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CONFIRMATION: MARCUS CLAPP

CONFIRMATION: BARBARA DALE

CONFIRMATI0N: ROGER ENDELL

CONFIRMATION: MICHAEL HOLMES

CONFIRMATION: GEORGIANNA LINCOLN

CONFIRMATION: RENEE MURRAY

CONFIRMATION: JANE PERKINS

CONFIRMATION: GLENDA STRAUBE

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1983-84
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HOUSE JUDICIARY COMMITTEE
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CONFIRMA-
TION

BRUCE
BOOKMAN

POUCH V
JUNEAU, ALASKA 99811
(907) 465-4990

Alaska State Legislature
HOUSE OF REPRESENTATIVES

REPRESENTATIVE
CHARLIE BUSSELL
CHAIRMAN

Committee on Judiciary

Telephone Interview Questions

(Judicial Conduct Commission Confirmee's)

1) Do you feel that you understand the role you would play as a Judicial Conduct Commissioner?

2) Are you willing to put in the amount of time required to do the job without renumeration?

3) Why do you want to serve on the Commission?

4) Do you have any suggestions/plans, etc. for the Commission?

5) What specific qualifications do you possess for the Commission?

6) Have you held any public offices in the past?

7) What is your party/political affiliation?

8) Do you feel any conflict of interest between a role as a Commissioner and your private life?

9) Any other statements for the Committee members to consider?

MEMBERS:
REP. JOHN LISKA, VICE CHAIRMAN; REP. RAMONA BARNES, EMERITUS;
REP. JOE HAYES; REP. HUGH MALONE; REP. DON CLOCKSIN; REP. RON WENDTE

POUCH V
JUNEAU, ALASKA 99811
(907) 465-4990

Alaska State Legislature
HOUSE OF REPRESENTATIVES

REPRESENTATIVE
CHARLIE BUSSELL
CHAIRMAN

Committee on Judiciary

Bruce Bookman

(Judicial Conduct Commission Confirmee's)

279- 8561

1) Yes, since I have served on the Judicial Qualifications Commission for the past year I feel I understand the role of a Commissioner.

2) Yes, have done it in the past and am willing to put in the time in the future.

3) I feel a responsibility to serve the public in the role of an attorney. Have worked with charities in past and want to continue in this role as a professional.

4) I think the Commission should increase its role and become more publicly active. The role of the executive director, which is the only paid position, should be expanded and defined so that he may have the power to investigate, not just sit through claims brought against judges.

5) Served on the Commission last year.

6) No, have never held public office.

7) Registered independent, previously a democrat.

8) No conflict of interest at present; if something should come up I would disqualify myself.

9) I have a good idea of the role of the Judicial Conduct Commission and would like to serve on it in the future.

MEMBERS:
REP. JOHN LISKA, VICE CHAIRMAN; REP. RAMONA BARNES, EMERITUS;
REP. JOE HAYES; REP. HUGH MALONE; REP. DON CLOCKSIN; REP. RON WENDTE

Alaska State Legislature

Speaker of the House of Representatives

Pouch V
State Capitol
Juneau, Alaska 99811
(907) 465-3720

Official Business



May 2, 1983

Representative Charlie Bussell
Chairman, Judiciary Committee
Capitol Building Room 122
Juneau, AK 99811

Dear Charlie,

Attached is a copy of Governor Sheffield's letter of April 29, 1983 submitting the names of Marcus Clapp, Bruce Bookman and Michael Holmes for appointment to the Commission on Judicial Conduct. Please review these appointments and hold confirmation hearings as necessary.

Very truly yours,

Joe L. Hayes
SPEAKER OF THE HOUSE

Enclosure

JLH:jvd

BILL SHEFFIELD
GOVERNOR

STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

MAY 2 3 1983

April 29, 1983

The Honorable Joe Hayes
Speaker of the House
Alaska State Legislature
Pouch V
Juneau, AK 99811

Dear Mr. Speaker:

Pursuant to applicable law, I submit the following names for legislative confirmation of appointment to the positions noted:

BOARDS AND COMMISSIONS
(with terms)

State Medical Board
Dr. Thomas Conley, Ketchikan, 83/04/28 - 86/04/21

Alaska State Board of Public Accountancy
J. Shelby Stastny, Anchorage, 83/04/28 - 85/04/25

Commission on Judicial Conduct
Marcus Clapp, Fairbanks, 83/04/28 - 4 year term
Bruce Bookman, Anchorage, 83/04/28 - 4 year term
Michael Holmes, Juneau, 83/04/28 - 4 year term

Sincerely,

Bill Sheffield
Governor

R E S U M E

BRUCE A. BOOKMAN
420 L Street, Suite 301
Anchorage, Alaska 99501
(907) 279-8561

PERSONAL

Date of Birth: June 10, 1942
Place of Birth: Sacramento, California
Marital Status: Married; three children

PRE-LEGAL EDUCATION

University of California at Berkeley, 1959-61, 1962-63
B.A., September 1963; Major - Philosophy, pre-law
Upper division average - 3.3.

Institute of European Studies, October 1961-August 1962
Winter semester at University of Vienna, Austria;
Summer semester at University of Freiburg, West Germany.

Herbert Hoover High School, Glendale, California 1956-59.

LEGAL EDUCATION

Boalt Hall School of Law, University of California. Awarded J.D., June 1967 - upper quarter of class. Grade point average 77.7.

Awarded summer language study stipend from Institute for International Legal Studies.

Admitted to practice before Supreme Courts of Alaska and California, the Federal District Court for the District of Alaska, and the Court of Appeals for Ninth Circuit. Member of American, Alaska, and California Bar Associations.

NATURE OF PRACTICE

General: Intensive civil and criminal trial practice on all levels; extensive legal writing before Alaska and United States Supreme Courts; personal injury work, plaintiff and defense.

EMPLOYMENT EXPERIENCE

Partner, Perkins, Coie, Stone, Olsen & Williams, 420 L Street, Suite 301, Anchorage, Alaska, June 1979 to present.

Solo practice, 920 West Sixth Avenue, Anchorage, Alaska, July 1975 to June 1979.

Partner, Bookman, Bryner & Shortell, 625 West Fifth Avenue, Anchorage, Alaska, May 1974 to July 1975.

Associate, McGrath, Wohlforth & Flint, 645 G Street, Anchorage, Alaska, September 1972 to May 1974.

Assistant Public Defender, Anchorage and Fairbanks, Alaska, May 1970 to September 1972.

Law Clerk of late Honorable George F. Boney, Alaska Supreme Court, January 1969 to December 1969.

Associate, Burr, Boney & Pease, 825 West Eighth Avenue, Anchorage, Alaska, July 1967 to December 1969.

Law Clerk, McCarty & Wheatley, Washington, D.C., summer 1966.

ACTIVITIES

Commission on Judicial Qualifications, 1982.
Member, Alaska Bar Association Fee Arbitration Panel.
Criminal Rules Revision Committee, 1971-72.
Criminal Code Revision Commission, 1975-76.
Governor's Task Force on Children's Code, 1975.
Chairman, Narcotic Drug Treatment Center, Methadone Maintenance Clinic, 1974 to 1977.
Director, Anchorage Child Abuse Board, Inc., 1972-1976.

Section 2. Supreme Court.

(a)

NOTES TO DECISIONS

Cited in Johnson v. State, Ct. App. No. 006 (File No. 4462), 631 P.2d 508 (1981).

Section 3. Superior Court.

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(Proposed Amendment)

Section 10. Commission on Judicial Conduct. The Commission on Judicial Conduct shall consist of nine members, as follows: three persons who are justices or judges of state courts, elected by the justices and judges of state courts; three members who have practiced law in this state for ten years, appointed by the governor from nominations made by the governing body of the organized bar and subject to confirmation by a majority of the members of the legislature in joint session; and three persons who are not judges, retired judges, or members of the state bar, appointed by the governor and subject to confirmation by a majority of the members of the legislature in joint session. In addition to being subject to impeachment under Section 12 of this article, a justice or judge may be disqualified from acting as such and may be suspended, removed from office, retired, or censured by the supreme court upon the recommendation of the commission. The powers and duties of the commission and the bases for judicial disqualification shall be established by law.

Editor's notes. — This amendment was proposed by Legislative Resolve No. 36, SLA 1981, and will be voted upon at the next general election to be held in November, 1982.

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And its intent. — The term "position of profit" was intended to prohibit all other salaried non-temporary employment under the United States or the State of Alaska. Begich v. Jefferson, Sup. Ct. Op. No. 481 (File No. 894), 441 P.2d 27 (1968).

Quoted in Delahay v. State, Sup. Ct. Op. No. 648 (File No. 1252), 476 P.2d 908 (1970).

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old law

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COUFIRMA-
TIOU

MARCUS
CLAPP

POUCH V
JUNEAU, ALASKA 99811
(907) 465-4990

Alaska State Legislature
HOUSE OF REPRESENTATIVES

REPRESENTATIVE
CHARLIE BUSSELL
CHAIRMAN

Committee on Judiciary

Telephone Interview Questions

(Judicial Conduct Commission Confirmee's)

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6) Have you held any public offices in the past?

7) What is your party/political affiliation?

8) Do you feel any conflict of interest between a role as a Commissioner and your private life?

9) Any other statements for the Committee members to consider?

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Alaska State Legislature
HOUSE OF REPRESENTATIVES

REPRESENTATIVE
CHARLIE BUSSELL
CHAIRMAN

Committee on Judiciary

Marcus Clapp

(Judicial Conduct Commission Confirmee's)

479-3161

1) Yes, have served on the Judicial Council for three years and a partner has been on the Commission in the past, so have a very good idea of the responsibilities involved.

2) Yes, the amount of time spent with the Judicial Council will easily shift to the Judicial Conduct Commission.

3) I am not very active with Bar association activities and have preferred to devote my time to important functions such as the Judicial Council and this. Supervising the way judges are retained and disaplined, is a very valuable thing to do.

4) No, not at the present, but plan to start research on the Commission very soon.

5) Have been in almost exclusive trial practice for over 16 years. So I have a very good understanding of the demands upon a judge and how a judge should act/react and his general demeanor. Also, the work on the Judicial Council has provided valuable experience.

6) No elective office, but public office through the Judicial Council.

7) No political affiliations at all- very apolitical person.

8) No conflict of interest; work on Judicial Council has kept everything up front and above board.

9) No additional statement.

MEMBERS:
REP. JOHN LISKA, VICE CHAIRMAN; REP. RAMONA BARNES, EMERITUS;
REP. JOE HAYES; REP. HUGH MALONE; REP. DON CLOCKSIN; REP. RON WENDTE

Alaska State Legislature

Speaker of the House of Representatives

Pouch V
State Capitol
Juneau, Alaska 99811
(907) 465-3720

Official Business



May 2, 1983

Representative Charlie Bussell
Chairman, Judiciary Committee
Capitol Building Room 122
Juneau, AK 99811

Dear Charlie,

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Very truly yours,

Joe L. Hayes
SPEAKER OF THE HOUSE

Enclosure

JLH:jvd

BILL SHEFFIELD
GOVERNOR

STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

MAY 02 1983

April 29, 1983

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Speaker of the House
Alaska State Legislature
Pouch V
Juneau, AK 99811

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Marcus Clapp, Fairbanks, 83/04/28 - 4 year term
Bruce Bookman, Anchorage, 83/04/28 - 4 year term
Michael Holmes, Juneau, 83/04/28 - 4 year term

Sincerely,

Bill Sheffield
Governor

HUGHES THORSNESS GANTZ
POWELL & BRUNDIN
ATTORNEYS AT LAW
590 UNIVERSITY AVENUE, SUITE 200
FAIRBANKS, ALASKA 99701
TELEPHONE (907) 479-3161
CABLE ADDRESS: DENALI
TELECOPIER: 479-0478

DAVID H. THORSNESS
RICHARD O. GANTZ
JAMES M. POWELL
BRIAN J. BRUNDIN
MARCUS R. CLAPP*
KENNETH P. JACOBUS
GARY W. GANTZ
JERRY E. MELCHER
JOE M. HUDDLESTON
SIGURD E. MURPHY
RICHARD D. THALER
CARL J. D. BAUMAN
FRED B. ARVIDSON
DENNIS M. BUMP*
MARY K. HUGHES
FRANK A. PFIFFNER
RALPH R. BEISTLINE*
GORDON J. TANS**
R. CRAIG HESSER
ROBERT L. MANLEY
JAMES M. GORSKI

TIMOTHY R. BYRNES
JAMES M. SEEDORF
RONALD E. NOEL*
FREDERICK J. ODSEN
MICHAEL L. LESSMEIER*
STEVEN S. TERVOOREN
MATTHEW K. PETERSON
JOSEPH R. D. LOESCHER
JAMES F. KLASEN
KENNETH D. LOUGEE*
KENNETH F. BRITTAIN
DAVID H. MERSEREAU
CORY A. CARLSON
EARL M. SUTHERLAND
CRAIG A. CARLSON
JAMES E. RAMSEY
JOSEPH S. SLUSSER*
LESLIE A. MORRILL
JOHN B. THORSNESS
JAMES R. SZENDER
GAIL M. BALLOU*

*FAIRBANKS OFFICE
**VALDEZ OFFICE

JOHN C. HUGHES
OF COUNSEL

509 WEST THIRD AVENUE
ANCHORAGE, ALASKA 99501
TELEPHONE (907) 274-7522
CABLE ADDRESS: DENALI
TELECOPIER: 274-7525
TELEX: 090-26376

200 CHENEGA STREET
P.O. BOX 767
VALDEZ, ALASKA 99686
TELEPHONE (907) 835-2888

April 21, 1983

Ms. Carol Derfener
Special Staff Assistant
Office of the Governor
Pouch A
Juneau, Alaska 99811

RE: Marcus R. Clapp's Nomination to the Commission on Judicial Conduct

Dear Ms. Derfener:

I was asked to submit a resume to the Governor for his consideration of my nomination by the Alaska Bar Association to the Commission on Judicial Conduct. I do not have a resume because it has been over fifteen years since I have applied for a job and I simply have not kept copies of the very old resumes. I will set forth concisely, however, my background in this letter and request that it suffice in place of a formal resume. I hope this doesn't cause any inconvenience but since the request is on quite short notice I felt this was the fastest way to comply.

Professional Experience

I have been with Hughes, Thorsness, Gantz, Powell & Brundin for fifteen years. It is the only job I have ever held in Alaska. I have been a partner in the firm for thirteen years and am presently the senior partner in the Fairbanks office. For the past twelve years I have attempted to limit my practice to the area of litigation mostly from the defense side.

Prior to coming to Alaska I was employed for one year as law clerk to Judge James D. Hathaway, Chief Judge of the Court of Appeals of the State of Arizona. This was from May of 1967 to June of 1968.

I was employed as a law clerk part time for attorney John William Johnson in Tucson, Arizona from December of 1966 through May of 1968.

I was a summer law clerk for the Scottsdale, Arizona law firm of Bottsford & Shumway in 1966.

Professional Achievements

I hold an "av" rating in Martindale-Hubbell which is voted on by my fellow lawyers and is the highest rating awarded by this publication which is the only publication that rates lawyers in the United States and Canada and is widely accepted by the Bar in general.

I was appointed by Governor Hammond and served three years on the Judicial Council from 1979 through mid-1982.

Throughout the last fifteen years I have served on various committees of both the State and local Bar associations. I am presently active in the torts section of the State Bar Association.

Education

Juris doctor degree 1967 from the University of Arizona Law School.

B.A. degree, Cum Laude, 1965 Arizona State University - English Major.

Personal

Date of birth February 11, 1942, Phoenix, Arizona.

Married to Judy with two daughters, Kimberly 13 and Kara 12.

Lay Leader First United Methodist Church, 1982 to present.

Coach in both girls basketball and softball for the last four years.

References

Andrew J. Kleinfeld, Attorney, 200 North Cushman, Fairbanks, Alaska 99701. 452-1305.

Richard K. Heacock, Jr., Pastor, First United Methodist Church, 915 Second Avenue, Fairbanks, Alaska 99701. 452-2956.

Richard O. Gantz, 509 West Third Avenue, Anchorage, Alaska 99501. 274-7522.

I think the above information will suffice to give the Governor the basic information he may need in making his appointment. I will be more than happy to supply any additional information upon request. Thank you.

Sincerely,

HUGHES, THORSNESS, GANTZ, POWELL & BRUNDIN

By Marcus R. Clapp

MRC:ac

Section 2. Supreme Court.

(a)

NOTES TO DECISIONS

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Section 9. Additional Duties. The judicial council shall conduct studies for improvement of the administration of justice, and make reports and recommendations to the supreme court and to the legislature at intervals of not more than two years. The judicial council shall perform other duties assigned by law.

old law

Section 10. Commission on Judicial Qualifications. The Commission on Judicial Qualifications shall consist of nine members, as follows: one justice of the supreme court, elected by the justices of the supreme court; three judges of the superior court, elected by the judges of the superior court; one judge of the district court, elected by the judges of the district court; two members who have practiced law in this state for ten years, appointed by the governing body of the organized bar; and two persons who are not judges, retired judges, or members of the state bar, appointed by the governor and subject to confirmation by a majority of the members of the legislature in joint session. In addition to being subject to impeachment under section 12 of this article, a justice or judge may be disqualified from acting as such and may be suspended, removed from office, retired, or censured by the supreme court upon the recommendation of the commission. The powers and duties of the commission and the bases for judicial disqualification shall be established by law. [Amendment approved August 27, 1968]

CONFIRMA-
TION

BARBARA
DALE

Barbara A. Dale
1728 Glacier Avenue
Juneau, Alaska 99801

Date of Birth: 6/6/51
Long Beach, California

1981 to present -	Started and managed retail business in Downtown Juneau; Board of Directors, Juneau Women's Resource Center; managed local assembly campaign; involved in campaign to elect current Governor; re-elected vice-chairperson of Alaska Commission on the Status of Women, chaired Southeast Women's Leadership Conference; founding member of Juneau N.O.W.
1980 to 1981	Elected vice-chairperson Alaska Commission on the Status of Women; chaired Child Care and Legislative Committees; implemented Commission's legislative goals through lobbying on issues; Alaska delegate to National Association of Commissions for Women; operated small home retail business.
1979	Accepted into Denali Program, Anchorage Community College; Alaska delegate to National Association of Commissions for Women Conference.
1978	Appointed to the Alaska Commission on the Status of Women.
1977	Planned, organized and chaired Parent's Group, asupport group for parents of young children; developed and implemented Mothershare in Anchorage, which has expanded into numerous separate groups around the state; Board member, Anchorage Montessori School.
1976	Helped organize a women's political action group in Anchorage.
1975	Assistant Director of St. Ann's Nursery part-time; co-administered child care program for 25 infants and toddlers; managed staff of six.
1974	Office manager for statewide campaign office.

1973	Staff Assistant to House Minority, Alaska State Legislature; organized office and managed staff of three for thirteen legislators; created information system for nine freshmen legislators
1972	Staff Assistant to House Health, Education and Social Services Committee; continued during interim as personal administrative assistant to Rep. Genie Chance; researched casework, handled legislative, personal and business affairs during interim.
1971	Staff Assistant to Senate Health, Education and Social Services Committee; attended Anchorage Community College Dental Assisting Program.
1970	Staff Assistant to House Commerce Committee.

CONFIRMA-
TION

ROGER
ENDELL

MEMORANDUM State of Alaska

DEPARTMENT OF CORRECTIONS

TO: Mr. Craig Lovell
Staff Assistant
House Judicary Committee

DATE: April 18, 1984

FILE NO:

TELEPHONE NO: 465-3376

FROM: Roger V. Endell
Commissioner

SUBJECT: Request for References

At your request I am providing the names, addresses and phone numbers of five references who can speak to my character and professional abilities in regard to my pending confirmation hearing before the House Judiciary Committee. Please advise me if you need further information. My resume' is attached as you requested.

1. John Angell, Ph.D.
Dean
School of Justice
University of Alaska, Anc.
3211 Providence Drive
Anchorage, Alaska 99508
Ph: (907) 786-1810

2. David Outcalt, Ph.D.
Chancellor
University of Alaska,
Anchorage
3211 Providence Drive
Anchorage, Alaska 99508
Ph: (907) 786-1410

3. Anthony Travisono
Executive Director
American Correctional
Association
4321 Hartwick Road
Suite L-208
College Park, Maryland 20740
Ph: (907) 699-7600

4. Robert Henderson
President
Alaska Chiefs of
Police Assoc.
5700 East Tudor Rd.
P.O. Box 6188, Annex
Anchorage, Alaska 99502
Ph: (907) 269-5751

5. William Nagel, President (Retired)
American Foundation
Institute of Corrections
404 Colony Drive
North Myrtle Beach, S. C. 29582
Ph: (803) 249-2182

RVE:al
Attachment

8-24-83

VITA

ROGER V. ENDELL

Present Position: Deputy Commissioner (and Head)
Adult Corrections Agency
State of Alaska

Address:

Adult Corrections Agency
2200 East 42nd Ave.
Anchorage, Alaska 99508

Phone: (907)561-4426
(Anchorage)
(907)465-3376
(Juneau)

Birthplace: Seattle, WA

Birthdate: May 3, 1940

Home Address:

SR 2, Box 4295 Great Land
Chugiak, Alaska 99567

Home Phone: (907)688-2441
(Anchorage)

Alaskan Residency:

1960 to present

Marital Status:

Married, two children

PROFESSIONAL RECOGNITION

May 1980	Merit pay increase, outstanding faculty member, University of Alaska, Anchorage
May 1981	Promotion from Assistant to Associate Professor of Justice, University of Alaska, Anchorage
May 1983	Granted tenure, Associate Professor of Justice, University of Alaska, Anchorage
May 1983	Named by the President of the American Correctional Association as a member of the ACA International Committee

EDUCATION

Bachelor of Education, University of Alaska, Fairbanks, 1966.

Master of Education, Counseling Psychology, University of Alaska, Fairbanks, 1969.

Doctoral Candidate, Criminology, School of Criminology, The Florida State University, Tallahassee, Florida, 1980 to present.

PROFESSIONAL TRAINING

January 1973	Leadership Training: Management Performance American Management Association, Juneau, Alaska
January 1973	Improvement of Management Performance American Management Association, Juneau, Alaska
April 1973	Career Based Education in Corrections University of Hawaii Educational Research and Development Center, at the Center for Continuing Education, California Polytech, Pomona, California
December 1974	Labor Contract Administration State of Alaska, Department of Administration Anchorage, Alaska
March 1975	Supervisory Management State of Alaska, Department of Administration Anchorage, Alaska

MILITARY

1960 - 1963	Honorable Discharge, Specialist E-5, U.S. Army Alaska Communications System, Juneau, Alaska Accounting specialist for long distance telephone and telegraphy

EMPLOYMENT HISTORY

January 1976 to January 1983	The Justice Center, University of Alaska, Anchorage, Alaska Titles: Associate Professor of Justice, and Director of Academic Programs and Continuing Professional Development
September 1971 to January 1976	Division of Corrections, Department of Health and Social Services, State of Alaska Title: Assistant Correctional Superintendent

May 1971 to September 1971	Division of Corrections, Department of Health and Social Services, State of Alaska Titles: Institutional Counselor, Parole Officer
September 1969 to May 1971	Bureau of Indian Affairs, U.S. Department of the Interior, Mt. Edgecumbe High School, Sitka, Alaska Title: Senior Counselor, Vocational and Educational Placement
June 1970 to August 1970	Oil Industry Orientation Program, joint effort of the Alyeska Pipeline Consortium, University of Alaska, State Department of Education and State Manpower Office, Sitka, Alaska Title: Chief Counselor
June - August 1966, 1967, 1968, 1969	Upward Bound Program, University of Alaska, Fairbanks, Alaska Title: Psychological Counselor and Instructor in Sociology and Psychology
1967 - 1969	Main Junior High School, Fairbanks North Star Borough School District, Fairbanks, Alaska Title: Teacher, Social Studies (geography and American government)
1966 - 1967	Baranof Elementary School, Greater Sitka Borough School District, Sitka, Alaska Title: Elementary Teacher

MEMBERSHIPS IN PROFESSIONAL ORGANIZATIONS

American Personnel and Guidance Association, 1969 - 1971
American Correctional Association, 1971 to present
Greater Anchorage Area Planning and Advisory Group for Drug Abuse Services, 1976 - 1978
Academy of Criminal Justice Sciences, 1976 - 1979
American Probation and Parole Association, 1976 - 1979
University of Alaska Criminal Justice Curriculum Revision Committee, 1977 - 1978
University of Alaska Alumni Asociation, Anchorage Chapter
University of Alaska Alumni Association Student Talent Grant Committee, 1976

Selected by Governor's Commission on the Administration of Justice as a representative in formulating the juvenile and corrections components of the 1978 Comprehensive Statewide Plan for Criminal Justice in Alaska
Western Correctional Association, 1978 to 1982
American Society of Criminology, 1978 to present
Student Advising Task Force, UAA, 1978 - 1979
Nominating Committee, University of Alaska Faculty Senate, 1978
Chairman, Campus Entity Naming Committee, 1978-79
Chairman, Administrative Affairs Board, Faculty Senate, University of Alaska, Anchorage, 1979-80, member 1982-83
Member, Ad Hoc Committee on Off Campus Instruction/Continuing Education, 1979-80
Western and Pacific Association of Criminal Justice Educators, 1980 to 1982
Member, Ad Hoc Task Force on Faculty Evaluation, Reappointment and Merit, and Faculty Administrative Evaluation, University of Alaska, Anchorage, 1980
Member, Academic Affairs Board 1981-82, 1982-83
Member, Admissions and Standards Committee 1981-82
Member, Faculty Evaluation Committee (Campuswide Peer Review) 1981-82
Member, Criminal Justice/Treatment Interface Group, an inter-disciplinary coordinating council for planning, problem solving, training and communication improvement among the criminal justice and alcohol and addiction service providers at the state and municipal levels of government, 1981-82
Member, Treatment Alternatives to Street Crime (TASC) Advisory Board, November, 1981 to present
President, University of Alaska, Anchorage Faculty Association, Fall, 1981 to present
Member, Vice Chancellor for Academic Affairs Search Committee, Spring, 1982
Member, Chancellor's Planning and Budget Council 1982
Member, Association of State Correctional Administrators, 1983 and continuing.
Member, Western Directors of Corrections Association, 1983 and continuing

PROFESSIONAL TRAVEL

All of Alaska (except the Aleutian Chain) for various research projects, meetings, conferences, classes and provision of technical assistance - for criminal justice related professional and/or academic purposes

Federal Bureau of Prisons facilities including: McNeil Island, Terminal Island, Lompoc, Leavenworth, El Reno, Marion, Springfield Medical Center, Atlanta, Englewood, Federal Correctional Centers or Prisons

National Parole Decision Making Conference, Denver, Colorado, 1972

American Correctional Association, Annual Correctional Congress, Denver, Colorado, 1976; Milwaukee, Wisconsin, 1977; Portland, Oregon, 1978; Philadelphia, Pennsylvania, 1979; Toronto, Ontario, Canada, 1982; Chicago, Illinois, 1983

National College of Juvenile Justice, Reno, Nevada, 1976

American Justice Institute, Sacramento, California, 1976

Planning and Research Division, San Francisco Police Department, San Francisco, California, 1976

Criminal Justice Study Tour of the Soviet Union, including meetings with Soviet professional counterparts in Leningrad, Moscow and Tallin (Estonia). Personal/professional visits with the Directors General and/or immediate staff assistants for Prison and Probation Services in Helsinki, Finland; Norkoping, Sweden and Copenhagen, Denmark; May/June 1978

Oklahoma State Department of Corrections, August, 1978

American Society of Criminology Annual Meeting, Dallas, Texas, November, 1978; Philadelphia, Pennsylvania, November 1979

National Symposium on Higher Education for Police Officers, Washington, D.C., February, 1979

Visited the White House at the invitation of Mr. Richard Pettigrew, Assistant to the President for Governmental Reorganization, February, 1979

Juvenile Intake Department, State Department of Human Resources, Tallahassee-Tampa, Florida, November, 1979

Study-Visit, Ministry of Justice, Prison Administration, Social Research Institute of Alcohol Studies and Research Institute of Legal Policy, Helsinki, Finland, December 1979-January 1980

Southern Conferences on Corrections, Florida State University, Tallahassee, Florida, February, 1980; March, 1981; March, 1982

AUTHORED PAPERS, GRANTS, PUBLICATIONS

1976

An Examination of Specialized Training Grants Funded by the Alaska Criminal Justice Planning Agency, 1973 through 1975, The Criminal Justice Center, August, 1976.

1977

Continuing Professional Development, a grant received from the Alaska Governor's Commission on the Administration of Justice, $116,000, for regional training and education programs for court, corrections, police, troopers and legal personnel, The Criminal Justice Center, January, 1977.

Criminal Justice Bulletin, a grant received from the Alaska Governor's Commission on the Administration of Justice, $35,000, for monthly publication of an education and training bulletin with distribution to all statewide criminal justice agencies, The Criminal Justice Center, January, 1977.

A Correctional Master Plan for the State of Alaska Division of Corrections, a grant application to the Washington, D.C. office of Law Enforcement Assistance Administration funded in the amount of $183,000. This extensive grant application was written at the request of the Director of the Alaska Division of Corrections and the Executive Director of the Alaska Criminal Justice Planning Agency.

"An Issue in Corrections: Does Incarceration Reduce the Crime Rate?" A presentation made on request to the Alaska Black Caucus, Windsor Room, Holiday Inn, Anchorage, Alaska, 1977.

"A Report on the National Correctional Congress," Alaska Justice Forum, Volume 1, Number 6.

"Alternatives in the Administration of Corrections in Alaska," a paper presented to the Legislative Interim Committee on Corrections, Anchorage, Alaska, November 7, 1977.

"Bars and Programs, Correctional Master Plan, Pro and Con," Alaska Justice Forum, Volume 1, Number 7.

"Let the Punishment Fit the Crime," The Anchorage Times, special supplement on Crime Prevention, November, 1977.

1978

The Alaska Division of Corrections: An Institutional Population and Space Utilization Study. The Criminal Justice Center, University of Alaska, Anchorage, April 15, 1978. This document has been placed, upon request, in the holdings of the Documents Office, Law Library, University of Washington; Criminal Justice Reference and Information Center, Law Library, University of Wisconsin, Madison; and Government Publications, Karrmann Library, University of Wisconsin, Platteville.

"Continuing Professional Development," Alaska Justice Forum, Volume 2, Number 4, April, 1978.

1979

"Police Education - A National Debate," Alaska Jusice Forum, Volume 3, Number 5, March, 1979 and Volume 3, Number 6, April, 1979.

Uniform Juvenile Intake Procedures, a grant awarded by the Alaska Governor's Commission on the Administration of Justice, $30,831 for development of statewide uniform procedures for juvenile intake, including implementation strategies (legislative, judicial and executive), June, 1979.

Alaska Corrections Master Plan: A Preliminary Summary. The Criminal Justice Center, University of Alaska, Anchorage, July 11, 1979.

Alaska Corrections Master Plan: Legislative Implications. The Justice Center, University of Alaska, Anchorage, November 8, 1979. This document has been placed, upon request, in the holdings of the Government Documents Section, Charles B. Serra Law Library, State University of New York at Buffalo; and the Documents Office, Law Library, University of Washington.

"The Correctional Master Plan: Some Legislative Options," a paper and testimony presented to the Alaska State Legislative House Judiciary Committee, November 10, 1979.

1980

"The Future of the American Family: A Justice System Perspective," a paper presented to the Alaska Panel, the White House Conference on the American Family, March 14, 1980.

Alaska Correctional Master Plan: Proposed Funding Strategy. Justice Center, University of Alaska, Anchorage, March 18, 1980.

Seven Years of Individualized Training: An Examination of Specialized Training Grants Funded by the Alaska Criminal Justice Planning Agency 1973 Through 1979. Justice Center, University of Alaska, Anchorage, April 15, 1980.

Social Services and Corrections: Some Impressions of the North Slope Borough of Alaska. Justice Center, University of Alaska, Anchorage, June 4, 1980. This document has been placed, upon request, in the holdings of the Documents Office, Law Library, University of Washington.

Criminally Committed Mental Patient Services: A Task Force Report, with John E. Havelock, Justice Center, University of Alaska, Anchorage, June 20, 1980.

1981

"An Experiment in Justice Education: The Political Realities of Justice Innovations," paper presented at the 26th Southern Conference on Corrections, in Proceedings: Southern Conference on Corrections, Vernon Fox (ed). Tallahassee, Florida: The Florida State Univ[illegible]ity, March 3, 1981.

"Finland and th[illegible]. Imprisonment Responses to Crime" in Creative Punishm[illegible]t: The Scandinavian Experiences In Perspective, John P.J. Dusich, editor. Albany, New York: State University of New York Press, in press (1982).

"Bioenvironmental Criminology: Political and Policy Implications for Crime Prevention Strategies," in Juvenile and Family Court Journal, approved for publication, May 1983.

"Justice Center Faculty Performance Level and Evaluation Guidelines," written for and adopted by the Justice Center Faculty as a part of the professional peer evaluation process, Fall, 1981.

"Police Executive Career Mobility: A Study of Alaskan Chiefs," with John Angell. Criminal Justice Review. Vol. 6, No. 2; 16-22.

1982

"The Media's Role in Justice Administration: The Corrections Perspective," a paper presented to the Alaska Press Club, Anchorage, January 27, 1982.

Faculty Evaluation Committee Policy Guidelines, Amendments to the UAA Faculty Senate Constitution and By-Laws which establish the constitutional base for the Faculty Evaluation Committee and Guidelines for its work, adopted Spring, 1982.

"A Socialist System of Justice: Observations From a Visit to the U.S.S.R." Paper presented at the 27th Southern Conference on Corrections, in Proceedings: Southern Conference on Corrections, Vernon Fon (ed.). Tallahassee, Florida: The Florida State University, March 30, 1982.

"Justice on the Last Frontier: The Training and Education of Alaska's Justice Practitioners," panelist presentation, Correctional Training for the Eighties, presented at the Southern Conference on Corrections, Tallahassee, Florida, March 28-30, 1982.

"Correctional Crises: Are we Asking the Right Questions," an invited paper presented to the Mt. McKinley Lions Club, Anchorage, July 29, 1982.

COMMUNTY SERVICE

Member, Board of Directors, Chugiak Community Council, 1976-1979

Chairman, Board of Directors, Project Helping Hand, Eagle River Correctional Center

Member, Board of Directors, manager and official, Babe Ruth Baseball League, 1973-1976, Knik Little League, 1979-80, 1982

Official, Amateur Athletic Union (AAU), Knik Swim Club, 1976 to present

Interviewer, public television system, station KAKM, half-hour interview of Director of Corrections on correctional issues, "Something to Say," July, 1979

Panel moderator, public television system, station KAKM, Pro and Con in "Scared Straight," November, 1979

Interviewee, television station KENI, "The New Mexico Penitentiary Riot - Its Implications for Alaska," on Stationbreak, January 1980

Interviewee, Public Broadcasting System, "Corrections in Alaska," on Alaska Review, June, 1980

TECHNICAL ASSISTANCE AND/OR CONSULTING

Consultant, Multnomah County Human Services Department, Portland, Oregon, 1976

Principal consultant, Joint Legislative Committee on Corrections, 1977-79

Principal consultant and author, State of Alaska Revised Criminal Code Implementation and Training Plan, the design of a delivery system to train all Alaskan criminal justice personnel on the revised Alaska Criminal Code, submitted to the Alaska Legislature, Spring, 1978

Consultant to the Alaska Department of Transportation and Public Facilities and the Alaska Division of Corrections for the Alaska Justice Facilities Planning Study, 1978

Consultant to the joint Executive-Legislative Correctional Master Plan Advisory Committee, 1978-79

Chairman, Community Advisory Committee, Anchorage Pre-Trial Facility (site selection and design), 1979

Member, Committee on Women Offenders, institution and program design, 1979

Principal consultant, Finance Committee, Alaska House of Representatives, evaluation and technical assistance, Correctional Master Plan, 1979-80

Member, Rural Justice Policy Committee, formulation of integrated rural justice services and design of public policy for implementation by the Governor's Commission on the Administration of Justice, 1979-80

Principal researcher under contract to organize, tabulate and analyze material and develop research results and report on the continuing training program grants of the Criminal Justice Planning Agency, Office of the Governor, for the period 1973-1979, April 1980

Author of contractual agreement for provision of technical assistance to the State of Alaska Division of Health for the Task Force on Criminally Committed Mental Patient Services, April 1980

Teleconference testimony, House Finance Sub-Committee on the University of Alaska. A presentation made on behalf of the Faculty Association, University of Alaska, Anchorage, January 28, 1982

"Parole Legislation and House Bills 225, 261 and 293." Invited teleconference testimony before the joint Alaska House of Representatives Committees on Health, Education and Social Services, and Judiciary. Anchorage, February 8, 1982

Consultant to joint House-Senate Bond Issue Finance Sub-Committee in regard to the formulation of the 1982 correctional bond issue and capital improvements, May 1982

Contractual consultant and expert witness in case number 2KB-81-144 Civil, Superior Court, providing technical assistance, information, consultation and testimony regarding the contemporary correctional management policies, the procedures and the practices of parole officers in field supervision services in rural Alaska.

SHORT COURSES, SEMINARS, CONFERENCES

As Director, Continuing Professional Development, thirty conferences, short courses, seminar training sessions and regional programs were designed and delivered for criminal justice practitioners, students and public statewide between 1976 and 1983.

TEACHING CURRICULUM

Curriculum responsibilities 1976 to 1983 included the following courses: Introduction To Criminal Justice; Criminology; Principles Of Corrections; Correctional Administration; Corrections And The Community; Justice Organization and Management; Justice Processes; Contemporary Correctional Issues; Comparative Justice System; Politics And Crime Prevention; Advanced Criminological Theory; and Correctional Systems Management.

CONFIRMATION

MICHAEL HOLMES

POUCH V
JUNEAU, ALASKA 99811
(907) 465-4990

Alaska State Legislature
HOUSE OF REPRESENTATIVES

REPRESENTATIVE
CHARLIE BUSSELL
CHAIRMAN

Committee on Judiciary

Telephone Interview Questions

(Judicial Conduct Commission Confirmee's)

1) Do you feel that you understand the role you would play as a Judicial Conduct Commissioner?

2) Are you willing to put in the amount of time required to do the job without renumeration?

3) Why do you want to serve on the Commission?

4) Do you have any suggestions/plans, etc. for the Commission?

5) What specific qualifications do you possess for the Commission?

6) Have you held any public offices in the past?

7) What is your party/political affiliation?

8) Do you feel any conflict of interest between a role as a Commissioner and your private life?

9) Any other statements for the Committee members to consider?

MEMBERS:
REP. JOHN LISKA, VICE CHAIRMAN; REP. RAMONA BARNES, EMERITUS;
REP. JOE HAYES; REP. HUGH MALONE; REP. DON CLOCKSIN; REP. RON WENDTE

POUCH V
JUNEAU, ALASKA 99811
(907) 465-4990

Alaska State Legislature
HOUSE OF REPRESENTATIVES

REPRESENTATIVE
CHARLIE BUSSELL
CHAIRMAN

Committee on Judiciary

Michael M. Holmes

(Judicial Conduct Commission Confirmee's)

586-2210

1) Yes, have served on the Judicial Qualifications Commission for one and a half years, so have very good idea of the role of a commissioner and the amount of time involved.

2) Yes, see above.

3) To do some good; I have been a Judicial Council member so have the necessary experience and qualifications to do a good job for the Commission.

4) The Commission needs to be better organized for effectiveness and it needs new proceedural rules.

5) Judicial Qualifications Commissioner for one and a half years; Judicial Council member, plus twenty-three years of experience as an attorney. Also know most, if not all of the Superior/Supreme Court Judges.

6) No elective office, but have held public position as:

-Assistant Attorney General - 3 years

-Deputy Attorney General - 3½ years

-Judicial Council Member - 8 years

-Judicial Quallifications Commissioner-1½ years

7) Registered Democrat; but not active.

8) No conflict of interest at all.

9) No additional statements.

MEMBERS:
REP. JOHN LISKA, VICE CHAIRMAN; REP. RAMONA BARNES, EMERITUS;
REP. JOE HAYES; REP. HUGH MALONE; REP. DON CLOCKSIN; REP. RON WENDTE

Alaska State Legislature

Speaker of the House of Representatives

Pouch V
State Capitol
Juneau, Alaska 99811
(907) 465-3720

Official Business



May 2, 1983

Representative Charlie Bussell
Chairman, Judiciary Committee
Capitol Building Room 122
Juneau, AK 99811

Dear Charlie,

Attached is a copy of Governor Sheffield's letter of April 29, 1983 submitting the names of Marcus Clapp, Bruce Bookman and Michael Holmes for appointment to the Commission on Judicial Conduct. Please review these appointments and hold confirmation hearings as necessary.

Very truly yours,

Joe L. Hayes
SPEAKER OF THE HOUSE

Enclosure

JLH:jvd

BILL SHEFFIELD
GOVERNOR

STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

MAY 2 3 1983

April 29, 1983

The Honorable Joe Hayes
Speaker of the House
Alaska State Legislature
Pouch V
Juneau, AK 99811

Dear Mr. Speaker:

Pursuant to applicable law, I submit the following names for legislative confirmation of appointment to the positions noted:

BOARDS AND COMMISSIONS
(with terms)

State Medical Board
Dr. Thomas Conley, Ketchikan, 83/04/28 - 86/04/21

Alaska State Board of Public Accountancy
J. Shelby Stastny, Anchorage, 83/04/28 - 85/04/25

Commission on Judicial Conduct
Marcus Clapp, Fairbanks, 83/04/28 - 4 year term
Bruce Bookman, Anchorage, 83/04/28 - 4 year term
Michael Holmes, Juneau, 83/04/28 - 4 year term

Sincerely,

Bill Sheffield
Governor

NORMAN C. BANFIELD
OF COUNSEL
MICHAEL M. HOLMES
WILLIAM B. ROZELL
LAWRENCE T. FEENEY
CHARLES N. DRENNAN
ANTHONY M. SHOLTY
JAMES R. WEBB
JOHN F. CLOUGH, III
GREGORY F. COOK

HERBERT L. FAULKNER (1882-1972)
FRANK M. DOOGAN (1923-1977)

LAW OFFICES OF
FAULKNER, BANFIELD, DOOGAN & HOLMES
A PROFESSIONAL CORPORATION
801 WEST TENTH STREET, SUITE 300
P. O. BOX 1150
JUNEAU, ALASKA 99802-1150
(907) 586-2210
TELEX: 090-45-335

ANCHORAGE OFFICE
DENALI TOWERS NORTH
2550 DENALI, SUITE 700
ANCHORAGE, ALASKA 99503
(907) 274-0666
TELEX: 090-26-455

RANDALL J. WEDDLE
MICHAEL A. BARCOTT
KAREN L. RUSSELL
LEE S. GLASS
RICHARD B. BROWN
TIMOTHY A. McKEEVER
RICHARD L. WAGG
ROBIN G. WILCOX

April 20, 1983

Ms. Cathy Stevenson
Secretary to the Governor
Lt. Governor's Wing
Third Floor - State Capitol Building
Juneau, Alaska 99801

Dear Ms. Stevenson:

At your request, I am submitting the following resume:

Michael M. Holmes was born in Seattle, Washington on April 6, 1934. He was admitted to the Bar in the State of Washington in 1959 and to the Bar in the State of Alaska in 1962. He has been a resident of Juneau, Alaska since 1960. Mr. Holmes graduated from The University of Washington (BA 1956) and The University of Washington School of Law (LLB 1959). He was an assistant attorney general from 1960 to 1963 and Deputy Attorney General from 1963 to 1966. He was a member of the Alaska Judicial Council from 1973 to 1980 and was a member of the Alaska Bar Association Board of Governors from 1963 to 1964. He served on the Judicial Qualifications Commission from April 1981 until December 1982. He is the senior partner in the law firm of Faulkner, Banfield, Doogan & Holmes (established 1934, offices in Juneau and Anchorage). He is a member of the Alaska Bar Association and the Juneau Bar Association and is Fellow of The American Bar Association. He is married and has three teenage children. He is Vice President of Gastineau Channel Little League.

I hope this summary will be sufficient.

Yours very truly,

Michael M. Holmes

MMH/pb

Section 2. Supreme Court.

(a)

NOTES TO DECISIONS

Cited in Johnson v. State, Ct. App. Op. No. 006 (File No. 4462), 631 P.2d 508 (1981).

Section 3. Superior Court.

NOTES TO DECISIONS

Jurisdiction generally. — The question of a court's jurisdiction goes to its power to hear and adjudicate the subject matter in a given case. K.C.M. v. State, Sup. Ct. Op. No. 2326 (File No. 4764), 627 P.2d 607 (1981).

Where a court is one of general jurisdiction, such as a superior court, it has traditionally been regarded as having the power to hear all controversies which may be brought before a court within a legal bounds of rights or remedies, except insofar as has been expressly and unequivocally denied by the state's constitution or statutes. K.C.M. v. State, Sup. Ct. Op. No. 2326 (File No. 4764), 627 P.2d 607 (1981).

Order for sterilization of mental incompetent. — A superior court, as a court of general jurisdiction, does have, as part of its inherent parens patriae authority, the power to entertain and act upon a petition seeking an order authorizing the sterilization of a mental incompetent. K.C.M. v. State, Sup. Ct. Op. No. 2326 (File No. 4764), 627 P.2d 607 (1981).

(Proposed Amendment)

Section 10. Commission on Judicial Conduct. The Commission on Judicial Conduct shall consist of nine members, as follows: three persons who are justices or judges of state courts, elected by the justices and judges of state courts; three members who have practiced law in this state for ten years, appointed by the governor from nominations made by the governing body of the organized bar and subject to confirmation by a majority of the members of the legislature in joint session; and three persons who are not judges, retired judges, or members of the state bar, appointed by the governor and subject to confirmation by a majority of the members of the legislature in joint session. In addition to being subject to impeachment under Section 12 of this article, a justice or judge may be disqualified from acting as such and may be suspended, removed from office, retired, or censured by the supreme court upon the recommendation of the commission. The powers and duties of the commission and the bases for judicial disqualification shall be established by law.

Editor's notes. — This amendment was proposed by Legislative Resolve No. 36, SLA 1981, and will be voted upon at the next general election to be held in November, 1982.

Cross references. — For provisions on the powers and duties of the Commission on Judicial Qualifications, see AS

Section 8. Judicial Council. The judicial council shall consist of seven members. Three attorney members shall be appointed for six-year terms by the governing body of the organized state bar. Three non-attorney members shall be appointed for six-year terms by the governor subject to confirmation by a majority of the members of the legislature in joint session. Vacancies shall be filled for the unexpired term in like manner. Appointments shall be made with due consideration to area representation and without regard to political affiliation. The chief justice of the supreme court shall be ex-officio the seventh member and chairman of the judicial council. No member of the judicial council, except the chief justice, may hold any other office or position of profit under the United States or the State. The judicial council shall act by concurrence of four or more members and according to rules which it adopts.

"Term". — With the exception of Alaska Const., art. IV, §§ 4 and 13, wherever "term" or "service at the pleasure of" appears in the constitutional text originally adopted, the reference is to a period of service for a particular office. Buckalew v. Holloway, Sup. Ct. Op. No. 1988 (File No. 4058), 604 P.2d 240 (1979).

Meaning of phrase "position of profit". — See Begich v. Jefferson, Sup. Ct. Op. No. 481 (File No. 894), 441 P.2d 27 (1968).

And its intent. — The term "position of profit" was intended to prohibit all other salaried non-temporary employment under the United States or the State of Alaska. Begich v. Jefferson, Sup. Ct. Op. No. 481 (File No. 894), 441 P.2d 27 (1968).

Quoted in Delahay v. State, Sup. Ct. Op. No. 648 (File No. 1252), 476 P.2d 908 (1970).

Section 9. Additional Duties. The judicial council shall conduct studies for improvement of the administration of justice, and make reports and recommendations to the supreme court and to the legislature at intervals of not more than two years. The judicial council shall perform other duties assigned by law.

Section 10. Commission on Judicial Qualifications. The Commission on Judicial Qualifications shall consist of nine members, as follows: one justice of the supreme court, elected by the justices of the supreme court; three judges of the superior court, elected by the judges of the superior court; one judge of the district court, elected by the judges of the district court; two members who have practiced law in this state for ten years, appointed by the governing body of the organized bar; and two persons who are not judges, retired judges, or members of the state bar, appointed by the governor and subject to confirmation by a majority of the members of the legislature in joint session. In addition to being subject to impeachment under section 12 of this article, a justice or judge may be disqualified from acting as such and may be suspended, removed from office, retired, or censured by the supreme court upon the recommendation of the commission. The powers and duties of the commission and the bases for judicial disqualification shall be established by law. [Amendment approved August 27, 1968]

CONFIRMA-
TION

GEORGIANNA
LINCOLN

Alaska State Legislature

SENATOR BETTYE FAHRENKAMP
CHAIRMAN, RESOURCES COMMITTEE

4016 EVERGREEN
FAIRBANKS, ALASKA 99701

907-479-3550

Senate

WHILE IN JUNEAU
POUCH V
JUNEAU, ALASKA 99811
OFFICE 907-465-3763
RESOURCES COMMITTEE
907-465-3834
HOME 907-789-9182

April 23, 1984

Hon. Charles Bussell
Room 124 Capital Building
Juneau, AK 99811

Dear Charlie:

Thank you for providing me the opportunity to give my highest personal and professional recommendation on the appointment of Georgianna Lincoln to the Commission on Judicial Conduct.

I have personally known Georgianna for over 20 years. During that time I have watched her grow and mature into one of Fairbanks' finest talents. She relentlessly pursues the facts and always goes the extra yard when challenged by an issue of a cause. I have never known her to shirk responsibility, in fact, she embraces it with vigor.

Georgianna is very active on a political and community level and contiues to prove herself a leader. I recommend her for confirmation without hesitation.

Sincerely,

Bettye

Bettye Fahrenkamp
Alaska State Senator

Alaska State Legislature

House of Representatives

Al Adams
Chairman
Committee on Finance

WHILE IN SESSION
Pouch V
State Capitol
Juneau, Alaska 99811
(907) 465-3706

OUT OF SESSION
P.O. Box 333
Kotzebue, Alaska 99752
(907) 442-3320

1024 W. 6th
Anchorage, Alaska 99501
(907) 274-0615

Official Business

April 17, 1984



The Honorable Charlie Bussell
Chairman, House Committee on Judiciary
Pouch V
Juneau, Alaska 99811

Dear Representative Bussell:

It pleases me to recommend Georgianna Lincoln to your committee for her appointment to the Commission on Judicial Conduct.

Georgianna and I worked together for the Fairbanks Native Association in the management of health and social programs related to that area. I found her to be talented and well versed on the subject. Georgianna has had a wide range of experience from aboriginal land claims, human services, housing assistance, village government, education and vocational training.

Because of her wide range of experience, I have no doubts that she is an excellent candidate for Commission on Judicial Conduct.

Sincerely,

Al Adams

Al Adams

Alaska State Legislature

Senate

Official Business

Pouch V
State Capitol
Juneau, Alaska 99811

24 April 1984

Representative Charlie Bussell
Chairman, House Judiciary Committee
Alaska State Legislature

Dear Representative Bussell:

I would highly recommend that Georgianna Lincoln receive a favorable evaluation by the House Judiciary Committee concerning her confirmation for appointment to the Commission on Judicial Conduct.

I have known Ms. Lincoln for many years, both personally and professionally. She has worked for both the Fairbanks Native Association and the Tanana Chiefs Conference, and has been very active as a volunteer in civic affairs in Fairbanks and interior Alaska. Ms. Lincoln's professional and volunteer activities have given her an intimate knowledge of the court system, the State legislature, and health and social services agencies within the State.

I urge you to give favorable consideration to Georgianna Lincoln's appointment to the Commission on Judicial Conduct. Her experience and the dedication with which she approaches any task would be an asset to the Commission. Please let me know if I can provide any further information.

Sincerely,

Frank R. Ferguson
Alaska State Senator

R E S U M E'

Name Georgianna Lincoln

Social Security 574-12-2895

Date of Birth 2/22/43

Address 2509 Alston Road
Fairbanks, Alska

Employment Record:

Wien Air Alaska
1961-1966
Accounts Recievable Supervisor

Fairbanks Native Association
1971-1973
Executive Director

North American Indian Women's Association
August-October 1977
Coordinator of Volunteers

Tanana Chiefs Conference
1978-1983
Director of Programs

Management Concepts, Inc.
1983-present
"ANCSA 85 Study"
Consultant

Community Activities:

National Indian Health Advisory Committee
1973-1977

Alaska State Comprehensive Health Advisory Council
1975-1976

University of Alaska Museum Advisory Committee
1976

University of Alaska Village Arts Upgrade Board
1974-1977

Alaska Future Frontiers Conference Group Leader
1979-1980

Governors' Interstate Indian Council
1979

Alaska State Equal Employment Opportunity Board
1977-1979

Northern Alaska Health Resource Board
1976

Fairbanks Human Rights Commission
Present

Education:

Drakes Business College
1961

University of Alaska
1973-1974
Business Administration

Numerous management training courses while employed with Tanana Chiefs Conference and Fairbanks Native Association. Corporate Management training seminars.

Corporate Boards:

Baan O Yeel Kon (Rampart Village Corporation)
President 1976-1981
Board of Directors 1976-Present

Doyon, Limited
Corporate Secretary - 1976-1980
Board of Directors - 1976-Present

Chairman - Doyon Shareholder Committee

Member - Doyon Annual Committee

United Bank Alaska
Board of Directors - 1981-Present

CONFIRMA-
TION

RENEE
MURRAY

Collins and Associates, Inc.

DENALI TOWERS SOUTH
SUITE 501
2600 DENALI STREET
ANCHORAGE, ALASKA 99503
(907) 276-7943

April 19, 1984

Representative, Charlie Bussell
Chairman, House Committee on Judiciary
Alaska State Legislature
Pouch V
Juneau, Alaska 99811

Dear Mr. Bussell:

I am pleased to have the opportunity to provide a reference for Ms. Renee Murray, recently appointed to the Alaska Judicial Council. I have been professionally acquainted with Ms. Murray since 1975, and have found her to be an outstanding individual, and an extremely competent professional. As you may be aware, a significant portion of her professional experience is related to the adjudication process.

Ms. Murray has lived in Alaska for 30 years, and has resided and worked in the Fairbanks, Anchorage, and Southeast areas of the State, and is well versed in the varied problems in rural and urban communities. Her professionalism and committment to community service organizations and projects has gained her unanimous respect from her collegues and friends alike.

I am a strong supporter of citizen involvement at all levels of state government, and therefore share your concern in ensuring that appointed nominees be suitable for their positions. I am confident that Ms. Murray is highly qualified and extremely suitable for the position to which she has been nominated. I strongly recommend Ms. Murray's confirmation for appointment to th Alaska Judicial Council.

Again, thank you for the opportunity to provide a reference for Ms. Murray. If I can be of further assistance, please contact me at 276-7943.

Sincerely,

Virginia M. Collins,
President, Collins & Associates

VMC:mr

STATE OF ALASKA

BILL SHEFFIELD, GOVERNOR

DEPARTMENT OF ADMINISTRATION

POUCH C (MS 0200)
JUNEAU, ALASKA 99811
PHONE: (907) 465-2200

OFFICE OF THE COMMISSIONER

April 19, 1984

The Honorable Charlie Bussell
Chairman, House Committee on Judiciary
Alaska State Legislature
Pouch V
Juneau, AK 99811

Dear Representative Bussell:

I am happy to respond to your request for a recommendation on Renee Murray, whom the Governor has appointed to the Judicial Council.

I have known Ms. Murray for some years, not in a professional relationship but as a friend and colleague in various civic organizations and endeavors. She is an intelligent and well educated woman who has always worked hard, behaved appropriately and demonstrated the highest degree of personal ethics. Without any hesitation whatsoever, I recommend that you confirm her to the seat on the Judicial Council.

Yours sincerely,

Lisa Rudd

Lisa Rudd
Commissioner

LR:mw

BISS AND HOLMES
ATTORNEYS AT LAW
AN ASSOCIATION OF PROFESSIONAL CORPORATIONS

BURTON C. BISS
ROGER F. HOLMES

S. R. BOX 5111
WASILLA, ALASKA 99687
TELEPHONE (907) 376-5318

ANCHORAGE OFFICE
618 CHRISTENSEN DRIVE
ANCHORAGE, ALASKA 99501
TELEPHONE (907) 277-8564



April 19, 1984

Representative Charlie Bussell
Chairman, House Committee on Judiciary
Alaska State Legislature
Pouch V
Juneau, AK 99811

Re: Ms. Renee Murray

Dear Chairman Bussell:

Thank you for your letter of April 15, 1984 requesting information pertaining to Ms. Murray, a nominee to the Alaska Judicial Council.

Renee is a personal friend as well as a business acquaintance of many years. She is well known to many attorneys through her work in securing payment to persons injured in industrial situations as well as general civil litigation. That experience has also given her close contact with the court system and the legal services delivery mechanisms of our society. She is an excellent administrator and particularly knowledgeable in the risk management and self-insurance field for businesses as well as subdivisions of the state government. It is in this context that our law firm most often has the benefit of her experience and judgments.

Renee has a particular faculty for making right decisions promptly. I am sure you know she is a leader in the responsible implementation of women's rights and her efforts there are most beneficial since she is neither doctrinaire nor fanatical.

We think she is an excellent member of the Alaska Judicial Council and are pleased to recommend her to you for confirmation by the legislature.

Sincerely,

BISS AND HOLMES
Wasilla Office

Burton C. Biss

skc

BISS AND HOLMES
ATTORNEYS AT LAW
AN ASSOCIATION OF PROFESSIONAL CORPORATIONS

BURTON C. BISS
ROGER F. HOLMES

618 CHRISTENSEN DRIVE
ANCHORAGE, ALASKA 99501
TELEPHONE (907) 277-8564

WASILLA OFFICE
SR BOX 5111
WASILLA, ALASKA 99687
TELEPHONE (907) 376-5318

April 23, 1984

Representative Charlie Bussell
Chairman, House Committee on Judiciary
Alaska State Legislature
Pouch V
Juneau, Alaska 99811

Re: Alaska Judicial Council/Renee Murray

Dear Charlie:

This will acknowledge receipt of your letter concerning Governor Sheffield's appointment of Renee Murray to the Alaska Judicial Council. I have known her for several years both professionally and personally. I have no reservations in urging her confirmation.

She has had a lot of contact over the years with attorneys throughout the state. She has a fairly good idea of which ones are good, and which ones are not. She has the background and temperament to weed out those who are unqualified in applying for the judiciary.

Her experience, plus her position as a nonlawyer member of the committee, I think will allow her to judge the candidates on their merits rather than on their popularity.

Very truly yours,

BISS & HOLMES

Roger F. Holmes

RFH:kp

LAW OFFICES OF
FAULKNER, BANFIELD, DOOGAN & HOLMES
A PROFESSIONAL CORPORATION
DENALI TOWERS NORTH
2550 DENALI STREET, SUITE 700
ANCHORAGE, ALASKA 99503-2774
(907) 274-0666
TELEX: 090-26-455

MICHAEL M. HOLMES
RANDALL J. WEDDLE
WILLIAM B. ROZELL
LAWRENCE T. FEENEY
CHARLES N. DRENNAN
ANTHONY M. SHOLTY
JAMES R. WEBB
MICHAEL A. BARCOTT
KAREN L. RUSSELL
LEE S. GLASS, M.D.
RICHARD B. BROWN
TIMOTHY A. McKEEVER
JOHN F. CLOUGH III
ROBIN G. WILCOX
JAMES B. PENTLARGE
LEON T. VANCE
DIANE L. DALEY
JAMES E. HUTCHINS

NORMAN C. BANFIELD
OF COUNSEL

HERBERT L. FAULKNER (1882-1972)
FRANK A. DOOGAN (1923-1977)

JUNEAU OFFICE
SUITE 300, 801 W. TENTH
P. O. BOX 1150
JUNEAU, ALASKA 99802-1150
(907) 586-2210
TELEX: 099-45-335

SEATTLE OFFICE
FIFTH AVENUE PLAZA
800 FIFTH AVENUE, SUITE 3740
SEATTLE, WASHINGTON 98104
(206) 292-8008
TELEX: 70-4212

April 20, 1984

Representative Charlie Bussell
Chairman, House Committee on Judiciary
Alaska State Legislature
Pouch "V"
Juneau, AK 99811

Re: Qualifications Of Renee Murray For Service On Alaska Judicial Council

Dear Representative Bussell:

Thank you for your letter of April 15, 1984, inquiring about the qualifications of Renee Murray to serve on the Alaska Judicial Council. I have known Ms. Murray in a professional capacity for a number of years. Her employment as an insurance adjuster handling personal injury claims has allowed her to become quite familiar with the Alaska judicial process. I have always found her to be very hard working, intelligent, and extremely articulate when expressing her views.

Because of her knowledge and interest in the quality of the Alaska judicial system and because of the other qualificiations which I have mentioned above, I would recommend Renee Murray highly and without reservation for a position on the Judicial Council.

Very truly yours,

FAULKNER, BANFIELD,
DOOGAN & HOLMES

By: _____
Randall J. Weddle

RJW:ce

Hon. Charlie Bussell, Chmn
House Judiciary Commitee
Alaska State Legislature
Juneau, Alaska

Petersburg Alaska
February 14, 1984

Dear Rep. Bussell

I wish to protest the appointment of Renee Murray to a seat on the Alaska Judicial Council. This is in no way meant to reflect on the capability of Ms Murray, whom I have never met, or know nothing about.

In making the protest I am referring solely to Article IV Section 8 of the Alaska Constitution (The Judiciary), which says, in part, "Appointments shall be made with due consideration to area representation, etc——"

Area representation has been given by all previous governors, and in so doing the intent of the article was followed.

I would respectfully request that this fact be presented to the Judiciary Committee when the subject of appointments is taken up. Thank you.

Very sincerely yours,

John B. Pugh

RESUME OF

RENEE MURRAY

ADDRESS: 605 W. 42ND AVENUE
ANCHORAGE, ALASKA 99503

PHONE: 561-1725 (W)
276-2102 (H)

EMPLOYMENT:

1/76 - 6/78
12/79 - PRESENT

ALASKA MANAGER OF SCOTT WETZEL SERVICES, INC. THIS FIRM IS INVOLVED IN CLAIMS ADMINISTRATION AND LOSS CONTROL SERVICES FOR SELF INSURED EMPLOYERS IN THE STATE OF ALASKA. REPRESENTATIVE OF THESE FIRMS AND/OR GOVERNMENTAL BODIES ARE THE MUNICIPALITY OF ANCHORAGE, CITY OF FAIRBANKS AND FAIRBANKS NORTH STAR BOROUGH, WIEN AIR ALASKA, SEALASKA CORPORATIONS, NANA REGIONAL CORPORATION, ETC.

THIS FIRM HANDLES THE CLAIMS ADJUSTMENT OF GENERAL LIABILITY, AUTO LIBILITY AND WORKER'S COMPENSATION CLAIMS AND IN MY CAPACITY AS MANAGER, I SUPERVISE AND DIRECT OUR OPERATIONS THROUGHOUT THE STATE OF ALASKA, INCLUDING OUR OFFICE IN JUNEAU, CONDUCT AND/OR PARTICIPATE IN CLAIMS CONFERENCES AND SEMINARS WITH OUR VARIOUS CLIENTS AND WITH THE INSURANCE INDUSTRY AS A WHOLE, WORK CLOSELY WITH OUR VARIOUS LEGAL COUNSELS THROUGHOUT THE STATE ON LITIGATED MATTERS FOR OUR CLIENTS, ATTEND WORKER'S COMPENSATION HEARINGS, DIRECT PERSONNEL OPERATIONS FOR ALASKA AND PERSONALLY ASSIST AND/OR HANDLE OUR MOST SERIOUS CASES IN THE STATE.

2/79 - 12/79

EMPLOYEE BENEFITS MANAGER - ROLLINS, BURDICK, HUNTER OF ALASKA, WORKING UNDER THE DIRECTION OF GEORGE SUDDOCK IN SALES AND SUPERVISION OF EMPLOYEE BENEFIT SERVICES TO LARGE EMPLOYERS IN THE STATE OF ALASKA.

8/69 - 12/75

CLAIMS REPRESENTATIVE FOR INDUSTRIAL INDEMNITY CO. MY INITIAL POSITION WITH THIS COMPANY, PRIOR TO THE MERGER OF THE CRUM & FORSTER GROUP WITH INDUSTRIAL INDEMNITY, WAS AS THE SOLE CLAIMS REPRESENTATIVE IN ALASKA, HANDLING AND DIRECTING THE CLAIMS OPERTION OF CRUM & FORSTER'S INSURANCE PROGRAM IN ALASKA, DIRECTING THE OPERATION OF THE INDEPENDENT ADJUSTERS WHO ASSISTED THE FIRM THROUGHOUT THE STATE, AND MAINTAINING A CLAIMS LIASON WITH THE AGENTS IN ALASKA. FOLLOWING THE MERGER WITH INDUSTRIAL INDEMNITY, MY POSITION WAS AS SUPERVISOR OF THE WORKER'S COMPENSATION SECTION, HANDLING AND/OR DIRECTING WORKER'S COMPENSATION CLAIMS THROUGHOUT THE STATE. THIS POSITION BROUGHT ME IN CONTACT WITH MANY LAWYERS, BOTH PLAINTIFF AND DEFENSE, WORKING WITH THEM AND NEGOTIATING SETTLEMENTS OF INSURANCE CLAIMS.

PUBLIC SERVICE 1976 - 1981

MEMBER OF THE RESOURCE INCOME COMMITTEE OF COMMONWEALTH NORTH OF ALASKA; ASSISTED IN THE WRITING AND PUBLICATION OF THE ACTION PAPER ON RESOURCE REVENUE AND STATE SPENDING.

MEMBER OF BANKING AND LOAN COMMITTEE OF COMMONWEALTH NORTH.

ORGANIZER AND CO-FOUNDER OF THE ALASKA FEMINIST FEDERAL CREDIT UNION, ANCHORAGE, ALASKA. I HAVE ALSO WORKED AS A VOLUNTEER WITH THIS ORGANIZATION AND IN THIS CAPACITY, I HAVE DONE LOAN COUNSELING AND INTERVIEWING; CREDIT CHECKING; ANALYSIS OF LOAN APPLICATIONS AND FINANCIAL STATEMENTS AND I HAVE SERVED AS PRESIDENT OF THE BOARD OF DIRECTORS AND AS BOARD MEMBER.

BOARD MEMBER AND VICE-PRESIDENT OF MT. VERNON COMMONS CONDOMINIUM HOMEOWNERS ASSOCIATION.

VICE-PRESIDENT, ANCHORAGE INSURANCE EDUCATION COUNCIL.

VICE-PRESIDENT OF THE ANCHORAGE CREDIT UNION LEAGUE.

LAY MEMBER OF FEE ARBITRATION COMMITTEE - ALASKA BAR ASSOCIATION.

AWARDS

INSURANCE CLAIMSWOMAN OF THE YEAR, PACIFIC NORTHWEST AND CANADA - 1977.

QUALIFIED FOR THE DESIGNATION OF CERTIFIED PROFESSIONAL INSURANCE WOMAN (CPIW) THROUGH THE COMPLETION OF VARIOUS INSURANCE COURSES AND YEARS OF EXPERIENCE IN THE INSURANCE INDUSTRY.

EDUCATIONAL BACKGROUND

COMPLETED THREE YEARS OF THE FIVE YEAR PROGRAM FOR CHARTERED PROPERTY AND CASUALTY UNDERWRITER THROUGH THE INSURANCE INSTITUTE OF AMERICA AND THE ANCHORAGE COMMUNITY COLLEGE - 1975 - 1978.

COMPLETED COURSES IN GENERAL INSURANCE PRINCIPLES, PROPERTY INSURANCE AND CASUALTY INSURANCE FOR A CERTIFICATE IN GENERAL INSURANCE FROM INSURANCE INSTITUTE OF AMERICA/ANCHORAGE INSURANCE EDUCATION COUNCIL - 1969 - 1972.

GRADUATE OF ROOSEVELT HIGH SCHOOL, PORTLAND, OREGON.

I HAVE BEEN A PARTICIPANT AND/OR SPEAKER IN NUMEROUS INSURANCE AND CLAIMS RELATED SEMINARS.

CURRENT MEMBERSHIPS

ALASKA INSURANCE ADJUSTERS ASSOCIATION
NATIONAL ASSOCIATION OF INSURANCE WOMEN
COMMONWEALTH NORTH OF ALASKA
SOROPTIMIST INTERNATIONAL OF ANCHORAGE
WOMEN FOR POLITICAL ACTION
ALASKA WOMEN'S RESOURCE CENTER

PERSONAL DATA

AN ALASKA RESIDENT SINCE 1954. DIVORCED, ONE GROWN DAUGHTER.

REFERENCES

LISA RUDD - 2827 LORE ROAD, ANCHORAGE, 99507

MAX HODEL - 1300 E. 5TH AVENUE, ANCHORAGE, 99501

GEORGE C. HAYES, ESQ. - 1007 W. 3RD AVENUE, ANCHORAGE, 99501

BURTON C. BISS, ESQ. - S. R. BOX 511, WASILLA, 99687

ROGER HOLMES, ESQ. - 618 CHRISTENSON DRIVE, ANCHORAGE, 99501

GEORGE S. SUDDOCK - 840 "K" STREET, ANCHORAGE, 99501

DONALD A. BELL - c/o ALASKA TIMBER INSURANCE EXCHANGE, 111 STEDMAN, KETCHIKAN, 99901

T. J. THRASHER - ALASKA TRUCKING ASSOCIATION, 3443 MINN. DR., ANCHORAGE 99503

KAREN HUNT, ATTORNEY - 1007 W. 3RD, ANCHORAGE, 99501

RANDALL WEDDLE, ESQ.- FAULKNER, BANFIELD, 2550 DENALI, #700, ANCHORAGE, 99503

VIRGINIA COLLINS - COLLINS, WEED & ASSOC., 2600 DENALI #501, ANCHORAGE, 99503

CONFIRMA-
TION

JANE
PERKINS

Alaska State Legislature
HOUSE OF REPRESENTATIVES

POUCH V
JUNEAU, ALASKA 99811
(907) 465-4990

ALCOHOLIC BEVERAGE CONTROL BOARD

Ms. Jane Perkins, Box 813, Nome, Alaska.

COMMISSION ON JUDICIAL CONDUCT

Ms. Barbara A. Dale, 1728 Glacier Avenue, Juneau, Alaska 99801.

Ms. Georgianna Lincoln, 2509 Alston Road, Fairbanks, Alaska.

ALASKA JUDICIAL COUNCIL

Ms. Renee Murray, 605 West 42nd Avenue, Anchorage, Alaska 99503.

Nome, Alaska
April 16, 1984

Representative Charlie Bussell
Chairman,
House Committee on Judiciary

The Honorable Representative Bussell:

I am in receipt of your letter requesting professional references on my behalf in regard to my appointment on the Alcoholic Beverage Control Board. The following names are submitted:

(1) Mrs. Myrtle Johnson - Nome (ph 443-2842)
Personal Representative in Nome for
Senator Stephens & Rep. Don Young

(2) Carolyn Michels
Director,
Norton Sound Health Corp. Nome
(443-5411)

(3) Mr. Charles Johnson (443-5252)
Chairman
Bering Straights Native Corp. - Nome

(4) Mr. Leo Rasmussen (443-2919)
Mayor
City of Nome
Nome, Alaska

(5) Mr. Leonard Ansell (443-2839)
Local Businessman
Nome, Alaska

I appreciate your concern and hope these individuals will give you adequate information for my confirmation.

Sincerely,
Dana Perkins

Jane Perkins - Nome, Alaska
Box 813
Nome, Alaska
Ph. 443-2507

Age: 54

Born: Nome, Alaska 1929
father - goldminer + Territorial Representative + Senator
mother - Housewife

Married: Donald E Perkins for 26 years
My husband died of Cancer 4 years ago

Children: 2 sons - Wesley + Nicholas married + live in Nome.
daughter Jenna - works for Fish + Game in Anchorage.
daughter Julie - just graduated from College + plans work here in Nome.

Present duties: Have some apartment rentals in Nome. Just recently sold 14 apt units as too difficult for me to maintain alone.
Presently serve on Nome Planning + Zoning Commission for past 3 years.
Also serve on Norton Sound Health Corporation Board as member at large from Nome for past 3 years. Last year on Executive Board also.

State Boards served on.

I was appointed by Gov. Egan to serve as one of Legal Commissioners on Alaska Public Offices Commission and was reappointed in term by Gov. Hammond. Could not be reappointed fully enjoyed Commission.

Served until last fall on the Task Force for Fire Prevention and Control. We were to terminate on June 30 1983 but due to funding we had not met as a Board since last Sept. I served as public member.

CONFIRMA-
TION

GLENDA
STRAUBE

POUCH V
JUNEAU, ALASKA 99811
(907) 465-4990

Alaska State Legislature
HOUSE OF REPRESENTATIVES

REPRESENTATIVE
CHARLIE BUSSELL
CHAIRMAN

Committee on Judiciary

Telephone Interview Questions

(Confirmee for the Board of Governor's Alaska Bar Association)

1) Do you feel that you understand the role you would play on the Board of the Governor's of the Alaska Bar?

2) Are you willing to put in the amount of time required to do the job without renumeration?

3) Why do you want to serve on the Board?

4) Do you have any suggestions/plans, etc. for the Board?

5) What specific qualifications do you posses for the Board of the Governor's Bar Association?

6) Have you held any public offices in the past?

7) What is your party/political affiliation?

8) Do you feel any conflict of interest between a role as a Board Member and your private life?

9) Any other statements for the Committee members to consider?

MEMBERS:
REP. JOHN LISKA, VICE CHAIRMAN; REP. RAMONA BARNES, EMERITUS;
REP. JOE HAYES; REP. HUGH MALONE; REP. DON CLOCKSIN; REP. RON WENDTE

POUCH V
JUNEAU, ALASKA 99811
(907) 465-4990

Alaska State Legislature
HOUSE OF REPRESENTATIVES

REPRESENTATIVE
CHARLIE BUSSELL
CHAIRMAN

Committee on Judiciary

Glenda Straube

(Confirmee for the Board of the Governor's Alaska Bar Association)

452-2515

1) Yes, have met with someone on the Board - know that it's a public member, representing the consumer, as opposed to a member of the Bar.

2) Yes, have spent many, many hours voluntary groups in the past, so am prepared to do so now.

3) Am an active person in the community, and am interested in the position.

4) No, have no specific plans/suggestions, just to bring a different perspective into the position.

5) Organizational, managerial, budget skills.

6) No public offices in the past.

7) Registered active Democrat.

8) No conflict, have minimum contact with the legal profession.

9) Whatever project I get involved in I go all out and am willing to do so on this Board appointment.

MEMBERS:
REP. JOHN LISKA, VICE CHAIRMAN; REP. RAMONA BARNES, EMERITUS;
REP. JOE HAYES; REP. HUGH MALONE; REP. DON CLOCKSIN; REP. RON WENDTE

Alaska State Legislature

Speaker of the House of Representatives

Pouch V
State Capitol
Juneau, Alaska 99811
(907) 465-3720

Official Business

May 23, 1983

Rep. Charlie Bussell
Chairman, Judiciary Committee
Room 126, Capitol Building
Juneau, AK 99811

Dear Charlie,,

Enclosed is a copy of Governor Sheffield's letter of May 23, 1983 submitting the name of Glenda Straube for appointment to the Alaska Bar Association Board of Governors. Please review this appointment and hold confirmation hearings as necessary.

Very truly yours,

Joe L. Hayes
SPEAKER OF THE HOUSE

Enclosure

JLH:jvd

BILL SHEFFIELD
GOVERNOR

STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

MAY 23 1983

May 23, 1983

The Honorable Joe Hayes
Speaker of the House
Alaska State Legislature
Pouch V
Juneau, AK 99811

Dear Mr. Speaker:

Pursuant to applicable law, I submit the following names for legislative confirmation of appointment to the positions noted:

BOARDS AND COMMISSIONS
(with terms)

Guide Licensing and Control board
Poldine Carlo, Fairbanks, 05/20/83 - 06/15/85

State Commission for Human Rights
Jacqueline Lindauer, Anchorage, 05/20/83 - 01/31/88

Alaska Bar Association Board of Governors
Glenda Straube, Fairbanks, 05/20/83 - 06/30/86

Real Estate Commission
Jon Ribacchi, Anchorage, 05/20/83 - 01/31/87
LaVerne Collins, Anchorage, 05/20/83 - 01/31/84

Sincerely,

Bill Sheffield

Bill Sheffield
Governor

Glenda J. Straube
P. O. Box 81958
Fairbanks, Alaska 99708
456-6000/456-1132

ORGANIZATIONAL AND LEADERSHIP SKILLS:

Worked independently, representing a state legislator in his absence. Responsible for supervision of staff.

Supervised 8-10 clerks, parts clerks and warehouse workers in capacity as warehouse foreman at large pipeline camp (Galbraith). Responsible for purchase of equipment and supplies valued at $1.5 Million.

Incorporated goals, objectives and responsibilities to be accomplished within legislative committee framework. Organized, set direction and maintained cohesiveness within legislative committee of nine inter-related consultant studies.

Planned, organized and facilitated arts festivals and events with an attendance of 5,000 and a two day budget of $30,000. Supervised volunteer staff of 100. Consistently updated format through utilizing participant and staff feedback and resources as they became available.

Prepared grant proposals, administered grants and maintained oversight of CETA employees.

COMMUNICATION SKILLS:

Acted as legislative liaison to the University of Alaska providing improved communications and cooperation.

Effectively solved legislator's constituent problems with state agencies in a positive manner.

Acted as public relations person by actively seeking and maintaining contacts with a wide variety of agencies, businesses, individuals and interest groups. Represented groups and individuals through various use of media: TV, radio and newspaper.

RESEARCH SKILLS:

Researched and analyzed financial needs of the University of Alaska. Prepared legislative fiscal reports and recommendations concerning UA's $185+ million budget.

Researched historical data and provided an overall view of background information pertinent to legislative committee work.

FINANCIAL SKILLS:

Operated as financial consultant for individuals, non-profit corporations, single proprietorships, partnerships and small corporations.

Operated as full-charge bookkeeper, prepared financial statements and tax forms for profit and non-profit entities.

Actively raised funds for non-profit groups through private and public sources.

Glenda J. Straube

WORK HISTORY:

3/81 to present. Realtor with ERA Meyeres Real Estate. During 1982, my annual sales exceeded $1.8 million.

12/76 to present. Self-employed as organizational and financial consultant. Within this time period, I worked for the legislature (off and on) as needed as an aide to ex-Rep. Brian Rogers and the House Finance Committee. Since becoming a Realtor, this work has been done strictly on an 'occasional' basis.

1/74 to 12/76. Worked as truck driver, surveyor and warehouse foreman for several pipeline contractors. Warehouse foreman for Arctic Constructors.

9/70 to 3/72. Administrative Assistant. Western Washington State College, Bellingham, Washington.

EDUCATION:

University of Alaska (1979-1981)
10 credits towards a degree in Business Administration. 3.7 Average. I plan on taking six credits next semester.

Copley High School, Akron, Ohio (1968 Graduate)
Graduated in top 3% of class. Offered several scholarships to colleges but unable to accept them due to death in family and subsequent responsibilities.

Much of my education has been self-taught or acquired through thousands of hours of volunteer work.

VOLUNTEER WORK:

Solstice, Inc. (non-profit arts organization), 1975-present. Past officer and present member.

Minority Business Enterprises (non-profit, state-funded org.), 1981-1982. I was asked to serve as Board Member to help save the failing organization.

Women in Crisis-Counseling and Assistance, (non-profit, state funded) 1980-1982. Past officer and present member. Averaged 40-100 hours per month during crisis situations.

College Community Center, past officer and past member.

Campaign Worker: Croft for Governor
Rodey for Senate
Brian Rogers for State House
Cowper for Governor
Sheffield for Governor
many other local, statewide and federal candidate

PERSONAL:

Age: 32, Excellent health. Avid reader and musician.

CHAPTER = 08.08
SECTION = 08.08.040
TITLE = 08

HEADINGS TITLE 8.
Business and Professions.
CHAPTER 08.
Alaska Integrated Bar Act.
ARTICLE 2.
The Board of Governors and Officers.

CITATION Sec. 08.08.040.

CATCH LINE
BOARD OF GOVERNORS OF THE ALASKA BAR.

TEXT (a) There is created a Board of Governors of the Alaska Bar to be elected under bylaws and regulations adopted by the board.

(b) The board consists of nine active members elected by the active members of the Alaska Bar and three persons appointed by the governor who are not attorneys.

HISTORY (Sec. 5 ch 196 SLA 1955; am sec. 1 ch 178 SLA 1960; am sec. 4 ch 181 SLA 1976; am sec. 2 ch 52 SLA 1981)

END OF DOCUMENT

DECISIONS

...licensing of legal practitioners. In re ... Sup. Ct. Op. No. 2172 (File Nos. ... 4526, 4608), 617 P.2d 505 (1980).

...viding for integration of state bar, 11[illegible] ALR 163; 151 ALR 617.
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...very person licensed to practice law ... in the Alaska Bar. All active and ... as of September 14, 1976 shall be ...

... in the state who, on September ... membership rolls, shall be reinstated ...

as a member only in accordance with the Alaska Bar Rules. (§ 4 ch 196 SLA 1955; am § 2 ch 181 SLA 1976)

Cross references. — As to eligibility to take the bar examination, see AS 08.08.205.

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Article 2. The Board of Governors and Officers.

Section
30. Governance of the Alaska Bar
40. Board of Governors of the Alaska Bar
50. Selection of the board
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70. Vacancies on the board
75. Meetings of the board
80. Powers of board
85. Annual report to legislature
90. Power of the bar to make or change bylaws and regulations
100. Administrative Procedure Act
110 — 120. [Repealed]

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Effect of amendments. — The 1981 amendment substituted "created" for "hereby constituted" and substituted "adopted" for "promulgated" in subsection (a). In subsection (b), the amendment added "and three persons appointed by the governor who are not attorneys."

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(b) Members of the Board of Governors shall hold office for three years and until their successors are elected or appointed and qualified.

(c) Four board members shall be selected on the following triennial rotation:

(1) in the first year, one member from the first judicial district, one member from the combined area of the second and fourth judicial districts, one member from the third judicial district, and one appointed member;

(2) in the second year, one member at large, two members from the third judicial district, and one appointed member; and

(3) in the third year, one member from the combined area of the second and fourth judicial districts, one member from the third judicial district, one member from the first judicial district, and one appointed member. (§ 5 ch 196 SLA 1955; am § 1 ch 178 SLA 1960; am §§ 1, 2 ch 9 SLA 1971; am §§ 3 -- 5 ch 52 SLA 1981)

Effect of amendments. — The 1981 amendment added the second sentence of subsection (a). The amendment also added "or appointed" preceding "and qualified" in subsection (b) and rewrote subsection (c).

Editor's notes. — Section 14, ch. 52, SLA 1981, provides: "The governor shall appoint the initial non-attorney members to the Board of Governors for the following terms: one member for a three-year term; one member for a two-year term; and one member for a one-year term."

Sec. 08.08.060. Election of officers. The active members of the Alaska Bar who are in actual attendance at the association's annual convention shall elect by a majority vote during the convention the association's officers from the membership of the Board of Governors. (§ 5 ch 196 SLA 1955; am § 1 ch 178 SLA 1960)

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(b) The governor shall appoint a member to fill a vacancy in the appointed membership of the board for the unexpired term. (§ 5 ch 196 SLA 1955; am § 1 ch 178 SLA 1960; am § 6 ch 52 SLA 1981)

Effect of amendments. — The 1981 amendment rewrote this section.

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Sec. 08.08.080. Powers of board. (a) Except as may be otherwise provided in this chapter or the Alaska Bar Rules, the board may approve and recommend to the state supreme court rules

(1) concerning admission, discipline, licensing, continuing legal education, and defining the practice of law;

(2) providing for continuing legal education and for certification of a continuing legal education program;

(3) establishing a program for the certification of attorneys as specialists.

(b) The board may adopt bylaws and regulations consistent with this chapter and the Alaska Bar Rules

(1) concerning membership and the classification of membership in the Alaska Bar;

(2) fixing the annual membership fees;

(3) concerning annual and special meetings.

(c) Consistent with this chapter and the Alaska Bar Rules, the board may

(1) provide for employees of the Alaska Bar, the time, place and method of their selection, and their respective powers, duties, terms of office, and compensation;

(2) establish, collect, deposit, invest, and disburse membership and admission fees, penalties, and other funds;

(3) sue in the name of the Alaska Bar in a court of competent jurisdiction to enjoin a person from doing an act constituting a violation of this chapter;

(4) provide for all other matters affecting in any way the organization and functioning of the Alaska Bar. (§ 7 ch 196 SLA 1955; am §§ 2, 3 ch 178 SLA 1960; am § 5 ch 181 SLA 1976; am § 8 ch 52 SLA 1981)

Cross references. — See Alaska Bar Rules adopted by the Alaska supreme court.

Effect of amendments. — The 1981 amendment rewrote this section.

NOTES TO DECISIONS

Final power and authority to determine standards for admission to the practice of law in Alaska resides in the supreme court, which has the inherent power to intercede at any time in admission matters. In re Luna, Sup. Ct. Op. No. 1503 (File No. 2789), 569 P.2d 789 (1977).

Practice of law not defined. — There is no rule defining the practice of law. Nor is there a statute defining the term except in the context of the requirements of active practice of law as a qualification for justices. In re Robson, Sup. Ct. Op. No. 1573 (File No. 3448), 575 P.2d 771 (1978). See also In re Babcock, Sup. Ct. Op. No. 178 (File No. 408), 387 P.2d 694 (1963), decided prior to the 1976 and 1981 amendments to this section.

For case construing board's power to define the practice of law prior to the 1976 amendment of this section, see In re Moody, Sup. Ct. Op. No. 1065 (File No. 2035), 524 P.2d 1261 (1974).

A superior court law clerk should be regarded as practicing law for the purposes of membership classification. In Moody, Sup. Ct. Op. No. 1065 (File No. 2035), 524 P.2d 1261 (1974).

Activities constituted practice of law in violation of supreme court's suspension order. — Where a person held himself out as a lawyer; performed legal services and gave legal advice in setting up a prepaid legal service plan, completing and filing necessary forms; signed a letter of the type usually written by an attorney with "attorney at law" printed aside his name; permitted another person to refer to

ALASKA BOARD OF GOVERNORS--This statute only amended in 1981, creating a 12-man board in place of a 9-man board, with three new ones to be lay members appointed by the governor. (The other nine, all attorneys, are elected at annual bar convention--this year June 9 & 10--and will take office, any new ones, June 11).

*Lay Members:

KAREN SLACK, Anchorage, Term expires 1984 (probably June 30th). She has just resigned, by letter, and in same, asks governor to appoint as quickly as possible...may be an appointment coming through forher

LeROY COOK, Fairbanks, term expires June 30, 1983...expected to resign, as Hammond appointed him in last days of Hammond regime. His name is NOT going to Sheffield, according to Randy Burns, executive director of Alaska Bar Ass'n. in ANchorage...andof course, he has not been confirmed by any House Judiciary Committee...since it's a new administration, suppose Sheffield will nominate a replacement when he gets around to it.

LEW M. WILLIAMS, Ketchikan, just appointed by Governor, not yet confirmed, term expires in 1985 (June 30th).

** Attorney Members:

President, Andrew J. Kleinfeldt, Fairbanks, term expires 1984

President-Elect, Mary K. Hughes, ANchorage, " " 1984

Vice President, Harold M. Brown, Ketchikan, " " 1984

Secretary, Ms. Niesje Steinkruger, Fairbanks, " " 1985

Treasurer, Ronald W. Lorensen, Juneau (AG office)" " 1985

State-wide representative,
William P. Bryson, ANchorage, term expires 1983

Bruce E. Gagnon, Anchorage, term expires 1985

Karen L. Hunt, Anchorage, (past Pres.) term expires 1983

Hugh G. (Jerry) Wade, ANchorage, term expires 1983

CONFIRMA-
TION

LEW
WILLIAMS



PIONEER PRINTING CO.

KETCHIKAN DAILY NEWS
SOUTHEASTERN LOG

April 19, 1984



Rep. Charles Bussell, Chairman
House Committee on Judiciary
Pouch V
Juneau, Alaska 99811

Dear Rep. Bussell:

In response to your request for five professional references (I presume you mean lawyers) who may be able to advise you on my qualifications to serve as a laymember on the Board of Governors of the Alaska Bar Association, I am submitting the following names.

You mentioned that time is a pressing factor so I haven't contacted these people to be sure they are available. If they are, I'm sure they'll give you an accurate assessment.

Superior Court Judge Thomas Stewart (retired), Juneau, 586-1220.

Fred O. Eastaugh of Robertson, Monagle, Eastaugh & Bradley with offices in Juneau, 586-3340.

Michael Holmes of Faulkner, Banfield, Doogan and Holmes at their Juneau office, 586-2210. I served four years on the Alaska Judicial Council with Holmes.

Bruce Botelho, an attorney with the Department of Revenue, 465-2300. He was a scoutmaster in Ketchikan before he went to law school and I was community scout chairman.

William Council, a private attorney in Juneau, 586-1786. Council was stationed in Ketchikan as an attorney for a state agency for several years.

I've given you all Juneau names to make your job of checking easier. If some of the above are not available, feel free to check with Norman Banfield, 586-2210, James Bradley, 586-3340, or James Clark, 586-3340, all practicing attorneys in Juneau; or with John Dimond, 364-3325, a retired supreme court justice, in Juneau.

As you are aware, I'm appointed to the Board of Governors of the Alaska Bar Association to represent the public. The best interests of the public sometimes differ from those of the legal profession. So you might find it more useful to check with other people who have served with me as a public member on the Alaska Judicial Council, the Governor's Commission on the Administration of Justice or the Citizens' Advisory Commission on Federal Areas.

P.O. BOX 7900, 501 DOCK STREET, KETCHIKAN, ALASKA 99901 (907)225-3157

Those include Ken Brady of Ken Brady Construction Co., 243-4604 in Anchorage; Paul Gavora of Gavora, Inc., 452-6422, in Fairbanks, owner of Marketbasket food stores; Robert Moss, a Homer fisherman still serving on the Judicial Council; Warren Olson, SRA Box 82A, Anchorage; Phil Holdsworth, 586-1383, Juneau; James A. Williams (no relation) PO Box 1260, Anchorage; or Gail (Mrs. Mark) Rowland, 272-6284, Anchorage.

In presenting these names, I presume you'd prefer that I refrain from submitting the names of attorneys practicing in the Department of Law, serving on the Board of Governors, or the names of active judges and justices, or the names of lawyer-legislators, or lawyers in Ketchikan.

I will be happy to provide you with any further information you desire.

Thank you for the courtesy of giving me this chance to submit further material to support my appointment

Sincerely yours,

Lew M. Williams, Jr.
publisher

POUCH V
JUNEAU, ALASKA 99811
(907) 465-4990

Alaska State Legislature
HOUSE OF REPRESENTATIVES

REPRESENTATIVE
CHARLIE BUSSELL
CHAIRMAN

Committee on Judiciary

Telephone Interview Questions

(Confirmee for the Board of Governor's Alaska Bar Association)

1) Do you feel that you understand the role you would play on the Board of the Governor's of the Alaska Bar?

2) Are you willing to put in the amount of time required to do the job without renumeration?

3) Why do you want to serve on the Board?

4) Do you have any suggestions/plans, etc. for the Board?

5) What specific qualifications do you posses for the Board of the Governor's Bar Association?

6) Have you held any public offices in the past?

7) What is your party/political affiliation?

8) Do you feel any conflict of interest between a role as a Board Member and your private life?

9) Any other statements for the Committee members to consider?

MEMBERS:
REP. JOHN LISKA, VICE CHAIRMAN; REP. RAMONA BARNES, EMERITUS;
REP. JOE HAYES; REP. HUGH MALONE; REP. DON CLOCKSIN; REP. RON WENDTE

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Lew M. Williams, Jr.

(Confirmee for the Board of the Governor's Alaska Bar Association)

225-3157

1) Have served on the Board since 6-30-82, so have good idea of the role of the public member to the Bar Association's Board of Governors.

2) Yes, have served on many boards/commissions in the past, so I understand the amunt of time necessary to do the job. Since the kids are gone, I have time to devote to this appointment.

3) This is interesting work and since I have no vested interests I can take a look at the situation from detached position. The background and knowledge gained from working on the Judicial Council and Governors Advisory council on the Administration of Justice makes an interest in an appointment to the Board a natural.

4) The Board and Bar Association needs to be more receptive to the public. The services and alternatives available to the public needs to be publicized and the public needs to be made aware of thieir existance.

5) Past work on the Jucicial Council and the Governors Council on the Administration of Justice combined with 37 years of owning a newspaper gives a general knowledge of the needs of the people in this area.

6) Yes, School Board-Wrangel-1960

-City Council

-Mayor-Petersburg-1960

7) Registered Democrat since 1946

8) No conflict of interest - any work on the newspaper is completely seperate from work on the Board. The editor (Not owner) of the newspaper does any controversial editorials, etc.

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Lew M. Williams, Jr.

Confirmee for the Board of the Governor's Alaska Bar Association)

225-3157

9) Am not actively pursuing any appointment by the Governor, but with the extra time I have, I would be happy to do it and would enjoy working on the Board.

MEMBERS:
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REP. JOE HAYES; REP. HUGH MALONE; REP. DON CLOCKSIN; REP. RON WENDTE

LLEWELLYN (LEW) WILLIAMS, JR., 56, is publisher and part owner of the Ketchikan Daily News. His wife, Dorothy, who came to Alaska 28 years ago as a school teacher, is co-publisher, business manager and the other owner of the newspaper.

Prior to moving to Ketchikan in 1966, the Williams owned and operated the Petersburg Press for ten years. During their time in Petersburg, Williams served five years as mayor. They were the first newspaper owners in Alaska to convert their publication to the offset form of printing. All Alaska newspapers now are produced by offset.

Before buying the Petersburg paper, the Williams lived in Wrangell where Williams ran the Wrangell Sentinel for his parents while his father served as secretary of Alaska. Williams also served on the school board in Wrangell.

Three of Alaska's four governors since statehood have appointed Williams to state boards. Gov. William Egan appointed him to the Alaska Judicial Council on which he served four years. Gov. Walter Hickel appointed him chairman of the Jones Act Relief Task Force. Gov. Jay Hammond appointed him to the Governor's Commission on the Administration of Justice, on which he still serves. And Lt. Gov. Terry Miller appointed him to serve on the Alaska lands Blue Ribbon Task Force.

Williams was one of the organizers of the Southeastern Conference and its first secretary. It is an organization of Southeast Alaska communities and chambers of commerce. He was an organizer of the Alaska Publishers' Association in 1963 and of the new Alaska Newspaper Association in 1980.

The Ketchikan Daily News has won over two dozen professional awards since the Williams became sole owners in 1976, including awards for editorials written by Williams, The National Newspaper

Foundation has designated the Ketchikan Daily News as a National Blue Ribbon Newspaper.

Williams has served on numerous civic committees in Wrangell, Petersburg and Ketchikan. He was a volunteer fireman in Wrangell and Petersburg and served as secretary of the Petersburg advisory committee to the Alaska Department of Fish and Game. He is holder of the Silver Beaver award for his work with the Boy Scouts of America. He is a past officer of the Elks lodge, the American Legion, Rotary, the chambers of commerce in Wrangell, Petersburg and Ketchikan and the Alaska State Chamber of Commerce.

Two of the Williams three children are reporters for newspapers in Washington state. The other is a computer operator for a printing and office supply firm in Missouri.

Williams was awarded an honorary doctor of humanities degree by the University of Alaska, Juneau in 1981.

BIOGRAPHY: MARCH 15, 1981

Optional add:

Williams was born in Spokane, Wash. He began his newspaper career in 1936 as a paper carrier for the Juneau Empire. He attended schools in Tacoma, Juneau and Wrangell, graduating from Wrangell High School in 1942. He attended prep school in Washington, D.C., then served three years in the U.S. Army in World War II. He was discharged honorably as a sergeant in the parachute troops.

Except for a year at business college in Berkeley, California in 1950, he has been active in the newspaper business in Alaska since World War II. In addition to newspaper activities in Wrangell, Petersburg and Ketchikan, Williams ran the Alaska Sunday Press in Juneau for its owners for six months and he and his wife owned the Sitka Sentinel for four years.

AS08.08.040 DOCUMENT= 1 OF 2 PAGE = 1 OF 1

CHAPTER = 08.08
SECTION = 08.08.040
TITLE = 08

HEADINGS TITLE 8.
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(2) providing for continuing legal education and for certification of a continuing legal education program;

(3) establishing a program for the certification of attorneys as specialists.

(b) The board may adopt bylaws and regulations consistent with this chapter and the Alaska Bar Rules

(1) concerning membership and the classification of membership in the Alaska Bar;

(2) fixing the annual membership fees;

(3) concerning annual and special meetings.

(c) Consistent with this chapter and the Alaska Bar Rules, the board may

(1) provide for employees of the Alaska Bar, the time, place and method of their selection, and their respective powers, duties, terms of office, and compensation;

(2) establish, collect, deposit, invest, and disburse membership and admission fees, penalties, and other funds;

(3) sue in the name of the Alaska Bar in a court of competent jurisdiction to enjoin a person from doing an act constituting a violation of this chapter;

(4) provide for all other matters affecting in any way the organization and functioning of the Alaska Bar. (§ 7 ch 196 SLA 1955; am §§ 2, 3 ch 178 SLA 1960; am § 5 ch 181 SLA 1976; am § 8 ch 52 SLA 1981)

Cross references. — See Alaska Bar Rules adopted by the Alaska supreme court.

Effect of amendments. — The 1981 amendment rewrote this section.

NOTES TO DECISIONS

Final power and authority to determine standards for admission to the practice of law in Alaska resides in the supreme court, which has the inherent power to intercede at any time in admission matters. In re Luna, Sup. Ct. Op. No. 1503 (File No. 27[illegible]), 569 P.2d 789 (1977).

Practice of law not defined. — There is no rule defining the practice of law. Nor is there a statute defining the term except in the context of the requirements of active practice of law as a qualification for justices. In re Robson, Sup. Ct. Op. No. 1573 (File No. 3448), 575 P.2d 771 (1978). See also In re Babcock, Sup. Ct. Op. No. 178 (File No. 408), 387 P.2d 691 (1963), decided prior to the 1976 and 1981 amendments to this section.

For case construing board's power to define the practice of law prior to the 1976 amendment of this section, see In re Moody, Sup. Ct. Op. No. 1065 (File No. 2035), 524 P.2d 1261 (1974).

A superior court law clerk should be regarded as practicing law for the purposes of membership classification. In Moody, Sup. Ct. Op. No. 1065 (File No. 2035), 524 P.2d 1261 (1974).

Activities constituted practice of law in violation of supreme court's suspension order. — Where a person held himself out as a lawyer; performed legal services and gave legal advice in setting up a prepaid legal service plan, completing and filing necessary forms; signed a letter of the type usually written by an attorney with "attorney at law" printed aside his name; permitted another person to refer to

CHARLIE--for now we have only one to confirm, may not get another soon--Joe

ALASKA BOARD OF GOVERNORS--This statute only amended in 1981, creating a 12-man board in place of a 9-man board, with three new ones to be lay members appointed by the governor. (The other nine, all attorneys, are elected at annual bar convention--this year June 9 & 10--and will take office, any new ones, June 11).

*Lay Members:

KAREN SLACK, Anchorage, Term expires 1984 (probably June 30th). She has just resigned, by letter, and in same, asks governor to appoint as quickly as possible...may be an appointment coming through forher.

LeROY COOK, Fairbanks, term expires June 30, 1983...expected to resign, as Hammond appointed him in last days of Hammond regime. His name is NOT going to Sheffield, according to Randy Burns, executive director of Alaska Bar Ass'n. in ANchorage...andof course, he has not been confirmed by any House Judiciary Committee...since it's a new administration, suppose Sheffield will nominate a replacement when he gets around to it.

LEW M. WILLIAMS, Ketchikan, just appointed by Governor, not yet confirmed, term expires in 1985 (June 30th).

** Attorney Members:

President, Andrew J. Kleinfeldt, Fairbanks, term expires 1984

President-Elect, Mary K. Hughes, ANchorage, " " 1984

Vice President, Harold M. Brown, Ketchikan, " " 1984

Secretary, Ms. Niesje Steinkruger, Fairbanks, " " 1985

Treasurer, Ronald W. Lorensen, Juneau (AG office)" " 1985

State-wide representative,
William P. Bryson, ANchorage, term expires 1983

Bruce E. Gagnon, Anchorage, term expires 1985

Karen L. Hunt, Anchorage, (past Pres.) term expires 1983

Hugh G. (Jerry) Wade, ANchorage, term expires 1983

E.O.
54

STATE OF ALASKA
PRELIMINARY STATEMENT OF FISCAL IMPACT

Bill No: Executive Order No. 54 Date on Bill:
Title: Creating a Department of Corrections
Sponsor: Governor
Requestor:

RECEIVED



1. Estimated fiscal impacts on: Department of Corrections

a. Expenditures:

(Thousands of Dollars)

			FY 83	FY 84	FY 85	FY 86		
Capital								
Operating			250.0	951.6	1008.7	1069.3		
Total								

b. Revenues:

Revenue								

2. Source of funds to offset fiscal impact of bill:

For FY 83 a delete/add supplemental appropriation request has been submitted. The funds are to be deleted from the Permanent Fund Dividend Hold Harmless BRU.

FY 84 funding will be included in budget revisions submitted by the Department of Corrections.

3. Assumptions:

4. Disclaimer:
This statement has not been reviewed by the OMB in the Office of the Governor. It does not represent the policy of the Sheffield Administration or the final estimate of fiscal impact.

Prepared By: Division of Budget & Administration — [signature] Phone: 465-8082
Division: Division of Budget & Administration Date: February 17, 1983

Approved by Commissioner: [signature] Date: 2/22/83
Department: Health & Social Services

5. Distribution:
Original to Legislative Finance
Copy to OMB
Copy to Sponsor
Copy to Requestor

2/8/83

POSITION PAPER/Department of Health & Social Servi

POSITION PAPER

EXECUTIVE ORDER 54

Executive Order 54 would establish a Department of Corrections. Departmentalization of Corrections would (1) ensure that Corrections is in fact a full partner in the criminal justice system; (2) enable the needs and problems of Corrections to be routinely presented to the Governor; (3) enable the agency to actively and effectively support its budget request throughout the administrative and legislative process; (4) provide continual professional guidance based on sound correctional experience, training, and management expertise in correctional systems from top departmental administrators; and (5) streamline the organizational structure for more effective correctional management.

Within the Alaska criminal justice system, a Department of Corrections would exceed the Judicial Branch and Department of Law, both in number of employees and in size of budget. Corrections is exceeded in size only by the Department of Public Safety. All criminal justice system agencies, including the Division of Adult Corrections, are budgeted together in the Administration of Justice category for appropriations. Corrections is in practice and responsibility a full partner in the criminal justice system. However, Public Safety and the court system organization are such that administrative heads are selected due to a refined knowledge in their specialized fields. The Director of the Division of Adult Corrections possesses that expertise; however, those in the DHSS Commissioner's Office must advocate for a broad range of human services, including Corrections. For the benefit of the criminal justice system, the increasing complexity of corrections makes it important that top administrators be expert corrections practitioners; they should not have their attention segmented to the other human service needs.

While, generally, Corrections and other divisions would be likely to benefit from the result of this departmentalization, the effect of separation would not be entirely beneficial to components of Department of Health and Social Services. The dual constitutional mandate for protection of the public and rehabilitation of the offender makes it essential that a human service emphasis be included among the highest Corrections' goals and objectives. Since most of the State's social and human support services are available from agencies within the Department of Health and Social Services, there is some cause to continue Corrections as a component agency within this department. While needed Department of Corrections' services could be secured from Department of Health and Social Services' agencies by negotiated agreement, there is great value in providing these services within the departmental planning and policy development structure in order to most effectively integrate social and human support services within the State. Creation of a separate department would not entirely relieve other Department of Health and Social Services' divisions and agencies from Corrections' demands for services since the need will continue to exist and the demand will simply be made by a separate department rather than by another division within this same department.

In terms of administrative support, the creation of a Department of Corrections could be beneficial to both the criminal justice component of DHSS, as well as to the remaining divisions and offices of the Department. The

POSITION PAPER/Department of Health & Social Servi

urgency and nature of Corrections' issues require increasingly larger portion of the efforts and attention of top DHSS administrators. Not only are the other human service programs impacted by more top administrative time being directed to corrections' issues, but also by an increasing portion of the Department's fiscal resources being committed to address Corrections' urgent needs. It must be remembered that the basic human services programs are not incidental, but rather are vital programs impacting every Alaskan. It is not likely that the demands of Corrections will slow significantly in future years. Each new institution will require a large number of new employees and pending litigation offers the prospect for committing the state to continued policy and program development, extensive renovation of existing facilities, and the need for even more fiscal resources to support expanded operations.

The Department of Health and Social Services believes the creation of a Department of Corrections would allow increased focus on the critical problems inherent in the operation of programs for adult offenders, would increase the effectiveness of the criminal justice system as a whole, and would be generally beneficial to the operation of other offices and divisions within DHSS. The Department supports the approval of Executive Order 54.

Recommended by: _____

Roger V. Endell
Director
Division of Adult Corrections

Date: 2/8/83

Approved by: _____

Robert London Smith, P.H.D.
Commissioner
Department of Health and
Social Services

Date: 2/22/83

Estelle says working with youth answer to rising prison population

By DAN HILL
Staff Writer

Texas Department of Corrections Director W.J. Estelle challenged a crowd gathered at the monthly Chamber of Commerce First Friday luncheon, to "do something" about the rising prison population, by working with young people in their own community to keep them out of the criminal justice system.

"We've all got to stop and re-evaluate our priorities," Estelle said. "They don't just turn 18 years old, and suddenly turn criminal, they grow up that way."

Estelle said it was every individual's responsibility to take care of the children in his own home and community, and take enough interest in them to let them know that there are alternatives to crime.

"You and I have taken that interest in our own children, most of us have anyway, but there are many others who have not, and that's why our prisons are full," Estelle said.

Estelle added that working on the problem of keeping individuals out of trouble is something that's going to take a lot of work.

"The real heroes in the criminal justice system are those who are spending their valuable time working with troubled youth, and even bigger heroes are those that totally get involved with our young people before they get in trouble, giving them something wholesome to do, to keep them out of trouble in the first place."

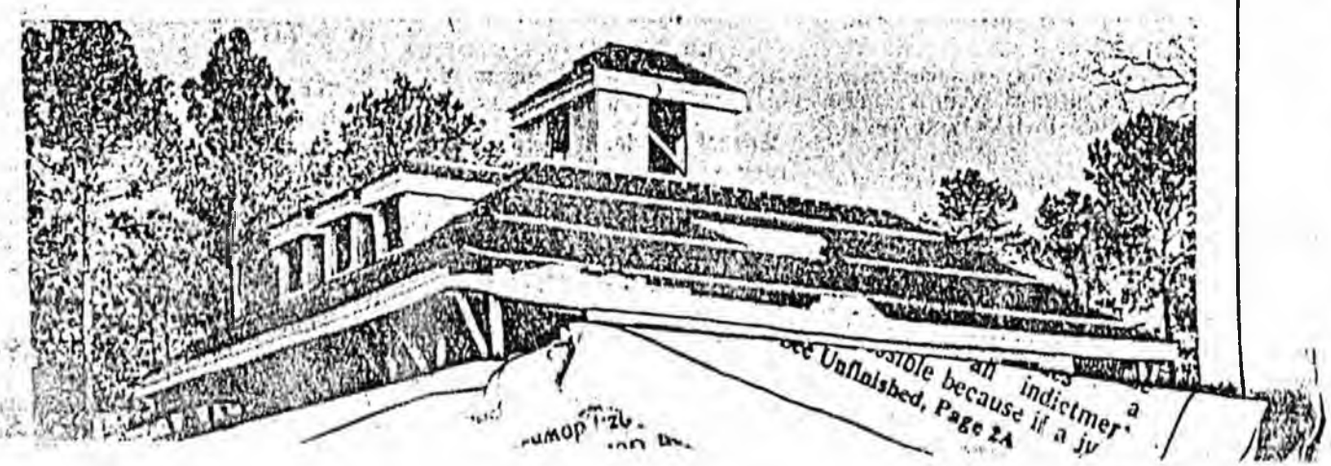
Estelle said that the time has come for action and for a commitment to the children and youth, and that it had to start on the neighborhood and community level.

"We've got to come to the understanding that we've got to solve the problem ourselves, and you can start by controlling what goes on within a one-mile radius of where you work and live," he said.

Estelle said that everyone understands that you have to pay taxes to have good schools, and he

See Estelle, Page 2A

ed house center of controversy



Unfinished, Page 2A



Estelle speaks

s Department of Corrections Director W. J. Estelle
:s at the Lufkin Chamber of Commerce First Friday
con. (Staff Photo)

tertainers signed up '83 Houston Rodeo

n Livestock Show and
ficials announced Friday
up of performers sched-
the Show, February 23
larch 6.

ers include:
23, Kool and the Gang.
24, Mel Tillis.
25, Merle Haggard.
26, Hank Williams, Jr,
ard, Lacy J. Dalton.
27, Eddie Rabbitt,
ish.
28, Conway Twitty,

1, Ricky Scaggs, Janie

— March 2, Don Williams.
— March 3, Crystal Gayle.
— March 4, Larry Gatlin and the Gatlin Brothers Band.
— March 5, Charley Pride.
— March 6, Oak Ridge Boys.

Ticket sales began Saturday, Dec. 4 at the Astrodome box office, Ticket Master, and Ticketron outlets. Prices are $8 and $4.

They are also available by mail. Write Rodeo Ticket Director; P.O. Box 25395; Houston, Texas; 77265.

Rodeo tickets include admission to all livestock show events, except the NCHA World's Championship Finals and the World's Championship

Estelle

Continued from Page 1A

said that the same sort of idea applies in the criminal justice system — you can't have the protection you want without paying for it.

Estelle has been the
the TDC since 1972, a
sought-after speaker
lecturer in the field c
justice.

Abortion

Continued from Page 1A

abortion," Taylor said.

"Some people (in Planned Parenthood) are very well-meaning," Martin said, and do not know Planned Parenthood includes abortions in their counseling.

Taylor said Planned Parenthood does not actually perform abortions but provides "referral listings of places they can have it done."

The organization will recommend to the woman that she not have an abortion after the first trimester of pregnancy, Taylor said.

Planned Parenthood serves a need in Angelina County, Prince said. About 3,800 people in the county received services from it last year.

"We'll have to make a decision that is best for the majority. We can't satisfy everybody," he added.

Planned Parenthood in Lufkin will receive $2,500 from United Way this year, according to Prince, less than one percent of the $285,000 distributed by United Way in the county. That is about two percent of Planned Parenthood's total budget.

The Right to Life board is trying to incorporate for two reasons. Members want to become a tax-exempt charitable organization and to be more credible. "In the eyes of the public, you're more credible if you have an organization with structure," Martin said.

Right to Life also plans to form a political action committee. During elections the committee will publish a list of candidates and their positions on abortion, Martin said.

Eventually, the board would like to provide a counseling service for women on abortion alternatives. "If you take a stand against something, you have to provide viable options," Martin said.

Until then, they will work closely with Birthright, a national counseling service with an office in Nacogdoches.

Mrs. Karen Castillo, director of Birthright there, said the service provides counseling on alternatives such as adoption and maternity homes.

Birthright is not church-affiliated

Birthright will offer
services and teach Rig
volunteers how to counse

Since Birthright is no
in politics, Mrs. Castillo
to Life will handle th
aspect.

Martin said there a
national pro-life, ant
movements, and the lo
hasn't decided which en
ate with.

Dr. Brian Carlin, a m
the group, said his vie
abortion are "fairly mi
pared to the views
Right-to-Life members.
doctor said he is not a
certain when the unborn
human.

He said he is against
because there is a possibi
life begins at conceptio
least a person can say is th
possibility," he said. "If th
possibility that there is a
there, you ought not to
out."

Carlin said that if the u
human, then it has the righ
process of law before death
don't have any reasons for
the kid."

Most abortions are done t
of the inconvenience of t
gnancy, he said.

Even if the pregnancy
result of rape, Carlin sa
unborn has rights. "The
didn't do anything."

One of the national Right
organization's main goa
passage of an amendment
U.S. Constitution that would
abortion unlawful, Martin sai

Martin said Right to Lif
nothing to do with birth co
but "once a life has been
duced, that life must be
tected."

Martin said that although
to Life opposes pro-abo
movements, they "don't plan
ugly to anybody about it. Yo
not going to change anybo
mind by being ugly. With an i
that's as emotional as that,
need to present it so people k
you're doing it out of love for
unborn, rather than out of hate
someone else."

Although most people involved

CRIME: punishment vs. prevention

Crime wins hands down as the political issue most likely to appear in every campaign. The anti-crime bandwagon is one nearly every candidate is ready to ride—waving slogans and solutions: capital punishment, tougher laws, stiffer penalties, more police, more jails, and more money.

Alaskan candidates were no exception this fall. They called for stronger anti-crime measures, although six new jails are in the works for Anchorage and the state's new criminal code is putting people behind bars at an extraordinary rate.

More jails and police may make the populace sleep a little sounder, but those who study crime, criminals and the justice system seem to agree that although these measures will cost a lot of money, they won't work.

"What we need to look at is alternatives to the use of law," said John Angell, director of Justice Center at the University of Alaska, Anchorage. "The only thing the law can do is administer retribution, and retribution doesn't seem very effective.

"We appear to be dealing with crime and corrections using the common sense of people who have not studied the problem, and the result is public policy that is not consistent with research findings on how to deal with the problem.

"The common sense solution to crime may be to build more prisons so you can lock more people up for longer periods of time, but it's the common sense of people who haven't studied the problem.

"Common sense, for example, tells you that conspicuous police patrols will control crime. It was tried and studied and it didn't change the incidence of crime," said Angell.

"We know that increasing the harshness of the criminal code will increase prison populations, but there has never been any research to show that tougher laws lead to a decrease in crime rates."

After Alaska's new criminal code was developed, modified by the legislature, and enacted in 1980, the prison population grew 28.3 percent in one year—the highest jump in the nation next to Mississippi's (28.8 percent).

"Alaska may soon be leading the pack in the proportion of its citizens behind bars, but that doesn't mean there will be less crime," Angell said.

Roger Endell, corrections specialist at the Justice Center, concurred. "Crime prevention strategy is the only strategy that makes sense in the light of what we now know.

"In Anchorage there are many calls for increasing the number of police officers: more police, more arrests, more people in the justice system, more people in jail. But we don't hear the question, *What do we get for all this?* Public policy should be newsworthy. We ought to be looking at the why.

"The policy decisions that are made are not always consistent with the recommendations of professionals and the best information we have on what is effective.

"Instead, society tends to fund projects and then, after the fact, try to evaluate the results. We need to design the evaluation into our justice projects. Funds should be provided to evaluate the effect of the public policy before it is put into effect.

"The legislature adopted a new criminal code that has resulted in the jailing of many more people, which is very costly, but it doesn't mean we now have a society. The probable impact of the code wasn't studied before it was adopted," said Endell.

Angell pointed out that justice-related policies are often formulated from recommendations of citizen's crime commissions that are popular in most cities and states.

"No one would think of appointing a citizen's committee of non-engineers to figure out how to get to the moon, and the problems associated with crime are infinitely more complex," he said.

"Unfortunately, people recognize the value of research for technology, but there seems to be no strong feeling that we should put money into research related to social problems. In the justice area, people are willing to spend money for things they can see, like police and jails, but not for understanding the problem.

"Politicians have made putting more police on the street a priority issue, although it's never been shown that this will cut crime. And there is no evidence that enacting the death penality reduces violent crime. The homicide rate in North Carolina went up after the death penalty was imposed. It may be that the death penality in some way legitimizes the violence by formalizing the punishment that will be inflicted."

The popular anti-crime measures often advocated in public will have no effect on that half of all criminal acts which are never reported to authorities. They are also unlikey to affect the "white-collar" crimes committed by people of a higher socio-economic status than the majority of people who end up in jail.

"Punative laws have the largest impact with people who have something to loose—status, reputation, money—and there are many people who don't have these things," Endell said.

"We have to get away from the punishment model, because research clearly indicates that punishment has no effect on the crime rate."

If common sense and punishment don't work, how can we have a safer society?

The first step advocated at the Justice Center was meeting the need to obtain a clear picture of what crimes are being committed, where, when and by whom. The second was the urgent need to develop alternatives to the punishment model, and the third was to improve what happens to people who are put in jail.

"One thing we're aware of is the need for a statewide system for collecting adequate data," Angell said. "People talk about rising crime rates, but we really don't know if life in Alaska is more hazardous today. We need to improve our record keeping system. And because 50 percent of all crimes are unreported, we need to carry out vicitimization studies."

Rather than counting the number of known crimes, vicitimization studies are

designed to find out how many people have been the victim of a criminal act.

The major source of data used to capture the trend and distribution of crime in the state is the Uniform Crime Reporting (UCR) Program. Data is collected by law enforcement agencies as crimes are reported. Seven offense categories representing the most common local problems, are defined as Crime Index Offenses: murder, forcible rape, robbery and aggravated assault make up the violent crimes; burglary, larceny-theft and motor vehicle theft make up the property crimes. They are serious because of their nature and the frequency with which they occur.

The UCR program was established in 1930 by the International Association of Chiefs of Police to provide crime statistics through which the nature and scope of the nation's crime problem could be understood. The Federal Bureau of Investigation took over the responsibility of receiving, tabulating and publishing the crime statistics, which are voluntarily submitted by police agencies. They are published each year as *Crime in the United States*.

There are several problems with the UCR program, according to *Crime in Alaska*, the state report prepared by the Office of Justice Assistance of the state Department of Law.

"The population bases which are used in computing crime rates are sometimes only estimates. This is especially true in non-census years. Also, crime may be either undiscovered and therefore unreported, or, as recent victimization surveys have indicated, unreported even though discovered.

"Despite these problems, UCR statistics do represent the basis for public awareness of crime and are the major source for a statistical understanding of the national crime problem. It is more reasonable to improve the existing program than to scrap it in favor of a new collection system which might prove more fallible," the report states.

A basic measurement in crime statistics is the crime index rate, defined as the number of incidents per 100,000 inhabitants. Because it relates the incidence of crime to the total population, it provides a means of comparing current and historical data for the state and allows Alaskan statistics to be compared with nationwide data.

During 1981, the Crime Index rate for Alaska was 5,949 per 100,000 persons, which represented a one-half percent increase over the 5,918 rate for 1980 and was slightly higher than the nationwide rate.

"It is important to understand how statistics are accumulated and what they represent," Endell said. In Alaska, the incidence of violent crime seems to be disproportionately high in smaller communities, but is under-reported. Non-violent crimes, white-collar crimes and corporate crimes are also likely to be unknown.

It is important to realize that crime statistics can be manipulated by changing the way things are classified," Endell said. "In Oakland, there was a very high burglary rate, which included all parking meter break-ins. Removing parking meter break-ins from the burglary catagory resulted in a two-thirds drop in the burglary rate in one year."

Endell said that in another city, the crime statistics showed a large drop in the number of drug-related offenses in one year. A law enforcement official was called to Washington to be commended for this success in combating crime. However, it was actually caused by a money-saving cutback in the number of law enforcement agency clerks, which reduced the quality of record keeping and resulted in the apparent victory in the war against crime.

Endell described our current corrections system as an economic drain which has done little more than create warehouses of crime.

"One-half to two-thirds of the prison population is receiving far more custody than required, and the greater the degree of custody, the greater the cost," he said. "We need to look at alternative programs and facilities."

He said the concept of requiring offenders to make restitution for their crimes is a reasonable one that should be politically appealing.

"We could institute programs through which non-violent inmates earn their way out of prison by working in public service jobs, such as construction of public projects in rural areas; or through employment in prison industries. The state has an obligation to provide inmates with legitimate work opportunities for which a legitimate wage is paid."

Under a restitution program, a person found guilty of a crime would be evaluated in terms of the threat he or she posed to society, and an evaluation would be made of the monetary restitution appropriate for the crime committed.

The criminal code would include a provision under which the court could choose to order restitution and the inmate would be assigned to work through which he or she could earn an eventual release from custody.

"We need to shift our focus from catching and convicting criminals to preventing criminal behavior," Endell said. "But we also need to improve what we're doing in corrections. It's a question of whether a person comes out of jail better or more bitter."

Another development which may lead to more effective policies is the bio-environmental approach to understanding and control of criminal behavior. Bio-environmental criminology uses genetics, biochemistry, psychology and sociology to explore questions about the early detection of deviancy and the environmental aspects of crime.

"There is no one cure-all for the problem of crime, but there is no magic in time-only punishment either," Endell said.

It may be impossible to have a society that is completely free of fear, but our justice system seems to hold much room for improvement in the effort to reduce both crime, and the fear of crime.

At the Justice Center, this kind of understanding and impact is the goal.

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Overcrowding Forces States to Re-Examine Sentencing Philosophy

Keeping the Lid on Prisons

BY DAVID RANII
National Law Journal Staff Reporter

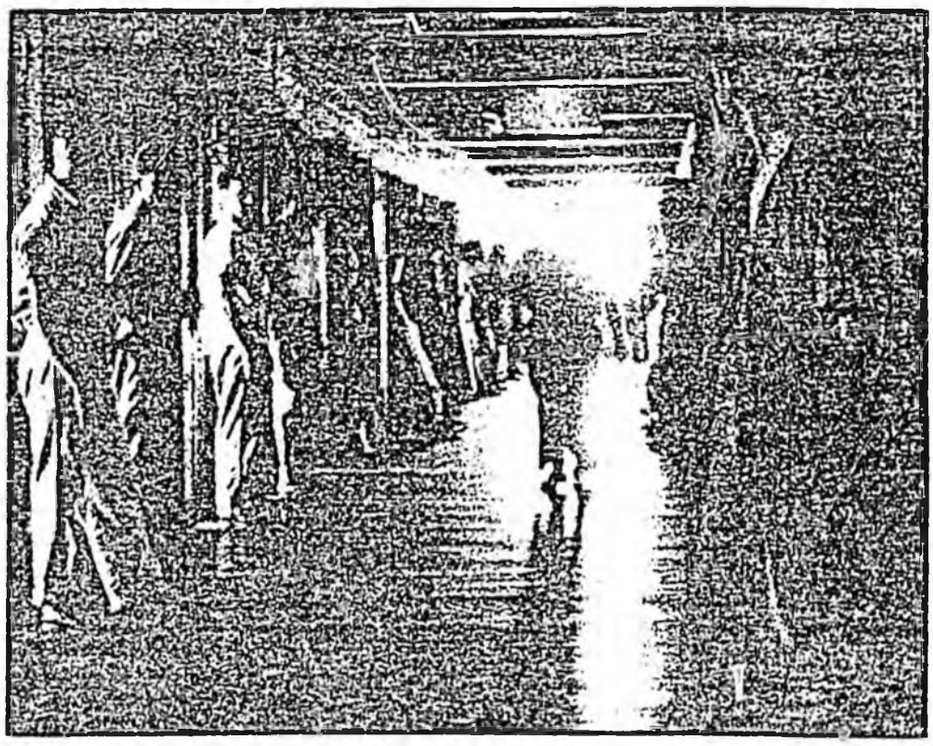
THE ENTHUSIASM of state lawmakers for a tougher response to crime is beginning to be tempered by the cold, hard fact that prison beds are a scarce commodity.

In a handful of states, the lack of space for prisoners has already caused legislators to change their minds about who should go to prison and how long they should stay there.

And, in some states, lawmakers are having these decisions made for them. At the end of last year, 31 states were under court order to reduce overcrowding and, in instances where a state has been slow to respond to judicial pressure, judges have even ordered the early release of prisoners.

Even in the states that are willing to bite the bullet and construct more prisons — and many are — the overcrowding problem is frequently so massive that the new supply of beds cannot keep up with the demand. In fact, a report prepared for the National Institute of Justice estimates that, at a cost of $32,000 to $40,000 per

Continued on page 10



HIGHLIGHTS

Marshals Revolt p. 2

U.S. DEPUTY marshals in Miami are suing their superiors, claiming that promotions have been improperly blocked.

Firm Burned p. 3

'Even a Man of Wealth Can Have Trouble Finding



DeLor

The D

BY JAM
National

but it is a practical approach to the problem.

and prisons that are horrendously overcrowded — and getting more so all the time — have begun to alter their thinking about who should be imprisoned, and for how long.

"What appears to be happening is that people who work in the [corrections] system are realizing that prisons are a scarce resource," said Deborah Jackson of Abt Associates, a consulting firm based in Cambridge, Mass., which is studying prison overcrowding for the National Institute of Justice, a federal agency. "It is very expensive to incarcerate people and very expensive to build prisons," she added. "Ten or 15 years ago, I don't think that was widely accepted."

"There are states where they are really beginning to look at what they are doing" with regard to incarceration policies, particularly "states that can't afford to keep on building [prisons]," echoed Gerald Kaufman, head of the Prison Overcrowding Project. The project, based in Philadelphia, is working with "decision-makers" in four states to develop strategies for controlling prison population size.

Ideally, taking into account the availability of prison beds may not be the best way to decide who goes to prison and how long they stay there, but it is a practical, rational approach to the overcrowding problem, said Diane Steelman of the National Council on Crime and Delinquency.

Those states that are giving serious consideration to overcrowding when setting criminal justice policies — and they are in the minority — have responded to the problem in a variety of ways.

A few of them are attacking the problem head-on, either by deciding to send fewer offenders to prison or by reducing their sentences. Others have decided to push prisoners out "the back door" — release them earlier

legislators have focused their attention on releasing prisoners sooner to relieve congestion. The state has adopted a systematic plan for the early parole of non-dangerous prisoners when the inmate population reaches capacity.

Not all states, however, have pulled back from the idea of "getting tough" on crime after considering the costs involved. In Pennsylvania, Gov. Richard Thornburgh simultaneously proposed mandatory minimum sentences and appropriation of $102 million for new prison construction. The legislature approved both plans.

Following is a closer look at what some of these states have done — or not done — because of prison overcrowding.

South Carolina

When South Carolina legislators proposed stiffer penalties for habitual criminal offenders, including a mandatory life sentence for anyone convicted of three property offenses, they gave minimal consideration to the effect longer prison terms would have on the state's miserably overcrowded prison system, which is currently at 140 percent of capacity.

But William D. Leeke, commissioner of the state Department of Corrections, made it impossible for the legislators to ignore the bill's potential impact. His staff developed data which demonstrated that, if employed to the maximum extent possible, the proposed longer sentences would create a demand for as many as 3,748 new prison beds by 1998.

Considering construction costs of $40,000 per bed and $5,000 in annual operating costs for each prisoner, the total bill through 1998 could be as much as $387.1 million, corrections officials estimated.

The legislators ultimately passed a property offenders — to receive prison sentences.

The emphasis on violent crimes made the guidelines "very easy to sell politically," said Ms. Knapp, and they were approved by the legislature in 1980.

Michigan

In 1978, Michigan voters approved a referendum abolishing the accumulation of "good time" — reduction of sentences for good behavior — for prisoners convicted of a felony. This measure, combined with the voters' rejection of a proposal to raise the state income tax to build more prisons, was a major contributor to prison overcrowding. That situation, in turn, led to passage of the Prison Overcrowding Emergency Powers Act.

The law, which took effect in January 1981, provides a mechanism for reducing the inmate population whenever it exceeds the state prison system's design capacity of 13,047 for 30 consecutive days.

When state prison officials inform the governor that this has occurred the governor "triggers" the emergency powers act and orders the officials to subtract 90 days from the minimum sentence of all inmates convicted of non-violent offenses.

This creates a pool of prisoners who are eligible for parole sooner than expected. But the prisoners' records are still scrutinized by the parole board, and only those who meet the board's qualifications are released.

The net effect is that prisoners who would have been paroled anyway are released up to 90 days ahead of time, said state corrections commission spokesman Calvin Goddard. "If you are not eligible for parole, you are not going to get out," he said. "That is the safeguard as far as the community is concerned."

that many plus an additional 500 to relieve present overcrowding, according to Mr. Miller.

Mr. Blumstein, a professor at Carnegie-Mellon University in Pittsburgh who once taught Mr. Miller, said Pennsylvania initially considered mandating minimum sentences for a broader range of offenses but decided that would be too expensive. "I think it would be irresponsible not to [make such calculations] at a time when prisons are overflowing," he said.

• • •

That, however, is precisely what most states have been doing. And Mr. Blumstein, along with many other corrections experts, believes that will continue to be the rule rather than the exception.

The prison overcrowding problem, according to these experts, should be prodding state officials into a fundamental rethinking of their criminal justice systems, but that is unlikely to happen.

At best, more states are going to adopt the "Michigan plan" for their own use, which will ease overcrowding without addressing the underlying causes. "We are going to see more and more relief valves," said Allen F. Breed, director of the National Institute of Corrections, a prison reform group based in Washington.

Mr. Breed also predicts a "rebirth of parole" in states that have abolished the practice or curbed it by instituting mandatory sentences. Most experts, however, expect the well-established trend toward tough, mandatory sentences to continue.

"The pressure on the states to continue as they are, because of the popularity of the political position [of being tough on crime] is enormous," Ms. Steelman said. "I think very often the pressure will be [on legislators] to say: 'This will cost a lot down the pik. We will get to that later.' "

Can Early Release Plans Keep the Lid on Prison?

Continued from page 1

new prison bed, between $8 billion and $10 billion in new prison construction is needed merely to meet the current demand for space in state and federal institutions.

And the space problem is getting worse. According to the latest federal Bureau of Justice Statistics data, the nation's prison population this year is growing at an annual rate of 14.3 percent, the biggest spurt ever. A major contributor to this population explosion, according to the bureau, is the abolishment of parole in four states, and the implementation in a number of states of mandatory and determinate sentencing laws.

These laws have generally been passed without an analysis of their impact on a state's prison population, according to corrections experts. Instead, legislators are merely pushing more people into state prisons — and making sure they stay there longer — without providing state corrections officials with the funding they need to absorb the flood of new arrivals.

The result, noted one prison reformer, has been "more and more bodies and less and less space."

A Change in Thinking

"Pushing tougher sentences can be viewed as the legislative version of the free lunch," said Alfred Blumstein, an expert in prison demographics and chairman of the Pennsylvania Commission on Crime and Delinquency.

Recently, however, some states faced with the twin problems of recession-induced fiscal restraints than their sentences would normally permit.

State officials in some states have gone on record in favor of alternatives to incarceration.

Earlier this year, Georgia Gov. George Busbee wrote a letter to state judges asking them to consider alternatives to incarceration, such as victim restitution and "intensive probation," for non-violent offenders. And in Nevada, which claims the highest incarceration rate of any state, some legislators' support for alternatives was spurred by the State Department of Prisons' request for $70 million in new prison construction.

Similarly, in South Carolina, legislators decided against passing a tougher sentencing law after learning they would need to undertake an exorbitantly expensive prison construction program to accommodate the growth in inmate population that would result.

Utilizing a unique approach, Minnesota has altered its sentencing guidelines with an eye toward the available number of prison beds. The guidelines are designed to reduce the prison population slightly.

And in Michigan, where the state prison system has been found to be unconstitutionally overcrowded, the "watered-down version" of the bill earlier this year that has had little impact on the state prison population, according to state officials.

"We weren't arguing that the legislature shouldn't incarcerate [habitual offenders] for long periods of time," said Mr. Lecke. "Our argument was: where are you going to put these people? . . . Don't put an impossible burden on the corrections system until you know you can pay for it."

Minnesota

When the Minnesota legislature established a Sentencing Guidelines Commission in 1978, it asked the commission to take current "correctional resources" into consideration when developing new guidelines. The commission staff, interpreting this broadly, responded by proposing guidelines that were designed so that the average projected prison population would be 95 percent of capacity.

The result, according to Mr. Blumstein, is "a very good illustration of establishing a sentencing policy that tries to be responsible in terms of its impact."

The commission also sought to give less weight to an offender's past crime's than the earlier sentencing guidelines. Previously, property offenders with moderate criminal histories were likely to receive prison sentences, but first offenders, even if convicted of "a fairly serious crime," were rarely sent to prison, said Kay A. Knapp, commission director.

Consequently, the new guidelines call for a greater proportion of violent offenders — and a lesser number of

Taking into account the availability of prison beds may not be the best way to decide who goes to prison and how long they stay there.

A "prison overcrowding emergency" has been declared three times since the law was passed, enabling the early release of about 2,300 inmates.

Four other states — Connecticut, Georgia, Iowa and New Jersey — have adopted similar laws, according to the National Institute of Corrections.

The so-called Michigan plan, said Ms. Steelman, "is terrific. I wish all these states would adopt it. What they have done is provide a rational and orderly way to deal with prison overcrowding."

Even when states have the money for prison construction, it takes four or five years to build a prison, she said. In the meantime, "the only logical way to deal with excess people is to let them out."

Pennsylvania

Governor Thornburgh, a former U.S. attorney in Pittsburgh, has earned a reputation for being tough on crime. So it was no surprise when he pushed the legislature to pass a tough new mandatory sentencing law that calls for a minimum of five years' imprisonment for those who are repeat violent offenders, those who commit violent crimes on public transportation and those who commit violent crimes with a firearm.

But, unlike most politicians, Mr. Thornburgh also asked for $102 million for new prison construction to handle the expanded inmate population the tougher sentences are expected to produce.

"We knew if we were going to put people away, we had to know where we were going to put them" said Harold D. Miller, an aide to the governor who helped develop the new corrections program. The state, estimating that the new sentencing laws will create a demand for a minimum of 1,880 new beds, has decided to build that many plus additional

Ketchikan Daily
News
Ketchikan, AK

State given time to reduce jail crowding

ANCHORAGE (AP) — The state has been given more time to reduce the inmate population of the crowded Sixth Avenue jail.

Superior Court Judge Victor Carlson said Friday he is convinced "the executive branch of government,. at its highest levels, is making an effort to deal with the problem."

Carlson cited recent legislative approval of a request from Gov. Jay Hammond to add 70 new prison guards to the state system.

Assistant Attorney General Mike Stark asked for additional time to complete the hiring and training of a staff for the recently renovated 45-bed wing at Post Six, known formerly as the Ridgeview Correctional Center.

The wing is to be used to handle the overflow from the Sixth Avenue facility where the population fluctuates between 120 and 150, although the design capacity of the jail is 100.

A pre-trial detention center is under construction on Post Road, just east of the downtown area, and is expected to be completed by December. Until then, prisoners awaiting trial will continue to be mixed with convicted prisoners.

Tim Stearns, an attorney for a group of inmates who sued the state in 1977 over jail conditions, objected to the 30-day extension granted by Carlson.

"If corrections had wished to comply with the court order, it would have been complied with by now," Stearns said. "I don't think a delay in moving the people from Sixth Avenue is going to help that institution or the other institutions."

While Carlson gave the state until March 15 to get the Sixth Avenue population down to 100, he ordered an April 12 court appearance to prove that the state has complied with a 1979 order mandating general improvements at the jail.

Among other things, prisoners complain about cold food, a lack of linens and toiletries, and having to sleep on the floor without mattresses.

Anchorage Times
Anchorage, AK

Court upholds 'emergency aid doctrine'

Associated Press

The state Court of Appeals has ruled that police acting in response to an immediate life-saving emergency legally can enter a private home without permission and gather incriminating evidence without a warrant.

The court issued that decision Thursday in upholding the conviction of David Gallmeyer of Wrangell on a charge of being a felon in possession of a firearm.

Police were called to the Gallmeyer home on April 12, 1978, by his wife, Linda. She told them by telephone that her husband had pushed her out of the house after a fight, and she asked their help in getting her 15-month-old baby out of the house.

While officers were en route, Gallmeyer placed the baby on the porch. When they arrived, Mrs. Gallmeyer told them her husband was intoxicated and had several guns in the house.

One of the responding officers decided he should talk with Gallmeyer to make certain he was calm before any attempt was made to remove the baby.

The officer called to Gallmeyer, then entered the home without permission. Once inside, he saw that Gallmeyer had a gun stuck in the waistband of his trousers. He grabbed it, and Gallmeyer was charged with being in possession of a firearm while intoxicated.

Police subsequently discovered that Gallmeyer was a convicted felon, and he was charged with and convicted of being a felon in possession of a firearm.

In upholding the conviction, the Court of Appeals said the "emergency aid doctrine" justified the warrantless entry of the home because police held a reasonable belief that a life-threatening emergency existed.

Anchorage Daily
News
Anchorage, AK

Overcrowded Sixth Avenue Jail hits deadline today

By SHEILA TOOMEY
Daily News reporter

A court-ordered deadline for reduction of the population at the overcrowded Sixth Avenue Jail expires today and a Superior Court Judge is expected to rule this afternoon on a state request that the deadline be extended to March 15.

Dec. 17, Judge Victor Carlson found the state in contempt of a 1979 court order and gave corrections officials 60 days to reduce the number of prisoners at Sixth Avenue to no more than 100. The jail population Thursday was 140, but was expected to fall to the high 120's today due to scheduled releases, according to Superintendent Russ Moody. An additional 45 pre-trial prisoners are being houseing in a wing at Post Six (formerly Ridgeview(, he said.

Prisoner affadavits filed in Superior Court Thursday, in preparation for today's hearing, complain of inadequate sanitary facilities, a lack of towels and sheets and inmates being forced to sleep on the floor because of a bed shortage.

The Legislature approved the hiring of 70 new corrections officiers last week, according to Assistant Attorney General Mike Stark. The requested deadline extension will give the Division of Corrections enough time to hire and train the personnel needed to staff another 45 beds at Post Six by March 15, Stark said. Moddy plans to transfer inmates with low security classifications to the Post Six facility as soon as it is staffed, he said.

Today's hearing is the altest in a battle that began in 1977 when a group of prisoners filed suit against the state demanding that prison conditions be improved. In 1979, Judge James Singleton ordered seven pages worth of improvements including areas such as food, medical care, clothing, exercise, plumbing, bedding, censorship of outgoing mail and telephone access. "With the aparent exception of mail censorship, defendants continue to be in violation of the above provisions of (Judge Singleton's) order," charged lawyer Tim Stearns, who represents the inmates.

The Sixth Avenue Jail houses arrested men awaiting trail and some convicted felons awaiting sentencing. The building is old, with poor plumbing and a faulty heating system. It consists mostly of dormitories holding up to 32 prisoners each. "We are overcrowded and understaffed," Moody said Thursday. "All things considered, and by comparison to any other institution like ours, I think we're doing very good.

Stearns charged that most of the violations at sixth avenue ar enot directly related to overcrowding.

Anchorage Times
Anchorage, AK

Court to study jail conditions

Overcrowding at Anchorage's Sixth Avenue jail is scheduled to come under court scrutiny again today when the state asks for more time to relieve the overcrowded conditions.

In December, Superior Court Judge Victor Carlson gave corrections officials 60 days to reduce number of prisoners at the jail to no more than 100. On Thursday, the jail population was about 140.

But state officials, who hired 70 new correctional officers last week, say they need an extension until March 15.

Carslon will hear arguments in the case this afternoon.

The Peninsula
Clarion
Kenai, AK
FEB 1 0 1982

33 indictments of false native dental care

ANCHORAGE (AP) — A Delta Junction dentist has been indicted on 33 counts of fraud for allegedly cheating the government by submitting claims for care never provided natives in rural Alaska, U.S. Attorney Michael Spaan says.

The indictments against James Goodman, 32, were returned Wednesday.

According to Spaan, the dentist was under contract with the U.S. Public Health Service to provide the care.

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Anchorage Daily News
Anchorage, AK
FEB 1 1982

Jail given another month to cut population

By SHEILA TOOMEY
Daily News reporter

State corrections officials won a one-month reprieve in Superior Court Friday when Judge Victor Carlson gave them until March 15 to reduce the prisoner population at the Sixth Avenue Jail to no more than 100 inmates.

Assistant Attorney General Mike Stark asked for the additional time to permit the hiring and training of guards for a new 45-bed wing at Post Six, formerly Ridgeview Correctional Center. The recently renovated wing is intended to house the overflow from the crowded Sixth Avenue Facility.

Noting recent legislative approval of a request from Gov. Jay Hammond for 70 new prison guards, Carlson said he is convinced "the executive branch of government, at its highest levels, is making an effort to deal with the problem."

The inmate population at Sixth Avenue fluctuates between about 120 and 150 prisoners awaiting trials or sentencing. A new pre-trial jail is now under construction on Post Road, east of downtown. It is scheduled to open in December.

While he agreed to a 30-day extension, Carlson ordered the state to appear in court April 12 prepared to prove that it has complied with a 1979 court order mandating seven pages of general improvements in jail conditions. Carlson also ordered Sixth Avenue supervisor Russ Moody to report to him by Monday on the current availability of blankets, towels, sheets, toothbrushes and soap in the jail.

The judge instructed Moody to take the temperature of food served to inmates over the weekend in order to test inmate charges that jail food is usually served cold.

In December, Carlson gave the state until Feb. 19 to comply with the requirements of the 1979 court order.

Tim Stearns, an attorney representing a group of inmates who filed suit against the state in 1977, argued against any extension. "If corrections had wished to comply with the court order, it would have been complied with by now," Stearns said. "I don't think a delay in moving the people from Sixth Avenue is going to help that institution or the other institutions."

Stearns said he believes Moody's personal efforts to improve jail conditions are not being supported by his superiors. Affidavits from inmates, filed with the court Thursday, charge that prisoners often have to sleep on the floor without blankets or sheets. They also complain about the alleged lack of medical care and physical exercise.

Carlson agreed that he, too, was concerned about the possibly explosive situation in the overcrowded jail.

Assistant Attorney General Stalk called the complaints "a long recipe list," with some charges false, some exaggerated and some true."

Fairview halfway house approved

By LARRY CAMPBELL
Daily News reporter

Fairview residents turned out in force Monday night to argue against allowing a halfway house for recently discharged mental patients to be located in their neighborhood.

But the Anchorage Planning and Zoning Commission, by a 5-1 vote, approved a permit allowing the center to remain in operation.

Residents' comments — heavily weighted against what mental health experts call a "transitional living center" — came during a public hearing before the commission. The commission earlier had approved a permit for the facility, which has been operating in a limited capacity since November, but a technical gaff required the issue to be considered again.

Fairview Community Council officials and area residents said they feel the neighborhood's opinions were ignored. The hearing was held at the Fairview Community Center.

Gordon Glaser, president of the Fairview Community Council, told

See Back Page, FAIRVIEW

Fairview residents oppose halfway house, but permit is approved

Continued from Page A-1

commissioners the prior decision on the halfway house violated the neighborhood's sense of involvement with the planning and implementation of the project.

"Community involvement and fear in this community are linked," Glaser said.

Glaser emphasized the involvement of Fairview residents with other community programs such as S.T.A.R. (Stand Together Against Rape) and the AWAIC (Abused Women's Aide in Crisis) shelter. Both programs are located in the Fairview area.

"We are participating wholeheartedly in programs like these," Glaser said. But with the halfway house, "nobody seemed to bother to ask us."

Dr. Gary Vreeman, director of the Anchorage Community Mental Health Center, testified that the halfway house is needed, and that the Fairview area is an ideal location for the facility because it is located close to public transportation, shopping centers, recreational facilities and a Post Office.

Vreeman tried to allay fears expressed by some residents that the halfway house might bring patients with violent tendencies into the neighborhood.

"People with a mental illness are typically withdrawn," Vreeman said. "A center like this helps to make them feel they are not failures."

He said the center's screening procedures for accepting residents to the facility eliminates patients with histories of violence, sexual aberration or alcohol or drug abuse.

But most of the Fairview residents who spoke at the hearing were unconvinced.

"They never consulted us and we are bitterly against this halfway house," said Helen Mason, secretary of the community council. "This isn't a good place to be if you don't get community cooperation."

Mason also spoke of concerns felt by a number of residents that the Fairview area already was inundated with social service facilities, such as those mentioned by Glaser.

The halfway house was originally granted a permit in November to operate as a quasi-institutional facility designed to assist newly released mental patients from Alaska Psychiatric Institute and other mental institutions in re-entering society.

Residents receive basic training in housekeeping, cooking, shopping and other self-support skills. Eventually, halfway house residents who successfully complete the program will leave the center and live on their own.

Eight patients had already moved into the six-plex at 921 E. 10th Ave. when community residents appealed the commission's earlier permit approval. When it was learned that a malfunctioning tape recorder made it impossible to provide a verbatim transcript of the earlier proceeding, a new permit and hearing process was begun.

In the interim, the halfway house was prevented from accepting 10 more residents.

Overhaul of prisons advised

By HAL SPENCER
The Associated Press

JUNEAU — Gov. Bill Sheffield should create a separate department for Alaska's beleaguered prison system, build more jails including a maximum security prison and put prisoners to work, a task force said Monday.

The task force, headed by Roger Endell, a University of Alaska, Anchorage, professor, also recommended that the state launch alcohol and drug abuse programs in jails, keep a number of violent offenders in the Federal Bureau of Prisons system and close no existing correctional facilities, with the exception of the Anchorage Careage House, until replacement facilities are found.

The Careage House should be used as the Division of Corrections headquarters, the task force said.

The task force also recommended that jail construction be viewed as a high priority among all units of state government, that corrections be managed on a decentralized, regional basis and that corrections staff be well trained.

The recommendations were among 35 presented to the governor, who said the suggestions "will be highly valuable to the administration as we prepare the state budget and possible bills for introduction to the 1983 Legislature."

Sheffield appointed the panel in mid-December with instructions that it forge solutions to Alaska's growing corrections crisis — a crisis most evident in the state's overcrowded jails.

But Sheffield had no immediate reaction to the specific proposals, and his office said he would have none pending further study.

No cost figures were attached to the task force's recommendations. Independent work now being done by various state agencies will develop the potential costs of the recommendations, according to John Greely, Sheffield's deputy press secretary.

See Back Page, TAS

Task force recommends overhaul of state corrections system

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"It is clear that there is a crisis in corrections," the task force said. "It is also clear that with sound, long-term and professional management, most of the current problems can and will be resolved."

The Division of Corrections, currently within the Department of Health and Social Services, should be elevated to cabinet-level status, the task force said.

Citing what it called a "crisis in correctional management," the panel said, "We have found unanimous agreement from virtually all persons interviewed, from all regions of the state, and from segments of the criminal justice system — police, courts, corrections, law — and from the citizen sector that departmental status is not only justified but necessary."

The task force said the department should be created in a "quick and clean" fashion through executive decree.

"The division has been managed by four different directors in the past six-year period," the panel said. "The most recent director as well as the current director were both hired by the previous administration to move the Division of Corrections toward a more stable management situation. Their task was made more difficult because of their lack of knowledge of the unique problems and potential advantages of Alaska corrections."

The Division of Corrections is currently headed by Robert Hatrak, who could not be reached for comment on the study Monday.

The panel also said a commissioner of corrections should be appointed as soon as possible. A deputy commissioner and four regional directors should be appointed by the commissioner, the task force said.

"In regard to the need for a maximum security facility in Alaska, the task force received clear and compelling testimony from state and local police, the court system" and others that the state needs such a facility.

The group also urged that "new site acquisitions, construction additions and building renovations be completed expeditiously as the highest priority through the channels of state government while minimizing both hindrances and costs."

The task force said the Department of Transportation and Public Facilities "should recognize prison construction as a high priority. Building supplies and prisoner labor should be used in building renovations and in the construction of non-secure buildings."

"The prisoner population should be put to work," the panel said.

The task force said corrections "must be given the resources to provide meaningful work opportunities for the offender population," listing as examples clearing land, rehabilitating streams and maintaining parks.

Recognizing that alcohol and drug abuse help to swell jail populations, the task force said the state, in cooperation with local governments, should provide prisoners with substance abuse programs. "There is a crucial need for a comprehensive approach to the problem of substance abuse," the panel said.

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State chief will support KILA home

NEWS MINER 3-4-83

By SCOTT YATES
Staff Writer

Deciding there had been "adequate public dialogue" a state corrections official said he will recommend that the state sign an agreement with KILA Inc. to run a 56-bed halfway house near Ester.

Walt Jones, assistant director of corrections, made the announcement near the end of a KILA board of director's meeting which saw 42 Ester residents show up to express their concern over the facility. Although the halfway house has been occupied by 21 persons since Feb. 26 under an existing agreement with the state, a contract amendment has not yet been signed to take into account the expanded capacity.

Rep. Mike Davis, who listened to the meeting over a teleconference hookup, said he did not think a KILA board of directors meeting constituted an adequate public hearing.

He was surprised to learn that the facility has been occupied despite earlier objections by Ester residents.

Leaders of the Ester opposition meanwhile said they will continue to wage their fight against the halfway house. Mark Davis said this morning he's "almost positive" that residents will go to court.

"The people of Ester were denied due process."

Apologies notwithstanding, residents remained unsatisfied with the explanations of KILA board President John Link Thursday night. Explaining that he was out of town when the controversy surfaced, Link said, "From what I can reconstruct, I think we are all suffering from the disability of not knowing what's going on."

Link told the group that he never considered the halfway house part of Ester and he accepted blame for not talking with residents.

"We never for a minute thought the people of Ester would raise a fuss. Believe me, if we had, we would have been out at the community center. Whatever blame there is rests on my shoulders. You have our apology."

After presenting a brief history of KILA, which means "friendly spirit" in Inupiat, Executive Director Frank Gold sat silently through most of the proceedings while Link and Jones were bombarded with questions.

Residents were told that security at the facility relies primarily on an

(See HOME, page 5)

HOME . . .

(Continued from page 1)

alarm system. Doors are wired to a central switchboard which lights if they are opened. Two teams of six supervisors each will work at the halfway house and at least two people will be awake at all times. The personnel will not, however, be responsible for restraining individuals. If someone leaves, state troopers will be called to apprehend them.

"Before we get excited about that, let me tell you the type of person lodged there is not the type who would go into a community, either Fairbanks or Ester and raise havoc," Link said.

Jones added that the prisoners are screened and only those posing the lowest risk possible will be considered.

"They have to show they can function in that environment. Everyone who is eligible doesn't go through a halfway house," Jones said.

Jones said that of 314 people who went through halfway houses during the past year, 265 completed the program successfully, that is, they didn't violate any rules which caused them to be sent back to jail.

Jones explained that those who fail the program usually commit infractions like drinking or returning late.

Armed with the contract between the state and KILA, residents asked who is ultimately responsible for the prisoners and any damage they might cause. A clause in the contract says the state is held harmless, but there was a difference of opinion whether that would hold up in court. Several members of the audience asked that the attorney general make a determination as to responsibility.

Link said during the meeting that KILA had spent $30,000 of its own, funds getting the building opened. He indicated the mortgage came due Thursday and was now deliquent because the state contract hadn't been signed.

New prisons chief scraps Woronzof jail

By TOM KIZZIA
Daily News reporter

1/7/83

The new head of Alaska's prison system said Thursday he wants to set aside plans for a new prison at Point Woronzof and find a way to solve overcrowding problems without immediate construction of a new jail in Anchorage.

Roger Endell, a university professor and former Alaska corrections official, was named Thursday to replace Robert Hatrak as chief of corrections. A spokesman for Gov. Bill Sheffield said the change was made to bring "fresh ideas and fresh leaders" to the prison system.

The new approach was immediately evident. A plan outlined Thursday by Endell would do away with the proposed jail at Point Woronzof, west of Anchorage International Airport. Former Gov. Jay Hammond and Mayor Tony Knowles agreed last November to build a new prison there.

Endell's plan also would close the controversial Cartage House jail in the middle of a Tudor Road residential neighborhood. Endell said he wants to convert it to a Southcentral headquarters for corrections within weeks after he begins his job Monday.

As an alternative, Endell wants to purchase and remodel as jails existing facilities in the Matanuska-Susitna and Kenai Peninsula boroughs. He also wants to keep open the Ridgeview Correctional Center, which the Hammond administration had declared decrepit and wanted to close.

Endell said his plan would be a cheaper and quicker way to relieve overcrowding in Alaska's prisons. It also would do away with the long-standing problem of finding a new prison site in Anchorage.

The Point Woronzof site would require a lengthy permit process by the municipality, and a costly extension of utilities, Endell said.

A likely alternative site appears to be a former missile base at Goose Bay, on the

See Back Page, CORRECTIONS

Corrections chief decides against Point Woronzof jail

Continued from Page A-1

north side of Knik Arm. Allen Korhonen, acting commissioner of the Department of Health and Social Services, said Thursday that corrections officials favored it as a site for a medium-security prison and planned to tour the base next week.

Other sites under discussion include the Wildwood Center in Kenai, a former radar base on Ohlson Mountain in Homer, and sites in Seward and Palmer.

Under the Hammond administration, corrections officials had argued that a medium-security prison was essential in Anchorage.

Medium-security prisons for 100 inmates at any two of the new locations possibly could be erected in a year, using modular materials, Endell said. These sites could also be used for maximum-security prisoners, according to Endell, who said the state may reconsider its earlier decision to build a single, 300-bed prison for its biggest security risks.

Endell said he favored small, regional facilities and said problems could develop if all the most difficult prisoners were housed together.

The need for minimum-security space in Anchorage can be met by keeping the Ridgeview and Third Avenue jails open, Endell said. The state had previously planned to close them after a new pretrial facility on Post Road opens sometime this spring.

Endell, who was head of a special Sheffield administration task force on corrections, is inheriting most of the same problems faced by Hatrak, who was on the job only nine months.

The task force report appeared to give more attention to concrete solutions to overcrowding than to rehabilitation programs. But it could be called only a moderate shift of emphasis from his predecessor's reliance on "community-based" programs such as halfway houses.

"He's a professional corrections administrator," Endell said of Hatrak, who was not criticized by name in the task force report. "A number of the problems in corrections he obviously inherited."

The task force was critical of the high turnover in corrections management. The next director, the task force said, should be someone already familiar with the state's jails.

The job description fits 42-year-old Endell well. A resident of the state for more than two decades, he served as assistant superintendent of the Juneau Correctional Center from 1971-73, the Third Avenue Jail in Anchorage from 1973-74, and the Eagle River Correctional Center from 1974-76.

He was most recently an associate professor of justice at the University of Alaska, Anchorage, Justice Center. A Sheffield spokesman said Endell has written extensively about the penal systems in the Soviet Union and Finland.

The Endell task force recommended that corrections be removed from the Department of Health and Social Services and placed in a new Department of Corrections. Endell said Thursday he expected the new department would be created soon, with him as commissioner, but he was not sure whether it would be created by the legislature or by executive decree.

Anchorage Daily News

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Let convicts do jobs for the city

Petty criminals may spend time behind a broom instead of behind bars under a promising state-municipal proposal that could spruce up the city while easing overcrowding in local jails. Still in the discussion stages, the proposal would put selected individuals convicted of misdemeanors to work sweeping bike trails, clearing roadside rubbish or even shelving library books instead of cooling their heels in already overcrowded jails.

Under the program, individuals convicted of such non-violent crimes as shoplifting, writing bad checks and littering could be assigned community service instead of jail time or a suspended sentence. Predetermined guidelines would screen out offenders inappropriate for the program, which could put up to 2,500 to work for the community at a cost of $150,000.

The local proposal dovetails appropriately with a report released Monday by the Governor's Task Force on Corrections. The report recommends community services opportunities as a method of acquiring eight-hour-a-day work habits and law-abiding skills. The report emphasizes the need for such programs now. We agree.

Although community service is not a new idea — the state Pretrail Intervention Program already coordinates community service projects with local non-profit agencies — the public works aspect of this proposal makes it especially attractive at a time of dwindling dollars and overcrowded prisons. It costs money to incarcerate a person; idle hours in overcrowded conditions do not make that money well spent.

Although a rough draft of the proposal is still a month off, we think this expanded local intervention program has merit — especially in light of the city's budget crunch and the state's jail crunch. If properly implemented, it's a program that could benefit the city — which is raising taxes to help fund basic capital projects maintenance — the jails, and even the petty offenders who could be channeled through the system in a productive, positive manner.

Welcome mat

NEW STATE JAILS and maybe a maximum security prison or two will be hot topics on the political scene during the coming legislative session. Let's hope the legislators will not overlook offers from communities that want this kind of business.

Seward, for one, has invited state officials to consider their port city as the site of a new jail or prison. For one thing, it would be good for the community's economy, bringing a new and steady payroll to town along with considerable construction dollars. For another, new detention facilities have to go *someplace*, and Seward would be fulfilling a civic duty by providing the site and the support required.

The Kenai Native Association has proposed converting the old Wildwood military station near Soldotna, which it now owns, into a minimum security prison. The Kenai Peninsula Borough gave it a strong endorsement and state officials, we're happy to say, apparently have responded favorably. Opposition, however, has surfaced in the form of an editorial in the Peninsula Clarion that took issue with Wildwood as a site. It said "putting a prison in the midst of a community is dubious public policy," and suggested better options should be available.

SEWARD AND KENAI are possibilities, obviously. Another smaller cities, looking for a steady addition to the local economic base, likewise might be receptive to the prospect of playing host to a state jail or prison.

But there still seems to be a lack of enthusiasm among those in the corrections system to give serious consideration to outlying areas.

The attention always seems to have been focused on Anchorage. Detention facilities here are more convenient for the lawyers, the judges, the convicts and the state employees in the system.

And if those are the primary criteria, it's no wonder there hasn't been much serious discussion of sites beyond the confines of urban and suburban Anchorage.

But with the stated interest from Seward and the Kenai Native Association, there is reason to think the prospect of finding new locations is not as gloom-and-doom as officials would have people believe.

Oops

AN EDITORIAL in these columns the other day said nice things about Sen. Don Gilman's efforts to learn more about what's going on in Anchorage, since he now represents the south end of town even though he lives in Kenai.

The same opinion piece expressed the hope that Sen.-elect Paul Fischer of Kasilof, who represents the same district with Mr. Gilman, would follow suit.

Well, it turns out that Mr. Fischer was in attendance at the now-famous secret meeting this week when the municipality presented the mayor's $196-million "wish list" to area legislators.

The mix-up came because it was inaccurately reported that the Fischer who was present was Sen. Vic, not Sen. Paul. Whoever did the reporting got the two confused.

IT HAS BEEN suggested that surplus pipeline camps be used and that's a worthy idea.

A former congressman from the East captured headlines earlier this year by proposing the use of an uninhabited Aleutian Island as a federal prison. That's not necessarily a hair-brained idea.

No matter what solution is found eventually, there's no doubt the problem will be a big ticket item for the new administration and the legislature to address. But it is not a problem that can't be solved — with enough thought (and probably a lot of dollars).

State may need to double space 3-4-83

Prisons said to be 'busting at seams'

By DAVID RAMSEUR
News-Miner Bureau

JUNEAU—Alaska may have to double its prison space to nearly 2,000 beds within four years at a cost of perhaps $130,000 a bed, if the state is to keep up with the skyrocketing number of persons convicted of crimes.

That's one of the findings of a newly released report by the research arm of the state House of Representatives.

The 60-page report says the state's prison population is expected to exceed 2,000 by 1987, compared to the current inmate population of nearly 1,300.

The current rate means that one out of every 400 Alaskans is in prison, which is significantly higher than the national average of one in every 600 persons.

Release of the report comes on the heels of considerable state activity on prison issues. Gov. Bill Sheffield recently proposed creating a separate state Department of Corrections.

His capital budget submitted to the Legislature calls for the construction of a new $45 million, 302-bed maximum security prison.

And lawmakers are considering a multitude of measures to tighten state criminal laws on everything from sexual assault to drunk driving. Many of those revisions will result in more inmates who would require additional prison space.

The House Research Agency report, authored by Betty Barton and Jon Sherwood, says the crime rate is partly responsible for the growing need for prisons.

In 1980, Alaska's crime rate was less than one percent lower than the national rate. In that year, Alaska ranked 14 among the states for its crime rate. Between 1980 and 1981, Alaska's violent crime rate—murder, assault, rape and robbery—increased 27 percent.

The report points to several reasons for that increase. Among them: an increase in the population of young adult males who are responsible for a large percentage of crime; poor economic conditions; and social problems such as alcohol abuse.

Other factors will affect a growing prison population in Alaska, says the study. One of the most important is a 1981 class action suit filed by an inmate which requires the state to relieve over-crowding and improve prison conditions.

The report outlines several courses state officials can take on corrections issues. Those include:

- Increasing prison bed space, which appears to be the most popular among the Sheffield administration and key legislators.
- Modifying state laws that determine who goes to prison and for how long.
- Strengthening prison management through reorganization.
- Improving communications and

(See PRISONS, page 5)

PRISONS . . .

(Continued from page 1)

decision-making in criminal justice agencies.

Some state officials, such as those in former Gov. Jay Hammond's think-tank agency, say building more prisons without looking at other problems is an incorrect solution to a skyrocketing prison population.

But "locking them up and throwing away the key" appears a popular notion with this Legislature and administration.

The report reaches no conclusions about the dilemma other than to suggest any answer will be costly.

"The rate of increase in prison populations—at least in the immediate future—is expected to grow," concludes the report.

"In light of this, it is becoming increasingly important that government become more efficient in its management of offender populations and its use of existing facilities."

More than $133 million is budgeted for this year for the administration of justice, an increase over 1982 of nearly 30 percent.

Sheffield has proposed an $83.9 million prison building program for next year which includes an 80-bed Fairbanks pre-trial facility and 32 additional beds for the youth wing in Fairbanks.

Prison staffing fortified

by Jeff Berliner 4/28/83
Times Writer

Fourteen new corrections staffers begin work at the Lemer prison today and 40 guards remain on mandatory overtime in the wake of two escapes last week.

An emergency situation continues at the prison, said superintendent Stanley Zaborac.

"Prison policies and procedures have been modified to limit the freedom of inmates to move from their living areas to other areas of the institution," Zaborac said today.

"Correctional officers are working 12-hour shifts and we're bringing people in on their days off," Zaborac said. Each guard is averaging one day of overtime per week, Zaborac said.

Zaborac has asked the legislature to declare the situation an emergency and approve a supplemental budget to pay for the 14 new staff members and overtime for the entire 54-person corrections staff.

Funding to complete a fence around the medium security wing of the prison also is in the request. One hundred of the prison's 242 inmates are in medium security. The minimum security section houses 142 prisoners. The prison is designed to hold 206 men.

Although all 14 people hired by Zaborac are termed temporary, he said he is seeking additional money to make them a permanent part of the staff.

The need for more staff is so critical, Zaborac said, that the new officers will receive an abbreviated training course: they'll complete 16 hours of classroom training today and then spend the weekend under the tutelage of experienced staff before being put on their own Monday.

Although the state of emergency continues at the prison, Zaborac said the facility is more secure than it has been in the past.

Five inmates escaped in two separate incidents. All five were recaptured and have been charged with escape.

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Report on prisons deserves attention

No pricetag has been attached yet, but the ideas collected in a single report by a special task force on state prisons represent an apparent consensus on Alaska's corrections needs. Expect state policy to begin to coalesce around the major conclusions.

The major themes: construction of more jails and a maximum security prison; elevation of the Division of Corrections to department status; and creation of "meaningful work opportunities" for prisoners. Other important aims: establishing drug and alcohol abuse programs in Alaska prisons, decentralization and regionalization of prison administration, an end to persistent "crisis in correctional management," and greater stability at the head of the system.

There are weaknesses in the report — chiefly the shorthanded consideration of alternatives to incarceration, in a state that imprisons more of its citizens than it can handle — but the conclusions and recommendations will be useful as Gov. Sheffield and the legislature begin coping with current stresses in the system. What's important about this effort is that it gives added currency to important ideas about prison management.

The most intriguing is the idea of putting prisoners to work — for both themselves and the society. Meaningful labor long has been the missing component in prisons whose stated aims included "rehabilitation." But rehabilitation is an elusive goal when enforced idleness — not to mention boredom, substance abuse, overcrowding and actual or potential violence — is the major fact of prison life. Assuming proper security safeguards can be arranged, prisoners put to work clearing land, rehabilitating streams or maintaining parks, to name a few tasks, could both spend their time usefully and repay their debt to society in a constructive way.

Substance abuse, too, deserves serious attention. It has become almost cliche for prison studies to point out the impact of alcohol and drug abuse on prison populations, and the overwhelming need for prisoners to cope with their compulsions before re-entering society. What the task force report accomplishes is to add that perspective to the public agenda — to encourage a response from the political system on what should be a mainstay of prison programs in Alaska.

In all, the task force has produced a useful report. The conclusions are neither startling nor revolutionary — but they deserve attention in Alaska's halls of power in the months and years to come.

Corrections director searches out site for prison

2/13/83

By RONNIE CHAPPELL
Daily News correspondent

KENAI — Corrections Director Roger Endell has crisscrossed the Kenai Peninsula since taking office earlier this year, making stops in Homer, Kenai and Seward. Next week, he returns to visit Nikiski.

The reason for all of this travel is simple. He's got 1,500 prisoners on his hands right now and there's space for only 900 in the state's existing prisons. He is looking for places to build new prisons, and he is looking for communities that want them.

According to Endell, there are two such communities on the Peninsula.

People in Seward are actively encouraging the state to build a new $40 million, 300-man maximum-security prison there. Endell said earlier this week that plans to develop a 220-man medium-security prison near Kenai have won the endorsement of the local City Council.

A decision on the maximum-security prison — and where to put it — will be made by the legislature this year.

The state had planned to build the new facility near Palmer, but that changed late last year when the Seward City Council contacted the Division of Corrections.

Endell described Seward's business and government leadership as "outright enthusiastic" over the prospect of becoming the home of the state's first penitentiary. "They are in an excellent position to be a contender" for the prison, he said.

The medium-security prison would be developed at Wildwood, an old Air Force Base that is owned by the Kenai Native Association. The Native corporation has offered to lease a three-story, concrete barracks building, garage and gymnasium to the state.

Endell is enthusiastic about

See Page B-2, CORRECTIONS

Corrections director on a search for site for state prison

Continued from Page B-1

the Wildwood site. "It has the highest potential of any existing site" now being considered for use as a corrections facility, he said.

Once the state has completed its evaluation of the buildings offered by the Native corporation, Endell said he plans to move quickly to close negotiations on the acquisition.

"We're close to an agreement now," he said. "In the next couple of weeks we hope to sit down and finalize it."

According to Endell, the state is looking for a long-term lease with the option to purchase at a fixed price.

The Native corporation has offered to lease the state three buildings for 20 years for $600,000 a year. The corporation would like to retain title to the property, said corporation President George Miller, but is willing to consider a sale if the state insists.

The value of that transaction to the Native corporation could increase substantially in coming weeks as the state is now talking about acquring seven buildings instead of three, Miller said.

A movie theater, medical clinic, bowling alley and grocery store with ample cold storage space are all adjacent to the concrete barracks building that would form the heart of the new prison.

If the Native corporation and the state conclude an agreement later this month, the new prison could be up and running by early fall, Endell said.

A "nucleus staff" will be dispatched to Kenai immediately to oversee renovation of the physical plant, begin program development, establish contact with local businesses and begin the process of screening and hiring 40 to 70 new employees.

Endell estimated it will cost about $1 million to convert the old Air Force base into a prison. A sprinkler system will have to be installed in the barracks building. Wooden doors will be replaced with metal ones and existing windows will be replaced with secure ones.

Control rooms and an electronic security system also will be installed.

The perimeter of the 10-acre prison will be surrounded by two security fences that are 20 feet apart. Both will be 18 feet high and topped with razor ribbon. An observation tower will be constructed on top of the three-story barracks building.

The proposed prison has not earned the support of everyone in the community. More than 250 Central Peninsula residents signed a petition opposing the Wildwood site.

In response to that opposition, the borough assembly rescinded a resolution endorsing the idea. In its place it enacted a measure calling on the Division of Corrections to hold public hearings on the Peninsula before reaching a final decision on the Wildwood site.

Endell said he is satisfying that request by meeting with city councils and chambers of commerce in Seward, Homer, Kenai and Nikiski.

Endell assures those he talks with the state will not locate a prison in a community where there is strong public oppostion, and he said he hasn't seen strong opposition on the Peninsula.

Assemblyman Kenn Stephens, who fought the prison, agrees opposition to the proposal has cooled.

"People have calmed down," Stephens said. "Folks aren't complaining on Soundoff (a radio call-in show broadcast by a Kenai radio station), and I haven't gotten any phone calls on it at all."

"The state's got its mind set, and people are resigned to the fact that there's going to be something there."

to create corrections department

By HAL SPENCER 1/21/83
The Associated Press

JUNEAU — The problems facing Alaska's prison system are firmly rooted in poor management — a situation that would change with creation of a corrections department, Roger Endell, state corrections chief, said Wednesday.

A corrections commissioner, who would oversee the department, could "pick up the phone and hire people, and more significantly, can pick up the phone and fire them," Endell told a joint meeting of the House and Senate health, education and social services committees.

Endell, whose corrections division is now within the Department of Health and Social Services, said that under the current situation, management officials, with the exception of the corrections director, are classified employees who cannot be easily dismissed.

The joint committee met to consider Gov. Bill Sheffield's Executive Order 54, which calls for creation of a corrections department. The move was recommended by a corrections task force, of which Endell was chairman.

The lawmakers deferred action, agreeing to meet as separate committees to take a closer look at the projected cost of the department.

Endell was able to provide only the "bottom-line" figures — about $250,000 for the rest of fiscal 1983, ending June 30, and almost $1 million for fiscal 1984.

"I can't believe it would be that high," said Sen. Rick Halford, R-Chugiak.

Endell said the department would have six management level employees and "support staff." The six would include a commissioner, two deputy commissioners working in Juneau and Anchorage respectively, and three regional directors overseeing correctional facilities in Southcentral, Southeast and the Bush respectively.

Endell urges prison industry

by Steve Rinehart 1/29/83
for The Times

Homer — Prison industry — everything from growing potatoes to building campsites — could help the corrections system pay its bills while teaching inmates better skills, said new state corrections chief Roger Endell.

While inmates can't be forced to earn their keep, he said, "my attitude is they will have to earn their privileges."

"I'm not advocating a return to the ball and chain," Endell said in a speech here this week. "It will be the inmates' choice. But those who chose not to work would be 'warehoused,' with space to sleep and little else."

Endell was in Homer to address the Homer Chamber of Commerce. Ohlson Mountain, a former military installation near Homer, is being considered as a site for a new medium-security prison.

Endell, who was appointed director of corrections by Gov. Bill Sheffield, said it has been his experience that most inmates prefer to work, gain some skills, and make some money.

Legally, inmates can be paid up to half the minimum wage, he continued, although they can also be charged for some services and forced to use a portion of their wages for family support.

Among suggestions Endell offered were that inmates do park and recreation work in remote locations. Trails, recreation cabins and fire pits could all be built by inmates.

There are many prison industries which would not compete with private enterprise, he said. For example, inmates could grow potatoes in the Palmer area since local growers can't meet consumer demand.

Currently, Endell said, the state contracts with a Canadian firm to do the laundry for the state ferry system. Juneau inmates could do the job as well and for less cost, he said.

As for the traditional prison industry — stamping license plates — Endell said he has been told there aren't enough vehicles in Alaska to make the business pay. However, he said, the state has sign-making equipment in storage, which could easily be put to use by prisoners making road and street signs for state and local governments.

Inmate labor could also be used to renovate prison sites, Endell said, thus lessening the high cost of needed improvements in the prison system.

Jail overcrowded — now

By CHRIS JARVIS 1/26/83
Empire Staff Reporter

Although Gov. Bill Sheffield has proposed a $81.8 million appropriation for construction of new jails, that doesn't help the overcrowding now being experienced at the Southeast Regional Correctional Institute at Lemon Creek.

Officials there are hoping a new maximum security wing now under construction will house prisoners by fall, easing some of the crowded conditions.

The rated capacity at Lemon Creek is 111 beds with 18 extra beds for those being held before arraignment and people serving weekend sentences. Monday night, however, 146 people were housed at Lemon Creek, Jail Superintendent Bill Huston said today.

While no major disturbances have occurred at the jail because of the overcrowding, Huston said a series of "small things you just don't put your finger on" often lead to troubles.

"The emotional level increases when you have this many people being held against their will," he said.

"Some discipline problems crop up when you have a lot of bodies," he said. For an example he cited a prisoner turning over a table in the mess hall out of frustration caused by tensions from overcrowding.

With only 45,000 square feet of living space, problems are bound to happen, Huston said. Until the new 58-bed maximum security unit is opened and other facilities are built in the state, there is potential for problems.

The Lemon Creek construction project started this fall and should be ready for occupancy by the fall of 1983, Huston said.

Eventually, Huston would like to convert the 24 and 22 bed dormatories now at the jail into single and double bed cells.

When you have 24 people living together in the same room during a long period of time, problems and tensions often come to the surface, Huston said.

The jail also needs additional space for activities, Huston said. But until the need for beds is lessened, none of the existing living space will be eliminated, he said.

Another problem facing jail administrators is the inability to plan ahead, especially on weekends when bookings increase because of arrests made by Juneau Police and Alaska State Troopers.

Noting that troopers and police have the option to not jail people arrested for traffic and other offenses, Huston said he is unwilling to second guess their actions.

"It's easy to sit back and say how Roger Staubach should have thrown that ball, but it's different when you're out there," he said referring to decisions police and troopers must make in the field.

"They not only are responsible for public safety but for the safety of the person too," Huston said.

Because police and troopers seldom want to make crack downs public before carrying them out, and unlike the Lower 48 where short term prisoners are housed in city and county jails, Lemon Creek must house long term prisoners as well as make room for those prisoners arrested or there for weekends or awaiting trial.

late hopes to construct new minimum security prisons by January

3-4-83

TOM KIZZIA
RONNIE CHAPPELL
News reporters

The state has proposed to vert three surplus federal s into medium-security sons in an attempt to elim- te prison overcrowding by uary.

n a plan ordered by Supe- r Court Judge Douglas Ser- ely as part of a settlement a class action lawsuit over son conditions, Director of rrections Roger Endell also poses to build a 250-bed son m scratch at Point ronzof in Anchorage, as ll as a maximum-security son at an undetermined ation.

The plan calls for the state increase the number of misdemeanants diverted from jail to community programs, and proposes to increase the number of "soft beds" used primarily by offenders with chronic alcohol problems.

Endell said that Alaska currently has 1,445 inmates — 431 more than it has room for.

The state could move 220 inmates into a former milli- tary base at Wildwood near Kenai in six to nine months, the plan says. In addition, the state has proposed to convert a former missile base at Goose Bay on the north side of Knik Arm into a jail for 200 inmates by fall of 1984, and a federal communications site at Chiniak, 49 miles by road from Kodiak, into a jail for 130 to 150 inmates, per- haps in early 1984.

However, at a public hear- ing in Kenai Thursday night, Endell said that a final deci- sion on whether to put a prison at Wildwood has not been made.

"It's a plan, that's all," he said, adding that the state has not yet negotiated an agree- ment with the owners of the base, Kenai Native Associa- tion.

Endell said the state would not develop the Wildwood site if residents oppose it. "If you don't want us here, we'll fold up our tents and go some- where else," he to a crowd of about 150 attending the hearing.

About half of those testify- ing at the hearing opposed putting a prison at Wildwood. Petitions containing the names of 400 people in opposi- tion were presented to Endell.

Others, however, testified in favor of the prison, and the Kenai Chamber of Commerce and Kenai Peninsula Fire Chiefs' Association gave En- dell resolutions supporting it.

Endell said the Goose Bay site is owned by the federal government, while the other two sites are now in private hands.

With these three sites in hand, the plan would scrap plans to expand an $11.7 mil- lion pre-trial facility in Fair- banks and a $9 million pre- trial facility in Juneau.

The plan does not outline the costs of the three pro- posed prisons, but said they would result in "tremendous cost savings."

The legislature would have to approve $45 million to build a maximum-security prison for 300 to 400 prison- ers. Sites under consideration are Palmer, Seward, Kenai and Haines.

The state would also have to come up with $35 million to build a new jail in Anchor- age to hold sentenced prison- ers waiting for a permanent assignment to prison. This new facility would allow the state to retire the existing Third Avenue and Sixth Ave- nue jails.

The state is seeking $5.6 million to finish a 50- to 80- bed Nome Regional Correc- tional Center, and plans to add a new 50-bed jail in Be- thel with existing funds.

Endell said lack of funding from the legislature, plus "poor management practices" by previous administrations, has contributed to the over- crowding problem.

Endell said factors that have led to overcrowding in- clude a stronger criminal code, fewer releases by the Board of Parole, tougher sen- tencing, and an increase in the number of police and prosecutors.

"Getting tough is admira- ble, but it is also tremendous- ly expensive. It is now time to pay the bill," he said.

Remote prison sites

THE MENTION of putting state prisons in remote areas brings cries of horror from the lawyers, the courts — and the prisoners.

They are quick to say that soners need easy access to their lawyers and to the court- rooms. They also say the pris- oners need to be close to law libraries, psychiatrists and counselors.

A re-orientation of that kind of thinking could be in order.

It's true that these services and various aids to prisoner welfare are mandated by the legislature and the courts.

But there's no reason why the lawyers and doctors and books and counselors can't be taken to the prisoners when they're needed, rather than having the prisoners them- selves in the center of things.

Selecting prison sites for the convenience of the prison- ers doesn't make much sense, particularly the long-term pri- soners. This is especially true when it's so difficult to get residents of a community to accept a prison as a neighbor.

There are excep- Pri- soners on trial or aw- ting sentence or whose terms are measured in days, not mo- hs or years, for instance, rea- y do need to be close to the lawyers and the courtrooms. But the ones with lengthy terms don't.

Alaska is a land of remote places. It should be easy to find sites for prisons.

Governor names Endell prisons chief

by Jeff Berliner
Times Writer

1/4/83

Director of Corrections Robert Hatrak resigned Wednesday at the request of Gov. Bill Sheffield, and was immediately replaced by University of Alaska professor Roger Endell.

Endell, 42, headed a Sheffield-appointed corrections task force that offered policy recommendations radically opposed to those followed by Hatrack.

Endell, a 22-year Alaska resident and a 1966 graduate of UA-Fairbanks, has been an associate professor of justice at the University of Alaska for six years. For six years before that, he served as an assistant superintendent at state prisons in Anchorage, Eagle River, and Juneau.

Hatrak's nine-month stint as prisons chief was marred by accusations of conflict of interest, charges that he had improperly let corrections contracts, and questions about his past.

While prison superintendent at New Jersey's Rahway State Prison, he was the object of a criminal investigation in New Jersey and later fired. Then, as Multnomah County (Ore.) correction director, a Portland grand jury recommended that he be fired from the job.

Endell said today that the Division of Corrections will steer state corrections in a different direction than it was going under Hatrak.

Endell will take over the helm Monday. His first task will be "getting the division reorganized and set up as a department, assuming the governor agrees it will go to department status," he said.

The task force headed by Endell recommended that the Division of Corrections be taken out of the Department of Health and Social Services and that it be elevated to department status run by a commissioner who answers to the governor.

Prisoners will be moved out of the controversial Carenge House — the nursing home turned prison which caused a storm of protest from the mayor and neighbors of the Tudor and Lake Otis facility — and the building will be transformed into the state corrections headquarters, Endell said today.

The efforts of Hatrak and assistant attorney general Mike Stark to settle an inmate lawsuit will be dropped, Endell said, indicating he'll work with the new attorney general to fight the inmate's suit over prison conditions. That was another task force recommendation.

"Serious prison overcrowding has to receive the constant attention of the director," Endell said.

But Endell said he thinks the problem can be solved at a lot less expense than proposed by the Hammond administration, notably Hatrak and acting commissioner of health and social services Allen Korhonen.

Without naming a dollar amount, Endell said, "I'm hoping we can do it for less."

Endell said he has ideas for coming up with as many as 400 new prison beds without "building concrete structures from the ground up."

He said the "very serious problems facing corrections are solvable" but will require "cooperation between the judicial, legislative and executive branches."

The corrections system has "a lot of catching up to," Endell said, so that the state prison system can handle all the people being funneled into it by the courts and as a result of new laws passed by the Legislature.

The task force report showed "very clearly there were substantial problems in management," Endell said, noting that the report stopped short of singling out Hatrak by name.

Endell said he will meet with the prison superintendents at the outset and anticipates none of the in-fighting and management problems which marked Hatrak's tenure as prison chief.

The "crisis in correctional management" can be solved with "sound, long-term and professional management," Endell's task force wrote, noting that the department has had four directors in six years.

But Endell called his appointment as the fifth director "a positive sign," proving that qualified Alaskans are available (a reference to selecting the last two directors from out of state), and because he already has a good working relationship with corrections.

"I know most of the people. I know most of their strengths and weaknesses," he said.

Endell said there may be a shake-up within corrections as a result of task force recommendations to establish regional corrections centers in Fairbanks, Juneau and the Bush. Attrition, through retirements of superintendents, may also clear some positions.

Endell candidly acknowledged Hatrak's problems but called him "a professional."

"He's had some tough experiences," Endell said of Hatrak. "He tried to do an admirable job. He's had some difficulties. But when he was appointed, the man knew he might be out of a job with the change in administrations."

Hatrak said today he was not told why he was losing his job — only that "my resignation would be accepted."

Hatrak, 45, was given the news Wednesday by acting commissioner of health and social services Korhonen.

Calls to Korhonen were returned by the governor's office and Sheffield spokesman Pete Spivey said the change was prompted by the governor's "desire to change leaders."

"The division of corrections has obviously gone through a lot of turmoil and I assume Hatrak's part of it," Spivey said.

The main finding of the task force, Sprivey said, was that "the division has not had very much strong leadership."

Hatrak said he had no warning of the sudden change.

"The governor has the right and perogative to field his own team. And he's probably better off fielding his own team. I feel strongly about that. It's his choice."

Hatrak said corrections problems promise to be a big issue in the Legislature in the coming session and "corrections needs to go into this with as strong a position as possible."

Endell

(Continued from page A-1)

EO 54 - Sheffield
HB 103 - Fritz

"Creating a Department of Corrections"

"An Act establishing a Department of Corrections and transferring certain functions of the Department of Health and Social Services to the Department of Corrections; and providing for an effective date."

BACKGROUND INFORMATION:

Executive Order 54 establishes a Department of Corrections, replacing the Division of Corrections currently operating correctional institutions and programs under the Department of Health and Social Services. Adult penal institutions, the correctional industries program and probation and parole is proposed to be placed in the new department's jurisdiction. Juvenile corrections remain the responsibility of the Department of Health and Social Services. Responsibilities for the transportation of prisoners and mentally ill offenders are not addressed.

The "TASK FORCE ON CORRECTIONS STATUS REPORT" was submitted to Governor William Sheffield in December/January, 1982-1983. A summary document of the impact of those thirty four (34) recommendations relative to EO 54 and HB 103 is attached here. As of this date Corrections is reporting that they are currently complying with fifteen (15) of the recommendations; they have future plans to deal with eight (8) of them; eleven (11) of the recommendations they agree with but at the present time have no plans with compliance.

Staff requested "organizational development" information in order to compare staffing levels and requirements of three phases : (a) Pre-transitional Management Team; (b) Transitional Management Team; (c) Operational Department of Corrections.

Staff additionally requested fiscal information relative to previous administrative levels of function and organization within the Division of Corrections as a comparison with the proposed elevation to departmental status and the accompanying fiscal impact that it would address.

As additional support to EO 54, the Division of Corrections through the Department of Health and Social Services has submitted their position paper, attached here for review.

The Committee presently has copies of the "Population Managment Plan" which addresses some of the concerns and issues relative to the Executive Order and House Bill before them. Submission to the Committee of the "Mini Corrections Master Plan" has been requested and it appears as though that will be available some time on or about the fifteenth of the month of March, 1983.

Although the "TASK FORCE ON CORRECTIONS STATUS REPORT" addresses both the problem of juvenile corrections and the transportation of prisoners , these are questions that the committee still has to address to future testimonial before them.

IMPACT:

Sectional Analysis done by staff of HESS is attached.

FISCAL NOTE:

Attached

WITNESSES:

Roger Endell, Corrections

STATUS OF TASK FORCE RECOMMENDATIONS
DIVISION OF ADULT CORRECTIONS

	COMPLY	FUTURE	AGREE
1.	X		
2.	X		
3.	X		
4.		X	
5.		X	
6.	X		
7.		X	
8.	X		
9.		X	
10.			X
11.	X		
12.	X		
13.	X		
14.		X	
15.	X		
16.			X
17.	X		
18.	X		
19.	X		
20.	X		
21.		X	
22.			X
23.			X
24.			X
25.			X
26.			X
27.	X		
28.			X
29.			X
30.			X
31.		X	
32.		X	
33.			X
34.	X		

B. FUTURE

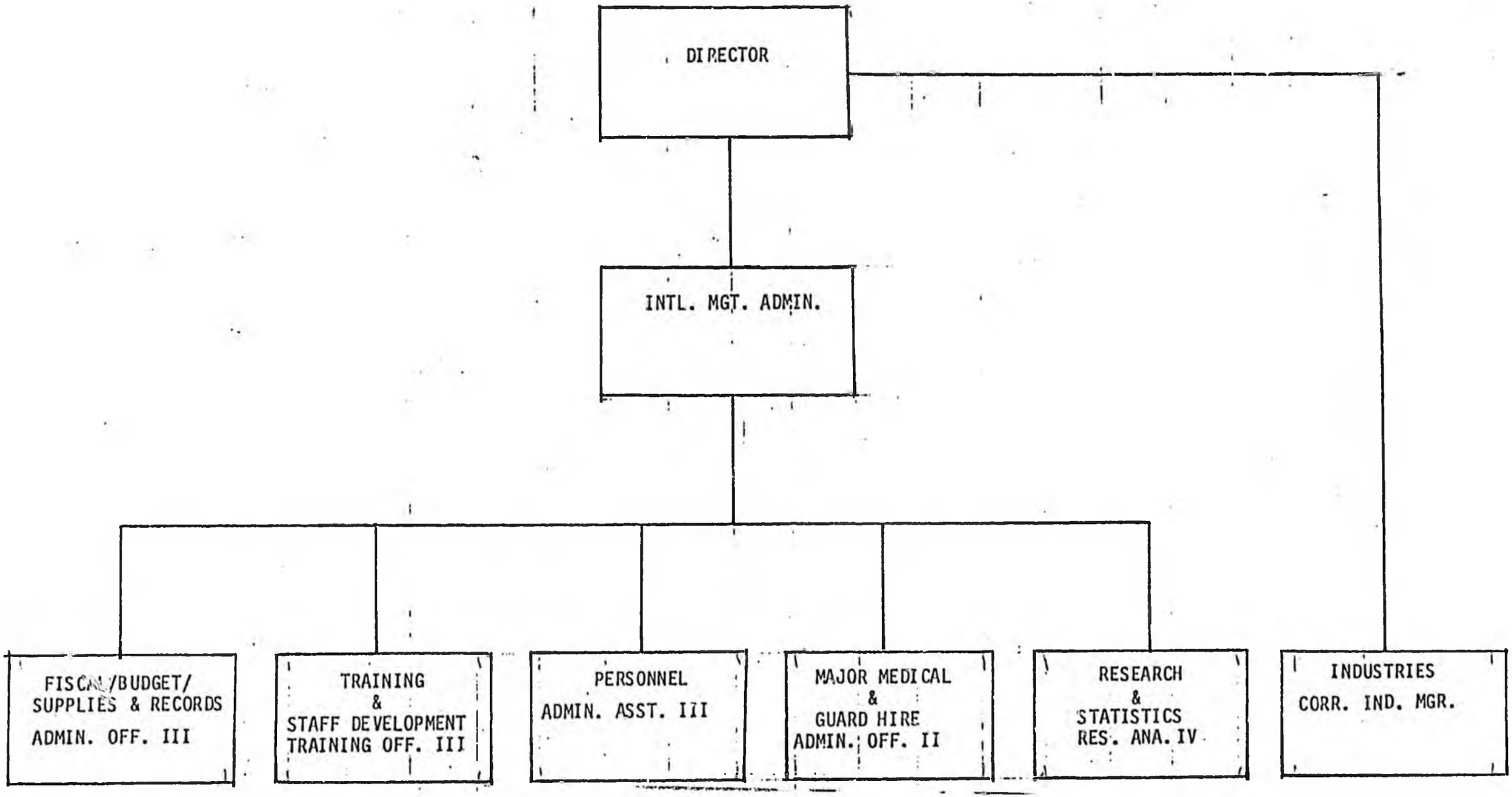
NUMBER	TEXT
(4 & 5)	The Third Avenue and 6th & C correctional centers in Anchorage should be utilized to hold short term offenders and those incarcerated for alcohol related offenses.
(7)	Hiland Mountain correctional center near Eagle River must be permitted to return to its original mission.
(9)	Sentenced adult female housing space at Meadow Creek (Eagle River) should be added as necessary with much less expensive architecture than past practice.
(14)	The state should continue to maintain a number of dangerously violent Alaska offenders within the Federal Bureau of Prisons' system.
(21)	All jail contracts should be managed by the Department of Corrections.
(31)	All youth correctional functions should be organized as a separate division within the Department of Corrections when reorganization is completed and functional.
(32)	The prisoner population of the State of Alaska should be put to work.

C. AGREE

NUMBER	TEXT
(10)	The type and methods of construction of the two institutions at Palmer should be copied elsewhere as needed in the State.
(16)	Correctional construction should be recognized as a high priority among all units of state government.
(22)	A well trained correctional staff is mandatory and critical to efficient management.
(23)	The Division of Corrections should be moved quickly and decisively in toto by immediate executive order to Departmental status.
(24)	A Commissioner of Corrections should be appointed by the Governor as soon as possible.
(25)	A cabinet level body should be directed to coordinate policy and law implementation for the effective administration of justice.
(26)	Management personnel of the agencies of justice (state and local) should coordinate the activities of these agencies at the local and regional level.
(28)	Municipalities should not be made responsible for the costs of pre-trial incarceration of offenders held on state criminal charges, but municipal-state coordination is essential.
(29)	The state should move immediately to address the law, policies and procedures with regard to public drunkenness and drunk driving.
(30)	The State Office of Alcoholism and Drug Abuse should provide comprehensive program services to correctional populations in cooperation with local municipalities.
(33)	Offender education and recreational programs should be made available to prison populations during the non-work hours of those prisoners.
(35)	Corrections should provide the opportunity to every offender the resources of a halfway house program for those about to be released -- corrections must correct.

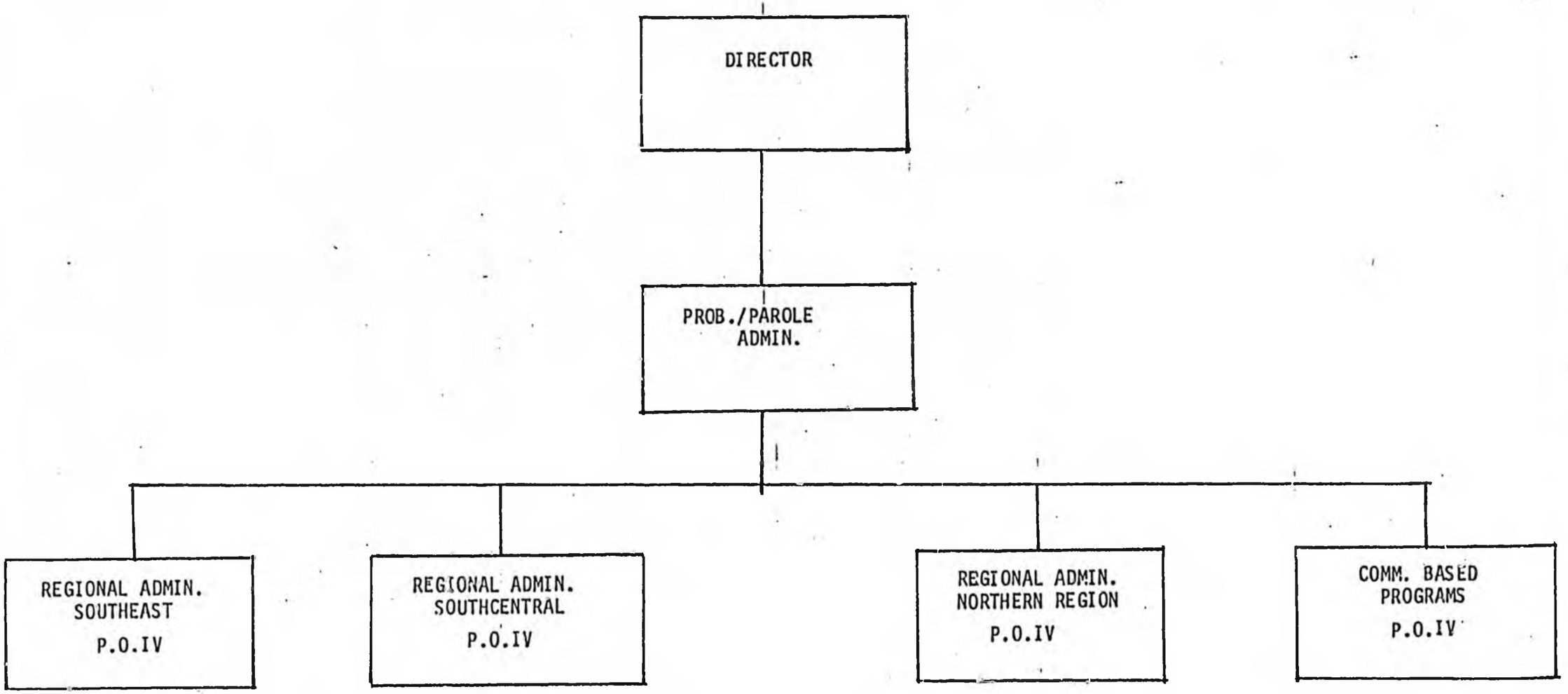
Organizational Chart
prior to transitional
Management Team

DIVISION OF ADULT CORRECTIONS
ADMINISTRATION & SUPPORT



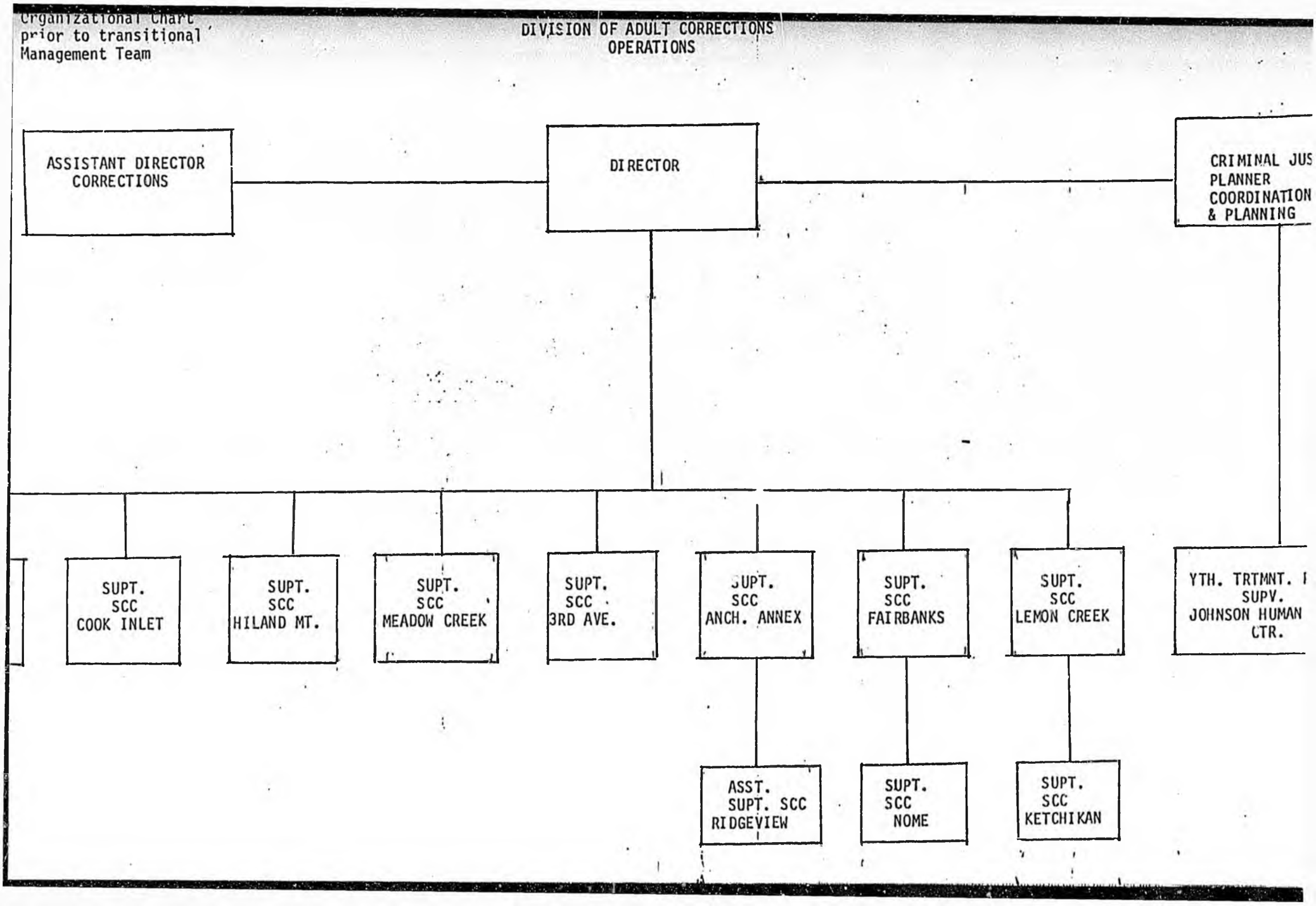
Organizational Chart
prior to transitional
Management Team

DIVISION OF ADULT CORRECTIONS
PROBATION & PAROLE

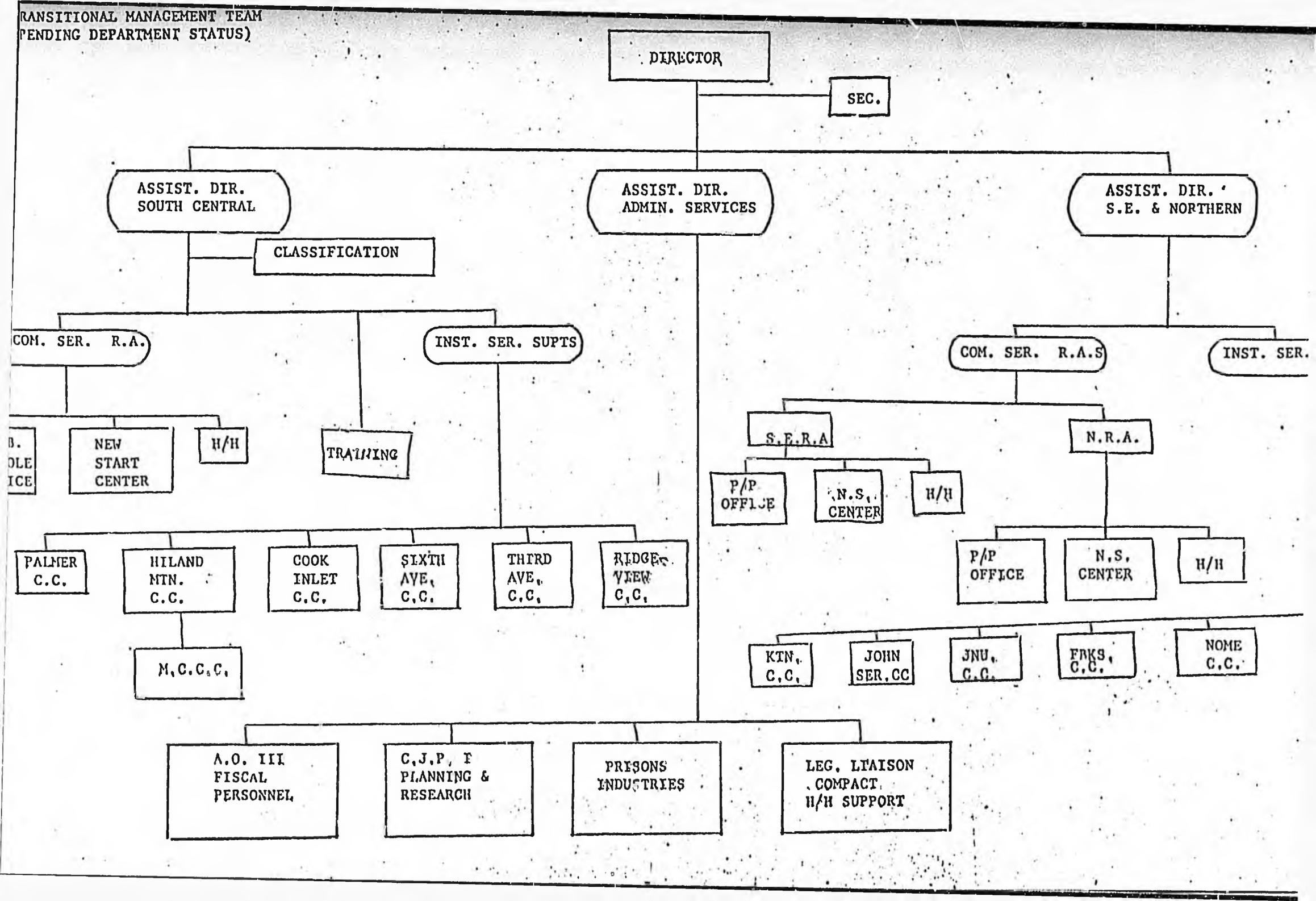


Organizational Chart
prior to transitional
Management Team

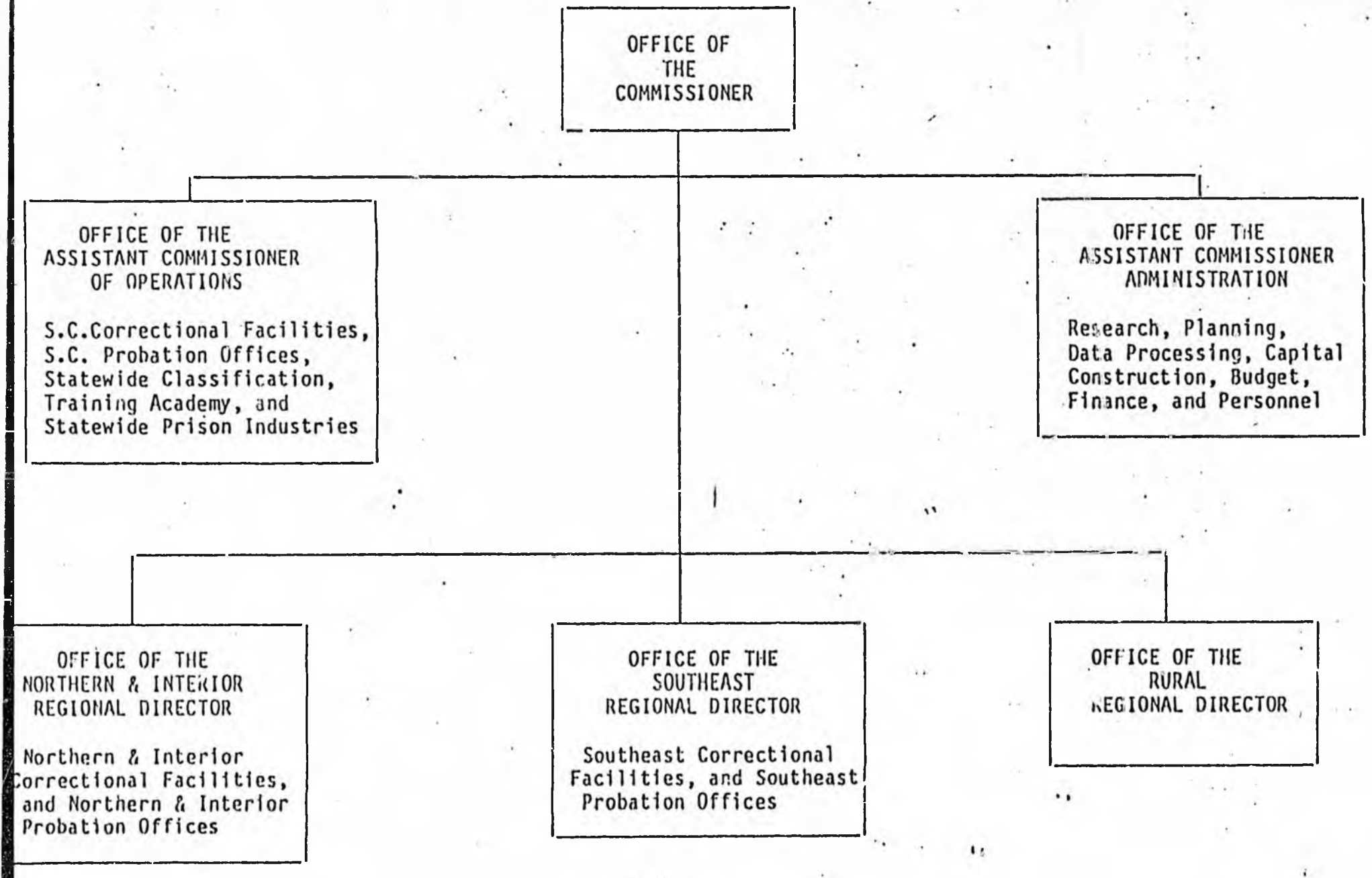
DIVISION OF ADULT CORRECTIONS OPERATIONS

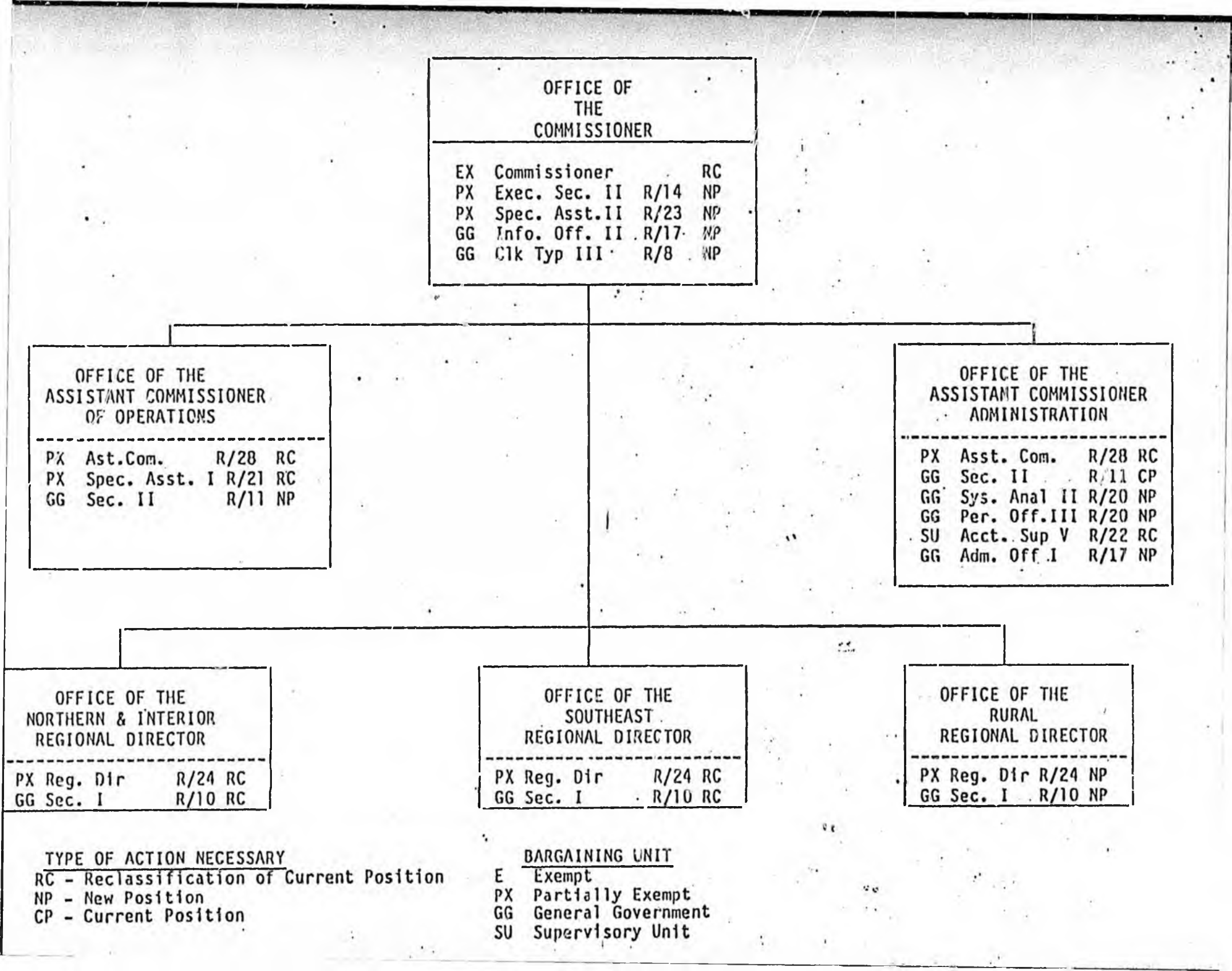


RANSITIONAL MANAGEMENT TEAM
PENDING DEPARTMENT STATUS)



DEPARTMENT OF CORRECTIONS




OFFICE OF THE COMMISSIONER
EX Commissioner RC
PX Exec. Sec. II R/14 NP
PX Spec. Asst.II R/23 NP
GG Info. Off. II R/17 NP
GG Clk Typ III R/8 NP
OFFICE OF THE ASSISTANT COMMISSIONER OF OPERATIONS
PX Ast.Com. R/28 RC
PX Spec. Asst. I R/21 RC
GG Sec. II R/11 NP
OFFICE OF THE ASSISTANT COMMISSIONER ADMINISTRATION
PX Asst. Com. R/28 RC
GG Sec. II R/11 CP
GG Sys. Anal II R/20 NP
GG Per. Off.III R/20 NP
SU Acct. Sup V R/22 RC
GG Adm. Off.I R/17 NP
OFFICE OF THE NORTHERN & INTERIOR REGIONAL DIRECTOR
PX Reg. Dir R/24 RC
GG Sec. I R/10 RC
OFFICE OF THE SOUTHEAST REGIONAL DIRECTOR
PX Reg. Dir R/24 RC
GG Sec. I R/10 RC
OFFICE OF THE RURAL REGIONAL DIRECTOR
PX Reg. Dir R/24 NP
GG Sec. I R/10 NP
TYPE OF ACTION NECESSARY
RC - Reclassification of Current Position
NP - New Position
CP - Current Position
BARGAINING UNIT
E Exempt
PX Partially Exempt
GG General Government
SU Supervisory Unit

New Positions

Range	Title	Loc	Monthly Salary	Variable Benefits	Suppl Benef	Health Insur	Total	FY83 3 mos	FY84 12 mos
14 X	Exec Secretary II	AWA	2241	383	137	240	3001	9003	36012
11	Secretary II	EBA	1862	318	114	240	2534	7602	30408
23 X	Spec. Asst. II	AWA	4149	709	254	240	5352	16056	64224
17	Info. Officer	AWA	2757	471	169	240	3637	10911	43644
8	Clerk Typist III	AWA	1553	265	95	240	2153	6459	25836
24 X	Reg'l Dir.-Rural	AWA	4936	844	303	240	6323	18969	75876
20	Pers. Officer	AWA	3469	593	213	240	5122	15366	61464
17	Admin. Officer I	AWA	2824	483	173	240	4720	11160	44640
20	Systems Anal. II	AWA	3394	580	208	240	4422	13266	53064
9	Secretary I	EBA	1803	308	111	240	2462	7386	29544
							SUBTOTAL	116,178	464,712

Reclassifications

PCN	From	To	Net Change: 3 mos	12 mos
4001	Director, Div of Corrections	Commissioner, Dept of Corrections	1380	5520
4840	Dep. Director Operations	Asst. Comm. Operations	3210	12840
4613	Dep. Director Administration	Asst. Comm. Administration	3210	12840
4813	Internal Mgmt. Administrator	Accounting Supervisor V	-0-	-0-
4159	Asst. Superintendent	Regional Director (Fbks)	7032	28128
4036	Probation/Parole Admin.	Regional Director (Juneau)	-0-	-0-
4513	Clerk Typist III	Secretary I (Juneau)	759	3036
4679	Clerk Typist III	Secretary I (Anchorage)	759	3036
4510	Asst. Director Corrections	Special Assistant I	-0-	-0-
		SUBTOTAL	16,350	65,400
		GRAND TOTAL	132,528	530,112

DEPARTMENT OF HEALTH AND SOCIAL SERVICE POSITIONS WHICH ARE TRANSFERING TO THE NEW DEPARTMENT OF CORRECTIONS OFFICE OF ASSISTANT COMMISSIONER OF ADMINISTRATION

FROM DIVISION OF MANAGEMENT AND BUDGET

Title	Range	PCN	Loc
Program Budget Analyst III	R/19	0004	AWA
Public Facilities Planner II	R/21	0501	AWA
Public Facilities Planner I	R/20	0503	EBA
Public Facilities Planner I	R/20	0502	EBA
Accounting Clerk I	R/8	0504	AWA
Clerk Typist II (PPT)	R/7	0505	EBA

FROM DIVISION OF ADMINISTRATIVE SERVICES

Title	Range	PCN	Loc
Personnel Officer I	R/16	0056	EBA
Clerk IV	R/9	0095	AWA
Accounting Clerk I	R/8	0046	EBA
Clerk Typist III	R/8	0058	EBA
Acct. Clerk II	R/9	0020	AWA
Acct. Clerk II	R/9	0016	AWA
Acct. Clerk II	R/9	0049	AWA

FY 82

STATE OF ALASKA -- BUDGET UNIT SUMMARY 10:54 7/02/81

CATEGORY: ADMINISTRATION OF JUSTICE PROGRAM: CORRECTIONS ADMIN & SUPPORT
AGENCY: DEPARTMENT OF HEALTH & SOCIAL SERVICES

COMPONENT DESCRIPTION	FY81 ATH	FY81 SUP	CONT	REQUEST	GOV AMD	GOVERNOR	HOUSE	SENATE	F.C.C.	BILLS	LEG.REC.
ADMINISTRATION & SUPPORT	1583.2		1478.4	1478.4		1467.9	1394.5	1335.0	1815.0		
TRAINING & CAREER DEVELOPMENT			270.9	270.9		270.9	257.3				
** TOTAL	1583.2		1749.3	1749.3		1738.8	1651.8	1335.0	1815.0		
** CHANGE VERSUS FY81 ATH				10.4%	-100.0%	9.8%	4.3%	-15.6%	14.6%		
OBJECT DESCRIPTION											
PERS. SERV.	1114.4		1264.5	1264.5		1264.5	1201.3	965.2	965.2		
TRAVEL	79.5		89.2	89.2		89.2	84.7	58.0	58.0		
CONTRACTUAL	295.4		354.4	354.4		343.9	326.7	288.7	288.7		
COMMODITIES	31.5		33.2	33.2		33.2	31.5	15.5	15.5		
EQUIPMENT	12.4		8.0	8.0		8.0	7.6	7.6	7.6		
GRANTS, CLMS											
MISC.	50.0								480.0		
FUNDING SOURCE											
GENERAL FUND	1583.2		1749.3	1749.3		1738.8	1651.8	1335.0	1815.0		
** GENERAL FUND CHANGE VS. FY81 ATH				10.4%	-100.0%	9.8%	4.3%	-15.6%	14.6%		
POSITIONS											
FULL-TIME	34.0		32.0	32.0		32.0	32.0	27.0	27.0		
STAFF-MONTHS	408.0		384.0	384.0		384.0	384.0	324.0	324.0		

CATEGORY: ADMINISTRATION OF JUSTICE PROGRAM: ADULT PROBATION & COMM PROGRAM
AGENCY: DEPARTMENT OF HEALTH & SOCIAL SERVICES

COMPONENT DESCRIPTION	FY81 ATH	FY81 SUP	CONT	REQUEST	GOV AMD	GOVERNOR	HOUSE	SENATE	F.C.C.	BILLS	LEG.REC.
ADULT PROBATION 1ST JUD DIST	210.8		370.5	489.2		468.8	370.0	370.0	417.8		
ADULT PROBATION 2ND DIST			101.1	159.2		159.2	144.0	144.0	144.0		
ADULT PROBATION 3RD JUDICIAL D	945.6		1344.2	1400.1		1360.5	1286.4	1286.4	1319.7		
ADULT PROBATION 4TH JUDICIAL D	452.1		532.4	706.7		672.2	590.0	590.0	657.0		
COMMUNITY BASED PROGS.	1018.0		1173.1	1173.1	644.1	1125.4	1658.6	1658.6	2052.7		
** TOTAL	2626.5		3521.3	3926.3	644.1	3786.1	4049.0	4049.0	4591.2		
** CHANGE VERSUS FY81 ATH				49.4%	-75.4%	44.1%	54.1%	54.1%	74.8%		
OBJECT DESCRIPTION											
PERS. SERV.	1621.8		2225.3	2528.3		2528.3	2285.0	2285.0	2428.8		
TRAVEL	29.8		39.6	66.6		66.6	60.3	60.3	62.2		
CONTRACTUAL	918.0		1056.4	1090.3	644.1	988.1	1531.2	1531.2	1538.7		
COMMODITIES	17.9		22.0	28.4		28.4	25.1	25.1	26.3		
EQUIPMENT	5.9		140.0	174.7		174.7	147.4	147.4	150.2		
LANDS/BLDGS	33.1		38.0	38.0							
GRANTS, CLMS									385.0		
FUNDING SOURCE											
GENERAL FUND	2626.5		3521.3	3926.3	644.1	3786.1	4049.0	4049.0	4591.2		
** GENERAL FUND CHANGE VS. FY81 ATH				49.4%	-75.4%	44.1%	54.1%	54.1%	74.8%		
POSITIONS											
FULL-TIME	51.1		58.0	67.0		67.0	64.0	64.0	66.0		
PART TIME	1.0		1.0	1.0		1.0	1.0	1.0	1.0		
STAFF-MONTHS	612.0		702.0	810.0		810.0	774.0	774.0	798.0		

STATE OF ALASKA -- BUDGET UNIT SUMMARY 10:50 7/02/81

CATEGORY: ADMINISTRATION OF JUSTICE PROGRAM: ADULT CONFINEMENT
AGENCY: DEPARTMENT OF HEALTH & SOCIAL SERVICES

COMPONENT DESCRIPTION	FY81 ATH	FY81 SUP	CONT	REQUEST	GOV AMD	GOVERNOR	HOUSE	SENATE	F.C.C.	BILLS	LEG.REC.
PALMER CORR. CNTR	1492.6		1479.6	1694.1		1694.1	1552.4	1495.3	1694.1		
ANCH.STATE CORR.CNTR	1270.9		1529.5	1529.5		1529.5	1453.1	1453.1	1529.5		
JUNEAU CORR.CNTR.	2377.5		2694.1	2694.1		2474.3	2350.6	2350.6	2474.3		
FAIRBANKS CORR.CNTR.	2677.0		3157.5	3157.5		3157.5	2999.7	3059.7	3174.0		
KETCHIKAN CORR.CNTR.	819.8		945.6	945.6		917.6	871.5	871.5	917.6		
ANC.ANNEX CORR.CNTR.	1713.9		1938.0	1938.0		1938.0	1841.0	1841.0	2052.6		
EAGLE RIVER CORR. CNTR	2314.0		2641.4	2641.4		2641.4	2509.4	2509.4	2609.2		
RIDGEVIEW MANOR	1046.8		1226.6	1226.6		1028.8	977.5	977.5	1018.5		
NOME CORRECTION CENTER	755.3		866.9	866.9		781.8	742.8	742.8	781.8		
JUNEAU WOM & JUV. FAC.				156.5	445.5	156.5	394.0	394.0	394.0		
MASTER PLAN STATEWIDE POOL	366.1		584.5	584.5		584.5	555.3	555.3	555.3		
PRISON INDUSTRIES			155.7	155.7		155.7	147.9	147.9	147.9		
LOCAL FACILITIES	1127.0		1412.2	1522.2		1522.2	1446.1	1446.1	1522.2		
OUT OF STATE CONTRACTUAL	2519.5		4175.5	4175.5		4175.5	3966.8	3966.8	4175.5		
MAJOR MEDICAL & GUARD HIRE	750.7		768.9	968.9		968.9	920.5	920.5	968.9		
** TOTAL	19231.1		23576.0	24257.0	445.5	23726.3	22728.6	22731.5	24015.4		
** CHANGE VERSUS FY81 ATH				26.1%	-97.6%	23.3%	18.1%	18.2%	24.8%		
OBJECT DESCRIPTION											
PERS. SERV.	10682.3		12785.7	13141.2	133.2	13141.2	12520.4	12463.3	13316.3		
TRAVEL	106.8		141.8	141.8	10.2	141.8	144.5	144.5	149.8		
CONTRACTUAL	5465.9		7583.1	7705.6	174.9	7394.7	7110.5	7110.5	7432.8		
COMMODITIES	1872.2		2031.4	2034.4	81.2	2034.4	1972.0	1972.0	2033.1		
EQUIPMENT	205.1		88.9	88.9	32.6	88.9	89.3	89.3	91.8		
LANDS/BLDGS	203.5		219.8	219.8							
GRANTS, CLMS	575.3		725.3	925.3	13.4	925.3	891.9	891.9	931.6		
MISC.	120.0							60.0	60.0		
FUNDING SOURCE											
GENERAL FUND	19231.1		23576.0	24257.0	445.5	23726.3	22728.6	22731.5	24015.4		
** GENERAL FUND CHANGE VS. FY81 ATH				26.1%	-97.6%	23.3%	18.1%	18.2%	24.8%		
POSITIONS											
FULL-TIME	308.0		308.0	319.0	6.0	319.0	323.0	321.0	328.0		
PART TIME	4.0		3.0	3.0		3.0	3.0	3.0	3.0		
STAFF-MONTHS	3727.0		3987.0	4119.0	72.0	4119.0	4167.0	4143.0	4227.0		

FY 83

STATE OF ALASKA -- BUDGET UNIT SUMMARY 13:21 6/10/82

AGENCY: DEPARTMENT OF HEALTH & SOCIAL SERVICES PROGRAM: CORRECTIONS ADMIN & SUPPORT
CATEGORY: ADMINISTRATION OF JUSTICE

COMPONENT DESCRIPTION	FY82 ATH	FY82 SUP	CONT.	REQUEST	GOV AMD	GOVERNOR	HOUSE	SENATE	F.C.C.	BILLS	HOUSE 2
DIRECTORS OFFICE	1815.0		1278.2	1526.8	1364.0	1364.0	1275.1	1364.0		336.7	1275.1
CAREER ENHANCEMENT TRAINING			277.9	277.9	281.1	283.9	269.5	281.1			269.5
CORRECTIONS CAREER ENHANCEMENT	130.3										
** TOTAL	1945.3		1548.1	1804.7	1645.1	1647.9	1544.6	1645.1		336.7	1544.6
** CHANGE VERSUS FY82 ATH				-7.2%	-15.4%	-15.2%	-20.5%	-15.4%	-100.0%		
OBJECT DESCRIPTION											
PERS. SERV.	1055.7		1145.1	1312.7	1229.9	1229.9	1143.0	1229.9			1143.0
TRAVEL	70.1		91.0	142.8	106.0	106.0	106.0	106.0			106.0
CONTRACTUAL	308.7		279.9	307.1	279.9	279.9	279.9	279.9			279.9
COMMODITIES	23.2		27.1	34.1	24.3	27.1	27.1	24.3			27.1
EQUIPMENT	7.6		5.0	8.0	5.0	5.0	5.0	5.0			5.0
LANDS/BLDGS										336.7	
MISC.	480.0						-16.4				-16.4
FUNDING SOURCE											
GENERAL FUND	1945.3		1548.1	1804.7	1645.1	1647.9	1544.6	1645.1		336.7	1544.6
** GENERAL FUND CHANGE VS. FY82 ATH				-7.2%	-15.4%	-15.2%	-20.5%	-15.4%	-100.0%		
POSITIONS											
FULL TIME	29.0		29.0	33.0	30.0	30.0	30.0	30.0			30.0
STAFF MONTHS	348.0		348.0	396.0	360.0	360.0	360.0	360.0			360.0

STATE OF ALASKA -- BUDGET UNIT SUMMARY 13:20 6/10/82

AGENCY: DEPARTMENT OF HEALTH & SOCIAL SERVICES PROGRAM: ADULT PROBATION & COMM PROGRAM
CATEGORY: ADMINISTRATION OF JUSTICE

COMPONENT DESCRIPTION	FY82 ATH	FY82 SUP	CONT.	REQUEST	GOV AMD	GOVERNOR	HOUSE	SENATE	F.C.C.	BILLS	HOUSE 2
ADULT PROBATION 1ST JUD DIST	417.8		455.8	455.8	460.3	465.0	436.1	460.3		56.4	436.1
ADULT PROBATION 2ND DIST	144.0		177.4	177.4	175.6	177.4	166.2	175.6		93.6	166.2
ADULT PROBATION 3RD JUDICIAL D	1319.7		1327.7	1327.7	1318.2	1341.3	1256.9	1318.2			1256.9
ADULT PROBATION 4TH JUDICIAL D	657.0		676.3	676.3	726.4	683.3	640.9	726.4			640.9
COMMUNITY BASED PROGS.	2052.7		1751.5	2026.5	1966.0	2026.5	1985.5	1966.0			1985.5
** TOTAL	4591.2		4388.7	4663.7	4646.5	4693.5	4485.6	4646.5		150.0	4485.6
** CHANGE VERSUS FY82 ATH				1.5%	1.2%	2.2%	-2.3%	1.2%	-100.0%		
OBJECT DESCRIPTION											
PERS. SERV.	2428.8		2583.2	2583.2	2632.9	2613.0	2452.1	2632.9		93.2	2452.1
TRAVEL	62.2		104.0	104.0	104.0	104.0	104.0	104.0		22.6	104.0
CONTRACTUAL	1538.7		1654.8	1929.8	1876.1	1929.8	1929.8	1876.1		28.8	1929.8
COMMODITIES	26.3		28.7	28.7	27.3	28.7	28.7	27.3		1.9	28.7
EQUIPMENT	150.2		18.0	18.0	6.2	18.0	18.0	6.2		3.5	18.0
LANDS/BLDGS											
GRANTS, CLMS	385.0										
MISC.							-47.0				-47.0
FUNDING SOURCE											
GENERAL FUND	4591.2		4388.7	4663.7	4646.5	4693.5	4485.6	4646.5		150.0	4485.6
** GENERAL FUND CHANGE VS. FY82 ATH				1.5%	1.2%	2.2%	-2.3%	1.2%	-100.0%		
POSITIONS											
FULL TIME	66.0		65.0	65.0	65.0	65.0	65.0	66.0		3.0	65.0
PART TIME	1.0		1.0	1.0		1.0	1.0				1.0
STAFF MONTHS	798.0		786.0	786.0	780.0	786.0	786.0	792.0		26.0	786.0

STATE OF ALASKA -- BUDGET UNIT SUMMARY 13:20 6/10/82

AGENCY: DEPARTMENT OF HEALTH & SOCIAL SERVICES PROGRAM: ADULT CONFINEMENT
CATEGORY: ADMINISTRATION OF JUSTICE

COMPONENT DESCRIPTION	FY82 ATH	FY82 SUP	CONT.	REQUEST	GOV AMD	GOVERNOR	HOUSE	SENATE	F.C.C.	BILLS	HOUSE 2
PALMER CORR. CNTR	1694.1	1206.5	1942.6	3569.2	3538.4	3574.1	3385.8	3689.4			3385.8
ANCH.STATE CORR.CNTR	1529.5	46.0	1557.5	1557.5	1548.3	1563.9	1482.0	1594.4			1482.0
JUNEAU CORR.CNTR.	2474.3	48.5	2494.1	2494.1	2475.0	2500.0	2376.6	2676.2			2376.6
FAIRBANKS CORR.CNTR.	3174.0	314.5	3264.7	3851.2	3819.0	3857.6	3671.3	3998.2			3671.3
KETCHIKAN CORR.CNTR.	917.6	73.3	1027.8	1352.0	1341.1	1354.6	1282.6	1359.3			1282.6
ANC.ANNEX CORR.CNTR.	2052.6	213.6	2239.0	2440.3	2421.6	2446.1	2314.3	2421.6			2314.3
EAGLE RIVER CORR. CNTR	2609.2	268.3	2847.9	4405.4	4366.7	4410.8	4196.6	4362.8			4196.6
AK WOMEN'S FACILITY	1018.5	58.3	1078.4	1078.4	1070.2	1081.0	1024.7	1070.2			1024.7
NOME CORRECTION CENTER	781.8	-38.9	854.7	854.7	849.2	857.8	811.7	869.3			811.7
JUNEAU WOM & JUV. FAC.	394.0	-42.6	681.5	681.5	674.7	681.5	652.8	674.7			652.8
RIDGEVIEW MEN'S		500.5	47.1	1324.0	1311.8	1325.0	1263.7	1311.8			1263.7
ANCHORAGE PRE-TRIAL			73.1	2371.3	2350.5	2374.2	2274.5	2350.5			2274.5
SEX OFFENDER TREATMENT	122.5										
STATEWIDE SERVICES	555.3	62.2	1657.1	1657.1	1659.9	1659.9	1736.7	978.4		8285.8	1736.7
PRISON INDUSTRIES	147.9	-46.3	159.1	159.1	160.2	161.8	148.9	160.2		355.5	148.9
LOCAL FACILITIES	1522.2										
OUT OF STATE CONTRACTUAL	4175.5	-310.2	3845.2	3845.2	3845.2	3845.2	3806.8	3845.2			3806.8
MAJOR MEDICAL & GUARD HIRE	968.9	396.3	1057.2	1466.8	1454.7	1469.4	1431.8	1454.7			1431.8
** TOTAL	24137.9	2750.0	24827.0	33103.8	32886.5	33162.9	31860.8	33016.5		8641.3	31860.8
** CHANGE VERSUS FY82 ATH				37.1%	36.2%	37.3%	31.9%	36.7%	-100.0%		
OBJECT DESCRIPTION											
PERS. SERV.	13316.3	1550.0	14741.0	20152.9	20107.2	20107.2	19006.5	20107.2		779.9	19006.5
TRAVEL	149.8	34.0	144.0	203.3	203.3	203.3	203.3	203.3		36.1	203.3
CONTRACTUAL	7432.8	252.9	6552.9	7592.5	7631.9	7631.9	7761.9	7761.9		182.4	7761.9
COMMODITIES	2033.1	563.9	2280.3	3384.6	3108.2	3384.6	3384.6	3108.2		187.4	3384.6
EQUIPMENT	91.8	116.2	95.8	236.0	236.0	236.0	236.0	236.0		154.0	236.0
LANDS/BLDGS		241.0								7268.5	
GRANTS, CLMS	931.6	-43.2	1013.0	1534.5	1599.9	1599.9	1599.9	1599.9		33.0	1599.9
MISC.	182.5	35.2					-331.4				-331.4
FUNDING SOURCE											
GENERAL FUND	24137.9	2750.0	24827.0	33103.8	32886.5	33162.9	31860.8	33016.5		8641.3	31860.8
** GENERAL FUND CHANGE VS. FY82 ATH				37.1%	36.2%	37.3%	31.9%	36.7%	-100.0%		
POSITIONS											
FULL TIME	328.0	70.0	330.0	519.0	517.0	517.0	517.0	517.0		28.0	517.0
PART TIME	3.0		3.0	5.0	4.0	4.0	4.0	4.0			4.0
STAFF MONTHS	4227.0	350.0	4331.0	6098.5	6068.5	6068.5	6068.5	6068.5		336.0	6068.5

POSITION PAPER/Department of Health & Social Services

urgency and nature of Corrections' issues require an increasingly larger portion of the efforts and attention of top DHSS administrators. Not only are the other human service programs impacted by more top administrative time being directed to corrections' issues, but also by an increasing portion of the Department's fiscal resources being committed to address Corrections' urgent needs. It must be remembered that the basic human services programs are not incidental, but rather are vital programs impacting every Alaskan. It is not likely that the demands of Corrections will slow significantly in future years. Each new institution will require a large number of new employees and pending litigation offers the prospect for committing the state to continued policy and program development, extensive renovation of existing facilities, and the need for even more fiscal resources to support expanded operations.

The Department of Health and Social Services believes the creation of a Department of Corrections would allow increased focus on the critical problems inherent in the operation of programs for adult offenders, would increase the effectiveness of the criminal justice system as a whole, and would be generally beneficial to the operation of other offices and divisions within DHSS. The Department supports the approval of Executive Order 54.

Recommended by: _____
Roger V. Endell
Director
Division of Adult Corrections

Date: 2/8/83

Approved by: _____
Robert London Smith, P.H.D.
Commissioner
Department of Health and
Social Services

Date: 2/22/83

MEMO TO: Health, Education and Social Services Committee
FROM: Dave Palmer
SUBJECT: Executive Order 54 and HB 103
DATE: January 25, 1983

HB 103	11.71.305	Places rehabilitation of persons convicted of personal use of controlled substances with the Dept. of Corrections instead of the Dept. of Health and Social Services.
HB 103	12.55.025	Transfers authority from DHSS to DOC for determining which facility is to be used for those people imprisoned and not on bail.
EO 54		not addressed.
HB 103	12.55.055	Changes jurisdiction of prisoners performing community work from DHSS to DOC.
EO 54	"	Same
HB 103	12.55.185	Repeals the definition of the division of corrections within DHSS.
EO 54	"	Same
HB 103	12.70.220 (c)	Changes from DHSS to DOC authority to comment on extraditions. (Should probably refer to §(b) also).
EO 54	"	Same
HB 103	33.05.080	Changes definition from DHSS to DOC in Title 33, Probation, Prisons, and Prisoners.
EO 54	"	Same
HB 103	33.15.260	Substitutes Commissioner of DOC for Commissioner of DHSS in definitions of Title 33.
EO 54	"	Same
HB 103	33.30.130	Transfers authority from Dept. of Public Safety to DOC for transportation of persons pending arraignment or commitment.
EO 54	"	Not changed

HB 103	33.30.900	Changes reference from commissioner of DHSS to commissioner of DOC in Title 33.
EO 54	"	Not Changed
HB 103	33.32.070	Changes from DHSS to DOC in reference to Correctional Industries Program.
EO 54		
HB 103	33.35.010	Reference to Commissioner of DHSS is changed to Commissioner of DOC pertaining to the Agreement on Detainers.
EO 54	"	Referenced, but not changed
HB 103	33.35.040	Same as 33.35.010.
EO 54	"	Same
HB 103	33.36.040	Authorizes commissioner of DOC, not commissioner of DHSS to implement interstate corrections compact.
HB 103	33.36.100	Changes reference from DHSS to DOC pertaining to the Western Interstate Corrections Compact.
EO 54	"	Same
HB 103	41.20.110 (b)	Changes reference from Commissioner, DHSS to Commissioner, DOC for volunteer trail work by prisoners.
EO 54	"	Not Addressed
HB 103	44.17.005	Adds Dept.of Corrections to list of State of Alaska departments.
EO 54	"	Same
HB 103	44.29.020 (9)	Excludes administration of correctional institutions from DHSS duties (leaves probation and parole, however).
HB 103	44.29.020 (17)	repeals probation and parole from DHSS duties.
EO 54	44.29.020 (17)	same as above, but creates 44.28.010 to add probation, parole, and adult penal institutions to DOC.

HB103	47.08.050 (8)	Changes authority from DHSS to DOC for medical services for people in custody.
EO 54	"	Not addressed
HB 103	47.17.020 (a)	Changes reference from division of corrections to department of corrections relating to child abuse cases.
EO 54		Not addressed
HB 103	47.21.010 (b)	Changes from division of corrections to department of corrections authority over juvenile offenders. ADVENTURE BASED EDUCATION HSS.
EO 54		Not addressed
HB 103	47.30.845 (5)	Changes authority from division of corrections to department of corrections regarding confidential records
EO 54	"	Not addressed
HB 103	47.37.040 (3)	Changes from division of corrections to department of corrections the agency to work with the office of alcoholism of DHSS for programs for inmates or parolees.

STATE OF ALASKA
THE LEGISLATURE

LEGISLATIVE AFFAIRS AGENCY

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

JAN 27 '83

M E M O R A N D U M

January 26, 1983

SUBJECT: Department of Corrections
(HB 103)

TO: Representative Milo Fritz

FROM: LHA Linn H. Asper
Legislative Counsel

In preparing a Senate duplicate of HB 103 we have determined that an additional section should be added to your bill to delete a reference to the division of corrections that I missed when I prepared the draft of HB 103. This could be added in a committee substitute by the Health, Education and Social Services committee. The proposed addition is as follows:

Page 4, after line 1, insert a new section to read:

* Sec. 9. AS 33.15.010 is amended to read:

Sec. 33.15.010. STATE BOARD OF PAROLE. There is in the department a board of parole consisting of five members to be appointed by the governor, subject to confirmation by a majority of the members of the legislature in joint session. One of the members, who shall be chairman of the board, shall be a person with training or experience in the field of probation and parole, [AND THAT MEMBER MAY BE AN OFFICIAL OR EMPLOYEE OF THE DEPARTMENT] but that member may not be an official or employee of the department [DIVISION OF CORRECTIONS]. The term of each of the other four members of the board is four years and until a successor is appointed and qualified. Successors are appointed in the same manner as provided for the board members first appointed. A vacancy shall be filled for the unexpired term.

Renumber succeeding bill sections accordingly.

LHA:ljb

THE LEGISLATURE OF THE STATE OF ALASKA
THIRTEENTH LEGISLATURE

I. REQUEST
Bill/Resolution No. EO 54
Title Executive Order Creating Department of Corrections
Requested by Governor

II. FISCAL DETAIL
Agency Affected Department of Corrections
Program Category Affected Administration of Justice
BRU, Program, Or Subprogram(s) Affected Director's Office
(Note: If more than one budget component is affected, separate line-item amounts and funding for each component in the analysis section.)

EXPENDITURES (Thousands of Dollars)

	FY 83	FY 84	FY 85	FY 86	FY 87	FY 88
100 PERSONAL SERVICES	132.5	530.1	561.9	595.6	631.4	669.2
200 TRAVEL	45.0	48.0	50.9	54.0	57.2	60.6
300 CONTRACTUAL	60.5	356.5	377.9	400.6	424.6	450.1
400 COMMODITIES	4.0	17.0	18.0	19.1	20.2	21.4
500 EQUIPMENT	8.0					
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC.						
TOTAL	250.0	951.6	1008.7	1069.3	1133.4	1201.3

FUNDING (Thousands of Dollars)

GENERAL FUND	250.0	951.6	1008.7	1069.3	1133.4	1201.3
FEDERAL FUNDS	-0-	-0-	-0-	-0-	-0-	-0-
OTHER (Specify Source)	-0-	-0-	-0-	-0-	-0-	-0-
	-0-	-0-	-0-	-0-	-0-	-0-
	-0-	-0-	-0-	-0-	-0-	-0-

POSITIONS

FULL TIME	10.0	10.0	10.0	10.0	10.0	10.0
PART TIME	-0-	-0-	-0-	-0-	-0-	-0-
TEMPORARY	-0-	-0-	-0-	-0-	-0-	-0-
	-0-	-0-	-0-	-0-	-0-	-0-

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

The Executive Order will create the Department of Corrections necessitating the transfer of the Division of Corrections and Parole Board from the Department of Health & Social Services to the new department, creation of ten new positions, the reclassification of nine Division of Corrections positions and the transfer of 13 positions from the Department of Health & Social Services Divisions of Management and Budget and Administrative Services to the new Department.

	FY 83	PFT	PPT
Adult Confinement	33402.1	498.0	4.0
Probation & Parole	4928.1	72.0	-0-
Admin. & Support	1645.1	30.0	-0-
Parole Board	258.3	4.0	-0-
	40233.6	604.0	4.0

IV. DATE 1/13/83 PREPARED BY Marsha Hubbard 1/14/83
AGENCY Dept. of Health & Social Services
PHONE 465-3331

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

83-001 (Rev. 12/81)

STATE OF ALASKA
PRELIMINARY STATEMENT OF FISCAL IMPACT

Bill No: Executive Order No. 54 Date on Bill:
Title: Creating a Department of Corrections
Sponsor: Governor
Requestor:

1. Estimated fiscal impacts on: Department of Corrections

a. Expenditures:

(Thousands of Dollars)

			FY 83	FY 84	FY 85	FY 86		
Capital								
Operating			250.0	951.6	1008.7	1069.3		
Total								

b. Revenues:

Revenue								

2. Source of funds to offset fiscal impact of bill:

For FY 83 a delete/add supplemental appropriation request has been submitted. The funds are to be deleted from the Permanent Fund Dividend Hold Harmless BRU.

FY 84 funding will be included in budget revisions submitted by the Department of Corrections.

3. Assumptions:

4. Disclaimer:
This statement has not been reviewed by the OMB in the Office of the Governor. It does not represent the policy of the Sheffield Administration or the final estimate of fiscal impact.

Prepared By: Division of Budget & Administration — C. Mitchell Phone: 465-8082
Division: Division of Budget & Administration Date: February 17, 1983

Approved by Commissioner: Robert Loudon Smith, M.D. Date: 2/22/83
Department: Health & Social Services

5. Distribution:
Original to Legislative Finance
Copy to OMB
Copy to Sponsor
Copy to Requestor

2/8/83

FISCAL NOTE

I. REQUEST
Bill/Resolution No. HB 103
Title Creating a Department of Corrections
Requested by House HESS Committee Date Feb. 9,1983

II. FISCAL DETAIL
Agency Affected Department of Corrections
Program Category Affected Administration of Justice
BRU, Program, Or Subprogram(s) Affected Director's office
(Note: If more than one budget component is affected, separate line-item amounts and funding for each component in the analysis section.)

EXPENDITURES (Thousands of Dollars)

	FY 83	FY 84	FY 85	FY 86	FY 87	FY 88
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 COMMODITIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS,CLAIMS,ETC.						
TOTAL		951.6	1008.7	1069.3		

FUNDING (Thousands of Dollars)

GENERAL FUND		951.6	1008.7	1069.3		
FEDERAL FUNDS		0	0	0		
OTHER (Specify Source)		0	0	0		
		0		0		
				0		

POSITIONS

FULL TIME						
PART TIME						
TEMPORARY						

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

Functions of the department of corrections under HB 103 are essentially identical to Executive Order 54. This note is based on the fiscal note prepared for EO 54 and preceeds the Dept. of Health and Social Services note, which is not expected to arrive for the hearing.

IV. DATE February 9,1983 PREPARED BY Dave Palmer
AGENCY House HESS committee
PHONE 465-3777

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

33-001 (Rev. 12/82)

MEMORANDUM

March 7,.1983

TO: Representative Charlie Bussell
Chairman, House Judiciary Committee

FROM: Mark K. Johnson
Staff Counsel, Rep. Flood

SUBJECT: Executive Order 54 and HB 103: Creating a Dept. of Corrections

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As you may know, before coming to the legislature, I worked for the Department of Health & Social Services amd was directly involved in preparing the operating budget for the Division of Corrections. I continue to be in touch, on a personal level, with several members of the staff of that agency.

On at least two separate occasions, agency personnel have indicated to me that the fiscal note prepared in support of Executive Order 54 is inadequate and would not provide sufficient funds to cover the expenses of departmentalization.

Thus, funds for supply and personnel functions in the new department do not exist.

One area that might deserve the attention of the committee is the resources that are being given up by the Department of Health & Social Services in the administrative area. Corrections represents a major portion of the work load on the Division of Administrative Services and the Division of Management & Budget of the present department. Will the separation of Corrections result in transfers of appropriate personnel and funds?? The answer to this question is probably not. The creation of the new Department of Corrections is seen privately by some members of the Department of Health & Social Services as an opportunity to reduce their workload without related reductions in staff.

I would be pleased to discuss this matter further with you if you desire.

STATE OF ALASKA

DEPARTMENT OF LAW

CRIMINAL DIVISION

BILL SHEFFIELD, GOVERNOR

POUCH KC – STATE CAPITOL
JUNEAU, ALASKA 99811
PHONE: (907) 465-3428

March 4, 1983



Charlie Bussell, Chairman
House Judiciary Committee
State Capitol
Pouch V
Juneau, Alaska 99811

Dear Representative Bussell:

Enclosed please find a list of the issues remaining to be litigated in the Cleary, et. al. v. Beirne, et. al., prisoner lawsuit.

If you have any questions regarding these issues, please contact me at your convenience.

Very truly yours,

NORMAN C. GORSUCH
ATTORNEY GENERAL

By: Michael J. Stark
Michael J. Stark
Assistant Attorney General

MJS/gb-32

Enclosure

3-C7LH

Issues Remaining in Cleary v. Beirne

1. Sufficient clothing for exercise and recreation

2. Recreation - 7 hours per week for Nome - need staff

*3. Visitation - a. increase hours - Proposed final provided for 30 hours per week re institution with 100 or more prisoners
27 hours per week re institution with 50-100 prisoners
24 hours per week re institution with 50 or more prisoners
(Now only 6 hours per week at most institutions)

b. Contact Visiting (1 hour per week) requires more staff

4. Safety - a. pre-hire psychological screening for staff having regular contact with prisoners

b. Refuse admission re prisioners with substantial mental problems until seen by medical personnel.

c. Crisis intervention counseling on 24 hour basis - training & staff

d. Space for counseling and education etc. re minimize competing interests for existing space.

*5. Staff Training - a. Should include negotiation, conciliation and non-physical confrontation techniques and prisoners rights and expanded curriculm.

b. (1) Prior to beginning work for staff
(2) Refresher training

c. Transportation - Public Safety now does most prisoner transp.

*6. Overcrowding - a. re required NOW to house sentenced felons and pretrial detainees separately

b. Expand alternatives to incarceration

*7. Rehabilitation/Treatment - a. Diagnostic and aptitude tests for prisoners

b. Expanded programs? - e.g. basic life skills, family counseling, stress reduction, employment skills, employment for prisoners and staff to supervise prisoners outside institutions.

c. Space for programs

8. Release support - programs re released prisoners (i.e. probation and parole)

*9. Increased Staffing - Ault report and Hutto report. (Consultants which state that institutions are overcrowded and understaffed)

*10. Health Care - a. Space and equipment in facilities

b. Availability of trained mental health professionals

c. Psychiatric facility and staff for acute and subacute case, short-term and long-term recuperative care.

d. Compliance with ACA standards for medical care (i.e. all mandatory standards and sufficient no of essential and important standards for ACA accreditation.

e. $ and staff re medical care (Consultant report recommendations).

11. Transportation - re prisoners to health related appts.

MEMORANDUM State of Alaska

TO: Roger V. Endell
Director
Division of Adult Corrections

DATE: March 7, 1983

FILE NO:

TELEPHONE NO:

FROM: for Ted Corey
Assistant Director
Division of Adult Corrections

SUBJECT: South Central Population

The following information describes South Central institutional populations, operating capacities, action being taken, and future recommended action.

Institution Maximum Operating Capacities:

Sixth Avenue: 90 - The count of 90 must be maintained to allow a 10 bed buffer for booking.

Third Avenue: 65 Sentenced - Classification Center.

Hiland Mountain: 160 - Ten (10) beds are reserved for segregation.

Meadow Creek: 30 - Three (3) beds reserved for segregation.

Ridgeview: 66 Sentenced misdemeanants.

Palmer: 230 - The population is broken down as follows: 130 Minimum, 100 Medium. There are four (4) Maximum Security beds maintained at Palmer Medium for segregation. When future inmate housing comes on line, the capacity of the minimum custody institution should be reduced to 106 and the Medium facility to 95 for a total of 201.

Cook Inlet: 186 bed operating capacity with 12 bed maximum security unit reserved for segregation.

The total operating capacity of Anchorage area institutions is 827. On 03/05/83, the count was 857. Institutions counts on 03/05/83 were as follows:

Sixth Avenue: 95 - Five (5) prisoners over the operating capacity.

Third Avenue: 65 - At operating capacity.

Ridgeview: 120 - 54 prisoners over the operating capacity of 66 sentenced offenders.

Meadow Creek: 33 - Three (3) prisoners over the operating capacity.

Hiland Mountain: 240 - 80 prisoners over the operating capacity.

Palmer Medium: 100 - At operating capacity.

Palmer Minimum: 130 - At operating capacity.

Cook Inlet: 74 - 112 prisoners under operating capacity. The new facility is scheduled for full capacity operation by 03/14/83. This will result in a projected operation count including intake projections of 887 prisoners in the Anchorage area institutions by 03/14/83. The above indictates a shortage of 60 beds with all institutions operating at capacity on 03/14/83.

In order to provide emergency housing for the 60 bed projected shortage, institutions in the Anchorage area will maintain the following capacities until additional funds and prisoner housing are identified.

Sixth Avenue: 80 - Reserving 20 beds for felony women and misdemeanant booking.

Third Avenue: 65 - Sentenced felons.

Ridgeview: 66 - Sentenced Misdemeanants.

Cook Inlet: 186 bed operating capacity. The holding cells in the booking area will have to provide felony intake housing with the 12 bed maximum unit reserved for segregation.

Hiland Mountain: 195 bed operating capacity.

Palmer Medium: 100 bed operating capacity.

Palmer Minimum: 130 bed operating capacity.

Meadow Creek: 33 sentenced women operating capacity.

Glennwood Center (Contract): 50 beds for work release offenders.

Effective 03/14/83, institutions in the Anchorage area will operate at the the new emergency capacities as noted above which results in a total Anchorage area prisoner bed capacity of 905.

It is evident that the above action will not relieve the rapid increase in prisoner intake. Felony daily booking have increased from 8 to a daily average of 16. Misdemeanant bookings are averaging 22 daily. The prisoner count in the Anchorage area is rising rapidly. In the first five days of March, the prisoner count increased by a net gain of 36 over prisoners released.

It is my intent to continue double bunking the new Cook Inlet Institution resulting in an operating capacity of 240 with the 12 bed unit reserved for segregation bringing the institutions total bed count to 152, which is 36 beds over the maximum design capacity of 216. This action will require additional fire exits.

The Anchorage area prisoner population increased from 742 on 02/01/83 to 790 on 02/28/83. This is a net gain of 48 prisoners in one month. My projections indicate at that there will be a shortage of 200 prisoner beds by June of 1983 in the Anchorage area. With Anchorage area institutions operating at and over their maximum capacity, it will be necessary to bring additional staff and prisoner housing on line as soon as possible.

TC:dw

ANCHORAGE AREA SUMMARY
Division of Adult Corrections

On Saturday, March 5, 1983:

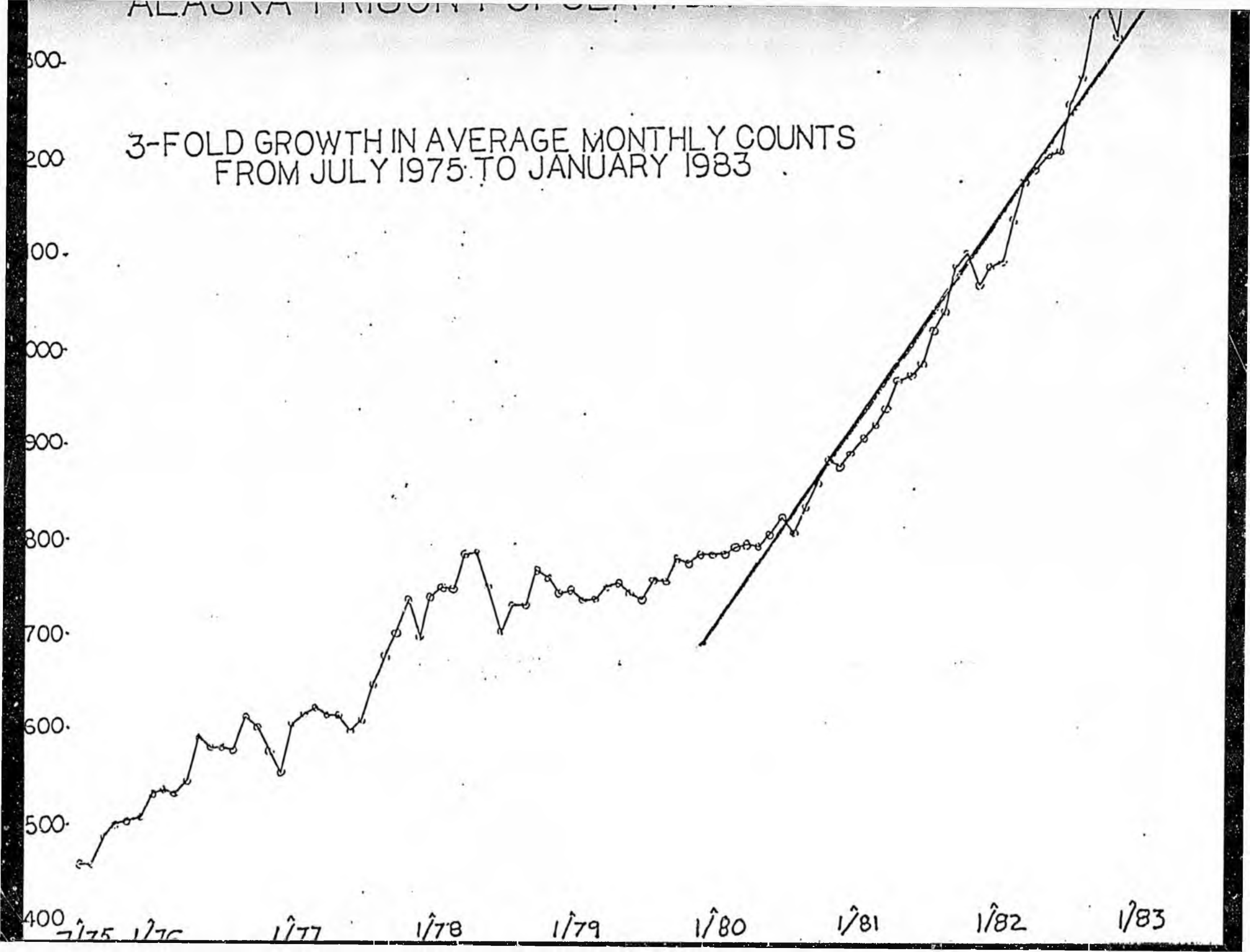
867 in custody in Anchorage Bowl
744 operating capacity (w/74 at CIPT)
113 more inmates than beds.

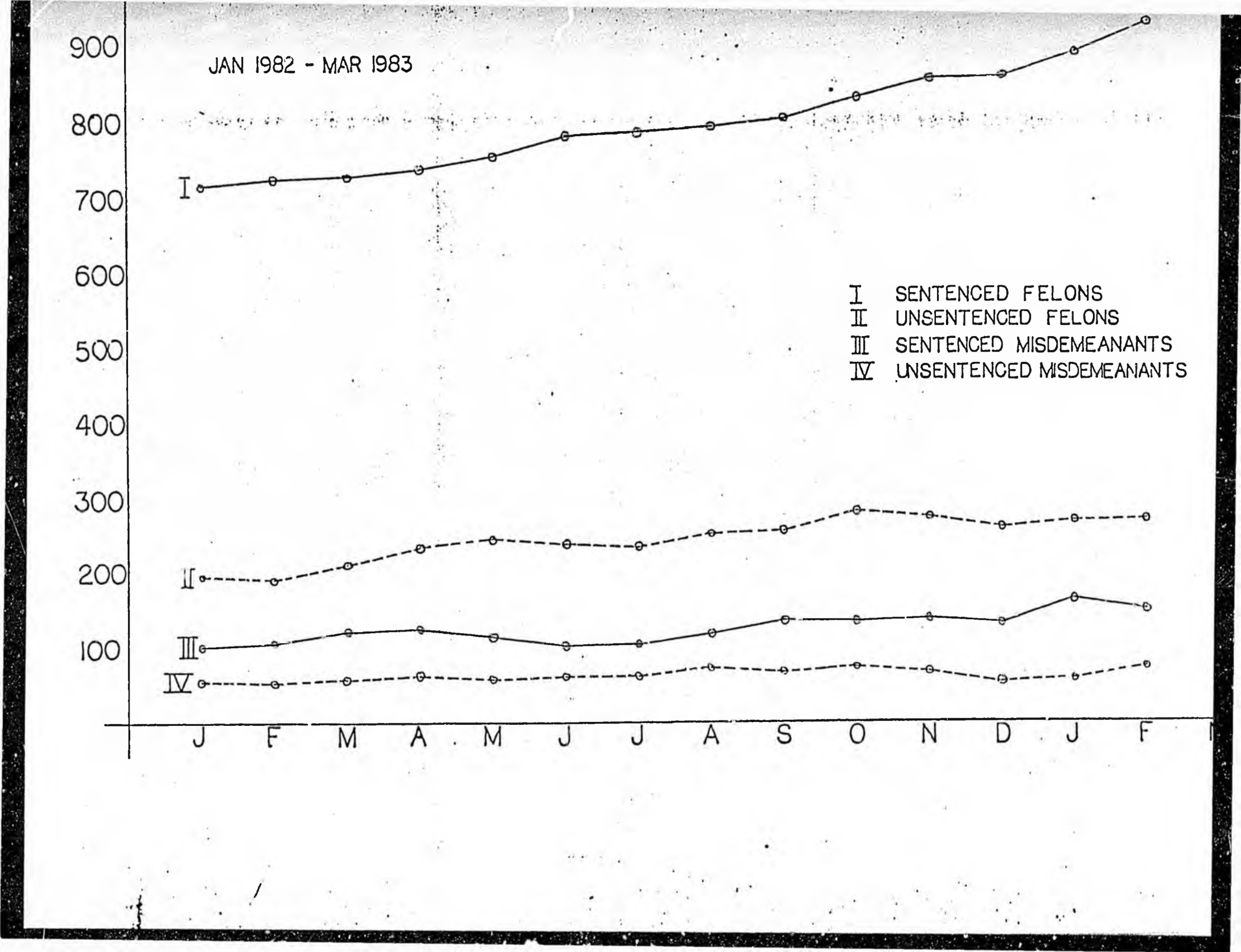
	Actual Count	3-5 Maximum Operating Cap.	Immediate Revisions
Hiland Mtn.	240	160	
Palmer	230	230	
Ridgeview	120	95	66
3rd Avenue	65	65	
Meadow Creek	33	30	
C.I.P.T.	74	74	200
6th Avenue	95	90	
	857	744	841

Action: Moving minimum of 110 additional inmates this week to C.I.P.T. In order to staff C.I.P.T., must close half of Ridgeview and move staff and 60 inmates to C.I.P.T. Another 20 inmates will transfer from Hiland Mountain Correctional Center. During the week 40 inmates will transfer from Sixth Avenue to C.I.P.T.

Staffing:
1. Move some from Ridgeview to C.I.P.T.
2. Voluntary overtime pool of correctional officers.
3. Potential raid of Academy trainees.

Summary: Even by adding 97 beds to operating capacity, we still are short 16 beds from last week's actual Anchorage area count. In the last 5 days there has been a net increase of 36 inmates in Anchorage, and an average of 40 bookings per day. There has been a statewide increase in the past two months of 120, to a total of 1,432 inmates.


3-FOLD GROWTH IN AVERAGE MONTHLY COUNTS
FROM JULY 1975 TO JANUARY 1983
800
200
100
000
900
800
700
600
500
400
1/75
1/76
1/77
1/78
1/79
1/80
1/81
1/82
1/83


JAN 1982 - MAR 1983
900
800
700
600
500
400
300
200
100
I
II
III
IV
I SENTENCED FELONS
II UNSENTENCED FELONS
III SENTENCED MISDEMEANANTS
IV UNSENTENCED MISDEMEANANTS
J F M A M J J A S O N D J F

SYSTEM TOTAL (Adult) (inc. TBP)

MONTH	1974	1975	1976	1977	1978	1979	1980	1981	1982	1983
January	488	495	529	600	732	738	770	876	1069	1388
February	511	472	534	611	742	728	771	891	1076	1432
March	503	477	529	616	742	728	778	905	1120	
April	513	480	541	609	776	739	782	921	1161	
May	497	482	586	608	777	745	778	950	1172	
June	486	474	576	593	742	733	791	955	1183	
July	500	460	576	603	697	727	810	968	1186	
August	493	460	574	639	723	745	794	1004	1239	
September	476	486	608	670	724	743	819	1023	1269	
October	469	499	598	697	764	767	846	1068	1330	
November	473	502	569	731	752	763	867	1085	1347	
December	491	506	549	689	736	771	861	1050	1311	
ST/12	492	483	564	639	743	744	805	975	1205	

THE LEGISLATURE OF THE STATE OF ALASKA
THIRTEENTH LEGISLATURE

FISCAL NOTE

I. REQUEST
Bill/Resolution No. Executive Order No. 54
Title Creating Department of Corrections
Requested by Governor Date Jan. 16, 1983

II. FISCAL DETAIL
Agency Affected Department of Corrections
Program Category Affected Administration of Justice
BRU, Program, Or Subprogram(s) Affected Director's Office
(Note: If more than one budget component is affected, separate line-item amounts and funding for each component in the analysis section.)

EXPENDITURES (Thousands of Dollars)

	FY 83	FY 84	FY 85	FY 86	FY 87	FY 88
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 COMMODITIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS,CLAIMS,ETC.						
TOTAL	250.0	951.6	1008.7	1069.3	1133.4	1201.3

FUNDING (Thousands of Dollars)

GENERAL FUND	250.0	951.6	1008.7	1069.3	1133.4	1201.3
FEDERAL FUNDS	-0-	-0-	-0-	-0-	-0-	-0-
OTHER (Specify Source)	-0-	-0-	-0-	-0-	-0-	-0-
	-0-	-0-	-0-	-0-	-0-	-0-
	-0-	-0-	-0-	-0-	-0-	-0-

POSITIONS

FULL TIME						
PART TIME						
TEMPORARY						

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

The Executive Order will create the Department of Corrections necessitating the transfer of the Division of Corrections and Parole Board from the Department of Health & Social Services to the new department.

IV. DATE January 16, 1983 PREPARED BY Marsha Hubbard
AGENCY Dept. of Health & Social Services
PHONE 465-3331

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

33-001 (Rev. 12/82)

EO 54

BILL SHEFFIELD
GOVERNOR

STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

January 17, 1983

The Honorable Speaker of the House
Alaska State Legislature
Pouch V
Juneau, Alaska 99811

Dear Mr. Speaker:

Under the authority of art. III, sec. 23, of the Alaska Constitution, and in accordance with AS 24.30.130(b), I am transmitting an executive order which creates a Department of Corrections. The new department is being created from the division of corrections which is currently located in the Department of Health and Social Services. This is similar to Executive Order No. 39's 1977 creation of the Department of Transportation and Public Facilities out of the former Department of Highways and Department of Public Works.

This Order's sec. 28 creates the new department. Section 29 then states that the commissioner is the principal executive officer and sets out some basic duties and powers. Section 29's AS 44.28.020 is based on AS 44.29.020(9) (amended in sec. 30 of the Order) and AS 44.29.020(17) (repealed in sec. 31), pertaining to the Department of Health and Social Services. Similarly, the new AS 44.28.030 is based on AS 18.-05.040(15).

Art. I, sec. 12, of the Alaska Constitution mandates that penal administration be based on protection of the public and reformation of the offender. Given the unprecedented increases in the prison population in the state, I believe that elevating the division of corrections to departmental status is necessary to achieve these twin goals and is in the best interests of efficient administration.

The problem of increasing crime in Alaska and how best to deal with those who are convicted of violations of the criminal law was the focus of a recent inquiry by a corrections task force that I created. In its January 3, 1983 report, the task force recommended the immediate elevation of the division of corrections to departmental status. According to members of the task force, this recommendation is strongly supported by all segments of the criminal justice system.

The Order does not transfer the responsibility for juvenile corrections matters and for offenders who are found guilty but mentally ill or not guilty by reason of insanity under AS 12.47.

Also, some responsibilities of the commissioner of public safety, principally the transportation of prisoners, have not been addressed in this Order. The decision on whether or when to transfer these responsibilities to the new commissioner of corrections will depend on such factors as the level of increased training that must occur before the new department can effectively and safely assume these responsibilities.

The phrase "Repealed effective July 1, 1987," which appears in brackets and capital letters in the AS 33.32 (correctional industries) headings for the sections being amended in secs. 15, 17, 19, 20, and 24 of this Order, appears in this Order because it appears in those headings in The Michie Company's publication of the statutes. That language is not being deleted, and the amendments made by this Order do not affect that statutory termination date of the correctional industries program. See sec. 7, ch. 53, SLA 1982.

Sincerely,

Bill Sheffield

Bill Sheffield
Governor

2/14

COMMITTEE REPORT

HOUSE

(7)
1/17/83

FURTHER: JUDICIARY
FINANCE

Date: Feb 11, 1983

Mr. Speaker:

The Committee on HESS has had EO 54

Creating a Department of Corrections

under consideration and reports it back as follows:

[✓] do pass [ ] do not pass

[ ] do pass with attached amendments(s)

[ ] replace with CS for _____ [ ] same title [ ] new title

and recommends _____

[ ] AND attaches a "Letter of Intent" [ ] New Fiscal Note [ ] Zero Fiscal Note Attached

[ ] reports it back without recommendation

[ ] referred to the _____ Committee

MEMBERS SIGNING DO PASS

Peter Jacobs
Nicholas Koppman
Mike Davis
Michael W. Miller
MILO H FRITZ
Mae Tischer

MEMBERS HAVING OTHER RECOMMENDATIONS:

Mae Tischer
MILO H. FRITZ
CHAIRMAN

H 60



STATE OF ALASKA
THE LEGISLATURE

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

LEGISLATIVE AFFAIRS AGENCY

M E M O R A N D U M April 29, 1983

SUBJECT: Landlords and tenants
(CSSSHB 1 (Judiciary))

TO: Representative Mitchell E. Abood, Jr.

FROM: Tamara Brandt Cook
Legislative Counsel TBC

Here is the sectional analysis of CSSSHB 1 (Judiciary) that you requested.

Section 1. This is a new provision authorizing enforcement of a judgment for the restitution of real property obtained in an action for forcible entry or detention. No other order to enforce the judgment may be required.

Section 2. Continued possession of a dwelling after expiration of a periodic tenancy is added to the list of cases that constitute unlawful holding by force for purposes of the article dealing with forcible entry and detainer. Under the Uniform Residential Landlord and Tenant Act a landlord is authorized to bring an action for possession.

Section 3. If the tenant terminates a rental agreement under the Uniform Residential Landlord and Tenant Act, fails to provide the proper notice of termination, and the failure to provide notice is wilful or not in good faith, the landlord may recover as punitive damages one and one-half times the actual damages. Failure to provide notice of termination is presumed to be wilful and not in good faith.

Section 4. In the case of a month-to-month tenancy, either party may terminate the rental agreement by providing at least 30 days notice. Under existing law the notice must be given at least 30 days before the rental due date indicated in the notice, so a tenancy must be terminated on a rental due date rather than at any time during the rental period.

Section 5. This authorizes a landlord to bring an action for recovery of actual damages in the subsection that provides for punitive damages. Under another section, AS 34.-03.270, it is clear that a landlord may bring an action for actual damages for breach of a rental agreement.

Section 6. This adds terminating the rental agreement or providing notice of termination to the list of retaliatory actions that a landlord may not take when a tenant attempts to enforce certain rights.

Section 7. A landlord is presumed to have acted in retaliation if the landlord takes certain actions within 60 days after a tenant attempts to secure rights.

TBC:ljb
11/008

An Overview of
Committee Substitute for Sponsor Substitute for HOUSE BILL NO. 1 (L&C)
"AN ACT RELATING TO LANDLORDS AND TENANTS"

The Alaska Statutes governing Landlords/Tenants, (Title 34- Property), has not been clear in defining certain areas of concern to both the landlord and the tenant. Whether oral or written, both the landlord and tenant hold certain unalienable rights in the property they own as a landlord or rent as a tenant. With the 0% to 4% vacancy rate in most of Alaska, and because over 35% of the population in Alaska rent their dwellings, it is necessary to update the laws to answer the needs of the landlord and tenant. The following is a summary of CSSSHB 1, and how it answers some of these needs.

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

Section 1. AS 09.45.090 is amended by adding a new paragraph to read:

(4) when, after a notice to terminate the tenancy as provided in AS 34.03.290 with reference to termination of a periodic tenancy, a person continues in possession of a dwelling unit after expiration of the time for determining the tenancy.

This new paragraph is being added to stipulate a "periodic tenancy" termination. AS 09.45.090 (3) cites termination of an "estate at will" tenancy, which can be defined as a tenancy that transpires on a day to day basis or an indefinite term at the will of the lessor. In this case, the tenant has no say in the matter of how long the tenancy will last. The landlord may, at any time, terminate the tenancy and the tenant has no right to a notice. (This type of tenancy was developed in a few hundred years ago in England, and rarely applies "modern day" tenancy.) For this reason, it is necessary to add Paragraph 4, as periodic tenancy, (month to month), is not referenced in the present context.

Section 2. AS 34.03.270 (b) was added by the Labor and Commerce Committee to more specifically clarify AS 34.03.290 (c), to read:

(b) If the rental agreement is terminated by the tenant and the tenant fails to provide the notice required under AS 34.03.290 (a) or (b), the landlord may recover an amount not to exceed one and one-half times the actual damages.

If the tenant decides to cancel his rental agreement, but does not notify the landlord, the landlord may collect one and one-half times the damages incurred, (i.e. rent). The tenant is obligated to give the landlord written notice of his intention to vacate the premises 45 days before termination, (See AS 34.03.290 (b)). If it is a case where the tenant remains in possession of the dwelling past the termination date

without the landlord's permission, then the landlord is entitled to one and one-half times the damages PLUS the actual damages, (2½X the actual damages), as compensation. (See AS 34.03.290 (c)).

Section 3. AS 34.03.290 (b) is amended to read:

(b) The landlord or the tenant may terminate a month to month tenancy by a written notice given to the other at least 45 [30] days before the termination [RENTAL DUE] date specified in the notice.

This amendment provides a more equitable time frame to tenants and landlords. The vacancy rate for apartments at the present time in the Anchorage, Fairbanks, Ketchikan and Juneau markets ranges from 0% to 4%. Because of this tight rental market, it is sometimes quite difficult for low income families, minorities, pet owners, families with children, and the elderly, (to name a few), to find adequate and habitable housing. General termination, (30 days), on the part of the landlord, in a time of a severe housing crunch does not always give the tenant sufficient notice to find other adequate housing. Also, in the case of a condo conversion, this gives the tenant sufficient notice to vacate or purchase their unit. In a future situation where the rental market is not so tight, this 45 day notice allows the landlord adequate time to make necessary repairs and alterations, as well as locate a new tenant.

"Rental due date" refers to Sec. 34.03.020 (c) which is the date on the same day each month that rent is to be paid. The landlord or the tenant may wish to give notice of termination on either side of the "rental due date", and replacing "rental due" with "termination" date provides for either time frame. It does not restrict either party to the exact day the rent is due when giving a termination notice.

The question arises, "What if the tenant gives notice on, say March 19?" This means that the termination date would be May 2nd. Therefore, the tenant would be obligated to pay the landlord for rent through March, all of April, (and two days in May, which would be prorated). The landlord would not lose any rental income even though the termination date falls after the "rental due date". By the time the 45 day period is up, the landlord has had adequate time to find a new tenant and the tenant has been given a more equitable amount of time to find a new dwelling.

(It should also be noted here that an increase in rent may also constitute a form of termination, as well as new rules put into effect by the landlord, i.e. no pets, adults only, etc. This is, in effect, terminating the rental agreement then in existance and offering a new rental agreement at different terms. If the tenant does not accept the "new terms", then he must vacate 45 days after the receipt of notice of substantial or material changes from the landlord. If the tenant does not respond to the landlord's notice of substantial or material changes, at the end of the 45 day period, the new rental agreement takes effect.)

Section 4. AS 34.03.290 (c) is amended to read:

(c) If the tenant remains in possession without the landlord's consent after expiration of the term of the rental agreement or after its termination, the landlord may bring an action for possession and recovery of actual damages. If [IF] the tenant's holdover is wilful [and] or not in good faith the landlord, in addition, may recover an amount not to exceed one and one-half times the actual damages. If the landlord consents to the tenant's continued occupancy, AS 34.20.020 applies.

An improper hold-over by a tenant has caused landlords financial hardships. If a tenant continues to occupy the dwelling after his tenancy expires, he has caused the owner loss of income needed to make mortgage payments, as well as loss of time to make necessary repairs, alterations, etc., before renting the unit to the next party. Alaska law allows landlords to sue for damages, but the time, effort and money involved is not always feasible to pursue.

The new clause noted above provides for recovery of actual damages, (i.e. lost rent income, lost time needed to make necessary repairs, etc.), as well as one and one-half times the actual damages as compensation to the landlord. This deters the tenant from staying on past termination or the expiration of the rental agreement and in effect is incentive to the individual(s) to vacate the premises. (Also see AS 34.03.270 (b)).

Section 5. AS 34.03.310 is amended by adding a new subsection to read:

(f) A landlord is presumed to have violated (a) of this section if the landlord increases rent, decreases service, or brings or threatens to bring an action for possession within 60 days after a tenant has engaged in an action listed under (a)(1) - (4).

This new subsection protects the tenant from landlords who abuse the right to access or evict the tenant for retaliatory reasons. The tenant has a right to his/her privacy, and the landlord must give "reasonable" notice to the tenant before entering the premises, (See AS 34.03.010). This new subsection also provides that the tenant may not be evicted because they have made a complaint using the proper procedures, (See AS 34.03.140), i.e. complained to a government agency regarding unfair rent hikes, or requesting that certain necessary repairs be made to the premises or common area. Sixty days is a sufficient amount of time to correct a problem or answer a complaint. After the 60 day period has expired, the tenant should refer to AS 34.03.160 and the landlord should refer to AS 34.03.220 for remedies to their problem(s).

COOPERATIVE EXTENSION SERVICE
UNIVERSITY OF ALASKA, USDA & SEA GRANT COOPERATING

ANCHORAGE DISTRICT, 2651 PROVIDENCE AVENUE, ANCHORAGE, ALASKA 99508

NOTE: SSHB 1 TESTIMONY GIVEN BY BARBARA EICHNER TO LABOR AND COMMERCE COMMITTEE ON 2/10/83. THE BILL HAS BEEN UPDATED BY THE LABOR AND COMMERCE COMMITTEE --- BARBARA EICHNER WILL SPEAK TO THESE CHANGES AT THE JUDICIARY MEETING 2/25/83.

Testimony on House Bill 1
Barbara G. Eichner
District Home Economist - Cooperative Extension Service
February 10, 1983

Good morning and thank you for providing the opportunity for me to testify on one of the most important bills before the 1983 legislature.

This is Barbara Eichner speaking. I am district home economist for the Cooperative Extension Service in Anchorage. Briefly, our agency is the non-credit educational arm of the land-grant university in every state, which includes the University of Alaska. Our job is to disseminate practical information to consumers on a wide variety of topics such as gardening. nutrition, agriculture and housing.

Three years ago because of a fluke answer to a consumer newspaper column, the Cooperative Extension Service was propelled to the forefront as the only impartial agency or organization who would and could answer landlord-tenant questions quickly, simply and at no charge. I am not an attorney and I do not give legal advice. All I can do is give people an idea of their rights and responsibilities under the law and yet despite that, over 4000 landlords and tenants have sought my advice through telephone counseling and seminars. In addition, over 14,000 copies of our landlord-tenant handbooks have been distributed statewide and 9 hours of radio and television time have been used to discuss landlord-tenant issues. In short, the concerns relating to rental housing are numerous and the effect of inadequate assistance is widespread. People in Bethel, Kodiak, Nome, Dutch Harbor and North Pole all want the same thing according to my statistics - available and affordable housing managed in a business-like manner. People in 26 Alaskan communities have all said the same thing - change the law.

You all know the history of rental housing in the boom and bust economy of Alaska's towns and villages. In good times housing has responded well to the laws of supply and demand. In poor times, landlords and tenants alike have asked for help in keeping housing available, affordable and soundly managed. Despite the steady growth of Alaska's overall economy, the supply of rental housing in the last 3 years has remained the same while the population increased. Anchorage alone has experienced a rental vacancy rate of less than 1% for almost 2 years. Newspaper headlines like "Tenants Feel Pinch of Escalating Rents", "Anchorage Renters May Form Union" and "Man Sues Landlady for $2.8 million" only underscore the tension prevalent in the rental market.

Continued...

The stories that didn't capture headline attention are the sometimes unbelievable but everyday problems the Extension Service has faced such as:

- the tenant who hasn't had heat for 6 months and whose landlord says if she doesn't like it she can move
- the landlord who is left with a $3000 outstanding bill in damages and back rent when the tenant moves out in the middle of the night
- the tenant whose rent has been raised $350 in just one month
- the landlord who needs to evict 8 people who are living in a one-bedroom apartment
- the tenant who was physically assaulted by his landlord, and
- the landlord who must replace a whole bedroom wall section because the permeating odor of a previous tenant's pet snake that crawled into the wall and died. (Yes, it is a true story).

If consumers are to act as responsible citizens in the marketplace, then our laws must reflect the needs of our citizens. It really doesn't matter whether you are a landlord or a tenant, the fact is that Alaska's Uniform Residential Landlord and Tenant Act is out-of-date and unclear. Many issues such as those just named, are not addressed at all.

In the three years that I have dealt with rental housing questions, the problems that have loomed largest include evictions, improper holdover, lack of written rental agreements, abuse of the right to access, retaliation, security deposits and forceable entry and detainer without due process.

I am pleased to see that House Bill 1 makes an effort to address four of these issues.

Section 1 and Section 3 make it clearer for landlords in knowing when they can prosecute for improper possession. Far too many tenants have told me that they feel landlords are obliged to house them until it is convenient for them to move. Not only has this attitude complicated the rights of landlords to negotiate new deals with new tenants, it has been held with little consequence or risk.

I believe Section 2 will be a welcome relief to both landlords and tenants in outlining a clearer way of determining when a tenant will move. The 45-day proviso is a compromise on just-cause eviction which is fairer to landlords. At the same time, I don't know how many landlords and tenants have been stuck with nearly 60 days notice when they have accidentally missed a rental due date. Almost everyone should be able to count 45 calendar days.

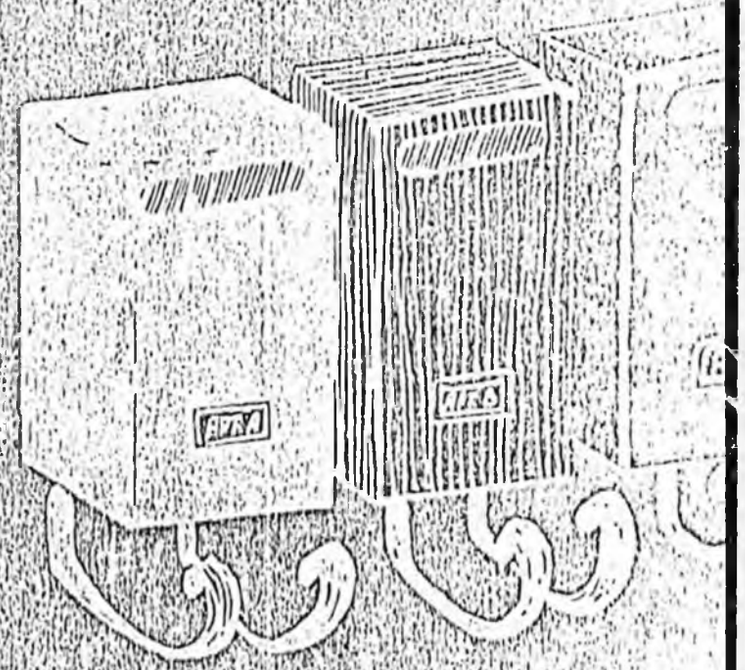
Continued...

And finally, in Section 4, I believe it is appropriate to shift the burden of proof for retalitory measures to the landlord without sticking them with an enforced lease behind which unsavory tenants could hide. Retalitory action is clearly illegal in our current statute but my experience indicates that it is practically impossible for tenants to prove. Landlords, by virtue of their position, have the greater power here and therefore I believe should have the greater burden. It is a question of social equity for tenants who see themselves as helpless victims and should create no hardship for the vast majority of our landlords who are straight-forward business people.

Housing issues have deep psychological roots. The fiber of the good life in this country appears to weigh heavily on access to shelter. We must give consumers the tools with which to manage their own affairs at a satisfactory level. Even though there are many issues yet to address, House Bill 1 has taken an equitable stance on at least 4 of these and I urge your serious consideration of this proposed legislation.

Thank you.

ALASKA LANDLORD-TENANT LAW



COOPERATIVE EXTENSION SERVICE
University of Alaska and USDA Cooperating

Revised August 1980

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INTRODUCTION

In 1974, the Alaska Legislature passed the Uniform Residential Landlord and Tenant Act (A.S. 34.03.010-.380). The purpose of the Act was to simplify, clarify and modernize Alaskan laws relating to the rental of dwellings. It was also intended to encourage both landlords and tenants to maintain and improve the quality of housing.

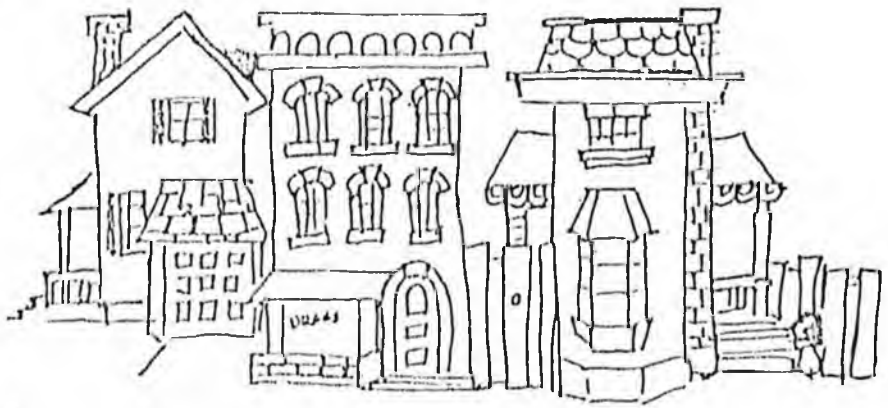
While the law does not cover every problem a landlord or tenant may have, it was written to protect the rights of both parties.

In addition to the Uniform Residential Landlord and Tenant Act, other laws which have application to the rental of dwellings include:

1. Alaska Statute 09.45.060-.160
   Procedure for Recovering Possession
2. Alaska Statute 34.06.010-.060
   Emergency Residential Rent Regulation and Control

This booklet was prepared directly from A.S. 34.03.010-.380. Where appropriate, we have cited the actual portion of the law that pertains so that if you need to go to court, you can either use this booklet or can refer directly back to the law. The reference will be the letters "A.S." (short for Alaska Statute) followed by some numbers (these are the title, chapter and article numbers of the law respectively), for example: (A.S. 34.03.330).

You can get a copy of the actual law at your nearest courthouse, public library or magistrate's office.



who is covered

A dwelling, in this law, is a structure or part of a structure used as a home, residence or sleeping place by one or more persons, including the rental of mobile home space.

If you rent a house, apartment, mobile home, mobile home space, condominium, townhouse or duplex, this law applies to you!

the law **does not** cover:

1. residency in an institution (school dorm, jail, hospital, nursing home, etc.);
2. hotels, motels and other transient housing;
3. condominiums occupied by the owner;
4. occupancy under a contract of sale;
5. occupancy of a dwelling owned by a fraternal or social organization of which you are a member;
6. live-in employment (apartment managers, housekeepers, etc.),
7. occupancy when the premises are used primarily for agricultural purposes.

terminology

In this booklet, several terms are used that mean the same thing.

Landlord means the owner or manager or rental agent for the dwelling.

Dwelling, unit, property and premises means the rental unit, whether it is a home, apartment, mobile home, etc.

Tenant means any of the people who rent a dwelling.

Other technical definitions may be found in A.S. 34.03.360—Definitions.

written notices

Putting things in writing does not mean the landlord and tenant are enemies or do not trust each other. It is simply a good way to do business. Oral agreements are legal; however, under the law, a written notice or agreement may be your only protection if something goes wrong. Some people hesitate to put agreements in writing because they don't know what to say. There are examples of various notices in the back of this booklet that may help.

Here are some things that should definitely be in writing:

1. receipts for payments of any kind;
2. promises to fix things;
3. rental agreements;
4. eviction or moving notices;
5. notices of repairs needed;
6. details of what needs to be done to get back a deposit.

It cannot be emphasized strongly enough how important this is: GET IT IN WRITING!



BEFORE YOU MOVE IN

rental agreements

Rental agreements may be either written or oral, but written is best. If any disagreement occurs later, both tenants and landlords will have evidence to back their claims.

If a tenant signs a rental agreement, moves in and begins paying rent, the agreement is still legal even if the landlord didn't sign the agreement.

If the landlord shows the tenant a rental agreement to which the tenant agrees, moves in and begins paying rent, the agreement is still legal even if the tenant did not sign it. It is critical that tenants and landlords review and discuss any rental agreements and rules before anyone moves in or money changes hands.

A lease is a rental agreement that tells how long the tenant will stay (usually four, six or twelve months). If there is a lease, the landlord cannot raise the rent or evict the tenant unless promises in the lease are broken. If there is a lease but the tenant must move, the tenant is still responsible for the rent for the rest of the lease period, unless the dwelling can be re-rented.

Here are some things which should appear in a rental agreement:

1. name and address of the owner and his/her manager or agent as well as the tenant's name and address;
2. the amount of rent, when it is due, where and how it is to be paid;
3. if this is a month-to-month agreement or lease with time limits;
4. when the rent will be considered overdue and what penalty will be levied;
5. what is included in the rent (heat, lights, water, etc.) and what is provided (driveway, garage, furnishings, kitchen appliances, snow removal, storage, laundry, etc.);
6. total number of full-time occupants and pets allowed;
7. a list of prohibited equipment (snowmobiles, motorcycles, musical equipment, etc.);
8. the amount and type of deposit (cleaning, security, pets, etc.) and what has to be done to get it back;
9. a list of landlord and tenant repair and maintenance duties;

Rental agreements cannot:

1. force a tenant to waive any legal rights,
2. excuse the landlord from any legal responsibilities,
3. let the landlord sue the tenant without notice,
4. require the tenant to pay the landlord's attorney fees should you go to court;
5. allow the landlord to take a tenant's personal belongings (A.S. 34.03.040).

DO NOT SIGN A RENTAL AGREEMENT THAT HAS ILLEGAL WORDING.

If the rental agreement contains any of the things listed below, they should be removed before signing:

1. agreeing to let the landlord come into the dwelling whenever he/she wants;
2. agreeing to immediate eviction for nonpayment of rent;
3. agreeing that the tenant will make all repairs;
4. excusing the landlord from liability in case of accidents due to his/her neglect;
5. giving up rights to the deposit.

change your mind?

Once an agreement to rent a place has been made, and all or part of the deposit and rent has been paid and then a tenant doesn't move in, he/she may not be able to have all his/her money returned. If this happens on a month-to-month agreement (written or oral), the tenant may have to pay for one month's rent or rent on a day-to-day basis until someone else rents the place, whichever is less. If a lease was signed, the tenant may owe rent until the place is re-rented or the lease period ends, whichever is less.

EXCEPTION: If the landlord lied about the place or deceived the tenant by not telling about important problems (for instance, no heat, the building is condemned, etc.) the tenant should get all the money back. In addition, the tenant could sue for fraud. If this situation comes up, see a lawyer.

illegal discrimination

It is illegal for landlords to refuse to rent to someone because of sex, age, race, religion, national origin, color, marital status, pregnancy or changes in marital status, unless the housing is specially designated for "singles only" in advance.

It is unlikely that a landlord will openly refuse to rent to someone for an illegal reason. There are some indications that a landlord may be practicing discrimination in renting when:

- the apartment the tenant called about is "suddenly" taken when the landlord sees the tenant.
- a place the tenant was told is "rented" remains vacant.
- the rent or deposit is much higher than advertised or charged for similar units.
- rules will be different for one tenant than for others in the same apartment house or court. (For example, others have pets, but you cannot. A landlord may decide to allow no more pets, but he/she must stick to the new rules as far as new tenants are concerned.)
- the tenant is not referred to a listing in a real estate office that fits his/her needs.
- a house or apartment in the tenant's area is rented with the intention of forcing others to leave (block-busting).
- an advertisement indicates a preference based upon race, color, religion, sex, age, marital status or national origin.

Everyone should have a free choice about where to live, and there are legal methods of fighting discriminatory practices. If you feel you have been discriminated against and want to do something about it, you can complain to the State Human Rights Commission. The Commission's investigation costs you nothing.

For more help on illegal discrimination, contact the Human Rights Commission in your town or:

State Human Rights Commission
204 East 5th
Anchorage, Alaska 99501
phone: 276-7474

disclosure

The law says that someone must be responsible for such things as decisions about maintenance, repairs, collecting rent and receiving notices from tenants or from the court. It is a requirement that when a tenant moves in, he/she must be told in writing the name and address of the owner (or who the owner wants his/her agent to be). This information must be kept up-to-date.

If this information is not provided, whoever made the rental agreement or receives the rent becomes the legally responsible person. Then, when the tenant is required to give a written notice or wants to sue, he/she should:

1. contact the owner or his/her agent, or
2. if that information was never officially given to the tenant, contact the person who made the original agreement or takes the rent. (A.S. 34.03.080)

deposits

Deposits are often collected for pets, children, cleaning or security before a tenant moves in. Sometimes the tenant will be asked to pay the last month's rent, too. The total amount collected for all deposits and pre-paid rent, except the first month's rent, cannot exceed two month's rent. (A.S. 34.03.070)

Deposits and pre-paid rent along with first month's rent can make total move-in costs high. Here are some examples of how these move-in costs might be set:

Legal Examples		Illegal Examples	
#1:	$ 375 first month's rent	#1:	$ 375 first month's rent
	$ 375 last month's rent		$ 375 last month's rent
	$ 175 security deposit		$ 400 security deposit
	$1125 total to move in		$1150 total to move in
#2:	$ 325 first month's rent	#2:	$ 325 first month's rent
	$ 150 cleaning deposit		$ 300 cleaning deposit
	$ 175 security deposit		$ 200 security deposit
	$ 325 last month's rent		$ 325 last month's rent
	$ 975 total to move in		$1150 total to move in

The deposit and any pre-paid rent must be deposited in a trust account in a bank, savings and loan association or with a licensed escrow agent. Exceptions are made for rural Alaska, if it is impractical to bank the money. When the deposit is collected, be sure to get a receipt. Also, it is a good idea to have the landlord write on the receipt the amount paid for each type of deposit and what has to be done to get the deposit back. (Always get and keep records for any money paid.)

If the tenant is renting a unit and the building is sold, there is often confusion as to which person, the old or new landlord, is responsible for the deposit and pre-paid rent money. The original landlord who accepted the money is the person responsible for returning the money to the tenant UNLESS the new owner receives the money from the old landlord and agrees to the responsibility of taking care of it.

When a tenant finds out the building is being sold, he/she should find out whether the old or new landlord will hold the deposit money. If the old landlord keeps the deposit, the tenant should get in writing the name of the bank where the deposit is kept and the new address of the old landlord.

inspections

While the law does not specify that an inspection must be done, it is a good idea for the landlord and tenant to inspect the dwelling together before anyone moves in. Make a list of items needing repair and the date the work should be completed (10 days is standard). Make another list of damage that will not be changed or repaired. Both the landlord and the tenant should sign and date these lists. Each of you should keep a copy. These lists will be handy when the tenant is ready to move out.



WHILE RENTING

paying rent/rent increases

The landlord is not required to ask tenants each month for their rent before they are "required" to pay it. If a time and place for payment of rent was not agreed upon when the tenant moved in, it is assumed that the rent will be collected at the dwelling.

If the tenant rents monthly, the rent is due every 30 days, unless otherwise agreed. So, if the tenant moves in on the 8th, the rent is due on or before the 8th of every month.

If there is a signed lease, rent may not be increased during the lease period. Other rent increases may be levied as the landlord sees fit; however, the law is unclear regarding the notice period which the landlord is required to give.

The general interpretation is that a rent increase is either:

1. a termination by the landlord of the tenancy at the old rental rate and an offer to renew it at a higher rate or
2. a modification of a rule or regulation.

In either case, tenants should be given a written notice 30 days before the next rental due date. If the tenant does not agree with the rent increase or cannot pay, he/she may give notice to move. Since the law is not clear, landlords and tenants should seek legal advice if they are unsure about a proposed rent increase. (A.S. 34.03.290b and A.S. 34.03.130b)

rules and regulations

Almost every landlord has rules and regulations. Often these are not mentioned until after a tenant moves in or until the rule

has been broken. To avoid problems, the law requires the landlord to show his/her rules and regulations to the tenant before the tenant commits himself to a rental agreement (oral or written). The tenant may discover that he/she does not agree with them and decide not to move in. The rules and regulations must be reasonable and specific, or under the law, the landlord will not be able to enforce them.

Remember that once the tenant has seen the rules and moved in, he/she is agreeing to live by these rules. A copy must be posted by the landlord someplace at the dwelling where it can be easily seen.

Rules must apply to all tenants equally and fairly. Rules and regulations cannot be changed without first giving tenants reasonable notice. If tenants do not agree to the change, and it changes the original rental agreement a great deal, they may move after giving at least 30 days notice or they may refuse to accept the rule. Landlords may evict tenants who refuse to abide by a reasonable rule change. If the change does not apply to all tenants in the building equally, an eviction based on a tenant's breaking of a rule may be illegal. (A.S. 34.03.130)

subleasing

When a lease is signed, the tenant is promising to stay for a certain length of time (usually four, six or twelve months). The tenant is telling the landlord that each and every month, whether the tenant still lives in the apartment or not, he/she will be responsible for paying the rent. Unless the landlord signs a paper saying it's okay with him/her for someone else to move in if the tenant moves out, the tenant cannot just have someone else "take over" the place.

There are usually only two ways to get out of a lease:

1. If the landlord breaks his/her part of the bargain (what's written in the lease), the tenant can move after giving 30 days written notice.
2. Get the landlord to agree to let the tenant sublease the place. Under the law the landlord has a right to ask for certain information about the new tenants. The landlord can reject the new tenants only for certain reasons, and cannot unreasonably prevent subleasing.

The information the landlord can ask for IN WRITING about the new tenant includes:

1. name, age and present address;
2. occupation, present employment and name and address of employer;
3. marital status;
4. how many people will live in the apartment;
5. two credit references;
6. names and addresses of all landlords of this person for the last three years.

Once this information has been given to the landlord, he/she has 14 days to answer the request. No answer within 14 days is considered the same as consent, so go ahead and sublease. If the answer is "no", the landlord must give written reasons for the decision.

The only legal reasons for refusing to allow a sublease are:

1. bad credit record;
2. too many people;
3. too many children;
4. unwillingness of new tenant to accept rental agreement;
5. pets not acceptable;
6. proposed business activity;
7. bad report from former landlord.

If the landlord says "no" to the suggested new tenant, but doesn't give reasons in the list of acceptable rejection reasons, the law says the old tenant can go ahead and sublease or move out; however, to move out without subleasing, a thirty day WRITTEN notice must be given to the landlord. (A.S. 34.03.070)

privacy

A common problem landlords and tenants have is that of the tenant's right to privacy. Many landlords feel they can come and go from their property whenever they please. Some tenants feel they never have to let a landlord come in.

To clear up the confusion, the law says a landlord must give a tenant 24 hours notice that he/she would like to come for the purpose of making repairs, maintenance, an inspection or showing the place. The landlord may enter only with the tenant's consent and only at reasonable times.

TWO EXCEPTIONS: No such notice is required if it is not possible to contact the tenant by ordinary means within 24 hours, or if there is an emergency (smoke, water, explosion, etc.).

Landlords cannot abuse their right to request entry or harass tenants, and tenants cannot unreasonably keep a landlord from entering.

If a tenant has a nosey landlord who believes he/she can come and go as he/she pleases, it might be a good idea to get a copy of the law to show him/her the section called ACCESS (34.03.140). If the landlord comes in and will not leave, call the police.

When a landlord does abuse his/her right to enter (by coming in without the tenant's permission, or when the tenant is gone or repeatedly without need), the tenant can ask a court to demand that the landlord stop (called an injunction). The tenant may also sue for actual damages or one month's rent, whichever is greater, court costs and attorney fees. If the tenant wishes to move because the landlord has abused the access privilege, a 10-day written notice is required.

If the tenant unreasonably refuses to allow the landlord in, the landlord can get an injunction. The landlord may also sue for actual damages or one month's rent, whichever is greater, or evict the tenant with a 10-day written notice.

absence/abandonment

Tenants must tell their landlord every time they plan to be gone for more than seven days. If the tenant plans to be gone only 2 or 3 days, then finds that for whatever reason he/she will actually be gone more than a week, they must notify the landlord as soon as possible.

This is to help protect the property from pipes freezing up, etc. While the tenant is gone, the landlord may go into the place only if there is an emergency or with 24 hours notice.

A landlord may assume the dwelling has been abandoned when:

1. the tenant is behind in rent, and
2. the tenant has been gone for more than 7 straight days and
3. the tenant did not notify the landlord that he/she would be gone.

The landlord may then enter the dwelling, store the tenant's belongings and re-rent the place. He must attempt to send the tenant a notice telling where the belongings are being kept and asking the tenant to remove his/her property within 15 days. The notice must also tell whether the landlord is going to have a public sale to get rid of the belongings or is going to throw or give them away, if

they are not picked up within 15 days. A tenant's belongings cannot be thrown or given away unless they can be considered to have no value or are food. (A.S. 34.03.230 and 34.03.260)

fire/casualty damage:

If the dwelling is damaged by a fire or other casualty (earthquake, flood, etc.), depending on the amount of damage, there are a couple of things the tenant can do.

1. Partial damage: When only a part of the dwelling is damaged and it is lawful for the tenant to stay (the place isn't condemned), move out of the damaged part. The rent can be reduced to an amount which reflects the fair value of the undamaged part of the dwelling.
2. Total destruction: If the tenant can no longer live in the place, he/she can move out, notify the landlord and stop paying rent. The rental agreement and responsibility to pay rent ends when the tenant moves.

After the tenant moves, the landlord must return any deposits and/or pre-paid rent to the tenant. Rent paid for the time the tenant didn't live in the dwelling must be returned (counted from the day of the casualty and including the day of the casualty) to the tenant. (A.S. 34.03.200)

housing codes

The primary objective of codes is the protection of the health and safety of the people who live in houses and apartments. A minimum standard of maintenance is set, making the landlord (not his tenants) responsible for keeping rental property in decent shape. (The section of this booklet called LANDLORD DUTIES explains what the landlord is expected to repair and maintain.)

The law protects tenants who use their right to report code violations. If they call to complain and ask for an inspection, the landlord cannot take revenge by evicting or harassing the tenant. Alaska has a statewide fire code but does not have a statewide housing code.

The following places do have local housing codes. Report substandard conditions to:

Anchorage - New Construction – Building Safety Division (264-6533)
" - Existing Housing – Health & Environmental Protection (264-4666)

Fairbanks - Fairbanks Building Official (452-1881)
Juneau - Juneau-Douglas Borough Housing Inspector (586-3300)
Ketchikan - City Building Inspector (225-3111)
Kodiak - City Building Inspector (486-5731)

condemned

Buildings inspected and found to be very unsafe may be condemned. The housing inspector will tell the landlord that he/she must repair the problems or he/she will be taken to court. If the problems are so serious that the inspector feels the building is beyond repair, the inspector will order that it be torn down.

The tenant may come home one day and find a sign posted on the building saying that the place is unsafe for anyone to live there. Tenants should immediately find out when the inspector and landlord expect all the tenants to move. They should also see an attorney before paying any more rent.

landlord duties

These are the things tenants can expect their landlords to do:

1. make all repairs to keep the dwelling in a livable condition;
2. keep all common areas (stairs, halls, yard, garbage area, etc.) clean and safe;
3. keep in safe and working condition all electrical, plumbing, toilet ventilating (fans, windows), air conditioning, kitchen and other appliances or facilities supplied by him/her;
4. provide garbage cans and arrange for removal service;
5. supply running water and reasonable amounts of hot water and heat at all times, unless there is a severe energy shortage or the furnace or hot water heater is in the complete control of the tenant (as in a house);
6. if requested by the tenant, supply locks and keys. If the lock can be easily broken, it does not provide enough protection. A tenant can demand that a proper lock be put on the door.

This is a check list of the main things the landlord should repair and maintain:

- doors, windows, roof, floors, walls, and ceilings that leak or have holes;
- plumbing fixtures (must work, not leak and provide a reasonable amount of running, hot and cold water at a reasonable water pressure level);
- a working and safe stove and oven;
- a reliable heating system which provides heat to all rooms in a reasonable amount;
- a safe electrical system (no loose or exposed wires, sockets that do not spark and enough power so the system does not blow fuses when used normally);
- windows (or fans) that provide fresh air when wanted;
- enough garbage cans to provide an adequate and safe trash removal service;
- extermination service if roaches, rats, mice or other pests infest the building, apartment or property;
- proper maintenance of vacuum cleaners, washing machines, dish washers, etc. supplied by the landlord (when not abused or broken by the tenant).

If the dwelling is in an isolated area where public sewer or water service is not available, the landlord does not have to provide those services; however, if the landlord privately provides these services at the beginning of the rental agreement, he/she must maintain the services. If there is a serious problem with something mentioned above that is not the tenant's fault, the law provides remedies for the tenant. The landlord must be given a reasonable chance to fix the problem first, but if he/she won't fix it, here is what the tenant can do:

1. MOVE. The tenant gives the landlord a written notice describing the problem and saying that if the problem is not fixed within 10 days, he/she will move within 20 days. If the problem is fixed within 10 days, but the tenant still wants to move, a regular 30-day notice is required.

2. EMERGENCY REPAIR AND DEDUCT. If heat, water, sewer or other essential service breaks down, the tenant may get the problem fixed and deduct the actual and reasonable expenses from the next month's rent. The tenant must give the landlord a written notice that this is what he/she plans to do, and if the problem is major, the tenant must provide the landlord with a copy of the estimated repair costs. However, once written notice is given, the tenant may immediately go ahead with repairs. If the cost is very great, it is advisable to contact a lawyer before proceeding with repairs. If the problem cannot be fixed right away and it

makes the dwelling unlivable, the tenant can give the landlord written notice that he/she is moving into substitute housing. The tenant is excused from paying rent until the problem is cured and may charge the landlord for the cost in excess of rent of staying in a hotel or other substitute housing until the problem is fixed. (A.S. 34.03.180)

3. SUE FOR DAMAGES. If the tenant or his family have suffered because the landlord failed to fix something, the tenant can sue. If the total amount is less than $2,000, the tenant may sue in the state small claim court. For larger claims, the tenant should see a lawyer.

4. WITHHOLD RENT. In some cases where the problem is really serious, it may reduce the value of the dwelling. If this happens, tenants may give written notice to their landlord that they refuse to pay a part of their rent until the problem is fixed. However, landlords and tenants may not agree on what is a serious problem, so it is wise to see a lawyer before using this remedy.

If the tenant notified the landlord in writing of a problem, and the landlord fixed it within the time allowed, but through the landlord's negligence, virtually the same thing happens again within 6 months, the tenant may terminate the rental agreement with a 10-day written notice. The notice must specify the problem and the date of termination.

handyman agreements

In the renting of a house or duplex, the landlord and tenant may agree IN WRITING that the tenant will be responsible for (4), (5) and (6) of the LANDLORD DUTIES. Also, if it is done in good faith, the landlord and tenant of any dwelling may agree that the tenant will do specific repairs, remodeling or maintenance jobs in exchange for payment or reduction of rent, etc. The landlord cannot force a tenant to agree to this kind of arrangement to get out of his/her obligations as a landlord. It must be



made IN WRITING, signed by both parties and cannot be on the same paper as the rental agreement. Also, this agreement cannot be made if it will reduce or endanger the services to the other tenants. (A.S. 34.03.100)

tenant duties

These are the duties tenants must perform to keep their part of the rental bargain:

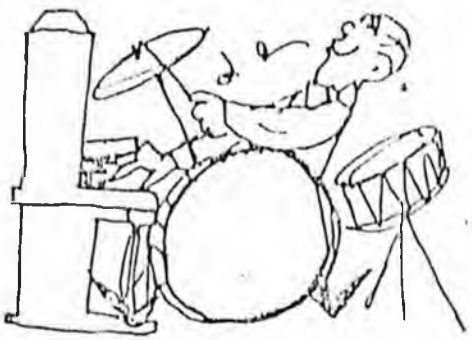
1. pay rent on time;
2. keep the place clean;
3. use the facilities properly (sinks, toilet, kitchen appliances, etc.);
4. do not disturb the neighbors;
5. do what is required by the lease; rental agreement or landlord's posted rules;
6. replace or fix anything damaged or broken because of an accident or carelessness;
7. do not destroy, damage or deface any part of the property.

If tenants do not uphold their end of the bargain, the landlord may be able to evict them. Eviction notices must be in writing and be specific about the problem in question. If the tenants were notified of a problem and remedied the problem within the time allowed, but the problem occurs again within 6 months, the landlord may evict the tenant using a 10-day written notice. The notice must specify the problem and the date of termination.

eviction

Landlords may evict tenants:

1. for failure to pay rent when it is due;
2. when the tenant has broken an important part of the rental agreement.



Many people think that tenants cannot be evicted in the winter in Alaska or if they have small children. This is not true.

A 10-day written notice is required when a landlord is evicting because the tenant is behind in his/her rent. If the rent is paid before the 10 days are up, the tenant may stay. The notice must tell tenants they have the choice of paying or moving. Ten days notice is also required when the landlord is evicting because the tenant has refused reasonable requests to enter the dwelling or has broken the rental agreement more than once in a 6-month period.

A 20-day written notice is required when the landlord is evicting because the tenant has broken an important part of the rental agreement, such as using the place illegally, etc. If the tenant fails to maintain the rental unit with the result that the health and safety of others are endangered, the landlord may deliver a written notice to correct the problem within 10 days of the receipt of the notice, or the tenant will have to move within 20 days. If the problem is corrected, the tenant may stay.

A 30-day written notice is required when the landlord wishes to evict for general reasons. This notice must be delivered 30 days before the next rental due date.

Eviction notices must be in writing, and the landlord cannot harass the tenant by:

- shutting off utilities
- changing the locks
- taking the tenant's belongings

If the tenant refuses to move at the end of the notice period (10, 20 or 30 days) the landlord must go to court to evict. The court calls most eviction suits "Forcible Entry and Detainer" (F.E.D.) cases. Here is how F.E.D. works:

The landlord files his/her claim with the court. The tenant will receive a complaint and summons to appear in court and give his/her side of the story. The trial will be scheduled 2-4 days after the summons is served. Tenants must act quickly if they don't want to be evicted. See a lawyer.

Tenants may have legal defenses or claims against the landlord which could prevent an eviction. Again, see a lawyer. If the tenant loses at the trial, the judge will sign an order telling the State Troopers to remove the tenant from the dwelling. The tenant may also have to pay the landlord's attorney fees, but if the tenant prevails, the landlord may have to pay the tenant's attorney fees. F.E.D. cases are usually handled by district court. For more information on evictions, read A.S. 09.45.060-.160, Forcible Entry and

Detainer. Information on preparing an eviction suit may be found in the Alaska Rules of Court, volume 2 - Civil Rules (read rules 1-5, 10, 76 and 85). The Rules of Court are available at the Alaska Law Library or your local magistrate's office.

retaliation

IF THE TENANT

1. complains to the landlord about repairs or failing to make repairs; OR
2. uses his/her rights under the Alaska Landlord-Tenant Law; OR
3. joins a tenant union or organization, OR
4. complains to a government agency about code violations or rent eviction controls:

THEN, THE LANDLORD CANNOT

1. raise the rent; OR
2. decrease services (such as shutting off utilities, etc.), OR
3. evict the tenant.

If the tenants feel illegal retaliation has occurred against them, they can move out or stay and sue for as much as 1½ times their actual damages.

An eviction is not considered illegal retaliation, if it is done because:

- the tenant is behind in the rent;
- the landlord must make repairs to meet code requirements or big changes that require a vacant dwelling;
- the tenant is using the place for illegal purposes;
- the landlord wants to use the place for something other than a rental dwelling for at least 6 months, or for personal purposes; .
- the property is being sold.

Rent increases are not considered illegal retaliation if the landlord can show:

- a sizeable increase in taxes or cost of maintaining the property (not including the cost of repairing something because of a tenant's complaint);
- that similar dwellings are being rented for a higher rate, and in fact, the landlord has been undercharging;
- that the cost of major improvements made to the property are being passed on to all tenants fairly and equally. (A.S. 34.03.310)



MOVING OUT

proper notice

When a tenant wants to move, the law requires that he/she give a written notice 30 days before the next rental due date. For example, if rent is due on the 8th of each month and the tenant decides on January 20 that he/she wants to move, the soonest he/she could get out of the obligation would be March 8, providing the tenant gives a written notice on or before February 8.

Tenants not giving proper written notice will be held responsible for rent up to that 30-day period or until the place is re-rented, whichever is less.

This does not include tenants who are moving because of serious problems which the landlord has not fixed (see the section under LANDLORD DUTIES).

cleaning and damages

Tenants should clean the dwelling completely before moving, including the refrigerator, bathtub, toilet and oven. Other cleaning responsibilities may have been spelled out in the rental agreement, lease or landlord's posted rules.

When the place has been cleaned, the tenant and landlord should inspect the place together, using the damage list prepared when the tenant first moved in as a guide. Tenants cannot be charged for ordinary wear and tear. But, since landlords and tenants sometimes disagree on what "ordinary wear and tear" is, here are some guidelines:

1. A family with children or pets will wear things out faster —this type of wear is the landlord's responsibility.
2. If something cannot be cleaned because of the landlord's act or negligence, it is the landlord's responsibility (non-washable paint on the walls, water leaks staining the walls, etc.).
3. Shampooing carpets and painting walls are usually considered landlord responsibilities, as these items are bound to get dirty through normal useage. Holes in the carpet or writing on the walls, however, are not normal wear and tear and are the tenant's responsibility to repair.

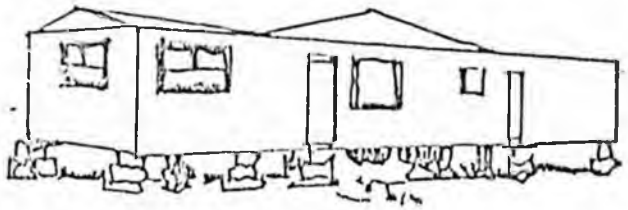
Damages caused by the tenant are the tenant's responsibility, even if they were caused by an accident. The damage deposit can be kept by the landlord in the amount needed to make repairs. If the tenant has purposely destroyed the landlord's property (throwing a rock through the window, writing on the walls, smashing furniture, etc.) the tenant may be guilty of a misdemeanor and face up to one year in prison, a $500 fine or both and will still have to pay for the damage.

deposit return

The deposit must be returned to the tenant within 14 days after he/she moves, or he/she must be sent a written notice from the landlord telling why any or all of the deposit is being kept. If the tenant feels deposit money is being unfairly kept, he/she can sue for up to twice the amount wrongfully kept.

Deposits may be kept only if the tenant:

- causes damage;
- owes back rent;
- doesn't leave the place as clean as it was when he/she moved in (other than ordinary wear and tear that cannot be removed by cleaning);
- does not comply with previously agreed upon requirements of deposit return as specified in the lease, rental agreement or landlord's posted rules. (A.S. 34.03.070b)



SPECIAL RULES FOR MOBILE HOMES

rental agreements

Rental agreements between mobile home park operators and mobile home park tenants may not:

1. prohibit the tenant from selling his mobile home (unless the mobile home is in violation of laws or ordinances, the proposed buyer doesn't agree with the terms of the existing rental agreement or the buyer does not have sufficient financial responsibility, and the park operator notifies the tenant of his/her objection in writing 30 days in advance);
2. require the tenant to provide permanent improvements to park property (the tenant may be required to maintain existing conditions);
3. require the tenant or prospective buyer to pay a fee to sell or transfer the mobile home (unless services were actually performed by the park operator to assist the sale or transfer, and the tenant was notified in writing of these charges before he/she moved into the park), or
4. require a fee to set up a mobile home in the park or to move an existing home out of the park (unless services were actually performed by the park, and the tenant was notified in writing of the charges before he/she moved into the park).

capital improvements

Mobile home park operators must give prospective tenants a list of all capital improvements that will be required (skirting, utility hookups, tie-downs, etc.) before the tenant moves in. Even though park operators may specify the type of equipment, tenants cannot be required to buy their equipment from the park operator.

eviction

Mobile home park tenants may be evicted only if:

1. they are behind in the space rent; or
2. they are violating a law or ordinance, and the violation endangers the health, safety or welfare of others in the park; or
3. the tenant has substantially violated a reasonable park rule as set out in the initial rental agreement or added later for all tenants, or
4. there is to be a change in the use of the land on which the park is located. When there is to be a change in the use of the mobile home park land, landlords or park operators must give tenants a 90-day written notice, unless a longer period was specified in a previously signed lease.

For all other evictions, the same notices are required as for other types of tenants. (A.S. 34.03.040c, 34.03.080d, 34.03.130c and 34.03.225)

RENT CONTROL

During the pipeline boom of the early 1970's, several Alaskan cities experienced a severe housing shortage, and the legislature passed an emergency rent control law. (A.S. 34.06.010-.060)

When emergency rent control is in force, the rules regarding rent increases and evictions change; however, the law expired in 1977, and if an emergency situation occurred again, a new law would have to be passed by the legislature.

THERE IS NO RENT CONTROL IN ALASKA AT THE CURRENT TIME.

COMMON RENTAL PROBLEMS

Problem	Remedy
1. No written notice	1. Written notices are required in many sections of the law; re-read this bulletin carefully to see when to use a written notice.
2. Landlord tells a tenant to move immediately or cuts off essential services without warning	2. Evictions are controlled by specific sections of the law. Tenants do not have to move if these rules are not followed and may sue for 1½ times actual damages.
3. Tenant refuses to move after receiving an eviction notice	3. The landlord should go to court for an E.E.D. order; the State Troopers will carry out the order. In addition, the landlord may sue for 1½ times the actual damages. See the section—EVICTIONS.
4. Deposit is not returned	4. Tenants may sue for twice the amount kept; re-read the section —DEPOSIT RETURN.
5. Tenant is habitually late with rent or repeatedly breaks rules	5. Late rent and other problems repeated within a 6-month period may be grounds for eviction; re-read section on EVICTIONS or see a lawyer.



SETTLING DISPUTES

When landlords and tenants disagree, sometimes tempers flare, and things may be said and/or done which are wholly outside the law. Sometimes the disagreement becomes just plain petty and small. It will only complicate matters if either party takes the issue to court.

If there is disagreement on any issue, remember that the court looks favorably on "good faith" action; that is, action taken in an honest, forthright manner. Try to remain calm. Gather your facts and PUT THEM IN WRITING. Be sure to pay attention to sections of the law that require written notices and that specify the number of days allowed for landlords or tenants to remedy disagreeable situations. Present your problem to the other party in writing, clearly stating what you want to change and what you will do if the situation doesn't change. The forms in the back of this booklet may help.

Generally speaking, the rental of dwellings is a business, and as in any other business, both parties should conduct themselves in a fair, honest manner. There are not many agencies that will mediate landlord/tenant disputes, and problems are frequently not serious enough to require a lawyer or go to court. Most landlord/tenant problems could be settled by both parties acting "in good faith".

If serions problems do arise, it is always advisable to see a lawyer. But first, give the other person a chance by trying to work it out togethrer.

WHERE TO GO FOR HELP



Both landlords and tenants can get help from the following agencies:

1. For copies of this publication and general assistance, contact the Cooperative Extension Service.

Anchorage	277-1488
Bethel	543-2503
Fairbanks	456-6885
Homer	255-8176
Juneau	586-7103
Ketchikan	225-3290
Nome	443-2320
Palmer	745-3360
Soldotna	262-5824

2. To file a complaint on false advertising, chronic misuse of deposit money or fraud, see the Consumer Protection Section, Alaska Department of Law.

Anchorage	420 L Street, Suite 100 Anchorage 99501 279-0428
Fairbanks	604 Barnette, Room 228 Fairbanks 99701 456-8588
Juneau	Pouch K, State Capital Juneau 99811 465-3692
Ketchikan	415 Main Street, Room 304 Ketchikan 99901 225-6120

3. Persons with low incomes may call Alaska Legal Services for attorney help. If your landlord tries to evict you, be sure you mention this when you call.

Anchorage	272-9431
Barrow	852-2300
Bethel	543-2237
Copper Center	822-3497
Dillingham	842-5653
Fairbanks	456-5401
Juneau	586-6425
Ketchikan	225-6420
Kodiak	486-4178
Kotzebue	442-3398
Nome	443-2951

4. If you need a lawyer but don't qualify for Alaska Legal Services, see the low-cost legal clinics in your town or call the statewide Lawyer Referral Service at 272-0352 in Anchorage. They may be able to refer you to a lawyer in your town.

5. For complaints against state government officials, contact the State Ombudsman Office.

Anchorage	840 K Street Anchorage 99501 276-4011
Fairbanks	613 Cushman Fairbanks 99701 452-4001
Juneau	525 Village Street Juneau 99811 465-4970

6. For complaints against Municipality of Anchorage employees, contact the Municipal Ombudsman Office at 264-4461.

7. To file a claim for damages of $2,000 or less, see the Alaska Court System and ask for their publication, "Alaska Small Claim Handbook".

SAMPLE FORMS

The following notices were prepared as samples of what is necessary. These samples may not apply in all situations, but could be helpful.

NOTICE OF EVICTION FOR NON-PAYMENT OF RENT

_____
(Date)

TO: _____
(Tenant)

_____

_____
(Address)

You are notified that you owe rent in the amount of $_____. If you do not pay this rent within TEN DAYS of the day you receive this notice, your tenancy is terminated and you must move. You must pay your rent in cash, money order or certified check.

If you have not paid the rent or moved within TEN DAYS, a lawsuit will be filed to evict you. If you pay your rent on or before the TEN DAY period, you may stay.

Signed,

_____
(Landlord)

Receipt:

I received this notice on the _____ day of _____ 19____ at _____ am/pm.

_____
(Tenant)

KEEP A COPY OF THIS NOTICE

NOTICE OF TERMINATION OF TENANCY (BY TENANT)

_____
(Date)

TO: _____
(Landlord)

_____

_____
(Address)

You are notified that I am terminating this tenancy effective on the rent due date which occurs at least 30 days from the date you receive this notice. My rent is due on the _____ of each month, so I will be gone by the _____ day of _____, 19__.

Please send my security deposit of $_____, or an explanation of how it was used, to _____
(address)

within 14 days of the date I move.

Signed,

_____
(Tenant)

_____

_____
(Address)

Receipt:

I received this notice on the _____ day of _____ 19____ at _____ am/pm.

_____
(Landlord)

KEEP A COPY OF THIS NOTICE

NOTICE OF EVICTION FOR VIOLATION OF AGREEMENT AND/OR THE LAW

_____
(Date)

TO: _____
(Tenant)

_____

_____
(Address)

You are notified that you have seriously violated your agreement with me and/or your duties under the law. The violation (s) are set out specifically as follows: _____

_____

_____

_____

If you do not remedy the violation (s) listed above within TEN DAYS after the date you receive this notice, your tenancy will terminate in not less than TWENTY DAYS, and you must move. Failure to remedy the violation (s) listed above will mean you must leave by the _____ day of _____, 19____.

If you have not remedied the problem (s) and have not moved by the date listed above, a lawsuit will be filed to evict you. If you remedy the problem (s) within TEN DAYS, you may stay.

Signed,

_____
(Landlord)

Receipt:

I received this notice on the _____ day of _____

19____ at _____ am/pm.

_____
(Tenant)

KEEP A COPY OF THIS NOTICE

NOTICE OF DEFECTS IN ESSENTIAL SERVICES

_____
(Date)

TO: _____
(Landlord)

_____

_____
(Address)

You are notified that you are failing to provide (water/hot-water/heat/sewer service or other essential services) at the above address. The specific defect (s) is as follows: _____

_____

_____

_____

If you do not fix this defect WITHIN 24 HOURS, I have a right to 1) have it fixed myself and deduct the cost from my rent, 2) sue you for damages, or 3) move out and hold you responsible for my expenses in doing so.

Signed,

_____
(Tenant)

Receipt:

I received this notice on the _____ day of _____

19____ at _____ am/pm.

_____
(Landlord)

KEEP A COPY OF THIS NOTICE

NOTICE OF TERMINATION OF TENANCY BY LANDLORD

_____
(Date)

TO: _____
(Tenant)

_____

_____
(Address)

You are notified that your tenancy is terminated and that you must move from the address listed above on the rent due date which occurs at least 30 days from the date you receive this notice. Your rent is due on the _____ of each month, so you must be gone by the _____ day of _____ 19____.

The reason you are being evicted is as follows:

_____

_____

_____

_____

If you are not gone by that date, a lawsuit will be filed to evict you.

Signed,

_____

Receipt:

I received this notice on the _____ day of _____

19____ at _____ am/pm.

_____
(Tenant)

KEEP A COPY OF THIS NOTICE

STATE OF ALASKA
FISCAL NOTE

Revision Date , 1983

I. REQUEST

Bill/Resolution No.: CS SS HB 1 (JUD)
Title: "An Act Relating to Landlords & Tenants"
Sponsor: House Judiciary
Requestor: House Finance

II. FISCAL DETAIL

Agency Affected: Public Safety
Program Category Affected: Crime & ID
BRU, Program or Subprogram(s) Affected: Alaska State Troopers

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 83	FY 84	FY 85	FY 86	FY 87	FY 88
OPERATING						
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 COMMODITIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC						
TOTAL OPERATING		-0-	-0-	-0-	-0-	-0-
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER (Specify Source)						

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

III. SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

IV. ANALYSIS: Attach a separate page for any Analysis No fiscal impact anticipated

Prepared By: Paul A. Conger Phone: 465-4338
Division: Administrative Services Date: 3/21/83

Approved by Commissioner: [signature] Date: 3/21/83
Department: Public Safety

Distribution:
Original to Legislative Finance
Copy to Office of Management and Budget (for Legislature introduced bills)
Copy to Department (for Governor introduced bills)
Copy to Sponsor
Copy to Requestor (if different from Sponsor)

3/2/83

Committee Substitute for Sponsor Substitute for House Bill No. 1 (L&C)
"AN ACT RELATING TO LANDLORDS AND TENANTS" ABOOD TESTIMONY BEFORE
JUDICIARY COMMITTEE 2/25/83

The Alaska Statutes governing Landlords and tenants is not entirely clear in defining certain areas of concern to both the landlord and the tenant. Both the landlord and the tenant hold certain unalienable rights in the property they own as a landlord or rent as a tenant. With the 0% to 4% vacancy rate in most of Alaska, and because over 35% of the population in Alaska rent their dwellings, it is necessary to update the laws to answer the needs of the landlord and tenant. I introduced House Bill No. 1 to answer some of these needs. I feel that it is fair and equitable to both parties.

Referring to Section 1. of CSSSHB 1, the landlord's rights are more clearly defined in relation to termination of a "periodic tenancy" held by a tenant. As the law stands now, it refers only to a lease or agreement, (a predetermined period of time) or an "estate at will", (for which the tenant is at the mercy of the landlord, and has no say in how long the tenancy will last). A "periodic tenancy" refers to a month to month period of time. Unlike a lease or agreement, it can be indefinite, and a good majority of rental arrangements today are based on a periodic tenancy. By inserting this new paragraph, it assists the landlord in enforcing his rights, should any conflicts arise due to termination.

Section 2 of CSSSHB 1 was added by the Labor and Commerce Committee to further clarify AS 34.03.290 (c) relating to the 45 day notice. If the tenant fails to give notice of termination, then the landlord is entitled to an amount not to exceed one and one-half times the actual damages.

Section 3 provides for a 45 day notice. I feel that this is a more equitable time frame to both tenants and landlords. Due to the tight rental market in Alaska at the present time, it is quite difficult to find adequate housing, especially for those families with children or pets, not to mention the elderly and minorities. General termination, (30 days), on the part of the landlord in a time of a severe housing crunch does not always give the tenant sufficient time to find suitable housing. A 45 day notice would also be beneficial to the landlord, in as much as it gives him time to locate a new tenant, and gives him an adequate time frame to make necessary repairs and alterations before the new tenant moves in. Also, in the case of condo conversion, this gives the tenant sufficient notice to vacate or purchase their unit.

"Rental due date" refers to the date on the same day each month that rent is to be paid. The landlord may wish to give notice of termination to the tenant before the "rental due date", and replacing "rental due date" with the word "termination" date provides for either time frame. It does not restrict either party to the exact date the rent is due when giving a termination notice. The question arises, "What if the tenant

gives notice on, say May 17th?" This means that the termination date would be July 2nd. Therefore, the tenant would be obligated to pay the landlord for rent through May, all of June, (and two days in July, which would be prorated). The landlord would not lose any rental income even though the termination date falls after the "rental due date". By the time the 45 day period is up, the landlord has had adequate time to find a new tenant and the tenant has been given a more equitable amount of time to find a new dwelling.

The new clause in Section 4 provides for recovery of "actual damages", as well as one and one-half times the actual damages as compensation to the landlord. This deters the tenant from staying on past termination or the expiration of the rental agreement and in effect, is incentive to the tenant to vacate the premises.

An improper hold-over by a tenant has caused landlords financial difficulties. If a tenant continues to occupy a dwelling after his tenancy expires, he is causing the landlord loss of potential income needed to make mortgage payments, as well as the loss of time to make necessary repairs before renting the unit to the next party. Alaska law allows landlords to sue for damages, but the time, effort and money involved is not always feasible to pursue.

Section 5 was included in this bill to protect the tenant from landlords who abuse the right to access or evict the tenant for retaliatory reasons. The tenant has a right to his/her privacy, and the landlord must give "reasonable" notice to the tenant before entering the property. This new subsection also provides that the tenant may not be evicted because they have made a complaint, (for just causes), against the landlord, as long as they abide by the laws governing landlords and tenants. Sixty days is a sufficient amount of time to correct a problem or answer a complaint.

This bill is intented to update the present laws governing both the landlord and tenant. I feel that it provides both parties with fair and equal provisions to answer some of the overwhelming problems that have arisen over the past several years, due to the increase of the Alaskan population.

* * * *

A M E N D M E N T

#1

Offered in the HOUSE

By Abood

TO: CSSSHB 1(L&C)

Page 1, after line 7, insert:

"* Section 1. AS 09.45 is amended by adding a new section to read:

Sec. 09.45.085. ENFORCEMENT. A judgment for the restitution of real property rendered in an action for forcible entry or detention may be enforced by the plaintiff without further judicial action and the plaintiff may not be required to obtain a writ of assistance or other order to enforce the judgment."

Renumber the following sections accordingly.

#2

A M E N D M E N T

TO: CSSSHB 1 (L&C)

Page 1, after line 12 insert:

"* Sec. 2. AS 34.03 is amended by adding a new section to read:

Sec. 34.03.025. CHANGES IN TERMS AND CONDITIONS OF RENTAL AGREEMENTS. The landlord and tenant may change the terms and conditions of a rental agreement if the changes are not prohibited by law. Unless both the landlord and the tenant agree to a change in a rental agreement, the agreement remains in effect under its original terms and conditions, including provisions relating to rent and the rights and obligations of the parties, until the agreement is terminated under AS 34.03.290 or other law."

Renumber following sections accordingly.

2/24/83

A M E N D M E N T #3

Offered in the HOUSE By Abood

TO: CSSSHB 1(L&C)

Page 1, line 14:

Delete "and" and insert ","

Page 1, line 16:

After (b) insert ", and the failure to provide the notice is wilful or not in good faith"

Page 1, line 17:

After "damages." insert "Failure by the tenant to provide the notice required under AS 34.03.290(a) or (b) is presumed to be wilful and not in good faith."

CS FOR SPONSOR SUBSTITUTE FOR HOUSE BILL NO. 1 (L&C)

"An Act relating to landlords and tenants."

OFFERED TO JUDICIARY
COMMITTEE 3/14/83

We have reworked HB 1 to reflect some of the changes recommended in the Judiciary meeting of February 25th.

The Bill has been re-drafted to reflect the three amendments and the sections have been renumbered to correspond to the Amendments. Also, note Page 2, Line 15 of the re-draft "AS 34.20.020" should be "AS 34.03.020".

Please refer to the re-draft of HB 1:
(Amendment No. 1)
New Section 1 - AS 09.45.085 is amended by adding a new paragraph to read:

ENFORCEMENT. A judgement for the restitution of real property rendered in an action for forcible entry or detention may be enforced by the plaintiff without futher judicial action and the plaintiff may not be required to obtain a writ of assistance or other order to enforce the judgment.

This Amendment is offered to assist the plaintiff in settling his case. As it stands now, if a landlord (for example), wins his suit against the tenant who is holding over without the landlord's permission needs to first receive a judgment from the court, and then go to the Court or State Troopers to file an additional form or forms to enforce the judgment. In some cases, a delay in action results in the tenant disappearing before the correct forms can be served upon him, and would alievate the additional costs of filing additional forms.

Section 3 - Page 1, Line 16 through 23 - (Amendment No. 2)

"AS 34.03 is amended by adding a new section to read:

Sec. 34.03.025. CHANGES IN TERMS AND CONDITIONS OF RENTAL AGREEMENTS. The landlord and tenant may change the terms and conditions of a rental agreement if the changes are not prohibited by law. Unless both the landlord and tenant agree to a change in a rental agreement, the agreement remains in effect under its original terms and conditions, including provisions relating to rent and the rights and obligations of the parties, until the agreement is terminated under AS 34.03.290 or other law.

I offered this as Amendment No. 1 to the Judiciary committee on February 25. In order to correspond to the Bill Sections, I am now offering this as Amendment No. 2. This is simply in place of the Letter of Intent by the Labor & Commerce Committee to define AS 34.03.290 (b) in detail regarding the 45 day notice as it applies to a rental increase. It gives further clarification to what transpires if a landlord or tenant makes substantial or material changes to a rental agreement. It does not change the bill, but defines AS 34.03.290 (b). If the landlord (for example), gives a tenant a notice of rental increase, and the tenant does not approve of the increase, then the tenant can give his notice as defined in AS 34.03.290 (b).

(Amendment No. 3)

(See Page 1, Line 26 and 27, and Page 2, Line 1,2 and 3)

Section 4 (was Section 2) AS 34.03.270 is amended by adding a new subsection to read:

(b) If the rental agreement is terminated by the tenant [and] , and the failure to provide the notice is wilful or not in good faith, the landlord may recover an amount not to exceed one and one-half times the actual damages. Failure by the tenant to provide the notice required under AS 34.03.290 (a) or (b) is presumed to be wilful and not in good faith.

These changes are offered as Amendment No. 3. The key word here is "presumed". The burden of proof lies with the tenant to prove that his intentions were in good faith. This shortens the judicial process in some circumstances. It is up to the tenant to explain why he did not give notice or had a good reason for not giving notice, (i.e. an emergency operation, a death in the family, etc.). Until that time, the court presumes that the tenant failed to give notice and the landlord can proceed with recovery of the premises.

(Introduced to Judiciary Committee
February 25, 1983)

CS FOR SPONSOR SUBSTITUTE FOR HOUSE BILL NO. 1 (L&C)

For an Act entitled: "An Act relating to landlords and tenants."

Attached is an updated copy of CSSSHB 1 as of March 14, 1983.

Three Amendments are also attached to the bill , and the bill has been re-drafted to include these amendments.

Note that the Sections have been renumbered to correspond to the Amendments. Also note Page 2, Line 15, "AS 34.20.020" should read "AS 34.03.020". This has been changed accordingly.

Offered: 2/15/83
Referred: Judiciary

Original Sponsor: Abood

IN THE HOUSE BY THE LABOR AND COMMERCE COMMITTEE

CS FOR SPONSOR SUBSTITUTE FOR HOUSE BILL NO. 1 (L&C)

IN THE LEGISLATURE OF THE STATE OF ALASKA

THIRTEENTH LEGISLATURE - FIRST SESSION

A BILL

For an Act entitled: "An Act relating to landlords and tenants."

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

*Section 1. AS 09.45.085 is amended by adding a new paragraph to read:

ENFORCEMENT. A judgment for the restitution of real property rendered in an action for forcible entry or detention may be enforced by the plaintiff without further judicial action and the plaintiff may not be required to obtain a writ of assistance or other order to enforce the judgment.

*Section 2. [1] AS 09.45.090 is amended by adding a new paragraph to read:

(4) when, after a notice to terminate the tenancy as provided in AS 34.03.290 with reference to termination of a periodic tenancy, a person continues in possession of a dwelling unit after expiration of the time for determining the tenancy.

*Section 3. AS 34.03 is amended by adding a new section to read:

Sec. 34.03.025. CHANGES IN TERMS AND CONDITIONS OF RENTAL AGREEMENTS. The landlord and tenant may change the terms and conditions of a rental agreement if the changes are not prohibited by law. Unless both the landlord and the tenant agree to a change in a rental agreement, the agreement remains in effect under its original terms and conditions, including provisions relating to rent and the rights and obligations of the parties, until the agreement is terminated under AS 34.03.290 or other law.

*Sec. 4. [2] AS 34.03.270 is amended by adding a new subsection to read:

(b) If the rental agreement is terminated by the tenant [and], the tenant fails to provide the notice required under AS 34.03.290 (a) or (b), and the failure to provide the notice is wilful or not in good faith, the landlord may recover an

an amount not to exceed one and one-half times the actual damages. Failure by the tenant to provide the notice required under AS 34.03.290 (a) or (b) is presumed to be wilful and not in good faith.

*Sec. 5. [3] / AS 34.03.290 (b) is amended to read:

(b) The landlord or the tenant may terminate a month to month tenancy by a written notice given to the other at least 45 [30] days before the termination [RENTAL DUE] date specified in the notice.

* Sec. 6. [4] / AS 34.03.290 (c) is amended to read:

(c) If the tenant remains in possession without the landlord's consent after expiration of the term of the rental agreement or after its termination, the landlord may bring an action for possession and recovery of actual damages. If [IF] the tenant's holdover is wilful or [AND] not in good faith the landlord, in addition, may recover an amount not to exceed one and one-half times the actual damages. If the landlord consents to the tenant's continued occupancy, AS 34.03.020 [AS 34.20.020] applies.

*Sec. 7. [5] / AS 34.03.310 is amended by adding a new subsection to read:

(f) a landlord is presumed to have violated (a) of this section if the landlord increases rent, decreases service, or brings or threatens to bring an action for possession within 60 days after a tenant has engaged in an action listed under (a)(1)- (4).

A M E N D M E N T #1

Offered in the HOUSE By Abood

TO: CSSSHB 1(L&C)

Page 1, after line 7, insert:

"* Section 1. AS 09.45 is amended by adding a new section to read:

Sec. 09.45.085. ENFORCEMENT. A judgment for the restitution of real property rendered in an action for forcible entry or detention may be enforced by the plaintiff without further judicial action and the plaintiff may not be required to obtain a writ of assistance or other order to enforce the judgment."

Renumber the following sections accordingly.

A M E N D M E N T

TO: CSSSHB 1 (L&C)

Page 1, after line 12 insert:

"* Sec. 2. AS 34.03 is amended by adding a new section to read:

Sec. 34.03.025. CHANGES IN TERMS AND CONDITIONS OF RENTAL AGREEMENTS. The landlord and tenant may change the terms and conditions of a rental agreement if the changes are not prohibited by law. Unless both the landlord and the tenant agree to a change in a rental agreement, the agreement remains in effect under its original terms and conditions, including provisions relating to rent and the rights and obligations of the parties, until the agreement is terminated under AS 34.03.290 or other law."

Renumber following sections accordingly.

AMENDMENT #3

Offered in the HOUSE By Abood

TO: CSSSHB 1(L&C)

Page 1, line 14:

Delete "and" and insert ","

Page 1, line 16:

After (b) insert ", and the failure to provide the notice is wilful or not in good faith"

Page 1, line 17:

After "damages." insert "Failure by the tenant to provide the notice required under AS 34.03.290(a) or (b) is presumed to be wilful and not in good faith."

STATE OF ALASKA

WALT FURNACE,CHAIRMAN
RICK UEHLING, VICE CHAIRMAN
JOHN COWDERY
NIILO E. KOPONEN
HUGH MALONE
JOHN RINGSTAD
RON WENDTE

POUCH V
JUNEAU, ALASKA 99811
(907) 465-3892

HOUSE LABOR AND COMMERCE COMMITTEE

February 10, 1983

LETTER OF INTENT FOR
CSSS FOR HB 1 (L & C)

The Legislature recognizes that an increase in rent by the landlord may constitute a form of termination, in that it terminates the rental agreement then in existence and offers a new rental agreement at different terms. The tenant, however, should be given ample time to locate a new dwelling and to move. Upon receipt of a notice of rent increase a tenant should have the full 45 days to vacate provided under this bill if he chooses no to accept the higher rent. The tenant would be under the obligation to inform the landlord of his intention to vacate within the 45 day period if the tenant does not intend to pay the higher rent.

SIGNED:

Representative Walt Furnace, Chairman

Representative John Ringstad

Representative Rick Uehling, Vice Chairman

Representative Ron Wendte

Representative John Cowdery

Representative Niilo Koponen

Representative Hugh Malone

2-Wire

SPONSOR: H. Judiciary

SUBJECT: HB1 - Tenants/landlords

MAILING ADDRESS: _____

_____ zip

PHONE: 465-4990 CONTACT: Catherine Zalewski

TAKEN BY: Tim 2/18

T/C DATE/DAY: 2/25

TIME: 1:30 Pacific
11:30 Alaska
10:30 Bering

T/C DURATION: 2 hours

SITES PARTICIPATING:

ALL ALASKAN	(Anchorage)	Dillingham	(Juneau)	Mat-Su	Sitka
	Barrow	Fairbanks	Ketchikan	Nome	Seward
WASHINGTON DC	Bethel	Haines	Kodiak	*Petersburg	Soldotna (Kenai)
	Delta Junction	Homer	Kotzebue	Sand Point	Valdez
					*Wrangell

Sen. Stevens
Sen. Murkowski
Congressman Young

Off-net to ANC LIO

SPECIAL OFF-NET* LOCATIONS/PHONE NUMBERS: _____

Chairing Site/Person * Rep Russell *

Catherine M. Zalewski
Signature of Sponsor/Contact Person

Date

-------- TELECONFERENCE OFFICE USE ONLY --------

MODERATOR NOTES

Special backup, publicty or technical considerations.

Jeanie Fortier -
Contact for ANC participants

BILLING INFORMATION

Billing Address: _____

_____ zip

Phone Charges To: _____
(area code) (phone number)

CATEGORY: Legislative ___ Non-Legislative ___

AMOUNT PAYABLE: _____

POST TELECONFERENCE NOTES

SITE/LOCATION: _____

LOCAL MODERATOR: _____

T/C Started: _____

T/C Ended: _____

Was T/C Recorded? _____

Was T/C Broadcast on RADIO or TV?

(If yes, what stations?) _____

TESTIFIED/PARTICIPATED: _____

UNABLE TO TESTIFY:. _____

OBSERVORS: _____

TOTAL #: _____

HB

2

HB 2 - Restricted ammo. in Commission of a Crime

To Testify

Pol (586-3300)

Bear 586-2660

1) Brian Porter
Chief of Police Anch

2) Nat'l Rifle Assoc
(Ken Fanning - Board of Directors) Wayne Rosen
(277-6775)

Thurs. morning

Fiscal Notes

1) Dept of Law

2) Dept of Public Safety

Ben Neff Kelch
Peace Officers

Warren Suddock.

HB2

A BILL

To establish minimum mandatory sentences for the use of armor-piercing handgun ammunition during the course of a violent crime.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, that title 18, United States Code, is amended by adding a new section 929 as follows:

Sec. 929. Use of restricted ammunition.

"(a) Whoever, during and in relation to the commission of a crime of violence for which he may be prosecuted in a court of the United States, including a felony which provides for an enhanced punishment if committed by the use of a dangerous weapon or device, uses or carries any handgun loaded with armor-piercing ammunition as defined herein, shall, in addition to the punishment provided for the commission of such felony, be sentenced to a term of imprisonment for not less than five years. Notwithstanding any other provision of law, the court shall not suspend the sentence of any person convicted of a violation of this subsection nor place him on probation, nor shall the term of imprisonment run concurrently with any other term of imprisonment including that imposed for the felony in which the armor-piercing handgun ammunition was being used or carried. No person sentenced under this subsection shall be eligible for parole.

"(b) For purposes of this section:

(1) 'handgund' means any firearm, including a pistol or revolver, originally designed to be fired by the use of a single hand;

(2) 'armor-piercing ammunition' means ammunition which, when or if fired from any handgun used or carried in violation of subsection (a), under the test procedure of the National Institute of Law Enforcement and Criminal Justice Standard for the Ballistics Resistance of Police Body Armor promulgated December, 1978, is determined to be capable of penetrating bullet-resistant apparel or body armor meeting the requirements of Type IIA of Standard NILECJ-STD-0101.01 as formulated by the United States Department of Justice and published in December of 1978; and

(3) 'crime of violence' means (i) an offense, other than a misdemeanor that consists solely of damage to property and that does not place another person in danger of death or serious bodily injury, that has as an element of the offense the use, attempted use, or threatened use of physical force against the person or property of another; or (ii) any other offense that is a felony and that, by its nature, involves a substantial risk that physical force against the person or property of another may be used in the course of committing the offense.

NATIONAL RIFLE ASSOCIATION OF AMERICA
INSTITUTE FOR LEGISLATIVE ACTION
1600 RHODE ISLAND AVENUE, N.W.
WASHINGTON, D.C. 20036

KTW BULLET FACT SHEET

Recently there has been a great deal of controversy regarding bullets which are capable of penetrating most soft body armor ("bullet-proof vests").

Such projectiles are not novel. The French army used a copper alloy bullet at the turn of the century. Specifically armor-piercing bullets (with a steel core) have been made since the First World War, and our government has sold large quantities to civilians as surplus. Many if not most handgun ammunition incorporates a copper alloy jacket around the bullet; such jacketed handgun bullets have been specially designed to increase the penetration since the 1930's, when police began to demand bullets useful against criminals using vehicles.

The KTW projectile is one example of a large class of projectiles which can be used to defeat body armor. It is the National Rifle Association's understanding that although KTW projectiles have been available for over ten years, no policeman has ever had one fired at him, nor has NRA been able to locate any other case of criminal misuse. The KTW ammunition is expensive (about $1.50 per round), only a small proportion of licensed dealers stock it, and the manufacturer will distribute only to dealers who sign a contract agreeing to sell only to law enforcement personnel. The media's effort to generate a controversy over this ammunition has thus served to advertise a form of ammunition which has not been misused in ten years of availability.

Attempts to ban ammunition of this type pose a serious concern in that definition of "ammunition of this type" is a complex and subjective matter. Assuming that a ban would be objective, (not limited to "bullets made by KTW") it would have to be keyed to some index of penetration. The problem is that there is no simple dividing line between bullets that will defeat body armor and bullets that will not. Any index eliminating most bullets with a sufficient penetration would also eliminate practically all bullets used by sportsmen for hunting: deer, antelope, elk, etc.

Body armor comes in many types and grades. Many manufacturers produce five or more grades, which offer increasing protection at the price of higher cost and weight. The best grades (with this steel inserts) will stop KTW bullets. The lower grades are insufficient to stop many ordinary types of pistol ammunition. Only a few very heavy and very expensive vests will stop ordinary rifles using hunting ammunition. Most vests are supplied with a chart showing what types of ammunition they will stop and will not stop. Some types of ammunition may be stopped if fired from a firearm with a short barrel but not one with a longer one which develops more power. Even with the same type of ammunition and the same firearm, some brands may be stopped while others, loaded to higher power, will not be. (For example, a model X Second Chance vest will stop 9mm rounds made by Federal or Winchester, but not

European military surplus rounds; it will stop most .357 magnum rounds if fired from a 4 1/2 inch barrel, and none of them if fired from a 6 inch barrel). Additionally, penetration is dramatically increased if the vest is wet, is backed by a hard surface (reportedly, even a simple lead .38 will penetrate a vest backed by wood during testing), or if the vest is struck at certain angles.

The result of all this is that bullets cannot be neatly divided into classes which will or will not penetrate body armor. Any attempt to objectively define such runs a risk of outlawing many types of ammunition now used by sportsmen, including:

(1) Most ammunition for hunting rifles. Due to its much greater power and velocity, this will penetrate almost all soft body armor except the heavy "SWAT" team vests. The government has, incidentally, classified many traditional rifle rounds (including the venerable .30-30) as "handgun ammunition" for Gun Control Act purposes, since there are some handguns chambered for such.

(2) Many full-metal jacketed bullets for handguns, now used by target shooters and other sportsmen, which are covered by a copper-alloy jacket, do not deform upon impact, and have higher penetration. Most automatic pistol ammunition is jacketed to prevent jamming.

(3) Certain handgun loads designed for big-game shooting and therefore loaded for deep penetration (using jacketed bullets or lead bullets cast for special hardness).

(4) Most military surplus ammunition used by shooters preparing for matches requiring such, or for reasons of economy.

Given that the proponents of such a system of grading have not come forward with a single example where this ammunition has been criminally abused, that its cost, restricted availability and (prior to the recent media coverage) limited advertising must make such abuse a rarity, there seems little reason to focus additional public attention on such ammunition, much less start people thinking on other ways to defeat such armor or circumvent its protection.

*Prepared by the Institute for Legislative Action on January 21, 1982

KTW ISSUE BRIEF

What is the KTW bullet that has stirred up such a storm of controversy and legislative action? Why has such a furor erupted over a bullet which has never been criminally misused? How has the media been able to label this the "cop-killer bullet" when no police officer has ever even had one fired at him? Where is the justification for this media campaign highlighting the vulnerability of police "bullet proof" vests?

The KTW bullet, a bronze, teflon coated round, is one example of a large class of projectiles known as metal or armor-piercing ammunition. In January of this year, NBC television aired a dramatic and rather misleading demonstration of the penetration ability of the KTW through the equivalent of four police Kevlar vests and several Los Angeles city telephone directories.

No effort was made to follow the established scientific ballistic testing procedures prescribed by the U.S. Department of Justice's National Institute of Law Enforcement and Criminal Justice to conduct standard ballistics resistance tests. Neither did the demonstration allow for the increased bullet penetration which occurs when the armor is backed by a rigid object. If NBC had checked the NILECJ standards, they would have known that an accurate ballistics test must be run by using ballistics clay or modeling clay to simulate the interaction between the armor, the bullet and the resilient human body.

Particularly distressing is the fact that NBC did not inform the viewers that different types of bullet resistant vests are available for different threat levels. Although it is true that some soft body armor cannot protect against all types of ammunition, the episode failed to mention that armor is commercially available and used by police which can defeat the KTW metal -piercing bullet.

In addition, NBC implied that the KTW is widely available to citizens. This simply is not true. The KTW is limited strictly to police and military use only. Very few dealers carry the bullet and these must agree to sell only to law enforcement and military.

The KTW bullets used in the NBC demonstration were obtained by a former F.B.I. agent who posed as a California drug enforcement agent. He had to call both the manufacturer and distributor of KTW before he located a firearms dealer who carried these in the state of California. In order to purchase the rounds, he had the dealer send the bullets directly to the headquarters of the California Narcotics Authority!

Minimum equirement police soft body armor already protects against 95 percent of the firearms which could threaten law enforcement officers during daily police operations. Armor which is designed to defeat armor-piercing and high velocity bullets is commercially produced and is widely available.

It is simply incongrous to propose a ban on a single type of armor-piercing ammunition, replete with all the inherent problems of enforcement, definition and overwhelming expense, for an apparently non-existent problem.

Is the KTW bullet truly a public menace?

-- No police officer has ever been shot with a KTW.

-- No criminal misuse of this ammunition has ever been documented since the bullet was developed twelve years ago.

-- The ammunition is restricted by the manufacturer and dealers to military and law enforcement use only.

-- The police already have soft body armor which is capable of protecting them against the KTW.

According to a recent statement made by Richard C. Davis, President of Second Chance Body Armor, Inc., one of the oldest and most prestigious armor manufacturers, "Up until the recent outburst of KTW publicity there were only a relative handful of 'gun expert' type people who knew about the existence of armor piercing handgun ammunition.

"I am probably in a position to be more sensitive than anyone to reports of KTW of other armor piercing ammo being used by criminals -- up until now, it just hasn't happened."

"The nice thing about armor piercing rounds is that because they do not expand, they generally cause far less damage than lead or hollow point style bullets. My general feeling is that there is approximately a hundred times greater chance of the policemen being killed by a head shot due to this vest publicity than there is by a criminal seeking out exotic armor piercing ammunition and then deliberately shooting a policeman with it. (emphasis added) If a pure and simple killing of a policeman is the desired effect, this can be much more easily accomplished with a high-powered rifle from a distance, or with a sawed off shotgun in the face from close range. It has been our experience that the vast majority of cop killings are the unplanned result of a small time criminal being suddenly confronted with capture. What we call: 'The cornered rat syndrome.'"

The focus on the KTW ammunition misunderstands both the design intent and capabilities of the soft body armor, as well as the actual threat this bullet poses for police.

HD2"

LAW ENFORCEMENT STANDARDS PROGRAM

NILECJ STANDARD FOR THE BALLISTIC RESISTANCE OF POLICE BODY ARMOR

A Voluntary National Standard Promulgated by the National Institute of Law Enforcement and Criminal Justice.

DECEMBER 1978

U.S. DEPARTMENT OF JUSTICE
Law Enforcement Assistance Administration
National Institute of Law Enforcement and Criminal Justice

For sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402
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NATIONAL INSTITUTE OF LAW ENFORCEMENT AND CRIMINAL JUSTICE

Blair G. Ewing, Acting Director

LAW ENFORCEMENT ASSISTANCE ADMINISTRATION

James M. H. Gregg, Acting Administrator

ACKNOWLEDGMENTS

This standard was formulated by the Law Enforcement Standards Laboratory of the National Bureau of Standards under the direction of Ronald C. Dobbyn, Manager, Protective Equipment Program, and Jacob J. Diamond, Chief of LESL. The technical research was performed by Nicholas J. Calvano, project leader, and other personnel of the NBS Center for Consumer Product Technology. The standard has been reviewed and approved by the National Advisory Committee for Law Enforcement Equipment and Technology of the International Association of Chiefs of Police and adopted by them as an IACP standard.

NILECJ STANDARD FOR THE BALLISTIC RESISTANCE OF POLICE BODY ARMOR

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FOREWORD

Following a Congressional mandate[1] to develop new and improved techniques, systems, and equipment to strengthen law enforcement and criminal justice, the National Institute of Law Enforcement and Criminal Justice (NILECJ) has established the Law Enforcement Standards Laboratory (LESL) at the National Bureau of Standards. LESL's function is to conduct research that will assist law enforcement and criminal justice agencies in the selection and procurement of quality equipment.

In response to priorities established by NILECJ, LESL is: (1) Subjecting existing equipment to laboratory testing and evaluation and (2) conducting research leading to the development of several series of documents, including national voluntary equipment standards, user guides and technical reports.

This document, NILECJ-STD-0101.01, Ballistic Resistance of Police Body Armor, is a law enforcement equipment standard developed by LESL and approved and issued by NILECJ. Additional standards as well as other documents are being issued under the LESL program in the areas of protective equipment, communications equipment, security systems, weapons, emergency equipment, investigative aids, vehicles and clothing.

This equipment standard is a technical document consisting of performance and other requirements together with a description of test methods. Equipment which can meet these requirements is of superior quality and is suited to the needs of law enforcement agencies. Purchasers can use the test methods described in this standard to determine firsthand whether a particular equipment item meets the requirements of the standard, or they may have the tests conducted on their behalf by a qualified testing laboratory. Law enforcement personnel may also reference this standard in purchase documents and require that any equipment offered for purchase meet its requirements and that this compliance be either guaranteed by the vendor or attested to by an independent testing laboratory.

The necessarily technical nature of this NILECJ standard, and its special focus as a procurement aid, make it of limited use to those who seek general guidance concerning body armor. The User Guide Series is designed to fill that need. We plan to issue guides to various items of law enforcement equipment as soon as possible, within the constraints of available funding and the overall NILECJ program.

The user guides being issued are highly readable and tutorial in nature in contrast to the standards, which are highly technical and intended for laboratory use by technical personnel. The guides provide, in non-technical language, information for purchasing agents and other interested persons concerning the capabilities of equipment currently available. They may then select equipment appropriate to the performance required by their agency. Recommendations for the development of particular guides should be sent to us.

---

[1]Section 402(b) of the Omnibus Crime Control and Safe Streets Act of 1968, as amended.

NILECJ standards are subjected to continuing review. Technical comments and recommended revisions are invited from all interested parties. Suggestions should be addressed to the Program Manager for Standards, National Institute of Law Enforcement and Criminal Justice, Law Enforcement Assistance Administration, U.S. Department of Justice, Washington, D.C. 20531.

Lester D. Shubin
Program Manager for Standards
National Institute of Law
Enforcement and Criminal
Justice

NILECJ STANDARD FOR THE BALLISTIC RESISTANCE OF POLICE BODY ARMOR

1. PURPOSE

The purpose of this standard is to establish minimum performance requirements and methods of test for the ballistic resistance of police body armor. This standard is a revision of NILECJ-STD-0101.00, dated March 1972 [2].

2. SCOPE AND CLASSIFICATION

2.1 Discussion

This standard is applicable to armors intended to protect the torso against gunfire. Many different types of armor are now available; they range in ballistic resistance from those designed to protect against small caliber handguns to those designed to protect against high-powered rifles.

Personal protective armor manufacturers make a great variety of armors, many to special order, but production is currently concentrated in six classes designed to resist the following threats:

- 22 LRHV, 40 gr RN lead (1050 ± 40 fps); 38 Spec., 158 gr RN lead (850 ± 50 fps); and 12 gauge #4 shot.
- 357 Mag., 158 gr JSP (1250 ± 50 fps); and 9 mm, 124 gr FMJ (1090 ± 75 fps).
- 357 Mag., 158 gr JSP (1395 ± 20 fps); and 9 mm, 124 gr FMJ (1175 ± 75 fps).
- 44 Mag., 240 gr JSP (1425 ± 50 fps).
- 30 Carbine, 110 gr M-1 (1950 ± 50 fps); and 12 gauge rifled slug (1600 ± 50 fps).
- 30-06 rifle, 166 gr AP M-2 (2750 ± 50 fps).

The ballistic threat posed by a bullet depends, among other things, on its composition, shape, caliber, mass, and impact velocity. Because of the wide variety of cartridges available in a given caliber, and because of the existence of hand loads, armors that will defeat a standard test round may not defeat other loadings in the same caliber. For example, an armor that prevents penetration by a 357 Magnum test round may or may not defeat a 357 Magnum round with higher velocity. In general, an armor that defeats a given lead-core round will not resist penetration by an identical round with an armor-piercing core. The test ammunitions specified in this standard represent common threats to law enforcement officers.

2.2 Classification

Police body armors covered by this standard are classified into five types, by level of performance. Table 1 summarizes the protection they afford.

TABLE 1. *Protection Afforded by Police Body Armor*

Threat	Ballistic Protection Afforded				
	Type I Armor	Type II-A Armor	Type II Armor	Type III Armor	Type IV Armor
22 LRHV (H)	Yes	Yes	Yes	Yes	Yes
25 Auto.	Yes	Yes	Yes	Yes	Yes
32 Auto.	Yes	Yes	Yes	Yes	Yes
38 Special Lead	Yes	Yes	Yes	Yes	Yes
12 Gauge #4 Lead Shot	Yes	Yes	Yes	Yes	Yes
357 Magnum JSP	No	Yes[1]	Yes[2]	Yes	Yes
9 mm Luger FMJ	No	Yes[3]	Yes[4]	Yes	Yes
38 Special HV	No	Yes	Yes	Yes	Yes
22 LRHV (R)	No	Yes	Yes	Yes	Yes
45 Auto.	No	Yes	Yes	Yes	Yes
12 Gauge 00 BK	No	Yes	Yes	Yes	Yes
7.62 mm FMJ	No	No	No	Yes	Yes
44 Magnum Lead	No	No	No	Yes	Yes
44 Magnum JSP	No	No	No	Yes	Yes
41 Magnum	No	No	No	Yes	Yes
30–06 PSP	No	No	No	Yes	Yes
30 Carbine	No	No	No	Yes	Yes
12 Gauge RS	No	No	No	Yes	Yes
30–06 AP	No	No	No	No	Yes

Abbreviations: AP—Armor; BK—Buckshot; FMJ—Full Metal Jacket; (H)—Handgun; HV—High Velocity; JSP—Jacketed Soft Point; LRHV—Long Rifle High Velocity; PSP—Pointed Soft Point; (R)—Rifle; RS—Rifled Slug

Footnotes: (1) Rounds up to 10.2 g (158 gr) with velocities up to 381 ± 15 m (1250 ± 50 ft) per second.
(2) Rounds up to 10.2 g (158 gr) with velocities up to 425 ± 15 m (1395 ± 50 ft) per second.
(3) Rounds up to 8.0 g (124 gr) with velocities up to 332 ± 15 m (1090 ± 50 ft) per second.
(4) Rounds up to 8.0 g (124 gr) with velocities up to 358 ± 15 m (1175 ± 50 ft) per second.

2.2.1 Type I (22 LR—38 Special)

This armor protects against the standard test rounds as defined in paragraph 5.1.1. It also provides protection against lesser threats such as 12 gauge No. 4 lead shot and most handgun rounds in calibers 25 and 32.

2.2.2. Type II-A (Lower Velocity 357 Magnum—9mm)

This armor protects against the standard test rounds as defined in paragraph 5.1.2. It also provides protection against lesser threats such as 12 gauge 00 buckshot, 45 Auto., 22 caliber Long Rifle High Velocity (rifle), High Velocity 38 Special and some other factory loads in caliber 357 Magnum and 9 mm, as well as the threats mentioned in paragraph 2.2.1.

2.2.3 Type II (Higher Velocity 357 Magnum—9 mm)

This armor protects against the standard test rounds as defined in paragraph 5.1.3. It also provides protection against lesser threats such as 12 gauge 00 buckshot, 45 Auto., 22 caliber Long Rifle High Velocity (rifle), High Velocity 38 Special and most other factory loads in caliber 357 Magnum and 9 mm, as well as the threats mentioned in paragraph 2.2.1 and 2.2.2.

2.2.4 Type III (High-Powered Rifle)

This armor protects against the standard test round as defined in paragraph 5.1.4. It also provides protection against lesser threats such as 223 Remington (5.56 mm FMJ), 30 Carbine FMJ, and 12 gauge rifled slug, as well as the threats mentioned in paragraphs 2.2.1, 2.2.2 and 2.2.3.

2.2.5 Type IV (Armor Piercing Rifle)

This armor protects against the standard test round as defined in paragraph 5.1.5. It also provides at least single hit protection against the threats mentioned in paragraphs 2.2.1, 2.2.2, 2.2.3 and 2.2.4.

2.2.6 Special Type

A purchaser having a special requirement for a level of protection other than one of the above standards should specify the exact test rounds to be used, and indicate that this standard shall govern in all other respects.

2.3 Configuration

Police body armor is offered in a variety of configurations. All makes and models offer protection for the torso front. Many models also cover the back, and some offer additional protection. Police body armor may be specified to contain armor parts to cover the:

(a) torso front, or front and sides
(b) torso back, or back and sides
(c) groin,
(d) coccyx (end of the spine)

or any practical combination of these, as required.

3. DEFINITIONS

3.1 Angle of Incidence

The angle between the line of flight of the bullet and the perpendicular to the plane tangent to the point of impact (see figure 1).

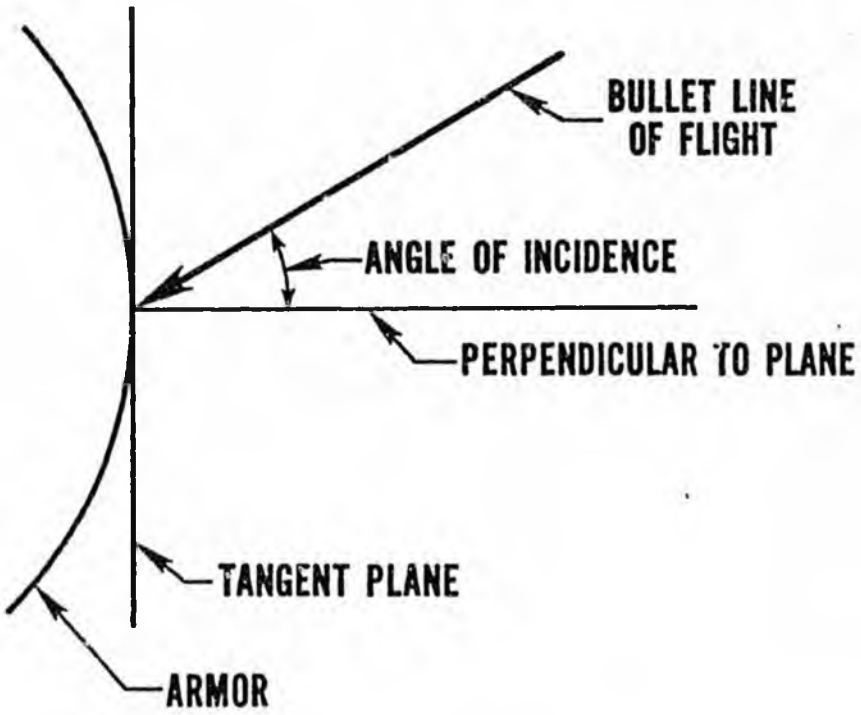

FIGURE 1. *Angle of incidence.*

3.2 Backing Material

A block of non-hardening, oil-base modeling clay, 45 cm by 45 cm by 10 cm thick (18 by 18 by 4 in), placed in contact with the back of the armor test specimen during ballistic testing.

3.3 Deformation

The maximum momentary displacement of the back surface of the armor test specimen caused by a fair hit that does not penetrate the armor.

3.4 Fair Hit

A bullet that impacts the armor at an angle of incidence no greater than 5 degrees, no closer to the edge of the armor part or to a prior hit than 5 cm (2 in), and at an acceptable velocity as defined in this standard. A bullet that impacts too close to the edge or a prior hit and/or at too high a velocity, but does not penetrate, shall be considered a fair hit for the determination of penetration but not deformation.

3.5 Full Metal Jacketed Bullet (FMJ)

A bullet made of lead completely covered, except for the base, with copper alloy (approximately 90 copper-10 zinc).

3.6 Jacketed Soft Point (JSP)

A bullet made of lead completely covered, except for the point, with copper alloy (approximately 90 copper-10 zinc).

3.7 Lead Bullet

A bullet made of lead alloyed with hardening agents.

3.8 Penetration

Complete perforation of an armor test sample by a test bullet or by a fragment of the bullet or armor, as evidenced by the presence of that bullet or a fragment in the backing material, or by a hole which passes through the backing material.

3.9 Strike Face

The surface of an armor designated by the manufacturer as the face that should be worn away from the body.

4. REQUIREMENTS

4.1 Sampling for Test

Two complete armors, selected at random, shall constitute a test sample. A maximum of two additional type I, II-A and II armors may be required for retesting.

4.2 Test Sequence

Armors shall be examined to determine compliance with the requirements of paragraphs 4.3 and 4.4, and shall then be tested for compliance with the requirements of paragraph 4.5.

4.3 Workmanship

Each armor shall be free from wrinkles, blisters, cracks or fabric tears, crazing, chipped or sharp corners and other evidences of inferior workmanship.

4.4 Labeling

Each armor shall be clearly and durably marked to provide the following information:

a) name, logo or other identification of the manufacturer
b) type of body armor, according to section 2 of this standard
c) size
d) lot number
e) month and year of manufacture
f) strike face, if any
g) cleaning instructions for the ballistic material and for the armor carrier, if any

Items d and e may be incorporated into a single number, e.g., a serial number.

4.5 Ballistic Penetration and Deformation

One complete armor shall be tested for resistance to ballistic penetration and ballistic deformation in accordance with paragraph 5.2. A second armor shall be so tested after wet conditioning in accordance with paragraph 5.1.8. Penetration by any fair hit, or deformation to a depth greater than 44 mm (1.73 in), in either test, shall constitute failure. The detailed requirements are summarized in table 2.

TABLE 2. *Test Summary*

	Test Variables				Performance Requirements		
Armor Type	Test Ammunition	Nominal Bullet Mass	Suggested Barrel Length	Required Bullet Velocity	Required Fair Hits Per Armor Part	Permitted Penetrations	Maximum Depth of Deformation
I	22 LRHV Lead	2.6 grams 40 grains	15 to 16.5 cm 6 to 6.5 in	320 ± 12 m/s 1050 ± 40 ft/s	5[a]	0	44 mm 1.73 in
	38 Special RN Lead	10.2 grams 158 grains	15 to 16.5 cm 6 to 6.5 in	259 ± 15 m/s 850 ± 50 ft/s	5[a]	0	44 mm 1.73 in
II-A	357 Magnum JSP	10.2 grams 158 grains	10 to 12 cm 4 to 4.75 in	381 ± 15 m/s 1250 ± 50 ft/s	5[a]	0	44 mm 1.73 in
	9 mm FMJ	8.0 grams 124 grains	10 to 12 cm 4 to 4.75 in	332 ± 15 m/s 1090 ± 50 ft/s	5[a]	0	44 mm 1.73 in
II	357 Magnum JSP	10.2 grams 158 grains	15 to 16.5 cm 6 to 6.5 in	425 ± 15 m/s 1395 ± 50 ft/s	5[a]	0	44 mm 1.73 in
	9 mm FMJ	8.0 grams 124 grains	10 to 12 cm 4 to 4.75 in	358 ± 15 m/s 1175 ± 50 ft/s	5[a]	0	44 mm 1.73 in
III	7.62 mm (308 Winchester) FMJ	9.7 grams 150 grains	56 cm 22 in	873 ± 46 m/s 2863 ± 151 ft/s	5[a]	0	44 mm 1.73
IV	30-06 AP	10.8 grams 166 grains	56 cm 22 in	838 ± 15 m/s 2750 ± 50 ft/s	1	0	44 mm 1.73 in

[a] Armor parts covering the torso front and torso back, with or without side coverage, shall each be impacted with the indicated number of fair hits. Armor parts covering the groin and coccyx shall each be impacted with 3 fair hits. The deformations due to the first two fair hits shall be measured to determine compliance.

Abbreviations: AP—Armor Piercing
FMJ—Full Metal Jacketed
JSP—Jacketed Soft Point
LRHV—Long Rifle High Velocity
RN—Round Nose

At the option of the tester, a type I, II-A or II armor part which has successfully withstood 5 fair hits with one test ammunition may thereupon be tested with the second test ammunition. However, if failure occurs with the second test ammunition a retest shall be conducted. A second specimen of that armor part shall be tested with the second test ammunition and the results of that test shall govern.

5. TEST METHODS

5.1 Test Equipment

It should be noted that hand-loaded ammunition may be required to achieve some of the bullet velocities required in the following paragraphs.

5.1.1 Type I Test Weapons and Ammunition

5.1.1.1 22 LR

The test weapon may be a 22 caliber handgun or test barrel. The use of a handgun with a 15 to 16.5 cm (6 to 6.5 in) barrel is suggested. Test bullets shall be 22 Long Rifle High Velocity lead, with nominal masses of 2.6 grams (40 grains) and measured velocities of 320 ± 12 meters (1,050 ± 40 feet) per second.

5.1.1.2 38 Special

The test weapon may be a 38 Special handgun or test barrel. The use of a handgun with a 15 to 16.5 cm (6 to 6.5 in) barrel is suggested. Test bullets shall be 38 Special round-nose lead, with nominal masses of 10.2 grams (158 grains) and measured velocities of 259 ± 15 meters (850 ± 50 feet) per second.

5.1.2 Type II–A Test Weapons and Ammunition

5.1.2.1 Lower Velocity 357 Magnum

The test weapon may be a 357 Magnum handgun or test barrel. The use of a handgun with a 10 to 12 cm (4 to 4.75 in) barrel is suggested. Test bullets shall be 357 Magnum jacketed soft point, with nominal masses of 10.2 grams (158 grains) and measured velocities of 381 ± 15 meters (1250 ± 50 feet) per second.

5.1.2.2 Lower Velocity 9 mm

The test weapon may be a 9 mm handgun or test barrel. The use of a handgun with a 10 to 12 cm (4 to 4.75 in) barrel is suggested. Test bullets shall be 9 mm full metal jacketed, with nominal masses of 8.0 grams (124 grains) and measured velocities of 332 ± 15 meters (1090 ± 50 feet) per second.

5.1.3 Type II Test Weapons and Ammunition

5.1.3.1 Higher Velocity 357 Magnum

The test weapon may be a 357 Magnum handgun or test barrel. The use of a handgun with a 15 to 16.5 cm (6 to 6.5 in) barrel is suggested. Test bullets shall be 357 Magnum jacketed soft point, with nominal masses of 10.2 grams (158 grains) and measured velocities of 425 ± 15 meters (1395 ± 50 feet) per second.

5.1.3.2 Higher Velocity 9 mm

The test weapon may be a 9 mm handgun or test barrel. The use of a handgun with a 10 to 12 cm (4 to 4.75 in) barrel is suggested. Test bullets shall be 9 mm full metal jacketed, with nominal masses of 8.0 grams (124 grains) and measured velocities of 358 ± 15 meters (1175 ± 50 feet) per second.

5.1.4 Type III Test Weapon and Ammunition

The test weapon may be a rifle or a test barrel chambered for 7.62 mm (308 Winchester) ammunition. The use of a rifle with a barrel length of 56 cm (22 in) is suggested. Test bullets shall be 7.62 mm full metal jacketed (U.S. military designation M80), with nominal masses of 9.7 grams (150 grains) and measured velocities of 873 ± 46 meters ($2{,}863 \pm 151$ feet) per second.

5.1.5 Type IV Test Weapon and Ammunition

The test weapon may be a rifle or a test barrel chambered for caliber 30–06 ammunition. The use of a rifle with a barrel length of 56 cm (22 in) is suggested. Test bullets shall be caliber 30–06 armor piercing (U.S. military designation APM2), with nominal masses of 10.8 grams (166 grains) and measured velocities of 838 ± 15 meters ($2{,}750 \pm 50$ feet) per second.

5.1.6 Chronograph

The chronograph shall have a precision of one microsecond and an accuracy of two microseconds. Its triggering devices shall be of either the photoelectric or conductive screen type.

5.1.7 Armor Backing Material

The armor backing material shall be conditioned by being kept for at least three hours at a temperature between 15 and 30°C (59 and 86°F), and shall be worked thoroughly to eliminate any voids. Its consistency shall be such that a depression of 25 ± 3 mm (1 ± 0.1 in) in depth is obtained when a 1 kg (2.2 lb) cylindrical steel mass, 45 mm (1.75 in) in diameter and having a hemispherical striking end, is dropped from a height of 2 meters (6.5 feet) onto one of its square faces. Three drop tests shall be made, and the center of each impact site shall be at least 75 mm (3 in) from a previous impact site and from any edge. A guide tube or other means may be used as required to assure that the striking end of the cylindrical mass impacts the backing material squarely. The backing material may be maintained at any temperature in the above range that will give it the required consistency.

A backing material found to be suitable is Roma Plastilina No. 1 modeling clay, available from Sculpture House, 304 West 42nd Street, New York, NY 10036, and other artist supply centers.

5.1.8 Wet Armor Conditioning

One complete armor shall be conditioned by subjecting both sides of each armor part to a water spray under the following conditions:

The spray nozzles shall be of such size and so spaced that 10 ± 2 liters (2.5 ± 0.5 gallons) of water per hour falls uniformly distributed on each 0.1 m^2 (1 ft^2) of spray booth floor area, and so located that the droplets are falling from gravitational force only, when they strike the armor surface.

Each surface of each armor part shall be sprayed for 3 minutes. Ballistic testing shall begin immediately after the armor is removed from the spray. The maximum time the armor may be out of the spray shall not exceed 10 minutes. After 10 minutes of testing, the armor shall be returned to the spray environment for an additional 3 minute spray on each surface.

5.2 Test Procedure

Set up the test equipment as shown in figure 2. Firmly clamp the appropriate test weapon, with barrel horizontal, in such a manner that alignment of the weapon is not altered when it is discharged.

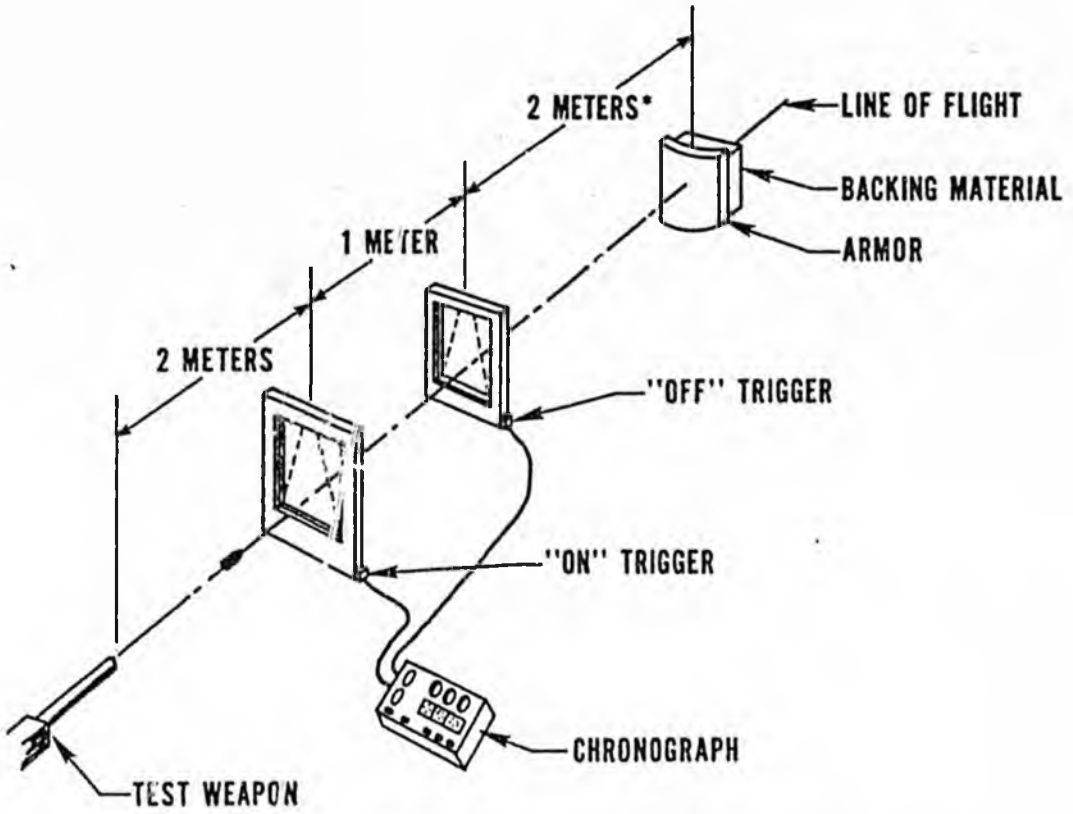

FIGURE 2. *Ballistic test setup.*

Allow all electronic equipment to warm up for 30 minutes or until stability is achieved, whichever time is greater. During testing, maintain the ambient temperature at 20–28°C (68–82°F) and the relative humidity at 30 to 70 percent.

Condition the armor test backing material and test it for consistency in accordance with paragraph 5.1.7. Reshape and smooth the backing material to its defined dimensions, and maintain it at the temperature required to maintain the required consistency.

Place the chronograph triggering screens two and three meters (6.6 and 9.8 feet), respectively, from the muzzle of the test weapon and arrange them so that they define planes perpendicular to the line of flight of the bullet. Measure the distance between the triggering planes with an accuracy of one millimeter (0.04 in).

Position a sheet of cardboard five meters (16 feet) from the muzzle of the test weapon if type I, II-A or II armor is being tested; position it 15 meters (50 feet) away if type III or IV armor is being tested. Fire a pre-test round through the cardboard to determine the line of flight and point of impact of the bullet; alternatively, use an aiming light or other suitable means.

Place one of the square faces of the armor backing material in intimate contact with the back face of the armor specimen under test and secure it with tape, the armor straps or

other means which will not interfere with the test. Place this assembly in back of the sheet of cardboard with the armor front face perpendicular to the line of flight of the bullet so that the desired point of impact touches the bullet hole made by the pre-test round, and then remove the cardboard.

Fire a test round at the armor. Record the time of flight of the bullet between the two triggering screens, as determined by the chronograph, and calculate the bullet velocity. Examine the armor and the backing material to determine whether penetration occurred when a bullet made a fair hit.

If no penetration occurred, measure and record the depth of the depression made in the armor backing material; do so for the first two (only) fair hits made with each test ammunition on each armor part.

If no failure occurred, reposition the armor so as to space additional impacts evenly over its surface or position another armor specimen (as required) and repeat the procedure with additional test rounds until the required number of fair hits (see table 2) has been obtained on each armor part. To minimize the concomitant bunching of ballistic material in soft armors, place each successive fair hit as far as possible from the center of each armor part. Reposition the backing material (as required) to avoid any overlap of depressions. If there are seams in the ballistic material, place the required number of fair hits so as to include impacts directly on those seams.

If no failure occurred, test the second complete armor, which had been preconditioned in accordance with paragraph 5.1.8.

U.S. GOVERNMENT PRINTING OFFICE : 1979 O—275-693

Department of Justice

Changed emphasis.

STATEMENT

OF

RUDOLPH GIULIANI
ASSOCIATE ATTORNEY GENERAL

207 - 633-3752

- Bob Bodenheim

BEFORE

THE

SUBCOMMITTEE ON CRIME
COMMITTEE ON THE JUDICIARY
HOUSE OF REPRESENTATIVES

CONCERNING

ARMOR-PIERCING BULLETS

ON

MAY 12, 1982

ARMOR-PIERCING AMMUNITION
ENHANCED PUNISHMENT LEGISLATION

This legislation would provide for enhanced punishment of individuals committing violent crimes, when, at the time of the crime, the individual used or carried a handgun loaded with armor-piercing ammunition.

This legislation is designed to provide some additional deterrent effect against the use of handgun ammunition capable of defeating police body armor.

The legislation closely parallels an approach to this problem endorsed the the U.S. Department of Justice and approved by the United States Senate. While federal legislation containing this provision of law was not enacted during the 97th Congress, it is believed that the approach presented represents the best available balancing of the rights of handgun owners and the need to protect law enforcement officers.

The bill would provide that enhanced punishment would be in addition to other terms of imprisonment and not run concurrently with any other terms of imprisonment. The enhanced punishment may not be suspended or reduced, nor are individuals sentenced under this proposed provision eligible for parole.

Recognizing the legitimate uses of some handguns and ammunition that can penetrate body-armor, this legislation does not prohibit the sale, possession, or legal use of those kinds of ammunition. The legislation should, however, provide a significant inducement for individuals not to commit violent crimes with such weapons.

The attached statement by Rudolph Giuliani, Associate Attorney General, U.S. Department of Justice, which was presented to Congress earlier this year, provides an excellent discussion of the history of the problem and possible responses.

In 1971, a Justice Department employee working with the Department's technology development program became aware of a new synthetic fiber, marketed under the trademark name "Kevlar." This new fiber was originally developed for use as a replacement for steel cords in automobile tires. Recognizing the potential of this fiber, the Department of Justice pioneered the development of a prototype vest made from Kevlar and, following extensive laboratory work, tested this vest in fifteen cities. Results exceeded expectations. In addition to offering exceptional ballistics resistance, the new vests were light, flexible and could be worn unobtrusively under normal street clothes and uniforms.

By 1975, dozens of manufacturers had entered the body armor market producing a wide range of soft, lightweight body armor. Because few state or local agencies had the resources to test such body armor, the Department of Justice, as part of its Law Enforcement Technology Assessment Program, developed a body armor standard published in December of 1978. This standard establishes procedures for testing body armor and creates five different armor categories: Type I, Type IIA, Type II, Type III and Type IV. These body armor categories protect against increasing threat levels. For example, the Type I armor is the lightest weight providing protection against designated handgun ammunition when fired from a distance of five meters under specified conditions; the Type IV armor is the heaviest providing protection against designated armor-piercing rifle ammunition. Types I, IIA and II armor are varieties of soft body armor; Types III and IV incorporate metallic or ceramic materials and are

Mr. Chairman and Members of the Subcommittee:

I appreciate this opportunity to appear today to describe the threat posed to law enforcement and other officials -- including the President -- by the availability of handgun ammunition capable of penetrating soft body armor. As this Subcommittee is probably aware, the Department of Justice developed the body armor used today by an estimated 50% of the nation's law enforcement officials and it is largely through the efforts of the Department and the International Association of Chiefs of Police that soft body armor is so widely used. This Subcommittee has previously received testimony to the effect that the use of soft body armor has saved the lives of an estimated 400 police officers during the past seven years. We are, therefore, deeply concerned over the availability of ammunition capable of defeating soft body armor and have devoted substantial efforts in recent months to developing an appropriate and workable legislative remedy to the problem.

Before proceeding to our specific legislative recommendation, let me take a few moments to put the issue in perspective. Toward this end, I would like to discuss briefly the development of modern body armor and our reaction to the recent threat to persons who rely upon body armor for protection.

Personal body armor available during the earlier part of the century was inappropriate for normal police work. Early garments were so heavy and awkward that police officers avoided wearing them. In addition to their bulk and weight, such garments inhibited movements necessary for self-defense. Heat buildup was another problem adding to wearer discomfort.

normally used by special weapons teams in sniper or seige situations. We have brought with us today examples of different types of armor and will discuss these varieties of armor in detail at the conclusion of my statement if the Subcommittee so desires.

Extensive testing was performed by the Department of Justice during the course of developing this armor standard. Moreover, other entities, particularly the Department of the Army, have carried out numerous tests to determine the penetration potential of various classes of firearms and ammunition as well as the capabilities of various categories of bullet-resistant body armor. The Department of Justice has also tested a wide range of handgun ammunition in connection with efforts to assist law enforcement agencies in selecting the most effective possible ammunition for police use.

In short, our technicians have known from the beginning that soft body armor, like all other forms of armor, can be pierced by particular types of rounds. As noted above, the standards used for testing different classes of body armor require that the armor be able to withstand specific types of bullets posing particular threat levels in order to receive a rating. It is for this reason that body armor is referred to by technicians as "bullet-resistant" or "ballistics-resistant" apparel. The fact that body armor is more commonly referred to by the public as "bullet-proof" has created the mistaken impression that body armor can or should be able to stop any bullet. Rather, soft body armor is designed to stop the most common threats that police officers face.

With this background, experts were not at all surprised by a network News program earlier this year on the KTW bullet and its ability to penetrate multiple thicknesses of soft body armor. Our technicians were, however, deeply disturbed that such information was so widely distributed to the public, in essence creating a shopping list for professional criminals.

The concern of the experts over the publicity surrounding the KTW bullet is two-fold. First, we fear that publicity surrounding the availability of ammunition capable of defecting body armor will encourage assassins and other criminals to search out these particularly dangerous classes of ammunition to use in their endeavors. Although our technicians have known about the KTW bullet for many years, this and other forms of armor-piercing ammunition were not felt to constitute a substantial threat because most criminals are not so sophisticated as to realize that the protection afforded by body armor is limited and that there are varieties of ammunition commonly available which will penetrate body armor. In the past, the conclusion that armor-piercing rounds posed only a minimum threat was difficult to fault as we are unaware of any instance in which an armor-clad police officer has been shot with armor-piercing handgun ammunition. Now, however, the publicity surrounding the KTW bullet has, in our view, increased the likelihood of such attacks.

Our second concern over the publicity is that it will, we believe, encourage a fatalistic attitude among police officers resulting in reduced use of body armor. In this regard, although the new soft body armor is comfortable to wear by comparison with

and we believe it is contrary to the public interest to publicize such dangerous ammunition.

Penetration capacity is, of course, a matter of basic physics. There are two major factors which determine penetration capability. First is the surface area over which the force is distributed; a bullet which expands upon impact spreads its force over a larger area than one which retains its shape. Therefore, a projectile composed of a hard substance normally has greater penetration potential than a soft projectile which mushrooms upon impact. The second major factor in penetration is velocity; the higher the velocity of a bullet, the greater its penetration capability. Thus high-power rifles, because of the incredible velocities they produce, have greater penetration power than handguns. Soft body armor is designed primarily to protect against handgun bullets. This reflects the fact that handguns are the weapons of choice of criminals representing -- according to one survey -- 83% of firearms seized by police. Moreover, handguns represent a greater threat to law enforcement officials than long guns because they are easily concealable. We have, therefore, focused our attention on armor-piercing <u>handgun</u> ammunition.

One of the first actions taken by the Department of Justice in response to the publicity surrounding the KTW bullet was to arrange for a demonstration to verify that the information furnished by our technicians was indeed correct. In February, a variety of handgun bullets were tested against a Type II vest at the FBI firing range in Quantico, Virginia. That demonstration corroborated the

earlier types of armor, it is a constant problem for police administrators to insure that body armor issued to officers is indeed worn. Too often, officers to whom body armor was issued have been killed or severely wounded because the armor was left in a dressing room locker or the trunk of a squad car. Continuing publicity about the availability of armor-piercing handgun ammunition, together with the complete absence of any effective statutory safeguards, will, we fear, cause some police officers to decide that it is useless to wear their armor when ammunition is available on the streets that will defeat the armor. This potential indirect effect of armor-piercing handgun ammunition could result in more deaths and crippling injuries than the actual use of armor-piercing bullets against officers wearing body armor. In short, we believe it is important to let the law enforcement officers of the nation know that measures are being taken to prevent the criminal use of armor-piercing ammunition. Legislation in this area would, we believe, have the effect of encouraging law enforcement officers to wear body armor issued to them.

Again, because we feel that publicity surrounding armor-piercing ammunition has the effect of increasing the risk to those who use body armor, I will carefully avoid any discussion of specific handgun rounds capable of pentrating armor. I appreciate the cooperation of the Subcommittee in agreeing not to disclose the identity of particular armor-piercing ammunition. Suffice it to say that there are a number of handgun bullets capable of penetrating body armor in addition to the KTW which has received so much publicity

information furnished by technicians -- a number of the bullets tested, in addition to the KTW, defeated the body armor. The armor used in that demonstration has been submitted to the Subcommittee for inspection and we will, of course, be pleased to furnish additional information regarding the February demonstration so long as we can do so without publicly disclosing the varieties of bullets which defeated the armor.

Based upon this and other information, we commenced development of a legislative response to the problem of armor-piercing bullets. Because an early discussion draft of a proposed armor-piercing bullet bill was somehow disclosed to the media and published in a firearms publication, it is no secret that our initial proposals in this area were very similar to H.R. 5437 introduced by Representative Biaggi. As the Treasury Department indicated in its testimony before this Subcommittee earlier this year, however, our continuing study of this issue revealed that there are serious flaws in the broad ban on armor-piercing handgun ammunition proposed in early Department legislative proposals and in H.R. 5437.

First, to date we have been unable to describe armor-piercing handgun ammunition in a way which reaches all rounds capable of defeating soft body armor without including a number of popular handgun bullets which have long been widely used for legitimate sporting and recreational purposes. The simple fact is that some bullets with a legitimate use will defeat soft body armor. Moreover, in certain handgun calibers, the effect of a ban on armor-piercing bullets would effectively deprive firearms owners of the use of

their weapons by rendering illegal all presently available commercially manufactured ammunition.

Given the fact that we are aware of no instance in which an armor-clad law enforcement official has been attacked with armor-piercing handgun ammunition, we cannot justify legislation banning all ammunition capable of penetrating the type of soft body armor worn by law enforcement officials. Put simply, we cannot recommend legislation so seriously disrupting the firearms and ammunition industry and so clearly impinging upon the interests of legitimate gun owners where the basis is solely a potential rather than a demonstrated threat. Furthermore, I should note that the Department of the Treasury has negotiated agreements with several ammunition manufacturers which will reduce the potential that handgun bullets designed for penetration will be available to anyone other than law enforcement and military agencies. Treasury reports that ammunition manufacturers are sensitive to the problem and have responded in a responsible manner to our requests for limitations on armor-piercing bullets.

A second serious problem with H.R. 5437 is that it would produce unjust results. This difficulty arises from the fact that ammunition performs differently depending upon the type of firearm from which it is fired. A particular round fired from a revolver with a four-inch barrel, for example, might not penetrate body armor whereas the same ammunition, if fired from a revolver with a six-inch barrel might defeat the same armor. This is because increased barrel length affects projectile velocity thus enhancing penetration power. We believe, therefore, that it would be impossible to justify,

for example, imposition of a minimum mandatory prison sentence under H.R. 5437 when it could be demonstrated that the ammunition, although classified as "armor-piercing" under the definition in the bill, would in fact not penetrate soft body armor when fired from the handgun possessed by the defendant at the time of the underlying criminal offense.

In addition to these difficulties, there are others which have been discussed by the Department of Treasury which I will not dwell on today including the cost of testing all commercially available ammunition, the problem posed by ammunition which can be fired interchangeably from either handguns or long guns and so forth. Suffice it to say that we do not believe the ban proposals presently before the Subcommittee are appropriate.

Nevertheless, we see no legitimate reason for private use or possession of handgun bullets, such as the KTW, that are designed specifically for the purpose of armor penetration. Therefore, we will continue to work with the Department of the Treasury and with the Subcommittee to develop a workable definition of such bullets. Our clear objective is to prevent criminals from having access to handgun bullets designed specifically to penetrate armor. In the meantime, however, we believe that immediate action in this area is needed and have submitted to the Subcommittee a draft bill designed to fill the existing gap in federal law. We believe this stopgap proposal would provide a meaningful disincentive to use of armor-piercing bullets during the course of federal crimes. Our proposal would establish a minimum, mandatory prison sentence of five years for the use of armor-piercing handgun ammunition during

the course of a federal crime of violence. By contrast with other similar proposals, our bill would provide for imposition of this minimum mandatory sentence only where it can be proved that the ammunition would penetrate Type IIA body armor -- the most popular armor for law enforcement use -- when fired from the firearm in the possession of the defendant. This approach avoids the anomaly described above where a person could be subjected to enhanced sentencing even though a bullet classified as "armor-piercing" would not, in fact, penetrate body armor if fired from his weapon.

Our proposal covers only federal crimes committed with armor-piercing handgun ammunition as we believe that the state interest in prosecuting perpetrators of state offenses outweighs the federal interest. If our bill is enacted by the Congress, we will notify the 50 states and urge enactment of similar state laws to protect state and local law enforcement officials.

We believe that this legislation would provide a significant deterrent to the use of armor-piercing handgun ammunition and that, where such ammunition is used during the course of a federal crime, would insure that the offender is imprisoned for a lengthy period thereby incapacitating that individual from the further commission of such offenses. In this regard, our proposal makes clear that the minimum mandatory sentence is to be served consecutively with the sentence imposed for the underlying crime of violence, that the sentence is not subject to probation or suspension, and that a person so sentenced is not eligible for parole.

Finally, we recommend against the enactment of the various proposals before the Subcommittee to authorize detailed testing of

handgun ammunition and body armor. Although we do not have solid test data on every one of the hundreds of different types of handgun ammunition manufactured here and abroad in recent years, we do have extensive information on bullet characteristics and armor capabilities and do not feel that further elaborate testing such as that proposed in H.R. 2280 is necessary. Rather, we believe we have sufficient information upon which to base legislation along the lines of our proposal.

Mr. Chairman, we believe that handgun ammunition designed to penetrate armor must be kept out of the hands of criminals and we look forward to working with your Subcommittee toward that end. We also believe that the legislation we have proposed today -- although modest by comparison with some other bills -- would fill a gap in existing law by recognizing that certain types of handgun ammunition are particularly dangerous and that the commission of a crime involving such ammunition should result in harsher penalties than would otherwise be applicable. In essence, our proposal recognizes varying ammunition threat levels in determining sentencing just as do existing laws which provide for enhanced sentencing for use of a firearm during the course of a felony. This legislation would provide new and needed protection for law enforcement officials and others who use soft body armor. We will appreciate your attention to this proposal. Of course, we will be pleased to work closely with you and your staff in refining this proposal should you feel that further adjustments are needed.

STATE OF ALASKA

DEPARTMENT OF PUBLIC SAFETY

DIVISION OF STATE TROOPERS

JAY S. HAMMOND, GOVERNOR

P.O. BOX 6188 ANNEX
ANCHORAGE, ALASKA 99502
PHONE:

September 21, 1982

The Honorable Joe L. Hayes
625 W. 5th Ave., Suite 1
Anchorage, AK 99501

Dear Mr. Hayes:

Thank you for your inquiry into the KTW projectile. This matter has received a great deal of national attention.

These cartridges are available in Alaska. Due to national publicity on their ability to penetrate soft body armour, we in the law enforcement profession are concerned.

It is not practical to wear a vest which would stop these projectiles. We, therefore, would support any legislation prohibiting the sale and possession of KTW bullets.

Again, thank you for your interest.

Sincerely,

T R Anderson

Colonel T. R. Anderson
Director

12-L13LH

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BULLET THREATS TO PROTECTIVE BODY ARMOR

November 27, 1979

Updated

March 25, 1982

William C. Boesman
Specialist in Science and Technology
Science Policy Research Division

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INTRODUCTION AND SUMMARY

INTRODUCTION

Since about 1975, law enforcement officers have been using protective body armor of the "soft" or "lightweight" variety to an increasing extent. This type of body armor, unlike the heavy flak jackets worn by the military and by special police units on dangerous tactical assignments, is designed to be lightweight and soft enough to be worn comfortably under law enforcement officers' uniforms or under plain clothes officers' outer garments.

This type of soft or lightweight body armor has been developed to the extent that it quite effectively "defeats" (stops the penetration of) many types of handgun bullets and some rifle bullets. It is the purpose of this report to analyze the characteristics of bullets which are most likely to defeat soft, lightweight body armor. The following section discusses various types of bullets and the purposes for which bullets are designed. The third section discusses recent law enforcement officer fatalities and the related use of soft body armor. The fourth section discusses recent developments in, and characteristics of, soft body armor. The last section presents a brief analysis of bullet characteristics, particularly those that can defeat currently available soft body armor.

SUMMARY

Existing, commercially available soft, lightweight body armor apparently can effectively stop most of the handgun bullets which pose a threat to law enforcement officers today. However, there is a class of handgun [illegible] that can penetrate

such armor. These types of bullets are: generally constructed of steel-jacketed lead or hard metal alloys; often pointed in shape rather than being flat, rounded, or hollow-pointed; and generally high velocity. Smaller handgun and rifle bullets (for example, .22 caliber) with the above characteristics are generally more effective in penetrating soft body armor than larger bullets (for example, .45 caliber) with the same characteristics.

BULLETS

TYPES

There are many ways to classify the various types of bullets that have been or are in use. 1/ For purposes of this analysis, bullets will be discussed according to the following characteristics:

- For use mainly in handguns, rifles, or machine guns, or in more than one type of weapon;
- Velocity (low, for example, 730 feet per second, to high, for example, 1800 feet per second);
- Caliber (small, for example, .22 caliber, to large, for example, .45 caliber);
- "Hardness" (soft nosed lead bullet, or partially jacketed, to full metal jacketed (with copper or steel) to hard metal alloy bullet); and
- Shape (round or hollow point to pointed nose).

Sometimes bullets are classified according to either their "stopping power"—their ability to knock down or disable a human being—or their "armor- or metal-piercing" ability. These two types of characteristics, however, may be somewhat mutually exclusive. For example, one bullet designed for high "stopping power" is the .357 caliber magnum hollow point bullet. Upon impact, this bullet expands (because of its hollow point) and converts a large percentage of its (high) velocity to kinetic energy within the wounded body—thus knocking down, stopping, or disabling the person.

1/ There may be as many as 10,000 different bullets that have been manufactured since the development of the bullet cartridge around the time of the U.S. Civil War.

This type of bullet, however, may be effectively stopped by soft body armor without body penetration and hence without wounding, except for "blunt trauma". 1/ On the other hand, an armor-piercing bullet which will penetrate soft body armor may, because it is hard and retains its shape, pass through a body with relatively little damage if it does not hit a bone, other hard substance, or vital organ. Obviously, bullet wounding capabilities are not completely predictable because of the exceedingly complex structure of the human body, and even the relatively less devastating bullets can and often do kill. In fact, more law enforcement officers were killed with .38 caliber weapons in 1976 through 1980 2/ than with any other weapon, mainly because these weapons are in more common use than other, more devastating bullets like the various magnum and armor-piercing bullets.

PURPOSES

It can be seen from the above discussion that many, if not most, bullet characteristics derive from the purpose or purposes which the ammunition designers had in mind. Thus, expanding bullets, particularly hollow point bullets, were designed for the purpose of more effectively transmitting kinetic energy to the wounded body than do ordinary bullets.

1/ Blunt trauma is injury caused by bullets which do not penetrate armor. It is injury caused by the force of the blow itself, as when a person is hit in the chest by a hard swung baseball bat.

2/ Federal Bureau of Investigation. Law Enforcement Officers Killed 19,6. Washington, U.S. Department of Justice, 1976. p. 24.
Also for 1977, p. 13; 1978, p. 13; 1979, p. 13; and 1980, p. 12.

Protective body armor, including the soft or lightweight variety, has been and is being designed to defeat many types of bullets, including many of the relatively more devastating (high velocity, hollow point) bullets. However, certain types of high velocity bullets made entirely of hard metal alloys, or which are fully covered with steel jackets, can defeat the currently available soft body armor. Thus, certain bullets of the armor- or metal-piercing variety, whether or not designated as such by bullet manufacturers, pose a threat to existing body armor which can effectively defeat most "ordinary" bullet threats.

LAW ENFORCEMENT OFFICER FATALITIES

CURRENT STATISTICS

A number of law enforcement officers are killed and wounded each year by handguns, rifles, shotguns, and other weapons. Recent statistics from the Federal Bureau of Investigation (FBI) indicate that this number, while still large, has decreased rather significantly from 1974 and 1975 to 1976. The following table shows statistics for law enforcement officers killed by firearms and other weapons for this period:

Law Enforcement Officers Killed, by Type of Weapon

WEAPON USED	1971	1972	1973	1974	1975	1976	1977	1978	1979	1980	TOTAL
HANDGUN	97	77	93	95	93	66	59	67	76	69	792
RIFLE	16	16	21	12	21	12	13	13	18	13	155
SHOTGUN	11	18	13	21	13	16	11	11	6	13	133
TOTAL FIREARMS	124	111	127	128	127	94	83	91	100	95	1,080
KNIFE	2	3	2	1	--	5	--	--	4	3	20
BOMB	--	1	--	--	--	4	--	--	1	--	6
PERSONAL WEAPONS	2	--	--	--	--	--	1	1	--	--	4
OTHER (CLUBS, ETC.)	1	1	5	3	2	8	9	1	1	6	37
GRAND TOTAL	129	116	134	132	129	111	93	93	106	104	1,147

Source: Federal Bureau of Investigation. Law Enforcement Officers Killed 1980. - Washington, U.S. Department of Justice, 1980. p. 11.

There reportedly is a consensus that at least 400 U.S. law enforcement officers have been protected from death or injury through the use of bulletproof vests from 1975 to the present. 1/ Although such a consensus cannot be confirmed with existing data, it is interesting that the approximately 20 percent decrease in firearm-related deaths indicated in the above table since 1974 could be accounted for partially by increased use of soft body armor by law enforcement officers.

The following table shows the size of bullets and types of firearms which caused the deaths of the 95 law enforcement officers in 1980. The handgun bullets shown in that table are all of a class which can be defeated by existing soft body armor unless they are of the hard metal alloy or steel-jacketed, armor-piercing variety. Soft body armor cannot defeat high velocity, metal jacketed rifle bullets either, some of which may be represented in the "rifle" column of the table.

OFFICER FATALITIES WHILE WEARING ARMOR

In 1980, the first year such data were collected uniformly by the FBI, 14 law enforcement officers in the United States were killed in the line of duty while wearing protective vests. 2/ Seven of the officers were shot

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1/ Conversations with a Department of Justice official and a representative of the International Association of Chiefs of Police on March 24, 1982.

2/ These cases are taken from Federal Bureau of Investigation. Law Enforcement Officers Killed 1980. Washington, U.S. Department of Justice, 1980. This report does not include information sufficient to determine whether the "protective vests" were soft body armor or other types, nor is that information currently available from the FBI.

1980

LAW ENFORCEMENT OFFICERS KILLED
TYPE AND SIZE OF FIREARM

SIZE OF WEAPON	TYPE OF WEAPON			
	HANDGUN	OFFICER'S OWN WEAPON	RIFLE	SHOTGUN
Total	69	13*	13	13
Handgun size				
.22 Caliber	4			
.25 Caliber	2			
.32 Caliber	8			
9 Millimeter	2			
.357 Magnum	16	7		
.380 Caliber	1	1		
.38 Caliber	30	4		
.44 Magnum	2			
.45 Caliber	1			
Caliber Not Reported	3			
Rifle size				
.22 Caliber			4	
.223 Caliber			3	
7 Millimeter			1	
.30-06 Caliber			1	
.30-30 Caliber			1	
.303 Caliber			1	
.308 Caliber			1	
.444 Magnum			1	
Shotgun size				
20 Gauge				3
12 Gauge		1		10

*Included in appropriate category.

Source: Federal Bureau of Investigation. Law Enforcement Officers Killed 1980. Washington, U.S. Department of Justice, 1980, p. 12.

in the head and five received fatal gunshot wounds to areas of the upper torso not protected by the vests. One officer was struck by a vehicle. The remaining officer was shot in the back with a bullet that penetrated his vest, but this was a .30-06 caliber rifle bullet fired from about 50 yards away. Soft body armor is not designed to prevent the penetration of most rifle bullets, such as .30-06 caliber bullets. 1/

1/ Id. at p. 28, 30, 32, 33, 34, 36, 37, 38, 40, 42, 43, and 44.

BODY ARMOR

RECENT DEVELOPMENTS

Since at least the early 1970s, there has been considerable interest among law enforcement support agencies in developing effective soft body armor that would be comfortable and unobtrusive enough to be worn continuously by law enforcement officers while on duty. Organizations like the National Institute of Law Enforcement and Criminal Justice (NILECJ) of the Law Enforcement Assistance Administration (LEAA) of the U.S. Department of Justice, and the International Association of Chiefs of Police, have sponsored several studies of soft body armor. 1/ Research programs on soft body armor and weapons threats have been administered and carried out by the Law Enforcement Standards Laboratory of the National Bureau of Standards, Department of Commerce; Edgewood Arsenal, Aberdeen Proving Grounds, Department of the Army; the FBI Quantico Test Base; and several private weapons testing laboratories. About 25 to 30 manufacturers of soft body armor are now producing units commercially for sale to an increasing number of U.S. law enforcement organizations.

1/ For example, Montanarelli, Nicholas, Clarence E. Hawkins, and Lester D. Snubin. Body Armor: Lightweight Body Armor for Law Enforcement Officers. Washington, U.S. Department of Justice, LEAA, NILECJ, May 1976. p. 113; Goldfarb, Michael A. et al. Body Armor: Medical Assessment. Washington, U.S. Department of Justice, LEAA NILECJ, May 1976. p. 30; National Institute of Law Enforcement and Criminal Justice. NILECJ Standard for the Ballistic Resistance of Policy Body Armor. Washington, U.S. Department of Justice, LEAA, NILECJ, December 1978. p. 10; and International Association of Chiefs of Police. Policy Armor Testing and Summary of Performance Testing Data. Gaithersburg, Maryland, International Association of Chiefs of Police, December 1978. p. 23.

COMMERCIALLY AVAILABLE SOFT BODY ARMOR

Most, if not all, soft body armor commercially available today is made of differing numbers of layers of Kevlar, a synthetic (aramid) fiber produced by the Du Pont Company. In addition to the number of layers of Kevlar used, the weaving and other processes used in the production of the final protective vest affects the strength of the product.

In the early 1970s, protective body armor generally was classified as to whether it was made of 7, 12, 16, 24, or other numbers of layers of Kevlar. Currently, manufacturers and police departments often designate certain threats (types of bullets) that the vests are to protect against, regardless of the numbers of layers of Kevlar involved.

In 1982 it is estimated that approximately half (about 250,000) of the Nation's law enforcement officers own or have access to soft body armor. 1/

1/ Conversations with a Department of Justice official and a representative of the International Association of Chiefs of Police on March 24, 1982.

The state of the art of protective body armor, which today is largely based upon the use of Kevlar, involves a trade off between the thickness of the protective vest versus the types of bullets which the vest can defeat. Certain commercially available bullets, like .357 caliber magnum hard metal alloy bullets, and some foreign-made nine millimeter steel jacketed bullets, can defeat commercially available soft body armor.

PROTECTION AVAILABLE

A side-by-side comparison of the handgun weapons used to fatally injure law enforcement officers in 1980 (shown above and repeated for convenience here) and handgun bullets required to be defeated by soft body armor in the equipment purchase specifications of a number of U.S. cities indicates that currently available soft body armor apparently can protect against the large majority of bullet threats facing law enforcement officers today.

Handgun Weapons Used to Fatally Injure Law Enforcement Officers in 1978	Deaths in 1980 From Weapons in Column One	Handgun Bullets Required to be Defeated by Representative Police Department Soft Body Armor Specifications 1/
.22 caliber	4	S, M, N (all also include .22 magnum)
.25 caliber	2	--
.32 caliber	8	N
9 millimeter	2	S, M, N
.357 magnum	16	S, M, N
.380 caliber	1	N
.38 caliber	30	S, M, N
.41 magnum	0	S, M, N (N does not indicate magnum).
.44 magnum	2	S
.45 caliber	1	S, M, N
caliber not reported	3	—

1/ From 1979 soft body armor specifications of Milwaukie, Oregon (M); Nashville, Tenn. (N); and San Diego, Calif. (S). The San Diego specification has apparently been adopted by about 40 other U.S. cities.

While most commonly used bullets apparently can be defeated by existing soft body armor, there is a class of bullets which can defeat it. This subject is discussed in the following paragraphs.

POSSIBLE REMAINING THREATS

Bullet Characteristics

Although a number of bullets can be defeated by currently available soft body armor, a number of threats remain. Most, if not all, types of metal- or armor-piercing bullets will apparently defeat existing soft body armor, whether these bullets are hard, metal alloy bullets, or lead bullets which are steel jacketed. Other types of non-armor- or metal-piercing bullets which might defeat soft body armor are bullets which are small caliber (for example, .22 caliber) or high velocity (particularly magnum) bullets. Bullets which combine these latter two characteristics (small caliber plus high velocity) are more likely to defeat some types of soft body armor (depending upon its thickness and construction) even if these bullets are not of hard metal alloy or steel jacketed construction. Thus, there currently exist several specific bullets, and a class of bullets having certain characteristics, that can, or could be designed to, defeat currently available soft body armor.

Blunt Trauma

Even if bullets do not penetrate soft body armor, lethal wounds could be caused by "blunt trauma." This type of wounding effect can be described as being similar to being hit on the body by a hard swung baseball bat. Because this phenomenon currently does not appear to be a

major wounding cause, it is not discussed further here. However, it is conceivable that, were higher powered bullets used or developed to defeat soft body armor, blunt trauma effects might be a major cause of concern to body armor researchers, developers, and manufacturers, as well as medical practitioners.

BODY-ARMOR DEFEATING BULLETS: THREAT CHARACTERISTICS

This section describes some bullet characteristics that are important to a consideration of what types of bullets can defeat, or can be designed to defeat, existing soft body armor.

VELOCITY

Handgun bullets typically range in muzzle velocities from about 730 feet per second (fps) (low velocity) to over 1,800 fps (high velocity), depending upon the powder charge of the cartridge and the length of the handgun barrel. Eleven hundred fps (roughly the speed of sound in air) may be a convenient point to differentiate between low and high velocity bullets, although it is unlikely that a consensus could be obtained that significantly different wounding effects occur above and below this velocity for a given type of bullet.

It is clear, however, that high velocity bullets are more likely to defeat soft body armor than low velocity bullets, all other characteristics remaining constant.

CALIBER AND WEIGHT

Caliber measures the diameter of bullets, that is, a .45 caliber bullet has a diameter of .45 inch. Caliber is thus a measure of size. A .45 caliber bullet is considerably larger than a .22 caliber bullet. The most common police bullet, and the most common bullet causing police fatalities, is the .38 caliber, intermediate in size between the .22 caliber and the .45 caliber.

Weights of bullets are measured in grains. The larger the caliber, the more a bullet weighs, given a constant shape.

The smaller caliber bullets, for example, the .22 caliber, are more likely to penetrate the commercially available body armor than larger caliber bullets, other bullet characteristics remaining constant.

SHAPE AND HARDNESS

Bullets are produced in several shapes--including round or ball nosed, flat-nosed, pointed, and hollow pointed. Round, flat-nosed (some of which are called wadcutters or semi-wadcutters) and hollow point bullets are often constructed as lead or semi-jacketed bullets which expand upon contact. The hollow point bullets are generally the most effective of these "expanding" bullets. Pointed bullets generally are constructed of lead with metal jackets, which are usually of copper. If such bullets are jacketed with steel, they generally have armor- or metal-piercing capabilities. Another class of bullets is constructed of hard metal alloys and are also armor- or metal-piercing bullets.

Thus, the harder and more pointed a bullet is, the more likely it is to penetrate commercially available body armor, other bullet characteristics remaining constant.

SUMMARY OF BULLET THREAT CHARACTERISTICS

Given the characteristics of the most successful, currently available soft body armor, bullet threat characteristics can be summarized in the following way:

Bullet Characteristics	Lowest Level of Threat	Highest Level of Threat
Velocity	Low velocity	High velocity
Caliber, weight	Large caliber, heavy	Small caliber, light
Shape	Round or flat nose, hollow point	Pointed
"Hardness"	Lead, or copper semi-jacketed lead	Full steel jacketed lead, or hard metal alloy bullet

Thus, the bullet type with the highest probability of penetrating soft body armor, and with a proven capability of penetrating many layers of existing soft body armor, is a high velocity, small caliber, pointed, steel jacketed lead or metal alloy bullet. Such bullets may be handgun bullets, rifle bullets, or bullets which can be used in either handguns or rifles.

POSSIBLE RAMIFICATIONS OF "PERFECT" BODY ARMOR

Commercially available soft body armor is not perfect, that is, it can be defeated by certain bullets of the hard metal alloy or steel-jacketed armor- or metal-piercing types. Assuming that "perfect" body armor could be developed to meet current threat conditions, there is at least one positive and one negative ramification of such a development:

Possible Positive Ramification

Decreased wounding and death of law enforcement officers under current conditions, that is, continued use by criminals of existing types of bullets which, to a considerable extent, can be defeated by existing soft, light-weight body armor.

Possible Negative Ramification

An "arms and ammunition race" by the criminal segment of society for even more powerful bullets and other weapons to defeat existing armor, and increased use by criminals of such armor. This possible negative ramification could be precluded to some extent by controlling, by law and enforcement, the manufacture, distribution, sale, possession, and international trade of all bullets of the armor- or metal-piercing type and, perhaps body armor.

DON YOUNG
CONGRESSMAN FOR ALL ALASKA

COMMITTEES:
INTERIOR AND INSULAR AFFAIRS
MERCHANT MARINE AND FISHERIES

Congress of the United States
House of Representatives
Washington, D.C. 20515

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TELEPHONE 907/456-6949

July 27, 1982

Mr. Francis C. Allan
President
The Alaska Cartridge Club
S.R.A. Box 4247
Anchorage, Ak. 99502

Dear Mr. Allan,

Thank you for your letter regarding the draft legislation concerning armor-piercing ammunition. I read the language of the legislation you sent, and I agree it is far too loosely worded to accomplish what the authors hope to.

As a result, I plan to oppose and will work to defeat any such legislation. The language is not the only reason I will oppose it. Now that armor-piercing ammunition has been developed, no act of Congress is going to prevent a person with criminal intentions from acquiring and using it. It is the same principle that applies to gun control. No matter what laws are passed, a criminally minded person will acquire a gun and ammunition. Therefore, only the legitimate and honest gun users will be hurt. Like you, I want to assist law enforcement officers, but it appears to me someone is going to have to invent another vest to stop these bullets.

Thank you for bringing this to my attention, and please inform your organization that I will oppose this legislation.

Best wishes,

Sincerely,

Don Young

DON YOUNG
Congressman for all Alaska

DY:lv

T H E
ALASKA CARTRIDGE CLUB

S.R.A. Box 4247, Anchorage. Alaska 99502

A Division of
THE ALASKA GUN COLLECTORS ASSOCIATION, INC.

Senator Ted Stevens
U S Senate
Washington, D.C. 20510

21 June 1982

Dear Senator Stevens,

Attached to this letter is a copy of draft legislation, S929 (Title 18 USC), which deals with the restriction of manufacture, importation and even possession of armor-piercing handgun ammunition which the Alaska Cartridge Club vehemently opposes. The subject was brought up by a television segment of the NBC-TV Magazine program which dealt with the ability of the "KTW" brand of ammunition to penetrate bullet-proof clothing. While the laudable intent of the proposed legislation is to protect law enforcement officers who wear such clothing on duty, it is so badly worded that it creates problems rather than solves them.

The language in the bill is all-inclusive and would certainly be detrimental to the hobby that is enjoyed by our organization. The term "armor-piercing" is not even properly defined. It is stated that ammunition will be classified after testing only. No guidelines of any value are given to the testing agency. It might be determined that any fully-jacketed bullet would be considered armor-piercing. Additionally, "body armor" is also not defined. Certainly, there are different grades of this material, some of which can be penetrated by normal "off-the-shelf" handgun ammunition at close range.

A section of the bill that we fully support is paragraph (b), which deals with the use of this type of ammunition by a criminal and the additional felony charge that would be brought as a result of its use. Regrettably, this is the only section that appears to be beneficial. The other sections will not help law enforcement officers to any measurable degree. Several brands of armor-piercing ammunition have been available for so many years that it would be nearly impossible to end their circulation. The "KTW" brand has been available for fifteen years, long before the protective clothing was in general use.

To illustrate the potential for abuse of this poorly-worded legislation, take my own situation as an example. I collect two types of ammunition, one of which is 9mm Luger (Parabellum) pistol ammunition. In my collection of more than four hundred examples, I have <u>one</u> round of KTW armor-piercing ammunition. Under this legislation, if I were to be caught with this one round in my possession, I could be fined $250,000 even though I do not own a 9mm handgun in which it could be fired!

I have also enclosed with this letter an article that I wrote on KTW ammunition for our newsletter. It appeared in our May 1981 issue--long before the current flap over armor-piercing ammunition. It provides an indication of the interest on the part of the serious collector in these cartridges, irrespective of their high penetrability.

I request that you or your staff look into the wording of this legislation, and, if it cannot be clarified or altered to make provision for legitimate collectors, that the proposed legislation be defeated. If we felt that the legislation would provide a degree of safety for peace officers, we would be willing to accept the negative impact on our hobby. However, this legislation simply does not provide the protection desired. Its only accomplishment is to restrict the activities of lawful citizens.

Our organization will be looking forward to hearing from you concerning this legislation and your intentions toward it. Thank you for your attention to this matter.

Sincerely,

Frank Allan

Francis C Allan
President

FRANK H. MURKOWSKI
ALASKA

COMMITTEE ON ENERGY AND NATURAL RESOURCES
COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS
COMMITTEE ON VETERANS' AFFAIRS

United States Senate
WASHINGTON, D.C. 20510

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July 12, 1982

Mr. Francis C. Allan, Pres.
Alaska Cartridge Club
SRA Box 4247
Anchorge, Alaska 99502

Dear Mr. Allan:

This is in response to your letter expressing your opposition to legislation to restrict the distribution and use of armor-piercing handgun ammunition.

Two bills are pending in the Senate Judiciary Committee which deal with this issue. They are S. 2017, introduced by Senator Hawkins, and S. 2128 introduced by Senator Moynihan. S. 2017 would require the Secretary of the Treasury to conduct a study of handgun bullets to determine which have the capacity to penetrate bulletproof vests. S. 2128 would limit the vailability and use of handgun bullets that are capable of penetrating certain body armor.

I have noted your comments about the lack of a proper definition of "armor-piercing." You may be assured that I will have your concerns in mind as I review these two bills. At the same time, I think it is important to review S. 2017 and S. 2128 to see if they are necessary in order to ensure the safety of our law enforcement officials.

Thank you for bringing your concerns to my attention. If you have further comments I would appreciate hearing from you.

Sincerely,

Frank H. Murkowski
United States Senator

AMENDMENT NO. --- Calendar No. ---

Purpose: To establish minimum mandatory sentences for the use of armor-piercing handgun ammunition during the course of a violent crime.

IN THE SENATE OF THE UNITED STATES--97th Cong., 2d Sess.

S. 2572

To strengthen law enforcement in the areas of violent crime and drug trafficking, and for other purposes.

Referred to the Committee on _____ and ordered to be printed

Ordered to lie on the table and to be printed

Amendment intended to be proposed by Mr. Schmitt (for himself and Mr. Percy)

Viz:

At the end of the bill add the following:

Part P

Sec. 924. (a) Chapter 44 of title 18, United States Code, is amended by adding at the end thereof the following:

''§ 929. Use of restricted ammunition

''(a) Whoever, during and in relation to the commission of a crime of violence for which he may be prosecuted in a court of the United States, including a felony which provides for an enhanced punishment if committed by the use of a dangerous weapon or device, uses or carries any handgun loaded with armor-piercing ammunition as defined in subsection (b), shall, in addition to the punishment provided for the commission of such felony, be sentenced to a term of imprisonment for not less than five years. Notwithstanding any other provision of law, the court shall not suspend the sentence of any person convicted of a violation of this subsection, nor place him on probation, nor shall the term of imprisonment run concurrently with any other term of imprisonment including that imposed for the felony in which the armor-piercing handgun ammunition was used or carried. No person sentenced under this subsection shall be eligible for

parole.

''(b) For purposes of this section--

''(1) 'handgun' means any firearm, including a pistol or revolver, originally designed to be fired by the use of a single hand;

''(2) 'armor-piercing ammunition' means ammunition which, when or if fired from any handgun used or carried in violaiton of subsection (a), under the test procedure of the National Institute of Law Enforcement and Crimial Justice Standard for the Ballistics Resistance of Police Body Armor promulgated December, 1978, is determined to be capable of penetrating bullet-resistant apparal or body armor meeting the requirements of Type IIA of Standard NILECJ-STD-0101.01 as formulated by the United States Department of Justice and published in December of 1978; and

''(3) 'crime of violence' means--

''(i) an offense, other than a misdemeanor that consists solely of damage to property and that does not place another person in danger of death or serious bodily injury, that has as an element of the offense the use, attempted use, or threatened use of physical force against the person or property of another; or

''(ii) any other offense that is a felony and that, by its nature, involves a substantial risk that physical force against the person or property of another may be used in the course of committing the offense.''.

(b) The table of sections for chapter 44 of title 18, United States Code, is amended by adding at the end thereof the following:

''929. Use of restricted ammunition.''.

HB 2--Re: Penalties for useof Restricted Ammunition -- Hayes, Flood, Lindauer
in commission of a Crime

1. This adds to AS 12.55.125, dealing with sentences of imprisonment for felonies

   (If, in commission of a felony, convict uses handgun loaded with armor-piercing ammo, convict to be sentenced to no less than 5 years in addition to other sentence for commission of the felony itself....i.e. 5 years in addition for use of the described ammo in the handgun).

2. This is similar to bills introduced in U.S. Senate.

3. Reference to AS 12.55.080 and 12.55.085 refers to statutes that deal with probation and SUspended Imposition of Sentence, respectively.

   (j)(3) in this bill bars probation being granted or the handing down of a suspended imposition of sentence if such ammo is used in the handgun. Prescribed minimum term can't be reduced, and no convict would be eligible for parole.

IMPACT:

WITNESSES:

CHANGES:

COMMENTS: If enacted, this likely would be challenged in courts as too severe, in light of the convict being sentenced on the felony-in-chief and again having 5 years added for type of ammunition used.

Should such an act be struck down by courts, it might be construed as rewarding a convict for his efficiency in using this described kind of ammunition.

THE LEGISLATURE OF THE STATE OF ALASKA
THIRTEENTH LEGISLATURE

FISCAL NOTE

I. REQUEST

Bill/Resolution No. House Bill 2
Title An Act relating to the penalties for the use of restricted ammunition
Requested by Representative Hayes Date 1-17-83
commission of a crime.

II. FISCAL DETAIL

Agency Affected Health & Social Services
Program Category Affected Offender Confinement, Reformation & Supervision
BRU, Program or Subprogram(s) Affected Adult Confinement
(Note: If more than one budget component is affected, separate line-item amounts and funding for each component in the analysis section.)

EXPENDITURES (Thousands of Dollars)

		FY 83	FY 84	FY 85	FY 86	FY 87	FY 88
100	PERSONAL SERVICES						
200	TRAVEL						
300	CONTRACTUAL						
400	COMMODITIES						
500	EQUIPMENT						
600	LAND & STRUCTURES						
700	GRANTS, CLAIMS ETC.						
	TOTAL	-0-	-0-	-0-			

FUNDING (Thousands of Dollars)

GENERAL FUND	-0-	-0-	-0-			
FEDERAL FUNDS						
OTHER (Specify Fund Source)						

POSITIONS

FULL TIME						
PART TIME						
TEMPORARY						

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

Assumption

House Bill No. 2 amends AS 12.55.125 to provide penalties where the offender carries or uses a handgun loaded with armor-piercing ammunition.

RECEIVED
FEB 3 1983
LEGISLATIVE FINANCE

IV. DATE 1-20-83 PREPARED BY Roger C. Lange
AGENCY Division of Adult Corrections
PHONE 465-3376

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

33-001 (Rev. 12/79)
OMB Reviewed by: Nancy Dunn

THE LEGISLATURE OF THE STATE OF ALASKA
THIRTEENTH LEGISLATURE

FISCAL NOTE

☒ Expenditure Type
☐ Revenue Type

I. REQUEST
Bill/Resolution No. HB 2
Title A.P. Ammunition
Requested by House Judiciary Date

II. FISCAL DETAIL
Agency Affected Department of Public Safety
Program Category Affected Administration of Justice
BRU, Program, Or Subprogram(s) Affected A S T
(Note: If more than one budget component is affected, separate line-item amounts and funding for each component in the analysis section.)

EXPENDITURES (Thousands of Dollars)

	FY 83	FY 84	FY 85	FY 86	FY 87	FY 88
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 COMMODITIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS,CLAIMS,ETC.						
TOTAL						

FUNDING (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER (Specify Source)						

POSITIONS

FULL TIME						
PART TIME						
TEMPORARY						

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

No fiscal impact is anticapated.

RECEIVED
FEB 8 1983
LEGISLATIVE FINANCE

F.C.A.

IV. DATE January 19, 1983 PREPARED BY Francis C. Allan Phone 269-5691
DIVISION State Troopers Initials FCA
DEPARTMENT OF PUBLIC SAFETY Initials 2/7/83

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

33-001 (Rev. 12/82)
OMB Reviewed by: Eric Laschever

THE LEGISLATURE OF THE STATE OF ALASKA
THIRTEENTH LEGISLATURE

RECEIVED
FEB 7 1983

FISCAL NOTE

I. REQUEST
Bill/Resolution No. HB 2
Title "An Act relating to penalties for the use of restricted ammunition in the commission of crime."
Requested by House Judiciary Committee Date 1/28/83

II. FISCAL DETAIL
Agency Affected Department of Law
Program Category Affected Administration of Justice
BRU, Program, Or Subprogram(s) Affected Prosecution
(Note: If more than one budget component is affected, separate line-item amounts and funding for each component in the analysis section.)

EXPENDITURES (Thousands of Dollars)

	FY 83	FY 84	FY 85	FY 86	FY 87	FY 88
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 COMMODITIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS,CLAIMS,ETC.						
TOTAL		-0-	-0-	-0-		

FUNDING (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER (Specify Source)						
		-0-	-0-	-0-		

POSITIONS

FULL TIME						
PART TIME						
TEMPORARY						

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

This bill requires that a person who uses or carries a handgun loaded with armor-piercing ammunition during the commission of a crime of violence be sentenced to five years imprisonment in addition to the seven, ten or fifteen year presumptive term he would receive for possessing a handgun during the commission of the crime. It is not expected to require the commitment of additional prosecution staff or resources. Proof of the type of ammunition a defendant carried in his gun should not unduly complicate or prolong the trial on the underlying offense.

IV. DATE 1/28/83 PREPARED BY Daniel W. Hickey, Chief Prosecutor
AGENCY Department of Law
PHONE 465-3428

Original: Legislative Finance
cc: Budget and Management
Prime Sponsor (First Legislator Named)
33-001 (Rev. 12/82)

OMB Reviewed by: Guy Bell

NOTIFICATION OF BILL HEARING

WEEK OF: 1/25

BILL #	BILL TITLE	DEPARTMENT	DATE	SPONSOR	DATE
HB 2	Ammunition in crime.	Pub Sec F.N.	1/21	Hayes	
	Veal				

HB

6

opinion

Anchorage Daily News

Winner, 1976 Pulitzer Prize Gold Medal for Public Service

Katherine Fanning
Editor and Publisher

Howard Weaver
Managing Editor

Gerald E. Grilly
General Manager

Steve Lindberg
Editorial Page

Lawrence Fanning Editor and Publisher 1967 to 1971
Alaska's Only Morning Newspaper • Founded in 1946 by Norman C. Brown

Drunken driving: a reckoning looms

1/18/83

A community reckoning is building on the issue of drunken driving — and none too soon. The trick now is to channel Alaska's energies appropriately.

Last week District Court Judge Elaine Andrews issued an appeal from the bench concerning the lack of treatment programs for repeat drunken driving offenders. Later she ordered the first confiscation of an offender's vehicle under Anchorage's new drunken driving ordinance.

The very next day, a local businessman with a history of drunken driving offenses was involved in an accident that killed the other driver. And this week more facts — painful facts — began to emerge about the incident:

- the man faced a pending charge for driving while drunk and an arrest warrant for failing to appear;
- hospital tests after the accident showed that he had a blood alcohol count more than three times higher than the legal standard for drunken driving — a count that would render most individuals unconscious;
- the man's wife, aware of the warrant and believing him to be drunk behind the wheel, had phoned police that day to ask that he be picked up;
- even after being involved in a serious accident and receiving hospital treatment the man went free until his wife once more called police to ask why he had not been apprehended on the outstanding warrant; and
- for more than a year — during which the man was involved in a minor accident, told police he was "totally smashed" at the time, and received a 30-day suspended sentence and $200 fine — the man's wife had sought help for his drinking problem. "He's an alcoholic," she said Wednesday. "He needs the kind of help you can't get at home or from friends."

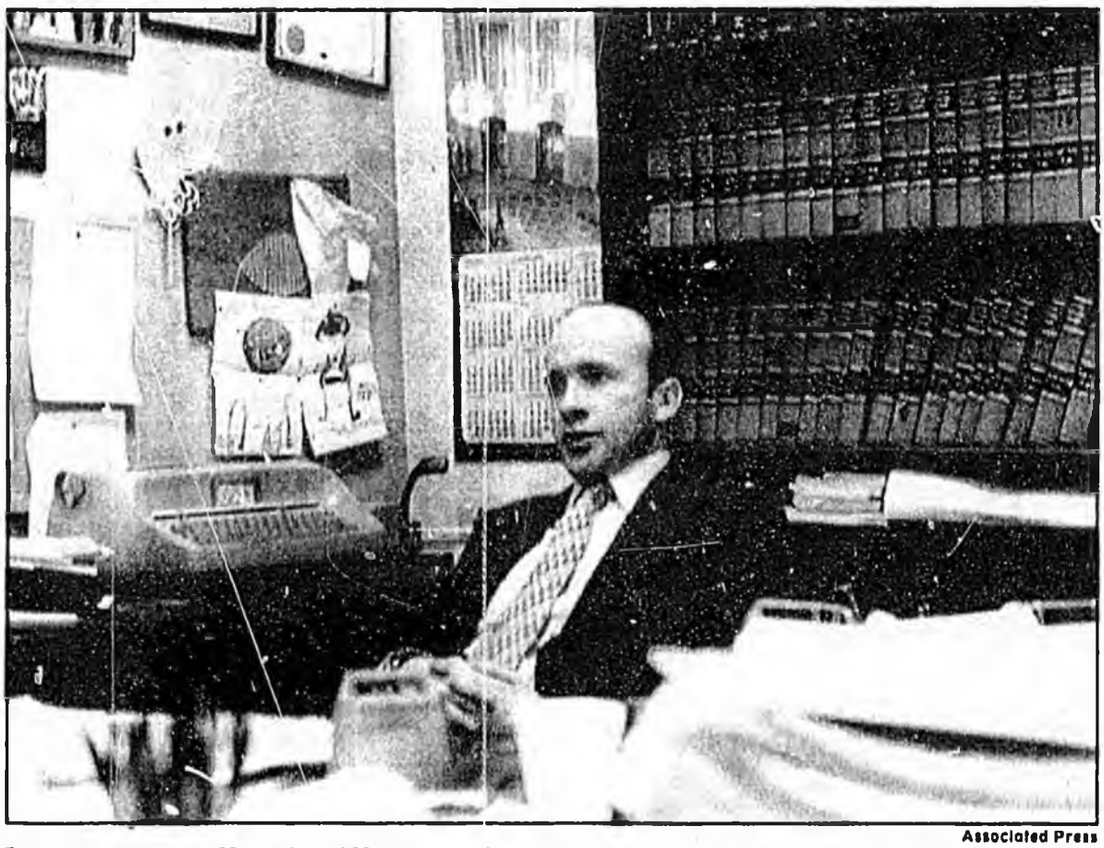
What is pertinent about this tragedy is the contradictions it reveals: the awful need for community action against drunken driving, yet the crying lack of appropriate treatment options; the public demand — and it is swelling — for effective protection, yet the official difficulties in making sanctions stick; the realization that mayhem is at risk *every* time a drunken driver takes the wheel, yet an ingrown tendency — in society as well as its institutions — to treat the matter lightly until that mayhem occurs.

In the aftermath of a growing consensus on the seriousness of drunken driving there is no room for scapegoating or blindness. The test of appropriate policy now must be to overcome those contradictions: to provide mandatory treatment options that can — not always, but often — keep the offender from repeating the crime; to remove dangerous implements — moving vehicles — from known dangerous hands; to take the offense itself — not just violent outcomes — as seriously as the community demands.

Judge Andrews struck an important blow in ordering confiscation of the vehicle of a multiple repeat offender. The sentence is a demonstration both that the law can work and that society is not powerless to protect itself. Confiscating a vehicle deprives the offender of the means of destruction even as it imposes a real penalty against unacceptable behavior. Yet that is not society's only possible response.

The Senate State Affairs Committee, chaired by Sen. Vic Fischer, D-Anchorage, will hold public hearings Saturday on three major bills related to issues of drunken driving and alcohol abuse. One bill would raise the drinking age from 19 to 21; another would stiffen penalties — including making provision for vehicle confiscation statewide; a third would deal with possible curfews for drivers under age 18.

The hearings begin at 9 a.m. in Anchorage Assembly chambers, 3500 East Tudor Road. A community concerned with the proposed legislation, other potential remedies, and the gathering storm over atrocities on its roads and highways, should be there to speak its piece.



Associated Press

District Judge James Hornaday of Homer says the state needs to enact tougher laws against drunken drivers

Judge urges tougher drunken driving laws

by Ralph Nichols
Times Writer

A District Court judge under fire for the tough sentences he gives drunken drivers told the Senate State Affairs Committee the legislature must increase the minimum penalties for that crime.

Judge James Hornaday of Homer told the committee Monday during a statewide teleconference hearing chaired by Sen. Vic Fischer, D-Anchorage, that the sentencing of drunken drivers can't be left to judges alone.

"Drunk driver cases are the most serious problem facing the Alaska court system today," Hornaday said.

"You must take discretion away from the judges because experience has shown the judges will generally only impose the statutory minimums," he said.

Hornaday has been transferred to Anchorage effective June 1 by presiding Superior Court Judge Mark Rowland because he is frequently disqualified by defense attorneys from hearing cases.

Many of those cases involve drunken drivers. Hornaday is known for sentencing first-time offenders to more than the mandatory 72 hours in jail.

The minimum sentence doesn't have to be the average sentence, he told the lawmakers. "In Maine, we are told, judges are giving on the average four times the minimum jail time."

Speaking in support of bills to toughten drunken driving laws, Hornaday called for an increase in the mandatory jail sentences faced by persons convicted of driving while intoxicated and driving with a suspended license.

Hornaday said the legislature should consider adopting:

- Forfeiture of the driver's vehicle upon his second drunk driving conviction, or his first conviction if a person is injured.
- Longer mandatory driver's license revocations.
- Required mandatory community work by convicted drunken drivers.
- Raising the drinking age and earlier bar-closing hours.
- Mandatory alcohol abuse programs in jails for all second-time offenders.

The judge also advocated creation of a state task force on drunken driving to address the problem.

"Over half of all the jury trials in the (state) are drunk driving cases. More are arrested for drunk driving than any other offense. Over two-thirds of the traffic fatalities involve drinking," he said.

Noting the Alaska Supreme Court has affirmed a 90-day jail sentence for a first-time deer poaching conviction, Hornaday asked the committee, "Why is it that hardly anyone bats an eye over these sentences, and yet there is such an uproar about sentencing above the bare minimum for drunk driving?"

He added that people argue "you shouldn't put drunk drivers in jail because you are just overcrowding the jails with non-criminals.

"Well, maybe we ought to be concerned about the overcroweded hospitals, and overcrowded wheelchairs and overcrowded cemeteries caused by drunk drivers."

Hornaday last week filed suit in U.S. District Court and state Superior Court, charging Rowland lacked the authority to transfer him and charging the action violated his civil rights.

Hornaday also challenged the constitutionality of pre-emptory challenges with no reason stated, saying they violate a judge's right to the due process of law.

McCarthy murder trial postponed

The trial of Louis Hastings, accused of murdering six McCarthy residents, has been postponed until July and will likely be postponed again. Defense attorney John Salemi told Superior Court Judge Ralph Moody Wednesday that he will need until late August to prepare Hasting's defense.

From Daily News staff reports

police report

Bullet hits assemblyman's home

Police pulled a .22-caliber bullet from the outside of Assemblyman Fred Chiei's South Anchorage home Monday after random shots were apparently fired by teen-agers from the Oceanview beach late that morning. The slug was embedded backwards in an outside corner of the Chiei home, indicating it probably ricocheted from another spot and was not fired directly at the assemblyman's home. A neighbor told police she saw two teens earlier that morning on the beach with a small caliber rifle, but they were too far away for her to identify. No injuries were reported.

Man charged with assault

An Anchorage man who allegedly threatened his ex-girlfriend's new boyfriend with a gun was arrested by Anchorage police. Chapaula Ayers, 25, of Anchorage was charged with third-degree assault and held in lieu of $1,000. According to police reports, Ayers was talking with his ex-girlfriend in a parked car when another man ordered him out of the vehicle. Ayers then allegedly chased the man with a handgun and fired one shot into the ground.

Drunken driving charged in accident

A man who allegedly struck a woman with his car as she walked down the road has been charged with drunken driving by Alaska State Troopers. The woman, who suffered minor injuries, told troopers she was hit Saturday night while walking along the Alyeska Highway. At Mile 112 of the Seward Highway, troopers stopped and arrested Timothy R. Mountfort, 23, of Fort Richardson. Mountfort was charged with driving while intoxicated and released.

From Daily News staff reports

4/29/83 Times

Courtroom drama

A DRUNK DRIVER who was responsible for the death of a child last June in Eagle River was sentenced to prison sentence in Superior Court here this week, despite testimony from numerous witnesses as to her good character and upstanding citizenship.

The judge gave her five years in prison and an additional five years of probation.

HE ALSO told the woman he wished he could put a photo of the mangled child she killed on the wall of her cell as a daily reminder of why she is sitting in prison.

At one point in the sentencing, the judge clapped his hands together to demonstrate how the drunk woman's car smashed into the victim.

THE COURTROOM scene, witnessed by the family of the dead child and many members of the Mothers Against Drunk Driving (MADD) organization, was filled with emotion and drama.

It wouldn't be a bad idea for attendance at these sentencings to be part of the rehabilitation process for those convicted drunk drivers who were fortunate enough not to have killed someone.

Lawmakers disregard MADD

I am very mad and so are the members of MADD.

When we were in Juneau the end of January, we received very warm welcomes and we were told to keep up the good work. We really felt we were doing some good on the laws about drunk drivers. Now, we know we are not very experienced in the field of lobbying, but all our hard work is coming from our honest-to-goodness hearts.

We really want to save people from the drunk drivers. I am now beginning to believe that in order to really get anything done, you have to have *lots* of money to pass around.

Unfortunately, I do feel that if some of our lawmakers lost a loved one or had been involved themselves as a victim, we would get a lot more done. I hope nothing like this does happen, but it does strike one out of two families.

The accident on March 17th really got to us. If this person would have been taken care of on his first offense, two people would not be dead today. Since our first visit to Juneau, there has been one 20-year-old boy killed; one 17-year-old badly hurt; one 9-year-old with two broken legs; two separate accidents with no injuries, but demolished cars. These are to just mention a few. This is senseless.

We need help to get through to these lawmakers.

I wonder how many people realize that if the excise tax is raised the money would go for rehabilitation, education and awareness. MADD is 100 percent for this program. We still maintain that if people know they will get a stiff sentence on their first offense, there would be many people who would be afraid to drive drunk and take the chance. They wouldn't take a second chance which unlike the victims in many cases, do not get a second chance.

It has been said that we in MADD want to put everyone in jail. This is not true; we want to make people aware that if they do drink and drive then they deserve to be put in jail and fined.

We want to stop this slaughter on the highways!

— *June Gerrish, president*

Obituaries

THEODORE HUGO GOODMAN

Memorial services for Theodore "Ted" H. Goodman, 40, will be at 1 p.m. today at the Witzleben Funeral Home and Crematory, Sixth Avenue Chapel with the Rev. Bob Thwing of St. Mary's Episcopal Church officiating. A private graveside service was conducted yesterday at the Anchorage Municipal Cemetery. His body was found April 15 and his death is under investigation by the Alaska State Troopers. Born Jan. 28, 1943, in [illegible]n, West Germany, he had liv[illegible] Alaska for 10 years and was working with a privately owned jewelry business. He was a veteran of the U.S. Army. He is survived by his mother, Benita Gutmann of Bonn, West Germany; one brother and one sister; and his companion, Dorothy Kabaker of Anchorage.

JOHN ROBERT VOSGIEN

Private services for John R. Vosgien, 37, will be later this week in Kodiak. He died May 5 in Kodiak. Born Nov. 22, 1945, in Seattle, Wash., he had lived in Alaska 34 years and was a laborer on Kodiak Island. He is survived by his father, Arthur L. Vosgien of Snohomish, Wash.; two sisters, Cathy Magnusen of Kodiak and Patricia Wilson of Redding, Calif.; and his brother, David Vosgien of Kodiak. Local arrangements by Witzleben Funeral Home and Crematory, Sixth Avenue Chapel.

ROBBIE JANE CHISM

Funeral arrangements for Robbie J. Chism, 31, are pending at Witzleben Funeral Home and Crematory, Sixth Avenue Chapel. She died May 11 at Providence Hospital. Born June 22, 1951, in Corpus Christi, Texas, she had lived in Anchorage for the last 17 years. She is survived by her husband, Clifton Chism of

DEBORAH L. SCARDINA

Funeral services will be held next week in Blaine, Wash., for Deborah L. Scardina, 29. She died May 12 at her Anchorge residence. Born April 26, 1954, in Long Beach, Calif., she had lived in Alaska for 2½ years. She leaves her mother and step-father, Mr. and Mrs. Robert Hansen of Blaine, Wash.; her brother, Michael Lebecki of Texas; her father, Thomas Labecki of San Francisco, Calif.; and her maternal grandmother, Florence King of Bellingham, Wash. Burial will be at the Enterprise Cemetery in Ferndale, Wash. Arrangements by Evergreen Memorial Chapel.

THOMAS SIDNEY BENTLEY

Services for Thomas S. Bentley, 83, who died Wednesday at his residence, will be held Saturday, 2 p.m., at Evergreen Memorial Chapel. Officiating will be Bishop William Parks of the Church of Jesus Christ of Latter-day Saints, Anchorage Third Ward. A visitation will be held at 1 p.m. He has been an Anchorage resident for 1½ years. Born July 30, 1899, in Providence, R.I., he lived most of his life in Dracut, Mass., where he attended school.He worked in the knitting industry in Lowell, Mass., prior to moving to Ossining, N.Y., where he was foreman of the knit shop at Sing Sing prison, from which he retired. He leaves his sister, Irene Stuart of Norwich, Conn.; four children, Barbara Kemp of Aiken, S.C., Rosemary Poussard of Anchorage, Thomas Bentley of Wappingers Falls, N.Y. and Rita Rice of Wichita, Kans.; eight grandchildren and three great-grandchildren. Burial will be at Angelus Memorial Park on Klatt Road following the funeral. Funeral arrangements by Evergreen Memorial Chapel.

BERNARD W. GOGUEN

(7)

COMMITTEE REPORT

HOUSE

FURTHER: FINANCE

2/28/83 Date: 4-29-83

Mr. Speaker:

The Committee on JUDICIARY has had HB 6

An Act relating to driving a motor vehicle.

under consideration and reports it back as follows:

[✓] do pass [ ] do not pass

[ ] do pass with attached amendments(s)

[✓] replace with CS for HB 6 (JUD) [X] same title [ ] new title

and recommends _____

[ ] AND attaches a "Letter of Intent" [X] New Fiscal Note [ ] Zero Fiscal Note Attached

[ ] reports it back without recommendation

[ ] referred to the _____ Committee

MEMBERS SIGNING DO PASS

Ramona P. Barnes

MEMBERS HAVING OTHER RECOMMENDATIONS:

H Malone No Rec

CHAIRMAN

H 60

POUCH V
JUNEAU, ALASKA 99811
465-4990

P.O. BOX 4-1325
ANCHORAGE, ALASKA 99509
248-1515

JR

CHAIRMAN
HOUSE JUDICIARY COMMITTEE
MEMBER
HOUSE RESOURCES COMMITTEE

Representative Charlie Bussell

ALASKA STATE LEGISLATURE
HOUSE OF REPRESENTATIVES

March 24, 1983

Robert J. Sinnett
2001 Salem Court
Anchorage, Alaska 99504

Dear Mr. Sinnett:

Thank you for taking the time to inform me of your support of HB 6 regarding driving a motor vehicle.

Representative Abood, HB 6's sponsor, is preparing some amendments to the bill. As soon as this has been completed, the House Judiciary Committee will be hearing the bill.

Again, thank you for your time and for becoming a part of the legislative process.

Sincerely,

Representative Charlie Bussell
Chairman, Committee on Judiciary

CB:lyn



JR

3-19-83

Charlie Russell, Representative
Pouch V
Juneau, Alaska, 99811

Dear Mr. Russell,

This letter is to let you know that HB6 has my full support and I would demand that this bill be passed immediately.

I have lost one son to a wanton killer, a drinking driver and I want to prevent the same think happening to my other two children and or to your wife, your children, if any, or to yourself.

You are in Juneau where the job has to be done prevention of future deaths of this nature rests with you.

Sincerely
Robert L Sennett
2001 Salem Court
Anchorage, Alaska 99504

Judiciary Referral

2526 Arlington Drive
Anchorage, AK 99503
April 14, 1983



Mr. Charles Bussell, Chairman
House Judiciary Committee
State of Alaska
Pouch V
Juneau, Alaska 99811

Dear Mr. Bussell:

My son died on April 4, 1983, as a result of an auto accident caused by a drunken driver. I urge you to support the proposed new laws raising the drinking age from 19 to 21, and providing stiff penalties for persons convicted of drunken driving.

A drunk behind the wheel of a vehicle is a disaster waiting to happen and stiff penalties are needed to stop this. Drunk driving laws and penalties should be set up to follow laws related to carrying and/or using dangerous weapons. Penalties for causing injuries should be stricter than the laws governing illegal hunting and fishing; right now they are not.

Drunk drivers should be required to --

(a) Permanently forfeit their vehicle upon the second conviction, or first conviction if another person is injured,

(b) Pay fines big enough to cover the cost of alcohol treatment,

(c) Have licenses revoked for a year or more.

Additionally, the laws should --

(a) Provide minimum penalties to take some discretion away from judges, and

(b) in the event of a death, jail terms should equal those which apply to murder.

At hearings conducted by Senator Fisher on April 9, 1983, impressive statistical evidence of the reduction in auto accidents associated with raising the legal drinking age to 21 was presented by Dr. Kelso. These data cannot be ignored and should be sufficient justification for raising the legal drinking age.

Concurrent with a stricter drunk driving law should be the provision of resources to the court system for judges and clerical staff, and for additional jail facilities. Better enforcement of the laws must be provided as a deterent. One method for improving enforcement is use of roadblocks. This approach may require added State Troopers; if so, funds should be appropriated.

I am circulating this letter among a substantial number of friends and co-workers; some are residents of your election district. I plan to circulate your reply to them also.

Sincerely,

Stuart Bigler

Stuart G. Bigler

HB6
JUDICIARY
Referral

April 11, 1983



Representative Charlie Bunnell
Alaska State Legislature
Pouch V (MS 3100)
Juneau, AK 99811

Dear Representative Bunnell,

I work with Thelma Smith. Her letter (copy enclosed) amply states the love she has for her son Sean. If there was ever a young Alaskan with a future, Sean was he. But he's gone.

Please, now is the time to stop such senseless waste. Drunk driving is against the law. Why can't we enforce it? Why can't we commit enough to cause this to cease?

Would you please do what you can to support whatever bill you feel will prevent another tragedy as Thelma's?

Sincerely,

Russell R. Cunningham, Jr.

2448 Sprucewood St
Anchorage, AK 99508

Drag racers and drunk drivers

Dear Editor:

My son is gone. Never again will he come through the front door and say "Hi Mom," nor will he even call me on the phone to see how I am.

He was run down by a car on one of Anchorages' busiest streets. He was hit with enough force to demolish his car which was impelled 300 feet from the initial point of impact. His near lifeless body had to be removed from the passenger side of the wreckage because access from the driver's side was impossible.

Fourteen hours after the accident my husband and I were taken into the operating room to see our child whose condition was so critical he could not be moved. I truly hope none of you will ever have to know the agony of holding your child's hand while being told there is no brain activity and literally no hope for him to survive.

Night after night our streets are used as drag strips and raceways with little if anything being done to prevent it. If you drive in Anchorage after 9 p.m., you are taking your life in your own hands!

Until, and only until, the public outcry against this carnage perpetrated by drunk drivers reaches monolithic proportions and our legislators in Juneau react responsibly to enact adequate legislation, deaths like my son's will continue to happen.

Help me save the children I have left. Help save your children, your spouse — it can happen to you! Write your legislators and tell them you want tougher laws and most of all tell them you want them enforced. Join M.A.D.D. and get involved before you lose a loved one.

We are a close family. We loved this child so deeply. The loss of our son, our brother, has left such an emptiness that we will never, ever be whole again.

I can only say the words aloud that my child is gone but my mind won't believe it. Every night I sit and wait for him to come home again. I love him so much.

Thelma Sinnett
Anchorage
Mother of Robert Sean Sinnett

A-8 The Anchorage Times, Friday, April 8, 1983

'Stop the mayhem,' says Sen. Fischer

A public hearing on three drunk driving bills now awaiting action in the legislature is scheduled for Saturday morning at the Anchorage Assembly chambers at 3500 Tudor Road.

The meeting is scheduled to run from 9 a.m. to 4 p.m.

The hearings are being hosted by the State Senate Affairs Committee, which is chaired by Sen. Vic Fischer, D-Anchorage.

"We have got to act now to stop the mayhem being caused by drunk drivers in Alaska," Fischer said. "We must stop drunks from driving and drivers from drinking."

The three bills now pending before the senate committee are:

- Senate Bill 61 which would increase the penalties for those convicted of drunk driving and authorize confiscation of vehicles driven by drunks.
- House Bill 17 which would raise the legal drinking age in Alaska from 19 years to 21 years. This has already been approved by the House and is awaiting Senate action.
- Senate Bill 226 which would limit the driving hours for persons under 18 years old on weekends. This bill was introduced last week by Fischer, who said he did so because other states that have established such driving curfews have seen "dramatic decreases in the number of auto accidents involving young people."



VIC FISCHER
Says act now to end mayhem

"In tackling drunk driving problems, the Senate State Affairs Committee will take a look at every possible measure that could be applied in Alaska," Fischer said. "No single, simplistic solution will eliminate the problem. We must carefully examine all potentially effective measures."

Fischer praised District Court Judge Elaine Andrews for her recent order to confiscate the car driven by a man who had five earlier drunken driving convictions and two license revocations.

"It's about time we took such drastic action," he said.

People who want to testify at Saturday's hearing should call the Anchorage Legislative Information Office at 278-3668.

Mrs. Dianne Cunningham
7217 Foxridge Circle
Anchorage, Alaska 99502

April 8, 1983



An Open Letter To: Senator Patrick Rodey
Senator Arliss Sturgulewski

Representative Charlie Bussell
Representative John Lindauer

I'm a wife, mother and I'm M.A.D.D.!

In my 37 years I've lived all over the world and I can honestly say I have never lived anywhere where I've feared more for my life and the lives of my loved ones than I do in Anchorage.

Anchorage has few major arteries and many of the existing roadways are in extremely poor condition. Driving, even in good weather, is for the most part hazardous. Add to this the drunken driver and you've got a lethal situation.

Our first week in Anchorage my daughter and I were witness to the death of a woman at the hands of an inebriated lady driving a large van. She ran a red light at a high rate of speed and broadsided the victim who was driving a small foreign car. I understand the deceased woman had a young daughter who was orphaned by this incident.

Since that first week there seems to be at least one, often more, fatal accident every week. Most of them are alcohol related. I've noticed that many of the drunk drivers involved are awaiting trial on previous alcohol related charges.

On a daily basis the News lists the judgments meted out by our courts against the drunken driver. I am sickened by their light fines and even lighter jail sentences. Why aren't the penalties for this type of crime more prohibitive???

Were I to get drunk, shoot and kill a perfect stranger I would have committed a serious crime and would be punished accordingly (I trust). However, if I get drunk and run someone down with my car it's not a crime, it's an accident and I'll probably get no more than a "hand slapping". I can't see the difference. An innocent victim is dead because of my inability to control my own actions. A car is every bit as much a lethal weapon as a handgun!

My little girl is 11 years old, in 7th grade, a cheerleader, a member of the National Junior Honor Society and, in general, an outstanding little person with lots of potential. If current penalties are not touchened and drunk drivers made painfully aware that they will not be tolerated by society, I'm afraid my daughter will never get the chance to grow into the fine young woman she appears destined to become. I find that thought unbearable.

I feel certain that if our elected legislators don't soon do something to rectify this intolerable situation the people will get angry enough to elect others who will. The hazard is real and getting more serious daily. It demands prompt attention.

Why do so many people have to die before our elected officials take this seriously? Drunk drivers commit violent crimes and kill many completely innocent people. Wake up, it may be your spouse or children next.

Thanks for listening.

Sincerely,

Dianne Cunningham

Mrs. Dianne Cunningham

CC: Governor Bill Sheffield
M.A.D.D

JR

3/30/83, SHIRLEE ANC LIO, 4598

TO: REPRESENTATIVES RUSSELL, LISKA, HAYES, BARNES, MALONE, CLOCKSIN AND WENDTE

FROM: WILLIAM CASLER, 268 GRAND LARRY, ANCHORAGE 99504
H 333-0272 W 274-2662

REQUEST YOU SUPPORT HOUSE BILL 6.

****

JR



3/31/83, SHIRLEE ANC LIO, 4856

TO: ALL MEMBERS, ALASKA HOUSE OF REPRESENTATIVES

FROM: TOM PITZKE, 3840 PATRICIA LANE, ANCHORAGE 99504
337-7335

I WAS HOPING THE HOUSE WOULD HAVE PASSED BY NOW SOME MEANINGFUL LEGISLATION DEALING WITH DRUNK DRIVING. AS PER THE LETTER TO THE EDITOR OF JUNE GERRISH, IT IS APPALLING THAT YOU HAVE PASSED NONE. HOW MANY MORE PEOPLE HAVE TO DIE ON OUR STREETS AND HIGHWAYS BECAUSE OF DRUNK DRIVING BEFORE SOMETHING IS DONE.

****

DUD. Ref

MSG 83-00005045 PRTY 1 04/01/83 14:20:38 ORIG: LF20 IN= 0005 OUT= 0056
FROM: GAIL/FBX TO: JUNO INFO
TARGET LJHL SUBJ: POMS

TO: REP. RUSSELL

FR: GLENN HACKNEY, 1136 SUNSET DR., FBX 99701 PH: 456-4610 (H & W)

RE: HB 6

MSG: HAS A DATE BEEN SET FOR HEARING ON THIS BILL OR ARE YOU WAITING FOR THE SENATE HEARINGS ON ITS SEMILAR BILL TENTATIVELY SET FOR APRIL 9TH?

PLEASE ADVISE.

----------EOM



[illegible] PRTY [illegible] ORIG LF02 IN: 0001 OUT 0096
[illegible] TO [illegible]
[illegible] FOM

JR

[illegible] THE FOLLOWING [illegible] MESSAGES [illegible] ADDRESSED TO THE HOUSE JUDICIARY CMTE:
[illegible], LISKA, HAYES, BARNES, MALONE, CLOCKSIN & WENDTE .

[illegible] HB 6

[illegible] #1

[illegible] LIVINGSTON, P O BOX 2152, FBX [illegible] (PH) [illegible]-3320 (H), [illegible]

[illegible] I UNDERSTAND PUBLIC HEARINGS ON HB 6 SCHEDULED TO BE HEARD IN FAIRBANKS [illegible] BEEN POSTPONED. WHEN ARE THEY TO BE RE SCHEDULED?

I URGE YOU TO SUPPORT PASSAGE OF HB 6.

----------EOM

[illegible] #2

[illegible] HB 6

[illegible] DEBBIE BECKER, S R 40265, FBX 99701 PH 456-1162(H)

[illegible] WHY HASN'T HOUSE BILL #6 BEEN SCHEDULED FOR PUBLIC HEARING IN FAIRBANKS?

I URGE YOUR SUPPORT IN RAISING THE DRINKING AGE FROM 19 TO 21.

----------EOM

MSG 83-00013391 PRTY 1 03/07/83 16:26:27 ORIG: LR00 IN= 0010 OUT= 0092
FROM: FLORENCE IN BARROW TO: JUNEAU INFORMATION
TARGET: LJHL SURJ: P.O.M.

TO: REPRESENTATIVES BUSSELL, LISKA, WENDTE, HAYES, BARNES, MALONE, CLOCKSIN

FROM: STEPHEN KRAJCIR
BOX 689
BARROW, ALASKA 99723
852-3985 (HOME)

RE: HB 6

I SUPPORT PASSAGE OF THIS LEGISLATION.

****
3/7/83 FLORENCE, BARROW LIO 13391

[illegible] 03/23/83 12:55:11 ORIG: LF20 IN= 0001 OUT= 0050
FROM: LYNDA/FBX TO: JNU INFO
TARGET: LJNL SUBJ: POM

TO: REP [redacted], CH., HSE JUD

JR

FROM: INGEBORG WILLSON, 285 "C" ST., FBX. 99701 #456-7032

RE: HB 6, DRIVING A MOTOR VEHICLE

MSG: UNABLE TO UNDERSTAND WHY HEARING OF HOUSE BILL 6 WAS PUT OFF. PLEASE ADVISE WHEN YOU PLAN TO RESCHEDULE.

EOM

TO: ALL MEMBERS, ALASKA LEGISLATURE

FROM: THOMAS PITZKE, 3940 PATRICIA LANE, ANCHORAGE 99504 337-7335

I AM STRONGLY SUPPORTIVE OF TOUGHER DRUNK DRIVING LAWS. HOW MANY MORE HERMAN ANDREWS AND AGNES PASSANITAS HAVE TO DIE BEFORE WE GET MUCH TOUGHER? ESPECIALLY BECAUSE THIS MAN HAD ALREADY HAD TWO PREVIOUS DWI'S IN LESS THAN A YEAR. HE WAS LAST ARRESTED FEBRUARY 11 THIS YEAR. IT'S SICKENING THAT A PERSON LIKE THAT IS ALLOWED OUT ON THE STREETS.

HB6
JR

WARMEST REGARDS.

MSG 83-00007126 PRTY 1 02/09/83 09:30:45 ORIG: LJ04 IN= 0005 OUT= 0006
TO: JUNEAU
FROM: SUE
TARGET: LJHL SUBJ: POH

TO: ALL LEGISLATORS

FROM: NANCY FAWTHROP
419 SEWARD ST. RM. 9
JUNEAU, ALASKA 99801
586-6234

I SUPPORT HB 6.

EOM

171 FRX LIO 3/21/83

REP. RUSSELL, GUNN, HOUSE JUDICIARY CMTE

GLENN HACKNEY, M.A.D.D., 1132 SUNSET DR., FR 22701 PH. 456-4610

CS HB 6 (SA)

WHEN ARE HEARINGS SLATED ON THIS BILL? WILL THEY BE TELECONFERENCED. ARE LET ME KNOW IN TIME FOR A REPORT TO M.A.D.D. TUESDAY EVENING.

----------EOM

Added to teleconf.

Judiciary Referral





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

APR 1983
RECEIVED

March 31, 1983

CHAMBERS OF
ELAINE ANDREWS, JUDGE

(907) 264-0663

Representative Charlie Bussell
Chairman, House Judiciary Committee
Alaska State Legislature
Pouch V
Juneau, Alaska 99811

Dear Representative Bussell:

I am writing to express some court related concerns over House Bill No. 6, a bill pertaining to criminal penalties for driving while intoxicated and driving while license suspended.

At the outset it is important to understand not only the intended impact of legislation that raises or establishes a mandatory minimum penalty, but also the predictable, but unintentioned, consequences. Certainly deterrence of the illegal conduct is a paramount goal. However, there are obstacles toward reaching that goal. Substantial mandatory minimum penalties can cause prosecutors to review cases more severely than they might otherwise, leading to reduced charging. Jurors, who quickly become educated in such matters, are reluctant to convict in cases where they know significant mandatory penalties will be imposed. Further, defendants who face loss of freedom, and financial security through loss of employment, will litigate these cases to the fullest, taxing the already understaffed prosecutorial and defense agencies, not to mention the court which is struggling to process the skyrocketing caseload.

Larger considerations aside, I discern several critical problems with the proposed legislation.

1. **AS 28.15.181(c) - Driving While License Suspended Penalty Prerequisite**

   It will require significant time on behalf of the prosecutor and the court to obtain information about "essentially similar" past convictions. Hearings will have to be held to determine what is a "substantially similar" offense. I would

estimate that at least 10-20% of the cases which involve Alaska's highly transient population would require such hearings.

2. **AS 28.15.291 - Driving While License Suspended Mandatory Penalties**

(a) There are essentially two ways that a driver's license can be revoked. The first is a court ordered revocation or suspension. This occurs usually at sentencing after the defendant is convicted of reckless driving or driving while intoxicated. The judge personally advises the defendant that his license is revoked and that mandatory penalties will be imposed if he drives.

The second method of revocation is an administrative revocation which occurs if the defendant has accumulated too many points on his license or if he is the registered owner of a car involved in a property damage accident of at least $500. These "administrative" suspensions are determined by hearing officers. Usually the driver is notified through the mail that his license will be suspended. The vast majority of administrative suspension charges coming before the court are due to the defendant's failure to comply with the SR-22 financial responsibility requirements.

Under the proposed legislation the type of suspension, whether court ordered or administrative is irrelevant. The defendants are treated as equally culpable. One defendant is likely a DWI offender who has been ordered not to drive. The other defendant may have a blameless record but be fiscally irresponsible as to a single accident. Mandatory minimum penalties may be wise as to the first offender but not as to the fiscally irresponsible offender. Financial responsibility should be approached through compulsory insurance or some more realistic and less costly avenue.

(b) Any kind of mandatory fine legislation is not a cost effective approach to punishment. Oftentimes the court and related enforcement agencies spend five or ten times the amount of the fine trying to collect it. If a person is arrested for failure to pay a fine and he agrees to pay the fine then the court must release the offender from custody. The "bench-warrant-release-for-payment" merry-go-round is a losing proposition. Fines should be left to the discretion of the court which can fashion other means, such as community service, to equally penalize indigent defendants.

(c) I assume that throughout the legislation language referring to "minimum sentence served" properly credits goodtime as required by statute.

3. **AS 28.35.030(a)(2) - Chemical Tests**

The language should be amended to reflect that the chemical test may be within four hours of the defendant's operation of the vehicle but that the test must show .10 or more at the time of operation. There have been a surprising number of cases in which the defendant claimed to be driving sober, slid off the road, walked to the bar, drank to intoxication and was arrested for DWI hours after the car was abandoned. The Municipality of Anchorage proposed a similar ordinance in the past and much litigation was generated over simiarly vague language.

4. **AS 28.35.031 - Immediate Operator License Revocation**

This proposed legislation creates absolutely nightmarish consequences for the court, prosecution and police. A court review to be scheduled within seven days of arrest would require the establishment of a sub-bureaucracy to coordinate court scheduling, witness subpoenas, proper notice to necessary parties, etc. The current court calendar could not accommodate such hearings. A new judicial officer, an in-court clerk to record proceedings, and clerical staff, not to mention hearing room, which we do not have, would be required.

5. **AS 28.35.032(a)(b)(d)(g)**

Does a person who refuses a breathalyzer test but agrees to a blood test, which would accomplish the same result, suffer the same consequences as the person who refuses all chemical tests?

6. **AS 28.05.045 - Impoundment of Vehicles**

A cursory review of the entire scheme of impound legislation suggest some problems in the proposed legislation.

What does impoundment of a vehicle accomplish that confiscation of license plates would not? An offender intent on driving will beg, borrow or otherwise obtain a car to drive. A borrowed car driven by a license-suspended driver is much more difficult to detect than a car driven down the road without license plates.

Although not directly a court concern, the problems of storage, insurance and potential civil liability for both proper and improper impoundment are enormous.

Court involvement in the proposed forfeiture legislation is significant. At minimum, in Anchorage, a judge and support staff would be required. Further the court is not the moving party in the forfeiture and therefore has no responsibility to ascertain parties who may have ownership or security interests in the vehicle in order to notify them of the forfeiture action. That burden is upon the prosecution.

My review of the legislation has been at best, brief. I urge you to carefully consider the total impact of the proposed legislation. The impact on the Anchorage district court, which is struggling to meet an increasing caseload, will be severe if this legislation is passed without adequate attention to the needs of the court which must faithfully and fully carry out the legislature's dictates.

I will be pleased to respond to any questions you may have and assist you in any manner you deem appropriate.

Sincerely,

Elaine M. Andrews

Elaine Andrews
Assistant Presiding Judge
Anchorage District Court

EA:smh

cc: Chief Justice Edmond Burke
Arthur H. Snowden, II
Presiding Judge Mark Rowland

Alaska Native Health Board

1689 C STREET, SUITE 230, ANCHORAGE ALASKA 99501 PHONE (907) 276 8989

Reference #A83-0335

March 29, 1983



Representative Charles Bussell
Alaska State Legislature
Pouch V (MS 3100)
Juneau, Alaska 99811

Dear Representative Bussell:

The Alaska Native Health Board wishes to go on record as endorsing the following pieces of legislation proposed this session:

H.B. 6 "An Act Relating to Driving a Motor Vehicle"
The ANHB favors the inclusion of a section in the examination given to applicants for a driver's license to test the applicant's knowledge of the effects of alcohol and drugs on drivers, the dangers of driving under the influence of alcohol or drugs, and the applicant's knowledge of the laws relating to driving while intoxicated. The ANHB also favors stricter penalties for intoxicated while driving offenses and refusals to submit to chemical tests of breath.

H.B. 10 "An Act Relating to Imitation Controlled Substances"
The ANHB favors legislation which would make it unlawful for a person to manufacture, distribute, or possess with intent to distribute, an imitation controlled substance, except as provided in AS 17.14.040.

H.B. 17 "An Act Relating to Age Limit Under Title 4, Alcoholic Beverages"
The ANHB endorses restoration of the legal minimum age for drinking alcoholic beverages in Alaska to age 21.

Your consideration in supporting and insuring passage of the above legislation will be very much appreciated. Thank you in advance.

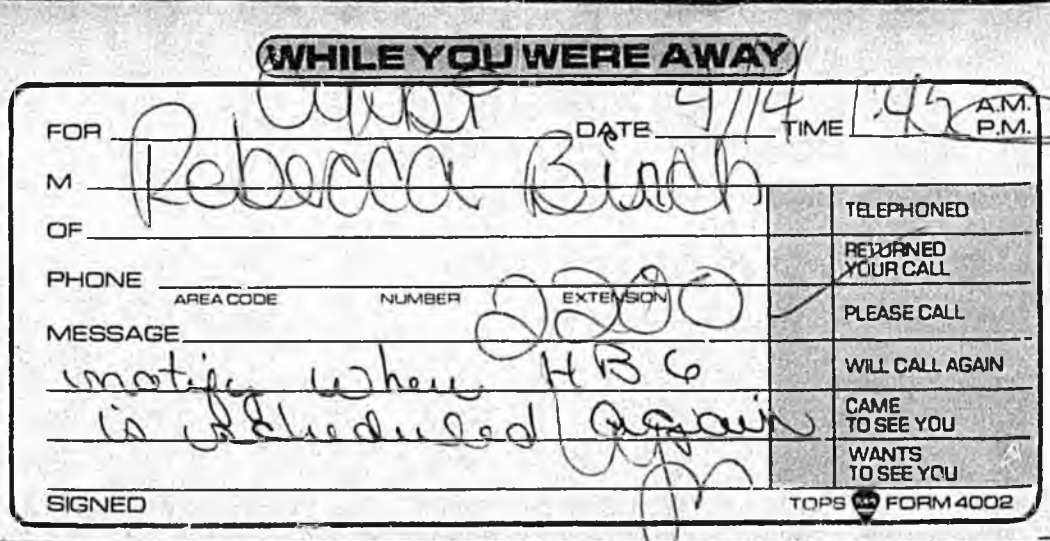
Sincerely,

Bonnie Gabaldon VH

Bonnie Gabaldon
(Interim) Executive Director

BG:be

ALEUTIAN/PRIBILOF ISLAND ASSOC., INC.
BRISTOL BAY AREA HEALTH CORPORATION
COOK INLET NATIVE ASSOCIATION
COPPER RIVER NATIVE ASSOCIATION
KODIAK AREA NATIVE ASSOCIATION
MAGNETAR ASSOCIATION
THE NORTH PACIFIC RIM
NORTH SLOPE BOROUGH HEALTH CORP.
NORTON SOUND HEALTH CORPORATION
SOUTHEAST ALASKA REGIONAL HEALTH CORP
TANANA CHIEFS CONFERENCE
YUKON-KUSKOKWIM HEALTH CORPORATION



WHILE YOU WERE AWAY

FOR Chief DATE 4/14 TIME 1:42 A.M. P.M.

M Rebecca Burch

OF

PHONE AREA CODE NUMBER EXTENSION 2200

MESSAGE motion when HB 6 is scheduled again

SIGNED

- TELEPHONED
- RETURNED YOUR CALL
- PLEASE CALL
- WILL CALL AGAIN
- CAME TO SEE YOU
- WANTS TO SEE YOU

TOPS FORM 4002

HB 6

TO: ALL LEGISLATORS

FR: ARNOLD PERRY
GEN DEL
WASILLA 99687

FOR YOUR INFORMATION, THERE ARE THREE PEOPLE IN AN ANCHORAGE HOSPITAL THAT MAY NOT LIVE ALL BECAUSE OF ANOTHER DRUNK DRIVER. EACH AND EVERY ONE OF THESE INCIDENTS THAT INVOLVE A DRUNK DRIVER TAKES AWAY SOMEONE'S LOVED ONE. IT IS MY OPINION AND, I AM SURE THE OPINION OF EVERY OTHER ALASKAN RESIDENT, THAT IT IS WAY PAST TIME SOMETHING SHOULD BE DONE.

MSG 83-00010620 PRTY 1 04/20/83 19:10:33 ORIG: LM00 IN= 0012 OUT= 0199
FROM: MARY/MATSU TO: JNU INFO
TARGET: LJHL SUBJ: P.O.M.

TO: ALL LEGISLATORS

HB6

FR: ALEX CONNORS
P O BOX 3404
PALMER 99645 PH: 376-4141

I STRONGLY SUPPORT THE LOBBYING EFFORTS AND THE EFFORTS IN GENERAL OF M.A.D.D. I STRONGLY ENCOURAGE YOU TO WORK ON LEGISLATION TO ELIMINATE DRUNK DRIVERS.

HOUSE JUDICIARY COMMITTEE OBSERVER/WITNESS SIGN-UP SHEET

DATE: 4-16-83 SPONSOR: Aboood

SUBJECT(S): HB 6 - drunk driving

NAME	REPRESENTING	ADDRESS	PHONE	OBSERVER	WITNESS	FOR	AGAINST
Tim Oberdorf		Box 2335 Soldotna Ak	262-9890	X		X	
Krustie Young		Box 1491 Soldotna, Ak.	262-4950	✓			
Terry Taylor		~~P.O.~~ S.R. 3149 Wasilla	376-6913	✓		X	
GUS BROCK		BOX 373 WRANGELL, AK	874-3188	✓			
mike BALL		BOX 8915 Ketchikan ALASKA	225-9334	✓			
WENDY CORRIGAN		BOX 1301 JUNEAU ALASKA	789-9838	✓			
Bonnie Barios		705 COOK STREET KETCHIKAN, ALASKA	225-2983	X			
Rita G. Regan		Box 510 Palmer, Alaska 99645	(907) 745-4375	X			
Carla Johnson		Box 1701 Wrangell, AK. 99929	874-3768	X			
Scott Reid		Box 1553 Cordova, AK. 99574	424-7515	X			
Brandon Jones				X			
Teresa Knightinger		Juneau Alaska		✓			

STATE OF ALASKA
FISCAL NOTE

Revision Date , 1983

I. REQUEST

Bill/Resolution No.: CSHB 6 (Judiciary)
Title: "...driving a motor vehicle."
Sponsor: Judiciary Committee (Abood-Orig.)
Requestor: House Finance Committee

II. FISCAL DETAIL

Agency Affected: Department of Law
Program Category Affected: General Govt.
BRU, Program of Subprogram(s) Affected: Legal Services

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 83	FY 84	FY 85	FY 86	FY.87	FY 88
OPERATING						
100 PERSONAL SERVICES		164.2	208.9	221.4	234.7	248.8
200 TRAVEL		10.0	10.6	11.2	11.9	12.6
300 CONTRACTUAL		20.4	23.8	25.2	26.7	28.3
400 COMMODITIES		12.4	7.6	8.1	8.6	9.1
500 EQUIPMENT		32.0				
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC						
TOTAL OPERATING	-0-	239.0	250.9	265.9	281.7	298.8
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND	-0-	239.0	250.9	265.9	281.7	298.8
FEDERAL FUNDS						
OTHER (Specify Source)						

POSITIONS:

FULL-TIME	-0-	4	4	4	4	4
PART-TIME						
TEMPORARY						

III. SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

Not specified by sponsor.

IV. ANALYSIS: Attach a separate page for any Analysis

Prepared By: Richard I. Pegues, Director — Phone: 465-3672
Division: Administrative Services Division — Date: May 5, 1983

Approved by Commissioner: Richard L. Pegues / for Norman C. Gorsuch, Attorney General — Date: May 5, 1983
Department: Department of Law

Distribution:
Original to Legislative Finance
Copy to Office of Management and Budget (for Legislature introduced bills)
Copy to Department (for Governor introduced bills)
Copy to Sponsor
Copy to Requestor (if different from Sponsor)

CSHB 6 (Judiciary)
Fiscal Note
Analysis

The committee substitute has eliminated impoundment of vehicles and retained modified and less restrictive provisions for forfeiture of vehicles. Likewise, the requirement to notify every person who has an ownership or security interest in vehicle within five days has been changed to simply notice prior to any hearing that would determine the disposition of any forfeited vehicle. Because of these changes, the fiscal impact on the department will be reduced. The requirement for court forfeiture hearings, however, still remains and the state must provide motions and answer intervenors' motions in order to invoke forfeiture. Consequently, the department's original estimate of four attorneys, and two clerical staff is being reduced to two attorneys and two clerical staff.

Fiscal Analysis - CSHB 6

The impact of CSHB 6 is expected to result in the addition of one Attorney IV position (SR 24) and one Attorney III position (SR 22). In addition to these attorney positions, two secretarial positions will provide support for the Anchorage and Fairbanks attorneys.

The first year of this analysis will cover 10 months of FY 84, allowing 2 months for these four positions to be established. The costs beyond FY 84 have been projected on a 12 month basis and include a 6% annual inflation factor.

1st Year (10 months)

	ANCHORAGE		FAIRBANKS		
	AIV	LSI	AIII	LSI	TOTAL
Personal Services	56.2	24.8	56.2	27.3	164.2
Travel	5.0	-0-	5.0	-0-	10.0
Contractual	8.0	2.2	8.0	2.2	20.4
Commod. - ongoing	1.5	1.5	1.5	1.5	6.0
Commod. - single time	2.0	1.2	2.0	1.2	6.4
Equip. - single time	1.5	14.5	1.5	14.5	32.0
					239.0

2nd Year (12 months + 6% annual inflation)

Personal Services	71.5	31.2	71.5	34.7	208.9
Travel	5.3	-0-	5.3	-0-	10.6
Contractual	9.1	2.8	9.1	2.8	23.8
Commodities	1.9	1.9	1.9	1.9	7.6
					250.9

POSITION TITLE				RANGE/STEP	BARG. UNIT	FORM 12 PAGE/LINE	GOV.	APPROV.	DISAPP.
Attorney IV				24A	X				
TYPE OF POSITION	STAFF MONTHS	RP NUMBER	PCN NUMBER	BRU PRIORITY	LOCATION	ELECTION DISTRICT	LEG.		
PFT	10				Anchorage				

CONTINUATION LEVEL ____ ADDITION ____

TYPE OF EXPENDITURE		AMOUNT
1	2	3
PERSONAL SERVICES		
Salary 4,469/month	44,690	
Benefits	6,890	
Supplemental Benefits	2,240	
Fixed Benefits	2,400	
TOTAL PERSONAL SERVICES	01	56,220
Travel	02	5,000
Contractual	03	8,000
Commodities	04	3,500
Equipment	05	1,500
Other		
TOTAL COST		74,220

RECEIPT CODE	FUNDING SOURCE	
	Federal Receipts 1002	
	G.F. Match 1003	
	General Funds 1004	74,220
	I-A Receipts 1007	
	Program Receipts 1028	
	Other	

FOR B&M USE ONLY
4A KEY NUMBER __ __ - __ __ - __ __ - __ __ - __ __

JUSTIFICATION

This is one of two attorney positions required by the Department of Law in order to absorb the significant increase in workload which will result from new legislation authorizing the forfeiture of motor vehicles driven by persons arrested for driving while intoxicated. The new legislation requires a court hearing when a forfeiture is contested by the vehicle owner, or by someone who has a financial interest in the vehicle. It is anticipated that many of these hearings will involve representatives from banks or financing companies who retain a financial interest in the vehicle.

3 REQUEST FOR NEW POSITION

AGENCY DEPARTMENT OF LAW

PROGRAM LEGAL SERVICES

BRU LEGAL SERVICES

COMPONENT LEGAL SERVICES OPERATIONS

Page of

Revised Date

FY 84

1336 (7/82) - 13

POSITION TITLE	RANGE/STEP	BARG. UNIT	FORM 12 PAGE/LINE	GOV.	APPROV.	DISAPP.
Legal Secretary I	10B	GGU				

TYPE OF POSITION	STAFF MONTHS	RP NUMBER	PCN NUMBER	BRU PRIORITY	LOCATION	ELECTION DISTRICT	LEG.
PFT	10				Anchorage		

CONTINUATION LEVEL | ADDITION

TYPE OF EXPENDITURE		AMOUNT
1	2	3
PERSONAL SERVICES		
Salary 1,817/month	18,170	
Benefits	2,800	
Supplemental Benefits	1,110	
Fixed Benefits	2,400	
TOTAL PERSONAL SERVICES	01	24,480
Travel	02	-0-
Contractual	03	2,200
Commodities	04	2,700
Equipment	05	14,500
Other		
TOTAL COST		43,880

RECEIPT CODE	FUNDING SOURCE		
	Federal Receipts	1002	
	G.F. Match	1003	
	General Funds	1004	43,880
	I-A Receipts	1005	
	Program Receipts	1028	
	Other		

FOR B&M USE ONLY
4A KEY NUMBER ___ - ___ - ___ - ___ - ___

JUSTIFICATION

This is the second of two attorney positions required by the Department of Law in order to absorb the significant increase in workload which will result from new legislation authorizing the forfeiture of motor vehicles driven by persons arrested for driving while intoxicated. The new legislation requires a court hearing when a forfeiture is contested by the vehicle owner, or by someone who has a financial interest in the vehicle. It is anticipated that many of these hearings will involve representatives from banks or financing companies who retain a financial interest in the vehicle.

3 REQUEST FOR NEW POSITION

AGENCY DEPARTMENT OF LAW

PROGRAM GENERAL GOVERNMENT

BRU LEGAL SERVICES

COMPONENT LEGAL SERVICES OPERATIONS

Page of

Revised Date

FY 84

1156(7/82)-13

POSITION TITLE				RANGE/STEP	BARG. UNIT	FORM 12 PAGE/LINE	GOV.	APPRDV.	DISAPP.
Attorney III				22A	X				
TYPE OF POSITION	STAFF MONTHS	RP NUMBER	PCN NUMBER	BRU PRIORITY	LOCATION	ELECTION DISTRICT	LEG.		
PFT	10				Fairbanks				

CONTINUATION LEVEL | ADDITION

	TYPE OF EXPENDITURE		AMOUNT
	1	2	3
	PERSONAL SERVICES		
6.	Salary 4,469/month	44,690	
7.	Benefits	6,890	
8.	Supplemental Benefits	2,240	
9.	Fixed Benefits	2,400	
9.	TOTAL PERSONAL SERVICES	01	56,220
0.	Travel	02	5,000
1.	Contractual	03	8,000
2.	Commodities	04	3,500
3.	Equipment	05	1,500
4.	Other		
5.	TOTAL COST		74,220

	RECEIPT CODE	FUNDING SOURCE		
6.		Federal Receipts	1002	
7.		G.F. Match	1003	
8.		General Funds	1004	74,220
9.		I-A Receipts	1005	
0.		Program Receipts	1028	
1.		Other		

FOR B&M USE ONLY
4A KEY NUMBER __ __ - __ __ - __ __ - __ __ - __ __.

JUSTIFICATION

This is one of two secretary positions required to provide secretarial support for the two new attorney positions assigned to Anchorage and Fairbanks. This particular secretarial position will serve the needs of the new attorney assigned to Anchorage. Included in the duties of this position will be the responsibility of coordinating the activities of the Civil Division attorneys handling the forfeiture action with the attorneys and support staff of the criminal division who originally prosecuted the intoxicated operator of the motor vehicle.

13 REQUEST FOR NEW POSITION

AGENCY DEPARTMENT OF LAW

PROGRAM LEGAL SERVICES

BRU LEGAL SERVICES

COMPONENT LEGAL SERVICES OPERATIONS

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Revised Date

FY 84

1136 (7/82) - 13

POSITION TITLE	RANGE/STEP	BARG. UNIT	FORM 12 PAGE/LINE	COV.	APPROV.	DISAPP.
Legal Secretary I	10B	GGU				
TYPE OF POSITION / STAFF MONTHS / RP NUMBER / PCN NUMBER	BRU PRIORITY	LOCATION	ELECTION DISTRICT	LEG.		
PFT / 10		Fairbanks				

CONTINUATION LEVEL | ADDITION

	TYPE OF EXPENDITURE		AMOUNT
	1	2	3
	PERSONAL SERVICES		
1.	Salary 2,048/month	20,480	
2.	Benefits	3,160	
3.	Supplemental Benefits	1,260	
4.	Fixed Benefits	2,400	
5.	TOTAL PERSONAL SERVICES	01	27,300
10.	Travel	02	-0-
11.	Contractual	03	2,200
12.	Commodities	04	2,700
13.	Equipment	05	14,500
14.	Other		
15.	TOTAL COST		46,700

	RECEIPT CODE	FUNDING SOURCE		
16.		Federal Receipts	1002	
17.		G.F. Match	1003	
18.		General Funds	1004	46,700
19.		I-A Receipts	1005	
20.		Program Receipts	1028	
21.		Other		

FOR B&M USE ONLY
4A KEY NUMBER __ __ - __ __ - __ __ - __ __ - __ __

JUSTIFICATION

This is the second of two secretary positions required to provide secretarial support for the two new attorney positions assigned to Anchorage and Fairbanks. This particular secretarial position will serve the needs of the new attorney assigned to Fairbanks. Included in the duties of this position will be the responsibility of coordinating the activities of the Civil Division attorneys handling the forfeiture action with the attorneys and support staff of the criminal division who originally prosecuted the intoxicated operator of the motor vehicle.

3 REQUEST FOR NEW POSITION

AGENCY DEPARTMENT OF LAW

PROGRAM LEGAL SERVICES

BRU LEGAL SERVICES

COMPONENT LEGAL SERVICES OPERATIONS

Page of

Revised Date

FY 84

1136 (7/82) - 83

MSG 83-00012292 PRTY 1 04/26/83 14:02:26 ORIG: LA05 IN= 0001 OUT= 0086
FROM: SHIRLEE, ANC INFO TO: POM, JUNEAU INFO
TARGET: LJHL SURJ: P O M

JR

TO: SENATORS V. FISCHER, JOSEPHSON, AND KELLY
REPRESENTATIVES CLOCKSIN, UEHLING, AND BUSSELL

FROM: DUANE HENSON, 901 WEST 1ST AVENUE, ANC 99501
279-4025 W 272-7344 H

THE STATE OF ALASKA GLEANS THE PROFITS FROM THE SALE OF ALCOHOL. THE STATE SHOULD ASSUME THE RESPONSIBILITY TO PROVIDE COMPENSATION TO THE SURVIVORS OF THE 'VICTIMS OF 'DRUNK DRIVERS'. LEGISLATION SHOULD BE INTRODUCED TO MANDATE AUTOMATIC PAYMENT OF $ 500,000.00 TO THE HEIR/S OF THE VICTIM FROM THE STATE AS COMPENSATION.

****

Liquor store held liable for crash injuries

Associated Press Times 3-5-83

A liquor store that sells alcohol to a minor may be liable for injuries suffered by the minor even though the buyer broke the law by making the purchase, the Alaska Supreme Court has ruled.

The ruling came in a lawsuit filed by the estates of Randy Hanson and Elizabeth Morris. The two minors were killed in an automobile crash on Dec. 31, 1977.

Hanson had bought a fifth of tequila at the Pines Liquor Store in Anchorage earlier that night. He shared the bottle with the four other minors in a car including driver David Anderson.

Hanson and Morris were killed when Anderson made an illegal left turn and collided with another car, the Supreme Court noted.

The court said that under an Alaska statute in effect at the time but repealed in 1980, the liquor store was responsible for injuries to customers served in violation of the law.

That Hanson broke the law by making the purchase and by later serving Anderson does not relieve the liquor store of liability, the court held.

HB 46



The constitutional breath test

By G. Kent Edwards

OUR COURTS are at it again! Creating more constitutional rights out of thin air. This time the air is the alcoholic breath of accused drunk drivers.

Judge Beverly Cutler and our appellate court have decided that the state should buy new breath-testing equipment capable of saving a sample of defendant's breath for possible future testing by the defendant. It seems that our current Breathalyzers don't have all the features that modern technology makes possible.

She thinks that the benefits of those additional features justify their acquisition. Judges Bryner, Singleton and Coats agreed. Of course, everyone is entitled to his opinion.

UNFORTUNATELY, the judges have characterized their opinion as being everyone's constitutional right, thereby depriving the other branches of our government from reaching their own opinions on the subject.

The decision has caused evidence in several hundred criminal cases to be suppressed. Not because the evidence was gathered illegally. Not because the evidence was unreliable. Not because the defendants were unable to cross-examine those who gathered the evidence. No, in the words of Judge Cutler, the evidence was suppressed "to remedy the careless disregard shown by prosecution to promptly fulfill the duties of investigating, developing, purchasing and implementing a breath sample saving system. The state and city should have done this immediately upon learning of the technology."

HER COMPLAINT is that the police did not take rapid enough steps to acquire necessary materials to enable the saving of defendant's breath for later testing by the defendant in the event the defendant wanted to have it tested. Alaska's Breathalyzer used up the entire sample in the course of the test.

The system Judge Cutler seemingly prefers isn't even foolproof. In fact, in the words of the court, it is a "proposed system" for which Alaska "lacks expertise" to use at this time. "It needs retesting with live subjects to assure its viability".

What so-called constitutional rights are being violated? The defendant's right to cross-examine "tests." Cross-examining the operator of the test apparently is not good enough! How could we have been so shortsighted for so many years? Machines don't talk, you say? Shows what little you know about the law and what can be done with a little extra "breath" in the hands of an aggressive, imaginative defense attorneys and judges.

AS ONE MIGHT expect in a decision this controversial, Judge Cutler had a difficult time determining whether she had in fact discovered a new constitutional right. First she said she did, but a few months later she decided that she had not, only to change her mind a second time. During this period she was receiving evidence as to such things as whether saving breath samples was technologically possible, the extent of its cost and the amount of effort being taken by government officials to improve the new system. Conflicting evidence kept causing the scale to tip differently each time. Surely the existence or non-existence of our constitutional rights are not so precariously balanced.

Not too surprising, the courts' opinions were completely devoid of any finding that the taking and saving of a separate breath sample for use by a defendant has ever, even once, helped show that a defendant was not drunk or that it is probable that a second test would result in such a conclusion. But then, such things are not supposedly relevant when dealing with constitution rights.

It is one thing to save evidence favorable to the defendant; it is another to require that evidence be created for the defendant with equipment that doesn't exist in the state.

Where is the line to be drawn? Must all tests leave a part of the evidence unspoiled for subsequent viewing by defendant's experts? Cut a fiber in half before testing and give one to the defendants; otherwise, a mass murderer such as Atlanta's Wayne Williams goes free? Do not use chemicals on a crucial blood stain? Do not deplete all of the confiscated narcotic in a test to determine its identity?

Must police chemists be constantly on top of the latest advances in the state of the art of a particular testing apparatus? Are they now placed in a situation where, unless they have the most advanced systems for making tests without destroying all of the evidence being tested, they could be jeopardizing the prosecution of a criminal case?

If it doesn't make sense to you, don't worry; you are in good company.

G. Kent Edwards was attorney general for the state of Alaska from 1968 to 1970. From 1971 to 1977 he was U.S. attorney for Alaska. Edwards, a Republican, is now in private practice.

Tough drunk driving bill clears House, 33-4

By The Associated Press

JUNEAU—The House on Thursday approved on a 33-4 vote a measure to substantially toughen the drunken driving laws in Alaska.

Rep. Mitch Abood, R-Anchorage, opened defense of his bill (HB6) by saying, "Politics has no place or home in this bill."

But it was politics as the proposed amendments—ranging from mandating alcohol rehabilitation to reducing the time a drunken driving conviction affects later convictions—were pressed by Assistant Minority Leader Don Clocksin, D-Anchorage.

Abood said he didn't want the issues addressed by the amendments in the bill because they would defeat the bill's purpose: to get the drunk drivers off the street.

While Clocksin's eight amendments were defeated, a fellow minority Democrat, Rep. Peter Goll of Haines, raised a question that may bring the issue back to the House floor today.

Goll and others pointed out the bill says that after one or more convictions a person could forfeit his vehicle. Goll said he was unsure if that was what was intended. Abood said the possibility of vehicle forfeiture would deter repeat offenders.

Other provisions of the bill would mandate more jail time and large monetary penalties for second and third drunk driving offenses.

A first-time offender also would lose license privileges for 30 days, and could have limited driving rights for 60 days. Current law allows a judge to give a limited license for 60 days, if the license isn't revoked for 30 days.

A second offense would mandate a one-year license revocation, while a third conviction would result in a 10-year license loss.

The first-time offender would face a minimum fine of at least $



REP. MITCH ABOOD
Off the street

second offense means a $500 fine, and a third offense $1,000. Current law mandates a maximum fine of $1,000.

The measure follows current statutes of 72 hours jail time for a first offense, but increases from 10 to 29 days the timme a person convicted for a second offense would have to spend in jail. A third offense mandates at least 30 days in jail.

But the recommendation must first be accepted by House Finance Chairman Al Adams, D-Kotzebue, and agreed to by the full Finance Committee.

Meanwhile, a letter of intent to be placed in the House-proposed operating budget mandates that the division look at cheaper alternatives to provide service.

The finance committee, at the urging of Rep. John Lindauer, R-Anchorage, earlier had deleted $1.45 million from the telecommunications budget. Deputy Commissioner of Administration Julianna Guy told Rep. Jim Duncan, D-Juneau, that the action could have cut service to rural communities and possibly meant the end of the Alaska Television Project.

Duncan contended the cuts would have possibly sliced live programming, such as "Monday Night Football." Guy said the Legislature would have to decide which villages wouldn't have programming.

She said the state would have to seek lower tariffs charged by Alascom to plug the deficit and provide Alaska with television service. Duncan said that proposal would be com-

plicated by the fact the tariffs are set by the Federal Communications Commission.

POUCH V
JUNEAU, ALASKA 99811
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Alaska State Legislature
HOUSE OF REPRESENTATIVES

REPRESENTATIVE
CHARLIE BUSSELL
CHAIRMAN

Committee on Judiciary

May 2, 1983

Ms. June Gerrish
MADD - Mothers Against Drunk Drivers
5800 Glenn Highway
Anchorage, Alaska 99504

Dear Ms. Gerrish:

The House Judiciary Committee passed HB 6, the "drunk driving" bill, out of Committee on Friday, April 29, 1983. I think it is an excellent and comprehensive item of legislation.

The Committee put considerable thought and effort into its creation and fine-tuning. Representative Mitch Abood's staff, the Committee staff, and the bill drafters for the Legislative Affairs Agency and the Department of Law worked very hard and diligently expending many long hours on this bill.

The Committee really appreciates the way the original sponsor, Rep. Abood of Anchorage, spent so much time working with the bill and with us. Rep. Abood testified before the Committee each time the bill was scheduled for hearing. He "rode herd" on the bill from its inception to the final product that passed out of the Committee.

I sincerely hope that this bill will not be substantially altered or amended in a way that weakens or destroys it.

The bill provides for seizure of a driver's license upon arrest as well as increased penalties upon conviction. While the minimum of 72 hours in jail is mandated for a first offense in keeping with the existing law, a second offense requires a minimum of no less than 20 days in jail and the third offense would result in at least 30 days in jail and a 10-year license revocation.

Charlie — see page 457 "EMERITUS" Websters New World Dictionary - "retired from active service, USUALLY FOR AGE, But retaining one's rank or title"
I guess this is appropreate —

MEMBERS:
REP. JOHN LISKA, VICE CHAIRMAN; REP. RAMONA BARNES, EMERITUS;
REP. JOE HAYES; REP. HUGH MALONE; REP. DON CLOCKSIN; REP. BEN WENDTE

Rep Mitch Abood, OMNIPOTENT

Fines based on the number of absence of prior convictions, carry mandatory minimums of $250 for a first offense, $500 for the second offense and not less than $1,000 for a third offense. Courts will be required, under the proposed bill, to consider prior offenses over the preceding 15 years in this or another jurisdiction, rather than going back only five years under the existing law to find prior convictions.

The bill also maintains as a crime the refusal to submit to a chemical test following arrest, as does existing law, except penalties are more stringent under the new bill.

In addition, law enforcement officers are authorized to require a breath test on the spot when the driver is first stopped. Refusal to submit to a preliminary breath test, prior to arrest, is classed as an infraction in the measure.

The House Judiciary Committee moved HB 17, the bill to raise the drinking age to 21, on the House Finance Committee back in February. The Chief Prosecutor of the State, Dan Hickey, testified before that group and the Finance Committee Substitute substantially weakened the bill. One wonders if Mr. Hickey initiated the amendments to that bill.

It is known that HB 6, the so-called "drunk driving bill," was not classed as one of the Chief Prosecutor's priorities when we were waiting for suggestions from the Department of Law. It is to be hoped that HB 6 will receive swift action in the House Finance Committee and not be weakened in the same manner HB 17 was. In fact, one wonders who is running the apparently leaderless Department of Law during this part of the Sheffield administration.

The Governor, afterall, during his campaign told folks he was in favor of raising the drinking age to 21. Recently, he said he was not in favor of this. A crystal ball would be helpful, maybe, to see what his views are on driving while intoxicated.

Very truly yours,

Representative Charlie Bussell
Chairman, Committee on Judiciary

CB:lyn

DEE, SOLDOTNA P.O.M. 5/9/83 #15824

TO: ALL SENATORS

ALL REPRESENTATIVES

FROM: RAINBOE BOVEE'
BOX 4498
SOLDOTNA, AK. 99669

OR

I URGE YOU AS AN ELECTED OFFICIAL, TO INTRODUCE AND PASS LEGISLATION THAT WILL IMPOSE STIFFER PENALTIES FOR THOSE CONVICTED OF DRUNK DRIVING. JUST SINCE JANUARY 27 TH. THE LAST COUNT WAS 21 PEOPLE IN ANCHORAGE ALONE, THAT WERE DEATH OR INJURY VICTIMS OF INTOXICATED DRIVERS. THIS PROBLEM MUST BE ADDRESSED.

E.O.M.

RECEIVED MAY 1983

Duncan Referral

REPRESENTATIVE DON CLOCKSIN

Alaska House of Representatives

ASSISTANT MINORITY LEADER

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APR 1983
RECEIVED

Anch. Times F-3-1983

Drunken driving laws fail, judge says

by Ralph Nichols
Times Writer

The legislature is to blame for repeat drunken driving offenders on Alaska highways, an angry District Court judge charged Tuesday.

Judge Elaine Andrews said lawmakers have failed to provide adequate alcohol abuse treatment programs for jailed drunken drivers.

"If they want drunk drivers off the road, they should do something," the judge said from the bench.

The judge became upset when she learned that Bernard Johnson, who is serving an 18-month sentence, is not receiving court-ordered treatment for alcohol abuse because no programs are available.

Johnson, 51, is in jail on three drunken driving convictions. He has 10 prior convictions for the same offense.

State dollars "obviously (are) not being spent at the preventive or treatment ends of the problem," Andrews said. "There is no place for treatment for people convicted of driving while intoxicated."

The current system does little more than steer repeat offenders through a "revolving door," Andrews continued.

They are sentenced, "warehoused in jail without treatment, and then released," she said. Because they haven't been cured, they will probably drive drunk again.

"Maybe," Andrews added, "someone ought to let the legislature know the burden is on them" to do more than just punish drunken drivers by funding alcohol treatment programs for repeat offenders serving extended sentences.

"My hands are tied," she said.

Andrews noted that Johnson — and others like him — can receive alcohol abuse treatment for only 30 days while incarcerated. "And I'm not going to let him out of jail" just because there is no treatment available, she said.

Assistant District Attorney Jim Wolf told the court this problem "is on the conscience of the legislature."

Andrews said later her main concern is that "there has to be some responsible program to address the serious issue of repeat offenders."

While increased penalties for drunken drivers, which the legislature has approved, "are reasonable . . . there also has to be prevention and treatment, she said.

"If the legislature wants people warehoused for the maximum time, then it should just do what is being done now, but if it wants to address the problem, then it has to spend the money" for treatment programs, Andrews said.

Andrews added that "the court system has done all it can do. Johnson will have been in custody without treatment for one and a half years when he is released from jail."

STATE OF ALASKA
THE LEGISLATURE

LEGISLATIVE AFFAIRS AGENCY

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

M E M O R A N D U M April 25, 1983

SUBJECT: Driving a motor vehicle while intoxicated (CSHB 6 (Judiciary))

TO: Representative Mitchell E. Abood, Jr.

FROM: Tamara Brandt Cook
Legislative Counsel

TBC

Here is the sectional analysis of the draft of CSHB 6 (Judiciary) that you requested. It only highlights the major changes to existing law.

Section 1 adds new requirements for a driver's license application examination: (1) that the applicant know the effects of alcohol and drugs on drivers and the related dangers of driving under their influence; and (2) that the applicant know the laws relating to driving while intoxicated.

Section 2 authorizes, on refusal to submit to a chemical test of breath or if a test indicates an alcohol concentration of .08 or more, the seizure of the driver's license by the law enforcement officer and revocation of the license by the Department of Public Safety. The officer reads the driver a notice and gives him a copy of the notice. The notice explains the revocation procedure and the right of court review. The notice itself is a temporary driver's license that expires in seven days unless the driver initiates court proceedings to rescind the revocation of license. The revocation periods are the same as those imposed by a court after conviction of the same offenses under Sec. 5 of this draft. A revocation or suspension action is stayed if the person initiates a court action to rescind the Department of Public Safety's action. Procedures for court review of an administrative revocation are set out.

Section 3 adds a new basis for the immediate revocation of a driver's license by a court: the refusal to submit to a chemical test of breath.

Section 4 extends the period limited license privileges from 30 to 60 days for offenses that are grounds for immediate revocation of a license. This does not apply to driving while intoxicated or refusal to submit to a chemical test of breath. Adds a requirement that a prior offense must occur within 15 years before longer periods of license revocation will be imposed.

Section 5 requires a court convicting a person of driving while intoxicated or refusal to submit to a chemical test of breath to revoke the person's driver's license. The period of revocation depends upon whether the person has been previously convicted in this or another jurisdiction of either offense within the preceding 15 years. If the person has not been previously convicted, the period of revocation is 90 days. If the person has been convicted once, the period is one year. If the person has been convicted more than once, the period of revocation is 10 years. Under existing law the court shall revoke the license of a person for not less than 30 days for the first conviction and may grant the persor limited license privileges. The court shall revoke the license for not less than one year for a second conviction and may not grant limited license privileges. The court shall revoke the license for not less than three years for a third or subsequent conviction and may not grant limited license privileges.

Section 6 allows a court to grant limited license privileges for the final 60 days a license is revoked for driving while intoxicated or refusal to submit to a chemical test if the person has not been previously convicted.

Section 7 removes the reference to a person convicted of driving a motor vehicle while intoxicated with reference to limited license privileges, since periods of revocation are established under Sec. 5 of this bill.

Section 8 removes the references to the issuance of a new driver's licenses for persons convicted of driving a motor vehicle while intoxicated after a limited license period has expired.

Section 9 limits the penalties imposed under existing law for driving while a license is canceled, suspended, revoked or in violation of limitation to situations involving loss of driving privileges for reasons other than driving while intoxicated or refusal to submit to a chemical test.

Section 10 provides a minimum penalty of 30 days imprisonment and a fine of $500 for driving when driving privileges have been revoked for driving while intoxicated or refusal to submit to a chemical test if the person has been convicted only once. If the person has been convicted more than once of driving while intoxicated or refusal to submit to a chemical test and drives while driving privileges have been revoked, the minimum penalty is 90 days imprisonment and a fine of $1,000.

Section 11 decreases the level of alcohol in a person's blood from 0.10 to 0.08 percent or more by weight and from 100 to 80 milligrams per 100 milliliters for the purpose of determining whether the person is under the influence of intoxicating liquors. Decreases the level of alcohol in a person's breath from 0.10 to 0.08 per 210 liters for the same purpose.

Section 12 changes the penalties for conviction of driving while intoxicated. If a person has not been previously convicted within the preceding 15 years of driving while intoxicated or refusal to submit to a chemical test, the minimum sentence of imprisonment is 72 hours, and a fine of not less than $250 imposed. If a person has been previously convicted once, the minimum sentence of imprisonment is not less than 20 consecutive days and a fine of not less than $500 is imposed. If a person has been previously convicted more than once, the minimum sentence of imprisonment is 30 days and a fine of not less than $1,000 is imposed. The five-year period used for calculating the number of convictions required to increase the penalty has been eliminated, so that all previous convictions occurring within the preceding 15 years are considered. A conviction in this or another jurisdiction, if the elements are substantially similar, is counted for purposes of determining enhanced penalties. The provision for suspension of sentence after the minimum sentence is served has been eliminated. The vehicle used in commission of the offense may be forfeited.

Section 13 requires a person involved in an accident or who commits a traffic offense while driving to submit to a

preliminary breath test that may be used by an officer in determining whether to arrest the person for driving while intoxicated. Refusal to submit to the test is a violation punishable by a fine.

Section 14 makes it clear that refusing to submit to a chemical test after being arrested constitutes the crime of refusing to submit to a chemical test. Refusing to submit to the preliminary breath test provided for in Sec. 13 of this bill is a separate offense.

Section 15 provides new penalties for refusal to submit to a chemical test which are similar to the fines and terms of imprisonment imposed for driving while intoxicated under this bill.

Section 16 provides that the levels of alcohol concentration in a person's blood or breath are decreased to conform to Sec. 11 of this bill.

Section 17 provides that the levels of alcohol concentration in a person's blood or breath are decreased to conform to Secs. 11 and 15 of this bill.

Section 18 removes provisions allowing the district court to find extenuating circumstances and to modify or nullify the suspension or revocation of a driver's license or permit for refusing to submit to a chemical test of breath.

Section 19 adds new sections providing for the forfeiture of a motor vehicle used in the commission of an offense under AS 28.35.030 (Operating a Vehicle, Aircraft or Watercraft While Intoxicated), and also for the forfeiture of a motor vehicle used in the commission of an offense under AS 28.35.032 (Refusal to Submit to a chemical Test of Breath). In addition, provision is made for the remission of forfeitures, a procedure to allow a person with ownership or security interests in a forfeited motor vehicle to claim the vehicle or interest in the vehicle through court proceedings. A municipality is granted authority to provide for impoundment and forfeiture of a motor vehicle in similar circumstances.

Section 20 repeals provisions that have been replaced by other provisions throughout this bill.

TBC:ljb
16/010

REPRESENTATIVE ABOOD's COMMENTS

ON HOUSE BILL #6

(before the Judiciary Committee,
March 15, 1983)

House Bill # 6, under the title "An Act relating to driving a motor vehicle," has a rather innocuous sound as to meaning. But I want to point out some of the meaning of that.

I would like to quote Mr. Leo Walsh, President of the West Anchorage High School student body, from a statement he made to me by phone March 14, 1983. Mr. Walsh says:

> "Individually, as a senior in high school, if the drinking age were raised to 21 from the present age of 19, it wouldn't make that much of a difference in my attitude towards alchoholic beverages. I have been taught to deal with it in a responsible manner."

That is a profound statement when dealing with responsible drinkers and irresponsible drinkers, regardless of age.

That is the whole point of House Bill # 6; the tough sentences, fines, impoundments, and confiscations of vehicles are all <u>tools</u> to eliminate the drunk driver from our highways.

I won't quote statistics, because I am sure you are all aware of them. But one fact in particular that I will bring you back to is the reason for the formation of M.A.D.D.(Mothers Against Drunkers) in Alaska, which is the deaths of the Gerrish children

This individual tragedy was <u>enough</u> to prompt the people of this State, (as well as similar tragedies in other states) to finally say "THAT IS <u>ENOUGH</u>!! WE NO LONGER CAN TOLERATE THE TAKING OF LIVES AND PROPERTY BY THE

IRRESPONSIBLE, DRUNKEN DRIVER!!

That is why House Bill # 6 has such rigid and tough clauses against drunken driving. To the responsible driver and drinker, it will really not make any difference; because of the sense of responsibility that he has toward his family, friends, and associates.

To the irresponsible driver and drinker, it will mean longer jail sentences, heavier fines, empoundment of his vehicle (or the friend's vehicle that he was driving), confiscation of the vehicle, possible loss of employment, and embarrassment to his loved ones.

But more than that, this legislation will take him off the streets if he considers the penalities and punishment of driving while intoxicated. This is the sole thrust and effort of House Bill #6.

Mr. Chairman, in conclusion I believe it is the duty of this Committee, the Court system, and especially those people who think nothing of driving while intoxicated, to take this law seriously; to realize that not just the legislature, or the Court system, but all citizens of our State cannot and will not tolerate any more deaths, injuries, property damage, and pain.

Mr. Chairman, thank you for the opportunity to present the people's case against drunk driving to this Committee. I urge you to act promptly, for each day we delay may mean another life.

Drunk Driving Penalties In Other Countries

For those who think that the new DUI laws recently passed in many states are far too harsh, we advise those people to take a look at how other nations around the world are dealing with the problem of the drinking driver. In some of the following cases you'll find that a few of these countries don't have near the drunk driving problem that now exists here in the United States. The apparent reason for this lack of a high number of DUI cases in these other countries would seem to be directly attributable to the no nonsense, rountinely dealt, strict punishments handed out by the courts in these foreign countries. This information has been drawn from newspaper accounts and statistics supplied to MADD by members. Any incorrect statements are attributable to the sources, not the writers.

West Germany • If a suspected drunk driver tests out at 0.8 mills of alcohol in the bloodstream, his license is automatically suspended for a minimum of three months, with a maximum of one year in prison or a fine. The police also use roadblock checkpoints to randomly test drivers for alcohol consumption.

Norway • In Norway, it's a mandatory, minimum sentence of three weeks in jail for any driver caught with a blood-alcohol level of .5 per mil or more. That means that five drops of alcohol per 1000 drops of blood. A fine may be added scaled to income. Suspended sentences are extraordinary. On the first offense you lose your license for at least one year. On the second offense within five years, you lose your license for life.

Israel • The problem of the drinking driver on the roadways in Israel is virtually non-existant, due largely to the two-year prison term that awaits convicted drunken drivers. In 1980, an Israeli Embassy spokesman was quoted as saying that there is about one drunk driving case in Israel a year.

Soviet Union • First offenders are banned from the roadways for six months. In one instance, the drunk driver who killed six and injured five more during a drive through northern Moscow was sentenced to death.

Great Britain • Those convicted face automatic license suspension for one year. In addition, if the case is aggravated, lifetime banishment from the roadways is possible. Other sentencing possibilities include six months in jail, up to an $1800 fine, and assignment to gardening, garbage collection, and other community service.

Egypt • Like most Moslem countries, alcohol usage is prohibited, drunken driving cases are rare.

India • Arrests are rare, but penalties are severe. Those convicted face six months in prison, $112 fine, or both.

South Korea • Just an arrest results in an automatic two month license suspension, with a conviciton meaning a jail sentence of up to one year and a fine of $700.

Japan • First offenders can face up to four months in jail and a $200 fine. Licenses are also revoked and can be returned only upon successful completion of a driving test one year later.

Chile • Those convicted face from 61 to 541 days in jail. If someone has been injured the minimum prison sentence is 18 months.

Community Support

(continued from page 2)

- Federated Fire Fighters of California
- Gannett Outdoor Advertising
- Joan Blake Austin of Joan Blake Austin Health Studios
- Jerry Burns of NBI
- Sacramento County Deputy Sheriffs Association
- Sacramento Police Officers Association
- Wine Institute

Federal Legislative Victory

The U.S. Congress has joined the fight to rid our roadways of the drunken driving menace. On September 29, the House of Representatives unanimously passed the legislation which contained the provisions of H.R. 6170, also known as the Howard-Barnes bill. On October 21, the Senate also unanimously passed the legislation. On October 25, President Reagan signed this welcome provision into law.

Essentially, this new law will provide important federal aid in the form of incentive grants to those states setting up comprehensive, community-based drunk driver control programs. Another attractive feature of the Howard-Barnes legislation is that it will provide the incentive grants out of funds which are already budgeted, thus the federal debt will not be increased because of this program.

A special thanks is in order to the President, Congressmen Howard and Barnes, and the individuals and groups responsible for the passage of this essential new measure.

STATE OF ALASKA
THE LEGISLATURE

LEGISLATIVE AFFAIRS AGENCY

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

M E M O R A N D U M

February 24, 1983

SUBJECT: Driving while intoxicated
(HB 6) (CSHB 6)

TO: Representative Mitchell E. Abood, Jr.

FROM: Tamara Brandt Cook
Legislative Counsel

TBC

You have asked me to indicate the changes contained in the draft CSHB 6 as compared to HB 6. I have done this in the form of a sectional analysis of CSHB 6 and the section numbers contained in the headings refer to CSHB 6.

Section 1. This is the same as sec. 1 of HB 6.

Section 2. This is the same as sec. 2 of HB 6.

Section 3. The language "arising out of the operation of a type of motor vehicle for which a driver's license is required" is inserted into subsection (c). The change limits the application of provisions dealing with revocation of a driver's license to situations involving the use of a vehicle, such as an automobile, for which a driver's license is required. The crime of driving while intoxicated under AS 28.35.030 can be committed by a person driving any type of motor vehicle, defined under AS 28.35.260(7) to mean any self-propelled vehicle, or an aircraft or watercraft. Without the added language a person convicted of driving while intoxicated in a case involving an airplane or boat would, under the strict terms of the provision, loose his license to drive an automobile, a somewhat puzzling result. This, however, is the situation under existing AS 28.15.-181(c) which requires revocation of a driver's license, for an automobile, for the crime of driving while intoxicated despite the fact that the crime may have involved a vehicle of a type for which no driver's license is required, such as an airplane or boat.

Section 4. This is the same as sec. 4 of HB 6.

Section 5. This is the same as sec. 5 of HB 6.

Section 6. This prohibits driving while a driver's license is cancelled, suspended, revoked or in violation of a limitation placed on the license whether the curtailment of the privilege to drive occurred in this state or another jurisdiction. The change was adopted by the House Community and Regional Affairs Committee as Amendment No. 2. The minimum term of imprisonment for driving without a license has been increased from 14 to 90 days in subsection (a) pursuant to Amendment No. 5 adopted by the House Community and Regional Affairs Committee. In subsection (b) the notice given by the department to a person whose license is curtailed of the consequences of driving without a license is altered to reflect the new 90-day imprisonment provision.

Section 7. This is the same as sec. 7 of HB 6.

Section 8. At the bottom of page 5 and the top of page 6, the language "if the offense arises out of driving a type of motor vehicle for which a driver's license is required" is inserted, since this provision has to do with revocation of a driver's license and impoundment and forfeiture of a motor vehicle. The reason for the change is the same as that indicated under sec. 3. In addition, this makes it clear that the impoundment and forfeiture provisions are to be applied to vehicles for which a driver's license is required such as automobiles, but not to other vehicles such as boats or planes.

Section 9. This contains the material from sec. 13 of HB 6. It was moved to a new section number at the request of the revisor of statutes, who has authority in any case to renumber sections. The language "to a person driving a motor vehicle of a type for which a driver's license is required" has been inserted in subsection (b) and (c)(1), so that the provisions dealing with administrative revocation of a driver's license apply only if a person is driving a vehicle such as an automobile. A chemical test under the implied consent statute can be given to a person driving any type of motor vehicle, including an aircraft or watercraft. Without this change, a driver's license, for an automobile, could be revoked on the basis of a test given in conjunction with the operation of a plane or boat. Under paragraphs (1), (2) and (4), the provision for suspension and for refusal to issue an original license have been included as possible department actions along with the provision for

revocation now contained in HB 6. In subsection (3) the word "suspension" is used in connection with curtailment of the privilege to drive for a limited period of time. The word "revocation" is used to refer only to permanent denial of the privilege to drive. Under existing statutes these terms are used interchangeably. The first sentence in (e) is inserted pursuant to Amendment No. 1 adopted by the House Community and Regional Affairs Committee.

Section 10. This contains material found in sec. 9 of HB 6. As in the previous section, limiting language is inserted so that provisions dealing with curtailment of a driver's license apply only if a person is arrested while driving a vehicle such as an automobile, for which a driver's license is required. Under paragraphs (1), (2), and (4), the provision for suspension and for refusal to issue an original license have been included as possible department actions along with the provision for revocation now contained in HB 6.

Section 11. This contains material found in sec. 10 of HB 6. Limiting language is inserted so that provisions dealing with curtailment of a driver's license apply only if a person refusing to submit to a chemical test was arrested while driving a vehicle, such as an automobile, for which a driver's license is required.

Section 12. This contains material found in sec. 11 of HB 6. The word "suspension" is used in connection with curtailment of the privilege to drive for a limited period of time. The word "revocation" is used to refer only to permanent denial of the privilege to drive.

Section 13. This contains material found in sec. 12 of HB 6.

Section 14. This contains material found in sec. 14 of HB 6. "Suspension" is used in connection with curtailment of the privilege to drive for a limited period of time. "Revocation" refers to permanent denial of the privilege to drive.

Section 15. The language "of a type for which a driver's license is required" is inserted in (a) to limit this section to impoundment of vehicles, such as automobiles for which a driver's license is required. An offense under AS 28.35.030 may involve other types of motor vehicles, such

as airplanes. Without this change these might also be impounded.

Section 16. The language "arising out of driving a motor vehicle of a type for which a driver's license is required" is added to Sec. 28.35.037(a) to limit forfeiture to vehicles such as automobiles or motorcycles. An offense under AS 28.35.030 or AS 28.35.032 may involve other types of motor vehicles, such as airplanes or boats for which no driver's license is issued. Without this change these might also be forfeited. Paragraph (3) is added to Sec. 28.35.038(b) and in (c) "may" is changed to "shall" pursuant to Amendment No. 4 adopted by the House Community and Regional Affairs Committee.

Section 17. This is the same as sec. 17 of HB 6.

TBC:ljb

STATE OF ALASKA
THE LEGISLATURE
LEGISLATIVE AFFAIRS AGENCY

RECEIVED
FEB 21 1983
STATE CAPITOL
JUNEAU ALASKA 99811
907 465-3900

MEMORANDUM February 21, 1983

SUBJECT: Revocation of driver's license
(Work Order No. 13-0480)

TO: Representative Mitchell E. Abood, Jr.

FROM: Tamara Brandt Cook
Legislative Counsel

TBC

You have asked whether the state may permanently revoke a person's driver's license after more than two convictions for driving while intoxicated or refusal to submit to a chemical sobriety test. It is my conclusion that the state may permanently revoke a person's license under those circumstances.

The state legislature under its police power has full authority to control and regulate the licensing of drivers, since driving involves danger to the public and requires a degree of knowledge on which others must rely. The state may prescribe the qualifications of persons who are eligible to be licensed and may establish the terms on which the right to a license depends. Since a license to drive is not deemed to be a vested right, the license is subject to suspension or revocation as may be provided by statute. The legislature has full authority to prescribe the conditions under which a license will be revoked when the public interest requires. Corpus Juris Secundum, Motor Vehicles, secs. 146, 154, 164; Breeze v. Goldberg, 595 S.W.2d 318 (Mo. 1980).

It is generally held that revocation of a license is not a penalty and that its purpose is not to punish but to protect the public from a dangerous driver. Consequently, it is not an unconstitutional infringement of the right to travel to deny a person the privilege to drive, since there is no right to travel by a specific method. State v. Scheffel, 514 P.2d 1052 (Wash. 1973), appeal dismissed, 94 S.Ct. 1984, 416 U.S. 964 (1974).

The legislature has full authority to designate the agency through which a license will be revoked. The discretionary power vested in administrative officers in suspending or revoking a license has been held to be in the nature of an administrative or executive function. Statutes authorizing administrative revocation of licenses have been held not to be invalid as a delegation of legislative power or judicial authority to the executive branch. Daneault v. Clark, 309 A.2d 884 (N.H. 1973). Violations of traffic laws, including driving while intoxicated, have been held to constitute grounds for administrative revocation of a license whether or not there has been a conviction for the offense. Severson v. Stoppel 152 N.W.2d 281 (Iowa 1967); State v. Scheffel, supra. A prior valid conviction is essential for revocation only if the statute expressly requires. Corpus Juris Secundum, Motor Vehicles, sec. 164.5.

The fact that no accident or tragedy resulted from the misconduct of a driver does not mitigate the offense or bar revocation of a license. Commonwealth ex rel Lamb v. Hill, 82 S.E.2d 473 (Va. 1954). A license may be revoked for refusal to take a chemical sobriety test. (See 88 A.L.R.2d 1064.) A license may also be revoked for convictions in other states, and the period of denial of the privilege to drive may be increased depending on the number of times a person is convicted. Carter v. State, 625 P.2d 313 (Alaska 1981); Danks v. State, 619 P.2d 720 (Alaska 1980); (see 87 A.L.R.2d 1019).

It is recognized that a driver's license may be revoked permanently and that an agency may refuse to ever grant a license to an unfit driver. Carmichael v. Scheidt, 106 S.E.2d 685 (North Carolina 1959) (involving permanent revocation upon third conviction of driving while intoxicated where one conviction occurred out-of-state); State v. Crotinger, 62 N.E.2d 494 (Ohio 1945) (involving permanent revocation for failure to stop even though the offense was a misdemeanor); MacKinnon v. Ferber, 84 A.2d 647 (New Jersey 1951) (upholding denial of a new license by the agency after a second conviction of driving while intoxicated where the second conviction occurred ten years after the first conviction and the court failed to order permanent revocation); Gullard v. State, 497 P.2d 93 (Alaska 1972) (upholding revocation for driving while intoxicated for one year and noting that the person must reapply for a license and that the Department of Public Safety must

independently evaluate the acceptability of relicensing him).

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

TBC:ljb



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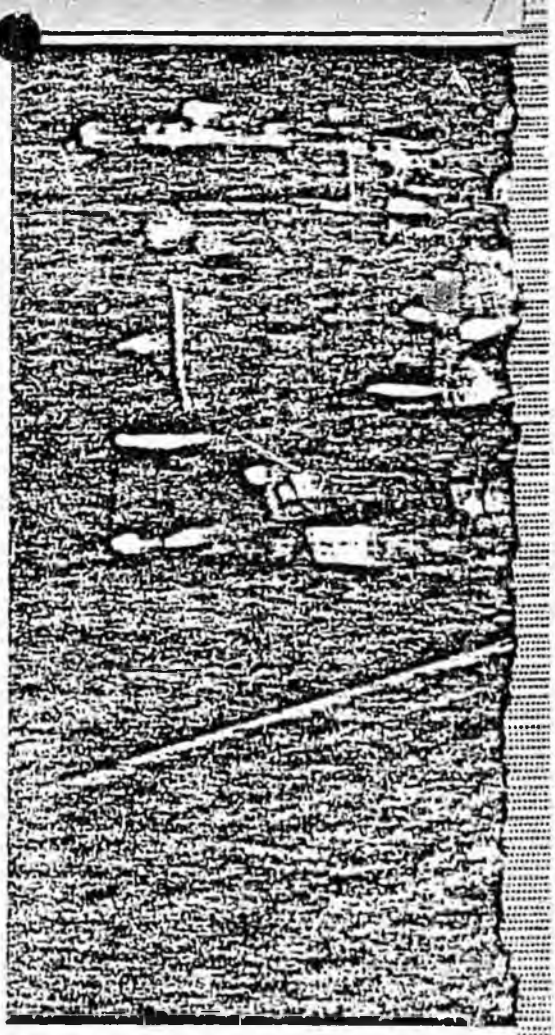
Cindy Ferguson with twins Tony and Tommy, D.C. crash: 'Socially accepted murder'



The War Against Drunk Drivers

The horror of those seconds will forever haunt Cindy Ferguson. She was driving her three sons—the identical twins Tommy and Tony and her baby, Lee—to a party, when suddenly her Vega was smashed from behind. A tremendous explosion hurled her, Tony and Lee onto the street. Cindy raced back to the car and pulled Tommy's burning body from the wreck, throwing herself on him to smother the flames. A friend, Steve Willoughby, remained trapped inside, screaming, a halo of fire encircling his face. As Cindy lay there on top of her son, the other driver approached her. But when she pleaded for help, he staggered away.

Willoughby, 20, and Lee Ferguson, two, died on that Memphis street. Tommy, five, was in critical condition for six months with burns over 65 percent of his body. He has lost almost all use of his kidneys and most of his hearing. He has had 100 operations already and faces 14 years of reconstructive surgery.

The other driver suffered a broken nose. Despite at least seven drunk-driving arrests in four years, he had never spent a day in jail. His 5- to 10-year sentence for second-degree murder provided little solace for Mrs. Ferguson. But her nightmare was primarily responsible for Tennessee passing one of the toughest drunk-driving laws in the nation—despite concerns that it would overcrowd the courts and prisons. "I was more concerned," said state Sen. Curtis Person, its sponsor, "about the overcrowding of hospitals, morgues and cemeteries."

Drunk driving is a national epidemic, what one reformer calls America's "socially accepted form of murder" (chart, page 37). More Americans have died at the hands of drunk drivers during the past two years than were killed in Vietnam; on average, about three Americans are killed and 80 are injured by drunk drivers every hour of every day. The drunken slaughter over the past decade is a staggering one-quarter of a million Americans—the entire population of Rochester, N.Y. Safety experts say that one out of two Americans will be victimized by a drunk driver in his lifetime, hardly surprising when the National Highway Traffic Safety Administration (NHTSA) contends that up to 10 percent of all drivers on weekend nights are legally intoxicated.

But finally, outraged Americans are trying to put an end to the carnage. In a major break with past public policy, which concentrated on highway-safety conditions and protective devices such as air bags, a coast-to-coast crusade aims at getting drunk driv-

Thomas Sexton III, 15: *Killed instantly when a drunk driver broadsided the car in which he was a passenger. His killer was sentenced to two years' probation, fined $200 and lost his license for 16 months.*



Paul Lawler, 15: *Crushed against a wall when a drunk drove off the highway. His killer was on probation after three prior drunk-driving convictions and is eligible for parole in July after serving two years.*





© Mark Reinstein—Photoreporters

ers themselves off the roads. A recent Gallup poll indicated that fully 77 percent of all Americans support mandatory prison sentences even for first-time offenders. President Reagan has declared the campaign a national priority, and Congress is considering bills that would award money to states that crack down.

'Failed Experiment': Already 27 state legislatures this year have passed their own versions of the toughest drunk-driving bill in the nation, and more legislation is pending in others. Twenty states have boosted the legal drinking age, reversing a Vietnam-era trend toward lower drinking ages that made alcohol-related crashes by far the single biggest killer of Americans between the ages of 16 and 24. In New Jersey the average number of persons killed annually by 18- to 20-year-old drivers climbed by 176 percent after the state lowered its drinking age to 18. "Statistics have shown us that kids can't handle alcohol," says New Jersey state Sen. C. Louis Bassano, sponsor of a bill to raise the drinking age to 21. "It's an experiment that has failed."

Liquor is so integrated into the nation's social and economic fabric that until recently, drinking and driving was an almost untouchable political issue. But the drunk driver who kills isn't usually the social drinker who has had one beer too many (box, page 36). The NHTSA reports that the average blood alcohol concentration of a drinking driver killed in a crash is .20—twice the rate for legal intoxication in most states. Still, judges, juries, prosecutors and legislators, most of whom drink socially, have tended to view the drunk driver with "there but for the grace of God, go I" sympathy (page 38). The result: loopholed laws that have been cumbersome to enforce, wholesale plea bargaining (California charged only 5,000 people with reckless driving in 1978, but permitted 80,000 drivers to plead guilty to it) and judgments of the lecture-and-slap-on-the-wrist variety (Idaho arrested 1,800 persons for drunk driving last year, convicted one-third of them and jailed just two). Explains NHTSA administrator Raymond Peck, "The well-scrubbed father of four standing before the judge doesn't look anything like the falling-down drunk that was pulled out of the wreck."

Time Bombs: America's tacit acceptance of drinking and driving has the effect of loosing time bombs on the nation's highways. An example was a Georgia man who, after his 13th conviction for driving while drunk, was sentenced to just one year in

Cari Lightner, 13:
Killed when a drunk driver struck her as she walked to a church carnival. Her killer, on bail after a drunk-driving arrest and with two prior convictions, was paroled after serving 19 months.

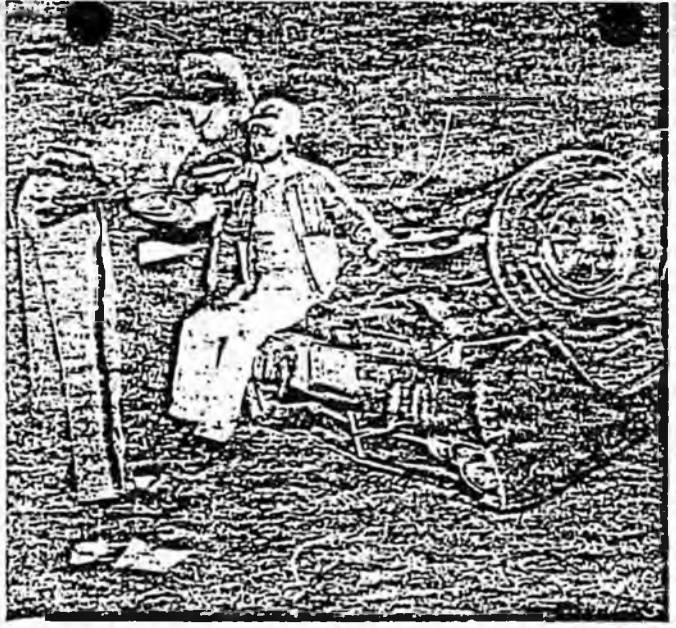


David Gunderman, 4:
Run over as he stood on the sidewalk waiting for an ice cream. His killer, who had eight prior convictions ranging from hit and run to drunk driving, was sentenced to five years in prison.



prison. Thus, he was drunk and on the road again 20 months later when he crashed and killed himself. Or consider the case of William Rowan. Rowan was once sentenced to 45 days in jail, a mild penance for a California driving record that carried six convictions for drunk or reckless driving, two for hit and run. Last March, after leaving a downtown Santa Ana bar, Rowan drove onto a sidewalk, killing four-year-old David Gunderman, who was waiting for the ice-cream man. After hitting the child, Rowan slumped in his seat and lit a cigar. Police measured his blood alcohol content at .27.

Campaigns against drunk driving have always had sobering truths on their side; what they lacked was a real constituency. All that may have changed one spring afternoon in 1980, when 13-year-old Cari Lightner of Fair Oaks, Calif., was struck from behind and killed by a hit-and-run driver as she walked to a church carnival. Cari's mother was stunned to learn that the driver, a 47-year-old man who had two previous drunk-driving convictions and was out on bail on a third arrest, had spent only two days in jail previously and was unlikely to wind up there for killing Cari. Candy Lightner quit her real-estate job and launched Mothers Against Drunk Drivers (MADD), giving the public outcry against drunk driving the constituency it has always needed—the victims.



Photos © P. F. Bentley—Photoreporters

Victim in New York: One out of every two Americans

In the past, says Edward Kunec, a NASA official who joined MADD in Virginia after drunk driver last summer, "people who had these tragedies closeted themselves and said it was fate or the will of the Lord. Now people are coming out of the closet—and they are angry." In just two years, MADD has grown to 83 chapters in 29 states. Remove Intoxicated Drivers-USA (RID), founded in New York under similarly tragic circumstances, went national last year and now boasts 55 chapters in 29 states. The anger that is the movement's glue has made these organizations aggressively self-righteous and militant. "You can't be too strident," explains RID national coordinator Doris Aiken. "I don't know how you can tell someone nicely that they are incompetent to drive." Aiken warns those who view this campaign as a fad that will soon fade: "The pendulum will not swing back. There is an endless supply of victims."

The legal system often transforms the victims' grief into outrage. Paul Lawler, 15, died five days after a van barreled off a Massachusetts highway and into a restaurant entrance, pinning him against the restaurant wall. The drunk at the wheel was on probation for his third drunk-driving con-

Driving While Intoxicated

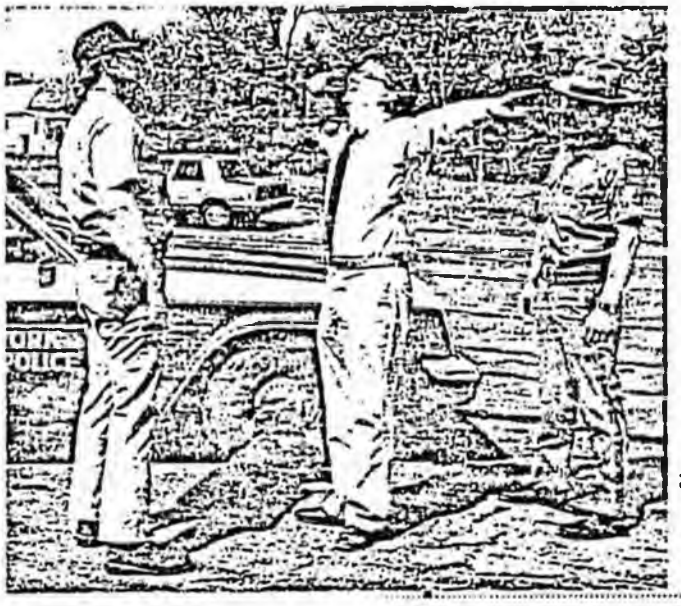
Many social drinkers think their driving remains unimpaired after a couple of cocktails. NEWSWEEK's *Ron Givens tested that thesis under the supervision of New York state police. His report:*

There was something absurd about drinking on an abandoned Schenectady airport runway while surrounded by police, but I wanted to find out how alcohol affected my driving skills. So I drank my gin and tonic next to an unmarked trooper car. As my bartender, Sgt. Henry Michelin, put it: "Just like the neighborhood bar—someplace to lean and drink."

An average male guinea pig—5 feet 10, 170 pounds—I had arranged to take on a difficult state-police driving course both sober and drunk. I supplied the gin and tonic, the state police provided a car. The course requires precise maneuvering around hard rubber cones—forward and backward. Scoring combines the time taken to complete the course with a five-second penalty for each mistake—such as flattening a cone. And a passing tally for troopers is 2 minutes 17 seconds. My blood alcohol level was measured by a preliminary-breath-test (PBT) device the size of a cigarette pack.

After eight practice runs through the course, I had whittled my time down from 3 minutes 10 seconds to a passing score, and it was time to begin drinking. My first gin and tonic—containing three ounces of 80-proof booze—placed my blood alcohol level 45 minutes later at .07 (70 milligrams of alcohol per decaliter of blood), high enough in New York to be charged with driving while impaired by alcohol. At this point I was slightly lightheaded, but I didn't feel uncoordinated. My driving score told a different story. Not only did I add 1 minute 12 seconds to my previous, sober record, but my score was 19 seconds over my very first attempt.

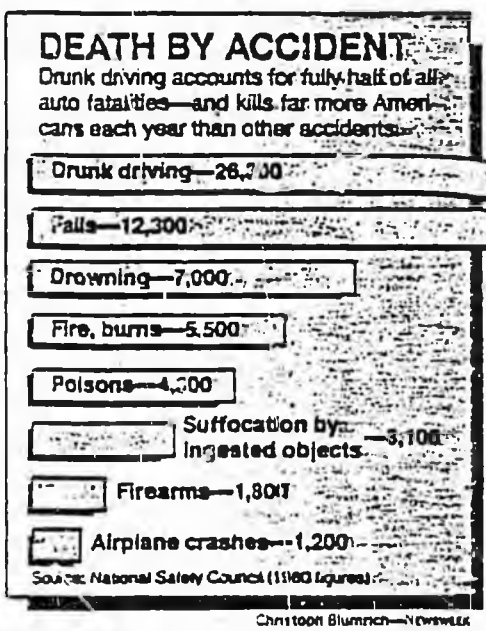
Givens flunks the touch-your-nose test: Only time helps



Wretched: During my first post-drink attempt, I unconsciously tried to compensate for my condition through caution—a tactic that experts say is common among drunk drivers. In my case it didn't work: it took me longer and I made many more mistakes. This drop-off in performance was intensified by two more drinks, each containing one ounce of gin, which put my blood alcohol level at .11, or enough to be charged with driving while intoxicated or driving with a blood alcohol level of .10 or more. Now I could easily tell that I was uncoordinated. I stumbled slightly when I walked and I flunked the touch-your-nose-with-your-finger test. My driving ability plummeted from poor to wretched. My score—4 minutes 26 seconds—was almost double my final sober result. "You have no business being in an automobile out

viction. He was sentenced to four and a half years in prison—including the then maximum of two and a half years for vehicular homicide—and is eligible for parole next July, just two years after the accident. "I was under the impression anyone arrested for this kind of thing would have the book thrown at him," says Paul's mother, Carol Lawler, who now heads the Greater Boston chapter of MADD. "I didn't know vehicular homicide was a misdemeanor."

Mark and Bonnie Schuett turned the death of their four-year-old daughter, Kelly, who was killed as she walked near her home in quiet Ixonia, Wis., into a statewide *cause célèbre*. The driver, a 29-year-old man with a prior drunk-driving arrest, pleaded no contest to driving while intoxicated and was given a suspended five-day jail sentence and fined $284. His license was revoked for a year—but was actually restored after 90 days because he took treatment at an alcohol-abuse center. "This man got away with hitting and killing my child," says Mrs. Schuett. "Her life means more than a $284 fine." As a result of the Schuetts' lobbying effort, a new Wisconsin law went into effect last May that permits the state to suspend the license of anyone arrested for an alcohol-related driving offense—even before a trial. "Maybe we've saved somebody else's life," says Mrs. Schuett. "But I'm still angry."



Guilt: If anger fuels the movement, guilt is its motor oil. Thomas and Dorothy Sexton recall going to court to witness the trial of the man whose blood alcohol content was .26 when he killed the Sextons' 15-year-old son, Tom. They saw a car thief sentenced to two years in jail, while their son's killer—who pleaded guilty to homicide by a motor vehicle—was sentenced to two years' probation and fined $200. "We painfully relate our experience and say, 'If you don't want that to happen to you, let's do something'," says Sexton, a U.S. Department of Agriculture scientist who is now active in Maryland's MADD chapter. "I'm convinced if I had been involved in something like this five years ago, Tom would be alive today."

The movement's approach to the drunk-driving problem is essentially punitive. While legislation varies from state to state, it usually makes driving with .10 blood alcohol content (three beers or glasses of wine or shots of whisky consumed by a 150-pound man in two hours) a crime. In addition, many of the new laws make prison mandatory, if not for the first offense, certainly for the second. They often increase penalties for drivers who refuse the blood alcohol test and require that all convictions—regardless of the court disposition—be listed on a driver's record.

Many states are delighted by the preliminary results of the new laws. In Maryland, drunk-driving arrests by state police have gone up 45 percent and highway fatalities down almost 20 percent since its law went into effect. Maine, which last year began mandatory jail sentences for first-time offenders, has experienced a 47 percent reduction in alcohol-related fatalities. Oregon has had the most experience—its crackdown began in 1971—and the most success. During the '70s, highway fatalities dropped 6 percent and Oregon's fatality rate declined 35 percent despite the presence of 46 percent more drivers and 62 percent more vehicles on the road.

Success may be due to more than tough laws. Oregon has coupled its legal effort with a media campaign that urges Oregonians to report drunk drivers to a special telephone hot line. One hot-line spokesman is Donny Durrant, a former logger who had lost his license four times for drunk driving before he drove off the road at 85 mph and broke his neck. Durrant, now a quadriplegic, says in a TV message: "I wish someone had gotten me off the road before I had the accident which drastically changed my life."



Other states are backing their legislation with a variety of programs. South Dakota places highway signs reading, "X marks the spot . . . THINK!" at the almost 600 locations where drivers have lost their lives since 1979. Some states have considered efforts to stigmatize the drunk driver publicly. One Pennsylvania legislator proposed a special red license plate for all drivers convicted of driving while intoxicated—a modern-day scarlet letter. Local police in both Maryland and Massachusetts have gone so far as to use roadblocks, called "sobriety checkpoints," to deter and detect drunk drivers, though the Massachusetts effort has been ruled unconstitutional by a state court. Many states, however, complain that the new laws overtax their increasingly limited resources. Maine was the only state to include in its crackdown legislative package a new tax on liquor, which is expected to produce $2 million to $3 million annually that will be earmarked for treatment and prevention of alcohol problems.

Court Watch: The anti-drunk-driving campaigners are pressuring the courts as well as the legislators. One such group keeps constant watch in North Carolina's Forsyth County District Traffic Court. "People walk up to us and tell us things have changed," says Sandra Nicastro, one of the group's court fixtures. "Lawyers have told their clients, 'I don't think I can get you off this time because that lady's sitting there listening'." Some judges need little encouragement to get tough. Maine judges have meted out an average jail sentence of eight days to drunk drivers under the state's new laws—four times the permitted minimum. And a Mecklenburg County, N.C., judge may have set a new standard when he sentenced a drunk driver, who had eight prior arrests but had caused no injuries, to three years in jail.

Many safety experts insist crusaders should be focusing on automobiles and highways, not on drivers. H. Laurence Ross, a sociology professor at State Univer-

on the road," said Sergeant Michelin.

While impairment due to alcohol varies from person to person and even, depending on circumstances, for the same individual, experts say that driving skills are significantly diminished at a blood alcohol level of .10. That's why many states have adopted .10 as the limit for determining when someone has been driving while intoxicated. However, Robert Pandina, acting director of the Center of Alcohol Studies at New Jersey's Rutgers University, argues that there is impairment at lower levels as well. Pandina explains that the .10 standard is "a kind of compromise that recognizes that this is a drinking society."

Wide Awake: Contrary to old wives and drinking buddies, nothing will temper the effects of alcohol except the passage of time—about two hours for every ounce consumed. Food slows the release of alcohol into the bloodstream without blunting its effect, and exercise and coffee will only produce a "wide-awake drunk"—someone alert enough to spot trouble but unable to do anything about it. That was clear enough to me as I rode with Sergeant Michelin back to town; my slow-motion brain couldn't keep up with the rush-hour traffic on the highway. I couldn't help remembering the times when I had been this drunk and driven, and the thought scared the hell out of me.

sity of New York at Buffalo, who has studied crackdowns on drunk driving, says deterrence only works for the short term when the problem is treated as a moral one rather than a safety question. In a new book, he writes: "A vehicle and highway that are safe for an alcohol-influenced driver are also safe for a driver who has a heart attack, who dozes off, who drops a lighted cigarette on his lap, who fails to see a stop sign. . . ."

Others are convinced that the lock-'em-up approach is meaningless unless it's combined with therapy. "I don't think the tougher laws will stop the hard-core alcoholics," says Col. Tom Anderson, director of the state police in Alaska, which has had a mandatory prison law since 1978. "It's a mess," agrees Arthur Snowden II, director of the state's court system. "We're just putting people in high-priced jails . . . just taking them off the street is not going to solve the problem." But Maryland district court Judge David Bates thinks he knows the solution. Bates gives drunk drivers the maximum permissible sentence, then waives it if they are willing to enter an appropriate education or treatment program. While it is hard to measure the success of Bates's approach because probationary sentences weren't included on drivers' records until last year, Bates says only 149 of the 5,697 drivers referred to the program dropped out or had their probation revoked.

But putting drunks behind bars does take

How Drunks Get Off

Defense attorney Randy Taylor parades around the courtroom, his arms pinned behind him by handcuffs. After several minutes of histrionic discomfort he compels the cop on the witness stand to remove the cuffs and place them on the defendant, a man charged with driving while intoxicated (DWI). Then Taylor seizes his client and bullies him about. Wasn't that how the police acted when they arrested him? he asks the witness. Finally, the Dallas lawyer shoves his client into a chair and barrels up to the cop: "Isn't it true you said, 'Shut up, you s.o.b.!' and kicked him in the leg?" And Taylor wins an acquittal.

"That's the way you get your client off," Taylor says. "The single most important factor in the typical DWI case is trying to make the jury put themselves in the place of the defendant." Taylor knows few restraints. On one occasion, after pleading his woman client guilty of DWI, he implored the jury, "The government wolves are really howling for blood tonight, waiting to put this poor little girl in jail for 30 days, taking her away from her husband." Then he put the cuffs on her, and she broke down and wept, attesting to the humiliation she had suffered. Despite a prior DWI conviction just 30 days before this arrest, she was sentenced to only three days in jail. Another time Taylor concluded his summation by stage-whispering to his client's four children, "Kids, I've done everything I can for your daddy." Pointing to the jury, he said, "Now it's up to these folks here." The defendant, who Taylor admits was probably guilty, was acquitted in 15 minutes.



© 1981 Herblock in The Washington Post

'Hitting that child with your car must have really jolted you. Keep your driver's license and get yourself a couple more drinks'

The concept of "there but for the grace of God go I" has been the cornerstone of DWI legal defense ever since drunks started stepping on the gas. While the appeal is emotional, its foundation is solidly statistical: a recent Gallup poll reveals that four out of 10 Americans admit to having driven after drinking. But the extraordinary public campaign against drunk driving is having its impact even on jurors who may understand—from personal experience—the drunk driver's plight. The Texas Criminal Defense Lawyers Project recently has sponsored two special programs on DWI defense. Its program notes read: "The public has come to view DWI as a pernicious force in their communities and are demanding stiffer penalties . . . this institute is designed to teach you how to effectively represent your client . . ." Among the tactics garnered from the program and talks with top defense attorneys:

■ **Challenge the evidence.** Breath-analysis tests should not be accepted as gospel. Force the prosecution to prove that the testing machine was in good working order, that its chemicals had been tested and that its operator had proper qualifications. The tests aren't foolproof. Some people such as diabetics, who have certain chemicals in their breath, or denture wearers, who trap alcohol fumes along their gums, trigger false positive readings. If a blood sample was taken, make sure to request it; if it no longer exists, claim that it was purposely destroyed.

■ **Track down witnesses.** Find people who were with the defendant before he got behind the wheel and get them to testify about how sober he was. Attorney F. Lee Bailey's acquittal on DWI charges in California stemmed partly from testimony about his sober behavior on the evening of his arrest by people who were at the restaurant where Bailey dined.

■ **Get the insurance company involved.** Insurers tend to see cases as business problems, not moral issues, and are often anxious to settle damage matters expeditiously. Don't assume that the victim's families want vengeance; often they just want the case to go away too.

■ **Visit the scene of the arrest.** Since it can take up to six months between the arrest and the trial, the arresting officers can often be tripped up on details about the location. "If they [make mistakes]," says Taylor, "I can argue, 'Well, if you can't remember this, why can you remember anything else better?' "

■ **Try to talk with the police—and hope you fail.** When the police won't cooperate, argue that the witness is hostile, biased and has an ax to grind.

■ **Carefully consider the choice between judge and jury.** Taylor opts for a jury 95 percent of the time. He says, "I can manipulate the jury's minds more than I can a trial judge who's been on the bench 15 years and seen all my tricks." But cases that revolve around complex points of law may best be left to a judge.

The courtrooms are the ultimate battleground in the war on drunk driving. And to win the war, reformers must find ways to force jurors and judges to sympathize with the victims of drunk drivers, instead of the defendants.

MARK STARR with DAN SHAPIRO in Houston

FACTS ON ALCOHOL AND HIGHWAY SAFETY

The Problem

Overview:

Drunk driving continues to be one of our nation's most serious public health and safety problems. Some 50 percent of all drivers killed each year have blood alcohol concentrations in excess of the legal limit, 0.10 percent. In single vehicle fatal crashes, where it is more certain who is at fault, upwards of 65 percent of those drivers who die were legally drunk. Over the past 10 years, the proportion of highway deaths involving alcohol has averaged a tragic 25,000 per year. Thus, a staggering one quarter of a million Americans have lost their lives in alcohol-related crashes in the last decade.

The cost of drunk driving has a high economic cost to this country as well. A conservative estimate of the total economic cost of drunk driving is put at 24 billion.

Alcohol and Crashes:

Alcohol is a major contributing factor to fatal (and serious injury) automobile crashes. According to a 1978 review of the literature, approximately 60 percent of fatal crashes involved a driver who had been drinking. Between 40 and 55 percent of such crashes involved a driver who had a blood alcohol concentration (BAC) greater than .10 percent (w/v).

With regard to alcohol and responsibility for fatal crashes, the drinking driver problem is even more significant. In one study drivers judged to be at fault in fatal crashes were six times more likely to have had BAC's greater than .10 percent (w/v) alcohol in their blood than drivers judged not at fault for their crashes (60 percent vs. 10 percent).

This strong relationship between crash responsibility and high alcohol levels is shown further in single vehicle crashes, where responsibility is apparent, and where between 60 and 75 percent (60-75%) of dead drivers have BACs greater than .10 percent (w/v).

The Driver Population:

What the high BAC figures in crashes suggest is that the majority of alcohol related fatal crashes are caused by heavy (problem) drinkers. Some portion of the approximately 15 percent of fatal crashes which involve drivers who have been drinking, but who do not have BACs greater than .10 percent, may be caused by less heavy, less chronic, "social" drinkers.

The majority of drivers are either abstainers or light to moderate (social) drinkers. Even quite liberal estimates suggest that only about 10 to 15 percent of the nation's drivers would be classified as being heavy (problem) drinkers.

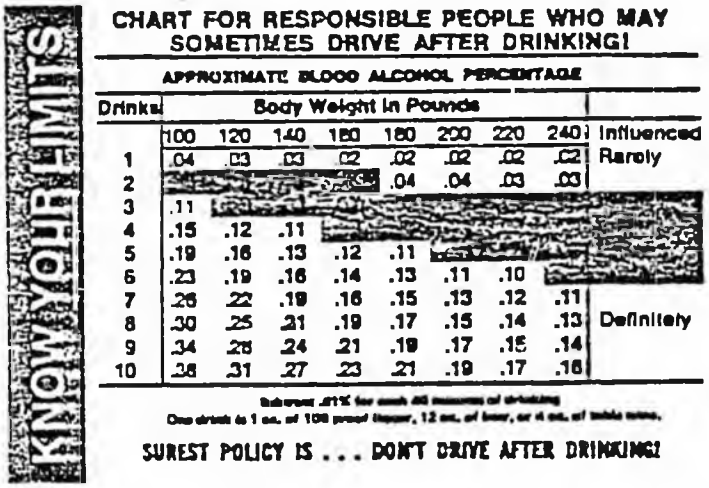
Arrested Drunk Drivers:

The average proportion of licenses drivers arrested for drunk driving over a one-year period is estimated to be one percent (1%). This translates to approximately 1.3 million of approximately 130 million licensed drivers.

On a nightly basis, between one in five hundred (1/500) and one in two thousand (1/2000) drivers on the road with a BAC greater than .10 percent (w/v) are arrested for drunk driving. These estimates come from a number of roadside surveys conducted in conjunction with the Alcohol Safety Action Projects (ASAPs) funded by the NHTSA in the 1970's and from the Grand Rapids data reported by Borkenstein and others.

The average BAC of these drinking drivers is approximately .20 percent, double the level for persumed intoxication. Estimating an average period of alcohol consumption at 4-5 hours, this means that the average fatally injured drinking driver had about 15 drinks prior to becoming involved in the crash.

Blood Alcohol and Body Weight



Past Approaches and Current Activities

Federal Action:

Over the last 12 years, the National Highway Traffic Safety Administration (NHTSA), an Agency within the U.S. Department of Transportation, has worked with the States to reduce alcohol related deaths on the highway. NHTSA initiated 35 Alcohol Safety Action Projects (ASAPs) throughout the country from 1971-1976 which resulted in the development of a coordinated systematic approach to deal with drunk driving.

In 12 of the 35 ASAPs, a statistically significant reduction in fatal crashes at night was achieved. Individual projects were able to double, and even triple driving while intoxicated arrests, using such new technology as roadside breath testing. Court procedures were streamlined to handle large caseloads. Roughly a quarter-of-a-million drinking drivers were referred for treatment.

Before the passage of the Highway Safety Act of 1966, few States specified a presumptive level of driving while intoxicated. The Federal standard for alcohol safety prescribed the 0.10 percent blood level that legally defines the legal intoxication limit. Now all the States have laws defining driving under the influence at the 0.10 percent level. The majority of the States now have made some improvements in their law enforcement, court, rehabilitation, and educational efforts.

State Action

Under the Section 402 grant program established by the Highway Safety Act the States are increasing the proportion of funds allocated to alcohol programs. In FY 1982 approximately 35 percent of 402 funds ($27.8 of 78.6 million) were allocated to drunk driving programs (with an added 30 percent spent on alcohol enforcement activities under Police Traffic Services).

Responding to citizen interest, 21 States and a number of local jurisdictions have established special drunk driving task forces to revitalize State/local programs.

Fifteen States have raised the minimum legal drinking age to reduce alcohol related crashes among youth. Other States such as Maryland have introduced legislation to raise the drinking age during 1982.

Sixteen States have adopted statutes allowing preliminary roadside breath testing to assist officers in establishing probable cause for drunk driving arrests.

Twenty-one States have established illegal per se statutes designed to simplify and streamline the prosecution of drunk drivers by making it illegal simply to operate a motor vehicle with an illegal blood alcohol concentration (above 0.10%).

S. J. Res. 241

Ninety-seventh Congress of the United States of Ameri

AT THE SECOND SESSION

Begun and held at the City of Washington on Monday, the twenty-fifth day of January, one thousand nine hundred and eighty-two

Joint Resolution

To provide for the designation of the week of December 12, 1982, through December 18, 1982, as "National Drunk and Drugged Driving Awareness Week".

Whereas traffic accidents cause more violent deaths in the United States than any other cause, over fifty thousand in 1980;

Whereas traffic accidents also play a substantial role in serious injuries in this country;

Whereas between 40 and 55 per centum of drivers who are fatally injured have alcohol concentrations in their blood above the legal limit and this figure rises to 55 to 65 per centum in single vehicle crashes;

Whereas the total societal cost of drunk driving has been estimated anywhere from $5,000,000,000 to $25,000,000,000 a year, which does not include the human suffering that can never be measured;

Whereas there are increasing reports of driving after drug use and accidents involving drivers who have used marihuana or other illegal drugs;

Whereas more research is needed on the effects of drugs on driving ability and their impact on the incidence of traffic accidents, either alone or in combination with alcohol;

Whereas an increased public awareness of the gravity of the problem of drugged driving may warn drug users to refrain from driving and may stimulate interest in increased research on the effects of drugs on driving ability and the incidence of traffic accidents;

Whereas the public, particularly through the work of citizens groups such as Mothers Against Drunk Driving (MADD) and Remove Intoxicated Drivers (RID), is demanding a solution to the problem of drunk driving;

Whereas the President has appointed a Commission on Drunk Driving to heighten public awareness and stimulate the pursuit of solutions;

Whereas many States have appointed task forces to examine the existing drunk driving program and make recommendations for a renewed, comprehensive approach;

Whereas an increase in the national awareness of the problem of drunk and drugged driving may help to sustain current efforts to develop comprehensive solutions at the State and local levels; and

Whereas the Christmas and New Year's holiday period, with more drivers on the roads and an increased number of social functions, is a particularly appropriate time to focus national attention on this critical problem: Now, therefore, be it

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That the week of December 12, 1982, through December 18, 1982, is designated as "National Drunk and Drugged Driving Awareness Week", and the President is authorized and requested to issue a proclamation calling upon the people of the United States to observe that week with appropriate activities.

Speaker of the House of Representatives.

Vice President of the United States and President of the Senate.

DRUNK DRIVING FACTS

- A blood alcohol concentration (BAC) of .10 percent or greater is the level at which a driver is considered legally intoxicated in most states.

- Approximately 55 percent of fatal crashes involve a driver who has been drinking.

- In single vehicle crashes, where responsibility is apparent, between 60 and 75 percent of dead drivers have BACs greater than .10 percent.

- The average BAC of drivers arrested for drunk driving is approximately .20 percent, double the level for presumed intoxication.

- Over the past 10 years, the proportion of highway deaths involving alcohol has averaged 25,000 per year; one quarter of a million Americans have lost their lives in alcohol-related crashes in the last decade.

- A conservative estimate of the total economic cost of drunk driving is put at between five and six billion dollars a year.

ACCIDENTS IN ALASKA

In 1975, alcohol-related highway accidents cost $19.5 million.

In 1977, 62 Alaskans died in alcohol-related highway accidents. About 80% of highway fatalities in Anchorage are alcohol-related.

OMVI ARRESTS IN ALASKA

The drivers being arrested are very heavy drinkers - had to have had ten drinks in an hour to reach the blood alcohol levels recorded. Most have so much alcohol in their system that they are still drunk when they go to work the next day.

Most people never drink enough to reach the illegal BAC level. Most people arrested for OMVI regularly drink large amounts.

At most one out of four arrested for OMVI are "normal" drinkers who have had too much just this night. The rest are used to drinking and driving - in fact one out of three people arrested for OMVI has previously been convicted.

Few of the arrests for OMVI are borderline cases - the average blood alcohol concentration is twice the level proscribed by law.

REASONS FOR RECOMMENDED STATUTORY CHANGES SB 608, 609, 610

PARTLY DONE a. Clean up statutes so that courts can spend time on real evidence instead of legal technicalities.

PRESENT b. OMVI arrests are expected to increase by as much as 50% in the near future.

PARTLY DONE c. Either help the courts by changing the statutes or by providing money for more courtrooms, judges, prosecutors.

d. OMVI arrests - largest single category of arrests and court caseload - 22% of all adult arrests; 28% of caseload of the misdemeanor courts; 50% of the trial time spent by the courts.

e. Changes will not stop drinking-driving but will help us handle the problem through the courts.

BEING WORKED ON f. We have definite evidence that the people who refuse breath-tests tend to be the most drunken and the most dangerous drivers - really experienced drinkers (average BAC: 0.27%). We are not helping them by keeping it easy to avoid the evidence of their dangerousness.

g. Using the traditional psychomotor tests, even experienced police are right only one out of two times about how drunk a person is - blood alcohol concentration (BAC) is objective and fair evidence, rather than just an opinion.

SB 551, 552

REASON FOR ALCOHOL SCREENING

KELSO'S JOB IN A STATEWIDE BASIS

a. Trying to separate the people out so that we can do what's right by the person who just has an attitude probelm, by the bad drivers, and by the alcoholics.

b. Trying to get an early identification of problem drinkers so that they can be encouraged to get help before they are far gone.

c. Trying to standardize court practices throughout the state.

PROBLEM DRINKING DRIVERS

1. The Problem Drinking Driver is someone who *regularly* drives while seriously impaired.

2. In the typical jurisdiction, about two-thirds of persons arrested for DWI are identifiable as Problem Drinkers, either clearly or marginally.

3. Problem Drinking Drivers usually have a high BAC (0.15 percent or above) when arrested. Of course, the BAC on any occasion may be lower.

4. Drivers with a high BAC (0.10 percent or above) are likely to be involved in at least

   - Twice as many crashes
   - Twice as many property damage crashes
   - Five times as many personal injury crashes
   - Twelve times as many fatal crashes
   - Twice as many traffic violations
   - Three times as many license suspensions

   as the average driver.

5. Social Drinkers rarely achieve the high BAC (0.10 percent or above) which problem drinkers achieve very often.

6. A person can learn to "drive while drunk" i.e., to compensate partially for the impairment caused by alcohol up to a point. The learning takes a lot of practice.

   Social Drinkers don't get that much practice. They are likely to judge themselves "too drunk to drive," or to drive very badly at lower BACs.

   Therefore, a person who drives reasonably well at a high BAC, or who can drive at all at a very high BAC (0.20 percent or above), is likely to be a Problem Drinker.

7. Problem Drinking Drivers tend to lead troubled lives, as is shown in:

   - The probability of their having previous and subsequent DWI arrests.
   - The frequency of their contacts with social agencies.
   - Their emotional profiles.
   - The frequency of their family and economic problems.

   This makes it possible to identify them by record checks and personality tests.

REALISTIC EXPECTATIONS

Problem Drinkers:

Regardless of what we do with problem drinkers, approximately 1 of 5 will be re-arrested for a drinking-driving offense within one year, 2 of 5 in three years.

Social Drinkers:

Without rehabilitation, 3 of 10 social drinkers will be re-arrested within three years. However, only 2 of 10 entering rehabilitation of some type will be re-arrested.

Source: University of South Dakota, Program Level Evaluation of ASAP Diagnosis Referral and Rehabilitation Efforts. Sept. 1975.

OVERALL STATEWIDE PROBLEM ANALYSIS

TRAFFIC RECORDS

Because of the problems described in the following paragraphs and the fact that current data is unavailable, there were no attempts made to perform a statistical analysis of the old data. This analysis has been performed on available data in past years and would only be redundant. Therefore, with the exception of the narrative in the traffic records section, the Overall Statewide Problem Analysis remains unchanged from the FY1982 highway safety plan. No further attempt to perform problem identification through statistical analysis will be done until current and accurate data becomes available.

The Alaska traffic records system continues to be plagued with many of the same problems that have prevented timely and accurate retrieval of accident data for the past few years. Excessive delays are still experienced in all aspects of the collection, entry, editing and retrieval of the accident and driver license data. Even though the driver license system is an automated on-line system, accurate statistical data for calendar year 1981 are not available at this time. Errors in data collection, as well as in the data entry, continue to contribute to the excessive delays in obtaining accident data.

Because of the changing philosophical views within the department, all attempts to utilize the "DART" traffic records software package have been abandoned. There is presently no individual within the department available that can utilize this system and at this time no efforts to revitalize the system are planned.

Even though a project was implemented in the department to alleviate many of the problems of the traffic records system, no progress of any consequence can be expected. The fact that the system spans two departments, neither of which has total responsibility, only complicates all efforts to upgrade the system. As the accident system remains a low priority within the department, we do not anticipate any improvement to the system during FY1983.

Because of these problems and the lack of reliable traffic data, emphasis will be placed on working with the Department of Public Safety to develop a more responsive outlook towards the traffic records system. This will include suggestions to move the responsibility of data entry from DOT/PF to the Department of Public Safety and to assign the system responsibilities to an individual in the department capable of overseeing and maintaining the system needs. With a commitment from the Department, traffic data and problem identification could be eliminated as a major obstacle in the preparation of the annual highway safety plan.

STATE ACCIDENT ANALYSIS

YEAR	INJURY ACCIDENTS	FATALITIES	TOTAL ACCIDENTS	M.D.R.(1)	PROPERTY DAMAGE ($)
1976	5,765	124	18,154	4.1	20,220,195
1977	5,085	136	15,086	4.5	20,348,441
1978	4,822	127	12,962	4.5	18,775,536
1979	4,560	90	13,521	3.2	19,365,424
1980	4,993	88	13,165	3.3	20,793,029

(1) Mileage Death Rate

1981 DATA NOT AVAILABLE AT THIS TIME

As shown by the preceding table, the total accident picture for Alaska in 1980 was one of increased risk to the motorist when compared to 1979. Accidents increased from 45 per 1,000 licensed drivers in 1979 to 48 per 1,000 licensed drivers in 1980. The mileage death rate increased from 3.2 per hundred million miles traveled in 1979 to 3.3 in 1980. The death rate per 1,000 motor vehicle accidents increased from 6.66 in 1979 to 6.68 in 1980.

Overall, there were more accidents per driver and per miles traveled than in 1979, with greater accident severity causing a higher injury and fatality rate. As a public health concern, the motor vehicle death rate per 100,000 population increased from 21.78 in 1979 to 21.97 in 1980 while the motor vehicle injury rate increased from 1,103.6 per 100,000 population in 1979 to 1,246.8 per 100,000 population in 1980.

STATE TRAFFIC ANALYSIS

YEAR	POPULATION	LICENSED DRIVERS	VEHICLES (1) REGISTERED	MILES (2) TRAVELED
1976	413,289	216,079	259,615	30.67
1977	411,211	294,926	283,973	30.34
1978	416,500	283,733	276,918	28.22
1979	413,200	299,818	262,549	27.90
1980	400,481	272,472	257,491	26.58

(1) Excludes trailers, commercial trailers and snowmachines.

(2) Represented as 100 million vehicle miles traveled.

As shown by the above table, Alaska's population remained stable through 1976-1979, with the exception of 1978 when it reached its highest level. The state experienced a 4% decline in population between 1978 and 1980.

The number of licensed drivers increased significantly in 1977, 36%, followed by another increase in 1979, but declined in 1980.

The number of vehicles registered shows a steady decrease since 1977, with a similar trend occurring in miles traveled since 1976.

LICENSED DRIVERS BY AGE AND SEX (1980)

The following table displays licensed drivers by age and sex. As is obvious, the majority of drivers licensed in Alaska (56.3%) are under 35 years of age. Thirty-one percent of all licensed drivers are young (under 35) males: the group most at risk in highway traffic accidents.

AGE	MALE	%(1)	FEMALE	%(1)	TOTAL	%(2)
14-18	8,367	60.6	5,431	39.4	13,798	5.1
19-24	25,822	55.0	21,111	45.0	46,933	17.2
25-29	25,395	53.3	22,282	46.7	47,677	17.5
30-34	24,950	55.4	20,121.	44.6	45,071	16.5
35-39	18,681	55.9	14,753	44.1	33,434	12.3
40-44	13,721	57.4	10,164	42.6	23,885	8.8
45-49	10,588	58.2	7,610	41.8	18,198	6.7
50-54	9,114	59.3	6,252	40.7	15,366	5.6
55-59	7,211	59.3	4,943	40.7	12,154	4.5
60-64	4,922	60.2	3,254	39.8	8,176.	3.0
65-69	2,772	61.5	1,738	38.5	4,510	1.7
70 +	2,093	65.1	1,120	34.9	3,213	1.2
Unknown	34	59.6	23	40.4	57	
TOTAL	153,670	56.4	118,802	43.6	272,472	100.0

(1) Percentage of that age group.
(2) Percentage of total licensed drivers.

MOTOR VEHICLE TRAFFIC FATALITY ACCIDENTS

During the years 1976-1978 the rate of alcohol-related fatal accidents occurring in the state appears to have remained fairly constant: approximately one-half of all fatal accidents were alcohol-related. A departure from this trend was reported in 1979 when the rate of alcohol involvement increased to 70% in fatal accidents.

There is some indication that improved reporting of alcohol involvement contributed to this apparent increase. However, alcohol involvement in highway crashes is the state's most serious and enduring problem and has been assigned the highest priority for treatment in the FY1983 highway safety program.

ALCOHOL

The following table reflects the distribution of alcohol/driver by age group. Accidents in which alcohol involvement was not stated or was unknown have been removed from the calculations.

AGE	NUMBER OF ALCOHOL ACCIDENTS	PERCENT INVOLVEMENT	PERCENTAGE OF LICENSED DRIVERS
15-18	220	11.3	3.4
19-29	922	47.2	36.5
30-39	407	20.9	27.8
40-49	238	12.2	15.2
50-59	134	6.9	10.3
60 +	31	1.6	2.5

During 1979, alcohol was indicated in 1,952 traffic accidents. Drivers aged 19-29 were the most frequent offenders: 47.2% of the alcohol-related accidents involved drivers in this age group who had beer drinking or who were suspected of drinking.

Drivers between the ages of 15 to 18, inclusive, who make up only 3.4% of the licensed driver population, accounted for 11.3% of the alcohol-related accidents, or more than 3 times their distribution in the general driver population.

Alcohol was a factor in 70% of the fatal accidents that occurred during 1979. Further analysis is not possible because of contradictory bivariate data, although there is some indication that young drivers are, again, over-represented. Inexperienced both in driving and in drinking, the young driver also has a predilection for high speeds, and the combination is lethal.

Alcohol enforcement and diversion to treatment and/or education of the drinking driver will remain the highest priority for Alaska's highway safety program.

SPEED RELATED

The number of speed-related fatalities declined from 80 in 1978 to 61 in 1979. Although the number of fatalities that were speed-related declined, the rate of speed involvement has remained constant at 27%. Speed as a contributing factor in injury accidents declined from 21% in 1978 to 16% in 1979.

DRIVER ONLY	FATAL ACCIDENT	FATALITIES	ALCOHOL ACCIDENTS	ALCOHOL FATALITIES
1979	81	91	57	66
0-18	17	20	11	13
19	2	2	2	2
20	9	11	6	8
1980	86	95	58	64
0-18	10	11	5	6
19	2	4	1	1
20	3	3	1	1
1981	90	100	66	76
0-18	13	18	11	16
19	4	4	4	4
20	2	3	2	3
REPORTED TO DATE - 09/17/82				
1982	38	43	22	24
0-18	4	6	1	2
19	3	4	2	2
20	1	1	1	1

	PRESENT LAW	HB 6
	1st offense: Ineligible for a driver's license or permit for a three months' period unless the court finds hardship and nullifies or modifies the suspension or revocation. If has prior DWI conviction, period of revocation or suspension is one year. First offense also carries minimum 72 consecutive hours' imprisonment. (AS 28.35.032)	1st offense: Driver's license seized if driving a motor vehicle. License is revoked or suspended for 90 days, unless has a prior DWI conviction. In that case, suspension or revocation is for one year. Vehicle impounded for 15 days. 72 consecutive hours imprisonment plus fine: $250 minimum; $500 maximum. (AS 28.35.032, secs. 9 - 12)
REFUSAL TO SUBMIT TO CHEMICAL TEST OF BREATH	2nd offense: If has prior conviction for either DWI or refusal to submit to a chemical test of breath, suspension or revocation of license is for one year. A conviction for DWI or for refusal to submit to a chemical test of of breath within previous five years yields a sentence of ten consecutive days' imprisonment. However, if the prior convictions for DWI or for refusal to submit to a chemical test of breath were within one year of this second conviction for refusal to submit to a chemical test of breath, imprisonment is for 20 days. The ten-day and 20-day sentences are both minimums. (AS 28.35.032)	2nd offense: If has either a prior DWI conviction or conviction for refusal to submit to a chemical test of breath, suspension or revocation is for one year. Second conviction for refusal to submit to a chemical test of breath or first such conviction of a person with a prior DWI conviction: minimum of 20 consecutive days imprisonment and a fine of $500 minimum; $1000 maximum. Driver's license seized if driving a motor vehicle. Vehicle impounded for 90 days and may be forfeited. (AS 28.35.032, secs. 9 - 12)
	Conviction under AS 28.35.032 also requires participation in a program of alcohol education or rehabilitation for term the court finds appropriate.	3rd or Subsequent offense: If for refusal to submit to a chemical test of breath or DWI in any combination, suspension or revocation of the driver's license is permanent. 30 consecutive days' imprisonment plus a fine of $1000 minimum and $2000 maximum. Same license seizure as for first offense. Vehicle impoundment and forfeiture provisions the same as for the second offense. (AS 28.35.032, secs. 9 - 12)

		Alcohol program participation requirements are unchanged.
		The five-year period for calculation of the number of offenses a person has committed, for the purposes of determining a penalty, has been eliminated for this offense.
		Note provisions for seizure of driver's license in sec. 13 in addition to provisions for refusal to submit to a chemical test of breath as trigger for seizure (above).

	PRESENT LAW	HB 6
	1st conviction for DWI: 72 consecutive hours imprisonment (AS 28.35.030). Driver's license revoked for 30 days minimum, or limited license and revocation for 60 days minimum. (AS 28.15.181)	1st conviction for DWI or refusal to submit to a chemical test of breath: revocation of driver's license for 90 days minimum (sec. 3). Fine: $250 minimum, $500 maximum (sec. 8) in addition to jail time.
DWI	2nd conviction for DWI or for refusal to submit to a chemical test of breath: Driver's license revoked and limited license may not be granted for one year minimum (AS 28.15.181). If within five years of a conviction for DWI or for refusal to submit to a chemical test of breath, ten consecutive days minimum imprisonment, unless within one year of a previous conviction, then 20 days. Court may order participation in alcohol education or rehabilitation program (AS 28.35.030). Subsequent convictions treated by the same provisions except that limited driver's license privileges may not be granted for at three years upon a third or subsequent conviction. Sentence may be suspended after the minimum sentence has been served.	2nd conviction, DWI or refusal to submit to a chemical test of test of breath (or equivalent elsewhere): One year minimum driver's license revocation (sec. 3); 20 consecutive days minimum 20 consecutive days minimum imprisonment and a fine of $500 minimum and $1000 maximum (sec. 8). 3rd or subsequent conviction for DWI or refusal to submit to a chemical test of breath (or equivalent elsewhere) in any combination of three or more: permanent revocation of driver's license (sec. 3). 30 consecutive days minimum imprisonment and a fine of $1000 minimum and $2500 maximum (sec. 8). No change in provision on alcohol education and rehabilitation assignments by court. --- Limited license privileges are removed for all DWI offenders.

PRESENT LAW	HB 6
DRIVING WITH LICENSE CANCELED, SUSPENDED, REVOKED, VIOLATION LIMITATION: Ten days' imprisonment minimum. Suspension of sentence after minimum sentence served is possible.	14 consecutive days, plus fines: $500 minimum and $1000 maximum. No suspension of sentence.

PRESENT LAW	HB 6
IMPOUNDMENT No present provision.	Upon probable cause of peace officer that vehicle used in DWI offense. Unless released, impoundment is for 15 days if no prior convictions for DWI or for refusal to submit to a chemical test of breath. If a prior conviction in Alaska or elsewhere for either, impoundment is for 90 days.

PRESENT LAW	HB 6
FORFEITURE No present provision.	If a prior conviction in Alaska or elsewhere for DWI or for refusal to submit to a chemical test of breath (or equivalent elsewhere), vehicle may be forfeited.

STATE OF ALASKA

THE LEGISLATURE

LEGISLATIVE AFFAIRS AGENCY

RECEIVED
FEB 1 1983

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

MEMORANDUM

January 31, 1983

SUBJECT: Drunk Driving -- HB 6
(Work Order No. 13-0676)

TO: Representative Mitchell E. Abood, Jr.

FROM: Russ Josephson
Legislative Counsel

Following is the sectional analysis of HB 6 which you requested:

Section 1 amends AS 28.15.081(a) by adding the new requirements for the driver's license and application examination: (1) that the applicant know the effects of alcohol and drugs on drivers and the related dangers of driving under their influence; and (2) that the applicant know the laws relating to driving while intoxicated.

Section 2 amends AS 28.15.181(a) by adding a new basis for the immediate suspension or revocation of a driver's license: the refusal to submit to a chemical test of breath under AS 28.35.032, Refusal to Submit to Chemical Test.

Section 3 amends AS 28.15.181(c) by repealing and reenacting it. Please refer to the accompanying penalties chart for comparison between the current law and HB 6.

Section 4 amends AS 28.15.201(b)(1) by removing the reference to the revocation of the license of a person convicted of operating or driving a motor vehicle while intoxicated. The revocation of the license of such a person is handled in Sec. 3 of this bill.

Section 5 amends AS 28.15.201(c) by removing the references to the issuance of a new driver's licenses for persons convicted of operating or driving a motor vehicle while intoxicated, after a limited license period has expired because, under Sec. 3 of this bill no limited license privileges may be granted.

Section 6 amends AS 28.15.291 by changing the penalty for violation of the prohibition against driving while a license is canceled, suspended, or revoked, or in violation of a limitation on the license. The penalty is increased from 10 days to 14 consecutive days and a fine of $500 - $1000 is added. In addition, the provision allowing the sentence to be suspended after the defendant has been imprisoned for no less than the minimum period has been removed.

Section 7 amends AS 28.35.030(a)(2), the "DWI" section by inserting the language to indicate that the alcohol levels referred to in the existing statute are to be determined by a chemical test given within four hours after the alleged offense was committed. Note that the broader term "a chemical test" is used here, not "a chemical test of breath".

Section 8 amends the "DWI" section further by changing the penalties for conviction. In addition, the five-year period used for calculating the numbers of convictions on a person's record has been eliminated, thus making all convictions count. The section also has been amended by the use of new language that indicates that a conviction under another law or ordinance, in this or another jurisdiction, is counted as a conviction in Alaska for purposes of determining how many convictions a person has and thus for determining what the penalty should be, if the elements of the law or ordinance are substantially similar. The effect of this amendment is to close a "loophole" if there were minor differences between the law under which a prior conviction had been obtained and the law under which a subsequent conviction was obtained. Also, the provision for suspension of sentence after the minimum sentence is served has been eliminated, as it was in Sec. 6. A person with multiple convictions for driving while intoxicated or for refusal to submit to a chemical test of breath, or for a combination of those two offenses (or another law or ordinance with substantially similar elements), may have the vehicle used in the commission of the latest offense impounded and forfeited.

Section 9 amends AS 28.35.032(a) by adding to the existing language on the refusal to submit to a chemical test of breath a new provision for the seizure of the driver's license by the law enforcement officer after reading the driver a notice and delivering the driver a copy of the notice. The notice explains the revocation procedure and

the right of court review. The notice is a temporary driver's license, as well.

Section 10 amends AS 28.35.032(b) to provide that the notice of revocation or suspension of a driver's license, as now required, indicate that the action will be effective after the temporary driver's license provided for in Sec. 9 has expired. Also, the section is amended to stay the revocation or suspension action if the person initiates a court action to rescind the Department of Public Safety's action. The three months' suspension or revocation period is eliminated from this section. Some additional technical changes were also made in this section.

Section 11 amends AS 28.35.032(d) to provide new penalties for the refusal to submit to a chemical test of breath under the implied consent statute. The penalties parallel those for conviction for "DWI" in several ways, including the calculation of the number of offenses. Provision is made for permanent suspension or revocation of the driver's license or the nonresident privilege to drive, and for the denial of an original license -- if multiple offenses are involved.

Section 12 amends AS 28.35.032(g) adding fines to the penalties for refusal to submit to a chemical test of breath, eliminates the five-year period used in calculating numbers of convictions, and increases the penalties for convictions. The sentence for multiple conviction cases may not be suspended under the amendments of this section.

Section 13 adds new subsections to AS 28.35.033, Chemical Analysis of Blood. This section provides for driver's license seizure if a chemical test produces results specified in subsection (a)(2). The procedure is the same as that in Sec. 9. In addition, the new language limits the court proceeding in which the driver's action to rescind the suspension of revocation of the driver's license is heard to two issues: (1) whether or not the arrest for driving while intoxicated was valid; and (2) whether the chemical test produced the results specified in subsection (a)(2). The penalties for administrative suspension or revocation for "DWI" or refusal to submit to a chemical test of breath are also set forth.

Section 14 amends AS 28.35.034. The section, formerly named "Period of Revocation", is renamed "Surrender of License or

Permit". The section is amended by the removal of the provisions allowing the district court to find extenuating circumstances and to modify or nullify the suspension or revocation of a driver's license or permit for refusing to submit to a chemical test of breath. Additional minor technical changes also were made.

Section 15 adds new sections to AS 28.35 for the impoundment and forfeiture of automobiles used in the commission of an offense under AS 28.35.030 (Operating a Vehicle, Aircraft or Watercraft While Intoxicated), and also for an offense under AS 28.35.032(f) (Refusal to Submit to a chemical Test of Breath) in the case of the forfeiture. In addition, provision is made for the remission of forfeitures, a procedure to allow persons with ownership or security interests in a forfeited motor vehicle to claim the vehicle through court proceedings.

Section 16 repeals AS 28.35.211(a)(4), a provision concerning suspension, revocation, or limitation of licenses for three months. The repealed provision has been replaced by other provisions throughout this bill.

RJ:ljb

Drunk drivers may lose their cars, licenses

By GREG GADBERRY
Daily News reporter

NEWS 2-3-83 1A 2



Daily News file photo /Paul Brown

State Rep. Mitch Abood is shown here participating in a demonstration in the affects of alcohol on drivers held in Anchorage in January. Abood backs a bill that would stiffen penalties for drunk drivers.

If Rep. Mitch Abood has his way, drunken drivers in Alaska will face not only jail time and fines but the permanent loss of their driver's licenses and their automobiles.

Those provisions are part of a comprehensive drunken driving bill written by Abood that drew strong support on Wednesday during a teleconference of the House State Affairs Committee.

"We have lived with this threat to our lives and our property for too long," the Anchorage Republican said.

The proposal mandates that police immediately seize the driver's licenses of anyone shown by breath tests to be driving legally drunk. Drivers who refuse to take breath-alcohol tests after arrest also would have their license taken under the bill.

The proposal would have police issue suspects a temporary seven-day license after their normal driver's license was taken away.

See Back Page, DRUNK

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News 2-3-83 2082

Drunk drivers may forfeit vehicles and licenses, serve longer jail terms if bill approved

Continued from Page A-1

Drunk drivers could appeal the license seizures to District Court judges. But unless the judge ruled the confiscation was unfair, the temporary license would expire after a week and the suspect would be unable to drive pending the outcome of the case.

Under present law, the state can suspend a driver's license if a person refuses a breathalyzer test, but that suspension is not immediate. Drivers who do take the test and are found to be drunk may have their licenses suspended at the discretion of the judge.

The Abood bill also requires longer license revocations for convicted drunken drivers.

Following a first conviction, drivers would lose their licenses for 90 days, three times the term now imposed on first-time offenders.

Current laws allow first-time offenders to get special licenses with which to drive to work. The Abood bill would prohibit such licenses.

Under the Abood proposal, second offenders would have their licenses pulled for a year, the same time provided now.

However, those with three or more convictions would lose their licenses for good. Current law allows judges to pull a license for three years on a third conviction.

According to Anchorage Municipal Prosecutor Allen Bailey, no other state has the power to permanently revoke a driver's license.

Advocates admit the license suspension issue will draw plenty of legal fire, but they contend the most controversial part of the Abood bill is the section requiring confiscation of the vehicles of drunken drivers.

People facing first convictions under the Abood bill would lose their cars for 15 days. Drunken drivers with two or more convictions would have their cars impounded for 90 days.

The bill also gives to judges the power to permanently confiscate vehicles if the driver has two or more convictions.

Current state statutes allow police to impound drunken drivers' vehicles if they are left in roadways and are a danger to traffic. But those laws do not impose specific time limits for impounding drunken drivers' vehicles.

There also is no provision under current law allowing for permanent confiscation of vehicles for drunken driving charges.

"That's really a giant step," Bailey said. "I don't think any state has that."

Abood's bill requires that those who refuse breathalyzer tests after arrest face fines and jail terms identical to those given drivers proved drunk by breath testers.

Under the bill, jail time for a first conviction is 72 hours in jail, identical to current law. The fine would range from $250 to $500.

Second offenders, however, would pay $500 to $1,000 and would remain behind bars for 20 consecutive days. That jail term is double what most second drunken driving convictions now receive.

A person convicted of a three or more offenses would serve at least 30 days.

"We are extremely enthusiastic," said Charles Landers, vice president of Mothers against Drunk Drivers. "This bill addresses many of the issues we think should be changed."

2082



June Gerrish: Deaths 'aren't fair.' Photo by Mark Kelley

Getting MADD about drunken driving

Group asks Legislature for stiffer DWI penalties

By CHRIS JARVIS
Empire Staff Reporter

She's MADD about drunken drivers, and she wants the Alaska Legislature to do something about it.

June Gerrish knows all too well the pain than goes with drunken driving-caused accidents. In December 1981, two of her grandchildren, 13-year-old Scott Gerrish and his 10-year-old brother Wesley, were run down and killed by a car driven by a drunken driver as they walked along a road in Girdwood, a quiet ski-resort town south of Anchorage.

The driver, Patrick Clemans, was last week sentenced to two concurrent eight-year terms and two years of probation by Anchorage Superior Judge Seaborn Buckalew.

Gerrish said today she was pleased with the sentence, noting it might serve as a warning to others of what can happen when driving while drunken and how serious the courts treat the crime.

And though last week's sentencing "took a lot weight off our minds," she said she is not done with her fight against drunken driving.

It is a fight that goes far beyond the boundary of the state's largest city. This week a Juneau man who recently pleaded no contest to a negligent homicide charge in the drunken-driving death of another 25-year-old man last June was again arrested, this time accused of drunken driving.

Some people withdraw from their anger and outrage, but Gerrish is doing something about hers. She founded the Alaska chapter of Mothers Against Drunk Drivers, a national group of citizens waging an all-out war against drunken driving.

The Alaska Chapter of MADD, started in September, now has about 300 members and will soon have chapters in Juneau, Valdez, Seward, Palmer and Fairbanks.

Now she has brought her fight to the Legislature and the House State Affairs Committee, which on Wednesday will hear her side of the growing drunken-driving tragedy in Alaska.

"We're not against drinking, but when they get in their cars, that's our business," Gerrish said.

Of her own experience, Gerrish said she never will forget the deaths of her grandchildren and the pain it erected.

"It's not fair," she said. "There are two kinds of death."

"The first, like the death of an old or very sick person, you can understand .... You're still hurt, but you know why," she said.

"But this was senseless; this was stupid," she said. "That's what makes me mad; I don't know why."

"We can never have another Christmas, we can never have birthdays," she said of her tight-knit family.

Her son, an Anchorage paramedic, had trouble returning to work following the death of his sons, Gerrish said. One of the first calls he received when he returned to work was to treat a 13-year-old boy who had been hit by a car, she said.

"He had trouble being in the same emergency room" under the same circumstances, she said.

While it supports raising the drinking age to 21, MADD is even more vocal about two other bills now under consideration in the House.

The first, introduced by House Speaker Joe Hayes, R-Anchorage, would require proof of liability insurance before a car can be registered in the state "so that innocent victims of motor vehicle accidents may be recompensed for the injury and financial loss inflicted upon them."

The other bill supported by MADD was introduced by Rep. Mitch Abood, R-Anchorage. It would increase penalties for repeated convictions for driving while intoxicated, refusal to take a breathalyzer test and driving while a license is suspended or revoked.

For example, the minimum sentence for someone convicted of driving while his driver's license is revoked following a conviction for driving while intoxicated would be 14 days in jail and a $500 fine.

In Alaska, Gerrish said, people don't have much trouble coming up with the money to pay fines, so she wants the fines increased to make more of an impression on drunken drivers.

Other changes the bill makes are a minimum jail term for those who refuse, a second time, to undergo a breatalyzer test. A second conviction would increase the sentence to no less than 20 days in jail and a fine of at least $500.

A second conviction for driving while intoxicated would result in a sentence of at least 20 days in jail and a fine of at least $500.

A third conviction would result in a sentence of no less than 30 days in jail and a fine of at least $1,000.

The bill also would allow a police officer to notify the driver at the time of arrest that he faces license revocation.

The revocation, could be appealed to the court within seven days. If not appealed, the revocation stands.

POSITION PAPER/Department of Health & Social Services

POSITION PAPER

CS for House Bill No. 6 (Judiciary)

"An Act relating to driving a motor vehicle."

House Bill No. 6 amended would increase the penalties for alcohol related driving offenses. Specifically:

Section 11 AS 28.15.291 sets the penalty for first offense driving with a suspended license as the result of a conviction of driving a motor vehicle while intoxicated at 30 days. The penalty for second or third offense driving with a suspended license as the result of a conviction of driving a motor vehicle while intoxicated would be 90 days.

Section 13 AS 28.35.030 (c) raises the penalty for second offense operating a motor vehicle while intoxicated to 20 consecutive days. The penalty for a third conviction would be raised to 30 consecutive days.

Section 16 AS 28.35.032 (g) sets the penalty for second offense of refusing to submit to chemical test at 20 days; third offense 30 days.

If CS for House Bill No. 6 is enacted, the increases in penalties set out in Sections 11, 13, and 16 would result in the need for 22 additional minimum security beds.

Recommended by: _____
Roger V. Endell, Director
Division of Adult Corrections

Date: May 6, 1983

Approved by: for _____
Robert London Smith, Ph.D.
Commissioner

Date: May 6, 1983

STATE OF ALASKA
FISCAL NOTE

Revision Date , 1983

I. REQUEST

Bill/Resolution No.: CS for HB 6 (Jud.)
Title: Act relating to driving a m.v.
Sponsor: Judiciary Committee
Requestor: Finance Committee

II. FISCAL DETAIL

Agency Affected: Health & Social Services
Program Category Affected: Justice
BRU, Program of Subprogram(s) Affected: Adult Confinement

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 83	FY 84	FY 85	FY 86	FY 87	FY 88
OPERATING						
100 PERSONAL SERVICES				419.7	444.9	471.6
200 TRAVEL		2.0	2.1	2.2	2.4	2.5
300 CONTRACTUAL		39.6	42.0	76.7	81.3	86.2
400 COMMODITIES		68.6	72.7	80.7	85.6	90.7
500 EQUIPMENT		-	-	4.5	-	-
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC		6.9	7.3	7.7	8.2	8.7
TOTAL OPERATING	-0-	117.1	124.1	591.5	622.4	659.7
CAPITAL	-0-	2,860.0	-0-	-0-	-0-	-0-
REVENUE	-0-	-0-	-0-	-0-	-0-	-0-

FUNDING: (Thousands of Dollars)

GENERAL FUND	-0-	2,977.1	124.1	591.5	622.4	659.7
FEDERAL FUNDS						
OTHER (Specify Source)						

POSITIONS:

FULL-TIME	-0-	-0-	-0-	9	9	9
PART-TIME						
TEMPORARY						

III. SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

The source of funds to offset the fiscal impact of this bill has not been identified by the sponsor.

IV. ANALYSIS: Attach a separate page for any Analysis

Prepared By: Roger C. Lange Roger C Lange Phone: 465-3376
Division: Adult Corrections Date: May 5, 1983

Approved by Commissioner: Date: May 6, 1983
Department Health & Social Services

Distribution:
Original to Legislative Finance
Copy to Office of Management and Budget (for Legislature introduced bills)
Copy to Department (for Governor introduced bills)
Copy to Sponsor
Copy to Requestor (if different from Sponsor)

3/8/83

IV. ANALYSIS:

A. Assumptions

1. Bed Impact

The passage of this bill will result in the need for 22 additional minimum security beds within the Alaska correctional system. The sections of the bill which affect increased inmate population projections are:

a. Section 11

Statistics furnished by the Department of Public Safety show 181 persons were convicted in 1982 for driving with a suspended or revoked license where the original offense resulting in the loss of license was driving while intoxicated (DWI) or implied consent (refusal to take a breathalyzer test). For purposes of this fiscal note, that number was used for calculating the increased person days of incarceration resulting from increased sentences to 30 or 90 days. It was assumed that 80% of the offenders would have been convicted only once in the previous 15 years and 20% convicted more than once in the previous 15 years.

The following calculations also consider that the offender would have been given a minimum sentence of 10 days previously, and it is assumed that every offender will earn all good time for which they are eligible. Therefore, 145 offenders would serve an additional 15 days and 36 offenders would serve an additional 60 days. This results in the need for an additional 11.88 beds.

b. Section 13

This section of the bill increases the minimum sentence for second time drunk drivers from 10 days to 20 days and third and subsequent time drunk drivers from 10 days to 30 days. It is estimated that would be 450 repeat offenders affected by this legislation, 425 second offenders and 25 third offenders. The additional sentence length to be served, assuming all good time will be earned is 12 days for second time offenders and 20 days for third offenders. This increased sentence length results in the need for 9 additional minimum security beds.

c. Section 16

This section provides new penalties for refusal to take a chemical test similar to the sentences to be imposed for driving while intoxicated. Statistical data for this offense was not available. Therefore, it was assumed that 20 individuals would be convicted with one

prior and 7 individuals would be convicted with 2 or more prior offenses. This would result in the need for 1.1 additional beds.

d. The summary of a, b, and c above is 21.98 beds, which were rounded to 22 beds.

2. All persons convicted would receive the minimum sentence and all persons would earn all good time for which they would be eligible.

3. Inflation of 6% per year was used for the entire period of the fiscal note.

4. The new beds would not be available for occupancy until July 1, 1985. This will result in further overcrowding of the existing facilities for two years.

5. One additional position is needed for every 2.5 prison beds. Therefore, 9 correctional officers are needed to provide the security and supervision of the inmates. These positions would be requested for FY 1986.

B. Program Summary:

1. Positions

1 - Correctional Officer III
8 - Correctional Officers II

These positions are needed to provide for the security of the institution where the beds will be constructed and for the supervision of the additional 22 persons (full-time equivalents) within the Alaska corrections system.

2. Other Expenditures

The fiscal impact will be experienced as soon as the bill becomes law. Therefore, the incremental costs directly related to inmate care are identified in FY 1984. Position costs and costs related to building operations are not included until FY 1986.

a. Travel - $2000. Inmate transportation to point of arrest when released from custody.

b. Contractual - $39,600. Medical expenses for 22 full-time equivalent inmates at $1800 per inmate per year.

c. Commodities - $68,600. Food, clothing, bedding, etc. for 8,085 inmate days at $8.48 per day.

d. Grants - $6,900. Inmate gratuities paid for persons working in the kitchen, or janitorial/maintenance crews, etc.

e. Capital Expenditures

22 beds @ $130,000 per bed = $2,860,000

D. Economic Impact:

Passage of this bill should not significantly impact the State's economy.

E. Impact on Local Governments:

There would be no fiscal impact on local governments unless they changed local ordinances related to DWI to include the same penalties contained in this bill. The fiscal impact would occur for local government units who contract with the State for the care of prisoners for local offenses.

1.	POSITION TITLE Correctional Officer II (8)			RANGE/STEP 13/B	BARG. UNIT G	FORM 12 PAGE/LINE	GOV.	APPROV.	DISAPP.
2.	TYPE OF POSITION PFT	STAFF MONTHS 96	RP NUMBER	PCN NUMBER	BRU PRIORITY	LOCATION	ELECTION DISTRICT	LEG.		

3.	CONTINUATION LEVEL		ADDITION	
4.	TYPE OF EXPENDITURE			AMOUNT
	1		2	3
	PERSONAL SERVICES			OT 26,968
5.	Salary		223,608	Shift Diff. 8,088
6.	Benefits		69,167	
7.	Supplemental Benefits		15,857	
8.	Fixed Benefits		25,888	
9.	TOTAL PERSONAL SERVICES	01		369,576
10.	Travel	02		
11.	Contractual	03		
12.	Commodities	04		1,600
13.	Equipment	05		4,000
14.	Other			
15.	TOTAL COST			375,176

	RECEIPT CODE	FUNDING SOURCE		
16.		Federal Receipts	1002	
17.		G.F. Match	1003	
18.		General Funds	1004	375,176
19.		I-A Receipts	1005	
20.		Program Receipts	1028	
21.		Other		

FOR B&M USE ONLY
4A KEY NUMBER ___ - ___ - ___ - ___ - ___

JUSTIFICATION

These positions will provide security coverage for the minimum security beds resulting from enactment of CS for House Bill No. 6 (Judiciary).

Single position costs:

Salary	$27,951
Overtime	3,371
Shift Diff.	1,011
Benefits	13,864
	$46,197

13 REQUEST FOR NEW POSITION

AGENCY Corrections
PROGRAM Offender Confinement, Reformation, & Supervision
BRU Adult Confinement
COMPONENT

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Revised Date

FY 84

	POSITION TITLE				RANGE/STEP	BARG. UNIT	FORM 12 PAGE/LINE	GOV.	APPRDV.	DISAPP.
1.	Correctional Officer III				15/A	G				
	TYPE OF POSITION	STAFF MONTHS	RP NUMBER	PCN NUMBER	BRU PRIORITY	LOCATION	ELECTION DISTRICT	LEG.		
2.	PFT	12								

3.	CONTINUATION LEVEL	X	ADDITION

	TYPE OF EXPENDITURE		AMOUNT
	1	2	3
	PERSONAL SERVICES		OT $ 3371 Shift Diff. $ 1011
5.	Salary	30,944	
6.	Benefits	9,446	
7.	Supplemental Benefits	2,165	
8.	Fixed Benefits	3,236	
9.	TOTAL PERSONAL SERVICES 01		50,173
10.	Travel 02		
11.	Contractual 03		
12.	Commodities 04		200
13.	Equipment 05		500
14.	Other		
15.	TOTAL COST		50,873

	RECEIPT CODE	FUNDING SOURCE	
16.		Federal Receipts 1002	
17.		C.F. Match 1003	
18.		General Funds 1004	50,873
19.		I-A Receipts 1005	
20.		Program Receipts 1028	
21.		Other	

FOR O&M USE ONLY
4A KEY NUMBER __ __ - __ __ - __ __ - __ __ - __ __

JUSTIFICATION

These positions will provide supervision of security staff for the new minimum security beds resulting from the passage of CS for House Bill No. 6 (Judiciary).

Single position costs:

Salary	$ 30,944
Overtime	3,371
Shift Diff.	1,011
Benefits	14,847
	$ 50,173

13 REQUEST FOR NEW POSITION

AGENCY Corrections
PROGRAM Offender Confinement, Reformation, & Supervision
BRU Adult Confinement
COMPONENT

Page of
Revised Date

FY 84

01-1136 (7/82) - 13

STATE OF ALASKA
FISCAL NOTE

Revision Date , 1983

I. REQUEST
Bill/Resolution No.: SCSCSHB 6 (S.A.)
Title: Act relating to driving a m.v.
Sponsor: Judiciary Committee
Requestor: Finance Committee

II. FISCAL DETAIL
Agency Affected: Health & Social Services
Program Category Affected: Justice
BRU, Program of Subprogram(s) Affected: Adult Confinement

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 83	FY 84	FY 85	FY 86	FY 87	FY 88
OPERATING						
100 PERSONAL SERVICES				419.7	444.9	471.6
200 TRAVEL		2.0	2.1	2.2	2.4	2.5
300 CONTRACTUAL		39.6	42.0	76.7	81.3	86.2
400 COMMODITIES		68.6	72.7	80.7	85.6	90.7
500 EQUIPMENT		-	-	4.5	-	-
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC		6.9	7.3	7.7	8.2	8.7
TOTAL OPERATING	-0-	117.1	124.1	591.5	622.4	659.7
CAPITAL	-0-	2,860.0	-0-	-0-	-0-	-0-
REVENUE	-0-	-0-	-0-	-0-	-0-	-0-

FUNDING: (Thousands of Dollars)

GENERAL FUND	-0-	2,977.1	124.1	591.5	622.4	659.7
FEDERAL FUNDS						
OTHER (Specify Source)						

POSITIONS:

FULL-TIME	-0-	-0-	-0-	9	9	9
PART-TIME						
TEMPORARY						

III. SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

The source of funds to offset the fiscal impact of this bill has not been identified by the sponsor.

IV. ANALYSIS: Attach a separate page for any Analysis

Prepared By: Roger C. Lange Roger C. Lange Phone: 465-3376
Division: Adult Corrections Date: May 17, 1983

Approved by Commissioner: Catherine Jones Date: 18 May 83
Department Health & Social Services

Distribution:
Original to Legislative Finance
Copy to Office of Management and Budget (for Legislature introduced bills)
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3/8/83

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A. Assumptions

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Statistics furnished by the Department of Public Safety show 181 persons were convicted in 1982 for driving with a suspended or revoked license where the original offense resulting in the loss of license was driving while intoxicated (DWI) or implied consent (refusal to take a breathalyzer test). For purposes of this fiscal note, that number was used for calculating the increased person days of incarceration resulting from increased sentences to 30 or 90 days. It was assumed that 80% of the offenders would have been convicted only once in the previous 15 years and 20% convicted more than once in the previous 15 years.

The following calculations also consider that the offender would have been given a minimum sentence of 10 days previously, and it is assumed that every offender will earn all good time for which they are eligible. Therefore, 145 offenders would serve an additional 15 days and 36 offenders would serve an additional 60 days. This results in the need for an additional 11.88 beds.

b. Section 13

This section of the bill increases the minimum sentence for second time drunk drivers from 10 days to 20 days and third and subsequent time drunk drivers from 10 days to 30 days. It is estimated that would be 450 repeat offenders affected by this legislation, 425 second offenders and 25 third offenders. The additional sentence length to be served, assuming all good time will be earned is 12 days for second time offenders and 20 days for third offenders. This increased sentence length results in the need for 9 additional minimum security beds.

c. Section 16

This section provides new penalties for refusal to take a chemical test similar to the sentences to be imposed for driving while intoxicated. Statistical data for this offense was not available. Therefore, it was assumed that 20 individuals would be convicted with one

prior and 7 individuals would be convicted with 2 or more prior offenses. This would result in the need for 1.1 additional beds.

d. The summary of a, b, and c above is 21.98 beds, which were rounded to 22 beds.

2. All persons convicted would receive the minimum sentence and all persons would earn all good time for which they would be eligible.

3. Inflation of 6% per year was used for the entire period of the fiscal note.

4. The new beds would not be available for occupancy until July 1, 1985. This will result in further overcrowding of the existing facilities for two years.

5. One additional position is needed for every 2.5 prison beds. Therefore, 9 correctional officers are needed to provide the security and supervision of the inmates. These positions would be requested for FY 86.

B. Program Summary:

1. Positions

1 - Correctional Officer III
8 - Correctional Officer II's

These positions are needed to provide for the security of the institution where the beds will be constructed and for the supervision of the additional 22 persons (full-time equivalents) within the Alaska corrections system.

2. Other Expenditures

The fiscal impact will be experienced as soon as the bill becomes law. Therefore, the incremental costs directly related to inmate care are identified in FY 84. Position costs and costs related to building operations are not included until FY 86.

a. Travel - $2000. Inmate transportation to point of arrest when released from custody.

b. Contractual - $39,600. Medical expenses for 22 full-time equivalent inmates at $1800 per inmate per year.

c. Commodities - $68,600. Food, clothing, bedding, etc. for 8,085 inmate days at $8.48 per day.

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POSITION TITLE	RANGE/STEP	BARG. UNIT	FORM 12 PAGE/LINE	COV.	APPROV.	DISAPP.
Correctional Officer II (8)	13/B	G				

TYPE OF POSITION	STAFF MONTHS	RP NUMBER	PCN NUMBER	BRU PRIORITY	LOCATION	ELECTION DISTRICT	LEG.		
PFT	96								

CONTINUATION LEVEL | ADDITION

TYPE OF EXPENDITURE		AMOUNT
1	2	3
PERSONAL SERVICES		OT 26,968 Shift Diff. 8,088
Salary	223,608	
Benefits	69,167	
Supplemental Benefits	15,857	
Fixed Benefits	25,888	
9. TOTAL PERSONAL SERVICES	01	369,576
10. Travel	02	
11. Contractual	03	
12. Commodities	04	1,600
13. Equipment	05	4,000
14. Other		
15. TOTAL COST		375,176

	RECEIPT CODE	FUNDING SOURCE	
16.		Federal Receipts 1002	
17.		C.F. Match 1003	
18.		General Funds 1004	375,176
19.		I-A Receipts 1005	
20.		Program Receipts 1028	
21.		Other	

FOR B&R USE ONLY
4A KEY NUMBER __ __ - __ __ - __ __ - __ __ - __ __

JUSTIFICATION

These positions will provide security coverage for the minimum security beds resulting from enactment of CS for House Bill No. 6 (Judiciary).

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Salary	$27,951
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Shift Diff.	1,011
Benefits	13,864
	$46,197

13 REQUEST FOR NEW POSITION

AGENCY Corrections

PROGRAM Offender Confinement, Reformation, & Supervision

BRU Adult Confinement

COMPONENT

Page of

Revised Date

FY 84

	POSITION TITLE				RANGE/STEP	BARG. UNIT	FORM 12 PAGE/LINE	COV.	APPROV.	DISAPP.
1.	Correctional Officer III				15/A	G				
2.	TYPE OF POSITION	STAFF MONTHS	RP NUMBER	PCN NUMBER	BRU PRIORITY	LOCATION	ELECTION DISTRICT	LEG.		
	PFT	12								

3.	CONTINUATION LEVEL	X	ADDITION	

	TYPE OF EXPENDITURE		AMOUNT
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6.	Benefits	9,446	
7.	Supplemental Benefits	2,165	
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9.	TOTAL PERSONAL SERVICES 01		50,173
10.	Travel 02		
11.	Contractual 03		
12.	Commodities 04		200
13.	Equipment 05		500
14.	Other		
15.	TOTAL COST		50,873

	RECEIPT CODE	FUNDING SOURCE		
16.		Federal Receipts	1002	
17.		G.F. Match	1003	
18.		General Funds	1004	50,873
19.		I-A Receipts	1005	
20.		Program Receipts	1028	
21.		Other		

FOR B&M USE ONLY
4A KEY NUMBER ___ - ___ - ___ - ___ - ___

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Shift Diff.	1,011
Benefits	14,847
	$ 50,173

13 REQUEST FOR NEW POSITION

AGENCY Corrections
PROGRAM Offender Confinement, Reformation, & Supervision
BRU Adult Confinement
COMPONENT

Page of
Revised Date

FY 84

FROM: SHIRLEE ANC LIO TO: POM, JUNEAU INFO
TARGET: LJHL SUBJ: POM

TO: ALL MEMBERS, ALASKA LEGISLATURE

FROM: JUNE GERRISH, 5800 GLENN HIGHWAY, ANCHORAGE 99504
H 338-0383 W 333-MADD

REPRESENTATIVE CLOCKSIN WAS WRONG WHEN HE SPOKE TO THE HOUSE, SAYING I WAS IN SUPPORT OF HIS AMENDMENTS TO HOUSE BILL 6. I AM NOT IN SUPPORT OF THEM! NO PERSON HAS A RIGHT TO USE MY NAME WITHOUT WRITTEN CONSENT. IN FACT, I PLEADED WITH HIS AIDE TO HAVE REPRESENTATIVE CLOCKSIN PASS HOUSE BILL 6 WITHOUT AMENDMENTS.

I REEMPHASIZE THAT I AM NOT IN FAVOR OF ANY AMENDMENT TO HB 6.

/S/ JUNE GERRISH, PRESIDENT

MSG 83-00017343 PRTY 1 05/12/83 18:42:15 ORIG: LA03 IN= 0003 OUT= 0180
FROM: JUNE, ANC LIO TO: POM, JUNEAU INFO
TARGET: LJHL SUBJ: POM

5/12/83, SHIRLEE ANC LIOM 17281

TO: ALL MEMBERS, ALASKA HOUSE OF REPRESENTATIVES

FROM: CRISS TETRAULT, 1711 OXFORD, NO. 2, ANCHORAGE 99503
H 561-4345 W 278-4145

I URGE YOU TO PASS HOUSE BILL 6

****

SG 83-00016881 PRTY 1 05/11/83 15:45:28 ORIG: LA01 IN= 0018 OUT= 0110
ROM: SHIRLEE ANC LIO TO: POMS JUNEAU INFO
ARGET: LJHL SUBJ: POM

O: ALL MEMBERS, ALASKA LEGISLATURE

ROM: LANI GERRISH, P.O. BOX 324, GIRDWOOD 99587
MSG: 272-3607

S PARENTS OF TWO SONS KILLED BY A DRUNK DRIVER, DON'T LET
HIS HAPPEN TO OTHER FAMILIES. PASS HOUSE BILL 6.



****

11/83, JUNE, ANCH LIO, MSG 16706

: ALL MEMBERS OF THE LEGISLATURE

OM: PHYLLIS JONES, 5800 GLENN HIGHWAY APT 5, ANCHORAGE, AK 99504
H- 333-6233

URGE YOU TO PASS HB 6 (DRIVING A MOTOR VEHICLE) BECAUSE IT IS MUCH
EDED FOR THE CITIZENS OF ALASKA.



****

11/83, JUNE, ANC LIO, MSG 16706

: ALL MEMBERS OF THE LEGISLATURE

OM: LANCE KEY, SRA 28 MONTE ROAD, EAGLE RIVER, AK 99577
HW- 265 -4372 H- 694-4441



6 (DRIVING A MOTOR VEHICLE) WILL BE VOTED ON SHORTLY. I FIND IT HARD
COMPREHEND ANY ELECTED OFFICIAL THAT WOULD VOTE AGAINST PASSAGE OF
IS BILL. YOU MUST STOP THE ALCOHOL RELATED SLAUGHTER ON OUR STREETS
D HIGHWAYS. YOU CAN HELP STOP THIS RUTHLESS KILLING. DO SO NOW.

**********8

11/83, JUNE, ANC LIO, MSG 16706

: ALL MEMBERS OF THE LEGISLATURE

OM: JUNE GERRISH, 5800 GLENN HIGHWAY, ANCHORAGE, AK 99504
H- 333-MADD OR 338-0383



PRESIDENT OF MADD, I AM SPEAKING FOR 350 MEMBERS PLUS APPROXIMATELY
OUSANDS OF CONCERNED CITIZENS THAT CALL ME FOR THE SAFETY OF OUR HIGHWAY.
EASE PASS HB 6 (DRIVING A MOTOR VEHICLE).

****

11/83, JUNE, ANC LIO, MSG 16706

): ALL MEMBERS OF THE LEGISLATURE

OM: JANE DIAL, 6700 PICKWICH PLACE, ANCHORAGE, AK 99504
H- 337-6579

SUPPORT HB 6 (DRIVING A MOTOR VEHICLE) AND I WOULD LIKE TO HAVE IT
SSED.



****

11/83, JUNE, ANC LIO, MSNG 16706

): ALL MEMBERS OF THE LEGISLATURE

OM: WADDEN SCHARDER, 3315 FAIRBANKS STREET, ANCHORAGE, AK 99503
H- 688-9869AND 274-5637



A CONCERNED CITIZEN INTERESTED IN STOPPING THE DEATHS OF LOVED ONES
CAUSE OF DRUNK DRIVERS, I URGE YOU TO PLEASE PASS HB 6 (DRIVING A
OTOR VEHICLE).

****

11/83, JUNE, ANC LIO, MSG 16706

): ALL MEMBERS OF THE LEGISLATURE

OM: THELMA SINNETT, 2001 SALEM COURT, ANCHORAGE, AK 99504
W- 265-4370 H- 562-4367



EQUEST YOUR SUPPORT OF HB 6 (DRIVING A MOTOR VEHICLE) IN THE UP-COMING
OTE. AS THE MOTHER OF A YOUNG SON RECENTLY KILLED BY A DRINKING DRIVER,
PLEAD FOR YOUR YES VOTE.

****

11/83, JUNE, ANC LIO, MSG 16706

): ALL MEMBERS OF THE LEGISLATURE

OM: BOB BRINK, P. O. BOX 91, ANCHORAGE, AK 99510
2211 SUNBURST CIRCLE, ANCHORAGE, AK
H- 274-1460 W- 274-3576



CK OF LEGISLATIVE ACTION ON JUDO CUP 84 FUNDING REQUEST WILL LIKELY
SULT IN CANCELATION OF THE PRE-OLYMPIC EVENT AND 14 COMMUNITY CULTUR-
EXCHANGE, IN ADDITION TO LOSS OF PRESTIGE AND MEDIA ATTENTION, ALASKA
LL NOT BE A SERIOUS CANDIDATE TO HOST FUTURE WORLD CLASS EVENTS. WILL
U HELP?

****

MSG 83-00016742 PRTY 1 05/11/83 13:01:10 ORIG: LA01 IN= 0007 OUT= 0056
FROM: SHIRLEE ANC LIO TO: POMS JUNEAU INFO
TARGET: LJHL SUBJ: POM



TO: ALL MEMBERS, ALASKA LEGISLATURE

FROM: WANDA WHEELER, 1610 PATTERSON, ANCHORAGE 99504
H 333-4382

I URGE PASSAGE OF HOUSE BILL 6, RELATING TO DRUNK DRIVING.

****

SG 83-00016721 PRTY 1 05/11/83 12:35:34 ORIG LA01 IN= 0006 OUT= 0051
ROM: SHIRLEE ANC LIO TO: POMS JUNEAU INFO
ARGET: LJHL SUBJ: POM

O: ALL MEMBERS, ALASKA LEGISLATURE

ROM: ELAINE DAW, 3845 BAXTER ROAD, ANCHORAGE 99504
H 338-5962

FIRMLY SUPPORT HOUSE BILL 6 (RELATING TO DRIVING A MOTOR EHICLE) AND HOPE YOU WILL, TOO.

MAY 1983 RECEIVED

2

****

/11/83, SHIRLEE ANC LIO, 16721

O: ALL MEMBERS, ALASKA LEGISLATURE

ROM: RUBEN WANG, SRA BOX 21110-B ANCHORAGE 99507.
(RES: HILLSIDE) H 344-2136 W 344-2561

LEASE URGE ALASKA STUDENT LOAN PROGRAM TO GRANT FINANCIAL ID TO THOSE WHO ARE ENROLLED IN USC DOCTORAL PROGRAM. HIS COMMITTED ALASKAN EDUCATORS WILL SERVE THE STATE TO HEIR EXCELLENCE.

/S/ RUBEN WANG

MAY 1983 RECEIVED

****

/11/83, SHIRLEE ANC LIO, 16721

O: ALL MEMBERS, ALASKA LEGISLATURE

ROM: MARK RAUCH, SRA BOX 62-E, ANCHORAGE 99507
(5950 CHISANA) H 349-2827 W 274-2662

URGE FULL FUNDING OF WICHE STUDENT EXCHANGE PROGRAM. I M A NINE-YEAR RESIDENT OF ALASKA I PLAN TO ATTEND LAW CHOOL IN OREGON BEGINNING AUGUST, 1983. IT WILL BE INANCIALLY IMPOSSIBLE IF WICHE IS CUT AS PROPOSED BY ENATE FINANCE. I HAVE A FAMILY OF FOUR TO SUPPORT. HANKS.

MAY 1983 RECEIVED

****

SG 83-00016760 PRTY 1 05/11/83 13:28:45 ORIG: LA03 IN= 0002 OUT= 0071
OM: JUNE, ANC LIO TO: POM, JNU INFO
RGET: LJHL SUBJ: POM

/11/83, JUNE, ANC LIO, MSG 16760

O: ALL MEMBERS OF THE LEGISLATURE

OM: DENNIS DAVIDSON, 9090 PRINCE OF PEACE, EAGLE RIVER, AK 99577
H- 694-4646

AM OPPOSED TO ANY ALTERATION OR MODIFICATION TO THE LITTLE DAVIS-BACON
W.

****

/11/83, JUNE, ANC LIO, MSG 16760

O: ALL MEMBERS OF THE LEGISLATURE

OM: JULIANA REED, 101 DUNNELL APT 1-B, ANCHORAGE, AK 99508
H- 333-7110 W- 265-9268

AM IN FAVOR IN HB 7 (MOTOR VEHICLES) BECAUSE I WAS A VICTIM OF AN ACCIDENT
HERE THE DRIVER DID NOT HAVE CAR INSURANCE AND LIABILITY. NOW I DON'T HAVE
CAR TO GO TO WORK AND INCONVENIENT TO THE COMMUNITY AS I AM A MEMEBEROF
IVIL AIR PATROL AND ALL THE RED TAPE I HAVE TO GO THROUGH TO GET A CAR.

****

G 83-00016785 PRTY 1 05/11/83 13:36:08 ORIG: LA05 IN= 0002 OUT= 0072
OM: SHIRLEE, ANC INFO TO: POM, JUNEAU INFO
RGET: LJHL SUBJ: P O M

TO: ALL MEMBERS OF THE LEGISATURE

ROM: ROBIN HARTLIEB, 11041 LIPSCOMB, ANC H 344-5478
MAIL: 1331 WEST 7TH AVE, ANC 99501

I URGE THE PASSAGE OF HB 6, RELATING TO DRUNK DRIVING LAWS.



SG 83-00016816 PRTY 1 05/11/83 14:11:57 ORIG: LA01 IN= 0044 OUT= 0088
ROM: SHIRLEE ANC LIO TO: POMS JUNEAU INFO
ARGET: LJHL SUBJ: POM

O: ALL MEMBERS, ALASKA LEGISLATURE

ROM: JANICE POKORNY, 5800 GLENN HIGHWAY, APT. 50, ANCH 99504
MSG: 338-0383

Y TWO NEPHEWS WERE KILLED BY A DRUNK DRIVER. KEEP MY TWO
HILDREN ALIVE AND PASS HOUSE BILL NO. 6.

****

SG 83-00016743 PRTY 1 05/11/83 14:34:51 ORIG: LA02 IN= 0004 OUT= 0093
ROM: JUNE, ANC LIO TO: POM, JNU INFO
ARGET: LJHL SUBJ: P O M



/11/83, JUNE, ANC LIO, MSG 16743

O: ALL MEMBERS OF THE LEGISLATURE

ROM: BRENT JONES, 8240 HARTZELL ROAD, ANCHORAGE, AK 99507
H- 345-0399 W-349-2724

LEASE EXPEDITE THE PASSAGE OF HB 117 AND SB 74 (SEXUAL ABUSE OF CHILDREN).

****

SG 83-00016802 PRTY 1 05/11/83 13:53:19 ORIG: LA01 IN= 0012 OUT= 0081
ROM: SHIRLEE ANC LIO TO: POMS JUNEAU INFO
ARGET: LJHL SUBJ: POM

O: ALL MEMBERS, ALASKA LEGISLATURE

ROM: ROY DAW, 3845 BAXTER ROAD, ANCHORAGE 99504
H 338-5962 W 243-3404

AM VERY MUCH IN FAVOR OF HB 6 WHICH CALLS FOR MUCH STRONGER
ENALTIES AGAINST DRUNK DRIVERS. I HOPE YOU WILL VOTE IN
AVOR OF IT.

MAY 1983 RECEIVED

****

SG 83-00016795 PRTY 1 05/11/83 13:45:38 ORIG: LA01 IN= 0010 OUT= 0077
ROM: SHIRLEE ANC LIO TO: POMS JUNEAU INFO
ARGET: LJHL SUBJ: POM

O: ALL MEMBERS, ALASKA LEGISLATURE

ROM: ROSEMARIE SPENCER, 7210 KISKA, ANCHORAGE 99504
H 333-4520

E STRONGLY SUPPORT HOUSE BILL 6 (DRUNK DRIVING) AND URGE
TRICT MEASURES AGAINST DRUNK DRIVERS.

MAY 1983 RECEIVED

****

MSG 83-00016951 PRTY 1 05/11/83 17:18:31 ORIG: LA01 IN= 0023 OUT= 0139
FROM: SHIRLEE ANC LIO TO: POMS JUNEAU INFO
TARGET: LJHL SUBJ: POM



TO: ALL MEMBERS, ALASKA HOUSE OF REPRESENTATIVES

FROM: BOB SINNETT, 2001 SALEM COURT, ANCHORAGE 99504
H 562-4367 W 276-4334

I AM IN TOTAL SUPPORT OF HOUSE BILL 6. ACT NOW, SAVE A LIFE.

****

SG 83-00016954 PRTY 1 05/11/83 17:23:41 ORIG: LA00 IN= 0004 OUT= 0142
ROM: JUNE, ANC LIO TO: POM, JNU INFO
ARGET: LJHL SUBJ: POM



/11/83, JUNE, ANC LIO, MSG 16954

O: ALL REPRESENTATIVES

ROM: GERALD L. HOOD, 8500 PIONEER DRIVE, ANCHORAGE, AK 99504
H- 333-6589 W- 276-4334

THE STATE OF ALASKA IS TO STOP THE CARNAGE ON ROADS AND HIGHWAYS
ERPETRATED BY DRUNKEN DRIVERS, HB 6 MUST BE ENACTED NOW. CANNOT
RGE YOU STRONGLY ENOUGH TO PASS THIS IMPORTANT LEGISLATION.

**********8

G 83-00016980 PRTY 1 05/11/83 17:50:06 ORIG: LA05 IN= 0007 OUT= 0154
OM: SHIRLEE, ANC INFO TO: POM, JUNEAU INFO
RGET: LJHL SUBJ: P O M

TO: ALL MEMBERS OF THE HOUSE OF REPRESENTATIVES

FROM: JOSEPH L. CARTER, 2614 WEST 33RD, ANC 99503 H 248-0846 W 272-0453

PLEASE VOTE FOR HB 6 (DRUNK DRIVING) TO PROVIDE HARSHER PENALTIES FOR
RUNK DRIVING. LET US AT LEAST CONSIDER THIS A CRIME AS SERIOUS AS TAKING
MOOSE OR BEAR ILLEGALLY. THANK YOU FOR VOTING RESPONSIBLY.

MSG 83-00016958 PRTY 1 05/11/83 17:24:09 ORIG: LA05 IN= 0005 OUT= 0143
FROM: SHIRLEE, ANC INFO TO: POM, JUNEAU INFO
TARGET: LJHL SUBJ: P O M

TO: ALL MEMBERS OF THE HOUSE OF REPRESENTATIVES

FROM: DIANA ADLEY, 8020 WOODGREEN CIRCLE, ANC 99502 H 349-3617 W 263-5484

I SUPPORT HB 6. FOR SOME, THIS LEGISLATION COMES TO LATE. WE NEED TO HELP SAVE OTHERS FROM BECOMING VICITIMS OF THIS INCREASING CRIME. I LOST A FRIEND TO A DRUNK DRIVER LAST FEBRUARY. GET THE DRUNKS OFF THE STREETS!

OM: SHIRLEE, ANC INFO TO: POM, JUNEAU INFO
RGET: LJHL SUBJ: P O M

TO: ALL MEMBERS OF THE LEGISLATURE

FROM: RUTH MITCHELL, 1703 ROOSEVELT APT 2, ANC 99503 H 562-4374 W 563-3815

I SINCERELY URGE YOU TO PASS HB 6 (DRUNK DRIVING).

SC 83-00017020 PRTY 1 05/11/83 18:35:14 ORIG: LA01 IN= 0029 OUT= 0182
ROM: SHIRLEE ANC LIO TO: POMS JUNEAU INFO
ARGET: LJHL SUBJ: POM

O: ALL MEMBERS, ALASKA LEGISLATURE

ROM: ADA SANNIN, 5800 RADCLIFF, ANCHORAGE 99504
H 333-0245

SUPPORT HOUSE BILL 6 (TOUGHER LAWS AGAINST DRUNK DRIVING).
VERY MUCH ENCOURAGE YOU ALL TO VOTE IN FAVOR OF ITS PASSAGE.

****

SG 83-00017001 PRTY 1 05/11/83 18:20:11 ORIG: LA02 IN= 0012 OUT= 0166
ROM: JEAN, ANCHORAGE TO: JUNEAU INFO, POMS
ARGET: LJHL SUBJ: POMS

/11/83 JEAN, ANCH LIO #1700,

O: ALL THE MEMBERS OF THE ALASKA STATE LEGISLATURE

ROM: MRS. SELMA SCHMIDT
2072 ARLINGTON DRIVE
ANCHORAGE, AK 99503 (H) 279-0066

LEASE PASS HB 6 IN REGARD TO DRUNK DRIVING.

****

MAY 1983 RECEIVED

SG 83-00016989 PRTY 1 05/11/83 18:12:48 ORIG: LA02 IN= 0011 OUT= 0160
ROM: JUNE, ANC LIO TO: POM, JNU INFO
ARGET: LJHL SUBJ: POM

/11/83, JUNE ANC LIO, MSG 16989

O: ALL MEMBERS OF THE LEGISLATURE

ROM: DEBORAH THOMPSON, BROWN JUG INCORPORATED
4140 OLD SEWARD HIGHWAY, ANCHORAGE, AK 99503
W- 563-3815 H -562-4374

E BELIEVE IN STIFFER PENALTIES, HIGHER FINES AND OTHER PENALTIES
N DRUNK DRIVERS. WE DEFINITELY URGE YOU TO PASS HB 6.

****

MAY 1983 RECEIVED

G 83-00016982 PRTY 1 05/11/83 17:54:10 ORIG: LA00 IN= 0006 OUT= 0156
OM: JUNE, ANC LIO TO: POM, JUNEAU INFO
RGET: LJHL SUBJ: POM

/11/83, JUNE, ANC LIO, MSG 16982

O: ALL MEMBERS OF THE LEGISLATURE

OM: BRUCE STAFFORD, 5059 VANCE DRIVE, ANCHORAGE, AK 99504
H- 333-2151 W- 265-4315

WOULD APPRECIATE YOUR SUPPORT OF PASSAGE OF CSHB 7 REGARDING PROOF OF
SURANCE PRIOR TO VEHICLE REGISTRATION, AND HB 6 PRETAINING TO DRUNK
RIVER.

****



DR

MSG 83-00016929 PRTY 1 05/11/83 16:44:44 ORIG: LA01 IN= 0021 OUT= 0130
FROM: SHIRLEE ANC LIO TO: POMS JUNEAU INFO
TARGET: LJHL SUBJ: POM

TO: ALL MEMBERS, ALASKA HOUSE OF REPRESENTATIVES

FROM: MARIANN CARIGLIO, 3543 MOUNTAIN VIEW DRIVE, ANCHORAGE 99504
H 272-1382 W 264-4545

I WOULD LIKE TO SEE HOUSE BILL 6 PASSED; GET THE DRUNK DRIVERS
OFF THE ROAD. THANK YOU.

****

SG 83-00016931 PRTY 1 05/11/83 16:49:11 ORIG: LA01 IN= 0022 OUT= 0132
ROM: SHIRLEE ANC LIO TO: POMS JUNEAU INFO
ARGET: LJHL SUBJ: POM



O: ALL MEMBERS, ALASKA HOUSE OF REPRESENTATIVES

ROM: FRANK BAKER, 6301 HABICHT CT., ANCHORAGE 99504
H 333-9071 W 263-5489

AM A PARENT AND A 38 YEAR RESIDENT OF ALASKA. I AM
ERY APPALLED BY DANGEROUS SITUATIONS ON OUR STREETS.
STRONGLY URGE YOU TO PASS HB 6 FOR THE SAKE OF ALL OUR
HILDREN.

****

****

FROM: PHYLLIS JONES, 5800 GLENN HIGHWAY, ANCHORAGE, AK 99504
H- 333-6233

IN RE: HB 6 - DRIVING A MOTOR VEHICLE

I DO NOT LIKE REPRESENTATIVE CLOCKSIN'S ATTITUDE ON THIS BILL. PLEASE PASS AS ORIGINALLY PROPOSED.

****

2R

FROM: JUNE GERRISH
PRESIDENT OF MADD
5800 GLEN HIGHWAY
ANCHORAGE, AK 99504 (H) 338-0383 (W) 33[illegible]-MADD

AS PRESIDENT OF MADD, SPEAKING FOR 350 MEMBERS TO APPROXIMATELY 1000 CALLS I HAVE RECEIVED WE DO NOT LIKE YOUR ATTITUDE ON HB 6. PLEASE PASS BILL AS PRESENTED.

****

5/12/83, JUNE, ANC LIO, MSG 17176

TO: ALL REPRESENTATIVES

FROM: GERALD HOOD, 8500 PIONEER DRIVE, ANCHORAGE, AK 99504
H- 333-6589 W- 276-4334

RECEIVED MAY 1983

REPRESENTATIVE CLOCKSIN'S AMENDMENT TO HB 6 (DRIVING A MOTOR VEHICLE) IS AN OUTRIGHT ATTEMPT TO DEBILITATE THIS LEGISLATION AND RENDER IT MEANINGLESS. HIS THINKING ON THIS ISSUE IS MYOPIC. HB 6 SHOULD BE ENACTED AS PROPOSED WITHOUT ALTERATION.

****

MSG 83-00017259 PRTY 1 05/12/83 15:42:59 ORIG: LA05 IN= 0004 OUT= 0123
FROM: SHIRLEE ANC LIO TO: POMS JUNEAU INFO
TARGET: LJHL SUBJ: POM

TO: ALL MEMBERS, ALASKA HOUSE OF REPRESENTATIVES

FROM: SANDRA RICARDO, 4807 KENT, ANCHORAGE 99503
H 563-6548

I URGE YOU TO PASS HOUSE BILL 6 IN ITS ENTIRETY IN ITS ORIGINAL FORM. EVEN THOUGH IT IS LATE AND YOU MAY NOT GET MANY MESSAGES ON IT, I KNOW THE PUBLIC SENTIMENT IS IN FAVOR THIS BILL.

****

FROM: BERTHA MIDYETT, 1011 WEST 12TH #1, ANCHORAGE, AK 99501
H- 272--3707

LEGISLATTIVE COMMITTEE OF OPAG APPROVE THE FOLLOWING:
HB 109-CRIMINAL PROSECUTION OF MINORS
HJR 7-ELECTION OF ATTORNEY GENERAL
HB 17--RAISING THE DRINKING AGE
HB 28-UNIVERSITY LAND
HB 128-CHILD PROSTITUTION
HB 294-ALASKA TOLL BRIDGE AND CAUSEWAY AUTHORITY
HB 202-LIQUOR TAX

****

5/16/83, SHIRLEE ANC LIO, 17878

TO: ALL MEMBERS, ALASKA LEGISLATURE
(ATTENTION: REPRESENTATIVE MITCH ABOOD)

FROM: BOB NESTEL, BOX 1753, EAGLE RIVER 99957 H 694-4372

SUBJ: CSHB 6 - RELATING TO DRIVING A MOTOR VEHICLE

THE ANCHORAGE DAILY NEWS 5/14 EDITION CARRIED THE STORY ON PAGE A-9 ABOUT OHIO'S NEW DRUNK DRIVING LAW INSTITUTED IN MARCH. ALCOHOL RELATED DEATHS DECREASED 32 PERCENT UP TO 5/13. PASSAGE OF CSHB 6 WILL HOPEFULLY HAVE THE SAME EFFECT IN ALASKA.

RECEIVED
MAY 1983

OR

MSG 83-00016833 PRTY 1 05/11/83 14:44:39 ORIG: LA03 IN= 0003 OUT= 0099
FROM: JUNE, ANC LIO TO: POM, JNU INFO
TARGET: LJHL SUBJ: POM

5/11/83, JUNE, ANC LIO, MSG 16833

TO: ALL MEMBERS OF THE LEGISLATURE

FROM: SANDRA QUIMBY, 2308 SUCCESS DRIVE, ANCHORAGE, AK 99504
H- 337-1094

I SUPPORT HB 6 (DRIVING A MOTOR VEHICLE) AND STRONGLY ENCOURAGE YOU TO VOTE IN FAVOR OF ITS PASSAGE.

****

TO: ALL MEMBERS OF THE LEGISLATURE

FROM: SANDRA RICARDO, 4807 KENT ST., ANC 99503 H 563-6548

RE: HB 6 DRUNK DRIVING

LET'S STOP THE CRASHES NOW PLEASE. PASS HOUSE BILL 6.

MSG 83-00008870 PRTY 1 04/15/83 08:42:47 ORIG: LS00 IN= 0001
FROM: SITKA TO: JUNEAU
TARGET: LJ04 SUBJ: POMS to: Reps. Bussell, Liska, Hayes, Barnes, Malone, Clocksin, Wendte PAGE 0002

FROM NANCY ELIASON
BOX 959
SITKA, AK. 99835 747-3632 (H) OR 747-3255

DRUNK DRIVING IS A MAJOR PROBLEM WHICH MUST BE ADDRESSED. THE MAJORITY OF ACCIDENTS ON OUR HIGHWAYS RESULT FROM DRUNK DRIVING. THE FOCUS ON REQUIRED SEAT BELTS, AIR BAGS, ETC. IS NOT GETTING AT THE ROOT OF THE PROBLEM.

##

4-15-83 ELAINE/SITKA 8870
TO: REP. AL ADAMS

MORE _ BACK _ NXT MSG U/R/S _ PREV MSG U/R/S _ RESEND _ CANCEL _

Dup. Pob

****

MSG 83-00016926 PRTY 1 05/11/83 16:53:01 ORIG: LA02 IN= 0007 OUT= 0134
FROM: JUNE, ANC LIO TO: POM, JNU INFO
TARGET: LJHL SUBJ: POM

5/11/83, JUNE, ANC LIO, MSG 16926

TO: ALL MEMBERS OF THE LEGISLATURE

FROM: LAURIE OLMSTEAD, 1344 K STREET, ANCHORAGE, AK 99501
W- 264-4545

IN RE: HB 6-DRIVING A MOTOR VEHICLE
I AM NOT IN FAVOR OF THIS BILL AS IT STANDS. I AM IN FAVOR OF A BILL THAT IS MORE STRINGENT FOR PUNISHMENT AND HAVING FEWER PRIVILEGES FOR PEOPLE WHO DRINK AND DRIVE. HOWEVER, I AM NOT IN FAVOR OF THE PORTION OF THEBILL THAT WOULD MAKE IT LEGAL TO FORFEIT HIS VEHICLE.

OR

POUCH V
JUNEAU, ALASKA 99811
(907) 465-4990

Alaska State Legislature
HOUSE OF REPRESENTATIVES

REPRESENTATIVE
CHARLIE BUSSELL
CHAIRMAN

Committee on Judiciary

May 11, 1983

The Honorable Elaine Andrews
District Court Judge
Third Judicial District
941 Fourth Avenue
Anchorage, Alaska 99501

Dear Judge Andrews:

I have been in receipt of your letter for three weeks now, relative to HB 6, or more properly, for the Committee Substitute (Judiciary) for HB 6. I have held up answering your letter until today in order to report to you any possible alterations by other committees.

Yesterday, the measure was considered by and passed out of the Finance Committee. In the normal course of scheduling, it will soon go the the House floor (from the Rules Committee) where it may well be subject to amendments prior to final passage.

You, of course, are aware that Committee Counsel, Judge Brewer, Retired, has had considerable experience with Driving While Intoxicated cases and related matters as to licensing. (Indeed, he may at one time have heard more DWI cases than any other judicial officer in the State, with more years on the bench). He exerted a great deal of effort and had considerable input into the Judiciary Committee's version, working with the staff of Representative Mitch Abood, the bill's sponsor; with the Department of Law and the Legislative Affairs Agency, which drafted the several versions of the bill.

Your concerns were most carefully considered by him and generally, I think, he agrees with your points of view. I cannot, of course, comment on what you "assume" the legislation means as to credit for jailed offenders' good time. That matter is up to the administration of the Department of Health, Education and Social Services, or, as it may become in the future, the Department of Corrections, to calculate.

Of course, your letter was written based on the original version. It underwent substantial changes in the fine-tuning of it. Please note, however, the final version

MEMBERS:
REP. JOHN LISKA, VICE CHAIRMAN; REP. RAMONA BARNES, EMERITUS;
REP. JOE HAYES; REP. HUGH MALONE; REP. DON CLOCKSIN; REP. RON WENDTE

deletes the impoundment of vehicles provision, no doubt much to the relief of you and your colleagues. Forfeiture of vehicles and remission of them are retained, though. I would be nearly impossible to set up two differing methods of punishment for those ordered by a court not to drive compared with those whose licenses have been administratively suspended because of financial responsibility. It would appear anomalous to tell motorists that court orders mean what they say, but that administrative regulations do not. A ban on driving, afterall, remains a ban on driving whether decreed by a court or by the Division of Motor Vehicles.

I am aware that courts generally do not look with favor upon legislatively mandated minimum sentences or fines. Constituents tell me, however, that the tendency is to impose only the mandatory minimum sentences, seldom going above or beyond them. Members of the public take a dim view of what they refer to as "leniency" of the courts. Since they believe penalties meted out are not severe enough, the aim of the legislation is to elevate the floor of the penalties by legislative action. Discretion by courts is essential, but the public seems to be saying, "Let's establish a bottom line, and court discretion can come into play after reaching that point."

There is little point in further analysis for as earlier indicated the measure is subject to amendments on the floor of the House. Further, the Court system will have its own analysis and interpretation of the final version, should it be enacted.

Another attempt for protection of citizens on the highway is manifested by the mandatory insurance for motorists bill, HB 7, but I will refrain from commenting further on that measure just now.

Thank you for involving yourself in the legislative process.

Very truly yours,

Representative Charlie Bussell
Chairman, Committee on Judiciary

CB:lyn

May 7, 1983

¥a¥

Dear ¥s¥:

The House Judiciary Committee passed HB 6, the "drunk driving" bill, out of Committee on Friday, April 29, 1983. I think it is an excellent and comprehensive item of legislation.

The Committee put considerable thought and effort into its creation and fine-tuning. Representative Mitch Abood's staff, the Committee staff, and the bill drafters for the Legislative Affairs Agency and the Department of Law worked very hard and diligently expending many long hours on this bill.

The Committee really appreciates the way the original sponsor, Rep. Abood of Anchorage, spent so much time working with the bill and with us. Rep. Abood testified before the Committee each time the bill was scheduled for hearing. He "rode herd" on the bill from its inception to the final product that passed out of the Committee.

I sincerely hope that this bill will not be substantially altered or amended in a way that weakens or destroys it.

The bill provides for seizure of a driver's license upon arrest as well as increased penalties upon conviction. While the minimum of 72 hours in jail is mandated for a first offense in keeping with the existing law, a second offense requires a minimum of no less than 20 days in jail and the third offense would result in at least 30 days in jail and a 10-year license revocation.

Fines based on the number of absence of prior convictions, carry mandatory minimums of $250 for a first offense, $500 for the second offense and not less than $1,000 for a third offense. Courts will be required, under the proposed bill, to consider prior offenses over the preceding 15 years in this or another jurisdiction, rather than going back only five years under the existing law to find prior convictions.

The bill also maintains as a crime the refusal to submit to a chemical test following arrest, as does existing law, except penalties are more stringent under the new bill.

In addition, law enforcement officers are authorized to require a breath test on the spot when the driver is first stopped. Refusal to submit to a preliminary breath test, prior to arrest, is classed as an infraction in the measure.

The House Judiciary Committee moved HB 17, the bill to raise the drinking age to 21, on the House Finance Committee back in February. The Chief Prosecutor of the State, Dan Hickey, testified before that group and the Finance Committee Substitute substantially weakened the bill. One wonders if Mr. Hickey initiated the amendments to that bill.

It is know that HB 6, the so-called "drunk driving bill", was not classed as one of the Chief Prosecutor's priorities when we were waiting for suggestions from the Department of Law. It is to be hoped that HB 6 will receive swift action in the House Finance Committee and not be weakened in the same manner HB 17 was. In fact, one wonders who is running the apparently leaderless Department of Law during this part of the Sheffield administration.

The Governor, afterall, during his campaign told folks he was in favor of raising the drinking age to 21. Recently, he said he was not in favor of this. A crystal ball would be helpful, maybe, to see what his views are on driving while intoxicated.

Very truly yours,

Representative Charlie Bussell
Chairman, Committee on Judiciary

CB:cmz

HB6

POUCH V
JUNEAU, ALASKA 99811
(907) 465-4990

Alaska State Legislature
HOUSE OF REPRESENTATIVES

REPRESENTATIVE
CHARLIE BUSSELL
CHAIRMAN

Committee on Judiciary

May 2, 1983

Ms. June Gerrish
MADD - Mothers Against Drunk Drivers
5800 Glenn Highway
Anchorage, Alaska 99504

Dear Ms. Gerrish:

The House Judiciary Committee passed HB 6, the "drunk driving" bill, out of Committee on Friday, April 29, 1983. I think it is an excellent and comprehensive item of legislation.

The Committee put considerable thought and effort into its creation and fine-tuning. Representative Mitch Abood's staff, the Committee staff, and the bill drafters for the Legislative Affairs Agency and the Department of Law worked very hard and diligently expending many long hours on this bill.

The Committee really appreciates the way the original sponsor, Rep. Abood of Anchorage, spent so much time working with the bill and with us. Rep. Abood testified before the Committee each time the bill was scheduled for hearing. He "rode herd" on the bill from its inception to the final product that passed out of the Committee.

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MEMBERS:
REP. JOHN LISKA, VICE CHAIRMAN; REP. RAMONA BARNES, EMERITUS;
REP. JOE HAYES; REP. HUGH MALONE; REP. DON CLOCKSIN; REP. RON WENDTE

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The Governor, afterall, during his campaign told folks he was in favor of raising the drinking age to 21. Recently, he said he was not in favor of this. A crystal ball would be helpful, maybe, to see what his views are on driving while intoxicated.

Very truly yours,

Representative Charlie Bussell
Chairman, Committee on Judiciary

CB:lyn

ALASKA STATE LEGISLATURE
HOUSE OF REPRESENTATIVES
RESEARCH AGENCY

Pouch Y, State Capitol
Juneau, Alaska 99811
(907) 465-3991

January 29, 1981

MEMORANDUM

TO: Representative Mitch Hood
Attention: Carol Horos

FROM: Christine Johnson, Research Staff

SUBJECT: Research Request No. 82-5
Drunk Driving Statistics

Carol Horos of your staff has asked for the following information regarding drunk driving:

(1) statewide data on the number of arrests and convictions for drunk driving for a sufficient number of years to show the current trend;

(2) statewide data on the number of arrests and convictions for other traffic violations where the driver was also intoxicated;

(3) a comparison between the incidence of drunk driving in Alaska and the national rate.

As we have explained to Ms. Horos, the second category of data required a special computer run by the Alaska Court System, and we have not yet received the information. We will forward it to you as soon as it arrives.

Arrests

Table I on the following page shows the number of arrests for drunk driving during 1978, 1979, and 1980. This data indicates that arrests for drunk driving are declining. Data for 1980 shows a 21% decrease in the number of arrests for this offense over the arrests reported in 1978. This decline may be related to the stiffer penalties for drunk driving which went into effect in the fall of 1978.

TABLE I
Statewide Arrests for Drunk Driving
1978 - 1980

	1978	1979	1980
Number of Arrests	3,765	3,006	2,575
Rate of Arrest per 100,000 people	815.3	750.5	643.0

Source: House Research Agency, January 1982, from data provided by the Criminal Justice Planning Agency, Alaska Department of Law, Crime in Alaska - 1980.

Table II below compares Alaska's 1980 arrest rate for drunk driving with the national rate for that year. The data indicates that the state's arrest rate for drunk driving is only slightly higher than the national rate.

TABLE II
State and National Arrest Rates for Drunk Driving - 1980
(Rate per 100,000 people)

Alaska Arrest Rate	National Arrest Rate
643.0	626.3

Source: House Research Agency, January 1982, from data provided in Crime in Alaska - 1980, and Federal Bureau of Investigation, U.S. Department of Justice, Crime in the United State, September 1981.

Convictions

Table III on the following pages shows both the number of cases involving drunk driving which were filed with the Alaska Court System during the three year period and the number of convictions which resulted. This information provides the best indication of the conviction rate for drunk drivers, as the data regarding arrests comes from another source and is not comparable to the Court's statistics on convictions.

Between 1978 and 1980, approximately 75% of the individuals charged with drunk driving were convicted. The conviction rate declined slightly in 1980, but no downward trend can logically be inferred from this information.

TABLE III
Drunk Driving Cases Filed with the Alaska Court System and Rate of Conviction
1978 - 1980

	1978	1979	1980
No. of Cases Filed	3,681	3,545	3,096
No. of Convictions	2,765	2,691	2,224
Conviction Rate	75%	76%	72%

Source: Alaska Court System.

We were unable to locate any information on the national conviction rate for drunk drivers. We did learn from the State Highway Safety Planning Commission that nationwide 50% of all fatal accidents in 1979 involved a drunk driver. This figure was closer to 75% for Alaska.

We hope this information is of use to you. Again, we will deliver the other material you requested as soon as it arrives. If we can provide any further assistance, please don't hesitate to contact us.

CJ/cj

ALASKA STATE LEGISLATURE
HOUSE OF REPRESENTATIVES
RESEARCH AGENCY

Pouch Y, State Capitol
Juneau, Alaska 99811
(907) 465-3991

9

February 4, 1982

TO: Representative Mitch Abood
Attention: Carol Horos

FROM: Christine Johnson, Research Staff

SUBJECT: Research Request No. 82-5
Arrests and Convictions for Drunk Driving: Additional Information

This memorandum should fulfill your request for data regarding arrests and convictions for driving while intoxicated (DWI). We have been waiting for a computer run from the Court System in order to respond to your question regarding the number of other traffic violations committed by drunk drivers.

Unfortunately, we have found that the Court System's data will only partially answer your question. On the Court's computer system, cases involving multiple offenses are listed by the primary, or the most serious, offense; the number of other lesser offenses is noted, but these offenses are not specifically named. Consequently ,while the data indicates the number of cases where an individual was charged with DWI and other lesser offenses, it does not show the number of people charged with drunk driving and other more serious violations.

The Court System's data for 1980 is summarized on the table on the following page. This information indicates that drunk drivers were responsible for a minimum of 236 other traffic offenses in 1980. Ninety percent of these drivers were ultimately convicted of drunk driving. Eighty-nine percent of those convicted served time in jail, 77% were fined, and 69% were both fined and jailed.

We hope this information is of use to you. We sincerely apologize for the delay in delivering it, but tabulating the data from the Court System took significantly longer than we anticipated. If we can provide any further information, please don't hesitate to contact us.

CJ

Attachment

1980 Court Cases Involving a DWI Offense and Other Lesser Offenses
By Disposition of Case

	NO. OF CASES WHICH INVOLVE A DWI OFFENSE AND ANOTHER OFFENSE	CONVICTIONS		PENALTIES									
				Jail		Fine		Both		License Revoked		Restitution Required		Probation
		No.	%	No.	%[1]	No.	%	No.	%	No.	%	No.	%	No.
ONE OTHER OFFENSE	164	146	89%	131	90%	111	76%	100	68%					
TWO OTHER OFFENSES	22	22	100%	20	91%	17	77%	16	73%					
THREE OR MORE OTHER OFFENSES	9[2]	8	89%	6	75%	7	86%	5	63%					
TOTAL	195	176	90%	157	89%	135	77%	121	69%	70	40%	23	13%	63	36%

[1]Percentage of convictions.

[2]Eight cases involve three other offenses and one case involves four other offenses.

Source: House Research Agency from data provided by the Alaska Court System, February, 1982.

RANGE OF JAIL SENTENCES

	No.	%
1- 5 days	82	52%
6- 10 days	32	20
11- 25 days	24	15
26- 50 days	8	5
51-100 days	7	5
101-200 days	3	2
over 200 days	1	1
TOTAL	157	100%

RANGE OF FINES

	No.	%
less than $100	2	2%
$100-199	24	18
$200-299	56	41
$300-399	27	20
$400-499	10	7
$500-750	14	10
over $750	2	2
TOTAL	135	100%

ALASKA STATE LEGISLATURE
HOUSE OF REPRESENTATIVES
RESEARCH AGENCY

Room Y, State Capitol
Juneau, Alaska 99811
(907) 465-3991

March 16, 1982

MEMORANDUM

TO: Representative Mitch Abood
Attention: Carol Horos

FROM: Christine Johnson, Research Staff

RE: Research Request No. 82-63
Drunk Driving Statistics

Attached please find several charts which should at least partially address your questions regarding (1) the recidivism rate for drunk drivers; and (2) the number of other offenses which drunk drivers commit. Major findings from the data are summarized below:

- In the last five fiscal years, approximately 16,700 individuals were booked into Alaska correctional facilities on charges of drunk driving. Of these, 7,100 or 42% had been booked for drunk driving on at least one other occasion since 1972.

- Between FY 77 and FY 80, the percentage of drunk drivers who were repeat offenders increased steadily from 33% to 48%. The percentage of repeat offenders declined slightly in FY 81 to 44%; however, it is impossible to say whether this represents a one-time fluctuation or the beginnings of a downward trend.

- Over the five-year period, drunk drivers were charged with a total of 2,500 other offenses, including 1,500 other traffic violations. Forty-nine percent of these other offenses were attributed to drivers who had been picked up for drunk driving on at least one other occasion.

We can provide a more detailed breakdown of this data by geographic location, and by age, sex, or race of the offender, if you desire. Please call if you have any questions.

CJ/bf

TABLE I

Number of Persons Booked in Alaska Correctional Facilities for OMVI Offenses Who Had Been Booked Previously on the Same Charge FY 77 - FY 81

Year	Total No. of Persons Booked for OMVI	No. of These Who Were OMVI Repeaters		No. of Other OMVI Offenses Since 1972											
				1	2	3	4	5	6	7	8	9	10	11	12
FY 77	3,340	1,096	33%	709	190	74	24	12	3	2	2				
FY 78	3,297	1,385	42%	949	266	95	46	16	8	4	1				
FY 79	3,777	1,693	45%	1018	356	160	82	44	16	9	7	1			
FY 80	3,004	1,455	48%	803	324	161	77	37	27	13	7	5	2		
FY 81	3,350	1,484	44%	863	295	148	77	35	23	14	10	8	5	4	2
5-Year Total	16,766	7,114	42%	4422	1431	638	306	144	77	42	27	14	7	4	2

SOURCE: House Research Agency, March 1982, from Alaska Dept. of Health and Social Services, Division of Corrections, Corrections Master Plan.

TABLE II
Number of Other Offenses For Which Drunk Drivers Were Charged
FY 77 - FY 81

Other Offense	No. of Bookings for OMVI and Other Offense				
	FY 77	FY 78	FY 79	FY 80	FY 81
Murder & Negl. Mansl.					1
Non-Negl. Manslaughter				1	1
Robbery	1	1	1	2	1
Aggravated Assault	25	21	20	11	5
Burglary		2			2
Larceny/Theft	4	3	8	4	4
Joyriding	20	21	20	7	6
Assault, Other	3			1	5
Fraud	1			4	1
Embezzlement			1		
Stolen Property			2	1	
Vandalism	6	8	9	1	5
Weapons	12	13	22	7	10
Sex Offenses				1	
Sale/Distribution of Controlled Substances	6		2		2
Liquor Laws	22	7	7	5	5
Drunkenness	15	7	14	1	6
Disorderly Conduct	11	11	3	9	12
Disord. Conduct, Other	17	13	15	17	52
Suspicion	1	3		1	6

(CONTINUED)

TABLE II (CONTINUED)

Other Offense	No. of Bookings for OMVI and Other Offense				
	FY 77	FY 78	FY 79	FY 80	FY 81
Traffic-M.V.	233	250	334	332	375
Offense Against Court	11	25	37	92	108
Probation Violation	1	1	6	5	3
Parole Violation					2
Bench Warrant	19	15	5	36	42
Bail Violation	1				
Escape	1	2	4	2	
AWOL-Fugitive	1		1	1	3
Contributing to Delinquency			1	2	1
Possession/Use of Controlled Substance	33	25	17	11	11
Juvenile Status Offense	1	1			
Other or Unknown		10	6	2	
TOTAL	446	440	535	556	671

Source: House Research Agency, March 1982, from Alaska Department of Health and Social Services, Division of Corrections, Corrections Master Plan.

TABLE III
Number of Other Offenses For Which Drunk Drivers Were Charged
Cumulative Total for FY 77 - FY 81

Other Offense	No. of Bookings for OMVI and this Offense	No. of These Which Involved OMVI Repeater		No. of Other OMVI Bookings Since 1972				
				1	2	3	4	5+
Murder & Negil. Mansl.	1							
Non-Negl. Mansl.	2							
Robbery	6	1	17%	1				
Aggravated Assault	34	27	32%	17	9			1
Burglary	4	2	50%	2				
Larceny-Theft	23	9	39%	5	2	1	1	
Joyriding	74	30	41%	15	7	1	3	4
Assault, Other	9	2	22%	1	1			
Fraud	6	2	33%		2			
Embezzlement	1							
Stolen Property	3	1	33%	1				
Vandalism	29	12	41%	7	4	1		
Weapons	64	11	17%	10	1			
Sex Offenses	1							
Sale/Distribution of Controlled Substances	10	3	30%	1	1	1		

(CONTINUED)

Other Offenses	No. of Bookings for OMVI and this Offense	No. of These Involving OMVI Repeater		No. of Other OMVI Bookings Since 1972				
				1	2	3	4	5+
Liquor Laws	47	7	15%	4	3			
Drunkenness	43	14	33%	9	2	1	1	1
Disorderly Conduct	46	23	50%	13	3	6	1	
Disord. Conduct, Other	114	47	41%	22	11	9	4	1
Suspicion	11	6	55%	2	3		1	
Traffic-M.V.	1,524	825	54%	318	200	112	73	122
Offense Against Court	273	167	61%	70	48	24	10	15
Probation Violation	16	10	63%	3	1	2	2	2
Parole Violation	2	2	100%	1	1			
Bench Warrant	117	66	56%	27	18	6	6	9
Bail Violation	1	1	100%	1				
Escape	9	4	44%	1	2	1		
AWOL-Fugitive	6	1	17%	1				
Contributing to Delinq.	4	1	25%	1				
Possession/Use of Controlled Substance	98	29	30%	23	3	2		1
Juvenile Status Offense	2							
Other or Unknown	18	7	39%	6	1			
TOTAL	2,640	1,310	49%	562	323	167	102	156

Source: House Research Agency, March 1982, from Alaska Department of Health and Social Services, Division of Corrections, Corrections Master Plan.

National Conference of State Legislatures

Office of State Federal Relations
444 North Capitol Street, N.W. Suite 203 Washington, D.C. 20001 202/737-7004

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New York Assembly

Executive Director
Earl S. Mackey

M E M O R A N D U M

TO: Legislators and legislative staff interested in drunk driving legislation

FROM: Ralph Craft, Staff Director Transportation and Communications Committee RC

RE: Drunk Driving Incentive Grants Regulations; Presidential Drunk Driving Commission Recommendations

DATE: February 9, 1983

Enclosed is a summary of the Final Rule for the Incentive Grant Criteria for Alcohol Traffic Safety programs that were published in the Federal Register February 7, 1983 page 5545.

Also enclosed are some of the recommendations made by the Presidential Commission on Drunk Driving in its interim report. The recommendations included are those that would require state legislative action.

RECOMMENDATIONS THAT WOULD REQUIRE STATE
LEGISLATION FROM THE INTERIM REPORT TO THE NATION
FROM THE PRESIDENTIAL COMMISSION ON DRUNK DRIVING

1.1 Program Financing

Legislation should be enacted at State and local levels which creates a dedicated funding source which includes offender fines and fees for increased efforts in the enforcement, prosecution, adjudication, sanctioning, and education and treatment of driving under the influence (DUI) offenders.

1.2 Task Forces

State and local governments should create Task Forces of governmental and non-governmental leaders to increase public awareness of the problem, to more effectively apply driving under the influence laws, and to involve governmental and non-governmental leaders in action programs.

1.8 Improved Roadway Delineation and Signing

States should give increased attention to improvements in roadway markings, signing, and roadside hazard visibility as important countermeasures to alcohol-related highway crashes.

2.2 Implied Consent

Each state should establish an implied consent statute providing that all drivers are deemed to have given their consent to tests of blood, breath or urine to determine their alcohol or drug concentration. The statute should provide:

(1) License suspensions sufficiently severe to discourage drivers from refusing the test.
(2) Introduction of evidence of the test refusal into driving under the influence prosecutions.
(3) That offenders not be required to be taken to a police facility and placed under formal arrest prior to test administration.
(4) That offenders who are unconscious or otherwise incapable of refusal are deemed to have given their consent to a test, the results of which are admissible in any trial or proceeding.
(5) That an individual's right to consult his attorney not be permitted to unreasonably delay administration of the test.
(6) That results of preliminary breath test devices are admissible in DUI trial proceedings.
(7) That refusals in sister States result in license suspensions in the State of driver residence.

2.3 Preliminary Breath Testing

States should enact a statute allowing the use of Preliminary Breath Test (PBT) devices by police officers.

2.5 Mandatory BAC Test

States should require mandatory alcohol and other drug testing of all drivers involved in a fatal or serious personal injury crash.

2.6 Booking Procedures

Laws, policies, and procedures should be adopted to expedite arrest, booking and charging procedures.

2.7 Uniform Traffic Ticket
State and local governments should adopt a statewide uniform traffic ticket system.

3.2 Definition of BAC
States should enact a definition of "Breath Alcohol Concentration" and make it illegal to drive or be in control of a motor vehicle with a Breath Alcohol Concentration above that defined level.

3.3 0.08 Presumptive Level of Under the Influence
Legislation should be enacted which provides that a person with an alcohol concentration of 0.08 is presumed to be driving under the influence.

3.4 0.10 Illegal Per Se
Legislation should be enacted making it illegal per se for a person with an alcohol concentration of 0.10 or higher within three hours of arrest to drive or be in actual physical control of a motor vehicle.

4.1 Mandatory Sentencing
The sentences recommended herein upon conviction of a driving under the influence offense should be mandatory and not subject to suspension or probation. Specifically the recommendations are that:

(1) All states establish mandatory substantial minimum fines for driving under the influence offenders, with correspondingly higher mandatory minimum fines for repeat offenders.
(2) Any person convicted of a first violation of driving under the influence should receive a mandatory minimum jail sentence of 48 consecutive hours, or license suspension for a mandatory period of not less than 90 days plus a mandatory assignment of 100 hours of community service.
(3) Any person convicted of a second violation of driving under the influence within five years should receive a mandatory minimum jail sentence of 10 days, and license revocation for not less than 1 year.
(4) Any person convicted of a third or subsequent violation of driving under the influence within five years should receive a mandatory minimum jail sentence of 120 days and license revocation for not less than three years.

4.5 Felony
Causing death or serious bodily injury to others while driving under the influence should be classified a felony.

4.6 License Violation
States should enact a statute requiring mandatory jail sentence of at least 30 days for any person convicted of driving with a suspended or revoked license or in violation of a restriction due to a driving under the influence conviction.

4.8 Victim Restitution
Any person convicted for driving under the influence should pay restitution.

4.9 Victim Assistance
State and local governments should provide assistance to victims of driving under the influence offenders.

4.10 Victim Impact Statements
State and local governments or courts by rule should require victim impact statements (including oral or written statements by victims or survivors) prior to sentencing in all cases where death or serious injury results from a DUI offense.

5.1 Administrative Per Se License Suspension
States should enact legislation to require prompt suspension of the license of drivers charged with driving under the influence, upon finding that the driver had a BAC of 0.10 in a legally requested and properly administered test. The prompt suspension should also extend to those who refuse the test, as well as those who are driving on a restricted license. Such suspension may be carried out by the court upon arraignment, or by the administrative agency charged with license administration. There should be reciprocity among States to assure a driver's license suspension by the home State if the driver meets these conditions in another State.

5.2 Driver License Compact
Each State should adopt the Driver License Compact and the one license/one record policy while also utilizing the National Driver Register.

5.4 Provisional License for Young Drivers
States should adopt laws providing a provisional license for young novice drivers which would be withdrawn for a driving under the influence conviction or an implied consent refusal.

6.1 Minimum Legal Drinking Age
States should immediately adopt 21 years as the minimum legal drinking age for all alcoholic beverages.

6.2 Dram Shop Laws
States should enact dram shop laws establishing liability against any person who sells or serves alcoholic beverages to an individual who is visibly intoxicated.

6.3 Alcohol Beverage Consumption in Motor Vehicles
State and local governments should prohibit consumption of alcoholic beverages in a motor vehicle and prohibit the possession of open alcoholic beverage containers in the passenger compartment of motor vehicles.

10.4 Administrative
(1) State standards, criteria and review procedures should be established for alcohol education schools, treatment and rehabilitation services, and community service programs. A State agency should be assigned responsibility to certify to the courts the alcohol education and treatment and rehabilitation programs that meet established criteria and standards. This same agency should make efforts to draw upon and involve appropriate existing programs, e.g., employee assistance programs.

(2) States should develop and implement an on-going statewide evaluation system to assure program quality and effectiveness.

(3) Defendants should be assessed fees for education or treatment and rehabilitation services at a level sufficient to cover the costs.

HIGHLIGHTS
FINAL RULE: INCENTIVE GRANT CRITERIA FOR ALCOHOL TRAFFIC SAFETY PROGRAMS

DEPARTMENT OF TRANSPORTATION
National Highway Traffic Safety Administration
23 CFR Part 1209
pursuant to
P.L. 97-364

FOUR BASIC GRANT CRITERIA (for 30% of 402 apportionment)

No. 1: Prompt License Suspension

The first criterion established by Congress for basic grant eligibility requires:

> The prompt suspension, for a period not less than ninety days in the case of a first offender and not less than one year in the case of any repeat offender, of the driver's license of any individual who a law enforcement officer has probable cause under State law to believe has committed an alcohol-related traffic offense, and (i) to whom is administered one or more chemical tests to determine whether the individual was intoxicated while operating the motor vehicle and who is determined, as a result of such tests to be intoxicated, or (ii) who refuses to submit to such a test as proposed by the officer.

- "prompt"
  - -- license suspension within an average of 45 days from time of arrest;
  - -- but, States reaching average of 90 days from time of arrest may qualify if they submit a plan showing how they will reduce the average to 45 days;
  - -- in order to be eligible for each of the supplemental criteria, a State must have a license suspension system in which average time to suspend a license does not exceed 45 days.
- "suspension" for 90 days on first offense
  - -- full suspension for 30 days and use of a restricted provisional or conditional license for the remaining 60 days;
  - -- no restricted or limited licenses for second offenders or persons refusing to take BAC test;

No. 2: Mandatory Sentence

The second criterion established by Congress for basic grant eligibility requires:

A mandatory sentence, which shall not be subject to suspension or probation, of (i) imprisonment for not less than 48 consecutive hours, or (ii) not less than ten days of community service, of any person convicted of driving while intoxicated more than once in any five-year period.

- "imprisonment" includes confinement not only in jails or prisons, but also in such places as minimum security facilities or in-patient rehabilitation/treatment centers.

- copies of existing legislation/regulations on mandatory sentences adequate to demonstrate compliance. Statistically valid samples can suffice for data on average sentence imposed on repeat offenders. Only data on general types of confinement (jail, treatment centers) to be required, not confinement used for each individual.

No. 3: Illegal Per Se Laws

The third criterion established by Congress for basic grant eligibility requires States to have a law that:

Provides that any person with a blood alcohol concentration of 0.10 percent or greater when driving a motor vehicle shall be deemed to be driving while intoxicated.

- .10% as presumptive level, rather than illegal per se, does not comply

No. 4: Increased Enforcement/Public Information Efforts

The fourth and final criterion established by Congress for basic grant eligibility requires:

Increased efforts or resources dedicated to the enforcement of alcohol-related traffic laws and increased efforts to inform the public of such enforcement.

- States will determine which indicators are most appropriate to demonstrate increased efforts

- Demonstration of increased levels of effort made through comparison of F.Y. 1982 (or later years) with prior preceding year or average of State efforts over 3 years preceding year in which State first applies for a grant.

SUPPLEMENTAL GRANT CRITERIA (for up to 20% of 402 apportionment)

- States required to adopt minimum of eight (8) criteria of their choosing out of 21 possible criteria, for full 20% grant
- Adoption of minimum of four (4) criteria of a State's choosing, will qualify a State for 10% grant
- To be eligible for supplemental grant for second and third year, States must adopt two (2) more criteria each year and demonstrate increased performance in criteria adopted in prior year or years
- States not required to adopt more than fifteen (15) of supplemental criteria, but will have to show increased performance in previously adopted criteria
- Prior adoption of criteria will be recognized, no matter when adopted, as long as States can demonstrate active implementation of the criteria during past four years.

List of 21 Possible Criteria:

1. Raise drinking age to 21 for all alcoholic beverages, immediately, or over three year period.
2. Explanation of program coordination among different State agencies involved in alcohol traffic safety programs (no requirement for single State Coordinator)
3. Setting of minimum standards for rehabilitation and treatment programs.
4. Establishment of a State task force; (county, city or regional task forces encouraged, but not required -- if local task forces not used, must show that local community interests are represented on the State task force.)
5. A statewide driver record system operated so conviction information is recorded within 30 days of conviction, license sanction or completion of appeals process.
6. Locally coordinated programs in cities, counties, or regions; communities decide themselves on specific geographic area to be involved in program.
7. Prevention and education program aimed at changing the societal norm relative to drunk driving (to include kindergarten through twelfth grade education program, and involvement of private sector and parents)

8. Pre- or post-screening (based, at a minimum, on BAC level at time of arrest, prior alcohol-related convictions, and a self-administered questionnaire)

9. An evaluation system that determines the effectiveness of individual program countermeasures and overall program effectiveness

10. Self sufficient programs; compliance demonstrated by providing a plan showing how program will become self sufficient.

11. Use of roadside sobriety checks

12. A citizen reporting program; compliance demonstrated by providing information on the degree of participation, e.g., number of citizen reports and resulting arrests based on statistically valid samples.

13. Enactment of a BAC of 0.08 percent as presumptive evidence

14. Uniform licensing procedures; full participation in the National Driver Register and the Driver's License Compact, and use of a one-license, one-record policy

15. Use of preliminary breath tests (PET's)

16. Adoption of the requirement that no alcohol-related charge be reduced to a non-alcohol-related offense or probation without judgment being entered and without written declaration of why the action is in the interest of justice. The law must also provide that if charge is reduced, driver's record must say reduced charge is alcohol-related

17. Establishment of a victim assistance program and use of victim impact statements and victim restitution.

18. Impoundment of the vehicle or confiscation of the vehicle's tags

19. Allowing the arresting officer to choose the specific type of chemical test to use

20. Enactment of dram shop liability laws (or upholding of common law dram shop liability in State's highest court)

21. Adoption of new, unique and innovative alcohol traffic safety programs

Public Law 97-364
97th Congress

An Act

To amend title 23, United States Code, to encourage the establishment by States of effective alcohol traffic safety programs and to require the Secretary of Transportation to administer a national driver register to assist State driver licensing officials in electronically exchanging information regarding the motor vehicle driving records of certain individuals.

, 1982
6170]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

traffic
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egister.

TITLE I—ALCOHOL TRAFFIC SAFETY PROGRAMS

SEC. 101. (a) Chapter 4 of title 23, United States Code, is amended by adding at the end thereof the following new section:

"§ 408. Alcohol traffic safety programs

408.

"(a) Subject to the provisions of this section, the Secretary shall make basic and supplemental grants to those States which adopt and implement effective programs to reduce traffic safety problems resulting from persons driving while under the influence of alcohol. Such grants may only be used by recipient States to implement and enforce such programs.

"(b) No grant may be made to a State under this section in any fiscal year unless such State enters into such agreements with the Secretary as the Secretary may require to ensure that such State will maintain its aggregate expenditures from all other sources for alcohol traffic safety programs at or above the average level of such expenditures in its two fiscal years preceding the date of enactment of this section.

share
da.

"(c) No State may receive grants under this section in more than three fiscal years. The Federal share payable for any grant under this section shall not exceed—

"(1) in the first fiscal year the State receives a grant under this section, 75 per centum of the cost of implementing and enforcing in such fiscal year the alcohol traffic safety program adopted by the State pursuant to subsection (a);

"(2) in the second fiscal year the State receives a grant under this section, 50 per centum of the cost of implementing and enforcing in such fiscal year such program; and

"(3) in the third fiscal year the State receives a grant under this section, 25 per centum of the cost of implementing and enforcing in such fiscal year such program.

"(d)(1) Subject to subsection (c), the amount of a basic grant made under this section for any fiscal year to any State which is eligible for such a grant under subsection (e)(1) shall equal 30 per centum of the amount apportioned to such State for fiscal year 1983 under section 402 of this title.

402.

"(2) Subject to subsection (c), the amount of a supplemental grant made under this section for any fiscal year to any State which is eligible for such a grant under subsection (e)(2) shall not exceed 20 per centum of the amount apportioned to such State for fiscal year 1983 under section 402 of this title. Such supplemental grant shall be in addition to any basic grant received by such State.

23 USC 402.

State eligibility.

"(e)(1) For purposes of this section, a State is eligible for a basic grant if such State provides—

"(A) for the prompt suspension, for a period not less than ninety days in the case of a first offender and not less than one year in the case of any repeat offender, of the driver's license of any individual who a law enforcement officer has probable cause under State law to believe has committed an alcohol-related traffic offense, and (i) to whom is administered one or more chemical tests to determine whether the individual was intoxicated while operating the motor vehicle and who is determined, as a result of such tests, to be intoxicated, or (ii) who refuses to submit to such a test as proposed by the officer;

"(B) for a mandatory sentence, which shall not be subject to suspension or probation, of (i) imprisonment for not less than forty-eight consecutive hours, or (ii) not less than ten days of community service, of any person convicted of driving while intoxicated more than once in any five-year period;

"(C) that any person with a blood alcohol concentration of 0.10 percent or greater when driving a motor vehicle shall be deemed to be driving while intoxicated; and

"(D) for increased efforts or resources dedicated to the enforcement of alcohol-related traffic laws and increased efforts to inform the public of such enforcement.

"(2) For purposes of this section, a State is eligible for a supplemental grant if such State is eligible for a basic grant and in addition provides for some or all of the criteria established by the Secretary under subsection (f).

Effective
program
criteria.

"(f) The Secretary shall, by rule, establish criteria for effective programs to reduce traffic safety problems resulting from persons driving while under the influence of alcohol, which criteria shall be in addition to those required for a basic grant under subsection (e)(1). The Secretary shall establish such criteria in cooperation with the States and political subdivisions thereof, appropriate Federal departments and agencies, and such other public and nonprofit organizations as the Secretary may deem appropriate. Such criteria may include, but need not be limited to, requirements—

"(1) for the establishment and maintenance of a statewide driver recordkeeping system from which repeat offenders may be identified and which is accessible in a prompt and timely manner to the courts and to the public;

"(2) for the creation and operation of rehabilitation and treatment programs for those arrested and convicted of driving while intoxicated;

"(3) for the impoundment of any vehicle operated on a State road by any individual whose driver's license is suspended or revoked for an alcohol-related driving offense;

"(4) for the establishment in each major political subdivision of a State of locally coordinated alcohol traffic safety programs which are administered by local officials and are financially self-sufficient;

"(5) for the grant of presentence screening authority to the courts;

"(6) for the setting of the minimum drinking age in such State at twenty-one years of age;

"(7) for the consideration of and, where consistent with other provisions of State law and constitution the adoption of, recommendations that the Presidential Commission on Drunk Driving may issue during the period in which rules are being made to carry out this section.

Appropriation authorization.

"(g) There is hereby authorized to be appropriated to carry out this section, out of the Highway Trust Fund, $25,000,000 for the fiscal year ending September 30, 1983, and $50,000,000 per fiscal year for each of the fiscal years ending September 30, 1984, and September 30, 1985. All provisions of chapter 1 of this title that are applicable to Federal-aid primary highway funds, other than provisions relating to the apportionment formula and provisions limiting the expenditures of such funds to Federal-aid systems, shall apply to the funds authorized to be appropriated to carry out this section, except as determined by the Secretary to be inconsistent with this section. Sums authorized by this subsection shall not be subject to any obligation limitation for State and community highway safety programs.".

23 USC 101 *et seq.*

(b) The analysis for chapter 4 of title 23, United States Code, is amended by adding at the end thereof the following:

"408. Alcohol traffic safety programs.".

Regulations, publication in Federal Register.
23 USC 408 note.

(c) The Secretary of Transportation shall issue and publish in the Federal Register proposed regulations to implement section 408 of title 23, United States Code, not later than November 1, 1982. The Secretary shall allow public comment and hold public hearings on the proposed regulations to encourage maximum citizen participation. The final regulations shall be issued, published in the Federal Register, and transmitted to Congress before February 1, 1983. To the extent such regulations relate to the making of basic grants under such section 408, such regulations shall become effective on the date on which they are published in the Federal Register. To the extent such regulations relate to the making of supplemental grants under such section 408, such regulations shall become effective April 1, 1983, unless before such date either House of Congress by resolution disapproves such regulations to such extent. If such regulations are so disapproved by either House of Congress, the Secretary shall not obligate for such supplemental grants any amount authorized to carry out such section 408 for the fiscal year ending September 30, 1983, or any subsequent fiscal year, unless specifically authorized to do so by a statute enacted after the date of enactment of this Act.

Ante, p. 1738.
Disapproval by Congress.

TITLE II—NATIONAL DRIVER REGISTER

National Driver Register Act of 1982.

SHORT TITLE

23 USC 401 note.

SEC. 201. This title may be cited as the "National Driver Register Act of 1982".

DEFINITIONS

23 USC 401 note.

SEC. 202. For purposes of this title, the term—

(1) "alcohol" has the meaning given such term by the Secretary of Transportation under regulations prescribed by the Secretary;

(2) "chief driver licensing official" means the official in each State who is authorized to (A) maintain any record regarding any motor vehicle operator's license issued by such State; and (B) grant, deny, revoke, suspend, or cancel any motor vehicle operator's license issued by such State;

(3) "controlled substance" has the meaning given such term in section 102(6) of the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. 802(6));

(4) "highway" means any road or street;

(5) "motor vehicle" means any vehicle, machine, tractor, trailer, or semitrailer propelled or drawn by mechanical power and used on a highway, except that such term does not include any vehicle, machine, tractor, trailer, or semitrailer operated exclusively on a rail or rails;

(6) "motor vehicle operator's license" means any license issued by a State which authorizes an individual to operate a motor vehicle on a highway;

(7) "participating State" means any State which has notified the Secretary of its participation in the Register system, pursuant to section 204 of this title;

(8) "Register" and "Register system" mean the National Driver Register established under section 203 of this title;

(9) "Secretary" means the Secretary of Transportation;

(10) "State" means each of the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Northern Mariana Islands, the Trust Territory of the Pacific Islands, and any other territory or possession of the United States; and

(11) "State of record" means any State which has transmitted to the Secretary, pursuant to section 205 of this title, any report regarding any individual who is the subject of a request for information made under section 206 of this title.

ESTABLISHMENT OF REGISTER

SEC. 203. (a) The Secretary shall, as soon as practicable after the date of enactment of this title, establish and thereafter maintain a Register, to be known as the National Driver Register, to assist chief driver licensing officials of participating States in exchanging information regarding the motor vehicle driving records of individuals. The Register shall contain an index of the information that is reported to the Secretary under section 205 of this title, and shall be designed to enable the Secretary, either electronically or, until such time as all States are capable of participating electronically, through the United States mails, to—

23 USC 40

Informati index.

(1) receive information submitted under section 205(a) of this title by the chief driver licensing official of any State of record;

(2) receive any request for information made by the chief driver licensing official of any participating State under section 206 of this title;

(3) refer such request to the chief driver licensing official of any State of record; and

(4) relay without interception of the actual information to the chief driver licensing official of a participating State any information provided by any chief driver licensing official of a State of record in response to such request.

(b) The Secretary shall not be responsible for the accuracy of any information relayed to the chief driver licensing official of any participating State, except that the Secretary shall maintain the Register in a manner that ensures against any inadvertent alteration of information during any relay.

Final rule.

(c)(1) The Secretary shall, within eighteen months after the date of enactment of this title, promulgate a final rule which provides for procedures for the orderly transition from the system regarding the motor vehicle driving records of individuals provided in Public Law 86-660 (74 Stat. 526) to the Register established under subsection (a) of this section.

23 USC 313 note.

(2) The Secretary shall not maintain in the Register any report or information which was compiled under the provisions of Public Law 86-660 (74 Stat. 526) and was transferred to the Register after (A) the date the State of record removes it from the State's file; (B) seven years after the date such report or information is entered into the Register; or (C) the date of establishment of a fully electronic Register system, whichever is earlier. Such report or information shall be disposed of in accordance with the provisions of chapter 33 of title 44, United States Code.

44 USC 3301 *et seq.*

Erroneous information.

(3) If the chief driver licensing official of any participating State finds that information which has been transmitted for inclusion in the Register under this section is erroneous or relates to a conviction of a traffic offense which is subsequently reversed, such official shall immediately notify the Secretary of the error. The Secretary shall provide for the immediate deletion from the Register of such material.

(d) The Secretary shall assign to the administration of this title such personnel as may be necessary to ensure the effective functioning of the Register system.

(e) The Secretary may prescribe such regulations as may be necessary to carry out the provisions of this title.

STATE PARTICIPATION

23 USC 401 note.

SEC. 204. (a) Any State may become a participating State under this title by notifying the Secretary of its intention to be bound by the provisions of section 205 of this title.

Status termination.

(b) Any participating State may terminate its status as a participating State under this title by notifying the Secretary of its withdrawal from participation in the Register system.

(c) Any notification made by a State under subsection (a) or (b) of this section shall be made in such form, and according to such procedures, as the Secretary shall establish by regulation.

REPORTS BY CHIEF DRIVER LICENSING OFFICIALS

23 USC 401 note.

SEC. 205. (a) The chief driver licensing official in each participating State shall, as soon as practicable after the date of enactment of this title, transmit to the Secretary a report containing the information required in subsection (b) of this section regarding any individual—

(1) who is denied a motor vehicle operator's license by such State for cause;

(2) whose motor vehicle operator's license is canceled, revoked, or suspended by such State, for cause; or

(3) who is convicted under the laws of such State of the following motor vehicle-related offenses or comparable offenses—

(A) operation of a motor vehicle while under the influence of, or impaired by, alcohol or a controlled substance;

(B) a traffic violation arising in connection with a fatal traffic accident, reckless driving, or racing on the highways;

(C) failure to render aid or provide identification when involved in an accident which results in a fatality or personal injury; or

(D) perjury or the knowledgeable making of a false affidavit or statement to officials in connection with activities governed by a law or regulation relating to the operation of a motor vehicle.

Required information.

(b) Any report regarding an individual which is transmitted by a chief driver licensing official pursuant to subsection (a) of this section shall contain—

(1) the legal name, date of birth (including day, month, and year), sex, and (at the Secretary's discretion) the height, weight, eye and hair color of such individual;

(2) the name of the State transmitting such information; and

(3) the social security account number, if used by the reporting State for driver record or motor vehicle license purposes, and the motor vehicle operator's license number of such individual (if that number is different from the operator's social security account number);

except that any report concerning an occurrence specified in subsection (a) (1), (2), or (3) of this section which occurs during the two-year period preceding the date on which such State becomes a participating State shall be sufficient if it contains all such information as is available to the chief driver licensing official on such date.

(c) Any report required to be transmitted by a chief driver licensing official of a State under subsection (a) of this section shall be transmitted to the Secretary—

(1) not later than thirty-one days after receipt by a State motor vehicle department of any information specified in subsection (b) (1), (2), or (3) of this section which is the subject of such report, if the date of such occurrence is after the date on which such State becomes a participating State; or

(2) not later than the expiration of the six-month period following the date on which such State becomes a participating State, if such report concerns an occurrence specified in subsection (a) (1), (2), or (3) of this section that occurs during the two-year period preceding such date.

(d) Nothing in this section shall be construed to require any State to report any information concerning any occurrence which occurs before the two-year period preceding the date on which the State becomes a participating State.

ACCESSIBILITY OF REGISTER INFORMATION

23 USC 401 n

SEC. 206. (a)(1) For purposes of fulfilling his duties with respect to driver licensing, driver improvement, or highway safety, the chief driver licensing official of any participating State may, on and after the date of enactment of this title, request the Secretary to refer electronically or through the United States mails any request for

information regarding the motor vehicle driving record of any individual to the chief driver licensing official of any State of record.

(2) The Secretary shall electronically or through the United States mails relay to any chief driver licensing official of a participating State who requests information under paragraph (1) of this subsection any information received from the chief driver licensing official of any State of record regarding an individual in accordance with paragraph (1) of this subsection, except that the Secretary may refuse to relay any information to any such official who is the chief driver licensing official of a participating State which is not in compliance with the provisions of section 205 of this title.

(b)(1) The Chairman of the National Transportation Safety Board and the Administrator of the Federal Highway Administration, for purposes of requesting information regarding any individual who is the subject of any accident investigation conducted by the Board or Bureau of Motor Carrier Safety, may request the chief driver licensing official of a State to obtain information under subsection (a) of this section regarding such individual. The Chairman and Administrator may receive any such information.

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(2) Any individual who is employed as a driver of [illegible] vehicle or who seeks employment as a driver of a motor v[illegible], request the chief driver licensing official of the State in w[illegible] individual is employed or seeks employment to transmit information under subsection (a) of this section to his employer or prospective employer. An employer or prospective employer may receive such information regarding any such individual, and shall make that information available to the affected individual. There shall be no access to information in the Register under this paragraph if such information was entered in the Register more than three years before the date of such request.

(3) Any individual, in order (A) to determine whether the Register is providing any data regarding him or the accuracy of any such data; or (B) to obtain a certified copy of data provided through the Register regarding him, may request the chief driver licensing official of a State to obtain information regarding him under subsection (a) of this section.

(4) Any request made under this subsection shall be made in such form, and according to such procedures, as the Secretary shall establish by regulation.

(c) Any request for, or receipt of, information by means of the Register shall be subject to the provisions of sections 552 and 552a of title 5, United States Code, and any other applicable Federal and State law, except that—

(1) the Secretary shall not relay, or otherwise transmit, information specified in section 205(b) (1) or (3) of this title to any person not authorized by this section to receive such information;

(2) any request for, or receipt of, information by any chief driver licensing official, or by any person authorized by subsection (b) of this section to request and receive information, shall be considered to be a routine use for purposes of section 552a(b) of title 5, United States Code; and

(3) any receipt of information by any person authorized by this section to receive information shall be considered to be a disclosure for purposes of section 552a(c) of title 5, United States Code, except that the Secretary shall not be required to retain the accounting made under paragraph (1) of such section for more than a seven-year period after the date of such disclosure.

PILOT TEST PROGRAM

SEC. 207. (a) The Secretary shall design, within eighteen months after the date of enactment of this title, and implement, within two years after the date of enactment of this title, a pilot test program for the purpose of demonstrating the potential effectiveness of a system for electronic referral and relay of information regarding the motor vehicle driving records of individuals. 23 USC 401 note.

(b) The Secretary shall solicit the participation of States which are interested in participating in such program and shall, within thirty months after the date of enactment of this title, select four States to participate in the program.

(c)(1) The Secretary shall select States in accordance with the provisions of subsection (b) of this section from among States which have in effect, on the date of selection, an intrastate online driver licensing system capable of electronically transmitting information regarding the motor vehicle driving records of individuals.

(2) The Secretary shall select only those States which indicate a willingness to participate in a comprehensive mechanical and programmatic evaluation of systems for the electronic transfer of information.

(3) The Secretary shall ensure that the selection made pursuant to subsection (b) of this section is representative of varying geographical and population characteristics of the Nation.

(4) No State shall participate in the program unless it agrees to assist in providing information to other States regarding the electronic transfer of the motor vehicle driving records of individuals.

(d) Within two years after the date of enactment of this title, the Secretary shall begin the pilot program authorized by subsection (a) of this section. Such program shall continue for a period of one year. In carrying out the program, the Secretary shall utilize different computer technologies and equipment in order to determine which technology and equipment is most effective for the electronic transfer of the motor vehicle driving records of individuals. The Secretary shall determine which systems and devices will best interconnect with systems and devices used in the States which are participating in the pilot program, as well as those used in other States. Computer technologies and equipment.

(e) Any equipment or device which is provided to a State for use in the pilot program conducted under this section may, in the discretion of the Secretary, remain with the State following the conclusion of the pilot program.

(f) Not later than one year after the conclusion of the pilot program, the Secretary shall submit to the Congress a report on the program. Such report shall include an evaluation of the technology utilized during the program, together with an explanation of the nature and degree of State participation in the program. The report shall also contain an evaluation of achievements of the pilot program, as well as a projection of accomplishments which might result from the acquisition of electronic transfer equipment and methods by States other than those which participated in the pilot program. Report to Congress.

CRIMINAL PENALTIES

23 USC 401 note.

SEC. 208. (a) Any person, other than an individual described in section 206(b)(4) of this title, who receives under section 206 of this title information specified in section 205(b) (1) or (3) of this title (the disclosure of which is not authorized by section 206 of this title), and who, knowing that disclosure of such information is not authorized, willfully discloses such information, shall be fined not more than $10,000 or imprisoned for not more than one year, or both.

(b) Any person who knowingly and willfully requests or under false pretenses obtains information specified in section 205(b) (1) or (3) of this title from any person who receives such information under section 206 of this title shall be fined not more than $10,000 or imprisoned for not more than one year, or both.

ADVISORY COMMITTEE

23 USC 401 note.

SEC. 209. (a) There hereby is established a National Driver Register Advisory Committee, which shall advise the Secretary concerning the efficiency of the maintenance and operation of the Register, and the effectiveness of the Register in assisting States in exchanging information regarding motor vehicle driving records.

Membership.

(b) The Advisory Committee shall consist of fifteen members, appointed by the Secretary, as follows:

(1) three members from among individuals who are specially qualified to serve on the Advisory Committee by virtue of their education, training, or experience, and who are not employees of the Federal Government or of any State; and

(2) three members from among groups outside the Government which represent the interests of bus and trucking organizations, enforcement officials, labor, or safety organizations; and

(3) nine members, geographically representative of the participating States, from among individuals who are chief driver licensing officials of participating States.

Office terms.

(c)(1) Except as provided in paragraph (2) and paragraph (3), each member of the Advisory Committee shall be appointed for a term of three years.

(2) Of the members first appointed—

(A) one of the members described in subsection (b)(1) and one of the members described in subsection (b)(2) and three of the members described in subsection (b)(3) shall be appointed for a term of one year;

(B) one of the members described in subsection (b)(1) and one of the members described in subsection (b)(2) and three of the members described in subsection (b)(3) shall be appointed for a term of two years; and

(C) one of the members described in subsection (b)(1) and one of the members described in subsection (b)(2) and three of the members described in subsection (b)(3) shall be appointed for a term of three years;

as designated by the Secretary at the time of appointment.

Vacancies.

(3) Any vacancy in the Advisory Committee shall be filled in the same manner as original appointments. Any member appointed to fill any vacancy shall serve for the remainder of the term for which his predecessor was appointed. Any member may serve after the expiration of his term until his successor has taken office.

Compensation.

(d) The members of the Advisory Committee shall serve without compensation, but the Secretary is authorized to reimburse such members for all reasonable travel expenses incurred by them in attending the meetings of the Advisory Committee.

(e)(1) The Advisory Committee shall meet not less than once each year.

(2) The Advisory Committee shall elect a Chairman and a Vice Chairman from among the members of the Advisory Committee.

Quorum.

(3) Eight members of the Advisory Committee shall constitute a quorum.

(4) The Advisory Committee shall meet at the call of the Chairman or a majority of the members of the Advisory Committee.

(f) The Advisory Committee may receive from the Secretary such personnel, penalty mail privileges, and similar services, as the Secretary considers necessary to assist it in performing its duties and functions under this section.

Report.

(g) Not less than once each year, the Advisory Committee shall prepare and submit to the Secretary a report concerning the efficiency of the maintenance and operation of the Register, and the effectiveness of the Register in assisting States in exchanging information regarding motor vehicle driving records. Such report shall include any recommendations of the Advisory Committee for changes in the Register system.

(h) The Advisory Committee shall be exempt from the requirements of section 10(e), section 10(f), and section 14 of the Federal Advisory Committee Act (5 U.S.C. Appendix).

REPORT BY SECRETARY

Submitta Congress 23 USC 4

SEC. 210. Not later than the expiration of the four-year period following the date of enactment of this title, the Secretary shall prepare and submit to the Congress a comprehensive report setting forth the extent and level of participation in the Register system, and the effectiveness of such system in the identification of unsafe drivers. Such report shall include any recommendations of the Secretary concerning the desirability of extending the authorization of appropriations for this title beyond the period of authorization provided in section 211 of this title.

AUTHORIZATION OF APPROPRIATIONS

23 USC 4

SEC. 211. (a) There are authorized to be appropriated for fiscal years beginning after September 30, 1982, for expenses incurred in the establishment of the Register system under this title not to exceed $2,000,000.

(b) There are authorized to be appropriated to carry out the provisions of this title and the provisions of Public Law 86-660 (74



23 USC 313 note.

Stat. 526) not to exceed $1,000,000 for fiscal year 1983, not to exceed $1,300,000 for fiscal year 1984, not to exceed $1,600,000 for fiscal year 1985, not to exceed $1,600,000 for fiscal year 1986, and not to exceed $1,600,000 for fiscal year 1987.

(c) Funds authorized under this section shall remain available until expended.

Approved October 25, 1982.

LEGISLATIVE HISTORY—H.R. 6170 (S. 2158):

HOUSE REPORT No. 97-867 (Comm. on Public Works and Transportation).
SENATE REPORT No. 97-360 accompanying S. 2158 (Comm. on Commerce, Science, and Transportation).
CONGRESSIONAL RECORD, Vol. 128 (1982):
May 11, S. 2158 considered and passed Senate.
Sept. 29, considered and passed House.
Oct. 1, considered and passed Senate.
WEEKLY COMPILATION OF PRESIDENTIAL DOCUMENTS, Vol. 18, No. 43 (1982):
Oct. 25, Presidential statement.

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Excerpts from
A REPORT ON A NATIONAL STUDY OF PRELIMINARY BREATH TEST (PBT) AND ILLEGAL PER SE LAWS

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FINAL REPORT

Prepared for:

U.S. DEPARTMENT OF TRANSPORTATION
National Highway Traffic Safety Administration
Washington, D.C. 20590

FOREWORD

The objectives of this project are to provide the National Highway Traffic Safety Administration (NHTSA) with: (1) an in-depth national state-of-the-art review and evaluation of two major driving while under the influence (DWI) countermeasure laws, "Illegal Per Se" (IPS) and "Preliminary Breath Test" (PBT), and (2) provide recommendations on model legislation, model jury instructions, and improvements in application by enforcement, prosecution and judicial bodies. The project will enable the NHTSA to assist the states in improving highway safety through the use of these laws for DWI enforcement and adjudication.

This document contains an executive summary and nine sections, plus an appendix.

Section 1 describes the rationale for implementation of Illegal Per Se and Preliminary Breath Test statutes, and the methodology utilized in conducting this study.

Section 2 presents the results of a survey of all states which have enacted a Preliminary Breath Test law.

Section 3 presents the results of a survey of all states that have enacted an Illegal Per Se law.

Section 4 describes the efforts to date of those states that have attempted but failed to pass either IPS or PBT laws.

Section 5 contains a series of in-depth studies of six states which have either a PBT or IPS law or both, and one state which has neither type of law.

Section 6 presents a summary of the statistical data collected during the study that demonstrates the effect IPS-PBT laws have on DWI arrests and prosecutions.

Section 7 contains proposed IPS and PBT statutes which were developed from examples of the most successful IPS-PBT laws now in use, with modifications suggested by legal and traffic safety authorities.

Section 8 contains proposed jury instructions to accompany the IPS and PBT statutes in Section 7. The jury instructions were derived from samples of jury instructions used by courts in seven different states with IPS or PBT laws.

Section 9 is a report of a NHTSA sponsored workshop on IPS/PBT and describes the findings and conclusions of sixteen national authorities on the utilization of PBT-IPS laws.

This study was designed by Donald Macdonald, J.D., and Marvin Wagner, L.L.M., who served as co-principal investigators for this study and contributed to all sections of the report. Mr. Macdonald is a senior project manager with

Science Applications, Inc. and has directed many projects dealing with the enforcement and adjudication of traffic safety laws. Marvin Wagner is a legal analyst and writer on a wide range of legal issues related to alcohol and highway safety and the adjudication of traffic offenses. The sections containing interviews with prosecutors and the suggested IPS-PBT statutes and jury instructions were provided by James P. Manak, J.D., director of the legal publications section of the Northwestern Traffic Institute, and James T. Reilly, J.D., a staff attorney with the National District Attorneys Association. Legal research, analysis, and interviews with state and local highway safety law enforcement officials, legislators, judges, prosecutors, and defense attorneys were provided by William Devlin, J.D.; Gary Gable, J.D.; and Frank Montecalvo, J.D., all of whom are members of the SAI legal system analysis staff, with extensive experience in conducting traffic safety related legal research and legislative analysis.

Special thanks are offered to Professor Robert Borkenstein, nationally known forensic expert on medico-legal problems and inventor of the Breathalyzer; to Professor Robert Force of Tulane University School of Law, a nationally recognized authority on constitutional law; to Professor James Starrs of the George Washington University National Law Center, an expert on the law and forensic science; and to Professor Andre Moenssens of the University of Richmond, T. C. Williams School of Law, an expert on constitutional law, each of whom provided a critique of this study.

Special recognition is also extended to those highway traffic safety and legal experts who attended the special workshop conducted to review the results of this study. The authors are pleased to express their appreciation for the assistance provided by the Contract Technical Manager, Mr. Phillip Dozier, and to the Chief of the Adjudication Branch of the Driver Licensing and Adjudication Division of NHTSA, Mr. George Brandt.

EXECUTIVE SUMMARY

Testimony of law enforcement personnel, prosecutors, the defense bar, and the judiciary that has been collated in the course of this research project indicates that prosecution of driving while intoxicated offenses (DWI) can be improved by modification of present statutes, especially by the adoption and utilization of Illegal Per Se (IPS) and Preliminary Breath Test (PBT) laws. Fifteen states now have an IPS statute in effect, and Illinois passed an IPS bill in July 1981. California legislators expect to see one enacted in 1981. Seven other states have introduced IPS legislation, but the chances of passage in the near future are uncertain. Fourteen states now have a PBT statute. Eleven states are using some form of PBT without a statute. One additional state expects to pass a new PBT law in 1981.

Sections 7 and 8 of this report contain a model IPS and PBT statute, a supporting rationale for each, and sample jury instructions for use with each statute. Both statutes and the jury instructions were drawn up with careful consideration of the existing statutory forms that have proven most successful, and IPS conforms closely to the latest recommendations from the National Commission on Uniform Traffic Laws and Ordinances. There is currently no UVC section dealing with PBT.

IPS LAWS

An Illegal Per Se statute (IPS) is a law which creates an absolute or strict liability upon a motorist who drives a vehicle on any public highway with a BAC of .10 percent or higher. This type of statute, which is widely used throughout most of the industrialized world, removes the "presumption of intoxication" found in most statutes, and places an "absolute" or "strict liability" upon the motorist when he/she drives after reaching the illegal blood alcohol concentration.

With respect to IPS statutes, surveys of prosecutors and judges in states using these types of statutes attribute to them an increase in guilty pleas. Some of the jurisdictions surveyed have enacted anti-plea bargaining statutes in DWI cases, but even without such statutes guilty pleas are higher because IPS is a difficult charge to defend against at trial. Other prosecutors report speedier settlement of cases under IPS resulting from a stronger plea negotiation posture. Some initial increase in the number of cases being tried was noted after the adoption of IPS statutes, but after the laws were tested in trials, the number of guilty pleas and convictions at trial sharply increased.

Despite the fact that a trial where only IPS was charged would be less costly, prosecutors surveyed preferred to charge both IPS and the traditional DWI offense. This is done in part to protect the case in the event the chemical test is challenged successfully, and in part to provide the opportunity to introduce testimony regarding defendant's demeanor at the time of arrest. In some jurisdictions, prosecutors are reluctant to try a case based strictly on an IPS violation. This was due to the belief that at least some juries will not convict without evidence of physiological impairment, other than that provided by the chemical tests.

The information gathered during this project supports the conclusion that an IPS provision is an effective tool in the enforcement of drunk driving laws.

The research reported upon here indicates that IPS:

1. Has increased the number of guilty pleas by an estimated average, for all jurisdictions, of 12 percent. Alabama reported a 40 percent reduction for the first six month period after its IPS law became effective, which was August 1980;

2. Has reduced the number of DWI charges that are negotiated down to a lesser charge by an estimated average of 16 percent;

3. Has increased the number of convictions for DWI by an estimated average of 9 percent, and this does not include convictions through pleas of guilty to a lesser offense, that probably would not have been obtained without the IPS statute. Alabama reported a 51 percent increase in DWI convictions for the first six month period after its IPS law became effective;

4. Has reduced overall cost of prosecuting DWI defendants by reducing the number of trials in many jurisdictions;

5. By reducing the number of elements of the offense to be proven, IPS facilitates prosecution of the impaired driver;

6. Has assisted law enforcement in making more impaired driver arrests. In those jurisdictions where external evidence in the form of outward signs of impairment was required before prosecutors would press the DWI charge, law enforcement officers were hesitant to arrest, even though a .10 percent BAC was suspected. Under IPS, evidence of gross psychomotor impairment is less important in making the decision to arrest;

7. Has facilitated the prosecution of those drinking drivers that show few indicia of physical impairment, even with high BACs. Outward signs of impairment need not be discussed in an IPS trial;

8. Has contributed to lowering the average BAC of those convicted of DWI-IPS;

9. The purely objective .10 percent BAC, as a basis for an arrest is more easily understood by the defendant than is the law enforcement officer's judgement, based upon demeanor, that the driver is impaired.

There are no offsetting disadvantages of IPS to report. The foregoing issues are addressed in Sections 1, 3, 5, and 6 of this report.

Penalties

Penalty provisions in IPS and DUI statutes varied greatly among the jurisdictions, as did actual charging and sentencing policies of prosecutors and judges. Mandatory jail penalties were often suggested by prosecutors as an effective deterrent to recidivism, but this view was not shared by the majority of the judges or law enforcement persons that were interviewed.

Administrative Adjudication of First Offense DWI

A number of the judges and prosecutors who were interviewed suggested that first offense DWI should be removed from the courts and placed in an administrative forum, which would emphasize treatment rather than punishment.

Training of Prosecutors

Typically, DWI cases are assigned to entry level staff members or are prosecuted by the least experienced of the assistant prosecutors. Formal training is non-existent or unstructured, with "on-the-job experience" the most common method. Statewide training through a prosecutor association is available in some jurisdictions. Often there is no syllabus or manual of effective techniques that should be employed. All agreed that training modules consisting of courses, manuals, and audio-visual materials would be helpful.

Training of Law Enforcement Officers

It was noted by prosecutors that the use of IPS provisions under DWI statutes can lead to over-reliance by the police on alcohol testing. Cases are weakened if the police officers fail to systematically note the steps leading up to testing and the general indicia of impairment. When the broadest possible investigatory approaches are used by the police, they result in stronger cases and more guilty pleas. Police personnel reported that some juries can be convinced by impersonal chemical test results, but other juries seem to require assurance that the defendant exhibited some outward signs of impairment, particularly in the BAC range of .10 percent to .15 percent.

Recommendations

Traffic safety officials in every state should organize like-minded persons in the legislature, the press, law enforcement, and the general public, to obtain passage of an Illegal Per Se law. DWI prosecutions should probably continue to be based on charges of both IPS and DWI, in order to encourage guilty pleas and to permit the introduction of all the available evidence at trial; however, IPS gives the prosecutor a more cost-effective opportunity to prove DWI, and with a lesser burden, by solely charging IPS when defendant has a BAC reading of .10%. Additional work must be done in some states to reinforce, in the minds of the judiciary, who in turn must convey to the jury, via the jury instructions, the fact that motorists with BACs in the range of .10% to .13% are in fact illegal and dangerous to themselves and others, irrespective of the presence or absence of other indicia of impairment.

The information gathered during this project supports the conclusion that an IPS provision is an effective tool in the enforcement of drunk driving laws.

The research reported upon here indicates that IPS:

1. Has increased the number of guilty pleas by an estimated average, for all jurisdictions, of 12 percent. Alabama reported a 40 percent reduction for the first six month period after its IPS law became effective, which was August 1980;

2. Has reduced the number of DWI charges that are negotiated down to a lesser charge by an estimated average of 16 percent;

3. Has increased the number of convictions for DWI by an estimated average of 9 percent, and this does not include convictions through pleas of guilty to a lesser offense, that probably would not have been obtained without the IPS statute. Alabama reported a 51 percent increase in DWI convictions for the first six month period after its IPS law became effective;

4. Has reduced overall cost of prosecuting DWI defendants by reducing the number of trials in many jurisdictions;

5. By reducing the number of elements of the offense to be proven, IPS facilitates prosecution of the impaired driver;

6. Has assisted law enforcement in making more impaired driver arrests. In those jurisdictions where external evidence in the form of outward signs of impairment was required before prosecutors would press the DWI charge, law enforcement officers were hesitant to arrest, even though a .10 percent BAC was suspected. Under IPS, evidence of gross psychomotor impairment is less important in making the decision to arrest;

7. Has facilitated the prosecution of those drinking drivers that show few indicia of physical impairment, even with high BACs. Outward signs of impairment need not be discussed in an IPS trial;

8. Has contributed to lowering the average BAC of those convicted of DWI-IPS;

9. The purely objective .10 percent BAC, as a basis for an arrest is more easily understood by the defendant than is the law enforcement officer's judgement, based upon demeanor, that the driver is impaired.

There are no offsetting disadvantages of IPS to report. The foregoing issues are addressed in Sections 1, 3, 5, and 6 of this report.

The problems noted with PBT include:

- The "false positives" and "false negatives" occur with some frequency when the PBT is the older "baggie" type test. New sophisticated PBT devices have been developed which are highly reliable and cost-effective when purchased and used in volume, and several of these devices meet NHTSA's standards for evidential alcohol testing equipment.

- Over-reliance by police on test results, to the detriment of careful observation of other indicia of DWI.

- Equipment maintenance problems (particularly with earlier models of the PBT devices).

- The possibility that a medium (but legal) BAC will mask drug use that is responsible for erratic driving.

- High cost to equip a complete state with modern, direct readout devices.

- Possible constitutional constraints on their use to establish probable cause.

The foregoing issues are addressed in Sections 1, 2, 4, and 5.

The emphasis of future PBT research should be in improving the accuracy and dependability of the equipment so as to permit admissibility of PBT results in court. The United States Supreme Court has not as yet ruled on whether a PBT can be taken with less than probable cause. The recent case law implies that such a test would be valid under the balancing theory that is an important part of the "Terry" test. Here, a balancing of the considerable public interest in improved traffic safety, against the minimal intrusion upon the motorist imposed by the modern pocket-sized portable PBT instrument, will likely be held constitutional. All of the cases brought before the state's highest courts dealing with the use of a PBT have upheld its use. The admissibility of either the PBT results or the refusal of a PBT would be of substantial assistance in DWI enforcement.

The future of PBT as a deterrent to drunk driving, particularly in those states with an IPS law, is promising. With or without a passive testing device, an expansion of the Prouse and Prichard decisions regarding random (non-discretionary) roadblocks, at which PBTs are administered on the basis of a reasonable and articulable suspicion of an illegally high BAC, has the potential for significantly increasing the public's perception of the probability of being apprehended for DWI. Authorities generally agree that the fear of apprehension is presently very low among persons who drink and drive.

2. SURVEY OF ALL STATES THAT HAVE PRELIMINARY BREATH TEST (PBT) LAWS

Introduction

As used in this report, the term "preliminary breath test" is defined to mean a pre-arrest breath test. Usually, but not always, the purpose of a preliminary breath test is to assist in establishing probable cause upon which a police officer may base his arrest.

A preliminary breath test is regarded as a valuable law enforcement tool in that:

a) It enables the officer in the field to make a quick and simple determination of whether a person is impaired or intoxicated in those marginal BAC cases, and those stops of impaired persons that have learned the appropriate responses to psychomotor tests;

b) It may indicate that an impaired person, with low BAC, is under the influence of drugs;

c) It can indicate that a person who appears to be intoxicated may be suffering from an illness, such as a diabetic reaction;

d) It can prove that a motorist is not impaired, and can thus be released at the scene and not suffer the indignities and inconvenience of an arrest; and

e) It engenders an awareness by the general public of higher probability of apprehension on the highway of impaired or intoxicated drivers.

A preliminary breath test is a valuable and reasonable use of police authority to determine the fact (or lack) of driver impairment. Considering the government's interest in highway safety (50 percent of all highway fatalities are alcohol-related) and the relatively low (possibly de minimus) intrusion occasioned by a PBT, the laws allowing a PBT have been consistenly upheld by the state courts.

An effective law enforcement campaign, which includes the systematic use of a PBT in traffic stops, can substantially raise the public's awareness of the probability of apprehension on the highways and, therefore, reduce significantly the annual number of drinking-driving accidents.

The typical PBT statute enables police officers to use this new investigative technique, prescribes conditions under which it may be used, determines the methodology to be employed, imposes a duty upon motorists to cooperate with the police in its use, provides sanctions for breach of this duty, and prescribes if and how the results obtained will be used in court. The statute, both on its face and as it is actually used, must meet all requirements imposed by the U.S. and State Constitutions. If there are ambiguities in the statute, the courts will interpret these ambiguities in favor of the defendant whenever possible. If this is not possible, the courts will render the statute unconstitutional. See U.S. v. Simms 508 F. Supp 1179 (1979).

Constitutional Issues Involved in Use of PBT

When a law enforcement officer makes a stop and requests the vehicle operator to submit to a PBT, a constitutional issue may arise in that the Fourth Amendment of the U. S. Constitution (applied to the states via the Fourteenth Amendment) guarantees to individuals the right to be free from unreasonable searches and seizures. The stopping of the individual would be a seizure of the person, and the administration of an active (as opposed to passive) type of preliminary breath test may be a search within the context of the Fourth Amendment. There is a school of thought that this test is not a "search" to which the Fourth Amendment constraints would be applicable. It has been stated that the sampling of "deep lung air" which is the subject of the search, is not sufficiently "intrusive" using the modern PBT devices, to constitute a search. Some analogies of this activity include voice exemplars, handwriting samples, removal of cordite from under fingernails, swabs of grease from hands, etc., which have been held as not being constitutionally protected searches. Should the test be accepted as a search, in order for the search and/or seizure to be valid, it must either be consented to by the individual searched, or be pursuant to a warrant, incident to an arrest, or involve exigent circumstances (immediate loss of evanescent evidence). Probable cause must be present in the last three situations.

In the case of Terry v. Ohio, 392 U.S. 1 (1968), however, the Supreme Court upheld the seizure and search of a person based on something less than probable cause (i.e., a "reasonable suspicion"). The court weighed the government's need for the search to protect the life of the officer, against the intrusiveness of the search iteself (here, a "pat-down" for weapons), and concluded that the search and seizure was not unreasonable in light of the Fourth Amendment. While it is apparent that a request for a PBT is not the same as a "pat down" to protect the life of the officer, the Terry balancing test has been subsequently applied to a variety of situations totally unrelated to the safety of the officer, and these include airport and international border searches.

Three recent State Supreme Court cases have substantial bearing on the issue of the requirements of "probable cause" for the arrest of a suspected DWI prior to a request to submit to a PBT. In the first case, Asbridge v. N. Dakota State Highway Commissioner, 291 N.W. 2d 739 (N.D. Sup Ct), reported on June 10, 1980, the court indicated that the defendant's failure of an on-site chemical screening test (PBT) was one of the elements in establishing "reasonable grounds" or probable cause for DWI arrest. It stated: "Similar in purpose to the various field sobriety tests, the purpose of an on-site chemical screening test is to insure that sufficient probable cause exists to warrant an arrest." (emphasis supplied)

In Marben v. State, 294 N.W. 2d 697 (Minn. Sup. Ct.), reported on August 20, 1980, Marben claimed that because he was not offered a PBT by the arresting officer prior to placing him under arrest, the arrest was invalid and the Implied Consent Law could not be invoked against him. The Court disagreed with this contention, and said the following:

"Contrary to Marben's assertion, we believe that the Implied Consent Law does not require the administration of a preliminary screening test where the officer ascertains from his own observations that the driver is under the influence of alcohol. Rather, the preliminary screening test appears to be intended to be utilized in situations where the officer, after observing the driver, is unsure whether the driver is under the influence of alcohol. See State v. Grovum, 297 Minn. 66. (emphasis supplied)

In State v. Gerber, 206 Neb. 75, 291 N.W. 2d 403 (1980), in regard to e use of a PBT test, the court said, "It should be kept in mind that the stimony with regard to the preliminary test was offered not for the purpose of tablishing the charge against Gerber, but rather to establish justification for acing Gerber under arrest." In Nebraska, it would appear that the Fourth endment issue is settled until the U.S. Supreme Court speaks.

Several other state high court decisions have been made which specify at the major purpose of a PBT is to assist the police officer in determining ether probable cause exists to warrant an arrest.

In State v. Grovum, 209 N.W. 2d 788, (Sup. Ct. of Minn., 1973) on ge 791, the court held:

"The use of a preliminary screening test for determining possible violations of the driving-while-under-the-influence statute is delineated by the statute and is solely for the purpose of guiding the officer as to whether an arrest should be made." (emphasis supplied)

In State v. Bellino, 390 A 2d 1014 (Sup. Ct., Maine, July 1978) the urt, in dealing with a pre-arrest breath test, stated:

"We take notice that subsection 10-c does not expressly require an arrest as a condition precedent to its application. Rather, it subjects the operator initially to a compulsory investigative process to determine whether the operator has consumed alcohol, this through what may be termed a preliminary unofficial breath test to be used only to establish probable cause for the requirement of an official second chemical test of blood or breath, if the preliminary breath test results are positive." (emphasis supplied)

The state courts have consistently interpreted the PBT laws as thority for field officers to conduct preliminary investigations to determine ther the motorists are in violation of the state's drinking-driving laws.

No direct challenge on constitutional grounds has been made in New York inst the use of PBT's as yet. Some New York lower court decisions have mined these issues.

In People v. Delaney, 83 Misc. 2d 576, 373 N.Y.S. 2d 477 (September 5), in referring to a PBT, this lower court rules, on page 480:

"In the breath test situation, the only reason for asking the motorist to take a breath test is to assist the officer in making a determination as to whether he is going to place the defendant under arrest, and consequently the sole and only function is to incriminate the motorist." (emphasis supplied)

In another lower court New York case, the court specifically applied the Terry doctrine to a PBT. It stated:

"However, if the police officer has no probable cause to make the arrest for driving while intoxicated, he may 'in appropriate circumstances and in an appropriate manner approach a person for purposes of investigating possible criminal behavior even though there is no probable cause to make an arrest,' Terry v. Ohio, supra. There, however, has to be "reasonable suspicion."

"On the other hand, while investigating an accident, the police officer may obtain 'probable cause,' or at least the 'necessary suspicion' to bring the fact situation within the purview of Terry v. Ohio, supra. In that event, the search and seizure of the breath would not be an illegal search and seizure."

"This court believes that a demand for a breath screening test under appropriate circumstances, bears the same relationship to a full scale chemical test as a pat down, to determine if a suspect has a weapon, under the circumstances authorized by Terry v. Ohio, supra, bears to a full scale body search."

Another aspect to be considered is that, with the exception of the State of Nebraska whose penalty for refusal treats the offense as a "misdemeanor," the penalties for refusal of a PBT are generally administrative in nature. Therefore, the constitutional requirements in these instances may be somewhat less stringent than in criminal prosecutions. In Camera v. Municipal Court, 387 U.S. 523, 18 L. EA. 2d 930, 87 S. Ct. 1727, the court stated:

"...this is not to suggest that a health official need show the same kind of proof to a magistrate to obtain a warrant as one must who would search for the fruits or instrumentalities of crime. Where considerations of health and safety are involved, the facts that would justify an inference of 'probable cause' to make an inspection are clearly different from those that would justify such an inference where a criminal investigation has been undertaken."

"The test of 'probable cause' required by the Fourth Amendment can take into account the nature of the search that is being sought."

"The warrant procedure is designed to guarantee that a decision to search private property is justified by a reasonable governmental interest. But reasonableness is still the ultimate standard. If a valid public interest justifies the intrusion contemplated, then there is probable cause to issue a suitably restricted search

warrant ... Such an approach neither endangers time-honored doctrines applicable to criminal investigations, nor makes a nullity of the probable cause requirement in this area. It merely gives full recognition to the compelling public and private interests here at stake, and in so doing, best fulfills the historic purpose behind the constitutional right to be free from unreasonable government invasions of privacy."

The United States Supreme Court has, in many instances, utilized the balancing concept, which is a separate element of the Terry doctrine in other situations where the public interests out-weighed the importance of protecting the individual from minimal search-type instrusions. In Davis v. Mississippi, 394 U.S. 721 L-Ed. 2d 676, 89 S. Ct. 1394, the court held that:

"Detention for fingerprinting may constitute a much less serious intrusion upon personal security than other types of police searches and detentions. Fingerprinting involves none of the probing into an individual's private life and thoughts that marks an interrogation or search."

In Pennsylvania v. Mimms, 4321 U.S. 106, 54 L. Ed. 2d 331, 98 S. Ct. 330, in a police-stop case, the court stated:

"Reasonableness, of course, depends on a balance between the public interest and the individual's right to personal security free from arbitrary interference by law officers."

"Against this important interest, we are asked to weigh the intrusion into the driver's personal liberty occasioned not by the initial stop of the vehicle, which was admittedly justified, but by the owner to get out of the car. We think this additional intrusion can only be described as de minimus."

In a very recent case, U.S. v. Mendenhall, 64 L. Ed. 2d 497, the court held that:

"Terry v. Ohio ... establishes that a reasonable investigative stop does not offend the Fourth Amendment. The reasonableness of a stop turns on the facts and circumstances of each case. In particular, the Court has emphasized (i) the public interest served by the seizure, (ii) the nature and scope of the intrusion, and (iii) the objective facts upon which the law enforcement officer relied, in light of his knowledge and expertise."

Applying the same balancing test to the use of PBTs, the government's need for the stop and search (to remove a potentially dangerous drunk driver, armed in a sense with a motor vehicle) balanced against the intrusiveness of the search (short delay of a "reasonably suspicious" motorist and having him blow into a pocket-sized device) may well result in the search being held to be reasonable and thus constitutional, when this issue does reach the high court.

Statutes authorizing the use of PBTs usually deal with this issue by prescribing the grounds upon which an officer must base his request. Although two states require probable cause (which constitutionally would be sufficient to make an arrest), most request something less stringent, but probably stringent enough to meet the Terry test. Recently the court has settled certain implied consent disputes in Mackey v. Montrym 99 S. Ct. 2612 (1979), and in doing so used an analysis that seems favorable to the validity of PBT laws. Thus, while the constitutionality of PBT laws remains unsettled, the case for validity seems to be strengthened by recent decisions.

Another Supreme Court case, Delaware v. Prouse, 440 U.S. 648 (1979) and a recent Tenth Circuit Court of Appeals decision in U.S. v. Prichard, issued April 1, 1981, are also helpful. In Prichard the court held that a roadblock on an interstate highway with which police attempted, albeit unsuccessfully, to check the license and registration of every motorist that passed by did not run afoul of Delaware v. Prouse. The police began the roadblock by stopping every car, but as soon as 10 cars were backed up, the officer would wave all of them through. Once the area was clear, the officer would reinstate the roadblock and begin this process again. The police later "candidly conceded" that they had planned "to enforce the law" if they observed evidence of other crimes while checking licenses and registration. During the stop of the vehicle at issue in this case, the officer discovered and seized a large quantity of cocaine.

In Prouse the Supreme Court held that random, totally discretionary license checks violated the Fourth Amendment, but at the same time indicated that a roadblock of "all incoming traffic" might withstand constitutional scrutiny. Prichard does not involve the "100% roadblock" referred to in Prouse, the court says, but it was no less reasonable. The police attempted to stop all traffic "insofar as was humanly possible," and their decision to let cars pass through when the traffic backed up was "reasonable and ... non-violative of the rule of Prouse."

The Prouse-Prichard roadblock scenario could be used to stop motor vehicles in a non-discretionary manner, and the observations made by the police officer while collecting information about license and registration could provide the articulable and reasonable suspicion that a DWI-related violation exists, which would then support an involuntary application of a non-passive PBT. This sort of "boot-strapping" would apparently be permissible under Prichard since the police candidly admitted that they planned to charge on any law violations that appeared during the process of the administrative type registration inspection.

In a recent New Jersey Supreme Court case, State v. Coccamo, N.J. Sup. Ct., Morris County, 9/26/80, in approving a roadblock practice to deter drunk drivers, the court cited the Prouse case, and stated:

> "After balancing the State's strong interest in protecting the public from the substantial risk posed by drunk drivers, with the minor inconvenience which may be caused to every fifth motorist and the fleeting, minimal intrusion upon his privacy, the State's action must be considered as a reasonable infringement upon the motorist's expectation of privacy. Nor did the stop become overly intrusive when the defendant was asked to produce his license and registration. When

the initial detention is lawful, as it was here, the police may require the driver to produce his driving credentials."

If a PBT is to be administered with the motorist's consent, such consent must be informed and voluntary. There are occasions on which this may be difficult to prove in court. Some states have attempted to remedy this situation with a statute stating that as a condition to the privilege of driving on the state's highways, the motorist is deemed to have given his consent to such testing. Usually such a statute involves a formal "evidentiary" test rather than a preliminary screening test, but occasionally preliminary tests are also included. Some PBT statutes require that an officer notify the motorist of his right to refuse the test and the consequences of such refusal. Other states require that the motorist be advised that there is no adverse consequence of such refusal, while many states will require license suspension. This is usually connected with the implied consent statute.

Other statutory provisions relate to the admissibility of the evidence in court. If the search is valid (after a legal arrest), there should be no problem, constitutionally speaking, with allowing PBT test results into evidence. Since the "search" issue associated with the PBT situation is unsettled, many states have opted for the safe route by stating that such test results are inadmissible as evidence, but only serve to indicate to the officer whether additional testing is required (i.e., after arrest). It is presumed that should there be an issue of whether the arrest itself was valid, the test results would be admissible for the purpose of establishing probable cause. Most statutes are silent on this, however.

Likewise, most statutes are silent on the issue of admissibility of refusal to take the preliminary breath test. This issue raises a possible problem with the Fifth Amendment right against self-incrimination. It would be constitutional to allow such refusal to be admissible for the purposes of license revocation under an implied consent statute (a non-criminal procedure), but it is questionable as evidence that the driver knew he was guilty of the crime and thus did not submit to the test. Some states do permit into evidence the fact of refusal to take the more formal implied consent test, and the inference to be drawn from this refusal is that the driver knew he was guilty. In Gerber, infra, the court held that the receipt of the PBT in evidence was not prejudicial error and not grounds for reversal.

PBT Test Devices

For those readers who are not familiar with the equipment used to administer pre-arrest (or preliminary) breath tests, the following short descriptions are provided for the two most commonly used PBT devices:

- The "baggy" test is composed of a tube containing a yellow chemical, potassium dichromate, in sulfuric acid, on silica gel crystals and a limiting bag. The subject blows through the tube until the bag on the other end is filled. The yellow color turns to green at the entrance end, and the length of the green change is a rough indicator of the BAC. It is used widely in Europe and in some places in this country. It is disposable, and is used one time only. The length of the green

can be set for any BAC desired as a standard. There is usually nothing to be sent to a laboratory for analysis.

- Electronic pocket-sized portable devices: These hand-held devices use either a fuel cell or an infra-red sensor, and do not require wet chemicals. They give readouts either as pass-fail or in digital BACs. Examples are the Alco-Sensor II and ALERT J3AD.

- Evidentiary instruments in mobile units: These can be used either as PBT devices or as evidentiary test units. These units are large in size. The test procedure takes at least 15 minutes, and requires the suspect to leave his vehicle. Examples include the Breathalyzer and the P.E. Intoximeter.

Each of the above devices are described as "active" as opposed to passive systems in that the subject being tested must cooperate by blowing into the device. A passive system (not available) would detect alcohol in the ambient air in the vicinity of subject's mouth, and would not require the active cooperation of the subject.

These devices are also categorized as screening devices, evidentiary devices, or remote collection devices. Remote collection devices are intended to collect whole breath specimens or the alcohol from a fixed volume of breath for later analysis. Their chief purpose is to provide a specimen to confirm an evidentiary test. Colorado requires this, as do some parts of Arizona. They form no part of preliminary breath testing. Examples are the Intoximeter indium encapsulating units, the Lucky silica gel tubes, and the Breathalyzer calcium sulfate tubes. All these methods require a special breath collection device. They are ancillary to evidential testing.

Several of the newest PBT devices that have undergone extensive testing by the National Highway Traffic Safety Administration have demonstrated the degree of accuracy and reliability that is presently required of instruments in a forensic laboratory, used to produce BACs for evidentiary purposes. In the event that future trial courts demand that an evidential breath test be taken within 30 minutes of the DWI arrest, as is now being suggested by some defense attorneys*, the new generation of PBT devices may suddenly enjoy a much wider market than at present. In states with a PBT law, the officer at the scene can use the first test to make a decision to arrest, and follow this up with a second, post-arrest breath test, under the implied consent statute, which should be admissible at trial.

Currently, fourteen states have statutes which provide for pre-arrest breath testing. These states are listed, and the character of their statutes summarized in Table 2-1. The sections which follow discuss the status of PBT laws in each of these states, and the operational aspects of the law in the

*See Time Magazine, Vol. 118 No. 5, page 64, 3 August 1981.

STATE	PBT	PBT legally permissible - no PBT stat.	A Grounds for request	B Consequences of refusal	C Admissibility of results	D Admissibility of refusal	E Is testing methodology prescribed?	F Test is required	G Notification of rights	STAT. CITATION(S)	COMMENTS
Ala.											
Alaska											
Ariz.											
Ark.											
Calif.											
Colo.											
Conn.		[]									
Del.											
Fla.	■		2	5	2	-	1	1,2	1*	322.261(1)(b)	*written consent required
Ga.											
Hawaii		[]									
Idaho		[]									
Ill.											
Ind.	■		1	3[c],6	1*	1*,6[c]	1	1	-	9-4-4-3-1 [61-2001c]	*implied
Iowa		[]									*not limited to a "breath" test; "not in presence" restriction
Kans.											
Ky.											
La.											
Maine	■[c]		5,6	-	-	-	2	2		29 § 1312.11C	
Md.											
Mass.											
Mich.											
Minn.	■■		2	1*,3,7[c]	1*	3	1	2	-	169.121 subd.6; 169.123 provision	*if chemical test is also refused for implied consent test
Miss.	■■		-	-	2*	-	2	2	-	63-11-5*	*authorizes rules & regs. for PBT, + implied by "unofficial"
Mo.											
Neb.	■		1,*,6	1*,4,6	-	-	-	2	2	37.669.08(3) and (5)	*misdemeanor
Nev.											
N.H.											
N.J.		[]									
N.Mex.											
N.Y.	■■		5*,6*	-	-	-	-	2	-	1192-a	*cl required at least "reasonable suspicion" (W)
N.C.	■■		3	5	2	-	1	2	3	20-16.3	
N.Dak.	■■		2,3,6	3	2	-	2	2	3	39-20-14	
Ohio											
Okla.		[]									
Oreg.											
Pa.		[]									
R.I.		[]									
S.C.											
S.Dak.	■		5,6	-	-	-	-	2	3	32-23-1.2	*must closely pre assess
Tenn		[]									
Tex.											
Utah		[]									
Vt.	■■		3	-	-	-	-	2	-	1201	*must closely PBT
Va.	■■		4*	5	2	2	2	1,2	1	18.2-267	*suspected of violation of § 18.2-266
Wash.											
W.Va.											
Wisc.	■		1	1*	2	1*	1	2	2	343.303 subds. (2)(a) and (3)	*unless implied consent test given for revocation of license only
Wyo.											
D.C.		[]									
P.R.	■										
V.I.											

LEGEND

- = cited statute is silent on issue
- *,c = references to COMMENTS column
- cl = ambiguity clarified by case law

Statutory Characteristics

A Grounds for requests:

1. Probable cause (violation involving alcohol)
2. Reason to believe (violation involving alcohol)
3. Reasonable grounds (violation involving alcohol)
4. Suspicion (violation involving alcohol)
5. Any accident
6. Any traffic violation

B Consequences of refusal:

1. Criminal penalty
2. Civil penalty
3. Suspension/revocation of license
4. Fine
5. No penalty
6. Charged with DWI offense
7. Required to take chemical test

C Admissibility of PBT results:

1. Yes - all cases
2. No - all cases
3. Only to justify arrest/implied consent test

D Admissibility of refusal:

1. Yes - all cases
2. No - all cases
3. To justify arrest/implied consent test
4. In license revocation procedures

E Testing methodology:

1. Prescribed
2. None

F Test is required:

1. By motorist's demand
2. At officer's discretion
3. Prior to arrest (at least a request to test)

G Notification of Rights:

1. Refusal and no penalty
2. Refusal with penalty
3. None

states in which interviews of police, prosecutors, defense attorneys, and judges were conducted.

2.1 FLORIDA

2.1.1 Statutory Provisions

Sec. 322.251. Suspension of license; chemical test for intoxication.

1.(b)1. Notwithstanding the provisions of this section, a law enforcement officer, who has reason to believe that a person's ability to operate a motor vehicle is impaired by alcohol and that the person has been operating a motor vehicle during the period of such impai[illegible] may, with the person's consent, give, or the person may demand, a prearrest breath test for the purpose of determining if said person is in violation of Sec. 316.028(1), but the taking of such prearrest breath test shall not be deemed a compliance with the provisions of paragraph (a). The results of any test administered under this section shall not be admissible into evidence in any civil or criminal proceeding. An analysis of a person's breath in order to be considered valid under the provisions of this section, must have been performed according to methods approved by the Division of Health of the Department of Health and Rehabilitative Services. For this purpose, the Division of Health is authorized to approve satisfactory techniques or methods.

2. Prior to administering any prearrest breath test, a law enforcement officer shall advise the motor vehicle operator that he has the right to refuse to take such test, and, prior to administering such test, a law enforcement officer shall obtain the written consent of the motor vehicle operator.

2.1.2 Case Law

The pre-arrest test is to be used when the officer does not have probable cause but does have a reasonable belief that the individual was driving under the influence of alcoholic beverages. Op. Atty. Gen., 075-46, Feb. 20, 1975.

While the above opinion seems to assert a substantive distinction between "probable cause" and "reasonable belief," these terms are most frequently used on an interchangeable basis. It seems clear that the Attorney General endorses a lesser standard than probable cause, and the authors here believe it means simply a reasonable and articulable suspicion.

It is unnecessary under Federal or Florida constitutions or statutes to place driver under arrest prior to administering a blood test to determine if he is intoxicated. State v. Mitchell, 245 So. 76 2d (1971). The court based its decision on Schmerber v. California, 384 U.S. 757 (1966) stating that the relevant act was not arrest of the subject, but whether there was a clear indication of relevance and likely success of a test of the subject's blood for alcohol.

See Section 5.3 for in-depth study of this state's PBT laws.

2.2 INDIANA

2.2.1 Statutory Provisions

Sec. 9-4-4.5-3 (47-2003e). Opportunity to submit to chemical test prior to arrest. -- (a) Any law enforcement officer authorized to enforce the laws of this state regulating the use and operation of vehicles on public highways who has probable cause to believe that any person has committed the offense of operating a vehicle while intoxicated, under IC 9-4-1-54, though not in his presence or view, shall not place such person under arrest for such offense until he has first offered to such person the opportunity to submit to a chemical test; however, it is not necessary to offer such an opportunity to a person who is unconscious. Any such person who agrees to submit to such chemical test shall not be arrested, but shall accompany the officer to the nearest available chemical test device for the purpose of taking such test as a condition of the driving privilege:

(1) If such chemical test results in prima facie evidence that such person is not intoxicated, he shall not be arrested and charged with such offense and he shall be released immediately.

(2) If such chemical test results in relevant evidence, coupled with other evidence, that such person is intoxicated, he may be arrested and charged with such offense.

(3) If such chemical test results in prima facie evidence that such person is intoxicated, he shall be arrested and charged with such offense.

(b) (Redesignated as subdivision (a)(2) by 1978 amendment.)

(c) (Redesignated as subdivision (a)(3) by 1978 amendment.)

(d) If any person shall refuse to submit to such chemical test, pursuant to this chapter, he may be arrested and charged with such offense, and his current driving license shall be delivered to the judge of the court in which such charge is filed, along with a certification of "refusal to submit," to motor vehicles.

See also Sec. 9-4-4.5-3 for definition of "chemical test."

This statute is not restricted to a breath test, but authorizes a pre-arrest test of breath, blood, urine, or other bodily substance for the presence of alcohol.

2.2.2 Case Law

The state must establish a foundation before Breathalyzer results are admissible into evidence. Klebs v. State, 305 N.E. 2d 781 (1974).

The Indiana Court of Appeals, First District, would not construe the language "nearest available test device" so narrowly as to require a law enforcement officer to forego an accurate and approved chemical test (blood test at hospital with analysis at State Police Laboratory) for another, which would have required moving the subject elsewhere or transporting the device to him. The court also held that exigent circumstances (dissipation of alcohol from blood) allow for a sample to be taken without a warrant, consent or arrest. Clark v. State, 372 N.E. 2d 185 (1978).

In Dunham v. State, 375 N.E. 2d 245 (1978), the court held that a certificate of "breath test refused," is admissible in license revocation proceedings.

2.2.3 Problems with Statutory Interpretation

The first sentence of the statute appears to limit pre-arrest testing to those situations where the offense of driving while intoxicated occurred outside the officer's presence or view. This wording is at variance with previous versions of the provision.

Also, it is not clear from the statute that the purpose of delivering the driver's license to the court, along with a certificate of refusal to take a chemical test, is to effectively withdraw the driving privilege, even before the court has acted to suspend the license. Failure to deliver the defendant's license to the court, with the certification, does not preclude the court from suspending the license. Bowlin v. State, 330 N.E. 2d 353 (1975).

2.2.4 Problems with Statutory Application

The Indiana statute, when viewed as another layer of protection of the civil rights of the motorist, works very well. Viewed as a device for simplifying the problem of establishing probable cause, it involves some problems. Since the statute requires probable cause before a pre-arrest test is given, the statute imposes an additional requirement with which the police must comply (in certain circumstances) before placing a person under arrest. Such additional requirement is not necessary to meet constitutional standards.

It is reported that the state police are using PBTs to a limited extent. There has been no objection in court to the use of PBTs in the field to date. The police support the pre-arrest tests and feel that they save time and are especially useful in separating out marginal cases, which probably would not be prosecuted even if an arrest were made.

2.3 MAINE

2.3.1 Statutory Provisions

Chapter 29 Sec. 1312.11C. Every person operating a motor vehicle which has been involved in an accident or which is operated in violation of any of the provisions of this Title shall at the request of a police officer, submit to a breath test to be administered by the police officer. If the test indicates that the operator has consumed alcohol, the police officer may require the operator to submit to a chemical test in the manner set forth in this section.

2.3.2 Case Law

In State v. Bellino, 390 A.2d 1014 (1978), the Supreme Judicial Court of Maine clarified an ambiguity in Section 29-1312, Subsection 10-C (now the current 11C) by stating that since the statute does not expressly require an arrest as a condition precedent to the administration of a preliminary breath test, no arrest is required; and that the purpose of the test is to establish probable cause for requiring an official second chemical test, blood or breath, if the preliminary breath test results are positive.

2.3.3 Problems with Statutory Interpretation

The statute does not specifically state that the test is to be given prior to arrest. This is apparently clarified by the Bellino case, supra, although a preliminary breath test was not an issue in that case.

The statute is silent on the issues of consequences for refusal, admissibility of PBT results, and admissibility of the fact of refusal to take the test.

2.3.4 Problems with Statutory Application

No problems were noted.

2.4 MINNESOTA

2.4.1 Statutory Provisions

Sec. 169.121, Subd 6. When a peace officer has reason to believe from the manner in which a person is driving, operating, or controlling a motor vehicle or has violated subdivision 1, he may require the driver to provide a sample of his breath for a preliminary screening test using a device approved by the commissioner of public safety for this purpose. The results of this preliminary screening test shall be used for the purpose of deciding whether an arrest should be made and whether to require the chemical tests authorized in section 169.123, but shall not be used in any court action except to prove that a chemical test was properly required of a person pursuant to section 169.123, subdivision 2. Following the screening test, additional tests

may be required of the driver pursuant to the provisions of section 169.123.

The driver of a motor vehicle who refuses to furnish a sample of his breath is subject to the provisions of section 169.123 unless in compliance with 169.123, he submits to a blood, breath or urine test to determine the presence of alcohol or a controlled substance.

See also 169.123 subd 2; PBT test refusal is grounds for requiring a chemical test.

2.4.2 Case Law

In State v. Grovum, 209 N.W. 2d 788 (1973), the Supreme Court of Minnesota held that refusal to take preliminary screening test for drugs or alcoholic beverages could not be grounds for revocation of license, but that refusal to take the chemical test provided by the implied consent statute would be grounds for a license suspension, and that such chemical test could be requested prior to an actual arrest if the police already had probable cause.

See Section 5.2 for in-depth study of this state's PBT laws.

2.5 MISSISSIPPI

2.5.1 Statutory Provisions

Sec. 63-11-5. Implied consent to chemical test; warnings; preliminary test.

* * *

The commissioner of public safety and the state board of health are authorized to adopt procedures, rules, and regulations to allow the arresting officer to give a preliminary, unofficial "on-the-spot" test to establish whether or not the breath of the driver is free from any alcoholic content before the official chemical analysis test of his breath is made. However, the failure to give the preliminary test shall in no way affect prosecution under this chapter.

2.5.2 Case Law

None. Law is not used.

2.5.3 Problems with Statutory Interpretation

It is unclear whether this statute was intended to provide for the "unofficial 'on-the-spot'" breath test to be given prior to arrest. The term "arresting officer" is used, implying that an arrest must first be made. This test is planned to be used in instances where the driver is a great distance from a Breathalyzer, and this would let the officer know whether it would be worthwhile to take the driver to the Breathalyzer site or not.

2.5.4 Problem with Statutory Application

This statute has not been used to date because no procedures, rules or regulations have been adopted by the commissioner of public safety or the state board of health allowing for such testing.

2.6 NEBRASKA

2.6.1 Statutory Provisions

Sec. 39.669.08. Drunken driving; implied consent of operator of motor vehicle to submit to chemical test to determine alcoholic content of blood, urine, or breath; when test administered; refusal; penalty.

(3) Any law enforcement officer who has been duly authorized to make arrests for violation of traffic laws of this state or ordinances of any city or village may require any person who operates or has in his actual physical control a motor vehicle upon a public highway in this state to submit to a preliminary test of his breath for alcohol content if the officer has reasonable grounds to believe that such person has alcohol in his body, or has committed a moving traffic violation or has been involved in a traffic accident. Any person who refuses to submit to such preliminary breath test or whose preliminary breath test results indicate an alcohol content of ten-hundredths of one percent or more shall be placed under arrest. Any person who refuses to submit to such preliminary breath test shall be punished by a fine of not less than fifty dollars nor more than one hundred dollars.

(5) Any person who is required to submit to a preliminary breath test, or to a chemical blood, breath or urine test pursuant to this section shall be advised of the consequences of refusing to submit to such test.

See also 39.669.11 regarding admissibility of results.

2.6.2 Case Law

In State v. Gerber, 206 Neb. 75 (1980), the Supreme Court of Nebraska held that before the results of a PBT may be received in evidence, it must be shown that the requirements of Neb. Rev. Stat. Sec. 39-669.11 (Reissue 1978) have been met, including evidence that the method of performing the preliminary test has been approved by the Nebraska Department of Health (N.D.H) and that the person administering and interpreting the test possesses a valid permit issued by the N.D.H. for that purpose.

In State v. Orosco, 199 Neb. 532, 260 N.W.2d 303 (1977), the court held that the offering of a PBT is not a condition precedent to an arrest for any offense arising out of acts alleged to have been committed while the person was driving or in actual physical control of a motor vehicle while under the influence of alcohol. In effect, the court ruled that a driver can be arrested

for DUI without being offered a PBT if the arresting officer already had enough evidence to establish probable cause for arrest.

See Section 5.1 for in-depth study of this state's IPS and PBT laws.

2.7 NEW YORK

2.7.1 Statutory Provisions

Sec. 1193-a. Breath tests for operators of certain motor vehicles. Every person operating a motor vehicle which has been involved in an accident or which is operated in violation of any of the provisions of this chapter shall, at the request of a police officer, submit to a breath test to be administered by the police officer. If such test indicates that such operator has consumed alcohol, the police officer may require such operator to submit to a chemical test in the manner set forth in section eleven hundred ninety-four of this chapter.

2.7.2 Case Law

In People v. Grasser, 393 N.Y.S. 2d 1009 (1977), the Amherst Town Court held that use of PBT under the statute is constitutional, but could be unconstitutional in certain circumstances. This court would require that there would have to be at least a "reasonable suspicion" of the crime of driving while intoxicated. ("Reasonable suspicion" being language from Terry v. Ohio, 392 U.S.1.) The statute on its face is much broader, allowing PBT in cases of any traffic accident or violation.

2.7.3 Problems with Statutory Interpretation

The statute is silent on the issues of admissibility of test results, consequences of refusal, admissibility of refusal, and testing methodology to be used.

2.8 NORTH CAROLINA

2.8.1 Statutory Provisions

Sec. 20-16.3. Preliminary breath test. Any law enforcement officer having reasonable grounds to believe that a person has been driving or operating a vehicle on a highway or public vehicular area while under the influence of intoxicating liquor may, without making an arrest, request that such person submit to a preliminary chemical breath test to be administered by the officer. The results of this test shall not be admissible in evidence and failure to submit to the test shall not constitute a violation of this Chapter. Nothing contained in this section shall be construed to prevent or require a subsequent chemical test pursuant to G.S. 20-16.2. The law-enforcement officer requesting the test shall advise orally and in writing the person to be tested that his failure to take the subsequent chemical test pursuant to G.S. 20-16.2 will not result in a penalty and that such refusal will not require the taking of a chemical test. No device may be used to give a

chemical test under the provisions of this section unless it has been approved as to type and make by the Department of Human Resources.

2.8.2 Case Law

No case law on PBT noted.

2.8.3 Problems with Statutory Interpretation

While the statute does not specifically state that the fact of a refusal to take the PBT is inadmissible in court for any reason, it is clear from reading the statute that this is the case, since the motorist must be advised that no penalty results from his refusal, and that such refusal will not require the taking of a chemical test.

2.8.4 Problems with Statutory Application

It is reported that the state patrol is not using the PBT for two reasons: (1) it is not admissible in court, and (2) twenty minutes are required to administer the test. North Carolina expects to use PBT more in the future, primarily as a device to screen out those persons with low enough BAC readings that they should not be arrested.

2.9 NORTH DAKOTA

2.9.1 Statutory Provisions

Sec. 39-20-14. Screening tests. Any person who operates a motor vehicle upon the public highways of this state shall be deemed to have given consent to submit to an onsite screening test or tests of his breath for the purpose of estimating the alcohol content of his blood upon the request of a law enforcement officer who has reason to believe that such person committed a moving traffic violation or was involved in a traffic accident as a driver, and in conjunction with the violation or the accident the officer has, through his observations, formulated an opinion that such person's body contains alcohol. A person shall not be required to submit to a screening test or tests of his breath while at a hospital as a patient if the medical practitioner in immediate charge of this case is not first notified of the proposal to make the requirement, or objects to the test or tests on the ground that such would be prejudicial to the proper care or treatment of the patient. The screening test or tests shall be performed by an enforcement officer certified as a chemical test operator by the state toxicologist and according to methods and with devices approved by the state toxicologist. The results of such screening test shall be used only for determining whether or not a further test shall be given under the provisions of section 39-20-01. If such person refuses to submit to such screening test or tests, none shall be given, but such refusal shall be sufficient cause to revoke such person's license or permit to drive in the same manner as provided in section 39-30-04, and a hearing as provided in section 39-20-05 and a judicial review as provided in section 39-20-06 shall be available. No provisions of this section

shall supersede any provisions of chapter 39-20, nor shall any provision of chapter 39-20 be construed to supersede this section except as provided herein.

2.9.2 Case Law

No case law located.

2.9.3 Problems with Statutory Interpretation

The statute is silent on the issue of admissibility or refusal to take the test.

2.9.4 Problems with Statutory Application

No problems noted.

2.10 SOUTH DAKOTA

2.10.1 Statutory Provisions

Sec. 32-23-1.2. Submission to breath test required by officer -- Chemical test after positive breath test. -- Every person operating a motor vehicle which has been involved in an accident or which is operated in violation of any of the provisions of this chapter shall, at the request of a law enforcement officer, submit to a breath test to be administered by such officer. If such test indicates that such operator has consumed alcohol, the law enforcement officer may require such operator to submit to a chemical test in the manner set forth in this chapter.

2.10.2 Case Law

No case law noted.

2.10.3 Problems with Statutory Interpretation

The statute is silent on the issue of whether the breath test may be given before arrest. The breath test discussed in the statute appears to be merely for the purpose of determining whether further testing is needed, and is not clearly for the purpose of establishing probable cause.

The statute is also silent on the issues of consequences for refusal of the test, admissibility of such refusal, admissibility of test results and testing methodology.

2.10.4 Problems with Statutory Application

This statute is not viewed by the state patrol as providing for a pre-arrest breath test. If the arrested driver "passes" the breath test, then he/she is charged with something other than driving with a 0.10% blood alcohol level.

2.11 VERMONT (Reported upon because it is described in other literature as having a PBT law)

2.11.1 Statutory Provisions

Sec. 1202. Consent to chemical test -- (a) Any person who operates, attempts to operate or is in actual physical control of any vehicle on a highway in this state is deemed to have given his consent to the taking of a sample of his breath for the purpose of determining the alcoholic content of his blood. If breath testing equipment is not reasonably available or if the person is unable to give a sufficient sample of his breath for testing or if a state police officer or law enforcement officer who has been certified by the Vermont criminal justice training council pursuant to Title 20, section 2358, has reasonable grounds to believe that the person is under the influence of a drug other than or in addition to alcohol, he is deemed to have given his consent to the taking of a sample of his blood for those purposes. If in the officer's opinion a person is incapable of decision or unconscious or dead, it is deemed that his consent is given and a sample of his blood shall be taken. A sample of breath shall be taken only by a law enforcement officer who has been certified by the department of public safety to operate a field sample gathering device for the gas chromatograph intoximeter whenever a state police officer or a law enforcement officer who has been certified by the Vermont criminal justice training council pursuant to Title 20, section 2358, had reasonable grounds to believe that the person was operating, attempting to operate or was in actual physical control of any vehicle while under the influence of intoxicating liquor.

(b) A person who is requested by a law enforcement officer to submit to a chemical test under this section shall have the right to consult an attorney prior to deciding whether or not to submit to the chemical test. The person must decide within a reasonable time, but no later than thirty minutes from the time of the initial attempt to contact the attorney, whether or not to submit to the chemical test. If a person submits to a breath test, he shall have also the right to have a blood test administered at his expense. Arrangements for the blood test shall be made by the person submitting to the breath test, or by his attorney or some other person acting on his behalf except where the person is detained in custody after administration of the breath test, in which case the law enforcement officers having custody of the person shall make arrangements for administration of the blood test upon demand.

Note: This statute is actually Vermont's implied consent law, and the state does not have a separate PBT law.

2.11.2 Case Law

Arrest is not a statutory prerequisite to the admissibility of a chemical breath test analysis under this statute if such a test is administered with the driver's consent. State v. Brown, 125 Vt. 58, 209A 2d 324 (1965).

2.11.3 Problems with Statutory Interpretation

The statute cited does not clearly provide for a preliminary breath test. It is not clear whether such a test is authorized prior to arrest. While the Brown case, supra, indicates that arrest is not necessary when the driver consents to the test, the statute indicates that a total of one test ("a test") may be administered. Therefore, if a test is given pre-arrest, another one may not be required later. This effectively rules out the use of any devices whose reliability is adequate only for screening purposes.

2.11.4 Problems with Statutory Applications

Because the statute does not allow for administration of more than one test, this statute is not used as authority for preliminary breath testing. PBTs, therefore, are generally not used in Vermont.

2.12 VIRGINIA

2.12.1 Statutory Provisions

Sec. 18.2-267. Analysis of breath to determine alcoholic content of blood. -- (a) Any person who is suspected of a violation of Sec. 18.2-266 shall be entitled, if such equipment be available, to have his breath analyzed to determine the probable alcoholic content of his blood. Such breath may be analyzed by any police officer of the State, or of any county, city or town, or by any member of the sheriff's department of any county, in the normal discharge of his duties.

(b) The State Board of Health shall determine the proper method and equipment to be used in analyzing breath samples taken pursuant to this section.

(c) Any person who has been stopped by a police officer of the State, or of any county, city or town, or by any member of the sheriff's department of any county and is suspected by such officer to be guilty of a violation of Sec. 18.2-266, shall have the right to refuse to permit his breath to be so analyzed, and his failure to permit such analysis shall not be evidence in any prosecution under Sec. 18.2-266, provided, however, that nothing in this section shall be construed as limiting in any manner the provisions of Sec. 18.2-268.

(d) Whenever the breath sample so taken and analyzed indicates that there is alcohol present in the blood of the person from whom the breath was taken, the officer may charge such person for the violation of Sec. 18.2-266, or a similar ordinance of a county, city or town wherein the arrest is made. Any person so charged shall then be subject to the provisions of Sec. 18.2-268, or of a similar ordinance of a county, city or town.

(e) The results of such breath analysis shall not be admitted into evidence in any prosecution under Sec. 18.2-266, the purpose of this section being to permit a preliminary analysis of the alcoholic content of the blood of a person suspected of having violated the provisions of Sec. 18.2-266.

(f) Police officers or members of any sheriff's department shall, upon stopping any person suspected of having violated the provisions of Sec. 18.2-266, advise such person of his rights under the provisions of this section.

2.12.2 Case Law

None noted. See Section 5.4 for in-depth study of this state's PBT law.

2.13 WISCONSIN

2.13.1 Statutory Provisions

Sec. 343.305. Revocation of license on refusal to submit to tests.

* * *

(2)(a) If a law enforcement officer has probable cause to believe that a person has violated Sec. 346.63(1) or a local ordinance in conformity therewith, the officer may request the person, prior to arrest and issuance of a citation, to take a preliminary breath test for the purpose specified under sub. (1), using a device approved by the department for the purpose. A person may refuse to take a preliminary breath test without being subject to revocation under sub. (9) if he or she consents, after arrest, to take a test under par. (b). Neither the results of the preliminary breath test nor the fact that it was administered shall be admissible in any action or proceeding in which it is material to prove that the person was under the influence of an intoxicant or a controlled substance.

2.13.2 Case Law

None noted.

2.13.3 Problems with Statutory Interpretation

No problems noted.

2.13.4 Problems with Statutory Application

Wisconsin's PBT statute clearly requires that the police officer have probable cause before administering a PBT to arrest; thus the PBT statute would not be useful in those situations where the officer has only reasonable suspicion that a person has violated the driving-under-the-influence statute. Since the PBT results are inadmissible, and since post-arrest testing does not require a prior PBT, the only purpose a PBT could serve is to determine whether additional testing for blood alcohol level should be pursued.

7.1 A PROPOSED STATUTE FOR ILLEGAL PER SE

Section 1000.00

Driving While Under Influence of Alcohol or Any Other Drugs

(a) A person shall not drive or be in actual physical control of any vehicle while:

1. The alcohol concentration in his blood or breath is 0.10 grams of alcohol per 100 milliliters of blood or 0.10 grams of alcohol per 210 liters of breath, as shown by chemical analysis;

2. Under the influence of alcohol;

3. Under the influence of any drug or combination of drugs to a degree which renders him incapable of safely driving; or

4. Under the combined influence of alcohol and any other drug or drugs to a degree which renders him incapable of safely driving;

(b) The fact that any person charged with violating this section is or has been legally entitled to use alcohol or any other drug shall not constitute a defense against any charge of violating this section.

5. Driving while under the influence of alcohol or any other drugs is a classification of the offense.

Commentary on IPS Statute

The chemical analysis includes wet and physical chemistry.

The rationale for charging under a statute combining IPS with traditional DUI: A majority of prosecutors surveyed by this project preferred to charge both IPS and traditional DUI offenses in order to give the jury the maximum proof of intoxication. Some were reluctant to try a violation of IPS if no other indicia of impairment were present. This was due to previous experience with some juries that will not convict without broader evidence of impairment.

Even in states with IPS statutes, defenses to the illegal BAC, as though it were a presumption, have remained. Despite language in some statutes establishing a strict liability, some courts have held the non-expert testimony can be used in defense of an IPS charge. This judicial gloss obviously acts as a partial bar to the effectiveness of IPS statutes.

IPS is uniformly complimented by prosecutors as an improvement in effective prosecution. It was felt that in time all the courts will accept the concept of IPS without the judicial gloss that gives defendants the opportunity to rebut the statutory prohibition, as though it were a mere presumption.

Therefore, based on the experience of prosecutors and other law enforcement officers, the project has chosen a model law which combines IPS with the standard features of a DUI statute. Our conclusion is that the combination model is the best approach. It gives the prosecutor multiple ways to convict a defendant while charging only one (basic) offense. The jury does not have to be unanimous in finding that a defendant has violated any one of the subdivisions of the statute; they only have to be unanimous that the defendant violated the statute in one of the several ways possible. The jury can actually be split on the individual bases for finding a violation of the statute. In effect, this statute gives the prosecutor multiple opportunities in one charging instrument to convict, and effectively deprives the defendant of the opportunity to focus his defenses on the one issue that might appeal to the sympathy of one or more jurors. Under this type of statute, those jurors who have unarticulated reservations concerning the reliability of evidentiary test results are given ample opportunity to base their conviction upon traditional DUI indicia, while those who favor the use of a per se regulatory format and are impressed by the scientific accuracy and reliability of the testing technology are likewise satisfied with application of the statute. This type of statute spreads the largest net permissible.

7.2 A PROPOSED STATUTE AUTHORIZING PRELIMINARY OR PRE-ARREST BREATH TEST

Section 1001.00

Refusal to Take a Preliminary or Pre-Arrest Breath Test: Authorization and Procedure

Any law enforcement officer who has been duly authorized to make arrests for violation of traffic laws of this state or ordinances of any city, town, or village may require any person who drives or has in his actual physical control a vehicle within this state to submit to a preliminary test of his breath for alcohol content if the officer has an articulable and reasonable suspicion that such person has committed the offense of driving while under the influence of alcohol or any other drugs pursuant to Section 1000.00. Refusal to take the preliminary test of breath shall constitute an infraction punishable by a fine of not more than $50. Such breath analysis must be administered at the scene of the stop. Any breath analysis required under this section must be administered with an instrument and in such a manner approved by the Commissioner of Toxicology or Public Health for that purpose. The results of a preliminary breath analysis may be used for determining whether an arrest should be made. When a driver is actually arrested, provisions of the state's Implied Consent Statute will apply. The preliminary breath test authorized here is in addition to any tests authorized in the Implied Consent Statute.

Commentary on PBT Statute

An articulable and reasonable suspicion may be based upon erratic driving behavior or, upon a stop for any violation, it may be based upon a number of behavioral patterns or other factors, which based upon the officer's experience may indicate impairment, such as the detection of slurred speech or alcoholic breath of the driver.

Because of the high incidence of alcohol involvement in injury and property damage type automobile accidents, it is also reasonable to believe that one or more of the drivers in such accidents are so impaired. The occurrence of an accident may provide sufficient basis for the officer to request a PBT of each involved driver, if only to rule out alcohol as a contributing factor.

The legislature has taken note of the fact that approximately 50 percent of all fatal highway accidents involve drinking drivers, and has resolved that this threat to public safety warrants closer scrutiny of potentially hazardous drivers where there is evidence of drinking sufficient to create an articulable and reasonable suspicion that one or more of the drivers is impaired by alcohol or other drugs.

5

An interim Report to the Nation From the Presidential Commission on Drunk Driving

5.0 LICENSING ADMINISTRATION

Suspension or revocation of driver licenses can be an effective deterrent to driving while under the influence. Studies in California and Washington show that license suspension was more effective than assignment of violators to alcohol education and/or treatment programs. If suspensions are imposed consistently and are highly publicized, this sanction can play an important role in reducing driving under the influence.

Cooperation between the States in sharing information on driver licensing and violations in order to stop those with revoked or suspended licenses from becoming licensed in another State is a necessity. The following recommendations are intended to improve the administration of the licensing process:

RECOMMENDATION

5.1 Administrative Per Se License Suspension

States should enact legislation to require prompt suspension of the license of drivers charged with driving under the influence, upon a finding that the driver had a BAC of 0.10 in a legally requested and properly administered test. The prompt suspension should also extend to those who refuse the test, as well as those who are driving on a restricted license. Such suspension may be carried out by the court upon arraignment, or by the administrative agency charged with license administration. There should be reciprocity among States to assure a driver's license suspension by the home State if the driver meets these conditions in another State.

COMMISSION NOTE

Some States have begun to use innovative methods to establish swift and certain penalties for drunk driving. In Minnesota, West Virginia, Iowa, and Delaware, any driver registering above 0.10 AC has his or her license automatically suspended for 90 days (or more) regardless of the subsequent disposition of his case. If he or she refuses the test, his or her license is suspended for 180 days. This is a swift and certain sanction which significantly adds to the general deterrent effect of the control system. The individual is afforded the opportunity of a hearing within a specified period of time; the facts to be pursued at this hearing relate to whether the individual tested over the legal limit or whether the individual refused the test.

A different approach, used in New York for repeat offenders, provides for an immediate temporary suspension pending disposition of the charges. This system is carried out by the court where there is a finding of probable cause for the arrest and where there is a drunk driving conviction within the past five years. These two approaches also differ in their administration; the New York system is administered by the local criminal courts for the Motor Vehicle Department, while the other States' systems are administered by the State driver licensing agency.

REFERENCE

1. Analytical Study of Minnesota Law, Robert H. Reeder, Northwestern Traffic Institute, December 1981.
2. Uniform Vehicle Code, Section 6-205 and 6-208.

Drunk Driving Penalties In Other Countries

For those who think that the new DUI laws recently passed in many states are far too harsh, we advise those people to take a look at how other nations around the world are dealing with the problem of the drinking driver. In some of the following cases you'll find that a few of these countries don't have near the drunk driving problem that now exists here in the United States. The apparent reason for this lack of a high number of DUI cases in these other countries would seem to be directly attributable to the no nonsense, rountinely dealt, strict punishments handed out by the courts in these foreign countries. This information has been drawn from newspaper accounts and statistics supplied to MADD by members. Any incorrect statements are attributable to the sources, not the writers.

West Germany • If a suspected drunk driver tests out at 0.8 mills of alcohol in the bloodstream, his license is automatically suspended for a minimum of three months, with a maximum of one year in prison or a fine. The police also use roadblock checkpoints to randomly test drivers for alcohol consumption.

Norway • In Norway, it's a mandatory, minimum sentence of three weeks in jail for any driver caught with a blood-alcohol level of .5 per mil or more. That means that five drops of alcohol per 1000 drops of blood. A fine may be added scaled to income. Suspended sentences are extraordinary. On the first offense you lose your license for at least one year. On the second offense within five years, you lose your license for life.

Israel • The problem of the drinking driver on the roadways in Israel is virtually non-existant, due largely to the two-year prison term that awaits convicted drunken drivers. In 1980, an Israeli Embassy spokesman was quoted as saying that there is about one drunk driving case in Israel a year.

Soviet Union • First offenders are banned from the roadways for six months. In one instance, the drunk driver who killed six and injured five more during a drive through northern Moscow was sentenced to death.

Great Britain • Those convicted face automatic license suspension for one year. In addition, if the case is aggravated, lifetime banishment from the roadways is possible. Other sentencing possibilities include six months in jail, up to an $1800 fine, and assignment to gardening, garbage collection, and other community service.

Egypt • Like most Moslem countries, alcohol usage is prohibited, drunken driving cases are rare.

India • Arrests are rare, but penalties are severe. Those convicted face six months in prison, $112 fine, or both.

South Korea • Just an arrest results in an automatic two month license suspension, with a conviciton meaning a jail sentence of up to one year and a fine of $700.

Japan • First offenders can face up to four months in jail and a $200 fine. Licenses are also revoked and can be returned only upon successful completion of a driving test one year later.

Chile • Those convicted face from 61 to 541 days in jail. If someone has been injured the minimum prison sentence is 18 months.

Community Support

(continued from page 2)

- Federated Fire Fighters of California
- Gannett Outdoor Advertising
- Joan Blake Austin of Joan Blake Austin Health Studios
- Jerry Burns of NBI
- Sacramento County Deputy Sheriffs Association
- Sacramento Police Officers Association
- Wine Institute

Federal Legislative Victory

The U.S. Congress has joined the fight to rid our roadways of the drunken driving menace. On September 29, the House of Representatives unanimously passed the legislation which contained the provisions of H.R. 6170, also known as the Howard-Barnes bill. On October 21, the Senate also unanimously passed the legislation. On October 25, President Reagan signed this welcome provision into law.

Essentially, this new law will provide important federal aid in the form of incentive grants to those states setting up comprehensive, community-based drunk driver control programs. Another attractive feature of the Howard-Barnes legislation is that it will provide the incentive grants out of funds which are already budgeted, thus the federal debt will not be increased because of this program.

A special thanks is in order to the President, Congressmen Howard and Barnes, and the individuals and groups responsible for the passage of this essential new measure.

MONDAY MORNING REPORT

Volume 6 No. 16 August 30, 1982

DRUNK DRIVING...legislation has been approved by lawmakers in 32 states and Washington, D.C. during 1982, according to a national survey by the Christian Science Monitor.

Although the new laws aimed at reducing the incidence of drunk driving differ from state to state, most of the current legislation has incorporated one or more of the following provisions:

1) Minimum mandatory jail sentences
2) Referral of drunk drivers to education or alcoholism treatment programs
3) Criminal penalties for drunk drivers whose auto crash has resulted in death of another person
4) Suspension or revocation of driving privileges
5) Raising the minimum legal drinking age for all alcoholic beverages (including beer) to 21
6) Making it illegal to operate a motor vehicle with a blood alcohol level of 0.10 percent

The current wave of concern about drunk driving has taken place over the past two years, spurred on by several groups representing the victims of drunk drivers.

MADD (Mothers Against Drunk Drivers) has received national attention and has been particularly effective in California, where a tough new drunk driving law went into effect in January, 1982.

Organization of the new groups and their activist pressure in state legislatures across the U.S. has helped to focus attention on the victims of drunk drivers. In the past, lawmakers, judges, juries and even many law enforcement officials often sympathized with the drunk driver rather than the victims.

Part of the problem was the common belief that people had about drunk drivers..."But for the grace of God, there go I."

The mistaken notion is that most drunk drivers were common, ordinary citizens who perhaps for the first time in their lives had "one drink too many" at a party and then became involved in an auto crash while trying to make it home.

The realization that most drunk drivers are not "first-timers" as far as driving while under the influence of alcohol and most have had far more than "a couple of beers" has helped the general public to realize that tough drunk driving laws pose no threat to most of the driving population.

In a study of 839 drivers involved in fatal auto crashes in Michigan during 1981, the Michigan State Police reported that 289 drivers had not been drinking prior to the crash.

Of the 553 drivers who had been drinking prior to the fatal crash, only 19 percent registered a blood alcohol level of under 0.10 percent.

81 percent of the drunk drivers registered 0.10



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ALCOHOL ABUSE AND VIOLENCE IN ALASKA

The mental health of a community or state is measured by many indicators. Some of these are: violent crimes, family violence, child abuse/neglect, and alcohol-related mortality.

violent crimes

- 64% of criminal homicides in 1980 were alcohol-related
- 41% of aggravated assaults were alcohol-related
- 48% of all violent offenders were using alcohol at the time of arrest
- 56% of all violent offenses were alcohol-related
- 72% of rapes - alcohol was used by either offender or victim

family violence

- 45% of all spouse abusers are heavy drinkers
- 90% of women seeking help at AWAIC, a battered women's shelter, were effected by alcohol
- 90% of the clients in Anchorage's Domestic Violence Program for Men report some level of substance abuse
- 90% of abusive parents have been abused or neglected by an alcoholic or drug dependent parent

child abuse/neglect

- estimates suggest that alcohol is a primary factor in as many as one-third of all reported cases of child abuse
- Alaska experiences 4 times as many cases of child abuse/neglect as the national average
- in an informal survey of youth outpatient units of the Behavioral Health Treatment system in Anchorage it was found:
  - -77.8% of the youth had one or more parents with substance abuse problems
  - -40% of the clients had been abused or neglected

ALASKA COUNCIL ON PREVENTION
OF ALCOHOL AND DRUG ABUSE, INC.

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HB6

Washington Area's War on Drunk Driving Pays Off in a Big Way

Area Traffic Deaths Drop; Arrests Are on Increase

By Blaine Harden
Washington Post Staff Writer

The highly publicized war against drunk driving—waged this past year by mothers, lawmakers, judges, juries and the police—has racked up impressive victories in the Washington area.

Highway deaths in 1982 declined in Virginia, Maryland and the District of Columbia, where laws against driving under the influence of alcohol were toughened. At the same time, arrests of drunk drivers have increased sharply.

In the District this year, 36 people—the lowest figure in at least a decade—had died in traffic accidents as of Tuesday. Alcohol-related deaths in Maryland fell 30 percent while arrests of drunk drivers were up 50 percent. Highway deaths in Virginia declined 14 percent.

During Christmas weekend, as police in all three jurisdictions beefed up patrols, there was one alcohol-related death in the Washington area, compared to seven over the 1981 Christmas weekend.

"The word is out. We are out there to get people and as a result we have reduced fatalities," says Robert M. Goldstein, director of the D.C. police alcohol countermeasures and traffic services.

See ALCOHOL, A7, Col. 1

ALCOHOL, From A1

Throughout the Washington area, there may never have been such a bad year to be drunk at the wheel.

In Northern Virginia, a drunk driver involved in a head-on collision that killed three persons was convicted in September of second-degree murder. The conviction was the first in the state on that serious charge in an alcohol-related traffic case.

In Maryland, a drunk driver involved in a crash that killed five members of a Montgomery County family was sentenced to 15 years in prison.

In the District, police began a first-in-the-nation mandatory breath test for all drivers stopped for moving violations. Any driver who refuses the test can be arrested.

Despite tough new laws and aggressive enforcement, some drivers continue to drink and drive. John T. Hanna, director of the Virginia Department of Transportation Safety, says only one in 2,000 drunk drivers is ever caught. One such driver slipped through the enforcement net last weekend in the Washington area.

Donald W. Jewell, 33, who ran an insect exterminating business, threw a party at his Manassas house on the night before Christmas Eve. Friends who saw him at the party described him as drunk and "having a hard time talking."

In the middle of the party, Jewell stormed outside and drove off in his black 1979 Chevrolet pickup truck. He headed south at 70 miles an hour on a 55-mile-an-hour, two-lane road, police said.

Jewell had a record of drinking and bad driving. In California in 1969 he was convicted of driving under the influence of alcohol. Near Hodges, S.C., in 1975 he ran a stop light and crashed into a car, killing three persons. A blood-alcohol test showed that Jewell was under the influence of alcohol at the time. He was convicted of involuntary manslaughter and sentenced to six years in prison.

Four years later, after he'd moved north to Mathews, Va., Jewell was convicted of breaking and entering and sentenced to five years in prison. From prison, Jewell wrote Circuit Court Judge John DeHardit: "I am an alcoholic and I need and want help with this so I can be a man. I also know that if I don't get help with my drinking I will be back in prison."

About 10:30 p.m. a week ago today, Jewell lost control of his pickup rounding a curve. Police said Jewell tried to pull his truck back on the road but it went into a roll, taking up both lanes of Rte. 234 near Manassas. It stopped rolling when it smashed into a pickup coming from the opposite direction.

"He had the whole highway covered. It looked like a wall coming at me. It scared the daylights out of me. I'm still scared," William E. Parker Jr., 39, the driver of the other pickup, said yesterday.

Parker, who escaped with a strained back from the crash that totaled his pickup said he was lucky.

"When I knew anything, he was rolling at me. If I hadn't got in the ditch, he'd a killed me too," Parker said.

ALASKA COUNCIL ON PREVENTION
OF ALCOHOL AND DRUGS ABUSE, INC.

7521 OLD SEWARD HWY., SUITE A • ANCHORAGE, ALASKA 99502 (907)349-6602

FACTS ABOUT ALCOHOL CONSUMPTION IN ALASKA

--FOR ALL AGE GROUPS

The average yearly intake of alcoholic beverages for all Alaskans (every man, woman, and child) is 33⅓ gallons, a combination of distilled liquor, wine, and beer. This is the equivalent of 4.6 gallons of absolute ethyl alcohol.

In order to consume 4.6 gallons of absolute ethyl alcohol per year, you would have to drink...



53.5 fifths of 86 proof liquor

OR...

153.2 quarts of 12%wine*

OR...





40.9 cases of 5% beer

*Most naturally fermented wines contain 12 to 14% ethyl alcohol. So called "fortified" wines have alcohol added to increase the percentage.

ACOPADA JANUARY 1982
KJB:st

Based on 1980 census

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No. 1

December 1981
Final Report

DOT/HS-806-170



US Department
of Transportation
National Highway
Traffic Safety
Administration

Analytical Study of the Legal and Operational Aspects of the Minnesota Law Entitled "Chemical Test for Intoxication" M.S.A. Sec. 169,123

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15. Supplementary Notes

This report was reviewed and critiqued by Mr. Joel A. Watne, Special Assistant Attorney General, State of Minnesota; Mr. Forst Lowery, Alcohol Program Coordinator, Department of Public Safety, State of Minnesota

16. Abstract

This report provides information for use by state legislatures, state governmental agencies, traffic safety organizations and other persons in enacting laws to control driving and drinking on the highways and specifically the type of "administrative per se" law in the State of Minnesota.

The report outlines the legal framework of the "administrative per se" law in the State of Minnesota. It explores the possible legal challenges which defendants might raise against the law. It studies the operational impact the "administrative per se" law has had in Minnesota on other alcohol countermeasures to control the drinking driver. The report concludes the Minnesota "administrative per se" law would withstand the possible legal challenges. It concludes that the enactment of this law has had a positive effect on the attitudes of law enforcement officers and has increased the effort of controlling DWI offenses. The report recommends that other states enact such a law.

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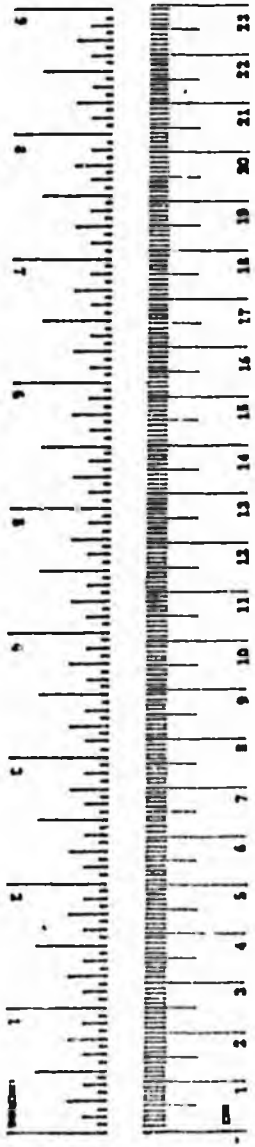
METRIC CONVERSION FACTORS

Approximate Conversions to Metric Measures

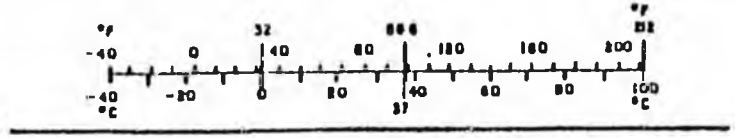
Symbol	When You Know	Multiply by	To Find	Symbol
		LENGTH		
in	inches	*2.5	centimeters	cm
ft	feet	30	centimeters	cm
yd	yards	0.9	meters	m
mi	miles	1.6	kilometers	km
		AREA		
in^2	square inches	6.5	square centimeters	cm^2
ft^2	square feet	0.09	square meters	m^2
yd^2	square yards	0.8	square meters	m^2
mi^2	square miles	2.6	square kilometers	km^2
	acres	0.4	hectares	ha
		MASS (weight)		
oz	ounces	28	grams	g
lb	pounds	0.45	kilograms	kg
	short tons (2000 lb)	0.9	tonnes	t
		VOLUME		
tsp	teaspoons	5	milliliters	ml
Tbsp	tablespoons	15	milliliters	ml
fl oz	fluid ounces	30	milliliters	ml
c	cups	0.24	liters	l
pt	pints	0.47	liters	l
qt	quarts	0.95	liters	l
gal	gallons	3.8	liters	l
ft^3	cubic feet	0.03	cubic meters	m^3
yd^3	cubic yards	0.76	cubic meters	m^3
		TEMPERATURE (exact)		
°F	Fahrenheit temperature	5/9 (after subtracting 32)	Celsius temperature	°C

*1 in = 2.54 (exactly). For other exact conversions and more detailed tables, see NBS Misc. Publ. 286, Units of Weights and Measures, Price $2.25, SD Catalog No. C13.10:286.



Approximate Conversions from Metric Measures

Symbol	When You Know	Multiply by	To Find	Symbol
		LENGTH		
mm	millimeters	0.04	inches	in
cm	centimeters	0.4	inches	in
m	meters	3.3	feet	ft
m	meters	1.1	yards	yd
km	kilometers	0.6	miles	mi
		AREA		
cm^2	square centimeters	0.16	square inches	in^2
m^2	square meters	1.2	square yards	yd^2
km^2	square kilometers	0.4	square miles	mi^2
ha	hectares (10,000 m^2)	2.5	acres	
		MASS (weight)		
g	grams	0.035	ounces	oz
kg	kilograms	2.2	pounds	lb
t	tonnes (1000 kg)	1.1	short tons	
		VOLUME		
ml	milliliters	0.03	fluid ounces	fl oz
l	liters	2.1	pints	pt
l	liters	1.06	quarts	qt
l	liters	0.26	gallons	gal
m^3	cubic meters	35	cubic feet	ft^3
m^3	cubic meters	1.3	cubic yards	yd^3
		TEMPERATURE (exact)		
°C	Celsius temperature	9/5 (then add 32)	Fahrenheit temperature	°F



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In particular, I want to thank Mr. Joel A. Watne, Special Assistant Attorney General; Mr. Forst Lowery, Alcohol Program Coordinator, Department of Public Safety; Mr. Harold L. "Pete" Peterson, Department of Public Safety; Sgt. Samuel J. Boe, Minnesota State Patrol; and Mr. Lowell C. Van Berkom, Director, Forensic Toxicology, State Crime Laboratory.

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PART I

STATEMENT OF PROBLEM

The State of Minnesota has a rather unique law.[1] It has been described as an "administrative per se" drinking-driving statute. In essense it provides as a part of the implied consent law that when a law enforcement officer obtains a chemical test for intoxication from a driver, and the result is 0.10 BAC or more,[2] the officer serves notice to the driver on behalf of the motor vehicle department (Department of Public Safety) of intention to revoke his driver's license for having a BAC of 0.10 or more. The driver is given 30 days in which to request a hearing and if none is requested, then the department revokes for 90 days. If a hearing is held, and the issues are determined against the driver, then his license is revoked for 90 days.[3]

This procedure is <u>additional</u> to the criminal drinking-driving charges of "driving under the influence of alcohol" and "driving with 0.10 BAC or more" which are tried in the court system.[4] Also, Minnesota has an implied consent law similar to other states which provides that upon <u>refusal</u> of a chemical test for intoxication action is taken against the license.[5]

The task of this study was to report on the legal and operational aspects of the "administrative per se" law. They are:

"1. Ascertain to what extent offenders charged with DUI are cited under Minnesota Section 169.123, as opposed to Minnesota Section 169.121, wherein an implied consent BAC test has been administered.

"2. Analyze the constitutional, legal and operational ramifications and potential impediments relative to the application of Minnesota Section 169.123 (special emphasis to be given to Subd. 4, 5 and 6).

"3. Determine, if possible, to what extent law enforcement officers

are using the Subd. 4 provision by submitting to the Commissioner of Public Safety BAC test results of 0.10 percent or more.

"4. Determine what use is being made by the Motor Vehicle Department (Department of Public Safety) of the BAC test results as authorized under Subd. 4. What, if any, are the constitutional, legal and practical problems—how well is it working.

"5. Determine to what extent driver license revocation actions are taken pursuant to Subd. 4 (BAC test results of 0.10 percent or higher) under the following situations:

1) The DUI charge is nolle prossed
2) The DUI case is continued
3) The DUI charge is plea bargained down to a lesser offense
4) The DUI case results in an acquittal.

"6. Based on available data, determine the impact the enactment of Minnesota Section 169.123 (Subd. 4) has had on the number of implied consent refusals.

"7. Determine the extent to which the Commissioner of Public Safety appears through prosecuting attorneys at driver license revocation hearings as provided for in Minnesota Section 169.123 (Subd. 6).

"8. Determine, to the extent practical, the impact of the administrative licensing action on the adjudication process (e.g., conviction rates, sanction involved).

"9. Determine, to the extent practical, the impact of the administrative licensing process on the rate of enforcement and support of police officers."

FOOTNOTES - Part I.

1. Minnesota Statutes Annotated, Sec. 169.123. It is interesting to note that West Virginia enacted a similar provision in 1981. See West Virginia Regular Session 1981, New Laws page 849. It is Sec. 17C-5A-1, effective September 1, 1981.

2. "BAC" is a commonly used term which is defined in Minnesota as "Alcohol Concentration" in Sec. 169.01 as follows:

> "Subd. 61. Alcohol concentration. "Alcohol Concentration" means (a) the number of grams of alcohol per 100 milliliters of blood, or (b) the number of grams of alcohol per 210 liters of breath, or (c) the number of grams of alcohol per 67 milliliters of urine."

3. The term "revocation" is not defined in the Minnesota statutes. However, the Department of Public Safety interprets the action required in the commonly accepted meaning of the term. A revocation means that the driver's license is terminated by formal action of the department and the driver can make application for a new license after the expiration of the time period.

4. The criminal charges are contained in Minnesota Statutes Annotated, Sec. 169.121.

5. The implied consent procedures are contained in Minnesota Statutes Annotated, Sec. 169.123.

PART II

LEGAL ASPECTS

One of the tasks of this study was to: "Analyze the constitutional, legal and operational ramifications and potential impediments relative to the application of Minnesota Section 169.123 (special emphasis to be given to Subd. 4, 5 and 6)."

Consequently, the first step will be to outline the legal framework.

LEGAL FRAMEWORK

The Minnesota "administrative per se" drinking-driving law became effective on July 1, 1976.[1] It is a parallel track to the traditional criminal charges normally placed against a drinking driver, and in many respects the two tracks are independent.

The legal steps in this system are summarized as follows:

1. Contact with Driver: A law enforcement officer comes into contact with a drinking driver in various ways. He may observe the conduct; he may respond to a motor vehicle collision; he may stop a driver for another violation; he may receive information from other citizens who have observed the drinking driver. Whatever the means, the information the officer has must meet the requirements of the U.S. Supreme Court decision in Delaware v. Prouse[2] in which the Court held that the officer must have at least "articulable suspicion" as a basis for the stop, or that a non-discretionary systematic roadblock is being operated.

2. After Stopping the Driver: The officer has several options after stopping the driver. He can:

a. Issue a citation and release the driver if the circumstances warrant.

b. Request a preliminary breath screening test for alcoholic influence provided the officer has "reason to believe" from the manner in which a person is driving, operating, or controlling a motor vehicle, or has driven, operated, or controlled a motor vehicle, that the driver may be violating or has violated the "under the influence" of alcohol or controlled substance or combination thereof, or the "illegal per se" law. (Sec. 169.121(6).)

c. Request a chemical test of blood, breath, or urine to determine the presence of alcohol or a controlled substance provided the officer has "reasonable and probable grounds to believe" the person was driving, operating, or in physical control of a motor vehicle in violation of Sec. 169.121 (criminal charges - see App. I) and one of the following conditions exist:

   1) the person has been lawfully placed under arrest for a violation of Sec. 169.121, or similar municipal ordinance, or
   2) the person has been involved in a motor vehicle accident or collision resulting in property damage, personal injury, or death, or
   3) the person has refused to take the preliminary breath screening test, or
   4) the person took the preliminary breath screening test and the results recorded an alcohol concentration of 0.10 or more. (Sec. 169.123(2).)

d. Release the driver when the preliminary breath screening test indicates the driver is not under the influence and when circumstances

do not warrant other action.

e. Make an arrest for driving under the influence of alcohol or controlled substance. (Sec. 169.121.)

f. Release the driver without arresting or without issuing citation if circumstances warrant.

3. Implied Consent Law - Warning: As noted above in "2.c." the officer may request a chemical test of blood, breath, or urine to determine alcohol concentration or a controlled substance provided the officer has "reasonable and probable cause" and one of four conditions is present. The next step for the officer is to request a chemical test and warn the driver:

a. That if testing is refused, the person's right to drive will be revoked for a period of six months; and

b. That if a test is taken and the results indicate that the person is under the influence of alcohol or a controlled substance, the person will be subject to criminal penalties and the person's right to drive may be revoked for a period of 90 days; and

c. That the person has a right to consult with an attorney but that this right is limited to the extent that it cannot unreasonably delay administration of the test or the person will be deemed to have refused the test; and

d. That after submitting to testing, the person has the right to have additional tests made by a person of his own choosing.[3] (Sec. 169.123(2).)

4. Implied Consent Law - Driver's Choice: After the officer has requested the test and has given the driver the warning, the next step is with the

driver. He can:

a. Refuse to permit chemical testing, and if so, then none shall be given.

b. Submit to a chemical test.

5. Implied Consent Law - Notice of Revocation: If the driver refuses the chemical test or if he submits and the test results are 0.10 or more alcohol concentration—in either event—the officer may serve immediate notice of intention to revoke on behalf of the Commissioner of Public Safety. When he does so, the officer shall take the license or permit of the driver, if any, and issue a temporary license effective for 30 days. If the license or permit is picked up by the officer, it is sent to the Commissioner of Public Safety along with the certification. (Sec. 169.123(5a).) See the form used for this step under Appendix III entitled "Notice of Revocation."

In the event a blood or urine test is given and the results are not immediately available, or for some reason the officer does not serve immediate notice, then the department serves the notice by certified mail.

6. Implied Consent Law - Certification: If the driver refuses the test or if he submits and the results are 0.10 or more alcohol concentration, the officer shall certify to the Commissioner of Public Safety that:

a. The officer had reasonable and probable grounds to believe that the person had been driving, operating, or in physical control of a motor vehicle while under the influence of alcohol or a controlled substance; and that:

b. The driver refused the test; or

c. That the driver submitted to the test and the results were 0.10 or more alcohol concentration.

7. Implied Consent Law - Action by Commissioner of Public Safety: Under the notice of revocation the driver has 30 days within which to request a hearing. If he does not, the order of revocation becomes effective. If the driver requests a hearing it is conducted as follows. (Sec. 169.123(5) and (6).)

8. Implied Consent Law - Hearing: If the driver requests a hearing within 30 days:

a. The hearing shall be before a municipal or county judge in the county where the alleged offense occurred unless there is an agreement that the hearing be in some other county.

b. The hearing shall be to the court and may be conducted at the same time and in the same manner as hearings on pre-trial motions for criminal prosecution under Sec. 169.121 (criminal charges see Appendix I).

c. The hearing shall be recorded.

d. The Commissioner of Public Safety may appear through his own attorney or by agreement with the jurisdiction involved, through the prosecuting authority for that jurisdiction. (Note: Current practice is for an Assistant Attorney General to represent the Commissioner in all such hearings.)

e. The request for the hearing delays the effective date of the revocation until a final judicial determination which results in a decision adverse to the person.

f. If a hearing is requested within the 30 days, the Commissioner shall issue additional temporary licenses until the final determination of whether or not there shall be a revocation. The

additional temporary license is good for 180 days and may be renewed by the Commissioner as necessary.

g. The scope of the hearing shall cover the issues of:

1) whether the officer had reasonable and probable grounds to believe the person was . . . (see 2.c. above for the grounds under which the test can be requested—or Sec. 169.123 (Subd. 2) in Appendix I).

2) whether at the time of the request for a test, the officer warned the person of his rights and consequences of taking or refusing the test (see Sec. 169.123 (Subd. 2) for text of warning in Appendix I).

3) whether the person refused the test or whether the test was taken and the results indicated an alcohol concentration of 0.10 or more and whether the testing method used was valid and reliable, and whether the test results were accurately evaluated.

h. The burden of proof at the hearing is on the state and it must prove the issues by a "fair preponderance of the evidence." (See State v. Halvorson, 181 N.W.2d 473, 477 (Minn.-1970).)

i. The court shall order either that the revocation be rescinded or sustained and forward the order to the Commissioner of Public Safety.

j. If the order of revocation is sustained the court shall also forward the driver's license to the Commissioner if it is not already in the Commissioner's possession. (Sec. 169.123(6).)

k. The driver has the right to be represented by counsel at the hearing.

9. Implied Consent Law - Appeal: If the hearing under the implied consent law goes adversely to the driver, he has the right to appeal to the District Court in the county where the hearing was held. The hearing is on the record and is governed by the same procedure as appeals from misdemeanor convictions. (Sec. 169.123(7).) If the hearing goes adversely to the Commissioner he may also appeal. (See State v. Normandin, 169 N.W.2d 222 (Minn.-1969), holding state can appeal an implied consent hearing decision; and State v. Ogg, 246 N.W.2d 560 (Minn.-1976), outlining procedure for appeal of implied consent hearing by the state.)

10. Implied Consent Law - Other Provisions: In addition to the aspects outlined above, the Minnesota implied consent law also provides that:

a. Police officers who can implement the implied consent provisions are limited to state highway patrol officers, University of Minnesota peace officers, a constable defined in Sec. 367.40, and a police officer of any municipality, including towns defined in Sec. 368.01, or a county law enforcement officer. (Sec. 169.123(1).)

b. A person may decline a blood test and elect to take either a breath or urine test, whichever is available and offered. However, no action can be taken for refusing a blood test unless either a breath or urine test was available and offered. (Sec. 169.123(2).)

c. Notwithstanding the requirement in "b" if there is reasonable and probable grounds to believe there is impairment by a controlled substance which is not subject to testing by blood or breath, a urine test may be required even after the blood or breath test has been administered. (Sec. 169.123(2a).)

d. Only a physician, medical technician, physician's trained mobile

intensive care paramedic, registered nurse, medical technologist, or laboratory assistant acting at the request of a peace officer may withdraw blood. This requirement does not apply to breath or urine. (Sec. 169.123(3).)

e. The person tested has a right to have a person of his own choosing administer a chemical test or tests in addition to any administered at the direction of the officer, provided that the additional test specimen is obtained at the place where the person is in custody, that it is after the test administered by the officer, and that it is at no expense to the state. The failure or inability to obtain the additional test shall not preclude the admissibility of the test by the officer unless the additional test was prevented or denied by the officer. (Sec. 169.123(3).)

f. Upon the request of the person tested, full information concerning the test or tests shall be made available to him. (Sec. 169.123(3).)

g. The physician or other qualified persons named in Sec. 169.123(3) who are authorized to withdraw blood at the request of the officer shall in no manner be liable in any civil or criminal action except for negligence in withdrawing the blood. (Sec. 169.123(3).)

11. Probable Cause and Exigent Circumstances for the Test. While not a part of the implied consent statute in Minnesota, it should be noted that the Minnesota Supreme Court has approved another method of obtaining a chemical test for intoxication. This method is based on constitutional law and since the court found there was no conflict with the statues, officers can obtain a chemical test for intoxication where there is (1) an exigent circumstance that the evidence will be lost (now or never), (2) that the officer had

probable cause to support a formal arrest, (3) and it is a highly unobtrusive search. Further, that a formal arrest should be made whenever the suspect appears capable of understanding and communicating with the arresting officer. If not, then the arrest is not necessary.[4]

This method has been approved by the court where the driver is in the hospital and unable to understand and communicate with the officer and there was probable cause to believe that the driver had killed another person while driving under the influence.

LEGAL CHALLENGES

At least 20 states, including Minnesota have enacted criminal "illegal per se" drinking-driving laws.[5] Since these laws are parallel to the "administrative per se" statute in Minnesota, an examination of appellate court decisions may shed light on possible legal challenges which might be raised against the administrative per se law. Also, other possible legal challenges will be discussed.

Arbitrary and Capricious. In North Carolina and Delaware appellate court decisions have ruled on the question of whether or not the 0.10 BAC was an arbitrary and capricious number. In rejecting this argument the North Carolina Court of Appeals held:

> "First, defendant argues that the new offense of driving when the alcohol in one's blood is 0.10 percent or more by weight is an arbitrary and unconstitutional exercise of the police power of the State because there is no evidence that a driver with 0.10 percent or more of alcohol in his blood is a threat to the health, safety, or welfare of the citizens. We will not discuss the numerous scientific studies which have shown the state of intoxication of persons with various degrees of alcohol in their blood. See, for example, Little, Control of the Drinking Driver: Science Challenges Legal Creativity, 54 A.B.A.J. 555 (June 1968). Suffice to say, from 1963 to 1975 there was a statutory presumption in this State that a person with 0.10 percent or more by weight of alcohol in his blood was under the influence of intoxicating liquor. G.S. 20-138.1(a)

(repealed by the 1973 amendment effective 1 January 1975). Our Supreme Court has held that the results of a breathalyzer test are admissible in evidence, and a test showing 0.10 percent or more by weight of alcohol in a defendant's blood is sufficient to carry the State's case to the jury on the question of whether defendant was under the influence of intoxicating liquor. State v. Cooke, 270 N.C. 644, 155 S.E.2d 165 (1967). We hold that the prohibition against driving upon the public highways when the amount of alcohol in one's blood is 0.10 percent or more by weight contributes in a real and substantial way to the safety of other travelers. The challenged statute is a constitutional exercise of police power by the General Assembly."[6]

Similarily the Supreme Court of Delaware said:

"We are unable to agree with appellant's contention that the new statute is unconstitutional. Its effect is to forbid any person to operate a motor vehicle if his blood contains .1 of one per cent alcohol. It represents a legislative determination that such quantity of alcohol has sufficient adverse effect upon any person to make his driving a definite hazard to himself and others. We cannot say that this determination is unfounded or contrary to the facts; a number of studies and many statistics have recently been published by experts in this field which support that conclusion."[7]

In summary, based on these two decisions, it is not likely the courts would strike down a "per se" provision since the 0.10 BAC is based on a number of scientific studies and is not, consequently, arbitrary or capricious.

Vague and Indefinite. This argument was made in decisions in Utah and Florida. It was contended that because the driver had no way to determine when he was approaching 0.10 BAC without a chemical test the statute violated due process of law. In rejecting this argument the Supreme Court of Florida held:

"Appellant alleges that the statute is vague and indefinite and so violative of due process in two ways. First, Appellant claims that consumers of alcoholic beverages are unable to determine how much alcohol they may consume before their alcohol blood level will make it unlawful for them to drive. An identical argument was made against a Utah statute, substantially similar to the challenged statute, in Greaves v. State, 528 P.2d 805 (Utah 1974). The Utah Supreme Court stated: 'We can see no reason why a person of ordinary intelligence would have any difficulty in understanding that if he has drunk anything containing alcohol, and particularly any substantial amount thereof, he should not attempt to drive or take control of a motor vehicle.' (Id. at 808.)

The above language is the view of this Court and accordingly we reject Appellant's first argument of 'vagueness.'

"Appellant's second 'vagueness' argument is meritorious but the statute's defect is easily cured. Appellant correctly points out that the statute fails to state whether the prohibited percentage of alcohol in the driver's bloodstream is by weight or by volume. We recognize the scientific difference. To determine the legislative intent we turn our attention to Section 322.262(2)(c), Florida Statutes Annotated, which provides as follows:

> 'If there was at that time 0.10 percent or more by weight of alcohol in the person's blood, it shall be prima facie evidence that the person was under the influence of alcoholic beverages to the extent that his normal faculties were impaired. Moreover, such person who has a blood alcohol level of 0.10 percent or above shall be guilty of driving, or being in actual physical control of, a motor vehicle, with an unlawful blood alcohol level.' (Emphasis supplied.)

"Because the above statute and the challenged statute are in pari materia we construe them together and hold that the legislative intent is that the standard of weight be applied in the enforcement of the challenged statute.

"Section 316.028(3), Florida Statutes Annotated, withstands each of Appellant's constitutional attacks." [8]

In summary, based on these two decisions, "per se" provisions are not vague and indefinite.

Equal Protection. In the Watts[9] case the defendant contended that the substantial disparity in punishment between the offense of "under the influence" and the offense of "per se" drinking-driving laws was arbitrary and unreasonable and thus it violated equal protection. The Supreme Court of Missouri concluded:

"Although appellant states his point in constitutional terms, he offers no authority based upon constitutional principles and his ultimate conclusion, not stated in his point, is that the enactment of Section 564.439 repealed, by implication, Section 564.440. He contends that both sections prohibit the same conduct and that the punishment and consequences of conviction under Section 564.440 are so unreasonably different from those under Section 564.439 that the sections are 'irreconcilably repugnant,' and that the later enactment (Sec. 564.439) had the effect of repealing the earlier (Sec. 564.440).

"As appellant acknowledges, a conviction under Sec. 564.440 could occur although a blood alcohol test showed the defendant to have had between 0.05% and 0.09% blood alcohol (Sec. 564.442, subd. 1 (2)) or even in the absence of a blood alcohol test result. Thus,

> the basic premise of appellant's argument on this score fails because Section 564.439 and Section 564.440 do not necessarily deal with the same conduct."[10]

Based on the Watts case the later enactment of a "per se" provision does not repeal the "under the influence" provision since they have different elements. No other decisions on equal protection were found but that constitutional clause has been interpreted to prohibit unequal treatment of persons within the same group or class. However, the legislature has the power to group or classify drivers as long as the classification is based on reasonable grounds. It is not likely that the administrative per se law could be successfully challenged on equal protection grounds.

Procedural Due Process. In Bell v. Burson[11] the U.S. Supreme Court held that deprivation of the continued possession of a driver's license was subject to the due process clause of the 14th Amendment of the U.S. Constitution. The Court said:

> "While '(m)any controversies have raged about . . . the Due Process Clause,' . . . it is fundamental that except in emergency situations (and this is not one) (financial responsibility law) due process requires that when a State seeks to terminate an interest such as that here involved (driver's license) it must afford 'notice and opportunity for hearing appropriate to the nature of the case' before the termination becomes effective." (Italics by the Court.)

Thus it is clear that due process requires notice and opportunity for a hearing appropriate to the nature of the case before the termination of the driver's license becomes effective. It appears there are instances in which the hearing may come after the action against the license, but that issue is not present under the Minnesota implied consent law. The Minnesota law provides for:

1. A hearing on the issues in a municipal or county court and a finding adverse to the driver is required before the Commissioner of Public Safety can revoke the license. (Sec. 169.123(5) and (6).)

2. The notice of opportunity for a hearing is served personally on the driver at the time he refuses or the test results are 0.10 or more. Sec. 169.123(5a). See form used in Appendix III, "Notice of Revocation."

3. There is a right of appeal to the District Court from the hearing before the municipal or county court. (Sec. 169.123(7).)

It appears quite clear that the Minnesota implied consent law procedures fully comply with the requirements of the U.S. Supreme Court in Bell v. Burson.[12]

In 1979, which is after the present implied law was enacted, the Supreme Court of Minnesota concluded in the Wiehle[13] decision that: "The present implied consent law satisfies all constitutional requirements."

Collateral Impact - Administrative Versus Criminal. Under the Minnesota statutes it is a criminal offense to drive, etc., with an alcohol concentration of 0.10 or more. In a parallel track the implied consent law provides for a revocation of the driver's license if the driver submits to a chemical test for intoxication and the results are an alcohol concentration of 0.10 or more. The question arises: if this "issue" of 0.10 or more has been litigated in the criminal trial, what impact does this have under the administrative proceeding and vice versa?

This issue could be raised by double jeopardy, res judicata, collateral estoppel, or collateral attack.

"Double jeopardy" is a constitutional right which prohibits a person from being tried twice for the same crime. The great weight of authority holds this doctrine is not applicable between a criminal conviction and a suspension or revocation of a driver's license growing out of the same event.[14]

"Res judicata" is a rule that a final judgment or decree on the merits is

conclusive of the rights of the parties in later suits on the points and matters determined in the former suit. It is normally applied to civil proceedings but has been applied in criminal cases. Here again the great weight of authority is that res judicata does not prevent the suspension or revocation of a driver's license growing out of the same event.[15]

"Collateral attack" is an attempt to avoid, defeat, or evade another judicial proceeding in an incidental proceeding. An exception is the right to appeal to a higher court in the same case. Here again the great weight of judicial authority is against collateral attack.[16]

"Collateral estoppel" is defined as once a court has litigated and decided an "issue" involving a party the same issue cannot be relitigated in a different case. The U.S. Supreme Court incorporated this doctrine into criminal cases in Ashe v. Swenson.[17] More recently the Court applied collateral estoppel to a case where the defendant was charged with possession of heroin and intent to kill. At his pretrial suppression hearing he attempted to suppress the evidence seized in a search of his house. The trial court ruled the search was legal and allowed the evidence to be admitted at the trial. He was convicted. Later he filed a civil rights action in Federal court against the officers who made the search alleging his 4th Amendment rights had been violated. The trial court held that collateral estoppel prevented him from relitigating the search and seizure question because that issue had already been decided against him in the prior criminal case. In upholding the trial court's ruling the U.S. Supreme Court said:

> "The federal courts have traditionally adhered to the related doctrines of res judicata and collateral estoppel. Under res judicata, a final judgment on the merits of an action precludes the parties or their privies from relitigating issues that were or could have been raised in that action. Cromwell v. County of Sac., 94 U.S. 351, 352, 24 L.Ed 195. Under collateral estoppel, once a court has decided an issue of fact or law necessary to its judgment, that decision may

preclude relitigation of the issue in a suit on a different cause of action involving a party to the first case. . . . As this Court and other courts have often recognized, res judicata and collateral estoppel relieve parties of the cost and vexation of multiple lawsuits, conserve judicial resources, and, by preventing inconsistent decisions, encourage reliance on adjudication.

"In recent years, this Court has reaffirmed the benefits of collateral estoppel in particular, finding the policies underlying it to apply in contexts not formerly recognized at common law. Thus, the Court has eliminated the requirement of mutuality in applying collateral estoppel to bar relitigation of issues decided earlier in federal court suits, Blonder-Tongue Laboratories, Inc. v. University of Illinois, 402 U.S. 313, 91 S.Ct. 1434, 28 L.Ed.2d 788, and has allowed a litigant who was not a party to a federal case to use collateral estoppel 'offensively' in a new federal suit against the party who lost on the decided issue in the first case, Parklane Hosiery Co. v. Shore, 439 U.S. 322, 99 S.Ct. 645, 58 L.Ed.2d 552. But one general limitation the Court has repeatedly recognized is that the concept of collateral estoppel cannot apply when the party against whom the earlier decision is asserted did not have a 'full and fair opportunity' to litigate that issue in the earlier case."[18]

A Texas U.S. District Court has stated:

"It is well-settled in federal law that the doctrine of collateral estoppel is 'as applicable to decisions of criminal courts as to those of civil jurisdiction.' . . . Thus, a criminal conviction can work an offensive estoppel in a subsequent civil proceeding if the issues for which estoppel is sought were put in issue and directly determined in the prior criminal proceeding." [19]

In regards to collateral estopped there are three requirements:

"The doctrine of collateral estoppel requires (1) that the issue in question be identical to an issue actually litigated in the prior litigation; (2) that the prior litigation have resulted in a final judgment on the merits; and (3) that the party against whom the estoppel is asserted was a party or in privity with a party to the prior adjudication."[20]

Nonetheless there is no judicial requirement that res judicata and collateral estoppel must apply in all situations. As regards an administrative determination, the U.S. Supreme Court has held that:

"When an administrative agency is acting in a judicial capacity and resolves disputed issues of fact properly before it which the parties have had an adequate opportunity to litigate, the courts have not hesitated to apply res judicata to enforce repose." [21]

This holding was cited in a U.S. Court of Appeals case that ultimately disallowed a claim of res judicata as argued by a corporation charged with OSHA violations:

"Finally, we note that even where the technical requirements of res judicata have been established, a court may nonetheless refuse to apply the doctrine. This court does not adhere to a rigid view of the doctrine in the administrative context:

> 'The sound view is therefore to use the doctrine of res judicata when the reasons for it are present in full force, to modify it when modification is needed, and to reject it when the reasons against it outweigh those in its favor.'

Bowen v. United States, 570 F.2d 1311, 1321 (7th Cir. 1978) quoting 2 K. Davis, Administrative Law Treatise 548 (1958). Res judicata must yield on occasion to competing public policies." [22]

A case from the Washington Supreme Court discusses the issues as applied either way—Criminal trial determination's impact on administrative hearing and Administrative hearing determination applied to a criminal trial. The case involved a parolee who was successful in defending against his parole revocation for a narcotics violation at an administrative hearing immediately prior to his criminal trial on the narcotic charge. He attempted to use the "not guilty" finding of the administrative hearing to preclude relitigation of the issue at his criminal trial. The pertinent language from the court is as follows:

"If a Washington state parolee is acquitted in a criminal trial, that acquittal does not bar the state from conducting a parole revocation hearing based upon the same incident. Standlee v. Smith, 83 Wash.2d 405, 518 P.2d 721 (1974). See also Standlee v. Rhay, 403 F.Supp. 1247 (E.D.Wash.-1975), rev'd 557 F.2d 1303 (9th Cir.-1977).

"The Standlee court relied upon 'the rule that a difference in the degree of the burden of proof in the two proceedings precludes application of collateral estoppel.' Standlee v. Smith, supra, 833 Wash.2d at 407, 518 P.2d at 722. The 'beyond a reasonable doubt' standard applies in a criminal case, while a parole revocation hearing is governed by the less exacting 'preponderance of the evidence' standard. Thus, a parolee defendant might be acquitted in a criminal prosecution because the state was unable to meet the burden of proof 'beyond a reasonable doubt', yet the same evidence could, under the lesser standard of proof, support parole revocation. (This is the general rule and it is certainly applicable to DWI/Implied Consent statutes, see Asbridge v. North Dakota State Highway Commission, 291 N.W.2d 739 (N.D.-1980); Marquardt v. Webb, 545 P.2d 769 (Okla.-1976).) . . .

"Collateral estoppel, perhaps more descriptively denoted as issue preclusion, and res judicata are doctrines having a common goal of judicial finality. The principles underlying both doctrines are to prevent relitigation of already determined causes, curtail multiplicity of actions, prevent harassment in the courts, inconvenience to the litigants, and judicial economy.

"Of the two doctrines, res judicata is the more comprehensive because it relates to a prior judgment arising out of the same cause of action between the parties. Collateral estoppel is less encompassing, barring relitigation of a particular issue or determinate fact. Both doctrines require a large measure of identity as to parties. . . .

"As to identity of parties, mutuality of parties is not a limiting ingredient of the collateral estoppel rule imposed by the Fifth and Fourteenth Amendments. It is sufficient that the party against whom the plea of collateral estoppel is asserted was a party or in privity with a party in the prior litigation.

"Here, the prosecutor asserts that the State was not a party at the parole revocation hearing because 'the state' for purposes of parole revocation is not 'the state' for purposes of criminal prosecutions. We find this contention to be without merit. Although the prosecutor was not a participant in the revocation proceeding, an assistant attorney general was. The same sovereign is involved in both instances."

The court then went on to consider whether an administrative determination could be applied to preclude a criminal trial. The court stated:

"Decisions of administrative agencies may be accorded preclusive effect in subsequent litigation. . . . The applicability of collateral estoppel in each case is dependent upon a number of factors, including (1) whether the agency acting within its competence made a factual decision; (2) agency and court procedural differences; and (3) policy considerations. . . .

"Policy arguments have been often the deciding factor when collateral estoppel is based upon prior administrative determination. 2 K. Davis, Administrative Law Treatise, Sec. 18.04 (1958 and Supp. 1970). The doctrine may be qualified or rejected when its application would contravene public policy. . . .

"We believe public policy dictates rejection of collateral estoppel in this instance. Parole revocation is not part of a new criminal prosecution. . . .

"Practical public policy requires that new criminal matters, when charged in the criminal justice system, must be permitted to be there decided, unhampered by any parallel proceedings of the Board of Prison Terms and Paroles. Consequently we hold that the board's parole revocation hearing decision regarding Dupard may not be interposed as a basis for collateral estoppel in his prosecution on new criminal charges. 13

Since public policy considerations are an exception to the application of collateral estoppel, it is important to note that the U.S. Supreme Court has held in a number of cases that highway safety is a compelling public interest. For example in the Mackey case the Court said:

"We have traditionally accorded the states great leeway in adopting summary procedures to protect public health and safety. States surely have at least as much interest in removing drunken drivers from their highways as in summarily seizing mislabeled drugs or destroying spoiled foodstuffs."[24]

In Minnesota, the Supreme Court has held that acquittal of the criminal charge of DWI does not, as a matter of law, dispose of corollary charges under the implied consent law. Furthermore, administrative and criminal proceedings growing out of a DWI case are related only insofar as they generally grow out of the same set of facts. Even though the state is the "party" in both instances, at a criminal trial, the "state" is represented by the county attorney, who is not free to plea bargain away state civil penalties. The civil penalties, i.e., via administrative process, is solely within the jurisdiction of the state's Attorney General and therefore the state could not be estopped from applying a civil sanction even though the county attorney included a "no loss of license" in his plea bargain.[25]

Other issues concerning res judicata, collateral estoppel and collateral attack are:

1. Res judicata is applicable in successive administrative proceedings.[26]
2. A collateral attack on the underlying criminal conviction is generally not permitted at an administrative hearing.[27]
3. As applied to Minnesota, res judicata does apply in administrative hearing and the Supreme Court has admonished state agencies to comply with pertinent statutes and regulations.

"Nevertheless, it should be noted that the practice of the commission in this case is not one to be commended. It appears that, in essence, the commission attempted largely to avoid the difficult legal question here encountered by simply substituting a different set of factual findings for those made in 1963 and 1965. We are in sympathy with relator's assertions that such action was prima facie violative of principles of res judicata--principles which, in spirit at least, apply to adjudications by administrative agencies as well as to those made by the courts. . . . Because of

> the breadth of power which has been delegated to administrative agencies such as the one here involved, it is necessary in the interests of consistency and fairness that such power be exercised only in the manner prescribed by statute and published regulation. Our legislature has set forth specific procedures to be followed relative to providing for notice and hearing for the reopening of compensation awards by the commission."[28]

In conclusion, the great weight of judicial authority continues to hold that a suspension or revocation of a driver's license is not barred by collateral estoppel or res judicata. This was summarized by the annotator in 96 ALR2d 612, 614 as follows:

> "It is generally recognized that state legislatures may, in the exercise of their police powers, enact reasonable regulations for the obtaining of drivers' or operators' licenses and for the revocation or suspension thereof under stated circumstances. However, where those circumstances which were the basis of the revocation or suspension were also the basis of charges in a previous criminal case, it might seem to the layman driver that the state has been allowed to try him twice for the same offense, and his notions of fair play might be injured all the more where the previous criminal prosecution resulted in a determination that he was 'not guilty.' Notwithstanding the notions of fair play entertained by laymen, however, what little authority there is on the subject holds that the later proceeding to revoke or suspend his license, since not intended as a punishment of the driver but designed solely for the protection of the public in the use of the highways, does not in the legal sense subject him to double jeopardy or punishment, nor is a judgment of acquittal in the previous criminal case res judicata on the issue of guilt or innocence in the later proceeding, for, as stated by one court, such judgment does not have any probative value in the subsequent proceeding beyond the mere fact of its rendition, the reason for this being found in the nature of the criminal proceedings and the type of proof required therein, for in a criminal proceeding the guilt of the accused must be established beyond a reasonable doubt, whereas in a civil proceeding to revoke a license it is sufficient if the offense is established by a preponderance of the evidence.
>
> "It should be noted that the result reached in the case of a revocation or suspension of a driver's license is fully in accord with the general rule relating to the effect on administrative proceedings of an acquittal or conviction in criminal proceedings."[29]

Double Punishment. Under the Minnesota law there is a dual track. Under Sec. 169.121 it is a criminal offense for a person to drive, etc., with an alcohol concentration of 0.10 or more. Under the implied consent law a

person can have his driver's license revoked for driving, etc., with an alcohol concentration of 0.10 or more. This second track has been referred to as "administrative per se."

What if a driver is punished with criminal penalties under the first statute and also suffers a revocation of his driver's license under the second law? Does this violate the constitutional prohibitions of double jeopardy and double punishment?

The U.S. Supreme Court has made it clear that the double jeopardy clause of the U.S. Constitution bars double punishment. The Court held in the Pearce[30] case that: "The Constitution was designed as much to prevent the criminal from being twice punished for the same offense as from being twice tried for it."

However, a review of the appellate court decisions indicates there would not be double punishment where one sanction is criminal and the other civil or administrative in nature.[31] For example, in Barnes v. Tofany[32] the defendant was convicted for driving while ability impaired for which he received a mandatory suspension of his driver's license. In addition, acting under a separate statute, the Commissioner of Motor Vehicles, then suspended his driver's license, following an administrative determination that the defendant was grossly negligent. Both suspensions arose out of the same event. The defendant appealed his second suspension on the grounds that this violated his constitutional rights of not being placed in double jeopardy and of double punishment. In upholding both suspensions the New York Court of Appeals said:

> "The constitutional prohibitions against double jeopardy and double punishment do not prevent the Legislature from enacting and and the executive from enforcing, civil as well as criminal sanctions for the same conduct. . . . Therefore, the question before us is really whether the sanction imposed (suspension of an operator's license) is essentially criminal or civil in nature.

"As the Supreme Court noted in Helvering v. Mitchell (303 U.S. 391, 399, 58 S.Ct. 630, 633, 82 L.Ed. 917), 'Remedial sanctions may be of varying types. One which is characteristically free of the punitive criminal element is revocation of a privilege voluntarily granted.' It is apparent that suspension or revocation of the privilege of operating a motor vehicle is essentially civil in nature, having as its aims chastening of the errant motorist, and, more importantly, the protection of the public from such a dangerous individual." * * *

"Each of these proceedings—one, a civil administrative proceeding, and the other, a criminal action—are separate and independent of each other. The outcome of one proceeding is of no consequence in the other. There is no constitutional or statutory prohibition to make the Commissioner's implementation of the statute illegal or unlawful. Since the statute imposed upon the Commissioner a mandatory duty to suspend petitioner's license after conviction, there was no exercise of discretion to be reviewed by the courts below as to the second suspension."[33]

The Supreme Court of Minnesota in the Mulvihill case in 1975 also emphasized this distinction between criminal and civil nature of the two tracks. The court said:

"We feel it important to again emphasize the essential differences between license revocation under Sec. 169.121, subd. 3, and license revocation under Sec. 169.123, subd. 4. The former is automatically imposed as a criminal penalty upon conviction of a Sec. 169.121 violation. It is triggered by the outcome of the criminal proceeding and is imposed through the judicial system. Revocation under this section is for not less than 30 days. On the other hand, revocation under the implied-consent law is essentially civil in nature. State, Department of Public Safety v. House, 291 Minn. 424, 425, 192 N.W.2d 93, 94 (1971). It is imposed administratively by the commissioner of public safety regardless of the outcome of the criminal proceeding arising out of the same incident and is triggered by the refusal to submit to chemical testing."[34]

A related issue is where the criminal charges are dismissed or the defendant is acquitted: Can the motor vehicle department revoke under the implied consent law? This issue was addressed by the Supreme Court of Minnesota in the Styrbicki[35] and Olsen[36] decisions.

In Styrbicki the defendant was found not guilty by a jury on the charge of driving under the influence of alcohol. However, the defendant had refused the chemical test when arrested and on this ground the motor vehicle department moved

to revoke his license. He argued on appeal to the Minnesota Supreme Court that because he was acquitted of the criminal charge, it followed that the arrest was therefore unlawful and thus the officer did not have the required "reasonable and probable grounds" for the implied consent law to revoke his license.

The court rejected this argument and held that the acquittal did not invalidate the arrest. In doing so the court concluded:

> "Other courts have also held that the fact that a person may have been acquitted of the offense of driving while intoxicated does not preclude an administrative hearing to determine if his driving privileges should be withdrawn for his refusal to submit to a chemical test to determine the alcoholic content of his blood."[37]

In the Olsen[38] case the Supreme Court of Minnesota held that where the driving under the influence charge was dismissed when the defendant pled guilty to the reduction of the charge to careless driving it was not a bar to a revocation of his driver's license for a refusal of the chemical test.

Guilty Plea. There is no provision in the Minnesota implied consent statute which ties a conviction of a drinking-driving offense to the refusal. However, the Supreme Court of Minnesota in the Schlief[39] case held that a driver who pleads guilty to the criminal DWI charge cannot be subjected to a revocation of his driver's license for refusing the chemical test. The court stated that it would serve no useful purpose and would be unreasonable.

In a later decision in the Mulvihill[40] case the court laid down the guidelines for the Schlief doctrine. The court held:

> "In order for a defendant to establish reasonable grounds for refusing to submit to chemical testing as otherwise required by statute and avail himself of the doctrine in the Schlief decision, he must do the following: (1) At the time of the refusal, he must intend to plead guilty to a charge of violating Minn.St. 169.121, subd. 1; (2) he must enter a plea of guilty to a charge which subjects him to automatic revocation under Sec. 169.121, subd. 3; and (3) he must plead guilty at the first available opportunity."

The effect of this approach is to put a lever on the defendant who has refused the test. It encourages him to plead guilty because if he does, there is no revocation for refusing the chemical test. Of course, he receives a revocation on the conviction but if he pleads "not" guilty and is convicted he could receive two revocations—one for the conviction and one for the implied consent refusal.[41]

Thus the Schlief-Mulvihill doctrine has a tendency to chill "not" guilty pleas. Such a practice has been held unconstitutional by the U.S. Supreme Court in United States v. Jackson[42] where the court held that due process forbids convicting a defendant on the basis of a coerced guilty plea.

Arizona had a statutory provision which was similar in effect to the Schlief-Mulvihill doctrine. In holding the statute unconstitutional the U.S. District Court said:

> "The effect of subparagraph H. is to needlessly chill the exercise of basic constitutional rights. See United States v. Jackson, supra. The operation of subparagraph H. obviously places the individual charged in a dilemma as to whether to stand on his rights, and thereby lose his driving privileges, or to enter a plea of guilty, without appeal, and thus retain his driving privileges. Thus, subparagraph H. of the statute imposes an impermissible burden upon the exercise of the accused's Fifth Amendment right not to plead guilty, and his Sixth Amendment right to demand a jury trial, and is, therefore, unconstitutional. See United States v. Jackson, supra, and Pope v. United States, 392 U.S. 651, 88 S.Ct. 2145, 20 L.Ed.2d 1317. Moreover, the obvious difference in treatment of the accused under the Arizona statute, which subparagraph H. includes therein, constitutes a violation of the equal protection clause of the Fourteenth Amendment." [43]

Since the Schlief-Mulvihill approach is not the rule around the country, it would not normally pose a problem in other states which adopted the Minnesota implied consent law since this doctrine is in the case law and not the statute.

FOOTNOTES - Part II.

1. Minnesota Laws 1976, Chapter 341, effective July 1, 1976, and codified as Sec. 169.127. However in 1978 this law was repealed and re-enacted as Sec. 169.123 by Minnesota Laws 1978, Chapter 727, effective September 1, 1978, retaining its substantive aspects.

2. Delaware v. Prouse, 440 U.S. 648, 99 S.CT. 1391, 59 L.Ed.2d 660 (1979).

3. The Supreme Court of Minnesota held that where a driver was under arrest for DWI while being transported went into convulsions and was rushed to the hospital unconscious, a blood test could be taken and if the results were 0.10 or over, his license could be revoked under the "administrative per se" law even though no warnings had been given and the driver did not consent. This conclusion was reached on the grounds that the taking of the blood sample was constitutional because there was "an exigency to preserve evidence, probable cause to support formal arrest, and a highly unobtrusive search," citing State v. Oevering, 268 N.W.2d 68 (Minn.-1978). Also, the court concluded that there was no prohibition in the Minnesota implied consent law which precluded the taking of the blood sample. Since the driver's condition precluded him from refusing the test, his consent remained continuous. This continuing consent permitted use of the results of the test in an implied consent proceeding. State v. Wiehle, 287 N.W.2d 416 (Minn.-1979). See also: State v. Hauge, 286 N.W.2d 727 (Minn.-1979), holding to same effect.

4. State v. Oevering, 268 N.W.2d 68 (Minn.-1978); State v. Dewey, 272 N.W.2d 355 (Minn.-1978); State v. Hauge, 286 N.W.2d 727 (Minn.-1979); State v. Wiehle, 287 N.W.2d 416 (Minn.-1979); State v. Hart, 289 N.W.2d 478 (Minn.-1979); State v. Aguirre, 295 N.W.2d 79 (Minn.-1980).

5. Alabama, Alaska, California, Delaware, Florida, Illinois, Iowa, Maine, Minnesota, Missouri, Nebraska, New York, North Carolina, Oregon, South Dakota, Utah, Vermont, New Hampshire, Washington, and Wisconsin.

6. State v. Basinger, 30 N.C.App. 45, 226 S.E.2d 216, 218 (1976).

7. Coxe v. State, 281 A.2d 606, 607 (Del.-1971).

8. Roberts v. State, 329 So.2d 296, 297 (Fla.-1976); Greaves v. State, 528 P.2d 805 (Utah-1974).

9. State v. Watts, 601 S.W.2d 617 (Mo.-1980).

10. 601 S.W.2d at 619.

11. Bell v. Burson, 402 U.S. 535, 91 S.Ct. 1586, 1591 (1971).

12. See n. 11.

13. State v. Wiehle, 287 N.W.2d 416 (Minn.-1979).

14. 96 ALR2d 612, "Conviction or Acquittal in Previous Criminal Case as Bar to Revocation or Suspension of Driver's License on Same Factual Charges." See also Later Case Service with more decisions to same effect.

15. 96 ALR2d, supra, n. 14.

16. 96 ALR2d 612, supra, n. 14.

17. Ashe v. Swenson, 397 U.S. 436, 90 S.Ct. 1189, 25 L.Ed.2d 469 (1970).

18. Allen v. McCurry, U.S. , 101 S.Ct. 411, 414-415 (1980).

19. Vela v. Alvarez, 507 F.Supp. 887, 889 (D.C.-Tex.-1981).

20. Lomax v. Smith, 501 F.Supp. 119, 122 (D.C.-Pa.-1980).

21. United States v. Utah Construction & Mining Co., 384 U.S. 394, 422, 86 S.Ct. 1545, 1560, 16 L.Ed.2d 642 (1966).

22. International Harvester Co. v. Occupational Safety and Health Review Commission, 628 F.2d 982, 986 (C.A.7th-Ill.-1980).

23. State v. Dupard, 609 P.2d 961, 962-65 (Wash.-1980).

24. Mackey v. Montrym, 443 U.S. 1, 99 S.Ct. 2612, 2621 (1979). See also statements to same effect in Dixon v. Love, 431 U.S. 105 97 S.Ct. 1723, 52 L.Ed.2d 172 (1977).

25. State, Department of Public Safety v. House, 192 N.W.2d 93 (Minn.-1971).

26. Doherty v. Cuomo, 430 N.Y.S.2d 168 (N.Y.App.-1980).

27. Commonwealth, Dept. of Transportation, 419 A.2d 233 (Pa.Cmwlth.-1980); Kuhn v. State ex rel. Van Natta, 404 N.E.2d 1360 (Ind.App.-1980).

28. Souden v. Hopkins Motor Sales, Inc., 182 N.W.2d 668, 672-73 (Minn.-1971).

29. 96 ALR2d 612, 614, supra, n. 14.

30. North Carolina v. Pearce, 395 U.S. 711, 89 S.Ct. 2072, 2077 (1969).

31. In Wells v. Roberts, 280 S.E.2d 266 (W.Va.-1981), the court noted: "Most courts that have considered similar claims, have consistently held that administrative revocation or suspension of an operator's license is not subject to a double jeopardy challenge. See, e.g., Campbell v. State, 176 Colo. 202, 491 P.2d 1385 (1971); Keenan v. Hardison, 245 Ga. 599, 266 S.E.2d 205 (1980); Williams v. State, 138 Ga.App. 662, 226 S.E.2d 816 (1976); Hardin v. Van Natta, 376 N.E.2d 518 (Ind.App.-1978); State v. Edwards, 353 So.2d 476 (La.App.-1977); State v. Sinner, 207 N.W.2d 495 (N.D.-1973); Commonwealth v. Levy, 194 Pa. Super. 390, 169 A.2d 596 (1961); Robinson v. Texas Dept. of Public Safety, 586 S.W.2d 604 (Tex.Civ.App. 1979); State v. Scheffel, 82 Wash.2d 872, 514 P.2d 1052 (1973).

See also: 88 ALR2d 1064, 1076, "Suspension or Revocation of Driver's License for Refusal to Take Sobriety Test," citing cases holding

that acquittal of the charge does not bar suspension or revocation of driver's license for refusal of the chemical test.

32. Barnes v. Tofany, 27 N.Y.2d 74, 261 N.E.2d 617 (1970).

33. 261 N.E.2d at 619.

34. State v. Mulvihill, 227 N.W.2d 813, 817 (Minn.-1975).

35. State v. Styrbicki, 169 N.W.2d 225 (Minn.-1969).

36. State v. Olsen, 169 N.W.2d 227 (Minn.-1969).

37. 169 N.W.2d at 227.

38. See n. 36, supra.

39. State v. Schlief, 185 N.W.2d 274 (Minn.-1971).

40. State v. Mulvihill, 227 N.W.2d 813, 817 (Minnn.-1975).

41. Sec. 169.121(3) prohibits a revocation under the implied consent law if the driver has been revoked for a conviction under the criminal statute for DWI. The provision reads as follows: Any person whose license has been revoked pursuant to Section 169.123 (implied consent) is not subject to the mandatory revocation provision of this section." However, officials in Minnesota report if the timing is such that the defendant receives a revocation for a conviction and some time later because of delays, etc., there can be a later revocation under the implied consent law.

42. United States v. Jackson, 390 U.S. 570, 88 S.Ct. 1209, 1216 (1968).

43. Voyles v. Thorneycroft, 398 F.Supp. 706, 707 (D.C.-Ariz.-1975).

PART III

STUDY OF OPERATIONAL IMPACT

In addition to studying the legal and constitutional questions relating to the Minnesota "administrative per se" implied consent law, the questions of—is the law working and how well—are addressed.

There were two principal sources for the responses to the following questions: (1) interviews with a number of state officials in Minnesota who are involved in running the programs under the implied consent law; and (2) statistics from their offices.

The questions to be answered were:

1. "Ascertain to what extent offenders charged with DUI are cited under Minnesota Section 169.123, as opposed to Minnesota Section 169.121, wherein an implied consent BAC test has been administered."

The total number of "arrests" for DWI reported to the Minnesota Criminal Justice Information System in 1980 was 22,788. Also, in 1980 the number of "certificates" from law enforcement officers to the Department of Public Safety that a driver had either refused a chemical test or had submitted and the results were 0.10 alcohol concentration or more totaled 28,429. From the data available it is not possible to determine the number of chemical tests administered in the 22,788 arrests. Under Minnesota law the officer can arrest for DWI without administering any chemical tests.

It is possible for the officer to file a "certificate" of refusal for 0.10 or more with the Department of Public Safety <u>without</u> filing any criminal charges for DWI. Also, there are cases where the driver submitted to the chemical test and the results were less than 0.10 alcohol concentration and thus no

certificate would be sent to the Department of Public Safety yet criminal charges could have been filed. Hence there are several reasons for the number of arrests and number of revocations to differ.

In some of the interviews with Minnesota officials it was reported that the "administrative per se" or implied consent law was popular with law enforcement officers. The number of revocations over arrests appears to support this view.

For further comparison of arrests and certificates see Tables I and IV in Appendix II. Also see Memorandum of Mr. Forst Lowery in Appendix IV explaining differences in the data.

2. "Determine, if possible, to what extent law enforcement officers are using the Subd. 4 provision by submitting to the Commissioner of Public Safety BAC test results of 0.10 percent or more."

The laboratory of the Bureau of Criminal Apprehension in Minnesota performs most of the blood and urine tests in DWI cases, except for St. Paul, Minneapolis, and a few other cities, and receives reports on all the breath tests performed in the state. In 1979 these tests totaled 15,254 where the results were 0.10 or more. In the same year the number of revocations under the implied consent "administrative per se" law was reported as 6,742. On the face of this it would appear that officers were using the law (Subd. 4 of Sec. 169.123) only about half the time.

However, there are some factors which should be noted. The Supreme Court of Minnesota has held that if a driver pleads guilty at the first opportunity to the DWI charge, then his license cannot be revoked under the implied consent law. See the discussion in Part II above of the Schlief-Mulvihill cases under the heading of "Guilty Plea." There is no data available to indicate how much this decreases the number of implied consent revocations.

Another factor impacting on the number of revocations under the implied consent law is that a number of drivers request a hearing. (See Table IX in Appendix II.) As will be noted this number has substantially increased in recent years. Needless to say, when it goes to a hearing the Attorney General does not win them all and this reduces somewhat the number of revocations.

Interviews with Minnesota officials indicate that in their view officers are using this law most of the time. When the factors just discussed are taken into consideration, it would appear that the views of the officials interviewed are supported by the data.

3. "Determine what use is being made by the Motor Vehicle Department of the BAC test results as authorized under Subd. 4. What, if any, are the constitutional, legal and practical problems - how well is it working."

The "certificate" from the officer, that a driver has either refused a chemical test or the results of the test were 0.10 or more, to the Department of Public Safety triggers the action under the implied consent law. The officials interviewed, both in and out of the division in DPS which handles these certificates, reported that the system was working well.

One factor which makes the system work more effectively is that at the time of the refusal or when a breath test is taken and the results are known at the time, the officer serves a "Notice of Revocation" on the driver and picks up the driver's license which is attached to the certificate forwarded to DPS. (See Form in Appendix III.) If it goes to a hearing and the license is not already in the possession of DPS, and the hearing is adverse to the driver, the court picks up the license and sends it to the DPS along with the court's decision. This greatly reduces the administrative problem of notifying the driver of his opportunity for a hearing (which formerly was done by certified mail in all cases) and obtaining possession of the license from the driver.

For the drivers who do not request a hearing, it was reported that there was no significant backlog. However, as will be noted in Table IX in Appendix II, the number of pending cases under the implied consent law is steadily growing. This is due in part to the lack of adequate staff in the Attorney General's Office to handle these cases and at the same time the increase in the number of DWI arrests being made on the street.

4. "Determine to what extent driver license revocation actions are taken pursuant to Subd. 3 (BAC test results of 0.10 percent or higher) under the following situations:

    1) the DUI charge is nolle prossed
    2) the DUI case is continued
    3) the DUI charge is plea bargained down to a lesser offense
    4) the DUI case results in an acquittal."

From the data available in Minnesota, it is very difficult to determine the precise impact the "administrative per se" implied consent law has had on the four areas listed above. In fact, no data was found to determine exactly how many DWI cases were nolle prossed, continued, plea bargained or acquitted on a state wide basis.

However, a general answer can be given by looking at the number of total alcohol-related revocations in Table I (Appendix II). The "administrative per se" law became effective on July 1, 1976. If a comparison is made for 1975 (17,628 revocations) which would be DWI convictions and refusals and 1979 DWI convictions and refusals (18,224 revocations) the impact of revoking under the "administrative per se" law was not negative. It appears the DWI case load has continued to increase since the convictions resulting in revocations has increased. In 1980 there was a significant increase—from 14,797 in 1979 to 17,406 in 1980. It can be concluded that the enactment of the "administrative per se" implied consent law did not decrease the DWI cases in court.

5. "Based on available data, determine the impact the enactment of Minnesota Section 169.123 (Subd. 4) has had on the number of implied consent refusals."

Prior to 1978 the Department of Public Safety did not keep data on the number of revocations for refusal separate from revocations for convictions or for having an alcohol concentration of 0.10 or more. However, the number of revocations for refusals in 1978 was 3,344, in 1979 it was 3,427, and in 1980 it was 3,863. Since this shows a steady increase, it can be concluded that the enactment of the "administrative per se" implied consent law which added revocations for having an alcohol concentration of 0.10 or more had no negative impact. Nor does it appear that this new law greatly increased refusals. (See Table I in Appendix II.)

6. "Determine the extent to which the Commissioner of Public Safety appears through prosecuting attorneys at driver license revocation hearings as provided for in Minnesota Section 169.123 (Subd. 6)."

In the Minnesota law it provides that: "The commissioner of public safety may appear (at the implied consent hearing) through his own attorney or, by agreement with the jurisdiction involved, through the prosecuting authority for that jurisdiction." According to the Minnesota Attorney General's Office no agreements have been entered into with any local jurisdiction to represent the Department of Public Safety at any implied consent hearings.

As will be noted in Table IX in Appendix II the number of pending cases has been steadily growing and to deal with this backlog either the staff in the Attorney General's Office who handles these cases will have to be increased or agreements will have to be made with local prosecutors. The importance of keeping the function in the Attorney General's Office is that it removes any pressure on the local prosecutor concerning the disposition of both the criminal charges and the implied consent revocation proceedings. Also, keeping it

at the state level provides for uniform policies in handling the implied consent cases.

7. "Determine, to the extent practical, the impact of the administrative licensing action on the adjudication process (e.g., conviction rates, sanction involved)."

It is very difficult to determine conviction rates, types of sanctions imposed, and related aspects in DWI cases in the court system. However, one measure that is available is the number of revocations for DWI convictions. These have increased — 15,512 in 1978; 14,797 in 1979; 17,406 in 1980; and 7,861 in the first five months of 1981 (which if the level continues would be about 18,864 in 1981).

Based on the number of revocations for convictions the enactment of the "administrative per se" implied consent law had no negative impact on criminal charges under the DWI statute.

Since the two tracks are separate and the timing is not parallel, the officials interviewed in Minnesota reported they had not observed any impact on conviction rates, sanctions imposed, etc. If anything, tightening the net on drinking drivers has led to increased enforcement activity by law enforcement officers. See especially the 1980 and 1981 revocations in Table I, Appendix II.

8. "Determine, to the extent practical, the impact of the administrative licensing process on the rate of enforcement and support of police officers."

The number of sworn police officers in Minnesota has remained relatively stable in the past few years—going from 5,922 in 1977 to 6,107 in 1980—an increase of only 185 officers. (See Table V in Appendix II.) Such a small increase cannot account for the increase in total number of revocations for alcohol related offenses which went from 17,741 to 30,481 in the same period of time. (See Table I in Appendix II.)

Among the officials interviewed it was reported that the "administrative per se" implied consent law was popular among law enforcement officers. As is true in many jurisdictions the officers express frustration at the courts and their handling of DWI cases. It appears they view the administrative track as providing a method of doing something about the drinking driver regardless of what happens to the criminal charges in court.

PART IV

EXECUTIVE SUMMARY AND CONCLUSIONS

In 1976 the State of Minnesota adopted a rather unique implied consent law. That state already had the traditional implied consent law which provided for revocation of the driver's license if the driver refused to submit to a chemical test for intoxication. What was added was a provision that when the officer requested a chemical test for intoxication under the implied consent law, and the driver submitted, and the results were an alcohol concentration of 0.10 or more, the officer sent a report to the motor vehicle department (Department of Public Safety). Based on the report the DPS could revoke the driver's license for having 0.10 or more. Of course, there is a notice and opportunity for a hearing. However, if the results of the hearing are adverse to the driver, or if he waives his right to a hearing, then the DPS can revoke on the basis of either the refusal to submit or having 0.10 or more. It has been described as an "administrative per se" law.

At the same time, Minnesota has a criminal statute making it a crime to drive, etc., while under the influence of alcohol which is the traditional DWI charge. Also in recent years at least 20 states, including Minnesota, have enacted criminal statutes making it a crime to drive, etc., with an alcohol concentration of 0.10 or more. This charge has been described as an absolute or "illegal per se" law.

The uniqueness of the Minnesota law is the two tracks—one a criminal "per se" law and the other an administrative "per se" law. They are separate tracks with almost no connection between the two. About the only connection are some restrictions on revoking the driver's license for both but that

connection applies in only some circumstances. In the situation where the driver refuses the test and pleads guilty to the criminal charge at the first opportunity, the Minnesota Supreme Court has held his license cannot be revoked for the refusal.

Another situation is where the timing is such that a revocation takes place for the implied consent law and the driver is later convicted of the criminal charge, then the statute prohibits another revocation unless the driver has had a prior revocation within three years. Then the prohibition does not apply.

If the timing is the opposite—the driver is convicted of the criminal charge first and the implied consent revocation happens later, then the Minnesota statute does not bar two revocations.

This study has two principal objectives. First, to study the legal and constitutional aspects and second, to look at the operation of the law and determine whether or not it is working and its impact on other aspects of the system of control on drinking-drivers.

Legal Conclusions. Since a number of states, including Minnesota, have had appellate court challenges to the "illegal per se" law, this was one method of determining possible court challenges to the "administrative per se" law. One possible challenge is that the legislature was arbitrary and capricious when it chose the alcohol concentration of 0.10 or more as an element of the statute. This argument has been rejected by the appellate courts because of the numerous scientific studies which have shown that every person with an alcohol concentration of 0.10 or more is an unsafe driver. Consequently, the legislative determination is based on scientific research.

Another possible legal challenge is that the law is vague and indefinite because the driver cannot tell when he is approaching the 0.10 concentration without a chemical test for intoxication. At least two appellate courts have rejected this argument because any person of ordinary intelligence who has consumed an alcoholic beverage, and particularly a substantial amount, knows that he should not attempt to drive or take control of a vehicle.

A third possible legal challenge is based on due process of law. In the Bell v. Burson case the U.S. Supreme Court held that a driver's license was an "important interest" to which the due process clause of the 14th Amendment attached. Thus a driver is entitled to notice and opportunity to a hearing in most circumstances before any action can be taken against his license. The Minnesota implied consent law complies with these requirements and the Minnesota Supreme Court has upheld its constitutionality.

A fourth possible challenge is "double jeopardy" or "collateral estoppel." Since there is both a criminal charge of driving, etc., with an alcohol concentration of 0.10 or more as well as administrative action for 0.10 or more, do corrective sanctions against the driver under both laws constitute double jeopardy? The appellate court decisions almost unanimously hold there is no double jeopardy between criminal and administrative sanctions. Collateral estoppel means that once an "issue" has been litigated, that "issue" (in this case the issue of 0.10 or more) cannot be litigated again. Normally, collateral estoppel has not been applied by the courts between criminal and administrative proceedings.

In some cases a driver can receive a revocation for being convicted of the criminal charge and also receive a separate revocation (not running concurrently) under the implied consent law. Since double jeopardy also prohibits double punishment does this constitute a violation of double jeopardy? The

answer is no since the appellate courts have regularly held that double jeopardy does not bar both civil or administrative sanctions on one hand and criminal sanctions on the other arising out of the same event.

If another state should enact the Minnesota implied consent law, care should be taken not to add a provision which bars a revocation for refusal if the driver pleads guilty to the criminal charge. While this ruling is not in the Minnesota statute it was imposed by the Minnesota Supreme Court. It has been held unconstitutional in Arizona by the U.S. District Court because it has a tendency to "chill" the defendant's constitutional right to plead not guilty.

Many observers feel that the law should not impose two revocations—one for a conviction and one for the implied consent law. If any state adopts the Minnesota "administrative per se" law, this point should be addressed.

In summary it appears clear that the Minnesota implied consent law with its provisions on "administrative per se" as a parallel track to the criminal drinking-driving charges is legally sound and constitutional.

Operational Conclusions. Based on data from Minnesota, interviews with a number of state officials, and review of the appellate court decisions in Minnesota, it appears the "administrative per se" law is working quite well.

On the national level, Professor Robert F. Borkenstein has estimated that police arrest only about 1 in 2,000 cases of drinking and driving. In Minnesota the Office of Traffic Safety estimates the figure is 1 in 300.

Because of the difficulty in collecting data on every aspect of the system, it is not possible to have precise figures. However, a reduction from about 1 in 2,000 to 1 in 300 is impressive even if only approximately correct.

A review of the number of revocations for alcohol related offenses, both criminal and implied consent in Table I (Appendix II), indicates the system is catching more drinking drivers each year and would tend to support, in part, the estimate of 1 in 300.

The addition of the "administrative per se" law appears to have had no negative impact on the operation of the criminal track for handling drinking drivers. In fact, the increase in the number of revocations for convictions in recent years appears to indicate it has had a "shot in the arm" effect upon the criminal system.

The officials interviewed reported that the "administrative per se" provisions are popular with law enforcement officers. Because of the typical frustration many officers have with the criminal handling of drinking drivers, the "administrative per se" law gives them an out for that frustration.

A factor which has helped make the system work is the notice of revocation and pick up of the driver's license at the time of refusal, or a breath test of 0.10 or more, along with the pick up at the time of the hearing if the decision is against the defendant and the license is not already in the hands of the Department of Public Safety. This greatly reduces the cost and gives personal service of the notice of an opportunity for a hearing which expedites the entire system.

It must be remembered that the so-called political and safety climate in Minnesota has been favorable to the enactment of new legislation in the area of drinking and driving. While the consumption of alcoholic beverages has steadily increased in Minnesota in recent years (see Table VIII in Appendix II) the efforts of the traffic safety community have been fairly well received. This is in contrast to other states where efforts to control the drunk driver have very rough sledding in the state legislatures and any new

legislation is strongly resisted. This factor needs to be kept in mind by any "transplant" of this type of law to another state.

As with any such system, the dedication, experience, and expertise of the officials and public employees operating the system are extremely important. In Minnesota the officials and employees appear to be well motivated and really make the system work.

However, the increasing case load is starting to cause problems and this is particularly a problem in the Office of the Attorney General. The file of pending cases waiting for a hearing under the implied consent law has grown significantly in recent years. It is clear a larger staff is needed for this function.

Overall the conclusion is that Minnesota does a good job in making the "administrative per se" system work and other states should be encouraged to consider adopting similar provisions.

APPENDIX I

TEXT OF RELEVANT MINNESOTA STATUTES

Source: Minnesota Statutes 1980, Embracing laws of a general and permanent nature and certain other laws in force or to be in force after the 1980 Session of the Legislature, Official Publication of the State of Minnesota.

169.121 MOTOR VEHICLE DRIVERS UNDER INFLUENCE OF ALCOHOL OR CONTROLLED SUBSTANCE.

Subdivision 1. It is a misdemeanor for any person to drive, operate or be in physical control of any motor vehicle within this state:

(a) When the person is under the influence of alcohol;

(b) When the person is under the influence of a controlled substance;

(c) When the person is under the influence of a combination of any two or more of the elements named in clauses (a) and (b); or

(d) When the person's alcohol concentration is 0.10 or more.

The provisions of this subdivision apply, but are not limited in application, to any person who drives, operates, or is in physical control of any motor vehicle in the manner prohibited by this subdivision upon the ice of any lake, stream, or river, including but not limited to the ice of any boundary water.

Subd. 2. Upon the trial of any prosecution arising out of acts alleged to have been committed by any person arrested for driving, operating, or being in physical control of a motor vehicle in violation of subdivision 1, the court may admit evidence of the amount of alcohol or a controlled substance in the person's blood, breath, or urine as shown by a medical or chemical analysis thereof, if the test is taken voluntarily or pursuant to section 169.123.

For the purposes of this subdivision:

(a) evidence that there was at the time an alcohol concentration of 0.05 or less is prima facie evidence that the person was not under the influence of alcohol;

(b) evidence that there was at the time an alcohol concentration of more than 0.05 and less than 0.10 is relevant evidence in indicating whether or not the person was under the influence of alcohol.

The foregoing provisions do not limit the introduction of any other competent evidence bearing upon the question whether or not the person was under the influence of alcohol or a controlled substance.

Subd. 3. Every person convicted of a violation of this section or an ordinance in conformity therewith is punishable by imprisonment of not more than 90 days, or by a fine of not more than $500, or both, and his driver's license shall be revoked for not less than 30 days, except that every person who is convicted of a violation of this section or an ordinance in conformity therewith, when the violation is found to be the proximate cause of great bodily harm as defined in section 609.02, subdivision 8, or death to another person, shall be punished by imprisonment for not more than 90 days, or by fine of not more

than $500, or both, and his driver's license shall be revoked for not less than 90 days.

Any person whose license has been revoked pursuant to section 169.123 is not subject to the mandatory revocation provision of this subdivision.

Subd. 4. Every person who is convicted of a violation of this section or an ordinance in conformity therewith within three years of any previous such conviction shall be punished by imprisonment for not more than 90 days, or a fine of not more than $500, or both, and his driver's license shall be revoked for not less than 90 days.

Subd. 5. The court may stay imposition or execution of any sentence authorized by subdivision 3 or 4 on the condition that the convicted person submit to treatment by a public or private institution or a facility providing rehabilitation for chemical dependency licensed by the department of public welfare. A stay of imposition or execution shall be in the manner provided in section 609.135. The court shall report to the commissioner of public safety any stay of imposition or execution of sentence granted under the provisions of this section.

Subd. 6. When a peace officer has reason to believe from the manner in which a person is driving, operating, or controlling a motor vehicle, or has driven, operated, or controlled a motor vehicle, that the driver may be violating or has violated subdivision 1, he may require the driver to provide a sample of his breath for a preliminary screening test using a device approved by the commissioner of public safety for this purpose. The results of this preliminary screening test shall be used for the purpose of deciding whether an arrest should be made and whether to require the chemical tests authorized in section 169.123, but shall not be used in any court action except to prove that a chemical test was properly required of a person pursuant to section 169.123, subdivision 2. Following the screening test additional tests may be required of the driver pursuant to the provisions of section 169.123.

The driver of a motor vehicle who refuses to furnish a sample of his breath is subject to the provisions of section 169.123 unless, in compliance with section 169.123, he submits to a blood, breath or urine test to determine the presence of alcohol or a controlled substance.

Subd. 7. On behalf of the commissioner of public safety a court shall serve notice of revocation on a person convicted of a violation of this section. The court shall take the license or permit of the driver, if any, or obtain a sworn affidavit stating that the license or permit cannot be produced, and send it to the commissioner with a record of the conviction and issue a temporary license effective only for the period during which an appeal from the conviction may be taken. No person who is without driving privileges at the time shall be issued a temporary license and any temporary license issued shall bear the same restrictions and limitations as the driver's license or permit for which it is exchanged.

The commissioner shall issue additional temporary licenses until the final determination of whether there shall be a revocation under this section.

History: *1957 c 297 s 1; 1961 c 454 s 9; 1967 c 283 s 1; 1967 c 569 s 1; 1969 c 744 s 1; 1971 c 244 s 1; 1971 c 893 s 1,2; Ex1971 c 27 s 6; 1973 c 421 s 1; 1973 c 494 s 8; 1975 c 370 s 1; 1976 c 298 s 2; 1976 c 341 s 1; 1978 c 727 s 2*

169.122 OPEN BOTTLE LAW, PENALTY.

Subdivision 1. No person shall drink or consume intoxicating liquors or nonintoxicating malt liquors in any motor vehicle when such vehicle is upon a public highway.

Subd. 2. No person shall have in his possession on his person while in a private motor vehicle upon a public highway, any bottle or receptacle containing intoxicating liquor or nonintoxicating malt liquor which has been opened, or the seal broken, or the contents of which have been partially removed.

Subd. 3. It shall be unlawful for the owner of any private motor vehicle or the driver, if the owner be not then present in the motor vehicle, to keep or allow to be kept in a motor vehicle when such vehicle is upon the public highway any bottle or receptacle containing intoxicating liquors or nonintoxicating malt liquors which has been opened, or the seal broken, or the contents of which have been partially removed except when such bottle or receptacle shall be kept in the trunk of the motor vehicle when such vehicle is equipped with a trunk, or kept in some other area of the vehicle not normally occupied by the driver or passengers, if the motor vehicle is not equipped with a trunk. A utility compartment or glove compartment shall be deemed to be within the area occupied by the driver and passengers.

Subd. 4. Whoever violates the provisions of subdivisions 1 to 3 is guilty of a misdemeanor.

History: *1959 c 255 s 1-4*

169.123 CHEMICAL TESTS FOR INTOXICATION.

Subdivision 1. **Peace officer defined.** For purposes of this section and section 169.121, the term peace officer means a state highway patrol officer, university of Minnesota peace officer, a constable as defined in section 367.40, subdivision 3, or police officer of any municipality, including towns having powers under section 368.01, or county.

Subd. 2. **Implied consent; conditions; election as to type of test.** (a) Any person who drives, operates, or is in physical control of a motor vehicle within this state consents, subject to the provisions of this section and section 169.121, to a chemical test of his blood, breath, or urine for the purpose of determining the presence of alcohol or a controlled substance. The test shall be administered at the direction of a peace officer. The test may be required of a person when an officer has reasonable and probable grounds to believe the person was driving, operating, or in physical control of a motor vehicle in violation of section 169.121 and one of the following conditions exist: (1) the person has been lawfully placed under arrest for violation of section 169.121, or an ordinance in conformity therewith; or (2) the person has been involved in a motor vehicle accident or collision resulting in property damage, personal injury, or death; or (3) the person has refused to take the screening test provided for by section 169.121, subdivision 6; or (4) the screening test was administered and recorded an alcohol concentration of 0.10 or more. Any person may decline to take a direct blood test and elect to take either a breath or urine test, whichever is available and offered. No action may be taken against the person for declining to take a direct blood test unless either a breath or urine test was available and offered.

(b) At the time a chemical test specimen is requested, the person shall be informed:

(1) that if testing is refused, the person's right to drive will be revoked for a period of six months; and

(2) that if a test is taken and the results indicate that the person is under the influence of alcohol or a controlled substance, the person will be subject to criminal penalties and the person's right to drive may be revoked for a period of 90 days; and

(3) that the person has a right to consult with an attorney but that this right is limited to the extent that it cannot unreasonably delay administration of the test or the person will be deemed to have refused the test; and

(4) that after submitting to testing, the person has the right to have additional tests made by a person of his own choosing.

Subd. 2a. **Requirement of urine test.** Notwithstanding subdivision 2, if there are reasonable and probable grounds to believe there is impairment by a controlled substance which is not subject to testing by a blood or breath test, a urine test may be required even after a blood or breath test has been administered.

Subd. 3. **Manner of making test; additional tests.** Only a physician, medical technician, physician's trained mobile intensive care paramedic, registered nurse, medical technologist or laboratory assistant acting at the request of a peace officer may withdraw blood for the purpose of determining the presence of alcohol or controlled substance. This limitation does not apply to the taking of a breath or urine specimen. The person tested has the right to have a person of his own choosing administer a chemical test or tests in addition to any administered at the direction of a peace officer; provided, that the additional test specimen on behalf of the person is obtained at the place where the person is in custody, after the test administered at the direction of a peace officer, and at no expense to the state. The failure or inability to obtain an additional test or tests by a person shall not preclude the admission in evidence of the test taken at the direction of a peace officer unless the additional test was prevented or denied by the peace officer. Upon the request of the person who is tested, full information concerning the test or tests taken at the direction of the peace officer shall be made available to him. The physician, medical technician, physician's trained mobile intensive care paramedic, medical technologist, laboratory assistant or registered nurse drawing blood at the request of a peace officer for the purpose of determining alcohol concentration shall in no manner be liable in any civil or criminal action except for negligence in drawing the blood. The person administering a test at the request and direction of a peace officer shall be fully trained in the administration of the tests pursuant to standards promulgated by rule by the commissioner of public safety.

Subd. 4. **Refusal, consent to permit test; revocation of license.** If a person refuses to permit chemical testing, none shall be given, but the peace officer shall report the refusal to the commissioner of public safety and the authority having responsibility for prosecution of misdemeanor offenses for the jurisdiction in which the acts occurred. If a person submits to chemical testing and the test results indicate an alcohol concentration of 0.10 or more, the results of the test shall be reported to the commissioner of public safety and to the authority having responsibility for prosecution of misdemeanor offenses for the jurisdiction in which the acts occurred.

Upon certification by the peace officer that there existed reasonable and probable grounds to believe the person had been driving, operating, or in physical control of a motor vehicle while under the influence of alcohol or a controlled substance and that the person refused to submit to chemical testing, the commissioner of public safety shall revoke the person's license or permit to drive, or his nonresident operating privilege, for a period of six months. Upon certification by the peace officer that there existed reasonable and probable grounds to believe the person had been driving, operating or in physical control of a motor vehicle while under the influence of alcohol or a controlled substance and that the person submitted to chemical testing and the test results indicate an alcohol concentration of 0.10 or more, the commissioner of public safety shall revoke the person's license or permit to drive, or his nonresident operating privilege, for a period of 90 days.

If the person is a resident without a license or permit to operate a motor vehicle in this state, the commissioner of public safety shall deny to the person the issuance of a license or permit for the same period after the date of the alleged violation as provided herein for revocation, subject to review as hereinafter provided.

Subd. 5. **Notice of revocation or determination to deny; request for hearing.** No revocation under subdivision 4 is effective until the commissioner of public safety or a peace officer acting on his behalf notifies the person of the intention to revoke and of revocation and allows the person a 30 day period to request of the commissioner of public safety, in writing, a hearing as herein provided. If no request is filed within the 30 day period the order of revocation becomes effective. If a request for hearing is filed, a revocation is not effective until a final judicial determination resulting in a decision adverse to the person.

Subd. 5a. **Peace officer agent for notice of revocation.** On behalf of the commissioner of public safety a peace officer offering a chemical test or directing the administration of a chemical test may serve immediate notice of intention to revoke and of revocation on a person who refuses to permit chemical testing or on a person who submits to a chemical test the results of which indicate an alcohol concentration of 0.10 or more. The officer shall take the license or permit of the driver, if any, and issue a temporary license effective only for 30 days. The peace officer shall send the person's driver's license to the commissioner of public safety along with the certificate required by subdivision 4.

If the person requests a hearing within the 30 day period, the commissioner shall issue additional temporary licenses until the final determination of whether there shall be a revocation under this section.

Subd. 6. **Hearing.** A hearing under this section shall be before a municipal or county judge, in the county where the alleged offense occurred, unless there is agreement that the hearing may be held in some other county. The hearing shall be to the court and may be conducted at the same time and in the same manner as hearings upon pre-trial motions in the criminal prosecution under section 169.121, if any. The hearing shall be recorded. The commissioner of public safety may appear through his own attorney or, by agreement with the jurisdiction involved, through the prosecuting authority for that jurisdiction.

The scope of the hearing shall cover the issues of: (1) whether the peace officer had reasonable and probable grounds to believe the person was driving, operating, or in physical control of a motor vehicle while under the influence of alcohol or a controlled substance, and whether the person was lawfully placed under arrest for violation of section 169.121, or the person was involved in a motor vehicle accident or collision resulting in property damage, personal injury or death, or the person refused to take a screening test provided for by section 169.121, subdivision 6, or the screening test was administered and recorded an alcohol concentration of 0.10 or more; and (2) whether at the time of the request for the test the peace officer informed the person of his rights and the consequences of taking or refusing the test as required by subdivision 2; and (3) either (a) whether the person refused to permit the test, or (b) whether a test was taken and the test results indicated an alcohol concentration of 0.10 or more, and whether the testing method used was valid and reliable, and whether the test results were accurately evaluated.

It shall be an affirmative defense for the person to prove that his refusal to permit the test was based upon reasonable grounds.

The court shall order either that the revocation be rescinded or sustained and forward the order to the commissioner of public safety. If the revocation is sustained, the court shall also forward the person's driver's license to the commissioner of public safety for his further action if the license is not already in the commissioner's possession.

Subd. 7. **Review by district court.** If the revocation or denial is sustained, the person whose license or permit to drive, or nonresident operating privilege has been revoked or denied, may within 20 days after notice of the determination by the commissioner of public safety file a petition for a hearing of the

matter in the district court in the county where the hearing pursuant to subdivision 6 was held unless there is agreement that the hearing may be held in some other county. The petition shall be filed with the clerk of the court together with proof of service of a copy thereof on the commissioner of public safety. It is the duty of the court to set the matter for hearing on a day certain with reasonable notice thereof to the parties. The hearing shall be on the record and shall be conducted in the same manner provided in sections 487.39 and 484.63 for appeal of misdemeanor convictions.

Subd. 8. **Notice of action to other states.** When it has been finally determined that a nonresident's privilege to operate a motor vehicle in this state has been revoked or denied, the commissioner of public safety shall give information in writing of the action taken to the official in charge of traffic control or public safety of the state of the person's residence and of any state in which he has a license.

Subd. 9. **Limited license.** In any case in which a license has been revoked under this section, the commissioner may issue a limited license to the driver. The commissioner in issuing a limited license may impose the conditions and limitations which in his judgment are necessary to the interests of the public safety and welfare, including re-examination of the driver's qualifications, attendance at a driver improvement clinic, or attendance at counseling sessions. The license may be limited to the operation of particular vehicles and to particular classes and time of operation. The limited license issued by the commissioner shall clearly indicate the limitations imposed and the driver operating under a limited license shall have the license in his possession at all times when operating as a driver. In determining whether to issue a limited license, the commissioner shall consider the number and the seriousness of prior convictions and the entire driving record of the driver.

Subd. 10. **Termination of revocation period.** If the commissioner receives notice of the driver's attendance at a driver improvement clinic, attendance at counseling sessions, or participation in treatment for an alcohol problem the commissioner may, 30 days prior to the time the revocation period would otherwise expire, terminate the revocation period. The commissioner shall not terminate the revocation period under this subdivision for a driver who has had a license revoked under section 169.121 or this section for another incident during the preceding three year period.

History: *1961 c 454 s 1-8; 1967 c 284 s 1-6; 1969 c 620 s 1; 1969 c 742 s 1; 1969 c 1129 art 1 s 18; 1971 c 893 s 3; Ex1971 c 36 s 1; 1973 c 35 s 36; 1973 c 123 art 5 s 7; 1973 c 555 s 1; 1974 c 406 s 35-38; 1977 c 82 s 2; 1978 c 727 s 3; 1980 c 395 s 1; 1980 c 483 s 1*

169.124 ALCOHOL SAFETY PROGRAM.

Subdivision 1. The county board of every county having a population of more than 10,000 shall and the county board of every county having a population of less than 10,000 may establish an alcohol safety program designed to provide alcohol problem assessment and evaluation of persons convicted of one of the offenses enumerated in section 169.126, subdivision 1.

Subd. 2. The alcohol problem assessment shall be conducted under the direction of the court and by such persons or agencies as the court deems qualified to provide the alcohol problem assessment and assessment report as described in section 169.126. The alcohol problem assessment may be conducted by court services probation officers having the required knowledge and skills in the assessment of alcohol problems, by alcoholism counselors, by persons conducting court sponsored driver improvement clinics if in the judgment of the court such persons have the required knowledge and skills in the assessment of

alcohol problems, by appropriate staff members of public or private alcohol treatment programs and agencies or mental health clinics, by court approved volunteer workers such as members of Alcoholics Anonymous, or by such other qualified persons as the court may direct. The commissioner of public safety shall provide the courts with information and assistance in establishing alcohol problem assessment programs suited to the needs of the area served by each court. The commissioner shall consult with the alcohol and other drug abuse section in the department of public welfare and with local community mental health boards in providing such information and assistance to the courts. The commissioner of public safety shall promulgate rules and standards, consistent with this subdivision, for reimbursement under the provisions of subdivision 3. The promulgation of such rules and standards shall not be subject to chapter 15.

Subd. 3. The cost of alcohol problem assessment outlined in this section shall be borne by the county. Upon application by the county to the commissioner of public safety, the commissioner shall reimburse the county up to 50 percent of the cost of each alcohol problem assessment not to exceed $25 in each case. Payments shall be made annually and prorated if insufficient funds are appropriated.

History: *1976 c 298 s 1; 1978 c 727 s 4*

169.125 COUNTY COOPERATION.

County boards may enter into an agreement to establish a regional alcohol problem assessment alcohol safety program. County boards may contract with other counties and agencies for alcohol problem assessment services.

History: *1976 c 298 s 3; 1978 c 727 s 5*

169.126 ALCOHOL PROBLEM ASSESSMENT

Subdivision 1. An alcohol problem assessment shall be conducted in counties of more than 10,000 population and an assessment report submitted to the court by the county agency administering the alcohol safety counseling program when:

(a) The defendant is convicted of an offense described in section 169.121; or

(b) The defendant is arrested for committing an offense described in section 169.121, is not convicted therefor, but is convicted of another offense arising out of the circumstances surrounding such arrest.

Subd. 2. The assessment report shall contain an evaluation of the convicted defendant concerning his prior traffic record, characteristics and history of alcohol problems, and amenability to rehabilitation through the alcohol safety program. The assessment report shall include a recommendation as to a treatment or rehabilitation program for the defendant. The assessment report shall be classified as private data on individuals as defined in section 15.162, subdivision 5a.

Subd. 3. The assessment report required by this section shall be prepared by a person knowledgeable in diagnosis of chemical dependency.

Subd. 4. The court shall give due consideration to the agency's assessment report.

Subd. 5. Whenever a person is convicted of a second or subsequent offense described in subdivision 1 and the court is either provided with an appropriate treatment or rehabilitation recommendation from sources other than the alcohol problem assessment provided for in this section, or has sufficient knowledge both of the person's need for treatment and an appropriate treatment or rehabilitation plan, and the court finds that requiring an alcohol problem assessment would not substantially aid the court in sentencing, such an alcohol problem assessment need not be conducted.

Subd. 6. This section shall not apply to persons who are not residents of the state of Minnesota at the time of the offense and at the time of the alcohol problem assessment.

History: *1976 c 298 s 4; 1978 c 727 s 6*

169.1261 REINSTATEMENT OF DRIVING PRIVILEGES; NOTICE.

Upon expiration of any period of revocation under section 169.121 or 169.123, the commissioner of public safety shall notify the person of the terms upon which his driving privileges can be reinstated, which terms are: (1) successful completion of a driving test and proof of compliance with any terms of alcohol treatment or counseling previously prescribed, if any; and (2) any other requirements imposed by the commissioner and applicable to that particular case. The commissioner shall also notify the person that if driving is resumed without reinstatement of driving privileges, the person will be subject to criminal penalties.

History: *1978 c 727 s 7*

169.127 [Repealed, 1978 c 727 s 11]

169.128 RULES OF THE COMMISSIONER OF PUBLIC SAFETY.

The commissioner of public safety may promulgate rules to carry out the provisions of sections 169.121 and 169.123. The rules may include forms for notice of intention to revoke, which shall describe clearly the right to a hearing, the procedure for requesting a hearing, and the consequences of failure to request a hearing; forms for revocation and notice of reinstatement of driving privileges as provided in section 169.1261; and forms for temporary licenses.

Rules promulgated pursuant to this section are exempt from the procedure required by sections 15.0411 to 15.052.

History: *1978 c 727 s 8*

169.129 AGGRAVATED VIOLATIONS; PENALTY.

Any person who drives, operates, or is in physical control of a motor vehicle, the operation of which requires a driver's license, within this state in violation of section 169.121 or an ordinance in conformity therewith before his driver's license or driver's privilege has been reinstated following its cancellation, suspension or revocation (1) because he drove, operated, or was in physical control of a motor vehicle while under the influence of alcohol or a controlled substance or while he had an alcohol concentration of 0.10 or more or (2) because he refused to take a test which determines the presence of alcohol or a controlled substance when requested to do so by a proper authority, is guilty of a gross misdemeanor. Jurisdiction over prosecutions under this section is in the district court.

History: *1978 c 727 s 9*

169.13 RECKLESS OR CARELESS DRIVING.

Subdivision 1. Any person who drives any vehicle in such a manner as to indicate either a wilful or a wanton disregard for the safety of persons or property is guilty of reckless driving and such reckless driving is a misdemeanor.

Subd. 2. Any person who shall operate or halt any vehicle upon any street or highway carelessly or heedlessly in disregard of the rights or the safety of others, is guilty of a misdemeanor.

Subd. 3. **Application.** The provisions of this section apply, but are not limited in application, to any person who drives any vehicle in the manner prohibited by this section upon the ice of any lake, stream, or river, including but not limited to the ice of any boundary water.

1981 Legislative Session

Note: The only change in the text of the Minnesota statutes relating to drinking and driving was to prohibit the court from staying the revocation of the driver's license. The text of the change is found in Laws 1981, Chapter 9 as follows:

DRIVER'S LICENSE—REVOCATION—STAY BY COURT

CHAPTER 9

S.F.No. 13

An Act relating to crimes; eliminating the power of a sentencing court to stay the revocation of the driver's licenses of a person convicted of driving, operating or being in physical control of a motor vehicle while under the influence of alcohol or controlled substances or a combination thereof; amending Minnesota Statutes 1980, Sections 169.121, Subdivision 5; and 609.135, Subdivision 1.

Be it enacted by the Legislature of the State of Minnesota:

Section 1. Minnesota Statutes 1980, Section 169.121, Subdivision 5, is amended to read:

Subd. 5. The court may stay imposition or execution of any sentence authorized by subdivision 3 or 4, except the revocation of the driver's license, on the condition that the convicted person submit to treatment by a public or private institution or a facility providing rehabilitation for chemical dependency licensed by the department of public welfare. A stay of imposition or execution shall be in the manner provided in section 609.135. The court shall report to the commissioner of public safety any stay of imposition or execution of sentence granted under the provisions of this section.

Sec. 2. Minnesota Statutes 1980, Section 609.135, Subdivision 1, is amended to read:

Subdivision 1. Except when a sentence of life imprisonment is required by law, or when a person is convicted of one of the crimes specified under section 609.11, subdivision 1, and had in his possession a firearm or used another dangerous weapon, any court, including a justice of the peace to the extent otherwise authorized by law, may stay imposition or execution of sentence and place the defendant on probation with or without supervision and on such terms as the court may prescribe, including restitution when practicable. The court may order the supervision to be under the probation officer of the court, or, if there is none and the conviction is for a felony, by the commissioner of corrections, or in any case by some other suitable and consenting person.

A court may not stay the revocation of the driver's license of a person convicted of violating the provisions of section 169.121.

Sec. 3. Effective date.

This act is effective the day following its final enactment and applies to offenses committed after that date.

Approved March 25, 1981.

Underscoring and strikeouts are as shown in enrolled act.

APPENDIX II

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TABLE I

Revocation of Driver's Licenses
for Alcohol Related Offenses in Minnesota

	DWI (§ 169.121)	Test Refusal (§ 169.123)	Over 0.10 BAC (§ 169.123)	Total
1974	*	*	-	15,396
1975	*	*	*	17,628
1976	*	*	*	14,251***
1977	*	*	*	17,741
1978	15,512	3,344	5,501	24,357
1979	14,797	3,427	6,742	24,966
1980	17,406	3,863	9,212	30,481
1981	7,861**	1,827**	3,598**	13,286**

* Data not broken down and not available

** Through May of 1981 (five months).

*** The lower number in 1976 is attributable to the decision of the Minnesota Supreme Court in Prideaux v. Department of Public Safety, 247 N.W.2d 385 (1976), which held that a driver had a right to counsel when submitting to a chemical test for intoxication. It caused the dismissal of a number of pending cases. Also, there was a loss of ASAP money to pay officers for overtime work.

Source: Motor Vehicle Department and Office of Traffic Safety of Minnesota Department of Public Safety.

TABLE II

Number of Chemical Tests for Intoxication in Minnesota with BAC of 0.10 or More

		0.10	0.15	0.20	0.25	0.30	0.35 & over	Total	Total of All Tests by Year
1973	Blood & Urine	780	1,830	1,660	630	161	81	5,142	
	Breath	2,725	4,048	2,548	826	181	39	10,367	15,509
1974	Blood & Urine	1,019	2,021	1,847	718	182	40	5,827	
	Breath	3,642	4,715	2,746	864	181	35	12,183	18,010
1975	Blood & Urine	1,146	2,175	1,861	678	169	34	6,063	
	Breath	3,087	4,299	2,595	755	172	19	10,927	16,990
1976	Blood & Urine	1,190	2,391	1,947	723	171	42	6,464	
	Breath	3,416	4,442	2,675	731	150	35	11,449	17,913
1977	Blood & Urine	1,119	2,111	1,820	714	161	54	5,979	
	Breath	2,646	3,757	2,179	610	121	28	9,341	15,320
1978	Blood & Urine	1,171	2,405	1,995	719	184	43	6,517	
	Breath	2,913	4,218	2,410	629	159	33	10,362	16,879
1979	Blood & Urine	1,025	1,999	1,701	598	120	22	5,465	
	Breath	2,788	3,984	2,314	558	125	20	9,789	15,254
1980	Blood & Urine	*	*	*	*	*	*	8,735***	
	Breath	3,598	5,011	2,883	750	149	32	12,423	21,158
1981	Blood & Urine	**							
	Breath	**							

* Not broken down and not available.

** Data not yet available for 1981

*** Includes all blood and urine tests for 1980, as well as tests below 0.10 BAC and negative tests. Based on previous years, tests below 0.10 BAC and negative tests constitute about 10%.

Source: Laboratory, Bureau of Criminal Apprehension, Minnesota Department of Public Safety.

TABLE III

Total DWI Arrests by Minnesota State Patrol

1974	4,832
1975	5,137
1976	4,689
1977	3,593
1978	4,082
1979	3,879
1980	5,255
1981	3,179*

* Through June 1981. In comparison the number of DWI arrests in 1980 for same period was 2,307.

Source: Minnesota State Patrol,
Department of Public Safety.

TABLE IV

TOTAL DWI ARRESTS REPORTED TO MINNESOTA CRIMINAL JUSTICE INFORMATION SYSTEM BY ALL OFFICERS

1974	19,422
1975	18,715
1976	19,419
1977	16,976
1978	18,078
1979	18,092
1980	2_,788

Source: Minnesota Crime Information, Annual Reports, Minnesota Department of Public Safety, Bureau of Criminal Apprehension, Criminal Justice Information Systems Section.

TABLE V

NUMBER OF SWORN POLICE OFFICERS IN MINNESOTA

1974	5,553
1975	5,688
1976	5,804
1977	5,922
1978	5,997
1979	6,037
1980	6,107

Source: Minnesota Crime Information, Annual Reports
Minnesota Department of Public Safety,
Bureau of Criminal Apprehension,
Criminal Justice Information Systems Section.

TABLE VI

TOTAL MOTOR VEHICLE REGISTRATIONS
IN MINNESOTA

1974	2,532,219
1975	2,662,517
1976	2,919,700
1977	2,962,335
1978	3,103,406
1979	3,576,041
1980	3,941,296

Source: Highway Statistics, U.S. Department of Transportation, Washington, D.C. for years 1975, 1976, 1977, 1978 and 1979; Minnesota Motor Vehicle Crash Facts, Office of Traffic Safety, Minnesota Department of Public Safety, for 1980.

TABLE VII

TOTAL LICENSED DRIVERS IN MINNESOTA

1974	2,402,550
1975	2,416,869
1976	2,571,540
1977	2,598,123
1978	2,234,646
1979	2,286,218
1980	2,766,032

Source: Highway Statistics, U.S. Department of Transportation, Washington, D.C., for years 1974, 1975, 1976, 1977, 1978 and 1979; Minnesota Motor Vehicle Crash Facts, Office of Traffic Safety, Minnesota Department of Public Safety, for 1980.

TABLE VIII

STATE OF MINNESOTA

BEVERAGE ALCOHOL CONSUMPTION 1967-1980
(In Gallons)

Calendar Year	1967	1968	1969	1970	1971	1972	1973	1974	1975	1976	1977	1978	1979	1980
Population*	2,490,260	2,541,888	2,601,071	2,655,544	2,716,086	2,793,046	2,837,071	2,891,104	2,935,351	2,994,058	3,034,718	3,088,303	3,116,100	3,139,261
3.2 Beer	22,682,359	21,928,966	21,381,847	21,539,420	20,630,438	19,575,353	20,335,256	19,655,470	18,484,197	16,973,058	15,964,194	15,026,289	14,534,412	13,997,325
(per capita)	9.12	8.63	8.22	8.11	7.60	7.01	7.17	6.80	6.30	5.67	5.26	4.87	4.66	4.47
Over 3.2 Beer	37,517,099	40,188,369	43,346,094	47,686,339	51,148,109	51,891,055	58,165,858	64,475,133	67,994,749	71,532,562	73,894,421	76,867,879	81,734,445	85,570,495
(per capita)	15.07	15.81	16.66	17.96	18.83	18.58	19.80	22.30	23.16	23.89	24.34	24.89	26.23	27.35
Liquor	6,468,781	6,958,610	7,550,812	7,483,893	8,053,868	7,735,466	8,149,172	8,636,851	8,425,563	8,528,288	8,719,793	8,659,862	9,024,449	9,240,406
(per capita)	2.60	2.74	2.90	2.82	2.97	2.77	2.87	2.99	2.87	2.85	2.87	2.80	2.90	2.95
Sparkling Wines	75,859	89,740	119,033	158,970	224,504	212,654	204,608	220,931	232,423	289,571	335,127	367,984	430,736	523,469
(per capita)	.03	.04	.05	.06	.08	.08	.07	.08	.08	.10	.11	.12	.14	.17
Wine 14-21%	1,273,118	1,270,673	1,268,749	1,174,318	1,202,639	1,135,721	1,057,291	1,032,029	962,413	890,753	835,091	759,678	701,753	657,139
(per capita)	.51	.50	.49	.44	.44	.44	.37	.36	.33	.30	.28	.25	.23	.21
Wine Under 14%	749,668	850,046	1,004,338	1,358,772	2,136,958	2,563,043	2,657,476	2,729,253	2,986,392	3,266,807	3,776,194	4,241,496	4,693,746	4,987,758
(per capita)	.30	.33	.39	.51	.79	.92	.94	.94	1.02	1.09	1.24	1.37	1.51	1.59
TOTAL	68,766,884	71,286,404	74,671,269	79,401,712	83,396,516	83,113,292	90,569,661	96,759,667	99,095,737	101,481,039	101,524,820	105,925,038	111,119,591	114,976,622
(per capita)	27.61	28.04	28.71	29.90	30.70	29.76	31.92	33.47	33.76	33.89	34.11	34.30	35.66	36.74

*Age 15 and Older
Source. Alcohol, Tobacco and Special Taxes Division, Minnesota Department of Revenue
Note: Population figures are derived from vital statistics published by the Minnesota Department of Health
Change, per capita consumption, 1967-1980, Increase 33%

TABLE IX

IMPLIED CONSENT HEARING CASELOAD
1974 - 1981

IMPLIED CONSENT CASELOAD

MONTH	NEW CASES	CASES CLOSED	CASES PENDING
1974			
JANUARY	91		634
FEBRUARY	121		656
MARCH	93		645
APRIL	96		610
MAY	110		603
JUNE	79		610
JULY	109		633
AUGUST	103		677
SEPTEMBER	79		689
OCTOBER	100		682
NOVEMBER	104		688
DECEMBER	84		637
1975			
JANUARY	146		593
FEBRUARY	152		630
MARCH	55		692
APRIL	108		609
MAY	94		593
JUNE	91		535
JULY	109		502
AUGUST	65		547
SEPTEMBER	62		550
OCTOBER	63		504
NOVEMBER	94		463
DECEMBER	86		466

IMPLIED CONSENT CASELOAD

MONTH	NEW CASES	CASES CLOSED	CASES PENDING
1976			
JANUARY	97		462
FEBRUARY	78		459
MARCH	114		446
APRIL	104		471
MAY	118		471
JUNE	87		488
JULY	89		456
AUGUST	227		439
SEPTEMBER	321		568
OCTOBER	297		738
NOVEMBER	242		930
DECEMBER	249		1011
1977			
JANUARY	451		1050
FEBRUARY	420		1322
MARCH	395		1478
APRIL	317		1589
MAY	320		1632
JUNE	411		1628
JULY	270		1780
AUGUST	151		1782
SEPTEMBER	258		1849
OCTOBER	357		1834
NOVEMBER	348		1812
DECEMBER	321		1819

IMPLIED CONSENT CASELOAD

MONTH	NEW CASES	CASES CLOSED	CASES PENDING
1978			
JANUARY	316		1817
FEBRUARY	377		1817
MARCH	370		1815
APRIL	329		1869
MAY	413		1728
JUNE	41-		1722
JULY	363		1739
AUGUST	301		1805
SEPTEMBER	623		1700
OCTOBER	500		2010
NOVEMBER	539		2366
DECEMBER	426		2282
1979			
JANUARY	603		2247
FEBRUARY	384		2327
MARCH	613		2247
APRIL	509		2341
MAY	567		2378
JUNE	517		2363
JULY	591		2451
AUGUST	457		2511
SEPTEMBER	474		2478
OCTOBER	533		2553
NOVEMBER	440		2362
DECEMBER	535	446	2451

IMPLIED CONSENT CASELOAD

MONTH	NEW CASES	CASES CLOSED	CASES PENDING
1980			
JANUARY	680	456	2675
FEBRUARY	381	667	2389
MARCH	492	508	2373
APRIL	790	461	2702
MAY	467	534	2635
JUNE	934	492	3077
JULY	292	581	2788
AUGUST	846	498	3136
SEPTEMBER	652	632	3156
OCTOBER	577	819	2914
NOVEMBER	676	562	3028
DECEMBER	1158	530	3656
1981			
JANUARY	809	760	3705
FEBRUARY	506	679	3532
MARCH	977	809	3700
APRIL	1034	840	3894
MAY	335	738	3491
JUNE	1049	793	3747
JULY			
AUGUST			
SEPTEMBER			
OCTOBER			
NOVEMBER			
DECEMBER			

Source: Office of Attorney General, State of Minnesota.

APPENDIX III

FORMS USED IN PROCESSING OF DRIVER

1. Notice of Revocation 69

Note: White copy to driver
Green copy with license and implied consent certificate to Department of Public Safety
Yellow copy to county attorney or court
Pink copy to be retained by officer

2. Implied Consent Advisory 71

3. Alcoholic Influence Report 73

PS31123-02

STATE OF MINNESOTA
DEPARTMENT OF PUBLIC SAFETY
DRIVER & VEHICLE SERVICES DIVISION
SAINT PAUL 55155

085451

→ *Date Issued _____
Enf. Agency _____
Ticket or Case# _____
DOB _____
Court _____

Name _____ (First / Middle / Last)

Address _____ D/L# _____

City _____ State _____ Zip _____

NOTICE OF REVOCATION

You are hereby notified that on the date shown above (*date issued) you were asked to submit to a chemical test to determine the alcohol concentration of your blood pursuant to M.S. 169.123, the Implied Consent Law.

☐ Because you refused to submit to testing, the Commissioner of Public Safety will revoke your driver license and/or driving privileges for six months, unless you request a hearing as indicated on the other side of this notice.

☐ Because you submitted to a breath test which disclosed an alcohol concentration of 0.10 or more, the Commissioner of Public Safety will revoke your driver license and/or driving privileges for 90 days unless you request a hearing as indicated on the other side of this notice. Results of breath test indicated _____ blood alcohol concentration.

This revocation will take effect 30 days after the (*date issued) shown above.

ORDER OF REVOCATION

☑ If the Commissioner of Public Safety does not receive a request for hearing within 30 days or a certificate of conviction reporting plea of guilty to the related charges of violating M.S. 169.121 (DWI), your driver license and/or privilege to drive in this state is hereby REVOKED. THIS IS YOUR OFFICIAL NOTICE OF THE REVOCATION. If a hearing request is received within 30 days, the revocation will be postponed until a final judicial determination resulting in a decision adverse to you.

SURRENDER OF DRIVER LICENSE

By law, the officer is required to take all license certificates in your possession, and if you have a valid license, issue a temporary license effective only for 30 days.

TEMPORARY LICENSE

This entire notice is valid as a temporary license from (*date issued) shown above for 30 days. NOT VALID IF DETACHED. If hearing requested, additional temporary license can only be obtained from Driver Evaluation Section, Driver & Vehicle Services Division. SEE REVERSE SIDE FOR ADDRESS. Temporary license valid only if record so indicates.

Licensee Height: _____ Weight: _____ Class: _____

Restriction: _____

☐ No temporary license issued because _____

AFFIDAVIT OF LOST DRIVER LICENSE

I have lost or destroyed my license. I promise that if it is found I will immediately forward it to the Driver License Office, 108 Transportation Building, St. Paul, Mn. 55155. I fully realize that in making this affidavit, the license certificate is rendered null and void and may not be used for operating a motor vehicle.

Date _____ Signature of Licensee _____

Signed: _____ Signature of Peace Officer

_____ Telephone Number

WHITE COPY TO DRIVER

REQUEST FOR HEARING – PROCEDURES AND INFORMATION

You have the right to request a hearing. Hearing requests must be received within 30 days. Request must be in writing, and directed to the Commissioner of Public Safety, Driver & Vehicle Services Division, 108 Transportation Building, St. Paul, Minnesota 55155. The Hearing would cover the issues of:

a. Whether the peace officer had reasonable and probable grounds to believe that you were driving, operating or in physical control of a motor vehicle while under the influence of alcohol or a controlled substance.

b. Whether you were lawfully placed under arrest for violation of Section 169.121, or were involved in a motor vehicle accident or collision resulting in property damage, personal injury or death, or refused to take screening test provided in Section 169.121, or took screening test and failed.

c. Whether you were advised of your rights and responsibilities under the law.

d. Whether you refused the test, or whether you submitted to testing which was properly conducted and showed an alcohol concentration of 0.10 or more.

GENERAL INFORMATION

If your license is revoked, you may not drive again in Minnesota under any condition including using a driver license from another jurisdiction until you have complied with Minnesota's requirements and received a notice of reinstatement. ANY ADDITIONAL TEMPORARY LICENSES CAN ONLY BE ISSUED BY DRIVER EVALUATION SECTION, DEPARTMENT OF PUBLIC SAFETY.

REINSTATEMENT INFORMATION

You may not drive in Minnesota until:

a. The expiration of the period of time designated on the front side of this notice or expiration of additional period of time as indicated in correspondence from Driver & Vehicle Services Division, and

b. You have successfully completed a re-examination, and paid $2.50 fee if required and

c. Prior to reinstatement of your privilege to drive in the State of Minnesota, you must submit proof of an alcohol problem assessment. This is an assessment interview relative to your use of alcohol. If this assessment was done by the court (termed a presentence investigation) you can submit a copy of that assessment to this office. If no assessment was done by the court, you must schedule an assessment interview with our office.

Assessment Scheduling (612) 296-2040
Assessment Information (612) 296-8599

d. You have made application for and have received new license, and

e. Received a notice of reinstatement.

f. If you are not a resident of Minnesota, you will receive a notice of reinstatement only.

LIMITED LICENSE INFORMATION

If this is the first time your license has been withdrawn, you may be eligible for a limited license.

▶ Any additional information may be obtained by writing Driver Evaluation Section, Driver & Vehicle Services Division, Room 108 Transportation Building, St. Paul, Minnesota 55155 or by telephone at (612) 296-2025.

State of Minnesota
Department of Public Safety
Driver and Vehicle Services Division
Implied Consent Section
108 Transportation Building
St. Paul, MN 55155

IMPLIED CONSENT ADVISORY

▶INSTRUCTIONS: To be used to request the test and to record the individual's responses. Complete both sides of this form.

Printed Name of Officer Requesting Test			Badge Number	ICR Number
Date	Time Reading Started	Time Reading Completed	Location Where Advisory Read	

I believe that you have been driving, operating or controlling a motor vehicle while under the influence of alcohol or a controlled substance.

Printed Name of Individual Being Advised

In addition: (X all applicable grounds)

☐ You have been placed under arrest for this offense.

☐ You have been involved in a motor vehicle accident or collision resulting in property damage, personal injury or death.

☐ You have refused to take the preliminary screening test authorized by law and requested of you.

☐ A preliminary screening test has been administered to you, and has shown your alcohol concentration to be .10 or more.

I request that you give a sample of your blood for testing to determine the presence of alcohol or controlled substance. This sample would be taken by a qualified person at:

Hospital or Other Location (PRINT)

If you do not wish to give a blood sample, I request you give a sample of your: ☐ Breath ☐ Urine

The sample would be taken at: Name of Facility (PRINT)

The sample would be taken by: Name of Person Obtaining Sample (PRINT)

If you refuse to provide the test sample, your right to drive will be revoked for six months. If you refuse to answer or make a decision, it will be considered a refusal to take the test.

If you provide the test sample, and if the results indicate that you are under the influence of alcohol or a controlled substance, you will be subject to criminal penalties, and your right to drive may be revoked for 90 days.

If you provide the test sample, you have the right to have additional tests made by a person of your choice. Any additional test must be at your own expense. It must be taken while still in custody. You will be permitted to contact any person you choose to arrange for any additional test.

You have the right to consult with an attorney. If you wish to do so, a telephone will be made available to you. If you are unable to contact an attorney, you must make the decision on your own. You must make your decision within a reasonable time.

Yes	No		Comments
		The information you have been given is based upon the Minnesota Implied Consent Law. Do you understand what I have just explained?	
		Do you wish to consult with an attorney? — Phone Call to Attorney — Time Started / Time Completed	
		Will you give a sample of your blood?	
		Will you give a sample of your (breath) (urine)?	
		Are you refusing with the understanding that you may lose your driving privileges for six months?	

What is your reason for refusing? _____

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IMPLIED CONSENT LAW
PEACE OFFICER'S CERTIFICATE

▶(PLEASE TYPE OR PRINT LEGIBLY, CROSS OUT REFERENCES TO INAPPLICABLE ITEMS)

Name of Peace Officer	Name of Policy Agency

I certify to the Commissioner of Public Safety, State of Minnesota, that I am a member of the above police agency and:

1. I am a "peace officer" within the meaning of Minnesota Statutes, Section 169.123, Subdivision 1.

2. On (Date)_____, I had reasonable and probable grounds to believe that the person named below had been driving, operating or in physical control of a motor vehicle within the State of Minnesota at _____ in the City or Township of _____ in _____ County, while under the influence of alcohol or a controlled substance, contrary to law.

Full Name		Date of Birth
Address		City, State, Zip
Driver License Number	Date of Issue	

3. The person was requested to submit to a chemical test to determine (alcohol concentration) (or) (presence of a controlled substance), pursuant to the provisions of Minnesota Statutes, Section 169.123, and was advised as indicated on the other side of this form.

4. The person: (X APPLICABLE BOX)
   - ☐ Refused to provide a test sample to determine the presence of (alcohol) (or) (controlled substance).
   - ☐ Provided a sample of (blood) (breath) (urine) for analysis. The sample was obtained at my request by:

Name	Job Title
Police Station, Hospital, or Other Location	
Date Obtained	Time Obtained A.M. P.M.

The sample was submitted for analysis to:

Name of Agency, Analyst or Breathalyzer Operator
Address of Agency or Analyst
City, State, Zip
Sample Identification Number (Blood or Urine Tests Only)

The sample was analyzed and interpreted, and the test result indicated (an alcohol concentration of .____) (the presence of a controlled substance,_____).

(ATTACH COPY OF BREATHALYZER CHECK LIST AND TEST SCORE SHEET OR LABORATORY TEST REPORT.)

SEND WITH COPY OF ALCOHOL INFLUENCE REPORT, ARREST OR ACCIDENT REPORT, OR MEMORANDUM OF CIRCUMSTANCES TO:

Department of Public Safety
Driver and Vehicle Services Division
Implied Consent Section
108 Transportation Building
St. Paul, MN 55155

(Attach Form

Signature of Peace Officer
Printed Name of Peace Officer
Badge Number
Business Telephone Number
Date

PS-01802-02 (Rev. 8/80)

X one or more
_ Driver _ Accident
_ Pedestrian _ Violation
_ Passenger _ Other

MINNESOTA
DEPARTMENT OF PUBLIC SAFETY
STATE PATROL DIVISION

ALCOHOLIC INFLUENCE REPORT

ICR Number
1821 Number
Date

NAME. LAST	FIRST	MIDDLE	TIME

Drivers License No | State

Date of Birth

Month	Day	Year

Arresting Officer: Badge No.

Location of Arrest:

Actions of the driver prior to stop (X) one or more

(A) _ Weave from lane to lane.
(B) _ Proceed in lanes provided for oncoming traffic.
(C) _ Proceed off the road from his lane or lanes of traffic.
(D) _ Make an improper turn.
(E) _ Proceed at excessive - reduced speed.
(F) _ Strike any gutter or other obstacles on a near road.
(G) _ Hit or narrowly miss hitting any person or property.
(H) _ Proceed contrary to any traffic control sign or signal.
(I) _ Involved in any accident.
(J) _ Other (explain on reverse side.)
(K) _ Type of road _ Two Way Divided Interstate

PBT - _ Pass _ Fail _ Refused _ Not Offered

Field Sobriety Tests

Pass	Fail	Straight line walking	Pass	Fail	One legged stand and count to ten
Pass	Fail	Finger to nose	Pass	Fail	Pick up coins

YOUR CONSTITUTIONAL RIGHTS (TIME _____)

1. You have the right to remain silent.
2. Anything you say can and will be used against you in court.
3. You have the right to a lawyer and to have the lawyer present while you are being questioned.
4. If you cannot financially afford to hire a lawyer, the State, after investigation to your finances, will appoint a lawyer to represent you prior to any questioning if you wish one.

DO YOU UNDERSTAND THESE RIGHTS? _ YES _ NO

1. Having these rights in mind, do you wish to answer my questions at this time? _ Yes _ No

2. Were you driving or operating a motor vehicle?		3. What type vehicle were you operating?	
4. Are you under a doctor or dentist's care?		5. If so, what is your doctor or dentist's name?	
6. Are you taking any medication?	7. What Kind?	8. Date/Time last taken	9. How much did you take?
10. Do you have diabetes?	11. What medication do you take?	12. Date/Time last taken	
13. Do you have any physical disability?		14. Describe your disability?	
15. Do you have any speech difficulty?		16. Describe your difficulty?	
17. Have you been in an accident?		18. Did you get a bump on the head or any other injury?	
19. What time is it?		20. Where are you now?	
21. Have you been drinking?	22. What did you drink?	23. Where were you drinking?	
24. When did you have your first drink?	25. When did you have your last drink?	26. How many drinks?	
27. Have you had anything to drink since the accident or arrest?		28. What did you have?	

29. Do you feel the effects of what you have had to drink?

30. Do you feel that what you have had to drink has effected your ability to drive?

PS 01812-03 Rev 1/81)

Examination: (Place an "X" in squares describing observed conditions)

Indication of Alcoholic Beverage on Breath	Observed Reactions:	Color of Face:	Eyes:
☐ None ☐ Moderate ☐ Faint ☐ Strong	☐ Average ☐ Reserved ☐ Fighting ☐ Indignant ☐ Talkative ☐ Slow ☐ Excited ☐ Belligerent ☐ Other	☐ Normal ☐ Flushed ☐ Pale ☐ Dark	☐ Normal ☐ Watery ☐ Bloodshot ☐ Staring ☐ Glassy

Pupils:	Reaction to Light:	Balance:	Walk:
☐ Normal ☐ Dilated ☐ Contracted	☐ None ☐ Poor ☐ Fair	☐ Good ☐ Wobbling ☐ Fair ☐ Falling ☐ Swaying ☐ Cannot Stand	☐ Sure ☐ Uncertain ☐ Fair ☐ Staggering ☐ Swaying ☐ Falling

Turning:	Speech:	Conclusion:	Ability To Understand Instructions
☐ Sure ☐ Uncertain ☐ Fair ☐ Staggering ☐ Swaying ☐ Falling	☐ Good ☐ Confused ☐ Fair ☐ Incoherent ☐ Slurred ☐ Other ☐ Stuttering	Effects of Alcohol ☐ None ☐ Extreme ☐ Slight ☐ Other ☐ Obvious	☐ Poor ☐ Fair ☐ Good

REMARKS:

SIGNATURE (Officer Completing Report) Date

APPENDIX IV

Minnesota Drunken Driving Apprehensions, Arrests, Criminal Charges, Convictions and Driver License Revocations - and the differences between them.

by Mr. Forst Lowery, Alcohol Program Coordinator, Office of Traffic Safety, Minnesota Department of Public Safety,
July 31, 1981

Minnesota has a two-track system of acting against drunken drivers. One is the conventional criminal justice procedure in which a driver is arrested, charged with a violation of M.S. 169.121 (drunken driving), and if convicted is penalized by a fine or jail. The other track involves the unique-to-Minnesota law within M.S. 169.123 (implied consent) which provides for administrative revocation of the driver license when a test shows .10 alcohol concentration or higher. Most accused drivers go down both tracks. This results in an extremely high ratio of penalties imposed on apprehended drunken drivers. Indeed, this ratio is the highest in the country.

In discussing this subject, however, some caveats should be noted. The high rate of drunken driving cases resulting in a penalty should not be called a "conviction rate" even though in many ways it is the equivalent.

Likewise, an "apprehension" is not necessarily the same thing as an "arrest". All arrests result from apprehensions, but not all apprehensions result in an arrest. In a similar way, not all arrests result in a criminal charge of drunken driving (169.121) even though the arrested person may be subject to, and receive, penalties under 169.123 for either refusing a test or failing a test.

The statistical information on the following pages describes the driver license revocations resulting from drinking and driving offenses. Notes are to clarify precisely what is conveyed and to warn against misinterpretation.

A. APPREHENSIONS (Minimum number; plus cases described below) 28,429

The figure shown here (28,429) is actually the number of "Peace Officer's Certificates" received by the Department of Public Safety (DPS). These report that a person either (a.) refused to take a test, or (b.) took a test and the result showed .10 alcohol concentration or more. This report is required by M.S. 169.123, often called the Implied Consent Law. In addition to the apprehensions included in the above figure there are some additional drinking driver apprehensions which should be included in order to provide a total, but their actual numbers are unknown. These are made up of those cases in which (a.) a test was not requested but an arrest was made on other evidence, or (b.) a test showed less than .10 but an arrest was made. Both situations are perfectly proper under Minnesota law, but the number of such cases is unknown. They are included, however, within (D.) below, "Drunken Driving Criminal Charges". Items (B.) and (C.) below break out the two variations of the "Peace Officer's Certificate" which make up the 28,429 total figure shown above, (See Figure 1.)

B. REPORTS TO DPS OF REFUSALS TO TAKE TEST 6,649

C. REPORTS TO DPS OF TEST RESULTS SHOWING .10 21,780

D. DRUNKEN DRIVING CRIMINAL CHARGES (M.S. 169.121) 22,788

This figure is the number of "arrests" reported to Minnesota Criminal Justice Information System when a 169.121 charge is placed. All of these cases would be included within the number of "Apprehensions" (item A. above) except those in which a test was not requested or in which a lower than .10 alcohol contentration was shown, as described above. "Apprehensions" includes, however, those cases in which a "Peace Officer's Certificate" was filed but a criminal charge was not, and therefore these cases are not included in the 22,788 figure for item D., Criminal Charges (169.121). (See Figure 1.)

DRIVER LICENSE REVOCATIONS (ALCOHOL)

The three principal kinds of driver license revocations associated with drunken driving are shown below, together with some notes on how they mesh and how they do not overlap except in rare circumstances. They are shown in descending order of their numbers, beginning with conventional revocations resulting from a court conviction. This is not necessarily the chronological order in which action against the driver license is taken, and as we note below, the chronological order of such actions is important.

E. REVOCATIONS FOR CONVICTION OF 169.121 (Minimum 30 days) 17,406

It should be emphasized that this figure does not represent the total number of convictions for drunken driving. It is the number of revocations resulting from a 169.121 conviction. Those persons convicted under 169.121 whose driver license has already been revoked under one of the provisions of 169.123 do not get another revocation and are not included in the 17,406 figure. Further discussion below.

F. REVOCATION FOR TEST RESULT SHOWING .10 (Ninety days) 9,212

G. REVOCATION FOR REFUSING TO TAKE TEST (Six months) 3,863

Note that a person may purge himself or herself of eligibilty for this revocation by pleading guilty to the criminal charge under 169.121 at the first opportunity. Many do. This does not apply if there is first a not-guilty plea, even if there is a subsequent conviction.

H. TOTAL REVOCATIONS FOR CONVICTION OR TEST FAIL (E + F) 26,618

I. TOTAL ALL THREE KINDS ALCOHOL-RELATED REVOCATIONS (E + F + G) 30,481

This figure included an unknown number of revocations for test refusal (G.) where the person was not convicted of 169.121 (E.) Note also that the unknown number of persons charged for 169.121 but not offered a test would increase total number of "Apprehensions" above the minimum figure (28,429) shown in (A.)

RATIOS OF REVOCATIONS TO NUMBER OF CASES

J. APPROX. PERCENT OF APPREHENDED DRIVERS RECEIVING REVOCATION 93.6%

Number of revocations for conviction plus number of revocations for failing test (.10) divided by the minimum number of apprehensions. $(\frac{H}{A})$

K. PERCENT OF KNOWN APPREHENSIONS RESULTING IN A REVOCATION 107.2%

Total of all three kinds of alcohol-related driver license revocations divided by minimum number of apprehensions. $(\frac{I}{A})$

The apparent anomaly of a greater-than-100% figure is the result, again, of there being a somewhat higher number of actual apprehensions than will be shown by "Peace Officer's Certificate" reports. See note under (1.) above. In addition, there may be some cases in which a license may be revoked for conviction under 169.121 while proceedings under 169.123 are still under way. In this kind of case, while Minnesota law says there shall be no mandatory revocation under 169.121 if the license has been revoked under 169.123, the opposite is not true. It is possible to revoke for test refusal if that proceeding should happen to come after revocation for conviction, or even after the conviction revocation period of 30 days, for example, has been completed. This is not likely. Neither is it likely that a person would receive an administrative revocation for failing the test if that person has already

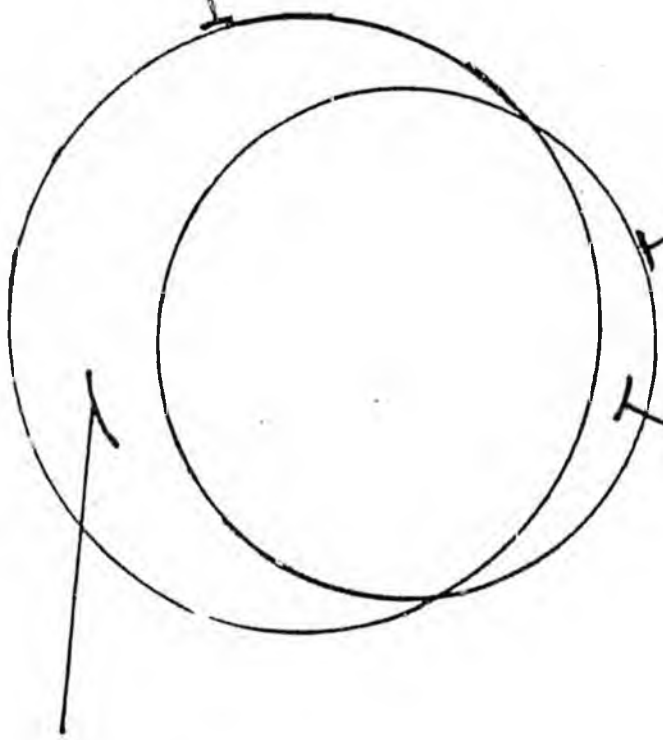
received a revocation for a conviction. These possibilities are described to show that in a two-track system like Minnesota's, with drinking drivers going down both tracks, the problems are with statistical meshing, rather than with actual clashing of the gears. (See Figure 2.)

In point of fact, Minnesota draws a pretty tight net around the drunken drivers who are apprehended and there are not very many holes in that net.

Figure 1.

APPREHENSIONS (Not necessarily with arrest)
("Peace Officer's Certificates" filed with DPS)

28,429



Arrests resulting in criminal charge of DWI

22,788

a. Arrests without a test request,

or

b. Arrests when test result was below .10

Numbers unknown

a, Refused test but DWI charge not made,

or

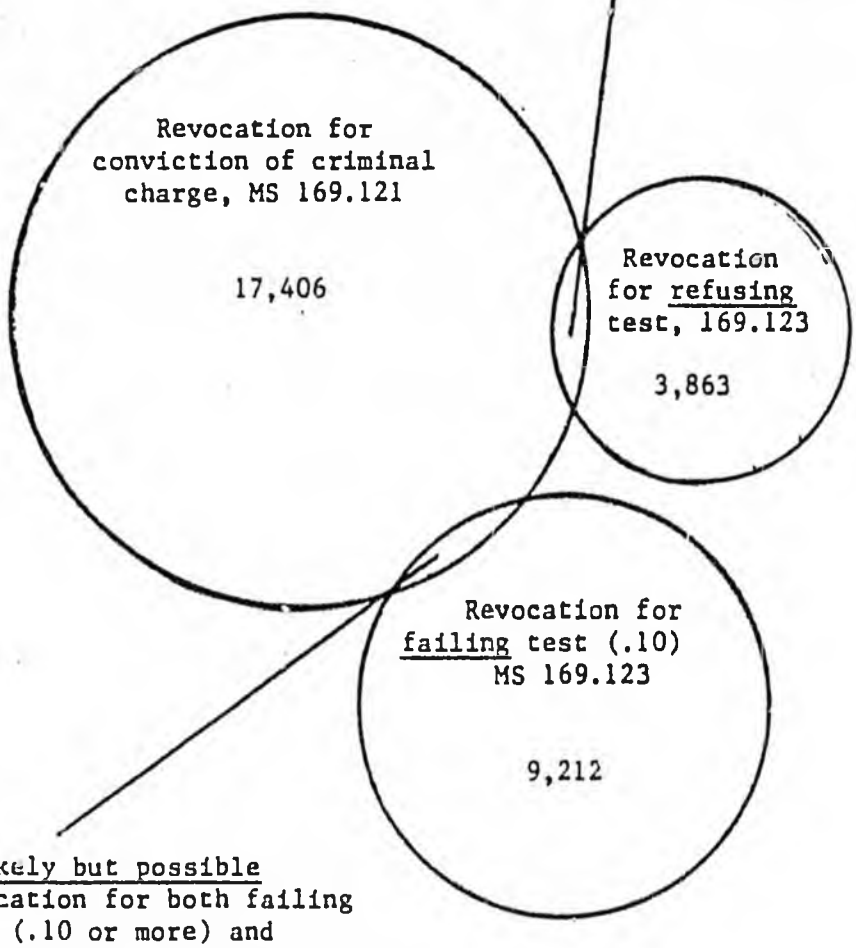
b. Failed test (.10 or more) but DWI charge not made

(Most of both "a" and "b" above are probably accident scene cases, where officer did not witness and probable cause for an arrest was less than the best.

Some of "b" may result from individual prosecutor policy on charging DWI.)

Numbers unknown

The three principal kinds of alcohol-related driver license revocations
1980



Unlikely but possible revocation for both refusal of test and conviction of charge.

Unknown number, if any.

Unlikely but possible revocation for both failing test (.10 or more) and conviction of criminal charge.

Unknown number, if any.

Figure 2.

ACCIDENTS IN ALASKA

In 1975, alcohol-related highway accidents cost $19.5 million.

In 1977, 62 Alaskans died in alcohol-related highway accidents. About 80% of highway fatalities in Anchorage are alcohol-related.

OMVI ARRESTS IN ALASKA

The drivers being arrested are very heavy drinkers - had to have had ten drinks in an hour to reach the blood alcohol levels recorded. Most have so much alcohol in their system that they are still drunk when they go to work the next day.

Most people never drink enough to reach the illegal BAC level. Most people arrested for OMVI regularly drink large amounts.

At most one out of four arrested for OMVI are "normal" drinkers who have had too much just this night. The rest are used to drinking and driving - in fact one out of three people arrested for OMVI has previously been convicted.

Few of the arrests for OMVI are borderline cases - the average blood alcohol concentration is twice the level proscribed by law.

REASONS FOR RECOMMENDED STATUTORY CHANGES SB 608, 609, 610

PARTLY DONE a. Clean up statutes so that courts can spend time on real evidence instead of legal technicalities.

PRESENT b. OMVI arrests are expected to increase by as much as 50% in the near future.

PARTLY DONE c. Either help the courts by changing the statutes or by providing money for more courtrooms, judges, prosecutors.

d. OMVI arrests - largest single category of arrests and court caseload - 22% of all adult arrests; 28% of caseload of the misdemeanor courts; 50% of the trial time spent by the courts.

e. Changes will not stop drinking-driving but will help us handle the problem through the courts.

BEING WORKED ON f. We have definite evidence that the people who refuse breath-tests tend to be the most drunken and the most dangerous drivers - really experienced drinkers (average BAC: 0.27%). We are not helping them by keeping it easy to avoid the evidence of their dangerousness.

g. Using the traditional psychomotor tests, even experienced police are right only one out of two times about how drunk a person is - blood alcohol concentration (BAC) is objective and fair evidence, rather than just an opinion.

SB 551, 552

REASON FOR ALCOHOL SCREENING

KELSO'S JOB ON A STATEWIDE BASIS

a. Trying to separate the people out so that we can do what's right by the person who just has an attitude probelm, by the bad drivers, and by the alcoholics.

b. Trying to get an early identification of problem drinkers so that they can be encouraged to get help before they are far gone.

c. Trying to standardize court practices throughout the state.

PROBLEM DRINKING DRIVERS

1. The Problem Drinking Driver is someone who *regularly* drives while seriously impaired.

2. In the typical jurisdiction, about two-thirds of persons arrested for DWI are identifiable as Problem Drinkers, either clearly or marginally.

3. Problem Drinking Drivers usually have a high BAC (0.15 percent or above) when arrested. Of course, the BAC on any occasion may be lower.

4. Drivers with a high BAC (0.10 percent or above) are likely to be involved in at least

   - Twice as many crashes
   - Twice as many property damage crashes
   - Five times as many personal injury crashes
   - Twelve times as many fatal crashes
   - Twice as many traffic violations
   - Three times as many license suspensions

   as the average driver.

5. Social Drinkers rarely achieve the high BAC (0.10 percent or above) which problem drinkers achieve very often.

6. A person can learn to "drive while drunk" i.e., to compensate partially for the impairment caused by alcohol up to a point. The learning takes a lot of practice.

   Social Drinkers don't get that much practice. They are likely to judge themselves "too drunk to drive," or to drive very badly at lower BACs.

   Therefore, a person who drives reasonably well at a high BAC, or who can drive at all at a very high BAC (0.20 percent or above), is likely to be a Problem Drinker.

7. Problem Drinking Drivers tend to lead troubled lives, as is shown in:

   - The probability of their having previous and subsequent DWI arrests.
   - The frequency of their contacts with social agencies.
   - Their emotional profiles.
   - The frequency of their family and economic problems.

   This makes it possible to identify them by record checks and personality tests.

REALISTIC EXPECTATIONS

Problem Drinkers:

Regardless of what we do with problem drinkers, approximately 1 of 5 will be re-arrested for a drinking-driving offense within one year, 2 of 5 in three years.

Social Drinkers:

Without rehabilitation, 3 of 10 social drinkers will be re-arrested within three years. However, only 2 of 10 entering rehabilitation of some type will be re-arrested.

Source: University of South Dakota, Program Level Evaluation of NSAP Diagnosis Referral and Rehabilitation Efforts. Sept. 1975.

FACTS ON ALCOHOL AND HIGHWAY SAFETY

The Problem

Overview:

Drunk driving continues to be one of our nation's most serious public health and safety problems. Some 50 percent of all drivers killed each year have blood alcohol concentrations in excess of the legal limit, 0.10 percent. In single vehicle fatal crashes, where it is more certain who is at fault, upwards of 65 percent of those drivers who die were legally drunk. Over the past 10 years, the proportion of highway deaths involving alcohol has averaged a tragic 25,000 per year. Thus, a staggering one quarter of a million Americans have lost their lives in alcohol-related crashes in the last decade.

The cost of drunk driving has a high economic cost to this country as well. A conservative estimate of the total economic cost of drunk driving is put at 24 billion.

Alcohol and Crashes:

Alcohol is a major contributing factor to fatal (and serious injury) automobile crashes. According to a 1978 review of the literature, approximately 60 percent of fatal crashes involved a driver who had been drinking. Between 40 and 55 percent of such crashes involved a driver who had a blood alcohol concentration (BAC) greater than .10 percent (w/v).

With regard to alcohol and responsibility for fatal crashes, the drinking driver problem is even more significant. In one study drivers judged to be at fault in fatal crashes were six times more likely to have had BAC's greater than .10 percent (w/v) alcohol in their blood than drivers judged not at fault for their crashes (60 percent vs. 10 percent).

This strong relationship between crash responsibility and high alcohol levels is shown further in single vehicle crashes, where responsibility is apparent, and where between 60 and 75 percent (60-75%) of dead drivers have BACs greater than .10 percent (w/v).

The Driver Population:

What the high BAC figures in crashes suggest is that the majority of alcohol related fatal crashes are caused by heavy (problem) drinkers. Some portion of the approximately 15 percent of fatal crashes which involve drivers who have been drinking, but who do not have BACs greater than .10 percent, may be caused by less heavy, less chronic, "social" drinkers.

The majority of drivers are either abstainers or light to moderate (social) drinkers. Even quite liberal estimates suggest that only about 10 to 15 percent of the nation's drivers would be classified as being heavy (problem) drinkers.

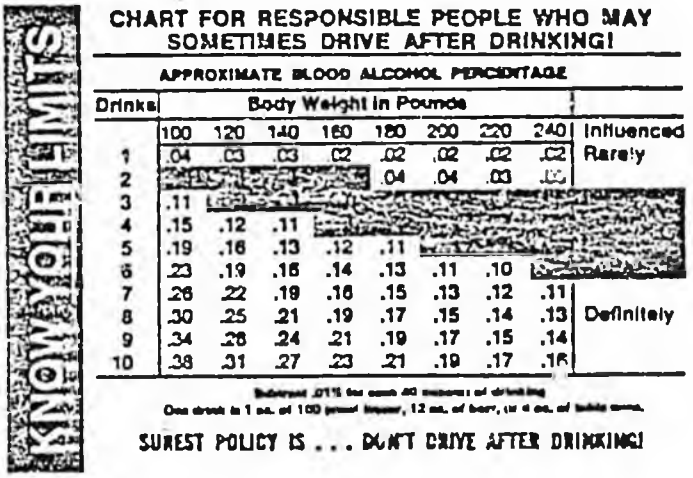
Arrested Drunk Drivers:

The average proportion of licenses drivers arrested for drunk driving over a one-year period is estimated to be one percent (1%). This translates to approximately 1.3 million of approximately 130 million licensed drivers.

On a nightly basis, between one in five hundred (1/500) and one in two thousand (1/2000) drivers on the road with a BAC greater than .10 percent (w/v) are arrested for drunk driving. These estimates come from a number of roadside surveys conducted in conjunction with the Alcohol Safety Action Projects (ASAPs) funded by the NHTSA in the 1970's and from the Grand Rapids data reported by Borkenstein and others.

The average BAC of these drinking drivers is approximately .20 percent, double the level for persumed intoxication. Estimating an average period of alcohol consumption at 4-5 hours, this means that the average fatally injured drinking driver had about 15 drinks prior to becoming involved in the crash.

Blood Alcohol and Body Weight



KNOW YOUR LIMITS

CHART FOR RESPONSIBLE PEOPLE WHO MAY SOMETIMES DRIVE AFTER DRINKING!

APPROXIMATE BLOOD ALCOHOL PERCENTAGE

Drinks	Body Weight in Pounds								
	100	120	140	160	180	200	220	240	Influenced
1	.04	.03	.03	.02	.02	.02	.02	.02	Rarely
2					.04	.04	.03	.03	
3	.11								
4	.15	.12	.11						
5	.19	.16	.13	.12	.11				
6	.23	.19	.16	.14	.13	.11	.10		
7	.26	.22	.19	.16	.15	.13	.12	.11	
8	.30	.25	.21	.19	.17	.15	.14	.13	Definitely
9	.34	.28	.24	.21	.19	.17	.15	.14	
10	.38	.31	.27	.23	.21	.19	.17	.16	

Subtract .01% for each 40 minutes of drinking

One drink is 1 oz. of 100 proof liquor, 12 oz. of beer, or 4 oz. of table wine.

SUREST POLICY IS . . . DON'T DRIVE AFTER DRINKING!

Past Approaches and Current Activities

Federal Action:

Over the last 12 years, the National Highway Traffic Safety Administration (NHTSA), an Agency within the U.S. Department of Transportation, has worked with the States to reduce alcohol related deaths on the highway. NHTSA initiated 35 Alcohol Safety Action Projects (ASAPs) throughout the country from 1971-1976 which resulted in the development of a coordinated systematic approach to deal with drunk driving.

In 12 of the 35 ASAPs, a statistically significant reduction in fatal crashes at night was achieved. Individual projects were able to double, and even triple driving while intoxicated arrests, using such new technology as roadside breath testing. Court procedures were streamlined to handle large caseloads. Roughly a quarter-of-a-million drinking drivers were referred for treatment.

Before the passage of the Highway Safety Act of 1966, few States specified a presumptive level of driving while intoxicated. The Federal standard for alcohol safety prescribed the 0.10 percent blood level that legally defines the legal intoxication limit. Now all the States have laws defining driving under the influence at the 0.10 percent level. The majority of the States now have made some improvements in their law enforcement, court, rehabilitation, and educational efforts.

State Action

Under the Section 402 grant program established by the Highway Safety Act the States are increasing the proportion of funds allocated to alcohol programs. In FY 1982 approximately 35 percent of 402 funds ($27.8 of 78.6 million) were allocated to drunk driving programs (with an added 30 percent spent on alcohol enforcement activities under Police Traffic Services).

Responding to citizen interest, 21 States and a number of local jurisdictions have established special drunk driving task forces to revitalize State/local programs.

Fifteen States have raised the minimum legal drinking age to reduce alcohol related crashes among youth. Other States such as Maryland have introduced legislation to raise the drinking age during 1982.

Sixteen States have adopted statutes allowing preliminary roadside breath testing to assist officers in establishing probable cause for drunk driving arrests.

Twenty-one States have established illegal per se statutes designed to simplify and streamline the prosecution of drunk drivers by making it illegal simply to operate a motor vehicle with an illegal blood alcohol concentration (above 0.10%).

S. J. Res. 241

Ninety-seventh Congress of the United States of Ameri

AT THE SECOND SESSION

Begun and held at the City of Washington on Monday, the twenty-fifth day of January, one thousand nine hundred and eighty-two

Joint Resolution

To provide for the designation of the week of December 12, 1982, through December 18, 1982, as "National Drunk and Drugged Driving Awareness Week".

Whereas traffic accidents cause more violent deaths in the United States than any other cause, over fifty thousand in 1980;

Whereas traffic accidents also play a substantial role in serious injuries in this country;

Whereas between 40 and 55 per centum of drivers who are fatally injured have alcohol concentrations in their blood above the legal limit and this figure rises to 55 to 65 per centum in single vehicle crashes;

Whereas the total societal cost of drunk dri[illegible]has been estimated anywhere from $5,000,000,000 to $25,000,0[illegible]0 a year, which does not include the human suffering that ca[illegible]er be measured;

Whereas there are increasing reports of dri[illegible]ter drug use and accidents involving drivers who have used marihuana or other illegal drugs;

Whereas more research is needed on the effects of drugs on driving ability and their impact on the incidence of traffic accidents, either alone or in combination with alcohol;

Whereas an increased public awareness of the gravity of the problem of drugged driving may warn drug users to refrain from driving and may stimulate interest in increased research on the effects of drugs on driving ability and the incidence of traffic accidents;

Whereas the public, particularly through the work of citizens groups such as Mothers Against Drunk Driving (MADD) and Remove Intoxicated Drivers (RID), is demanding a solution to the problem of drunk driving;

Whereas the President has appointed a Commission on Drunk Driving to heighten public awareness and stimulate the pursuit of solutions;

Whereas many States have appointed task forces to examine the existing drunk driving program and make recommendations for a renewed, comprehensive approach;

Whereas an increase in the national awareness of the problem of drunk and drugged driving may help to sustain current efforts to develop comprehensive solutions at the State and local levels; and

Whereas the Christmas and New Year's holiday period, with more drivers on the roads and an increased number of social functions, is a particularly appropriate time to focus national attention on this critical problem: Now, therefore, be it

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That the week of December 12, 1982, through December 18, 1982, is designated as "National Drunk and Drugged Driving Awareness Week", and the President is authorized and requested to issue a proclamation calling upon the people of the United States to observe that week with appropriate activities.

Speaker of the House of Representatives.

Vice President of the United States and President of the Senate.

DRUNK DRIVING FACTS

- A blood alcohol concentration (BAC) of .10 percent or greater is the level at which a driver is considered legally intoxicated in most states.

- Approximately 55 percent of fatal crashes involve a driver who has been drinking.

- In single vehicle crashes, where responsibility is apparent, between 60 and 75 percent of dead drivers have BACs greater than .10 percent.

- The average BAC of drivers arrested for drunk driving is approximately .20 percent, double the level for presumed intoxication.

- Over the past 10 years, the proportion of highway deaths involving alcohol has averaged 25,000 per year; one quarter of a million Americans have lost their lives in alcohol-related crashes in the last decade.

- A conservative estimate of the total economic cost of drunk driving is put at between five and six billion dollars a year.

Post 12/30/82

Nation's War on Drunk Driving Is Paying Off in a Big Way

States Pass Tougher Laws, Step Up Their Enforcement

By Howard Kurtz
Washington Post Staff Writer

From Maine, where tougher penalties have cut the number of car accidents by 41 percent, to Florida, where 30 fewer people are dying each month on the highways, a nationwide campaign is making unprecedented progress against drunken driving.

For the first time in many holiday seasons, the dominant news is not the usual increase in highway deaths, but increasingly successful new laws and enforcement efforts to keep drunk drivers off the road. In the most aggressive jurisdictions, including the Washington area, fewer people are dying in auto accidents.

Legislatures in 18 states, including Maryland and Virginia, passed tougher drunk driving laws this year, and similar bills are pending in 14 states. Maryland and New Jersey joined 23 other states in raising their drinking age to 21 for most alcoholic beverages, reversing the trend of the early 1970s toward a lower drinking age.

A growing number of states are resorting to mandatory jail terms, stiffer fines, more frequent arrests and highway checkpoints. Congress recently voted to provide $125 million in grants to states that act aggressively against drunken drivers.

See DRIVING, A6, Col. 3

Anti-Drunk-Driving Effort Gains

DRIVING, From A1

The crackdown has not been as successful in some places. Minnesota officials, for example, say most offenders know the police do not have enough manpower to arrest more than one drunken driver in 300. Fatalities in California, which initially dropped by 42 percent after stricter penalties were adopted last January, have rebounded almost to 1981 levels.

There were 49,125 traffic deaths in the United States last year, about half related to alcohol. The effort to reduce these casualties has been spurred by the friends and relatives of accident victims and citizens' groups such as Mothers Against Drunk Driving.

Arizona legislators needed no such prodding. They voted overwhelmingly for stricter penalties after one of their colleagues, Sister Clare Dunn, 46, and another nun were killed by a drunken driver. Around the same time, a drunken man in Arizona crashed into a car full of boy scouts, killing several.

Since July, a first conviction for drunken driving in Arizona has cost a minimum of 24 hours in jail, a $250 fine and a 90-day license suspension. A second offense carries at least a 60-day jail term, and a third conviction can bring as much as 2½ years in prison.

In Maine, half of last year's traffic deaths were rural, single-car crashes, which state police spokesman Kirk Moore described as "a person driving down the road and banging into a tree." Four-fifths of the victims had been drinking, and half were men in their twenties.

The state legislature responded in September 1981 by setting a minimum $250 fine and a 45-day license suspension for a first drunken driving offense. If criminal charges are filed, it means at least 48 hours in jail. Refusal to take an alcohol test is punished by a six-month license suspension.

The result: 150 people have been killed in highway crashes this year, compared with 199 in the same period last year.

"It's a very tight law," Moore said. "People have to be prosecuted. You can't plea bargain down to reckless driving. There haven't been more arrests, so it's really the deterrence of the law. People are now thinking twice about having that extra drink."

Maine police have compiled a profile of the typical driver involved in a fatal accident: a single or divorced man in his 20s, a heavy beer drinker, driving an older-model car sometime after 10 p.m. on weekends.

Florida now requires first offenders to perform 50 hours of community service, sometimes in hospital emergency rooms where many accident victims are taken. Along with a 50-percent increase in arrests, these penalties have helped reduce this year's traffic deaths by 12 percent to 2,659, or 371 fewer than in 1981.

Maryland, which recently stopped 1,500 drivers during the first weekend of "sobriety checkpoints," has been the most aggressive enforcer of drunken driving laws. Its police expect to make 32,000 arrests this year for driving while intoxicated, compared with 15,575 in 1980.

While traffic deaths not related to drinking have decreased by only 3 to 4 percent from last year in Maryland, alcohol-related deaths have dropped 29 percent to bring the state's highway death toll down to its lowest level in 19 years. "We know in our hearts and in our statistic books that the crackdown in Maryland is really working," said state police spokesman Bill Clark.

The problem in Minnesota was that a driver whose license was revoked was allowed to stay on the road for a month or more as his case dragged on through appeals. Under a law passed this year, the offender's license is now revoked within seven days.

But public safety official Forst Lowery says the odds are still against the police. "Say a dog brings 300 of his friends into a room, they all dirty the carpet and we only punish one," Lowry said. "We have to make many more arrests before a deterrent is established."

Some officials say the key element is the certainty of punishment. New York, for example, has no mandatory jail term for drunken driving, but a new law requires judges to impose a $350 fine and revoke the offender's license for six months. Fatal night crashes in New York are down 17 percent.

"You can't plead to speeding or bald tires or something anymore," said Marcus Salm, New York's assistant director of highway safety. "We had a lot of guys who would say, 'Look, if you charge me with drunken driving, my wife will leave me and I'll lose my job, and besides, I've got a good lawyer.' "

Still, Salm acknowledged, "There are ways of getting around the mandatory penalties. Judges don't like being told what to do, and they sometimes react by telling the state what to do. They can throw the case out."

Under congressional legislation sponsored by Rep. Michael D. Barnes (D-Md.), each state that makes drunken driving controls a priority is now eligible for an additional 50 percent of its federal highway safety grant. To qualify, a state must take such steps as raising the drinking age to 21, eliminating plea bargaining, setting up highway checkpoints and using preliminary breath tests.

A presidential commission recently urged the states to adopt similar measures. One recommendation, already in effect in many places, is to use a blood alcohol content of .10 as the legal standard of intoxication. For a 160-pound person, this would mean drinking either five beers, five glasses of wine or three shots of whiskey in an hour.

The commission also suggested that money collected in fines be given back to local authorities to finance enforcement and education programs. This is already being done in New York, where Salm said it provides a powerful incentive for county police to join the crackdown.

Staff researcher Carin Pratt contributed to this report.

Washington Area's War on Drunk Driving Pays Off in a Big Way

Area Traffic Deaths Drop; Arrests Are on Increase

By Blaine Harden
Washington Post Staff Writer

The highly publicized war against drunk driving—waged this past year by mothers, lawmakers, judges, juries and the police—has racked up impressive victories in the Washington area.

Highway deaths in 1982 declined in Virginia, Maryland and the District of Columbia, where laws against driving under the influence of alcohol were toughened. At the same time, arrests of drunk drivers have increased sharply.

In the District this year, 36 people—the lowest figure in at least a decade—had died in traffic accidents as of Tuesday. Alcohol-related deaths in Maryland fell 30 percent while arrests of drunk drivers were up 50 percent. Highway deaths in Virginia declined 14 percent.

During Christmas weekend, as police in all three jurisdictions beefed up patrols, there was one alcohol-related death in the Washington area, compared to seven over the 1981 Christmas weekend.

"The word is out. We are out there to get people and as a result we have reduced fatalities," says Robert M. Goldstein, director of the D.C. police alcohol countermeasures and traffic services.

See ALCOHOL, A7, Col. 1

ALCOHOL, From A1

Throughout the Washington area, there may never have been such a bad year to be drunk at the wheel.

In Northern Virginia, a drunk driver involved in a head-on collision that killed three persons was convicted in September of second-degree murder. The conviction was the first in the state on that serious charge in an alcohol-related traffic case.

In Maryland, a drunk driver involved in a crash that killed five members of a Montgomery County family was sentenced to 15 years in prison.

In the District, police began a first-in-the-nation mandatory breath test for all drivers stopped for moving violations. Any driver who refuses the test can be arrested.

Despite tough new laws and aggressive enforcement, some drivers continue to drink and drive. John T. Hanna, director of the Virginia Department of Transportation Safety, says only one in 2,000 drunk drivers is ever caught. One such driver slipped through the enforcement net last weekend in the Washington area.

Donald W. Jewell, 33, who ran an insect exterminating business, threw a party at his Manassas house on the night before Christmas Eve. Friends who saw him at the party described him as drunk and "having a hard time talking."

In the middle of the party, Jewell stormed outside and drove off in his black 1979 Chevrolet pickup truck. He headed south at 70 miles an hour on a 55-mile-an-hour, two-lane road, police said.

Jewell had a record of drinking and bad driving. In California in 1969 he was convicted of driving under the influence of alcohol. Near Hodges, S.C., in 1975 he ran a stop light and crashed into a car, killing three persons. A blood-alcohol test showed that Jewell was under the influence of alcohol at the time. He was convicted of involuntary manslaughter and sentenced to six years in prison.

Four years later, after he'd moved north to Mathews, Va., Jewell was convicted of breaking and entering and sentenced to five years in prison. From prison, Jewell wrote Circuit Court Judge John DeHardit: "I am an alcoholic and I need and want help with this so I can be a man. I also know that if I don't get help with my drinking I will be back in prison."

About 10:30 p.m. a week ago today, Jewell lost control of his pickup rounding a curve. Police said Jewell tried to pull his truck back on the road but it went into a roll, taking up both lanes of Rte. 234 near Manassas. It stopped rolling when it smashed into a pickup coming from the opposite direction.

"He had the whole highway covered. It looked like a wall coming at me. It scared the daylights out of me. I'm still scared," William E. Parker Jr., 39, the driver of the other pickup, said yesterday.

Parker, who escaped with a strained back from the crash that totaled his pickup said he was lucky.

"When I knew anything, he was rolling at me. If I hadn't got in the ditch, he'd a killed me too," Parker said.

Jewell died of what a medical examiner called "multiple severe injuries."

To head off this kind of driver before an accident can occur, police in Maryland set up "sobriety roadblocks" over the Christmas weekend and plan to do so again this weekend.

Under a three-month program authorized earlier this month by Maryland Gov. Harry Hughes, the roadblocks are set up to catch drunk drivers who "absolutely don't think they can be caught," said Sgt. Ray Cotton.

"State Police stopped 2,000 cars over the weekend and we arrested four drivers," Cotton said. "We don't consider this a defeat, however. We are making believers out of people. The fact that we aren't arresting that many people is a sign that awareness of drunk driving is working."

In Montgomery County, along a flare-brightened stretch of Montgomery Village Avenue, county police on one recent holiday night checked an estimated 350 drivers between 11 p.m. and 1 a.m. They arrested no one.

"I don't think anybody had visions of locking up hordes of people," said Sgt. Owen J. Lennon, surveying the line of backed-up holiday travelers. "This is primarily a deterrent."

The mood on both sides of the spot check remained friendly. Police officers asked drivers if they had had anything to drink, then told those who said "no" or "just one" to "get home safely and thank you for cooperating."

As the night grew later and colder, some officers became impatient.

One policeman asked a glamorously dressed young woman to pull off the road for a test. "Recite the alphabet," she was told.

"Are you serious? That's what I get for being honest with you guys and telling you I had two drinks," she said, shivering in her strapless, sequined top, and then passed the test.

Maryland police say they can do little about those drivers who choose to avoid roadblocks by turning around and driving away from them.

"As a general rule," says Sgt. Cotton, "we would not approach an individual who turns around from a checkpoint, unless he does it illegally."

When area police do arrest someone for drunk driving, new laws require stiffer penalties.

In the District, persons arrested with blood alcohol levels at 0.1 percent or higher can now be convicted of driving while intoxicated even without evidence of impaired driving ability. The law doubles penalties for those who refuse to take breath or blood tests and sharply increases fines for repeat drunk-driving offenders.

In Maryland, where the drinking age this year was raised from 18 to 21, second offenders no longer can avoid conviction by receiving probation. Blood tests are mandatory in fatal accidents, and police can confiscate for 120 days the license plates of any repeat drunk driver.

In Virginia, first offenders can no longer erase their convictions by entering a rehabilitation program. Second offenders face an automatic 48 hours in jail, and a third conviction requires a minimum of one month in jail and possibly lifetime revocation of a driver's license.

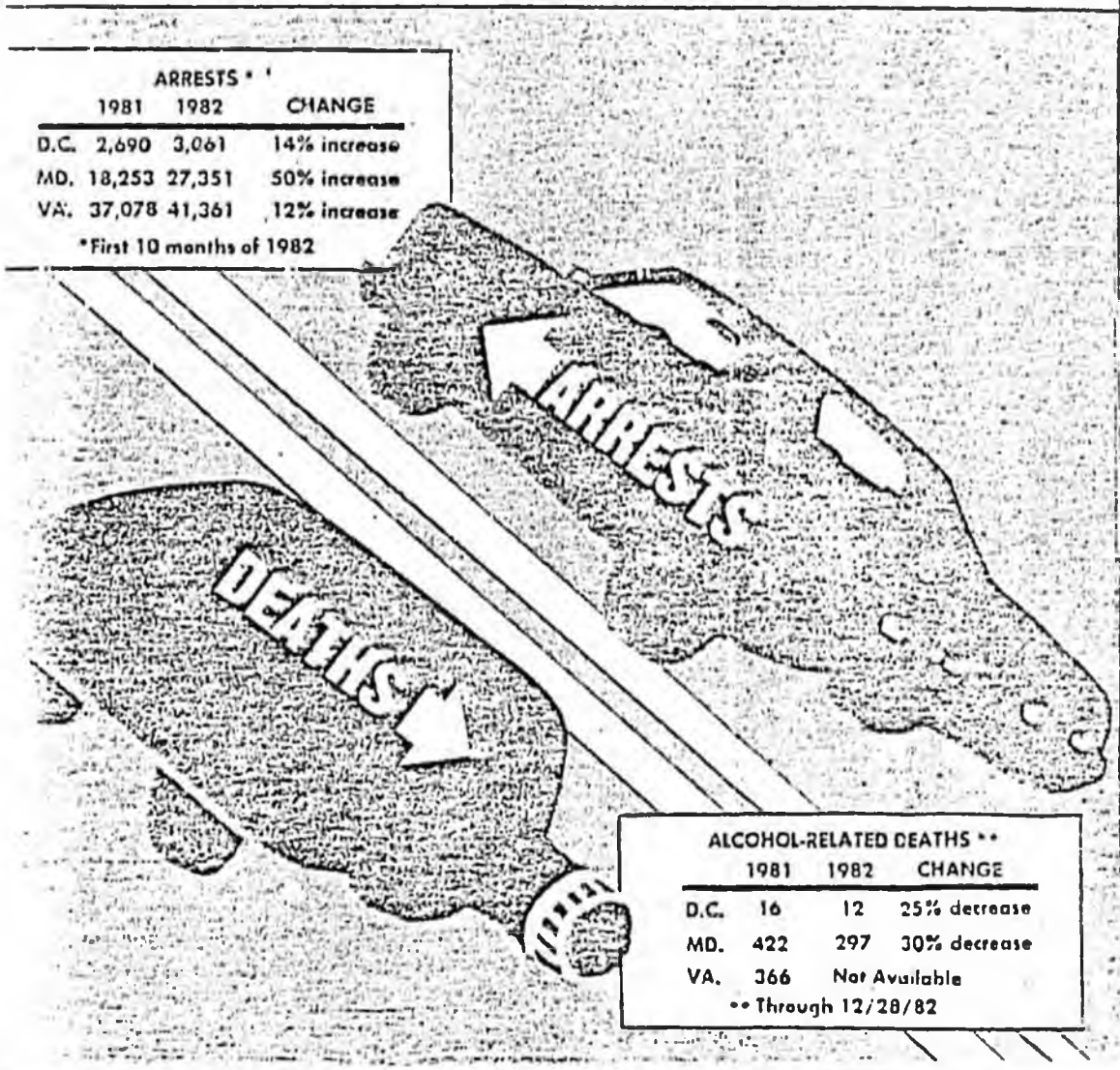
The target of this crackdown is drunk driving, not drunks. Accordingly, two local governments, one hospital and one volunteer group have come up with programs that permit tipplers to ride home—in a cab—for free.

Montgomery County's Dial-a-Ride program fielded 50 calls and sent out 45 cabs on Christmas Day. The big night, however, will be New Year's Eve when 400 calls and 300 pick-ups are expected, according to Jerry Freed at Dial-a-Ride.

"We get people trying to make reservations before they go out and drink too much," Freed said. "We make them aware it's for people already in trouble."

Staff writers Alma Guillermoprieto, Rosa Michnya and Joanne Ostrow contributed to this report.

CRACKDOWN ON DRUNK DRIVING



ARRESTS *

	1981	1982	CHANGE
D.C.	2,690	3,061	14% increase
MD.	18,253	27,351	50% increase
VA.	37,078	41,361	12% increase

*First 10 months of 1982

ALCOHOL-RELATED DEATHS **

	1981	1982	CHANGE
D.C.	16	12	25% decrease
MD.	422	297	30% decrease
VA.	366	Not Available	

** Through 12/28/82



Iowa's tough on drunk drivers.

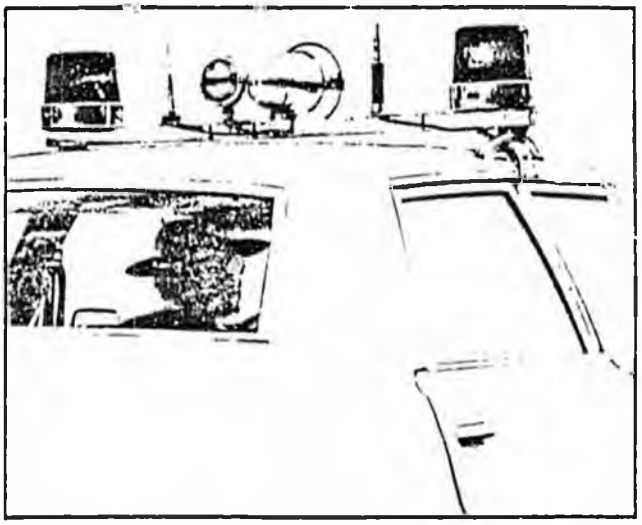
In order for a tougher drunk driving law to accomplish its purpose, it must not merely punish those arrested, it must deter those who might otherwise drive after drinking. Therefore public service advertising and news media coverage of new laws is extremely important. In Iowa, the Governor's Highway Safety Office hired an advertising agency to create a TV spot on the new law. That 30-second message, which is included in the ACAP video documentary, shows a young man in a small room. He begins talking to the camera:

> "When they stopped me for drunk driving I thought 'No Big Deal.' It was my first time. Well, I lost my driver's license right then and there — gone for at least 120 days. And my insurance company says my rates are going to go up a thousand dollars a year. That's gonna hurt, bad. And now I'm here . . .

The camera pulls back to reveal that the man talking is actually behind bars.

> ". . . for 48 hours. Iowa's new drunk driving law is for real, and it's tough, even if it's your first time."

The exposure given this spot by Iowa's TV stations has insured that virtually every motorist is aware of the new law.



Administrative License Revocation for Drunk Driving

Recommendation for legislative action by the American Council on Alcohol Problems

Administrative Revocation for Drunk Driving

Public indignation continues to grow. Citizens have made it clear to lawmakers and public officials that they are no longer willing to tolerate the highway carnage caused by drunk drivers.

In 1982 this grass roots sentiment, widely expressed across the country, resulted in the appointment of the Presidential Commission on Drunk Driving. The Commission's interim report was issued in December 1982 so that states could act on its recommendations during 1983 legislative sessions.

Those recommendations cover a wide range of topics, including changes in state drunk driving laws. The Commission recommends enactment of a "per se offense" at .10% BAC, and a presumption of guilt at .08% BAC. It also supports raising the drinking age to 21 and adopting a system for administrative revocation of drivers' licenses.

Other recommendations pertain to minimum jail sentences and legal sanctions against drunk driving. Legal penalties, however, require county attorneys willing to prosecute and judges willing to hand down the sentences mandated by the legislatures. Unfortunately, some county attorneys grant deferred prosecution, allowing those apprehended by police to continue driving. Those who are tried and convicted, or who plead guilty, are often given deferred sentences by the judge.

In all but a handful of states, drivers' licenses are only suspended or revoked after court conviction, so those charged with drunk driving may keep their licenses for months after being apprehended. One of the Presidential Commission's recommendations addresses that problem.

Administrative Revocation, pioneered in Minnesota in 1976 and adopted by Iowa in 1982, means that the driver's license is confiscated by the arresting officer on behalf of the Department of Transportation. Hearing officers are empowered to grant work permits in some cases. Under the "implied consent" portion of the law, licenses are revoked for refusal to take the chemical test, as well as for test failure.

Under this "two-track" system the loss of driving privilege extends to all those apprehended with a blood alcohol level of .10%, regardless of court action or lack of it. Administrative Revocation accomplishes the most important task in the fight against drunk driving. It takes drunk drivers off the road immediately, and serves as a strong deterrent to others.

Because, in almost every state, prosecution and sentencing vary considerably from one county to another, Administrative Revocation is the only predictable penalty for drunk driving. The American Council on Alcohol Problems has produced an 18-minute video tape documentary on Administrative Revocation in Iowa. Below are quotations from the video presentation:

"By the time that bill reached the floor of the House it was pretty clear from sentiment in the Capitol that they had to vote out something. They had to do something in the way of legislation on drunk driving that year because of the clear public sentiment favoring that, and the national trend in that direction. . . . There was massive bipartisan sentiment. The first vote in the House was 97-0, and the first vote in the Senate was 45-0."
Don Mason, Attorney
Prosecuting Attorney's Counsel

"I think that the administrative revocation of a drivers' license for all persons above .10 BAC is extremely important. . . . I think it puts the responsibility for putting people back out on the road back where it belongs — that's back with the state agencies. Since they do the issuing of driver's licenses, they should be responsible for who's out on the road. That's not really a judicial responsibility."
Sven Sterner
Governor's Highway Safety Office

"This is the first time in the history of this ASAP program that people have actually, realistically lost their drivers' licenses when they were arrested for OMVI. . . . We're the ones that initiate the revocation. We take the license right on the spot."
Roger Sanders, Patrolman
Alcohol Safety Action Program
Des Moines Police Department

"In the four and a half months since the law took effect there have been 5,685 drivers' licenses revoked in Iowa."
Bill Kendall, Director
Driver Licensing, DOT

"In the first four months that this law has been on the books there have been 59 fewer alcohol-related fatalities. . . . In that period there were 189 total highway fatalities — 29% of that 189 were alcohol-related. Over the same period a year ago, that percentage was 46%. . . . The sanctions that are applied generally — the fine, community service, some hours in jail — do not carry the deterrent effect on the drinking driver that the sure, immediate loss of their license has."
Gordon Sweitzer, Director
Motor Vehicle Division, DOT

"The one advantage we do have in the acronym game in Iowa with MADD and SALD is that we have GLADD. Now we have Good Laws Against the Drunken Driver."
Col. Frank Metzger, Director
Iowa Highway Patrol

To order a copy of the video tape documentary on Administrative Revocation, complete the order form below and mail to the American Council on Alcohol Problems.

Please send me a copy of the ACAP video documentary on Administrative Revocation.

Check video format:
_____ ¾-inch "U-Matic" cassette
_____ ½-inch "Beta" cassette
_____ ½-inch "VHS" cassette

I've enclosed remittance for:
_____ two-week rental ($10.00)
_____ Purchase of cassette ($50.00)

Mail to:
American Council on Alcohol Problems
2908 Patricia Drive
Des Moines, IA 50322

name

address

city state zip

States take tougher, quicker action to stop drunken drivers

On-the-spot suspension of licenses, more uniform laws bolster efforts across US

By George B. Merry
Staff writer of The Christian Science Monitor

Boston

Thousands of drunken drivers are now being pulled off the nation's highways — and with fewer questions asked.

• Lawmakers in at least 35 states passed tough new penalty or enforcement measures in 1982.

• Similar or even stricter statutes are pending, or expected to be filed, within the next few weeks in all but three states — Kansas, Kentucky, and Maine.

Particular attention is being focused on recommendations by the President's Commission on Drunk Driving, calling for speedier action. These include provisions that can be administered uniformly around the nation. Penalties currently vary widely from region to region, thus leading many judges and juries to refrain from punishing drunken drivers.

One especially appealing approach involves on-the-spot suspension of drivers' licenses by police. Four states — three in the past year and a half — have moved with considerable success in on-the-spot license revocation of those stopped for driving under the influence of liquor.

Similar instant tough drunk-driver measures begin April 1 in a fifth state, and lawmakers in at least four others are considering following suit with the administrative revocation approach, one of the major recommendations of the presidential commission.

Buoyed by the sharp reduction of liquor-related traffic deaths in his home state of Iowa, William N. Plymat, a member of the presidential panel, which was appointed last spring, is dedicating substantial energies to selling the idea elsewhere.

With administrative revocation, the driver retains the right to appeal, but during that often lengthy process the suspension holds.

The retired insurance executive and former Republican state senator views the threat of immediate, lengthy suspension of a motorist's right to operate a vehicle as an effective curb on drunk driving.

Under the tough Iowa statute, first implemented last July 1, an arresting officer can seize a license if the driver refuses to take a breath test on the scene, or flunks it by having a blood alcohol content of 0.10 percent or more.

Revocation is 120 days for first offenders, 240 days for a second arrest, and one year for the third. Also provided are tougher penalties for drunk driving — $100 fines and the possibility of 30 days in jail now becomes up to $1,000 and one year behind bars.

With administrative revocation, the driver retains the right to appeal the loss of his license, but during that often lengthy judicial process the suspension holds. In hardship cases, temporary permits to operate a vehicle to and from work can be granted, but even stiffer penalties are imposed should the motorist be picked up for drunk driving during the period of revocation.

The new law, during its first six months, cost 7,887 drivers their licenses — 6,383 for four months, 1,077 for eight months, and 427 for a full year, according to James Fetters, the driving improvements manager for Iowa's department of transportation.

During the same period, Iowa's liquor-related road death total was 97, or 59 fewer than during the corresponding period in 1981.

While a number of factors, including faster treatment and improved care of traffic accident victims, contributed to the improvement, safety transportation safety officials attribute the better record substantially to the tougher curbs on drunk driving.

Of the 7,887 license-revoked drivers, 6,693 took the breath test and failed, with an average blood alcohol count of 0.19 percent. The level of intoxication of the remaining 1,194 is unknown, since they refused to submit to the test.

Similar on-site administrative revocations of licenses also appear to be working effectively in Minnesota, Delaware, and West Virginia.

Oklahoma drunk drivers, beginning in April, will be next to face on-the-spot license suspensions for not less than 30 days.

Mr. Plymat, who pledges to continue his crusade in behalf of such measures, is enthusiastic about the prospects for early passage in Utah, where Gov. Scott M. Matheson solidly backs the effort.

Within the past few days a proposed administrative revocation law has been introduced into the California Assembly. Legislative committees in at least two other states — Alaska and North Carolina — also are expected to take up such measures during the next few weeks.

Several papers in Iowa, including the Cedar Rapids Gazette, regularly print the names and addresses of those whose licenses are revoked for drunk driving. Arrests for operating a motor vehicle under the influence of liquor similarly are publicized in a number of other dailies around the US, including the St. Louis Globe Democrat, Plymat notes.

Learning from Iowa

The Monitor's view — Thursday, January 27, 1983

For years states and municipalities have tried just about every legal stratagem to help curb the drunken driving problem in the United States. Yet in many communities judges and juries are loath to impose severe penalties, in part because of a recognition that the drinking driver is often as not in need of special counseling. Now, thanks to the experience of a few states, it is clear that there is one step that could be taken at the state level to quickly reduce liquor-related traffic accidents: swift administrative license revocation — right at the scene of the arrest.

Minnesota pioneered administrative revocation in 1976. Today similar laws are on the books in Iowa, West Virginia, and Delaware. Oklahoma will join the list later this spring. Utah is now considering such a measure. Alaska, California, and North Carolina are also expected to take up the issue this year.

How does it work? Take Iowa, where such a law was enacted after unanimous passage in both houses of the legislature last year. Persons stopped for suspected drunken driving are asked to take a sobriety test on the spot. If they refuse, they face a substantial penalty. If they take the test, and fail, their license is suspended right then and there. Revocation for first offenders is 120 days; for second offenders, 240 days; for subsequent offenders, one year. The driver has the right to appeal the loss of the license or contest the administering of the sobriety test. But during the period of appeal the suspension remains in effect. Exceptions are made for revocation in cases of extreme hardship.

In the six months since the law has been in place in Iowa, close to 8,000 persons have had their licenses suspended for varying periods of time. In the great majority of cases, blood alcohol readings were found to be especially high, indicating that law-enforcement authorities were not abusing their right to stop a motorist for a sobriety check. It might also be noted that the alcohol-related accident rate fell sharply during the same period.

The President's Commission on Drunk Driving endorsed such a proposal in its interim report. The issue is not one of severely penalizing the drinking driver. Indeed, what is good about the revocation concept is that it is uniform, applying equally to all motorists. Under such a law, no motorist apprehended for drinking in one locality would face a punishment more — or less — severe than a motorist in another jurisdiction. The law also puts the responsibility back where it belongs: in the hands of each motorist.

State legislatures meeting this year might well consider Iowa's experience.

POSITION PAPER/Department of Health & Social Service

POSITION PAPER

SCSCS for House Bill No. 6 (Judiciary)

"An Act relating to driving a motor vehicle."

House Bill No. 6 amended would increase the penalties for alcohol related driving offenses. Specifically:

Section 11 AS 28.15.291 sets the penalty for first offense driving with a suspended license as the result of a conviction of driving a motor vehicle while intoxicated at 30 days. The penalty for second or third offense driving with a suspended license as the result of a conviction of driving a motor vehicle while intoxicated would be 90 days.

Section 14 AS 28.35.030 (c) raises the penalty for second offense operating a motor vehicle while intoxicated to 20 consecutive days. The penalty for a third conviction would be raised to 30 consecutive days.

Section 20 AS 28.35.032 (g) sets the penalty for second offense of refusing to submit to chemical test at 20 days; third offense 30 days.

If CS for House Bill No. 6 is enacted, the increases in penalties set out in Sections 11, 14, and 20 would result in the need for 22 additional minimum security beds.

Recommended by: Walter J. Hickel for

Roger V. Endell, Director
Division of Adult Corrections

Date: ~~May~~ June 7, 1983

Approved by: Robert London Smith

Robert London Smith, Ph.D.
Commissioner

Date: 6/9/83

STATE OF ALASKA
FISCAL NOTE

Revision Date , 1983

I. REQUEST
Bill/Resolution No.: SCSCSHB 6 (Jud.)
Title: Act relating to driving a m.v.
Sponsor: Judiciary Committee
Requestor: Finance Committee

II. FISCAL DETAIL
Agency Affected: Health & Social Services
Program Category Affected: Justice
BRU, Program of Subprogram(s) Affected: Adult Confinement

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 83	FY 84	FY 85	FY 86	FY 87	FY 88
OPERATING						
100 PERSONAL SERVICES				419.7	444.9	471.6
200 TRAVEL		2.0	2.1	2.2	2.4	2.5
300 CONTRACTUAL		39.6	42.0	76.7	81.3	86.2
400 COMMODITIES		68.6	72.7	80.7	85.6	90.7
500 EQUIPMENT		-	-	4.5	-	-
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC		6.9	7.3	7.7	8.2	8.7
TOTAL OPERATING	-0-	117.1	124.1	591.5	622.4	659.7
CAPITAL	-0-	2,860.0	-0-	-0-	-0-	-0-
REVENUE	-0-	-0-	-0-	-0-	-0-	-0-

FUNDING: (Thousands of Dollars)

GENERAL FUND	-0-	2,977.1	124.1	591.5	622.4	659.7
FEDERAL FUNDS						
OTHER (Specify Source)						

POSITIONS:

FULL-TIME	-0-	-0-	-0-	9	9	9
PART-TIME						
TEMPORARY						

III. SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

The source of funds to offset the fiscal impact of this bill has not been identified by the sponsor

IV. ANALYSIS: Attach a separate page for any Analysis

Prepared By: Roger C. Lange
Phone: 465-3376
Division: Adult Corrections
Date: June 7, 1983

Approved by Commissioner: Robert Lordon Smith, Ph.D.
Date: 6/9/83
Department Health & Social Services

Distribution:
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3/8/83

IV. ANALYSIS:

A. Assumptions

1. Bed Impact

The passage of this bill will result in the need for 22 additional minimum security beds within the Alaska correctional system. The sections of the bill which affect increased inmate population projections are:

a. Section 11

Statistics furnished by the Department of Public Safety show 181 persons were convicted in 1982 for driving with a suspended or revoked license where the original offense resulting in the loss of license was driving while intoxicated (DWI) or implied consent (refusal to take a breathalyzer test). For purposes of this fiscal note, that number was used for calculating the increased person days of incarceration resulting from increased sentences to 30 or 90 days. It was assumed that 80% of the offenders would have been convicted only once in the previous 15 years and 20% convicted more than once in the previous 15 years.

The following calculations also consider that the offender would have been given a minimum sentence of 10 days previously, and it is assumed that every offender will earn all good time for which they are eligible. Therefore, 145 offenders would serve an additional 15 days and 36 offenders would serve an additional 60 days. This results in the need for an additional 11.88 beds.

b. Section 14

This section of the bill increases the minimum sentence for second time drunk drivers from 10 days to 20 days and third and subsequent time drunk drivers from 10 days to 30 days. It is estimated that would be 450 repeat offenders affected by this legislation, 425 second offenders and 25 third offenders. The additional sentence length to be served, assuming all good time will be earned is 12 days for second time offenders and 20 days for third offenders. This increased sentence length results in the need for 9 additional minimum security beds.

c. Section 20

This section provides new penalties for refusal to take a chemical test similar to the sentences to be imposed for driving while intoxicated. Statistical data for this offense was not available. Therefore, it was assumed that 20 individuals would be convicted with one

prior and 7 individuals would be convicted with 2 or more prior offenses. This would result in the need for 1.1 additional beds.

d. The summary of a, b, and c above is 21.98 beds, which were rounded to 22 beds.

2. All persons convicted would receive the minimum sentence and all persons would earn all good time for which they would be eligible.

3. Inflation of 6% per year was used for the entire period of the fiscal note.

4. The new beds would not be available for occupancy until July 1, 1985. This will result in further overcrowding of the existing facilities for two years.

5. One additional position is needed for every 2.5 prison beds. Therefore, 9 correctional officers are needed to provide the security and supervision of the inmates. These positions would be requested for FY 86.

B. Program Summary:

1. Positions

1 - Correctional Officer III
8 - Correctional Officer II's

These positions are needed to provide for the security of the institution where the beds will be constructed and for the supervision of the additional 22 persons (full-time equivalents) within the Alaska corrections system.

2. Other Expenditures

The fiscal impact will be experienced as soon as the bill becomes law. Therefore, the incremental costs directly related to inmate care are identified in FY 84. Position costs and costs related to building operations are not incldued until FY 86.

a. Travel - $2000. Inmate transportation to point of arrest when released from custody.

b. Contractual - $39,600. Medical expenses for 22 full-time equivalent inmates at $1800 per inmate per year.

c. Commodities - $68,600. Food, clothing, bedding, etc. for 8,085 inmate days at $8.48 per day.

Grants - $6,900. Inmate gratuities paid for persons working in the kitchen, or janitorial/maintenance crews, etc.

e. Capital Expenditures

22 beds @ $130,000 per bed = $2,860,000

D. Economic Impact:

Passage of this bill should not significantly impact the State's economy.

E. Impact on Local Governments:

There would be no fiscal impact on local governments unless they changed local ordinances related to DWI to include the same penalties contained in this bill. The fiscal impact would occur for local government units who contract with the State for the care of prisoners for local offenses.

POSITION TITLE	RANGE/STEP	BARG. UNIT	FORM 12 PAGE/LINE	GOV.	ATTACH.	DISAPP.
Correctional Officer II (8)	13/8	G				

1. TYPE OF POSITION	STAFF MONTHS	RP NUMBER	PCN NUMBER	BRU PRIORITY	LOCATION	ELECTION DISTRICT	LEG.		
PFT	96								

3. CONTINUATION LEVEL | ADDITION

4. TYPE OF EXPENDITURE		AMOUNT
1	2	3
PERSONAL SERVICES		OT 26,968
5. Salary	223,608	Shift Diff.
6. Benefits	69,167	8,088
7. Supplemental Benefits	15,857	
8. Fixed Benefits	25,888	
9. TOTAL PERSONAL SERVICES 01		369,576
10. Travel 02		
11. Contractual 03		
12. Commodities 04		1,600
13. Equipment 05		4,000
14. Other		
15. TOTAL COST		375,176

	RECEIPT CODE	FUNDING SOURCE	
16.		Federal Receipts 1002	
17.		C.F. Match 1003	
18.		General Funds 1004	375,176
19.		I-A Receipts 1005	
20.		Program Receipts 1028	
21.		Other	

FOR OSM USE ONLY
4A KEY NUMBER __ __ - __ __ - __ __ - __ __ - __ __

JUSTIFICATION

These positions will provide security coverage for the minimum security beds resulting from enactment of CS for House Bill No. 6 (Judiciary).

Single position costs:

Salary	$27,951
Overtime	3,371
Shift Diff.	1,011
Benefits	13,864
	$46,197

13 REQUEST FOR NEW POSITION

AGENCY Corrections

PROGRAM Offender Confinement, Reformation, & Supervision

BRU Adult Confinement

COMPONENT

Page of

Revised Date

FY 84

1.	POSITION TITLE Correctional Officer III				RANGE/STEP 15/A	BARG. UNIT G	FORM 12 PAGE/LINE	COV.	APPROV.	DISAPP.
2.	TYPE OF POSITION PFT	STAFF MONTHS 12	RP NUMBER	PCN NUMBER	BRU PRIORITY	LOCATION	ELECTION DISTRICT	LEG.		

3. CONTINUATION LEVEL | X | ADDITION | |

	TYPE OF EXPENDITURE		AMOUNT
	1	2	3
	PERSONAL SERVICES		OT $ 3371
5.	Salary	30,944	Shift Diff.
6.	Benefits	9,446	$ 1011
7.	Supplemental Benefits	2,165	
8.	Fixed Benefits	3,236	
9.	TOTAL PERSONAL SERVICES	01	50,173
10.	Travel	02	
11.	Contractual	03	
12.	Commodities	04	200
13.	Equipment	05	500
14.	Other		
15.	TOTAL COST		50,873

	RECEIPT CODE	FUNDING SOURCE		
16.		Federal Receipts	1002	
17.		G.F. Match	1003	
18.		General Funds	1004	50,873
19.		I-A Receipts	1005	
20.		Program Receipts	1028	
21.		Other		

FOR B&M USE ONLY
4A KEY NUMBER __ __ - __ __ - __ __ - __ __ - __ __

JUSTIFICATION

These positions will provide supervision of security staff for the new minimum security beds resulting from the passage of CS for House Bill No. 6 (Judiciary).

Single position costs:

Salary	$ 30,944
Overtime	3,371
Shift Diff.	1,011
Benefits	14,847
	$ 50,173

13 REQUEST FOR NEW POSITION

AGENCY Corrections

PROGRAM Offender Confinement, Reformation, & Supervision

BRU Adult Confinement

COMPONENT

Page of

Revised Date

FY 84

01-4136 (7/82) - 13

STATE OF ALASKA
FISCAL NOTE

Revision Date , 1983

I. REQUEST

Bill/Resolution No.: CSHB6
Title: "An Act...Driving a Motor Vehicle"
Sponsor: Abood, Furnace, Lindauer
Requestor:

II. FISCAL DETAIL

Agency Affected: Dept. of Administration
Program Category Affected: Public Defender
BRU, Program of Subprogram(s) Affected: Third District, Fourth District

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 83	FY 84	FY 85	FY 86	FY 87	FY 88
OPERATING						
100 PERSONAL SERVICES		177.2	187.8	199.1	211.0	223.7
200 TRAVEL						
300 CONTRACTUAL		15.0	15.9	16.9	17.9	19.0
400 COMMODITIES		4.5	4.8	5.1	5.4	5.7
500 EQUIPMENT		6.0				
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC						
TOTAL OPERATING		202.7	208.5	222.4	234.3	248.4
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND		202.7	208.5	222.4	234.3	248.4
FEDERAL FUNDS						
OTHER (Specify Source)						

POSITIONS:

FULL-TIME		3.0	3.0	3.0	3.0	3.0
PART-TIME						
TEMPORARY						

III. SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

GENERAL FUND

IV. ANALYSIS: Attach a separate page for any Analysis

Prepared By: Bob Stokes, Admin. Officer
Phone: 279-7541
Division: for Dana Fabe, Public Defender
Date: April 13, 1983

Approved by Commissioner: Lisa Rudd
Date: April 14, 1983
Department: Administration

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3/8/83

ANALYSIS OF C.S.H.B. 6

There are several provisions within this bill which will require a substantial increase in the attorney time necessary to handle DWI and refusal of breathalyzer cases.

First, the increase in mandatory minimum penalties for second and subsequent offenders to 20 and 30 days respectively, as well as the increase in fines, will mean that a much higher number of defendants will exercise their right to a jury trial. Preparation for jury trial requires extensive interviews with the client and prospective witnesses, and the court time for the case is greatly increased, since a DWI change of plea in court may take 15 minutes while a jury trial in such a case usually lasts 1 - 2 days. We handle a high volume of not only State prosecuted DWI's but Municipally prosecuted DWI's as well. This increase in attorney time necessary for handling each drunk-driving case, given our already staggering misdemeanor caseloads, will require two additional attorneys for the Anchorage office, and one for the Fairbanks office.

Second, a drastic increase to a 90-day mandatory penalty for a first offender charged with driving with a suspended license will increase the number of jury trials which this office is required to handle.

Third, provisions in the statute which allow a police officer upon probable cause to seize the defendant's driver's license or impound his vehicle for a substantial period of time at the time of arrest will also require increased attorney time, due to the defendant's right to schedule a court hearing within 7 days to obtain return of his license or vehicle. Although the defendant may not have a right to an attorney to handle the hearing which he initiates to have his car or license returned, he will need an attorney's assistance at that hearing to the extent that it impacts his criminal case. Because anything that the defendant might say at that hearing regarding the facts of his case could be used against him at the subsequent criminal trial, he would need the assistance of counsel at that hearing. The attorney would have to obtain the immunity which would be due the client under the Alaska Supreme Court decision of McCracken v. Corey, as well as limit the scope of cross-examination at the hearing.

Because of the volume of DWI cases handled by this agency and the substantially increased attorney time necessary to comply with the provisions of the Statute, two additional attorneys for Anchorage and one for Fairbanks are requested.

STATE OF ALASKA
FISCAL NOTE

Revision Date , 1983

I. REQUEST

Bill/Resolution No.: HB6/SB61
Title: Drunk Driving
Sponsor:
Requestor:

II. FISCAL DETAIL

Agency Affected: Alaska Court System
Program Category Affected: Admin. of Justice
BRU, Program of Subprogram(s) Affected: Trial Courts

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 83	FY 84	FY 85	FY 86	FY 87	FY 88
OPERATING						
100 PERSONAL SERVICES		482.8	614.2	651.1	690.2	731.6
200 TRAVEL						
300 CONTRACTUAL		12.5	15.9	16.9	17.9	19.0
400 COMMODITIES		12.5	15.9	16.9	17.9	19.0
500 EQUIPMENT		31.2				
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC						
TOTAL OPERATING		539.0	646.0	684.9	726.0	769.6
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND		539.0	646.0	684.9	726.0	769.6
FEDERAL FUNDS						
OTHER (Specify Source)						

POSITIONS:

FULL-TIME		12	12	12	12	12
PART-TIME						
TEMPORARY						

III. SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

IV. ANALYSIS: Attach a separate page for an Analysis

Prepared By: Richard Barrier
Division: Alaska Court System/Administration
Phone: 264-0545
Date: 4/13/83

Approved by Commissioner:
Date:
Department:

Distribution:
Original to Legislative Finance
Copy to Office of Management and Budget (for Legislature introduced bills)
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3/8/83

ANALYSIS OF FISCAL IMPACT OF SB 61/HB 6:

The Court System currently disposes of approximately 6,000 DWI cases each year. Presently, 8.6% of these cases are disposed of at trial, or approximately 500 trials per year. This legislation will increase the number of cases proceeding to trial, since individuals faced with stiffer penalties and forfeiture of motor vehicles will be more likely to take their cases to trial than to plead guilty as they have in the past. Assuming that 5% of those individuals presently pleading guilty opted for a trial under the new statutes, the Court System would experience an increase of approximately 250 trials per year.

This legislation provides that individuals issued temporary licenses upon arrest on DWI have seven days in which to schedule a court hearing regarding extension of their temporary license. If 25% of the individuals charged with DWI ask the court for this seven day hearing, the court would experience an increase of approximately 1,500 hearings per year.

Once a motor vehicle has been forfeited to the state, the court must notice any interested party regarding this forfeiture and permit interested parties to submit a petition for remission of interest in the motor vehicle. Each petition filed will require a court hearing. It is estimated that this would lead to approximately 500 hearings per year.

Statewide, the major impact of this legislation would be an increase of approximately 250 DWI trials and 2,000 hearings per year. Along with the judicial manpower required to conduct the trials and hearings, the court needs supporting staff for the judges and clerical staff to process the case files, calendar and notice the participants in hearings, and perform other new clerical functions under this legislation related to impoundment of vehicles and forfeiture of vehicles.

The impact of this legislation will be felt in each court location in the state, though the major impact will be in the larger metropolitan areas. Both Anchorage and Fairbanks currently have a heavy caseload of DWI cases, with Anchorage reporting approximately 30% of the state's caseload and Fairbanks 25% of the caseload. In each of these locations the district courts are working at capacity, and would therefore need increased resouces to handle the projected number of new trials and hearings to be held under this legislation. In each location, the minimal staffing required to implement this legislation would be one district court judge, with a support staff of a secretary and in-court clerk, and two court clerk II positions in the criminal sections to deal with the new clerical demands created by this legislation.

In addition to Anchorage and Fairbanks, both Palmer and Kenai have significant DWI caseloads, with each having nearly 10% of

the state's caseload. While these courts may be able to get by without additional judicial resources, each would need at a minimum one additional court clerk II position.

A detailed breakdown of the cost associated with this legislation is provided below.

FY 84 COST OF IMPLEMENTING HB 6/SB 61

PERSONAL SERVICES:	
SALARIES:	
ANCHORAGE	
District Court Judge	$ 60,600
Secretary (Range 12B)	23,352
In-Court Clerk (Range 12B)	23,352
Court Clerk II (2 @ Range 10B)	41,424
FAIRBANKS	
District Court Judge	69,084
Secretary (Range 12B)	26,616
In-Court Clerk (Range 12B)	26,616
Court Clerk II (2 @ Range 10B)	46,706
PALMER	
Court Clerk II (Range 10B)	21,384
KENAI	
Court Clerk II (Range 10B)	21,984
	$361,118
BENEFITS:	
Judges	139,659
Classified	78,582
Total Personal Services	579,359
CONTRACTUAL	15,000
COMMODITIES	15,000
EQUIPMENT (one time costs)	31,200
TOTAL COST	$640,559
FIRST YEAR ADJUSTMENT:	
Less two months recruitment time	(101,560)
TOTAL COST FIRST YEAR	$538,999

(Subsequent years' costs include inflation at 6%.)

AMENDED TITLE:
AN ACT RELATING TO DRIVING A MOTOR VEHICLE

PRIME SPONSOR: ABOOD.
CO-SPONSORS: FURNACE, LINDAUER, COWDERY, SZYMANSKI, PESTINGER, BETTISWORTH, CATO, UEHLING.
CURRENT STATUS: 2/28/83 IN (H) JUDICIARY

DATE	SEQ	PAGE	LEGISLATIVE ACTION
01/17/83	01	0018	FIRST READING -- COMMITTEE REPORTS
02/28/83	02	0361	S.A. -- CS04, NR02, OTHER01
02/28/83	03	0361	S.A. F/NOTE HSE SUPPL #17
			JUDICIARY
			RULES
****	**	**	*** *** ***

SPONSOR: House Judiciary
(leg) non-leg pub hear (work sess) inv hear

SUBJECT: HB 6 [illegible]

MAILING ADDRESS: _____

PHONE 4990 CONTACT Catherine

DATE TAKEN/BY Jnh 3/18.

T/C DATE/DAY Wed. March 23

TIME: 7-9 PACIFIC

_____ YUKON

5-7 ALASKA

_____ BERING

SITES PARTICIPATING:

North Slope
Anaktuvuk Pass
* Barrow
Kaktovik
Point Hope
Wainwright

ALL ALASKA
ALL LIO's
WASH., D.C.

NANA
Ambler
* Kotzebue
Noorvik
Selawik

Norton Sound
Gambell
Hooper Bay
* Nome
Savoonga
Shishmaref
** Unalakleet

Bristol Bay
Aleutians
* Bethel
* Dillingham
St. Paul
Sand Point
** Unalaska

Interior
* Delta Junction
* Fairbanks
** Fort Yukon
Galena

South Central
(* Anchorage)
Homer
* Kenai (Sol)
* Kodiak
* Mat-Su
Seward
* Valdez

Southeast
Cordova
Haines
Hoonah
* Juneau
* Ketchikan
* Petersburg
* Sitka
Wrangell
Yakutat

Chairing Site/Person Ben Russell

Special Offnet _____
Location/Phone# _____

[illegible] 3/18/83
Signature of Sponsor/Contact Person Date

------TELECONFERENCE OFFICE USE ONLY------

2-Wire ✓ 4-Wire _____
Bridges: #1 (206)447-0620
#2 (206)447-1534
#3 (206)447-5627
#4 (206)447-9479
Bridge operator (800)426-3232
JNU trouble #'s 586-1062
465-3836

Publicity:
_____ Local calls/list attached
_____ Media/P.S.A. attached
Can expect:
_____ Lengthy back-up
_____ Bill summary
_____ Participants list

POST TELECONFERENCE NOTES

Site/Date: _____

Local Moderator _____

T/C Started: _____ T/C Ended _____

T/C Recorded: _____

Testified/Participated: _____

Unable to Testify: _____

Observers: _____

Total Number: _____

ER/Department of Health & Social Services

POSITION PAPER

CS for House Bill No. 6 (State Affairs)

"An Act relating to driving a motor vehicle."

House Bill No. 6 amends existing state law by increasing the length of sentence for first offense of driving with license suspended from 10 days to 90 days; second offense of operating a motor vehicle while intoxicated from 10 days to 20 days; third offense of operating a motor vehicle while intoxicated from 10 days to 30 days. It is estimated that the net effect of increasing the penalities for the specified offenses would increase the prison population by 80 beds.

Enactment of this bill would have significant impact upon prison population.

Recommended by: for Roger C. Lange
Roger V. Endell, Director
Division of Adult Corrections

Date: 3/11/83

Approved by: Robert London Smith
Robert London Smith, Ph.D.
Commissioner

Date: 3/14/83

STATE OF ALASKA
PRELIMINARY STATEMENT OF FISCAL IMPACT

Bill No: Committee Substitute HB 6 (SA) Date on Bill: Not available
Title: "An Act relating to driving a motor vehicle."
Sponsor: Rep. Abood
Requestor: Rep. Abood

1. Estimated fiscal impacts on:

a. Expenditures:

(Thousands of Dollars)

			FY 83	FY 84	FY 85	FY 86	FY 87	FY 88
Capital				11,570.0	-0-	-0-		
Operating				549.2	2,006.4	2116.1		
Total			-0-	12,119.2	2.006.4	2116.1		

b. Revenues:

Revenue			-0-	-0-	-0-	-0-		

2. Source of funds to offset fiscal impact of bill:

The funding source has not been identified by the bill sponsor.

3. Assumptions:

The Committee Substitute for House Bill No. 6 increases the mandating jail time for individuals who drive while the operator's license is cancelled, suspended, or revoked. The amendment increases the sentence for that offense from 14 consecutive days to 90 consecutive days.

It is estimated based on statistical data available, that there would be approximately 650 convictions annually for the offenses specified in the amendment. Because of the significant increase in sentence length, it is assumed that 25% of the current offenders would be deterred from driving while their license was cancelled,

Prepared By: Roger C. Lange Roger C. Lange Phone: 465-3376
Division: Adult Corrections Date: Feb. 24, 1983

Approved by Commissioner: Robert London Smith Date: 2/24/83
Department:

5. Distribution:
Original to Legislative Finance
Copy to OMB
Copy to Sponsor
Copy to Requestor

2/8/8

3. Assumptions: (continued)

suspended or revoked. Therefore, it would be anticipated that there 487 persons would be convicted of this offense annually.

The current sentence for these offenses results in 8 days served in jail (14 days less good time). Under the new penalty 68 days would be served (90 days less good time). Time served would increase 60 days; therefore, the increased number of beds required to implement this amendment would be:

487 persons x 60 days ÷ 365 days per year

487 x 60 ÷ 365 = 80 new beds

Cost of minimum security beds are estimated to be $130,000 per bed.

Capital costs = 80 x $130,000 = $10,400,000

Additional costs for commodities, contractual services, and inmate gratuities only are included for FY 1984, as the construction could not be reasonably completed until July 1984. At that time, personnel services costs would start for 36 positions.

Costs previously identified for the original bill have been combined with the new costs identified, and are reflected in the total estimated costs.

4. Disclaimer:
This statement has not been reviewed by the OMB in the Office of the Governor. It does not represent the policy of the Sheffield Administration or the final estimate of fiscal impact.

(7)

2/28

COMMITTEE REPORT

HOUSE

1/17/83

FURTHER: JUDICIARY

Date: 2/25/83

Mr. Speaker:

The Committee on STATE AFFAIRS has had HB 6

Relating to driving a motor vehicle.

under consideration and reports it back as follows:

[ ] do pass [ ] do not pass

[ ] do pass with attached amendments(s)

[X] replace with CS for ~~State Affairs~~ HB6(SA) [X] same title [ ] new title

and recommend do pass

[ ] AND attaches a "Letter of Intent" [X] ~~New~~ Fiscal Note Sup 17 [ ] Zero Fiscal Note Attached

[ ] reports it back without recommendation

[ ] referred to the _____ Committee

MEMBERS SIGNING DO PASS

Mike Abbood

M M Mills

John J Cardinal

Walt Furnace

MEMBERS HAVING OTHER RECOMMENDATIONS:

Anthony Vaska No Rec

Ronald J. Farmer - Do pass if amended.

Dick Shelby No Rec.

Mike Abbood

CHAIRMAN

H 60

STATE OF ALASKA
FISCAL NOTE

Revision Date , 1983

I. REQUEST

Bill/Resolution No.: CS HB 6 (SA)
Title:
Sponsor: Abood
Requestor: House Judiciary

II. FISCAL DETAIL

Agency Affected: Public Safety
Program Category Affected: Justice/PUB PROT
BRU, Program of Subprogram(s) Affected:
AST-Det. & CIB/DMV-Driver Services

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 83	FY 84	FY 85	FY 86	FY 87	FY 88
OPERATING						
100 PERSONAL SERVICES		53.2	56.4	59.8	63.4	67.2
200 TRAVEL		3.0	3.2	3.4	3.6	3.8
300 CONTRACTUAL		87.1	87.8	93.0	98.6	104.5
400 COMMODITIES		.2	.2	.2	.2	.2
500 EQUIPMENT		3.8	-			
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC						
TOTAL OPERATING		147.3	147.6	156.4	165.8	175.7
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND		147.3	147.6	156.4	165.8	175.7
FEDERAL FUNDS						
OTHER (Specify Source)						

POSITIONS:

FULL-TIME		2	2	2	2	2
PART-TIME						
TEMPORARY						

III. SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

The funding source has not been identified by the bill sponsor.

IV. ANALYSIS: Attach a separate page for any Analysis

Prepared By: Michael Orelove
Phone: 465-4349
Division: Administrative Services
Date: 3/14/83

Approved by Commissioner: [signature]
Date: 3/15/83
Department: Public Safety

Distribution:
Original to Legislative Finance
Copy to Office of Management and Budget (for Legislature introduced bills)
Copy to Department (for Governor introduced bills)
Copy to Sponsor
Copy to Requestor (if different from Sponsor)

3/8/83

CS HB 6 (State Affairs)

Assumptions:

Division of Motor Vehicles:

1) Arresting agencies, not DMV, will handle costs of impound & storage if vehicle is released under AS 28.35.036(c) or (d); 2) Alaska Court System will handle "Revenue" fiscal note covering fines and vehicle forfeitures; 3) Hearing officer will cover areas outside Anchorage and Fairbanks quarterly; 4) 96% of defendants who take breath test will have .10% or higher; 5) For 26% of impounds an individual will ask for hearing; and 6) Effective date is July, 1983.

Fiscal Impact:

Division of Alaska State Troopers:

Expenditures	FY 84	FY 85	FY 86
300 Contractual Services	77.5	82.2	87.1

Analysis:

The only impact that is anticipated from this Bill relates to the costs that will be incurred when vehicles are impounded under Section 28.35.036. We have estimated that one thousand vehicles will be impounded, of which five hundred will require towing and storage fees to be paid by the Department due to the person operating the vehicle not being the owner and operating the vehicle without the owner's consent, driver not being charged within the prescribed period, dismissed charge or where the driver is acquitted of the charge. Wrecker fees are estimated at $80.00 per occurrence and a $5.00 per pay storage fee for fifteen days required. Inflation is estimated at 6% for each year after FY 84. No increase in personnel is anticipated.

Division of Motor Vehicles:

EXPENDITURES

	FY 84	FY 85	FY 86
100 Personal Services	53.2	56.4	59.8
200 Travel	3.0	3.2	3.4
300 Contractual	9.6	5.6	5.9
400 Commodities	.2	.2	.2
500 Equipment	3.8	-0-	-0-
TOTAL	69.8	65.4	69.3

ANALYSIS

One Documents Processing Clerk II will be required in Juneau to handle administrative license actions, and related work for individual defendants whose breath results are .10% or higher. Will prepare and mail license actions (of which it is estimated there will be an increase of 2,700 to 3,000 annually, based on 1981 statistics); enter data on computer; prepare certified copies for prosecutors, courts, etc.; process stays; maintain proof of insurance filings; and maintain records. Equipment breakdown for this position is as follows: Typewriter - $1,245; File Cabinet - $291; and Chair - $188.

One Clerk Typist III in Anchorage is proposed to handle data relating to hearings requested by individuals whose vehicle was impounded. Will send hearings notices to those requesting a hearing, maintain current computer records concerning hearings, and maintain tape file for all hearings. Will type hearing transcripts from tape as required for appeals, and other court action. Equipment breakdown for this position is as follows: Typewriter - $1,245; Desk - $446; File Cabinet - $235; and Chair - $163.

Travel is for hearing officer when hearings are outside the Anchorage or Fairbanks areas.

$4,300 of first year contractual is for new testing material and forms, and $5,300 is for postage (all license actions and hearing notices must be sent via certified mail). Remaining years contractual is for postage only.

We basically know what the increased workload will be as a result of increased license actions, and that one clerical position in Juneau will be necessary if we are to process this increase. However, at this point it is only an estimate as to how many defendants and/or vehicle owners will ask for a hearing after impoundment of a motor vehicle. Figures released by the Court System in 1981 reflect a 75% conviction rate between 1978 and 1980 for DWI cases. It is estimated 75% of those not convicted will ask for a hearing in an effort to determine who will pay impound and storage costs; plus 10% of the remaining for other various reasons. If there is this large of an increase in hearings one clerical position will be needed in Anchorage to handle the workload.

5. Amendments Proposed:

A. Sec. 5, Page 3 (AS 28.15.201(c)), change to read as follows:
(c) After the termination of the limitation as shown on the certificate issued under (b) of this section, the license of a person on whom a limitation was imposed will become suspended unless the person has complied with AS 28.20.240. [IS NO LONGER BOUND BY THE LIMITATION AND MAY APPLY FOR A DUPLICATE LICENSE UNDER AS 28.15.141.....]

The reason for this recommended change is because at the present time, and in the proposed new law, it states a person may apply for a duplicate license at the end of the limitation period, which is in conflict with AS 28.20.240. That section reflects the limitation will continue until the individual files proof of insurance. Also under AS 28.20.240, the limitation may continue for the three year period a person is otherwise required to file proof of insurance, thus circumventing the insurance requirement. This amendment would prevent that.

B. Sec. 9, Page 8 (AS 28.35.031(e)), and Sec. 12, Page 11 (AS 28.35.032(d)), change "90 days" to "3 months".

Only reason for this request is that it would be easier for the department to administer.

C. Sec. 14, Page 13 (AS 28.35.034), replace first sentence with language similar to the following. "A person whose license or permit to operate or drive a motor vehicle has been revoked under the provisions of AS 28.35.031 or AS 28.35.032 shall surrender the license or permit to the law enforcement officer who delivers to him a copy of the suspension or revocation notice. The law enforcement officer shall forward the license, and a copy of the revocation notice, to the department."

Reason for this recommendation is so it doesn't conflict with Sec. 9 and 10, which reflect the law enforcement officer shall seize the person's driver's license. It also specifies what the officer is to do with the license.

D. Sec. 9, Page 7, lines 6 thru 10 (AS 28.35.031(c)), and Sec. 11, Page 10, line 1 thru 5 (AS 28.35.032(b)): "the Department of Public Safety shall revoke or suspend [NOTIFY THE PERSON THAT] the person's license or nonresident privilege to drive or operate a motor vehicle in the state. [IS REVOKED OR SUSPENDED, OR THAT NO ORIGINAL LICENSE OR PERMIT WILL BE ISSUED] The revocation is effective upon expiration of the temporary....."

Reason: Allow the notice given by the law enforcement officer as mentioned in Sec. 9 and 10 suffice for notice, and not require additional notice via mail. This would save mailing costs on approximately 4,000 notices annually at current price of $1.55 each, plus clerical time to process.

(continued)

Amendments Proposed (cont')

E. A section of Title 28 not addressed in this bill, however, is related in some ways, is AS 28.15.221(a). May want to look at amending that section by adding "or another law or ordinance with substantially similar elements if committed in another jurisdiction.".

Reason: As presently written an out-of-state violation cannot be included as a violation against an Alaska driver's license, and be counted in the point total. Appears from this bill the intent is to count a DWI conviction in another jurisdiction the same as if it occurred in Alaska. The above change would allow entry of out-of-state DWI, or any other traffic violation, for people who possess an Alaska driver's license, and thus equal treatment for all violations, regardless of where the offense occurred.

1.	POSITION TITLE DOCUMENTS PROCESSING CLERK			RANGE/STEP	BARG. UNIT	FORM 12 PAGE/LINE	GOV.	APPROV.	DISAPP.
2.	TYPE OF POSITION PFT	STAFF MONTHS 12	RP NUMBER	PCN NUMBER	BRU PRIORITY	LOCATION JUNEAU	ELECTION DISTRICT	LEG.		

3.	CONTINUATION LEVEL		ADDITION	
4.	TYPE OF EXPENDITURE			AMOUNT
	1		2	3
	PERSONAL SERVICES			
5.	Salary			
6.	Benefits			
7.	Supplemental Benefits			
8.	Fixed Benefits			
9.	TOTAL PERSONAL SERVICES	01		26.6
10.	Travel	02		
11.	Contractual	03		
12.	Commodities	04		
13.	Equipment	05		1.5
14.	Other			
15.	TOTAL COST			28.3

	RECEIPT CODE	FUNDING SOURCE		
16.		Federal Receipts	1002	
17.		G.F. Match	1003	
18.		General Funds	1004	28.3
19.		I-A Receipts	1005	
20.		Program Receipts	1028	
21.		Other		

FOR B&M USE ONLY
4A KEY NUMBER __ __ - __ __ - __ __ - __ __ - __ __

JUSTIFICATION

One Documents Processing Clerk II will be required in Juneau to handle administrative license actions, and related work for individual defendants whose breath results are .10% or higher. Will prepare and mail license actions (of which it is estimated there will be an increase of 2,700 to 3,000 annually, based on 1981 statistics); enter data on computer; prepare certified copies for prosecutors, courts, etc.; process stays; maintain proof of insurance filings; and maintain records. Equipment breakdown for this position is as follows: Typewriter - $1,245; File Cabinet - $291; and chair - $188.

13 REQUEST FOR NEW POSITION

AGENCY Public Safety

PROGRAM Life & Property Protection

BRU Driver/Vehicle Services

COMPONENT Driver Services

Page of

Revised Date

FY 84

01-113G (7/82) - 13

1.	POSITION TITLE: CLERK TYPIST III				RANGE/STEP	BARG. UNIT	FORM 12 PAGE/LINE	COV.	APPROV.	DISAPP.
2.	TYPE OF POSITION: PFT	STAFF MONTHS: 12	RP NUMBER	PCN NUMBER	BRU PRIORITY	LOCATION: ANCHORAGE	ELECTION DISTRICT	LEG.		
3.	CONTINUATION LEVEL		ADDITION							

4.	TYPE OF EXPENDITURE		AMOUNT
	1	2	3
	PERSONAL SERVICES		
5.	Salary		
6.	Benefits		
7.	Supplemental Benefits		
8.	Fixed Benefits		
9.	TOTAL PERSONAL SERVICES	01	26.6
10.	Travel	02	
11.	Contractual	03	
12.	Commodities	04	
13.	Equipment	05	2.1
14.	Other		
15.	TOTAL COST		28.7

	RECEIPT CODE	FUNDING SOURCE		
16.		Federal Receipts	1002	
17.		G.F. Match	1003	
18.		General Funds	1004	28.7
19.		I-A Receipts	1005	
20.		Program Receipts	1028	
21.		Other		

FOR B&M USE ONLY
4A KEY NUMBER — — - — — - — — - — — - — —

JUSTIFICATION

One Clerk Typist III in Anchorage is proposed to handle data relating to hearings requested by individuals whose vehicle was impounded. Will send hearings notices to those requesting a hearing, maintain current computer records concerning hearings, and maintain tape file for all hearings. Will type hearing transcripts from tape as required for appeals, and other court action. Equipment breakdown for this position is as follows: Typewriter - $1,245; Desk - $426; File Cabinet - $235; and Chair - $163.

13 REQUEST FOR NEW POSITION

01-1136 (7/92) - 13

AGENCY: Public Safety

PROGRAM: Life & Property Protection

BRU: Driver/Vehicle Services

COMPONENT: Driver Services

Page of

Revised Date

FY 84

POSITION PAPER/Department of Health & Social Service

RECEIVED

POSITION PAPER

House Bill No. 6

"An Act relating to driving a motor vehicle."

House Bill No. 6 amends existing state law by increasing the length of sentence for first offense of driving with license suspended from 10 days to 14 days; second offense of operating a motor vehicle while intoxicated from 10 days to 20 days; third offense of operating a motor vehicle while intoxicated from 10 days to 30 days. It is estimated that the net effect of increasing the penalities for the specified offenses would increase the prison population by nine beds.

This bill would not significantly affect program objectives of the Division of Adult Corrections; however, it would have fiscal impact.

Recommended by: for Roger C. Lange

Roger V. Endell, Director
Division of Adult Corrections

Date: 2/8/83

Approved by: Robert London Smith

Robert London Smith, Ph.D.
Commissioner

Date: 2/9/83

STATE OF ALASKA
PRELIMINARY STATEMENT OF FISCAL IMPACT

Bill No: House Bill No. 6 Date on Bill: January 17, 1983
Title: "An Act relating to driving a motor vehicle."
Sponsor: Abood, Furnace, Lindauer, Cowdery, and Szymanski
Requestor: State Officers

1. Estimated fiscal impacts on:

a. Expenditures:

(Thousands of Dollars)

			FY 83	FY 84	FY 85	FY 86	FY 87	FY 88
Capital				1170.0				
Operating				56.7	59.9	63.4		
Total				1226.7	59.9	63.4		

b. Revenues:

Revenue				-0-	-0-	-0-		

2. Source of funds to offset fiscal impact of bill:

The funding source to implement this bill, if enacted, has not been identified by the author of the bill.

3. Assumptions:

The impact of HB 6 upon the Division of Adult Corrections would be additional bed space for 9 full time equivalent inmates in minimum custody status. These beds would cost $130,000 per bed to construct for a total of $1,170,000.

Costs for inmates food, clothing, etc., for the 3,285 person days were computed by taking current costs with a 6% per year inflation factor. Present costs are $8/day for food and clothing and $7.69/day for medical and counseling. As these inmates would have minimum custody classification, they would be utilized in institutional jobs such as clearing, food service, etc., for which they would be reimbursed.

4. Disclaimer:
This statement has not been reviewed by the OMB in the Office of the Governor. It does not represent the policy of the Sheffield Administration or the final estimate of fiscal impact.

Prepared By: Roger C. Lange Roger C. Lange Phone: 465-3376
Division: Division of Adult Corrections Date: Jan. 31, 1983

Approved by Commissioner: Robert London Smith, M.D. Date: 2/15/83
Department: Health & Social Services

5. Distribution:
Original to Legislative Finance
Copy to OMB
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2/5

Judiciary Referral





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

CHAMBERS OF
ELAINE ANDREWS, JUDGE

(907) 264-0663

March 31, 1983

Representative Charlie Bussell
Chairman, House Judiciary Committee
Alaska State Legislature
Pouch V
Juneau, Alaska 99811

Dear Representative Bussell:

I am writing to express some court related concerns over House Bill No. 6, a bill pertaining to criminal penalties for driving while intoxicated and driving while license suspended.

At the outset it is important to understand not only the intended impact of legislation that raises or establishes a mandatory minimum penalty, but also the predictable, but unintentioned, consequences. Certainly deterrence of the illegal conduct is a paramount goal. However, there are obstacles toward reaching that goal. Substantial mandatory minimum penalties can cause prosecutors to review cases more severely than they might otherwise, leading to reduced charging. Jurors, who quickly become educated in such matters, are reluctant to convict in cases where they know significant mandatory penalties will be imposed. Further, defendants who face loss of freedom, and financial security through loss of employment, will litigate these cases to the fullest, taxing the already understaffed prosecutorial and defense agencies, not to mention the court which is struggling to process the skyrocketing caseload.

Larger considerations aside, I discern several critical problems with the proposed legislation.

1. **AS 28.15.181(c) - Driving While License Suspended Penalty Prerequisite**

   It will require significant time on behalf of the prosecutor and the court to obtain information about "essentially similar" past convictions. Hearings will have to be held to determine what is a "substantially similar" offense. I would

estimate that at least 10-20% of the cases which involve Alaska's highly transient population would require such hearings.

2. **AS 28.15.291 - Driving While License Suspended Mandatory Penalties**

(a) There are essentially two ways that a driver's license can be revoked. The first is a court ordered revocation or suspension. This occurs usually at sentencing after the defendant is convicted of reckless driving or driving while intoxicated. The judge personally advises the defendant that his license is revoked and that mandatory penalties will be imposed if he drives.

The second method of revocation is an administrative revocation which occurs if the defendant has accumulated too many points on his license or if he is the registered owner of a car involved in a property damage accident of at least $500. These "administrative" suspensions are determined by hearing officers. Usually the driver is notified through the mail that his license will be suspended. The vast majority of administrative suspension charges coming before the court are due to the defendant's failure to comply with the SR-22 financial responsibility requirements.

Under the proposed legislation the type of suspension, whether court ordered or administrative is irrelevant. The defendants are treated as equally culpable. One defendant is likely a DWI offender who has been ordered not to drive. The other defendant may have a blameless record but be fiscally irresponsible as to a single accident. Mandatory minimum penalties may be wise as to the first offender but not as to the fiscally irresponsible offender. Financial responsibility should be approached through compulsory insurance or some more realistic and less costly avenue.

(b) Any kind of mandatory fine legislation is not a cost effective approach to punishment. Oftentimes the court and related enforcement agencies spend five or ten times the amount of the fine trying to collect it. If a person is arrested for failure to pay a fine and he agrees to pay the fine then the court must release the offender from custody. The "bench-warrant-release-for-payment" merry-go-round is a losing proposition. Fines should be left to the discretion of the court which can fashion other means, such as community service, to equally penalize indigent defendants.

(c) I assume that throughout the legislation language referring to "minimum sentence served" properly credits goodtime as required by statute.

3. **AS 28.35.030(a)(2) - Chemical Tests**

The language should be amended to reflect that the chemical test may be within four hours of the defendant's operation of the vehicle but that the test must show .10 or more at the time of operation. There have been a surprising number of cases in which the defendant claimed to be driving sober, slid off the road, walked to the bar, drank to intoxication and was arrested for DWI hours after the car was abandoned. The Municipality of Anchorage proposed a similar ordinance in the past and much litigation was generated over simiarly vague language.

4. **AS 28.35.031 - Immediate Operator License Revocation**

This proposed legislation creates absolutely nightmarish consequences for the court, prosecution and police. A court review to be scheduled within seven days of arrest would require the establishment of a sub-bureaucracy to coordinate court scheduling, witness subpoenas, proper notice to necessary parties, etc. The current court calendar could not accommodate such hearings. A new judicial officer, an in-court clerk to record proceedings, and clerical staff, not to mention hearing room, which we do not have, would be required.

5. **AS 28.35.032(a)(b)(d)(g)**

Does a person who refuses a breathalyzer test but agrees to a blood test, which would accomplish the same result, suffer the same consequences as the person who refuses all chemical tests?

6. **AS 28.05.045 - Impoundment of Vehicles**

A cursory review of the entire scheme of impound legislation suggest some problems in the proposed legislation.

What does impoundment of a vehicle accomplish that confiscation of license plates would not? An offender intent on driving will beg, borrow or otherwise obtain a car to drive. A borrowed car driven by a license-suspended driver is much more difficult to detect than a car driven down the road without license plates.

Although not directly a court concern, the problems of storage, insurance and potential civil liability for both proper and improper impoundment are enormous.

Court involvement in the proposed forfeiture legislation is significant. At minimum, in Anchorage, a judge and support staff would be required. Further the court is not the moving party in the forfeiture and therefore has no responsibility to ascertain parties who may have ownership or security interests in the vehicle in order to notify them of the forfeiture action. That burden is upon the prosecution.

My review of the legislation has been at best, brief. I urge you to carefully consider the total impact of the proposed legislation. The impact on the Anchorage district court, which is struggling to meet an increasing caseload, will be severe if this legislation is passed without adequate attention to the needs of the court which must faithfully and fully carry out the legislature's dictates.

I will be pleased to respond to any questions you may have and assist you in any manner you deem appropriate.

Sincerely,

Elaine M. Andrews

Elaine Andrews
Assistant Presiding Judge
Anchorage District Court

EA:smh

cc: Chief Justice Edmond Burke
Arthur H. Snowden, II
Presiding Judge Mark Rowland

Return to Bussell's office

STATE OF ALASKA
THE LEGISLATURE

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

LEGISLATIVE AFFAIRS AGENCY

M E M O R A N D U M April 28, 1983

SUBJECT: Driving a motor vehicle while intoxicated (CSHB 6 (Judiciary))

TO: Representative Mitchell E. Abood, Jr.

FROM: Tamara Brandt Cook
Legislative Counsel
TBC

Here is the sectional analysis of the draft of CSHB 6 (Judiciary) that you requested. It only highlights the major changes to existing law.

Section 1 makes it clear that a judge or employee of the court, in addition to other named persons, may take possession of a title, registration, or license that is revoked, canceled, limited or suspended. This is not a substantive change to existing law.

Section 2 adds new requirements for a driver's license application examination: (1) that the applicant know the effects of alcohol and drugs on drivers and the related dangers of driving under their influence; and (2) that the applicant know the laws relating to driving while intoxicated.

Section 3 authorizes, on refusal to submit to a chemical test of breath or if a test indicates an alcohol concentration of 0.10 or more, the seizure of the driver's license by the law enforcement officer and revocation of the license by the Department of Public Safety. The officer reads the driver a notice and gives him a copy of the notice. The notice explains the revocation procedure and the right of court review. The notice itself is a temporary driver's license that expires in seven days unless the driver initiates court proceedings to rescind the revocation of license. The revocation periods are the same as those imposed by a court after conviction of the same offenses under Sec. 6 of this draft. A revocation is stayed if the person initiates a court action to rescind the Department of

Public Safety's action. Procedures for court review of an administrative revocation are set out.

Section 4 adds a new basis for the immediate revocation of a driver's license by a court: the refusal to submit to a chemical test of breath.

Section 5 extends the period limited license privileges from 30 to 60 days for offenses that are grounds for immediate revocation of a license. This does not apply to driving while intoxicated or refusal to submit to a chemical test of breath. Adds a requirement that a prior offense must occur within 15 years before longer periods of license revocation will be imposed.

Section 6 requires a court convicting a person of driving while intoxicated or refusal to submit to a chemical test of breath to revoke the person's driver's license. The period of revocation depends upon whether the person has been previously convicted in this or another jurisdiction of either offense within the preceding 15 years. If the person has not been previously convicted, the period of revocation is 90 days. If the person has been convicted once, the period is one year. If the person has been convicted more than once, the period of revocation is 10 years. Under existing law the court shall revoke the license of a person for not less than 30 days for the first conviction. The court shall revoke the license for not less than one year for a second conviction. The court shall revoke the license for not less than three years for a third or subsequent conviction.

Section 7 allows a court to grant limited license privileges for the final 60 days a license is revoked for driving while intoxicated or refusal to submit to a chemical test if the person has not been previously convicted. Existing law also provides for limited license privileges only for first offenders.

Section 8 removes the reference to a person convicted of driving a motor vehicle while intoxicated with reference to limited license privileges, since periods of revocation are established under Sec. 6 of this bill.

Section 9 provides that the license of a person on whom a limitation was placed is revoked after the period of limitation until the person provides proof of financial responsibility and receives a new license.

Section 10 limits the penalties imposed under existing law for driving while a license is canceled, suspended, revoked or in violation of limitation to situations involving loss of driving privileges for reasons other than driving while intoxicated or refusal to submit to a chemical test. Those situations are dealt with under Sec. 11 of this bill.

Section 11 provides a minimum penalty of 30 days imprisonment and a fine of $500 for driving when driving privileges have been revoked for driving while intoxicated or refusal to submit to a chemical test if the person has been convicted only once within the previous 15 years. If the person has been convicted more than once of driving while intoxicated or refusal to submit to a chemical test and drives while driving privileges have been revoked, the minimum penalty is 90 days imprisonment and a fine of $1,000.

Section 12 provides that upon expiration of a period of limitation the driver's license remains revoked until the person furnishes proof of financial responsibility. Under existing law the period of limitation continues and the person may continue to drive, subject to the limitation, until proof of financial responsibility is furnished.

Section 13 changes the penalties for conviction of driving while intoxicated. If a person has not been previously convicted within the preceding 15 years of driving while intoxicated or refusal to submit to a chemical test, the minimum sentence of imprisonment is 72 hours, and a fine of not less than $250 imposed. If a person has been previously convicted once, the minimum sentence of imprisonment is not less than 20 consecutive days and a fine of not less than $500 is imposed. If a person has been previously convicted more than once, the minimum sentence of imprisonment is 30 days and a fine of not less than $1,000 is imposed. The five-year period used for calculating the number of convictions required to increase the penalty has been eliminated, so that all previous convictions occurring within the preceding 15 years are considered. A conviction in this or another jurisdiction, if the elements are substantially similar, is counted for purposes of determining enhanced penalties. The provision for suspension of sentence after the minimum sentence is served has been eliminated. The vehicle used in commission of the offense may be forfeited.

Section 14 requires a person involved in an accident or who commits certain serious traffic offenses, or drives in a manner that creates risk to a person or property to submit to a preliminary breath test that may be used by an officer in determining whether to arrest the person. Refusal to submit to the test is a violation punishable by a fine.

Section 15 makes it clear that refusing to submit to a chemical test after being arrested constitutes the crime of refusing to submit to a chemical test. Refusing to submit to the preliminary breath test provided for in Sec. 13 of this bill is a separate offense.

Section 16 provides new penalties for refusal to submit to a chemical test which are similar to the fines and terms of imprisonment imposed for driving while intoxicated under this bill.

Section 17 removes provisions allowing the district court to find extenuating circumstances and to modify or nullify the suspension or revocation of a driver's license or permit for refusing to submit to a chemical test of breath.

Section 18 adds new sections providing for the forfeiture of a motor vehicle used in the commission of an offense under AS 28.35.030 (Operating a Vehicle, Aircraft or Watercraft While Intoxicated), and also for the forfeiture of a motor vehicle used in the commission of an offense under AS 28.-35.032 (Refusal to Submit to a chemical Test of Breath). In addition, provision is made for the remission of forfeitures, a procedure to allow a person with ownership or security interests in a forfeited motor vehicle to claim the vehicle or interest in the vehicle through court proceedings. A municipality is granted authority to provide for impoundment and forfeiture of a motor vehicle in similar circumstances.

Section 19 repeals provisions that have been replaced by other provisions throughout this bill.

TBC:ljb
17/002

HB

7

M E M O R A N D U M

TO: Rep. Charlie Bussell, Chairman, House Judiciary Committee
Rep. John J. Liska, Vice-Chairman
Rep. Ramona Barnes
Rep. Don Clocksin
Rep. Joe L. Hayes
Rep. Hugh Malone
Rep. Ron Wendte

FROM: Karla Forsythe, KKF General Counsel, Alaska Court System

DATE: April 29, 1983

SUBJECT: CS for SS for HB 7, "An Act relating to motor vehicles"

The above-entitled act is scheduled for hearing before the House Judiciary Committee on Monday, May 2, 1983.

The court system has several concerns with the proposed legislation, all of a technical nature.

Proposed AS 28.22.500 provides that it is a class B misdeamnor for a person to drive or permit to be driven a vehicle for which a liability policy is not in effect. The enforcement scheme set forth in proposed subsections (b) and (c) raises problems because it inappropriately combines existing procedures for issuance of citations with procedures for submitting proof of compliance with traffic laws, and with procedures for bail forfeiture. Specifically, subsection (b) cross-references AS 28.05.151. That statute authorizes the supreme court to adopt by order a bail forfeiture schedule for those traffic offenses amenable to non-judicial disposition. The rationale behind a bail forfeiture system is that certain minor offenses are adequately punished with a mail-in fine upon a plea of guilty, a procedure which frees the court calendar for judicial disposition of serious offenses. Only minor offenses appear on the traffic bail schedule.

The sentencing procedures set forth in subsections (c) and (d) make it clear that driving without insurance is a major offense. Moreover, since license suspension is required, defendants will be entitled to a jury trial. Use of bail forfeiture procedures does not meet the legislative intent nor the legal requirements for processing a serious offense such as driving without insurance.

The legislation also provides that when proof of insurance is submitted to the court, the charge shall be dismissed. There are several types of offenses under current law for which a charge will be dismissed upon showing proof of compliance. Two examples are driving without a license (AS 28.15.131) and equipment violations (13 AAC 04.008). Proof of compliance (either by showing a driver's license or by showing that the defective equipment has been repaired) shall be given either to the law enforcement agency, or, in the case of a driver's license, to the court.

Requiring that the court alone shall accept proof of compliance adds to the court system a task which duplicates procedures of other agencies in many areas of the state, and adds to the court's clerical burden.

The following language would eliminate the problems created by the existing proposal, while still meeting the legislative intent:

(b) If a peace officer has probable cause to believe a motor vehicle was used in the commission of an offense under (a) of this section, a citation will be issued. The charge will be dismissed if evidence is presented within five days showing insurance policy coverage as required by AS 28.22.010 was in effect at the time the citation was issued.

This language is more workable because it eliminates a reference to the bail forfeiture procedure, and because it allows sufficient flexibility for proof of compliance to be submitted either to a court or to the appropriate enforcement agency, as convenience warrants in different locations throughout the state.

The Department of Law in its fiscal note has estimated that several hundred new prosecutions will be commenced as a result of this legislation. It is difficult to quantify the impact on the court, particularly since the Department of Law believes there will be no fiscal impact on its operations. However, any new hearings will add to the already considerable workload of the district court, particularly in Anchorage, and may require additional judicial and clerical resources, depending on the volume of cases filed.

Finally, proposed AS 28.22.530 requires that if the court orders forfeiture of a vehicle, the court shall within five days provide notice of the forfeiture to all persons with ownership or security interests. Requiring the court to give notice is inconsistent with the court's traditional role as impartial adjudicator, and is a requirement more appropriately placed with the moving party. Should this function remain with the court, additional clerical resources will be required in proportion to the number of forfeitures ordered.

Since the Department of Law has agreed to make a change along these lines to a similarly-worded section of HB 6, an amendment to require the state rather than the court to provide notice appears in order.

If the committee has any questions regarding these comments, or if additional information is needed, the court system will be glad to respond.

HOUSE STATE AFFAIRS
STANDING COMMITTEE
March 21, 1983
1:00 p.m.

Members Present: Rep. Abood, Chairman
Rep. Cowdery, Vice-Chairman
Rep. Furnace (late)
Rep. Shultz (late)
Rep. M.M. Miller (late)
Rep. Vaska
Rep. Larson

COMMITTEE CALENDAR

Teleconference and Hearing

Re: "The Residency Issue"

WITNESS REGISTER

Dove Kull
Older Alaskans Commission
Juneau, Alaska 99801
Position Statement: Recommended the committee consider the low-income and poverty levels the elderly are faced with when they address the longevity and Pioneer Home Programs.

Red Swanson
Legislative Committee For The Pioneers Of Alaska
Juneau, Alaska
Position Statement: Felt that 99% of older Alaskans wanted the state to go to court over the ruling of the Longevity Bonus Program brought before the U.S. Supreme Court.

Marge Gray
Teleconference
Homer, Alaska
Position Statement: She said that no other state gave to their old timers like Alaskans do.

Robert Gray
Teleconference
Homer, Alaska
Position Statement: He felt the House State Affairs should compare our residency laws to other state laws.

Brian Merrit
Teleconference

Wrangell, Alaska
Position Statement: He felt that the 2-year requirement to obtain a student loan should remain intact.

Lenore Gunderson
Teleconference
Wrangell, Alaska
Position Statement: She felt the proof of eligibility to prove you're an Alaskan should be more stringent.

John Dapcevich
Mayor
Box 1081
Sitka, Alaska 99835
747-8383
Position Statement: Referred to the class action suit filed by Alaskan Students paying high tuition rates for attending school outside Alaska.

Merl Thomas
Teleconference
Pioneers of Alaska
Fairbanks, Alaska 99707
Position Statement: He endorsed Red Swanson's testimony.

Ellisa Demattio
Teleconference
816 Irwin #A
Anchorage, Alaska
277-0285
Position Statement: Felt that a requirement to have an Alaskan high school diploma was unfair to attend college.

Edna Hale
Teleconference
Haines, Alaska
Position Statement: Demonstrated her support for the Student Loan Program.

Alaska Linck
Pioneers of Alaska
Fairbanks, Alaska 99707
Position Statement: She found no fault with previous residency requirements.

Jo Jones
Teleconference
P & D Inc.
Anchorage, Alaska 99501
Position Statement: Urged her support to strengthen residency requirement.

Betty Huffman

Teleconference
Pioneers of Alaska
Fairbanks, Alaska 99501
Position Statement: Concurred with Red Swanson's testimony.

Leo Land
Teleconference
Haines, Alaska
Position Statement: Felt proof of eligibility requirements should be more stringent.

Bert Sharp
Teleconference
Pioneers of Alaska
Fairbanks, Alaska 99707
Position Statement: Felt the Longevity Bonus Program should the Legislature's top priority.

Bob Anderson
Teleconference
Yakutat, Alaska
Position Statement: Concurred with Mayor Dapcevich's testimony.

Louis Odsather
Teleconference
Mat Su, Alaska
Position Statement: Urged committee to establish what a residency requirement is as soon as possible.

William Richardson
Teleconference
Sitka, Alaska
Position Statement: Referred to Susan Burke, Attorney, to investigate an issue.

Bob Gore
Teleconference
119 Austin #911
Ketchikan, Alaska
Position Statement: Felt that if Montana, Idaho and Utah could have strict residency issues; we should be able to do as well.

Bob Perry
Teleconference
Mat Su, Alaska
Position Statement: Supported the Longevity Bonus Program.

Norma Lundy
Teleconference
Anchorage, Alaska

Position Statement: No position stated.

Susan Burke
Attorney
424 N. Franklin
Juneau, Alaska
586-2777
Position Statement: Reviewed her job description for House State Affairs.

PREVIOUS ACTION

Re: "The Residency Issue"

AS 08.04.280

AS 08.24.110

AS 08.42.110

AS 08.54.100

AS 08.54.110

AS 08.54.120

AS 08.54.140

AS 08.54.142

AS 08.60.030

AS 08.88.171

AS 21.27.090

AS 21.06.250

AS 21.27.220

Bar Rule 5(1)(a)

ACTION NARRATIVE

TAPE#A, Side A
Recording
Number 0001 Chairman Abood called the meeting to order and indicated the members present.

Number 0047 Chairman Abood said, "the performance requirements stipulated in Mr. Hudson's contract were necessarily broad in nature

and general in tone. The extent of application and even more important the cope of the problems simply were not known at the time.

He said the employment of a Non-Attorney to conduct this search was, "to produce a plain language action plan that can be understood by the common man".

Chairman Abood said, because the question of "constitutionality" required professional counsel from attorneys with experience and knowledge in the complex arena, he felt that House State Affairs should go directly to the attorneys with the most recent experience expertise. Ron Zobel, former Attorney General Avrum Gross and his assistant Susan Burke.

Chairman Abood said that it was invaluable to obtain the perspectives of three persons, who only recently had argued both sides of a major case before the U.S. Supreme Court and more so since that decision centered largely around the use of Durational Residence as a requirement for disbursement of millions of dollars to the Alaska public and felt surely their input was relevant.

Chairman stated it was also deemed necessary to receive input from the general public. Questionnaires were sent to select persons and groups with a vested interest in major programs under study due to the residency question.

Chairman Abood added that with the aid of Attorney Susan Burke, the House State Affairs hoped to present a full picture of what the problem is, what needs fixing, what should be left alone and hopefully, will leave a guide for future Lawmakers to use in determining how to employ the use of, as a requirement, in a manner that should minimize litigation and comply with the U.S. Constitution."

Number 0124

Chairman Abood announced that Susan Burke was present and that she would be the attorney assisting us with residency. He pointed out that she handled the case that went before the U.S. Supreme Court.

Number 0146

Chairman Abood said the use of durational residence as a requirement in Alaska Statutes have been found in 53 separate authorities. Durational residence exists in Statutes pertaining to HOLDING PUBLIC OFFICE, NUMEROUS LOAN PROGRAMS, SOME REGULATORY AND ADVISORY BOARDS AND COMMISSIONS, FOR SOME OCCUPATIONAL LICENSES, TO VOTE IN ALASKA, TO OBTAIN A RESIDENT FISHING AND HUNTING LICENSE, TO SELL ALCOHOLIC BEVERAGES, TO OBTAIN AND GAIN PREFERENCE FOR LOW COST HOUSING, TO PARTICIPATE IN LAND LOTTERIES, TO RECEIVE PARTIAL FORGIVENESS OF DEBT OWED THE STATE FOR LOANS ON LAND PURCHASED AND STUDENT AID GIVEN, TO OBTAIN RESIDENCE IN ONE OF THE FIVE PIONEER'S HOMES AND TO RECEIVE THE LONGEVITY BONUS AND FINALLY THE DIVIDEND FROM THE PERMANENT FUND EARNINGS.

Number 0151

Chairman Abood made note that the length of residency is used throughout the Statutes and vary from 30 days to 30 years. The benefits authorized by these laws represent millions of dollars and affect the lives of thousands of Alaska's citizens.

Number 0168

Chairman Abood said when the ZOBEL v WILLIAMS U.S. Supreme Court decision came down last June 14, 1982, many doubts surfaced over the fate of other state Statutes that used durational residence as a prime requirement.

He added that the House State Affairs Committee had been given the task to review all such Statutes and to recommend changes that are needed to reduce or minimize the states potential liability in these residence based matters.

Number 0172

Chairman Abood said he had contracted the services of Mr. Hudson to assist the committee to determine what statutes use durational residency to develop a methodology, to use as a measure of each statute against the U.S. Constitution; and to recommend action required to bring the laws in conformance with the Constitution of the United States of America.

He said that Attorney Susan Burke had been hired under a separate contract to prepare a draft bill on bona fide residence.

Number 0183

Chairman Abood told committee members that he had not hired Avrum Gross, or Ron or Penny Zobel. He said that Bill Hudson and Susan Burke were the only two hired to assist the committee.

Number 0223

Representatives Shultz and Furnace joined the meeting at 1:30 p.m.

Number 0250

Dove Kull comes to the stand. She said she was an older Alaskan and a member of the Older Alaskan Commission, although she was speaking for herself. She recommended we use the congut housing formula, using 1/4 of your income for payment and work out a formula. She was disappointed that she did not receive the longevity bonus and felt that many older Alaskans were counting on that money. Ms. Kull said that those older Alaskans that lived here earlier had hardships to endure. She told the members of the committee that 60% of the elderly in Alaska are low income or poverty and to keep that in mind when the Longevity and Pioneers' Home Program come up.

Red Swanson, Legislative Committee for the Pioneers of Alaska came to the stand. He said that 2,000 people responded to a survey he sent out and that results of the survey indicated that 99% wanted to go to court over the longevity bonus. He said that his committee was preparing a position paper on the subject. He said they were willing as a committee to work with anyone to protect the rights of older Alaskans.

Number 0394

Chairman Abood instructed Mr. Swanson that if he had an input to bring it to the committee as soon as possible, because time was a factor. He told Mr. Swanson that his committee was not responsible for funding and that the purpose of the hearing today was to define what makes a Pioneer. He suggested that Mr. Swanson meet with Mr. Hudson on his concerns.

Number 0430

Marge Gray of Homer comes on the teleconference network. She asked some questions of the committee. She said that no other state gives to their old timers like Alaska. Chairman Abood agreed that we were the most lenient with our programs to older Alaskans.

Number 0483

Robert Gray of Homer comes on the network. He told the committee that after reviewing the questionnaire it was his assessment that the issue at hand was the time frame requirements be examined and compared with other state laws.

Number 0540

Chairman Abood reviewed the following Durational Residency Requirements with members of the committee:

ACTIONS

1. PUBLIC OFFICERS

(A) FINDINGS: That substantial reason exists to justify the use of longer terms of residence in determining qualifications to hold major Public Office.

RECOMMENDATIONS: Take no action, the Statutes and Constitutional references are likely in compliance with the U.S. Constitution.

2. BOARDS AND COMMISSIONS

(B) FINDINGS: That the durations currently used are inconsistent with the Purpose stated in several of these Statutes and serve no valid public interest. Further that any duration beyond one year could be challenged and may be found invalid.

RECOMMENDATIONS: That you consider repealing the existing durational residence requirements in all of these laws and substitute the Bona Fide residence required to be prepared by Attorney Susan Burke.

That the Statutes be amended to require Bona Fide residence and and a reasonable number of years experience in the two laws relating to the Board of Registration for Architects, Engineers and Land Surveyors and the Guides Licensing and Control Board. Some exceptional experience appears useful and defensible.

Number 0556

Brian Merrit of Wrangell talked about the student loan. He said he felt 2 years for residency should be maintained as it is currently. He said that if we lower it, students from outside will ruin it for other

students who reside here.

Number 0573 — Rep. M.M. Miller arrived at 2:35 p.m.

Number 0600 — Lenore Gunderson of Wrangell said she was the City Clerk. She found fault with the residency requirements and said that she knew of people who are registered voters, vote absentee continually and live outside the state. She felt we should require more proof in residency.

Number 0618 — John Dapcevich, Mayor of Sitka, said he was a strong believer in the State's rights. He talked of the class action suit that our stude[illegible] filed for having to pay high tuition rates for attending school outside of Alaska. He recommended it be referred to the Department of Law.

Number 0645 — Merl Thomas of Fairbanks endorsed Red Swanson's testimony and concurred with Mayor Dapcevich.

Tape A, Side B
Recording
Number 0045 — Chairman Abood referred back to Durational Residency Requirements:

3. OCCUPATIONAL LICENSES

FINDINGS: The courts have already ruled against the use of any duration of residence as a requirement for an attorney's license (NOLL v BAR ASSOCIATION), and only simple resident is permitted. A thorough review of the records indicated little tolerance by the courts in the use of any specific length of residence that might bar the employment of an individual's occupational skill between different states.

RECOMMENDATION: Amend the statutes dealing with the following occupations as listed below. Repeal the present residence requirements and substitute a simple residence in its place.

	TITLE	DURATION (PRESENT)	AUTHORITY
1.	Public Accountant	1 yr	AS 08.04.280
2.	Attorney	Residence	Bar Rule 5(1)(a)

3.	Collection Agencies	1 yr	AS 08.24.110
4.	Morticians	1 yr state appren.	AS 08.42.110
5.	Guides...		
	Master	Residence plus hunting exp.	AS 08.54.100
	Registered	Resident	AS 08.54.110
	Class A Asst.	20 yr exp. in district	AS 08.54.120
	Assistant	Resident	AS 08.54.140
	Transporter	Resident	AS 08.54.142
6.	Junk Dealer	Resident def.	AS 08.60.030
7.	Real Estate Brokers and Salesman	Resident	AS 08.88.171
8.	Insurance Brokers, Agents & Solicitors	1 yr	AS 21.27.090
			AS 21.06.250
			AS 21.27.220

For other licenses listed under this category such as the Alcoholic Beverage License and the Resident Fish & Game License, he recommended to repeal the present durational residence requirement and subsitute as follows:

1. Alcoholic beverage license - replace with simple residence. There appears to be no reason for duration in the state except to serve as a prohibition in receiving a license.

2. Resident Fish & Game License - he recommended the Committee substitute bona fide residence.

4. PUBLIC RIGHTS & BENEFITS

FINDINGS: The 30-day requirement to vote in Alaska is most probably constitutional and should stand.

That the one year requirement for the following programs appears excessive, especially the Low-Cost Housing Preference program which the courts would likely construe as a "basic necessity of life" wherein no durational residency has been permitted before in the courts.

1. Annulment of Marriage.

2. Low-Cost Housing Preference Program

3. Vocational Substitute Program

4. Industrial Incentive Tax Credits

5. Bounties for Certain Animals

RECOMMENDATION: No change is necessary for AS 15.05.010 (Voting), unless the Committee chooses to substitute simple residence and require 30 days in which to handle the registration process.

That the other laws be modified to simple residence.

That the Legislature consider the repeal of AS 43.26.095 (b)(3) and AS 16.35.130, which are the Industrial Incentive Tax Credit and Bounties for Certain Animals; neither of these programs have been active in years.

Number 0082 — Ellisa Demattio of Anchorage said she didn't like the requirement of having to have an Alaskan diploma to attend school. She was concerned about older Alaskans who did not graduate in the state. Rep. Furnace informed her that it was only proposed to given Alaskan students first, but the proposal was dropped by Sen. Sackett. She felt that 2 year residency requirement should stay as it is currently.

Number 0190 — Edna Hale of Haines said that she has three children that have attended college under the student loan program, because otherwise they would not have been able to go to college. She felt that 1 to 2 year residency requirement was all right.

Number 0204 — Chairman Abood referred back to the Durational Residency Requirements:

5. LAND DISPOSAL PROGRAMS

FINDINGS: The State is awaiting the ruling on the Kenai Borough Land Disposal Program and should probably make no changes pending settlement of the matter.

RECOMMENDATION: That the Committee takes no action until the decision of the court in the Kenai case.

Number 0218

Alaska Linck of Fairbanks said she was a 65 year plus residency of Alaska. She said older Alaskans have very little time left in their lives and found no fault with the past requirements that were challenged in court.

Chairman Abood referred back to the Durational Residency Requirement.

Number 0292

6. SPECIAL OLD AGE PROGRAMS

FINDINGS: The greatest problem with durational residence before the Legislature rests with the twin Pioneer's programs; the Alaska Longevity Bonus Program and the Pioneer's Home Program.

The settlement reached in the Vest case on August 25, 1982 is a mandate to the Legislature to take corrective action immediately. Clearly, with regard to the Longevity Bonus, maintaining the 25 year pre-statehood residency requirement is a lost cause. A one year duration of residence appears to be an acceptable replacement.

Number 0301

Chairman Abood said that mandate for the Legislature to take corrective action or the Courts will. Clearly with regards to the ALB the 25 year durational residence with the requirement that it commence before State hood is lost. A one year duration of resi nce appears to be an acceptable replacement.

With regards to the PIONEERS' HOME PROGRAM, he concurred with the opinion rendered by former Attorney General Wilson Condon that the program is probably defensible with its unique 15 year residency requirement. It is not established as a welfare home and it does not deny anyone needing such care from

receiving it through other programs offered by the State.

Number 0326

Chairman Abood said that fifteen years was reasonable to use as a measure of attachment to the state by citizens who must be 65 years old and the average age of which is 82 years old. The Homes are just that Homes for elderly Alaskans who would likely be forced to leave their state were it not for the Pioneers' Home. He said a measure of attachment and Allegiance for these category folds would not be met with a simple one or two year requirement.

Number 0338

Chairman Abood said he had found that the SPECIAL ASSESSMENT AND FISHING LICENSE EXEMPTIONS ARE probably not well founded and would not stand up under a test.

RECOMMENDATIONS: That you call for the repeal of the 25 year, Pre-Statehood eligibility requirements and substitute the Bona Fide residence requirements in Susan Burke's Bill draft.

That the Legislature consider carefully the future of this important program. I believe there may be other FUNDING SCENARIOS beyond those listed in Jon Tillinghast's report to the Senate Judiciary Committee. I have ideas that may aid in finding a good long term solution. Though it falls outside the terms of my contract, I would be pleased to work with whatever body is designated to handle this problem and opportunity.

Number 0372

Chairman Abood said he recommended no immediate changes to the PIONEERS' HOME Program. Rather the need to develop a fall back plan in case it suffers from some action by the courts similar to the ALB.

That the ASSESSMENT AND FISHING LICENSE exemptions be determined by Bona Fide Residence requirements being developed by Susan Clark.

Number 0363

Jo Jones of Anchorage said he was in support to do something about the need to strengthen our residency requirements, with emphasis on Small Business and employer. He said that it worked in other states so it is possible to work in Alaska.

Chairman Abood referred back to the Durational Residency Requirements:

7. LOAN AND GRANT PROGRAMS (G)

FINDINGS: That there is a great deal of inconsistency in the established requirements for residency in these 41 programs. That many programs require no residency, that one even states that it is open to nonresidents and that I was not able to find documentation to affirm the justification for many of these varying durations of residence.

That the STUDENT LOAN PROGRAM is pending in ANDRESS v BAXTER and should be left alone until the courts are done with the case. However, I will present a separate paper on these issues as relate to the forgiveness clause and application of the low interest provisions. This will be outside of this report.

Number 0413

That THE FISHING LOAN PROGRAMS now probably require excessive, non-defensible durations of residence, but that the one year Bona Fide residence requirement may not provide adequate measure of these MIGRATORY applicants. I tend to agree with the Director of Legislative Legal Council, that a more rational duration would be two years.

Number 0417

Chairman Abood said that the programs listed in No. 4,5,6,7,8 and 10 will and likely be best served to use the Bona Fide Residence Requirement. That residence requirements for REFUND OF POLITICAL CONTRIBUTION AND CHILD CARE EXPENSES most likely fall in SIMPLE RESIDENCE requirement, since they fall under the category of POLITICAL RIGHTS AND BASIC NECESSITIES OF LIFE, and the courts do not support durational residency in these matters...

Number 0425

RECOMMENDATIONS: 1. That no action be taken on the Student Loan programs until courts conclude.

2. That you consider repealing the present 5 year residence requirements in the Fisheries Loan programs and substitute a 2 year residence requirement.

3. That you consider applying a Bona Fide requirement for all other loan programs as a normal course of action, except where the program relates to "Basic Necessities" or "Political Rights".

Number 0438 — Betty Huffman of Fairbanks said she supported Red Swanson's testimony. She wanted to see the residency requirement continued. She said many older Alaskans need longevity bonus' to live in the state.

Number 0460 — Leo Land of Haines felt that you should prove your residency with a birth certificate, letters of affidavits, or church records; rather than with a voter's registration card.

Number 0501 — Bert Sharp of Fairbanks felt that challenging the residency requirement has resulted in the destruction of the fine programs for the Pioneers of Alaska. He said longevity bonus should be top priority with the legislature.

Number 0532 — Bob Anderson of Yakutat concurred with Mayor Dapcevich's testimony. He felt that Pioneer's Home should run 65 years or older and should be a resident of Alaska for 25 years.

Number 0559 — Louis Odsather of Mat Su Valley said that we should establish a residency requirement so that any results will not bankrupt the State.

Number 0690 — William Richardson of Sitka, said he wanted to draw to Susan Burke's attention that the state of Colorado has a 35 year eligibility program requirement.

Number 0616 — Robert Gore of Ketchikan said that Arizona Pioneer Home residency requirement was 30 years. In Montana, Idaho and Utah, it is 20 years. He felt that we should be able to do the same here.

Tape 2, Side A
Recording
Number 0049 — Mr. Perry of Mat Su Valley said he sympathizes with the legislature, but believed that Alaskans who had lived in the territory or state before statehood should have longevity bonus.

Number 0087 — Norma Lundy of Anchorage wanted to know if other members of the Older Alaskans Commission had testified, because she arrived late. Chairman Abood said yes.

Number 0228 — Susan Burke said she viewed her job as advising the legislature if a particular ruling would be held unconstitutional in a court of law.

Number 0294 — There being no further business to come before the committee, Chairman Abood adjourned the meeting at 3:00 p.m.

Alaska State Legislature

Speaker of the House of Representatives

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Juneau, Alaska 99811
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Official Business

May 1, 1983

MANDATORY AUTO INSURANCE: THE OTHER SIDE

by Jeff Day

In the book, "The Invisible Bankers," author Andrew Tobias wrote:

Insurance lobbyists outnumber all others in virtually every state. "Our strength?" pondered one. "It comes from having a group of people who tell a story that is logical and reasonable to a group of people who don't have the slightest idea what you're talking about."

This report is to try and provide the information not often volunteered by the industry in the hopes that those who act on this legislation will begin with at least the slightest idea of what we are talking about and why the sponsors believe a mandatory insurance law is needed.

This report is based on a review of approximately 200 newspaper articles published between 1978 and 1982, industry publications, prior research reports and interviews with insurance and public safety officials conducted in April 1983 in a half dozen states with mandatory laws.

THE INDUSTRY SIDE

The insurance industry has traditionally opposed the imposition of a mandatory insurance law. Yet 32 states have enacted such a law beginning with Massachusettes in 1927. Some of the newest laws are those in Arizona which went into effect January 1, 1983, Nevada, Wyoming and Texas January 1, 1980 and Oregon January 1, 1979.

The opposition from the insurance industry is usually summed up in three broad statements:

1. You can't achieve 100% compliance with the law
2. It's costly to administer
3. It raises insurance premiums

The insurance industry has done an excellent job projecting that message to legislatures that consider such a law. Letters to legislators on the subject are basically no more than a regurgitation of a position paper published several years ago by State Farm, the largest insurance conglomerate in the nation. But that report relies on generalities, quotes that are 20 years old and information which is extremely outdated.

THE ALASKA SITUATION

While definite statistics are impossible to come by, it is estimated the number of unisured drivers in the state is between 11% and 40%. A survey of accidents over a two year period in 1980 and 81 showed that 20% of those involved in an accident were uninsured. Alaska has about 380,000 registered vehicles.

In the 1982 report from the Division of Insurance, Insurance Markey analyst Norm Cheney wrote:

"Even with the inherent inadequacies of this system... we estimate 59.5% were insured (in 1980). We have re-evaluated the data base used in previous reports and find that the statistics for the total number of autos were misstated. We have corrected the deficiencies and now have what we believe to be the most accurate possible estimation of the number of uninsured motorists." (emph added)

That number of uninsured was 40%!

Cheney wrote, "The thought that approximately 40% of Alaskans on the highways are uninsured is unsettling at best. Reasons for the large numbers of uninsured drivers are illusive. There does not appear to be a lack of available markets, and rates, in general, are not excessive."

In October 1980 a newspaper story noted that 40% drove uninsured in Alaska...a 12 % increase over five years. Division of Insurance director Ken Moore was quoted as saying," The horror story isn't over. These figures are not unlike those in other states with no mandatory automobile insurance laws."

Moore also added,"I'm not necessarily opposed to compulsory insurance, but because of the bad record of states with it, it makes me gun shy."

DMV Commissioner William Nix was also quoted in 1980 as saying that states with mandatory insurance only achieved a compliance rate of 90-95%. Remember, this statement was made when Alaska was thought to have a 40% uninsured population.

Nix also stated that he thought Alaska's financial responsibility laws were among the toughest in the nation and that the penalty of a three year license suspension was an "inducement to have people meet their obligations."

With a 40% uninsured population, that evidently wasn't much of an inducement. Nor have financial responsibility laws alone provided inducement in other states. That is why over 30 states have adopted mandatory insurance laws.

Mandatory insurance has been proposed in Alaska before. One of the reasons mandatory insurance failed before is because of the very reason Tobias stated above at the outset of this report.

Road and weather conditions in Alaska tend to make the potential for an accident fairly great. The requirement of insurance is not only intended to keep poor drivers off the road and ensure that drivers at fault compensate victims but also to protect responsible drivers.

There are probably many marginal drivers who would buy insurance if they were forced to. Some accidents don't result from specific negligence. Sliding through an icy interesection in winter is one example. The result can be hundreds or thousands of dollars of damage that the generally good driver would have to pay, in addition to meeting the requirements of our current financial responsibility laws which are aimed are the problem driver.

It makes sense to provide the added incentive this bill will provide to encourage the good driver to buy insurance to protect both himself and others.

LAWS IN OTHER STATES

Insurance laws enacted in other states are basically variations on a theme. When the consumer awareness movement reached a peak in the mid 1970's, no fault insurance became "in." A number of states now have mandatory no fault laws or a combination mandatory no fault/fault requirement. Some states have only mandatory auto liability such as SSHB 7 proposes to enact. There are likely inequities in both fault and no fault insurance. This report does not intend to compare the two but rather to focus on the mandatory requirements in states regardless of the type of insurance.

Massachusettes became the first state to enact a law. It requires proof of insurance at time of registration. It is also mandatory that uninsured and underinsured insurance are carried. In most states it is only mandatory that insurance companies offer this coverage as would be done under HB 7.

New York and North Carolina followed with mandatory laws in 1957. New York added a no fault law in 1974. The New York law requires the insured to have two cards as proof of insurance. One is out in a file when the car is registered. The other must be kept in the vehicle at all times just as the registration is kept in the vehicle.

North Carolina, considered to have one of the most effective laws requires proof of financial responsibility to be shown at time of registration.

Some states tie both the registration and license to proof of insurance. Montana and Louisiana require proof of insurance in this manner.

Several states don't require actual proof of financial responsibility but rather that the applicant sign an affadavit certifying he is insured and will be insured when driving a motor vehicle. Such states also impose rather severe penalties for falsifying the certification in addition to driving without insurance. Arizona and Connecticut are examples of this variation. False certification in Connecticut brings a fine up to $1000 and a jail term up to five years.

Most states also require insurance companies to issue a card which must be kept in a vehicle which states the type and limits of insurance carried.

Overall, the general,procedures of mandatory laws are the same. Proof must be shown at time of registration or licensure. Cards are issued by companies to be kept in cars. The key to the system working is the method of enforcement.

ENFORCEMENT

The most repeated claim by the insurance industry is that the laws cannot be enforced. In one sense that is true. No one claims to have removed 100% of the uninsured from the road. But proponents in states which have enacted such laws knew in advance they would not achieve 100% compliance. However, is has been the potential to dramatically decrease the number of uninsured which prompted the laws. And I have found no example where the law has failed to reduce the number of uninsured motorists.

In states where the law is less successful than in others, it is usually because the enforcement mechanism is not as tight as those with lower uninsured populations.

The major criticism by the industry is that someone will get insurance just long enough to renew the registration and then cancel the insurance and keep the card which is good for a year. To get around that some states have required insurance companies to notify the Department of Motor Vehicles when a policy is cancelled by an insured. DMV must then notify the motorist who is given a chance to prove that insurance is in effect. This has the potential of creating a lot of peperwork depending on limits imposed upon the notification procedure.

Some states began with a law that required notification by companies anytime a policy was cancelled. North Carolina did this and became backlogged by notices. Most states which have tried this ran into the same problems.

To correct the problem, laws were changed to require notification by insurance companies of a cancellation only during the initial six months after a policy was issued. North Carolina has 4.8 million registered vehicles. Jim Stamey of North Carolina's DMV said this change cut the number of persons involved in enforcing the law from over 100 to about 5 troopers and 4 hearing officers. He also added that it's believed if a person is going to cancel, they will do so in that first six months.

Delaware changed it's law in 1979 to require notification by insurance companies only during the first year following issuance of a policy. Insurance Commissioner David Elliott noted,"Now we can concentrate on the first year people who cancel. We think they're the ones trying to beat the system."

New York requires notification of cancellation at anytime. With 6 million cars, the result became a large backlog. A new computer system is now being installed which should help ease this problem. It is interesting to note most states now implementing the law do utilize computers to a large degree which cuts the amount of staff needed and expedites the enforcement process.

Oregon adopted a law with unlimited notification provisions but changed it the following year. Currently a random sampling process is in effect. Each month about 1% of the motorists are checked for proof of insurance. There is no notification by insurance companies required. This process appears to work... so far.

Tony Dilorenzo of Oregon's DMV noted that the law originally cost about $1 million to enforce. The changes he said reduced the cost to about $100,000 for clerks and computer time.

Other states have not had such good luck simply going on a random sampling basis. Nevada easily passed a mandatory law in 1979 but even proponents were worried it would not be effective since it lacked a notification provision. Michigan did not adopt the notification procedures and reports indicate there were problems obtaining as high a level of compliance with the law as other states had achieved. Connecticut had similar problems.

But, in general it appears that those who adopted a notification procedure as proposed in HB 7 achieved the highest compliance rates with the least amount of paper work and cost.

Most states also require a motorist to show proof of insurance when stopped for a traffic violation. This is why the card is important, and it's important to ensure the card is legitimate through enforcement by notification of DMV by insurance companies.

If a policy is cancelled, DMV can flag it on a computer. It is relatively simple, then, when a driver is stopped to verify the legitimacy of the insurance card.

PENALTIES

The penalties for driving without insurance differ. Generally, they include fines and revocation of license and registration.

Michigan and Nevada impose a $100-500 fine. Wyoming has a maximum $750 fine plus revocation of registration. Oregon imposes a fine of $100 unless insurance is obtained within 15 days after a citation is issued. False certification at time of registration will bring a $1000 fine and up to a year in jail. In Connecticut, that offense brings a $1000 fine and up to 5 years in jail.

Georgia provides for a 60 day suspension of a drivers license and registration with a $25 fee to get it back. Louisiana imposes a loss of a license for 6-18 months, a fine of $125 and up to 30 days in jail.

Hawaii imposes fines of at least $100 and impounds the vehicle. Delaware allows 24 hours to prove insurance after a citation and then imposes a fine between $200 and $1000. Conviction results in revocation of driving priveleges until proof of insurance is shown. Indiana imposes a $500 fine and 60 days in jail.

Arizona mandates a $250 fine for the first offense. New Jersey imposes a $200 fine and up to 90 days in jail for the first offense.

In Minnesota a rather comprehensive approach is taken on any offense. As Patrolman Ray Schmidt explained, "We request that the driver park his car. We book the person with no insurance, take him to jail and have the car towed." Eventual penalties are a $500 fine, up to 90 days in jail and revocation of license and registration.

The penalties in these states are typical of those in other states.

EFFECTIVENESS

The insurance industry says compulsory laws have not been effective in removing the uninsured population. The results show just the opposite. In reviewing these statistics, it should be noted that Alaska's uninsured population is estimated to be as high as 40% at the current time.

North Carolina completed a study within the past year. DMV spokesman Jim Stamey said the results showed that 2-3% of the motoring public are uninsured...in a state of over 4 million vehicles.

Stamey said, "We consider the law to be the most effective in the nation."

In Oregon it was estimated 15-20% were uninsured before the law took effect in 1979. The figure after 7 months was 4.5%. DMV Administrator Harold Grover said, "The overall implementation appears to be pretty smooth. It is succeeding better than we expected."

Insurance industry representative Richard Clement even conceded the law was having beneficial effects. He said, "We've always been opposed to compulsory auto insurance. There have been some problems, but, quite frankly, it's gone quite smooth. So far our fears haven't been borne out."

In Louisiana, the administrator of the State Insurance rating commission noted that 65% wrere insured before the law took effect in July 1978. By the day the law became effective 80% were insured and the number was growing.

Minnesota has achieved a 5% uninsured population out of 3 million vehicles.

Before New Jersey adopted it's law in 1973, 7.4% of motorists involved in accident were uninsured. By 1976 the number had declined to 3.7%.

In New York, it was estimated that 10% of motorists were uninsured when the law went into effect in 1957. During early years of enactment that fell to 5%. New York has 6 million vehicles. It's estimated that about 6% are now uninsured. The lack of a computer system and the number of vehicles has made enforcement a problem. But Insurance division spokesman Stan Dorf noted there have been few bills introduced to amend or repeal the program.

Dorf said,"Even if premiums increased slightly as a result of such a law, which I don't believe they should, the program is worth it from a social standpoint."

DMV spokesman Joe Donovan said the current unenforceability of the New York system stems mostly from the number of vehicles. Legislation is now proposed that would require insurance companies to notify DMV only in the first six months after issuance of a policy.

Massachusettes has had some enforcement problems again because of the sheer number of vehicles but the estimated number of uninsured motorists is about 5%.

Montana enacted its law in 1979. The County Commisioner calls it "a good one."

In general, those states which have implemented a mandatory law in some form have achieved about a 95% insured population. And that is the goal many states had in mind when these laws were passed. 95% compliance would be a substantial improvement in Alaska just as it was envisioned to be in other states such as Texas which passed a law because 25-45% were estimated to be uninsured. Washington D.C. considered such a law in 1980 because 40-60% drove uninsured. Nevada passed legislation because 30-40% were uninsured according to Insurance Commissioner Don Heath.

Wyoming's Commissioner, John Langdon said the law was needed because 25-35% were uninsured. Connecticut passed a law in 1973 because 8% were uninsured. Florida considered the law because 45% were uninsured. West Virginia recently enacted mandatory insurance laws. Indiana enacted the law in 1982 because 13% were uninsured.

Arizona was the last state to enact such legislation because 40% were uninsured. Representative Bill English, who sponsored the bill said, " We need to take a firm grip on this. It's totally irresponsible to be driving on the streets without adequate insurance."

The conclusion is that 32 states have enacted such laws to achieve lower percentages of uninsured drivers despite vigorous opposition by the insurance industry. Only 2 have ever been repealed. This attests to the fact that the laws work because even states with enforcement snags don't advocate repeal of the law. The laws do work.

EFFECT ON PREMIUMS

In all the material researched for this report, no statement in fact was found that simply the introduction of compulsory insurance laws directly raised premiums. Even those that acknowledged the possibility that rates might rise slightly, encouraged passage of a mandatory law.

New Jersey assistant Motor Vehicle Director Seymour Blaustein said in 1979, "There's no getting away from the fact that as insurance costs go up, some people are dropping their coverage, but I think we've got good verification procedures that catch a lot of people without insurance."

Nevada Insurance Commissioner Don Heath said, "Rate increases are a reflection of the national economy. The mandatory law should bring a price downtrend for preferred customers."

When Texas adopted the law several years ago, Houston Representative Gene Green commented, "It's estimated insurance rates might go up 5-10% at most. If the insurance companies use this as grounds for raising rates, they're barking up the wrong tree because they have already increased rates every year I've been in the Legislatyre."

Generally, rates rise simply because of inflation. As Richard B. Neiley of the Insurance Company of North America explained, "Insurance rates are future cost projections. The means the insurance cycle is out of phase with the rest of the economy. When prices for general goods and services are rising, insurance rates are often stable. By the time the rate of increase in the price of other goods and services diminishes, data is becoming available showing insurance rates have not kept up with underlying costs. Insurance rates then increase rapidly and profits improve."

It is somewhat ridiculous to compare rate increases and premiums in one state to another. Dozens of considerations go into rate establishment and no state is identical to another. First, a rate has to be determined that will cover potential future losses and expenses and allow for a profit. Consideration is given to the trend in dollar cost per claim, the trend in number of claim payments showing the change, if any, in the number of accidents that occur, expenses and how large a profit margin a company wants.
The industry specifically makes this point:

Rates among the various 50 states can be widely different because of variations in the cost of repairs, medical care, weather patterns, and other geographic and demographic factors such as population density and traffic congestion.

Some states prohibit rating differences on the basis of age, gender, marital status. Assigned risk pools are different in many states in operation. The risk pool is the classification that so called high risk drivers are placed into. This pool is covered by all insurers. Some states subsidize the pool through fee charges on insurance or licenses. Some states have instituted a reinsurance plan which basically mandates companies to write policies at reasonable rates to all drivers again based on surcharges of everyones policies. Technical differences in any number of these areas can be the cause for distinct rate differences between states.

New York Division of Insurance spokesman Stan Dorf said, "Compulsory laws will not raise the premiums as the industry would lead you to believe. There are no more accidents even though more people are insured. It's also logical and proven that if more drivers are insured, the uninsured motorist premiums will, in fact, decrease.

Massachusettes Insurance rating bureau spokesman Howard Mahler noted that premium increases in policies tend to result as a result of inflation rather than a compulsory law. Despite some enforcement problems in that state, Mahler said the Registry of Motor Vehicles has expressed no desire to repeal the law.

COST OF ENFORCEMENT

Just a brief comment on the proposed cost.

Other states which have imposed the law usually note it costs between $1 and 1.5 million to enforce properly. The states saying this are those with 2 million, 4 million, 4.5 million or more vehicles.

Alaska DMV has given us a comparable fiscal note for a state with 380,000 registered vehicles.

It must again be noted that North Carolina has over 4 million vehicles. 4 hearing officers and 5 troopers are needed to enforce the program which has achieved 2-3% uninsured.

There is no dispute the program will cost money. It is hard it believe that enforcement for 380,000 vehicles will cost as much as that in a state with several million..even with a cost of living difference.

DMV spokesman Jim Stamey from North Carolina said in an interview that Alaska was in the best position of any state wishing to enact such a law because of the low population and the computer technology available.

Those states now adopting the law have made good use of computer time to lessen the need for clerical staff. Howard Mahler of Massachusettes encouraged the state to use computers to a great extent if we adopt a program.

MORE ON INDUSTRY OPPOSITION

The research indicates that the insurance companies opposition to mandatory insurance does not really hold up. The law can and has been enforced to an excellent degree in many states. Premiums don't rise simply as a result of a compulsory law. The provisions in this law make it less costly and bureaucratic that laws in other states.

So if these arguments are largely countered, and insurance companies stand to do more business as a result of this law what could be the opposition?

Some potential insight was provided in a statement by Insurance industry representative Richard Clement when he commented on Oregon's law shortly after enactment. He said, "We've always been opposed to compulsory insurance. We're afraid the Legislature is going to get into the business of establishing rates and that the state can form an insurance company."

The insurance industry is not federally regulated. It does not want any regulation. The move to adopt compulsory insurance is likely seen as an intrusion into an industry which wishes to be exempt from all regulation. Past history in other states has shown the need for regulation to maintain realistic rates. And, indeed, there are programs which have been enacted and which could be enacted in Alaska with the result of lower premiums but which would be opposed by the insurance industry.

Perhaps, the other reason the industry opposes mandatory insurance is because it might decrease profits.

It must be noted that, in statistics provided by the Alaska Division of Insurance for 1981, the top 30 companies doing business in the state earned $31.2 million in premiums for automobile liability coverage. Incurred losses totalled $19.6 million for a profit of over $11 million.

According to the July 19, 1982 edition of Best's Insurance Management Report, Alaska had the lowest loss ratio of ANY state for all automobile insurance, 56.1%. Nationally the loss ratio was 70.7%. Basically, this means insurance companies earned greater profits on a comparable amount of business in Alaska than they did outside.

The 1982 report from the Division of Insurance reported:

"We are quite happy with the state of the market in Alaska. Over the past 3 years, we have seen an increase in the number of companies pursuing a share of the market. We now have a very active non standard market helping to make insurance available at competitive prices to those drivers with numerous or serious violations on their driving records."

It might be suggested that more insurers are seeking to enter the Alaska marketplace because the profit margins are higher here. The auto insurance market has consistently been profitable for the past five years.

CONCLUSIONS

Research has indicated that the arguments put forward by the industry are at best, half truths. It does cost money to run an effective program. But it has proven effective in states with uninsured populations both greater and lesser than the uninsured population in Alaska.

Legislation can be passed that will result in a significantly higher number of insured drivers. CSHB 7 would do this. It incorporates notification procedures from other states which have proven effective and cost efficient. It provides strong incentives to buy insurance or find alternative modes of transportation.

Simply requiring insurance after the fact of an accident has not proved sufficient in this or in other states. I also suggest that our current financial responsibility law needs stricter provisions as well. This will be researched and proposed in the near future. In any case, the law as is or even as amended is not a strong enough incentive. Alabama does not have a mandatory law. It does have financial responsibility laws similar to Alaska's. Deputy State Insurance Commissioner Tharpe Forrester noted that 30% do not carry insurance despite the law although, as he said, "We strongly encourage them to carry it."

Research on this subject will continue in an effort to propose additional legislation at a future date which could result in lower premiums. A number of states have passed mandatory laws and then changed other insurance provisions to implement no fault or a reinsurance facility or changes in assigned risk pooling....BUT the mandatory law came FIRST.

That is what is proposed here. A mandatory law would be a significant step forward in attempting to decrease our 40% uninsured population. But it should be considered as one step in a multi faceted approach that should be continually pursued after the law takes effect.

This report will be updated as additional material becomes available.

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1982 - STATISTICAL ANALYSIS
PRIVATE PASSENGER AUTOMOBILE INSURANCE

- SUMMARY -

In 1981, the majority of companies writing private passenger automobile liability and physical damage insurance in Alaska garnered a profit. The overall loss ratio for all admitted companies writing private passenger automobile insurance was 56.8%, 4.6% higher than the 52.2% ratio enjoyed in 1980.

According to the July 19, 1982 edition of "Best's Insurance Management Report" Alaska had, for the fourth consecutive year, the lowest loss ratio of any state for all automobile insurance, 56.1%. This includes commercial automobile and private passenger automobile insurance. The loss ratio nationally was 70.7%, 14.6 percentage points higher. A consistently profitable automobile insurance market is something few states have been able to maintain in recent years. We are quite happy with the state of the market in Alaska. Over the past three years, we have seen an increase in the number of companies pursuing a share of the market. We now have a very active non-standard market helping to make insurance available at competitive prices to those drivers with numerous or serious violations on their driving records. Good drivers have many different companies and a wide variation of prices from which to choose. On the negative side, we still find ourselves striving to overcome misconceptions and trepidatious underwriting by many companies. Being the largest of the United States, yet having a population of only just over 400,000 people does cause problems from a statistical credibility standpoint. Too often the negative results from other states have an influence on our market conditions. When profit conditions indicate a need for a company to tighten their underwriting, Alaska has in the past felt first the tightening rope of reduced availability. We sincerely hope that the consistent profitability of the Alaska automobile insurance market will cause the industry to consider us a desirable market in which to do business.

We have again divided this portion of the "Personal Lines Statistical Analysis" into two sections. First, is a review of the private passenger automobile insurance market in Alaska. The second section is a display of the rates charged for five different risks by numerous companies writing private passenger automobile insurance in Alaska.

Exhibit I ranks the 1981 market shares of the 30 leading writers in Alaska by line of automobile insurance and compares those shares to the 1980, 1979 and 1978 figures for those 30 companies.

The first chart of Exhibit I shows us that State Farm Mutual Automobile Insurance Company is the leading writer of private passenger auto liability insurance in this State. During 1981, State Farm Mutual Auto increased its written premium for this line by 7.6% despite dropping its market share by .15% to 22.15%, nearly a full percentage below its 23.1% share in 1979. Ranked number two, Allstate gained an additional .3% of the market and now holds a 20.5% market share, an increase of 2.6% over 1979's 17.9% share. Allstate's premium volume went up 10.1% in 1981. Third place Criterions market share remained about the same, 7.04%, up from 7% in 1980, premium volume was up 9.2%. United Services Automobile Association lost .3% of its share down to 4.19% from 4.5% in 1980, but they increased their premium volume 1.2%. Number five, State Farm Fire and Casualty gained a full percentage point of the market from 2.9% in 1980 to 3.92% in 1981 and had 49.4% more premium than 1980. Elsewhere in the top ten, four companies increased their market share and premium volume. Number seven, Leader National, lost 1.43% of its share down to 3.47% from 4.9%, while writing 22.5% less premium than 1980. The cumulative market share for the top ten is 74.8%, this compares to 74.7% in 1980. The top 30 companies accounted for 98.62% of the market, while the 30 top companies in 1980 had 98.9% of the market. Of the 30 companies, 13 increased their market share, 17 lost share. Written premiums were up for 17 companies and down for 13 companies. For all companies writing private passenger automobile liability in Alaska, written premiums were up 8.4% to $32,408,000 from $29,900,000 in 1980.

Exhibit I, Chart 2 shows that State Farm Mutual Auto has 22.5% of the private passenger auto physical damage market, an increase of .4% from 1980 and 3% from 1979. Written premiums for State Farm Mutual were up 23.1%. Allstate lost about .1% of its share down to 17.73% from 17.8% in 1980, but still up 1% over the 1979 share. Premiums for Allstate increased 10.1% from 1980. Criterion retains third place with a 1% increase in market share, 7.1% compared to 6.1% in 1980, premiums were up 29.6% since 1980. United Services Automobile Association moved into fourth place with a 5.42% share; 1.42% over 1980, premiums were up 50.9%. Foremost dropped to fifth, losing over 1.1% of its share and 15.2% in written premiums. The remainder of the top ten are led by State Farm Fire and Casualty in sixth place which now hold 3.22% of the market; up from 2.0% or 14th place in 1980, premium jumped 9.1% during the year. Nationwide Mutual joined the top ten in 1981 with a .5% increase in share, to 3.0%. The ten top writers account for 3.5% more of the market of 1981, 71.44% opposed to 67.9% in 1980. 95.95% of the private passenger auto physical damage business was written by the 30 companies, up 1.35% over 1980. Fourteen companies gained market share while 16 lost, but 19 increased premium volume and only 11 wrote less premium. Written premium volume for all companies was up 11.6% to $26,896,000.

Chart 3 of the first exhibit displays the market shares of the top 30 companies based on their combined written premiums for liability and physical damage. Again, State Farm Mutual Auto leads with 22.31%, Allstate remains second with a 19.24% share of the market a slight drop from 1980. Of more significance is the fact that Allstate has fallen 3% behind State Farm. In 1978 and 1979, Allstate trailed State Farm by about 4%, closing the gap to 2.2% in 1980 and now falling back to 3%. Criterion has 7.1% of the market up .4% from 1980. United Services Automobile Association is up .45% over 1980 to 4.75%. In 1981, State Farm Fire and Casualty increased it share 1.1% to 3.6%. All of the top ten this year increased their premium volume and only one company from last year dropped out of the top ten, Leader National falling from 5th in 1980, a 3.3% share, to 11th in 1981 with a 2.41% share. Of these 30 writers, 13 companies increased their market share, 15 declined and two remained about the same. Nineteen companies wrote more premium in 1981 and 11 wrote less. Cumulatively, the 30 companies accounted for 96.39% of all private passenger auto premiums, whereas the 30 top writers in 1980 represented 96.6% of the market. Premium volume for all admitted companies writing private passenger automobile insurance in 1981 was $59,304,000 up 10.5% over the 1980 figure of $53,666,000

Exhibit 2, Chart 1 shows us that liability business was not as profitable in 1981 as in years past. The loss ratio for the top 30 writers and the overall market was the same in 1981, 62.8%. This is a substantial increase from the 51.5% loss ratio experienced by the total private passenger auto liability market in 1980. Of the top 30 companies, 10 had better experience, 18 worse and two were new markets in 1981. Eleven of the 18 companies with loss ratios worse than last year had loss ratios in excess of 60%, eight had in excess of 70%, three companies experienced a loss ratio greater than 80%. Eleven of the 30 companies had loss ratios below 50%, seven of these were below 40%.

The second chart of Exhibit 2 shows that the private passenger automobile physical damage market had a good year in 1981. The loss ratio for all companies was 49.5% compared to 53% in 1980. Fifteen of the top 30 companies improved their loss ratios in 1981. Only five of the 30 companies had loss ratios in excess of 60%, eight of the 30 had loss ratios less than 40%.

Chart 3 has the loss ratios for the top 30 writers of both liability and physical damage coverages and again we see generally profitable results. Of the 30 companies, four had loss ratios in excess of 70%, 14 had loss ratios less than 50% and the overall loss ratios for all companies was 56.8%, 4.6% higher than 1980 but still low enough for profit.

The two charts of Exhibit III further illustrate the profitability of the private passenger auto market in Alaska. Here we have the top 30 writers of liability and physical damage auto coverages and their expense exhibits. We have calculated the loss ratios, which should indicate a company's break-even point--permissibe loss ratio (PLR)--(the ratios do not provide for investment income, reserves or the traditional 5% profit percentages). In the liability arena 14 companies had actual

loss ratios that exceeded their PLR, up from seven in 1980. Four of these companies had expense ratios in excess of that normally allowed by this division. An expense factor (including profit) greater than 45% is in most cases considered excessive. Thirteen companies had actual loss ratios 15% below their PLR in 1981 compared to 17 in 1980. The average PLR for the 30 companies was 61.2%. The expense exhibits for physical damage evidenced five companies whose loss ratios exceeded their PLR. Four of these companies had expense ratios in excess of the normally allowed 45%. Twelve companies had actual loss ratios 20% or more below their permissible loss ratios. The average PLR for the 30 companies was 61.9%, compared to actual loss ratios for the 30 companies of 49.5%, leaving 12.4% for incurred but not reported claims and profit requirements.

Writers of private passenger automobile insurance in Alaska have experienced five consecutive years of profitability a condition that's rare in today's automobile market. In many markets in the "Lower 48" states, combined ratios of 100% or more are common. Over the next 12 months we will be urging some companies to lower their rates and/or bring their expenses into line with accepted standards.

Exhibit IV is an illustration of the total private passenger automobiles registered in the State versus the insured car years, a comparison which provides a means of approximating the percent of uninsured motorists in this State. We have reevaluated the data base used in previous reports and find that statistics for the total number of autos were misstated. We have corrected the deficiencies and now have what we believe to be the most accurate possible estimation of the number of uninsured motorists. It is impossible to determine precisely the percentage uninsured. Even with the inherent inadequacies of this system, we can see that the number of insured drivers increased somewhat in 1980, we estimate 59.5% were insured up 1.6% over 1979 and 6.3% over 1978. While this increase is welcome, the thought that approximately 40% of Alaskans on the highways are uninsured is unsettling at best. Reasons for the large numbers of uninsured drivers are illusive. There does not appear to be a lack of available markets, and rates, in general, are not excessive.

Exhibit V concerns the Automobile Insurance Plan (assigned risk plan). Part A shows that in 1980, 2.6% of all insureds in the State were written through the Plan. This is 1% less than in 1979, 3.1% less than in 1978 and 5.2% less than 1977. 6.5% of the insureds countrywide were written through a plan of some sort in 1980, this is compared to 3.9% in 1979, an increase of 67%. In part B we see that the population of the plan continues to decline. At the end of 1980 there were 3,564 insureds in the plan, 24.1% less than in December 1979. 2,627 were in the plan at the end of 1981, a 26.3% drop from 1980 and 70.2% less than the 9,447 at the end of 1977. The depopulation of the plan is continuing in 1982 as shown in part C. Through September of 1982 only 1,009 policies had been assigned, 37.8% less than September 1981. The number of policies assigned each month has declined for 57 straight months. Part D charts the percentage of private passenger automobile liability premiums attributable to the Automobile Insurance Plan. The percentage in 1980 was 4.3%, down 2% from the 6.3% in 1979.

This division remains concerned about the population of the plan. While the population continues to decrease, the division feels that many insureds being placed in the plan could be written by companies on a voluntary basis. In conversations with agents around the State who utilize the plan extensively, we have heard that one of the main reasons for their use of the plan is price. We agree that for some types of risks the plan rates are low in comparison to voluntary market, but these rates are low because the experience of the plan has been favorable. The preponderance of clean risks or certainly risks that would be acceptable to companies on a voluntary basis are, to some degree, responsible for this good experience. The Alaska Automobile Insurance Plan Advisory Committee has been exploring various methods of depopulating the plan. One method receiving consideration is the requirement that agents give insureds a brochure explaining the plan and advising that by shopping, they may find companies willing to write voluntarily at lower rates or with improved coverage and better service.

For several years we have closed this narrative summary with a statement to the effect that the private passenger automobile insurance market in Alaska is profitable; this year is no exception. We are of the opinion that this profitability will continue. While this division continues to push for reduced insurance rates, we are not going to hinder the right of a company to make a reasonable profit. We will continue our efforts to assure that auto insurance rates in Alaska are neither excessive, inadequate nor unfairly discriminatory.

Norm Cheney
Insurance Market Analyst

EXHIBIT IV

TOTAL PRIVATE PASSENGER AUTOS
VERSUS INSURED CAR YEARS

YEAR	TOTAL NUMBER OF AUTOS*	INSURED CAR YEARS+	PERCENTAGE INSURED
1975	199,536	117,355	58.8
1976	221,386	120,964	54.6
1977	226,329	121,635	53.7
1978	232,425	123,581	53.2
1979	229,403	132,391	57.7
1980	230,040	136,895	59.5

* Based on data supplied by Alaska Department of Transportation and Public Facilities

+ Automobile Insurance Plans Service Office

In Memoriam

* SEAN SINNETT *

The members of the Legislature are deeply saddened at the tragic and untimely death of a young third generation Alaskan, Sean Sinnett of Anchorage.

Sean was a bright and enthusiastic young man, filled with vitality. Born in Anchorage, he was a 1980 graduate of East Anchorage High School. He was goalie for the hockey team in 1980 when it won the State Championship. In more recent years he was an employed member of the Teamsters and an avid hot-air balloonist.

It distresses us greatly to learn of this fine young man's death and the tragic circumstances surrounding it. Accidents involving pedestrians seem so needless and preventable. It should sadden every Alaskan to know of the loss of this promising young citizen and renew in each of us a dedication to do whatever we can to make certain that our highways and streets are made safe not only for drivers, but for pedestrians as well.

We wish to extend to Mr. and Mrs. Robert Sinnett, and to Christopher and Teresa our deepest and most heartfelt condolence. We share your loss. Our thoughts are with you at this most difficult time.

SPEAKER OF THE HOUSE

PRESIDENT OF THE SENATE

Date:

Requested by: Senator Kelly, Halford, Stevens

BMF
Bayly, Martin & Fay of Alaska, Inc.

December 20, 1982

Rep. Romona L. Barnes
P. O. Box 3382 Downtown Stat.
Anchorage, AK 99510

Dear Romona:

My wife and I received your questionnaire in the mail this week and would like to respond to one of our concerns, specifically the Mandatory Auto Insurance. As you will see through the balance of this letter, Linda and I have very adamant thoughts in this regard.

During the month of March 1980, Linda was involved in an automobile accident with another party that did not have any liability insurance for his vehicle. As a matter of fact, he did not have any liability insurance for the three vehicles that he owned at that time. Linda was stopped at a red light and the other party rear ended her totaling out her 1976 Toyota 4-door sedan and causing a three day stay in Providence Hospital. As she was a school teacher on School District business, the Workmen's Compensation picked up her medical bills, not her pain and suffering, and as her vehicle was four years old, there was no collision coverage on her insurance policy, only the liability insurance. The other party was driving a 1954 Chevrolet pick-up truck and he did not have the liability insurance nor Physical Damage. His vehicle was not that badly damaged as he drove it away after the accident and he did not receive injuries.

We consulted an attorney after about two weeks of negotiating with the individual, and found out at a later date, that not only did he not have the Automobile Liability Insurance, but also he did not have any monies to make restitution nor did he want to cooperate with us in any way. We were able to obtain a judgement in court against the individual and now have that in our pocket for whatever it is worth. In the meantime, we are out of the $3,000 low book for Linda's car and her pain and suffering.

The individual that struck Linda was later given a ticket for negligent collision and his driver's license was revoked by the State of Alaska. Approximately, three months after the accident the

Pouch 7-502 / Anchorage, Alaska 99510 / (907) 276-5617 (907) 276-5454 / TELEX: 25418
1031 W. Fourth Avenue, Suite 400, Anchorage, Alaska 99501

individual was picked up by the Anchorage City Policy for driving without a license and was given another $25 ticket and spend three days in the city jail. We know, and have seen, the individual driving about Anchorage many, many times and he still does not have a valid drivers license. Of course this revoked driver's license situation does not mean anything to an individual of this caliber. Therefore, we have a law that says that basically an individual must have minimum automobile liability limits or prove that he is financially responsible for those limits and if he does neither of those he will receive a $25 ticket and lose his license. It seems to me that the spirit of the law is well taken, however, the penalty means little or nothing. As a possible solution, I would suggest that the penalty be elevated to say thirty to sixty days mandatory jail sentence for the above situation or mandatory insurance be purchased before license plates or renewal license plates would be distributed. Several states in the lower 48 now have a law that license plates renewal will not be granted without proof of Automobile Liability Insurance and if the insurance is cancelled during the year that the license plates are removed by authorities from the vehicle. Driving without license plates on the vehicle would cause the impounding of the vehicle until the situation is remedied.

I have suggested the above solutions to such people as Dick Randolph and jokingly have been accused of trying to push for another insurance sail, as I am in the insurance brokerage business through Bayly, Martin & Fay of Alaska. Indeed, this is not the case as my specialty is Aviation Liability Insurance, and I would go so far as to say that State Farm and Alstate Insurance write 90% of the automobile insurance in the state of Alaska. Therefore, I am not trying to line my own pockets with Mandatory Auto Insurance.

I sincerely hope that you are able to provide the State of Alaska with your guidance on this subject matter and if you should have any questions or comments, please do not hesitate to call on us.

Sincerely yours,

Jack Good

Jack & Linda Good
4926 Lunar Dr.
Anchorage, AK 99504
337-5816

RONALD T. WEST, ATTORNEY AT LAW
608 W 4TH, STE 21
ANCHORAGE, ALASKA 99501

TELEPHONE
(907) 278-9742

file HB-7

March 8, 1983

yd 3-13

MAR 11 REC'D

The Honorable Ramona Barnes
House Judiciary Committee
Pouch V
Juneau, Alaska 99801

Dear Ramona:

Thank you for your letter of the 28th wherein you indicated that you were filing House Bill No. 7, regarding automobile insurance as a condition to register and operate a motor vehicle.

The bill seems to me to be well drafted and to cover every eventuality including the cancellation of insurance as soon as a vehicle is registered. However, one concern I have with the bill concerns its political chances and my suggestion is that you will run into some opposition from representatives of communities which are not tied into the State Highway system or Juneau.

The reason I state this is that in my travels to some bush communities which have roads of a few miles or 15 or 20 miles, I have noted that the vehicles are not licensed, titled or registered and that all manner of people drive them, some with licenses and some without. In my opinion, this is probably a reasonable working relationship because there are so few vehicles. The logic does not work, however, with respect to communities that are inter-connected by the highway system and/or the marine highway system. Perhaps some rider could be put on which would cover this. I think the goal of the bill is excellent and if there is anything I can do to assist in its passage, please advise.

Very truly yours,

Ronald T. West

Ronald T. West
Attorney at Law

RTW:me

Car insurance is a neces

By KENT LEE WOODMAN

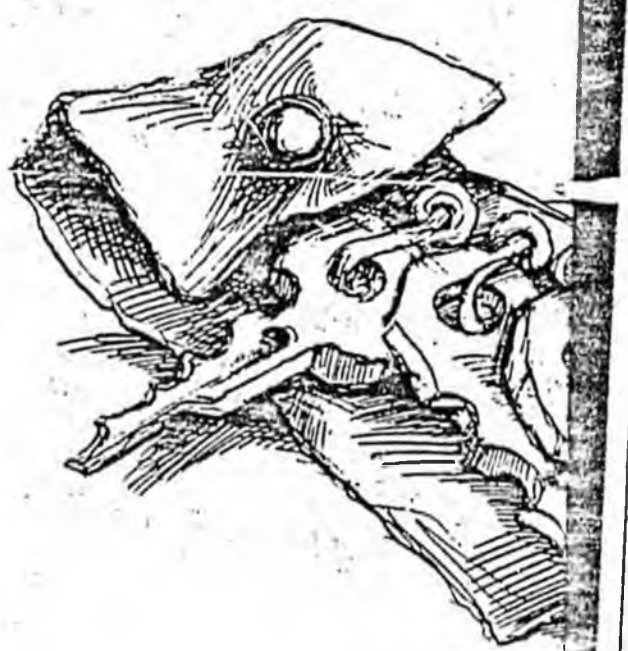
Last year in Juneau I stopped to pay my respects at Rep. Anderson's office. Previously I had correspondance with him on the subject of mandatory auto liability insurance. Rep. Anderson had draft copies of bills to require a minimum level of public liability for all auto operators and for state vehicle inspections and stickers. Neither bill was going anywhere.

Now I recognize that many folks come up here to escape the bureaucracy they had to live with in the South 48, but coming up here and abandoning all responsibility is not finding freedom, it is running from it. I once had freedom defined to me, as the freedom to take on the responsibilities you choose. We should be responsible enough to be certain that our affairs are in order to the point where we can pay for injury and damage to others for our actions. This is normally done by insurance on home and auto. We should be responsible enough to only take motor vehicles on the road which comply with the law and give everyone else a "fighting chance" to live . . . we should do these things, but many of us do not.

As an individual and as a business owner, both with adequate insurance, I am sick to my stomach when time after time one of my vehicles gets hit and the other driver has no insurance, no regular job, no cash reserves and often no license or registration.

We had one of our brand new Datsun diesel pickups smashed out from under my partner by a driver who had no insurance, no license, was drunk as a skunk, and who now lives in the Matanuska Valley where he gold mines and refuses to come to the phone or accept a certified letter. Our insurance paid the major portions, and we paid the $500 deductable. Our insurance carrier is "attempting to recover" both the funds they advanced and the deductable, but who knows when and if that will ever happen?

Recently our new Mazda service diesel was ripped open from end to end by a guy in a Chevy pickup with no insurance, no license, no registration. Same deal again, and another $2,800-plus.



Daily we all see the death-on-wheels that some folks push on to the public highways; no bumpers, broken windshields, missing lights, lights aimed up in your face, no defrosters, ice covered windows and drivers peering out through a postage-stamp sized hole, no brake lights, no turn indicators, bald tires in winter and summer and the whole works.

Estimates have been made that over 60 percent of the driving public in Alaska is not insured. That means that all the premiums required to cover all the accidents and injuries are paid by fewer than half of us who do have the responsiblity to have coverage. What's fair about that? Maybe we should cancel as well and let the rest of the world try to pry money out of us if we cause an accident.

I know that there will be some who will cry, "but what about the folks who cannot *afford* the insurance, cannot *afford* to keep

sary responsibility for all



points of view from our community

compass

"If folks cannot, or will not, develop that sort of old-fashioned responsibility, then I am afraid we must legislate it."

their vehicles up to a safe standard?"

My answer may appear a tad cold on the surface, but think about it: perhaps they should not drive! There is the People Mover Bus system now, the third such system since I've been here and this one is working! There are special concessions made to car-poolers. Remember, the courts have long held that driving an automobile on the public highways is a *privilege, not a right*. When you take your ton of steel out there and aim it at folks, you are supposed to have your act together. If you do not, keep off the track.

You're not supposed to fly airplanes without licenses and medical. You're not supposed to conduct brain surgery or practice law without certain certificates. Why, then, should folks be allowed to go out there and cause more property damage and death each year than all the wars we've ever been in, on the public highway with no such responsibility? If folks cannot, or will not, develop that sort of old-fashioned responsibility, then I am afraid we must legislate it.

It's a manageable program. It's a bill that already has been written once, and there are comment sheets to get it on track. We have seen recently an ordinance that lets the police pick up vehicles driven by drunks; why not the same for those who drive when their licenses have been revoked, those who drive with no public liability and those who drive vehicles with 20 or 30 write-ups?

I recognize that the mandatory vehicle inspection system offers opportunity either for heavier bureaucracy or graft, but it can be made to work ... Hawaii and Texas do it with ease. Sure we have difficulties in the Bush, and making the same rules apply there and here in town, but they can be worked out certainly.

☐ Kent Lee Woodman is a 25-year resident of Anchorage, a licensed insurance agent, a small business owner, pilot and regional representative for the Aircraft Owners and Pilots Association.

Alaska State Legislature

Speaker of the House of Representatives

Pouch V
State Capitol
Juneau, Alaska 99811
(907) 465-3720

Official Business

April 11, 1983

To: House Labor and Commerce Committee

From: Jeff Day
Assistant to the Speaker

Re: Fiscal Note for Department of Public Safety on SSHB 7

There are several misconceptions made in the fiscal note provided for SSHB 7 that this office wishes to respond to. Additionally it is felt, the fiscal note is not an accurate reflection the result of the legislation but, rather, is intended to discourage passage of the bill.

1. This is virtually the same fiscal note that was produced for the original HB 7 despite the fact that numerous changes and revisions were made in the sponsor substitute with a desire of lowering the proposed fiscal impact. It is felt that the changes in SSHB 7 were not taken into consideration in preparation of this fiscal note.

2. The fiscal note assumes an effective date of July 1, 1983. In fact the bill proposes an effective date of July 1, 1984 in order to give the Department sufficient time to prepare to implement this legislation. The fiscal impact in FY 84 should be minimal. This note does not reflect that fact.

3. The fiscal note states that every car stopped in which the driver could not provide proof of insurance would have to be impounded. That is not the case. The legislation gives discretion to a peace officer to impound a car on the spot. It does not mandate impoundment at that time. In fact a provision has been provided to issue a citation which is believed will be the usual course of action in such cases. Impoundment on the spot would only be likely if a peace officer knows he is dealing with a repeat offender or some similar case.
The fiscal note reflects the desire for three state troopers to enforce the impoundment procedures which it feels are mandated. Since the bill does not mandate impoundment, it is felt these troopers are not needed for this activity. This cost should be eliminated from the fiscal note.

It must also be noted that the request for the three troopers includes 25 hours overtime in their proposed salaries without justification from the Department.

The fiscal note assumes a compliance unit of 9 persons will be required all based in Anchorage. If all are based in Anchorage, it is stipulated there must be more space made available. Why must all nine employees be based in Anchorage?

In the justification sections for the Clerk positions there are some misleading statements. The simple check for license and registration with regard to liability insurance should not be a "highly specialized" function as the fiscal note assumes. Micro film and computer technology should make this a relatively simple task along with the resulting form paper work. It is agreed that accuracy will be essential, but the qualifications and justification for this level of clerk service are overstated.

The fiscal note assumes that 10% will try to circumvent the law. While the ten per cent figure may be legitimate, it must be pointed out that some states have stated that only 5% try to circumvent the law. In any case, the legislation does not direct DMV to search all their records and find those who are trying to slip through the cracks. It only directs DMV to take action on those that come to its attention through notification by insurance companies. The assumption must also be made that this law will provide an incentive for many uninsured drivers to get insurance, provide proof to DMV at the time of registration or license renewal or the registration simply will not be renewed. There is no intent for DMV to initiate investiagtions into non insured motorists unless there is a clear action in which a motorist cancels a policy.

The justification for a clerk V position is questionable. These duties could be carried out by the unit supervisor or by one of the other four clerk positions.

In summary, the fiscal note reflects a cost that is similar to programs enacted in other states but which deal with many more vehicles than the number registered in Alaska. There are several wrong or misleading assumptions that have created what is felt to be an inflated fiscal note. These areas should be re-examined and the department should be urged to read the sponsor substitute and understand it to a better degree for preparation of a revised fiscal note.

Alaska State Legislature

Speaker of the House of Representatives

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Juneau, Alaska 99811
(907) 465-3720

Official Business

April 18, 1983

The Honorable Walt Furnace
Chairman
House Labor and Commerce Committee
Pouch V
Juneau, Alaska 99811

Re: SSHB 7/ Reply to letter by Michael Thomas

Dear Representative Furnace:

You have received a letter from Michael Thomas who represents the American Insurance Association. He list a number of reasons why this legislation should not be enacted. I wish to offer the following arguments for enactment of the legislation.

First, the insurance industry in general has opposed compulsory insurance, yet it has been enacted in about 2 dozen states. While it has been repealed in a couple and amended in some states, the fact remains...THE MAJORITY OF THOSE STATES WHICH HAVE TRIED THIS APPROACH HAVE KEPT IT. If such laws are so inneffective as the industry would want you to believe, why have most of the states retained these laws?

The arguments say that no law has proved completely effective in accomplishing a 100% insured motoring population. We do not expect 100% compliance. We do expect two accomplishments. It is believed that more people will buy insurance. If we can achieve even 90% compliance, that is a significant improvement over current estimates. Some states have achieved an even higher insured percentage. Two, the bill provides strong disincentives to drive while not insured. It is believed that the possibility of severe penalties will keep a significant portion of uninsured drivers off the road rather than risking loss of driving priveleges or a motor vehicle. The bill is not aimed solely at mandating compliance. It also seeks to provide an incentive for to find alternate transportation for the uninsured.

The letter says that North Carolina has had problems achieving successful results with its law and " has still left many vehicles uninsured." However, in statistics obtained in 1981 it was learned that the prediction was that only 5% evaded the system and were uninsured. And of the accidents occuring in state involving in state drivers, less than one half of one per cent were found to be uninsured. In Alaska, a survey of accidents showed in 1980 and 1981 that about 20% of those people involved in accidents were uninsured. This points out that the North Carolina law has worked and I believe, if we could achieve their success rate, the legislation would have to be considered a success.

Two points need to be made. The letter from the insurance industry is misleading and vague. If there are inaccuracies in this one section, I submit that same vagueness likely persists throughout the letter. Insurance industry publications on this subject argue very effectively but in a very vague manner.

The letter also infers that compulsory insurance doesn't work because states still mandate the offering of uninsured insurance. First, you must realized uninsured or underinsured insurance is not required by any driver. It can be waived by the insured. But it's offering allows a person to take ALL precautions to protect himself.

The letter infers that this law would be easy to avoid and that a motorist will cancel insurance the day after he buys it to comply with the law. While it is recognized a small hard core percentage might do this, once again there are disincentives in the bill that will make people really think about taking the chance of getting caught without insurance. I don't believe there is another states which has proposed as severe penalties as this legislation seeks to do for non compliance. There has not been serious objection to the notification requirments placed on insurance companies by this legislation at this point. North Carolina has reported reduced cost and administrative burden by requiring notification by insurance companies of cancellation only within the first six months of policy issuance. This is what our bill proposes to require.

Nobody is assuming the law will cost nothing to enforce. It will take efficient enforcement and a substantial amount of money. It is not believed it will require what Dept. of Public safety is asking for in a fiscal note.

The bill also infers that premiums will rise dramatically if this program is adopted. First it is obvious premiums will rise if higher minimum liability limits are adopted. The desire to raise the limits may be a bargaining item even though it is not believed rates will increase as substantially as proposed. Whether there may be an increase in premiums simply as a result of mandatory insurance is subject to debate. The removal of the higher minimum limits negates much of the letter's argument, however.

The letter says that study of alternatives has not been undertaken on how to improve current law. A substantial directive has been received from the public for mandatory insurance. The public wants action now..not a study.

Conclusion

No one has ever assumed enactment of this legislation will result in a 100% insured motoring public. But results from other states have shown similar laws do increase the number of insured drivers. A combination of mandatory liability insurance and the offering of uninsured and underinsured insurance coupled with retention of the current financial responsibility law is the most effective way to close loopholes and protect the public.

Other states have encountered probems with the law, but most states that have enacted the law HAVE KEPT IT. Obviously, something beneficial is happening. It is realized there will likely be amendments to this law in the future if adopted. But it is a good starting point. Efforts have been taken to choose the better parts of legislation from many states so that it is effective and cost efficient.

The insurance industry has a very well financed lobbying effort to ward off these laws when the crop up around the nation. I caution the committee not tp be misled by vague facts or misrepresentations in statement. I believe the public has expressed an interest in this legislation and it is the responsibility of the Legislature to represent the public..not the insurance industry.

This office remains open to work with others seriously concerned with addressing this public concern.

Sincerely,

Jeff Day
Assistant to the Speaker

MOTOR VEHICLE SAFETY RESPONSIBILITY ACT

HEADINGS TITLE 28.
Motor Vehicles.
CHAPTER 20.
Motor Vehicle Safety Responsibility Act.

DECLARATION OF PURPOSE.

The legislature is concerned over the rising toll of motor vehicles accidents and the suffering and loss inflicted by them. The legislature determines that it is a matter of grave concern that motorists be financially responsible for their negligent acts so that innocent victims of motor vehicle accidents may be recompensed for the injury and financial loss inflicted upon them. The legislature finds and declares that the public interest can best be served by the requirements that the operator of a motor vehicle involved in an accident respond for damages and show proof of financial ability to respond for damages in future accidents as a prerequisite to his exercise of the privilege of operating a motor vehicle in the state.

HISTORY (Sec. 2 ch 163 SLA 1959)

Sec. 28.20.020.
ADMINISTRATION.

(a) The department shall administer and enforce this chapter and may adopt rules and regulations necessary for its administration.

(b) The department shall receive and consider any pertinent information upon request of persons aggrieved by its orders or acts under this chapter.

(c) The department shall prescribe and provide suitable forms requisite or considered necessary to carry out this chapter.

HISTORY (Sec. 4 ch 163 SLA 1959)

Sec. 28.20.030.
COURT REVIEW.
Repealed by sec. 4 ch 140 SLA 1977.

Sec. 28.20.040.
DEPARTMENT TO FURNISH OPERATING RECORD.
Repealed by sec. 20 ch 241 SLA 1976.

Sec. 28.20.050.
APPLICATION OF CHAPTER.

(a) The provisions of this chapter requiring deposit of security and suspension for failure to deposit security apply to the driver and owner of a vehicle subject to registration under the laws of this state which is involved in any manner in an accident in this state resulting in bodily injury to or death of a person or damage to the property of any one person exceeding $500.

(b) Not less that 20 days after receipt of a report of such accident, the department shall determine the amount of security which it considers sufficient to satisfy any judgments for damages resulting from the accident which may be recovered against each driver or owner. The determination shall not be made with respect to a driver or owner who is exempt from the requirements as to security and suspension.

(c) The department shall determine the amount of security deposit required upon the basis of the reports or other information submitted. If a person involved in an accident as described in this chapter fails to make a report or submit information indicating the extent of his injuries or the damage to his property within 30 days after the accident, and the department does not have sufficient information on which to base an evaluation of injuries or damage, then the department after reasonable notice to the person, if it is possible to give notice, otherwise without notice, shall not require a deposit of security for the benefit or protection of the person.

(d) Within 30 days after receipt of report of an accident and upon determining the amount of security to be required of any person involved in the accident or to be required of the owner of any vehicle involved in the accident, the department shall give to every person written notice of the amount of security required to be deposited by him and stating that an order of suspension will be made upon the expiration of 10 days after the notice is sent unless within that time security is deposited as required. No license may be suspended unless the licensee is afforded a hearing by the department at which it is determined that there is a reasonable possibility of a judgment being rendered holding him liable.

(e) A peace officer investigating an accident that results in bodily injury to or the death of a person or damage to the property of a person exceeding $500 shall inform persons involved in the accident in writing of the requirements of this chapter as they apply to suspension of an operator's license or driving privileges.

HISTORY (Sec. 7 ch 163 SLA 1959; am sec. 1 ch 127 SLA 1972; am sec. 11 ch 144 SLA 1977; am sec. 3 ch 78 SLA 1982)

Sec. 28.20.060.
EXCEPTIONS TO REQUIREMENT OF SECURITY.
The requirements as to security and suspension in this chapter do not apply to

(1) the driver or owner if the owner had in effect at the time of the accident an automobile liability policy or bond with respect to the vehicle involved in the accident, except that a driver is not exempt if at the time of the accident the vehicle was operated without the owner's express or implied permission;

(2) the driver who is not the owner if there was in effect at the time of the accident an automobile liability policy or bond with respect to his driving of vehicles not owned by him;

(3) a driver or owner whose liability for damages resulting from the accident is, in the judgment of the department, covered by another form of liability insurance policy or bond;

(4) a person qualifying as a self-insurer under sec. 400 of this chapter or to a person operating a vehicle for a self-insurer;

(5) the driver or owner of a vehicle involved in an accident in which no injury or damage was caused to the person or property of anyone other than the driver or owner;

(6) the driver or owner of a vehicle which at the time of the accident was parked, unless the vehicle was parked at a place where parking was at the time of the accident prohibited by a law or ordinance;

(7) the owner of a vehicle if at the time of the accident the vehicle was operated without his express or implied permission or was parked by a person operating the vehicle without the permission;

(8) the owner of a vehicle or the driver of a vehicle operating it with permission if at the time of the accident the vehicle was owned or leased to the United States, this state or a political subdivision of this state or a municipality of the state; or

(9) the driver or the owner of a vehicle if at the time of the accident the vehicle was operated by or under the direction of a police officer who, in the performance of his duties, assumed custody of the vehicle.

Sec. 28.20.070.
REQUIREMENTS AS TO POLICY OR BOND.

(a) No policy or bond is effective under sec. 60 of this chapter unless it is issued by an insurance company or surety company authorized to do business in this state, except as provided in (b) of this section, and if the accident resulted in bodily injury or death, unless the policy or bond is subject to a limit, exclusive of interest and costs, of not less than $25,000 because of bodily injury to or death of one person in any one accident and, subject to the same limit for one person, to a limit of not less than $50,000 because of bodily injury to or death of two or more persons in any one accident, and if the accident has resulted in injury to, or destruction of, property to a limit of not less than $10,000 because of injury to or destruction of property of others in any one accident.

(b) No policy or bond is effective under sec. 60 of this chapter with respect to a vehicle not registered in this state or a vehicle which was registered in another jurisdiction at the effective date of the policy or bond or the most recent renewal of it, unless the insurance or surety company issuing the policy or bond is authorized to do business in this state, or if the company is not authorized to do business in this state, unless it executes a power of attorney authorizing the director of the division of insurance to accept service on its behalf of notice or process in an action upon the policy or bond arising out of the accident.

(c) The department may rely upon the information in an accident report as to the existence of insurance or a bond unless the department has reason to believe that the information is erroneous.

HISTORY (Sec. 9 ch 163 SLA 1959; am sec. 1 ch 146 SLA 1966; am sec. 1 ch 20_ SLA 1975; am sec. 12 ch 144 SLA 1977)

Sec. 28.20.080.
FORM AND AMOUNT OF SECURITY.

(a) The security required by this chapter shall be in the form and amount the department requires, but in no case in excess of the limits specified in sec. 70 of this chapter for the acceptable limits of a policy or bond.

(b) Every depositor of security shall designate in writing the person in whose name the deposit is made and may at any time change the designation, but a single deposit of security applies only on behalf of a person required to furnish security because of the same accident.

HISTORY (Sec. 10 ch 163 SLA 1959)

Sec. 28.20.090.
SUSPENSION FOR FAILURE TO DEPOSIT SECURITY.
(a) If a person required to deposit security under this chapter fails to deposit security within 10 days after the department sends notice, the department shall suspend
(1) the license of each driver involved in the accident;
(2) the privilege of operating a vehicle subject to registration if the driver is a nonresident;
(3) the privilege of the owner to operate or permit the operation within this state of a vehicle subject to registration if the owner is a nonresident.
(b) Suspensions shall be made in respect to persons required by the department to deposit security who fail to deposit such security, except as otherwise provided under succeeding sections of this chapter.
HISTORY (Sec. 11 ch 163 SLA 1959) CITATION

Sec. 28.20.100.
RELEASE FROM LIABILITY.
(a) A person is relieved from the requirement for deposit of security for the benefit or protection of another person injured or damaged in the accident if he is released from liability by the other person.
(b) A covenant not to sue relieves the parties to it as to each other from the security requirements of this chapter.
(c) If the department evaluates the injuries or damage to a minor in an amount not more than $500, the department may accept, for the purposes of this chapter only, evidence of a release from liability executed by a natural or legal guardian on behalf of the minor without court approval.
HISTORY (Sec. 12 ch 163 SLA 1959; am sec. 13 ch 144 SLA 1977)

Sec. 28.20.110.
ADJUDICATION OF NONLIABILITY.
A person is relieved from the requirement for deposit of security for a claim for injury or damage arising out of the accident if the person is finally adjudicated not to be liable for the claim. HISTORY (Sec. 13 ch 163 SLA 1959)

HISTORY (Sec. 14 ch 163 SLA 1959; am sec. 4 ch 78 SLA 1982)

Sec. 28.20.120.
AGREEMENTS FOR PAYMENT OF DAMAGES
(a) Two or more persons involved in or affected by an accident as described in AS 28.20.050 may at any time enter into a written agreement for the payment of an agreed amount with respect to their claims because of bodily injury, death, or property damage arising from the accident. The agreement may provide for payment in installments. The parties may file a signed copy of the agreement with the department.
(b) If proof of financial responsibility is provided and to the extent provided by the written agreement filed with it, the department shall not require the deposit of security and shall terminate a previous order of suspension, or if security was deposited, the department shall immediately return the security to the depositor or his personal representative.

(c) If there is a default in a payment under the agreement upon notice of default the department shall take action suspending the license of the person in default as is appropriate in case of failure of the person to deposit security when required under this chapter. (d) The suspension remains in effect and the license may not be restored until

(1) security is deposited as required under this chapter in the amount the department determines; or

(2) when, following default and suspension, the person in default pays the balance of the agreed amount; or

(3) one year elapses following the effective date of the suspension and evidence satisfactory to the department is filed with it that during the period no action at law upon the agreement is pending.

Sec. 28.20.130.
PAYMENT UPON JUDGMENT.
The payment of a judgment arising out of an accident, or the payment upon judgment of an amount equal to the maximum amount which could be required for deposit under this chapter, for the purposes of this chapter, releases the judgment debtor from the liability evidenced by the judgment. HISTORY (Sec. 15 ch 163 SLA 1959; am sec. 12 ch 2 SLA 1964)

Sec. 28.20.140.
TERMINATION OF SECURITY AGREEMENT
If satisfied as to the existence of a fact which under secs. 100 - 130 of this chapter entitles a person to be relieved from the security requirements, the department shall not require the deposit of security and shall terminate a previous order of suspension in respect to the person, and shall immediately return the deposit to the person or his personal representative. HISTORY (Sec. 16 ch 163 SLA 1959)

Sec. 28.20.150.
DURATION OF SUSPENSION.
(a) Unless a suspension is terminated under other provisions of this chapter, an order of suspension by the department remains in effect until terminated and no license may be renewed or issued to a person whose license is suspended until proof of financial responsibility for the future is provided and

(1) the person deposits or there is deposited on his behalf the security required under this chapter; or

(2) three years elapse following the date of suspension.

(b) Repealed by sec. 9 ch 78 SLA 1982.
HISTORY (Sec. 17 ch 163 SLA 1959; am secs. 5, 9 ch 78 SLA 1982)

Sec. 28.20.160.
APPLICATION TO NONRESIDENTS, UNLICENSED DRIVERS, UNREGISTERED VEHICLES AND ACCIDENTS IN OTHER STATES.
(a) If a driver or owner of a vehicle subject to registration under the laws of this state involved in an accident in this state does not have a license or registration in this state, then the driver may not be licensed, nor may the owner register a vehicle in this state until he complies with the requirements of this chapter to the extent necessary if, at the time of the accident, he had held a license or been the owner of a vehicle registered in this state.

(b) When a nonresident's operating privilege is suspended under sec. 90 of this chapter the department shall send a certified copy of the record of the action to the official in charge of the issuance of licenses and registration certificates in the state in which the nonresident resides, if the law of the other state provides for action similar to that provided for in (c) of this section.

(c) Upon receiving certification that the operating privilege of a resident of this state has been suspended or revoked in another state under a law providing for its suspension or revocation for failure to deposit security for the payment of judgments arising out of an accident under circumstances which would require the department to suspend a nonresident's operating privilege if the accident had occurred in this state, the department shall suspend the license of the resident. The suspension continues until the resident furnishes evidence of his compliance with the law of the other state relating to the deposit of security.

HISTORY (Sec. 18 ch 163 SLA 1959)

Sec. 28.20.170.
AUTHORITY OF DEPARTMENT TO DECREASE AMOUNT OF SECURITY. The department may reduce the amount of security ordered within six months after the date of the accident if in its judgment the amount is excessive. If the security originally ordered is on deposit, the excess deposit over the reduced amount ordered shall be returned immediately to the depositor or his personal representative. HISTORY (Sec. 19 ch 163 SLA 1959)

Sec. 28.20.180.
CORRECTION OF ACTION OF DEPARTMENT. If the department takes action or fails to take action under this chapter due to erroneous information or no information, upon receiving correct information within one year after the date of an accident the department shall take appropriate action to carry out the purposes and effect of this chapter. However, this section does not require the department to re-evaluate the amount of a deposit required. HISTORY (Sec. 20 ch 163 SLA 1959)

Sec. 28.20.190.
CUSTODY OF SECURITY. The department shall place security deposited with it in the custody of the Department of Revenue. HISTORY (Sec. 21 ch 163 SLA 1959)

Sec. 28.20.200.
DISPOSITION OF SECURITY.

(a) The security deposited is available only for

(1) the payment of a settlement agreement covering a claim arising out of the accident upon instruction of the person who made the deposit, or

(2) the payment of a judgment given against the person required to make the deposit for damages arising out of the accident in an action at law begun not later than one year after the deposit of security, or within one year after the date of deposit of security following failure to make payments under an agreement to pay.

(b) Every distribution of funds from a security deposit is subject to the limits of the department's evaluation on behalf of a claimant. HISTORY (Sec. 22 ch 163 SLA 1959)

Sec. 28.20.210.
RETURN OF DEPOSIT.

(a) Upon the expiration of two years from the date of deposit of security, the security remaining on deposit shall be returned to the person who made the deposit or his personal representative if an affidavit or other evidence satisfactory to the department is filed with it showing that

(1) no action for damages arising out of the accident for which deposit was made is pending against the person on whose behalf the deposit was made, and

(2) there does not exist any unpaid judgment against the person in an action.

(b) This section does not limit the return of a deposit of security under any other provision of this chapter authorizing return. HISTORY (Sec. 23 ch 163 SLA 1959; am sec. 6 ch 78 SLA 1982)

Sec. 28.20.220.
MATTERS NOT TO BE EVIDENCE IN CIVIL SUITS. The report required after an accident, the action taken by the department under this chapter, the findings, if any, of the department upon which its action is based, and the security filed shall not be referred to, and shall not be evidence of the negligence or due care of either party, at the trial of an action to recover damages. HISTORY (Sec. 24 ch 163 SLA 1959)

Sec. 28.20.230
PROOF OF FINANCIAL RESPONSIBILITY FOR THE FUTURE.

(a) The provisions of this chapter requiring the deposit of proof of financial responsibility for the future apply to persons who are convicted of or forfeit bail for certain offenses under motor vehicle laws or who, by ownership or operation of a vehicle of a type subject to registration under ch. 10 of this title, are involved in an accident in this state which results in bodily injury or death of a person or damage to the property of any one person exceeding $500.

(b) The term "proof of financial responsibility for the future" as used in this chapter means proof of ability to respond in damages for liability, on account of an accident occurring after the effective date of proof, which arises out of the ownership, maintenance or use of a vehicle subject to registration under the laws of this state, in the amount of $25,000 because of bodily injury to or death of one person in any one accident, and, subject to the same limit for one person, in the amount of $50,000 because of bodily injury to or death of two or more persons in any one accident, and in the amount of $10,000 because of injury to or destruction of property of others in any one accident. As used in this chapter the terms "proof of financial responsibility" or "proof" mean proof of financial responsibility for the future.

HISTORY (Sec. 25 ch 163 SLA 1959; am sec. 59 ch 69 SLA 1970; am sec. 2 ch 202 SLA 1975; am sec. 14 ch 144 SLA 1977)

Sec. 28.20.240.
PROOF REQUIRED WHEN USE OF LICENSE IS RESTRICTED.

Whenever under a law of this state the license of a person is suspended, revoked, limited under AS 28.15.201, or canceled for any reason, the department may not issue to that person a new or renewal of license in his name until permitted to do so under the motor vehicle laws of this state. A period of suspension, revocation, limitation, or cancellation under this section continues until proof of financial responsibility for the future is provided.

HISTORY (Sec. 26 ch 163 SLA 1959; am sec. 7 ch 78 SLA 1982)

Sec. 28.20.250.
ACTION IN RESPECT TO UNLICENSED PERSON.

(a) If a person does not have a license, but by final order or judgment is convicted of, or forfeits bail or collateral deposited to secure an appearance for trial for an offense requiring the suspension or revocation of license, or for driving a motor vehicle upon the highways without being licensed to do so, or for driving an unregistered vehicle upon the highways, no license shall be issued to the person unless he gives and thereafter maintains proof of financial responsibility for the future.

(b) Whenever the department suspends or revokes a nonresident's operating privilege for conviction or forfeiture of bail, the privilege remains suspended or revoked unless the person has previously given or immediately gives proof of financial responsibility for the future.

HISTORY (Sec. 27 ch 163 SLA 1959)

Sec. 28.20.260.
WHEN PROOF REQUIRED AFTER ACCIDENTS.

(a) Upon receipt by the department of the report of an accident resulting in bodily injury or death, or property damage to any one person exceeding $500, the department shall suspend the license of the driver of a motor vehicle involved in the accident unless the driver or owner

(1) has previously furnished or immediately furnishes security required by this chapter, or is excepted from furnishing security under sec. 60 of this chapter, and

(2) maintains proof of finan al responsibility for three years following the accident.

(b) This section does not apply to an owner or operator with respect to an accident in which a judgment in his favor is given on a cause of action arising out of the accident which establishes his freedom from fault.

HISTORY (Sec. 28 ch 163 SLA 1959; am sec. 15 ch 144 SLA 1977)

Sec. 28.20.270.
SUSPENSION FOR NONPAYMENT OF JUDGMENTS. Upon receipt of a certified copy of a judgment and a certificate of facts relative to the judgment, the department shall immediately suspend the license or nonresident's operating privilege of a person against whom the judgment is given except as otherwise provided in this chapter. HISTORY (Sec. 29 ch 163 SLA 1959)

Sec. 28.20.280.
WHEN COURTS TO REPORT NONPAYMENT OF JUDGMENTS. If a person fails within 30 days to satisfy a judgment arising out of a motor vehicle accident, the clerk of the court, or the judge if there is no clerk, in which the judgment is given, shall forward to the department a certified copy of the judgment and a certificate of facts relative to the judgment. HISTORY (Sec. 30 ch 163 SLA 1959)

Sec. 28.20.290.
FURTHER ACTION WITH RESPECT TO NONRESIDENTS. If the defendant named in a certified copy of a judgment reported to the department is a nonresident, the department shall send a certified copy of the judgment to the official in charge of the issuance of licenses and registrations of the state of which the defendant is a resident. HISTORY (Sec. 31 ch 163 SLA 1959)

Sec. 28.20.300.
EXCEPTION FOR GOVERNMENT VEHICLES. Sections 260 and 270 of this chapter do not apply to an accident caused by the ownership or operation, with permission, of a vehicle owned or leased to the United States, this state, or a political subdivision or municipality of this state. HISTORY (Sec. 32 ch 163 SLA 1959)

Sec. 28.20.310.
EXCEPTION WHEN CONSENT GRANTED BY JUDGMENT CREDITOR. If the judgment creditor consents in writing in a form prescribed by the department to the issuance of a license or nonresident's operating privilege to the judgment debtor, the department may allow it for six months from the date of such consent and thereafter until the consent is revoked in writing, if the judgment debtor furnishes proof of financial responsibility notwithstanding default in the payment of judgment, or of an installment of the judgment prescribed in sec. 270 of this chapter. HISTORY (Sec. 33 ch 163 SLA 1959) -

Sec. 28.20.320.
EXCEPTIONS WHEN INSURER LIABLE. No license or nonresident's operating privilege shall be suspended under this chapter if the department finds that an insurer is obligated to pay the judgment upon which suspension is based at least to the extent and for the amounts required in this chapter, but has not paid the judgment for any reason. A finding by the department that an insurer is obligated to pay a judgment is not binding upon the insurer and has no legal effect except for the purpose of administering this section. If in a judicial proceeding it is determined by a final judgment, decree or order that an insurer is not obligated to pay a judgment, the department, notwithstanding any contrary finding made by it, shall immediately suspend the license or nonresident's operating privilege of a person against whom the judgment is given, as provided in sec. 270 of this chapter. HISTORY (Sec. 34 ch 163 SLA 1959)

Sec. 28.20.325.
EXCEPTION FOR BUSINESS RELATIONSHIP. If the driver at the time of an accident was driving, in the course and scope of his employment, a vehicle owned, operated or leased by his employer, the security deposit, proof of future responsibility and suspension provisions of this chapter apply to the employer and to the vehicles owned by him or registered under his name and do not apply to the driver. HISTORY (Sec. 1 ch 25 SLA 1966)

Sec. 28.20.330.
SUSPENSION TO CONTINUE UNTIL JUDGMENTS PAID AND PROOF GIVEN.
(a) If a person has an unsatisfied judgment against him requiring suspension under sec. 270 of this chapter, his license or nonresident's operating privilege shall remain suspended and shall not be renewed, nor shall a license or registration be issued in the name of the person, including a person not previously licensed, until the judgment is stayed or satisfied and until the person gives proof of financial responsibility subject to the exceptions in secs. 310 - 320, and 370 of this chapter.
(b) The proof required by (a) of this section shall be maintained during the period the person has a license or nonresident's operating privilege.

HISTORY (Sec. 35 ch 163 SLA 1959)

Sec.28.20.340
LICENSE CANCELLED, SUSPENDED OR REVOKED.
Upon receiving a record of the conviction of a person for driving a vehicle while his license was suspended, the department shall immediately suspend the registration of every vehicle registered in his name until he gives proof of financial responsibility for the future for each vehicle registered in his name. HISTORY (Sec. 36 ch 163 SLA 1959)

Sec. 28.20.360.
PAYMENTS SUFFICIENT TO SATISFY REQUIREMENTS.
(a) For the purpose of this chapter, a judgment is satisfied when
(1) $25,000 is credited upon a judgment given in excess of that amount because of bodily injury to or death of one person as the result of any one accident; or
(2) subject to the limit of $25,000 because of bodily injury to or death of one person, the sum of $50,000 is credited upon a judgment given in excess of that amount because of bodily injury to or death of two or more persons as the result of any one accident; or
(3) $10,000 is credited upon a judgment given in excess of that amount because of injury to or destruction of property of others as a result of any one accident.
(b) However, payments made in settlement of a claim because of bodily injury, death or property damage arising from the accident shall be credited in reduction of the amounts provided for in this section. HISTORY (Sec. 38 ch 163 SLA 1959; am secs. 60, 61 ch 69 SLA 1970; am sec. 3 ch 202 SLA 1975)

Sec. 28.20.370.
INSTALLMENT PAYMENT OF JUDGMENTS; DEFAULT.

(a) A judgment debtor upon due notice to the judgment creditor may apply to the court in which such judgment was rendered for the privilege of paying the judgment in installments and the court, without prejudice at any other legal remedy, may order and fix the amount and time of payment of the installments.

(b) The department shall not suspend a license or nonresident's operating privilege, and shall restore a license or nonresident's operating privilege suspended following nonpayment of a judgment, when the judgment debtor gives proof of financial responsibility and obtains an order permitting the payment of the judgment in installments. (c) If the judgment debtor fails to pay an installment specified by the court order, upon notice of default, the department shall immediately suspend the license or nonresident's operating privilege of the judgment debtor until the judgment is satisfied as provided in this chapter.
HISTORY (Sec. 39 ch 163 SLA 1959) -

Sec. 28.20.380.
REGISTRATION AND OPERATOR'S RIGHTS LIMITED BY EXTENT OF PROOF.

(a) When a certificate is filed showing that a policy is issued covering a motor vehicle owned by the insured, but not insuring the person when operating a motor vehicle not owned by him, the restriction may be removed upon the filing of a certificate showing an operator's policy issued to the person.
(b) If the department receives evidence of the violation of the restriction on the license, it may suspend the license until a certificate is filed showing an operator's policy issued to the holder of the license. HISTORY (Sec. 40 ch 163 SLA 1959)

Sec. 28.20.390.
ALTERNATE METHODS OF GIVING PROOF.
Proof of financial responsibility for a person who is not the owner of a vehicle may be given by filing

(1) a certificate of insurance as provided in secs. 410 or 420 of this chapter;

(2) a bond as provided in sec. 470 of this chapter;

(3) a certificate of deposit of money or securities as provided in sec. 490 of this chapter; or

(4) a certificate of self-insurance as provided in sec. 400 of this chapter, supplemented by an agreement by the self-insurer that, for accidents occurring while the certificate is in force, he will pay th same amount that an insurer would be obligated to pay under an owner'. motor vehicle liability policy if it had issued a policy to the self-insurer.
HISTORY (Sec. 41 ch 163 SLA 1959)

Sec. 28.20.400.
SELF-INSURERS.

(a) A person in whose name more than 25 vehicles are registered in this state may qualify as a self-insurer by obtaining a certificate of self-insurance issued by the department as provided in (b) of this section.

(b) The department may issue a certificate of self-insurance when it is satisfied that the person has and will continue to have ability to pay judgments obtained against him. The certificate may be issued authorizing a person to act as a self-insurer for either property damage or bodily injury, or both, or within the limits the department prescribes.

(c) Upon not less than 10 days' notice and a hearing pursuant to the notice, the department may upon reasonable grounds cancel a certificate of self-insurance. Failure to pay a judgment within 30 days after judgment becomes final is a reasonable ground for the cancellation of a certificate of self-insurance. HISTORY (Sec. 42 ch 163 SLA 1959)

Sec. 28.20.410.
CERTIFICATE OF INSURANCE AS PROOF.

Proof of financial responsibility for the future may be furnished by filing with the department the written certificate of an insurance carrier authorized to do business in this state certifying that there is in effect a motor vehicle liability policy for the benefit of the person required to furnish proof of financial responsibility. The certificate shall give the effective date of the motor vehicle liability policy, which shall be the same as the effective date of the certificate, and shall designate by description or appropriate reference all vehicles covered by it, unless the policy is issued to a person who is not the owner of a motor vehicle.
HISTORY (Sec. 43 ch 163 SLA 1959)

Sec. 28.20.420.
CERTIFICATE FURNISHED BY NONRESIDENT AS PROOF.

(a) A nonresident may give proof of financial responsibility by filing with the department a written certificate of an insurance carrier authorized to transact business in the state in which the vehicle described in the certificate is registered, or if the nonresident does not own a vehicle, then in the state in which the nonresident resides, if the certificate otherwise conforms with this chapter; the department shall accept it upon condition that the insurance carrier complies with (b) and (c) of this section.

(b) The insurance carrier shall execute a power of attorney authorizing the department of accept service on its behalf of notice or process in an action arising out of a motor vehicle accident in this state.

(c) The insurance carrier shall agree in writing that the policy shall conform with the laws of this state relating to the terms of motor vehicle liability policies issued in this state.
HISTORY (Sec. 44 ch 163 SLA 1959; am sec. 44 ch 32 SLA 1971) -

Sec. 28.20.430.
DEFAULT BY NONRESIDENT INSURER.
If an insurance carrier not authorized to transact business in this state, but qualified to furnish proof of financial responsibility in this state, defaults in an undertaking or agreement, the department shall not accept as proof a certificate of the carrier whether previously filed or thereafter tendered as proof, so long as the default continues.
HISTORY (Sec. 45 ch 163 SLA 1959)

Sec. 28.20.440.
MOTOR VEHICLE LIABILITY POLICY.
(a) In this AS 28.20.010 - 28.20.640, "motor vehicle liability policy" means an "owner policy" or an "operator's policy" containing an agreement or endorsement as provided in this section, or certified as provided in AS 28.20.410 or 28.20.420 as proof of financial responsibility for the future, and issued, except as otherwise provided in AS 28.20.420, by an insurance carrier authorized to transact business in this state, to or for the benefit of the person named as insured.
(b) The owner's policy of liability insurance shall
(1) designate by description or appropriate reference all vehicles which it covers;
(2) insure the person named and every other person using the vehicle with the express or implied permission of the named insured, against loss from the liability imposed by law for damages arising out of the ownership, maintenance or use of the vehicle within the United States of America or the Dominion of Canada, subject to limits exclusive of interests and costs, with respect to each vehicle, as follows: $25,000 because of bodily injury to or death of one person in any one accident, and, subject to the same limit for one person, $50,000 because of bodily injury to or death of two or more persons in any one accident, and $10,000 because of injury to or destruction of property of others in any one accident;
(3) contain coverage in the amounts set out in (2) of this subsection for the protection of the persons insured under the policy who are legally entitled to recover damages from owners or operators of uninsured motor vehicles because of bodily injury or death arising out of the ownership, maintenance or use of the uninsured motor vehicle, except that this coverage may be waived in writing by the insured on or before the effective date of the policy.
(c) The operator's policy of liability insurance shall insure the person named as insured against loss from the liability imposed upon him by law for damages arising out of the use by him of any motor vehicle not owned by him, within the same territorial limits and subject to the same limits of liability as are required for an owner's policy of liability insurance. -
(d) The motor vehicle liability policy shall state the name and address of the named insured, the coverage, the premium charges, the policy period and the limits of liability, and shall contain an agreement or an endorsement that insurance is provided in accordance with the coverage defined in AS 28.20.010 - 28.20.640 for bodily injury and death or property damage, or both, and is subject to all the provisic of AS 28.20.010 - 28.20.640.

(e) The motor vehicle liability policy need not insure liability under a workers' compensation law nor liability for damage to property owned by, rented to, in charge of or transported by the insured. (f) Every motor vehicle liability policy is subject to the following provisions but these provisions need not be contained in the policy.

(1) The liability of the insurance carrier becomes absolute whenever injury or damage covered by the policy occurs; the policy may not be cancelled or annulled as to this liability after the occurrence of the injury or damage; no statement made by the insured or on his behalf and no violation of the policy defeats or voids the policy.

(2) The satisfaction by the insured of a judgment for injury or damages is not a condition precedent to the right or duty of the insurance carrier to make payment on account of injury or damage.

(3) The insurance carrier may settle a claim covered by the policy, and if settlement is made in good faith, the amount of settlement is deductible from the limits of liability specified in (b) of this section.

(4) The policy, the written application for the policy, if any, and every rider or endorsement which does not conflict with the provisions of AS 28.20.010 - 28.20.640 constitute the entire contract between the parties.

(g) A policy which grants the coverage required for a motor vehicle liability policy may also grant lawful coverage in excess of or in addition to the coverage specified for a policy and the excess or additional coverage is not subject to the provisions of AS 28.20.010 - 28.20.640. With respect to a policy which grants excess or additional coverage the term "motor vehicle liability policy" applies only to that part of the coverage which is required by this section.

(h) A motor vehicle liability policy may provide that the insured shall reimburse the insurance carrier for any payment the insurance carrier would not have been obligated to make under the terms of the policy except for the provisions of AS 28.20.010 - 28.20.640.

(i) A motor vehicle liability policy may provide for proration of the insurance with other valid and collectible insurance.

(j) The requirements for a motor vehicle liability policy may be fulfilled by the policies of one or more insurance carriers which together meet the requirements.

(k) A binder issued pending the issuance of a motor vehicle liability policy fulfills the requirements for a policy.

HISTORY (Sec. 46 ch 163 SLA 1959; am sec. 2 ch 146 SLA 1966; am sec. 4 ch 202 SLA 1975; am sec. 60 ch 94 SLA 1980)

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Sec. 28.20.450.

NOTICE OF CANCELLATION OR TERMINATION OF CERTIFIED POLICY. When an insurance carrier certifies a motor vehicle liability policy under sec. 410 or sec. 420 of this chapter the insurance certified may not be cancelled or terminated until at least 10 days after a notice of cancellation or termination of the insurance is filed with the department, except that a policy subsequently procured and certified shall, on the effective date of its certification, terminate for the purpose of this chapter the insurance previously certified for a vehicle designated in both certificates. HISTORY (Sec. 47 ch 163 SLA 1959)

Sec. 28.20.460.
CHAPTER NOT TO AFFECT OTHER POLICIES.

(a) This chapter does not apply to or affect a policy of automobile insurance against liability which may now or hereafter be required by any other law of this state, except that the policy, if it contains an agreement or is endorsed to conform with the requirements of this chapter, may be certified as proof of financial responsibility under this chapter.

(b) This chapter does not apply to or affect a policy insuring solely the insured named in the policy against liability resulting from the maintenance or use by persons in the insured's employ or on his behalf of vehicles not owned by the insured.
HISTORY (Sec. 48 ch 63 SLA 1959)

Sec. 28.20.470.
BOND AS PROOF.
Proof of financial responsibility may be evidenced by the bond of a surety company authorized to transact business in this state. The bond shall be conditioned for payment of the amounts specified in sec. 230 of this chapter. The bond shall be filed with the department and shall not be cancellable except after 10 days' written notice to the department.
HISTORY (Sec. 49 ch 163 SLA 1959)

Sec. 28.20.480.
ACTION ON BOND. If a judgment given against the principal on a bond is not satisfied within 30 days after it becomes final, the judgment creditor may, for his own use and benefit and at his sole expense, bring an action in the name of the state against the company executing the bond. HISTORY (Sec. 50 ch 163 SLA 1959)

Sec. 28.20.490.
MONEY OR SECURITIES AS PROOF.
Proof of financial responsibility may be evidenced by the deposit of $25,000 in cash, or securities which are legal investments for saving banks or trust funds having a market value of $25,000. The department shall not accept a deposit unless accompanied by evidence that there are no unsatisfied judgments of any character against the depositor in the recording district where the depositor resides. HISTORY (Sec. 51 ch 163 SLA 1959; am sec. 15 ch 214 SLA 1975)

Sec. 28.20.500.
OWNER MAY GIVE PROOF FOR OTHERS.

(a) The owner of a motor vehicle may give proof of financial responsibility on behalf of his employee or a member of his immediate family or household. The furnishing of proof in this manner permits the person for whom it is given to operate a motor vehicle covered by the proof. The department shall endorse appropriate restrictions on the face of the license held by a person for whom proof is given by another, or may issue a new license containing these restrictions.

(b) The department, upon receiving satisfactory evidence of the violation of a restriction, may suspend the license until a certificate is filed showing a policy issued to the driver which covers the driver as operator or owner of the vehicle operated in violation of the restriction. -

Sec. 28.20.510.
SUBSTITUTION OF PROOF.
The department shall consent to the cancellation of a bond or certificate of insurance, or the department shall return money or securities to the person entitled to it, upon the substitution and acceptance of other adequate proof of financial responsibility under this chapter.
HISTORY (Sec. 54 ch 163 SLA 1959; am sec. 16 ch 214 SLA 1975)

Sec. 28.20.520.
OTHER PROOF MAY BE REQUIRED.
Whenever proof of financial responsibility filed under this chapter no longer fulfills the purpose for which it is required, the department shall required other proof as required by this chapter and shall suspend the license pending the filing of other proof.
HISTORY (Sec. 55 ch 163 SLA 1959)

Sec. 28.20.530.
APPLICATION OF DEPOSIT. The department shall hold the deposit to satisfy, in accordance with this chapter, any execution on a judgment issued against the person making the deposit for damages, including damages for care and loss of services because of bodily injury to or death of any person, or for damages because of injury to or destruction of property, including the loss of use of it, resulting from the ownership, maintenance, use or operation of a vehicle subject to registration under the laws of this state after the deposit is made. Money or securities deposited are not subject to attachment or execution unless the attachment or execution arises out of a suit for damages specified in this section. HISTORY (Sec. 52 ch 163 SLA 1959; am sec. 17 ch 214 SLA 1975)

Sec. 28.20.540.
DURATION, CANCELLATION AND RETURN OF PROOF.
(a) The department shall, upon request, consent to the immediate cancellation of a bond or certificate of insurance, or shall return to the person entitled to it money or securities deposited as proof of financial responsibility, or shall waive the requirement of filing proof, in any of the following events:

(1) at any time after three years from the date proof is required when, during the three year period preceding the request, the department has not received record of a conviction or a forfeiture of bail which would require or permit the suspension or revocation of the license or registration of the person by or for whom the proof was furnished; or

(2) upon the death of the person on whose behalf the proof was filed or the permanent incapacity of the person to operate a motor vehicle; or

(3) if the person who has given proof surrenders his license to the department.

(b) The department shall not consent to the cancellation of a bond or the return of money or securities if an action for damages upon a liability covered by the proof is pending or a judgment upon the liability is unsatisfied, or if the person who filed the bond or deposited money or securities has within one year immediately preceding the request been involved as a driver or owner in a motor vehicle accident resulting in injury or damage to the person or property of others. An affidavit of the applicant as to the nonexistence of these facts, or that he is released from all of this liability, or has been finally adjudicated not to be liable for the injury or damage is sufficient evidence in the absence of evidence to the contrary in the records of the department.

(c) Whenever a person, whose proof has been cancelled or returned under (a)(3) of this section applies for a license within a period of three years from the date proof was originally required, the application shall be refused unless the applicant reestablishes the proof for the remainder of the three-year period.

HISTORY (Sec. 56 ch 163 SLA 1959; am sec. 18 ch 214 SLA 1975)

Sec. 28.20.550.
TRANSFER OF REGISTRATION TO DEFEAT PURPOSE OF CHAPTER PROHIBITED.

(a) If an owner's registration is suspended under this chapter, the registration shall not be transferred nor the vehicle registered in any other name until the department is satisfied that the transfer of registration is proposed in good faith and not for the purpose or with the effect of defeating the purposes of this chapter.

(b) This section does not affect the rights of a conditional vendor, chattel mortgagee or lessor of the vehicle registered in the name of another as owner who becomes subject to this chapter.

(c) The department shall suspend the registration of a vehicle transferred in violation of this section. HISTORY (Sec. 57 ch 163 SLA 1959)

Sec. 28.20.560.
SURRENDER OF LICENSE AND REGISTRATION, AND FALSE AFFIDAVITS.

(a) A person whose license or registration is suspended under any provision of this chapter, or whose policy of insurance or bond, when required under this chapter, is cancelled or terminated, shall immediately return his license or registration to the department. If a person fails to return the license or registration to the department, the department shall immediately direct a peace officer to obtain possession of it and to return it to the department.

(b) A person who wilfully fails to return a license or registration as required in (a) of this section or who knowingly gives an affidavit required by this chapter which is false is punishable by a fine of not more than $500, or by imprisonment for not more than 30 days, or by both. HISTORY (Sec. 58 ch 163 SLA 1959)

Sec. 28.20.570.
FORGED PROOF.
A person who forges or, without authority, signs any evidence of proof of financial responsibility for the future, or who files or offers for filing evidence of proof of financial responsibility for the future, knowing or having reason to believe that it is forged or signed without authority, is punishable by a fine of not more than $1,000, or by imprisonment for not more than one year, or by both.
HISTORY (Sec. 59 ch 163 SLA 1959)

Sec. 28.20.580.
ASSIGNED RISK PLANS. After consultation with the insurance companies authorized to issue motor vehicle liability policies in this state, the director of the division of insurance shall approve a reasonable plan, fair to the insurers and equitable to their policyholders, for the apportionment among these companies of applicants for motor vehicles policies and other vehicle coverages who are in good faith entitled to but are unable to procure policies through ordinary methods. When a plan is approved, all the insurance companies shall subscribe to it and participate in it. An applicant for an assigned risk policy, a person insured under an assigned risk plan, and an insurance company affected may appeal to the commissioner of commerce and economic development from a ruling or decision of the authority designated to operate the plan. Failure to adopt an assigned risk plan does not relieve any person from responsibility under this chapter. HISTORY (Sec. 60 ch 163 SLA 1959; am sec. 16 ch 144 SLA 1977)

Sec. 28.20.585.
REINSTATEMENT FEE. If an operator's license is suspended under the provisions of this chapter, the department shall charge a person who applies for reinstatement of the operator's license a reinstatement fee of $50. HISTORY (Sec. 8 ch 78 SLA 1982)

Sec. 28.20.590.
PAST APPLICATION OF CHAPTER. This chapter does not apply to any accident or judgment arising from an accident or violation of the motor vehicle laws of this state, occurring before September 1, 1959. HISTORY (Sec. 61 ch 163 SLA 1959)

Sec. 28.20.600.
CHAPTER DOES NOT PREVENT OTHER PROCESS. This chapter does not prevent the plaintiff in an action from relying for relief upon other processes provided by law. HISTORY (Sec. 62 ch 163 SLA 1959)

Sec.28.20.610
PROVISIONS OF CHAPTER APPLY THROUGHOUT STATE.
The provisions of this chapter apply upon highways and elsewhere throughout the state. HISTORY (Sec. 63 ch 163 SLA 1959)

Sec. 28.20.620.
APPLICATION OF ADMINISTRATIVE PROCEDURE ACT.
Repealed by sec. 4 ch 140 SLA 1977.

Sec. 28.20.630.
DEFINITIONS
In this chapter unless the context otherwise requires
(1) Repealed by sec. 20 ch 214 SLA 1976.
(2) Repealed by sec. 2 ch 135 SLA 1977.
(3) "judgment" means a judgment which is final by expiration without appeal of the time within which an appeal may be taken, or final by affirmation on appeal, given by a court of any state or of the United States, upon a cause of action arising out of the ownership, maintenance, or use of a vehicle of a type subject to registration under the laws of this state, for damages, including damages for care and loss of services, because of bodily injury to or death of a person, or for damages because of injury to or destruction of property, including the loss of use of property, or upon a cause of action on an agreement of settlement for such damages;
(4) Repealed by sec. 2 ch 135 SLA 1977.
(5) Repealed by sec. 20 ch 241 SLA 1976; sec. 2 ch 135 SLA 1977.
(6) Repealed by sec. 2 ch 135 SLA 1977.
(7) Repealed by sec. 2 ch 135 SLA 1977.
(8) Repealed by sec. 2 ch 135 SLA 1977.
(9) Repealed by sec. 2 ch 135 SLA 1977.
(10) Repealed by sec. 2 ch 135 SLA 1977.
(11) Repealed by sec. 2 ch 135 SLA 1977.
(12) Repealed by sec. 2 ch 135 SLA 1977.
(13) Repealed by sec. 2 ch 135 SLA 1977.
(14) Repealed by sec. 2 ch 135 SLA 1977.
(15) Repealed by sec. 20 ch 241 SLA 1976.
HISTORY (Sec. 3 ch 163 SLA 1959; am sec. 20 ch 241 SLA 1976; am sec. 2 ch 135 SLA 1977)
Sec. 28.20.640.
SHORT TITLE.
This chapter may be cited as the Motor Vehicle Safety Responsibility Act.
HISTORY (Sec. 1 ch 163 SLA 1959)

END OF DOCUMENT

AGENCY: DEPARTMENT OF PUBLIC SAFETY **CATEGORY:** PUBLIC PROTECTION

PROGRAM: LIFE AND PROPERTY PROTECTION **BRU(S):** DRIVER/VEHICLE SERVICES

The Driver/Vehicle Services BRU is organized into four components: Vehicle Services, Driver Services, Field Services, and Administration. The basic purpose of the Vehicle Services unit is protection of ownership of vehicles by the maintenance of an official single source record of vehicle titles. License plate records also facilitate vehicle recovery when stolen. The purpose of the Driver Services unit is to restrict vehicle operation to those persons who are capable of safe operation by utilizing a system of driver testing, records maintenance, and a "driver improvement" function to identify and help improve or suspend drivers who violate safe driving laws. This unit also provides protection for innocent victims of accidents by suspending those drivers who do not meet their financial responsibilities resulting from an accident. The Field Services Unit operates the system of field offices where the public may obtain their vehicle titles, registrations, and driver licenses.

Driver and vehicle identification information collected is computerized for rapid retrieval by law enforcement agencies during investigation of criminal activities. This information is highly useful in identifying offenders. For instance, FBI statistics show that nationwide, a motor vehicle is involved in 50% of all crimes committed.

The Administration component includes the director's office, central support staff, and the municipal tax unit. The municipal tax unit is funded by charges assessed to municipalities which elect to levy a municipal motor vehicle tax; this tax is collected by the State.

PHONE CONTACT FOR MORE INFORMATION: Robert Rowan, Director 269-5551

SERVICE MEASURES	FY 82		FY 83	FY 84	
	PLAN	ACTUAL	PLAN	CONTINUATION	TOTAL
Number of registrations processed.	355,000	381,599	350,000	380,000	380,000
Number of titles issues.	190,000	161,080	160,000	170,000	170,000
Number of driver's licenses issued.	140,000	141,712	140,000	155,000	155,000
Accident reports processed.	20,000	20,444	17,000	22,000	22,000
Driver records produced.	96,000	77,942	90,000	85,000	85,000
Documents filmed.	2,100,000	1,996,306	2,100,000	2,200,000	2,200,000
Financial responsibility suspensions.	4,000	2,603	3,000	3,000	3,000
Point suspensions.	2,300	2,507	3,000	2,900	2,900

...ard report form ...cidents urged

...YORK — The standardiza... state accident reports is being ...ed to state regulators by ...ent Insurance Agents of ... Inc.

...recommends that an accident ...e developed by the National ...tion of Insurance Commis... in cooperation with IIR/... Corporation in order to cut ...for consumers, agents and ...while streamlining the ...ection process. In a letter to ...Vice President and Executive ...ttee Chairman Bill Gunter, ...the IIAA requested that an ...advisory committee be set ...elop such a form.

...request will be brought ...the NAIC's systems for dere... and improved regulation sub... at the NAIC meeting in ...this March.

• • •

Kilpatrick to assume ...onal executive roles

...YORK — Ralph S. Saul, ...of CIGNA Corporation, an... January 17 that the co-chief ...structure, established at ...of the 1982 merger of Con... General and INA, will be re... with a more traditional struc... as of the April 18 annual ...of shareholders. Following ...meeting it is planned that ...serve as chairman of the ...of directors and Robert D. ...will serve as president and ...executive officer of CIGNA. ...Kilpatrick have been co-chief ...since the merger.

...ting on this action, Saul ...major decisions to integrate ...General and INA have ...made and the policies and ...required to manage CIGNA ...established. Moreover, ...is expected to meet the goals ...Kilpatrick and I set for the ...of the merger. In view of the ...made regarding the merger, ...concluded in consultation with ...that it is now appropriate ...a more traditional form ...structure to address ...and operational needs of ...

...new structure Saul, in ...serving as chairman of the ...chair the executive and ...committees of the board.

...served as chairman and ...executive officer of INA from ...the merger. Kilpatrick, 58, ...as president and chief ...officer of Connecticut ...1976 until the merger, ...the company in 1954.

IIR/ACORD develops auto identification card

WHITE PLAINS, NY — Robert E. Merriman, executive vice president of the recently merged IIR/ACORD Corporation, has announced the availability of a uniform automobile insurance identification card effective February 15. Six of the 18 states that require proof of insurance as part of their mandatory automobile insurance laws have approved the ACORD form. Three other states appear to be nearing approving it, and several others have indicated that they are looking favorably upon it.

Those states where the card has been approved include Colorado, Connecticut, Delaware, Montana and Texas. Kansas also has given its approval, but has limited its use to private passenger automobiles.

Companies also are required to print and distribute ID cards of some type in Florida, Georgia, Hawaii, Idaho, Kentucky, Michigan, Nevada, New Jersey, New York, Oklahoma, Pennsylvania, and West Virginia. Some companies also issue ID's on a voluntary basis in states where they are not required. Although the majority of these forms are similar in appearance, each jurisdiction has some unique content or size requirement, necessitating separate forms which will comply with the state's regulation.

• • •

Reinsurance arbitration program offered by IAF

NEW YORK — A new arbitration program to help insurers and reinsurers speedily resolve their disputes has been developed by Insurance Arbitration Forums, Inc.

The "Excess/Primary Reinsurance Arbitration" program provides an effective vehicle for the settlement of inter-insurer disputes, according to Bernard L. Hines Jr., executive director of IAF, a non-profit industry organization.

"This program will enable insurers and reinsurers to resolve their disputes more quickly and efficiently," he said.

Prior to the establishment of the IAF program, there were no formal rules to guarantee an objective and prompt settlement of a reinsurance dispute, said Hines.

Now, through IAF's national network, cases involving all types of reinsurance disputes are being handled according to specific arbitration rules, he said. In addition, the entire arbitration process takes only 60 to 90 days.

Under the reinsurance program, disputing parties choose the hearing site and participate in the selection of arbitrators from IAF's group of experienced reinsurance executives.

Filing cost for the program is $250 for each disputing party. The program is voluntary and handled on a per case basis.

Additional information is available

EDITORIAL C...

The new cost

Theories of liability have develope... legal scholars and underwriters of a f...

The latest and perhaps the hardest... of liability for wrongful life . . . not w... theory was accepted by the Washi... (January 14 INSURANCEWEEK) as...

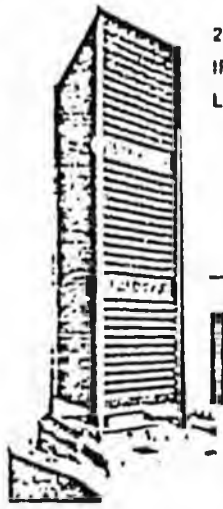
Under the recent ruling of the W... their parents may recover damages f... properly inform expectant parents o... prevented the choice of abortion.

It is difficult to argue against the r... sure from a physician concerning p... unborn child. It is logical in some in... the right to decide on abortion coul... doctor who failed to properly inform... defects. However, the ruling that th... damages against the doctor in favor... is stretching the judicial function bey...

Most of us will agree that we can... stances under which we would pref... the court to award damages to a c... wrongfully permitting the child to b... mation that could have resulted in ar... jury to place a negative measuremen...

Permitting recoveries for wrongf... liability to the unborn and to the ai... holding physicians liable for the su... permitting them to die.

Wrongful life liability and the im... expansion of liability for medical se... pressures on medical practitioners ... increase costs for patients.



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ALASKA STATE LEGISLATURE
HOUSE OF REPRESENTATIVES
RESEARCH AGENCY

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MAR 28 1983

March 28, 1983

MEMORANDUM

TO: Representative Joe Hayes
Attention: Jeff Day

FROM: David Teal
Research Staff

RE: Automobile Liability Insurance
Research Request Number 83-128

Jeff Day, of your staff, asked for information relating to automobile liability insurance. More specifically, he requested the latest estimates of the proportion of uninsured motorists in Alaska, the number of vehicles registered in the state, the number of licensed drivers, and the amount of property damage and personal injury caused by uninsured motorists.

Insured vs. Uninsured Motorists

As you may know, automobile liability insurance policies generally cover some persons not named on the policies; as far as the insurance provider is concerned, the unit of exposure is the vehicle, not the policy-holder or the number of potential operators. This factor makes determining the number of uninsured drivers very difficult and is the reason that data are usually presented in terms of uninsured vehicles rather than uninsured persons.

The Division of Insurance prepared statistics on the number of uninsured vehicles in Alaska, but included several caveats in the analysis. (See Attachment A.) That study used information from several sources and produced two estimates of the number of uninsured vehicles during several years. The estimates are so dissimilar that one must question their value. For example, the estimate of uninsured vehicles in 1980 was 40.5 percent by one method and 11.0 percent by the other method.

A third method, which was used by the Division of Drivers' Services in the Department of Public Safety, is likely to provide a much better estimate of the proportion of motorists in Alaska that are uninsured. The division reviewed records of accidents that occured during January of 1981 and found that 21 percent of motorists involved in accidents were uninsured. A repeat of the study in January of 1982 showed that

20 percent of motorists were uninsured. Applying the 20 percent figure to the vehicle registration statistics presented later in this memorandum produces an estimate of about 100,000 uninsured vehicles in the state. Figures for 1983 have not been compiled.

Liability Limits

Jeff Day noted that liability limits of $100,000 per person (to a maximum of $300,000 per accident) for bodily injury and $50,000 for property damage--traditionally written as 100/300/50--are "standard" and wondered how many insured drivers currently carry less than this amount of liability insurance. I was unable to find any written record of the number of motorists that purchase more insurance than is required by law, but it is worth noting that Alaska currently requires 25/50/10 and that Hawaii is the only state with higher limits than Alaska. (See Attachment B.)

The only way to determine the number of policies written for limits higher than the minimum is to contact the individual insurance companies. A reasonable estimate could be obtained by contacting State Farm, Allstate, Criterion, and United Services. Together, these companies insure about 70 percent of Alaska's motorists.

I was able to contact Allstate and State Farm Insurance Companies, and spokesmen for both said that their most common coverage is 100/300/50. In this sense, the 100/300/50 policy is the industry standard. According to State Farm Insurance, the additional cost of 100/300/50 amounts to only about $20 per year more than the 25/50/10 coverage. The company also pointed out that law suits now commonly exceed Alaska's current minimums.

Damage and Injury Caused by Uninsured Motorists

There are no requirements that records on this subject be maintained. Don Koch, of the Division of Insurance, stated that he wouldn't even be able to "guesstimate" because he felt that much of the damage is unreported and/or uncompensated. A similar opinion was expressed by representatives of the insurance industry.

As you may be aware, uninsured motorist coverage is a mandatory offering in Alaska. This means that insurance companies must offer the coverage and inform clients of its availability. There is no requirement that the coverage be purchased.

Registered Vehicles and Licensed Drivers

According to Sharon Naus, of the Division of Drivers' Services in the Department of Public Safety, there were 316,797 persons holding valid Alaska drivers licenses on January 10, 1983. She also reported that 407,870 vehicles were registered in Alaska in calendar year 1982. The following table shows the number of registered vehicles by vehicle type.

Motor Vehicles Registered in Alaska
Calendar Year 1982

Vehicle Type	Number
Passenger Auomobiles	217,719
Motorcycles	14,504
Commercial Trailers	10,079
Utility Trailers	37,999
Commercial Trucks	19,361
Pick-ups	106,851
Buses	1,357
TOTAL	407,870

Source: Department of Public Safety 3/83

* * *

In addition to material obtained from the Division of Insurance, I am attaching a recent House Research Agency memorandum on the subject of compulsory insurance. If you have questions about information presented in this memorandum and its attachments or have additional questions, please call.

Attachments

A) Alaska Drivers: Insured vs. Uninsured (Division of Insurance, undated)
B) Liability Limits (Division of Insurance, undated)
C) Research Request 83-48

ATTACHMENT A

ALASKA DRIVERS
Insured vs. Uninsured

The division's statistical needs respond to rate-making and solvency issues. Nevertheless, it has made an attempt to obtain some feeling as to what portion of the public may be uninsured. Unfortunately, a number of caveats must be placed on this information. The sources for the data used in the calculation come from several areas and in each case, this data is untested and has been subject to some adjustment or assumption which may cast suspicion on its accuracy.

You will note the substantial difference between the two charts. The reason for this difference is attributed to the different interpretation of what constitutes a private passenger type risk. The caveats following each chart detail the source of the numbers.

The data that follows is useful for "guesstimating" the percentage of insured motor venicles in Alaska. It does not relate to insured persons in Alaska. To our knowledge, there is currently no source for arriving at a number of insured persons since a policy, when written, covers some persons not named automatically.

The unit of exposure, as far as the insurer is concerned, is the number of vehicles not the number of potential operators.

Chart 1. (From Division of Insurance 1982 Statistical Analysis)

(1) Year	(2) Registered Autos	(3) Insured Car Years	(4) % Insured	(5) % Uninsured
1975	199,536	117,355	58.8	41.2
1976	221,386	120,964	54.6	45.4
1977	226,389	121,635	53.7	46.3
1978	232,425	123,581	53.2	46.8
1979	229,403	132,391	57.7	42.3
1980	230,040	136,895	59.5	40.5

(1) This column is on a calendar basis.

(2) The number of registered automobiles was obtained from the Division of Planning and Research in the Department of Transportation and Public Facilities of the State of Alaska. The number of auto registrations derives from the following types of license plates:

- Regular
- Personalized
- Call Letter
- Other, including legislator, historic vehicle
- Pickups and vans
- Farm trucks

The numbers have been adjusted to remove duplicate registrations. They to not include unregistered vehicles, nor is there a method to arrive at a reasonable "guesstimate" of that number. Prior to 1977, pickups and vans were included in the freight-light trucks classification. We have made an adjustment to separate the pickups and vans from that classification, based on the relationship during 1977-79 of the pickups and vans classification to the freight-light trucks classification. Official automobiles (State, federal and municipal) are not included. Some fleets of automobiles have been included but are not identifiable by name or number. The chart relates only to private passenger registrations and insurance.

(3) These figures were obtained from the Automobile Insurance Plans Service Office (AIPSO), a licensed rating organization for this State. Included are voluntary and assigned risk nonfleet private passenger vehicles insured. An insured car year is one automobile insured for one year, so that, if a car is insured for six months, that would be 1/2 car year.

(4) = (3) ÷ (2)

(5) = 100% - (4)

Chart 2 (from AIPSO Ins. Facts, 1982)

Year	Registered Autos*	Insured Car Years+	% Insured	% Uninsured
1973	111,455	99,430	89.2	10.8
1974	135,902	99.430	70.2	29.8
1975	141,921	117,355	82.7	17.3
1976	154,093	120,964	78.5	21.5
1977	159,896	121,635	76.1	23.9
1978	162,578	123,619	82.2	17.8
1979	153,402	132,391	86.3	13.7
1980	153,774	136,895	89.0	11.0

* Represents number of passenger car registrations based on data from U.S. DOT, Federal Highway Administration, Highway Statistics Division, Office of Highway Planning. (A) Includes all new and renewal passenger car registrations. (B) Includes passenger car fleet vehicles, taxi cabs, and miscellaneous private passenger-car type vehicles registered as passenger cars. (C) Includes passenger car registrations made throughout the year, although vehicle may have ben registered only a portion of the year. (D) Vehicles registered in one name and later sold and registered in another name count as two registrations, etc.

+ Represents 1/12 of the number of exposure months of liability insurance on vehicles rated as private passenger nonfleet type risks. (A) Includes many pickup trucks insured as passenger car type but not so registered. (B) May include other vehicles insured as passenger car risks, but registered as antiques, station wagons, vanity, press, ham radio, etc. (C) Does not include motorcycles recreational vehicles, nonowner risks, and cars rated in a fleet or self-insured.

ATTACHMENT B

In view of the interest being expressed by a number of persons in reviewing the limits of liability required by the Alaska Safety Responsibility Act (financial responsibility law) the Division of Insurance has updated exhibits originally prepared when the limits were last revised in 1975.

EXHIBIT A reflects the purchasing power or value of the dollar based on the annual average value as measured by consumer prices. The base year utilized is 19[illegible] the year of Alaska Statehood. The indices used were developed by the U. S. Bureau of Labor Statistics. Column (3) shows the limits of liability for bodily injury applicable to the particular year. Column (5) does the same for property damage. The figures for 1982 and 1983 are projections and are not firm.

EXHIBIT B is the same concept as EXHIBIT A except it uses the date of last change of limits as the base year and thus uses a shorter span of years.

EXHIBIT C is an excerpt from the FC&S BULLETINS published by the National Underwriter Company of Cincinnati, Ohio. It depicts the current (as of January 1983) limit of liability for each state of the United States and for each province in Canada.

March 1, 1983

Division of Insurance
Department of Commerce & Economic Development
State of Alaska

PURCHASING POWER OF FINANCIAL RESPONSIBILITY LAW LIMITS USING 1959 (statehood) AS BASE YEAR

(1) Year	(2) Purchasing Power indx	(3) B.I. Limits (000)	(4) Purchasing Power of (3)	(5) P.D. Limit (000)	(6) Purchasing Power of (5)
1959	1.000	10/20	10000/20000	5	5000
1960	.984	10/20	9840/19680	5	4920
1961	.975	10/20	9750/19500	5	4875
1962	.964	10/20	9640/19280	5	4820
1963	.953	10/20	9530/19060	5	4765
1964	.940	10/20	9400/18800	5	4700
1965	.924	10/20	9240/18480	5	4620
1966	.899	10/20	8990/17980	5	4495
1966	.899	15/30	13485/26970	5	4495
1967	.873	15/30	13095/26190	5	4365
1968	.838	15/30	12570/25140	5	4190
1969	.796	15/30	11940/23880	5	3980
1970	.751	15/30	11265/22530	5	3755
1971	.720	15/30	10800/21600	5	3600
1972	.698	15/30	10470/20940	5	3490
1973	.657	15/30	9855/19710	5	3285
1974	.587	15/30	8805/17610	5	2935
1975	.542	15/30	8130/16260	5	2710
1975	.542	25/50	13550/27100	10	5420
1976	.512	25/50	12800/25600	10	5120
1977	.481	25/50	12025/24050	10	4810
1978	.447	25/50	11175/22350	10	4470
1979	.402	25/50	10050/20100	10	4020
1980	.355	25/50	8875/17750	10	3550
1981	.325	25/50	8125/16250	10	3250
1982est.	.310	25/50	7750/15500	10	3100
1983est.	.295	25/50	7375/14750	10	2950
Proposals					
1983est.	.295	50/100	14750/29500	25	7375
1983est	.295	100/200	29500/59000	25	7375

Prepared by: Alaska Division of Insurance
Based on U.S. Bureau of Labor Statistics
Date: March 1, 1983

PURCHASING POWER OF FINANCIAL RESPONSIBILITY LAW LIMITS USING 1975 (date of last change in financial responsibility law limits) AS BASE YEAR

(1) Year	(2) Purchasing Power Indx	(3) B.I. Limits (000)	(4) Purchasing Power of (3)	(5) P.D. Limit (000)	(6) Purchasing Power of (5)
1975	1.000	25/50	25000/50000	10	10000
1976	.945	25/50	23625/47250	10	9450
1977	.887	25/50	22175/44350	10	8870
1978	.824	25/50	20600/41200	10	8240
1979	.742	25/50	18550/37100	10	7420
1980	.654	25/50	16350/36700	10	6540
1981	.599	25/50	14975/29950	10	5990
1982est.	.572	25/50	14300/28600	10	5720

Prepared by: Alaska Division of Insurance
Based on: U.S. Bureau of Labor Statistics
Date: March 1, 1983

ECOSE RESEARCH AGENCY
Pouch Y - State Capitol
Juneau, Alaska 99811
465-3991

MEMORANDUM March 6, 1980

TO: Representative Sally Smith

FROM: Peter B. Froehlich

RE: Uninsured Motorists and the Motor Vehicle Safety Responsibility Act (AS 28.20) (Research Request No. 69)

You recently asked this agency to explore possible methods to "tighten up" the Motor Vehicle Safety Responsibility Act (AS 28.20). In the course of our research on the Act, we learned that the Senate Commerce Committee has been studying the same issue. That committee has received a report from Richard Block, former director of the Division of Insurance, addressing amendments to the Act, as well as other approaches to the problem of uninsured motorists in Alaska. Senator Bradley has recently introduced one bill as a result of Mr. Block's report (SB 460 authorizing municipalities to impose mandatory insurance). Another, which will amend and tighten up the Motor Vehicle Safety Responsibility Act is currently being drafted by the Legal Services Division of the Legislative Affairs Agency for the committee.

In light of the existence of Mr. Block's report and the legislation which Senate Commerce Committee intends to introduce amending the Act, you have instructed us that completion of our research pursuant to your request was not necessary. Nonetheless, we offer this memorandum as a brief summary of our work thus far.

* * * * * * * * * * *

The problem at hand is that over 50% of the registered private vehicles in Alaska are completely uninsured. In 1978, according to Division of Insurance statistics, the figure was 49.1%. Although that year is the most recent for which complete data is available, the trend has been an increase in the figure each year.

The answer to the problem is not at all simple, and many possibilities have been suggested. Mandatory insurance appears to be the least popular for several reasons. In the states which have tried it, enforcement and administration has been an expensive burden and insurance rates have often climbed faster than in states without mandatory insurance.

"No fault" insurance is perhaps a more workable solution, but has not been popular with insurance carriers, attorneys and others in Alaska when it has been considered by the legislature in the past.

Amendment of the existing Motor Vehicle Safety Responsibility Act may be the most feasible answer. This approach would take advantage of the main body of an existing chapter of the Alaska Statutes. It would therefore result in less disruption, adjustment and staff increase in the existing bureaucracy which implements the Act. It would be simpler both to legislate and to administer. Because fewer people would be forced by law to buy insurance, individual freedom of choice would be preserved to a greater degree. While all possible problems with uninsured drivers would not be solved, significant improvement could result from amending the Act.

The Motor Vehicle Safety Responsibility Act was enacted in 1959 during the first legislative session after Statehood. The Act deals with two separate subjects: 1) the requirement of deposit of security by uninsured motorists involved in an accident (AS 28.20.050-220); and 2) the requirement of proof of financial responsibility for the future by motorists convicted of certain offenses or involved in an accident (AS 28.20.230-600). The Act has been amended 13 times from 1964 through 1977. However, none of these amendments were really substantive. They merely made minor changes such as raising dollar amounts (e.g., ch 202 SLA 1976 and ch 144 SLA 1977), repealing some sections and subsections (e.g., 53 SLA 1973 and ch 135 SLA 1977), and substituting the Department of Public Safety for the Department of Revenue in the administration of the Act (e.g., ch 214 SLA 1976). Although the Alaska Supreme Court made several specific suggestions for substantive amendments to the Act in Paulson vs. National Indemnity Co. 498 P2 d731 (AK 1972), no remedial action was taken by the legislature. The Act has been significantly interpreted in one other Alaska Supreme Court case, Hart vs. National Indemnity Co. 422 P2 d1015 (AK 1967). It has been cited or applied in at least 9 other cases, including three Alaska Supreme Court cases, two Federal District Court cases, and four Alaska Superior Court cases.

Several amendments to the Act have been suggested either by others contacted during our research or by the research itself. First, of course, are the suggestions of the Alaska Supreme Court in the Paulson decision 498 P2 d731 at 737. These suggestions are directed at tightening the requirements of the second part of the Act for proof of financial responsibility for the future by motorists involved in accidents. The court suggested the repeal of language in AS 28.20.410 and 440 which allows a motorist to satisfy the act by insuring only one of several vehicles he owns.

Two amendments were suggested by Ken Moore, director of the Division of Insurance in a January 24, 1980 letter to Senator Hackney. These amendments would 1) prevent registration of a vehicle or renewal thereof by anyone required under the Act to file proof of responsibility for the future who did not do so; and 2) make any falsification of such proof punishable by a fine or jail sentence. The latter suggested amendment appears to be covered by existing AS 28.20.570. The first suggestion, essentially tightening the relationship between the Act and AS 28.10 (Vehicle Registration) appears to be necessary and desirable; however, it would be susceptible to devious compliance by an individual who obtains an insurance policy, registers his car, and then cancels his policy.

Another possible amendment to tighten the Act would be repealing AS 28.20.260(b) which exempts anyone involved in an accident who establishes his freedom from fault in court from the proof of financial responsibility in the future requirement. The Department of Public Safety in 13 AAC 08.110 has implemented this section by providing that only those who "in the department's opinion" stand a "reasonable possibility" of being held liable in court need provide the required proof. Eliminating the exemption of AS 28.20.250(b) would force more people to prove financial responsibility and save the department from making its finding as to reasonable possibility of liability. However, it would also force innocent parties to accidents to buy what would probably be high risk, high cost "SR 22" insurance.

One last amendment which has been suggested may be the most effective measure. It is a suggestion which apparently arose from Mr. Block's report to the Senate Commerce Committee and will be included in that committee's bill. This approach would follow the example of New Mexico and enact a fairly stiff penalty (fine and/or jail) for any uninsured motorist who is involved in an accident in which he has any fault.

In conclusion, we should note that the whole area of automobile insurance and solutions to the problem of uninsured motorists is very complex, and no perfect solutions seem to be available. If you have any futher questions or desire any additional background information on this matter, please contact us.

PBF/dp

A STUDY OF UNINSURED MOTORISTS INVOLVED IN REPORTED AUTOMOBILE ACCIDENTS

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ANN DURAND

INSURANCE INDUSTRY STUDIES
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A Study of Uninsured Motorists Involved in Reported Automobile Accidents

Overview

A study of the characteristics of uninsured motorists and of the vehicles they drive has been done by the Personal Lines Committee of the All-Industry Research Advisory Council (AIRAC). This study was based on data obtained from official accident report forms filed with motor vehicle departments in seven states--California, Florida, Louisiana, North Carolina, Oregon, Virginia, and West Virginia. It was assumed that a vehicle was uninsured if the accident report did not show the vehicle was insured, or if the driver at the time of the accident was other than the owner and no insurance was shown.

Major findings from this study of uninsured drivers involved in reported accidents were as follows:

1. About 70% of the uninsured motorists in the study were males. In all accidents (including both insured and uninsured), almost 70% of the drivers were males, also. Thus, there does not appear to be any significant difference by sex in the insured population and the uninsured population. It is interesting to note that males, who make up 53% of all licensed drivers, were involved in a disproportionate share of accidents.

2. Uninsured motorists tended to be younger drivers. Some 46% of the uninsured motorists in the study were under age 25 compared with 38% of all drivers involved in accidents and 22% of all licensed drivers in the seven survey states.

3. About 30% of the uninsured motorists were not owners of the vehicles driven in the reported accidents. Younger drivers were less likely than older drivers to be owners (possibly a reflection of young people driving parents' cars).

4. A large proportion of the uninsured vehicles were older models. Some 46% of the uninsured vehicles in the study were 1971 models or older compared with 36% of all cars in operation.

5. A special analysis of the areas of residence of the uninsured motorists examined levels of income and of mobility. This analysis suggested that failure to have auto insurance was not restricted to a limited segment of the population (i.e., the uninsured motorists were not concentrated in any particular types of areas.)

Introduction

Although the magnitude of the problem presented by the uninsured driver to the insured public and to the auto insurance industry is difficult to measure, it has been alleged that the number of uninsured drivers is increasing and that a major reason for car owners driving without insurance is the high cost of such auto insurance. In 1978, the Personal Lines Committee of the All-Industry Research Advisory Council (AIRAC) charged a subcommittee with exploring changes in consumer behavior resulting from increases in auto insurance premium. One project initiated by this subcommittee was a study of the characteristics of uninsured motorists and of the vehicles they drive. This report summarizes the results of that study.

Methodology

Recognizing the limitations of examining aggregate statistics comparing car registrations with insured cars and of surveying consumer attitudes and behavior (possible self-reporting bias), the approach taken in this study was to examine information provided on official accident report forms that described accidents involving private passenger vehicles. Information about uninsured drivers and vehicles was provided by motor vehicle departments in seven states from the reports of accidents that occurred during a one-month period or from reports processed during a one-month period. For the purpose of this study, it was assumed a vehicle was uninsured if the accident report did not show that the vehicle was insured. Also, if the driver was other than the owner and no insurance was shown, it was assumed that there was no insurance applicable. It should be noted that data in this study describing uninsured drivers were based solely on accident reports filed in the seven survey states, and no effort was made in the course of this study to verify the accuracy or completeness of these reports.

Information was obtained from the states of California, Florida, Louisiana, North Carolina, Oregon, Virginia, and West Virginia using survey forms similar to that shown in Appendix A. The following items were collected for each uninsured driver: accident date, accident location (county), residence ZIP code, birthdate, sex, vehicle ownership, vehicle model year, vehicle make, and types of damage. States were selected to take part in this study on the basis of their ability to provide the desired information and their willingness to participate. A list of survey periods is shown in Appendix B for each participating state.

It should be noted that this method did not provide information about uninsured motorists in general, but about uninsured motorists who were involved in accidents reported to their respective state motor vehicle departments. Consequently, comparisons in this report of uninsured motorists with distributions of all drivers involved in accidents are more meaningful than comparisons with all licensed drivers (which are also provided). Because distributions of all drivers involved in accidents were not available for the seven survey states individually, data for 24 states combined were used for comparison purposes. Unfortunately, appropriate distributions of all vehicles involved in accidents by make and by model year were not available.

Summary of Results

Descriptive information was collected for a total of 6,159 uninsured motorists involved in reported accidents in the seven survey states. The number of uninsured motorists and the number of accident reports reviewed during the survey period are shown for each state in Table 1. The largest absolute numbers of uninsured motorists were found in the states of Florida (2,169) and California (1,035). The particularly small number of uninsured motorists in North Carolina (51) was probably a result of the selection criterion used by that state: information was provided only for those cases where action was being taken by the state. It is not recommended that state-to-state comparisons be made of the number of

Table 1

Number of Uninsured Motorists and Number of Accident Reports Reviewed by State

State	Number of Uninsured Motorists Involved In Reported Accidents	Number of Accident Reports Reviewed
California	1,035	47,494
Florida	2,169	6,539
Louisiana	778	24,762
North Carolina	51	Not Available
Oregon	446	10,535
Virginia	773	38,297
West Virginia	907	4,950

uninsured drivers as a percentage of accident reports reviewed because of suspected differences in data collection methods among the participating states. This report focuses on descriptions of uninsured motorists and vehicles rather than on such comparisons of incidence for this reason.

It should be noted that the number of uninsured motorists per state may differ in subsequent tables due to varying amounts of missing data for individual survey items. Tables presented in the remainder of this report are based on valid data only.

Sex and age of uninsured motorists are examined individually in Tables 2 and 3, and Table 4 contains distributions of uninsured motorists by age and sex combined. Similar proportions of uninsureds involved in accidents and of all drivers involved in accidents were males. A disproportionately large number of the uninsured drivers and of all drivers in accidents were found to be males when comparisons were made with the distribution of all licensed drivers in the seven survey states. Almost 70% of all uninsured drivers in the study and of all drivers involved in accidents were males compared with 53% of all licensed drivers in the seven survey states (see Table 2 and Figure 1).

Uninsured motorists tended to be younger drivers as shown in Table 3 and Figure 2. Drivers under age 20 accounted for 20% of the uninsured motorists in the study compared with 18% of all drivers involved in accidents and 8% of all licensed drivers. About 46% of the uninsured motorists were 24 years old or younger compared with 38% of all drivers involved in accidents and 22% of all licensed drivers.

The distributions of uninsured motorists and of all licensed drivers categorized by age and sex are shown in Table 4. A similar distribution for all drivers involved in accidents was not available. Consequently, comparisons with all drivers involved in accidents by age and by sex that are shown in Tables 2 and 3 should be a consideration when interpreting information shown in this table. Young males under age 25 accounted for about one-third of the uninsured motorists for the seven states combined, but only 12% of all licensed drivers were males in this age group. Some 18% of the uninsured motorists and 37% of all licensed drivers in the

seven survey states were females aged 25 or older. Similar observations regarding the age and sex of uninsured motorists could be made for each of the seven participating states individually.

A substantial number of uninsured motorists were not owners of the vehicles involved in the reported accidents. As shown in Table 5, about 30% of all uninsured motorists in the study did not own the vehicles driven, and the percentages of nonownership ranged from a low of 20% in California to a high of 44% in Louisiana. The strong relationship between vehicle ownership and driver age (possibly a reflection of young people driving parents' cars) is apparent in Table 6. Half of the uninsured motorists under age 20 did not own the vehicles which they drove at the time of their accidents compared to 30% of those between the ages of 20 and 24. The percentage of uninsured motorists who were nonowners continued to decrease with increasing age for the other age groups shown in this table.

Distributions of uninsured vehicles by model year and by make are shown in Tables 7 and 8. Uninsured vehicles tended to be somewhat older when comparisons were made with all vehicles in operation (see Table 7 and Figure 3). About 46% of the uninsured vehicles in the study and 36% of all cars in operation were 1971 models or older. This general observation regarding uninsured vehicle age applied to all states in the study except Louisiana where 28% of the uninsured vehicles were reported to be 1971 models or older. Strikingly higher percentages of uninsured vehicles were in this age group in North Carolina (68%--but the sample size was very small) and in Oregon (64%).

There was no apparent relationship between vehicle make and involvement in a reported accident while uninsured. As shown in Table 8, the distribution of uninsured vehicles in the study by make was similar to the distribution of all cars in operation.

Residence areas of the uninsured motorists and of all people in four of the survey states were compared in an effort to determine the extent to which the failure to have auto insurance (and involvement in a reported accident) was restricted to a limited segment of the population.

Tables 9 and 10 contain distributions of income levels and of mobility (i.e., percentages of households with length of residence two years or less) for residence ZIP code areas of the uninsured motorists and comparison distributions for the state populations. This analysis was restricted to the states which supplied ZIP codes for at least 85% of the uninsured motorists and for which there were adequate numbers of uninsureds. There was no consistent pattern appearing in either the income distributions or in the mobility distributions that was present for each of the four states. This suggested that uninsured motorists were not concentrated in any particular types of areas.

Further analyses of accident locations and areas of residence were done in order to discover whether there was a relationship between driving in urban areas and having auto insurance. As shown in Table 11, 32% of the accidents in Florida involving uninsured motorists occurred in Dade County (Miami) while 15% of all vehicles in Florida were registered in that county. Similarly, 39% of the accidents reported in California occurred in Los Angeles County compared to 31% of all registered vehicles (see Table 12). A substantially higher percentage of the uninsured motorists than of the total population in California resided in the city of Los Angeles--13% compared to 8%--as shown in Table 13. These comparisons seem to support a hypothesis that uninsured motorists were more likely to drive or to reside in urban areas. However, accident frequencies are higher in urban areas than in nonurban areas. Thus, since this study was based on uninsured motorists who were involved in reported accidents, these comparisons may reflect, in part, a higher accident frequency in urban areas rather than a characterization of uninsured motorists.

Consumer Affairs

(Phoenix) Arizona Republic, April 9, 1982

4-year compulsory auto-insurance plan advances

By Joel Nilsson
Republic Staff

A four-year experimental program including compulsory automobile insurance or proof of financial responsibility for all Arizona drivers was approved Thursday by the Senate Commerce and Labor Committee.

The panel revised a House-passed version by placing the provisions into law with an automatic repeal date of Dec. 31, 1986, and establishing a Mandatory Vehicle Insurance Review Commission to gauge the impact of the legislation.

As passed by the House on March 8, the provisions would have been placed in statute with no expiration date. House Bill 2333 was approved by the House on a 46-10 vote.

The committee's 6-1 approval on a bipartisan vote apparently ensures Senate passage of the proposal, which is similar to other measures that have failed repeatedly in the Senate.

Residents would be required to carry auto insurance or other proof of financial responsibility when they register or re-register their vehicles and to sign a sworn statement that the financial responsibility will remain in effect for the entire registration period.

Rep. Bill English, R-Sierra Vista, who has introduced auto-insurance measures in each of the last four years, called the amended version "the most finely tuned measure of its kind in the entire United States."

English estimated that 40 percent of Arizona's motorists, or 600,000 people, do not have vehicle insurance.

Under the legislation, a driver cited in an accident would be required to surrender his license, which would be returned only after demonstrating proof of financial responsibility in court.

The measure would repeal existing financial-responsibility statutes, and the Motor Vehicle Division would be required to verify annually, through random selection, the financial responsibility of owners of up to 10 percent of the state's registered motor vehicles.

Failure to prove financial responsibility would be a Class 1 misdemeanor with a minimum $250 fine for the first offense. Subsequent offenses would carry higher fines, mandatory license suspensions and jail terms.

The proposed commission in the Department of Insurance would monitor the program to ascertain if the number of uninsured motorists declined; enforcement and prosecution problems, if any; and determine whether insurance premiums increased as a result of mandatory auto insurance.

The measure would require that reports by the commission be forwarded to the Legislature annually.

Sen. Peter Kay, R-Phoenix, asked English whether he lacked conviction for compulsory insurance by agreeing to make it a four-year experimental program beginning Dec. 31.

English said he has "total conviction" in the program and said the expiration was "part of the political deal I cut with Senator Corbet," referring to Senate President Leo Corbet, R-Phoenix.

Also adopted by the panel was an amendment that would prohibit "stacking" of underinsured- and uninsured-motorist coverage.

Stacking — allowing damages that exceed policy limits in one category to be paid from the other category — was opposed by insurance companies but defended by David Gage, representing the Arizona Trial Lawyers Association.

Gage contended the anti-stacking provision was "a hidden trap for the unwary" and was "designed to reduce insurance-company payouts."

[illegible] Republic, March 17, 1961

Compulsory auto-insurance bill gets tentative OK in House

By Don Harris
Republic Staff

The Arizona House late Monday tentatively approved a bill calling for mandatory automobile insurance with a provision that could land violators in jail for 48 hours.

The measure, House Bill 2129, also increases the minimum coverage for liability and property damage and sets up procedures for tracking down uninsured motorists.

Another aspect of the bill would declare a driver's license to be suspended or revoked if it were found that the driver lied about having insurance coverage when he registered his vehicle.

House members debated the comprehensive and complex bill for more than an hour before tentatively approving it in a standing vote, 31-6.

The bill is certain to receive close scrutiny in the Senate. Senate President Leo Corbet, R-Phoenix, commented, "All the information we get is that it will raise the price of insurance. We're not interested in doing that. The bill has some good features. We will look at it and try to extract those good portions."

Corbet questioned the constitutionality of sending a motorist to jail for failing to have insurance. He said the U.S. Constitution prohibits jailing a person for failing to pay a debt.

As originally prepared, the measure would have mandated a 48-hour jail term for any uninsured motorist involved in an accident. The amended version that was adopted provides for a hearing procedure in which the two days in jail would not be served until the driver was found guilty by a magistrate.

Rep. Bill English, R-Sierra Vista, chief sponsor of the bill, said a motorist accused of failing to have insurance could attempt to avoid jail by making a plea that he thought, in good faith, he was insured.

English urged passage of the bill, saying it is needed to "help those poor folks who are damaged irreparably" by uninsured motorists.

"We need to take a firm grip on this," he said. "We need to get tough. It is totally irresponsible to be driving on the streets without adequate insurance."

Rep. Rhonda Thomas, R-Phoenix, successfully amended a provision on the minimum allowable coverage. Present standards call for $15,000 liability coverage for injury to one person, $30,000 for injury to two or more, and $10,000 for property damage. The bill proposed to push those to $25,000, $50,000 and $15,000, respectively. Mrs. Thomas' amendment sets the minimums at $20,000, $40,000 and $10,000, respectively.

She charged that, under the original proposal, insurance rates would have increased by about $80 a year, roughly a 10 percent boost. Mrs. Thomas said that under her proposal, rates would go up about 6 percent.

Rep. Clare Dunn, D-Tucson, criticized the provision that calls for a random sampling each year of 10 percent of the licensed drivers to uncover uninsured motorists who lied about their financial responsibility when they registered their vehicles.

If a motorist failed to respond to the survey notice mailed by the Motor Vehicle Division, it would be assumed under the terms of the bill, that the motorist did not have insurance. That would enable the state to revoke the individual's license.

"Get ready for some real havoc in your district," Miss Dunn said, warning that someone on vacation who failed to respond in time would lose his license.

New auto insurance law is tougher, but still has problems

By SUSAN HEADDEN

A 20-year-old driver crosses the center line on a busy street and crashes head-on into another car, killing both its occupants.

The victims are parents and breadwinners. Their family suffers not only personally, but financially, because the motorist who caused the accident is uninsured.

"You could legitimately expect a jury award of about $400,000," said Indianapolis attorney Andrew Young, who handled such a case. "But there's no point. That family will go uncompensated."

IN RECENT years, the risk of causing a serious accident has not been enough to keep an estimated 13 percent of Indiana's registered motorists from driving without insurance. But their habits may change after Jan. 1, when changes in the state's "proof of financial responsibility" law will go into effect.

The changes, adopted by the 1982 General Assembly, will require motorists to show proof of insurance before they register vehicles. Violations will be Class C misdemeanors, carrying penalties of up to $500 and 60 days in jail.

While it stops short of being a compulsory insurance law, the new statute is tougher than its predecessor. The current law requires that proof be shown only after the fact — in the case of an accident in which a driver causes death, personal injury or property damage in excess of $200. Penalties are limited to a two-year suspension of a driver's license.

SUPPORTERS HOPE the new law will provide added protection for all road users. For others affected by it, the law carries various consequences:

Major insurance companies stand to lose money, as well as self-control. The Bureau of Motor Vehicles will gain responsibility and paper work. And agents specializing in writing policies for high-risk motorists are expected to do a land-office business.

According to Rep. Jeffrey F. Espich (R-Uniondale), who sponsored the bill, uninsured drivers account for 20 to 30 percent of Indiana's traffic accidents.

Because many of the uninsured have poor driving records, they often are able to buy insurance only from companies that specialize in high risks and charge correspondingly high prices.

ONE SUCH AGENT, Robert Friedmeyer of All Risk Insurance, reports a surge in inquiries since the law was passed. He expects a boom in his business by the first of the year.

"They put a few little teeth into the law and it will make people think twice about driving without insurance," Friedmeyer said. "So far, people think it's compulsory — and we haven't bothered to enlighten them."

Likewise, larger companies and agents catering to the average risk client will take on more customers. But they're not as pleased as the high risk specialists with the prospects for new business.

Insurance customers, like clients of banks and law firms, come in degrees of desirability. And like the least credit-worthy mortgagee and the lawyer's charity case, there are drivers whom even All Risk won't insure.

FOR THE HEAVY-FOOTED and the accident prone, there is the assigned risk plan — a pool of the highest-risk drivers, whom insurance companies must accept at relatively low rates. Under the new law, the assigned risk pool (now representing 0.2 percent of the driving population) is sure to grow — but it won't bring in any more profits for the insurance companies.

"The assigned risk pool has never been self-supporting," said Charles Van Arsdale, president of the Insurance Institute of Indiana and an opponent of the law. "They have always been a loss factor, and that will be passed on to the normal insured in the way of higher rates."

Expansion of the assigned risk pool is only part of the problem the law poses for the insurance industry.

CRITICS SAY THE new provisions lay the foundation for a compulsory insurance law, wrapped in red tape, that would increase costs for the consumer and the industry.

"The common result," Van Arsdale said, "is a complex bureaucracy and the need for insurance companies to exchange information with the department of motor vehicles. And this will lead to an increase in premiums."

According to opponents and proponents of the new law, the greatest threat to its effectiveness — and to its simplicity — is enforcement.

A committee continues to work out details, but so far all the Bureau of Motor Vehicles plans to do is require that motorists registering vehicles submit a sworn statement saying they have a policy of a given number with a given insurance company.

THE SIGNATURE will get the motorist a license plate, but short of the risks of a perjury conviction, nothing stands to prevent an applicant from making up a policy or from holding one just long enough to register a vehicle and then canceling it.

"They'll see that it's not working," Van Arsdale said. "Then they will start to patch it up, and you will have the workings of a full-blown mandatory insurance bill."

The difference between the new provisions in the Indiana law and mandatory insurance laws — such as the ones in Massachusetts and New Jersey — is that Indiana's calls for a one-time proof of coverage. In the other states, motorists are required to carry proof at all times and may be fined if they are stopped by a policeman and don't have any.

THE LICENSE branches plan to make verification checks of a random sample of applicants, but insufficient money and manpower probably will make careful monitoring impossible, said Michael M. Packard, commissioner of motor vehicles.

Likewise, representatives of insurance companies say costs prohibit their producing identification cards and notifying the appropriate license branch every time a license-holder cancels a policy.

I.D. cards and notification are features of the "full-blown" law that the industry has historically opposed.

"Indiana has some of the lowest insurance rates because we've been able to stay away from (mandatory insurance)," Van Arsdale said. "We like it that way. We don't want policyholders to have to pay through the teeth for those who are irresponsible."

HE SAID THAT insurance companies already offer extra protection for their regular policyholders against drivers who have no coverage.

The coverage, which 99 percent of Indiana drivers buy for about $10 a year, now extends only to property damage in excess of $200. But under terms of a new law (which the industry intended as a substitute for mandatory insurance law and which goes into effect Sept. 1) it will cover personal injury as well.

"We're already paying for them," said Espich of bad-risk motorists. "But with no help from them."

Although the new law remains unattractive to insurance companies concerned with the marketplace, it does require more high-risk motorists to assume responsibility for their actions and to contribute to the costs of ensuring the safety of all motorists.

THE DEGREE of compliance remains to be seen.

Van Arsdale predicted: "The irresponsible people will still be willing to drive without it, and the others, those who can't even afford to buy food, still won't buy insurance."

Espich commented: "I'm satisfied for today. We'll see how it works, then worry about the changes."

Consumer Affairs

New Haven (Conn.) Register, January 30, 1981

Proposals would tighten insurance law

By LYNNE DeLUCIA
Staff Reporter

Lawmakers have mapped out several avenues to close the gap in the state's automobile insurance card law, which provides drivers with an easy method to circumvent the intent of the statute.

The law, approved two years ago by the General Assembly, requires insurance companies to issue insurance identification cards to motor vehicle owners. The cards must be issued when a policy begins or is renewed.

The cards must be presented at the Department of Motor Vehicles in order to register a car. The department will not issue or renew a vehicle registration unless the card is presented.

Failure to carry the proof of insurance card could result in a $500 fine.

The intent of the law was to provide a way to keep uninsured motorists off the road.

But the loophole in the law is simple: drivers make one payment on an insurance policy — just to get the insurance card — then cancel the policy.

When the original law was written, critics told lawmakers that the proposal would be easily foiled. But proponents argued that the majority of residents would be honest enough to maintain their automobile insurance coverage.

It seems lawmakers are miffed that their attempt to guarantee that all motorists have no-fault automobile insurance is being dodged by a basic, simple maneuver.

Rep. Benjamin DeZinno, D-Meriden, has proposed that an insurance company notify the Motor Vehicle Department immediately when an automobile policy is dropped.

Rep. Paul Gionfriddo, D-Middletown, has taken DeZinno's idea one step further. He suggests that the MVD revoke the automobile registration of a driver who cancels his or her insurance policy.

A more sophisticated approach has been offered by Rep. Edward Krawiecki, R-Bristol. He suggests that a computer-based system replace the no-fault insurance identification card.

The computer system would list all the insured motorists in the state. Insurance companies would be required to maintain an up-to-date log of their clients.

The newly appointed Senate chairman of the Insurance and Real Estate Committee, Frederick Knous, D-Clinton, said the insurance identification card system must be reviewed this year.

Knous said the intent of the current law is "very good," but that too many motorists have discovered an easy way out.

"There have been some problems. Some changes may be needed," he said.

The MVD did not submit legislation this year to change the insurance card law.

Don Byers of the department said that most of the "kinks" have been ironed out since the law took effect last January.

The first months of the new law were difficult for the department and the consumer. Problems arose when consumers who were unaware of the law came to the department to register their cars, only to be turned away because they did not have an insurance card.

Some insurance companies were backlogged and did not issue the cards on time to clients, but Byers said most of the problems have been resolved.

The insurance industry last year opposed suggestions that companies be required to notify the MVD when a policy is canceled. The industry argued that the notification system would be too costly. It has no plans to submit legislation to change the system.

Charleston (W.Va.) Gazette, January 31, 1980

Auto Insurance Bill Is Popular, But It Has Opponents

By Fanny Seiler
Staff Writer

Compulsory automobile liability insurance has struck a popular note in the Legislature and House Speaker Clyde See, D-Hardy, predicted Wednesday the House would pass it.

"I don't think it would be a particularly close vote," See added

But the legislation isn't assured of reaching the House floor. It has to be reported out by the Banking and Insurance Committee. Committee Chairman Clarence Martin III, D-Berkeley, an opponent of the proposal, said he wants to look into ways to improve the present system. But he said it's up to the committee to determine what action to take.

Senate Insurance Committee Chairman Robert Rogers, D-Boone, a sponsor of compulsory insurance for several years, predicted it would pass the Senate. He made the prediction at a public hearing after proponents and opponents gave their views.

OPPONENTS OF compulsory insurance said it would increase insurance rates for the low-risk drivers who already have insurance, but there still would be a high number of uninsured motorists and administrative costs would drain the state's budget at a time when inflation is already taking its toll

Proponents argued that the present system isn't working.

Opponents outnumbered proponents, and were generally insurance industry spokesmen However, John Hall, chairman of the insurance department and professor at Georgia State University, spoke in opposition, coming to Charleston at his own expense. He had done a study as a consultant hired by the South Carolina Legislature South Carolina, according to Martin, is one of the states with compulsory insurance now considering repealing it

Hall said he once was a proponent of compulsory insurance, but now opposes it because rates increase, greater pressure is brought to bear on the rate regulation process that becomes "highly political" as a result, and because enforcement efforts usually fail

Hall said high hazard drivers tend not to be insured and under compulsory insurance they pay higher rates But because they pay higher rates they become vocal in their complaints to the regulatory agency which is faced with a dilemma because the high-hazard driver can't afford the high premiums As the regulatory agency becomes political, it tends to bend under pressure from the vocal high-risk driver and low-risk drivers have to subsidize the high-risk drivers.

IN ADDITION, Hall said rate levies are depressed by the regulator agency and when losses are incurred, insurers tend to make them up from more profitable lines such as commercial business

Grover Czech, regional vice president for the American Insurance Association, representing 150 companies, said North Carolina had 45 full-time highway patrolmen at one time tracking down drivers whose insurance had elapsed Frank Norton, president of Inland Mutual Insurance Co of Huntington, said North Carolina and New York couldn't enforce it. He said he favored a system like Virginia's which gets the driver with a high accident record off the road and put him in jail.

Robert Showen, representing the Independent West Virginia Insurance Federation, said compulsory insurance would cause an additional cost to the policyholders and the taxpayers

But on the proponents side, Delegate Darrell Holmes, D-Kanawha, said an uninsured motorist who was drunk hit his son, causing $1,500 in damage to his vehicle He said the police charged the uninsured motorist with public intoxication, and the driver is still allowed to drive, which he does for a living. Holmes said the Department of Motor Vehicles wouldn't take the driver's license because he needed it Holmes said he supported compulsory insurance or another change to make the present system work.

PHARES READER, retired from the West Virginia Education Association, said he represented 300,000 retired persons in West Virginia as spokesman for the Association of Retired People. He favored compulsory insurance and said he couldn't see the great complications presented by the insurance companies.

Bill Aiken of the West Virginia Farm Bureau also favored a compulsory plan that was "just and fair to all." He said his organization had 6,500 farm members.

Delegate Joseph Caudle, D-Berkeley, spoke in favor of compulsory insurance because he said there's a $300 deduction under the present uninsured motorists law which has to be paid by the motorist who is hit by an uninsured driver.

Consumer Affairs

(Jacksonville) Florida Times-Union, February 15, 1981

Mandatory auto liability insurance pushed

By RANDOLPH PENDLETON
Times-Union Capitol Bureau

TALLAHASSEE — Twenty-five years ago when $5,000 a year was a substantial salary and hospital rooms were a small fraction of what they are today, $10,000 in auto liability insurance was pretty good protection.

Today, with hospital rooms going for $100 a day and $5,000 is below the minimum wage level, $10,000 will not go far in reimbursing an accident victim.

Nonetheless, the minimum required insurance for drivers is no higher today than it was then.

In fact, under no-fault insurance, the [illegible]le now required to carry liability insurance are those who have had accidents. They must have coverage of $10,000 per person with a maximum of $20,000 per accident, and $5,000 property damage.

All drivers must have $10,000 in personal injury protection, which means their medical bills will be paid up to that amount regardless of fault.

There is no reliable figure on the number of drivers without liability insurance in the state, but there are estimates that it is at least 45 percent of those on the highways and is considerably higher in South Florida where insurance rates are considerably higher than in the rest of the state.

The prospect of all of these drivers with no insurance to protect anyone they might run into is alarming to Sen. Richard Langley, R-Clermont.

Langley has introduced a bill that would require liability insurance of $25,000 per person with a maximum of $50,000 per accident and $10,000 property damage.

Thus far there has been no great clamor of support for the legislation.

Deputy Insurance Commissioner James Hanlon says the insurance commissioner's office opposes it at this time because auto insurance companies are in court fighting an order to return excess profits to their customers and increasing the limits would increase their profits.

On the other hand, the insurance industry is opposed to mandatory liability insurance because it would force companies to insure people who are poor risks.

Ralph Cobb, in the financial responsibility section of the Department of Highway Safety and Motor Vehicles, thinks it would be impossible to enforce, particularly in a state where many of the drivers are tourists.

In fact, Cobb says, there probably are more people with liability insurance now than there would be if it were mandatory.

"If you tell people in the office not to wear green socks tomorrow, someone will wear them to see what you're going to do," Cobb said.

Langley said that before a person can support mandatory liability insurance, "There is a philosophical threshold you have to pass first: Whether it is a privilege to drive in Florida or a right. I think it is a privilege."

Having crossed the threshold, Langley feels the fact that some drivers might be kept off the roads because they could not afford compulsory liability insurance is an inadequate argument.

"There are lots of things I can't afford to do," Langley said.

Langley said he now must make up for the lack of compulsory insurance by buying uninsured motorist insurance to protect him if he is hit by someone without insurance. Although he still might need the insurance to protect against someone ignoring the law, he feels the rates would be lower for the uninsured motorist coverage if there were a compulsory liability insurance law.

"Now I'm paying for the other guy's insurance and he has the privilege of driving on the road," Langley complains.

Consumer Affairs
Wilmington (Del.) Evening Journal, February 2, 1978

State Prepares Tighter Rules For Its No-Fault

By NANCY KESLER
Dover Bureau

DOVER — The Delaware Insurance Department today proposed legislation to tighten provisions of the no-fault insurance law and crack down on uninsured motorists.

David H. Elliott, state insurance commissioner, said the bill will require insurance companies to issue identification cards to their policy holders. The cards must be carried along with the registration card.

Any individual driving a car stopped by a policeman or involved in an accident must produce the insurance card. If the driver is not able to produce the card, it will be presumed the auto is not covered. However, the driver will be given 24 hours to show proof of insurance. This portion of the bill would reverse a court decision which presently requires the state to prove that a motorist has no insurance.

The bill also would impose fines for driving without insurance. A violator would be fined a mandatory $200, although the fine could go as high as $1,000.

On conviction for driving without insurance, an individual's driving privileges would be revoked until proof of insurance is furnished. The courts also may deny driving privileges for up to six months if circumstances warrant additional penalties.

Aside from the legislation, Elliott said, each individual who registers a motor vehicle would have to put on file the name of his insurance company.

The insurance commissioner said about 20 percent of the state's drivers are not insured and the problem is one mentioned often by the public. He said the legislation he is recommending should reduce significantly the number of uninsured motorists without placing a burden on the majority of drivers who abide by the law.

Consumer Affairs

Wilmington (Del.) Evening Journal, March 13, 1979

State Acts to Curb Uninsured Driver With New Card Policy

In an attempt to crack down on uninsured drivers, state Insurance Commissioner David H. Elliott has ordered auto insurance companies to send policyholders dated identification cards each year.

The proof-of-insurance cards, which have been sent out without expiration dates, are required before a car owner can get Delaware license tags. State officials say some motorists allowed their policies to lapse, but continued to renew license tags by using old, undated cards.

Elliott also said yesterday he would no longer require insurance companies to report all auto policy cancellations. Instead, only cancellations of first-year policies must be reported. The volume of policy cancellations, officials said, was swamping the Motor Vehicle Division.

Division Director Robert J. Voshell had said earlier his division was able to check only one quarter of the cancellation notices. Elliott has estimated 20 percent of the state's drivers are uninsured.

"Now we can concentrate on the first-year people who cancel," Voshell said. "We think they're the ones trying to beat the system."

The new identification cards, Voshell said, should aid in detecting cancellations of policies in effect more than a year. "If someone cancels an older policy, he won't get an annual card," he said.

Consumer Affairs
(Honolulu, Hawaii) Bulletin & Advertiser, April 12, 1978

Tough no-fault bill wins passage

By DOUGLAS WOO
Advertiser Politics Writer

Those who are driving without no-fault insurance coverage: Beware.

The House yesterday passed and sent to Gov. George Ariyoshi a tougher no-fault law that would require judges to fine violators at least $100 and impound uninsured vehicles.

The bill was one of 23 passed by representatives on final reading at the Legislature, which is preparing to adjourn Friday. Other measures passed or to Ariyoshi yesterday would:

• Increase the income tax deduction for the deaf, blind and totally disabled from $5,000 to $7,000.

• Require boards that regulate professions to have members of the public — as well as members of the professions — sitting on them.

• And set up energy conservation standards for new building designs.

The no-fault insurance measure, which would go into effect Sept. 1 if signed by Ariyoshi, targeted a major problem in the 3-year-old law — enforcement.

The existing law does not give clear authorization to police to demand proof of no-fault coverage from motorists they stop for other reasons. In addition, it has been criticized for not providing adequate guidelines to the courts for punishing violators.

The new law would require drivers to produce their no-fault cards to police upon demand. No-fault proof would be required also for safety inspections which, in turn, are needed for automobile registration.

The bill sets a minimum fine of $100 which cannot be suspended and requires the court to suspend or revoke an uninsured vehicle's registration and the license of the uninsured driver in addition to impounding the car.

The bill also requires applicants for a driver's license to show proof of no-fault coverage.

Also passed and sent to Ariyoshi were bills to:

• Create an office of tourism in the Department of Planning and Economic Development, to coordinate policies relating to the visitor industry.

• Increase the period of notification of rent increases by landlords.

Under present law, such notice must be given at least 28 days prior to the end of a month-to-month tenancy. The bill increases the period to 45 days.

• Permit landlords to post notice, when tenants cannot be served in person, so eviction proceedings can begin.

• Give the Board of Land and Natural Resources authority to promulgate regulations for exploration and development of geothermal resources.

• Set a ceiling of $1 million on the state's liability in insuring aquaculture loans from private lenders.

...w Orleans, La.) Times-Picayune, June 29, 1978

Insurance Rush Is On, Drivers Toe Line of Law

By PAUL ATKINSON

It's cash on the barrelhead or a loan from a finance company for many customers rushing to get compulsory auto liability insurance by Saturday.

One insurance agent said he knew of a $1,500 loan to finance a liability policy.

That was part of the picture Wednesday as insurance agents and companies reported booming business a few days before Louisiana's experiment with compulsory auto liability insurance officially kicks off.

Apparently, most of the new business is going into what is called the Louisiana Automobile Insurance Plan or high risk pool. John Hilbig, regional manager for the Insurance Information Institute, said he found among member companies their regular business was about the same but their high risk business was surging.

The manager of the high risk pool, John W. Dingman, said his office had processed more than 16,000 applications through last weekend easily breaking the one-month record of 11,000.

Starting Saturday, the state Department of Public Safety will begin checking all auto accidents to determine if the vehicle owners were insured.

Even now, said Leroy Havard, assistant secretary of the office of motor vehicles of the Department of Public Safety, motorists are being required to certify they carry the liability insurance for truck license renewals and for renewals of private passenger auto licenses that expire July 31.

Arthur M. "Artie" Caron, secretary-treasurer of the John W. Dussouy Insurance Agency, said that customers are being sent to the finance company if they don't have the cash.

Caron said much of his new business is going into the high risk pool. That plan requires that insurance agents remit the first year's premium in cash or certified check.

Some customers don't have the cash, said Caron, so they are being sent to finance companies. "They get as good rates as from banks," said Caron.

Caron said one loan was for $1,500 to finance a policy.

As alternatives to liability insurance, the motor vehicle owner could post a motor vehicle liability bond, deposit $10,000 in cash, bonds or stocks with the state treasurer or get a self insurance certificate issued by the Department of Public Safety. Neither alternative is being used much.

A spot check of insurance agents and companies by The Times-Picayune showed an almost-unbelievable demand for liability insurance policies.

"They are driving us nuts," said Caron.

A veteran State Farm Mutual insurance agent, Joseph Helwick, said he needed asbestos gloves the telephone lines are so hot.

Roger Holden, district manager for Travelers Insurance Co.'s Louisiana operations, said, "new business is about four times as great this year as it was in 1977."

As noted, many of the new insureds are going into the Louisiana Auto Insurance Plan or the high risk pool.

Dingman, manager of the plan in Louisiana, said he has had to leave his own office so clerks could use it to process the applications.

"Our old record for a month was 11,000 applications processed in May," said Dingman, looking at mail bags full of applications, "but through last Friday we had done nearly 16,000 in June. I expect we'll go 20,000 or better this month."

Dingman's office, in effect, is really a middle man, passing the policies on to conventional companies such as State Farm. Allstate or Travelers. State Farm, the state's largest auto insurance underwriter with about 25 percent of the market, gets about 25 percent of the so-called high risk business also.

That has caused drastic changes at State Farm's regional office in Monroe.

(continued)

Billy E. Wilson, service superintendent for Louisiana, said he has had to create a high risk department. "Where we had only about 3,000 high risk policies in 1975 we expect to go as high as 50,000 before the end of 1978," he said. "The staff was three people and now it is 30 but we are still sinking."

H. P. Walker, administrator for the state Insurance Rating Commission, said his office is literally being swamped with policies. By law, the Insurance Rating Commission is required to keep records on all policies written.

"We got in an all-time record 61,366 policies last week," said Walker. "That averages out to about 12,273 a day. In other years we would average about 5,200 a day."

Walker said he is sticking by an earlier prediction that by Saturday or shortly after 80 percent of the motor vehicle owners will have liability insurance.

He had earlier estimated that between April and July 1 more than 600,000 new liability policies will be sold.

He expects 1.9 million vehicles out of a total of 2.4 million will be insured.

The compulsory law requires that motor vehicles registered in Louisiana be covered by liability security with limits of $5,000 per person and $10,000 total for all bodily injuries resulting from one accident and $5,000 for property damage.

Those who are caught without the required security can have their vehicle registration revoked and can lose their driver's license for 30 days to one year.

If a person falsely swears that he has the required security, he can lose his vehicle registration and his driver's license for six to 18 months. Additionally, he can be fined not more than $125 or be imprisoned for not more than 30 days.

Havard said the Department of Public Safety's $1.36 million appropriation came through untouched in the governor's spending bill.

He said he is now going through state Civil Service to set up a staff to enforce the law. The funding will allow for a staff of 65 with 25 handling the revocation of driver's licenses.

"We hope to have our people on board by July 20," said Havard. There will be a training period leading up to strict enforcement by September.

Consumer Affairs

(New Orleans, La.) Times-Picayune, June 18, 1978

80 % of La. Motorists Predicted to Have Liability by July 1

By PAUL ATKINSON

A top official of the Louisiana State Insurance Rating Commission predicts that nearly 80 percent of the state's motorists will have their required auto liability insurance by the July 1 enforcement deadline.

H P Walker, administrator for the rating commission which keeps all insurance policies, said he expects as many as 400 000 new policies to be sold from April 1 to July 1.

"If things continue as they are going," he said in a weekend interview, "we will have 75 percent to 80 percent of the vehicles covered by liability insurance by July 1."

Walker said about 65 percent of the vehicles were insured on April 1 – indicating the massive increase.

He said there are an estimated 2 4 million vehicles and "the way things are going just over 1 9 million should be insured by July 1."

Meanwhile, the state police are gearing up to begin enforcement of the new law in July.

Leroy Havard, assistant secretary of the Office of Motor Vehicles of the Department of Public Safety, said that beginning July 1 his office will begin checking every one of the estimated 165 000 accidents a year to determine which vehicles carried the required liability insurance.

If it is found a vehicle owner doesn't have liability insurance, Havard said he faces suspension of his driver's license for at least six months and suspension of his motor vehicle registration.

Havard said he has heard from insurance agents they are doing a booming business and he also expects 80 percent compliance with the law by July 1.

Mrs. Virginia Morgan, chief file clerk for the general insurance section at the rating commission, said that the workload has "increased tremendously" in the last two months. She said they are handling about 35 percent more policies a day.

"We have some clerks coming in at 7 in the morning because they want to catch up," said Mrs. Morgan.

Havard said that so far the Department of Public Safety's $1.24 million budget for the 1978-1979 fiscal year beginning July 1 is intact with the appropriations bill now in the Senate.

The funding will provide for the hiring of 65 new personnel, most of them to be revokation officers, he said.

Havard said the main enforcement tool for his office will come through checking all the 165,000 accidents. He said reports of the accidents will be received and the owner of each vehicle will be sent a notice asking for insurance information.

Once this is returned by those in the accidents, the insurance companies will be asked if the policies were in force. Should the insurance companies tell his office there was no insurance, the vehicle owner will be notified he will be given an opportunity for a hearing.

"We know the insurance companies can make a mistake also," said Havard. Once it is conclusively determined there was no insurance and the vehicle owner falsified the information, Havard said his officers will move in to pick up the driver's license.

Havard said vehicle owners will also have to certify they have liability insurance when they get their safety inspections and when they get a motor vehicle license. "So they will have to certify this three times in two years," said Havard.

He admitted that officials in this instance "will be basically taking their word."

But he said the idea of requiring an insurance ID card proposed earlier has been scrapped as too costly. "Where that has been tried elsewhere it hasn't worked," he said. "You have deterioration and the insurance companies just pass the cost of this on in increased rates."

Havard said there will be periodic spot checks by computers to see that vehicle owners are complying with the law.

The law provides that vehicle owners must have liability coverage of $5,000 for injury to one person or $10,000 for two or more and $5,000 for property damage or else show other financial responsibility.

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Bernard's no-fault legislation was completely stymied in the House Commerce Committee, while Grisbaum's compulsory liability legislation sailed through the House, 82-33, and the Senate, 28-11.

Interviewed Friday, Bernard said what will happen this session in efforts to repeal the legislation is anybody's guess. He said, however, he won't be bringing back his no-fault legislation this session.

He predicted the enforcement of the compulsory liability law "will be a big mess."

Bernard stressed that the Insurance Commissioner's office will have nothing to do with the enforcement of the compulsory liability law.

He said he sees all sorts of pitfalls, including drivers buying policies and then letting them drop immediately.

Insurance industry officials say they haven't seen a great surge of business.

Most officials believe that the major portion of the uninsureds will wind up in the Louisiana Insurance Plan, which is the high risk pool.

Even that plan, however, is not reporting the boxcar type of numbers that it will take to gain compliance with the law by July 1.

John W. Dingman, manager of the plan, said Friday that the plan applications have increased from 13,063 in 1975, to 35,403 in 1976 and to 82,737 in 1977.

"In the first three months of 1978 we have shown a 27 percent increase over the 1977 total," said Dingman. "That's 17,657 applications in 1977 and 22,403 in the first three months of 1978."

Incidentally, the Louisiana Insurance Plan drivers may be facing a rate hike of more than 20 percent effective next month. Dingman said his board has authorized him to apply to the Louisiana Insurance Rating Commission at its May meeting for a rate hike that will be somewhere below the 27 percent hike sought four times in 1977 and earlier this year.

Dingman said it is easily possible that the insurance plan membership will go as high as 200,000 before the end of the year, but this depends mostly on how much enforcement the state intends to give the law.

Checks with the regular insurance industry indicate the same business trend.

John Grush, a general insurance agent, said his firm, Grush and Mannard, had good demand in October and November of 1977 when people thought the law was going into effect on Jan. 1, 1978.

"We have good demand this year but I don't think it is because of the compulsory liability law," he said. "People don't mention it."

Bake Foster, with Aetna Life and Casualty Co., said, "Our auto insurance business has increased but I am not sure if it's the compulsory liability law or we are more competitive in our rates than we were six months ago. We do expect an increase in business."

Albert Aparicio Jr., a general insurance agent and president of the Independent Insurance Agents of New Orleans, said he found a surge of the uninsured coming forward last year when the law was signed by Gov. Edwards.

"I think the ones who are going to be the hangers-on are the less responsible segment or the don't cares," he said. "We found business increase but there has been a leveling off."

Drivers will be able to buy auto liability insurance, the insurance agents promised.

"There will be no reason for a person who has a valid driver's license in Louisiana not to get insurance," said David J. Dessauer, an insurance agent. "But he is going to pay for it, it is there. He will pay what his driving record has established."

Dingman agreed. "The insurance is available. There is a market for it."

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Consumer Affairs
(New Orleans, La.) Times-Picayune, April 23, 1978

State Will Enforce Liability Law

By PAUL ATKINSON

More than 400,000 uninsured Louisiana drivers may be in for a rude awakening this summer -- the state apparently means business in enforcing the compulsory auto liability law.

Leroy Havard, assistant secretary of the state's Office of Motor Vehicles, said Friday that Gov. Edwin Edwards has recommended a $1.2 million allocation in the 1978-1979 budget to begin enforcement of the new law which goes into effect July 1.

A spot check of insurance agents indicates that there is going to be a great last-minute crush or else a lot of drivers hope they can avoid detection. They say they just haven't seen the business.

Avoiding detection may not be so easy. Havard said the budget will fund 25 revocation officers — about seven of whom will be stationed in the New Orleans area to pick up the driver's licenses of those who are found to be without liability insurance — and 40 clerical and administrative personnel operating out of Baton Rouge.

Havard pointed out that drivers are going to have to either show their insurance policies or an insurance identification card or they will not be able to get brake tags in New Orleans or at safety inspection stations around the state.

He said he believes this requirement in itself will be a strong deterrent prodding a driver to get insurance.

Additionally, drivers will have to sign affidavits attesting to the fact they have auto liability insurance when they once again get their auto license plates next year.

The new law was passed by a 2-to-1 margin at the 1977 session of the Legislature, but the effective date was delayed until July 1, 1978.

It provides that a driver must have $5,000 liability coverage for one injured person, $10,000 for two or more persons injured in an accident and $5,000 for damages to property.

Legislation has been introduced in the 1978 session to repeal the law before it even goes into effect.

Havard said that because of this uncertainty, his office has not ordered the insurance certification forms or hired the additional personnel yet. But this will be done immediately on July 1 when it is certain the law is not going to be repealed and a new state budget year begins.

"I don't think we will have any trouble finding the personnel," he said. "Most will come from this office. We could begin real strict enforcement — having our revocation officers at their posts — by Sept. 1."

Under the provisions of the bill, if it is found by the Department of Public Safety Motor Vehicle Division that a driver does not have the minimum coverage, he will be stripped of his driver's license for six months up to 18 months. Additionally, he could be subject to a $125 fine or a 30-day jail term, for a false declaration of liability insurance.

Havard also believes that the threat of taking a person's driver's license for six months gives the law strong teeth.

"In some states if they find a person does not have liability insurance, he can get his license back once he gets insurance," said Havard.

"But our law says that the person will have to give up his license for at least six months, even if he goes out immediately and buys the liability insurance. So this is stronger."

Havard said the Department of Public Safety will also check every accident to see that those involved in the accidents have liability coverage. If they don't, their driver's licenses will be suspended for six months.

Even if the revocation officers are not physically able to go out and pick up a person's driver's license, said Havard, this revocation is entered into the Department of Public Safety's computer. The driver would be subject to being detected if he is stopped for a traffic violation and a computer check is run.

The compulsory liability law is very likely to generate more controversy during this session of the Legislature.

Metairie state Rep. Charles Grisbaum spearheaded the drive to get the law enacted last year, hitting it at the right time. He pushed it through while State Insurance Commissioner Sherman A. Bernard was heating up the air waves with a $60,000 campaign to pass his version of the compulsory no-fault auto insurance legislation.

Bernard opposed the compulsory liability law strongly, saying at one time that it would produce a field day for lawyers.

"It is going to make Louisiana the most fertile hunting ground for lawyers of any state in the union," he said last summer.

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(Mo.) Globe-Democrat, November 1, 1978

Mandatory car insurance is proposed

A commission studying revisions in state auto insurance regulations has been urged to determine whether Missouri should adopt a mandatory liability insurance law.

Such a statute could require motorists to get insurance covering medical injuries and property damage in order to receive state license plates, a state division of insurance spokesman suggested.

William H. Lichius, a special assistant for consumer affairs, recommended a study of the proposal as the commission met to consider a no-fault auto insurance plan here Tuesday.

A NO-FAULT SYSTEM that would require automatic payment of some types of damages is expected to be recommended by the 15-member commission at its next meeting Nov. 14 in Springfield.

Some committee members, including Don Duggan, regional vice president of State Farm — the largest auto insurance company in Missouri — generally appeared to favor a mandatory liability law, but expressed doubt that it could be enforced.

"It seems to me that if we're going to have such a law there should be a very still penalty for persons who are caught driving without the insurance," Lichius said.

Suggested penalties raised at the meeting ranged from revocation of a driver's license to a jail term. At present, Missouri motorists are not required to have liability coverage. Drivers must either have such insurance or be able to assume financial responsibility for damages in case of an accident.

The commission, which was appointed recently by Gov. Joseph P. Teasdale, is expected to draft a no-fault insurance plan that will include at least some elements of no-fault laws that are on the books in other states, including Michigan and Oregon.

MINIMUM STANDARDS contained in four proposals being studied by the commission would make no-fault insurance mandatory, to some degree, for all drivers.

Basic insurance coverage varies in each of the plans, but all would provide medical expense payments, work-loss benefits and funeral-death benefits. Drivers eligible for the insurance generally would have to be residents of the state in which the no-fault law is passed. In three of the plans, insurance companies may offer deductible provisions ranging up to a maximum of $300.

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Continuation

Jim Hunter, DMV manager of driver and vehicle safety, concurred. "I don't believe (cancellation) is an effort to get around the law.

"We're finding that of those cancellation notices, a lot of the individuals did pick up their insurance. They were switching companies, getting rid of one of their vehicles, or discontinuing use of a vehicle.

"Part of it might be stemming from economic conditions (strikes) right now contributing to shopping around for better rates," Hunter said. He also said that many vehicles such as motorcycles and four-wheel-drive units are seasonal and not insured for the entire year.

"There are a lot of insurance transactions going on out there, but people are maintaining their coverage," he said. "They are telling us the truth; when they tell us they are insured, by and large they are. What comes up on the bottom line, the accident reports, is that only 4 to 5 percent of the people are coming up uninsured."

Hunter said that in January, when DMV received 12,447 cancellation notices from insurance companies, the DMV suspended only 986 people for failure to maintain proof of insurance.

"In January we took random samples of 2,300 vehicles registered with us to verify indicated insurance coverage," he added. "We only got 71 denials back" (from insurance companies).

An insurance industry representative, Richard V. Clement, executive secretary for Independent Insurance Agents of Oregon, said, "We've always been opposed to compulsory auto insurance. We're afraid the Legislature is going to get into the business of establishing rates, and that the state can form an auto insurance company. Plus the increased paperwork.

"We still maintain that it's not going to do the stated purpose, get the uninsured driver off the road.

"But the agent isn't particularly unhappy with it," Clement said. "It's been more business for agents, although (new customers) are troubled drivers who have been driving without insurance. The so-called irresponsible driver, and that's hard business to place and a very high price."

Clement said, "There have been some minor problems; but quite frankly it's gone quite smooth. We're sitting back and watching, willing to help make it work. It looks like the trend is good. So far, our fears haven't been borne out."

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Consumer Affairs

(Portland) Oregonian, February 19, 1979

Mandatory insurance effective, costly

By STEVE ERICKSON
of The Oregonian staff

Oregon's 7-month-old mandatory auto insurance law is realizing what its draftsmen set out to accomplish, those responsible with its enforcement say, but administrative costs have been high.

Legislative hearings will begin this week to consider amendments that would slash administrative costs in half while attempting to maintain the high level of compliance the administrative procedures have been able to ensure.

Harold Grover, administrator of the Department of Motor Vehicles which enforces the law, said that before it became effective last July 1, 14 percent of all reported accidents involved an uninsured motorist. That figure now has been reduced to 4½ percent.

"Overall, implementation seems to be pretty smooth," Grover said. "It is succeeding better than expected. We expected it to be more difficult to administer, and more public hostility and frustration. There has been some confusion, but for the most part people have been quite cooperative and accepted it."

He said a hearing on House Bill 2052, which "would essentially simplify administration of the law," begins at 1:30 p.m. Tuesday, Feb. 20, before the House Judiciary Committee.

Under the law, if you are going to drive a motor vehicle registered in Oregon you must have liability insurance coverage of at least $15,000 for a single injury, $30,000 for injuries in a single accident, and $5,000 for property damage or you must provide the DMV with other proof of financial responsibility.

The statute requires that insurance companies notify DMV if a policy is terminated or canceled within the first 120 days of that policy. DMV then sends a license cancellation notice to the owner which becomes effective unless the licensee demonstrates that the vehicle was either disposed of or has insurance coverage.

Currently, DMV samples 1 percent of registered motor vehicles in the state annually and requests that the registered owners verify that the vehicle is insured.

Rep. Al Riebel, R-Salem, a sponsor of HB 2052, served on a Legislative Interim Task Force on Mandatory Insurance which issued a report last December that was used as a basis for proposed changes in the law.

"We (task force members) didn't feel we could say, 'This thing's no good,' because we hadn't had enough time for it to work yet," Riebel said. "We didn't feel it was fair to make sweeping changes or condemnation until it had gone through at least a year."

Riebel said the task force was "trying to see if we could cut the costs and not change the bill tremendously."

In its report, the task force stated, "The cost for fiscal year 1978-79 is $650,000 and is estimated to be a little over $1 million per biennium. If the task force recommendations are adopted by the Legislature, it is anticipated that the costs will be reduced significantly. Initial estimates indicate the cost will be $310,000 for the biennium. This amounts to an estimated $690,000 savings per biennium."

Riebel said the House Judiciary Committee will hear proposals to "reduce paperwork tremendously and be just as effective."

Mike Kopetski, who was administrator for the task force, met last week with Riebel to discuss HB2052, which Kopetski said was an attempt to "make administration of the law more efficient and at the same time maintain at least the same level of compliance."

He said the bill's "primary focus" is to propose changing enforcement mechanism from initial documentation that a person is insured to a 10 percent random sampling.

The bill also recommends doing away with the 120-day provision, which Kopetski termed "an exercise in paperwork for insurance companies and the DMV."

Grover said he does not expect Oregon to achieve zero percent uninsured. Judging by success of other states with mandatory insurance laws, he said, "about 5 percent seems to be the point of saturation. To go beyond that would be extremely expensive and you'd be hassling the major portion of the population. Our experience indicates that people who are uninsured can't afford the insurance."

Fears had been expressed that some motorists would try to circumvent the law by buying insurance and maintaining it only long enough to obtain a license or registration, then canceling the policy. Jay Rupp, who is in charge of the DMV section that processes all documentation relating to the mandatory insurance law, discussed this.

"We received 2,539 cancellation notices (from insurance companies) in August, another 5,374 in September, in excess of 9,000 for October and 12,447 in January," he said. "It is now leveling off, we're not seeing the dramatic increase we saw during fall and winter months."

Rupp said the increase in cancellation notices does not necessarily indicate deceit on the part of motorists.

"If they were trying to get around the law they wouldn't be out buying insurance," he said. "These cancellation notices were from people who did buy insurance. In some cases they found out how much it cost, couldn't afford it and tried another company. In other cases the company felt they were too high a risk and canceled them. Most cancellation notices have come to us from companies that deal mostly with the problem driver."

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Houston (Tex.) Post, May 2, 1979

Mandatory auto liability bill passed by House

By FELTON WEST
Chief, Post Austin Bureau

AUSTIN — The Texas House passed and sent to the Senate Tuesday a mandatory automobile liability insurance bill which Houston Rep. R.E. "Gene" Green, the sponsor, said was "stronger" than either he or the House Insurance Committee proposed.

Because the House overwhelmingly passed — 123-9 — such a strong bill, Green said he was optimistic a mandatory liability law could be passed in the Senate despite strong insurance industry opposition and even with less than a month left in the 140-day legislative session.

"I think it has a good chance in the Senate," where it will be carried by Houston Sen. Gene Jones, Green said. "This is an important statewide issue. Every survey taken shows 75 percent or more of the people want mandatory liability. If the bill can get to the Senate floor, I think it will pass."

Green noted that although various lawmakers have for years been sponsoring bills to require mandatory liability coverage for motor vehicles in Texas, this is the first year such a bill has ever emerged from a legislative committee in either the House or the Senate in the face of insurance industry opposition.

"Now the House for the first time has put the ball in the Senate court," he said.

The Houston representative, who headed a House interim study committee on mandatory insurance, originally introduced a bill that would have required proof of liability insurance coverage (in the minimum amounts of $10,000 per person or $20,000 per accident for personal injury and $5,000 for property damage) before vehicle license plates could be bought.

But he brought from the House insurance committee a bill (House Bill 22) that would merely have required minimum coverage, made it a finable offense to be caught without it, and authorized police officers to check motorists' coverage when they stopped vehicles for traffic or other offenses.

Green said he preferred to move into mandatory insurance in that way, avoiding creating a lot of bureaucracy and paperwork for the Texas Department of Public Safety and insurance companies.

But critics argued his approach would bring about only "semi-mandatory" liability coverage that would still leave many motorists on the road without insurance, taking a chance they wouldn't be caught.

Reps. Craig Washington of Houston, Bob Hendricks of McKinney and others hatched amendments to strengthen the bill by requiring insurance companies to issue with insurance policies vehicle windshield stickers, similar to vehicle inspection stickers, that would show whether vehicles were insured. They proposed that vehicle safety inspections be denied if the insurance stickes were not on the vehicles.

Although he resisted that plan last week, Green brought the House a complete substitute for his bill Tuesday, attempting to perfect the proposed sticker system, and got it approved easily.

El Paso Rep. Ronald Coleman then added a provision that would authorize police to issue window stickers evidencing insurance coverage to vehicles registered in Mexico or other foreign counties, which he said are a particular problem in border cities.

As passed, the Green bill would have the DPS check with insurance companies about insurance coverage on vehicles involved in accidents, but the insurance companies would have to reply only if there was no insurance policy in effect on the vehicle involved. Green said that would cut down on paperwork.

The bill would not require motorists to buy vehicle liability insurance unless they could not otherwise (as present law states) show "financial responsibility" either by self-insurance or by posting with the DPS bond or a certificate of deposit or securities worth at least $25,000. The mandatory financial responsibility would not be required of vehicles registered to and operated by persons residing in other states, unless the vehicles were operated primarily in Texas. But such out-of-state vehicles or drivers would be subject to suit after involvement in accidents.

Failure to maintain financial responsibility would be punishable by fine of $50 to $200 the first time and $200 to $1,000 for subsequent offenses.

Green said financial responsibility must be enforced to reverse a downward trend in liability coverage. He estimated about 30 percent of Texas vehicles are not insured now, compared with about 24 percent three three ago. In Harris County, he said, a slightly higher percentage is without coverage.

The percentage of insured vehicles has gone down since 1973, he said.

Opposing the bill, insurance companies claim mandatory liability coverage would increase insurance rates. But Green argues that damages caused by uninsured motorists are costing Texans plenty.

"If estimated insurance rates might go up 5 to 10 percent at most," he said. "If the insurance companies use (this) as grounds for increasing rates, they're barking up the wrong tree because they have already increased rates every year I've been in the Legislature."

He has been in the House since 1973.

They could get a card and then cancel their insurance in two or three days," Sena said. "Whatever law we pass somebody will find a way around it."

From the moment AB108 was approved, Sen. Jean Ford was convinced something even tougher was needed.

"We don't require insurance companies to notify the DVM when someone cancels insurance," said Ford, D-Las Vegas, at the time.

While Sena was happy to see his mandatory insurance law become law, he wasn't pleased with the state's other new insurance law. Beginning Jan. 1, Nevada became the first state in the nation to drop its no-fault auto insurance law. Fifteen states now permit no-fault insurance.

Instead of no-fault insurance, Nevada now requires drivers to carry a minimum "15/30/5" liability coverage. The slashes around these numbers may seem confusing, but they are an attempt to simplify something complex.

Liability insurance only pays others for damage that was your fault. The number before the first slash means $15,000 is the maximum amount of money your insurance company will pay for the injury or death of one person. The middle number means $30,000 is the most money your insurance company will pay if more than one person was injured or killed in the same accident. The last number means $5,000 is the maximum amount your insurance company will pay for property damage caused by your car.

If a person injured by your car wins a $100,000 court judgment against you, then your insurance company pays only the first $15,000. The remainder comes out of your pocket.

Many, if not most, insurance agents feel the 15/30/5 liability limits are too low.

"If you rear-end a Mercedes-Benz, you better have more than $5,000 protection," says Assemblyman Mike FitzPatrick, R-Las Vegas. Until two months ago, FitzPatrick was an insurance broker.

"15/30/5 is too small," adds Ann Marie Aniello, an insurance agent. "You couldn't pay $5,000 for most cars today. Look at how high the law suits are. We always suggest higher limits. Some companies won't even write the standard 15/30/5 limits."

Consumers Reports magazine recommended a minimum liability coverage of 100/300/25 in a 1977 study.

Sena and FitzPatrick opposed adoption of the liability insurance law. They felt Nevada's no-fault law could have been saved by raising the "threshold" limit above $750.

Under no-fault, each driver was compensated by his own insurance company, regardless of who was at fault. An individual was entitled to $750 worth of medical benefit without going into court. If someone incurred more than $750 worth of medical bills, then he could sue to recover his expenses. No-fault also paid injured persons up to $175 a week in lost wages, depending on the policy.

Many witnesses testified that the $750 threshold limit was too low to prevent the filing of unnecessary law suits. Consequently, in the waning days of the Legislature the Assembly approved a bill to increase that threshold to $5,000. Yet the Senate failed to agree on the Assembly bill. Just before the session ended, the two houses compromised on Senate Bill 313, a measure which killed no-fault and required minimum liability insurance.

"We felt it was the best way to go," remembers Sen. Don Ashworth, D-Las Vegas, a member of the Commerce and Labor Committee which proposed the bill. "It's not a boost for attorneys. No-fault just wasn't the answer."

Yet the assemblymen, Sena and FitzPatrick, feel raising the no-fault threshold would have been the solution. They predict many motorists will have to sue to recover damages.

Such suits could drag on for 18 months in court, FitzPatrick said. Injured persons could go bankrupt before a settlement is reached, he added.

During the 1979 Legislature FitzPatrick blamed "your friendly neighborhood trial lawyer" for no-fault's repeal.

"They have the most to gain financially" without it, he said.

"I hope between now and 1981 the people of Nevada will understand the importance of no-fault," Sena added after the new liability law was adopted.

FitzPatrick predicted insurance rates would climb 12 percent with the repeal of no-fault. His prediction hasn't been far off. Farmers Insurance Group increased rates 13.5 percent — although state Insurance Commissioner Don Heath denied another 5 percent increase which Farmers requested explicitly because of no-fault's repeal. State Farm Insurance was awarded a 7.2 percent average rate boost. The company sought an 18 percent increase.

Though insurance rates keep rising, Changing Times magazine said in March 1979 article that a typical State Farm policyholder "has a property damage liability claim once in 18 years and a personal injury liability claim once every 55 years."

"The rate increases are a reflection of the national economy," Heath contends. "In no way are rates increasing because of the repeal of no-fault. The mandatory law should bring a price downtrend for preferred customers."

State Farm increased its rates by 81 percent in Nevada between 1976 and 1978, reported U.S. News and World Report magazine.

Surprisingly it has been an attorney, Richard Myers, president of the Nevada Trial Lawyers Association, who has publicized that no-fault could bring savings. Myers warns insurance buyers not to seek medical and wage loss coverage if they already receive such benefits from their employers.

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Las Vegas (Nev.) Review-Journal, January 14, 1980

Motorists lining up for insurance

By Ed Vogel
RJ Staff Writer

Most automobile insurance agents in Nevada have been wearing big smiles these days. Their offices have been more crowded than Fremont Street on Saturday night. And almost everyone who walks in the door is a buyer.

There's a good reason for the sudden popularity of insurance men. If you don't have auto insurance, then you don't drive anymore in Nevada.

A law went into effect Jan. 1 which requires Nevada motorists to carry cards which prove they have insurance. Police can ticket drivers who can't pull out these cards.

In addition, motorists must present the insurance cards at Department of Motor Vehicles offices when they renew license plates. A driver won't be given a 1980 license sticker unless he has such an insurance card in his possession.

The state already had required motorists to carry auto insurance. The catch was, however, a driver only had to say — not show — he had insurance when he visited the DMV. There was no penalty if someone lied. Consequently, 25 to 40 percent of the citizenry drove around without insurance, said Don Heath, state insurance commissioner.

That all changed when the 1979 Legislature approved Assembly Bill 108, the new mandatory insurance law. This legislation shoves a $100 to $500 fine on motorists who can't prove they are insured. More importantly, they won't be able to drive around long without a current license sticker.

As yet the state Highway Patrol hasn't been enforcing the requirement because some insurance companies may not have mailed cards to customers. Enforcement will begin this week, troopers say. The Metropolitan Police Department indicates it may not enforce the insurance requirement until Feb. 1. However, accident records show some drivers already have been cited for not carrying insurance.

The man most responsible for the mandatory insurance law is Assemblyman Nash Sena, D-Henderson.

"I was hit by an uninsured motorist and I had to come up with the $100 deductible to fix my car," Sena said. "I felt if I had to carry it, then other people should have to carry it, too."

Though Sena was unsuccessful in an attempt to push a similar bill through the 1977 Legislature, he had little trouble during last year's session. Testimony that as many as 40 percent of the state's drivers lacked insurance produced unanimous approval of Sena's bill.

As tough as the mandatory law may seem, Sena says some drivers will find a way to avoid it.

Continued

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Consumer Affairs

Las Vegas (Nev.) Review-Journal, May 29, 1979

Lawmakers tighten auto insurance law

By Ed Vogel
R-J Legislative Bureau

CARSON CITY— The Legislature adopted a mandatory minimum automobile insurance bill Monday and then killed the current no fault insurance law.

Instead of having at least no fault insurance, starting next January 1 Nevada's motorists must have an auto insurance policy giving them at least $15,000 of public liability and $10,000 of property damage coverage.

Assembly Bill 166 also will ensure motorists actually have coverage, said Sen. Richard Blakemore, D-Tonopah.

"Thirty to 40 percent of the drivers in Nevada now are not covered," Blakemore said.

The bill virtually forces drivers to acquire insurance since they won't be given an auto license renewal sticker if they can't show proof of insurance.

"When you get a policy you will be issued a special card," Blakemore said. "Then when you get your registration renewal in the mail you will have to send the insurance card in."

Drivers also will be required to show proof of insurance when a police officer requests it.

Though the mandatory insurance bill passed the Senate on a 17-0 vote, Sen. Jean Ford, D-Las Vegas, wasn't convinced it will be strong enough.

"We don't require insurance companies to notify the Department of Motor Vehicles when someone cancels insurance," Ford said.

Blakemore agreed the law can be beaten. He said the DMV doesn't have the "mechanism" to keep up with insurance cancellations.

The Assembly raised some objections before it killed the no-fault law on a 28-7 vote.

"Repealing no-fault will hurt everybody," said Assemblyman Mike FitzPatrick, a Las Vegas insurance broker.

Without no-fault, injured persons may have to sue over auto accidents, he said. FitzPatrick said it takes 18 months to schedule a hearing on any lawsuit.

"I hope between now and 1981 the people of Nevada will understand the importance of no-fault," added Assemblyman Nash Sena, D-Henderson.

Assemblyman Jack Jeffery, however, said the insurance companies "oversold" no-fault.

"The propaganda they put out said no-fault would lower rates of liability but instead the liability rates went up something like 80 percent," added Jeffery, D-Henderson.

Blakemore believes the requirement for insurance with public liability and property damage minimums will lower insurance rates by 5 percent.

Minimum auto insurance will cost $150, Blakemore said.

or lower. Said ISO cost comparison figures for a number of firms, rates for the above policy in Jefferson County can vary from a low of $199.50 with one firm to a high of $347.64 with another. In Tuscaloosa County they go from a low of $131.90 to a high of $296. Montgomery County prices range from $156 to $283.40.

There is no law in Alabama that says you have to have insurance, said Forrester. "But there is a safety responsibility law that says that if you have an accident that is your fault and you do not reimburse the injured party, your driver's license and tag are taken.

"We estimate 30 percent of the people do not have liability insurance," said Forrester. "We strongly encourage them to carry it."

Forrester, and several insurance firm spokesmen *The News* talked to, said that there is good competition in the insurance industry in Alabama.

Alabama has lower rates than many areas of the country that are more congested or have more lawsuits that sometimes result in high legal fees and high settlements.

AND "IN Alabama we have no territory that divides a city," said Forrester. "For example, you would be charged the same premium no matter where you lived in Birmingham. That's important."

Some larger cities, such as New York and Los Angeles, are divided into areas. "That becomes a problem," said Forrester, "with one part of a town claiming they pay more."

Here are some tips on shopping for insurance from the State Insurance Department, Alabama Farm Bureau, State Farm and Allstate.

● Shop around. Compare rates and policies. You could save hundreds of dollars a year. The cost is not the only factor you should use, although that's what most customers look at first.

When comparison shopping, check at least three policies and firms. Don't be high pressured into buying the first policy you see.

● READ AND UNDERSTAND every word of a contract before you sign it. If you don't understand, ask the agent to explain it to you. If you're not happy with his explanation, ask an agent for another firm or the State Insurance Department to explain it.

● Deal with an established, reputable firm. It doesn't help to get your insurance with a firm that charges low rates if that firm will fold up when it comes time to pay you.

Ask your neighbors and relatives about their firms. Check out the firm's general reputation for settling claims. Do they do it fast and fair or do you have to fight them for it?

● How available are the firm's agents? If you are traveling out of state, how much trouble will it be to get claims settled? Firms that don't have agents in another state often contract with adjusters in that state to settle their claims for them. They say this works, while national firms said it is better to have your own agent on the scene.

● What type of discounts does the firm offer? Look for discounts for such things as having more than one car, being an honor student in school, taking driver training or not smoking and drinking. Compare at what age the rates change for that firm. Do you get a discount for a smaller car?

● See if you can get a discount if you drive to work in a car pool and don't use your car every day.

● Consider the various costs for different amounts of deductibles. A larger deductible could save a big part of your premium.

● Check to see how the rates vary for how many miles you drive to work. One firm may charge more than another for the same amount of miles.

● If your insurance premiums are low, think about paying the amount due in a lump sum rather than in quarterly or monthly payments. This will avoid your owing a payment fee or financing cost.

● However, if your premiums are high, you may want to put the amount for the premiums in a savings account, earn interest on the money and then make quarterly or monthly payments even though this means you owe a payment fee or finance charge. The interest earned may be more than the amount of the fee or finance charge.

● You can check an insurance firm's financial soundness in "Best Insurance Reports," available at most libraries.

● You also can call the State Insurance Department at 832-6140 for data on a firm's rates, financial soundness and settlement record.

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Birmingham (Ala.) News, October 24, 1979

Auto insurance: It pays to shop around

BY TOM CALLAGHAN JR.
News staff writer

Traffic accidents happen without warning. One moment a driver can be glancing to the side admiring the beautiful sunset, and the next moment he could be stomping his foot on the brake and bracing himself for a grinding, metal-crunching, glass-shattering crash.

It's hard to plan in a budget for a wreck like that. That's why many motorists protect themselves, in part, from the effects of car accidents by carrying insurance policies.

Many people, though, look at insurance as too complex to understand and just blindly pay what the salesman asks without checking around to see what other firms offer.

THERE ARE MANY factors that go into deciding how much an insurance policy costs. There also are many factors that can be used to compare the value of one insurance policy against another.

Insurance firms charge different prices in different territories, or areas. The reason they do this, they say, is make each area pay for itself. The rates are set, in part, on the accident rate, repair costs, hospital costs, and amount of lawsuits historically filed in that area.

People who live in the country usually have to pay less than those who live in the city because there are more cars and a better chance of getting in an accident in a city.

There also are other factors that determine what a person might be charged. They include his age (younger drivers have more accidents), past driving record, what he's using his car for, and the type of car. Some cars cost more to repair than others and some cars are safer in wrecks than others.

THE PRICE OF a policy that provides the same coverage can vary from firm to firm, as well.

"We do not have uniform rates in Alabama," said Tharpe Forrester, deputy commissioner with the State Insurance Department. "Each company looks at its loss experience in their territories. If losses in one are higher, they have higher rates. The number of territories will vary between companies."

The three firms that have sold the most automobile insurance in Alabama, said Forrester, are State Farm, Alabama Farm Bureau and Allstate. Together they sold 57 percent of the car insurance in this state.

"After the top three," said Forrester, "the percentage drops way down. Those percentages are for the year ending in 1977 but it hasn't changed much."

Some insurance firms set their own rates, he said, but there are rating service firms that suggest rates for those companies that don't want to set their own.

There are about 450 car insurance firms in Alabama. About 35 percent of them use the rating firm Insurance Services Office (ISO), said Forrester.

ISO DIVIDES the state into eight areas. The most expensive is Jefferson County, the least is Autauga and Elmore counties. That also could vary with each insurance firm.

According to ISO rates, a Birmingham driver could pay $274 for the same policy that would cost an Elmore county man only $211.

The policy is for a driver over the age of 29 who uses his 1978 Chevrolet Malibu for pleasure use only and does not drive it to work. He has a clean driving record.

The policy includes $10-20,000 bodily injury liability coverage, $10,000 property damage liability, up to $20,000 uninsured motorist, $50 deductible comprehensive and $100 deductible collision. The date of the policy was Sept. 15, 1979.

The cost of the policy can vary even more depending on other, individual factors. The costs here are for comparison only and may be different from what ISO would charge you.

That same policy at ISO rates would cost the same driver these amounts in these areas: Colbert, Franklin, Jackson, Lauderdale, Lawrence, Limestone and Madison counties — $263; Jefferson County — $274; Autauga and Elmore counties — $211; Tuscaloosa County — $246; Etowah County — $253; Mobile and Baldwin counties — $250; Montgomery County — $221; and the rest of the state — $255.

THE COST OF an insurance policy within an area can vary by firms. For

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...ings (Mont.) Gazette, June 9, 1979

Liability law in effect now for July licenses

By KIM LARSEN
Of The Gazette Staff

Most motorists without liability insurance will no longer be able to renew their car licenses or obtain new license plates.

Yellowstone County Treasurer May Jenkins said Friday that car owners applying for July license renewals without proof of liability will be turned away from the license-plate lines in the courthouse.

The mandatory insurance measure, passed by the Legislature, goes into effect July 1.

But Mrs. Jenkins is enforcing the law now because July license renewals are being made now.

Pat Driscoll, chief assistant attorney general in Helena, said it is legal to require proof of insurance on licenses due after the effective date of the law even though that date is three weeks away.

Mrs. Jenkins said that if enforcement were not allowed now, car owners buying July licenses would have to be told to come back next month.

Minimum insurance requirements for all vehicles are $25,000 liability, $50,000 medical and $5,000 property damage.

The easiest way a motorist can prove he has the required insurance is to present a copy of his policy when he applies for a new or renewed license.

Other proofs that will be accepted are a certificate of liability statement, a memorandum from an insurance agent, an insurance identification card, a premium payment receipt or an application or binder.

"Absolutely no licenses will be issued if no proof of insurance is shown," Mrs. Jenkins said.

The treasurer also warned motorists that their insurance must be continuously in effect. "Those who think they can take out a policy and drop it in three months will be in violation of the law," she said.

Any motorist caught without insurance after having obtained a license will be guilty of a misdemeanor, according to the new law.

Motorcycles, vehicles propelled by auxiliary power, and government agency vehicles are exempt from the insurance requirement.

Mrs. Jenkins said the Motor Vehicle Department already has had to turn away "a few" license applicants because they could not prove they have insurance.

The new law is a good one, Mrs. Jenkins said, but she does not like the burden of it being placed on county treasurers. Demanding proof of insurance and noting it on registration forms will require more paperwork and cause "long lines again," she said.

"Until we get the problems worked out, I hope the public will be sympathetic — very patient with us," Mrs. Jenkins said. "It's the law, so we have to do it."

Mrs. Jenkins announced six other changes in licensing that go into effect July 1:

- The lien filing fee will be raised from $2 to $3 while the registration fee will go up $1. Vehicles weighing more than 2,850 pounds will cost $12 while those under that weight will cost $7.
- County designation stickers will be issued for personalized plates as soon as the state prepares the decals. These stickers must be placed on the upper left-hand corner of the plate.
- Personalized plates will be issued on a staggered basis just as numerical plates are now issued. Existing personalized plates will remain on a calendar-year basis, however.
- Mopeds will be deleted from the motorcycle law. House Bill 819, called the "Moped Relief Act," will allow mopeds to be ridden on the streets without registration, title or taxes.
- Special mobile plates will have a grace period to Feb. 15 of each year. Special mobiles are construction equipment used primarily on job sites but use the roads to move from site to site. Plates for these vehicles, in the past, had to be renewed on the first of the year and no grace period was allowed.
- An individual will be able to transfer one set of plates between two vehicles while still owning both. Registration fees will cease on the first vehicle upon transfer.

the hearings. It would require every car owner in the city to carry liability and collision coverag...

The other bills were introduced by Betty Ann Kane (D-At Large) and by Nadine P. Winter (D-Ward 6).

Kane said her bill was modeled after the highly successful Michigan no-fault law, and would provide more generous benefits than the Dixon bill. She said she would support the latter if it proved more politically feasible.

Dixon said his bill was drafted with help from the Committee for Consumers No-Fault, a national coalition of insurance companies, consumer groups, unions, vehicle fleet owners and car rental firms.

The measure would permit a person injured in an accident to submit a substantiated claim for up to $124,000 in expenses and lost wages without having to prove who was at fault. The claim would be paid by the insurance company carrying the policy on the car in which the injured person was riding or—if the injured party is a pedestrian—on the car involved.

Under typical insurance practice now, a motorist making a claim must demonstrate that the accident was the fault of the other driver or of circumstances beyond the motorist's control. Generally, such claims are paid by the company that insures the person found to be at fault.

With few exceptions, lawsuits would not be permitted by injured persons attempting to recover damages unless they exceed $124,000, plus $1,000 in death benefits.

Kane said her bill would not set any limit on payments. She said both bills allow lawsuits in cases involving permanent disability or disfigurement.

Nationally, no-fault coverage accompanied by restrictions against lawsuits has been fought by the Association of Trial Lawyers of America, whose members earn part of their livelihoods trying such cases.

Charles C. Parsons, president of the association's local affiliate, the Association of Plaintiffs' Trial Lawyers of Metropolitan Washington, said a spokesman for his group will testify against the no-fault bills.

He said the Dixon measure is "an insurance industry bill . . . highly disadvantageous to the general public and highly advantageous to the insurance industry."

Saying that auto injury cases represent a fraction of his own practice, Parsons insisted that "I don't see myself as an ogre" as trial lawyers often are painted in the media.

"We will show in our testimony that the only way to deal with (auto insurance) is on a case-by-case basis," Parsons said. He said the only proposal the trial lawyers could work with is the Rolark compulsory-insurance bill.

More than 30 witnesses are scheduled to testify before the City Council's Public Services and Consumer Affairs Committee at sessions scheduled for 10 a.m. and 5 p.m. Others interested in testifying may sign up at the hearings.

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Washington (D.C.) Post, January 17, 1980

Debate on Compulsory Auto Insurance Begins

By Jack Eisen
Washington Post Staff Writer

Between 40 and 60 percent of Washington motorists drive around town on any given day without car insurance, according to a report released this week by the Washington-based consumer group Automobile Owner's Action Council.

The report adds that there is reason to believe uninsured motorists are more accident-prone than insured drivers.

But the days of the uninsured motorist may be over, if no-fault automobile insurance becomes mandatory in the District.

Hearings today on proposals to introduce some form of mandatory automobile insurance will set the stage for one of the liveliest legislative debates expected in the city this year.

There has been no official estimate on the cost of no-fault premiums. When introducing a proposal on no-fault automobile insurance last October, Council Chairman Arrington Dixon said the coverage would cost each District motorist $127 a year, but offered no comparison with the current cost of a basic insurance package.

But August P. Alegi—assistant vice president of the Government Employees Insurance Co., the city's biggest insurer and one known for relatively low premium costs—said no-fault coverage would cost $82 a year, compared with an average of $145 for a basic insurance package today. Like other advocates of no-fault, Alegi said the reduction is made possible by lower administrative costs.

Motorists will have to shoulder premium costs for no-fault insurance in addition to coverage protecting against property damage and other accident-related costs.

The Dixon bill would require insurance companies to set up a pooling arrangement offering policies to high-risk drivers.

Witnesses testifying today represent a broad spectrum of views ranging from the insurance industry—which generally supports the proposal—to the legal profession—which opposes it. The general public may also make its views known.

All the proposals being considered would require automobile owners in the District to carry liability insurance, and make it a crime to drive without this coverage. It is estimated that the owners of 114,000 cars—four out of every 10 registered in the city—currently carry no insurance.

In addition to assuring compensation to accident victims without the need to fix blame, the no-fault system would help hold down rising premium rates or even reduce them, supporters of the system say.

But trial lawyers, who have fought such measures whenever proposed in state legislatures and Congress, say the no-fault proposal would sharply curtail the existing right of victims to sue for damages.

In considering the no-fault proposal, the D.C. council will be acting for the nation's capital as a state legislature would. Any bill enacted, however, would be subject to review and possible veto by Congress, which in 1978 rejected national no-fault legislation.

The D.C. council has four bills pending, but today's testimony is expected to center on two of them:

•The first was introduced by Dixon and cosponsored by five others on the 13-member council. It would set up a comprehensive no-fault system and require everyone to be insured.

•The second was introduced by Wilhelmina J. Rolark (D-Ward 8), the committee chairman, who will preside at

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"I'm sure that estimate is high," said Bob Gwynne of Murfreesboro division manager for State Farm. "The last time I looked — and this is based on auto registrations... It was about 18 per cent statewide uninsured, and Shelby County was high — about 25 or 26."

Gwynne, who also serves as the lobbyist for State Farm when the General Assembly is in session, said that, as of the end of last year, his firm had 525,299 automobile policies in the state, with 73,559 of those in Shelby County — "our largest market in Tennessee."

Tennessee Farm Bureau, which operates only in the state, has about 351,000 casualty insurance policyholders but, according to a spokesman in the state insurance department office, has relatively little coverage in Shelby County.

"I don't know how much insurance they have in Memphis, you've got to at least drive by a farm before they'll sell it to you."

Buford Dreadon of Columbia, lobbyist for the Farm Bureau, said his company has no figures on accidents involving uninsured motorists.

There is no way to determine how many accidents per year do not involve insurance coverage. One reason is that so many use their own collision insurance to have it repaired.

Dreadon added, however, that "about 98 per cent of our people do voluntarily buy uninsured motorists insurance."

Gwynne said his company's records show 96.4 per cent of the State Farm policyholders have uninsured motorists insurance, which covers the policyholder when the other driver is at fault and has no insurance.

"Do you know why that figure's so high?" asked James E. Blount III, a Memphis attorney who specializes in representing plaintiffs in accidental injury cases.

"It's because state law requires uninsured motorist insurance to be part of the policy. The only way they cannot sell uninsured motorists (coverage) is to get the policyholder to sign a waiver of that coverage that is required under Tennessee state law.

"Even if it's not written into the policy, the courts have ruled that the coverage is there."

Blount said a problem that is almost as pressing — or depressing — as uninsured motorists is that of underinsured motorists and that inflation has played havoc with what a dollar will buy in terms of care and repair.

He said the minimum insurance required in Tennessee — $10,000 — "is probably the lowest in the country" and that Mississippi and Arkansas share that figure.

"What's $10,000 to a person badly injured when you spend $3,000 for a broken leg? We should raise the minimum limits to at least $25,000, and we're not talking about a lot of money in premiums."

Blount said insurance companies aren't known for pushing it, but underinsured-motorist coverage can be purchased "up to the limits of your liability coverage."

"Under that coverage your own company pays the difference between what the underinsured person's company pays and your actual damages or your maximum coverage."

He said he has dealt with many tragic cases where persons have been permanently disabled in accidents that were not their fault but could collect nothing because there was no insurance.

"And, oh sure, there are death cases like that where there is no insurance. But, of course, they were also to blame because they didn't have insurance either.

"I have this case where a guy ran a red light and this woman was killed. It was clearly his fault but there's no insurance. It's a tragic situation. They don't even know how they're going to bury her."

The list of tragedy is literally endless — it grows daily.

"Right now, I have this young man who was in Overton Park with his bicycle," said Jerome Hoffman, a Memphis attorney. "He was completely off the roadway when this car filled with kids, lose control and leaves the road for 100 feet or more and runs him down.

"He is disabled for life, and there was no insurance. A 20-year-old boy, disabled for life through no fault of his own and not able to get one red cent to help out. If the boy had had a driver's license and insurance he would have been able to collect through uninsured motorists, but he didn't drive a car.

"It killed me, and I'm used to this kind of thing."

Joseph Fuller, a Kingsport attorney who specializes in defense work for insurance companies, said, "It's going to shock you the number of people who are driving naked as we call it — driving without insurance coverage. A lot of people just don't have the money."

He said there is much disagreement among insurance companies he represents concerning answers to the uninsured motorists problem and such proposals as no fault and compulsory liability.

The problem, Fuller said is much like an old East Tennessee saying.

"You know what you're running from, but you don't know what you're running to."

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Anchorage (Alas.) Daily Times, October 12, 1980

Alaska's automobile insurance paradox

by Bill Knaven
Times Writer

One out of every two drivers you see driving Alaska's often ice-caked roads is uninsured.

In some states, it's as illegal to drive without insurance as it is to drive drunk.

In Alaska, however, it's almost becoming a fad. According to estimates by the state department of Transportation and Public Facilities, 50 percent of the registered drivers in Alaska are uninsured — a 12 percent increase in five years.

"The horror story isn't over," says Ken Moore, state director of the division of insurance, adding that the figure doesn't take into account many more uninsured motorists in Bush communities who don't register their cars.

But Moore says the figures are not unlike those in other states with no mandatory automobile insurance laws.

"To a lot of people on a limited income, a car is a necessity," Moore says. And those states with compulsory car insurance still report up to 15 percent up to its drivers not insured. But he is at a loss to explain why half of the motorists in relatively wealthy Alaska are uninsured.

One Sunday evening last year, Roy and Phyllis Fields of Anchorage met one of those uninsured drivers — in a bone-crunching collision involving three cars.

The Fields were hospitalized for nearly two weeks. They still go back for therapy. Their bill is $12,000 and growing. They can't afford it and their insurance company isn't paying for it under their uninsured motorist coverage. A third driver involved in the accident was insured, but his company isn't paying either.

Roy says the Veterans Administration would have paid for his bills but he failed to file with them in time under the impression his insurance company was going to cover the costs.

The Fields get $420 a month in pension and social security money.

"With inflation, it's getting skimpy," Roy says.

Their attorney, Jim Palmier, has worked out a deal with the hospital to defray the bill until the case is resolved, he added.

"They are the salt of the earth," Palmier said of his clients.

Although they are eligible, the Fields will not take food stamps or medicaid or any other kind of welfare.

While the insurance companies play their claims games, the Fields wearily await the outcome.

"Both companies agree it should be paid, but by someone else," says Roy.

A typical day for the Fields is not action-packed. They spend much of their time at the Full Gospel Church or their small home on Medfra Street.

"We don't go riding too much anymore," Phyllis says, nearly laughing. Laughter doesn't come easily to the Fields these days. But then nothing does.

Phyllis can't lift her arm higher than her shoulder. If she tries to stand for any period of time, her knees swell up so bad she has to rest in bed for a day or two. A wheelbarrow full of aspirin cannot relieve her constant headaches.

Roy is doing somewhat better. Retired after an electronics career, he likes to show the bump on his shoulder where the bone didn't heal correctly. But he has a tendency to just sit and stare into space.

In the collision, they were smashed against the dashboard. Phyllis broke three ribs, her shoulder and three vertabrae in her neck. Roy fractured his clavicle, seven ribs and punctured his lungs.

The uninsured motorist suffered a broken nose.

The Fields' still haven't fully recovered from their injuries and are slowly regaining the strength that was sapped from months of inactivity. When you're in your 60s, it's not easy.

"I was so active!" Phyllis exclaims, while rattling off all the things she did before the accident — gardening, painting, shoveling snow, changing their car's oil.

"I even tarred the roof," she said as Roy nodded his head at the memory and smiled.

The Fields seem to like reminiscing. Life is a home movie. And the more reruns the better — not what is scheduled for the new season, which is more therapy, limping around and

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wondering if and when their bills will be paid.

Phyllis has therapy twice a week to loosen up her neck. The one-hour session is nothing she looks forward to.

"I'm so dizzy when I come out. I don't know how long it will last. The doctor said it's a long-term thing."

Their injuries, Roy admits, may have been prevented by wearing seatbelts.

"Intellectually I realize I should wear the little buggers."

The first three months after the accident, a wooden chair was his bed. He couldn't breathe lying down until his ribs healed. Phyllis slept in bed with a brace.

"Sometimes he'd be slumped over and I'd have to tie him into the chair," she said.

Because of pending litigation, details of the accident — at the intersection of Chugach and Arctic — are being withheld.

The accident occurred May 27, 1979. Ironically, it was a day when the Fields thought the streets were safest — many people had deserted the city for the Memorial Day weekend.

The Fields say they feel no animosity toward the uninsured driver, even though the only time he visited them, he accused them of causing the accident, Phyllis says.

"I think he was just afraid of losing his license," says Roy. "We told him to go to the insurance company and try to convince them he was right."

He'd have a hard time convincing the Fields he even had any right to be driving. Since the accident, they believe in some kind of compulsory automobile insurance.

Twenty-four states in the nation now have compulsory insurance laws, often tied to some form of no-fault insurance, but that still doesn't keep uninsured drivers off the road.

In Alaska, when a driver causes an accident and has no insurance, he or she must prove financial responsibility to cover the costs. But an Alaska privacy act virtually voids the financial responsibility law by making that information hard or unavailable to get, state insurance director Moore said.

If you don't pay, you get your license suspended for up to three years.

Why people drive uninsured may be due to several reasons — mostly financial.

"I can't afford it," says one young career woman who nets $900 a month.

Despite getting into a recent accident due to the snow, which caused about $1,000 damage to the front end of her car, she still hasn't changed her mind.

"It's the first accident I've ever had. Think of all the money I've saved by not having insurance the past six years."

Insurance coverage for her Chevrolet Camaro would cost about $650 a year "because I'm single. And I'm not going to get married just to drop my rates."

Another rationalized not getting insurance by saying "it's a hassle."

But if you drive with a lot of heart, as they say in the demolition derby, it may be worth it to buy insurance.

Chances are, everyone driving in Alaska will be involved in one accident in one year, state troopers say.

An average accident in 1978 cost $1,700 according to State Farm Insurance figures. State Farm has the greatest share of the Alaska car insurance market — 21 percent.

Anchorage insurance agent Bob Bellott said many accidents are not reported because drivers feel it will jack up their cost of insurance too much.

"It would not adversely affect them," Bellott said. State Farm, however, does tack on a 10 percent surcharge for each accident claim, he said.

Cause an accident where people like the Fields suffer a rash of injuries and you may be looking at a $12,000 bill, not including legal fees. Accidently cause another where someone is permanently maimed and the price tag may be closer to a million dollars.

If you can't pay for the damages with insurance, you can kiss your assets goodbye.

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Fairbanks (Alas.) Daily News-Miner, March 18, 1980

The uninsured motorists: are tougher laws needed?

By TRICIA OLSEN
For The News-Miner

In 23 years of driving, Carl Jeglum, 44, hadn't had an auto accident. His record was about as clean as they come.

But in the past year and a half, he has been hit three times—all by uninsured motorists. The first two drivers paid their debts quickly and willingly.

Jeglum was lucky Twice. But his luck ran out on the third accident.

No. 3 was a minor accident—a fender bender—but it triggered something in Jeglum, of 2256 Jack St. This time the offender was unwilling to pay for the damage.

"He was a nice, nice guy," said Jeglum, who didn't anticipate any problem collecting the $165 on the estimated damages. "He just said, 'Have it done and bill me.'" Jeglum preferred to prepay the work.

He tried to stay in touch, but soon the "nice guy" wouldn't answer his phone and ignored Jeglum's letters.

"When it happened to me, I said, 'We're not talking about money, it's the principle,'" and he started writing letters to state legislators to find out why the law doesn't, in his view, protect people who share his experience.

Last October, he filed suit in Small Claims Court and was awarded a default judgment on Jan. 24.

"I've got this wonderful piece of paper," Jeglum said, a legal file in his hand, "that will not repair my automobile at all."

The bill has grown a bit—it's now $198, including court costs—but an execution order allows the court to seize property, such as bank accounts or an auto, or garnish his earnings, "if he has any money," Jeglum said, emphasizing the "if."

But, he said, "My time is worth money, and so is everyone else's and you don't collect on those things."

Jeglum eventually paid for the repairs out of his own pocket.

"I've got a hunch I won't get my money back," he said. "It's a crying shame."

"This puts a lot of burden on your shoulders as . . . " Jeglum paused while his eyes ran over the paper in his hand until he found the word he was looking for: " . . . plaintiff."

One of Jeglum's letter went to Rep. Sally Smith, D-Fairbanks. Her response contained some alarming statistics.

"Currently about 30 per cent of the registered cars in Alaska are uninsured," she wrote, "and there are large numbers of cars that are unregistered."

Figures cited by Motor Vehicles Commissioner William R. Nix in his letter to Jeglum made the picture seem a little less bleak. He said 92 per cent of motor vehicle owners or drivers in accidents last year have met their financial obligations. The driver's licenses of the remaining 8 per cent were suspended for three years or until they make restitution.

Nix wrote that Alaska's financial responsibility laws are "among the toughest in the United States." The penalty of a three-year license suspension, he said, is an "inducement to have people meet their obligations."

Lee Standiford, Fairbanks office manager of the Division of Motor Vehicles, said if an accident report shows that a driver was not insured, the driver and owner will receive a "Notice of Suspension" letter from the department.

The letter asks for proof of insurance, a settlement or release from the other parties involved, or a security deposit large enough to cover the damages caused by the accident.

In addition to the deposit, they must file documents showing that they are financially responsible. If there is no judgment within a year, the motor vehicles department returns the security deposit upon request, Standiford said.

He emphasized that if the driver is not also the owner, the owner's license could be suspended, too.

Nix wrote, "This penalty was strengthened by the Legislature in 1978 when it made the penalty for driving with a suspended license a mandatory 10-day jail sentence."

But Rep. Smith doesn't think the financial responsibility laws are strong enough and suggested changing the current law to "put some teeth into it."

She wrote, "A good financial responsibility act could be done in conjunction with car registration, thus avoiding a growth in the bureaucracy. In addition, it may back up those who have to resort to the courts to obtain justice."

Alaskan law defines a financially responsible person as one who can pay for damages in these amounts: $25,000 for bodily injury or death in one person, $50,000 for two or more persons, and $10,000 for injury to or destruction of property of others.

Under current law, a person need proof of financial responsibility only after his first uninsured accident.

Many, especially those unable to collect from an uninsured motorist, believe mandatory insurance may be the answer. Today's law was clearly expressed in a 1967 Supreme Court decision: "No law of Alaska requires a driver or owner to carry automobile liability insurance as a prerequisite to his owning or operating a motor vehicle in this state."

Smith does not support mandatory insurance. A nation-wide study of insurance rates, she said, showed that six states have rates higher than Alaska's; five of them have compulsory insurance. Smith added that she fears "we would be contributing to the growth of government" and that problems are created in enforcing the insurance.

"Those states that have mandated insurance have also had to establish a large bureaucracy to handle the necessary paperwork," she wrote.

Nix wrote that even in the 21 states with mandatory insurance, only 90 to 95 per cent of the drivers are insured.

"They found that to enforce total compliance would be extremely expensive," wrote Nix, "and would place unwarranted restrictions on innocent drivers."

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Tricia Olsen is a journalism student at the University of Alaska Fairbanks.

Consumer Affairs

Philadelphia (Penn.) Irquirer, November 16, 1981

How no-fault failed to halt soaring insurance costs

By David Morrison
Inquirer Harrisburg Bureau

HARRISBURG — The beauty of the concept was that no matter who caused the accident, the victims would receive immediate financial help.

It was called no-fault insurance, and to its proponents in the early 1970s it held the promise of an end to the spiraling cost of automobile insurance and to the nightmarish suits and countersuits that seemed to be the inevitable result of any automobile accident resulting in damage or injury.

Under no-fault, courts no longer would be clogged with lengthy, sometimes frivolous, arguments about who caused the crash, whether the injured party had done all he or she could to avoid it and what the dollar value was of injuries, damage or death.

For a reasonable cost, a driver could ensure that he and his family could be compensated quickly by his own insurance company for medical bills, lost wages, rehabilitation and many other injury-related expenses.

That was how its proponents envisioned it, and in the last decade, Pennsylvania and two dozen other states enacted no-fault into law. But as the state House prepares to vote, perhaps as early as this week, on legislation to amend Pennsylvania's 1974 no-fault law, it is clear that no-fault insurance has not lived up to its promise.

It has, in many cases, expedited payments to accident victims. But rather than a decrease in the cost of automobile insurance, as expected, the insurance has soared.

Since enactment of no-fault in Pennsylvania, the cost of automobile insurance has increased more rapidly than the Consumer Price Index, which has been a staggering reflection of double-digit inflation in recent years.

If the current law is not amended, experts say, insurance costs will continue to increase dramatically. But even if the legislature adopts the proposed changes, which are designed to close some expensive loopholes, it is generally agreed that auto insurance costs will continue to rise.

Without the proposed changes in the law, Pennsylvania motorists would see premiums almost double in the next four years, one insurance company estimated. Even with the changes, the same company projected, premiums would climb by more than 60 percent.

The questions regarding the increases in insurance costs appear to be at best: How soon? How high?

Although several surveys have indicated that the consumer still favors the no-fault concept, there is a growing uncertainty that he is willing to pay the cost.

Currently, the no-fault debate in Pennsylvania centers on House Bill 1285, which is vigorously supported by Gov. Thornburgh and the insurance industry and is vigorously opposed by the Pennsylvania Trial Lawyers Association. When the House convenes today, members are expected to have on their desks close to 50 proposed amendments for the legislation reflecting wishes of the

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various groups interested in the bill.

The insurance industry versus the trial lawyers over no fault is a long-standing confrontation, and neither side's motives are entirely selfless.

Lost legal fees

According to the best data available, the changes mandated in this bill will cost attorneys who represent auto accident victims between $62 million and $90 million a year in lost legal fees — money the insurance industry says comes out of benefits that are paid to victims.

The changes would save insurance companies as much as $166 million a year in claims that would have to be paid under the current law — costs that probably would be passed on to the consumer in coming years if the bill fails.

Enactment of the bill definitely would improve the profit picture for the state's 204 auto insurance companies, which last year paid in benefits 64 percent of the more than $669 million they collected in bodily injury premiums.

Thornburgh calls the Pennsylvania legislation "our best effort" for reform. He concedes, however, that its economic impact "won't cut the rates for insurance" but could slow the rate of increases.

"We are trying to get back to the basic concept of no-fault," said Rep. Walter F. DeVerter (R-Mifflin), chairman of the House Insurance Committee and chief sponsor of the bill. "I don't know if this bill is perfect, but I do know that under the present system people have not received what has been promised to them."

Although sponsors of House Bill 1285 maintain it is not "an industry bill," automobile insurance companies nationwide are monitoring the Pennsylvania debate and are ready to field a team of experts and lobbyists at a moment's notice.

The Philadelphia-based Insurance Federation of Pennsylvania already has poured about $30,000 into newspaper advertising alone, said its president, Thomas J. Finley Jr., and probably will spend much more before the bill completes its legislative journey.

The Trial Lawyers Association is not far behind. It is currently soliciting contributions of up to $40 a month from its members for the fight, an expenditure that Philadelphia lawyer James F. Mundy described in a June 12 letter to the association's more than 2,000 members as a "commitment [that] has become as necessary to the success of your practice as rent, stationery and secretary."

"Certainly we have a selfish interest," said Bruce Dexter of Harrisburg, president of the Trial Lawyers Association. "Nobody gets this involved in an issue and spends this kind of money on an issue if they don't have a selfish interest.

"We don't expect the public to believe us. We just hope it doesn't believe the insurance industry, either."

Money at stake

Grover Czech, vice president for the mid-Atlantic region of the Washington-based American Insurance Association, a lobbying and research organization representing 150 insurance companies, agreed that economic issues were at stake in the no-fault war.

But he insisted that the industry's state-to-state proselytizing for no-fault is serving the best interests of consumers, aimed at developing "a system that works the way it is supposed to work, that provides the best possible protection for the lowest possible costs."

Once the consumer issue of liberals and Ralph Nader-like activists in the early 1970s, when there was much talk but little action toward enactment of a federal no-fault program, no-fault in the '80s more often is a classic clash of powerful special-interest groups.

"In 1974, when the law was enacted," said Michael Browne, Pennsylvania insurance commissioner, "it was heralded as something that would do two things: One, it would provide for quick, expeditious payments of claims to people who were injured in auto accidents, and two, it would reduce the cost of automobile insurance.

"While it did the first, it certainly did not do the latter."

In the absence of no-fault, a driver bought insurance to protect himself against economic losses if he was at fault in an accident. Some states required motorists to buy liability insurance to guarantee they would be able to pay claims against them. Drivers bought additional insurance for their own injuries.

Under the no-fault concept, motorists were to be required to buy only the insurance that covered them for economic losses caused by their own injuries, no matter how the accident happened. In exchange for the automatic compensation for "out-of-pocket" losses, the insured was to give up his right to sue for those damages as well as his right to sue for noneconomic or general damages, sometimes called "pain and suffering."

No state has ever tried an absolute no-fault system in which all claims are paid automatically. Each law and each proposed law to some degree still preserves the injured party's right to sue. The laws in some states, including Pennsylvania and New Jersey, require the injured person to reach a certain "threshold" of injury — determined monetarily by actual economic losses or through some verbal description — before he can take legal action to recover damages from the person who was at fault. Other states, including Delaware and Maryland, mandate insurance for the driver, combined with no restrictions on lawsuits.

Not best or worst

Although it was once a model for the nation, the Pennsylvania law is not considered the best in the United States, according to some of the more objective advocates of no-fault. But they agree that, despite its failings, the Pennsylvania law certainly is not the worst either, primarily because of its comparatively liberal benefits for accident victims.

The Pennsylvania and New Jersey laws are two of three in the nation that provide for unlimited payment of injury-related claims. In Pennsylvania, the coverage applies to both those who have purchased the insurance required by law and — through what proponents of House Bill 1285's changes call a major flaw in the law — for those who have not.

The claims of the insured are paid

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by his own insurance company. The claims of the uninsured, however, are paid through the Philadelphia-based Assigned Claims Plan, a pool arrangement run by the state's auto insurance companies. The uninsured, according to the State Department of Transportation's current estimates, total 350,000 in the state, with 38 percent of them in the Philadelphia area.

The Pennsylvania law provides for a death benefit of $5,000; up to $15,000 for lost income, both for the victims or their survivors, and up to $25 a day for a year for loss of services that victims normally would perform for themselves.

Victims or their survivors still have the right to sue a person they believe to be at fault in the accident if there are more than $750 in actual expenses or if the accident involves death, serious injury or permanent disfigurement.

But at the same time, the state's insurance rates are some of the highest in the nation.

According to figures supplied by Allstate Insurance Co., one of the largest automobile insurance firms operating in the state, an adult male must pay an average of $64 a year in Harrisburg for the bodily injury portions of his automobile insurance that are required by law. In Philadelphia, his premiums for bodily injury liability and basic Personal Injury Protection average $223 a year. A male teenage driver must pay an average $201 a year in Harrisburg and $697 in Philadelphia.

Allstate projects those rates will increase substantially by 1985. With enactment of the legislation, the company says, the male adult's insurance premium for bodily injury coverage will jump to $109 a year in Harrisburg and $375 if he lives in Philadelphia. Without the changes, his insurance bill in Harrisburg will be $123 a year for the bodily injury section and $426 in Philadelphia.

The teenage driver faces a similar plight: $330 a year in Harrisburg and $1,138 in Philadelphia with enactment of House Bill 1285; $385 in Harrisburg and $1,338 in Philadelphia without it.

There are three major aims of House Bill 1285:

• To replace the $750 threshold for suing with a verbal definition of the threshold. That means no one would be able to sue for pain and suffering unless the accident results in death, both "serious and permanent" injury or serious and permanent disfigurement. A compromise version, supported by some labor groups, would replace the verbal threshold with a $5,000 to $10,000 threshold.

• To crack down on uninsured motorists, both through penalties the bill would impose and by eliminating such motorists from benefits paid by the Assigned Claims Plan.

• To eliminate "double dipping" — people receiving payments for injuries both from their automobile insurance and some other insurance plan, such as a group hospitalization and health program.

But House Bill 1285 would bring other changes, too:

• Although it was not the original intent of the law, the Pennsylvania no-fault system provides that a survivor of an accident victim is not only entitled to a $5,000 death benefit, but is also entitled to receive up to $15,000 to compensate for wages the victim would have received. The bill would eliminate the wage-loss benefit for survivors and would restrict the loss-of-services benefit of $25 a day to only the victim. If he dies, his survivors would get nothing for loss of services.

• Under current law, insurance companies cannot make a "lump sum" settlement with a victim over $2,500 without court approval. House Bill 1285 proposes changing that to $10,000.

• Insurance companies now have to go to court to force an accident victim to submit to examination by insurance company physicians. The burden of proof is on the insuror to establish that there is good cause to require an examination. The bill would allow the companies to require "reasonable" examinations on their own; if the victim refuses, the burden in court would be his. The state Insurance Department says this provision would help eliminate fraud against insurance companies.

• Under current law, insurance companies are required to pay 18 percent interest on claims payments they withhold. That rule is applied, for example, to a claim that is the subject of litigation. The industry wanted the rate reduced to 6 percent, but Commissioner Browne insisted that it be lowered to 12 percent. Some consumer groups consider that still too low in view of high returns insurance companies can earn on investments, but an Insurance Department spokesman said average earnings on investments for those companies are between 6 percent and 9 percent.

The uninsured

But Hunter said the absence of strong language, coupled with the provision to reduce the interest insurors must pay on withheld claims, is particularly troublesome. "You can make 17 percent interest in a money market fund," he said. "Insurance companies could net 5 percent by simply saying, 'Hey, I'm not going to pay. Sue me,' even if they are forced to pay later.

"The only thing insurance companies understand is money," Hunter added. "If you can't hit them in the pocketbook, you can't make them toe the mark."

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Jeffrey O'Connell, a University of Virginia law professor who is one of the country's foremost advocates of no-fault, says that uninsured motorists should not receive benefits they did not pay for, but he suggested that the law still should permit them to sue to recover damages if they are not at fault. He contended that those who are willfully uninsured "are usually quite poor" and cannot afford to buy the mandatory coverage, a contention supported by a recent PennDOT survey.

That is also a concern of Pennsylvania Rep. Stephen Levin (D., Philadelphia), who is the author of an amendment to House Bill 1285 that he wants to use as a vehicle to repeal the no-fault law entirely.

"You can have the working poor — a man who earns less than $10,000 a year — driving a $1,000 car buying $1,500 worth of insurance," he said. "If you take something away from somebody, you've got to give him something in return."

Otis W. Littleton, chief counsel to the House Insurance Committee and principal draftsman of House Bill 1285, argued that, "under existing law or under the proposed law, we do not limit the right to sue for actual economic losses, even if the person is willfully uninsured." However, for that person to sue for pain and suffering, he would "have to meet the same threshold as any other driver." If he is in a single-car accident or some other accident in which no one was really at fault, he would be out of luck, Littleton conceded.

The insurance industry would like to see Pennsylvania adopt a provision, similar to one in Florida, that would crack down on those engaged in the filing of fraudulent claims, a program the state Insurance Department says it is not willing to take on.

The trial lawyers are interested in adding another provision from Florida — a regulation defining and prohibiting excessive insurance industry profits, a provision the lawyers association contends has resulted in refunds of more than $100 million to Florida policy-holders. The Insurance Department says that is covered by rate review provisions in House Bill 1285.

Finally, Bob Hunter, president of the Virginia-based National Insurance Consumer Organization, said any no-fault insurance program should carry "good and open and punitive damage language to make sure the insurance companies toe the mark and pay what they are supposed to pay." The Insurance Department says all that is taken care of in another law, the Unfair Claims Practices Act.

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(Harrisburg, Penn.) Patriot, March 11, 1979

'No-Fault' Insurance Law Facing Major Surgery

By CARMEN BRUTTO
Staff Writer

The state's five-year-old no-fault auto insurance law faces major surgery to make it tougher on uninsured motorists who have been beneficiaries of defects in the current law.

The state's mandatory auto insurance law is apparently being ignored by hundreds of thousands of motorists who nonetheless benefit from a provision that insured drivers pick up the medical bills and lost wages of uninsured persons injured in traffic accidents.

The original intent of the 1974 law was to protect pedestrians and passengers under an assigned claims provision, but the effect of the law's language was to extend the same protection to thousands of drivers who hold no insurance.

Changes in the law are being proposed in a package of bills drafted by Reps. Russell Kowalyshyn, D-Northampton, former chairman of the House Insurance Committee, and Ivan Itkin, D-Pittsburgh.

Three of the four bills in the package were introduced last week. The fourth, to eliminate an uninsured motorist's coverage for injury and lost wages compensation is being circulated among House members for additional sponsors.

"It seems to me that a person who drives in the state without insurance, which is in violation of the law, should not be allowed to collect any of the benefits provided by the law, especially since he has not paid any premiums to provide such benefits," Itkin said. "I intend to correct this glaring error in the law."

The assigned claims plan covering uninsured persons is an insurance industry pooling mechanism that distributes claim payments to vehicle passengers or pedestrians who are accident victims and not otherwise insured.

"One of the sad ironies of the no-fault law is that those who ignore it by failing to obtain insurance are protected anyway, and the cost of that protection is paid by those who are legally insured," Kowalyshyn said.

According to Kowalyshyn, more than half the assigned claims paid last year by insurance companies went to uninsured motorists. He said it is likely this has been the pattern for several years.

In addition to the actual payouts, the industry sets aside even larger amounts in "reserve" for future payments, resulting in millions of dollars of inflated premiums paid by the insured motorist, he said.

A provision in a bill passed last year would have corrected the inequity, but it was vetoed by Gov. Milton Shapp who objected to other aspects of the bill.

To avoid a recurrence of that situation, the uninsured motorist issue is being handled in a bill separate from the others.

A second no-fault-related bill by Kowalyshyn gives local constables the power to enforce the law and remove a suspended vehicle's registration and license plate from the vehicle owner.

Current law requires PennDOT employees or State Police to perform this function. Kowalyshyn wants the uninsured motorist to bear the cost rather than the general public.

Kowalyshyn also wants motorists to pay a $25 fee to re-register a vehicle after the original registration was suspended for failure to carry insurance. He said there are several hundred thousand vehicles in this category, and the revenues from the proposed fee would provide funds to make the enforcement system self-sustaining.

Kowalyshyn is also pressing Gov. Dick Thornburgh, Insurance Commissioner Harvey Bartle and PennDOT Secretary Thomas Larson to revise the current method of spot-checking for uninsured motorists.

PennDOT now uses a three percent random sample of the state's six million motor vehicle registrations to uncover those who might be uninsured.

Kowalyshyn wants PennDOT to zero in on the half million notices it receives annually from insurance companies reporting the names of drivers who have dropped their insurance.

Although many of these people have sold their vehicles or have taken coverage with another company, he said the reports will also prove useful in tracking down illegal drivers.

Consumer Affairs

Philadelphia (Penn.) Inquirer, May 20, 1982

No-fault votes a start on long road to reform

By David Morrison
Inquirer Harrisburg Bureau

HARRISBURG — A proposal to revamp the Pennsylvania no-fault automobile insurance system will come to a vote in the House Judiciary Committee on June 8, an action that could kick off a long, hot summer of debate on the controversial measure.

Rep. Warren H. Spencer (R., Tioga), chairman of the committee, said the action should clear the way for a final House vote on the no-fault measure before the legislature's long recess, scheduled to begin June 30.

But that is actually the first of many hurdles before the legislation. Some members of the Senate have said they will attempt to put through a drastic overhaul of the state's automobile insurance laws if the no-fault bill comes within their grasp. Such action would mean that a final version of the reform proposal would come only at the end of a protracted fight in a House-Senate conference committee.

Meanwhile, Pennsylvania Insurance Commissioner Michael L. Browne has scheduled four public hearings late this month and in June on proposed rate increases that could cost Pennsylvania motorists about $154 million a year in added insurance premiums, a prospect that could liven any of the imminent no-fault debates.

Spencer's committee normally does not handle insurance-related bills. It was forced to accept the no-fault measure late last year after the bill was approved by the House Insurance Committee but failed to win enough votes to pass the House.

Strong support

The no-fault bill has hefty support from the insurance industry and Gov. Thornburgh. But it still faces opposition from a powerful lobby, the Pennsylvania Trial Lawyers Association.

The bill was brought to the floor of the House after carefully orchestrated committee work that kept legislative tinkering at a minimum. More than 100 floor amendments were proposed, many of which were designed to gut the no-fault system in Pennsylvania. On Nov. 16 the House voted 118-80 to send the bill to Judiciary for public hearings.

"Hopefully we won't have 100 amendments offered when we get this out on the floor," said Spencer, who was the only member of his lawyer-dominated committee to vote against reassigning the no-fault bill to Judiciary. "We're trying to get a bill the insurance companies can live with; one that the trial lawyers can live with, and, most important, one that will benefit the consumer."

Spencer, who conducted four hearings around the state on the bill, said members of his committee could still offer amendments to a version of the bill that's being drafted by the committee staff. But barring an unforseen rebellion in the ranks, he said, the Judiciary version of the bill would be surprisingly similar to the measure approved by the insurance committee.

Part of package

No-fault, or personal-injury protection, is only a part of the average automobile insurance policy and is required coverage in Pennsylvania. It's that portion of the policy that allows an insured motorist who is injured in an accident to be compensated for actual costs of hospitalization and medical expenses by his own insurance company, no matter who was at fault in the accident.

In a pure no-fault system, that would be all the insurance that a person should have. It would be economical because, ostensibly, settlement of claims would not require any kind of litigation, thus eliminating court costs and legal fees from the auto insurance system. There would be no need for a person to buy liability insurance.

Pennsylvania's auto insurance law, sculptured in 1974 by consumer and powerful lobbying groups, blends no-fault insurance with the old liability system. It's a prime example of lawmakers wanting desperately to try something popular and something new, but not wanting it deperately enough to abandon the past.

A Pennsylvania motorist is required to carry a brand of no-fault that pays unlimited amounts for his medical care if he's injured. Yet, if his medical bills exceed $750, he still can file a lawsuit seeking compensation for other damages, such as loss

Continued

1 of 2

Continuation

of a promising athletic career or simple inconvenience and discomfort caused by an accident.

Liability insurance

Consequently, a Pennsylvania motorist also is required to buy liability insurance, which pays for damages to others should he be judged at fault. That represents about 25 percent of the cost of the average insurance policy.

The reform proposal, sponsored by Rep. Walter F. DeVerter (R., Mifflin), would prohibit lawsuits for "pain and suffering" in all cases, except those that involve death or "serious and permanent" disfigurement or injury. It also would eliminate a loophole in the state law that allows an injured person to collect payments from both auto and hospitalization insurance policies for one accident.

Those two provisions and some other fine-tuning in the reform bill, DeVerter said, would save the insurance industry more than $150 million a year — savings that should be passed on to the consumer.

As a means of springing the bill from the Judiciary Committee, Browne advocated an amendment earlier this year calling for an overall 8.9 percent rollback in all insurance coverages required by law. But as a condition for endorsing that amendment, Browne told the Judiciary Committee that it would have to leave DeVerter's bill substantially intact.

Spencer said he expected that many members of the committee would want to include Browne's amendment no matter what form the bill took.

There's one indication that the insurance industry senses that a no-fault reform bill with a premium-rollback provision has a chance of being enacted this summer. And it's reminiscent of what happened when the state's no-fault law was originally passed with its provision for a rollback.

Increased rates

Before the effective date of the no-fault law, insurance companies were allowed to increase rates substantially so that policyholders never really received any benefit from the rollback. Many insurance companies in the state this year are seeking increases, all of them having received substantial rate hikes less than a year ago.

Browne has scheduled a public hearing May 27 for a 23.5-percent, $31-million rate increase request for the Assigned Risk Plan, the state pool that insures high-risk motorists. A 19.4 percent increase for the group went into effect in November.

On June 2 he'll hold a hearing on the 18-percent, $12.1-million sought by Prudential Property and Casualty Insurance Co., which got a 7.7-percent increase in September.

There's a June 16 hearing on the 10.2-percent, $42-million increase requested by Insurance Services Office, a group representing smaller companies. It got its last increase, 11.8 percent, in October.

On June 17 there's a hearing on the request for the largest auto insurer in Pennsylvania, State Farm Mutual Insurance Cos., which is seeking a 15.3-percent, $41.9-million increase, although it received a 6.8 percent increase in September.

Browne also is considering an 8.5-percent, $3.1-million increase for Liberty Mutual Insurance Co., which implemented an 8.2 percent increase in August, and a 13.2-percent, $4.8-million increase for Travelers Indemnity Co., which had a 9.3-percent increase in September.

Bracing for a rollback

Although state Insurance Department officials would not speculate on whether the companies were bracing for a rollback, one source did indicate that rate requests usually are filed annually.

"They are," the source said, "filing a bit early this year."

Spencer would not predict in an interview this week what amendments members of his committee would offer or support when the committee starts its final work on the bill June 8.

He indicated some pork-barreling provisions put in by the insurance industry — such as a proposal to reduce the interest on delayed claims payments from 18 percent to 12 percent — will be deleted. But the thrust of the measure will be to reduce the number of automobile accident-related lawsuits.

Sen. Henry G. Hager (R., Lycoming), the president pro tem, said last week that he will advocate a system similar to one in use in Delaware — the favorite system of the Pennsylvania Trial Lawyers Association — if the no-fault bill comes his way. Delaware has no restrictions of lawsuits for pain and suffering. However, an accident victim seeking compensation for something other than medical expenses, cannot use the amount he collected from his no-fault insurance coverage for medical expenses as evidence to bolster his lawsuit.

"I know there is a lot of support for the Delaware plan because it's anti-insurance, industry," Spencer said. "But it's just too liberal to get past all members of the House."

Sen. Paul McKinney (D., Phila.) is taking a different tack. He says he'll introduce legislation when the Senate reconvenes Monday to dismantle the no-fault system entirely.

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Consumer Affairs

Philadelphia (Penn.) Inquirer, November 16, 1981

States now steering clear of no-fault plans

By David Morrison
Inquirer Harrisburg Bureau

HARRISBURG — Prospects of federal legislation mandating minimum standards for automobile insurance motivated 25 states to enact some form of no-fault by 1976. But as federal momentum slowed, so did that in the states, and in the last five years, none of the remaining states has taken action toward a no-fault law.

One state, Nevada, repealed its statute after only a few years.

The concept's uneven political history perhaps can be traced to the fact that no state has adopted a pure no-fault law. Each state has permitted lawsuits at some stage where the injured may claim that another party is to blame.

"At a practical matter, nobody ... wants to be the first to try something that may be a total failure," said Gov. Thornburgh, who is supporting legislation that would bring Pennsylvania's auto insurance laws closer to a pure no-fault concept. "Politically, people have a legitimate interest. Trial lawyers have a legitimate concern that their clients ought to have recompense for their injuries from the people who actually caused them."

Aiding the attorneys who attack no-fault is the system's failure to reduce auto insurance premiums, as promised. But proponents say it is the economy, not the concept, that has kept premiums rising.

A 1977 study by the U.S. Transportation Department weighed all the problems of various no-fault systems, then concluded, "No-fault automobile insurance works."

"No problem has arisen in the implementation of no-fault for which there does not appear to be a readily available and feasible solution, given the political will to make the necessary change," the federal study said.

In Michigan, for example, bodily injury liability claims have declined from 25.3 per 1,000 insured cars in 1972, the year before no-fault was enacted there, to 2.7 in 1978. In addition, Michigan places a verbal threshold on the right sue, keeping down the number of court cases.

Michigan also offers what generally are regarded as the most liberal benefits, closer to the ideal of the no-fault law. And still the premiums there have not been out of line with the other increases in the Consumer Price Index, the state's insurance department reports.

Consumer Affairs

(Newark, N.J.) Star-Ledger, March 11, 1979

MV flagging drivers of uninsured vehicles

By ALAN FRIEDMAN

More and more drivers are walking these days because they are ignoring New Jersey's compulsory insurance law and getting caught by the Division of Motor Vehicles (MV).

"There's no getting away from the fact that as insurance costs go up, some people are dropping their coverage," pointed out Seymour Blaustein, assistant MV director. "But I think we've got good verification procedures that catch a lot of people without insurance."

Blaustein said that during 1978, the division revoked the licenses of 66,946 motorists due to insurance related problems, an increase of about 5,000 over the previous year.

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The majority of cases, 35,963, involved drivers whose insurance had been cancelled, primarily for lack of payment. Another 11,915 licenses were revoked because drivers involved in accidents had no insurance.

MV Director John Waddington estimated that between 4.5 and 5 per cent of the motorists involved in the 300,000 accidents reported yearly are uninsured.

"That's a pretty big sample," noted Waddington. That figure translates to about 230,000 uninsured drivers when related to the state's total driving population of 4.7 million.

Blaustein, however, admitted that no state" can come up with an exact count of uninsured drivers. New Jersey has had its compulsory insurance law since 1973.

The state gets most of its information about uninsured motorists from accident and police reports and from insurance companies. Insurance firms are required to notify the MV when car insurance policies are canceled.

Motorists are also required to show insurance identification cards during the annual safety inspection of their automobiles.

Waddington said the MV follows up on "a couple hundred thousand" notices a year that coverage has been ended by a driver.

"Some people have just moved out of the state. We send out a notice asking what happened," Waddington said. "If we don't get any answer, we send out a second notice. If there's no answer to the second notice, we revoke the license."

Prior to the mandatory insurance law of 1973, motorists could drive without insurance if they paid a $50 fee to the state. Blaustein said between 86 and 88 per cent of the drivers involved in accidents before 1973 were insured.

Since 1973, he said, that figure has hovered around the 95 per cent mark, going as high as 96.3 per cent in 1976. Last year it was 94.9 per cent.

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The 66,946 MV license revocations for insurance causes last year comprise the largest bulk of the department's annual total of 200,000 suspensions.

A spokesman for the state Department of Insurance said New Jersey auto coverage rates are up this year about 11 per cent over 1978.

"The minimum one-car coverage would be about $370 a year," he said, adding that for families with two cars but no young drivers, the minimum would be about $500 total.

"A family with a 17-year-old driver could pay four times the one-car rate," he added. He also noted that drivers in urban areas could pay upward of $750. Some city rates run into the $1,000 range, although the Insurance Department official said that was "just an approximation."

While the state bases its estimate of uninsured drivers on the sample involving about 300,000 accident reports yearly, officials of the insurance industry have contended the number of uninsured drivers exceeds a half million.

Insurance officials say some motorists buy insurance and pay the initial 40 per cent, but don't come up with the rest of the money during the 120-day period provided for full payment.

Members of the industry maintain that those drivers still get insurance identification cards for their initial outlay, which they can show to police in the event they are stopped for a traffic violation.

(Newark, N.J.) Star-Ledger, June 16, 1978

Governor accuses auto insurers of intimidation and deception

By VINCENT R. ZARATE

Gov. Brendan Byrne yesterday charged the car insurance industry is intimidating the Legislature, misleading the public and threatening higher rates in its effort to kill his automobile insurance reform package.

Byrne, in the midst of his toughest fight since the income tax battles of 1976, charged the insurance companies' criticisms of his plan are "patently untrue."

Administration sources admitted the Governor's tough-worded attack shows how severe the fight is between the multimillion dollar insurance industry and the administration on how best to solve the mounting auto insurance crisis in the state.

Byrne wants the Assembly to vote on his package before it recesses for the summer -- either next Thursday or Monday, June 26.

* * *

The governor issued the statement as prod the seven member Assembly Banking and Insurance Committee to release the bills after its hearings. The committee, still undecided on how to vote, meets again Monday in the State House in Trenton.

Byrne pulled no punches charging the industry with a "high pressure campaign based upon threats and misstatements of fact."

At issue is whether the administration can get laws to replace the assigned risk pool, establish a new surcharge system for errant drivers and, most important, force every auto insurance company to write a policy to any person asking for it.

The industry has sent its top officials to New Jersey to kill the package, warning it would lead to higher rates and force companies to leave New Jersey and no longer write auto insurance.

Byrne said of the insurance industry's position:

"In their statements before the Assembly committee, the insurance companies have again rattled the saber of withdrawal from the state. They hope to intimidate the Legislature into bending to their wishes. I am confident that the Legislature will not do so."

He said the allegation by industry representatives that his plan would lead to higher rates "is patently untrue."

Byrne said one of his bills (A-1120) would require problem drivers to pay more for their insurance. He said the other bill (A-121) would create a reinsurance facility and allow the state insurance commissioner to establish a separate rate for drivers "with demonstrably bad driving records."

Byrne said the measures are aimed at eliminating the Assigned Risk Plan, which "claims one million drivers, 730,000 of whom have clean records, and would also eliminate present industry discrepancies in the way companies distinguish between good and bad drivers."

The major problem in New Jersey is that few persons can get automobile insurance on the open market and, instead, are dumped into the assigned risk pool.

The pool has increased from 338,353 motorists three and one half years ago to one million today, and those in assigned risks are subjected to surcharges starting at 60 per cent of their base rate for errant driving.

He charged the present system represents "for the companies . . . a game of semantics."

SECTION ANALYSIS -- MANDATORY AUTO LIABILITY INSURANCE
CSSSHB 7 (L&C)

Section 1 Declaration of Purpose. Expresses goal of legislation that motorists be financially responsible for their actions due to rising toll of accidents. The legislature declares that the public interest can best be served by the requirement to show proof of liability insurance prirot to registration.

Section 2 adds mobile homes as defined by statute to vehicles exempt from registration.

Section 3 Amends 28.10.011 by adding a new section under REGISTRATION which specifies an owner may not register or renew registration of a vehicle without providing proof of liability insurance as required in statute.

Section 4 Amends APPLICATION FOR REGISTRATION statute by specifying that certificate of registration may not be issued until the criteria set out in Section 3 above is met.

Section 5 Amends 28.10.111 (RENEWAL OF REGISTRATION) by adding a new section specifying that current registration may not be renewed until adequate proof of financial responsibility is shown as required in statute.

Section 6 Allows DMV to issue title to certain vehicles exempt from registration.

a) vehicles exempt under Soldier and Sailor's Civil Relief Act (current exemption)
b) special mobile equipment (new)
c) vehicles driven or parked on private property (new)
d) vehicles driven or moved on highway or vehicular way which is not connected to state highway system (new)
e) mobile homes as defined by statute (new)

Section 7 Requires proof of sufficient liability insurance on vehicles OWNED by driver before driver's license can be issued or renewed for both residents and non-residents. If driver did not OWN vehicles at time of license renewal, no proof would have to be shown. A person who owns a vehicle that is registered out of state must show proof of insurance prior to obtaining an Alaska license.

Section 8 Mandates suspension of license when advised that insurance has been cancelled and there is no response by license holder within 30 days of notice to suspend sent by department.

Section 9 Amends law to require knowledge of the effects of alcohol and drugs on driving and knowledge of laws relating to financial responsibility when taking test for driver's license.

Sections 10-13 Amends current financial responsibility law to increase liability limits to current rates as established for insurance polices under AS. 28.22.010 These are increasing limits from 25/50/10 to 100/300/50 thousand.

Section 14 adds requirement of offering underinsured motorist coverage for insurance policies written in state for both personal njury and property damage.

Section 15 adds new sections (l) and (m) to current definition of insurance policy. These are the same items as contained in the proposed definition under AS 28.22.010 (sec.17)

Section 16 Amends current law to increase amount of money or securities required as proof of insurance to a rate in line with policy requirements ... $100,000

Section 17 ADDS NEW CHAPTER 22 TO TITLE 28..Motor Vehicle Liability Insurance

This is virtually identical language to that now in statute 28.20.440.

CHANGES TO CURRENT LAW OR ADDITIONS:

28.22.010

(b) 2 A/B- increases minimum limits for insurance to be contained in policy. (These are the same limits that were amended in the previous 5 sections)

Bodily injury to or death of one person in any one accident
CURRENTLY $25,000 PROPOSED $100,000

Bodily injury to or death of two or more persons in any 1 accident
CURRENTLY $50,000 PROPOSED $300,000

Injury to or destruction of property of others in any one accident
CURRENTLY $10,000 PROPOSED $50,000

These are limits contained in most standard policies currently issued. These are also limits generally imposed by banks for insurance requirements to buy a car.

(3) Requires offering of underinsured motorist coverage in addition to uninsured coverage. Coverage will also relate to property damage. Current law only requires offering of uninsured coverage for bodily injury or death. But this may be waived in writing.

(l) Requires insurance carrier to notify DMV when a policy is cancelled within the first 180 days that a policy is in effect and within 10 days of knowledge of termination or intent to terminate. If a person whose coverage terminates fails to provide DMV with satisfactory evidence of insurance, DMV will suspend the driver's license and all registration certificates and plates issued to owner of vehivle until proof of insurance is given.

(m) Requires insurance carriers to provide the insured with a card indicating existance of satisfactory policy. This card must be carried in vehicle at all times.

28.22.020

To be considered effective, policies must be issued by insurance companies authorized to do business in state and meet financial limits imposed by statute. Allows for exception if power of attorney is executed.

28.22.500 PENALTIES

Penalties are imposed for driving or knowingly permitting to be driven a vehicle required to be insured unless the vehicle and driver are are covered by an adequate insurance policy. This section describes penalties for violation of that law. See attached sheet.
SEC. 28.20.510 sets out provisions relating to impoundment.

Allows for impoundment or release to person with right to possess a vehicle if a peace officer has cause to believe vehicle was driven without proper insurance. If released, the owner or person with right to possess must pay costs of impounding and storing.

Impoundment is until proof of insurance is shown if driver has not been previously convicted of similar offense or for 30-90 days if person has been previously convicted of similar violation within 10 years.

Upon impoundment, a hearing will be provided at the time of impoundment to the person with the right to possess the vehicle, the driver, other persons with an ownership interest. Following a hearing, the vehicle will be released to owner or person with right to possess if it is determined impoundment was improper or that at the time of impoundment the vehicle was being driven

by a person other than the owner or person with right to possess the vehicle AND

without the consent of the owner or person with right to possess the vehicle.

Vehicle will also be released if

the driver is not charged within 10 days of impoundment of an offense related to the impoundment OR any related charges are dropped or dismissed OR the driver is acquitted of any related offenses.

If the vehicle is not released after impoundment hearing, a lienholder may reposses the vehicle for sale and impoundment costs are to be paid by sale proceeds.

28.22.520/28.22.530 FORFEITURES

These provisions apply when forfeiture is called which happens following 3rd conviction within 10 years of driving without proper insurance.

Court will require surrender of registration and title. If not released, the department may dispose of the vehicle as governed by statutes.

Upon order to forfeit, the court will provide notification of intent to require forfeiture to all who have an ownership interest in vehicle. This will allow for any interested party to ask for remission of interest in the vehicle. Court will hold hearing if request for remission of interest is made and such interest will be remitted if

the petitioner has an interest in the vehicle acquired in good faith AND

a person other than the petitioner was convicted of the offense which resulted in forfeiture AND

before parting with the motor vehicle, the petitioner didn't know or have reasonable cause to believe it would be used in the commission of an offense.

This protects the vehicle dealer or, for example, the owner of a a car taken without permission or stolen.

If remission of interest is granted it may be either in the form of reimbursement for interest or repossession of the vehicle and title.

28.22.540 UNUSED MOTOR VEHICLES

This provision allows a person to terminate or suspend insurance policy without penalty by removing plates from vehicle and delivering them to DMV. When vehicle is to be used, driver must present proof of insurance to DMV and plates will be returned.

28.22.550 ANNUAL REPORT

Requires annual report beginning in February 1986 which is to assess impact of law with regard to effect on number of uninsured motorists, insurance rates and cost to administer law.

SECTION 18 Amends insurance code to require that insurance policies sold in state meet requirements of liability policy described in this chapter. Since the bill would not become law until July 1, 1984, this would allow insurance companies to prepare to meet this requirement.

SECTION 19 Amends insurance code to mandate that companies must offer uninsured and underinsured coverage for personal injury and liability in at least the amounts voluntarily purchased by the customer. This coverage may be waived by the insured.

SECTION 20 Delays one provision of not issuing or renewing drivers license unless insurance is proven until 1/1/85. This allows DMV time to upgrade computer to provide for cross referencing licenses and owned cars.

SECTION 21 Effective date of act is 7/1/84.

PENALTIES UNDER AS 28.22.5000

A person may not drive or move nor may an owner knowingly permit to be driven or moved on a highway or vehicular way or area a vehicle required to be insured under a motor vehicle liabilty policy that complies with AS 28.22.010 unless a motor vehicle liability policy is in effect for the motor vehicle.

If stopped and a peace officer has reason to believe a person is driving without insurance, a citation for $250 will be given. The driver will then have 5 days to show the court that insurance was in effect at the time of the citation. If proof is shown, charges and fine will be dropped. OTHERWISE....

Violation of the law is a Class B misdemeanor.

Court will impose a minimum fine of $250 and maximum of $1000. Minimum fine may not be suspended. Court may also impose jail term of up to 90 days which may be suspended if fine is paid.

ADDITIONALLY THE COURT WILL IMPOSE THE FOLLOWING SANCTIONS:

1st Offense	SUSPENSION OF LICENSE FOR UP TO 30 DAYS
	SUSPENSION OF REGISTRATION UNTIL PROOF OF INSURANCE SHOWN
2nd Offense within 10 years	SUSPENSION OF LICENSE WITHOUT LIMITED DRIVING PRIVILEGES FOR MINIMUM OF 30 DAYS/MAXIMUM OF 90 DAYS
	SUSPENSION OF REGISTRATION AND IMPOUNDMENT OF VEHICLE FOR 90 DAYS OR LONGER UNTIL PROOF OF INSURANCE IS SHOWN. ALLOWS FOR JUDICIAL HEARING BEFORE ANY IMPOUNDMENT TAKES PLACE. SUCH A HEARING INCLUDES ANY PERSON NAMED ON TITLE OR WHO MAY HAVE A LIEN INTEREST.
3rd Offense 10 years	SUSPENSION OF LICENSE WITHOUT LIMITED DRIVING PRIVILEGES FOR within MINIMUM OF 90 DAYS TO MAXIMUM OF ONE YEAR.
	FORFEITURE OF VEHICLE UNDER AS 28.22.520

Alaska State Legislature

Speaker of the House of Representatives

Pouch V
State Capitol
Juneau, Alaska 99811
(907) 465-3720

Official Business

LABOR AND COMMERCE SUBSTITUTE HB 7

Changes from SSHB 7

The changes made by the Labor and Commerce Committee changed language and sections 18 and 19 to require insurance companies to offer uninsured and underinsured coverage for both property damage and personal injury. This coverage may be waived upon signature of the insured. This coverage must be available in at least equal amounts to the coverage bought voluntarily under the regular liability coverage.

The language was changed both in Title 21 and the proposed reqrite of Title 28 as this bill proposes.

No other amendments were offered in committee.

State Farm Insurance Companies

ONE STATE FARM PLAZA
BLOOMINGTON, ILLINOIS 61701

APR 14 10 18 AM '83

JOHN J. GORDON
ASSISTANT GENERAL COUNSEL
(309) 662-8027

April 12, 1983

LAW DEPARTMENT

Mr. Don Koch
Chief Market Surveillance
Division of Insurance
State of Alaska
Pouch "D"
Juneau, AK 99811

Re: Alaska - SB-223; HB-7

Dear Mr. Koch:

These bills are causing us at State Farm serious concern. In scrutinizing the Declaration of Purpose, as stated in the bills, it would appear that if the legislature is serious in attempting to decrease the non-insured driving population, the drastic increase in liability and property damage limits, would go far not in decreasing the number of uninsured drivers, but rather increase that population. Some drivers would be unable to meet the premium payments and would find ways to continue driving without coverage. No state has minimum liability limits approaching the proposed amount. Attached are the actuarial figures on the resulting costs if these bills were to succeed. In addition to these increased premium costs, there would be the intangible but real cost increases in claim payments. These increased payments would eventually be reflected in additional premium increases.

These bills also require an insurer to notify the motor vehicle department of any terminations or intentions to terminate within a ten day period. The language is unclear if the ten day period begins before or after a termination or intent to terminate. Notice requirements have been mandated in other states and it has been found that the costs to the motor vehicle departments, as well as the insurers, have not been justified as a means of decreasing the uninsured population. Such requirements would only succeed in increased costs.

Also of grave concern is the ambiguous language in the new Chapter 22 that could be interpreted to mean that all policies, i.e., an owner's policy, an operator's policy, and motor vehicle liability policy, be treated as a certified motor liability policy with absolute liability after a loss has occurred.

This bill as written could severely damage the now competitive and healthy marketplace for automobile insurance in Alaska.

Enclosed also is a publication we have used for informational purposes in other states when the compulsory issue has arisen.

In my conversation Friday, April 8, with Director Moore, it was suggested that we write to you and provide our comments. Hopefully they can be of some use in defeating these bills. We certainly appreciate your help.

Sincerely,

John Gordon
Assistant General Counsel

jl
Enc.
cc Michael Thomas (w. enc.)

ALASKA

APR 14 10 10 AM '03

A. Average State Farm Mutual policy premium changes from 25/50/10 BIPD liability and 25/50 UM coverage to 100/300/50 and 100/300 UM

	Current Semi-Annual Premium	Semi-Annual Premium Increase	Percentage Increase
BIPD	$ 64.90	+ 17.10	26.3%
UM Coverage	8.00	+ 3.80	47.5%
Both BIPD & UM	72.90	+ 20.90	28.7%

B. Example #1: An adult driver, pleasure use, in Anchorage who currently carries 25/50/10 BIPD and 25/50 UM to required limits

	Current Semi-Annual Premium	Semi-Annual Increase in Premium	Percentage Increase
BIPD	$ 56.43	+ $ 14.82	+ 26.3%
UM	8.00	+ $ 3.80	+ 47.5%
Both	64.43	+ $ 18.62	+ 28.9%

Example #2: 18-year old single male principal operator, pleasure use, Anchorage; currently with 25/50/10 BIPD and 25/50 UM to required limits

	Current Semi-Annual Premium	Semi-Annual Increase in Premium	Percentage Increase
BIPD	$255.42	+ $ 67.08	+ 26.3%
UM	8.00	+ 3.80	+ 47.5%
Both	263.42	+ 70.88	+ 26.9%

Alaska State Legislature

Speaker of the House of Representatives

Pouch V
State Capitol
Juneau, Alaska 99811
(907) 465-3720

Official Business

CSHB 7 (Judiciary)
Effect of Amendments

The proposed Judiciary committee substitute makes the following changes:

Clarifies that the provisions of this law relate to 'motor' vehicles as defined in the statutes.

Includes a certificate of self insurance as one means of proving financial responsibility. This is typically used by commercial companies to insure a fleet of vehicles. The certificate is defined by AS 28.20.400.

Clarifies that a person seeking a license must only show proof of insurance only on vehicles which are both registered in that persons name and owned by the person which must be located within the state.

Changes the propsed liability limit increases from 100/300/50 to 50/100/25. Currently the limits in law are 25/50/10.

Adopts the language suggested by the Court system relating to issuance of a citation by a peace officer.

Deletes provisions which allowed a peace officer to impound a vehicle on the spot if he had cause to believe an insurance policy was not in effect.

Changes the responsibility for notifying parties in a forfeiture incident from the "court" to the Department of Law as suggested by the Court System.

Changes the date for submission of the first annual report from February 1986 to 1988 and changes report from Dept. of Commerce and Economic Development to a JOINT report with Department of Public Safety.

Adds new effective date of January 1, 1984 for the provisions which mandate that insurance companies offer uninsured and underinsured insurance. These sections would now take effect before any other provision in the law.

Judiciary
Referral

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April 22, 1983



The Honorable Charlie Bussell
Alaska State Legislature
Capitol Building, Rm. 126
Juneau, Alaska 99801

Re: HB 7

Dear Representative Bussell:

Mike Thomas and I would like to be informed, preferably a few days in advance, of any hearings on HB 7 so that we may have an opportunity to testify.

Thank you for your assistance.

Sincerely,

Steve Silver

Steve Silver

SWS/ke
cc: Mike Thomas

MAR 14 1983

March 9, 1983

Representative Joe L. Hayes
Pouch V
Juneau, Alaska 99811

Dear Representative Hayes:

I am writing this letter in pain, outrage and total disgust. I have painfully become aware of the completely inadequate and antiguated driving laws of this state as a result of my son Sean's death at the hands of an irresponsible, uninsured driver who was drinking, speeding, ran a red light and God only knows what else. This driver can afford alcohol and drugs (they were found in his car) but he cannot afford insurance!

The law concerning the requirement to have auto insurance, better known as "the State gives you a free one" is at best a farce. Having lived here 44 years and watching the traffic increase to the point beyond the capacity of our road system, coupled with the irresponsible attitude of the outsiders coming in and the young people growing up, dictates that the law be tightened.

It is imperative that mandatory auto insurance be required of those wishing to drive in the State of Alaska. When auto licenses are renewed or bought, or with registration and/or titles, proof of insurance at that time should be shown. Upon cancellation of insurance, then licenses revoked. In short No Insurance - No License!

Sean was not allowed to own a car or drive without insurance which he bought and paid for himself and he took that responsibility with him into his young adulthood and was subsequently killed by a person who apparently did not care or have any regard about others.

The time is long past due for all Alaskans new or old to accept the responsibilties attached to owning and driving an automobile and the necessary steps to accomplish this rests squarely on your shoulders.

Sincerely,

Robert J. Sinnett
ROBERT J. SINNETT

Thelma Sinnett
THELMA SINNETT
2001 Salem Court
Anchorage, Alaska 99504

Judiciary
Referral

Joe M. Huddleston
509 West Third Avenue
Anchorage, Alaska 99501

April 19, 1983



The Honorable Charlie Bussell
Pouch "V"
Juneau, Alaska 99811

Dear Charlie:

I have just learned through Representatives Ringstad and Pestinger that House Bill No. 7 on compulsory insurance has been transferred from Labor and Commerce to the House Judiciary committee for hearing. I would appreciate your earliest communication as to when this matter will be scheduled for public hearing. I am desirous of travelling to Juneau to speak on this legislation.

Sincerely yours,

Joe M. Huddleston
509 West Third Avenue
Anchorage, Alaska 99501

JMH/ph

274-7522

Joe M. Huddleston
509 West Third Avenue
Anchorage, Alaska 99501

April 15, 1983

The Honorable Charlie Bussell
House of Representatives
Pouch "V"
Juneau, Alaska 99811

Dear Charlie:

I would like to take this opportunity to direct to you my thoughts on pending legislation. House Bill No. 7 and Senate Bill No. 223 is proposed legislation which requires compulsory insurance in order to obtain a driver's license or vehicle tags. The idea of compulsory insurance does have surface appeal, but I believe that it does not stand close scrutiny. As you know, I am an attorney practicing law in Anchorage. I am significantly involved in insurance defense actions and I have researched this subject at length. This matter was originally scheduled for a hearing before the House Labor and Commerce Committee on Friday, February 15th. I had planned on attending that hearing but it was cancelled on the 14th. It is my hope that I will be able to attend either the House or Senate hearing on this matter when it is rescheduled.

As I mentioned above, the idea of compulsory insurance does have a degree of surface appeal. However, our several sister states have experimented with this type of legislation to their prejudice. New York adopted a compulsory insurance law in 1956 and a study undertaken by the University of Michigan in 1963 reported that the law was unenforced, unenforceable, and a complete failure. A New York Daily News "study" reported that the law had failed to achieve its aims and was, in fact, counterproductive.

In the main our sister states have found that the compulsory insurance laws (1) cannot be enforced; (2) are costly to administer; and (3) increase insurance premiums for responsible drivers.

Notwithstanding the above, my three major reservations concerning this legislation are that it will (1) significantly increase the premium rates for responsible policy holders; (2) significantly increase the case loads at the Superior Court level; and (3) engender disrespect for law.

A superficial review of this subject might suggest that the respective insurance carriers would be in favor of this type of legislation. What greater boon could one envision to the insurance industry than legislation which mandates that everyone must buy their product? However, the insurance industry has realized that compulsory insurance creates a bureaucracy in state government and in private industry and, further, significantly raises insurance premium rates.

I would suggest to you that this Bill is simply a make work project for attorneys. In the situation where an insured motorist is involved in an accident with an uninsured motorist, he has recourse to his uninsured motorist benefits. This is a very common situation and in almost all of these situations no lawsuit is filed. The insured motorist simply settles with his own insurance carrier or, in a relatively few cases, the matter is taken to arbitration. The overwhelming majority of this type of case does not involve an attorney and is settled without recourse to the court. The savings to the taxpayer are incalculable.

The requirement that every driver obtain insurance will negate the effect of the uninsured motorist benefits and result in a proliferation of lawsuits rather than the insured simply settling the case with his own insurance company or demanding arbitration. This will be an excellent benefit for attorneys but will be a disservice to the citizens of the state of Alaska in that it will increase insurance premiums, increase state and private industry bureaucracy, increase the expense at the Superior Court level and prevent the speedy resolution of claims through the uninsured motorist provisions.

As I stated above, my research has indicated that the system of compulsory insurance is not effective in that it is unenforceable. The costs of enforcement through the Department of Motor Vehicles is prohibitive. A California study revealed that persons were applying for insurance, or actually obtaining it, and then cancelling the insurance as soon as they obtained their license. A Pennsylvania study reflected that the Department of Motor Vehicles in that state was bogged down in a bureaucratic morass. On average, forty thousand notices of cancellation or lapses of payment were processed each month by that department. The most recent information from New York reflects that the costs of enforcement were in excess of seven million dollars per year. South Carolina also spent in excess of one million dollars to enforce its compulsory law in the fiscal year ending April 30, 1979. It is the experience of our system of jurisprudence that laws that are unenforced or unenforceable are a disservice to the legislature and a disservice to the people of the state.

AN ALTERNATIVE SOLUTION

The concept that citizens of the state of Alaska should be protected from physical and financial reverses of this type is laudable and should be pursued. However, there is a much more effective method of insuring that this type of physical and financial protection is available. Many states, for instance Oregon, require that each insurance policy contain uninsured motorist benefits. Under this type of provision, when an insured driver is involved in an accident with an uninsured motorist he simply files a claim with his own insurance company rather than dealing with the financially irresponsible individual that caused the collision in the first place. Requiring uninsured motorist coverage in every policy precludes the necessity of increasing either government or private industry bureaucracy. Requiring uninsured motorist provisions in every policy is easily enforceable as the respective carriers would not be allowed to sell insurance that did not include these benefits. Additionally, uninsured motorists coverage is very inexpensive to the policy holder. I would request that you review your own insurance policy and compare the costs of uninsured motorist coverage with the costs of general bodily injury liability coverage. The UM coverage generally costs just a few dollars.

It is my firm belief that the passage of House Bill No. 7, Senate Bill No. 223 will result in a morass of bureaucracy and paperwork and significant expense to the citizens of the state of Alaska. Additionally, compulsory insurance will significantly raise the premium rates that each of us must pay for insurance. Unfortunately, it is the experience of the citizens of the state of Alaska that we are compelled to pay an inordinate price for goods and services that are available in the Lower 48 on a less expensive basis. I do not believe that this additional cost should be passed along to the citizens of the state of Alaska. I would appreciate your thoughts or comments on this. I wish to thank you for your courtesy in this matter.

Sincerely yours,

Joe M. Huddleston
500 West Third Avenue
Anchorage, Alaska 99501

JMH/ph

STATE OF ALASKA
FISCAL NOTE

Revision Date , 1983

I. REQUEST

Bill/Resolution No.: CSSSHB 7(L&C)
Title: relating to motor vehicles
Sponsor: Labor & Commerce Committee
Requestor: Judiciary Committee

II. FISCAL DETAIL

Agency Affected: Commerce & Ec. Dev.
Program Category Affected: Public Prot.
BRU, Program of Subprogram(s) Affected:
Division of Insurance

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 83	FY 84	FY 85	FY 86	FY 87	FY 88
OPERATING						
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL	0	4.0	4.0	5.0	5.0	5.0
400 COMMODITIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC						
TOTAL OPERATING	0	4.0	4.0	5.0	5.0	5.0
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND	0	4.0	4.0	5.0	5.0	5.0
FEDERAL FUNDS						
OTHER (Specify Source)						

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

III. SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

not available

IV. ANALYSIS: Attach a separate page for any Analysis

Prepared By: Kenneth C. Moore, Director
Phone: 465-2515
Division: Insurance
Date: 4/29/83

Approved by Commissioner: Richard A. Lyon
Date: 5/5/83
Department: Commerce & Economic Development

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Copy to Sponsor
Copy to Requestor (if different from Sponsor)

3/8/83

IV. ANALYSIS:

The data to be used as a comparison in the report required in Sec. 28.22.550 of the bill does not currently exist in a form that is reliable or conclusive. It is necessary to create base data at the earliest possible time if any kind of comparative comments are to have any meaning in the required reports. The amounts shown as contractual are to be used for periodic polls to arrive at insured automobile ratios via poll sampling by a firm qualified to conduct such work. The information so developed along with that acquired from the court system and other affected departments will be used to prepare the report.

Panel OK's auto insurance bill

Thu Associated Press TIMES 5-7-83

JUNEAU — The House Judiciary Committee on Friday approved a measure that would require auto insurance in Alaska. If approved by the legislature and signed by Gov. Bill Sheffield, the law would be similar to those enacted in 30 other states.

The measure (CSHB7) would require proof of insurance be shown at the time registration is renewed each year for vehicle in Alaska. Drivers also would routinely be asked to show proof of insurance when stopped for a moving violation.

The penalties for driving without insurance would include a fine of between $250 and $1,000, suspension or revocation of a driver's license and vehicle registration for up to 30 days on a first offense and 90 days for a second conviction. A vehicle could be impounded after a second conviction and forfeited after a third.

The measure also increase the minimum liability limits for which a person must be insured to $50,000 for injuries caused to one person in an accident, $100,000 in accidents with multiple injuries and $25,000 for property damage. Current law requires $25,000 for injuries to one person, $50,000 in multiple-injury accidents and $10,000 for property damage.

The bill would require insurance companies to offer uninsured and underinsured insurance for both bodily injury and property damage. Currently, only uninsured insurance is offered for bodily injury.

Speaker Joe Hayes, R-Anchorage, said he is pleased with the public reaction to the bill.

"I think most people agree that those who take advantage of the privilege to drive should also take the responsibility that comes with that privilege," Hayes said.

Current law requires insurance to be purchased after an accident, which Hayes calls backwards. "We should be protecting the public before people get behind the wheel of a car," he said.

STATE OF ALASKA
FISCAL NOTE

Revision Date , 1983

I. REQUEST

Bill/Resolution No.: CSSSHB 7 (Judiciary)
Title: "...relating to motor vehicles..."
Sponsor: House Judiciary (Orig. - Hayes)
Requestor: House Finance Committee

II. FISCAL DETAIL

Agency Affected: Department of Law
Program Category Affected: General Govt.
BRU, Program of Subprogram(s) Affected: Legal Services

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 83	FY 84	FY 85	FY 86	FY 87	FY 88
OPERATING						
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 COMMODITIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND	-0-	-0-	-0-	-0-	-0-	-0-
FEDERAL FUNDS						
OTHER (Specify Source)						

POSITIONS:

FULL-TIME	-0-	-0-	-0-	-0-	-0-	-0-
PART-TIME						
TEMPORARY						

III. SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

N/A

IV. ANALYSIS: Attach a separate page for any Analysis

Prepared By: Richard I. Pegues, Director (Richard I. Pegues) Phone: 465-3672
Division: Administrative Services Division Date: May 12, 1983

Approved by Commissioner: Norman C. Gorsuch, Attorney General (Richard I. Pegues) Date: May 12, 1983
Department: Department of Law

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CSSSHB 7 (Judiciary)
Fiscal Note
Analysis

The Department of Law is submitting a "zero" fiscal note for this bill because the financial impact cannot be estimated at this time. There is no accurate data available that would indicate the extent to which violations may occur. The provision for forfeiture of a vehicle, which is triggered when a person is convicted twice or more within ten years, will require some work on the part of legal services attorneys in handling remission proceedings. The degree of compliance, the level of prosecution, and the potential number of repeat offenders simply cannot be predicted until sometime after this legislation becomes law. The department might have to request additional resources from the legislature if, over time, there is poor compliance resulting in a large number of repeat offenders.

TELEGRAM

ALASCOM, INC.
PHONE: 586-6442
JUNEAU, AK 99802

OR



22257 NL TDA EAGLE RIVER AK 366 05-16 955A ADT

PMS REP CHARLIE RUSSELL

POUCH V 3523

JUNEAU AK

RE: OSSSHB7 SENATE COUNTER PART SB223

THE FOLLOWING RECOMMENDATIONS ARE SUGGESTED HOUSEKEEPING MEASURES THAT WILL IMPROVE THE BILL.

PAGE 3, LINE 22; THE TERMS "AUTHORIZED TO DO BUSINESS IN THE STATE" MAY CREATE UNCERTAINTY. THE DIVISION OF INSURANCE MAKES THE DISTINCTION OF ADMITTED OR NONADMITTED COMPANIES. SUGGEST USING WORDING ON PAGE 16, LINE 26 AFTER THE COMMA THROUGH LINE 25.

THE SAME OR SIMILAR PHRASES APPEAR ON PAGE 6 LINE 9; PAGE 7 LINE 1; PAGE 12 LINE 6, 14 AND 21.

PAGE 16, LINE 21 AND 22; USE THE PHRASE "OR IF THE COMPANY IS NOT AUTHORIZED TO DO BUSINESS IN THE STATE." IS THIS INTENDED TO MEAN NONADMITTED COMPANIES?

PAGE 5, LINE 7; "[illegible] OF CANADA." THIS WOULD APPEAR TO BE LEGISLATION WHEN WORDING IN THE AUTO INSURANCE POLICY PROVIDES COVERAGE.

PAGE 5, LINE 24; "[illegible] DAYS" SHOULD BE CHANGED TO "6 MONTHS OR 3 MONTHS." MOST AUTO POLICIES ARE WRITTEN FOR THESE TERMS. THE

PAGE 6, LINE 9 THROUGH 14; "THE CARD" WORDING SHOULD BE PROVIDED BY THE DEPARTMENT OF PUBLIC SAFETY OR DIVISION OF INSURANCE SO IT IS NOT BROADER THAN THE INSURANCE POLICY.

PAGE 8, LINE 1; DELETE "AND EVERY RIDER" THE TERM RIDER IS USED IN THE LIFE INSURANCE BUSINESS NOT THE PROPERTY AND CASUALTY BUSINESS.

PAGE 8 LINE 11 THROUGH 14; I AM NOT SURE WHY THIS PROVISION IS INCLUDED IN THE BILL. IT APPEARS TO REQUIRE PAYMENT BY THE INSURER OF ITEMS NOT COVERED BY THE POLICY.

PAGE 10 LINE 22; INSERT "THE MOTOR VEHICLE" AFTER THE "KNOWLINGLY PERMIT."

THROUGHOUT THE BILL THE TERM "BODILY INJURY TO OR DEATH OF ONE PERSON" SHOULD BE CHANGED TO "BODILY INJURY, SICKNESS OR DISEASE SUSTAINED BY ANY PERSON" INCLUDING DEATH AT ANY TIME RESULTING THEREFROM."

PROPERTY DAMAGE SHOULD BE AMENDED TO "AND INCLUDING DESTRUCTION OF DAMAGED" PROPERTY."

MOST AUTO INSURANCE POLICIES OFFER COMBINED SINGLE LIMITS. NO PROVISION IS MADE IN THE BILL TO COMBINE SINGLE LIMITS COVERAGE BUT THIS IS RECOMMENDED AS AN ADDITION.

BOB WESTEL
BOX 1753
EAGLE PASS, TX 78852

MEMO

TO: Rep. Bussell, Chairman & Rep. Liska, Vice-Chairman, & Reps. Barnes, Hayes, Malone, Clocksin & Wendte

FROM: Staff Counsel

Date: May 2, 1983

SUGGESTED AMENDMENTS

1--p. 3, line 10, the "and" at end of line, not bracketed, appears to be a typo and should be eliminated.

2--The following is suggested in the light of Karla Forsythe's letter to all Committee members. (in packet). Any violation or crime resulting in a Class B misdemeanor automatically means an appearanc in court.....not so with the traffic infractions listed in traffic bail schedules, where the individual may mail in bail and never make an appearance. (Of course, some ticket recipients want to come into court for trial, and do). There's no choice, with a Class B misdemeanor. This bill would have it both ways and the provisions are conflicting.

Where a person stands to lose a license and/or go to jail, as in this proposal and under the Class B misdemeanor, the person also can have a jury trial (Baker v. City of Fairbanks, __P.2d __1970

Following is Karla's language, offered as replacement at page 11, line 3:

(b) If a peace officer has probable cause to believe a motor vehicle was used in the commission of an offense under (a) of this section, a citation will be issued. The charge will be dismissed if evidence is presented within five days showing insurance policy coverage as required by AS 28.22.010 was in effect at the time the citation was issued.

3--As per the suggestion on the last page of Karla's letter, the following would be offered on page 14, line 15:

forfeiture of a motor vehicle under AS 28.22.520, the [court]

Department of Law shall within five days provide to every person (etc

SECTION ANALYSIS -- MANDATORY AUTO LIABILITY INSURANCE
CSSSHB 7 (L&C)

Section 1 Declaration of Purpose. Expresses goal of legislation that motorists be financially responsible for their actions due to rising toll of accidents. The legislature declares that the public interest can best be served by the requirement to show proof of liability insurance prirot to registration.

Section 2 adds mobile homes as defined by statute to vehicles exempt from registration.

Section 3 Amends 28.10.011 by adding a new section under REGISTRATION which specifies an owner may not register or renew registration of a vehicle without providing proof of liability insurance as required in statute.

Section 4 Amends APPLICATION FOR REGISTRATION statute by specifying that certificate of registration may not be issued until the criteria set out in Section 3 above is met.

Section 5 Amends 28.10.111 (RENEWAL OF REGISTRATION) by adding a new section specifying that current registration may not be renewed until adequate proof of financial responsibility is shown as required in statute.

Section 6 Allows DMV to issue title to certain vehicles exempt from registration.

a) vehicles exempt under Soldier and Sailor's Civil Relief Act (current exemption)
b) special mobile equipment (new)
c) vehicles driven or parked on private property (new)
d) vehicles driven or moved on highway or vehicular way which is not connected to state highway system (new)
e) mobile homes as defined by statute (new)

Section 7 Requires proof of sufficient liability insurance on vehicles OWNED by driver before driver's license can be issued or renewed for both residents and non-residents. If driver did not OWN vehicles at time of license renewal, no proof would have to be shown. A person who owns a vehicle that is registered out of state must show proof of insurance prior to obtaining an Alaska license.

Section 8 Mandates suspension of license when advised that insurance has been cancelled and there is no response by license holder within 30 days of notice to suspend sent by department.

Section 9 Amends law to require knowledge of the effects of alcohol and drugs on driving and knowledge of laws relating to financial responsibility when taking test for driver's license.

Sections 10-13 Amends current financial responsibility law to increase liability limits to current rates as established for insurance polices under AS. 28.22.010 These are increasing limits from 25/50/10 to 100/300/50 thousand.

Section 14 adds requirement of offering underinsured motorist coverage for insurance policies written in state for both personal njury and property damage.

Section 15 adds new sections (l) and (m) to current definition of insurance policy. These are the same items as contained in the proposed definition under AS 28.22.010 (sec.17)

Section 16 Amends current law to increase amount of money or securities required as proof of insurance to a rate in line with policy requirements ... $100,000

Section 17 ADDS NEW CHAPTER 22 TO TITLE 28..Motor Vehicle Liability Insurance

This is virtually identical language to that now in statute 28.20.440.

CHANGES TO CURRENT LAW OR ADDITIONS:

28.22.010

(b) 2 A/B- increases minimum limits for insurance to be contained in policy. (These are the same limits that were amended in the previous 5 sections)

Bodily injury to or death of one person in any one accident
CURRENTLY $25,000 PROPOSED $100,000

Bodily injury to or death of two or more persons in any 1 accident
CURRENTLY $50,000 PROPOSED $300,000

Injury to or destruction of property of others in any one accident
CURRENTLY $10,000 PROPOSED $50,000

These are limits contained in most standard policies currently issued. These are also limits generally imposed by banks for insurance requirements to buy a car.

(3) Requires offering of underinsured motorist coverage in addition to uninsured coverage. Coverage will also relate to property damage. Current law only requires offering of uninsured coverage for bodily injury or death. But this may be waived in writing.

(l) Requires insurance carrier to notify DMV when a policy is cancelled within the first 180 days that a policy is in effect and within 10 days of knowledge of termination or intent to terminate. If a person whose coverage terminates fails to provide DMV with satisfactory evidence of insurance, DMV will suspend the driver's license and all registration certificates and plates issued to owner of vehivle until proof of insurance is given.

(m) Requires insurance carriers to provide the insured with a card indicating existance of satisfactory policy. This card must be carried in vehicle at all times.

28.22.020

To be considered effective, policies must be issued by insurance companies authorized to do business in state and meet financial limits imposed by statute. Allows for exception if power of attorney is executed.

28.22.500 PENALTIES

Penalties are imposed for driving or knowingly permitting to be driven a vehicle required to be insured unless the vehicle and driver are are covered by an adequate insurance policy.
This section describes penalties for violation of that law.
See attached sheet.
SEC. 28.20.510 sets out provisions relating to impoundment.

Allows for impoundment or release to person with right to possess a vehicle if a peace officer has cause to believe vehicle was driven without proper insurance. If released, the owner or person with right to possess must pay costs of impounding and storing.

Impoundment is until proof of insurance is shown if driver has not been previously convicted of similar offense or for 30-90 days if person has been previously convicted of similar violation within 10 years.

Upon impoundment, a hearing will be provided at the time of impoundment to the person with the right to possess the vehicle, the driver, other persons with an ownership interest. Following a hearing, the vehicle will be released to owner or person with right to possess if it is determined impoundment was improper or that at the time of impoundment the vehicle was being driven

by a person other than the owner or person with right to possess the vehicle AND

without the consent of the owner or person with right to possess the vehicle.

Vehicle will also be released if

the driver is not charged within 10 days of impoundment of an offense related to the impoundment OR any related charges are dropped or dismissed OR the driver is acquitted of any related offenses.

If the vehicle is not released after impoundment hearing, a lienholder may reposses the vehicle for sale and impoundment costs are to be paid by sale proceeds.

28.22.520/28.22.530 FORFEITURES

These provisions apply when forfeiture is called which happens following 3rd conviction within 10 years of driving without proper insurance.

Court will require surrender of registration and title. If not released, the department may dispose of the vehicle as governed by statutes.

Upon order to forfeit, the court will provide notification of intent to require forfeiture to all who have an ownership interest in vehicle. This will allow for any interested party to ask for remission of interest in the vehicle. Court will hold hearing if request for remission of interest is made and such interest will be remitted if

the petitioner has an interest in the vehicle acquired in good faith AND

a person other than the petitioner was convicted of the offense which resulted in forfeiture AND

before parting with the motor vehicle, the petitioner didn't know or have reasonable cause to believe it would be used in the commission of an offense.

This protects the vehicle dealer or, for example, the owner of a a car taken without permission or stolen.

If remission of interest is granted it may be either in the form of reimbursement for interest or repossession of the vehicle and title.

28.22.540 UNUSED MOTOR VEHICLES

This provision allows a person to terminate or suspend insurance policy without penalty by removing plates from vehicle and delivering them to DMV. When vehicle is to be used, driver must present proof of insurance to DMV and plates will be returned.

Alaska State Legislature

Speaker of the House of Representatives

Pouch V
State Capitol
Juneau, Alaska 99811
(907) 465-3720

Official Business

LABOR AND COMMERCE SUBSTITUTE HB 7

Changes from SSHB 7

The changes made by the Labor and Commerce Committee changed language and sections 18 and 19 to require insurance companies to offer uninsured and underinsured coverage for both property damage and personal injury. This coverage may be waived upon signature of the insured. This coverage must be available in at least equal amounts to the coverage bought voluntarily under the regular liability coverage.

The language was changed both in Title 21 and the proposed reqrite of Title 28 as this bill proposes.

No other amendments were offered in committee.

4/25

COMMITTEE REPORT

HOUSE

~~STATE AFFAIRS~~

FURTHER: FINANCE

(7)

3/31/83

Date: 4/22/83

Mr. S[illegible]r:

The Committee on LABOR & COMMERCE has had SSHB 7

"An Act relating to motor vehicles; and providing for an effective date."

under consideration and reports it back as follows:

[ ] do pass [ ] do not pass

[ ] do pass with attached amendments(s)

[X] replace with CS for SS HB7 (L&C) [X] same title [ ] new title

and recommends _____

[ ] AND attaches a "Letter of Intent" [X] ~~New~~ Fiscal Note [ ] Zero Fiscal Note Attached Sup 45

[ ] reports it back without recommendation

[ ] referred to the _____ Committee

MEMBERS SIGNING DO PASS

Walt Furnace

[illegible]

John J Taudent

Rick Clekling

MEMBERS HAVING OTHER RECOMMENDATIONS:

[illegible]

H Malone No Rec

Walt Furnace
CHAIRMAN

H 60

STATE OF ALASKA
FISCAL NOTE

Revision Date , 1983

I. REQUEST

Bill/Resolution No.: CSSSHB 7 (L&C)
Title: An Act Relating to Motor Vehicles
Sponsor: Hayes, Barnes, et al
Requestor: House Judiciary

II. FISCAL DETAIL

Agency Affected: Public Safety
Program Category Affected: Justice/ Publi
BRU, Program of Subprogram(s) Affected: Alaska State Troopers/Driver/Protection Vehicle Services

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 83	FY 84	FY 85	FY 86	FY 87	FY 88
OPERATING			528.7	560.4	594.0	629.6
100 PERSONAL SERVICES			32.9	34.9	37.0	39.2
200 TRAVEL			424.2	449.6	476.6	505.2
300 CONTRACTUAL			37.6	39.9	42.3	44.9
400 COMMODITIES			151.5			
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC						
TOTAL OPERATING			1,174.9	1,084.8	1,149.9	1,218.9
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND			1,174.9	1,084.8	1,149.9	1,218.9
FEDERAL FUNDS						
OTHER (Specify Source)						

POSITIONS:

FULL-TIME			12	12	12	12
PART-TIME						
TEMPORARY						

III. SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

Not Identified by Sponsors.

IV. ANALYSIS: Attach a separate page for any Analysis

Prepared By: Mike Orelove
Phone: 465-4349
Division: Administrative Services
Date: 5/2/83

Approved by: Commissioner: [signature]
Date: 5/2/83
Department: Public Safety

Distribution:
Original to Legislative Finance
Copy to Office of Management and Budget (for Legislature introduced bills)
Copy to Department (for Governor introduced bills)
Copy to Sponsor
Copy to Requestor (if different from Sponsor)

3/8/

Alaska State Troopers

CSSSHB 7 (L&C)

Motor Vehicle Liability Insurance

Passage of this bill will require a statewide enforcement effort to ensure compliance. If a vehicle is stopped and proves not to have current insurance it will need to be impounded. This will require numerous Troopers all over the State to spend patrol time enforcing provisions of this particular law. The bulk of the activity will take place in the Anchorage area, Fairbanks, and Juneau. One additional Trooper is requested for each of these locations to absorb the increased work load.

FY '85

	Three Troopers	Academy(2)	Totals
Personal Svc.	201,684		201,684
Travel	6,360		6,360
Contractual	55,866	9,540	65,406
Commodities	10,494	636	11,130
Equipment(1)	64,554		64,554
	338,958	10,176	349,134

(1) Equipment costs are incurred during the first year only.

(2) The Public Safety Academy is budgeted only for costs of training replacement Troopers based on normal turnover of personnel. Any new Troopers required due to new legislation need additional funding.

Note: Inflation after FY'85 is estimated at 6% per year. FY'85 is based upon FY'84 costs inflated by 6%.

1.	POSITION TITLE: State Trooper			RANGE/STEP: 76A	BARG. UNIT: PSEA	FORM 12 PAGE/LINE	COV.	APPROV.	DISAPP.
2.	TYPE OF POSITION: PFT	STAFF MONTHS: 13.9	RP NUMBER	PCN NUMBER	BRU PRIORITY	LOCATION: Palmer	ELECTION DISTRICT: 7-15	LEG.		
3.	CONTINUATION LEVEL		ADDITION						

	TYPE OF EXPENDITURE		AMOUNT
	1	2	3
	PERSONAL SERVICES		
5.	Salary $2,998 + 25 hrs. OT	44,118	
6.	Benefits .2721	11,266	
7.	Supplemental Benefits	2,880	
8.	Fixed Benefits	2,240	
9.	TOTAL PERSONAL SERVICES 01		60,504
10.	Travel 02		2,000
11.	Contractual 03		17,568
12.	Commodities 04		3,300
13.	Equipment 05		20,300*
14.	Other		
15.	TOTAL COST		103,672

	RECEIPT CODE	FUNDING SOURCE		
16.		Federal Receipts	1002	
17.		G.F. Match	1003	
18.		General Funds	1004	103,672
19.		I-A Receipts	1005	
20.		Program Receipts	1028	
21.		Other		

FOR BGH USE ONLY
4A KEY NUMBER ___ - ___ - ___ - ___ - ___

JUSTIFICATION

This position will be utilized on increased patrol activity due to the need to check motor vehicle records to assure compliance with this new law.

* Equipment costs will be incurred in the first year only.

Computations are at FY 84 costs.

13 REQUEST FOR NEW POSITION

AGENCY: Department of Public Safety
PROGRAM: Crime ID & Apprehension
BRU: Alaska State Troopers
COMPONENT: Detachments & C.I.B.

Page 1 of 3
Revised Date

FY 84

1.	POSITION TITLE State Trooper				RANGE/STEP 76A	BARG. UNIT PSEA	FORM 12 PAGE/LINE	GOV.	APPROV.	DISAPP.
2.	TYPE OF POSITION PFT	STAFF MONTHS 13.9	RP NUMBER	PCN NUMBER	BRU PRIORITY	LOCATION Fairbanks	ELECTION DISTRICT 18-21	LEG.		
3.	CONTINUATION LEVEL		ADDITION							

	TYPE OF EXPENDITURE		AMOUNT
	1	2	3
	PERSONAL SERVICES		
5.	Salary $3,472 + 25 hrs. OT	51,093	
6.	Benefits	13,047	
7.	Supplemental Benefits	2,880	
8.	Fixed Benefits	2,240	
9.	TOTAL PERSONAL SERVICES	01	69,260
10.	Travel	02	2,000
11.	Contractual	03	17,568
12.	Commodities	04	3,300
13.	Equipment	05	20,300*
14.	Other		
15.	TOTAL COST		112,428

	RECEIPT CODE	FUNDING SOURCE		
16.		Federal Receipts	1002	
17.		G.F. Match	1003	
18.		General Funds	1004	112,428
19.		I-A Receipts	1005	
20.		Program Receipts	1028	
21.		Other		

FOR B&M USE ONLY
4A KEY NUMBER — — - — — - — — - — — - — —

JUSTIFICATION

This position will be utilized on increased patrol activity due to the need to check motor vehicle records to assure compliance with this new law.

* Equipment costs will be incurred in the first year only.

Computations are at FY 84 costs.

13 REQUEST FOR NEW POSITION

AGENCY Department of Public Safety

PROGRAM Crime ID & Apprehension

BRU Alaska State Troopers

COMPONENT Detachments & C.I.B.

Revised Date

FY 84

01-1136 (7/82) - 13

1.	POSITION TITLE: State Trooper			RANGE/STEP: 76A	BARG. UNIT: PSEA	FORM 12 PAGE/LINE	GOV.	AFFIRM.	DISAFF.
2.	TYPE OF POSITION: PFT	STAFF MONTHS: 13.9	RP NUMBER	PCN NUMBER	BRU PRIORITY	LOCATION: Juneau	ELECTION DISTRICT: 7-15	LEG.		
3.	CONTINUATION LEVEL		ADDITION						

4.	TYPE OF EXPENDITURE		AMOUNT
	1	2	3
	PERSONAL SERVICES		
5.	Salary: $2,998 + 25 hrs. OT	44,118	
6.	Benefits .2721	11,266	
7.	Supplemental Benefits	2,880	
8.	Fixed Benefits	2,240	
9.	TOTAL PERSONAL SERVICES	01	60,504
10.	Travel	02	2,000
11.	Contractual	03	17,568
12.	Commodities	04	3,300
13.	Equipment	05	20,300*
14.	Other		
15.	TOTAL COST		103,672

	RECEIPT CODE	FUNDING SOURCE		
16.		Federal Receipts	1002	
17.		C.F. Match	1003	
18.		General Funds	1004	103,672
19.		I-A Receipts	1005	
20.		Program Receipts	1020	
21.		Other		

FOR B&M USE ONLY
4A KEY NUMBER ___ ___ - ___ ___ - ___ ___ - ___ ___ - ___ ___

JUSTIFICATION

This position will be utilized on increased patrol activity due to the need to check motor vehicle records to assure compliance with this new law.

* Equipment costs will be incurred in the first year only.

Computations are at FY 84 costs.

13 REQUEST FOR NEW POSITION

AGENCY: Department of Public Safety
PROGRAM: Crime ID & Apprehension
BRU: Alaska State Troopers
COMPONENT: Detachments & C.I.B.

Revised Date

FY 84

Driver/Vehicle Services

The basic assumption of this fiscal note is that for this bill to be effective there must be an adequate system of enforcement and compliance. Other states with mandatory insurance laws estimate that 5%-15% of their vehicles are operating without insurance as owners find ways to circumvent the law. We find that our present Financial Responsibility Law, AS 28.20, is practically as effective and far less costly both to the state bureaucracy and to the citizens directly.

For this bill to be effective the division of Motor Vehicles must create a compliance unit of 9 employees. The compliance unit must be located with Division headquarters since there must be ready reference to the existing ownership and registration record. The present headquarters location will not accomodate any expansion, therefore, the fiscal note provides for relocation and lease of new space for the Division of Motor Vehicles headquarters in FY-85.

A further breakdown by object code is attached. The reason for such a large figure in the 310 catagory is because of statutory requirement that all suspension notices must be sent by registered or certified mail, return receipt requested. If action is taken on 30,000 uninsured vehicles, at $1.55 postage per notice, that cost alone is $46,500.

ANALYSIS (continued):

The FY-85 costs for the compliance unit are as follows:

100 Personal Services	
1 - Insurance Compliance Unit Supervisor (Range 18, new classification)	52.7
2 - Hearing Officers (Range 16, new classification)	90.1
1 - Clerk V	33.2
4 - Clerk IV	119.6
1 - Microfilm Equipment Operator	31.4
TOTAL	327.0
200 Travel	
Hearing Officers to travel to various cities to conduct suspension hearings	26.5
300 Contractual	
310 - phones, tolls, postage	54.6
320 - forms, advertising, public notice	15.9
330 - headquarter's space lease (6,000 sq. ft.)	171.7
360 - equipment rental (4 AJIS terminals)	31.8
382a - DP Chargeback programming and maintenance	84.8
TOTAL	358.8

ANALYSIS (continued):

400 Commodities

Normal office supplies	26.5

500 Equipment

Office Equipment (9 employees)	27.0
Word Processing Station (Wang)	20.0
Microfilm Camera and Printer	40.0
TOTAL	87.0

Inflation for subsequent years is figured at the 6% level.

1.	POSITION TITLE Clerk IV			RANGE/STEP 9	BARG. UNIT GGU	FORM 12 PAGE/LINE	GOV.	APPROV.	DISAPP.
2.	TYPE OF POSITION PFT	STAFF MONTHS 12	RP NUMBER	PCN NUMBER	BRU PRIORITY	LOCATION Anchorage	ELECTION DISTRICT	LEG.		
3.	CONTINUATION LEVEL		ADDITION						

4.	TYPE OF EXPENDITURE		AMOUNT
	1	2	3
	PERSONAL SERVICES		
5.	Salary 1700	20.4	
6.	Benefits	3.6	
7.	Supplemental Benefits	1.3	
8.	Fixed Benefits	2.9	
9.	TOTAL PERSONAL SERVICES 01		28.2
10.	Travel 02		
11.	Contractual 03		5.0
12.	Commodities 04		1.0
13.	Equipment 05		3.0
14.	Other		
15.	TOTAL COST		37.2

	RECEIPT CODE	FUNDING SOURCE	
16.		Federal Receipts 1002	
17.		G.F. Match 1003	
18.		General Funds 1004	37.2
19.		I-A Receipts 1005	
20.		Program Receipts 1028	
		Other	

FOR O&M USE ONLY
4A KEY NUMBER __ __ - __ __ - __ __ - __ __ - __ __

JUSTIFICATION

The state is required to suspend vehicle registrations and operator's licenses of those found to be operating a motor vehicle without liability insurance. The clerical functions associated with this are highly specialized in that the Clerk IV must be able to do detailed research in both motor vehicle and drivers records, must be familiar with different type of insurance policies, and must have a working knowledge of all motor vehicle laws.

Accuracy is essential in this work since the consequences of the unit's actions on individual citizens is great. The loss of vehicle and driving privileges is a harsh step and the possibility of error must be eliminated to avoid working hardships on innocent parties. To assist in record tracking and handling similar form correspondence, a Wang word processing unit will be used by the section.

Based on other states' experience, approximately 10% or 30,000 vehicle owners will try to circumvent or violate this law. The volume of records and correspondence with 30,000 cases annually will require a unit of 4 Clerk IVs.

Computation on this form is at FY 84 costs.

13 REQUEST FOR NEW POSITION

AGENCY Department of Public Safety

PROGRAM Life and Property Protection

BRU Driver/Vehicle Services

COMPONENT Vehicle Services

Page 1 of 1

Revised Date

FY 84

1.	POSITION TITLE Clerk IV			RANGE/STEP 9	BARG. UNIT GGU	FORM 12 PAGE/LINE	GOV.	APPROV.	DISAPP.
2.	TYPE OF POSITION PFT	STAFF MONTHS 12	RP NUMBER	PCN NUMBER	BRU PRIORITY	LOCATION Anchorage	ELECTION DISTRICT	LEG.		
3.	CONTINUATION LEVEL		ADDITION						

4.	TYPE OF EXPENDITURE		AMOUNT
	1	2	3
	PERSONAL SERVICES		
5.	Salary 1700	20.4	
6.	Benefits	3.6	
7.	Supplemental Benefits	1.3	
8.	Fixed Benefits	2.9	
9.	TOTAL PERSONAL SERVICES 01		28.2
10.	Travel 02		
11.	Contractual 03		5.0
12.	Commodities 04		1.0
13.	Equipment 05		3.0
14.	Other		
15.	TOTAL COST		37.2

	RECEIPT CODE	FUNDING SOURCE	
16.		Federal Receipts 1002	
17.		G.F. Match 1003	
18.		General Funds 1004	37.2
19.		I-A Receipts 1005	
20.		Program Receipts 1028	
21.		Other	

FOR BDM USE ONLY
4A KEY NUMBER __ __ - __ __ - __ __ - __ __ - __ __

JUSTIFICATION

The state is required to suspend vehicle registrations and operator's licenses of those found to be operating a motor vehicle without liability insurance. The clerical functions associated with this are highly specialized in that the Clerk IV must be able to do detailed research in both motor vehicle and drivers records, must be familiar with different types of insurance policies, and must have a working knowledge of all motor vehicle laws.

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Computation on this form is at FY 84 costs.

13 REQUEST FOR NEW POSITION

AGENCY Department of Public Safety

PROGRAM Life and Property Protection

BRU Driver/Vehicle Services

COMPONENT Vehicle Services

Revised Date

FY 84

01-1136 (7/82)

1.	POSITION TITLE Clerk IV			RANGE/STEP 9	BARG. UNIT GGU	FORM 12 PAGE/LINE	GOV.	APPROV.	DISAPP
2.	TYPE OF POSITION PFT	STAFF MONTHS 12	RP NUMBER	PCN NUMBER	BRU PRIORITY	LOCATION Anchorage	ELECTION DISTRICT	LEG.		
3.	CONTINUATION LEVEL		ADDITION							

4.	TYPE OF EXPENDITURE		AMOUNT
	1	2	3
	PERSONAL SERVICES		
5.	Salary 1700	20.4	
6.	Benefits	3.6	
7.	Supplemental Benefits	1.3	
8.	Fixed Benefits	2.9	
9.	TOTAL PERSONAL SERVICES 01		28.2
10.	Travel 02		
11.	Contractual 03		5.0
12.	Commodities 04		1.0
13.	Equipment 05		3.0
14.	Other		
15.	TOTAL COST		37.2

	RECEIPT CODE	FUNDING SOURCE	
16.		Federal Receipts 1002	
17.		G.F. Match 1003	
18.		General Funds 1004	37.2
19.		I-A Receipts 1005	
20.		Program Receipts 1028	
21.		Other	

FOR BSM USE ONLY
4A KEY NUMBER __ __ - __ __ - __ __ - __ __ - __ __

JUSTIFICATION

The state is required to suspend vehicle registrations and operator's licenses of those found to be operating a motor vehicle without liability insurance. The clerical functions associated with this are highly specialized in that the Clerk IV must be able to do detailed research in both motor vehicle and drivers records, must be familiar with different types of insurance policies, and must have a working knowledge of all motor vehicle laws.

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Based on other states' experience, approximately 10% or 30,000 vehicle owners will try to circumvent or violate this law. The volume of records and correspondence with 30,000 cases annually will require a unit of 4 Clerk IVs.

Computation on this form is at FY 84 costs.

13 REQUEST FOR NEW POSITION

AGENCY Department of Public Safety

PROGRAM Life and Property Protection

BRU Driver/Vehicle Services

COMPONENT Vehicle Services

Revised Date

FY 84

01-1136 (7/82) - 13

1.	POSITION TITLE Clerk IV			RANGE/STEP 9	BARG. UNIT GGU	FORM 12 PAGE/LINE	GOV.	APPROV.	DISAPP.
2.	TYPE OF POSITION PFT	STAFF MONTHS 12	RP NUMBER	PCN NUMBER	BRU PRIORITY	LOCATION Anchorage	ELECTION DISTRICT	LEG.		
3.	CONTINUATION LEVEL		ADDITION						

4.	TYPE OF EXPENDITURE		AMOUNT
	1	2	3
	PERSONAL SERVICES		
5.	Salary 1700	20.4	
6.	Benefits	3.6	
7.	Supplemental Benefits	1.3	
8.	Fixed Benefits	2.9	
9.	TOTAL PERSONAL SERVICES 01		28.2
10.	Travel 02		
11.	Contractual 03		5.0
12.	Commodities 04		1.0
13.	Equipment 05		3.0
14.	Other		
15.	TOTAL COST		37.2

	RECEIPT CODE	FUNDING SOURCE	
16.		Federal Receipts 1002	
17.		G.F. Match 1003	
18.		General Funds 1004	37.2
19.		I-A Receipts 1005	
20.		Program Receipts 1028	
21.		Other	

FOR B&H USE ONLY
4A KEY NUMBER __ __ - __ __ - __ __ - __ __ - __ __

JUSTIFICATION

The state is required to suspend vehicle registrations and operator's licenses of those found to be operating a motor vehicle without liability insurance. The clerical functions associated with this are highly specialized in that the Clerk IV must be able to do detailed research in both motor vehicle and drivers records, must be familiar with different types of insurance policies, and must have a working knowledge of all motor vehicle laws.

Accuracy is essential in this work since the consequences of the unit's actions on individual citizens is great. The loss of vehicle and driving privileges is a harsh step and the possibility of error must be eliminated to avoid working hardships on innocent parties. To assist in record tracking and handling similar form correspondence, a Wang word processing unit will be used by the section.

Based on other states' experience, approximately 10% or 30,000 vehicle owners will try to circumvent or violate this law. The volume of records and correspondence with 30,000 cases annually will require a unit of 4 Clerk IVs.

Computation on this form is at FY 84 costs.

13 REQUEST FOR NEW POSITION

AGENCY Department of Public Safety

PROGRAM Life and Property Protection

BRU Driver/Vehicle Services

COMPONENT Vehicle Services

Page 1 of 1

Revised Date

FY 84

01-1136 (7/82) - 13

1.	POSITION TITLE Hearing Officer			RANGE/STEP 16	BARG. UNIT GGU	FORM 12 PAGE/LINE	COV.	APPROV.	DISAPP.
2.	TYPE OF POSITION PFT	STAFF MONTHS 12	RP NUMBER	PCN NUMBER	BRU PRIORITY	LOCATION Anchorage	ELECTION DISTRICT	LEG.		
3.	CONTINUATION LEVEL		ADDITION						

4.	TYPE OF EXPENDITURE		AMOUNT
	1	2	3
	PERSONAL SERVICES		
5.	Salary 2670	32.0	
6.	Benefits	5.6	
7.	Supplemental Benefits	2.0	
8.	Fixed Benefits	2.9	
9.	TOTAL PERSONAL SERVICES 01		42.5
10.	Travel 02		10.0
11.	Contractual 03		5.0
12.	Commodities 04		2.0
13.	Equipment 05		3.0
14.	Other		
15.	TOTAL COST		62.5

	RECEIPT CODE	FUNDING SOURCE	
16.		Federal Receipts 1002	
17.		G.F. Match 1003	
18.		General Funds 1004	62.5
19.		I-A Receipts 1005	
20.		Program Receipts 1028	
		Other	

FOR OBM USE ONLY
4A KEY NUMBER __ __ - __ __ - __ __ - __ __ - __ __

JUSTIFICATION

The mandatory insurance bill requires the state to suspend vehicle registrations, plates, and operator's licenses for those people who operate a vehicle without the required liability insurance. Prior to taking any action of this type, the department must provide the person an opportunity for an administrative hearing (AS 28.05.131).

Using estimates based on other states' experience with mandatory insurance, there will only be a 90% compliance level. This means action will be taken on the remaining 10% or 30,000 uninsured vehicles. The hearing officer must travel to all areas of the state to administer the hearings. With this volume there will be two hearing officers required.

Due to the limited scope of the hearing items, it is not necessary to have an attorney in this position.

Computation on this form is at FY 84 costs.

13 REQUEST FOR NEW POSITION

AGENCY Department of Public Safety

PROGRAM Life and Property Protection

BRU Driver/Vehicle Services

COMPONENT Vehicle Services

Revised Date

FY 84

OMB-1136 (7/82) - 13

1.	POSITION TITLE Hearing Officer			RANGE/STEP 16	BARG. UNIT GGU	FORM 12 PAGE/LINE	GOV.	APPROV.	DISAPP.
2.	TYPE OF POSITION PFT	STAFF MONTHS 12	RP NUMBER	PCN NUMBER	BRU PRIORITY	LOCATION Anchorage	ELECTION DISTRICT	LEG.		
3.	CONTINUATION LEVEL		ADDITION							

4.	TYPE OF EXPENDITURE		AMOUNT
	1	2	3
	PERSONAL SERVICES		
5.	Salary 2670	32.0	
6.	Benefits	5.6	
7.	Supplemental Benefits	2.0	
8.	Fixed Benefits	2.9	
9.	TOTAL PERSONAL SERVICES 01		42.5
10.	Travel 02		10.0
11.	Contractual 03		5.0
12.	Commodities 04		2.0
13.	Equipment 05		3.0
14.	Other		
15.	TOTAL COST		62.5

	RECEIPT CODE	FUNDING SOURCE	
16.		Federal Receipts 1002	
17.		G.F. Match 1003	
18.		General Funds 1004	62.5
19.		I-A Receipts 1005	
20.		Program Receipts 1028	
21.		Other	

FOR O&M USE ONLY
4A KEY NUMBER — — - — — - — — - — — - — —

JUSTIFICATION

The mandatory insurance bill requires the state to suspend vehicle registrations, plates, and operator's licenses for those people who operate a vehicle without the required liability insurance. Prior to taking any action of this type, the department must provide the person an opportunity for an administrative hearing (AS 28.05.131).

Using estimates based on other states' experience with mandatory insurance, there will only be a 90% compliance level. This means action will be taken on the remaining 10% or 30,000 uninsured vehicles. The hearing officer must travel to all areas of the state to administer the hearings. With this volume there will be two hearing officers required.

Due to the limited scope of the hearing items, it is not necessary to have an attorney in this position.

Computation on this form is at FY84 costs.

13 REQUEST FOR NEW POSITION

AGENCY Department of Public Safety

PROGRAM Life and Property Protection

BRU Driver/Vehicle Services

COMPONENT Vehicle Services

Revised Date

FY 84

01-1136 (7/82) : 13

1.	POSITION TITLE: Microfilm Equipment Operator I			RANGE/STEP: 10	BARG. UNIT: GGU	FORM 12 PAGE/LINE	GOV.	APPROV.	DISAPP.
2.	TYPE OF POSITION: PFT	STAFF MONTHS: 12	RP NUMBER	PCN NUMBER	BRU PRIORITY	LOCATION: Anchorage	ELECTION DISTRICT	LEG.		
3.	CONTINUATION LEVEL		ADDITION						

4.	TYPE OF EXPENDITURE		AMOUNT
	1	2	3
	PERSONAL SERVICES		
5.	Salary 1803	21.6	
6.	Benefits	3.8	
7.	Supplemental Benefits	1.3	
8.	Fixed Benefits	2.9	
9.	TOTAL PERSONAL SERVICES 01		29.6
10.	Travel 02		
11.	Contractual 03		5.0
12.	Commodities 04		4.0
13.	Equipment 05		43.0
14.	Other		
15.	TOTAL COST		118.8

	RECEIPT CODE	FUNDING SOURCE		
16.		Federal Receipts	1002	
17.		G.F. Match	1003	
18.		General Funds	1004	118.8
19.		I-A Receipts	1005	
20.		Program Receipts	1028	
		Other		

FOR B&M USE ONLY
4A KEY NUMBER __ __ - __ __ - __ __ - __ __ - __ __

JUSTIFICATION

As a result of this bill, each vehicle operator must present some form of proof of insurance at the time of registration. This form is kept with the vehicle records which are microfilmed. Also the records of registration, suspensions, and all associated documents are microfilmed and kept with vehicle records. These forms and documents will represent a 20% increase in the documents presently maintained by the Vehicle Service Unit.

To accomodate this increased workload, a Microfilm Equipment Operator I is necessary to augment the present staff. Equipment associated with this position includes a microfilm camera and a reader-printer work station.

The microfilm retrieval system currently being used has proved cost effective in terms of labor savings and rapid response to filing needs. The high initial cost of equipment is soon offset by savings in labor and file storage costs.

Computation on this form is at FY 84 costs.

13 REQUEST FOR NEW POSITION

AGENCY Department of Public Safety

PROGRAM Life and Property Protection

BRU Driver/Vehicle Services

COMPONENT Vehicle Services

Revised Date

FY 84

01-113G(7/82)-13

1.	POSITION TITLE: Insurance Compliance Unit Supervisor			RANGE/STEP: 18	BARG. UNIT: Sup.	FORM 12 PAGE/LINE	GOV.	APPROV. / DISAPP.
2.	TYPE OF POSITION: PFT	STAFF MONTHS: 12	RP NUMBER	PCN NUMBER	BRU PRIORITY	LOCATION: Anchorage	ELECTION DISTRICT	LEG.
3.	CONTINUATION LEVEL		ADDITION					

4.	TYPE OF EXPENDITURE	1	2	AMOUNT 3
	PERSONAL SERVICES			
5.	Salary 3143		37.7	
6.	Benefits		6.6	
7.	Supplemental Benefits		2.3	
8.	Fixed Benefits		2.9	
9.	TOTAL PERSONAL SERVICES	01		49.5
10.	Travel	02		5.0
11.	Contractual	03		5.0
12.	Commodities	04		2.0
13.	Equipment	05		3.0
14.	Other			
15.	TOTAL COST			64.5

	RECEIPT CODE	FUNDING SOURCE		
16.		Federal Receipts	1002	
17.		G.F. Match	1003	
18.		General Funds	1004	64.5
19.		I-A Receipts	1005	
20.		Program Receipts	1028	
21.		Other		

FOR B&M USE ONLY
4A KEY NUMBER

JUSTIFICATION

The mandatory insurance laws require that the state take action against those who do not have liability insurance or those who cancel policies after registration. Administration of this program is the responsibility of the Insurance Compliance Unit. The Supervisor of this unit will act under the general direction of the Chief of Vehicle Services and will be responsible for the supervision of seven employees.

This position carries considerable authority in that this unit has the responsibility of suspending both vehicle registration and operator's licenses of violators. This will require close coordination with the insurance industry, the court system, and law enforcement agencies to ensure that appropriate and timely action is taken and that complete due process is given to the citizen.

The intent of the law is to have 100% compliance, however based on other states' experience, usually only 90% compliance is achieved. This will require some action be taken on 30,000 uninsured vehicles and their owners.

Computation on this form is at FY84 costs.

13 REQUEST FOR NEW POSITION

AGENCY Department of Public Safety

PROGRAM Life and Property Protection

BRU Driver/Vehicle Services

COMPONENT Vehicle Services

Page 1 of 1

Revised Date

FY 84

STATE OF ALASKA
FISCAL NOTE

Form 209

Revision Date , 1983

I. REQUEST

Bill/Resolution No.: SSHB 7
Title: Motor Vehicle Insurance
Sponsor: Hayes
Requestor:

II. FISCAL DETAIL

Agency Affected: Public Safety
Program Category Affected: Public Prot/Jus
BRU, Program of Subprogram(s) Affected: Driver/Vehicle Services/Alaska State Troo

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 83	FY 84	FY 85	FY 86	FY 87	FY 88
100 PERSONAL SERVICES		498.5	528.4	560.1	593.7	629.3
200 TRAVEL		31.0	32.9	34.9	37.0	39.2
300 CONTRACTUAL		460.2	487.8	517.1	548.1	581.0
400 COMMODITIES		35.5	37.6	39.9	42.3	44.8
500 EQUIPMENT		147.9				
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC						
TOTAL OPERATING		1173.1	1086.7	1152.0	1221.1	1294.3
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND		1173.1	1086.7	1152.0	1122.1	1294.3
FEDERAL FUNDS						
OTHER (Specify Source)						

POSITIONS:

FULL-TIME		12.0	12.0	12.0	12.0	12.0
PART-TIME						
TEMPORARY						

III. SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

Not identified by sponsor.

IV. ANALYSIS: Attach a separate page for any Analysis

Prepared By: Marcia Lynn McKenzie
Phone: 465-4349
Division: Administrative Services
Date: 04/06/83

Approved by Commissioner:
Date: 4/6/83
Department: Public Safety

Distribution:
Original to Legislative Finance
Copy to Office of Management and Budget (for Legislature introduced bills)
Copy to Department (for Governor introduced bills)
Copy to Sponsor
Copy to Requestor (if different from Sponsor)

3/8/8

The basic assumption of this fiscal note is that for this bill to be effective there must be an adequate system of enforcement and compliance. Other states with mandatory insurance laws estimate that 5%-15% of their vehicles are operating without insurance as owners find ways to circumvent the law. We find that our present Financial Responsibility Law, AS 28.20, is practically as effective and far less costly both to the state bureaucracy and to the citizens directly.

This fiscal note assumes an effective date of July 1, 1983. A 6% inflation factor has been applied to FY 85 and beyond.

Fiscal Note Detail - Alaska State Troopers

SS House Bill No. 7

Motor Vehicle Liability Insurance

Passage of this bill will require a statewide enforcement effort to ensure compliance. If a vehicle is stopped and proves not to have current insurance it will need to be impounded. This will require numerous Troopers all over the State to spend patrol time enforcing provisions of this particular law. The bulk of the activity will take place in the Anchorage area, Fairbanks and Juneau. One additional Trooper is requested for each of these locations to absorb the increased work load.

FY '84

	Three Troopers	Academy (2)	Totals
Per. Ser.	190,268		190,268
Travel	6,000		6,000
Contractual	52,704	9,000	61,704
Commodities	9,900	600	10,500
Equip. (1)	60,900		60,900
	319,772	9,600	329,372

(1) Equipment costs are incurred during the first year only.

(2) The Public Safety Academy is budgeted only for costs of training replacement Troopers based on normal turnover of personnel. Any new Troopers required due to new legislation need additional funding.

Note: Inflation after FY '84 is estimated at 6% per year. A Form 13 for each position is attached.

1.	POSITION TITLE: State Trooper			RANGE/STEP: 76A	BARG. UNIT: PSEA	FORM 12 PAGE/LINE	COV.	APPROV.	DISAPP.
2.	TYPE OF POSITION: PFT	STAFF MONTHS: 13.9	RP NUMBER	PCN NUMBER	BRU PRIORITY	LOCATION: Juneau	ELECTION DISTRICT: 7-15	LEC.		
3.	CONTINUATION LEVEL		ADDITION						

4.	TYPE OF EXPENDITURE	1	2	AMOUNT 3
	PERSONAL SERVICES			
5.	Salary $2,998 + 25 hrs. OT		44,118	
6.	Benefits .2721		11,266	
7.	Supplemental Benefits		2,880	
8.	Fixed Benefits		2,240	
9.	TOTAL PERSONAL SERVICES	01		60,504
10.	Travel	02		2,000
11.	Contractual	03		17,568
12.	Commodities	04		3,300
13.	Equipment	05		20,300*
14.	Other			
15.	TOTAL COST			103,672

	RECEIPT CODE	FUNDING SOURCE		
16.		Federal Receipts	1002	
17.		G.F. Match	1003	
18.		General Funds	1004	103,672
19.		I-A Receipts	1005	
20.		Program Receipts	1028	
21.		Other		

FOR OMB USE ONLY
4A KEY NUMBER — — - — — - — — - — — - — —

JUSTIFICATION

This position will be utilized on increased patrol activity due to the need to check motor vehicle records to assure compliance with this new law.

* Equipment costs will be incurred in the first year only.

13 REQUEST FOR NEW POSITION

AGENCY Department of Public Safety

PROGRAM Crime ID & Apprehension

BRU Alaska State Troopers

COMPONENT Detachments & C.I.B.

Revised Date

FY 84

EXPENDITURES

	FY 84	FY 85	FY 86
100 Personal Services	308.2	326.7	346.3
200 Travel	25.0	26.5	28.1
300 Contractual	398.5	422.4	447.7
400 Commodities	25.0	26.5	28.1
500 Equipment	87.0	-0-	-0-
TOTAL	843.7	802.1	850.2

For this bill to be effective the Division of Motor Vehicles must create a compliance unit of 9 employees. The compliance unit must be located with Division headquarters since there must be ready reference to the existing ownership and registration record. The present headquarters location will not accomodate any expansion, therefore, the fiscal note provides for relocation and lease of new space for the Division of Motor Vehicles headquarters in FY-84.

A further breakdown by object code is attached. The reason for such a large figure in the 310 catagory is because of statutory requirement that all suspension notices must be sent by registered or certified mail, return receipt requested. If action is taken on 30,000 uninsured vehicles, at $1.55 postage per notice, that cost alone is $46,500.

1.	POSITION TITLE: State Trooper			RANGE/STEP: 76A	BARG. UNIT: PSEA	FORM 12 PAGE/LINE	GOV.	APPROV.	DISAPP.
2.	TYPE OF POSITION: PFT	STAFF MONTHS: 13.9	RP NUMBER	PCN NUMBER	BRU PRIORITY	LOCATION: Fairbanks	ELECTION DISTRICT: 18-21	LEG.		
3.	CONTINUATION LEVEL		ADDITION						

	TYPE OF EXPENDITURE	1	2	AMOUNT 3
	PERSONAL SERVICES			
5.	Salary $3,472 + 25 hrs. OT		51,093	
6.	Benefits		13,047	
7.	Supplemental Benefits		2,880	
8.	Fixed Benefits		2,240	
9.	TOTAL PERSONAL SERVICES	01		69,260
10.	Travel	02		2,000
11.	Contractual	03		17,568
12.	Commodities	04		3,300
13.	Equipment	05		20,300*
14.	Other			
15.	TOTAL COST			112,428

	RECEIPT CODE	FUNDING SOURCE		
16.		Federal Receipts	1002	
17.		C.F. Match	1003	
18.		General Funds	1004	112,428
19.		I-A Receipts	1005	
20.		Program Receipts	1028	
		Other		

FOR OMB USE ONLY
4A KEY NUMBER — — - — — - — — - — — - — —

JUSTIFICATION

This position will be utilized on increased patrol activity due to the need to check motor vehicle records to assure compliance with this new law.

* Equipment costs will be incurred in the first year only.

13 REQUEST FOR NEW POSITION

AGENCY Department of Public Safety

PROGRAM Crime ID & Apprehension

BRU Alaska State Troopers

COMPONENT Detachments & C.I.B.

Revised Date

FY 84

ANALYSIS (continued):

The FY-84 costs for the compliance unit are as follows:

100 Personal Services

1 - Insurance Compliance Unit Supervisor (Range 18, new classification)	49.5
2 - Hearing Officers (Range 16, new classification)	85.0
1 - Clerk V	31.3
4 - Clerk IV	112.8
1 - Microfilm Equipment Operator	29.6
TOTAL	308.2

200 Travel

Hearing Officers to travel to various cities to conduct suspension hearings	25.0

300 Contractual

310 - phones, tolls, postage	51.5
320 - forms, advertising, public notice	15.0
330 - headquarter's space lease (6,000 sq. ft.)	162.0
360 - equipment rental (4 AJIS terminals)	30.0
382a - DP Chargeback programming and maintenance	80.0
TOTAL	398.5

ANALYSIS (continued):

400 Commodities

Normal office supplies	25.0

500 Equipment

Office Equipment (9 employees)	27.0
Word Processing Station (Wang)	20.0
Microfilm Camera and Printer	40.0
TOTAL	87.0

Inflation for subsequent years if figured at the 6% level.

1.	POSITION TITLE Clerk IV			RANGE/STEP : 9	BARC. UNIT GGU	FORM 12 PAGE/LINE	COV.	APPROV.	DISAPP.
2.	TYPE OF POSITION PFT	STAFF MONTHS 12	RP NUMBER	PCN NUMBER	DRU PRIORITY	LOCATION Anchorage	ELECTION DISTRICT	LEG.		

3.	CONTINUATION LEVEL		ADDITION	
4.	TYPE OF EXPENDITURE			AMOUNT
	1		2	3
	PERSONAL SERVICES			
5.	Salary 1700		20.4	
6.	Benefits		3.6	
7.	Supplemental Benefits		1.3	
8.	Fixed Benefits		2.9	
9.	TOTAL PERSONAL SERVICES	01		28.2
10.	Travel	02		
11.	Contractual	03		5.0
12.	Commodities	04		1.0
13.	Equipment	05		3.0
14.	Other			
15.	TOTAL COST			37.2

	RECEIPT CODE	FUNDING SOURCE		
16.		Federal Receipts	1002	
17.		G.F. Match	1003	
18.		General Funds	1004	37.2
19.		I-A Receipts	1005	
20.		Program Receipts	1028	
21.		Other		

FOR OMB USE ONLY
4A KEY NUMBER ___ - ___ - ___ - ___ - ___

JUSTIFICATION

The state is required to suspend vehicle registrations and operator's licenses of those found to be operating a motor vehicle without liability insurance. The clerical functions associated with this are highly specialized in that the Clerk IV must be able to do detailed research in both motor vehicle and drivers records, must be familiar with different types of insurance policies, and must have a working knowledge of all motor vehicle laws.

Accuracy is essential in this work since the consequences of the unit's actions on individual citizens is great. The loss of vehicle and driving privileges is a harsh step and the possibility of error must be eliminated to avoid working hardships on innocent parties. To assist in record tracking and handling similar form correspondence, a Wang word processing unit will be used by the section.

Based on other states' experience, approximately 10% or 30,000 vehicle owners will try to circumvent or violate this law. The volume of records and correspondence with 30,000 cases annually will require a unit of 4 Clerk IVs.

13 REQUEST FOR NEW POSITION

AGENCY Department of Public Safety

PROGRAM Life and Property Protection

BRU Driver/Vehicle Services

COMPONENT Vehicle Services

Revised Date

FY 84

1.	POSITION TITLE Clerk V			RANGE/STEP 11	BARG. UNIT CCU	FORM 12 PAGE/LINE	COV.	APPROV.	DISAPP.
2.	TYPE OF POSITION PFT	STAFF MONTHS 12	RP NUMBER	PCN NUMBER	DRU PRIORITY	LOCATION Anchorage	ELECTION DISTRICT	LEG.		

3.	CONTINUATION LEVEL		ADDITION	
4.	TYPE OF EXPENDITURE			AMOUNT
	1		2	3
	PERSONAL SERVICES			
5.	Salary 1914		23.0	
6.	Benefits		4.0	
7.	Supplemental Benefits		1.4	
8.	Fixed Benefits		2.9	
9.	TOTAL PERSONAL SERVICES	01		31.3
10.	Travel	02		
11.	Contractual	03		5.0
12.	Commodities	04		1.0
13.	Equipment	05		3.0
14.	Other			
15.	TOTAL COST			40.3

	RECEIPT CODE	FUNDING SOURCE		
16.		Federal Receipts	1002	
17.		C.F. Match	1003	
18.		General Funds	1004	40.3
19.		I-A Receipts	1005	
20.		Program Receipts	1028	
		Other		

FOR B&H USE ONLY
4A KEY NUMBER __ __ - __ __ - __ __ - __ __ - __ __

JUSTIFICATION

Under the general supervision of the Insurance Compliance Unit Supervisor, this position will supervise the clerical section of this unit. The unit will perform checks on those suspected of being in violation of the insurance laws. The consequences of the actions of this section in suspending vehicle registrations and operator's licenses and complexity of the due process system require a high level of supervision and expertise.

The section supervisor must have a thorough knowledge of motor vehicle laws and forms and vehicle insurance practices and policies. This section will also schedule administrative hearings and the supervisor must coordinate these with the hearing officer's travel plans.

This position will be responsible for the final actions of the unit, and accuracy and good judgement are essential to ensure correct compliance with the insuracne laws and to avoid hardships for innocent vehicle operators.

13 REQUEST FOR NEW POSITION

AGENCY Department of Public Safety

PROGRAM Life and Property Protection

BRU Driver/Vehicle Services

COMPONENT Vehicle Services

Revised Date

FY 84

01-1136 (7/82) - 13

1.	*POSITION TITLE Hearing Officer			RANGE/STEP 16	BARG. UNIT GGU	FORM 12 PAGE/LINE	GOV.	APPROV.	DISAPP.
2.	TYPE OF POSITION PFT	STAFF MONTHS 12	RP NUMBER	PCN NUMBER	BRU PRIORITY	LOCATION Anchorage	ELECTION DISTRICT	LEG.		
3.	CONTINUATION LEVEL		ADDITION						

4.	TYPE OF EXPENDITURE		AMOUNT
	1	2	3
	PERSONAL SERVICES		
5.	Salary 2670	32.0	
6.	Benefits	5.6	
7.	Supplemental Benefits	2.0	
8.	Fixed Benefits	2.9	
9.	TOTAL PERSONAL SERVICES 01		42.5
10.	Travel 02		10.0
11.	Contractual 03		5.0
12.	Commodities 04		2.0
13.	Equipment 05		3.0
14.	Other		
15.	TOTAL COST		62.5

	RECEIPT CODE	FUNDING SOURCE		
16.		Federal Receipts	1002	
17.		C.F. Match	1003	
18.		General Funds	1004	62.5
19.		I-A Receipts	1005	
20.		Program Receipts	1028	
21.		Other		

FOR B&H USE ONLY
4A KEY NUMBER __ __ - __ __ - __ __ - __ __ - __ __

JUSTIFICATION

The mandatory insurance bill requires the state to suspend vehicle registrations, plates, and operator's licenses for those people who operate a vehicle without the required liability insurance. Prior to taking any action of this type, the department must provide the person an opportunity for an administrative hearing (AS 28.05.131).

Using estimates based on other states' experience with mandatory insurance, there will only be a 90% compliance level. This means action will be taken on the remaining 10% or 30,000 uninsured vehicles. The hearing officer must travel to all areas of the state to administer the hearings. With this volume there will be two hearing officers required.

Due to the limited scope of the hearing items, it is not necessary to have an attorney in this position.

13 REQUEST FOR NEW POSITION

AGENCY Department of Public Safety

PROGRAM Life and Property Protection

BRU Driver/Vehicle Services

COMPONENT Vehicle Services

Revised Date

FY 84

1.	POSITION TITLE: Insurance Compliance Unit Supervisor			RANGE/STEP: 18	BARG. UNIT: Sup.	FORM 12 PAGE/LINE	COV.	APPROV.	DISAPP.
2.	TYPE OF POSITION: PFT	STAFF MONTHS: 12	RP NUMBER	PCN NUMBER	BRU PRIORITY	LOCATION: Anchorage	ELECTION DISTRICT	LEG.		
3.	CONTINUATION LEVEL		ADDITION						

4.	TYPE OF EXPENDITURE	1	2	AMOUNT 3
	PERSONAL SERVICES			
5.	Salary 3143		37.7	
6.	Benefits		6.6	
7.	Supplemental Benefits		2.3	
8.	Fixed Benefits		2.9	
9.	TOTAL PERSONAL SERVICES	01		49.5
10.	Travel	02		5.0
11.	Contractual	03		5.0
12.	Commodities	04		2.0
13.	Equipment	05		3.0
14.	Other			
15.	TOTAL COST			64.5

	RECEIPT CODE	FUNDING SOURCE		
16.		Federal Receipts	1002	
17.		G.F. Match	1003	
18.		General Funds	1004	64.5
19.		I-A Receipts	1005	
20.		Program Receipts	1028	
21.		Other		

FOR OMB USE ONLY
4A KEY NUMBER — — - — — - — — - — — - — —

JUSTIFICATION

The mandatory insurance laws require that the state take action against those who do not have liability insurance or those who cancel policies after registration. Administration of this program is the responsibility of the Insurance Compliance Unit. The Supervisor of this unit will act under the general direction of the Chief of Vehicle Services and will be responsible for the supervision of seven employees.

This position carries considerable authority in that this unit has the responsibility of suspending both vehicle registration and operator's licenses of violators. This will require close coordination with the insurance industry, the court system, and law enforcement agencies to ensure that appropriate and timely action is taken and that complete due process is given to the citizen.

The intent of the law is to have 100% compliance, however based on other states' experience, usually only 90% compliance is achieved. This will require some action be taken on 30,000 uninsured vehicles and their owners.

13 REQUEST FOR NEW POSITION

AGENCY Department of Public Safety

PROGRAM Life and Property Protection

BRU Driver/Vehicle Services

COMPONENT Vehicle Services

Revised Date

FY 84

81-1136 (7/82) - 13

1.	POSITION TITLE Microfilm Equipment Operator I				RANGE/STEP 10	BARG. UNIT GGU	FORM 12 PAGE/LINE	GOV.	APPROV.	DISAPP.
2.	TYPE OF POSITION PFT	STAFF MONTHS 12	RP NUMBER	PCN NUMBER	BRU PRIORITY	LOCATION Anchorage	ELECTION DISTRICT	LEG.		

3.	CONTINUATION LEVEL	ADDITION	
4.	TYPE OF EXPENDITURE		AMOUNT
	1	2	3
	PERSONAL SERVICES		
5.	Salary 1803	21.6	
6.	Benefits	3.8	
7.	Supplemental Benefits	1.3	
8.	Fixed Benefits	2.9	
9.	TOTAL PERSONAL SERVICES	01	29.6
10.	Travel	02	
11.	Contractual	03	5.0
12.	Commodities	04	4.0
13.	Equipment	05	43.0
14.	Other		
15.	TOTAL COST		118.8

	RECEIPT CODE	FUNDING SOURCE		
16.		Federal Receipts	1002	
17.		G.F. Match	1003	
18.		General Funds	1004	118.8
19.		I-A Receipts	1005	
20.		Program Receipts	1028	
21.		Other		

FOR B&M USE ONLY
4A KEY NUMBER

JUSTIFICATION

As a result of this bill, each vehicle operator must present some form of proof of insurance at the time of registration. This form is kept with the vehicle records which are microfilmed. Also the records of registration, suspensions, and all associated documents are microfilmed and kept with vehicle records. These forms and documents will represent a 20% increase in the documents presently maintained by the Vehicle Services Unit.

To accomodate this increased workload, a Microfilm Equipment Operator I is necessary to augment the present staff. Equipment associated with this position includes a microfilm camera and a reader-printer work station.

The microfilm retrieval system currently being used has proved cost effective in terms of labor savings and rapid response to filing needs. The high initial cost of equipment is soon offset by savings in labor and file storage costs.

13 REQUEST FOR NEW POSITION

AGENCY Department of Public Safety

PROGRAM Life and Property Protection

BRU Driver/Vehicle Services

COMPONENT Vehicle Services

FY 84

Revised Date

01-1536 (7/82) - 13

MSG 83-00012137 PRTY 1 04/26/83 10:36:37 ORIG: LA01 IN# OUT# OUT#
FROM: SHIRLEE ANC LIO TO: POMS JUNEAU INFO
TARGET: LJHL SUBJ: POM

TO: REPRESENTATIVE HAYES, BARNES, PHILLIPS, FURNACE, LINDAUER, ABOOD, UEHLING, LISKA, CONDERY, SZYMANSKI, FRITZ, PESTINGER AND BUSSELL

JR

FROM: BOB NESTEL, P. O. BOX 1753, EAGLE RIVER 99577 H 694-4372

RE: HB 7

DIRECTOR OF INSURANCE KEN MOORE ADDRESSED THE ANCHORAGE PROPERTY AND CASUALTY INSURANCE AGENTS RECENTLY CONCERNING THIS BILL. I SUGGEST YOUR STAFF CONTACT MR. MOORE AT 465-2515 FOR HIS INPUT.

****

Dup. Reb

SG 83-00005093 PRTY 1 04/01/83 17:25:03 ORIG: LA01 IN= 0015 OUT= 0076
ROM: SHIRLEE ANC LIO TO: POMS JUNEAU INFO
ARGET: LJHL SUBJ: POM

/1/83, SHIRLEE ANC LIO, 5093

JUD
Ref



O: ALL MEMBERS, HOUSE OF REPRESENTATIVES

ROM: TAM AGOSTI-GISLER, 1718 LOGAN STREET, ANCHORAGE 99504.
H 272-9227 W 243-1141

STRONGLY SUPPORT HOUSE BILL 7. HAVING BEEN INVOLVED IN
ANY ACCIDENTS WHERE UNINSURED DRIVER WAS AT FAULT, I
TRONGLY URGE YOU TO PASS THIS BILL.

****

MG'83-000 9126 PRT: 1 05/19/83
ROM: SHIRLEE ANC LIO TO: POMS JUNEAU INFO
ARGET: LJHL SUBJ: POM

TO: ALL MEMBERS, ALASKA LEGISLATURE

FROM: ROBERT CHRISTIANSEN, 3605 ARCTIC BLVD., NO. 105
ANCHORAGE 99503, H 344-4809 W 563-3233

RE: HOUSE BILL 7(AN ACT RE MOTOR VEHICLES; E.D.)

I DISAGREE WITH THIS BILL; IT IS AN UNJUSTIFIED INFRINGEMENT ON MY RIGHTS AS A CITIZEN OF THE U.S.A. THE CONSTITUTION GUARANTEES FREEDOM OF CHOICE. WE HAVE THE COURT SYSTEM TO HANDLE CASES THAT INVOLVE INDIVIDUALS WITHOUT INSURANCE. THIS BILL IS A TAX FORCED ON THE CITIZEN BY THE LEGISLATURE, INFLUENCED BY THE INSURANCE LOBBYISTS.

MAY 1983
RECEIVED

DR

****

[illegible] PRTY 1 05/24/93 16:35:09 ORIG: LDOC IN= [illegible] OUT= [illegible]
[illegible] LINDA/DELTA TO [illegible]
[illegible] LJHL SUBJ POM'S

[illegible] MARYLOU & DALE THOMPSON
BOX 467
DELTA JUNCTION, ALASKA 99737

JR

[illegible] ALL LEGISLATORS
[illegible] SB223/ HB7

[illegible] ARE OPPOSED TO THESE BILLS REQUIRING INSURANCE ON VEHICLES. [illegible] THE [illegible]NDIVIDUAL SHOULD BE INSURED NOT EACH SEPARATE VEHICLE...

MSG 83-00017082 PRTY 1 05/12/83 10:28:06 ORIG: LA01 IN= 0002 OUT= 0022
FROM: SHIRLEE ANC LIO TO: POMS JUNEAU INFO
TARGET: LJHL SUBJ: POM

TO: ALL MEMBERS, ALASKA HOUSE OF REPRESENTATIVES

FROM: BEATRICE E. WATTS, 6610 SHERWOOD CIRCLE, ANCHORAGE 99504
H 333-4589 W 274-3576

PLEASE PASS HB 7 REQUIRING MANDATORY LIABILITY INSURANCE FOR AUTOMOBILE DRIVERS.

5/6/83, JUNE, ANC LIO, MSG 15598

TO: ALL REPRESENTATIVES

FROM: JIM RHODES, 664 HIGHLANDER CIRCLE, ANCHORAGE, AK 99502
H- 349-7945 W- 274-3576

PLEASE SUPPORT HB 7, ONLY DRIVERS WHO ARE IRRESPONSIBLE WILL BE AFFECTED. HB 7 WILL FORCE THEM TO PROVIDE COMPENSATION TO PEOPLE THEY INJURE.

****

TO:

FROM: ROGER E. HENDERSON, 1418 ST. GOTTHARD AVE., ANCHORAGE
(MAIL: 821 N ST., SUITE 102, ANCHORAGE 99501)
H 561-0509 2 272-1527

AMENDMENTS MADE LAST YEAR TO CHAPTER 38 OF TITLE 9 HAVE SERIOUSLY HAMPERED ABILITY TO OBTAIN RELIEF IN OUR COURTS. HOUSE BILL 326 CORRECTS DEFICIENCIES, AND I URGE YOU TO VOTE FOR THIS BILL. I AM AN ATTORNEY IN PRIVATE PRACTICE, WITH DIRECT EXPERIENCE WITH THE STATUTE IN QUESTION.

FROM: RONALD WEST, 8530 EAST 12TH, ANCHORAGE, AK
H- 333-5013 W- 278-9742

I URGE YOU TO VOTE FOR HB 326. THE PRESENT LAW VERY MUCH PENALIZES ALL CREDITORS, PARTICULARLY THE SMALL CREDITOR AND BUSINESSMAN.

MSG 83-00015510 PRTY 1 05/06/83 12:28:46 ORIG: LA07 IN= 0005 OUT= 0069
FROM: CAROL, ANCH TO: JUNEAU INFO, POM
TARGET: LJHL SUBJ: POM

TO: ALL MEMBERS OF THE HOUSE

FROM: KENT EDWARDS
2113 DUKE DRIVE
ANCHORAGE 99504 (H) 279-8059

HB7 MERITS YOUR SUPPORT. ACQUIRING INSURANCE BEFORE JEOPARDIZING THE LIVES OF OTHERS ON OUR ROADS SHOULD BE PART OF RESPONSIBLE CITIZENSHIP.

POUCH V
JUNEAU, ALASKA 99811
465-4990

P O BOX 4-1325
ANCHORAGE, ALASKA 99509
248-1515

Representative Charlie Bussell
ALASKA STATE LEGISLATURE
HOUSE OF REPRESENTATIVES

CHAIRMAN
HOUSE JUDICIARY COMMITTEE
MEMBER
HOUSE RESOURCES COMMITTEE
MEMBER
SPECIAL COMMITTEE ON FISHERIES
MEMBER
LEGISLATIVE COUNCIL
MEMBER
ALASKA CODE REVISION COMMISSION

May 12, 1983

Ms. Diana E. Long
P. O. Box No. 2781
Palmer, AK 99645

Dear Ms. Long:

Thank you for your letter of May 3, 1983, expressing your concerns regarding mandatory automobile liability insurance.

House Bill 7 was introduced by Representatives Hayes, Barnes, Phillips, Furnace, Lindauer, Abood, Uehling, Liska, Cowdery, Szymanski, Fritz and Pestinger. This act would require evidence of motor vehicle liability insurance to be furnished to the Department of Public Safety when registering or renewing registration on a vehicle.

The Judiciary Committee began hearing HB 7 Monday, May 2, 1983, and passed it from Committee on Friday, May 6, 1983 - a near record for a piece of legislation such as this is.

Representative Adams is Chairman of the Finance Committee; this Committee will now be hearing HB 7.

Again, I appreciate your taking the time to write and become a part of the legislative process.

Very truly yours,

Evelyn J. Doane

Representative Charlie Bussell
Chairman, Committee on Judiciary

CB:lyn

P.O. Box 2781
Palmer, AK 99645

May 3, 1983

RECEIVED MAY 1983



The Honorable Charlie Bussell
Pouch V Mail Stop 3100
Juneau, AK 99811

Dear Representative Bussell:

I would like to urge positive action regarding mandatory automobile liability insurance, a plan now being reviewed by the House Judiciary Committee. I feel Alaska has reached the time where mandatory automobile liability insurance is a necessity.

An article in the Anchorage Times on May 3, 1983 stated, "Officials estimate that from 10% and 40% of all cars in Alaska are uninsured." Because I am employed by the State in the Division of Motor Vehicles I am probably aware of the need for mandatory insurance more so than most. I am constantly amazed at the vast numbers of people who do not have automobile liability insurance and my own guess is that 40% is a much closer estimate than 10%.

Last week two very dear friends of mine were seriously injured in an accident. The other party involved was not injured and did not have insurance. He was found at fault for the accident. As a result of this accident the father of a family of five is in the hospital with a broken neck and will not be able to work and support his family for several months. Luckily, his vehicle was fully covered by insurance. I can't help think how serious it could have been if he did not have insurance.

I also feel that a method whereby people must prove insurance coverage prior to registering their vehicle would be feasible. I have been told it works successfully in other states.

Again, I would like to urge positive action toward this matter. The opinions stated in this letter are my personal opinions only and not that of a State employee with the Division of Motor Vehicles.

Sincerely,

D E Long

(Ms.) Diana E. Long

cc: Representative Ron Larson
Representative Barbara Lacher
Senator Jalmar Kerttula

Judiciary Committee began hearing HB7 Monday and passed it from Committee on Friday — A near record for a piece of legislation such as this is —

HB

8

NON-ATTORNEY MEMBERS
MARY JANE FATE
JOHN E. LONGWORTH
ROBERT H. MOSS

ATTORNEY MEMBERS
JAMES B. BRADLEY
JOSEPH L. YOUNG
BARBARA L. SCHUHMANN

CHAIRMAN, EX OFFICIO
EDMOND W. BURKE
CHIEF JUSTICE
SUPREME COURT

Alaska Judicial Council

1031 W. Fourth Avenue, Suite 301
ANCHORAGE, ALASKA
99501
(907) 279-2526

EXECUTIVE DIRECTOR
FRANCIS L. BREMSON

March 16, 1983

Representative Charlie Bussell
Chairman, House Judiciary Committee
State Capitol
Pouch 5
Juneau, AK 99811

RE: House Bill 8 and Senate Bill 84

Dear Representative Bussell:

The Alaska Judicial Council wishes to go on record in opposition to House Bill 8 and Senate Bill 84, both of which are currently under consideration by the Alaska State Legislature. Both bills would alter the number and size of election districts for judicial retention purposes and, thereby, the roles and responsibilities of the Judicial Council.

At the Council's meeting in Anchorage on February 15-16, 1983, Council members specified the following statutory, administrative and constitutional bases for its objections to the legislation:

Statutory Reasons:

-The difficulty of the Judicial Council determining, on the basis of vague language ("routinely and frequently"), whether a judge should be subject to election in districts other than the one in which he/she resides;

-The possible conflict created by requiring the Council to determine where a judge must run, while at the same time evaluating the judge for retention purposes.

Administrative Reasons

-The possibility that some voters, while within the jurisdiction of one Judicial District, would actually vote for retention purposes for the judge of another Judicial District;

-The confusion occasioned by using different election districts for retention elections than are used for general elections.

Constitutional Reasons

-The possibility that voters in whose election districts no Superior and/or District Court exists may be disenfranchised, either because the election district does not include a court, or because the district is served by one or more judges, none of whom hear matters "routinely or frequently" in such districts.

Should you or any member of your Committee wish to discuss the Council's position with regard to this legislation in further detail, please let me know. I would be pleased to appear before the committee to testify in opposition to this legislation at such time and place as may be convenient.

Thank you for the opportunity to present the Council's position on this matter.

Sincerely,

Francis L. Bremson
Executive Director

FLB/pjd

cc: Alaska Judicial Council

STATE OF ALASKA
THE LEGISLATURE

LEGISLATIVE AFFAIRS AGENCY

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

M E M O R A N D U M

February 18, 1982

SUBJECT: Judicial retention elections -- HB 624

TO: Representative Ramona L. Barnes
Chairman, House Judiciary Committee

FROM: Richard A. Bradley
Legislative Counsel

You have asked that I explain the provision of HB 624 that ties judicial retention election districts to the legislative election districts as they existed in 1959. Sec. 22.18.050(b) (as enacted in Sec. 1 of HB 624) provides:

> (b) For purposes of the section, the judicial retention election districts of the state are the election districts as they are described in art. XIV of the state constitution as it existed on March 19, 1959.

March 19, 1959 has no particular significance in itself; it is merely the effective date of Chapter 50, SLA 1959, the Act that established the Alaska court system and became the basis for AS 22.

The source of the date is AS 22.10.010, the section providing for the "establishment of the superior court" and establishing the borders of the four judicial districts of the superior court. The language of the section establishes each judicial district with reference to identified election districts, "as said districts are described in art. XIV of the state constitution on March 19, 1959".

Ever since the Alaska court system was established, the jurisdiction of the superior court has been tied to the 1959 election district borders. While the districts for the election of members of the legislature have varied since then, no alteration of the borders of the four judicial districts has occurred.

I have no idea whether the judicial districts are obsolete in their borders or would benefit from revision. I am aware that there was some interest in that question several years ago but I believe the difficulties that caused the proposals may have been resolved otherwise. But I suggest that this bill should not seek to establish retention districts for judges in terms of the recent reapportionment, for example, without simultaneously altering the judicial districts of the superior court. Since the judicial districts establish lines in which cases may be brought and heard by particular judges, they should also establish the districts in which the judges seek retention.

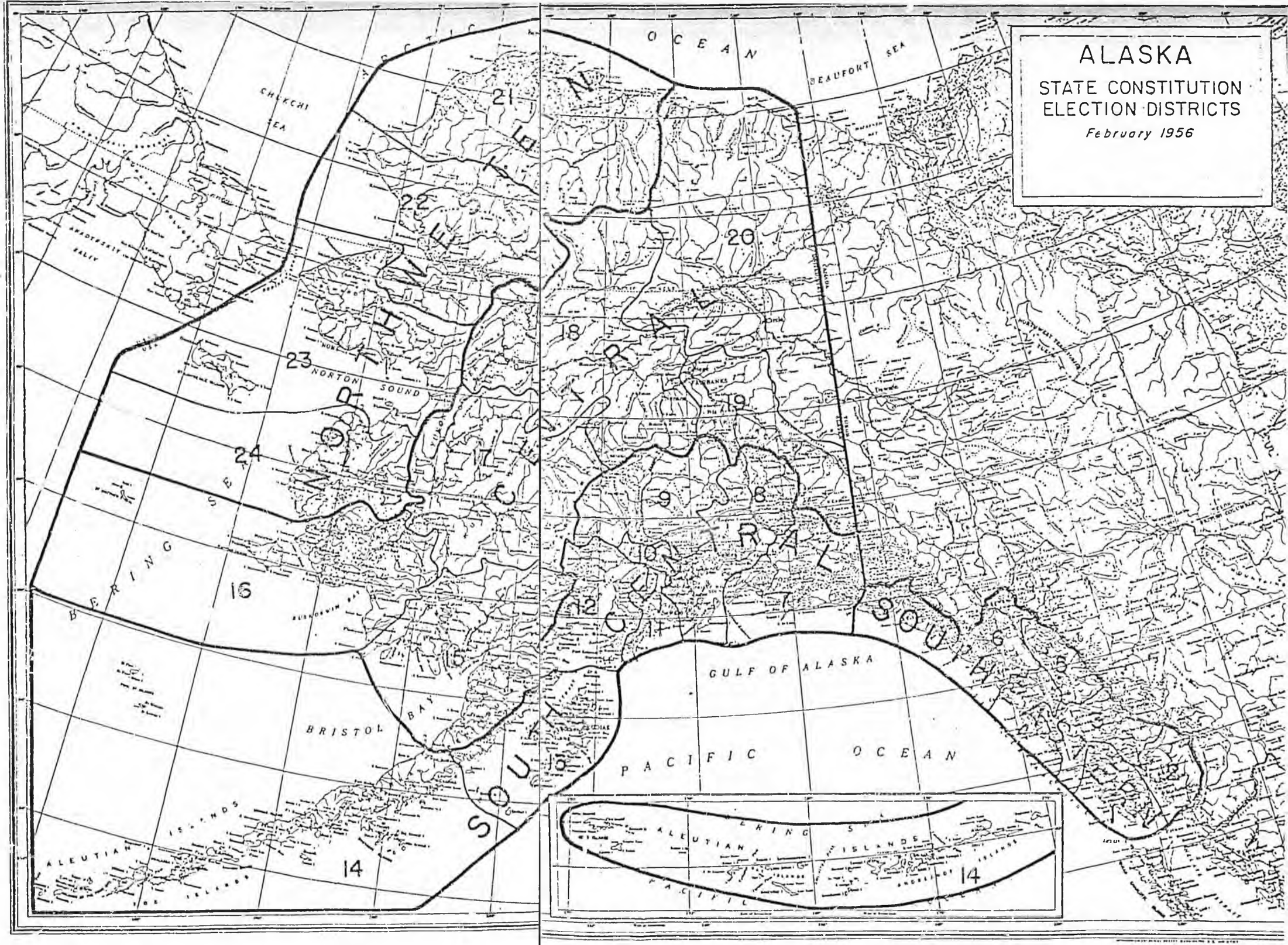
If I may assist further, please advise. If you wish me to attend your hearing tomorrow, give me a call and I will come over.

RAB:ljb

ALASKA

STATE CONSTITUTION ELECTION DISTRICTS

February 1956



given the opportunity to express their will in response to a ballot that is drawn in conformity with the intent of the framers of the Constitution of Alaska. Boucher v. Bomhoff, Sup. Ct. Op. No. 775 (File No. 1487), 495 P.2d 77 (1972).

Section 4. Powers. Constitutional conventions shall have plenary power to amend or revise the constitution, subject only to ratification by the people. No call for a constitutional convention shall limit these powers of the convention.

The United States Congress has no power to amend a state's constitution. State v. Lewis, Sup. Ct. Op. No. 1364 (File No. 3039), 559 P.2d 630, cert. denied, 432 U.S. 901, 97 S. Ct. 2943, 53 L. Ed. 2d 1073 (1977).

The constitution of the State of Alaska provides only two means for its amendment. Alaska Const., art. XIII, § 1 authorizes such amendments by a two-thirds vote of each house of the legislature thereafter approved by a majority vote at the next statewide election. This section provides for amendments by a constitutional convention subject to ratification by the people. State v. Lewis, Sup. Ct. Op. No. 1364 (File No. 3039), 559 P.2d 630, cert. denied, 432 U.S. 901, 97 S. Ct. 2943, 53 L. Ed. 2d 1073 (1977).

The Alaska Constitution may not be amended by popular vote alone, without prior action by either the legislature or a constitutional convention. State v. Lewis, Sup. Ct. Op. No. 1364 (File No. 3039), 559 P.2d 630, cert. denied, 432 U.S. 901, 97 S. Ct. 2943, 53 L. Ed. 2d 1073 (1977).

Adoption of provision in Statehood Act did not amend constitution. — Although included in Alaska Statehood Act, § 8(b), 48 U.S.C. Prec. § 21, was the provision that in the event that three propositions to be submitted to the voters were adopted by a majority vote, "the proposed constitution of the proposed State of Alaska ... shall be deemed amended accordingly," and although the propositions were adopted, the Alaska Constitution was not thereby amended to include "the terms or conditions of the grants of land" set forth in Alaska Statehood Act, § 6(i) since there was no state legislature in existence at the time of passage of the Statehood Act, the territorial legislature never approved an amendment incorporating the restrictions of Alaska Statehood Act, § 6(i), which relates to mineral land grants, into the Alaska Constitution, and no constitutional convention was called to act on the matter. State v. Lewis, Sup. Ct. Op. No. 1364 (File No. 3039), 559 P.2d 630, cert. denied, 432 U.S. 901, 97 S. Ct. 2943, 53 L. Ed. 2d 1073 (1977).

Article XIV

Apportionment Schedule

Cross reference. — As to legislative apportionment, see Alaska Const., art. VI.

Section 1. Election Districts. Members of the house of representatives shall, until reapportionment, be elected from the election districts and in the numbers shown below:

Number of District	*Name of District*	*Number of Representatives*
1	Prince of Wales	1
2	Ketchikan	2

Number of District	*Name of District*	*Number of Representatives*
3	Wrangell-Petersburg	1
4	Sitka	2
5	Juneau	2
6	Lynn Canal-Icy Straits	1
7	Cordova-McCarthy	1
8	Valdez-Chitina-Whittier	1
9	Palmer-Wasilla-Talkeetna	1
10	Anchorage	8
11	Seward	1
12	Kenai-Cook Inlet	1
13	Kodiak	2
14	Aleutian Islands	1
15	Bristol Bay	1
16	Bethel	1
17	Kuskokwim	1
18	Yukon-Koyukuk	1
19	Fairbanks	5
20	Upper Yukon	1
21	Barrow	1
22	Kobuk	1
23	Nome	2
24	Wade Hampton	1

Reapportionment and redistricting. — The reapportionment proclamation of the governor, dated June 14, 1974, as modified by the Alaska supreme court in Groh v. Egan, Sup. Ct. Op. Nos. 1081a, 1081b (File No. 2235), 526 P.2d 863 (1974), provides that the election districts are to have the following numbers, names, and assignments of seats in the house of representatives:

Election District	Name of District	Number of Representatives
1	Ketchikan-Prince of Wales	2
2	Wrangell-Petersburg	1
3	Sitka	1
4	Juneau-Lynn Canal	2
5	Cordova-Valdez-Seward	1
6	Palmer	1
7	Anchorage Northwest	4
8	Anchorage Northeast	4
9	Anchorage Spenard	2
10	Anchorage East	2
11	Anchorage South	2
12	Anchorage West	2
13	Kenai-Cook Inlet	2
14	Kodiak	1
15	Aleutian Chain	1
16	Bristol Bay	1

ALASKA STATE LEGISLATURE
HOUSE OF REPRESENTATIVES
RESEARCH AGENCY

Pouch Y, State Capitol
Juneau, Alaska 99811
(907) 465-3991

May 21, 1981

MEMORANDUM

TO: Representative Ben Grussendorf

FROM: Leslie Longenbaugh
Research Staff

RE: Retention Election of Judges
Research Request Number 81-141

You asked that we provide information on options for changing the system of retention by election for district and superior court judges in this state. You would like to find a way of reconciling the differences between the population most likely to be served by the judge and the population which is given the opportunity to vote on the judge's retention.

The "modified Tennessee plan," where judges are appointed and then subject to approval or rejection by the voters, is incorporated in the Alaska Constitution; however, that Constitution does vest the Legislature with the power to establish the manner in which judges are approved or rejected (see Article IV, Section 6, of the Alaska Constitution, which is Attachment C to this memorandum).

PRESENT SITUATION

One question raised by this inquiry is whether the group which is served by a judge includes few, many, or most of those who may vote for his or her retention. For the most part, the disparity between these two groups is significant. For example, a judge whose court is in Sitka will seldom hear cases from Juneau, Ketchikan, and Wrangell, and yet will be subject to approval or rejection by voters in those communities. Some proponents of change argue that a judge who is unpopular among the population he or she serves is nonetheless likely to be retained by a voting population that includes a majority who are uninformed about the judge's performance.

This difference between those served and those who may vote on a judge's retention is also perceived as a problem by some staff within the court system. The Honorable Duane Craske, Superior Court Judge in Sitka, for example, told us that he would welcome a reform in this area, seeing it

as a way of furthering communication between a judge and those he or she serves. Nick Maroules, Attorney for the Judicial Council,[1] also has said that he thinks some change in this direction is a good idea, particularly for Southeast.

For the purposes of court administration, Alaska is divided into four judicial districts (see Attachment A). The First Judicial District encompasses all of Southeast Alaska, the Second includes the far northwestern region of the state, the Third comprises Southcentral Alaska and the Aleutian Islands, and the Fourth cuts a diagonal swathe across the center of the state, including Fairbanks and Bethel. In the First Judicial District, superior and/or district court judges sit in four municipalities: Juneau, Ketchikan, Sitka and Wrangell. In the Second, judges sit in Kotzebue and Nome; the Third Judicial District contains five communities where judges sit: Anchorage, Homer, Kenai, Kodiak and Valdez. The Fourth has judges in Bethel and Fairbanks. The size of the four districts is thought by some to reduce the chances that a voter will be well-informed about the performance and popularity of a judge from another part of the judicial district.

Once appointed by the Governor, an Alaskan district or superior court judge is likely to spend most of his or her tenure in the municipality where he or she was originally assigned. This position contradicts the popular view that judges quite frequently move from one town to another. There are three occasions when a district or superior court judge will be temporarily replaced by a judge from another part of his or her judicial district: 1) illness; 2) vacation; and 3) preemption, or disqualification.

The third case mentioned above, that of disqualification, is the most common reason for temporary reassignment. Alaska law allows participants in civil cases and defendants in criminal prosecutions to request that their cases be tried before a judge other than the one assigned. The petitioner need not provide any reason for the request for disqualification. In addition, it sometimes happens that a judge feels himself or herself to be unable to participate fairly in a proceeding; in these cases, the judge files a disqualification from the case.

Once a change of judge has been granted, the Presiding Judge of the judicial district must choose a judge of the same authority as the disqualified judge, i.e., district or superior, to go to the other court to hear the case. This reassignment is sometimes a problem, particularly in judicial districts with only a few courts. For example,

---

[1]Nick Maroules, Attorney/Legal Analyst, Alaska Judicial Council, 420 "L" Street, Suite 502, Anchorage, 99501; telephone: 279-2526.

Because none of the four towns in the First Judicial District which have courts presently contains more than one superior court judge, judges who are reassigned within this district must nearly always travel some distance. During 1980, 2% of the cases heard in the First Judicial District were reassigned because of the disqualification of the original judge.[2]

In terms of the number of judges and the size of the population served, the Third Judicial District is the largest in the State. Anchorage, which is located within the Third District, has ten Superior Court judges and seven District Court judges. When a judge is disqualified from a case in the Anchorage area, another judge usually can be found in Anchorage to replace him or her on the case. Judges in Valdez, Kenai, Homer, and Kodiak, however, are also likely to be replaced by Anchorage judges. For this reason, it would seem that voters in the Third Judicial District would be more likely than voters in the First to know the judges from throughout their district.

The two remaining judicial districts, the Second and the Fourth, present situations similar to that in the First, although on a different scale. Each of these districts contains two municipalities with courts, and in each the two municipalities are separated by hundreds of miles.

OPTIONS

In your request to this Agency, you mentioned two alternatives for resolving the perceived disparity between those eligible to vote for a judge's retention and those who are served by that judge. These options are: 1) to have the voters within each election district vote on the retention of the judges in their election district; and 2) to have the voters in each community vote on the retention of judges serving in their community. For reasons discussed below, we offer a third option for your consideration: to break the present judicial districts down into smaller election units which would correspond more closely to the areas actually served by the judges within them.

---

[2]We computed this figure ourselves by counting the number of disqualifications in Judge Stewart's 1980 files, and using the figure for the total number of cases other than traffic violations given to us by Merle Martin, the Manager of Technical Operations for the Court System (telephone: 264-0544). This figure is not presently available for the other three judicial districts, but presumably could be computed in the same fashion.

The first option, to have judges retained only by the voters in their election districts, would present difficulties because of the impracticability of matching election district boundaries with the present areas served by judges (compare Attachments A and B). In order to institute this change, the area served by each judge would have to be redefined to conform to the election district.

The second option you suggested, to have only those voters in the community where a judge sits vote on his or her retention, also would be difficult to institute. If only the community where the judge sits is included in this plan, the surrounding smaller communities whose inhabitants are routinely subject to the judge's orders will be disenfranchised. For example, the judge in Sitka who hears cases from Angoon would not be voted upon by the inhabitants of Angoon, or of any of the small communities whose cases he or she hears.

We have worked out a third option, which is a combination of the two you suggested and the present practice: having the Division of Elections break up the present judicial districts, precinct by precinct, into smaller election units. This would be similar to the Division's present practice, which is to divide the election districts every ten years, precinct by precinct, in order to match the ballots to the judicial districts involved.

According to Patty Ann Polley, Director of the Division of Elections,[3] her office hopes to divide up the reapportioned election districts in time for the 1982 retention elections. Ms. Polley reports that making divisions smaller than the four judicial districts would not present any real difficulty.

The primary problem associated with this approach seems to lie in the timing. Ms. Polley has estimated that the Division of Elections must have the figures from the reapportioned election districts by February 1982 in order to use the new districts in the 1982 elections. Thus, February 1982 is the latest date, assuming that there are no major delays in the progress of the reapportionment plan, that the Division of Elections will be starting work on the decennial division of election districts into judicial districts. If new election units of some kind are to be included in the Division's efforts, the Legislature will have had to pass the appropriate legislation, and the Judicial Council (or some other group which is qualified to make such judgments about the judiciary) will have had to decide on the boundaries of the new "judicial election districts" before February 1982.

---

[3] Patty Ann Polley, Director, Division of Elections, 3rd Street Community Building, Juneau, 99811; telephone: 586-5181.

Of course, at the request of the Legislature, the Division of Elections could redivide the judicial districts at almost any time; the time limits mentioned above refer to the earliest possible election, i.e., 1982, and to the most efficient use of staff time at the Division of Elections, since they must redivide the districts in 1982 as they do every ten years.

Mr. Marcules, the Attorney for the Judicial Council, has told us that as far as he knows, the idea of redistricting for judicial elections has never come before the Judicial Council. Mr. Marcules has placed the idea on the agenda for the next general meeting of the Council, scheduled for the first week in June, and has said that he will call us with the results of that meeting. We will keep you informed of the Judicial Council's response to the suggestion.

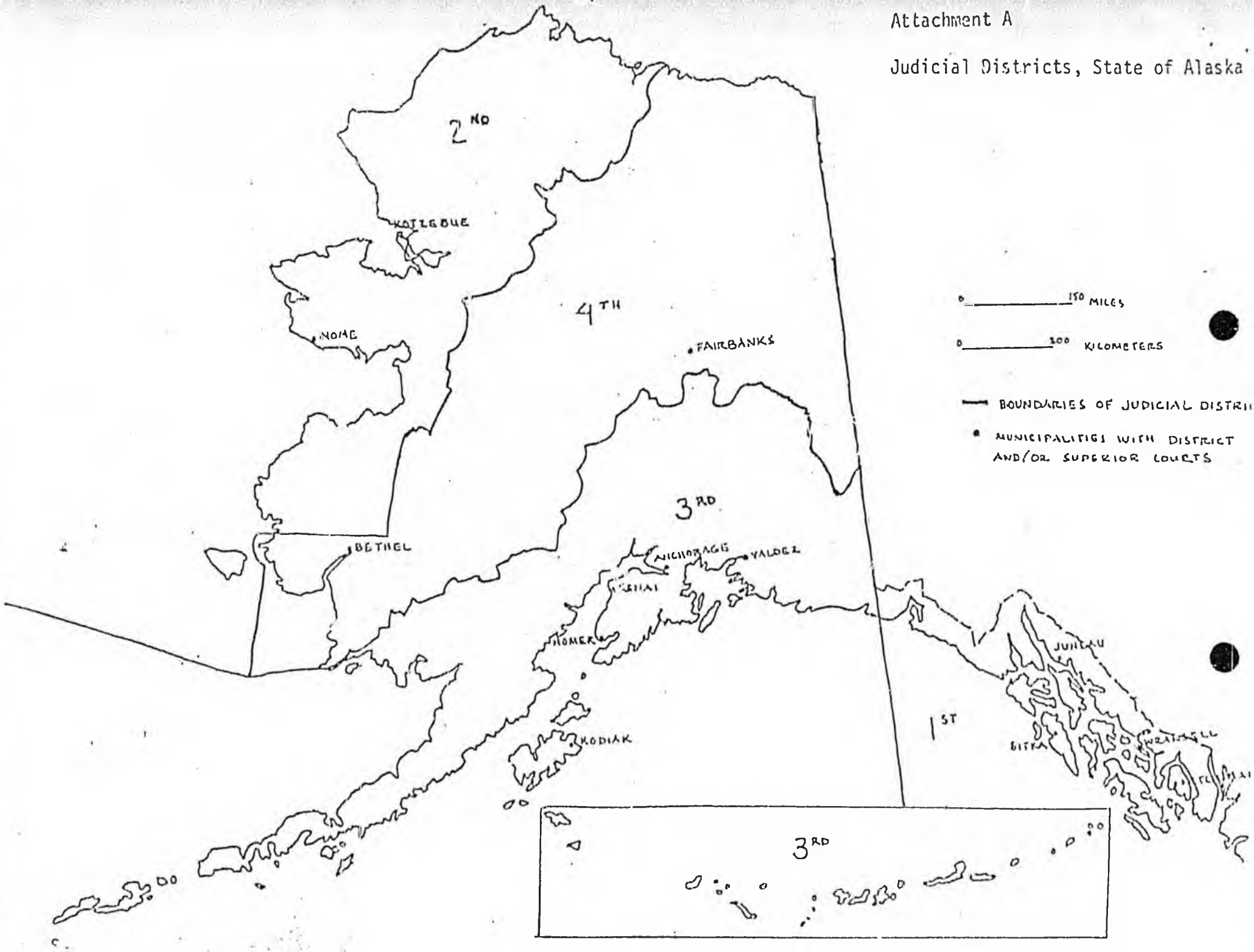
If you would like us to research further any of the alternatives listed above, please do not hesitate to call on us.

LL/bf

Encls.

Attachment A

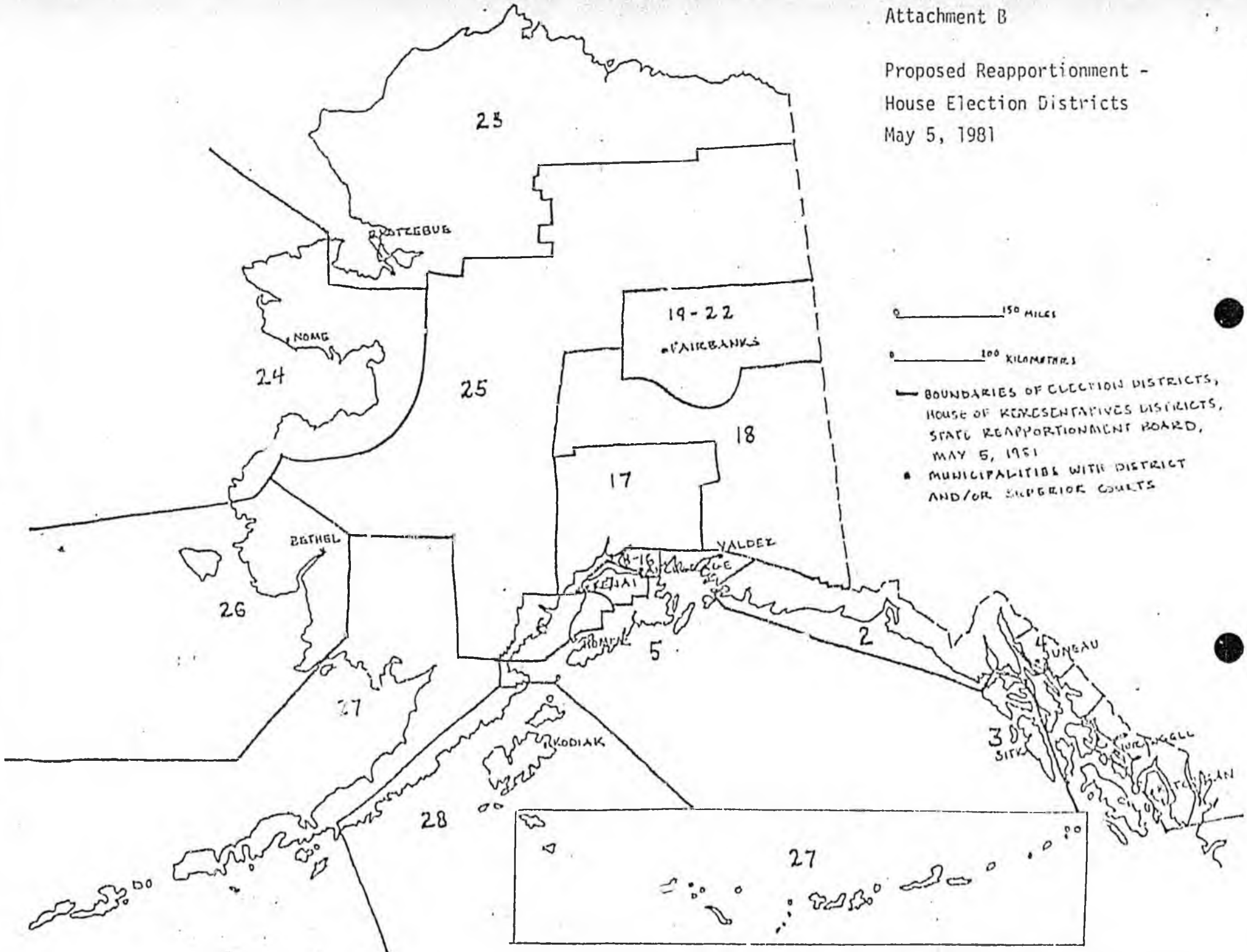
Judicial Districts, State of Alaska



Sou:

Attachment B

Proposed Reapportionment -
House Election Districts
May 5, 1981



tion of courts shall be prescribed by law. The courts shall constitute a unified judicial system for operation and administration. Judicial districts shall be established by law.

Supreme Court

SECTION 2. (a) The supreme court shall be the highest court of the State, with final appellate jurisdiction. It shall consist of three justices, one of whom is chief justice. The number of justices may be increased by law upon the request of the supreme court.

(b) The chief justice shall be selected from among the justices of the supreme court by a majority vote of the justices. His term of office as chief justice is three years. A justice may serve more than one term as chief justice but he may not serve consecutive terms in that office.

(The amendment to this section was approved by the voters of the state August 25, 1970 and became effective October 10, 1970. Subsection (b) was added.)

Superior Court

SECTION 3. The superior court shall be the trial court of general jurisdiction and shall consist of five judges. The number of judges may be changed by law.

Qualifications of Justices and Judges

SECTION 4. Supreme court justices and superior court judges shall be citizens of the United States and of the State, licensed to practice law in the State, and possessing any additional qualifications prescribed by law. Judges of other courts shall be selected in a manner, for terms, and with qualifications prescribed by law.

Nomination and Appointment

SECTION 5. The governor shall fill any vacancy in an office of supreme court justice or superior court judge by appointing one of two or more persons nominated by the judicial council.

Approval or Rejection

SECTION 6. Each supreme court justice and superior court judge shall, in the manner provided by law, be subject to approval or rejection on a nonpartisan ballot at the first general election held

more than three years after his appointment. Thereafter, each supreme court justice shall be subject to approval or rejection in a like manner every tenth year, and each superior court judge, every sixth year.

Vacancy

SECTION 7. The office of any supreme court justice or superior court judge becomes vacant ninety days after the election at which he is rejected by a majority of those voting on the question, or for which he fails to file his declaration of candidacy to succeed himself.

Judicial Council

SECTION 8. The judicial council shall consist of seven members. Three attorney members shall be appointed for six-year terms by the governing body of the organized state bar. Three non-attorney members shall be appointed for six-year terms by the governor subject to confirmation by a majority of the members of the legislature in joint session. Vacancies shall be filled for the unexpired term in like manner. Appointments shall be made with due consideration to area representation and without regard to political affiliation. The chief justice of the supreme court shall be ex officio the seventh member and chairman of the judicial council. No member of the judicial council, except the chief justice, may hold any other office or position of profit under the United States or the State. The judicial council shall act by concurrence of four or more members and according to rules which it adopts.

Retirement

Impeachmen

Additional Duties

SECTION 9. The judicial council shall conduct studies for improvement of the administration of justice, and make reports and recommendations to the supreme court and to the legislature at intervals of not more than two years. The judicial council shall perform other duties assigned by law.

Compensatio

Commission on Judicial Qualifications

SECTION 10. The commission on judicial qualifications shall consist of nine members, as follows: one justice of the supreme court, elected by the

ALASKA STATE LEGISLATURE
HOUSE OF REPRESENTATIVES
RESEARCH AGENCY

Pouch Y, State Capitol
Juneau, Alaska 99811
(907) 465-3991

March 31, 1981

MEMORANDUM

TO: Representative Pat O'Connell

FROM: Leslie Longenbaugh LL
Research Staff

RE: Campaign Laws
Research Request Number 81-96

You have asked that we clarify the effect of the two Judiciary Committee amendments to House Bill 89 on the reporting obligations of candidates for judicial retention.

Presently judicial candidates for retention are governed by AS 15.13.110 (attached), which requires all candidates for civil office to report campaign contributions and expenditures to the Alaska Public Offices Commission. Nancy Carlson, Director of APOC[1], reports that judges are treated by the Commission in the same manner as other candidates, although judges very rarely file more than a "15-0 form," which states that they have received no contributions and have made no campaign expenditures. To Ms. Carlson's knowledge, no judges have been accused of violating the reporting requirements.

Because judges are already within the jurisdiction of APOC, this amendment would have the effect of clarifying the steps to be taken by APOC in the case of a violation by a judicial candidate of the reporting requirements. The amendment would not alter the reporting requirements already imposed upon judicial candidates.

If we can be of further assistance, please call on us.

LL/dp

Encls.

[1]Nancy Carlson, Director, Alaska Public Offices Commission; phone: 274-0321.

HB No. 8--JUDICIAL RETENTION ELECTIONS----------GRUSSENDORF, BARNES

1-- This adds a chapter to Title 22, Judiciary, re-enacting existing wording now found in separate chapters this this bill will repeal (i.e., AS 22.15.100, Supreme Court; AS 22.07.060, Criminal Court of Appeals; AS 22.10.150, Superior Court and AS 22.15.195, District Court) It combines the procedures regarding retention elections all in one new chapter.

2--Changes from running for election in an entire judicial distrcit (one of the four) to running in those election districts the judges on the ballot serve. For example, under this bill, Sitka voters would not vote on Juneau judges and vice versa; Ketchikan voters would vote on judges there, not in other Southeast locations; Anchorage judges would not be voted on in the Matanuska-Susitna Borrough; a judge serving Cordova-Glennallen,Valdez would be voted on in those districts rather than those plus the entire Third Judicial District.

3--Provision is made for certification by the Judicial Council to the director of elections, that a judge can be on ballots in other election districts when the judge sits or serves other election districts as well on a "routinely and frequently" basis.

IMPACT:

FISCAL NOTE:

AMENDMENTS:

(Suggested amendment: Lines 15,16 page 1; lines 2,3 page 2; line 17, page 2 and line 3, page e):

Omit words "....and may provide a recommendation regarding retention or rejection." This would remove the possibility of a recommendation based on whim, fancy, hearsay, manipulated statistics, personal dislike or disregard by people around the state who comprise the Judicial Council, who have never seen particular judges, observed them in court, read their opinions and may be totally unqualified to judge whether a judge is qualified..

STATE OF ALASKA
PRELIMINARY STATEMENT OF FISCAL IMPACT

Bill No: House Bill #8 Date on Bill: 1-17-83
Title: "An Act relating to judicial retention elections; and providing for an effective date."
Sponsor: Grussendorf and Barnes
Requestor: House Judiciary

1. Estimated fiscal impacts on:

a. Expenditures:

(Thousands of Dollars)

			FY 83	FY 84	FY 85	FY 86		
Capital								
Operating			-0-	-0-	91.8			
Total			-0-	-0-	91.8			

b. Revenues:

Revenue								

2. Source of funds to offset fiscal impact of bill:

Sponsor suggested taking the funds from the budget of the Office of Budget and Management.

3. Assumptions:

See attached sheet.

4. Disclaimer:
This statement has not been reviewed by the OMB in the Office of the Governor. It do not represent the policy of the Sheffield Administration or the final estimate of fis impact.

Prepared By: Dana C. Coffman, Deputy Director Phone: 586-6181
Division: Division of Elections Date: 2-14-83

Approved by Commissioner: Date:
Department:

5. Distribution:
Original to Legislative Finance
Copy to OMB
Copy to Sponsor

2/8/83

"An Act relating to judicial retention elections"

Assumptions:

1. The passage of this legislation will initially affect the 1984 General Election ballots.

2. There would be 24 election districts as were designated in 1959.

3. Necessity of printing 24 separate ballots - one for each of the judicial retention.

4. Additional 12% inflation for each of the subsequent election years.

No additional funds are required beyond the Contractual Services area. Additional postage, printing and advertising costs will be required for the printing of 24 separate ballots. There will also be costs associated with printing additional pages in the Official Election Pamphlet, and postage associated with the heavier weight of the pamphlet.

Programming costs related to ballot counting will be substantial.

Professional Services Agreement will be required to contract for the production of a cross-reference listing of communities using the 1959 and 1981 reapportionments.

POUCH V
JUNEAU, ALASKA 99811
(907) 465-[illegible]

Alaska State Legislature
HOUSE OF REPRESENTATIVES

REPRESENTATIVE
CHARLIE BURSELL
CHAIRMAN

Committee on Judiciary

March 21, 1983

Mr. Francis L. Bremson
Executive Director
Alaska Judicial Council
1031 W. Fourth Avenue, Suite 301
Anchorage, Alaska 99501

Dear Director Bremson:

Thank you for your letter of March 16, 1983, expressing your views on HB 8 and SB 84, regarding judicial retention elections, and your participating in the legislative process.

I would like to comment on points raised through this letter in the order conveyed by the letter.

Statutory Reasons. A judge would be voted on, I gather, in all the districts from which litigation stems that would come before a particular judge or judges, so I do not believe there would be an insurmountable difficulty in the Council's making that determination.

Where would a conflict arise in the Council's determining where a judge must run and at the same time making an evaluation of that judge? Surely you would not want the Council considering either positive or negative comments from interested persons who would never have a case going before the particular judge or judges? Or would the Council rather solicit good (or bad) comments from any area in order either to boost or knock down a judge? I cannot believe the Council would resort to such tactics, as they might possibly border on the unethical.

As you know, the Con[illegible]itution establishes the Council, but it does not set forth Council duties, which is accomplished by legislation. Perhaps clarifying legislation should be enacted.

Administrative Reasons. I think you are confusing the four judicial districts which have existed since long before statehood with the House and Senate smaller election districts we now have. That tends to obfuscate the issue.

MEMBERS:
REP. JOHN LISKA, VICE CHAIRMAN; REP. RAMONA BARNES, EMERITUS;
REP. JOE HAYES; REP. HUGH MALONE; REP. DON CLOCKSIN; REP. RON WENDTE

You maintain that judges of one judicial district (one of the territorial four?) might actually be voted on by voters in another judicial district (one of the territorial four). As I understand the bills, no voter would be able to vote for a judge unless, in prosecuting or defending a piece of litigation, there would be the distinct possibility of a particular judge or judges of a location hearing the litigation. If the particular voter would have to bring the lawsuit in some other court, then that is the area in which the voter would vote on judges. Let us neither be confused or bound by out-moded, out-dated territorial judicial district boundaries, which probably should be demolished anyway!

I do not understand your point of confusion "by using different election districts for retention elections than are used for general elections." That is already a fact and has been a fact since statehood. That is to say, retention elections for judges are judicial district-wide now (referring to the four judicial districts mentioned earlier), whereas legislators use small divisions within those huge districts as their election districts, so the differences you mention already exist, you see. Both legislators and judges are elected now at general elections and I fail to see why confusion would reign merely by narrowing the scope of geographical areas in which judges should run. Or, would you rather scrap all House/Senate election district boundaries and have legislators run at large in the four judicial districts? For example, why should residents of the Aleutian Islands in the Third Judicial District vote for judges in Palmer, or Kenai, or Valdez, and visa versa? For that matter, why should residents of Valdez, Cordova and Glennallen vote for Anchorage and Kodiak and Kenai judges whom they rarely, if ever, see? Using common sense in establishing retention election districts should cause no confusion.

Constitutional Reasons. It is my understanding that the authors of the bills have no intention of anyone ever being disenfranchised in voting for a judge or judges. It cannot be that there would have to be a courthouse in every House (or Senate) election district in order for a citizen to vote; rather, wherever such voter would bring his/her cause of action, if one existed, would be the area in which that voter would see judges' names on the ballot. Is that not quite simple?

You mention the willingness to appear before the Committee(s) to discuss the legislation in further detail. I cannot speak for my counterpart in the Senate, but I will assure you that testimony from interested persons is always welcome. It seems to me, however, that as far as the House is concerned, the Committee quite fully understands the purpose of the proposed legislation. A determination of whether further testimony is needed will be made, I am sure, at the appropriate time.

Again, I wish to thank you for your interest in involving yourself in the legislative process.

Very truly yours,

Representative Charlie Bussell
Chairman, Committee on Judiciary

CB:lyn

cc: Alaska Judicial Council

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Again, I wish to thank you for your interest in involving yourself in the legislative process.

Very truly yours,

Representative Charlie Bussell
Chairman, Committee on Judiciary

CB:lyn

cc: Alaska Judicial Council

bcc: Edmund W. Burke, Chief Justice
Alaska Supreme Court
Chairman, Exofficio, Alaska Judicial Council
303 "K" Street, Anchorage, Alaska 99501

Mr. John E. Longworth
Robert H. Moss
James B. Bradley
Joseph L. Young
Barbara L. Schuhmann

Mary Jane Fate

HB

10

MSG 82 [illegible]5965 PRTY 1 02/03/83 11:48:01 ORIG: LA02 IN= 0009 OUT= 00
FROM: SHIRLEE, ANC LIO TO: POMS, JUNEAU INFO
TARGET: LONG SUBJ: POM

2/3/83 SHIRLEE ANC LIO, MSG 5965

SSHB10

TO: ALL SENATORS
ALL REPRESENTATIVES

FROM: TOM PITZKE
3840 PATRICIA LANE
ANCHORAGE, AK 99504 (H)337-7335

I WANT THE SO-CALLED LOOK-ALIKE DRUG TO BE MADE ILLEGAL TO OWN, DISTRIBUTE AND MANUFACTURE, ETC. THESE DRUGS CAN AND HAVE BECOME A BIG PROBLEM WITH OVERDOSE DEATHS AND OTHER VIOLENCE RELATING TO DRUG DEALING. THE SELLERS ARE THE WORST OFFENDERS.

WARMEST REGARDS.

Fake 'Speed' Causes Almost as Much Fear As the Real Thing

• • •

Look-Alikes, Mainly Caffeine, Used by Many Youngsters; Some Deaths Are Reported

By Steve R. Massey
Staff Reporter of The Wall Street Journal

CLEVELAND—"Pink footballs," "black beauties" and "yellow jackets" were confiscated here during the recent arrest of a street dealer who sells drugs to kids. But the dealer had to be released.

It turned out that the capsules were misnamed. They weren't what many of the dealer's customers thought they were: forms of "speed," the drug-world term for potent amphetamines that make a user's heart race and his nervous system tingle. Doctors prescribe amphetamines mainly for losing weight. Without a prescription, it is illegal to sell them.

But the capsules that the dealer was nabbed with are perfectly legal to sell in most places. Though disguised as pink footballs and the like, they are no stronger than three cups of coffee. In fact, caffeine is the main ingredient in most of them. Yet they, too, can be dangerous.

These stimulants are called "look-alikes" by narcotics agents. Once found almost exclusively in truck drivers' pockets, they have been cropping up all around the country. College and high-school students are gulping them for pick-me-ups. So are junior-high pupils and even younger children. The trend worries many adults.

Reports of Overdoses

The fake speed is causing almost as much alarm as genuine speed. Laurence B. Golden, a staff assistant with the intelligence office of the federal Drug Enforcement Administration, says his office receives daily reports of overdoses—and occasionally of deaths.

The dangers of look-alikes, however, are certainly less than the dangers of speed. "The real problem is that the young people are getting in on the drug scene and taking these things," says James Tudor of the Ohio State Board of Pharmacy. "It's a very natural step up into the real thing."

On the other hand, the buyer of a look-alike may already be a speed user who thinks he is getting speed again this time. If so, he almost certainly won't get the buzz he expected to get, so he may take more and more of the look-alike. That could lead to an overdose. Or it could lead him to think that he needs more speed than he used to. Then, the next time he gets *real* speed, he may overdose on that.

A look-alike pill typically is two-thirds caffeine. The remaining one-third usually is composed of two anti-allergic agents: ephedrine sulfate and phenylpropanolamine. These constrict blood vessels, and if taken in excessive quantities can collapse them.

More Work for Police

When a drug is sold as speed, the authorities have to assume that it is speed. "Once this stuff gets on the street, it's dope," says Mr. Golden. "It's dealt with the same way." So the upsurge in look-alike traffic means more work for the police. It also means more work for drug companies fighting misuse of their products. It is bad enough when your product finds its way into the street-drug trade. It is even more infuriating when it's something *disguised* as your product.

Despite efforts by local, state and federal officials, the look-alikes keep coming. One federal official estimates that as many as 100 million may be sold this year. That compares with 70 million of the actual amphetamines. The number of wholesalers pushing the bogus speed, Mr. Golden says, has jumped from a dozen a few years ago to about 120 now.

"It is like dealing with a greased pig," says Richard J. McMahon of the attorney general's office in Delaware. In June 1980, that state became the first to pass an anti-fraud law aimed at halting the flow of look-alikes. So far, only two cases have reached the courts; the state won one of them, "and even then the penalty was probation," Mr. McMahon says. More recently, nine other states have passed such laws: Arkansas, Colorado, Connecticut, Indiana, Kansas, Louisiana, Maryland, Oklahoma and South Dakota.

It may seem strange to charge someone with fraud for selling something legal instead of illegally selling something that is more dangerous anyway. But the federal drug authorities seem powerless to halt the look-alike traffic, so the states, with federal encouragement, are doing whatever they can.

There is no federal law protecting people who think they are buying speed but get look-alikes instead, and the ingredients in the look-alikes aren't controlled substances under federal regulations. So federal offi-

Please Turn to Page 21, Column 2

Almost as Much Fear as Real Ones

Continued From First Page

cials are forced to pass the buck.

Not the postal service, though. Ned Friece of the U.S. Postal Inspector's Office says the agency has filed 39 complaints with an administrative-law judge, all charging distributors of the capsules with falsely representing them as safe. (Distributors may be developing a damned-if-I-do, damned-if-I-don't complex. If they say they are selling speed, the anti-fraud laws may get them. If they truthfully say they are selling the caffeine pills, and state or imply that they are safe, the post office may get them.)

Mostly, however, federal authorities simply urge states to enact stiffer anti-fraud penalties, and they give vocal support to state and local enforcement efforts.

Death in Michigan

Ohio is considering legislation requiring packages of look-alikes to disclose that the contents aren't speed. Michigan, operating under an existing deceptive-trade law, has shut down one look-alike wholesaler and banned three others from selling the pills in the state. According to the Michigan attorney general's office, two young women in Flint, Mich., died last year from overdoses of 50 or more look-alikes each. The deaths may have been suicides.

Douglas Vivian, a pharmacist for the poison-control center and drug-information service at Hurley Medical Center in Flint, says a dose of 10 grams can be fatal. The average look-alike, experts say, contains 200 milligrams, so a 10-gram dose would be 50 pills.

But Jerry O'Donnell, the director of the police-department laboratory in Albuquerque, N.M., says there is "no way to tell" what constitutes an overdose because "it varies from person to person." Mr. O'Donnell says that three young men aged 15 to 20 died in Albuquerque during the last year after taking look-alikes. While the victims had been doing some drinking, Mr. O'Donnell says, all had been "in excellent physical condition: they all died of brain hemorrhaging, which is symptomatic of ephedrine (sulfate) and PPA (phenylpropanolamine)."

Firms Take Steps

Some established drug companies are trying to dissociate themselves from look-alikes. SmithKline Corp. in Philadelphia discontinued its green-and-clear diet-capsule line, Dexamyl, after it discovered that capsules disguised as Dexamyl were being sold as speed. Pennwalt Corp.'s Philadelphia division has successfully barred four companies from pushing imitations of its popular Biphetamine 20—the real "black beauties."

The founder of the look-alike industry, William Saye, 38, of Fairburn, Ga., applauds the prohibitive measures. "Today, it is being abused," he says. "Kids don't know how to handle business. There are too many bathtub operations in existence now and not enough quality controls."

Mr. Saye started selling caffeine pills wholesale out of his truck cab in Georgia in 1975. The next year, as business expanded, he set up Saye Drug Co. there. In 1977, he moved the company to a Tampa warehouse and changed its name to OTW Distributors Inc. By the end of that year, he had almost 50 employes selling the pills at truck stops in almost every state. The salesmen were called "peashooters," and drivers would contact them over citizens'-band radio. Mr. Saye says that his salesmen, when asked, were supposed to tell a customer that the pills weren't speed—or risk being fired. By 1980, when he retired from the drug trade, Mr. Saye's business was bringing in about $8 million annually in sales. The pills were obtained from a Long Island manufacturer. Evidently it was all perfectly legal.

Despite "hassles with the police and the press," Mr. Saye says, "I'm proud of what I've done. I ran the business right. Now I just want to lead a normal life, raise some beef cattle, and enjoy my two girls and two boys."

Small Operations

Today, most wholesale distributors are small operations, often a husband-and-wife team working out of their home. "About all they have to do is file a one-page registration form," says an official of the Food and Drug Administration. Sales are handled mainly by mail or phone except for a few storefront concerns in Albuquerque and Los Angeles with such names as the Source and the Pick-Me-Ups.

The distributors don't advertise much, though some ads run occasionally in local and college newspapers and a few national magazines. Instead, they leave calling cards in such places as truck-stop restrooms and college dormitories—a practice started by them. Supplies come from larger wholesalers such as Clifton Pharmacal Inc. in Milmy, Pa., which has its own pharmaceutical factory, or from one of an estimated 10 to 12 big manufacturers in Pennsylvania and on Long Island. They are sold in high volumes, in lots of 100 or 1,000, at prices ranging from about two cents to 10 cents a pill. On the street, says Mr. Tudor of the Ohio pharmacy board, they fetch anywhere from 50 cents to $8 a pill.

Most distributors won't divulge earnings, but estimates are that average sales for a medium-sized company can range between $500,000 and $1 million a year. Jerry Hecht, the founder of the Pick-Me-Ups in Albuquerque, says that his six stores average $1,000 a week each in profits.

STATE OF ALASKA
THE LEGISLATURE

LEGISLATIVE AFFAIRS AGENCY

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

M E M O R A N D U M

February 21, 1983

SUBJECT: Imitation controlled substances (SSHB 10)

TO: Representative Mitchell E. Abood, Jr.

FROM: James H. Lear
Legislative Counsel

You have asked for a sectional analysis of SSHB 10 (An Act relating to imitation controlled substances). SSHB 10 is based on the Model Imitation Controlled Substances Act drafted by the Drug Enforcement Agency of the United States Department of Justice in October, 1981.

The bill consists of one section creating a new Chapter 73 in AS 11. The chapter contains several new sections:

Sec. 11.73.010. Prohibits the manufacture or distribution of imitation controlled substances as defined in Sec. 11.73.099(3) or possession of the same with intent to distribute. Violation of the section is punishable as a class C felony (maximum of five years in prison and maximum fine of $50,000).

It is not a crime in certain instances if the substance is to be used as a placebo for medical treatment. This section is intended to curb the distribution of noncontrolled substances currently sold over-the-counter if manufactured or distributed as imitation controlled substances. See also sec. 11.73.050.

Sec. 11.73.020. Prohibits the possession of certain noncontrolled substances with the intent to manufacture an imitation controlled substance. The substances are those most frequently used to manufacture imitation controlled substances. Violation of this section is punishable as a class C felony. This section is not part of the "Model Act".

Sec. 11.73.030. This section imposes a stricter punishment for distribution of imitation controlled substances by an adult to a minor. The crime is a class B felony punishable by a maximum of ten years in prison and a maximum fine of $50,000.

Sec. 11.73.040. Prohibits advertisement to promote the distribution of an imitation controlled substance. This crime is punishable as a class C felony. The section is directed mainly at those persons who promote the distribution of an imitation controlled substance by soliciting advertising space in newspapers, magazines, et cetera, or by publicly distributing advertisements for an imitation controlled substance. A publisher and a distributor of not only a local but of a national publication could be prosecuted for violation of sec. 11.73.040 if the state can establish beyond a reasonable doubt that the person had the requisite mental state. The defendant must have known that the purpose of the advertisement or solicitation was to promote the distribution of an imitation controlled substance in the State of Alaska. It is obvious that it would be easier for the state to prosecute an individual who resides within the state, but Alaska has criminal jurisdiction over a nonresident publisher of a national magazine or newspaper who knowingly publishes an advertisement to promote the distribution of an imitation controlled substance if that person consumates the crime from outside the state by the intervention of an innocent or guilty agent, such as a newsstand operator, within the state (AS 12.05.010 -- crime commenced outside the state but consumated inside).

Sec. 11.73.050. This section specifies that manufacturing, distributing, or possessing an imitation controlled substance solely for use as a placebo under prescription is not a crime. See also sec. 11.73.010.

Sec. 11.73.060. This section addresses the circumstances under which a violator of the chapter may have to forfeit to the state those items associated with the perpetration of offenses involving imitation controlled substances. The section is rather lengthy since it is intended to provide adequate guidelines for determining what property may be subject to forfeiture, how it is to be seized, what procedure is to be used for litigating the interests of possible owners, disposition of forfeited property, et cetera. If the degree of detail in this section were absent, an individual might successfully challenge the

forfeiture on the basis that it constitutes a taking of property without due process.

The section is almost identical to AS 17.30.110, the forfeiture provision of the 1982 drug bill enacted by Chapter 45, SLA 1982.

Sec. 11.73.099. Definition section. "Controlled substance" is defined by incorporating the definition codified in AS 11.81.900(6). However, sec. 13, Chapter 45, SLA 1982, repealed and reenacted that paragraph by substituting the following language for the former definition:

> (6) "controlled substance" has the meaning ascribed to it in AS 11.71.900(4).

The other important definition is the definition of "imitation controlled substance". Basically, a substance is an imitation controlled substance if it appears by dosage unit appearance to be a controlled substance or if it is represented as one. The definition enumerates those circumstances under which such a representation could be found.

JRL:ljb

AMENDMENT

To: House Bill No. 10

Page 8, line 18:

Delete "AS 11.81.900(6)" and insert "AS 11.71.900(4)"

P:60 ROCKY MTN NEWS 4/2/78

At least 12 deaths attributed to use of 'look-alike' drugs

CHICAGO (UPI) — Counterfeit pills sold increasingly on the streets as "look-alike" hard drugs have killed at least a dozen users, the American Medical Association reported Thursday.

Authorities are essentially powerless to prosecute the sale by pushers of such drugs, which contain a combination of easily attainable ingredients found in appetite suppressants and decongestants, the AMA report said.

"They're called look-alikes because they mimic the size, shape and color of controlled substances — usually amphetamines or tranquilizers," said the AMA report.

Counterfeit "black beauties," "yellow jackets," "dexies" and other drug culture names for speed have caused 12 deaths, federal Food and Drug Administration investigations have confirmed.

They include a 17-year-old Belvidere, Ill., girl who died after taking what police presumed to be "black beauties," and a 17-year-old Albuquerque boy who consumed two counterfeit biphetamines (a type of amphetamine), lapsed into a coma and died. Several other victims have suffered paralysis after suffering strokes because of the drugs.

In addition, at least-nine suicides are linked to conterfeit drugs, most of them attributed to caffeine overdose.

A typical "look-alike," manufactured for a few pennies and sold to unwitting purchasers at huge profits, contains up to 200 milligrams caffeine, 50-75 milligrams phenylpropanolamine and 30 milligrams ephedrine. Their combined effect on a user "is unpredictable," the FDA said.

HB 10 JR

'Look-alike' drugs can lead to violence, trooper testifies

2-2-83

by Harry McFarland
Associated Press

Juneau — When the buyer discovered he had been sold imitation drugs, he grabbed a gun, went back to the seller's home and shot him.

That is an example of the violence that imitation drugs, or "look-alikes," can cause on the streets, said Alaska State Trooper Lt. Roger McCoy during testimony on a bill to outlaw their sale in the state.

"Look-alikes" are designed to resemble or duplicate the appearance of brand name amphetamines, barbituates, tranquilizers and narcotic pain killers. On the streets, they are known and sold by the same names as their drug counterparts: Black Beauties, Dexies, Yellows, Christmas Trees and Rainbows.

"Look-alikes," though, contain non-controlled substances such as caffeine, ephedrine and other over-the-counter drugs.

The bogus drugs are showing up in Alaska in large quantities, said Anchorage Police Department Lt. Ron Needham.

"I have seen bags with the sum of 100,000 dosage units," Needham said from Anchorage via the state teleconference system. "I have seen bags with 500,000, a half a million, dosage units."

The state has seen an increase in cases involving the look-alikes, McCoy said. In 1981, troopers had 95 cases involving the imitation drugs. Last year, they had 214 cases.

McCoy gave three reasons for the bill's passage: the potential of violence, the potential of overdose and the potential that juveniles will be introduced into the drug culture, McCoy said.

While the drugs are not physically addicting, they can be psychologically so, the policemen said.

Imitation drugs are very profitable, McCoy said. They sell for the same price as their real counterparts. A bag of speed will sell for $200 to $300. So will the fake stuff.

The difference is that the fake costs substantially less to manufacture, McCoy said. A tablet that sells for $3 to $5 dollars may only cost three cents to make.

Needham said 90 percent of the drugs sold on the street in Anchorage are imitations.

Rhonda Butterfield, assistant attorney general with Special Prosecution and Appeals, said there is a need for the legislation as only two ways currently exist to prosecute sellers of imitation drugs.

The first is to charge a seller with attempting to commit a crime; the other, charge the seller with theft by deception.

STATE OF ALASKA
PRELIMINARY STATEMENT OF FISCAL IMPACT

Bill No: CS SS HB 10 (JUD) Date on Bill: 2-23-83
Title: "An Act Relating to imitation controlled substances"
Sponsor: Abood, etc.
Requestor: House Judiciary

1. Estimated fiscal impacts on:

a. Expenditures:

(Thousands of Dollars)

	FY 83	FY 84	FY 85	FY 86
Capital				
Operating				
Total	-0-	-0-	-0-	-0-

b. Revenues:

Revenue	

2. Source of funds to offset fiscal impact of bill:

3. Assumptions:

No Fiscal Impact

4. Disclaimer:
This statement has not been reviewed by the OMB in the Office of the Governor. It therefore does not represent the final estimate of fiscal impact.

Prepared By: Francis C. Allan Phone: 269-5691
Division: Alaska State Troopers Date: 3-2-83

Approved by Commissioner: [signature] Date: 2/8/83
Department: Public Safety

5. Distribution:
Original to Legislative Finance
Copy to OMB
Copy to Sponsor
Copy to Requestor

2/15/83

STATE OF ALASKA
PRELIMINARY STATEMENT OF FISCAL IMPACT

Bill No: CS for SS for H.B. No. 10 Date on Bill: February 23, 1983
Title: "An Act relating to imitation controlled substances."
Sponsor: Judiciary Committee
Requestor: House Judiciary Committee

1. Estimated fiscal impacts on:

a. Expenditures:

(Thousands of Dollars)

			FY 83	FY 84	FY 85	FY 86	FY 87	FY 88
Capital				730.0	-0-	-0-		
Operating				13.9	122.4	129.8		
Total			-0-	743.9	122.4	129.8		

b. Revenues:

Revenue			-0-	-0-	-0-	-0-		

2. Source of funds to offset fiscal impact of bill:

The source of funds to implement this bill has not been identified by the sponsors.

3. Assumptions:

A. Estimated arrest and conviction information was gathered from the Department of Law and the Alaska Judicial Council statistics. They estimate that there would annually befive convictions resulting in prison terms for Class B and Class C felonies. Class A misdemeanors have been omitted in the committee substitute.

B. It is assumed that all convictions are of first time offenders.

C. The following table displays data regarding additional bed needs with enactment of HB 10:

Prepared By: Roger C. Lange Phone: 465-3376
Division: Division of Adult Corrections Date:

Approved by Commissioner: Date: 3/10/83
Department: HEALTH & SOCIAL SERVICES

5. Distribution:
Original to Legislative Finance
Copy to OMB
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Copy to Requestor

2/8/83

Class of Offense	Expected # of Convictions	% & # to Jail	Avg. Sentence Length	Flat Years	Person Years
B Felony	1	50%/ .5	2.5 Yr.	1.9	.95
C Felony	23	20%/4.6	1.09 Yr.	.82	3.77
	24	5.1			4.72

Therefore, 4.72 beds would be needed. For purposes of this fiscal note, this was rounded to the nearest whole number resulting in 5 new beds identified as being required.

D. Cost Estimates:

1. Capital Expenditures

It is assumed that medium security beds would be the appropriate classification. It is estimted that construction costs for this type of bed will be approximately $146,000 per bed. Therefore, capital expenditures would be:

5 x $146,000 = $730,000

2. Personal Services

It is assumed that these 5 beds would be combined with other construction where staff will be identified. It is estimated two staff positions will be required to provide security and supervision for the additional inmates.

3. Other Costs

Other costs identified reflect only food, clothing, bedding, and medical services necessary to meet the physical care and medical needs of the projected inmate increase.

4. Inflation of 6% per year was used for projecting cost after FY 1985, the year in which the total bed impact would be experienced.

4. Disclaimer:
This statement has not been reviewed by the OMB in the Office of the Governor. It does not represent the policy of the Sheffield Administration or the final estimate of fiscal impact.

POSITION PAPER/Department of Health & Social Services

POSITION PAPER

HOUSE BILL 10

"An Act relating to imitation controlled substances."

The Department of Health and Social Services is supportive of this legislation.

Data is not available on the use or distribution of imitation controlled substances also known as "look-alikes." Look-alikes are generally sold as purporting to be depressants or stimulants that normally would require prescriptions. These look-alikes are also sometimes advertised as diet aids or sleep aids.

Products sold over the counter containing caffeine (No-Doz etc.) are sometimes sold as amphetamines (uppers). This is one example of selling an imitation controlled substance.

To manufacture or sell a product by misrepresenting its contents should not be acceptable. The public health and safety risk related to misrepresented drugs can be numerous. Use of drugs (legal by prescription or over-the-counter) not in accordance with medically recommended dosage can lead to health problems. Overdose, unexpected reactions or actions and/or allergic reactions may be a few of the problems.

One possible major problem is the use of a look-alike may lead a person to take increased dosage to achieve an effect. To a careless, inexperienced or naive user the use of the "real" product after use of an imitation could result in unintentional overdose.

HB 10 could be one mechanism to help prevent such problems and to make persons aware of the danners of such actions.

Recommended by:

Roger Endell, Director
Division of Adult Corrections

George E. Rundell
Acting Coordinator
Office of Alcoholism/
Drug Abuse

Date: 3-9-83

Approved by:

Robert London Smith, Ph.D.
Commissioner
Dept. of Health &
Social Services

Date: 3/9/83

Drug Enforcement Administration
Office of Intelligence

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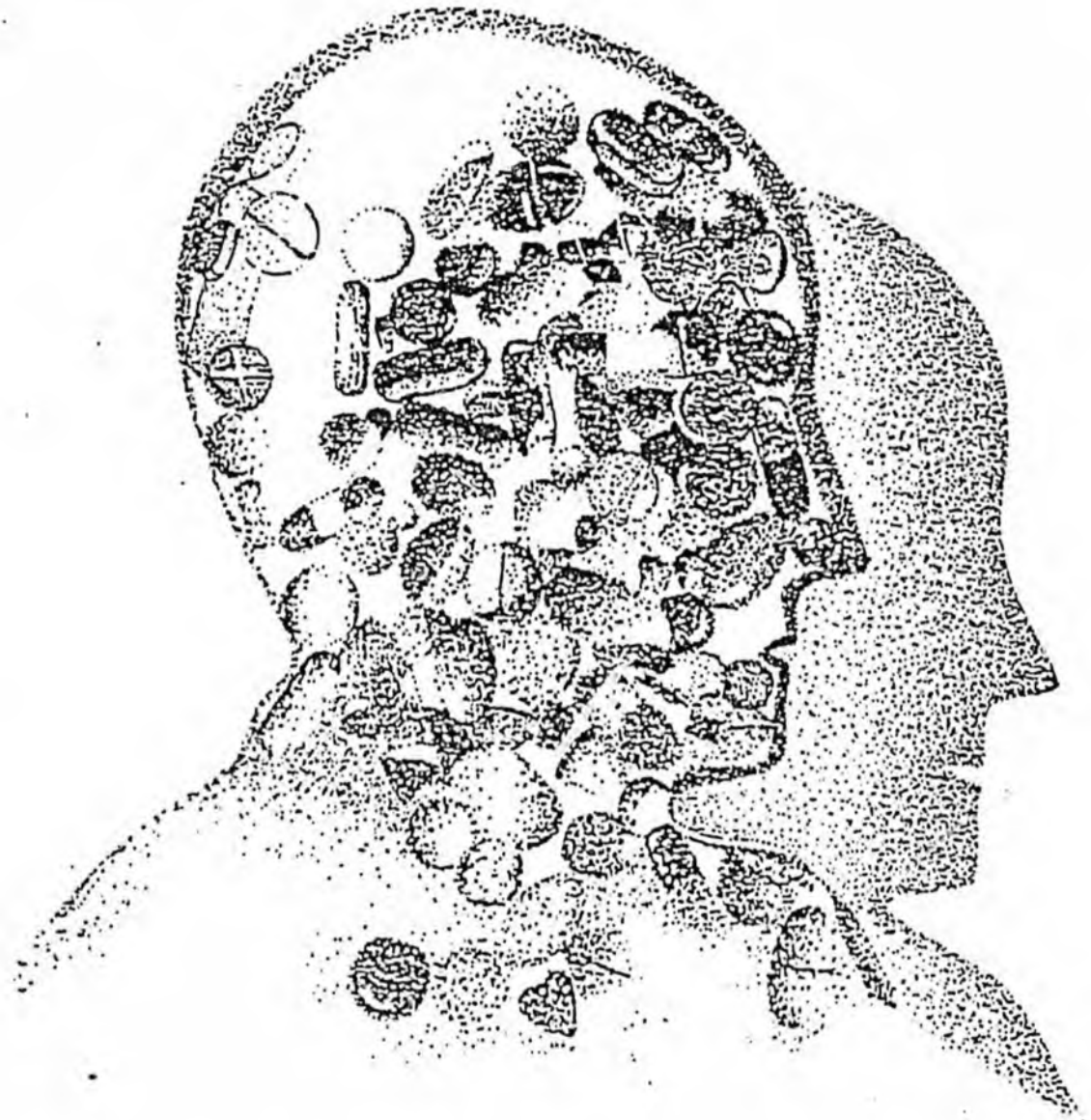
Trafficking in Look-Alikes ; an Update



Trafficking in Look-Alikes; an Update

Recent federal and state actions have seriously affected the rampant trafficking in look-alikes that has been sweeping the country. Look-alike distributors, who began assaulting the nation with a blizzard of capsules and tablets early in 1980, and the manufacturers who supply them have been dealt a series of regulatory setbacks that may portend an end to this multi-million dollar industry.

Look-alikes are carefully designed to resemble or duplicate the appearance of brand name amphetamines, barbiturates, tranquilizers, and narcotic pain killers in both capsule and tablet form. On the street, they are known by the same names as their dangerous drugs counterparts: Black Beauties, Dexies, Yellows, Christmas Trees, and Rainbows. But look-alikes contain only non-controlled substances such as caffeine, ephedrine, phenylpropanolamine, acetaminophen, and other over-the-counter non-prescription drugs.

As the number of mail order and store front wholesale distributors grew from a mere handful in early 1980 to more than 150 outlets by November of 1981, the production of look-alikes was reported to have soared to 30 million dosage units per week. During the past year and a half, the look-alike industry has flooded the nation's campuses and schoolyards with hundreds of millions of these pills. Intelligence derived from local police agencies, hospital emergency rooms, and medical examiners reveals widespread abuse, especially among teen-agers and college age youths.

In marked contrast to the methods used by illicit drug traffickers, look-alike distributors have conducted extensive advertising campaigns claiming their products to be both safe and legal. They have utilized full color brochures, magazine ads, highway billboards, and even television spots designed to appeal to teen-agers and young adults. Using commercial mailing lists, distributors have mailed colorful business cards directly to young recipients.

The easy availability of look-alikes has encouraged a climate of acceptance among many teen-agers and has conditioned them to the daily trafficking, handling, and consumption of these "pharmacal stimulants." In many places, look-alikes have become as much a part of the drug culture as the shopping center head shop and the paraphernalia vendor.

As the abuse of look-alikes grew, the public health dangers of these substances quickly became apparent. It is obvious that the young consumer who thinks that he has been purchasing "speed" or "ludes" and has become used to taking several look-alike

capsules or tablets at a time in order to "get the full effect" runs the risk of serious overdose or death if one day he ingests the same number of real controlled substances. In addition to this danger, the look-alikes, themselves, can have serious damaging effects. The number of emergency room incidents attributable to these drugs has risen dramatically in the past year. More than a dozen deaths caused by look-alikes have been reported from around the country. More deaths from caffeine overdose and emergency room hypertensive incidents from severe reactions to phenylpropanolamine may have occurred but have gone unreported.

Although trafficking in look-alikes is not prohibited by the federal Controlled Substances Act, the Drug Enforcement Administration considers that the distribution and sale of look-alikes, as of drug paraphernalia, encourages and contributes to drug abuse and drug profiteering. The look-alike problem is one more facet of the nation-wide drug abuse problem. For these reasons, the DEA has undertaken a six-point program against look-alikes. Briefly stated, the six points are:

1. Drafting of a Model Imitation Controlled Substances Act[1] for concerned states to adopt.

2. Preparation of documentation describing the problem, distribution patterns and practices, and other information to be used in support of the Model Act.

3. Fostering intergovernmental agency cooperation and providing active support to other agency efforts.

4. Enlisting the support and voluntary cooperation of the legitimate pharmaceutical industry.

5. Publicizing the DEA initiative and encouraging the support of parent and community groups.

6. Targetting of states heavily involved in look-alike distribution and manufacture to encourage legislative action.

More than a dozen states have enacted or are considering legislation targetted against the manufacture and distribution of look-alikes. States with legislation now on the books include Arkansas, Colorado, Connecticut, Delaware, Florida, Indiana, Kansas, Louisiana, Maryland, North Carolina, Oklahoma, Oregon, and South Dakota. Some cities, such as Independence, Missouri, have passed local ordinances prohibiting storefront look-alike sales. In other state action, the Attorney General of Illinois has filed complaints against 39 look-alike distributors. To date, he has obtained verbal agreements from 15 distributors to cease and desist selling in the State of Illinois and he has obtained temporary restraining orders against three others.

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[1]Copies are available upon request from the Dangerous Drugs Section, Office of Intelligence, Headquarters, DEA.

(202) 633-1263

The legitimate pharmaceutical industry also has been cooperating in efforts to eliminate the look-alike problem. The Eli Lilly Company, one of the largest manufacturers of gelatin capsules, has, since July 1981, refused to sell capsules to look-alike manufacturers. Other capsule manufacturers also have indicated a willingness to cooperate in this effort. The resulting lack of capsules already has begun to affect the look-alike distribution chain and some distributors say they can no longer obtain "Yellows" and "Black Beauties."

Recent actions by federal government agencies are having salutary effects on the problem too. During the past several months, the U. S. Postal Service has filed complaints against 39 look-alike distributors. To date, the Postal Service has concluded consent agreements with nine distributors and has obtained False Representation Orders against nine others. The False Representation Orders require postmasters to stop the delivery of all mail to the subject distributors.

The most significant federal action yet taken occurred on September 30, 1981, when the Food and Drug Administration filed counterfeiting and mis-labeling complaints against nine manufacturers of look-alike drugs. With the assistance of U. S. Marshalls in five states, seizures of equipment, materials, and finished products were effected at the following locations:

BT Pharmaceuticals, Inc.
Tampa, Florida

Frye Pharmaceuticals, Inc.
Birmingham, Alabama

Jerome Stevens Pharmaceuticals, Inc.
Central Islip, New York

Valley Run Pharmaceutical
Milroy, Pennsylvania

Newtron, Pharmaceuticals, Inc.
Coram, New York

Pharmadose, Inc.
Bohemia, New York

Standard Pharmacal Corp.
Elgin, Illinois

LNK International, Inc.
Hauppauge, New York

VIP Pharmaceuticals, Inc.
Pearl River, New York

An inventory of seized items includes: 15 million filled capsules, 800,000 tablets, 20 million empty capsules, and over one million dollars worth of equipment including offset rollers, capsule printers, tablet punches and dies, and tablet presses. The FDA felt that its case against a tenth manufacturer, Ketchum Laboratories of Amityville, New York, was inadequate to support any enforcement action at that time.

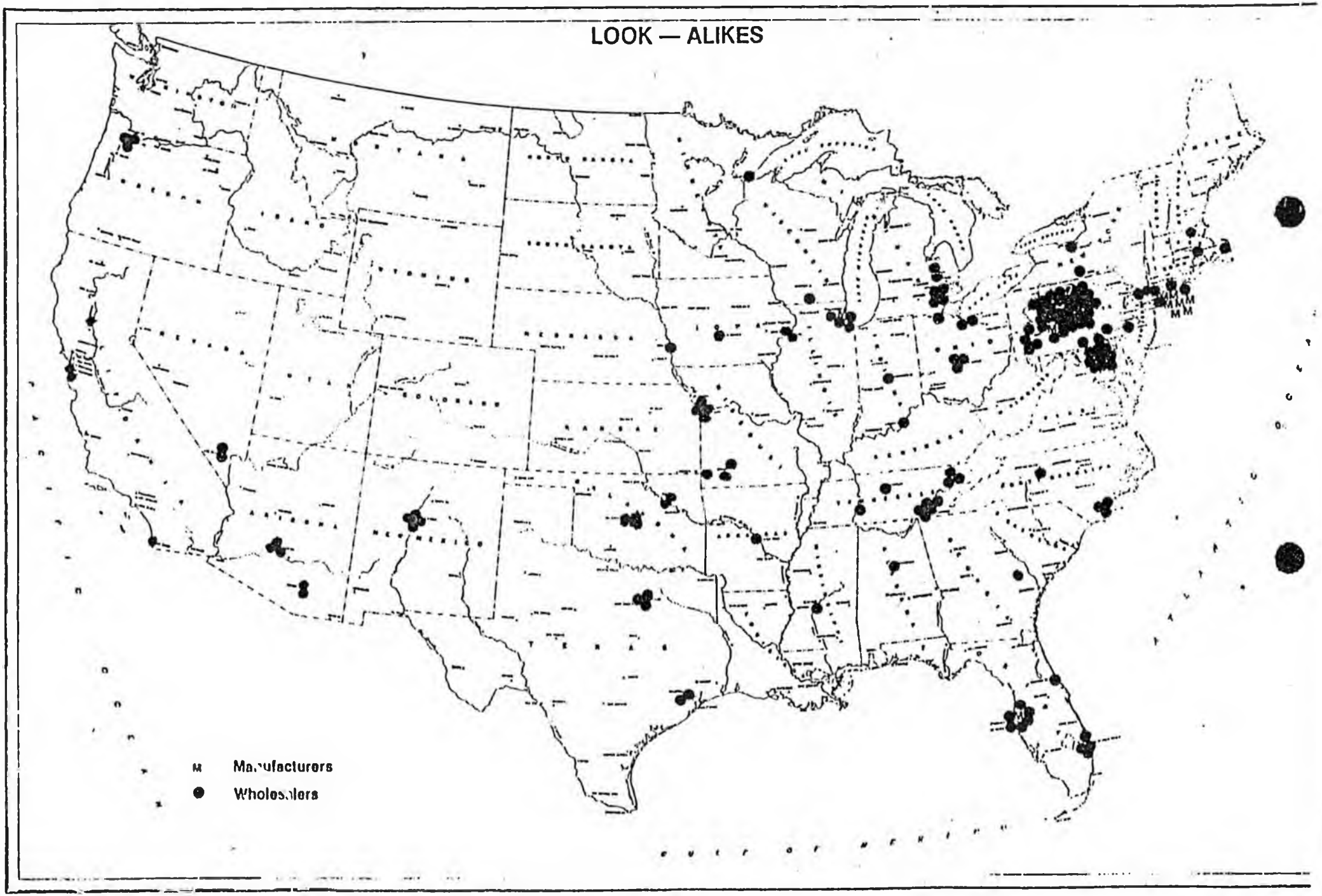
As a result of the FDA actions, one of the manufacturers has already signed a consent agreement to cease and desist production of look-alikes, and two more companies are also negotiating consent agreements. Information on responses by the other manufacturers was unavailable as of the date of this report.

The actions described above comprise a promising start toward ending the nation-wide trafficking in look-alikes. It is too early to make an accurate evaluation of the overall damage sufferd by look-alike traffickers, but there is room for some optimism. Continuing action by federal agencies, state and local governing bodies, the pharmaceutical industry, and the public will be required to eliminate the look-alike problem from this country.

Laurence B. Golden
Office of Intelligence
November 2, 1981

(202) 633-1263

UNITED STATES



ALASKA STATE LEGISLATURE
HOUSE OF REPRESENTATIVES
RESEARCH AGENCY

Pouch Y, State Capitol
Juneau, Alaska 99811
(907) 465-3991

November 3, 1982

MEMORANDUM

TO: Representative Mitch Abood
Attention: Carol Horos

FROM: Christine Johnson, Research Staff

RE: Look-alike Drug Laws
Research Request 82-186

Carol Horos of your staff has asked us for the number of states which have passed look-alike drug laws and the number of states in which such legislation has been proposed. We received the following information from the National Conference of State Legislatures (NCSL):

- As of August 1982, thirty-six states had adopted legislation restricting the sale of look-alike drugs.

- Fourteen states* did not have look-alike drug laws in August of this year; however, legislation was pending in four of these states (Michigan, Nebraska, New Mexico, and Tennessee). Legislation has also been considered in one other state (Texas), although no law was ever passed.

The federal Drug Enforcement Administration has drafted a model look-alike drug law for states; we have requested a copy of this legislation and will forward it to you when it arrives. We have also enclosed two articles on look-alike drugs which may be of interest to you.

If we can provide any further information, please don't hesitate to contact us.

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*States without look-alike drug laws include: Alaska, Hawaii, Massachusetts, Michigan, Montana, Nebraska, New Hampshire, Nevada, New Mexico, North Dakota, Tennessee, Texas, West Virginia, Wyoming.

FDA Seeking to Bottle Up Fake Narcotics

By Pete Earley



An example of look-alike imitation drugs, left, and the real controlled substances.

In 1980, an Albuquerque teenager died after drinking several shots of bourbon at a Christmas party and swallowing two capsules he had been told were amphetamines. Police discovered that the capsules were not amphetamines, but non-prescription drugs made to look like them.

Since then, imitation amphetamines and barbiturates have been linked to 11 other teen-age deaths, according to the Food and Drug Administration.

The federal government faces an unusual jurisdictional problem in trying to control the so-called look-alike drugs. Because their ingredients can be obtained without a prescription, the Drug Enforcement Administration said it doesn't have jurisdiction. The FDA maintains it can play only a limited role because it has certified the ingredients as safe.

While the agencies say they are taking what steps they can, they are somewhat reluctant to take on new enforcement tasks in times of tight budgets.

Fake amphetamines contain large amounts of caffeine, phenylpropanolamine (a nasal decongestant and appetite suppressant) and the decongestant ephedrine. Imitation barbiturates contain acetaminophen, salicylamide, chlorpheniramine or other sedatives and hypnotic agents.

When the ingredients are taken separately and in small doses, they are considered safe, an FDA spokesman said. But they can cause nervousness, insomnia, temporary psychotic episodes, cerebral hemorrhage, drowsiness or death if mixed together in large amounts or taken with alcohol.

Many young people take them that way, a DEA spokesman said, because they believe that will help simulate the "high" caused by controlled substances. In mid-1981, DEA estimated that 30 million doses of fake narcotics were being manufactured each week and distributed through a network of 200 dealers.

Since 1980, FDA has filed administrative complaints against 45 companies that it claims violated counterfeit provisions of the Food, Drug and Cosmetic Act by making imitation drugs. Over the same period, the U.S. Postal Service has filed 20 complaints that accused drug makers of false advertising because they did not disclose that their products could cause illness or death.

Last week, FDA unveiled what it believes is its toughest tactic to date. It informed 16 small companies that they must submit any products that contain combinations of caffeine, ephedrine and phenylpropanolamine for certification as new drugs. "We have researched this extensively and can find no precedent for the three-drug combination. It would be hard to believe that anyone can show a medical purpose or need for these drugs," said Bill Grigg, an FDA spokesman. In effect, Grigg said, FDA's action will force many of the stimulants off the market.

Last year, DEA drafted a model law for states to ban look-alike drugs. So far, 30 states have enacted legislation. DEA also convinced three companies that make drug capsules to voluntarily refuse orders from suspected imitation drug makers.

While federal officials are confident that their tactics have driven Sen. Gordon J. Humphrey (R-N.H.) said such maneuvering has convinced him that the only way to eliminate the imitation drugs is by giving the DEA, FDA and the Postal Service jurisdiction. He has introduced legislation that would prohibit the manufacture of drugs that "look like or are represented to be controlled substances." Products that promote drug abuse would be barred from the mails and FDA counterfeit laws would be expanded.

But at a recent hearing, Hatch urged Congress to delay passing new legislation. "We are trying to solve this problem through leadership. If we can't solve the problem through state laws then we might need to do it at a federal level, but that's not yet clear," he said.

Illinois Attorney General Tyrone Fahner disagreed with Hatch. Fahner told Congress that although his state has moved against dealers, it still has problems. "Some companies we have sued and closed have popped up again under a new name and location. Just because we stop a look-a-like distributor in Illinois doesn't mean we have solved the national problem."

Washington Post May 30, 1982

mits" which allow a convicted drunk driver to drive only a specified route at a specified time without unauthorized stops.

Several states, Utah, Idaho and Maryland among them, have set the blood alcohol concentration (BAC) level, which determines intoxication, at 0.08 percent, closer to the more stringent laws in Europe where the Netherlands and Norway have the level at 0.05 percent. The new Maryland law adds that state to at least 16 others that allow police officers to administer a breath test at the scene without first arresting the driver. Refusal to take the test then subjects the driver to a six-month license suspension.



Photo courtesy of *The Denver Post*

The new solutions, however, are not expected to be panaceas, the experts admit. Stiff mandatory sentences can irk some judges who find ingenious ways to avoid applying them. Mandatory sentences may result in long lists of offenders waiting to get into crowded jails. Experts also recognize that tougher laws do not always reduce the number of alcohol-related driving deaths. For instance, the British Road Safety Act of 1967 set a BAC level of 0.08 percent as prima facie evidence of drunk driving and made punishment upon conviction a mandatory one-year license suspension. Weekend alcohol-related driving deaths declined immediately following implementation of the law but rose to previous levels within a year.

In general, though, the result of the new state laws has been increased media attention and more public awareness, two phenomena welcomed by traffic safety professionals at the National Highway Traffic Safety Administration (NHTSA) where millions of dollars have been spent on public information campaigns in the past. One NHTSA official, Clayton Hall, who specializes in the drunk-driving issue, called the new attention "a squeaky wheel thing." "People are getting interested at the community level and there is an awakening of a feeling that something must be done," Hall said.

Richard W. Foster

The 'look-alike' game: Deception in street drugs

In the shadowy world of abuse of illegal and legal drugs, a new issue that is drawing the attention of state legislatures has surfaced: the sale and use of over-the-counter drugs—called "look-alikes"—that imitate prescription stimulants. Eleven states have banned the distribution of these drugs, and seven more have considered such legislation.*

The federal Food and Drug Administration (FDA) has received numerous inquiries and complaints about look-alikes, which are generally similar in size, shape, color, and markings to amphetamine-type products such as biphetamines and Dexedrine, but which have slight deviations in markings that often go undetected by the buyer.

Illicit drug dealers have recognized that more money could be made selling counterfeits than actual prescription drugs and, in addition, they would be immune to prosecution for selling look-alikes.

The fact that these drugs are frequently mistaken for prescription drugs has caused serious problems. Many young users have overdosed by confusing the strong prescription drug with its imitation. Also, confusion of counterfeits with prescription drugs interferes with the ability of doctors to treat an overdose victim. Although the FDA has received four reports of deaths associated with the use of these drugs, the causes of death could not be directly attributed to look-alikes.

Look-alikes typically contain two-thirds caffeine and one-third cough-cold ingredients such as phenylpropanolamine (an appetite suppressant and nasal decongestant) and ephedrine sulfate (a decongestant). They are labeled in compliance with current FDA labeling requirements for use as stimulants for mental alertness and as decongestants and bronchodilators for managing bronchial asthma. Since these drugs are legitimately manufactured and properly labeled, they are considered legally marketable. By the time they filter down to the user level, however, they are almost always unlabeled and misrepresented.

The drugs produce constriction of blood vessels, which in turn elevates blood pressure and, if taken in large quantities, can cause blood vessels to collapse. Reported abuse syndromes—very similar to the amphetamine abuse syndrome—include over-excitement, insomnia and hallucinations, all of which can lead to toxic psychosis.

The FDA is encouraging and supporting state attempts to formulate and develop regulatory laws to deal with this problem. Delaware took the lead by passing anti-fraud legislation in 1980. When the Maryland General Assembly learned of increasing use of look-alike drugs in schools, the Anne Arundel County delegation sponsored a bill that expanded on Delaware's statute.

The Maryland law prohibits "distribution, attempted distribution, or possession with intent to distribute non-controlled substances intended for use or distribution as controlled dangerous substances." The law is aimed at mass volume distributors, not just street dealers. Since the law became effective in June 1981, 12 major distributors have closed or moved their business out of the state, and there are now no known distributors in Maryland. The counterfeit problem still exists, however, because of mail order businesses. Many of the complaints the FDA has received have been from the parents of children who ordered fake "pep pills" after receiving unsolicited mail-order literature.

Despite state and federal attempts to prohibit the distribution of these drugs, sales are on the rise. It is estimated that as many as 100 million look-alikes may be sold this year, compared to 70 million pills of amphetamines.

The FDA had not fully articulated its position on counterfeit drugs until September 28, 1981, when the agency raided nine factories in Alabama, Florida, Illinois, New York, and Pennsylvania. Equipment and over 10 million drugs were seized under a section of the Food, Drug and Cosmetic Act that defines a counterfeit drug and states that such drugs are liable to seizure.

Jane Germano

Kaye Bache-Snyder is a free lance writer in the Denver area. Michele R. Magri is editorial assistant for NCSL's Publication Department. Richard W. Foster, a former Associated Press reporter, is a free-lance writer based in Denver. Jane Germano is a support staff member with NCSL's Natural Resource Information Systems.

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Fake 'Speed' Causes Almost as Much Fear As the Real Thing

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Look-Alikes, Mainly Caffeine, Used by Many Youngsters; Some Deaths Are Reported

By Steve R. Massey
Staff Reporter of The Wall Street Journal

CLEVELAND—"Pink footballs," "black beauties" and "yellow jackets" were confiscated here during the recent arrest of a street dealer who sells drugs to kids. But the dealer had to be released.

It turned out that the capsules were misnamed. They weren't what many of the dealer's customers thought they were: forms of "speed," the drug-world term for potent amphetamines that make a user's heart race and his nervous system tingle. Doctors prescribe amphetamines mainly for losing weight. Without a prescription, it is illegal to sell them.

But the capsules that the dealer was nabbed with are perfectly legal to sell in most places. Though disguised as pink footballs and the like, they are no stronger than three cups of coffee. In fact, caffeine is the main ingredient in most of them. Yet they, too, can be dangerous.

These stimulants are called "look-alikes" by narcotics agents. Once found almost exclusively in truck drivers' pockets, they have been cropping up all around the country. College and high-school students are gulping them for pick-me-ups. So are junior-high pupils and even younger children. The trend worries many adults.

Reports of Overdoses

The fake speed is causing almost as much alarm as genuine speed. Laurence B. Golden, a staff assistant with the intelligence office of the federal Drug Enforcement Administration, says his office receives daily reports of overdoses—and occasionally of deaths.

The dangers of look-alikes, however, are certainly less than the dangers of speed. "The real problem is that the young people are getting in on the drug scene and taking these things," says James Tudor of the Ohio State Board of Pharmacy. "It's a very natural step up into the real thing."

On the other hand, the buyer of a look-alike may already be a speed user who thinks he is getting speed again this time. If so, he almost certainly won't get the buzz he expected to get, so he may take more and more of the look-alike. That could lead to an overdose. Or it could lead him to think that he needs more speed than he used to. Then, the next time he gets *real* speed, he may overdose on that.

A look-alike pill typically is two-thirds caffeine. The remaining one-third usually is composed of two anti-allergic agents: ephedrine sulfate and phenylpropanolamine. These constrict blood vessels, and if taken in excessive quantities can collapse them.

More Work for Police

When a drug is sold as speed, the authorities have to assume that it is speed. "Once this stuff gets on the street, it's dope," says Mr. Golden. "It's dealt with the same way." So the upsurge in look-alike traffic means more work for the police. It also means more work for drug companies fighting misuse of their products. It is bad enough when your product finds its way into the street-drug trade. It is even more infuriating when it's something *disguised* as your product.

Despite efforts by local, state and federal officials, the look-alikes keep coming. One federal official estimates that as many as 100 million may be sold this year. That compares with 70 million of the actual amphetamines. The number of wholesalers pushing the bogus speed, Mr. Golden says, has jumped from a dozen a few years ago to about 120 now.

"It is like dealing with a greased pig," says Richard J. McMahon of the attorney general's office in Delaware. In June 1980, that state became the first to pass an anti-fraud law aimed at halting the flow of look-alikes. So far, only two cases have reached the courts; the state won one of them, "and even then the penalty was probation," Mr. McMahon says. More recently, nine other states have passed such laws: Arkansas, Colorado, Connecticut, Indiana, Kansas, Louisiana, Maryland, Oklahoma and South Dakota.

It may seem strange to charge someone with fraud for selling something legal instead of illegally selling something that is more dangerous anyway. But the federal drug authorities seem powerless to halt the look-alike traffic, so the states, with federal encouragement, are doing whatever they can.

There is no federal law protecting people who think they are buying speed but get look-alikes instead, and the ingredients in the look-alikes aren't controlled substances under federal regulations. So federal offi-

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Almost as Much Fear as Real Ones

Continued From First Page

cials are forced to pass the buck.

Not the postal service, though. Ned Friece of the U.S. Postal Inspector's Office says the agency has filed 39 complaints with an administrative-law judge, all charging distributors of the capsules with falsely representing them as safe. (Distributors may be developing a damned-if-I-do, damned-if-I-don't complex. If they say they are selling speed, the anti-fraud laws may get them. If they truthfully say they are selling the caffeine pills, and state or imply that they are safe, the post office may get them.)

Mostly, however, federal authorities simply urge states to enact stiffer anti-fraud penalties, and they give vocal support to state and local enforcement efforts.

Death in Michigan

Ohio is considering legislation requiring packages of look-alikes to disclose that the contents aren't speed. Michigan, operating under an existing deceptive-trade law, has shut down one look-alike wholesaler and banned three others from selling the pills in the state. According to the Michigan attorney general's office, two young women in Flint, Mich., died last year from overdoses of 50 or more look-alikes each. The deaths may have been suicides.

Douglas Vivian, a pharmacist for the poison-control center and drug-information service at Hurley Medical Center in Flint, says a dose of 10 grams can be fatal. The average look-alike, experts say, contains 200 milligrams, so a 10-gram dose would be 50 pills.

But Jerry O'Donnell, the director of the police-department laboratory in Albuquerque, N.M., says there is "no way to tell" what constitutes an overdose because "it varies from person to person." Mr. O'Donnell says that three young men aged 15 to 20 died in Albuquerque during the last year after taking look-alikes. While the victims had been doing some drinking, Mr. O'Donnell says, all had been "in excellent physical condition; they all died of brain hemorrhaging, which is symptomatic of ephedrine (sulfate) and PPA (phenylpropanolamine)."

Firms Take Steps

Some established drug companies are trying to dissociate themselves from look-alikes. SmithKline Corp. in Philadelphia discontinued its green-and-clear diet-capsule line, Dexamyl, after it discovered that capsules disguised as Dexamyl were being sold as speed. Pennwalt Corp.'s Philadelphia division has successfully barred four companies from pushing imitations of its popular Biphetamine 20—the real "black beauties."

The founder of the look-alike industry, William Saye, 38, of Fairburn, Ga., applauds the prohibitive measures. "Today, it is being abused," he says. "Kids don't know how to handle business. There are too many bathtub operations in existence now and not enough quality controls."

Mr. Saye started selling caffeine pills wholesale out of his truck cab in Georgia in 1975. The next year, as business expanded, he set up Saye Drug Co. there. In 1977, he moved the company to a Tampa warehouse and changed its name to OTW Distributors Inc. By the end of that year, he had almost 50 employes selling the pills at truck stops in almost every state. The salesmen were called "peashooters," and drivers would contact them over citizens'-band radio. Mr. Saye says that his salesmen, when asked, were supposed to tell a customer that the pills weren't speed—or risk being fired. By 1980, when he retired from the drug trade, Mr. Saye's business was bringing in about $6 million annually in sales. The pills were obtained from a Long Island manufacturer. Evidently it was all perfectly legal.

Despite "hassles with the police and the press," Mr. Saye says, "I'm proud of what I've done. I ran the business right. Now I just want to lead a normal life, raise some beef cattle, and enjoy my two girls and two boys."

Small Operations

Today, most wholesale distributors are small operations, often a husband-and-wife team working out of their home. "About all they have to do is file a one-page registration form," says an official of the Food and Drug Administration. Sales are handled mainly by mail or phone except for a few storefront concerns in Albuquerque and Los Angeles with such names as the Source and the Pick-Me-Ups.

The distributors don't advertise much, though some ads run occasionally in local and college newspapers and a few national magazines. Instead, they leave calling cards in such places as truck-stop restrooms and college dormitories—a practice started by them. Supplies come from larger wholesalers such as Clifton Pharmacal Inc. in Milroy, Pa., which has its own pharmaceutical factory, or from one of an estimated 10 to 12 big manufacturers in Pennsylvania and on Long Island. They are sold in high volumes, in lots of 100 or 1,000, at prices ranging from about two cents to 10 cents a pill. On the street, says Mr. Tudor of the Ohio pharmacy board, they fetch anywhere from 50 cents to $8 a pill.

Most distributors won't divulge earnings, but estimates are that average sales for a medium-sized company can range between $500,000 and $1 million a year. Jerry Hecht, the founder of the Pick-Me-Ups in Albuquerque, says that his six stores average $1,000 a week each in profits.

P:60 RKY. MTN. NEWS 4/2/82

At least 12 deaths attributed to use of 'look-alike' drugs

CHICAGO (UPI) — Counterfeit pills sold increasingly on the streets as "look-alike" hard drugs have killed at least a dozen users, the American Medical Association reported Thursday.

Authorities are essentially powerless to prosecute the sale by pushers of such drugs, which contain a combination of easily attainable ingredients found in appetite suppressants and decongestants, the AMA report said.

"They're called look-alikes because they mimic the size, shape and color of controlled substances — usually amphetamines or tranquilizers," said the AMA report.

Counterfeit "black beauties," "yellow jackets," "dexies" and other drug culture names for speed have caused 12 deaths, federal Food and Drug Administration investigations have confirmed.

They include a 17-year-old Belvidere, Ill., girl who died after taking what police presumed to be "black beauties," and a 17-year-old Albuquerque boy who consumed two counterfeit biphetamines (a type of amphetamine), lapsed into a coma and died. Several other victims have suffered paralysis after suffering strokes because of the drugs.

In addition, at least nine suicides are linked to conterfeit drugs, most of them attributed to caffeine overdose.

A typical "look-alike," manufactured for a few pennies and sold to unwitting purchasers at huge profits, contains up to 200 milligrams caffeine, 50-75 milligrams phenylpropanolamine and 30 milligrams ephedrine. Their combined effect on a user "is unpredictable," the FDA said.

STATE OF ALASKA
THE LEGISLATURE

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

LEGISLATIVE AFFAIRS AGENCY

M E M O R A N D U M February 1, 1983

SUBJECT: Imitation controlled substances (HB 10)

TO: Representative Mitchell E. Abood, Jr.

FROM: James H. Lear
Legislative Counsel

You have asked for a sectional analysis of HB 10 (An Act relating to imitation controlled substances). HB 10 is based on the Model Imitation Controlled Substances Act drafted by the Drug Enforcement Agency of the United States Department of Justice in October, 1981.

The bill consists of one section creating a new Chapter 14 in AS 17. The chapter contains several new sections:

Sec. 17.14.010. Prohibits the manufacture or distribution of imitation controlled substances as defined in Sec. 17.14.099(3) or possession of the same with intent to distribute. Violation of the section is punishable as a class C felony (maximum of five years in prison and maximum fine of $50,000). It is not a crime in certain instances if the substance is to be used as a placebo for medical treatment. This section is intended to curb the distribution of noncontrolled substances currently sold over-the-counter if manufactured or distributed as imitation controlled substances.

Sec. 17.14.015. Prohibits the possession of certain noncontrolled substances with the intent to manufacture an imitation controlled substance. The substances are those most frequently used to manufacture imitation controlled substances. Violation of this section is punishable as a class C felony. This section is not part of the "Model Act".

Sec. 17.14.020. This section imposes a stricter punishment for distribution of imitation controlled substances by an

adult to a minor. The crime is a class B felony punishable by a maximum of ten years in prison and a maximum fine of $50,000.

Sec. 17.14.030. Prohibits advertisement to promote the distribution of an imitation controlled substance. This crime is punishable as a class C felony. The section is directed mainly at those persons who promote the distribution of an imitation controlled substance by soliciting advertising space in newspapers, magazines, et cetera, or by publicly distributing advertisements for an imitation controlled substance. A publisher and a distributor of not only a local but of a national publication could be prosecuted for violation of sec. 17.14.030 if the state can establish beyond a reasonable doubt that the person had the requisite mental state. The defendant must have known that the purpose of the advertisement or solicitation was to promote the distribution of an imitation controlled substance in the State of Alaska. It is obvious that it would be easier for the state to prosecute an individual who resides within the state, but Alaska has criminal jurisdiction over a nonresident publisher of a national magazine or newspaper who knowingly publishes an advertisement to promote the distribution of an imitation controlled substance if that person consumates the crime from outside the state by the intervention of an innocent or guilty agent, such as a newsstand operator, within the state (AS 12.05.010 -- crime commenced outside the state but consumated inside).

Sec. 17.14.040. This section specifies that manufacturing, distributing, or possessing an imitation controlled substance solely for use as a placebo under prescription is not a crime.

Sec. 17.14.050. This section addresses the circumstances under which a violator of the chapter may have to forfeit to the state those items associated with the perpetration of offenses involving imitation controlled substances. The section is rather lengthy since it is intended to provide adequate guidelines for determining what property may be subject to forfeiture, how it is to be seized, what procedure is to be used for litigating the interests of possible owners, disposition of forfeited property, et cetera. If the degree of detail in this section were absent, an individual might successfully challenge the forfeiture on the basis that it constitutes a taking of property without due process.

The section is almost identical to AS 17.30.110, the forfeiture provision of the 1982 drug bill enacted by Chapter 45, SLA 1982.

Sec. 17.14.099. Definition section. "Controlled substance" is defined by incorporating the definition codified in AS 11.81.900(6). However, sec. 13, Chapter 45, SLA 1982, repealed and reenacted that paragraph by substituting the following language for the former definition:

> (6) "controlled substance" has the meaning ascribed to it in AS 11.71.900(4).

Rather than requiring the reader to make a two-step process to get to the definition, the internal reference on line 18, page 8, of HB 10 should be amended to read "AS 11.71.900(4)".

The other important definition is the definition of "imitation controlled substance". Basically, a substance is an imitation controlled substance if it appears by dosage unit appearance to be a controlled substance or if it is represented as one. The definition enumerates those circumstances under which such a representation could be found.

JHL:ljb

ALASKA STATE LEGISLATURE
HOUSE OF REPRESENTATIVES
RESEARCH AGENCY

Pouch Y, State Capitol
Juneau, Alaska 99811
(907) 465-3991

November 3, 1982

MEMORANDUM

TO: Representative Mitch Abood
Attention: Carol Horos

FROM: Christine Johnson, Research Staff

RE: Look-alike Drug Laws
Research Request 82-186

Carol Horos of your staff has asked us for the number of states which have passed look-alike drug laws and the number of states in which such legislation has been proposed. We received the following information from the National Conference of State Legislatures (NCSL):

- As of August 1982, thirty-six states had adopted legislation restricting the sale of look-alike drugs.

- Fourteen states* did not have look-alike drug laws in August of this year; however, legislation was pending in four of these states (Michigan, Nebraska, New Mexico, and Tennessee). Legislation has also been considered in one other state (Texas), although no law was ever passed.

The federal Drug Enforcement Administration has drafted a model look-alike drug law for states; we have requested a copy of this legislation and will forward it to you when it arrives. We have also enclosed two articles on look-alike drugs which may be of interest to you.

If we can provide any further information, please don't hesitate to contact us.

---

*States without look-alike drug laws include: Alaska, Hawaii, Massachusetts, Michigan, Montana, Nebraska, New Hampshire, Nevada, New Mexico, North Dakota, Tennessee, Texas, West Virginia, Wyoming.

FDA Seeking to Bottle Up Fake Narcotics

By Pete Earley
Washington Post Staff Writer

In 1980, an Albuquerque teenager died after drinking several shots of bourbon at a Christmas party and swallowing two capsules he had been told were amphetamines. Police discovered that the capsules were not amphetamines, but non-prescription drugs made to look like them.

Since then, imitation amphetamines and barbiturates have been linked to 11 other teen-age deaths, according to the Food and Drug Administration.

The federal government faces an unusual jurisdictional problem in trying to control the so-called look-alike drugs. Because their ingredients can be obtained without a prescription, the Drug Enforcement Administration said it doesn't have jurisdiction. The FDA maintains it can play only a limited role because it has certified the ingredients as safe.

While the agencies say they are taking what steps they can, they are somewhat reluctant to take on new enforcement tasks in times of tight budgets.

Fake amphetamines contain large amounts of caffeine, phenylpropanolamine (a nasal decongestant and appetite suppressant) and the decongestant ephedrine. "Imitation" barbiturates contain acetaminophen, salicylamide, chlorpheniramine or other sedatives and hypnotic agents.

When the ingredients are taken separately and in small doses, they are considered safe, an FDA spokesman said. But they can cause nervousness, insomnia, temporary psychotic episodes, cerebral hemorrhage, drowsiness or death if mixed together in large amounts or taken with alcohol.

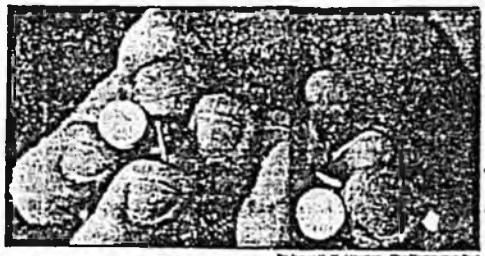
Many young people take them that way, a DEA spokesman said, because they believe that will help simulate the "high" caused by controlled substances. In mid-1981, DEA estimated that 30 million doses of fake narcotics were being manufactured each week and distributed through a network of 200 dealers.

Since 1980, FDA has filed administrative complaints against 45 companies that it claims violated counterfeit provisions of the Food, Drug and Cosmetic Act by making imitation drugs. Over the same period, the U.S. Postal Service has filed 20 complaints that accused drug makers of false advertising because they did not disclose that their products could cause illness or death.

Last week, FDA unveiled what it believes is its toughest tactic to date. It informed 15 small companies that they must submit any products that contain combinations of caffeine, ephedrine and phenylpropanolamine for certification as new drugs. "We have researched this extensively and can find no precedent for the three-drug combination. It would be hard to believe that anyone can show a medical purpose or need for these drugs," said Bill Grigg, an FDA spokesman. In effect, Grigg said, FDA's action will force many of the stimulants off the market.

Last year, DEA drafted a model law for states to ban look-alike drugs. So far, 30 states have enacted legislation. DEA also convinced three companies that make drug capsules to voluntarily refuse orders from suspected imitation drug makers.

While federal officials are confident that their tactics have driven



By Jamie K. W. Atkerson—The Washington Post

An example of look-alike, imitation drugs, left, and the real controlled substances.

Sen. Gordon J. Humphrey (R-N.H.) said such maneuvering has convinced him that the only way to eliminate the imitation drugs is by giving the DEA, FDA and the Postal Service jurisdiction. He has introduced legislation that would prohibit the manufacture of drugs that "look like or are represented to be controlled substances." Products that promote drug abuse would be barred from the mails and FDA counterfeit laws would be expanded.

But at a recent hearing, Haislip urged Congress to delay passing new legislation. "We are trying to solve this problem through leadership. If we can't solve the problem through state laws then we might need to do it at a federal level, but that's not yet clear," he said.

Illinois Attorney General Tyrone Fahner disagreed with Haislip. Fahner told Congress that although his state has moved against dealers, it still has problems. "Some companies we have sued and closed have popped up again under a new name and location. Just because we stop a look-a-like distributor in Illinois doesn't mean we have solved the national problem."

Washington Post July 30, 1982

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CHAIRMAN
HOUSE JUDICIARY COMMITTEE
MEMBER
HOUSE RESOURCES COMMITTEE

Representative Charlie Bussell

ALASKA STATE LEGISLATURE
HOUSE OF REPRESENTATIVES

February 23, 1983

The Proprietary Association
1700 Pennsylvania Avenue, N.W.
Washington, D.C. 20006

ATTENTION: Mr. Allan R. Rexinger, Director of Legislative Relations

SUBJECT: HB 10, Imitation Controlled Substance Act

Dear Mr. Rexinger:

Thank you for your interest and offer of help in drafting a proper subject act.

Enclosed for your further information is a copy of the Act as amended and passed from the House Judiciary Committee on February 22, 1983.

I welcome any further comments you have regarding this or any other act we have under consideration.

Again, thank you for becoming involved in our legislative process.

Regards,

Representative Charlie Bussell
Chairman, Committee on Judiciary

CB:lyn

cc: Representative Abood

THE PROPRIETARY ASSOCIATION

1700 Pennsylvania Avenue N.W./Washington, D.C. 20006/Phone (202) 393-1700

February 4, 1983

Representative Mitch E. Abood
Pouch V - Room 102
Alaska State Legislature
Juneau, Alaska 99811

Attn: July McGhie

Dear Representative Abood:

The purpose of this letter is to follow-up my conversation with Ms. McGhie during which we discussed several amendments to HB 10 — the Imitation Controlled Substances Act. As I explained to Ms. McGhie, The Proprietary Association is a 102-year-old national trade association which represents manufacturers of nonprescription, i.e., over-the-counter (OTC) medicines such as St. Joseph's Aspirin for Children, Anacin, Bayer Aspirin, Contac, Tylenol, Excedrin, Pepto Bismol and many others.

Enclosed is a summary of the amendments to HB 10. Also enclosed is a memorandum on street-drug look-alikes, the U.S. Drug Enforcement Administration Imitation Controlled Substances Model State Bill, the American Medical Association Model State Bill, and the Imitation Controlled Substances Amendment as passed the United States Senate on September 30, 1982. Please note that several of these amendments appear in the text of the enclosed bills. The amendments are marked by number for your convenience and correspond to the summary of our amendments.

Please do not hesitate to contact us if we can be of further assistance. In the mean time, I intend to keep in contact with Ms. McGhie and look forward to speaking with you in the future.

Thank you.

Sincerely,

Allan R. Rexinger

Allan R. Rexinger
Director of Legislative Relations

Enclosures: As stated

ARR/ds

THE PROPRIETARY ASSOCIATION

1700 Pennsylvania Avenue N.W./Washington, D.C. 20006/Phone (202) 393-1700

AMENDMENTS TO ALASKA HB 10
IMITATION CONTROLLED SUBSTANCES ACT

*CAPITALS indicate material to be added.
**[Bracketed] material is to be deleted.

AMENDMENT I

On page 1, line 12 after the word "person" add the following words:

KNOWINGLY OR INTENTIONALLY

Comment: The addition of these words adds specific intent to the Section which is necessary to prevent coverage of a person who does not intend to manufacture, distribute, or possess an imitation controlled substance, but who by unforseen circumstances becomes unwhitingly liable under the Act.

AMENDMENT II

On page 2, line 14 after the word "possesses" add the following:

: (1)

On page 2, line 16 after the word "research" add the following:

, (2) A NONCONTROLLED SUBSTANCE THAT WAS INITIALLY INTRODUCED INTO COMMERCE PRIOR TO THE INITIAL INTRODUCTION INTO COMMERCE OF THE CONTROLLED SUBSTANCE WHICH IT IS ALLEGED TO IMITATE, OR (3) AN IMITATION CONTROLLED SUBSTANCE FOR USE IN U.S. FOOD AND DRUG ADMINISTRATION INVESTIGATIONAL NEW DRUG TRIALS.

Comment: Two additional exemptions are needed beyond that already provided for placebos. The first would provide an exemption for a legitimate over-the-counter medicine that is already on the market and which may be rendered in violation of the Act if a controlled substance is subsequently marketed with identical dosage unit appearance. It is possible therefore that the legitimate OTC would be forced off the market or its manufacturer made subject to a penalty by the subsequent manufacture of a controlled substance. We do not believe this is the intention of the bill. In addition, an exemption ought to be provided for manufacturers of drugs that are used in U.S. Food and Drug Administration approved investigational new drug trials. These tests are conducted with the approval of the FDA.

AMENDMENT III

On page 8, strike line 22-29 and in lieu thereof add the following:

(3) "IMITATION CONTROLLED SUBSTANCE" MEANS ANY SUBSTANCE THAT IS NOT A CONTROLLED SUBSTANCE, AND THAT BY DOSAGE UNIT APPEARANCE (INCLUDING COLOR, SHAPE, SIZE, AND MARKINGS) OR BY REPRESENTATIONS WOULD LEAD A REASONABLE PERSON TO BELIEVE THAT THE SUBSTANCE IS A CONTROLLED SUBSTANCE; THE TERM "REPRESENTATIONS", AS USED IN THIS PARAGRAPH, INCLUDES BUT IS NOT LIMITED TO THE FOLLOWING:

Comment: By removing any reference to specific drug entities or ingredients, the definition of an "imitation controlled substance" is broader and would necessarily cover the widest possible range of noncontrolled substances intended to imitate controlled substances. Use of specific references to drug entities or ingredients creates room for reformulation for the purpose of escaping coverage under the current language of HB 10.

ARR/ds

2/4/83

THE PROPRIETARY ASSOCIATION

1700 Pennsylvania Avenue N.W./Washington D.C. 20006/Phone (202) 393-1700

MEMORANDUM

STREET-DRUG LOOK-ALIKES

INTRODUCTION

The Proprietary Association is a 100-year-old trade association which represents manufacturers of nonprescription, i.e., over-the-counter (OTC) medicines such as St. Joseph's Aspirin for Children, Anacin, Distan, Contac, Tylenol, Excedrin, Sine-Off and many others. These products are classified as drugs under both the Federal Food, Drug, and Cosmetic Act [21 U.S.C. 300, et. seq.] and State statutes. Many of the Association's members market OTC products in this state and/or maintain plants and facilities here, employing many persons. In addition, these products are sold at retail by thousands of food stores, pharmacies, discount and department stores, and other retail outlets. The Association is therefore interested in the proposed legislation.

NON-PRESCRIPTION DRUGS

Responsible self-medication is a valuable and crucial part of our health care system and economy. For the individual, it is a familiar, inexpensive, and convenient method of treating common discomforts. For the health care system, it shields against a deluge of visits to health professionals for minor self-limiting disorders. For the national economy, self-medication helps contain the demand for unnecessary visits to the doctor and thus the total cost for formal medical services. As the 1978 edition of the U.S. Department of Commerce's U.S. Industrial Outlook stated:

> "Seventy-five percent of all illness and injuries are initially treated through self-care and OTC medications. If only a small percentage of self-treatment was shifted to medical practitioners, the patient load would disrupt the U.S. health care system" U.S. Industrial Outlook 1978, U.S. Department of Commerce, January, 1978, page 131.

OTC Labeling

Because OTC medicines are designed for use by consumers without medical supervision, federal and state law requires that they contain considerable U.S. FDA approved labeling information for the benefit of consumers -- labeling not carried by street-drug look-alikes. This information includes:

(1) the product name;

. . . /

Proposed Legislation Should Not Affect Legitimate Medicines

Laws to attack the problem of these street-drug look-alikes, however, must not be so over-broad as to make criminal the good faith marketing of legitimate drug manufacturers, nor must it make it impossible for them to comply with the law.

- Thus, a definition of an "imitation controlled substance" should take into consideration representations made about the substance as well as overall appearance of the final dosage form specifically including color, size, and shape and markings or lack thereof in determining whether a drug or a transaction in ...ng the drug is illegal (cf. New York S 7994, February 11, 1982 attachment "green").

- In order to prevent a lawfully marketed nonprescription drug from being made illegal by introduction of a new controlled substance, nothing in the act should apply to a noncontrolled substance that was initially introduced into commerce prior to the introduction into commerce of a controlled substance.

- In addition, prescription drugs, placebos, and drugs approved by FDA for use in investigational new drug trials should be excluded from the legislation since they are already under strict professional supervision and the legislation should not nor need not interfere with legitimate medical practice or research.

- The legislation should also take into account the intent of the manufacturer or distributor by considering the packaging, labeling, advertising and promotion of the drugs, along with the other criteria discussed.

Medications lawfully marketed under State and Federal law should not be forced off the market. None of these drugs have any reason, nor is there any intent, to look like a controlled substance. There are some 300,000 OTC products on the market, very many of them solid dosages, and many hundreds of brand-name and generic controlled substances.

Given the relatively few color choices - red/blue/yellow/green/white; the fact that timed dosages have clear tops to indicate timed release beads; - and the fact that there is no comprehensive pictorial index to which a manufacturer might go to determine similarity of mere color, size and shape, there is a possibility of some accidental similarity in color, shape and size in the manufacture of legitimate non-prescription medicines. Their labeling, advertising, promotion and markings make it clear, however, that they should not be swept up in the attempt to curb otherwise illicit activities.

Attachments: Discussion Draft of DEA Model State Statute ("buff")
Discussion Draft of AMA Model State Statute ("pink")
New York S 7994 ("green")
PA letter to Thomas Searlett, Esq./"US HHS News" ("blue")
PA Memorandum ("yellow")

MJU/dmw
3/31/82

(2) a statement of identity;
(3) a list of ingredients;
(4) the net quantity of the contents;
(5) the name and address of the manufacturer, packer, or distributor;
(6) the indications for use;
(7) directions and dosage instructions;
(8) warnings and cautionary statements;
(9) drug interaction precautions, if any; and
(10) an expiration date.

The Association is well aware of the critical functions which the labeling of an OTC serves in the appropriate and responsible use of OTC medicines. The Association makes available to consumers through pharmacists thousands of pamphlets entitled "Medicine Labels and You" (enclosed). In addition, the Council on Family Health, a non-profit organization funded by many of the Association's members, has broadcast millions of dollars worth of public service announcements on radio television urging consumers to read the label on OTC medicines.

Street-Drug Look-Alikes

The subject of the legislation is the fraudulent promotion of OTC medicines intentionally made to resemble controlled substances. The Association and its members are opposed to such practices because they necessarily involve the promotion and marketing of OTCs without adequate labeling, or encourage the disregard of OTC labeling, as well as the use of OTCs for inappropriate conditions. In addition, they damage the public's confidence in OTCs as the safe and effective medicines which they are when used as directed.

The Proprietary Association was first asked to assist in combating the marketing of street-drug look-alikes in 1979 when it was invited to testify before the Oregon Board of Pharmacy. The Association has also testified before the Wisconsin State Senate Committee on Judiciary and Consumer Affairs. The Pennsylvania House Health & Welfare Committee has provided technical advice to many other state legislatures. We have organized and keep updated a compilation of street-drug look-alike legislation which has been considered or enacted in the states. The Association has distributed this material to legislatures, pharmaceutical associations, boards of pharmacy, health officials and other interested persons in several states, including Colorado, Illinois, Iowa, Kentucky, Louisiana, Michigan, Missouri, Nebraska, New York, Utah, and Washington.

Because the marketing of imitation controlled substances has grown and changes in character in recent months, the Association has also discussed model state legislation with the U.S. Drug Enforcement Administration (attachment "buff") and the American Medical Association (attachment "pink"). Examining present law, however, the Association has concluded that the promotion of street-drug look-alikes is already illegal under several provisions of the Federal Food, Drug, and Cosmetic Act (attachment "yellow"). Accordingly, on September 21, 1981, in a letter to FDA General Counsel Thomas Scarlett, the Association formally requested that FDA take action against the practice. On September 30, 1981, FDA announced the seizure--as street-drug look-alikes--of the products of nine manufacturers in five states (attachment "blue"). The Association also has been working with the Post Office Department which has been moving against the practice.

. . . /

DRUG ENFORCEMENT ADMINISTRATION
IMITATION CONTROLLED SUBSTANCES
MODEL STATE BILL
WITH CHANGES PROPOSED BY THE PROPRIETARY ASSOCIATION
AND THE PHARMACEUTICAL MANUFACTURERS ASSOCIATION

Section 1. Definitions

a. The term "controlled substance" means a substance as defined in (insert appropriate citation for definition of "controlled substance" in State Controlled Substances Act).

b. The term "distribute" means the actual, constructive, or attempted transfer, delivery, or dispensing to another of an imitation controlled substance.

c. The term "manufacture" means the production, preparation, compounding, processing, encapsulating, TABLETING, packaging, or repackaging, labeling or relabeling, of an imitation controlled substance.

d. The term "imitation controlled substance" means a substance OTHER THAN A PRESCRIPTION DRUG that is not a controlled substance, which by OVERALL dosage unit appearance (including color, shape, size and markings), AND ~~or~~ by representations made, would lead a reasonable person to believe that the substance is a controlled substance. NOTHING IN THIS ACT SHALL APPLY TO A NON-CONTROLLED SUBSTANCE THAT WAS INITIALLY INTRODUCED INTO COMMERCE PRIOR TO THE INITIAL INTRODUCTION INTO COMMERCE OF THE CONTROLLED SUBSTANCE WHICH IT IS

*Deletions indicated by strikeout.
Additions indicated by CAPITALS.

Retyped by The Proprietary Association

(over, please)

ALLEGED TO IMITATE. ~~In those rare cases when the appearance of the dosage unit is not reasonably sufficient to establish that the substance is an "imitation controlled substance" (for example in the case of powder or liquid).~~ The court or authority concerned should consider, in addition, to all other logically relevant factors, the following factors as related to "representations made" in determining whether the substance is an "imitation controlled substance":

(1) Statements made by an owner or by anyone else in control of the substance concerning the nature of the substance, or its use or effect.

(2) ~~Statements made to the recipient that the substance may be resold for inordinate profit.~~ WHETHER THE CONSIDERATION TENDERED IN EXCHANGE FOR THE NONCONTROLLED SUBSTANCE SUBSTANTIALLY EXCEEDS THE REASONABLE VALUE OF THE SUBSTANCE, CONSIDERING THE ACTUAL CHEMICAL COMPOSITION OF THE SUBSTANCE AND, WHERE APPLICABLE, THE PRICE AT WHICH OVER-THE-COUNTER SUBSTANCES OF LIKE CHEMICAL COMPOSITION SELL.

(3) Whether the substance is packaged in a manner normally used for illicit controlled substances.

(4) Evasive tactics or actions utilized by the owner or person in control of the substance to avoid detection by law enforcement authorities.

. . . /

(5) Prior convictions, if any, of an owner, or anyone in control of the object, under state or Federal law related to controlled substances or fraud.

(6) The proximity of the substances to controlled substances.

Section 2. Offenses

a. Manufacture or distribution - It is unlawful for any person to manufacture, distribute, or possess with intent to distribute, an imitation controlled substance. Any person who violates this section shall be guilty of a crime and upon conviction may be imprisoned for not more than _____, fined not more than _____, or both.

b. Distribution to a minor - Any person 18 years of age or over who violates Section 2a by distributing an imitation controlled substance to a person under 18 years of age is guilty of an aggravated crime and upon conviction may be imprisoned for not more than _____, fined not more than _____, or both.

c. Possession - It is unlawful for any person to use, or to possess with intent to use, an imitation controlled substance. Any person who violates this section is guilty of a crime and upon conviction may be imprisoned for not more than _____, fined not more than _____, or both.

. . . /

d. Advertisement - It is unlawful for any person to place any newspaper, magazine, handbill or other publication, or to post or distribute in any public place, any advertisement or solicitation with reasonable knowledge that the purpose of the advertisement or solicitation is to promote the distribution of imitation controlled substances. Any person who violates this section is guilty of a crime and upon conviction may be imprisoned for not more than _____, fined not more than _____, or both.

e. Immunity - No civil or criminal liabililty shall be imposed by virtue of this Act on any person ~~registered under the Controlled Substances Act~~ who manufactures, distributes, or possesses ~~an imitation controlled substance for use as~~ a placebo ~~by a registered practitioner~~ in the ORDINARY course of professional practice or research OR FOR USE IN U.S. FOOD & DRUG ADMINISTRATION APPROVED INVESTIGATIONAL NEW DRUG TRIALS.

Section 3. Forfeiture

(Insert designation of state civil forfeiture section) is amended to provide for the civil forfeiture of imitation controlled substances by adding the following after paragraph (insert designation of last category of forfeitable property):

"( ) all imitation controlled substances as defined by (list appropriate citation for this Act in the state's statutes).

. . . /

Section 4. Severability

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

MJU:khp

2/2/81

Revised
January 1982

In The General Assembly

State of_____

A BILL

For An Act Pertaining to the Unlawful Manufacture, Processing, Packaging, Distribution, Delivery and Sale of Imitation Controlled Substances

Be it enacted by the Legislature of the State of_____

Section 1. The Legislature hereby finds and declares that there is a serious health threat in this state presented by tablets and capsules which contain only nonprescription ingredients, but which are manufactured to resemble various controlled drugs in size, shape, color and markings. The purpose of this legislation, therefore, is to prohibit the manufacture, processing, packaging, distribution, delivery and sale of such substances and to provide criminal penalties therefor.

Section 2. Except as otherwise may be authorized by law, no person shall knowingly:

(a) Manufacture, process, package, distribute or sell a noncontrolled substance, other than a prescription drug, which, or the label or container of which, substantially resembles a specific controlled substance;

(b) Distribute or sell a noncontrolled substance upon the express or implied representation that the substance is a controlled substance;

(c) Distribute or sell a noncontrolled substance upon the express representation that the recipient, in turn, will be able to distribute or sell the substance as a controlled substance.

Section 3. In determining whether there has been a violation of Section 2 (a), the following factors shall be considered:

(a) Whether the noncontrolled substance in its overall finished dosage form is substantially similar in size, shape, and color, and markings (or lack thereof) to a specific controlled substance;

~~(b) Whether the noncontrolled substance in its finished dosage form has substantially similar markings on each dosage unit as a specific controlled substance;~~

(b) Whether the noncontrolled substance in its finished dosage form is packaged in a container which, or the labeling of which, bears markings or printed material substantially similar to that accompanying or containing a specific controlled substance.

Section 4. In determining whether there has been a violation of Section 2 (b), the following factors, in addition to those factors set out in Section 3, shall be considered:

(a) Whether the noncontrolled substance is packaged in a manner ordinarily used for the illegal delivery of a controlled substance;

(b) Whether the consideration tendered in exchange for the noncontrolled substance substantially exceeds the reasonable value of the substance, considering the actual chemical composition of the substance and, where applicable, the price at which over-the-counter substances of like chemical composition sell.

(c) Whether the consideration tendered in exchange for the noncontrolled substance approximates or exceeds the price at which the substance would sell upon illegal delivery were it actually the specific controlled substance it physically resembles.

Section 5. In any criminal prosecution brought under this Act, it shall not be a defense that the defendant believed the noncontrolled substance actually to be a controlled substance.

Section 6. The provisions of this Act shall not be applicable to:

(a) Law enforcement officers acting in the course and legitimate scope of their employment;

(b) ~~Persons who~~ The manufacture, processing, ~~package~~ packaging, ~~distribute~~ distribution or ~~sell~~ sale of noncontrolled substances to licensed medical practitioners for use as placebos in the course of professional practice or research, or for use in clinical research conducted pursuant to the Federal Food, Drug and Cosmetic Act;

(c) Licensed medical practitioners, pharmacists and other persons authorized to dispense or administer controlled substances and acting in the legitimate performance of their professional license.

(d) For purposes of Section 2(a), a noncontrolled substance in its finished dosage form that was initially introduced into commerce prior to the initial introduction into commerce of a controlled substance in its finished dosage form it may substantially resemble.

Section 7. Violation of this Act shall be a _____, punishable by a fine of not more than _____, and/or by a period of imprisonment not to exceed _____.

Section 8. If any provision of this Act or the application thereof to any person, thing or circumstance is held invalid, such invalidity shall not affect the provisions or application of this Act that can be given effect without the invalid provision or application, and to this end the provisions of this Act are declared to be severable.

Section 9. This Act shall become effective _____.

NOTE: Stricken material to be omitted.
Underscored material to be added.

United States of America

No. 133—Part II

Congressional Record

PROCEEDINGS AND DEBATES OF THE 97th CONGRESS, SECOND SESSION

Vol. 128 WASHINGTON, THURSDAY, SEPTEMBER 30, 1982 No. 133—Part II

Senate

THURSDAY, SEPTEMBER 30, 1982

(Legislative day of Wednesday, September 8, 1982)

VIOLENT CRIME AND DRUG ENFORCEMENT IMPROVEMENTS ACT OF 1982—Continued

UP AMENDMENT NO. 1856

Mr. THURMOND. Mr. President, I send to the desk certain amendments—in fact a group of amendments that I hope can be considered and adopted en bloc.

The PRESIDING OFFICER. The clerk will state the amendments.

The legislative clerk read as follows:

The Senator from South Carolina (Mr. THURMOND) proposes an unprinted amendment numbered 1856

(S. 12789)

SENATOR DANFORTH'S AND SENATOR HUMPHREY'S SIMULATED CONTROLLED SUBSTANCES AMENDMENTS (NOS. 9 AND 10)

The amendments provide Federal criminal sanctions for the manufacture, sale, and advertising of simulated controlled substances. The sale, manufacture, and distribution of these drugs—defined as any drug containing non-controlled substances that purport to act like a controlled substance, either stimulant or depressant—would be punishable by imprisonment of not more than two years. Distribution to a minor would carry a four-year penalty. Advertising these drugs would be a misdemeanor. The Food and Drug Administration would have the primary enforcement authority.

(S. 12795)

Reproduced by The Proprietary Association
pa 10/4/82

"SEC. 308. (a) For purposes of this section, the term—

"(1) 'imitation controlled substance' means any substance other than a controlled substance or prescription drug, or combination of such substances, which is marketed, sold, or distributed to encourage recreational drug use or abuse or any similar nonmedical use and—

"(A) by representation or appearance (including color, shape, size, and markings) would lead a reasonable person to believe that the substance is a controlled substance; or

"(B) purports to act, either alone, in multiple doses, or in combination with a substance or substances, like a controlled substance, either stimulant or depressant as defined in section 102(9) of the Controlled Substances Act;

"(2) 'distribute' means the actual, constructive, or attempted transfer, delivery, or dispensing to another of an imitation controlled substance;

"(3) 'manufacture' means the production, preparation, propagation, compounding, or processing of an imitation controlled substance, and includes any packaging or repackaging of such substance or labeling or relabeling of its container; except that such term does not include the preparation, compounding, packaging, or labeling of an imitation controlled substance in conformity with applicable State or local law by a practitioner as an incident to his administering or dispensing of such substance in the course of his professional practice; and

"(4) 'controlled substance' is used as defined in section 102(6) of the Controlled Substances Act.

"(b)(1)(A) Except as provided in subparagraph (B), it shall be unlawful for any person knowingly or intentionally to create, manufacture, or distribute, or possess with intent to create, manufacture, or distribute an imitation controlled substance. Any person who violates this paragraph shall be sentenced to a term of imprisonment of not more than two years, a fine of not more than $10,000, or both.

"(B) Subparagraph (A) does not apply to the creation, manufacure, distribution, or possession of an imitation controlled substance by a person if the imitation controlled substance is created, manufactured, distributed, or possessed for use as a placebo in the course of the professional practice of a practitioner registered under part C of the Controlled Substances Act or in research conducted under section 505(i) of this Act or conducted in connection with an application filed under section 505(b) of this Act.

"(2) Any person at least 18 years of age who violates paragraph (1)(A) by distributing an imitation controlled substance to a person under 18 years of age shall be sentenced to a term of imprisonment of not more than four years, fined not more than $20,000, or both.

(c) It is unlawful for any person to place any newspaper, magazine, handbill, or other publication, or to post or distribute in any public place, any advertisement of solicitation with reasonable knowledge that the purpose of the advertisement or solicitation is to promote the distribution of imitation controlled substances. Any person who violates this subsection is guilty of a crime and upon conviction may be imprisoned for not more than one year, fined not more than $5,000, or both.".

(b) Subsection (a) of section 302 of such Act is amended by striking out "paragraphs (h), (i), and (j)" and inserting in lieu thereof "paragraphs (h) and (j)".

(11) On page 47, beginning with line 12, strike out all through line 2 on page 51 and renumber subsequent titles accordingly.

(12) On page 59, beginning with line 20, strike out all through line 6 on page 61 and insert in lieu thereof the following:

HUMPHREY, and I are offering an amendment to deal with the problem of look-alike drugs. Cosponsoring this amendment are Senators ANDREWS, GRASSLEY, and LUGAR. This amendment is now part of the lengthy committee amendment.

The past few years have witnessed the birth of a new drug problem which has most of the moral and medical dangers of narcotics abuse, and yet the drugs being abused are legal under current Federal law. In legal circles, these drugs are known as imitation controlled substances; the press refers to them as look-alikes; and street pushers call them turkeys or kiddie dope. The tablets are a combination of legal substances such as caffeine and powerful decongestants, but they are packaged to look like well-known controlled substances such as amphetamines and Quaaludes. Buyers, many of whom are junior high and high school students, think they are getting the illegal drugs when they are in fact receiving the look-alike.

According to the Drug Enforcement Administration, "the wholesale vending of look-alike drugs has become a major nationwide drug abuse problem." DEA reports that a handful of distributors at the end of 1979 grew to 110 in 1981. The pills are offered by the big distributors in 1,000-pill jars, with advertising that they can be sold individually for tremendous profits. DEA estimates that production of these pills has reached 30-million units per week.

Profits in this business are substantial. One small-time distributor of these drugs in Dallas, Tex., interviewed by the Texas Monthly, claims profits of $90,000 a year; the profits of some larger manufacturers based in New York and large distributors such as Mid-State Supply in Oklahoma and Chicago Specialty Distributors of Illinois run into the millions of dollars. Even more troubling, the over-the-counter drug store, devoted entirely to the sale of look-alikes, opened in Los Angeles last fall despite the protests of concerned citizens. Officials fear this to be the first of what may be a string of similar stores which could appear all over the Nation. Indeed, some have already opened in New Mexico.

The manufacturers and distributors of look-alike amphetamines and barbiturates use every means of advertising legally available. The small-time dealer in Dallas walks the Texas beaches distributing his business cards; larger companies use more sophisticated advertising methods. One look-alike company mails its color brochures to college freshmen. The Drug Enforcement Administration reports that another look-alike company which distributes to college campuses puts the following words on envelopes: "To College Mail Handlers: Please deliver to dorms that have a high proportion of drug users. We request that this letter be delivered to an individual that needs or uses drugs so that he may be given direction and shown the way." The implication here is that the brochure inside is from some public service organization which wishes to discourage drug abuse—a cheap ploy to reach potential customers.

The first danger of look-alikes is, then, their tendency to encourage drug abuse. As a member of the Ohio State Board of Pharmacy put it, look-alikes are "a very natural step up to the real thing." The medical hazards of look-alikes is a second. Consider the situation where someone has been using look-alikes and is then given the real amphetamine. One DEA official put it this way: "They take six or seven of the phonies and then they take six or seven of the real thing someday and they are dead." Many people do not realize that the look-alikes themselves can be lethal. The FDA has confirmed 12 deaths from look-alikes, and other sources say many more have died, and all within the last 2 years. For example, the Illinois Department of Public Health claimed six deaths in 9 months from look-alikes. Recent deaths attributed to look-alikes include a 17-year-old girl from Belvidere, Ill., a 21-year-old carnival worker from Columbus, Ga., and three young men from Albuquerque, N. Mex., aged 15 to 20, who were in excellent physical condition but suffered brain hemorrhaging from the drugs.

The medical problem presented by look-alike overdoses is ironic. Hospital officials usually find pills on the person of victims and assume the look-alikes to be real amphetamines. They then treat the patient for amphetamine overdose and he or she dies of a caffeine overdose. As an Illinois Department of Public Health official put it, "Treating a caffeine problem like it was amphetamines is useless." It is time to try to put an end to such deaths.

The Drug Enforcement Administration has advocated State and local laws prohibiting the manufacture and sale of look-alikes, and many of the States have responded. This is a commendable effort. But relying on the uncoordinated actions of a diverse group of lawmaking bodies is inadequate. The absence of Federal criminal sanctions makes the look-alike problem, according to a Delaware official, "like dealing with a greased pig." Presently, manufacturers or distributors chased out of one State simply set up in another. The American Pharmacy magazine has criticized the Federal Government for its failure to take action, saying "* * * there appears to be no central plan of action, no spearhead force to halt this nationwide scourge * * *. Yet this problem is a national one that must be stopped." In its report on look-alike drugs, Time magazine noted that "probably no serious headway will be made * * * until the Federal Government finds a way to block the look-alike loophole with a uniform national law."

Making the manufacture and sale of look-alike drugs a Federal crime will be more than a symbol, more than a gesture. Look-alike pushers are in business because their product is legal. One dealer has said: "This can't last forever. Someday they've got to write a law against it." Mr. President, we can no longer tolerate drug pushers who hide behind a facade of business cards, brochures, slogans, and sham corporations in an attempt to imitate the respectable business community.

This problem is beginning to get the attention it deserves. The Select Committee on Narcotics Abuse and Control in the House of Representatives, chaired by Congressman LEO ZEFERETTI of New York, has held very productive hearings on the dangers of look-alike drugs. Mr. ZEFERETTI has asked hard questions about how the Federal Government can stifle this new drug abuse problem that has grown to alarming proportions. The Select Committee on Narcotics has sought the advice of both the Food and Drug Administration, charged with protecting the health of the Nation against impure and unsafe drugs, and the Drug Enforcement Agency Administration, charged with suppressing narcotics and other dangerous drugs.

In September 1981, the Food and Drug Administration seized 15 million capsules and tablets and 20 million empty capsules used in the look-alike drug trade, as well as the machinery used to manufacture these items. This seizure was made possible because of the Federal statutes that outlaw the manufacture of counterfeit prescription drugs. This year, beginning in mid-August, the FDA seized 1 million finished capsules and tablets containing a combination of caffeine, ephedrine, and PPA, which had been advertised as "100 percent legal" pep pills and speed. The FDA has advised the manufacturers that pills with this combination of substances require their approval before they can be marketed. These and similar efforts on the part of FDA are commendable, and yet they are not enough. We must do more than confiscate the pills and implement new regulations.

In my view the time has come for Federal criminal sanctions for the manufacture, sale, and advertising of look-alike drugs. The amendment offered by the Senator from New Hampshire and myself is quite simple. It defines look-alike drugs and any other drug containing noncontrolled substances that purports to act like a controlled substance, either stimulant or depressant. The sale and manufacture and distribution of these drugs would be a felony under our amendment, with maximum imprisonment up to 3 years. Distributing these drugs to a minor would be an aggravated offense with imprisonment up to 4 years. Advertising these drugs would be a misdemeanor. The Food and Drug Admin-

istration will have the primary enforcement authority of these provisions. The FDA seems the best choice for enforcement because they now have jurisdiction over all noncontrolled substances, and they already have been active in the fight against look-alikes.

This amendment will not hamper any legitimate over-the-counter drug manufacturer. The intent of he amendment is clear. We are out to stop the look-alike drug trade, to stop those drugs sold primarily to teenagers and frequently passed off as controlled substances. The purpose of these drugs is clearly nonmedical.

The mushrooming look-alike drug market has been covered by all three national television networks and by publications ranging from American Pharmacy and Drug Topics to Time and the Wall Street Journal. I ask unanimous consent to insert into the RECORD a number of these program transcripts and newspaper and magazine articles about this drug problem.

I believe the Federal Government can afford to give no quarter to drug abuse. We must take sterner measures. This amendment is part of what must be a larger effort.

I want to extend my thanks to the chairman of the Judiciary Committee, Senator THURMOND, both for including this amendment in the committee amendment, and for the important work he has done on this entire legislation. Let me also extend my thanks to Mr. Paul Summitt, special counsel to the Judiciary Committee, who has devoted so much of his time to improving the criminal statutes of the United States. His tireless efforts are to be commended, and we in the Senate are glad to have the benefit of his able assistance.

Mr. HUMPHREY. Mr. President, I am delighted that the Senate Judiciary Committee has accepted this amendment to the crime bill because it contains a powerful new weapon against those who prey on our youth by manufacturing and distributing look-alike drugs to promote drug abuse.

Look-alikes resemble or duplicate the appearance of certain highly abused controlled substances such as amphetamines, barbiturates, and tranquilizers. They contain only substances commonly sold over the counter, but in multiple doses or in combination with aspirin or caffeine produce stimulant or depressant effects similar to the controlled substances they resemble.

Manufacturers and distributors are actively promoting these pills as the "legal way to get high" and have engaged in extensive advertising campaigns claiming their products to be both safe and legal. Look-alikes are sometimes advertised using the "street terms" for amphetamines and barbiturates such as black beauties yellow jackets, speed, and white crosses, and are promoted through college newspapers, handbills at rock concerts, direct mail solicitations, magazine advertisements, and storefront operations near school campuses.

The industry is lucrative and growing. According to the Drug Enforcement Administration (DEA), mail order and storefront wholesale distributors grew from a mere handful in early 1980 to more than 150 outlets in November 1981 and production had increased to 30 million dosage units per week. The profits to distributors have been estimated to range from $100,000 per year for the small operator into the millions for a larger distributor.

As chairman of the Subcommittee on Alcoholism and Drug Abuse, the rapid expansion of this industry is extremely disturbing to me. First and most importantly, look-alikes are not safe. If taken in multiple doses or in combination with alcohol, there is a risk of hypertension, cardiac problems, or cerebral hemorrhage. To date the Food and Drug Administration (FDA) has documented at least 12 deaths attributed to look-alike drugs. Additionally, the marketing of these legal drugs solely to encourage recreational mind alteration or experimentation supports the drug culture in our society and by encouraging teenagers to accept a climate of drug use, may lead to the later use of illegal drugs. Finally, development of the look-alike industry seriously undermines the efforts of all of us, both in Government and the private sector, who are working to educate young people about the serious risks of drug use and reduce the drug problem in our society.

Especially disturbing is the apparent lack of effective Federal jurisdiction over this industry. DEA has jurisdiction over drugs which are illegally trafficked if the drug components are scheduled in the Controlled substances Act. Since DEA's jurisdiction is limited to enforcement of the Controlled Substances Act, DEA has no power to restrict sales and distribution of look-alikes which do not contain controlled substances. DEA has been influential in the fight against look-alikes by developing and distributing to the States a Model Imitation Controlled Substances Act. To date 28 States have passed some legislation aimed at dealing with look-alikes and 17 more States have legislation pending. Individual statutes differ from jurisdiction to jurisdiction and manufacturers only seek new locations more favorable to their activities.

Over the counter substances are regulated by the FDA under the Federal Food, Drug and Cosmetic Act. The FDA has exerted jurisdiction under the counterfeit provisions of the act against those look-alikes designed to resemble specific controlled substances. In September 1981, the FDA seized materials and manufacturing equipment from nine manufacturers which produced and mislabeled counterfeit drugs, and is now proceeding to move against distributors under both its counterfeit and imitation provisions.

But as a result of these FDA enforcement actions manufacturers have become more sophisticated and are currently producing pills, tablets, and capsules that do not look like controlled substances and therefore are no longer subject to legal action under the Federal Food, Drug and Cosmetic Act. Now that the market has been established among our young people, these non-look-alikes are being promoted and sold in the same manner to willing buyers. As so often happens, the drug abuse promoters remain one step ahead of existing law.

Recently the FDA announced that the triple combination of phenylpropanolamine, ephedrine sulfate, and caffeine—the ingredients commonly contained in look-alikes—will now be regarded as a "new drug" and will thus require an application to FDA for marketing approval. Regulatory letters were issued to 14 manufacturers of triple combination products informing them that shipment of these drugs in interstates commerce without FDA approval violates the law. But there is already evidence that the response of these manufacturers has been to simply delete one or more of the three ingredients and thus produce a product that already possesses FDA approval. This is only further evidence of the ability of these manufacturers to modify their behavior to escape piecemeal Federal regulation, and of the need for a comprehensive Federal statute outlawing the manufacture and distribution of both look-alikes and non-look-alikes.

The U.S. Postal Service has also been involved in the look-alike drug enforcement effort. The Postal Service filed complaints against 41 distributors under its false representation statute and obtained false representation orders or consent agreements requiring postmasters to discontinue mail delivery to these distributors. The problem, however, continues. Most of the major promoters are evading the orders and agreements by restricting their business to telephone orders and payment by credit card, bank wire, or United Parcel Service COD.

Also, look-alike distributors and manufactuers no longer claim their products are absolutely safe and occasionally enumberate side effects related to consumption. Since the labels no longer misrepresent the nature of the product, the Postal Service is without

jurisdiction to restrain use of the mails for product distribution.

The only other Federal agency which may have jurisdiction over the advertising and distribution practices exhibited by look-alike dealers is the Federal Trade Commission (FTC), I am informed the Commission is reviewing its jurisdictional posture, but to date has not prosecuted.

Thus the look-alike industry appears to have circumvented ordinary regulation due to to the unique characteristics of this product and the industry's innovative ability to make changes in order to frustrate law enforcement efforts. We are confronted with an industry promoting drug use and abuse in our youth which we have no direct ability to regulate.

For these reasons, in July I introduced in the Senate a legislative package intended to supplement and clarify ongoing Federal enforcement efforts against look-alikes. The package of three bills was designed to fill the existing gaps and articulate a national policy in opposition to those who would encourage our children to take drugs for recreation, those who would make "pill popping" a national pastime, and those who would seek to make drug trafficking a socially acceptable occupation.

And it is for these reasons that I join today with Senator DANFORTH in offering this amendment to S. 2572, which incorporates the thrust of this look-alikes legislation. Our amendment is simple and straightforward. It outlaws the creation, manufacture, and distribution of imitation controlled substances which look like, or are represented to be controlled substances, and substances which purport to act like controlled substances, if they are marketed to encourage recreational drug use or abuse or any similar nonmedical use. Our definition of imitation controlled substances is broad enough to include both look-alikes and non-look-alikes, so long as they are marketed, sold, or distributed to encourage recreational drug use or abuse—but narrow enough to make it clear that prescription drugs, over-the-counter drugs, and legitimate generic drugs, over the counter drugs, and legitimate generic drugs are excluded. Exemptions are also included for placebos used in the course of professional practice and research.

The amendment imposes a felony sanction and intentional sales to minors would result in a doubled penalty. The amendment also imposes a misdemeanor sanction for advertisement of imitation controlled substances. Enactment of this legislation vests jurisdiction in the FDA to monitor and control the marketing practices of distributors.

Further, the amendment proposes to amend the Federal Food, Drug and Cosmetic Act to provide the FDA, acting through the U.S. Attorney, with power to seek injunctions to restrain manufacturers of counterfeit materials and equipment used to manufacture counterfeits but they are unable to restrain the manufacturer from distribution. Thus if the subject manufacturer has other warehouses stockpiled with counterfeits that are unknown to food and drug agents, the manufacturer can continue to distribute inventories until the FDA seizes it. The omission of injunctive power does not make sense and probably was a legislative oversight. The FDA should be empowered to restrain distribution by counterfeit manufacturers until it can be assured that future distribution by the subject manufacturer is in compliance with Federal Law.

Mr. President, enactment of this legislation will send a powerful signal that the Federal Government is firm in its resolve to shut down the look-alikes drug industry. Dr. Carlton Turner, Director of the President's Drug Abuse Policy Office, DEA, FDA, FTC, the National Institute on Drug Abuse, the U.S. Postal Service, the Internal Revenue Service, and the Consumer Product Safety Commission are now doing all within their power, through interagency meetings and cooperative efforts, to coordinate a Federal effort against these unscrupulous manufacturers and distributors. It is important that the Congress assist these agencies in this effort with a clear and comprehensive Federal policy outlawing the manufacture, distribution, and sales of look-alike drugs for the purpose of fostering drug abuse. I urge my colleagues to support this amendment in order that we may protect our young people by moving quickly and decisively against the look-alike industry.

The PRESIDING OFFICER. The question is on agreeing to the amendments en bloc.

The amendment (UP No. 1356) was agreed to.

(S. 12798)

FISCAL NOTE

I. REQUEST

Bill/Resolution No. HB 10

Title "An Act relating to imitation controlled substances."

Requested by Representative Abood Date 1/19/83

II. FISCAL DETAIL

Agency Affected Department of Law

Program Category Affected Administration of Justice

BRU, Program, Or Subprogram(s) Affected Prosecution

(Note: If more than one budget component is affected, separate line-item amounts and funding for each component in the analysis section.)

EXPENDITURES (Thousands of Dollars)

	FY 83	FY 84	FY 85	FY 86	FY 87	FY 88
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 COMMODITIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS,CLAIMS,ETC.						
TOTAL	-0-	-0-	-0-	-0-	-0-	-0-

FUNDING (Thousands of Dollars)

GENERAL FUND	-0-	-0-	-0-	-0-	-0-	-0-
FEDERAL FUNDS						
OTHER (Specify Source)						

POSITIONS

FULL TIME	-0-	-0-	-0-	-0-	-0-	-0-
PART TIME						
TEMPORARY						

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

It is estimated that enactment of this bill will result in 50 to 60 new criminal prosecutions throughout the state each year. This estimate is based upon a survey taken by the department, of local police agencies and the state troopers. Examined singly, no additional prosecution person nel will be required to implement the provisions of the bill. These new prosecutions, however, do represent additional workload which, when added to other crime bills, will have the effect of hampering the department's overall ability to prosecute criminal offenses. The forfeiture provisions in the bill will also require additional attorney time to handle the court hearings required if a forfeiture of specific property is contested by the owner, and may have the effect of diverting resources from other matters currently being addressed.

IV. DATE 1/19/83 PREPARED BY Daniel W. Hickey, Chief Prosecutor

AGENCY Department of Law

PHONE 465-3428

Original: Legislative Finance

cc: Budget and Management

Prime Sponsor (First Legislator Named)

33-001 (Rev. 12/81)

Office of Management and Budget

Reviewed by: Mike Mahr, Program Budget Analyst

Division of Budget Review

Bill/Resolution No. [illegible]
Title "An Act relating to imitation controlled substances."
Requested by House Judiciary Date Jan. 13, 1983

II. FISCAL DETAIL

Agency Affected Health & Social Services
Program Category Affected Offender Confinement, Reformation & Supervision
BRU, Program or Subprogram(s) Affected Adult Confinement
(Note: If more than one budget component is affected, separate line-item amounts and funding for each component in the analysis section.)

EXPENDITURES (Thousands of Dollars)

		FY 83	FY 84	FY 85	FY 86	FY 87	FY 88
100	PERSONAL SERVICES						
200	TRAVEL						
300	CONTRACTUAL						
400	COMMODITIES						
500	EQUIPMENT						
600	LAND & STRUCTURES						
700	GRANTS, CLAIMS ETC.						
	TOTAL	-0-	1184.8	33.4	35.4		

FUNDING (Thousands of Dollars)

GENERAL FUND	-0-	1184.8	33.4	35.4		
FEDERAL FUNDS						
OTHER (Specify Fund Source)						

POSITIONS

FULL TIME						
PART TIME						
TEMPORARY						

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

This bill makes it unlawful to manufacture, distribute, or possess with intent to distribute, an imitation controlled substance. The bill also classifies levels of offenses as class B and class C felonies, as well as specifies forfeitures applicable when provisions of the statute are violated.

IV. DATE January 21, 1983 PREPARED BY Roger C. Lange
AGENCY Division of Adult Corrections
PHONE 465-3376

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

OMB review:

03-001 (Rev. 12/79)

BILL NUMBER House Bill No. 10

EXPENDITURES (Thousands of Dollars)

		FY 83	FY 84	FY 85	FY 86	FY 87	FY 88
100	PERSONAL SERVICES						
200	TRAVEL		.8	.8	.9		
300	CONTRACTUAL		7.2	14.7	15.6		
400	COMMODITIES		8.8	17.9	18.9		
500	EQUIPMENT						
600	LAND & STRUCTURES		1168.0				
700	GRANTS, CLAIMS ETC.						
	TOTAL	-0-	1184.8	33.4	35.4		

FUNDING (Thousands of Dollars)

GENERAL FUND	-0-	1184.8	33.4	35.4		
FEDERAL FUNDS						
OTHER(Specify Fund Source)						

POSITIONS

FULL TIME	-0-	-0-	-0-	-0-	-0-	-0-
PART TIME						
TEMPORARY						

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

A. Assumptions

1. Estimated conviction information was furnished by the Department of Law. They estimate that there would annually be three convictions for a Class B felony and 30 convictions for Class C felonies. Class A misdemeanors have been omitted in the committee substitute.

2. It is assumed that all convictions are of first time offenders.

3. The following table displays data regarding additional bed needs with enactment of HB 10:

Class of Offense	Expected # of Convictions	% & # to Jail	Avg. Sentence Length	Flat Years	Person Years
B Felony	3	50%/1.5	2.5 Yr.	1.9	2.85
C Felony	30	20%/6.0	1.09 Yr.	.82	4.92
	33	7.5			7.77

Therefore, 7.77 beds would be needed. For purposes of this fiscal note, this was rounded to the nearest whole number resulting in 8 new beds identified as being required.

B. Cost Estimates:

1. Capital Expenditures

It is assumed that medium security beds would be the appropriate classification. It is estimated that construction costs for this type of bed will be approximately $146,000 per bed. Therefore, capital expenditures would be:

8 x $146,000 = $1,168,000

2. Personal Services

It is assumed that these 8 beds would be combined with other construction where staff will be identified. Therefore, no costs are specifically identified in this fiscal note for staff costs, although staff will be required to provide security and supervision for the additional inmates.

3. Other Costs

Other costs identified reflect only food, clothing, bedding, and medical services necessary to meet the physical care and medical needs of the projected inmate increase.

4. Inflation of 6% per year was used for projecting cost after FY 1985, the year in which the total bed impact would be experienced.

Conference Call

SPONSOR: H. Judiciary

SUBJECT: Control of In Patient Substances

MAILING ADDRESS: (witness to testify from anchorage at committee meeting)

PHONE: 4990 CONTACT: Kathleen Zalewski

TAKEN BY: Chuck

T/C DATE/DAY: Tues Feb 1

TIME: 1:30 - Pacific
11:30-12:30 Alaska
10:30 Bering

T/C DURATION: 1 hr.

SITES PARTICIPATING:

ALL ALASKAN	(Anchorage)	Dillingham	(Juneau)*	Mat-Su	Sitka
	Barrow	Fairbanks	Ketchikan	Nome	Seward
WASHINGTON DC	Bethel	Haines	Kodiak	*Petersburg	Soldotna (Kenai)
	Delta Junction	Homer	Kotzebue	Sand Point	Valdez
Sen. Stevens					*Wrangell
Sen. Murkowski					
Congressman Young					

SPECIAL OFF-NET* LOCATIONS/PHONE NUMBERS: Rhonda Butterfield + perhaps one other will come to Anch LIO.

Chairing Site/Person * [illegible] *

X Kathleen Zalewski
Signature of Sponsor/Contact Person Date

-------- TELECONFERENCE OFFICE USE ONLY --------

MODERATOR NOTES

Special backup, publicty or technical considerations.

POST TELECONFERENCE NOTES

SITE/LOCATION:

LOCAL MODERATOR:

T/C Started:

T/C Ended:

Was T/C Recorded?

Was T/C Broadcast on RADIO or TV?

(If yes, what stations?)

TESTIFIED/PARTICIPATED:

UNABLE TO TESTIFY:.

OBSERVORS:

TOTAL #:

BILLING INFORMATION

Billing Address:

zip

Phone Charges To: (area code) (phone number)

CATEGORY: Legislative ___ Non-Legislative ___

AMOUNT PAYABLE:

NOTIFICATION OF BILL HEARING

WEEK OF: 2/1

BILL #	BILL TITLE	DEPARTMENT	DATE	SPONSOR	DATE
HB10 (HB679	imitation controlled sub. received back up material 1/18 Roger McCoy to testify (1/21)			Abood	1/19
	Request for F.N. (1/21) Set up HC on Feb 1 at 1.30 with Anch.				
1/31	Lt. Roger McCoy				

HB No. 10--RE: Imitation Controlled Substances Act---ABOOD, WENDTE, LINDAUER

1--This bill names seven susbstances that could be used to manufacture imitation controlled substances (look-alike drugs), as depcited in AS. 17.10 etc. (Narcotic drugs) and AS 17.12,etc. (Depressant, Hallucinogenic and Stimulant Drugs).

2--This worksheet is NOT section-by-section analysis, (Sponsor should provide that, as well as witness(es)), but see material in file from 12th Legislature.

3--In FORFEITURES chapter (AS 17.14.050) possible forfeitures are are considerably expanded from the meagre paragraph in AS 17.12.130 which merely mentions in passing "counterfeit drugs" and forfeitures of same. This provides for forfeiture the substance,raw materials, products, equipment used in making same. or processing, cmpoounding, distributing, delivering or containers or conveyances including aircraft, vehicles or vessels used in sale, transporting, receipt, possession or concealment of substance.

IMPACT:

WITNESSES:

PROPOSED CHANGES:

FISCAL NOTE:

HB

14

COMMITTEE REPORT

HOUSE

FINANCE

(7)

FURTHER:

3/10/83

Date: [illegible]

Mr. Speaker:

The Committee on JUDICIARY has had HB 14

"An Act relating to processing of permits by state agencies; and to administration of the Alaska coastal management program."

under consideration and reports it back as follows:

[ ] do pass [ ] do not pass

[ ] do pass with attached amendments(s)

[✓] replace with CS for [illegible] [✓] same title [ ] new title

and recommends _____

[ ] AND attaches a "Letter of Intent" [ ] New Fiscal Note [ ] Zero Fiscal Note Attached

[ ] reports it back without recommendation

[ ] referred to the _____ Committee

MEMBERS SIGNING DO PASS	MEMBERS HAVING OTHER RECOMMENDATIONS:
[illegible]	
[illegible]	
[illegible]	
[illegible]	

[illegible]

CHAIRMAN

H 60

COMMITTEE REPORT

HOUSE

FINANCE

FURTHER:

(7)

5/27/83

Date: 6-7-83

Mr. Speaker:

The Committee on JUDICIARY has had HB 94

"An Act relating to processing of permits by state agencies, and to administration of the Alaska coastal management program."

under consideration and reports it back as follows:

[ ] do pass [ ] do not pass

[✓] do pass with attached amendments(s)

[ ] replace with CS for HB 94 (FIN) [✓] same title [ ] new title

and recommends _____

[ ] AND attaches a "Letter of Intent" [ ] New Fiscal Note [ ] Zero Fiscal Note Attached

[ ] reports it back without recommendation

[ ] referred to the _____ Committee

MEMBERS SIGNING
DO PASS

MEMBERS HAVING
OTHER RECOMMENDATIONS:

CHAIRMAN

H 60

STATE OF ALASKA
PRELIMINARY STATEMENT OF FISCAL IMPACT

Bill No: HB 14 Date on Bill: 1/18/83
Title: Permit Processing/Alaska Coastal Management Program
Sponsor: Representative Martin
Requestor:

1. Estimated fiscal impacts on: Department of Community & Regional Affairs

a. Expenditures:

(Thousands of Dollars)

			FY 83	FY 84	FY 85	FY 86		
Capital				-0-	-0-	-0-		
Operating				-0-	-0-	-0-		
Total				-0-	-0-	-0-		

b. Revenues:

Revenue								

2. Source of funds to offset fiscal impact of bill:

3. Assumptions:

The reshuffling of permit authority would have no impact upon the Department. No fiscal impact.

4. Disclaimer:
This statement has not been reviewed by the OMB in the Office of the Governor. It does not represent the policy of the Sheffield Administration or the final estimate of fiscal impact.

Prepared By: Richard Rainery RR Phone: 465-4703
Division: Commissioner's Office Date: 2/15/83

Approved by Commissioner: [signature] Date: 2/18/83
Department: Community & Regional Affairs

5. Distribution:
Original to Legislative Finance
Copy to OMB
Copy to Sponsor
Copy to Requestor

2/8/83

STATE OF ALASKA
FISCAL NOTE

Revision Date , 1983

I. REQUEST
Bill/Resolution No.: HB 14 ~~702~~
Title: Re: Permitting
Sponsor: Martin
Requestor: House Labor and Commerce

II. FISCAL DETAIL
Agency Affected: Natural Resources
Program Category Affected:
BRU, Program or Subprogram(s) Affected: several

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 83	FY 84	FY 85	FY 86	FY 87	FY 88
OPERATING						
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 COMMODITIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC						
TOTAL OPERATING	see analysis					
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER (Specify Source)						

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						
	see analysis					

II. SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

IV. ANALYSIS:

Actual final impacts of this legislation will depend upon the specifics of resulting regulations, inter-agency memoranda of understanding detailing responsibilities and procedures, and RSA funding arrangements and personnel transfers. In any event, DNR will require additional personnel in order to act as lead agency.

~~XXXX

STATE OF ALASKA
FISCAL NOTE

Revision Date , 1983

Page 1 of 2

I. REQUEST

Bill/Resolution No.: HB 14 701
Title: "...processing of permits..."
Sponsor: Repr. Martin
Requestor: House Labor & Commerce

II. FISCAL DETAIL

Agency Affected: Department of Law
Program Category Affected: General Govt.
BRU, Program of Subprogram(s) Affected: Legal Services

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 83	FY 84	FY 85	FY 86	FY 87	FY 88
OPERATING						
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 COMMODITIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND	-0-	-0-	-0-	-0-	-0-	-0-
FEDERAL FUNDS						
OTHER (Specify Source)						

POSITIONS:

FULL-TIME	-0-	-0-	-0-	-0-	-0-	-0-
PART-TIME						
TEMPORARY						

III. SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

N/A

IV. ANALYSIS: Attach a separate page for any Analysis

Prepared By: Richard L. Pegues Richard T. Pegues, Director Phone: 465-3672
Division: Administrative Services Division Date: April 13, 1983
Approved by Commissioner: Richard L. Pegues for Norman C. Gorsuch, Attorney General Date: April 13, 1983
Department: Department of Law

Distribution:
Original to Legislative Finance
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Copy to Sponsor
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STATE OF ALASKA
FISCAL NOTE

Revision Date , 1983

I. REQUEST
Bill/Resolution No.: HB 14 ~~402~~
Title: Re: Permitting
Sponsor: Martin
Requestor: House Labor and Commerce

II. FISCAL DETAIL
Agency Affected: Natural Resources
Program Category Affected:
BRU, Program or Subprogram(s) Affected: several

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 83	FY 84	FY 85	FY 86	FY 87	FY 88
OPERATING						
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 COMMODITIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC						
TOTAL OPERATING	see analysis					
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER (Specify Source)						

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						
	see analysis					

III. SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

IV. ANALYSIS:

Actual final impacts of this legislation will depend upon the specifics of resulting regulations, inter-agency memoranda of understanding detailing responsibilities and procedures, and RSA funding arrangements and personnel transfers. In any event, DNR will require additional personnel in order to act as lead agency.

Prepared By: Mark Wittow Mark Wittow Phone: 465-2400
Division: Commissioner's Office Date: 4/15/83

Approved by Commissioner: for Mary Sullivan Date: 4/18/83
Department: Natural Resources

Distribution:
Original to Legislative Finance
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Copy to Department (for Governor introduced bills)
Copy to Sponsor

5/10

COMMITTEE REPORT

HOUSE

JUDICIARY

FINANCE

(9)

FURTHER:

4/26/83

Date: 5/9/83

Mr. Speaker:

The Committee on RESOURCES has had HB 14

"An Act relating to processing of permits by state agencies, and to administration of the Alaska coastal management program."

under consideration and reports it back as follows:

[ ] do pass [ ] do not pass

[ ] do pass with attached amendments(s)

[X] replace with CS for HB 14 (Resources) [✓] same title [ ] new title

and recommends

[ ] AND attaches a "Letter of Intent" [ ] New Fiscal Note [ ] Zero Fiscal Note Attached

[ ] reports it back without recommendation

[ ] referred to the Committee

MEMBERS SIGNING DO PASS

Dick Shultz

John F. Glaska

John Ringstad

Kevin Cowdery

MEMBERS HAVING OTHER RECOMMENDATIONS:

[illegible] Do not pass unless [illegible]

Ronald F. Fenn [illegible]

[illegible]

Anthony Vaska Do Not Pass

Dick Mickey It's a travesty

John Ringstad

CO-CHAIRMAN

John Ringstad

H 60

4/26

COMMITTEE REPORT

HOUSE

(7)

1/17/83

FURTHER: RESOURCES
JUDICIARY
FINANCE

Date: 4/21/83

Mr. Speaker:

The Committee on LABOR & COMMERCE has had HB 14

" Relating to processing of permits by state agencies, and to administration of the Alaska Coastal Management program. "

under consideration and reports it back as follows:

[ ] do pass [ ] do not pass

[ ] do pass with attached amendments(s)

[X] replace with CS for HB 14 (L+C) [ ] same title [ ] new title

and recommends _____

[ ] AND attaches a "Letter of Intent" [ ] New Fiscal Note [X] 2 Zero Fiscal Note Attached

[ ] reports it back without recommendation

[ ] referred to the _____ Committee

MEMBERS SIGNING DO PASS	MEMBERS HAVING OTHER RECOMMENDATIONS:
[illegible]	Nick Koponen Do not pass
	[illegible]
	[illegible]
	Rick Uehling (NO REC)
	H Malone - DO NOT PASS UNLESS AMENDED

CHAIRMAN

H 60

STATE OF ALASKA
FISCAL NOTE

Revision Date , 1983

Page 1 of 2

I. REQUEST

Bill/Resolution No.: HB 14 701
Title: "...processing of permits..."
Sponsor: Repr. Martin
Requestor: House Labor & Commerce

II. FISCAL DETAIL

Agency Affected: Department of Law
Program Category Affected: General Govt.
BRU, Program of Subprogram(s) Affected: Legal Services

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 83	FY 84	FY 85	FY 86	FY 87	FY 88
OPERATING						
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 COMMODITIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND	-0-	-0-	-0-	-0-	-0-	-0-
FEDERAL FUNDS						
OTHER (Specify Source)						

POSITIONS:

FULL-TIME	-0-	-0-	-0-	-0-	-0-	-0-
PART-TIME						
TEMPORARY						

III. SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

N/A

IV. ANALYSIS: Attach a separate page for any Analysis

Prepared By: Richard L. Pegues Richard L. Pegues, Director Phone: 465-3672
Division: Administrative Services Division Date: April 13, 1983
Approved by Commissioner: Richard L. Pegues for Norman C. Gorsuch, Attorney General Date: April 13, 1983
Department: Department of Law

Distribution:
Original to Legislative Finance
Copy to Office of Management and Budget (for Legislature introduced bills)
Copy to Department (for Governor introduced bills)
Copy to Sponsor
Copy to Requestor (if different from Sponsor)

HB 14 vol. 1 - page 222
Fiscal Note
Analysis

This bill greatly shortens the permitting process time of state agencies. Although this will cause us to assist with some new regulations necessary for a shortened permit process for the permitting agencies, this additional work will not be time consuming or burdening. Therefore, the bill will have a fiscal impact on the Department of Law's operations. Considerable fiscal impact will occur on the part of agencies responsible for permits, such as Fish & Game, DEC and Natural Resources, as they gear up to review and issue permits in shortened times provided by the bill.

COMMITTEE REPORT

HOUSE

(7)

FURTHER: FINANCE



5/10/83

Date: May 25, 1983

Mr. Speaker:

The Committee on JUDICIARY has had HB 14

"An Act relating to processing of permits by state agencies; and to administration of the Alaska coastal management program."

under consideration and reports it back as follows:

[ ] do pass [ ] do not pass

[ ] do pass with attached amendments(s)

[✓] replace with CS for HB 14 (RES) [✓] same title [ ] new title

and recommends

[ ] AND attaches a "Letter of Intent" [ ] New Fiscal Note

[ ] Zero Fiscal Note Attached

[ ] reports it back without recommendation

[ ] referred to the Committee

MEMBERS SIGNING
DO PASS

MEMBERS HAVING
OTHER RECOMMENDATIONS:

CHAIRMAN

H 60

League of Women Voters of Alaska

COMMENT ON HB 14 REGARDING PROCESSING OF PERMITS
FOR HOUSE JUDICIARY COMMITTEE
May 25, 1983

The League of Women Voters of Alaska has followed the issue of processing of permits for several legislative sessions. We do not have a particular interest in the outcome of most permits, but we do have a great interest in the process of granting permits. We believe that the public interest in our air, water, and land resources must be protected. This should be the primary purpose of any permitting system. Further, the public must have appropriate opportunities to participate in the process. All factors in a permit decision must be balanced so that the greatest weight is given to the public interest.

The League of Women Voters of Alaska is composed of the five local Leagues in Ketchikan, Juneau, Central Kenai Peninsula, Anchorage, and Fairbanks, a provisional League in the Matanuska-Susitna area, a small unit in Kodiak, and a few scattered at-large members. We speak on selected governmental issues based on our principles and positions. The positions and principles are adopted following in-depth study and consensus among the whole membership.

The League of Women Voters of Alaska opposes HB 14. There has been no outpouring of public demand for this type of legislation. Rigid schedules should not be established by statute. We believe that any perceived problems with the permitting process have been and will continue to be corrected administratively. Administrative changes can provide the necessary flexibility to accommodate a variety of permits while providing for efficient processing of them.

We have some specific comments on the bill. The time limits for processing permits delineated in the bill do address some of the concerns we have had with some versions of bills dealing with this issue. There has been some provision made for public input in the allowable time limits. We still believe that the time limits are unnecessarily rigid for three reasons. First, there is no public demand for specific time limits. Second, we can envision cases where a field season would be desirable, or the issues surrounding a particular development would be so complex, that it might not be possible to reach a sound decision within the time limits. The bill does not permit much flexibility in these few cases. Thirdly, we are concerned that staffing levels at some future time may not be adequate to give full consideration to all permits applied for. Then many permit applications may face the provision for automatic approval. We do not believe that automatic approval upon failure to meet the time requirements is in the public interest. We can see a number of potential problems with this provision. For example, many permits may receive pro forma approval or denial without proper scrutiny in order to meet the requirement. In either case we suspect the result will be costly litigation which could add years of delay to any project.

The bill provides for designation of a lead agency. In principle this is reasonable. A "one-stop" process could be a great benefit to an applicant. In practice, an agency with an interest in a particular outcome may have difficulty fairly balancing conflicting information submitted by other agencies. The lead agency must be a neutral party in the process if the public is to have faith in its ability to balance competing factors.

The League of Women Voters of Alaska believes this bill is both unnecessary and unwise. There is no compelling need at this time to make statutory changes in the permitting process. This bill will not serve the public interest.

Prepared by Mary Beth Judey
4837 Palo Verde Dr.
Fairbanks, AK 99701
479-3765

(2)

AMENDMENT

OFFERED IN THE HOUSE: BY: Representative Bussell

TO: CS HOUSE BILL No. 14 (Resources)

SENATE BILL No. _____

PAGE: 5 LINE: 14

insert:

the Office of the Governor, Division of Policy Development and Planning.

delete:

[Department of Natural Resources.]

LAW OFFICES

BIRCH, HORTON, BITTNER, PESTINGER AND ANDERSON

A PROFESSIONAL CORPORATION

130 SEWARD STREET, SUITE 411

JUNEAU, ALASKA 99801

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1127 WEST SEVENTH AVENUE
ANCHORAGE, ALASKA 99501
(907) 276-1550
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FAIRBANKS, ALASKA 99701
(907) 452-1666

1140 CONNECTICUT AVE., N.W.
SUITE 1100
WASHINGTON, D.C. 20036
(202) 659-5800

LLOYD V. ANDERSON
LUANN E. BAILEY
SUSAN P. BEHLKE
RONALD G. BIRCH
WILLIAM H. BITTNER
WILLIAM P. BRYSON
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JACK D. CLARK
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JOSEPH W. EVANS
JOSEPH W. GELDHOF
PAUL H. GRANT
TIMOTHY M. HAAKE *
HAL R. HORTON
CAROL A. JOHNSON
MARC W. JUNE
STANLEY T. LEWIS
JEFFREY B. LOWENFELS
CATHARINE C. MACKAY-SMITH *
PATRICK H. OWEN
MICHAEL J. PARISE
SUZANNE C. PESTINGER
MICHAEL V. REUSING
ELISABETH H. ROSS
WILLIAM R. SATTERBERG
E. BUDD SIMPSON
DANIEL W. WESTERBURG

* NOT ADMITTED IN ALASKA

April 14, 1983

The Honorable Walt Furnace, Chairman
House Labor and Commerce Committee
Alaska State Legislature
Pouch V
Juneau, Alaska 99811

Re: SSHB 14: Sealaska Amendments

Dear Chairman Furnace:

Following yesterday's hearing, I reviewed Sealaska's proposed changes to SSHB 14 with Bill Berrier. I believe the following accurately represents the results of our discussions:

1. Sealaska has proposed the insertion of a new subsection "e" to proposed AS 44.62.635. At yesterday's hearing, concerns were expressed that our amendments' reference to the "Division of Policy Development and Planning" was improper, since DPDP was being reorganized within the Office of Budget & Management. However, because the Governor's executive order creating that office was rejected by the legislature, and because legislation creating the office (SB 152) has not yet been enacted, it is proper drafting to continue to refer to the Division of Policy Development & Planning by its historical name;

2. Sealaska had proposed to add, as a new Section 4 to HB 14, the "Authority not Enlarged" section of its proposed legislation. See Sealaska bill, p. 3, lines 6-14. This section is particularly vital if the legislature is to solve the "foot in the door" problem described in my testimony of April 12th. Mr. Berrier sees no objection to the inclusion of this subject matter in the bill; however, he would prefer to see the issue addressed in the existing lead agency section of HB 14. In response to Mr. Berrier's suggestion, Sealaska would recommend that new subsections (f) and (g) be added to proposed AS 44.62.635 to read:

(f) "Nothing in this section, or AS 46.40, may be construed as authorizing a lead agency, or any resource agency, to deny or condition a consistency determination because of impacts which may be caused by activities not themselves requiring a state permit or disposal of interest in state land."

(g) "In making a consistency determination under this section for an activity occurring outside the boundaries of a coastal resource district with an approved district plan, the lead agency, or any resource agency, may consider only those statewide standards and guidelines adopted by the Alaska Coastal Policy Council under AS 46.40.040(1)."

3. Sealaska, finally, had proposed the insertion, as a new Section 4 to HB 14, of proposed AS 46.40.065 (Sealaska bill, pg. 2, lines 4-13). This provision would have required landowner consent before "areas which merit special attention" could be designated outside the boundaries of coastal resource districts. Without this provision, the Alaska coastal policy council will retain almost unbridled authority to impair or prohibit major resource development activities in the unorganized borough.

Mr. Berrier believes that the insertion of this provision would violate the "one subject rule" (Alaska Const., Art. II, Sec. 13) because HB 14 deals only with Coastal Management procedures, while Sealaska's proposed 46.40.065 deals with the substantative authority of the Alaska Coastal Policy Council.

Sealaska respectfully disagrees with Mr. Berrier's conclusion. The Alaska Supreme Court has, repeatedly, very broadly construed the state's "one-subject" rule, and has required only that the subjects included bear some rational relationship to each other, or fall within the same "general idea." Gellert v. State, 522 P.2d. 1120, 1123 (Alaska 1974); see also North Slope Borough v. Sohio Petroleum Corporation, 585 P.2d. 534 (Alaska 1978). The driving force behind permit reform legislation over the past four years has been to ease the burden which the Alaska coastal management program has placed upon private industry in the state. Major industry in the state will be benefited little by the designation of a lead agency, if that agency may still prohibit major resource development in the unorganized borough without the landowners meaningful participation in the process. Both HB 14, and proposed AS 46.40.065, very much deal with the procedures governing the application of the Alaska Coastal Management Act to private industry. As a result, they both

"embrace some one general subject... [and] fall under some one general idea..." Gellert v. State, 522 P.2d. at 1123. Thus, there hardly appears the "substantial and plain" violation of the one-subject rule which would raise a serious constitutional question. North Slope Borough v. Sohio Petroleum Corporation, 585 P.2d. at 545.

Nonetheless, should the committee conclude that a significant "one-subject rule" problem exists with respect to the inclusion of proposed AS 46.40.065, Sealaska would urge the committee to include that provision as a companion bill. The unilateral designation of AMSA's in the unorganized borough is a very serious problem, and one which deserves consideration in conjunction with any permit reform legislation.

Sealaska appreciates the consideration given its amendments by this committee. We, in turn, have made every effort to accomodate our amendments to the needs of other industries in the state, and as well to the common goal of insuring the prompt consideration and passage of HB 14. Since the enactment of HB 14 this session will in all likelihood end the "permit reform" debate before the legislature, I'm sure the committee can appreciate Sealaska's concern that the needs of the Southeast Alaska timber industry, and of Native regional corporations throughout the state, are recognized in any permit reform legislation.

Sincerely,

BIRCH, HORTON, BITTNER,
PESTINGER AND ANDERSON

Jon K. Tillinghast by SBJ

Jon K. Tillinghast

JKT:rdg

Alaska MUNICIPAL League

TELEPHONES
(907) 586-1325
586-6526

204 N. FRANKLIN ST.
JUNEAU, ALASKA 99801

May 23, 1983

To: House Judiciary Committee

From: Ginny Chitwood

Re: HB 14 - Processing of Permits

Over the past several years during the debate on permit reform bills, there have been alot of questions raised by municipalities about where local governments and coastal resource districts fit in the whole process of consistency decisions and the approval of permit applications. In one version, local recommendations were to be given "great weight", but what that phrase meant was unclear. This year, the local recommendations need to be "considered", according to HB 14, and are not mentioned at all in SB 219. Does this mean that local planning and zoning ordinances are no longer valid? that approved coastal management programs can be overridden? that the wishes of the residents of an area have no more weight than a letter from John Doe in Podunk? We're sure that's not the legislature's intent, but that is not clear from the legislation.

AML has consistently endorsed permit reform, either administratively or legislatively, but opposes streamlining strictly for the sake of streamlining, especially if the wishes of local people are going to be overridden in the process. We hope that you will schedule a teleconference hearing to ensure the widest possible participation in the discussions of this bill.

James M. Souby
Director
Division of Policy Development
and Planning

DATE: January 3, 1983

FILE NO:

TELEPHONE NO:

FROM: Wendy Wolf
State-Federal Coordinator
Division of Policy Development
and Planning

SUBJECT: Oil & Gas Permits
in 1982

In 1982, 22 federal Oil and Gas Permit reviews were completed by this office. All these projects were declared consistent. By each oil company, the number of days needed for each review is indicated:

ARCO	30(2) 38(3) 41 42 44 45 52 112	This averages out to 46 days each, or 40 days exclusive of the 112 day review. The latter is Put 7 - a previously inconsistent project. 3 other projects were withdrawn by the applicant prior to review close out.
EXXON	51	
MOBIL	33	
PHILLIPS	39 41	
SHELL	43 48	
SOHIO	42 30	
TENNECO	55	
UNION	142 146	These Union permits were held up by negotiations between Union and DEC over the necessity for discharge permits for relief pits.

The overall average review time is 53.9 days for these permits. Exclusive of the 3 lengthy reviews, the review time averages 41 days.

Our new expediting procedures appear to be working well.

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

FIRST JUDICIAL DISTRICT AT JUNEAU

CITY OF ANGOON and SIERRA CLUB, Petitioners, vs. ALASKA DEPARTMENT OF ENVIRONMENTAL CONSERVATION and SHEE ATIKA, INC., Respondents. (C)	FILED IN THE SUPERIOR COURT STATE OF ALASKA FIRST DISTRICT AT JUNEAU FEB 10 1983 Barbara Pittman, Clerk By SAW Deputy No. 1JU-82-1919 Civil

MEMORANDUM OF DECISION AND ORDER

Upon hearing oral arguments of counsel and testimony of three witnesses, and upon consideration of the pleadings and memoranda, the court has arrived at the following conclusions.

1. Petition for Review

The Petition for Review is granted, pursuant to App. R. 610(b)(1). Postponement of review of the November 8, 1982 decision of the Commissioner of the Department of Environmental Conservation (DEC) on petitioners' emergency motion for stay would result in injustice. The injustice consists of petitioners inability to obtain a ruling from the Commissioner of DEC on their request for a stay before clearcutting takes place.

The Petition for Review raises the question of whether the Commissioner of DEC erred in concluding he had no jurisdiction to enjoin the clearcutting at issue. The court finds in favor of the petitioners on this question. The Commissioner himself recognized that he should consider standards for protection of the coastal zone under the Alaska Coastal Management Act when reviewing respondent's plans to construct a log transfer facility However, the Commissioner did not feel that the proposed clear-cutting was a proper subject of his permitting authority. Therefore, he held he had no power to enjoin the clearcut.

The Coastal Management Act should be given a broader reading

The Commissioner's authority is not delineated by the activity on the face of the application for a Certificate of Reasonable Assurance. The Act envisions a comprehensive review by agencies of impacts to coastal land and water. Consequently, activities closely associated with uses specifically mentioned in permit applications must also be considered.

The court finds no compelling reason to treat the clearcut separately from the log transfer facility. The cutting, by respondents' own testimony, will serve a variety of functions, all related to the sorting, storage, and transfer facilities of this project. The fact that some of the cut acreage is intended for a log sort yard does not alter the court's reasoning. No persuasive evidence was presented to require that a sort yard must receive separate consideration. Since the Commissioner has the authority, and is in fact mandated, to determine consistency with the ACMP for the entire project at Cube Cove, he has the jurisdiction to issue a stay if warranted.

The case is remanded to the Commissioner of DEC to determine whether the clearcutting should be enjoined pending the adjudicatory hearing. The interests of judicial and administrative economy dictate that DEC make this decision, not the court, given the extensive record before the department in this case already. In remanding, this court is not making any judgment on the merits of petitioners' emergency motion for stay. The court is only confirming the Commissioner's authority, and directing that he exercise that authority as soon as possible.

2. Preliminary Injunction

Ordinarily, the function of a preliminary injunction is to preserve the status quo -- or establish a new status -- while an underlying action is pending. The showing for an injunction involves three factors: irreparable harm to petitioners, little or no harm to respondents, and the existence of a substantial

question presented on the merits.

In this case, the underlying action before the court is a Petition for Review. The question presented by the Petition has been decided, in favor of the petitioners, so the traditional purpose of an injunction does not exist. However, since a TRO has been in effect for almost three months, and the Commissioner will shortly be deciding the propriety of a stay, this court finds further temporary injunctive relief appropriate. The current injunctive order will be extended only until such time as the Commissioner issues a ruling on petitioner's emergency motion for stay. The court urges that this action take place in the very near future, so that the duration of its injunctive order is extremely short-lived.

For the reasons stated above, the Petition for Review is granted and decided in favor of petitioners. The Motion for Preliminary Injunction is granted only insofar as it extends the court's current injunctive order until the Commissioner of DEC rules on the merits of petitioners' emergency motion for stay. The Commissioner is directed to handle this matter expeditiously.

IT IS SO ORDERED.

DONE at Juneau, Alaska, this 10th day of February, 1983.

Walter L. Carpeneti

Walter L. Carpeneti
Superior Court Judge

CERTIFICATION

This is to certify that on the above date I provided a copy of the above Memorandum of Decision and Order to:

Barbara Malchick, Esq.
Douglas Mertz, Esq.
Jacquelyn R. Luke, Esq.

Secretary to the Judge

Department of Environmental Conservation

Subcommittee: NRMEC
Members: Bettisworth, Grussendorf, Vaska/Wendte

House Ceiling: 11,300.
Senate ceiling: 11,000.
Governor: 11,809.

Federal Receipts: 1620.4
FY 83 Federal Receipts: 2282.7

Line item or program	Request	Gov.Amd.	House	Difference
Facilities construction and operation	1184.9	1150.	1082.	-5.8%

The area of water and sewer construction was identified by members of the subcommittee as a major interest in terms of capital projects. This area is receiving federal money to train water and sewer operators (65.) This unit administers the Village Safe Water, Municipal Grants (for sewer projects) and the Operator Training and Certification programs. The difference between the House and Governor's proposals amounts to 68. and would delete an environmental conservation supervisor position and travel money.

Environmental Quality Permit Section	0	0	0	0

This section has been cut out, due to the shifting of these functions to regional offices. This is felt to be more efficient, thus cutting down the time to process permits. This localization of function is estimated to cut down the time by up to 2 weeks. In dividing up the section, 12.2 was given to the northern regional office, 12.2 to central and 60.7 to southeast. Other money was shifted to the director's office.

Environmental Quality Southcentral region	2092.9	1798.6	1794.	-0.1%

The size of the rquest was based on a 6% increase for inflation and money to take up those areas which were covered by federal money which would not be present for the coming year.

Env. Quality Management Director's office	241.0	225.1	220.1	-2.1%

There has been an increase from FY 83 levels (146.8) largely because of transfers from other programs within this unit (Water Quality, Management and Technical Assistance, Air and Solid Waste.)

Env. Quality Management Water Quality Management	1081.	915.5	1101.5

SHORT FORM PAGE D NAT XX PUB XX

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OVERKILL

OR

HAVE WE ARRIVED AT THE POINT WHERE IT IS NO LONGER POSSIBLE TO GET THERE FROM HERE?



Part of the life blood of any logging operation in Southeast Alaska is the ability to establish logging camps and the facilities to put logs into the water and boom and raft them preparatory to towing them to a mill site or shipping point. Because these facilities involve uplands, tidelands and navigable waters, an applicant must clear the activity necessary for construction with an upland owner (if other than his own private property), the Alaska Department of Natural Resources (DNR) because they are custodians of the State's tidelands and the Corps of Engineers, Department of the Army (Corps) as the agency responsible for issuing permits for facilities in navigable waters.

To illustrate the total "overkill" of procedures and duplication one must struggle through in obtaining the necessary permits and approvals, it is necessary to track the procedure. Neets Bay 10 and 12 are a good example of such facilities and their record.

Neets Bay is within the Ketchikan Pulp Company (KPC) (KPC is a wholly-owned subsidiary of Louisiana-Pacific Corporation)long term timber sale and the original need for camp, log transfer and boom and rafting facilities was recognized and reviewed by the Forest Service (FS) multi-discipline team when designating areas for the 1974-79 five-year operating area for which an environmental impact statement (EIS) was written. Therefore, as the upland owners, the Forest Service reviewed and approved the site for these facilities and included them in the EIS prior to commencing logging operations on the five-year period beginning July 1, 1974.

On April 26, 1977 (Exhibit A) a letter was sent to the Corps together with application for a permit described as "proposed standing log boom retained in position by 5 ton anchors, log transfer facility using approximately 1,000 cubic yards of upland shot rock and employing an A-frame lift-off device, an offloading ramp consisting of a lashed log crib filled with shot rock from an upland source, a small boat dock and ramp to aid in construction of roads and facilities".

On June 15, 1977 we were sent a letter by the Corps notifying us of their receipt of our application, the assignation of Reference No. 071-OYD-2-770123 and the notification of assessment of a $100.00 processing fee should approval be granted. (Exhibit B)



On July 19, 1977 we received from the Corps (Exhibit C) a copy of a letter from the U. S. Environmental Protection Agency (EPA) requesting the permit, if issued, contain the following special conditions:

1. The permittee shall implement, once per year for a period of three years, a bottom sampling program to determine whether lost solids have accumulated in the project waters associated with the log transfer site. Each such sampling shall be completed not later than September 1 of each sampling year.

2. The permittee shall submit a brief report of the findings of each sampling effort and a sketch showing location of sampling sites, to the Corps of Engineers, the Alaska Department of Environmental Conservation and the U.S. Environmental Protection Agency not later than October 15, of each sampling year.

3. The permittee shall remove all significant accumulations of lost wood solids, if any, and dispose of them in an upland fill approved by the U.S. Forest Service and/or the Alaska Department of Environmental Conservation and concurred in by the Environmental Protection Agency. The permittee shall modify log transfer procedures, including possibly the relocation of the transfer site if significant accumulations of lost wood solids are found as a consequence of any sampling program conducted by the permittee or the Environmental Protection Agency.

AIthough EPA saw fit to copy the Alaska Department of Environmental Conservation (DEC), the U.S. National Marine Fisheries Service (NMFS), the U.S. Fish & WildLife Service (USF&WS) and the Forest Service with their letter, they did not see fit to send it to the applicant thus requiring a copy of the letter to come from the Corps with their notice to us and our return agreement July 29, 1977 to the Corps (Exhibit D) with copy to EPA.

On August 29, 1977 and after advertisement of request for public comment, the Corps sent a letter (Exhibit E) informing us to submit our processing fee and we would receive our permit. On September 15, 1977 having submitted the required fee we received a cover letter and our permit from the Corps (Exhibit F). This permit contained standard Corps conditions a-x (24 in number) plus the three additional conditions of EPA. Included in the 24 Corps conditions are the conditions for applicant

to "at all times be consistent with applicable water quality standards, effluent limitations and standards of performance, prohibitions, and pretreatment standards established pursuant to Sections 301,302,306 and 307 of the Federal Water Pollution Control Act of 1972 (P.L. 92-500; 86 Stat. 816), or pursuant to applicable State and local law".

Another subsequent section also adds, "...if applicable water quality standards are revised or modified during the term of this permit the permit will be modified if necessary to conform with such revised standards within 6 months of the revision..."

On September 30, 1977 we applied to the Department of Natural Resources for a tideland permit for this same area. However, due to market changes affecting our need for logs, scheduling our logging operations, together with the need to recover blown down timber in other areas, it became apparent we would not be moving into this area as planned.

It is difficult to be precise in these schedules when we must get our Corps permits started a minimum of six months prior to construction and construction must precede logging by at least one year. This means we are estimating our logging needs one and one-half to as much as three years in advance in relation to needing permits, and we are working with the Forest Service preparatory to writing environmental impact statements as far as eight years in advance of construction for some of these facilities.

In any event, we did not start the work applied for in either the DNR tidelands permit or the Corps permit as expected. On April 16, 1979 we received notice from DNR (Exhibit G) to notify them of our intentions on the tidelands permit or they would close the file. We advised DNR by letter of April 20, 1979 (Exhibit H) of our new estimated dates of construction schedule starting on March 1, 1980 and completion on August 1, 1980.

It was now apparent our logging activities in this area would not be completed during the 1974-79 five-year period but would now fall withir the 1979-84 period. This necessitated the FS multi-discipline team review and the inclusion of this area and its facilities in yet another EIS.

We also wrote the Corps on August 8, 1979 (Exhibit I) requesting extension of our permit to cover our new schedule. On October 4, 1979 (after a period of almost two months) we received word from the Corps (Exhibit J) stating they could not extend our permit because we had not commenced work by April 26, 1978 or a year after our original application and must reapply.



On October 16, 1979 we sent a cover letter and application to the Corps (Exhibit K). The letter, application and drawing were basically the identical ones used for our original application of April 26, 1977. On or about October 23, 1979 we received from the Corps a letter (undated) (Exhibit L) designating our application NPACO-RF-P Neets Bay 12 with the reference number 071-OYD-2-790398. We were further informed by the Corps that further action on our permit was suspended because the permit area was within the Alaska coastal zone and we must provide a certification that our activity would comply with the Alaska Coastal Management Program. Also, they advised us that a permit cannot be issued until we have obtained a Certificate of Reasonable Assurance or Waiver of Certification as required by Section 401(a)(1) of the Clean Water Act. This certification or waiver is to be issued by the DEC.

We next received a letter dated November 30, 1979 from DNR (Exhibit M) informing us that our tideland permit ADL 100073 for Neets Bay was to be advertised as shown on the attached notice. We then received a copy of the Corps public notice dated December 7, 1979 (Exhibit N) and attached was a copy of the public notice from the Office of the Governor, Division of Policy Development & Planning (DPDP) for Application for Certification of Consistency with the Alaska Coastal Management Program and also attached was the DEC public notice of Application for Water Quality Certification. This latter certification is assurance that any discharge to waters of the United States resulting from the project described in the Corps permit will comply with the Clean Water Act and applicable state laws, even though the applicant must agree to abide by these laws as a condition of obtaining the permit from the Corps and the permit itself so stipulates (see Corps permit General Conditions part b).

A letter dated December 12, 1979 was sent to the Corps from DPDP (Exhibit O) advising them they had received the application, were reviewing it for Alaska Coastal Management Program Consistency Determination and had distributed the material to the appropriate governmental agencies for a review which they were scheduled to close on January 10, 1980, soon after which they would send the review decision to the Corps. Also, the State Clearinghouse has now assigned State ID No. FD280-79121111FP.

On December 28, 1979 we had a telephone call from the NMFS questioning whether there was enough water under the transfer site to float the log bundles at all tides. We directed him to the plat submitted with our application indicating 50 to 60 feet and pointed out that the site would be of no use for our purposes if the bundles did not float. We agreed to make ourselves available to travel to the site with them However, we later found they had visited the site without cont[illegible] with us.



On January 4, 1980 we were copied on a letter sent from the Alaska Department of Fish & Game (ADF&G) (Exhibit P) requesting a one month extension to permit a more thorough evaluation and assessment of the impacts of this development. ADF&G sent copies of this letter to USF&WS, NMFS, EPA, two recipients (Juneau and Anchorage) at DNR, two recipients (both Juneau) at DEC, one other recipient at ADF&G and the State Clearinghouse.

Also, on January 4, 1980 the DPDP wrote the Corps (Exhibit Q) notifying them the Alaska State Clearinghouse was extending the closing date for review from their original January 10, 1980 by fifteen days which they calculated would be a closing date of February 2, 1980. (Actually, 15 days from January 10, 1980 is January 25, 1980).

On January 17, 1980 we received a copy of a letter from EPA to the Corps (Exhibit R) advising them the proposal may have adverse impacts on water quality and/or the aquatic resources and accordingly, coordination with appropriate State and Federal resource agencies was needed and they would expect to provide additional comments within 30 days. The EPA copied USF&WS, ADF&G, DEC and NMFS.

On January 18, 1980 we received a copy of a letter from the Corps to NMFS (Exhibit S) agreeing to extend the review period to February 7, 1980.

On January 29 we received notice and billing from DNR (Exhibit T) for the advertisement for our State Tideland Permit.

On February 8, 1980 we received a copy of a letter from EPA to the Corps (Exhibit U) informing them of no objection to issuance of this permit "provided the applicant complies with all State & Federal resource agency conditions that may be needed to protect the aquatic resources". A copy of this letter went to USF&WS, NMFS, ADF&G, and DEC. Had EPA read the requirements written into a Standard Corps Permit they would have noted the applicant must not only agree to comply with all State and Federal conditions but must also agree to currently comply if rules or regulations are added or modified and we would not now at this late date have to agree with what we must agree with to obtain the valid permit.

On February 15, 1980 we received a letter from the Corps (Exhibit V) enclosing a copy of a letter they received from the ADF&G saying they had reviewed the application and "find this project consistent with those Coastal Zone Management standards we have responsibility for reviewing and have no objections to issuance of a permit, provided the following special stipulations are included:

1. A non violent log transfer facility is employed.



2. The permit is limited to a five year period".

Copies of this letter dated February 1, 1980 were sent to NMFS, USF&WS, EPA, 2 recipients at DNR, 2 recipients at DEC, ADF&G, Clearinghouse and to the Applicant.

It is interesting to note that at this late date there is a requirement for a non violent dump when both the original and subsequent applications for permit detailed in the drawings of the facilities as well as in the verbal description a lift-off, non violent type of equipment to be used. Also, the insistence of a five year limitation with no explanation whatsoever of why they think this is necessary or investigation as to whether this limitation is consistent with the applicant's requirements.

We next heard directly from DPDP on February 19, 1980 (Exhibit W). They informed us that, "As currently planned, we have found the proposal to be inconsistent with ACMP. It will be consistent with the ACMP provided the attached stipulations are met.

INCONSISTENT DETERMINATION ATTACHMENT

Conditions related to South Neets Bay Timber Project
(State I.D. # FD 280-79121111 FP):

1. The Department of Environmental Conservation must first issue a Certificate of Reasonable Assurance stating that the proposed activity will comply with the requirements of Section 401 of the Federal Water Pollution Control Act Amendments of 1972 as modified by the Clean Water Act of 1977.

2. A non-violent log transfer facility must be employed.

Copies of this letter were sent to Office of Coastal Management (OCM), Department of Law, COE(Corps) and DEC. Again, we have the requirement for a non violent log transfer in the permit application.

At this point we seem to be in the position of not being able to get approval from DPDP until DEC goes to public notice and issues a Certificate of Reasonable Assurance that the project will be in compliance with Section 401 of the Federal Water Pollution Control Act even though this is stipulated by the Corps as a general condition of the permit.

We next received a letter from the Corps dated February 21, 1980 (Exhibit X) and relaying to us a letter they received from NMFS and indicating they had made two on-site inspections of the area to be covered by this application. They state, "As a result of these investigations, we believe that the proposed action will not significantly harm marine, estuarine, or anadromous fisheries resources if the following stipulations are incorporated into the permit:

1. Log transfer methods should be non violent. This will reduce the amount of bark debris knocked off in the transfer process.
2. This permit shall expire in five years.
3. A sufficient amount of clean shot rock shall be placed over all fill material so that erosion and leaching of fill material will not occur".

We were not copied on this letter, necessitating the Corps send us a copy and request our comments to NMFS who must then contact the Corps of our agreement. Also, had this agency read either the original or second application for this facility they, too, would have noted it was specifically for a lift-off (non violent) type and was to be filled entirely by shot rock. They also deemed a five year limitation on the permit without any explanation of the necessity or inquiry of the applicant.

Also on February 21, 1980 we wrote DPDP (Exhibit Y) agreeing to a non violent dump, even though this was the intention from the original application for this permit on April 26, 1977.

On March 3, 1980 we received from the DEC by Certified Mail, Return Receipt Requested (Exhibit Z) a cover letter transmitting to us a State of Alaska Department of Environmental Conservation Certificate of Reasonable Assurance. This document states the log transfer facility consisting of 1,000 cubic yards of shot rock fill and an A-frame lift-off device will be constructed along with other facilities. It then stipulates the following provisions:

1. A spill prevention control and counter measures plan in accordance with 40 CFR 112.4(c)*has been prepared by the applicant and submitted to ADEC.



2. A non-violent log transfer facility is employed.

3. A clean shot rock cap is placed over all fill material to prevent surface erosion.

4. ADEC 401 certification expires in five (5) years.

Copies of this letter were sent to Corps, EPA, ADL(DNR), ADF&G, NMFS, USF&WS, SERO(?), OCM and State Clearinghouse.

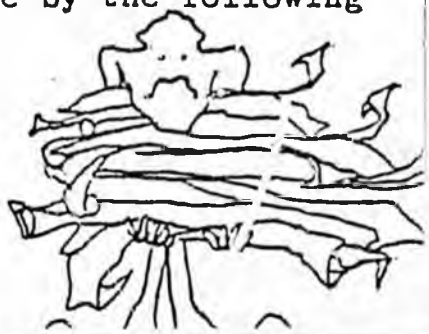
Although we do not understand why a spill prevention control and countermeasure plan is needed for approval of this permit we will submit one to DEC because to argue it would be time consuming and it will be required by the Coast Guard, FS and EPA prior to fuel being stored in the area. We will agree to a non violent log transfer as stipulated on both plans and description of our permits since April 26, 1977 and we will agree to a clean shot rock cap because all of the fill material will be clean shot rock as stated in application. We are still curious as to why so many agencies (or is it really one agency with a lot of shadows?) insist on a five-year limit without inquiring of us how long we will need the facility. In this case, we will most likely agree to the five year stipulation, only so we can commence the project and hope for an extension if we need the facility longer.

On March 3, 1980 we also received a copy of a letter from DPDP to the Corps (Exhibit AA) informing them they had received a Certificate of Reasonable Assurance from DEC stating that the subject project will comply with the requirements of Section 401 of the Federal Water Pollution Control Act. They further state they have now completed their ACMP review of the subject proposal and find it consistent with ACMP. Copies of this letter were sent to OCM, two recipients at ADF&G, DEC and Commissioner McAnerney of Regional Affairs (CRA).

As of this writing, on March 10, 1980, we do not have our permit and we do not have a DNR tideland permit. Our construction season has started and our construction people are on the ground constructing the road and developing quarry sites and are badly in need of this permit to properly schedule their work.

Neets Bay 12, NPACO-RF-P, No. 071-OYD-2-790398, State I. D. No. FD280-7912111IFP and ADL No. 100073 has been reviewed by two FS multi-discipline team reviews including participants from other State and Federal agencies, been included within two Environmental Impact Reports in which all agencies could (and most did) make comments, as well as any private citizen and has now been reviewed by, or copied with, some correspondence by the following agencies in relation to this application:

FS U.S. Forest Service



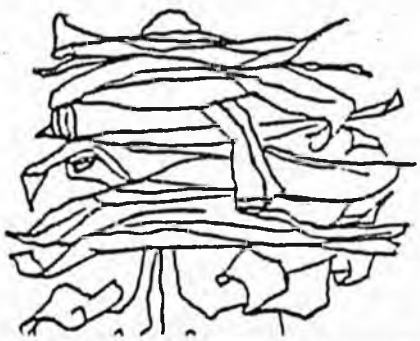
Corps	Corps of Engineers, Dept. of Army
EPA	U.S. Environmental Protection Agency
DNR	Alaska Department of Natural Resources
DPDP	Office of the Governor, Division of Policy Development and Planning
ADF&G	Alaska Department of Fish & Game
DEC	Alaska Department of Environmental Conservation
ADL	Alaska Department of Law
CRA	Commissioner of Regional Affairs
	State Clearinghouse
OCM	Alaska Department of Coastal Management
SERO	Unable to identify
NMFS	National Marine Fisheries Service
USF&WS	U.S. Fish & Wildlife Service

The question needing an answer is, why so much duplication, delay and totally unnecessary paperwork is required for a routine non-controversial permit such as this? Is it really necessary for nine State Departments or Agencies and probably twice that number of State employees along with five Federal Agencies and their employees to review, make comments and shuffle the paper? This chronology illustrates how rapdily the bureaucracy has come upon us when one reviews the rather direct route to the permit received in 1971 as compared to the frightening growth and duplication that has sprung up by 1979, even when applied to an area for which there had been a previous permit issued.

We do not fault the Corps, as their practice is to be helpful in notifying the applicants of agency input, but their regulations force them to respond to each and every comment, no matter how duplicative, until all participants are satisfied. We also think that if all agencies would read and analyze the General Conditions an applicant must consent to in order to get a permit they would realize many of their concerns are already well protected and much of their review and comments unnecessary. Attached is a current copy of the Corps General Conditions for a permit, for your information.

We sincerely feel this process is non productive, wasteful, inflationary and in need of review, particularly in respect to the State's duplicative reviews. It is only for this purpose this review has been written and circulated. If it accomplishes some reduction in what we consider a decided OVERKILL the effort will have been worthwhile.

3/80



I. General Conditions:

a. That all activities identified and authorized herein shall be consistent with the terms and conditions of this permit; and that any activities not specifically identified and authorized herein shall constitute a violation of the terms and conditions of this permit which may result in the modification, suspension or revocation of this permit, in whole or in part, as set forth more specifically in General Conditions j or k hereto, and in the institution of such legal proceedings as the United States Government may consider appropriate, whether or not this permit has been previously modified, suspended or revoked in whole or in part.

b. That all activities authorized herein shall, if they involve, during their construction or operation, any discharge of pollutants into waters of the United States or ocean waters, be at all times consistent with applicable water quality standards, effluent limitations and standards of performance, prohibitions, pretreatment standards and management practices established pursuant to the Federal Water Pollution Control Act of 1972 (P.L. 92-500, 86 Stat. 816), the Marine Protection, Research and Sanctuaries Act of 1972 (P.L. 92-532, 86 Stat. 1052), or pursuant to applicable State and local law.

c. That when the activity authorized herein involves a discharge during its construction or operation, of any pollutant (including dredged or fill material), into waters of the United States, the authorized activity shall, if applicable water quality standards are revised or modified during the term of this permit, be modified, if necessary, to conform with such revised or modified water quality standards within 6 months of the effective date of any revision or modification of water quality standards, or as directed by an implementation plan contained in such revised or modified standards, or within such longer period of time as the District Engineer, in consultation with the Regional Administrator of the Environmental Protection Agency, may determine to be reasonable under the circumstances.

d. That the discharge will not destroy a threatened or endangered species as identified under the Endangered Species Act, or endanger the critical habitat of such species.

e. That the permittee agrees to make every reasonable effort to prosecute the construction or operation of the work authorized herein in a manner so as to minimize any adverse impact on fish, wildlife, and natural environmental values.

f. That the permittee agrees that he will prosecute the construction or work authorized herein in a manner so as to minimize any degradation of water quality.

g. That the permittee shall permit the District Engineer or his authorized representative(s) or designee(s) to make periodic inspections at any time deemed necessary in order to assure that the activity being performed under authority of this permit is in accordance with the terms and conditions prescribed herein.

h. That the permittee shall maintain the structure or work authorized herein in good condition and in accordance with the plans and drawings attached hereto.

i. That this permit does not convey any property rights, either in real estate or material, or any exclusive privileges; and that it does not authorize any injury to property or invasion of rights or any infringement of Federal, State, or local laws or regulations nor does it obviate the requirement to obtain State or local assent required by law for the activity authorized herein.

j. That this permit may be summarily suspended, in whole or in part, upon a finding by the District Engineer that immediate suspension of the activity authorized herein would be in the general public interest. Such suspension shall be effective upon receipt by the permittee of a written notice thereof which shall indicate (1) the extent of the suspension, (2) the reasons for this action, and (3) any corrective or preventative measures to be taken by the permittee which are deemed necessary by the District Engineer to abate imminent hazards to the general public interest. The permittee shall take immediate action to comply with the provisions of this notice. Within ten days following receipt of this notice of suspension, the permittee may request a hearing in order to present information relevant to a decision as to whether his permit should be reinstated, modified or revoked. If a hearing is requested, it shall be conducted pursuant to procedures prescribed by the Chief of Engineers. After completion of the hearing, or within a reasonable time after issuance of the suspension notice to the permittee if no hearing is requested, the permit will either be reinstated, modified or revoked.

k. That this permit may be either modified, suspended or revoked in whole or in part if the Secretary of the Army or his authorized representative determines that there has been a violation of any of the terms or conditions of this permit or that such action would otherwise be in the public interest. Any such modification, suspension, or revocation shall become effective 30 days after receipt by the permittee of written notice of such action which shall specify the facts or conduct warranting same unless (1) within the 30-day period the permittee is able to satisfactorily demonstrate that (a) the alleged violation of the terms and the conditions of this permit did not, in fact, occur or (b) the alleged violation was accidental, and the permittee has been operating in compliance with the terms and conditions of the permit and is able to provide satisfactory assurances that future operations shall be in full compliance with the terms and conditions of this permit; or (2) within the aforesaid 30-day period, the permittee requests that a public hearing be held to present oral and written evidence concerning the proposed modification, suspension or revocation. The conduct of this hearing and the procedures for making a final decision either to modify, suspend or revoke this permit in whole or in part shall be pursuant to procedures prescribed by the Chief of Engineers.

l. That in issuing this permit, the Government has relied on the information and data which the permittee has provided in connection with his permit application. If, subsequent to the issuance of this permit, such information and data prove to be false, incomplete or inaccurate, this permit may be modified, suspended or revoked, in whole or in part, and/or the Government may, in addition, institute appropriate legal proceedings.

m. That any modification, suspension, or revocation of this permit shall not be the basis for any claim for damages against the United States.

n. That the permittee shall notify the District Engineer at what time the activity authorized herein will be commenced, as far in advance of the time of commencement as the District Engineer may specify, and of any suspension of work, if for a period of more than one week, resumption of work and its completion.

three year limit from the date of issuance of this permit unless otherwise specified) and is not completed on or before _____ day of _____, 19 _____. (three years from the date of issuance of this permit unless otherwise specified) this permit, if not previously revoked or specifically extended, shall automatically expire.

p. That this permit does not authorize or approve the construction of particular structures, the authorization or approval of which may require authorization by the Congress or other agencies of the Federal Government.

q. That if and when the permittee desires to abandon the activity authorized herein, unless such abandonment is part of a transfer procedure by which the permittee is transferring his interests herein to a third party pursuant to General Condition t hereof, he must restore the area to a condition satisfactory to the District Engineer.

r. That if the recording of this permit is possible under applicable State or local law, the permittee shall take such action as may be necessary to record this permit with the Register of Deeds or other appropriate official charged with the responsibility for maintaining records of title to and interests in real property.

s. That there shall be no unreasonable interference with navigation by the existence or use of the activity authorized herein.

t. That this permit may not be transferred to a third party without prior written notice to the District Engineer, either by the transferee's written agreement to comply with all terms and conditions of this permit or by the transferee subscribing to this permit in the space provided below and thereby agreeing to comply with all terms and conditions of this permit. In addition, if the permittee transfers the interests authorized herein by conveyance of realty, the deed shall reference this permit and the terms and conditions specified herein and this permit shall be recorded along with the deed with the Register of Deeds or other appropriate official.

II. Special Conditions: (Here list conditions relating specifically to the proposed structure or work authorized by this permit):

The following Special Conditions will be applicable when appropriate:

STRUCTURES IN OR AFFECTING NAVIGABLE WATERS OF THE UNITED STATES:

a. That this permit does not authorize the interference with any existing or proposed Federal project and that the permittee shall not be entitled to compensation for damage or injury to the structures or work authorized herein which may be caused by or result from existing or future operations undertaken by the United States in the public interest.

b. That no attempt shall be made by the permittee to prevent the full and free use by the public of all navigable waters at or adjacent to the activity authorized by this permit.

c. That if the display of lights and signals on any structure or work authorized herein is not otherwise provided for by law, such lights and signals as may be prescribed by the United States Coast Guard shall be installed and maintained by and at the expense of the permittee.

d. That the permittee, upon receipt of a notice of revocation of this permit or upon its expiration before completion of the authorized structure or work, shall, without expense to the United States and in such time and manner as the Secretary of the Army or his authorized representative may direct, restore the waterway to its former conditions. If the permittee fails to comply with the direction of the Secretary of the Army or his authorized representative, the Secretary or his designee may restore the waterway to its former condition, by contract or otherwise, and recover the cost thereof from the permittee.

e. Structures for Small Boats: That permittee hereby recognizes the possibility that the structure permitted herein may be subject to damage by wave wash from passing vessels. The issuance of this permit does not relieve the permittee from taking all proper steps to insure the integrity of the structure permitted herein and the safety of boats moored thereto from damage by wave wash and the permittee shall not hold the United States liable for any such damage.

MAINTENANCE DREDGING:

a. That when the work authorized herein includes periodic maintenance dredging, it may be performed under this permit for _____ years from the date of issuance of this permit (ten years unless otherwise indicated);

b. That the permittee will advise the District Engineer in writing at least two weeks before he intends to undertake any maintenance dredging.

DISCHARGES OF DREDGED OR FILL MATERIAL INTO WATERS OF THE UNITED STATES:

a. That the discharge will be carried out in conformity with the goals and objectives of the EPA Guidelines established pursuant to Section 404(b) of the FWPCA and published in 40 CFR 230;

b. That the discharge will consist of suitable material free from toxic pollutants in other than trace quantities;

c. That the fill created by the discharge will be properly maintained to prevent erosion and other non-point sources of pollution; and

d. That the discharge will not occur in a component of the National Wild and Scenic River System or in a component of a State wild and scenic river system.

DUMPING OF DREDGED MATERIAL INTO OCEAN WATERS:

a. That the dumping will be carried out in conformity with the goals, objectives, and requirements of the EPA criteria established pursuant to Section 102 of the Marine Protection, Research and Sanctuaries Act of 1972, published in 40 CFR 220-228;

b. That the permittee shall place a copy of this permit in a conspicuous place in the vessel to be used for the transportation and/or dumping of the dredged material as authorized herein.

This permit shall become effective on the date of the District Engineer's signature.

Permittee hereby agrees to comply with the terms and conditions of this permit.

EXHIBITS INCLUDED*

Exhibit A	Application to Corps	4/26/77
Exhibit B	Corps letter	6/15/77
Exhibit C	Corps letter w/EPA letter	7/19/77
Exhibit D	KPC to Corps & EPA	7/29/77
Exhibit E	Corps to KPC	8/29/77
Exhibit F	Corps permit	9/15/77
Exhibit G	DNR letter	4/16/79
Exhibit H	LP to DNR	4/20/79
Exhibit I	LP to Corps	8/8/79
Exhibit J	Corps denying extension	10/4/79
Exhibit K	Letter & application to Corps	10/16/79
Exhibit L	Letter from Corps recognizing application	Undated
Exhibit M	Notice of DNR tideland ad.	11/30/79
Exhibit N	Corps Public Notice + DPDP and DEC	12/7/79
Exhibit O	DPDP to Corps	12/12/79
Exhibit P	ADF&G to Corps	1/2/80
Exhibit Q	DPDP to Corps	1/4/80
Exhibit R	EPA to Corps	1/14/80
Exhibit S	Corps to NMFS	1/18/80
Exhibit T	DNR to LP	1/25/80
Exhibit U	EPA to Corps	2/5/80
Exhibit V	Corps to KPC(ADF&G)	2/15/80
Exhibit W	DPDP to KPC	2/19/80
Exhibit X	Corps to KPC(on NMFS)	2/21/80
Exhibit Y	KPC to DPDP	2/21/80
Exhibit Z	DEC to KPC	3/3/80
Exhibit AA	DPDP to Corps	3/3/80

3/80

*Available upon request

Louisiana-Pacific Corporation
Ketchikan Division
Post Office Box 6600
Ketchikan, Alaska 99901 U.S.A.
Telephone 907-225-2151
Telex 529-55-251
Answer back: KAYPULPCO KET

April 1, 1980

Mr. James E. Caruth, Chief
Regulatory Functions Branch
Department of the Army
Alaska District, Corps of Engineers
P.O. Box 7002
Anchorage, Alaska 99510

Re: NPACO-RF-P, Ward Cove 23
071-OYD-2-790391

Dear Mr. Caruth:

Enclosed is a self-explanatory letter we have sent to the Division of Parks of the Alaska Department of Natural Resources. We hope we are able to convince the ADP there is a better way and trust our letter will permit continued processing of our application.

Sincerely,

D. L. Finney, Manager
Forestry & Government Affairs

hr
Enclosure

Louisiana-Pacific Corporation

Ketchikan Division

Post Office Box 6600
Ketchikan, Alaska 99901 U.S.A.
Telephone (907-225-2151
Telex 529-55-251
Answerback KAYPULPCO KET

April 3, 1980

Mr. Chip Dennerlein, Director
Division of Parks, State of Alaska
Department of Natural Resources
619 Warehouse Drive, Suite 210
Anchorage, Alaska 99501

Re: Ward Cove 23

Dear Chip:

Our first reaction to your comment on our Corps permit is that you have read the "Overkill" paper and felt left out by not having your agency mentioned. If this is the case, please accept our apologies as we had no intention of slighting you or your department. Just in case you haven't seen the "Overkill" paper, one is enclosed, so you can see how we have come to develop a prejudice toward any agency feeling it necessary to comment on Corps permits.

There are several things about your request for assurance on which we would like to comment. First, by writing the Corps without copying us, you necessitate the Corps writing to us (copy enclosed), us writing you and giving you assurance, then you writing the Corps and telling them it's all right, then the Corps writing us and telling us it's all right, before the processing of our permit can continue. If you really feel you must continue to be involved, please have the courtesy of sending us a copy of your request. Or, if you really intend to join the ranks of the "overkillers", you could let us know you intend to so respond to all permits and we can head off a lot of nonsense by notifying the Corps we will abide by your every wish at the time we apply. This would save you, us and the Corps a lot of letter writing, postage and, most importantly to us, valuable time.

Another observation we have is that the cultural resources you wish to protect are already covered by the American Antiquities Act of 1906 (16 USC 431-433), National Historic Preservation Act of 1966 (16 USC 470) and Executive Order 11593(1971). Provisions of a Corps permit require an applicant to be in compliance with all Federal, State and Municipal laws. Also, our long term timber sale with the Forest Service has been recently modified to include an obligation for us to report any historic cultural resources immediately. Your added request for assurance does seem to be an "overkill".

One last observation is, if you have read the permit application we submitted, you will have noted it is for placing fill material and setting piling. It strikes us that there is not even the remotest possibility of discovering cultural resources with these activities.

Chip, as you can probably tell, you rattled our chain. We have decided to take head-on all unnecessary State Agency involvement in Corps permits because it really is coming to the point where we can no longer get there from here. Your agency just happens to be the first new customer since we wrote our exposé. Hopefully, our efforts will be rewarded by getting some logic in to the system and if such is the case, it will be well worth the time spent.

Now, so our application for NPACO-RF-P Ward Cove 23 Reference No. 071-OYD-2-790391 to Construct Berm and Place Piling in Ward Cove, Ketchikan, Alaska may proceed, we hereby notify you we agree, if any cultural resources are uncovered during the period of construction, our project engineer will halt all work that may disturb such resources and contact the Division of Parks (and probably the Guinness Book of Records) at once.

We shall, by copy of this letter, notify the Corps of our agreement but respectively request that you also contact the Corps at the soonest possible time, informing them you have our assurance and have no objection to the futher processing of our permit.

Louisiana-Pacific Corporation

We would be most interested in any comments you might have concerning your continued involvement in Corps permits.

Sincerely,

D. L. Finney, Manager
Forestry & Government Affairs

hr
Enclosure

cc: J. Hammond – w/cc of Corps & Parks letters
T. Miller "
J. Reinwand "
R. LeResche "
W. McConkey "
& a host of others

DEPARTMENT OF THE ARMY
ALASKA DISTRICT. CORPS OF ENGINEERS
P.O. BOX 7002
ANCHORAGE, ALASKA 99510

REPLY TO
ATTENTION OF:
NPACO-RF-P
Ward Cove 23

MAR [illegible] 1980

Ketchikan Pulp Company
P.O. Box 6600
Ketchikan, Alaska 99901

Reference: 071-OYD-2-790391
Construct Berm & Piling
Ward Cove
Ketchikan, Alaska

Gentlemen:

Inclosed is a copy of a letter dated 12 March 1980 concerning your application for a Department of the Army permit for the referenced work.

It is the policy of the Department of the Army to provide an applicant the opportunity for a resolution or rebuttal to all objections and/or recommendations received on a proposed project. In this regard, the Alaska Division of Parks (ADP) has reviewed your proposal and requested that if any cultural resources are uncovered during the period of construction, your project engineer halt all work that may disturb such resources and contact them at once.

I would appreciate receiving any comments that you may have on the request by ADP. If you intend to comment, please give your immediate attention to this matter so processing of your permit application can be expedited.

Sincerely,

Larry L. Reeder
for JAMES E. CARUTH
Chief, Regulatory Functions Branch

1 Incl
As stated

STATE OF ALASKA

JAY S. HAMMOND, GOVERN

DEPARTMENT OF NATURAL RESOURCES

DIVISION OF PARKS

619 Warehouse Dr., Suite 210
Anchorage, Alaska 99501

March 12, 1980

File No.: 1130-2-1

Subject: Ward Cove 23

Mr. D. L. Robbins, Chief
Construction/Operations Division
Corps of Engineers
Box 7002
Anchorage, AK 99510

Dear Mr. Robbins:

We have reviewed the subject proposal and would like to offer the following comments:

STATE HISTORIC PRESERVATION OFFICER

No probable impacts. Should cultural resources be found during the construction, we request that the project engineer halt all work which may disturb such resources and contact us immediately.

William S. Hanable
State Historic Preservation Office

STATE PARK PLANNING

Consistent with ACMP.

LWCF

No comment.

Sincerely,

for Chip Dennerlein
Director

CD/cw

16-311(R)

April 8, 1983

The Honorable Bettye Fahrenkamp
Chairman of the Senate Resources
Committee
Alaska State Legislature
Pouch V
Juneau, Alaska 99811

Re: Enclosed Coastal Management Legislation

Dear Senator Fahrenkamp:

The purpose of this letter is to transmit and recommend for your consideration legislation which would make certain changes to the Alaska Coastal Management Act (AS 46.40).

The changes are sought because of several problems with the Alaska coastal management program which are shared by Sealaska and Alaskan industry as a whole. These problems are, to a degree, the same which have been raised over the past four years in the course of "permit reform" debate. As you quite are aware, permit reform legislation has become quite controversial, with little likelihood that comprehensive legislation will be enacted in the near future. There are, however, certain problems in existing state regulation over which there is little disagreement. Rather than await the uncertain resolution of the larger "permit reform" controversy, Sealaska believes that real and substantial progress in regulatory reform can be made by addressing a few specific problems at this point in time.

The first problem addressed by the enclosed legislation is perhaps the most notorious--the duplicative and potentially conflicting "consistency determinations" which are authorized by existing law. As you know, any number of state agencies are

required to make a "consistency determination" on the same project. The administration long ago acknowledged that there was absolutely no justification for this state of affairs. Yet while everyone recognizes a need for having but one "consistency determination" for each project, the pitfall has been agreeing on the agency to make that decision. While many industry groups advocate that the decision be made by the Department of Natural Resources, environmental organizations have not surprisingly recommended the Department of Environmental Conservation.

The proposed legislation strikes a middle ground by providing that one consistency determination will be made for each project by the Division of Policy Development and Planning. The division is already the agency primarily responsible for coastal management matters, and, as a result, this bill does not make revolutionary changes from the existing law. It would, however, solve the problem of overlapping consistency determinations immediately, leaving for later, more comprehensive legislation, the issue of where that authority should ultimately reside.

There is an equally important issue addressed by the bill, one of which some legislators may be unaware. When the Coastal Management Act was enacted in 1977, it was the intent of the legislature that the program be implemented through existing agency authorities. The last thing the legislature wanted was to expand the jurisdiction of any state bureaucracy.

However, earlier this year, Judge Walter Carpeneti of the State Superior Court in Juneau ruled that the coastal management program had the effect of expanding agency jurisdiction. The problem is essentially this: if the Department of Environmental Conservation has permit jurisdiction over a particular dock, Judge Carpeneti believes that DEC may deny the permit for that dock if it concludes that the activities which that dock will facilitate will violate the coastal management program--<u>even if those activities themselves do not require a DEC permit.</u> To carry Judge Carpeneti's ruling to its logical extreme, when DEC reviews the first transfer dock for a new major oil development--such as the Beaufort Sea--it may acquire jurisdiction over all field operations by virtue of the coastal management act.

A copy of Judge Carpeneti's decision is enclosed. While we believe that the court was mistaken, clarifying legislation is necessary. Under the enclosed bill, for example, if a coastal management consistency determination is needed for a dock, a determination will be made <u>on that dock,</u> and not on every single activity which will in any manner be aided by the construction of the dock.

Third, there is a developing problem of extraterritorial regulation by Alaska cities under the guise of the coastal management program. Some small cities have prepared coastal management plans which include standards and guidelines for lands outside the city limits. While the Office of Coastal Management is technically calling these extraterritorial zoning laws "advisory," it is apparent that as as a practical matter, state agencies may begin to adopt and apply them. It is Sealaska's view that if a particular city wishes to control land use outside its existing borders, it should seek to expand those borders, rather than using the coastal management act as a means of indirect annexation.

Finally, under the Alaska coastal management program, the Coastal Policy Council may designate "areas which merit special attention" outside existing district limits--zones in which development is severely restricted or perhaps precluded. Some have proposed to designate large tracts of privately-owned land as "AMSA's." Sealaska believes that private land owner consent should be required before an AMSA is designated over privately owned land outside existing district boundaries. Under this proposal, the Council will be required to accomodate the private land owner before the AMSA may be designated.

I realize that it is late in the session, and that your committee has many matters before it. On the other hand, most of the issues addressed by the enclosed legislation have been aired and debated in committee after committee for some four years. At the present time, absolutely nothing has come from the time consuming and acrimonious debate over permit reform. This bill would at least resolve some of the most obvious problems with the existing coastal management program without endless and repetitive debate.

I would appreciate it, if at your earliest convenience, you could discuss this legislation with Jon Tillinghast. I have also requested Sam Kito and Robert Loescher to work with Mr. Tillinghast on this legislation.

Sincerely,

Byron I. Mallott

cc: Representative Terry Martin
Robert Loescher
Sam Kito

IN THE SENATE

SENATE BILL NO.

IN THE LEGISLATURE OF THE STATE OF ALASKA

THIRTEENTH LEGISLATURE - FIRST SESSION

A BILL

For an Act entitled: "An Act amending the Alaska Coastal Management Act."

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

* Sec. 1. AS 46.40.100(a) is amended to read:

Sec. 46.40.100. COMPLIANCE AND ENFORCEMENT. (a) Municipalities, and subject to AS 46.40.205, state agencies shall administer land and water use regulations or controls in conformity with district coastal management programs approved by the council and the legislature and in effect.

* Sec. 2. AS 46.40.200 is amended to read:

Sec. 46.40.200. STATE AGENCIES. Upon the adoption of the Alaska coastal management program, state departments, boards and commissions shall review their statutory authority, administrative regulations, and applicable procedures pertaining to land and water uses within the coastal area for the purpose of determining whether there are any deficiencies or inconsistencies which prohibit compliance with the program adopted. State agencies shall, within six months of the effective date of the Alaska coastal management program, and subject to AS 46.40.205, take whatever action is necessary to facilitate full compliance with and implementation of the program, including preparation and submission of recommendations to the council for additional or amended legislation.

HESSIGER AND ANDERSON
ATTORNEYS AT LAW
130 SEWARD STREET - SUITE 411
JUNEAU, ALASKA 99801
(907) 586-2660

* Sec. 3. AS 46.40 is amended by adding new sections to read:

Sec. 46.40.065. AREAS WHICH MERIT SPECIAL ATTENTION. If a person proposes to the council that an area which merits special attention should be designated outside the boundaries of a district with an approved coastal management plan, and that area includes lands which are in private ownership, the council shall, before approving the designation, notify each affected private land owner. The designation may only be approved by the council if each private land owner within the proposed designation has given his consent.

Sec. 46.40.205. COASTAL MANAGEMENT CONSISTENCY DETERMINATIONS. (a) Whevever an activity within or affecting the coastal area of the state requires either a federal permit or license for which a consistency determination is required by 16 U.S.C. §1456, or two or more state permits, a single consistency determination will be made for the activity by the division. The determination made by the division under this subsection is conclusive on all state agencies, and no state agency may comment to the federal permitting agency on the consistency of the activity with the Alaska coastal management program.

(b) Whenever an activity within or affecting the coastal area of the state requires only one state permit, any required consistency determination shall be made by the permitting agency.

(c) In making a consistency determination under (a) of this section, the division shall solicit recommendations from other state agencies. Each state agency shall confine its comments to matters within its primary area or expertise.

(d) For the purposes of this section, "state permit" includes any state action sought or required for the construction

PFEFFERLE AND ANDERSON
ATTORNEYS AT LAW
130 SEWARD STREET - SUITE 411
JUNEAU, ALASKA 99801
(907) 586-2880

or operation of an activity, including any disposal of an interest in state land or water, land classification or certification under Sec. 401 of the Clean Water Act, 33 U.S.C. §1341.

Sec. 46.40.208. AUTHORITY NOT ENLARGED.

(a) Nothing in this chapter may be construed as authorizing a state agency or the division to deny or condition a permit or disposal of interest in state land or water because of impacts which may be caused by activities not themselves requiring that permit or disposal from the permitting agency.

(b) Nothing in this chapter may be construed as authorizing a coastal resource district to engage in extraterritorial planning or regulation.

* Sec. 4. AS 46.40.210 is amended by adding a new subsection to read:

(7) "division" means the Office of the Governor, Division of Policy Development and Planning.

PESTINGER AND ANDERSON
ATTORNEYS AT LAW
[illegible] - SUITE 411
JUNEAU, ALASKA 99801
(907) 586-2880

Bill Sheffield, Governor

DEPT. OF COMMUNITY & REGIONAL AFFAIRS

OFFICE OF THE COMMISSIONER

POUCH B
JUNEAU, ALASKA 99811
PHONE: (907) 465-4700

February 7, 1983

POSITION PAPER

RE: HB 14

SPONSOR: Representative Martin

Program Effects of Bill

The bill deals with permit reform and provides for a "fast tracking" of all permit applications requiring agency decisions within certain timeframes. The measure also provides for a "Lead Agency" concept for the issuance of coastal management consistency determinations.

Comments

The proposed revisions to regulatory procedures are considerable; some of the changes are probably desirable and others have no direct bearing upon this Department or its concerns. Section 44.62.635 "Lead Agency" is of particular interest, as it deals with Alaska Coastal Management Program (ACMP) consistency determinations. One of the foremost selling points of the National Coastal Management Program is the requirement that federal coastal actions must be consistent with approved State programs. In Alaska that concept has been expanded upon to require that proposed State and Federal coastal activities be consistent with ACMP approved local programs. HB 14 and Executive Order 53 are in opposition in that the latter would continue to vest consistency review authority in the Governor's Office, while the former would disperse this responsibility to individual line agencies. Moreover, subsection (b) would weaken the consideration afforded to approved local programs to an extent rendering them little more than advisory. Communities and regions that have Coastal Management Programs in place or in the works have proceeded under the expectation that local programs would have more than advisory powers.

Original Request

THE ALLIANCE

P.O. Box 100 / Anchorage, Alaska 99510 / (907) 277-0010

April 21, 1983



Representative Charlie Bussell
Pouch V - MS 3100
Juneau, Alaska 99811

Dear Representative Bussell:

As one of our objectives, The Alaska Support Industry Alliance supports regulatory reform.

To enhance an improvement in the manner and the time in which permits are issued, the Board of Directors of The Alliance are in support of H.B. 14 as introduced and amended by Representative Terry Martin. The passing of H.B. 14 will improve the permitting procedure, thus allowing industry to schedule their activities in a more orderly and efficient manner, resulting in a better cost effective climate for all Alaskans.

We urge you to support H.B. 14.

Sincerely,
For The Alaska Support
Industry Alliance

VJ Molyneux

Val J. Molyneux
Committee Chairman,
Regulatory Reform

VJM:lh

Alaska Support Industry Alliance . . . for responsible economic development

Joe Mathis, President
Universal Services, Inc.-Int'l.
Milton Byrd, Vice President
Frontier Companies of Alaska
Paul Harding, Secretary/Treasurer
Universal Services, Inc.-Int'l.
Len Kelley
Greyhound Support Services, Inc.
Bill Woodland
Quality Cleaners
Roger Spencer
Alaska Bussell Electric
Steve Simmons
Drilling Supply and Rental
Val Molyneux
VECO
Ron Jordan
Northern Drilling Services
Ann Curtis
Crowley Maritime
Richard Danley
Arctic Alaska Drilling
Chuck Becker, Executive Director

Resource Development Council
for Alaska, Inc.
444 West 7th Avenue, Anchorage, Alaska 99501
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April 8, 1983

William Sheffield, Governor
State of Alaska
Pouch A
Juneau, Alaska 99811

RE: REGULATORY REFORM

Dear Governor Sheffield:

The Resource Development Council has had serious concerns about regulatory reform for the past four years and each year has encouraged the administration to do something about permitting problems. We have recently learned your administration intends to do something about it, and for this we commend you.

However, we understand administration "working groups" are nearing a final conceptual decision to have one lead agency, OMB, act for all state permits. We also understand your staff has been informed that industry has no problem with OMB's having this authority. Our industry contacts indicate exactly the opposite to be true. For this reason, we urge you to not finalize any position until there has been representative input from the various industries affected.

Attached is a copy of the new RDC policy statement on regulatory reform which was passed unanimously by the Executive Committee. As you can see, we are advocating changes in permit handling and attitudes. We think the direction your staff is heading will not only result in longer permit times, but will require more regulations, statutory and contractual changes. Also it perpetuates an unnecessary layer of bureaucracy which used to be in DPDP and has been given new life under a different name in OMB.

Comments indicate one of the selling points in having OMB issue the permits is that it is "neutral" and "capable of conflict resolution." Governor, industry doesn't really need someone who is "neutral." It needs to deal with people who are knowledgeable and can understand business problems and the free enterprise system.

Government employees need to understand that each stipulation costs money and many stipulations discourage development. Alaska is rapidly pricing itself out of the market because of the gold-plated stipulations being imposed by multilayers of government. The cost to the state in jobs and money due to "lost opportunity" runs into the hundreds of millions of dollars each year. It's too bad business can't take advantage of these opportunities and create new jobs, as bad as our state needs them.

Most of industry's problems in permitting do not come from the permitting agency charged by law to issue the permits. These agencies generally have enough expertise to understand industry's problems; permits and changes can be negotiated.

By far, most of the problems come from <u>other agencies</u> who have no statutory authority to act on the permit but who have gained authority under MOU's between agencies. These latter agencies insist that industry construct the project their way. They try to design many parts of the project, but having little or no expertise, they cannot conceive of the problems they cause and the costs that result. In most cases they don't care. Their lack of experience can result in permit provisions which are near fatal to a project. Unfortunately, these requirements seem to be in the majority of permits. Most of the problems could be eliminated by the agency setting standards and letting industry determine how to meet those standards.

State agencies that issue permits are required to show that the proposed operation is consistent with the state or locally approved CCM plan before they issue a permit. Who is better qualified than that permitting agency to make such a determination and why must the determination be made <u>twice</u>? In other words, why does the added layer of OMB have to be in the picture at all?

We need a system which significantly speeds up the permitting process. The new proposal sounds much like the earlier proposal for Uniform Procedures Regulations which would have been a disaster if they had been implemented. We urge you and your staff to abandon any thoughts along that line. We don't need new regulations to implement regulatory reform.

No amount of change in law or regulations can accomplish regulatory reform without complete backing by you. On the other hand, we are not sure that any change is required in law or regulations. We believe the main change needed is one of employee attitude and that only <u>you</u> can bring that about.

To accomplish regulatory reform, the main thing needed is for you, the Governor, to issue a command to all of your troops that you want the permit time and stipulations reduced by 50% within a year, and that after one year you will personally challenge any supervisor who has not accomplished this objective. With strict enforcement, this approach would be very effective.

The prior administration never gave state employees the feeling that it was serious and intended to accomplish reform; we are confident you can.

Sincerely,

RESOURCE DEVELOPMENT COUNCIL
for Alaska, Inc.

Mano Frey

Mano Frey
President

encl.

1983

Resource Development Council for Alaska, Inc.

444 West 7th Avenue, Anchorage, Alaska 99501
Box 516, Anchorage, Alaska 99510 - 907/278-9615

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Joe Thomas
Dick Tindall
James Wakefield
Jack Warner
Lew Williams
Joe Wilson
Don Wold

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Boyd Brownfield
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Robert Huck
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Dale Tubbs

POLICY STATEMENT NO. 11

REGULATORY REFORM

The Resource Development Council recognizes the need for certain regulations to implement statutes to protect the public health, safety and welfare. However, the proliferation of applications, stipulations, regulations and permits is overwhelming to Alaskans and has resulted in, and continues to have an increasingly negative effect on the economy. Everyone including labor and business suffers and the helpless consumer ends up paying the bill. Many promises of reform have been made with few tangible results.

Regulations should facilitate and maintain orderly administration of policy where the broad public interest is at issue. However, when the power of the government to regulate becomes such a burden to the private sector that it creates economic hardship, suffering or negation of individual liberties and rights of property, then the Council concludes that regulatory powers have been over-extended. When regulations multiply and overlap, the power may be abused and it becomes counter-productive and in need of reform.

The Resource Development Council recommends the following:

I

That governments draw up a test of standards by which any regulation will be measured, such as:

1) Is it duplicative?

2) is it truly calculated to protect only the broad public interest?

3) does it violate individual personal or property rights?

4) does it create undue financial burden which will translate to negative shift in the overall economy?

5) when individual and personal rights are subjected to threat, then full burden of proof of need, as well as financial responsibility, will be borne by the agency or agencies responsible for promulgation of the regulation,

6) that a clear distinction be made between established laws of the land and government regulation as created at will within government agencies and bureaus.

continued...

II

That local, state and federal governments make a positive commitment to an effective regulatory reform program that eliminates duplication of permits, multiple handling of permits, duplication of statutory authorities, "networking," and prohibits employees from writing law through "stipulations." These various governments should require their employees to adhere to this commitment of regulatory reform and should stringently enforce that commitment.

III

That government allow its employees to add stipulations only when there is a proven need and then only if required by statute.

IV

That, as public policy, the resource agency responsible for issuing a permit should be the lead agency and be responsible for all provisions of the permit. The lead agency should be able to override the recommendations of any agency furnishing advice and should not include stipulations of other agencies not provided for under the law authorizing the permit and should establish and enforce reasonable time limits for input by other agencies.

V

That the state and local governments eliminate the subtle "networking" process which functions without statutory authority and results in delays, re-work and non-issuance of permits.

VI

That the burden of proof be placed on the government to show why a permit does not comply with law.

VII

That the federal, state and local governments require agencies to review their regulations and work toward elimination of those that are archaic and not asolutely required by law; and that legislature and Congress annually review administrative progress in achieving regulatory reform.

VIII

That legislation be enacted to require disclosure of the costs, both public and private, related to permit processing and administration of regulations and that testimony at public hearings on cost/benefits be required prior to agency adoption of any regulation.

continued...

IX

That legislation be enacted to require fiscal notes on the external economic effect as well as environmental impact of each proposed statute and a cost/benefit review be included in the fiscal note.

X

That to minimize frivolous lawsuits, many of which are based on ill-founded regulations and stipulations, legislation should be enacted to require the loser in each lawsuit to pay the court costs, all attorney fees, the cost of delays, plus interest on all of these funds.

XI

That prior to adoption of regulations, public hearings be held as required by the Alaska Administrative Procedure Act (AS 44.62.190-210.)

Adopted ----------

USBORAX

April 27, 1983

The Honorable Terry Martin
Alaska House of Representative
Pouch V
State Capitol
Juneau, AK 99811

Dear Representative Martin:

U.S. Borax supports your efforts to introduce legislation (SSHB 14) to reform the permitting process in order to avoid unnecessary delays in the orderly development of Alaska's resources.

U.S. Borax is in the process of developing the Quartz Hill molybdenum deposit located 45 miles east of Ketchikan, Alaska. This is a world-class mineral deposit of significant long-term importance to the State of Alaska and anything that can be done to minimize costs and delays in the permitting process of this project while retaining the controls necessary for proper development would, in our opinion, benefit both the State of Alaska and U.S. Borax.

We have read your bill and believe it would minimize costs and delays as well as improve the permitting process by establishing a lead state agency depending on the resource involved.

Sincerely,

Eugene D. Smith/gw

Eugene D. Smith
Vice President
Government and Public Affairs

EDS:gw

cc: Mr. R. E. Kendall
Mr. D. L. Finney
Mr. J. C. Paulsen
Mr. Bill Miles

UNITED STATES BORAX & CHEMICAL CORPORATION · 3075 WILSHIRE BOULEVARD · LOS ANGELES, CALIFORNIA 90010 · (213) 381-5311
MAIL ADDRESS: P. O. BOX 75128, SANFORD STATION, LOS ANGELES, CALIFORNIA 90075

Alaska Loggers Association, Inc.

111 STEDMAN, SUITE 200
KETCHIKAN, ALASKA 99901
Phone 907-225-6114

April 22, 1983

Honorable Terry Martin
Alaska State Representative
Pouch V State Capitol Building
Juneau, Alaska 99811

Dear Representative Martin:

Please excuse the lack of response to your letter of April 13 concerning ALA support of H.B. 14. All the loggers are either working or are in the process of getting started and I haven't been able to get enough Directors together to consider a resolution supporting the bill.

It is hoped by the time I get it approved it will not be too late to support this legislation.

Sincerely,

Donald A. Bell

Donald A. Bell
General Manager
ALASKA LOGGERS ASSOCIATION

DAB/mjh
cc: Jim Clark

HB

17

U.S. Department
of Transportation

National Highway
Traffic Safety
Administration

400 Seventh St., S.W.
Washington, D.C. 20590

FACTS ABOUT TEENAGE DRUNK DRIVING

From the National Center for
Statistics and Analysis

Although drunk driving is a problem that pervades all age groups of our licensed population, it is especially severe for teenagers. The combination of learning how to drive, youthful risk-taking behavior, and drinking is accounting for the number one killer of teenagers in this country. Consider these facts:

- Teenage drivers are involved in 1 out of every 5 fatal accidents that occur with close to 9,000 teenagers (15-19 years old) killed in motor vehicle accidents in 1980.[1]

- Almost 60 percent of fatally injured teenage drivers were found to have alcohol in their blood systems prior to their crash, with 43 percent at legally intoxicating levels (i.e., greater than or equal to .10 percent blood alcohol concentration).[2]

- Of the 25,000 persons who die each year in drunk driver accidents, 5,000 of those victims are teenagers. That means that 14 teenagers die each day in drunk driver accidents.[1]

- Alcohol involvement in teenage fatal accidents is at least three times greater in nighttime accidents (between 8 PM and 4 AM) than it is in daytime accidents (between 4 AM and 8 PM).[2]

- In addition, teenage drivers are involved in 1 out of every 4 injury accidents, with a total of 650,000 injured teenagers in 1980.[3] Alcohol is involved in close in 20 percent of injury producing accidents, which means that 130,000 teenagers are injured per year in drunk driver accidents. So, 14 teenagers die and an additional 360 teenagers are injured in alcohol related crashes per day.

- Although teenagers comprise only 8 percent of the driver population and account for only 6 percent of the vehicle miles travelled in this country, they add up to 17 percent of all accident involved drivers and at least 15 percent of all drunk drivers in accidents.[2]

- Think of this: of 330 children born today in the U.S. (about the size of a small grade school), one will die and four will sustain serious or crippling injuries in an alcohol related crash before they reach the age of 24.[4]

- The Surgeon General has reported that life expectancy has improved in the U.S. over the past 75 years for every age group except one. The exception is the 15-24 year old American whose death rate is higher today than it was 20 years old. And the leading single cause of death for this age group is drunk driving.[5]

- As if the pain and suffering were not enough, insurance companies have estimated that teenage drunk driver accidents are costing society close to $6 billion per year in damage, hospital costs, lost work, etc.[6]

SOURCES:

1 Fatal Accident Reporting System 1980, National Center for Statistics and Analysis, National Highway Traffic Safety Administration, Washington, DC, Publication No. DOT-HS-805-953, October 1981.

2 Alcohol Involvement in Traffic Accidents--Recent Estimates from the National Center for Statistics and Analysis, National Highway Traffic Safety Administration, Washington, DC, Publication No. DOT-HS-806-269, May 1982.

3 Report on Traffic Accidents and Injuries for 1979-1980--The National Accident Sampling System, National Center for Statistics and Analysis, National Highway Traffic Safety Administration, Washington, DC, Publication No. DOT-HS-806-176, February 1982.

4 Mathematical Analysis Division, NRD-31, National Center for Statistics and Analysis, National Highway Traffic Safety Administration, Washington, DC.

5 Health, United States, 1980, National Center for Health Statistics, Public Health Service, U.S. Department of Health and Human Services, Hyattsville, Maryland, Publication No. (PHS) 81-1232, December 1980.

6 Allstate Insurance Company, letter dated March 24, 1982, from Loss Prevention Manager, Allstate Plaza, Northbrook, Illinois 60062.

FACTS ON ALCOHOL AND HIGHWAY SAFETY

The Problem

Overview:

Drunk driving continues to be one of our nation's most serious public health and safety problems. Some 50 percent of all drivers killed each year have blood alcohol concentrations in excess of the legal limit, 0.10 percent. In single vehicle fatal crashes, where it is more certain who is at fault, upwards of 65 percent of those drivers who die were legally drunk. Over the past 10 years, the proportion of highway deaths involving alcohol has averaged a tragic 25,000 per year. Thus, a staggering one quarter of a million Americans have lost their lives in alcohol-related crashes in the last decade.

The cost of drunk driving has a high economic cost to this country as well. A conservative estimate of the total economic cost of drunk driving is put at 24 billion.

Alcohol and Crashes:

Alcohol is a major contributing factor to fatal (and serious injury) automobile crashes. According to a 1978 review of the literature, approximately 60 percent of fatal crashes involved a driver who had been drinking. Between 40 and 55 percent of such crashes involved a driver who had a blood alcohol concentration (BAC) greater than .10 percent (w/v).

With regard to alcohol and responsibility for fatal crashes, the drinking driver problem is even more significant. In one study drivers judged to be at fault in fatal crashes were six times more likely to have had BAC's greater than .10 percent (w/v) alcohol in their blood than drivers judged not at fault for their crashes (60 percent vs. 10 percent).

This strong relationship between crash responsibility and high alcohol levels is shown further in single vehicle crashes, where responsibility is apparent, and where between 60 and 75 percent (60-75%) of dead drivers have BACs greater than .10 percent (w/v).

The Driver Population:

What the high BAC figures in crashes suggest is that the majority of alcohol related fatal crashes are caused by heavy (problem) drinkers. Some portion of the approximately 15 percent of fatal crashes which involve drivers who have been drinking, but who do not have BACs greater than .10 percent, may be caused by less heavy, less chronic, "social" drinkers.

The majority of drivers are either abstainers or light to moderate (social) drinkers. Even quite liberal estimates suggest that only about 10 to 15 percent of the nation's drivers would be classified as being heavy (problem) drinkers.

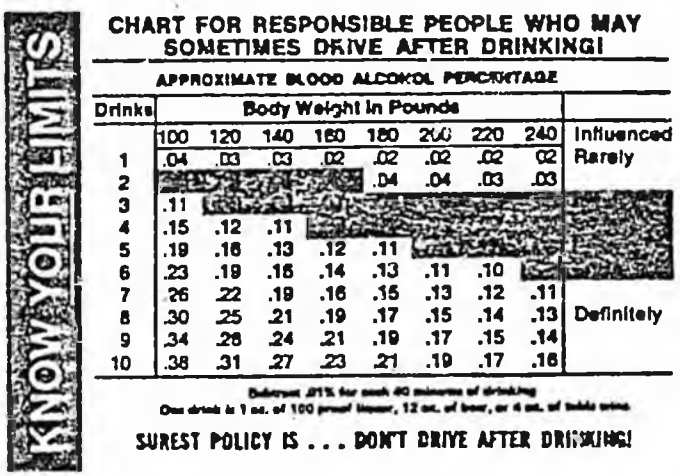
Arrested Drunk Drivers:

The average proportion of licenses drivers arrested for drunk driving over a one-year period is estimated to be one percent (1%). This translates to approximately 1.3 million of approximately 130 million licensed drivers.

On a nightly basis, between one in five hundred (1/500) and one in two thousand (1/2000) drivers on the road with a BAC greater than .10 percent (w/v) are arrested for drunk driving. These estimates come from a number of roadside surveys conducted in conjunction with the Alcohol Safety Action Projects (ASAPs) funded by the NHTSA in the 1970's and from the Grand Rapids data reported by Borkenstein and others.

The average BAC of these drinking drivers is approximately .20 percent, double the level for persumed intoxication. Estimating an average period of alcohol consumption at 4-5 hours, this means that the average fatally injured drinking driver had about 15 drinks prior to becoming involved in the crash.

Blood Alcohol and Body Weight



Past Approaches and Current Activities

Federal Action:

Over the last 12 years, the National Highway Traffic Safety Administration (NHTSA), an Agency within the U.S. Department of Transportation, has worked with the States to reduce alcohol related deaths on the highway. NHTSA initiated 35 Alcohol Safety Action Projects (ASAPs) throughout the country from 1971-1976 which resulted in the development of a coordinated systematic approach to deal with drunk driving.

In 12 of the 35 ASAPs, a statistically significant reduction in fatal crashes at night was achieved. Individual projects were able to double, and even triple driving while intoxicated arrests, using such new technology as roadside breath testing. Court procedures were streamlined to handle large caseloads. Roughly a quarter-of-a-million drinking drivers were referred for treatment.

Before the passage of the Highway Safety Act of 1966, few States specified a presumptive level of driving while intoxicated. The Federal standard for alcohol safety prescribed the 0.10 percent blood level that legally defines the legal intoxication limit. Now all the States have laws defining driving under the influence at the 0.10 percent level. The majority of the States now have made some improvements in their law enforcement, court, rehabilitation, and educational efforts.

State Action

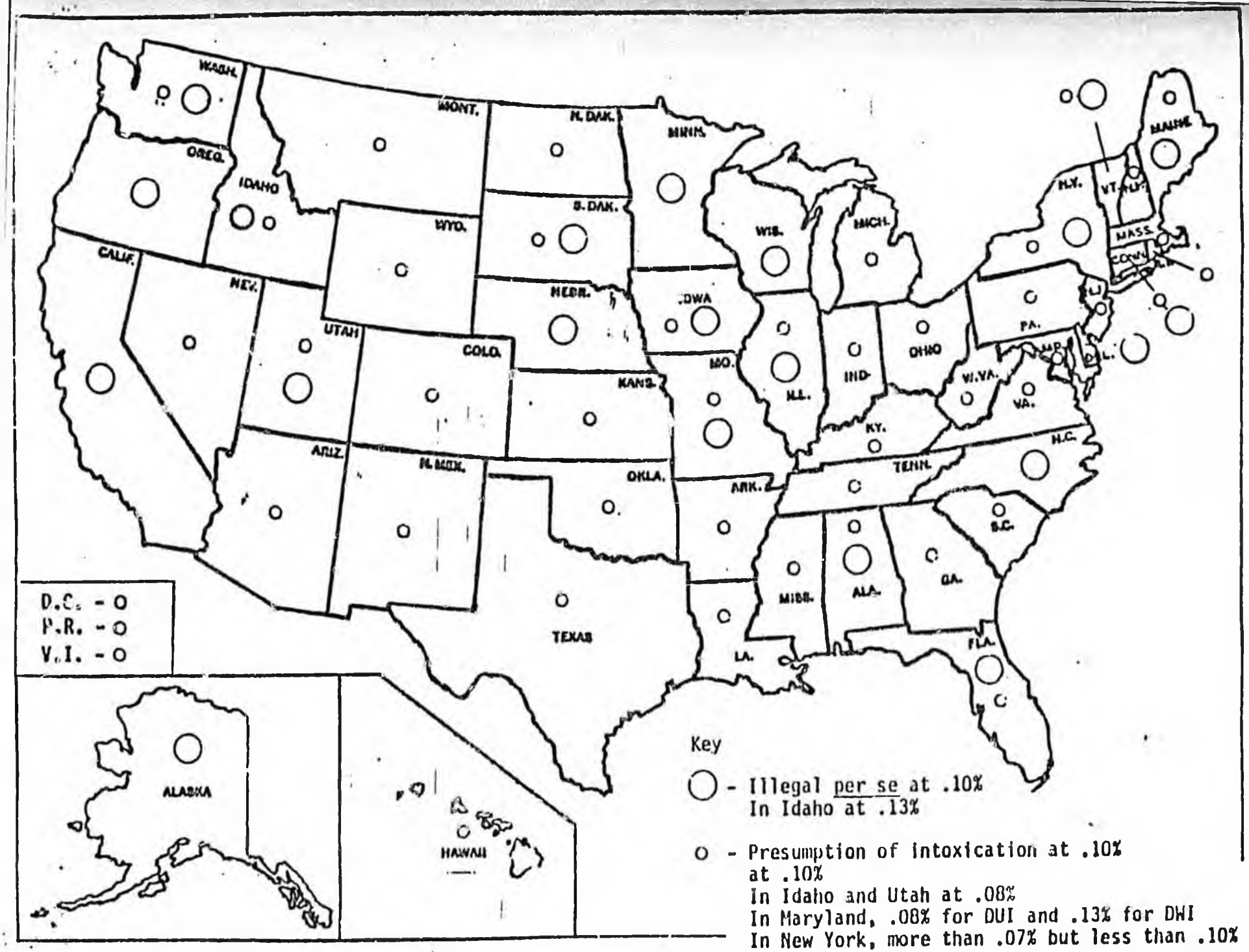
Under the Section 402 grant program established by the Highway Safety Act the States are increasing the proportion of funds allocated to alcohol programs. In FY 1982 approximately 35 percent of 402 funds ($27.8 of 78.6 million) were allocated to drunk driving programs (with an added 30 percent spent on alcohol enforcement activities under Police Traffic Services).

Responding to citizen interest, 21 States and a number of local jurisdictions have established special drunk driving task forces to revitalize State/local programs.

Fifteen States have raised the minimum legal drinking age to reduce alcohol related crashes among youth. Other States such as Maryland have introduced legislation to raise the drinking age during 1982.

Sixteen States have adopted statutes allowing preliminary roadside breath testing to assist officers in establishing probable cause for drunk driving arrests.

Twenty-one States have established illegal per se statutes designed to simplify and streamline the prosecution of drunk drivers by making it illegal simply to operate a motor vehicle with an illegal blood alcohol concentration (above 0.10%).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MINN.
OREG.
IDAHO
WYO.
S. DAK.
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TENN.
ARIZ.
N. MEX.
OKLA.
ARK.
S.C.
MISS.
ALA.
GA.
LA.
FLA.
TEXAS
D.C. - O
P.R. - O
V.I. - O
ALASKA
HAWAII
Key
- Illegal per se at .10%
In Idaho at .13%
- Presumption of intoxication at .10%
at .10%
In Idaho and Utah at .08%
In Maryland, .08% for DUI and .13% for DWI
In New York, more than .07% but less than .10%

LEGAL AGE FOR CONSUMPTION OF BEER, WINE AND DISTILLED SPIRITS

STATE	EFFECTIVE DATE OF LATEST AMENDMENT	MINIMUM DRINKING AGE[A] AND BEVERAGE				
		BEER		WINE		DISTILLED SPIRITS
		NOT OVER 3.2% ALCOHOL	OVER 3.2% ALCOHOL	TABLE	FORTIFIED	ALL
Alabama	7/75	19	19	19	19	19
Alaska	9/70	19	19	19	19	19
Arizona	8/72	19	19	19	19	19
Arkansas	3/35	21	21	21	21	21
California	12/33	21	21	21	21	21
Colorado	4/45	18	B	21	21	21
Connecticut	10/72	18	18	18	18	18
Delaware	7/72	20	20	20	20	20
District of Columbia	2/34	18	18	18	21	21
Florida	10/80	19	19	19	19	19
Georgia	9/80	19	19	19	19	19
Hawaii	3/72	18	18	18	18	18
Idaho	7/72	19	19	19	19	19
Illinois	1/80	21	21	21	21	21
Indiana	1/34	21	21	21	21	21
Iowa	7/78	19	19	19	19	19
Kansas	3/49	18	21	21	21	21

LEGAL AGE FOR CONSUMPTION OF BEER, WINE AND DISTILLED SPIRITS

STATE	EFFECTIVE DATE OF LATEST AMENDMENT	MINIMUM DRINKING AGE[A] AND BEVERAGE				
		BEER		WINE		DISTILLED SPIRITS
		NOT OVER 3.2% ALCOHOL	OVER 3.2% ALCOHOL	TABLE	FORTIFIED	ALL
Kentucky	5/38	21	21	21	21	21
Louisiana	11/48	18	18	18	18	18
Maine	10/77	20	20	20	20	20
Maryland	7/74	18	18	18	21	21
Massachusetts	4/79	20	20	20	20	20
Michigan	12/78	21[C]	21[C]	21[C]	21[C]	21[C]
Minnesota	9/76	19	19	19	19	19
Mississippi	7/66	18	18[D]	18[D]	21	21
Missouri	5/45	21	21	21	21	21
Montana	7/79	19	19	19	19	19
Nebraska	7/80	20	20	20	20	20
Nevada	12/33	21	21	21	21	21
New Hampshire	5/79	20	20	20	20	20
New Jersey	1/80	19	19	19	19	19
New Mexico	12/34	21	21	21	21	21
New York	5/34	18	18	18	18	18
North Carolina	5/35	18	18	18	21	21
North Dakota	12/36	21	21	21	21	21
Ohio	8/35	18	21	21	21	21
Oklahoma	12/76	18	21	21	21	21
Oregon	12/33	21	21	21	21	21

HB 17
JR

Drinking age

3-3-83
Times

A GOOD BILL to raise the minimum drinking age in Alaska from 19 to 21 is on the verge of being diluted and diverted from the legislative track.

Such a bill has been introduced in a number of previous sessions and what should be an easy matter to deal with has always gotten involved in curious machinations that have resulted in its demise.

THIS TIME AROUND, some legislators are arguing that the measure, which also prohibits persons under the age of 21 from serving drinks, is unfair to young adults. A lot of people are now dead who might be alive had that measure been put on the books when it first came up. Many of Alaska's highway deaths are attributable to drunk drivers in the under-21 age group.

Back in the early 1970s, when youngsters were being given all sorts of additional legal privileges, Alaska lowered its drinking age to 19. Those days are over and members of the Alaska legislature should pay attention to some of the things that have happened as a result of those actions.

STATISTICS show that raising the drinking age in other states has resulted in a decrease in the number of alcohol-related highway deaths. The figures also show that 19 of the 27 states that lowered their drinking age during the 1970s have now thought better of those actions and reversed them.

The new concerns being raised by Alaska legislators this session should not be allowed to block passage of this bill. Its sponsors are encouraged to do whatever is necessary to get it back on the track.

Drinking age plan may change

by Bill White
Times Juneau Bureau

3-1-83

Juneau — A bill to raise Alaska's minimum drinking age to 21 has been put on hold, as lawmakers prepare amendments to protect the rights of citizens who are 19 or 20 years old now.

As written, the proposal would raise the drinking age from 19 to 21 years old 90 days after it became law.

The bill also would prohibit workers under the legal age from serving liquor. The only exceptions would be those 19 or 20 years old who hold such jobs when the bill becomes law.

But Rep. Jim Duncan, D-Juneau, told the House Finance Committee the bill would unfairly exclude young adults from some kinds of work.

Duncan added, "we may be on the verge of making institutional criminals" of those 19 or 20 years old who are used to going to bars or dances where liquor is served. Their lifestyles aren't easy to change, he said.

Dan Hickey, the state's chief prosecutor, said passage of the bill should reduce crime. But he doesn't have the staff to push prosecutions of those who would violate the new law, he said.

Finance Chairman Al Adams, D-Kotzebue, told Hickey to prepare amendments to the bill to stagger when the new law would take effect to protect the rights of those who now drink or who may serve liquor.

The committee plans to take up those amendments Wednesday.

Rep. Mike Miller, D-Juneau, urged the committee members to approve the bill.

"I was one of the members of the legislature in the early 1970s when we took what we considered a pioneering step in lowering the drinking age," he said.

"I think I was dead wrong and I think a lot of kids are dead right now," he added, referring to statistics that show an increase in alcohol-related traffic fatalities among young people.

Miller cited a December 1982 report from the Presidential Commission on Drunk Driving that found "raising the legal drinking age produced an average annual reduction of 28 percent in nighttime fatal crashes involving 18-21 year old drivers."

He said 27 states lowered their drinking ages in the 1970s for all alcoholic beverages and 11 other states lowered the age for beer or wine consumption. But 19 states have reversed their actions.

Miller said the bill not only would save lives on Alaska's highways, but it would reduce alcohol consumption in the state. "None of us can take a great deal of pride in the amount of drinking in Alaska."

Rep. Terry Martin, R-Anchorage, sponsor of the bill, said 55 percent of all fatal traffic accidents in Alaska involved those younger than 19. But the state's Highway Safety Planning Agency said that between 1979 and 1982 the age group under 20 accounted for one-fourth of all alcohol related fatalities. Members of that same age group hold 3 percent of the driver's licenses in Alaska.

Rep. Vern Hurlbert, D-Sleetmute, said raising the drinking age might cause some young adults to drink in their cars rather than bars.

The Sheffield administration has endorsed the bill. But it favors staggering the effective date of the bill to raise the minimum age to 20 next year and 21 in 1985.

The House passed a similar bill last year. But it died in the Senate.

Opinion

JUNEAU EMPIRE

WILLIAM S. MORRIS III
PRESIDENT and PUBLISHER

JEFFREY A. WILSON
GENERAL MANAGER

CARL SAMPSON, Managing Editor
FRED HOWARD, Circulation Manager
TOM BLUMENSHINE, Production Manager

We support raising the drinking age

Anyone who has lived in Alaska for any length of time has known someone hurt by alcohol.

Alcohol abuse crosses every line. It affects old and young, man and woman, rich and poor. But no instance of alcohol abuse is as tragic as among young people.

To see a teen-ager caught up in alcohol abuse can only be described as a shame. Yet most of us see it, hear about it and read about it all the time.

Most drinkers, young and old, are responsible. Yet a sizable minority — a minority that cannot be ignored — continues to misuse alcohol. And many are teen-agers.

The major and most deadly abuse of alcohol is drunken driving. For some reason, young Alaskans especially are arrested time and again for drunken driving. You can see it in the daily police reports and hear about it from concerned friends and parents.

All too often, you read about it in the obituaries.

According to Mothers Against Drunk Drivers, a nationwide group that has taken hold in Alaska, almost one-third of the 24,000 people who died in alcohol-related traffic accidents nationally were teen-agers.

No death is as tragic as a drunken-driving death. That tragedy is even worse when it involves a teen-ager.

Getting rid of alcohol in Alaska seems an impossibility. Though it has been successful in many rural areas, the return of prohibition is not at hand in most of the state.

What is at hand is a movement to raise Alaska's drinking age from 19 to 21.

That is an effort we can all support. Raising the drinking age will not solve Alaska's drinking problem. Nor will it stop drunken driving among teen-agers.

But it will help stop the on-going tragedy of alcohol abuse among many of Alaska's youths.

"I voted to lower the drinking age in 1970," Rep. Mike Miller, D-Juneau, told the House Judiciary Committee last week. "We were dead wrong."

We agree. Drinking is not a right. It is a privilege we believe is hurting too many teen-agers.

Though no statistics are available for the state, we and many other responsible Alaskans agree that raising the drinking age to 21 will save lives.

We support raising the state drinking age.

21: Magic drinking age

Panel: 19 too young

By The Associated Press

Witnesses at a House Judiciary Committee hearing weren't sure people automatically become responsible drinkers at age 21, but they nevertheless agreed that the drinking-age should be lifted from 19 to 21.

A measure to do that, (HB17), whose prime is Rep. Terry Martin, R-Anchorage, was the subject of a hearing Thursday. Martin told committee members that age 21 seems to be "some kind of magical number that does reduce death."

Martin said that of 24,000 annual alcohol-related traffic deaths nationally, 7,000 were teenagers. The problem has prompted Congress to consider a national age of consumption, he added.

Alaska's director of Highway Safety, Charlie Smith, said statistics on alcohol-related traffic deaths in the 49th state are largely unavailable because "last year was the first time I was asked to produce statistics."

A presidential commission has recommended all states raise their drinking age to 21, Smith said.

Howard Scaman, who represented Mothers Against Drunk Driving, Students Against Drunk Driving, and the Coalition for a Safe Alaska, said that the problem is so serious that alcohol "is readily available in the junior high system."

The state, he said, has one liquor license per 183 people, several times higher than the national average.

Rep. Mike Miller, D-Juneau, said he was part of the problem.

"I voted to lower the drinking age in 1970," he said. "We were dead wrong. We felt that if they wanted to get it, they were going to get it. And they were going to drive anyway."

Raising the drinking age won't eliminate teenage drinking, Miller said, "but we can lessen it."

"There is no magic number," he said. "We have to draw the line somewhere. Twenty-one seems to be a good age."

When Rep. Don Clocksin, D-Anchorage, said he was concerned the law would be discriminating because of age, But, Miller added, "Drinking and getting drunk is not a right. And society has a right to draw a line."

A representative of the Hotel, Restaurant and Bartenders Union Local 878, Michelle Castanedo said she had no objection to raising the drinking age. But, she said, she would like to see a provision for 18-to 20- year-olds being allowed to work in places where alcohol is served.

A committee substitute providing for her concern is expected to be introduced today as hearings on the bill continue.

Martin supports higher drinking age

Associated Press 1/28/83

Juneau — Witnesses at a House Judiciary Committee hearing weren't sure people automatically become responsible drinkers at age 21, but they nevertheless agreed that the drinking age should be lifted from 19 to 21.

A measure to do that, sponsored primarily by Rep. Terry Martin, R-Anchorage, was the subject of a hearing Thursday. Martin told committee members that age 21 seems to be "some kind of magical number that does reduce death."

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"There is no magic number," he said. "We have to draw the line somewhere. Twenty-one seems to be a good age."

When Rep. Don Clocksin, D-Anchorage, said he was concerned the law would be discriminating because of age, Miller admitted he shared the same concerns.

But, Miller added, "Drinking and getting drunk is not a right. And society has a right to draw a line."

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A committee substitute providing for her concern is expected to be introduced today.

Letters to the editor

Raise the age for drinking

Dear Editor:

In response to the letter, "Cure for teenage drinking," I would like to make a few comments.

Mr. Kirk wrote a lengthy and lively letter demeriting Rep. Terry Martin's bill to raise the drinking age from 19 to 21. He says the bill violates the "American Way" of giving citizens great responsibility for their individual actions.

Let's keep in mind that laws and regulations arise in response to harmful behavior. This bill is long overdue!

Real-life groups of people are, in fact, punished for the transgressions of a few of their members. The "old elementary school teacher who used to make the whole class stay in from recess because someone was talking during class" offers us all a valuable lesson. No one lives completely unto himself. Our actions always produce an affect touching those persons associated or identified with us. For example, a disruptive or criminal family member causes grief to other members of his family. Shoplifters cause the price of retail goods to rise for all shoppers, and careless youthful drivers cause other teen-agers to pay higher insurance rates. The elementary teacher was illustrating the point that it was not only her job to maintain order in the classroom but that the group also was expected to exhibit appropriate conduct and encourage classmates to do the same.

We should learn early in our education that we are individually and collectively responsible for our actions. Peer pressure to do what is right is the only hope for an orderly society, as it is impossible to have a policeman for every citizen. One who buys liquor for a minor contributes to that minor's risk of harm to himself and others. One who purchases products that contribute to people's poor health and safety — whether it be tobacco, alcohol, or illegal drugs — directly reinforces that more of that substance will be produced. These individuals share in the responsibility along with the intoxicated driver who cripples and kills on the highway.

Nothing will prevent a minor from obtaining dangerous substances if he is determined to do so just as it is impossible to prevent a suicide by a peron bent on self-destruction. However, there is no reason to make these items convenient to youth prior to their reaching an age that we hope allows for the development of maturity and judgement needed to exercise caution if not outright refusal to use these substances.

Comparing the loss of jobs for teenagers in drinking establishments because of the revised 21 year old drinking age is sort of like finding a remedy for cancer and then complaining that some nurses will find themselves out of work. It is true that unemployment is a priority, but the disabling and killing of youthful drivers, their friends, and other innocent drivers is a much higher priority. It is time we consider the long-range costs of our decisions and policies rather than just the immediate effects. It might be a bore to drive at 55 mph and see what you pass but thousands of people are alive today as a result of the law.

Yes, one could say Terry Martin's plan punishes the innocent teen-ager along with the guilty. It's a fact of life. But, if you are a teenager who chooses not to drink, you would hardly consider Rep. Martin's bill a punishment.

Paul M. Anthony
Eagle River

Editorial Opinion and Comment of

FAIRBANKS
Daily News - Miner

"Independent in All Things . . . Neutral in None"

Other opinions expressed on this page do not necessarily reflect those of the Daily News-Miner.

Alcohol abuse worries

We hope members of the Alaska Legislature will be as concerned about the serious community problems caused by alcohol abuse as are their constituents.

Around the nation, Americans are worried. A recent Gallup poll found that Americans are more worried about excessive drinking than they are about smoking or overeating. A majority think the federal tax on liquor should be doubled.

In Alaska, that concern is reflected in efforts to curb the problems caused by alcohol abuse, particularly drunk driving. Last year, Anchorage residents formed a chapter of a powerful new organization called Mothers Against Drunk Driving. Now some Fairbanks residents who have personally experienced the tragedy of losing a family member or friend in an accident involving a drunk driver are setting up a chapter here. Watch for their announcement soon of a public meeting for anyone who is interested.

It's going to take a lot of public pressure to enact the changes we need to make alcoholic beverages less available and therefore cut down on the abuses associated with alcohol. So far, the Legislature has refused to take final action on measures that would increase the state excise tax and restore the drinking age to 21. At the same time, statistics from across the nation are documenting the increasing number of deaths of young people in traffic accidents where booze is involved. And we read more and more about the young age at which students are beginning to accept alcohol consumption as part of their daily living.

The Gallup survey, commissioned by the National Council on Alcoholism's New York affiliate, found that 68 percent of the 1,039 adults surveyed rated an educational campaign to foster drinking moderation "very important."

Fifty-six percent named at least one type of alcoholic beverage on which they favored doubling the federal tax, with an increase in distilled liquor drawing the most support—from 54 percent. Forty-nine percent favored doubling the federal tax on beer, 48 percent on wine.

Sixty-two percent said they would like to see the major political parties support a moderate drinking campaign in their platforms and 59 percent said they would be more likely to vote for a candidate who supported such a campaign.

That should send a message to incumbent legislators. Though people concerned about alcohol abuse and supporting state measures to control it may not have the dollars to match campaign contributions from the liquor industry, they certainly have the votes.

The Legislature has been derelict in the face of the facts in not enacting a tax increase on alcoholic beverages since 1961. It's past time they turned a deaf ear to the powerful liquor lobbyists and passed legislation to raise the drinking age and pay for some of the human misery created by those who can't handle alcohol.

Here in Fairbanks, we've so far managed to sweep aside most of the proposals to deal with alcohol abuse, too often claiming that since a specific proposal won't do the whole job, we shouldn't enact it. With that shortsighted view, we'll never even get started.

Fairbanks Mayor Bill Walley's blue ribbon commission can be a big help in curbing alcohol abuse and thereby making Fairbanks cleaner and safer if it will recommend specific steps the community can take and urge people to also push for other steps the state can take.

The problems caused by alcohol abuse aren't going to go away if we ignore them—sadly, they're going to get even worse.

This year is the time to press for some action.

Letters to the editor

1/15/83 Times

Cure for teen-age drinking

Dear Editor:

Rep. Terry Martin has filed another bill to raise the drinking age from 19 to 21 years of age. A similar bill was squashed last year in the state Senate.

Martin's argument is that by allowing these young adults — and a 19 or 20-year old is a legal adult, mind you — access to legal liquor makes it that much easier for teenagers to get booze. He points out that teenagers cause a disproportionate share of drunk-driving accidents. The answer to teen-age drunk driving, he says, is to prohibit those kids' older friends and siblings from touching that Old Demon Rum.

The bill violates certain principles.

It is the American way, our historical tradition, to give citizens great responsibility for their individual actions. Freedom is curtailed only when an individual proves irresponsibility by abusing that freedom. Groups of people — ethnic, religious, demographic — are not to be punished for the irresponsibility or other transgressions of a few of the members of those groups.

Remember that old elementary school teacher who used to make the whole class stay in from recess because someone was talking during class? Remember how, even then, you perceived that as not fair? Better example: statistics show that blacks and Hispanics in America commit more violent crimes per capita than do whites. I hope I shall never hear Alaska legislators calling for restrictions on the rights of blacks and Hispanics because of this.

Too farfetched? Allow me one more hypothetical situation: Two nations go to war. One contains a number of citizens whose ancestors came from the enemy nation. Regardless of their actual citizenship or loyalty, these citizens are rounded up and held in concentration camps for the duration. The nation which succumbs to this lapse in judgment is still embarassed by it some 41 years later.

Enough on principles. What about the practical effects of the bill in question? Martin's attempt at prohibition would not prevent 19- and 20-year-olds from getting alcohol; they would obtain it surreptiously just as 17- and 18-year-olds do now. What it would do is prevent them from holding jobs in establishments where liquor is served. This includes that nice restaurant at the hotel as well as your local neighborhood pizza parlor. Such establishments are a major source of employment for young people without job skills.

There are other ways to cut back on drunken driving. One idea, put forward by the staff of the then-Sen. Charlie Parr last year, is to suspend the license of any minor caught driving while intoxicated until that minor reaches adulthood.

For some teens, three days in jail, no matter how monotonous or difficult at the time, might seem a status symbol when back amongst their peers. But the thought of losing their wheels for a long time ought to make even the tough teens tremble. The proposal has the advantage of punishing individual teen-agers rather than a whole demographic slice of their older brothers and sisters.

There are other ways to cut back on drunk drivers, including impoundment of vehicles and longer mandatory jail terms. These proposals don't quite provide the "quick fix" Martin desires, but they differ from his plan in one important aspect: they punish the guilty, not the innocent.

Equal responsibility can be expected only when equal rights are extended. Nineteen- and 20-year-olds are legal adults who stand before the same system of police, courts and corrections as do the rest of us. To deny them a privilege we all enjoy, a right of access to entertainment as well as employment, is not only impractical but wrong.

Kenneth C. Kirk
4318 Vance Dr.

Alaska's image

Dear Editor:

When his days as governor were numbered, Jay Hammond spent a lot of time in public appearances talking about what his "legacy" would be for eight years of service. Now we know more about what he was meant to Alaskans from the public opinion shift which has apparently occurred nationwide as a result of Hammond-era public relations escapades.

Traditionally Alaskans have not wasted a lot of valuable energy trying to impress Outside residents of our meaningful existence in this world of hocus-pocus. But image-maker Hammond needed to convince the rest of the nation that we really care what they think of us; with the result being a loss of self-esteem.!

Two million dollars were reportedly spent for a national communications program to embellish an already positive national image. Two years later, after many tales of woe for programs that flopped and books that weren't published, the concensus Outside is that Alaskans are frivolous with money they don't deserve to have or to throw around.

Donn R. Liston
Anchorage

Barbs

If there's enough for second helpings, it most likely wasn't all that appetizing to begin with.

There's no one harder to shut up than the person who has nothing to talk about.

The Effect of Raising the Legal Minimum Drinking Age on Fatal Crash Involvement

HB112

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The Effect of Raising the Legal Minimum Drinking Age on Fatal Crash Involvement

ABSTRACT

In the early 1970's, many states in the U.S. lowered their legal minimum drinking ages, resulting in increased fatal crash involvement among young drivers. Beginning in 1976 and continuing into the 1980's, some of these states raised their drinking ages. The present study, conducted in nine states in which the drinking ages were raised, found that this resulted in reductions in fatal crash involvement among drivers the law changes applied to, especially in types of fatal crashes in which alcohol is most often involved. The reductions in the nighttime fatal crash involvement of such drivers, that occurred in eight of the nine states, ranged from 6 to 75 percent. On average, a state that raises its drinking age can expect about a 28 percent reduction in nighttime fatal crash involvement among drivers the law change applies to. It was estimated that in the 14 states that had raised their drinking ages as of January 1981, the result each year is about 380 fewer young drivers involved in nighttime fatal crashes. In the 31 states that still had a legal minimum drinking age less than 21 as of that date, it is estimated that each year there could be about 730 fewer young drivers in nighttime fatal crashes if the legal drinking age were raised to 21.

In the early 1970's, more than half of the states in the U.S. lowered their legal minimum drinking ages -- in most cases from 21 to 18 -- for the purchase of some or all alcoholic beverages. Research indicated that this legislation resulted in increased crash involvement among young drivers.[1,2] In a study of various states and Canadian provinces that reduced their drinking ages from 21 to 18, there were significant increases in fatal crash involvement -- particularly in nighttime and single vehicle crashes in which alcohol is most often involved -- of drivers under 21 in these areas, compared with adjacent areas that did not reduce their drinking ages. These increases occurred not only among 18-20 year olds, who were directly affected by the law change, but also among 15-17 year olds.[1]

As a result of these findings and other reports of growing teenage alcohol-related problems, many states that had lowered their legal minimum drinking ages in the early 1970's raised them beginning in 1976. By the end of 1980, 14 of the 30 states that had lowered their drinking ages for the purchase of some or all alcoholic beverages had raised them, although not necessarily back to the original ages. In this paper, a study of the effect of raising the drinking age on fatal crash involvement of teenage drivers is reported.

METHODS

Research Design

Nine states, all of which raised their legal minimum drinking ages between September 1, 1976 and January 1, 1980, were studied. Four states that raised their drinking ages during 1980 were excluded, because the law changes were too recent for their effects to be measured using data available when the

study was conducted. New Jersey, which raised its drinking age from 18 to 19 on January 2, 1980, but included a "grandfather" clause permitting those already 18 before that date to drink, was also excluded.

Each of the nine states was paired with a comparison state in which the legal minimum drinking age remained unchanged during the study period. Comparison states were chosen on the basis of geographic proximity to law-change states and comparability with law-change states with respect to numbers of crash fatalities. Table 1 shows the law-change and comparison state pairs, and drinking age regulations in each state.

Table 1 goes here

Data on driver involvement in fatal crashes from January 1975 through September 1980 were obtained from the Fatal Accident Reporting System (FARS).* Only drivers of motor vehicles -- automobiles, light trucks, vans, on-off road vehicles -- were included.

Alcohol is a major factor in fatal motor vehicle crashes in general, but is particularly likely to be involved in nighttime fatal crashes (9:00 p.m. - 5:59 a.m.), especially single vehicle nighttime fatal crashes.[3-5] This subset of crashes therefore received special attention during the study.

The duration of post-law periods studied ranged from nine months (Illinois) to three years (Minnesota). In two states that raised their drinking ages from 18 to 19 but had a "grandfather" clause that permitted those already 18 years

* FARS is a computerized data base containing information on motor vehicle fatalities in the 50 states, the District of Columbia, and Puerto Rico. The data are collected by the state governments under contract to the National Highway Traffic Safety Administration. Police accident reports are the primary source of data, supplemented by data from medical examiners and other sources.

old to drink, the 12-month period following the law change dates was excluded. Pre-law and post-law periods for the nine states are shown in Figure 1. The ages to which the law changes apply are also given for each state in Figure 1.

Figure 1 goes here

Fatal crash involvement of drivers younger than those covered by the laws (starting with age 15) was also studied because of the possibility of spillover effects in these ages when alcoholic beverages could no longer be obtained legally by older teenagers. As a control, drivers older than those to whom the law changes applied (through age 21) who could drink legally in law change states throughout the study period were also included.

When a state changes its drinking age, there are possible effects on fatal crash involvement in adjacent states, both in the age groups the law changes apply to, and among their younger and older associates. These effects can be positive or negative. For example, if a state raises its drinking age from 18 to 21 and a neighboring state has an 18-year-old drinking age, then 18-20 year olds in the law-change state may travel to the neighboring state in order to drink legally, and may crash there. On the other hand, if a neighboring state has a 21 year old drinking age, 18-20 year olds in that state may no longer travel to the law-change state to drink, and consequently may crash less in both states.

These and other possible effects have a bearing on the research design used in the present study, which involved comparing law-change states with neighboring (although not necessarily contiguous) states, and also must be considered in assessing the net effect of states raising their legal minimum drinking age. It was found, however, that the number of drivers of the age

groups studied with out-of-state licenses in fatal crashes in law-change and comparison states in the pre- and post-law periods was small (less than 10 percent of the total). More importantly, the number of drivers in fatal crashes in law change states that were licensed in the comparison states (and fatal crash involved drivers in comparison states that were licensed in the law-change states) was less than one percent of the total.

Analyses based only on drivers licensed in the state in which the crash occurred produced the same results as analyses based on all drivers; the latter measure was therefore used.

Statistical Analysis

If raising the drinking age reduces driver involvement in alcohol-related fatal crashes, nighttime fatal crashes would be expected to be reduced more than daytime crashes (and single vehicle nighttime fatal crashes more than multiple vehicle daytime fatal crashes). In other words, the ratio of night-to-day fatal crashes in a law-change state would be greater before the law change than after it. This can be shown in a 2 x 2 table as follows:

	Time Period	
Time of Crash	Before Law Change	After Law Change
Night	n_{11}	n_{12}
Day	n_{21}	n_{22}

and $$\frac{n_{11}}{n_{21}} \geq \frac{n_{12}}{n_{22}} \qquad (1)$$

A statistical measure that compares such ratios is the log odds ratio,[6] defined as:

$$\beta = \ell n \quad \frac{n_{12}/n_{22}}{n_{11}/n_{21}} \qquad (2)$$

Positive values of β correspond to increases in the night/day ratio, negative values to decreases, and $\beta = 0$ whenever the ratio is unchanged. Except for small samples ($n \leq 5$) the distribution of β is asymptotically normal and its variance is approximately:

$$\sigma_\beta^2 = \frac{1}{n_{11}} + \frac{1}{n_{12}} + \frac{1}{n_{21}} + \frac{1}{n_{22}} \qquad (3)$$

The hypothesis of no change in the night/day ratio subsequent to the law could therefore be tested in terms of the approximately standard normal test statistic $Z = \beta/\sigma_\beta$. Large negative values of Z would indicate a reduction in this ratio; large positive values an increase.

To rule out the possibility that changes in the ratios in law-change states were part of a regional trend, the log odds ratio for a law-change state (β_ℓ) was compared with the log odds ratio of the non-law change (comparison) state with which it was paired (β_c). To calculate β_c data for the comparison state were split into before and after periods that coincided with these periods in the law-change state. Positive, zero or negative values of the difference $\Delta\beta = \beta_\ell - \beta_c$ are indicative of greater, equal or smaller increases in the law-change state than in the comparison state. The variance of this test statistic is $\sigma^2_{\Delta\beta} = \sigma^2_{\beta_\ell} + \sigma^2_{\beta_c}$ and $\Delta\beta/\sigma_{\Delta\beta}$ is again standard normal if the change in the night/day ratio was the same in both states.

To rule out the possibility that changes observed in age groups covered by the law (and younger ages) were part of a trend in the night/day ratio that occurred in other age groups in law change states, log odds ratios in law-change and comparison states were compared for older drivers through age 21, to whom the law change did not apply. This was done by comparing $\Delta\beta_a$ for the law-affected group to a similarly calculated $\Delta\beta_o$ for the older age group. As before, the variance of $\Delta\beta_a - \Delta\beta_o$ is equal to $\sigma^2_{\Delta\beta_o} + \sigma^2_{\Delta\beta_a}$ and the test statistic is $(\Delta\beta_a - \Delta\beta_o)/(\sigma^2_{\Delta\beta_a} + \sigma^2_{\Delta\beta_o})^{\frac{1}{2}}$ which is standard normal in the absence of a difference between the $\Delta\beta$'s.

The log odds ratios were also used to estimate changes in the number and percentage of drivers in nighttime fatal crashes resulting from the law. Consider now the 2 x 2 x 2 contingency table for a given age group:

		State			
		Comparison		Law-Change	
		Before	After	Before	After
Time of Crash	Night	a	b	e	x
	Day	c	d	g	h

If the two odds ratios are the same then,

$$\frac{xg}{eh} = \frac{bc}{ad} = e^{\beta_c} \qquad \text{and } x = bceh/adg.$$

Now if, instead of x, the cell frequency is actually n, then the difference

$$\Delta n = n - x = n\,[1 - e^{\beta_c - \beta_2}] \qquad (4)$$

is the change in drivers involved in nighttime fatal crashes in the law-change state after the law went into force. This change can be expressed as a percentage:

$$\Delta P = 100\,\frac{\Delta n}{x} = 100\,[e^{\Delta\beta} - 1] \qquad (5)$$

Estimates of net changes in fatal crash involvement due to the laws were obtained by comparing the estimated changes for the age group covered by the law (ΔP_a) with the estimated change (ΔP_o) for the older group. Applying formula (5) for both age groups leads to the estimated net change due to the law for the law-affected group:

$$\Delta P_k = \frac{\text{Net change}}{\text{in state k}} = \frac{\Delta P_a - \Delta P_o}{1 + \Delta P_o} \qquad (6)$$

These methods were also used to determine what changes occurred in driver involvement in single vehicle nighttime fatal crashes and in all fatal crashes.

Data from the matched state pairs were analyzed by means of these methods in three different ways. The simplest analysis was based on data pooled across the nine law change and nine comparison states. In this analysis the pooled data were treated as if all of it had come from one change and one comparison state. This analysis disregards the variation between the states.

In the second method the "typical" change attributable to the laws was estimated as the average of the nine separate state estimates:

$$(\Delta P)_{av} = 1/9\ (\Delta P_1 + \ldots + \Delta P_9) \qquad (7)$$

The corresponding estimate for the variance of ΔP_k is

$$\sigma^2 = 1/8 \sum_{1}^{9} (\Delta P_k - (\Delta P)_{av})^2 \qquad (8)$$

and so the 95 percent confidence interval for the average is $(\Delta P)_{av} \pm 1.96\ \sigma/\sqrt{9}$. National projections for the estimated impact of already existing laws and the impact of further law changes were estimated on the basis of $(\Delta P)_{av}$.

Finally, to estimate the percentage change in driver fatal crash involvement that occurred in law-change states during the study period, the estimated changes were summed across the law-change states and divided by the estimated sum of the number of drivers that would have been in fatal crashes without the law change. This estimate corresponds to the "aggregate" change due to the laws. The aggregate change is a weighted average of the changes, whereas the typical change is an unweighted average. Statistical significance of the aggregate change was assessed in terms of the test statistic:

$$Z = \frac{1}{\sqrt{9}} \sum_{1}^{9} \frac{\Delta\beta_{ak} - \Delta\beta_{ok}}{(\sigma^2_{\Delta\beta_{ak}} + \sigma^2_{\Delta\beta_{ok}})^{\frac{1}{2}}} \qquad (9)$$

In the absence of a law effect Z would have a standard normal distribution.

RESULTS

Table 2 shows the results of comparisons between the nine law-change and comparison state pairs on driver involvement in fatal crashes before and after the laws went into force. In the age groups the laws applied to, there was a greater decrease in driver involvement in nighttime than in daytime fatal crashes in law-change states than in comparison states subsequent to the laws ($Z = -3.29$, $p = 0.001$). There was also a greater decrease in single vehicle nighttime fatal crash involvement than in multiple vehicle daytime fatal crash involvement for those ages ($Z = -2.85$, $p < 0.01$). There were an estimated 30 percent fewer drivers in the law-affected age groups in fatal nighttime crashes in law-change states during the post-law periods studied, and 41 percent fewer drivers in single vehicle nighttime fatal crashes. There was a decrease in driver involvement in all fatal crashes in law-change states in the age groups that the law applied to, but it was not statistically significant ($Z = -1.20$, $p > 0.10$).

Table 2 goes here

There was some indication of decreased fatal crash involvement of drivers in law-change states who were younger than drivers the law changes applied to, but the changes were not statistically significant. This was also the case when comparisons were based only on drivers one year younger. There were also small, non-significant changes for older drivers in law-change states.

The three sets of estimates of the percent net reductions in fatal crash involvement of drivers in law-change states to whom the law changes applied are given in Table 3. The three estimation methods yielded reasonably consistent results. Estimated reductions in driver involvement in nighttime fatal crashes

ranged from 18 to 28 percent; all three estimates were statistically significant. Estimated reductions in driver involvement in single vehicle nighttime crashes ranged from 23 to 35 percent. Although these reductions were higher than the nighttime reductions, only the aggregate estimate was statistically significant, in part because of the smaller number of drivers in nighttime single vehicle crashes. There were smaller estimated reductions in all fatal crashes (12 to 20 percent); the pooled estimate was statistically significant.

Table 3 goes here

Table 4 shows, for each of the nine law-change states, the estimated post-law changes in nighttime fatal crash involvement for law-affected and older drivers, and the net effects. The net effects of the laws on drivers the law changes applied to are also displayed in Figure 2. There were estimated net reductions in driver involvement in nighttime fatal crashes in eight of the nine states, ranging from 6 to 75 percent. Montana was the lone state in which there was not a net reduction. The average reduction in the nine states was 28 percent (± 17 percent for a 95 percent confidence interval).

Table 4 goes here

Figure 2 goes here

Figure 3 displays the estimated effects of driver involvement in nighttime fatal crashes as deseasonalized monthly time series from 1975 into 1980 as the

nine states studied raised their legal minimum drinking ages.*

Figure 3 goes here

DISCUSSION

When states lowered their legal minimum drinking ages in the early 1970's, the result was an increase, among both law-affected and younger drivers, in involvement in fatal crashes, especially those crashes in which alcohol is most often involved. The results of the present study indicate that when states raise their drinking age, there is a corresponding decrease in fatal crash involvement among law-affected drivers. There is some evidence that raising the drinking age also affects younger drivers, but the reductions in the involvement of younger drivers in fatal crashes were not statistically significant.

For the 14 states (including the nine studied plus five others) that as of January 1981 had raised their legal minimum drinking ages in recent years, it is estimated that these law changes result each year in about 380 fewer young drivers involved in nighttime fatal crashes.** For the 31 states (including seven of the nine studied) that as of January 1981 had a drinking age for

* The estimated monthly series was obtained in three steps. First, for each month the data in the 2 x 2 table representing day/night and law change/no law change splits were pooled among states that had already raised the drinking age, and the frequency of nighttime crash involvement in the change state was estimated so that the odds ratio of the modified table then equalled the odds ratio for a similar table obtained by pooling all pre-law change counts across all months and all states. Second, these estimated counts for the post-law periods in the change states were added to the sum of the observed counts in the states that still did not change their laws. Third, this sum was smoothed using X-11. The estimated monthly reduction in fatal crash involvement was subdivided between law effect and other factors using a constant factor (40 percent). This factor represents the estimated reduction in the involvement of older drivers.

** This annual estimate was based on data from 1979, the last full year for which FARS data were available when the present study was conducted.

some or all alcoholic beverages that was less than 21,* it is estimated that each year there could be about 730 fewer young drivers involved in nighttime fatal crashes if in all states the drinking age for all alcoholic beverages was raised to 21. Any single state that raises its drinking age can expect the involvement in nighttime fatal crashes of drivers of the age groups to which the change in the law applies to drop by about 28 percent.

The societal benefits achieved in states that have raised their drinking ages are substantial; the benefits achievable by additional states raising their drinking ages would be even more substantial. Raising the legal minimum drinking age to 21 in all states would have an important impact in reducing the annual toll of motor vehicle deaths in the United States, particularly the deaths of young people and of others with whom they are involved in crashes.

* If persons less than age 21 were allowed to purchase only beer containing not more than 3.2% alcohol by weight, the state was classified as having a 21-year-old drinking age.

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TABLE 1

Legal Minimum Drinking Ages in Law-Change and Comparison States[1]

Law-Change State	Drinking Age Change From	To	Effective Date	Comparison State	Legal Minimum Drinking Age
Illinois[2]	19	21	1/1/80	Indiana	21
Iowa[3]	18	19	7/1/78	Kansas[4]	21
Maine	18	20	10/24/77	Vermont	18
Massachusetts	18	20	4/1/79	Connecticut	18
Michigan	18	21	12/23/78	Ohio[4]	21
Minnesota[3]	18	19	9/1/76	Wisconsin	18
Montana	18	19	1/1/79	Idaho	19
New Hampshire	18	20	5/24/79	Part of New York[5]	18
Tennessee	18	19	6/1/79	Kentucky	21

1 The laws apply to all alcoholic beverages except where noted.

2 The age change applied to beer and wine; the legal minimum drinking age for distilled spirits was 21 throughout the study period. Prior to the 1980 change, home rule units in Illinois had the authority to promulgate different laws for drinking ages. Some raised the drinking age from 19 to 21 for beer and wine before the statewide change in 1980, although in some cases, beer and wine purchase by 19-20 year olds was permitted under some conditions.

3 A "grandfather" clause permitted 18 year olds to drink if they were 18 before the law went into effect.

4 The legal minimum drinking age was 18 for beer with not over 3.2% alcohol content, and 21 for other alcoholic beverages.

5 The following counties in central and northern New York were included: Clinton, Essex, Franklin, Fulton, Hamilton, Herkimer, Jefferson, Lewis, Madison, Montgomery, Oneida, Oswego, St. Lawrence, Saratoga, Warren, and Washington.

TABLE 2

Statistical Tests Comparing Changes in Driver Involvement in Fatal Crashes Before and After Changes in Legal Minimum Drinking Ages

Fatal Crash Ratios Compared	Driver Categories: Drivers the Law Change Applied to		Younger Drivers		Older Drivers	
	Z statistic[1]	Estimated change(%)	Z statistic[1]	Estimated change(%)	Z statistic[1]	Estimated change(%)
Nighttime : Daytime	-3.29**	-30	-0.29	-6	-0.53	-15
Single Vehicle Nighttime : Multiple Vehicle Daytime	-2.85*	-41	-0.32	-12	-0.20	-9
All Types	-1.20	-11	-0.91	-7	+1.03	+11

[1] Z is standard normal under the null hypothesis. See text.

** $p = 0.001$, two-tailed

* $p < 0.01$, two-tailed

TABLE 3

Estimated Percent Net Reductions in Fatal Crash Involvement of Drivers to Whom Changes in the Legal Minimum Drinking Ages Applied

Fatal Crash Type	Method of Estimation[1]		
	Aggregate	Typical	Pooled
Nighttime	-18%*	-28%**	-23%*
Single vehicle nighttime	-35%*	-23%	-25%
All types	-20%	-12%	-14%*

[1] See text.

** $p < 0.001$, two-tailed

* $p < 0.05$, two tailed

TABLE 4

Estimated Changes in Nighttime Fatal Crash Involvement After Changes in the Legal Minimum Drinking Ages in Nine States, and Net Reductions in the Age Group the Law Change Applied To

Law-Change State	Change in Nighttime Fatal Crash Involvement		Net Reduction Among Drivers the Law Change Applied to
	Drivers the Law Change Applied to	Older Drivers	
Illinois	-30%	-9%	-23%
Iowa	-60%	-29%	-45%
Maine	-14%	-3%	-11%
Massachusetts	-10%	-5%	-6%
Michigan	-17%	+40%	-41%
Minnesota	-56%	-32%	-34%
Montana	+17%	+3%	+14%
New Hampshire	-55%	+80%	-75%
Tennessee	-43%	-14%	-33%
Average Reduction			-28%*

* = 17% for a 95% confidence interval.

FIGURE 1

PRE-LAW AND POST-LAW PERIODS STUDIED, AND AGES THE LAW CHANGES APPLY TO

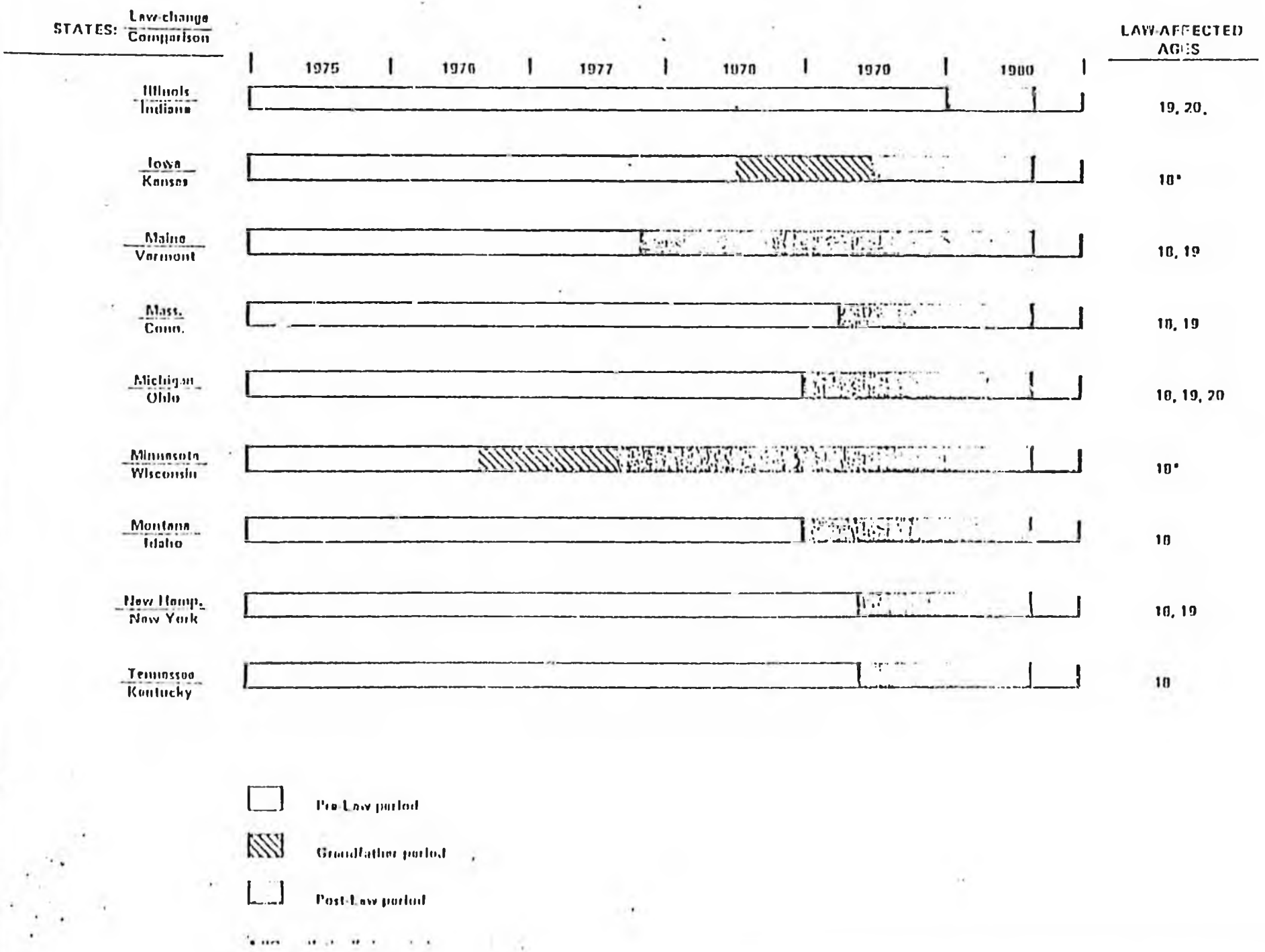


FIGURE 2

NET CHANGES IN DRIVER INVOLVEMENT IN NIGHTTIME FATAL CRASHES
AFTER CHANGES IN THE LEGAL MINIMUM DRINKING AGES

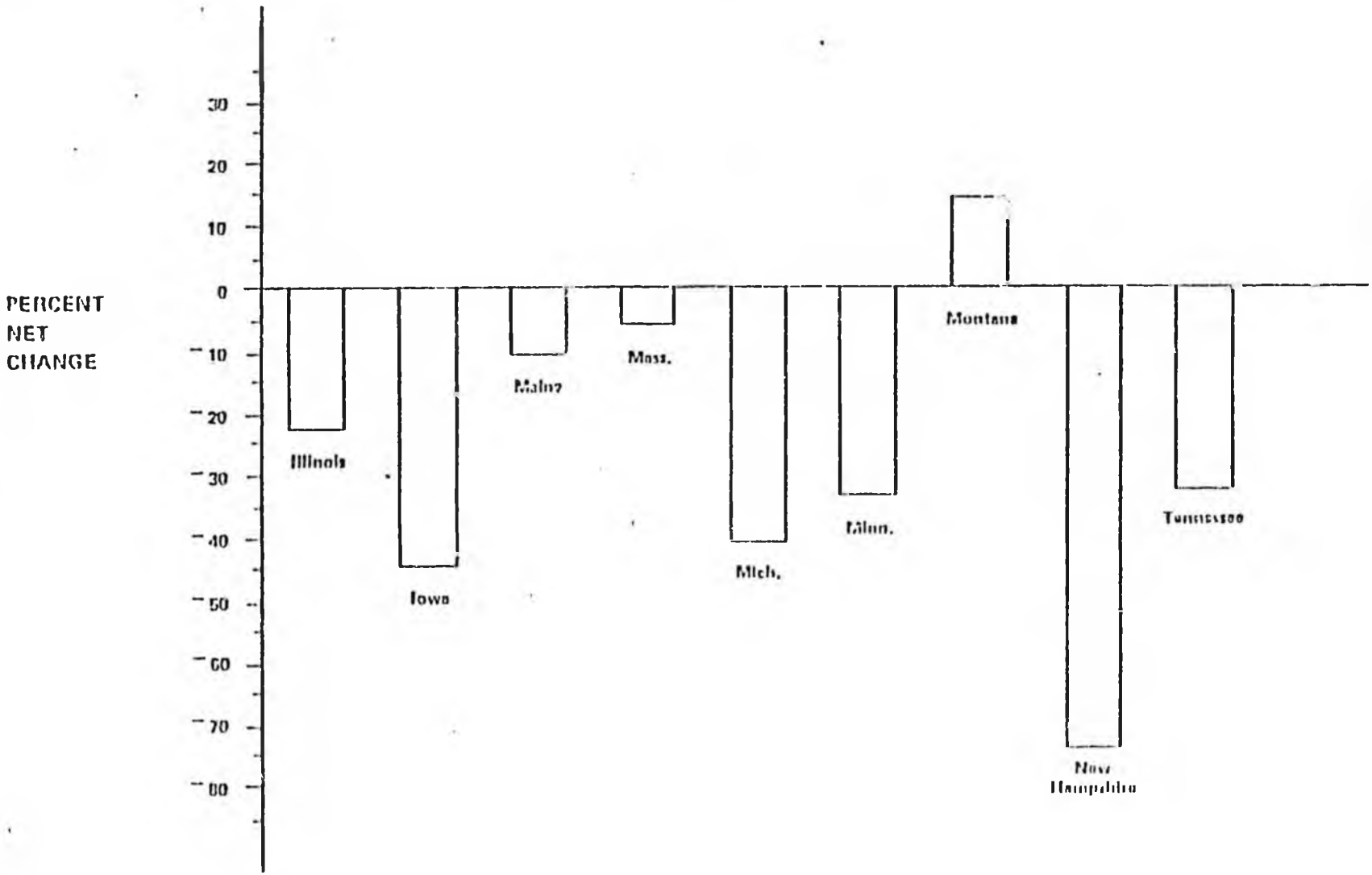
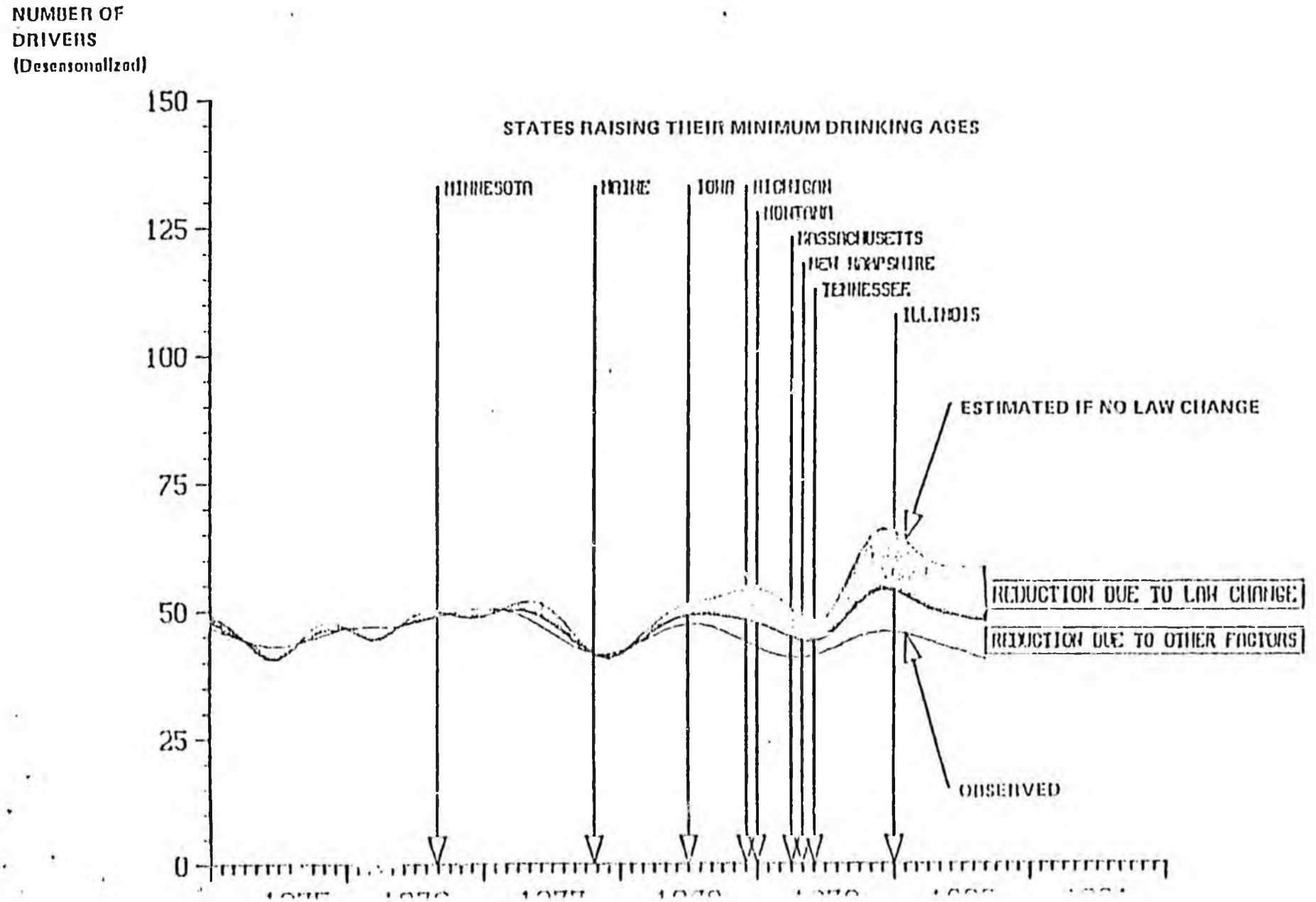


FIGURE 3

ESTIMATED NET REDUCTION IN NIGHTTIME FATAL CRASH INVOLVEMENT
IN NINE STATES THAT RAISED THEIR LEGAL MINIMUM DRINKING AGES



insurance institute for highway safety

the highway loss reduction

Status Report

Vol. 16, No. 14 September 23, 1981

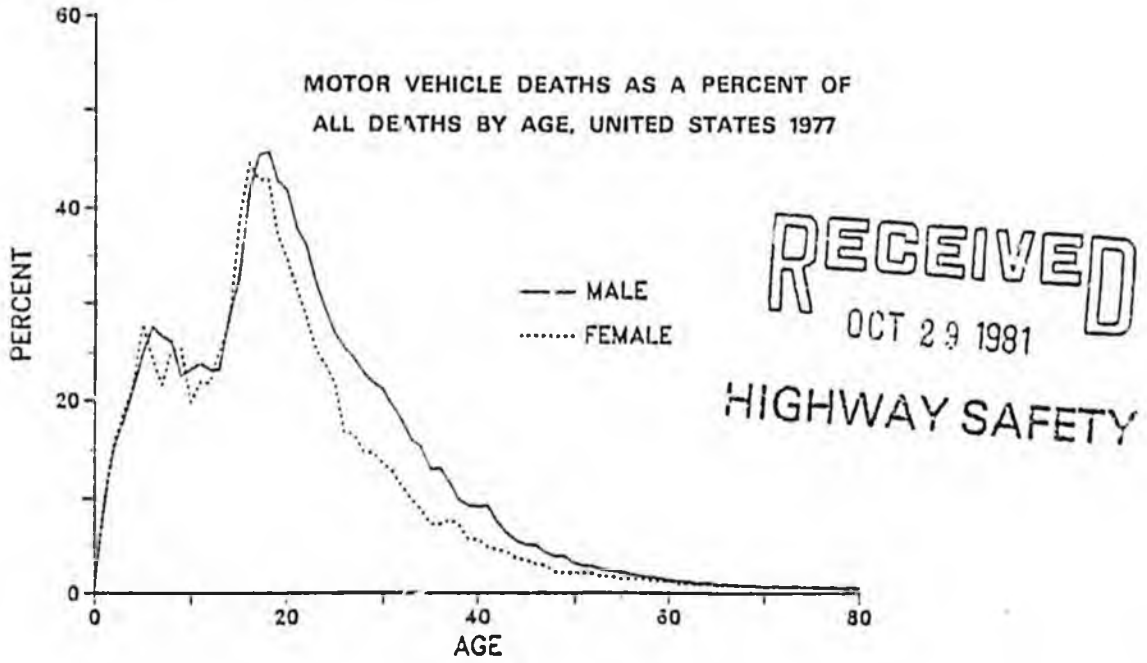
A Special Issue

Teens and Autos: A Deadly Combination

"By a wide margin, the major public health problem for teenagers in the United States is injuries associated with motor vehicle use."

The enormity of the issue is thus summed up in a new research study by the Insurance Institute for Highway Safety. Warnings of the sometimes-tragic combination of a teenaged driver and an automobile are common. But the real story goes beyond that. Starting at the age of 13, motor vehicle passenger death rates per capita climb sharply compared to passengers of other ages. Motor vehicle-related fatalities are suffered by teenagers at more than twice the rate that would be expected on a population basis. According to one Institute study, more than 7,000 teenagers lost their lives in passenger car crashes in 1978.

Deaths and injuries inflicted on any segment of the population in motor vehicle crashes constitute a costly burden in pain and suffering and in economic terms. When a disproportionate share of those costs can be identified as being caused by a particular group of drivers and passengers, it is especially important to examine public policies and countermeasures available. This special issue of *Status Report* focuses on some of the known facts and policy options relating to teenagers and automobiles.



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HIGHWAY SAFETY

The Insurance Institute for Highway Safety is an independent, nonprofit, scientific and educational organization. It is dedicated to reducing the losses—deaths, injuries and property damage—resulting from crashes on the nation's highways. The Institute is supported by the American Insurance Highway Safety Association, the American Insurers Highway Safety Alliance, the National Association of Independent Insurers Safety Association and several individual insurance companies.

Some Facts About The Teen Years

Here are some highlights of Institute research findings about teenagers and motor vehicles:

• THE DANGEROUS AGE – Nearly half of all deaths of teenagers 16-19 years old are the result of motor vehicle crashes. Motor vehicles account for higher proportions of the deaths of 16,17, 18, and 19-year-olds than for any other age. This age group, which was 8 percent of the population in 1977, sustained 17 percent of all motor vehicle-related fatalities.

• DRIVERS – More deaths per licensed driver are associated with the crashes of 18-year-olds than with any other age. More than 60 percent of the passenger vehicle-related deaths of 16- and 17-year-olds, about one-third of the deaths of 15-year-olds, one-quarter of the deaths of 14-year-olds, and smaller but appreciable proportions of the deaths of persons of other ages from infancy through late adulthood resulted from 16- and 17-year-olds driving passenger vehicles.

• PASSENGERS – When teenagers drive they not only have a very high fatality rate themselves, but also contribute substantially to the deaths of others. Teenaged passengers show a high death rate per capita compared to passengers of other ages, the increases starting at 13. The majority of fatally injured teenaged passengers sustain those injuries in vehicles driven by teenagers.

• SEX – Teenaged males have much higher rates of driver involvement in fatal crashes than females. For males the rate peaks at 18, whereas for females it is highest at age 16.

• NIGHTTIME – More than half of the 16-19-year-old passengers and drivers who sustained fatal injuries did so in crashes taking place from 9 p.m. until 5:59 a.m. the following day.

• ALCOHOL – States that have raised their legal minimum drinking age have had a substantial reduction in nighttime fatal crashes.

• SINGLE-VEHICLE CRASHES – Fatal crashes of younger drivers were more likely to involve only the passenger vehicle they were driving than were crashes of older drivers.

• DRIVER EDUCATION – When high school driver education was eliminated from some school districts in Connecticut, there was a 57 percent net reduction in licensure of 16-17-year-olds from what would have been expected had driver education continued to be available, and a commensurate reduction in crashes in this age group.

• RESTRAINTS – Evidence from Ontario, Canada, indicates that even under a mandatory belt-use law, teenaged drivers – the age group most at risk – are least likely to use seat belts and are least affected by laws requiring their use.

Deaths Per Licensed Driver Peak At 18

The teen years are the most treacherous ones on the highway, and the age of 18 is particularly critical, a new study of teenaged drivers by the Insurance Institute for Highway Safety has shown.

More deaths per licensed driver were associated with the crashes of 18-year-olds than with any other age, reported Ronald S. Karpf and Allan F. Williams in an analysis of 1978 fatality data.

Next to the 18-year-olds, the 16-, 17-, and 19-year-olds had the highest rates of deaths per licensed driver; the figures then declined rapidly as drivers grew older. When depicted graphically, the statistics for almost every aspect of the teen driver problem jut up in towering peaks when compared to the pattern for the entire driver population. (See Figure 1.) Not only for teenaged drivers themselves, but also for passengers in their vehicles, for occupants of other vehicles into which they crash, and for nonoccupants such as pedestrians, the peak fatality figures are all associated with drivers in their teens.

Male, Female Rates Vary

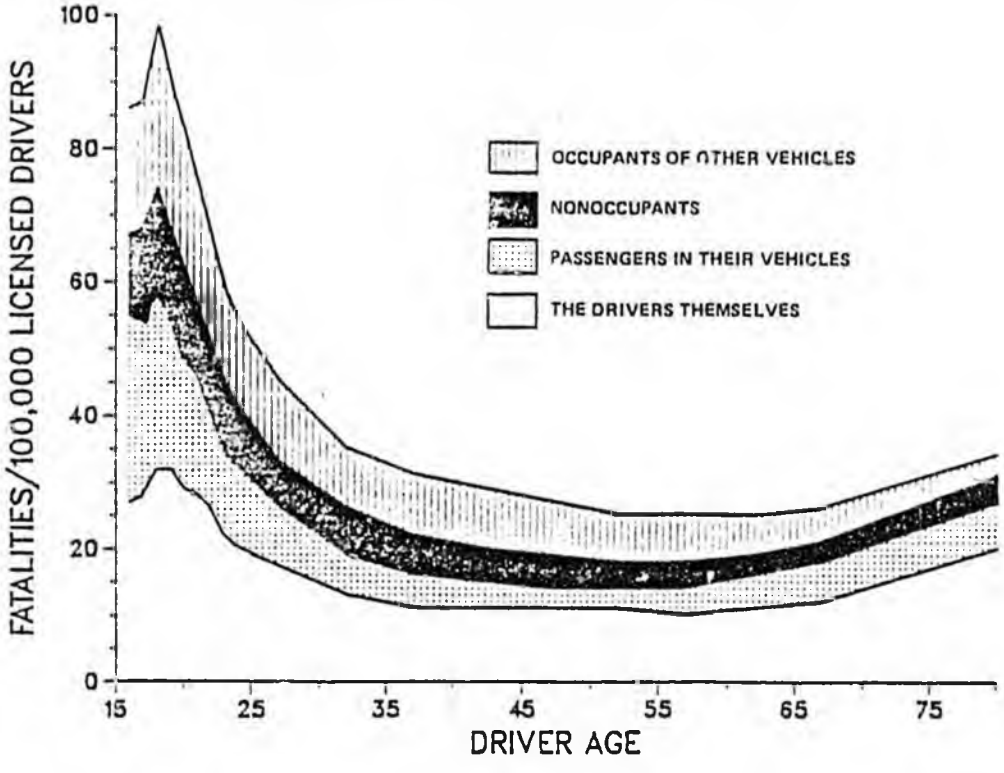
While 18 was the age of greatest involvement in fatal passenger vehicle crashes per licensed driver when both males and females were considered together, there was great variation between the sexes in the fatal crash data. For males the rate peaked at 18, while for females it was highest at 16. (See Figure 2.)

The death rates of drivers themselves were highest from 16 through 21, peaking at 18 and 19. Moreover, partly because young drivers appear to load large numbers of their friends into their cars, they were especially likely to have passengers in their vehicles die.

(Cont'd on page 4)

Figure 1

FATALITIES ASSOCIATED WITH CRASHES OF DRIVERS OF VARIOUS AGES, 1978



Deaths Per Licensed Driver Peak At 18 *(Cont'd from page 3)*

"Sixteen-year-old drivers had the highest rate of such passenger deaths," the researchers said, "in fact, fewer 16-year-old drivers were killed than were passengers in their vehicles."

Younger drivers were found more likely to be involved in fatal single-vehicle crashes than older drivers. Sixteen-year-old drivers had the highest proportion of such crashes at 39 percent. The rate remained near this level until after the age of 24.

Contribution Of 16- And 17-Year-Olds

In 1978 there were 4,198 deaths in crashes involving passenger vehicle drivers 16 and 17 years old. The young drivers themselves accounted for 1,344 of those deaths, and 1,307 of their passengers died. The other fatalities were occupants in other vehicles with which the teen drivers collided and nonoccupants (motorcyclists, pedalcyclists, and pedestrians). Taken together they all accounted for 10 percent of the 1978 deaths that occurred in crashes involving a passenger vehicle. These crashes involving 16- and 17-year-old drivers had a significant impact on the fatality toll for all of the teen years. They accounted for 60 percent of the passenger vehicle-related deaths of 16- and 17-year-olds, about one-third of the deaths of 15-year-olds, one-fourth of the deaths of 14-year-olds, and smaller but appreciable proportions of the deaths of persons of other ages from infancy through late adulthood. (See Figure 3.)

Considering the toll associated with teen drivers, the authors of the Institute study mentioned several possible measures that might reduce the loss of life in highway crashes. Among them were these:

• Raise the minimum age of licensure to 18. "This would undoubtedly be an effective policy, although not all of the more than 4,000 fatalities that result annually from the driving of 16- and 17-year-olds would be eliminated. Some might drive without licenses; those not allowed to drive would become potential pas-

Figure 2

NUMBERS OF DRIVERS OF PASSENGER VEHICLES IN FATAL CRASHES PER 100,000 LICENSED DRIVERS, UNITED STATES 1978

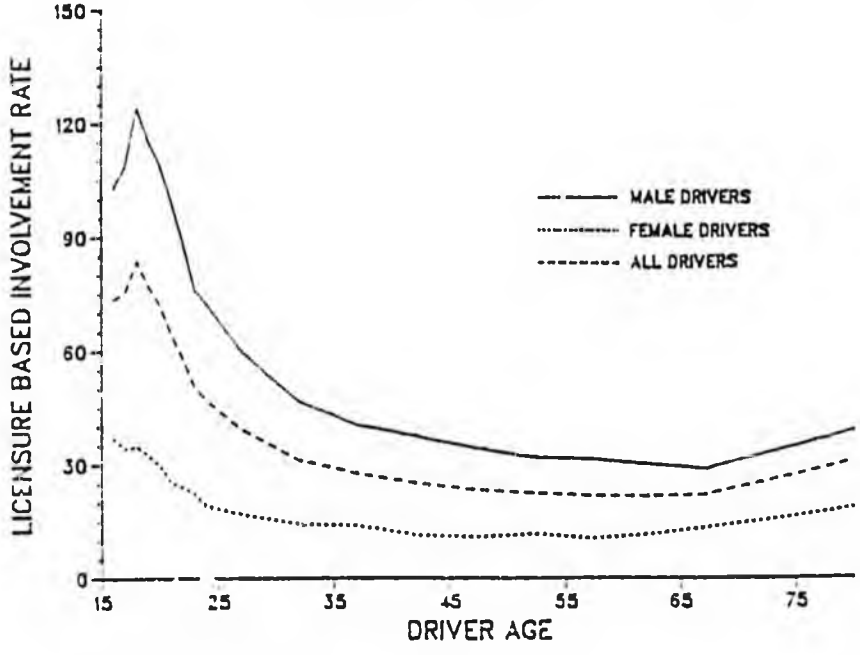
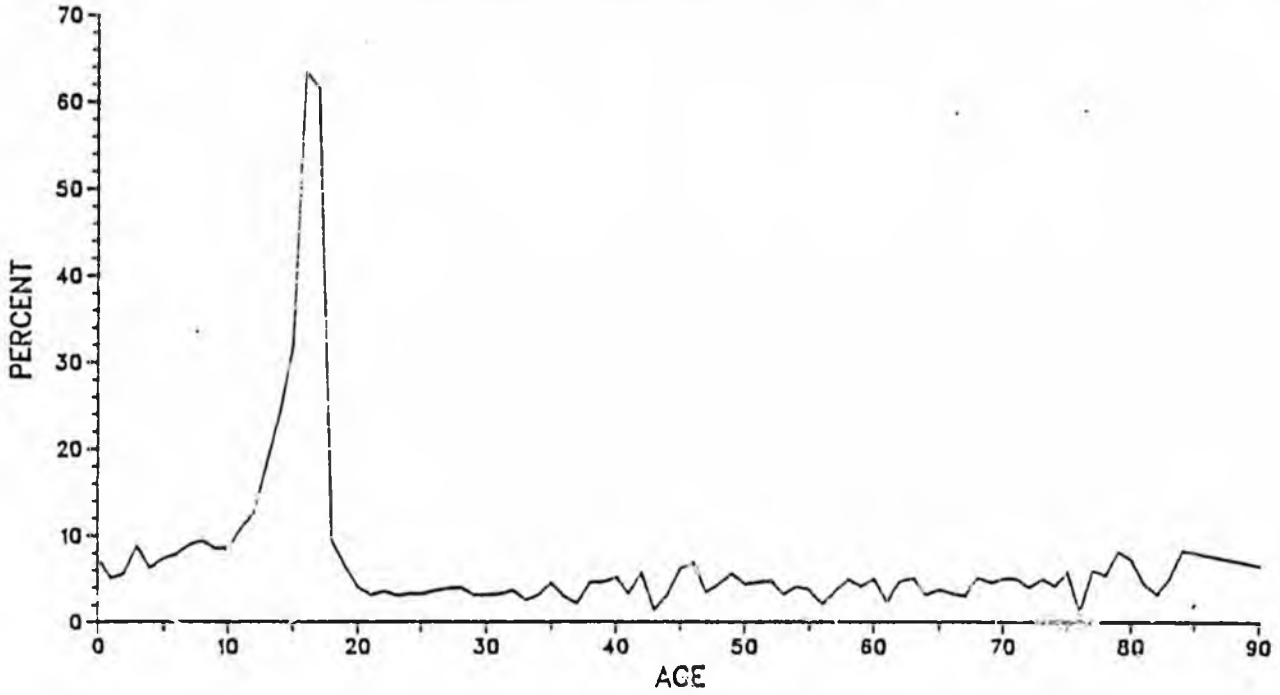


Figure 3

PERCENTAGE OF PASSENGER VEHICLE RELATED DEATHS IN VARIOUS AGE GROUPS INVOLVING 16–17 YEAR OLD DRIVERS, UNITED STATES 1978



sengers; and to some extent older drivers would substitute for 16- and 17-year-olds in providing transportation."

• Allow only "essential" driving by 16- and 17-year-olds, e.g., to and from work. This is seen as one way of offsetting the inconvenience or hardship for many teenagers and their parents in raising the age of licensure.

• Eliminate high school driver education. "High school driver education has been found to increase substantially the numbers of 16-17-year-olds licensed, without reducing crashes." (See report on page)

• Prohibit teenagers from driving during some late evening/early morning hours. "Almost half the fatal crashes of drivers less than 18 years old take place from 8:01 p.m. to 4 a.m."

• Implement long-available crash-packaging technologies and clean up highway and roadside hazards. "Deaths of motor vehicle occupants of *all* ages could be markedly reduced" by such measures, including making air bags available for public use.

• Make licenses for teen drivers conditional on seat belt use. This measure should be considered for 16- and 17-year-olds and possibly older teenagers, who rarely use seat belts.

Copies of the report, "Teenage Drivers and Motor Vehicle Deaths," by Ronald S. Karpf and Allan F. Williams, are available from the Insurance Institute for Highway Safety, Watergate 600, Washington, D.C. 20037.

Teen Passenger Toll Is Heavy, Starting at 13

Teenaged drivers not only are more in jeopardy than drivers of other age groups but – less well known – they also contribute substantially to the deaths of other teenagers as passengers.

A new research study by Allan F. Williams and Ronald S. Karpf of the Insurance Institute for Highway Safety focuses on the deaths of teenaged passengers and includes these findings:

- Teenaged passengers show a high death rate per capita compared to passengers of other ages, the increased rates starting at 13.

- The majority of fatally injured teenaged passengers sustain those injuries in vehicles driven by teenagers.

- Deaths of teenaged passengers tend to occur in nighttime crashes, especially weekend nighttime crashes.

Deaths of teenagers as passengers and as drivers are actually about equal, the researchers reported. From 1978 data, they found that 63 percent of all teenaged passengers who are killed sustained their injuries in vehicles driven by teens. They also discovered that 72 percent of all passengers fatally injured in vehicles driven by teenaged drivers were teenagers.

Death Rates Rise At 13

Teenaged passengers account for nearly one in three of all passenger deaths in passenger vehicles, the new study reports. Passenger death rates per capita begin to rise at 13, the researchers reported, exceed driver death rates until 17, and are higher at each age from 16 to 19 than at any other time of life.

Figure 1

FATALLY INJURED OCCUPANTS OF PASSENGER VEHICLES
PER 100,000 UNITED STATES POPULATION, 1978

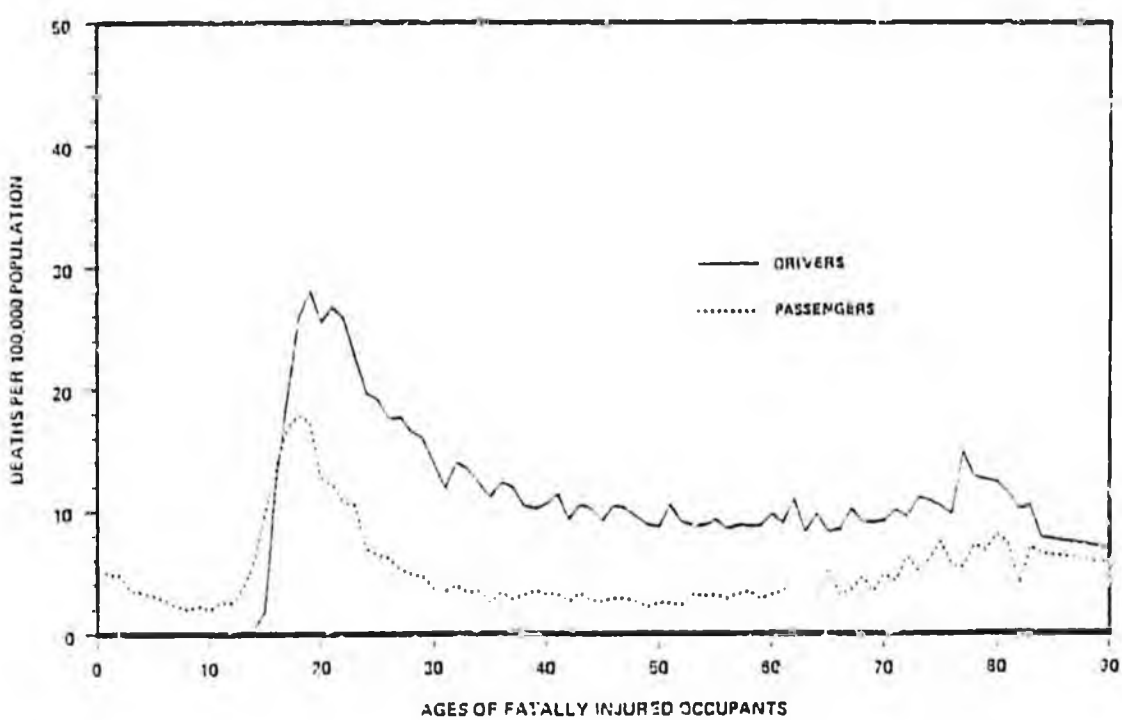
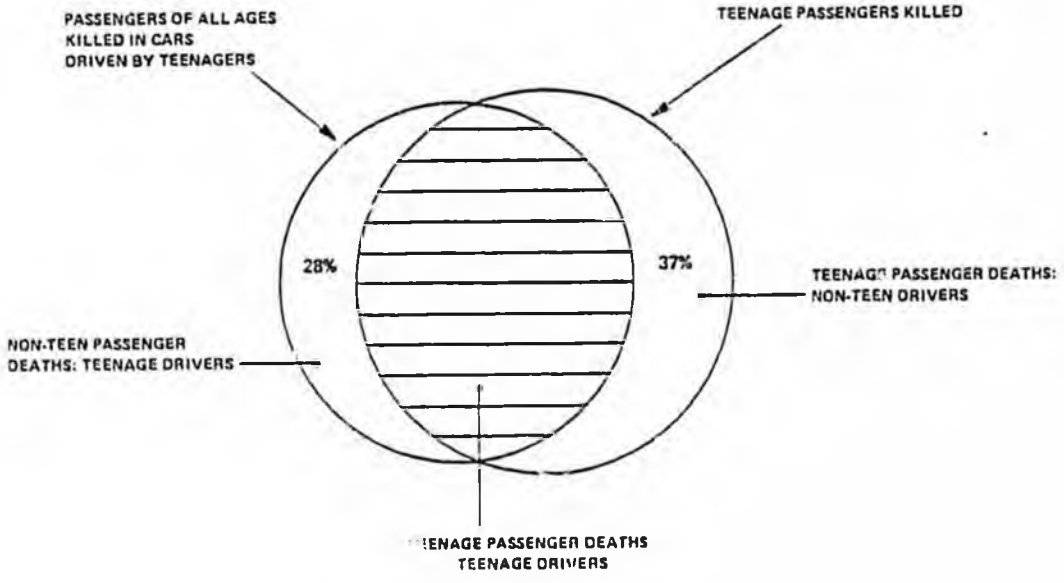


Figure 2

CONTRIBUTION OF TEENAGE DRIVERS TO DEATHS OF TEENAGE PASSENGERS



Among all teenagers, male drivers had the highest death rate per capita, followed by male passengers, female passengers, and female drivers, in that order. From 13 through 16 the rates for both male and female passenger deaths increased in a similar fashion, diverging after 16. The male rates rose sharply and peaked at 19 before declining sharply; female rates were about the same for 16 through 18, then declined.

In the 1978 data, 67 percent of the deaths of teenaged male passengers and 58 percent of the deaths of teenaged female passengers resulted from travel with a teenaged driver. "Teenaged drivers are a major source of transportation for teenage passengers," the researchers commented, "and there is some evidence that the presence of teenage passengers, especially in large numbers, is associated with increased crash risk for teenage drivers." Because of this the authors recommended that consideration be given means to prohibit teenaged drivers from transporting teenaged passengers.

Many Die In Nighttime Crashes

More than half of both the passengers and drivers in the 16-to-19 age range who were reported fatally injured in the 1978 data sustained their injuries in nighttime crashes. The researchers found that males in this age range were more likely than females to die in nighttime crashes.

The study referred to suggested ways to reduce the deaths of teenaged drivers offered in another study (see report on page 3), and said the same measures would be effective in reducing the deaths of teenaged passengers. Pointing especially to the need for seat belt use, the researchers noted that a number of states in recent months have passed requirements for child restraint use.

"Child restraint laws are important, but the need is much greater for teenagers," the authors said. "In 1978 there were 592 children 0-3 years old fatally injured in passenger vehicles in the United States, compared to 6,291 fatalities among 16-19-year-olds."

Copies of the study, "Deaths of Teenagers as Passengers in Motor Vehicles" by Allan F. Williams and Ronald S. Karpf, are available from the Insurance Institute for Highway Safety, Watergate 600, Washington, D.C. 20037.

Curfew, Licensing Delay Seen As Options

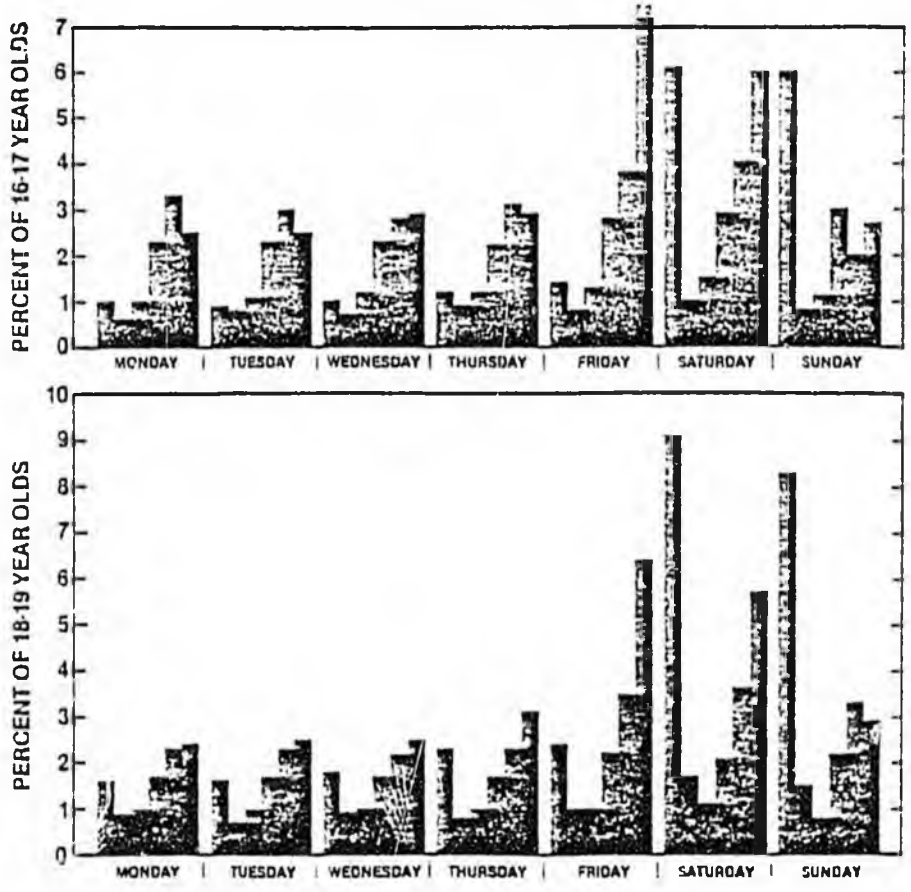
Postponing driver licensure until 18 and restricting the hours that young drivers are permitted to drive are two of the most promising measures that might reduce teenaged drivers' involvement in fatal crashes, a Yale University researcher has suggested.

Leon S. Robertson of the university's Center for Health Studies came to these conclusions in a study of teenaged drivers and their fatal crash involvement. The study, published in the Summer 1981 issue of the Journal of Health Politics, Policy and Law, was supported by the Insurance Institute for Highway Safety.

Robertson examined data on fatal crashes from 1975 through 1978 involving 236,205 drivers, including 19,470 under 18 years of age. From the patterns he found he concluded that an "increase in teenager deaths in the 1960s and early 1970s resulted at least partly from public policy specifically intended to reduce the crash involvement of teenaged drivers." Among the programs with questionable results he mentioned were alcohol and drug education programs that have proliferated in schools and may have contributed to increased use of narcotics and resulting problems on the highways, and high school driver education. (See report on page 10.)

"Clearly, greater consideration should be given to the potential effects of public policies before they are widely adopted," the researcher said.

Fatal Crash Involvement of Driver Age Groups by Time of Day and Day of Week*



*Each day is divided into six four-hour increments

The study pointed out that almost half of the fatal crashes involving drivers under the age of 18 occur in the four hours before or the four hours after midnight. "Thus, modification of the licensure laws to allow those less than 18 years old to operate vehicles only from 4 a.m. to 8 p.m. has the potential to reduce their fatal crash involvement if such a provision could be effectively enforced," Robertson said. He noted that police enforcement would be difficult but that parents aware of such a law might reduce the availability of vehicles to 16- and 17-year-olds late at night.

There were no adult passengers in 83 percent of vehicles in fatal crashes involving drivers below the age of 18, Robertson noted. Requiring the presence of an adult in the car for drivers of that age might reduce their involvement in fatal crashes, he said. However, he warned that such a measure should be carefully researched before adoption because of the possibility that more adult deaths would result.

Copies of the study, "Patterns of Teenaged Driver Involvement in Fatal Motor Vehicle Crashes: Implications for Policy Options," by Leon S. Robertson may be obtained from the Insurance Institute for Highway Safety, Watergate 600, Washington, D.C. 20037.

Raising Drinking Age Reduces Fatal Crashes

States that have raised their legal minimum drinking age in recent years have had a substantial reduction in nighttime fatal crashes, Insurance Institute for Highway Safety researchers have reported.

In the early 1970's more than half of all the states lowered their minimum drinking ages. But between 1976 and January of this year, 14 states had reversed that trend and raised the minimum ages. The Institute research indicated that about 380 fewer young drivers are involved in nighttime fatal crashes each year in these 14 states since the minimum ages were raised.

28 Percent Reduction Is Average

"Any single state that raises its drinking age can expect the involvement in nighttime fatal crashes of the age groups to which the change in the law applies to drop by about 28 percent," the researchers reported. In eight of nine states studied, reductions were found ranging from 6 percent to 75 percent. In only one state, Montana, was no net reduction observed.

Included in the study were Illinois, Iowa, Maine, Massachusetts, Michigan, Minnesota, Montana, New Hampshire, and Tennessee. The research project excluded five other states that had raised their minimum drinking age so recently that there had not been sufficient time for the results to be measured with available data.

While alcohol is known to be a major factor in all fatal crashes, it is particularly involved in nighttime fatal crashes. Other research (see report on page 8) has reported that almost half of all fatal crashes involving drivers under 18 happen between 8:01 p.m. and 4 a.m.

More Gains Seen Possible

While a significant number of lives were saved by the law changes, the researchers predicted that even more substantial gains might be made if all 31 states (including seven of the nine studied) that as of last January had a drinking age of less than 21 were to raise the minimum to 21. Such action would mean that each year about 730 fewer young drivers would be involved in nighttime fatal crashes, the study estimated.

(Cont'd on page 10)

Raising Drinking Age Reduces Fatal Crashes (Cont'd from page 9)

"Raising the legal minimum drinking age to 21 in all states would have an important impact in reducing the annual toll of motor vehicle deaths in the United States, particularly the deaths of young people and of others with whom they are involved in crashes," the researchers said.

Copies of the study, "The Effect of Raising the Legal Minimum Drinking Age on Fatal Crash Involvement" by Allan F. Williams, Paul L. Zador, Sandra S. Harris, and Ronald S. Karpf, are available from the Insurance Institute for Highway Safety, Watergate 600, Washington, D.C. 20037.

High School Driver Ed Promoting Early Licensure

A Connecticut study has underscored the role of high school driver education in promoting the licensure of 16- and 17-year-olds and, as a result, their increased involvement as drivers in crashes.

In 1976, Connecticut dropped state funding for high school driver education, and eight municipalities and one regional school district eliminated the courses from their high school curricula. This provided an opportunity to observe the effects on licensure and crash involvement in the affected school districts, contrasted with nearby communities that retained their programs.

A 1980 study, carried out at Yale University's Center for Health Studies, indicated that elimination of high school driver education in these communities led to a 57 percent reduction in licensure among 16- and 17-year-olds during a three-year period, compared to a 9 percent decrease in communities that retained the program.

Conducted by Leon Robertson under a grant from the Insurance Institute for Highway Safety, the study also showed the communities without high school driver education experienced a 63 percent reduction in the crash rate among 16- and 17-year-olds on a population basis, compared with little change in the crash rate in communities that retained the programs. (See *Status Report*, Vol. 15, No. 9, June 10, 1980.)

The study noted earlier research in England and the U.S. which found that "more driver education was related to more licensed drivers," with the net result being higher crash involvement per capita for 16- and 17-year-olds. (See *Status Report*, Vol. 12, No. 17, Nov. 30, 1977.)

"About 75 percent of the 16-17-year-olds who could be expected to have been licensed if they had taken high school driver education waited until they were 18 or older to be licensed when high school training was no longer available," the Robertson study concluded.

"The intertwined and more far-reaching issue is whether or not 16-17-year-olds should be licensed to drive whatever their training. Many state laws do not allow persons less than 18 years of age to vote, sign contracts, play pinball machines, and the like. And yet persons apparently considered insufficiently mature for such activities are licensed to assume responsibility for operating vehicles that so commonly kill and maim."

Robertson noted that in Connecticut – which has a relatively low crash rate – about one in five drivers licensed at 16 will be involved in a crash causing injury or more than $400 in property damage before their 18th birthdays.

Teens Found Least Likely To Obey Belt-Use Law

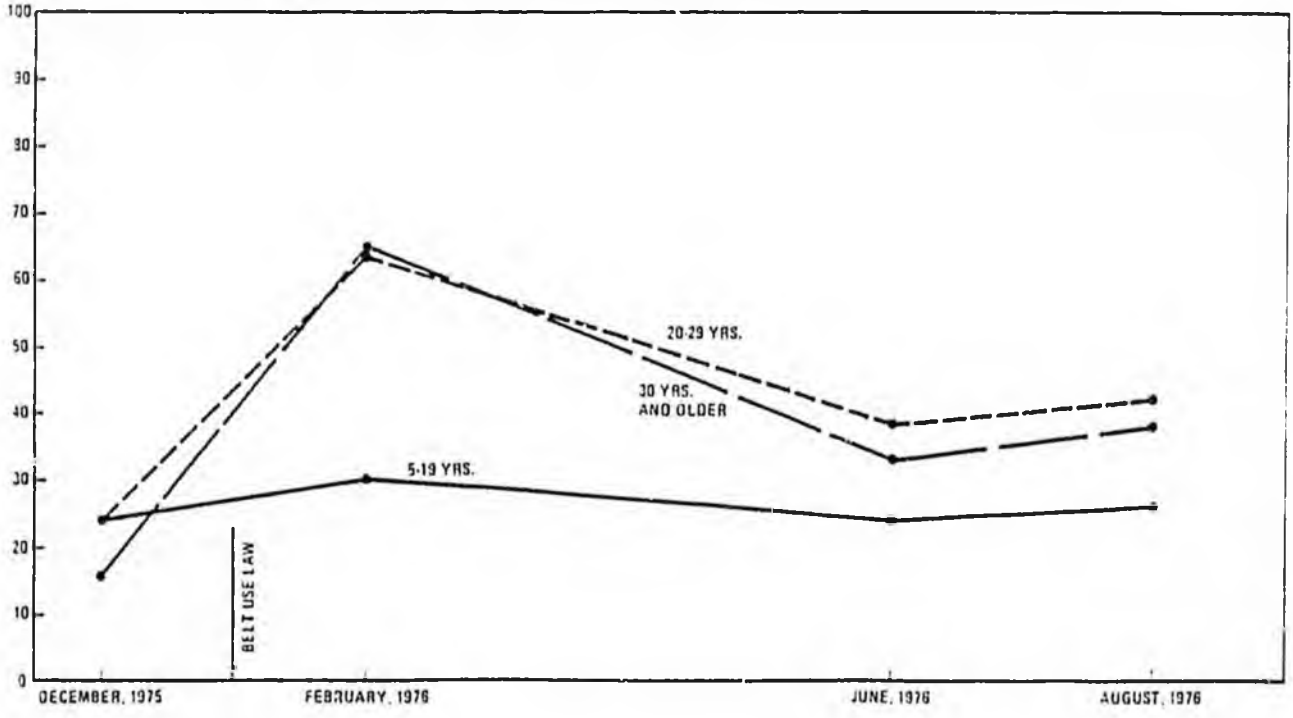
A belt-use law in Ontario, Canada, succeeded in raising the belt-use rates of the general population, but researchers found those most at risk – teenaged drivers – were least likely to obey it.

In November 1975, the province of Ontario adopted a law requiring vehicle drivers and passengers to wear seat belts. Researchers for the Insurance Institute for Highway Safety conducted surveys of belt-use patterns both before and after enactment of the law.

In December 1975, a month before the law became effective, 21 percent of the drivers surveyed at urban and rural sites were seen wearing belts. In February 1976, after the law went into effect, belt use by drivers jumped to 71 percent. But by August that year, it had fallen to 48 percent overall.

The story was different for teenaged drivers and passengers in their teens and under. "Shoulder belt use by teenaged drivers and teenaged or younger passengers was apparently only slightly and temporarily affected by the law," wrote researcher Leon Robertson. About three-fourths of persons estimated to be 5-19 years of age were *not* using shoulder belts in December, before the law, and in June and August of the following year. This was after a very slight increase in February, right after the law went into effect. (See graph.)

PERCENT DRIVER AND RIGHT FRONT PASSENGER SHOULDER BELT USE IN EQUIPPED CARS BEFORE AND AFTER A MANDATORY BELT USE LAW WENT IN FORCE JANUARY 1, 1976 IN ONTARIO, CANADA, BY ESTIMATED AGE.



Vol. 16, No. 14, Sept. 23, 1981

On The Inside

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the highway loss reduction

Status Report

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POSITION PAPER/Department of Health & Social Services

POSITION PAPER

HOUSE BILL NO. 112

"An Act authorizing an advisory vote by the qualified voters of the State on raising the age of majority to 21 for the purposes of regulation of intoxicating liquor; and providing for an effective date."

Overview

Passage in 1971 of the 26th Amendment to the United States Constitution not only allowed 18 year olds to vote but this action assisted in extending certain other privileges to this age group. During the period of 1970 to 1975, 27 states including Alaska, lowered their minimum drinking age for all alcoholic beverage, and another 11 states lowered the drinking age for wine and/or beer. However, 1976 saw a reversal of this trend when Minnesota raised its minimum drinking age and since then, eight (8) other states have also raised their drinking age. A key factor in states decisions to raise drinking ages has been their experience of sharp increases in alcohol-related highway accidents and fatalities that have coincided with the reduction in drinking age. Massachusetts, for example, found that traffic fatalities involving drinking teenagers nearly tripled in the years following lowering the legal drinking age.

Alaska Experience

Alcohol abuse and alcoholism are generally recognized as Alaska's number one health and social problems. Alcohol has also been linked with the state's high accidential death rate and other manifestations of social ills, such as homicide, suicide, crime, violence, child and spouse abuse and neglect, etc.

Youth of Alaska are not immune from the ill effects of alcoholism and alcohol abuse. For example, the State Alcoholism Plan estimates that over 7,000 of Alaska's youth are problem drinkers, defined as drinking alcohol to an extent, or in a manner that an alcohol-related disability is displayed. Also, our state-funded alcoholism treatment programs report that youth make up 5.9% of all persons seen for treatment and counselling. Our Department finds 16-17% of all juvenile arrests are for driving under the influence, liquor law violators and public drunkenness, ranging to as high as 52% in Bethel and 45% in Juneau.

These statistics appear to indicate that alcoholism and alcohol abuse continues to be a serious health and social problem in the State and to which our youth are vulnerable as well.

POSITION PAPER/Department of Health & Social Services

Department's Position

The Department offers its expertise in looking at the social and health aspects of the problem. Our experience must be considered in combination with expert advice from the other agencies and groups impacted by the problem, such as the Department of Public Safety and Department of Law. We wish to note that the raising of the legal drinking age, although not a panacea for alcohol abuse, may decrease the availability of alcohol to a population that is at risk from this major health and social service problem.

Recommended by: Robert L. Cole

Robert L. Cole
Coordinator
Office of Alcoholism/
Drug Abuse

Date: 02/02/82

Approved by: Helen D. Beirne

Helen D. Beirne
Commissioner
Dept. of Health and
Social Services

Date: 2-2-82

THE LEGISLATURE OF THE STATE OF ALASKA
TWELFTH LEGISLATURE

FISCAL NOTE

I. REQUEST
Bill/Resolution No. HB 112
Title "An Act authorizing an advisory vote by voters raising age to 21..."
Requested by _____ Date _____

II. FISCAL DETAIL
Agency Affected Health & Social Services
Program Category Affected Alcoholism/Drug Abuse
BRU, Program, Or Subprogram(s) Affected _____
(Note: If more than one budget component is affected, separate line-item amounts and funding for each component in the analysis section.)

EXPENDITURES (Thousands of Dollars)

	FY 82	FY 83	FY 84	FY 85	FY 86	FY 87
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 COMMODITIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS,CLAIMS,ETC.						
TOTAL	-0-	-0-	-0-	-0-	-0-	-0-

FUNDING (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER (Specify Source)						
POSITIONS	-0-	-0-	-0-	-0-	-0-	-0-
FULL TIME						
PART TIME						
TEMPORARY						
	-0-	-0-	-0-	-0-	-0-	-0-

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

Robert L. Cole

IV. DATE January 27, 1982 PREPARED BY Robert L. Cole
AGENCY Alcoholism/Drug Abuse
PHONE 586-6201

Original: Legislative Finance
cc: Budget and Management
Prime Sponsor (First Legislator Named)
33-001 (Rev. 12/81)

jcc



Just how big is this problem? It is estimated in the Alaska State Alcoholism Plan for FY 80 that 13,141 Alaskans between the ages of 20-29, 7,372 Alaskans 30-39, and 5,635 Alaskans 40-49 are persons with alcohol related problems. It is projected that these 26,148 people directly and seriously affect the lives of four to six other people, many of whom are children (there are 177,643 young people) in this state where the median age is 22 years. However, considering the extended family system throughout Alaska, young people are seriously affected by those 2,212 Alaskans 50-59, 1,028 Alaskans 60-69, and 72 Alaskans over 70 who are aunts, uncles and grandparents with alcohol-related problems.

Statewide statistics pertaining to youth with alcohol related problems were unavailable as studies deal with the "legal" drinking age. However, in a study done for NIAAA it was found that:

- Over 1/4 of the nation's teenagers are problem drinkers.
- Fewer than 18% of the nation's 17-year-olds never have taken a drink.
- 1/4 of the 13-year-olds surveyed could be classified as moderate drinkers.
- Nearly half of all the students surveyed (13,000 youths in 450 schools) said they had been drunk within the past year.

A National Council on Alcoholsim bulletin reported on a survey done by the Social Advocates for Youth - approximately 3500 4th, 5th, 6th graders:

- 45% of the children considered themselves users of alcohol
- 20% reported drinking alcohol once a month
- 9% stated alcohol use imposed personal problems for them which they felt they would like to discuss with someone
- Lastly, the younger students reported much of their alcohol use occurs within the family and they would be willing to seek counsel with their parents.

The ALCOHOLISM AND ALCOHOL EDUCATION REPORT from Washington, D.C. reported that Michigan's Institute for Social Research shows that "Daily drinking among high school seniors in the U.S. jumped 20% between 1978 and 1979, to 6.9 percent of the class of '79 from 5.7 percent of the 1978 seniors, according to a national study which only last year reported a decrease in the daily drinking habits of 12th graders."

And it is believed that, as with all other national studies, the Alaskan usage would be greater and the problems associated with that, more complex.

The Bachman Study found that when asked how often they had taken five or more drinks in a row during the prior two weeks, 52% of all high school senior males and 41% of females in 1979 reported doing so on at least one occasion, 26% of males and 12% of females reported doing so on three or more occasions. Each of these percentages has risen by 3 or 4% since 1976. This suggests that the problem of alcohol abuse among high school seniors may be increasing dramatically.

2) Alcohol and Youth in Anchorage

The conclusion that alcohol abuse among youth may be stabilizing in numbers, but more intense within the abusing group may be supported by the results of a study given to 8th grade Mat-Su students. Only forty percent (40%) of those surveyed felt that alcohol was a dangerous drug. Excluding the perceived risk of tobacco, alcohol was perceived as having the lowest risk of any drug mentioned. Twenty-two (22) percent of the males and 7% of the females surveyed stated they had used alcohol often and by the 8th grade only 28% of the males and 33% of the females had never used alcohol. These statistics are similar to those found in an 8th grade classroom in an Anchorage suburban school.[3]

Of the juvenile drug counseling caseload at the Open Door Clinic for FY-80, 38 admissions or 45% of the total caseload was attributable to drugs and alcohol. None of those included in the statistical profile were above 18 years of age.[9] Currently, the Municipality's Youth Outpatient Program is operating at 160% of estimated capacity.

In 1979, data derived from the Anchorage area indicated a serious and worsening situation. In the last year, the situation appears to be improving slightly. Listed below are eight arrest categories and one request for service category that have a high degree of relationship with youth and alcohol use. Between 1977 and 1979, these incidents increased by 39.9% while the total increase in police activity increased only 24%. In 1980, these incidents decreased by 10%

8 Response to Self-Evaluating Questionnaire, Akeela House, Inc., May, 1980.

9 Open Door Clinic Juvenile Drug Counseling, Demographic Characteristics, FY-80.

while the total increase in police activity increased only 24%. In 1980, these incidents decreased by 10% while the total increase in police activ-ity was 5.9%. This slight turn around could be the result of both the increasing sophistication of the Anchorage programs designed to assist youth under the age of 18 and the growing conservative philosophy in Anchorage and the Nation.

Table 4
Juvenile Offenses Involving Alcohol
1977-1980, Anchorage

	1977	1979	1980	Percent
Liquor Minors Involved	89	120	104	-13.3%
A & B (Juvenile Arrests	33	41	43	+ 4.9%
Disorderly Conduct	54	70	48	-31.4%
Drinking in Public	3	5	11	+54.5%
Driving While Intoxicated	6	18	14	-22.2%
Drunk on Roadway	3	5	5	- 0 -
Minor in Possession	29	59	64	+ 7.8%
Minor on Premises	13	11	6	-45.5%
Miscellaneous Liquor Violations	8	4	5	+25.0%
Total	238	333	300	-10.0%
Total Cases-Requests and Arrests	63,096	78,380	83,338	5.9%

Source: 1977, 1979, and 1980 Anchorage Police Department Yearly Report.

The philosophy of the local programs are consistent with the conclusions of a recent article regarding alcohol abuse by adolescents and its prevention. The article stated that problem drinking among teenagers is frequently correlated with involvement in anti-social activities, poor school performance, drug use, problem drinking among family and/or peers, and lack of supervision. Alcohol education has tended to increase knowledge, but not change behavior patterns, and in some cases, has led to increased alcohol use. The author suggests that future prevention strategies be targeted at specifically defined groups of adolescents and that they be concerned with the prevention of problem drinking rather than the prevention of alcohol use. [10]

10 Hankoff and Schmidt, " Reviews of Studies of Adolescent Drinking Patterns and the Effectiveness of Prevention Measures Used with This Age Group," Public Health Review, Hankoff and Schmidt, 1979.

Youth - Muni

Table 27. Arrest Data, by Offense Category and Adult/Juvenile Status, Alaska, 1976-1978.

YEAR	AGE GROUP	OFFENSE CATEGORY					
		DRIVING UNDER THE INFLUENCE		DRUNKENNESS		LIQUOR LAW VIOLATIONS	
		NO.	%	NO.	%	NO.	%
1978	Adult	3195	97.9	567	92.0	1205	57.3
	Juvenile	70	2.1	49	8.0	897	42.7
	TOTAL	3265	100.0	616	100.0	2102	100.0
1977	Adult	3430	97.9	184	98.4	903	49.7
	Juvenile	74	2.1	3	1.6	915	50.3
	TOTAL	3504	100.0	187	100.0	1818	100.0
1976	Adult	2928	98.3	10	71.4	592	48.4
	Juvenile	52	1.7	4	28.6	632	51.6
	TOTAL	2980	100.0	14	100.0	1224	100.0

For adult arrestees, the major alcohol-related offense class was driving under the influence, accounting for roughly 21%-24% of all adult arrests. For juvenile arrestees, the liquor law violation class was the major arrest category, accounting for approximately 12%-15% of all juvenile arrests during this period. See Table 28.

Table 28. Total Arrests and Alcohol-Related Offenses, by Adult/Juvenile Status, Number and Percent of Total, Alaska, 1976-1978.

ADULTS/ARRESTS BY OFFENSE	1978		1977		1976	
	NO.	%	NO.	%	NO.	%
Total Arrests	14862	100.0	14764	100.0	12435	100.0
Total Alcohol-Related Arrests	4967	33.4	4517	30.6	3530	28.4
Alcohol-Related Arrests:						
DUI	3195	21.5	3430	23.2	2928	23.5
Drunkenness	567	3.8	184	1.2	10	0.1
Liquor Law Viol.	1205	8.1	903	6.1	592	4.8
JUVENILES/ARRESTS BY OFFENSE						
Total Arrests	5947	100.0	6051	100.0	5568	100.0
Total Alcohol-Related Arrests	1016	17.1	992	16.4	688	12.3
Alcohol-Related Arrests:						
DUI	70	1.2	74	1.2	52	1.0
Drunkenness	49	0.8	3	0.04	4	0.1
Liquor Law Viol.	897	15.1	915	15.2	632	11.8

alcohol abuse

- the Alaska Council on the Prevention of Alcohol and Drug Abuse estimates there are over 45,000 alcoholics in the State of Alaska
- in a study done in 1979, it was found that almost 30% of all juveniles between 12-17 years old were alcohol and other drug abusers - with alcohol being the drug of choice by far
- "problems with alcohol" is the third leading reason people seek help at local community mental health centers in Alaska
- in a study done in 1979, 12% of Anchorage residents reported they drank "almost all the time."
- Alaskans spent $280,600,000 on retail alcohol in 1980
- 58% of pedestrian-motor vehicle accidents were alcohol-related
- 62.7% of people in the under 25 age group use alcohol to face problems
- fetal alcohol syndrome is the third leading cause of birth defects nationally, and is totally preventable

alcohol-related mortality

- 52% of all fire deaths in Alaska are alcohol-related
  - Alaska's fire fatality rate is twice as high as the national average
- 68% of all drownings are alcohol-related
- in 1976-1979 in Anchorage, the leading causes of death in the age group of 15-44 were:

motor vehicle accidents	- 70% alcohol related
suicide	- 80% alcohol related
homicide	- 64% criminal homicides 40% domestic murders

SOURCES
State Office of Alcohol and Drug Abuse - Annual Report to the Legislature 1981
The Alaska State Alcoholism and Drug Abuse Plan - 1981-1983
Anchorage Health Systems Plan 1981-82

DRIVER ONLY	FATAL ACCIDENT	FATALITIES	ALCOHOL ACCIDENTS	ALCOHOL FATALITIES
1979	81	91	57	66
0-18	17	20	11	13
19	2	2	2	2
20	9	11	6	8
1980	86	95	58	64
0-18	10	11	5	6
19	2	4	1	1
20	3	3	1	1
1981	90	100	66	76
0-18	13	18	11	16
19	4	4	4	4
20	2	3	2	3
REPORTED TO DATE - 09/17/82				
1982	38	43	22	24
0-18	4	6	1	2
19	3	4	2	2
20	1	1	1	1

AGE	NUMBER OF ALCOHOL ACCIDENTS	PERCENT INVOLVEMENT	PERCENTAGE OF LICENSED DRIVERS
15-18	220	11.3	3.4
19-29	922	47.2	36.5
30-39	407	20.9	27.8
40-49	238	12.2	15.2
50-59	134	6.9	10.3
60 +	31	1.6	2.5

During 1979, alcohol was indicated in 1,952 traffic accidents. Drivers aged 19-29 were the most frequent offenders: 47.2% of the alcohol-related accidents involved drivers in this age group who had been drinking or who were suspected of drinking.

Drivers between the ages of 15 to 18, inclusive, who make up only 3.4% of the licensed driver population, accounted for 11.3% of the alcohol-related accidents, or more than 3 times their distribution in the general driver population.

Alcohol was a factor in 70% of the fatal accidents that occurred during 1979. Further analysis is not possible because of contradictory bivariate data, although there is some indication that young drivers are, again, over-represented. Inexperienced both in driving and in drinking, the young driver also has a predilection for high speeds, and the combination is lethal.

Alcohol enforcement and diversion to treatment and/or education of the drinking driver will remain the highest priority for Alaska's highway safety program.

SPEED RELATED

The number of speed-related fatalities declined from 80 in 1978 to 61 in 1979. Although the number of fatalities that were speed-related declined, the rate of speed involvement has remained constant at 27%. Speed as a contributing factor in injury accidents declined from 21% in 1978 to 16% in 1979.

MULTI-QUEST

Volume XI

May -June 1981

Prepared for

ALASKA COUNCIL ON ALCOHOLISM

AND DRUG ABUSE

DITTMAN RESEARCH CORPORATION

Alaska Bank of Commerce Building

3230 "C" Street

Anchorage, Alaska

Alaska Analysts / Dittman Research

FINDINGS

Over-all throughout Alaska, over half of all respondents (54%) feel the drinking age should remain at 19, while over one-third (37%) feel the age should be increased to 21, and six percent (6%) support lowering the minimum age to 18...

> "Currently in Alaska, a person must be at least 19 years old to legally purchase and consume alcoholic beverages. Some people have said the drinking age should be raised to 21, others have said the drinking age should be lowered to 18, and still others have said the drinking age should remain at 19. What is your opinion?"
>
> Increase to 21.....37%
> Lowered to 18..... 6%
> Remain at 19.....54%

...Support for raising the minimum age to 21 is highest in rural areas of Alaska (55%), Southcentral (50%) and Southeast (46%), while 56% of Anchorage respondents and 64% of Fairbanks respondents were in favor of retaining the current age requirements.

Age-wise, younger respondents (18-24) were most in favor of retaining the current age requirements (71%), while older respondents (56 and over) were most in favor of increasing the minimum age to 21 (47%).

Females were slightly more in favor of an increase than males (39% to 36% respectively), and local government employees were more in favor of an increase (39%) than federal, state or private sector employees (28-34%).

Home-makers (52%), professional "white-collar" employees (37%) and skilled "blue-collar" craftsmen were most in favor of an increase, and upper income respondents were also in favor of raising the drinking age (45%).

Thirty-nine percent (39%) of registered voters favored an increase compared to 29% of non-registered respondents, and among registered voters, Republicans (46%) and Democrats (42%) were more in favor than non-partisans (35%).

Findings...(con't)

Support for 1:00-2:00 am closing is highest among white-collar workers (39%), while blue-collar workers tend to favor "current times" (22%) or 4:00-5:00 am (21-25%).

And support for earlier closing times increases linearly as family income increases (from 47% of 0-$20,000 to 65% of $60,000 and over).

Democrats are more in favor of later hours (22% 4:00-5:00 am and 17% "same as current"), while Republicans are more in favor of earlier hours (15% between midnight - 1:00 am, 37% between 1:00-2:00 am).

Solutions to underage drinking focuses on parental responsibility (18%) and new, stiffer penalties (13%), however over one-fourth (26%) said they didn't know what could or should be done...

"What do you think should be done about under-age drinking in your community?"

Parental discipline	18%
Make new stricter, stiffer laws	13%
Enforce current laws	9%
Educational programs	9%
Punish sellers	7%
Nothing--they'll get it anyway	5%
Peer pressure, peer example	5%
Counseling	3%
Prohibition--make it inaccessible	2%
Community work projects as punishment	1%
Not a problem	1%

...Rural respondents were the most undecided (30%), while Central Alaskan respondents supported a parental solution (27%). In Southcentral, approximately one-third (33%) didn't recommend a solution, while 15% said it was a parental-type problem and 12% supported stiffer penalties and restrictions. The Anchorage responses were similar to the other Southcentral communities, while Southeastern respondents were more in favor of educational programs (15%) as well as greater parental controls (21%), and stiffer penalties (18%).

Younger respondents (18-24 year-olds) recommended stiffer penalties (21%), "peer panels" (8%) made up of "judges" of other young people to assign penalties, and parental discipline (10%). As respondents became older,

support for a parental-based solution increased (25% of 56 and over), and sentiment for punishment of suppliers also increased (12%).

Little major differences were noted based on age -- females were a little more undecided (30%) compared to males (22%).

Support for educational programs and "peer programs" were highest among white-collar workers (11% and 10% respectively), while blue-collar workers were most in favor of new restrictions-stiffer penalties (22%).

Parental discipline was the most common solution in all income groups with the exception of 0-$20,000 which supported stronger penalties (17%) and enforcement of existing laws (13%).

Republicans and non-partisan respondents were most supportive of parental discipline (22% and 20% respectively), while Democrats were more in favor of "enforce existing laws" (11%), "punish sellers" (9%), and "can't do anything, they'll get it anyway" (9%).

In total, approximately nine out of ten Alaskans (87%) feel alcoholism is one of the most serious problems in Alaska...

"Do you think alcoholism is or is not one of the most serious problems in Alaska?"

Is	87%
Is not	11%

...with concern highest in rural areas (94%) and Southeast (93%).

Younger people (18-24) feel it is a greater problem (88%) than older people (81%), and women consider it more serious than men (92% to 81% respectively).

Home-makers, at 96%, are most concerned with the problem of alcoholism, and white-collar respondents also register strong concern (93%). On the other hand blue-collar workers are slightly less likely to consider alcoholism one of the most serious Alaskan problems (75-85%).

Findings...(con't)

In terms of annual family income. all income ranges considered alcoholism serious -- with upper income concern the greatest (94%).

Eighty-eight percent (88%) of registered voters considered alcoholism one of the most serious problems, and the concern was virtually identical for partisan and non-partisan voters -- 88% Democrats, 88% Republicans and 87% non-partisan.

Analytically speaking, the perception of alcohol as a serious problem in Alaska is wide-spread (87%), and there consequently is substantial state-wide support for earlier closing times for cocktail lounges and bars (54% 3:00 am or earlier). There is also substantial support to raise the minimum age to 21 years old (37%), however the majority (54%) prefer retaining the current minimum age of 19. Over-all, in recognition of the seriousness of the alcohol issue, there is considerable support for measures related to limiting the availability of alcohol (hours and age). This approach extends to recommended solutions to under-age drinking -- while 3% recommended counseling and 9% recommended educational programs; 18% recommended parental discipline, 14% recommended new, stiffer penalties; 9% recommended stronger enforcement of existing laws; and 7% specifically recommended punishment of sellers who provide alcohol to under-age people.

Findings...(con't)

Regarding closing times, state-wide, 20% felt bars, lounges and night clubs should remain open until 4:00-5:00 am and 17% felt the closing times should remain as they are at the present time -- which may also be 5:00 am depending on the community -- in total, 37% could support a 5:00 am closing. Over half (55%) feel the closing time should be before 3:00 am, with the bulk of that percentage (33%) favoring a 1:00-2:00 am closing...

"In your opinion, what should be the closing time for cocktail lounges and bars in your community?"

12-1:00 am	11%
1-2:00 am	33%
2-3:00 am	10%
3-4:00 am	2%
4-5:00 am	20%
5-6:00 am	--
Same as now	17%

...Geographically, rural areas are most in favor of their current closing time (42%), however 27% favor a 1:00-2:00 am close.

Support for 4:00-5:00 am close is greatest in the Fairbanks area at 34% (52% favor a pre-3:00 am close), while only 4% in Southeast favor the late close. Most of Southeastern respondents favor 1:00-2:00 am (36%) or "same as now" (29%). In the Mat Valley and Kenai Peninsula region, 17% support 4:00-5:00 am and an additional 12% support the current closing time. A total of 56% favor a closing at or before 2:00 am. In Anchorage, 4:00-5:00 am or "current time" closing is favored by 37%, while a total of 57% favor 3:00 am or earlier (primarily 1:00-2:00 am).

Age-wise, younger respondents favor later hours (34% 4:00-5:00am), while older respondents favor current closing times (21-23%) or 1:00-2:00 am (31-32%).

Females favor earlier closing hours (13% between 12:00-1:00 am; 36% between 1:00-2:00; and 12% between 2:00-3:00 am), on the other hand males tend to prefer the current times (22%). Male/Female sentiment regarding 4:00-5:00 am closing is nearly identical (19-20%.)

STATE OF ALASKA

JAY S. HAMMOND, GOVERNOR

DEPARTMENT OF PUBLIC SAFETY
OFFICE OF THE COMMISSIONER

POUCH N
JUNEAU, ALASKA 99811
PHONE:

October 28, 1981

Len Danis
c/o Terry Martin
921 W 6th Avenue, Suite 250
Anchorage, Alaska 99501

Dear Ms. Danis:

Enclosed are the statistics regarding traffic accidents and fatalities that you requested. The alcohol-related accidents are somewhat incomplete, but I hope what is available will be of some help to you.

Please feel free to contact me if I can be of any further assistance concerning highway safety-related matters.

Sincerely yours,

Karen VanDusseldorp

Karen VanDusseldorp
Research Analyst
Alaska Highway Safety Planning
Agency

KV/sn
Encl:

12-L2LH

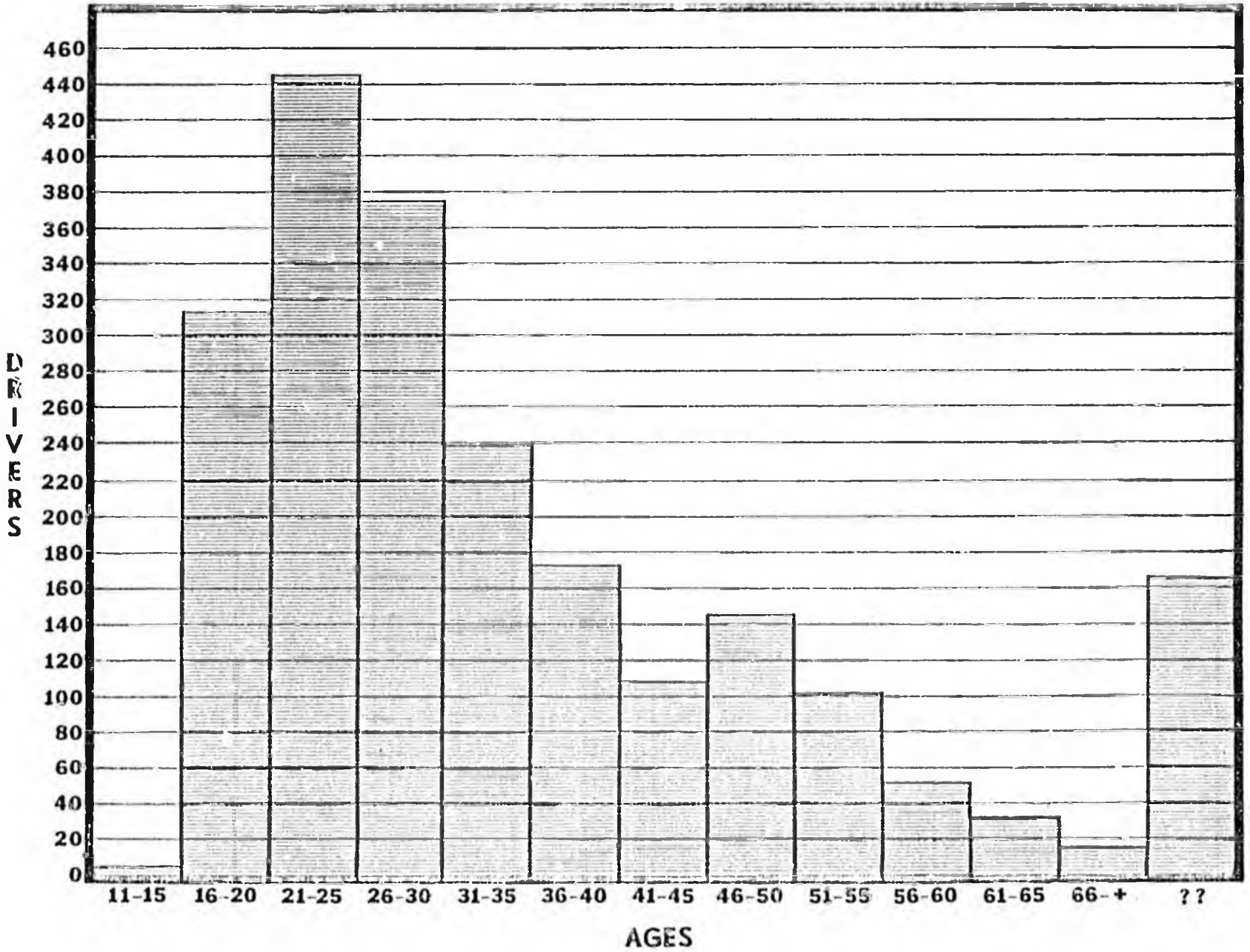
YEAR	FATALITIES	TOTAL # ACCIDENTS	MDR*
1970	101	11,641	7.3
1971	65	10,828	4.1
1972	61	11,753	3.9
1973	74	11,837	4.6
1974	89	17,101	4.1
1975	127	22,590	4.6
1976	124	21,408	4.1
1977	136	15,174	4.5
1978	127	12,962	4.5
1979	90	13,521	3.2
1980	80	13,165	3.3

* Mileage Death Rate

ALCOHOL-RELATED 1979

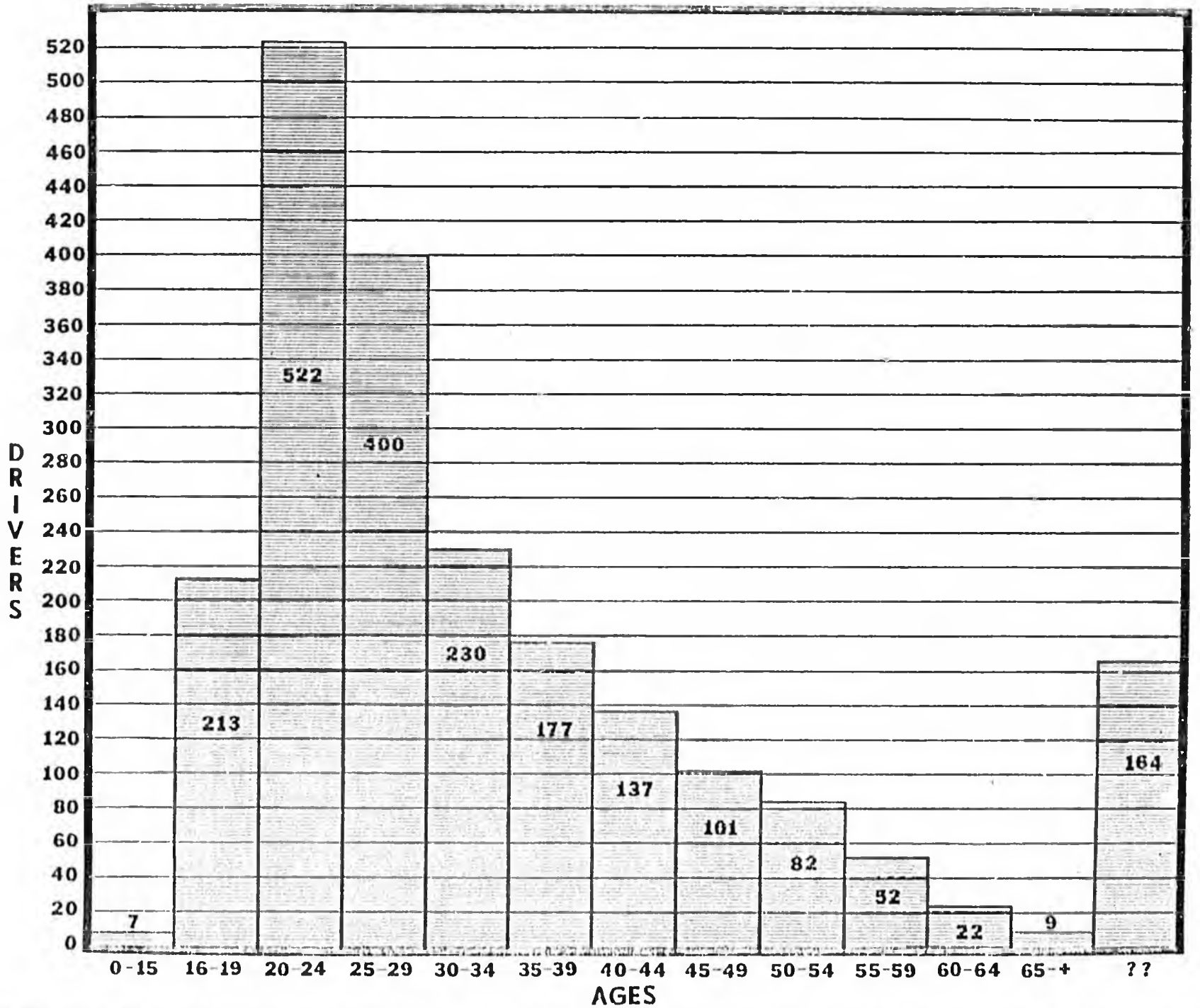
AGE	# OF ALCOHOL ACCIDENTS	PERCENT INVOLVEMENT	PERCENTAGE OF LICENSED DRIVERS
15-18	220	11.3	3.4
19-29	922	47.2	36.5
30-39	407	20.9	27.8
40-49	238	12.2	15.2
50-59	134	6.9	10.3
60+	31	1.6	2.5

ALCOHOL PRESENCE BY AGE GROUP



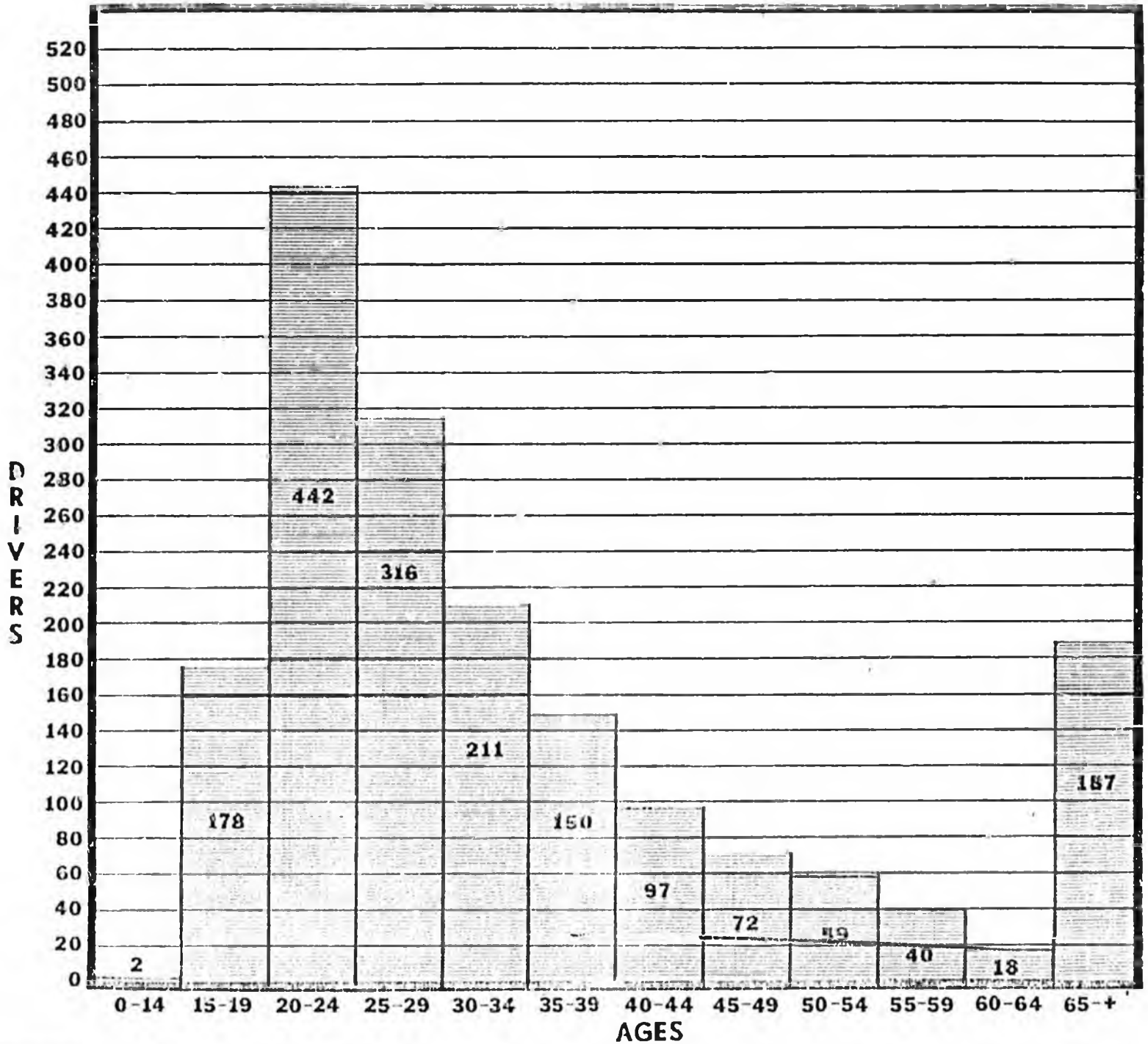
1970

•••DRIVER ALCOHOL PRESENCE BY AGE GROUP•••



1977

•••DRIVER ALCOHOL PRESENCE BY AGE GROUP•••



1978

EGISLATURE

HB 17

House votes to raise drinking age

TIMES 3-15-83

Harry McFarland
Associated Press

Juneau — The Alaska House Monday approved a bill that would raise the drinking age from 19 to 21, and have an advisory vote on the same question in the November 1984 general election.

The bill was approved 31-7 after several hours of debate, but Rep. Jim Duncan, D-Juneau — who engineered most of the amendments that were added to the bill — gave notice of reconsideration.

Duncan was able to have attached amendments that made the bill nearly identical to a version the House Finance Committee had recommended. House lawmakers earlier had rejected the Finance version in favor of a Judiciary Committee version.

The amendments that made the bill similar to the Finance bill were the advisory vote, four sections that specifically detail under what conditions someone under age 21 can enter an eating establishment that serves liquor, and would allow those 19 years or older to work in a hotel, restaurant or eating place also serving alcoholic beverages.

But Duncan was unable to amend the bill to add two versions of a grandfather clause, the first of which was contained in the Finance version.

The first amendment would have allowed those 19 years of age on Jan. 1, 1984, to continue entering liquor-serving establishments. The second would have allowed those 19 on the effective date of the bill, which as passed, would be 90 days after the bill is signed by the governor.

The first battle — which took place in the House's first night session this year — was over an attempt by Rep. Vern Hurlbert, D-Sleetmute, to rescind the adoption of the Judiciary version.

The bill would have been the direct opposite of what those supporting the upping of the drinking age wanted, Duncan said.

MSG 83-00012825 PRTY 1 03/04/83 11:11:27 ORIG: LA03 IN= 0001 OUT= 0032
FROM: JUNE, ANC LIO TO: POM JNU INFO
TARGET: LJHL SUBJ: POM

3/4/83, JUNE, ANC LIO, MSG 12825

HB17

TO: ALL MEMBERS OF THE LEGISLATURE

FROM: JEAN JONES
7503 SHADY BIRCH PLACE
ANCHORAGE, AK 99502 (H) 243-9510 (W) NONE

THE LAWMAKERS MADE A MISTAKE WHEN THE BILL WAS PASSED TO LOWER THE DRINKING AGE FROM 21 TO 19. WE MUST CORRECT THAT, BY RAISING THE DRINKING AGE BACK TO 21. ANYTHING WE CAN DO TO LOWER THE NUMBER OF ALCOHOL-RELATED HIGHWAY DEATHS, AND SUICIDES IS AN IMPROVEMENT.

****

Editorial Opinion and Comment of

FAIRBANKS
Daily News - Miner
"Independent in All Things . . . Neutral in None"

Other opinions expressed on this page do not necessarily reflect those of the Daily News-Miner.

Alcohol abuse worries

We hope members of the Alaska Legislature will be as concerned about the serious community problems caused by alcohol abuse as are their constituents.

Around the nation, Americans are worried. A recent Gallup poll found that Americans are more worried about excessive drinking than they are about smoking or overeating. A majority think the federal tax on liquor should be doubled.

In Alaska, that concern is reflected in efforts to curb the problems caused by alcohol abuse, particularly drunk driving. Last year, Anchorage residents formed a chapter of a powerful new organization called Mothers Against Drunk Driving. Now some Fairbanks residents who have personally experienced the tragedy of losing a family member or friend in an accident involving a drunk driver are setting up a chapter here. Watch for their announcement soon of a public meeting for anyone who is interested.

It's going to take a lot of public pressure to enact the changes we need to make alcoholic beverages less available and therefore cut down on the abuses associated with alcohol. So far, the Legislature has refused to take final action on measures that would increase the state excise tax and restore the drinking age to 21. At the same time, statistics from across the nation are documenting the increasing number of deaths of young people in traffic accidents where booze is involved. And we read more and more about the young age at which students are beginning to accept alcohol consumption as part of their daily living.

The Gallup survey, commissioned by the National Council on Alcoholism's New York affiliate, found that 68 percent of the 1,039 adults surveyed rated an educational campaign to foster drinking moderation "very important."

Fifty-six percent named at least one type of alcoholic beverage on which they favored doubling the federal tax, with an increase in distilled liquor drawing the most support—from 54 percent. Forty-nine percent favored doubling the federal tax on beer, 48 percent on wine.

Sixty-two percent said they would like to see the major political parties support a moderate drinking campaign in their platforms and 59 percent said they would be more likely to vote for a candidate who supported such a campaign.

That should send a message to incumbent legislators. Though people concerned about alcohol abuse and supporting state measures to control it may not have the dollars to match campaign contributions from the liquor industry, they certainly have the votes.

The Legislature has been derelict in the face of the facts in not enacting a tax increase on alcoholic beverages since 1961. It's past time they turned a deaf ear to the powerful liquor lobbyists and passed legislation to raise the drinking age and pay for some of the human misery created by those who can't handle alcohol.

Here in Fairbanks, we've so far managed to sweep aside most of the proposals to deal with alcohol abuse, too often claiming that since a specific proposal won't do the whole job, we shouldn't enact it. With that shortsighted view, we'll never even get started.

Fairbanks Mayor Bill Walley's blue ribbon commission can be a big help in curbing alcohol abuse and thereby making Fairbanks cleaner and safer if it will recommend specific steps the community can take and urge people to also push for other steps the state can take.

The problems caused by alcohol abuse aren't going to go away if we ignore them—sadly, they're going to get even worse.

This year is the time to press for some action.

POUCH V
JUNEAU, ALASKA 99811
465-4990

P.O. BOX 4-1325
ANCHORAGE, ALASKA 99509
248-1515

CHAIRMAN
HOUSE JUDICIARY COMMITTEE
MEMBER
HOUSE RESOURCES COMMITTEE

Representative Charlie Bussell

ALASKA STATE LEGISLATURE
HOUSE OF REPRESENTATIVES

March 30, 1983

City of Cordova
P. O. Box No. 1210
Cordova, Alaska 99574

ATTENTION: Mr. Perry D. Lovett, City Manager

Dear Mr. Lovett:

Thank you for forwarding to the House Judiciary Committee a report of the Cordova City Council's unanimous support for the legislative effort to raise the minimum age for consumption of alcoholic beverages to 21.

The House Judiciary Committee held lengthy hearings on HB 17, a bill introduced for that purpose. I have enclosed a copy of the bill, CSHB 17 - Judiciary, which has moved to the Floor of the House. I have also enclosed a copy of the House Journal for the 57th day, which shows floor action on the bill.

The bill is now in the Senate State Affairs Committee. I have also enclosed 12 copies of the Legislative Directory which indicates the membership of the Senate State Affairs Committee on page 30. You may wish to contact both the Senate State Affairs Committee and the Senate Judiciary Committee, to which the bill is referred following State Affairs.

Thank you again for forwarding information regarding your concerns and for becoming involved with the legislative process. Together we can make a difference and do something about the state we are in.

With best regards I remain,

Sincerely,

Representative Charlie Bussell
Chairman, Committee on Judiciary

CB:lyn

enclosures

POUCH V
JUNEAU, ALASKA 99811
465-4990

P.O. BOX 4-1325
ANCHORAGE, ALASKA 99509
248-1515

CHAIRMAN
HOUSE JUDICIARY COMMITTEE
MEMBER
HOUSE RESOURCES COMMITTEE

Representative Charlie Bussell

ALASKA STATE LEGISLATURE
HOUSE OF REPRESENTATIVES

March 28, 1983

Robert and Thelma Sinnett
2001 Salem Court
Anchorage, Alaska 99504

Dear Mr. and Mrs. Sinnett:

Thank you both for taking the time to write expressing your concerns for acts of public behavior which have gotten totally out of control.

With respect to the misuse of alcohol and drugs the Judiciary Committee in the House perfected HB 17 which raised the legal drinking age back to 21. On the House Floor I, and others, fought hours of attacks by Representatives Duncan and Clocksin to water down and destroy this bill. HB 17 is now in the Senate where Senators Ray, Josephson and Fischer will do all they can to kill it.

The House Judiciary now has HB 6 which covers increased penalties for drinking while intoxicated. Representatives Clocksin, Malone and Wendte have stalled action through two hearings, but will be unable to stop this bill from getting to the Floor of the House soon.

Within the next two weeks I hope you will be seeing two bills requiring manditory insurance coverage ready for passage by the House. Again, Representatives Duncan, Malone, Miller, Clocksin and Wendte will be doing all they can to stop or delay progress on these bills.

Slowly, but surely, we are chipping away at the problem. We need all the help you can give those of us trying to make the needed changes.

Thanks again to you both for writing and becoming part of the legislative process; together we can make a difference and do something about the state we are in.

Sincerely,

Representative Charlie Bussell
Chairman, Committee on Judiciary

CB:lyn

March 9, 1983



Representative Charlie Bussell
Pouch V
Juneau, Alaska 99811

Dear Representative Bussell:

I am writing this letter in pain, outrage and total disgust. I have painfully become aware of the completely inadequate and antiguated driving laws of this state as a result of my son Sean's death at the hands of an irresponsible, uninsured driver who was drinking, speeding, ran a red light and God only knows what else. This driver can afford alcohol and drugs (they were found in his car) but he cannot afford insurance!

The law concerning the requirement to have auto insurance, better known as "the State gives you a free one" is at best a farce. Having lived here 44 years and watching the traffic increase to the point beyond the capacity of our road system, coupled with the irresponsible attitude of the outsiders coming in and the young people growing up, dictates that the law be tightened.

It is imperative that mandatory auto insurance be required of those wishing to drive in the State of Alaska. When auto licenses are renewed or bought, or with registration and/or titles, proof of insurance at that time should be shown. Upon cancellation of insurance, then licenses revoked. In short No Insurance - No License!

Sean was not allowed to own a car or drive without insurance which he bought and paid for himself and he took that responsibility with him into his young adulthood and was subsequently killed by a person who apparently did not care or have any regard about others.

The time is long past due for all Alaskans new or old to accept the responsibilities attached to owning and driving an automobile and the necessary steps to accomplish this rests squarely on your shoulders.

Sincerely,

Robert J. Sinnett
ROBERT J. SINNETT

Thelma Sinnett
THELMA SINNETT
2001 Salem Court
Anchorage, Alaska 99504

MADD

MOTHERS AGAINST DRUNK DRIVERS
ANCHORAGE, ALASKA CHAPTER

2/1/83 CB

SCOTT AND WESLEY GERRISH MEMORIAL



Scott 13, and his brother Wesley 10, were walking on a Satruday afternoon, on December 5, 1981 at about 4:30 P.M., when they were struck down by a vehicle driven by an alleged "Drunk under the influence of alcohol". The trial has been postponed again and more information as well as the outcome of the sentence will be issued after the trial.

Scott and Wesley's death was no accident. IT WAS A CRIME! A crime that is neglected by the system. That is why the Anchorage MADD chapter was formed.

MADD is an organization of victims, survivors and concerned citizens determined to reduce deaths and injuries resulting from driving under the influence. Mothers Against Drunk Drivers encompasses all types of people; young, old, male, female, mothers, fathers, sisters, brothers, and any citizen concerned with the problems of driving under the influence.

THE GOAL OF MADD IS: TO REDUCE FATALITIES AND INJURIES RESULTING FROM DRIVING UNDER THE INFLUENCE (DUI).

THE OBJECTIVES OF MADD ARE:

To Force Effective Reform Of The Drunk Driving Problem.

To Be The Voice Of The Victim.

To Increase Public Awareness To The Awareness Of The Seriousness Of Driving Under The Influence.

Teach Communities How They Can Become Involved In The Fight Against Drunk Drivers.

Establish Court Monitoring Programs In Each Community.

SOME CHANGES WE WANT IN ALASKA:

Raise The Drinking Age To 21.

Tougher Sentences And Fines.

Work With Bartenders And Clerks In Not Serving The "Too Drunk To Drive" And "Too Young To Drink" People.

Educate The Public On The Problems Of Drinking And Driving.

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CHUCK LANDERS
Vice President

PHYLLIS JONES
Treasurer

WADEEN VO[illegible]ERS
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CONGRESSMAN JAMES HANSEN (R-UT)
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CONGRESSWOMAN MARY ROSE OAKAR (D-OH)

MEMBERSHIP: As a member, you will be entitled to any and all services MADD has to offer, including newsletters, current legislation and drunk driving information..

_____ $20 Individual _____ $40 Family _____ $150 or more Organization Affiliat

_____ I would like to make a contribution of $ _____ in support of your organizat

_____ I would like to volunteer my time, please call me.

_____ I am a victim. _____ I am a concerned citizen.

NAME: _____ ADDRESS: _____

CITY, STATE AND ZIP: _____ PHONE: ( )

M A D D

MOTHERS AGAINST DRUNK DRIVERS

ANCHORAGE, ALASKA CHAPTER

SCOTT AND WESLEY GERRISH MEMORIAL

LISTED BELOW ARE SOME OF THE GOALS WE OF THE ALASKA M.A.D.D. CHAPTER HOPE TO ATTAIN IN OUR STATE:

1. To ultimately reduce the number of deaths and injuries caused by alcohol related crashes.
2. To educate people on drinking and driving. The seriousness of drinking and driving and the social responsibility not to drive after consuming alcohol.
3. Get tougher sentences for drinking and driving by working with legislators, judges, D.A.'s and law enforcement agencies to force the effective reforms of this problem.
4. Make it mandatory anyone selling/serving alcohol take a course to recognize a person who is too young and/or too drunk to purchase alcohol, much less drive a vehicle. These servers/sellers would have to carry an identification card proving they have taken the course.
5. Enforce fines and arrests for bartenders and bar owners who serve a person until they fall off the bar stool or pass out. Educate people to call a taxi, friend (of the drunk driver), or even take car keys away to prevent a driver who is drunk from going out on the streets.
6. Assisting families of victims hurt by drunk drivers. Offering emotional support to these people.
7. Getting people in general, involved in getting license numbers and makes of cars that are driving recklessly or weaving all over the road. Getting people to not be afraid to report these drivers.
8. Enforce laws that a person must have insurance before getting a drivers license. This way a persons past driving record is investigated.
9. Take vehicles away from people after the first offense, for 90 days. 2nd time, 6 months, 3rd time, three years. Getting to and from work is no excuse to drive, as there is public transportation, family, friends and fellow workers in most cases.
10. Raise the drinking age to 21.
11. While in jail for drinking while under the influence, make these people work for the State or City to save tax money. They can help keep the parks or streets clean instead of sitting in jail and watching T.V. and playing pool. These type of activities do not seem like punishment.
12. Issue M.A.D.D. bumper stickers to remind drivers about driving while drinking does not go hand in hand.

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MADD

MOTHERS AGAINST DRUNK DRIVERS
ANCHORAGE, ALASKA CHAPTER

SCOTT AND WESLEY GERRISH MEMORIAL



Don't Let Your Loved One Be A Victim...

hers Against Drunk Drivers
and Wesley Gerrish Memorial
horage, Alaska

ers Against Drunk Drivers (MADD) organization of concerned citizens e main goal is to reduce the number alities and injuries caused by persons g under the influence of alcohol. nally, over the past ten years, 00 people were killed in alcohol d accidents, and millions more were d. hen Cari Lightner was killed by nk driver her mother decided it was o do something. In 1980, Mrs. ier chartered Mothers Against Drunk rs in California — now there are ers nationwide.

Anchorage Chapter was established in by Mrs. June Gerrish in memory of vo grandsons, Scott and Wesley. The h boys were struck and killed by a e driven by an individual alleged to der the influence of alcohol. Their s, i Lightner's, and thousands of annually are crimes — crimes often go unpunished.

1978 to 1981, there were 405 ies resulting from alcohol related accidents in Alaska. During the four years over 18,000 people were d, many crippled or impaired for hese shocking statistics translate into population being either killed or injured by drivers under the influence of alcohol. And, there is no way to quantify the number of survivors who continue to suffer from these senseless "accidents".

Mothers Against Drunk Drivers is committed to reforming the system which punishes a convicted drunk driver with as little as a three day jail sentence. By increasing public awareness and involving as many community members as possible, MADD is launching a campaign to fight this crime, and ultimately to do as much as possible to minimize the heartache caused by drunk drivers.

The Anchorage Chapter of Mothers Against Drunk Drivers will be the voice of the victim. MADD's goals include working to establish court monitoring programs in the community, assisting families of victims, raising the legal drinking age to 21, and educating the general public on the problems of drinking and driving. Most importantly, MADD will enlist the help of prosecutors, legislators, judges, and law enforcement agencies to convict more of the individuals charged with drunk driving, and to establish tougher sentences for those convicted.

Every member of Mothers Against Drunk Drivers is committed to doing as much as possible to bring the drunk driver to a halt.

SUMMER 1982

MADD

MOTHERS AGAINST DRUNK DRIVERS

NATIONAL NEWSLETTER

A MESSAGE FROM CANDY

At long last the Presidential Commission on Drunk Driving got underway and we had our first meeting on June 3, 1982. Prior to that, in April, I was invited to attend a press conference at The White House where I was able to meet with the President, *briefly*, and other luminaries. I am on the Executive and Legislative Subcommittee, and will be attending their first meeting August 2nd and 3rd in Oklahoma City, Oklahoma. The next full committee meeting will be in Scottsdale, Arizona, on September 13th. These meetings are open to the public and I encourage everyone to attend.

I am proud to report that MADD is not only represented on the Presidential commission on Drunk Driving, but on Governors' Appointed State Task Forces in Florida, Colorado, Delaware, Louisiana, Maryland, Massachusetts, Michigan, Nebraska, North Carolina, Ohio, Pennsylvania, Texas, and Virginia. MADD members are also serving on many county task forces across America.

I can't tell you how much it meant to me to meet so many wonderful and dedicated people who attended our first regional workshop. I would especially like to thank Sandra Hosking for being there. Despite her numerous handicaps as a result of a drunk driver, Sandra displayed a great deal of courage and was an example for us all.

On September 22, 1982, national headquarters is having our first major fund raiser in Sacramento. It will be a dinner to honor those in California who have contributed to the drunk driving effort and our cause, and to celebrate our two-year anniversary. If you see a newsletter after this one, it was successful. If you don't, it wasn't! This money will be used to help increase our community awareness programs, student educational programs, and victim assistance programs. Yes, Virginia, MADD does do other things besides legislation.

A personal decision I have made: in the near future you will no longer see my daughter's picture and story on brochures. It is time to let her rest in peace. Two ironies: Busch, her killer, was sentenced to one year in prison on May 7, 1982, for parole violation - two years to the day after I started MADD. We completed our incorporation on September 5, 1980. Cari and Serena were born on September 5, 1966. I shall miss her always.

By the time you read this, summer will be almost over and I

(continued on page 11)

MADD Is The Voice Of The Victim

Case #1 — Jeff Morris refused the breath test but admitted having put away a half-pint of whiskey before his lumber company truck slammed into a line of five cars. Despite the death of one man, the injury of several others, and five prior DWI arrests with three convictions, Harris County Judge Neel Richardson sentenced Jeff Morris to ONLY 20 DAYS IN JAIL AND A $500.00 FINE for the charge of criminally negligent homicide.

Members of the Houston Chapter of MADD were shocked at the light sentence, as was Assistant District Attorney Nick Vincent. After Vincent and MADD representatives spoke to news reporters about the case, Judge Richardson was deluged with criticism.

Judge Richardson angrily defended himself claiming evidence of alcohol was not included in the charges. "The defendant is charged with the misdemeanor offense of negligent homicide by failing to keep a proper lookout and failing to apply his brakes in proper time", Judge Richardson explained to the Houston Chronicle. "Public reaction called my attention to the fact that there was an implication by prosecutors that Morris was a drunk driver and should have received a heavier sentence", Judge Richardson continued. While publicly complaining that the state had subjected..."*his court and the system of justice in general to public criticism*", the judge withdrew the guilty plea and sent the case to another judge.

On June 10, 1982, Judge Neil McKay, after meeting with two representatives of MADD in his office to explain his position, sentenced Morris to 180 days in jail and a $500.00 fine.

Case #2 — In May an anonymous call alerted MADD Headquarters that a truck driver was driving on a suspended license with four drunk driving arrests within a four-month time period. The arrests had occurred in two counties.

MADD's investigation revealed THREE license suspensions, each the result of the driver's refusal of a blood alcohol test. Unimpressed he continued to drink and drive. Further investigation showed that the DMV driving record did not show any of the current charges. Phone calls to both counties confirmed that in one county he had been convicted of *one* charge *six months after arrest*. In the second county three of the charges were *still* pending. Additional probing revealed

(continued on page 10)

And The Problem Goes On . . .

Seven hours after fleeing the scene where she had struck and killed Anna Clara Forde, Sandra Larizza turned herself in at Long Beach Police Headquarters. Although she confessed to having had several drinks at a party the night before, Larizza was never charged with drunk driving. On June 16th, Larizza was fined only $1,000 and put on two years probation after pleading no contest to a misdemeanor charge of leaving the scene of an accident.

Larizza reportedly had many friends in the police department including Lt. Dan Shea. Anna Forde, a clerk at the Long Beach Police Department, also knew Shea although they did not work together. In a June 24th Los Angeles Times article Lt. Shea described the VICTIM as a "*...nondescript person, one of the faceless individuals of the world...*". He went on to describe Larizza as "*...very popular, a delight to be around...everybody liked her...*".

Her husband, four children, and co-workers find it difficult to accept Shea's apparent attitude that Anna Forde's life was not as "*worthy*" as Ms. Larizza's. In a memo to Deputy Chief C.W. Clark, co-workers angrily objected to Shea's comments, saying their friend was "*...caring...vivacious, and...articulate...*". When questioned by MADD member Jeri Cole, Chief Charles Usry, Long Beach P.D., stated -- "*Lt. Shea was on duty at the time of the comment, therefore he was speaking for the Department.*"

Southern California MADD representatives are waging a letter writing campaign to local and state lawmakers, members of the judicial system and the media calling for responsible action to be taken by the courts, the DA's office, and the police department regarding the handling of drunk driving cases and Lt. Shea's irreprehensible actions. Jeri Cole shared her fear with reporters; "*What this (case) tells the public is, if you are drunk and you hit and kill somebody, go ahead and go home.*"

On October 16, 1981 Robert Lee Byington, a Long Beach Police Officer, struck and killed James M. Riddle, age 20, while driving under the influence of alcohol. Byington's BAC was .21.

Subsequently, Mr. Byington pled no contest to a charge of felony vehicular manslaughter. Judge Luis Cardenas sentenced Byington to 1 year in the county jail imposing *no* fine, *no* probation, and *no* action to revoke or suspend his drivers license. The modification of sentencing from a felony to a misdemeanor charge allows Mr. Byington the opportunity to return to his job following incarceration. Although Byington was sentenced to *county* jail, he was instead sent to the Costa Mesa *City* jail. Further, MADD has received reports that his jailers have given him preferential treatment in direct violation of jail regulations. These privileges include home-cooked food brought to him on a regular basis, unlimited phone calls, 2-3 lengthy contact visits per week including one unsupervised visit which took place in the jail parking lot.

Judge Cardenas, when questioned by MADD, defended himself by claiming that the DA did not make a strong case for the prosecution. The DA's office responded by blaming the defense, claiming a "deal" was made with the judge.

Our Orange County Chapter has called for a thorough investigation by local authorities and for the dismissal of Robert Byington from the Long Beach Police Force as provided for under law.

Letters protesting this case should be addressed to: Charles Usry, *Chief, Long Beach PD*, 400 West Broadway, Long Beach, CA 90802; Honorable Luis Cardenas, Department 5, Superior Court, County of Orange, 700 Civic Center Drive West, Santa Ana, CA 92702, or Honorable Robert E. Rickles (current Presiding Judge); George Deukmejian, *Attorney General of the State of California*, 555 Capitol Mall, Sacramento, CA 95814; Judicial Council of California, Commission on Judicial Performance, 350 McAllister, San Francisco, CA 94102.



An article in the spring newsletter reported the case of a 33-year-old Sacramento man, Gerald Basquez, who was sentenced to 3½ years in the county jail for violation of probation and driving with a revoked license. Basquez, who had 15 prior convictions for drunk driving was also tried at the time on two additional drunk driving charges but the jury was deadlocked and could not reach a verdict. He was subsequently retried and found guilty. Judge Edward Garcia, Sacramento Municipal Court, added two years, the maximum sentence, to the 3½ year jail sentence now being served. A probation officer, in a report to the judge, called Basquez "*a walking time bomb who requires incarceration for the protection of the community.*"

Long time deputy district attorneys said Basquez's 5½ year total jail sentence is the most they can remember ever being given out to a misdemeanor drunken driver in Sacramento.

HE'S BEEN THERE!

Dear MADD,

My name is Hiram I. Cobb. I am 49 years old and at the present time I am serving a life sentence in Indiana. I am an alcoholic. The reason I am writing you is because alcohol put me here. In 1973 I started having medical problems (S. Diabetes) prostrate gland problems, impotence, etc. Then marital problems. After spending a lot of money on doctors, both medical and mental, and getting nowhere, I crawled into a booze bottle and became a full-fledged alcoholic. In the summer of 1975 I was arrested twice in the same week by the same cop for drunken driving. Unfortunately I had enough money to buy my way out of that mess. But *if* the judge had not been money hungry, and *if* he had handled my case according to law, I would have been given a stiff jail sentence and placed in a detox center. Let me tell you friend, that was the worst money I ever spent. Just six months later I was arrested for bank robbery and first degree murder. *Why?* Alcohol and drugs. It's true I did not kill anyone with a drunk driving auto, but I was drunk just the same and another human being lost his life (a reserve police officer). *If* I had just been placed in jail *or* a detox center when I was arrested for drunken driving I would not be here today and another man would still be alive to see his children grew up. I too read Candy Lightner's story and I do believe something should and could be done about drunken driving. But before anything can be changed, the crooked judges and attorneys will have to be dealt with first. Any person that takes that first drink of booze, be it social or alcoholic, is a potential murderer. Everyone knows that as long as booze is made, there will be fools like me to drink it. But how about a tavern or nightclub with locked doors? What I mean is this. Anyone wishing to drink or party that goes into a tavern or nightclub would have to stay locked in the place until he or she is given a breathalizer test and declared sober...sound stupid? Well let me tell you friend, it would be a whole hell of a lot better than winding up in prison and/or losing all your family and friends and having some innocent child or grown person's death on your conscience for the rest of your life. Believe me, I know what I'm talking about. I am now a member of Alcoholics Anonymous. I know it's kind of like shutting the gate after the horse got out, but at least I know what I am now and I can be honest with myself. When it comes to the killer, alcohol, I wish there was some way I could plant this true story into the brain of every drunk driver in the world but we all know that's impossible. So in closing let me say good luck and God bless. I'll be praying for this organization.

Sincerely,
Hiram I. Cobb
Pendleton, IN 46064



Duke Van Dyke Vice President

Duke and his wife Carol lost a son to a drunk driver three years ago. They are both long-time volunteers. Before coming on board as Vice President, Duke was active in the Speakers Bureau and the Victim Asistance program as well as a "utility man" always ready to do what needed doing. Duke is a retired colonel who brings to MADD strong leadership and a wealth of experience. Duke's primary responsibility is to back up Candy and to supervise MADD's administrative staff. I am extremely pleased Duke has agreed to be our Vice President -he has already proven himself to be a valuable asset to our organization.

Community Support

Our campaign to reduce the deaths and injuries caused by drunk drivers could not continue without support from our communities. We are grateful to everyone who has contributed. We would especially like to thank:

- The **Leavey Foundation** for renewing our grant which supports the National Headquarters
- **Tandem Productions** for a generous contribution to our Los Angeles, California Chapter
- **Disney World** for their support of our Orlando, Florida Chapter
- **Government Employees Insurance Company** for its grant to our Williamson-Davidson County Chapter in Tennessee
- **Prudential Life Insurance Company** for it's grant to our Delaware Valley Chapter in Pennsylvania
- **Junior Achievment** of Glendale, California for donating the proceeds of its fund raiser to National Headquarters
- **Baverle Real Estate** for donating office space and **Railey Paper Company** for donating office furniture to our Austin, Texas Chapter
- **Sacramento El Dorado Medical Society** for assistance with our fund raiser and support of MADD.

Those Marvelous MADD Volunteers

All volunteers are very special people and MADD is blessed with the very best of them. In **Orlando, Florida, Pat Oles** is doing an outstanding job compiling, laying-out, printing and bulk mailing the monthly newsletter. Pat is a wife and mother and still finds time to do this incredible job completely on her own.

The efforts of **Bonnie Rathbone** since January of this year have been instrumental in keeping the **Central Massachusetts** Chapter on track even though the loss of 4 members of her family makes it necessary for Bonnie to travel two hours to Boston to follow the case. Bonnie has found the time and energy to testify before the State Task Force, make several dynamic radio interviews, sell raffle tickets and still be available to other victims in crisis.

Gladys Almond, of Baton Rouge, Louisiana supports herself by working full time at a job that allows her only one day off a month. Gladys spends that one day in court, monitoring cases for MADD!!!

National headquarters is fortunate to have **Ken Nelson**, an outstanding speaker.

A heart-felt "thank you" to all Marvelous MADD Volunteers!

Saving A Life Can Be Habit Forming

Experts estimate that almost half of all automobile occupant fatalities and many serious injuries might have been avoided if the people had been wearing seat belts. If you are one of those people who do not use belts for one reason or another, think carefully about your motivations.

Many people say they are afraid of being trapped in a car by a seat belt. In fact, in the vast majority of cases, seat belts protect passengers from severe injuries, allowing them to escape more quickly.

Some people use seat belts for highway driving, but rationalize it is not worth the trouble to buckle up for short trips. The numbers tell a different story: 80% of all automobile accidents causing serious injury or death involve cars traveling under 40 miles per hour. Three quarters of all collisions happen less than 25 miles from the driver's home.

We heartily support the program initiated by the National Highway Traffic Safety Administration to encourage the use of seat belts. So please fasten your own belt, and urge your family and friends to follow your example. Make it a lifesaving habit to use seat belts.

Many of our children would be alive today if they had been wearing seat belts or in child restraining seats when involved in a drunk driving crash.

CHAPTER HIGHLIGHTS

We want to express our sincere appreciation for a job well done by Ron and Karen Frazier of the **Rappahannock County** Chapter of *Virginia*. Ron has been transferred to *London* (is MADD going international?). Ron and Karen were instrumental in organizing their chapter and they have worked hard on the drunk driving issue. We want to welcome Donna Neal, the new Chapter President, and we know you will all give her your support.

CONGRATULATIONS to Ed Kunec, President of the **Fairfax County Chapter** *(Virginia)*, for his appointment to the STATE TASK FORCE. The chapter is also represented on a County Task Force.

Ruth Weill is serving on the Governor's Task Force in *Louisiana*. The **Baton Rouge Chapter** has logged over 200 hours of court monitoring and has begun a statewide victim identification program. The **San Mateo County Chapter** *(California)* has been holding weekly seminars which are conducted by local law enforcement officials, judges, motor vehicle department representatives and others involved in the drunk driving problem. The state of *Michigan* is organizing rapidly thanks to the efforts of Lee Landes and Greg Reese who are serving on the state task force. The **Wayne County Chapter** and the **Macomb County Chapter** have been leaders in the state. New drunk driving laws were signed by the Governor of the state of *Florida*. The **Orlando Chapter** did an outstanding job providing expert testimony on the laws when they were in the legislature. They also helped raise funds for a Breath Alcohol Testing Mobile Unit for the police. In *Ohio*, the **Southwestern Ohio Chapter** sponsored a drunk driving demonstration in cooperation with Warner Amex Security and Malibu Grand Prix. They also had a local marathon walker who walked from Lexington, *Kentucky* to Cincinnati, *Ohio* in less than 24 hours to call attention to the deaths and injuries caused by drunk drivers during holiday weekends. Our **Maryland Chapter** has had tremendous success. Nine new drunk driving laws were passed in *Maryland*. The **Lehigh Valley Chapter** in *Pennsylvania* conducted a mock court in which a judge, a police officer, a prosecuting attorney and a magistrate acted out the process from arrest through sentencing. *Minnesota's* governor signed new drunk driving laws in March. Both the **Metro #1** and **Metro #7 Chapters** were instrumental in the passage of these laws. In *Massachusetts*, Carol Lawler, President of the **Greater Boston Chapter** is serving on the Governor's Task Force and Jan Constantineau, President of the **Central Massachusetts Chapter** is serving on the Worchester County Early Intervention Team and Task Force on Alcohol and Safety. Congratulations to all our chapters for their hard work and tremendous success.

MADD PAST, PRESENT AND FUTURE

MADD started as a one-woman crusade for personal justice. Today it is the focus of national attention with eighty-five chapters in twenty-nine states. We look forward to the day when there are MADD chapters in every state.

When MADD first began to call for reform of California's Drunk Driving Laws, it was difficult to find a sympathetic ear. Today those new laws are in effect and thirty-five state legislatures introduced new drunk-driving laws in 1982. New laws were passed in twenty-four states. MADD will continue to work for effective drunk driving laws.

When Governor Brown of California appointed a State Task Force to find solutions to the drunk driving problem, he was one of the few politicians to understand the significance of the MADD movement. Today members serve on Governor's State Task Forces in nine states and on many County Task Forces. Candy Lightner has been appointed to the President's Commission on Drunk Driving. Tomorrow more state task forces will be formed to seek local solutions.

MADD was initially recognized for its legislative efforts. Today these MADD programs are highly regarded:

1. Community Awareness and Education (Prevention)
   One key to the solution of the drunk-driving problem is changing our attitudes about drinking and driving. Today drinking and driving is socially acceptable; in fact, drunk drivers often receive positive feedback for their anti-social behavior. Making drunk driving socially unacceptable means changing societal values. This is done by raising consciousness (awareness) and education on how to be individually responsible. Programmatically this means:
   a. Speakers Bureau
      Each chapter develops a nucleus of accomplished public speakers who make presentations before service clubs, professional associations, community groups, governmental agencies, corporations, schools and others interested in the drunk-driving problem.
   b. Student Education Program
      An educational program coordinated by MADD, but administered by and for high school students (Note: 44% of all night-time fatal alcohol-related crashes are caused by 16-24-year-olds).
   c. Media Coverage and Events
      Mass media, both local and national, keep people aware of the drunk driving problem and solutions. Events educate people on how to be individually responsible, i.e. "Holidays Ahead Campaign".
      Each MADD member becomes an advocate for reform of society. Each becomes a living, walking, talking education program. Peer pressure at work.
2. Victim Services
   A victim can be either the person who suffered injuries as a result of a crash caused by a drunk driver and/or the family members of the crash victim.
   Assistance to victims includes:
   a. Short-term treatment
      Crisis intervention, individual counseling and bereavement group support
   b. Information and Referral
      Information about and referral to appropriate services in the community
   c. Adjudication Advocacy
      If a victim wishes to follow the adjudication process of the person responsible for the crash, MADD explains the adjudication process, one's rights, is present in court, documents court proceedings and results, and follow up
3. Reform and Enforcement
   Another key to changing behavior is to punish anti-social behavior. This is accomplished by enactment of laws providing for punishment of drunk drivers and by ensuring that these laws are enforced. Programatically:
   a. Advocacy
      MADD advocates for reforms in the criminal justice system, law enforcement, motor vehicle agencies, prosecuting attorneys' handling of drunk driving cases and provides expert testimony on legislation related to the drunk-driving problem.
   b. Task Force Formation
      Chapters advocate for formation of state and county task forces which seek local solutions.
   c. Court Monitoring
      To determine if prosecuting attorneys and judges strictly enforce current laws in prosecuting and sentencing those persons accused of drunk driving.

In the future, MADD programs will reach more Americans.

Two years ago MADD staff consisted of Candy and a few friends working out of her home. Today MADD occupies a suite of offices and boasts a staff of ten professionals and five other highly qualified individuals. MADD is working towards a system of paid regional staff.

When MADD began, 26,000 people were killed every year by drunk drivers and another million were injured. Today, in four states including California, statistics show fewer deaths and injuries on our highways in 1982 as compared to 1981. **Lives are being saved!** We have a long way to go to make our highways safe but a start has been made.

In the summer of 1980 MADD was a concept, an idea. Today MADD is a movement of victims and concerned men and women from all walks of life. Someday MADD will be an anachronism as drunk driving will no longer be socially acceptable or go unpunished. Until that day MADD will continue to be the Voice of the Victim!



Lehigh Valley Chapter, PA



Houston Chapter, TX



Mahoning County Chapter, OH



Stanley County Chapter, NC

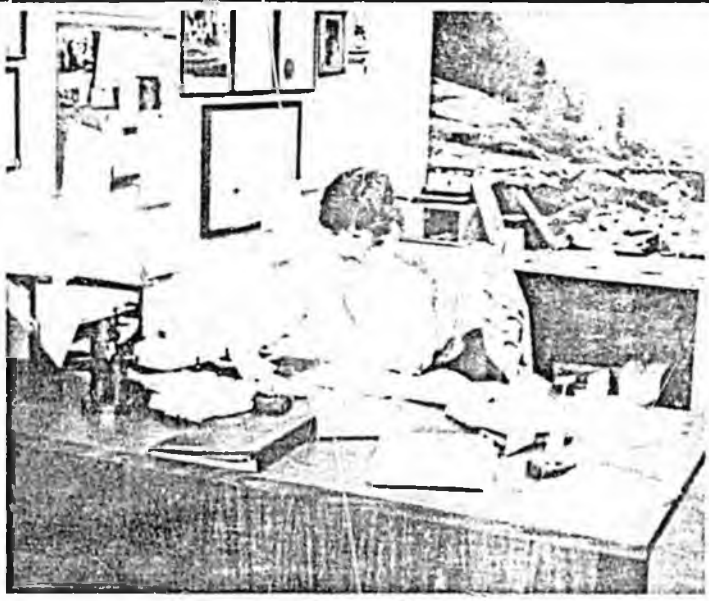
Rappahannock Chapter, VA





Central Massachusetts Chapter





First National Headquarters, November 1980

Candy Lightner and Governor Jerry Brown. Gov. Brown signing new drunk driving bills 9/29/81 for new laws that went into effect 1/1/83.



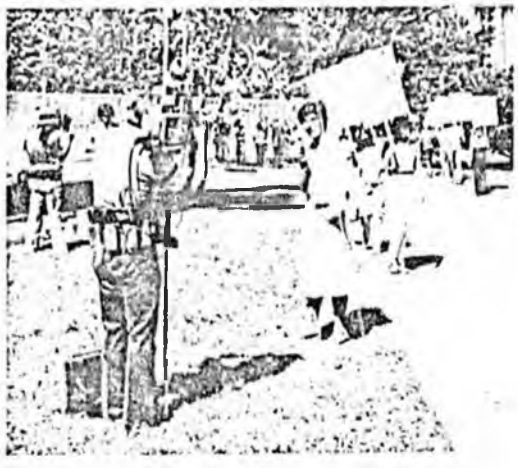
Washington, D.C. press conference, October 2, 1981



Sacramento press conference, February 23, 1981



Candy Lightner at swearing-in ceremonies with Ray Peck (NHTSA) and John Volpe, Chairman of Presidential Commission on Drunk Driving.



MADD's first picketing

EAST COAST WORKSHOP

MADD'S first regional workshop was a resounding success. One hundred people attended. One chapter president traveled from El Paso, Texas to join us in Washington, D.C.

Among the workshops were: Organizing Your Chapter, Fund Raising, Grantsmanship, Volunteer Program Management, Victim Assistance Program Management and Working with the Press. One of the most beneficial aspects of the gathering, however, was the moral support and uplifting we were able to give one another. The energy created by so many people dedicated to the same purpose gathered in one place really charged up everyone.













We are holding our final 1982 workshop in Sacramento in November. See you there!

THE VICTIMS STORY

DEAR CANDY,

I have pretty much recuperated now from the emotional and physical ordeal of sentencing, March 25th and wanted to let you know the results.

John Morgan was sentenced to two years in prison beginning April 12th. Two years for two lives doesn't seem much to me. However, it is far greater than what has been given before in our area and even more than Cook County (Chicago). The defense attorney tried again to throw the case out and Morgan spoke of how he has changed, hardship, etc. But you could tell it was not sincere. He even said he had wanted to talk to me, but when I gave him a chance after the judge left, he didn't accept it. The judge allowed me the option of speaking and when I sat there I thought I would pass out. But I did manage to say their right to life was taken, it was 11 months exactly since I had buried those 2 wonderful people and a person should take responsibility for his actions. My brother (in his clerical collar) and 4 girlfriends were with me. I believe the judge had his mind made up before, because he was quietly firm and reminded Morgan his own 2 children could have been dead also.

I understand the Trooper had given information earlier that Morgan was still drinking. But I believe your letter to the judge made a great impression especially when I saw he responded back to you. Thank you, so much, Candy. Isn't it great to know we can make a difference!

A very sincere thank you!
Georgene Zibits
Chicago, Illinois

MADD:

I happen to be a recent VODD (Victim Of A Drunk Driver). On 7 5 81 while riding my 10-speed bike I was struck from behind by a pickup truck and ended up 188 feet from the point of impact. The driver, 32, was found some blocks away with my bike wedged in his grill and a BAC of .18 and was given 4 tickets.

I spent 5 months and 19 days in the hospital with a spinal cord injury. I will never walk again. I also lost control of my bladder and bowels and am physically impotent.

My medical expenses, which I estimate at $75,000, were almost all covered by my medical insurance, and my vocational rehabilitation is already over $20,000.

The driver pled no contest and was fined $175 and got a 90-day license suspension and DWI school. My injury or even the accident weren't in any of the charges. He had no insurance or resources to sue for.

Shortly after the accident the Assistant State Attorney called me and asked if I would identify the driver. When I told her I couldn't because I was hit from behind and was unconscious, she said they'd probably have to dismiss the charges because there were no witnesses. I screamed about the bike in the grill and the tickets and he was brought to trial.

I have not had any income since the accident and if it wouldn't have been for my mother I would've lost my house through foreclosure.

I and my relatives and friends are very angry about this and how little was done to the driver.

We are on the right track with laws that will dole out stiffer penalties to the drunk drivers because it will stop some of them from driving drunk. But what about the victims!? If the victim dies, we seem to have had the attitude, "Well, we can't bring them back, and anyway it was just an accident." If the victim is permanently disabled, it is not even a crime! This is outrageous! The drivers must be held responsible for the damage they do.

Stewart Rosenkrantz
1755 N.W. 18th Street
Ft. Lauderdale, FL 33311

LEGISLATIVE ALERT

HOWARD-BARNES BILL NEEDS YOUR SUPPORT

MADD has long endorsed effective federal legislation to assist the states in battling drunk drivers. MADD endorses H.R. 6170, a bill introduced by Congressmen James Howard of New Jersey and Michael Barnes of Maryland, providing important federal aid to those states setting up comprehensive, community-based drunk driver control programs. The Howard-Barnes bill, which has already passed the House Public Works & Transportation Committee, is expected to come up for a vote before the entire U.S. House of Representatives before the Labor Day weekend. Currently, the bill has the bipartisan cosponsorship of 120 members of the 435-member House. But this is not enough!! We must assure a clear majority cosponsoring the Howard-Barnes bill, which in MADD's view, is the best available mechanism to finally bring under control the nationwide drunk driving epidemic. The Congress must go on record that drunk driving can no longer be tolerated. Take a minute to write your Congressman NOW to cosponsor this life saving legislation.

ADDRESS YOUR LETTER:
(The Name of Your Congressman)
U.S. House of Representatives
Washington, D.C. 20515

L.A. TIMES

Dr. Joyce Brothers

Turning Rage Into Positive Action



Dear Dr. Brothers: A year ago, my 16-year-old daughter was killed instantly by a drunken driver who ran through a school crossing. Because of this, I suppose, I was not amused by the film, "Arthur," that seemed to celebrate and condone drunken driving. In fact, I was so enraged when the audience laughed at a drunk that I wanted to scream at everyone. I was unable to sleep for several nights after seeing this film.

My husband shared my views but somehow he's managed to be more adjusted. He just let it go and it didn't seem to affect him. He worries because he's afraid my anger will only end up destroying me and our marriage. Sometimes, I worry too, but I don't know what to do. G.H.

Dear G.H.: Take positive action that will turn your justifiable rage into something that will help others. Make your anger constructive. Drunks account for half the nation's fatalities and I agree that a drunken driver is never funny.

I haven't seen the movie you refer to, but I do know there's a powerful new group springing up around the country. It's called MADD, which stands for Mothers Against Drunk Driving. This crusade against slaughter on the highways has earned the attention of judges, legislators and highway officials. One result of their constructive anger is that more stringent laws have been put into effect against drunken drivers.

It will help you to write out or talk out your feelings. Your husband may have found ways to release some of his anger and pain over your daughter's death. He may use his work as a way of relieving some of those tensions.

Contact someone in your local government and ask if there's a chapter of MADD in your community. If there is, join it. If there isn't, perhaps you can form one.

• • •

MADD Is The Voice of The Victim

(continued from page 1)

that the county in which the three drunk driving charges were pending was unaware of the one conviction. When contacted BY MADD, the D.A. prosecuting the remaining three charges explained that his county considered CONDITIONAL PROBATION WITH REFERRAL TO A TREATMENT PROGRAM APPROPRIATE SENTENCING FOR THIS MAN WHO,"...OBVIOUSLY HAS A PROBLEM AND NEEDS HELP."

MADD's involvement resulted in a June 9th sentencing to 6 months in county jail, a $1,250.00 fine, driver's license revocation, 3 years formal probation and the filing of a charge of violation of probation.

Case #3 - The driver claimed the two victims darted out in front of his vehicle causing the fatal crash. Subsequent investigation revealed that Larry Hargadon and Karen Lippstren were standing on the side of the highway behind their disabled car when they were hit and killed by the defendant on January 30, 1982.

Friends had encouraged the parents *not* to become involved in the adjudication process. Lee and Bernard Hargadon followed the advice until a meeting with the probation officer disclosed the information that, based on the original report, the driver had been charged *only* with two counts of MISDEMEANOR MANSLAUGHTER. The probation officer also disclosed that *over* 100 letters, in *support* of the *charged driver*, had been received by the probation department. Shocked, the parents contacted MADD headquarters.

With encouragement and guidance of MADD, the parents took action! Several phone calls were made to bring the *second report* to the attention of the district attorney, his supervising attorney, and the probation department. Letters on behalf of the victims poured in from friends and concerned citizens. These actions resulted in the charges being changed to two counts of *felony vehicular manslaughter*. Our San Mateo chapter will continue to work with and support the Hargadon family through the court process.

REPORT

Ten minutes earlier the driver was stopped by two policemen for erratic driving. According to witnesses, despite the driver's intoxicated behavior, the officers made no arrest. Ten minutes later, he hit the Irwin family head on at 80 mph. The driver was killed. Also dead were Mark Irwin, 22, and his 6-month-old daughter, Misty Jane. Debbie Irwin, 19, and her three-year-old son Steven were seriously injured. Four years later, Debbie is suing the town of Ware, Massachusetts under the Governmental Tort Claims Act. The Massachusetts Appeals Court has ordered the case to be heard by a jury. A MADD Massachusetts chapter is supporting action to raise money for court expenses.

SECOND DEGREE MURDER

In Redding, California, on January 3, 1979, Penny Maillet and her six-year-old daughter Michelle were killed in an automobile accident. Another daughter, two-year-old Danielle, suffered major injuries. Their car had been struck by another car driven by Robert Lee Watson. Police tests indicated that Watson's vehicle was traveling in excess of 71 mph. And he was drunk! (.23 BAC) Two more deaths to add to the total of more than 26,000 caused each year on our nation's highways by drunk drivers. But this one has a different twist —a Shasta County (California) jury on July 9, 1982, found Watson guilty of 2 counts of Second Degree Murder for his wanton and "conscious disregard" for the lives of others.

For the first time in the state of California, a drunk driver was successfully prosecuted for murder when his act caused the death of another. As far as MADD researchers have been able to determine this case is also the FIRST SUCCESSFUL MURDER PROSECUTION in the UNITED STATES RELATED to a DRUNK DRIVING CRASH. As such it represents a watershed in legal thinking with respect to prior theories of criminal law relating to drunk driving situations.

The Shasta County District Attorney's Office represented by former D.A. Will Hawes, present D.A. Stephen Carlton and Deputy D.A. Dennis Sheehy, in conjunction with the California Attorney General's Office fought for more than 2 years for the right to charge defendant Watson with second degree murder. The defense advocated that Watson should only be charged with felony drunk driving and vehicular manslaughter but in a land mark decision handed down in November, 1981, the California Supreme Court held that the murder charge was appropriate where "there exists a rational ground for concluding that defendant's conduct was sufficiently wanton . . .". The court was careful to caution against "the routine charging of second degree murder"; and that it was necessary for the prosecution "to carry its burden of establishing implied malice" and "the (other) elements of second degree murder". The court's opinion, written by Justice Richardson and concurred with by Justices Mosk, Tobriner, Newman and Lachs, spoke directly to the distinction between the gross negligence finding required in "vehicular manslaughter" cases and the finding requirement of "malice" in murder cases. Gross negligence has been defined in California as "the exercise of so slight a degree of care as to raise a presumption of **conscious indifference** to the consequences". On the other hand, "malice may be implied when a person, knowing that his conduct endangers the life of another, nonetheless acts deliberately with **conscious disregard** for life". Though bearing similarity, these definitions are not identical. **Malice "contemplates a subjective awareness of a higher degree than does gross negligence"** and involves an element of wantonness which is absent in gross negligence."

On August 6, 1982, claiming he had erred in his instructions to the jury, Judge William Phelps reversed Watson's conviction and, instead, substituted a verdict of guilty of vehicular manslaughter. Not only did Phelps impose the lesser penalty of only 3 years in state prison (rather than the 15 years to life which Murder II carries) but he literally ignored the "will of the people" which the jury had expressed by its verdict. Apparently trial by jury is invalid unless the Redding judge approves of the verdict obtained. Judge Phelps decision is being appealed.

A Message from Candy

(continued from page 1)

will be wondering what happened to the vacation I promised myself I would definitely take this time. The first one was interrupted by the signing of the bills at a governor's press conference here in Sacramento, the second was cut short because of the White House ceremony, and the third one I'm afraid to plan.

Since I started MADD two years ago, I have traveled over 81,000 miles. (That was tabulated from trips I recorded. There were many I didn't record.) I have completed over 150 radio shows, over 100 TV shows, and over 30 press conferences. None of the TV and radio includes newscasts. Also, this does not include all the interviews I gave to newspapers, magazines, free-lance writers, authors and potential authors. Those were too numerous to count. I have picketed The White House once, the State Capitol three times, and participated in two candlelight vigils -one in Sacramento and one in Los Angeles. I can remember when I was terrified to speak before a group of people, and refused to do so because I was afraid they would hear my knees knock!

In the beginning I was fueled by my own grief and bitterness. After awhile, as my grief began to subside, I was fueled by others' tragedies and devastation. Now, I'm just fueled by the injustice of it all and knowing what everyone said could not be done is being done. *Laws* are changing, sentencing is changing, prosecuting is changing, attitudes are changing, and we are seeing reduction in death and injuries due to drunk driving on our highways. HAPPY TWO-YEAR ANNIVERSARY, MADD, AND CONGRATULATIONS!

Candy Lightner

LITTLE PEOPLE POWER

Early this year an article appeared in the SECOND GRADE WEEKLY READER that generated a response illustrating the awareness youngsters have of the drunk driving problem. Correspondence was received from students of Mrs. B. Kerley's class in Bartlett, TN; Mrs. Wall's class in Mounds View, MN; Mrs. Easterday's class in Dove Creek, CO; Janet Dixon's class in Rochester, MI; second grade classes in Keokuk, IA and Milroy, PA. Unfortunately space will not permit inclusion of all of these thought provoking letters, but we would like to share with you the letter received from the North Hill School in Rochester, MI.

Dear Mothers,

We talked about drunk drivers yesterday and we, too, are mad. Many of us have seen drunk drivers and we don't like to see people hurt by their carelessness. We wrote about drunk drivers in our journals. Here are some of the things we said.

...(drunk drivers) should get their license expired because if they keep on driving then more and more people will get killed.—*Scott*

...drunk drivers should go to jail.—*Eric*

...sometimes they kill people because they are dumb. —*David*

I think drunk drivers should go to jail because drunk drivers are silly.—*Amy*

I think drunk drivers should not ride.—*Mary*

...drunk drivers should go to jail because people are killed.—*Drew*

...(drunk drivers) should be put in jail for their entire life. I think a taxi should pick them up.—*Joie*

They (drunk drivers) should stop drinking. That's what I think!—*Karen*

Drunk drivers damage their brain.—*Joy*

I think their parents shouldn't let them go to parties. Or, when they are at a party and someone asks them to drink or take drugs, they should say NO!—*Mary Ann*

Drinking is yucky.—*Jessica*

Police should take away their license for the rest of their life.—*Kelly*

...it (drinking) is dangerous and people get hurt.—*Jennifer*

I think drunk drivers should never be able to drink alcohol again. That would solve the problem.—*Todd K.*

As you can see we are concerned about the problem of drunk drivers. We hope your organization can help get laws passed that will take care of some of this problem.

Sincerely,
Second Grade, Room 4
Janet Dixon, Teacher
North Hill School

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Martin supports higher drinking age

Associated Press 1/28/83

Juneau -- Witnesses at a House Judiciary Committee hearing weren't sure people automatically become responsible drinkers at age 21, but they nevertheless agreed that the drinking age should be lifted from 19 to 21.

A measure to do that, sponsored primarily by Rep. Terry Martin, R-Anchorage, was the subject of a hearing Thursday. Martin told committee members that age 21 seems to be "some kind of magical number that does reduce death."

Martin said that of 24,000 annual alcohol-related traffic deaths nationally, 7,000 were teen-agers. The problem has prompted Congress to consider a national age of consumption, he added.

Alaska's director of Highway Safety, Charlie Smith, said statistics on alcohol-related traffic deaths in the 49th state are largely unavailable because "last year was the first time I was asked to produce statistics."

A presidential commission has recommended all states raise their drinking age to 21, Smith said.

Howard Scaman, who represented Mothers Against Drunk Driving, Students Against Drunk Driving, and the Coalition for a Safe Alaska, said that the problem is so serious that alcohol "is readily available in the junior high system."

The state, he said, has one liquor license per 183 people, several times higher than the national average.

Rep. Mike Miller, D-Juneau, said he was part of the problem.

"I voted to lower the drinking age in 1970," he said. "We were dead wrong. We felt that if they wanted to get it, they were going to get it. And they were going to drive anyway."

Raising the drinking age won't eliminate teen-age drinking, Miller said, "but we can lessen it."

"There is no magic number," he said. "We have to draw the line somewhere. Twenty-one seems to be a good age."

When Rep. Don Clocksin, D-Anchora said he was concerned the law would be criminating because of age, Miller admit he shared the same concerns.

But, Miller added, "Drinking and gett drunk is not a right. And society has a ri to draw a line."

A representative of the Hotel, Restaur and Bartenders Union Local 878, Miche Castanedo said she had no objection to ra ing the drinking age. But, she said, would like to see a provision for 18 20-year-olds being allowed to work in pla where alcohol is served.

A committee substitute providing for h concern is expected to be introduced tod

JUNEAU EMPIRE, FRIDAY, JANUARY 28, 1983 3

21: Magic drinking age

Panel: 19 too young

By The Associated Press

Witnesses at a House Judiciary Committee hearing weren't sure people automatically become responsible drinkers at age 21, but they nevertheless agreed that the drinking-age should be lifted from 19 to 21.

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A representative of the Hotel, Restaurant and Bartenders Union Local 878, Michelle Castanedo said she had no objection to raising the drinking age But, she said, she would like to see a provision for 18-to 20- year-olds being allowed to work in places where alcohol is served.

A committee substitute providing for her concern is expected to be introduced today as hearings on the bill continue.

#017

Letters to the editor

Raise the age for drinking

Dear Editor:

In response to the letter, "Cure for teenage drinking," I would like to make a few comments.

Mr. Kirk wrote a lengthy and lively letter demeriting Rep. Terry Martin's bill to raise the drinking age from 19 to 21. He says the bill violates the "American Way" of giving citizens great responsibility for their individual actions.

Let's keep in mind that laws and regulations arise in response to harmful behavior. This bill is long overdue!

Real-life groups of people are, in fact, punished for the transgressions of a few of their members. The "old elementary school teacher who used to make the whole class stay in from recess because someone was talking during class" offers us all a valuable lesson. No one lives completely unto himself. Our actions always produce an affect touching those persons associated or identified with us. For example, a disruptive or criminal family member causes grief to other members of his family. Shoplifters cause the price of retail goods to rise for all shoppers, and careless youthful drivers cause other teen-agers to pay higher insurance rates. The elementary teacher was illustrating the point that it was not only her job to maintain order in the classroom but that the group also was expected to exhibit appropriate conduct and encourage classmates to do the same.

We should learn early in our education that we are individually and collectively responsible for our actions. Peer pressure to do what is right is the only hope for an orderly society, as it is impossible to have a policeman for every citizen. One who buys liquor for a minor contributes to that minor's risk of harm to himself and others. One who purchases products that contribute to people's poor health and safety — whether it be tobacco, alcohol, or illegal drugs — directly reinforces that more of that substance will be produced. These individuals share in the responsibility along with the intoxicated driver who cripples and kills on the highway.

Nothing will prevent a minor from obtaining dangerous substances if he is determined to do so just as it is impossible to prevent a suicide by a peron bent on self-destruction. However, there is no reason to make these items convenient to youth prior to their reaching an age that we hope allows for the development of maturity and judgement needed to exercise caution if not outright refusal to use these substances.

Comparing the loss of jobs for teenagers in drinking establishments because of the revised 21 year old drinking age is sort of like finding a remedy for cancer and then complaining that some nurses will find themselves out of work. It is true that unemployment is a priority, but the disabling and killing of youthful drivers, their friends, and other innocent drivers is a much higher priority. It is time we consider the long-range costs of our decisions and policies rather than just the immediate affects. It might be a bore to drive at 55 mph and see what you pass but thousands of people are alive today as a result of the law.

Yes, one could say Terry Martin's plan punishes the innocent teen-ager along with the guilty. It's a fact of life. But, if you are a teenager who chooses not to drink, you would hardly consider Rep. Martin's bill a punishment.

Paul J. Anthony
Eagle River

Opinion

JUNEAU EMPIRE

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We support raising the drinking age

Anyone who has lived in Alaska for any length of time has known someone hurt by alcohol.

Alcohol abuse crosses every line. It affects old and young, man and woman, rich and poor. But no instance of alcohol abuse is as tragic as among young people.

To see a teen-ager caught up in alcohol abuse can only be described as a shame. Yet most of us see it, hear about it and read about it all the time.

Most drinkers, young and old, are responsible. Yet a sizable minority — a minority that cannot be ignored — continues to misuse alcohol. And many are teen-agers.

The major and most deadly abuse of alcohol is drunken driving. For some reason, young Alaskans especially are arrested time and again for drunken driving. You can see it in the daily police reports and hear about it from concerned friends and parents.

All too often, you read about it in the obituaries.

According to Mothers Against Drunk Drivers, a nationwide group that has taken hold in Alaska, almost one-third of the 24,000 people who died in alcohol-related traffic accidents nationally were teen-agers.

No death is as tragic as a drunken-driving death. That tragedy is even worse when it involves a teen-ager.

Getting rid of alcohol in Alaska seems an impossibility. Though it has been successful in many rural areas, the return of prohibition is not at hand in most of the state.

What is at hand is a movement to raise Alaska's drinking age from 19 to 21.

That is an effort we can all support. Raising the drinking age will not solve Alaska's drinking problem. Nor will it stop drunken driving among teen-agers.

But it will help stop the on-going tragedy of alcohol abuse among many of Alaska's youths.

"I voted to lower the drinking age in 1970," Rep. Mike Miller, D-Juneau, told the House Judiciary Committee last week. "We were dead wrong."

We agree. Drinking is not a right. It is a privilege we believe is hurting too many teen-agers.

Though no statistics are available for the state, we and many other responsible Alaskans agree that raising the drinking age to 21 will save lives.

We support raising the state drinking age.

Getting MADD about drunken driving

Group asks Legislature for stiffer DWI penalties

By CHRIS JARVIS
Empire Staff Reporter

She's MADD about drunken drivers, and she wants the Alaska Legislature to do something about it.

June Gerrish knows all too well the pain than goes with drunken driving-caused accidents. In December 1981, two of her grandchildren, 13-year-old Scott Gerrish and his 10-year-old brother Wesley, were run down and killed by a car driven by a drunken driver as they walked along a road in Girdwood, a quiet ski-resort town south of Anchorage.

The driver, Patrick Clemans, was last week sentenced to two concurrent eight-year terms and two years of probation by Anchorage Superior Judge Seaborn Buckalew.

Gerrish said today she was pleased with the sentence, noting it might serve as a warning to others of what can happen when driving while drunken and how serious the courts treat the crime.

And though last week's sentencing "took a lot weight off our minds," she said she is not done with her fight against drunken driving.

It is a fight that goes far beyond the boundary of the state's largest city. This week a Juneau man who recently pleaded no contest to a negligent homicide charge in the drunken-driving death of another 25-year-old man last June was again arrested, this time accused of drunken driving.

Some people withdraw from their anger and outrage, but Gerrish is doing something about hers. She founded the Alaska chapter of Mothers Against Drunk Drivers, a national group of citizens waging an all-out war against drunken driving.

The Alaska Chapter of MADD, started in September, now has about 800 members and will soon have chapters in Juneau, Valdez, Seward, Palmer and Fairbanks.

Now she has brought her fight to the Legislature and the House State Affairs Committee, which on Wednesday will hear her side of the growing drunken-driving tragedy in Alaska.

"We're not against drinking, but when they get in their cars, that's our business," Gerrish said.

Of her own experience, Gerrish said she never will forget the deaths of her grandchildren and the pain it created.

"It's not fair," she said. "There are two kinds of death."

"The first, like the death of an old or very sick person, you can understand .... You're still hurt, but you know why," she said.

"But this was senseless; this was stupid," she said. "That's what makes me mad; I don't know why."

"We can never have another Christmas, we can never have birthdays," she said of her tight-knit family.

Her son, an Anchorage paramedic, had trouble returning to work following the death of his sons, Gerrish said. One of the first calls he received when he returned to work was to treat a 13-year-old boy who had been hit by a car, she said.

"He had trouble being in the same emergency room" under the same circumstances, she said.

While it supports raising the drinking age to 21, MADD is even more vocal about two other bills now under consideration in the House.

The first, introduced by House Speaker Joe Hayes, R-Anchorage, would require proof of liability insurance before a car can be registered in the state "so that innocent victims of motor vehicle accidents may be recompensed for the injury and financial loss inflicted upon them."

The other bill supported by MADD was introduced by Rep. Mitch Abood, R-Anchorage. It would increase penalties for repeated convictions for driving while intoxicated, refusal to take a breathalyzer test and driving while a license is suspended or revoked.

For example, the minimum sentence for someone convicted of driving while his driver's license is revoked following a conviction for driving while intoxicated would be 14 days in jail and a $500 fine.

In Alaska, Gerrish said, people don't have much trouble coming up with the money to pay fines, so she wants the fines increased to make more of an impression on drunken drivers.

Other changes the bill makes are a minimum jail term for those who refuse, a second time, to undergo a breatalyzer test. A second conviction would increase the sentence to no less than 20 days in jail and a fine of at least $500.

A second conviction for driving while intoxicated would result in a sentence of at least 20 days in jail and a fine of at least $500.

A third conviction would result in a sentence of no less than 30 days in jail and a fine of at least $1,000.

The bill also would allow a police officer to notify the driver at the time of arrest that he faces license revocation.

The revocation, could be appealed to the court within seven days. If not appealed, the revocation stands.

HB17 JR

MAR 1983
RECEIVED



Albert Brock
Box 373
Wrangell, Alaska
99929

March 15, 1983

Representative Charlie Bussell
Chairman, House Judiciary Committee
Pouch V
Juneau, Alaska 99811

Dear Charlie Bussell:

I would like to know your opinion on whether or not we should raise the drinking age to twenty-one, or leave it at nineteen?

I don't think we should raise the age to twenty-one. Instead I think we should raise the punishments for alcohol abuse.

Sincerely,

Albert Brock

Albert Brock

TG 83-00002212 PRTY 1 03/21/83 17:36:57 ORIG: LA05 IN= 0002 OUT= 0130
FROM: CAROL, ANCHORAGE TO: POM, JUNEAU INFO
TARGET: LJHL SUBJ: P O M

HB 17 JR

TO: ALL MEMBERS OF THE LEGISLATURE

FROM: JOHN M. ULSHER, 6901 DICKERSON DRIVE, ANCHORAGE 99504
337-7876 H 272-8216 W

DO NOT RAISE THE DRINKING AGE. THIS VIOLATES THE RIGHTS OF YOUNG ADULT ALASKANS AND SCAPEGOATS AN ENTIRE AGE GROUP FOR THE ACTIONS OF A FEW OF ALL AGES. PLEASE LET ME KNOW HOW YOU VOTE ON THIS ISSUE.

OM

MSG 83-00000102 PRTY 1 03/14/83 09:20:53 ORIG: LJ04 IN= 0002 OUT= 0008
FROM: PATRICIA/JUNEAU TO:
TARGET: LJHL SUBJ: P O M

TO: REPRESENTATIVES MIKE M. MILLER, JIM DUNCAN, AND SENATOR RAY
WITH COPIES TO ALL LEGISLATORS
FROM: DEANNA & CHRIS BOTTS
P.O. BOX 381 PHONE: 364-3379
DOUGLAS, ALASKA - 99824

RE: HB 17

WE URGE SWIFT PASSAGE OF HOUSE JUDICIARY VERSION OF HB 17, RESOTRING THE DRINKING AGE TO 21. WE APPALLED BY THE NEEDLESS SLAUGHTER OF 19 AND 20 YEAR OLDS ON ALASKA'S HIGHWAYS DUE TO DRIVING WHILE DRUNK AND ARE WEARY OF PAYING ESCALATED INSURANCE PREMIUMS FOR TWISTED METAL AND SPLAYED FLESH. WE FAVOR STRONG MEASURES NOW WITH NO WAFFELING BY THE LEGISLATURE.

...EOM

House rejects higher drinking age...

The Associated Press

JUNEAU — House lawmakers on Monday soundly defeated a move to raise the legal drinking age in Alaska from 19 to 21.

Rep. Terry Martin, R-Anchorage, pushed the change in the form of an amendment to a bill revamping state liquor laws. After defeating Martin's amendment, and voting on several others, the House approved the 73-page revision of Alaska's alcohol laws on a 33-2 vote.

The bill passed the Senate earlier, but the House amended it so the legislation (HCSCSSSSB239 Finance) now returns to the Senate. It may end up in a House-Senate free conference committee.

Martin said the number of persons who die in auto accidents involving intoxicated drivers is on the increase. He said the combination of liquor and driving is "snuffing out the lives of many promising youths."

But opponents argued that persons who are old enough to go to war for their country are old enough to decide if they want to drink.

"I think it's ludicrous that we stand here trying to take away freedom," said Rep. Ray Metcalfe, R-Anchorage. "Pretty soon someone is going to propose that we lock ourselves in a rubber room to protect ourselves."

Reps. Nels Anderson, Ramona Barnes, Vern Hurlbert, Mike Miller and Martin voted in favor of raising the drinking age.

Another amendment, which was adopted on a 21-13 vote, would allow the Alcoholic Beverage Control Board, in certain situations, to approve a liquor license that exceeds the quota set for an area.

Rep. Joyce Munson, D-Anchorage, said there's a problem in Anchorage, especially in the Girdwood area. She said the value of liquor licenses has risen to the point where the natural location is downtown.

The legislation, which is the outgrowth of a special committee headed by Sen. Bill Ray, D-Juneau, makes numerous other changes in Alaska's liquor laws.

One change would expand the ABC Board to include one person who is knowledgeable about alcoholism and alcohol abuse.

Another would allow a bartender or liquor store owner to refuse to sell liquor to a person who has a serious drinking problem.

A major provision in the bill would allow communities to declare themselves "damp" rather than wet or dry. The bill provides for a local vote on several options beyond whether the community should be wet or dry.

The bill establishes seven options for first and second class cities and 6 options for unincorporated villages. T options range from a total b on liquor sales to a ban importation and possession allowing sales and possessi just on holidays to commun liquor licenses (for cities) complete freedom in sales a possession.

The bill sets out penalties violation of liquor laws in a community:

- Selling liquor without license would be a felony p ishable by a $50,000 fine a five years in jail for a seco conviction, sale to a minor, o large sale. A first convict would be a misdemeanor p ishable by a year in jail an $5,000 fine.
- Possession would be a m demeanor punishable by days in jail and a $1,000 fine.
- Importation would be felony punishable by five ye in jail and a $50,000 fine fo second conviction or a c involving a large quantity alcohol. Other importation fenses would be misdemeano

..But survey shows support for 21

By JEANNE ABBOTT
Daily News reporter

More Anchorage residents than not say the state's drinking age should be raised from 19 to 21, according to a telephone survey taken last week by the Daily News. But the difference of opinion between those who approve a change and those who don't is slight.

In a sample of 100 residents taken randomly from the telephone book, the newspaper found that 49 percent wanted the legal age of liquor consumption raised to 21 years while 43 percent thought it should remain at 19. Eight percent registered no opinion.

The state Senate voted last week to ask voters whether the drinking age should be raised. The Senate voted 12-5 to put the question to voters on the November general election ballot i the form of an advisory vote. However, the vote would not be binding but simply would be a recommendation to the legislature.The bill passed without debate and went to the House, where lawmakers amended the bill and sent it back to the Senate.

Of those surveyed, a number applauded any measure that would keep liquor from the hands of teenagers.

Said one: "I don't think people can handle it at 50, let alone when they're kids."

And another: "Kids at that age are incompetent to make such judgments. I know I was."

And another: "The way teenagers drive and drink, I don't think anybody should be drinking before they're 21."

Many who approved the change were parents who viewed it as a positive move for their own children. "I have a few teenage daughters, and I'd like to see them wait a few years," said a mother.

And several were non-drinkers who disapprove of any drinking, at any age, although one teetotaler said he didn't want to be in a position to dictate to those who drank.

Of those who thought the age should remain at 19, opinions fell into two basic patterns.

Many agreed with one man who said: "If they're old enough to be drafted and fight, they're old enough to buy a beer."

But more voted from this perspective: "I don't think it's going to make any difference. It just means more hassles for law enforcement, and I don't see the need."

Or, as this resident said: "They'll violate the law anyway. It's hard to give something, and then take it away. This will just make kids criminals."

Likewise, said another: "Liquor is readily available no matter what age you are. I just don't think raising the age limit would do any good."

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Visitors center attracts vandals

By CRAIG MEDRED
Empire Assistant Editor

Booze, drugs, vandalism, reckless driving, drunk driving.

Put them in any order you want. U.S. Forest Service officials say they are reaching crisis proportions in the Mendenhall Recreation Area at night, particularly on weekends.

"It seems to be getting worse and worse and worse," Juneau District Ranger Jack Blackwell said. "We can't continue to put up with that."

Forest Service officials "staked out" the parking lot at the Mendenhall Glacier on Jan. 16 and 17, a Friday and Saturday.

"There were 150-plus vehicles Friday night between 10 p.m. and 2 a.m., and 100-plus vehicles Saturday night between 9 p.m. and 1 a.m.," according to a report on the night's activities. "Major violations of the teenagers were:

•"Minor consuming — 80 percent;

•"Minor possession drugs-marijuana — 30 percent;

•"Reckless driving (brodies) — 5 percent;

•"Littering — minimal because we were monitoring so closely;

•"Driving while intoxicated — 25 percent."

The report, according to Pat Thrasher of the Forest Service, could cover any weekend.

"There is an increasing level of disruptive behavior," he said. "It seems to be related to teenagers, young adults, that find that a relatively easy area to party."

Nobody knows about the problem better than Ann Leonard. She has lived as the caretaker at the Mendenhall Visitor's Center since October. In that time, her car has been demolished, and she has several times harbored fears she might suffer bodily injury.

"There's drugs and drinking. They're all underaged. They're driving like crazy," Leonard said. "It seems to get worse around basketball games, tournaments .... It's weekends generally. It's a real party spot."

Leonard's problems started right after she took the part-time caretaker job. Shortly after Thanksgiving, vandals, believed to be youths, broke the rear and side windows out of her car, stole the battery and air cleaner, smashed the distributor, pulled out wires and caused general havoc.

Just before Christmas, they stole another battery, stereo speakers which were bolted in the car and anything else that could be pried or battered off. In January, vandals smashed the windshield, the glass over all the dash instruments, the grill, tore off a rear view mirror and generally preceded to tear up the inside of the car.

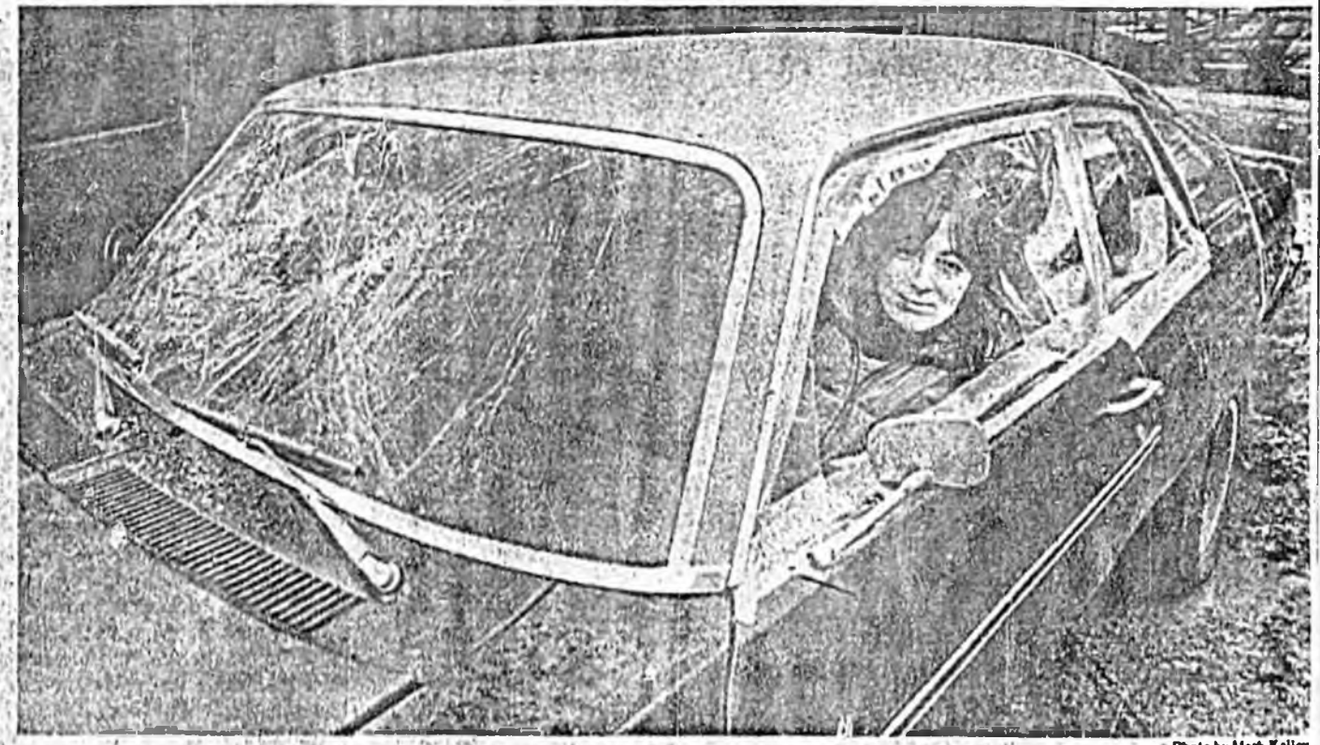

Photo by Mark Kelley

VANDALIZED CAR — Mendenhall Visitor Center caretaker Ann Leonard sits in her car, which was nearly demolished by vandals while parked in the center's lot. The lot is regularly used as a party site for under-age drinking, according to authorities.

All of this happened while Leonard's car was parked in the glacier parking lot, which hosts a number of partying youths on nearly any weekend night, according to the Forest Service.

"I've gotten alarmed...," Leonard said, noting the two caretakers before her quit in the wake of break ins at the visitor's center and problems with vandals.

Not only do the partying youth go on rampages, they are a "real garbage problem," Leonard said. "Every weekend we can pick up two garbage cans full of beer bottles. They just throw them on the ground, (leaving) a lot of broken glass that is hard to pick up.

"I bet if they ever drain those kettle ponds (next to the parking lot), they'll find their full of beer cans."

Alaska State Troopers say there is little they can do about the problem, pointing to state laws which say they must observe probable cause to believe a crime is being committed before acting.

"They (troopers) are real frustrated," Leonard said.

Thrasher said the Forest Service is considering a number of ways to eliminate the problem — including a curfew or a nighttime blockade on the highway to the glacier.

"We'd also like to raise the consciousness level, particularly of the parents," Blackwell said. "Hey, what are your kids doing tonight?"

Among the Forest Service ideas for solving the problem:

•Close the glacier parking lot from midnight to 6 a.m.

•Put a year-round dumpster at the site in hopes youths will use it.

•Put a "traffic island in the center of the parking lot to reduce 'brodies' and large group parking.

•"Place (a) gate at (the) Forest Service boundary. These kids are so much into their cars few would walk the mile and a half to the parking lot."

•Patrol the area with Forest Service personnel.

"What we are dealing with here are the problems of an urban park," Thrasher said.

Date??

Higher drinking age is proposed

By The Associated Press

Raisng Alaska's legal drinking age to 21 could make the state's highways safer, the director of the Alaska Council on Prevention of Alcohol and Drug Abuse told a House panel Thursday.

Drivers from 18 to 20 years old are "extraordinarily prone" to automobile accidents and "more apt to lose control" when they drink, Barbara Hoffman told the House Judiciary Committee.

The committee is considering a bill calling for an advisory vote on the issue. Voters would express their opinions at the first general election after passage of the bill.

Consultants on alcoholism testified both for and against the legislation. An expert hired by the alcohol council said figures show a variety of social problems involving youths are declining in states where the drinking age has been raised. An expert hired by bar and restaurant owners said the figures are inconclusive.

Frank Lee, who last year supported the bill but this year testified in opposition to it for an Anchorage bar and restaurant association, said data can be interpreted in many ways.

Bar and restaurant owners don't think the proposed advisory ballot offers the right question, he added, suggesting the Legislature consider a vote on raising the age of majority from 19 to 21.

The bill before the Judiciary Committee restricts the change in the legal age to "the purpose of regulation of the sale, consumption, service, furnishing, barter, purchase, gift or delivery of intoxicated liquor."

Rep. Charles Anderson, R-Anchorage, said he is bothered by the idea of "legislating against" 19 to 21 year olds.

Committee Chairwoman Ramona Barnes, R-Anchorage, and Rep. Randy Phillips said they have been getting cards on the issue saying "I'm 18. I vote."

Bill sponsor Rep. Terry Martin, R-Anchorage, admitted the bills has "political ramifications" that make some politicians nervous, but he argued polls show Alaskans strongly in favor of changing the drinking age.

99-year jail term upheld

ANCHORAGE (AP) — The maximum 99-year prison term handed out to a Fairbanks man convicted of the contract killing of a young woman on Nov. 9, 1980, has been approved by the state Court of Appeals.

Lawrence Hoover was convicted of first-degree murder in the death of 25-year-old Nancy Williams, who was killed when a shotgun was fired point-blank into her face during a hunting trip.

In approving the 99-year sentence, the Court of Appeals said it was justified.

Sheffield: hike drinking age

FAIRBANKS (AP) — Democratic gubernatorial candidate Bill Sheffield told a group of high school students Thursday that Alaska should raise its legal drinking age from 19 to 21.

The Anchorage businessman said the change would be a first step toward reducing alcohol abuse in the state.

"Other states in the Lower 48 have been increasing the legal drinking age — and with impressive results," Sheffield said in remarks prepared for an American government class at Lathrop High School, "the automobile accident rate has declined, thousands of lives have been saved and young people are leading more productive lives."

He said there were almost 2,900 fewer traffic fatalities in Michigan the first year after it raised its drinking age from 18 to 21, Sheffield said.

To illustrate the severity of the problem in Alaska, Sheffield said alcohol was a factor in:

—64 percent of the criminal homicides in 1980;
—80 percent of the suicides;
—70 percent of the traffic fatalities;
—48 percent of the violent crimes.

Juveniles account for about 52 percent of the arrests of liquor law violators and 64 percent of the arrests for non-aggravated assaults, he said.

Opposing Sheffield for the Democratic nomination are state Rep. Oral Freeman of Ketchikan, Fairbanks attorney Steve Cowper, former Lt. Gov. H.A. "Red" Boucher, and political newcomers Bruce Lemke of Anchorage and Edward Vincent of Fairbanks.

Running as Republicans in Alaska's open primary in August will be Lt. Gov. Terry Miller, Anchorage businessman Tom Fink and Rick Reakoff of Wiseman.

State Rep. Dick Randolph of Fairbanks says he will run in the November general election as a Libertarian.

POUCH V
JUNEAU, ALASKA 99811
465-4990

P.O. BOX 4-1325
ANCHORAGE, ALASKA 99509
248-1515

CHAIRMAN
HOUSE JUDICIARY COMMITTEE
MEMBER
HOUSE RESOURCES COMMITTEE

Representative Charlie Bussell
ALASKA STATE LEGISLATURE
HOUSE OF REPRESENTATIVES

February 28, 1983

First American Baptist Church
1200 East 27th Avenue
Anchorage, Alaska 99504

ATTENTION: Pastor Howard Bess

RE: F.A.B.C. Letter of February 12, 1983

Dear Pastor Bess:

Thank you for taking the time and spending the effort to send your comments regarding various legislative efforts presently under consideration.

I know well how hard it is to follow the legislative process from Anchorage. So, I hope my comments help you get a better picture of our progress regarding your points of interest.

1. HB 17 was referred to the Judiciary Committee and became the object of our early deliberations. This bill raises the drinking age to a minimum of 21 years of age and to a certain extent restricts attendance of young people (less than 21 years of age) in public places which sell or serve alcoholic beverages.

A copy of the bill as it passed from the Committee is enclosed.

Representatives Malone and Clocksin opposed the committee passage and the bill.

2. I'm solidly behind the legislation to increase penalties for drunk driving, but do not believe it goes far enough. I'm planning introduction of additional legislation which will require the industry which sells the booze to pay for the problems it causes.

3. You already know some of my feelings about our State's prison problems. When I think of them I'm reminded of the old story about the guy who was waundering through the woods one day and came upon a fast moving river. In the middle of the river he noticed a number of people who appeared to be in trouble of drowning. At once he jumped into the river to save them. When he reached the people in the middle of the river he was able to see around a bend upstream where he observed another group of people throwing others into the river.

If I can just stop the people from being thrown in prison, we'll not have to build the things. That is a tall order, but we must all work toward that goal.

Thanks again for taking the time to become involved in the legislative process.

With warm regards I remain,

Sincerely yours,

Representative Charlie Bussell
Chairman, Committee on Judiciary

CB:lyn

enclosure

FIRST AMERICAN
BAPTIST CHURCH

HOWARD H. BESS
MINISTER

1200 East 27th Avenue, Anchorage, Alaska 99504 (907) 278-3233



February 12, 1983

The Honorable Charles Bussell
Alaska State House of Representatives
Juneau, Alaska 99801

Dear Charlie:

I have followed the legislative session thus far as best I can through the newspapers. I know that does not always give us folks in Anchorage the clearest of pictures, but its the best we can do. May I pass on some comments.

1) I encourage your support for the restoring of the drinking age to 21. As you know I give time to the prisons as a chaplain. So many of the new people coming into our prison system are 18-20 year olds who were drinking when they committed their crimes. Also it is apparent that 18-20 year olds do a lot of passing of alcoholic beverages to the 16-17 year old group. I know the argument that the 18 year old is old enough to serve in the military, old enough to vote, old enough to be tried as an adult, therefore he is old enough to drink. It makes good philosophy, but the evidence is that the 18-20 year olds cannot drink responsibly and are getting into a lot of trouble. We can't afford to support them in prison.

2) I encourage you to pursue your battle for strong drunk driving laws. Take their license. Take their vehicle. Fine them heavily. You are on the right track.

3) I urge you to use all your power and influence to block spending 45 million dollars on the building of a 300 bed maximum security prison!
a) We have other needs for the 45 million dollars plus the one million dollars it will take to operate it each year.
b) We do not have 300 maximum security prisoners. One long time prison official gave me an estimate that we have no more than 50 hard core criminals who need a maximum security prison. Why build a 300 bed facility? An adequate classification system can identify the hard core criminals. A smaller facility can be built, or it may make sense to leave the 50 in the lower 48. (See the enclosed editorial I clipped from the Times.) Who came up with the 300 number anyway?
c) We don't need 300 more beds of any kind! I am sure you are familiar with Charles Colson. (No one has ever accused him of being a liberal or of advocating soft attitudes toward crime.) I believe he has become a valid prophet about prisons in the United States. He rightfully raises the question...

"Why do we lock up people who are of no danger to the public?"

He maintains (and I agree) that many of the people we lock up should be on parole or probation and should be making financial restitution and doing public service. Why should WE be paying to house and feed (at a cost of $30,000 per person per year) people who are not dangerous to society?

Before we build a 300 bed maximum security prison, we need to know why we have 150 people in our prisons who are eligible for parole and who have not applied for parole. I suspect that the answer is that we have a poor parole system in which the prisoner has no confidence. This has been verbalized to me several times. An excellent parole system is much cheaper that prisons. In addition, people, who are on parole, work, pay taxes, and make restitution.

To sum up, Charlie, stop the building of that 300 bed maximum security prison! Our tax money can be spent on better things.

I have enclosed a number of things for your consideration. I hope they are helpful and give you food for thought.

If you come back to Anchorage for a few days in the near future, I would appreciate the opportunity to talk to you. Thank you for the job you are doing for us.

Sincerely,

Howard Bess

Howard H. Bess

MSG 83-00012041 PRTY 1 04/25/83 18:07:27 ORIG: LA02 IN= 0009 OUT= 0138
FROM: JUNE, ANC LIO
TARGET: LJHL SUBJ: POM
TO: POM JUNEAU INFO

4/25/83, JUNE, ANC LIO, MSG 12041

TO: ALL MEMBERS OF THE LEGISLATURE

FROM: THOMAS PITZKE, 3840 PATRICIA LANE, ANCHORAGE, AK 99504
(W) 337-7335

I WOULD HOPE AS THE SESSION NEARS, THE LEGISLATION DEALING WITH THE RAIS-
ING OF THE DRINKING AGE PASSES BECAUSE IF IT DOESN'T, THERE ARE GOING
TO BE MORE DEATHS ON THE HIGHWAYS ON YOUR CONSCIENCE. I, MYSELF, WILL
HELP SUPPORT THE DEFEAT OF ANYONE WHO DOES NOT SUPPORT THIS TYPE OF
LEGISLATION AND LIKE LEGISLATION TRYING TO STOP THE CARNAGE ON THE HIGH-
WAYS. I HOPE THAT ALL OF YOU WILL REPLY TO THIS MESSAGE.

/S/ THOMAS PITZKE

********** ********** **********

HB17 JR



P.O. Box 871
Wrangell, AK 99929
March 22, 1983

Representative Charlie Bussell
Chairman, House Judiciary Committee
Pouch V
Juneau, AK 99811

Dear Representative Bussell:

My name is Fawn Werner, and I am a sophomore at Wrangell High School. I am writing this letter to voice my personal opinion concerning the Alaska state drinking age.

I feel that the drinking age should remain nineteen. Consider this: at the age of eighteen, you are considered a legal adult. As a legal adult you accept certain responsibilities, such as registration for the military draft. If you are capable of fighting for your country, and risking the chance of death every day, then I feel you should be allowed to consume alcoholic beverages.

Also keep in mind that when you reach the age of eighteen you are tried in court as an adult. You are also able to vote for the state governor, president of the United States, state senators, and representatives.

If you are to be considered in so many ways, a legal adult, I feel that you should accept all adult responsibilities including consumption of alcohol.

Sincerely yours,

Fawn D. Werner

Fawn D. Werner

#0177

P.O. Box 317
Wrangell, AK 99929
March 14, 1983



Rep. Charlie Bussell, Chairman
House Judiciary Commettee
Pouch V
Juneau, AK 99811

Dear Mr. Bussell

I am writing this letter with concern of the drinking age.

I think raising the drinking age to 21 is stupid and unnecessary. They say it would lesson the D.W.I's. I doubt that very seriosly. Consider using Wrangell as an example for raising the drinking age. Would this eliminate most D.W,I's NO! There are always more people over the age 30 who get D.W.I's in this town than people between the ages of 19 and 21. Perhaps the over 30 group is the ones that should not be allowed th drink. They're as big or bigger threat than teenagers.

I just think if you really look and consider what I'm writing. you will see my point of view.

I'm not writing this to hurt Wrangell in any way I'm just using it as an example. All I am saying that in this town there are more adults over the ages of 19 and 21 that get D.W.I's

Sincerely,

Melinda Paulo

Melinda Paulo
Wrangell high

HB 17 JR



P.O. Box 642
Wrangell, Alaska 99929
March 11, 1983

Representative Charlie Brussell
Chariman, House Judiciary Committee
Pouch V
Juneau, Alaska 99811

Dear Mr. Brussell:

I am addressing this letter to y u concerning the drinking age in Alaska. I am against the change all the way. I don't think that it is a good idea at all. It should stay the same way because, if young adults want to drink then they will. You don't need a bar to drink you just need a buyer and money and the booze. Nothing will stop them not even the law.

If you decide to change the law it only seems that only more kids throughout Alaska will get into more trouble. They'll get in trouble with the Police, at home and in their social life. I say if that is what they want out of life let them drink.

Thanks for you time.

Sincerely yours,

Cari Kuntz

ck

O: ALL LEGISLATORS

FROM: MARCIA B. WILLIAMS
4401A PORTAGE ROAD
JUNEAU, ALASKA 99803

PHONE: 789-5245 (H)
586-1188 (W)



RE: SJR 1

I AM AGAINST ERA RESOLUTION.

****

O: ALL LEGISLATORS

FROM: TONY DUVERNAY
205 BEHRENDS AVENUE
JUNEAU, ALASKA 99801

PHONE: 586-1983 (H)
586-3685 (W)

RE: HB 17

I AM IN FAVOR OF THE JOINT HOUSE RESOLUTION VERSION OF THE BILL WITHOUT AMENDMENTS AND I URGE YOUR CONSIDERATION.

****

MSG 83-00000736 PRTY 1 03/15/83 15:56:35 ORIG: LA01 IN= 0021 OUT= 0100
FROM: SHIRLEE ANC LIO TO: POMS JUNEAU INFO
TARGET: LJHL SUBJ: POM

3/15/83, SHIRLEE ANC LIO, 736

TO: ALL MEMBERS, ALASKA LEGISLATURE

FROM: MICHAEL A. ADAMS, P. O. BOX 8, ANCHORAGE 99510-0008
H 333-9658

HB 17

RAISE AGE TO 21 IMMEDIATELY, FOR THOSE EVEN 19 YEARS OLD NOW. KEEP MINORS OUT OF DRINKING AREAS, PROVIDE SEPARATE NON-DRINKING SECTIONS IN RESTAURANTS. KEEP MINORS FROM WORKING IN BARS.

WHILE YOU WERE AWAY

FOR Katherine DATE 1/25 TIME 2:10 A.M. P.M.

M David Kisuth

OF

PHONE 2653
AREA CODE NUMBER EXTENSION

MESSAGE wants to testify on HB 17. @ told him you would call this p.m. & let him know schedule, etc. -lp-

SIGNED

- TELEPHONED
- RETURNED YOUR CALL
- PLEASE CALL ✓
- WILL CALL AGAIN
- CAME TO SEE YOU
- WANTS TO SEE YOU

TOPS FORM 4002

FROM: BETTY BAER, 3622 WESLEYAN, ANCHORAGE 99504
H 333-0819

PLEASE SUPPORT HOUSE BILL NO. 17. DO NOT DELETE SECTION 4.
THANK YOU.

****

/83, SHIRLEE ANC LIO, 701

ALL MEMBERS, ALASKA LEGISLATURE

SANDRA PLOOY, 4986 CASTLE COURT, ANCHORAGE 99504
H 333-6371

JPPORT HOUSE BILL NO. 17. I DO NOT WANT SECTION 4
ETED.

****

MSG 83-00000571 PRTY 1 03/15/83 12:33:26 ORIG: LA02 IN= 0001 OUT= 0058
FROM: JUNE, ANC LIO TO: POM, JNU INFO
TARGET: LJHL SUBJ: POM

3/15/83, JUNE, ANC LIO, MSG 571

TO: REPRESENTATIVES BUSSELL, LISKA, HAYES, BARNES, MALONE, CLOCKSIN, AND WENDTE

FROM: BETTY BAER
3622 WESLEYAN DRIVE
ANCHORAGE, AK 99504 (H) 333-0819 (W) NONE

I SUPPORT HB 17. PLEASE DO NOT DELTE SECTION 4. THANK YOU.

****

MSG 83-00000562 PRTY 1 03/15/83 12:22:53 ORIG: LA01 IN= 0010 OUT= 0056
FROM: SHIRLEE ANC LIO TO: POMS JUNEAU INFO
TARGET: LJHL SUBJ: POM

3/15/83, SHIRLEE ANC LIO, 562

TO: ALL MEMBERS, ALASKA HOUSE OF REPRESENTATIVES

FROM: TERRY BURRELL, 3716 WESLEYAN, ANCHORAGE 99504
H 333-2774 W 333-9658

SUPPORT HOUSE BILL 17, STRAIGHT AND SIMPLE. KEEP IN SECTION 4, DO NOT EXTEND DRINKING AGE FOR THOSE BETWEEN 19 AND 21. LAWS LIKE THIS WORK IN OTHER STATES AND SAVE LIVES. ALASKA NEEDS THIS LAW.

****

FROM: IRMA ATKINS, 1529 GARDEN STREET, ANCHORAGE 99504
H 279-3038

PLEASE DO NOT DELETE SECTION 4 OF HOUSE BILL NO. 17.

****

FROM: ELLEN WHIP, 8535 BLACKBERRY ST., ANCHORAGE 99502
H 243-5792

PLEASE SUPPORT HOUSE BILL 17 AND DO NOT DELETE SECTION 4.

****

HB 817
Duo Ref

4/6/83, SHIRLEE ANC LIO, 5984

TO: ALL MEMBERS, ALASKA LEGISLATURE

FROM: THOMAS FITZKE, 3840 PATRICIA LANE, ANCH 99504
337-7335



ANOTHER DEATH HAS COME TO ANCHORAGE BECAUSE OF DRUNK DRIVING. DENNIS BIGLER, 26, WAS DRIVING AROUND TOWN TO PICK UP PRESENTS FOR HIS FAMILY EASTER WEEKEND WHEN HE WAS HIT. THERE IS NO EXCUSE FOR THE DELAY YOU HAVE CAUSED ON RAISING THE DRINKING AGE. THE NATIONAL BARTENDERS UNION RECENTLY VOTED TO RAISE THE DRINKING AGE.

****

MSG 83-00012361 PRTY 1 04/26/83 16:35:25 ORIG: LA01 IN= 0014 OUT= 0123
FROM: SHIRLEE ANC LIO TO: POMS JUNEAU INFO
TARGET: LJHL SUPJ: POM

JR

TO: ALL MEMBERS, ALASKA LEGISLATURE

FROM: ROBERT CLARK, P.O. BOX 4-1908, ANCHORAGE 99509
(RES: 1428 ATKINSON DR.) H 333-5295 W 266-1680

IF WE RAISE THE AGE OF ALCOHOL CONSUMPTION, WE MAY NOT PREVENT SOME MINORS FROM GETTING ALCOHOL BY INDIRECT MEANS. WE WILL, HOWEVER, BE HANDING THEM A WARNING: ALCOHOL IS DANGEROUS. PASS HOUSE BILL 17.



HB 17 JR

POUCH V
JUNEAU, ALASKA 99811
465-4990

P.O. BOX 4-1325
ANCHORAGE, ALASKA 99509
248-1515

CHAIRMAN
HOUSE JUDICIARY COMMITTEE
MEMBER
HOUSE RESOURCES COMMITTEE

Representative Charlie Bussell
ALASKA STATE LEGISLATURE
HOUSE OF REPRESENTATIVES

March 31, 1983

Ms. Tammy Watkins
P. O. Box No. 551
Wrangell, Alaska 99929

Dear Tammy:

Thank you for taking the time to write expressing your concerns regarding recent action by the House of Representatives which, if approved by the Senate and signed by the Governor, would raise the legal age for consumption of alcohol to 21.

HB 17 is a good bill. If enacted into law, it will save many lives. It will not prevent you from going or taking a friend into a restaurant which serves alcohol and having a nice dinner. You just cannot drink if you are under 21 years old.

Thank you again for taking the time to become involved with the legislative process. Together we can make a difference and do something about the state we are in.

With best regards I remain,

Sincerely,

Representative Charlie Bussell
Chairman, Committee on Judiciary

CB:lyn

enclosure: House Bill 17

#B19 JR

Dear Mr. Bussell:

I have sent you this letter concerned of the drinking age being moved up to 21. It is a photo copied one of the one I have sent to Senator Ray. Please read it and send me your feelings of my letter.

Thank you,

Tammy Watkins

Tammy Watkins



Box 551
Wrangell, Ak. 99929
March 21, 1983

Senator Bill Ray
Chairman, Senate Judiciary Committee
Pouch V
Juneau, Ak. 99811

Dear Senator Ray:

I am 15 years old and I am writing in concern of the drinking age being moved up from 19 to 21.

Although I don't drink, I don't think it will change anything. Sure, not as many people in the bars, maybe, but that means more people drinking illegally. I also feel very strongly about the portion of the law that doesn't allow minors to be in establishments that serve liquor without someone of age.

Here in Wrangell, we don't have a nice restaurant that does not serve liquor. That means that a teenager can't take a friend out for a nice dinner. The only place available is the local "hagg-out".

This is one area my parents and I agree on. They also believe that this portion of the law is too restrictive. As long as the bar is separated from the restaurant, there should be no restriction, in our view.

Thank you for taking time to read my letter.

Sincerely,

Tammy Watkins

Tammy Watkins

MSG 83-00007330 PRTY 1 04/11/83 17:35:28 ORIG: LA01 IN= 0017 OUT= 0103
FROM: JUNE, ANC LIO TO: POM, JNU INFO
TARGET: LJHL SUBJ: POM

4/11/83, JUNE, ANC LIO, MSG 7330

JUDICIARY Referral

TO: ALL MEMBERS OF THE LEGISLATURE

FROM: DAVID SPEAKES, 705 MULDOON, SP. 204, ANCHORAGE, AK 99504
(H) 338-3265 (W) 272-5312

HOORAY, YOU'VE RAISED THE PRICE ON BOOZE! NOW RAISE THE DRINKING AGE TO WHERE IT SHOULD. THIS WILL SAVE LIVES AND TAX DOLLARS.

/S/ DAVID SPEAKES

****

MSG

HB17 JR

TO: ALL MEMBERS OF THE LEGISLATURE

FROM: KEITH KLEMME, 6630 EAST 10TH AVENUE, ANCHORAGE, AK 99504
(H) 337-2216

I SUPPORT M.A.D.D. I THINK IT'S ABOUT TIME THE LEGISLATORS PASSED STRICTER LAWS BECAUSE IT'S WHAT THE CONSTITUENTS WANT.

****

3/15/83, JUNE, ANC LIO, MSG 633

TO: ALL MEMBERS OF THE HOUSE OF REPRESENTATIVES

FROM: DOROTHY WHIP
3436 CREEKSIDE
ANCHORAGE, AK 99504 (H) 338-2606

I AM FOR THE RAISING OF DRINKING AGE TO 21.

****

3/15/83, SHIRLEE ANC LIO, 621

TO: ALL MEMBERS, ALASKA HOUSE OF REPRESENTATIVES

FROM: SALLY TILTON, BOX 8-134, ANCHORAGE 99508
(RES. CHUGIAK) H 688-9651

SUPPORT HOUSE BILL NO. 17. DO NOT DELETE SECTION 4.

****

3/15/83, SHIRLEE ANC LIO, 618

TO: ALL MEMBERS, ALASKA HOUSE OF REPRESENTATIVES

FROM: BETH JACKSON, SRA BOX 2110, ANCHORAGE 99507
(RES: PORT ORFORD DR.) H 349-5143

SUPPORT HOUSE BILL NO. 17. DO NOT DELETE SECTION 4.

****

HB 7

POUCH V
JUNEAU, ALASKA 99811
(907) 465-4990

Alaska State Legislature
HOUSE OF REPRESENTATIVES

REPRESENTATIVE
CHARLIE BUSSELL
CHAIRMAN

Committee on Judiciary

May 2, 1983

Ms. June Gerrish
MADD - Mothers Against Drunk Drivers
5800 Glenn Highway
Anchorage, Alaska 99504

Dear Ms. Gerrish:

The House Judiciary Committee passed HB 6, the "drunk driving" bill, out of Committee on Friday, April 29, 1983. I think it is an excellent and comprehensive item of legislation.

The Committee put considerable thought and effort into its creation and fine-tuning. Representative Mitch Abood's staff, the Committee staff, and the bill drafters for the Legislative Affairs Agency and the Department of Law worked very hard and diligently expending many long hours on this bill.

The Committee really appreciates the way the original sponsor, Rep. Abood of Anchorage, spent so much time working with the bill and with us. Rep. Abood testified before the Committee each time the bill was scheduled for hearing. He "rode herd" on the bill from its inception to the final product that passed out of the Committee.

I sincerely hope that this bill will not be substantially altered or amended in a way that weakens or destroys it.

The bill provides for seizure of a driver's license upon arrest as well as increased penalties upon conviction. While the minimum of 72 hours in jail is mandated for a first offense in keeping with the existing law, a second offense requires a minimum of no less than 20 days in jail and the third offense would result in at least 30 days in jail and a 10-year license revocation.

MEMBERS:
REP. JOHN LISKA, VICE CHAIRMAN; REP. RAMONA BARNES, EMERITUS;
REP. JOE HAYES; REP. HUGH MALONE; REP. DON CLOCKSIN; REP. RON WENDTE

Fines based on the number of absence of prior convictions, carry mandatory minimums of $250 for a first offense, $500 for the second offense and not less than $1,000 for a third offense. Courts will be required, under the proposed bill, to consider prior offenses over the preceding 15 years in this or another jurisdiction, rather than going back only five years under the existing law to find prior convictions.

The bill also maintains as a crime the refusal to submit to a chemical test following arrest, as does existing law, except penalties are more stringent under the new bill.

In addition, law enforcement officers are authorized to require a breath test on the spot when the driver is first stopped. Refusal to submit to a preliminary breath test, prior to arrest, is classed as an infraction in the measure.

The House Judiciary Committee moved HB 17, the bill to raise the drinking age to 21, on the House Finance Committee back in February. The Chief Prosecutor of the State, Dan Hickey, testified before that group and the Finance Committee Substitute substantially weakened the bill. One wonders if Mr. Hickey initiated the amendments to that bill.

It is known that HB 6, the so-called "drunk driving bill," was not classed as one of the Chief Prosecutor's priorities when we were waiting for suggestions from the Department of Law. It is to be hoped that HB 6 will receive swift action in the House Finance Committee and not be weakened in the same manner HB 17 was. In fact, one wonders who is running the apparently leaderless Department of Law during this part of the Sheffield administration.

The Governor, afterall, during his campaign told folks he was in favor of raising the drinking age to 21. Recently, he said he was not in favor of this. A crystal ball would be helpful, maybe, to see what his views are on driving while intoxicated.

Very truly yours,

Representative Charlie Bussell
Chairman, Committee on Judiciary

CB:lyn

May 7, 1983

¥a¥

Dear ¥s¥:

The House Judiciary Committee passed HB 6, the "drunk driving" bill, out of Committee on Friday, April 29, 1983. I think it is an excellent and comprehensive item of legislation.

The Committee put considerable thought and effort into its creation and fine-tuning. Representative Mitch Abood's staff, the Committee staff, and the bill drafters for the Legislative Affairs Agency and the Department of Law worked very hard and diligently expending many long hours on this bill.

The Committee really appreciates the way the original sponsor, Rep. Abood of Anchorage, spent so much time working with the bill and with us. Rep. Abood testified before the Committee each time the bill was scheduled for hearing. He "rode herd" on the bill from its inception to the final product that passed out of the Committee.

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Fines based on the number of absence of prior convictions, carry mandatory minimums of $250 for a first offense, $500 for the second offense and not less than $1,000 for a third offense. Courts will be required, under the proposed bill, to consider prior offenses over the preceding 15 years in this or another jurisdiction, rather than going back only five years under the existing law to find prior convictions.

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It is known that HB 6, the so-called "drunk driving bill," was not classed as one of the Chief Prosecutor's priorities when we were waiting for suggestions from the Department of Law. It is to be hoped that HB 6 will receive swift action in the House Finance Committee and not be weakened in the same manner HB 17 was. In fact, one wonders who is running the apparently leaderless Department of Law during this part of the Sheffield administration.

The Governor, afterall, during his campaign told folks he was in favor of raising the drinking age to 21. Recently, he said he was not in favor of this. A crystal ball would be helpful, maybe, to see what his views are on driving while intoxicated.

I want to especially thank you for the time and effort you have put into expressing your concerns about HB 6. It is wonderful feeling to know that the citizens in my District are interested in the legislative progress of our State. Working together is the way we can improve our surroundings.

Very truly yours,

Representative Charlie Bussell
Chairman, Committee on Judiciary

":cmz

THE LEGISLATURE OF THE STATE OF ALASKA
THIRTEENTH LEGISLATURE

FISCAL NOTE

☐ Expenditure Type
☐ Revenue Type

I. REQUEST
Bill/Resolution No. HB 17
Title Age Limits/Alcoholic Beverages
Requested by _____ Date _____

II. FISCAL DETAIL
Agency Affected Department of Public Safety
Program Category Affected Administration of Justice
BRU, Program, Or Subprogram(s) Affected A.S.T.
(Note: If more than one budget component is affected, separate line-item amounts and funding for each component in the analysis section.)

EXPENDITURES (Thousands of Dollars)

	FY 83	FY 84	FY 85	FY 86	FY 87	FY 88
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 COMMODITIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS,CLAIMS,ETC.						
TOTAL		-0-	-0-	-0-		

FUNDING (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER (Specify Source)						

POSITIONS

FULL TIME						
PART TIME						
TEMPORARY						

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

No fiscal impact is anticipated.

F.C.A.

IV. DATE January 19, 1983 PREPARED BY Francis C. Allan Phone 269-5691
DIVISION State Troopers Initials mcl
DEPARTMENT OF PUBLIC SAFETY Initials

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

38-001 (Rev. 12/82)

OMB Reviewed by: Eric Leathwood

RECEIVED
FEB 3 1983
LEGISLATIVE FINANCE

THE LEGISLATURE OF THE STATE OF ALASKA
THIRTEENTH LEGISLATURE

FISCAL NOTE

I. REQUEST
Bill/Resolution No. HB 17
Title "An Act relating to age limits under Title IV. Alcoholic Beverages."
Requested by House Judiciary Committee Date 1/26/83

II. FISCAL DETAIL
Agency Affected Department of Law
Program Category Affected Administration of Justice
BRU, Program, Or Subprogram(s) Affected Prosecution
(Note: If more than one budget component is affected, separate line-item amounts and funding for each component in the analysis section.)

EXPENDITURES (Thousands of Dollars)

	FY 83	FY 84	FY 85	FY 86	FY 87	FY 88
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 COMMODITIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS,CLAIMS,ETC.						
TOTAL		150.2	161.1	170.8		

FUNDING (Thousands of Dollars)

GENERAL FUND		150.2	161.1	170.8		
FEDERAL FUNDS						
OTHER (Specify Source)						

POSITIONS

FULL TIME						
PART TIME						
TEMPORARY						

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

This bill raises the age at which a person is legally allowed to consume alcoholic beverages from 19 to 21. It does not change the current penalty provisions under Title 4; most violations of Title 4 are class A misdemeanors. It is anticipated that passage of the bill would result in 250 to 300 additional criminal prosecutions per year statewide, especially during the first 1 or 2 years after passage. Those persons now aged 19 and 20 are used to being able to legally consume alcoholic beverages, it is expected that many would resist efforts to enforce a law which takes away this privilege.

Prosecution of consumers of alcoholic beverages under 21 years of age would be for relatively minor violations; however, the total anticipated number of such violations represents an appreciable increase in overall prosecutor workload.

IV. DATE February 1, 1983 PREPARED BY Richard I. Pegues, Dir. Adm. Svcs.
AGENCY Department of Law
PHONE 465-3672

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

33-001 (Rev. 12/82)

OMB Reviewed by: Guy Bell

Additionally, it is anticipated that 50 to 100 prosecutions of the more serious offence of furnishing alcohol to a minor will also occur. These offences, committed by bars, liquor stores, bootleggers, and older friends, will require vigorous prosecution by the state if the change in the drinking age is to succeed. Consequently, prosecutor resources must be increased to handle the increased workload that will result from enactment of this bill.

THE LEGISLATURE OF THE STATE OF ALASKA
THIRTEENTH LEGISLATURE

FISCAL NOTE

I. REQUEST
Bill/Resolution No. HB 17
Title An act relating to age limits under Title 4, Alcoholic Beverages
Requested by Martin Date 1/17/83

II. FISCAL DETAIL
Agency Affected Division of Insurance
Program Category Affected Public Protection
BRU, Program, Or Subprogram(s) Affected Division of Insurance
(Note: If more than one budget component is affected, separate line-item amounts and funding for each component in the analysis section.)

EXPENDITURES (Thousands of Dollars)

	FY 83	FY 84	FY 85	FY 86	FY 87	FY 88
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 COMMODITIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC.						
TOTAL		0	0	0		

FUNDING (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER (Specify Source)						

POSITIONS

FULL TIME						
PART TIME						
TEMPORARY						

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

RECEIVED
FEB 3 1983
LEGISLATIVE FINANCE

IV. DATE January 25, 1983 PREPARED BY Kenneth C. Moore, Div of Insurance
AGENCY Commerce & Economic Development
PHONE 465-2515

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

33-001 (Rev.)

OMB Reviewed by: Guy Bell

A M E N D M E N T

Offered in the HOUSE By Wendte

TO: HOUSE BILL NO. 17

Page 6, following line 2 add the following:

"* Sec. 15. PERSONS NOT AFFECTED. This Act shall not apply to a person who is 19 years of age or older on the effective date of this Act."

1/25/83

NOTIFICATION OF BILL HEARING

WEEK OF: _____

BILL #	BILL TITLE	DEPARTMENT	DATE	SPONSOR	DATE
HB 17	age/ Alcoholics	Pub Ser. F.N.	1/21	Martin	1/19

HB 17--Re: raising age limits under Title 4, Alcoholic Beverages------ --MARTIN, M. W. MILLER, M.M. MILLER, VASKA, and LINDAUER

1--This bill amends existing statutes to raise age from 19 to 21 in dealing with alcoholic beverages, such as access to, entering, being on the premises, purchasing, getting another to purchase for the under-aged person, or furnishing by licensees or by employees of licensees, to persons under 21.

2--The new, substituted language than the age references add words or phrases such as "of licensee" after "employee" (so it reads "employee of licensee"); changes "his" to "the person" in existing statute, and "for the person under the age of 21 years" replaces "on his behalf." Persons under 21 are barred from selling or serving, also.

3--Penalties--they are not provided in this bill, since penalties are provided in AS 04.16.080 which this bill does not amend. (Mostly all class A misdemeanors for violations, except for transporting into an area a certain amount of liquor, a class C felony)

4--NOTE--in reading the last section of this bill, Sec. 14, it amends AS 23.10.355. Existing AS 23.10.355 in the statute books refers to AS 04.15.020(h) and the entire Chapter 15 of Title 4 (AS 04.15.010-04.15.115) was repealed in 1980. There is no reference to Chapter 15 in this proposal, so if enacted, the statute will read exactly as sponsors wish, and, therefore, this final section in the bill does NOT refer to any repealed portion of Title 4.

(On Labor, & Workman's Comp)

IMPACT:

FISCAL NOTE:

WITNESSES;

AMENDMENTS;

HB

28

FISCAL NOTE Revision Date , 1983

I. REQUEST
Bill/Resolution No.: HB 28 / HB 46
Title: Re University Lands
Sponsor: Martin/Ringstad
Requestor: House Resources

II. FISCAL DETAIL
Agency Affected: Natural Resources
Program Category Affected: Management
BRU, Program of Subprogram(s) Affected: Land Management

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 83	FY 84	FY 85	FY 86	FY 87	FY 88
OPERATING						
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 COMMODITIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC						
TOTAL OPERATING		79.36				
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER (Specify Source)						

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

III. SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

The $79,360 needed to implement this legislation is included in the appropriation made by Section 2 of HB 45.

IV. ANALYSIS: Attach a separate page for any Analysis

Prepared By: Mark Wittow Phone: 465-2400
Division: Commissioner's Office Date: 4/15/83
Approved by Commissioner: for Mark Wittow Date: 4/18/83
Department: Natural Resources

Distribution:
Original to Legislative Finance
Copy to Office of Management and Budget (for Legislature introduced bills)
Copy to Department (for Governor introduced bills)

4/20

COMMITTEE REPORT

HOUSE

JUDICIARY

FURTHER: ~~FINANCE~~

(7)

1/17/83

Date: APRIL 19, 1983

Mr. Speaker:

The Committee on RESOURCES has had HB 28

"Relating to the transfer of the ownership and management of University of Alaska trust land from the Department of Natural Resources to the Board of REgents of the Univrsity of Alaska; and providing for an effective date."

under consideration and reports it back as follows:

[ ] do pass [ ] do not pass

[ ] do pass with attached amendments(s)

[✓] replace with CS for HB 28 (RESOURCES) [✓] same title [ ] new title

and recommends DO PASS

[ ] AND attaches a "Letter of Intent" [✓] ~~New~~ Fiscal Note Sup 4.3

[ ] Zero Fiscal Note Attached

[ ] reports it back without recommendation

[ ] referred to the _____ Committee

MEMBERS SIGNING
DO PASS

SHULTZ

ARSON

BUSSELL

LISKA

COWDERY

EHLING

INGSTAD

MEMBERS HAVING
OTHER RECOMMENDATIONS:

CHAIRMAN

H 60

HB

29

4/21/82

Dear Representative Martin:

I discussed your question with Patty Ann Polley in the Division of Elections after our meeting this morning. She advised me that the division cannot undertake investigations into the validity of candidates' declarations of candidacy. The Attorney General has issued an opinion on this very question, as well; I have attached a copy for your reference.

I hope this arswers your question.

Sincerely,

Debbie Baley

Debbie Baley
Lt. Governor's Office

of ALASKA

RECEIVED
STATE OF ALASKA
JAN 23 '80
LIEUTENANT GOVERNOR

TO: Honorable Terry Miller
Lieutenant Governor

DATE: January 24, 1980

FILE NO: J-66-412-80

TELEPHONE NO:

FROM: AVRUM M. GROSS
ATTORNEY GENERAL

By:
Rodger W. Peggs
Assistant Attorney General

SUBJECT: Constitutional residency requirements for elective state office

You have asked what you, as Lieutenant Governor and the state's chief election officer, should do with respect to the application of the constitution's residency requirements to those who file for elective state office.

As a general rule, you should accept filings which are valid on their face, and it is neither your duty nor your function to question their validity.

Under the Alaska Constitution, one who files for elective public office must have been a resident of the State (and, for legislators, of the election district) for a prescribed period. */ A candidate's eligibility for filing is determined "immediately preceding his filing for office." Alaska Const., art. II, § 2, art. III, § 2. The requisite information is entered on the declaration of candidacy which is filed by the candidate. AS 15.25.030(8).

The Election Code makes no provision for the election officials to reject an application which is valid on its face and timely filed. Under AS 15.25.040, an untimely filed declaration of candidacy clearly must be rejected. But there is no similar provision for rejecting a declaration which substantially complies with the prescribed requirements for filing for office. With respect to residency, those requirements are that, in substance, the candidate states that he meets "the specific residency requirements of the office for which he is a candidate." AS 15.25.030(8). Given substantial compliance by the candidate, his name must

---

*/ For the legislature, three years in the State and one in the district is required. Alaska Const., art. II, § 2. For governor and lieutenant governor, seven years in the State is required. Alaska Const., art. III, §§ 2, 7.

be placed on the ballot. AS 15.25.060.

For the most part, the Alaska Election Code, like many others, depends upon the adversarial nature of the election process for enforcement. The law reasonably assumes that a candidate's opponents will be the first to raise complaints against any false or fraudulent filing. Residence (domicile) is an elusive legal concept. Proof of residence consists of both objective facts and subjective feelings. A determination requires a full blown hearing and an independent, nonpartisan decision maker. The Election Code quite wisely does not provide for the election officials to make such determinations.

Of course, if a declared or would-be candidate states to the election officials that in his own mind he does not believe he is a resident of the state or of the election district or that he believes that he no longer meets the constitution's residency requirements, then the officials -- on the basis of that admission -- may reject a declaration of candidacy from that person unless it is preceded or accompanied by a withdrawal or repudiation of the admission of disqualification. While election officials have no duty to question or determine residency, they are not compelled to ignore admissions of disqualification. However, whether one is qualified or not is a legal question and an admission of disqualification could be dead wrong. Therefore, the election officials must honor any subsequent withdrawal or repudiation of such an admission. And, indeed, if they are convinced at the outset that a candidate's admission of disqualification is in error, they can and should disregard it and accept a timely and properly filed declaration of candidacy from the candidate.

RWP/pjg

STATE OF ALASKA
PRELIMINARY STATEMENT OF FISCAL IMPACT

Bill No: HB 29 Date on Bill: 1/17/83
Title: relating to the verification of residency of candidates for certa
Sponsor: Martin, Flood & Lindhauer public offices
Requestor: State Affairs Committee (HOUSE) 1/14/83 1:45 pm Rm.102

1. Estimated fiscal impacts on: Division of Elections staff

a. Expenditures:

(Thousands of Dollars)

			FY 83	FY 84	FY 85	FY 86	FY 87	
Capital								
Operating					-4-		-3-	
Total								

b. Revenues:

Revenue								

2. Source of funds to offset fiscal impact of bill:

3. Assumptions: Regulations must be written and adopted to require coordination between Div. of Elections and local taxing authorities to confirm length of residency. ($1,000 in FY 85)
Staff time must be allocated to verify residency of 120-150 state office candidates every 2 years. This should take the month of July for one person. ($3,000 every 2 years)

4. Disclaimer:
This statement has not been reviewed by the OMB in the Office of the Governor. It do not represent the policy of the Sheffield Administration or the final estimate of fis impact.

Prepared By: TPThoma Phone: 4611
Division: Elections Date:

Approved by Commissioner: Date:
Department:

5. Distribution:
Original to Legislative Finance
Copy to OMB
Copy to Sponsor

2/8/83

3/16

COMMITTEE REPORT

HOUSE

(7)
1/17/83

FURTHER: JUDICIARY
FINANCE

Date: 3/14/83

Mr. Speaker:

The Committee on STATE AFFAIRS has had HB 29

✓ Relating to the verification of residency of candidates for certain public offices.

under consideration and reports it back as follows:

[X] do pass [ ] do not pass

[ ] do pass with attached amendments(s)

[ ] replace with CS for _____ [ ] same title [ ] new title

and recommends _____

[ ] AND attaches a "Letter of Intent" [X] New Fiscal Note Sup# 2.5
[ ] Zero Fiscal Note Attached

[ ] reports it back without recommendation

[ ] referred to the _____ Committee

MEMBERS SIGNING DO PASS:

Mitch Abood
Dick Shutter
John J Cavanagh
Walt Furnarie
Ronald J. Furn

MEMBERS HAVING OTHER RECOMMENDATIONS:

Rep Mitch Abood
CHAIRMAN

H 60

AMENDED TITLE:
AN ACT RELATING TO THE VERIFICATION OF RESIDENCY OF CANDIDATES FOR CERTAIN PUBLIC OFFICES

PRIME SPONSOR: MARTIN.
CO-SPONSORS: FLOOD, LINDAUER.
CURRENT STATUS: 3/16/83 IN (H) FINANCE REFERRAL: JUDICIARY

DATE	SEQ	PAGE	LEGISLATIVE ACTION
01/17/83	01	0024	FIRST READING -- COMMITTEE REPORTS
01/18/83	02	0049	FIN COMM REFERRAL ADDED BY UNAN CONSENT
03/16/83	03	0501	S.A. -- DP05
03/16/83	04	0501	S.A. F/NOTE HSE SUPPL #25
			FINANCE
			JUDICIARY
			RULES
****	**	**	*** *** ***

HB

30

Voter Registration (proof of eligibility)

HOUSE BILL NO. 30, by Martin and Lindauer. Amends section of the Election Code relating to information required when registering to vote (AS 15.07.060) by adding a new section that would allow the Director of Elections to require an applicant to provide proof of eligibility to vote. The Director may use information available from other state departments or agencies to determine an applicants eligibility to vote. The Director shall provide an application form containing a statement wherein the voter certifies that he has been a state resident for at least 30 days prior to the date of the election or that he claims eligibility as an overseas voter, or that he is eligible to vote in a presidential election. Provides a false claim of eligibility is a criminal offense. The Director is to investigate a claim of eligibility if information provided by the voter is or seems inconsistent with other information regarding eligibility of the applicant. Does not provide for an effective date.

Introduced January 17 and referred to State Affairs, Judiciary, then to Finance.

Property Tax (exemption--disabled veterans)

HOUSE BILL NO. 31, by Furnace, Barnes, Grussendorf, Koponen, Phillips, Lindauer, Abood, Liska, Larson and Fritz. Would require municipalities to exempt the real property owned and occupied as a permanent place of abode by a disabled veteran from taxation. The exemption for veterans would be the percentage of the assessed value of the property that is the same as the percentage of disability as established by the vets' service disability rating. The bill changes sections of the existing Municipal Code relating to assessment and taxation (AS 29.53.020--required exemptions), effective January 1, 1984, and would change those sections of a new Municipal Code (AS 29.45.030) when enacted by the Thirteenth Legislature.

Introduced January 17 and referred to Community & Regional Affairs, then to Finance.

Appropriation (special) (Anchorage campus dorms)

HOUSE BILL NO. 32, by Furnace, Martin, Barnes, Flood, Lindauer, Abood, Liska, Szymanski and Fritz. Makes a special appropriation in the amount of $15,000,000 to the University of Alaska for construction of dormitories for the U of A Anchorage campus. Provides appropriation is for a capital project and does not lapse. Provides Act takes effect immediately.

Introduced January 17 and referred to Health, Education and Social Services, then to Finance.

Appropriation (special) (Anch. state trooper facility)

HOUSE BILL NO. 33, by Furnace, Martin, Barnes, Lindauer, Abood, Liska, Szymanski, Pestinger. Makes a special appropriation in the amount of $8,100,000 to the Department of Public Safety for construction of a state trooper crime laboratory and office facility in Anchorage. Provides appropriation is for a capital project and does not lapse. Provides Act takes effect July 1, 1983.

Introduced January 17 and referred to State Affairs, then to Finance.

REGISTRATION PROCEDURES BY MAIL

1. If you are currently registered to vote in another state you must complete the attached "Voter's Authorization to Cancel Registration" card.

2. Print or type full name - last, first and middle initial. Names containing punctuation, such as a hyphen (-) or apostrophe ('), should be shown with that punctuation. A name suffix such as "Jr.", "Sr.", or "III" should follow the last name.

3. Print previous name if registered to vote under that name. Be sure to sign this card according to your new name.

4. Print complete Alaska residence address. Exact descriptions are necessary to determine accurately the exact precinct and district in which you live. As examples (where applicable) you should provide street name and house number, subdivision name, highway name, milepost number, a pier and slip number for ships, space number and trailer park name for trailers, and tract or plot numbers for rural areas. A rural postal box or highway will not suffice.

5. Print your mailing address if different from your residence address including a specific street address (where applicable), postal box number, star route, city and zip code.

6. It is not mandatory to provide your social security number, however, this information is helpful to our office.

7. Please fill in place of birth, although this information is not mandatory. If you were born abroad, enter the foreign country along with a phrase indicating military or American parents (if applicable).

8. Please fill in date of birth. Although this information is not mandatory, it is helpful to the Elections Office for identification purposes.

9. If you are a naturalized citizen, fill in your date of naturalization.

10. Fill in how long you have lived in Alaska. This information is computed from the day you moved to Alaska to the date of registration. For those who have lived here longer than one year, only the number of years need be entered. If you have temporarily resided outside of Alaska after initially residing here, your time in Alaska would include the time spent outside IF you have not registered to vote in any other state. If you have registered to vote in another state, THEN, the length of time in Alaska would be computed from the date of your return to Alaska.

11. Fill in how long you have lived in the current election district, following the same guidelines as above. If you are unsure of your election district, indicate how long you have lived at your current address.

12. Indicate male or female.

13. Please indicate if you have been convicted of a felony. If your civil rights have not been restored, it is illegal for you to register to vote. If you have been unconditionally discharged from incarceration, probation and/or parole be sure to indicate the date of your discharge.

14. You are not required to provide your political affiliation. "Non-Partisan" is the same as "Independent" (a designation used in some other states) while "Other" is the category for any political affiliation other than Republican and Democrat (such as Libertarian, Alaskans for Independence, etc.)

15. Fill in today's date -- the date of this registration -- so that this office can compute the thirty-day registration requirement.

16. You are required to sign the registration form, and are, in fact, taking an oath. Sign the form by the same name you have printed above (i.e. by your proper first, middle initial, and last name, including any suffixes, etc.).

17. Have a registrar, notary public, U.S. postal official, a district judge or magistrate, commissioned officer of the armed forces, or other person qualified to administer oaths, witness and sign this registration form. If a qualified official is not available, two witnesses over the age of 18 years may sign this registration form, and, in addition, shall provide certification according to AS 09.65.012. A sample certification is attached.

E-2-OUT

LIARCO Business Forms - Re

007660

SAMPLE VOTER REGISTRATION CARD

STATE OF ALASKA

VOTER REGISTRATION

PLEASE PRINT

READ INSTRUCTIONS ON BACK SIDE BEFORE COMPLETING CARD

(1) VOTER'S AUTHORIZATION TO CANCEL REGISTRATION

To the voter registration office of _____ (City or County) _____ (State)

This is to advise that I am now a resident of Alaska. Therefore, my registration where I formerly resided at the following address should be cancelled.

NAME		
FORMER ADDRESS (House Number and Street Name or Rural Route and Box Number)		
CITY	STATE	ZIP CODE
BIRTHDATE	SOCIAL SECURITY NUMBER	
SIGNATURE X		DATE

195108

(2) VOTER'S NAME _____ LAST FIRST INITIAL

(3) PREVIOUS NAME (If registered to Vote in Alaska under that name) _____

(4) ALASKA RESIDENCE ADDRESS _____ DO NOT LIST P.O. BOX OR RURAL ROUTES

CITY _____ STATE _____

(5) MAILING ADDRESS _____

CITY _____ STATE _____ ZIP _____

FOR OFFICE USE ONLY

VOTER NUMBER

☐ INITIAL REGISTRATION ☐ CHANGE OF AFFILIATION

☐ CHANGE OF ADDRESS ☐ CHANGE OF NAME

FORM 01-3001 (3/82)

(6) SOCIAL SECURITY NUMBER	PLACE OF BIRTH (7)	DATE OF BIRTH (8) MO DAY YR	DATE OF NATURALIZATION (9) MO DAY YR
(10) HOW LONG HAVE YOU LIVED IN ALASKA? YEARS MONTHS DAYS	HOW LONG HAVE YOU LIVED IN THIS ELECTION DISTRICT (AT CURRENT ADDRESS) (11) YEARS MONTHS DAYS	SEX: (12) ☐ MALE ☐ FEMALE	
(13) IF YOU HAVE EVER BEEN CONVICTED OF A FELONY, HAVE YOU BEEN UNCONDITIONALLY DISCHARGED FROM INCARCERATION, PROBATION AND/OR PAROLE? IF SO, GIVE DATE:	OATH: I, the undersigned declare that the foregoing facts concerning my qualifications as a voter or a voter changing my address are true. I further declare that I am a citizen of the United States and will be 18 years of age or older within 90 days of the date of registration.		
	DATE (15)	SIGNATURE OF VOTER (16) X	
(14) POLITICAL AFFILIATION (Circle preference) REPUBLICAN DEMOCRAT NON-PARTISAN OTHER (SPECIFY) _____	WITNESS (17)	WITNESS OR OFFICIAL (17)	
	TWO WITNESSES OR A QUALIFIED OFFICIAL MUST SIGN	TITLE	LOCATION

Sample Certification

The following is a sample of the certification which must be used if a notary public or other individual empowered to administer oaths (discussed in number 17 of the previous page) is unavailable to witness the registrant's (voter's) signing of the voter registration card.

I _____ certify under penalty of
Registrant's Name (Please Print)

perjury that the information on the attached voter registration form is true and accurate. I further certify that no notary public or other official empowered to administer oaths is available.

_____ _____
Date Signature of Registrant

_____
Location

I certify that I am at least 18 years old and that I have witnessed the registrant's signing of the attached voter registration card and this certification.

_____ _____
Date Signature of Witness

I certify that I am at least 18 years old and that I have witnessed the registrant's signing of the attached voter registration card and this certification.

_____ _____
Date Signature of Witness

government to provide housing facilities to persons engaged in national defense activities, to register and vote at elect in state. 142 ALR 430.

Sec. 15.07.040. Time for registration. A person who is qualified under AS 15.05.010(1) — (4) is entitled to register at any time throughout the year except that a person under 18 years of age may register at any time within 90 days immediately preceding his 18th birthday. (§ 2 ch 211 SLA 1968; am § 20 ch 32 SLA 1971; am § 6 ch 116 SLA 1972; am § 7 ch 100 SLA 1980)

Effect of amendments. — The 1980 amendment substituted "a person under 18 years of age may register at any time within 90 days immediately preceding his 18th birthday" for "no registration will be made for a period of 30 days preceding the election" at the end of the section.

Collateral references. — Constitutionality of statutes in relation to registration before voting at election or primary. 91 ALR 349.

Sec. 15.07.050. Registration in person or by mail. Registration may be made in person before a registration official or by mail. (§ 2 ch 211 SLA 1968)

Sec. 15.07.060. Required registration information. (a) Each applicant who requests registration or reregistration shall supply the following information under oath:

(1) name and sex;

(2) address and other necessary information establishing residence if requested;

(3) Repealed by § 8 ch 100 SLA 1980.

(4) term of residence in state and in election district; and whether the applicant has previously been registered to vote in another jurisdiction, and, if so, the jurisdiction and the address of the previous registration;

(5) a declaration that the registrant will be 18 years of age or older within 90 days of the date of registration;

(6) a declaration that the registrant is a citizen of the United States;

(7) date of application;

(8) signature or mark.

(b) If the applicant has been previously registered to vote in another jurisdiction, he shall surrender to the registration official any voter registration or identification card or credentials from that jurisdiction the applicant may possess. The director shall notify the chief elections officer in that jurisdiction that the applicant has registered to vote in Alaska, request that jurisdiction to cancel the applicant's voter registration there, and return the applicant's voter registration or identification card or credentials, if any, to that jurisdiction.

(c) If application for registration is made in person before a registration official, the applicant shall exhibit one form of identification to

the official, including but not limited to a driver's license, birth certificate, passport, hunting or fishing license. A registration official who knows the identity of the applicant may waive the identification requirement.

(d) If the applicant requests reregistration, the applicant shall supply under oath any former name under which the applicant was registered to vote in the state. (§ 2 ch 211 SLA 1968; am § 21 ch 32 SLA 1971; am §§ 6, 7 ch 197 SLA 1975; am § 8 ch 100 SLA 1980)

Effect of amendments. — The 1980 amendment inserted "under oath" at the end of the introductory paragraph of subsection (a), repealed the former provisions of paragraph (3) of subsection (a), which read: "Election district and precinct as of the date of registration," substituted "the jurisdiction and the address of the previous registration" for "where" at the end of paragraph (4) of subsection (a), substituted "within 90 days of the date of registration" for "on or before the date of the next statewide election" at the end of paragraph (5) of subsection (a), substituted "director" for "lieutenant governor" at the beginning of the second sentence of subsection (b), and added subsections (c) and (d).

NOTES TO DECISIONS

Omission of a voter's complete address is not a "minor" omission. Willis v. Thomas, Sup. Ct. Op. No. 1923 (File No. 4398), 600 P.2d 1079 (1979).

Where a voter filled out a voter registration application on October 5, 1978, but failed to supply her complete street address as required by this section, and on election day, filled out a second voter registration form, this time including her complete address, her ballot should not be counted. Willis v. Thomas, Sup. Ct. Op. No. 1923 (File No. 4398), 600 P.2d 1079 (1979).

Applied in Hammond v. Hickel, Sup. Ct. Order (File Nos. 4281, 4282, 4283, 4284, 4285, 4291), 588 P.2d 256 (1978).

Collateral references. — Validity of statute requiring information as to age, sex, residence, etc., as condition of registration or right to vote. 44 ALR 260.

Propriety of test or question asked applicant for registration as voter other than formal questions relating to specific conditions of his right to registration. 76 ALR 1238.

Right of married woman to use maiden surname. 67 ALR3d 1266.

Sec. 15.07.065. Exchange of voter registration information.

Repealed by § 231 ch 100 SLA 1980.

Editor's notes. — The repealed section derived from § 8, ch. 197, SLA 1975.

Sec. 15.07.070. Procedure for registration. (a) The director may adopt regulations under the Administrative Procedure Act (AS 44.62) relating to the registration of voters consistent with the requirements of this section.

(b) To register by mail the director or the area election supervisor shall furnish, upon request, and at no cost to the voter, forms prepared

JAY S. HAMMOND, GOVERNOR

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

POUCH K — STATE CAPITOL
JUNEAU, ALASKA 99811
PHONE: (907) 465-3600

July 8, 1982

The Honorable Terry Martin
3960 Reka Drive-B6
Anchorage, Alaska 99504

Re: Marilyn Carpenter's candidacy
Our file 366-029-83

Dear Representative Martin:

In a letter dated June 24, 1982 (received in this office on June 28, 1982), you requested that we review certain aspects of Ms. Marilyn Carpenter's candidacy for the office of Representative from Election District 13, Seat B. Although you pose a number of specific questions, you appear to have two primary concerns: (1) was Ms. Carpenter a resident of Election District 13 for one year, as required by Article II, Section 2 of the Alaska Constitution, at the time she refiled her declaration of candidacy on June 1, 1982; and (2) because she was not properly a candidate before June 1, 1982, having not been a resident for a full year in Election District 13, must her campaign committee (or, in the alternative, contributors to that committee) repay to the state any campaign contribution refunds under AS 43.20.013(a)?

In brief, the Attorney General's office cannot make the residency determination you desire. We are the attorney for the Division of Elections, and as such have no greater powers than the division possesses to make such inquiries. As you note in your letter, the division cannot go beyond the statements in the declaration of candidacy. If you have a disagreement with the statements in that declaration of candidacy, one remedy which you may pursue is to file a lawsuit in the Superior Court. The answer to your question regarding repayment to the state for refunds given to campaign contributors is not as clear. However, on the basis of our research and consideration of the facts presented, we believe it is extremely unlikely that a court would require contributors to repay the refunds, and even more unlikely that the court would require the campaign committee to do so. A more detailed analysis of these issues follows.

I. FACTUAL BACKGROUND

On December 1, 1981, Ms. Carpenter filed her declaration of candidacy under AS 15.25.030. In the declaration, she stated that she had been a resident of Election District 13 since June, 1981.

Article II, Section 2 of the Alaska Constitution provides in pertinent part: "A member of the legislature shall be a qualified voter who has been a resident of Alaska for at least three years and of the district from which elected for at least one year, immediately preceding his filing for office." (Emphasis added.) Since Ms. Carpenter stated on her December 1, 1981 declaration that she had been a resident of Election District 13 only since June, 1981, it appeared from the face of her declaration that she did not meet the constitutional eligibility requirement for the office of having been a resident of the district for one year "immediately preceding [her] filing for office."

However, that fact was not noticed by Division of Elections officials at that time, and they accepted her declaration. Ms. Carpenter solicited campaign contributions and made expenditures for campaign purposes.

In April, 1982, you contacted officials in the Division of Elections and pointed out the problem with Ms. Carpenter's December 1, 1981 declaration of candidacy. On May 5, 1982, Patty Ann Polley, Director of the Division of Elections, spoke with Ms. Carpenter about the residency question, following up the conversation with a May 6, 1982 letter to Ms. Carpenter.

Ms. Carpenter responded that she became a resident of Election District 13 on May 28, 1981. On May 27, 1982, Ms. Polley sent Ms. Carpenter a letter informing her that her declaration of candidacy was being rejected because she did not meet the one-year residency requirement prior to filing. The letter noted that Ms. Carpenter had indicated an intention to refile on or after May 28, 1982.

On June 1, 1982, Ms. Carpenter refiled for the office of Representative from Election District 13, Seat B, stating that she had been a resident of Election District 13 since June 1, 1981.

Your June 24, 1982 inquiry to this office followed.

II. MS. CARPENTER'S RESIDENCE SINCE JUNE 1, 1981.

In your letter, you relate a number of items which lead you to question Ms. Carpenter's residence in Election District 13 as of June 1, 1981. However, as you also note in your letter, there is nothing the Division of Elections "could do but accept as the truth any information a candidate submits on the application." That is what we advised the Lieutenant Governor in a memorandum on January 22, 1980 (Department of Law file J66-412-80). In that memorandum, we stated: "As a general rule, you should accept filings which are valid on their face, and it is neither your duty nor your function to question their validity." We also stated:

> For the most part, the Alaska Election Code, like many others, depends upon the adversarial nature of the election process for enforcement. The law reasonably assumes that a candidate's opponents will be the first to raise complaints against any false or fraudulent filing. Residence (domicile) is an elusive legal concept. Proof of residence consists of both objective facts and subjective feelings. A determination requires a full blown hearing and an independent, nonpartisan decisionmaker. The Election Code quite wisely does not provide for the election officials to make such determinations.

The court in Bell v. Foster, 200 A.2d 354 (N.J. Super. App. Div. 1964), reached the same conclusion. In that case, the court found that the clerk's duty in reviewing a nominating petition (similar to a declaration of candidacy) was merely ministerial, and that the clerk could not rule on the question of residency. The court stated: "To the extent that the residence requirement embraces the concept of domicile, its determination calls for judicial intervention." The court noted the significant possibility of abuse if such determinations were made by individuals appointed by elected officials. Garcia v. Carpenter, 525 S.W.2d 160 (Tex. 1975). A similar result was reached in (In our telephone conversation yesterday, you acknowledged the problems which might result from the Lieutenant Governor, as supervisor of elections, ruling on the qualifications of a candidate for Lieu-

tenant Governor or the Attorney General, as an appointee of the Governor, ruling on the qualifications of a candidate for Governor.)

While you recognize that Division of Elections officials cannot question Ms. Carpenter's residence in Election District 13 as of June 1, 1981, you wondered whether the Attorney General might make a ruling on this question. Under AS 44.23.020, the Attorney General is the legal advisor to the Governor and other state officers. In other words, he is charged with assisting them in carrying out their duties. It was in this capacity that we gave advice to the Lieutenant Governor regarding elections officials making residency determinations. The Attorney General does not have independent authority to make such determinations; rather, it is his duty to advise other state officials and, if necessary, defend their decisions (for example, a decision by elections officials not to make a residency determination) in the event of litigation.

As we indicated in our advice to the Lieutenant Governor, "the Alaska Election Code, like many others, depends upon the adversarial nature of the election process for enforcements." If you still believe that Ms. Carpenter is not qualified to run as a candidate for the office of Representative from Election District 13, there are two remedies available to you. The first is to file a lawsuit in Superior Court seeking a judicial determination that Ms. Carpenter is not qualified to run. The second is to take your case directly to the most powerful judges of all, the voters in Election District 13.

III. REPAYMENT OF STATE REFUNDS TO CAMPAIGN CONTRIBUTORS.

AS 43.20.013(a) authorizes refunds by the state of up to $100 per individual for political contributions. You are interested in knowing whether the state could require repayment to the state of those refunds made for campaign contributions to Ms. Carpenter's campaign prior to the refiling of her declaration of candidacy on June 1, 1982.

Initially, it must be noted that any repayment to the state would have to be made by the individual contributors to Ms. Carpenter's campaign, not her campaign committee. The campaign committee did not claim any refunds from the state; only the individual contributors did. Accordingly, if

those refunds were improperly claimed, it was the contributors who improperly claimed them. The campaign committee could not be required to repay the state for refunds given to individual contributors.

More importantly, however, we believe it is extremely unlikely that a court would require the repayment of those refunds under the facts of this case. Ms. Carpenter initially filed on December 1, 1981. On December 8, 1981, she was informed by Division of Elections officials that her filing was in order and that her name would appear on the primary election ballot. It was not until May 27, 1982, that the division rejected her declaration of candidacy.

Under these facts, the contributors to Ms. Carpenter's campaign would have a very strong argument that their contributions to her campaign were made in reliance on the representation by the division that Ms. Carpenter's filing was in order and that she would be listed on the ballot as a candidate. There is an appearance of unfairness in the state certifying Ms. Carpenter's candidacy, allowing contributions to be solicited on behalf of her campaign, allowing those contributions to be spent for campaign purposes, refunding those contributions, and only then seeking repayment of those refunds upon discovering that her initial filing was not proper.

There are a number of cases which hold that the absence of fraud or willful misconduct excuses a failure to comply with the letter of the law. See, e.g., Anderson v. Davis, 419 A.2d 806 (Pa. 1980); People ex rel. Bell v. Powell, 221 N.E.2d 292 (Ill. 1966). While we have discovered no cases precisely on point, in Owens v. Sharpton, 381 N.E.2d 160 (N.Y. 1978), the court addressed the question whether petitions designating a candidate in a party primary election and a committee to fill vacancies were completely invalidated because the candidate did not meet residency requirements. If the petitions were completely invalidated, the committee to fill vacancies would not be permitted to make an appropriate substitution. The court held that the petitions were valid as far as the committee was concerned and that the committee should be permitted to make an appropriate substitution, notwithstanding the disqualification of the candidate, as long as there was no finding that either the petition or the petition gathering process was tainted by fraud. Compare Fotopoulos v. Bd. of Elections, 381 N.E.2d 337 (N.Y. 1978)

(where designating petition invalid, committee invalid as well).

Under the facts presented here, where the Division of Elections recognized Ms. Carpenter's candidacy until May 27, 1982, we believe the court would find that her campaign contributions committee expenditures were sufficiently valid -- or at least appeared sufficiently valid to good faith contributors -- that contributors to the campaign were entitled to refunds under AS 43.20.013(a).

IV. OTHER MATTERS.

You also raise a number of other questions:

1. Should Ms. Carpenter have listed the name of the person or persons renting her condominium from June 1981 until its sale in November, 1981? AS 39.50.030(b)(1) requires a conflict of interest statement to include "(1) the source of all income over $100 . . . received by him . . . during the preceding calendar year." Because Ms. Carpenter's conflict of interest statement was filed in December 1981, it was not necessary for it to include any sources of income during that same calendar year, only the preceding calendar year.

2. Should the individual who loaned Ms. Carpenter the down payment for her new home be listed on the conflict of interest form? We have no knowledge that Ms. Carpenter received a loan to make the down payment on her new home. However, if she received such a loan, it is reportable on the conflict of interest form under AS 39.50.030(b)(6).

3. Should the person leasing or renting Ms. Carpenter's part ownership in a condominium in Girdwood be listed on the conflict of interest statement? If she received income from the rental of a condominium in calendar year 1980, the source of that income should be listed on the form under AS 39.50.030(b)(1).

4. Would Ms. Carpenter's campaign committee have to return monies given in federal tax credits to contributors in 1981? While that is a question of federal law, not state law, we believe the federal courts would apply an analysis similar to that contained in Part III of this letter.

5. Can a person list their campaign telephone number as a work number on the declaration of candidacy form? We are unaware of any provision of law which prohibits this practice.

6. If Ms. Carpenter won the primary election and then was found not to be qualified, would her primary opponent be entered on the ballot for the general election? AS 15.25.110 provides that a vacancy on the general election ballot resulting from a candidate's disqualification may be filled by party petition. See AS 15.25.120 -- 15.25.130 for petition procedures.

V. CONCLUSION.

We hope we have answered your questions. If we can be of further assistance, please contact us at your convenience.

Sincerely,

WILSON L. CONDON
ATTORNEY GENERAL

By: G. Thomas Koester
G. Thomas Koester
Assistant Attorney General

GTK:dlm

cc: Ms. Marilyn Carpenter
Lieutenant Governor Terry Miller
Joseph K. Donohue
Patty Ann Polley

STATE OF ALASKA
PRELIMINARY STATEMENT OF FISCAL IMPACT

Bill No: HB 30 Date on Bill: 1/17/83
Title: "relating to proof of eligibility for registration as a voter"
Sponsor: Martin and Lindhauer
Requestor: House State Affairs Committee

1. Estimated fiscal impacts on: Office of the Governor, Division of Elections

a. Expenditures:

(Thousands of Dollars)

			FY 83	FY 84	FY 85	FY 86		
Capital								
Operating				12				
Total								

b. Revenues:

Revenue								

2. Source of funds to offset fiscal impact of bill: General Funds

3. Assumptions: Passage of HB 30 would require the re-design and new printing of the voter registration forms. Compared to costs experienced by printing these forms in 1982, a run of one-half as many forms should incur this fiscal impact.

4. Disclaimer:
This statement has not been reviewed by the OMB in the Office of the Governor. It does not represent the policy of the Sheffield Administration or the final estimate of fiscal impact.

Prepared By: TPThoma Information Officer Phone: 4611
Division: Elections Date: 2/23/83

Approved by Commissioner: Date:
Department:

5. Distribution:
Original to Legislative Finance
Copy to OMB
Copy to Sponsor

AMENDED TITLE:
AN ACT RELATING TO PROOF OF ELIGIBILITY FOR REGISTRATION
AS A VOTER

PRIME SPONSOR: MARTIN.
CO-SPONSORS: LINDAUER.
CURRENT STATUS: 2/25/83 IN (H) JUDICIARY REFERRAL: FINANCE

DATE	SEQ	PAGE	LEGISLATIVE ACTION
01/17/83	01	0024	FIRST READING -- COMMITTEE REPORTS
01/18/83	02	0049	FIN COMM REFERRAL ADDED BY UNAN CONSENT
02/25/83	03	0343	S.A. -- DP05
02/25/83	04	0343	F/NOTE HSE SUPPL #16
			JUDICIARY
			FINANCE
			RULES
****	**	**	*** *** ***

HB

34

AMENDMENT

OFFERED IN THE HOUSE: BY: Judiciary Committee

TO: SS HOUSE BILL No. 34

SENATE BILL No. _____

PAGE: 1 LINE: line 21

Insert after "governor": "has not made an appointment or"

To: Representative Mitch Abood, Chairman
House Committee on State Affairs

Through: Walt Furnace, Representative

From: Steven C. Levi, Staff

Date: January 20, 1983

COPY

RE: ~~HB~~ 34

At the present time, the line of succession to the Governor's chair is limited to two (2) individuals: the elected Lt. Governor and the Governor's hand-picked, legislatively confirmed successor. Should the Governor's chair fall empty when there is no Lt. Governor, for whatever reason, the hand-picked, legislatively confirmed successor is only an acting governor and will hold this postion only until a special election may be held to fill the office with an elected governor.

There is, however, a gap in the succession process. Should the Governor and the Lt. Governor be unable to fill the chair and there is no hand-picked, legislatively confirmed successor, there is no procedure for succession.

Representative Furnace recommends, through HB 34, that in the hopefully unlikely case that the Governor's chair is vacant and there is no Lt. Governor or hand-picked, legislatively confirmed successor, that the President of the Senate and thereafter the Speaker of the House shall succeed to the chair of governor.

Legislative Counsel has assured Representative Furnace that the succession to the chair of Governor by the President of the Senate or the Speaker of the House is only in the capacity of Acting-Governor and only until such time as a special election may be held. Legislative intent is that the President or the Speaker shall be Acting-Governor only.

RECEIVED
JAN 20 1983

To: Mitch Abood, Chairman
House Committee on State Affairs

From: Representative Walt Furnace

RE: SSHB 34

Date: March 25, 1983

Under current statute, the succession to the chair of Governor runs through the Lt. Governor and thereafter the Governor's appointed and legislatively confirmed successor.

This bill allows for the line of succession to continue thereafter to a lock step progression of administrators, whether they have been confirmed or not. Should the vacancy occur in the office of Governor-Elect and Lt. Governor-Elect, the outgoing Governor will become the Acting Governor for that period after his expired term until a special election is held and the new Governor inaugurated.

The important fact to keep in mind is that if the Governor and Lt. Governor are unable to fullfill the duties of their respective posts and the Governor's handpicked successor has not yet been confirmed, there must be someone who can step in immediately and assume the powers and duties of the Acting Governor.

HB 34

ALASKA STATE LEGISLATURE
HOUSE OF REPRESENTATIVES
RESEARCH AGENCY

Pouch Y, State Capitol
Juneau, Alaska 99811
(907) 465-3991

RECEIVED
APR 13 1983

COPY
Post in Committee file for

April 12, 1983

MEMORANDUM

TO: Representative Walt Furnace

FROM: Deb Pomeroy, Research Aide Deb

RE: Succession to the Offices of Governor and Lt. Governor
Research Request 83-119

Steve Levi of your office called requesting the following information regarding succession to the offices of Governor and Lt. Governor in other states:

1) What is the line of succession in other states?

2) Is succession decided constitutionally or by statute?

3) What is the term of the successor?

4) Is the successor appointed Acting Governor or Governor?

5) Does the Acting Goverror have the same powers as the Governor?

6) Are there any states where Supreme Court Justices succeed to Governor?

As you are aware, Alaska does not have a constitutional line of succession after the Lt. Governor. AS 44.19 states that after the start of the initial term of office, the Governor appoints, and the Legislature confirms in a joint session, a person from a principal department of state government as the successor to the Lt. Governor. If the Lt. Governor succeeds to the Governor's office, the appointee becomes Lt. Governor and serves for the remainder of the term. If, however, the appointed successor succeeds to the Governor's office, (s)he serves only until a special election is held.

Thirty-six states decide the succession to the Governor's office by constitution; thirteen states either decide the succession or add to the line of succession by statute. In all of the states, the successor has the duties and powers of the Governor. In all states except Hawaii,

the successor is appointed Governor; in Hawaii, only the Governor and Lt. Governor may have the title of Governor, with other successors known as "Acting" Governor.

The majority of the states have direct succession to Governor. That is, if the Lt. Governor becomes Governor, his office remains vacant until the next election. Connecticut, Hawaii, Minnesota and Pennsylvania are the only states which have a successor to the office of Lt. Governor.

In 31 states, either the Senate President or House Speaker is next in line after the Lt. Governor to become Governor. Of the remaining 18 states, all but Delaware have an elected administrative official next in line for succession. Delaware has an appointed secretary of state in line after the Lt. Governor, although the next official for succession is elected. Nebraska is the only state in which the entire line of succession consists of legislative committee chairmen.

In reference to the term of the successor, most of the states have the successor serving for the remainder of the Governor's term, or until the next general election at which time a successor is elected for the unexpired portion of the term. A few states' constitutions or statutes vaguely state that the successor will serve "until the vacancy is filled."

I have prepared the attached chart listing the following information for each state:

1) the order of succession to either the Governor's or Lt. Governor's office and whether or not it is decided by statute or constitutionally;

2) whether the person in the line of succession is elected, appointed, or a legislative official; and

3) the length of the term the successor holds and any conditions which apply.

I hope this information is useful. If you have any questions, please call.

DP

Attachment

STATE	SUCCESSION TO	CONSTITUTION OR STATUTE	ORDER OF SUCCESSION	APPOINTED OR ELECTED	CONDITIONS
Alabama	Governor	Cons. Art.V	Lt. Governor Sen. Pres. pro tem House Speaker Attorney General State Auditor Secretary of State State Treasurer	Elected Sen. Elected Hse. Elected Elected Elected Elected Elected	If the Gov. & Lt. Gov. seats become vacant more than 60 days before a General Election, these seats are filled at that election for the unexpired term; otherwise successor serves for the remainder of the term.
Alaska	Governor Lt. Governor	Cons.Art.III AS 44.10	Lt. Governor Gov. appointee	Elected Appointed	Elected Lt. Gov. serves for remainder of term. Legislature confirms Gov. appointee as successor to Lt. Gov. If (s)he succeeds to Gov., (s)he serves only until a special election is held.
Arizona	Governor	Cons. Art.V	Sec. of State Attorney General State Treasurer Supt.of Pub. Instr.	Elected Elected Elected Elected	Successor holds office until a Governor is duly elected and qualified. Only elected officials may succeed, not those who have been appointed to fill a vacancy
Arkansas	Governor	Cons. Art. 6	Lt. Governor Senate President Assembly Speaker	Elected Sen. Elected Assm.Elected	The Governor's term is two years. Successor holds office until the vacancy has been filled.
California	Governor	Cons. Art.VI Govt 12058	Lt. Governor Sen. Pres. pro tem Assembly Speaker Sec. of State Attorney General Controller	Elected Sen. Elected Assm.Elected Elected Elected Elected	Successor serves full term.
Colorado	Governor	Cons. Art.IV	Lt. Governor Sen. Pres. pro tem House Speaker	Elected Sen. Elected Hse. Elected	Successor holds office until the vacancy has been filled.

STATE	SUCCESSION TO	CONSTITUTION OR STATUTE	ORDER OF SUCCESSION	APPOINTED OR ELECTED	CONDITIONS
Connecticut	Governor	Cons. Art.IV	Lt. Governor Sen. Pres. pro tem	Sen. Elected	Office is held until the next gen. election. When the Lt. Gov. succeeds to Gov., the Senate Pres. becomes Lt. Gov. Within 15 days of the Lt. Gov. taking his oath, the Sen. must select a new Pres. pro tem. If during an interim, a successor is required & there is no Pres. pro tem, the Sec. of State will convene Senate to elect one.
Delaware	Governor	Con. Art.III	Lt. Governor Sec. of State Attorney General Sen. Pres. pro tem House Speaker	Elected Appointed Elected Sen. Elected Hse. Elected	Successor holds office until a Governor is duly elected and qualified.
Florida	Governor	Cons. Art.IV FS 14.55	Lt. Governor Sec. of State Attorney General State Comptroller State Treasurer Comm.of Education Comm.of Agriculture	Elected Elected Elected Elected Elected Elected Elected	Successor serves for the remainder of the term.
Georgia	Governor	Cons. Art.V	Lt. Governor House Speaker	Elected Hse. Elected	Lt. Governor serves until next general election, at which time a Governor is elected for the unexpired term. If the House Speaker succeeds to Gov.,a special election must be held to elect a Gov. within 60 days of the Speaker taking office.
Hawaii	Governor	Cons. Art. V HS 26-2	Lt. Governor Senate President House Speaker Attorney General Director of Finance Comptroller Dir. of Taxation Dir. of Pers.Svces	Elected Sen. Elected Hse. Elected Appointed Appointed Appointed Appointed Appointed	Successor serves for the remainder of the term. When the Lt. Gov. succeeds to Gov., the Sen. Pres. becomes Lt. Gov. After that, succession leaves the Lt. Gov. office vacant. Only the Governor and Lt. Governor can hold the title of Governor; the others are known as Acting Governor. Although known as "Acting" Governor, the successor has all powers given to the Gov.

STATE	SUCCESSION TO	CONSTITUTION OR STATUTE	ORDER OF SUCCESSION	APPOINTED OR ELECTED	CONDITIONS
Idaho	Governor	Cons. Art.IV	Lt. Governor Sen. Pres. pro tem House Speaker	Elected Sen. Elected Hse. Elected	Lt. Gov. holds office for the remainder of the term; Sen. Pres. pro tem and House Speaker serve "until the vacancy is filled."
Illinois	Governor	Cons. Art. V IS127¶63b122	Lt. Governor. Attorney General Secretary of State Comptroller Treasurer Senate President House Speaker	Elected Elected Elected Elected Elected Sen. Elected Hse. Elected	Holds office for the remainder of the term. Elected officials only are eligible to succeed.
Indiana	Governor	Cons. Art. V	Lt. Governor	Elected	Serves until Governor is elected. Constitution states that further succession will be determined by law; however, no statutes were found.
Iowa	Governor	Cons. Art.IV	Lt. Governor Sen. Pres. pro tem House Speaker	Elected Sen. Elected Hse. Elected	Lt. Gov. serves remainder of term; Sen. Pres. and House Speaker serve "until the vacancy is filled."
Kansas	Governor	Cons. Art. 1 KS 48-12-4	Lt. Governor Senate President House Speaker Secretary of State Attorney General Chancellor, U.of K. Pres, Kansas State Univ. of Ag. and Applied Science	Elected Sen. Elected Hse. Elected Elected Elected	Serves until next election.
Kentucky	Governor	Cons. Art.84	Lt. Governor Sen. Pres. pro tem	Elected Sen. Elected	Lt. Governor serves until a Gov. is duly elected and qualified; if the Sen. Pres. pro tem succeeds, and vacates office before the first two years are over, a new election is held. If there is no Pres. pro tem, the Secretary of State, then Attorney General hold office until a President pro tem has been elected.

STATE	SUCCESSION TO	CONSTITUTION OR STATUTE	ORDER OF SUCCESSION	APPOINTED OR ELECTED	CONDITIONS
Louisiana	Governor	Cons. Art.IV	Lt. Governor Secretary of State Attorney General Treasurer Presiding Sen. Off. House Speaker	Elected Elected Elected Elected Sen. Elected Hse. Elected	Successor serves for the remainder of the term. The governor appoints and the legislature confirms a new Lt. Governor. He is not eligible to succeed however, to the Governor's position. The constitution states further succession may be determined by law; however no statute was found.
Maine	Governor	Cons. Art. V	Senate President	Sen. Elected	If the office becomes vacant more than 90 days before primary election for a bienniel election, a Governor is elected at that bienniel election and serves for the remainder of the term.
Maryland	Governor	Cons. Art.II	Lt. Governor	Elected	A Lt. Governor is appointed by the Governor and confirmed by the majority of a joint session. If both seats become empty, the assembly elects a new Governor. The Senate President serves as Acting Governor until that time.
Massachusetts	Governor	Cons. Ch. 2	Lt. Governor	Elected	Serves for remainder of the term.
Michigan	Governor	Cons. Art. V	Lt. Governor Sec. of State Attorney General	Elected Elected Elected	Successor serves for remainder of the term. Order of succession pertains to elected officials only, not those appointed to fill a vacancy. The constitution states that further succession may be determined by law; however, no statute was found.
Minnesota	Governor	Cons. Art. V MS 4.06	Lt. Governor Senate President House Speaker Secretary of State State Auditor State Treasurer Attorney General	Election Sen. Elected Hse. Elected Elected Elected Elected Elected	Successor serves for remainder of term. The Senate President succeeds to the Lt. Gov. office. After the Senate President, all successors are for the governor's office. If the Senate President succeeds to governor, the Lt. Governor office remains vacant.
Mississippi	Governor	Cons. Art. V	Lt. Governor Sen. Pres pro tem House Speaker	Elected Sen. Elected Hse. Elected	Successor serves for the remainder of the term. If all three mentioned seats are vacant, the Sec. of State convenes Senate to elect a Pres. pro tem.

STATE	SUCCESSION TO	CONSTITUTION OR STATUTE	ORDER OF SUCCESSION	APPOINTED OR ELECTED	CONDITIONS
Missouri	Governor	Cons. Art.IV	Lt. Governor	Elected	Successor serves for the remainder of the term.
			Sen. Pres.pro tem	Sen. Elected	
			House Speaker	Hse. Elected	
			Sec. of State	Elected	
			State Auditor	Elected	
			State Treasurer	Elected	
			Attorney General	Elected	
Montana	Governor	Cons. Art.VI	Lt. Governor	Elected	Successor serves for the remainder of the term.
		MS 2-16-514	Senate President	Sen. Elected	If the Lt. Gov. or Sen. President succeeds to
			House Speaker	Hse. Elected	Gov., they appoint a Lt. Gov.; if the House Speaker succeeds, the legislature elects a Lt. Governor in joint session.
Nebraska	Governor	Cons. Art.IV	Lt. Governor	Elected	Successor serves until vacancy is filled.
			Speaker of the Leg.	Leg. Elected	
		NS 84-120	Chair,Exec.Board of Leg. Council,	Leg. Elected	
			Chair,Comm.on Comm.	Leg. Elected	
			Chair, Judiciary	Leg. Elected	
			Chair, Government	Leg. Elected	
			Chair, Military & Veterans Affairs	Leg. Elected	
			Chair, Approp.	Leg. Elected	
			Chair, Revenue	Leg. Elected	
			Chair, Education	Leg. Elected	
			Chair, Banking,Commerce & Insurance	Leg. Elected	
			Chair, Public Work	Leg. Elected	
			Chair, Ag. & Envir.	Leg. Elected	
			Chair, Hlth&Welfare	Leg. Elected	
			Chair,Misc.Subjects	Leg. Elected	
			Chair, Urban Affair	Leg. Elected	
			Chair, Labor	Leg. Elected	
			Chair, Const.Rev.	Leg. Elected	

STATE	SUCCESSION TO	CONSTITUTION OR STATUTE	ORDER OF SUCCESSION	APPOINTED OR ELECTED	CONDITIONS
Nevada	Governor	Cons. Art. V	Lt. Governor	Elected	Serves for the remainder of the term.
New Hampshire	Governor	Cons. Art.49	Senate President House Speaker Secretary of State State Treasurer	Elected Elected Leg. Elected Leg. Elected	Successor serves for the remainder of the term. The Secretary of State and State Auditor are entitled to serve only until the Senate or House elects a President or Speaker.
New Jersey	Governor	Cons. Art. V	Senate President Assembly Speaker	Sen. Elected Assm.Elected	Successor serves until the next general election at which time a Governor is elected for the unexpired portion of the term. The constitution states further succession may be determined by statute; however, no statute was found.
New Mexico	Governor	Cons. Art. V	Lt. Governor Secretary of State Sen. Pres. pro tem House Speaker	Elected Elected Sen. Elected Hse. Elected	Serves for the remainder of the term.
New York	Governor	Cons. Art.IV	Lt. Governor Sen. Pres. pro tem Assembly Speaker	Elected Sen. Elected Assm.Elected	Lt. Governor serves for remainder of the term. Sen. Pres. and Assembly Speaker serve until next general election to be held not more than 3 mo. after both Gov. & Lt. Gov. seats become vacant.
N. Carolina	Governor	NCS 174.11	Lt. Governor Sen. President House Speaker Secretary of State State Auditor State Treasurer Supt. of Pub. Inst. Attorney General Agriculture Comm . Labor Comm. Insurance Comm.	Elected Sen. Elected Hse. Elected Elected Elected Elected Elected Elected Elected Elected Elected	Holds office for remainder of term.

STATE	SUCCESSION TO	CONSTITUTION OR STATUTE	ORDER OF SUCCESSION	APPOINTED OR ELECTED	CONDITIONS
N. Dakota	Governor	NDS 44.2.3 NDS 54.47.3	Lt. Governor Secretary of State House Speaker Sen. Pres. pro tem Attorney General	Elected Elected Hse. Elected Sen. Elected Elected	Successor serves for remainder of term. Only elected officials are eligible for succession, not those appointed to fill a vacancy. If none of the listed officials may serve, line of succession moves to the ex-Governors, the most recent one serving first.
Ohio	Governor	Cons.Art.III	Lt. Governor Senate President House Speaker	Elected Sen. Elected Hse. Elected	Serves for the remainder of the term. When both Gov. & Lt. Gov. seats are vacant prior to the expiration of the the first 20 months of the term, the Gov. and Lt. Gov. are elected at the next gen. election held in an even numbered year.
Oklahoma	Governor	Cons. Art.VI	Lt. Govenor Sen. Pres. pro tem House Speaker	Elected Sen. Elected Hse. Elected	Lt. Governor serves for the remainder of the term. Sen. Pres. and House Speaker serves "until the vacancy is filled."
Oregon	Governor	Cons. Art. V	Secretary of State Treasurer Sen. Pres. pro tem House Speaker	Elected Elected Sen. Elected Sen. Elected	Serves until the next election. An appointed official may not succeed to office.
Pennsylvania	Governor	Cons. Art.IV	Lt. Governor Sen. Pres. pro tem	Elected Sen. Elected	Serves for the remainder of the term. The Sen. Pres. succeeds to Lt. Gov. office when the Lt. Gov. succeeds to Gov.
Rhode Island	Governor	Cons. Art. 7	Lt. Governor Presiding Sen.Off.	Elected Sen. Elected	Holds office until the next annual election.
S. Carolina	Governor	Cons. Art.IV	Lt. Governor Sen. Pres. Pro tem	Elected Sen. Elected	Holds office until the next general election. Constitution states that further succession may by determined by law; no statute was found.
S. Dakota	Governor	Cons. Art.IC SDS 1-7-4.1	Lt. Governor Hse. Speaker Sen. Pres. pro tem Hse.Spkr. pro tem Secretary of State	Elected Hse. Elected Sen. Elected Hse. Elected Sen. Elected	Successor serves for remainder of term. Governor appoints new Lt. Governor who is confirmed by the legislature, and is not eligible for succession.

STATE	SUCCESSION TO	CONSTITUTION OR STATUTE	ORDER OF SUCCESSION	APPOINTED OR ELECTED	CONDITIONS
Tennessee	Governor	Cons.Art.III	Senate Speaker House Speaker	Sen. Elected Hse. Elected	The Senate Speaker is by statute Lt. Governor. If succession occurs within the first 18 months, successor holds office until the next general election; after the 1st 18 mo. of the term, the successor serves for the remainder of the term.
Texas	Governor	Cons. Art.IV	Lt. Governor Senate President	Elected Sen. Elected	Holds office for the remainder of the term.
Utah	Governor	Cons.Art.VII	Secretary of State Sen. Pres. pro tem	Appointed Sen. Elected	Holds office until the next general election.
Vermont	Governor	VS 3.4	Lt. Governor House Speaker	Elected Hse. Elected	Holds office for the remainder of the term.
Virginia	Governor	Cons. Art. V	Lt. Governor Attorney General House Speaker	Elected Elected Hse. Elected	Holds office for the remainder of the term.
Washington	Governor	Cons. Ch.III	Lt. Governor Secretary of State State Treasurer State Auditor Attorney General Supt. of Pub. Inst. Comm. of Pub. Lands	Elected Elected Elected Elected Elected Elected Elected	If the vacancy occurs more than 30 days before a general election, then a new Governor is elected at that election.
W. Virginia	Governor	Cons.Art.VII	Senate President House Speaker	Sen. Elected Hse. Elected	If vacancy occurs before the first 3 years of term a new election must be held.
Wisconson	Governor	Cons. Art. V	Lt. Governor Secretary of State	Elected Elected	Holds office for the remainder of the term.

STATE	SUCCESSION TO	CONSTITUTION OR STATUTE	ORDER OF SUCCESSION	APPOINTED OR ELECTED	CONDITIONS
Wyoming	Governor	WS 9-1-211 9-1-212	Secretary of State Senate President House Speaker State Auditor State Treasurer Supt. of Pub. Inst. Senate Vice-Pres H. Speaker pro tem	Elected Sen. Elected Hse. Elected Elected Elected Elected Sen. Elected Hse. Elected	Serves until the end of the term if vacancy occurs less than 60 days before a general election. If it occurs more than 60 days before a general election, a Governor is elected for the unexpired term at that election.

4/6

COMMITTEE REPORT

HOUSE

FURTHER: JUDICIARY

(7)

3/23/83

Date: 3/25/83

Mr. Speaker:

The Committee on STATE AFFAIRS has had SS HB 34

An Act regulating succession to the office of lieutenant governor and providing for an acting governor.

under consideration and reports it back as follows:

[X] do pass [ ] do not pass

[ ] do pass with attached amendments(s)

[X] replace with SS for SS HB 34 [ ] same title [X] new title

and recommends

[ ] AND attaches a "Letter of Intent" [X] New Fiscal Note and [X] Zero Fiscal Note Attached

[ ] reports it back without recommendation

[ ] referred to the Committee

Sup 34

MEMBERS SIGNING DO PASS

Milt Abbott

Walter R Furnace

Ronald J. Farm

John J. Crudden

Dick Shultz

M. K. Miller

mm miller

MEMBERS HAVING OTHER RECOMMENDATIONS:

Rep Milt Abbott

CHAIRMAN

H 60

STATE OF ALASKA
PRELIMINARY STATEMENT OF FISCAL IMPACT

Bill No: SS HB 34 Date on Bill: 3/23
Title: regulating succession to the office of lieutenant governor
Sponsor: Furnace
Requestor: House State Affairs Committee

1. Estimated fiscal impacts on: personal services, operating budget

a. Expenditures:

(Thousands of Dollars)

			FY 83	FY 84	FY 85	FY 86	FY 87	
Capital								
Operating							1375.6	
Total								

b. Revenues:

Revenue								

2. Source of funds to offset fiscal impact of bill:

3. Assumptions: a special election, held soon after the 1986 General election, with a 6% inflation factor figured from the present estimate of a one-question special election held in 1983, $1,155,000.

4. Disclaimer:
This statement has not been reviewed by the OMB in the Office of the Governor. It do not represent the policy of the Sheffield Administration or the final estimate of fis impact.

Prepared By: TPThoma Information Officer Phone: 4611
Division: Elections Date: 3/29

Approved by Commissioner: Date:
Department:

5. Distribution:
Original to Legislative Finance
Copy to OMB

STATE OF ALASKA
FISCAL NOTE

Revision Date , 1983

I. REQUEST

Bill/Resolution No.: SS HB 34

Title: "An Act regulating succession to the office of lt. gov. & providing for an acting governor."

Sponsor: Furnace

Requestor: House State Affairs

II. FISCAL DETAIL

Agency Affected: Office of the Gover

Program Category Affected: Exec Operati

BRU, Program or Subprogram(s) Affected: Lt. Governor's Office

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 83	FY 84	FY 85	FY 86	FY 87	FY 88
OPERATING						
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 COMMODITIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC						
TOTAL OPERATING	-0-	-0-	-0-	-0-		
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND	-0-	-0-	-0-	-0-		
FEDERAL FUNDS						
OTHER (Specify Source)						

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

III. SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

No fiscal impact.

IV. ANALYSIS: Attach a separate page for any Analysis

Prepared By: Michael A. Nizich Phone: 465-3616

Division: Administrative Services Date: 4/4/83

Approved by Commissioner: Laura J. Herman Date: 4/4/83

Department: Office of the Governor

Distribution:

Original to Legislative Finance
Copy to Office of Management and Budget (for Legislature introduced bills)
Copy to Department (for Governor introduced bills)
Copy to Sponsor
Copy to Requestor (if different from Sponsor)

3/84

ANALYSIS: SSHB 34 Page 2 of 2

This bill does not change the existing law for conducting a special election; however, as a reminder, if in the event a special election was required, the approximate cost to do so would be $952.7.

HB

38

THE LEGISLATURE OF THE STATE OF ALASKA JDD
THIRTEENTH LEGISLATURE

FISCAL NOTE

[X] Expenditure Type
[ ] Revenue Type

I. REQUEST
Bill/Resolution No. HB 38
Title AN ACT RELATING TO AGE LIMITS UNDER TITLE 4
Requested by _____ Date 1/21/83

II. FISCAL DETAIL
Agency Affected DEPARTMENT OF PUBLIC SAFETY
Program Category Affected ADMINISTRATION OF JUSTICE
BRU, Program, Or Subprogram(s) Affected ALASKA STATE TROOPERS
(Note: If more than one budget component is affected, separate line-item amounts and funding for each component in the analysis section.)

EXPENDITURES (Thousands of Dollars)

	FY 83	FY 84	FY 85	FY 86	FY 87	FY 88
100 PERSONAL SERVICES						
200 TRAVEL						
300. CONTRACTUAL						
400 COMMODITIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC.						
TOTAL	- 0 -	- 0 -	- 0 -			

FUNDING (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER (Specify Source)						

POSITIONS

FULL TIME						
PART TIME						
TEMPORARY						

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

NO FISCAL IMPACT

RECEIVED
FEB 4 1983
LEGISLATIVE FINANCE

IV. DATE 1/21/83 PREPARED BY F.C. ALLAN Phone 269-5691
DIVISION ALASKA STATE TROOPERS Initials
DEPARTMENT OF PUBLIC SAFETY Initials 1/26

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

33-001 (Rev. 12-[illegible]) OMB Reviewed by: Eric Lasehover

THE LEGISLATURE OF THE STATE OF ALASKA
THIRTEENTH LEGISLATURE

JUD

FISCAL NOTE

I. REQUEST
Bill/Resolution No. HB 38
Title An act relating to age limits under Title 4, Alcoholic Beverages
Requested by M.M. Miller Date 1/17/83

II. FISCAL DETAIL
Agency Affected Division of Insurance
Program Category Affected Public Protection
BRU, Program, Or Subprogram(s) Affected Division of Insurance
(Note: If more than one budget component is affected, separate line-item amounts and funding for each component in the analysis section.)

EXPENDITURES (Thousands of Dollars)

	FY 83	FY 84	FY 85	FY 86	FY 87	FY 88
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 COMMODITIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS,CLAIMS,ETC.						
TOTAL		0	0	0		

FUNDING (Thousands of Dollars)

GENERAL FUND	0					
FEDERAL FUNDS	0					
OTHER (Specify Source)	0					

POSITIONS

FULL TIME						
PART TIME						
TEMPORARY						

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

RECEIVED
FEB 9 1983
LEGISLATIVE FINANCE

IV DATE January 25, 1983 PREPARED BY Kenneth C. Moore, Div of Insurance
AGENCY Commerce & Economic Development
PHONE 465-2515

Original: Legislative Finance
cc: Budget and Management
Prime Sponsor (First Legislator Named)
33-001 (Rev.) CMB Reviewed by: Guy Bell

HB

48

ual statement when

pay to the director
AS 21.06.250. (§ 1

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spital and medical

(c) A domestic company is exempt from taxation under this section for a period of five years from the date of its organization.

(d) An authorized insurer shall, with respect to all wet marine and transportation contracts written in this state during the preceding calendar year, before April 1 of each year, pay to the director a tax of three-quarters of one per cent on its gross underwriting profit. The gross underwriting profit is computed by deducting from the net premiums (i.e., gross premiums less all return premiums and premiums for reinsurance), on wet marine and transportation insurance contracts, the net losses paid (i.e., gross losses paid, less salvage and recoveries on reinsurance ceded) during the calendar year under the contracts. In the case of an insurer issuing participating contracts, the gross underwriting profit shall not include, for computation of the tax prescribed by this section, the amounts refunded or paid as participation dividends by the insurers to the holders of the contracts.

(e) Payment to the director by an insurer of the tax upon its premium required by this section shall be in lieu of all other taxes imposed by the state upon premiums, franchise, privilege or other taxes measured by income of the insurer commencing with the taxable year beginning January 1, 1967.

(f) The state hereby pre-empts the field of imposing excise, privilege, franchise, income, license, permit, registration, and similar taxes, licenses, and fees upon insurers and their general agents, agents and representatives as such; and on the intangible property of insurers or agents; and all political subdivisions of agencies in the state, including home rule boroughs or cities, are prohibited from imposing or levying upon insurers, or upon their general agents, agents and representatives as such, any tax, license, or fee. Provided that this subsection sha.. not be construed as prohibiting the imposition by political subdivisions of taxes upon real and tangible personal property of insurers and their general agents, agents and representatives.

(g) The director may suspend or revoke the certificate of authority of an insurer which fails to pay its taxes as required under this section.

(h) The provisions of this section do not apply to title insurance companies. A premium tax on title insurance companies shall be levied in accordance with the provisions of AS 21.66.110. (§ 1 ch 120 SLA 1966)

Sec. 21.09.220. Counter signature by resident agent—Application of title. No company, association, reciprocal exchange, person or persons authorized to transact insurance or offer indemnity contracts in this state excepting reciprocal mutuals organized under the laws of this state and life insurance companies or life in-

surance contracts and health and accident contracts and annuity contracts written therein, may make, write, place or cause to be made, written or placed, a policy or contract of insurance or indemnity of any kind or character, or a general or floating policy covering risks on property located in the state, liability created by or accruing under the laws of this state, or undertakings to be performed in this state, except through their licensed resident insurance agents, who shall countersign all policies, riders and endorsements or indemnity contracts so issued and collect the premiums, or see to their collection in due course, and who shall keep a record of the same. The record shall contain the usual and customary information concerning the risk undertaken, including the full premium paid or to be paid, to the end that the state may receive the taxes required by law to be paid on premiums collected for insurance on property or undertakings located in this state. No agent shall pay or forward a premium or application for insurance or in any manner secure, help or aid in the placing of insurance, or effect a contract of insurance or indemnity upon property, liability or undertakings located in this state with an insurer which is not authorized to transact its business in this state; except that if two or more insurers issue a single policy of insurance, the policy may be countersigned on behalf of all insurers appearing on it by a licensed agent, resident of the state, or any one of the insurers. The practice of signing policies in blank is likewise prohibited. (§ 1 ch 120 SLA 1966)

Sec. 21.09.230. Exception. Nothing contained in § 220 of this chapter shall be construed as preventing the free and unlimited right to negotiate wholly outside this state contracts of insurance by licensed nonresident agents and brokers, provided the policies, dailies, endorsements or evidence of the contracts covering properties or insurable interests in this state are countersigned by the resident agent of this state, in which event the countersigning agent shall receive a commission of not less than five per cent of the premium paid; provided, however, that the countersigning commission may not exceed one-half of the total commission and provided further that for countersigning these insurance policies the resident agent shall not be paid more than $50 nor less than $1 for countersigning a policy or bond; and provided further, that if the licensed nonresident agent or broker or the insurer assuming the risk desires the resident agent to render additional services during the life of a policy the compensation to be paid to the countersigning agent shall be a matter of contract between the parties in interest. Sections 220—250 of this chapter do not apply to the following contracts:

(1) policies covering property received for shipment or delivery, or in transit while in possession or custody of a common carrier,

or the rolling stock, vessels, aircraft, or other property of a common carrier used and employed by it in interstate or foreign commerce, or insurance of aircraft owned or operated by manufacturers of aircraft;

(2) policies issued by insurers not using agents in the general solicitation of business;

(3) contracts of reinsurance or retrocessions made by and for admitted companies;

(4) contracts of life and disability insurance and annuity contracts;

(5) contracts of title insurance;

(6) bid bonds issued in connection with a public or private contract;

(7) wet marine and transportation insurances. (§ 1 ch 120 SLA 1966)

Sec. 21.09.240. Affidavit attached to annual statement. At the time the annual statement of every such company is filed with the director there shall be attached to it an affidavit of the president, manager or chief executive officer in the United States stating that §§ 220—250 of this chapter have not been violated. (§ 1 ch 120 SLA 1966)

Sec. 21.09.250. Unlawful acts defined. It is unlawful for an insurer doing business in this state to make, write, place or cause to be made, written or placed in this state a policy, duplicate policy or contract of insurance of any kind or character, or general or floating policy upon persons or property resident, situated or located in this state, from or through a broker, agent, surplus line broker or person who has not secured a license in this state. No insurer may pay a commission or any form of remuneration to a person, firm or organization for the writing or placing of insurance coverage in this state unless that person, firm or organization holds a license issued by the director or his successor. (§ 1 ch 120 SLA 1966)

Sec. 21.09.260. Violations—Penalties. An insurer violating the provisions of §§ 220—250 of this chapter is guilty of a misdemeanor and upon conviction is punishable by a fine not more than $500 for each violation. In the event of conviction the insurance director may suspend or revoke the license of the insurer, but violation shall not invalidate the insurance contract. (§ 1 ch 120 SLA 1966)

Sec. 21.09.270. Retaliation. (a) If, under the laws of another state or foreign country, taxes, licenses and other fees, in the aggregate, and fines, penalties, deposit requirements or other material obligations, prohibitions or restrictions are or would be im-

THE LEGISLATURE OF THE STATE OF ALASKA
THIRTEENTH LEGISLATURE

FISCAL NOTE

I. REQUEST
Bill/Resolution No. HB 48
Title An act repealing certain insurance laws
Requested by Martin Date 1/18/83

II. FISCAL DETAIL
Agency Affected Division of Insurance
Program Category Affected Public Protection
BRU, Program, Or Subprogram(s) Affected Division of Insurance
(Note: If more than one budget component is affected, separate line-item amounts and funding for each component in the analysis section.)

EXPENDITURES (Thousands of Dollars)

	FY 83	FY 84	FY 85	FY 86	FY 87	FY 88
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 COMMODITIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS,CLAIMS,ETC.						
TOTAL		0	0	0		

FUNDING (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER (Specify Source)						

POSITIONS

FULL TIME						
PART TIME						
TEMPORARY						

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

IV. DATE January 25, 1983 PREPARED BY Kenneth C. Moore, Div of Insurance
AGENCY Commerce & Economic Development
PHONE 465-2515

Original: Legislative Finance
cc: Budget and Management
Prime Sponsor (First Legislator Named)
33-001 (Rev.)
OMB Reviewed by: Guy Bell

DATE	SEQ	PAGE	LEGISLATIVE ACTION
01/18/83	01	0038	FIRST READING -- COMMITTEE REPORTS
02/04/83	02	0169	L&C -- DP06
			JUDICIARY
			RULES
****	**	**	*** *** ***

AMENDED TITLE:
AN ACT REPEALING CERTAIN INSURANCE LAWS

PRIME SPONSOR: MARTIN.

CO-SPONSORS:

CURRENT STATUS: 2/04/83 IN (H) JUDICIARY

HB

49

STATE OF ALASKA

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

Bill Sheffield, Governor

POUCH K – STATE CAPITOL
JUNEAU, ALASKA 99811
PHONE: (907) 465-3600

April 25, 1983



The Honorable Charlie Bussell
Chairman, House Judiciary Committee
Alaska State Legislature
Pouch V
Juneau, AK 99811

Re: CS for HB 49
Our file no.: 366-568-83

Dear Representative Bussell:

This letter responds to the several questions relating to the nepotism restrictions proposed in the CS for HB 49, now pending before the House Judiciary Committee.

As discussed at the prior committee hearing, the state is presently a party to litigation which questions the permissible scope of any nepotism prohibition established under the Personnel Rules. Public Employees Local 71 v. State, Case No. 82-4931 Civ. (Third Judicial District). The complaint, filed in June 1982, alleges, in pertinent part, that the director of the division of personnel exceeded statutory authority in adopting Personnel Rule 13 09. The state's position in the litigation is that the personnel Rule was adopted under the authority of AS 39.25. At the present time, the parties are pursuing settlement negotiations.

A brief summary of the legal questions posed in the litigation may prove helpful to the committee. Directly at issue in the litigation is whether AS 39.25.150 confers the requisite statutory authority for the promulgation of any Personnel Rules which relate to a nepotism restriction. See AS 44.62.020. See also Kelly v. Zamarello, 486 P.2d 906, 910 n. 19 (Alaska 1971). If adoption of a nepotism restriction is authorized under AS 39.25, the inquiry turns to whether the rules are "in accordance with standard prescribed by other provision of law." AS 44.62.020. See Boehl v. Sabre Jet Room, Inc., 349 P.2d 585 (Alaska 1960). Our research has not as yet disclosed any Alaska case authority which offers a direct answer to whether it is per-

missible to adopt under the authority of the enabling statute a regulation which extends, but is not inconsistent with, the policy expressed in a separate statutory provision. Two factors may prove relevant were the litigation to proceed to a judicial resolution. First, regulations are typically accorded a presumption of validity. Alaska Intern Industries, Inc. v. Musarra, 602 P.2d 1240 (Alaska 1979). Second, the legislature has amended AS 39.25 subsequent to the enactment of AS 39.10.010, as recently as last session, presumably with knowledge of the long-standing nepotism prohibition in the Personnel Rules. However, since the matter is presently in litigation, any further comment on the merits of the pending litigation would be inappropriate. If, ultimately, the matter is not resolved in the immediate litigation, the Department of Law will review whether the director of personnel enjoys the authority to establish reasonable nepotism restrictions beyond the scope of AS 39.10.010. We are in formed that in the interm the division of personnel does not intend to enforce Personnel Rule 13 09. See 1979 Inf. Att'y Gen. Op. (Feb. 13; J-66-191-79).

The committee also questioned whether any legislative action to amend AS 39.10.010 would unduly prejudice the state's position in the litigation. That the propriety of Personnel Rule 13 09 is questioned in pending litigation should not, in our view, impair the Legislature's ability to address this matter. Any inference drawn from the legislature's action or, alternatively, inaction would be speculative at best, and would not be a determining factor in the litigation. Moreover, an appropriate letter of intent would dispel whatever inference may be suggested due to prospective legislative reform.

The committee also raised several questions broadly relating to the scope of CSHB 49. The proposed bill establishes nepotism restrictions specific to state "department[s] or agenc[ies]." Absent specific statutory provision to the contrary, the nepotism restrictions would not apply, for example, to the appointment of members or employees of regulatory boards and commissions, such as those regulatory bodies established in Title 8 of the Alaska Statutes. Further, in its most expansive scope the restrictions concern only the relationship between a prospective employee and the commissioner, deputy commissioner or executive head of a particular agency or department. The bill does not, therefore, address the situation of a relationship between two persons not employed within the same department or agency. The example raised at the prior committee hearing, the appointment of a legislator's spouse or child to a position in a state agency or, for that matter, to a position on any legislator's personal staff, would not be within the ambit of the present bill. Of course, other rules adopted by the legislature to

manage internal affairs may address such a situation. Finally, a question was raised as to whether it would be appropriate to limit the coverage to persons related by blood or marriage. More specifically, the question concerned the possible extension of the nepotism prohibition to persons in a meretricious relationship. Without addressing any policy implications, we caution that amending the bill to obtain the contemplated policy objectives would render the legislation extremely vulnerable to challenge as violative of the constitutional guarantees to equal protection, due process and personal privacy.

Please let us know if we can offer any further assistance on this matter.

NORMAN C. GORSUCH
ATTORNEY GENERAL

By: Jonathan B. Rubini
Jonathan B. Rubini
Assistant Attorney General

JBR:jb

POUCH V
JUNEAU, ALASKA 99811
465-4990

P.O. BOX 4-13[illegible]
ANCHORAGE, ALASKA 99509
248-1515

CHAIRMAN
HOUSE JUDICIARY COMMITTEE
MEMBER
HOUSE RESOURCES COMMITTEE
MEMBER
SPECIAL COMMITTEE ON FISHERIES
MEMBER
LEGISLATIVE COUNCIL
MEMBER
ALASKA CODE REVISION COMMISSION

Representative Charlie Bussell
ALASKA STATE LEGISLATURE
HOUSE OF REPRESENTATIVES

April 26, 1983

Mr. Kenneth L. Brown
1501 West 33rd Avenue
Anchorage, Alaska 99503

Dear Mr. Brown:

Thanks for taking the time to write expressing your interest in House Bill 49, an Act relating to nepotism.

The House Judiciary Committee has had House Bill 49 under consideration during several hearings. I tend to agree with you. I see little or no need for this legislation.

It seems to me that our leaders and supervisors should be able to control the work being done by individuals employed for that purpose.

Thank you again for writing and for becoming a part of the legislative process.

Very truly yours,

Representative Charlie Bussell
Chairman, Committee on Judiciary

CB:lyn

JUDICIARY
Referral



REPRESENTATIVE CHARLES BUSSE
HOUSE JUDICIARY COMMITTEE

RE: HB-49 (NEPOTISM)

I VEHEMENTLY OPPOSE THIS BILL, AND I SUGGEST YOU DO ALL IN YOUR POWER TO KILL IT. I WORK FOR DOT/PF — IT IS A LARGE STATE DEPARTMENT WITH A LARGE POOL OF EMPLOYEES — I SUGGEST THAT SOMEONE SEE HOW MANY EMPLOYEES WOULD BE AFFECTED IF THIS IS ENACTED.

WHAT PURPOSE DOES THE BILL SERVE THAT THE EXISING LAW DOES NOT? AS LONG AS A PERSON DOES NOT USE THEIR POSITION OR HAVE ANY INFLUENCE IN THE HIRE OF A RELATIVE, ANY FURTHER RESTRICTIONS ARE AN INVASION OF THEIR CIVIL RIGHTS. AND WHAT DOES MARITAL STATUS HAVE TO DO WITH PROMOTIONS? — WHY NOT PASS A LAW AGAINST CO-HABITATION BETWEEN EMPLOYEES? — IT IS A PROPOSAL THAT WOULD BE A FLAGRANT VIOLATION OF PRIVACY. KILL IT!

KENNETH L. BROWN
1501 W 33RD AVE
ANCHORAGE, ALASKA
99503

Alaska State Legislature

BLUE RIBBON COMMISSION ON THE
STATE PERSONNEL ACT

Senator Bill Ray, Chairman

Pouch YG
Mail Stop 3123
Juneau, Alaska 99811
(907) 465-4442

JUNEAU, ALASKA

MEMORANDUM

March 2, 1983

TO: House Judiciary Committee

FROM: Teresa B. Cramer
Administrative Assistant

SUBJECT: Committee Substitute for House Bill 49 (State Affairs)
Nepotism in State Government

The existing statute prohibiting nepotism in state employment forbids only the employment of anyone related to the executive head of a department or agency. The statute states in full:

> It is unlawful for a person who is the spouse of or is related by blood within and including the second degree of kindred to the executive head of a principal state department or agency to be employed in that department or agency. AS 39.10.010.

The Personnel Rule is more extensive, prohibiting the employment of relatives of the head of a division or subdivision within that division or subdivision. In addition, the Rule prohibits the employment of two related persons in the same agency unless express approval is given by both the appointing authority and the Director of Personnel. A copy of the Rule is attached.

The scope of the Personnel Rule is broader than the statutory authority granted in AS 39.10.010. The rule-making authority given to the Personnel Board by the State Personnel Act may not extend to nepotism, since the nepotism statute is not part of that Act. The Attorney General has advised the Division of Personnel that the nepotism rule exceeds the scope of statutory authority. A lawsuit has been filed challenging the Department of Transportation's implementation of nepotism prohibitions.

The Blue Ribbon Commission recommends that legislation prohibiting nepotism in state employment be adopted to provide statutory authority for the Personnel Rule. The prohibition against employing relatives does limit the opportunities for some Alaskans to find state jobs. The disadvantage to those people should be weighed against the appearance of impropriety and favoritism which is created by people working for a close relative who is a highly-placed state official.

Bill Analysis

Page 1 Line 9 — The first section of the Committee Substitute is based on the existing statute and Personnel Rule. The first paragraph prohibits the appointment of relatives or the spouse of the commissioner, assistant or deputy commissioner of a department or the relatives or spouse of an executive head of an agency. The reference to AS 39.25.020 means that the prohibition will extend to departments or agencies in all branches of government.

Paragraph (a) differs from the existing Personnel Rule and the statute by including reference to assistant and deputy commissioners and by its application to departments and agencies which are not part of the executive branch of government. It also differs by prohibiting the appointment rather than the employment of relatives. Prohibiting appointments of relatives permits people whose relationship is created (by marriage or adoption) after both are employed within a department to continue their employment even if one is the commissioner, deputy or assistant commissioner. However, the relative could not be promoted while related to the commissioner, since a promotion is an appointment to a higher position.

Line 16 — Paragraph (b) prohibits the appointment of relatives of a division director to a position within that division. Like the first section, this prohibition extends to all branches of government through reference to AS 39.25.020.

Line 21 — Paragraph (c) requires that before two relatives may be employed in the same department, the commissioner must approve the appointment in writing. This prohibition is limited to the executive branch.

Line 27 — The commissioner may not approve an appointment if one of the people will be working in a direct supervisory relationship to the other spouse or relative.

Page 2 Line 1 — The commissioner may not approve an appointment which is prohibited by paragraphs (a) or (b).

Line 3 — Paragraph (d) defines "second degree of kindred" as it is defined in the current Personnel Rule. The definition extends beyond the normal definition by including aunts and uncles,

who are usually defined as being third degree kindred. The definition applies only to the nepotism statute.

"Second degree of kindred" is defined to include full, half, and step relationships. It does not include in-law relationships.

Line 7 The second section of the Committee Substitute provides for an immediate effective date.

TBC:lmk
Attachment

13 09.0 Nepotism

13 09.1 No person may be employed in a position in any agency who is the spouse of or is related by blood or marriage within and including the second degree of kindred to the appointing authority of the agency.

13 09.2 No person may be employed in a position in any division or subdivision of any agency who is the spouse of or is related by blood or marriage within and including the second degree of kindred to the head of the division or subdivision of the agency.

13 09.3 No person may be employed in a position in any agency who is the spouse of or is related by blood or marriage within and including the second degree of kindred to any other employee in the agency without the expressed approval of the appointing authority and the Director.

Alaska State Legislature

BLUE RIBBON COMMISSION ON THE
STATE PERSONNEL ACT

Senator Bill Ray, Chairman

Pouch YG
Mail Stop 3123
Juneau, Alaska 99811
(907) 465-4442

JUNEAU, ALASKA

MEMORANDUM

March 2, 1983

TO: House Judiciary Committee

FROM: Teresa B. Cramer
Administrative Assistant

SUBJECT: Committee Substitute for House Bill 49 (State Affairs)
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> It is unlawful for a person who is the spouse of or is related by blood within and including the second degree of kindred to the executive head of a principal state department or agency to be employed in that department or agency. AS 39.10.010.

The Personnel Rule is more extensive, prohibiting the employment of relatives of the head of a division or subdivision within that division or subdivision. In addition, the Rule prohibits the employment of two related persons in the same agency unless express approval is given by both the appointing authority and the Director of Personnel. A copy of the Rule is attached.

The scope of the Personnel Rule is broader than the statutory authority granted in AS 39.10.010. The rule-making authority given to the Personnel Board by the State Personnel Act may not extend to nepotism, since the nepotism statute is not part of that Act. The Attorney General has advised the Division of Personnel that the nepotism rule exceeds the scope of statutory authority. A lawsuit has been filed challenging the Department of Transportation's implementation of nepotism prohibitions.

The Blue Ribbon Commission recommends that legislation prohibiting nepotism in state employment be adopted to provide statutory authority for the Personnel Rule. The prohibition against employing relatives does limit the opportunities for some Alaskans to find state jobs. The disadvantage to those people should be weighed against the appearance of impropriety and favoritism which is created by people working for a close relative who is a highly-placed state official.

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Paragraph (a) differs from the existing Personnel Rule and the statute by including reference to assistant and deputy commissioners and by its application to departments and agencies which are not part of the executive branch of government. It also differs by prohibiting the appointment rather than the employment of relatives. Prohibiting appointments of relatives permits people whose relationship is created (by marriage or adoption) after both are employed within a department to continue their employment even if one is the commissioner, deputy or assistant commissioner. However, the relative could not be promoted while related to the commissioner, since a promotion is an appointment to a higher position.

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TBC:lmk
Attachment

13 09.0 Nepotism

13 09.1 No person may be employed in a position in any agency who is the spouse of or is related by blood or marriage within and including the second degree of kindred to the appointing authority of the agency.

13 09.2 No person may be employed in a position in any division or subdivision of any agency who is the spouse of or is related by blood or marriage within and including the second degree of kindred to the head of the division or subdivision of the agency.

13 09.3 No person may be employed in a position in any agency who is the spouse of or is related by blood or marriage within and including the second degree of kindred to any other employee in the agency without the expressed approval of the appointing authority and the Director.

Sec. 39.10.010. Nepotism prohibited. It is unlawful for a person who is the spouse of or is related by blood within and including the second degree of kindred to the executive head of a principal state department or agency to be employed in that department or agency. (§ 1 ch 98 SLA 1959)

Am. Jur. 2d reference. — 63 Am. Jur. 2d, Public Officers and Employees, § 97.

Chapter 15. Official Bonds.

Section	Section
10. Form, amount, and conditions	60. Number of sureties
20. Obligation and effect	70. Justification of sureties
30. Action on bond	80. Release of sureties
40. Recovery on defective bond	90. Proceedings for release of sureties
50. Procedure when bond becomes insufficient	100. Failure to file new bond

Sec. 39.15.010. Form, amount, and conditions. The official bond of an officer or employee of the state required by statute, or rule or regulation under authority of law shall be in a form joint and several, and made payable to the state in the penal sum and with the conditions required by law. (§ 11-2-1 ACLA 1949)

Cross reference. — As to surety bonds furnished by the principal executive officer of each department and subordinate officials, see AS 39.05.050.

Am. Jur. 2d references. — 12 Am. Jur. 2d, Bonds, § 1 et seq.; 63 Am. Jur. 2d, Public Officers and Employees, §§ 122, 414-482.

Sec. 39.15.020. Obligation and effect. Bonds of state officers and employees are in force and obligatory upon the principal and sureties for breach of the condition of the bond committed during the time the officer or employee discharges the duties of or holds the office or appointment. Each bond is considered in force and obligatory upon the principal and sureties for the faithful discharge of all duties required of the officer or employee by any law enacted after the execution of the bond and this condition shall be set out in the bond. (§ 11-2-2 ACLA 1949)

Sec. 39.15.030. Action on bond. An official bond executed by a state officer or employee is in force and obligatory upon the principal and sureties to and for the state, and for the use and benefit of all persons injured or aggrieved by the wrongful act or default of the officer or employee in his official capacity or employment. A person injured or aggrieved may bring suit on the bond in his name. (§ 11-2-3 ACLA 1949)

I. REQUEST
Bill/Resolution [redacted] HB 49
Title An Act relating to nepotism in State employment
Requested by Abood Date 1-25-83

II. FISCAL DETAIL
Agency Affected Administration
Program Category Affected Centralized Administrative Services
BRU, Program, or Subprogram(s) Affected Labor Relations
(Note: If more than one budget component is affected, separate line-item amounts and funding for each component in the analysis section.)

EXPENDITURES (Thousands of Dollars)

		FY 82	FY 83	FY 84	FY 85	FY 86	FY 87
100	PERSONAL SERVICES						
200	TRAVEL						
300	CONTRACTUAL						
400	COMMODITIES						
500	EQUIPMENT						
600	LAND & STRUCTURES						
700	GRANTS, CLAIMS, ETC.						
	TOTAL	-0-	-0-	-0-	-0-	-0-	-0-

FUNDING (Thousands of Dollars)

GENERAL FUND	-0-						
FEDERAL FUNDS							
OTHER (Specify Source)							

POSITIONS

FULL TIME	-0-						
PART TIME	-0-						
TEMPORARY	-0-						

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

No fiscal impact.

Gary E. Stevenson

IV. DATE 1-25-83 PREPARED BY [illegible] P. Clark
AGENCY Division of Labor Relations
PHONE 465-4404
OMB Reviewed By: Liz Blecker

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

[illegible]

THE LEGISLATURE OF THE STATE OF ALASKA
THIRTEENTH LEGISLATURE

FISCAL NOTE

I. REQUEST
Bill/Resolution No. HB 49, SB 56
Title An Act relating to nepotism in State employment
Requested by House State Affairs Date January 24, 1983

II. FISCAL DETAIL
Agency Affected Administration
Program Category Affected Central Administrative Services
BRU, Program, or Subprogram(s) Affected Personnel
(Note: If more than one budget component is affected, separate line-item amounts and funding for each component in the analysis section.)

EXPENDITURES (Thousands of Dollars)

		FY 83	FY 84	FY 85	FY 86	FY 87	FY 88
100	PERSONAL SERVICES						
200	TRAVEL						
300	CONTRACTUAL						
400	COMMODITIES						
500	EQUIPMENT						
600	LAND & STRUCTURES						
700	GRANTS, CLAIMS, ETC.						
	TOTAL	0					

FUNDING (Thousands of Dollars)

GENERAL FUND	0						
FEDERAL FUNDS							
OTHER (Specify Source)							

POSITIONS

FULL TIME							
PART TIME							
TEMPORARY							

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

No fiscal impact presuming the Executive Branch will not be expected to monitor or enforce this Act in the Legislative or Judicial Branch.

IV. DATE January 24, 1983 PREPARED BY Frank Raye
AGENCY Administrator Personnel
PHONE 465-4430
OMB Reviewed By: Liz Bleckert

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

47D7/0121-7

(7)

COMMITTEE REPORT

HOUSE

2/28

1/18/83

FURTHER: JUDICIARY

Date: 2/25/83

Mr. Speaker:

The Committee on STATE AFFAIRS has had HB 49

"An Act relating to nepotism in state employment; and providing for an effective date"

under consideration and reports it back as follows:

[ ] do pass [ ] do not pass

[ ] do pass with attached amendments(s)

[X] replace with CS for (State Affairs) CSHB(SA) 49 [X] same title [ ] new title

and recommends it do pass

[ ] AND attaches a "Letter of Intent" [ ] New Fiscal Note

[ ] reports it back without recommendation [X] Zero Fiscal Notes Attached 2

[ ] referred to the _____ Committee

MEMBERS SIGNING DO PASS

Mike Abbott

John J Cardenas

Dick Shultz

Walt Furnace

Ronald L. Tanner

MEMBERS HAVING OTHER RECOMMENDATIONS:

W. Wallace - NO REC

Rep Mike Abbott
CHAIRMAN

H 60

HB 49 TITLE & SPONSOR SUMMARY 08:22 3/02/83 PAGE 1 OF 2

AMENDED TITLE:
AN ACT RELATING TO NEPOTISM IN STATE EMPLOYMENT; AND PROVIDING FOR AN EFFECTIVE DATE

PRIME SPONSOR: HOUSE RULES COMMITTEE.
CO-SPONSORS:
CURRENT STATUS: 2/28/83 IN (H) JUDICIARY

HB 49 HOUSE ACTION 08:22 3/02/83 PAGE 2 OF 2

DATE	SEQ	PAGE	LEGISLATIVE ACTION
01/18/83	01	0039	FIRST READING -- COMMITTEE REPORTS
02/28/83	02	0361	S.A. -- CS05, NR01
02/28/83	03	0361	TWO F/NOTES EQUAL ZERO
			JUDICIARY
			RULES
****	**	**	*** *** ***

neo-plas-tic \,nē-ə-'plas-tik\ *adj* [IS*] **1** : of, relating to, or constituting a neoplasm or neoplasia **2** : of or relating to neoplasticism

neo-plas-ti-cism \-'plas-tə-,siz-əm\ *n* [*ne-* + *plasticism*] : the de Stijl art principle in painting — **neo-plas-ti-cist** \-tə-səst\ *n*

Neo-pla-ton-ic \,nē-(,)ō-plə-'tän-ik, -plā-\ *adj* : of or relating to Neoplatonism or Neoplatonists

Neo-pla-to-nism \,nē-ō-'plāt-'n-,iz-əm\ *n* [ISV] **1** : Platonism modified in later antiquity to accord with Aristotelian, post-Aristotelian, and oriental conceptions that conceives of the world as an emanation from the One with whom the soul is capable of being reunited in trance or ecstasy **2** : doctrines similar to ancient Neoplatonism — **Neo-pla-to-nist** \-'n-əst\ *n*

neo-prene \'nē-ə-,prēn\ *n* [*ne-* + chloro*prene*] : a synthetic rubber made by the polymerization of chloroprene and characterized by superior resistance (as to oils)

neo-scho-las-ti-cism \-skə-'las-tə-,siz-əm\ *n* : a contemporary movement among Catholic scholars aiming to restate the methods and teachings of medieval Scholasticism in a manner suited to the intellectual needs of the present

neo-te-nic \,nē-ə-'tē-nik, -'ten-ik\ *adj* [ISV] : of, relating to, or exhibiting neoteny

neo-te-ny \'nē-ə-,tē-nē\ *n* [NL *neotenia*, fr. *ne-* + Gk *teinein* to stretch — more at THIN] **1** : attainment of sexual maturity during the larval stage **2** : retention of some larval or immature characters in adulthood

ne-o-ter-ic \,nē-ə-'ter-ik\ *adj* [LL *neotericus*, fr. L Gk *neōterikos* fr. Gk, youthful, fr. *neōterios* compar. of *neos* new, young — more at NEW] : recent in origin : MODERN

Neo-zo-ic \-'zō-ik\ *adj* : of, relating to, or constituting the entire period from the end of the Mesozoic to the present time

Ne-pali \nə-'pȯl-ē, -'päl-, -'pal-\ *n, pl* **Nepali** *also* **Nepalis** [Hindi *naipālī* of Nepal, fr. Skt *naipāliya*, fr. *Nepāla* Nepal] **1** : the Indic language of Nepal **2** : a native or inhabitant of Nepal — **Nepali** *adj*

ne-pen-the \ə-'pen(t)-thē\ *n* [L *nepenthes*, fr. Gk *nēpenthes*, neut. of *nēpenthēs* banishing pain and sorrow, fr. *nē-* not + *penthos* grief, sorrow; akin to Gk *pathos* suffering — more at NO, PATHOS] **1** : a potion used by the ancients to dull pain and sorrow **2** : something capable of causing oblivion of suffering — **ne-pen-the-an** \-thē-ən\ *adj*

neph-e-line \'nef-ə-,lēn\ *or* **neph-e-lite** \-,līt\ *n* [F *néphéline*, fr. Gk *nephelē* cloud — more at NEBULA] : a hexagonal mineral $KNa_3Al_4Si_4O_{16}$ that is a usu. glassy crystalline silicate of sodium, potassium, and aluminum common in igneous rocks — **neph-e-lin-ic** \,nef-ə-'lin-ik\ *adj*

neph-e-lin-ite \'nef-ə-lə-,nīt\ *n* [ISV] : a silica-deficient igneous rock having nepheline as the predominant mineral

neph-e-lom-e-ter \,nef-ə-'läm-ət-ər\ *n* [Gk *nephelē* cloud + ISV *-meter*] : an instrument for measuring cloudiness; *specif* : an instrument for determining the concentration or particle size of suspensions by means of transmitted or reflected light — **neph-e-lo-met-ric** \,nef-ə-lō-'me-trik\ *adj* — **neph-e-lom-e-try** \-'läm-ə-trē\ *n*

nephew \'nef-(,)yü, *chiefly Brit* 'nev-\ *n* [ME *nevew*, fr. OF *neveu*, fr. L *nepot-*, *nepos* grandson, nephew; akin to OE *nefa* grandson, nephew, Skt *napāt* grandson] **1 a** : a son of one's brother or sister or of one's brother-in-law or sister-in-law **b** : an illegitimate son of an ecclesiastic **2** *obs* : a lineal descendant; *esp* : GRANDSON

neph-o-scope \'nef-ə-,skōp\ *n* [Gk *nephos* cloud + ISV *-scope* — more at NEBULA] : an instrument for observing the direction and velocity of clouds

nephr- *or* **nephro-** *comb form* [NL, fr. Gk, fr. *nephros* — more at NEPHRITIS] : kidney ⟨*nephric*⟩ ⟨*nephrology*⟩

ne-phrid-i-al \nə-'frid-ē-əl\ *adj* : of or relating to a nephridium

ne-phrid-i-um \-ē-əm\ *n, pl* **ne-phrid-ia** \-ē-ə\ [NL] **1** : a tubular glandular excretory organ characteristic of various coelomate invertebrates **2** : a primarily excretory structure; *esp* : NEPHRON

neph-rite \'nef-,rīt\ *n* [G *nephrit*, fr. Gk *nephros*] : a compact tremolite or actinolite that is the less valuable kind of jade formerly worn as a remedy for kidney diseases

ne-phrit-ic \nə-'frit-ik\ *adj* **1** : RENAL **2** : of, relating to, or affected with nephritis

ne-phri-tis \nə-'frī-təs\ *n* [LL, fr. Gk, fr. *nephros* kidney; akin to ME *nere* kidney, Lanuvian *nehrundines* testicles] : acute or chronic inflammation of the kidney caused by infection, degenerative process, or vascular disease

neph-ro-gen-ic \,nef-rə-'jen-ik\ *adj* **1** : originating in the kidney **2** : developing into or producing kidney tissue

neph-ron \'nef-,rän\ *n* [G, fr. Gk *nephros*] : a single excretory unit esp. of the vertebrate kidney

ne-phro-sis \nə-'frō-səs\ *n* [NL] : degeneration of the kidneys chiefly affecting the renal tubules — **ne-phrot-ic** \-'frät-ik\ *adj or n*

ne plus ul-tra \,nē-,pləs-'əl-trə, ,nā-,plüs-'ül-\ *n* [NL, no further] **1** : the highest point capable of being attained : ACME **2** : the most profound degree of a quality or state

nep-o-tism \'nep-ə-,tiz-əm\ *n* [F *népotisme*, fr. It *nepotismo*, fr. *nepote* nephew, fr. L *nepot-*, *nepos* grandson, nephew — more at NEPHEW] : favoritism shown to a relative (as by giving an appointive job) on a basis of relationship

Nep-tune \'nep-,t(y)ün\ *n* [L *Neptunus*] **1 a** : the god of the sea in Roman mythology **b** : OCEAN **2** : the planet eighth in order from the sun — see PLANET table — **Nep-tu-ni-an** \nep-'t(y)ü-nē-ən\ *adj*

nep-tu-ni-um \nep-'t(y)ü-nē-əm\ *n* [NL, fr. ISV *Neptune*] : a radioactive metallic element that is chemically similar to uranium and is obtained in nuclear reactors as a by-product in the production of plutonium — see ELEMENT table

Ne-re-id \'nir-ē-əd\ *n* [L *Nereid-*, *Nereis*, fr. Gk *Nēreid-*, *Nēreis*, fr. *Nēreus* Nereus] : any of the sea nymphs held in Greek mythology to be the daughters of the sea-god Nereus

ne-re-is \'nir-ē-əs\ *n, pl* **ne-re-ides** \nə-'rē-ə-,dēz\ [NL, genus name, fr. L, Nereid] : any of a genus (*Nereis*) of usu. large often

ner-o-li *or* **ner-o-li oil** \'ner-ə-lē\ *n* [F *néroli*, fr. It *neroli*, fr. Anne Marie de La Trémoille, princess of *Nerole fl* 1670] : a fragrant pale yellow essential oil obtained from orange flowers and used esp. in cologne and as a flavoring

Ne-ro-ni-an \ni-'rō-nē-ən\ *or* **Ne-ron-ic** \-'rän-ik\ *adj* [L *Neronianus*, fr. *Neron-*, *Nero* Nero †A.D. 68 Rom emperor] : of, relating to, or characteristic of Nero or his times

nerts \'nərts\ *n pl, slang* : NUTS 5

nerv- *or* **nervi-** *or* **nervo-** *comb form* [ME *nerv-*, fr. L, fr. *nervus*] : NEUR- ⟨*nervine*⟩

ner-va-tion \,nər-'vā-shən\ *n* : an arrangement or system of nerves *also* : VENATION

nerve \'nərv\ *n* [L *nervus* sinew, nerve; akin to Gk *neuron* sinew, nerve, *nēn* to spin — more at NEEDLE] **1** : SINEW, TENDON ⟨strain every ~⟩ **2** : one of the filamentous bands of nervous tissue connecting parts of the nervous system with the other organs and conducting nervous impulses **3 a** : NERVE CENTER 2 **b** : power of endurance or control : FORTITUDE, STRENGTH **c** (1) : BOLDNESS, DARING (2) : BRASS, GALL **4 a** : a sore or sensitive point **b** *pl* : nervous disorganization or collapse : HYSTERIA **5** : VEIN 3 **6** : the sensitive pulp of a tooth **syn** see TEMERITY — **nerved** \'nərvd\ *adj*

nerve *vt* : to give strength or courage to

nerve cell *n* : NEURON; *also* : a nerve cell body exclusive of its processes

nerve center *n* **1** : CENTER 2b **2** : a source of leadership, control, or energy

nerve fiber *n* : AXON, DENDRITE

nerve gas *n* : a war gas damaging esp. to the nervous and respiratory systems

nerve impulse *n* : the progressive alteration in the protoplasm of a nerve fiber that follows stimulation and serves to transmit a record of sensation from a receptor or an instruction to act to an effector

nerve-less \'nərv-ləs\ *adj* **1** : destitute of strength or courage : FEEBLE **2** : exhibiting control or balance : POISED — **nerve-less-ly** *adv* — **nerve-less-ness** *n*

nerve-rack-ing *or* **nerve-wrack-ing** \'nərv-,rak-iŋ\ *adj* : extremely trying on the nerves

nerv-i-ness \'nər-vē-nəs\ *n* : the quality or state of being nervy

ner-vous \'nər-vəs\ *adj* **1** *archaic* : SINEWY, STRONG **2** : marked by strength of thought, feeling, or style : SPIRITED **3** : of, relating to, or composed of neurons **4 a** : of or relating to the nerves; *also* : originating in or affected by the nerves **b** : easily excited or irritated : JUMPY **c** : TIMID, APPREHENSIVE ⟨~ smile⟩ **5 a** : UNEASY, DISTURBING ⟨~ moment⟩ **b** : ERRATIC, UNSTEADY ⟨~ canoe⟩ **syn** see VIGOROUS — **ner-vous-ly** *adv* — **ner-vous-ness** *n*

nervous breakdown *n* **1** : NEURASTHENIA **2** : a case of neurasthenia

nervous Nel-lie \,nər-və-'snel-ē\ *n* [fr. the name *Nellie*] : a timid or ineffectual person

nervous system *n* : the bodily system that in vertebrates is made up of brain and spinal cord, nerves, ganglia, and parts of the receptor organs and that receives and interprets stimuli and transmits impulses to the effector organs

ner-vure \'nər-vyər\ *n* [F, fr. *nerf* sinew, fr. L *nervus*] : VEIN 3

nervy \'nər-vē\ *adj* **1** *archaic* : SINEWY, STRONG **2 a** : showing calm courage : BOLD **b** : marked by effrontery or presumption : BRASH **3** : EXCITABLE, NERVOUS

ne-science \'nesh-(ē-)ən(t)s, 'nēsh-; 'nes-ē-ən(t)s, 'nēs-\ *n* [LL *nescientia*, fr. L *nescient-*, *nescience*, prp. of *nescire* not to know, fr. *ne-* not + *scire* to know — more at NO, SCIENCE] : lack of knowledge or awareness : IGNORANCE — **ne-scient** \-(ē-)ənt\ *adj*

ness \'nes\ *n* [ME *nasse*, fr. OE *næss*; akin to OE *nasu* nose — more at NOSE] : CAPE, PROMONTORY

-ness \nəs\ *n suffix* [ME *-nes*, fr. OE; akin to OHG *-nissa* -ness] : state : condition : quality : degree ⟨good*ness*⟩

Nes-sel-rode \'nes-əl-,rōd\ *n* [Count Karl R. *Nesselrode* †1862 Russ statesman] : a mixture of candied fruits, nuts, and maraschino used in puddings, pies, and ice cream

Nes-sus \'nes-əs\ *n* [L, fr. Gk *Nessos*] : a centaur shot by Hercules with a poisoned arrow for attempting to carry away his wife

nest \'nest\ *n* [ME, fr. OE; akin to OHG *nest* nest, L *nidus*] **1 a** : a bed or receptacle prepared by a bird for its eggs and young **b** : a place where eggs are laid and hatched **c** : a receptacle resembling a bird's nest **2 a** : a place of rest, retreat, or lodging **b** : DEN, HANGOUT **3** : the occupants or frequenters of a nest **4 a** : a group of similar things : AGGREGATION **b** : HOTBED 2 **5** : a group of objects made to fit close together or one within another

nest *vi* **1** : to build or occupy a nest **2** : to fit compactly together or within one another ~ *vt* **1** : to form a nest for **2** : to pack compactly together

nest egg *n* **1** : a natural or artificial egg left in a nest to induce a fowl to continue to lay there **2** : a fund of money accumulated as a reserve

nest-er \'nes-tər\ *n* **1** : one that nests **2** *West* : a homesteader or squatter who takes up open range for a farm

nes-tle \'nes-əl\ *vb* **nes-tling** \-(ə-)liŋ\ [ME *nestlen*, fr. OE *nestlian*, fr. *nest*] *vi* **1** *archaic* : NEST 1 **2** : to settle snugly or comfortably **3** : to lie in an inconspicuous or sheltered manner ~ *vt* **1** : to settle, shelter, or house in or as if in a nest **2** : to press closely and affectionately — **nes-tler** \-(ə-)lər\ *n*

nest-ling \'nest-liŋ\ *n* : a young bird that has not abandoned the nest

Nes-tor \'nes-tər, -,tȯ(ə)r\ *n* [L, fr. Gk *Nestōr*] **1** : an aged and wise counselor of the Greeks in the Trojan War **2** *often not cap* : one who is a patriarch or leader in his field

Nes-to-ri-an \ne-'stōr-ē-ən, -'stȯr-\ *adj* **1** : of or relating to the doctrine ascribed to Nestorius and ecclesiastically condemned in 431 that divine and human persons remained separate in the incarnate Christ **2** : of or relating to a church separating from Byzantine Christianity after 431, centering in Persia, and surviving among Assyrians — **Nestorian** *n* — **Nes-to-ri-an-ism** \-,iz-əm\ *n*

net \'net\ *n* [ME *nett*, fr. OE; akin to OHG *nezzi* net, L *nodus* knot] **1 a** : a meshed fabric twisted, knotted, or woven together at regular

HB

52

Alaska State Legislature

JUNEAU, ALASKA

BLUE RIBBON COMMISSION ON THE
STATE PERSONNEL ACT

Senator Bill Ray, Chairman

Pouch YG
Mail Stop 3123
Juneau, Alaska 99811
(907) 465-4442

MEMORANDUM

January 25, 1983

TO: House Judiciary Committee

FROM: Teresa B. Cramer Teresa B Cramer
Administrative Assistant

SUBJECT: House Bill 52 - Government Interests in Intellectual Work Products Developed at the Expense of the State

The Blue Ribbon Commission is proposing legislation to create and protect the state's interest in inventions, discoveries and creations developed by state employees or contractors during their employment or developed with the use of state facilities or resources.

The commission became interested in the issue when an employee of the Department of Fish and Game testified about employment problems arising from his patenting of a production scale salmon incubator. He had begun developing the incubator before he accepted employment with the state. He began working for the department and continued his project after securing advice from the Department of Law concerning avoiding the potential conflict of interest. His job for Fish and Game was closely related to the development of incubators. The employee stated that he created the incubator on his own time. He then patented it and sold the patent to a private corporation which marketed it. Thereafter, the department was required to pay royalties for use of the process.

The employee has filed several grievances over poor performance evaluations, lost promotional opportunities, and an alleged retaliatory layoff which he believed resulted from his patenting the invention. The department testified that there had been considerable morale problems because other employees believed that they had contributed to the development of the process. They thought it unfair that one individual could secure a patent and potentially profit from an invention in which others had participated and in which the state should have an interest.

The Blue Ribbon Commission is concerned that there is no statute protecting the state's interest in the inventions, discoveries and creations made by its employees or made through the use of its facilities. Legislation for the Alaska Energy Center and the Alaska

Resources Corporation gives each agency the authority to hold patents. Nothing in either chapter spells out how the state acquires that interest.

While the proposed legislation does not specifically address the situation which occurred in the Department of Fish and Game, the commission believes that this system would alleviate similar problems in the future. Information about the number of conflict of interest hearings before the Personnel Board indicates that there will probably be no more than two or three applications of the bill per year.

Bill Analysis

Page 1 Line 10	The first section of the proposed legislation gives the state all right, title and interest in any intellectual work product developed during working hours or with the use of state facilities or by employees whose duties include responsibility for research.
Page 4 Line 12	"Intellectual work product" is broadly defined later in the bill to include anything which is subject to patent, trademark or copyright laws.
Page 2 Line 8	A state employee or person under contract with the state is obliged to disclose the development of an intellectual work product to the Alaska Council on Science and Technology and to assign any interest in it to the state. If requested, the person is required to assist the Council in applying for a trademark, patent or copyright. The commission believes that the Council is the most appropriate existing state agency to administer the program.
Page 2 Line 21	The Council is given broad discretion to decide whether to pursue patenting, trademarking, or copyrighting the invention after consultation with affected state agencies. The Council may waive any state interest in the discovery or may waive all interest but retain a royalty-free license in the intellectual work product so that the state would not have to pay for its use in the future. If the state waives its interest, then the inventor would be able to pursue protection of his own interest in the discovery.
Page 3 Line 3	The proposed legislation gives the Council authority to grant monetary recognition to employees who develop an intellectual work product. The recognition could be in

the form of a cash award, a share in any royalties generated by the invention, or in any other manner the Council found appropriate. Payment would, of course, be subject to legislative appropriation. The commission believes that the Council should have wide discretion in implementing the monetary award system in order to best encourage employees in their work and serve the state's interests.

Page 3
Line 13 — Any disagreements between an employee and the state pertaining to ownership of an intellectual work product would be subject to voluntary arbitration if the parties agreed to be bound by the result. If not, then the disagreement could be settled in court. In addition, the state and the employee or contractor may enter into an employment contract which requires compulsory arbitration.

Page 3
Line 29 — Legislators and employees of the University of Alaska are exempted from the chapter. The University has its own policy on intellectual property developed at its expense which is codified in section 2 of the proposed legislation.

Page 4
Line 5 — The Council is granted rule-making authority for the chapter in accordance with the Administrative Procedure Act.

Page 4
Line 24 — Section 2 of the legislation adds language to codify the University of Alaska's right to intellectual work products developed by its employees.

Page 5
Line 7 — Section 3 requires state employees to waive their interest in intellectual work products developed at the expense of the state as set out in section 1 of the bill. The waiver is not subject to negotiation under the Public Employment Relations Act.

Page 5
Line 29 — Section 4 amends the Alaska Council on Science and Technology statutes to add the powers and responsibilities granted by the proposed legislation.

Page 6
Line 7 — Section 5 repeals the patenting powers currently granted to the Alaska Energy Center and the Alaska Resources Corporation. The commission believes that there should be a single system which applies to all legislative, judicial and executive branch employees of the state.

HB

58

POSITION PAPER/Department of Health & Social Services

POSITION PAPER

CS for SS for House Bill No. 58 (Judiciary)

"An Act relating to a prisoner serving a sentence in full or having probation revoked for refusing to participate in counseling or treatment required by the court."

Section I

AS 12.55.015 Authorized sentences sets forth the conditions a judge may impose, either singly or in combination, on a defendant at the time of sentencing. Section I of CSSSHB 58 adds an additional condition "(9) provide for a sentence to be served in full by a defendant who refuses to participate in available alcohol, drug, sex offender or other mental health treatment required by the sentencing judge."

Section II

Sec. 12.55.080 Suspension of sentence and probation is amended by giving the court the authority to require available alcohol, drug, sex offender or other mental health treatment as a condition of probation.

Section III

AS 12.55.085 Suspending imposition of sentence (b) is amended by giving probation officers and the court the authority to re-arrest a person on probation status in instances of where the probationer refuses to participate in treatment required by the sentencing judge.

Section IV

AS 12.55.100 Conditions of probation (a) is amended by adding "(5) to participate in available alcohol, drug, sex offender or other mental health treatment" as a condition of probation which may be required.

Section V

AS 12.55.110 Notice and grounds for revocation suspension is amended to include refusal by a defendant to participate in available alcohol, drug, sex offender or other mental health treatment required by the court as a condition of probation as good cause for revocation of a suspended sentence.

Section VI

AS 33.15.080 Granting of parole is amended by including the provision that parole may not be granted to a prisoner who has refused available alcohol, drug, sex offender or other mental health treatment recommended by the sentencing judge.

POSITION PAPER/Department of Health & Social Services

Section VII

AS 33.30.250 Work Furlough (g) as amended would prohibit prisoners who refuse to participate in available alcohol, drug, sex offender or other mental health treatment required by the Division of Adult Corrections from being granted work furlough.

Summary

It is understood that the intent of this legislation is to help assure that offenders participate in treatment programs as determined by the court and professional correctional staff. It is noted that the purpose of section 1 of CS for SS for HB 58 is set out elsewhere in the bill and that the language contained in section 1 is unclear. Because the purpose of section 1 is carried throughout the other sections and is not necessary to ensure the intent of the bill is understood, it is recommended that section 1 be deleted.

Recommended by: Roger C. Endell for
Roger V. Endell, Director
Division of Adult Corrections

Date: April 13, 1983

Approved by: Robert London Smith
Robert London Smith, Ph.D.
Commissioner

Date: 4/14/83

STATE OF ALASKA
FISCAL NOTE

Revision Date , 1983

I. REQUEST

Bill/Resolution No.: CS for SS for HB 58
Title: "..prisoner..refusing..treatment
Sponsor: House Judiciary
Requestor: House Finance

II. FISCAL DETAIL

Agency Affected: Health & Social Services
Program Category Affected: Justice
BRU, Program of Subprogram(s) Affected: Adult Confinement

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 83	FY 84	FY 85	FY 86	FY 87	FY 88
OPERATING						
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 COMMODITIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-
CAPITAL	-0-	-0-	-0-	-0-	-0-	-0-
REVENUE	-0-	-0-	-0-	-0-	-0-	-0-

FUNDING: (Thousands of Dollars)

GENERAL FUND	-0-	-0-	-0-	-0-	-0-	-0-
FEDERAL FUNDS						
OTHER (Specify Source)						

POSITIONS:

FULL-TIME	-0-	-0-	-0-	-0-	-0-	-0-
PART-TIME						
TEMPORARY						

III. SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

Not applicable.

IV. ANALYSIS: Attach a separate page for any Analysis

Prepared By: Roger C. Lange Roger C. Lange Phone: 465-3376
Division: Adult Corrections Date: April 13, 1983

Approved by Commissioner: Robert Loeber Jr. M.D. Date: 4/14/83
Department Health & Social Services

Distribution:
Original to Legislative Finance
Copy to Office of Management and Budget (for Legislature introduced bills)
Copy to Department (for Governor introduced bills)
Copy to Sponsor
Copy to Requestor (if different from Sponsor)

3/f/83

IV. ANALYSIS

The earlier fiscal note prepared on House Bill No. 58 assumed a loss of good time by inmates refusing to participate in counseling or treatment. Subsequent testimony at the House Judiciary Committee indicated that it was not the intent of the legislation to take away good time. This is also the opinion of the Office of the Attorney General. Therefore, enactment of this bill would have no fiscal impact on the Division of Adult Corrections.

From Judiciary Committee-----3/22/83

CSSSHB 58

page 2, delete Sec. 4, lines 12 through 16 (& renumber other sections accordingly)

Page 3, delete word available on line 7

on line 8, delete required by the division of corrections, and replace with

recommended by the sentencing court and made available by the Division of Corrections, or determined appropriate and made available by the Division of Corrections.

SUMMARY OF COMMITTEE SUBSTITUTE FOR SSHB 58

Denial of Parole or Furlough

Section 7 - The Parole Board may not parole a prisoner who refuses to participate in alcohol, drug, sex offender or other mental health treatment.

Section 8 - The Division of Corrections may not furlough a prisoner who refuses to participate in treatment.

Revocation of Suspension of Sentence

Sections 2, 3 and 5 - A judge may impose available alcohol, drug, sex offender or other mental health treatment as a condition of probation.

Section 6 - A sentence will be revoked if the defendant refuses to participate in treatment that is required by the judge.

STATE OF ALASKA
PRELIMINARY STATEMENT OF FISCAL IMPACT



Bill No: HB 58 Date on Bill: 1/26/83
Title: "An Act requiring certain prisoners to serve a full sentence."
Sponsor: Representative Lindauer
Requestor: House Judiciary Committee

1. Estimated fiscal impacts on:

a. Expenditures:

(Thousands of Dollars)

			FY 83	FY 84	FY 85	FY 86		
Capital								
Operating				-0-	-0-	-0-		
Total				-0-	-0-	-0-		

b. Revenues:

Revenue								

2. Source of funds to offset fiscal impact of bill:

No information provided.

3. Assumptions:

This bill requires that a prisoner who refuses to participate in court ordered counseling while incarcerated may not be released until he has served his full sentence. The bill is not expected to have an appreciable impact on prosecution functions, as the prisoner will have already been convicted and sentenced by the time the question of his release arises. The bill may require the commitment of additional corrections resources, however.

4. Disclaimer:
This statement has not been reviewed by the OMB in the Office of the Governor. It therefore does not represent the final estimate of fiscal impact.

Prepared By: Daniel W. Hickey, Chief Prosecutor (Richard R. Legus for) Phone: 465-3428
Division: Criminal Division Date: 1/28/83
Approved by Commissioner: Norman C. Gorsuch, Attorney General (Richard R. Legus for) Date: 3/2/83
Department: Department of Law

5. Distribution:
Original to Legislative Finance
Copy to OMB
Copy to Sponsor
Copy to Requestor

2/15/83

Bill No: House Bill No. 58 Date on Bill: January 18, 1983
Title: "An Act requiring certain prisoners to serve a full sentence."
Sponsor: Reps. Lindauer, Barnes, Abood, Pestinger, and Liska
Requestor:

1. Estimated fiscal impacts on:

a. Expenditures:

(Thousands of Dollars)

			FY 83	FY 84	FY 85	FY 86	FY 87	FY 88
Capital					438.0			
Operating					-0-			73.8
Total			-0-	-0-	438.0	-0-	-0-	73.8

b. Revenues:

Revenue			-0-	-0-	-0-	-0-	-0-	-0-

2. Source of funds to offset fiscal impact of bill:

The funding source to offset the fiscal impact of this bill was not identified by the sponsors.

3. Assumptions:

Statistical data is not available regarding the number of inmates currently refusing to participate in counseling or other programs required or recommended by sentencing judges. It is, therefore, assumed that two (2) inmates per year with an average sentence length of six (6) years would refuse to participate in rehabilitation programs required or recommended by the sentencing judge. A prisoner who must fully serve his/her sentence loses all good time. The amount of good time earned during a six (6) year sentence is one and one-half (1½) years.

The fiscal impact in the State's correctional system would be three (3) additional beds (2 inmates per year for an additional 1½ years). It is assumed these individuals would require a medium security setting. The cost for the beds, which would be needed in

Prepared By: Roger C. Lange Roger C. Lange OMB Phone: 465-3376
Division: Adult Corrections Date: Feb. 28, 1983

Approved by Commissioner: Robert London Smith Date: 3/1/83
Department: SRS

5. Distribution:
Original to Legislative Finance
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2/8/83

3. Assumptions: (continued)

approximately four years, is calculated to be:

3 x $145,000 = $ 438,000.

Based on an estimate of one staff position for every 2.5 inmates, one additional position would be necessary, beginning in FY 1988. Other costs include primarily food, clothing, and medical care, also beginning in FY 1988

4. Disclaimer:
This statement has not been reviewed by the OMB in the Office of the Governor. It does not represent the policy of the Sheffield Administration or the final estimate of fiscal impact.

POSITION PAPER/Department of Health & Social Services

POSITION PAPER
Sponsor Substitute for House Bill No. 58

"An Act requiring certain prisoners to serve a full sentence."

House Bill No. 58 adds a new section to AS 30.30 which states that a prisoner who refuses to participate in counseling or other programs required or recommended by the sentencing judge may not be released, paroled, or furloughed until the prisoner's sentence is fully served.

State Statute 33.30.100 authorizes the Commissioner of Health and Social Services to designate the facility where a sentence is to be served. AS 33.30.120 authorizes the Commissioner to transfer prisoners from one facility to another. This provides Adult Corrections the flexibility to effectively manage prison population and to give consideration to prisoner needs.

It is the goal of Adult Corrections to provide a complete rehabilitative process for every prisoner; however, this is not always possible due to availability of certain types of programs, maintaining the integrity of programs, overcrowding, prisoner motivation, length of sentence, etc. At the time of sentencing, all of those factors are not known. It is the duty of the classification committee to identify and evaluate whatever factors may be relevant in each case; including the recommendations of the court. The placement of a prisoner reflects both the prisoner's needs and the needs/capabilities of the system. It should be recognized that factors of individual and system needs may conflict and that it is the responsibility of adult corrections to determine the most appropriate placement and programming.

Prisoners are classified within 30 days of admission to an institution and within 30 days following sentencing. The purpose of this classification is to work with each prisoner to develop a plan of incarceration to meet the prisoner's needs within the constraints of the correctional system. The classification committee addresses insitutional placement, custody level, housing, work, program (including counseling) and furlough. Each prisoner's classification is reviewed a minimum of once every six months during the sentence.

The classification committee considers the availability of beds in correctional facilities in relationship to the type of security required for each prisoner; i.e. maximum, medium, minimum. The committee also considers the prisoner's program/counseling needs in relationship to the custody level. In some cases, prisoners cannot be placed in correctional facilities where specific program/counseling is available due to their custody level; i.e. a maximum custody prisoner would not be placed in a minimum/medium custody setting because of the risk to staff, prison population, and the public presented by the maximum security prisoner.

POSITION PAPER/Department of Health & Social Services

Alaska's prison system does not have the same programs/counseling available at every institution; therefore, we are required to consider security needs before program/counseling needs.

There are two portions of Sponsor Substitute for House Bill No. 58 which are unclear 1) Sec. 33.30.330(a) does not define "sentence is fully served." There is a question of whether good time would be granted to those who are ordered to serve a sentence in full. The attached fiscal note is based on the assumption that good time would not be awarded. 2) The bill does not provide a mechanism to return a prisoner who refuses to participate in counseling or programs to court.

The enactment of House Bill No. 58 would increase the length of time to be served for the certain group of prisoners. Alaska's already overburdened correctional facilities would have to provide additional and very costly new beds to house the prisoners required to serve their full sentences.

Although the intent of this legislative proposal is both positive and admirable, it is not clear that coercion will cause a cure. In fact, it appears that the cure may cost considerably more than the problem and may be constitutionally questionable mechanism to alleviate a relatively minor problem in terms of the small number of uncooperative prisoners. We believe that the correctional division already possesses sufficient resources to deal with this problem through better and more sound prisoner classification and management.

Because of the reasons stated, the Department of Health and Social Services does not support passage of House Bill No. 58.

Recommended by: for Logan C. Savage
Roger V. Endell, Director
Division of Adult Corrections

Date: March 21, 1983

Approved by: Robert London Smith
Robert London Smith, Ph.D.
Commissioner

Date: 3/22/83

STATE OF ALASKA
FISCAL NOTE

Revision Date Mar. 21, 1983

I. REQUEST

Bill/Resolution No.: SS for HB No. 58
Title: "An Act req. prisoners serve full sentence"
Sponsor: Lindauer
Requestor: Judiciary Committee

II. FISCAL DETAIL

Agency Affected: Health & Social Services
Program Category Affected: Admin. of Just.
BRU, Program of Subprogram(s) Affected: Adult Confinement

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 83	FY 84	FY 85	FY 86	FY 87	FY 88
OPERATING						
100 PERSONAL SERVICES						55.5
200 TRAVEL						
300 CONTRACTUAL						6.8
400 COMMODITIES						11.1
500 EQUIPMENT						
600 LAND & STRUCTURES			438.0			
700 GRANTS, CLAIMS, ETC						.4
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	73.8
CAPITAL	-0-	-0-	438.0	-0-	-0-	-0-
REVENUE	-0-	-0-	-0-	-0-	-0-	-0-

FUNDING: (Thousands of Dollars)

GENERAL FUND	-0-	-0-	438.0	-0-	-0-	73.8
FEDERAL FUNDS						
OTHER (Specify Source)						

POSITIONS:

FULL-TIME	-0-	-0-	-0-	-0-	-0-	1
PART-TIME	-0-	-0-	-0-	-0-	-0-	-0-
TEMPORARY	-0-	-0-	-0-	-0-	-0-	-0-

III. SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

The source of funds to offset the fiscal impact of this bill has not been identified by the sponsor of the bill.

IV. ANALYSIS: Attach a separate page for any Analysis

Prepared By: Roger C. Lange — Roger C. Lange — Phone: 465-3376
Division: Adult Corrections — Date: March 21, 1983

Approved by Commissioner: Robert London Smith — Date: 3/22/83
Department: Health & Social Services

Distribution:
Original to Legislative Finance
Copy to Office of Management and Budget (for Legislature introduced bills)
Copy to Department (for Governor introduced bills)
Copy to Sponsor
Copy to Requestor (if different from Sponsor)

3/8/83

IV. ANALYSIS

A. Assumptions

Statistical data is not available regarding the number of inmates currently refusing to participate in to participate in counseling or other programs required or recommended by sentencing judges. It is, therefore, assumed that two (2) inmates per year with an average sentence length of six (6) years would refuse to participate in rehabilitation programs required or recommended by the sentencing judge. A prisoner who must fully serve his/her sentence loses all good time. The amount of good time earned during a six (6) year sentence is one and one-half (½) years.

The fiscal impact in the State's correctional system would be three (3) additional beds (2 inmates per year for an additional 1½ years). It is assumed these individuals would require a medium security setting. It is assumed that the 3 beds will not be needed for 4½ years as that would be the normal release date for the first offenders affected by this legislation.

B. Program Summary

1. Positions

One Correctional Officer II will be needed based on one staff positions for every 2½ beds in the correctional system. It is estimated the cost for this position, including overtime and shift differential, for FY 1988 will be $55,500.

2. Other Expenditures - FY 1988

a. Contractual Services - $6,800 is estimated to pay for medical services based on FY 1984 estimates of $1,800 per inmate per year.
b. Commodities - $11,100 will be needed for food, clothing, bedding supplies, paper products, etc. This is based on the FY 1984 estimate of $8.00 per inmate day with 6% annual inflation.
c. Grants - $400 is requested to pay gratuities for inmates working on kitchen or janitorial crews.
d. Capital Expenditures - FY 1985
It is estimated 3 beds will be needed. It is assumed that the capital cost will be $146,000 per bed.
Capital needs = 3 x $146,000
= $438,000

C. Impact - There is no economic or local government impact anticipated if this legislation is enacted.

STATE OF ALASKA
Office of the Governor
Budget & Management Div.

CATEGORY	Admin. of Justice
COVER PROGRAM	
AGENCY	Health & Social Services
DIVISION	Adult Corrections
BUDGET REQUEST UNIT	Adult Confinement
BUDGET COMPONENT	

REVISED PROGRAM
REQUEST FOR NEW POSITION

FY 1988

POSITION TITLE: Correctional Officer II

LOCATION: Not determined

TYPE (FULL OR PART-TIME): PFT

NUMBER REQUESTED: 1

RANGE	BARGAINING UNIT
13	GGU

MONTHLY SALARY	# MONTHS (CY)
2899	12

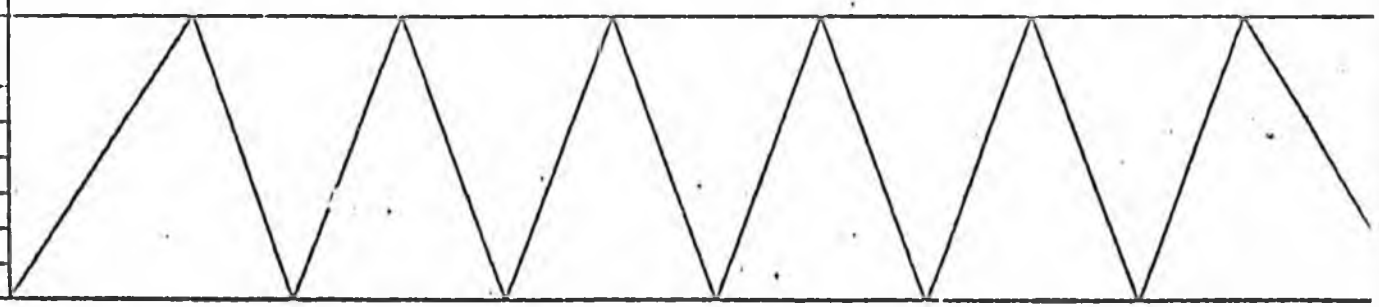
JUSTIFICATION:

To provide security and supervision of inmates in a correctional center. It is estimated that one position is needed for every 2 1/2 inmates. The proposed legislation will result in the need for an estimated 3 additional beds within the corrections system. Therefor, one additional correctional officer will be needed in FY 1988.

01 PERSONAL SERVICES	55,500
02 TRAVEL	
03 CONTRACTUAL	
04 COMMODITIES	
05 EQUIPMENT	
08 OTHER	
TOTAL	55,500
1002 FEDERAL	
1003 G/F MATCH	
1004 GENERAL FUND	55,500
1005 I/A RECEIPTS	
1023 PROGRAM RECEIPTS	

DETAIL OF RELATED EXPENSES

Salary 34,788 + Shift Diff. 652 + Overtime 5,408 + Variable Ben. 8,206 + SBS 2,504 + Peace Officer 3,942



SS HB 58

The Anchorage Times

Mon

City / State

- The Blotter
- Obituaries
- Tell it to Bud

Nov. 2
1982

Judges' sentences may be ignored

by Jeff Berliner
Times Writer

Sentencing orders handed down by state judges may be ignored when a convict refuses to take part in rehabilitation programs in jail, according to Commissioner of Health and Social Services Helen Beirne.

Sentencing orders also may be ignored when the length of "sentence is too short to offer much promise for rehabilitation," Bierne wrote in a letter to assistant municipal prosecutor Mike Marsh, who questioned why the Division of Corrections — which is in Beirne's department — is able to ignore judges' recommendations.

Marsh focused his criticism on the case of Amos Singletary, convicted of nine crimes for enticing or dragging young girls into his car. Singletary has a past rape conviction and a sentence which ordered that he be enrolled in a sex offender program in prison.

Singletary was never enrolled in such a program following his Feb. 19 sentencing, and District Court Judge John Mason released him after he had served 6½ months of a one-year sentence. Singletary was placed on probation and ordered to get professional counseling outside since he wasn't getting it in jail.

Two weeks after his release, Singletary was picked up for violating his probation by returning to a home where two of his earlier victims lived. Mason sentenced Singletary to another year in jail on Oct. 13, and again ordered that Singletary be placed in a prison sex offender treatment program.

Beirne said she had a staff member contact Singletary in jail, and that "Mr. Singletary continued to take the position that he is not guilty and that he does not wish to participate in sex offender treatment."

Singletary did not deny his guilt in court. And Marsh said prosecutors dropped eight other enticement charges in exchange for Singletary's accepting the evidence against him.

Mason had sentenced Singletary to a year in jail in February. In her letter, Beirne reported Singletary's projected release date as July 6.

Because the sex offender program "is of a long-term nature," Beirne said there was no point in enrolling Singletary.

But according to Marsh, Singletary had 5½ months left to serve as of July 6.

"It would not be realistic to treat an individual over a period of less than a year," Beirne wrote Marsh, attributing that judgment to a staff psychiatrist.

Mason last month sentenced Singletary to another year in jail, and for the second time ordered that he be enrolled in the sex offender rehabilitation program.

Although the second one-year sentence came on Oct. 13, Beirne said Singletary's release date has been set for April 30.

Beirne, quoting another psychiatrist, wrote Marsh that "chronic offenders such as Mr. Singletary are not very amenable to treatment, and that an absolute minimum of nine months in treatment would be necessary to offer the slightest hope of having an effect on his behavior."

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Convicted perjurer Mic
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The 33-year old DeMan
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years in jail.

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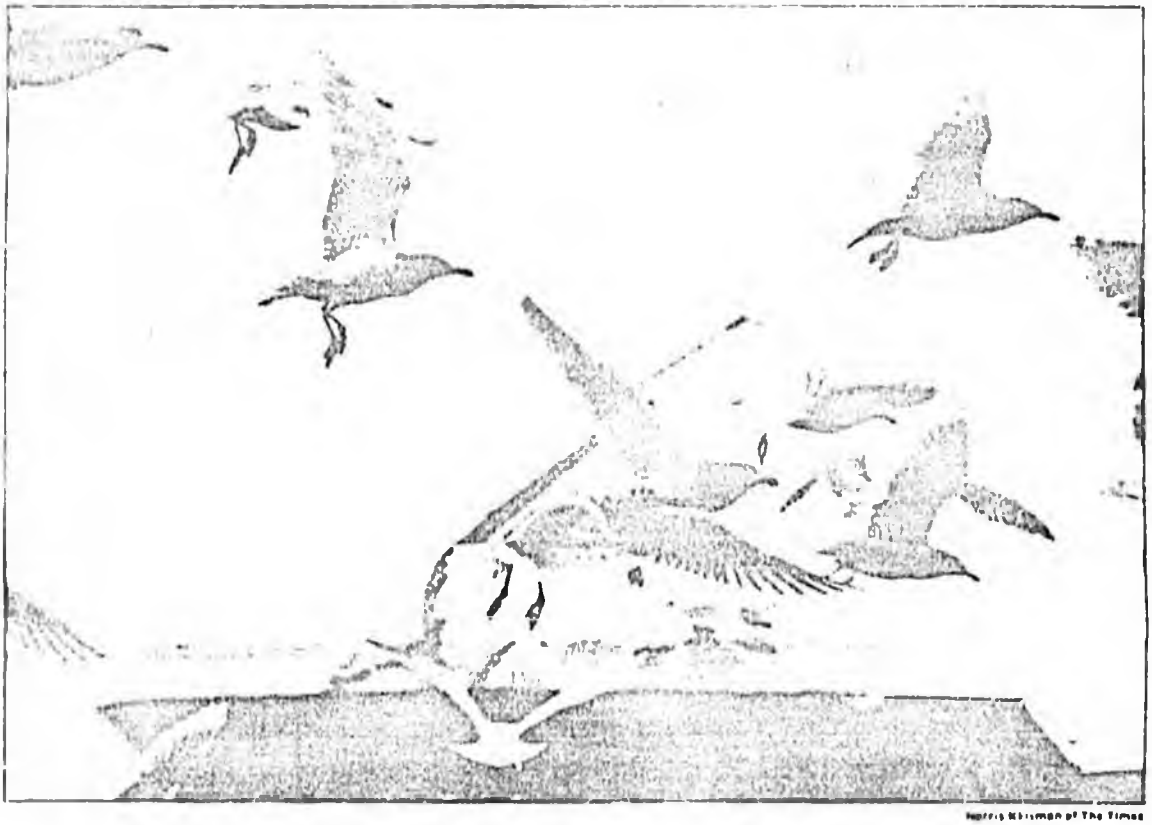

Norris Kirkman of The Times

INTO WILD BLUE GANDER

Waterfront fowls were sent a flapping as a low-flying helicopter chased them from their perch near the roof in the background. This photo was taken in Wrangell before the gulls headed south for the winter.

Alaskan c
to be reva

by Jeff Berliner
Times Writer

The state plans to overhaul its court system to simplify civil litigation and to cut the time takes to get a civil case to trial after it's filed.

Alaska will be the first state in the country to undertake a project of this magnitude. The doors of the court system will be opened to experts from the National Center for State Courts in January.

State Supreme Court Chief Justice Edmond Burke will appoint a task force to work with the center's consultants.

The $50,000 project will take a year to complete, but court system administrator Art Snowden said it will reduce costs for litigants and make Alaska's courts among the most efficient in the country.

It now take 18 months for a civil suit to go to trial.

"Although our time frame is one of the best in the country, it can be improved," Snowden said.

"No state has undertaken an examination of its litigation processes on the scale here proposed," according to a proposal from the court center's western regional office in Sacramento, Calif. "The results should benefit litigants in Alaska and serve as provocative example to other states."

The project will cover three areas:

• Divorce — A task force will

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Honored Army officer dies

Maj. Gen. Charles Martin Gotta, former commander of the U.S. Army in Alaska, died Saturday of [illegible] in Washington, D.C. [illegible] 87.

Born in 1917, Gettys began his 37-year Army career at Clemson

General Staff College and later, the Army War College.

He served on the staff of Headquarters Allied Forces Southern Europe in the early 1950s, and was chief of the plans branch in the United Nations Command in Eu-



Budget issue tops ag

by Beth Barrett
Times Writer

The public will have a second chance Tuesday to testify on Mayor Tony Knowles proposed $194 million operating budget and his $286 million building and utility spending plan.

And the Anchorage Assembly will decide

The Knowles spending p
the fee schedule for city per
sanitary system inspection
increased from $30 to $150
new permit structure would
with the cost of inspections

Nov. 1, 1983 H. Times 55 AB50

Division ignores judge's order

by Jeff Lerner
Times Writer

An assistant municipal prosecutor may ask a judge to haul Division of Corrections officials into court to explain why they are ignoring a judge's sentence of a convicted sex offender.

Anchorage District Court Judge John Mason echoed the concern expressed by prosecutor Mike Marsh over corrections officials' failure to place Amoe Singletary in a sex offender treatment program.

And a prison official acknowledged that Singletary is not an isolated case — that others sentenced to jail have not been placed in the counseling programs selected by judges as part of their sentences.

"We can't force people to participate in a program," said Hiland Mountain prison superintendent Frank Sauser.

Sauser said that ignoring a judge's sentencing recommendation is not uncommon.

"It occurs not just with this (sex offender program), but with all kinds of treatment," he said.

Sauser said conditions of sentences handed down by judges are ignored when it involves a treatment program in which an inmate refuses to participate.

Mason and Marsh expressed dismay that the court does not have the power to order the Division of Corrections to carry out the sentence Mason imposed on Singletary almost three weeks ago.

This is the second time Mason has sent Singletary to jail and asked that he be enrolled in a sex offender treatment program. The first time the request was ignored, Mason released Singletary so he could get counseling out of jail that was not provided in prison.

One day after the second sentencing, on Oct. 14, Marsh wrote Commissioner of Health and Social Services Helen Beirne asking her to intervene, because corrections responsibilities fall under her department. Copies of the letter also went to Division of Corrections director Robert Hatrack, Sauser, Mason, Gov. Jay Hammond and Attorney General Wilson Condon.

Marsh has not received a response to his letter. A spokesman for Beirne, Judy Shiller, said Beirne would "probably" respond this week. She didn't say what her response would be.

Short of hauling corrections officials into court, Mason said he may first try to get through to them by telephone and in writing.

Mason first sentenced Singletary to jail — recommending his placement in the sex offender program at Hiland Mountain — in February after Singletary pleaded no contest to nine crimes and had eight other charges dropped in exchange for his plea.

Singletary was sentenced to three years in jail — with two years suspended — on seven counts of trying to entice young girls into his car and two counts of assault and battery for trying to force them into his car. Singletary also has a prior rape conviction.

When Mason learned that Singletary was not getting any psychological treatment, he ordered his release on supervised probation so he could get professional counseling.

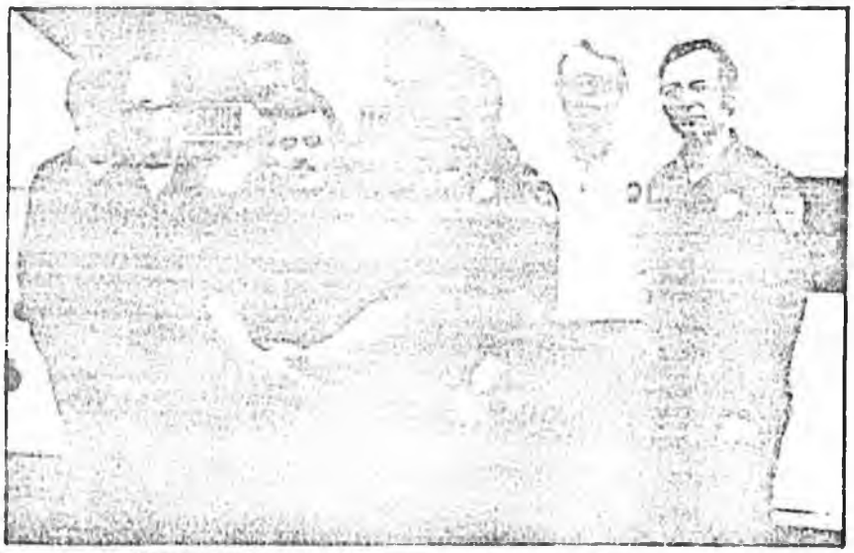
But two weeks after his release, Singletary was picked up outside a foster children's home where two of his former victims lived. A condition of his probation had been that he have no contact with young girls.

In sentencing him to jail again, this time for another year, Mason again stressed that he wanted Singletary enrolled in the sex offender treatment program. Mason threatened to release Singletary again so he could get professional counseling if the state failed to give him the treatment in jail.

Marsh said Singletary is a danger to society and "the number one goal should be protection of society." He has urged Singletary be sent to jail for the full 4½-year maximum term.

Singletary has been in the Third Avenue jail for the three weeks since his sentencing and the Division of Corrections has one more week under the law to classify him and respond to Mason's sentence.

"They may resist that," said Mason, "but there's nothing I can do. That's a corrections problem and corrections has a lot of problems now. We don't have the authority to order them to do it, only to recommend."



RESCUE TEAM

Eight veteran Anchorage firefighters recently completed 40 hours of intensive underwater rescue training for white water, lakes and rivers. Each member of the class already has five years experience in water rescue and recovery. From left, they are firefighters Kent Bohac and Mike House; engineers Paul Burns, Claude Adams, Dean Fortain and Larry Tish; battalion chief and team leader Kent Andersen; and firefighter John Huxley.

State extends funding for quake research

Associated Press

Fairbanks — State officials say they will continue to fund 30 earthquake monitoring stations which were scheduled to close in December because of federal funding cuts.

The seismic stations are one of six University of Alaska projects which will get state funding under the Legislature's plan to appropriate state funds to shore up programs affected by the tight federal budget.

The stations are located in the southern Cook Inlet area, monitoring one of the most active earthquake areas in the state.

John Eppenberger, director of the university's Geophysical Institute, said closing the stations would be equivalent to shutting down weather monitoring stations.

The $150,000 grant to continue the seismic operations for the next fiscal year will underwrite [illegible] telephone circuits to transmit data, helicopter [illegible] service the stations and not been found," he said. "If we don't get new money by the first of July, we are right back where we were two weeks ago."

Other state grants for university projects include:

• $150,000 to the School of Mineral Industry for minerals research.

• $40,000 to the Division of Life Sciences for continued research on brucellosis vaccine for controlling disease prevalent among reindeer.

• $35,000 to the Institute of Water Resources for studies of arsenic contamination of groundwater and streams near placer mining operations.

• $5,000 for the Rural Education Health Careers Program.

Anchorage police promote 2 officers





Two Anchorage police corporals — Mark Marsh and Gary Russell — have been promoted to sergeant, according to Police Chief Brian S. Porter.

Marsh, who will be supervisor of the Crisis Intervention Response Team, joined the department in 1971 as a reserve officer.

After becoming a full-time officer in 1972, he worked in the warrants section, the dispatch center, on traffic patrol and trained new recruits. He is now enrolled at Anchorage Community College, where he is studying for a degree in police administration.

Russell will become supervisor of robbery investigations. After joining the department in Ju[illegible]

Troop[illegible]

by Cary Virtue
Times Writer

Alaska is one of the few stat[illegible] which does not have a full-fledg[illegible] crime lab. But Alaska Sta[illegible] Trooper commander Tom Ande[illegible]son hopes to change that.

Anderson will ask Gov. J[illegible] Hammond to set aside $8.1 milli[illegible] in his proposed 1983-84 budget [illegible] build a fully equipped crime l[illegible] However, Anderson said it will [illegible] up to the new governor whether [illegible] submit it to the legislature.

"In this day and age of mode[illegible] scientific progress, it's becom[illegible] more and more difficult to effe[illegible]tively investigate a case with[illegible] strong support from a crime la[illegible] Anderson said. "We just [illegible] hardly operate without it."

State law enforcement agenc[illegible] here now send most of their te[illegible]

Court re[illegible]

Times Washington Bureau

Washington — The U.S. [illegible]preme Court ruled against N[illegible] Slope Eskimos today, refusin[illegible] reopen their legal battle aga[illegible] the federal government for all[illegible] damages to their homeland.

The court let stand wit[illegible] comment a U.S. Court of C[illegible] decision that denied compens[illegible] to Inupiat Eskimos for dam[illegible]

Subsiste[illegible] spark c[illegible]

by A.J. McClanahan
Times Writer

Newspaper ads in favor [illegible] subsistence priority repeal [illegible]tive, which depict dozens of w[illegible] heads, are an "intentional m[illegible]resentation" of the facts, say [illegible]nents of the ballot measure.

The actual photograph[illegible] gests waste," said Jane A[illegible] spokeswoman for the group [illegible]ing the repeal initiative, Al[illegible] for Sensible Fish and Game [illegible]agement.

The photograph is severa[illegible] old, she said, and shows [illegible] heads for an entire village [illegible] before they were distributed [illegible] tagers.

But a spokesman for the [illegible] side, Alaskans for Equal [illegible] and Hunting Rights, defen[illegible] ad.

The repeal effort will st[illegible] clusive subsistence sh[illegible] rights of Alaska marine [illegible] mals," said Sam McDow[illegible] outspoken supporter of spo[illegible]ting rights and a leader in th[illegible]tive drive.

The taking of marine ma[illegible] would not be directly affect[illegible] repeal of state law, becau[illegible] are managed under the [illegible] Marine Mammal Protect[illegible]

Angvik charged that the [illegible] posts that the taking of [illegible] mammals is managed u[illegible] current state priority sub[illegible] law.

"That's erroneous an[illegible] who put it in knew that,"

Collision hal[illegible] high speed c[illegible]

A high-speed chase [illegible] Spenard ended Sunday

Alaska Court System
State of Alaska

KARLA L. FORSYTHE
General Counsel

OFFICE OF ADMINISTRATIVE DIRECTOR

303 K Street
Anchorage, AK 99501

M E M O R A N D U M March 2, 1983

To: Representative Charlie Bussell
Chairman, House Judiciary Committee

Representative John Liska
Vice-Chairman, House Judiciary Committee

Representative Joe Hayes
Representative Ramona Barnes
Representative Hugh Malone
Representative Don Clocksin
Representative Ron Wendte

From: Karla L. Forsythe
General Counsel
Alaska Court System

Subject: SSHB 58

Thank you for this opportunity to comment on SSHB 58.

This bill amends existing law to preclude the release, parole or furlough of any prisoner who refuses to participate in programs recommended or required by the court, unless the prisoner at a court hearing shows good cause for failure to participate. The prisoner is entitled to be represented by counsel.

Since the length of prisoners' sentences will be at stake, and since prisoners can be expected to raise the issue of lack of available programs, the bill will result in increased contested hearings. Any new hearings add to the already considerable workload of the courts. Although this bill taken by itself does not require additional manpower, continued caseload increases will require additional judicial resources.

In Anchorage alone, the police force has increased 169% since 1976, from 174 officers covering 31 square miles to 294 officers covering 110 square miles in 1983. DWI arrests have increased by 276% from 1977, from 651 to 1797. Small claims in Anchorage are

up 172% from 1977. Search warrant requests have also increased, up 538% from 1975 (99 search warrants in 1975; 532 in 1982). In-court deputies for the Anchorage district court accrued a total of 787 hours of overtime last year. Alcohol screening statistics point to a 34% increase in new cases since 1977. These cases are a continuing responsibility for the court, because non-compliance affidavits are filed in about 25% of the cases, requiring court hearings and bench warrants.

In general, as legislative action continues to increase penalties, attorneys litigate longer and harder to protect their clients' interest.

The effectiveness of legislation which involves the justice system is directly related to the ability of the courts to process cases efficiently. As with other bills which provide for additional court hearings, the benefits of SSHB 58 should be analyzed in this context.

KLF:smh

Representative John Lindauer
District 10-A
3933 Geneva Place
Anchorage, AK 99508

Alaska State Legislature

House of Representatives

While in Juneau
Pouch V
Juneau, AK 99811
465-3709

Received 1/24/83

1/24/83

January 21, 1983

TO: House Judiciary Committee

FROM: Representative John Lindauer

SUBJECT: House Bill #58: "An Act requiring certain prisoners to serve full sentence."

The purpose of this Act is to motivate convicts to accept counseling or other rehabilitation programs required or recommended by the sentencing judge.

Presently, convicts may refuse to accept counseling or rehabilitation and then may be released early by the Commissioner on the premise that the convict will not be rehabilitated if he or she stays in jail.

Copy to Bill file

HB

60

HB 60--Lindauer--An Act providing or conditional pardon."

1--At first glance, it would seem to fly in the face of Art. XIV, Sec. 1, (But probably doesn't)

U.S. Constitution, where it reads, in part:

> "....No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

Arguably, if such a law were tested in Alaska, a pardoned person requested to leave the state could say (1) privileges to stay in Alaska were abridged, (2) did not have the "immunity" of being protected by Alaska laws, or (3) infringements were made on his liberty to remain in the state of his choice and (4) was denied "equal protection" of Alaska laws.

2--Article I, Alaska Constitution, under "inherent Rights" gives citizens the same kind of protection.

Probably similar arguments could be made under Alaska Constitution, and the additional hue and cry that the State cannot make "unjust distinctions between persons." (See Legee v. Martin, 379 P.2d 477(1963)

3--HOWEVER, COUNTERING THAT,

is Art. II, Sec. 21, Executive Clemency, as follows:

> "Subject to procedure prescribed by law, the governor may grant pardons, commutations, and reprieves, and may suspend and remit fines and forfeitures. This power shall not extend to impeachment. A parole system shall be provided by law."

(a) The Legislature has not yet prescribed procedures relative to executive clemency or how it should be carried out. THis measure would be the first, or come closest, to that proposition.

(b)--Obviously, the Governor already has the power to grant pardons. There is no Alaska case law on same and apparently there are no standards prescribed anywhere that the Governor would have to meet.

In other words, "he can do it if he wants to."

(c)--I understand from BIlly Berrier such executive clemency arrangements have been upheld in at least two jurisdictions (but he was unable to give me case law citations and I haven't the hours to research it, yet).

(d)--"Executive clemency", I think, is quite different from a Judge handing down a sentence. In the latter case, to make such a condition as a part of a sentence, the Judge would be dealing with law and very likely would be acting unconstitutionally and the provision probably could be successfully challenged. Action challenging Governors action under this kind of law probably would be unsucessful.

****

Alaska State Legislature

Representative John Lindauer
District 10-A
3933 Geneva Place
Anchorage, AK 99508

While in Juneau
Pouch V
Juneau, AK 99811
465-3709

House of Representatives



March 11, 1983

MEMORANDUM

TO: House Judiciary Committee

FROM: Representative John Lindauer

RE: House Bill #60: "An Act providing for conditional pardon."

The intent of HB 60 is to offer a released prisoner the option of leaving the state of Alaska in exchange for a Governor's conditional pardon.

Recividism is a major problem in Alaska allowing Alaska's released convicts to leave the state would insure that these convicts would not terrorize, rape, burglarize, or assault Alaskans. Hopefully, a new climate and location often closer to the "home" from whence they came, would assist in their rehabilitation.

The transport by the convict would be voluntary. However, should the individual renig on his agreement, he would fall again under the provisions of his parole.

Alaska State Legislature

Representative John Lindauer
District 10-A
3933 Geneva Place
Anchorage, AK 99508

While in Juneau
Pouch V
Juneau, AK 99811
465-3709

House of Representatives



March 11, 1983

MEMORANDUM

TO: House Judiciary Committee

FROM: Representative John Lindauer

RE: House Bill #60: "An Act providing for conditional pardon."

The intent of HB 60 is to offer a released prisoner the option of leaving the state of Alaska in exchange for a Governor's conditional pardon.

Recividism is a major problem in Alaska allowing Alaska's released convicts to leave the state would insure that these convicts would not terrorize, rape, burglarize, or assault Alaskans. Hopefully, a new climate and location often closer to the "home" from whence they came, would assist in their rehabilitation.

The transport by the convict would be voluntary. However, should the individual renig on his agreement, he would fall again under the provisions of his parole.

STATE OF ALASKA
FISCAL NOTE

Revision Date , 1983

I. REQUEST
Bill/Resolution No.: House Bill No. 60
Title: providing for cond. pardon...
Sponsor: Lindauer
Requestor: House Judiciary

II. FISCAL DETAIL
Agency Affected: Health & Social Servs.
Program Category Affected: Justice
BRU, Program of Subprogram(s) Affected:
Adult Confinement

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 83	FY 84	FY 85	FY 86	FY 87	FY 88
OPERATING						
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 COMMODITIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-
CAPITAL	-0-	-0-	-0-	-0-	-0-	-0-
REVENUE	-0-	-0-	-0-	-0-	-0-	-0-

FUNDING: (Thousands of Dollars)

GENERAL FUND	-0-	-0-	-0-	-0-	-0-	-0-
FEDERAL FUNDS						
OTHER (Specify Source)						

POSITIONS:

FULL-TIME	-0-	-0-	-0-	-0-	-0-	-0-
PART-TIME						
TEMPORARY						

III. SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

Not applicable.

IV. ANALYSIS: Attach a separate page for any Analysis

Prepared By: Roger C. Lange Roger C. Lange Phone: 465-3376
Division: Adult Corrections Date: April 26, 1983

Approved by Commissioner: Robert London Smith, Ph.D. Date: 4/28/83
Department Health & Social Services

Distribution:
Original to Legislative Finance
Copy to Office of Management and Budget (for Legislature introduced bills)
Copy to Department (for Governor introduced bills)
Copy to Sponsor
Copy to Requestor (if different from Sponsor)

3/8/83

IV. ANALYSIS

Enactment of House Bill No. 60 would not impact the Division of Adult Corrections as offenders receiving conditional would not require supervision.

HB

75

The Anchorage Times

Saturday, February 19, 1983

City / State B

Exclusionary rule change sought

by Steve Hansen
Times Writer

A Senate resolution aimed at amending the so-called exclusionary rule received a strong endorsement from several prosecutors, law enforcement officials and citizens who testified before a Senate Judiciary Subcommittee public hearing here Friday.

If the resolution receives similar support from at least two-thirds of the state House and Senate, the amendment will appear on the ballot in the 1984 general election.

Under the rule, if a judge decides that evidence has been gathered illegally by law enforcement officials, it is inadmissable in court. And if a defendant is brought to trial based on evidence gathered in an illegal search, the charges can be dismissed.

The exclusionary rule is based primarily on the U.S. Constitution's prohibition of illegal search and seizure by the government. But many states have the same type of prohibition either in their constitutions, or in their statutes.

Opponents of the rule say it often allows criminals to go free on legal technicalities.

The resolution, co-sponsored by Sen. Bill Ray, D-Juneau, and Sen. Fritz Pettyjohn, R-Anchorage, would modify the rule.

Under the provisions of the resolution, even if officers did not follow correct constitutional procedures in gathering evidence, it would be admissible if the state could prove the police acted in "good faith."

Pettyjohn called the resolution "the most significant piece of criminal legislation this legislature will address."

Alaska law currently guarantees the right of citizens to be "secure in their persons, houses and other property, papers, and effects" and against "unreasonable" searches and seizures.

It also states that warrants must be issued based on probable cause, must describe the place to be searched, and the persons or things to be seized.

If the resolution is approved by the legislature and voters, the following amendment will be added:

"A person whose rights under this section are violated has a cause of action for civil damages against the peace officer who violates this secition. Evidence seized in violation of this section shall not be suppressed in a criminal prosecution if it is discovered by a peace officer acting in the good-faith belief that the officer's conduct is constitutional and if there is a reasonable basis for that belief."

District Attorney Victor Crumm, Municipal Prosecutor Allen Bailey and U.S. Attorney Michael Spaan were among those who testified in favor of the "good-faith" resolution at Friday hearing.

Sens. Joe Josephson and Pat Rodey, both D-Anchorage, and Pettyjohn hosted the hearing.

Crumm said the charges against some suspects are now being reduced or amended if he thinks the evidence would not be admitted by the court.

Bailey repeated Crumm's statement, adding, "But in my opinion if one rapist walks (away free) then that's too many."

Bailey was making reference to a case he handled in which a conviction against a rapist was thrown out because the evidence was ruled inadmissable.

Spaan said the exclusionary rule should be amended because it "doesn't benefit an innocent party but it benefits the guilty."

He said the alternative to allowing a judge to decide whether evidence was obtained in a "good-faith" mistake was "worth letting a guilty person go unpunished."

After the hearing, Pettyjohn said he felt confident the proposal would receive the required two-thirds majority in both legislative bodies.

"I doubt it will have that much trouble because it is such a common-sense proposition," he said.

And if it goes before the voters?

"I think it will sail," Pettyjohn said.

HB75
JR

Police support easing evidence regs for court

By CHRIS JARVIS 1/28/83
Empire Staff Reporter

The Board of Directors of the Alaska Peace Officers Association has recommendedeasing the "fruit of the poisoned tree" doctrine, which prohibits admitting evidence in court if it was obtained illegally.

In its annual winter meeting the board unanimously supported a bill introduced by Sen. Fritz Pettyjohn, R-Anch., which would allow evidence to be admitted even if it was obtained illegally if the officer acted in good faith and believed a search was proper.

"It's bad to put a potentially dangerous person back on the street just because of a technical error," said board chairman Warren Suddock.

Suddock is a captain in the Uniformed Field Services Division of the Anchorage Police Department.

If evidence is obtained illegally out of negligence or malice, however, the officer should be liable for criminal, civil or internal discipline, Suddock said.

Lawmakers should also make assaulting a police officer and causing injury that requires minor medical treatment third degree assault, which is a felony, said Suddock. Currently, assaulting a police officer is considered resisting arrest, a misdemeanor.

Suddock also called for clarification of penalties for drunk driving convictions.

"For a myriad of reasons," such as lack of space in the jails, "a lot of people don't pay the penalty," he said.

The Legislature should clarify the law to prevent the "set-up of some ludicrous bookkeeping systems to keep people guessing what three days is," he said, referring to judges who sentence drunk drivers to three days in jail without specifying three 24-hour days.

Southeast judges seem to know three days means 72 hours, Suddock said.

Pettyjohn seeks to tighten state's exclusionary rule

by Hal Spencer
Associated Press

Times 1-25-93

Juneau — An Anchorage police officer spots what he suspects is a getaway car moments after an armed robbery. He stops the vehicle, but its driver flees. The policeman discovers a loaded pistol in a paper bag under the seat.

It is possible, says Sen. Fritz Pettyjohn, that the hypothetical driver, later charged with armed robbery, would "walk free" because the car was searched without a warrant.

It's called the "exclusionary rule," and it's firmly rooted in the U.S. Constitution's Fourth Amendment protections against unreasonable searches and seizures.

Pettyjohn, an Anchorage Republican and former prosecutor, is leading a fight to tighten Alaska's statute on the rule so that often-inadmissable evidence can be used in court.

A portion of the proposal would permit introduction of the evidence "if the prosecution satisfies the judge that the peace officer's conduct was taken in a reasonable, good-faith belief that the conduct was proper and that the evidence discovered should not be kept from the trier of fact, if otherwise admissable, because the conduct resulted in only a technical violation of the defendant's right to be protected from unlawful searches and seizures."

The bill, sponsored by Pettyjohn and three other senators, reached the Senate Judiciary Committee on Monday and was assigned to Pettyjohn, in his capacity as a member of that committee.

The freshman senator said he expects "heat from civil libertarians" on the measure, but is prepared to devote a lot of energy to its passage.

"The result of this (proposal) would be that if an officer makes a good-faith and reasonable effort to comply with the Fourth Amendment, the evidence he obtained in the course of a search or seizure will not be thrown out of court," Pettyjohn said.

The senator said the exclusionary rule seems to come up most often in drug-related cases, "but it's really as most terrible in violent crime cases."

The measure "is in response to grass roots pressure," said Sen. Bill Ray, D-Juneau, Judiciary Committee chairman.

Sen. Patrick Rodey, D-Anchorage, chairman of the Judiciary Committee last year, attended Monday's meeting and said a study of the exclusionary rule by a former state prosecutor will be completed by the first half of February.

The study, performed by Barry Stern, now a professor of law in Boston, will be made available to the committee, he said.

Pettyjohn said he has strong feelings about what he called shackles placed on police officers by the exclusionary rule and he said he is confident the U.S. Supreme Court soon will tighten the rule.

POUCH V
JUNEAU, ALASKA 99811
465-4990

P.O. BOX 4-1325
ANCHORAGE, ALASKA 99509
248-1515

CHAIRMAN
HOUSE JUDICIARY COMMITTEE
MEMBER
HOUSE RESOURCES COMMITTEE

Representative Charlie Bussell

ALASKA STATE LEGISLATURE
HOUSE OF REPRESENTATIVES

February 23, 1983

Juneau Bar Association
P. O. Box No. 1312
Juneau, Alaska 99802

ATTENTION: Ms. Kathy Kolkhorst

SUBJECT: Information Request on Status of HB 75 and SB 49

Dear Ms. Kolkhorst:

Enclosed is a copy of a brief report which was made to me by a House Judiciary staff member who attended the first hearing held on SB 49.

As you can see the three Anchorage Senate attorneys gathered precious little information at their hearing. I also understand the Senate intends little or no further action with the bill at this time.

HB 75 is in the House Judiciary at this time and I plan little effort on it at this time. I prefer to give the Feds time to make some changes.

If you have a chance, please stop by Room No. 124 in the Capitol. You may be interested in our regular hearing schedules.

Regards,

Representative Charlie Bussell
Chairman, Committee on Judiciary

CB:lyn

Received
1/24/83
2-21-83
CB

JUNEAU BAR ASSOCIATION

P.O. Box 1312
Juneau, AK 99802

January 24, 1983

The Honorable Charlie Bussell, Chairman
House Judiciary Committee
Pouch V - Room 126 Capitol
Juneau, Alaska 99811

Dear Representative Bussell:

The Juneau Bar Association at its Friday meeting discussed, for the first time, Senate Bill 49 and House Bill 75 which would limit the application of the exclusionary rule.

The membership was quite interested in gaining more information about the effects of the two bills and directed me to request that your committee schedule the bills for further hearings to permit reflection and comment.

We appreciate your consideration of this request and would ask to be kept informed of scheduled hearings on these bills.

Sincerely,

Kathy Kolkhorst/pc

Kathy Kolkhorst

1,768

THE LEGISLATURE OF THE STATE OF ALASKA
THIRTEENTH LEGISLATURE

JUD

FISCAL NOTE

☐ Expenditure Type
☐ Revenue Type

I. REQUEST
Bill/Resolution No. HB 75
Title "An act relating to the exclusionar, rule;..."
Requested by _____ Date _____

II. FISCAL DETAIL
Agency Affected Department of Public Safety
Program Category Affected Administration of Justice
ERU, Program, Or Subprogram(s) Affected Alaska State Troopers
(Note: If more than one budget component is affected, separate line-item amounts and funding for each component in the analysis section.)

EXPENDITURES (Thousands of Dollars)

	FY 83	FY 84	FY 85	FY 86	FY 87	FY 88
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 COMMODITIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS,CLAIMS,ETC.						
TOTAL	0	0	0			

FUNDING (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER (Specify Source)						
	0	0	0			

POSITIONS

FULL TIME						
PART TIME						
TEMPORARY						

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

No fiscal impact is anticipated.

RECEIVED
FEB 4 1983
LEGISLATIVE FINANCE

IV. DATE January 25, 1983 PREPARED BY F. C. Allan F.C.A. Phone 269-5691
DIVISION State Troopers Initials
DEPARTMENT OF PUBLIC SAFETY mlm Initials 1/31

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

33-001 (Rev. 12/80) OMB Reviewed by: Eric Laschever

MSG 83-00002857 PRTY 1 01/20/83 18:39:18 ORIG: LB00 IN= 0010 OUT= 0119
FROM: WALLY IN BETHEL - TO: JUNEAU INFORMATION
TARGET: LJHL SUBJ: P O M

TO: CHAIRMAN, HOUSE JUDICIARY COMMITTEE
CHAIRMAN, SENATE JUDICIARY COMMITTEE

FR: ANGSMAN LAW OFFICES
PETER ERHARDT
PO BOX 758
BETHEL, ALASKA 99559 PHONE: 543-2973

I WOULD LIKE TO SEE A PUBLIC HEARING SCHEDULED ON BOTH HB75 AND SB49. I FEEL THESE ARE VERY IMPORTANT BILLS AND INPUT FROM THE PUBLIC AS WELL AS THE LEGAL COMMUNITY WOULD BE QUITE HELPFUL, BEFORE PASSING THESE BILLS OUT OF COMMITTEE.

THANK YOU FOR YOUR CONSIDERATION.

HB

79

(7)

COMMITTEE REPORT

HOUSE

FURTHER:

1/19/83

Date: 2-9-83

Mr. Speaker:

The Committee on JUDICIARY has had HB 79

An Act repealing peremptory disqualification of a judge and changing Rule 10(a) and Rule (25(d), Rules of Criminal Procedure and Rule 42(c) Rules of Civil Procedure; and providing for an effective date.

under consideration and reports it back as follows:

[X] do pass [ ] do not pass

[ ] do pass with attached amendments(s)

[ ] replace with CS for _____ [ ] same title [ ] new title

and recommends _____

[ ] AND attaches a "Letter of Intent" [ ] New Fiscal Note

[X] Zero Fiscal Note Attached

[ ] reports it back without recommendation

[ ] referred to the _____ Committee

MEMBERS SIGNING
DO PASS

MEMBERS HAVING
OTHER RECOMMENDATIONS:

CHAIRMAN

H 69

F.c 11

THE LEGISLATURE OF THE STATE OF ALASKA
THIRTEENTH LEGISLATURE

FISCAL NOTE

I. REQUEST
Bill/Resolution No. HB 79
Title "An Act repealing peremptory disqualification of a judge..."
Requested by House Judiciary Committee Date 1/26/83

II. FISCAL DETAIL
Agency Affected Department of Law
Program Category Affected Administration of Justice
BRU, Program, Or Subprogram(s) Affected Prosecution
(Note: If more than one budget component is affected, separate line-item amounts and funding for each component in the analysis section.)

EXPENDITURES (Thousands of Dollars)

	FY 83	FY 84	FY 85	FY 86	FY 87	FY 88
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 COMMODITIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS,CLAIMS,ETC.						
TOTAL		X	X	X		

Costs that will occur cannot be determined at this time. See analysis below.

FUNDING (Thousands of Dollars)
General Funds costs that will occur cannot be determined at this time.
Please see analysis below.

GENERAL FUND		X	X	X		
FEDERAL FUNDS						
OTHER (Specify Source)						

POSITIONS

FULL TIME						
PART TIME						
TEMPORARY						

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

Although not quantifiable at this time, this bill has the potential for causing a significant fiscal impact on the Department of Law, the Public Defender and the Court System. The department rarely uses peremptory disqualification and the department's Criminal Division probably does so only 10 or 12 times each year. The problem will arise from the private criminal defense bar which disqualifies some judges 30% or 40% of the time. If the private bar continues to seek this same level disqualification, based on cause, our prosecutors will then have to devote substantial portions of their time participating in a two-tier disqualification hearing process. Without any prior experience to guide us, the department is hesitant to speculate on the actual cost that this bill might cause. The department does believe that this bill will have the effect of hampering its

II. Fiscal Detail

Agency Affected Department of Law

Program Category Affected Administration of Justice

BRU, Program, Or Subprogram(s) Affected Prosecution

(Note: If more than one budget component is affected, separate line-item amounts and funding for each component in the analysis section.)

EXPENDITURES (Thousands of Dollars)

	FY 83	FY 84	FY 85	FY 86	FY 87	FY 88
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 COMMODITIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS,CLAIMS,ETC.						
TOTAL		X	X	X		

Costs that will occur cannot be determined at this time. See analysis below.

FUNDING (Thousands of Dollars)

General Funds costs that will occur cannot be determined at this time. Please see analysis below.

GENERAL FUND		X	X	X		
FEDERAL FUNDS						
OTHER (Specify Source)						

POSITIONS

FULL TIME						
PART TIME						
TEMPORARY						

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

Although not quantifiable at this time, this bill has the potential for causing a significant fiscal impact on the Department of Law, the Public Defender and the Court System. The department rarely uses peremptory disqualification and the department's Criminal Division probably does so only 10 or 12 times each year. The problem will arise from the private criminal defense bar which disqualifies some judges 30% or 40% of the time. If the private bar continues to seek this same level disqualification, based on cause, our prosecutors will then have to devote substantial portions of their time participating in a two-tier disqualification hearing process. Without any prior experience to guide us, the department is hesitant to speculate on the actual cost that this bill might cause. The department does believe that this bill will have the effect of hampering its

Richard L. Pegues

IV. DATE January 28, 1983 PREPARED BY Richard L. Pegues, Dir. Adm.Svcs.

AGENCY Department of Law

Original: Legislative Finance PHONE 465-3672

cc: Budget and Management

Prime Sponsor (First Legislator Named)

33-001 (Rev. 12/82)

OMB review by Guy Bell

overall ability to prosecute criminal offenses, by diverting already diminished resources from other matters currently being addressed.

NOTIFICATION OF BILL HEARING

WEEK OF:

BILL #	BILL TITLE	DEPARTMENT	DATE	SPONSOR	DATE
HB 79	Judge & staff Pay	Dept of Law Richard (F.N.)	1/26	Fritz + Liska	

Lawyers' muscle

THE LAWYERS in Homer continue to prevail in the case of the transfer of District Court Judge James Hornaday from their town to Anchorage.

Those lawyers wouldn't try criminal cases before the judge because he was handing out severe punishment for drunken drivers. So many of them boycotted his courtroom that Judge Hornaday had little to do. Anchorage lawyers had to be sent to Homer to handle the load.

Judge Hornaday protested his forced move by appealing it. This week, a memo filed with state and federal court from the attorney of the presiding judge who made the transfer maintains it was done through due process.

The peremptory challenges in Homer have turned out to be a powerful instrument in the lawyers' control over that small community's judicial system. They also have frustrated the efforts of a conscientious judge to control the drunk driving on Alaska's roads and highways.

THE LAW that allows peremptory challenges needs modification so that abuses such as the one in Homer can be avoided. Judges need to be able to concentrate on the business at hand and not be required to concern themselves with lawyers' attitudes.

Working on proposals for such a modification would be a good job for the members of the legislature between the time they adjourn this year and meet again next January.

TIMES 5-20-83

Pre-emption of judges 'disruptive'

by Jeff Berliner
Times Writer

Times 2-6-83

A handful of state judges are "disrupting" the state court system because they are removed from cases so frequently, says state court administrator Art Snowden.

Court records show that one Anchorage judge and five other judges from around the state are excused from cases far more than their colleagues.

Although the current debate over pre-emptions has focused on Homer District Court Judge James Hornaday, he is not the only judge regularly excused from cases by lawyers. There are 42 trial judges in the state, (the eight appellate judges may not be pre-empted), and lawyers routinely excuse six of them.

According to court records, in addition to Hornaday, the judges most regularly bumped from

See Judges, page A-1

Judges

(Continued from page A-1)

cases are Juneau District Court Judge Gerald Williams, Fairbanks District Court Judge Stephen Cline, Anchorage Superior Court Judge Karl Johnstone, Juneau Superior Court Judge Roger Pegues, and Wrangell Superior Court Judge Henry Keene.

By law, attorneys have a right of pre-emption, called peremptory challenge, which means that each side in a case may excuse the judge assigned to that case one time. The parties involved do not have to state the reason. Lawyers have five days from the initiation of a case to file a notice for a change of judge. The legislature is now considering a bill to repeal lawyers' right to pre-empt a judge.

Court officials have called the pre-emption an "administrative nightmare" because of the problems in reassigning judges.

"It is more efficient without it," Snowden said, adding that the court system has not taken a policy on the peremptory challenge and is probably split on the issue.

Snowden called it "a disruption" that costs the state court system an average of $20,000 yearly in extra costs of reassigning cases to other judges.

The biggest expense, Snowden said, is paying travel and expense money to have judges journey to one-judge areas to fill in where the only judge in town has been legally removed from a case.

That has happened so much in Homer that Hornaday has been ordered to pack up, leave town, and don his judicial robes in Anchorage. Even if lawyers pre-empt him there, the reasoning is, there are other judges to fill in. Presiding Judge Mark Rowland ordered Hornaday to move to Anchorage by June 1 to fill a judicial vacancy here.

Hornaday has been pre-empted from about 84 percent of the criminal cases assigned to him. His lawyer, Henry Camarot, claims that Hornaday is pre-empted 8 percent of the time when all his cases are considered.

Cline, Williams and Johnstone are taken off cases up to half the time. All four of the most pre-empted judges have been retained in office by voters in recent elections.

Johnstone, the only Anchorage judge regularly excused, is also the only judge who hears civil cases almost exclusively. The others regularly hear criminal cases, too. Johnstone is pre-empted three times more than all the other Anchorage Superior Court civil judges put together, and his pre-emptions climbed to a high of 20 in December. Judges are assigned between 30 and 40 new cases monthly. Johnstone was pre-empted 153 times in 1982, up from 71 in 1981. And although Johnstone said last summer that his pre-emptions were going down, court records show they are on the rise.

But in Anchorage, the state's biggest judicial district, Johnstone's cases are simply reassigned to another Anchorage judge. That can't be done in Homer, where Hornaday is the only judge. His removal means that court administrators have to send in another judge to hear Hornaday's cases.

Last week the House Judiciary Committee held two days of hearings on the bill to abolish the pre-emption. Lawyers argued against the bill, claiming the pre-emption is used to excuse a judge who may not give their client a "fair shake."

Both defense attorneys and Anchorage municipal prosecutor Allen Bailey argued for keeping pre-emptions around so they have a tool to excuse a judge they think is either too lenient or too harsh when it comes to sentencing.

Judge blames lawyers for high disq

Empire - 2-8-83

Lawyers counter that challenges are needed to guarantee fairness

By CHRIS JARVIS
Empire Staff Reporter

Lawyers, not judges, are to blame for the high frequency with which some judges are disqualified from cases, Juneau District Court Judge Gerald O. Williams said today.

Williams is frequently disqualified from hearing cases because, in his opinion, "Alaska is the most lawyer-whipped state in a lawyer-whipped country."

Williams and Juneau Superior Court Judge Rodger Pegues have been named as two of six Alaska trial judges most frequently disqualified from cases. Pegues is on vacation and was unavailable for comment.

Alaska Court Administrator Art Snowden said the peremptory challenges, which allow lawyers to ask for a different judge without stating a reason, are an "administrative nightmare," noting it costs the state an estimated $30,000 a year to fly judges into a jurisdiction to hear a case.

Williams, a former Alaska State Trooper, said members of the bench should not be blamed.

Williams said it is his responsibility to make sure a person accused of a crime is brought to trial within 120 days of his arrest, he said. He thinks peremptory challenges are often used to prolong the time before trial.

Lawyers generally disagree.

"I don't know of any attorney" who uses peremptory challenges only to prolong

...qualification rate

cases, said lawyer Richard Burnham.

According to current rules, an attorney on either side of a case can request a judge be disqualified without giving a reason.

Requiring attorneys to say why a judge should be disqualified would present problems if a judge is not disqualified and the attorney must then argue a case before him, Burnham said.

Although acknowledging it costs money to fly a judge to hear the cases of a disqualifed judge, Burnham said there are other solutions to the problem. For example, he said, a superior court judge could hear district court cases or, if that is not possible, another district judge could be hired.

"It doesn't seem to me the goal of the judicial system is to run cheaply. It's to give people their day in court," Burnham said.

Williams, however, said if a case is prolonged long enough; eventually a case

Continued on Page 2

Judge...

Continued from Page 1

could be dismissed because the time limit for trial has been passed.

Admitting he is sometimes curt when on the bench, Williams said he finds it difficult to "put someone in jail in a nice way."

He defended his record, saying he treats everyone who is convicted in his court in the same way.

"I've still got friends who are mad at me (for sentencing them to jail), but it goes with the turf," he said.

"I admit I'm old fashioned," Williams said. He seldom likes to grant delays in court proceedings because cases often end up dismissed when delayed too long, he said.

Peremptory challenges are often used by attorneys in a "tactical and strategic" manner, Williams said.

Of defense attorneys, Williams said, "It is in their interest to prolong to avoid a trial."

However, it is not always in the best interest of the defendent, Williams said. Peremptory challenges and continuances might result in an attorney's client staying in jail, if not able to make bail, he said.

It is the court's responsibility to assure efficiency in the system especially with criminal case loads in Juneau almost doubling in four years, he said.

Sometimes 30 to 60 days will have elapsed days since a person's arrest before making the first court appearance. That leaves as few as 60 days before the case may go to trial, Williams said, noting motions for continuances, if granted, could extend beyond the 120 day limit.

Although some people who see Williams on the bench for the first time might see him as "a combination of Attila the Hun and Genghis Kahn," he said it is because his experience has taught him he must be absolute when passing judgement.

"I may appear curt in court but I've learned through experience that you've got to do it," he said.

Christian Ministers Association of Kachemak Bay
P.O. Box 2018
Homer, Alaska 99603

December 9, 1982

Judge Mark C. Rowland
303 K Street, Courtroom D
Anchorage, AK 99501

Dear Judge Rowland,

Your office and the judicial system are held in high regard by us and our children. We value justice as one of the key ingredients in our democratic way of life. We regularly instruct our children to respect the law and to deal in a just way with their companions and fellow citizens.

In this context we cannot understand why you should order Homer District Court Judge James Hornaday transfered to Anchorage against his will and against the overwhelming wishes of our community. As we understand, there is no precedence for this.

Therefore, we ask — for justice sake — that Judge Hornaday be retained as our District Court Judge. Secondly, you should know that we wholeheartedly endorse the policies of Judge Hornaday in sentencing DWI offenders. Finally, we request that the whole peremption policy be reviewed in light of these circumstances.

A judge serves his community in an exceptional manner. His policies are supported by the people he serves. He is an outstanding example for our children. Yet, he is transfered against his will. That seems a strange reward — even stranger justice.

Speaking for the Christian Ministers Association, I am

Sincerely yours,

J Schmidt

The Rev. John D. Schmidt, President
235-7600

cc: Chief Justice Edmond Burke

COMMUNITY MENTAL HEALTH CENTER

Box 2274
Homer, Alaska 99603-2274
(907) 235- 7701



RESOLUTION

SOUTH PENINSULA MENTAL HEALTH ASSOCIATION, INC.

December 11, 1982

Whereas, Judge James Hornaday has proven to be an effective and competent District Court Judge serving the Homer Court, and

Whereas, Judge Hornaday was overwhelming endorsed by the residents of his jurisdiction during the recent election, and

Whereas, the right of the State Judicial system to move a Judge without public hearing or other procedural considerations is currently being questioned,

Be it hereby resolved that the South Peninsula Mental Health Association requests the retention of Judge Hornaday in the Homer District Court, and

Be it further resolved that the judicial pre-emption statutes in Alaska should be thoroughly reviewed and that the procedures for moving a Judge from one jurisdiction to another should be standardized through promulgation of appropriate regulations.

Resolution passed at the Board of Directors meeting on December 11, 1982.

Joe P Aprill

Reverend Joe Aprill, Chairperson

December 6, 1982

Homer Chamber of Commerce

Judge Mark C. Rowland
303 K Street
Courtroom D
Anchorage, AK 99501

Dear Judge Rowland:

The community and surrounding areas of Homer is greatly dismayed to learn of your decision to transfer Judge James C. Hornaday from Homer to Anchorage. We strongly urge your reconsideration in this matter.

Judge Hornaday has been an excellent judicial representative for Homer for many years. His home and family are here. We do not want to lose Judge Hornaday to this area.

This community has steadfastly supported Judge Hornaday's courageous stand against the crime of drunken driving and we wholeheartedly support his sentencing procedures.

Please find attached petitions of support in favor of Hornaday being retained as District Judge in this area.

Sincerely,

HOMER CHAMBER OF COMMERCE

Jim Daily,
President

JD:lag
Enclosures

cc: Governor Bill Sheffield
Judge Edmond Burke
Homer City Council
Kenai Peninsula Borough Assembly
Rep. Milo Fritz
Hugh Malone
Sen. Paul Fischer
Don Gilman

Post Office Box 541 • Homer, Alaska 99603

CITY OF HOMER
P.O. BOX 335
HOMER, ALASKA 99603-0335

Box 335
Homer, Alaska 99603

CITY OF HOMER

REPLY TO:

- ☐ City Hall
  Ph. (907) 235-8121
- ☐ Port of Homer
  Ph. (907) 235-8597
- ☐ Harbor Master
  Ph. (907) 235-8959
- ☐ Public Works Dept.
  Ph. (907) 235-8120
- ☐ City Engineer
  Ph. (907) 235-6368

December 6, 1982

The Honorable Mark Rowland
Presiding Judge of the Superior Court
303 "K" Street
Anchorage, AK 99501

Dear Judge Rowland:

We, as a community, strongly oppose the transfer of Judge James Hornaday. Judge Hornaday's stance on drunk driving is looked upon as a favorable public service in the community. Perhaps the laws of pre-emption should be closely scrutinized and amended out of necessity in administering a trial court system.

Jim Hornaday is an active participant in community affairs, an impeccable family man, and contributes strong support to this rural community. The type of program he advocates serves the individual rights of our citizens to travel the streets of Homer with less probability of being harmed by drunk drivers.

As Mayor of Homer, I petition you to cancel the transfer order removing Judge Hornaday from this community as District Court Judge.

Sincerely,

Erle Cooper
Mayor

EC:lcr
CC: Governor Bill Sheffield
Judge Edmond Burke
District 5, Legislative Delegation

CITY OF HOMER
HOMER, ALASKA

RESOLUTION 82-20(S)

A RESOLUTION SUPPORTING A STIFF SENTENCING POLICY FOR DRIVING WHILE INTOXICATED (DWI).

WHEREAS, the absence of sidewalks in Homer requires pedestrians to walk along the traveled ways, subjecting themselves to potential vehicle associated accidents; and,

WHEREAS, studies which have been conducted show that the higher the blood alcohol level, the greater the likelihood of an accident; and,

WHEREAS, there has been an increase in D.W.I. cases of some seventy-seven percent (77%) between 1980 and 1981 in the Homer District Court; and,

WHEREAS, the City Council of the City of Homer wishes to have life, liberty and property protected from potential injury by person(s) who drive while under the influence of alcohol;

NOW THEREFORE, BE IT RESOLVED that the Common Council of the City of Homer, Alaska, supports a stiff sentencing policy for Driving While Intoxicated (DWI).

BE IT FURTHER RESOLVED that copies of this resolution be directed to the State legislators of Alaska.

DATED in Homer, Alaska this 14th day of June, 1982.

CITY OF HOMER

Sam Matthews

Sam Matthews, Mayor Pro tem

ATTEST:

Kathleen F. Herold

Kathleen F. Herold, City Clerk

C. R. BALDWIN
ATTORNEY
P. O. BOX 4210
KENAI, ALASKA 99611
TELEPHONE (907) 283-7167

December 23, 1982

Milo H. Fritz
Box 158
Anchor Point, Alaska 99556

Dear Milo:

This letter is prompted by the article concerning your position on certain legal reforms you have proposed which appears in the December 20 issue of The Clarion.

You were quoted as indicating that you expected the legal profession to oppose your bill removing the right of peremptory challenges. I know of very few attorneys who have ever exercised their right to file a peremptory challenge against a judge. I, myself, have never filed one and I agree that no such right should exist. I have not made a study of other jurisdictions but would be very surprised if the right exists in very many states. Presumably, the law was originally passed by well meaning individuals who enjoy tinkering with the system. I wish you well in pushing the legislation and offer you my support.

I was surprised that you were quoted as indicating your interest in enacting legislation which would impose a limit on attorney's fees in probate matters. Although I do not do any probate work myself at the present time, it has been my experience in the past that after the passage of the Uniform Probate Act and the institution of simplified probate procedures, many attorneys are now charging fees which are lower than they were in the past. In the case of a large estate I would suggest that a fee based upon the percentage of that estate would be unconscionable. From the attorney standpoint, it generally does not cost any more to probate a large estate than to probate a small one. Prior to the passage of the Uniform Probate Act, that was not the case.

Philosophically, I am opposed, as I am sure you are,

to the State interfering in contract relationships between professionals and their clients. I would suggest that a legislature which would concern itself with fees charged by an attorney to his client would also not hesitate in interfering with the fees charged by a physician to his patient. As a practical matter, a client who is overcharged by an attorney presently has recourse to the fee arbitration panel which operates under the auspices of the Alaska Bar Association. In light of the foregoing, I would request that you rethink your position on supporting a limit on attorneys fees.

Thank you for your attention to my comments. I wish you well in Juneau this year.

Very truly yours,

Rick

C. R. BALDWIN

CRB/hs

LAWS OF ALASKA

1967

Source: SB 66 am

Chapter No. 48

AN ACT

Relating to the disqualifications of judicial officers; and providing for an effective date.

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

* Section 1. AS 22.20.020 is repealed and re-enacted to read:

Sec. 22.20.020. DISQUALIFICATION OF JUDICIAL OFFICER FOR CAUSE. (a) A judicial officer may not act as such in a court of which he is a member in an action in which

(1) he is a party or is directly interested;

(2) he was not present and sitting as a member of the court at the hearing of a matter submitted for its decision;

(3) he is a material witness;

(4) he is related to either party by consanguinity or affinity within the third degree;

(5) either party has retained him as their attorney or has been professionally counseled by him in any matter within two years preceding the filing of the action;

(6) the judicial officer feels that, for any reason, he cannot give a fair and impartial decision.

(b) In an action specified in (a)(4) and (5) of this section the disqualification may be waived by the parties and is waived unless a party raises the objection.

(c) If a judicial officer disqualifies himself or

consents to disqualification, the presiding judge of the district shall immediately transfer the action to another judge of that district to which the objections of the parties do not apply or are least applicable and if there be no such judge, then the chief justice of the supreme court shall assign a judge for the hearing or trial of the action. If a judicial officer denies his disqualification the question shall be heard and determined by another judge assigned for the purpose by the presiding judge of the next higher level of courts or, if none, by the other members of the supreme court. The hearing may be ex parte and without notice to the parties or judge.

* Sec. 2. AS 22.20 is amended by adding a new section to read:

Sec. 22.20.022. PREEMPTORY DISQUALIFICATION OF A SUPERIOR COURT JUDGE. (a) If a party or his attorney in a superior court action, civil or criminal, files an affidavit alleging under oath that he believes that he cannot obtain a fair and impartial trial, the presiding judge shall at once, and without requiring proof, assign the action to another judge of that district, or if there be none, then the chief justice of the supreme court shall assign a judge for the hearing or trial of the action. The affidavit shall contain a statement that it is made in good faith and not for the purpose of delay.

(b) No judge or court may punish a person for contempt for making, filing or presenting the affidavit provided for in this section, or a motion founded on the affidavit.

(c) The affidavit shall be filed within five days after the case is at issue upon a question of fact, or within five days after the issue is assigned to a judge, whichever event occurs later, unless good cause is shown for the failure to file it within that time.

(d) No party or his attorney may file more than one affidavit under this section in an action and no more than two affidavits in an action.

* Sec. 3. This Act applies to all actions pending, but not set for trial on the effective date of this Act.

* Sec. 4. This Act takes effect on the day after its passage and approval or on the day it becomes law without approval.

Approved by Governor: March 28, 1967
Actual effective date: March 29, 1967

Appeal from joint judgment.—See Stanley v. Greenberg, 5 Alaska 178.

Am. Jur. reference.—2 Am. Jur., Appeal and Error, § 1 et seq.

Sec. 22.15.250. Disposition of fines. When by law any fees, fines, forfeitures, or penalties are levied and collected by the district magistrate or deputy magistrate, the proceeds and all other money collected shall be accounted for and transmitted to the administrative director of the judicial system for transfer to the general fund of the state except as provided in § 270 of this chapter. (§ 21 ch 184 SLA 1959)

Sec. 22.15.260. Bond. Before entering upon his duties each district magistrate and deputy magistrate shall execute and file with the administrative director a surety bond in form and amount to be determined by rule of the supreme court. The state shall pay for the bond. (§ 22 ch 184 SLA 1959)

Am. Jur. reference.—30A Am. Jur., Judges, § 12.

Sec. 22.15.270. Retention of fines, etc., by political subdivisions. All fines, penalties and forfeitures resulting from violations of ordinances of political subdivisions shall be returned to the political subdivision whose ordinance is involved in the manner provided by rule of the supreme court. The political subdivision shall pay to the state administrative director of the court for transfer to the general fund of the state such sums as shall pay for the judicial services rendered to the political subdivision by the magistrate rendering the services. Fines, penalties and forfeitures imposed after appeals accrue to the state, unless the appeal is prosecuted by the political subdivision. (§ 23 ch 184 SLA 1959)

Chapter 20. Officers and Employees.

Article
1. Judicial Officers (§§ 22.20.010—22.20.030)
2. Attorneys (§§ 22.20.040—22.20.090)
3. Commissioner of Public Safety (§§ 22.20.100—22.20.140)

Article 1. Judicial Officers.

Section
10. Judicial officer defined
20. Disqualification of judicial officer
30. Power of judicial officers

Pre-1967 Law

Sec. 22.20.010. Judicial officer defined. The term "judicial officer" means a supreme court justice, including the chief justice, a judge of the superior court, a district magistrate and a deputy magistrate. (§ 54-2-1 ACLA 1949)

Am. Jur. reference.—14 Am. Jur., Courts, § 22.

Sec. 22.20.020. Disqualification of judicial officer. (a) A judicial officer may not act as such in a court of which he is a member in any of the following cases:

(1) in an action or proceeding to which he is a party or in which he is directly interested;

(2) when he was not present and sitting as a member of the court at the hearing of a matter submitted for its decision;

(3) when he is related to either party by consanguinity or affinity within the third degree;

(4) when he has been attorney in the action or proceeding in question for either party;

(5) when a party, or an attorney for a party to an action or proceeding, civil or criminal, files an affidavit that the judge before whom the action or proceeding is to be tried or heard has a personal bias or prejudice either against him or his attorney or in favor of an opposite party, or attorney for an opposite party, to the suit, and that it is made in good faith and not for the purpose of delay, and the affidavit shall state the facts and the reasons for the belief that bias or prejudice exists, and shall be filed within one day after the action, suit, or proceeding is at issue upon a question of fact, unless good cause is shown for the failure to file it within that time. No party or attorney may file more than one such affidavit in any case. The provisions of this subdivision apply only to the superior court.

(b) In the cases specified in (3) and (4) of this section the disqualification may be waived by the parties and is waived unless a party raises the objection. (§ 54-2-1 ACLA 1949)

Revisor's note.—Also see the Rules of Civil Procedure relating to "Disability of a Judge."

This section contains the only conditions under which the judge should abandon the trial of a cause and send it to another judge. United States v. Pratt, 3 Alaska 400, affirmed in 170 F. 881.

The affidavit must assert facts from which a sane and reasonable mind may infer bias or prejudice. United States v. Pioneer Packing Co., 10 Alaska 70; Graff v. Electrical Enterprises, Inc., 12 Alaska 322.

And is subject to strict construction. — That affidavits of prejudice are to be strictly construed has been held consistently. United States v. Pioneer Packing Co., 10 Alaska 70.

Personal bias must be shown.—The affidavit of prejudice must show that a personal bias exists, and the holding is that judicial bias or rulings of a judge which are the subjects of correction on appeal do not constitute personal bias. United States v. Pioneer Packing Co., 10 Alaska 70.

Filing of affidavit.—The affidavit must be filed within the time specified by statute and the recused judge must determine the question. United States v. Pioneer Packing Co., 10 Alaska 70.

Requires that cause be at issue upon question of fact.—This section specifically requires that the cause be at issue upon a question of fact before the affidavit may be filed. United States v. Pioneer Packing Co., 10 Alaska 70.

When cause is at issue.—A cause is not at issue upon a question of fact until all permissible motions and demurrers have been waived or filed and passed upon, and the proper pleading, setting forth the claims of the respective parties, has been filed. United States v. Pioneer Packing Co., 10 Alaska 70.

Mere assertion of bias insufficient. —A mere assertion of belief that the judge is biased or prejudiced, giving no reasons in its support, does not disqualify the judge under the provisions of this section. Pacific Coal, etc., Co. v. Pioneer Min. Co., 205 F. 577.

It is a mistake to assume that a judge can be ousted from jurisdic-

tion to try a cause upon an allegation of mere bias or prejudice. United States v. Pratt, 3 Alaska 400, affirmed in 170 F. 881.

Attorney may allege prejudice in a respectful manner.—An attorney may in a proper case, in a respectful manner, allege that the judge is prejudiced against his client, and unless the act is done with reckless disregard of truth, or with the express intention to reflect upon the honor and integrity of the judge, it is not a contempt. Tjosevig v. United States, 225 F. 5.

And untrue or excess facts are not proper ground for contempt or criticism.—Where an attorney filed a proper affidavit of prejudice and of interest, if the facts therein stated were untrue, the fact that they were untrue is not a proper basis for adjudging a contempt, nor is the fact that the affidavit contained more than was necessary to accomplish the change of judges a ground for punishment or criticism. Paul v. United States, 36 F. (2d) 639.

Duty of judge not to withdraw from case where affidavit is insufficient.—A judge against whom an insufficient showing for recusation has been made owes it to his oath of office and to the litigant who has invoked the jurisdiction of the court over which he regularly presides not to withdraw from the case, where an insufficient affidavit of prejudice has been filed, however much his personal feelings may incline him to do so. Graff v. Electrical Enterprises, Inc., 12 Alaska 322.

Statements made by the judge in a prior suit involving a different defendant, and in the case at bar, did not show any objectionable attitude on the part of the judge, or any personal bias against the defendant in the case at bar. United States v. Pioneer Packing Co., 10 Alaska 70.

Cited in Stringer v. United States, 16 Alaska 305, 233 F. (2d) 947.

ALR references.—Disqualification of judge by relative's ownership of stock in corporation which is party to action, 8 ALR 295; 110 ALR 472.

State's right to file affidavit disqualifying judge for bias, 115 ALR 866.

Right of party in course of litigation to challenge title or authority of judge, 144 ALR 1207.

Disqualification of judge in pending case as subject to revocation or removal, 162 ALR 641.

Sec. 22.20.030. Power of judicial officers. A judicial officer may

(1) preserve and enforce order in his immediate presence, and in the proceedings before him, when he is engaged in the performance of a duty imposed upon him by law;

(2) compel obedience to his lawful orders, as provided by law;

(3) compel the attendance of persons to testify in a proceeding pending before him in the cases and manner provided by law;

(4) administer oaths to persons, in a proceeding pending before him, and in all other cases where it may be necessary in the exercise of his powers and the performance of his duties;

(5) take and certify the proof and acknowledgment of a conveyance of real property, or any other written instrument authorized or required to be proved or acknowledged;

(6) take and certify the acknowledgment of satisfaction of a judgment in any court;

(7) take and certify an affidavit or deposition to be used in any court of justice or other tribunal of the state. (§§ 54-2-3, 54-2-5, 54-2-6 ACLA 1949)

The power to punish for contempt is the highest exercise of judicial power. United States v. Pratt, 3 Alaska 400, affirmed in 170 F. 881.

It is not an incident to the mere exercise of judicial functions. United

Memorandum

Alaska Court System

TO: Karla Forsythe
General Counsel

DATE : February 2, 1983

FROM: Robert G. Fisher
Fiscal Officer

SUBJECT: Travel Costs - Pre-emptions

The following information is provided in response to your request for information on the cost of travel arising from the pre-emption of judges.

Several problems prevent an accurate reporting of these costs. To begin with, Technical Operations does not accumulate statistics strictly on the number of pre-emptions. Some statistics are available for all the categories of disqualifications, but not all courts are represented. Secondly, the travelling judges do not report the specific reason for travelling to other courts on their reimbursement claims. The result is the court does not have the capability to identify the actual cost of pre-emptive disqualifications.

Despite these problems, all judicial travel claims for the period of 7/1 through 12/31/82 were reviewed. Those claims which appeared to be related to the pre-emption or disqualification of a judge were analyzed further. While this method of estimating costs is not perfect, it provides an approximate cost figure.

The schedule presented below shows the travel costs of providing judicial coverage for disqualifications at various court locations during the six month period ending 12/31/82.

COURT LOCATION	TRAVEL COSTS
Juneau - District Court	$ 2,500
- Superior Court	600
Ketchikan - District Court	1,250
- Superior Court	1,100
Bethel - Trial Courts	3,900
Kenai - Trial Courts	650
Homer - District Court	2,700
TOTAL	$12,700

Note - With per diem for travelling Judges, annual costs would probably be $50,000 or so, according to Art Snowden - JJ Brewer

The approximate annual cost would be $25,400. To obtain estimated costs for individual locations the six month figures should be doubled.

Adm. F-1
Rev. 2-73

TESTIMONY OF ATTORNEY HENRY CAMAROT, ANCHORAGE
February 3, 1983

Gentlemen and (unable to hear the period of 4 log numbers due to static in the teleconference) except for a short period when I left Alaska I practiced in the State of Oregon. I presently represent District Judge James Hornaday in respect to an order that was issued by the Honorable Mark Rowland, presiding Superior Court Judge for the Third Judicial District. In that order, Judge Hornaday had been directed to move from Homer, Alaska, his place of residence for some seven years, to Anchorage, Alaska to permanently fill the office of District Judge in the Anchorage area. I come in favor of repealing the perempt statute. Alternatively I wish to make several other comments and I think they can be interpreted as clear recommendations. The consideration of the perempt statute repeal perhaps can be invaluated against the framework of the true factual situation that currently exists; infact, I got the impression as I was listening to some of the witnesses testify, that this law seems to be directed all towards Judge Hornaday, when I believe the issue is far greater than Judge Hornaday.

Some eight years ago more or less Judge Hornaday gave up a successful 10 year law practice to accept an appointment as the acting district judge in Homer. The condition of his employment at thr time that he moved to Homer. He moved to Homer. The Legislature established a Homer District Judge position. He applied to the judicial council for that office in Homer. His name was forwarded to the Governor for that office and that office began in Homer. He was appointed by the Governor for that specific office. The Judicial council twice recommended him for retention and he has twice been overwhelming retained by the vote in the election of the Third District. More recently, in the election of 1982, more people turned out to testify on his behalf before the judicial council meetings held in Homer than for any other judge in the state. He also passed with the lawyers in the bar poll and received the highest rating of any judge with the Alaska Peace Officers Association.

Judge Hornaday has established deep roots in Homer. His wife, Karen, teaches violin to many children and serves as chairperson on the Homer Parks and Recreation Commission. She serves on many church and civic activities and just recently helped passed the bond issue of the building of the new high school in Homer. His daughter, Mary, is a sophomore
in college and his son, Dan, is a high school sophomore who worked his way up to the staring quarterback on the football team. He also plays on the basketball team. Dan is usually on the honor roll. Their son, Joshua, is in the third grade and is into music, Little League and Cub Scouts. Five year old Matthew has just started kindergarten. The Judge is active in Little League matters, Chamber of Commerce matters and plenty of other activities. When he left the private practice and accepted the appointment as the district judge in Homer, he made substantial financial sacrifices. He was required to sell his home and a commercial building that had been partially set aside as a retirement income. When he moved to Homer, he bought a home there. That was to be his home and that was to be his community for years to come.

We have all heard about how in early 1982, the first part of 1982, Judge Hornaday decided to do something about the drunk driving. He was deeply concerned about this continuing highway travesty, which he was aware resulted in the killing and maiming of over 200,000 Americans a year. It was frustrating to him. Apparently, drunk driving cases constitute over 50% of all the jury trials in the Alaska court system. For many reasons, and because he also serves at times as a coroner and probate judge, because of times when he has come in direct contact with auto crash results, leaving maimed bodies and grieved families or person who have suffered injuries, thereby, felt he had to do

something. He wanted to do it, not by legislative action, but what he wanted to do was in a true effort to be fair, give notice beforehand that persons convicted of a drunk driving in his court would receive a 60 day sentence with 45 suspended and 15 days actually having to be served. Now at the outstead let me point out this is not the maximum sentence, as some people have suggested. The maximum sentence under AS23.35.030 is $1000 or by imprisonment for not more than one year or by both. Now it is not the minimum sentence, which is 72 consecutive hours in the first instance. But what he was really doing, was, he was really giving fair warning beforehand to attorneys and drivers, particularly those consuming alcohol and driving under the influence, that this is what he would do. Now that resulted in an increase in Judge Hornaday being perempted. This is not to say that Judge Hornaday had not been perempted on prior occasions, but this announced policy seemed to have resulted in a definite increase in the peremptions that he experienced prior to the spring of 1982. Let me stop here and note that he was not legislating at that time. He was not attempting to. But what he was doing again just simply identifing the symptom patterns. Now when it was called to his attention that the public statement could not be followed, that he had to consider matters on a case to case basis, he acknowledged that. He publicly recinded the policy and he did sentence on a case-by-case basis. And he did not give 15 days in every insistence. He did go back to the 72 hours, frequently. But the peremptions continued. Continued to the point that Presiding Judge Mark Rowland determined, as he put it, it became administratively a nightmare and was costly to the system. And the system is one of the things I want to talk about.

Now the statistics put together by the court administrator regarding Judge Hornaday and our statistics will be at odds. Truthfully speaking, we don't think that there is comparable statistics that show that one District Judge or Superior Court Judge, particularly in areas where there is only one judge, that experience any more or less peremptions than Judge Hornaday had been experiencing. We don't know to what degree the peremptions compare. But we do know that there are problems and there are serious problems and the problems are going to continue in our opinion with the peremption statute in other areas as they have happened in the past in Wrangell, Petersburg, Ketchikan, Juneau and Kodiak. In any event, Judge Rowland believes that Judge Hornaday's peremptions in Homer were occurring to such a degree that he determined that he had to move Judge Hornaday out of Homer. I don't suggest that Judge Rowland is not acting in good faith. He was very candid when he said that it is the exercising of the peremption by counsel out of the current statute and the resulting costs of bringing in another judge from Anchorage, which is causing him to issue his order. Judge Rowland is attempting to follow obligations imposed on him as the presiding judge to properly administer the court system. And also to be concerned about the costs endowed in his responsibility.

In that regard, as I understand it from Judge Hornaday, Judge Hornaday was advised that he should consider peremtory challenges in sentencing persons before him as a particular consideration. I am sure this is done to avoid having the experse of the cost of having to send another District Judge to Homer when Judge Hornaday was perempted. Chief Justice Burke in a public hearing in Homer indicated perempts had to be considered in sentencing. So, I think we ought to recognize the issue that peremptions affect sentencing, that with the statute as it exists, the system should acccept that the consequences and cost and, threaten, the independence of the judiciary. So it's understood, are we challenging Judge Rowland's order on Judge Hornaday's behalf because I believe that there are serious constitutional and legal arguments on whether he has the authority to take the action he did. But aside from that, and if it be found that Judge Rowland does have the power and authority to remove a District Judge

from his place of residence and the office to which he is assigned, then the problem will still remain. Let's turn for a moment to the defense attorneys or primarily to the ones that are utilizing the perempt statutes.

I have talked with defense attorneys, quite a few of them, and I recognize what they are saying. They can not claim that Judge Hornaday has been more stern in his sentencing practices than other judges. They contend they are under ethical duties to advise the client that he or she has a right to perempt Judge Hornaday. I hear what those defense counselors are saying. But I also know that this constitutes and is just as clear an act as judge-shopping as any other act would be if not for the perempt statute. Even if the attorney contended that he had a ethical responsibility, it's judge shopping. In other instances in my opinion, they are using the perempt for purposes of delay in coming to trial. The delay is always an act that has to do with the defendant because anything can happen between the time of the charge and the actual time of the trial. But what is truly more troubling is, and what must be troubling to an elected official, be he legislator or otherwise, be he judge or otherwise, regarding what the justification might be claimed in respect to the perempt statute, the bottom line is not withstanding thousands of voters particularly those voters in the Homer area voting in favor of the man, Judge Hornaday. There will still be a few members of the bar who are mainly able to sufficiently prevail upon the presiding judge so as to require Judge Hornaday to be removed from one area to another. I don't say they are making personal contact, I say they are doing that through the perempt statute. In my mind as it has already been indicated, the perempt statute and peremption rule interferes with the judicial process under the Constitution and the court responsibility to perform the duties endowed upon them. It also destroys the independence of the judge and to a degree I believe it interferes with the oath of office that each judge takes that he will support the state and federal constitution and will faithfully discharge the duties of his office as a judge of the court to which he is appointed, to the best of his ability. It destroys the independence of the judge. I sincerely believe that it is very wrong to remove a judge who is regarded as judicially competent and I would like to make a note that the major incidents that I have heard in respect to Judge Hornaday has nothing to do with his ability in a civil case, nothing to do with his ability during the course of a trial, presumably it has to do with his sentencing in DUIL cases and some pr' trial motions, other than that attorney after attorney have told me he is a very competent, capable judge. But the clutch of the issue comes down to this, if the peremption statutes are to stay in existance and Judge Rowland's order is to remain in effect, then every judge appointed to a district judge area is subject to be reassigned depending on how his rulings and sentencing practices are viewed by the attorneys. I suggest that the precedent being established here is extreme for the reasons already stated. It should be a matter of a state-wide concern. What happens to the next District Judge that goes to Homer. He accepts that office in the wake of Judge Hornaday's reassignment, if that occurs. He knows that the presiding judge doesn't want to have make another reassignment. He does know that he has to avoid peremptions and to avoid peremptions he obviously must not follow the practices followed by Judge Hornaday. Peremption has an effect on sentencing without a question. The matter of degree perhaps in Homer is a matter of degree anywhere. I know that there are many judges today in Alas who are very concerned about this order. I think it is a matter for new judicial candidates to consider as part of the input as to whether or not they want to become judges. They are invited to place themselves, as now, in front of the judicial council for particular judicial office. They have to realize they maybe reassigned. Against this background I wish to make the following recommendations. I thought a lot about

the perempt statute and I believe that it has one part of it that makes me feel that it should be repealed and its the view of it being unfair.

I submit to you that whether its the filing of an affidavit or a simple notice of a change of judge of Criminal Rule 25 and Civil Rule 43, the accusation is that litigants can not receive a fair and impartial trial. If the judge has no opportunity to defend himself against that charge, although it clearly imputes his integrity. In my opinion the judge, whether it's Judge Hornaday or any other judge is denied due process, he cannot defend his integrity which is so important to a judge. I would suggest in the first inistance, therefore, that the particular AS22.20.022 be repealed.

Then I have an alternative suggestion. I have a lot of respect for my brethren. I see the attorneys here in mass. I've heard them. Accordingly, realistically speaking, that perempt statute cannot be repealed. I would like to give you perhaps a compromise. I would suggest that there would be a statute passed or present statute amended, rejecting the reassignment of any Superior Court or District Judge from the area of his residence to any other location. It is not say that a judge cannot be temporarily assigned, as the Constitution recognizes, and it takes place periodically, so long as there is a time limit on each assignment each year. I think the wholesome affect of this type of law is that if the perempt statute is to be continue as part of the Alaska Judicial processes that it be recognized as part of the overall system, including the cost of reassigning a judge to the area where the peremption right is imposed. It will also reassure other members of the judiciary or future potential members, that have to give that fact their consideration. They are weighing the pros and cons of continuing or becoming a judge.

Another alternative, the second alternative, I would suggest would be given serious consideration, would be to limit the perempt statute to those areas that have more than one judge serving a community, such as Anchorage and Fairbanks, and deny the invoking of the peremptory challenge for no cause where there are single judges, whether they be Superior or District Court Judges in other areas.

I realize that this would not be as popular and be subject to constitutional attack. However, I believe that it could withstand that constitutional attack.

I wish to thank the committee for allowing me to make this presentation. I sincerely hope that reservation in supporting this and that the recommendations maybe of some assistance to the committee. Needless to say, in the final analysis, in the case of Judge Hornaday, that any action taken by the legislature, I sincerely hope, will allow him to stay in Homer. Thank you.

TESTIMONY IN FAVOR OF PASSAGE OF HB 79

THANK YOU, MR. CHAIRMAN.

I AM REP. MILO FRITZ FROM ANCHOR POINT, NEAR HOMER ALASKA.

THE FIRST COURT OF JUSTICE IN ALASKA WAS ESTABLISHED BY THE U.S. IN 1900 UNDER JUDGE JAMES WICKERSHAM IN EAGLE ON THE YUKON RIVER. SINCE THEN, THE COURT SYSTEM HAS GROWN IN SIZE AND COMPLEXITY TO MEET THE CHANGING NEEDS OF THE TIMES AND THE INCREASE IN POPULATION.

GENERALLY SPEAKING, THE LEGAL NEEDS OF THE PEOPLE OF ALASKA, EXCEPTING THE DISSIDENTS AND ECCENTRICS PRESENT IN ANY AGE, WERE ADEQUATELY MET. UNTIL 1967, PEREMPTORY DISQUALIFICATION OF A JUDGE COULD ONLY BE INVOKED FOR CAUSE, THAT IS, FOR A GOOD, TRENCHANT REASON. AND I BELIEVE, MR. CHAIRMAN, THAT NO REASONABLE PERSON CAN OBJECT TO THAT.

IN 1967, ACCORDING TO THE SESSION LAWS OF ALASKA FOR THAT YEAR AND APPEARING IN ALASKA STATUTES, THAT IS THE LAWS OF ALASKA KNOWN AS AS 22.20.022, AN ADDITION WAS MADE, MAKING IT POSSIBLE FOR THE PETITIONER, THAT IS THE LAWYER OR THE CLIENT TO DISQUALIFY A JUDGE WITHOUT PROVIDING ANY REASON WHATSOEVER. AND IT IS THE PURPOSE OF HB 79 TO STRIKE THIS 1967 AMENDMENT TO ALASKA LAW FROM THE BOOKS MAKING PEREMPTORY CHALLENGE OF A JUDGE POSSIBLE ONLY FOR CAUSE, THAT IS, FOR A VALID REASON.

IN THE ELECTION OF NOVEMBER 2, 1982, THE VOTERS IN THE THIRD JUDICIAL DISTRICT VOTED 57,000 TO 38,000 TO RETAIN JUDGE JAMES C. HORNADAY ON THE BENCH. ON THE KENAI PENINSULA, WHERE

JUDGE HORNADAY RESIDES AND HOLDS COURT IN THE SMALL CITY OF HOMER, THE VOTE WAS 6000 TO 3000 IN FAVOR--AN IMPRESSIVE VOTE.

NOW IT HAPPENS THAT JUDGE HORNADAY HANDS OUT TOUGH SENTENCES TO THOSE CONVICTED OF DRUNK DRIVING. SO QUITE NATURALLY, THE TRANSGRESSOR AND HIS LAWYER, QUITE LOGICALLY AND WITHOUT HAVING TO GIVE A REASON, PEREMPTORILY CHALLENGED JUDGE HORNADAY ASKING THAT THE CASE BE HEARD BEFORE ANOTHER JUDGE SINCE, OF COURSE, THE SENTENCE ~~CAN'T LEGALLY BE~~ IS NOT GENERALLY MADE ANY MORE SEVERE AND MIGHT QUITE POSSIBLY BE LIGHTER. ANY GOOD LAWYER WHO DOES THIS IS QUITE WITHIN HIS RIGHTS, SINCE IT HIS DUTY TO OBTAIN FOR HIS CLIENT THE LIGHTEST POSSIBLE SENTENCE. IN OTHER WORDS, THE LAWYER IS NOT AT FAULT, THE LAW IS, AND THAT IS WHY I ASK YOU AND YOUR COMMITTEE TO REMEDY THIS DEFECT BY FAVORABLY PASSING OUT HB 79.

NOW, IN A STATEMENT AT A HEARING REGARDING JUDGE HORNADAY HELD IN HOMER ON JANUARY 5, 1983, SUP. COURT JUDGE MARK ROWLAND TESTIFIED THAT JUDGE HORNADAY WAS PEREMPTORILY CHALLENGED IN ABOUT 80% OF THE CASES COMING BEFORE HIM, ONLY A SMALL PERCENTAGE OF WHICH HAD TO DO WITH DRUNKEN DRIVING. IN OTHER WORDS, BY ACCIDENT OR DESIGN, MOST OF THE LAWYERS ON THE KENAI PENINSULA INDULGED IN A VENDETTA AGAINST JUDGE HORNADAY PEREMPTORILY DISQUALIFYING HIM. IN EFFECT, THESE LAWYERS SAID, "OKAY, SO YOU ARE GOING TO HAND OUT MAXIMUM SENTENCES AGAINST OUT DRUNK DRIVING CLIENTS. THEREFORE, WE WILL PEREMPTORILY DISQUALIFY YOU FOR ALL OUR CASES." OF COURSE, THIS LEFT JUDGE HORNADAY WITH LITTLE TO DO AND MADE IT NECESSARY FOR SUP. COURT JUDGE

MARK ROWLAND TO DISPATCH A JUDGE FROM ANCHORAGE AT NEEDLESS EXPENSE TO HOMER TO HEAR JUDGE HORNADAY'S CASES. AND SINCE HORNADAY HAS BEEN RENDERED INEFFECTIVE, ROWLAND HAS TRANSFERRED HIM TO ANCHORAGE AS OF JUNE 1, THUS QUITE LEGALLY TRANSGRESSING THE WILL OF THE PEOPLE OF THE KENAI PENINSULA. JUDGE ROWLAND IS NOT WRONG; THE LAWYERS ARE NOT WRONG; THE LAW IS WRONG AND HB 79 RECTIFIES THE SITUATION.

IN ANCHORAGE, PEREMPTORY DISQUALIFICATION OF JUDGE HORNADAY WOULD COST NOTHING SINCE THERE ARE SEVERAL JUDGES OF JUDGE HORNADAY'S RANK AVAILABLE.

THEREFORE, IT SEEMS THAT PEREMPTORY CHALLENGE OF A JUDGE WITHOUT CAUSE SHOULD BE STRICKEN FROM THE BOOKS SINCE IT SERVES LAWYERS AND TRANSGRESSORS AND NOT THE ADMINISTRATION OF JUSTICE. REM ACU TETIGISTI.

IF, MR. CHAIRMAN, THIS 13TH STATE LEGISLATURE PROMPTLY PASSES OUT HB 79 WHICH WOULD ELIMINATE PEREMPTORY DISQUALIFICATION WITHOUT CAUSE, THE PEOPLE OF THE KENAI PENINSULA WILL KEEP THE JUDGE WHOSE ACTIONS THEY APPLAUDED BY VOTING FOR HIS RETENTION 2 TO 1.

PASSAGE OF THIS MEASURE WILL ALSO PREVENT THIS FROM OCCURRING IN OTHER one-JUDGE JURISDICTIONS WHERE, FOR FRIVOLOUS REASONS OR NO REASON AT ALL, A JUDGE MAY BE PEREMPTORILY DISQUALIFIED. THE JUDGES ARE NOT WRONG, THE LAWYERS ARE NOT WRONG, THE PEOPLE ARE NOT WRONG--THE LAW IS WRONG. LET US REPEAL IT BY PASSING HB 79.

I THANK YOU, MR. CHAIRMAN.

POUCH V
JUNEAU, ALASKA 99811
465-4990

P.O. BOX 4-1325
ANCHORAGE, ALASKA 99509
248-1515

CHAIRMAN
HOUSE JUDICIARY COMMITTEE
MEMBER
HOUSE RESOURCES COMMITTEE

Representative Charlie Bussell
ALASKA STATE LEGISLATURE
HOUSE OF REPRESENTATIVES

February 28, 1983

Wayne Anthony Ross
360 "K" Street, Suite 240
Anchorage, Alaska 99501

RE: HB 79, Legislation Pertaining to Peremptory Disqualification

Dear Mr. Ross:

Thank you for taking the time to author and forward to the Committee the letter setting out your feelings with regard to HB 79. This letter, along with a great deal of other inofrmation, was considered by the Committee before making its findings and reporting the bill out without amendment or change.

On Wednesday, February 25, 1983, HB 79 was brought before the House for second reading and debate. After nearly two hours of debate and one attempt at having the bill amended, HB 79 was advanced to third reading and voted on by the body.

A copy of the House Journal covering action by the House for its thirty-eighth day is enclosed and shows the voting and progress of HB 79 as it passed the House. At the close of the floor action for the day on HB 79, Representative Fritz gave notice of reconsideration of his vote which carries the bill to the next legislative day for another vote if brought up at that time.

On the next legislative day, HB 79 was not again brought up, so it has passed the House as shown in the Journal for the thirty-eighth day.

Thank you again for taking the time to become involved with the legislative process.

Regards,

Representative Charlie Bussell
Chairman Committee on Judiciary

CB:lyn

Wayne Anthony Ross

ATTORNEY AT LA

ROBERT D. FRENZ
THOMAS S. GINGRAS
WILLIAM D. COOK

MAIN BRANCH · 360 "K" STREET, SUITE 240 · ANCHORAGE, ALASKA 99501 · AREA 907/277-6775 · 276-5307
CORDOVA BRANCH · POST OFFICE BOX 207 · CORDOVA, ALASKA 99574 · AREA 907/424-7229

FEB 1983
RECEIVED

February 10, 1983

Representative Charlie Bussell
Chairman House Judiciary Committee
Pouch V, Capitol Building
Juneau, Alaska 99801

Re: House Bill No. 79
"An Act repealing peremptory disqualification of a judge and changing Rule 10(c) and Rule 25(d), Rules of Criminal Procedure and Rule 42(c), Rules of Civil Procedure; and providing for an effective date."

Dear Representative Bussell:

This letter is to express our strong opposition to House Bill No. 79.

It was clearly apparent from the testimony of Representative Fritz in support of his bill, that this bill is tailored for only a few judges and primarily Judge Hornaday of Homer. The bill simply is inapplicable to the majority of the judges on the bench today.

The attorney handling the case is in the best position to gauge his rapport with a judge based upon the judge's past actions. A peremptory challenge allows a change of a judge without antagonizing or embarrassing a judge. There is no need to state your reason for the peremptory challenge. If there is a valid reason for a change of judge, and an attorney had to state his reasons, it would certainly destroy that attorney's rapport with that judge for any future cases in front of him. Judges are only human too.

A judge being only human, can easily be biased in one area of the law. If a fair trial is to be guaranteed, the attorney and his client should have the right to a change of judge when appearing in front of him in that area of the law. It is

apparent in this state as in all other states that jurors can be challenged for cause and in fact may be excused without cause. Why cannot we have the right to change one judge as well?

Apart from a judge's actual bias on issues of law, there are times when attorneys do suffer from personality conflicts with a judge. For this reason, the attorney should be allowed to preempt the judge and not make the client suffer.

The system has worked well in the past, and now only in the one judge area is it having a problem. In essence the baby should not be thrown out with the bath water for that one problem. We are certain that there are other ways of resolving the problem rather than repealing Alaska Statute 22.20.022.

We urge you to defeat House Bill 79.

Sincerely,

Robert D. Frenz

Wayne Anthony Ross

RDF/jm

POUCH V
JUNEAU, ALASKA 99811
465-4990

P.O. BOX 4-1325
ANCHORAGE, ALASKA 99509
248-1515

CHAIRMAN
HOUSE JUDICIARY COMMITTEE
MEMBER
HOUSE RESOURCES COMMITTEE

Representative Charlie Bussell
ALASKA STATE LEGISLATURE
HOUSE OF REPRESENTATIVES

February 28, 1983

Wayne Anthony Ross
360 "K" Street, Suite 240
Anchorage, Alaska 99501

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On the next legislative day, HB 79 was not again brought up, so it has passed the House as shown in the Journal for the thirty-eighth day.

Thank you again for taking the time to become involved with the legislative process.

Regards,

Representative Charlie Bussell
Chairman, Committee on Judiciary

CB:lyn

MSG 03-00010815 PRTY 1 01/24/03 12:10:24 ORIG LM00 IN= 0044 OUT= 0102
FROM: MARTIE/KATSU TO: J'NEAU INFORMATION
TARGET: LJHL SUBJ: PDM

TO: ALL LEGISLATORS

FROM: LEONARD HOFFITT
PO BOX 742
PALMER 99645

PRE-EMPTION SHOULD BE ELIMINATED WHEN USE A COURSE CASE BY CASE DISCLOSURE STATEMENT FILED WITH THE COURT BY PERTINENT JUDGES AND ATTORNEYS AFTER LEARNING THE NAMES OF PEOPLE INVOLVED AND THE NATURE OF THE CASE. THE LEGISLATURE SHOULD DEFINE THE TYPES OF CONFLICT AND ITAS THAT WOULD REQUIRE AN OFFICER OF THE COURT TO WITHDRAW FROM A CASE.
THUS ORIGINALS AND LITIGANTS COULD EXPECT TRIALS WITH MINIMUM PREJUDICES OR CONFLICTS OF INTEREST.

POUCH V
JUNEAU, ALASKA 99811
465-4990

P.O. BOX 4-1325
ANCHORAGE, ALASKA 99509
248-1515

CHAIRMAN
HOUSE JUDICIARY COMMITTEE
MEMBER
HOUSE RESOURCES COMMITTEE

Representative Charlie Bussell
ALASKA STATE LEGISLATURE
HOUSE OF REPRESENTATIVES

February 21, 1983

Mr. Mark Andrews
P. O. Box No. 521
Bethel, Alaska 99559

SUBJECT: House Bill 79, Pre-emptory Disqualification

Dear Mr. Andrews:

Thank you for taking the time to write expressing your thoughts on alternative proposals to improve HB 79.

After a great deal of deliberation on the bill and having taken several hours of teleconference, the Committee moved the bill out favoring its passage as written. It will require a 2/3's vote as it deals with a court rule and I believe it is scheduled for floor action some time this week.

Thank you again for becoming a part of the legislative process.

Regards,

Representative Charlie Bussell
Chairman, Committee on Judiciary

CB:lyn

P.O. Box 521
Bethel, Alaska 99559
February 15, 1983



Representative Charlie Bussell
State Capitol
Pouch V
Juneau, Alaska 99811

Dear Rep. Bussell;

These are my comments concerning House Bill No. 79, which would repeal peremptory disqualifications of judges.

I listened to all of the testimony on January 31, and to much of the testimony on February 3. Without going into the pros and cons again, I believe that the alternative proposal for temporary reassignments should be adopted. Specifically, I believe that there should be a limit on the first reassignment to 90 days. This temporary reassignment would provide a "cooling off" period for all parties involved. The costs to the judicial system would be reduced by temporarily halting the continual reshuffling of judges, and relations between bench and bar would have the opportunity to improve.

If the peremptory disqualifications continued with the same frequency after this first reassignment, then the solution to the problem would be left to the discretion of the chief judge of the district, including the possibility of permanent reassignment.

I believe that a second alternative, that of limiting peremptory challenges to multijudge courts, is unconstitutional.

The Homer incident has illuminated a part of a larger problem with the practice of peremptory disqualifications. Perhaps the House Judiciary Committee could vote to provide funding to the Alaska Court System for a study of (1) the dollar costs of the present practice, specifically focusing on the differences between single judge and multijudge courts, and (2) the effects of the current practice on sentencing.

Thank you for your kind attention.

Very truly yours,

Mark Andrews

Holta
2-16-83

A M E N D M E N T

Failed 2/13

Offered in the HOUSE By Wendte

TO: House Bill No. 79

Page 1, line 6, following "An Act" delete "repealing" and insert "relating to"

Page 1, line 11, following "AS 22.20.022" delete "is repealed." and insert "(a) is amended to read.

Sec. 22.20.022. PEREMPTORY DISQUALIFICATION OF A SUPERIOR OR DISTRICT COURT JUDGE. (a) If a party [OR A PARTY'S ATTORNEY] in a district court action or a superior court action, civil or criminal, files an affidavit alleging under oath a statement of facts and reasons for the belief that a fair and impartial trial cannot be obtained, the presiding district court or superior court judge, respectively, shall at once, and without requiring proof, assign the action to another judge of the appropriate court in that district, or if there is none, the chief justice of the supreme court shall assign a judge for the hearing or trial of the action. The affidavit shall contain a statement that it is made in good faith and not for the purpose of delay.

* Sec. 2. AS 22.20.022(d) is amended to read:

(d) A party [OR A PARTY'S ATTORNEY] may not file more than one affidavit under this section in an action and no more than two affidavits in an action."

Page 1, line 12, change "Sec. 2" to "Sec. 3"

Page 1, line 12, following "AS 22.20.022" delete "repealed" and insert "amended"

Page 1, line 14, delete "eliminating" and insert "modifying"

Page 1, lines 16 - 18, delete all material.

MSG 83-00006057 PRTY 1 02/03/83 14:00:44 ORIG: LR00 IN= 0013 OUT= 0011
FROM: FLORENCE IN BARROW TO: TIM/JUNEAU
TARGET: LJH1 SUBJ: ~~(H)~~ JUD ON HB 79 2/3/83

OMNI # 2

PARTICIPANT WHO WOULD LIKE TO TESTIFY:

HAROLD CURRAN
BOX 69
BARROW, AK

852-2611

2:55 - 3 FEB 83

MSG 83-00006059 PRTY 1 02/03/83 14:09:46 ORIG: LA08 IN= 0009 OUT= 0012
FROM: BARBARA IN ANCORAGE TO: JNU T/C
TARGET: LJH1 SUBJ: H JUDICIARY T/C, 2/3

OMNI #3

TO TESTIFY:

8. TERESA CARNS, AK JUDICAL COUNCIL, 1031 W. 4TH,SUITE#301, ANC., 279-2526

WE HAVE 5 PEOPLE TO TESTIFY WHO WERE ALSO AT MONDAY'S H. JUDICIARY T/C....

ERIC SANDERS
RON DRATHMAN
HENRY CAMAROT
MICHAEL SCHNEIDER
JOHN LOHFF
THANKS FOR YOUR HELP.....

MSG 83-00006055 PRTY 1 02/03/83 14:00:33 ORIG: LA08 IN= 0008 OUT= 0010
FROM: BARBARA IN ANC TO: JNU T/C
TARGET: LJH1 SUBJ: H. JUDICIARY T/C, 2/3

OMNI #2

TO TESTIFY:
7. JOHN B. LOHFF, 308 G ST.,#303, ANCHORAGE 99501 276-8514

TO OBSERVE:
5. ELIZABETH MICHERSON, 1024 W. 6TH, ANCHORAGE, 99501 274-1426
6. STEPHEN J. VAN GROOR, 308 G ST.,#303, ANCHORAGE, 276-8514

MSG 83-00006074 PRTY 1 02/03/83 14:29:52 ORIG: LA08 IN= 0011 OUT= 0016
FROM: BARBARA IN ANC TO: GAIL/TIM IN JNU
TARGET: LJH1 SUBJ: H. JUDICIARY T/C, 2/3

OMNI #4

TO TESTIFY

9. PHILLIP WEIDER, 444 H STREET, ANCHORAGE 276-7000

MSG 83-00006060 PRTY 1 02/03/83 14:10:44 ORIG: LV00 IN= 0003 OUT= 0014
FROM: PAT, VALDEZ TO: JNO T/C
TARGET: LSH1 SUBJ: HB79,HOUSE JUDICIARNY/PRE-EMPTION

PARTICIPANT... Testify 3:25 3Feb83 PDS

1. ?WILLIAM BIXBY, BOX 1229,VALDEZ 99686 835-4775 ATTORNEY;COWAN, GILLESFIE & JEFFERSON

Private Practice, formerly FBI Agent

HB 79

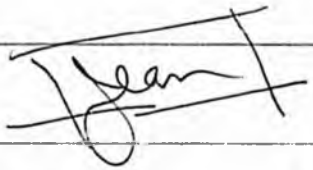
Seward

Testify 3-FEB 83

1. George Peck 2 PM

2. Lt. Donald Earl 3:30

1 - observor has had to leave



Hom
testify

1. John Rata 3:55 3Feb83
2. Calvin Hand 4:15 3Feb83
3 Ed Bailey 4:10 3Feb83

B

MSG 83-00006034 PRTY 1 02/03/83 13:35:18 ORIG: LA08 IN= 0005 OUT= 0006
FROM: CANDY/ANCHORAGE TO: GAIL
TARGET: LJH1 SUBJ: **** HOUSE JUDICIARY T/C 2/3 ******

HAVE BEEN ASKED TO ALERT YOU THAT KBBI RADIO/HOMER WILL BE TAPING JUDGE HORNADAY.

ALSO, BARBARA WANTED ME TO MAKE SURE THAT YOU HAD RECIEVED HER OMNI EARLIER ABOUT HENRY CAMAROT'S TIME CONSTRAINT. HE MADE THIS REQUEST A DAY OR TWO AGO, AND IF AT ALL POSSIBLE WOULD LIKE TO SPEAK AT 12:15 AST, 2:15 PST.

THANKS

MSG 83-00006033 PRTY 1 02/03/83 13:30:14 ORIG: LL00 IN= 0003 OUT= 0004
FROM: DEE,SOLDOTNA TO: TIM/JUNEAU
TARGET: LJH1 SUBJ: H. JUD. DISQUALIFICATION JUDGES 2/3/83

OMNI # 1

PARTICIPANTS 1.50 - 3 FEB 83

1. ALLAN BEISWENGER BOX 3519 SOLDOTNA, AK. 2629164

E.O.M.

MSG 83-00006031 PRTY 1 02/03/83 13:30:18 ORIG: LF20 IN= 0004 OUT= 0005
FROM: LYNDA/FBX TO: ALL
TARGET: LJH1 SUBJ: HSE JUD T/C 2/3

FAIRBANKS HAS ONE PARTICIPANT TO TESTIFY: 1.35 - 3 FEB 83

1. ART ROBSON, R.V.B.A., 3568 GERAGHTY ST, FBX. 99701 PH 479-6281

HE WAS ONE OF THE FOLKS WHO WAS NOT ABLE TO TESTIFY AT THE LAST HEARING AND IS UNDER A TIME CONSTRAINT TODAY. WOULD IT BE POSSIBLE FOR HIM TO GIVE HIS TESTIMONY AS SOON AS POSSIBLE? THANK YOU.

----------EOM

MSG 83-00006045 PRTY 1 02/03/83 13:46:30 ORIG: LF02 IN= 0001 OUT= 0008
FROM: ANNIE IN FAIRBANKS TO: JUNEAU T/C
TARGET: LJH1 SUBJ: JUDICIARY T/C 2/3/83

HERE TO TESTIFY IN FAIRBANKS:

JUDGE HUGH H. CONNELLY, 604 BARNETTE, ROOM 341, FAIRBANKS 99701 452-9251

2135 3FEB83

MSG 83-00006040 PRTY 1 02/03/83 13:48:03 ORIG: LA08 IN= 0007 OUT= 0009
FROM: BARBARA IN ANC TO: JNU T/C
TARGET: LJH1 SUBJ: H. JUDICIARY T/C, 2/3

IN ANCHORGE TO TESTIFY:

1. ERIC SANDER, 500 C STREET, ANC, 272-3538 3 PM - 3 FEB 83
2. RON DRATHMAN, 444 H ST., ANC 276-7000 3:05 - 3 FEB 83
3. MICHAEL, SCHNEIDER, 880 N ST.,#200, ANC, 99501 277-4551
4. HENRY CAMAROT, 310 K STREET, SUITE 500, ANC 276-6363 2:15 3 FEB
5. MARYANNE E. FOLEY, 227 E. 12TH AVE.,,#2, ANC 274-2890
6. JULIE SIMON, 3812 SPENARD RD., ANC., 276-3125

TO OBSERVE:

1. PETER MYSING, 444 H STREET, ANC., 276-700
2. W. JOHN LOIN , 2531 NORTHRUP PLACE , ANC., 277-4194
3. JEFF BERLINER, ANCHORAGE TIMES, 820 W. 4TH, ANC., 278-5622
4. ELAINE ANDREW, 2131 BELAIR, ANC 272-7709 3:30 3 FEB 83

MSG 83-00006023 PRTY 1 02/03/83 13:23:45 ORIG: LJ03 IN= 0001 OUT= 0002
FROM: GAIL TO: TEST
TARGET: LJH1 SUBJ: TEST

TEST

MSG 83-00006027 PRTY 1 02/03/83 13:25:15 ORIG: LJ03 IN= 0003 OUT= 0003
FROM: GAIL TO: TEST
TARGET: LJH1 SUBJ: TEST 2

TEST 2

1-26-85
Friday:
No Meetings
Scheduled

HOUSE JUDICIARY COMMITTEE
FIRST COMMITTEE OF REFERRAL

			HEARING DATE	REFERRED TO
HB 2	An Act relating to penalties for the use of restricted ammunition in the commission of a crime.	Hayes Pearce	1-25	Thurs
HB 8	An Act relating to judicial retention elections; and providing for an effective date.	Grussendorf		
tw HB 10	An Act relating to imitation controlled substances.	Abood	~~1-26~~ 2/1	Wed HJR1
HB 17	An Act relating to age limits under Title 4, Alcoholic Beverages.	Martin	1-27	
HB 38	An Act relating to age limits under Title 4, Alcoholic Beverages.	MM Miller		
HB 52	An Act relating to government interests in intellectual work products developed at the expense of the state.	Rules		
SSHB 58	An Act requiring certain prisoners to serve a full sentence.	Lindauer Barnes	1-28	
HB 60	An Act providing for conditional pardon.	Lindauer		
HJR 1	Proposing an amendment to the Constitution of the State of Alaska providing that a legislator who is convicted of a felony forfeits legislative office.	Phillips	1-26	Wed
HJR 2	Proposing an amendment to the Constitution of the State of Alaska limiting the length of regular sessions of the legislature.	Hayes	1-24	Rules 1-24
HJR 3	Proposing an amendment to the Constitution of the State of Alaska limiting the length of regular sessions of the legislature.	Phillips		

			HEARING DATE	REFERRED TO
HJR 4	Relating to the ratification of an amendment to the Constitution of the United States defining Congressional representation and voting rights for residents of the District of Columbia.	MM Miller		
HJR 5	Proposing an amendment to the Constitution of the State of Alaska relating to annulment of regulations be the legislature.	Szymanski		
HJR 6	Relating to the proposal of Congress of an Equal Rights Amendment.	MM Miller		
HJR 7	Proposing amendments to the Constitution of the State of Alaska relating to the election of attorney general and to procedures governing the election and term for state offices to be elected under the constitution.	Uehling Ward Barnes		
HJR 8	Proposing an amendment to the Constitution of the State of Alaska relating to elections for candidates for the offices of governor and lieutenant governor.	Flood		
HJR 9	Proposing an amendment to the Constitution of the State of Alaska relating to elections for candidates for the offices of governor and lieutenant governor.	Bussell		
HJR 11	Proposing an amendment to the Constitution of the State of Alaska limiting the length of regular sessions of the legislature.	Lacher		
HJR 12	Proposing and amendment to the Constitution of the State of Alaska relating to the terms of legislators.	Lacher Tischer Lindauer		

			HEARING DATE	REFERRED TO
HB 75	An Act relating to the exclusionary rule; changing Rule 37(c), Rules of Criminal Procedure, and Rule 412, Alaska Rules of Evidence, by limiting application of the exclusionary rule when a good faith search only results in technical violations of the constitutional guarantee against unlawful search and seizure.	Pestinger Furnace Uehling Barnes		
HB 79	An Act repealing peremptory disqualification of a judge and changing Rule 10(c) and Rule 25(d), Rules of Criminal Procedure and Rule 42(c), Rules of Civil Procedure; and providing for an effective date.	Fritz		
HB 87	An Act prohibiting publication of the identity of persons charged with certain sexual offenses; and changing Rule 6(1), Rules of Criminal Procedure.	Bettisworth		
HB 100	An Act relating to assaulting a peace officer, fire fighter, or emergency responder.	Lacher		
HB 104	An Act relating to compensation for victims of violent crimes; and providing for an effective date.	Clocksin		
HJR 13	Urging the United States Congress to propose to the people of the United States an amendment to the Constitution of the United States, or to call a convention for the purpose of adopting the "Liberty Amendment".	Bettisworth		
HJR 14	Proposing amendments to the Constitution of the State of Alaska providing for the ratification of appropriations by the qualified voters of the state.	Bettisworth		
HCR 11	Relating to the use of petit ju[illegible]s of earphones.	Fritz		

Mand.

$/31 - to continue to Thursday

Vincent Vitale
274-3538
request file

1:30

		HEARING DATE	REFERRED TO
HB 109	An Act relating to criminal prosecution of minors.	Pestinger Furnace	
HJR 24	Proposing an amendment to the Constitution of the State of Alaska relating to the rights of states.	Rules	
HB 124	An Act requiring an advisory vote by the qualified voters of the state on amendments to the Alaska Statehood Act.	Rules	

17 Like 5 Similar

1976 Judges Conference on Record against Ch 116 1971

1967 SB 66

3 Feb 83 - HB 79

1:35 Art Robson Fairbanks (Judge)
1:50 Allan Beiswenger Soldotna (Attorney)
2:00 Geo Peck Seward - (~~City Attorney~~) (Judge)
2:15 Henry Camerow (Attorney) Anchorage
2:35 Hugh Connelly Fairbanks (Judge)
2:55 Harold Curran Barrow - (NSB) Attorney
3:00 Eric Sanders Anchorage Attorney
3:05 Ron Drathman Anchorage Attorney
3:10 James Hornaday Homer Judge
3:25 William Bixby Valdez Attorney
3:30 Elaine Andrews Anchorage Judge
3:45 Phill Weidner Anchorage Attorney
3:55 John Rate Homer Attorney
4:10 Ed Bailey Homer Lay person
(Need his statement) (Good idea's)
4:15 Calvin Hand 76 years Homer (Anchor Point Res)
(Need his statement) for ~~[illegible]~~ future use
4:30 Gerald Williams Juneau (Judge)

(don't Judges give warning regarding a 2nd ??
Rule 45 — impedes timely trial)

MSG 83-00006074 PRTY 1 02/03/83 14:29:52 ORIG: LA08 IN= 0011 OUT= 0016
FROM: BARBARA IN ANC TO: GAIL/TIM IN JNU
TARGET: LJH1 SUBJ: H. JUDICIARY T/C, 2/3

OMNI #4

TO TESTIFY

9. PHILLIP WEIDER, 444 H STREET, ANCHORAGE 276-7000

MSG 83-00006055 PRTY 1 02/03/83 14:00:33 ORIG: LA08 IN= 0008 OUT= 0010
FROM: BARBARA IN ANC TO: JNU T/C
TARGET: LJH1 SUBJ: H. JUDICIARY T/C, 2/3

OMNI #2

TO TESTIFY:
7. JOHN B. LOHFF, 308 G ST.,#303, ANCHORAGE 99501 276-8514

TO OBSERVE:
5. ELIZABETH MICHERSON, 1024 W. 6TH, ANCHORAGE, 99501 274-1426
6. STEPHEN J. VAN GROOR, 308 G ST.,#303, ANCHORAGE, 276-8514

MSG 83-00006059 PRTY 1 02/03/83 14:09:46 ORIG: LA08 IN= 0009 OUT= 0012
FROM: BARBARA IN ANCORAGE TO: JNU T/C
TARGET: LJH1 SUBJ: H JUDICIARY T/C, 2/3

OMNI #3

TO TESTIFY:

8. TERESA CARNS, AK JUDICAL COUNCIL, 1031 W. 4TH,SUITE#3[illegible], ANC., 279-2526

WE HAVE 5 PEOPLE TO TESTIFY WHO WERE ALSO AT MONDAY'S H. JUDICIARY T/C....

ERIC SANDERS
RON DRATHMAN
HENRY CAMAROT
MICHAEL SCHNEIDER
JOHN LOHFF
THANKS FOR YOUR HELP.....

MSG 83-00006045 PRTY 1 02/03/83 13:46:30 ORIG: LF02 IN= 0001 OUT= 0008
FROM: ANNIE IN FAIRBANKS TO: JUNEAU T/C
TARGET: LJH1 SUBJ: JUDICIARY T/C 2/3/83

HERE TO TESTIFY IN FAIRBANKS:

JUDGE HUGH H. CONNELLY, 604 BARNETTE, ROOM 341, FAIRBANKS 99701 452-9251

2:35 3 FEB 83

MSG 83-00006040 PRTY 1 02/03/83 13:48:03 ORIG: LA08 IN= 0007 OUT= 0009
FROM: BARBARA IN ANC TO: JNU T/C
TARGET: LJH1 SUBJ: H. JUDICIARY T/C, 2/3

IN ANCHORGE TO TESTIFY:

1. ERIC SANDER, 500 C STREET, ANC, 272-3538 3 PM - 3 FEB 83
2. RON DRATHMAN, 444 H ST., ANC 276-7000 3:05 - 3 FEB 83
3. MICHAEL, SCHNEIDER, 880 N ST.,#200, ANC, 99501 277-4551
4. HENRY CAMAROT, 310 K STREET, SUITE 500, ANC 276-6363 - 2:15 3 FEB
5. MARYANNE E. FOLEY, 227 E. 12TH AVE.,,#2, ANC 274-2890
6. JULIE SIMON, 3812 SPENARD RD., ANC., 276-3125

TO OBSERVE:
1. PETER MYSING, 444 H STREET, ANC., 276-700
2. W. JOHN LOIN , 2531 NORTHRUP PLACE , ANC., 277-4194
3. JEFF BERLINER, ANCHORAGE TIMES, 820 W. 4TH, ANC., 278-5622
4. ELAINE ANDREW, 2131 BELAIR, ANC 272-7709 3:30 3 Feb 83

MSG 83-00006060 PRTY 1 02/03/83 14:10:44 ORIG: LV00 IN= 0003 OUT= 0014
FROM: PAT, VALDEZ TO: JNO T/C
TARGET: LJH1 SUBJ: HB79,HOUSE JUDICIARNY/PRE-EMPTION

PARTICIPANT... Testify 3:25 3 Feb 83 PDS

1. ? WILLIAM BIXBY, BOX 1229, VALDEZ 99686 835-4775 ATTORNEY; COWAN, GILLESPIE & JEFFERSON

Private Practice, formerly FBI Agent

MSG 83-00006057 PRTY 1 02/03/83 14:00:44 ORIG: LR00 IN= 0013 OUT= 0011
FROM: FLORENCE IN BARROW TO: TIM/JUNEAU
TARGET: LJH1 SUBJ: (H) JUD ON HB 79 2/3/83

OMNI # 2

PARTICIPANT WHO WOULD LIKE TO TESTIFY:

HAROLD CURRAN
BOX 69
BARROW, AK

2:55 - 3 Feb 83

852-2611

MSG 83-00006033 PRTY 1 02/03/83 13:30:14 ORIG: LL00 IN= 0003 OUT= 0004
FROM: DEE,SOLDOTNA TO: TIM/JUNEAU
TARGET: LJH1 SUBJ: H. JUD. DISQUALIFICATION JUDGES 2/3/83

OMNI # 1

PARTICIPANTS 1:50 - 3 FEB 83

1. ALLAN BEISWENGER BOX 3519 SOLDOTNA, AK. 2629164

E.O.M.

MSG 83-00006031 PRTY 1 02/03/83 13:30:18 ORIG: LF20 IN= 0004 OUT= 0005
FROM: LYNDA/FBX TO: ALL
TARGET: LJH1 SUBJ: HSE JUD T/C 2/3

FAIRBANKS HAS ONE PARTICIPANT TO TESTIFY: 1:35 - 3 FEB 83

1. ART ROBSON, R.V.B.A., 3568 GERAGHTY ST, FBX. 99701 PH 479-6281

HE WAS ONE OF THE FOLKS WHO WAS NOT ABLE TO TESTIFY AT THE LAST HEARING AND IS UNDER A TIME CONSTRAINT TODAY. WOULD IT BE POSSIBLE FOR HIM TO GIVE HIS TESTIMONY AS SOON AS POSSIBLE? THANK YOU.

----------EOM

MSG 83-00006034 PRTY 1 02/03/83 13:35:18 ORIG: LA08 IN= 0005 OUT= 0006
FROM: CANDY/ANCHORAGE TO: GAIL
TARGET: LJH1 SUBJ: **** HOUSE JUDICIARY T/C 2/3 ******

HAVE BEEN ASKED TO ALERT YOU THAT KBBI RADIO/HOMER WILL BE TAPING JUDGE HORNADAY.

ALSO, BARBARA WANTED ME TO MAKE SURE THAT YOU HAD RECIEVED HER OMNI EARLIER ABOUT HENRY CAMAROT'S TIME CONSTRAINT. HE MADE THIS REQUEST A DAY OR TWO AGO, AND IF AT ALL POSSIBLE WOULD LIKE TO SPEAK AT 12:15 AST, 2:15 PST.

THANKS

MSG 83-00004955 PRTY 1 01/31/83 13:48:19 ORIG: LA08 IN= 0008 OUT= 0009
FROM: INEZ/ANCH TO: JNU/TC
TARGET: LJH1 SUBJ: HOUSE JUDICIARY TC

ANOTHER OBSERVER:

JOHN LOHFF

ANC

MSG 83-00004954 PRTY 1 01/31/83 13:42:40 ORIG: LA08 IN= 0007 OUT= 0008
FROM: INEZ/ANCH TO: JNU/TC
TARGET: LJHT SUBJ: HOUSE JUDICIARY

RON DRAFTMAN
P. WEIDER
RANDALL P. BURNS
KENNY CASAROT
WAYNE A. ROSS
ROBERT E. POENE
MICHAEL J. SCHNEIDER
JOHN SUTHERLAND
DIANE F. VALLENTINE
ELIZABETH PAGE KENNEDY

ANC

NSNG S LAXXA

MSG 83-00004274 PRTY 1 01/31/83 14:18:54 ORIG: LR00 IN= 0006 OUT= 0012
FROM: FLORENCE IC BARROW TO: LAXTC
TARGET: LJH1 SUBJ: (H) JUD T/C ON HB 79 1/31/83

HERE TO OBSERVE:

MICHAEL I. JEFFERY
SUPERIOR COURT JUDGE
BOX 270
BARROW, ALASKA 99723

852-4800

83-00004943 PRTY 1 01/31/83 13:23:51 ORIG: LF02 IN= 0002 OUT= 0003
M: DEBBIE (FB) TO: TIM/JUNO
RGET: LJH1 SUBJ: HB 79 T/C

SERVER:

DGE STEPHEN R. CLINE, BOX 73454, FAIRBANKS, AK 452-9249

ARE EXPECTING ~~JUDGE CLINE~~ AT NOON. 2:00

E 83-00004945 PRTY 1 01/31/83 13:27:05 ORIG: LB00 IN= 0005 OUT= 0004
ON: HELEN/PETUE OPERATOR
RGET: LJH1 SUBJ: PARTICIPANT

THE [illegible]

[illegible]

ANC 1

3-00004972 PRTY 1 01/31/83 13:19:45 ORIG: LA08 IN= 0004 OUT= 0002
LARR/ANCH TO: JNU
T: LJH1 SUBJ: HOUSE JUDICIARY TC

'S PARTICIPANTS ARE:
~~M. THORSNESS 509 W. 3RD AVE,ANCH, 274-7522~~
M. BAILEY 310 K ST., ~~SUITE 509~~, ANCH, 279-6546

3-00004947 PRTY 1 01/31/83 13:29:44 ORIG: LA08 IN= 0006 OUT= 0005
INEZ/ANCH TO: JNU/TCE
T: LJH1 SUBJ: HOUSE JUDICIARY

E ADDITIONAL PARTICIPANTS; ANC 2
NCM
L. HUNT
Michael Schneider
ric Sanders

83-00004952 PRTY 1 01/31/83 13:34:04 ORIG: LI00 IN= 0006 OUT= 0007
: DOLDOTNA TO: JUNEAU T/C
ET: LJH1 SUBJ: ON GOING T/C 1/31/83 11:30 AK AST

CHAPPELL ANCH. DAILY NEWS BOX 4196 KENAI, AK. 283-3074

M.

83-00004950 PRTY 1 01/31/83 13:30:41 ORIG: LI00 IN= 0005 OUT= 0006
: DOROTHY IN DILLINGHAM TO: JUNEAU TC
ET: LJH1 SUBJ--PARTICIPANT

VE ONE OBSERVER AT THE PRESENT TIME, AND AM EXPECTING ONE MORE POSSIBLY.

ETER AZHMAN, ALASKA COURT SYSTEM, BOX 209, DILLINGHAM, ALASKA 99576
ELEPHONE NUMBER IS 842-5215

3-00004986 PRTY 1 0./31/83 14:28:56 ORIG: LS00 IN= 0009 OUT= 0013
FALEENE, SITKA TO: ALL SITES
T: LJH1 SUBJ: 1/31/ M. JUD T/C

SERVE IS SITKA:

UTTE SWANBERG, TRIAL COURTS AT SITKA, BOX 910, SITKA, AK 99835,
0. 747-3291

OBVSERVING, "MAY" WISH TO TESTIFY LATER:

CRASKE, JUDGE, BOX 910, SITKA, AK 99835, PH. NO. 747-6714

MSG 83-06005007 PRTY 1 01/31/83 15:07:19 ORIG LL00 IN= 0008 OUT= 0017
FROM: DEE,SOLDOTNA TO: JUNEAU T/C
TARGET: LJH1 SUBJ: HOUSE JUD. COMM. T/C 1/31/83 11:30 AST

ALLAN REISWENGER BOX 3519 SOLDOTNA, AK. 99669

ALLAN WOULD LIKE TO PARTICIPATE

E.O.M.

MSG 83-00004962 PRTY 1 01/31/83 13:52:54 ORIG: LF02 IN= 0003 OUT= 0010
FROM: DEBBIE/FBX TO: TIM/JUNO
TARGET: LJH1 SUBJ: HB 79 T/C

JUDGE JANE KAUVAR HAS ARRIVED. SHE MAY WISH TO TESTIFY.
604 BARNETTE, FAIRBANKS, AK 99701 452-9248

MSG 83-00005024 PRTY 1 01/31/83 15:24:03 ORIG: LK00 IN= 0005 OUT= 0020
FROM: JUNE/KETCHIKAN TO: ALL SITES
TARGET: LJH1 SUBJ: 1/31 HOUSE JUD. T/C

ALTHOUGH INTERESTED WAS EXPRESSED DURING MY CONTACTS, NO ONE HAS ARRIVED TO PARTICIPATE.

JOM/JR

MSG 83-00005026 PRTY 1 01/31/83 15:27:19 ORIG: LF02 IN= 0007 OUT= 0021
FROM: DEBBIE(FBX) TO: TIM/JUNO
TARGET: LJH1 SUBJ: HB 79 T/C

ADDITIONAL PARTICIPANT:

ART ROBSON, TANANA VALLEY BAR ASS., 3568 GERAGHTY ST., FBX, 99701 479-6281

MR. ROBSON IS OUR LAST WITNESS.

[illegible]

MSG 83-00005022 PRTY 1 01/31/83 15:21:00 ORIG: LS00 IN= 0012 OUT= 0019
FROM: FALEENE, SITKA TO: TIM, JUNEAU, ALL
TARGET: LJH1 SUBJ: 1/31 H. JUD T/C

SITKA'S OBSERVER, JUDGE DUANE CRASKE, DOES NOT WISH TO TESTIFY.

###

MSG 83-00004999 PRTY 1 01/31/83 14:57:02 ORIG: LA08 IN= 0010 OUT= 0016
FROM: BARBARA IN ANC TO: TIM IN JNU
TARGET: LJH1 SUBJ: HOUSE JUDICIARY T/C , JAN . 31

NAMES AND ADDRESSES OF OUR PARTICIPANTS AND OBSERVORS:
1. T DAVID H. THORSNESS ,509 W. 3RD AVE., ANCHORAGE 99501 274-7522
2. T ALLEN M. BAILEY, 310 K ST.,SUITE 508, ANCHORAG 99501 279-6546
3. T TIM LYNCH, 601 W. 5TH AVE., ANCHORAGE, 99501
4. T KAREN L. HUNT , 1007 W. 3RD, SUITE #400, ANCHORAGE, 99501 279-3581
5. ERIC SANDERS, 500 C STREET, #400, ANCHORAGE 99501 272-3538
6. RON DRATHMAN , 444 H STREET, ANCHORAGE 276-7000
7. P. WEIDER, 444 H STREET, ANCHORAGE 276-7000
8. RANDALL P. BURNS, 360 K STREET,,# 105, ANCHORAGE, 272-7469
9. HENRY CAMAROT, SUITE 500, 310 K STREET, ANCHORAGE, 276-6363
10. WAYNE A ROSS, 1007 W. 3RD, SUITE 304, ANCHORAGE, 276-5307
11. ROBERT D. FRENS, " " " "
12. MICHAEL SCHNEIDER, 880 N STREET, # 202, ANCHORAGE, 99501 277-4551
13. JODY W. SUTHERLAND
14. DIANE F. VALLENTINE, 255 W. FIREWEED, ANCHORAGE 99503 277-1604
15. ELIZETH PAGE KENNEDY, 1031 W. 4TH, SUITE 200, ANCHORAGE, 99504 276-3550
16. JOHN R. LOHFF, 308 G STREET, #303, ANCHORAGE , 99501 276-8514

SG 83-00004994 PRTY 1 01/31/83 14:37:04 ORIG: LA08 IN= 0009 OUT= 0014
ROM: BARBARA IN ANC TO: TIM IN JNU
ARGET: LJH1 SUBJ: HOUSE JUDICIARY T/C JAN 31

JST RECEIVED YOUR MESSAGE.

O SPEAK:
[illegible]
AREN HUNT
ICHAEL SCHNEIDER

R QUESTION-

RIC SANDERS
ON DRATHMAN
. WEIDER
ENRY CAMAROT
AYNE A ROSS
IANE F. VALLENTINE

SG 83-00004997 PRTY 1 01/31/83 14:42:40 ORIG: LF02 IN= 0004 OUT= 0015
ROM: DEBBIE/FBX TO: TIM/JUNO
ARGET LJH1 SUBJ: HB 79

~~UDGE CLINE YOU'LL COME TO~~ TESTIFY WHEN YOU COME BACK TO FAIRBANKS

DDITIONAL OBSEVERS:

UDGE CONNELLY, 604 BARNETTE RM 341, FAIRBANKS 452-9251
(HE MAY WISH TO MAKE COMMENTS LATER)

UDGE H. E. CRUTCHFIELD, 1811 CROSSON AVE., FAIRBANKS, 99701 456-5630
ARL SLATER, ALASKA COURT SYSTEM, SR BOX 70746, FBX 99701

HB 79
JR
peremption

Judicial challenge bill stands

3-1-83 Clarion

Senate next to consider Fritz bill on challenges

A House bill to eliminate the right of attorneys to disqualify a judge without stating a cause will move to the Senate after its sponsor abandoned efforts to convince more representatives to support the legislation.

Rep. Milo Fritz, R-Anchor Point, sponsored the bill to repeal peremptory challenges (the legal term for removing a judge from a case without stating a cause). In addition to a state statute allowing those challenges, the state court system has a rule implementing the law. While the statute may be repealed with a simple majority vote, eliminating the court rule requires a two-thirds majority.

Fritz's bill passed the House by a 24-13 margin last week. With that margin, the portion of the bill repealing the statute could take effect if passed by the Senate and signed by the governor. The portion of the bill repealing the court rule would not be effective, because 27 votes, or a two-thirds margin, was not reached.

On Thursday, Fritz said he would ask for reconsideration in hopes of picking up the additional votes. Fritz's aide, David Schade, said Monday that reconsideration was not asked for because support from some representatives was wavering. "If you have a sure thing, keep it," he said.

Schade also reiterated Supreme Court Chief Justice Edmond Burke's comment that the court would change its rules voluntarily if the statute was changed.

The peremptory challenge law came under fire last fall after the court system announced that Homer District Court Judge James Hornaday would be transferred to Anchorage on June 1. The reason for the transfer, court officials said, was that in more than 80 percent of the criminal cases to come before Hornaday, attorneys were disqualifying him without cause.

Clario

PENINSULA CLARION
Complimentary Copy
For
MEMBERS OF THE LEGISLATURE
flown to Anchorage courtesy of
ALASKA AERONAUTICAL INDUSTRIES
flown to Juneau courtesy of
ALASKA AIRLINES

he Peninsula Clarion / U.S.P.S. 438-410. Kenai, Alaska 25 cents

House passes repeal of judicial challenge law

Reconsideration asked in try for larger margin

A House bill to repeal the right of attorneys to disqualify a judge from a case without cause passed by a 25-13 margin Wednesday, but the bill's author still asked legislators to reconsider their vote.

Rep. Milo Fritz, R-Anchor Point, said he is asking for reconsideration in hopes of getting 27 votes, a two-thirds majority. He expected that vote to come today or Monday.

Rep. Hugh Malone, D-Kenai, voted against the bill.

A two-thirds majority is required to repeal a court system rule which implements the challenge without cause (legally called a peremptory challenge) statute. If the 27-vote mark is not reached, the bill repealing the statute only would still pass and go to the Senate. If passed there and signed into law, the court rule could still stand, although many judges would like to see the law done away with.

"The only indication we've had on the court rule is the 17 judges that were interviewed. They all agreed, along with the Supreme Court Chief Justice, that they would welcome any opportunity to change the law," Fritz said Thursday.

Supreme Court Chief Justice Edmond Burke said in a public hearing in Homer that the court rule would not be maintained if the Legislature repealed the peremptory challenge statute.

See AREA, Page 24

...Area legislation

Continued from Page 1

The issue of peremptory challenges arose because Homer District Court Judge James Hornaday was being challenged in more than 80 percent of the criminal cases to come before him.

Third Judicial District Presiding Judge Mark Rowland transferred Hornaday to Anchorage, but delayed the move to June 1.

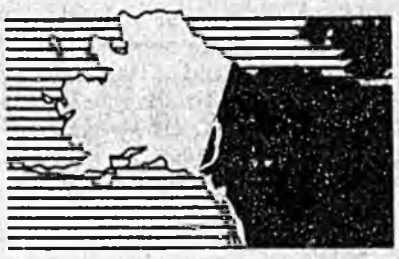
Bill would stop peremptory challenge of judges

The Associated Press

JUNEAU — The Alaska House by a 24-13 vote has passed a bill to eliminate the peremptory challenge of judges, but it rejected a change in court rules that take precedence over legislative mandates.

Another attempt to change court rules was expected today on a notice of reconsideration filed by the bill's sponsor, Rep. Milo Fritz, R-Anchor Point.

A change in court rules would have required a two-thirds vote in the House, or 27 votes, but the court rule



amendment mustered only 23.

The peremptory challenge has come under fire because of the highly publicized case of District Court Judge James Hornaday of Homer. He has been disqualified by challenges in 80 percent of his recent cases, after he said he automatically would sentence first-time drunken drivers to 15 days in jail.

The vote on the bill (HB79) came after nearly two hours of debate on the measure and an amendment proposed by Rep. Ron Wendte, D-Ketchikan. Wendte's amendment would have made all challenges qualified, but it was defeated.

Describing the bill as overkill, Wendte said his change was an attempt to "strike middle ground and provide that peremptory challenges be maintained but put the burden on the client and his attorney."

Calling the middle ground unobtainable, Judiciary Chairman Charlie Bussell, R-Anchorage, said the amendment would allow clerks in attorneys' offices to offer superflous reasoning on challenges.

Rep. Don Clocksin, D-Anchorage, said that Wendte's amendment would not allow the challenges to be eliminated.

Rep. Niilo Koponen, D-Fairbanks, said the bill is an issue over the right to a fair trial, which was the reason for the peremptory challenge becoming a part of court procedures.

The amendment would "at least make the right (of a fair trial) accountable," said Rep. Hugh Malone, D-Kenai.

But Rep. Tony Vaska, D-Bethel, said the elimination of the peremptory challenge would allow prejudice to remain in the court system.

"Prejudice means to me stiffer sentences for blacks, Chicanos and Alaska Natives," he said. "The public should have a fair hearing at all times, not with a judge who is prejudiced."

TIMES 2-24-83

House passes judge challenge bill

Associated Press

Juneau — The Alaska House passed by a 24-13 vote on Wednesday a bill to eliminate the peremptory challenge of judges.

A change in court rules would have required a two-thirds vote in the House, or 27 votes, but the court rule amendment mustered only 23.

The peremptory challenge has come under fire because of the highly publicized case of District Court Judge James Hornaday of Homer. He has been disqualified in 80 percent of his recent cases, after he said he automatically would sentence first-time drunk drivers to 15 days in jail.

The vote on the bill came after nearly two hours of debate on the measure and an amendment proposed by Rep. Ron Wendte, D-Ketchikan. The amendment would have made all challenges qualified, but it was defeated.

Describing the bill as "overkill," Wendte said his change was an attempt to "strike middle ground and provide that peremptory challenges be maintained, but put the burden on the client and his attorney."

Judiciary Chairman Charlie Bussell, R-Anchorage, called the middle ground unobtainable. He said the amendment would allow clerks in attorneys' offices to offer superfluous reasoning on challenges.

Rep. Don Clocksin, D-Anchorage, said that Wendte's amendment would not allow the challenges to be eliminated.

Rep. Niilo Koponen, D-Fairbanks, said the bill is an issue over the right to a fair trial, which was the reason for the peremptory challenge becoming a part of court procedures.

The amendment would "at least make the right (of a fair trial) accountable," said Rep. Hugh Malone, D-Kenai.

But Rep. Tony Vaska, D-Bethel, said the elimination of the peremptory challenge would allow prejudice to remain in the court system.

"Prejudice means to me stiffer sentences for blacks, Chicanos and Alaska natives," he said. "The public should have a fair hearing at all times, not with a judge who is prejudiced. A fair hearing in every case; that's what justice is all about."

Koponen said the bill "will be known as the Lawyers' Full Employment Act of 1983."

In other action, the House rejected a change in court rules that take precedence over legislative mandates.

Another attempt to change court rules was expected Friday on a notice of reconsideration filed by the its sponsor, Rep. Milo Fritz, R-Anchor Point.

Malone questioned on judicial challenge stand

To the editor: Clavion 2-25-83

An open letter to Rep. Hugh Malone:

I understand you are a surveyor. I hope you get your transit out and take a good look at where you're going, as I understand you opposed the Milo Fritz bill which would repeal the law of peremptory challenge. By letting this law stay in running Judge Hornaday out of Homer, do you for one think this will solve the problem?

When there is a new judge assigned, regardless of his attitude toward drunken driving and other crimes, this will only tell lawyers who use this law to load their pockets with taxpayers' money. Apparently Chief Justice Burke and Judge Rowland want to keep this law on the books, perhaps for the day when they topple and have to take defending drunken drivers. I am told when Judge Rowland was a visiting judge in Homer, he apparently wasn't interested in saving taxpayers money, as he flew his own plane, landing on Lake Beluga. Another visiting judge recently, along with a district attorney and a game warden, were seen as they ran aground on the bar and he was so hard aground, he didn't show up to court till 2 p.m. the next afternoon. Judge Hornaday is a skilled navigator and keeps his ship off the bar.

If this peremptory law is so all-fired necessary, why not put our courts on a paying basis and let them pay for visiting judges, instead of having people who are able to survive the drunken drivers, as in most states one found guilty or the loser in a civil action is required to pay the cost of court. As of now, we the taxpayers are not only paying the cost, we're also paying for a public defender who apparently uses excess time with this peremptory or other laws, stalling to feather his own nest, telling people who want to plead guilty to plead not guilty so they can run up expense. Also, I know of one case where a man had a quite steady job on the Slope and a public defender, defending him on a criminal trespass case.

WHO is paying?

I'm almost to the point of advocating a repeat of history, as was in Colonial Williamsburg, Virginia, in 1658.

I hope you'll see the light.

Some questions for anyone interested in such subjects:

1. Why not breath-test equipment in all bars and places liquor is sold?

2. Why not let the people vote for all judgeships as long as we are paying their salaries?

3. Why couldn't we send other perempted judges for a Homer visiting judge?

4. Why, as heard on a teleconference before a committee, are three Anchorage judges not sent as visiting judges to Homer — maybe too tough or lawyers can't dictate to?

5. I am told you are against the bill, Rep. Malone. Why?

I and many of the voters are watching to see if our representatives are satisfying the will of the people.

Calvin H. Hand
Anchor Point

Letters to the editor

Bill would stop peremptory challenge of judges

The Associated Press

JUNEAU — The Alaska House by a 24-13 vote has passed a bill to eliminate the peremptory challenge of judges, but it rejected a change in court rules that take precedence over legislative mandates.

Another attempt to change court rules was expected today on a notice of reconsideration filed by the bill's sponsor, Rep. Milo Fritz, R-Anchor Point.

A change in court rules would have required a two-thirds vote in the House, or 27 votes, but the court rule



amendment mustered only 23.

The peremptory challenge has come under fire because of the highly publicized case of District Court Judge James Hornaday of Homer. He has been disqualified by challenges in 80 percent of his recent cases, after he said he automatically would sentence first-time drunken drivers to 15 days in jail.

The vote on the bill (HB79) came after nearly two hours of debate on the measure and an amendment proposed by Rep. Ron Wendte, D-Ketchikan. Wendte's amendment would have made all challenges qualified, but it was defeated.

Describing the bill as overkill, Wendte said his change was an attempt to "strike middle ground and provide that peremptory challenges be maintained but put the burden on the client and his attorney."

Calling the middle ground unobtainable, Judiciary Chairman Charlie Bussell, R-Anchorage, said the amendment would allow clerks in attorneys' offices to offer superflous reasoning on challenges.

Rep. Don Clocksin, D-Anchorage, said that Wendte's amendment would not allow the challenges to be eliminated.

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The amendment would "at least make the right (of a fair trial) accountable," said Rep. Hugh Malone, D-Kenai.

But Rep. Tony Vaska, D-Bethel, said the elimination of the peremptory challenge would allow prejudice to remain in the court system.

"Prejudice means [redacted]me stiffer sentences for [redacted]ks, Chicanos and Alaska Natives," he said. "The public should have a fair hearing at all times, not with a judge who is prejudiced."

Peninsula Clarion
2/10/83

Judge ban repeal law advances

JUNEAU — A bill repealing the right of attorneys to disqualify judges without stating a reason was given a "do pass" recommendation Wednesday by the House Judiciary Committee.

Also on Wednesday, the Senate Finance Committee passed to the full Senate the supplemental appropriations bill for school districts.

Rep. Hugh Malone, D-Kenai, voted against passing the judicial bill, sponsored by Rep. Milo Fritz, R-Anchor Point.

Malone said Wednesday he supports changing the current method of allowing attorneys to disqualify one judge in a case without stating a reason. The law allowing disqualification for cause should stay, he said. Under that law, a hearing to determine whether changing judges is appropriate is held in each case.

A law taking the middle ground, where attorneys would have to state a cause under oath, but no hearing would held, should be passed, he said. Malone said when the bill reaches the floor, he would propose amendments to accomplish his preferred procedure.

"I'd like to know the reasons why judges are being challenged," he said. "I also loathe to take away a right withut a clear showing that the right is unnescessary or that it is being used in such a way that it is causing a hardship."

Sen. Don Gilman, R-Kenai, Wednesday reported that the Senate Finance Committee has voted to pass the supplemental appropriation bill for school districts to the Senate floor. The bill passed the House last week and Gilman said he expected it to pass the Senate within a few days. The bill appropriates $23.5 million for schools.

"It was refreshing to see the bill go through. It was straightforward, and no one tried to tack on anything," he said.

Gilman also reported that two other bills that he introduced are moving through the Senate committee structure. A bill providing a supplemental appropriation for the Department of Environmental Conservation for water and sewer projects and to municipalities for Municipal Assistance will be heard by the Finance Committee Tuesday and Wednesday next week. The bills received "do pass" recommendations by the Senate Community and Regional Affairs Committee.

Judge blames lawyers for high disqualification rate

Empire - 2-8-83

Lawyers counter that challenges are needed to guarantee fairness

By CHRIS JARVIS
Empire Staff Reporter

Lawyers, not judges, are to blame for the high frequency with which some judges are disqualified from cases, Juneau District Court Judge Gerald O. Williams said today.

Wiliams is frequently disqualified from hearing cases because, in his opinion, "Alaska is the most lawyer-whipped state in a lawyer-whipped country."

Williams and Juneau Superior Court Judge Rodger Pegues have been named as two of six Alaska trial judges most frequently disqualified from cases. Pagues is on vacation and was unavailable for comment.

Alaska Court Administrator Art Snowden said the peremptory challenges, which allow lawyers to ask for a different judge without stating a reason, are an "administrative nightmare," noting it costs the state an estimated $30,000 a year to fly judges into a jurisdiction to hear a case.

Williams, a former Alaska State Trooper, said members of the bench should not be blamed.

Williams said it is his responsibility to make sure a person accused of a crime is brought to trial within 120 days of his arrest, he said. He thinks peremptory challenges are often used to prolong the time before trial.

Lawyers generally disagree.

"I don't know of any attorney" who uses peremptory challenges only to prolong cases, said lawyer Richard Burnham.

According to current rules, an attorney on either side of a case can request a judge be disqualified without giving a reason.

Requiring attorneys to say why a judge should be disqualified would present problems if a judge is not disqualified and the attorney must then argue a case before him, Burnham said.

Although acknowledging it costs money to fly a judge to hear the cases of a disqualifed judge, Burnham said there are other solutions to the problem. For example, he said, a superior court judge could hear district court cases or, if that is not possible, another district judge could be hired.

"It doesn't seem to me the goal of the judicial system is to run cheaply. It's to give people their day in court," Burnham said.

Williams, however, said if a case is prolonged long enough, eventually a case

Continued on Page 2

Judge...

Continued from Page 1

could be dismissed because the time limit for trial has been passed.

Admitting he is sometimes curt when on the bench, Williams said he finds it difficult to "put someone in jail in a nice way."

He defended his record, saying he treats everyone who is convicted in his court in the same way.

"I've still got friends who are nad at me (for sentencing them to jail), but it goes with the turf," he said.

"I admit I'm old fashioned," Williams said. He seldom likes to grant delays in court proceedings because cases often end up dismissed when delayed too long, he said.

Peremptory challenges are often used by attorneys in a "tactical and strategic" manner, Williams said.

Of defense attorneys, Williams said, "It is in their interest to prolong to avoid a trial."

However, it is not always in the best interest of the defendent, Williams said. Peremptory challenges and continuances might result in an attorney's client staying in jail, if not able to make bail, he said.

It is the court's responsibility to assure efficiency in the system especially with criminal case loads in Juneau almost doubling in four years, he said.

Sometimes 30 to 60 days will have elapsed days since a person's arrest before making the first court appearance. That leaves as few as 60 days before the case may go to trial, Williams said, noting motions for continuances, if granted, could extend beyond the 120 day limit.

Although some people who see Williams on the bench for the first time might see him as "a combination of Atilla the Hun and Genghis Kahn," he said it is because his experience has taught him he must be absolute when passing judgment.

"I may appear curt in court but I've learned through experience that you've got to do it," he said.

Pre-emption of judges 'disruptive'

Times 2-6-83

by Jeff Berliner
Times Writer

A handful of state judges are "disrupting" the state court system because they are removed from cases so frequently, says state court administrator Art Snowden.

Court records show that one Anchorage judge and five other judges from around the state are excused from cases far more than their colleagues.

Although the current debate over pre-emptions has focused on Homer District Court Judge James Hornaday, he is not the only judge regularly excused from cases by lawyers. There are 42 trial judges in the state, (the eight appellate judges may not be pre-empted), and lawyers routinely excuse six of them.

According to court records, in addition to Hornaday, the judges being regularly bumped from

See Judges, page A-4

Judges

(Continued from page A-1)

cases are Juneau District Court Judge Gerald Williams, Fairbanks District Court Judge Stephen Cline, Anchorage Superior Court Judge Karl Johnstone, Juneau Superior Court Judge Roger Pegues, and Wrangell Superior Court Judge Henry Keene.

By law, attorneys have a right of pre-emption, called peremptory challenge, which means that each side in a case may excuse the judge assigned to that case one time. The parties involved do not have to state the reason. Lawyers have five days from the initiation of a case to file a notice for a change of judge. The legislature is now considering a bill to repeal lawyers' right to pre-empt a judge.

Court officials have called the pre-emption an "administrative nightmare" because of the problems in reassigning judges.

"It is more efficient without it," Snowden said, adding that the court system has not taken a policy on the peremptory challenge and is probably split on the issue.

Snowden called it "a disruption" that costs the state court system an average of $30,000 yearly in extra costs of reassigning cases to other judges.

The biggest expense, Snowden said, is paying travel and expense money to have judges journey to one-judge areas to fill in where the only judge in town has been legally removed from a case.

That has happened so much in Homer that Hornaday has been ordered to pack up, leave town, and don his judicial robes in Anchorage. Even if lawyers pre-empt him there, the reasoning is, there are other judges to fill in. Presiding Judge Mark Rowland ordered Hornaday to move to Anchorage by June 1 to fill a judicial vacancy here.

Hornaday has been pre-empted from about 84 percent of the criminal cases assigned to him. His lawyer, Henry Camarot, claims that Hornaday is pre-empted 8 percent of the time when all his cases are considered.

Cline, Williams and Johnstone are taken off cases up to half the time. All four of the most pre-empted judges have been retained in office by voters in recent elections.

Johnstone, the only Anchorage judge regularly excused, is also the only judge who hears civil cases almost exclusively. The others regularly hear criminal cases, too. Johnstone is pre-empted three times more than all the other Anchorage Superior Court civil judges put together, and his pre-emptions climbed to a high of 20 in December. Judges are assigned between 30 and 40 new cases monthly. Johnstone was pre-empted 153 times in 1982, up from 71 in 1981. And although Johnstone said last summer that his pre-emptions were going down, court records show they are on the rise.

But in Anchorage, the state's biggest judicial district, Johnstone's cases are simply reassigned to another Anchorage judge. That can't be done in Homer, where Hornaday is the only judge. His removal means that court administrators have to send in another judge to hear Hornaday's cases.

Last week the House Judiciary Committee held two days of hearings on the bill to abolish the pre-emption. Lawyers argued against the bill, claiming the pre-emption is used to excuse a judge who may not give their client a "fair shake."

Both defense attorneys and Anchorage municipal prosecutor Allen Bailey argued for keeping pre-emptions around so they have a tool to excuse a judge they think is either too lenient or too harsh when it comes to sentencing.

2-2-83 Anch News

Homer residents still trying to keep judge

By RONNIE CHAPPELL
Daily News correspondent

HOMER — The residents of this Kachemak Bay community apparently are willing to give up their right to pre-empt judges without legal cause in order to keep District Court Judge James C. Hornaday in Homer.

Opponents of Hornaday's pending transfer to Anchorage took their fight to the halls of the State Capitol Monday and urged the House Judiciary Committee to support a proposed bill that would bar lawyers from disqualifying judges without cause.

The bill is sponsored by Rep. Milo Fritz, R-Anchor Point, who told the committee that lawyers in Homer were abusing the right of peremptory challenge for the sake of "indulging in a vendetta against Hornaday."

A past president of the Alaska Bar Association, a judge, an Anchorage prosecutor and the Alaska Department of Law all testified against passage.

Early last year Hornaday announced plans to begin sentencing first time drunken drivers to 15 days in jail. The stance earned Hornaday the respect of the community at large, but incurred the wrath of defendants and local lawyers, who began asking that their cases be tried by other judges.

"Attorneys have usurped and abused the system," testified Wayne Kessler, chairman of an ad hoc committee that is fighting Hornaday's transfer. Speaking through the state teleconference system, Kessler charged that often lawyers use peremptory challenges for personal and political reasons. "The idea that the clients are the ones preempting the judges is totally assinine," Kessler said.

Homer City Councilwoman Gail Phillips and Homer High School teacher Wayne Lee joined Kessler in urging passage of the bill.

However, Fairbanks District Court Judge Jane Kauver advised the committee that changing the law would do little to remedy the existing problem. "Judges getting challenged peremptorily will be challenged for cause," Kauver said. The result, she said, will be damaging hearings that tie up court time, drive up the cost of litigation and result in hard feelings.

What others say

Times – 1-25-83

From The Peninsula Clarion, Kenai

HORNADAY'S transfer is only the battle — the war is the larger question of whether attorneys should be armed with the right to disqualify without cause a judge assigned to hear a case. There is no suggestion that attorneys be limited in their right to challenge for cause. Indeed, it is a vital right for those accused of crime. However, it is suggested that they should not be able to use peremptory disqualification.

Kenai C of C:

Stiffer DWI sentences but keep pre-emption

C/N 1/14/83

The Kenai Chamber of Commerce Board has come out for stiffer drunk driving sentences but chose not to support the house bill prefiled by Rep. Milo Fritz which would eliminate preemption of judges by defendants without stated cause.

But the subject will be in for more disucssion when the Chamber Board meets again Friday noon, said Chamber secretary Peggy Arness. Some of the Board members are not satisfied that the Chamber took a strong enough stand, and Board members are getting phone calls, said Mrs. Arness.

About 12 of the 16 Board members attended Friday's meeting. At that time all "went along" with the Board's stand on stiffer sentencing and non-support of the proposed pre-emptory bill.

Influencing the Board's decision was attorney Ed Garnett, a Chamber Board member, who defended preemptions which have taken Judge James Hornaday off the Homer Superior Court bench so often he may be transferred.

Judge Mark Rowland has said Hornaday could remain in Homer if the legislature made changes in the preemptory bill. Hornaday has been preempted on 80 percent of his cases, at least partially because of his announced tough sentences for drunk drivers.

But Garnett stated Hornaday had more than his share of preemptions even before his stand on drunk driving.

An earlier letter from the Chamber to the Homer task force to retain Hornaday in Homer, expressed Chamber support of the group's efforts.

Assembly balks at backing Homer judge retention

Gene McBride hopefully suggested a "unanimous consent" for a Borough Assembly resolution asking that the transfe[illegible]ng of District Judge J[illegible]es C. Hornaday from Homer be set aside, but differing opinions greeted the resolution which went down to defeat on a six to nine vote.

Brentley Keene of Homer, despite his community's strong show of sentiment favoring Hornaday's retention, stated he believed the resolution was "not the type of thing the Assembly should be dealing with."

Marilyn Dimmick also thought it an area the Assembly shouldn't be delving into, confusing the good feeling for Hornaday by expanding the resolution to proposing mandatory sentences for drunk drivers and limiting pre-emptory disqualification of judges which has plagued Hornaday and brought his transfer orders.

But Tommy Corr of Kalifonsky Beach thought the resolution was the type of thing the Assembly should be doing.

Corr also supported the right of Raymond Gillespie, Seward attorney, to vote on the issue. Attorneys have been solidly opposed to weakening the pre-emptory rights, a prospect which has arisen with support of Hornaday. Gillespie's voting had been questioned by Chuck Crapuchettes.

Support for the resolution came from Betty Glick, Onis King, Corr, Crapuchettes, McBride, and Mrs. McGahan. Opposed were John Crawford, Dave Carey, Don McCloud, Joe Arness, John Douglas, Kenn Stephens, Keene, Gillespie, and Mrs. Dimmick. Sharon Jean was absent.

Mrs. McGahan earlier offered a resolution deleting the section calling for a review of the pre-emption without cause and expressed personal feelings. "I know one judge I would like to preempt. No cause; it's just that we don't agree on anything." But her motion went down 5 to 10.

Corr's motion to delete the section asking for mandatory drunk driving sentences also was beaten, 5 to 10.

Around the Peninsula...

C-N 1/14/83

Homer drunk driving arrests in 1982 more than doubled over 1981 (171 compared to 84), according to the *Homer News*. Early in 1982, alarmed about a 30 percent increase in drunk driving over the previous year, Judge James Hornaday stiffened sentences. But preemptory challenges have prevented him from hearing 80 percent of the criminal cases, including DWI cases.

The trend does not appear to have changed for 1983. Two were brought to court on drunk driving charges the second day of the new year. One had almost made it home, within 50 feet despite a .23 breathalyzer test result. According to law, a driver testing at .15 is drunk.

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CHAIRMAN
HOUSE JUDICIARY COMMITTEE
MEMBER
HOUSE RESOURCES COMMITTEE

Representative Charlie Bussell
ALASKA STATE LEGISLATURE
HOUSE OF REPRESENTATIVES

February 28, 1983

Mark Andrews
Supervising Attorney
Alaska Legal Services
Bethel, Alaska

RE: HB 79, Legislation Pertaining to Peremptory Disqualification

Dear Mr. Andrews:

Thank you for taking the time to give the Committee your comments via Teleconference during our hearing process on HB 79.

On Wednesday, February 25, 1983, HB 79 was brought before the House for second reading and debate. After nearly two hours of debate and one attempt at having the bill amended, HB 79 was advanced to third reading and voted on by the body.

A copy of the House Journal covering action by the House for its thirty-eighth day is enclosed and shows the voting and progress of HB 79 as it passed the House. At the close of the floor action for the day on HB 79, Representative Fritz gave notice of reconsideration of his vote, which carries the bill to the next legislative day for another vote if brought up at that time.

On the next legislative day, HB 79 was not again brought up, so it has passed the House as shown in the Journal for the thirty-eighth day.

Thank you again for taking the time to become involved with the legislative process.

Regards,

Charlie

Representative Charlie Bussell
Chairman, Committee on Judiciary

CB:cmz

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Representative Charlie Bussell

ALASKA STATE LEGISLATURE
HOUSE OF REPRESENTATIVES

February 28, 1983

Wayne Lee
Sterling Highway
Homer, Alaska

RE: HB 79 Legislation Pertaining to Peremptory Disqualification

Dear Mr. Lee:

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Representative Charlie Bussell
ALASKA STATE LEGISLATURE
HOUSE OF REPRESENTATIVES

February 28, 1983

Judge Stephen Cline
Box 73454
Fairbands, Alaska

RE: HB 79, Legislation Pertaining to Peremptory Disqualification

Dear Judge Cline:

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Chairman, Committee on Judiciary

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Representative Charlie Bussell
ALASKA STATE LEGISLATURE
HOUSE OF REPRESENTATIVES

February 28, 1983

Henry Camarot
310 K Street, Suite 500
Anchorage, Alaska 99501

RE: HB 79, Legislation Pertaining to Peremptory Disqualification

Dear Mr. Camarot:

Thank you for taking the time to give the Committee your comments via Teleconference during our hearing process on HB 79.

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Chairman, Committee on Judiciary

CB:cmz

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Representative Charlie Bussell

ALASKA STATE LEGISLATURE
HOUSE OF REPRESENTATIVES

February 28, 1983

Harold Curran
Box 69
Barrow, Alaska 99723

RE: HB 79, Legislation Pertaining to Peremptory Disqualification

Dear Mr. Curran:

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Charlie

Representative Charlie Bussell
Chairman, Committee on Judiciary

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Representative Charlie Bussell
ALASKA STATE LEGISLATURE
HOUSE OF REPRESENTATIVES

February 28, 1983

Judge James D. Hornaday
Box 134
Homer, Alaska 99603

RE: HB 79, Legislation Pertaining to Peremptory Disqualification

Dear Judge Hornaday:

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On the next legislative day, HB 79 was not again brought up, so it has passed the House as shown in the Journal for the thirty-eighth day.

Thank you again for taking the time to become involved with the legislative process.

Regards,

Representative Charlie Bussell
Chairman, Committee on Judiciary

CB:cmz

POUCH V
JUNEAU, ALASKA 99811
465-4990

P.O. BOX 4-1325
ANCHORAGE, ALASKA 99509
248-1515

CHAIRMAN
HOUSE JUDICIARY COMMITTEE
MEMBER
HOUSE RESOURCES COMMITTEE

Representative Charlie Bussell
ALASKA STATE LEGISLATURE
HOUSE OF REPRESENTATIVES

February 28, 1983

George Peck
Box 596
Seward, Alaska 99664

RE: HB 79, Legislation Pertaining to Peremptory Disqualification

Dear Mr. Peck:

Thank you for taking the time to give the Committee your comments via Teleconference during our hearing process on HB 79.

On Wednesday, February 25, 1983, HB 79 was brought before the House for second reading and debate. After nearly two hours of debate and one attempt at having the bill amended, HB 79 was advanced to third reading and voted on by the body.

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MEMBER
HOUSE RESOURCES COMMITTEE

Representative Charlie Bussell

ALASKA STATE LEGISLATURE
HOUSE OF REPRESENTATIVES

February 28, 1983

John Rate
Box 2169
Homer, Alaska 99603

RE: HB 79, Legislation Pertaining to Peremptory Disqualification

Dear Mr. Rate:

Thank you for taking the time to give the Committee your comments via Teleconference during our hearing process on HB 79.

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Chairman, Committee on Judiciary

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248-1515

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HOUSE JUDICIARY COMMITTEE
MEMBER
HOUSE RESOURCES COMMITTEE

Representative Charlie Bussell

ALASKA STATE LEGISLATURE
HOUSE OF REPRESENTATIVES

February 28, 1983

Ed Bailey
PO Box 2994
Homer, Alaska 99603

RE: HB 79, Legislation Pertaining to Peremptory Disqualification

Dear Mr. Bailey:

Thank you for taking the time to give the Committee your comments via Teleconference during our hearing process on HB 79.

On Wednesday, February 25, 1983, HB 79 was brought before the House for second reading and debate. After nearly two hours of debate and one attempt at having the bill amended, HB 79 was advanced to third reading and voted on by the body.

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Chairman, Committee on Judiciary

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HOUSE RESOURCES COMMITTEE

Representative Charlie Bussell

ALASKA STATE LEGISLATURE
HOUSE OF REPRESENTATIVES

February 28, 1983

Calvin Hand
Str 490
Anchor Point, Alaska 99556

RE: HB 79, Legislation Pertaining to Peremptory Disqualification

Dear Mr. Hand:

Thank you for taking the time to give the Committee your comments via Teleconference during our hearing process on HB 79.

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Chairman, Committee on Judiciary

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MEMBER
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Representative Charlie Bussell

ALASKA STATE LEGISLATURE
HOUSE OF REPRESENTATIVES

February 28, 1983

Wayne Kessler
Box 1243
Homer, Alaska

RE: HB 79, Legislation Pertaining to Peremptory Disqualification

Dear Mr. Kessler:

Thank you for taking the time to give the Committee your comments via Teleconference during our hearing process on HB 79.

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Thank you again for taking the time to become involved with the legislative process.

Regards,

Representative Charlie Bussell
Chairman, Committee on Judiciary

CB:cmz

TESTIMONY OF JUDGE JAMES D. HORNADAY, HOMER
February 2, 1983

Mr. Chairman and ladies and gentlemen of the Committee, thank you for holding this hearing and inviting me to address the Committee. I hope I am not the monster judge that everyone has been talking about. My name is James D. Hornaday and from a perspective of nearly 20 years in Alaska I am speaking to you today as a judge. The judicial cannons permit and even require that judges speak out for the improvement of the administration of justice. And with all of the comments by many of my lawyer friends I feel a little like David when he went up against Goliath. The men and women of good will can and do differ in their opinions, and it does remind a little of the old Alaska adage that if the lawyers are against something it must be worthwhile. I wish it were someone else who was on the line rather than me, frankly I would rather be playing basketball or working on a legal history project. But the question of the peremptory challenge is involved with the independence of the judiciary and the decreasing respect for the judiciary. First of all, the peremptory challenge is not a fundamental constitutional right; it does not even exist anywhere in the Federal system, and there are Federal judges in every state and territory. Apparently it does not even exist in the vast majority, about two-thirds of the states. Alaska is in the extreme minority. It did not exist in Alaska until a few years ago when some lawyers pushed it through the Legislature. The Federal system and the majority of states get along just fine without it. Now as one example, drunk driving cases are the most serious problem facing the Alaska Court System. Over half of all the jury trials in the entire Court System are drunk driving cases. Drinking was involved in over 80% of the traffic fatalities; over 200 thousand are killed or injured annually on our nation's highways. Let's make clear what the Legislature has already done; the Legislature has passed legislation providing for up to one year in jail and $5,000 fine, revocation of licenses and community work. Now the statutes specifically states that for the first offense a defendant is to receive not less than 72 consecutive hours. It is too serious a problem to leave in the hands of the attorneys and that is the none effect of the peremptory challenge without cause. Judges are concerned about the peremptory challenge; it is affecting sentences. The Chief Justice has stated publicly that the peremptory challenge moderates sentences and that a judge has to walk a fine line and if they get too far over they will be removed by the peremption. I was told by the presiding judge that I had to take peremptions into consideration when I sentence. It is the most frequent topic of conversation at the Annual Judicial Conference. The leading authority on court delay called the Alaska peremptory challenge an absolute abomination, those were his words. Representatives of the National Center of State Courts were amazed at the existence of the removal without cause. I have heard judges tell the Chief Justice they are concerned about the peremption. It is a problem state-wide, not just in Homer. You have heard the lawyer in Bethel and the problems there. You've heard the judges in Fairbanks. It exists in Kodiak, Ketchikan, Juneau and all over the state, even in multi-judge areas. Now we announced a pattern of sentencing in drunk driving cases in Homer about a year ago which was effective, but sentences were clearly within the sentences permitted by the Legislature. Fifteen days is less than 5% of the maximum penalty. Although the announced pattern is no longer in effect and was rescinded when the higher court ruled that it could not be applied. There are sentencing patterns in Alaska, attorneys keep records of the sentences of judges. So there are patterns but known only to the judges and the lawyers. The public, including the potential defenders, do not know the patterns. It is time to open up the System and bring it out from behind the closed doors of the

legal profession. Now I was a lawyer for 10 years and you are never going to satisfy the lawyers on sentencing. About 6 years ago we initiated the first work program, alternate work program, for drunk drivers in Alaska. Some lawyers supported, but other complained that work was a cruel and unusual punishment. Now the program has been reinstituted pursuant to the community work which the Legislature has made a sentencing tool. Now the lawyers are complaining that we are giving too much community work. Also the argument that the System would be flooded with time consuming challenges for cause is questionable, as several attorneys have indicated that they would not use challenges for cause. Further the presiding judge denied a challenge because against me on hearing a DWI case after the announced policy was rescinded. The hearing took all of 10 minutes. The Court System and the people of Alaska should not be held held hostage by attorneys threating to plug the System with challenges for cause. Further judges will disqualify themselves if for some reason they should not hear a case. There is already a procedure for this approach that is in effect. However, again note that a judge has to give a reason why they are disqualifying themselves. Related to the peremptory challenge is another deep concern which I have as a 20 year Alaskan and as a lawyer and a judge and a citizen, and that is the growing lack of respect for the Alaska Judiciary among the members of the public. Reportedly, concern over the Justice System trailed only the capitol move and subsistence in intensity in the recent election. Almost half of the voters in the Third District voted not to retain the trial judges last November. This negative vote is up nearly 10% in only 4 years. How many years will it be before all judges are defeated? Some of the longer serving judges remember when they received 85% approval ratings. For the first time in nearly 20 years in the legal profession, so many people told me they were voting against all of the judges that I lost count. And note that, at least to-date, that most of the people, most of the lay people, testifying to you are against the peremption, only the lawyers are testifying before you in favor of it. That should tell you something. We pride ourselves in Alaska on the merit selection appointment procedure for judges. The Judicial Council recommends the Governor appoints and the people vote, and yet the present situation with the peremptory challenge is worse than the most partisan political election of judges, and that a very few attorneys can remove a judge & hold the System hostage. The cost to the public and the wasted expense and time is high. The selection process of which we are so proud and the public vote means absolutely nothing. Just as an example, I was required to move to Homer to take the judgeship in Homer. The Judicial Council recommended me for Homer and the Governor specifically appointed me to Homer. The family moved here and has put down deep roots; we have children in school of all ages. I received good ratings from the lawyers and the highest rating from the Alaska Peace Officers and was retained overwhelming by the voters in the November election in my home area by a 2 to 1 margin. And although I appreciate Mrs. Barnes' invitation to Anchorage, I would prefer frankly to remain in Homer. I did live in Anchorage for a couple years and I have, we have, a lot of friends up there, however we are pretty deeply rooted in Homer at the present time. Two weeks after the election I was asked to transfer to Anchorage because of the peremptions. I have been assured that there is no other reasons for my transfer, only the peremptions. None of my sentences have ever been reversed as excessive. Now there are checks and balances that are far more appropriate than peremptions without cause and they are numerous. If a judge is doing something improper turn them over to the Judicial Qualifications Commission, or challenge the judge for cause, or test the judge in the retention elections, or appeal the judge's decision, or ask the judge to voluntarily disqualify himself. The message is going out loud and clear to the judges in Alaska, to the attorneys and to the public that inspite of the vote of thousands that vote means nothing, and a handful of attorneys can accomplish the transfer

of a judge, and threaten other judges through peremptions for which they do not even have to give a reason. All the attorneys have talked about before you are the rights of their clients, and these are important rights, no one would say that they are not. But what about the rights of the victims? What about the rights of society? The Constitution clearly requires a judge to sentence to protect society and reformation. No where in the Constitution, in the statutes or in the case law is there any indication that a judge is to sentence in order to avoid peremptions. And yet the Chief Justice of the Alaska Supreme Court has stated publicly that this is happening, and any judge who will level with you will tell you the same. The tail is wagging the dog at the present time as the attorneys are in effect controlling sentencing, and are now even controlling the transfer of judges. Thank you.

MARY/MATSU - 3/1 - 2:25 P.M.



TO: ALL LEGISLATORS

FR: LEONARD MOFFITT
P O BOX 748
PALMER 99645

PREEMPTION IS 'TOOTED' AS A PROCEDURE TO PROTECT LAYMEN FROM PREJUDICIAL JUDGES HOWEVER, THAT PURPOSE SEEMS TO HAVE TAKEN SECOND PLACE AS ATTORNEYS MAY USE IT TO OBTAIN FAVORABLE JJUDGES FOR THEMSELVES. THE PAST RECORD OF RACIAL SENTENCING WOULD INDICATE THE PREEMPTIONWAS AND IS INEFFECTIVE. LEGISLATIVE DETERMINATION IS WHAT CONTITUTES JUDICIAL CONFLICTS OF INTEREST AND BIAS PLUS REQUIRING JUDICIAL DISCLOSURE ARE NECESSARY JUDICIAL IMPROVEMENTS. MEANINGFUL JUDICIAL IMPROVEMENTS CANNOT BE OBTAINED UNTIL THE OFFICERS OF THE COURT ARE NOT ALLOWED TO VOTE ON CONFLICT OF INTEREST ISSUES.

EOM

ALASKA STATE LEGISLATURE JR Rep Bussell

INTERIM OFFICE:
P.O. BOX 81435
FAIRBANKS, ALASKA 99708

IN SESSION:
POUCH V
JUNEAU, ALASKA 99811
(907) 465-4930/4941

CHAIRMAN
1983 INTERIOR DELEGATION

MEMBER
TRANSPORTATION
HEALTH, EDUCATION AND SOCIAL SERVICES
LABOR SUBCOMMITTEE
JOINT OIL AND GAS
RURAL EDUCATION ATTENDANCE AREAS

Representative Mike Davis
House District 19

C

MEMORANDUM



To: Members of the House Judiciary and State Affairs Committees

From: Rep. Mike Davis Mike

Date: March 21, 1983

Re: House Bill 79

Enclosed is a copy of a letter written in regard to House Bill 79, which would repeal the peremptory disqualification of judges. Mr. Parrish presents some insightful arguments which you may wish to consider when evaluating this bill.

PARRISH LAW OFFICE
A PROFESSIONAL CORPORATION
ATTORNEYS AT LAW
536 FOURTH AVENUE
FAIRBANKS, ALASKA 99701

O. NELSON PARRISH
JAMES A. PARRISH
LANCE C. PARRISH
ROBERT A. PARRISH
OF COUNSEL

TELEPHONE
(907) 456-4070

March 10, 1983

Representative Mike Davis
Capitol Office Building
Pouch V
Juneau, Alaska 99811

Dear Representative Davis:

I am writing regarding House Bill 79 which has apparently been introduced in the First Session of the 13th Legislature. This bill provides that the current Alaska Statute 22.20.022 providing for peremptory disqualification of judges be repealed. I wish to express my most sincere opinion that the passage of this bill would constitute a giant leap backward in the struggle for a fair and impartial judiciary in Alaska.

I take a particular interest in this bill because my father, Robert A. Parrish, strongly supported it when it was originally passed. I have paid special attention to the effect which it has had upon the judiciary and justice in individual cases. I have consulted with numerous other lawyers whose opinions I respect. Among those, the near unanimous consensus is that the peremptory disqualification procedure has been of great benefit to the state and should not be abandoned.

The peremptory disqualification procedure operates on two independent levels. Each is basic to fair adjudication of both civil and criminal controversies in this state.

On the first level, the disqualification procedure helps insure that a party or his counsel will not be required to participate in litigation before a judge who is consciously or unconsciously biased against him. Despite its rapid growth and large size, Alaska is a small state in terms of its citizens inter-relationships and their relationship with the judiciary. Lawyers especially have the occasion to go before the same judge time and time again during the course of the average year. Trial judges wield substantial power well beyond that which can be controlled by appellate review. The potential is always present that a judge will for non-judicial reasons act in a biased manner against a given attorney or party. The availability of a peremptory challenge effectively precludes a judge from at least repeatedly acting in a biased manner against a lawyer or party.

Additionally, despite the high quality of the Alaskan judiciary, lawyers are often correct in the belief that a certain judge may not be properly suited to the trial of a certain type of case. Again, the peremptory challenge procedure helps insure that such a lawyer or his client will not be bound to accept a given judge to try any given type of case.

At the second level, the peremptory challenge procedure promotes and assures that the judiciary will in general operate in a completely unbiased manner and will strive to provide justice uniformly.

It is easy to say at this stage of the judiciary's development that we do not need a peremptory challenge law because there is no evidence that any judge has been acting in a biased manner toward any particular attorneys or any particular type of cases. But, this has not always been the case. There have in the past been strong inter-personal conflicts between lawyers and judges which have resulted in biased decisions. Likewise, before the peremptory challenge law there was much less uniformity in judicial application of the law. It is my strong belief that the peremptory challenge law has contributed substantially to the improved judicial situation in this state.

The exercise of a peremptory challenge in any given case is of little significance to a judge. However, if a pattern develops whereby a certain attorney is repeatedly challenging the same judge, it becomes apparent to the bar in general that that attorney does not believe he can get a fair trial in front of that judge. No judge wishes to be subject to such public opinion and therefore each strives to avoid bias in his attitude towards attorneys and/or parties and their cases. This office has not had occasion to peremptorily challenge a judge for many years. Nevertheless, we consider the right to a peremptory challenge a fundamental guarantee of the high quality and unbiased judiciary that we have.

Likewise, if any judge develops a pattern of bias in a given type of case, that pattern will soon become evident through the use of peremptory challenges. Again, since such a pattern is indicative of bias, no judge would want it to continue. Therefore, he will be spurred to closely evaluate his rulings in light of those of other judges and conform to them. In this way, the judiciary acts in a more uniform manner. Uniform application of laws is desirable. Aside from equality of treatment, it speeds the revision process if the people or the lawmakers disagree with the manner of application.

Perhaps the most important attribute of the peremptory challenge procedure is that it allows attorneys to represent their clients to the fullest extent without fear of subsequent judicial reprisal in other cases. In the absence of a peremptory challenge rule, judges can develop the attitude that they are always right and that any attorney who challenges their judgment by openly disagreeing with it or appealing it is wrong. In the absence of a peremptory challenge, a challenge to the authority of such a judge will be met with conscious or unconscious retaliatory measures in a subsequent case.

I am pleased to say that in Fairbanks, at least, there is no evidence of such attitudes. However, as they did exist before the peremptory challenge law and do exist in other states without such a law, I am constrained to believe that there is a cause and effect relationship.

I have not had any experience with political controversies in the courts. However, I would assume that the risk of a biased judge is as great there as it is in other types of cases. As a lawmaker, I would think that you would be especially attuned to the importance that an unbiased judge makes in a legal controversy. I am sure you can see as well as I that there is always the potential for the selection of a judge who simply should not be chosen to hear a given case. I also hope you can understand that judges, as human beings, are sensitive to their reputation as to fairness. Since the peremptory challenge rule may be the singlemost important means by which judicial reputations can be developed and communicated, their continued existence is critical.

I understand that there are concerns of expediency which would militate in favor of repealing the peremptory challenge rule. I, for one, favor taking measures which increase the efficiency and reduce the cost of the legal system. Nevertheless, the importance of the peremptory challenge procedure in terms of judicial quality and fairness offsets by far its cost in terms of efficiency and expense. Therefore, I hope that you will oppose passage of House Bill 79.

Sincerely,

James Parrish

James A. Parrish

JAP:mgs

PARRISH LAW OFFICE
A PROFESSIONAL CORPORATION
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536 FOURTH AVENUE
FAIRBANKS, ALASKA 99701

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JAMES A. PARRISH
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OF COUNSEL

TELEPHONE
(907) 456-4070

March 10, 1983



Representative Charlie Bussell
Capitol Office Building
Pouch V
Juneau, Alaska 99811

Dear Representative Bussell:

I am writing regarding House Bill 79 which has apparently been introduced in the First Session of the 13th Legislature. This bill provides that the current Alaska Statute 22.20.022 providing for peremptory disqualification of judges be repealed. I wish to express my most sincere opinion that the passage of this bill would constitute a giant leap backward in the struggle for a fair and impartial judiciary in Alaska.

I take a particular interest in this bill because my father, Robert A. Parrish, strongly supported it when it was originally passed. I have paid special attention to the effect which it has had upon the judiciary and justice in individual cases. I have consulted with numerous other lawyers whose opinions I respect. Among those, the near unanimous consensus is that the peremptory disqualification procedure has been of great benefit to the state and should not be abandoned.

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I understand that there are concerns of expediency which would militate in favor of repealing the peremptory challenge rule. I, for one, favor taking measures which increase the efficiency and reduce the cost of the legal system. Nevertheless, the importance of the peremptory challenge procedure in terms of judicial quality and fairness offsets by far its cost in terms of efficiency and expense. Therefore, I hope that you will oppose passage of House Bill 79.

Sincerely,

James A. Parrish

JAP:mgs

Judiciary
Refused

BRADBURY, BLISS & RIORDAN, INC.

JOHN H. BRADBURY
RONALD L. BLISS
RICHARD J. RIORDAN, JR.
MICHAEL H. WOODELL
MADELON M. BLUM
MARK C. MANNING
WILLIAM M. WUESTENFELD
DAVID RANKINE
JOSEPH L. REECE
MICHAEL A. BUDZINSKI
JULIE E. HOFER
PATRICK G. MIDDLETON
SUSAN E. STEWART

LAWYERS
431 WEST 7TH AVENUE, SUITE 201
ANCHORAGE, ALASKA 99501
[907] 279-4571 · 278-45??
TELEX: 9-25-407
CABLE ADDRESS: BRADANCHOR

April 8, 1983



Representative Charles Bussell
Alaska House of Representatives
Pouch V, Mail Stop 3100
Juneau, AK 99811

Dear Representative Bussell:

I had hoped to attend the telephone conference with you some weeks ago concerning the deliberations by the House Judiciary Committee on whether to continue to permit the preemption of trial judges. A conflicting court appearance made it impossible for me to attend. As a result I am writing to you to express the reasons I think the right to preempt a judge should be preserved.

While preemption of judges has been a fairly longstanding practice, the situation involving Judge Hornaday in Homer has, for the first time, put the propriety of that practice in focus. I understand that Judge Hornaday is preempted in approximately 80% of the drunken driven cases which are on his calendar on the basis of his publically announced policy of automatically imposing a substantially longer sentence than the mandatory three-day provision now applicable. I do not know Judge Hornaday. I harbor no ill will toward him. I think that he is both sincere and mistaken and that his position demonstrates the need for the right to preempt any given judge if the circumstances warrant it.

People are free only to the extent they are not vulnerable to the arbitrary exercise of power. To protect freedom and to prevent disparate treatment of persons by those with power, the rule of law was established as a basic tenet of our constitutional scheme. That means nothing more nor less than a guarantee that objective standards will be established which apply to all persons whose conduct comes within the ambit of those standards. It eliminates persons being held

to a standard of which they are not aware or which is applied to some and not to others. It offends any reasonable person's sense of fairness to be treated differently than another for the same act or omission under similar circumstances. Even a child understands this basic notion of fair play.

The means by which standards are set for the conduct of Alaskans is through legislation by their elected representatives. By that means everybody participates in the process of deciding what standards will govern them. Once those standards are established, they are expected of everyone. As a result, I should not be punished for something from which you are exempt or anyone else might be exempt as a matter of some subjective or unilateral action by someone in authority.

The havoc wrought by drunken drivers in this state is a disgrace. However, that does not justify me imposing my personal standards on others. Nor does it justify a judge imposing his personal standards on others. It is the responsibility of the elective representatives of the people of this state to establish the standards by which citizens must conduct themselves. The state legislature has decided that three days is the appropriate sentence for the first drunk driving conviction under most circumstances, with the discretion to impose heavier sentences if egregious circumstances exist. If a judge decides that he will automatically impose substantially longer sentences than those established by the legislature, he is imposing his personal standards on those persons who come before him. To the extent a judge considers his subjective judgment to be superior to that mandated by the state legislature, he preempts the legislative process.

Judges are sworn to uphold the law. They should therefore apply legal standards. Indulging personal standards is unfair because it puts average citizens in a position of having to guess what the personal preferences of each judge might be when conducting themselves during their daily lives. Citizens of this state are entitled to know what the consequences of their acts are by referring to the laws of this state.

It is a very basic principle that citizens should be ruled by law, not men. A judicial system will be respected

only to the extent it not only is fair but is also preceived to be fair. There is no discernible reason for a person who comes before a judge to be treated differently than a person who comes before any other judge in this state for the same charge, particularly when the legislature has provided a guide which all judges are expected to follow absent special circumstances.

I personally would prefer better laws than those now on the books concerning drunk driving. To that extent I share Judge Hornaday's views. If you agree with Judge Hornaday's views on drunken driving, I urge you to support remedial legislation that applies to all drunken drivers in this state. I urge you not to adopt the principle that allows the people of this state to be subjected to the personal standards of every judge in this state. The rule of law is too important to be sacrificed for the expediency and the emotional appeal of the drunk driving issue. Only if persons who come before the judicial system have the right to exclude judges who are known to have personal bias in a given area can the rule of law be promoted with the sort of assurance that the people of this state deserve and are entitled to expect.

Yours very truly,

John H. Bradbury

JHB/vmd

JUDICIARY Referral

Schaible, Staley, DeLisio & Cook, Inc.

A Professional Legal Corporation

to Senate State Affairs

Fairbanks Office
Grace Berg Schaible
Howard Staley
Dennis E. Cook
Barbara L. Schuhmann
Robert B. Groseclose
Charles D. Silvey, Jr.
Gerard R. LaPorte
Gregory W. Lessmeier

Anchorage Office
Stephen S. DeLisio
Alan Sherry
Joseph M. Moran
Michael C. Geraghty
Patricia L. Zobel
Walter J. Sczudlo
Lynn L. Cassel

Of Counsel:
William V. Boggess

March 29, 1983

Representative Charlie Bussell
Pouch V
Juneau, Alaska 99811

Re: House Bill 79,
Repealing Peremptory Disqualification of Judges

Dear Representative Bussell:

House Bill 79 would eliminate the peremptory challenge of judges. It would thus only allow challenges of judges for cause under A.S. 22.20.020. If only challenges for cause are allowed, then challenges for cause will increase. Under the present system, I do not hesitate to appear before judges that I have challenged peremptorily. There are many reasons for changing a judge.

However, if you challenge a judge for cause, it is a very serious accusation. You must state, by affidavit, that you feel the judge cannot be fair and impartial. In a way, you are stating the judge has not followed the judicial canons of ethics. S/he has failed to recuse himself or herself when that is what should have happened. If I ever had to challenge a judge for cause, I would never want to appear before that judge again. I would continue to challenge that judge for cause, particularly if that is what my client wanted or insisted upon.

Using this method of disqualification will cause an increase in legal costs and expenses for clients, and will increase the work of judges. Attorneys will have to file motions to disqualify for cause, accompanied by affidavits and memoranda. There will be hearings on the motion. If the motion is first denied, then it is assigned to another judge for hearing under A.S. 22.20.020(c). If the motion is still denied, the question can go up on appeal, or at least a petition for review can be filed. The peremptory challenge system is so much more efficient, that it should be retained.

If there are problems because there are single judge districts, those are problems should be solved by ingenious

use of telephone hearings, and, if necessary, assignment of a judge from a different district to handle motions and the trial. Eliminating the peremptory challenge of judges will not solve the problem.

Alaska is still a small enough state that many people know judges that they come before. If they are not comfortable, for whatever reason, they should have the right to one peremptory challenge. The times when this has become a problem for the court system are times when a judge has announced publically the sentence s/he intends to give in all drunk driving cases, for example, or cases where lawyers and litigants have consistently felt that the judge's demeanor or decisions were unacceptable.

The peremptory system works very efficiently. If a judge is challenged, another judge is very simply assigned to the case. One piece of paper needs to be filed by the attorney, and another is filed by the courts. (See Civil Rule 42.)

The peremptory challenge of judges should be retained. I urge you to defeat House Bill 79.

Sincerely,

SCHAIBLE, STALEY, DeLISIO & COOK, Inc.

By: Barbara L. Schuhmann
Barbara L. Schuhmann

BLS:skb


HB
80

Alaska State Legislature

IN SESSION:
POUCH V
JUNEAU ALASKA 99811
(907) 465-4949

BOX 142
EAGLE RIVER, ALASKA
99577
(907) 694-4949

Representative Randy Phillips
HOUSE DISTRICT 8

MEMORANDUM

TO: REPRESENTATIVE CHARLIE BUSSELL
CHAIRMAN, HOUSE JUDICIARY COMMITTEE

FROM: REPRESENTATIVE RANDY PHILLIPS L.E.P.

DATE: JANUARY 12, 1984

RE: HOUSE BILL 80

Craig Lovell of your staff advised me today that House Bill 80 will be before the House Judiciary Committee on Monday, January 16, at 1:30 p.m. for hearing. I have requested that the Division of Elections update their 1983 Fiscal Note on this bill. I have requested that this updated fiscal note be ready for your committee's hearing.

As you know, the Anchorage area experienced a power outage on the day of the 1982 general election. While power was restored to some of the Anchorage bowl by about 6:00 p.m. that day, power was not restored to outlying areas (including the Chugiak-Eagle River area) until 12:30 a.m. the next morning. Additionally, the normally 45-minute to an hour trip from the downtown Anchorage area to places of residence in Chugiak-Eagle River took approximately two hours or more because of traffic signal light malfunction and traffic tieups. After the election, many persons in my district expressed to me that they assumed polling places would be closed because of the power failure or that they left town at their normal time only to arrive home too late to vote because of the traffic problems.

According to an article in the November 3, 1982, Anchorage Times, "Stray Bullet Stalls Traffic, Voters, Power," page C-1, Attorney General Wilson Condon stated that after review of the situation and the law, he determined that there was "Absolutely no authority to extend the polling time."

The proposed legislation presently before your committee in the form of House Bill 80 is an attempt to rectify this matter so that if a natural disaster or something on the order of the Anchorage situation occurs in later years, there will be some authority for some action if any action is deemed necessary.

For your information, and the information of your committee members, I have attached the following items to this memorandum:

1. November 13, 1982 memorandum from Assistant Attorney General Kennedy and Investigator Savage to Attorney General Condon.

2. "Polling Hours for the General Election" from The Book of the States 1982-83.

Attachments

STATE OF ALASKA
THE LEGISLATURE

LEGISLATIVE AFFAIRS AGENCY

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

M E M O R A N D U M January 12, 1984

SUBJECT: Extension of time for voting: HB 80

TO: Representative Charles Bussell
Chairman, House Judiciary Committee

FROM: Richard A. Bradley
Legislative Counsel

You have requested a sectional analysis of the above described bill. As a preliminary matter, I must advise you that a sectional analysis or summary of a bill should not be considered an authoritative interpretation of the bill and the bill itself is the best statement of its contents. If you would like an interpretation of the bill as it may apply to a particular set of circumstances, please address a specific request to this office.

I have assumed that the justification for the bill is the power outage that occurred during an election in Anchorage in 1980. It was widely believed at that time that some percentage of the voting population was deterred from voting at that election because of the outage.

Section 1 of the bill establishes new subsections to AS 15.15.080, a provision dealing with the times for the opening and closing of the polls.

The existing provisions of that section now provide:

> Sec. 15.15.080. TIME FOR OPENING AND CLOSING POLLS. On the day of any election, each election board shall open the polls for voting at eight o'clock in the morning, shall close the polls for voting at eight o'clock in the evening, and shall keep the polls open during the time between these hours. The election board members shall report to the polling place at 7:30 in the morning of an election day. The hour shall be

determined by the standard time, or daylight saving time, that is applicable to the polling place.

The material added by this bill would permit the director of elections, with the concurrence of the lieutenant governor, to "extend the hours for voting on election day" on a determination by the director that a "natural disaster or exigency" has prevented a "substantial number of qualified voters from voting."

The director may draw that conclusion and offer that determination only if the director is able to show by statistics or other means "an actual decrease in the number of qualified voters voting" over previous elections and no other factors such as redistricting can account for the change.

In my opinion, even if there is a decrease in the number of voters voting, the provisions of Sec. 15.15.080(b) would not be triggered unless the "natural disaster or other exigency" was simultaneously occurring.

The director may adopt regulations to implement the provisions of Sec. 80(b).

If I may be of further assistance, please advise.

RAB:ojb
J2/019

Alaska State Legislature

IN SESSION:
POUCH V
JUNEAU ALASKA 99811
(907) 465-4949

BOX 142
EAGLE RIVER, ALASKA
99577
(907) 694-4949

Representative Randy Phillips
HOUSE DISTRICT 8

MEMORANDUM

TO: REPRESENTATIVE CHARLIE BUSSELL
CHAIRMAN, HOUSE JUDICIARY COMMITTEE

FROM: REPRESENTATIVE RANDY PHILLIPS R.E.P.

DATE: JANUARY 12, 1984

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Attachments

POUCH V
JUNEAU, ALASKA 99811
(907) 465-4990

Alaska State Legislature
HOUSE OF REPRESENTATIVES

REPRESENTATIVE
CHARLIE BUSSELL
CHAIRMAN

Committee on Judiciary

HB 80
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D. Letter of Intent
Representative Randy Phillips, Sponsor.
Attachment 1. Memorandum from Assistant Attorney General Kennedy and Investigator Savage to Attorney General Condon.
Attachment 2. "Polling Hours for the General Election", The Book of the States 1982-1983.

MEMBERS:
REP. JOHN LISKA, VICE CHAIRMAN; REP. RAMONA BARNES, EMERITUS;
REP. JOE HAYES; REP. HUGH MALONE; REP. DON CLOCKSIN; REP. RON WENDTE

STATE OF ALASKA

OFFICE OF THE GOVERNOR

DIVISION OF ELECTIONS
POUCH AF
JUNEAU, ALASKA 99811-9974

PHONE: (907) 586-6181

January 16, 1984

HB 80

There is still a zero fiscal note for HB 80

Mary Lou Meiners
Mary Lou Meiners
Director
Division of Elections

THE LEGISLATURE OF THE STATE OF ALASKA
THIRTEENTH LEGISLATURE

FISCAL NOTE

I. REQUEST
Bill/Resolution No. House Bill No. 80 -- "An Act providing for the
Title extension of the time for voting on election day under certain
Requested by Representative Phillips Date 1/24/83
circumstances."

II. FISCAL DETAIL
Agency Affected Office of the Governor
Program Category Affected Division of Elections
BRU, Program, Or Subprogram(s) Affected Division of Elections
(Note: If more than one budget component is affected, separate line-item amounts and funding for each component in the analysis section.)

EXPENDITURES (Thousands of Dollars)

	FY 83	FY 84	FY 85	FY 86	FY 87	FY 88
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 COMMODITIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS,CLAIMS,ETC.						
TOTAL	-0-	-0-	-0-	-0-	-0-	-0-

FUNDING (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER (Specify Source)						

POSITIONS NONE

FULL TIME						
PART TIME						
TEMPORARY						

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

No additional fiscal impact will be incurred with House Bill No. 80.

IV. DATE 1/24/83 PREPARED BY Danith D. Arnoldt Danith D. Arnoldt, Deputy Director
AGENCY Office of the Governor, Division of Elections
PHONE 586-6181

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

33-003 (Rev. 12/82)

(9)

5/6

COMMITTEE REPORT

HOUSE

FURTHER: JUDICIARY

FINANCE

1/20/83

Date: 5/5/83

Mr. Speaker:

The Committee on STATE AFFAIRS has had HB 80

"An Act providing for the extension of the time for voting on election day under certain circumstances."

under consideration and reports it back as follows:

[ ] do pass [ ] do not pass

[ ] do pass with attached amendments(s)

[ ] replace with CS for _____ [ ] same title [ ] new title

and recommends _____

[ ] AND attaches a "Letter of Intent" [ ] New Fiscal Note [X] Zero Fiscal Note Attached

[X] reports it back without recommendation

[ ] referred to the _____ Committee

MEMBERS SIGNING DO PASS

MEMBERS HAVING OTHER RECOMMENDATIONS:

Milt Abbood Don't Pass

Walt Furnace DO NOT PASS EVER R.J.

Ronald J. Farm NO REC ~~[illegible]~~

John J. Cardinal

[illegible] NO REC

Dick Shultz Do Not Pass

Rep Milt Abbood

CHAIRMAN

H 60

STATE OF ALASKA

OFFICE OF THE GOVERNOR

DIVISION OF ELECTIONS
POUCH AF
JUNEAU, ALASKA 99811-9974

PHONE (907) 586-6181

March 31, 1983



Virginia D. Hillikin
3211 W. 28th Court
Anchorage, AK 99503

Dear Ms. Hillikin:

The Division of Elections has received your letter to Lieutenant Governor McAlpine and members of the Alaska Legislature regarding changes in the Alaska Election Laws, Title 15.

To address your main concern, the power outage in Anchorage during the 1982 General Election and contingency plans for voting under emergency conditions, the Division of Elections has closely reviewed the actions of the poll workers in Anchorage and the percentage of voter turnout in the districts affected by the power outage with the following conclusions:

1.) Auxiliary power and lighting were available in all but six polling places, and in those six places lighting and the ability to vote were quickly restored.

2.) Ballot security was not compromised in any precinct or polling place.

3.) A total of 30 persons in 14 Anchorage precincts were noted by the poll workers as arriving too late to vote, after 8 p.m.; this is no appreciable difference than any previous election, the workers noted.

4.) Conclusion: Despite the inconvenience, voters were willing and able to cast their ballots in record numbers.

As a legislative response to the power outage, House Bill 80 was introduced by Representative Phillips to provide "for the extension for the time for voting on election day under certain circumstances." I have attached this bill for your reference.

This legislation has had two hearings before the House State Affairs Committee and the Division of Elections has testified on the bill. We submitted a report made in conjunction with the investigation of the power outage by the Alaska State Troopers and the office of the Attorney General, which I have also attached for your reference.

The Division of Elections has valid concerns with the proposed H.B. 80, primary being:

1.) the prior public notice of certain hours between which the polling places will be open, as required by AS 15.15.070;
2.) the difficulty in determining what constitutes a "natural disaster or other exigency" as stated in line 12 of H.B. 80;
3.) the method and means of reviewing statistics to determine, on election day, where an actual decrease in the number of voters has occurred, as stated in lines 13-20 of H.B. 80;
4.) the apparent lack of any law or regulation in any other state's election laws providing for an extension of polling hours for emergencies or natural disasters.

The Division of Elections feels that the present provision, AS 15.15.320, that "every qualified voter present and in line at the time prescribed for closing the polls may vote" is adequate for both emergencies and fairness to all parties in the voting process. Consequently we do not feel that a bipartisan committee with authority to extend the voting hours under emergency conditions is necessary or advisable.

It should be noted that H.B. 289 has recently been introduced by Representative Hayes to extend the polling hours in Alaska by opening one hour earlier at 7:00 a.m. The Division of Elections supports this legislation and will testify today before the House State Affairs Committee to begin this practice on a statewide basis. H.B. 289 is attached for your reference.

Your point is well taken on the display of political banners, posters etc., near or in a polling place. AS 15.15.170 prohibits any political persuasion of any type within 200 feet of a polling entrance, and notices are posted at each polling area to that effect. As you may know, this law precludes giving verbal advice on any race or issue on the ballot, wearing of political buttons, any display of printed political materials, etc. The penalties for violation of this section are described in AS 15.56.020, detailing campaign misconduct in the second degree, a Class B. Misdemeanor. A person who knowingly violates this provision after being given warning by an elections official at the polls may be arrested and charged by an Alaska State Trooper.

Your comment on the abuse of this statute is the first instance received by the Division of Elections that this did occur. You can be assured that we will enforce this statute and continually re-emphasize its importance in our training of election officials throughout the state. Thank you for bringing this to our attention.

Regarding the disposition of unused ballots, as cited in AS 15.15.480, all unused ballots are destroyed at the polling place after the polls are closed; this is done in the presence of the election officials, who then sign an oath testifying to the time, method, and number of unused ballots that were destroyed. Since a determined and certified number of ballots are distributed to each polling place, the Division of Elections feels that this method of disposal is more proper than transferring the unused ballots to Juneau with other marked question ballots, tallies and other materials incidental to the vote tabulation.

I hope that these comments and materials have addressed the concerns that your group has. If I can clarify these comments any further or assist you in any other way, please contact the Division of Elections.

Thank you for your interest and comments.

Sincerely,

Mary Lou Meiners
Director of Elections

Enclosures

cc: David Koivuniemi - Lieutenant Governor's Office
Senator Bill Ray - Senate Judiciary Committee
Senator Vic Fischer - Senate State Affairs Committee
Rep. Charlie Bussell - House Judiciary Committee
Rep. Mitchell Abood - House State Affairs Committee

MEMORANDUM State of Alaska

TO: Wilson L. Condon
Attorney General
Juneau - AGO

DATE: November 13, 1982

FILE NO:

TELEPHONE NO:

FROM: Elizabeth Page Kennedy
Assistant Attorney General
and
Gayle W. Savage, Investigator
Anchorage - AGO

SUBJECT: Effect of Power Outage on Voting Procedures

As a result of the power outage in the Anchorage area on November 2, 1982, an investigation was initiated at the request of the Attorney General to determine whether or not election procedures at the polls were adversely affected and whether or not the voters in those areas were deprived of their right to vote.

The investigation included interviews with officials of Chugach Electric, Municipal Light & Power, the Anchorage Police Department, the Federal Bureau of Investigation, officials of the Division of Elections, and members of the election boards from the election precincts directly affected by the power outage.*

I. Extent of Power Outage

According to Robert H. Day, an engineer for Municipal Light and Power, there were two power outages in Anchorage on

---

* A list of election board members interviewed follows this report.

RECEIVED
FEB 7 1983
DIRECTOR OF ELECTIONS

Election Day, November 2, 1982. The first occurred at approximately 7:00 a.m. and power was restored at about 7:45 a.m. The second power outage in Anchorage occurred at about 4:00 p.m. and was caused by an apparent act of vandalism** which caused a power line belonging to Chugach Electric to fall across a power line belonging to Municipal Light and Power. The resulting overload and power surge caused power to go out throughout much of Anchorage. Power in Anchorage west of Muldoon Road was restored by approximately 6:15 p.m. Power east of Muldoon to Eagle River was not restored until as late as 1:00 a.m. the following morning.

According to officials in the Division of Elections, the following 28 polling places reported power outages:

1. District 10, Precinct 84 (Stellar School, 2508 Blueberry, Anchorage)

2. District 10, Precinct 86 (Rogers Park Elementary School, 1400 East Northern Lights Blvd., Anchorage)

3. District 10, Precinct 88 (North Star Elementary School, 605 W. Fireweed, Anchorage)

4. District 10, Precinct 89 (West High School, 1700 Hillcrest Dr., Anchorage)

5. District 11, Precinct 104 (Enstar, 3000 Spenard Road, Anchorage)

6. District 11, Precinct 111 (West High School, 1700 W. Hillcrest Dr., Anchorage)

7. District 12, Precinct 120 (Inlet View School, 1219 "N" Street, Anchorage)

** The cause of the power outage was not the subject of this investigation but is being investigated by the FBI. Agent Kampher of the FBI indicated that at this point in time, there is no evidence to suggest that the motive for the vandalism, if in fact it was vandalism, was to affect election results.

8. District 12, Precinct 121 (Pioneer Home 923 West 11th Ave., Anchorage)

9. District 12, Precinct 122 (Denali Elementary School, 148 East 9th Ave., Anchorage)

10. District 12, Precinct 123 (Fairview Elementary School, 1317 Nelchina, Anchorage)

11. District 12, Precinct 124 (Airport Heights Elementary School, 1510 Alder, Anchorage)

12. District 12, Precinct 126 (Alaska Sales & Service, 1300 East Fifth Ave., Anchorage)

13. District 12, Precinct 127 (Chugach Elementary School, 1205 "E" St., Anchorage)

14. District 12, Precinct 128 (Government Hill Elementary School, 525 E. Bluff Road., Anchorage)

15. District 13, Precinct 140 (Lake Otis Elementary School, 3331 Lake Otis Pkwy., Anchorage)

16. District 13, Precinct 141 (College Gate Elementary School, 3104 Sunflower, Anchorage)

17. District 13, Precinct 142 (Baxter Elementary School, 2991 Baxter Road, Anchorage)

18. District 13, Precinct 143 (East High School, Bragaw and Northern Lights Blvd., Anchorage)

19. District 13, Precinct 144 (Russian Jack Elementary School, 4470 East 20th Ave., Anchorage)

20. District 13, Precinct 147 (Clark Jr. High School, 150 S. Bragaw, Anchorage)

21. District 14, Precinct 160 (Baxter Elementary School, 2991 Baxter Road, Anchorage)

22. District 14, Precinct 170 (Bartlett High School, 25500 North Numdoon, Anchorage)

23. District 15, Precinct 184 (Homestead Elementary School, 2901 Baranof Drive, eagle River)

24. District 15, Precinct 185 (Northland Baptist Church, Eagle River Loop Road, Eagle River)

25. District 15, Precinct 186 (First Baptist Church, Old Glenn Highway, Eagle River)

26. District 15, Precinct 187 (Eagle River Elementary School, Old Eagle River Road, Eagle River)

27. District 15, Precinct 188 (Chugiak High School, Birchwood Loop, Chugiak)

28. Statewide Precinct at Anchorage International Airport

Of the above-listed polling places, power was restored to all before or by about 6:15 p.m. except for the five polling places in District 15 (Chugiak, Eagle River) where power was not restored until after midnight.

II. Auxillary Power or Supplemental Lighting

With the exception of precincts 12-121, 12-126, 14-170, 15-185, 15-186, and the statewide polling place at Anchorage International Airport, all of the polling places were equipped with auxillary power sources and those persons working at the polling places were able to move polling booths and punch machines beneath lighted areas so that those voting could see more clearly.

At the precinct polling places which were not equipped with auxillary power, election board members usually were able to move the punch machines and booths near windows until supplemental sources of light such as candles, flashlights and lanterns, could be obtained.

All board members that were interviewed reported that supplemental light was obtained very quickly; many reported that due to the morning power outage, they brought flashlights with them to the polls and were prepared when the power went out in the evening. In addition, precinct workers reported that school principals, custodians, as well as the voters were very cooperative in providing light sources to the poll workers.

III. Ballot Security

All board members interviewed reported that despite the power outage, security of the ballots and the procedures ensuring the integrity of the voting process were not compromised. In most instances, those signing the precinct registers were separated from those waiting to vote and those voting. Reports indicated that at no time did four or five voters have ballots in hand waiting to vote. Many precincts used a card system whereby those who had signed the register received cards and in turn traded the card for a ballot. Other precincts did not give voters ballots until booths and flashlights became available.

All precincts reported that despite less than ideal lighting conditions, visual contact and control were maintained throughout the power outage.

Finally, all precincts reported that throughout the entire election day, including the period of time the power was out, the ballot box was attended by a precinct worker and a source of light was near the ballot box to ensure security.

IV. Poll Closures

All board members interviewed except those in precinct 13-143 indicated that their precincts closed the polls at 8:00 p.m. Precinct 13-143 closed the polls at 8:01 and allowed two people to vote who had come in by way of a back door and were in the building at 8:00 p.m.

Fourteen of the precincts that reported a power outage, also reported that persons arrived at their polling place after closure of the polls and were not allowed to vote. The total number of people denied access to the polls after closure in these 14 precincts was about 30 with precinct 15-185 (Eagle River) reporting about four or five people arriving too late to vote.

Those denied access to the polls in some cases indicated to the precinct workers that they had had a difficult time getting from their work in Anchorage to the polling place due to fog and traffic. Others indicated that they had heard on the radio or television that because of the power outage, polling places might be open late. Many indicated that they simply did not make it to the polls in time and offered no excuse.

According to precinct workers interviewed, the number of people who arrived late at the polls and were not allowed to vote did not differ appreciably from previous elections.

V. Questioned Ballots

Board members interviewed reported a range of 33 to 103 questioned ballots in their precincts. People generally cast questioned ballots because their names were not on the precinct register. Others told precinct workers that due to traffic delays, they would not be able to get to their polling places before the 8:00 p.m. poll closure. Others simply indicated that due to traffic congestion, it was inconvenient to vote at their regular polling places.

Board members indicated that the number of questioned ballots generally did not differ significantly from previous elections and where significant differences did occur, may have been a result of redistricting as well as problems associated with the power outage.

All those interviewed indicated that when a voter wanted to cast a questioned ballot, they were advised, if time permitted, to vote at their correct precinct so that the voter could vote for the local legislative candidates for their district but in all cases, if the voter wanted to vote a questioned ballot at their precinct, the precinct workers allowed voters to do so.

VI. Complaints by Voters

Nearly all precinct workers interviewed indicated that generally, voters were very cooperative and praised the election workers for an admirable job in light of the conditions. It was reported that some voters complained of long lines, or the inconvenience involved in getting to the polls, or of the poor lighting conditions, but those complaints were few in number. None of those interviewed reported people walking away from the polls without voting because of lines or conditions. Some voters did indicate they would vote later after polls were a bit less crowded and did return. While voters generally were inconvenienced by traffic congestion and, in some cases, insufficient light, board members indicated that the atmosphere was a bit more jovial and voters more cooperative as a result of the power outage.

Generally, board members reported that, subsequent to the election, they had not talked with any people who absolutely had been unable to vote either in their own district or cast a questioned ballot in another district as a result of the power outage.

VII. Conclusions

The power outage in the Anchorage area has raised three primary concerns:

1) whether or not security of the ballots and integrity of the voting procedures as practiced by the election boards was compromised;

2) whether or not voters were deprived in any way of their right to vote;

3) whether or not the turnout by voters was affected by the power outage.

With regard to the security of the ballots and the integrity of the procedures followed by the election boards, it appears that neither were compromised despite less than ideal lighting conditions. Board members seem to have been very careful with regard to the security of the ballots by ensuring that ballot boxes were under constant supervision and under adequate light. Those signing the voter register generally were kept separate from those obtaining ballots. Those receiving ballots were generally limited to a small number of people and various procedures were used to safeguard against non-registered persons obtaining ballots. Finally, while in many instances lighting limitations required that voting booths be abandoned, voters were able to vote in relative privacy and sufficiently lighted areas.

Interviews with board members indicated that the polling places were open until 8:00 p.m. and that voting was not interrupted except in some instances for a very short period of time, a few minutes at most, to enable board members to find supplemental lighting or to move voting booths or punches to lighted areas.

All of the precinct boards allowed voters to cast questioned ballots if voters chose to do so but if time permitted, encouraged voters to vote at the proper polling places

so that voters could vote for candidates in their legislative districts.

Apparently, some people indicated that they heard on the radio or television that the polls might be open later than 8:00 p.m. According to the Division of Elections, no release or statements by the Division were made to the media that polling hours would be extended. This misinformation was apparently a result of conjecture by certain members of the media. In fact, the Division of Elections enlisted the assistance of the Anchorage Police Department and the Alaska State Troopers to notify election boards that the polls would officially close at 8:00 p.m.

Finally, with regard to how the outcome of the elections was affected by the power outage, it is impossible to determine how many voters did not participate in the election as a result of the power outage. There is no question that traffic congestion, as a result of inoperative traffic signals, may have affected the ability of many people to vote in areas that were both directly and indirectly affected by the power outage. Officer Hutchison of the Anchorage Police Department indicated that some traffic arteries were congested as much as 45 minutes to an hour after power was restored. On the other hand, members of election boards reported that while many people were delayed by as much as two hours in getting to the polls, there generally was enough time for most voters to make it to their precincts. In addition, there was nothing prohibiting persons from casting questioned ballots at more convenient locations which many voters in fact did.

A look at the percentage of registered voters who cast ballots in the November 2 election (excluding questioned and absentee ballots) shows that the turnout in those precincts directly affected by power outages ranged from 43.4 percent (District 12, Precinct 127, a downtown Anchorage location) to 67.1 percent (District 15, Precinct 187, an Eagle River precinct). The figures cited are not intended to be used to explain voting patterns, only to show that the power outage did not necessarily adversely impact voter turnout in areas where power was out for a period of time.

The conclusion to be drawn then is that while many people may have been inconvenienced and delayed by the power outage in the Anchorage area, a majority of the people registered to vote did vote and while others may not have voted, most had the opportunity to vote either at their proper precincts or to

cast questioned ballots in other precincts. In addition, despite less than ideal conditions in those precincts without power, order and control over the security of the ballots and integrity of the voting procedures was maintained by election board members. It does not appear that anyone was deprived of the right to vote nor was that right compromised by improper conduct or negligence on the part of election boards.

ELECTION BOARD MEMBERS INTERVIEWED

1. District 10, Precinct 84: Kathryn Marshall (274-4724) and Holly Brown (337-3897)

2. District 10, Precinct 86: Lela Morgan (272-1882) and Clara Tappley (279-9873)

3. District 10, Precint 88: Hazel Gallagher (277-7832) and Janet Boylan (694-5387)

4. District 10, Precinct 89: Kay Linton (272-6961) and Marjean Dunaway (277-5356)

5. District 11, Precinct 104: Martha Proudfoot (277-8854) and Lorraine Russo (274-4149)

6. District 11, Precinct 111: Carol Merbs (277-2760) and Suzanne Stefano (279-4338)

7. District 12, Precinct 120: Dorothy Wilcox (277-5906) and Phyllis Kempton (274-8138)

8. District 12, Precinct 121: Grace Nurse (272-1989) and Eileen Hickey (272-1609) and Frieda Plumb (272-2929)

9. District 12, Precinct 122: Cindy Bline (345-1067) and Inez Parko (272-1866)

10. District 12, Precinct 123: Dorothy Seitz (272-4832)

11. District 12, Precinct 124: Gayle Hunter (279-4668), Pat Kobar (279-3981) and Peggy Hicklin (279-1001)

12. District 12, Precint 126: Eileen Rink (272-4155) and Deanna Wieskamp (277-4554)

13. District 12, Precinct 127: Mary McKenzie (277-0448) and Vivian Mearig (272-8177)

14. District 12, Precinct 128: Gloria White (277-0439) and Lorraine Bennett (279-5396)

15. District 13, Precinct 140: Margaret Barr (276-3136) and Dianne Acheson (276-1281)

16. District 13, Precinct 141: Sparky Rumfelt (337-2903) and Marge McLaughlin (333-5485)

17. District 13, Precinct 142: Ruth Deary (333-8003)

18. District 13, Precint 143: Mary Ann Bartholomew (333-7327) and Donna Luiten (333-7583)

19. District 13, Precinct 144: Shirleen Noble (337-6376) and Paula Lund (337-1978)

20. District 13, Precinct 147: Mary Topolski (272-3291) and Hermine Beuwkamp (337-2057)

21. District 14, Precinct 160: Francis Pitzke (337-7335) and Tammy Townsend (337-5665)

22. District 14, Precinct 170: Anna Campbell (333-7633) and Alpha Brown (333-5677)

23. District 15, Precinct 184: Phyllis Janke (694-2712) and Marty Rourke (694-9153)

24. District 15, Precinct 185: Norma Kindred (694-2283) and Annette LaPage (694-2534)

25. District 15, Precinct 186: Hazel Arndt (694-2310) and Lorraine Pederson (694-9125)

26. District 15, Precinct 187: Mary Whitman (694-5084) and Alma Werre (688-2634)

27. District 15, Precinct 188: Rita Lane (688-2507) and Mickie Delk (688-3347)

28. Statewide Precinct at International Airport: Shirley Looney (428-2937)

Polling Hours for the General Election

	Polls open	Polls close	Notes on Hours
ALABAMA	8 a.m.	6 p.m.	Opening and closing times not mandatory: polls must be open at least 10 consecutive hours
ALASKA	8 a.m.	8 p.m.	
ARIZONA	6 a.m.	7 p.m.	
ARKANSAS	8 a.m.	7:30 p.m.	Polls may open at 7 a.m.
CALIFORNIA	7 a.m.	8 p.m.	Charter cities may set different hours for municipal elections
COLORADO	7 a.m.	7 p.m.	
CONNECTICUT	6 a.m.	8 p.m.	
DELAWARE	7 a.m.	8 p.m.	
FLORIDA	7 a.m.	7 p.m.	
GEORGIA	7 a.m.	7 p.m.	In cities of 300,000 or more, polls remain open until 8 p.m.
HAWAII	7 a.m.	6 p.m.	Voters standing in line at 6 p.m. may vote. No one may join line after 6 p.m.
IDAHO	8 a.m.	8 p.m.	Polls close 8 p.m. or earlier when all registered electors of the precinct have appeared and voted. County clerk has option of opening polls at 7 a.m.
ILLINOIS	6 a.m.	7 p.m.	
INDIANA	6 a.m.	6 p.m.	
IOWA	7 a.m.	9 p.m.	
KANSAS	7 a.m.	7 p.m.	Hours may be changed by election authorities, but polls must be kept open at least 12 consecutive hours between 6 a.m. and 8 p.m.
KENTUCKY	6 a.m.	6 p.m.	Persons in line may vote until 7 p.m.
LOUISIANA	6 a.m.	8 p.m.	Persons in line at 8 p.m. are entitled to vote.
MAINE	Between 6 a.m. & 10 a.m.	Between 8 p.m. & 9 p.m.	Only municipalities using voting machines have the option of staying open until 9 p.m.
MARYLAND	7 a.m.	8 p.m.	
MASSACHUSETTS	May open as early as 5:45 a.m., must be opened by 10 a.m.	8 p.m.	In cities and towns, the polls shall be kept open at least 10 hours
MICHIGAN	7 a.m.	8 p.m.	
MINNESOTA	7 a.m.	8 p.m.	Municipalities of less than 1,000 may establish hours of 9 a.m. to 8 p.m.
MISSISSIPPI	7 a.m.	6 p.m.	
MISSOURI	6 a.m.	7 p.m.	
MONTANA	8 a.m. 12 p.m.	8 p.m. 8 p.m. or earlier when all have registered in any precinct have voted	In precincts of less than 100 registered voters.

Polling Hours for the General Election (cont.)

	Polls open	Polls close	Notes on Hours
NEBRASKA	7 a.m. 8 a.m.	7 p.m. 8 p.m.	Mountain Time Zone. Central Time Zone.
NEVADA	7 a.m.	7 p.m.	
NEW HAMPSHIRE	Varies	Varies	Cities: Polls open not less than 4 hours and may be opened not earlier than 6 a.m. nor later than 8 p.m. Small towns: In towns of less than 700 population the polls shall be open not less than 5 consecutive hours. On written request of 7 registered voters the polls shall be kept open until 6 p.m. In towns of less than 100 population, the polls shall close if all on the checklist have voted. Other towns: Polls shall open not later than 10 a.m. and close not earlier than 6 p.m. On written request of 10 registered voters the polls shall be kept open until 7 p.m.
NEW JERSEY	7 a.m.	8 p.m.	
NEW MEXICO	8 a.m.	7 p.m.	
NEW YORK	6 a.m.	9 p.m.	
NORTH CAROLINA	6:30 a.m.	7:30 p.m.	In voting precincts where voting machines are used, county board of elections may permit closing at 8:30 p.m.
NORTH DAKOTA	Between 7 a.m. & 9 a.m.	Between 7 p.m. & 9 p.m.	
OHIO	6:30 a.m.	7:30 p.m.	
OKLAHOMA	7 a.m.	7 p.m.	
OREGON	8 a.m.	8 p.m.	
PENNSYLVANIA	7 a.m.	8 p.m.	
RHODE ISLAND	Between 7 a.m. & 12 noon	9 p.m.	
SOUTH CAROLINA	8 a.m.	7 p.m.	Lancaster County is allowed to keep polls open until 8 p.m.
SOUTH DAKOTA	7 a.m. 8 a.m.	7 p.m. 8 p.m.	Mountain Time Zone. Central Time Zone.
TENNESSEE	Varies	8 p.m. EST 7 p.m. CST	Polls must be open minimum of 10 and maximum of 13 continuous hours
TEXAS	7 a.m.	7 p.m.	In counties of more than one million population the polls may be opened at 6 a.m.
UTAH	7 a.m.	8 p.m.	
VERMONT	Between 6 a.m. & 10 a.m.	Not later than 7 p.m.	Polls must be open at least 9 consecutive hours during the day.
VIRGINIA	6 a.m.	7 p.m.	
WASHINGTON	7 a.m.	8 p.m.	
WEST VIRGINIA	6:30 a.m.	7:30 p.m.	
WISCONSIN	7 a.m. 9 a.m.	8 p.m. 8 p.m.	1st, 2nd and 3rd class cities. 4th class cities, villages and towns. Opening hours extendable by governing body to not earlier than 7 a.m.
WYOMING	8 a.m.	7 p.m.	

SOURCE: *The Book of the States 1992-93*, (Lexington, Kentucky: The Council of State Governments, 1992) p. 106-7.

HB
84
#1



1-28-83 CPP

P.O. Box 100795
Anchorage. 99510
24 Feb. 1983

Dear Charlie Bussell:

I could not take part today in the teleconference on HB #84 which I support, because of a heavy drift of tobacco smoke from an adjoining office. When my throat begins to feel irritated, I have learned not to "stick it out" or I will suffer later. I left and returned later but the participants had just finished.

Smokers tend to discount non-smokers' complaints because the ill effects of second-hand smoke are not immediately evident, but they are not present to observe the victim waking up short of breath or choking in the small hours of the morning. I have had first hand experience of this result when working for years in smoke-polluted air. For a very long time I was not aware that second-hand smoke was the direct cause of my problems and when I did come to that conclusion my lungs had been irreparably damaged. I have no doubt that the very same thing is happening to thousands of people today. After leaving my job the nightly spells gradually became very few but I continued to have trouble with little exertion especially in cold weather. After tests my doctor diagnosed my trouble as emphysema.

Some smokers are very thoughtful. I have seen them extinguish smokes before entering stores and this is appreciated not just by people like me, but by those who simply hate the odor of tobacco. Those who do smoke in stores leave behind a cloud that hangs in the air for hours afterwards. Many, many store checkers have complained to me about the smoke that is blown in their faces all day long. Waitresses suffer too. many complain about the odor that is carried home in their clothes. I used to hang my coat in the basement every evening on coming home from work.

The passage of HB #84 will protect our health and indirectly help smokers also.

Sincerely,

Janet C Goetz

(Mrs. John Goetz) Goetz

HB 84: An Act relating to smoking in public places and vehicles

I support the legislative intent behind HB 84 which declares that tobacco smoking in public places constitutes a significant health hazard, that employees have a right to work in a smoke-free environment as stated in recent court decisions, and that smoking by employees results in increase costs to employers in the form of higher costs for health, fire, and life insurance and worker compensation coverage.

Further, I support the provisions of HB 84 which would amend the existing law on smoking in public places to include . . ."an office, factory, warehouse, or other place of employment. . . ."

Also, I also support the provisions of HB 84 which would assure employees that some work areas would be designated for non-smokers, that the only places of employment which could be designated in entirety as smoking areas are those in which all employees smoke, and that in areas where not all employees smoke, "a person in charge". . .must post signs in conspicuous locations in non-smoking areas stating 'Smoking Prohibited by Law.'"

Name	Employer	Name	Employer
Hazel L. Tanner		Tom Pittman	self
J. Sherman Tanner	D. of F & G	Harold L. Mitchell	Northwestern
R.L. Crystal Tanner	D.O.T./P.F.	Lynn Stewart	
Francis B. Delmont		Teri Lee Lehman	AK Dept Admin
Colette M. Delmont		C. Matthew Lehman	Self
[illegible]		[illegible]	CITY/BORO of JNU
Ning Tanner	C+RA		
Douglas D. Kunkel	Price Waterhouse		
Charles R. [illegible]			
Rhonda Merrilew	- Hospital		
Jean A. Hill	AK D.F.&G.		

When this sheet is filled, please hand-carry it to Rep. Milo Fritz, Alaska House of Representatives, Capitol Rm 114

Charlie: "Let my people go"
(8)110

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RECEIVED
MILO H. FRITZ, M.D.
FEB 4 11 57 AM '83

Name	Employer	Name	Employer
Wally Harrison	L.A.A.	Verma Whitfield	USPS.
Mary Harrison	Housewife	M. Wolpert	Juneau Empire
John J. Stevens		[illegible]	C/B - IRMA
Bessie Stevens		[illegible]	U.S. Govt
Daniel Lee	State	Betty S Anderson	USDA-ES
Daniel A. Nelson	State	Sharon Esles	CBJ
Kevin D. Henderson	State	Howard A. Anderson	BIA
Wanda Fleming	State	Lillian D Walker	BIA
Johnathan Reynolds	State	Mrs. Ruth E. Terry	BIA
Marion Turner	State	[illegible]	STATE
C. M. Lean	City/Borough	Rev. [illegible]	State of AK

When this sheet is filled, please hand-carry it to Rep. Milo Fritz, Alaska House of Representatives.

I SUPPORT HB 84

NAME	EMPLOYER	NAME	EMPLOYER
Cathie Allen	Alaska Airlines		
Christopher [illegible]	STATE		
Frank [illegible]	WARREN'S		
Robert Milton	Federal		
John Milton	Federal		
Dianna M Drulley			
(Mrs) Kathy J. Shudlick	N/A		
[illegible] Korn	Federal		
Nancy Korn	self-employed		
Deborah Parish	self employed		
David J. Parish	A.E.L.P.		
[illegible]	Ret Civ. Serv		
Audrie Reynolds.	self-employed.		
JoAnn M. Zentner	self-employed		
William J. Zentner	City & Borough of Juneau Eng.		
Nancy Shaw	self-employed		
Jose Piguero	state employee		
Rosa Cedeño	Student		

HB 84: An Act relating to smoking in public places and vehicles

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Name	Employer	Name	Employer
Jeanne Mungle		Amy [illegible]	JDHS
Traci Ceraulo	JDHS	Gail Sanders	JDHS
Anne [illegible]	JDHS	[illegible]	FBD+H
Nancy Murray	C&B Schools JDHS	Cynda O'Clarey	JDHS
Chris Carter	J-DHS	Andrea Trapp	JDHS
Katie Ratcliffe	J-DHS	Sheryl [illegible]	JDHS
Kim Hope	J-D-H-S	Natalie James	JDHS
Eric Lantz	J-DHS	Christina Obras	JDHS
Cindi Trapp	JDHS	Tina [illegible]	JDHS
[illegible]	JDHS	Amberly [illegible]	JDHS
[illegible]	JDHS	Ed [illegible]	JDHS

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HB 84: An Act relating to smoking in public places and vehicles

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Name	Employer	Name	Employer
Thomas A Kollin	Juneau H.S	Ranie Coithahn	
Ted Peterson	JDHS	C Koithahn	
Bryan [illegible]	JDHS	Roger Williams	Klondike Gold
Ann Symons	JDHS	[illegible]	self employed
Cynthia Morris	JDHS	Nancy Smeil	SCLDF
Scott Miller	JDHS	Chris Cruning	C & B of Jno
Crystal Browne	JDHS	Linda Wachtel	LAA
Kelly Stephens		Karen E Stephens	AK music
Jeri E Weller		Jamie J. Blume	AK. Music
Kelly Peterson	Alaska [illegible]	Sue Bickerman	WARREN'S
Gail Bo[illegible]	" "	Doug Rountree	JDHS

When this sheet is filled, please hand-carry it to Rep. [illegible], Alaska House of Representatives.

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Name	Employer	Name	Employer
[illegible]	[illegible]	[illegible]	[illegible]
[illegible]	[illegible]	[illegible]	[illegible]
[illegible]	[illegible]	[illegible]	[illegible]
[illegible]	[illegible]	[illegible]	[illegible]
[illegible]	[illegible]	[illegible]	[illegible]
[illegible]	[illegible]	[illegible]	[illegible]
[illegible]	[illegible]	[illegible]	[illegible]
[illegible]	[illegible]	[illegible]	[illegible]
[illegible]	[illegible]	[illegible]	[illegible]
[illegible]	[illegible]	[illegible]	[illegible]
[illegible]	[illegible]	[illegible]	[illegible]
[illegible]	[illegible]	[illegible]	[illegible]

When this sheet is filled, please send-copy it to Rep. Mike Kelly, Alaska House of Representatives.

HB 84: An Act relating to smoking in public places and vehicles

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Name	Employer	Name	Employer
Anna Andrews	J-D Sch Dist.	Kelly Schultz	J.D.H.S.
Hank Lenker	Self	[illegible]	J.DH
Scot Fison	Self	Ralph [illegible]	State of AK
[illegible]	J-D-HS	Richard R. [illegible]	City of Juneau.
Nancy [illegible]	Fish & Game	Paul Thomas	JDHS
Ken Galdabini	JDHS	[illegible]	JDHS
[illegible]	JDHS	[illegible] Wilson	"
Nathan Dingler	JDHS	Natalie James	JDHS
Julie Ray	McDonalds	Drew Spence	"
Carol [illegible]	J-D-HS	[illegible]	J-D
Marie Heidersdorf	JDHS	[illegible]	JDHS

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Name	Employer	Name	Employer
Troy Wilson	JDHS		
Aaron Reed	JDHS		
Ross Mercer	JDHS		
[illegible]	JDHS		
[illegible]	JDHS		
Catalina Zagazi	SUNRAY DRUG		

When this sheet is filled, please hand-carry it to Rep. Bill Pratt, Alaska House of Representatives.

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Name	Employer	Name	Employer
Sandy Spicher	J.D.H.S. Dennis Austin	[illegible] Parker	J.D.H.S. Nina Russell
Shawn Paul	J.D.H.S. Margaret Mellow	Robert Markovich	J.D.H.S.
Wendy CORRIGAN	J.D.H.S. Margaret Mellow	[illegible]	J.D.H.S.
[illegible]	J.D.H.S.	[illegible]	J.D.H.S.
[illegible]	J.D.H.S. [illegible]	Lisa Plummer	J.D.H.S.
[illegible]	J.D.H.S.	Shannon Morgan	J.D.H.S.
[illegible]	J.D.H.S.	John Grummett	J.D.H.S.
Mike Estes	J.D.H.S.	Bill Marchese	J.D.H.S.
Alma Harris	J.D. School District	[illegible]	J.D.H.S.
Christa [illegible]	J.D.H.S.	Joy Mourant	J.D.H.S.
M. Ke Larme - Margaret Mellow	J.D.H.S.	[illegible]	J.D.H.S.

When this sheet is filled, please hand-carry it to Rep. [illegible], Alaska House of Representatives.

HB 84: An Act relating to smoking in public places and vehicles

I support the legislative intent behind HB 84 which declares that tobacco smoking in public places constitutes a significant health hazard, that employees have a right to work in a smoke-free environment as stated in recent court decisions, and that smoking by employees results in increase costs to employers in the form of higher costs for health, fire, and life insurance and worker compensation coverage.

Further, I support the provisions of HB 84 which would amend the existing law on smoking in public places to include . . ."an office, factory, warehouse, or other place of employment. . . ."

Also, I also support the provisions of HB 84 which would assure employees that some work areas would be designated for non-smokers, that the only places of employment which could be designated in entirety as smoking areas are those in which all employees smoke, and that in areas where not all employees smoke, "a person in charge". . .must post signs in conspicuous locations in non-smoking areas stating 'Smoking Prohibited by Law.'"

Name	Employer	Name	Employer
Salina Rinninger	H.S.	Heather Oisten	J.D.H.S.
Dennis Kaill	JDHS	Sherena Gearietty	J.D.H.S
Jeff Brink	JDHS	Myrna Wahto	J.D.H.S.
Brian Newhouse	[illegible]	[illegible]	J.D.H.S
[illegible]	JDHS	Kelly [illegible]	JDHS
Jack Holman	JDHS	[illegible]	[illegible]
Dana Rodriguez	HS	Lisa Oldaker	J.D.H.S
Trac Griswold	JDHS	Dawn Brookshire	JDHS
Jaylene Bolchon	JDHS	Kim Bennell	JDHS
Greg LaPoint	JDHS	[illegible]	JDHS
Darin Hotrum	J.D.H.S	Marla Hamers	JDHS

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Name	Employer	Name	Employer
[illegible]	J.D.H.S.	[illegible] Thomas	J.D.H.S.
George [illegible]	J.D.H.S.	Thomas A. Kallin	J-D H.S.
Carey Donaghey	J.D.H.S	Marilyn Grant	J-D H.S
Kitty Doogan	J.D.H.S	James Masse	J.D.H.S
[illegible]	J.D.H.S	[illegible] Bonnell	J.D.H.S
[illegible]		Michael Money Douglas	Cold Storage
[illegible]		[illegible] M. Olsen	Alaskan
Rick Opitz	J.D.H.S	[illegible]	J.D.H.S.
Mike Pollay	J.D.H.S	Stefanie Cantwell	J.D.H.S
Missi [illegible]		[illegible] Van Seckel	J.D.H.S
Richard [illegible]	US government	Rob Menzies	J.D.H.S

9:4 [illegible]

When this sheet is filled, please hand-carry it to Rep. Lila Fritz, Alaska House of Representatives.

HB 84: An Act relating to smoking in public places and vehicles

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Name	Employer	Name	Employer
[illegible]	JDHS	Brad Hathaway	JDHS
[illegible]	JDHS	Mary Cartmill	JDHS
Shirley R. Hubbard		Rob McCormick	JDHS
Julie Fowler	JDHS	Bartlett Memorial Hospital	
Susan James	JDHS	Rick Boston	JDHS
Crystal Cameron	JDHS	Russell Dutton	JDHS
Karen Dittmer	JDHS	Alan Buck	JDHS
Jim Dexter	JDHS	Tracy Doe	JDHS
Bill Hagering	JDHS	Kim Ivey	JDHS
Elizabeth Schoech	JDHS	Mike Warner	JDHS
[illegible]	JDHS	[illegible]	JDHS

When this sheet is filled, please hand-carry it to Rep. Mike Fritz, Alaska House of Representatives.

HB 84: An Act relating to smoking in public places and vehicles

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Name	Employer	Name	Employer
Maria Wilson	JDHS	Karla Olsen	JDHS
Jordan [illegible]	self-employed JDHS	[illegible]	JDHS
Shawn Dooley	JDHS	Karyn Price	[illegible] JDHS
Arvon Knight	JDHS	Molly Ferguson	JDHS
Bernie Cunning[illegible]	JDHS	[illegible]	JDHS
Jackie Wagner	JDHS	[illegible]	JD
Sharon [illegible]	JDHS	[illegible] Crawdall	Juneau Drug JDHS
Roger [illegible]	JDHS	Tara Ellanna	JDHS
Katie [illegible]	JDHS	Charles M. Jurasz	Greater Juneau Branch
Chrissie Tobeck	JDHS	Karla Wood	JDHS
Bill Martinssen	JDHS	Anahita Niere	JDHS

When this sheet is filled, please hand-carry it to Rep. Mike Fritz, Alaska House of Representatives.

For Charlie Bussell.

PETITION

WE, the undersigned, employees of the State of Alaska at 1111 West 8th Street, Juneau Alaska 99802, are in support of the passage of House Bill 84: An Act Relating to Smoking in Public Places and Vehicles. (In its present form, Introduced 01/20/83; see attached.)

1) Teresa L. Clanimis
2) Evelyn L. Richardson
3) Gregoria A. Jealing
4) Anne Jones
5) David F. Carr
6) Gary Miller
7) Kathy Brown
8) George Long
9) Mary Salter
10) Susan Bradley

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1) Lorna Shell
2) Lawrence J Dale
3) Anna Riezinger-von Reitz
4) Chris Mobley
5)
6) Jean Findley
7)
8) John E Post
9) Barbara Duval
10) Kathryn A. Hendrickson

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1) Roberta S. Banko
2) Albert H. Warnsu
3) Carolyn M Spalding
4) Brenda L. Vaughn
5) Dennis Gettehouse
6) Catherine L. Miller
7) Bradford Kettleson
8) Betty J. Olson
9) Pat Shira
10) Joseph H Taylor

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1) Kay Winchell
2) Dan Corcoran
3) James A. Wilson
4) Gary Waid
5) Lynda McCurry
6) Helen Wright
7) Laila Clarke
8) Marylyn Gunn
9) Mark Giglio
10) Craig McKenzie

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1)
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1) Elfrieda Mullins
2) Amy J. Lyskolm
3) Kathleen E Boom
4) Jamie Lapinski
5) Celeste Hayes
6) Thomas Hay
7) Deborah Patrick
8) Ray Brown
9) Anne C Fuller
10) Ralph Swap

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1) Larry St Clair
2) Shirley A. Gray
3) Ralph [illegible]
4) Wanda Sims
5) Willie E Ehlers
6) Cecilia A Wagoner
7) M G Torgerson
8) Ron Torgerson
9) Elizabeth Gomez
10) Doris Robbins

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1) Paul G Wiederhold
2) Jo S Donner
3) Betsy Tenwold
4) Anthony E Zenk
5) [illegible]
6) [illegible]
7) [illegible]
8) [illegible]
9)
10)

Killing for cash

Cigarettes are biggest hazard, doctor warns

by Warren King
Times staff reporter

Scientists struggle to beat major killers like heart disease and cancer, but the nation's biggest health hazards are largely preventable with common sense, America's chief disease fighter said here yesterday.

Cigarette smoking, alcohol abuse and violence all need more attention as serious public health hazards today, said Dr. William H. Foege, director of the federal Centers for Disease Control.

"The three interact. But we're losing more personal years of life from cigarette smoking than any other cause," he said.

"What's especially staggering is that we tolerate it ... The tobacco companies know they are killing for money. Let's take the steps to prevent that."

Foege said legislators should ban tobacco advertising and tax cigarettes for the funds to treat health problems stemming from smoking.

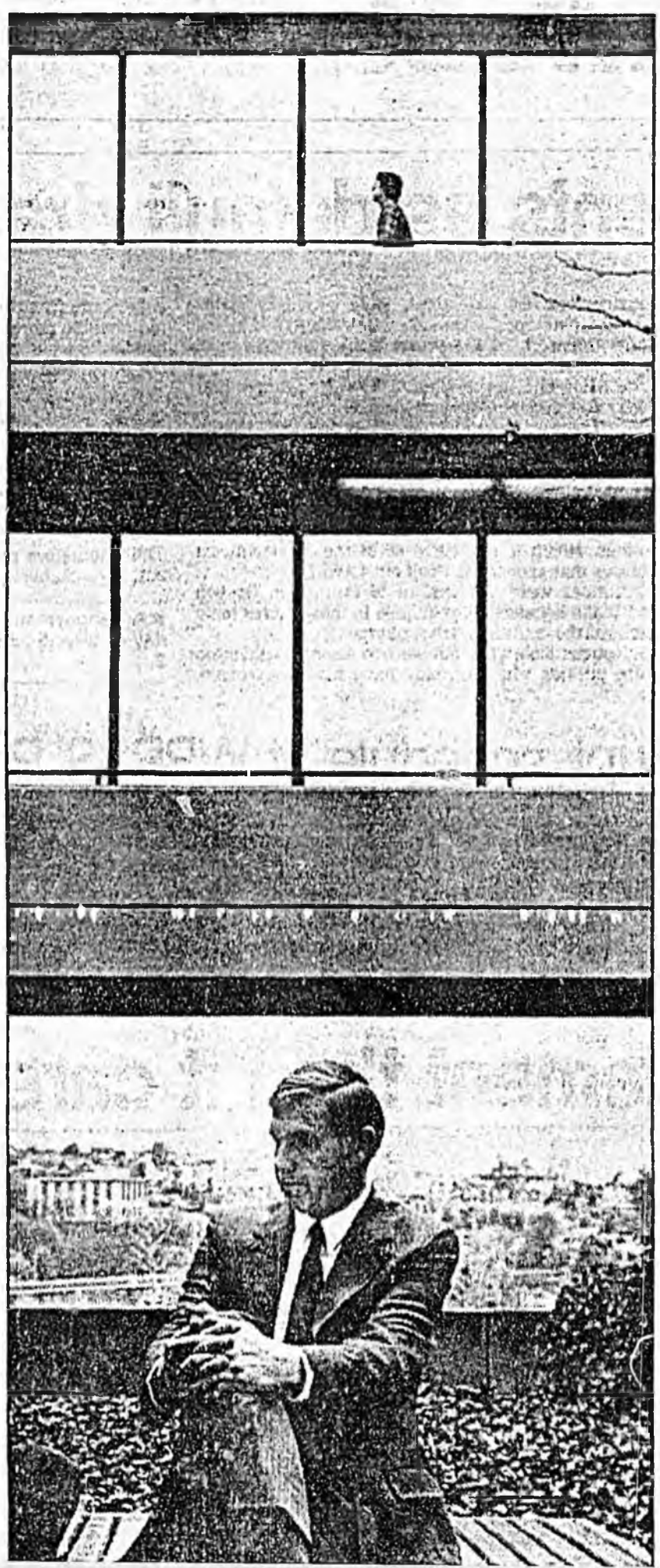
He predicted that unless something is done to control the tobacco industry, smoking will become the major health problem of Third World countries by the year 2000.

"We would do the Third World a real favor if we became very indignant about this problem," said Foege, who delivered the keynote address at the University of Washington's observance of World Health Day.

Foege, a graduate of the UW Medical School and Pacific Lutheran University, announced Wednesday that he is stepping down as director of the Atlanta-based CDC.

He will remain with the agency to pursue such interests as international public-health projects, and has agreed to stay on as director until a successor is found.

"I wasn't fired and I wasn't doing this (resigning) to protest a policy," said the 47-year-old Foege in an interview. "I said I should do this for only five or six years. I didn't want to stay in too long and [illegible]"



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"I wasn't fired and I wasn't doing this (resigning) to protest a policy," said the 47-year-old Foege in an interview. "I said I should do this for only five or six years. I didn't want to stay in too long and get too comfortable."

Foege took over the agency in 1977 after his predecessor was ousted over the controversial swine-flu-vaccine program. He said he is most proud of the CDC's efforts during his tenure to increase immunization programs.

Immunization levels for measles, rubella, polio, diphtheria and whooping cough were as low as 60 percent six years ago; now they are more than 95 percent, he said.

Foege, a native of Chewelah, Stevens County, is credited with developing the immunization strategy that dealt a final blow to smallpox worldwide. He is still vitally interested in international health problems.

"Health among nations is as interrelated as oil," he said. "We live in a global village where all health problems are . . . intensified by the jet age."

Foege said the two or three new cases of measles a week in the United States are almost always imported from other countries. On another plane, he said, the findings of cholera research done in Bangladesh had application to treating diarrhea in all children.

"We end up benefiting as much as other countries," he said. "And in a generic way, we're more likely to have a stable world and a more peaceful world if there are not high mortality and (disease) rates."

Foege said scientists are working hard to decrease disease and infant mortality rates in Third World countries. He predicted vaccines for leprosy and malaria will be tested in humans by the end of the 1980s. But better control of health problems still has a long way to go, he said.

It is "a bit obscene," he said, that American health officials hold endless meetings discussing international health "while a mother in western Africa is in deep depression after her child has died of measles because we can't figure out a way to deliver the (25-cents-a-dose) vaccine."

It is embarrassing, he said, that we sit and try to figure out the cost of a home computer when fewer than 25 percent of those in western Africa can read.

And he asked members of his World Health Day audience if they could identify with losing half the children in a nation to disease before the youngsters reach the age of 5.

"I think the measure of civilization is how we treat each other," he said, "and international public health is one of the best indices of how we treat each other."

A realistic goal for year 2000 is "for the United States to demonstrate it is indeed a civilized country."

As for taking care of ourselves, Foege predicted major gains in Americans changing to healthier lifestyles during the next 20 years. Tobacco and alcohol abuse and obesity must decline, he said.

Foege said: "This is a very American message: You can be a rugged individualist, you can determine your own health destiny.

"That is such a powerful message instead of packaging it as 'Thou shalt not smoke.'"



Alan Berner / Seattle Times

Dr. William Foege, director of the federal Centers for Disease Control, says cigarette smoking is the nation's top health hazard.

Idea of smoke-free work place catches fire

By PHILIP HAGER
The Los Angeles Times

SAN FRANCISCO — The new office policy on smoking took effect on a Monday morning. Four days later, Ann Williamson was still ecstatic.

"I can't tell you what a difference it makes," she said. "Believe me, it's wonderful to be able to breath clean air and earn a living at the same time."

Williamson, an employment interviewer in the state Employment Development Department office in nearby Berkeley, and some other non-smoking workers had been trying for nearly two years to get the department to establish a smoke-free workplace. Weary of the pervasive blue haze in the air, they finally brought a lawsuit against the department.

But now a new policy has gone into effect: there is no smoking in the main office — by the employees or the public. Employees can take work-breaks and smoke in the restroom, coffee shop or conference room if it is not being used.

The success of Williamson and her co-workers is far from isolated. Responding to protests, lawsuits and new concern over the health hazards of "second-hand smoke," a growing number of employers — public and private — are establishing smoke-free environments in the workplace.

Until now, the focus of anti-smoking campaigns had been on theaters, restuarants and public meeting places. Now that focus has shifted to the workplace, where people spend more time. Some workers cite fears of contracting lung cancer, respiratory infection or some other illness from smokey environments. Others are just tired of headaches, nausea and burning eyes and throats.

The state of California, in a new law covering 144,000 state employees, requires all state agencies to adopt a policy on office smoking. No sweeping office renovations are mandated. But agencies have been told they should ban smoking from formal meetings, encourage workers in small meetings to ask permission to smoke and, where feasible, provide no-smoking areas, ventilated smoking areas or other arrangements to separate smoker from non-smoker.

Ordinances restricting smoking in the workplace have been adopted recently in such cities as San Diego and Ukiah. And a proposed ordinance that would require employers to set aside smoke-free office space — and also that would provide city tax incentives for installing partitions, air cleaners and other structural changes — is being considered the by Board of Supervisors here. Employers who do not comply would face civil fines of $100 per day.

However, proposals like this are not going unchallenged.

In San Francisco, the city's Chamber of Commerce has expressed concern over the measure, raising questions about its cost to employers and objections to the prospect of fines for violations.

The Washington-based Tobacco Institute is staunchly opposing court or government-ordered smoking bans in the workplace. It contends such prohibitions amount to "job discrimination" against smokers and that there is no conclusive proof of health hazards from second-hand smoke.

"It's eminently preferable to strike a balance between what smokers desire and what anti-smokers desire," says Walker Merryman, a spokesman for the institute. "But no courts have said that there's a constitutional right to be free of someone else's tobacco smoke. Such a right just doesn't exist."

Nonetheless, a number of private employers have responded to the demands of non smokers. Several large companies — IBM, AT&T and Pratt & Whitney Aircraft, among others — have set aside smoke-free work areas. In San Francisco, companies ranging from Bancroft-Whitney, a publishing concern, to Just Desserts, a pastry maker, limit smoking to specific times and places.

Pacific Telephone Co., with 103,000 employees the largest private employer in the state, is drafting a far-reaching program in the wake of two petition campaigns by employees and a subsequent employee survey that found surprising sentiment — both among smokers and non-smokers — for setting aside smoke-free work areas.

The company plans not only to set aside smoke-free areas, but to sponsor its own programs to help employees to quit smoking.

Eriksen notes that among its other benefits, the new program is expected to reduce certain costs attributable to smoking, including medical care, fire insurance, maintenance of facilities and worker absences.

The question of cost savings is receiving considerable debate. One widely noted study, published in 1981 by William L. Weis, a business administration professor at Seattle University, cited the additional expenses of insurance, absenteeism and disability payments and concluded that employers may be spending an extra $4,611 per year per smoking employee.

On the other side, Lewis C. Solomon, an education professor at the University of California, Los Angeles, calls that analysis "faulty." Solomon, in a paper published in connection with his work as an economic consultant to tobacco companies, contended among other things that worker absenteeism was more likely related to job boredom, low pay and lack of company loyalty than to smoking.

4/3/83 Ukiah News

Alaska State Legislature

House of Representatives

Office of The Majority Leader

Official Business

Pouch V
State Capitol
Juneau, Alaska 99811

February 7, 1983

Mr. Richard Gelardin
SRA Box 84-B
Anchorage, Alaska 99507

Dear Mr. Gelardin:

Thank you for your message regarding HB 84, limiting smoking in public places. Your concerns about the hazards of smoke, including second hand smoke are shared. I agree with the premise that the right to breathe clean air is more basic than the right to pollute it.

However, in a sense of equality, we must be sure the rights of smokers are safeguarded as well; remembering many of them would like to stop smoking, but are unable.

I will carefully consider HB 84, and if it represents a fair solution to these concerns, I will support it.

Thank you again, for sharing your concerns with me. Please feel free to contact my office any time.

Very truly yours,

Ramona L. Barnes
House Majority Leader

RLB:jl



THE TWO OF YOU

Your baby-to-be, snuggled inside your womb, is silently engaged in a wonder-filled adventure: the struggle toward life. Your unborn baby needs all the help it can get in that struggle. Especially from you.

The two of you are separate beings. Yet you're united in the closest possible togetherness.

Right now your baby is floating in fluid inside your womb. The baby cannot breathe or take nourishment through its mouth. Everything it needs — oxygen and food — must be supplied through a special lifeline. Attached to the wall of your womb is the placenta, which is connected by a cord to your baby's tummy. Not until birth will your baby be set free to breathe and live on its own. Until then, every breath you take is your baby's too.

QUIT SMOKING

When you quit smoking this minute, you'll be giving your unborn baby the smoke-free environment both of you need to be healthy. It's more than a gift. It's a matter of life and breath.

Your lung association is concerned about you and your baby. For more information on how to quit smoking, check with them. They care about every breath you take.

AMERICAN LUNG ASSOCIATION
Affiliate

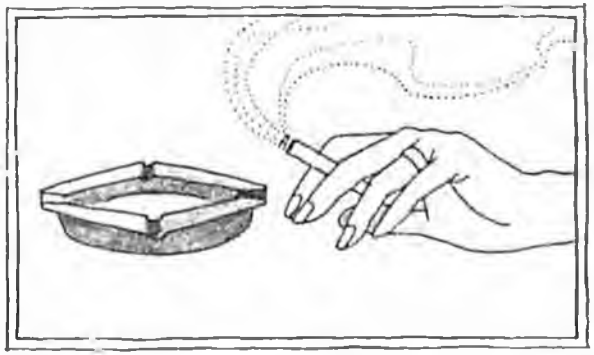
0963 2/80 Published by American Lung Association

SMOKING AND THE TWO OF YOU



IF YOU SMOKE

Your unborn baby doesn't breathe before the moment of birth. But it practices some motions of breathing by exercising certain chest muscles. The effects of cigarette smoke are so immediate — and so powerful — that your baby's practice movements slow down after you smoke just two cigarettes. The more cigarettes you smoke, the more you interfere with your baby's preparations for life.



Normally, your blood is completely separate from your unborn baby's. But when you smoke, some of the harmful gases and poisonous substances in smoke actually pass from your blood through the placenta and into the baby's blood.

One of these gases is carbon monoxide, which forces oxygen out of the red blood cells — both yours and your baby's. Another powerful poison, nicotine, adds to the damage by narrowing blood vessels, including those in the placenta itself. This means not as much oxygen and food is delivered to your developing baby.

- The babies of mothers who smoke during pregnancy are more likely to be born undersized. And these babies have a greater chance of dying soon after birth.
- Studies show that women who smoke during pregnancy also have more stillbirths, spontaneous abortions, and premature deliveries than women who don't smoke.

© AMERICAN LUNG ASSOCIATION, 1980

AFTER THE BABY IS BORN

It's always important to you and the baby to stay away from cigarettes.

Babies have little lungs and very small airways. Breathing smoke-filled air causes those tiny airways to get even smaller, and breathing can be blocked or impaired.



Babies and young children also breathe much faster than adults. They inhale more air — and more pollution — in comparison to their total body weight. And many of their lungs' defenses have not developed yet.

Babies in their first year have a higher rate of pneumonia and bronchitis if their parents smoke at home.

Another complicating factor is that mothers and fathers who smoke, thereby damaging the defenses in their own lungs, have more respiratory infections which they can pass on to their children. Acute respiratory problems are more common in young children if their parents smoke.

And, if you smoke while your children are growing up, you have enormous influence on their behavior. Parental smoking — by both fathers and mothers — is a major factor motivating youngsters to smoke. Few, if any, parents want their children to take up a habit that can cripple their lungs and cut short their lives.

YOUR OWN HEALTH

Right now your baby is your central concern. So is your own health. If you're as healthy as possible — both before and after your baby's birth — life is a lot happier.

Even if you feel fine now, smoking is a slow time-bomb. If you quit smoking now, it increases the possibility of your being around to see your child grow and develop.

Cigarette smoking is the major cause of such lung diseases as emphysema, chronic bronchitis, and lung cancer. Smoking constricts your blood vessels, increases your blood pressure, and damages your heart. Even one cigarette upsets the flow of blood and air in your body.

After your baby is born, you should be aware that cigarette smoking is especially dangerous among women who use birth-control pills, especially after age 35. Smoking sharply increases the risk of serious effects on the heart and blood vessels. The risk is so serious, in fact, that the Food and Drug Administration has revised its labeling requirement for such pills and included this prominent warning: "Women who use birth control pills should not smoke."



Your family wants you alive and well. Cigarettes don't keep you that way.

TO: HOUSE JUDICIARY COMMITTEE MEMBERS: REPRESENTATIVES BUSSELL, LISKA, HAYES, BARNES, MALONE, CLOCKSIN, AND WENDTE AND REPRESENTATIVE GRUSSENDORF AND SENATOR ELIASON

Judiciary Referral

FROM: GARY SHORT
S.R., 144 WOLFF DRIVE
SITKA, AK 99835 (H)747-8158

RE: HB84

PLEASE DO ALL POSSIBLE IN SUPPORT OF HB 84. NON-SMOKERS HAVE RIGHTS TOO. I FIND IT DISTRESSING THAT I MUST TOLERATE CIGARETTE SMOKE WHILE IN THE HOSPITAL, SUPPOSEDLY ONE OF THE MOST HEALTHY SITUATIONS WE CAN CREATE. I FIND IT OFFENSIVE THAT SMOKING GOES ON IN SCHOOLS BY THE STAFF. THANK YOU FOR YOUR HELP.

****4/4, FALEENE, SITKA LIO, 5190****



****

FROM: CURVIN METZLER
5419 EAST 42ND AVENUE#28
ANCHORAGE, AK99504 (H) 333-2957 (W) 271-4011

HB84

AS AN EMPLOYEE OF THE DEPT. OF HEALTH, I AM AWARE OF THE OVERWHELMING AMOUNT OF EVIDENCE DEMONSTRATING THE HARMFUL EFFECTS OF CIGARETTE SMOKING. SINCE NOT ONLY THE SMOKER BUT ALSO THOSE AROUND HIM ARE AFFECTED, I STRONGLY URGE YOUR SUPPORT OF STRICTER REGULATION ON PUBLIC SMOKING. (HB 84)

TO: ALL LEGISLATORS

FROM: JOHN REYNOLDS
BOX 143
DOUGLAS, ALASKA 99824

PHONE: 364-3197

JR

RE: HB 84

PLEASE VOTE FOR PASSAGE OF THIS BILL.

[illegible] JUNEAU, ALASKA

[illegible]

[illegible]

#B84

[illegible]
[illegible]
[illegible]

[illegible]

[illegible]



MSG 83-00004239 PRTY 1 03/29/83 16:54:59 ORIG: LJ04 IN= 0017 OUT= 0089
FROM: PATRICIA/JUNEAU TO:
TARGET: LJHL SUBJ: P O M

TO: REPRESENTATIVE [redacted]

FROM: RICHARD WILLIAMSON
5603 AISEK STREET
JUNEAU, ALASKA 99801

586-4401(H)

JR

RE: BY 84

I AM ALL FOR IT.

...EOM

[illegible]
TARGET [illegible] SUBJ [illegible]

[illegible], [illegible] [illegible]

[illegible], ALASKA LEGISLATURE

FROM: [illegible] RIVES
[illegible] BANNISTER DRIVE
ANCHORAGE, AK 99504 (H) 276-0474

I WOULD LIKE TO EXPRESS MY SUPPORT FOR THE PROPOSED NO SMOKING IN PUBLIC BILL.

I OPPOSE THE APPOINTMENT OF DR. HARROLD RAYNOLDS AS COMMISSIONER OF EDUCATION BECAUSE HIS PAST RECORD SHOWS HE IS ANTAGONISTIC TO ALL PRIVATE SCHOOLS.

****

#B84

MAR 1983
RECEIVED

FROM: JANE HARRISON, 3961 EASTWOOD LOOP, ANCHORAGE 99504
(H) 337-7969 (W) 264-2631

PLEASE SUPPORT HOUSE BILL 84 AND PROHIBIT SMOKING IN PUBLIC PLACES AND PLACES OF EMPLOYMENT.

****

MSG 83-00003722 PRTY 1. 03/26/83 13:27:24 ORIG: LJ04 IN= 0003 OUT= 0001
FROM: SUE TO: JUNEAU
TARGET: LJHL SUBJ: FOM

TO: REP. BUSSELL AND CLOCKSIN

FROM: JOE RAFFERTY
8904 BIRCH LANE
JUNEAU, AK. 99801
789-2441

I SUPPORT HB 84. HOWEVER IT WOULD BE STRONGER IF LINE 21 ON PAGE 3 IS CHANGED TO READ 'MINIMUM VENTILATION STANDARDS AS SPECIFIED UNDER ASHRAE, 62-81, 1981'. THANK YOU.

EOM**********

MSG 83-00014892 PRTY 1 03/11/83 16:51:52 ORIG: LM01 IN= 0003 OUT= 0102
FROM: MARY/MATSU TO JNU INFO
TARGET: LJHL SUBJ: P.O.M.

TO: REPRESENTATIVES LACHER, LARSON, [redacted], LISKA, HAYES, BARNES, MALONE, CLOCKSIN, WENDT

FR: TED MYERS
P O BOX 495
PALMER 99645 PH: 376-2200

HB84

RE: HB 84

I SUPPORT MORE RESTRICTIONS ON SMOKING IN PUBLIC PLACES.

0451 MARTIE/MATSU 3/15 7:55 AM

TO: REPS. LACHER, LARSON, BUSSELL, LISKA, HAYES, BARNES, MALONE, CLOCKSIN, WENDTE

FROM: ROSE FOGARTY
BOX 26
SUTTON 99674
PHONE: 745 6175

HB84

I SUPPORT THE BILL TO STOP SMOKING IN PUBLIC PLACES. I USED TO SMOKE BEFORE AND I DON'T MIND IT, BUT I THINK IF THEY CAN'T SMOKE IN THE STREETS, THEY JUST MIGHT SMOKE LESS.

ASNG 1074 MARTIE/MATSU 3/16 12:05 PM

TO: REPS. LACHER, LARSON, RUSSELL, LISKA, HAYES, BARNES, MALONE, CLOCKSIN, & D WENDTE

HB84

FROM SARAH ORTNER
BOX 147
PALMER 99645

REGARDING SMOKING IN PUBLIC PLACES--I DON'T SMOKE, I DON'T LIKE BREATHING IT IN WHEN I GO SOME PLACE. IT IS A FORM OF AIR POLLUTION.

MSG 83-00010930 PRTY 1 02/24/83 16:40:10 ORIG [illegible] IN= 0017 DU[illegible]
FROM: SITKA TO: JUNEAU
TARGET: KJUL SUBJ: POMS

TO: REPS. FRITZ, M.M. MILLER, [redacted], KOPONEN, LARSON, MALONE, MARTIN, MCBRIDE, SZMANSKI, ZHAROFF, M.L. MILLER, LINDAUER, FURNACE, & VASKA.

FROM: GARY SHORT
ST. RT., 144 WOLFF DRIVE
SITKA, AK. 99835 747-8158 (H) OR 747-5825 (W)

RE: HB 84

YOU HAVE MY SUPPORT ON HB 84. IF THERE IS ANYTHING I CAN DO TO HELP, PLEASE LET ME KNOW. THANK YOU FOR YOUR EFFORT IN THIS AREA.

######
2/24 ELAINE/SITKA 10930

FEB 1983
RECEIVED

REPRESENTATIVE [redacted], AND THE INTERIOR DELEGATION: [illegible] DAVIS
JETTISWORTH, RINGSTAD, KOPONEN, M.W. MILLER AND SENATORS KENNETT
RANTENKAMP, AND MOSS

FROM: JOSEPH S. RUSSO, BOX 10503, FAIRBANKS 99710 [illegible]

RE: HB84 AN ACT RELATING TO SMOKING IN PUBLIC PLACES AND VEHICLES

FULLY SUPPORT HB84 AND THE PROHIBITION OF SMOKING IN ALL PUBLIC BUILDINGS.
I AM VERY CONCERNED ABOUT MY HEALTH, AS WELL AS THE HEALTH OF ALL THE
CITIZENS OF THE STATE, AND I KNOW THAT YOU ARE TOO. PLEASE SUPPORT AND
VOTE FOR HB84. IT'S A MATTER OF LIFE AND DEATH.



MSG 83-00008383 PRTY 1 02/15/83 08:31:14 ORIG: LJ04 IN= 0002 OUT= 0002
FROM PATRICIA/JUNEAU TO
TARGET LJHL SUBJ: P O M'S

TO: ALL LEGISLATORS

FROM: PETER BRANSON
526 EAST 5TH PHONE: 586-6018
JUNEAU, ALASKA 99801

I AM FOR HB 84.



FEB 1983 RECEIVED

MSG 83-00008387 PRTY 1 02/15/83 08:39:58 ORIG: LJ04 IN= 0005 OUT= 0005
FROM: PATRICIA/JUNEAU TO:
TARGET: LJHL SUBJ: P O M

TO: ALL REPRESENTATIVES

FROM: GEORGE HOYT PHONE: 789-4202
6590 GLACIER HIGHWAY, #38
JUNEAU, ALASKA 99801

I STRONGLY URGE SUPPORT FOR HB 84 AS IT CURRENTLY EXISTS IN THE FORM IT WAS SENT TO THE SA COMMITTEE. I SUPPORT THE LANGUAGE AS IT EXISTS IN DRAFT, PAGE 1, LINES 20 & 21, AND STRONGLY SUPPORT THAT IT BE PASSED AS IT IS.

...EOM

MSG 83-00008549 PRTY 1 02/15/83 14:18:45 ORIG: LA02 IN= 0014 OUT= 0026
FROM: JUNE, ANC LIO TO: POM, JNU
TARGET: LJHL SUBJ: POM



2/15/83, JUNE ANC LIO, MSG 8549

TO: ALL THE MEMBERS OF THE LEGISLATURE

FROM: TOM FITZKE
3840 PATRICIA LANE
ANCHORAGE, AK 99504 (H) 337-7335

MAILING ADDRESS - SAME

I AM VERY STRONGLY IN FAVOR FOR HB 84 AND WISH ALL OF YOU TO STRONGLY SUPPORT THE BILL.

TO: ALL MEMBERS, ALASKA LEGISLATURE

FROM: JOHN MIDDAUGH, M.D.
PRESIDENT, ALASKA PUBLIC HEALTH ASSOCIATION
3010 GLACIER STREET
ANCHORAGE, AK 99504 (H) 333-9345 (W) 561-4404

THE ALASKA PUBLIC HEALTH ASSOCIATION URGES YOU TO CO-SPONSOR AND WORK ACTIVELY TO SUPPORT PASSAGE OF HOUSE BILL 84. CIGARETTE SMOKING IS THE MAJOR SINGLE CAUSE OF DEATH FROM CANCER IN AMERICA. MANY OF THESE DEATHS CAN BE PREVENTED BY LEGISLATION TO REDUCE SMOKING.

2/18/83, SHIRLEE ANN LEO, 9547

TO: ALL MEMBERS, ALASKA LEGISLATURE

FROM: SHEILA M. DAVIES
5[illegible]
DIVERTON AVENUE
ANCHORAGE, AK 99507 (W) 349-9503

I AM AGAINST THE APPOINTMENT OF ANY PERSON TO THE POSITION OF COMMISSIONER OF EDUCATION WHO IS OPPOSED TO PRIVATE SCHOOLS

MSG #3-00007079 PRTY 1 [illegible]/08/83 18:29:44 ORIG [illegible]A02 IN= 0022 OUT= 0105
FROM: SHIRLEE, ANC LIO TO: POMS, JUNEAU INFO
TARGET: [illegible] POM

[illegible]/83: SHIRLEE ANC LIO, MSG 7079

TO: ALL MEMBERS, ALASKA LEGISLATURE

FROM: DR. LOUANN FELDMANN
1217 EAST TENTH AVENUE
ANCHORAGE, AK 99501 (W) 279-9586

RE: HOUSE BILL NO. 84

FOR THE HEALTH OF MY CHILDREN, MY PATIENTS AND MYSELF, I URGE YOU TO COSPONSOR AND/OR SUPPORT PASSAGE OF HOUSE BILL NO. 84.

HB84

****

MSG 93-00000643 PRTY 1 02/15/93 16:03 27 ORIG: LJ20 IN= 0012 OUT= 0105
FROM: PATRICIA/JUNEAU TO:
TARGET: LJHL SUBJ: F O M

TO: ALL LEGISLATORS

FROM: HAN FAWTHROP
119 SEWARD STREET, ROOM 9
JUNEAU, ALASKA 99801
PHONE: 586-5234

I SUPPORT HB 84.

...EOM



MSG 83-00011882 PRTY 1 03/01/83 11:49:36 ORIG: L001 IN= 0002 OUT= 0046
FROM: ROBERTA/KODIAK TO: JUNEAU
TARGET: LJHL SUBJ: PUBLIC OPINION MESSAGE

TO: HOUSE JUDICIARY COMMITTEE: [redacted] LISKA BARNES
MALONE HAYES CLOCKSIN
WENDTE

SENATOR BOB MULCAHY, REPRESENTATIVE FRED ZHAROFF,
REPRESENTATIVE FRITZ

FROM: KENNETH CRAWFORD
P.O. BOX 205
KODIAK, ALASKA 99615 486-3570



RE: HB 84

I SUPPORT HB 84 AND URGE YOUR SUPPORT OF THIS BILL TOO.
/

[illegible] 03/04/83 10:26:45 ORIG: LA01 IN= 0001 OUT= 0021
FROM: SHIRLEE ANC LIO TO: POMS, JUNEAU INFO
TARGET: LJHL SUBJ: POM

3/4/83, SHIRLEE ANC LIO, 12806

TO: REPRESENTATIVES BUSSELL, LISKA, HAYES, BARNES, MALONE, CLOCKSIN AND WENDTE

FROM: TERRY BLACK, P. O. BOX 89115, ANCHORAGE 99508
(RESIDENCE: 815 NORTH PARK) (H) 278-4762 (W) 267-2416



I SUPPORT HOUSE BILL NO. 84. I THINK IT IS ABOUT TIME THE DANGERS OF SECOND-HAND SMOKE AND THE RIGHTS OF NON-SMOKERS ARE RECOGNIZED.

****

[illegible] 00011437 [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] OUT= 002[illegible]
[illegible] [illegible] [illegible] [illegible] [illegible] [illegible]
[illegible] [illegible] [illegible] [illegible]

TO REPRESENTATIVES [illegible] AND LISKA.

FROM: JOSEPH S. RUSSO, P. O. BOX 16007, TWO RIVERS, ALASKA 99716,
HOME [illegible] WORK 479-22[illegible]

[illegible] HB84 "AN ACT RELATING TO [illegible] IN PUBLIC PLACES AND VEHICLES."

I FULLY SUPPORT HB84 AND THE PROHIBITION OF SMOKING IN ALL PUBLIC BUILDINGS. I AM VERY CONCERNED ABOUT MY HEALTH AND THE HEALTH OF ALL THE CITIZENS OF THE STATE, AND I KNOW THAT YOU ARE TOO. PLEASE SUPPORT AND VOTE FOR HB84. IT'S A MATTER OF LIFE AND DEATH.

SIGN.....

TO REPS. [redacted], LISKA, HAYES, BARNES, MALONE, BLOCKSIN, AND MENDEL

FROM GARY SHORT
ST RT. 144 WOLFF DRIVE
SITKA, AK. 99835 747-6150 (H) OR 747-5025 (W)

RE: HB 94

BEING A NON-SMOKER WORKING IN AN AREA WHERE THE MINORITY ARE SMOKERS IS VERY OFFENSIVE. ALL COMFORT FACILITIES ARE CONTINUOUSLY FILLLED WITH SMOKE WHICH RESULTS IN AN UNHEALTHY SITUATION & FORCES ME NOT TO USE THE SAID FACILITIES. IT APPEARS THAT THE SMOKERS HAVE THE ADVANTAGE OVER THE NON-SMOKERS. PLEASE SUPPORT HB 94. IT IS OF PARAMOUNT CONCERN TO THE NON-SMOKERS.

#####

2/24 ELAINE/SITKA 10930

FEB 1983
RECEIVED

MSG 84-00027970 PRTY 1 03/23/84 15:00:46 ORIG: LB00 IN= 0006 OUT= 0090
FROM: HELEN/BETHEL TO: JUNEAU INFORMATION OFFICE
TARGET: LJHK SUBJ: P O M

TO: ALL SENATORS AND
ALL REPRESENTATIVES

FR: CHERYL JERABEK
BOX 76
ANIAK, ALASKA 99559 907-675-4388

THANK YOU FOR YOUR SUPPORT OF THE SMOKING LEGISLATION. AS A NON-SMOKER WORKING IN A PUBLIC PLACE I APPRECIATE THIS LEGISLATION. THANK YOU AGAIN.

==========

SG 84-00027943 PRTY 1 03/23/84 14:38:05 ORIG: LK00 IN= 0003 OUT= G079
FROM: JUNE R./KETCHIKAN TO: JUNEAU INFO
TARGET: LJHK SUBJ: FOM

TO: ALL SENATORS AND ALL REPRESENTATIVES

FROM: DR. JAMES AND BETTY WILSON
659 MAIN STREET
KETCHIKAN, ALASKA 99901 225-5231

RE: HB 84 (TO PROTECT THE NONSMOKER FROM SIDESTREAM AND SECONDHAND TOBACCO SMOKE)

OUR FAMILY ALWAYS GETS RUNNING NOSES, COUGHS, ITCHY EYES WHEN IN PUBLIC PLACES. WE APPRECIATE THE FEW PLACES THAT PROVIDE SMOKING AREAS. PLEASE SUPPORT THIS BILL (HB 84). IT ISN'T A MATTER ONLY OF COMFORT BUT ALSO OF HEALTH.

EOM**********

FROM: DR. HAL POST
CHAIRMAN,
COMMUNITY RESOURCE COMMITTEE
ALPA
4715 MELVIN AVE
ANCHORAGE, AK 99503
243-5642



RE: HB 84

MESSAGE: ON BEHALF OF THE ALASKA PSYCHOLOGICAL ASSOCIATION (ALPA), I URGE YOUR CONTINUED SUPPORT ON HB 84, WHICH WILL BE COMING BEFORE YOU A SECOND TIME.

EOM/**********

TO: ALL SENATORS AND
ALL REPRESENTATIVES

FR: CHRISTINE WAILCOX
BOX 94
ANIAK, ALASKA 99557

RE: SCSCSHB 84

A APPREICATE YOUR SUPPORT OF THE SMOKING LEGISLATION. THANK YOU AGAIN IN BEHALF OF THE MANY NON-SMOKERS.

MSG 84-00027839 PRTY 1 03/23/84 11:50:46 ORIG: LS00 IN= 0003 OUT= 0054
FROM: ELAINE, SITKA TO: JUNEAU
TARGET: LJHK SUBJ: POM

MSG 84-00027891 PRTY 1 03/23/84 13:47 18 ORIG: LA01 IN= 0002 OUT= 0069
[illegible]
TARGET: LJHK SUBJ: PO[illegible]

FOM 3/23/84 FLORENCE, ANC LIO MSG 27891

TO: ALL REPRESENTATIVES

FROM: DAVID FINKELSTEIN
CONSERVATION CHAIRMAN, SIERRA CLUB, ALASKA CHAPTER
BOX 102025
ANCHORAGE, AK 99510
(H) 279-6719

RE: HB 84

WE HOPE YOU WILL SUPPORT THE SENATE AMENDED HB 84. ALTHOUGH WE PREFER THE STRONGER SMOKING LIMITATIONS IN THE ORIGINAL HOUSE BILL, THE SENATE VERSION IS A REASONABLE COMPROMISE. THANKS FOR YOUR SUPPORT.

****

MSG 84-00035266 PRTY 1 03/16/84 10:19:26 ORIG: LK00 IN= 0006 OUT= 0028
FROM: JUNE R./KETCHIKAN TO: JUNEAU INFO
TARGET: LJHK SUBJ FOR

6

TO: REPRESENTATIVES WENDTE AND MCBRIDE
REPRESENTATIVES BUSSELL, FRITZ, M.M. MILLER, ET AL (BILL SPONSORS)

FROM: RALPH AND JOY GREGORY
P. O. BOX 6853
KETCHIKAN, ALASKA 99901 225-5435 (H) 225-3181 (W)

RE: HB 84, SMOKING IN PUBLIC PLACES

WE SUPPORT HB 84 AND ANYTHING THAT TIGHTENS SMOKING REGULATIONS. PARTICULAR CONCERN: STATE OFFICES, IN WHICH SUPERVISORS ARE ALLOWED TO CAUSE OTHER EMPLOYEES TO BREATHE SECOND HAND SMOKE, BY THE SUPERVISORS (AND THEIR GUESTS) SMOKING IN THEIR OPEN DOOR OFFICES AND ALLOWING SMOKE TO DRIFT INTO WORK STATIONS, JOB AREAS.

EOM**********

MAR 1984
RECEIVED

POUCH V
JUNEAU, ALASKA 99811
465-4990

P.O. BOX 4-1325
ANCHORAGE, ALASKA 99509
248-1515

CHAIRMAN
HOUSE JUDICIARY COMMITTEE
MEMBER
HOUSE RESOURCES COMMITTEE

Representative Charlie Bussell

ALASKA STATE LEGISLATURE
HOUSE OF REPRESENTATIVES

February 21, 1983

Ms. Nan Fawthrop
119 Seward Street, Room 9
Juneau, Alaska 99801

Dear Ms. Fawthrop:

Thank you for your telegram of February 15, 1983, supporting House Bill 84, "Smoking in Public Places and Vehicles." The House Judiciary Committee has just received this bill from the House State Affairs Committee and we have scheduled a teleconference on the 24th of February, 1983, at 1:30 p.m. (Juneau time).

Again, thank you.

Very truly yours,

Representative Charlie Bussell
Chairman, Committee on Judiciary

CB:lyn

FEBRUARY 7, 1983



MILLER FAMILY
P.O. BOX 2436
JUNEAU, AK.
99803

STATE AFFAIRS COMMITTEE
RESOURCES COMMITTEE
JUDICIARY COMMITTEE
ALASKA STATE HOUSE OF REPRESENTATIVES

DEAR PEOPLE,

WE HAVE READ HOUSE BILL NO. 84, "AN ACT RELATING TO SMOKING IN PUBLIC PLACES AND VEHICLES". WE FEEL THAT WHILE THE BILL IS AN IMPROVEMENT TO THE CURRENT STATUTES, IT FALLS FAR SHORT OF PROTECTING THE PUBLIC. WE FEEL THAT SMOKING SHOULD BE LIMITED TO ONES RESIDENCE, PRIVATE VEHICLE, OR THE OUT-OF-DOORS.

IN THE UNITED STATES, 67% vs 33% OF THE POPULATION IS NONSMOKING[1] AND WE FEEL THE STATUTES SHOULD PROTECT THE RIGHTS OF THE 67% WHO DON'T AND NOT THE PRIVILEGE OF THE 33% WHO DO. WE HOPE YOU WILL CONSIDER MAKING IT ILLEGAL TO SMOKE ANYWHERE BUT IN ONES RESIDENCE, PRIVATE VEHICLE, OR THE OUT-OF-DOORS.

THANK YOU.

SINCERELY,

Kathy Miller
Gary Miller
KATHY, SHAWN, AND GARY MILLER

1. SURGEON GENERALS REPORT, 1978

P.O. box 206
Douglas, AK. 99824

2 - 8 - 83

State Affairs

C.C.Resources and Judiciary

I wish to convey my support for House Bill No. 84. Tobacco smoke irritates my eyes, nose and throat. I resent having to restrict my activites to protect my health from others smoking



Sincerely,

Mark J. Miller

TEAMSTERS' PHARMACY

751 Old Richardson Highway
Fairbanks, Alaska 99701
(907) 452-1720



MAR 7 1983

Dear Members of the Resources Committee:

We ask your support of

House Bill 84

Lawrence D Hart

20 Feb 1982

Dear Mr Bussell:

I am a state worker who does not have her own cubicle or office. Since I work in a large room, I am affected by what others do at their desks.

I feel I have a right to decent air in my working environment. I believe HR 84 would help.

Anne Fuller
2895 Mendenhall Loop #69
Juneau
AK 99801

DATE: March 5, 1983

TO: The Judiciary Committee

FROM: Julie Mapes
P.O. Box 82450
Fairbanks, Alaska 99708

SUBJECT: House Bill 84



I understand that this bill is now before your committee. I have not read the bill, but I have been told that, if passed, it will prohibit smoking in many public areas. I **STRONGLY** urge you to support this bill.

I have a serious allergy to cigarette, cigar, and pipe smoke. I also have allergies to several other substances and foods. It is my choice not to eat those foods or to come in contact with any substance that will cause me to have a reaction. No other person can interfere with that decision with one exception. THE TOBACCO SMOKER! They may be a minority now days, but it only takes one smoker to pollute the air in a room. I do not object to other's smoking. I DO OBJECT TO BEING FORCED TO BREATHE THEIR SMOKE!!!

A few years ago, I would have been against House Bill 84 because I believed that the majority of the smokers would be considerate of non-smokers rights. The responses I have gotten from most smokers has convinced me that I was completely wrong. For example, the following are a sample of the responses I have gotten and my answers to those responses:

1) "You can take it for a little while."

It only takes two to ten minitues to start a reaction. The reaction will last anywhere from one to seven days depending on the concentration of the smoke and the length of the exposure.

2) "You better see an allergist."

I wouldn't mind seeing an allergist but what good would it do. I know most of the things I'm allergic to. All the doctor could do is prescribe medicine I don't wish to take. About seven years ago, I had to take very large doses of anti-histamines to counteract the worst reaction I've ever had. The reaction was gone within a week but I didn't feel too good. A few days later I was hospitalized for a serious bladder infection. (The

result of the anti-histamines.) Last night, I heard on the news that cancer causing agents have been found in medicine used for allergy shots. I believe the best solution would be to stop the cause. NO THANKS, NO MEDICINE FOR ME!!!

3) "AW" (This one flipped the ashes on to my desk and blew the smoke into my face."

I don't think I should repeat what I said, so I'll leave it to your imagination.

4) "Oh, I'm sorry" (This one politely put the cigarette behind his back.)

Being sorry and putting that thing behind your back doesn't do any good. It's still in the same room and it's doing just as much damage.

5) "You should get one of those air purifiers for your desk."

I work on a wide open floor with five foot partitions between the offices. Between fifteen to twenty industrial size purifiers are needed. I am not the one pulluting the air so why am I the one who is supposed to spend $30 to $130 on a purifier?

6) "Even if you weren't allergic to smoke, I wouldn't smoke around you because I know you it bothers you." (This one is the only smoking friend I have.)

Thank you, I really appreciate your courtesy!

I know I'm not the only one who is bothered by or allergic to tobacco smoke. Like many people, I avoid places where smoke is present. That even includes my husbands Lion's club socials. But there are places I can't avoid. We have to eat so I have to go to the grocery store. I have to go to work. (I'm fortunate that on our corner of the floor there are no smokers.) I can't wait to be called for jury duty and see the reaction when I say "I will not be able to serve if smoking is allowed during deliberation."

For myself, my children (who have started having minor allergy reactions to tobacco smoke), and for all non-smokers who are too shy to stand up for their rights, I once again urge you to support House Bill 84.

Thank you for your attention.

POUCH V
JUNEAU, ALASKA 99811
465-4990

P.O. BOX 4-1325
ANCHORAGE, ALASKA 99509
248-1515

CHAIRMAN
HOUSE JUDICIARY COMMITTEE
MEMBER
HOUSE RESOURCES COMMITTEE

Representative Charlie Bussell

ALASKA STATE LEGISLATURE
HOUSE OF REPRESENTATIVES

February 23, 1983

Charles M. Kaltenbach, Dr. P.H.
Executive Director, Northern Alaska
Health Resources Association, Inc.
529 5th Avenue, Suite 8
Fairbanks, Alaska 99701

SUBJECT: HB 84, Smoking in Public Places and Vehicles

Dear Dr. Kaltenbach:

Thank you for taking the time to write and express your opinion with regard to HB 84.

I wish to inform you that I was a sponsor for the bill at its introduction. HB 84 has gone through the State Affairs Committee and has just arrived at the Judiciary Committee where it is scheduled for hearing today. It has been set up as a teleconference due to the interest by people statewide who wish to have input.

Thank you again for your interest in being a part of the legislative process.

Regards,

Charlie

Representative Charlie Bussell
Chairman, Committee on Judiciary

CB:lyn

northern alaska health resources association, inc.



2-22-83
CB

February 17, 1983

The Honorable Charlie Bussell
Pouch V, MS 3100
Juneau, Alaska 99811

Dear Representative Bussell:

We are writing in support of HB 84, a bill relating to smoking in public places and vehicles. The hazards of smoking have been known for many years; however, it has only been recently that evidence has become available that there is also a risk in breathing smoke from another persons cigarette. In addition, the non-smoking public has become increasingly less tolerant of being exposed to the smoke of others, especially in places such as restaurants, theaters, and places of employment.

NAHRA has long been an advocate of school and community health education efforts which attempt to prevent children from beginning the habit of smoking and to convince those who smoke to quit. In addition, we have strongly advocated the passage and enforcement of State laws prohibiting smoking in public places. House Bill 84 proposes to strengthen and broaden the concept of protecting the non-smoker from exposure to the dangers of inhaling the smoke generated by others. We support this approach.

Sincerely,

Chas M. Kaltenbach

Charles M. Kaltenbach, Dr. P.H.
Executive Director

CMK:flr

529 5th avenue, suite 8 fairbanks, alaska 99701 telephone (907) 456-2553

Smoking HB 84 Chas Bussell Rm 126

Second hand tobacco smoke is damaging to

Many older persons

Children

The unborn

The most of the breathing, inhaling citizens who are present

I, Dove G.M. Kull, am an older person. The lining of my nasal passages, like the skin on my hands, has become thinner. As a result, tobacco smoke penetrates and bursts the blood vessels and causes nose bleed. Sometimes there is bleeding for hours, followed by blood seepage for several days until the vessels heal. It is unpleasant and annoying to be forced (because of lack of separation in restaurants, to sit by or near smokers

Please, help older persons like me to have protection

One older friend who died recently, worked in a bar for years. He was not a smoker but he suffered for years from serious emphysema.

Some physicians will not accept pregnant mothers unless they give up smoking, because of the effect on the fetus

Dove G M Kull

586-2670

2/23/83, JUNE, ANC LIO, MSG 10597

TO: SENATORS ELIASON, P. FISCHER, V. FISCHER, HALFORD, JOSEPHSN, KELLY, MOSS, PETTYJOHN, RAY, RODEY, STURGULEWSKI, AND ZIEGLER

REPRESENTATIVES ABOOD, BARNES, [redacted]SELL, CATO, CLOCKSIN, COWDERY, DAVIS, FRITZ, FURNACE, GOLL, HAYES, KOPONEN, LARSON, LISKA, MALONE, M.W. MILLER, M.H. MILLER, SHULTZ, TISCHER, VASKA, AND WENDTE,

FROM: ANN H. MORRIS, MD
PRESIDENT OF AK COUNCIL ON HEALTH OR SMOKING
P. O. BOX 4026
ANCHORAGE, AK 99501 (H) 349-3286 (W). 562-2174

CIGARETTE SMOKING IS THE #1 PREVENTABLE CAUSE OF DEATH AND DISABILITY IN AMERICA. THE ACHS URGES YOUR SUPPORT ON HB34.

****

FEB 1983
RECEIVED

POUCH V
JUNEAU, ALASKA 99811
465-4990

P.O. BOX J-1325
ANCHORAGE, ALASKA 99509
248-1515

CHAIRMAN
HOUSE JUDICIARY COMMITTEE
MEMBER
HOUSE RESOURCES COMMITTEE

Representative Charlie Bussell

ALASKA STATE LEGISLATURE
HOUSE OF REPRESENTATIVES

February 23, 1983

Robert W. Rigg, M.D.
Alaska Medical Director
SOHIO ALASKA PETROLEUM COMPANY
3111 "C" Street
Anchorage, Alaska 99502

SUBJECT: HB 84, Smoking in Public Places and Vehicles

Dear Dr. Rigg:

Thank you for taking the time to write and express your opinion with regard to HB 84.

I wish to inform you that I was a sponsor for the bill at its introduction. HB 84 has gone through the State Affairs Committee and has just arrived at the Judiciary Committee where it is scheduled for hearing today. It has been set up as a teleconference due to the interest by people statewide who wish to have input.

Thank you again for your interest in being a part of the legislative process.

Regards,

Representative Charlie Bussell
Chairman, Committee on Judiciary

CB:lyn

SOHIO ALASKA PETROLEUM COMPANY

3111 "C" STREET
ANCHORAGE, ALASKA

TELEPHONE (907) 276-5111

MAIL: POUCH 6-612
ANCHORAGE, ALASKA 99502



February 14, 1983

Representative Charlie Bussell
Alaska State Legislature
Pouch V
Juneau, Alaska 99811

Dear Representative Bussell:

As the Alaska Medical Director for Sohio Alaska Petroleum Company, I am personally committed to the preservation and maintenance of good health and safe working conditions.

The most serious preventable hazard to an individual's health is the danger from cigarette smoking and/or inhalation of second hand smoke.

I strongly encourage you to co-sponsor and support passage of House Bill 84.

It is indeed a matter of life and health versus sickness and infirmity.

Sincerely,

Robert W. Rigg, M.D.
Alaska Medical Director

RWR:jsr

February 24, 1983

P.O. Box 16007
23 Mile Chena Hot Springs Rd.
Two Rivers, Alaska 99716



3-1-83 SB

Rep. Charlie Bussell
Chairman, House Judiciary Committee
State Capitol
Pouch V
Juneau, AK 99811

I am in full support of HB 84, "An Act relating to smoking in public places and vehicles." I am very concerned about my health and the health of the other employees in my place of employment. I, as well as 76% of the employees in the building am a non-smoker; only 24% of this building's occupants smoke tobacco, primarily in cigarette form.

Fourteen people out of 56 have chosen to pollute their bodies with tobacco, however these 14 people are successful in polluting the air that everyone breathes. I am sure that you are aware of the hazardous side effects of cigarette smoke, both ingested directly into the lungs by drawing on cigarettes etc., and the "side-stream smoke" breathed by everyone, as the burning weed smolders in the ashtray.

According to Laurence H. Bates, M.D. in "Lessen Your Cancer Risk,"

> "A nonsmoker who lives with a smoker has 3.7 times the risk of developing lung cancer as the nonsmoker who lives with a mate who does not smoke. The smoke that comes from the burning end of the cigarette is breathed by both the smoker and the nonsmoker. Called 'side-stream smoke,' it contains about <u>five times</u> the amount of carbon monoxide, tar, nicotine and carcinogens as the 'mainstream smoke' that a smoker draws through the cigarette into his lungs. Some recent information indicates that side-stream smoke may be a major causative factor in cancer for the smoker, since the smoker constantly is exposed to his own side-stream smoke." (emphasis added)

I would like to further note that the majority of the time the cigarettes smoked in this building are just sitting in the ashtrays polluting the air with side-stream smoke, as the smoker is chatting on the telephone or flipping through a file. Further observations lead me to believe that our building has extremely poor ventilation and a good deal of stagnant air, therefore trapping the cigarette pollutants, and forcing everyone to inhale these pollutants.

I would like to offer several suggestions to remedy this dangerous and unhealthy working situation throughout the state.

The most effective means would be controlling the source, namely the smokers themselves, by prohibiting smoking in public buildings, as HB 84 suggests. Smoking should <u>NEVER</u> be allowed in the working offices, and if the smoker has trouble accepting the guidelines of this approach, that is their own personal problem. I believe that it is criminal for innocent

people to be subjected to a well-known carcinogen beyond their control, because smokers can't break their destructive habit.

A second, less radical approach would be to segregate smokers and non-smokers. Smokers could be put in rooms with only smokers (and any non-smoker that didn't object), and in no case would a smoker be put in a room with non-smokers. The main problem with this approach is that the continuity of certain working sections could be disrupted.

The third and least palatable of choices would be to do something about the smoke itself. Due to the antiquated air-conditioning system in our building, and lack of duct work, installing some kind of central air cleaner would certainly be out of the question, not to mention ineffective, since the smoke would actually have to travel to the registers, thereby polluting the air the cleaner was intended to purify. It is possible that offices supply smokeless ashtrays AND desk unit air cleaners for every smoker in a particular building. However, the major drawback with this approach is that the smokers would have to cooperate in using the apparatus.

I am sure by now that you have an understanding of the problem as I percieve it, and I can assure you that I am not the only person in the state of Alaska that shares these feelings. I would like to emphasize that I fully support HB 84 as written (as of this date), and I feel that any other means of controlling the smoking problem other than the actual prohibition of the practice in public buildings would be nothing but a poor and interim compromise.

I am very sincere and very concerned about my health, as well as the health of my fellow workers and all the citizens of the state, and I know that you are too. Please support and vote for HB 84 and pass it through to the House Rules Committee.

It's a matter of life and breath.

Sincerely,

Joseph S. Russo

Joseph S. Russo

4 March 1983

HB 84 (against smoking)



The Honorable Charlie Bussell, Chairman
Alaska State House Judiciary Committee

Dear Representative Bussell,

I am pleased to report that a majority of the APEA Juneau GGU members and delegates present at our 1 March 1983 monthly meeting passed a resolution of support for the anti-smoking HB84, now pending action in your committee.

I believe this spontaneous gesture of support may have greater credibility than the "smoking survey" now being conducted among State employees. Unless someone has personally suffered smoke abuse they usually don't take the problem seriously, and smokers can be expected to oppose it with habit-induced fervency. The survey's wording is being questioned. I myself never received one at home or at my work station.

I realize that peripheral developments may have terminally jeopardized the bill. It could have meant a more healthy, safe and productive working environment for State employees. Regardless of the outcome of all this, I thank you and each of your committee members for your time and for your fair hearing of my testimony.

Respectfully,

Louis R. Coatney

Louis R. Coatney
9706 Trappers Lane
Juneau, Alaska 99801
(907)789-0046

cc: Mike Miller
others

PS. I have written this letter as an individual Alaskan and individual APEA member and Juneau-GGU delegate.

March 3, 1983

TO WHOM IT MAY CONCERN:

At the regular monthly meeting of the Juneau General Government Unit of the Alaska Public Employees Association, held at APEA Headquarters conference room at 340 N. Franklin on Tuesday, March 1, 1983, the following resolution was passed by a majority vote of members present:

"WHEREAS, smoking is a health and safety hazard and may contribute to redueed productivity at the workplace; and

WHEREAS, Alaska State House Bill 84 would reduce the amount of smoking in public places;

BE IT THEREFORE RESOLVED that the majority of GGU members present at the March meeting of same do endorse House Bill 84.

Phil McMurray

Phil McMurray
APEA Juneau GGU Chapter Secretary

The resolution was proposed "off the cuff," and the wording is ours.

4343 Taku Blvd.
Juneau, Alaska 99801
March 2, 1983



The Honorable Charlie Bussell
Capitol Building #126

Dear Sir:

I would like to take this opportunity to thank you for the introduction and support of House Bill #84.

As a non-smoker who is constantly subjected to "second hand" cigarette smoke, I would like to offer whatever help I can for the passage of this bill.

I am employed by the State in the State Office Building and everyday I became ill--due to the fact that in my division of seven people, five are heavy smokers. When I discussed this problem with my supervisor, I was informed there was nothing that could be done. The smokers have the "right" to smoke while working. I'd certainly like to know who bestowed this "right." Perhaps if their smoke stopped where my air began, there wouldn't be a problem, however, a smoker can do his or her job without smoking, but when there is smoke in the air, I can't do my job without breathing it. And since one reason I don't smoke is because of the health risk, my attempt to reduce this risk is meaningless as I have no choice but to breathe the air which is smoke-filled.

Once again, let me thank you for the bill. If I can do anything beside writing to the legislators and my union, please let me know.

Sincerely,

Jacqueline A. Hatcher

JR

Teresa Sammis
General Delivery
Douglas, AK 99824

March 24, 1983

The Honorable Charlie Bussell
State Capitol
Pouch V
Juneau, AK 99811

Dear Representative Bussell:

This letter is to urge you to quick approve and pass on House Bill 84. To those of us breathing ambient smoke, every day goes slowly when we suffer from burning eyes and clogged sinuses. (And those are just the short term effects!) Obviously, the sooner the bill is passed, the sooner we will be able to breathe easily.

Please get this bill out of the Judiciary Committee, so that it can be approved and passed as soon as possible. Thank you for your consideration.

Sincerely,

Teresa Sammis

Teresa Sammis

HB84
JR



P.O. Box 1111
Wrangell, AK 99929
March 20, 1983

Representative Charlie Bussell
Pouch V
Juneau, AK 99811

Dear Representative Bussell:

I am writing you this letter to tell you my opinion on smoking in public places. My personal opinion is that it should be made illegal to smoke at public meetings and in public buildings.

Could you please write me back and tell me your opinion on this issue. Thank you for your time.

Sincerely,

Dan Vantreas

Dan Vantreas

dv

Mrs. John Goetz
PO Box 100795
Anchorage, Alaska 99510
Mrs. Goetz

POUCH V
JUNEAU, ALASKA 99811
465-4990

P.O. BOX 4-1325
ANCHORAGE, ALASKA 99509
248-1515

CHAIRMAN
HOUSE JUDICIARY COMMITTEE
MEMBER
HOUSE RESOURCES COMMITTEE

Representative Charlie Bussell

ALASKA STATE LEGISLATURE
HOUSE OF REPRESENTATIVES

March 28, 1983

Mr. Gary Miller
P. O. Box No. 2436
Juneau, Alaska 99803

Dear Mr. Miller:

Thanks for taking the time and effort to write expressing your concerns with regard to HB 84.

The Judiciary Committee has indeed spent a good deal of time hearing testimony on this bill resulting in a record for all the items you outline in your letter including the cost "guesstimate" to the State.

I do not believe there is anyone on the Committee against what the bill is intended to do, but I am concerned with getting it done.

We presently have a law on the books which if enforced, would extend relief to the problem. Creating another non-enforceable law is not my aim, nor that of the House Judiciary Committee.

We have the bill before the Committee again today with hope our staff work will combine with committee agreement on the best way to proceed, with the result being an enforceable, legal and fair law which all parties can live with.

Thanks again for writing and becoming involved in the legislative process. Together we can make a difference and do something about the state we are in.

With best regards I remain,

Sincerely,

Representative Charlie Bussell
Chairman. Committee on Judiciary

CB:lyn

MARCH 23, 1983

JR

GARY MILLER
P.O. BOX 2436
JUNEAU, AK. 99803
PH. 789-3757



CHARLIE BUSSELL
JUDICIARY COMMITTE
HOUSE OF REPRESENTATIVES

DEAR REPRESENTATIVE BUSSELL,
WHEN HOUSE BILL $84, "AN ACT RELATING TO SMOKING IN PUBLIC PLACES AND VEHICLES", CAME BEFORE THE STATE AFFAIRS AND JUDICIARY COMMITTEES, STATISTICS, STUDIES, AND THREE DAYS OF TESTIMONY WERE RECORDED. CITED WERE RECENT COURT DECISIONS, WORKERS COMPENSATION PAYMENTS, AND EARLY RETIREMENT DISABILITY PAYMENTS TO WORKERS WHO ARE SENSITIVE TO TOBACCO SMOKE DO TO AN ALLERGY, ASTHMA, OR EMPHYSEMA. THE COST OF THESE TO THE STATE OF ALASKA IS UNKNOWN, BUT THERE IS ONE COST THAT CAN BE ESTIMATED AND IT WAS OVERLOOKED.

THE AMERICAN CANCER SOCIETY WROTE IN 1981, "...THE AVERAGE PACK-A-DAY SMOKER COSTS A COMPANY $625-$750 PER YEAR IN INCREASED EXPENSES." THE ALASKA DEPARTMENT OF LABOR'S RESEARCH AND ANALYSIS UNIT REPORTED AN AVERAGE MONTHLY NUMBER OF STATE EMPLOYEES FOR 1980 AT 15,370. THE SURGEON GENERAL REPORTS THAT 33% OF THE ADULT POPULATION SMOKES SO THERE ARE APPROXIMATELY 5,072 STATE EMPLOYEES WHO SMOKE. USING THE ABOVE FIGURES, THE INCREASED EXPENSES TO THE STATE BECAUSE OF SMOKING EMPLOYEES CAN BE ESTIMATED:

5,072	SMOKING STATE EMPLOYEES	5,072
x625	DOLLARS	x750
$3,170,000		$3,804,000

SINCERELY,
Gary Miller
GARY MILLER

Letters

Smoking

Dear Editor:

House Bill 84, "An act relating to smoking in public places and vehicles," is not a bill just for the health conscious person who is into aerobic exercise, jogging, etc. It is more than a statement by the 2/3 population, which does not smoke, to the 1/3 that does, to give us a place to breathe smoke-free air. The bill: addresses the health hazards of second hand smoke, acknowledges the recent court decision concerning rights of nonsmokers, and takes note of the cost of smoking to the public.

It has been estimated the State of Alaska pays increased expenses for its smoking employees in excess of three million dollars annually. Alaska also pays workers compensation to people who lose work time because of smoke conditions making them too ill to work.

Some private industry is addressing the smoking problem now. IBM, 3M, and AT&T have set up separate areas for their nonsmoking employees. Some employers have set up separate areas because of court decisions.

In 1976, a New Jersey court ruled against New Jersey Bell Telephone Co. stating that companies have a duty to give workers a smoke free work area if they want it. In August 1982, Lanny L. Vickers vs. the Veterans Administration, the United States District Court, Western District of Washington, ruled that a person who is physically sensitive to smoke qualifies as handicapped person as defined in 29 U.S.C. 706(7) (B). In October 1982, the United States Court of Appeals, ninth circuit, (Irene C. Parodi vs. Merit Protection Board) ruled a person is eligible for voluntary disability retirement benefits if that person is medically not able to perform the job because of sensitivity to smoke in the work place and the employer does not offer "... Suitable employment in a safe environment ..." Werner H. Peterke, a former Social Security administration worker, was awarded approximately $700 every two weeks in employee compensation payments on the grounds that he suffered from the smoke of fellow employees at work.

Medical research has linked ambient smoke to medical problems in nonsmokers. Children of parents who smoke are more prone to bronchial ailments. Nonsmoking wives of smokers have higher lung cancer rates than nonsmoking wives of nonsmokers.

House bill 84 represents an issue whose time has come. It has moved from arguments between smokers and nonsmokers to a bill before the legislature. It could very well go on to become law. If you have an interest, contact your legislator at Pouch V, Juneau, Alaska, 99811.

Gary Miller
P.O. Box 2436
Juneau, Alaska



Judiciary Referral

OK Lumber Company, Inc.

SR 40292/4 MILE STEESE - P. O. BOX 10449 - FAIRBANKS, ALASKA 99701 - (907) 456-6270

Representative Charlie Bussel
Alaska State Legislature
Pouch V
Juneau Ak 99811

Dear Mr. Bussel...

Please Get with the program on HB84. Its time that the None smoking population had some protection. I have a lumber yard and it really upsets me the way some of the general public abuse the rights of others.....and totally disrespect the facilities , by their careless use of cigarettes and other smokes... I have a hard time keeping up with the insurance costs as it is...let alone smokers who just mash out thier smokes on the floor and flipping thier cigarette butts carelessly anywhere in the yard. Even with signs out...they don't pay attention.

Thank you...I assume that you will be prompt on this bill, and I urge you to support this bill.

Angie Kruckenberg

HB84
Judiciary
Referral

May 3, 1983



Representative Charlie Bussell,
Chairman, Committee on Judiciary
Ak. State Legislature

Dear Mr. Bussell,

On Feb. 15th your committee received H.B. #84. After it was there seven weeks you wrote in reply to my previous letter that you expected to have it out of committee by April 15th. That was nearly 3 weeks ago and still the bill awaits action.

This bill is of considerable importance to many Alaskans: those who are asthmatic, those allergic to tobacco smoke, and those who resent being to breathe someone else's foul smoke. Medical data has recently shown this bill to be of importance to everyone who ~~don't smoke~~ whether or not they fall into one of these categories for all non-smokers suffer damage to their small airways when forced to inhale drifting tobacco smoke.

Presently all non-smoking Alaskans are forced to do just that! They must stand by unprotected in most public places and watch their right to breathe clean air be completely disregarded by certain insensitive smokers. H.B. #84 will correct this situation - but it needs your support and your immediate action to get it to the floor. Won't you please give it and non-smokers a chance?

Sincerely,

Grant B. Carlin
SR Box 20784
Fairbanks, Ak
99701

NO "IFS", "AND" OR "BUTTS"

These are the facts and Nordale intermediate students would like to share them with you:

- - - Each year 300,000 Americans die prematurely from the effects of smoking.

- - - Ninety percent of all lung cancer cases occur in smokers.

- - - If you are a male and smoke two packs a day, you have a ten times greater chance of getting lung cancer than a non-smoking male.

- - - More than twice as many smokers die each year from coronary heart disease than non-smokers.

- - - Cigarettes are the major cause of home fire deaths and injuries in the United States each year.

- - - Cigarette smoke contains thousands of harmful chemicals including poisons such as arsenic, formaldehyde, cresote, ammonia and hydrogen cyanide.

- - - Breathing someone else's tobacco smoke is harmful.

- - - Two million asthma attacks among non-smokers are caused by breathing someone else's smoke.

- - - Persons suffering from angina can have an attack induced by breathing another person's smoke

- - - Children of parents who both smoke are likely to have twice as many respiratory illness as kids raised in a smoke free home.

- - - Infants in their first year of life have a higher rate of pneumonia if their parents smoke than they would have if their parents did not smoke.

- - - Smoking when pregnant can cause stillbirths, pre-mature births, or smaller size babies.

- - - Breathing someone else's cigarette smoke frequently causes these effects in the non-smoker; headache, cough, eye irritation, and nasal discomfort.

- - - Breathing cigarette smoke either as a smoker or non-smoker increases your heart rate, raises your blood pressure and puts carbon monoxide in your blood.

- - - More than one-half of all physicians, dentists and druggists have quit smoking since the Surgeon General's Report in 1964.

- - - Parental smoking is the major cause of their children's smoking.

SOURCE OF DATA AVAILABLE UPON REQUEST

Judiciary
Referral

1024 Fifth Avenue
Fairbanks, Alaska 99701
May 2, 1983

The Honorable Charlie Bussel
Alaska Legislature
House Judiciary Committee
Pouch V
Juneau, Alaska 99811

Dear Representative Bussel:

I am writing to urge your action within committee on House Bill 84, to increase the penalties for smoking in public places and vehicles.

As you must be aware, smoking has a direct affect on the health of everyone in the presence of those who smoke. As a former cancer patient who was specifically ordered by my physician to stay away from cigarette smoke, I am in strong support of House Bill 84. While I don't want to infringe upon the rights of others, I feel that here is a case where the smokers are infringing on the rightsof everyone else. In the instances where I must enter public buildings and vehicles, I don't want to be forced to breathe air filled with cigarette smoke and thus endanger my own health.

Smoking is not a necessary function of the human body. It is a habit, just as chewing gum,drinking liquor etc. etc. etc. We don't allow people to drink liquor on public vehicles or in other public areas. Frankly, I'd prefer that to the smokers and I don't prefer either one. At that point where one's habits become a danger to the health of another, they are no longer and right....and I'm sure any cancer specialist in the state or country will verify for you the danger cigarette smoke poses to the health of all of us, particularly those whose medical history includes cancer.

Please stop sitting on this legislation and get it out of committee.

Thank you.

Sincerely,

Margaret Bauman

Margaret Bauman

3/22/84, SHIRLEE ANC LIO, 27607

TO: ALL MEMBERS
ALASKA HOUSE OF REPRESENTATIVES

FROM: RUTH SUTTON, ADMINISTRATIVE ASSISTANT
HOME HEALTH CARE, INC.
4107 LAUREL STREET, SUITE 2
ANCHORAGE, AK 99508
(H) 248-7430 (W) 561-2162

SUBJ: HOUSE BILL 84 (SMOKING IN PUBLIC PLACES AND VEHICLES)

WE SUPPORT SENATE AMENDED VERSION OF HOUSE BILL 84.

****


RECEIVED

[illegible]

[illegible]

[illegible]



MSG 84-00027561 PRTY 1 03/22/84 15:40:57 ORIG: LF00 IN= 0009 OUT= 0116
FROM: ANNIE IN FAIRBANKS TO: JUNEAU INFO.
TARGET LJHK SUBJ: POM

TO: ALL MEMBERS OF THE HOUSE

FROM: DR. RICHARD PARRY
ALASKA STATE MEDICAL ASSOC.
4107 LAUREL ST.
ANCHORAGE 99504
WORK 562-2662

RE: SCS CS HB84(FIN) AM S SMOKING IN PUBLIC PLACES

AS A MEMBER OF THE COALITION FOR HB84 WE URGE YOU TO ACCEPT THE SENATE VERSION OF THIS BILL.

****



MSG 84-00027634 PRTY 1 03/22/84 17:03:47 ORIG: LA01 IN= 0007 OUT= 0145
FROM: DAVE/ANC LIO TO: POM - JNO LIO
TARGET: LJHK SUBJ: POM

TO: ALL MEMBERS OF THE HOUSE.

FROM: CLINTON LILLIBRIDGE
STATE PRESIDENT
AMERICAN ACADAMY OF PEDIATRICS
SUITE 117
4001 DALE
ANCHORAGE, AK 99508
563-1948

RE: HB 84

MESSAGE: THE ACADAMY IS STRONGLY IN FAVOR OF THE MODIFIED BILL AS PASSED BY THE SENATE TODAY. WE URGE PASSAGE BY THE HOUSE.

MSG 83-00014975 PRTY 1 05/05/83 08:58:09 ORIG LS00 IN= 0002 OUT= 0008
FROM: SITKA TO: JUNEAU
TARGET: LJHL SUBJ: POM

DR

TO: REPRESENTATIVE BUSSELL, CHAIRMAN, HOUSE JUDICIARY COMMITTEE
AND REPRESENTATIVE LISAK, VICE CHAIRMAN
AND REPRESENTATIVES HAYES, BARNES, MALONE, CLOCKSIN, AND WENDTE

FROM:
GARY SHORT
STAR ROUTE, 144 WOLFF DRIVE
SITKA, ALASKA 99835 747-8158

I WOULD LIKE TO HAVE THESE COMMENTS MADE A PART OF YOUR COMMITTEE'S CONSIDERATION OF HB 84 TODAY.

I'M TIRED OF PEOPLE BEING FORCED TO SMOKE --- MY ELEMENTARY CHILDREN AT SCHOOL, PEOPLE IN HOSPITALS AND PUBLIC TRANSPORTATION, ETC. THERE HAS BEEN LITTLE DONE TO INSURE THE RIGHTS OF THE NON-SMOKER AND MUCH TO INSURE THAT THE SMOKER HAS THE RIGHT TO INFLICT THEIR HABIT ON OTHERS. THE NON-SMOKER SHOULD HAVE RIGHTS TOO. PLEASE GIVE THEM SOME.

##
MAY 5, 1983 ELAINE/SITKA LIO 14975

MSG 83-00010510 PRTY 1 04/20/83 16:35:37 ORIG: LS00 IN= 0019 OUT= 0143
FROM: FALEENE, SITKA TO: JUNEAU INFO
TARGET: LJHL SUBJ: POM

TO: (H) JUDICIARY CMTE. MEMBERS: REPRESENTATIVES BUSSELL, LISKA, HAYES, BARNES, MALONE, CLOCKSIN, AND WENDTE

Judiciary Referral

FROM: GARY SHORT
S.R. 144 WOLF DRIVE
SITKA, AK 99835 (H)747-8518

PLEASE MAKE MOVEMENT ON HB 84. WHEN YOU DO SO, PLEASE DO ALL POSSIBLE TO CURTAIL SMOKING IN SCHOOLS, ESPECIALLY BY STAFF.

####4/20, FALEENE, SITKA LIO, 10510####



MSG 83-00006331 PRTY 1 04/07/83 12:48:42 ORIG: LF02 IN= 0006 OUT= 0068
FROM: ANNIE IN FAIRBANKS TO: JUNEAU INFO.
TARGET: LJHL SUBJ: FOM

Judiciary Referral

TO: HOUSE JUDICIARY: REPRESENTATIVES RUSSELL, LISKA, HAYES, BARNES, MALONE, CLOCKSIN, WENDTE

FROM: DOUG YATES, 408 7TH AVE., FAIRBANKS 99701 HOME 452-2413

RE HB84

I URGE YOU TO FAVORABLY ACT ON HB84. THIS IS LONG OVERDUE LEGISLATION THAT WILL PROTECT THE NON-SMOKING MAJORITY WHEN VISITING PUBLIC PLACES, RESTAURANTS, GROCERY STORES, ETC. THE EFFECTS OF SECOND HAND TOBACCO SMOKE ARE A DEFINITE HEALTH HAZARD TO THE PUBLIC AT LARGE. PLEASE ACT RESPONSIBLY.

EOM**********

MSG 83-00013506 PRTY 1 04/29/83 16:51:51 ORIG: LF01 IN= 0034 OUT= 0136
FROM: ANNIE IN FAIRBANKS TO: JUNEAU INFO.
TARGET: LJHL SUBJ: POM

TO: REPRESENTATIVES BUSSELL, LISKA, BARNES, MALONE, HAYES, CLOCKSIN, WENDTE

FROM: LIZ GRAY, 215 INA ST., FAIRBANKS 99701 HOME 456-3367 W-452-1776

RE: HB 84

PLEASE MOVE HB84 OUT OF JUDICIARY COMMITTEE! FURTHER DELAY ON THIS BILL IS UNACCEPTABLE, AS I UNDERSTAND THAT THIS COMMITTEE HAS HAD HB84 SINCE FEBRUARY 15. MY LUNGS AND I WILL THANK YOU FOR YOUR PROMPT ATTENTION IN GETTING SOME ACTION ON HB84.

****

MSG 83-00012964 PRTY 1 04/28/83 13:12:08 ORIG: LAC1 IN= 0005 OUT= 0045
FROM: JUNE, ANC LIO TO: POR, JNU INFO
TARGET: LJHL SUBJ: POM

4/28/83, JUNE, ANC LIO, MSG 12964

TO: REPRESENTATIVES BARNES, BUSSELL, HAYES, LISKA, MALONE, AND WENDTE

FROM: LINDA HARVEY, 5131 HATCHER CIRCLE, ANCHORAGE, AK 99504
H-333-5276 W-276-3441 EX-253

PLEASE SUPPORT HB 84. EVERYTIME SOMEONE LIGHTS UP A CIGARETTE, THEY ANNIHILATE MY CHOICE TO NOT POLLUTE MY BODY IN THIS MANNER.I HAVE A RIGHT TO CHOOSE NOT TO SMOKE. PLEASE SUPPORT THAT RIGHT..

POUCH V
JUNEAU, ALASKA 99811
(907) 465-4990

Alaska State Legislature
HOUSE OF REPRESENTATIVES

REPRESENTATIVE
CHARLIE BUSSELL
CHAIRMAN

Committee on Judiciary

April 30, 1983

Liz Gray
215 Ina Street
Fairbanks, Alaska 99701

Dear Ms. Gray:

I would like to thank you for the time that you have taken in relation to HB 84. I also appreciate the brief telephone conversation we had on this date.

Enclosed you will find the Committee Substitute for HB 84. The Committee, along with many others, have put considerable work into this legislation. We feel that the changes will enhance the passage of the bill.

CSHB 84 is scheduled for hearing on Thursday, May 5, at 1:30 p.m. At this time, we plan to move the bill from Committee, with perhaps minor amendments. The bill will then be forwarded to the Finance Committee. It is my hope that the Finance Committee will act quickly on this legislation.

I want you to know how much we appreciate the involvement of the citizens of the State of Alaska in the legislative process. Working together is the way to make our State a better place in which to live.

Sincerely,

Representative Charlie Bussell
Chairman, Committee on Judiciary

Enc.

CB:cmz

MEMBERS:
REP. JOHN LISKA, VICE CHAIRMAN; REP. RAMONA BARNES, EMERITUS;
REP. JOE HAYES; REP. HUGH MALONE; REP. DON CLOCKSIN; REP. RON WENDTE

Dear Members of the Judiciary Committee:

I am writing to ask your support of House Bill 84, which provides long overdue health protection to non-smokers in Alaska. The present statute is inadequate in that it does not go nearly far enough to guarantee everyone's right to breathe clean air. As a non-smoker, I can attest to this fact because:

yes I frequently have had meals ruined while eating in restaurants, due to drifting tobacco smoke.

yes I have experienced extreme discomfort while waiting in line in banks. supermarkets, and other retail establishments, due to someone else's smoking habit.

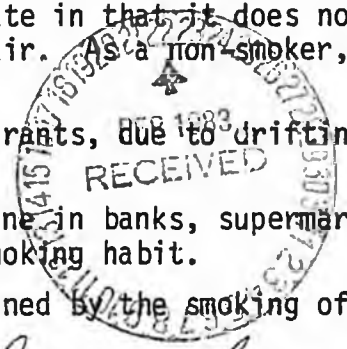
yes Where I work, I am constantly annoyed and sometimes sickened by the smoking of my fellow employees.

How this bill is treated by your committee will show Alaskan voters whether their representatives really represent them or instead owe their allegiance to the tobacco lobby.

Signed: _____ Date: _____

...e Resources Committee:

...o ask your support of House Bill 84, which provides long overdue health pro-...kers in Alaska. The present statute is inadequate in that it does not go ...to guarantee everyone's right to breathe clean air. As a non-smoker, I can ...t because:



X I frequently have had meals ruined while eating in restaurants, due to drifting tobacco smoke.

X I have experienced extreme discomfort while waiting in line in banks, supermarkets, and other retail establishments, due to someone else's smoking habit.

___ Where I work, I am constantly annoyed and sometimes sickened by the smoking of my fellow employees.

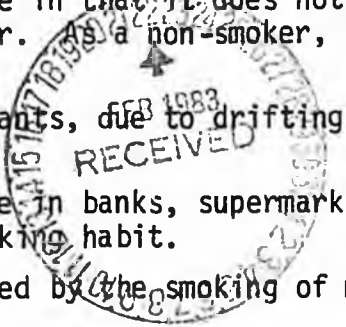
X The beauty shop is unpleasant because of smokers.

How this bill is treated by your committee will show Alaskan voters whether their representatives really represent them or instead owe their allegiance to the tobacco lobby.

Signed: Joan E. Bower Date: 2-10-83

Dear Members of the Resources Committee:

I am writing to ask your support of House Bill 84, which provides long overdue health protection to non-smokers in Alaska. The present statute is inadequate in that it does not go nearly far enough to guarantee everyone's right to breathe clean air. As a non-smoker, I can attest to this fact because:



X I frequently have had meals ruined while eating in restaurants, due to drifting tobacco smoke.

X I have experienced extreme discomfort while waiting in line in banks, supermarkets, and other retail establishments, due to someone else's smoking habit.

X Where I work, I am constantly annoyed and sometimes sickened by the smoking of my fellow employees.

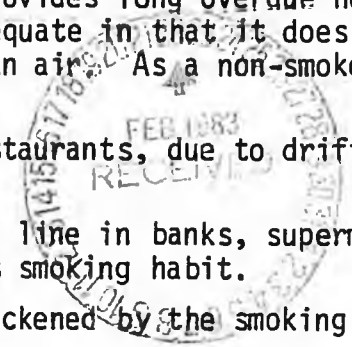
X Smoking has ruined the health of friends & relatives

How this bill is treated by your committee will show Alaskan voters whether their representatives really represent them or instead owe their allegiance to the tobacco lobby.

Signed: Donald A. Callahan Jr Donald A. Callahan, Jr Date: 2/10/83

Dear Members of the Resources Committee:

I am writing to ask your support of House Bill 84, which provides long overdue health protection to non-smokers in Alaska. The present statute is inadequate in that it does not go nearly far enough to guarantee everyone's right to breathe clean air. As a non-smoker, I can attest to this fact because:



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✓ I have experienced extreme discomfort while waiting in line in banks, supermarkets, and other retail establishments, due to someone else's smoking habit.

___ Where I work, I am constantly annoyed and sometimes sickened by the smoking of my fellow employees.

___ _____

How this bill is treated by your committee will show Alaskan voters whether their representatives really represent them or instead owe their allegiance to the tobacco lobby.

Signed: Marilyn K. Wenglick Date: 2/9/83

Dear Members of the Resources Committee:

I am writing to ask your support of House Bill 84, which provides long overdue health protection to non-smokers in Alaska. The present statute is inadequate in that it does not go nearly far enough to guarantee everyone's right to breathe clean air. As a non-smoker, I can attest to this fact because:

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X I have experienced extreme discomfort while waiting in line in banks, supermarkets, and other retail establishments, due to someone else's smoking habit.

___ Where I work, I am constantly annoyed and sometimes sickened by the smoking of my fellow employees.

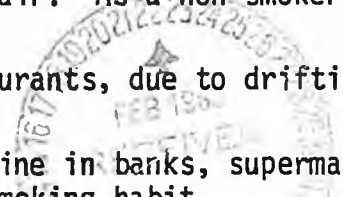
___ _____

How this bill is treated by your committee will show Alaskan voters whether their representatives really represent them or instead owe their allegiance to the tobacco lobby.

Signed: Mildred A. Snodgrass Date: 2/15/83

ear Members of the Resources Committee:

I am writing to ask your support of House Bill 84, which provides long overdue health protection to non-smokers in Alaska. The present statute is inadequate in that it does not go early far enough to guarantee everyone's right to breathe clean air. As a non-smoker, I can ttest to this fact because:



X I frequently have had meals ruined while eating in restaurants, due to drifting tobacco smoke.

X I have experienced extreme discomfort while waiting in line in banks, supermarkets, and other retail establishments, due to someone else's smoking habit.

___ Where I work, I am constantly annoyed and sometimes sickened by the smoking of my fellow employees.

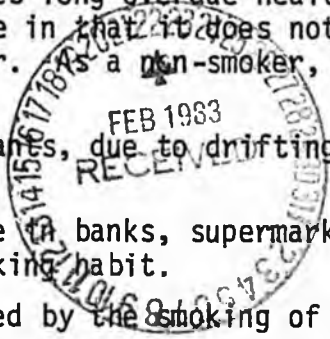
X On trains where people smoke it is extremely annoying because of the small space

low this bill is treated by your committee will show Alaskan voters whether their representatives eally represent them or instead owe their allegiance to the tobacco lobby.

Signed: Susan Holleday Date: 2/12/85

Dear Members of the Resources Committee: FEB 18 1983

I am writing to ask your support of House Bill 84, which provides long overdue health protection to non-smokers in Alaska. The present statute is inadequate in that it does not go nearly far enough to guarantee everyone's right to breathe clean air. As a non-smoker, I can attest to this fact because:



- ✓ I frequently have had meals ruined while eating in restaurants, due to drifting tobacco smoke.
- ✓ I have experienced ~~extreme~~ discomfort while waiting in line in banks, supermarkets, and other retail establishments, due to someone else's smoking habit.
- ___ Where I work, I am constantly annoyed and sometimes sickened by the smoking of my fellow employees.

How this bill is treated by your committee will show Alaskan voters whether their representatives really represent them or instead owe their allegiance to the tobacco lobby.

Signed: [signature] Date: 2-15-83

Dear Members of the Judiciary Committee:

I am writing to ask your support of House Bill 84, which provides long overdue health protection to non-smokers in Alaska. The present statute is inadequate in that it does not go nearly far enough to guarantee everyone's right to breathe clean air. As a non-smoker, I can attest to this fact because:

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✓ I have experienced extreme discomfort while waiting in line in banks, supermarkets, and other retail establishments, due to someone else's smoking habit.

✓ Where I work, I am constantly annoyed and sometimes sickened by the smoking of my fellow employees.

_____

How this bill is treated by your committee will show Alaskan voters whether their representatives really represent them or instead owe their allegiance to the tobacco lobby.

Signed: J C [illegible] Date: 2-10-83

Dear Members of the Judiciary Committee:

I am writing to ask your support of House Bill 84, which provides long overdue health protection to non-smokers in Alaska. The present statute is inadequate in that it does not go nearly far enough to guarantee everyone's right to breathe clean air. As a non-smoker, I can attest to this fact because:

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- ✓ Where I work, I am constantly annoyed and sometimes sickened by the smoking of my fellow employees.
- _____

How this bill is treated by your committee will show Alaskan voters whether their representatives really represent them or instead owe their allegiance to the tobacco lobby.

Signed: John E. Nelson Date: 2/10/83

Judiciary Committee:

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ers in Alaska. The present statute is inadequate in that it does not go
o guarantee everyone's right to breathe clean air. As a non-smoker, I can
t because:

tly have had meals ruined while eating in restaurants, due to drifting
moke.

* * I have experienced extreme discomfort while waiting in line in banks, supermarkets, and other retail establishments, due to someone else's smoking habit.

__ Where I work, I am constantly annoyed and sometimes sickened by the smoking of my fellow employees. I don't work – however being around smoke
ma[illegible] me.

How this bill [illegible] treated by your committee will show Alaskan voters whether their representatives really represent them or instead owe their allegiance to the tobacco lobby.

Signed: Sylvia Burns Date: 2/13/83

e Judiciary Committee:

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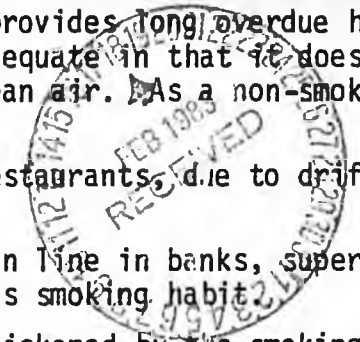

✓ I frequently have had meals ruined while eating in restaurants, due to drifting tobacco smoke.

✓ I have experienced extreme discomfort while waiting in line in banks, supermarkets, and other retail establishments, due to someone else's smoking habit.

___ Where I work, I am constantly annoyed and sometimes sickened by the smoking of my fellow employees.

✓ On Buses and Trains I [illegible] feel sick when other passengers smoke

How this bill is treated by your committee will show Alaskan voters whether their representatives really represent them or instead owe their allegiance to the tobacco lobby.

Signed: Naomi [illegible] Date: Feb 12 1983

FEB 1983 RECEIVED

Dear Members of the Judiciary Committee:

I am writing to ask your support of House Bill 84, which provides long overdue health protection to non-smokers in Alaska. The present statute is inadequate in that it does not go nearly far enough to guarantee everyone's right to breathe clean air. As a non-smoker, I can attest to this fact because:

- [X] I frequently have had meals ruined while eating in restaurants, due to drifting tobacco smoke.
- [X] I have experienced extreme discomfort while waiting in line in banks, supermarkets, and other retail establishments, due to someone else's smoking habit.
- [ ] Where I work, I am constantly annoyed and sometimes sickened by the smoking of my fellow employees.
- [ ] _____

How this bill is treated by your committee will show Alaskan voters whether their representatives really represent them or instead owe their allegiance to the tobacco lobby.

Signed: Samuel D. Skaggs Date: 2/14/83

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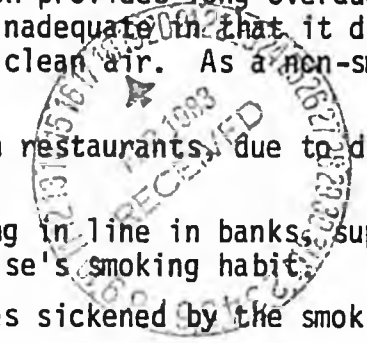

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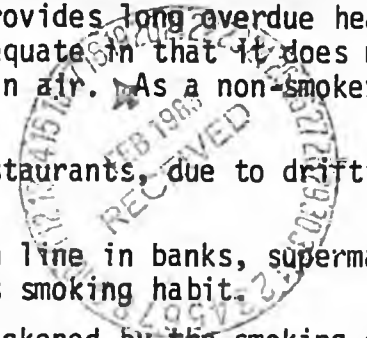
_____

How this bill is treated by your committee will show Alaskan voters whether their representatives really represent them or instead owe their allegiance to the tobacco lobby.

Signed: Jamie E. Weinstein Date: 2/16/83

Dear Members of the Judiciary Committee:

I am writing to ask your support of House Bill 84, which provides long overdue health protection to non-smokers in Alaska. The present statute is inadequate in that it does not go nearly far enough to guarantee everyone's right to breathe clean air. As a non-smoker, I can attest to this fact because:



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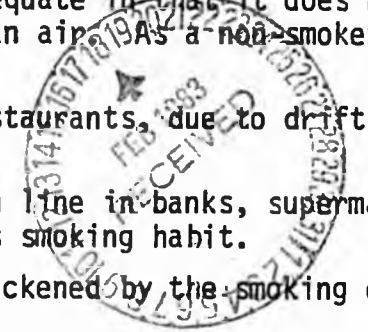
___ _____

How this bill is treated by your committee will show Alaskan voters whether their representatives really represent them or instead owe their allegiance to the tobacco lobby.

Signed: David J Fitz Date: 2/14/83

Dear Members of the Judiciary Committee:

I am writing to ask your support of House Bill 84, which provides long overdue health protection to non-smokers in Alaska. The present statute is inadequate in that it does not go nearly far enough to guarantee everyone's right to breathe clean air. As a non-smoker, I can attest to this fact because:



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___ _____

How this bill is treated by your committee will show Alaskan voters whether their representatives really represent them or instead owe their allegiance to the tobacco lobby.

Signed: [signature] Date: 2-14-83

FEB 1983 RECEIVED

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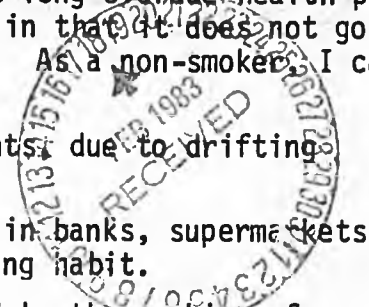


✓ I frequently have had meals ruined while eating in restaurants due to drifting tobacco smoke.

✓ I have experienced extreme discomfort while waiting in line in banks, supermarkets, and other retail establishments, due to someone else's smoking habit.

___ Where I work, I am constantly annoyed and sometimes sickened by the smoking of my fellow employees. have been but not as much at this time.

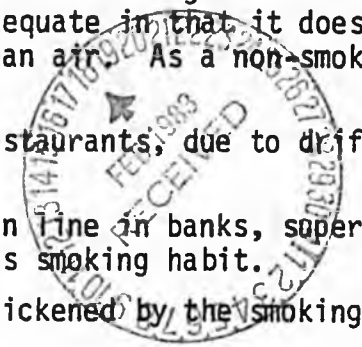
✓ Jury duty wld be difficult if there is smoking in the jury room.

How this bill is treated by your committee will show Alaskan voters whether their representatives really represent them or instead owe their allegiance to the tobacco lobby.

Signed: Karen Kowalski Date: 2/14/83

Dear Members of the Judiciary Committee:

I am writing to ask your support of House Bill 84, which provides long overdue health protection to non-smokers in Alaska. The present statute is inadequate in that it does not go nearly far enough to guarantee everyone's right to breathe clean air. As a non-smoker, I can attest to this fact because:



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___ Where I work, I am constantly annoyed and sometimes sickened by the smoking of my fellow employees.

___ _____

How this bill is treated by your committee will show Alaskan voters whether their representatives really represent them or instead owe their allegiance to the tobacco lobby.

Signed: Michael A. Bruce M.D. Date: 2/14/83

of the Judiciary Committee:

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bacco smoke.

I have experienced extreme discomfort while waiting in line in banks, supermarkets,
and other retail establishments, due to someone else's smoking habit.

Where I work, I am constantly annoyed and sometimes sickened by the smoking of my
fellow employees.

Please help us all to equal rights - I feel the impact of Smoke [illegible] !!

bill is treated by your committee will show Alaskan voters whether their representatives
present them or instead owe their allegiance to the tobacco lobby.

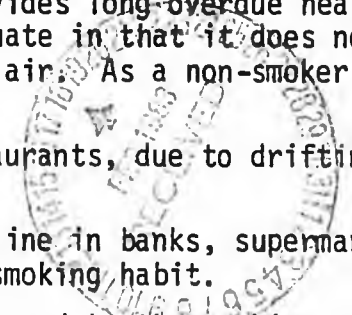
Sam Lamont

Date: 10 Feb 83

RECEIVED 1983

...mbers of the State Affairs Committee:

I am writing to ask your support of House Bill 84, which provides long-overdue health protection to non-smokers in Alaska. The present statute is inadequate in that it does not go nearly far enough to guarantee everyone's right to breathe clean air. As a non-smoker, I can attest to this fact because:



✓ I frequently have had meals ruined while eating in restaurants, due to drifting tobacco smoke.

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___ Where I work, I am constantly annoyed and sometimes sickened by the smoking of my fellow employees.

___ _____

How this bill is treated by your committee will show Alaskan voters whether their representatives really represent them or instead owe their allegiance to the tobacco lobby.

Signed: Emily Kanak Date: 2/9/83

Judiciary Committee:

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X I have experienced extreme discomfort while waiting in line in banks, supermarkets, and other retail establishments, due to someone else's smoking habit.

X Where I work, I am constantly annoyed and sometimes sickened by the smoking of my fellow employees.

X The World is a No Smoking Section! It is the Smokers who need to be segregated Not the Breathers!

How this bill is treated by your committee will show Alaskan voters whether their representatives really represent them or instead owe their allegiance to the tobacco lobby.

Signed: Richard Lehmann Date: 2/13/82

Judiciary Committee:

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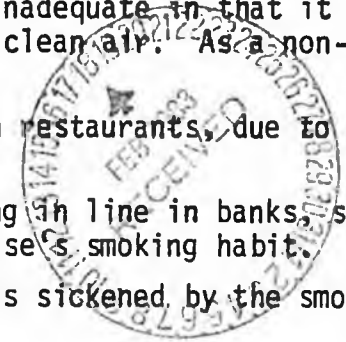

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✓ Where I work, I am constantly annoyed and sometimes sickened by the smoking of my fellow employees.

___ _____

How this bill is treated by your committee will show Alaskan voters whether their representatives really represent them or instead owe their allegiance to the tobacco lobby.

Signed: Margaret Brennan Date: 15 Feb 88

Judiciary Committee:

[redacted] ask your support of House Bill 84, which provides long overdue health pro-
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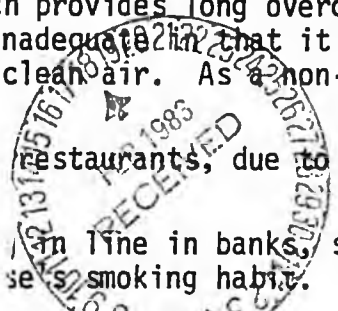

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- ✓ I have experienced extreme discomfort while waiting in line in banks, supermarkets and other retail establishments, due to someone else's smoking habit.
- ✓ Where I work, I am constantly annoyed and sometimes sickened by the smoking of my fellow employees.
- ___ _____

How this bill is treated by your committee will show Alaskan voters whether their representatives really represent them or instead owe their allegiance to the tobacco lobby.

Signed: [redacted] Date: 13 Feb 83

Dear Members of the Judiciary Committee:

I am writing to ask your support of House Bill 84, which provides long overdue health protection to non-smokers in Alaska. The present statute is inadequate in that it does not go nearly far enough to guarantee everyone's right to breathe clean air. As a non-smoker, I can attest to this fact because:

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___ Where I work, I am constantly annoyed and sometimes sickened by the smoking of my fellow employees.

___ _____

How this bill is treated by your committee will show Alaskan voters whether their representatives really represent them or instead owe their allegiance to the tobacco lobby.

Signed: Barbara M. Tabbert Date: 2-11-83

of the Judiciary Committee:

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have experienced extreme discomfort while waiting in line in banks, supermarkets,
d other retail establishments, due to someone else's smoking habit.

here I work, I am constantly annoyed and sometimes sickened by the smoking of my
~~fellow~~ employees.

How this bill is treated by your committee will show Alaskan voters whether their representatives really represent them or instead owe their allegiance to the tobacco lobby.

Signed: Dennis W Jeffers ODS Date: 2/14/83

Dear Members of the Judiciary Committee:

I am writing to ask your support of House Bill 84, which provides long overdue health protection to non-smokers in Alaska. The present statute is inadequate in that it does not go nearly far enough to guarantee everyone's right to breathe clean air. As a non-smoker, I can attest to this fact because:

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___ _____

How this bill is treated by your committee will show Alaskan voters whether their representatives really represent them or instead owe their allegiance to the tobacco lobby.

Signed: Ruth E J Ewig Date: 2-11-83

Dear Members of the Judiciary Committee:

I am writing to ask your support of House Bill 84, which provides long overdue health protection to non-smokers in Alaska. The present statute is inadequate in that it does not go nearly far enough to guarantee everyone's right to breathe clean air. As a non-smoker, I can attest to this fact because:

- ✓ I frequently have had meals ruined while eating in restaurants, due to drifting tobacco smoke.
- ✓ I have experienced extreme discomfort while waiting in line in banks, supermarkets, and other retail establishments, due to someone else's smoking habit.
- ✓ Where I work, I am constantly annoyed and sometimes sickened by the smoking of my fellow employees.
- Protection for non-smokers in public places is long overdue.

How this bill is treated by your committee will show Alaskan voters whether their representatives really represent them or instead owe their allegiance to the tobacco lobby.

Signed: Grant B Carlson Date: 2-10-83

rs of the Judiciary Committee:

riting to ask your support of House Bill 84, which pro ides long overdue health pro- non-smokers in Alaska. The present statute is inadequate in that it does not go enough to guarantee everyone's right to breathe clean air. As a non-smoker, I can his fact because:

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___ _____

How this bill is treated by your committee will show Alaskan voters whether their representatives really represent them or instead owe their allegiance to the tobacco lobby.

Signed: Nancy C. Flocking Ester, Alaska 99725 Date: 2-10-83

Dear Members of the Judiciary Committee:

I am writing to ask your support of House Bill 84, which provides long overdue health protection to non-smokers in Alaska. The present statute is inadequate in that it does not go nearly far enough to guarantee everyone's right to breathe clean air. As a non-smoker, I can attest to this fact because:

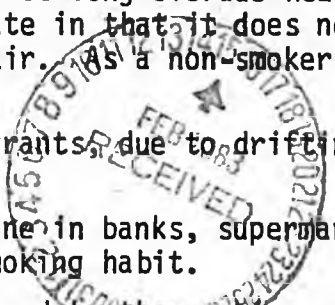
- ✓ I frequently have had meals ruined while eating in restaurants, due to drifting tobacco smoke.
- ✓ I have experienced extreme discomfort while waiting in line in banks, supermarkets, and other retail establishments, due to someone else's smoking habit.
- ✓ Where I work, I am constantly annoyed and sometimes sickened by the smoking of my fellow employees.
- ✓ My children and I suffer severely from allergies to smoke

How this bill is treated by your committee will show Alaskan voters whether their representatives really represent them or instead owe their allegiance to the tobacco lobby.

Signed: [signature] Date: 2/10/83

Dear Members of the Judiciary Committee:

I am writing to ask your support of House Bill 84, which provides long overdue health protection to non-smokers in Alaska. The present statute is inadequate in that it does not go nearly far enough to guarantee everyone's right to breathe clean air. As a non-smoker, I can attest to this fact because:



X I frequently have had meals ruined while eating in restaurants, due to drifting tobacco smoke.

X I have experienced extreme discomfort while waiting in line in banks, supermarkets, and other retail establishments, due to someone else's smoking habit.

___ Where I work, I am constantly annoyed and sometimes sickened by the smoking of my fellow employees.

X I've gotten burns in my clothes from being tempted into by a

How this bill is treated by your committee will show Alaskan voters whether their representatives really represent them or instead owe their allegiance to the tobacco lobby.

Signed: Susan K. Vargas Date: 2-10-83

Dear Members of the Judiciary Committee:

I am writing to ask your support of House Bill 84, which provides long overdue health protection to non-smokers in Alaska. The present statute is inadequate in that it does not go nearly far enough to guarantee everyone's right to breathe clean air. As a non-smoker, I can attest to this fact because:

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X I have experienced extreme discomfort while waiting in line in banks, supermarkets, and other retail establishments, due to someone else's smoking habit.

___ Where I work, I am constantly annoyed and sometimes sickened by the smoking of my fellow employees.

X Smoking takes place even when the area is posted "No Smoking"!

How this bill is treated by your committee will show Alaskan voters whether their representatives really represent them or instead owe their allegiance to the tobacco lobby.

Signed: Wendell J. Duffield Date: Feb. 10, 1983

Dear Members of the Judiciary Committee:

I am writing to ask your support of House Bill 84, which provides long overdue health protection to non-smokers in Alaska. The present statute is inadequate in that it does not go nearly far enough to guarantee everyone's right to breathe clean air. As a non-smoker, I can attest to this fact because:

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X I have experienced extreme discomfort while waiting in line in banks, supermarkets, and other retail establishments, due to someone else's smoking habit.

___ Where I work, I am constantly annoyed and sometimes sickened by the smoking of my fellow employees. (Smoking banned in my husband's office

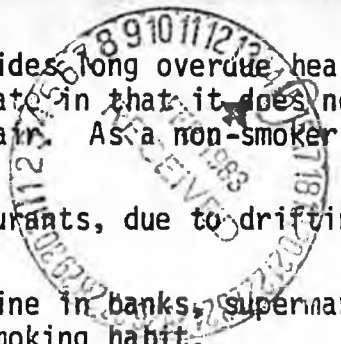
___ _____

How this bill is treated by your committee will show Alaskan voters whether their representatives really represent them or instead owe their allegiance to the tobacco lobby.

Signed: Mrs. Peter Layton Date: 2-10-83

Dear Members of the Judiciary Committee:

I am writing to ask your support of House Bill 84, which provides long overdue health protection to non-smokers in Alaska. The present statute is inadequate in that it does not go nearly far enough to guarantee everyone's right to breathe clean air. As a non-smoker, I can attest to this fact because:



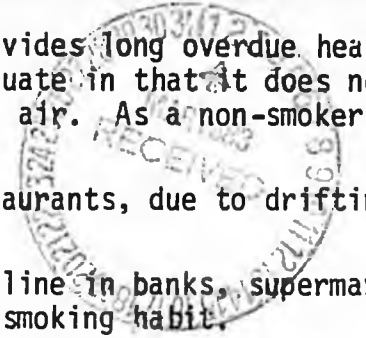
- ✓ I frequently have had meals ruined while eating in restaurants, due to drifting tobacco smoke.
- ✓ I have experienced extreme discomfort while waiting in line in banks, supermarkets, and other retail establishments, due to someone else's smoking habit.
- ✓ Where I work, I am constantly annoyed and sometimes sickened by the smoking of my fellow employees.
- ✓ As a businesman, Smokers are at least 35% less productive than non smokers, None smokers find things to do.. Smokers look for a cigarette undconversation..

How this bill is treated by your committee will show Alaskan voters whether their representatives really represent them or instead owe their allegiance to the tobacco lobby.

Signed: Roger Knickerbocker Date: 2/9/87

Dear Members of the Judiciary Committee:

I am writing to ask your support of House Bill 84, which provides long overdue health protection to non-smokers in Alaska. The present statute is inadequate in that it does not go nearly far enough to guarantee everyone's right to breathe clean air. As a non-smoker, I can attest to this fact because:



X I frequently have had meals ruined while eating in restaurants, due to drifting tobacco smoke.

X I have experienced extreme discomfort while waiting in line in banks, supermarkets, and other retail establishments, due to someone else's smoking habit.

X Where I work, I am constantly annoyed and sometimes sickened by the smoking of my fellow employees.

X I am allergic to tobacco smoke (as are several friends). We don't need our air polluted.

How this bill is treated by your committee will show Alaskan voters whether their representatives really represent them or instead owe their allegiance to the tobacco lobby.

Signed: Martin L. Hall Date: 2/27/83

Dear Members of the Judiciary Committee:

I am writing to ask your support of House Bill 84, which provides long overdue health protection to non-smokers in Alaska. The present statute is inadequate in that it does not go nearly far enough to guarantee everyone's right to breathe clean air. As a non-smoker, I can attest to this fact because:

- [X] I frequently have had meals ruined while eating in restaurants, due to drifting tobacco smoke.
- [X] I have experienced extreme discomfort while waiting in line in banks, supermarkets, and other retail establishments, due to someone else's smoking habit.
- [X] Where I work, I am constantly annoyed and sometimes sickened by the smoking of my fellow employees.
- [ ] _____

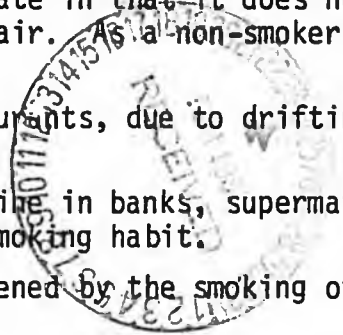
How this bill is treated by your committee will show Alaskan voters whether their representatives really represent them or instead owe their allegiance to the tobacco lobby.

Signed: Mrs. John C. Warnke Date: 2/27/83

HB 84

Dear Members of the Judiciary Committee:

I am writing to ask your support of House Bill 84, which provides long overdue health protection to non-smokers in Alaska. The present statute is inadequate in that it does not go nearly far enough to guarantee everyone's right to breathe clean air. As a non-smoker, I can attest to this fact because:



X I frequently have had meals ruined while eating in restaurants, due to drifting tobacco smoke.

X I have experienced extreme discomfort while waiting in line in banks, supermarkets, and other retail establishments, due to someone else's smoking habit.

X Where I work, I am constantly annoyed and sometimes sickened by the smoking of my fellow employees.

___ _____

How this bill is treated by your committee will show Alaskan voters whether their representatives really represent them or instead owe their allegiance to the tobacco lobby.

Signed: Paige M. Ruth Date: 2-10-85

Paige M. Ruth

HB84

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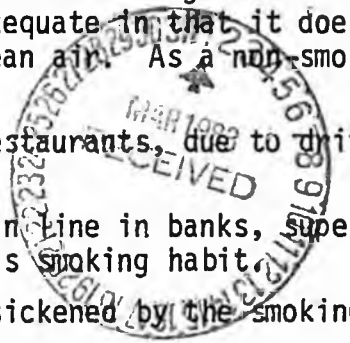

___ I frequently have had meals ruined while eating in restaurants, due to drifting tobacco smoke.

___ I have experienced extreme discomfort while waiting in line in banks, supermarkets, and other retail establishments, due to someone else's smoking habit.

✓ Where I work, I am constantly annoyed and sometimes sickened by the smoking of my fellow employees.

___ _____

How this bill is treated by your committee will show Alaskan voters whether their representatives really represent them or instead owe their allegiance to the tobacco lobby.

Signed: Paula R Shenbuchler Date: 2-24-83

rs of the Judiciary Committee:

riting to ask your support of House Bill 84, which provides long overdue health pro-
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frequently have had meals ruined while eating in restaurants, due to drifting
bacco smoke.

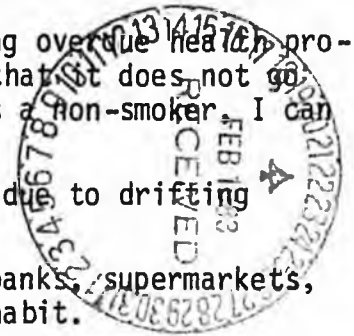
I have experienced extreme discomfort while waiting in line in banks, supermarkets, and other retail establishments, due to someone else's smoking habit.

Where I work, I am constantly annoyed and sometimes sickened by the smoking of my fellow employees.

I really want to thank you for the special attention you will give this bill.

How this bill is treated by your committee will show Alaskan voters whether their representatives really represent them or instead owe their allegiance to the tobacco lobby.

Signed: Teresa Anne Johnson MLT(ASCP) CLT(NCA) Date: 2-15-83



Dear Members of the Judiciary Committee:

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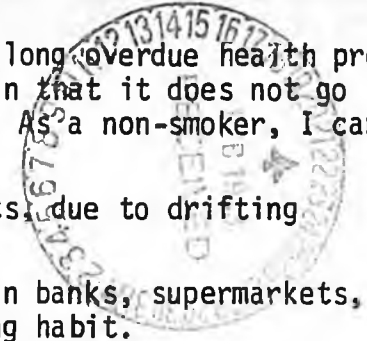


X I frequently have had meals ruined while eating in restaurants due to drifting tobacco smoke.

X I have experienced extreme discomfort while waiting in line in banks, supermarkets, and other retail establishments, due to someone else's smoking habit.

X Where I work, I am constantly annoyed and sometimes sickened by the smoking of my fellow employees.

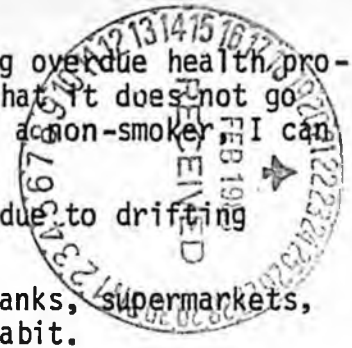
X I feel that smokers in a public school set a bad example for our kids and also create a fire hazard.

How this bill is treated by your committee will show Alaskan voters whether their representatives really represent them or instead owe their allegiance to the tobacco lobby.

Signed: Richard P. Stoughton Date: 2/12/83

Dear Members of the Judiciary Committee:

I am writing to ask your support of House Bill 84, which provides long overdue health protection to non-smokers in Alaska. The present statute is inadequate in that it does not go nearly far enough to guarantee everyone's right to breathe clean air. As a non-smoker, I can attest to this fact because:



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___ I have experienced extreme discomfort while waiting in line in banks, supermarkets, and other retail establishments, due to someone else's smoking habit.

___ Where I work, I am constantly annoyed and sometimes sickened by the smoking of my fellow employees.

___ _____

How this bill is treated by your committee will show Alaskan voters whether their representatives really represent them or instead owe their allegiance to the tobacco lobby.

Signed:_____ Date:_____

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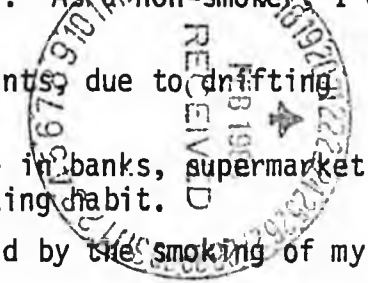

X I frequently have had meals ruined while eating in restaurants, due to drifting tobacco smoke.

X I have experienced extreme discomfort while waiting in line in banks, supermarkets, and other retail establishments, due to someone else's smoking habit.

___ Where I work, I am constantly annoyed and sometimes sickened by the smoking of my fellow employees.

___ _____

How this bill is treated by your committee will show Alaskan voters whether their representatives really represent them or instead owe their allegiance to the tobacco lobby.

Signed: Mary Sue Zawadzki Date: 2/17/83

rs of the Judiciary Committee:

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___ Where I work, I am constantly annoyed and sometimes sickened by the smoking of my fellow employees.

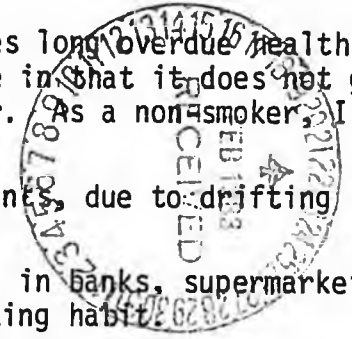
___ _____

How this bill is treated by your committee will show Alaskan voters whether their representatives really represent them or instead owe their allegiance to the tobacco lobby.

Signed: Mark Gustafson Date: 2/16/83

Dear Members of the Judiciary Committee:

I am writing to ask your support of House Bill 84, which provides long overdue health protection to non-smokers in Alaska. The present statute is inadequate in that it does not go nearly far enough to guarantee everyone's right to breathe clean air. As a non-smoker, I can attest to this fact because:



✓ I frequently have had meals ruined while eating in restaurants, due to drifting tobacco smoke.

✓ I have experienced extreme discomfort while waiting in line in banks, supermarkets, and other retail establishments, due to someone else's smoking habit.

___ Where I work, I am constantly annoyed and sometimes sickened by the smoking of my fellow employees. this used to be terrible, but has improved

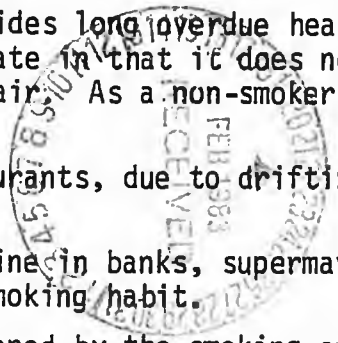
✓ there is virtually nowhere for non-smokers to go for dancing/nightlife.

How this bill is treated by your committee will show Alaskan voters whether their representatives really represent them or instead owe their allegiance to the tobacco lobby.

Signed: Janet Lokken Date: 2/15/83

Dear Members of the Judiciary Committee:

I am writing to ask your support of House Bill 84, which provides long overdue health protection to non-smokers in Alaska. The present statute is inadequate in that it does not go nearly far enough to guarantee everyone's right to breathe clean air. As a non-smoker, I can attest to this fact because:



X I frequently have had meals ruined while eating in restaurants, due to drifting tobacco smoke.

X I have experienced extreme discomfort while waiting in line in banks, supermarkets, and other retail establishments, due to someone else's smoking habit.

No Where I work, I am constantly annoyed and sometimes sickened by the smoking of my fellow employees.

Because smoking is prohibited.

How this bill is treated by your committee will show Alaskan voters whether their representatives really represent them or instead owe their allegiance to the tobacco lobby.

Signed: M R Clapp Date: 2/16/83

Marcus R. Clapp P.O. Box 80054, Fbks

of the Judiciary Committee:

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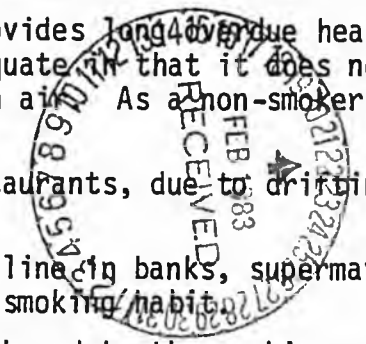

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___ _____

How this bill is treated by your committee will show Alaskan voters whether their representatives really represent them or instead owe their allegiance to the tobacco lobby.

Signed: Lynn Endicott Date: 15 Feb 83

...he Judiciary Committee:

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X Where I work, I am constantly annoyed and sometimes sickened by the smoking of my fellow employees.

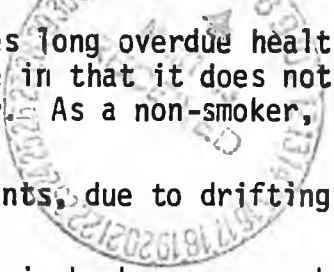
___ _____

How this bill is treated by your committee will show Alaskan voters whether their representatives really represent them or instead owe their allegiance to the tobacco lobby.

Signed: Keith A. Johnson Date: 3-2-83

Dear Members of the Judiciary Committee:

I am writing to ask your support of House Bill 84, which provides long overdue health protection to non-smokers in Alaska. The present statute is inadequate in that it does not go nearly far enough to guarantee everyone's right to breathe clean air. As a non-smoker, I can attest to this fact because:



✓ I frequently have had meals ruined while eating in restaurants, due to drifting tobacco smoke.

✓ I have experienced extreme discomfort while waiting in line in banks, supermarkets, and other retail establishments, due to someone else's smoking habit.

___ Where I work, I am constantly annoyed and sometimes sickened by the smoking of my fellow employees.

I have been uncomfortable with smokers in medical facilities

How this bill is treated by your committee will show Alaskan voters whether their representatives really represent them or instead owe their allegiance to the tobacco lobby.

Signed: Carol Hall Date: 2-27-83

s of the Judiciary Committee:

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enough to guarantee everyone's right to breathe clean air. As a non-smoker, I can
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✓ I have experienced extreme discomfort while waiting in line in banks, supermarkets, and other retail establishments, due to someone else's smoking habit.

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___ _____

How this bill is treated by your committee will show Alaskan voters whether their representatives really represent them or instead owe their allegiance to the tobacco lobby.

Signed: Karen Swanson Date: Feb 25, '83

Dear Members of the State Affairs Committee:

I am writing to ask your support of House Bill 84, which provides long overdue health protection to non-smokers in Alaska. The present statute is inadequate in that it does not go nearly far enough to guarantee everyone's right to breathe clean air. As a non-smoker, I can attest to this fact because:

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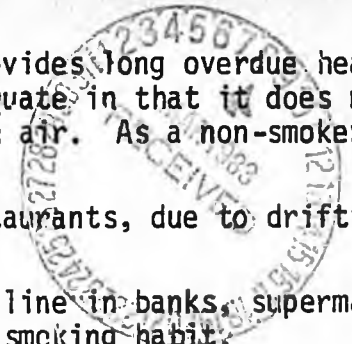
___ _____

How this bill is treated by your committee will show Alaskan voters whether their representatives really represent them or instead owe their allegiance to the tobacco lobby.

Signed: Bonnie D. Ganezzo Date: 3/14/83

Dear Members of the Judiciary Committee:

I am writing to ask your support of House Bill 84, which provides long overdue health protection to non-smokers in Alaska. The present statute is inadequate in that it does not go nearly far enough to guarantee everyone's right to breathe clean air. As a non-smoker, I can attest to this fact because:



- ✓ I frequently have had meals ruined while eating in restaurants, due to drifting tobacco smoke.
- ✓ I have experienced extreme discomfort while waiting in line in banks, supermarkets, and other retail establishments, due to someone else's smoking habit.
- ✓ Where I work, I am constantly annoyed and sometimes sickened by the smoking of my fellow employees.
- ✓ Have had open heart surgery & my lungs (& supermarket) Smoke irritates it.

How this bill is treated by your committee will show Alaskan voters whether their representatives really represent them or instead owe their allegiance to the tobacco lobby.

Signed: Edwin L. Colby Date: Mar 3 83

Dear Members of the Judiciary Committee:

I am writing to ask your support of House Bill 84, which provides long overdue health protection to non-smokers in Alaska. The present statute is inadequate in that it does not go nearly far enough to guarantee everyone's right to breathe clean air. As a non-smoker, I can attest to this fact because:

- ✓ I frequently have had meals ~~ruined~~ pleasure diminished while eating in restaurants, due to drifting tobacco smoke.
- ✓ I have experienced extreme discomfort while waiting in line in banks, supermarkets, and other retail establishments, due to someone else's smoking habit.
- ___ Where I work, I am constantly annoyed and sometimes sickened by the smoking of my fellow employees.
- ___ _____

How this bill is treated by your committee will show Alaskan voters whether their representatives really represent them or instead owe their allegiance to the tobacco lobby.

Signed: Douglas A. Yates Date: 4/5/83

HB

84

#2

(7)

COMMITTEE REPORT

HOUSE

FURTHER:

Date: 5-5-83

2/15/83

Mr. Speaker:

The Committee on JUDICIARY has had HB 84

An Act relating to smoking in public places and vehicles.

under consideration and reports it back as follows:

[ ] do pass [ ] do not pass

[ ] do pass with attached amendments(s)

[ ] replace with CS for HB 84 (new) [ ] same title [ ] new title

and recommends _____

[ ] AND attaches a "Letter of Intent" [ ] New Fiscal Note

[ ] Zero Fiscal Note Attached

[ ] reports it back without recommendation

[ ] referred to the _____ Committee

MEMBERS SIGNING
DO PASS

MEMBERS HAVING
OTHER RECOMMENDATIONS:

CHAIRMAN

H 60

FISCAL NOTE | Revision Date , 1983

I. REQUEST

Bill/Resolution No.: CS HB 84 (Judiciary)
Title: Smoking in public places & vehicles
Sponsor: Rep. Fritz, et al
Requestor: House Judiciary

II. FISCAL DETAIL

Agency Affected: Health & Soc. Services
Program Category Affected: Health
BRU, Program of Subprogram(s) Affected:

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 83	FY 84	FY 85	FY 86	FY 87	FY 88
OPERATING	0	0	0	0	0	0
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 COMMODITIES						
500 EQUIPMENT						
600 LANDS & STRUCTURES						
700 GRANTS, CLAIMS, ETC.						
TOTAL OPERATING	0	0	0	0	0	0
CAPITAL	0	0	0	0	0	0
REVENUE	0	0	0	0	0	0

FUNDING: (Thousands of Dollars)

GENERAL FUND	0	0	0	0	0	0
FEDERAL FUNDS	0	0	0	0	0	0
OTHER (Specify Source)						

POSITIONS:

FULL-TIME	0	0	0	0	0	0
PART-TIME	0	0	0	0	0	0
TEMPORARY	0	0	0	0	0	0

III. SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

V. ANALYSIS: Attach a separate page for any Analysis

Prepared By: Dean Tirador Phone: 465-2113
Division: Public Health Date: 4-13-83

Approved by Commissioner: Robert London Smith, Ph.D. Date: 4/18/83
Department: Health and Social Services

Distribution:
Original to Legislative Finance
Copy to Office of Management and Budget (for Legislature introduced bills)
Copy to Department (for Governor introduced bills)
Copy to Sponsor
Copy to Requestor (if different from Sponsor)

3/8/83

STATE OF ALASKA
FISCAL NOTE

Revision Date , 1983

I. REQUEST

Bill/Resolution No.: CSHB 84
Title: "...smoking in public places..."
Sponsor: Repr. Fritz
Requestor: House Judiciary Committee

II. FISCAL DETAIL

Agency Affected: Department of Law
Program Category Affected: General Govt.
BRU, Program of Subprogram(s) Affected: Legal Services

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 83	FY 84	FY 85	FY 86	FY 87	FY 88
OPERATING						
100 PERSONAL SERVICES		32.7	41.6	44.1	46.7	49.2
200 TRAVEL		2.5	3.2	3.4	3.6	3.8
300 CONTRACTUAL		4.5	4.8	5.1	5.4	5.7
400 COMMODITIES		3.6	1.5	1.6	1.7	1.8
500 EQUIPMENT		5.1				
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC						
TOTAL OPERATING	-0-	48.4	51.1	54.2	57.4	60.5
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND	-0-	48.4	51.1	54.2	57.4	60.5
FEDERAL FUNDS						
OTHER (Specify Source)						

POSITIONS:

FULL-TIME						
PART-TIME		2	2	2	2	2
TEMPORARY						

III. SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

Not specified by sponsor.

IV. ANALYSIS: Attach a separate page for any Analysis

Prepared By: Richard L. Pegues Richard I. Pegues, Director Phone: 465-3672
Division: Administrative Services Division Date: April 13, 1983
Approved by Commissioner: Richard L. Pegues / FOR Norman C. Gorsuch, Attorney General Date: April 13, 1983
Department: Department of Law

Distribution:
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Copy to Office of Management and Budget (for Legislature introduced bills)
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Copy to Sponsor
Copy to Requestor (if different from Sponsor)

CSHB 84
Fiscal Note
Analysis

This bill extends the state's current mandatory prohibition of smoking in public places to include public meetings of municipalities and most places of business such as retail stores, restaurants, banks, offices, factories, warehouses, and other places of employment. Under existing statute, this extended prohibition is at the option of the person having control of such places of employment. The bill would also make the existing mandatory requirement to provide reasonable smoking areas, in most prohibited areas, optional. Because of the very broad changes to the existing law, requiring mandatory compliance by nearly every place of business in the state, except for cocktail lounges, taverns and tobacco shops, it is anticipated that the department will have to devote additional resources of one part-time attorney and a part-time secretary to provide the civil enforcement actions required by the bill in the Superior Court.

Consequently, the only costs shown are those that will occur in the department's civil division as result of filing and handling civil complaints on behalf of the Commissioner of the Department of Environmental Conservation. Work drafts of the committee substitute, dated 4/12/83, have added an entirely new section that provides criminal citations and penalties. So that there will be no misunderstanding, the department intends to handle these citations in the same manner as minor traffic offenses are handled. Traffic offenses are heard in magistrate court and only the arresting officer, civilian witnesses and the defendant appear before the magistrate. Prosecutors only attend these proceedings in those rare instances when defendants appear with counsel. If for any reason, it is expected that state prosecutors are to regularly prosecute violations of the proposed AS 18.35.300 or AS 18.35.330, then substantial additional funding will be required. A preliminary estimate is that 2 full-time and 1 part-time prosecutors and 1 legal secretary would be needed at an initial annual cost of $220.0.

Fiscal Analysis - HB 84

The impact of HB 84 is expected to result in the addition of one-half the time of an Attorney IV and one-quarter of the time of a Legal Secretary I on a statewide basis. Actual placement of cummulative positions and costs can only be determined after the Legislature has acted and we know what bills and fiscal notes have been approved. For purposes of the analysis, salary schedule A has been used.

The first year of the analysis is FY 84 and costs have been calculated on a 10 month basis to account for the time required to establish new positions and the time it takes to get a new program underway. The costs after FY 84 are on a 12 month basis and include a 6% annual inflation factor.

1st Year (10 months)

	Atty IV (PPT)	L/SI (½ equiv.)	Total
Personal Services	26.9	5.8	32.7
Travel	2.5	-	2.5
Contractual	4.0	.5	4.5
Commod. - ongoing	.8	.4	1.2
Commod. - single time	2.0	.4	2.4
Equipment - single time	1.5	3.6	5.1
			48.4

2nd Year (12 months + 6% annual inflation)

Personal Services	34.1	7.5	41.6
Travel	3.2	-	3.2
Contractual	4.3	.5	4.8
Commodities	1.0	.5	1.5
Equipment	-	-	-
			51.1

STATE OF ALASKA
FISCAL NOTE

Revision Date April 18 , 1983

I. REQUEST

Bill/Resolution No.: CS for HB 84
Title: An Act relating to Smoking in public places
Sponsor: Fritz, M.M. Miller et al
Requestor: Hein

II. FISCAL DETAIL

Agency Affected: ADEC
Program Category Affected: Public Info. Office
BRU, Program of Subprogram(s) Affected:
EQM - Environmental Sanitation

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 83	FY 84	FY 85	FY 86	FY 87	FY 88
OPERATING						
100 PERSONAL SERVICES	0	10.0	0	0		
200 TRAVEL		2.0				
300 CONTRACTUAL		3.0	7.0	7.0		
400 COMMODITIES		5.0	3.0	3.0		
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC						
TOTAL OPERATING		20.0	10.0	10.0		
CAPITAL		-	-	-		
REVENUE		-	-	-		

FUNDING: (Thousands of Dollars)

GENERAL FUND		20.0	10.0	10.0		
FEDERAL FUNDS						
OTHER (Specify Source)						

POSITIONS:

FULL-TIME		.25	-	-		
PART-TIME		-	-	-		
TEMPORARY		-	-	-		

III. SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

None identified in the legislation

IV. ANALYSIS: Attach a separate page for any Analysis

Prepared By: Joe Cladouhos
Division: Environmental Quality Mgmt.
Phone: 465-2640
Date: 4/18/83

Approved by Commissioner: Richard A. McGuire
Department: Environmental Conservation
Date: 4/22/83

Distribution:
Original to Legislative Finance
Copy to Office of Management and Budget (for Legislature introduced bills)
Copy to Department (for Governor introduced bills)
Copy to Sponsor
Copy to Requestor (if different from Sponsor)

3/8/83

ALASKA DEPARTMENT OF ENVIRONMENTAL CONSERVATION

POSITION PAPER

CS for HB 84

April 22, 1983

The Department of Environmental Conservation supports this proposed legislation because it extends and clarifies the existing statute. If HB 84 is enacted, the Department would amend 18 AAC 55, Smoking In Public Places. We would also take appropriate measures to inform the public of the new law.

Richard A. Neve
Commissioner

THE LEGISLATURE OF THE STATE OF ALASKA
THIRTEENTH LEGISLATURE

FISCAL NOTE

I. REQUEST
Bill/Resolution No. HB 84
Title "An Act relating to smoking in public places and vehicles."
Requested by House State Affairs Committee Date 2/8/83

II. FISCAL DETAIL
Agency Affected Department of Law
Program Category Affected Legal Services
BRU, Program, Or Subprogram(s) Affected Legal Services
(Note: If more than one budget component is affected, separate line-item amounts and funding for each component in the analysis section.)

EXPENDITURES (Thousands of Dollars)

	FY 83	FY 84	FY 85	FY 86	FY 87	FY 88
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 COMMODITIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS,CLAIMS,ETC.						
TOTAL		48.4	51.1	54.2		

FUNDING (Thousands of Dollars)

GENERAL FUND		48.4	51.1	54.2		
FEDERAL FUNDS						
OTHER (Specify Source)						

POSITIONS

FULL TIME						
PART TIME						
TEMPORARY						

III. ANALYSIS (See Fiscal Note Preparation Instruction, Section III)
This bill extends the state's current mandatory prohibition of smoking in public places to include public meetings of municipalities and most places of business such as retail stores, restaurants, banks, offices, factories, warehouses, and other places of employment. Under existing statute, this extended prohibition is at the option of the person having control of such places of employment. The bill would also make the existing mandatory requirement to provide reasonable smoking areas, in most prohibited areas, optional. Because of the very broad changes to the existing law, requiring mandatory compliance by nearly every place of business in the state, except for cocktail lounges, taverns and tobacco shops, it is anticipated that the department will have to devote additional resources to provide the enforcement actions required by the bill such as seeking injunctions and the collection of fines and penalties.

Richard I. Pegues

IV. DATE February 9, 1983 PREPARED BY Richard I. Pegues, Dir. Adm. Svcs.
AGENCY Department of Law
PHONE 465-3672

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

33-001 (Rev. 12/82)

STATE OF ALASKA
FINAL STATEMENT OF FISCAL IMPACT

Bill No: HB 84 Date on Bill: January 20, 1983
Title: "An Act relating to smoking in public places and vehicles."
Sponsor: Fritz et al
Requestor:

1. Estimated fiscal impacts on:

a. Expenditures:

(Thousands of Dollars)

			FY 83	FY 84	FY 85	FY 86		
Capital				-0-				
Operating				$10,000.00				
Total				$10,000.00				

b. Revenues:

Revenue				-0-				

2. Source of funds to offset fiscal impact of bill:

3. Assumptions:

18 AAC 55 "Smoking In Public Places" will be amended if this legislation passes. It would necessitate printing new regulations and public education to inform affected public facility operators and the general public of their rights and responsibilities under the new law.

4. This statement has been reviewed by the OMB in the Office of the Governor. It may be considered to represent the policy of the Sheffield Administration and the final estimate of fiscal impact.

Prepared By: Joe Cladouhos Phone: 465-2640
Division: Environmental Quality Management Date: 2-14-83

Approved by Commissioner: Clair Darling for R.A. Neve Date: 2/14/83
Department: Environmental Conservation

Reviewed by OMB: Date:
Phone:

5. Distribution:
Original to Legislative Finance
Copy to Department
Copy to Sponsor
Copy to Requestor

2/8/83

STATE OF ALASKA
PRELIMINARY STATEMENT OF FISCAL IMPACT

Bill No: House Bill No. 84 Date on Bill: 1/20/83
Title: "An Act relating to smoking in public places and vehicles"
Sponsor: Rep. Fritz, et al.
Requestor: HESS

1. Estimated fiscal impacts on:

a. Expenditures:

(Thousands of Dollars)

			FY 83	FY 84	FY 85	FY 86		
Capital			0	0	0	0		
Operating			0	0	0	0		
Total			0	0	0	0		

b. Revenues:

Revenue								

2. Source of funds to offset fiscal impact of bill:

3. Assumptions:

4. Disclaimer:
This statement has not been reviewed by the OMB in the Office of the Governor. It does not represent the policy of the Sheffield Administration or the final estimate of fiscal impact.

Prepared By: Dean Tirador Phone: 465-3090
Division: Public Health Date: 2/10/83

Approved by Commissioner: Date: 2/17/83
Department: Health and Social Services

5. Distribution:
Original to Legislative Finance
Copy to OMB
Copy to Sponsor

POSITION PAPER/Department of Health & Social Services

House Bill No. 84

"An Act Related to Smoking in Public Places and Vehicles"

BACKGROUND INFORMATION:

First, there is mounting evidence in the medical literature that passive smoking by children, particularly young children, and adults with heart or lung ailments cause them to suffer physiological and eventually anatomic consequences that adversely affect their health status. Second, there is a mounting public awareness of the annoyance caused by persons smoking indoors in public areas. Third, and this is the fact of greatest significance, in 1981, there were 92 deaths in Alaska due to cancer of the respiratory system and 145 premature deaths due to coronary disease. Smoking undoubtedly contributed heavily to these numbers.

WHAT THE BILL DOES:

This bill strengthens the rights of persons who choose not to damage their lungs and cardiovascular systems by smoking - either active or passive smoking. It recognizes several features of indoor air quality that are not adequately recognized by the present statute.

SUGGESTION FOR IMPROVEMENT:

On page 3 line 13: Due to the difficulty of defining a "smoker" this line could be more effectively stated; "(4) a place of employment if all the employees consent to the designation in entirety,".

On page 3, line 27: Addition of "per Alaska statute 18.35.300" would make the sign more effective.

On page 4, Section 6 would add a potential case load to already overcrowded district and superior courts. The personal injury sustained by a violation, or even a brief series of violations, of this statute would be minimal and difficult to prove. The remedies contained in Sections 7 and 8 of this bill set forth adequate avenues for correction of violations.

POSITION PAPER/Department of Health & Social Services

DEPARTMENT POSITION:

This bill is an enlightened public health policy statement and is strongly endorsed by this department.

RECOMMENDED BY: E. S. Rabeau, M.D.

E.S. Rabeau, M.D.
Director
Division of Public Health

DATE: Feb 10, 1983

APPROVED BY: Robert London Smith

Robert London Smith, Ph.D.
Commissioner
Department of Health and Social Services

DATE: 2/14/83

APPROVED BY: _____

Emil Notti
Legislative Assistant to the Governor

DATE: _____

2/15

(7)

COMMITTEE REPORT

HOUSE

FURTHER: RESOURCES JUDICIARY

1/20/83

Date: 2/14/83

Mr. Speaker:

The Committee on STATE AFFAIRS has had HB 84

An Act relating to smoking in public places and vehicles.

under consideration and reports it back as follows:

[X] do pass if amended [ ] do not pass

[ ] do pass with attached amendments(s)

[ ] replace with CS for _____ [ ] same title [ ] new title

and recommends _____

[ ] AND attaches a "Letter of Intent" [2] New Fiscal Notes Sup 9

[ ] Zero Fiscal Note Attached

[ ] reports it back without recommendation

[ ] referred to the ~~Resources~~ _____ Committee

MEMBERS SIGNING DO PASS

M. M. Miller - DO PASS

MEMBERS HAVING OTHER RECOMMENDATIONS:

Ronald J Larson - Pass if Amended.

Mike Hixon Pass if amended

Dick Shultz Pass if amended

Rep Mike Hixon
CHAIRMAN

H 60

HOUSE STATE AFFAIRS
STANDING COMMITTEE
February 14, 1983
1:00 p.m.

Members Present: Rep. Abood, Chairman
Rep. Cowdery, Vice-Chairman
Rep. Larson
Rep. Furnace
Rep. M. M. Miller
Rep. Shultz

Members Absent: Rep. Vaska

COMMITTEE CALENDAR

HB 85: "An Act relating to the use of the income of the Alaska permanent fund (AS 37.13); repealing the permanent fund dividend program (AS 43.23); and providing for an effective date."

HB 84: "An Act relating to smoking in public places and vehicles."

WITNESS REGISTER

Rep. Fritz
Pouch V
Juneau, Alaska 99811
465-4833
Position Statement: Original sponsor of the bill; urged passage of HB 84.

Rep. M. M. Miller
Pouch V
Juneau, Alaska 99811
465-4841
Position Statement: Co-sponsor of HB 84; urged passage of legislation.

Don Kubely
Cabaret Hotel and Restaurant Association
CHAR
6310 Glacier Hwy.
Juneau, Alaska 99801
789-4849
Position Statement: Representing CHAR; wanted Lines 6-7, Page 2 to be deleted from HB 84.

Donna Reeder
3713 Amalgo

Juneau, Alaska 99801
465-2176
Position Statement: Representing herself and other non-smoking state employees; urged passage of HB 84.

Beverly Bradon
P.O. Box 1424
Juneau, Alaska 99802
465-2176
Position Statement: Representing herself as a non-smoking state employee; supported passage of HB 84.

Cherie Shelley
Alaska Public Employees Association
340 N. Franklin St.
Juneau, Alaska 99801
586-2334
Position Statement: Representing APEA; did not indicate whether APEA supported HB 84 or not.

Rosalee T. Walker
7677 N. Douglas Hwy.
Juneau, Alaska 99801
586-2873
Position Statement: Representing herself; opposed HB 84.

Dove Kull
326 4th Street
Juneau, Alaska 99801
586-2670
Position Statement: Representing herself as an older Alaskan; urged passage of HB 84.

Leo Kaye
Director
Alaska Lung Association
P.O. Box 103056
Anchorage, Alaska 99510
Position Statement: On behalf of the Alaska Lung Association; urged passage of HB 84.

Richard Lauber
Tobacco Institute
120 W. 1st.
Juneau, Alaska 99801
586-1324
Position Statement: Representing the Tobacco Institute; opposed HB 84.

Tom Coyne
Box 5283
Ketchikan, Alaska 99901
225-4154
Position Statement: Representing himself; urged passage of HB

Alice Hovena
General Delivery
Auke Bay, Alaska 99821
789-2649
Position Statement: Representing herself as a former state employee; supported HB 84.

Don Hagmason
Retail Association
Juneau, Alaska 99801
Position Statement: Representing Retail Association; opposed HB 84.

Ken Richardson
1521 Sunrise Drive
Anchorage, Alaska 99504
277-5770
Position Statement: Representing himself and being an individual with breathing difficulties; urged passage of HB 84.

Joe Clodauis
Department of Environmental Conservation
Pouch O
Juneau, Alaska 99811
465-2640
Position Statement: Representing DEC; supported HB 84.

Susan Scott
Alaska Council on Health
217 E. 11th Ave.
Anchorage, Alaska 99504
276-0217
Position Statement: Representing herself and Alaska Council on Health; urged passage of HB 84.

Alice Richardson
1521 Sunrise Drive
Anchorage, Alaska 99504
277-5770
Position Statement: Retired Nurse and representing herself; urged passage of HB 84.

Debbie Sharpe
Box 7996
Ketchikan, Alaska 99901
225-5747
Position Statement: Representing herself; urged support of HB 84.

Jeff Sharpe
Box 7996

Ketchikan, Alaska 99901
225-5747
Position Statement: Representing himself; supports HB 84.

Gary Miller
P.O. Box 2436
Juneau, Alaska 99803
789-3757
Position Statement: Representing himself and numerous other individuals; supports HB 84.

Roberta Banko
P.O. Box 803
Juneau, Alaska 99802
586-9874
Position Statement: A state employee representing herself; urged passage of HB 84.

Ric Inannolino
426 East Street
Juneau, Alaska 99801
586-9850
Position Statement: Representing himself; supports HB 84.

PREVIOUS ACTION

None

ACTION NARRATIVE

TAPE#1

Recording Number 0001 — Chairman Abood called the meeting to order at 1:00 p.m., and indicated the members present at the hearing. He told committee members that the first bill to be heard would be HOUSE BILL NO. 85 and then following HOUSE BILL NO. 84.

Number 0036 — Chairman Abood told committee members that it was the intention of the Chairman to pass HB 85 out of committee to the next committee of referral.

Number 0050 — Rep. M. M. Miller moved that HB 85 be passed out of committee with individual recommendations. Hearing no objections, the motion carried with Representatives Abood, Cowdery and Furnace recommending a "do pass" and Representatives M. M. Miller, Shultz and Larson having no recommendation.

Number 0058

Chairman Abood called Rep. Fritz to the stand, the sponsor of HB 84; the bill relating to smoking in public places and vehicles. Rep. Fritz told committee members that if smoking affected only those who smoke, there would be little need for HB 84; but smoke is not confined to the smoker. He stated that smoking interferes with the rights of those who do not smoke, to work or carry on their business in a smoke-free environment. Therefore, it was his feeling that smoking should be banned in vehicles and indoor areas open to the public. He asked the committee to favorably consider HB 84 for passage.

Number 0136

Rep. M. M. Miller, co-sponsor of HB 84, testifies on behalf of the legislation. He told members of the committee that second hand smoke was a significant health hazard. He said a recent court decision ruled that employees had a right to work in a smoke-free environment. He said, "we're not prohibiting smoking." The intent is that smoking does not interfere with those who do not want to smoke.

Rep. M. M. Miller went over new sections of HB 84 that are different from current statutes. In Sec. 2. (2), Line 27 that indicates if privately owned such as, a library, (INDOOR) theater, museum, lecture or concert hall, gymnasium, or swimming pool or other indoor (PUBLICALLY OWNED AND OPERATED) place of entertainment or recreation. Rep. M. M. Miller stated that it was changed to include municipalities, retail store, restaurant or bank which was not in place in previous legislation. The reason being was because people with breathing difficulties and sensitivities to smoke have to go to these places. He urged support of HB 84.

Number 0270

Don Kubely, representing Cabaret Motel and Restaurant Association (CHAR) takes the stand. He told committee members that he had no problem with the main thrust of the bill. He was against the verbiage on Page 2, Lines 6-7 that referred to no smoking in a retail store, restaurant or bank. Mr. Kubely stated that it was contrary and establishments or businesses that are privately owned should not be subject. In

conclusion, Mr. Kubely stated that CHAR felt that sections on Page 2, Lines 6-7 should either be deleted, or left as they are in the present statutes.

Number 0309

Donna Reeder, representing herself and currently employed with the State Department of Administration, takes the stand. She said that she was in a corner with two other non-smoking employees and although the smokers are in another section, the non-smokers are still getting their smoke. She told committee members that dividing sections in offices does not help the problem. She said employees can't wear contacts and suffer irritations in their nose and throat, due to second hand smoke. She urged passage of HB 84.

Number 0339

Beverly Bradon, representing herself and currently employed with the State Department of Administration, Word Processing Unit takes the stand. She said she worked with machines that draw smoke to their section of the office. She told members of the committee that the smoke gave her frequent headaches, but that she had to work to support her child. She urged passage of HB 84.

Cherie Shelley, representing APEA takes the stand. Ms. Shelley referred to Page 4, Line 5 of the bill. She said that she wasn't for or against the bill per say. It was her intention to point out to committee members that if HB 84 passed APEA would be forced to file grievances or a court action, because of the change in working conditions for an employee.

Number 0385

Rosalee T. Walker takes the stand in opposition to HB 84. She said she was a law abiding citizen and that passage of HB 84 would make her a potential criminal, because she smoked. She said she didn't feel it was necessary to pass HB 84, because if merchants do not want you to smoke they can hang a sign and that was sufficient. She also said that there would be a great burden put on enforcement people if HB 84 passed. She opposed passage of HB 84.

Number 0422

Dove Kull, representing herself as an older

Alaskan takes the stand. She said older people have thin skin. She said that same thing happens in your nasal passages when you are around smokers. Ms. Kull said she and other older Alaskans have frequent nose bleeds when subjected to second hand smoke. She strongly recommends HB 84 for those people who have sensitivities such as older people encompass.

Number 0445 — Leo Kaye, the Director of the Alaska Lung Association gives his testimony via the teleconference network from Anchorage. He said that HB 84 was designed to improve the original law and provides safeguards for non-smokers. He told committee members it was a health hazard to receive second hand smoke. He urged passage of HB 84.

Number 0522 — Richard Lauber, with the Tobacco Institute takes the stand. He told members of the committee that there is no actual fact findings that indicate second hand smoke is harmful. He was opposed to HB 84.

Number 0658 — Tom Coyne of Ketchikan gives his testimony via teleconference network. He said that present laws pertaining to smoking were not being enforced. He supported HB 84.

Number 0700 — Alice Hovena takes the stand. She said that the current law was not effective on the part of businesses in controlling smoke. Ms. Hovena said she didn't wish to be subjected to second hand smoke, although she would like to have dinner at a restaurant with a smoke-free surrounding. She said that when someone has nose bleeds, headaches and difficulty breathing, how can it be stated that there is no fact finding evidence that second hand smoke is harmful. She urged support of HB 84.

Number 0840 — Don Hagmason representing the Alaska Retailers Association takes the stand. He was concerned with passage of HB 84, in that if a person was smoking in a grocery store and the knowledge of who the individual was uncertain, the action suit would be filed against the grocery store merchant. He opposed HB 84.

Number 0870 — Ken Richardson, representing himself gives his testimony via the teleconference

network. He said he must constantly wear masks to breathe when he is around smoke in federal meeting places, grocery stores and airplanes. He said the residual smoke gives you colds and other sensitivities and urged passage of HB 84.

Number 0916 — Joe Clodauis, with the Department of Environmental Conservation (DEC) takes the stand. He said that the current bill was more complete and extensive, addressing current needs. He added if the DEC is to enforce the law, support HB 84.

Number 0954 — Susan Scott, representing the Alaska Council on Health gives her testimony via teleconference in Anchorage. Her concern was mainly for small children, with breathing difficulties, who could not go into a store or restaurant because of second hand smoke. She said that breathing second hand smoke was a health hazard and urged passage of HB 84.

Tape 1, Side B
Recording
Number 0010 — Alice Richardson, a retired Public Health Nurse, representing herself gives her testimony via teleconference in Anchorage. She said over 3 million people suffer sensitivities to smoke. During her recent air travel, she indicated she was still recovering from bleeding sinuses. She urged passage of HB 84.

Number 0048 — Debbie Sharpe of Ketchikan gives her testimony via teleconference network. She told of the problem on the ferry system where the lounge is divided in half for smokers and non-smokers, but how the people blow their smoke as they go to their side of the lounge. She urged support of HB 84.

Number 0100 — Jeff Sharpe of Ketchikan gives his testimony via teleconference network. He was opposed to smoking in a grocery store near the fresh food section and was appalled at finding cigarette ashes on produce. He supported HB 84 and its passage.

Number 0119 — Gary Miller, a state employee representing himself, speaks on behalf of many state employees in favor of HB 84. He read a memo

from a department executive who found loopholes in the current statute and; therefore, permitted employees objecting to second hand smoke to be subjected to it just the same. It was the executive's belief that he set the rules and decide what is fair for all. Mr. Miller felt that passage of HB 84 would make the law for enforceable.

Number 0224 — Roberta Banko, representing herself takes the stand. She said that passage of HB 84 would give the non-smoker more leeway to go to a smoker and encourage him to put out his cigarette. She supported HB 84.

Number 0245 — Discussion continues on HB 84.

Number 0290 — Ric Inannolino representing himself takes the stand. He passed out an article from a San Francisco newspaper that told of a non-smoker, employed with the federal government, receiving a $20,000 suit because she was subjected to a smoke filled office. He supported passage of HB 84.

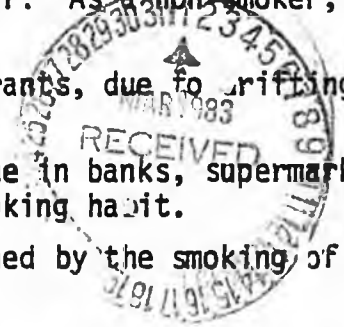
Tape 2, Side A
Recording
Number 0001 — Chairman Abood thanked everyone for taking the time to testify.

Number 0013 — Rep. Shultz moved that HB 84 be passed out of committee with individual recommendations. Motion passed with Rep. M M. Miller recommending a "do pass" and Representatives Larson, Abood and Shultz recommending do pass "if amended".

Number 0025 — No further business to come before the committee. Chairman Abood called the meeting adjourned at 2:35 p.m.

Dear Members of the Judiciary Committee:

I am writing to ask your support of House Bill 84, which provides long overdue health protection to non-smokers in Alaska. The present statute is inadequate in that it does not go nearly far enough to guarantee everyone's right to breathe clean air. As a non-smoker, I can attest to this fact because:



X I frequently have had meals ruined while eating in restaurants, due to drifting tobacco smoke.

X I have experienced extreme discomfort while waiting in line in banks, supermarkets, and other retail establishments, due to someone else's smoking habit.

X Where I work, I am constantly annoyed and sometimes sickened by the smoking of my fellow employees.

___ _____

How this bill is treated by your committee will show Alaskan voters whether their representatives really represent them or instead owe their allegiance to the tobacco lobby.

Signed: Rita Walker Date: 2/25/83

AMENDED TITLE:
AN ACT RELATING TO SMOKING IN PUBLIC PLACES AND VEHICLES

PRIME SPONSOR: FRITZ.

CO-SPONSORS: MILLER,M.M., BUSSELL, KOPONEN, LARSON, MALONE, MARTIN, MCBRIDE, SZYMANSKI, ZHAROFF, MILLER,M.W., LINDAUER, FURNACE, VASKA, DAVIS.

CURRENT STATUS: 2/15/83 IN (H) JUDICIARY

DATE	SEQ	PAGE	LEGISLATIVE ACTION
01/20/83	01	0067	FIRST READING -- COMMITTEE REPORTS
02/15/83	02	0259	S.A. -- DP01, OTHER03
02/15/83	03	0259	F/NOTES HSE SUPPL #9
02/15/83	04	0264	MOVED FROM RES TO JUD BY UNAN CONSENT
			JUDICIARY
			RULES
****	**	**	*** *** ***

2-WIRE

SPONSOR: H. Judiciary

SUBJECT: HB 84- Smoking in Public Places

MAILING ADDRESS: Invitational Hearing

zip

PHONE: 4990 CONTACT: Catherine Zalewski

TAKEN BY: Tim

T/C DATE/DAY: ~~Wed~~ Thurs, Feb 24

TIME: 1:30 Pacific
11:30 Alaska
10:30 Bering

T/C DURATION: 1 hr

SITES PARTICIPATING:

ALL ALASKAN	~~Anchorage~~	Dillingham	~~Juneau~~ *	Mat-Su	Sitka
	~~Barrow~~	Fairbanks	~~Ketchikan~~	Nome	Seward
WASHINGTON DC	Bethel	Haines	Kodiak	*Petersburg	Soldotna (Kenai)
	Delta Junction	Homer	Kotzebue	Sand Point	Valdez
					*Wrangell

Sen. Stevens
Sen. Murkowski
Congressman Young

SPECIAL OFF-NET* LOCATIONS/PHONE NUMBERS: _____

Chairing Site/Person * Rep. Bussell *

Catherine Zalewski
Signature of Sponsor/Contact Person

Date

-------- TELECONFERENCE OFFICE USE ONLY --------

MODERATOR NOTES

Special backup, publicty or technical considerations.

ANC- Leo Kaey
Exec. Director Alaska Lung Assoc.

POST TELECONFERENCE NOTES

SITE/LOCATION: _____

LOCAL MODERATOR: _____

T/C Started: _____

T/C Ended: _____

Was T/C Recorded? _____

Was T/C Broadcast on RADIO or TV?

(If yes, what stations?) _____

TESTIFIED/PARTICIPATED: _____

UNABLE TO TESTIFY: _____

OBSERVORS: _____

TOTAL #: _____

BILLING INFORMATION

Billing Address: _____

_____
zip

Phone
Charges To: _____
(area code) (phone number)

CATEGORY: Legislative ___ Non-Legislative ___

AMOUNT PAYABLE: _____

TO: ALL MEMBERS OF THE LEGISLATURE

FROM: LINDA BURKHART, 120 STEWART, A#2, ANCHORAGE, AK 99508
H- 338-2357 W- 333-1023

URGE YOU TO PASS HB 6 (DRIVING A MOTOR VEHICLE) TODAY.

QR

FROM: JOHNATHAN REYNOLDS
BOX 143
DOUGLAS, ALASKA 99824

PLEASE CONTINUE WORKING FOR SPEEDY PASSAGE OF HB 84-SMOKING/PUBLIC PLACES.
MANY THANKS.

EOM//

SENATE JUDICIARY/Department of Health and Social Services

POSITION PAPER

CS FOR HOUSE BILL NO. 84 (Judiciary)

"An Act Relating to smoking in public places and vehicles."

BACKGROUND INFORMATION:

First, there is mounting evidence in the medical literature that passive smoking by children, particularly young children, and adults with heart or lung ailments cause them to suffer physiological and eventually anatomic consequences that adversely affect their health status. Second, there is a mounting public awareness of the annoyance caused by persons smoking indoors in public areas. Third, and this is the fact of greatest significance, in 1981, there were 92 deaths in Alaska due to cancer of the respiratory system and 145 premature deaths due to coronary disease. Smoking undoubtedly contributed heavily to these numbers.

WHAT THE BILL DOES:

This bill strengthens the rights of persons who choose not to damage their lungs and cardiovascular systems by smoking - either active or passive smoking. It recognizes several features of indoor air quality that are not adequately recognized by the present statute.

Starting on page 4 through the end of the bill there is considerable discussion adding and amending items regarding size of no smoking signs, civil complaints/penalties, citations/penalty, injunctions, enforcement authority, public education and definitions which delineate the context of the subject.

SUGGESTION FOR IMPROVEMENT:

On page 3, line 14: Due to the difficulty of defining a "smoker" this line could be more effectively stated; "(4) a place of employment if all the employees consent to the designatio in entirety,".

On page 3, line 27: Addition of "per Alask statute 18.35.300" would make the sign more effective.

DEPARTMENT POSITION:

This bill is an enlightened public health policy statement and is strongly endorsed by this department.

MSNG 15881 MARTIE/MATSU 5/9 ?:30 AM

TO: REPRESENTATIVES LACHER, LARSON, RUSSELL, Tischer LISKA, HAYES, BARNES, MALONE CLOCKSIN, WENDTE

FROM: JOE ORTNER
BOX 1178
PALMER 99645
745 3211

RE: HB 84, SMOKING IN PUBLIC PLACES

I AM STRONGLY IN FAVOR OF THE NO SMOKING BILL. A BILL OF THIS KIND IS LONG OVERDUE.

****

MSNG 15881 MARTIE/MATSU 5/9 9:30 AM

TO: REPRESENTATIVES LACHER, LARSON, TISCHER, LISKA, HAYES, BARNES, MALONE, CLOCKSIN, WENDTE

FROM: MICHELLE ORTNER
PO BOX 1178
PALMER 99645
745 3211

RE: HB 84, SMOKING IN PUBLIC PLACES

I AM STRONGLY IN FAVOR OF THE NO-SMOKING BILL. CONDITIONS IN ROOMS FILLED WITH SMOKERS FOR LONG PERIODS OF TIME CAN BECOME UNBEARABLE.

6

M. B. Boad, M.D.
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March 2, 1977

ALL MEDICAL DIRECTORS:

RE: EMPLOYEE SMOKING AT WORK

The number of complaints from employees who state they are seriously bothered by the smoking of others has increased somewhat and the strength of the complaints has increased a lot recently. A New Jersey Bell employee has recently gained much publicity on this topic and this has caused us to focus on the subject and consider just what the Company position should be to requests for banning all smoking on Company premises.

This issue is not solely a Medical one nor even a health issue alone but rather is a social matter. We don't know how many of our employees smoke but probably between 25 - 50%. We have not had any great problems in the Bell System and the issue has been handled on a local basis without the need for a Company policy or position. We would prefer to have it remain this way, with each complaint handled individually.

About a year ago I prepared the following statement for Mr. H. W. Clarke as a guide for consideration if it becomes necessary to have a definite Policy or Practice on smoking. This was distributed to the Personnel Vice Presidents February 18, 1977, at their annual meeting:

EMPLOYEE SMOKING AT WORK

Except in areas established as non-smoking such as switch-rooms, traffic operating rooms, etc., supervisors should make a reasonable attempt to separate in work areas those personnel who smoke from those who do not. This can usually be done by segregating the smokers (or non-smokers) in one area of the work space.

CONTROL DATA CORPORATION
Interoffice Memorandum

November 28, 1979

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TO: Distribution A (Executives)

FROM: R.G. Wheeler HQS13A Ext. 4160

SUBJECT: New Policy on Designation of Smoking and Nonsmoking Areas

Effective January 1, 1980 the Corporation has approved a new domestic policy on the designation of smoking and nonsmoking areas.

Since both smokers and nonsmokers are employees, we're trying to find the most equitable way in which to assure the rights of both, given the rapidly moving public position on the question of smoking. Attached are the new policy and guidelines which are our best attempt to create a smoke-free atmosphere for those who desire it, and permit smoking by individuals who desire to do so. Where it gets tough, is in those areas regularly used by both smokers and nonsmokers. Here, the only way any semblance of equity can be achieved is by first establishing the basic assumption that those areas of our buildings in general use by employees will be nonsmoking, except where specific "smoking permitted" areas are designated.

At this time, Minnesota and Nebraska have legislation that is similar to this policy. Other states are currently holding hearings and working on legislation that will be similar to this policy. For both health and legal considerations, the Corporation has approved this policy to protect and preserve in the most reasonable manner we could find, the health and comfort of employees by creating both places that are free from smoking as well as those where smoking is permitted.

It is recognized that whenever there are potentially conflicting individual rights, a considerable amount of emotion surrounds those issues. We need to be as helpful as possible for our employees and our facilities people to implement this policy as equitably as possible.

Control Data is committed to protecting the rights of smoking and nonsmoking employees. As a consequence, we need to proceed as carefully as possible. If you have any questions, please do not hesitate to contact your personnel manager or myself.

Roger G. Wheeler
Vice President
Personnel & Public Affairs

/jzs

Attachments

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Council Adopts A New Policy On Smoking

Few subjects stir up as much controversy as "smoking versus no smoking" in University buildings.

Nonsmokers often worry about the harmfulness of "passive smoking," i.e., inhaling the smoke of others. Smokers, on the other hand, often feel their own rights are being curtailed.

After a lengthy review and wide solicitation of faculty and staff opinions, the Personnel Policy Council has adopted the following policy:

"Harvard University recognizes the increasing weight of scientific evidence that smoking is harmful not only to the smoker but also to nearby nonsmokers who, in enclosed areas, become 'passive smokers,' without choice. It is hoped that such situations can be resolved among and between the staff members involved.

"If there remains a conflict between smokers and nonsmokers about when and where a staff member may smoke within University buildings, this policy calls for the smoker to respect the expressed wishes and needs of the nonsmoker."

Staff with questions and comments should contact their Personnel Officer or drop a note to Sunny Macmillan, Holyoke Center 661.

HARVARD UNIVERSITY GAZETTE 9/18/81

About the Hospital

In 1977, the New England Deaconess Hospital actively instituted an antismoking policy through a standing administrative and medical staff committee still active in the hospital today.

From the start, the Deaconess Smoking Policy Committee believed that slow, steady progress would produce more lasting results. Thus, smoking has not yet been banned throughout the hospital. However, the Deaconess has taken incremental steps to reduce the number of smoking areas and, in due course, hopes to eliminate smoking entirely within the hospital.

Although the most productive activity regarding the anti-smoking effort has taken place over the past few years, concern with this issue has been growing since the 1950's.

In 1959, a study found that doctors in Massachusetts had cut their smoking activity drastically. In 1962, Deaconess employees and visitors were asked to smoke only in designated areas. In 1964, with the issuance of the now famous Surgeon General's report on smoking and its destructive side effects, the antismoking effort increased at the hospital. In 1977, a New England Deaconess Smoking Policy Committee was established to complete the task of making the Deaconess a "smoke free" hospital. That goal is soon to be realized.

Policy on Smoking

Smoking Pc

The New England Deaconess Hospital is a health care institution committed to the prevention of disease as well as its treatment. Smoking, the major preventable cause of disease and death in this country, is, therefore, not permitted anywhere in the hospital by any patient, visitor or employee, except in specifically posted smoking areas. *All unposted areas are 'No Smoking' areas.*"

Where You May Not Smoke

Please refrain from smoking except in an area that is clearly marked to permit smoking.

Massachusetts General Laws, Chapter 270, S 21, (1975), require such a restriction in all hospitals in the Commonwealth, but permits *limited* smoking areas to be defined.

Where You May Smoke

Patients may not smoke unless their doctors write an order to permit them to do so. This should be discussed with individual physicians. Even with permission, patients may not smoke in most areas of the hospital.

Visitors are asked not to smoke at all in the hospital, if possible. However, an area located near the hospital cafeteria (Farr Building) is available for those for whom it is difficult to abstain.

Staff members may not smoke in patient areas, nor *any* area not marked to permit smoking.

The Reason

Smoking causes premature death for 300,000 Americans *each year.* Lung cancer, now the most common cancer in men and the second most common in women, is due almost entirely to smoking. With the steady rise in illnesses associated with cigarette smoking, such as emphysema, bronchitis and heart disease, the New England Deaconess Hospital has assumed an active, leadership role through its antismoking effort. The Deaconess policy sets an example for its employees, its patients and its visitors and for other hospitals and health care institutions. The Deaconess policy has been recognized by other health care institutions as one of the most progressive in the United States.

Patients

1) Patients are expected not to smoke while in the hospital, and are so informed prior to admission. This may be modified only on the written order of the patient's own physician.

2) No patient may smoke in a two-bed room unless both persons in the room have written permission from their respective physicians.

3) Smoking is never permitted, and may not be ordered on the intensive care units (Farr 6) or the special care units (Baker 5 and Farr 8).

Employees

1) No hospital employee may smoke while on duty. Employees may smoke only on their free time, and then only in the areas specifically set aside for them and clearly marked as "smoking" areas.

2) Employees may not smoke in patient or visitor areas.

3) Employees should not visibly carry cigarettes while on duty, as it might help to undermine a patient's effort to break the habit.

4) Employee lounges and locker rooms, provided for the use of all staff, are "no smoking" areas, unless specifically posted as "smoking" areas.

5) Prospective employees will be informed of these points at their first interviews.

Visitors

Visitors are requested not to smoke while in the hospital.

However, if visitors are on the premises for an extended period and they feel they must smoke, the vending area near the hospital cafeteria (Farr Building) has been designated as a visitors' smoking area. This is the only area where visitors may smoke, and medical and nursing staff are asked to help by informing any visitor who does not realize this.


Founded in 1896, the New England Deaconess Hospital began as a 14-bed home-hospital dedicated to serving the health care needs of the Boston community. Today, it is the third largest hospital in Boston, a 489-bed and [illegible] 14-building complex located in the famed Longwood medical area. The Deaconess is a specialty referral hospital [illegible] the medical and surgical needs of the patients as well as patients from the Joslin Diabetes Center and the Dana Farber Cancer Institute. The Deaconess is known internationally and [illegible] for its research and teaching [illegible] cardiac, pulmonary and chest [illegible] for diabetes, transplant and pediatric [illegible] cancer, diabetes, [illegible] and renal disease and [illegible]

Com nce

Supervisors and department heads are responsible for ensuring compliance with the letter and spirit of this policy, and violations of the policy should be referred to them.

1) Questions of interpretation, understanding or compliance may be referred to the coordinator of patient relations, ext. 2-8042 or to the personnel department, ext. 2-8146.

2) Suggestions regarding the policy, or its application, will be welcomed by the Smoking Policy Committee, ext. 2-8330. Members of the Committee are also available to speak to staff, patients or visitors who are reluctant to cooperate with this policy.

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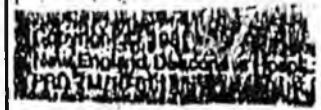

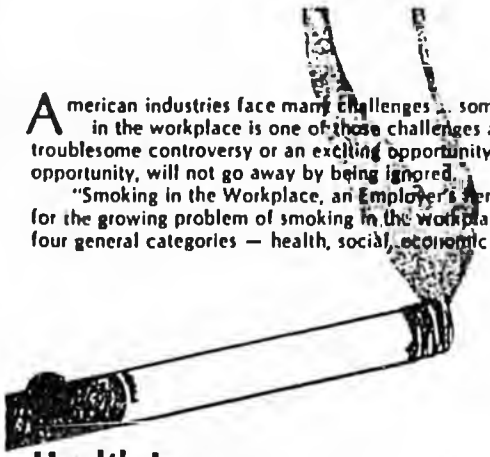

American industries face many challenges ... some troublesome, some exciting. Smoking in the workplace is one of those challenges and, depending on who is speaking, it is either a troublesome controversy or an exciting opportunity. The smoking challenge, whether viewed as controversy or opportunity, will not go away by being ignored.

"Smoking in the Workplace, an Employer's Perspective" is an examination of facts and issues responsible for the growing problem of smoking in the workplace. The issues facing the employer are many, but fit into four general categories — health, social, economic and legal issues.

Health Issues

Health issues are of two types: risks to the smoker and to the non-smoker. Volumes of research verify that smokers are at increased risk of cancer, lung disease and heart disease. Research in the industrial setting has demonstrated that smoking increases risks to workers exposed to a wide variety of chemical and physical agents.[1] The risk may be that tobacco facilitates the inhalation, ingestion or skin absorption of toxic agents. In addition, workplace chemicals may be transformed into even more harmful agents by smoking. The synergism of smoking and asbestos is the most well known hazardous link. (Smoking asbestos workers are about five times more likely to develop lung cancer than are non-smoking asbestos workers.[1])

Health risks to non-smokers in the workplace are less well known. Recent research has demonstrated that exposure to tobacco smoke in the work environment is deleterious to the non-smoker and significantly reduces [redacted] airways function (a test of lung function.)[1] Prolonged second-hand smoke does more than cause demonstrable damage to healthy non-smokers. The effects on non-smokers with heart and lung disease can be devastating and life threatening. For the employee with emphysema or asthma, exposure to second-hand smoke at work will significantly impair the ability to breathe. By displacing oxygen with other gases it instantly (and in some cases drastically) alters symptoms. Most asthmatics and every employee with emphysema will incur long-term problems from systematic exposure to second-hand smoke.

Social Issues

Social issues of smoking are addressed less often, but are no less significant. Non-smokers frequently are offended by smoke. They express resentment that they cannot avoid air contaminated by second-hand and side stream smoke. More and more frequently conflicts are arising between smokers and non-smokers who demand what they feel are their rights.

A Social Security Administration poll of 14,110 SSA employees revealed that 76% of the non-smoking employees were bothered by second-hand smoke. A majority reported developing sore throats, burning eyes and coughing spells, and half reported occasional difficulty in concentrating. Since two-thirds of most work forces are non-smokers, the indicated rate of dissatisfaction among all employees translates to half the work force. They reported dissatisfaction and disrupted work caused by others' smoke.[4]

As management approaches the smoking issue, it is treading in a sensitive area. The positive aspects must be emphasized to smokers (promotion of quit-smoking programs) and non-smokers (protection from others' smoke). The second-hand smoking issue will continue to snowball during the 1980's. Research has shown that 78% of the work force feel employers have the right to prohibit smoking.[4]

Economic Issues

Economic issues related to smoking include:

- The absentee rate among smokers is twice that for non-smokers.
- The accident rate is twice that of non-smokers (due in part to loss of attention, hand occupation, eye irritation and cough.)[6,7]
- Increased health insurance costs ($204 additional cost per smoking employee, in 1980 dollars)[1]
- Additional fire insurance, workers compensation, life and disability insurance costs.[1]
- Down time spent doing smoking-related activity (estimated at 30 minutes per day at $4 per hour for a yearly cost of $500, $900 for a pipe smoker.)[8]
- Increased maintenance costs (Merle Norman Cosmetics returned $40 to each employee in unused maintenance funds after they banned smoking in their facilities). It is estimated each smoker causes $120 damage per year to carpeting, etc.

A less obvious economic price for smoking is the increased cost of heating and cooling outside air. Recommended outdoor air ventilation rates for areas of buildings where smoking is permitted is *25 cubic feet per minute per person.* Compare this to only *one-fifth* that for areas where smoking is not permitted. The expense of heating and cooling such a large amount of outside air is staggering and increasing as energy costs rise.[10]

Legal Issues

Legal responsibilities for smoking are still evolving. In Minnesota, however, the guidelines are clear. The Minnesota Clean Indoor Air Act (MCIAA) defines places of employment as public places. The right of non-smokers to breathe clean air is primary. All areas, except private offices, must have signs designating smoking/no-smoking areas. Non-smoking employees must be allowed, under the MCIAA, to carry out their duties in a smoke-free area.

Employers who fail to comply with the law are at risk to suits by employees who wish to force compliance. They are additionally at risk in cases where workers compensation or personal injury are issues.[11] By mid-1981, several successful litigations, as well as numerous workers compensation claims, have been settled on behalf of the non-smoker. Punitive damages have been awarded to non-smokers.



Solutions

Resolving the four categories of issues normally takes a two-pronged approach. The combination of restricting smoking to a limited number of designated areas, combined with a company-supported smoking cessation program, seems to be most common.

Smoking restrictions take a variety of forms. Probably the most effective method is to restrict smoking to a portion of the cafeteria or certain rest areas. An alternate method is to separate smokers from non-smokers at work stations and allow smoking in the smokers' area. This plan often leads to complications with work flow, reshuffling people who quit smoking, and problems with air flow pulling smoke into non-smoking areas. This solution also fails to address the problems of energy consumption, reduced productivity and the increased accident rate of smokers.

Some companies have banned smoking in all company facilities. The transition period for older employees is somewhat difficult, but new employees readily accept the restrictions.

Smoking cessation programs can be educational, supportive, or added incentive. An extensive listing of smoking cessation programs is available through the American Lung Association.

Incentive programs attempt to use the economic system to motivate people to quit. There are numerous examples. G.W. Dahl Co., Inc., Bristol, Rhode Island, allows employees to sign a pledge stating "To qualify for a bonus of $3 per week, I promise to quit smoking entirely. I promise to report myself immediately in writing to the payroll department in the event I break this pledge..."

Intermatic Company employees bet against the house on their ability to quit smoking. Bets range from $1 to $100 with double-or-nothing for anyone with 12 month's abstinence.

Texas Division of Dow Chemical Company quitters earned a raffle ticket for a fishing-boat for each month they didn't smoke. Non-smokers could participate in a second raffle by recruiting smokers to join the smokers' raffle.[11]

Incentive programs often achieve a success rate well over 30%, with some as high as 70%. (Unless there is a provision for them to participate, non-smokers may build resentments over incentive programs.)

Smoking in a work environment poses a unique set of problems for management. There are tools and techniques which, when properly applied, provide for positive intervention. It is possible for management to (1) provide a beneficial smoking and health package for workers, (2) simultaneously improve productivity and profits, and (3) head off an issue of growing concern among employees and between management and labor.

About ANSR

The Association for Non-Smokers' Rights (ANSR pronounced answer) is a concerned citizens' group for smokers and non-smokers alike, interested in protecting everyone's right to a clean indoor environment.

ANSR promotes and protects the right to clean indoor air through many activities including:

- Working for enforcement of the Minnesota Clean Indoor Air Act (MCIAA-1975), a law protecting "the public health, comfort and environment by prohibiting smoking in public places and at public meetings EXCEPT in designated smoking areas."
- Informing Minnesotans as to their rights and responsibilities under this law.
- Educating the public about the health and safety hazards of SECOND HAND SMOKE, particularly in an enclosed environment.
- Encouraging implementation of the MCIAA in the workplace and other public places such as restaurants, retail stores, public transportation, educational facilities, health care facilities, auditoriums and arenas and public meetings.

ANSR is sponsored by the American Lung Association of Minnesota and the American Lung Association of Ramsey County. Its activities are governed by a board of directors who are elected by the general membership.

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A program of:
American Lung Association of Minnesota
American Lung Association of Ramsey County



Smoking in the Workplace

An Employer's Perspective

ACTION ON SMOKING AND HEALTH
2000 H Street, N.W. Washington, D.C. 20006 (202) 659-4310

ASH SPECIAL REPORT:
THE ECONOMICS OF EMPLOYEE SMOKING

Action on Smoking and Health (ASH) has prepared this presentation to help employers appreciate both the immediate and long-range economic benefits of implementing "quit smoking" programs for smoking employees, and of establishing policies to protect nonsmoking employees from exposure to tobacco in the workplace. Today private business firms are expressing more interest than ever before in smoking cessation programs for their employees. In one month ASH has received in excess of 60 separate company requests for assistance and/or information on how to reduce smoking among employees.

These companies writing for our suggestions have already realized the fact that smoking is bad business. One fifth of all lost work days in the U.S. is attributable to the effects of cigarette smoking;[1] a 2-pack-a-day smoker is absent from work 150% more often than a nonsmoker.[2] Cigarettes are a major cause of damage to furniture[3] and carpets, the leading ignition source for small fires,[4] and a prime cause of damage to inventory and expensive office equipment.[5] Medical and disability payments are greatly increased due to the smoking habit,[6] as are insurance costs.[7] Add to this increased costs for cleanup and equipment to accommodate smoking employees,[8] lost production time fiddling with smoking paraphernalia, the problems of smoking in hazardous areas, etc., and the reduction of smoking becomes a significant source for savings and increased efficiency for almost any business operation. This reduction can be accomplished both by helping smokers cut down on (or quit) smoking and by restricting smoking in the work area. Of course, hiring, salary and promotion policies can also influence the amount of smoking cutting into work hours.

In addition to the economic aspects of smoking in the workplace, large employers are increasingly sensitive to the health problems, counterproductive discomfort, and offense smoking causes nonsmoking employees and customers alike. Not only does unrestricted smoking contribute to discontent, conflict and ill will on the job, but it is now the subject of a mounting body of legal and regulatory action.[9]

Employees in many states have been awarded unemployment and job disability payments after having left their jobs due to significant tobacco smoke in their workplace. In one case which has received national attention, a court in New Jersey has banned all smoking in the office of a worker whom the judge found to be allergic to tobacco smoke.[10] The court determined: "There can be no doubt that the by-products of burning tobacco are toxic and dangerous to the health of smokers and nonsmokers generally and to this plaintiff in particular."[11] The judge also held as a matter of law that "an employee has a right to work in a safe environment," and that to the extent necessary to protect this right, a court may prohibit smoking in the workplace.[12]

We at ASH strongly believe that the problems of smoking in the workplace should be taken to the courts, or before regulatory agencies, only as a last resort. With the cooperation of companies concerned with the welfare of their employees and the public interest, the health and comfort of nonsmoking employees can be protected with little or no inconvenience to employees who smoke during working hours.

We are therefore providing these materials to major business organizations in an effort to secure their cooperation with regard to this problem. For our part, we do not seek a total ban on smoking in the workplace. Rather, we ask only that certain minimal -- and we believe reasonable -- steps be taken to protect the health and comfort of the majority of workers who are nonsmokers.

Attached is a list of proposals. These are steps which we feel would provide minimal protection for nonsmoking employees. Many employers have gone beyond these proposed measures after determining it is in their best interests to do so.

Although at least 30% of businesses in America already have restrictions on smoking at the workplace, ASH attaches only a sample list of employers who have already acted to reduce or eliminate smoking among their employees. As you can see, the approaches taken by different companies vary considerably.

In considering this matter you may find the following information of particular interest:

1. An idling cigarette generates as much as four times the amount of toxic agents given off by a cigarette being puffed by the smoker.[13] These toxic agents go directly into the air, and are not filtered by the cigarette filter or by the filtration through the cigarette tobacco.

2. Studies have shown that nonsmokers in a smoke-filled room may be forced to breathe in the equivalent of several cigarettes a day.[14]

3. The American Medical Association estimates that at least 34 million Americans are tobacco smoke sensitive in one way or another.[15]

4. Seventy-eight per cent of all adults -- including 70% of all adult smokers -- believe management should have the right to prohibit smoking in their places of business. The clear majority feels management should have this right even if there is no safety hazard.[16]

5. The majority of adults are nonsmokers. Specifically, less than 40% of adult males, and less than 30% of adult females, are cigarette smokers.[17]

6. Almost 65% of all adults -- including 77% of nonsmokers, and 34.8% of smokers -- find it annoying to be near a person smoking cigarettes.[18]

7. A very substantial body of evidence now clearly indicates that ambient tobacco smoke can create a serious health problem, especially for the estimated 34 million Americans who have particular susceptibilities. Moreover, in significant concentrations, tobacco smoke causes measurable physical symptoms of irritation in the majority of all nonsmokers.[19]

8. The majority of smokers -- and the overwhelming majority of nonsmokers -- believe smoking should be allowed in fewer places.[20]

9. In response to increasing pressures from nonsmokers, the majority of states -- and literally hundreds of counties, cities, towns, etc. -- have passed laws to protect the rights of nonsmokers to breathe air unpolluted by tobacco smoke.[21] Restrictions on smoking aboard airplanes, trains, buses, and in a growing number of federal office buildings are other indications of the strong desires of many nonsmokers, and of the growing public acceptance of reasonable restrictions on smoking in enclosed public places.

Action on Smoking & Health would be happy to provide further documentation for any of the statements made above. To obtain information relating to this general problem, or to discuss any particular aspect of the economic disadvantages of smoking in the workplace, please feel free to write or call at your convenience.

Action on Smoking & Health is a national, nonprofit tax-exempt scientific and educational organization concerned with the problems of smoking and with the rights of the nonsmoker. It serves as the legal action arm of the anti-smoking community, initiating, participating in, and assisting legal actions designed to reduce the toll of smoking in the U.S. and to protect the rights of the nonsmoker. In this regard, the issue of smoking in the workplace is of great concern to us.

NONSMOKERS MAKE GOOD RISKS, SAY INSURANCE COMPANIES

Now, those bastions of cautious economics are rewarding nonsmokers with discounts—and not just for life insurance.

By Diana Shaman

In 1979, 15 years after the Surgeon General issued the first report on smoking and health, a Worcester, Mass., insurance company, State Mutual Life Assurance Company of America, issued a landmark study of its own. Entitled "Mortality Differences Between Smokers and Nonsmokers," the report is still causing ripples within the insurance industry.

The study, which was conducted over a 15-year period, examined the causes of death of policyholders and revealed, for example, that for lung cancer, pneumonia and influenza, the mortality rates among smokers were 15 times higher than among nonsmokers.

For heart disease, cardiovascular disease, and other respiratory diseases, the death rate for smokers was two to three times higher. In general, a higher death rate for smokers, usually two and one half times that of nonsmokers, showed up at all ages, particularly among younger people.

The insurance company's president, W. Douglas Bell, emphasizing that he was not taking a moral stance on cigarette smoking, issued this statement at the time the report was released: "State Mutual's position has been simply that nonsmokers are better life insurance risks than cigarette smokers, and that as a mutual life insurance company, we have a responsibility to our nonsmoking policyholders to recognize their improved mortality rate in the form of lower insurance costs."

As the most comprehensive insurance study to date, the report continues to have an impact on insurance underwriting. "Immediately before our study, no more than 50 companies offered nonsmoker discounts on life insurance," says Peter Marion, associate actuary at State Mutual. "Less than three years later, there are 400 companies offering them."

Nonsmoker discounts are reduced premiums on insurance policies offered by some companies to policyholders who have not smoked cigarettes—in some cases also pipes and cigars are included—for at least 12 months.

The idea for a nonsmoker discount became a reality at State Mutual in 1964, a month following the Surgeon General's report. "The idea was prompted by the report," says William Moisuk, associate actuary for individual health insurance at State Mutual, "but at the time there was no such thing as an insurance study on the subject, so we were pioneering the ground."

Initially, State Mutual offered nonsmokers discounts of from 5 to 10 percent, but as the company grew more confident that mortality rates were indeed substantially affected by smoking, it increased discounts and dividends so that nonsmokers now save an average of 20 percent. Mr. Marion says that more than 100,000 nonsmoker policies, representing 70 percent of life insurance sales, have been issued since the discounts began.

State Mutual's success has been closely monitored by other insurers who are anxious to achieve the same competitive edge. "Nonsmoker discounts are a vital selling tool for us," says Theodore Topalian, chief underwriter at Mutual of New York, the 15th-largest life insurance company in the country. "Sometimes it makes the difference between a sale and a nonsale."

AMERICAN LUNG ASSOCIATION BULLETIN (ISSN 0092-5659). Managing Editor, Lucille Fisher Masters/ Editorial Consultant, Ellie Kossack/ Designer, Robert Palevitz/ Vol. 68. No. 7.

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Some companies have stepped in with discounts on health, homeowner, and other insurance

In addition to life insurance discounts, several companies have begun offering nonsmoker discounts on disability income policies, which are paid when a policyholder can't work because of being sick or disabled. One company, Provident Indemnity Life Insurance, in Norristown, Pa., offers a one-third discount for nonsmokers in its small group comprehensive medical insurance plans. And, on the theory that smokers cause more fires and often have accidents when lighting up a cigarette while driving a car, casualty companies—companies that insure property—have stepped in with discounts on homeowner, fire and automobile insurance.

Because the cost of premiums is usually based on a company's claim experience, many insurance companies say that, by taking new directions, they are treading on shaky ground from an underwriting point of view.

"There is an abundantly clear correlation between smoking and less than good mortality, but on the disability side we are frankly winging it," says William Boyd, vice president of health insurance at the Indianapolis Life Insurance Company. The company has been offering nonsmoker discounts on life insurance for 10 years and is about to offer a three percent discount for disability insurance.

Collective savings on nonsmoker discounts by policyholders could be substantial

Insurance premium receipts amount to billions of dollars annually. During 1981, companies collected $33.8 billion in individual automobile insurance premiums, and $11.4 billion in individual homeowner insurance premiums. Life insurance companies collected $36 billion in individual life insurance premiums, and $31.8 billion in group and individual health insurance premiums. If the nonsmoker discount trend accelerates, collective savings by policyholders could be substantial.

John M. Bragg, an actuarial consultant with offices in Atlanta, Ga., and Toronto, Canada, has researched the effects of smoking and nonsmoking both on mortality and morbidity (disease) and has come up with some startling conclusions, based on studies of data on about 250,000 persons insured by life insurance companies over the period 1968 to 1978.

At age 45, male smokers die at an 80 percent higher rate than nonsmokers, Mr. Bragg concluded. At age 55, male smokers die at a 110 percent higher rate. Though somewhat less affected, women are also hit by smoking. Women smokers at age 45 have a 49 percent higher death rate than nonsmokers. At age 55, their death rate is 71 percent higher. For both sexes, the situation tends to get worse with advancing age. Mr. Bragg's definition of a nonsmoker is someone who has not smoked cigarettes for 12 months at the time the policy was issued.

"We also have reason to believe that medical and surgical expenses for smokers, both male and female, are generally 70 percent higher than for nonsmokers," Mr. Bragg says. He arrived at that figure, he says, by studying available data. "Smokers have far more deaths related to pulmonary illness, for example. We also talked to knowledgeable doctors. When you put everything together, you can come up with an educated professional opinion."

Mr. Bragg points out that his conclusions will probably cause some controversy, but he is in the business of advising insurance companies on product development, and many companies appear to agree that the nonsmoking discounts are justified. More important, companies feel they have the evidence to present to state insurance commissioners, who also have to rule that discounts are not arbitrary and unfair.

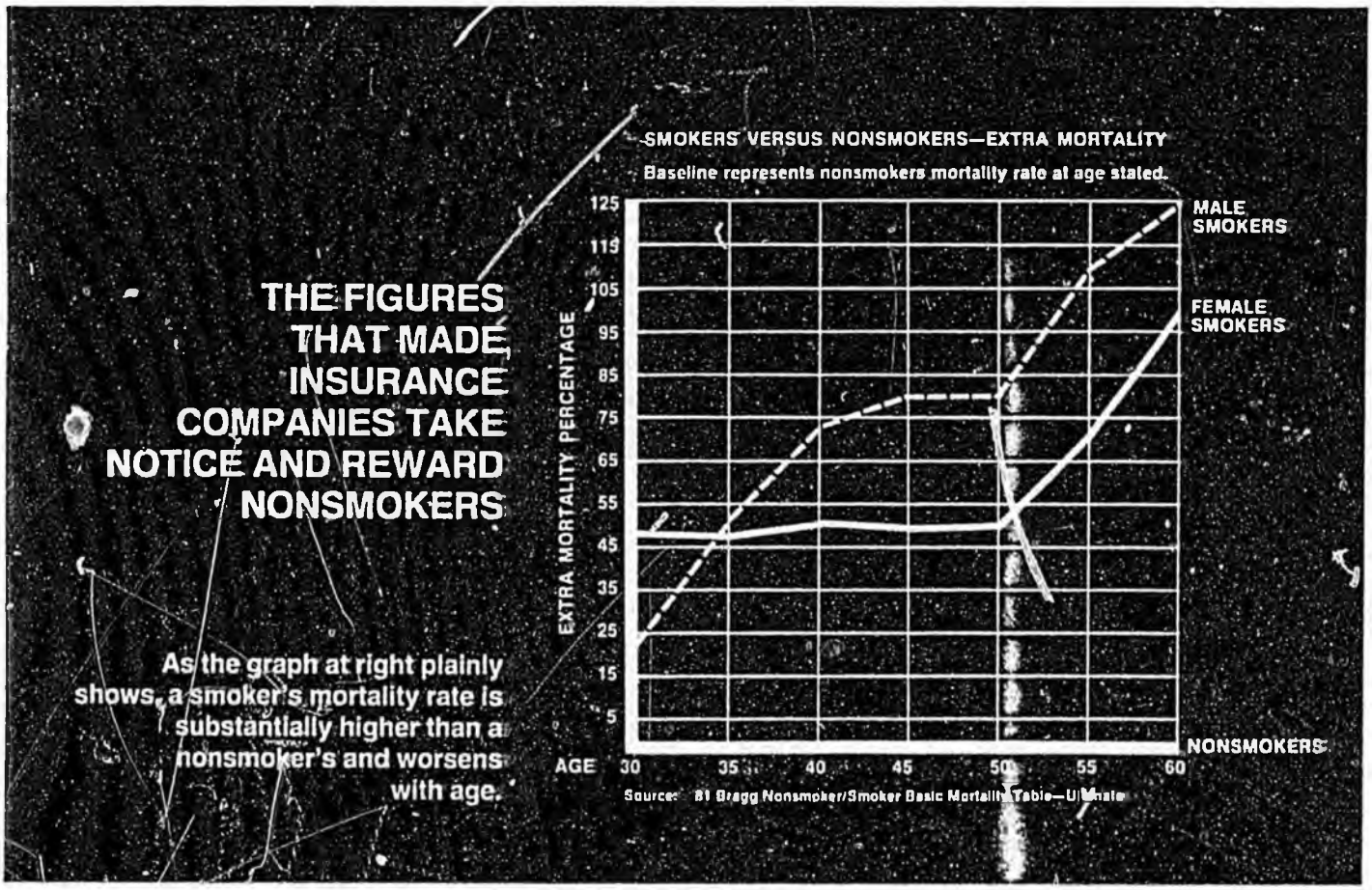
"Nonsmokers live longer. Our rates prove it!" proclaims one insurance company's billboard ad

Allnation Life Insurance Company in Wilmington, Del., rented a billboard last June to advertise a new 30 percent discount on life insurance premiums for nonsmokers. The message read, "Nonsmokers live longer. Our rates prove it!" Said their company president, Douglas Ietter, "We thought we should reward people who don't smoke."

Industry spokesmen say that nonsmoker discounts are good for business. "Everyone is looking to save money," says Marshall Hendrian, an agent for The Travelers Insurance Companies in New York. He is able to offer nonsmoking customers who take out a minimum of $75,000 in life insurance a substantial discount. A male smoker, aged 45, for example, pays an annual premium of $2,107 compared with a nonsmoker's premium of $1,936.

Discounts on life insurance premiums are now relatively common, but nonsmoker discounts on disability income insurance are also increasing. Reflecting the current trend, Kansas Farmers Life Insurance Company in Manhattan, Kans., began offering about a 10 percent discount on this type of insurance, effective August 1, 1982, according to John Cooper, the claims manager. The company also offers nonsmoker discounts on life insurance.

A company that already has been making discounts available on disability is Pacific Mutual Life Insurance Company in Newport Beach, Calif., which began to offer such plans in July 1980. The discounts average five percent of the premium, and 70 percent of the company's disability policies are sold on a nonsmoker basis. "Smokers are less concerned about their general body condition and are generally more careless than nonsmokers," says William Hezzelwood, assistant vice president, explaining why the company felt justified in offering the discounts. "The Surgeon General's report also indicates that nonsmokers get sick less often than smokers."



Another trend: Raise the discounts

Pan American Life Insurance Company in New Orleans, La., was another company in the forefront, offering three percent nonsmoker discounts on disability as of July 1981. The company is now considering raising the amount of the discount, according to Paul Wisnewski, second vice president and disability income director.

The company started with the smaller discount, he says, because "there was no empirical study we could transfer into claims costs of occupational groups that we sell to. We figured that in a year or two we would get more empirical data." Two thirds of the company's sales are to nonsmokers. And Pan American is now working on developing new health insurance policies, including hospitalization. "I suspect that whatever we work on will have a nonsmoker discount," Mr. Wisnewski says.

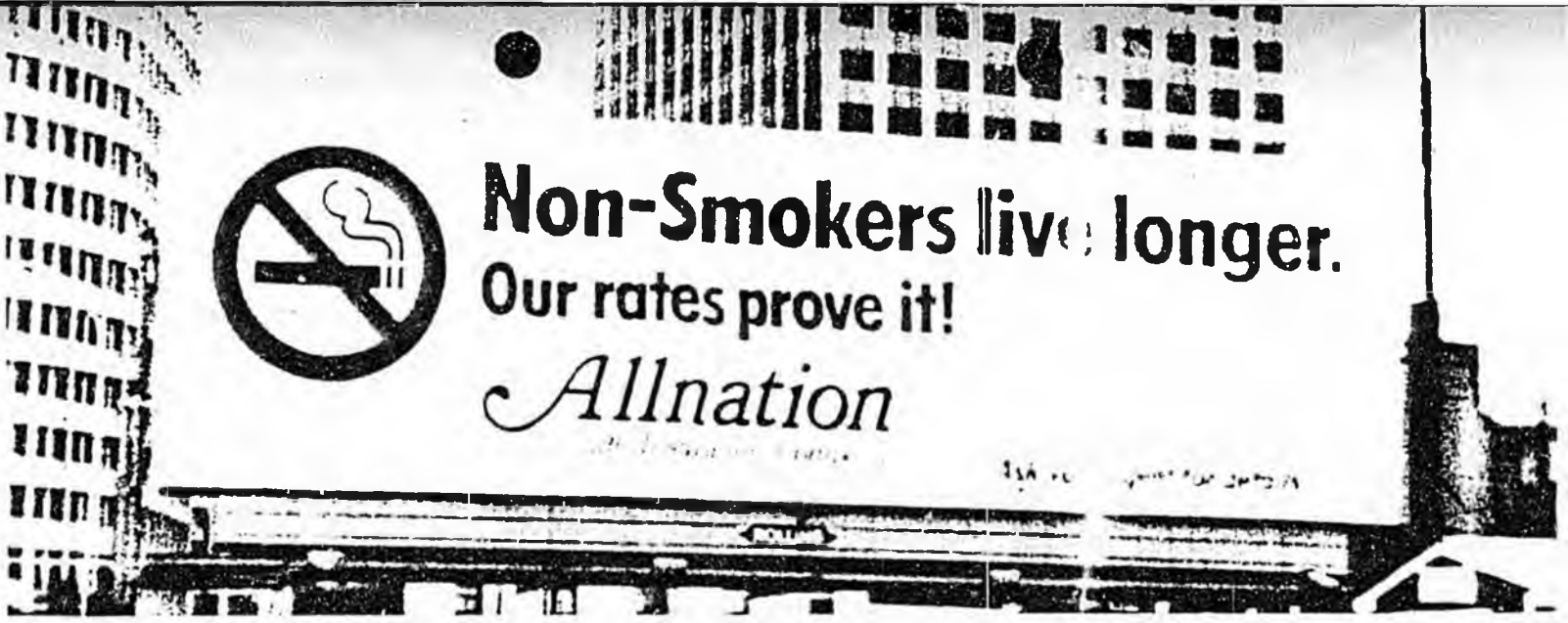
Like others in the industry, Mr. Wisnewski considers discounts the coming trend. Paul Barnhart, a consulting actuary in St. Louis, Mo., predicts that within two years, 90 percent of the insurance companies carrying disability plans will be offering some kind of nonsmoker discount on disability income policies. What percentage the discount will be of the premium amount depends on how conservative or aggressive the individual company wants to be, Barzhart says. He has worked on discounts ranging from 3 to 10 percent and feels the higher figure is justified. "Nonsmoker policyholders ought to experience at least 10 percent lower disability claims," he says.

Less prevalent are nonsmoker discounts being offered by casualty companies, but they are available. Farmers Insurance Group, headquartered in Los Angeles, Calif., has been offering discounts on homeowner and automobile insurance since the late '70s. The present discount on homeowners policies is 10 percent. The discount on automobile insurance is 12 percent.

The company's decision to offer the discounts was prompted in part by a Columbia University study that showed smokers to have significantly more accidents than nonsmokers. Among one of the groups studied by researchers, 54 percent of those who had a high rate of accidents were smokers, compared with 18.6 percent of those who had no accidents or violations.

Farmers also conducted its own study of policyholders, and it showed that 6.59 percent of smokers had accidents compared with 3.75 percent of nonsmokers. Robert Hitchcock, sales manager of the company's regional office in Merced, calls the discounts "our number one calling card."

Citizens Insurance Group in Howell, Mich., has been offering a 10 percent nonsmoker discount on homeowner policies since October 1, 1980. No member of a house-



The billboard in Wilmington, Del., rented by a life insurance company offering a discount to nonsmokers.

hold can have smoked over a 12 month period. The Michigan Insurance Bureau regulations have allowed insurance companies to use smoking as a rating criterion since January 1981. "That was one of the reasons we started to offer the discounts," says Jim McLogan, personal lines unit manager.

A study has shown that 17.7% of the fires in one- and two-family homes are smoking-related

The Hanover Insurance Company in Worcester, Mass., introduced nonsmoker discounts on homeowners insurance in 1973, says James Richardson, the vice president of the company. Discounts on automobile insurance were offered a year later. "Initially, we offered a five percent discount on both plans," Mr. Richardson says. "We were so pleased with the results that we felt we could increase the discounts and did so in the late '70s." The discounts now average 10 percent.

Studies by the National Fire Protection Association have shown that 17.7 percent of fires in one- and two-family homes are smoking-related, Mr. Richardson says. Children playing with matches caused an additional 9.7 percent of fires.

Several companies are now studying the possibility of offering nonsmoker discounts on comprehensive medical insurance coverage, but Provident Indemnity Life Insurance took the step two years ago. With that company, nonsmokers pay one third less for small group comprehensive medical insurance, life insurance and short-term disability insurance.

"We felt that if nonsmoker discounts make sense for life insurance, why not for health insurance," says Samuel Corey Jr., Provident's senior vice president of marketing. "Everyone knows there is a relationship between smoking and health. The problem was how to price the product. We took an educated stab." Because the field is so new, other insurers will probably be watching Provident's experience in order to develop their own products.

In a broader sense, nonsmoker discounts go beyond mere savings on premiums, and they may, in fact, already be shaping social policies. Mr. Corey, for example, noted that employers must pay at least 50 percent of small group insurance premiums, which average about $5,000 a year. Hiring nonsmokers saves them money, and many are already indicating that they make that choice when they can.

"I think that newer policies down the road will take into consideration things even beyond smoking," says William Boyd of Indianapolis Life. "Whether or not you are exercising, for example, or whether or not you are dieting. Insurance companies could be rewarding lifestyles that have been proven effective in promoting longevity and lower rates of morbidity. In a way, I think we have a social responsibility to do that."

A. Judson Wells, Ph.D., a former director of the specialty products division at E.I. De Nemours Du Pont & Company, has been working, since his retirement, as a volunteer for the American Lung Association. His special concern are the issues of passive smoking, smoking in the workplace, and nonsmoker discounts in the insurance industry. "We are always looking for ways to convince people that smoking isn't good for them," Dr. Wells says. "If they start getting the same message from the insurance industry, maybe it will help."

Most insurers appear convinced that nonsmokers live longer and are healthier. As good business practice, they are putting that conviction to use. "Nonsmokers discounts are not a gimmick," says William Moisuk of State Mutual, where nonsmoking discounts started. "We feel they are something we should offer our policyholders in order to be equitable and fair." «

Dian Shaman is a freelance writer based in New York.

SMOKING AND HEALTH DON'T COMPUTE

At IBM, educating employees to attain and maintain a healthy lifestyle is considered good business. The giant corporation gives its managers guidance on smoking practices in the workplace—and it also has ordered 27,000 copies of ALA's self-help Freedom From Smoking manual

A conversation with Cole Mandelblit, IBM senior advisor for Health and Care Planning.

Q. *IBM, which is one of the leading corporations in this country, has offered ALA's* FREEDOM FROM SMOKING *self-help manuals as part of its health education program to its 200,000 employees. Tell us something about that health education program.*

A. Back in 1978, we at IBM took an intensive look at what we were doing in our preventive health efforts. We concluded that although we had a number of good programs in place, and some of them had been in place for many years, we had not done enough in the way of health education and health promotion.

Q. *Did you have a special reason for that review?*

A. Yes, we did. In recent years, medical research has found increasing evidence that lifestyles have a major influence on health. Lifestyles that include cigarette smoking, insufficient exercise or poor diet affect people's health over a period of time. It follows, then, that lifestyle also affects corporate costs in relation to medical benefits and absenteeism as well as productivity. And it also impacts life insurance and total disability costs.

Q. *Is money the bottom line?*

A. No. The larger picture is that if employees learn how to improve or maintain their health, they will lead more productive, more satisfying lives.

Q. *Leading a more satisfying life is really what people want these days, isn't it?*

A. They do. In contrast, if you develop a serious ailment, such as emphysema, chronic bronchitis or lung cancer, you are limited in your activities, often for years on end. This impacts your whole life, as well as your ability to perform work effectively.



"Smoking cessation is a key area of concern in terms of preventive health programs."

Q. *Can you identify an important area of lifestyle that people should modify to protect their health?*

A. Well, if you look at the available data, smoking cessation is a key area of concern in terms of preventive health programs. Smoking cessation should be the first on the list.

Q. *Have you offered smoking cessation clinics to IBM employees?*

A. Yes, IBM will provide tuition assistance for any smoking employee or a member of the family to attend smoking cessation clinics run by the Lung Association or other organizations in the community. This is in addition to clinics specifically scheduled by IBM for employees and their families. However, only a small percentage of smokers have tried cessation clinics.

Q. *The National Cancer Institute reports that 95 percent of smokers who successfully quit do so on their own, not through a group.*

A. The data seems to indicate that a lot of people quit smoking only after a number of efforts, maybe of different types. You never know what it was that helped the person to succeed—whether it was the last thing that did it or all of the things that preceded the decision to quit.

Q. *Well, preliminary data show that people who use the American Lung Association's "Freedom From Smoking in 20 Days" manual and the followup manual keep returning to the manuals for help. The rate of nonsmoking does not drop off as the months pass but, instead, increases with users of these manuals.*

A. Yes, and IBM was the first corporation to offer the manuals to its employees. In our opinion, the FREEDOM FROM SMOKING self-help program—which includes ways to change eating habits, reduce stress, and start exercising—is a well-thought-out piece of work. It's also a low-cost approach to smoking cessation. The research data indicated that there was sufficient expectation of success to justify making it available to our employees and members of their families free of charge.

Q. *Did IBM employees order a large number of copies?*

A. Yes, 27,000 requests were received.

Q. *Besides smoking cessation, what else does IBM offer in its preventive health program?*

A. We offer exercise classes, weight reduction programs, nutrition courses, and a number of other programs that



Photos: Penny Gentieu

IBMer Rose Fletcher has a company-supplied desk sign proclaiming her workspace to be a nonsmoking area.

help to improve lifestyle patterns. The subjects vary somewhat according to local interest.

Q. *Are many corporations other than IBM taking a hard look at the effect of lifestyle on health?*

A. Although a lot of companies are doing things and there has been considerable publicity and attention to this subject, it is my impression that the trend toward providing health education in the workplace is just beginning to develop.

It seems to me that employers have been presented with a very high-cost model of preventive health. It includes not only building new exercise facilities but also hiring staff members to maintain them and to conduct the programs. More than this, the model includes detailed needs and interest surveys, as well as evaluation studies to assure that the programs result in changes in people's health practices.

Q. *You are saying that IBM has another approach.*

A. Yes. IBM decided to turn to community organizations that have an established track record in health promotion and fitness—organizations such as YMCAs, hospitals, voluntary health organizations—such as Lung Associations—and commercial organizations. We offer approved courses at IBM offices or at local community facilities at no cost to employees, retirees and their families.

Q. *Using community organizations and local facilities as part of your health program looks like a practical approach for a corporation like IBM, which has so many employees spread throughout the nation.*

A. That's true. We have some 200,000 employees in about 300 locations.

Q. *Returning to IBM's concern about smoking, surveys today show that two-thirds of employees are nonsmokers. Does management have a responsibility to them, as well as to the smokers?*

A. We recognize the responsibility. In addition to assisting smokers to quit, IBM has established guidelines concerning smoking in the workplace.

Q. *Does IBM have written policies on smoking at work?*



IBM managers are responsible for banning smoking from meeting rooms without good air-clearing ventilation

A. We don't call them policies, but we have provided managers with guidance over a period of eight years concerning smoking in the workplace. We have modified that guidance from time to time with the goal of increasing the sensitivity to the needs of the nonsmoker.

Q. *People in other organizations would be interested in the way smoking-nonsmoking guidelines work at IBM. What is management's overall approach?*

A. Briefly, the guidance involves setting aside areas in cafeterias, libraries and other general areas for the smoker and the nonsmoker. It involves identifying certain common areas, such as elevators and copier rooms and small shuttle buses, as nonsmoking areas. It also indicates that managers are responsible for assuring that meeting rooms have adequate ventilation. If the ventilation is not adequate, the conference room is to be designated as a nonsmoking area.



"We make a reasonable effort to accommodate the person who may be irritated by smoke."

Q. *What do you do about private offices? Can the person who occupies an office designate it as either a smoking or nonsmoking area?*

A. We've made nonsmoking signs available to people who want to place them on a desk and make that office a nonsmoking area. The problem is, of course, what to do if there are three or four desks in an area where some people are smokers and some are not. We try to deal with

that the best we can. We make a reasonable effort to accommodate the person who may be irritated by smoke. We certainly don't have 100 percent success, but we work pretty hard at it.

Q. *Beyond the guidelines IBM has worked out, is there any one thing that you can recommend from your experience that will make the workplace more agreeable for both smokers and nonsmokers?*

A. In the past, we have obtained opinion survey data and reviewed the written complaints we have received from nonsmokers. A few people have said they want smoking banned entirely in the workplace. We have not been able to accommodate people with that view.

The vast majority of people are not saying "ban smoking." They are saying something else—"be more sensitive." If you conduct a meeting and six of ten people are heavy smokers, some of the nonsmokers will get a headache or an irritated throat and be very uncomfortable.

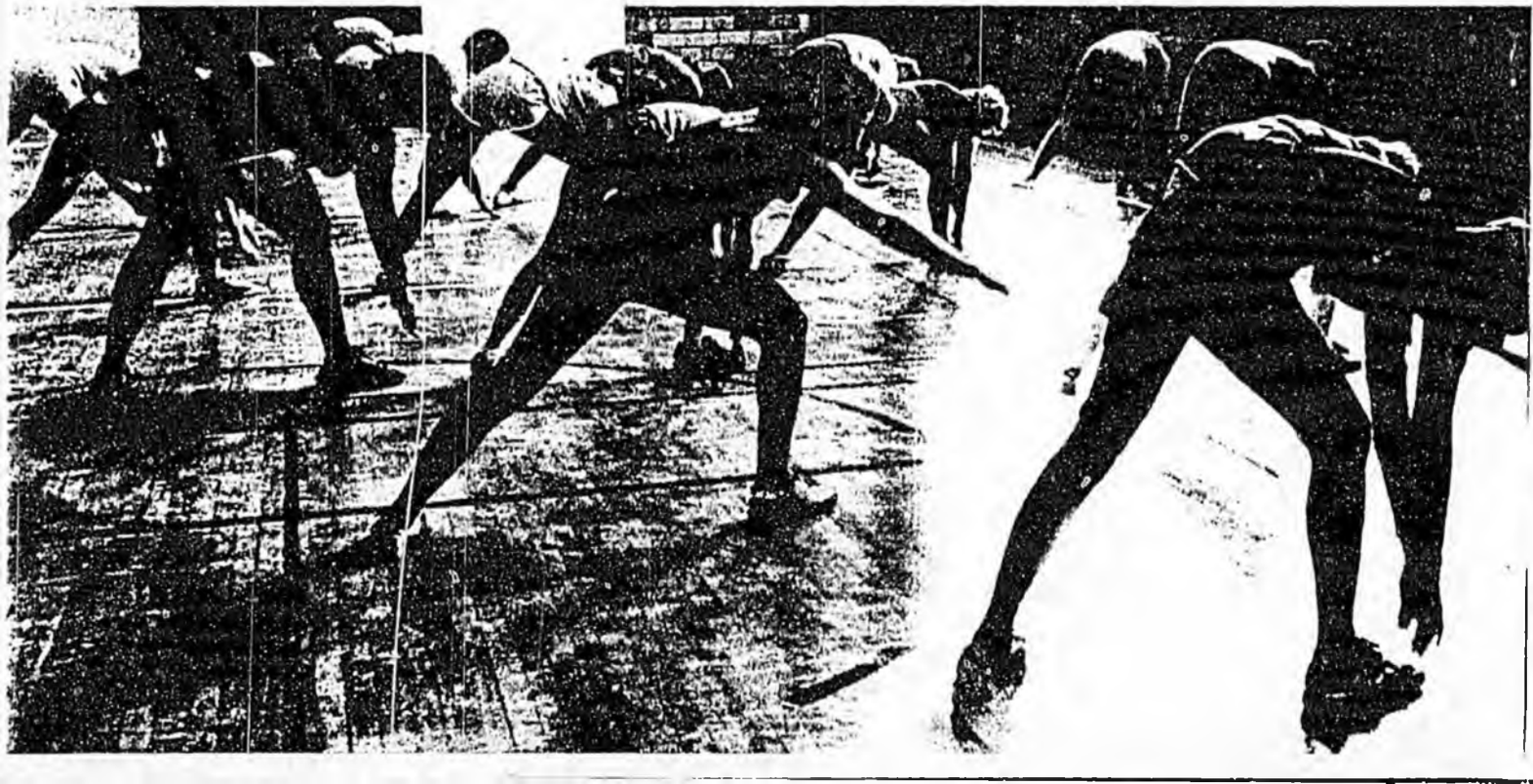
Q. *Are you saying that it's only fair for the smokers to curb their smoking at such a meeting?*

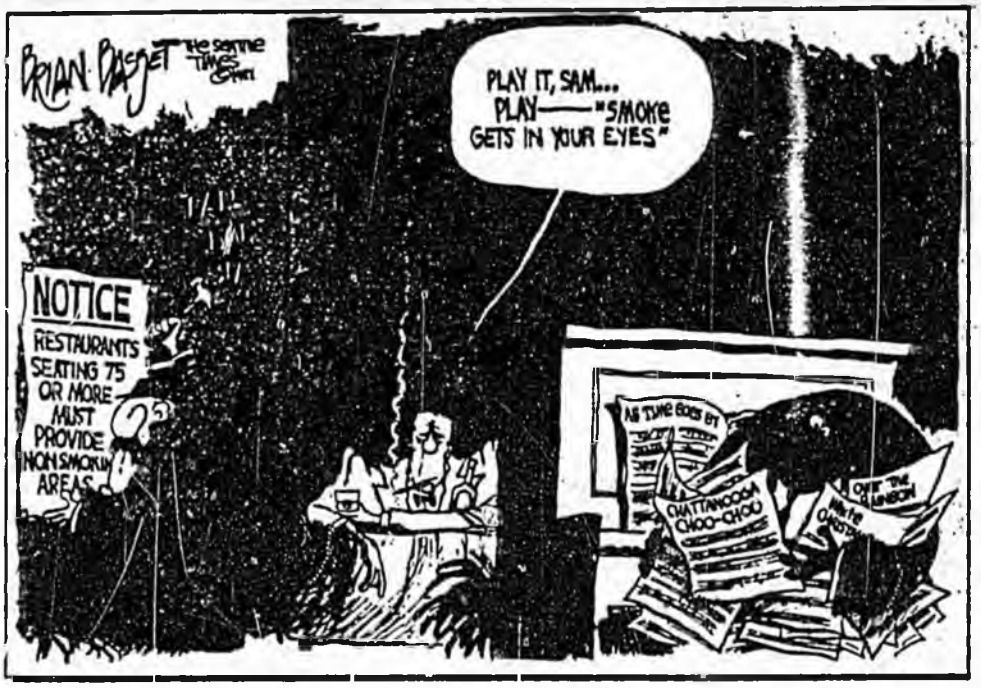
A. If you're conducting a meeting in a conference room, you have to manage it in a rational way so you're not affecting people negatively. By the same terms, if someone whom you know is affected by smoke in your office, you don't smoke. I think that a lot of smoking complaints in places of work and in public places would disappear if people were basically more sensitive to each other. A lot of the friction would be reduced if smokers were thoroughly informed about the effect that smoking may have on other people. «

COLE MANDELBLIT was a speaker at a session on Smoking at the Workplace at the ALA Annual Meeting held in Los Angeles in May 1982. The ALA has since sent "Smoking at the Workplace, A Program Guide" to all Lung Associations to help them work with companies in establishing programs to curb smoking at work.



Above: Lisa Andrews p[illegible]uses one of the 27,000 ALA Freedom From Smoking [illegible]anuals requested by IBM employees. Below: IBMers [illegible]ercise together at a YMCA.





ASH Assists Appeal of Nonsmoking Employee

Action on Smoking and Health has agreed to assist in appealing a court decision holding that an employee in the District of Columbia is entitled to no protection from the health hazards and risks of drifting tobacco smoke on the job.

The case involved Adele Gorden, a young woman who was hired by a contractor for the Environmental Protection Agency (EPA). Because she was sensitive to tobacco smoke and because she was pregnant at the time, she asked that she not be required to be seated near smokers. At first her request was granted, but subsequently she was given the choice of being seated in the midst of smokers or of being dismissed from her job.

When Ms. Gorden's action was first filed, the defendant argued that it should be dismissed because she was entitled to no legal protection against smoke on the job. ASH filed an *amicus curiae* (friend of the court) brief on her behalf, and ASH Executive Director John Banzhaf joined in the oral argument on the motion. The defendant's request was denied because the original judge determined that Ms. Gorden was entitled to legal protection.

When the case finally went to trial, a different judge ruled, after presentation of all the evidence, that the law provided no protection for a smoke-sensitive worker in Gorden's situation, regardless of whether the smoke had in fact proven harmful to her health. At this point ASH agreed to help finance the appeal and to provide additional legal assistance.

The case is an important one because the precedent will affect all nonsmoking employees in the District of Columbia. The rule also contradicts the well-known Donna Shimp case in which a smoke-sensitive office worker in New Jersey was granted an injunction preventing any smoking in her office, and provides legal support for other employers who wish to disregard the health and needs of nonsmoking employees. The proceeding is expected to be a difficult and expensive one: the transcript alone cost almost $1,000. But, as ASH general counsel Paul Pfeiffer put it, "This is one case that nonsmokers simply can't afford to lose."

Every employee who smokes a pack of cigarettes a day costs his or her employer $624 a year because of illness and absenteeism, according to Dr. Marvin Kristein, professor of economics at the State University of New York at Stony Brook.

A smoking ban in your workplace?

A smoking ban in the workplace can result in savings of up to 75% in personnel costs, insurance premiums, maintenance charges, and other expenses. An article in **Personnel Journal** quotes extensively from the 1979 **Surgeon General's Report**, which indicates that more than 81-Million days of work are lost each year in the US because of smoking; that the lung cancer mortality rate for those who smoke 25 or more cigarettes per day is 2,500% higher than for nonsmokers; and that male employees who smoke more than 40 cigarettes per day are absent from work 84% more often than their nonsmoking peers. In addition, the mortality rate for smokers is 300% higher than that of nonsmokers during their peak employment years.

The following costs can be reduced by enforcing a smoking ban:

- Interior cleaning costs can be cut by up to 50%.
- Health and fire insurance premiums can be 25 to 35% lower for smoke-free businesses, and morbidity and fire statistics suggest that premium discounts should be as high as 70%.
- Disability and early retirement payments can be slashed by as much as 75%. Smokers are almost 6 times as likely to become disabled and retire early as nonsmokers.

It was also reported that a recent study in the **Wall Street Journal** found particulate contamination in office buildings that permit smoking to be 10 to 100 times higher than allowable limits for the quality of outside air.

— **Management World, August 1981.**

No-Smoking Airline Gets Support

Muse Air, a Dallas-based airline that bans all smoking on its flights, is operating successfully on its present Dallas-Houston route with a 40 percent load factor, quite high for a carrier that began operations on July 15. In support of its decision to fly smokeless, the airline cited studies showing that for every passenger who requests a smoking seat, five request seats in the no-smoking section. A recent survey conducted by the airline showed that passengers support the idea of a smoke-free flight by a margin of 100 to 1. Muse Air is hoping to expand its routes to other cities in the future—friendly letters from nonsmokers would help. Write to Muse Air, 3300 Mockingbird Lane, Dallas, TX 75235.

DEPARTMENT OF ADMINISTRATION
DIVISION OF RETIREMENT & BENEFITS
POUCH CR
JUNEAU, ALASKA 99811

Public Employees' Retirement System
Teachers' Retirement System
Judicial Retirement System
Elected Public Officers Retirement System
National Guard Retirement System
Territorial Retirement System
Retirees' Voluntary Dental-Vision-Audio Plan
Supplemental Benefits System
Group Health/Life Insurance Benefits
Deferred Compensation Plan
Public Employers Social Security Contributions

Bill Sheffield, Governor

(907) 465-4461

February 7, 1983

Mr. Leo C. Kaye
Executive Director
Alaska Lung Association
P.O. Box 3056 DT
Anchorage, AK 99510

Dear Mr. Kaye:

I am writing at the request of Mr. Don Allen to provide you with some statistics regarding costs associated with employees who smoke as opposed to those who do not smoke.

Our health insurance consultant did research the subject and reported that health insurance claims for non-smokers could possibly warrant an approximately 2% reduction of standard premium rates over the long run. Further figures indicate a more significant employer savings when absentee rates are examined. These statistics point to a greater absentee rate for smokers than for non-smokers. This might be explained by a smoker's greater susceptibility to minor throat ailments and colds of relatively short duration that do not require the services of a physician. These statistics are still quite tentative since such studies are as yet ongoing and should not be considered conclusive.

As I discussed with Mr. Allen, I do not believe that the State of Alaska is able to financially reward a specific group of employees due to the obvious claims of discrimination and a negotiated pay schedule for all employees. We further discussed that if our experience rated group health plan felt the effects of fewer claims because of more non-smokers, our savings as an employer would eventually result from lower health insurance premiums. A even greater economy would presumably be realized if the absentee rate decreased as suggested. We are considering these types of programs generally and this reasoning may lead to an employee program to assist employees in their efforts to stop smoking.

I did recommend to Mr. Allen that efforts in establishing such a program also be discussed with agencies such as the Division of Labor Relations

Rep. Abood

and the Department of Health and Social Services since they might be in a position to research this subject further and/or implement non-smoking programs or even other avenues that might be indicated.

The idea of health insurance cost containment is an issue affecting all of us. This division, in dealing with group health insurance, is particularly interested in efforts that could result in lower medical costs. Please feel free to contact me if there is additional health insurance information that this office might furnish.

Sincerely,

Michael B. Coughlin

Michael B. Coughlin
Deputy Director - Dept of Administration
Dept of retirement & benefits

2% reduction of standard premium rates for non-smokers

Jophson
Fisher
Clarkson
Uehling

MBC/jb

tant to emphasize that the common denominator underlying the asthmatic diathesis is a nonspecific hyperirritability of the tracheobronchial tree. Thus, the distinction between various types of asthma may often be artificial and the response of a given subclassification may be initiated by more than one type of stimulus" (22). The natural history of adult asthma has not been well documented. There is no evidence that early detection of asthma is feasible, and no documentation that therapy for asymptomatic asthmatics is beneficial. Therefore, no justification exists at present for asthma screening in the general population.

B. *Clinical Case Finding*

It is important to establish the diagnosis of asthma (reversible airway obstruction) in all patients with one or more symptoms of the classic triad (cough, wheezing, or dyspnea), particularly when these symptoms are episodic and nocturnal. Although pulmonary function studies alone are nondiagnostic, when performed on patients with these symptoms spirometry can document the airways hyperirritability that is characteristic of asthma.

Ideally, all patients with wheezing, dyspnea, or chronic cough should have spirometry. If airways obstruction is demonstrated, the spirometry should be repeated after bronchodilators to document reversibility of the airways obstruction. In the presence of normal spirometry, symptomatic patients who suffer paroxysmal breathlessness or unexplained cough should have a provocational challenge with methacholine. A positive challenge can document airways hyperirritability between symptomatic attacks.

It is important to obtain repeated spirometric measurements throughout the treatment of asthmatic patients to evaluate objectively the therapeutic response. ". . . signs and symptoms of asthma imperfectly reflect the physiologic alterations that are present, so much so that if one relies upon the loss of subjective complaints, or even the sign of wheezing, as being the end point at which therapy for an acute attack should be terminated, an enormous reservoir of residual disease is missed" (22).

III. Lung Cancer

A. *Population Screening*

Lung cancer mortality has increased continuously over the last half century even though the major causal factor is a well-known controllable exposure. Eighty-seven percent of bronchogenic carcinoma in the adult male is attributable to cigarette smoking (23) and it has been noted that "For every preventable death from highway accidents, there were approximately two deaths from lung cancer which could have been prevented if the individual had not smoked cigarettes" (24). The risks for developing lung cancer are directly related to the amount and duration of smoking, the age of starting to smoke, the degree of inhalation, the tar and nicotine content of cigarettes, and inversely related to smoking cessation. Other etiologic factors, such as occupational exposures to asbestos, nickel, chromium, and radioactive ores have contributed, but far less than cigarette smoking, to the mortality risk from lung cancer. Males 45 years and over who have had a chronic, daily cigarette consumption of one or more packs seem to be the high risk group for this disease (24).

The treatment of lung cancer after it has become symptomatic remains unsatisfactory. Symptomatic bronchogenic carcinoma is usually advanced and incurable. Presymptomatic bronchogenic carcinoma is not necessarily early-stage disease, but resectability rates and survival rates tend to be considerably better among those with presymptomatic cancer. The National Cancer Institute's program of Surveillance, Epidemiology and End Results Reporting (SEER) in lung cancer (25) indicates that only 18 percent of newly detected lung cancers were found to be "localized" (confined to the site of origin) at the time of detection. However, individuals with localized lung cancer who were subsequently treated by surgical resection experienced a 50 percent five-year survival.

Of various methods considered for the early detection of lung cancer, only examination of sputum cytology and chest radiography have been found by population studies to be sufficiently practical and acceptable to be considered for a clinical trial of the efficacy of screening (26, 27). Previous clinical trials of early lung cancer detection using chest radiography alone (28–30) and those using exfoliative sputum cytology in addition to chest radiography (26, 27) failed to demonstrate a reduction in lung cancer mortality associated with screening. However, none of these studies was a randomized clinical trial using full size (36 cm × 43 cm) chest radiographs with or without sputum cytology testing in which screening was compared to no screening. Until recently, such a trial might have been considered ethically inappropriate.

There have been only three completely randomized clinical trials of screening (exclusively) for early-stage bronchogenic cancer. These clinical trials are now being conducted under auspices of the National Cancer Institute (31). These studies have enrolled more than 30,000 men, age 45 years and older, who smoked 20 or more cigarettes per day. The three clinical centers of the NCI Cooperative Early Lung Cancer Study follow two separate study designs. One study design (Mayo Clinic) tests whether screening by chest radiography plus sputum cytology at four-month intervals is more efficacious than a traditional recommendation that the two tests be performed annually (32). The other design (Johns Hopkins and Memorial-Sloan Kettering) tests whether the efficacy of lung cancer screening by annual chest radiography is enhanced by the addition of exfoliative sputum cytology screening at four-month intervals (33, 34).

The three clinical trials are incomplete, thus only interim results are available. These studies have demonstrated that chest radiography and sputum cytology can detect presymptomatic, earlier stage carcinoma, particularly carcinoma of the squamous cell type. Resectability and survival rates have been higher in the study groups than in the control groups. However, at this time, only one of the three centers (Johns Hopkins) reports a statistically significant reduction in lung cancer mortality associated with screening (35). "With equal rates of lung cancer occurrence in the two arms of the JHLP population, the observation of a reduced lung cancer mortality in the Study group seems likely to be due to the effect of cytologic screening. However, it must still be realized that the entire benefit of cytologic screening seems to be confined to only one (squamous) cell type" (35). These optimistic results remain to be corroborated.

In the fall of 1978, a Consensus Conference of Screening for Lung Cancer was held under the sponsorship of the Division of Cancer Control and Rehabilitation, National Cancer Institute, in collaboration with the National Institute for Occupational Safety and Health. This conference sought to develop guidelines for lung cancer screening programs in the general population. Recommendations were developed in conformity with the criteria developed by Wilson and Junger for the World Health Organization (3).

Included among these recommendations are the following (36):

1. Current prospective studies of asymptomatic persons who have been screened [illegible] cancer by chest roentgenograms and [illegible] cytological examination do not at present [illegible] any evidence of a notable reduction [illegible] from the disease. These studies must [illegible] tinued for several more years before the accumulated information will be sufficient to allow a relationship between screening and mortality to be [illegible]

of Washington is working with Weyerhauser in Tacoma and Seattle, Intalco in Bellingham, General Telephone in Everett, Eddie Bauer Clothing, Northern Pacific Insurance and Sea-First National Bank.

ALA of Washington does not charge a fee to the company for any of these services.

The ALA of Middlesex County (Mass.) has been actively promoting the FFS self-help manuals in industry since 1981. Health or personnel departments are contacted and a date is arranged for a "Smoking/Health Awareness Day," an inservice introduction to the association's services and resources. Films, FFS slide/tapes, and ecolyzers are used, and a question-and-answer period ensues. "Miss Massachusetts" for 1981-82, who quit smoking using the FFS self-help manuals, frequently participates in the session, answers questions, and signs autographs.

The company always promotes the event with a notice either in pay envelopes, newsletters, or announcements posted throughout the building. The association presented its awareness day to 1,000 employees at Digital Equipment Corporation.

After the event, the FFS program begins centered on the manuals. The association staff meets six times with participants for one hour, twice a week during lunch hour. Progress with the manuals is reviewed. The following week participants meet to focus on the second manual and maintenance.

The association reports much more interest from employees in this approach with the manuals rather than the seven-session FFS clinic.



COST/BENEFIT ANALYSIS

The issue of the costs of smoking to individual businesses is controversial. There is no question that costs are involved. But determining exactly what those costs are is extremely complex.

In spite of well-known literature on the subject it is still open to question as to just how much money a company will save if it institutes smoking cessation programs. Such financial analyses, or so called cost benefit analyses, are very complex, involving as they do mortality and morbidity estimates, actuarial life tables, discounting of future benefits to present values, productivity impact studies, and other similarly complex components.

The marketing strategy plan (see Appendix B), suggests that associations emphasize the health benefits of curbing smoking at the workplace rather than put major stress on cost benefits.

ALA does not recommend using the figures widely cited by Professor William L. Weis, a C.P.A., who teaches at Seattle University. His calculations have been examined and questioned by one of the experts on this topic: Marvin Kristein, Ph.D., associate professor of economics at the State University of New York at Stony Brook. Dr. Weis' figures are not as widely accepted and are more than 6 times greater than Dr. Kristein's.

The total economic cost of cigarette smoking per year to American industry is estimated at $47.5 billion, according to Dr. Kristein, who believes his calculations represent underestimates of the real financial cost of smoking workers.

The average pack-or-more-a-day smoker, he says, costs the employer $624 for every year of his or her working life. These calculations are based on an average salary of $10,000.

These are totally wasted dollars that could otherwise be given to the employees as compensation or improved health benefits, shared with stockholders, or otherwise allocated to business development for a stronger national economy. Dr. Kristein is now in the process of refining his analysis.

At the National Conference on Smoking OR Health (see below) a special workshop addressed how to conduct a cost-benefit analysis on smoking control and cessation in industry. The assembled group of experts agreed that relatively good data exist on the extra costs of smoker absenteeism, disability insurance, health insurance and life insurance, but the impact on accident rates, productivity, pension accruals, maintenance costs and the impact of smoking on the health of nonsmokers need much more work.

The American literature on the cost benefit analyses for smoking cessation programs suffers from several weaknesses. The higher pension accruals that will result if smokers quit smoking and therefore live longer are not considered. This number is substantial and could be as high as the total "savings" calculated in some papers.

Other areas where better basic data are needed involve: accident rates for smokers versus nonsmokers; productivity of nonsmokers versus smokers; and costs of the health effects of passive smoking at the workplace. A third area of concern is the length of time that will elapse between the time the smoker quits and the time a given benefit will materialize (such as increased productivity or improved health of nonsmokers).

It is ALA's experience from contacts with national companies that officers--including medical directors--are extremely interested in both the health and financial costs of smoking at the workplaces. As more definitive studies become available these will be sent to associations.

NATIONAL CONFERENCE ON SMOKING OR HEALTH

Smoking at the workplace was one of the major topics at a November 1981 conference, Smoking OR Health, underwritten by the American Cancer Society and cosponsored in cooperation with a host of other organizations, including ALA.

Under discussion are ways to produce models to help companies calculate their own costs as a result of smoking at the workplace. During 1982 and the years ahead, more materials on these subjects will be published as a result of the conference, which called for ongoing cooperation among agencies to develop programs to curb smoking at work.

Appendix BB from the proceedings includes: action strategies and suggested elements of corporate guidelines for smoking control programs; ways to calculate cost benefits; experiences of selected companies to date; labor-managment relations. Further updates from the Conference will be published later in the summer of 1982 and will be sent to associations.

Until this cost benefit area becomes much better defined, lung associations would be well-advised to avoid using explicit economics as the major basis for selling smoking control and cessation programs to industry. Nevertheless, nearly all experts feel that in the long run a given workplace will be healthier, and more productive, if smoking among the workplace is eliminated or reduced to an absolute minimum.

A vice president of Boeing summed it up: "We tried to calculate the costs and benefits but finally gave up. We just decided that we would rather pay pension benefits than hospital bills."



SMOKERS AND NONSMOKERS AT WORK

An investigation by C.B. Barad (reported in the journal, Occupational Health Safety, 48:1979) studied symptomatic effects of passive smoking in a population of more than 10,000 nonsmoking office workers:

- more than 50% of the nonsmokers reported difficulty working near a smoker.
- another 36% said that they were forced to move away from their desks or work stations because of passive smoking.
- about one nonsmoker in three reported being "bothered" either continuously or very frequently by tobacco smoke at work. In terms of specific symptoms, 48% of the nonsmokers reported conjunctival irritation, 35% nasal irritation, and 30% coughing, sore throat, or sneezing. Nearly 25% reported exacerbation of a preexisting

pulmonary condition, 3% aggravation of a cardiovascular disorder, and 10% stated they were "allergic" to tobacco smoke.

The study also found:

- nearly one fourth of the nonsmokers very frequently or always reacted to tobacco smoke with frustration, and a similar proportion felt hostile toward smokers or management.
- 7% of the nonsmokers stated that they had used sick leave during the preceding 12 months because of the tobacco smoke around them at work.

White and Froeb in a study of the long-term effects of both voluntary and involuntary smoking in more than 5,000 persons (New England Journal of Medicine, 302:720-23, 1980) found that chronic exposure to tobacco smoke in the work environment harms nonsmokers and significantly reduces small airway function. Small airway function in nonsmokers exposed to smoke on the job was reduced to the equivalent of smokers who consumed from one to ten cigarettes daily.

The studies suggesting a link between lung cancer and passive smoking (the chapter on involuntary smoking and lung cancer from the 1982 Surgeon General's report has been sent to all associations, see DETAILS, March 12, 1982) present alarming possibilities of concern to all employers and nonsmoking employees.

In an article by W.L. Weis (Supervisory Management, 26(9):31-35, September 3, 1981) the possibility that smokers may be experiencing a growing negative bias in the job interview process and on the job itself is investigated.

The survey of 223 Seattle-area managers found:

- 119 would choose nonsmokers over smokers if they were equally qualified.
- 103 had no definite preference.
- 1 preferred smokers.

The managers were then asked to make two assumptions, that smokers have about a 50 percent higher absenteeism rate than nonsmokers, and that the health of nonsmokers who work around smokers is measurably impaired. The number choosing nonsmokers increased to 198, 23 were undecided, 1 had no response, and 1 still preferred smokers.

CLEARING THE SMOKE FROM THE WORKPLACE

By Kay Amicone

Few companies have calculated what employee smoking actually costs them in employee health, in benefit programs, and in the cost of doing business

NONSMOKERS HAVE A RIGHT TO BREATHE air not fouled by cigarette smokers practicing their addiction—and a growing segment of American industry has come to believe that dictum. Business is finding it both altruistic and economical to protect employees' health, so a number of firms are examining policies regarding smoking in the workplace—and some companies have sharply restricted smoking at work.

Because a widening body of medical evidence suggests that the potential health problems caused by "side-stream" or "secondhand" smoke can be very serious, managements are looking hard at the fact that a nonsmoking employee can spend 40 hours a week in a confined area breathing co-workers' sidestream smoke. Sidestream smoke has even higher concentrations of noxious compounds than the mainstream smoke inhaled by the smoker, the secondhand variety containing *twice* the tar and nicotine and *five* times the carbon monoxide of mainstream smoke. Before the nonsmoker inhales secondhand smoke, however, some of these concentrations are diluted in the ambient air. The smoker, on the other hand, inhales more toxic compounds directly into the lungs.

A 1980 study by James White and Herman Froeb published in the *New England Journal of Medicine* concluded that chronic exposure to tobacco smoke in the workplace may be deleterious to the nonsmoker. In their study, the nonsmokers who were chronically exposed to tobacco smoke showed dysfunction of the small airways of the lungs comparable to that of light smokers. It is also a fact that tobacco smoke can combine with other toxic agents, such as asbestos, in ways that compound the harm caused by either agent alone. Add to this not-pretty picture that many nonsmokers suffer allergic or irritative reactions when exposed to tobacco smoke, and it is not difficult to understand why the health cost of on-the-job smoking can be high indeed. The economic costs are equally overwhelming.

Health economist Marvin Kristein of the State University of New York at Stony Brook has estimated that the average one-pack-or-more-per-day smoker may, over his or her lifetime, be costing his or her employer about $624 per year in lost productivity and excess insurance costs. He puts the total economic cost of cigarette smoking per year to American industry at $47.5 billion.

Smokers raise the cost of doing business

Smokers cost industry billions of dollars a year in lost productivity: Smokers waste time lighting and puffing on cigarettes, they are absent more often than nonsmokers, they get sick more, they have twice the number of on-the-job accidents as nonsmokers, they also retire more often on early disability—and they may die sooner from smoking-related diseases.

And smokers raise the cost of doing business: Employers pay more for maintenance, ventilation and fire insurance if their employees smoke. Increased fire-accident costs alone have been estimated to be $10 per year per smoker.

Few companies, however, have calculated what smoking actually costs them or what management has saved in those firms that do have no-smoking policies. Such figures are difficult to pin down for several reasons. Cigarette smoking is not the only risk factor to consider when evaluating employee health, and there has not been sufficient time to measure the long-term gains from smoking cessation efforts or reduced incidence of disease. The question of employee turnover further complicates the calculations.

New York Telephone has tried to add it all up. The company determined that 57 percent of the employees who participated in their smoking-cessation program actually quit smoking. Using this figure, the company esti-

adults, too) to find a useful, self-fulfilling societal niche. By that I mean a place where a young man or woman can be a self-supporting, contributing citizen engaged in a worthwhile, healthful life. As a Ph.D. scientist trained in chemistry, I understand perhaps better than most what can happen to the human mind and body when it is abused. I count the habitual inhalation of tobacco smoke as serious abuse.

What then does all this say to me? For one thing, that there is plenty to accomplish in educating youth about pitfalls, shortfalls, wrong turns. If you choose to regard life as a highway, then consider that just off the shoulder of the road is quicksand. People who tend to romanticize life's fast track seldom see that quicksand—until they are waist-deep in it.

"The new volunteer load must be spread evenly"

Additionally, with the federal government in retreat along the social service front and with more women working, the new volunteer load must be spread more evenly among young and old, male and female. It is imperative that each does his or her appropriate share.

Still, the skeptic may say, "Why worry about all this? Leave people alone. If they got hooked on drugs, that's their problem. If they become sick and die after smoking cigarettes for a long time, well, they knew what they were doing. Why bother?"

As I see it, there are two reasons for us all "to be concerned." One is simply the social costs reflected through what I'll label public burdens. Consider the escalating health, accident and life insurance rates; add on higher taxes to pay widows' benefits; and figure in the costs of building, equipping and maintaining hospitals, clinics, rehabilitative centers and jails.

The second reason is more personal. It has to do with a basic view of life here on earth. Stated simply, it says that each of us should do what he or she can to leave the world a slightly better place than he found it. I find support for this in recent explorations of the solar system. I was fascinated to learn that all our space scientists found were barren rock and gaseous clouds. This discovery merely emphasizes the uniqueness of planet earth, with its broad oceans and verdant valleys teeming with life.

I don't mean to pontificate, but doesn't this fact point to an object lesson, one that argues compellingly to society to maintain, to nurture, to improve our precious and oftentimes precarious existence?

President Derek Bok of Harvard University, in charging this year's seniors, commanded my attention when he stated: "Most of us will never achieve a lasting happiness unless we engross ourselves in some serious effort to improve the condition of others. Sooner or later we have to find a convincing way to justify our privileges and opportunities in a world in which so many others remain in much less fortunate circumstances. If you fail to make these efforts, every success and satisfaction is likely to become, sooner or later, hollow . . . illegitimate . . . and unfulfilling."

"Most of us have some time or talent to promote good causes"

Not all of us have the good fortune to find careers that directly benefit others or improve the long-term prospects of life. But most of us have some funds we can spare and time or talent to promote good causes in our home communities. So, gathering everything together, I would much rather miss a few games of golf, or even some time sitting on the warm sands of a Caribbean island. I prefer to get back into the thick of some action, in a setting where it's easy to tell the white hats from the other guys. I enjoy getting in a few more licks for a cause I truly believe in; and I can't think of a better, more aggressive group to work with than the American Lung Association.

Two areas are of particular interest to me, and both deal with smoking and health: 1) passive smoking and 2) smoking cessation in the workplace. I feel safe in predicting that we are on the cutting edge of developments in these obviously interrelated arenas.

Finally, when I become tired or discouraged trying to break into a field which is somewhat new to me, I reach back for an authority. The best one I know is that of Isaiah, one of the original volunteers. When the Lord had a particularly sticky job and asked, "Whom shall I send? Who will go for us?" Isaiah had a ready answer. This biblical stalwart said, "Here am I, send me." «

Fight LUNG DISEASE with a WILL– *yours.*

Bequests are powerful medicine.

AMERICAN LUNG ASSOCIATION
The Christmas Seal People



Campbell's Carol Ritchie, supervisor of personnel services, makes sure prospective employees know that smoking is banned except in designated areas.

areas. "I guess the general idea was not to get any cigarette butts in the soup," says Dr. Wear.

Now Campbell can't find enough employees for the kind of smoking-cessation programs it ran in the past. The reason for this is not a lack of interest—it's a lack of smokers. According to Dr. Wear, "We can't find enough people to make up a group anymore. We cleaned up all those [smokers] who were ripe for picking a long time ago, and we just don't have that many left." The company now deals with smokers on a one-to-one basis as part of a periodic health examination program.

• The Austad Company sells mail-order golf equipment and has a showroom and retail store in Sioux Falls, S.D. Oscar Austad, who started the company in 1963, has never permitted smoking. At Austad no one is allowed to smoke—not workers or customers or sales people—not even at break time. "If Ronald Reagan walked in here and lit up," says Mr. Austad, "we'd kick him out."

A nonsmoker himself, Mr. Austad cites fire protection and aesthetics among his reasons for the ban. But his main motivation, he says, is to protect the rights of his nonsmoking employees.

• Johns-Manville, an asbestos manufacturer, bans smoking in plants where asbestos and asbestos products are made. The company instituted the ban in 1976 after medical evidence showed that asbestos workers who smoke have a 92 times greater chance of contracting lung cancer than workers who do not smoke. In some Johns-Manville facilities the ban is total; in others, where unions saw the ban as an issue in contract negotiations, the company has had to set up break areas where smoking is permitted.

When the smoking ban was imposed at each plant, Johns-Manville also offered smoking-cessation classes to help its employees make the nonsmoking transition. As a further safeguard, the company no longer hires smokers in asbestos-using plants.

• Intermatic, Inc., of Illinois, which manufactures small electrical appliances, offers its smoking employees incentives to quit and has run three separate programs. In one program, employees could bet the company up to $100 that they would quit smoking for one year. In the most recent campaign, 18 successful quitters were eligible for a lottery. The winner of the lottery received a trip for two to Las Vegas. The "losers" were treated to a day at the race track.

Smoking is viewed as New York Telephone's principal health hazard

• Employee smoking is given top priority at New York Telephone: "We view smoking as the principal health hazard of this company," says Dr. Loring Wood, medical director for research and development. "We consider that smoking cessation will alleviate a whole variety of chronic diseases and productivity problems."

About 1,000 New York Telephone employees have completed various company-sponsored cessation programs. The company's medical staff also refers smoking employees to community organizations, such as lung associations, as part of their health-strategy planning for each employee.

Because total prohibition is considered a last resort, the company's on-the-job policy provides for separate smoking and nonsmoking sections in areas of common use, such as cafeterias and conference rooms; and employees having private offices can decide for themselves whether to smoke or not. In areas with two or more workers, accommodation is urged, with a series of steps to be followed if someone objects to smoking for medical reasons.

• Riviera Motors, a Volkswagen/Porsche/Audi dealership in Hillsboro, Ore., restricts on-the-job smoking to specified areas. Since 1978, the company has run annual smoking-cessation classes and has maintained a support system for those who were trying to quit. The company stocked a refrigerator with yogurt, fruit and fresh vegetables to serve as low-calorie substitutes for smoking; it compiled a collection of books on smoking, jogging and health; and it encouraged nonsmokers to give moral support to their fellow workers. The support was sometimes expressed in novel ways, such as placing a flower with an encouraging note on a smoker's desk.

Smoking also plays a role when Riviera interviews prospective employees: "We still hire some people who smoke," says Marcus Sassaman, "but we try to be very much up front with them and tell them this is not what

mated that their smoking-cessation program produced an annual savings in health costs of $645,000 for reduced coronary disease and $1,400,000 for reduced lung disease.

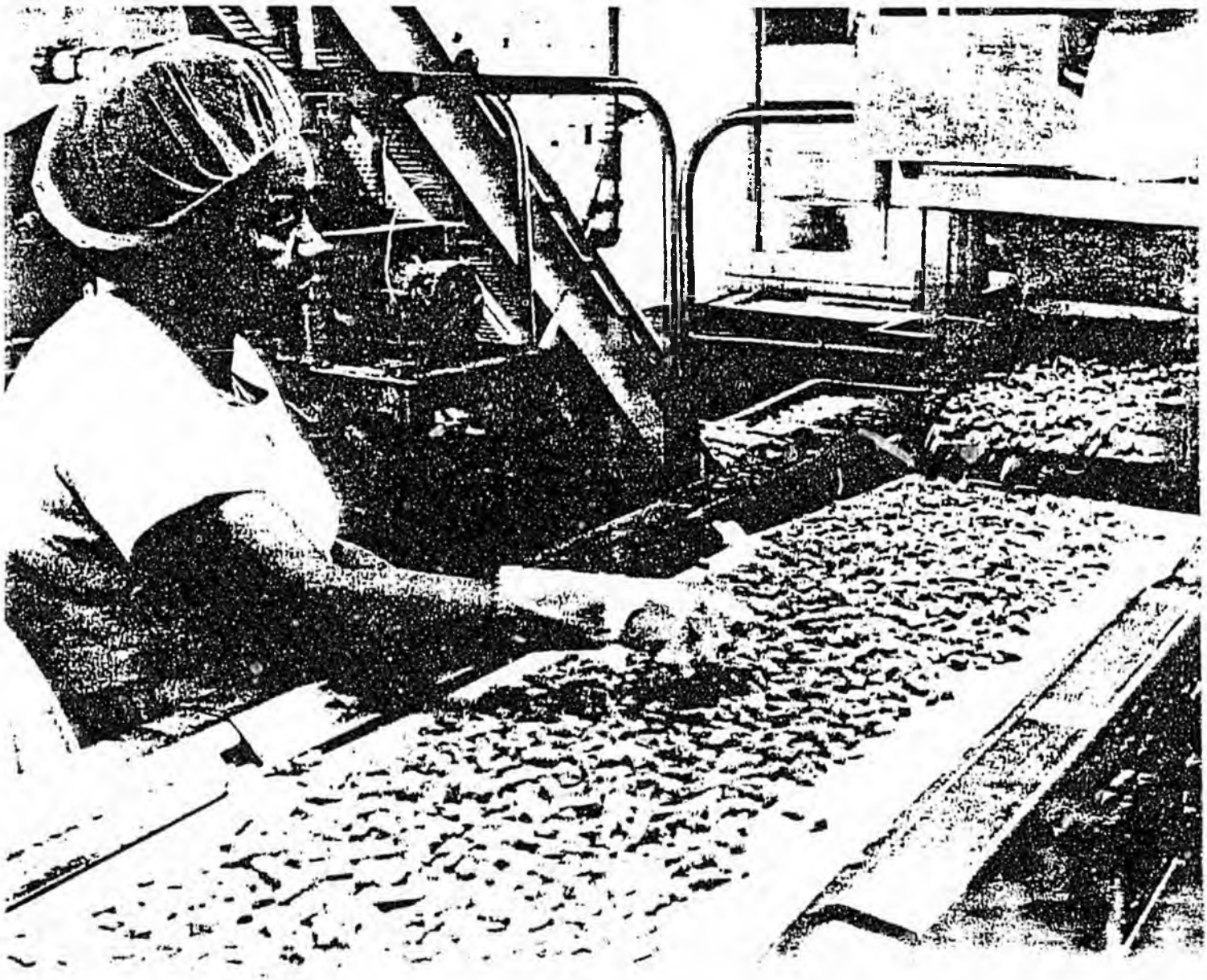
The Campbell Soup Company also has been willing to work up estimates on the effects of their past smoking-cessation programs. The company figured that it cost them $500 for every employee who quit smoking (about 70 employees participated, with a 20 percent quit rate), mainly for time off the job to attend the sessions. It is difficult to measure the long-term savings for such a small group, but Campbell's corporate medical director, Dr. Roland Wear, has worked out estimates of probable savings, and his figures indicate a substantial return on the company's investment. Dr. Wear is convinced of the value of this type of economic evaluation: "I'm a doctor, not an economist," he says. "But at the same time I think this is the kind of thing we're going to have to get into we hope to get businessmen to spend upfront money i this area." Such savings analyses make the kind of bo tom-line presentation that can impress businesses wit how reduced-smoking policies can combine concern f employee health with good economics.

A number of approaches to smoke-free workplaces

Once a company has opted for a smoke-free workplace it can choose a number of approaches to this goal. Som employers concentrate on smoking-cessation program and incentives, others prefer promulgating on-the-jo smoking policies, and combining techniques is also pop ular. Some examples:

- At the Campbell Soup Company, which has banne smoking on the job since the company was founded i 1869, smoking is permitted only in designated breal

Founded in 1869, Campbell Soup may have modernized its technology but one original policy remains: No Smoking.



Because sponsoring smoking-cessation programs has proved to be a relatively noncontroversial way for companies to approach the smoking-in-the-workplace problem, much of industry's effort to reduce on-the-job smoking is centered upon such programs. "The nonsmokers at this point," says Donna Shimp, an activist for nonsmokers' rights, "are benefiting from the fallout of the pitch to smokers."

Some employers won't go as far as instituting hard and fast no-smoking rules because they fear employees' resistance. Their fears could well be groundless: In a 1975 government survey, 78 percent of all adults, including 70 percent of all adult smokers, felt employers had the right to prohibit smoking in the workplace.

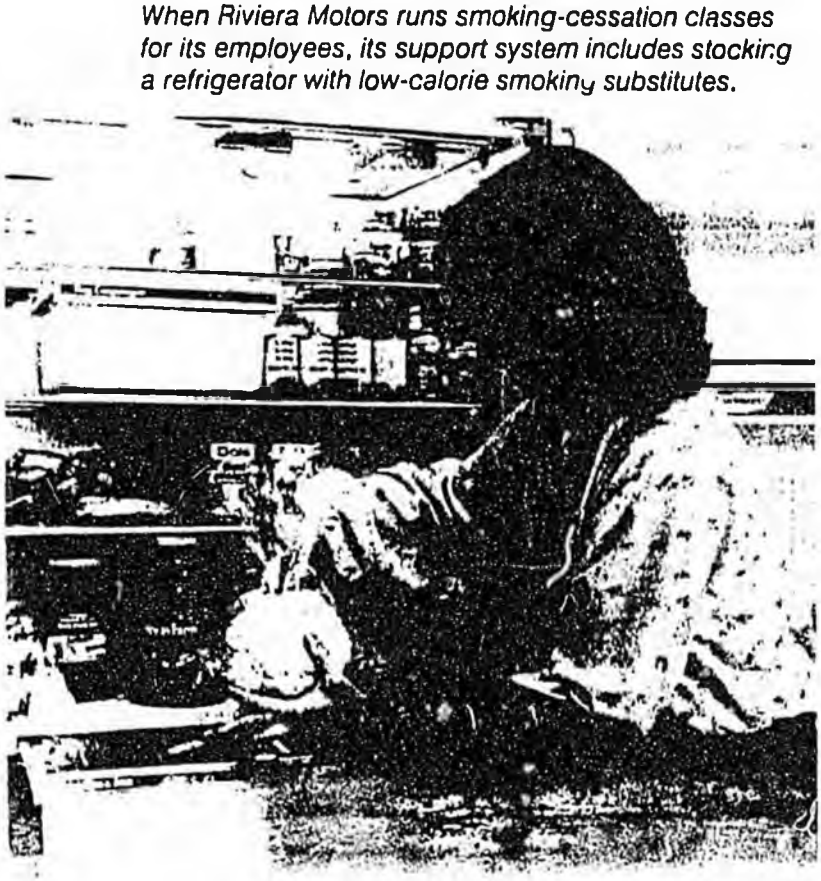
And evidence from companies already restricting on-the-job smoking supports the survey results. Johns-Manville reports that the employee who resists is the exception. According to Marcus Sassaman at Riviera Motors, the nonsmokers support their fellow workers' attempts to quit.

Anticipating union resistance also discourages some employers from pushing nonsmoking programs. The union question is complicated. At Johns-Manville it was the union's insistence that the right to smoke was negotiable under their contract that compelled the company to set up smoking areas in some facilities.

But, says Donna Shimp, this is the case only where a contract contains a specific right-to-smoke provision. Yet even when smoking is not a matter of direct contract negotiation, management often will consider union reaction while formulating a no-smoking policy. "Organized labor is in the middle," says Shimp, because it represents both smokers and nonsmokers. In 1976 Shimp, who suffers severe allergic reactions to tobacco smoke, sued her employer, the New Jersey Bell Telephone Co., for the right to a smoke-free workplace. She won. At that time, her union told her it would represent her right to work but not at the expense of other, smoking employees.

But now some unions have found a way out of this dilemma. Today a union might represent both the nonsmoker's right to a healthy, smoke-free work area and the smokers's right to a smoking lounge. "Comparing six years ago with today," says Mrs. Shimp, "it's a whole new ball game."

When Riviera Motors runs smoking-cessation classes for its employees, its support system includes stocking a refrigerator with low-calorie smoking substitutes.



Court decisions are enunciating nonsmokers' rights

Some employers worry about the possibility of a smoking ban violating smokers' legal rights. Not so, says Shimp: There is no constitutional right to smoke. The judge in her precedent-setting case cited her common law right to a safe working environment and termed tobacco smoke a "non-necessary toxic substance."

"The right of an individual to risk his or her own health," the judge's decision states, "does not include the right to jeopardize the health of those who must remain around him or her in order to properly perform the duties of their jobs."

In other court cases, employees adversely affected by tobacco smoke on the job have been awarded compensation and disability by the courts. And three states—Minnesota, Utah and Nebraska—have legislation controlling smoking in the workplace. The Nebraska law, passed in 1979, illustrates the shift in emphasis from a smoking to a no-smoking norm. It states: "No person shall smoke in a public place or at a public meeting except in designated smoking areas." Most office settings are included under the law.

Those who work in the smoking and health field feel there is an increasing awareness of the hazards of secondhand smoke and the rights of nonsmokers. "I was in industry for quite a while, and I can't even remember anybody talking about this five years ago," says Judson Wells, a retired Du Pont executive who is working with Edwin Fisher on the ALA program for industry.

In the 1979 NICSH survey cited earlier, 33 percent of the responding companies expressed an interest in developing or expanding a program to help their employees quit smoking. This number represents both the progress that has already been made and the work left to be done. The momentum is there; someday America may be a land of smoke-free workplaces. «

Kay Amicone is a freelance writer based in New York.

.Kimberly-Clark sees health promotion as part of the total health-care containment efforts by the company. The program shows management's concern and respect for the health needs of the employees. "Effectively helping people achieve their normal life expectancy as healthy, motivated and productive citizens is really the bottom line," says the company's medical director.

.Smokers have twice the deaths due to coronary heart disease and 10 times the risk of developing lung cancer. They also have longer convalescent periods from respiratory infections. If surgery is required, they are more likely to develop post-operative infections.

.Smoking in certain occupations greatly increases the threats to lung health because of synergistic effects of tobacco smoke and other airborne hazards. Controlling smoking at the workplace—as well as exposure to other airborne hazards—is critically important in these industries.

.As a result of its smoking cessation programs, New York Telephone estimates an annual savings in absence and treatment costs for smoking-related diseases of $1.4 billion for lung disease and $645,000 for cardiovascular diseases. This does not take into account the impact on employees' well-being, productivity and approximately 15 lives saved annually.

.Protecting workers from airborne hazards—asbestos, silicosis, cotton dust, and thousands more substances—is critically important in specific industries. Lung associations are eager to assist these industries in establishing programs to prevent occupational lung disease.



.The facts urge a new definition of employee benefits, one which stipulates that no-smoking policy is a labor-management accomplishment of which both sides can be proud. Unions as well as management are now beginning to see programs to help smokers quit as an employee health benefit.

.Of the $245 billion spent by Americans on health care in 1980, estimates are that employers paid nearly half the cost.

.Smokers who consume one pack of cigarettes daily have a 50% greater rate of hospitalization than those who do not smoke. If they smoke two packs per day, smokers have twice the absenteeism rate of nonsmokers.

.Cigarette smoking causes the premature death of 340,000 Americans each year and disables millions more.

.Although costs and savings are the language of business, a main driving force for most companies is improvement of health. Overall, "Companies would rather have healthy employees and pay pension benefits instead of hospital bills," says the medical director of Boeing.

.Smokers, on the average, have 35-45% higher absenteeism rates compared to nonsmokers.

.The total economic cost of cigarette smoking per year to American industry runs as high as $47 billion, according to Marvin Kristein, Ph.D., Associate Professor of Economics at the State University of New York at Stony Brook. Each smoker costs the employer approximately $624 for every year of his or her working life. These costs are based on an average one-pack-a-day smoker.

.Smoking is related to 90% of all lung cancer cases; 80% of emphysema and bronchitis.

."We view smoking as the principal health hazard of this company," says Dr. Loring Wood, Medical Director for Research and Development at New York Telephone Company. "We consider that smoking cessation will alleviate a whole variety of chronic disease and productivity problems."

SACRAMENTO REPORT

CALIFORNIANS FOR
NON-SMOKERS' RIGHTS
909 12th Street
Sacramento, CA. 95814

VOLUME 1 NO.2 SEPTEMBER 1982

CNR

News Briefs

Famed attorney Melvin Belli has filed a $100 million lawsuit against two major tobacco companies on behalf of a terminally ill former smoker. The patient suffers from cancer, lung disease, and heart failure, all attributed to cigarette smoking.

If the suit is successful it will pave the way to shifting the cost of providing cigarette victims' medical care from nonsmokers (in the form of higher taxes and insurance premiums) to the tobacco industry and its customers.

ASH, Smoking and Health Review, July 1982

San Francisco station KRON-TV sent anchorman Evan White to interview the six cowboys in Wyoming seen in the film "Death in the West" who were suffering from smoking-caused lung cancer. Five had already died!

Herb Caen's column
San Francisco Chronicle, May, 1982

Speaking of "Death in the West", Senator Diane Watson sponsored the showing of the film to legislators, legislative staff members, and public representatives in the Capitol on June 23. She says she hopes it can be shown in schools throughout the state.

Sacramento Union
June 24, 1982

Yet another smoking-caused fire which claimed the lives of a north area of Sacramento couple and their pet dog. Firefighters found that a smoldering cigarette in the living room was the culprit.

Sacramento Bee
May 31, 198[illegible]

Published in the New England Journal of Medicine recently a report that radioactive particles in cigarette smoke can cause tumors throughout the body. Smokers are exposed to these particles just in smoke more than all the other sources combined.

NBC News
July 29, 1982

A recent study of the American Association of Family Physicians found that only 18% of teachers smoke. Yet the non-smokers don't have officially mandated protection in teachers' lounges.

Wind Pipeline
San Fernando, CA
June 1982

ASH Review, July '82



NEXT MEETING: September 21, Tues. 7 PM

..at the home of Chuck & Cathy Mawson [illegible] Lake Glen Way, Sacramento

NEW JERSEY
GASP INC.
Group Against Smoking Pollution

NEWSLETTER

October 1982

Volume 9 Number 2



"THANK YOU FOR SMOKING."

GASP GETS FILM SUPPRESSED BY PHILLIP MORRIS

Death in the West is now in GASP's hands. The 25-minute film made by Britain's Thames TV shows old Marlboro man commercials along with footage of real cowboys dying of smoking--for instance, a rancher riding along with an oxygen mask for his emphysema, his oxygen tank on his saddlebags. The victims' doctors testify smoking caused their patients' diseases. And Philip Morris representatives are interviewed, making asinine comments like "Applesauce can be hazardous to your health if you eat too much."

The showing in Britain produced such outrage against

(See FILM, page 2)

Two Nonsmoking Workers Win

A Missouri Appellate Court has ruled unanimously that Western Electric Co. must provide a safe workplace, free from tobacco smoke, for employee Paul Smith. The Sept. decision, as a unanimous ruling by a higher court, can be expected to have much greater impact than Shimp vs. N. J. Bell.

Jesse Rivera, an employee of N. J. State Division of Youth and Family Services, has won a grievance asking for the Governor's policy on smoking for state employees to be implemented in his office. The arbitrator directed that an enclosed area be set up for smoking and the majority of the office be smoke-free.

GASP has copies of both decisions.

Current workplace cases now number in the tens, if not in the hundreds, as nonsmoking workers seek protection or compensation. In Washington State a federal judge has ruled tobacco intolerance is a legal handicap. GASP will follow these cases and report them.

PLEASE DON'T DROP YOUR CIGARETTES ON THE FLOOR. THE COCKROACHES ARE DYING OF CANCER.



SMOKING AND HEALTH REVIEW

Volume XI, Number 5 September-October 1981

ASH Sues CAB Over Smoking Rules

Action on Smoking and Health has taken the Civil Aeronautics Board (CAB) to court in a challenge to the CAB's new rules, which significantly reduce the protections provided for nonsmoking passengers and open the door to seating smokers next to nonsmokers. In a related matter, ASH is asking the CAB to reconsider a staff decision to do nothing about ASH's complaint about allowing smoking on airplanes despite cutbacks in airplane ventilation, particularly cutbacks that occurred when they clearly violated existing CAB rules.

Under the old rules, passengers seated in the no-smoking section were entitled to protection against drifting tobacco smoke by a rule that provided that they not be "unreasonably burdened" by such smoke. This rule was used by ASH to force Pan Am to abandon its practice of seating smokers directly across the aisle from nonsmokers (longitudinal separation), and TWA to stop sandwiching small no-smoking sections between smoking sections. ASH attorneys argued that the new rule provides no protection for passengers seated in the no-smoking section because it does not consider how thick or how harmful the drifting tobacco smoke is. Moreover, under the new rule, passengers could not complain about new longitudinal or sandwiching configurations, or even about the seating of smokers next to nonsmokers as long as the latter were technically in a no-smoking section.

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Smoker's Brown Lung Compensation Limited

Court Decision

In a decision that could have important ramifications in many other industrial compensation fields and to government entitlement programs generally, the North Carolina Supreme Court has ruled that a textile worker need not be compensated for that portion of her disabling lung condition caused by her own smoking.

Mrs. Elsie Morrison, now 54 years old, had worked in the textile trades for more than 20 years, where she was exposed to cotton dust. For at least 20 years, she also smoked half a pack of cigarettes per day even though she had been treated many times for respiratory infections, bronchitis, and coughing. In recent years she reportedly smoked less, but she was still regularly smoking when she became totally disabled and sought workers' compensation.

Mrs. Morrison claimed that her condition, diagnosed as byssinosis (also known as brown lung), was caused by her exposure to cotton dust during her employment. If her claim proved true, she would have been entitled to an award of approximately $36,000. However, the industrial commission that considered her case found on the basis of medical testimony that almost half of her condition was caused by other factors, including primarily smoking, and accordingly slashed her award by almost one half. This decision was affirmed by North Carolina's highest court; thus it becomes binding in that state.

Many authorities have begun to question what proportion of various

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Smoker's Brown Lung Compensation Limited

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compensable medical conditions are in fact caused by the employee's own smoking, and whether employees who smoke should continue to be fully compensated for these disabilities. For example, in a commentary in the *Journal of the American Medical Association*, Drs. Heyden and Pratt stated that "it is difficult to conceive the legislative need for compensation of a disease that rarely reaches irreversible disabling degrees among exsmokers or nonsmokers who continue to work under the same cotton dust exposure." (Vol. 244, No. 16, Oct. 17, 1980 at 1797-8) They cited a study, reported in 1972, that indicated that only smokers seemed to suffer from serious byssinosis and that "workers with typical byssinosis who stopped smoking cigarettes without changing their work area ... observed that their byssinosis symptoms disappeared." Another study showed similarly high rates of emphysema in smokers regardless of whether they worked around cotton dust or not, and virtually no emphysema among nonsmokers even if they worked with cotton.

The Morrison decision could have a major impact in North Carolina, where awards for brown lung totaled $4 million in 1980, particularly if the compensation commissions reduce awards to heavier smokers by a proportionally higher amount. The decision is also of particular importance since it comes from a state with a strong sympathy for the tobacco industry; thus it might serve as a precedent in other southern, as well as northern, states.

The rationale of the decision--that workers are not entitled to full compensation for conditions that they cause by their own smoking—also has potential application in many other areas. As indicated elsewhere in the *Review*, respiratory diseases among coal miners, lumber workers, employees in the construction industry, and workers exposed to asbestos are believed to occur largely in workers who smoke, and in many cases the disability is moderated if they quit smoking. Various studies also indicate that a significant portion of the medical expenses paid by the government under Medicare, Medicaid, veterans' benefits, and welfare are for conditions caused primarily by the smoking of the recipients.

While it may be illogical to require nonsmokers to pay the vast medical costs of conditions caused by smoking, either through unnecessarily high insurance premiums, taxes, or through the added costs of products from cotton goods to coal, many feel that it is unfair to deny compensation to workers who suffer from conditions aggravated by exposure to industrial pollutants. ASH attorneys are therefore considering two alternatives: (1) requiring the tobacco companies to pay for these costs, or (2) requiring workers or those seeking government-supported health benefits who smoke to pay an additional amount in health insurance premiums to compensate for the added health costs or risks associated with their smoking.

ASH Testifies Before Congress on Black Lung

The tobacco industry should pay its fair share of the costs of black lung disease, and coal mining companies should be given financial incentive to reduce smoking among their employees, ASH recently testified before the House Ways and Means Committee's Subcommittee on Oversight.

The problem the subcommittee was investigating was what to do about the insolvency of the Black Lung Trust Fund, which is used to compensate coal miners who suffer disabling lung disease. At present, coal mining companies are required to make payments into the fund based upon the number of tons of coal mined, and the federal government has been financing the deficit of almost half a billion dollars a year out of general tax revenues.

ASH staff counsel Athena Mueller cited medical evidence that black lung is much more likely to occur among coal miners who are also smokers, and that only smoking miners seem to come down with the most serious form of the disease, which requires compensation. Therefore, she said, payments for allocation to the black lung fund should be made by both the coal and tobacco companies in proportion to the role each product plays in causing the disease. Failure to require the tobacco industry to pay its fair share not only burdens nonsmoking taxpayers who are forced to pay more for products that use coal, but it also inter-

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The Wizard of Id



A PRECEDENT-SETTING CASE: NONSMOKERS' RIGHTS UPHELD IN COURT

A legal precedent was set when Donna Shimp obtained a court ruling granting her the right to work in an environment free from tobacco smoke. Mrs. Shimp, who is with the New Jersey Bell Telephone Company, found that she had a serious allergy to cigarette smoke. The following interview relates the incidents in Mrs. Shimp's long search for a way to keep on working. Many people gave their time to help her, including medical experts, the lung association, and a team of lawyers.

Editor: A judge in a New Jersey Superior Court recently granted you the right to work in an environment free from tobacco smoke.

Mrs. Shimp: Yes, the Honorable Philip A. Gruccio, J.S.C. made the ruling that in the office where I work there would be no burning of tobacco products at any time by anyone and that I would have the full protection of the court against any disciplinary action, harrassment, or anything else directly or indirectly related to the ruling.

Editor: Is this the first court decision of its kind?

Mrs. Shimp: As far as I know, it is.

Editor: What was behind it all? Were you campaigning to get your rights as a nonsmoker, or did tobacco smoke bother you physically?

Mrs. Shimp: I had a serious medical problem. Tobacco smoke made me nauseous, gave me big red blotches on my face, and probably caused three episodes of corneal erosion.

Editor: Where do you work?

Mrs. Shimp: I work for the New Jersey Bell Telephone Company as a service representative in the Millville Business Office.

Editor: Do customers who smoke come in to see you?

Mrs. Shimp: Yes, they do.

Editor: Sounds like a tough problem, if smoking makes you sick. Did you think of quitting your job and doing something else?

Mrs. Shimp: Yes, my husband wanted me to quit, but I needed to keep my job. One reason, to be honest, is that I knew that in March of this year I would have 15 years of service with the company. At 15 years they vest your pension—they give you a permanent right to it. I felt that if I were to leave, I would be throwing 14 years down the drain. All I thought at first was, "Let me just make it until March."

Editor: Then what happened?

Mrs. Shimp: I read a lot about the health effects of smoking. As I learned how harmful tobacco smoke is to everyone, I began to feel it was unfair to be forced to leave a job I really liked just because other people were smoking.

Editor: Why did you go to the courts?

Mrs. Shimp: I finally got to that point after I had tried everything else. I had tried asking my co-workers not to smoke. I tried going to the company medical department with my problem. I asked the help of the union. I also tried to locate a local or state health or environmental regulation that would apply.

Editor: What was the general response?

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ON THE COVER: 1976 Christmas Seal Chairman Dick Cavett (right) with former chairman Jack Lemmon. Lemmon recently sent this mailgram: BEST WISHES FOR SUCCESS WITH YOUR UPCOMING CHRISTMAS SEAL CAMPAIGN. JACK LEMMON, AN ACTOR WHO APPRECIATES CLEAN AIR."

NOVEMBER 1976

AMERICAN LUNG ASSOCIATION
BULLETIN



DICK CAVETT, 1976 National Christmas Seal Chairman, with former chairman Jack Lemmon—see page 11

A PRECEDENT-SETTING CASE: NONSMOKERS' RIGHTS UPHELD IN COURT

Mrs. Shimp: Many officials of different organizations acknowledged the health hazard created by tobacco smoke and the justice of my request, but they would finally say, "Sorry, we can't do anything. There's no regulation that covers tobacco smoking in your circumstances."

Editor: When did the whole problem start?

Mrs. Shimp: About five years ago, but the correct diagnosis as to what was causing it wasn't made until this year. I finally got to the diagnosis through my eye problem. Something was causing the cornea of my eyes to erode.

Editor: Corneal erosion sounds serious. I suppose you went to an eye doctor.

Mrs. Shimp: Yes, I did. First my regular doctor and then three ophthalmologists tried to find out what was happening. The first eye doctor said, "Ask the Man upstairs. I don't know what's causing it." The second said that the corneal erosion was probably the result of an allergic condition, perhaps hay fever, but he made no effort or suggestion to explore further. Neither my private physician nor the ophthalmologists suggested that I go to an allergist at that time.

Editor: Then how did you begin to identify tobacco smoke as the probable cause?

Mrs. Shimp: One evening, I got acutely ill at a dinner party. About 40 people were in a room that wasn't well ventilated, and many people were smoking. I got so actively sick that I thought I had food poisoning.

Editor: So what did you do?

Mrs. Shimp: From this experience, I began to suspect

Mrs. Shimp is holding one of the "No Smoking" signs which are displayed in her company's medical departments. She says, "I was only asking them to spread this protection to other departments."



tobacco smoke as the cause of the problem. For days after that dinner party, even the smell of a burning cigarette at work would make me feel sick all over again.

Editor: Did you discuss the problem with your physician at that point?

Mrs. Shimp: Yes. He said, "You undoubtedly have a toxic reaction to tobacco smoke. The only thing I can tell you is stay away from it."

I said to him, "Do you really mean I ought to quit my job?" and he replied, "I can't be involved in changing your vocation. I'm telling you what the problem is, and you work it out."

Editor: Did you ever get a definitive diagnosis concerning your reaction to tobacco smoke?

Mrs. Shimp: Yes, I did. Allergist Richard F. Brams, M.D., of Wilmington, Delaware did a thorough evaluation for clinical allergies, including a study of my home and work environments. The diagnosis was respiratory allergies exacerbated by tobacco smoke, especially in poorly ventilated rooms. Apparently, I had lived for years with a few allergies with just a mild antihistamine for relief. Then somewhere along the line, I developed an allergy to tobacco smoke.

Editor: Did you ever smoke yourself?

Mrs. Shimp: Oh, yes. I used to be a heavy smoker. I smoked about three packs a day when I was in the brokerage business. Black coffee and cigarettes were my mainstays in that business.

But when I got married, my husband said, "It's me or the cigarettes." And, I must say, he almost lost. When people tell me cigarette smoking is not a drug addiction, I tell



them they are all wet. Some people are truly addicted to nicotine. I went through a terrible withdrawal period.

Editor: How long did it take you to quit?

Mrs. Shimp: I couldn't admit this for a long time, but I admit it now because I think it helps people to understand the hold that cigarettes can have on you. It took me almost two years to completely quit. Every now and then, I would buy a pack and sneak one smoke privately, just to try it again. It took me 12 years or more before I didn't desperately want a cigarette once in a while.

Editor: So you understand the problems other people have when you ask them not to smoke.

Mrs. Shimp: I've also seen women I've worked with—women who are really in very poor health with respiratory conditions and circulatory problems—try to quit smoking, and they just can't make it. I can empathize with the smoker who feels threatened. I think I can understand it better than someone who has never smoked.

Editor: Let's go back to your immediate problem when you discovered you were allergic to tobacco smoke: How did you handle the situation? You said you had to work.

Mrs. Shimp: At first, I was able to get around the problem by putting up a "No Smoking" sign in the office. It was a small office which had individual ventilating systems. I could use the exhaust mechanism, even in the winter, if I wanted to.

Editor: And then what happened?

Mrs. Shimp: I found that our business office was going to close. I had a choice of going to one or two other offices where a good percentage of the employees smoked. The man I ultimately went to work for said, "If you can't take the smoking, you'd better not come to my office."

So I said to him, "What do you suggest I do?"

He replied, "You'll have to decide. I'm letting you know now that the other people in the office are not going to quit smoking and I'm not going to ask them to."

Editor: So what was your decision?

Mrs. Shimp: I elected to keep on working. A couple of days before I was to go to the new office, my husband called my physician and said, "Can't you give her something to combat the nausea?" My physician reluctantly prescribed an anti-emetic.

Editor: Did that work?

Mrs. Shimp: When I felt terribly nauseated from the smoking in the office, I took the medicine, and it would enable me to last the day somehow, even though I still felt sick to my stomach.

Editor: Wasn't there any ventilation there?

Mrs. Shimp: None! There were no individual exhaust fans, and the central unit was not used because it created cold drafts. However, I came up with something that could help me. A friend of mine who is an industrial physician in the Delaware Valley suggested a respirator. I talked to the people at a mine safety appliance company and got an industrial mask.

Editor: Is this a mask that fits over your nose and mouth?

Mrs. Shimp: Yes, it does. Of course, my job is talking over the telephone, so the mask made that rather difficult.

Editor: Sounds like a scene from a novel.

Mrs. Shimp: I would say that was probably the worst two months I ever spent in my life, because I was sick every day. About the second week in the new office I had to go to an ophthalmologist because my eyes were so irritated.

"When I felt terribly nauseated from the smoking in the office, I took the medicine, and it would enable me to last the day somehow. That was probably the worst two months I ever spent in my life."

"I first went to the company representative responsible for formulating policy and explained my problem. They agreed that the problem was a very real one, but they said there was no law requiring them to do anything about it."

Fortunately, he had the good sense to send me to an allergist. As I said earlier, the allergist identified my problem as allergies aggravated by tobacco smoke.

Editor: What did the allergist tell you to do?

Mrs. Shimp: After another corneal episode, he told me not to go back to work. The Bell medical department's consultant concurred with his findings and also found an allergy to tobacco smoke, itself. At that point, the company put me on disability with full pay for three months.

Editor: Did your nausea, eye problems, and skin problems subside when you were off the job on disability?

Mrs. Shimp: In about a week, I was just fine. I had no problem at all.

Editor: Then what happened?

Mrs. Shimp: I kept thinking, "There must be somebody who can help me." I contacted any group I could think of who might have some information. The American Lung Association of Southern New Jersey was most helpful. I wanted to understand the situation as best I could. I even contacted the U.S. Surgeon General's office. I found that

there was excellent evidence about the health hazards of cigarette smoke, but there was nothing on what to do about it in the work environment.

Editor: Did your physician also give you some help at this point?

Mrs. Shimp: My allergist, Dr. Brams, was neither too busy nor afraid to get involved. He helped me by writing to my employer, and by filing a claim with the regional office of the Occupational Safety and Health Administration on my behalf, citing some of the medical reports I had accumulated. The very fact that he was willing to go to bat for my right to a healthy work environment—one that was smoke-free and also ventilated—gave me the strength to pursue this goal.

Dr. Brams did all these things without fee—and so did all the other doctors who later on came to my aid and supported his position.

Editor: Was it at that point that you went to the union?

Mrs. Shimp: Actually, I've always been a corporation-minded person, so I first went to the company representative responsible for formulating policy and explained my problem. They were all very receptive and agreed that the problem was a very real one, but they said there was no law requiring them to do anything about it.

Editor: So what was your next move?

Mrs. Shimp: I then went to the union with the same request and got the same answer. The union said it would represent my right to work but not at the expense of the other employees.

It was at that time that I first considered legal action as a very remote possibility. I honestly couldn't believe, until I finally went into the courtroom, that you would have to legislate or litigate common decency.

Editor: Did you talk to the other employees in the office?

Mrs. Shimp: I had talked to them, and they were sympathetic—as long as they didn't have to stop smoking. As union members, they knew they had the backing of the union in any right-to-smoke issue. The awareness of the safety and health people at the top hasn't filtered down to the field yet. At any state level, I did get good representation for improved ventilation but without any smoking restrictions.

Editor: Have people at New Jersey Bell had this privilege for many years?

Mrs. Shimp: There was no smoking on the job when I was hired 15 years ago. It was a condition of employment. Smoking on the job came into union contracts in many businesses about 10 or 12 years ago, and our company went along with the trend.

Editor: You said that at that point you were on disability.

Mrs. Shimp: Yes. The company was paying me to stay at home, without working, in a smoke-free environment. After three months, I went to half-pay and was told that I could be fired "to protect my health" if I didn't take a demotion.

Editor: What was a demotion supposed to accomplish?

Mrs. Shimp: It offered a convenient solution to the problem. According to company rules, telephone employees may not smoke at the switchboards or where there is switching equipment. If I had been demoted to telephone operator, I'd be working where no smoking is allowed as a matter of company policy.

Editor: Is there any special reason for a no-smoking rule near the equipment?

Mrs. Shimp: It's to protect the machinery from contamination and also from fire.

Editor: Did you accept the demotion?

Mrs. Shimp: No, I didn't. First of all, I had worked for many years as a service representative. I didn't think that a demotion and substantial pay loss was a fair solution to th problem. But equally important, I had come to understand that tobacco smoke is harmful to nonsmokers, especially to those of us who are sensitive to it. I said to myself, if this is true, why should the company allow smoking on the job? Why was the union continuing to go along with smoking on the job?

Editor: So, despite the obvious roadblocks, you were still looking for a way to continue at your regular job.

Mrs. Shimp: All along, I had a basic belief that there must be a way, somehow, to keep on working. Especially if smoking is injurious to your health. Justice is part of the great American dream.

Editor: Did you try some other routes before you got into legal action?

Mrs. Shimp: I kept thinking that there was some answer other than the courts. I went to the Clean Air Council, I went to the Environmental Protection Agency, I even went to the Occupational Safety and Health Administration (OSHA) in Washington. Almost everybody whom I pleaded my case to said, "Yes, you are right, but there's no law to say you are right." I finally concluded that the question would have to be brought to the courts. I didn't know how to do it, but I decided to give it a try.

Editor: Very quickly, tell us the end before we discuss the details: Just exactly what was the court decision?

Mrs. Shimp: I received a temporary restraining order stating that I was to be provided an atmosphere free of toxic and harmful substances.

Editor: What was the basis of the court decision?

Mrs. Shimp: The judge said he was weighing the right of the person who accepted the medical evidence on the hazards of tobacco smoking and chose not to smoke—versus the right of the person who chose to disregard the evidence and continued to smoke.

The judge said that, on the basis of the evidence he had before him, there was no question that he had to protect my health in the work environment.

Editor: What's next? Will the order stand?

Mrs. Shimp: No opposing affidavits have been filed, and my employer asked for a settlement conference, so the order will probably become a permanent injunction very soon.

Editor: How did you proceed with the development of the case? Did you employ a lawyer, or did one volunteer to help you?

Mrs. Shimp: At first, a friend who is a lawyer agreed to represent me in my right to work. I could sense the company attitude and the union attitude at the time and saw that I might need some help. The lawyer, Edward N. Adourian, Jr., wrote a letter of representation to both the company and the union, saying that he was interested in helping provide me with a healthy work environment and would be glad to cooperate in any way he could.

Editor: What happened then?

Mrs. Shimp: Mr. Adourian made some preliminary investigations and found that there were no precedents for the case. He felt I definitely had a case but pointed out that it would take a couple of years of research to prepare what he called a "landmark case." He equated it with the desegregation question in U.S. schools a few years ago.

Editor: So you hit another roadblock.

Mrs. Shimp: The lawyer said that the expense of the research would be tremendous, even though some other lawyers might be willing to cooperate with us as a matter of public interest.

Editor: By now, I've learned to ask you this: What did you do then?

Mrs. Shimp: I kept asking people about ways to help. One person would refer me to somebody else.

Finally, I located a professor of labor law at Rutgers University, Alfred W. Blumrosen. I found out later from



others that he is eminent in his field and very well respected nationally. He had done all the research for a case such as mine as a matter of academic interest. He said the premise he had developed could be applied very well to my particular case.

Editor: What was his premise?

Mrs. Shimp: That an employee has access to the courts for injunctive relief if his or her health is being harmed and if there are no clear laws to protect the employee. Professor Blumrosen said he would help me if I could get a team of lawyers together.

Editor: And did you get a team of lawyers to help you?

Mrs. Shimp: Yes, there were five altogether.

Editor: Did they work on the case on a volunteer basis?

Mrs. Shimp: Yes, they did it as lawyers interested in the precedent. Not one of them charged a fee or indicated in any way that he wanted payment.

Editor: Were they nonsmokers?

Mrs. Shimp: Only one was a nonsmokers' rights person. The other lawyers felt, as one of them said, that a human need was not being met and that if they had the knowledge to meet it, they would help me.

Editor: What kind of documentation did you have to come up with for the case?

Mrs. Shimp: Well, first of all, I obtained an affidavit from Dr. Brams concerning my medical susceptibility to cigarette smoke. I then obtained supporting affidavits from allergists Frank Rosen, M.D.—who had already written to Bell on my behalf—and Michael Diamond, M.D.

Those affidavits also included statements from experts concerning studies of persons exposed to tobacco smoke involuntarily and the effect of such exposure on those people, especially on those with allergies.

Editor: What other evidence did you need?

Mrs. Shimp: There were affidavits from experts in environmental health, such as Dr. Wilbert S. Aronow of the University of California and Dr. Susan M. Daum of the Mt. Sinai School of Medicine, New York City. There were also affidavits from experts in the field of smoking and health—people such as Dr. Luther Terry, who was U.S. Surgeon General when the first report, "Smoking and Health," was published, and also former U.S. Surgeon General Jesse L. Steinfeld. One important affidavit was from Dr. D. C. Bews, an occupational health expert and former medical director of Bell Canada.

Editor: Let's come up to the present. In your new office, do you still work as a service representative?



Mrs. Shimp with Professor Alfred W. Blumrosen of Rutgers University. Prof. Blumrosen had done the research for a case such as hers.

Mrs. Shimp: The job is the same. The telephone company policy states that employees should be flexible enough and the jobs standardized enough that they may be assigned to any office, as the work demands. We are often loaned to another office.

Editor: What happens when you are loaned to another office? Does the no-smoking order go with you?

Mrs. Shimp: The judge granted me the right to a smoke-free environment wherever I am assigned. This brought up some problems a short time ago. The company wanted to loan me to another office. They were going to put me in a little room where they said I'd be protected from smoke. I'd been there before, and it worked out all right, except when I went out into the main office or when someone came in with a cigarette.

Editor: Did you accept this temporary move?

Mrs. Shimp: I said I would work there if I had the same protection I had in my assigned office—but so far I have not been loaned.

Editor: Did the court decision also cover demotion to a lesser job? Can the company change your job status to



Mrs. Shimp worked for over a year digging up facts on matters such as the health hazards of smoking and also locating experts who could help her.

solve smoking conditions at work?

Mrs. Shimp: My job status cannot be changed. And my rate of pay can't be changed, either.

Editor: How is the matter working out for you now at work?

Mrs. Shimp: There's no smoking in the office. This means a 20-cent "No Smoking" sign, when you get right down to it. When my trial lawyer, Stuart B. Finifter of Atlantic City, N.J., asked the court to grant me the same protection that Bell gives to its equipment, I really got that protection.

Editor: Can the other employees smoke anywhere in the building where you work now?

Mrs. Shimp: The company has set up a smoking lounge in the basement, which can be used by smokers and any nonsmoking workers who choose to share it. Even though this may be in violation of the court order, I haven't complained as I do have the use of a separate lounge which is adjacent to the work area and rest room facilities . . . all within the "no smoking" part of the building.

Editor: How do you feel about smokers at work after your experience of getting ill from smoke and getting little cooperation from them?

Mrs. Shimp: I look upon them as people who happen to smoke. They don't have three heads. If I could have worked up a nice, healthy hatred for the people in my office who continued to smoke on the job, even though it was making me ill, my fight would have been easier. But I didn't feel that way then. Disappointed in them, maybe, but I didn't hate them.

Editor: How does the smoking lounge work out practically at work? Are the people in the office happy with the arrangement?

Mrs. Shimp: Because the company also grants extra "smoke breaks," this does create an extra burden for the nonsmoking workers, but things are working out fairly well. In some other offices, where there is a more impersonal relationship between employees, I could see this situation causing friction. Personally, I am so thankful to be able to work without being sick that I'm not going to complain at this point!

"There's now no smoking in the office where I work. The company grants extra 'smoke breaks', and this does cause an extra burden for nonsmoking workers. In some other offices, where there is a more impersonal relationship between employees, I could see this situation causing friction."

Editor: I understand that there are a number of people throughout the United States who, like you, get ill from tobacco smoke. The percentage is not high, but those people have a real problem. What would they have to do to win a court decision like yours, creating smoke-free working conditions for them?

Mrs. Shimp: I would recommend that they try talking with fellow employees, with the officials of the company, the union, and any local body that might assist them before they attempt to go the legal route. Sometimes you can solve the problem quite simply by turning up a fire regulation that stipulates no smoking in certain areas.

Editor: But suppose they fail, as you did, to get a regulation set up in their work place that prohibits smoking on the job. What then?

Mrs. Shimp: I suppose they would have to go essentially the same legal route that I did. They could benefit by my experience and save some steps.

Editor: Could they use the documents that you presented in court?

Mrs. Shimp: Yes, but they couldn't simply take the

documents, put a ribbon around them, and present them in court. However, I am advised that a lawyer could take the pleadings and rework them to fit his client and the laws of his state. Hundreds of letters have come in to me and to my lawyers requesting copies of these documents. We are putting all the material together in a handbook that will be available through the National Interagency Council on Smoking and Health in New York.

Editor: Could a lawyer cite your case as a precedent?

Mrs. Shimp: Yes. However, in order to cite that precedent, a lawyer would have to prove that his client had a medically proved allergy to cigarette smoke. A lawyer would have to obtain his own affidavits from the client's own doctor and specialists.

Editor: Would a lawyer have to obtain his own testimony from experts on smoking and health and from environmental experts as well?

"I agree that smoking is something that has been accepted, but times are changing. Before I learned the scientific facts about the matter, I used to be apologetic about asking people to stop smoking. But now, I think it's foolish to be apologetic about protecting your health."

Mrs. Shimp: That's a question for a lawyer, but as I understand it, that is true. However, the affidavits in my case could be used in several ways without obligating my expert witnesses to participate directly.

Editor: Looking back at the long and tortuous route that you trod, would you go through the same process again to obtain working conditions free from tobacco smoke?

Mrs. Shimp: Many people ask me that. I think I would because the matter is an important one. Time has dimmed some of the agony of the struggle, and I have learned how universal the problem is. I'm anything but alone in this situation. The volume of mail I receive attests to that!

Editor: Do you think that a person has much chance today of convincing people at work to quit smoking? Some people argue that smoking is such an entrenched social custom that it's difficult to change this habit in groups of people.

Mrs. Shimp: I agree that smoking is something that has been accepted, but times are changing. Before I learned scientific facts about the matter, I used to be apologetic about asking people to stop smoking. But now I think that it's foolish to be apologetic about protecting your health.

Editor: What about making people mad when you ask them to quit smoking?

Mrs. Shimp: You can ask them in a nice way to stop. You don't have to go around chopping people's heads off. However, I do think you have an obligation to be firm about it if you truly believe that cigarette smoking is harmful to your health.

Editor: Do you think that employees will comply if companies set up no-smoking regulations?

Mrs. Shimp: They will comply if the company rule is explained fairly and if it is enforced. A vigorous educational program is essential. I do think that some companies will have to provide smoking lounges for their employees if a good percentage of the employees smoke.

You have to remember that in retail merchandising, in heavy industry, and in places where people work on assembly lines, there almost invariably is a company rule against smoking, and people just accept it. Many millions of people don't smoke at work . . . and the number is growing. Every day I learn of small businesses and large companies that are taking measures to protect their nonsmoking employees.

Editor: Let me ask you this: If you had no specific allergy to tobacco smoke, would you go through the same battle to win your right to a smoke-free work place?

Mrs. Shimp: Knowing what I know now, I think I would. I have read most of the important scientific research on the effects of tobacco smoke on nonsmokers. In my opinion, and in many experts' opinion, there is good scientific evidence that smoking is harmful to nonsmokers.

Editor: What is your basic scientific concern about no smoking in the work place?

Mrs. Shimp: I am really concerned about the unexplored synergistic effect of the many toxic agents on our body systems in today's polluted environment. When "safe" levels have not been established, the only acceptable standard should be zero—especially when dealing with a nonessential toxic substance like tobacco smoke.

I won my battle because the harm to my system was immediate and could be documented. But I think all nonsmokers and agencies, such as the American Lung Association, that are working for environmental improvement should have the wholehearted support of the medical community in trying every means of attaining a smoke-free environment, especially at work.

DONNA M. SHIMP has been a service representative with the New Jersey Bell Company for 15 years. Before that, she was an assistant account executive with the investment firm, Merrill Lynch, Pierce, Fenner and Smith. Much of Mrs. Shimp's free time is now taken up in writing and consulting with unions and management concerning smoke-free work areas. She continues to receive letters about the court case.

LUCILLE FISHER is the editor of the ALA Bulletin.

SMITH v. WESTERN ELECTRIC COMPANY

Missouri Court of Appeals
Eastern Division

Decision reversing circuit court order which dismissed employee petition seeking injunction to prevent employer from exposing employee to tobacco smoke in workplace.

PAUL SMITH, Plaintiff-Appellant v. WESTERN ELECTRIC COMPANY, Defendant-Respondent, No. 44286, Sept. 14, 1982.

Morley Swingle, Cape Firardeau, Mo., for plaintiff-appellant.

Willam G. Ohlahausen, St. Louis, Mo., for defendant-respondent.

Before Dowd, Gunn, and Crandall, Judges.

PRIVATE SUIT

1. Working Conditions — Exposure to Tobacco Smoke — Employee's Allergic Reaction — Duty of Employer under State Law ►80.30

Employee's petition seeking to enjoin employer from exposing him to tobacco smoke in workplace and from altering his pay or employment conditions because of employee's allergic reaction to smoke states claim upon which relief can be granted under applicable state law, since it is well-settled in Missouri that employer owes duty to employee to use all reasonable care to provide reasonably safe workplace and to protect employee from avoidable perils; accordingly, order dismissing petition is reversed and case is remanded for further proceedings.

2. Employee Exposure to Tobacco Smoke — Allergic Reaction — State Court Jurisdiction over Claim ►80.30

Employee is not precluded by Occupational Safety and Health Act from seeking relief in state court in order to prevent employer from maintaining working conditions which expose employee to tobacco smoke and thus trigger his allergic reaction to smoke, because Act does not affect common law duty of employers regarding injuries, diseases or death of employees arising out of employment, and does not prevent state court from asserting jurisdiction over occupational safety and health issue for which no OSH Administration standards is in effect.

Full Text of Decision

DOWD, Judge:

Plaintiff appeals from an order dismissing his petition on the ground that it fails to state a claim upon which relief can be granted.

The petition seeks an injunction to prevent plaintiff's employer from exposing him to tobacco smoke in the workplace and from affecting his pay or employment conditions because of his medical reaction to tobacco smoke. The petition alleges that by allowing smoking in the work area, defendant permits its employees to be exposed to a health hazard and thereby breaches its duty to provide a safe place in which to work.

Plaintiff contends the trial court erred in dismissing his petition in that it invokes legal principles entitling him to relief and shows that injunctive relief is appropriate. Plaintiff further contends that federal law does not preempt state common law in this case.

In reviewing the dismissal of this petition for failure to state a claim, we grant the petition its broadest intendment and liberally construe its averments. *Paddock Forest Residents Ass'n v. Ladue Service Corp.*, 613 S.W.2d 474, 476 (Mo.App. 1981). We accept as true all factual allegations and their favorable inferences. *Nelson v. Wheeler Enterprises, Inc.*, 593 S.W.2d 646, 647 (Mo.App. 1980). If the averments thus viewed invoke principles of substantive law upon which relief can be granted to plaintiff, the petition is not subject to dismissal. *Paddock Forest Residents Ass'n*, 613 S.W.2d at 476. Any reasonable doubt with regard to the petition's sufficiency is resolved in favor of plaintiff. *Nelson*, 593 S.W.2d at 647.

The petition includes the following allegations. Plaintiff has been employed by defendant since 1950 and has worked in defendant's Missouri branch since 1967. He is a nonsmoker sharing an open office area with other employees, many of whom smoke tobacco products as they work. In 1975 plaintiff began to experience serious respiratory tract discomfort as a result of inhuling tobacco smoke in the workplace. A subsequent medical evaluation determined that plaintiff suffers a severe adverse reaction to tobacco smoke. His symptoms include sore throat, nausea, dizziness, headache, blackouts, loss of memory, difficulty in concentration, aches and pains in joints, sensitivity to noise and light, cold sweat, gagging, choking sensations, and lightheadedness. After a sufficient period

have become increasingly severe over the years, however. Doctors evaluating and treating plaintiff have advised him to avoid contact with tobacco smoke whenever possible.

The petition further alleges that plaintiff first complained to defendant about the tobacco smoke in the workplace in 1975. Defendant thereafter moved plaintiff to different locations within the plant, but no improvement resulted because each location contained significant amounts of tobacco smoke. In 1978 plaintiff was informed that he should no longer sumbit complaints about the smoke through defendant's anonymous complaint procedure since defendant would not process them. In response to recommendations of the National Institute for Occupational Safety and Health,[1] defendant adopted a smoking policy in April 1980. The declared policy was to protect the rights of both smokers and nonsmokers by providing accommodations for both groups and by making a reasonable effort to separate the groups in work areas. Because defendant has failed to implement its policy by making such a reasonable effort, improvement of the air in the workplace has not resulted.

According to the petition, in August 1980 plaintiff filed with defendant a Handicapped Declaration Statement that he was handicapped by his susceptibility to tobacco smoke. Refusing to segregate smokers or to limit smoking to non-work areas, defendant informed plaintiff he could either continue to work in the same location and wear a respirator or apply for a job in the computer room (where smoking is prohibited). The latter option would entail a pay decrease of about $500 per month. Defendant thereafter provided plaintiff with a respirator that has proven ineffective in protecting plaintiff from tobacco smoke.

The petition states that plaintiff has exhausted all avenues of relief through defendant; he has no adequate remedy at law; he is suffering and will continue to suffer irreparable physical injuries and financial losses unless defendant improves working conditions. The petition alleges that defendant is breaching its common law duty as an employer to provide plaintiff a safe place to work, and that defendant has available defendant's ability to protect its computer equipment from tobacco smoke. The petition further states that, although "second-hand smoke" is harmful to the health of all employees, defendant is permitting them to be exposed in the workplace to this health hazard which is neither related to nor a necessary by-product of defendant's business.

Construing these allegations favorably to plaintiff, we must determine whether they invoke principles of law entitling him to relief.

[1] It is well-settled in Missouri that an employer owes a duty to the employee to use all reasonable care to provide a reasonably safe workplace, *e.g., Todd v. Watson,* 501 S.W.2d 48, 50 (Mo. 1973); *Hightower v. Edwards,* 445 S.W.2d 273, 275 (Mo. banc 1969), and to protect the employee from avoidable perils. *Moles v. Kansas City Stock Yards Co. of Maine,* 434 S.W.2d 752, 755 (Mo.App. 1968). Whether the employer has fulfilled its duty depends upon the facts of each case. *Lathrop v. Rippee,* 432 S.W.2d 227, 231 (Mo. 1968). For example, in *McDaniel v. Kerr,* 258 S.W.2d 629 (Mo. banc 1953), the employer had failed to provide a safe workplace where the employee's inhalation of dust on the job caused damage requiring removal of his lung. In *DeMarco v. United States,* 204 F.Supp. 290 (E.D.N.Y. 1962), the court found a negligent failure to provide a safe working environment where the plaintiff was injured when he fainted and fell after complaining about gasoline fumes in an unventilated work area.

The allegations of the instant case, taken as true, show that the tobacco smoke of coworkers smoking in the work area is hazardous to the health of employees in general and plaintiff in particular. The allegations also show that defendant knows the tobacco smoke is harmful to plaintiff's health and that defendant has the authority, ability, and reasonable means to control smoking in areas requiring a smoke-free environment. Therefore, by failing to exercise its control and assume its responsibility to eliminate the hazardous condition caused by tobacco smoke, defendant has breached and is breaching its duty to provide a reasonably safe workplace. *See Shimp v. New Jersey Bell Telephone Co.,* 145 N.J. Super. 516, 368 A.2d 408(1976). As stated in *Thompson v. Kroeger,* 380 S.W.2d 339, 343-44 (Mo. 1964) (quoting *Gatzke v. Terminal Railroad Ass'n of St. Louis,* 321 S.W.2d 462, 466 (Mo. 1959)).

tions which a reasonably prudent employer would have taken in given circumstances, even though other employers may not have taken such commensurate precautions. What usually is done may be evidence of what ought to be done, but what ought to be done is fixed by a standard of reasonable prudence, whether it usually is complied with or not.

If plaintiff's petition establishes defendant's failure to provide a safe place for plaintiff to work, we must next consider whether injunctive relief would be an appropriate remedy. An injunction may issue "to prevent the doing of any legal wrong whatever, whenever in the opinion of the court an adequate remedy cannot be afforded by an action for damages." §526.030 RSMo 1978. Injunctive relief is unavailable unless irreparable harm is otherwise likely to result, *see City of Grandview v. Moore,* 481 S.W.2d 555, 558 (Mo.App. 1972), and plaintiff has no adequate remedy at law. *See State ex rel. Taylor v. Anderson,* 242 S.W.2d 66, 72 (Mo. 1951).

The petition alleges that plaintiff's continuing exposure to smoke in the workplace is increasingly deleterious to his health and is causing irreparable harm. Assuming the allegations and reasonable inferences therefrom to be true, we think it is fair to characterize deterioration of plaintiff's health as "irreparable" and as a harm for which money damages cannot adequately compensate. This is particularly true where the harm has not yet resulted in full-blown disease or injury. Money damages, even though inadequate, are the best possible remedy once physical damage is done, but they are certainly inadequate to compensate permanent injury which could have been prevented. Plaintiff should not be required to await the harm's fruition before he is entitled to seek an inadequate remedy. Moreover, the nature of plaintiff's unsafe work environment represents a recurrent risk of harm that would necessitate a multiplicity of lawsuits. Finally, the petition states that plaintiff has no adequate remedy at law and alleges facts indicating that prior to this action plaintiff unsuccessfully pursued relief, both through his employer's in-house channels and through administrative agencies. Viewing the petition favorably, as we must to determine its sufficiency, we find that injunction would be an appropriate remedy.

[2] Defendant contends the trial court lacks jurisdiction to provide relief, and therefore the petition fails to state a claim the subject matter of this case is p by the Occupational Safety and H (OSHA), 29 U.S.C. §§651-678 (1 Act specifically states, however, th not affect the common law regar juries, diseases, or death of emplo ing out of . . . employment." § The Act also declares that it does vent a state court from asserting tion over an occupational safety issue for which no OSHA standa fect. §667(a). We are unperso defendant's argument that §653(b only to the common law pert workers' compensation laws. In defendant has not directed our at any OSHA standard which would cover tobacco smoke. No such figured in the opinions of other co sidering OSHA and tobacco *Federal Employees for Non-S Rights v. United States,* 446 F.Sup OSHC 1407] (D.D.C. 1978), *aff* F.2d 310 [7 OSHC 1634] (D.C. Ci *denied,* 444 U.S. 926 (1979); *Shi* N.J. Super. 516, 368 A.2d 408. more, defendant conceded in oral a that a court may retain jurisdictio absence of an OSHA standard.

We conclude that plaintiff has claim upon which relief can be gra that the trial court therefore erro missing the petition. Plaintiff shou lowed the opportunity to pr allegations.

The judgment is reversed and r remanded.

BECHTEL POWER CORP TION

Review Commission Decisio

SECRETARY OF LABOR, Com v. BECHTEL POWER CORPOR Respondent, OSAHRC Docke 77-3222, Aug. 31, 1982.

Marshall H. Harris, U.S. Depart Labor, Philadelphia, Pa., for comp

Michael A. Floyd and James H San Francisco, Calif., for respondent

Review Commission Judge He Osterman.

Before Rowland, Chairman; Cle Cottine, Commissioners.

[1] The Occupational Safety and Health Act of 1970, 29 U.S.C. §§651-678, established the National Institute for Occupational Safety and Health, §671, to develop safety standards and implement sections 669 and 670 of the Act.

406 "G" Street P.O. Box 3056 DT Anchorage, Alaska 99510 (907) 272-2332

ALASKA LUNG ASSOCIATION, *Inc.*

Leo C. Kaye, *Executive Director*

Representative Charlie Bussell, Chairperson
House Judiciary Committee
Alaska State Legislature
Pouch V
Juneau, AK 99811

Dear Representative Bussell,

The Alaska Lung Association is indeed pleased to submit the enclosed portfolio containing documentation in support of House Bill 84.

I was impressed to find that the Anchorage Times published a report on the public hearings. A copy is enclosed.

Please contact Don Allan (564-1094) or my office, should you desire additional information or assistance.

Sincerely,

Leo C. Kaye
Executive Director
Alaska Lung Association

LCK/vk

Enclosures

cc: Don Allan, CLU

THE SMOKENDER®

Volume 1, Number 1 — Spring/Summer 1981

Wives Risk Lung Cancer From Husbands' Smoking

A recent 14-year study, performed at Tokyo's National Cancer Center Research Institute, found that nonsmoking wives of smoking husbands die of lung cancer at a rate double or more that of nonsmoking wives with nonsmoking husbands. The landmark study, published January 17, in the British Medical Journal, reports that the risk to nonsmoking wives was directly related to the amount of their husbands' smoking. These findings support mounting evidence that links "passive" or "second-hand" smoking with a variety of respiratory ailments.

The Japanese study, which followed 142,857 women and 122,261 men between 1965 and 1979, found that nonsmoking women who were regularly exposed to their husbands' smoking, showed risk levels ranging from ⅓ to ½ that of direct smoking. A total of 346 lung cancer deaths among women were reported during the 14 year survey, and 174 of these deaths were nonsmoking women married to smoking husbands.

Dr. Takeshi Hirayama, author of the study and chief epidemiologist at the National Cancer Research Institute in Tokyo, suggests the findings "appear to explain the long-standing riddle of why many women develop lung cancer although they themselves are nonsmokers".

The study found that the increased risk to women varied according to the amount of cigarettes smoked by the husband, and the living environment, urban or rural, also was a big factor.

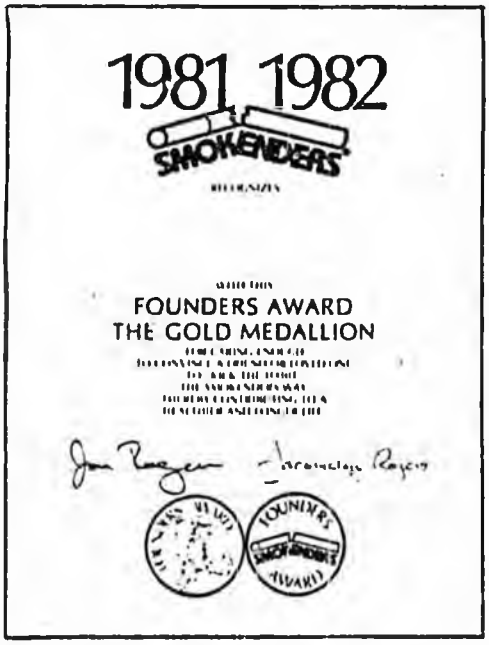
Women whose husbands smoked 20 or more cigarettes a day were 2.08 times more likely to develop lung cancer. If the husbands smoked 20 or less cigarettes a day, the risk was still 1.61 times higher than for wives of nonsmokers.

In agricultural areas where air pollution was not influencing the study's findings, a risk level 4.6 times higher was observed among nonsmoking wives of farm workers 40 to 59 years of age who smoked two or more packs of cigarettes each day.

The study was originally undertaken to determine the effects on health of a large number of factors, including drinking, occupation and marital status. Results indicate, however, that smok-

Continued on page 2

New Smokenders Founders Medals to be Awarded Yearly



Each year hundreds of Smokenders graduates recommend the Program to their friends and loved ones. And happily enough, most of these referrals sign-up, complete the course and join the growing ranks of nonsmokers.

We feel that graduates deserve official recognition for helping their friends quit smoking, so we've established a series of yearly awards to be given to the sponsors of new Smokenders graduates.

If, in the course of a year, you refer just one new person, and he or she completes the program, we'll award you a Bronze Smokenders Founders Medal and a special certificate highlighting your achievement. If you recommend as many as five new graduates, you'll receive a beautiful, sterling silver plated Founders Medal and certificate. And for referring ten new graduates, you'll receive a stunning 14K gold plated Founders Medal and a framed certificate of merit commemorating your truly outstanding contribution to good health.

SURGEON GENERAL REPORTS DANGERS OF LOW-TAR CIGARETTES

In *The Changing Cigarette*, a 237-page report issued by Surgeon General Dr. Julius B. Richmond, federal health officials summarize recent scientific findings on low-tar, low-nicotine cigarettes. In brief, the report states that milder brands may offer "limited" reduction in lung cancer risks, but there is little evidence to indicate that they reduce the risks of heart disease, bronchitis, emphysema, complications of pregnancy and other disorders related to smoking.

The report warns of new health hazards from chemical additives used in cigarettes to enhance lost flavor due to reduced levels of tar and nicotine. Additives currently in use include substances such as shellac, caramel, eugenal and chemicals which can produce carcinogens when burned.

Last year the tobacco industry supplied the surgeon general with a list of about 1,500 cigarette additives but no specific brand-levels or formulas have been released to date. Dr. Richmond is continuing negotiations with the industry to obtain precise additive formulations for each brand. However, under current law, cigarette companies do not have to release this information, and until then, adequate testing is not possible.

In a compromise move, the Surgeon General has proposed that a government guarantee could preserve the confidentiality of such information. This approach has worked successfully in Great Britain, and American companies doing business there have conformed. However, Secretary of Health and Human Services, Patricia Roberts, stated that new legislation may be required to secure the necessary information.

When asked to comment, a Tobacco Institute spokesman called the report "markedly candid and more moderate in tone" than prior

Continued on page 3

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A Healthy Investment 4
Smokenders Superstar — Barry Manilow 5

An Invitation To All Our Friends

Dear Graduate:

Saying "hello" to you that first meeting was a pleasure. You came to us to quit smoking, and we were anxious to get to know you and help you.

During the weeks that followed, we all grew closer. We talked together, laughed together, and worked together. Together we shared the same goals and the same attitudes towards smoking. We helped you develop the motivation and gave you the tools you needed to stop smoking, and you did.

With **The Smokender**, a free newsletter, we have a way to stay in touch with you and share ideas, personal experiences, current events, and other items of general interest.

We invite you to read it, respond to it, and help us make it as interesting as we can together. This is our way of saying hello again and we would love to hear from you.

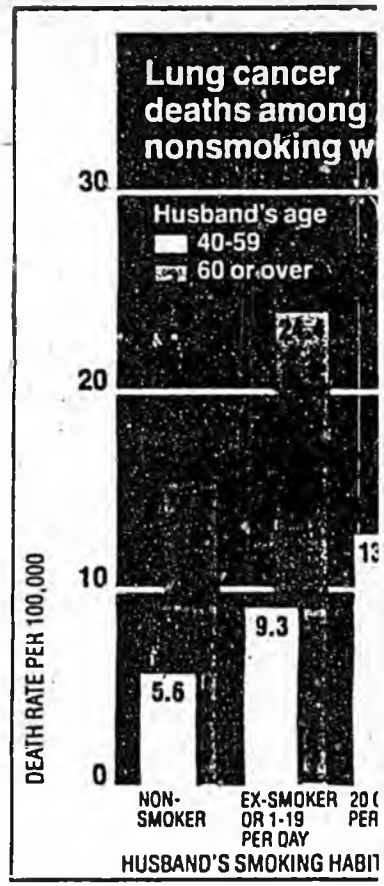
What would you like to see included in **The Smokender?** With your comments and contributions, we can make this the beginning of a long and lively new relationship.

Enjoy.

Sincerely,
THE SMOKENDERS STAFF

The Smokender is published by Smokenders World. Please address all submissions and inquiries to:

Managing Editor
The Smokender
50 Washington Street
Norwalk, CT 06856



Source: National Car Research Inst

Airlines must seat non-smokers

Non-smokers travelling on U.S. airlines are now protected by a special regulation of the Civil Aeronautics Board. The rule requires airlines to provide a seat in the non-smoking section for any passenger who requests it. This holds true even if the section must be enlarged to accommodate everyone.

Foreign airlines also have non-smoking sections, but they are under no obligation to expand their non-smoking section.

Wives Risk *Continued from page 1*

ing is the only habit of husbands to affect the deaths of wives. The findings are so statistically significant that it "was not the result of chance", Dr. Hirayama said.

Surprisingly, the husbands smoking *did not* affect the risk of death from other types of cancer or heart attacks.

A noted British physician, who did pioneering work linking cigarette smoking and lung cancer, described Dr. Hirayama's study as "scientifically sound." He also stated that the correlation between smoking husbands and deaths from lung cancer in nonsmoking wives was higher than he had expected.

"The implication", he said, "is that cigarette smoking poses a hazard to anybody in public rooms if they are not well ventilated."

GRADUATES WELCOME

Just a reminder that as a S enders graduate, you are a welcome to attend any of ou venient seminars if you wou to reinforce your non-sm habit. Whether you would l offer a personal testimonial, a friend, or just visit, we a ways glad to see you.

By the way, if you have back to smoking again (it ca pen), you can enroll anytin an additional eight-week se for just ½ the regular rate.

If you prefer, take advant our Summer Rejoin Sale. T will be only $125.00 if you before Labor Day. To get and locations of seminars you, please refer to the en schedule.

FACTS ABOUT NONSMOKERS

More than 30 million Americans have kicked the cigarette habit. Millions more are trying. Among adults, only one in three still smokes. In the population as a whole, it's one in four. Even counting cigar and pipe smokers, nonsmokers are a clear majority.

Nonsmokers are no longer a silent majority, though. They mind if you smoke. And they're speaking up. They see tobacco smoke as a pollutant that defiles their air. And new research gives them ammunition to defend themselves. It shows that second-hand smoke can have harmful effects on nonsmokers.

OPEN BURNING

Tobacco smoke is a very complex mixture. There are hundreds of chemical compounds in burning tobacco.

Some of the most hazardous compounds are tar, nicotine, carbon monoxide, cadmium, nitrogen dioxide, ammonia, benzene, formaldehyde, and hydrogen sulphide. And dozens of others. Any one alone can assault the body and cause trouble. Together, they make smoking the menace it is.

Even when a smoker inhales, researchers have calculated that two-thirds of the smoke from the burning cigarette goes into the environment. The percentage of pollution from cigar and pipe smoke is even higher.

SIDESTREAM SMOKE

Every time anyone lights a cigarette or cigar or pipe, tobacco smoke enters the atmosphere from two sources. Most important for nonsmokers, there is *sidestream* smoke, which goes directly into the air from the burning end. Then, there is *mainstream* smoke, which the smoker pulls through the mouthpiece when he or she inhales or puffs. Nonsmokers are also exposed to mainstream smoke after the smoker exhales it.

A cigarette smoker inhales—and exhales—mainstream smoke eight or nine times with each cigarette for a total of about 24 seconds. But the cigarette burns for 12 minutes and pollutes the air continuously with sidestream smoke. Smokers can keep cigars and pipes burning for a much longer time. The pollution lingers long after.

Sidestream smoke—the smoke from the burning end—has higher concentrations of noxious compounds than the mainstream smoke inhaled by the smoker. Some studies show there is *twice* as much tar and nicotine in sidestream smoke compared to mainstream. And *three* times as much of a compound called 3-4 benzpyrene, which is suspected as a cancer-causing agent. *Five* times as much carbon monoxide, which robs the blood of oxygen. And 50 times as much ammonia.

There is also evidence that there is even more cadmium in sidestream smoke than in mainstream. Cadmium is now under investigation as one of the compounds in cigarette smoke that damages the air sacs of the lungs and causes emphysema.

Before the nonsmoker inhales secondhand smoke, however, some of the high concentrations of hazardous substances are diluted in the ambient air. The smoker, on the other hand, inhales both firsthand and secondhand smoke.

CARBON MONOXIDE

Carbon monoxide is a colorless, odorless gas created by incomplete combustion. Car exhaust puts it in the air. So does tobacco smoke.

While it is difficult to measure the amount of tar or cadmium in someone's lungs or body, it is relatively easy to measure the levels of carbon monoxide in the blood.

When you inhale carbon monoxide, the gas bumps oxygen molecules out of your red blood cells and forms a new compound called carboxyhemoglobin. As the amount of this compound increases in your blood, the body becomes starved for oxygen.

One study shows that after only thirty minutes in a smoke-filled room the carbon monoxide level in the nonsmoker's blood increases as well as the blood pressure and heart beat.

HAZARDOUS LEVELS

What levels of carbon monoxide are hazardous? In industry, the maximum concentrations of carbon monoxide in the air cannot average out to more than 50 p.p.m. (parts per million); and efforts are now underway to reduce the maximum. The Federal Air Quality Standards for the *outside air* limit concentrations to an average of 9 p.p.m.

Given this as a baseline, how much carbon monoxide do cigarettes send into the air?

Researchers have found that smoking seven cigarettes in one hour—even in a ventilated room—created carbon monoxide levels of 20 p.p.m. In the seat next to the smoker, the level shot up to 90 p.p.m., almost twice the maximum set for industry. Smoking ten cigarettes in an enclosed car also produced carbon monoxide levels up to 90 p.p.m. The carbon monoxide level in the blood of nonsmokers and smokers in the car *doubled*.

When nonsmokers were exposed to these levels, the carbon monoxide level in their blood not only doubled within the first hour, *but doubled again during the second hour.*

When nonsmokers leave a smoky environment, it takes hours for the carbon monoxide to leave the body. Unlike oxygen which is breathed in and then out again in minutes, carbon monoxide in the blood lasts for hours. After three or four hours, half of the excess carbon monoxide is still in the bloodstream.

EFFECTS OF THE GAS

Some studies indicate that with these levels of carbon monoxide in the blood, people—including drivers—cannot distinguish relative brightness, lose some ability to judge time intervals, and take longer to respond to taillights. They also show impaired performance on some psychomotor tests. These levels of carbon monoxide in the blood create physiologic stress in heart disease patients. The resultant lack of oxygen can also add distress for people who already have lung disease.

Animals exposed to carbon monoxide (levels from 50 to 100 p.p.m.) continuously for weeks showed damage to heart and brain.

OTHER COMPOUNDS

Not enough research has been done on effects of other compounds in tobacco smoke. For example, hydrogen cyanide is a poison that attacks respiratory enzymes. It is not found in ordinary air pollution. But the concentration in cigarette smoke itself is 1600 p.p.m. Long-term exposure to levels above 10 p.p.m. is considered dangerous.

Nitrogen dioxide is an acutely irritating gas that can damage the lungs. Levels of 5 p.p.m. in the air are considered dangerous. Cigarette smoke contains 250 p.p.m.

ANIMAL RESEARCH

Some researchers have exposed mice to second-hand smoke over a period of one or two years. A significant number of mice developed severe bronchitis. Rabbits exposed to smoke from 20 cigarettes per day for two to five years developed emphysema.

Dogs exposed to cigarette smoke ten times per week for one year suffered a breakdown in lung tissues. Rats exposed to second-hand smoke for 45 minutes a day for two to six months showed twice as many lung tumors as did a control group.

The exact parallel between animal and human exposure in smoke-filled rooms is hard to determine at this stage of research. But some implications are serious indeed.

SMOKE AT THE WORKPLACE

A study of nonsmokers exposed to tobacco smoke at work for many years showed a dysfunction in the small airways of the lungs of the nonsmokers. It is not yet clear whether abnormalities in the small airways precede the kind of changes that characterize chronic lung disease like emphysema. But very frequently the beginning changes of chronic lung diseases start in the small airways.

EFFECTS ON CHILDREN

Babies and young children breathe more rapidly than adults. Because of this higher breathing rate, they inhale more air—and more pollution—in comparison to their total

body weight. Some studies show youngsters inhale two to three times as much of a pollutant per unit of body weight compared to adults. And this assault happens when young lungs are growing and developing.

One major study discovered that in their first year, babies of parents who smoke at home have a much higher incidence of lung disease, specifically bronchitis and pneumonia, than babies with nonsmoking parents.

A study of the lung function of children—aged five to nine—showed an adverse reaction in the small airways of children who had smoking parents compared with those whose parents were nonsmokers.

Parents who smoke at home can aggravate symptoms in some children with asthma and even trigger asthma episodes. Millions of people, adults as well as children, are sensitive to tobacco smoke and suffer smoke-caused asthma episodes. Parents should limit their smoking to separate rooms away from these children or, better yet, should quit smoking altogether.

Even among nonasthmatic children, a team of researchers found that respiratory illnesses happened twice as often to young children whose parents smoked at home compared to those with nonsmoking parents.

In a study of 441 nonsmokers divided into two groups—those with a history of allergies and those without—70 percent of *both* groups suffered from eye irritations caused by smoke. Even among the nonallergic groups, 30 percent developed headaches and nasal discomfort, while 25 percent experienced cough.

SECONDHAND SMOKE AND LUNG CANCER

Some studies have found an increased risk of lung cancer in nonsmoking wives married to men who smoke. Although the studies are too few as yet to conclude a definite association between secondhand smoke and lung cancer, the findings have raised concern. Since there are cancer-causing agents in cigarette smoke, it is not unreasonable to expect that inhaling these agents firsthand or secondhand could cause disease. Exposure to tobacco smoke may be similar to exposure to radiation: there are no safe levels.

TOBACCO SMELLS

Contamination and odors are immediately created by such elements in tobacco smoke as ammonia and pyridine. Pyridine is a strong irritant that is produced when nicotine burns. The presence of a minute amount in the air produces distinctly unpleasant odors.

The contamination is so intense that when someone smokes in an air-conditioned environment, the air-conditioning demands can jump as much as 600 percent to control odor.

Another intriguing finding from air-conditioning research is that the human body attracts tobacco smoke. Burning tobacco smoke creates a high electrical potential, whereas the water-filled human body has a low one. The smoke in a room gravitates and clings to people in much the same way as iron filings are drawn to a magnet.

And the odors linger on. Chemicals in tobacco smoke called aldehydes and ketones supply the penetrating smell, while the tars hold them to your skin and your clothes. But the smoker is not sensitive to the smell because of the destructive effects of smoke on the inner lining of his or her nose.

THE RIGHT TO BREATHE CLEAN AIR

Nonsmokers have the right to breathe clean air, free from harmful and irritating tobacco smoke. This right supersedes the right to smoke when the two conflict.

THE RIGHT TO SPEAK OUT

Nonsmokers have the right to express—firmly but politely—their adverse reactions to tobacco smoke. They have the right to voice their objections when smokers light up.

Nonsmokers have the right to act through legislative channels, social pressures or any other legitimate means—as individuals, or in groups—to prevent or discourage smokers from polluting the atmosphere and to seek the restriction of smoking in public places.

- Let family, friends, co-workers and strangers know you mind if they smoke.
- Put stickers, buttons, and signs in your home, car, and office. Request seating in nonsmoking sections when you travel.
- Support legislation to restrict smoking or set up smoke-free areas in public places.
- Ask your doctor and dentist to restrict smoking in their waiting rooms and to establish no-smoking regulations in all health care facilities, including hospitals.
- Propose no-smoking resolutions at organization meetings. Encourage hotels and restaurants to establish no-smoking areas.
- Contact your lung association to discuss ways to protect nonsmokers at work.

AMERICAN LUNG ASSOCIATION
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#0008 Published by AMERICAN LUNG ASSOCIATION 8/82

Second-Hand Smoke

Are you a nonsmoker who is shy about defending yourself against inconsiderate smokers?

Or are you a smoker who doesn't realize the distress you inflict on nonsmokers?

Find out the effects of tobacco smoke on nonsmokers.

Take A Look At The Facts

asbestos exposure. Case histories were studied for smoking and drinking habits and occupation. In 14 of 156 available chest X-rays typical PP were found; a significantly higher incidence than expected in the region ($p < 0.001$), but in agreement with earlier studies, which are reviewed. It is suggested that all patients with laryngeal carcinoma should be questioned about exposure to asbestos, and that in patients occupationally exposed to asbestos, the occurrence of laryngeal carcinoma should be considered an occupational disease. It is concluded that exposure to asbestos in association with smoking gives rise to a higher incidence of laryngeal carcinoma. (Auth. Abs. Mod.)

81-1088. Hirayama, T. Non-Smoking Wives of Heavy Smokers Have a Higher Risk of Lung Cancer: A Study From Japan. *British Medical Journal* 282: 183-185, January 17, 1981.

A Japanese study of 91,540 nonsmoking wives aged 40 and above who were followed up for 14 years (1966-79) is described. Standardized mortality rates for lung cancer were assessed according to the smoking habits of their husbands. Wives of heavy smokers were found to have a higher risk of developing lung cancer and a dose-response relationship was observed. The relationship between the husband's smoking and the wife's risk of developing lung cancer showed a similar pattern when analyzed by age and occupation of the husband. The risk was particularly great in agricultural families when the husbands were aged 40-59 at enrollment. The husbands' smoking habit did not affect their wives' risk of dying from other diseases such as stomach cancer, cervical cancer, and ischemic heart disease. The risk of developing emphysema and asthma seemed to be higher in nonsmoking wives of heavy smokers, but the effect was not statistically significant. The husbands' drinking habit seemed to have no effect on any causes of death in their wives, including lung cancer. These results indicate the possible importance of passive or indirect smoking as one of the causal factors of lung cancer. They also appear to explain the longstanding riddle of why many women develop lung cancer although they themselves are nonsmokers. These results also cast doubt on the practice of assessing the relative risk of developing lung cancer in smokers by comparing them with nonsmokers. (Auth. Abs.)

81-1089. Kunze, M.; Vutuc, C. Threshold of Tar Exposure: Analysis of Smoking History of Male Lung Cancer Cases and Controls. In: Gori, G. B.; Bock, F. G. (Editors). *Banbury Report 3. A Safe Cigarette?* New York, Cold Spring Harbor Laboratory, March 12, 1980, pp. 29-36.

In the study described, individual tar exposure was quantified for a lifetime of smoking to determine a threshold below which the smoker is at a "tolerable risk" for lung cancer. The exposure figure would represent the sum of all the tar yields of all the cigarettes ever smoked by an individual. Over 700 male lung cancer patients and over 1,500 controls, in three subject samples, were evaluated in terms of neoplasm incidence, smoking history, and total tar exposure. It was found that the average tar exposure in tumor patients is significantly higher than that of the controls. In general, higher tar exposures correlated with higher risks of various types of cancer. The threshold for tolerable risk was determined to be around 500 exposure units (based on the calculation method used). This would roughly equate to consumption of one pack per day of a low-tar brand (less than 15 mg) for 20 years.

81-1090. Langenbach, R.; Malick, L.; Nesnow, S. Rat Bladder Cell-Mediated Mutagenesis of Chinese Hamster V79 Cells and Metabolism of Benzo(*a*)pyrene. *Journal of the National Cancer Institute* 66(5): 913-917, May 1981.

Primary rat bladder epithelial cells were cocultivated with Chinese hamster V79 cells in the presence of carcinogens, and the induction of 6-thioguanine resistance in the V79 cells was used as a marker of cell-mediated mutagenesis. The carcinogens dimethylnitrosamine, 7,12-dimethylbenz(*a*)anthracene, and benzo(*a*)pyrene (BP) were mutagenic to V79 cells in the presence of bladder cells but not in their absence. Analysis of BP metabolites formed by bladder cells indicated that 7,8-dihydro 7,8-dihydroxybenzo(*a*)pyrene, 9,10-dihydro-9,10-dihydroxybenzo(*a*)pyrene, benzo(*a*)pyrene-3,6-quinone, and 9-hydroxybenzo(*a*)pyrene were the major organic-soluble metabolites formed. Glucuronide and sulfate conjugates of BP metabolites were also produced by bladder cells. Mutagenesis data from the rat bladder system and previous data from rat liver and lung cell-mediated mutagenesis systems indicate that the cell-mediated mutagenesis approach may provide a useful approach for studying the organotropic effect of chemical carcinogens. Furthermore, the finding that rat bladder epithelium can metabolize some carcinogens offers new possibilities for the mechanism of initiation of bladder cancer. (Auth. Abs.)

81-1091. Miller, A. B. Epidemiology and Etiology of Lung Cancer. In: Hansen, H. H.; Rorth, M. (Editors). *Lung Cancer 1980.* Amsterdam, Excerpta Medica, International Congress Series 525, 1980, pp. 9-26.

Epidemiologic evidence compiled by the International Union Against Cancer and the International Agency For Research on Cancer, from a number of cancer registries throughout the world, clearly identifies the carcinogenic risk factors associated with cigarette smoking. Incidence of lung cancer data in males and females, derived from these studies and standardized to world population, shows that the highest and lowest incidence for men in Liverpool, United Kingdom, and Ibadan, Nigeria, respectively. For females, Maori, New Zealand, and Ibadan, Nigeria, present the highest and lowest figures. These risks are compounded by other environmental factors, such as asbestos, radiation, and other forms of air pollution, which frequently confuse the smoking issue. One of the more recent studies sponsored by the Tobacco Research Council in the United Kingdom, involving a comparison of mortality between different areas in the north of England while taking into account differences in smoking incidence, confirmed the overwhelming importance of cigarette smoking as a risk factor. Therefore, a

major reduction of lung cancer incidence and mortality will occur only when there is a substantial shift in population exposure to smoking. In Canada, a reduction in smoking in males gives rise to cautious optimism; however, in females this trend is not yet apparent. Smoking bans in public places along with a gradual change in the public's tolerance to cigarette smoke forecast a major impact in most technologically advanced countries with a resultant reduction in both incidence and mortality from lung cancer in both sexes.

81–1092. Milti, L.; Massei, V.; Sanguinetti, C. M.; Forastieri, L.; Pomifazi, F.; Frascione, P.; Vennarucci, L. S. I Tumori Broncopolmonari. [Bronchiopulmonary Tumors.] *Minerva Medica* 70(3):.217-230, January 21, 1979, Italian.

An examination was made of 259 subjects, 242 males and 17 females, with primitive pulmonary carcinoma. Of the male group, 75 percent were smokers—most smoking between 11-30 cigarettes per day—and 19 were former smokers (11 of whom had quit for more than 5 years). Among the items taken into consideration were the symptoms, age of the subjects, year of diagnosis, clinical prognosis, and TNMP models. It is noted that bronchiopulmonary cancer rates have been on the rise during the past 10 years, and that this is probably connected to the increase in cigarette consumption.

81–1093. Ohmori, T.; Mori, H.; Rivenson, A. A Study of Tobacco Carcinogenesis XX. Mastocytoma Induction in Mice by Cigarette Smoke Particulates ("Cigarette Tar"). *American Journal of Pathology* 102(3): 381-387, March 1981.

A significant incidence of cutaneous mastocytomas was observed in female mice of CAF/J and ARS-HA (ICR) strains upon long-term application of cigarette smoke condensate suspensions ("tar"). The mastocytomas were not detected in control groups treated with acetone, benzo(*a*)pyrene (BaP), tetradecanoyl pherbol acetate (TPA), nor in mice treated once with an initiator dose of 75 mg 7, 12-dimethylbenz(*a*)anthracene (DMBA). The skin mastocytomas were constantly accompanied by diffuse dermal mast cell infiltration (DDMI), which was also seen in the tumor-free skin of the "tar"-treated mice. These results indicate that mastocytomas were induced by agents present in the cigarette smoke condensate. DDMI might be a precursor of mastocytomas. (Auth. Abs.)

81–1094. Reif, A. E. Effect of Cigarette Smoking on Susceptibility to Lung Cancer. *Oncology* 38: 76-85, 1981.

It has been suggested that genetic predisposition to lung cancer is a more important factor than cigarette smoking, and that, therefore, one may smoke. Recently, this thesis has been defended strongly, but this literature survey indicates that the genetic susceptibility for development of lung cancer varies between individuals. Therefore, to conclude from this that one may smoke would be valid only if there was a close relationship between the genetic tendency to smoke cigarettes and the genetic tendency to develop lung cancer. The evidence that such a relationship does not exist is overwhelming. It is, therefore, valid to conclude that the large excess of deaths from lung cancer in cigarette smokers as compared to nonsmokers is a direct consequence of smoking cigarettes. To illustrate the effect of cigarette smoking on susceptibility to lung cancer, the distribution of susceptibilities to lung cancer in cigarette smokers and in nonsmokers has been derived. The shape of the susceptibility distribution is determined by the effects of all environmental carcinogens (both known and unknown) to which the population has been exposed, as well as by differences in genetic susceptibility between members of the population. The method described has general application. (Auth. Abs.)

81–1095. Rivedal, E.; Sanner, T. Potentiating Effect of Cigarette Smoke Extract on Morphological Transformation of Hamster Embryo Cells by Benzo[*a*]pyrene. *Cancer Letters* 10(3): 191-198, September 1980.

Morphological transformation in the hamster embryo cell bioassay was used to study the possibility that carcinogenicity of benzo(*a*)pyrene (BP) is affected by cigarette smoke extract and whether smoke extract would promote transformations initiated by BP. The transformation frequency increases with increasing concentrations of BP and smoke extract. In experiments with a combined treatment of BP and smoke extract, the transformation rates were higher than expected for all concentrations from experiments with the compounds tested separately. The greatest potentiating effect was found using 0.01 µg/ml BP and 1 µg/ml smoke extract. The transformation frequency obtained with this combination was 4.3 percent compared to 1.4 percent and zero, respectively, for the individual substances. In experiments where cells were treated sequentially with BP (0.05 µg/ml) for 4 days, followed by smoke extract (1 or 5 µg/ml) for the next 4 days, the transformation frequency was significantly higher than expected on the basis of the compounds tested separately. The demonstration of a synergistic effect between BP and cigarette smoke and the promotion-like effect of smoke extract on BP-initiated transformations of hamster embryo cells are of interest in relation to the higher frequency of lung cancer found in areas with high air pollution compared to rural areas. (Auth. Abs.)

81–1096. Ruffie, P.; Hirsch, A.; Marteau, D.; Dignon, J.; Chretien, J. Etude Etiologique et Histologique de 448 Cancers du Poumon. [Etiological and Histological Study of 448 Cases of Lung Cancer.] *Annales de Medecine Interne* 132(1): 12-15, 1981, French.

Distribution of histological types of lung cancer and correlation of cell types with sex, smoking habit, and asbestos exposure were studied over an 8-year period in 425 male and 23 female patients in a French hospital. The mean age of the patients was 63.2 years. The epidermoid cancer type was the most frequent both in the male (77.6 percent of all lung

7

RODALE PRESS

MEMORANDUM

TO: All Rodale Press Employees

FROM: Bob Rodale

SUBJECT: A uniform no-smoking policy

For a number of years, smoking has not been permitted in some Rodale Press buildings, and in certain office areas. Yet smoking has been allowed in the majority of our work areas.

Because of this policy confusion and recent rise in complaints about smoking, I feel that it's time we work toward a uniform no-smoking policy. Here are the reasons. Most important, the non-smokers among us feel very strongly that they have a right not to breathe second-hand smoke, which can be as dangerous to health as first-hand smoke, if you get enough of it. There are complaints not only about possible harm to health, but about inability to concentrate as well. Also very important to us are the many questions asked by visitors, who often include customers. They ask why a health-oriented company like Rodale Press permits smoking in its offices.

After considerable discussion, we have decided that January 1, 1983 will be the time when a no-smoking policy will become uniform throughout all our buildings, including not only work areas but rest rooms and eating areas as well.

Between now and then, we will offer a variety of programs to help those people who want to quit smoking. This will include additional Smokenders programs, special classes to help ex-smokers prevent weight gain and get started on a fitness plan, and booklets, posters, and meetings designed to help smokers break their habit. Information about these activities will appear regularly in What's Going on Here.

I feel that this is one of the most important steps that can be taken to improve the environment that we all live a large part of our lives in. I have never smoked, so I can't see this issue from the vantage point of someone who does. I do know this action will cause inconvenience for some people. But I hope we can work together to solve any problems and create a climate that will make it possible for smokers who wish to stop to do so.

RR:mls
March 1, 1982

Rodale Press, Inc., 33 East Minor Street, Emmaus, PA 18049
215-967-5171 Telex 4847[illegible]

GENERAL SERVICES ADMINISTRATION

Public Buildings Service

[41 CFR Part 101-20]

MANAGEMENT OF BUILDINGS AND GROUNDS

Smoking in GSA-Controlled Buildings and Facilities

AGENCY: Public Buildings Service, General Services Administration.

ACTION: Proposed rule.

SUMMARY: This regulation prohibits smoking in certain areas of buildings controlled by GSA. It has become necessary to regulate smoking in certain areas of Federal buildings because smoke in a confined area may be irritating and annoying to nonsmokers and may create a potential hazard to those suffering from heart and respiratory diseases or allergies. The intent of this regulation is to provide a reasonably smoke-free environment in certain areas for those working and visiting in GAS-controlled buildings.

DATE: Comments must be received on or before October 11, 1978.

ADDRESS: Comments should be addressed to the General Services Administration (PBOP), Washington, D.C. 20405.

FOR FURTHER INFORMATION CONTACT:

Mr. Donald Winegarden, Director, Operations Division, Office of Buildings Management, General Services Administration, Washington, D.C. 20405, 202-566-1563.

Subpart 101-20.1 Building Operations, Maintenance, Protection, and Alterations

Section 101-20.109-10 is revised to read as follows:

§ 101-20.109-10 Regulations of smoking.

Regulation for controlling smoking in GSA-controlled buildings and facilities are set forth below. Agencies are encouraged to develop additional guidelines for internal use and for taking appropriate administrative action when violations of these regulations occur.

(a) Smoking is prohibited in the following areas:

(1) *Auditoriums, classrooms, and conference rooms.* Buildings managers shall insure that signs and adequate receptacles for smoking refuse are placed outside the entrances to auditoriums, classrooms, and conference rooms.

(2) *Elevators.* "No smoking" signs shall be posted in elevators, and adequate receptacles shall be placed outside the entrances.

(3) *Shuttle vehicles.*

(4) *Hazardous areas.* Each agency shall post and enforce "no smoking" rules in any location under its jurisdiction which involves flammable liquids, flammable gases, or flammable vapors, or in all other locations where there is a collection of readily ignitible, combustible materials.

(b) Smoking is not permitted in libraries, except in those non-stack areas that are designated as "smoking" areas. These areas shall be established by the buildings manager in collaboration with the heads of the occupant agencies.

(c) An employee who occupies a private office is authorized to declare that office a "no smoking" area.

(d) "No smoking" areas shall be established in cafeterias. These areas shall be designated as "no smoking" areas by each building manager, in collaboration with the heads of the occupant agencies. The areas designated shall be based upon an estimate of the number of smoking and nonsmoking patrons served. This may be adjusted on the basis of local experience. The "no smoking" areas shall be identified by appropriate signs.

(e) The establishment of "no smoking" work areas in open space should be thoroughly investigated. Supervisors should plan work space in a manner so that employees who desire a "no smoking" area can be accommodated: *Provided,* That: (1) Efficiency of work units will not be impaired, (2) additional space will not be required, and (3) costly alterations to the space or procurement of additional office equipment will not be necessary. Agencies are responsible for insuring that "no smoking" areas are identified by appropriate signs. In establishing and continuing a smoking policy in work areas under their jurisdiction, supervisors should strive to maintain an equitable balance between the rights of nonsmokers and those of smokers.

(f) In medical care facilities such as medical clinics and health units, smoking is restricted to visitor waiting areas, staff lounges, private offices, and specially designated areas. Waiting areas shall be divided into areas designated as "smoking" and "no smoking" whenever possible.

(g) Agencies are responsible for providing adequate noncombustible ash trays or receptacles in locations where smoking is permitted.

(Sec. 205(c), 63 Stat. 390 (40 U.S.C. 486(c))

Dated: August 25, 1978.

JAMES B. SHEA, Jr.,
Commissioner,
Public Buildings Service.

(FR Doc. 78-25407 Filed 9-6-78; 11 03 am)

COPY

P.O. Box 803
Juneau, AK 99802
Feb. 10, 1983

TO: State Affairs, Resources & Judiciary Committees

Dear Committee Members:

We are both state office workers in the Department of Labor Building. The Air conditioning doesn't work and our superiors have repeatedly failed to address the problem of smoke in the air with reasonable accomodations to protect us from the effects of ambiant smoke inhalation. In the light of recent court decisions on the subject and in behalf of the approximately two thirds of state workers who don't smoke please consider your duty to your constituents and to the state workers and give your full support to passage of House Bill #84 "An Act Relating to Smoking in Public Places and Vehicles".

Thank you,
Roberta S Banko.
Dennis G. Andison
Roberta S. Banko
Dennis G. Andison

P.O. box 206
Douglas, Ak. 99824

2 - 8 - 83

State Affairs

C.C. Resources and Judiciary

I wish to convey my suport for House Bill No. 84. Tobacco smoke irritates my eyes, nose and throat. I resent having to restrict my activites to protect my health from others smoking

Sincerely,

Mark J. Miller

RECEIVED
FEB 8 1983

APPLECART



Feb. 14, 1983

TO: State affairs, Resources + Judiciary Committees

Dear Committee members,

I would appreciate your consideration of House Bill # 84 "an act Relating to Smoking in Public Places + Vehicles.

I am now in private business + do not allow smoking on the premises due to the fact that I quit working at the museum (Dept. of Ed.) to get away from smoke as I have a real allergy to cigarette smoke.

Sincerely,

Martha Stevens

Larry and Martha Stevens
515 N. Franklin Street
Juneau, Alaska 99801

(907) 586-3689

— Consulting Services —
— Workshops —
— Software —

February 23, 1983

Thank you for permitting me to make this presentation in favor of the passage of HB-84.

The Judiciary Committee will be interested in learning of two recent court decisions relating to one aspect of the proposed law as contained in HB-84, that of protecting the non-smoking employee in the workplace:

1. In the first decision (Vickers v. Veteran's Administration, U.S. District Court, Seattle, WA, August 31, 1982), the plaintiff was found by the Court to be protected as a "handicapped person" by provisions of the Rehabilitation Act of 1973 (29 U.S.C. §794). The plaintiff, Mr. Vickers, is an employee hypersensitive to tobacco smoke who brought suit for relief from the smokey office atmosphere in which he worked.

   The importance of this decision is the formal declaration by the court of the inclusion of persons hypersensitive to ambient tobacco smoke under the federal law assisting handicapped persons in the workplace.

2. In the second case (Parodi v. Merit Systems Protection Board, 690 F. 2d 731 (1982)), another employee, also hypersensitive to the tobacco smoke in her place of work, had been advised by her physician to retire, since her allergy made it impossible to work in the smokey office to which she had been assigned. The Ninth Circuit Court of Appeals declared that the employee suffers from an "environmental limitation" and has the right to disability retirement benefits, unless her employer can place her in a "safe," "smoke-free" environment in which she can perform her duties.

   One important fact about this case is that it was decided by the second highest court in our country. Another is the declaration of the plaintiff as having "environmental limitations;" the law has previously only spoken to assisting workers having physical limitations, such as vision problems, those confined to wheelchairs, and so forth.

   To me, the most interesting possible effect of this court decision is as follows: I believe it was the 1964 U.S. Surgeon General's report on smoking which provided the statistic that approximately six percent of the American public is allergic to tobacco smoke. Assuming that the Alaska population follows this norm, it may be that, among employees working for the State of Alaska alone, six hundred (6% of approximately 10,000 state employees) may now be eligible for disability retirement benefits if they cannot be placed into work environments free of smoke. The economics behind such a statistic are very interesting.

Numerous corporations in the United States, taking the above judicial decisions into consideration, have solved the problem by simply taking a poll of employees, and based upon statements of employees regarding their desire to work in or out of a smokey area, have revised floorplans

and work areas, installed improved air circulation systems, smoke-eaters, and so forth.

I strongly urge this Judiciary Committee to recommend passage of HB-84 which will assist in a voluntary implementation of provision of safe working conditions for workers in Alaska. To assist you, copies of the above-referenced decisions are attached for your review.

Thank you.

Marilyn Norton

court adjudicate," *id.*, he or she is not identified, nor is he or she shown to have authorized the Foundation to represent him or her in making such a showing. They simply are not here.

B. *The Legislator Plaintiffs.*

[2] As we have seen, these plaintiffs sue only in their official capacities as members of the Legislature. They do not assert independent claims as individuals. Thus, their specific claims are confined to those under Article IV, Section 4, and the Fifth and Tenth Amendments. But those are claims of the State of California, and there is no allegation that the legislator plaintiffs represent, much less that they have been authorized to represent the house of the legislature of which they are members, the legislature itself, or the State.

For all that appears, the State may not desire to assert the constitutional claims that they make, either because it does not believe that the claims have merit, or for other reasons. In California, the Attorney General is, "[s]ubject to the powers and duties of the Governor, ... the chief law officer of the State." Cal.Const., Art. 5, § 13. He "has charge, as attorney, of all legal matters in which the State is interested ..." (Cal. Government Code § 12511), and "... shall ... prosecute or defend all causes to which the State ... is a party...." (*Id.*, § 12512). For whatever reason, he is not here.

In *Mountain States Legal Foundation, supra*, the state was before the court, arguing against the petitioners' claims. Here, it is not present at all. That fact, however, does not, by some alchemy, transfer the state's claims to the plaintiffs, just because the plaintiffs want to assert them. Here again, *Mountain States* is directly in point. *See* 630 F.2d at 769-771.

If we assume that the allegation that "plaintiffs" are injured by the ban on construction of major sources of pollution is intended to include the plaintiff legislators, it is still insufficient to give them standing. The injury involved, "economic stagnation," or "severe economic dislocation," may or may not in fact affect any of them, or any of the Foundation's members, supporters, or contributors. It is just the kind of claimed injury the assertion of which is an attempt at having the court adjudicate "'abstract questions of wide public significance' which amount to 'generalized grievances, pervasively shared and most appropriately addressed in the representative branches.'" *Valley Forge College, supra*, —— U.S. at ——, 102 S.Ct. at 760, *quoting Warth v. Seldin*, 1974, 422 U.S. 490, 499-500, 95 S.Ct. 2197, 2205, 45 L.Ed.2d 343.

In No. 81-4442, the judgment is affirmed. In No. 81-7060, the petition is dismissed.



Irene C. PARODI, Petitioner,

v.

MERIT SYSTEMS PROTECTION BOARD and Office of Personnel Management, Respondents.

No. 80-7671.

United States Court of Appeals, Ninth Circuit.

Argued Feb. 10, 1982.

Submitted April 13, 1982.

Decided Oct. 21, 1982.

Federal employee was denied disability retirement benefits by the Merit Systems Protection Board, and she appealed. The Court of Appeals, Pregerson, Circuit Judge, held that: (1) the Court of Appeals had appellate jurisdiction to review decision, and (2) employee established prima facie case for entitlement to benefits; however, proceeding would be remanded since record was unclear as to whether suitable employment in a safe environment was available.

Reversed and remanded.

1. United States ⇐39(15)

Judicial review of voluntary disability determinations is available where there has been a substantial departure from important procedural rights, misconstruction of governing legislation, or some like error going to heart of administrative determination. 5 U.S.C.A. § 8347(c).

2. United States ⇐39(15)

Disability benefits proceeding in which federal employee claimed that Merit Systems Protection Board misconstrued governing legislation by not finding her "totally disabled" despite her inability to perform her work in her assigned work site was subject to judicial review. 5 U.S.C.A. § 8347(c).

3. United States ⇐39(15)

Party seeking to prove disability meets initial burden of proof by showing that employee is unable, due to disease or injury to perform useful and efficient service in specific position occupied at time proceedings for voluntary or involuntary retirement are instituted by either federal employer or government. 5 U.S.C. (1976 Ed.) § 8331(6).

4. United States ⇐39(15)

Under statute pertaining to disability of federal employees, it is not required that person have serious or permanent physical problem to qualify for disability benefits; law only requires person be unable to perform useful and efficient service because of disease or injury on job last occupied. 5 U.S.C. (1976 Ed.) § 8331(6).

5. United States ⇐39(15)

Statute governing disability of federal employees does not require applicant to prove inability to perform useful service under all circumstances. 5 U.S.C. (1976 Ed.) § 8331(6).

6. United States ⇐39(15)

Once applicant for voluntary disability retirement benefits demonstrates inability to perform useful and efficient service in last job occupied, burden shifts to government to show that appropriate substitute position is available and if government satisfies that burden and offers claimant suitable position, claimant is no longer disabled within meaning of statute but if government cannot find suitable position or refuses to offer one, claimant is then entitled to disability benefits. 5 U.S.C. (1976 Ed.) § 8331(6).

7. United States ⇐39(15)

Federal employee established prima facie case of entitlement to disability retirement benefits due to her inability to continue working in a smoke-filled environment; however, record was unclear as to whether suitable employment in a safe environment was available necessitating remand for further proceedings. 5 U.S.C. (1976 Ed.) § 8331(6).

Paul M. Dubrasich, Browne & Kahn, San Francisco, Cal., for petitioner.

William Kanter, argued, Russell L. Caplan, William Kanter, Washington, D. C., on brief, for respondents.

Appeal from the Merit Systems Protection Board.

Before CHOY, PREGERSON, and POOLE, Circuit Judges.

PREGERSON, Circuit Judge:

Appellant Irene C. Parodi, a federal employee, was transferred to an office in which many other employees smoked. She began experiencing pulmonary difficulties. On her doctor's advice, she took a leave of absence from work. She then applied for employment disability benefits, claiming her reaction to cigarette smoke rendered her disabled. Doctors who examined her on behalf of the government found that she had not suffered physical damage. They did conclude, however, that her hypersensitivity to cigarette smoke prevented her from working in a smoke-filled environment. Appellee Office of Personnel Management (OPM) ruled that her medical condition did not render Parodi disabled within the meaning of the governing statute and denied disability benefits. Appellee Merit

Systems Protection Board (MSPB) affirmed the denial.

Parodi appeals, claiming that appellees, in denying her disability benefits, misconstrued the statutory meaning of "disability." Appellees answer that this court has no jurisdiction to review this case, or, if this court has jurisdiction, that Parodi was not disabled under the applicable statute.

We conclude that this court has appellate jurisdiction to review appellees' decision and that Parodi was disabled. Accordingly, we reverse and remand for further proceedings.

BACKGROUND

Parodi worked for the Defense Logistics Agency for nearly twelve years. In July 1977, the agency transferred her to a new workplace, located in a room occupied by sixty to seventy people, many of whom smoked.

Immediately after the transfer, Parodi began missing work due to pulmonary complications which included continual phlegm production, chest pains, congestion, and difficulty breathing and speaking. A pulmonary specialist, Dr. Donald Ho, diagnosed her as suffering from "asthmatic bronchitis with hyper-irritable airways," and concluded her condition stemmed from her reaction to cigarette smoke. Dr. Ho recommended she take leave from work. She did so and her symptoms subsided. Dr. Ho then recommended she not return to work in a smoke-filled environment. Parodi continued her absence from work and, shortly thereafter, on June 26, 1979, she filed for disability retirement benefits.

Two doctors examined Parodi on behalf of the OPM. Dr. Charles Bass did not perform any objective tests but reported that Parodi did not suffer any short or long term adverse physical effects. Dr. Bass acknowledged that his opinion could change if he saw Parodi's chest x-rays and that Parodi's problem could require "personnel and environmental control." Dr. Robert Fallat, in examining Parodi, exposed her to cigarette smoke and within four minutes she suffered acute pulmonary problems including airway irritation, an increase in airway resistance, and a reduction in peak-flow rates. Dr. Fallat concluded that Parodi was hypersensitive to cigarette smoke, and recommended she "not return to employment in the same office where she previously experienced significant symptomatology." Dr. Fallat also stated that requiring Parodi to work in her previous job would endanger her health.

The OPM reviewed the medical evidence and, on September 27, 1979, concluded that Parodi was not totally disabled "within the meaning and intent of the Civil Service Retirement Regulations." Parodi appealed to the MSPB.

In its decision, the MSPB acknowledged the doctors' recommendation that Parodi not return to work in a smoke-filled environment and that her superior officer believed that she could not do her job due to pulmonary problems. The MSPB also recognized that Parodi "might reasonably be concerned with the probable risk to her future health from working in an environment where exposure to cigarette smoke presents a hazard to all employees, and particularly to herself because of her peculiar physical sensitivity." Despite these findings, the MSPB concluded that Parodi was not totally disabled and affirmed the OPM decision.

JURISDICTION

Parodi requests that this court review the MSPB's denial of her disability retirement claim. Our review of this denial is governed by several statutes. At the time Parodi filed her claim, the employee retirement statute provided that "[a]n administrative action or order affecting the rights or interests of an individual or of the United States under this subchapter [5 U.S.C. §§ 8331 et seq.] may be appealed to the Merit Systems Protection Board." 5 U.S.C. § 8347(d). Another statute provided that persons could appeal decisions of the MSPB to the United States Court of Claims or the United States Court of Appeals. 5 U.S.C. §§ 7703(a)(1) and (b)(1). Under section 7703, courts must set aside agency actions found to be "(1) arbitrary, capricious, an

abuse of discretion, or otherwise not in accordance with law; (2) obtained without procedures required by law, rule or regulation having been followed; or (3) unsupported by substantial evidence." 5 U.S.C. 7703(c). The retirement statute, 5 U.S.C. §§ 8331–48, also provided, however, that "[t]he Office [of Personnel Management] shall determine questions of disability and dependency arising under this subchapter. The decisions of the Office concerning these matters are final and conclusive and not subject to review." 5 U.S.C. § 8347(c).[1]

The question before us is whether this court may review the MSPB's denial of Parodi's claim, and if so, what standard of review should be applied. Parodi argues that this court should review the MSPB decision pursuant to the standard of review set forth in section 7703(c). Appellees contend that section 8347(c), in mandating that OPM decisions concerning disability and dependency "are final and conclusive and not subject to review," bars any judicial review of Parodi's claim.

With one exception, discussed below, courts have rejected both these positions. Courts have recognized that the "conventional 'substantial evidence'" standard of review—which Parodi seeks to apply—does not apply to disability determinations because section 8347(c) places a "special and unusual restriction on judicial examination," *Scroggins v. United States*, 397 F.2d 295, 297, 298 (Ct.Cl.), *cert. denied*, 393 U.S. 952, 89 S.Ct. 37[illegible], 21 L.Ed.2d 363 (1968).[2]

Courts, have also rejected the contention that section 8347(c) bars all judicial review of OPM disability determinations. That section specifically limits its effect to questions of "disability and dependency." Thus, courts have interpreted section 8347(c) as barring judicial review only of the evidentiary basis of determinations concerning disability and dependency. *See Scroggins*, 397 F.2d at 298, 299. Courts, however, have allowed judicial review in disability cases "where there has been a substantial departure from important procedural rights, a misconstruction of the governing legislation, or some like error 'going to the heart of the administrative determination.'" *Scroggins*, 397 F.2d at 297, *quoting Gaines v. United States*, 158 Ct.Cl. 497, 502, *cert. denied*, 371 U.S. 936, 83 S.Ct. 309, 9 L.Ed.2d 271 (1962). *See also Polos v. United States*, 621 F.2d 385, 391 n.9 (Ct.Cl.1980); *Fancher v. United States*, 588 F.2d 803, 806 (Ct.Cl. 1978); *Allen v. United States*, 571 F.2d 14, 17 (Ct.Cl.1978); *McFarland v. United States*, 517 F.2d 938, 942–43 (Ct.Cl.1975), *cert. denied*, 423 U.S. 1049, 96 S.Ct. 776, 46 L.Ed.2d 638 (1976); *McGlasson v. United States*, 397 F.2d 303, 307 (Ct.Cl.1968); *Smith v. Dulles*, 236 F.2d 739, 742 (D.C.Cir.), *cert. denied*, 352 U.S. 955, 77 S.Ct. 329, 1 L.Ed.2d 244 (1956); *Matricciana v. Hampton*, 416 F.Supp. 288, 289 (D.Md.1976); *Cantrell v. United States*, 240 F.Supp. 851, 853 (W.D.S.C.1965), *aff'd*, 356 F.2d 915 (4th Cir. 1966).[3]

Thus, under this so-called *Scroggins* rule, courts treat section 8347(c) as limiting, rather than barring, judicial review otherwise provided by section 7703(c). While the *Scroggins* standard of judicial review and the standard of review provided by section 7703(c) are similar—both allow courts to

1. Congress amended section 8347(c) in 1980 to provide for judicial review under 5 U.S.C. § 7703(c) in involuntary disability retirement cases where the employee was found disabled on the basis of his or her mental condition. Pub.L.No.96-500, 94 Stat. 2696 (1980), (codified at 5 U.S.C. 8347(d) (1981)). As the statute went into effect January 1, 1981 and Parodi's claim did not involve an involuntary claim on the basis of her mental condition, the amendment does not control her case. The significance of the amendment is discussed *infra*.

2. The statute was amended since *Scroggins*. The change—substituting the OPM for the Civil Service Commission in subsection 8347(c) and the MSPB for the Civil Service Commission in subsection 8[illegible](d)—was a technical amendment and does not affect the *Scroggins* doctrine. *See Ch[illegible] v. Office of Personnel Management*, MSPB No. DA 831609003 (May 28, 1981), slip op. [illegible]

3. Congress did not explain the purpose of section 8347(c). *See Matricciana v. Hampton*, 416 F.Supp. 288, 289 n.1 (D.Md.1976). (After an exhaustive search, counsel was unable to come up with an explanation of the purpose of section 8347(c) in the legislative history.)

overturn decisions based upon improper procedures or misconstruction of the law—the *Scroggins* standard of review is narrower. Courts reviewing agency decisions under section 7703(c) overturn decisions not supported by substantial evidence whereas, courts reviewing decisions controlled by section 8347(c), as construed by *Scroggins*, may not reexamine the evidentiary basis for an agency's disability determination.

This construction of section 8347(c), which limits rather than bars judicial review, is consistent with the presumption favoring judicial review of agency actions. "Only upon a showing of 'clear and convincing evidence' of a contrary legislative intent should the courts restrict access to judicial review." *Abbott Laboratories v. Gardner*, 387 U.S. 136, 141, 87 S.Ct. 1507, 1511, 18 L.Ed.2d 681 (1967), cited in *Dunlop v. Bachowski*, 421 U.S. 560, 567, 95 S.Ct. 1851, 1857–58, 44 L.Ed.2d 377 (1975). The language of section 8347(c) does not provide clear and convincing evidence of a congressional intent to bar all judicial review of disability determinations. The statute only evinces a congressional intent to bar judicial review of factual questions concerning disability and dependency.[4]

The Eighth Circuit recently became the first court to reject the Court of Claims' *Scroggins* rule by holding that courts lack jurisdiction to review voluntary—i.e., employee-initiated—disability retirement decisions. *Morgan v. Office of Personnel Management*, 675 F.2d 196 (8th Cir. 1982). The *Morgan* court asserted that the 1980 amendment to the disability statute, Pub. L.No. 96–500, 94 Stat. 2696 (December 1980), indicates that Congress recognized that section 8347(c) mandates a total bar on judicial review of voluntary disability decisions. The 1980 amendment, however, made involuntary—i.e., agency-initiated—disability retirement determinations based on an employee's mental condition subject to judicial review pursuant to the provisions of 5 U.S.C. § 7703, rather than the narrower provisions of section 8347(c).

According to *Morgan:*

> this amendment expressly providing for judicial review under § 7703 would have been redundant if § 8347(c) had already provided for judicial review under § 7703. The 1980 amendments are specific. Had Congress intended to provide for judicial review of *all* disability determinations and not just agency-initiated involuntary disability retirement determinations based in whole or in part upon mental condition, Congress could have so provided.

Morgan, 675 F.2d at 200 (emphasis original).

We disagree with the *Morgan* analysis. The argument that the 1980 amendment would have been redundant if section 8347(c) had provided for judicial review under section 7703 is irrelevant for the simple reason that section 8347(c), as construed by *Scroggins*, does not provide for review under section 7703. Rather, as noted above, *Scroggins* teaches that section 8347(c) limits the review provided by section 7703(c). The 1980 amendment gave courts power to review the facts underlying an MSPB decision involving an involuntary disability determination based on mental condition—a power courts do not possess, under *Scroggins*, when reviewing a MSPB decision involving a voluntary disability application. Thus, there is no conflict or redundancy between *Scroggins'* interpretation of section 8347(c) and the 1980 amendment. The amendment, rather than duplicating *Scroggins*, expands judicial review beyond that provided for by *Scroggins* for involuntary disability retirement determinations based on mental condition.

The *Morgan* court also misread the legislative reports accompanying the 1980 amendment. *Morgan* contends that the re-

4. Had Congress wished to preclude judicial review of both factual and legal questions, Congress could have so provided. *See* 38 U.S.C. § 211(a) as it read prior to its 1970 amendment. ("[D]ecisions of the Administrator on any question of law or fact concerning a claim for benefits or payments under any law administered by the Veterans' Administration shall be final and conclusive and no other official or any court of the United States shall have power or jurisdiction to review any such decision.")

ports refer to a bar on *all* judicial review. The House Report, however, in discussing the problem Congress intended the amendment to remedy, pointed to three cases that did not allow "judicial review" to show that the amendment was necessary. H.Rep.No. 1080, 96th Cong., 2d Sess. 4 (1980). All three cases—*Scroggins v. United States*, 397 F.2d 295 (Ct.Cl.), *cert. denied*, 393 U.S. 952, 89 S.Ct. 376, 21 L.Ed.2d 263 (1968), *McGlasson v. United States*, 397 F.2d 303 (Ct.Cl.1968), and *McFarland v. United States*, 517 F.2d 938 (Ct.Cl.1975)—held that under section 8347(c), courts could not review the factual findings that underlie an agency's disability and dependency determinations, but that limited judicial review, i.e., review under the *Scroggins* rule, is appropriate. Thus, the bar on judicial review referred to by the reports precludes only judicial review of factual findings.

The legislative history of the 1980 amendment also indicates that Congress amended the statute based, in part, on the OPM's representation that section 8347(c) already allowed limited judicial review of all disability proceedings. As *Morgan* notes, Congress passed the 1980 amendment to prevent involuntary disability retirement proceedings from being misused to force employees out of active service for reasons of mental competency. *Morgan*, 675 F.2d at 200. *See also* S.Rep.No.1004, 96th Cong., 2d Sess. 2, *reprinted in* 1980 Code Cong. & Ad.News 5986, 5987. At the time the initial House version of the amendment was passed, the OPM objected that the proposed standard of judicial review—*de novo* review of the evidence—was too broad. *See* letter of Alan K. Campbell, Director, OPM, May 14, 1980, H.R. 96-1080, at 8. The OPM, however, did not argue that judicial review was not otherwise available. In fact, the OPM took a position opposed to that which it now takes before this court by admitting that judicial review exists for all disability retirement decisions and that the *Scroggins* rule was appropriate for reviewing voluntary disability determinations. The Director of the OPM wrote Congress:

> We believe it is reasonable and proper to restrict *expanded* judicial review to involuntary disability retirements. An employee who voluntarily applies for disability retirement seeks to establish title to a benefit granted by law; the Office of Personnel Management is the administrative agency charged under the law with the managerial function of adjudicating disability retirement claims. *It is appropriate, therefore, that OPM decisions on voluntary applications be conclusive, reviewable only to determine whether there has been a substantial procedural error, a misconstruction of governing legislation, or some like error going to the heart of the administrative determination.*

H.R. 96-1080 at 8 (emphasis added).[5]

Thus, we disagree with the Eighth Circuit's conclusion that the 1980 amendment indicates that section 8347(c) forecloses all judicial review.[6] Rather, the history and language of the 1980 amendment indicate Congress merely wished to expand judicial review for involuntary disability retirement determinations based on an employee's mental condition, not that Congress believed the law barred all judicial review of disability determinations.

[1] Therefore, we decline to follow the *Morgan* decision and agree with the prior consistent judicial opinions that section 8347(c) does not bar all judicial review.[7]

5. A similar letter accompanies S.R. 96-1004, but is not reprinted in the Congressional & Administrative News. The letter may be found in the 1980 Senate Reports, on microfilm in the Library of the United States Court of Appeals for the Ninth Circuit.

6. "Although we look to the reasoning of other circuits and district courts for guidance, we are bound only by decisions rendered in this circuit." *Gunther v. County of Washington*, 623 F.2d 1303, 1319 (9th Cir. 1979), *aff'd*, 452 U.S. 161, 101 S.Ct. 2242, 68 L.Ed.2d 751 (1981).

7. Appellees also assert that the Supreme Court's decision in *United States v. Erika, Inc.*, —— U.S. ——, 102 S.Ct. 1650, 72 L.Ed.2d 12 (1982), precludes judicial review of voluntary disability decisions.

Erika addressed the question whether the Court of Claims has jurisdiction to review determinations by private insurance carriers of

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We adopt the *Scroggins* rule and hold that judicial review of voluntary disability determinations is available where there has been a substantial departure from important procedural rights, a misconstruction of the governing legislation, or some like error going to the heart of the administrative determination.

[2] Here, Parodi claims the agency misconstrued the governing legislation by not finding her "totally disabled" despite her inability to perform her work in her assigned worksite. This case, therefore, falls squarely within the *Scroggins* doctrine and is subject to judicial review.

DISABILITY

The parties do not dispute the essential facts of this case: Parodi worked in an environment containing cigarette smoke; due to her hypersensitivity to cigarette smoke, she could not work at her assigned worksite; further employment at her worksite would subject her to risk of permanent lung impairment; but she could work in an environment containing less cigarette smoke. Given these facts, the issue here is whether the OPM and MSPB erred in finding that Parodi was not "totally disabled."

[3] Under the governing legislation a person is totally disabled if unable to perform "useful and efficient service in the grade or class of position last occupied by the employee or Member because of disease or injury not due to vicious habits, intemperance, or willful misconduct on his part within five years before becoming so disabled." 5 U.S.C. § 8331(6).[8] Under this statute, the party seeking to prove disability meets its initial burden of proof by showing that the employee is unable, due to disease or injury, to perform useful and efficient service in the specific position occupied at the time proceedings for voluntary or involuntary retirement are instituted by either the employee or the government. *See Cerrano v. Fleishman*, 339 F.2d 929, 931 (2nd Cir. 1964), *cert. denied*, 382 U.S. 855, 86 S.Ct. 106, 15 L.Ed.2d 93 (1965).

Appellees do not dispute that Parodi, because of her disease,[9] is unable to perform the specific position she last occupied. Rather, appellees contend that Parodi is not disabled because she does not suffer any permanent or serious impairment, and because she would be able to work in an area with less cigarette smoke.[10]

the amounts of benefits payable under Part B of the Medicare Statute. Part A of the Medicare statute covers institutional health care costs such as hospital expenses. Part B provides supplemental benefits for certain medical expenses excluded from the Part A program. The Court held that the Court of Claims has no jurisdiction over Part B determinations.
Erika is not applicable to the instant case. While *Erika* dealt with the question of judicial review, the Court did not provide any general guidelines for determining whether a statute precludes judicial review. In fact, the Court specifically noted that judicial review was only foreclosed "[i]n the context of the [Medicare] statute's precisely drawn provisions." *Id.* 102 S.Ct. at 1654. The Medicare provisions are different from the retirement disability provisions at issue in this case. Further the Court noted that the Medicare statute's legislative history provides clear evidence of Congress' intent to limit judicial review of Part B decisions. *Id.* 102 S.Ct. at 1654–55. Appellees cannot point to any similar history for section 8347(c).

8. This definition was replaced in 1980. Act of Dec. 5, 1980, Pub.L.No.96–499, Title IV, § 403(b), 94 Stat. 2606. The new definition of disability provides in part:

> Any employee shall be considered to be disabled only if the employee is found by the Office of Personnel Management to be unable, because of disease or injury, to render useful and efficient service in the employee's position and is not qualified for reassignment, under procedures prescribed by the Office, to a vacant position which is in the agency at the same grade or level and in which the employee would be able to render useful and efficient service.

Id. § 403(a) (codified at 5 U.S.C. § 8337(a) (1981)). The new definition of "disabled" is not applicable to the present case because the amendments were not effective until 90 days after the effective date of the act, December 5, 1980. *Id.* § 403(c).

9. Parodi's disease is asthmatic bronchitis with hyper-irritable airways disease. Appellees do not assert her disease was caused by vicious habits, intemperance, or willful misconduct.

10. Parodi contends she would be unable to work in a location containing *any* cigarette

[4] Both contentions suffer the same flaw—they impose on claimants seeking disability benefits certain requirements beyond those imposed by section 8331(6). As to appellees' first contention, section 8331(6) does not require that a person have a serious or permanent physical problem to qualify for disability benefits.[11] The law only requires the person be unable to perform useful and efficient service, because of a disease or injury, in the job last occupied.

[5] Appellees' second contention—that Parodi is physically able to perform her job—is also irrelevant. Section 8331(6) does not require an applicant to prove an inability to perform useful service under all circumstances. While Parodi could perform her previously assigned job in an area with less smoke, as stated above, all she must show under section 8331(6) is an inability, due to an injury or disease, to perform the job she occupied at the time she applied for disability benefits. *Cerrano*, 339 F.2d at 931. She has done so.[12]

While Parodi's condition presents a prima facie case for disability benefits, we recognize that her claim is unusual. Most disability claims involve a physical or mental limitation that prevents a claimant from performing his or her job. Parodi has an environmental limitation. Unlike a person with a physical limitation, a person with an environmental limitation can physically perform the assigned work in a proper environment. Here, Parodi could perform the work assigned to her if she were placed in a smoke-free environment. Parodi cannot, however, perform her job due to its location in a smoke-filled office. She is as disabled for her job at her assigned worksite as she would be had she actually suffered permanent and severe chronic bronchitis or another physically disabling disease. She cannot perform her job, not due to choice or bad habits, but due to a disease which limits the environment in which she can work.

Section 8331(6) does not exclude environmental limitations from forming the basis of an employee's disability. Appellees have not cited any authority or justification for precluding victims of environmental limita-

smoke. The question whether she could work in a location containing less cigarette smoke or whether she requires total isolation from cigarette smoke is not relevant here as the government did not offer Parodi employment in any location containing less smoke than at her previous place of employment.

11. Section 8331(6) makes no reference to "severity" or "seriousness" of the injury or disease. Had Congress intended "seriousness" to be a prerequisite to recovering benefits, it could have explicitly required a showing of seriousness. The federal disability insurance benefits statute, for example, defines disability as:

> (i)nability to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than twelve months.

42 U.S.C. § 423(d)(1)(A). This definition requires the claimant to prove a serious medical problem before receiving benefits. No such requirement exists under section 8331(6). Further, disability does not always involve a physical impairment. For example, in *Globe Union, Inc. v. Baker*, 310 A.2d 883 (Del.Super. 1973), *aff'd*, 317 A.2d 26 (Del.1974), the claimants worked in an environment of high lead concentration. When the lead level in their blood reached a certain point, they were transferred to less remunerative jobs in lead-free environments. They applied for and received partial disability benefits. The employer appealed claiming that disability requires physical incapacity as well as loss of wages. The court rejected this argument and affirmed the award. While this case involved the Delaware workers' compensation statute, the principle that a finding of disability does not require a physical impairment applies to this case.

12. Under similar disability statutes, courts have held that one's ability physically to perform a job does not necessarily render the person ineligible to receive disability benefits. For example, in *Diamond M. Drilling Co. v. Marshall*, 577 F.2d 1003 (5th Cir. 1978), the claimant suffered a heart attack on the job and filed for benefits under the Longshoreman's Compensation Act. The Benefits Review Board found him totally disabled. The employer appealed. The court, in affirming the award, noted that one can be disabled "when physically capable of performing certain work but otherwise unable to secure that particular kind of work." 577 F.2d at 1006.

tions from receiving disability benefits.[13] As noted above, to qualify for disability benefits applicants must demonstrate an inability, due to a disease or injury, to perform useful and efficient service at the last job occupied. The nature of the disease or injury, unless it involves vicious habits, intemperance, or willful misconduct, is irrelevant.

In sum, Parodi's lack of a serious or permanent medical incapacity and her ability to perform her job in another location are immaterial to the primary question concerning disability—whether she could perform the job she last occupied. She could not.

The finding that she could not perform the job she last occupied, however, does not conclusively decide this case. Under the facts presented here, Parodi would not be disabled if the government offered her suitable employment—employment at the same grade or position in a location appropriate for Parodi's physical condition—because if such employment were offered, Parodi would be able to perform useful and efficient service. We must decide who carries the burden of proving whether suitable employment is available to Parodi.

The only case discussing this issue is *Cerrano v. Fleishman*, 339 F.2d at 926. There, the Bureau of Customs involuntarily retired Cerrano. The administrative board found Cerrano disabled for "useful and efficient service" in his position. He claimed he was not disabled for service in other positions in the same grade or class. The Second Circuit held that the Civil Service Commission, before involuntarily retiring someone, need not "search the entire galaxy of Civil Service jobs, either in the same grade or the same class, to determine whether or not there was some such position between Alaska and Florida or Hawaii and Maine, which the appellant, in spite of his disability, could fill." *Id.* at 931. The court also suggested that an *employee* applying for voluntary disability benefits would not have to prove "he was unable to perform any of the jobs which for administrative convenience are put in the same grade or class and in which, at the time, there might be an opening." *Id.*

[6, 7] We agree that an employee should not have to prove the availability of an appropriate job. The government is in a better position than the claimant to provide evidence of the availability of suitable employment, particularly the availability of employment in a safe environment. Therefore, we hold that once an applicant for voluntary disability retirement benefits demonstrates an inability to perform useful and efficient service in the last job occupied, the burden shifts to the government to show that an appropriate substitute position is available.[14] If the government satisfies this burden and offers the claimant a suitable position, the claimant is no longer disabled within the meaning of section 8331(6). If, however, the government cannot find a suitable position or refuses to offer one, the claimant is then entitled to disability benefits. In the instant case, Parodi is willing and able to work if a position in the same grade or class located

13. Analogous areas of law provide that persons suffering from environmental limitations (generally referred to as non-exertional limitations) may be considered disabled. Social Security, for example, provides disability benefits where environmental restrictions result in an "inability to tolerate some physical feature(s) of work settings that occur in certain industries or types of work." 20 C.F.R. Subpart P, App. 2, Rule 2000.00(e). *See also Gagnon v. Secretary of Health, Education, and Welfare*, 666 F.2d 662 (1st Cir. 1981). Workers' Compensation cases have also recognized environmental limitations as disabling. *See generally* 2 A. Larson, *The Law of Workmen's Compensation*, § 57.61, (1981).

14. This test is similar to that employed in determining Social Security disability. When applying for Social Security disability, a claimant carries the initial burden of establishing that he is unable to perform his previous work. Once the claimant has made such a showing, the burden shifts to the Secretary of HEW to establish that there is other substantial gainful employment which the claimant can perform. *Hall v. Secretary of HEW*, 602 F.2d 1372, 1375 (9th Cir. 1979). The test we adopt is also similar to the test employed in connection with the Longshoremen's Compensation Act. *See Bumble Bee Seafoods v. Director, Office of Workers' Compensation Programs*, 629 F.2d 1327 (9th Cir. 1980).

in a safe environment is available. Therefore, unless Parodi's environmental limitation is accommodated within 60 days by an offer of suitable employment in a safe environment,[15] Parodi is eligible for disability benefits. For good cause shown to the district court, this period could be extended.

The record is not clear whether suitable employment in a safe environment is available. If it is, and if the government does not offer Parodi such employment, she is eligible for disability retirement benefits in an amount to be determined through regular proceedings.

This panel will retain jurisdiction over further proceedings in this appeal if any are necessary subsequent to remand.

REVERSED and REMANDED for further proceedings in accordance with the foregoing opinion.



Milton VENTURA, Plaintiff-Appellant,

v.

Hoyt C. CUPP, Superintendent, Oregon State Penitentiary, Defendant-Appellee.

No. 81-3598.

United States Court of Appeals, Ninth Circuit.

Argued and Submitted Aug. 5, 1982.

Decided Oct. 21, 1982.

Petitioner appealed from an order of the United States District Court for the District of Oregon, Robert C. Belloni, J., denying a petition for habeas corpus. The Court of Appeals held that although the failure to exhaust state remedies was suggested by the record, it was not possible to determine whether the failure to exhaust was properly excused in whole or in part or whether any state remedy still existed, and therefore, appeal from denial of petition for habeas corpus would be dismissed and cause would be remanded for determination of whether any state remedies remained available to petitioner, whether any previously available state remedies were not exhausted, and whether failure to have employed available state remedies was either a deliberate bypass or a situation in which there was no cause of the failure to have employed state remedies.

Dismissed and remanded.

1. Habeas Corpus ⇐45.3(1)

Requirement of exhaustion of state remedies may not be waived by state unless the interest of justice so requires.

2. Habeas Corpus ⇐113(13)

Although the failure to exhaust state remedies was suggested by the record, it was not possible to determine whether the failure to exhaust was properly excused in whole or in part or whether any state remedy still existed, and therefore, appeal from denial of petition for habeas corpus would be dismissed and the cause would be remanded for a determination of whether any state remedies remained available to petitioner, whether any previously available state remedies were not exhausted, and whether failure to have employed available state remedies was either a deliberate bypass or a situation in which there was no cause of the failure to have employed state remedies.

Hollis K. McMilan, Eugene, Or., for plaintiff-appellant.

Virginia L. Linder, Asst. Atty. Gen., Salem, Or., for defendant-appellee.

Appeal from the United States District Court for the District of Oregon.

15. In this case, the government could simply remove the environmental barriers or offer Parodi a job in an area containing less smoke.

Feb. 14, 1983

To: The Honorable Sponsors of HB No. 84

I would like to see passage of the above---especially as related to the "close work area". Many workers are exposed, to "smokers," who have allergy/respiratory problems and should be allowed to have a smoke-free work place.

Thank you.

Pat Ellsworth RN
Health Unit, Fed. Bldg.
Bx 378
Juneau, Alaska 99802

February 14, 1983

Dear Hearing Officer,

I support House Bill No. 84, which if enacted would prohibit smoking in public places and work area. As a nonsmoker, I am concerned about the injurious effects of secondary smoke to my health.

I believe my desire for a smoke free environment can be achieved, and that smokers may continue to smoke, by providing for designated smoking areas and segregating work areas into smoking and nonsmoking areas.

I am also concerned that the tobacco industry, by spending large amounts of money, may sway the apparent consensus of the group presenting testimony.

I hope that you will seek information from the interested public beyond the short sighted profit motive of the tobacco companies.

Sincerely,

Eugene E. Miller

Eugene E. Miller
17040 Glacier Highway
Juneau, AK 99801

cc: Representative Mike Miller
Representative Jum Duncan
Senator Bill Ray

BARTLETT MEMORIAL HOSPITAL

P. O. BOX 3-3000 • JUNEAU, ALASKA 99801 • TELEPHONE (907) 586-2611
MILE 3 — GLACIER HIGHWAY

February 11, 1983

HOUSE BILL 84 "SMOKING IN PUBLIC PLACES"

Traditionally, smokers have enjoyed the freedom to smoke when and where they choose. In recent years, research has shown that second hand smoke can have harmful effects on non-smokers. Non-smokers are no longer a silent majority, they mind if you smoke and are speaking up.

Tobacco smoke contains hazardous compounds; tar, nicotine, carbon monoxide, cadmium, nitrogen dioxide, ammonia, benzene, formaldehyde and hydrogen sulfide. Two-thirds of the smoke from the burning cigarette goes into the environment. The smoke from the burning end of the cigarette has the highest concentration of these pollutents.

Being in a room with smokers can significantly increase the carbon-monoxide levels in non-smokers. The half-life of carbon-monoxide is over 5 hours and with prolonged repeated exposure a non-smoker may have a carbon-monoxide level as high as someone that smokes. This carbon-monoxide has a higher affinity for hemoglobin in the blood than does oxygen and causes a decrease in the ability of the blood to transport oxygen thru out the body. This can lead to impaired performance and physiological stress to vital organs.

Persons exposed to second hand smoke experience an increase in the likelyhood of developing; broncitis, emphysema, lung cancer and persons with existing lung disease such as asthma who are sensitive to tobacco smoke are compromised.

Nonsmokers have the right to breath clean air, free from harmful and irritating tobacco smoke. I support House Bill 84 and encourage the legislature to take action on their behalf.

Sincerely,

Gary Dunne RRT

Gary Dunne RRT

COPY

To: All Members of the State Affairs, Resources & Judiciary Committee

From: Anna von Reitz, State Employee, Alaska Voter

Dear Committee Members,

I urge you to support and pass the proposed House Bill 84, "An Act Relating to Smoking in Public Places and Vehicles." The health hazards of smoking and of ambient smoke inhalation are well documented; the correlation between exposure to tobacco smoke and incidence of heart and lung diseases is too strong to ignore. In the best interests of public health, it is your responsibility to take action against this ubiquitous menace.

There are some special areas of concern that I urge you to consider with exceptional care -- those being the provisions to protect young children, the elderly and non-smoking members of the work force.

As you are probably well aware, the elderly and young children are especially susceptible to lung damage and impaired vascular performance, which is further complicated by exposure to ambient smoke. Non-smoking members of the work force deserve spicial consideration because their abstinence from smoking is a contributing factor toward greater productivity, lower insurance rates and lower work site maintenance costs.

A final urgent concern is for the establishment of an effective and comprehensive educational program for the general population concerning the dangers to public and personal health, and the very real social costs, that are associated with smoking and inhalation of ambient smoke.

Support House Bill 84!

Box 981
Juneau, Alaska 99802
February 9, 1983

The Honorable Mitchell F. Abood, Jr.
Chair. State Affairs Committee
Alaska State House of Representatives
Pouch V State Capitol B uilding
Juneau, Alaska 99811

Dear Mr. Abood:

Re: HB #84 SMOKING IN PUBLIC PLACES

I encourage you to work toward passing HB #84 out of your committee with a unanimous "Do Pass."

Medical studies show that exposure to tobacco smoking among healthy non-smokers significantly reduces small airway function. In people who are allergic to smoke, it can cause headaches, elevated blood pressure and heart rate, coughing and even asthma attacks. Prevent discrimination agains non smokers, by providing public places where they can do their grocery shopping etc, without being subjected to the passive act of smoking agains their own choosing.

I think people in general are considerate of others, when it is pointed out that their actions can harm others. This is demonstrated by the way people obey the no smoking signs in hospital rooms and in elevators.

HB # 84 can be used to let smokers know that non smokers have the right not to be subjected to their side smoke.

Sincerely,

Nina L. Brown R.N.

Nina L. Brown, R.N.

CC: MIlo Fritz
Mike Miller

Juneau, Alaska
February 10, 1983

The Honorable Mitchell E. Abood, Jr.
Alaska State House of Representatives
Pouch "V" State Capitol Building
Juneau, Alaska 99811

Dear Sir:
RE: HB 84 Smoking in Public Places

As a respiratory Therapist in an acute care facility I see the ravages of smoking every day. Men and women who were once active and healthy now are reduced to no better than cripples by the self destructive act of smoking.

As Chairman of the State Affairs Committee, I encourage you to work toward passing this bill out of your committee with a unanimous "Do Pass." It will protect the non-smokers from the exposure to smoke in the air from smokers. Cigarette, cigar and pipe smoke does not heed "No Smoking Signs" it drifts as it pleases. Smoke assaults the lungs, sometimes only as unseen particles of all people, smokers and non smoker alike.

Smoking is an active habit done by conscious choosing, unfortunately non-smokers are subjected to the passive act of smoking against their own choosing. Passive smoking by non-smokers causes some people great distress, in the form of headache, nausea, itchy eyes and sore throats. In some cases it can trigger shortness of breath, elevated blood pressure and heart rate, coughing and even asthma attacks in some individuals. The worst result of passive smoking is the effect on infants and little children and the elderly who have minimal reserves to combat the ill effects.

Non Smokers deserve equal rights, provide them with public places where they will be free from passive smoking.

PLEASE SUPPORT H.B. #84 SMOKING IN PUBLIC PLACES.

Sincerely,

Sandra N. Gast

Sandra N. Gast, R.T.
6310-22 Glacier Hwy
Juneau, Alaska 99801

(Bartlett Memorial Hospital)

CC: Milo Fritz
Mike Miller

SOHIO ALASKA PETROLEUM COMPANY

3111 "C" STREET
ANCHORAGE, ALASKA

TELEPHONE (907) 276-5111

MAIL: POUCH 6-612
ANCHORAGE, ALASKA 99502

February 14, 1983

Representative Milo Fritz
Alaska State Legislature
Pouch V
Juneau, Alaska 99811

Dear Milo:

As the Alaska Medical Director for Sohio Alaska Petroleum Company, I am personally committed to the preservation and maintenance of good health and safe working conditions.

The most serious preventable hazard to an individual's health is the danger from cigarette smoking and/or inhalation of second hand smoke.

I strongly encourage you to co-sponsor and support passage of House Bill 84.

It is indeed a matter of life and health versus sickness and infirmity.

Sincerely,

Robert W. Rigg, M.D.
Alaska Medical Director

RWR:jsr

Will see you next week -
Regards.

VI. LITIGATION

A. Private Actions to Prohibit or Restrict Smoking in Private Places of Work

1. Shimp v. N. J. Bell Telephone Co., 368 A 2d 408 (N.J. Sup. Ct. 1976):

In the single case in which a court has found an employee has a right to a smoke-free work environment, a New Jersey court prohibited smoking in all work areas of a company office. Alleging a severe allergic reaction to cigarette smoke, the plaintiff Shimp sued her employer to compel it to provide her a no-smoking work area. This case was not actively defended by N.J. Bell Telephone.

2. Mitchell v. Bell Telephone Co., C-4159-76 (N.J. Sup. Ct. 1978):

This was another case in which the plaintiff, an employee of the defendant and allegedly allergic to tobacco smoke, sought an injunction compelling the defendant to provide him with a smoke-free place of work. The court dismissed the case, in response to the defendant's motion which was based on preemption grounds. Mitchell, which was actively defended, was brought by the same attorney who represented Shimp and the dismissal was entered by the same judge.

3. Gordon v. Raven Systems and Research, Inc., 14092-79 (D.C. Sup. Ct. 1981):

Plaintiff sought reinstatement and damages from her former employer, alleging that she was fired when she insisted that she be provided with a smoke-free environment because of her allergy to tobacco smoke. The court dismissed the case, finding that defendant had no contractual or legal obligation to accede to plaintiff's demands. The court expressly declined to follow Shimp, discussed above, and observed that "neither statute, regulation, nor principles of common law required the Raven Corporation to furnish the plaintiff with the kind of smoke-free workplace she demanded."

4. Kensell v. State of Oklahoma et al., Civ. No. 81-786-T (W.D. Okla. 1982):

The plaintiff, an employee of the Oklahoma Department of Human Services, filed suit in U.S. District Court against his employer, the State of Oklahoma and numerous state officials and employees, contending, inter alia, that their refusal to provide him with a smoke-free workplace violated his rights under the First, Fifth, Ninth and Fourteenth Amendments. Citing FENSR and Gasper, discussed below, the court dismissed the plaintiff's suit, concluding that "[f]or the Constitution to be read to protect non-smokers from inhaling tobacco smoke would be to broaden the rights of the Constitution to limits heretofore unheard of." Like the court in Gasper, the Kensell court noted that the results sought by the plaintiff might better be accomplished through the legislative process.

5. Vickers v. Veterans Administration, No. (81-85V) (W.D. Wash., August 31, 1982):

A U.S. District Court in Washington State ruled that a federal employee who is hypersensitive to tobacco smoke is "handicapped" within the meaning of the Rehabilitation Act, 29 U.S.C.§794. The court, however, found that the supervisor's reasonable efforts in this case to accomodate the employee's handicap satisfied the Act's requirement that federal agencies not discriminate against handicapped persons. No damages were awarded to the plaintiff.

6. Smith v. Western Electric Company, No. 44286 (Mo. Ct. of Appeals, Sept. 14, 1982):

The Missouri Court of Appeals held that an employer's common law duty to provide a reasonably safe workplace might include an obligation to ensure a smoke-free environment for employees sensitive to burning tobacco. The court did not base its decision on any statute but rather on the "well-settled" law that employers must protect employees from avoidable perils. Western Electric had contended that the federal Occupational Safety & Health Act preempted any state action on this issue. This decision will allow plaintiff the opportunity to prove his allegation at a trial.

7. Parodi v. Merit Systems Protection Board, 80-7671 (9th Cir., Oct. 21, 1982):

The U.S. Court of Appeals for the 9th Circuit ruled a government employee with a hypersensitivity to cigarette smoke must be given a smoke-free office within 60 days or be granted disability payments. While acknowledging that most disability claims involve a physical or mental limitation, the court stated that an "environmental limitation",such as Parodi's hypersensitivity to smoke, may form the basis for an employee's disability.

8. Hentzel v. The Singer Co., (Calif. Ct. of Appeals, Dec. 20, 1982):

The California Court of Appeals found that an employee allegedly fired for insisting on a smoke-free workplace has the right to sue his former employer for damages. The decision, reversing a trial court's dismissal of the Henztel complaint, emphasized the need to protect employees who voiced dissatisfaction with allegedly hazardous working conditions.

B. Private Actions to Prohibit or Restrict Smoking in Public Places

1. Gasper v. Louisiana Stadium and Exposition District 418 F. Supp. 716 (E.D. La. 1976), aff'd, F.2d 897 (5th Cir. 1978), cert. denied, 439 U.S. 1079 (1979):

Plaintiffs sued to compel the authorities who manage the Louisiana Superdome to prohibit smoking in the Superdome during sporting and other public events. In support of this request, the plaintiffs claimed a constitutional right to a smoke-free environment, relying on the First Amendment (freedom of speech), Fifth and Fourth Amendments (due process right to life and liberty) and Ninth Amendment (which protects so-called unspecific but "fundamental" rights). The district court unequivocally rejected each of these claims. The court of appeals affirmed this decision in all respects, while noting that the legislature, as opposed to a court, would have broad power to regulate smoking in public places. The Supreme Court denied the plaintiff's petition for review of the lower courts' decisions.

2. Federal Employees for Non-Smokers Rights (FENSR) v. United States, 446 F. Supp. 181 (D.D.C. 1978), aff'd, 598 F. 2d 310 (D.C. Cir.), cert. denied, 444 U.S. 926 (1979).

Several anti-smoking organizations, whose members included federal employees, sought to compel the federal government to prohibit smoking in federal facilities except in designated smoking areas. Plaintiffs asserted a private right of action under the Occupational Safety and Health Act (OSHA), a deprivation of their First and Fifth Amendments rights (freedom of speech and right to due process) and a common law right to a smoke-free workplace. The district court, relying on the decision in Gasper, rejected the constitutional claims, held that OSHA implies no private cause of action and found that it had no jurisdiction to consider the common law claim advanced by the plaintiffs in support of their demands. The court of appeals affirmed the district court decision and the Supreme Court refused to review the case.

3. Church v. Brown, et. al., Civ. No.78-4073 (S.D. Ill. 1979):

The plaintiff, an employee of Scott Air Force Base, brought this action in U.S. District Court alleging that the commander of the base and the United States had a duty, under both the common law and OSHA, to provide him with a smoke-free working environment. Accepting "wholeheartedly" the analysis of the court in FENSR, the Church court found that it had no jurisdiction to consider the common law claim propounded by the plaintiff and rejected his OSHA claim, finding "that no private implied cause of action exists under OSHA..."

4. GASP v. Mecklenburg County, 256 S.E. 2d 477 (N.C. 1979):

An anti-smoking group sought an injunction forcing county authorities to prohibit smoking in all county public buildings and places of work, relying, like the plaintiffs in FENSR and Gasper, on an alleged constitutional right to a smoke-free environment. The North Carolina Court of Appeals, citing FENSR and Gasper, held that no such constitutional right exists and dismissed the plaintiff's suit.

VI. LITIGATION

C. Other Decisions

1. Stevens v. Employment Security Commission (Iowa, Nov. 1976):

An Iowa state court ruled eligible for unemployment benefits a woman whose health required that she accept a job only in a smoke-and-dust free environment. Suffering from asthma, the plaintiff quit her job because the cigarette smoke in her office allegedly aggravated her illness. Unable to find a job that met the conditions required by her health, she applied for unemployment benefits. The Employment Security Commission said her restrictions on possible employment had made her unavailable for work and ineligible for benefits. But a District Court in Iowa disagreed, saying her limitation was not so great as to to remove any possibility of employment. The court compared her situation to the cases where benefits were granted to persons limited to "light work".

2. Ellen L. Meyer v. C.P. Clare & Co., (Idaho Industrial Comm., Nov 1978):

Unemployment benefits were also granted to an Idaho worker who had quit because two cigar smokers were transferred into her work area. She could have been given a leave of absence until a suitable position opened, but no one told her of this option. According to the state industrial commission, her limited choice "would compel a reasonable person to leave her employment." Thus she had good cause for quitting and was eligible for benefits.

3. Alexandria Volunteer Fire Dept. v. City of Alexandria, (E.D. VA, Dec. 13, 1982):

A federal district court rejected a lawsuit by Alexandria volunteer firefighters which challenged a regulation requiring volunteer firefighters to meet city fire department standards, including no smoking. No violations of the due process or equal protection clauses were found in the requirement that the volunteers meet the same physical, mental and training standards that the professional firefighters must meet.

4. San Mateo County Fire Fighters, Local 2400 v. City of San Mateo, No. 268890 (Calif. Sup. Ct. Dec. 16, 1982):

Stating the city may have violated a state law that requires local officials to negotiate working conditions, a superior court temporarily barred the city of San Mateo from enforcing a no-smoking policy for rookie firefighters. Under the court order, the city may continue to require fire department applicants to sign the no-smoking pledge, however, it would be unenforceable unless the temporary injunction is overturned at trial.

STATE of ALASKA

MEMORANDUM

TO: [redacted]
Director

DATE: June 2, 1982

FILE NO:

Thru: [redacted]

TELEPHONE NO: [redacted]

FROM: Roberta Banko
[redacted]

SUBJECT: Cigarette Smoke

For some time we have noticed a severe problem with the amount of cigarette smoke in the air of [redacted]. As you know, the Surgeon General of the United States as well as many studies on the subject are linking the effects of passive smoking with lung cancer and other related diseases. Fellow workers have expressed concern about the health hazards, discomforts and inconvenience experienced as a result of the smoke in the air. Although some efforts have been made to improve the situation by moving workers' work stations around, installing large "smoke-eaters" and providing fans to recirculate the smoke, these efforts are not effective. As stated in the APEA contract (Article 3, Section 1 b, pp. 8-9) one of the purposes of our contract is "to promote fair and reasonable working conditions." These conditions should apply equally to all members.

We are confident that all reasonable efforts can be made to promote the welfare and champion the rights of non-smokers as well as those of smokers. [redacted] to move to a new building, we feel that now is the best time to address the problem and, if necessary, institute some regulations correcting the situation. The following are suggestions for dealing with the situation:

1. "NO SMOKING" in all areas except those designated and agreed upon by all workers as smoking areas.

2. All smokers who wish to smoke at their desks should provide, at their expense, desk-type "smoke-eaters".

3. Smokers should refrain from walking around others' work areas with lighted cigarettes.

4. Install more large, room-size "smoke-eaters" so that a modicum of efficiency might be achieved or otherwise provide for an air exchange or proper ventilation (this should be undertaken in addition to the above regulations.)

Additional information can be provided on the subject of the harmful effects of passive or "side-stream" smoking on health if you find it necessary in order to address this problem. We are looking forward to your reply and to working with you in solving this problem.

cc: [redacted]
Leo Kay, Alaska Lung Association
Joe Cladouhos, Environmental Health/Environmental Conservation
Raymond Jorgenson, OSHA
Dr. Erwin Rabeau, Director Public Health/Health & Social Services
Dr. Helen Byrne, Commissioner, Health & Social Services
John Cenoweth, Ombudsman, Governor's Office
Dianne Corso, APEA

MEMORANDUM [redacted]

State of Alaska [redacted]

TO: Roberta Banko

DATE: June 8, 1982

FILE NO: [redacted]

TELEPHONE NO: [redacted]

FROM: [redacted] Director

SUBJECT: Smoking Prohibitions

This will acknowledge your memo of June 2, 1982, concerning "Cigarette Smoke" and set forth the policy of this Division with regard to restricting smoking.

It is the policy of this Division to adhere strictly to Alaska Statute 18.35.300 and Chapter 55 Alaska Administrative Code Section 18 AAC 55.010-AAC 55.060.

AS 18.35.300(3) states, "smoking is prohibited in a public school; or in a room, chamber, place of meeting or public assembly under the control of the state, or a department or agency of the state, while a public meeting held under auspices of the state, or a department of the state, is in progress". This section will be adhered to and all rooms accommodating public meetings will be posted as a no smoking area while the meeting is in progress.
AS 18.35.300(6) states, "smoking is prohibited in a place of business in which the owner, manager, proprietor, or other person who has control of the premises posts a sign conveying the message that smoking is prohibited by law". Although this section refers specifically to businesses it may be interpreted to mean state office buildings serving the public. In any case it is my decision to not exercise this questionable perogative and restrict smoking in all or any portion of office space housing the [redacted] Division. Chapter 55 Alaska Administrative Code Section 18 AAC 55.900(c)(3) states in part ". . . in a state office building "other person who has control" means a division director who has authority over the office or his designee". This places the responsibility and authority to restrict or not restrict smoking, for those areas not specifically restricted by the law, in this office. Therefore, no areas housing [redacted] staff will be restricted to smoking without my expressed approval.

Although this policy may seem harsh to those of you who wish to limit smoking, it is my belief that if we are to promote fair and reasonable working conditions for all employees, our policy concerning this subject should be no more or no less restrictive than the law.

The new office building to which we are moving does have an air cirulating system. Hopefully, this will help provide a work environment in which we can all achieve our goals in pleasant and comfortable surroundings. If specific problems with ventilation do occur, please inform this office through your supervisor.

Attached is a copy of the pertinent statute and Administrative Code for your perusal.

cc: Central Office Supervisors
Regional Managers

Attachment

[redacted]

CHAPTER AND VERSE:

Public Smoking

I. THE ISSUE

Does other people's smoke cause disease in nonsmokers?

Is the presence of tobacco smoke in the atmosphere cause for alarm?

In the continuing national dialogue on the various issues raised by cigarette smoking, these questions have now come to the forefront.

It has been called the issue of "second hand smoke," "public" or "involuntary" smoking.

Unfortunately, as with most controversial scientific issues, there has been a great deal of misinformation and unsubstantiated allegations made about the effect of other people's smoke on nonsmokers.

Because of this misinformation, a majority of both smokers and nonsmokers have come to believe erroneously that second hand smoke has been shown to be harmful to the normal nonsmoker. This perception is apparently the underlying basis for widespread efforts to prohibit smoking in public places.

The fact is: other people's smoke has not been shown to cause disease in nonsmokers.

Because we believe that public policy should be debated and determined on the basis of proven facts, rather than false

perceptions, we have prepared this document summarizing what is known at this time on the question of second hand smoke.

II. WHAT ARE THE FACTS?

Numerous scientists, physicians, government officials and health experts have studied the effect of environmental smoke on nonsmokers. None of these studies has been able to prove that other people's smoke causes disease in nonsmokers.

- A joint study conducted in 1971 by the Federal Aviation Administration (FAA), the U. S. Department of Health, Education and Welfare (HEW) and the National Institute of Occupational Safety and Health (NIOSH) examined the health aspects of smoking on passenger aircraft. The report of this study stated: "...it is concluded that inhalation of the by-products from tobacco smoke generated as a result of passengers smoking aboard commercial aircraft does not represent a significant health hazard to non-smoking passengers." (1)

- In 1977, after studying a proposed rule on prohibiting airline pilots from smoking in the cockpit of commercial planes, the FAA stated: "...with respect to the alleged deleterious effects of carbon monoxide upon the performance of the smoking pilot, the FAA believes that the information presented is too inconclusive to warrant the issuance of the requested rule at this time." (2)

- The U.S. Interstate Commerce Commission (ICC), in a 1971 decision upholding the right to smoke on interstate buses, stated "We agree with the examiner's conclusions that petitioner has failed adequately to demonstrate the deleterious effects of

second-hand smoke upon the health of motorbus passengers." (3)

• In 1974, Dr. R. Rylander, the Swedish medical researcher, and other leading medical experts organized an international workshop, attended by scientists from all over the world, to consider the health consequences of atmospheric tobacco smoke. They concluded: "For the majority of the population the average exposure burden due to environmental tobacco smoke is probably much lower than that due to industrial air pollutants and in many cases also environmental air pollution or the lung burden due to dust clouds or other indoor air pollutants." (4)

• The Bavarian Academy of Industrial and Social Medicine sponsored a symposium on smoking in the workplace in 1977 in Munich, attended by eminent German scientists, lawyers and government leaders. In a closing statement, the symposium's chairman, Professor Doctor H. Valentin of the University of Erlangen-Nuremburg, said: "In conclusion, with regard to medical and legal facts of passive smoking at the work place, the following must be considered. Under our present day work place conditions, no clear and significant untoward health effects from passive smoking have been shown." (5)

• R.S.F. Schilling and a group of co-researchers, thinking that children of smoking parents might contract respiratory symptoms or disease due to their close proximity to smoking family members, determined exactly the opposite after a study.

In 1977, they reported in the American Journal of Epidemiology: "We have found no significant relation between parents' smoking and respiratory symptoms or lung function in their children." They added: "We conclude that exposure to low levels of smoke produced by cigarette smokers does not result in chronic respiratory symptoms or loss of lung function among children nor among adults." (6)

III. SUPPORTING OPINIONS

Others who have studied the effects of smoking on nonsmokers have confirmed these findings.

- Dr. D.M. Aviado, a Professor of Pharmacology at the University of Pennsylvania for almost 30 years, said in a statement before the Council of the District of Columbia Committee on Transportation and Environmental Affairs in 1976: "On the basis of existing scientific evidence, tobacco smoke constitutes no health hazard to nonsmokers in public places." (7)

- In a statement in 1977 before the New Jersey Public Health Council, Dr. Walter M. Booker, Emeritus Professor of Pharmacology of Howard University, said: "As a scientist, I am interested in actual data which demonstrate whether a nonsmoker absorbs tobacco smoke and, if so, whether the amount is sufficient to cause adverse physiological effects. The literature simply does not support the theory that a nonsmoker absorbs amounts which can cause harm." (8)

- Pathology Professor Dr. Edwin R. Fisher of the University of Pittsburgh, appearing before the same New Jersey group in 1977 said: "My careful review of the literature, confirming the conclusions based upon my own experimental data and the related work discussed above, reveals a lack of scientific information which would allow me to conclude that atmospheric tobacco smoke or its constituents represent a health hazard in nonsmokers." (9)

• Writing in the San Francisco Examiner in 1977, medical researcher Dr. C. H. Hine said: "The medical literature to date does not indicate any significant health risk to the nonsmoker from environmental tobacco smoke normally encountered in day-to-day situations." (10)

• Appearing before the New Jersey Public Health Council in 1977, Dr. Charles L. Waite, Retired Rear Admiral of the U. S. Navy Medical Service, Medical Director of The Tobacco Institute, and Fellow of the American College of Physicians, made the following statement: "In my opinion, there is no convincing evidence to support the hazards claimed by some to the effect that cigarette smoke threatens the health of the average well nonsmoker. On the basis of existing scientific evidence, I can only conclude that tobacco smoke constitutes no health hazard to nonsmokers in public places." (11)

• And, in 1977 Dr. W. Klosterkotter, of the Hospital of the University of Essen, W. Germany, said: "So far passive smoking has not proven to be health-hazardous in healthy adults. Thus an important condition for a legal smoking ban, e.g. at places of work, remains unfilled." (12)

Opponents Of Smoking Agree

Even the most avowed critics of smoking acknowledge that smoking has not been established as a cause of disease in nonsmokers.

Some of them include:

• The then U.S. Surgeon General, Jesse Steinfeld, who stated after issuing the 1972 Public Health Service Report on Smoking: "We cannot say with certainty that exposure to tobacco smoke is causing serious illness in nonsmokers..." (13)

• Dr. Jonathan Rhoads, Chairman of the National Cancer Advisory Board, said in 1975 that to his knowledge "it is not, in fact, actually harmful." (14)

• Dr. E. Cuyler Hammond of the American Cancer Society was reported to have said in 1974 that there "was no shred of evidence" that a nonsmoker can get cancer from "second hand" smoke and that there is a lot of evidence that he cannot... He added that to suggest passive smoking could cause cancer is dishonest, and that he would be prepared to testify as much in a court. (15)

• The "Expert Group" appointed by the British organization, Action on Smoking and Health (ASH), headed by Dr. Charles Fletcher of the British Royal College of Physicians, concluded in 1973 that: "There is no evidence that other people's smoke is dangerous to healthy nonsmokers..." (16)

• American Cancer Society official Lawrence Garfinkel said in 1976: "...(T)here is no evidence, however, that nonsmokers who are constantly exposed to cigarette smoke have a higher incidence of bronchial carcinoma." (17)

• Great Britain's Foreign Minister Dr. David Owen, while serving as Minister of Health in 1975 said: "No clear

evidence has yet been published to show that tobacco smoke is harmful to normally healthy nonsmokers or that a heavily tobacco-smoke laden atmosphere has other than a transient effect." (18)

- In a 1977 television appearance in Washington, D.C., on WTOP-TV (CBS) Dr. Gio Gori stated: "I would say that the evidence that we have today, scientific evidence, something that we can prove, or normal smoking conditions that you may have a couple of people smoking in a regular size room, the health effects connected with that are probably going to be minimal." (19)

- Three spokesmen for the Naylor Dana Institute for Disease Prevention of the American Health Foundation, including Dr. Ernst L. Wynder, concluded that: "Specifically, we know of no data suggesting that passive inhalation of cigarette smoke increases the risk of developing lung cancer." In addition, they reported: "On the basis of available epidemiological evidence, it appears that passive inhalation of tobacco smoke by nonsmokers or smokers does not increase their risk for chronic illnesses such as cancer of the respiratory tract, emphysema, or cardiovascular disease." (20)

IV. REFUTING FALSE CLAIMS

Although there is no convincing evidence to date to show that other people's cigarette smoke causes disease in nonsmokers, a number of false allegations bearing on this subject have been widely published. Some of the more common claims are listed below accompanied by the facts:

Claim: Smoking causes chronic degenerative diseases in nonsmokers.

Fact : There is no scientific basis for such claims. An American Cancer Society epidemiological study in 1976 found no evidence that nonsmokers constantly exposed to tobacco smoke have increased risk of lung cancer. (21)

Claim: Atmospheric tobacco smoke causes or contributes to the development of atherosclerosis (a disease characterized by inelasticity and thickening of arterial vessel walls) in nonsmokers, as a result of carbon monoxide.

Fact : Early studies conducted on animals chronically exposed to carbon monoxide and fed a high cholesterol diet compared with animals not so exposed showed that these animals had arterial changes which duplicated early atherosclerosis. (22)

However, the experimenter, P. Astrup, has recently admitted that he and others have been unable to reproduce his previous experiment and that his "present study suggests that applying the generally accepted criteria for intimal (membrane or lining of an organ) damage, no

direct toxic effect of CO can be demonstrated." Dr. Astrup added that "CO exposure is probably a very weak stimulus on the aortic wall, compared with hypercholesterolemia induced by cholesterol feeding." (23) In addition, the CO claim ignores observations in bridge and tunnel workers which showed that those persons, also chronically exposed to carbon monoxide, did not have any increased incidence of atherosclerosis. (24)

Claim: Parental smoking causes respiratory illness in children.

Fact : A group of researchers studied respiratory symptoms, diseases and lung function in 37. families with 816 children in three towns and "found no signficiant relation between parents' smoking and respiratory symptoms or lung function in their children." They concluded that "exposure to low levels of smoke produced by cigarette smokers does not result in chronic respiratory symptoms or loss of lung function among children nor among adults." (25)

Another recent clinical study confirms the same findings. The study determined that: "Smoking and nonsmoking parents have about the same proportion of children with respiratory symptoms. The number of cigarettes smoked by the parents has no influence on respiratory symptoms in their children..." (26)

Claim: Cigarette smoke causes respiratory allergies.

Fact : Claims about tobacco allergy stem primarily from the many studies in which extract from tobacco leaf has been tested and found to cause allergic response in people who are otherwise allergic. (27) However, these tobacco leaf extract studies do not resolve the issue, and despite the claims of one researcher, the work of others to date has not found any allergens in tobacco smoke. (28) Work is still being done in this area.

Claim: Asthmatics are believed to be particularly vulnerable to tobacco smoke.

Fact : A recent study failed to find any significant changes in the lung function of asthmatics who had been exposed to cigarette smoke for two hours in a small test chamber. (29)

VI. CARBON MONOXIDE AND OTHER ENVIRONMENTAL FACTORS

Some nonsmokers have expressed concern over the presence of tobacco smoke in the atmosphere.

Studies measuring tobacco smoke constituents in the atmosphere under realistic conditions have not found levels of carbon monoxide sufficiently high to justify such concern. The level set by the U.S. Occupational Safety and Health Administration (OSHA) as the limit for industrial exposure over an eight-hour period is 50 parts per million (ppm). The combined results of studies on the amount of carbon monoxide in the atmosphere from smoking indicate that, under realistic conditions, carbon monoxide in the atmosphere from smoking will rarely exceed 10 ppm. (30)

One exception was reported in a study of a sports arena which permitted smoking but was not air conditioned, causing the carbon monoxide level to reach 25 ppm, a level which was not considered to be hazardous. (31) Other exceptions were studies performed in taverns and nightclubs where carbon monoxide levels as high as 42 ppm were recorded. (32) However, these studies were conducted with an instrument that is known to exaggerate the level of carbon monoxide in the presence of alcohol vapors. (33)

Combined results of studies of COHb* levels in smokers and in nonsmokers exposed to tobacco smoke indicate that, under realistic smoking conditions, smokers will rarely experience COHb levels greater than ten percent and the levels in nonsmokers

* Carboxyhemoglobin, the combination formed by carbon monoxide and red blood pigment

usually will not exceed two to three percent. And, even these relatively low levels of COHb will drop within a few hours after the cessation of exposure to smoke. (34)

Some nonsmokers also complain about the alleged buildup of carbon monoxide in offices and other places where smoking is allowed. Yet, one recent study showed that the COHb levels of office workers were higher when they came to work than when they left at the end of the day, even though they were exposed to cigarette smoke throughout the day. (35) Clearly, the real concern should be for the outdoor levels of carbon monoxide from car exhaust and other sources to which nonsmokers are exposed on their way to work.

No one has ever established that the health of normal nonsmokers is adversely affected by even the small amount of carbon monoxide that might be in the atmosphere due to cigarette smoke. CO is a natural body constituent which is present in the blood without any exposure to CO in the atmosphere, and the body can and does eliminate CO by various means. Persons with COHb levels of 15 percent or less rarely even suffer any of the first symptoms of CO difficulties such as headaches and nausea. (36)

A claim frequently made about exposure to low levels of CO is that it affects certain performances, such as the ability to distinguish between short intervals of time or to solve mathematical problems. But there is still scientific disagreement about whether such performances are affected by COHb measurements in the neighborhood of ten percent or less. Some studies indicate that these levels of CO will affect such performance (37), while

other studies do not so indicate. (38) This area requires additional research.

It also has been alleged that persons with severely compromised cardiovascular systems are adversely affected by environmental tobacco smoke, especially carbon monoxide.

This belief stems largely from Aronow's studies of angina patients in which he used "pure" carbon monoxide, as well as tobacco smoke, to elevate their COHb levels. He found that a certain COHb level obtained by exposure to "pure" carbon monoxide caused certain changes in cardiac function, but that the same COHb level obtained from tobacco smoking did not result in such changes. (39) The reason for these differences in cardiovascular function are as yet unknown. Whatever the reasons for these findings, this study raises a substantial question about the relevancy of "pure" carbon monoxide type studies to the nonsmokers' situation. This is another area where further research is needed.

Studies of other tobacco smoke constituents indicate that smoke's contribution to atmospheric levels of these compounds is minimal. (40) Such studies are usually conducted as the result of a claim about the danger of exposure to some compound attributable to tobacco smoke. One such study of "volatile" organic compounds recently concluded that the amount of such compounds added to the atmosphere as a result of cigarette smoking is "insignificant." (41)

As to nicotine, research shows that low atmospheric levels result from cigarette smoke. (42) No scientist has suggested that

the minuscule amount of nicotine that might be absorbed by a nonsmoker has anything to do with the production of human disease. In fact, a recent study monitoring heart rates of nonsmokers exposed to cigarette smoke under laboratory conditions concluded that the amount of nicotine inhaled by nonsmokers under their rigorous test conditions was too small to alter heart rate. (43)

VI. THE ANNOYANCE FACTOR

All of the foregoing establishes, in our judgment, that there is no physiological basis for claiming that other people's smoke causes disease in the nonsmoker.

Despite that fact, it is clear that cigarette smoke does annoy some people. Tobacco smoke may "drift" into the eyes or nose of the nonsmoker who may be annoyed by the smell. In places that are poorly ventilated, high concentrations with other environmental impingements may cause eye or nasal irritation.

At least one scientist, Dr. Gary Huber, suggests that the odor of smoke components "may trigger emotional responses not yet well understood." (44) Support for this theory was found in a recent study in which college students were first characterized as to their attitudes concerning tobacco smoke and then were exposed to such smoke. (45) The heart rates of those who "disliked" smoke were much higher than those who were "indifferent" to smoke. There was no way to determine from the data whether initially the "dislike" group had a higher heart rate or whether the anticipation of sitting and inhaling the "disliked" cigarette smoke caused an increased heart rate.

Yet some studies suggest that the vast majority of smokers and nonsmokers are not usually annoyed by public smoking. For example, a recent U.S. survey conducted by Response Analysis in Princeton, N.J., found that when people were asked about the kinds of things that annoyed or irritated them in their everyday lives,

only about two percent of the annoyances mentioned were related to smoking. (46)

The American Express Company found little interest in nonsmoking travel tours (47), and a Seattle, Washington, restaurant reported that there were only seven requests for seating in the nonsmoking section during a three-month period when they served 30,000 customers. (48)

All of this suggests that the issue of other people's smoking really falls into the category of annoyances -- akin to other everyday annoyances, such as barking dogs, loud music, personal eating habits, etc.

Smoking is like any other habit or practice with the potential of annoying others. In our society, such annoyances are alleviated through the traditional rules of common courtesy. The "second hand" smoking problem addressed in this paper would surely begin to disappear if smokers were more sensitive to the feelings of nonsmokers and practiced simple rules of courtesy in dealing with the problem.

One fact is clear: Although atmospheric tobacco smoke may be annoying to some people, it has not been proven to cause disease in nonsmokers.

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MEMORANDUM

TO; Rep. Bussell, Chairman, House Judiciary Comm.

TOPIC: Suggested Amendments, Deletions to HB 84 as per Committee Discussions at prior hearing, Feb. 23, 1983

FROM: Joe Brewer

Date: March 28, 1983

1st suggested amendment:

Page 3, line 19--

(d) A smoking section may not be designated under (a) of this section in an area or vehicle unless the area or vehicle [meets the minimum ventilation and air quality standards adopted by the Department of Enviromental Conservation.] is sufficiently well ventilated by natural or mechanical means.

2nd suggested amendment: (add authority)

Page 3, line 27--

"Smoking Prohibited by law"[.], per AS 18.35.300.

3rd suggested amendment: (deletion)

p. 4, delete entire Section 6, lines 4 through 10.

4th suggested amendment: (delete words) (Dist. Ct. has no injunctive powers; unless this Committee gives it such by this language in this limited area).

p. 4, line 12:

Sec. 18.35.346. INJUNCTIONS. The commissioner of environmental conservation or any affected party may institute an action in the [district court or the] superior court to enjoin repeated violations of AS 18.35.300- 18.35.360.

p. 2, memo on changes suggested for HB 84.

5th suggested change, or addition. (Statutory authority needed so act would not wind up in temporary acts and fail to be in permanent statutes

p. 4, line 21--

Sec. 9. AS 18.35 is amended by adding a new section to read:

Sec. 18.35.360. PUBLIC EDUCATION. The Commissioner of environmental conservation shall take appropriate measures to inform the public of their rights under this Act.

- -

(Note:

Then, the last section in the statute, as it exists now, AS 18.35.360, would have to be renumbered, as shown. I don't know if this should be included as an amendment or leave it up to the Revisor of Statutes. (?)

[Sec. 18.35.360] Sec. 18.35.365 . Regulations. The Department of Environmental Conservation may adopt regulations to implement the provisions of AS 18.35.300 -- [18.35.350] 18.35.360.

Alaska Public
Employees Association APEA
State Headquarters: 340 N. Franklin, Juneau, AK 99801 (907) 586-2334

epresentative Bussell, Chairman
douse Judiciary Committee

FROM. Cherie Shelley
APEA Executive Director

SUBJECT: Smoking Survey

DATE: March 25, 1983

APEA recently mailed a smoking survey to our membership. Forty-four percent or 3,628 of the members responded

QUESTIONS	PERCENT OF AFFIRMATIVE RESPONSES	PERCENT OF NEGATIVE RESPONSES	PERCENT OF NO RESPONSES
Do you smoke?	26	70	4
Do you have a medical condition which is affected by smoke?	24	74	2
Is there adequate ventilation in your office?	40	58	2
Is your worksite enclosed by walls?	61	38	1
Is your worksite open-concept with dividers?	36	61	3
Has the issue of "smoking" interfered with your office operations?	36	61	3
Do you believe it would be possible to reach a mutually agreeable solution within your office regarding "smoking"?	68	26	6
Have any arrangements been made in your office to separate smokers from non-smokers or to provide proper ventilation?	29	61	10

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AMENDMENT

OFFERED IN THE HOUSE: BY: Rep. John Lindauer

To: House Judiciary Committee HOUSE BILL No. 84

SENATE BILL No. _____

PAGE: _____ LINE: _____

To be added on line 26 of page 1:

elevator, or intra-state commercial airline flights of duration of two hours or less.

To be added on line 4 of page 4:

hire, or intra-state commercial airline flights of duration of two hours or less.

FILED IN THE
UNITED STATES DISTICT COURT
Western District of Washington

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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON

LANNY L. VICKERS, Plaintiff, vs. THE VETERANS ADMINISTRATION, et al., Defendants.	No. C81-85V MEMORANDUM DECISION

From the credible evidence presented at the trial of this cause, the Court now renders the following decision:

1. The issues before this Court are these:

(a) Does the plaintiff have a cause of action against his superior, David Radke, Chief of Supply Service at the Veterans Administration Medical Center in Seattle, Washington?

(b) Does the plaintiff have a cause of action against the Veterans Administration under the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794, for money damages or for equitable relief?

2. This is not an action to determine whether all government employees have a right to work in offices which are free from tobacco smoke. It is an action solely to determine whether this one plaintiff has the right to work in an

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environment wholly free from tobacco smoke.

3. Plaintiff is entitled to recover damages of and from David Radke only if plaintiff established by a preponderance of the evidence that David Radke, in his actions relative to plaintiff, violated a clearly-established statutory or constitutional right of plaintiff. Harlow v. Fitzgerald, 50 U.S.Law Week 4815, June 22, 1982.

4. From the evidence in this cause the Court is unable to find that David Radke did in fact at any time violate any clearly-established right of plaintiff. The complaint of plaintiff against David Radke must in consequence be dismissed with prejudice.

5. The question then remains as to whether plaintiff is entitled to any kind of relief against the Veterans Administration as a handicapped person under the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794. The Court ruled prior to trial that § 794 does permit a private right of action for damages or for equitable relief.

6. The Court finds that plaintiff is a handicapped person within the meaning of the term "handicapped person" as defined in 29 U.S.C. § 706(7)(B). That subsection provides that any person is a "handicapped" person within the contemplation of 29 U.S.C. § 794 if that person has a physical impairment which substantially limits one or more of his or her major life activities. It appears from the evidence in this cause that plaintiff is unusually sensitive to tobacco smoke and that this hypersensitivity does in fact limit at least one of his major life activities, that is, his capacity to work in an environment which is not completely smoke free.

7. The finding by the Court that plaintiff is a handicapped person within the meaning of the Act does not, however,

dispose of this matter. In order for the Court to find that plaintiff is entitled to recover money damages from the Veterans Administration or that plaintiff is entitled to some kind of equitable relief, the Court must find that the Veterans Administration discriminated against plaintiff by reason of his handicap.

8. 29 U.S.C. § 794 provides as follows:

> "No otherwise qualified handicapped individual in the United States, as defined in Section 706(7) of this title, shall, solely by reason of his handicap, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination...under any program or activity conducted by any Executive agency or by the United States Postal Service."

9. In his trial brief plaintiff asserts that because of plaintiff's complaints and this lawsuit, Mr. Radke has indicated resentment and anger toward plaintiff by means of non-verbal expressions of animosity towards plaintiff, by statements made to other employees about plaintiff and the smoking issue, and by efforts to limit work assignments to plaintiff and to prevent his promotion. The Court found no credible evidence in the record to sustain any one of these contentions.

10. The Court finds further no evidence in the record that plaintiff has in any way been discriminated against in terms of work assignments, pay or promotions by reason of his hypersensitivity to tobacco smoke, by reason of his complaining to his superiors about the presence of tobacco smoke in his work environment, or by the commencement of this action. Plaintiff has regularly received high performance ratings for his work and has been awarded at least three incentive awards, which have resulted in higher pay for him.

11. The Court is unable to find in the words of § 794 that

plaintiff has been, solely by reason of his handicap excluded from the participation in or denied the benefits of any program or activity conducted by the Veterans Administration.

12. Plaintiff asserts, however, that he has been discriminated against because of the failure of the Veterans Administration "to make reasonable accommodations to his physical handicap by providing a work environment that is free of tobacco smoke."

13. Plaintiff has failed to cite any authority from the decided cases to the effect that the Veterans Administration was under a duty to make "reasonable accommodations" to plaintiff's sensitivity to tobacco smoke. Assuming, but not deciding, that the Veterans Administration was under such a duty, the Court finds from the evidence that the Veterans Administration did make reasonable efforts to accommodate to plaintiff's handicap.

14. Plaintiff is employed in the Purchasing and Contracts Section of the Supply Service Department at the Veterans Administration Medical Center. The employees in that section have their desks in Room 105-C in Building 15. This building is a temporary one. It is contemplated that within two years all of the Supply Service employees will be moved out of that building and into new quarters in a building now under construction. Ten employees have their desks in Room 105-C. Some of them smoke; some do not. Room 105-C is relatively quite crowded as there are more desks and more employees in that room than the available space can comfortably accommodate. In that room are seven windows, which can be opened and closed, and one double door. This double door may be opened or "cracked" to admit fresh air. Two rather large circulating fans are located in this room.

15. Immediately adjacent to Room 105-C is Room 105-D in which are located those employees who are in the Personal Property Management Section of the Supply Service Department. There are eight employees in this section. Some of these employees smoke; some do not.

16. In February, 1979 the Deputy Administrator of the Veterans Administration at the direction of the Administrator promulgated a nationwide policy relative to smoking at the facilities of the Veterans Administration. One of the provisions of that policy was as follows:

> "In establishing and continuing a smoking policy in work areas under their jurisdiction, supervisors should strive to maintain an equitable balance between the rights of smokers and nonsmokers."

17. In February, 1980 the Director of the Veterans Administration Medical Center in Seattle promulgated a policy relative to smoking in the facility. That policy provided that smoking was to be permitted in office areas. By virtue of that promulgated policy employees were permitted to smoke in Rooms 105-C and 105-D.

18. From time to time plaintiff has made known to his superiors his sensitivity to tobacco smoke and has urged that action be taken by them to make it possible for him to work in a smoke-free environment.

19. In an effort to accommodate to plaintiff's handicap the following has been done by the Veterans Administration:

(a) After plaintiff's initial complaint the desks of smokers were physically separated in the office from the desks of the nonsmokers.

(b) Thereafter Mr. Radke sought and was able to secure a voluntary agreement by those who work in the same office as plaintiff (Room

105-C) not to smoke at any time in that room.

(c) Later, Mr. Radke sought and was able to secure a voluntary agreement by those who work in Room 105-D, the office adjacent to Room 105-C, that they would not smoke at any time in that room.

(d) Mr. Radke submitted a requisition for an exhaust system to be installed in Room 105-C in the hope that this system would remove whatever tobacco smoke might drift into Room 105-C from rooms where smoking was still permitted. This request was, however, turned down by the Engineering Department because its cost was considered to be excessive in light of the fact that Building 15 was only a temporary building and the employees in Supply Service were to be transferred from that building to a new building.

(e) Mr. Radke was able to have two vents installed in the ceiling of Room 105-C in an effort to withdraw from that room any tobacco smoke that might drift into it from other areas.

(f) Mr. Radke purchased at his own expense an air purifier in an effort to alleviate the effects of his smoking in his own private office, Room 105-B.

(g) Mr. Radke offered to have a partition constructed around plaintiff's desk. This partition would have extended from floor to ceiling and have a door.

(h) Plaintiff was given the opportunity to move

his desk farther away from the door leading from Room 105-C to 105-D and closer to a window.

(i) Plaintiff has been offered an outside maintenance job by defendant Veterans Administration.

20. The voluntary action by the smokers in Rooms 105-C and 105-D has significantly reduced the presence of tobacco smoke in plaintiff's work space in Room 105-C.

21. At the time plaintiff complained to his supervisor about the adverse effects of tobacco smoke upon his health, Mr. Radke was faced with the problem of trying to accommodate the desires of plaintiff with the desires of the smokers whose desks were in Rooms 105-C and 105-D. It appears from the testimony of plaintiff that some of those individuals were "heavy" or "very heavy" smokers. Under the national policy of the Veterans Administration he was under a duty to "strive to maintain an equitable balance between the rights of smokers and nonsmokers." In light of the policy promulgated by the Director of the Veterans Administration Medical Center in Seattle that smoking was to be permitted in offices, Mr. Radke could not have ordered that there be no smoking in Rooms 105-C and 105-D without running into the objection by the smokers in those rooms that they were permitted by the Director's policy to smoke at their desks and that Mr. Radke did not have the authority to override that policy. He was faced, too, with the problem that some of the employees in Room 105-C wanted to have the windows open; some insisted that they be closed. Some wanted the temperature of the room relatively high; some wanted it relatively low. These opposing attitudes made it, of course, difficult to arrive at a mutually satisfactory arrangement with respect to whether the windows would be open or closed.

22. The only tobacco smoke to which plaintiff is now

exposed is that which may at times drift into Room 105-C from Room 105-A or 105-B. This drifting in of smoke is not a constant phenomenon and, when it does occur, the smoke is normally not heavy in concentration. At the time of the voluntary commitments by the smokers in Rooms 105-C or 105-D, and as an accommodation to them in exchange for their agreeing not to smoke at their desks, Mr. Radke gave them permission to smoke in Room 105-A, the office of the Assistant Chief of Supply Service, or, when on business, to smoke in his own office, Room 105-B.

23. In light of all of the foregoing the Court finds that the Veterans Administration did make a reasonable effort to accommodate to plaintiff's handicap while at the same time attempting to accommodate to those who felt the need to smoke during working hours.

24. Plaintiff would like to have everyone in Supply Service be forbidden to smoke in order that he would not be exposed at any time to tobacco smoke. The Director of the Medical Center has not, however, banned smoking in any of the office spaces of the Center. The Veterans Administration has not adopted a policy against smoking in any of its offices. Congress has not enacted any legislation which forbids smoking in office working spaces in any of the office buildings owned by the United States.

25. Had Congress enacted legislation or the Veterans Administration adopted a policy or the Director of the Medical Center promulgated a directive forbidding the smoking of tobacco in any office space, this Court would readily enforce that ban. In the absence, however, of a statute or regulation forbidding the smoking of tobacco in government office spaces those Supply Service employees who smoke have certain rights

which must be balanced against the desire of plaintiff that his working environment be completely free of tobacco smoke. Until and unless Congress enacts a statute banning the smoking of tobacco in government offices or the Veterans Administration promulgates a policy against smoking in its offices, the desires of those employees who wish to smoke cannot be disregarded.

26. In order to minimize the effect of tobacco smoke upon himself, plaintiff must himself take action to avoid his exposure to tobacco smoke. It appears that plaintiff can at any time close the door which separates Room 105-C from 105-D and that this would have the effect of preventing the entrance into Room 105-C of any smoke which might drift out of Rooms 105-A or 105-B. Although it is somewhat of an inconvenience and perhaps a nuisance to close that door, it appears to the Court that plaintiff would choose to do that rather than to have himself exposed to the tobacco smoke to which he is sensitive. There is no prohibition against the closing of that door, and the Chief of the Purchasing and Contracts Section testified that it was immaterial to him whether that door was kept in a closed or an open position.

27. In addition the desk of plaintiff is located but one desk away from the door which separates Rooms 105-C and 105-D. Plaintiff was advised that he could move his desk farther away from that door and closer to a window if he desired to do so, but he has chosen to have his desk remain in its present position. The Court is of the opinion that moving his desk would undoubtedly reduce his exposure to smoke.

28. By reason of the foregoing the Court finds that plaintiff is not entitled to injunctive relief nor to damages as against defendant Veterans Administration.

29. This Memorandum Decision will be in lieu of formal findings of fact and conclusions of law.

The Clerk of this Court is instructed to send uncertified copies of this Memorandum Decision to all counsel of record and to prepare and enter a judgment reflecting this decision.

DATED this 31st day of August, 1982.

United States District Judge



62-73

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ASHRAE STANDARD

Standards for NATURAL AND MECHANICAL VENTILATION

Approved by the American Society of Heating, Refrigerating and Air-Conditioning Engineers Inc. Standards Committee January 28, 1973, and Board of Directors by Letter Ballot February 16, 1973.

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STANDARDS FOR NATURAL AND MECHANICAL VENTILATION

SECTION 1.0 PURPOSE AND SCOPE

This standard* defines ventilation requirements for spaces intended for human occupancy and specifies minimum and recommended ventilation air quantities for the preservation of the occupants' health, safety, and well-being.

Good ventilation practice exists when clean ventilation air is provided in sufficient quantities to maintain the required oxygen, carbon dioxide, and other air quality levels in the space under consideration.

The standard does not specify the air quantities required for the control of temperature and humidity or the exhaust quantities required for source control of domestic or industrial wastes. The specifications are based on the current state of knowledge and acceptable practice related to air filtration, odor control and environmental physiology.

*Replaces the ventilation section of ASA Standard A53.1 dated May 23, 1946.

SECTION 2.0 DEFINITIONS (SEE FIG. 1)

2.1 AIR CLEANER: a device capable of removing airborne impurities such as dusts, gases, vapors, fumes and smokes.

2.2 AIR CONDITIONING: the process of treating air to meet the requirements of the conditioned space by controlling simultaneously its temperature, humidity, cleanliness, and distribution.

2.3 AIR, EXHAUST: air removed from a space and not reused.

2.4 AIR, OUTDOOR: air taken from outdoors and therefore not previously circulated through the system.

2.5 AIR, RECIRCULATED: return air again supplied to a space.

2.6 AIR, RETURN: air removed from a space and recirculated or exhausted.

2.7 AIR, SUPPLY: that air delivered to each or any space in the system, or the total delivered to all spaces in the system, which is used for ventilation, heating, cooling, humidification, dehumidification, distribution, etc.

2.8 AIR, VENTILATION: that portion of supply air which comes from outside (outdoors) plus any recirculated air that has been treated to maintain the desired quality of air within a designated space. (See Section 3.0).

2.9 EXFILTRATION: air flow outward through cracks and interstices, around windows and doors, and through floors and walls of a space or building.

2.10 INFILTRATION: the inward air leakage through cracks and interstices, around windows and doors, and through floors and walls of a space or building.

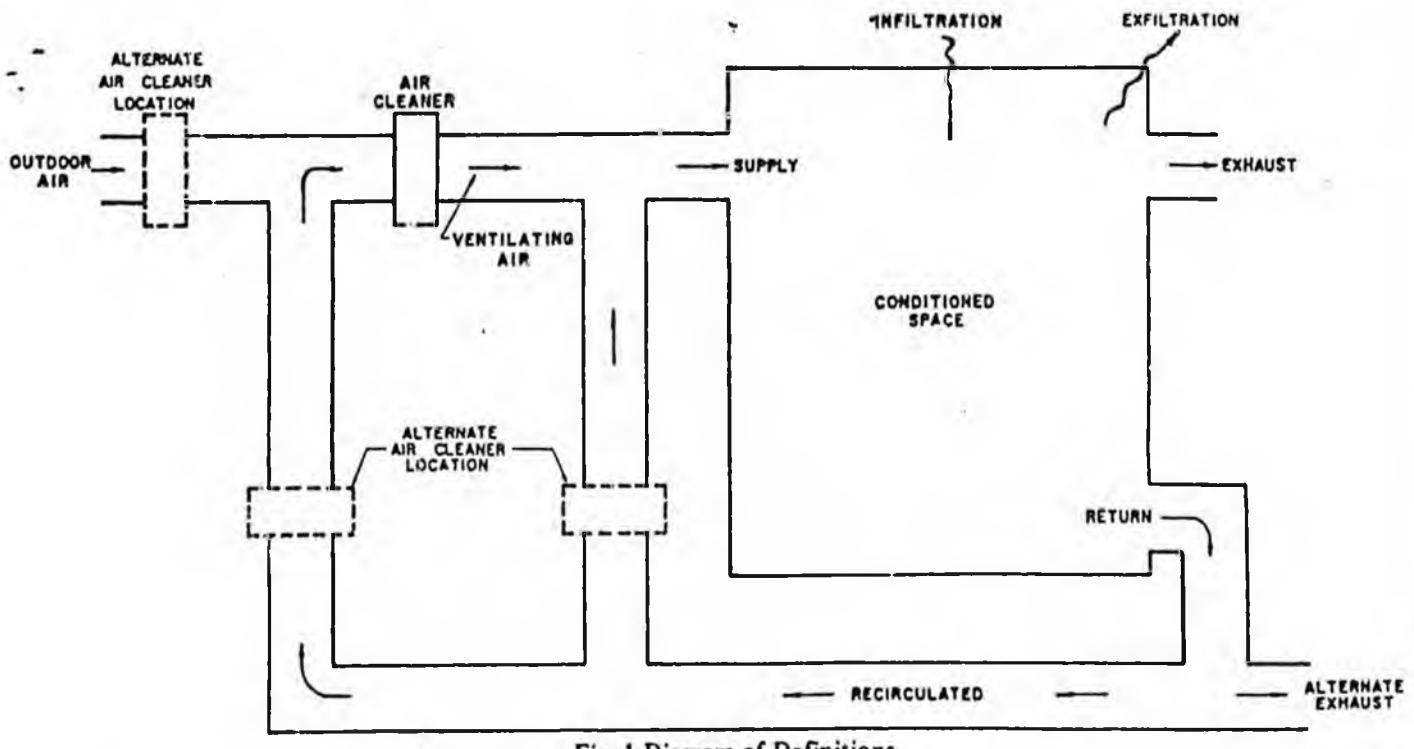

Fig. 1 Diagram of Definitions

2.11 MECHANICAL EXHAUST SYSTEM: a system for removing air from a room or space by mechanical means.

2.12 MECHANICAL SUPPLY SYSTEM: a system for forcing air into a room or space by mechanical means.

2.13 NATURAL VENTILATION: the movement of air into and out of a space through intentionally provided openings, such as windows and doors, or through non-powered ventilators.

2.14 VENTILATION: the process of supplying ventilation air to any space by natural or mechanical means. (Provision must be made for simultaneous removal of air from the space.)

SECTION 3.0. ACCEPTABLE VENTILATION AIR QUALITY (SEE BIBLIOGRAPHY)

3.1 TABLE I lists the maximum allowable pollutant concentrations in ventilation air commensurate with the ventilation requirements set forth in Section 6.0 of this Standard. In addition ventilation air shall conform to the limiting conditions given in Section 3.3.

3.2 OUTDOOR AIR shall be considered of that quality which meets or exceeds the criteria of Table I if one of the following conditions is met:

3.2.1 Monitoring Data of governmental pollution-control agencies such as the National Air Pollution Control Administration show that the air quality of the community in which the ventilation system is located meets the requirements of Table I;

3.2.2 The Community in which the ventilation system is located is similar in population, geographic and meteorological setting and industrial pattern to a community having acceptable air quality as determined in paragraph 3.2.1;

3.2.3 The Community in which the ventilation system is located has a population of less than 20,000 people, and no nearby substantial contamination source;

3.2.4 Air Monitoring, for three consecutive months, as required for inclusion in the NAPCA-SORAD System, shows that the air quality meets the requirements of Table I.

3.3 AIR shall be considered unacceptable for ventilation use in accordance with this standard if it contains any contaminant in a concentration greater than one-tenth the Threshold Limit Value (TLV) currently accepted by the American Conference of Governmental Industrial Hygienists. Where there is reasonable expectation that the air is unacceptable, as indicated above, sampling and analysis shall be carried out by qualified personnel in accordance with procedures and equipment acceptable to the American Conference of

Table I
Maximum Allowable Contaminant Concentrations
for Ventilation Air

Contaminant	Annual Average (Arithmetic Mean) $\mu g/m^3$	Short-Term Level (Not to be exceeded More than once a Year) $\mu g/m^3$	Averaging Period (hr)
Particulates	60*	150*	24
Sulfur Oxides	80	400	24
Carbon Monoxide	20,000	30,000	8
Photochemical Oxidant	100	500	1
Hydrocarbons (not including methane)	1,800	4,000	3
Nitrogen Oxides	200	500	24
Odor		Essentially Unobjectionable**	

*Federal criteria for U.S. by 1975.
**Judged unobjectionable by 60% of a panel of 10 untrained subjects.

The levels listed are met by ambient outdoor air in many major cities, or will be met by such outdoor air when passed through minimal air treatment systems (containing suitable combinations of heaters, coolers, humidifiers, etc., and including roughing particulate filters). Conformity of users' local air to these concentrations may be determined by reference to the Storage and Retrieval of Aerometric Data System (SORAD) of the National Air Pollution Control Administration, and by other means, as listed in Section 3.2.

Governmental Industrial Hygienists, the American Industrial Hygiene Association or the Occupational Health Section of the U.S. Public Health Service.

3.4 IF OUTDOOR AIR of the quality specified by Sections 3.1 and 3.3 is not available, filtration or other treatment devices shall be used to bring its quality to or above the minimum level defined by Sections 3.1 and 3.3.

3.5 ACCEPTABLE VENTILATION AIR may contain a mixture of suitably treated recirculated air and outdoor air such that the mixture meets or exceeds the quality limits stated in 3.1 and 3.3 (See Section 5.0).

SECTION 4.0. VENTILATING SYSTEMS– GENERAL REQUIREMENTS

4.1 VENTILATING SYSTEMS shall be provided with adequate openings for supply, return and exhaust air to obtain the required circulation.

4.2 OUTDOOR AIR INLETS shall be located to minimize or eliminate possible contamination.

4.3 EXHAUST DISCHARGES shall be located so that the air exhausted to the outside does not create a nuisance or contaminate outdoor air near outdoor air inlets.

4.4 VENTILATING SYSTEMS shall be designed and installed so that the air coming in contact with occupants is at a temperature, velocity and quality not to constitute a health hazard or discomfort.

4.5 VENTILATING DUCTS shall be constructed entirely of incombustible, nonporous materials. Their construction shall comply with the standards of air conditioning and ventilating systems of the National Fire Protective Association (Pamphlets NFPA No. 90A and NFPA No. 90B).

4.6 OCCUPIED SPACES shall be provided with means of supplying sufficient ventilation air for the maximum number of persons for which such spaces are designed.

4.7 THIS STANDARD assumes that contaminants from concentrated sources which can be a potential hazard or nuisance (heat, smoke, fumes, etc.) are collected as close as possible to the source by exhaust systems separate from the space ventilating system.

4.8 WHEN SPECIAL EXHAUSTS are used (as in the kitchen), consideration must be given to provide adequate supply air to the space to replace the exhaust air.

SECTION 5.0. RECIRCULATION

The requirements for ventilation quantities given in Section 6.0 are for 100% outdoor air when the outdoor air meets the specifications for air quality given in Section 3.0. Except for areas where recirculation is prohibited by other codes or standards having precedence, the outdoor air requirements may be reduced to 33% of the specified required ventilation air quantity if adequate temperature control is provided, in addition to filtering equipment, so that the maximum allowable concentration of particulates entering the space is less than that specified in Table I. If, in addition, high efficient adsorption or other odor and gas removal equipment is employed, so that the air entering the space has been purified to meet the requirements of Sections 3.1 and 3.3, the outdoor air requirement may be reduced to 15% of the specified required ventilation air quantity. *In no case shall the outdoor air quantity be less than 5 cfm per person.*

SECTION 6.0. VENTILATION REQUIREMENTS

The required air quantities are for outdoor air meeting the requirements of Section 3.0 or for a combination of acceptable outdoor air and recirculated air in accordance with Section 5.0. Minimum and recommended values are given to provide different quality levels in recognition of the need to provide choices of environmental performance for different classes of projects. In either case the designer is encouraged to use his experience and judgment in the application of this Standard as long as the minimum requirements are satisfied.

In many cases the required ventilation air quantities for spaces with positive exhaust systems, such as toilets, baths, lobbies, corridors, and kitchens, may be supplied from adjacent spaces. The sum of the ventilation requirements for the space and the adjacent space shall be provided.

	Estimated persons/ 1000 sq ft floor area. Use only when design occupancy is not known	Required ventilation air, cubic feet per minute per human occupant, (when the number is bracketed, refer to the notes).		Comments
		Minimum	Recommended	
6.1. RESIDENTIAL (Private dwelling places, single or multiple units)				
Single Unit Dwellings				
General Living Areas, Bedrooms	5	5	7-10	
Kitchens	–	20	30-50	*
Baths, Toilet Rooms	–	20	30-50	*
Basements, Utility Rooms	–	5	5	
Multiple Unit Dwellings				
General Living Areas, Bedrooms	7	5	7-10	
Kitchens	–	20	30-50	*
Baths, Toilet Rooms	–	20	30-50	*
Basements, Utility Rooms	–	5	7-10	
Garages	–	(1.5)	(2.0)-(3.0)	**
Mobile Homes	7	5	7-10	
6.2. COMMERCIAL				
General Requirements–Merchandising (Apply to all forms unless specially noted)				
Sales Floors and Showrooms (Basement and Street Floors)	30	7	10-15	
Sales Floor and Showrooms (Upper Floors)	20	7	10-15	
Storage Areas (Serving Sales Floors and Storerooms)	5	5	7-10	
Dressing Rooms	–	7	10-15	
Malls and Arcades	40	7	10-15	
Shipping and Receiving Areas	10	15	15-20	
Warehouses	5	7	10-15	
Elevators	–	7	10-15	
Food Markets, Supermarkets, etc.				
Meat Processing Rooms	10	5	5	*
Drug Stores				
Pharmacists' Work Rooms	10	20	25-30	
Specialty Shops				
Pet Shops	–	(1.0)	(1.5)-(2.0)	*
Florists	10	5	7	**
Greenhouses	1	5	7-10	**, ***

*Installed capacity for intermittent use.
**cfm per sq ft of floor area.

*Spaces maintained at low temperatures (–10 to 50 F) are not covered by these requirements unless the occupancy is continuous. Ventilation from adjoining spaces is permissible. When the occupancy is intermittent, infiltration will normally exceed the ventilation requirement. (See Chapter 23, Refrigeration Load, ASHRAE Handbook of Fundamentals, 1972).

*cfm per sq ft of floor area
**Maximum allowable concentration (MAC) for sulfur dioxide = 30 μg/cu m
***Ventilation to optimize plant growth, temperature, humidity, etc., will almost always be greater than shown.

	Estimated persons/ 1000 sq ft floor area. Use only when design occupancy is not known	Required ventilation air, cubic feet per minute per human occupant, (when the number is bracketed, refer to the notes).		Comments
		Minimum	Recommended	
Banks (see sales floors and offices				
Vaults	–	5	5	
Food Services				
Dining Rooms	70	10	15-20	
Kitchens	20	30	35-35	•
Cafeterias, Short Order, Drive-Ins, Seating Areas, and Queuing Areas	100	30	35-35	
Bars (Predominantly Stand-up)	150	30	40-50	
Cocktail Lounges	100	30	35-40	
•Exhaust to outside; source control as required.				
Hotels, Motels, Resorts				
Bedrooms (Single, Double)	5	7	10-15	
Living Rooms (Suites)	20	10	15-20	
Baths, Toilets (attached to bedrooms)	–	20	30-50	•
Corridors	5	5	7-10	
Lobbies	30	7	10-15	
Conference Rooms (Small)	70	20	25-30	
Assembly Rooms (Large)	140	15	20-25	
Public Rest Rooms	100	15	20-25	
Cottages (treat as single-unit dwellings)	–	–	– –	
(See also Food Services, Industrial, Merchandising, Barber and Beauty Shops, Garages for associated Hotel/Motel Services)				
•Installed capacity for intermittent use.				
Dry Cleaners and Laundries				
Commercial	10	20	25-30	•, ••
Storage/Pickup Areas	30	7	10-15	
Coin-operated	20	15	15-20	••
•Exhaust to outside; source control as required. ••Installed equipment must incorporate positive exhaust and control (as required) of undesirable contaminants (toxic or otherwise).				
Barber, Beauty and Health Services				
Beauty Shops (Hair dressers)	50	25	30-35	
Reducing Salons (Exercise Rooms)	20	25	30-35	
Sauna Baths and Steam Rooms	–	5	5	
Barber Shops	25	7	10-15	
Photo Studios				
Camera Rooms, Stages	10	5	7-10	•
Darkrooms	10	10	15-20	
•Thermal effects probably determine requirements.				
Shoe Repair Shops (Combined Workrooms/ Trade Areas)	10	10	15-20	

	Estimated persons/ 1000 sq ft floor area. Use only when design occupancy is not known	Required ventilation air, cubic feet per minute per human occupant, (when the number is bracketed, refer to the notes).		Comments
		Minimum	Recommended	
Garages, Auto Repair Shops, Service Stations				
Parking Garages (enclosed)	–	(1.5)	(2.0)-(3.0)	*
Auto Repair Workrooms (general)	–	(1.5)	(2.0)-(3.0)	*, **
Service Station Offices	20	7	10-15	

*cfm per sq ft of floor area

**Stands where engines are run must incorporate systems for positive engine exhaust withdrawal

Theatres				
Ticket Booths	–	5	7-10	
Lobbies, (Foyers and Lounges)	150	20	25-30	
Auditoriums (in Motion Picture Theatres, Legitimate Theatres, Lecture, Concert and Opera Halls—no smoking)	150	5	5-10	
Auditoriums (smoking permitted)	150	10	10-20	
Stages (with proscenium and curtains)	70	10	12-15	*, **
Green Rooms and Workrooms	20	10	12-15	
Public Rest Rooms	100	15	20-25	

*Thermal effects probably determine requirements

**Special ventilation will be needed to eliminate stage effect contaminants

Ballrooms				
Public	100	15	20-25	
Bowling Alleys (Seating Area)	70	15	20-25	
Gymnasiums and Arenas				
Playing Floors—minimal or no seating	70	20	25-30	
Locker Rooms	20	(30)	(40)-(50)	*
Spectator Areas	150	20	25-30	
Ramps, Foyers, and Lobbies	150	10	15-20	

*cfm/locker

Pool Rooms	25	20	25-30	
Amusement Parlors	25	20	25-30	
Tennis, Squash, Handball Courts (indoor)	–	20	25-30	
Swimming Pools (indoor)	25	15	20-25	*

*The same for air-supported structures

Ice-skating and Curling Rinks	70	10	15-20	*

*The same for air-supported structures

Roller Rinks	70	10	15-20	*

*The same for air-supported structures

	Estimated persons/ 1000 sq ft floor area. Use only when design occupancy is not known	Required ventilation air, cubic feet per minute per human occupant, (when the number is bracketed, refer to the notes).		Comments
		Minimum	Recommended	
Transportation				
Waiting Rooms	50	15	20-25	
Garages	–	(1.5)	(2.0)-(3.0)	*
Ticket and Baggage Areas, Corridors and Gate Areas	50	15	20-25	
Control Towers	50	25	30-35	
Hangers	2	10	15-20	**
Publi Rest Rooms	100	15	20-25	
Platform	150	10	15-20	
Concourses	150	10	15-20	
Repair Shops	–	10	15-20	
Offices				
General Office Space	10	15	15-25	
Conference Rooms	60	25	30-40	
Drafting Rooms, Art Rooms	20	7	10-15	
Doctor's Consultation Rooms	–	10	15-20	
Waiting Rooms (Doctors, Employment Agencies, etc.)	30	10	15-20	*
Lithographing Rooms	20	7	10-15	*
Diazo Printing Rooms	20	7	10-15	
Computer Rooms	20	5	7-10	
Keypunching Rooms	30	7	10-15	
Public Rest Rooms	100	15	20-25	
Communication				
TV/Radio Broadcasting Booths, Radio Studios	20	30	35-40	*
Motion Picture and TV Stages	20	30	35-40	
Pressrooms	100	15	20-25	
Composing Rooms	30	7	10-15	
Engraving Shops	30	7	10-15	
Telephone Switchboard Rooms (Manual)	50	7	10-15	
Telephone Switchgear Rooms (Automatic)	–	7	10-15	
Teletypewriter/Facsimile Rooms	–	5	7-10	

*cfm per sq ft of floor area

**Special solvent and exhaust problems handled separately

*Installed equipment must incorporate positive exhaust and control (as required) of undesirable contaminants (toxic or otherwise).

*Thermal effects probably determine requirements

6.3. INDUSTRIAL

Occupational safety laws in the various states usually regulate the ventilation requirements. Almost always, these are far in excess of the ventilation requirements for the occupants. The following list gives the requirements for the occupants only, assuming that the ventilation air is of a quality equal to or exceeding the limits listed in Section 3.0.

	Estimated persons/ 1000 sq ft floor area. Use only when design occupancy is not known	Required ventilation air, cubic feet per minute per human occupant, (when the number is bracketed, refer to the notes).		Comments
		Minimum	Recommended	
Mining and Rock Products*				
Underground Mine Shafts	–	20	25-30	
Underground Mine Faces (non-Toxic Materials)	–	35	40-45	
Underground Mine Faces (Toxic Materials: Beryl, Uranium and other radioactive rocks; radon emanators)		35	40-45	
Underwater Tunneling	–	35	40-45	
Control Cabs for Rock-Handling Machinery	–	20	25-30	
Control Rooms (for Lime and Cement Kilns, Crushers, Tipples, Weighing stations, etc.)		15	20-25	
Stonecutting Rooms	–	36	40-45	
Areas Serving Cement Kilns, Crushers, etc.	–	35	40-45	
*Special contaminant control systems may be required				
Metallurgy*				
Control Rooms	–	15	20-25	
Crane Cabs	–	20	25-30	
Halls Containing Cupolas, Melting Furnaces, Oxygen Furnaces, Pot Lines, etc.	–	35	40-45	
*Special contaminant control systems may be required				
Metalworking and Metal Finishing*				
Foundry Mold, Core Making and Shakeout Areas	–	35	40-45	
Halls Housing Heavy Metalworking, such as Foundry Pouring Rooms, Drop Forges, Scarfing and Rolling Stands, Cast Iron Machining	–	35	40-45	
Halls Housing Medium Metalworking, such as Finish and non-Ferrous Machining, Punch Press and Brake Operations, Spot-welding, Extruding	–	35	40-45	
Gas- and Arc-Welding Booths	–	35	40-45	
Halls Housing Light Metalworking: Appliance, Aircraft, Automotive and Machine Assembly (Excluding 3.3.7)	–	20	25-30	
Automotive Engine Test, Drive-Away Areas in Automotive Assembly Plants	–	–	– –	**
Paint Spray Booths	–	–	– –	**
Pickling, Etching, and Plating Lines	–	–	– –	**

	Estimated persons/ 1000 sq ft floor area. Use only when design occupancy is not known	Required ventilation air, cubic feet per minute per human occupant, (when the number is bracketed, refer to the notes).		Comments
		Minimum	Recommended	
Degreasing Booths, Steam Cleaning Booths	–	–	– –	••
Sandblasting Booths, Frit Spraying Booths	–	–	–	••
Rooms Serving Porcelain Enamel and Heat-Treating Furnaces	–	–	– –	••
Grinding and Polishing Rooms	–	30	35-40	••
*Special contaminant control systems may be required **Special exhaust systems required				
Chemicals and Pharmaceuticals				
Rooms Containing Grinders, Mullers, Blenders, Pulverizers, Pelletizers Sieving and Other Dusty Operations	–	30	35-40	•
Rooms Containing Reaction Vessels, Stills, Contactors, Extractors, Evaporators and Other Potential Gas Emitters	–	20	25-30	•
Rooms Containing Drying Ovens	–	15	20-25	•
Fermentation Rooms	–	15	20-25	•
Pillmaking and Capsule Filling Booths	–	10	15-20	•
Packaging Areas	–	10	15-20	•
Utility Rooms (Refrigeration Plants, Heating Plants)	–	7	10-15	
Control and Computer Rooms	–	7	10-15	
*Special contaminant control systems may be required				
Textiles, Clothing Manufacture				
Carding Rooms; Nonwoven Fabric Production and Pile Fabric Shearing Areas	–	15	20-25	
Spinning Rooms (Natural and Staple Fibers)	–	15	20-25	
Spinning Rooms (Synthetic Continuous Fiber Production)		15	20-25	
Yarn Rewinding, Warping Rooms	–	15	20-25	
Yarn and Cloth Dyeing and Coating; Cloth Printing Rooms	–	15	20-25	
Weaving and Knitting Rooms	–	15	20-25	
Cutting and Sewing Lofts	–	15	20-25	
Plastics and Rubber Processing*				
Rooms Containing Mixing and Compounding Operations (dry or liquid)	–	15	20-25	
Rooms Housing Thermoplastic Thermosetting Froming Operations (Extrusion, Injection Molding, Bead Molding, Vacuum Forming, etc.)	–	15	20-25	

	Estimated persons/ 1000 sq ft floor area. Use only when design occupancy is not known	Required ventilation air, cubic feet per minute per human occupant, (when the number is bracketed, refer to the notes).		Comments
		Minimum	Recommended	
Foam-moulding Rooms (especially Urethane)	–	15	20-25	
Glassfiber Reinforced Plastic Layup Rooms	–	15	20-25	
Trimming, Grinding and Polishing Rooms	–	25	30-35	
Vacuum-Coating Rooms	–	15	20-25	
Painting, Printing and Adhesive Assembly Operations	–	15	20-25	
Rubber Calendering Rooms	–	15	20-25	
Moulding, Vulcanizing, Lamination Rooms	–	15	20-25	
*Special contaminant control systems may be required				
Electrical Electronics and Aerospace				
Semiconductor Processing Rooms	–	10	15-20	
Circuit Board Etching, Soldering Rooms	–	20	25-30	
Magnetic Tape Production Areas	–	10	15-20	
Clean Rooms (Class 100)	–	10	15-20	
Clean Rooms (Class 10,000)	–	10	15-20	
Clean Rooms (Class 100,000)	–	10	15-20	
Encapsulation Operations (Plastic, Glass and Ceramics)	–	10	15-20	
Coil Winding Capacitor, Relay and Transformer Manufacturing Areas	–	10	15-20	
Lamp and Tube Manufacture	–	10	15-20	
TV Picture and Image Tube Manufacturing Areas	–	10	15-20	
Magnet, Magnetic Core Manufacturing Areas	–	10	15-20	
Wood Products, Papermaking				
Sawmills, Lumber Planing and Sanding, Wood Turning, Shaping, Drilling and Routing Operations, Veneer Making Areas	–	20	25-30	•
Glueing and Plywood Manufacturing Areas	–	20	25-30	•
Chipboard, Bagasseboard and Hardboard Manufacturing Areas	–	20	25-30	•
Rubbing, Staining, Varnishing and Painting Rooms	–	20	25-30	••
Crate and Pallet Making, Building Prefabrication (Nailing Operations) Areas	–	20	25-30	
Lumber and Panel Warehouses	–	20	25-30	
Chipping, Barking and Grinding Operations Areas	–	20	25-30	•
Pulping Operations, Digesters, Bleachers	–	10	15-20	•

	Estimated persons/ 1000 sq ft floor area. Use only when design occupancy is not known	Required ventilation air, cubic feet per minute per human occupant, (when the number is bracketed, refer to the notes).		Comments
		Minimum	Recommended	
Papermaking Operations (Beaters, Fourdrinier machiners, dryers, creped wadding machines, calenders)	–	10	15-20	•
Winding, Slitting, Curring, Envelope Making Rooms	–	10	15-20	
Paper Warehouses	–	20	25-30	
Corrugated Board Honeycomb Manufacture, Boxmaking room	–	20	25-30	••
Coating Rooms	–	20	25-30	••
*Special contaminant control systems may be required **Special solvent and exhaust problems handled separately				
Brewing, Distilling, Wineries, Bottling**				
Grain Mixing and Handling Areas	–	20	25-30	•
Yeast Production Areas	–	20	25-30	•
Fermentation Areas	–	20	25-30	•
Distillation Rooms	–	20	25-30	•
Fruit Handling, Crushing Areas	–	20	25-30	•
Caves	–	20	25-30	
Warehouses	–	20	25-30	
Filtration Rooms, Blending Rooms	–	20	25-30	
Bottling Areas	–	20	25-30	
Soft-Drink compounding Areas	–	20	25-30	
Carbonation Areas	–	20	25-30	
*Special solvent and exhaust problems handled separately **Spaces maintained at low temperatures (–10 to 50 F) are not covered by these requirements unless the occupancy is continuous. Ventilation from adjoining spaces is permissible. When the occupancy is intermittent, infiltration will normally exceed the ventilation requirement. (See Chapter 23, Refrigeration Load, ASHRAE Handbook of Fundamentals, 1972).				
Food Processing****				
Fruit and Vegetable Sorting and Cleaning Areas	–	20	25-30	
Cutting, Chopping, Shredding, Crushing, Squeezing Areas	–	20	25-30	•
Canning Operations	–	20	25-30	•
Bakeries, Cereal Processing, Candymaking	–	20	25-30	•
Fish Processing	–	20	25-30	••
Meat Curring, Canning	–	20	25-30	•
Dairies (Fluid Milk Operations)	–	20	25-30	
Cheesemaking, Yogurt	–	20	25-30	
Flour Milling, Bagging, etc.	–	30	35-40	•••
Sugar Purification and Salt Purification	–	20	25-30	
Control Rooms for Coffee Roasting, Grinding	–	10	15-20	
Vacuum Drying Operations	–	10	15-20	

	Estimated persons/ 1000 sq ft floor area. Use only when design occupancy is not known	Required ventilation air, cubic feet per minute per human occupant, (when the number is bracketed, refer to the notes).		Comments
		Minimum	Recommended	
Tea and Spice Handling, Packaging	–	20	25-30	
Packaging	–	20	25-30	
Refrigeration Plants, Steam Plants	–	20	25-30	•

*Thermal effects probably determine requirements
**Special solvent and exhaust problems handled separately
***Special contaminant control systems may be required
****Spaces maintained at low temperatures (−10 to 50 F) are not covered by these requirements unless the occupancy is continuous. Ventilation from adjoining spaces is permissible. When the occupancy is intermittent, infiltration will normally exceed the ventilation requirement. (See Chapter 23, Refrigeration Load, ASHRAE Handbook of Fundamentals, 1972).

Tobacco Processing				
Blending and Shredding	–	20	25-30	
Redrying, Reconstituting	–	20	25-30	
Cigar Manufacturers	–	20	25-30	
Cigarette Manufacturers, Pipe Tobacco Packaging	–	20	25-30	
Power Plants				
Control Rooms	–	10	15-20	
Boiler Rooms	–	35	40-45	
Generator Rooms	–	20	25-30	
Sewage Treatment Plants				
Control Rooms	–	10	15-20	
Compressor/Blower Motor Rooms	–	20	25-30	
Glass and Ceramic Manufacture				
Sand Handling and Mixing Areas	–	20	25-30	
Melting Furnace Support Areas	–	20	25-30	•
Platemaking, Pouring Areas	–	20	25-30	•
Bottlemaking, Blowing Machinery Areas	–	20	25-30	•
Fiber Spinning Areas	–	20	25-30	•
Grinding Rooms	–	20	25-30	••
Ceramics (Powder) Pressing and Molding Areas	–	20	25-30	
Potters Workrooms (wet)	–	20	25-30	
Kiln and Sintering Furnace Service Areas	–	20	25-30	•
Frit and Glaze Sprayrooms	–	20	25-30	••

*Thermal effects probably determine requirements
**Special contaminant control systems may be required

6.4. AGRICULTURAL
(Includes installations on farms, farmers' markets, grain elevators, etc.; for processing operations)

Fodder, Seed and Grain Handling, Storage	–	20	25-30	•

	Estimated persons/ 1000 sq ft floor area. Use only when design occupancy is not known	Required ventilation air, cubic feet per minute per human occupant, (when the number is bracketed, refer to the notes).		Comments
		Minimum	Recommended	
Animal Husbandry	–	20	25-30	•
Vegetable and Fruit Handling, Storage	–	20	25-30	••
Dairy Products	–	20	25-30	••
Natural Fiber Handling	–	20	25-30	
Tobacco Handling, Warehousing	–	20	25-30	
Mushroom Growing	–	10	15-20	

•Special contaminant control systems may be required
••Spaces maintained at low temperatures (−10 to 50 F) are not covered by these requirements unless the occupancy is continuous. Ventilation from adjoining infiltration will normally exceed the ventilation requirement. (See Chapter 23, Refrigeration Load, ASHRAE Handbook of Fundamentals, 1972).

6.5. INSTITUTIONAL

Schools				
Classrooms	50	10	10-15	
Multiple Use Rooms	70	10	10-15	
Laboratories	30	10	10-15	•
Craft Shops, Vocational Training Shops	30	10	10-15	•
Music, Rehearsal Rooms	70	10	15-20	
Auditoriums	150	5	5-7½	
Gymnasiums	70	20	25-30	
Libraries	20	7	10-12	
Common Rooms, Lounges	70	10	10-15	
Offices	10	7	10-15	
Lavatories	100	15	20-25	
Locker Rooms	20	(30)	(40)-(50)	••
Lunchrooms, Dining Halls	100	10	15-20	
Corridors	50	15	20-25	
Utility Rooms	3	5	7-10	
Dormitory Bedrooms	20	7	10-15	

•Special contaminant control systems may be required
••cfm/locker

Hospitals, Nursing and Convalescent Homes				
Foyers	50	20	25-30	
Hallways	50	20	25-30	
Single, Dual Bedrooms	15	10	15-20	
Wards	20	10	15-20	
Food Service Centers	20	35	35	
Operating Rooms, Delivery Rooms	–	20	– –	•
Ready Rooms, Recovery Rooms	–	15	– –	•
Amphitheatres	100	10	15-20	
Physical Therapy Areas	20	15	20-25	
Autopsy Rooms	10	30	40-50	
Incinerator Service Areas	–	5	7-10	••

For Shops, Restaurants, Utility Rooms, Kitchens, Bathrooms and other service items see Hotels.

•Special requirements or codes may determine requirements
••Special exhaust systems required

	Estimated persons/ 1000 sq ft floor area. Use only when design occupancy is not known	Required ventilation air, cubic feet per minute per human occupant, (when the number is bracketed, refer to the notes).		Comments
		Minimum	Recommended	
Research Institutes				
Laboratories (Light-duty, nonchemical)	50	15	20-25	*
Laboratories (Chemical)	50	15	20-25	*
Laboratories (Heavy-duty)	50	15	20-25	*
Laboratories (Radioisotope, Chemically and Biologically Toxic)	50	15	20-25	*
Machine Shops	50	15	20-25	
Darkrooms, Spectroscopy Rooms	50	10	15-20	
Animal Rooms	20	40	45-50	**
*Special contaminant control systems may be required **Special requirements or codes may determine requirements				
Military and Naval Installations				
Barracks	20	7	10-15	
Toilets/Washrooms	100	15	20-25	
Shower Rooms	100	10	15-20	
Drill Halls	70	15	20-25	
Ready Rooms, MP Stations	40	7	10-15	
Indoor Target Ranges	70	20	25-30	*
*Floor area behind firing line only				
Museums				
Exhibit Halls	70	7	10-15	
Workrooms	10	10	15-20	
Warehouses	5	5	7-10	
Prisons (See also Gymnasiums, Libraries, Applicable Industrial Areas)				
Cell Blocks	20	7	10-15	
Eating Halls	70	15	20-25	
Guard Stations	40	7	10-15	
Veterinary Hospitals				
Kennels, Stalls	20	25	30-35	*
Operating Rooms	20	25	30-35	*
Reception Rooms	30	10	15-20	
*Special requirements or codes may determine requirements				

6.6. ORGANIZATIONAL

Churches, Temples (See theaters, schools and offices)	–	–	–	
Legislative Halls				
Legislative Chambers	70	20	25-30	
Committee Rooms and Conference Rooms	70	20	25-30	

	Estimated persons/ 1000 sq ft floor area. Use only when design occupancy is not known	Required ventilation air, cubic feet per minute per human occupant, (when the number is bracketed, refer to the notes).		Comments
		Minimum	Recommended	
Foyers, Corridors	50	20	25-30	
Offices	10	10	15-20	
Press Lounges	20	20	25-30	
Press/Radio/TV Booths	20	20	25-30	
Public Rest Rooms	20	15	20-25	
Private Rest Rooms	–	20	30-50	
(For Food Service, Utilities, etc. see Hotels)				
Police and Fire Stations (See Prisons and Military Installations)	–	–	–	
Survival Shelters	–	5	–	•

•Special requirements or codes may determine requirements

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78-74 Flow Capacity of Suction Line Filters and Filter Driers, Method of Testing	$ 2.00	$ 4.00
79-78 Methods of Testing for Rating Room Fan-Coil Air Conditioners	$ 3.00	$ 6.00
84-78 Air-to Air Heat Exchangers, Method of Testing	$ 2.50	$ 5.00
85-78 Automatic Control Terminology for Heating, Ventilating, Air-Conditioning and Refrigeration Equipment	$ 5.00	$10.00
86-76 Method of Testing for Field Performance of Refrigeration Grade Oils	$ 2.00	$ 4.00
90-75 Energy Conservation in New Building Design	$ 5.00	$10.00
90-75 Section 12 Addendum	$ 2.00	$ 4.00
91-76 [Supersedes 91-75] Methods of Testing for Rating Pre Mix and Post Mix Soft Drink Vending and Dispensing Equipment	$ 2.00	$ 4.00
93-77 Methods of Testing to Determine Thermal Performance of Solar Collectors (ANSI B198.1-1977)	$ 4.00	$ 8.00
94-77 Methods of Testing Thermal Storage Devices Based on Thermal Performance (ANSI B199.1-1971)	$ 3.00	$ 6.00
93-94 Combination Price	$ 5.00	$10.00

*26 Construction Drawings for ASHRAE STANDARD 52-76 describe how to apply the methods outlined in the Standard to the building of apparatus for testing air cleaning devices. The set $25.00. Postage: add $1.00 for U.S. and $2.00 for foreign.

Public smoking under fire

by Bill White 2-21-83
Times Juneau Bureau

Juneau — Anti-smokers lined up this week behind a bill that would ban cigarette, pipe, and cigar smoking in public places.

"Your bill can be a terrific benefit for the people of Alaska," said Dr. John Middaugh, state immunologist and official with the Alaska Public Health Association. "It endorses the concepts of health prevention and deterrence."

Middaugh's comments came from Anchorage during a statewide teleconference on the proposal, on which the House Judiciary Committee held two days of hearings.

Susan Scott, a state employee in Anchorage, asked, "Is it unreasonable to request not to have ashes in my cauliflower at the grocery store or to stand in a long line at Long's Drug store with a man puffing on a 6-inch-long cigar or to eat a tasty meal without smoking my neighbor's pipe?"

Current law says smoking in public places "may constitute" a nuisance. The public places listed include trains, buses, ferries, elevators, libraries, museums, lecture or concert halls, gymnasiums, public schools, state meeting rooms, restrooms and hospital hallways. Portions of those areas may be designated as smoking sections.

The proposed bill would declare smoking in those areas a nuisance and a public health hazard.

It also would expand the list of areas in which smoking would be banned. On the list would be taxicabs (unless the driver agrees), all indoor dens of recreation, mu-

See Smoke, page A-4

Smoke

(Continued from page A-1)

nicipal meeting halls, businesses (including retail stores), restaurants, banks, offices, factories and warehouses.

The bill would allow civil lawsuits "to recover for personal injuries sustained as a result of the violation." But committee members discussed deleting that language to prevent harassment suits.

Rep. Hugh Malone, D-Kenai, said one of the biggest problems with the current law is no one enforces it. "I'm inclined to focus on enforcement or forget the bill."

State regulations set fines at $10 to $25 for smokers violating the law and $50 to $100 for those who fail to display no-smoking signs. State Department of Environmental Conservation officials testified they could not recall anyone ever being fined.

Rep. Don Clocksin, D-Anchorage, agreed that enforcement seems to be the problem. Narrowing the law to make sure it is enforced is more important than broadening it if there is no enforcement, he said.

Leo Kaye, executive director of the Alaska Lung Association, said studies have shown second-hand smoke is a health hazard. He added that recent court decisions recognize the rights of employees to work in smoke-free environments.

And employers pay higher health insurance and sick pay costs because of workers who smoke, Kaye said.

Rep. Charlie Bussell, R-Anchorage, pegged the cost per 50 smokers at his electric company at $300,000 a year.

Representatives of the tobacco and retailing industries spoke against the proposal.

Rick Lauber, representing the tobacco industry, argued against testimony that second-hand smoke is harmful. "A vast majority of [illegible] show there's no health hazard from second-hand smoke."

State employees who have complained are covered under the current law, he added.

But one state worker, Roberta Banko, said non-smokers are "treated as troublemakers" if they complain about the "noxious fumes."

"There are a lot of things I can choose to do, but I cannot choose not to work," she said.

Banko, who works for the Department of Labor, said Friday she planned to file a complaint against Rep. Ramona Barnes, R-Anchorage, who smoked in apparent violation of the law, through one of the hearings on the bill.

Barnes said she was in the smoking section of the room. But there are no signs posted in the hearing room.

3-2-83
CB

Richard B. Lauber

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March 2, 1983

The Honorable Charlie Bussell
Chairman House Judiciary Committee
State Capitol
Pouch V
Juneau, Alaska 99811

Dear Mr. Chairman:

During the testimony last week on HB 84 there was mention of the White-Froeb Study. The conclusion of that report appeared to conflict with the vast array of eminent scientists who agree that no conclusive scientific evidence exists to support the claim that smoking affects the health of nonsmokers.

I am enclosing a reprint of the Congressional Record, "White-Froeb Study Discredited By Scientists", for your information.

Sincerely,

Rick Lauber

Richard B. Lauber

RBL:ml

United States of America

Congressional Record

PROCEEDINGS AND DEBATES OF THE 97th CONGRESS, SECOND SESSION

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House of Representatives

WHITE-FROEB STUDY DISCREDITED BY SCIENTISTS

HON. L. H. FOUNTAIN
OF NORTH CAROLINA
IN THE HOUSE OF REPRESENTATIVES

Thursday, December 16, 1982

Mr. FOUNTAIN. Mr. Speaker, after 30 years of service to the people of the Second District of North Carolina, I am about to retire from the U.S. House of Representatives. Before leaving I would like to submit, for the RECORD, an item dealing with an issue with which I and many others have long been interested; namely, the alleged effect of smoking on the health of the nonsmoker.

Mr. Speaker, let me briefly place the issue into its proper context. In 1978, the Subcommittee on Tobacco of the House Committee on Agriculture heard testimony from a vast array of eminent scientists and physicians on the issue of the effect of tobacco smoke on nonsmokers. Those individuals who testified generally agreed that no conclusive scientific evidence exists to support the claim that smoking affects the health of nonsmokers. In 1980, however, an article appeared in the New England Journal of Medicine by Drs. White and Feoeb entitled "Small Airways Dysfunction in Nonsmokers Chroncially Exposed to Tobacco Smoke," in which the authors concluded that smoking in the workplace adversely affects the lung function of nonsmokers. This conclusion appeared to conflict with the testimony presented to the Subcommittee on Tobacco.

Since its publication, the White-Froeb study has been used to support both regulatory and legislative activities in the United States. For example, the study was referred to in testimony before the Civil Aeronautics Board during its recent consideration of rules regarding smoking aboard commercial aircraft. The National Research Council report entitled "Indoor Pollutants" which was issued in 1981 under an EPA contract also relies on the study. Finally, the White-Froeb study has received widespread attention in both State and local legislative and policymaking bodies.

The White-Froeb study continues to play an important role in legislative considerations, despite the fact that the study itself has been heavily criticized by scientists and health practitioners. Most recently, at the 1982 joint meeting of the American Lung Association-American Thoracic Society, Dr. Michael D. Lebowitz, professor of internal medicine, college of medicine, University of Arizona and special consultant to the Subcommittee on Tobacco, presented reasons why, in his own words, "the results of this study cannot be used to demonstrate an effect of passive smoking on forced expiratory flows in adults exposed in the workplace." Dr. Lebowitz, a noted specialist in epidemiology and respiratory diseases, said that the basic problem with the White-Froeb study is that it is "improperly designed" and that "there are problems with the whole data set and with the conclusion." Dr. Lebowitz also expressed concern that the significance of the White-Froeb data appeared to depend upon their unexplained omission of data from 3,000 subjects originally included in the study.

Mr. Speaker, Dr. Lebowitz wrote a letter, dated July 10, 1981, to our colleague, Congressman CHARLES ROSE, Chairman of the Tobacco and Peanuts Subcommittee of the House Agriculture Committee, as a result of a personal interview which Chairman ROSE and Dr. Lebowitz had with Dr. White. With the personal consent of Chairman ROSE, I am inserting herewith Dr. Lebowitz's letter. It more fully explains the author's views regarding the White-Froeb study.

I also want to mention another evaluation of the White-Froeb study, one which was made by Dr. J. G. Gostomzyk, director of the department of health of the city of Augsburg, West Germany. After an extensive, detailed review of the White-Froeb study, Dr. Gostomzyk has concluded that the White-Froeb data were incompletely presented and did not satisfy the prerequisites for scientific credibility. In addition, Dr. Gostomzyk remarked that "Dr. White's methodology is not scientific but that of a lay person with convictions," and concluded that "we assume that Dr. White's study is an attempt at scientific validation of his credo and that he possibly is unaware of the inadequacy of this methodology." It is obvious that Dr. Gostomzyk is referring to Dr. White's outspoken antismoking activities in California, including Dr. White's endorsement of public smoking referendums which were, incidentally, twice rejected by the California voters.

Given these and other criticisms of the White-Froeb study, it would appear that the New England Journal of Medicine has, perhaps unwittingly, performed a disservice to its readership. It is extremely unfortunate that a study so fraught with methodological problems, as indicated through numerous criticisms by scientists in the United States and elsewhere, should have been published in such a reputable journal of medicine. The White-Froeb study should, therefore, not be relied upon by the Congress, Federal agencies, or other legislative or policymaking bodies when considering restrictions on smoking in public places.

THE UNIVERSITY OF ARIZONA,
COLLEGE OF MEDICINE,
Tucson, Ariz., July 10, 1981

Congressman CHARLES ROSE,
Chairman, Subcommittee on Tobacco and Peanuts, House of Representatives, Rayburn Building, Washington, D.C.

DEAR CONGRESSMAN ROSE: The following is a summary of my notes on our visit to Dr. James White at UC San Diego, as per our discussion. Unfortunately, despite the statement in the editorial of the New England Journal of Medicine (27 March 1980), Dr. White and his co-author did not "faultlessly demonstrate a reduction in measures of small airways of healthy non-smokers exposed to cigarette smoke in the work place". It is apparent from our visit and the article that there were various faults in the present study, which shall be discussed.

The problems with the research design are as follows:

The participants were not only volunteers, but generally had to pay for the physical fitness course; this is the reason most were white-collar. Employees in specific factories invited White to run the physical fitness course in their factories as well, which would also bias the population sample. Blue-collar workers were not distributed randomly. [It has to be assumed that volunteers in the physical fitness courses fall into unrepresentative categories: the highly motivated, with an interest in health and usually healthier, those who are worried about health and generally less healthy; the first group would include fewer smokers and the second group would include more smokers.]

The questionnaire utilized was not a vali-

dated one per se; test-retest comparisons were made only on the smoking questions and very small groups of subjects. The smoking information was not validated. There were no test-retest or validations on symptoms asked in the questionnaire. The questionnaire itself was derived by the investigator, and included some questions from standard questionnaires; this did not appear to include standard respiratory questions, and in fact various typical respiratory questions (such as phlegm) were not asked. The questionnaire did not include questions on attitude, but did include questions on activity levels and jobs (duration, type). The questionnaire did ask how many smokers were in their work area, room size, and nature of the air conditioning. It also included questions about residences in the last 20 years (zip codes), so that exposures away from work were assessed by residential location. A question was asked about smokers in the home. [Thus, the smoking information is not validated, but is probably relatively accurate. The information about exposure to passive smoking is only approximate, as is the information on other occupational exposures. Exposures to air pollutants or to unknown toxic gases in the working place is only approximate, and their effects underestimated.]

Dr. White presented a paper to the American College of Sports Medicine, the abstract for which in 1977 indicated there were 7,122 subjects enrolled between 1969 and 1977. However, in the New England Journal of Medicine article, he states that the base population analyzed is only 5,210 smokers and non-smokers enrolled between 1969 and 1979. Although he excluded all the ex-smokers, some whose zip codes were missing, his answers as to why the rest of the subjects were excluded were entirely unclear and tend to indicate potential bias in selection of subjects for consideration for analyses. It might be added that the 2,100 subjects analyzed in the NEJM article and those analyzed and presented in the Sports Medicine abstract appear to be the same as they yield exactly the same table of results (as determined from comparison of the table in the Sports Medicine manuscript and the NEJM table).

In addition to the sources of bias mentioned above, it is apparent that the non-smokers in clean work environments and those in smoking work environments have not only chosen not to smoke, but it is likely that those non-smokers working in smoking environments may be different for a variety of reasons from non-smokers working in clean environments. Furthermore, it is apparent that the non-smokers in non-smoking environments are quite different in that their lung function is "super normal" in comparison even with the Seventh Day Adventists (the source of the Morris prediction equations).

Dr. White did state that from the questionnaire and from the baseline tests that there were no significant differences in the three non-smoking/non-inhaling groups in terms of the amount of previous exercise or oxygen consumption, but he was unsure of the difference in percent of body fat. Smokers did have less body fat, were less in terms of having lower oxygen consumption, and had less activity. He says further that there were no differences between the groups in terms of childhood respiratory history (lower respiratory tract illnesses) from his submitted questionnaire information, but he did not ask about family history. He did not ask sufficiently about respiratory questionnaires to appropriately exclude groups on the bases of productive cough ("cough bronchitis"). He states that there were no differences in prevalence rates of questionnaire responses by zip codes; if so, this contradicts other evidence vis-a-vis the effects of air pollution in these areas. He was not able to assess other exposures such as those from hobbies, exposures to gas stoves, or transportation. In terms of passive smoking in the home, he excluded such passive smokers from the non-smoking and passive smoking groups, but not from any smoking groups. He was not able to provide any information about the distribution of characteristics in those eliminated from the original 7,000 or the 2,208 that qualified because of other questionnaire results.

With regards to the pulmonary function testing done by Dr. White, it must be first noted that the instrument used is not considered a satisfactory instrument in that it is non-linear (highly biased) at both high volumes and low volumes. [This has the effect of maximizing differences in that anyone with minor aberrations of total vital capacity or of flows at the end of the flow volume curve would have very different, that is, low, flows.] The comparisons that Dr. White did and reported on in his response letter in the NEJM (14 August 1980) would not in any way modify this opinion. Furthermore, Dr. White has the only pulmonary function technician and reader. Even though he was trained at the VA hospital and his techniques were evaluated by test—retest and by comparison to other readers, any biases inherent in Dr. White's thinking (see below) would affect the way he read the tests. Furthermore, he took the FEV$_1$ and flows off the same spirogram using an approximation technique published by Morris, et al., which is not an adequate or accurate representation of those measures. All of his tests were baseline tests done after two and a half hours in the classroom in the evening on those without acute respiratory illnesses (usually on a Monday or Tuesday evening); thus, there is probably little diurnal variation or pretest biases other than those experienced by the workers during their work day and in their activities prior to the classroom. Although it is difficult to judge the effects of these factors, they may have influenced the test results, especially in those with any significant exposures during the day.

The major problem with the pulmonary function test results as reported is that they are not age- and height-adjusted, since lung volumes and flow rates are associated with both of these factors. In other words, Dr. White used raw values of flows and volumes to do comparisons. He did this on the assumption that the mean age and height were similar for the different groups. This is a mistake, since the distributions for those ages and heights could have differed. Furthermore, his quoted figures for percent predicted are strictly for the average person, age 49, with an average height, and does not represent the group for which they are provided. In terms of these statistical analysis, he just chose the SNK package among many. There is no correlation coefficient per se. "Normality" was not an objective of this study, so he cannot state anything about the normality of the subjects studied, including those he considered to have significantly different results from the non-exposed non-smokers. He does not understand the difference between clinical meaningfulness and statistical significance. It is quite obvious that the majority of those in the passive smoking and in the non-inhaling group are quite normal and that very few would be consdered abnormal by any criteria.

In his reported results, he quotes as incorrect significance level of $p.<.005$, whereas the level provided by the technique is $p.<.05$. This is very different, given the number of comparisons made, and indicates that some of the results would not be significant if corrections were made for the number of comparisons. Furthermore, the data presented in Table 1 was used to recompute the SNK analysis by Mary C. Townsend, MPH (Department of Epidemiology, University of Pittsburgh). Those results differ from those published by Dr. White and are provided in the attachment. The most important of the differences is the finding that the passive smokers and light smokers differ for the male FEV 75-85 percent. Thus, the effect of passive smoking on non-smokers is still unconfirmed, despite Dr. White's unfailing conviction that it is confirmed.

Other minor points: In terms of the carbon monoxide sampling, although it is stated that it was randomized, it was really on only 40 smoking and 40 non-smoking situations chosen by chance but not by random selection. Dr. Froeb, the co-author with Dr. White, is a private practitioner in La Jolla and helped Dr. White in drafting the NEJM manuscript from the manuscript presented at the American College of Sport Medicine. It might be pointed out that San Diego is not strictly low in air pollution concentrations, nor uniformed throughout the area; this may bias some results. Dr. White performed the pulmonary function tests until "reproducible curves were obtained", but they do not necessarily follow the Intermountain, Snowbird, or ATS recommendations.

In reviewing Dr. White's response to the letter to the Editor in the NEJM (14 August 1980), it is quite clear that Dr. White did not satisfactorily answer all the questions raised, many of which are similar to those raised in this letter. It is questionable, from the discussion, whether Dr. White would pursue any further re-analysis of the data, nor necessarily could it be pursued. It is questionable, given the basic underlying problems in the research design, that re-analysis of the data would be worthwhile. On the other hand, given other results that contradict Dr. White's, including those now in press (such as Comstock et al., Johns Hopkins, presented at the Society for Epidemiological Research in June of 1981), it would be likely that a panel discussion of passive smoking might be valuable. I will be glad to furnish further discussion or help in that matter.

Sincerely,

MICHAEL D. LEBOWITZ, Ph. D.,
F.C.C.P.,
Professor of Internal Medicine

development programs are under way through sponsorship of the U.S. Department of Agriculture, National Science Foundation, Southwest Border Regional Commission, Four-Corners Regional Commission, and the state of California.

Germ plasm collections have been made from wild guayule plants in Mexico and Texas. Plantings have been established to test yields, to increase seed supplies, and to conduct plant breeding work. Test plots have been established to determine desirable planting and cultivation practices. Research is being conducted on the possibility of increasing rubber yield by treating guayule plants with plant growth regulators.

The recent development of a seed coating process to promote germination, and the development of selective herbicides, will make direct seeding in field plantations a possibility. Eliminating nursery or greenhouse propagation could produce considerable savings in production costs.

The only guayule yield figures now available are estimates developed during the ERP. During the life of the ERP the [illegible] per hectare, approximately 480 kg of guayule rubber per year. Kelly (*15*) obtained yields of approximately 860 kg per hectare per year from one test plot in California. Foster *et al.* (*16*) have outlined the state of the art of guayule technology and described present and projected world rubber market conditions and areas of the United States where conditions favor guayule cultivation.

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17. The Diamond Shamrock Corporation, Cleveland, Ohio, is sponsoring the hydrocarbon research program at the University of Arizona.

M. Dunn

Indoor Air Pollution, Tobacco Smoke, and Public Health

James L. Repace and Alfred H. Lowrey

Serious health effects from air pollution have led to federal standards for the regulation of outdoor exposure levels. However, Americans spend about 90 percent of their time indoors (*1*). Thus the levels of indoor air pollution are important in determining total exposure to air pollutants (*2–6*). Indeed, in a recent review article (*4*) it was concluded that indoor air pollution in public office buildings is of greater potential harm than the outdoor variety, and that these exposures may constitute a real threat to the health of many urban people. The U.S. Surgeon General asserted in his report on *Smoking and Health* that tobacco smoke can be a significant source of atmospheric pollution in enclosed areas (*7*). Some 53 million U.S. smokers consumed 615 billion cigarettes in 1978 (*8*). Thus it is apparent that indoor air pollution from tobacco smoke is pandemic.

In the presence of cigarette smoke, many normal nonsmokers experience eye and throat irritation, headache, rhinitis, and coughing; allergic persons report wheezing, sneezing, and nausea as well. Particularly acute symptoms may be found in infants, children, persons with cardiovascular or respiratory disease, and wearers of contact lenses (*7, 9*). Determining the extent of the exposure of nonsmokers to cigarette smoke is important because smoking is a cause of chronic obstructive pulmonary disease, cardiovascular disease, and lung cancer, and is associated with cancers in other parts of the body (*7*); because these diseases also occur in nonsmokers; and because the products of tobacco combustion have been detected in nonsmokers (*10*).

Although measurements of indoor carbon monoxide pollution from smoking are abundant (*7*), published reports of the exposure of the population to the particulate phase of ambient tobacco smoke are rare (*7, 11–13*). Furthermore, a comprehensive theory of the generation and removal mechanisms for tobacco particulates in naturally or mechanically ventilated habitable spaces has not been presented.

We therefore undertook a systematic study of the levels of respirable suspended particulates (RSP) in several common indoor environments in an attempt (i) to determine the relation of these levels to the aerosol from tobacco smoking, (ii) to understand the effect of ventilation on tobacco smoke concentra-

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tions, and (iii) to develop a general model for estimating the range of the public's exposure. Our goal was to provide a quantitative basis for assessing the health hazards to nonsmokers posed by repeated exposure to tobacco combustion products.

Model Development

To relate the contribution of smoking to indoor RSP requires a model describing the behavior of the tobacco aerosol in indoor spaces. Bridge and Corn (*6*) found that a reduced form of an equation by Turk (*14*) reliably predicts carbon monoxide (CO) concentrations from tobacco smoke in ventilated spaces and so is of major value in assessing the possible hazards in occupied spaces (*11*). The equation is not valid, however, for a pollutant that is affected by physical decay due to adsorption on room surfaces. Penkala and DeOliviera (*15*) showed that decay of the tobacco aerosol in a well-mixed unventilated chamber is exponential.

We modify the Turk equation in differential form by adding a decay term to the removal rate and equating the rate of change of pollutant mass to the algebraic sum of the generation and removal rates.

Table 1. Recommended values of the mixing factor m. After Corn (*11*).

Configuration of air supply system	m
Perforated ceiling*	1/2
Trunk system with anemostats	1/3
Trunk system with diffusers	1/4
Natural draft and ceiling exhaust fans	1/6
Infiltration and natural draft	1/10

*This is the best standard condition.

The mixing factor is an empirical number that accounts for room-specific effects on pollutant transport. Pollutant removal is more rapid in a well-mixed atmosphere (where m is large) than in a poorly mixed, stable one (where m is small). Factors that affect m include type and placement of ventilation grills, ventilation flow rates, inhomogeneous pollutant distribution, barriers, circulation fans, and room traffic.

decay time, a time constant associated with the removal of a pollutant from a room through adsorption on surfaces and filtration; and m is the mixing factor, an empirically determined number (*16*) that modifies the ventilation time as τ_v/m, where $m \leq 1$ ($m = 1$ implies ideal mixing). Corn (*11*) suggested values of m for various ventilation systems (Table 1). We postulate that m also modifies the ideal decay time as τ_a/m. The pollution generation rate, in micrograms per minute, is given as $G = nC_0/t_b$, where n is the number of cigarettes being smoked at time t; C_0 is the total particulate matter (TPM) from both sidestream and exhaled mainstream smoke; and t_b is the duration of cigarette smoking.

Summary. An experimental and theoretical investigation is made into the range and nature of the exposure of the nonsmoking public to respirable suspended particulates from cigarette smoke. A model incorporating both physical and sociological parameters is shown to be useful in understanding particulate levels from cigarette smoke in indoor environments. Observed levels of particulates correlate with the predictions of the model. It is shown that nonsmokers are exposed to significant air pollution burdens from indoor smoking. An assessment of the public health policy implications of these burdens is presented.

The solution yields the density $A(t)$, in micrograms per cubic meter, of smoke in the room as a function of time:

$$A(t) = A_{eq}(1 - e^{-t/\tau}) \qquad (1)$$

where $A_{eq} = G\tau/V$ is the equilibrium concentration of the pollutant in the room, and where the time constant

$$\tau = \frac{\tau_a\tau_v}{m(\tau_a + \tau_v)} \qquad (2)$$

is the mean ventilation time, or the time for the smoke concentration to decrease to $1/e$ of its value (where e is the base of natural logarithms); V is the room volume in cubic meters; $\tau_v = V/Q$ is the ideal ventilation time, or the time required to replace a volume of air equal to the volume of the room by ventilation and infiltration; Q is the volume rate of ventilation and infiltration; τ_a is the ideal

If $\tau = \tau_v/m$) it becomes the reduced Turk equation of Bridge and Corn (*6*), with $m = 1$; and (ii) in the case of adsorption only (the unventilated room), $\tau = \tau_a/m$. Then, if the generation of smoke ceases at time t_b, prior to equilibrium, A will decay according to

$$A(t) = A_0 e^{-m(t-t_b)/\tau_a} \qquad (3)$$

where A_0 is a constant related to the equilibrium concentration by

$$A_0 = A_{eq}[e^{m t_b/\tau_a} - 1]$$

Equation 3 becomes the decay equation described by Penkala and DeOliviera ($t > t_b$, $m = 1$).

The modified Turk equation (Eq. 1) contains only measurable quantities, and thus in principle can be used to estimate the concentration of TPM or CO from tobacco smoke (or other indoor air pollutants), as a function of time, for any room for which the pollutant generation rate, volume, and mean ventilation time are known.

Controlled Experiments

Equation 2 shows that the mixing factor affects the time constant for decay as well as ventilation. Experiments under conditions of known ventilation were therefore necessary to assess the influence of mixing factors, decay time constants, and generation rates on the growth and decay of tobacco smoke particulates. To increase the usefulness of the experimental values determined for the mean ventilation time for the removal of tobacco smoke, we conducted these experiments in actual occupied spaces rather than in experimental chambers.

A piezobalance (TSI model 3500) (*17–19*) was used in sampling the aerosol. It collects respirable particulates (*20*) between 0.01 and 3.0 micrometers in diameter with near 100 percent efficiency (decreasing to 50 percent at 3.5 μm and to 10 percent at 4 μm). The sampling rate is 1 liter/min (*18*); the sampling time is variable. Factory-calibrated with welding smoke, the detecting crystal in the instrument used has a sensitivity of 5.74 $\mu g/min\text{-}m^3$ per hertz. The instrument underestimates the mass concentration of tobacco aerosol by about 15 percent compared to measurements made with low-volume filter sampling techniques. Readings can be affected by changes in humidity; the maximum expected error due to changes in relative humidity when sampling a hygroscopic aerosol (such as tobacco smoke) is given as $\pm$ 10 $\mu g/m^3$. The overall instrument error is about $\pm$ 10 percent compared with low-volume filter measurements of welding smoke (*19*). The aerosol from sidestream cigarette smoke (that portion emitted by the burning tip), an important component of many indoor aerosols, is lognormal, with 99 percent of the mass < 1 μm in aerodynamic diameter and with an initial mass median diameter (MMD) from 0.2 to 1.5 μm depending on dilution (*20, 21*). The relative particle sizes of fresh sidestream and mainstream smoke (the latter being that portion inhaled by the smoker) are about the same; for ex-

Table 2. Parameters for Eq. 1, as determined with experiments 1 to 3 (unventilated rooms).

Experiment	A_{eq} ($\mu g/m^3$)	A_u ($\mu g/m^3$)	τ_a/m (min)	m	r^{2*}	C_0† (mg of TPM)	Cigarette condition
1‡	530	503	10	1	.98	12.3	Smoldered
2‡	5178	551	89	1/9	.42	16.0	Smoldered
3§	1773	681	16.4	< 1	.81	23.0	Smoked

*Coefficient of determination for the decay curve. †The estimated amount of TPM liberated if the entire cigarette had been consumed, according to FTC protocol. The FTC mainstream TPM level for this cigarette is 18 mg (*24*). ‡V = 21.9 m³. §V = 29 m³.

haled mainstream smoke, particle size is estimated to be ~ 0.8 μm (MMD). Since the ambient cigarette smoke aerosol is reproducible and coagulates very slowly, it has been used as a test aerosol (*21*) and in evaluation of heating, air-conditioning, and ventilating systems (*22*). [The bulk of the ambient tobacco aerosol is probably due to cigarettes, since less than 15 percent of smokers smoke cigars or pipes (*23*).]

Unventilated Growth and Decay of Tobacco Smoke

Experiments were carried out to determine the usefulness of Eq. 3, which predicts a rapid decay for good mixing and a slow decay for poor mixing; and also to discover the limits of τ_a/m.

Experiments 1 and 2 were conducted in a wood-panelled den in a private residence. In the geometric center of the room (volume, 21.9 m³), a popular filter cigarette [containing 65 millimeters of tobacco and ranking 94th on the Federal Trade Commission (FTC) scale of tar and nicotine content (17 milligrams of tar and 1 milligram of nicotine) (*24*)] was ignited and allowed to smolder until 89 percent of its tobacco was consumed. During the first experiment, two box fans (51 centimeters in diameter) with antiparallel exhausts were used to ensure ideal mixing; each fan's exhaust, measured with a Velometer, was 55 m³/min. The growth and decay of the RSP were measured with the piezobalance. Experiment 2 was similar to experiment 1, except that the cigarette was extinguished after 75 percent of its tobacco was consumed and the circulating fans were not used, so that mixing was natural. The results of both experiments are plotted in Fig. 1, with the background levels of RSP subtracted. The data points generally represent 1-minute average values. The differences in mixing dramatically affect the slopes of the decay curves.

The theoretical curves shown in Fig. 1 were generated by fitting the data points from the decay curves to Eq. 3 with a regression analysis; A_0 and τ_a/m were determined and used to calculate the growth curves from Eq. 1, case (ii). The ratio of the slopes of the decay curves for ideal and natural mixing yields the mixing factor for the room. Table 2 gives the values obtained for the various parameters. The value of the mixing factor obtained is in good agreement with the expected value given in Table 1 for the case of infiltration and natural draft. The growth curve for the case of natural mixing (experiment 2) shows a poor fit initially because of the effect of the warm smoke rising to the ceiling and remaining

Table 3. Field survey of indoor RSP in the absence of smoking.

Locale	Room volume (m³)	Persons per room	Persons per 100 m³	Indoor RSP level* ($\mu g/m^3$)	Average time per RSP sample (min)	Outdoor RSP level† ($\mu g/m^3$)	Comment
Crepes restaurant (Washington, D.C.)	124	43	35	29	20	44	No smoking section; aroma of frying crepes evident
Sandwich restaurant (Laurel, Md.)	326	40	12	55	21	40	No smoking section; near kitchen; three smokers in smoking section
Sandwich restaurant (Laurel, Md.)	326	55	17	51	21	55	No smoking section; near kitchen; one smoker in smoking section
Fast-food restaurant (Bowie, Md.)	1,400	22	1.6	38	7		Aroma of hamburgers frying
Private residence (Seabrook, Md.)	120	11	9	24	20		Cocktail party; one candle burning 6 m from RSP detector
Private residence (Bowie, Md.)	124	1	0.8	44	15		One hour after sweeping basement floor
Private residence (Greenbelt, Md.)	22	2	9	24	6		Natural mixing‡
	22	2	9	55	1		Two fans moving 110 m³ of air per minute§
Private residence (Glenn Dale, Md.)	29	7	24	57	5		One fan moving 55 m³ of air per minute‖
Conference room (Greenbelt, Md.)	113	10	9	53	10		Two fans moving 50 m³ of air per minute¶
Public library meeting room (Bowie, Md.)	1,415	30	2.1	29	30		During piano recital
Library of Congress (Washington, D.C.)	27,000	130	0.48	30	10		Main reading room
Church (Bowie, Md.)	4,224	300	7	30	42		During Sunday service
Bagel bakery (Yonkers, N.Y.)	510	30	6	25	10	8	Aroma of baking bagels evident
Private residence (Hawthorne, N.Y.)	150	17	11	26	16		During dinner party

*Mean ± standard deviation for the Washington area samples, 40 ± 13 $\mu g/m^3$. †Duration of sampling, 5 minutes. ‡Experiment 2 background. §Experiment 1 background. ‖Experiment 3 background. ¶Experiment 4 background.

out of the detector's range for about 3 minutes. Experiment 3 demonstrated that Eq. 3 is valid under more general conditions, that is, when a cigarette is actually smoked.

We conclude that these experiments show that for the unventilated room, Eq. 3, the reduced form of Eq. 1, is useful in describing the growth and decay of cigarette smoke particulates.

Ventilated Growth and Equilibrium of Tobacco Smoke

An experiment was conducted in a ventilated conference room of a modern office building to test Eq. 1 in the case of removal of uniformly generated tobacco smoke by both decay and ventilation. The experiment involved measuring the growth of cigarette-generated RSP from background levels to near equilibrium. Analysis of the RSP-versus-time curve determines τ, the mean ventilation time, and C_T, the total RSP liberated from the combined sidestream and exhaled mainstream smoke.

The RSP detector was located in the geometric center of the 113-m³ room. Two fans with antiparallel exhausts were used to establish a vigorous circulation of 100 m³/min. The ideal ventilation time τ_a, calculated from the volumetric flow rates of the ventilation system, was 49.2 minutes for a complete change of air. Thirty-two cigarettes were smoked in 40 minutes by a relay of seven smokers, with an average of four persons smoking at any given time. When smoking their own brands, they averaged 9.8 minutes per cigarette; when smoking cigarettes supplied to them, they averaged 5.8 minutes per cigarette. All butts were collected and the amount of tobacco consumed was measured for each cigarette. The estimated mainstream TPM (M) (tar plus nicotine) generated by the 32 cigarettes was determined by weighting the TPM values for each cigarette (*24*) by the fraction of tobacco consumed, and adding the results to obtain M = 418 mg [TPM is emitted from cigarettes at a linear rate after the fourth puff (*25*)].

Figure 2 shows the growth against time of RSP from the cigarette smoke. The data points are corrected for background RSP levels and are 2-minute averages. A regression analysis using Eq. 1 yields A_{eq} = 1947 μg/m³ and τ = 14 minutes, with a coefficient of determination = .964 (from Eq. 2, τ_a = 19.5 minutes). Finally, C_T, or the total amount of RSP liberated in the room during the entire smoking period, 772 mg, is calculated by using Eq. 1; C_T/M = 1.85. This ratio represents a weighted average for six different brands of filter cigarettes that together commanded a 23 percent share of the market in 1976 (*26*).

From the goodness of fit of the theory to the data and from the observation of predicted interactive behavior among mixing, growth, and decay processes for RSP from cigarette smoke, it appears that all the room-specific factors affecting the removal of tobacco smoke (ventilation, decay, and mixing) can be combined into a single time constant τ, which can be determined for any room by regression analysis of the decay or growth-equilibrium curves, or by calculation from the equilibrium concentration if the smoke generation rate and room volume are known. The ratio of the slopes of the decay curves for ideal and natural mixing yields the mixing factor. We conclude that Eq. 1 is a useful tool for predicting the levels of tobacco smoke in both ventilated and unventilated occupied space.

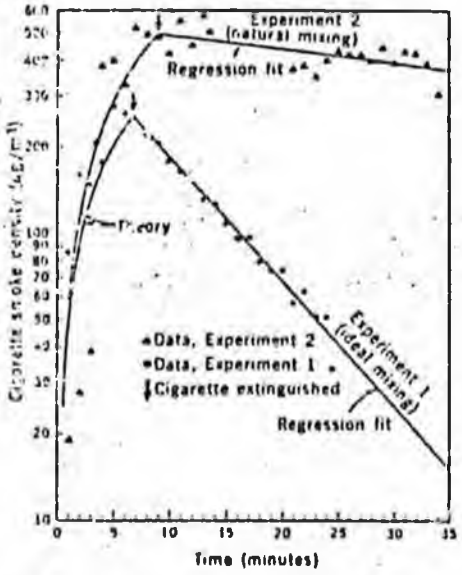

Fig. 1. Theoretical predictions versus experimental results for the growth and decay of RSP from a smoldering, average-tar cigarette in a 22-m³ unventilated room. The dramatic difference in the slopes of the decay curves reflects the difference in room air turbulence (mixing) for the otherwise similar experiments.

Field Survey of RSP

We now address the complex problem of surveying the levels of RSP indoors and determining what portion of this aerosol may be attributed to cigarette smoke by means of Eq. 1. The problem is complicated by differences in smoking rates, numbers of smokers, room volumes, effective ventilation rates, and the TPM values of various brands of cigarettes. The problem may be simplified by assuming that smoking is a random process when it occurs among large groups of people. It follows that cigarette smoke RSP values may be treated as equilibrium values; that all of the smokers may be treated as habitual smokers who smoke identical average-tar cigarettes in the same way at the same average rate, uniformly distributed over a 16-hour day. An average smoking rate r of two cigarettes per hour is calculated from the 1975 figures for the number of U.S. smokers and the U.S. domestic cigarette consumption (*8*). In 1978, the sales-weighted average mainstream TPM value M_a was 17.6 mg for all the cigarettes sold in the United States (*7*). The estimated emission rate C_0 (combined sidestream plus exhaled mainstream TPM) from a habitual smoker is given by $E = 1.85\,rM_a$ = 65 mg/hour, where 1.85, used for the ratio C_0/M_a, is taken from the conference room experiment. Physically observable in any field survey of smoking is n_s, the number of burning cigarettes (the number of "active" smokers); n_s can be related to the number of habitual smokers n_{hs} by considering that the average time for smoking a cigarette is 10 minutes (*2, 6*). This number and the previously calculated average smoking rate indicate that $n_{hs} = 3n_s$.

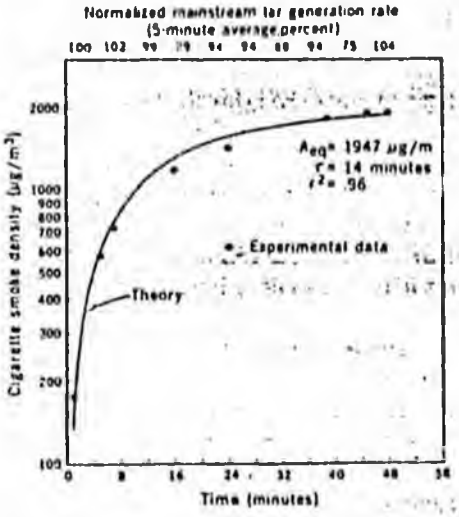

Fig. 2. Theoretical predictions versus experimental results for the attainment of equilibrium A_{eq} for the combined emission of sidestream and exhaled mainstream cigarette smoke from four chain smokers in a 113-m³ conference room with well-mixed ($n \sim 1$) ventilation in a modern office building. Under natural mixing conditions, about 11 habitual smokers would generate an equivalent equilibrated concentration of smoke. This many smokers would be expected in a group of 33 adults (well within the capacity of this 50-person conference room).

From the equilibrated form of E[illegible], we determine that

$$R = A_{eq} = 650 \frac{D_s}{C_a} \quad (4)$$

where R is the smoker-generated equilibrium RSP level in micrograms per cubic meter, D_s is the density of active smokers (number per 100 m³), and C_a is the effective rate for the removal of cigarette aerosol (air changes per hour), with $C_a = 60/\tau$.

The aerosol sampling described in this article was performed from late March through early June 1978 in the Washington, D.C., metropolitan area. The MMD (seasonal average) of the outdoor urban aerosol for Washington in 1970 was 0.5 μm, with 90 percent of the aerosol mass less than 3 μm in aerodynamic diameter and lognormally distributed (*27*).

It is important to note that all of the RSP measurements we report represent time-averaged values.

Factors other than tobacco smoke may contribute to indoor RSP. These include infiltration of outdoor RSP, cooking, dust raised by indoor traffic, and industry. By restricting the sampling to nonindustrial indoor locations where tobacco smoking is absent, the effect of the remaining variables may be assessed. Table 3 gives the RSP levels for several indoor spaces in which smoking did not take place: three restaurants, four private residences, an office building conference room, two libraries, and a church during services. The mean of these measurements is 40 μg/m³. In three instances, fans were mixing the air at a high rate and RSP levels were elevated, apparently because of dust entrainment. No correlation between the volumetric density of people (occupancy) and RSP is evident. Hemperly (*28*), in sampling RSP in Houston, found similar RSP levels in two schools, a library, and a museum—all nonsmoking areas.

Table 4 gives the results of RSP sampling in nonsmokers' automobiles traveling along two major commuter highways (Route 50 in Maryland and U.S. I-295 in Washington) during the rush hour. The samples were taken on different days and were measured in different vehicles. In all cases, the windows were slightly open and the ventilation fans were running. The mean of the data, 38 μg/m³, is not very different from the mean of the indoor readings, 40 μg/m³ (Table 3).

The impact of actual ventilation practice on ambient RSP levels from smoking was investigated at eight restaurants, three cocktail lounges, two bingo games, a dinner-dance, a bowling alley, a sports arena, and a hospital emergency waiting room. For contrast, one unventilated private residence was sampled during a cocktail party. With the exception of the hospital waiting room and the hotel bar, each space sampled represented the major part of the building and was subject to ventilation requirements specified by building codes. Sampling was generally performed well after opening time to ensure that an approximately steady-state level of smoking had been reached.

Table 4. Levels of RSP in nonsmokers' [illegible] during rush-hour traffic on a busy commuter highway in Washington, D.C., measured with the vehicles' windows slightly open and the ventilation fans running. Each car carried four persons and had a volume of 2 m³, so that the occupancy was equal to 200 persons per 100 m³.

Date	Time	Sampling time (min)	RSP level (μg/m³)
23 March	a.m.	10	40
23 March	p.m.	35	20
24 March	a.m.	20	54
28 March	a.m.	26	49
31 March	a.m.	8	25
Mean ± standard error			38 ± 15

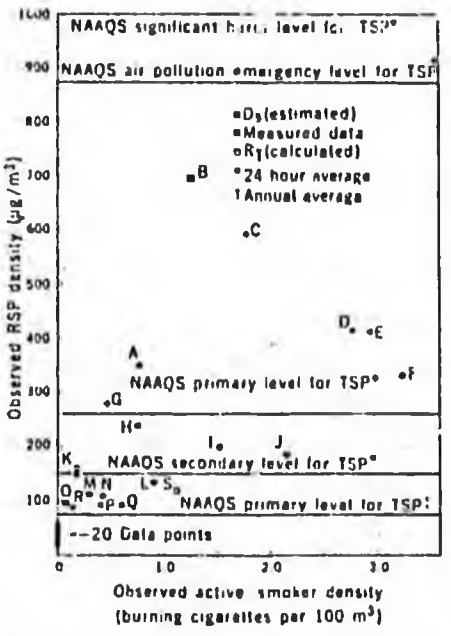

Fig. 3. Results of a field survey of short-term time-averaged levels of RSP in 38 enclosed spaces (see Tables 3, 4 and 5). Levels corresponding to federal standards for TSP are indicated for comparison only. The microenvironments include ten restaurants, three cocktail lounges, two bingo games, a dinner-dance hall, a bowling alley, a sports arena, two libraries, a church, a hospital waiting room, five vehicles, and five residences. The letters A through S correspond to those given in Table 5. The effective air change rates for microenvironments A and S are known from experiments to be C_a = 1.5 and 9.2, respectively.

The piezobalance and a stopwatch were used to take tabletop-level RSP samples for periods ranging from 10 to 50 minutes (mean, 20 minutes). The piezobalance was equilibrated in advance to avoid errors due to changes in temperature or humidity.

The room dimensions were estimated and the number of active smokers was sampled periodically throughout the measurement period and averaged. It was usually not possible to sample the premises when there was no smoking; in most cases, the RSP outside the premises was sampled for comparison. Table 5 gives the results of the measurements. Figure 3 shows the average density of active smokers (defined as the number of burning cigarettes per 100 m³) plotted against the total indoor RSP sampled. As a guide to whether a given datum is "high" or "low," the National Ambient Air Quality Standards (NAAQS) for total suspended particulates (TSP) are also shown. Since a specific averaging time is incorporated into these standards, violation of the standard is not demonstrated here. However, repeated exposure to such elevated levels can lead to "violations" of the annual standards, as will be shown later. Note that all the data for nonzero smoker density exceeded the level of the annual primary (health-related) NAAQS, whereas none of the data for zero smoker density exceeded this level. Further, the background RSP measured outside the smoking premises suggests that the source of these elevated levels was not the outdoor air. The mean and the standard deviation for the outdoor RSP are 46 ± 13 μg/m³, and in every case the outdoor level is less than the indoor. In certain cases, indoor controls are available. In bingo game 2, held in the nave of a church, the active smoker density was 0.47 per 100 m³, the occupancy was 3.6 persons per 100 m³, and the RSP density was 279 μg/m³ (Table 5). By contrast, during the tobacco smoke-free religious services, despite an occupancy of 7.0 persons per 100 m³, 30 burning votive candles, and several processions, the RSP density was 30 μg/m³. The elevated RSP levels in the bingo game clearly appear to be due to smoking. Similarly, measurements taken in the nonsmoking section of a sandwich restaurant showed considerably lower levels than in the smoking section, indicating that the contribution of smoking to RSP was much larger than the effect of cooking, even at the low cigarette densities shown (Table 5). Figure 3 shows that, in general, RSP levels increase with active smoker density, although there is

considerable scatter in the data. The question now is whether Eq. 1 is useful in explaining this scatter.

We hypothesize that the levels of RSP for finite D_s (Fig. 3) are due to near-equilibrium levels of cigarette smoke adding to much smaller background levels, and that the scatter in the RSP levels for fixed cigarette density is due primarily to differences in the mean ventilation time τ. Analyzing the background corrected data given in Table 5, we use Eq. 4 to calculate a range for C_a between 1.2 and 10.7 air changes per hour; C_a is used instead of τ to facilitate comparison with building code-specified ventilation rates. The range determined for C_a is consistent with two known values of C_a derived from the cocktail party and roadside restaurant experiments (Table 5).

The C_a for tobacco aerosol is affected by the rate of mechanical ventilation and infiltration, the rate of smoke adsorption, and mixing. The range of mechanical ventilation and infiltration can be calculated from tables of standards determined by the American Society of Heating, Refrigerating, and Air Conditioning Engineers (ASHRAE) (29), the authority specified by the local building code (30). For each premise listed in Table 5, the recommended maximum number of outdoor air changes per hour (based on the estimated floor area, maximum occupancy, and volume) was calculated from the ASHRAE tables; a two-thirds recirculation of air (the maximum permitted by ASHRAE) was assumed. This yielded a range of 0.7 to 9.4 air changes per hour. Infiltration, resulting mainly from the opening of doors, was estimated from the actual occupancy during the sampling (29): we assumed a 100 percent turnover of occupants per hour. This was added to the calculated mechanical ventilation rates, giving a final estimated range of $1.3 \leq C_v \leq 13.4$ air changes per hour, where $C_v = 60/\tau_v$.

The practical range of physical decay from adsorption for cigarette aerosol can be computed from our experiments and the literature. Most establishments possess simple filters that are relatively ineffective at removing tobacco smoke (22). The shortest ideal decay time measured (in experiment 1) was equivalent to six air changes per hour (Table 2). By contrast, Penkala and DeOliviera (15) measured a mean life for tobacco smoke, under uniform mixing in a chamber with unreactive walls, equivalent to one air change per hour. These two extremes given an estimated range of $1 \leq C_d \leq 6$ air changes per hour for RSP from tobacco smoke, where $C_d = 60/\tau_d$.

The range of mixing m appropriate for the spaces listed in Table 5 is $1/4 \leq m \leq 1/2$, as determined from Table 1. By using Eq. 2, a theoretical range of mean air change rates, $1/2 \leq C_{aTh} \leq 10$ air changes per hour, is calculated from the estimated ranges for C_v, C_d, and m. This is consistent with the 1 to 11 air changes per hour determined with our model from the experimental results. In other words, the variations in the observed RSP density for fixed cigarette density can be phenomenologically ac-

Table 5. Field survey of indoor RSP sampled in the presence of smoking. Where the standard deviation is given, the value is an average of 2-minute samples; where it is not given, the sampling time is the averaging time.

Locale	Estimated volume (m^3)	Average number of smokers	Indoor sampling time (min)	Average occupancy (persons)	Active smoker density per 100 m^3	Indoor RSP ($\mu g/m^3$)	Outdoor RSP ($\mu g/m^3$)	Outdoor sampling time (min)	Occupants smoking (%)	Date	Time
A. Cocktail party*	268	2	15	14	0.75	351 ± 38			14	8 April	9:00 p.m.
B. Lodge hall	3,168	40†	50	350	1.26	697 ± 28	60	6	11†	31 March	11:00 p.m.
C. Bar and grill	507	9	18	75	1.78	589 ± 28	63	6	12	21 March	8:00 p.m.
D. Firehouse bingo	541	10.5	16	125	2.77	417 ± 63	51	15	8.4	27 March	10:00 p.m.
E. Pizzeria	170	5	32	50	2.94	414 ± 58	40	5	10	14 April	8:00 p.m.
F. Bar/cocktail lounge	216	7	26	55	3.24	334 ± 120	50	5	13	25 March	10:00 p.m.
G. Church											
Bingo game	4,224	20	8	150	0.47	279 ± 18			13	31 March	10:00 p.m.
Sunday service	4,224	0	31	300	0	30			0	13 May	11:00 a.m.
H. Inn	338	2.5	12	70	0.74	239 ± 9	22	10	3.5	23 March	1:00 p.m.
I. Bowling alley	918	14	20	128	1.53	202 ± 19	49	5	11	25 March	8:00 p.m.
J. Hospital waiting room	93	2	12	19	2.15	187 ± 52	58	6	11	28 March	10:30 p.m.
K. Shopping plaza restaurant											
Sample 1	1,369	2.5	18	95	0.18	153 ± 8	59	5	2.6	24 March	7:30 p.m.
Sample 2	1,369	2.5	18	50	0.18	163 ± 4	36	10	5	24 March	9:30 p.m.
L. Barbeque restaurant	225	2	10	25	0.89	136 ± 17			8	24 March	9:00 p.m.
M. Sandwich restaurant A											
Smoking section	781	2.25	20	30	0.29	110 ± 36	40	5	7.5	25 March	8:00 p.m.
Nonsmoking section	326	0	20	40	0	55 ± 5	40	5	0	25 March	7:30 p.m.
N. Fast food restaurant											
Sample 1	360	1.5	40	30	0.42	109 ± 38			5	26 March	7:00 p.m.
Sample 2	360	0	7	30	0	30			0	26 March	1:30 p.m.
O. Sports arena	823,000	759†	12	6,700‡	0.09	94 ± 13	24	5	11†	29 March	10:00 p.m.
P. Neighborhood restaurant/bar	250	1	12	35	0.40	93 ± 17			2.9	25 March	8:30 p.m.
Q. Hotel bar	169	1	12	25	0.59	93 ± 2			8		2:30 p.m.
R. Sandwich restaurant B											
Smoking section	781	1	8	30	0.13	86 ± 7	55	5	3.3	14 April	11:00 a.m.
Nonsmoking section	326	0	21	50	0	51	55	5	0	14 April	1:30 p.m.
S. Roadside restaurant											
Sample 1	90	1	18	5	1.12	107§			20	29 March	3:00 p.m.
Sample 2	90	0	2	3	0	30			0	29 March	3:00 p.m.

*Only the cocktail party microenvironment was unventilated. †Estimated. See (31). ‡Paid attendance. §Calculated, equilibrium value.

counted for by ventilation, recirculation, infiltration, decay, mixing, and average smoking behavior. We conclude that the finite D_s RSP levels shown in Fig. 3 are indeed generated primarily by cigarette smoke and that this is consistent with the predictions of our model.

The Range of Public Exposure

We can now model the full range of exposure of the nonsmoking public to cigarette smoke. Equation 4 may be rewritten as

$$R = 25.6 \frac{P_s}{C_s} \qquad (5)$$

where P_s is the occupancy (persons per 1000 square feet). (The volumetric measure is implicit, assuming a 10-foot ceiling.) The P_s is three times the density of habitual smokers D_{hs} and nine times the density of active smokers D_s (*31*). A family of RSP curves is generated from Eq. 5 by varying C_s and P_s over their ranges. Representative samples of this family are plotted in Fig. 4. A lower limit for C_s of about one-half to one mean air change per hour has been determined experimentally and theoretically for removal of cigarette aerosol from private dwellings ventilated by infiltration and from commercial establishments whose mechanical ventilation is poor. A realistic upper bound for C_s may be obtained from the well-ventilated environment of the commercial airliner. A mechanical (design) ventilation rate of 15 to 20 air changes per hour with no recirculation is typical of the Boeing 707 (*32*). The best ideal decay rate measured in the experiments was six air changes per hour. Assuming a mixing factor of unity, we calculate an upper limit for C_s of 26 air changes per hour. The practical range for P_s is obtained from the ASHRAE (*29*), which specifies mechanical ventilation rates for typical average occupancies in various structures. For commercial structures, these densities (in persons per 1000 square feet) range from 10 for general office space to 70 for dining rooms to 150 for such places as stand-up bars, auditoriums, arenas, and commercial aircraft. The design ventilation rate C_v is typically determined from both the design occupancy and the intended use of the structure. For example, 15 to 25 cubic feet per minute per occupant is specified for general office space, 10 to 20 for dining rooms, and 30 to 40 for cocktail lounges. In 1975, *ASHRAE Standard 90-75*, "Energy conservation in new building design," decreased these rates by factors of one-half to one-third. *ASHRAE Standard 62-73* is currently being revised to specify higher rates of ventilation for premises in which smoking is permitted. How effective would increases in C_v be in lowering the levels of RSP from tobacco smoke? Equation 5 shows that such levels decrease only exponentially with increasing C_s. Furthermore, as Kalika *et al.* (*33*) observed, "the current practice of recirculation or reuse of air is largely dictated by the economics of heating and cooling, with little regard for changes in indoor air quality." That is, ventilation may be subject to arbitrary reduction by building management or by legislative or bureaucratic fiat; in many nonurbanized areas, it may not even be regulated by building codes (*34*).

Figure 4 illustrates the estimated range

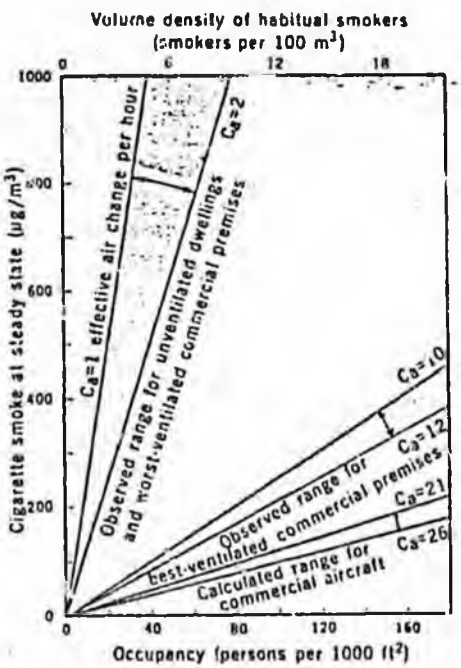

Fig. 4. Theoretical steady-state density of respirable particulates from environmental cigarette smoke in habitable indoor spaces, as related to the design occupancy P_s. On the average, one-third of adults are habitual smokers; for every three such smokers, we calculate that an average of one cigarette burns constantly throughout a 16-hour day. According to standard engineering criteria (*29*), occupancy and the type of microenvironment determine the design rate of mechanical ventilation C_v. The effective air change rate (C_s) for the removal of tobacco aerosol from room interiors is determined by C_v, by mixing, and by the rate of adsorption of tobacco particles on room surfaces. Generally C_v and hence C_s increase with P_s. [Typical P_s (in persons per 1000 square feet) ranges from 10 for office buildings to 70 for restaurants to 150 for bars, sports arenas, and aircraft (*29, 32*).] We estimate the practical range of C_s to be from 1 to 12 air changes per hour. It appears that over the combined practical ranges of P_s and C_s, repeated exposure to tobacco smoke can lead to annual RSP burdens that violate the primary annual NAAQS.

of exposure of the nonsmoking public to RSP from cigarette smoke. The actual dose of RSP is clearly a function of personal activity patterns; differences in respiration rate also affect the dose. Many different scenarios can be imagined. In the following, we express a range of RSP burdens from the cigarette aerosol relative to a typical RSP ambient background level. For an air shed (air quality control region) that is in compliance with the annual secondary (public welfare) NAAQS for TSP of 60 $\mu g/m^3$, the RSP fraction of the ambient aerosol is conservatively estimated at 50 $\mu g/m^3$ and is likely to be composed largely of combustion-produced sulfates (*35*). Since the particle size distributions of this fraction and the cigarette aerosol are both in the respirable range, we first compare them on a mass basis, without regard for differences in the chemical composition of each.

Let A, B, C, and D be nonsmokers who dwell in the same air shed and who breathe at the average rate of 20 m^3/day. All have different occupations and lifestyles that lead, as we shall see, to dramatically different RSP burdens.

Nonsmoker A is a mailman who walks a regular route and is able to live in a completely tobacco smoke-free environment. He is exposed only to the background ambient and therefore inhales 365 mg of RSP annually.

Nonsmoker B is an office worker who works a 40-hour week 50 weeks per year in a 40-m^3 office with two other persons, one of whom is a habitual smoker. Replacing D_s in Eq. 4 with $D_{hs}/3$, we find that B's mass RSP exposure is more than three times that of A (we calculate an expected C_s of 1.1 for office buildings).

Nonsmoker C is a musician who entertains in a popular, poorly ventilated nightclub 8 hours nightly, 5 nights per week, 50 weeks per year. The average P_s in the club is 100 persons per 1000 square feet (about 33 smokers). Further, C shares a 100-m^3 apartment with a roommate who is a chain smoker. C is exposed to the roommate's smoke 5 hours per day, 7 days per week, annually. By using Eqs. 4 and 5 and a C_s of one air change per hour, we find that C's mass RSP burden is more than 15 times that of A.

An alternative way of approaching the excess RSP exposure is in terms of cigarette equivalents. The cigarette with the least tar in the May 1978 FTC scale has 0.55 mg of TPM. In these terms, B's excess RSP burden is equivalent to 5 cigarettes per day and C's burden to 27 cigarettes per day. However, this may un-

derestimate the true impact, since many nonsmokers have greater sensitivity to smoke than smokers (*7*).

Nonsmoker D is a flight attendant who spends 40 hours per week, 50 weeks per year on board a commercial airliner with a C_a of 23 air changes per hour. The average P_a on the plane is 150 persons per 1000 square feet. D's RSP burden is nearly twice that of A. Even with one of the best ventilation systems in use, the high density of smokers causes a substantial increase in mass RSP inhaled by D.

The following three considerations may help to place these scenarios into perspective. First, an annual exposure 1.5 times that of A is sufficient to exceed the primary annual NAAQS; the exposure of D, B, and C to RSP all violate the standard by factors of 1.2, 2, and 10, respectively. Second, pulmonary clearance studies show that the half-life of inert respirable particles (2.8 μm in MMD) in the lungs of nonsmokers is ~ 70 days (*36*): residence of RSP in the lungs is prolonged. Third, in a series of pulmonary lavage studies on 400 nonrandomly selected volunteers (250 nonsmokers and 150 smokers) (*37*), two of the nonsmokers had tarry lavage fluids with pigmented pulmonary alveolar macrophages strikingly similar to those found in smokers. In these two volunteers, the levels of aryl hydrocarbon hydroxylase, an inducible carcinogen-detoxifying pulmonary enzyme, were intermediate in value between the levels found in smokers and most nonsmokers. These findings were attributed to the effects of exposure to tobacco smoke (*38*).

Health Policy Implications

There is good toxicologic evidence that elevated levels of particulates in outdoor air, perhaps in combination with other pollutants, cause illness and death during air pollution episodes (particulate levels in excess of 1000 $\mu g/m^3$ per 24 hours). There is much epidemiologic evidence, some of it conflicting, that lower levels of particulates, perhaps in combination with other pollutants, affect respiratory health adversely when exposure to them is sustained (*39*). (This evidence has been used to establish the thresholds for harm on which the primary annual NAAQS for TSP is based.) There is excellent toxicologic evidence that mainstream cigarette smoke causes chronic obstructive pulmonary disease (*7, 40*). Epidemiological evidence, some of it conflicting, indicates that exposure to tobacco smoke in the home affects respiratory health adversely (*7, 41*). Finally, there is excellent evidence that mainstream cigarette smoke causes cancer in many organs (*7*). Sidestream smoke is chemically identical to mainstream smoke, and typically is more concentrated (*2*). Coke-oven emissions, which chemically are similar to tobacco smoke, are associated with increased rates of many forms of cancer in coke-oven workers (*42*). Animal studies demonstrate that the particulate phase of tobacco smoke contains numerous potent carcinogens and tumor promoters, initiators, and accelerators (*7*). One of these, benzo[*a*]pyrene, was detected at a concentration of 40 parts per million in ambient tobacco smoke (*13*). Strong evidence supports a correlation between the magnitude of long-term exposure to carcinogens and the incidence of cancer (*43*). Therefore, given the efforts by public health authorities to eliminate involuntary public exposure to saccharin and the fire retardant Tris—which have, respectively, one-fifty-thousandth and one-tenth the experimental carcinogenic potency of benzo[*a*]pyrene alone (*44, 45*)—similar efforts to prevent involuntary exposure to ambient tobacco smoke (*46*) appear justified.

Conclusions

We have defined the probable range of exposure of the nonsmoking public to a common pathological aerosol, cigarette smoke. We showed, both experimentally and theoretically, that under the practical range of ventilation conditions and building occupation densities, the RSP levels generated by smokers overwhelm the effects of ventilation and inflict significant air pollution burdens on the public. Our observations show that levels of RSP in places where tobacco is smoked greatly exceed levels found in smoke-free environments, outdoors, and vehicles on busy commuter highways. Our experimental results are consistent with the large differences in 24-hour average RSP levels reported for smoking and nonsmoking homes in the Harvard Six-City Study (*47*), with a survey of short-term RSP levels in commercial and public buildings in Houston (*28*), and with other studies of tobacco-generated TSP (*7, 11-13*).

Attempts to reduce RSP levels from smoking by increasing the rate of mechanical ventilation or the efficiency of filtration yield exponentially diminishing returns for linear increases in ventilation energy (and cost). Moreover, efforts to conserve energy in buildings will decrease ventilation rates (*48*). Therefore, increased ventilation does not appear to be a solution to the problem. Indoor air is a resource whose quality should be maintained at a high level. Smoking indoors may be incompatible with this goal (*33, 49*).

Further research is necessary to define the integrated particulate exposure of various segments of the population; compliance with the NAAQS, as indicated by the establishment of outdoor TSP sampling stations, does not imply protection of the public from excessive RSP burdens. Repeated exposure to ambient cigarette smoke imposes air pollution burdens on nonsmokers that exceed the primary annual NAAQS. It appears that the RSP burdens from ambient tobacco smoke are so large that they must be incorporated explicitly in future epidemiological assessments (*50, 51*) of the relation between particulate levels and morbidity or mortality.

The Clean Air Act of 1970 and its amendments mandate the control of public exposure to outdoor TSP. However, little legislative attention has been devoted to the quality of indoor air—other than the passage of the Public Health Service Act of 1978, which provides for an ongoing study of the health costs of indoor air pollution. Clearly, indoor air pollution from tobacco smoke presents a serious risk to the health of nonsmokers. Since this risk is involuntary, it deserves as much attention as outdoor air pollution.

Note added in proof: A very recent epidemiological study concluded that long-term exposure to tobacco smoke, limited to the work environment only, is deleterious to the nonsmoker and significantly reduces small-airway function to the same extent as smoking one to ten cigarettes per day. This is consistent with scenario B (*52*). *ASHRAE Standard 62-73R*, a proposed standard for ventilation required for minimum acceptable indoor air quality, has been published (see *29*). Using data supplied in the standard, we calculate a C_a of ≤ 1.28 for office buildings where smoking is permitted.

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Materials Science

On 23 May *Science* will publish an issue containing 20 articles devoted to Advanced Technology Materials. The issue will provide a sample of some of the more significant work being conducted in the major industrial research laboratories. The manuscripts have been prepared by leading industrial scientists who have delivered texts that are not only authoritative but also readable and interesting. Upper-division undergraduates, graduate students, and mature scientists will find the issue a valuable sample of applications of fundamental knowledge.

The topics covered include: New Polymers; Conductive Polymers; Multipolymer Systems; Fiber Reinforced Composite Materials; Heterogeneous Catalysts; Glassy Metals; High Strength Low Alloy Steels; Superconductors for High Current, High Fields; New Magnetic Alloys; High Temperature Ceramics; Gas Turbine Materials and Processes; Diamond Technology; New 3 5 Compounds and Alloys; Molecular Beam Epitaxy; New Methods of Processing Semiconductor Wafers; Materials in Relation to Display Technology; Photovoltaic Materials; Magnetic Bubble Materials; Josephson Device Materials; and Biomedical Materials.

Paying the piper

When experiments on animals turn up carcinogens in our favorite foods and everyday consumer items, some critics invariably dismiss the data as coming only from animals. The tobacco industry has, of necessity, taken the opposite tack; for years it has argued that the evidence incriminating cigarettes shows merely a "statistical association" because it comes from studies of human deaths, not animal experiments. By now, though, the evidence that cigarettes shorten life is overwhelming; the causal connection is as firmly established as any in medicine. "Indeed," writes John Cairns, a molecular biologist and expert on cancer, "in retrospect, it is almost as if Western societies had set out to conduct a vast and fairly well controlled experiment in carcinogenesis, bringing about several million deaths and using their own people as the experimental animals."

But the cancer connection, which was the most obvious and easiest to establish, is not the major cause of death in smokers. Rather, it is coronary heart disease. Second comes lung cancer. General deterioration of the lung tissue is third. After these three major causes, a variety of other diseases and cancers make a further contribution to the high death rate of smokers. Cancers of the larynx, mouth, esophagus, bladder, kidney, and pancreas are all more common in smokers than nonsmokers. So are ulcers of the stomach and intestine, which are more likely to be fatal in smokers.

Women who smoke during pregnancy run a significant risk that their babies will die before or at birth. The newborns are likely to weigh less, to arrive prematurely, and to be more susceptible to "sudden infant death."

The risk of smoking is, in general, a 70 percent increase in the probability of dying at any age—100 percent for a two-pack smoker. As a rule of thumb, each cigarette knocks about five minutes off the smoker's life. For an average habit, that adds up to six or seven years (more for some, less for others). In the meantime, smokers lose more work days to illness than nonsmokers and spend more time in the hospital.

The ill effects of smoking are mostly, but not entirely, a consequence of the amount of inhaled smoke. Virtually all cigarette smokers inhale, even those who say they do not, and they continue to do so when they switch to pipes or cigars.

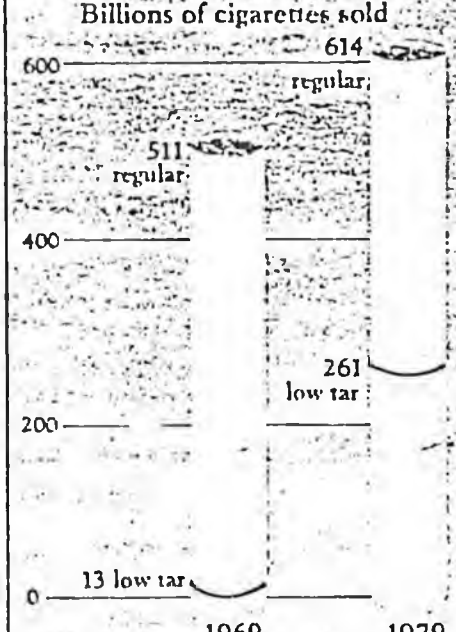
Cigarette smoke is loaded with poisons and carcinogens. The "tars," particles of organic matter, are largely responsible for causing cancer, or, perhaps, for promoting the growth of tumors started by other agents. Nicotine and carbon monoxide are thought to be the main cause of heart disease; there is debate about their relative importance.

In response to public worry about the health hazards of smoking, cigarette manufacturers over the last decade have progressively lowered the tar and nicotine content. These "lighter" brands appear to be effective in reducing rates of lung cancer. There may be a similar effect for heart disease, but the evidence is not as good. Smokers of low-tar cigarettes appear to get no protection from other respiratory illnesses.

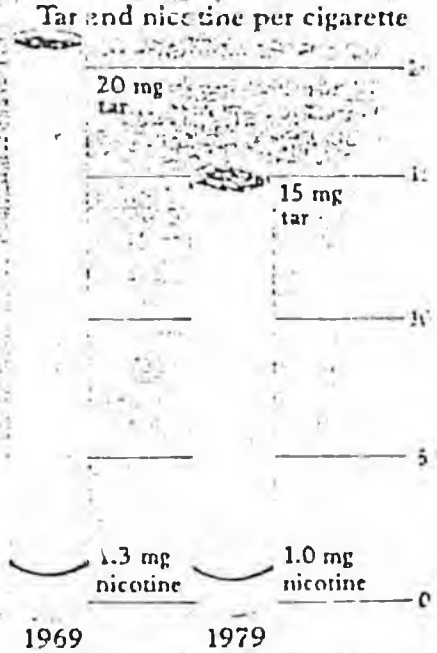
In order to elicit recommendations for his 1981 report on smoking, Surgeon General Julius B. Richmond recently called a conference to set research priorities for low-tar cigarettes. One area of concern was quickly established: The light cigarettes may pose a risk for pregnant women. Dr. Jesse Steinfeld, dean of the Medical College of Virginia in Richmond, speculates that the villain in low-tars may be carbon monoxide, since it "binds hemoglobin and may restrict the oxygen a baby needs from the mother's blood."

Carbon monoxide may turn out to be harmful to adults as well. In fact, questions abound on the safety of light cigarettes. We still do not know whether smokers who switch to low-tar cigarettes smoke more and inhale more deeply. If they do, those smokers are at least partly offsetting the presumed advantage of switching. Another question concerns whether the availability of these "safer" cigarettes has encouraged a large number of young people who otherwise would not have smoked to begin the habit. All in all, we are still far from knowing whether the low-tar, low-nicotine cigarettes will ultimately prove to be a Good Thing.

—*W. D.*



Low tar sales have soared in a decade.

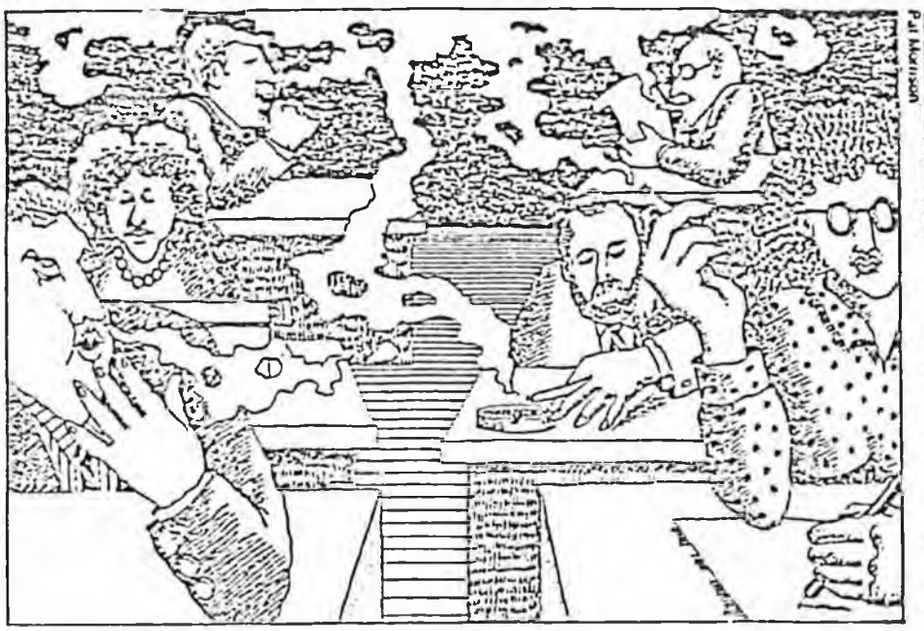


Tar and nicotine content has dropped.

Smoke gets in your eyes . . . and lungs

SAN DIEGO—For years, nonsmokers have endured the tobacco fumes of the smoking public in restaurants, elevators, conference rooms, and the workplace—all the while worrying about the effects on their health. Now there is evidence to back up their fears: A study at the University of California at San Diego shows that the breathing ability of nonsmokers exposed to tobacco smoke on the job is measurably less than that of workers in smoke-free environments.

Researchers James White and Herman Froeb tested 2 100 men and women from the San Diego area by measuring the rates at which they could force air out of their lungs. On average, they found a ten percent lower exhalation rate among nonsmokers who had worked in smoked-filled offices more than 20 years. These so-called passive smokers displayed breathing rates comparable to those of persons who smoked up to ten cigarettes a day.



Paul Madison

There is no evidence as yet that passive smokers risk such illnesses as emphysema and cancer. But their reduced lung capacity does indicate that nonsmokers forced to breathe smoke at work suffer the same kind of damage to small airways deep inside the lungs as do smokers. That damage is in the form of mucous and scar tissue, which block the smooth flow of air and can inhibit the transfer of oxygen into the bloodstream. "This is permanent damage occurring in people who have chosen not to smoke," says White, who studiously avoids the smokers among his colleagues at the university.

Unrestricted smoking at work is permitted by nearly 75 percent of all employers in the United States. Dozens of lawsuits have been filed by nonsmokers and most have been settled out of court. John Banzhaf, executive director of Action on Smoking and Health, knows of only one case that came before a judge, who ruled in favor of the plaintiff. The judge reportedly was impressed by the fact that the plaintiff's company had banned smoking in a nearby computer room because the equipment malfunctioned when exposed to cigarette smoke. He ruled that if smoking could be curtailed for the sake of a machine, it could be curtailed for the sake of a human being.

through sponsorship of the U.S. Department of Agriculture, National Science Foundation, Southwest Border Regional Commission, Four-Corners Regional Commission, and the state of California.

Germplasm collections have been made from wild guayule plants in Mexico and Texas. Plantings have been established to test yields, to increase seed supplies, and to conduct plant breeding work. Test plots have been established to determine desirable planting and cultivating practices. Research is being conducted on the possibility of increasing rubber yield by treating guayule plants with plant growth regulators.

The recent development of a seed coating process to promote germination, and the development of selective herbicides, will make direct seeding in field plantations a possibility. Eliminating nursery or greenhouse propagation could produce considerable savings in production costs.

The only guayule yield figures now available are estimates developed during the ERP. During the life of the ERP the per hectare, approximately 480 kg of guayule rubber per year. Kelly (*15*) obtained yields of approximately 860 kg per hectare per year from one test plot in California. Foster *et al.* (*16*) have outlined the state of the art of guayule technology and described present and projected world rubber market conditions and areas of the United States where conditions favor guayule cultivation.

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Indoor Air Pollution, Tobacco Smoke, and Public Health

James L. Repace and Alfred H. Lowrey

Serious health effects from air pollution have led to federal standards for the regulation of outdoor exposure levels. However, Americans spend about 90 percent of their time indoors (*1*). Thus the levels of indoor air pollution are important in determining total exposure to air pollutants (*2–6*). Indeed, in a recent review article (*4*) it was concluded that indoor air pollution in public office buildings is of greater potential harm than the outdoor variety, and that these exposures may constitute a real threat to the health of many urban people. The U.S. Surgeon General asserted in his report on *Smoking and Health* that tobacco smoke can be a significant source of atmospheric pollution in enclosed areas (*7*). Some 53 million U.S. smokers consumed 615 billion cigarettes in 1978 (*8*). Thus it is apparent that indoor air pollution from tobacco smoke is pandemic.

In the presence of cigarette smoke, many normal nonsmokers experience eye and throat irritation, headache, rhinitis, and coughing; allergic persons report wheezing, sneezing, and nausea as well. Particularly acute symptoms may be found in infants, children, persons with cardiovascular or respiratory disease, and wearers of contact lenses (*7, 9*). Determining the extent of the exposure of nonsmokers to cigarette smoke is important because smoking is a cause of chronic obstructive pulmonary disease, cardiovascular disease, and lung cancer, and is associated with cancers in other parts of the body (*7*); because these diseases also occur in nonsmokers; and because the products of tobacco combustion have been detected in nonsmokers (*10*).

Although measurements of indoor carbon monoxide pollution from smoking are abundant (*7*), published reports of the exposure of the population to the particulate phase of ambient tobacco smoke are rare (*7, 11–13*). Furthermore, a comprehensive theory of the generation and removal mechanisms for tobacco particulates in naturally or mechanically ventilated habitable spaces has not been presented.

We therefore undertook a systematic study of the levels of respirable suspended particulates (RSP) in several common indoor environments in an attempt (i) to determine the relation of these levels to the aerosol from tobacco smoking, (ii) to understand the effect of ventilation on tobacco smoke concentra-

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for estimating the range of the public's exposure. Our goal was to provide a quantitative basis for assessing the health hazards to nonsmokers posed by repeated exposure to tobacco combustion products.

Model Development

To relate the contribution of smoking to indoor RSP requires a model describing the behavior of the tobacco aerosol in indoor spaces. Bridge and Corn (*6*) found that a reduced form of an equation by Turk (*14*) reliably predicts carbon monoxide (CO) concentrations from tobacco smoke in ventilated spaces and so is of major value in assessing the possible hazards in occupied spaces (*11*). The equation is not valid, however, for a pollutant that is affected by physical decay due to adsorption on room surfaces. Penkala and DeOliviera (*15*) showed that decay of the tobacco aerosol in a well-mixed unventilated chamber is exponential.

We modify the Turk equation in differential form by adding a decay term to the removal rate and equating the rate of change of pollutant mass to the algebraic sum of the generation and removal rates. The solution yields the density $A(t)$, in micrograms per cubic meter, of smoke in the room as a function of time:

$$A(t) = A_{eq}(1 - e^{-t/\tau}) \qquad (1)$$

where $A_{eq} = G\tau/V$ is the equilibrium concentration of the pollutant in the room, and where the time constant

$$\tau = \frac{\tau_a \tau_v}{m(\tau_a + \tau_v)} \qquad (2)$$

is the mean ventilation time, or the time for the smoke concentration to decrease to $1/e$ of its value (where e is the base of natural logarithms); V is the room volume in cubic meters; $\tau_v = V/Q$ is the ideal ventilation time, or the time required to replace a volume of air equal to the volume of the room by ventilation and infiltration; Q is the volume rate of ventilation and infiltration; τ_a is the ideal decay time, a time constant associated with the removal of a pollutant from a room through adsorption on surfaces and filtration; and m is the mixing factor, an empirically determined number (*16*) that modifies the ventilation time as τ_v/m, where $m \leq 1$ ($m = 1$ implies ideal mixing). Corn (*11*) suggested values of m for various ventilation systems (Table 1). We postulate that m also modifies the ideal decay time as τ_a/m. The pollution generation rate, in micrograms per minute, is given as $G = nC_0/t_b$, where n is the number of cigarettes being smoked at time t; C_0 is the total particulate matter (TPM) from both sidestream and exhaled mainstream smoke; and t_b is the duration of cigarette smoking.

Equation 1 has two special cases: (i) in the case of ventilation only ($\tau = \tau_v/m$) it becomes the reduced Turk equation of Bridge and Corn (*6*), with $m = 1$; and (ii) in the case of adsorption only (the unventilated room), $\tau = \tau_a/m$. Then, if the generation of smoke ceases at time t_b, prior to equilibrium, A will decay according to

$$A(t) = A_0 e^{-mt/\tau_a} \qquad (3)$$

where A_0 is a constant related to the equilibrium concentration by

$$A_0 = A_{eq}[e^{mt_b/\tau_a} - 1]$$

factor m, after Corn (*11*). The mixing factor is an empirical number that accounts for room-specific effects on pollutant transport. Pollutant removal is more rapid in a well-mixed atmosphere (where m is large) than in a poorly mixed, stable one (where m is small). Factors that affect m include type and placement of ventilation grills, ventilation flow rates, inhomogeneous pollutant distribution, barriers, circulation fans, and room traffic.

Configuration of air supply system	m
Perforated ceiling*	1/2
Trunk system with anemostats	1/3
Trunk system with diffusers	1/4
Natural draft and ceiling exhaust fans	1/6
Infiltration and natural draft	1/10

*This is the best standard condition.

Summary. An experimental and theoretical investigation is made into the range and nature of the exposure of the nonsmoking public to respirable suspended particulates from cigarette smoke. A model incorporating both physical and sociological parameters is shown to be useful in understanding particulate levels from cigarette smoke in indoor environments. Observed levels of particulates correlate with the predictions of the model. It is shown that nonsmokers are exposed to significant air pollution burdens from indoor smoking. An assessment of the public health policy implications of these burdens is presented.

described by Penkala and DeOliviera (*15*) for $m = 1$.

The modified Turk equation (Eq. 1) contains only measurable quantities, and thus in principle can be used to estimate the concentration of TPM or CO from tobacco smoke (or other indoor air pollutants), as a function of time, for any room for which the pollutant generation rate, volume, and mean ventilation time are known.

Controlled Experiments

Equation 2 shows that the mixing factor affects the time constant for decay as well as ventilation. Experiments under conditions of known ventilation were therefore necessary to assess the influence of mixing factors, decay time constants, and generation rates on the growth and decay of tobacco smoke particulates. To increase the usefulness of the experimental values determined for the mean ventilation time for the removal of tobacco smoke, we conducted these experiments in actual occupied spaces rather than in experimental chambers.

A piezobalance (TSI model 3500) (*17–19*) was used in sampling the aerosol. It collects respirable particulates (*20*) between 0.01 and 3.0 micrometers in diameter with near 100 percent efficiency (decreasing to 50 percent at 3.5 μm and to 10 percent at 4 μm). The sampling rate is 1 liter/min (*18*); the sampling time is variable. Factory-calibrated with welding smoke, the detecting crystal in the instrument used has a sensitivity of 5.74 μg/min-m^3 per hertz. The instrument underestimates the mass concentration of tobacco aerosol by about 15 percent compared to measurements made with low-volume filter sampling techniques. Readings can be affected by changes in humidity; the maximum expected error due to changes in relative humidity when sampling a hygroscopic aerosol (such as tobacco smoke) is given as $\pm$ 10 μg/m^3. The overall instrument error is about $\pm$ 10 percent compared with low-volume filter measurements of welding smoke (*19*). The aerosol from sidestream cigarette smoke (that portion emitted by the burning tip), an important component of many indoor aerosols, is lognormal, with 99 percent of the mass < 1 μm in aerodynamic diameter and with an initial mass median diameter (MMD) from 0.2 to 1.5 μm depending on dilution (*20, 21*). The relative particle sizes of fresh sidestream and mainstream smoke (the latter being that portion inhaled by the smoker) are about the same; for ex-

Table 2. Parameters for Eq. 1, as determined with experiments 1 to 3 (unventilated rooms).

Experiment	A_{eq} ($\mu g/m^3$)	A_0 ($\mu g/m^3$)	τ_a/m (min)	m	r^{2*}	C_0† (mg of TPM)	Cigarette condition
1‡	530	503	10	1	.98	12.3	Smoldered
2‡	5178	551	89	1/9	.42	16.0	Smoldered
3§	1773	681	16.4	< 1	.81	23.0	Smoked

*Coefficient of determination for the decay curve. †The estimated amount of TPM liberated if the entire cigarette had been consumed, according to FTC protocol. The FTC mainstream TPM level for this cigarette is 16 mg (24). ‡V = 21.9 m^3. §V = 29 m^3.

haled mainstream smoke, particle size is estimated to be ~ 0.8 μm (MMD). Since the ambient cigarette smoke aerosol is reproducible and coagulates very slowly, it has been used as a test aerosol (*21*) and in evaluation of heating, air-conditioning, and ventilating systems (*22*). [The bulk of the ambient tobacco aerosol is probably due to cigarettes, since less than 15 percent of smokers smoke cigars or pipes (*23*).]

Unventilated Growth and Decay of Tobacco Smoke

Experiments were carried out to determine the usefulness of Eq. 3, which predicts a rapid decay for good mixing and a slow decay for poor mixing; and also to discover the limits of τ_a/m.

Experiments 1 and 2 were conducted in a wood-panelled den in a private residence. In the geometric center of the room (volume, 21.9 m^3), a popular filter cigarette [containing 65 millimeters of tobacco and ranking 94th on the Federal Trade Commission (FTC) scale of tar and nicotine content (17 milligrams of tar and 1 milligram of nicotine) (*24*)] was ignited and allowed to smolder until 89 percent of its tobacco was consumed. During the first experiment, two box fans (51 centimeters in diameter) with antiparallel exhausts were used to ensure ideal mixing; each fan's exhaust, measured with a Velometer, was 55 m^3/min. The growth and decay of the RSP were measured with the piezobalance. Experiment 2 was similar to experiment 1, except that the cigarette was extinguished after 75 percent of its tobacco was consumed and the circulating fans were not used, so that mixing was natural. The results of both experiments are plotted in Fig. 1, with the background levels of RSP subtracted. The data points generally represent 1-minute average values. The differences in mixing dramatically affect the slopes of the decay curves.

The theoretical curves shown in Fig. 1 were generated by fitting the data points from the decay curves to Eq. 3 with a regression analysis; A_0 and τ_a/m were determined and used to calculate the growth curves from Eq. 1, case (ii). The ratio of the slopes of the decay curves for ideal and natural mixing yields the mixing factor for the room. Table 2 gives the values obtained for the various parameters. The value of the mixing factor obtained is in good agreement with the expected value given in Table 1 for the case of infiltration and natural draft. The growth curve for the case of natural mixing (experiment 2) shows a poor fit initially because of the effect of the warm smoke rising to the ceiling and remaining

Table 3. Field survey of indoor RSP in the absence of smoking.

Locale	Room volume (m^3)	Persons per room	Persons per 100 m^3	Indoor RSP level* ($\mu g/m^3$)	Average time per RSP sample (min)	Outdoor RSP level† ($\mu g/m^3$)	Comment
Crepes restaurant (Washington, D.C.)	124	43	35	29	20	44	No smoking section; aroma of frying crepes evident
Sandwich restaurant (Laurel, Md.)	326	40	12	55	21	40	No smoking section; near kitchen; three smokers in smoking section
Sandwich restaurant (Laurel, Md.)	326	55	17	51	21	55	No smoking section; near kitchen; one smoker in smoking section
Fast-food restaurant (Bowie, Md.)	1,400	22	1.6	38	7		Aroma of hamburgers frying
Private residence (Seabrook, Md.)	120	11	9	24	20		Cocktail party; one candle burning 6 m from RSP detector
Private residence (Bowie, Md.)	124	1	0.8	44	15		One hour after sweeping basement floor
Private residence (Greenbelt, Md.)	22	2	9	24	6		Natural mixing‡
	22	2	9	55	1		Two fans moving 110 m^3 of air per minute§
Private residence (Glenn Dale, Md.)	29	7	24	57	5		One fan moving 55 m^3 of air per minute‖
Conference room (Greenbelt, Md.)	113	10	9	53	10		Two fans moving 50 m^3 of air per minute¶
Public library meeting room (Bowie, Md.)	1,415	30	2.1	29	30		During piano recital
Library of Congress (Washington, D.C.)	27,000	130	0.48	30	10		Main reading room
Church (Bowie, Md.)	4,224	300	7	30	42		During Sunday service
Bagel bakery (Yonkers, N.Y.)	510	30	6	25	10	8	Aroma of baking bagels evident
Private residence (Hawthorne, N.Y.)	150	17	11	26	16		During dinner party

*Mean ± standard deviation for the Washington area samples, 40 ± 13 $\mu g/m^3$. †Duration of sampling, 5 minutes. ‡Experiment 2 background. §Experiment 1 background. ‖Experiment 3 background. ¶Experiment 4 background.

out of the detector's range for about 3 minutes. Experiment 3 demonstrated that Eq. 3 is valid under more general conditions, that is, when a cigarette is actually smoked.

We conclude that these experiments show that for the unventilated room, Eq. 3, the reduced form of Eq. 1, is useful in describing the growth and decay of cigarette smoke particulates.

Ventilated Growth and Equilibrium of Tobacco Smoke

An experiment was conducted in a ventilated conference room of a modern office building to test Eq. 1 in the case of removal of uniformly generated tobacco smoke by both decay and ventilation. The experiment involved measuring the growth of cigarette-generated RSP from background levels to near equilibrium. Analysis of the RSP-versus-time curve determines τ, the mean ventilation time, and C_T, the total RSP liberated from the combined sidestream and exhaled mainstream smoke.

The RSP detector was located in the geometric center of the 113-m³ room. Two fans with antiparallel exhausts were used to establish a vigorous circulation of 100 m³/min. The ideal ventilation time τ_v, calculated from the volumetric flow rates of the ventilation system, was 49.2 minutes for a complete change of air. Thirty-two cigarettes were smoked in 49 minutes by a relay of seven smokers, with an average of four persons smoking at any given time. When smoking their own brands, they averaged 9.8 minutes per cigarette; when smoking cigarettes supplied to them, they averaged 5.8 minutes per cigarette. All butts were collected and the amount of tobacco consumed was measured for each cigarette. The estimated mainstream TPM (M) (tar plus nicotine) generated by the 32 cigarettes was determined by weighting the TPM values for each cigarette (*24*) by the fraction of tobacco consumed, and adding the results to obtain M = 418 mg [TPM is emitted from cigarettes at a linear rate after the fourth puff (*25*)].

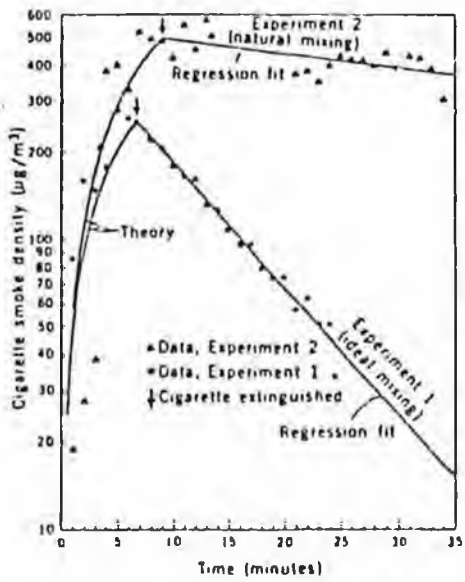

Fig. 1. Theoretical predictions versus experimental results for the growth and decay of RSP from a smoldering, average-tar cigarette in a 22-m³ unventilated room. The dramatic difference in the slopes of the decay curves reflects the difference in room air turbulence (mixing) for the otherwise similar experiments.

Figure 2 shows the growth against time of RSP from the cigarette smoke. The data points are corrected for background RSP levels and are 2-minute averages. A regression analysis using Eq. 1 yields A_{eq} = 1947 µg/m³ and τ = 14 minutes, with a coefficient of determination = .964 (from Eq. 2, τ_v = 19.5 minutes). Finally, C_T, or the total amount of RSP liberated in the room during the entire smoking period, 772 mg, is calculated by using Eq. 1; C_T/M = 1.85. This ratio represents a weighted average for six different brands of filter cigarettes that together commanded a 23 percent share of the market in 1976 (*26*).

From the goodness of fit of the theory to the data and from the observation of predicted interactive behavior among mixing, growth, and decay processes for RSP from cigarette smoke, it appears that all the room-specific factors affecting the removal of tobacco smoke (ventilation, decay, and mixing) can be combined into a single time constant τ, which can be determined for any room by regression analysis of the decay or growth-equilibrium curves, or by calculation from the equilibrium concentration if the smoke generation rate and room volume are known. The ratio of the slopes of the decay curves for ideal and natural mixing yields the mixing factor. We conclude that Eq. 1 is a useful tool for predicting the levels of tobacco smoke in both ventilated and unventilated occupied space.

Field Survey of RSP

We now address the complex problem of surveying the levels of RSP indoors and determining what portion of this aerosol may be attributed to cigarette smoke by means of Eq. 1. The problem is complicated by differences in smoking rates, numbers of smokers, room volumes, effective ventilation rates, and the TPM values of various brands of cigarettes. The problem may be simplified by assuming that smoking is a random process when it occurs among large groups of people. It follows that cigarette smoke RSP values may be treated as equilibrium values; that all of the smokers may be treated as habitual smokers who smoke identical average-tar cigarettes in the same way at the same average rate, uniformly distributed over a 16-hour day. An average smoking rate r of two cigarettes per hour is calculated from the 1975 figures for the number of U.S. smokers and the U.S. domestic cigarette consumption (*8*). In 1978, the sales-weighted average mainstream TPM value M_a was 17.6 mg for all the cigarettes sold in the United States (*7*). The estimated emission rate C_0 (combined sidestream plus exhaled mainstream TPM) from a habitual smoker is given by $E = 1.85\,rM_a$ = 65 mg/hour, where 1.85, used for the ratio C_0/M_a, is taken from the conference room experiment. Physically observable in any field survey of smoking is n_s, the number of burning cigarettes (the number of "active" smokers); n_s can be related to the number of habitual smokers n_{hs} by considering that the average time for smoking a cigarette is 10 minutes (*2*, *6*). This number and the previously calculated average smoking rate indicate that $n_{hs} = 3n_s$.

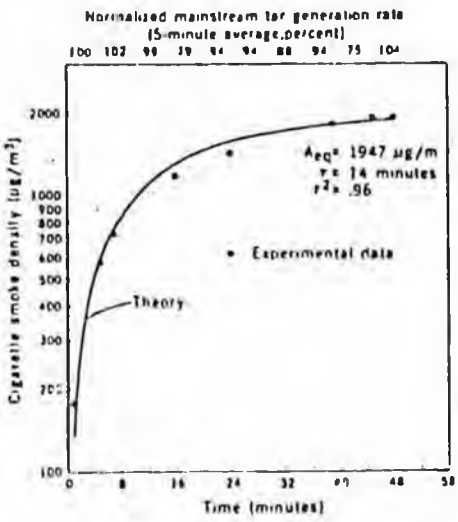

Fig. 2. Theoretical predictions versus experimental results for the attainment of equilibrium A_{eq} for the combined emission of sidestream and exhaled mainstream cigarette smoke from four chain smokers in a 113-m³ conference room with well-mixed ($m \sim 1$) ventilation in a modern office building. Under natural mixing conditions, about 11 habitual smokers would generate an equivalent equilibrated concentration of smoke. This many smokers would be expected in a group of 33 adults (well within the capacity of this 50-person conference room).

From the equilibrated form of Eq. 1, we determine that

$$R = A_{eq} = 650 \frac{D_s}{C_e} \quad (4)$$

where R is the smoker-generated equilibrium RSP level in micrograms per cubic meter, D_s is the density of active smokers (number per 100 m³), and C_e is the effective rate for the removal of cigarette aerosol (air changes per hour), with $C_e = 60/\tau$.

The aerosol sampling described in this article was performed from late March through early June 1978 in the Washington, D.C., metropolitan area. The MMD (seasonal average) of the outdoor urban aerosol for Washington in 1970 was 0.5 μm, with 90 percent of the aerosol mass less than 3 μm in aerodynamic diameter and lognormally distributed (27).

It is important to note that all of the RSP measurements we report represent time-averaged values.

Factors other than tobacco smoke may contribute to indoor RSP. These include infiltration of outdoor RSP, cooking, dust raised by indoor traffic, and industry. By restricting the sampling to nonindustrial indoor locations where tobacco smoking is absent, the effect of the remaining variables may be assessed. Table 3 gives the RSP levels for several indoor spaces in which smoking did not take place: three restaurants, four private residences, an office building conference room, two libraries, and a church during services. The mean of these measurements is 40 μg/m³. In three instances, fans were mixing the air at a high rate and RSP levels were elevated, apparently because of dust entrainment. No correlation between the volumetric density of people (occupancy) and RSP is evident. Hemperly (28), in sampling RSP in Houston, found similar RSP levels in two schools, a library, and a museum—all nonsmoking areas.

Table 4 gives the results of RSP sampling in nonsmokers' automobiles traveling along two major commuter highways (Route 50 in Maryland and U.S. I-295 in Washington) during the rush hour. The samples were taken on different days and were measured in different vehicles. In all cases, the windows were slightly open and the ventilation fans were running. The mean of the data, 38 μg/m³, is not very different from the mean of the indoor readings, 40 μg/m³ (Table 3).

The impact of actual ventilation practice on ambient RSP levels from smoking was investigated at eight restaurants, three cocktail lounges, two bingo games, a dinner-dance, a bowling alley, a sports arena, and a hospital emergency waiting room. For contrast, one unventilated private residence was sampled during a cocktail party. With the exception of the hospital waiting room and the hotel bar, each space sampled represented the major part of the building and was subject to ventilation requirements specified by building codes. Sampling was generally performed well after opening time to ensure that an approximately steady-state level of smoking had been reached.

Table 4. Levels of RSP in nonsmokers' cars during rush-hour traffic on a busy commuter highway in Washington, D.C., measured with the vehicles' windows slightly open and the ventilation fans running. Each car carried four persons and had a volume of 2 m³, so that the occupancy was equal to 200 persons per 100 m³.

Date	Time	Sampling time (min)	RSP level (μg/m³)
23 March	a.m.	10	40
23 March	p.m.	35	20
24 March	a.m.	20	54
28 March	a.m.	26	49
31 March	a.m.	8	25
Mean ± standard error			38 ± 15

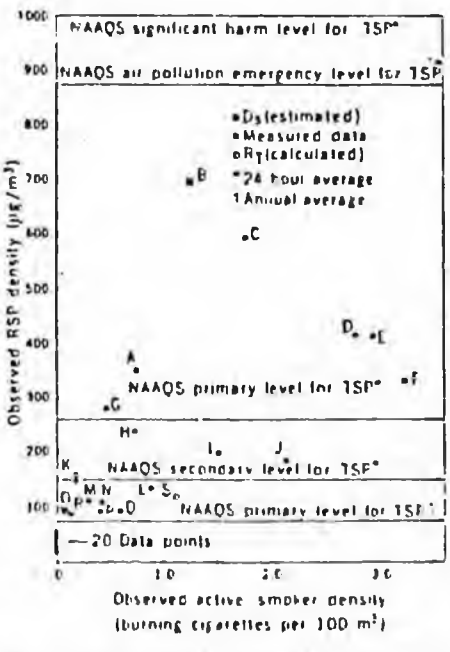

Fig. 3. Results of a field survey of short-term time-averaged levels of RSP in 38 enclosed spaces (see Tables 3, 4 and 5). Levels corresponding to federal standards for TSP are indicated for comparison only. The microenvironments include ten restaurants, three cocktail lounges, two bingo games, a dinner-dance hall, a bowling alley, a sports arena, two libraries, a church, a hospital waiting room, five vehicles, and five residences. The letters A through S correspond to those given in Table 5. The effective air change rates for microenvironments A and S are known from experiments to be C_e = 1.5 and 9.2, respectively.

The piezobalance and a stopwatch were used to take tabletop-level RSP samples for periods ranging from 10 to 50 minutes (mean, 20 minutes). The piezobalance was equilibrated in advance to avoid errors due to changes in temperature or humidity.

The room dimensions were estimated and the number of active smokers was sampled periodically throughout the measurement period and averaged. It was usually not possible to sample the premises when there was no smoking; in most cases, the RSP outside the premises was sampled for comparison. Table 5 gives the results of the measurements. Figure 3 shows the average density of active smokers (defined as the number of burning cigarettes per 100 m³) plotted against the total indoor RSP sampled. As a guide to whether a given datum is "high" or "low," the National Ambient Air Quality Standards (NAAQS) for total suspended particulates (TSP) are also shown. Since a specific averaging time is incorporated into these standards, violation of the standard is not demonstrated here. However, repeated exposure to such elevated levels can lead to "violation" of the annual standards, as will be shown later. Note that all the data for finite smoker density exceeded the level of the annual primary (health-related) NAAQS, whereas none of the data for zero smoker density exceeded this level. Further, the background RSP measured outside the smoking premises suggests that the source of these elevated levels was not the outdoor air. The mean and the standard deviation for the outdoor RSP are 46 ± 13 μg/m³, and in every case the outdoor level is less than the indoor. In certain cases, indoor controls are available. In bingo game 2, held in the nave of a church, the active smoker density was 0.47 per 100 m³, the occupancy was 3.6 persons per 100 m³, and the RSP density was 279 μg/m³ (Table 5). By contrast, during the tobacco smoke-free religious services, despite an occupancy of 7.0 persons per 100 m³, 30 burning votive candles, and several processions, the RSP density was 30 μg/m³. The elevated RSP levels in the bingo game clearly appear to be due to smoking. Similarly, measurements taken in the nonsmoking section of a sandwich restaurant showed considerably lower levels than in the smoking section, indicating that the contribution of smoking to RSP was much larger than the effect of cooking, even at the low cigarette densities shown (Table 5). Figure 3 shows that, in general, RSP levels increase with active smoker density, although there is

considerable scatter in the data. The question now is whether Eq. 1 is useful in explaining this scatter.

We hypothesize that the levels of RSP for finite D_s (Fig. 3) are due to near-equilibrium levels of cigarette smoke adding to much smaller background levels, and that the scatter in the RSP levels for fixed cigarette density is due primarily to differences in the mean ventilation time τ. Analyzing the background corrected data given in Table 5, we use Eq. 4 to calculate a range for C_s between 1.2 and 10.7 air changes per hour; C_s is used instead of τ to facilitate comparison with building code-specified ventilation rates. The range determined for C_s is consistent with two known values of C_s derived from the cocktail party and roadside restaurant experiments (Table 5).

The C_s for tobacco aerosol is affected by the rate of mechanical ventilation and infiltration, the rate of smoke adsorption, and mixing. The range of mechanical ventilation and infiltration can be calculated from tables of standards determined by the American Society of Heating, Refrigerating, and Air Conditioning Engineers (ASHRAE) (*29*), the authority specified by the local building code (*30*). For each premise listed in Table 5, the recommended maximum number of outdoor air changes per hour (based on the estimated floor area, maximum occupancy, and volume) was calculated from the ASHRAE tables; a two-thirds recirculation of air (the maximum permitted by ASHRAE) was assumed. This yielded a range of 0.7 to 9.4 air changes per hour. Infiltration, resulting mainly from the opening of doors, was estimated from the actual occupancy during the sampling (*29*); we assumed a 100 percent turnover of occupants per hour. This was added to the calculated mechanical ventilation rates, giving a final estimated range of $1.3 \leq C_v \leq 13.4$ air changes per hour, where $C_v = 60/\tau_v$.

The practical range of physical decay from adsorption for cigarette aerosol can be computed from our experiments and the literature. Most establishments possess simple filters that are relatively ineffective at removing tobacco smoke (*22*). The shortest ideal decay time measured (in experiment 1) was equivalent to six air changes per hour (Table 2). By contrast, Penkala and DeOliviera (*15*) measured a mean life for tobacco smoke, under uniform mixing in a chamber with unreactive walls, equivalent to one air change per hour. These two extremes given an estimated range of $1 \leq C_d \leq 6$ air changes per hour for RSP from tobacco smoke, where $C_d = 60/\tau_d$.

The range of mixing m appropriate for the spaces listed in Table 5 is $1/4 \leq m \leq 1/2$, as determined from Table 1. By using Eq. 2, a theoretical range of mean air change rates, $1/2 \leq C_{aTh} \leq 10$ air changes per hour, is calculated from the estimated ranges for C_v, C_d, and m. This is consistent with the 1 to 11 air changes per hour determined with our model from the experimental results. In other words, the variations in the observed RSP density for fixed cigarette density can be phenomenologically ac-

Table 5. Field survey of indoor RSP sampled in the presence of smoking. Where the standard deviation is given, the value is an average of 2-minute samples; where it is not given, the sampling time is the averaging time.

Locale	Estimated volume (m^3)	Average number of smokers	Indoor sampling time (min)	Average occupancy (persons)	Active smoker density per 100 m^3	Indoor RSP ($\mu g/m^3$)	Outdoor RSP ($\mu g/m^3$)	Outdoor sampling time (min)	Occupants smoking (%)	Date	Time
A. Cocktail party*	268	2	15	14	0.75	351 ± 38			14	8 April	9:00 p.m.
B. Lodge hall	3,168	40†	50	350	1.26	697 ± 28	60	6	11‡	31 March	11:00 p.m.
C. Bar and grill	507	9	18	75	1.78	589 ± 28	63	6	12	21 March	8:00 p.m.
D. Firehouse bingo	541	10.5	16	125	2.77	417 ± 63	51	15	8.4	27 March	10:00 p.m.
E. Pizzeria	170	5	32	50	2.94	414 ± 32	40	5	10	14 April	8:00 p.m.
F. Bar/cocktail lounge	216	7	26	55	3.24	334 ± 120	50	5	13	25 March	10:00 p.m.
G. Church											
Bingo game	4,224	20	8	150	0.47	279 ± 18			13	31 March	10:00 p.m.
Sunday service	4,224	0	31	300	0	30			0	13 May	11:00 a.m.
H. Inn	338	2.5	12	70	0.74	239 ± 9	22	10	3.5	23 March	1:00 p.m.
I. Bowling alley	918	14	20	128	1.53	202 ± 19	49	5	11	25 March	8:00 p.m.
J. Hospital waiting room	93	2	12	19	2.15	187 ± 52	58	6	11	28 March	10:30 p.m.
K. Shopping plaza restaurant											
Sample 1	1,369	2.5	18	95	0.18	153 ± 8	59	5	2.6	24 March	7:30 p.m.
Sample 2	1,369	2.5	18	50	0.18	163 ± 4	36	10	5	24 March	9:30 p.m.
L. Barbeque restaurant	225	2	10	25	0.89	136 ± 17			8	24 March	9:00 p.m.
M. Sandwich restaurant A											
Smoking section	781	2.25	20	30	0.29	110 ± 36	40	5	7.5	25 March	8:00 p.m.
Nonsmoking section	326	0	20	40	0	55 ± 5	40	5	0	25 March	7:30 p.m.
N. Fast-food restaurant											
Sample 1	360	1.5	40	30	0.42	109 ± 38			5	26 March	2:00 p.m.
Sample 2	360	0	7	30	0	30			0	26 March	1:30 p.m.
O. Sports arena	823,000	759†	12	6,700‡	0.09	94 ± 13	24	5	11†	29 March	10:00 p.m.
P. Neighborhood restaurant/bar	250	1	12	35	0.40	93 ± 17			2.9	25 March	8:30 p.m.
Q. Hotel bar	169	1	12	25	0.59	93 ± 2			8		2:30 p.m.
R. Sandwich restaurant B											
Smoking section	781	1	8	30	0.13	86 ± 7	55	5	3.3	14 April	11:00 a.m.
Nonsmoking section	326	0	21	50	0	51	55	5	0	14 April	1:30 p.m.
S. Roadside restaurant											
Sample 1	90	1	18	5	1.12	107§			20	29 March	3:00 p.m.
Sample 2	90	0	2	3	0	30			0	29 March	3:00 p.m.

*Only the cocktail party microenvironment was unventilated. †Estimated. See (*31*). ‡Paid attendance. §Calculated, equilibrium value.

infiltration, decay, mixing, and average smoking behavior. We conclude that the finite D_s RSP levels shown in Fig. 3 are indeed generated primarily by cigarette smoke and that this is consistent with the predictions of our model.

The Range of Public Exposure

We can now model the full range of exposure of the nonsmoking public to cigarette smoke. Equation 4 may be rewritten as

$$R = 25.6 \frac{P_s}{C_s} \quad (5)$$

where P_s is the occupancy (persons per 1000 square feet). (The volumetric measure is implicit, assuming a 10-foot ceiling.) The P_s is three times the density of habitual smokers D_{hs} and nine times the density of active smokers D_s (*31*). A family of RSP curves is generated from Eq. 5 by varying C_s and P_s over their ranges. Representative samples of this family are plotted in Fig. 4. A lower limit for C_s of about one-half to one mean air change per hour has been determined experimentally and theoretically for removal of cigarette aerosol from private dwellings ventilated by infiltration and from commercial establishments whose mechanical ventilation is poor. A realistic upper bound for C_s may be obtained from the well-ventilated environment of the commercial airliner. A mechanical (design) ventilation rate of 15 to 20 air changes per hour with no recirculation is typical of the Boeing 707 (*32*). The best ideal decay rate measured in the experiments was six air changes per hour. Assuming a mixing factor of unity, we calculate an upper limit for C_s of 26 air changes per hour. The practical range for P_s is obtained from the ASHRAE (*29*), which specifies mechanical ventilation rates for typical average occupancies in various structures. For commercial structures, these densities (in persons per 1000 square feet) range from 10 for general office space to 70 for dining rooms to 150 for such places as stand-up bars, auditoriums, arenas, and commercial aircraft. The design ventilation rate C_v is typically determined from both the design occupancy and the intended use of the structure. For example, 15 to 25 cubic feet per minute per occupant is specified for general office space, 10 to 20 for dining rooms, and 30 to 40 for cocktail lounges. In 1975, *ASHRAE Standard 90-75*, "Energy conservation in new building design," decreased these rates by factors of 2 to 3. The current *Standard 62-73* is currently being revised to specify higher rates of ventilation for premises in which smoking is permitted. How effective would increases in C_v be in lowering the levels of RSP from tobacco smoke? Equation 5 shows that such levels decrease only exponentially with increasing C_s. Furthermore, as Kalika *et al.* (*33*) observed, "the current practice of recirculation or reuse of air is largely dictated by the economics of heating and cooling, with little regard for changes in indoor air quality." That is, ventilation may be subject to arbitrary reduction by building management or by legislative or bureaucratic fiat; in many nonurbanized areas, it may not even be regulated by building codes (*34*).

Figure 4 illustrates the estimated range

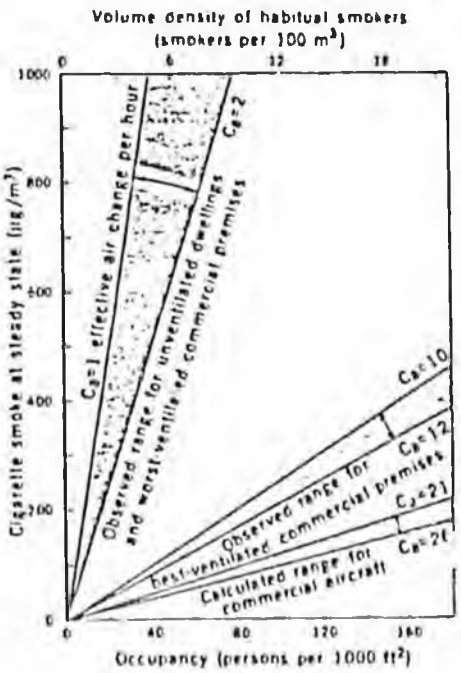

Fig. 4. Theoretical steady-state density of respirable particulates from environmental cigarette smoke in habitable indoor spaces, as related to the design occupancy P_s. On the average, one-third of adults are habitual smokers; for every three such smokers, we calculate that an average of one cigarette burns constantly throughout a 16-hour day. According to standard engineering criteria (*29*), occupancy and the type of microenvironment determine the design rate of mechanical ventilation C_v. The effective air change rate (C_s) for the removal of tobacco aerosol from room interiors is determined by C_v, by mixing, and by the rate of adsorption of tobacco particles on room surfaces. Generally C_v, and hence C_s, increase with P_s. (Typical P_s (in persons per 1000 square feet) ranges from 10 for office buildings to 70 for restaurants to 150 for bars, sports arenas, and aircraft (*29*, *32*).) We estimate the practical range of C_s to be from 1 to 12 air changes per hour. It appears that over the combined practical ranges of P_s and C_s, repeated exposure to tobacco smoke can lead to annual RSP burdens that violate the primary annual NAAQS.

RSP from cigarette smoke. The actual dose of RSP is clearly a function of personal activity patterns, differences in respiration rate also affect the dose. Many different scenarios can be imagined. In the following, we express a range of RSP burdens from the cigarette aerosol relative to a typical RSP ambient background level. For an air shed (air quality control region) that is in compliance with the annual secondary (public welfare) NAAQS for TSP of 60 $\mu g/m^3$, the RSP fraction of the ambient aerosol is conservatively estimated at 50 $\mu g/m^3$ and is likely to be composed largely of combustion-produced sulfates (*35*). Since the particle size distributions of this fraction and the cigarette aerosol are both in the respirable range, we first compare them on a mass basis, without regard for differences in the chemical composition of each.

Let A, B, C, and D be nonsmokers who dwell in the same air shed and who breathe at the average rate of 20 m^3/day. All have different occupations and lifestyles that lead, as we shall see, to dramatically different RSP burdens.

Nonsmoker A is a mailman who walks a regular route and is able to live in a completely tobacco smoke-free environment. He is exposed only to the background ambient and therefore inhales 365 mg of RSP annually.

Nonsmoker B is an office worker who works a 40-hour week 50 weeks per year in a 40-m^3 office with two other persons, one of whom is a habitual smoker. Replacing D_s in Eq. 4 with $D_{hs}/3$, we find that B's mass RSP exposure is more than three times that of A (we calculate an expected C_s of 1.1 for office buildings).

Nonsmoker C is a musician who entertains in a popular, poorly ventilated nightclub 8 hours nightly, 5 nights per week, 50 weeks per year. The average P_s in the club is 100 persons per 1000 square feet (about 33 smokers). Further, C shares a 100-m^3 apartment with a roommate who is a chain smoker. C is exposed to the roommate's smoke 5 hours per day, 7 days per week, annually. By using Eqs. 4 and 5 and a C_s of one air change per hour, we find that C's mass RSP burden is more than 15 times that of A.

An alternative way of approaching the excess RSP exposure is in terms of cigarette equivalents. The cigarette with the least tar in the May 1978 FTC scale has 0.55 mg of TPM. In these terms, B's excess RSP burden is equivalent to 5 cigarettes per day and C's burden to 27 cigarettes per day. However, this may un-

derestimate the true impact, since many nonsmokers have greater sensitivity to smoke than smokers (*7*).

Nonsmoker D is a flight attendant who spends 40 hours per week, 50 weeks per year on board a commercial airliner with a C_v of 23 air changes per hour. The average P_v on the plane is 150 persons per 1000 square feet. D's RSP burden is nearly twice that of A. Even with one of the best ventilation systems in use, the high density of smokers causes a substantial increase in mass RSP inhaled by D.

The following three considerations may help to place these scenarios into perspective. First, an annual exposure 1.5 times that of A is sufficient to exceed the primary annual NAAQS: the exposure of D, B, and C to RSP all violate the standard by factors of 1.2, 2, and 10, respectively. Second, pulmonary clearance studies show that the half-life of inert respirable particles (2.8 μm in MMD) in the lungs of nonsmokers is ~ 70 days (*36*): residence of RSP in the lungs is prolonged. Third, in a series of pulmonary lavage studies on 400 nonrandomly selected volunteers (250 nonsmokers and 150 smokers) (*37*), two of the nonsmokers had tarry lavage fluids with pigmented pulmonary alveolar macrophages strikingly similar to those found in smokers. In these two volunteers, the levels of aryl hydrocarbon hydroxylase, an inducible carcinogen-detoxifying pulmonary enzyme, were intermediate in value between the levels found in smokers and most nonsmokers. These findings were attributed to the effects of exposure to tobacco smoke (*38*).

Health Policy Implications

There is good toxicologic evidence that elevated levels of particulates in outdoor air, perhaps in combination with other pollutants, cause illness and death during air pollution episodes (particulate levels in excess of 1000 $\mu g/m^3$ per 24 hours). There is much epidemiologic evidence, some of it conflicting, that lower levels of particulates, perhaps in combination with other pollutants, affect respiratory health adversely when exposure to them is sustained (*39*). (This evidence has been used to establish the thresholds for harm on which the primary annual NAAQS for TSP is based.) There is excellent toxicologic evidence that mainstream cigarette smoke causes chronic obstructive pulmonary disease (*7*, *40*). Epidemiological evidence, some of it conflicting, indicates that exposure to tobacco smoke in the home affects respiratory health adversely (*7*, *41*). Finally, there is excellent evidence that mainstream cigarette smoke causes cancer in many organs (*7*). Sidestream smoke is chemically identical to mainstream smoke, and typically is more concentrated (*2*). Coke-oven emissions, which chemically are similar to tobacco smoke, are associated with increased rates of many forms of cancer in coke-oven workers (*42*). Animal studies demonstrate that the particulate phase of tobacco smoke contains numerous potent carcinogens and tumor promoters, initiators, and accelerators (*7*). One of these, benzo[*a*]pyrene, was detected at a concentration of 40 parts per million in ambient tobacco smoke (*13*). Strong evidence supports a correlation between the magnitude of long-term exposure to carcinogens and the incidence of cancer (*43*). Therefore, given the efforts by public health authorities to eliminate involuntary public exposure to saccharin and the fire retardant Tris—which have, respectively, one fifty-thousandth and one-tenth the experimental carcinogenic potency of benzo[*a*]pyrene alone (*44*, *45*)—similar efforts to prevent involuntary exposure to ambient tobacco smoke (*46*) appear justified.

Conclusions

We have defined the probable range of exposure of the nonsmoking public to a common pathological aerosol, cigarette smoke. We showed, both experimentally and theoretically, that under the practical range of ventilation conditions and building occupation densities, the RSP levels generated by smokers overwhelm the effects of ventilation and inflict significant air pollution burdens on the public. Our observations show that levels of RSP in places where tobacco is smoked greatly exceed levels found in smoke-free environments, outdoors, and vehicles on busy commuter highways. Our experimental results are consistent with the large differences in 24-hour average RSP levels reported for smoking and nonsmoking homes in the Harvard Six-City Study (*47*), with a survey of short-term RSP levels in commercial and public buildings in Houston (*28*), and with other studies of tobacco-generated TSP (*7*, *11*-*13*).

Attempts to reduce RSP levels from smoking by increasing the rate of mechanical ventilation or the efficiency of filtration yield exponentially diminishing returns for linear increases in ventilation energy (and cost). Moreover, efforts to conserve energy in buildings will decrease ventilation rates (*48*). Therefore, increased ventilation does not appear to be a solution to the problem. Indoor air is a resource whose quality should be maintained at a high level. Smoking indoors may be incompatible with this goal (*33*, *49*).

Further research is necessary to define the integrated particulate exposure of various segments of the population; compliance with the NAAQS, as indicated by the establishment of outdoor TSP sampling stations, does not imply protection of the public from excessive RSP burdens. Repeated exposure to ambient cigarette smoke imposes air pollution burdens on nonsmokers that exceed the primary annual NAAQS. It appears that the RSP burdens from ambient tobacco smoke are so large that they must be incorporated explicitly in future epidemiological assessments (*50*, *51*) of the relation between particulate levels and morbidity or mortality.

The Clean Air Act of 1970 and its amendments mandate the control of public exposure to outdoor TSP. However, little legislative attention has been devoted to the quality of indoor air—other than the passage of the Public Health Service Act of 1978, which provides for an ongoing study of the health costs of indoor air pollution. Clearly, indoor air pollution from tobacco smoke presents a serious risk to the health of nonsmokers. Since this risk is involuntary, it deserves as much attention as outdoor air pollution.

Note added in proof: A very recent epidemiological study concluded that long-term exposure to tobacco smoke, limited to the work environment only, is deleterious to the nonsmoker and significantly reduces small-airway function to the same extent as smoking one to ten cigarettes per day. This is consistent with scenario B (*52*). *ASHRAE Standard 62-73R*, a proposed standard for ventilation required for minimum acceptable indoor air quality, has been published (see *29*). Using data supplied in the standard, we calculate a C_v of ≤ 1.28 for office buildings where smoking is permitted.

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Materials Science

On 23 May *Science* will publish an issue containing 20 articles devoted to Advanced Technology Materials. The issue will provide a sample of some of the more significant work being conducted in the major industrial research laboratories. The manuscripts have been prepared by leading industrial scientists who have delivered texts that are not only authoritative but also readable and interesting. Upper-division undergraduates, graduate students, and mature scientists will find the issue a valuable sample of applications of fundamental knowledge.

The topics covered include: New Polymers; Conductive Polymers; Multipolymer Systems; Fiber Reinforced Composite Materials; Heterogeneous Catalysts; Glassy Metals; High Strength Low Alloy Steels; Superconductors for High Current, High Fields; New Magnetic Alloys; High Temperature Ceramics; Gas Turbine Materials and Processes; Diamond Technology; New 3-5 Compounds and Alloys; Molecular Beam Epitaxy; New Methods of Processing Semiconductor Wafers; Materials in Relation to Display Technology; Photovoltaic Materials; Magnetic Bubble Materials; Josephson Device Materials; and Biomedical Materials.

Nonsmokers and Cigarette Smoke: A Modified Perception of Risk

The article by Repace and Lowrey (*1*) is an interesting and useful aid for evaluating the exposure levels of nonsmokers to cigarette smoke. The article, however, is flawed because it compares the levels to those of smokers of cigarettes delivering the lowest amount of tar of any brand on the market. This cigarette delivered 0.55 mg of tar in 1978 and accounted for less than 2 percent of the cigarettes consumed that year and for less than 3 percent of the cigarettes sold in 1979 (*2*). The exposure of various nonsmokers was found to be the equivalent of smoking 2 to 27 such cigarettes per day. Twenty years ago, smoking as few as ten cigarettes daily was hazardous (*3*). Hence, the article implies that the health of exposed nonsmokers is seriously jeopardized.

The consequences of smoking on health have not been measured for consumers of the brand yielding the lowest tar, but rather for all smokers. In 1977 the average tar yield of American cigarettes, based on sales, was about 16 mg (*4*). Thus, "nonsmoker B" was exposed to the equivalent of one-sixth of the average 1977 cigarette per day, "nonsmoker C" to one per day, and "nonsmoker D" to one-sixteenth. It might be more pertinent to consider the tar delivery of cigarettes that were smoked about 20 years ago. The average cigarette in 1959 delivered about 29 mg in ten puffs. Thus, the model nonsmokers then would have been exposed to the equivalent of one-third to five *puffs* per day.

To be sure, we do not know that any level of cigarette smoke is harmless. The model nonsmokers were exposed to levels exceeding the primary annual National Ambient Air Quality Standards. Small amounts of smoke are irritating to many nonsmokers and may physically impair some. Such effects by themselves are sufficient cause for concern about passive exposure to cigarette smoke. Risk of cancer and other diseases for which dose is important should not, however, be imputed from comparisons of nonsmokers with the least affected 2 percent of the smoking population.

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Bock raises an important issue: How is the estimated range of exposure of nonsmokers to cigarette smoke translated into an increased risk of incurring the diseases of smoking? However, Bock both misinterprets our analysis and understates the risks. First, we did not derive an exposure-response relation between tobacco smoke and risk on the basis of low-tar cigarette equivalents inhaled by nonsmokers. Rather, we expressed the range of exposure in terms of such equivalents and confined our assessment of risk to the statement that such exposure represents a serious risk to the health of nonsmokers. We justified this not only by comparison with low-tar cigarettes, but also by references to outdoor air standards, pulmonary lavage experiments, coke-oven emissions, and carcinogenic potency. Second, we do not agree with Bock's assertion that comparisons with low-tar cigarettes are inappropriate because such cigarettes are smoked by the "least affected 2 percent of the smoking population." The latest report of the Surgeon General (*1*) advises that "there is no safe cigarette and no safe level of consumption" and that although lower yields of tar and nicotine reduce the risk of lung cancer and "to some extent improve the smoker's chance for longer life . . . it is not clear what reductions in risk may occur in the case of diseases other than lung cancer."

More to the point, Bock's comparisons of nonsmokers' exposures to those of inhaling smokers of high-tar cigarettes are misleading. As we have shown, the exposure of certain nonsmokers to tobacco smoke appears to be similar to the exposure of low-tar cigarette smokers. The cloud of pollution surrounding low-tar smokers appears to be not very different from the cloud surrounding high-tar smokers who are noninhalers. In fact, our low-tar cigarette produces sidestream emissions that are nearly 80 percent of those of the 1977 cigarette and nearly 40 percent of those of the 1959 cigarette (*2*). This is significant because a study begun in 1959 (*3*) has shown that 45- to 54-year-old male smokers who were noninhalers suffered a 41 percent higher mortality rate than male "nonsmokers" (*4*). A number of studies now indicate that carcinogenic, respiratory, and cardiovascular effects result from nonsmokers' exposure to indoor tobacco smoke (*5*).

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sponding to the average reflectivity is 11 ± 4, a moderately high value for a dry planetary surface at radar frequencies. For other parts of Venus where the reflectivity approaches 0.4, K calculated by assuming negligible conductivity and loss rises to 20.

How can these relatively high reflectivities be explained? From Eq. 2 we see that both the real and imaginary parts of ϵ contribute to the reflectivity. It seems extremely unlikely that dielectric losses (L) of naturally occurring dry rocks could be large enough to dominate the reflection mechanism; they normally control only the attenuation with depth (*9*). For the conductivity, S, to be important in reflection, not only must it exceed about 0.1 mho/m at our radar's operating frequency, but the conductive region must extend over an area with dimensions comparable to a wavelength or larger. If such large areas of conductive surface exist, it would seem likely that, at least occasionally, reflectivities near unity would be encountered, since occurrence of the precise frequency-dependent threshold value of S necessary to yield reflectivities consistently between 0.3 and 0.4 seems highly fortuitous.

We are left, then, with the necessity for explaining how the real part, K, of the dielectric constant can be raised to values between 11 and 20. The most likely mechanism is the presence in the rock of conducting inclusions much smaller than the observing wavelength. Meteorites containing relatively large amounts of free iron-nickel mixtures and sulfides display values of K ranging up to 100 or more (*9*). Free metals seem unlikely and in any case could not exist for long in any part of the Venus surface exposed to the atmosphere; highly conducting metallic sulfides would also be unstable to atmospheric exposure (*11*). But if overturning of the first few centimeters of surface proceeds slowly enough, or if material is being steadily stripped off the surface and blown elsewhere, atmospherically unstable minerals could be maintained sufficiently near the surface to be effective in raising the dielectric constant.

Nozette and Lewis (*12*) suggested that chemical erosion takes place at high elevations on Venus, where winds are comparatively strong and atmospheric densities and temperatures relatively low. The fine-grained eroded material is subsequently delivered to lower elevations, where it is chemically modified and possibly compacted. In the process, the putative conducting inclusions are transformed into gases and nonconducting minerals. If the "original" Venus surface contained on the order of 15 percent free metal—or, more likely, pyrite (FeS_2), which has been postulated independent of radar observations to explain the observed atmospheric chemical composition (*11*)—the high values of reflectivity seen at high elevations could be readily explained. Pyrite is one of very few minerals with the necessary high conductivity, having values between 1 and 10^5 mho/m (*8*).

The model that emerges from this discussion requires that the surface of Venus in the vicinity of the highly reflecting regions contain a significant amount of conducting mineral as inclusions in the rock. From a consideration of the present lower atmospheric composition, this material is likely to be pyrite and may be widespread in the original crustal rock, lying in radar view only at higher elevations, where new surface is constantly being exposed. It is also possible that pyrite is preferentially produced in sulfur-rich volcanic material.

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Cigarette Smoke Contains Anticoagulants Against Fibrin Aggregation and Factor XIIIa in Plasma

Abstract. *Gas-phase, water-soluble components of cigarette smoke cause delayed fibrin self-assembly and prevent fibrin cross-linking by inactivation of factor XIIIa (plasma transglutaminase). These anticoagulant properties of smoke are demonstrable in plasma, suggesting they play a role in the pathophysiology of smoking.*

There is little information on the effects of cigarette smoke on important biochemical interactions, though considerable information on its physiologic effects is available. Studies on interactions of cigarette smoke with certain proteins have provided biochemical evidence that specific functions of such proteins are inhibited (*1*, *2*) or augmented (*3*) by smoke components. In view of the shortened half-life of radioactively labeled fibrinogen in dogs exposed to cigarette smoke (*4*) and of the reported increase in fibrinogen in human smokers (*5*), we examined the possible effect of smoke on certain fibrinogen functions in vitro. We found that water-soluble smoke components include two types of anticoagulants: one is directed against fibrin self-assembly and the other inactivates factor XIIIa, thereby preventing cross-link formation (that is, stabilization) in fibrin clots.

Fibrinogen, a plasma glycoprotein, consists of three pairs of disulfide-bridged polypeptide chains termed Aα (molecular weight, ~ 70,000), Bβ (~ 60,000), and γ (~ 50,000). Cleavage by thrombin of arginyl-glycine peptide bonds at positions Aα16 and Bβ14 results in release of small polar peptides A and B from their respective chains: the resulting fibrin monomers polymerize noncovalently and form the fibrin gel.

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factor XIIIa which catalyzes the formation of ε-(γ-glutamyl)lysine cross-links between adjacent fibrin molecules. Certain other proteins are also cross-linked in this way to fibrin, for example, fibronectin (*6*) and fast-reacting α_2-plasmin inhibitor (*7*).

In this work, the effect of cigarette smoke on fibrin aggregation was investigated by the use of water-soluble, gas-phase components of smoke, obtained (*8*) by bubbling the smoke produced from one cigarette through 3 ml of buffer or distilled water. This extract (SE) was incorporated in varying dilutions in the buffer to which fibrin monomer solution (in 0.25 percent acetic acid) was added in order to initiate fibrin aggregation, which was monitored turbidimetrically at 350 nm (*9*). A dose-dependent delay in fibrin aggregation was observed (Fig. 1A). Increasing the amount of smoke extract resulted in decreased absorbance of the clot (1:10 and 1:5 dilution) and (1:5 dilution) delayed the onset of fibrin aggregation. The decreased absorbance (indicating a less opaque or more transparent clot) remained undiminished for several hours. These effects were partly decreased in dialyzed smoke solutions and could not be corrected by incorporating calcium chloride (20 m*M*) in the buffer (not shown).

The fibrin aggregation inhibitor was also examined by use of two differing fibrin preparations with α chains lacking COOH-terminal segments. One fraction, termed I-6 and isolated from plasma, lacked approximately one-fifth of the native peptide from most of its α chains [that is, its α chains were of similar size (*10*)]. Another fraction, termed I-9D, was obtained from an 88 percent coagulable plasmic digest of fibrinogen and lacked longer segments, approximately two-thirds of the native peptide, from most of its α chains (*11*). Neither preparation displayed a delay in fibrin aggregation in the presence of smoke extract (Fig. 1, B and C). In addition, the clot absorbance of I-6 was decreased, suggesting that aggregation was partially inhibited or that this effect was distinct from that of the delay in fibrin aggregation (Fig. 1A). These results implied that the fibrin aggregation inhibitor required the presence of intact α chains to exert its effect. What is more, they suggested that the inhibitor interacted either directly with the α chains of fibrin or with another fibrin site which lost its capacity to interact with the inhibitor following conformational changes induced by the loss of intact α chains.

We also determined whether the Smoke extract consistently prolonged the thrombin clotting times of plasma (Fig. 1D), but this effect could be abolished by decreasing the amount of extract added. In related analyses the clotting times of isolated fibrinogen fractions were examined in plasma containing the extract. To fresh plasma that had been depleted of its fibrinogen by heat precipitation, band I fibrinogen and thrombin and determined clotting times. Consistent with the results on fibrin aggregation (Fig. 1A), the smoke extract prolonged clotting times in samples containing band I fibrinogen, and this defect was not corrected by the presence of calcium chloride (Fig. 1E). Samples containing fraction I-6 fibrinogen exhibited no

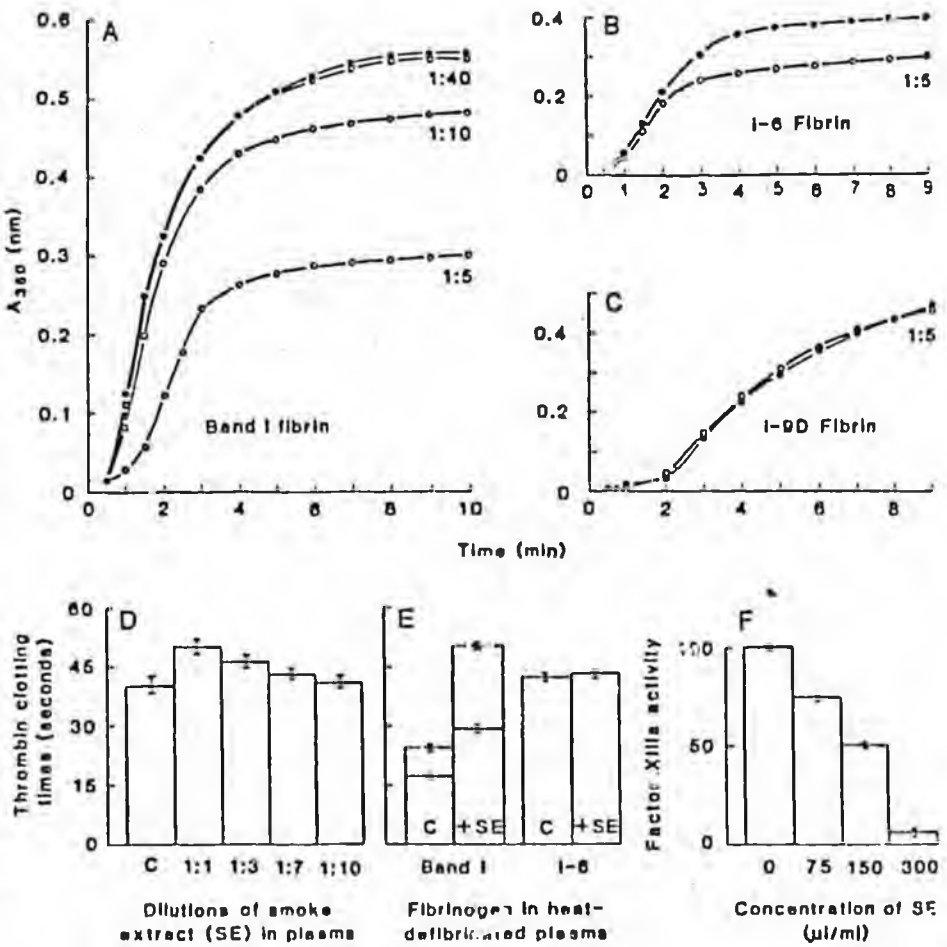

Fig. 1. Anticoagulant effects of smoke extract (*SE*) on fibrin and factor XIIIa. (A) Effect of different dilutions (open circles) on the time course of aggregation of (band I) fibrin which has intact α chains (*10*); closed circles indicate buffer control. After dilution of the fibrin solution with 20 volumes of buffer (0.025*M* tris-hydrochloride, *p*H 7.4, 0.135*M* NaCl) (*9*) containing SE, the final concentration of fibrin was 0.5 mg/ml. The *p*H remained constant during the experiments; in certain control experiments buffer containing SE alone or SE plus human albumin (0.5 mg/ml) in buffer was monitored for several hours and displayed no increase in absorbance (not shown). (B and C) Effect of SE on the aggregation of fibrin which lacks COOH-terminal segments from its α chains: fraction I-6 lacks approximately one-fifth (*10*) and fraction I-9D lacks approximately two-thirds (*11*) from their α chains. The final concentration was 0.4 mg/ml; the buffer was as in (A) and the SE dilution was 1:5. (D) The effects of SE on the clotting times of fresh human plasma (*9*). The height of each column reflects the mean and the brackets the range of at least three determinations in the presence of different dilutions of SE as shown; control plasma is designated *C*. Human thrombin (in 0.01*M* tris-hydrochloride, *p*H 7.4, and 0.15*M* sodium chloride) was added to citrated plasma (to 0.4 U/ml) and the clotting times were determined. (E) Histograms of clotting times for two differing fibrinogen preparations, showing that the inhibitory effect of SE on band I is not present when I-6 fibrinogen is clotted. The experiments were carried out in plasma that had previously been heat-treated (56°C, 10 minutes) to remove its own fibrinogen [which is heterogeneous (*10*)]. To this treated plasma, fibrinogen (either band I or I-6) was added (to 2 mg/ml) and clotting times were determined. Final thrombin concentration was 0.5 U/ml and SE dilution was 1:3 in all experiments (*C*, control). Columns with solid or interrupted lines indicate the presence and absence of calcium chloride (20 m*M*), respectively. (F) Effect of SE on the activity of isolated factor XIIIa, showing inhibition of [^{14}C]putrescine incorporation into casein. The conditions of the assay (*16*) as applied here were as follows: To 0.5 ml of 0.01*M* tris-acetate buffer, *p*H 7.4, containing calcium chloride (20 m*M*), dithiothreitol (5 m*M*), Hammerstein casein (1 percent), different concentrations of SE (as shown), and [^{14}C]putrescine (0.1 μCi/μmole), we added 5 μg of XIIIa. The mixture was incubated for 60 minutes at 37°C, and the reaction was stopped by adding 4 ml of 7 percent cold trichloroacetic acid. The precipitate was assayed by liquid scintillation (*16*).

change in their clotting times in the presence of the extract (Fig. 1E), again in agreement with the fibrin aggregation results. These findings indicated that smoke extract inhibits fibrin aggregation in the plasma environment. Moreover, the similarity of its dose-response whether plasma or isolated fibrin was used implied that competitive interaction between the smoke inhibitor and nonfibrinogen plasma proteins was minimal.

We then examined factor XIIIa–catalyzed fibrin cross-linking in the presence of the smoke extract. Fresh whole blood or plasma fibrin clots are cross-linked and therefore insoluble in 5*M* urea. When such clots were obtained in the presence of smoke extract (1:3 dilution) they were soluble in 5*M* urea (not shown). Similarly soluble were clots obtained from isolated fibrinogen and factor XIIIa in the presence of the extract. Cross-linking inhibition was also demonstrated by subjecting reduced fibrin samples to polyacrylamide gel electrophoresis in the presence of sodium dodecyl sulfate (*12*). In this analysis cross-linking can be shown by the characteristic depletion of α and γ chains and the concurrent appearance of more cathodal electrophoretic bands, termed α-polymers and γ-γ dimer, respectively (Fig. 2, gel 1). The presence of smoke extract resulted in a concentration-dependent inhibition of α-polymer and γ-γ dimer formation (Fig. 2, gels 2 and 3). Moreover, higher concentrations of the extract were required to inhibit the [more rapid (*13*)] formation of γ-γ dimer than that of α-polymers.

The possibility that this inhibitor was directed against (or binding to) fibrin cross-linking sites was examined. Non-cross-linked fibrin clots (*14*) exposed to smoke extract, followed by extensive washing and subsequent exposure to XIIIa, resulted in unimpaired fibrin cross-linking, indicating that the inhibitor did not bind to fibrin. In addition, dialysis removed the cross-linking inhibitor from the smoke extract (Fig. 2, gel 4), and its activity remained in freeze-dried samples.

Factor XIIIa–catalyzed incorporation of monodansyl cadaverine (fluorescence) (*15*) and of ^{14}C-labeled putrescine (*16*) into casein was used to assess the smoke inhibitor effect on XIIIa. These amines compete with the ε-amino group of peptide-bound lysine and prevent its cross-linking to peptide-bound γ-glutamine; thus measurement of casein-bound fluorescence or radioactivity serves to assay XIIIa by use of substrates other than fibrin. Both assays disclosed irreversible inhibition of XIIIa which depended on the concentration of smoke extract and required calcium chloride. Fig. 1F illustrates the results of the experiments with [^{14}C]putrescine. Direct inactivation of XIIIa was demonstrated after it was incubated with smoke extract. That is, the loss of XIIIa activity was proportional to the concentration of the smoke extract, and it could not be reversed by removal of the smoke inhibitor by dialysis or by gel filtration (G-25 Sephadex). By contrast, when the inactive zymogen (XIII) was subjected to the same treatment, it displayed no loss of activity following dialysis and activation to XIIIa.

Thus cigarette smoke contains two distinct coagulation inhibitors: one prolongs the clotting times of plasma by inducing delayed fibrin aggregation and requires the COOH-terminal region of fibrin α chains to exert its effect; the other inactivates XIIIa, preventing the cross-linking of fibrin polymers. By extension, this second smoke inhibitor may similarly affect other physiologically important proteins (*6*, *7*) also known to be cross-linked to fibrin by XIIIa.

We believe that these results permit speculation on potential pathophysiologic effects that may result from the exposure of lungs or other tissues to cigarette smoke. Diminished fibrin cross-linking could result in premature removal of fibrin, by proteolytic enzymes, thereby impairing the role of fibrin in initiating the provisional or temporary extracellular matrix during normal tissue repair. Besides protective fibrin-to-fibrin cross-links, other proteins [such as fibronectin (*6*) and α_2-plasmin inhibitor (*7*)] are cross-linked by XIIIa to fibrin, the latter conferring additional resistance to proteolysis (*7*). The presence of the smoke inhibitor is therefore likely to result in an initial wound matrix lacking the protective effect of such cross-links and consequently susceptible to early degradation. Blood complement abnormalities, suggesting ongoing low-grade inflammation in cigarette smokers (*17*), are consistent with this possibility, and the elevated fibrinogen levels (*5*) as well as the shortened half-life of radioactively labeled fibrogen (*4*) associated with smoking can be explained as a response to such an inflammatory process. What is more, that fibrin(ogen) degradation fragments induce a leukocyte-mediated increase in fibrinogen synthesis in cultured hepatocytes (*18*) is also consistent with this speculation.

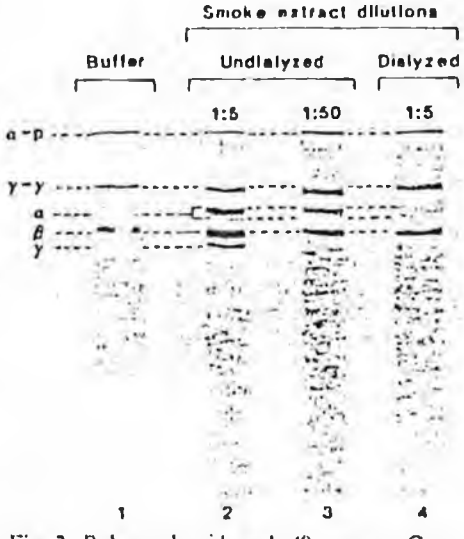

Fig. 2. Polyacrylamide gels (9 percent, Coomassie stained) of cross-linked fibrin clots (*9*) which had been washed and reduced prior to electrophoresis (*12*), showing non-cross-linked α-polymer (gels 2 and 3) and γ chains (gel 2) in clots obtained in the presence of smoke extract (SE). The absence of γ chains in gel 3 reflects the higher rate of γ-γ dimer (than α-polymer) formation (*13*) and indicates that the rate of XIIIa inactivation by the 1:50 SE dilution was lower than that of γ-γ dimer formation. The cross-linking mixture (*9*) contained dialyzed (gel 4) or undialyzed (gels 2 and 3) SE, isolated (band 1) fibrinogen, and factor XIII.

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2 April 1982; revised 28 May 1982

Metabolism of 2,4',5-Trichlorobiphenyl by the Mercapturic Acid Pathway

Abstract. *Carbon-14–labeled 2,4',5-trichlorobiphenyl was found to be metabolized by the mercapturic acid pathway to metabolites that are excreted in bile. About 57 percent of the carbon-14 was excreted in the bile; 30 to 35 percent was present as mercapturic acid pathway metabolites. Mercapturic acid was also isolated from the urine (0.3 percent of the dose).*

Although polychlorinated biphenyls (PCB's) have not been shown to be metabolized by the mercapturic acid pathway (MAP), there is evidence that the MAP may be involved. Biphenyl and 2,2',5,5'-tetrachlorobiphenyl are metabolized to dihydrodiols (*1*, *2*), and the NIH shift occurs in the metabolism of 4-chloro- and 4,4'-dichlorobiphenyl (*3*, *4*). Both of these metabolic routes usually indicate that an arene oxide precursor was formed, and compounds that form arene oxides are often metabolized in part by conjugation with glutathione, that is, by the MAP. Also, biphenyl is known to be metabolized by the MAP (*5*).

The most common indication that a xenobiotic was metabolized by the MAP is the isolation of the appropriate mercapturic acid from the excreta; however, this may also be indicated by formation of metabolites that contain metabolically introduced thiol, *S*-glucuronyl, methylthio, methylsulfinyl, or methylsulfonyl groups (*6–8*). Several chlorinated biphenyls were found to be excreted by mice as metabolites containing methylthio and methylsulfonyl groups (*9*), and chlorinated biphenyl methyl sulfones were also isolated from various tissues (*10–12*) and from milk from a lactating female (*13*). The radioactivity from intraperitoneally administered [^{35}S]cysteine was incorporated into 2,4',5-trichlorobiphenyl (triCB) methyl sulfones that accumulated in the lungs of mice given oral doses of triCB (*14*).

The evidence cited above indicated that some chlorinated biphenyls are metabolized by the MAP and that the common products of this pathway (the corresponding mercapturic acid and its precursors) are metabolized further before excretion. The mechanism was thought to be similar to that described for pentachlorothioanisole, where the biliary MAP metabolites were excreted mainly in the feces as bis-(methylthio)tetrachlorobenzene and nonextractable residues (*15*) and about 1 percent of the dose was present in the urine as *N*-acetyl-*S*-(methylthiotetrachlorophenyl)cysteine. The excretion of triCB methyl sulfide and methyl sulfone in feces from mice given triCB (*9*) prompted a search for MAP metabolites in bile from rats given ^{14}C-labeled triCB. In addition, triCB is a significant component of technical PCB containing 42 to 48 percent chlorine.

Bile collected from four bile duct–cannulated rats given single oral doses of ^{14}C-labeled triCB (*16*) (4 mg, 3.94 μCi per rat) contained 52.7 ± 19.2 percent of the dose after 48 hours, and 84 to 90 percent of the radioactivity was extracted from the bile (*17*). The radioactivity in the extract was separated into six fractions by reversed-phase high-performance liquid chromatography (HPLC) (*18*). The fractions were examined for possible MAP metabolites by converting the xenobiotic moieties to the corresponding triCB-*S*-acetates (*19*). Fractions 4 and 5, which contained 4.5 and 33.5 percent of the biliary ^{14}C, respectively, yielded significant quantities of triCB-*S*-acetates. Small quantities were obtained from fractions 1, 2, and 3. Two isomeric triCB-*S*-acetates were separated by gas chromatography (*20*) and found to have retention times and mass spectra identical with those of authentic triCB-3-*S*-acetate and triCB-4-*S*-acetate (*21*). After derivatization (*22*) of fraction 4, the derivatized triCB-*S*-cysteinylglycine and -cysteine conjugates were isolated by HPLC. After derivatization of fraction 5, the methyl ester of triCB-*S*-(*N*-acetyl)cysteine was isolated by HPLC. From the mass spectral data (*23*), structures were assigned to these derivatives and to the underivatized mercapturic acid as outlined in Fig. 1 (*21*).

About 30 to 35 percent of the radioactivity in the bile was present as MAP metabolites, showing that the MAP is a major metabolic pathway for this chlorinated biphenyl and that significant quantities of the metabolites are available for further metabolism by intestinal enzyme systems.

The fate of biliary triCB MAP metabolites in the intestine could not be deduced from the identities of the metabolites reported previously (*24*); therefore, the metabolic fate of ^{14}C-labeled triCB in

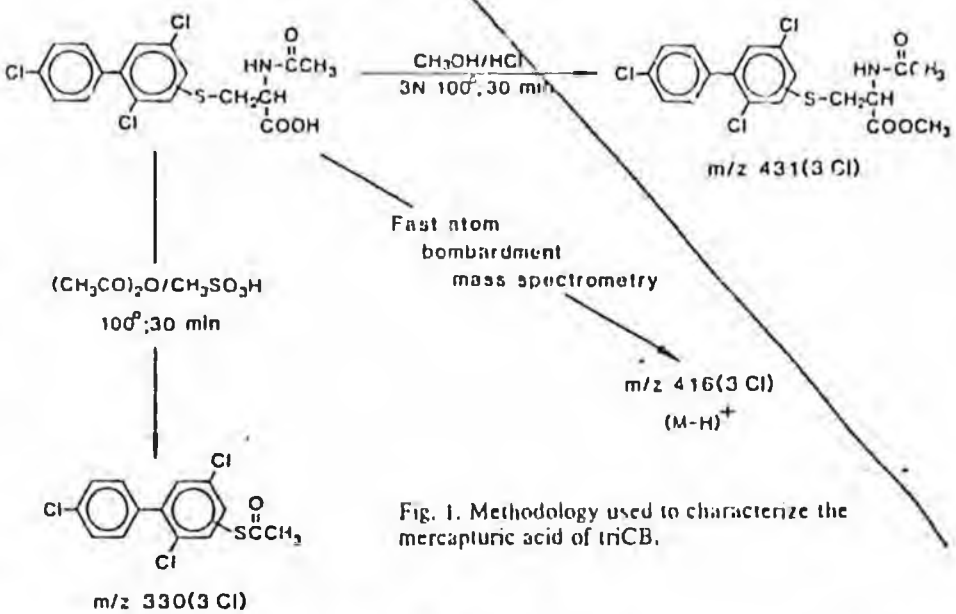

Fig. 1. Methodology used to characterize the mercapturic acid of triCB.

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Anchorage Daily News - 22 Oct 82

Non-smoker gets disability pay

The Associated Press

SAN FRANCISCO — A non-smoking federal worker transferred to an office with several smokers is entitled to about $20,000 in disability pay because she developed breathing difficulties, a federal appeals court ruled Thursday.

Irene Parodi cannot "perform her job due to its location in a smoke-filled office," the 9th U.S. Circuit Court of Appeals wrote in what the woman's lawyer called a landmark ruling.

"Unlike a person with a physical limitation, a person with an enviromental limitation can physically perform the assigned work in a proper environment," the court said.

"She is as disabled for her job at her assigned worksite as she would be had she actually suffered permanent and severe chronic bronchitis or another physically disabling disease," the court said.

The court said that unless Parodi is offered a job in a smoke-free office within 60 days, she will become eligible for disability retirement benefits of about $500 a month.

Mike Copies for Committee.

The Menace of Indoor Pollution

As we insulate, weatherstrip and seal our homes to conserve energy, we are also sealing in pollutants that are odorless, invisible and sometimes highly dangerous

By Lowell Ponte

On a brisk autumn day in 1979, James L. Repace, a policy analyst for the Environmental Protection Agency (EPA), used himself as a guinea pig. He carried a sophisticated air-monitoring device with him throughout the day—at home and at work. It was at his side as he drove through rush-hour traffic in smoggy Washington, D.C. Like him, it took in gusts of bus exhaust as he lugged it along city streets. To Repace's surprise, the monitor revealed that he suffered the most severe air pollution while waiting for his dinner to cook in his own kitchen.

Many scientists warn that pollution *inside* our homes and offices frequently reaches concentrations that would be illegal out-of-doors. Since the typical American spends 90 percent of each day indoors, pollution here is clearly a serious problem. And it is aggravated by the well-motivated efforts of energy-conscious consumers to insulate, weatherstrip and otherwise seal living areas to reduce fuel costs.

Unfortunately there have been few, if any, efforts on the part of either government or environmentalists to publicize the problem or to warn citizens of possible danger. The information presented here is published to acquaint readers with the facts so that they can take individual measures to reduce the risks.

Gas appliances. Most Americans live today in homes with fires burning night and day—the tiny blue pilot lights in furnaces, water heaters, clothes dryers, stoves and ovens fueled by natural gas. Gas burns far cleaner than the coal and wood stoves it replaced; it almost never pours visible smoke into homes. But where there's fire, there's smoke. Scientists are finding that some combustion products emitted by gas appliances may be more hazardous than we suspected.

Researchers at California's Lawrence Berkeley Laboratory measured the pollution output of gas stoves cooking at 350° F. and found that in kitchens with poor ventilation, the room's air could soon contain as much carbon-monoxide and nitrogen-dioxide gas as the Los Angeles sky on a smoggy day.

Carbon monoxide can be deadly. Just before last Halloween, a Los Angeles father turned on his home gas heater, apparently neglecting to check its vent. Days later he and his two daughters were found dead, asphyxiated by carbon monoxide. Each year in the United States, roughly 1700 people die in similar accidents.

When carbon monoxide enters our lungs, it binds to the red blood cells' hemoglobin 210 times more strongly than oxygen does. Thus even a small amount of carbon monoxide impairs our blood's ability to carry oxygen.

The EPA has set a standard of nine "parts per million" (ppm)—nine molecules of carbon monoxide mixed with every million molecules of air—as the maximum safe exposure to carbon monoxide during an eight-hour period. Victims of cardiovascular disease can suffer the pains of angina at this level. When carbon monoxide reaches 15 ppm, some subjects experience ominous changes in heart rhythm. At 30 ppm some will suffer distortions in vision and physical dexterity that impair driving.

Yet a study by the National Academy of Sciences reports that the air in home kitchens over short periods of up to one hour can reach up to 50 ppm carbon monoxide "as a result of ordinary use of a gas range, especially when the cooking utensils divert or quench the flame."

Gas flames also create oxides of nitrogen, including nitrous oxide (laughing gas) and nitrogen dioxide. The EPA's permissible annual pollution average for nitrogen dioxide in the air is only 0.05 ppm. At 0.1 ppm, it will cause breathing difficulties. At 0.5 ppm, this gas has been shown to lead to a greater susceptibility to disease in animals.

Some scientists suspect that nitrogen dioxide is the prime cause of increased respiratory illness among people in homes with gas stoves. Dr. Frank E. Speizer of Harvard University Medical School studied 8000 children, ages six to nine, half of whom lived in homes where parents cooked with gas and half where electricity was used. He found evidence that children from homes using gas stoves suffered up to 15 percent more respiratory illness than did the other group.

Kerosene heaters. In 1982 Americans bought more than 5 million portable heaters fueled by kerosene. Used to warm single rooms, the heaters vent the chemical by-products of their flame directly into the surrounding air. Test results published by *Consumer Reports* last October revealed that in a small room kerosene heaters put an average of 13 ppm of carbon monoxide into the air, and as much as 1.8 ppm of nitrogen dioxide (many times the EPA permissible level). A kerosene heater could also produce up to 12 ppm of sulfur dioxide in room

air—as much as 85 times the EPA health standard for outdoors. At even one ppm of sulfur dioxide, mild asthmatics can suffer breathing problems within 10 minutes, and at 5 ppm they can experience asthma attacks.

Home fireplaces. Many Americans have reverted to fireplaces for winter warmth. But fireplace chimneys are often poorly vented, and the fires built in them can raise carbon-monoxide levels in the home and produce exotic gases such as benzo[*a*]pyrene, a known cancer-causing chemical. Family members often toss into a fireplace anything that will burn, without knowing that the colored inks of the Sunday funnies, for example, can put a trace of arsenic vapor into the air. Other objects such as wood treated with preservatives can emit toxic fumes.

Insulation. In the 1970s more than half a million Americans fought the energy crunch by insulating their homes with urea-formaldehyde foam. Formaldehyde vapors in concentrations as high as 0.5 ppm or more have since been measured. At as little as 0.1 ppm of formaldehyde, some persons are hit by throat and upper-lung irritation, and at 0.25 ppm asthmatics and children face a serious health risk.

Fire-resistant asbestos, another widely used insulating material, is now recognized as a serious threat to health. Its fiber dust is easily inhaled into the lungs, where its crystals will cause development of fibrous tissue. Now banned in industry, fraying asbestos insulation continues to pollute the air in schools where an estimated three million American children attend classes. Replacing asbestos-backed vinyl tile floor covering can also be a hazard: if the tile is ripped up incorrectly, asbestos dust is released into the air.

Air-conditioning systems. These are sources of living air pollution—germs, fungi and amoeba. The bacterial infection that is known as Legionnaire's disease infected its victims in Philadelphia in 1976 and in other places since then by spawning in air-conditioning systems.

Air-conditioning systems and humidifiers often spread lung ailments through office buildings—especially modern, energy-efficient ones that have windows that can't be opened. These white-collar enclosures also absorb pollution from underground garages.

While factory workers have government agencies regulating pollution in their work place, most white-collar workers have not received such attention. Yet even photocopiers give off a common smog ingredient, ozone, along with other chemicals. Typically these machines are put in backroom offices with little ventilation.

Aerosol sprays. When we disperse insecticides indoors with spray cans, tiny droplets can remain in the air for a few hours, after which the chemicals will settle into the carpet and furniture. Each time an

infant crawls across a rug, subtle clouds of hazardous dust may waft up. Hair and deodorant sprays, oven cleaners and other aerosols also create clouds of chemicals that can be inhaled and ingested into the bloodstream.

Tobacco smoke. While smoking one cigarette, a person inhales more than 3600 different chemicals, including carbon monoxide, formaldehyde and nitrogen dioxide. Young children in homes of smokers suffer significantly higher rates of respiratory illness and receive hospital treatment more often than other children.

In offices where people smoke, scientists have measured levels of inhalable particles many times more concentrated than a factory would be allowed to put into the surrounding outside air in a 24-hour period. The heavy smoker also poses a special hazard in closed automobiles, where airspace is so limited that carbon-monoxide levels can quickly approach 35 ppm, an amount that could affect the driver's ability by distorting his hearing, perception and motor skill.

Radiation. The soil and common building materials such as granite, brick, cement and concrete can be naturally rich in radioactive radon and its by-products polonium 218, lead 214 and bismuth 214. Ironically these are the preferred construction materials for energy-efficient passive solar homes. What has alarmed scientists is that the houses act like closed jars, trapping natural radon gas and causing it to build up.

In Mount Airy, Md., the National Association of Homebuilders created a prototype for the ideal energy-efficient home of the future. Here the old-fashioned, drafty American house was replaced by a dwelling so airtight it exchanged air with the outdoors only about twice in 24 hours.

Trouble was, Mount Airy happens to have a concentration of radon gas, which was producing radioactivity inside the prototype at levels several times higher than might be found inside an ordinary home—levels eight times higher than those deemed safe by government guidelines.

In 1981 an editorial in the *Journal of the American Medical Association* called for "a temporary halt to our home-energy conservation programs" until we knew more about the risks of indoor air pollution. One of the facets needing study is how *mixtures* of pollutants can combine to become more dangerous. Those who smoke and are exposed simultaneously to either radiation or asbestos dust, for example, are apparently at greater risk than separate exposure could cause.

But just when we need to know more about synergistic effects and other unknown dangers, the federal government has cut by more than half its meager research budget for indoor pollution. Until more is known, it is simple prudence for individual Americans to take what-

ever steps they can to protect themselves from the already proven dangers. What can *you* do to reduce indoor pollution?

• Be alert when using a fireplace, kerosene heater or gas stove. A poorly adjusted gas stove can give off carbon monoxide at a greater rate than a properly adjusted one. One sign of a gas range needing adjustment: the tip of the flame is yellow instead of blue. Have a service man correct it.

Ideally you should vent stoves and ovens *outside*, preferably with an exhaust fan that switches on automatically whenever the appliance is in use. If you use a kerosene heater, set it inside your fireplace and let the chimney vent its combustion gases.

• Smokers should confine their air pollution to one room of the house and make sure the window is open. Better still, they shouldn't smoke inside at all.

• If there is a risk of radon gas in your area (a special threat in basements), consider sealing off any leaks or cracks in the foundation of your house. Basement drains are also a potential entry point.

• Consider using an "indoor-outdoor heat exchanger." These devices, which cost from $300 to $1000 and can be installed like a window air conditioner, use the heat from air that they pump *out* of your home to warm the fresh outdoor air that is simultaneously pumped in. They bring in fresh air on a cold winter day while conserving up to 70 percent of a home's costly heat. They can also be installed with filters to remove smoke and other pollutants.

Our home is our castle, but in trying to make it a perfect environment, we've filled it with some dangerous conveniences and made it a bit too snug to breathe in safely. Short of new gadgetry to clear inside air, good ventilation is the quickest remedy for indoor pollution.

For information on reprints of this article, see page 214

Flight Paths

At the Nashville airport I purchased a ticket to Dallas. The flight left from Gate 7, and I asked the ticket agent how to get there. "Take the escalator to the upper level and turn right," he said. "Gate seven is about halfway to Dallas."

—Contributed by Ronald Sanders

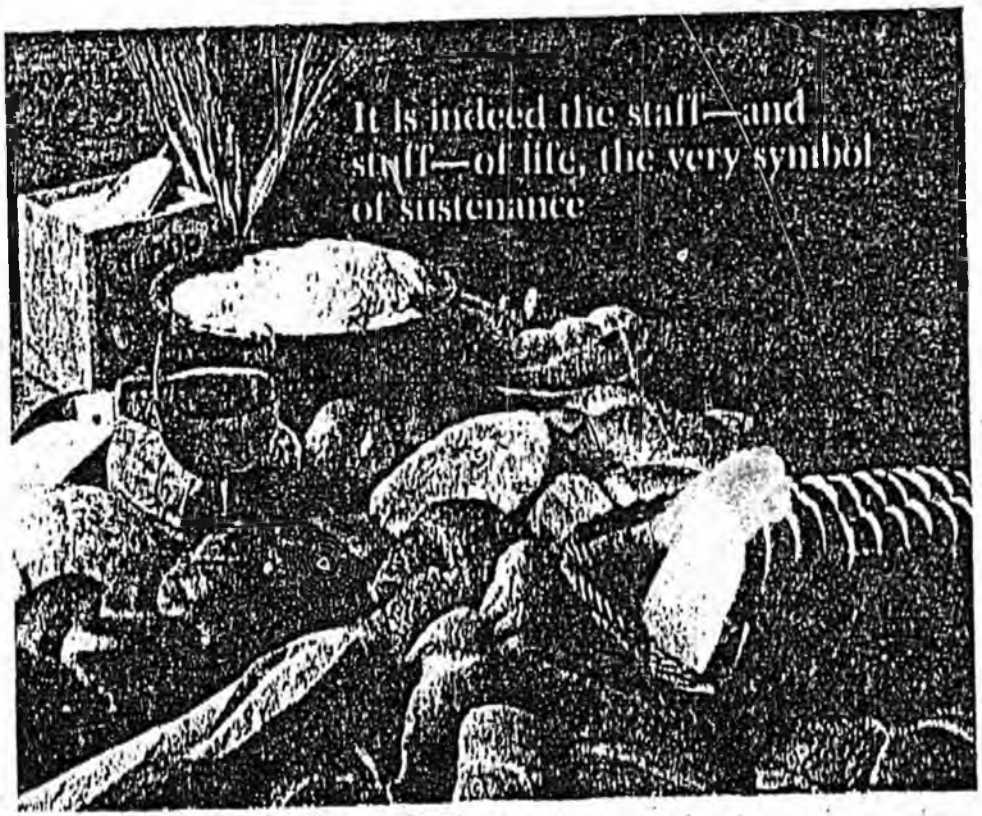
I was in an airport bar with a friend when we were approached by a slightly tipsy stranger. He asked my friend, who has an accent, where he was from. "Central America," my friend said.

"Really? So am I!" the man said in a booming voice.

"What part?" my friend asked.

"Kansas City."

—Contributed by Garry M. Schaeffer



Our Daily Bread

By Jack Denton Scott

The slightest whiff of baking bread starts taste buds blossoming. Its siren scent has even driven men to acts of madness: refused bread that he smelled baking in the little town of Byron, Mich., an enraged Indian launched one of the worst massacres in the state's history in 1827.

Like a country's flag, bread signals nationality at the world's tables: Mexico's tortilla; India's flat *chapati* and puffy *puri;* Scottish scones and oatcakes; England's light cottage loaves; Ireland's soda bread; the flat, pocketed Middle Eastern pita; America's corn bread.

And loaves appear in as many

PHOTO: IRENE STERN

Anti-smoking bill becomes hot issue

HB84

Times 3-18-83

Associated Press

Juneau — A representative who puffed on a cigarette during hearings regarding new smoking regulations apparently was not blowing smoke into the face of the law.

Rep. Ramona Barnes, R-Anchorage, says she was not violating the state's new smoking regulations during a recent House Judiciary Committee meeting, as was charged in a complaint filed by the Alaska Department of Environmental Conservation.

Roberta Banko of Juneau filed a complaint after seeing Barnes smoking during the committee hearing on a bill to prohibit smoking in a variety of public places. The bill being considered would increase the number of public places in which smoking is banned.

Barnes was cited for violating a year-old Alaska statute prohibiting smoking "in a room, chamber, place of meeting or public assembly under auspices of the state, or a department or agency of the state while public meeting held under the auspices of the state, or a department or agency of the state, is in progress." The penalty, if convicted, is $15.

The House majority leader said she was smoking in an approved smoking area. She also said that others were smoking during the meeting.

Barnes denied Banko's charge that she (Barnes) "was being very theatrical — obviously very arrogantly smoking in the meeting. It was apparent to everyone there that she was making a statement about her distain for the proceedings," said the woman, an active supporter of smoking regulations.

Barnes said, "I smoke all the time."

Banko said she was upset that Barnes was smoking in the same room as several people who had come to testify about how smoking aggravated their health problems.

Barnes said a smoke-eater was sitting next to her to prevent the smoke from bothering others.

HB 84

Smoke signals

IF ONE'S ACTIONS can be deemed a statement of that person's position on any given topic, Rep. Ramona Barnes can smoke to her heart's content at legislative committee hearings — and do so under constitutional immunity.

A Juneau woman filed a complaint with the Department of Environmental Affairs against Mrs. Barnes, accusing her of theatrically and arrogantly smoking a cigarette during a meeting of the House Judiciary Committee. At the time, the committee was considering a bill to ban smoking in public places.

BUT ALREADY on the books, as Roberta Banko protested in her complaint, is a year-old law that prohibits smoking "in a room, chamber, place of meeting or public assembly under auspices of the state, or a department or agency of the state while a public meeting held under the auspices of the state, or a department or agency of the state, is in progress."

Said the complaint by the Juneau woman, an active supporter of smoking regulations: "She was being very theatrical — obviously very arrogantly smoking in the meeting. It was apparent to everyone there that she was making a statement about her disdain for the proceedings."

AH, BUT there's the rub. By her own admission, Ms. Banko acknowledges that Rep. Barnes "was making a statement."

And the Alaska constitution specifically says: "Legislators may not be held to answer before any other tribunal for any statement made in the exercise of their legislative duties while the legislature is in session. Members attending, going to, or returning from legislative sessions are not subject to civil process and are privileged from arrest except for felony or breach of the peace."

For Rep. Barnes, apparently, politics still means a smoke-filled room now and then — notwithstanding any law to the contrary.

HB84

Smoking mad about lawsuits

He said. She said. They said. You said. And now I say I'm sick of the Alaska state government using my tax dollars for trivial lawsuits such as the one mentioned in your paper of March 15 regarding Rep. Ramona Barnes having a complaint filed against her by DEC for smoking in a ". . . room, chamber, place of meeting . . . under auspices of the state . . ."

How much is this nonsense going to cost the taxpayer? Wouldn't it have been simpler to ask her to please stop smoking rather than letting it slide so the state could secure solid "evidence" that she abused the law? Being as Juneau is all state government, why not just stop selling cigarettes altogether. That way there would be no chance of abusing the law.

With the ridiculousness that is going on in Juneau these days most of us are wonderng what is really being smoked!

— *Laura M. Schafer*

4/13/83

Letters

Smoking

Dear Editor:

House Bill 84 "An act relating to smoking in public places and vehicles," is not a bill just for the health conscious person who is into aerobic exercise, jogging, etc. It is more than a statement by the 2/3 population, which does not smoke, to the 1/3 that does, to give us a place to breathe smoke-free air. The bill: addresses the health hazards of second hand smoke, acknowledges the recent court decision concerning rights of nonsmokers, and takes note of the cost of smoking to the public.

It has been estimated the State of Alaska pays increased expenses for its smoking employees in excess of three million dollars annually. Alaska also pays workers compensation to people who lose work time because of smoke conditions making them too ill to work.

Some private industry is addressing the smoking problem now. IBM, 3M, and AT&T have set up separate areas for their nonsmoking employees. Some employers have set up separate areas because of court, decisions.

In 1976, a New Jersey court ruled against New Jersey Bell Telephone Co. stating that companies have a duty to give workers a smoke free work area if they want it. In August 1982, Lanny L. Vickers vs. the Veterans Administration, the United States District Court, Western District of Washington, ruled that a person who is physically sensitive to smoke qualifies as handicapped person as defined in 29 U.S.C. 706(7) (B). In October 1982, the United States Court of Appeals, ninth circuit, (Irene C. Parodi vs. Merit Protection Board) ruled a person is eligible for voluntary disability retirement benefits if that person is medically not able to perform the job because of sensitivity to smoke in the work place and the employer does not offer "... Suitable employment in a safe environment ..." Werner H. Peterke, a former Social Security administration worker, was awarded approximately $700 every two weeks in employee compensation payments on the grounds that he suffered from the smoke of fellow employees at work.

Medical research has linked ambient smoke to medical problems in nonsmokers. Children of parents who smoke are more prone to bronchial ailments. Nonsmoking wives of smokers have higher lung cancer rates than nonsmoking wives of nonsmokers.

House bill 84 represents an issue whose time has come. It has moved from arguments between smokers and nonsmokers to a bill before the legislature. It could very well go on to become law. If you have an interest, contact your legislator at Pouch V, Juneau, Alaska, 99811.

Gary Miller
P.O. Box 2436
Juneau, Alaska



Anchorage Daily News photo illustration by Jim Lavrakas

Stickers like this are available from the Alaska Lung Association, and obstetrician Lydia Eastburn is always pleased when she can give one to a patient who's kicked the habit.

Pregnant smokers are 'smoking for two'

By GWEN BARCUS
Daily News reporter

☐ "Warning: The surgeon general has determined that cigarette smoking is dangerous to your health."

For the expectant mother that precautionary notice on every package of cigarettes is doubly important. When she smokes she is smoking for two.

Dr. Lydia Eastburn, an Anchorage obstetrician and gynecologist, says about 40 percent of the pregnant women she sees are smokers.

"When I'm seeing a new patient, one of my first questions is 'Do you smoke?' The next is 'How much?' "

If the answer to the first question is yes, Eastburn says she goes on to explain why now is the time to quit. About one-fifth of her patients heed her advice, and probably an equal number cut down on the number of cigarettes they smoke.

Eastburn is trying to increase those numbers. "I know most mothers want to do everything possible to assure their baby's health," she says. "There are some things over which they have no control, but stopping smoking is one thing they can do, and it's very important in the development of the fetus."

The pregnant woman who smokes increases the risk of having a miscarriage — smokers are almost twice as likely to miscarry as women who don't smoke, according to Peter Fried and Harry Oxorn in their book "Smoking for Two."

Eastburn says another risk is that the baby will die during pregnancy, and low birth weight also appears to be closely related to smoking during pregnancy.

Although there may be several reasons why some newborns are smaller than average, virtually all scientific studies on the subject show a clear relationship between cigarette smoking and lower infant birth weight. And, according to Eastburn, smaller babies mean smaller heads and smaller heads mean smaller brains. She is convinced that the incidence of learning disabilities is higher in babies of smokers.

There are some 200 chemicals in cigarettes, many of which are harmful even for the adult smoker. For the unformed developing life, dependent on its mother for the oxygen and nourishment it needs to develop properly, Eastburn says the results of smoking by the mother can be tragic.

"A couple of years ago I had a patient whose fetus was not growing at the proper

See Page F-3, SMOKING

pared to her husband, arriving in Palmer in 1936 to work as a surgery nurse at the Matanuska Valley Hospital. It was a "far cry from Chicago," where she had taught school, "but I fell in love with the country — and also with Walter. We were married in Seward in 1938."

Walter had gone to Palmer in 1935 while the Matanuska Colonists were enroute there. Following his graduation from Washington State College, now Washington State University, he was working for the Alaska Rural Rehabilitation corporation.

Elsie recalls their honeymoon prospecting trip to Lake Chalatna — with a friend of Walter's. She refers to the trip as "Three on a Honeymoon." They flew into the remote area with a dismantled river boat which they planned to reassemble on arrival. The river ran in a narrow bed between high bluffs and the two men pulled Elsie upstream from the top of the

The Rondy King and Queen Regent will celebrate their 45th anniversary this year, and except for a year spent Outside when Elsie's mother was ill, and time spent in New York while Walter was earning his master's degree at Hunter College, the two have lived in Alaska all that time.

During World War II, Walter served as paymaster and timekeeper with the Army Transport Service based in Seward. He spent 15 years as a teacher at Seward High School, and when the family moved to Anchorage in 1966, taught history in evening classes at the University of Alaska, Anchorage.

Prior to his retirement five years ago, he was Command Historian for the U.S. Army Alaska, and still pursues his interest in history, particularly Alaska history.

Work for Elsie has included teaching, nursing and administration, and



Anchorage Daily News/Paul Brown

Walter and Elsie Blue were chosen by the Pioneers of Alaska to be King and Queen Regent of the 1983 Fur Rendezvous.

13 years operating "The Blue Shop," a women's and children's clothing store in Seward. She served as administrative assistant at Seward General Hospital and was administrator of the Careage House and Ridgeview Manor, both former nursing homes in Anchorage. She retired in 1975, and devotes much of her time to the activities of The Pioneers of Alaska Auxiliary 4. Vitally interested in the welfare of Alaska's long-time residents, she serves as a member of the State of Alaska Pioneer Homes advisory board.

Virginia, their only child, was born in Seward, and now lives in New York City where she is a writer. She was an original member of the Anchorage Community Theater.

When asked what sort of vehicle they would like to ride in during the Rondy parade Feb. 19, Walter Blue replied, his blue eyes twinkling, "a garbage truck."

"Our entire life in Alaska has been like this," Elsie laughs. "There's never been a dull moment."

Smoking and pregnancy don't mix — for you or your baby

Continued from Page F-1

rate," the doctor recalls. "I felt sure it was because she was a heavy smoker. When she went into labor she was rushed to the hospital and in her nervousness smoked almost a package of cigarettes on the way. Her baby was born dead."

The most active and powerful ingredient in cigarette smoke is nicotine. The amount of nicotine in a single cigarette, if injected rather than inhaled, would paralyze the brain centers controlling the heart and breathing and cause rapid death. In the case of a pregnant smoker, her nicotine-constricted veins narrow the blood vessels that supply the fetus, thus decreasing the amount of oxygen and "food" it receives. In addition, nicotine actually crosses the placenta and directly affects the fetal cardiovascular system.

Frier and Oxorn say "for every cigarette smoked by the mother, the fetus gets the equivalent effects of two."

Eastburn says another danger for the pregnant smoker becomes evident if the baby has to be delivered by cesarian section. The procedure requires a general anaesthetic, which presents a risk to both mother and baby if the mother is a heavy smoker, especially if smoking continues right up to the time of birth.

It helps to stop smoking even a week before the baby is born, says Eastburn. And the new mother should work hard to maintain her resolve, she adds, because the "involuntary smoker" — anyone breathing the air around the smoker — is exposed to even more of tobacco's harmful constituents than the smoker. The smoke from the burning end of a cigarette has *twice* as much nicotine as the inhaled smoke, and *five* times as much carbon monoxide.

According to the Alaska Lung Association, babies in the first year of life have higher rates of pneumonia and bronchitis if their parents smoke at home. And children of smoking parents are twice as likely to smoke as children of non-smokers.

The Lung Association distributes an informational packet for the prospective mother who smokes, and Eastburn gives one to each of her smoking patients. (They are also available from the association at 406 G St., telephone 272-2332. A $1 donation is requested.) She files their charts in blue folders so they're easily distinguishable, and everytime she sees a "blue folder" patient she encourages her to quit.

Other than quitting "cold turkey," what can the smoking mother-to-be do to lessen the danger to her baby?

"If she has tried to quit and has failed, she should at least cut down to no more than 10 cigarettes a day," says the doctor. "If lighting up a cigarette is important to her, perhaps she could light up, take one puff, then throw the cigarette away."

But it would be even better, Eastburn says, if she could say what is printed on a sticker distributed by the lung association: "I quit because I love my baby."

DETAILS No. 16 April 27, 1979

The New England Journal of Medicine

February 9, 1978



MASSACHUSETTS DEPARTMENT OF PUBLIC HEALTH

Edited by
JONATHAN E. FIELDING, M.D., M.P.H., AND PEARL K. RUSSO

SMOKING AND PREGNANCY

JONATHAN E. FIELDING, M.D., M.P.H.

In 1957 Simpson published her original finding that babies born to women who smoke during their pregnancy are on the average 200 g lighter than neonates born to nonsmokers.[1] More than 100 articles on this relation have led to general acceptance that, on the average, smokers' babies weigh 150 to 250 g less than nonsmokers' babies, and twice as many of the former weigh less than 2500 g. Differences in weight are in direct proportion to the number of cigarettes smoked and are independent of other infant and maternal factors known to influence birth weight.[2]

Further information may be obtained from Jonathan E. Fielding, M.D., Commissioner, 600 Washington St., Boston, MA 02111 ([617] 727-2700).

Until recently, however, it had been difficult to explain why observed perinatal mortality ratios (smokers to nonsmokers) varied from lows of 1.01 and 1.03 in sample sizes of 11,700 and 9800[3-5] to highs of 1.28 and 1.40 in respective sample sizes of 15,800* and 12,500,†[6,7] with an intermediate value of 1.12 in a sample of 19,000.[8]

A series of articles analyzing data from the Ontario Perinatal Mortality Study of all single births in 10 Ontario teaching hospitals during 1960-61 indicates progress in untying this Gordian knot.[2,9,10] The study of 51,490 births, including 701 fetal deaths and 655 early neonatal deaths, supplemented usual clinical records with interviews of mothers in the hospital, interviews with anesthetists and attending physicians and autopsy records.[11] Results relate perinatal mortality to social, demographic and physical maternal factors, prenatal care, histories of prior pregnancies, complications of pregnancy, details of anesthesia, delivery and hospital course and infant survival up to eight days. The interviews of mothers included questions on the maximum amount smoked during pregnancy, expressed as packages per day. The study found that perinatal mortality was 27 per cent higher in infants of smokers as a group than in those of nonsmokers. Risk, however, varied greatly according to other factors, including maternal height, weight before pregnancy, hospital pay status (public or private), birthplace, age, parity, previous pregnancy history and sex of the child. When simultaneous adjustments for these variables had been made, smoking less than one package per day increased perinatal mortality risk by 20 per cent versus 35 per cent for smoking more than one package per day.

Controlling for the same variables, the authors found that the increased risk of both in utero deaths and neonatal deaths is concentrated in the period of 20 to 28 weeks' gestation. Increased neonatal mortality rates seem to result from the increased risk of very early delivery rather than lower survival at a particular gestational age. The authors estimate that 30 per cent of the excess perinatal death associated with maternal smoking is due to increases of 25 and 24 per cent respectively in placenta praevia and abruptio placentae for those who smoke less than one package per day and of 92 and 68 per cent for heavier smokers. Other studies have also found an average increase of 28 to 48 per cent in these conditions for smokers.[12-15]

Crucial to an understanding of risk is the differential risk of smoking based on maternal characteristics. The Ontario study found that the excess perinatal death risks of less than 10 per cent were associated with low parity, young age and normal hemoglobin. By contrast, older mothers of higher parity who were of public pay status or who suffered from anemia (hemoglobin less than 11 g per deciliter) had in-

*For neonatal deaths only.

†Approximate.

creased perinatal mortality risks of 70 to 100 per cent when they were heavy smokers.[2,11] The characteristics other than smoking that are associated with differential risk may be important in reconciling the varying risks to smokers observed in the large-scale studies. Differences in population selected for study, as well as different methods of adjustments to match smokers and nonsmokers, appear to have contributed to the wide variation in perinatal mortality ratios for smokers vis-à-vis nonsmokers.[4] In addition to the growing evidence for adverse late outcomes of pregnancy, a recent article in the *Journal* provided convincing demonstration that pregnant smokers have a significantly increased risk of spontaneous abortion, 1.8 to 1.0, when compared to nonsmokers.[16] Not yet fully explored are the combined risks of smoking and alcohol ingestion, although there is no reason to believe that this combination yields fewer adverse effects than the sum of those two behaviors. Also unresolved is whether the effects of maternal smoking on fetal growth and development carry over into childhood.

Although the risks recently reported need confirmation by others, the growing evidence linking maternal smoking to increased perinatal mortality argues strongly for augmented attempts to apprise women of childbearing years of the potential risk of smoking in the outcome of pregnancy. The Surgeon General's 1973 report on the Health Consequences of Smoking estimated 4600 perinatal deaths in the United States annually as a result of maternal smoking.[17] Unfortunately, despite a drop from 52 to 39 in the percentage of men over 21 who smoke, the percentage of women of childbearing age who smoke is growing.[18] A careful cohort study of teen-age girls found that the proportion of regular smokers among girls 15 to 16 years of age had risen from 9.6 per cent in 1968 to 20.2 per cent in 1974, and among girls 17 to 18, an increase from 18.6 to 25.9 per cent in the same period.[19]

Although too little is known about what motivates smokers to stop, some evidence suggests that pregnant women may be particularly susceptible to educational and motivational technics aimed at cessation of smoking. Several studies indicate that most women are sufficiently concerned about the outcome of pregnancy to adhere to medical advice regarding helpful and harmful activities.[20-22] One survey showed that 62 per cent of young women smokers believed that smoking can harm an unborn child; most reported that they either had cut back (32 per cent) or had stopped smoking (35 per cent) during pregnancy.[23] The frequency of contact between pregnant women and health professionals provides an unusual opportunity for education about the dangers of smoking and positive reinforcement for reduction or elimination of this habit.

The Massachusetts Department of Public Health has made the following recommendations to help reduce smoking among pregnant women:

1. In the initial prenatal visit, physicians and nurses should include cigarette smoke in the usual list of drugs that are known to affect adversely the outcome of pregnancy and are to be avoided. Mention may be made that during pregnancy, when use of all pharmacologic agents is to be kept to a minimum, cigarette smoke, which contains over 1000 "drugs," is of special concern.

2. Pregnant women should be told that evidence to date suggests that they are at especially high risk for detrimental effects of smoking on the pregnancy if they have had a history of previous perinatal loss, bleeding or placental complications, if they are anemic or if they are in the older age group.[24]

3. Physicians should consider obtaining a carboxyhemoglobin or expired carbon monoxide level on every patient during the first prenatal visit. If this test is performed, the patient should be shown abnormal laboratory results and told that the high level, which poses a risk to the fetus, can be lowered to the normal range only by cessation of smoking.[25] The success of cessation efforts can be monitored by repeat testing at later prenatal visits. When levels remain elevated, physicians should reinforce their previous strong advice.

4. Any woman with bleeding at any time during pregnancy should be questioned closely on whether or not she smokes, and the dangers of smoking to the fetus re-emphasized.

5. Physicians should obtain a list of reputable local smoking cessation clinics and provide this information to pregnant patients who smoke, with the suggestion that these peer groups may help the patients stop smoking.

6. Health facilities and physician offices should not permit smoking in any areas where staff and patients come in contact. Prominent "No Smoking" signs should be displayed in all patient areas, and abstinence enforced.

7. Blue Cross and commercial insurers should consider inclusion of coverage for approved smoking cessation activities in all subscriber contracts. At a minimum, such activities for pregnant women should become a part of standard master medical coverage. Medicaid should also cover such programs. Insurers should develop reasonable criteria for vendors of these services that address cost, program content, personnel and standardized reporting on results. As an alternative, insurers could consider reinforcing information on the dangers of smoking generally by charging lower premiums to those individuals and families who would sign a certified affidavit that they are nonsmokers. (This approach has worked with life insurance.)

The Massachusetts Department of Public Health is recommending to the Federal Trade Commission that the warning on cigarette packages be revised to read as follows: "Cigarette smoking is hazardous to your health and can cause fatal cancer, heart disease and lung disease. Smoking during pregnancy increases the [illegible] risk of death of the un-

Abstract from Early Human Development

RANTAKALLIO, P., University of Oulu, Finland

"The effect of maternal smoking on birth weight and the subsequent health of the child." (Early Human Development 2/4: 371-82, 1978)

"The effect of maternal smoking during pregnancy on birth weight was studied in 12,068 births, the mothers in 1819 of which were regarded as smokers. The children of the smokers were compared with those of controls of similar age, parity, marital status and place of residence. Maternal smoking reduced birth weight in a dose-related manner. Birth weight was least affected among young, primiparous mothers who smoked only slightly, a difference which was, however, entirely caused by those mothers who stopped smoking for the last 3 mth of pregnancy, and this subgroup showed similar figures for postneonatal mortality and morbidity up to the age of 5 to those of their controls.

Postneonatal mortality was higher in the total group of the smokers than among their controls, the primiparous or young mothers not differing in this respect from the others. Morbidity up to the age of 5 was significantly higher ($P < 0.001$) among the children of the smokers, the children of the primiparas and young mothers being affected in a similar way to the others. The low birth weight infants of the smokers had a higher mean birth weight and lower perinatal mortality than the low birth weight infants of the controls, but morbidity up to age of 5 and postneonatal mortality were higher among the smokers in respect of both low birth weight infants and others."

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Current Comments®

EUGENE GARFIELD
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Nicotine Addiction Is a Major Medical Problem: Why So Much Government Inertia?

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Readers of *Current Contents*® are probably familiar with my feelings about the smoking habit.[1,2] I particularly dislike being forced to suffer the choking pollution so casually created by most smokers. On the other hand, I'm especially appreciative of smokers who understand my concern. Many other non-smokers feel the same way. It doesn't make sense to us that smokers maintain their habit in obvious disregard of its dangers and costs. Nevertheless, this is not without an understanding that the smoker has a need which can at best be delayed only temporarily.

The dangers and costs attributed to smoking are legion. Smoking is linked to a number of diseases: cardiovascular disease; cancers of the throat, lung, mouth, pancreas, and urinary bladder; peptic ulcers; decreased fertility; and increased still-births and spontaneous abortions.

Society loses the most from the smoker's habit. A few years ago the National Institute of Drug Abuse (NIDA) published an important volume on smoking behavior research. In this work, on which I will draw heavily below, Bryan Luce and Stuart Schweitzer (UCLA School of Public Health) state that smoking results in a major drain of the nation's economic resources in both direct health care costs and the costs associated with lost earnings due to sickness and death.[3] The NIDA estimates that smoking-related illnesses cost the American public nearly $8 billion in 1975. Lost earnings resulting from smoking-related illnesses and deaths totalled nearly $18 billion. By comparison the $170 million cost of smoking-caused fire damage seems small. But the National Fire Prevention and Control Administration says that smoking-caused fires account for 47% of all fire-related deaths and injuries.[4]

Most smokers will agree that their habit is dangerous and costly. The majority of them *want* to quit but few are successful. A 1967 survey of adult and adolescent smoking habits in Britain indicated that 77% of current smokers want to stop.[5] However, only one in five stops permanently.

Many non-smokers find it especially ironic and annoying that smokers often dislike the habit. There is a common view that smokers are simply weak people with little will-power. This is a distorted view of a *significant medical problem*. Smoking is more than just a bad habit that is socially and physically unacceptable to non-smokers. Smoking is a *powerful physical addiction*. I agree with M.A.H. Russell, senior lecturer and honorary consultant psychiatrist at Maudsley Hospital Addiction Control Unit, UK, who asserts, "Cigarette-smoking is probably the most addictive and dependence-producing form of... self-administered gratification known to man."[6] Unfortunately the evidence is

growing that the statement is now equally applicable to women.

I cringe when I recall a recurring scene from my youth. A beautiful young woman, dressed as a cheerleader, would stand on the corner outside my high school giving away sample packets of cigarettes. Her supply was inexhaustible: she was never empty-handed. She and her colleagues were the predecessors of the drug-pushers who now pervade the educational establishment. Whether she realized it or not, she was pushing the powerful addictive drug called nicotine.

Unfortunately, most people do not acknowledge this *addictive* aspect of smoking. In fact, the 1964 Surgeon General's Report alleged that smoking is not an addiction because "there are no withdrawal symptoms, no tolerance is developed, and no anti-social behavior is elicited."[7]

Not surprisingly, the Tobacco Institute in Washington, DC, the chief lobbying group for the tobacco industry, also maintains that smoking is not an addiction. Ann Browder, assistant to the president of the Institute, explains: "If nicotine is addictive, we wonder why 30 million people have given up the habit since 1964. Cigarette smoking is not addicting, as opposed to being habituating, in that an individual who began smoking a pack or a pack and a half a day doesn't have to increase that consumption in order to satisfy the desire to smoke. Our stand is certainly that it is habituating but not addictive."[8]

The distinction the Tobacco Institute draws between habituation and addiction has been called artificial by the World Health Organization (WHO). In its reports, WHO has replaced both terms with a single term: drug dependence.[9] Since the 1964 Surgeon General's Report was issued, there has been convincing research to show that at least one component of tobacco, nicotine, is a dependence-producing drug, as defined by WHO: "a drug having the capacity to produce a state of psychic or physical dependence, or both."[7]

WHO defines drug dependence as "a state, psychic and sometimes physical, resulting from the interaction between a living organism and a drug, characterized by behavioral and other responses that always include a *compulsion* to take the drug on a continuous or periodic basis in order to experience its psychic effects, and sometimes to avoid the *discomfort of its absence* [withdraw]. *Tolerance* may or may not be present."[9]

Tolerance is indicated when the addict becomes accustomed to the initial effects of the drug. Also, it usually involves a physical change of some kind in the addict. In its third report on smoking and health, the Royal College of Physicians stated that nicotine fits the definition of tolerance: "When inhaling cigarette smoke for the first time most people have symptoms such as palpitations, dizziness, sweating, nausea and vomiting.... If they continue to smoke, they acquire a tolerance to nicotine, and over a period of two or three years the smoking pattern usually changes so as to allow a high intake of nicotine.... The metabolic type of tolerance also occurs, in that smokers metabolize nicotine more efficiently than do nonsmokers."[10]

Withdrawal symptoms are those "which follow sudden withholding of a drug to which a person has become addicted."[11] (p. 1483) The regular smoker feels withdrawal symptoms an hour or two after his last cigarette. Stanley Schachter, professor of psychology at Columbia University, observes, "Restrained smokers appear to be chronically more irascible, to nibble more, and to have poorer concentration than unrestrained smokers."[12] Russell adds, "Such [withdrawal] symptoms as depression, anxiety, restlessness [and] intense craving...have frequently been described.... More recently, objective physical withdrawal effects have been clearly demonstrated and include sleep disturbance, sweating, gastrointestinal changes, drop in pulse rate and blood pressure, disturbed time perception..., impaired performance at simulated driving...and EEG changes."[5]

Jerome Jaffe, professor of psychiatry at Columbia, points out that society is unwilling to recognize these withdrawal symptoms as signs of illness. Jaffe reported, "Even where severe withdrawal phenomena do occur...society generally has taken the view that such signs and symptoms are 'normal' and to be expected under the circumstances. While tremulousness following abrupt withdrawal of alcohol, or autonomic disturbances from withdrawal of opiates are equally to be expected under the circumstances, they are, for some reason, not regarded as equally 'normal under the circumstances' and are viewed as representing signs of illness."[13] In short, alcohol addiction is now viewed as an illness (it wasn't always) but smoking has not yet reached that stage in the public's perception of the problem.

Smokers are compelled to smoke to avoid the disagreeable symptoms of withdrawal. Compulsion is "an irresistible impulse to perform some act contrary to one's better judgment or will."[11] (p. 332) Not only did 77% of the British smokers surveyed in 1967 want to quit but they also gave good reasons for quitting.[5] Smoking causes physical harm and discomfort, is expensive, and is increasingly disapproved of by other people. Since only one in five of those surveyed quit permanently it is clear that the majority of smokers act against their will and better judgment. For them, cigarette smoking is a compulsion.

I can't avoid mentioning here a certain woman Ph.D. who makes frequent TV and public appearances on behalf of the Tobacco Institute. She is one of those one in five who smokes out of free will. She is well paid to convince smokers that they should cling to their habit in spite of the statistical evidence that smoking is disease related. None of those statistics applies to them, she says. My contempt for such misuses of science is difficult to express briefly. While it may not matter what she says to today's smokers who can't quit even if they want to, it does matter that she convinces individuals who haven't started smoking that they may be exempt from the laws of probability.

Like other addictive compulsions, cigarette smoking leads to antisocial behavior when the available supply is restricted. Gwenda Blair, writing in *Mother Jones*, claims: "Data from Germany after World War II indicates that even under conditions of extreme deprivation, and in situations where food rations were under 1,000 calories a day, smokers still bartered eats for smokes.... Smokers' need for cigarettes was so overwhelming that some also... prostituted themselves or stole other goods that could be traded for cigarettes."[14]

It should be obvious that cigarette smoking is not a minor vice. Nicotine, "the most powerful pharmacological agent in cigarette smoke,"[15] is in the same chemical family as the poison strychnine, the medicine quinine, the hallucinogen mescaline, and the addictive pain relievers cocaine, opium, morphine, codeine, and heroin. Russell suggests that nicotine is addictive because it stimulates the hypothalamus, which is considered to be the "pleasure center" in the brain. He states, "It is likely that the special feature of dependence-producing potential possessed by some psychoactive drugs [including nicotine] rests in their ability to either directly or indirectly influence the hypothalamic reward system."[5] He claims that stimulation of the hypothalamus is a more powerful reinforcer of behavior than hunger, thirst, and sex.[5]

Some researchers now believe that nicotine is the *most* powerful addictive drug. Russell also quotes a survey indicating that 85% of those who smoke

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more than *one* cigarette develop a dependence on nicotine.[5] Thus, nicotine addiction is established even more quickly than heroin addiction.

Robert Dupont, former director of the NIDA, estimates that nearly 70% of people who ever smoked (and are still alive) still smoke on a regular basis.[14] He compares this to less than 15% of people who ever used heroin and are still alive and addicted. Once established, the smoking habit is harder to break than addiction to heroin. In fact, heroin addicts consider nicotine to be more "needed" than heroin. In 1974, 278 British opiate users were asked to list a number of drugs in subjective order of greatest personal need. They rated nicotine above heroin, methadone, amphetamine, barbiturates, LSD, cannabis, alcohol, and tea or coffee.[5] I'll have more to say about coffee in a future essay.

There are several reasons why nicotine is more addictive than other dependence-producing drugs. First, the beginning smoker inhales around 200 puffs of nicotine-rich smoke in his or her first pack of cigarettes. The heroin user starts off with only one or two shots a week. The pack-a-day smoker "shoots up" more than 50,000 nicotine puffs in a year! Behavioral psychologists agree that the strength of a habit increases with the frequency of its reinforcement.[5, 16] Nicotine forms the most addictive habit because it is reinforced most frequently.

A second factor affecting habit strength is the timing of reinforcement. After heroin enters the bloodstream through intravenous injection, it takes almost 14 seconds for it to reach the brain. Nicotine enters the bloodstream through the lungs—it takes only eight seconds for it to reach the brain and pay off its pharmacological rewards.[5] The Australian Council on Smoking and Health says this rapid absorption explains why nicotine is so much more dependence-producing than alcohol and other drugs.[16] I suppose when you are addicted, six seconds faster can seem like a vast improvement.

Third, cigarette smoking is a socially accepted habit. The Royal College of Physicians contrasts the role of cigarette smoking with alcohol and barbiturate use in society. "Most people who drink alcohol or take sleeping pills are able to do so in moderation or on special occasions and can tolerate periods without them. It is only a small minority who become alcoholics or addicts. Furthermore, dependence on alcohol or barbiturates usually occurs in settings of psychological or social difficulty. With cigarette smoking the situation is altogether different. The most stable and well-adjusted person will, if he smokes at all, almost inevitably become dependent on the habit."[10]

As any cigarette smoker will tell you, it is much harder to kick the habit than to acquire it. Since the 1950s, when public withdrawal clinics first opened in the Scandinavian countries, there have appeared almost as many smoke control programs as there are brands of cigarettes. Jerome Schwartz, chief of health care research at the California Department of Health, Sacramento, classifies the variety of smoke control programs into nine categories: individual counseling by health professionals; educational programs sponsored by schools or commercial groups; group control activities sponsored by volunteer associations, foundations, commercial groups, and health departments; medications used to help smokers overcome their habit and withdrawal symptoms; hypnosis; behavioral conditioning; self-control procedures; mass-media programs on the risks of smoking and ways to kick the habit; and community efforts to involve neighborhoods and cities in educational programs.[17]

Given the evidence for physical dependence on nicotine, you would think that smoke control programs concentrate on handling withdrawal problems. However, most do not. It is no coincidence that these smoke control programs show disappointingly low cure rates. Schwartz surveyed 123 smoking cessation programs and found that only one-fifth had success rates of 40% or better. Nearly one-half of the programs had success rates of 21% or *less*. This would seem to be the expected rate based on the British data. Only three of the programs in the survey claimed success rates higher than 70%.[17]

Edward Lichtenstein, professor of psychology at the University of Oregon, Eugene, admits that behavioral programs are generally unsuccessful because they ignore nicotine dependence as one of the more important clinical aspects of smoking behavior. He says, "Most social learning workers, including myself, consistently ignore the implications of a large body of research which suggests that nicotine is a primary reinforcer for smoking and that, at least for heavy smokers, there are internal or physiological stimuli that drive the smoking habit.... The challenge for social learning workers is to incorporate this information on physiological processes into treatment programs. At least, we should probably cease trying to persuade smokers that their habit is entirely or even largely under external stimulus control."[18] (Incidentally, a social learning worker is a psychologist who studies the situational and environmental factors influencing a person's behavior.)

The Five-Day Plan, organized by the Seven-Day Adventist Church, uses the educational and group approach. While it acknowledges nicotine as an addictive drug, the Plan encourages people to overcome their habit by changing their attitudes toward both themselves and cigarettes. V.E. Gardner, medical director of the Five-Day Plan at the Philadelphia Better Living Center, explains, "We strongly follow concepts of nicotine as an addictive drug with very definite withdrawal symptoms. The plan is designed to minimize these. The withdrawal symptoms clear up in less than one week if no cigarettes are used. We get together each day to support each other during the few days of withdrawal. During this time, focus is placed on changing attitudes—toward the cigarette and towards oneself. The cigarette must not be looked upon as a reward or its denial a deprivation. New health promoting behavior gives a new self image in which smoking is out of character. It is these changed attitudes that are of real help in preventing a return to smoking, for the psychological craving persists even after the physical withdrawal symptoms have cleared."[19]

Smokers in the Five-Day Plan attend five consecutive group-therapy sessions, each lasting one and one-half hours. Sessions include lectures, films, and discussions on the psychological aspects of the smoking habit and ways to overcome it. The Five-Day Plan also encourages physical fitness exercises, balanced diet, hot and cold showers, and abstention from tea, coffee, and alcohol. A series of monthly follow-up meetings is organized to make sure that those who have quit or cut down on their smoking continue to do so.

During the five days of treatment, between 70% and 100% of the participants stop smoking. But, Schwartz points out, "Follow-up reports indicate that recidivism is high.... In-residence treatment at the Seventh Day Adventist Church's facility in St. Helena, California, showed 35% cure rates a year afterward."[17] Data from ten Five-Day Plan programs in different parts of the world show cure rates ranging from 16% to 40% after periods ranging from six months to five years.[17] Again we find that only about one in five can break the habit. Evidently, the changes in attitude and self-image are less permanent than the persistent physiological craving for nicotine.

The Smokenders program uses a behavior modification approach to help

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the smoker kick the habit. The program is designed with nicotine addiction in mind. Participants are given "assignments"—things to do which physically and psychologically recondition them for withdrawal. Lois Rafalko, vice president for program and training at the Smokenders headquarters in Phillipsburg, New Jersey, explains, "We do things to deal with the physiological withdrawal in advance. It happens gradually so that on the day when the member stops smoking he doesn't have the physical trauma of 'cold turkey.'"[20] Cold turkey is the abrupt cessation of drug intake, at which time the drug user begins to feel symptoms of withdrawal.

Participants in the Smokenders program attend eight weekly sessions, each lasting two hours. The first five sessions are smoking sessions—participants can smoke as much as they choose. But participants must stop smoking completely on the day after the fifth session. The last three sessions are reinforcing meetings that prepare reformed smokers to live without the habit. As long as people are not smoking they can return after the program ends for continued reinforcement.

The gradual and "painless" modification of smoking behavior makes the Smokenders program one of the more successful methods. Rafalko claims that 80-85% of those who complete the program are not smoking at all at the end of eight weeks. At the end of one year, 70% of those who quit smoking in the program are still not smoking. These data have not been confirmed by independent reviewers. Let's hope it is true.

Any program that tries to change smoking behavior faces a number of problems from the start. First, little has been done to identify tried and true smoke control techniques. Instead, researchers are influenced by currently popular ideas. Lichtenstein states, "The complexity of smoking permits a wide variety of social learning strategies and tactics to be applied. Unfortunately, choices often seem to depend on current fads or trends rather than flowing from a clinical and empirical analysis of smoking behavior itself."[18]

Also, behavioral smoke control programs must treat a large number of variables. Phoebus Tongas, chief psychologist at the Kaiser-Permanente Medical Center, says, "[Smoking] is under the control of such a great number and variety of discriminative stimuli and reinforcers that the task of eliminating it for long periods of time is immensely difficult as every research study has shown."[21] Lastly, the number of variables is multiplied by the number of individual smokers. John Pinney, director of Health, Education, and Welfare's Office of Smoking and Health, remarks, "If we've got 53 million smokers, we've got 53 million different kinds of smokers."[22]

Treating the cigarette habit as a physical addiction makes the problem of kicking the habit simpler. Instead of balancing hundreds of behavioral stimuli and reinforcers, the researcher can concentrate on the relatively few physiological motivations behind nicotine dependence. Pinney says, "If we can find some common denominators between [smokers]—biochemical or otherwise—then that will help."[22]

Schachter, suggests one such biochemical common denominator. He was interested in the smoker's claim that smoking is calming in stressful, anxious situations. Using a number of experimental subjects and strategies, Schachter found that "the smoker's mind is in the bladder."[12] Stress results in making the urine more acidic. When the urine is acidic nicotine is flushed out of the body. The smoker begins to feel withdrawal symptoms as the level of nicotine in the body decreases. "When the urine is alkaline, only one fourth as much nicotine is excreted as when the urine is acid; this is explained by the fact that nicotine base is reabsorbed from an alkaline urine."[12]

Psychologist James Fix at the University of Nebraska in Omaha thinks this biochemical fact can be practically applied to kick the smoking habit. Fix and co-workers divided a total of 42 subjects into three groups. One group took daily supplies of sodium bicarbonate, which decreases the acid content of the digestive system. Another group took vitamin C, which raises the acid content. The third group took a placebo.[23]

After five weeks, Fix reported "totally astonishing" results: "The bicarbonate group's average daily consumption dropped drastically to 0.14 cigarettes, while the vitamin C group and placebo groups went to 7.8 (up slightly from the fourth week); moreover, bicarbonate takers proved more likely to abstain from smoking for a 48-hour period."[22] Fix cautions that these results are preliminary, since many variables were not controlled in the experiment. However, they are encouraging enough to support the original idea that increased alkaline content makes the craving for nicotine less compelling.

There is good reason to be excited by Fix's advance in smoking control research. Any advance that does not depend upon a behavior modification program is bound to be valuable. It should encourage basic research scientists and others involved in clinical research because a cure for the disease is attainable. Whether we are coming closer to a cure is debatable. The Australian Council on Smoking and Health asserts, "An effective cure [for smoking] would rank with the discovery of penicillin in its effect on the health of mankind."[16] Russell adds, "The effective control of cigarette smoking is potentially the most important health measure that is likely to be open to us for the rest of this century."[5]

But it will not be enough to cure smokers of their addiction to nicotine. It is even more important to prevent people from getting hooked in the first place. This involves changing society's attitude toward the smoking habit. Recently, WHO's Expert Committee on Smoking Control recommended that "nonsmoking be regarded as 'normal social behavior' and [that] governments ...step' up antismoking legislation to establish that objective.... The purpose of smoking-control measures is not to punish the smoker but to encourage recognition of non-smoking as the norm."[24] Perhaps when the smoke clears a bit society may see the wisdom in this position.

Not only would it be illegal for cigarette companies to dispense samples to adolescents, but the government would be ready to discourage tobacco growing. One cannot ignore the economic significance of the cigarette industry. Cigarettes will be produced even if all forms of advertising and promotion are banned. Tobacco production will stop only when a better use for tobacco crop land is found. This is difficult to achieve because thousands of small farmers derive high income from a few acres of tobacco. The complicated nature of agricultural politics makes it doubtful that we would curtail tobacco farming to eliminate "the most lethal of all breathable pollutants."[16] Consider how difficult it has been to prevent production of the poppy plants needed to produce heroin.

The tobacco industry is well aware of society's changing attitude toward the cigarette habit and of the increasing restrictions on cigarette advertising and smoking in public places. As a result, it has turned to Third World countries in order to bolster declining sales. Blair points out that the Third World market is ripe for exploitation because it is "eager for symbols of Western affluence and still unencumbered by health and advertising regulations."[14]

Another recent article noted that the US government is helping the tobacco industry market cigarettes to the Third World at the same time it helps to alleviate malnutrition there. "Perhaps the most cynical foreign use of tobacco by the United States has been the inclusion of tobacco in the...'Food for Peace'

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program of concessional agricultural sales to needy countries. This supposedly humanitarian aid program has been manipulated...to get rid of unwanted domestic tobacco surpluses, to introduce foreigners to US tobacco in hopes of nurturing a future commercial market, and to provide aid to politically favored governments."[25]

But the Third World countries are not as ignorant as the tobacco industry hopes. China, the world's leader in cigarette production, recently acknowledged the link between cigarette smoking and cancer. "The government's first anti-smoking effort is aimed at discouraging the young from taking up the habit.... The reason for the push may not be hard to find: the World Health Organization estimates that cancer is the leading cause of death in China."[4] In Egypt, where smoking has increased *tenfold* in the last two years, cigarette advertising has been banned from television and smoking has been restricted in theaters and on planes. Cairo's English-language newspaper, *The Gazette*, angrily observes, "The tobacco industry, like the arms industry, is looking increasingly to the vast Third World for what sensible people would call suckers with a death instinct."[4]

While the tobacco industry here and abroad will not be dissuaded from pushing nicotine in the Third World, the US government can be. Lest anyone be left with the impression that it is only the profit-minded capitalists who are guilty of indirect mass murder through smoking-induced disease, let me remind you that the smoking habit is equally tolerated, supported, and prevalent in the socialist countries. Clearly it is a problem that is not going to be solved by cliches.

It is also clear that the amount of research directed at a solution is pitifully small. The total research budget this fiscal year for the NIDA is $48 million; only $1.7 million of that is going into smoking research.[26] Not only should there be direct allocations to basic and applied research from tobacco revenues, there should also be allocations for prevention programs and treatments. Two bills, now in the Pennsylvania General Assembly, would allocate funds from the sales of cigarettes for such worthwhile programs. One would place a 1 cent per pack tax on cigarettes to be paid to the Pennsylvania Cancer Control and Research Fund.[27] The other would place a 1 cent per pack tax on cigarettes to be paid to the state's Department of Health for grants and low interest loans for the payment of cancer treatment.[28] Let us hope that these bills and others like them will be passed.

I do not deny that I feel strongly about this issue. My father and three of my best friends died of smoking-related diseases. Every one of them would have supported every effort, financial and otherwise, that would assure future generations would be spared the agony of emphysema and other smoking-induced diseases.

At the same time we need to recognize that the smoking problem is a very complicated issue. Simplistic formulas for resolving the complex issues involved are not enough. While I would never support legislation to outlaw cigarette production, there is not adequate moral justification for cigarette production merely because people want it. The tobacco industry has an obligation to help support research that will produce disease-free alternatives for future generations.

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*Reprinted in Garfield E. *Essays of an information scientist.* Philadelphia: ISI Press, 1977. 2 vol.

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My Turn

Juneau Empire - 4-5-83

In Defense of Smokers

By MICHAEL COHERN

During the last week I have been inundated by propaganda from anti-smoke lobbyists. I would like to tell you what has transpired to me during this last week that has me wondering why no one has looked at the other side of this one-sided debate.

Late last week as I sat having my morning coffee downtown, I heard two people discussing House Bill 84 (an amendment to existing law on smoking in public places, to include places of employment). I asked if they smoked. They most certainly did not. I asked if any of them drove a motor vehicle. One wouldn't answer, but the other told me she owned a '74 VW. I asked if it used oil. She said it smoked a little.

"Isn't this a little hypocritical?" I asked. "A car puts out more pollution and smoke in one hour than a smoker does in a month! Ever have an accident? How much property is damaged each year by drivers? How many 'innocent' people are hurt every year? Ever known anyone to die from an accident? These are typical complaints of non-smokers to smokers."

She suddenly she realized she was late for work, and promptly left.

The next morning, I heard a young man voice the opinion that smoking in public was terrible, as he had to smell it.

"Have you ever had to set next to a drunk? Does he smell better?" I asked him. "What about a woman who uses so much perfume she makes you choke at twenty feet? Ever smell someone who doesn't shower very often? What about sitting next to someone with bad breath?" He wasn't so nice. Instead of him leaving, he told me where to go.

A few days later, I met two ladies talking about the "foul air around people that smoke." One said she had "rights" to clean air. I told her foul air came with industry, cars, big cities and even refuse burning — as well as a tiny bit from cigarettes.

Rights? Doesn't everyone have rights? It was quoted (incorrectly) that only 40 to 45 percent of the population smoked. What is it that they are not saying? Only that this figure represents everyone, regardless of age. The true fact is well over 50 percent of the adult population smokes. The minors don't count, as they can't legally purchase cigarettes anyway. So why is the minority (of voting age) telling the majority what it can or cannot do? Doesn't the majority rule?

Smokers are already cornered, restricted, punished and regulated. Are non-smokers? Can non-smokers get a ticket for abstaining in certain public places? Are there smoking areas where non-smokers are not permitted? Do airlines save the majority (and the best) seats for smokers? Are non-smokers ridiculed for not smoking? Are non-smokers harassed and hounded to smoke by smokers? Do smokers get the best tables in restaurants segregating smokers from non-smokers? Can smokers

... It was at this point that I finally realized that they were no longer sitting next to, or even near me — they had moved!

Yesterday morning, again having my morning coffee - I was handed a petition for support of the anti-smoke HB 84. Ah-ha! In it, was the statement that smoking was harmful, increased employer costs (through higher costs for health, fire and life insurance, as well as worker compensation coverage.) The person that handed it to me must have already heard of me, though, because he didn't stay to debate the petition. A clear case of hit-and-run!

Now about the petition; someone hasn't done their homework, obviously. Anyone who ever smoked knows that it is far more dangerous to tell a smoker he can't smoke than to let him smoke! Who wants an angry smoker, suffering from withdrawal, to work with?

And who will pay all the lost man-hours a worker will have if he or she has to stop working to run to an obscure, hidden-away smoke room for 5 to 10 minutes every time he or she wants to smoke? What smoker can concentrate on their work properly when they are suffering physical as well as mental withdrawal? The costs for these lost minutes will far outweight any minor additional insurance costs.

Today, at lunch, I listened to a nurse describe her patients. (Not personal information, just general information.) I heard her say that more than 75 percent of the patients at her hospital do not smoke. Hmmm Perhaps people should smoke to lower overcrowding of our hospitals. Maybe non-smokers are the principal cause of exhorbitant hospital costs. (If they smoked, there wouldn't be as many in the hospitals.)

I don't really believe that last paragraph, but any honest person must admit, the statements are just as reasonable as most complaints non-smokers have against smokers. Come to think of it, if you check our hospital you will find the majority of ill patients is there because of auto accidents, alcohol-related diseases and accidents and infections. Very few patients are there from tobacco related problems.

What have I been saying? Listen to me, please. I firmly believe that we all should take a closer look at the other side of HB 84. Is this a minority trying to force a majority to do their will? Will this bill hurt more than it helps? Will it save Alaska money?

I believe each of us has some habit — eating too much, drinking, foul or abusive language, drugs, unmentionable sexual diversities, or any number of other problems. How would you like to be harassed because of yours?

I find it incredible that a society that accepts the murder of the unborn, the public drunkenness and many other far more serious problems should attack the personal rights of an individual to smoke.

Let's quit finding fault with others or their habits. Everone has a habit. What's yours? Cars? Alcohol? Drugs? Are these really safer than smoking? I think not.

Cigarettes are not the No. 1 preventable killer we've been led to believe. Cars are. Followed closely by alcohol. Then abortions. Then possibly tobacco. So should we ban the car? What about alcohol? (That was done once. Anyone remember prohibition? Increased crime, violence, even bloodshed. Did it help? Will prohibition of cigarettes produce the same effects? You bet!)

Perhaps we should ban obnoxious perfumes, outlandish cosmetics, people with bad breath, or maybe blue-eyed people with blue suits. Tax collectors are offensive — let's ban them! How about nasty teachers? Why not make cuss-rooms for all our foul-mouthed friends?

Or should we just stop to realize that the anti-smoke campaign is just as ridiculous as those already mentioned?

Honorable members of the Legislature, I ask that you re-evaluate this highly volatile topic. I ask for rejection of HB 84 in its attack on personal freedom. If you feel you cannot support this opinion, at least leave it up to the people, those who elected you. Let us decide.

Again I ask, let this be put before the people — or reject this willful destruction of personal freedom.

Every Alaskan concerned with the erosion of our personal human rights, should be upset with this House Bill 84, not just smokers. Today, it's smoking. What rights will be under attack tomorrow? If you feel this is an attack on your personal freedoms, contact your local representative and senator today. Let him know how you feel — today! Tomorrow may be too late. The address to write is:

Senator John Q. Public
Alaska Legislature
Pouch V
Juneau, 99811

related activities. Again, we

Juneau

1980 – Labor Relations Yearbook

scope of the major issues that the participation teams are empowered to address. As the parties' statement of the terms of their Experimental Agreement puts it:

"Appropriate subjects, among others, which a Team might consider include: use of production facilities; quality of products and quality of the work environment; safety and environmental health; scheduling and reporting arrangements; absenteeism and overtime; incentive coverage and yield; job alignments; contracting out; and energy conservation and transportation pools."

St. John cautioned in his Arden House remarks that "the bottom line for the plan won't be determined for many years." He also said that a "crucial" element in the plan's success will be "effective problem solving through the better communications approach" of the teams.

An advantage of the stress on resolving these issues at the local plant level, he noted, is the flexibility of response this provides. The teams "will have the ability to deal with problems at the local level that may be unique or otherwise special to that particular department."

In the plan, the parties suggest that their experience in collective bargaining, although "successful" in many respects, has been disappointing in the resolution of "many problems . . . at the work site." These "are not readily subject to resolution under existing contractual programs and practices . . .," according to the parties.

They indicated that the joint team attack on such problems "is an essential ingredient in any effort to improve the effectiveness of the company's performance and to provide employees with a measure of involvement adding dignity and worth to their work life."

Study on Employer Anti-Smoking Programs

About 15 percent of the nation's businesses have programs to encourage and help workers stop smoking, according to a study prepared for the Department of Health and Welfare.

The study, which surveyed top-level management and medical officials in 3,000 U.S. firms, found that one-third of the companies are interested in developing or expanding smoking and health programs for workers.

Employer Cost

The National Interagency Council on Smoking and Health (NICSH), which conducted the survey, said cigarette smoking accounts for $5 billion to $8 billion in direct health care expenses and another $12 billion to $18 billion in indirect costs for lost productivity, wages and absenteeism.

A significant number of responding companies have policies that restrict or prohibit smoking in the workplace, said NICSH, a coalition of more than 30 public and private health groups concerned with reducing smoking.

"Most policies had been initiated by management, and policies were most frequently applied to blue-collar work areas, where smoking often poses a safety as well as a health hazard," NICSH said. According to the survey, 65 percent of the firms established those policies after release of the first Surgeon General's report in 1964.

Companies responding to the NICSH survey ranked smoking programs third among health education and promotion efforts, following high blood pressure and weight control programs. Larger firms are more likely to have smoking programs, NICSH said.

Most workplace smoking and health programs are operated in-house, with distribution of materials on how to stop smoking, physician counseling and other health professional counseling, the study found. Most firms use their own staff to administer the programs and support activities with existing medical resources rather than separate funds, the report said.

Of the companies interested in developing or expanding worker anti-smoking programs, more than 70 percent said they would like assistance. One-third of the companies responding to the survey said they are unsure at present whether they want to begin or expand worker health programs.

More information on anti-smoking efforts and copies of the survey are available from NICSH, 291 Broadway, Suite 1005, New York, N.Y. 10008, Tel. 212-227-4390.

HB

85

STATE OF ALASKA
PRELIMINARY STATEMENT OF FISCAL IMPACT

Bill No: House Bill 85 Date on Bill: 1/20/83
Title: "An Act relating to the Alaska permanent fund (AS 37.13) and repealing the permanent fund
Sponsor: divident program (AS43.23); and providing for an effective date."
Requestor: St. Affairs, Judiciary and Finance Sponsor: Rep. Szymanski

1. Estimated fiscal impacts on:

a. Expenditures:

Millions
(Thousands of Dollars)

			FY 83	FY 84	FY 85	FY 86		
Capital			$117 mill.					
Operating								
Total			$117 mill.					

b. Revenues:

Revenue								

2. Source of funds to offset fiscal impact of bill:

3. Assumptions:

Bill takes effect immediately, and is retro to January 1, 1983. The $117 million figure is an approximate of the assets from the PFD that would now transfer to the Alaska permanent fund upon the bills effective date, taking in funds from FY 80, FY 81, FY 82, and FY 83 to date.

4. Disclaimer:
This statement has not been reviewed by the OMB in the Office of the Governor. It does not represent the policy of the Sheffield Administration or the final estimate of fiscal impact.

Prepared By: Mary Relford Phone: 465-2300
Division: Commissioner's office Date: 2/10/83

Approved by Commissioner: Robt A Smith Date: 2/10/83
Department: Revenue

5. Distribution:
Original to Legislative Finance
Copy to OMB
Copy to Sponsor
Copy to Requestor

2/8/83

AMENDED TITLE: SSHB 85

AN ACT RELATING TO THE USE OF THE INCOME OF THE ALASKA PERMANENT FUND (AS 37.13); REPEALING THE PERMANENT FUND DIVIDENT PROGRAM (AS 43.23); AND PROVIDING FOR AN EFFECTIVE DATE

PRIME SPONSOR: SZYMANSKI.

CO-SPONSORS:

CURRENT STATUS: 2/15/83 IN (H) JUDICIARY REFERRAL: FINANCE

DATE	SEQ	PAGE	LEGISLATIVE ACTION
02/11/83	01	0225	FIRST READING -- COMMITTEE REPORTS
02/15/83	02	0259	S.A. -- DP03, NR03
02/15/83	03	0259	F/NOTE HSE SUPPL #9
			JUDICIARY
			FINANCE
			RULES
****	**	**	*** *** ***

HB

87

ALASKA NETWORK ON DOMESTIC VIOLENCE AND SEXUAL ASSAULT

P.O. BOX 809
JUNEAU, ALASKA 99802
586-3650

POSITION PAPER
HB87: An Act prohibiting publication of the identity of persons charged with certain sexual offenses

The Alaska Network on Domestic Violence and Sexual Assault is a non-profit corporation composed of twenty-one programs statewide that provide domestic violence, sexual assault, and adult crisis intervention services to members of their respective communities. Network programs are funded in part through grants and contracts awarded by the Council on Domestic Violence and Sexual Assault.

The Network was established in 1978, and has as one of its primary focuses the elimination of domestic violence and sexual assault through provision of shelter, advocacy, and education/prevention services.

The Network supports the intent of HB87 to protect the privacy of the victim and reduce the potential for additional trauma.

HB 87

STATE OF ALASKA
THE LEGISLATURE

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

LEGISLATIVE AFFAIRS AGENCY

M E M O R A N D U M January 3, 1983

SUBJECT: Publication of identity of certain sex offenders (Work Order #13-0213)

TO: Representative Robert H. Bettisworth

FROM: James H. Lear
Legislative Counsel JHL

You have requested this office to draft a bill that would withhold names of individuals from public access in the case of certain sexual offenses such as incest in an effort to protect the victim from adverse publicity.

Your request could be satisfied by closing the criminal proceedings and records surrounding those proceedings similar to the methods employed in children's proceedings (AS 47.10). However, such a statutory scheme would in all likelihood be found violative of the right of the accused to a public trial guaranteed by Article I, sec. 11 of the Alaska Constitution. Additionally, the due process clause of the 14th Amendment to the U.S. Constitution prohibits secret trials in criminal proceedings according to the Alaska Supreme Court decision in RLR v. State, 487 P.2d 27 (1971). It might also present some problems with respect to Article 1, sec. 5 of the Alaska Constitution and the First Amendment of the U.S. Constitution (freedom of speech).

Although the absolute closing of trial proceedings and surrounding records would not be constitutionally permissible, a good argument can be made in support of prohibiting the press from identifying the defendant in conjunction with prosecution of incest charges. One could assert that the state has a compelling interest in such a limited protection

of the victim without affecting the right of the accused to a public trial or the right of the press to otherwise monitor the criminal proceedings.

Accordingly, I have drafted a bill that would subject the news media to misdemeanor charges if they reveal the identity of such a criminal defendant and would impose the same penalty as that provided in AS 47.10.090(b) and (c) pertaining to publication of identity in conjunction with juvenile delinquent status.

I would be willing to elaborate upon the legal principles and court decisions that underly the above conclusions if you so desire. Please feel free to contact me at 465-2450.

JHL:csh

STATE OF ALASKA
PRELIMINARY STATEMENT OF FISCAL IMPACT

Bill No: HB 87 Date on Bill: 1-20-83
Title: An Act prohibiting publication of the identity of persons charged with certain sexual offenses
Sponsor: Rep. Bettisworth
Requestor: House Judiciary

1. Estimated fiscal impacts on:

a. Expenditures:

(Thousands of Dollars)

	FY 83	FY 84	FY 85	FY 86
Capital				
Operating				
Total	-0-	-0-	-0-	-0-

b. Revenues:

Revenue				

2. Source of funds to offset fiscal impact of bill:

Source of funds not identified by sponsor

3. Assumptions:

NO FISCAL IMPACT

4. Disclaimer:
This statement has not been reviewed by the OMB in the Office of the Governor. It therefore does not represent the final estimate of fiscal impact.

Prepared By: Paul Conger Phone: 465-4338
Division: Administrative Services Date: 3-4-83

Approved by Commissioner: [signature] Date: 2/8/83
Department: Public Safety

5. Distribution:
Original to Legislative Finance
Copy to OMB
Copy to Sponsor
Copy to Requestor

2/15/83

Bill/Resolution No. HB 87

Title "An Act prohibiting publication of the identity of persons charged with certain sexual offenses; and changing Rule 8(1), Rules of Criminal Procedure."

Requested by House Judiciary Committee Date 2/3/83

II. FISCAL DETAIL

Agency Affected Department of Law

Program Category Affected Administration of Justice

BRU, Program, Or Subprogram(s) Affected Prosecution

(Note: If more than one budget component is affected, separate line-item amounts and funding for each component in the analysis section.)

EXPENDITURES (Thousands of Dollars)

	FY 83	FY 84	FY 85	FY 86	FY 87	FY 88
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 COMMODITIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS,CLAIMS,ETC.						
TOTAL		-0-	-0-	-0-		

FUNDING (Thousands of Dollars)

GENERAL FUND		-0-	-0-	-0-		
FEDERAL FUNDS						
OTHER (Specify Source)						

POSITIONS

FULL TIME						
PART TIME						
TEMPORARY						

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

The Department of Law believes that this bill has serious constitutional problems and in light of those problems the department does not believe there will be any fiscal impact.

RECEIVED

FEB 8 1983

LEGISLATIVE FINANCE

IV. DATE February 4, 1983 PREPARED BY Richard I. Pegues, Dir. Adm. Svcs.

AGENCY Department of Law

Original: Legislative Finance PHONE 465-3672

cc: Budget and Management

Prime Sponsor (First Legislator Named)

33-001 (Rev. 12/82)

OMB Reviewed by: Guy Bell

THE LEGISLATURE OF THE STATE OF ALASKA
THIRTEENTH LEGISLATURE

FISCAL NOTE

[X] Expenditure Type
[ ] Revenue Type

I. REQUEST
Bill/Resolution No. HB 87
Title ~~Act prohibiting publication of identity of persons....~~
Requested by House Judiciary Date

II. FISCAL DETAIL
Agency Affected Department of Public Safety
Program Category Affected Crime ID and Apprehension
BRU, Program, Or Subprogram(s) Affected Troopers & Council on Domestic Violence
(Note: If more than one budget component is affected, separate line-item amounts and funding for each component in the analysis section.)

EXPENDITURES (Thousands of Dollars)

	FY 83	FY 84	FY 85	FY 86	FY 87	FY 88
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 COMMODITIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS,CLAIMS,ETC.						
TOTAL		-0-	-0-	-0-		

FUNDING (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER (Specify Source)						

POSITIONS

FULL TIME						
PART TIME						
TEMPORARY						

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

NO FISCAL IMPACT

RECEIVED
FEB 9 1983
LEGISLATIVE FINANCE

IV. DATE 2-2-83 PREPARED BY Paul Conger Phone 465-4338
DIVISION Admin Services Initials
DEPARTMENT OF PUBLIC SAFETY Initials

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

33-001 (Rev. 1/82) OMB Reviewed by: Eric Jaschever

HB

91

HB 91

"Vital statistics" refers to records of birth, death, fetal death, marriage, divorce, adoption and related data. With specific exceptions, vital statistics are not available for inspection.

The language of HB 91, taken from the 'Model State Vital Statistics Act' published by the Public Health Service, opens records to the public: birth records - 100 years after date of birth; and marriage, death, divorce, dissolution of marriage or annulment records - after 50 years.

Passage of HB 91 will make public approximately 33,000 of the 675,000 records held by the State Registrar of Vital Statistics. The bill addresses the concerns of geneological researchers. A zero fiscal note is attached to the bill. Committee of next referral is the Judiciary Committee.

Dave Palmer
March 4, 1983

18.50.310 DOCUMENT= 1 OF 1 PAGE = 1 OF 2
CHAPTER = 18.50
SECTION = 18.50.310
TITLE = 18
EADINGS TITLE 18.
HEALTH AND SAFETY.
CHAPTER 50.
VITAL STATISTICS ACT.
ARTICLE 4.
RECORDS.
ITATION SEC. 18.50.310.
ATCH LINE
DISCLOSURE OF RECORDS.
EXT (A) TO PROTECT THE INTEGRITY OF VITAL STATISTICS RECORDS, TO INSURE THEIR PROPER USE, AND TO INSURE THE EFFICIENT AND PROPER ADMINISTRATION OF THE VITAL STATISTICS SYSTEM, IT IS UNLAWFUL FOR A PERSON TO PERMIT INSPECTION OF, OR TO DISCLOSE INFORMATION CONTAINED IN VITAL STATISTICS RECORDS, OR TO COPY OR ISSUE A COPY OF ALL OR PART OF A RECORD, EXCEPT AS AUTHORIZED BY REGULATIONS ISSUED UNDER THIS CHAPTER.

(B) THE BUREAU MAY PERMIT THE USE OF DATA CONTAINED IN VITAL

18.50.310 DOCUMENT= 1 OF 1 PAGE = 2 OF 2
STATISTICS RECORDS FOR RESEARCH PURPOSES.

(C) INFORMATION IN VITAL STATISTICS RECORDS INDICATING THAT A BIRTH OCCURRED OUT OF WEDLOCK SHALL NOT BE DISCLOSED EXCEPT UPON ORDER OF A SUPERIOR COURT OR AS PROVIDED BY REGULATIONS.

(D) APPEALS FROM DECISIONS OF THE CUSTODIANS OF LOCAL RECORDS REFUSING DISCLOSURE UNDER (A) AND (B) OF THIS SECTION SHALL BE MADE TO THE STATE REGISTRAR, WHOSE DECISION IS BINDING UPON THE CUSTODIAN OF LOCAL RECORDS.

(E) THE DEPARTMENT MAY BY REGULATION PROVIDE FOR THE RELEASE OF INFORMATION TO AUTHORIZED REPRESENTATIVES OF ORGANIZATIONS OR FOUNDATIONS THAT COUNSEL THE NEXT OF KIN OF VICTIMS OF INFANT SUDDEN DEATH SYNDROME.

STORY (SEC. 27 CH 118 SLA 1960; AM SEC. 1 CH 132 SLA 1978)

601 * END OF DOCUMENTS IN LIST - ENTER RETURN OR ANOTHER COMMAND.

FISCAL NOTE

I. REQUEST
Bill/Resolution No. House Bill Number 798 Item 82
Title "An Act relating to disclosure of vital statistics records"
Requested by Representative Bettisworth Date

II. FISCAL DETAIL
Agency Affected Department of Health and Social Services
Program Category Affected Division of Administrative Services
BRU, Program, Or Subprogram(s) Affected Bureau of Vital Statistics
(Note: If more than one budget component is affected, separate line-item amounts and funding for each component in the analysis section.)

EXPENDITURES (Thousands of Dollars)

	FY 82	FY 83	FY 84	FY 85	FY 86	FY 87
100 PERSONAL SERVICES	0	0	0	0	0	0
200 TRAVEL	0	0	0	0	0	0
300 CONTRACTUAL	0	0	0	0	0	0
400 COMMODITIES	.4	0	0	0	0	0
500 EQUIPMENT	0	0	0	0	0	0
600 LAND & STRUCTURES						
700 GRANTS,CLAIMS,ETC.						
TOTAL	.4	0	0	0	0	0

FUNDING (Thousands of Dollars)

GENERAL FUND	.4	0	0	0	0	0
FEDERAL FUNDS						
OTHER (Specify Source)						

POSITIONS

FULL TIME	0	0	0	0	0	0
PART TIME						
TEMPORARY						

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

1. 8 foot table $225.00
2. Chairs (2) $175.00

$400.00

IV. DATE Feb. 23, 1982 PREPARED BY Paul P. Brooks
AGENCY Dept. of Health & Social Services
PHONE 465-3391

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

33-C01 (Rev. 12/81)

STATE OF ALASKA
PRELIMINARY STATEMENT OF FISCAL IMPACT

Bill No: House Bill Number 91 Date on Bill:
Title: "An Act Relating to disclosure of vital statistics records"
Sponsor:
Requestor: Representative Bettisworth

Estimated fiscal impacts on:

a. Expenditures:

(Thousands of Dollars)

			FY 83	FY 84	FY 85	FY 86		
Capital								
Operating								
Total			0	0	0	0		

b. Revenues:

Revenue								

. Source of funds to offset fiscal impact of bill:

Responsibility for identification of funding is that of the author of the bill.

. Assumptions:

. Disclaimer:
This statement has not been reviewed by the OMB in the Office of the Governor. It does not represent the policy of the Sheffield Administration or the final estimate of fiscal impact.

Prepared By: Joan Brooks by D. Lee 1st. Phone: 465-3391
Division: Planning, Policy and Evaluation/Vital Statistics Date: February 22, 1983

Approved by Commissioner: Robert Loeber Smith Date: 2/22/83
Department: H & SS

. Distribution:
Original to Legislative Finance
Copy to OMB
Copy to Sponsor

2/8/83

HB 91 TITLE & SPONSOR SUMMARY 1c-01 3/08/83 PAGE 1 OF 2

AMENDED TITLE:
AN ACT RELATING TO DISCLOSURE OF VITAL STATISTICS RECORDS
AND INFORMATION;
AND PROVIDING FOR AN EFFECTIVE DATE

PRIME SPONSOR: BETTIWORTH.
CO-SPONSORS:
CURRENT STATUS: 3/07/83 IN (H) JUDICIARY

HB 91 HOUSE ACTION 1A:02 3/08/83 PAGE 2 OF 2

DATE	SEQ	PAGE	LEGISLATIVE ACTION
01/20/83	01	0069	FIRST READING -- COMMITTEE REPORTS
03/07/83	02	0418	HESS -- DPOS
03/07/83	03	0418	HESS F/NOTE EQUALS ZERO
			JUDICIARY
			RULES

(7)

COMMITTEE REPORT

HOUSE

3/7

1/20/83

FURTHER: JUDICIARY

Date: March 4, 1983

Mr. Speaker:

The Committee on HESS has had HB 91

An Act relating to disclosure of vital statistics records and information; and providing for an effective date.

under consideration and reports it back as follows:

[✓] do pass [ ] do not pass

[ ] do pass with attached amendments(s)

[ ] replace with CS for _____ [ ] same title [ ] new title

and recommends _____

[ ] AND attaches a "Letter of Intent" [ ] New Fiscal Note [X] Zero Fiscal Note Attached

[ ] reports it back without recommendation

[ ] referred to the _____ Committee

MEMBERS SIGNING DO PASS

Peter Jaeger

Nick Bonner

Bette Cate

Mike DAVIS

MILO FRITZ

MEMBERS HAVING OTHER RECOMMENDATIONS:

MILO FRITZ

CHAIRMAN

CO-

H 60

February 24, 1983

House Health, Education and
Social Services Committee
Room 112, Capitol Building
Pouch V
Juneau, AK 99811

attn: Mr. Dave Palmer

Although I earnestly wish to testify in person on HB91, I am unable to postpone a trip on March 4th and, therefore, am submitting the following testimony in favor of the bill:

I am both a family and professional genealogist (Alaskan Records Research, Business License number BL000201); hold a BLA with history emphasis from the University of Alaska, Juneau; am a full-time student in the Master of Arts in Teaching program at Alaska Pacific University; am employed half-time at the UAJ library; tutor history, english, geography, and logic at UAJ; am Alumni Representative on the UAJ Assembly; have published a family history and am currently working (in my spare time) on an historical novel.

With this variety of efforts underway, you can understand why I have little time to spend writing back and forth to prospective clients to obtain the written permissions required before I can access vital statistics data as my client's personal representative.

As it stands now, individuals can obtain vital statistics on their own ancestors but professionals or those working on far distant lateral relatives may not easily do so. A business must be cost-effective. Repeated correspondence is not (unless I raised my fees to cover it, which would price me out of the market). Thus, I simply refer many inquiries to the office of Vital Statistics and so lose the fees I could obtain for doing the research myself.

Passage of this bill will help all who are searching for long-lost relatives who "went up north to the goldrush and were never heard of again."

Being the first of my family to reside in Alaska, I have no family interest in opening Alaska's records. However, I would personally like to see my state on a par with the rest of the country. After tracing several thousand of my own ancestors, lateral, and collateral relatives through most of the northern states and Ontario, and collecting hundreds of official documents dated from 1738 to 1978, I have never been refused a record because of access restrictions except hospital patient records. I feel that this bill is a step in the right direction but could go further. People researching in Alaska should meet with no more roadblocks than I have experienced in other states. I would like to see the time limits of 100 and 50 years reduced to about 30 years, if the purpose is genealogical research. The most persuasive argument against opening birth records is the problem of illegitimacy. Besides the fact that it no longer carries the stigma it once did, a professional genealogist couldn't care less what the records say, all he or she is interested in

is locating them for the client. The client or individual researcher is a member of the illegitimate child's family and thus has a personal interest in keeping the fact of illegitimacy within the family.

I feel a person's right to know about their own heritage outweighs any "right to privacy" of their ancestors and this includes a person's right to hire a researcher if unable or unwilling to travel to Juneau to do their own research. Therefore, I highly recommend passage of this bill, preferably with an amendment allowing disclosure to genealogists of those vital records not made public by AS 18.50.310(f).

Sincerely

Kit Stewart

Kit Stewart
9119 Nagoon Lane
Juneau, AK 99801
789-9411

a false status, occupation, membership, license, privilege, or identity himself or another person shall be fined not more than $[ ] imprisoned not more than [ ] years, or both.

(c) Any person who uses any such document to commit a crime shall punished by fine or imprisonment or both equal to that required by tute for the accompanying offense. Such sentence shall be served con-cutively with that of the accompanying offense.

Section 4. [*Severability.*] [Insert severability clause.]

Section 5. [*Repeal.*] [Insert repealer clause.]

Section 6. [*Effective Date.*] [Insert effective date.]

Suggested State Legislation 1979

Model State Vital Statistics Act (1977 Revision)

#B91

The Model State Vital Statistics Act is a document designed to be used by state registrars of vital statistics and state legislators when considering revision of the vital statistics laws. The main objectives of the 1977 revision of the model act are (1) to incorporate current social customs and practices and current technology into the policies and procedures of the vital statistics system in the states, (2) to promote the uniformity of these policies and procedures to the end that all vital records will be readily acceptable in all places as prima facie evidence of the facts therein recorded, (3) to enhance the level of comparability of vital statistics data among the states, and (4) to minimize duplication within the vital statistics system and thereby achieve maximum administrative economy.

The historical philosophy of the vital statistics systems in the United States is that vital events be registered only in the state in which they occur. This concept is maintained in this revision of the model act. The jurisdiction of the state registrar extends only to boundaries of his state, and standards for registration may be set and enforced only for those events occurring within those boundaries. This is a very important concept in maintaining the validity of vital records in their use for legal purposes. If it is to be respected, the appropriate procedures for recording birth and death information for United States citizens born or dying in foreign countries and certification of birth information for aliens adopted by United States citizens must continue to be the responsibility of those federal agencies which retain jurisdiction over recording these events.

While this revision of the model act does not constitute an abrupt departure from earlier acts, there are several modifications that should be noted. The most significant change relates to the establishment of a centralized system for the collection, processing, registration, and certification of vital records in each state, whereby all vital events are reported directly to the State Office of Vital Statistics. However, the model act contains authorization for local offices to perform those functions the state registrar may direct, including the receipt and processing of vital records and the issuance of certified copies, when such offices can be shown to be an aid to efficient and effective operation of the system. The model act further provides for the options of allowing such local offices to work with records only for their designated geographic area or to be given access to the entire state file and allowing them to issue certified copies without regard to where the event occurred within the state. The important concept, however, is that these offices are part of the State Office of Vital Statistics and are under the direct control of the state registrar.

The recommendation for a change from a locally oriented vital statistics system to a centralized system is based on several considerations: (1) a centralized system produces more timely registration of the records, thereby improving the timeliness of all operations, including publication of statistical data as well as fulfillment of citizens' needs for vital records services; (2) it decreases duplication and cost since many activities presently performed at local vital records offices are repeated at the state office; (3) it reduces the opportunity for fraudulent use of certified copies because amendments to the records will be easier to control and certified copies will

...records of each [divorce, dissolution of marriage, or annulment] decree ...mitted during the preceding calendar month.

...(c) [Provision for a recording fee may be added here if desired.]]

Section 22. [*Amendment of Vital Records.*]

(a) A certificate or report registered under this act may be amended only in accordance with this act and regulations adopted by the state agency to protect the integrity and accuracy of vital records.

(b) A certificate or report that is amended under this section shall be marked "Amended," except as otherwise provided in this section. The date of amendment and a summary description of the evidence submitted in support of the amendment shall be endorsed on or made a part of the record. The state agency shall prescribe by regulation the conditions under which additions or minor corrections may be made to certificates or records within one year after the date of the event without the certificate or record being marked "Amended."

(c) Upon written request of both parents and receipt of a sworn acknowledgment of paternity signed by both parents of a child born out of wedlock, the state registrar shall amend the certificate of birth to show such paternity if paternity is not already shown on the certificate of birth. Such certificate shall not be marked "Amended."

(d) Upon receipt of a certified copy of an order of [court of competent jurisdiction] changing the name of a person born in this state and upon request of such person or his or her parents, guardian, or legal representative, the state registrar shall amend the certificate of birth to show the new name.

(e) Upon receipt of a certified copy of an order of [court of competent jurisdiction] indicating the sex of an individual born in this state has been changed by surgical procedure and that such individual's name has been changed, the certificate of birth of such individual shall be amended [as provided in Regulation 10.8(a)(5)] to reflect such changes.

(f) When an applicant does not submit the minimum documentation required in the regulations for amending a vital record or when the state registrar has reasonable cause to question the validity or adequacy of the applicant's sworn statements or the documentary evidence, and if the deficiencies are not corrected, the state registrar shall not amend the vital record and shall advise the applicant of the reason for this action and shall further advise the applicant of the right of appeal to [court of competent jurisdiction].

(g) When a certificate or report is amended under this section, the state registrar shall report the amendment to any other custodians of the record and their record shall be amended accordingly.

Section 23. [*Reproduction of Vital Records.*] To preserve vital records, the state registrar is authorized to prepare typewritten, photographic, electronic, or other reproductions of certificates or reports in the [Office of Vital Statistics]. Such reproductions when certified by the state registrar shall be accepted as the original records. The documents from which permanent reproductions have been made and verified may be disposed of as provided by regulation.

Section 24. [*Disclosure of Information from Vital Records.*]

(a) To protect the integrity of vital records, to ensure their proper use, and to ensure the efficient and proper administration of the system of vital statistics, it shall be unlawful for any person to permit inspection of, or to disclose information contained in vital records, or copy or issue a copy of all or part of any such record except as authorized by this act and by regulation or by order of [court of competent jurisdiction]. Regulations adopted under this section shall provide for adequate standards of security and confidentiality of vital records.

(b) The state agency may authorize by regulation the disclosure of information contained in vital records for research purposes.

(c) Appeals from decisions of custodians of vital records, as designated under authority of Section 6(b), who refuse to disclose information, or to permit inspection or copying of records as prescribed by this section and regulations issued hereunder, shall be made to the state registrar whose decisions shall be binding upon such custodians.

(d) When 100 years have elapsed after the date of birth, or 50 years have elapsed after the date of death, marriage, or [divorce, dissolution of marriage, or annulment], the records of these events in the custody of the state registrar shall become public records and information shall be made available in accordance with regulations which shall provide for the continued safekeeping of the records.

Section 25. [*Copies or Data from the System of Vital Statistics.*] In accordance with Section 24 and the regulations adopted pursuant thereto:

(1) The state registrar [and other custodian(s) of vital records authorized by the state registrar to issue certified copies] shall upon receipt of a written application issue a certified copy of a vital record in his or her custody or a part thereof to any applicant having a direct and tangible interest in the vital record. Each copy issued shall show the date of registration and copies issued from records marked "Delayed" or "Amended" shall be similarly marked and show the effective date. The documentary evidence used to establish a delayed certificate shall be shown on all copies issued. All forms and procedures used in the issuance of certified copies of vital records in the state shall be provided or approved by the state registrar.

(2) A certified copy of a vital record or any part thereof, issued in accordance with Section 25(1), shall be considered for all purposes the same as the original and shall be prima facie evidence of the facts stated

HB

94

STATE OF ALASKA
FISCAL NOTE

Revision Date May 19 , 1983

I. REQUEST

Bill/Resolution No.: CSHB 94 (Judiciary)
Title: "...seizure of items..."
Sponsor: House Judiciary (orig.-Bettisworth)
Requestor: House Finance Committee

II. FISCAL DETAIL

Agency Affected: Department of Law
Program Category Affected: Admin. of Justice
BRU, Program of Subprogram(s) Affected: Prosecution

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 83	FY 84	FY 85	FY 86	FY 87	FY 88
OPERATING						
100 PERSONAL SERVICES		118.4	149.8	158.8	168.3	178.4
200 TRAVEL		10.0	12.8	13.6	14.4	15.3
300 CONTRACTUAL		18.0	20.3	21.5	22.8	24.2
400 COMMODITIES		10.0	5.7	6.0	6.4	6.8
500 EQUIPMENT		17.5				
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC						
TOTAL OPERATING		173.9	188.6	199.9	211.9	224.7
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND		173.9	188.6	199.9	211.9	224.7
FEDERAL FUNDS						
OTHER (Specify Source)						

POSITIONS:

FULL-TIME		3	3	3	3	3
PART-TIME						
TEMPORARY						

III. SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

Not specified by sponsor.

IV. ANALYSIS: Attach a separate page for any Analysis

Prepared By: Richard I. Pegues, Director (Richard L. Pegues) Phone: 465-3672
Division: Administrative Services Division Date: May 19, 1983
Approved by Commissioner: Norman C. Gorsuch, Attorney General (Richard L. Pegues/for) Date: May 19, 1983
Department: Department of Law

Distribution:
Original to Legislative Finance
Copy to Office of Management and Budget (for Legislature introduced bills)
Copy to Department (for Governor introduced bills)
Copy to Sponsor
Copy to Requestor (if different from Sponsor)

CSHB 94
Fiscal Note
Analysis

This bill would have a significant negative impact upon the Department of Law's efforts to prosecute violations of the state fish and game laws. It allows seizure of items used in violations of the law only if the seizure is necessary to preserve items of evidence or to prevent the removal of items from the judicial district in which the violation occurred. A defendant who disagrees with this judgment on the officer's part may be expected to seek repossession, and this would have to be litigated. The bill would require the commitment of additional attorney time to attend the hearings which must be held within seven days after charges are filed in order to extend a seizure. All items that the owner establishes are necessary to the owner's livelihood must be returned to the defendant unless the department proves to the court that these items are needed as evidence or they are likely to be removed from the judicial district. This is a change in criminal procedure which is not found in any other area of criminal law; it would significantly impair our ability to prosecute these cases. Also, because there is no floor limit on the value of items, the disposal of objects of even very low monetary value such as tackle boxes would have to be litigated.

The Department of Law is opposed to the bill in its present form. Under current law, items which are used in the violation of fish and game laws may be seized. This seizure is not merely to preserve the items as evidence, but is also a sanction for the commission of the offense, the prevention of the movement of items such as boats and airplanes out of the jurisdiction, or their transfer to an innocent purchaser. In the past, persons who are under investigation for, or who have been charged with offenses have deliberately transferred their interest in items to prevent seizure by the state.

Of significant concern is the provision requiring the return of seized items within seven days after the charges are filed. The state should continue to retain possession of seized items until the conclusion of the criminal case as the court may order forfeiture as part of the criminal sentence. A seven day period is much too short to enable the department to adequately prepare for court hearings in these cases. Many items used in fish and game violations are seized in extremely remote parts of the state; there may be no representative of the Department of Law in the area on a regular basis. Local enforcement officers have the authority to file charges and seize evidence or items in connection with these charges, but will have no attorney available to attend a court hearing within seven days.

This bill would significantly impair the Department of

Law's ability to successfully investigate and prosecute fish and game violations. In light of the tremendous value to the State of Alaska of our natural resources and wildlife population, it would be inadvisable to decrease the protection of resources by the liberalization of the laws designed to deter violations of the fish and game laws and to facilitate the apprehension of offenders.

FISCAL ANALYSIS CSHB 94 (Judiciary)

The impact of CSHB 94 (Judiciary) is expected to result in the addition of two Attorney III positions (SR22) and one Legal Secretary I position (SR10) at Anchorage.

The first year of the analysis will be FY 84 and costs have been calculated on a 10 month basis to account for the time required to establish new positions and the time it takes to get a new program underway. The costs beyond FY 84 are over a 12 month basis and include a 6% annual inflation factor.

1st Year (10 months)

	Atty III	Atty III	Leg Sec I	Total
Personal Services	47.5	47.5	23.4	118.4
Travel	5.0	5.0	-0-	10.0
Contractual	8.0	8.0	2.0	18.0
Commod. - ongoing	1.5	1.5	1.5	4.5
Commod. - single time	2.0	2.0	1.5	5.5
Equipment - single time	1.5	1.5	14.5	17.5
				173.9

2nd Year (12 months + 6% annual inflation)

Personal Services	60.0	60.0	29.8	149.8
Travel	6.4	6.4	-0-	12.8
Contractual	9.1	9.1	2.1	20.3
Commodities	1.9	1.9	1.9	5.7
				188.6

1.	POSITION TITLE Attorney III			RANGE/STEP 22A	BARG. UNIT X	FORM 12 PAGE/LINE	COV.	APPROV.	DISAPP.
2.	TYPE OF POSITION PFT	STAFF MONTHS 10	RP NUMBER	PCN NUMBER	BRU PRIORITY	LOCATION Anchorage	ELECTION DISTRICT	LEG.		

3.	CONTINUATION LEVEL		ADDITION	
4.	TYPE OF EXPENDITURE			AMOUNT
	1		2	3
	PERSONAL SERVICES			
5.	Salary 3,714/month		37,140	
6.	Benefits		5,727	
7.	Supplemental Benefits		2,240	
8.	Fixed Benefits		2,400	
9.	TOTAL PERSONAL SERVICES	01		47,507
10.	Travel	02		5,000
11.	Contractual	03		8,000
12.	Commodities	04		3,500
13.	Equipment	05		1,500
14.	Other			
15.	TOTAL COST			65,507

	RECEIPT CODE	FUNDING SOURCE		
16.		Federal Receipts	1002	
17.		G.F. Match	1003	
18.		General Funds	1004	65,507
19.		I-A Receipts	1005	
20.		Program Receipts	1028	
21.		Other		

FOR B&M USE ONLY
4A KEY NUMBER __ __ - __ __ - __ __ - __ __ - __ __

JUSTIFICATION

This is the first of two attorney positions required by the Department of Law in order to absorb the significant increase in workload which will result from new legislation authorizing the return, within seven days, of items seized during arrests for fish and wildlife violations. Significant amounts of attorney time will be needed to extend seizures to protect evidence and to protect items that would otherwise be removed from the judicial district where the violation occurred.

13 REQUEST FOR NEW POSITION

AGENCY DEPARTMENT OF LAW

PROGRAM ADMINISTRATION OF JUSTICE

BRU PROSECUTION

COMPONENT THIRD JUDICIAL DISTRICT

Page of

Revised Date

FY 84

1.	POSITION TITLE: Attorney III			RANGE/STEP: 22A	BARG. UNIT: X	FORM 12 PAGE/LINE	GOV.	APPROV.	DISAPP.
2.	TYPE OF POSITION: PFT	STAFF MONTHS: 10	RP NUMBER	PCN NUMBER	BRU PRIORITY	LOCATION: Anchorage	ELECTION DISTRICT	LEG.		

3.	CONTINUATION LEVEL	ADDITION	
4.	TYPE OF EXPENDITURE		AMOUNT
	1	2	3
	PERSONAL SERVICES		
5.	Salary 3,714/month	37,140	
6.	Benefits	5,727	
7.	Supplemental Benefits	2,240	
8.	Fixed Benefits	2,400	
9.	TOTAL PERSONAL SERVICES 01		47,507
10.	Travel 02		5,000
11.	Contractual 03		8,000
12.	Commodities 04		3,500
13.	Equipment 05		1,500
14.	Other		
15.	TOTAL COST		65,507

	RECEIPT CODE	FUNDING SOURCE	
16.		Federal Receipts 1002	
17.		G.F. Match 1003	
18.		General Funds 1004	65,507
19.		I-A Receipts 1005	
20.		Program Receipts 1028	
21.		Other	

FOR B&M USE ONLY
4A KEY NUMBER __ __ - __ __ - __ __ - __ __ - __ __

JUSTIFICATION

This is the second of two attorney positions required by the Department of Law in order to absorb the significant increase in workload which will result from new legislation authorizing the return, within seven days, of items seized during arrests for fish and wildlife violations. Significant amounts of attorney time will be needed to extend seizures to protect evidence and to protect items that would otherwise be removed from the judicial district where the violation occurred.

13 REQUEST FOR NEW POSITION

AGENCY DEPARTMENT OF LAW

PROGRAM ADMINISTRATION OF JUSTICE

BRU PROSECUTION

COMPONENT THIRD JUDICIAL DISTRICT

Page of

Revised Date

FY 94

1.	POSITION TITLE Legal Secretary I			RANGE/STEP 10B	BARG. UNIT GGU	FORM 12 PAGE/LINE	COL.	APPROV.	DISAPP.
2.	TYPE OF POSITION PFT	STAFF MONTHS 10	RP NUMBER	PCN NUMBER	BRU PRIORITY	LOCATION Anchorage	ELECTION DISTRICT 8	LEG.		

3.	CONTINUATION LEVEL	ADDITION	
4.	TYPE OF EXPENDITURE		AMOUNT
	1	2	3
	PERSONAL SERVICES		
5.	Salary 1,726/month	17,260	
6.	Benefits	2,660	
7.	Supplemental Benefits	1,058	
8.	Fixed Benefits	2,400	
9.	TOTAL PERSONAL SERVICES	01	23,400
10.	Travel	02	-0-
11.	Contractual	03	2,000
12.	Commodities	04	3,000
13.	Equipment	05	14,500
14.	Other		
15.	TOTAL COST		42,900

	RECEIPT CODE	FUNDING SOURCE	
16.		Federal Receipts 1002	
17.		G.F. Match 1003	
18.		General Funds 1004	42,900
19.		I-A Receipts 1005	
20.		Program Receipts 1028	
21.		Other	

FOR B&M USE ONLY
4A KEY NUMBER __ __ - __ __ - __ __ - __ __ - __ __

JUSTIFICATION

This position is required to provide support for the two new attorney positions. This secretary will be responsible for the preparation of a large volume of court documents generated by the numerous court filings involving fish and wildlife seizures. The allocation of a single secretary to serve two full time attorneys is the minimum amount of support needed to meet the workload anticipated particularly in view of the long distance, or remote nature of many of the violations.

13 REQUEST FOR NEW POSITION

AGENCY DEPARTMENT OF LAW

PROGRAM ADMINISTRATION OF JUSTICE

BRU PROSECUTION

COMPONENT THIRD JUDICIAL DISTRICT

Page of

Revised Date

FY 84

01-115617/821-13

STATE OF ALASKA
PRELIMINARY STATEMENT OF FISCAL IMPACT

Bill No: CSHB 94 (RES) Date on Bill: 2-8-83
Title: "An Act relating to the seizure of items used in or in aid of fish and game violations."
Sponsor: Representative Bettisworth
Requestor: Legislative Budget Review Committee

RECEIVED 3-4-83

1. Estimated fiscal impacts on:

a. Expenditures:

(Thousands of Dollars)

	FY 83	FY 84	FY 85	FY 86		
Capital						
Operating	-	173.9	188.6	199.9		
Total						

b. Revenues:

Revenue						

2. Source of funds to offset fiscal impact of bill:

No information provided

3. ASSUMPTIONS: This bill would have a significant negative impact upon the Department of Law's efforts to prosecute violations of the state fish and game laws. It allows seizure of items used in violations of the law only if the seizure is necessary to preserve items of evidence. A defendant who disagrees with this judgment on the officer's part may be expected to sue to regain possession, and this would have to be litigated. The bill would require the commitment of additional attorney time to attend the hearings which must be held within seven days after charges are filed in order to extend a seizure. All items, even those which are clearly evidentiary in nature, must be returned to the defendant unless the department obtains a court order allowing the police to keep it. This is a change in criminal procedure which is not found in any other area of criminal law; it would significantly impair our ability to prosecute these cases. In situations where there were multiple defendants, one defendant could request and obtain the return of his property, the other defendants could move to dismiss their charges because the state had not retained possession of the evidence.

4. Disclaimer:
This statement has not been reviewed by the OMB in the Office of the Governor. It therefore does not represent the final estimate of fiscal impact.

Prepared By: Daniel W. Hickey, Chief Prosecutor Phone: 465-3428
Division: Department of Law/ Criminal Division Date: 3-3-83

Approved by Commissioner: Norman C. Gorsuch, Attorney General Date: 3/3/83
Department: Department of Law

5. Distribution:
Original to Legislative Finance
Copy to OMB
Copy to Sponsor
Copy to Requestor

2/15/83

COMMITTEE REPORT

HOUSE

3/14

(7)

FURTHER: JUDICIARY

1/20/83

Date: February 2, 1983

Mr. Speaker:

The Committee on RESOURCES has had HB 94

"An Act relating to the seizure of items used in or in aid of fish and game violations."

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

[✓] do pass [ ] do not pass

[ ] do pass with attached amendments(s)

[✓] replace with CS for HB 94 (Rev) [✓] same title [ ] new title

and recommends DO PASS

[ ] AND attaches a "Letter of Intent" [X] ~~New~~ Fiscal Note Sep 24

[ ] reports it back without recommendation

[ ] referred to the _____ Committee

MEMBERS SIGNING DO PASS

SHULTZ Dick Shultz

CARSON Ronald J. Carson

LISKA John J. Liska

DOWDERY John J. Dowdery

RINGSTAD John Ringstad

MEMBERS HAVING OTHER RECOMMENDATIONS:

VASKA Anthony Vaska Do Not Pass

GOLL [illegible]

UEHLING [illegible]

John Ringstad
CHAIRMAN

H 60 (Rev. 12/78)

AMENDED TITLE:
AN ACT RELATING TO THE SEIZURE OF ITEMS USED IN OR IN AID OF FISH AND GAME VIOLATIONS

PRIME SPONSOR: BETTISWORTH.
CO-SPONSORS: GROSSENDORF.
CURRENT STATUS: 3/14/83 IN (H) JUDICIARY

DATE	SEQ	PAGE	LEGISLATIVE ACTION
01/20/83	01	0070	FIRST READING -- COMMITTEE REPORTS
03/14/83	02	0475	RES -- DNP01, CS05, NR02
03/14/83	03	0475	RES F/NOTE HSE SUPPL #24
			JUDICIARY
			RULES
****	***	***	**** **** ****

STATE OF ALASKA

BILL SHEFFIELD, GOVERNOR

DEPARTMENT OF PUBLIC SAFETY
OFFICE OF THE COMMISSIONER

POUCH N
JUNEAU, ALASKA 99811
PHONE:

March 30, 1983

465-4322



The Honorable Charlie Bussell
Alaska State Legislature
State Capitol
Pouch V
Juneau, Alaska 99811

Dear Representative Bussell:

The Department of Public Safety is opposed to CSHB94 (RES) as written in its present form. The Department expresses particular concern over the provision in this Bill allowing seized property to be returned seven days after charges for the violation has been filed in court. Under current law, items which are used in violation of fish and game laws may be seized and held until final disposition of the case or until the individual has posted a bond for return of the property. The purpose for seizing the property is not merely to preserve items as evidence, but is also a sanction for the commission of the offense, the prevention of the movement of items such as boats and airplanes out of the jurisdiction, or their transfer to an innocent purchaser. In the past, persons who are under investigation for, or who have been charged with, offenses, have deliberately transferred their interest in items to prevent seizure by the State. The Department feels that returning the property within seven days undermines the purpose for seizing the property as noted above. However, in light of the proposal to provide a time frame in which the seized property can be returned, the Department of Public Safety recommends amending the current language in CS HB 94 (RES) (page 2. line 2) and insert the following ". . . unless forfeited by the order of the court, shall be returned within 60 days or upon completion of litigation, whichever comes first, unless retention is approved by Court order." The Department feels that the 60 days limit would provide sufficient time to hold seized property and accomplish the purposes for seizure as discussed above.

Questions also arise as to what standards or reference will be acceptable or required in establishing to the courts if an item has an individual value of $2,500 or more. For example, a hunting rifle may be seized with an apparent value of $100; however, the same rifle may be worth no less than $3,000 to its owner because it is an heirloom.

12-L2LH

The Department of Public Safety's records indicate that of twenty-five (25) aircraft seized since 1977, twenty-four (24) were seized through the use of the seizure warrants issued by the courts. Eleven (11) of the twenty-five (25) aircraft were eventually forfeited to the State. Of these eleven (11) aircraft, eight (8) had been released back to the owners by posting bonds prior to their forfeiture by the courts.

Passage of this Bill, as written, would also have a significant negative impact on the Department of Law's efforts to prosecute violations of the State fish and game laws. Most of the rural bush communities are without any Assistant District Attorneys to provide immediate legal council to Fish & Wildlife Protection officers when needed.

The seizure of evidence or instrumentalities of a violation, and whether it can be used in any case against any defendant is presently regulated quite rigidly by the Constitution of the United States and by the Alaska Rules of Court concerning both criminal and civil procedures. In addition, policies on the seizure of evidence have been established by this Department and are followed by our officers.

As written, this Bill, if passed, would also be in conflict with AS 08.54.210(b) which refers to unlawful acts by big game guides. The conflict would be with a portion of the penalty provision which states "In addition to punishment for a felony, all guns, fishing tackle, boats, aircraft, automobiles or other vehicles, camping gear and other equipment and paraphernalia used in, or in aid of, guiding or transporting activity engaged in during the period of suspension or revocation shall (emphasis added) be confiscated by persons authorized to enforce this chapter."

It has been the priority of the Department of Public Safety to focus its enforcement efforts on violations involving the commercial exploitation of our State's resources. Considering the tremendous value to the State of Alaska of our natural resources and wildlife, the Department of Public Safety strongly believes that any amendments to AS 16.05.190 are not in the State's best interest at this time.

Sincerely,

Robert J. Sundberg
Commissioner

STATE OF ALASKA

BILL SHEFFIELD, GOVERNOR

DEPARTMENT OF LAW

CRIMINAL DIVISION

POUCH KC – STATE CAPITOL
JUNEAU, ALASKA 99811
PHONE: (907) 465-3428

March 11, 1983

The Honorable John Ringstad, Chairman
House Resources Committee
Pouch V
Juneau, AK 99811

Dear Representative Ringstad:

I am writing in response to Mr. Dave Stancliff's letter to the chief prosecutor inviting comment on the expected impact of CSHB 94 upon the criminal division and the criminal justice system. After analysis of the bill and consultation with other criminal attorneys within the department, I have concluded that the proposed bill is likely to have a negative impact upon efforts to enforce fish and game laws.

Current law provides redress for a person whose property is seized as a result of an illegal search. AS 16.05.190 requires that property be seized under a "valid search", and Rule 37, Alaska Rules of Criminal Procedure, provides that a person who has been subject to an unlawful search and seizure may petition the court for the return of the property and the suppression of its use as evidence.

Although the current statutes do not specifically deal with notice and the right to a hearing to obtain the return of seized property, case law has established that the constitutional right to due process of law requires that the owner of seized property be given immediate notice of any seizure and the opportunity for meaningful hearing. See, for example, State v. Rice, 626 P.2d 104 (Alaska 1981) and F/V American Eagle v. State, 620 P.2d 657 (Alaska 1980).

The American Eagle case involved the seizure of a crab fishing vessel because of the violation of a regulation prohibiting the taking of crab out of season. The court there held that if the seized property was used by its owner in earning a livelihood, notice and an opportunity to contest the state's reasons for seizing the property must follow "within days, if not hours" of the seizure. 620 P.2d at 667. Fish and Wildlife Protection officers and attorneys are well aware of the due process requirements set out in the American Eagle and related cases, and provide immediate notice and an opportunity

to be heard when property is seized. Thus, a citizen who believes that his property was wrongfully taken, or who has compelling reasons which justify the return of the property, may petition the court for the immediate return of his property. This is commonly done, generally through the posting of a bond in lieu of the seized property.

As compared to the number of criminal actions filed for the violation of fish and game laws, the seizure of large items of property such as boats and airplanes is used infrequently, and generally for only the most serious violations. The vast majority of seizures of vessels are made pursuant to search and seizure warrants issued by neutral magistrates or judges following a determination of sufficient probable cause. Probably the most common situation in which large items of property are seized without warrants are airplanes seized when an officer observes a violation of a fish and game law such as "same day airborne." The conviction rate on these serious fish and game violations is quite high. Additionally, although the state may request the forfeiture of an item following criminal conviction, this motion is not always granted. Any arguments in mitigation which the defendant wishes to make as to why his property should not be forfeited can be made during his sentencing hearing.

The proposed amendments to AS 16.05.190 provide that all items, even minor ones such as guns or traps, may not be seized unless they are necessary as evidence of a violation. Often, of course, they will be needed as evidence. But the state may choose to seize items for other reasons besides use as evidence. For example, if the item has been seized it can not be used in violation of the law during the pendency of the case. The Alaska Supreme Court has recognized this as a valid consideration in seizure cases. See the American Eagle case cited above.

Another important consideration is the prevention of the transfer from the jurisdiction or sale to an innocent purchaser of property used in fish and game violations. Is is not uncommon for the owner of an airplane or vessel who discovers that he may have been observed violating the law to immediately remove the plane or boat from the jurisdiction. Planes which were the subject of an ongoing investigation have been sold to innocent purchasers within days of the alleged violation. AS 16.05.195(e) specifically provides that an item subsequently sold to an innocent purchaser in good faith may not be forfeited. Thus, if the violator manages to sell his plane, nets, vessel, etc. the state has no way to regain possession of that item for forfeiture as part of the criminal sentence.

Another important reason to seize items, other than to use them as evidence in prosecution, is the deterrence of others. As stated above, forfeiture of large items is generally sought in only most serious fish and game violations. Often these cases involve commercial guides who may violate the law regularly, and who have a commercial motive for their behavior. Only a substantial deterrent will discourage some potential offenders from taking chances and hoping that he will not be caught.

The committee substitute, which adds language requiring an individual item value of $2,500 or more on line 28 of the bill, is a significant improvement over the original version. Nonetheless, a person who owns a seized item worth over $2,500 will be able to litigate under CSHB 94, the validity of the decision of the person who seized the item that the seizure was necessary to preserve the item as evidence. This will require the state to attempt to prove the good faith of the person making the seizure, and to present the state's case in advance of the trial in order to convince the court that it is necessary to preserve the item as evidence. As discussed more fully below, this hearing may be held at a time when the state's case is in the early stages of development, when all possible evidence has not yet been obtained.

The proposed language on lines 2 through 4 of page 2 of the bill requires that seized property be returned within seven days after the charges are filed, unless an extension is approved by court order for cause shown. While the language does not explicitly require a hearing for this order, an appellate court will almost certainly interpret the language to require a full hearing on the merits. AS 16.05.190 applies to seizures made without a warrant. If no warrant has been issued, there has not yet been a determination by a neutral judge regarding the existence of probable cause. An ex parte presentation to the court by the state, either through testimony or an affidavit, of the reasons justifying the continued seizure of the item may well violate the due process cause, as an ex parte procedure would deny the defendant a right to be heard on the issue. The American Eagle case makes it clear that the defendant has a right to a hearing on his contention that the state should not continue to hold the seized item.

The proposed language appears to place the burden on the state to demonstrate "cause" in order to justify an extension of the seizure. Thus, the item is automatically returned to the defendant unless the state bears the burden of proof placed upon it. These hearings will ordinarily be taking place during the early stages of the state's case, when all available facts may not yet have been fully developed. Additionally, the standard for "cause" is unclear. Is the only "cause" allowable under the statute the fact that the item will be used as

evidence? Or, is a legitimate concern regarding the removal of the item from the court's jurisdiction or its sale to an innocent purchaser sufficient cause to justify the state's retention of the property? If the item's status as evidence is the only permissible reason to continue to hold the item, then the state would be required to release a boat or plane to an owner even if the owner intends to walk out of the courtroom and remove the item from the state.

Finally, the seven day period allowed before a court extension must be obtained is much too short. Many, if not most, seizures of large items used in fish and game violations are made in remote locations of the state. While the officers involved have the authority to file charges immediately, if appropriate, there may well be no prosecutor or assistant attorney general available locally to handle the hearing. Under the language of the statute as currently drawn, the defendant's property is returned to him automatically after seven days, perhaps even if weather precludes the arrival of a judge or district attorney within the seven day period. It should also be noted that, in a felony case, there may be no judicial officer available with a jurisdiction to hear the case. If a defendant has been indicted for the charges, then only a superior court judge has jurisdiction over the case. A local district court judge or a magistrate could not preside over the forfeiture hearing.

Regarding fiscal impact, a preliminary statement of fiscal impact is attached to this letter. Thank you for allowing the opportunity for comment on CSHB 49. Please contact my office if you have any questions.

Sincerely yours,

NORMAN C. GORSUCH
ATTORNEY GENERAL

DANIEL W. HICKEY
CHIEF PROSECUTOR

By: Gayle Horetski
Gayle Horetski
Assistant Attorney General

GH/lb

Attachments

STATE OF ALASKA
THE LEGISLATURE

POUCH V · STATE CAPITOL
JUNEAU ALASKA 99811
907-465-3500

LEGISLATIVE AFFAIRS AGENCY

M E M O R A N D U M February 10, 1983

SUBJECT: Protection of confiscated property
(Work Order No. 13-0774)

TO: Susan Brody
Acting Director
House Research Agency

FROM: Edward H. Hein
Legislative Counsel

You have asked what legal protections exist in the constitution and the rules of court for owners of property seized in fish and game violation cases. Specifically, this question is asked in light of HB 94, which amends AS 16.05.190. Under that statute, paraphernalia used in violation of AS 16.05 or regulations of the Department of Fish and Game may be seized without a warrant under a valid search. The paraphernalia is subject to forfeiture by court order upon conviction. Otherwise, the paraphernalia must be returned to the owner after completion of the case and payment of any fine imposed.

Under both the federal and Alaska constitutions, no person may be deprived of property without due process of law. United States Constitution, Amendment XIV; Alaska Constitution, Article I, section 7. The Alaska Supreme Court has spelled out what due process requires in the context of a seizure of property used in a fish and game violation. In F/V American Eagle v. State, 620 P.2d 657 (Alaska 1980), the Court said"

> The standards of due process under the Alaska and federal constitutions require that a deprivation of property be accompanied by notice and opportunity for hearing at a meaningful time to minimize possible injury. Where property allegedly used in an illicit act is confiscated by government officials pending a forfeiture action, no notice or hearing is necessary prior to the seizure. However, when the seized

> property is used by its owner in earing a livelihood, notice and an unconditioned opportunity to contest the state's reasons for seizing the property must follow the seizure within days, if not hours, to satisfy due process guarantees even where the government interest in the seizure is urgent. (Citations omitted).

The Court also said that while an owner of property seized for a fish and game violation may have a right to obtain release of the property by posing an adequate bond, due process does not require that this be an absolute right. "To permit this," the Court said, "would frustrate one purpose of forfeitures, which is to prevent possible use of the property in further illicit acts." 620 P.2d at 668. The Court indicated, however, that if the property owner can prove he or she was unaware that the property was being used for an illegal purpose, was merely negligent in allowing such use, or had done all that could reasonably be expected to prevent such use, due process probably would require release of the property if adequate bond is posted.

The Court noted that the owners of the F/V American Eagle had raised "a substantial question whether the statutory scheme on its face affords adequate procedural due process". The Court did not decide that question, however, because it said the vessel owners were in fact afforded procedural due process. The seizure in that case was subject to a judicially approved warrant and the owners of the vessel were formally notified of the seizure in a timely manner. It is not clear, however, whether under different circumstances the Court might rule that AS 16.05.190 - 16.05.195 are unconstitutional.

The federal and Alaska constitutions also protect persons from unreasonable searches and seizures of their property. United States Constitution, Amendment IV; Alaska Constitution, Article I, section 14. The primary purpose of these provisions is to protect the privacy of individuals from unreasonable intrusion by the government.

Normally, a search and seizure requires a search warrant. Where the search and seizure is incident to a lawful arrest, a search warrant is not required. Such a search, however, must be limited to the discovery of weapons and evidence within the area of the arrestee's immediate control. A warrantless search of a vehicle used in a crime may be made if there is probable cause to believe that the vehicle

contains contraband or evidence, and exigent circumstances exist which prevent the vehicle from being seized or otherwise necessitates an immediate search.

AS 16.05.190 specifically requires that a seizure of property used in or in aid of a fish and game violation be pursuant to a valid search. Although the catchline of this section says "Seizure without warrant . . .", the text of the statute is not limited to warrantless searches. The search, with or without a warrant, must be "valid". In this regard the section adds nothing to the constitutional requirements that already exist.

Once property has been seized under AS 16.05.190, the owner has "an immediate and unqualified right to contest the state's justification for the seizure before a judge under Criminal Rule 37(c)". 620 P.2d at 667. Criminal rule 37(c) provides:

> (c) A person aggrieved by an unlawful search and seizure may move the court in the judicial district in which the property was seized or the court in which the property may be used for the return of the property and to suppress for use as evidence anything so obtained on the ground that the property was illegally seized.

I hope this adequately answers your question. If you have any further questions, feel free to contact me at your convenience.

EHH:ljb

ALASKA STATE LEGISLATURE
HOUSE OF REPRESENTATIVES
RESEARCH AGENCY

Pouch Y, State Capitol
Juneau, Alaska 99811
(907) 465-3991

February 16, 1983

MEMORANDUM

TO: Representative John Ringstad
Attn: David Stancliff

FROM: Susan Brody, Director

RE: Confiscation of Property in Fish and Game Violations
Research Request 83-66

David Stancliff of your staff asked us to identify the protections which currently exist for owners of property seized in fish and game violation cases. Specifically, we were asked to look at legal protections which exist in the State Constitution, the rules of court procedure, and the policies and procedures of the Department of Public Safety.

We asked Ed Hein of the Legal Services Division to assist us in researching this topic. He prepared the attached memorandum describing relevant provisions in both the federal and State constitutions and in the rules of court. In his memorandum, Mr. Hein discusses a 1980 Alaska Supreme Court case (F/V American Eagle v. State)[1] which directly addresses your concern. To supplement the information provided by Mr. Hein, we contacted Capt. Nutgrass with the Division of Fish and Wildlife Protection in the Department of Public Safety, Bart Rozell, the attorney who represented the owners of the American Eagle in the Supreme Court case mentioned above, and Assistant Attorney General John Gissberg.

Existing Procedures in Fish and Game Violation Cases

When property is seized in conjunction with a fish and game violation, it eventually must be returned to the owner unless forfeited by order of the court. However, the item need only be returned "after completion of the case and payment of the fine, if any" (AS 16.05.195).

When the seized property is used by its owner in earning a livelihood, such as a commercial fishing boat or airplane, the seizure may present a financial hardship for the owner. In these cases, the owner of the seized property has the right to petition the court for an earlier release of the property. However, if the court decides to release the property, the owner often is required to post an adequate bond or to obtain insurance. Property may only be released when it is not essential evidence to the case.

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1 F/V American Eagle v. State, 620 P. 2d 657 (Alaska 1980)

As an example of this procedure, Capt. Nutgrass described a 1982 violation in which an airplane involved in an illegal hunting operation was seized under a search and seizure warrant obtained by the Division of Fish and Wildlife Protection. In that case, the owner's request for release of the plane was granted by the court, subject to a number of stipulations. These stipulations required the owner to return the aircraft to the State within a specified time period, required the plane to remain in the state, and specified that the owner must provide security either in the form of insurance or a bond for $17,000, the estimated value of the plane. In this case, the value of the property was estimated during an inspection by the division's chief mechanic. In some instances, an independent appraisal is also required.

John Gissberg, Assistant Attorney General, stated that many of these cases are settled out of court, especially when commercial fishing boats are involved. The settlement allows the owner to keep the boat on the fishing grounds; without settlement, the boat would be transported to a community such as Kodiak for appraisal and storage prior to a court hearing.

Bart Rozell, an attorney with the firm of Faulkner, Banfield, Doogan and Holmes, gave the example of a commercial crab boat seized on the fishing grounds in the Aleutians. The appraisal would have been conducted in Kodiak, thus removing the vessel from the fishing grounds at the height of the season and resulting in a substantial loss of income to the vessel owner. To avoid this income loss, Mr. Rozell emphasized that owners of vessels have no alternative but to settle out of court by pay ng a large fine.

The dollar amount required for an out-of-court settlement varies from case to case and is established by the Attorney General's Office in consultation with the Division of Fish and Wildlife Protection. Mr. Gissberg noted that they try to require an amount sufficient to discourage the illegal activity from occurring again in the future. He said that the amount is sometimes based on the dollar value of the illegal catch or on some percentage of the boat value. Capt. Nutgrass cited out-of-court settlements for seized crab boats which ranged from $100,000 to $350,000.

Constitutional Protections

As noted in the memorandum from Ed Hein, the Alaska Supreme Court's ruling in F/V Eagle v. State discusses the constitutional due process requirement as it pertains to fish and game violation seizures. The Court noted that the case had raised "a substantial question whether the statutory scheme on its face affords adequate procedural due process." Although it did not decide in the vessel owners' favor, the Court noted that:

> "...when the seized property is used by its owner in earning a livelihood, notice and an unconditional opportunity to contest the state's reasons for seizing the property must follow the seizure within days, if not hours, to satisfy due process guarantees even where the government interest in the seizure is urgent." (see attached memorandum)

Bart Rozell, the attorney who represented the owners of the American Eagle, believes that the existing State statute does not adequately protect the rights of owners of seized property. In his opinion, the right of the property owner to a prompt post-seizure hearing should be clearly specified in statute. John Gissberg agreed that establishing the right to a prompt hearing in statute would be an appropriate action in light of the American Eagle case. Both Mr. Rozell and Mr. Gissberg also mentioned the possibility of having the State conduct vessel appraisals at the site of the violation.

State v. Rice[2] is another State Supreme Court case which deals with the question of due process guarantees for owners of seized property; it specifically addresses the rights of innocent owners of seized property. The court ruled that Cessna Finance, an innocent holder of an interest in a seized airplane, had been "deprived of its constitutional rights to substantive due process through the failure of the statutory scheme ...to provide for remission of the interests of innocent non-negligent third parties in the forfeited item." Relevant sections of this decision are attached for your information.

As Mr. Rozell and Mr. Gissberg have dealt extensively with the issue of confiscated property in fish and game violations, you may wish to contact them directly for further information on this problem; Bart Rozell can be reached at 586-2210 and John Gissberg's can be reached through the A.G.'s office, 465-3600. In addition, both Ed Hein and I are available to answer any further questions.

SB/sj

Attachments

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[2] State of Alaska v. Wilder S. Rice and Cessna Finance Corporation, 626 P.2nd 104 (Alaska 1981).

conducting the search for property which is taken as a result of the search. The enumeration of specific things does not limit the meaning of words of a general nature. (§ 22 art I ch 94 SLA 1959)

This section is constitutional. 1959 Op. Att'y Gen., No. 15.

This section is tailored carefully to art. I, § 14, of the Alaska Constitution and is therefore valid. 1959 Op. Att'y Gen., No. 15.

There is no constitutional requirement that all searches be with warrant. 1961 Op. Att'y Gen., No. 19.

And reasonable searches may be made without warrant. 1961 Op. Att'y Gen., No. 19.

"Reasonable search". — A reasonable search is one made (a) upon probable cause that fruits of a crime or evidence relating to the crime will be found; (b) under circumstances which would make the securing of a warrant impracticable. 1961 Op. Att'y Gen., No. 19.

The mere observation of items which are in plain view or which are open and apparent, is not a search. Consequently, evidence based on such observations is admissible so long as the observing officer was legally in the position where the observations were made. Klockenbrink v. State, Sup. Ct. Op. No. 631 (File No. 1149), 472 P.2d 958 (1970).

A search may be made pursuant to a valid arrest, providing that the arrest is made prior to the search. 1961 Op. Att'y Gen., No. 19.

Requirement of written signed statement objectionable but valid. — The amendment requiring a written signed statement of the reason for the search is objectionable but valid. It is objectionable because it unnecessarily ties the hands of the field agents charged with enforcement of the fish and game laws, and is a provision which is quite uncommon, if not unique. 1959 Op. Att'y Gen., No. 15.

Such requirement will not validate an invalid search. — The statutory requirement that fish and game agents fill out a form stating the objects of search will not make an otherwise invalid search valid. 1961 Op. Att'y Gen., No. 19.

But it may invalidate an otherwise valid search if not complied with. 1961 Op. Att'y Gen., No. 15.

This section requires that notice be given to the person "in control" of crab pots. Nathanson v. State, Sup. Ct. Op. No. 1310 (File No. 2541), 554 P.2d 456 (1976).

Failure to notify owner of crab pots was not a violation of this section where officers of the Department of Fish and Game approached the crab pots to conduct a search to check the extent of compliance with a regulation providing that fishermen could place their crab pots in the water up to 72 hours prior to the opening of the season and the owner was not present, attending to his crab pots, since there being no "person in control of the property or object to be searched," the officers were unable to give him the required notice. Nathanson v. State, Sup. Ct. Op. No. 1310 (File No. 2541), 554 P.2d 456 (1976).

Notice required for search of vessel, building, etc. — The considerations leading to the conclusion that no notice was required for a search of crab pots would not apply to the search of a vessel, building or other effects in which the owner would have a reasonable expectation of privacy. Nathanson v. State, Sup. Ct. Op. No. 1310 (File No. 2541), 554 P.2d 456 (1976).

Area of vessel open to search. — In the case of a vessel, the limits of the area open to search probably include the entire vessel. 1961 Op. Att'y Gen., No. 19.

Sec. 16.05.190. Seizure without warrant and confiscation by court. Guns, traps, nets, fishing tackle, boats, aircraft, automobiles or other vehicles, sleds, and other paraphernalia used in or in aid of a violation of this chapter, or rule or regulation of the department may be seized under a valid search, and all fish and game, or parts of fish and game, or nests or eggs of birds, taken, transported, or possessed contrary to the provisions of this chapter, or rule or regulation of the department shall be seized by any person designated in § 150 of this chapter. Upon conviction of the offender or upon judgment of the court having jurisdiction that the item was taken, transported, or possessed in

violation of this chapter or rule or regulation of the department, all fish and game, or parts of them are forfeited to the state and shall be disposed of as directed by the court. If sold, the proceeds of the sale shall be transmitted to the proper state officer for deposit in the general fund. Guns, traps, nets, fishing tackle, boats, aircraft, or other vehicles, sleds, and other paraphernalia seized under the provisions of this chapter, or rule or regulation of the department, unless forfeited by order of the court, shall be returned, after completion of the case and payment of the fine, if any. (§ 23 art I ch 94 SLA 1959)

A seizure is a prerequisite to forfeiture under the provisions of this section. Rubino v. State, Sup. Ct. Op. No. 215 (File No. 395), 391 P.2d 946 (1964).

Forfeiture acts upon the thing itself. — In case of forfeiture, the decree of the court acts upon the thing itself and binds the interest of all the world, whether any party actually appears or not. If it is condemned, the title of the property is completely changed, and the new title acquired by the forfeiture travels with the thing in all its future progress. United States v. Pollastrine, 8 Alas. 104 (1929).

It divests titles and liens. — A forfeiture necessarily divests every existing right, whether of title or lien or other interest, in the thing forfeited. There is no reason why it should not extinguish the right of a lienholder equally with that of the owner. It binds the interests of all the world. United States v. Pollastrine, 8 Alas. 104 (1929).

Section distinguishes between mandatory and discretionary forfeiture. — This section distinguishes between mandatory forfeiture of contraband (fish, game, birds) upon conviction, and discretionary forfeiture of paraphernalia (guns, traps, aircraft, etc.). Graybill v. State, Sup. Ct. Op. No. 1234 (File No. 2386), 545 P.2d 629 (1976).

Not between criminal or civil forfeiture proceedings. — The distinction which the legislature sought to draw between contraband and paraphernalia is between mandatory and discretionary forfeiture, not between requiring criminal or civil forfeiture proceedings. Graybill v. State, Sup. Ct. Op. No. 1234 (File No. 2386), 545 P.2d 629 (1976).

Forfeitures, even when civil in form, are basically criminal in nature. Graybill v. State, Sup. Ct. Op. No. 1234 (File No. 2386), 545 P.2d 629 (1976).

"Order of the court" may refer to orders rendered following criminal conviction. — Since the "case" and "fine" referred to in this section concern criminal proceedings, it is reasonable to interpret an "order of the court" as likewise referring to orders rendered subsequent to a criminal conviction, as well as those following a separate civil action. Graybill v. State, Sup. Ct. Op. No. 1234 (File No. 2386), 545 P.2d 629 (1976).

Valid forfeiture where defendant convicted under AS 16.05.920. — Where defendant was convicted under AS 16.05.920, which makes certain acts unlawful, in order to effect a valid forfeiture of defendant's aircraft, it was not necessary for the state to institute a separate civil in rem proceeding against the aircraft. Graybill v. State, Sup. Ct. Op. No. 1234 (File No. 2386), 545 P.2d 629 (1976).

While forfeiture is a civil remedy unless otherwise provided by statute, this section, as it applied to a defendant who was convicted under AS 16.05.920, did so provide. Graybill v. State, Sup. Ct. Op. No. 1234 (File No. 2386), 545 P.2d 629 (1976).

For cases construing seizure and forfeiture under the provision of ACLA 1949, § 39-2-10, see United States v. One Fish Trap, 7 Alas. 215 (1924); United States v. The Pacific, 7 Alas. (1924); United States v. One Floating Fish Trap, 7 Alas. 334 (1925); The M. & M., 8 Alas. 17 (1928).

Cited in Wacek v. State, Sup. Ct. Op. No. 1108 (File No. 2166), 530 P.2d 751 (1975).

Sec. 16.05.195. Forfeiture of equipment. (a) Guns, traps, nets, fishing gear, vessels, aircraft, other motor vehicles, sleds, and other paraphernalia or gear used in or in aid of a violation of this title, or regulation promulgated under this title, and all fish and game or parts

be enacted to benefit the state. It is desired that the department participate in the federal aid programs on the same basis as other states. (§ 20 art I ch 94 SLA 1959)

Sec. 16.05.150. Enforcement authority. The following persons are peace officers of the state and they shall enforce this chapter:

(1) an employee of the department authorized by the commissioner;

(2) a police officer in the state;

(3) any other person authorized by the commissioner. (§ 21 art I ch 94 SLA 1959)

Enforcement of fish and game laws on military reservations. — Where the military does not assign sufficient personnel to enforce fish and game laws on military reservations, state game officials as well might enforce them, possibly by deputizing state game officials as federal marshals, since 10 U.S.C. 2671(c) makes violation of state fish and game laws a federal offense. 1964 Op. Att'y Gen., No. 2.

Since state fish and game laws operate on a federal military reservation, not only as federal law but also as state law, both the federal and state officers may enforce these laws. 1964 Op. Att'y Gen., No. 2.

State officers should have full access to military reservations in Alaska, subject to safety and military security requirements, to enforce laws and manage and harvest fish and game resources. 1964 Op. Att'y Gen., No. 2.

Sec. 16.05.160. Duty to arrest. Each person designated in § 150 of this chapter shall arrest a person violating this chapter, or any rule or regulation made under this chapter, in his presence or view, and shall take the person immediately for examination or trial before an officer or court of competent jurisdiction. (§ 21 art I ch 94 SLA 1959)

Cited in Schuster v. State, Sup. Ct. Op. No. 1305 (File No. 2911), 553 P.2d 925 (1976).

Sec. 16.05.170. Power to execute warrant. Each person designated in § 150 of this chapter may execute a warrant or other process issued by an officer or court of competent jurisdiction for the enforcement of this chapter, and may, with a search warrant, search any place at any time. The judge of a court having jurisdiction may, upon proper oath or affirmation showing probable cause, issue a warrant in all cases. (§ 21 art I ch 94 SLA 1959)

Sec. 16.05.180. Power to search without warrant. Each person designated in § 150 of this chapter may without a warrant search any thing or place if the search is reasonable or is not protected from searches and seizures without warrant within the meaning of § 14, art. I of the state constitution, which specifically enumerates "persons, houses and other property, papers and effects." However, before a search without warrant is made a signed written statement by the person making the search shall be submitted to the person in control of the property or object to be searched, stating the reason the search is being conducted. A written receipt shall be given by the person

STATE OF ALASKA

BILL SHEFFIELD, GOVERNOR

DEPARTMENT OF PUBLIC SAFETY
OFFICE OF THE COMMISSIONER

POUCH N
JUNEAU, ALASKA 99811
PHONE:

March 4, 1983

Mr. Dave Stancliff
Professional Aide
House Committee on Resources
Pouch V
Juneau, AK 99811

Dear Mr. Stancliff:

In review of the Committee's substitute draft of CS HB 94 (Res) no fiscal or logistical impact is foreseen. The substitute draft would provide, in some cases, a more workable solution with the wording "within seven days after charges are filed with the court." We are not sure what standards or reference will be acceptable or required in establishing to the courts if an item has an individual value of $2,500.00 or more. An individual king or tanner crab pot could have an estimated value of $600.00; however, as the bill is worded on line 14, 15, and 16, a seizure of a pot could be argued as being unnecessary to preserve the pot as evidence of the crime. This would include an aircraft, vehicle or vessel exceeding the individual value of $2,500.00.

It could be logically argued in court that an aircraft seized during a major game violation was not necessary to preserve the aircraft as evidence of a crime. The officer could identify the aircraft by number, physical description and by taking photographs. This would preclude the seizure of items as instruments of the crime and by having the ability to bring that item before the court of jurisdiction.

We are still opposed to any amendments effecting AS 16.05.190 as it provides the necessary protection to the citizen as well as the State.

Sincerely,

Robert J. Sundberg
Commissioner

-L2LH

TESTIMONY ON HB 94

HOUSE RESOURCES COMMITTEE

March 11, 1983

Presented by Gregory F. Cook
Faulkner, Banfield, Doogan & Holmes
P.O. Box 1150
Juneau, Alaska 99802
(907) 586-2210

HB 94 seeks to amend existing law relating to seizure and forfeiture of items used in fish and game violations. The bill is a good start, but in my opinion, it needs significant amendments before it should be adopted.

Seizure and forfeiture of equipment used to commit violations of fish and game laws are critical enforcement tools. These tools are needed to conserve fishery and wildlife resources. At the same time, however, it is important for the State to recognize the rights of innocent owners. The bill as it now stands does not recognize these basic, constitutional rights known generally as "due process" requirements.

The Alaska Supreme Court and the United States Supreme Court have each addressed the need to protect the rights of innocent (and non-negligent) owners of property used by a "third person" for the commission of a crime. All persons must be presumed innocent until proven guilty. A seizure of nets, a vessel, or an airplane occurs <u>before</u> a trial showing guilt or

innocence. Due process of law guarantees the following rights to everybody whose equipment is seized under AS 16.05.190:

(1) judicial review of specific facts supporting the seizure before the seizure happens;

(2) reasonable notice to the owner that a seizure has occurred;

(3) the right of the owner to a prompt, meaningful, post-seizure judicial hearing;

(4) the right to petition for "remission" or "mitigation" of the seizure;

(5) the opportunity to post a bond and secure release of the item seized.

Seizures and forfeitures are complex areas of law. Drafting a bill that meets the requirements of the Alaska Constitution and the United States Constitution will require significant additional drafting work. I respectfully call the attention of the Resources Committee members to this fact, and suggest that the Judiciary Committee could be the proper forum to make those corrective amendments. I stand ready to assist both committees, and legislative counsel in this matter.

Thank you for your time and attention.

Respectfully submitted,

Gregory F. Cook
March 10, 1983

Alaska Sportfishing Association

3605 Arctic Blvd., Suite 800 • Anchorage, Alaska 99503

MAR 2 - 1983

February 28, 1983

Representative Dick Shultz
Co-Chairman, Natural Resources Committee
Pouch V
Juneau, AK 99811

Dear Representative Shultz:

The Alaska Sportsfishing Association urgently requests your support in denying confirmation to Governor Sheffield's appointees to the Board of Fisheries until such time as two, true sportsfishing representatives are appointed to the board. Please keep in mind that the Board of Fisheries meets on March 21, 1983, whether these appointees are confirmed or not. Sportsfishing and tourism for 19[illegible] and beyond will be affected by their decisions.

The appointments to the Board of Fisheries by Governor Sheffield has triggered a highly indignant response by sportsfishing enthusiasts throughout Alaska. The lobbying and pressures brought by commercial-fishing interests have decreased the representation to this critical body from three to what we now consider to be effectively zero.

The Board of Fisheries has the power to allocate fish above escapement requirements to the various fishing interests. We feel that the appointments, as they currently exist, are an absolute insult to the 100,000 licensed sportsfishermen in the Anchorage-bowl, and a serious threat to sportsfishing interests from the Matanuska Valley to Homer. The five sportsfishing associations in the Anchorage area asked for an appointment with Governor Sheffield while he was here. He did not even grant time to listen to our grievance.

We do not contend that the appointees are not highly respected and qualified people. We simply insist on true sportsfishermen being placed on the Board of Fisheries to represent sportsfishing and the highly valuable tourist industry when allocating fish resources.

We do question the ability of Mr. Paul Weller, the only appointee with sportsfishing inclinations, to fairly represent the sportsfishing side. The last time a sportsfishing representative was chosen from the Kenai-Soldotna area (Dr. Fair), who truly represented the sportsfishermen and acted on their behalf, was forced to resign after receiving threatening phone calls, attempted boycott of his business, chiding to his children at school, and malicious acts to his private property. Mr. Weller is backed by Lottie Ettelman, a long-time, setnet-fishing operator and commercial-fishing activist (in addition to being a top democarat in that area). In fairness to Mr. Weller, he was considerate enough to attend our general membership meeting on February 8, 1983, which displayed some interest in representing our cause, though there was a feeling he lacked knowledge of fishing issues (after four years of representation on the Kenai-Soldotna Advisory Committee).

In my earlier letter to Governor Sheffield before the appointments were made, we recommended Mr. William E. Moulton, Jr., and Ms. Toni Salmeier as two superbly-qualified individuals who have been highly involved in both the sportsfishing and tourist industry. Mr. Moulton is also a Fish and Wildlife graduate.

Additionally, your support in the speedy passage of House Bill 63 is requested. This bill would establish sportsfishing on an equal basis with subsistence fishing and would at least minimize the devisiveness of the priority subsistence issue.

These and many other actions are drawing keen interest by sportsfishers throughout Alaska. I assure you that we intend to track actions taken and to keep the public aware of the responsiveness of their legislators.

Sincerely,

Bob Hunter

Robert L. Hunter, President
Alaska Sportsfishing Association

CSHB 94 ANALYSIS

Section 1

Authorizes the seizure of items discovered under a valid search if the person making the search determines that the items in question should be held as evidence of a fish and game violation. Parts of fish or game nests or eggs of birds taken, transported, or possessed may also be seized.

Disposal of fish and game, or their parts that have been seized, is left up to the court if the person they have been seized from is convicted. If the court sees fit to sell the fish and game used as evidence proceeds shall, by way of the proper state officer, be deposited in the general fund.

Items seized having an individual value of $2500 or more cannot be held beyond 7 days after charges are filed in court for the associated violation, unless an extension is approved by court order for cause shown.

Policy Question

Should citizens who have had items valued at $2500 or more seized in an alleged fish and game violation be afforded the opportunity to have the court ascertain within 7 days after charges are filed whether or not the items seized should be held as evidence in the case.

Possible Considerations

1) Remedies that are now available without this proposed change in law.

2) Costs of implementing this law

3) Costs to citizens under present system, should they be found innocent

STATE OF ALASKA
FINAL* STATEMENT OF FISCAL IMPACT

Bill No: CSHB 94 Date on Bill: 2/8/83
Title: Seizure of items used in or in aid of fish and game violations
Sponsor: Bettisworth and Grussendorf
Requestor: House Resources Committee

1. Estimated fiscal impacts on:

a. Expenditures:

(Thousands of Dollars)

			FY 83	FY 84	FY 85	FY 86		
Capital								
Operating								
Total			-0-	-0-	-0-	-0-		

b. Revenues:

Revenue								

2. Source of funds to offset fiscal impact of bill:

3. Assumptions:

*This statement has been reviewed by the OMB in the Office of the Governor.

Prepared By: Richard P. Barrier Phone: 264-0545
Division: Alaska Court System Date: 3/8/83

Approved by Commissioner: Date:
Department:

Reviewed by OMB: Date:
Phone:

5. Distribution:
Original to Legislative Finance
Copy to Department
Copy to Sponsor
Copy to Requestor

2/24/83

THE LEGISLATURE OF THE STATE OF ALASKA
THIRTEENTH LEGISLATURE

H.R

FISCAL NOTE

☐ Expenditure Type
☐ Revenue Type

I. REQUEST
Bill/Resolution No. HB 94
Title An Act relating to the seizure of items used in or in aid of ~~fish~~ and game violations
Requested by Bettisworth & Grussendorf Date 1/27/83

II. FISCAL DETAIL
Agency Affected Department of Public Safety
Program Category Affected Fish & Wildlife Protection
BRU, Program, Or Subprogram(s) Affected Fish & Wildlife Protection
(Note: If more than one budget component is affected, separate line-item amounts and funding for each component in the analysis section.)

EXPENDITURES (Thousands of Dollars)

	FY 83	FY 84	FY 85	FY 86	FY 87	FY 88
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 COMMODITIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS,CLAIMS,ETC.						
TOTAL	0	0	0			

FUNDING (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER (Specify Source)						
	0	0	0			

POSITIONS

FULL TIME						
PART TIME						
TEMPORARY						
	0	0	0			

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

RECEIVED
FEB 7 1983
LEGISLATIVE FINANCE

IV. DATE 1/27/83 PREPARED BY Col. R. J. Stickles Phone 269-5532
DIVISION F&WP Initials
DEPARTMENT OF PUBLIC SAFETY Initials 2/1/83

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

33-001 (Rev. 12/82)

OMB Reviewed by: Date Logged

STATE OF ALASKA
FISCAL NOTE

Revision Date Mar. 11, 1983

I. REQUEST

Bill/Resolution No.: CS HB 94
Title: "Seizure of items..F & G violations"
Sponsor: Representative Bettisworth
Requestor: House Resources Committee

II. FISCAL DETAIL

Agency Affected: FISH AND GAME
Program Category Affected: NRMEC
BRU, Program of Subprogram(s) Affected: Commercial Fisheries, Game & Sport Fish

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 83	FY 84	FY 85	FY 86	FY 87	FY 88
OPERATING						
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 COMMODITIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER (Specify Source)						

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

III. SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

IV. ANALYSIS: Attach a separate page for any Analysis

Prepared By: Beverly Reaume
Phone: 465-4120
Division: Administration
Date: 03/11/83

Approved by Commissioner: Don W. Collinsworth
Date: 3-11-83
Department: Fish and Game

Distribution:
Original to Legislative Finance
Copy to Office of Management and Budget (for Legislature introduced bills)
Copy to Department (for Governor introduced bills)
Copy to Sponsor
Copy to Requestor (if different from Sponsor)

3/8/83

file copy

STATE OF ALASKA

DEPARTMENT OF LAW

CRIMINAL DIVISION

BILL SHEFFIELD, GOVERNOR

FOUCH KC – STATE CAPITOL
JUNEAU, ALASKA 99811
PHONE: (907) 465-3428

March 30, 1983

The Honorable Charlie Bussell, Chairman
House Judiciary Committee
Pouch V
Juneau, Alaska 99811

Dear Representative Bussell:

I am writing on behalf of the Criminal Division of the Department of Law to comment on the expected impact upon the criminal division and the criminal justice system of a bill currently being considered by your committee: CSHB 94. After analysis of the bill and consultation with other criminal attorneys within the department, I have concluded that the proposed bill is likely to have a negative impact upon efforts to enforce fish and game laws.

Current law provides redress for a person whose property is seized as a result of an illegal search. AS 16.05.190 requires that property be seized under a "valid search", and Rule 37, Alaska Rules of Criminal Procedure, provides that a person who has been subject to an unlawful search and seizure may petition the court for the return of the property and the suppression of its use as evidence.

Although the current statutes do not specifically deal with notice and the right to a hearing to obtain the return of seized property, case law has established that the constitutional right to due process of law requires that the owner of seized property be given immediate notice of any seizure and the opportunity for meaningful hearing. See, for example, State v. Rice, 626 P.2d 104 (Alaska 1981) and F/V American Eagle v. State, 620 P.2d 657 (Alaska 1980).

The American Eagle case involved the seizure of a crab fishing vessel because of the violation of a regulation prohibiting the taking of crab out of season. The court there held that if the seized property was used by its owner in earning a livelihood, notice and an opportunity to contest the state's reasons for seizing the property must follow "within days, if not hours" of the seizure. 620 P.2d at 667. Fish and Wildlife Protection officers and attorneys are well aware of the due process requirements set out in the American Eagle and related cases, and provide immediate notice and an opportunity

to be heard when property is seized. Thus, a citizen who believes that his property was wrongfully taken, or who has compelling reasons which justify the return of the property, may petition the court for the immediate return of his property. This is commonly done, generally through the posting of a bond in lieu of the seized property.

As compared to the number of criminal actions filed for the violation of fish and game laws, the seizure of large items of property such as boats and airplanes is used infrequently, and generally for only the most serious violations. The vast majority of seizures of vessels are made pursuant to search and seizure warrants issued by neutral magistrates or judges following a determination of sufficient probable cause. Probably the most common situation in which large items of property are seized without warrants are airplanes seized when an officer observes a violation of a fish and game law such as "same day airborne." The conviction rate on these serious fish and game violations is quite high. Additionally, although the state may request the forfeiture of an item following criminal conviction, this motion is not always granted. Any arguments in mitigation which the defendant wishes to make as to why his property should not be forfeited can be made during his sentencing hearing.

The proposed amendments to AS 16.05.190 provide that all items, even minor ones such as guns or traps, may not be seized unless they are necessary as evidence of a violation. Often, of course, they will be needed as evidence. But the state may choose to seize items for other reasons besides use as evidence. For example, if the item has been seized it can not be used in violation of the law during the pendency of the case. The Alaska Supreme Court has recognized this as a valid consideration in seizure cases. See the American Eagle case cited above.

Another important consideration is the prevention of the transfer from the jurisdiction or sale to an innocent purchaser of property used in fish and game violations. It is not uncommon for the owner of an airplane or vessel who discovers that he may have been observed violating the law to immediately remove the plane or boat from the jurisdiction. Planes which were the subject of an ongoing investigation have been sold to innocent purchasers within days of the alleged violation. AS 16.05.195(e) specifically provides that an item subsequently sold to an innocent purchaser in good faith may not be forfeited. Thus, if the violator manages to sell his plane, nets, vessel, etc. the state has no way to regain possession of that item for forfeiture as part of the criminal sentence.

Another important reason to seize items, other than to use them as evidence in prosecution, is the deterrence of

others. As stated above, forfeiture of large items is generally sought in only most serious fish and game violations. Often these cases involve commercial guides who may violate the law regularly, and who have a commercial motive for their behavior. Only a substantial deterrent will discourage some potential offenders from taking chances and hoping that he will not be caught.

The committee substitute, which adds language requiring an individual item value of $2,5000 or more on line 28 of the bill, is a significant improvement over the original version. Nonetheless, a person who owns a seized item worth over $2,500 will be able to litigate, under CSHB 94, the validity of the decision of the person who seized the item that the seizure was necessary to preserve the item as evidence. This will require the state to attempt to prove the good faith of the person making the seizure, and to present the state's case in advance of the trial in order to convince the court that it is necessary to preserve the item as evidence. As discussed more fully below, this hearing may be held at a time when the state's case is in the early stages of development, when all possible evidence has not yet been obtained. Also, the bill does not explain how determination of an item's value is to be made. Should an item's value be based upon its purchase price? Replacement cost? Fair market value? If fair market value is the appropriate criterion, is it the market value at the place and time seized, or at the time of later disposal? If these questions are not resolved, they are likely to provoke future litigation on the issue.

The proposed language on lines 2 through 4 of page 2 of the bill requires that seized property be returned within seven days after the charges are filed, unless an extension is approved by court order for cause shown. While the language does not explicitly require a hearing for this order, an appellate court will almost certainly interpret the language to require a full hearing on the merits. As 16.05.190 applies to seizures made without a warrant. If no warrant has been issued, there has not yet been a determination by a neutral judge regarding the existence of probable cause. An ex parte presentation to the court by the state, either through testimony or an affidavit of the reasons justifying the continued seizure of the item would probably not provide the defendant sufficient due process of law, as an ex parte procedure would deny the defendant a right to be heard on parte procedure would deny the defendant a right to be heard on the issue. The American Eagle case makes it clear that the defendant has a right to a hearing on his contention that the state should not continue to hold the seized item.

The proposed language appears to place the burden on the state to demonstrate "cause" in order to justify an

extension of the seizure. Thus, the item is automatically returned to the defendant unless the state bears the burden of proof placed upon it. These hearings will ordinarily be taking place during the early stages of the state's case, when all available facts may not yet have been fully developed. additionally, the standard for "cause" is unclear. Is the only "cause" allowable under the statute the fact that the item will be used as evidence? Or, is a legitimate concern regarding the removal of the item from the court's jurisdiction or its sale to an innocent purchaser sufficient cause to justify the state's retention of the property? If the item's status as evidence is the only permissible reason to continue to hold the item, then the state would be required to release a boat or plane to an owner even if the owner intends to walk out of the courtroom and remove the item from the state.

Finally, the seven day period allowed before a court extension must be obtained is much too short. Many, if not most, seizures of large items used in fish and game violations are made in remote locations of the state. While the officers involved have the authority to file charges immediately, if appropriate, there may well be no prosecutor or assistant attorney general available locally to handle the hearing. Under the language of the statute as currently drawn, the defendant's property is returned to him automatically after seven days, perhaps even if weather precludes the arrival of a judge or district attorney within the seven day period. It should also be noted that, in a felony case, there may be no judicial officer available within a jurisdiction to hear the case. If a defendant has been indicted for the charges, then only a superior court judge has jurisdiction over the case. A local district court judge or a magistrate could not preside over the forfeiture hearing.

Thank you for allowing the opportunity for comment on CSHB 49. Please contact me if you have any questions.

Very truly yours,

NORMAN C. GORSUCH
ATTORNEY GENERAL

DANIEL W. HICKEY
CHIEF PROSECUTOR

By: Gayle A. Horetski
Gayle A. Horetski
Assistant Attorney General

GAH/gb-85

Attachments

HB

100

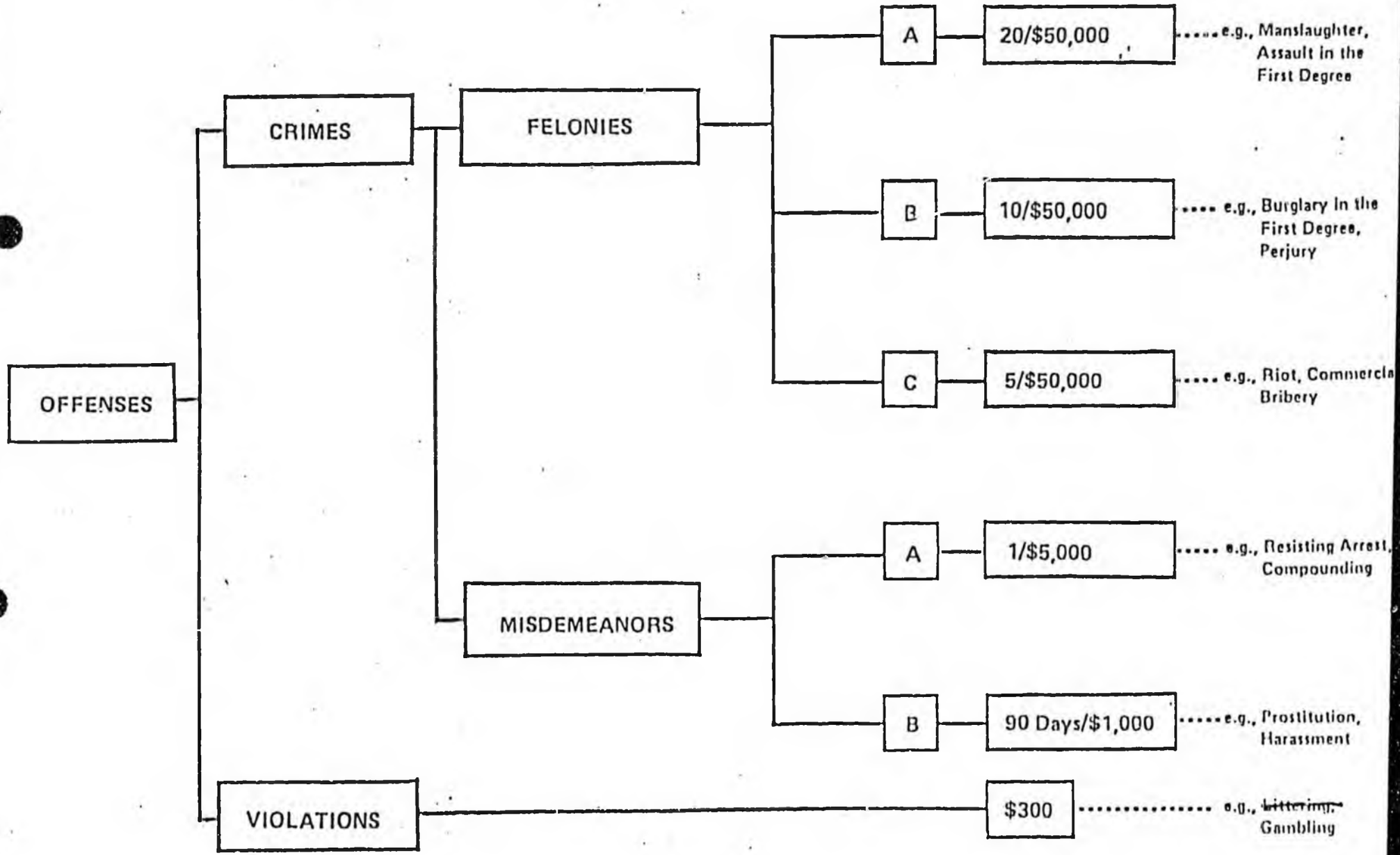
HOUSE JUDICIARY COMMITTEE OBSERVER/WITNESS SIGN-UP SHEET

DATE: 5/10/83 SPONSOR: Lanier

SUBJECT(S): SS HB 100

NAME	REPRESENTING	ADDRESS	PHONE	OBSERVER	WITNESS	FOR	AGAINST

CLASSIFICATION OF OFFENSES UNDER THE REVISED CRIMINAL CODE



Unclassified Felonies – Murder I – 20-99/$75,000 Murder II, Kidnapping – 5-99/$75,000

Sexual Assault

STATE OF ALASKA
PRELIMINARY STATEMENT OF FISCAL IMPACT

Bill No: House Bill No. 100 Date on Bill: Jan. 26, 1983
Title: "An Act relating to assaulting a peace officer, fire fighter, or emergency responder."
Sponsor: Lacher and Szymanski
Requestor:

1. Estimated fiscal impacts on:

a. Expenditures:

(Thousands of Dollars)

			FY 83	FY 84	FY 85	FY 86		
Capital			0	0	0	0		
Operating			0	0	0	0		
Total			0	0	0	0		

b. Revenues:

Revenue								

2. Source of funds to offset fiscal impact of bill:

3. Assumptions:

4. Disclaimer:
This statement has not been reviewed by the OMB in the Office of the Governor. It does not represent the policy of the Sheffield Administration or the final estimate of fiscal impact.

Prepared By: Mark S. Johnson Phone: 465-3027
Division: Public Health, Emergency Medical Services Section Date: 2/28/83

Approved by Commissioner: Kathleen Smith, M.D. Date: 3/8/83
Department: Health and Social Services

5. Distribution:
Original to Legislative Finance
Copy to OMB
Copy to Sponsor
Copy to Requestor

2/8/8

THE LEGISLATURE OF THE STATE OF ALASKA
THIRTEENTH LEGISLATURE

FISCAL NOTE

I. REQUEST
Bill/Resolution No. House Bill No. 100
Title "An Act relating to assaulting a peace officer, fire fighter, or emergency
Requested by Lacher and Szymanski Date Jan. 26,1983 responde

II. FISCAL DETAIL
Agency Affected Department of Health and Social Services
Program Category Affected Emergency Medical Services
BRU, Program, Or Subprogram(s) Affected Emergency Medical Services
(Note: If more than one budget component is affected, separate line-item amounts and funding for each component in the analysis section.)

EXPENDITURES (Thousands of Dollars)

	FY 83	FY 84	FY 85	FY 86	FY 87	FY 88
100 PERSONAL SERVICES	0	0	0	0	0	0
200 TRAVEL	0	0	0	0	0	0
300 CONTRACTUAL	0	0	0	0	0	0
400 COMMODITIES	0	0	0	0	0	0
500 EQUIPMENT	0	0	0	0	0	0
600 LAND & STRUCTURES	0	0	0	0	0	0
700 GRANTS,CLAIMS,ETC.	0	0	0	0	0	0
TOTAL	0	0	0	0	0	0

FUNDING (Thousands of Dollars)

GENERAL FUND	0	0	0	0	0	0
FEDERAL FUNDS	0	0	0	0	0	0
OTHER (Specify Source)	0	0	0	0	0	0

POSITIONS

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

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

IV. DATE Jan. 26, 1983 PREPARED BY Mark S. Johnson
AGENCY EMS Section, Dept. of Health & Social Servic
Original: Legislative Finance PHONE 465-3027
cc: Budget and Management
Prime Sponsor (First Legislator Named)
33-001 (Rev. 12/82)

STATE OF ALASKA
PRELIMINARY STATEMENT OF FISCAL IMPACT

Bill No: SSHB 100 Date on Bill: 2/23/83
Title: "An Act relating to assaulting a peace officer, fire fighter, or emergency responder."
Sponsor: Representative Lacher
Requestor: House Judiciary Committee

1. Estimated fiscal impacts on:

a. Expenditures:

(Thousands of Dollars)

			FY 83	FY 84	FY 85	FY 86		
Capital								
Operating				129.5	144.3	153.0		
Total				129.5	144.3	153.0		

b. Revenues:

Revenue								

2. Source of funds to offset fiscal impact of bill:

No information provided.

3. Assumptions:

The sponsor substitute for HB 100 sets and clarifies the felony levels for assaults upon peace officers and other emergency responders. As was noted in our original Statement of Fiscal Impact, approximately 50-100 criminal cases would be prosecuted as felonies rather than misdemeanors. Therefore, because of the increased likelihood of trials, increased length of trials, and more aggressive motion practice, additional attorney and other staff resources would be required.

4. Disclaimer:
This statement has not been reviewed by the OMB in the Office of the Governor. It therefore does not represent the final estimate of fiscal impact.

Richard I. Pegues

Prepared By: Richard I. Pegues, Director Phone: 465-3672
Division: Administrative Services Division Date: 3-10-83

Richard L. Pegues /for

Approved by Commissioner: Norman C. Gorsuch, Attorney General Date: 3-10-83
Department: Department of Law

5. Distribution:
Original to Legislative Finance
Copy to OMB
Copy to Sponsor
Copy to Requestor

2/15/83

STATE OF ALASKA
FISCAL NOTE

Revision Date , 1983

I. REQUEST

Bill/Resolution No.: SSHB 100
Title: "Act relating to assaulting a police..."
Sponsor: Rep. Lacher
Requestor: House Judiciary

II. FISCAL DETAIL

Agency Affected: Public Safety
Program Category Affected: Crime ID
BRU, Program of Subprogram(s) Affected: Alaska State Troopers

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 83	FY 84	FY 85	FY 86	FY 87	FY 88
OPERATING						
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 COMMODITIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC						
TOTAL OPERATING		-0-	-0-	-0-	-0-	-0-
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER (Specify Source)						

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

III. SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

IV. ANALYSIS: Attach a separate page for any Analysis No fiscal impact anticipated

Prepared By: Paul Conger
Phone: 465-4338
Division: Administrative Services
Date: 3-16-83

Approved by Commissioner:
Date: 3/18/83
Department: Public Safety

Distribution:
Original to Legislative Finance
Copy to Office of Management and Budget (for Legislature introduced bills)
Copy to Department (for Governor introduced bills)
Copy to Sponsor
Copy to Requestor (if different from Sponsor)

3/8/83

Alaska State Legislature

REPRESENTATIVE
BARBARA LACHER
P.O. BOX 478
PALMER, ALASKA 99645
(907) 376-4215

WHILE IN JUNEAU
POUCH V
JUNEAU, ALASKA 99811
(907) 465-4894

House of Representatives

M E M O R A N D U M

TO: Representative Bussell
House Judiciary Committee Chairperson

FROM: Representative Lacher
House C&RA Committee Chairperson

DATE: May 8, 1983

SUBJECT: Proposed Judiciary CS to SSHB 100

The Judiciary Committee Substitute to SSHB 100 is the result of excellent committee work and I fully support the proposed changes.

The amendments added to SSHB 100 in the House Judiciary CS provide more comprehensive legislation, covering all of the relevant Statutes. The Judiciary CS combines the positive aspects of both the Senate and House bills. I view these changes as an improvement on SSHB 100 and fully endorse the Judiciary Committee Substitute.

The increase in penalties and clarification of the law, in terms of the full range of emergency responders, is a much needed piece of legislation. I urge your committee to pass out CSSSHB 100.

Alaska State Legislature

REPRESENTATIVE
BARBARA LACHER
P.O. BOX 478
PALMER, ALASKA 99645
(907) 376-4215

WHILE IN JUNEAU
POUCH V
JUNEAU, ALASKA 99811
(907) 465-4894

House of Representatives

M E M O R A N D U M

TO: Representative Bussell
House Judiciary Committee Chairperson

FROM: Representative Lacher
House C&RA Committee Chairperson

DATE: May 8, 1983

SUBJECT: Proposed Judiciary CS to SSHB 100

The Judiciary Committee Substitute to SSHB 100 is the result of excellent committee work and I fully support the proposed changes.

The amendments added to SSHB 100 in the House Judiciary CS provide more comprehensive legislation, covering all of the relevant Statutes. The Judiciary CS combines the positive aspects of both the Senate and House bills. I view these changes as an improvement on SSHB 100 and fully endorse the Judiciary Committee Substitute.

The increase in penalties and clarification of the law, in terms of the full range of emergency responders, is a much needed piece of legislation. I urge your committee to pass out CSSSHB 100.

Alaska State Legislature

Barbara Lacher, Chairman
Mae Tischer, Vice-Chairman
Randy Phillips
Milo Fritz
Don Clocksin
Jack McBride
Mike Szymanski

Room 104
State Capitol
Juneau, Alaska 99811

Pouch V
Juneau, Alaska 99811

House of Representatives
Committee on Community & Regional Affairs

To: House Judiciary Committee
From: Representative Barbara Lacher
Date: March 10, 1983
Subject: SS HB 100

You previously considered HB 100, and many questions and problems were brought to light at that time. Therefore, I had this sponsor substitute prepared. I believe this new legislation will answer your concerns, as well as addressing the concerns of our emergency responders, fire-fighters, and peace officers.

The sponsor substitute increases the penalty for an assault on an emergency responder by one degree. For example, if an assault upon a person would normally be considered a Class C felony, it would become a Class B felony if the assault were upon a peace officer, fire fighter, emergency technician, paramedic, ambulance attendant, or other emergency responder while in the performance of official duties.

My goal is to increase protection for emergency responders, while decreasing the number of assaults on them. These people are the protectors of our society. Endangering them and interfering with their efforts to protect our lives and property should be a more serious crime.

I believe that, if we make the public aware that these assaults will result in more severe penalties than would normally be dealt by our courts, we can curb these attacks. I urge your wholehearted support of SSHB 100.



ALASKA STATE FIREFIGHTERS ASSOCIATION

HOUSE JUDICIARY COMMITTEE

Hearing on House Bill No. 100 Relating to Assulting a Peace Officer, Fire Fighter, or Emergency Responder

February 14, 1983

Mr. Chairman:

My name is E. Robert Haag representing the Alaska State Firefighters Association and the Alaska Fire Chiefs Association.

We wish to speak in favor on the intent of House Bill No. 100 now before your Committee.

Our two Associations at their annual meetings last October 1983 passed a number of resolutions pertaining to the Fire Service. We did not make a resolution dealing with the specific subject in Hous Bill No. 100 for additional wordage to AS 11.41.220 (a). However, we do believe that the suggested additional sub paragraph (3) is important in that it defines responders.

We would suggest consideration of some wordage chane in lines 18 and 19. The suggested change is the same we made in the Senate Judiciary Committee hearing on Senate Bill No.24 on February 2, 1983.

Lines 18 and 19 revised to read "or other emergency responder, regardless of rank, functions or duties being performed".

Alaska State Legislature

REPRESENTATIVE
BARBARA LACHER
P.O. BOX 478
PALMER, ALASKA 99645
(907) 376-4215

WHILE IN JUNEAU
POUCH V
JUNEAU, ALASKA 99811
(907) 465-4894

House of Representatives

To: House Judiciary Committee
From: Representative Barbara Lacher
Date: February 14, 1983
Subject: Background: House Bill 100

I introduced HB 100 at the request of firefighters in my district. The intent of the bill is two-fold: to ensure that peace officers, firefighters, emergency medical technicians, and other emergency responders are recognized by the law as "persons", so that those assaulting emergency responders are successfully prosecuted; and to raise the penalty for assaulting emergency responders.

As I understand the problem, there was a court decision in which a judge ruled that emergency responders are not "people" in the eyes of the law. This bill defines emergency responders, and the penalty for assaulting one.

Further, there is apparently no middle ground in assigning penalties for assaulting emergency responders; the assault is termed either a misdemeanor or a Class B felony. Peace officers, firefighters, and other emergency responders would like a penalty that falls in between the two, for those times when physical injury is not "serious" as defined by statute (part of the criteria for the Class B felony), but when physical harm is caused to the responder that should be considered more serious than a misdemeanor.

Last Friday, the Senate Judiciary Committee heard teleconference testimony on SB 24, the companion bill to HB 100. Officer George Novacky, on behalf of the Anchorage Police Department, indicated in his testimony that 113 APD officers were assaulted in 1982. These officers missed a total of 253 work days in 1982 due to the injuries they received--approximately one work year lost because of assaults on officers.

In his testimony, Novacky also noted that there are restraints on what an officer can do when responding to a situation, but there are no such restraints on a person who assaults an officer. Raising the penalty for assaulting emergency responders may provide a deterrent to this type of behavior.

A total of ten people testified to the Senate Judiciary Committee. All but one of these people supported the companion bill. The one exception was Gayle Horetski, who spoke on behalf of the Department of Law; she felt that existing statutes adequately address the intent of the bill.

I have attached a list of the participants in Friday's Senate teleconference, as well as messages I have received in support of the bill.

If you have further questions, I will be happy to be of assistance.

attachments

THE FOLLOWING DOCUMENT(S) MAY NOT FILM LEGIBLY BECAUSE OF POOR QUALITY OF THE ORIGINAL.

Rep Locher pg 1 of 1

Alaska Fire Chiefs' Association

Mint 2/10/83



RESOLUTION No. 82-1 Amended

WHEREAS Alaska Statutes, Title 11, Section 11.46.400 states: A person commits the crime of arson in the first degree if, by starting a fire or causing an explosion, he intentionally damages protected property of another; or any property, whether his own or another's, and the act recklessly places another person in danger of physical injury or protected property of another in danger of damage, and

WHEREAS Alaska Statutes, Title 11, Section 11.81.900(39) states: "Person" means a natural person and, when appropriate, an organization, government, or governmental instrumentality, and

WHEREAS in the case of the State of Alaska v. Markland (4FA-582-100 Cr.), the defendant was charged with arson in the first degree, and

WHEREAS in the case of the State of Alaska v. Markland Superior Court Judge Warren Taylor stated in the instructions to the jury that, "a fireman is not a person within the crime of first degree arson",

NOW, THEREFORE, BE IT RESOLVED BY THE ALASKA FIRE CHIEFS' ASSOCIATION as follows:

Section 1: That the Alaska Fire Chiefs' Association directs the Alaska Fire Chiefs' Association President to have the Alaska Statutes, Title 11 (Alaska Criminal Code) amended to read in Section 11.46.400,

A person commits the crime of arson in the first degree if, by starting a fire or causing an explosion, he intentionally damages protected property of another; or any property, whether his own or another's, and the act recklessly places another person, including fire service personnel, police officers, and public employees, in danger of physical injury or protected property of another in danger of damage.

APPROVED in conference October 20, 1982 in Ketchikan, Alaska.

BASIL J. SANDS, Jr., President

SENATOR FRITZ PETTYJOHN
REPRESENTATIVE BARBARA LACHER

ERIC TODD THEIN
WASILLA VOLUNTEER FIRE DEPT.
P.O. BOX 49
WASILLA 99687 PH. 376-3759

HB100 AND SB24
IN THE PASSING OF THIS LEGISLATION THE WHOLE PUBLIC SAFETY DIVISION,(WHETHER ALL TIME OR PASTIME) SHOULD FILL THE 'BILL' TO PROSECUTE CRIMINALS TO THE FULLEST EXTENT. HOWEVER IT WILL ALSO REMAIN UP TO THE JUDGES AND D.A.'S TO CARRY OUT THE AMENDMENT TO THE FULLEST EXTENT.

THIS BIL WILL SHOW THE PUBLIC THAT PUBLIC SAFETY PERSONNAL HAVE A JOB TO DO WITHIN THE LAW, (WHICHEVER DIVISION POLICE, FIRE, OR AMBULANCE.)

SENATOR FRITZ PETTYJOHN
REPRESENTATIVE BARBARA LACHER

TERRY SIMPSON
WASILLA FIRE DEPARTMENT
GENERAL DELIVERY
WASILLA 99687 PH. 376-2903

HB100 AND SB24
IF THIS PASSES THROUGH, THEN I HOPE IT WILL DECREASE THE POSSIPLITY OF ARSON, AND THOSE WHO ARE JUST VOLUNTEER FIREMEN WILL BE COVERED BY SOME MEANS. THEN THE PEOPLE WHO THINK ABOUT COMMITTING ARSON ARE GOING TO TAKE A SECOND THOUGHT BEFORE DOING SO.

SENATOR FRITZ PETTYJOHN
REPRESENTATIVE LACHER

RAEJEAN MYERS
WASILLA VOLUNTEER FIRE DEPT.
SR 5079
WASILLA 99687 PH.376-9126(HOME) 376-5100(WORK)

HB100 AND SB24
IN THE AMENDMENTS WITH ALL AMENDMENTS TO THE AMENDMENT TO READ 'WILLFULLY INTENTIONALLY' RATHER THAN "RECKLESSLY." THE WORD IS TOTALLY INAPPROPRIATE FOR USE IN FIRE. I'M SURPRISED IT HAS LIVED THIS FAR IN THE PAPERWORK.

THE PRECEDING DOCUMENT(S) MAY NOT FILM LEGIBLY BECAUSE OF POOR QUALITY OF THE ORIGINAL.

PLEASE Sign In.



LEGISLATIVE TELECONFERENCE NETWORK SIGN-IN SHEET

Date: 2/11

Site/Location: Jnu.

Sponsor/Subject: S. Judiciary SB 24.

Name/Representing	Address	Phone	Here to Testify	Here to Observe
✓Lee Powelson APEA	340 North Franklin	586-2334	✓	
✓William W. Ireland JPO	810 D STREET Douglas	364-2139	—	
Greg White JPD	620 S. Anne's Ave Douglas	364-3424	✓	
STEVE CRAMER (REP. BUSSELL)	1060 FRITZ CO[illegible] JUNEAU	789-4347		✓
GAYLE HORETSKI (DEPT. OF LAW)	POUCH KC, JUNEAU	465-3428	X	

MSG 83-00007958 PRTY 1 02/11/83 14:57:17 ORIG: LA08 IN= 0008 OUT= 0020
FROM: BARBARA IN ANC TO: STATS IN JNU
TARGET: LJHZ SUBJ: FINAL STATS (S) JUDICIARY T/C, 2/11

IN ANCHORAGE:

TESTIFIED	4
UNABLE TO TESTIFY:	8
OBSERVORS	2
TOTAL	14

MSG 83-00007935 PRTY 1 02/11/83 14:19:59 ORIG: LA08 IN= 0006 OUT= 0017
FROM: BARBARA IN ANCHORAG TO: LINDA IN JNU
TARGET: LJHZ SUBJ: (S) JUDICIARY T/C, FEB 11

OMNI #3
TO TESTIFY
9. LEE R. GERRISH, ANCH.,EMS. PARA-MEDIC, 625, C ST., ANC.,276-5511
10. ALAN LEIGH, ANCH. EMS. PARA-MEDIC, 625 C ST., ANC., 276-5511
11. JOHN N. GLENN, ANCH. FIRE DEPT., 3500 TUDOR RD., ANC 786-8376
12. WAYNE A. SHUTT, " " " " "
13. JOHN F. FRANKLIN, MUNICIPAL COMMISSIONER OF PUBLIC SAFETY,
825 L ST., ROM 509, ANC., 264-4901

WE ARE NOW OVER THE LTN. WE STILL HAVE STATIC AT TIMES..
HOPEFULLY, ALL WILL BE OKAY FOR REST OF T/C
FOM

OMNI #1 **** NOTE TIME CONSTRAINT, TESTIFIER #2

TO TESTIFY:

1.) KATHLEEN GRAY/ANCHORAGE POLICE DEPT., 625 C ST., ANCHORAGE 264-4155
2.) GUY TUTTEROA/APD****** PLEASE NOTE TIME CONSTRAINT, HE IS ONLY ON HIS LUNCH HOUR; WOULD LIKE TO SPEAK ASAP **********
3.) RICHARD WILLIAMS/ANCHORAGE EMS PARAMEDIC, 211 WEST 7TH, ANCHORAGE 264-4940
4.) HOLLY PLOOG/APDEA, 701 W. 58TH ST., ANCHORAGE 99502, 561-1158
5.) PAT CHEESE, ANCHORAGE EMS PARAMEDIC, 1764 EAGLE RIVER RD., EAGLE RIVER 694-3688
6.) RON BECKER/APD, P.O. BOX 3-004 ECB., 995-7333-
7.) WALT STIEHM/APD, 625 C STREET., ANCHORAGE 345-5799

8.) GEORGE NOVAKY/APD, 625 C STREET

TO OBSERVE:

1.) DAVID SKITT/ANCHORAGE EMS PARAMEDIC, 211 W. 7TH, ANCHORAGE

MSG 83-00007918 PRTY 1 02/11/83 13:37:02 ORIG: LF02 IN= 0001 OUT= 0011
FROM: LYNDA/FBX TO: ALL
TARGET: LJHZ SUBJ: SEN. JUD 2/11 T/C

FBX MSG #1
FAIRBANKS:

TO TESTIFY:
1. JEANNE OSTNES, EMRG. MED. SVS., P.O.BOX 2120, FBX. 99707 456-3978
2. ROCKY DUNCAN, FBX. FIREFIGHTERS, 656 7TH AVE., FBX.99701 452-1557

---EOM

MSG 83-00007921 PRTY 1 02/11/83 13:38:32 ORIG: LM00 IN= 0006 OUT= 0012
FROM: MARTIE/MATSU TO: TELECONFERENCE MODERATOR
TARGET: LJHZ SUBJ: SEN JUDICIARY T/C, SB24

MSNG #1

TO TESTIFY

1. JAKE WRIGHT, WASILLA FIRE DEPARTMENT, WASILLA, ALASKA

MSG 83-00007922 PRTY 1 02/11/83 13:38:53 ORIG: LA08 IN= 0005 OUT= 0013
FROM: CANDY/ANCHORAGE TO: LINDA/JNU
TARGET: LJHZ SUBJ: SEN. JUDICIARY T/C ONGOING

OMNI #2

GEORGE NOVAKY OF APD, TESTIFIER #8, HAS JUST INDICATED A TIME CONSTRAINT. HE WOULD LIKE ALSO TO GO ASAP. HE EXPLAINS THAT MOST PEOPLE HERE HAVE SPECIFIC INCIDENTS TO DISCUSS, WHILE HE HAS SOME GENERAL COMMENTS. I TOLD HIM I WOULD PASS HIS REQUEST ON.

City of Delta Junction

Box 229

Delta Junction, Alaska 99737

907 - 895 - 4656

The North End of the Alaska Highway

March 3, 1983

Representative Charlie Bussell
Pouch V
Juneau, Alaska 99811

Dear Representative Bussell:

The City Council of Delta Junction reviewed pending legislation at their March 1, 1983 meeting. They voted unanimously to endorse and provide their support on the following bills:

HB42 An Act relating to the determination of population for purposes of calculating amounts of state aid; and providing for an effective date.

HB100 An Act relating to an avalanche and fire weather forecasting system; and providing for an effective date.

HB119 An Act making a special appropriation for payment as a grant to the community of TOK for a rescue ambulance apparatus; and providing for an effective date.

HB136 An Act making an appropriation to the Department of Revenue for financial assistance to municipalities; and providing for an effective date.

HB153 An Act making a supplemental appropriation to the Department of Revenue for financial assistance to municipalities; and providing for an effective date.

HB162 An Act authorizing general law municipalities to limit the number of consecutive full terms certain municipal officials may serve.

HB172 An Act relating to municipal government; and providing for an effective date. (Title 29 rewrite).

House Bill 164 was also reviewed by the Council and they voted four to two against endorsing and supporting this legislation.

Sincerely,

Louis E. Heinbockel, Mayor
City of Delta Junction

STATE OF ALASKA
PRELIMINARY STATEMENT OF FISCAL IMPACT

Bill No: SSHB 100 Date on Bill: 2/23/83
Title: "An Act relating to assaulting a peace officer, fire fighter, or emergency responder."
Sponsor: Representative Lacher
Requestor: House Judiciary Committee

1. Estimated fiscal impacts on:

a. Expenditures:

(Thousands of Dollars)

			FY 83	FY 84	FY 85	FY 86		
Capital								
Operating				129.5	144.3	153.0		
Total				129.5	144.3	153.0		

b. Revenues:

Revenue								

2. Source of funds to offset fiscal impact of bill:

No information provided.

3. Assumptions:

The sponsor substitute for HB 100 sets and clarifies the felony levels for assaults upon peace officers and other emergency responders. As was noted in our original Statement of Fiscal Impact, approximately 50-100 criminal cases would be prosecuted as felonies rather than misdemeanors. Therefore, because of the increased likelihood of trials, increased length of trials, and more aggressive motion practice, additional attorney and other staff resources would be required.

4. Disclaimer:
This statement has not been reviewed by the OMB in the Office of the Governor. It therefore does not represent the final estimate of fiscal impact.

Richard C. R. Pegues

Prepared By: Richard I. Pegues, Director Phone: 465-3672
Division: Administrative Services Division Date: 3-10-83

Richard C. R. Pegues for

Approved by Commissioner: Norman C. Gorsuch, Attorney General Date: 3-10-83
Department: Department of Law

5. Distribution:
Original to Legislative Finance
Copy to OMB
Copy to Sponsor
Copy to Requestor

2/15/83

STATE OF ALASKA
FISCAL NOTE

Revision Date , 1983

I. REQUEST

Bill/Resolution No.: SSHB 100
Title: Act relating to assaulting a police..."
Sponsor: Rep. Lacher
Requestor: House Judiciary

II. FISCAL DETAIL

Agency Affected: Public Safety
Program Category Affected: Crime ID
BRU, Program or Subprogram(s) Affected: Alaska State Troopers

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 83	FY 84	FY 85	FY 86	FY 87	FY 88
OPERATING						
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 COMMODITIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC						
TOTAL OPERATING		-0-	-0-	-0-	-0-	-0-
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER (Specify Source)						

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

III. SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

IV. ANALYSIS: Attach a separate page for any Analysis No fiscal impact anticipated

Prepared By: Paul Conger
Phone: 465-4338
Division: Administrative Services
Date: 3-16-83

Approved by Commissioner:
Date: 3/18/83
Department: Public Safety

Distribution:
Original to Legislative Finance
Copy to Office of Management and Budget (for Legislature introduced bills)
Copy to Department (for Governor introduced bills)
Copy to Sponsor
Copy to Requestor (if different from Sponsor)

3/8/83

STATE OF ALASKA
PRELIMINARY STATEMENT OF FISCAL IMPACT

Bill No: House Bill No. 100 Date on Bill: Jan. 26, 1983
Title: "An Act relating to assaulting a peace officer, fire fighter, or emergency responder."
Sponsor: Lacher and Szymanski
Requestor:

1. Estimated fiscal impacts on:

a. Expenditures:

(Thousands of Dollars)

			FY 83	FY 84	FY 85	FY 86		
Capital			0	0	0	0		
Operating			0	0	0	0		
Total			0	0	0	0		

b. Revenues:

Revenue								

2. Source of funds to offset fiscal impact of bill:

3. Assumptions:

4. Disclaimer:
This statement has not been reviewed by the OMB in the Office of the Governor. It does not represent the policy of the Sheffield Administration or the final estimate of fiscal impact.

Prepared By: Mark S. Johnson Phone: 465-3027
Division: Public Health, Emergency Medical Services Section Date: 2/28/83

Approved by Commissioner: Kent Landon Smith M.D. Date: 3/8/83
Department: Health and Social Services

5. Distribution:
Original to Legislative Finance
Copy to OMB
Copy to Sponsor
Copy to Requestor

2/8/8

THE LEGISLATURE OF THE STATE OF ALASKA
THIRTEENTH LEGISLATURE

FISCAL NOTE

I. REQUEST
Bill/Resolution No. House Bill No. 100
Title "An Act relating to assaulting a peace officer, fire fighter, or emergency
Requested by Lacher and Szymanski Date Jan. 26,1983 responde

II. FISCAL DETAIL
Agency Affected Department of Health and Social Services
Program Category Affected Emergency Medical Services
BRU, Program, Or Subprogram(s) Affected Emergency Medical Services
(Note: If more than one budget component is affected, separate line-item amounts and funding for each component in the analysis section.)

EXPENDITURES (Thousands of Dollars)

	FY 83	FY 84	FY 85	FY 86	FY 87	FY 88
100 PERSONAL SERVICES	0	0	0	0	0	0
200 TRAVEL	0	0	0	0	0	0
300 CONTRACTUAL	0	0	0	0	0	0
400 COMMODITIES	0	0	0	0	0	0
500 EQUIPMENT	0	0	0	0	0	0
600 LAND & STRUCTURES	0	0	0	0	0	0
700 GRANTS,CLAIMS,ETC.	0	0	0	0	0	0
TOTAL	0	0	0	0	0	0

FUNDING (Thousands of Dollars)

GENERAL FUND	0	0	0	0	0	0
FEDERAL FUNDS	0	0	0	0	0	0
OTHER (Specify Source)	0	0	0	0	0	0

POSITIONS

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

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

IV. DATE Jan. 26, 1983 PREPARED BY Mark S. Johnson
AGENCY EMS Section, Dept. of Health & Social Servic
PHONE 465-3027

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

33-001 (Rev. 12/82)

THE LEGISLATURE OF THE STATE OF ALASKA
THIRTEENTH LEGISLATURE

JUD

FISCAL NOTE

☐ Expenditure Type
☐ Revenue Type

I. REQUEST
Bill/Resolution No. HB 100
Title "An Act relating to assaulting a police officer,etc..."
Requested by _____ Date _____

II. FISCAL DETAIL
Agency Affected Department of Public Safety
Program Category Affected Administration of Justice
BRU, Program, Or Subprogram(s) Affected Alaska State Troopers
(Note: If more than one budget component is affected, separate line-item amounts and funding for each component in the analysis section.)

EXPENDITURES (Thousands of Dollars)

	FY 83	FY 84	FY 85	FY 86	FY 87	FY 88
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 COMMODITIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS,CLAIMS,ETC.						
TOTAL	0	0	0			

FUNDING (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER (Specify Source)						
	0	0	0			

POSITIONS

FULL TIME						
PART TIME						
TEMPORARY						

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

No fiscal impact is anticipated.

RECEIVED
FEB 4 1983
LEGISLATIVE FINANCE

IV. DATE January 25, 1983 PREPARED BY F.C. Allan F.C.A. Phone 269-5691
DIVISION State Troopers Initials
DEPARTMENT OF PUBLIC SAFETY Initials 1/31

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

33-001 (Rev. 12/82) OMB Reviewed by: Eric Laschever

STATE OF ALASKA
PRELIMINARY STATEMENT OF FISCAL IMPACT

Bill No: HB 100 Date on Bill: 1/20/83
Title: "An Act relating to assaulting a peace officer, fire fighter, or emergency responder."
Sponsor: Representative Lacher
Requestor: House Judiciary Committee

1. Estimated fiscal impacts on:

a. Expenditures:

(Thousands of Dollars)

			FY 83	FY 84	FY 85	FY 86		
Capital								
Operating				129.5	144.3	153.0		
Total				129.5	144.3	153.0		

b. Revenues:

Revenue								

2. Source of funds to offset fiscal impact of bill:

No information provided.

3. Assumptions: This bill raises to a felony those assaults upon peace officers and other emergency responders which are currently prosecuted as misdemeanors under the criminal code. Based upon the broad coverage of the bill, the Department of Law estimates that approximately 50-100 criminal cases would be prosecuted as felonies rather than misdemeanors. Because of increased likelihood of trials, increased length of trials, and more aggressive defense motion practice, additional attorney and staff resources would be required.

4. Disclaimer:
This statement has not been reviewed by the OMB in the Office of the Governor. It does not represent the policy of the Sheffield Administration or the final estimate of fiscal impact.

Prepared By: Daniel W. Hickey Phone: 465-3428
Division: Department of Law, Criminal Division Date: 2/15/83

Approved by Commissioner: Norman C. Gorsuch, Attorney General Date: 2/15/83
Department: Department of Law

5. Distribution:
Original to Legislative Finance
Copy to OMB
Copy to Sponsor
Copy to Requestor

2/8/83

HOUSE JUDICIARY COMMITTEE OBSERVER/WITNESS SIGN-UP SHEET

DATE: [illegible] SPONSOR: EASLEY

SUBJECT(S): HB 100

	NAME	REPRESENTING	ADDRESS	PHONE	OBSERVER	WITNESS	FOR	AGAINST
1	E. Robert Hagg	[illegible]	[illegible]	586-6406		✓	✓	
2	LEE POWELSON	Alaska Public Employees Assoc.	340 North Franklin, Juneau	586-2354		✓	✓	
3	Joseph Turner	Dept Public Safety	Pouch M, Juneau AK	465-[illegible]		—	—	
4	GAILE HORETSKI	AK. DEPT. OF LAW	POUCH KC, JUNEAU	465-3428		X		
	Greg White	AK. Peace Ofc. Assn. F.P.A.	210 Admiral Way, Juneau	586-2155		X		
5	Barbara Hacker (STAFF)	Legis.	Pouch V Juneau	465-4874		X		

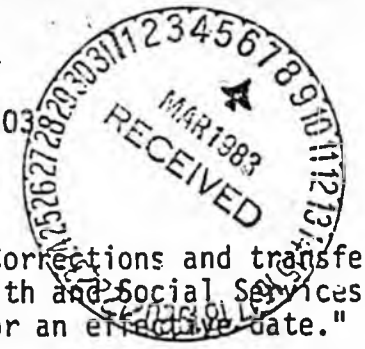
HB

103

POSITION PAPER/Department of Health & Social Services

POSITION PAPER

House Bill No. 103



"An Act establishing a Department of Corrections and transferring certain functions of the Department of Health and Social Services to the Department of Corrections; and providing for an effective date."

House Bill No. 103 adds a new chapter to Title 44 which establishes a Department of Corrections and gives the Department the responsibility to administer state programs including 1) state prisons and state prisoners; 2) probation and parole; 3) extraditions and detainers.

The bill changes the language in Titles 11, 12, 33, 41, 44, and 47 to reflect a Department of Corrections, rather than Department of Health and Social Services and/or Division of Adult Corrections. House Bill No. 103 excludes delinquent juveniles from the responsibilities of the new Department by omission of conforming amendments.

The Department of Health and Social Services supports the concept of House Bill No. 103 and recommends its passage. We do not view this bill as being in conflict of Executive Order 54 but, in fact, is supportive of the Governor's order.

Recommended by: Roger V. Endell

Roger V. Endell, Director
Division of Adult Corrections

Date: 2-9-83

Approved by: Robert London Smith

Robert London Smith, Ph.D.
Commissioner

Date: 2/11/83

STATE OF ALASKA
PRELIMINARY STATEMENT OF FISCAL IMPACT

Bill No: House Bill No. 103 Date on Bill: January 21, 1983
Title: "An Act establishing a Department of Corrections . . ."
Sponsor: Reps. Fritz, Koponen, Furnace, Goll, and Davis
Requestor:

1. Estimated fiscal impacts on:

a. Expenditures:

(Thousands of Dollars)

			FY 83	FY 84	FY 85	FY 86	FY 87	FY 88
Capital			-0-	-0-	-0-	-0-		
Operating			250.0	951.6	1008.7	1069.3		
Total			250.0	951.6	1008.7	1069.3		

b. Revenues:

Revenue			-0-	-0-	-0-	-0-		

2. Source of funds to offset fiscal impact of bill:

The funding source to offset the fiscal impact for FY 1983 is contained in delete/add supplemental submitted by the Department of Health and Social Services. Funding for FY 1984 has not been identified by the bill sponsors.

3. Assumptions:

House Bill No. 103 will create the Department of Corrections necessitating the transfer of the Division of Corrections and Parole Board from the Department of Health & Social Services to the new department, creation of ten new positions, the reclassification of nine Division of Corrections positions and the transfer of 13 positions from the Department of Health & Social Services Divisions of Management and Budget and Administrative Services to the new Department.

4. Disclaimer:
This statement has not been reviewed by the OMB in the Office of the Governor. It does not represent the policy of the Sheffield Administration or the final estimate of fiscal impact.

Prepared By: Roger C. Lange Roger C. Lange Phone: 465-3376
Division: Adult Corrections Date: February 8, 1983

Approved by Commissioner: Robert London Smith Date: 3/7/83
Department: HEALTH & SOCIAL SERVICES

5. Distribution:
Original to Legislative Finance
Copy to OMB
Copy to Sponsor
Copy to Requestor

2/8/8

ALASKA STATE LEGISLATURE
HOUSE OF REPRESENTATIVES
RESEARCH AGENCY

Pouch Y, State Capitol
Juneau, Alaska 99811
(907) 465-3991

February 25, 1983

MEMORANDUM

TO: Representative Mae Tischer

FROM: Jonathan Shood
Research Staff

RE: Texas Department of Corrections Education and Rehabilitation Programs
Research Request 83-18

Heidi Borson of your staff requested that we provide you with information pertaining to the educational and rehabilitation programs operated by the Texas Department of Corrections (TDC). We have contacted officials with the TDC and obtained the following information.

The Texas Department of Corrections' education and rehabilitation services can be divided into three main classes of programs. First, Texas operates programs which provide vocational, basic, and college education. Second, Texas has a work policy which requires employment for all inmates. Finally, Texas offers a number of treatment programs for inmates.

Education

The educational programs in the Texas Department of Corrections are administered by its Treatment Division. The programs include the Windham School System, the Division of Continuing Education, and the Apprenticeship and Training Program.

The Windham School System was established as an independent school district for Texas state prisoners by an act of the Texas State Legislature in 1969. The Windham School System is comprised of the adult basic and vocational education programs in the Department's twenty-three institutions. Windham is part of the TDC's Education Department; however, as a school district, the Windham School System is funded through the Texas Education Agency's State Minimum Foundation Program. Therefore, Windham does not compete for funds with other areas of corrections operations.

All twenty-three institutions in the Texas Correctional System have full competency-based education programs for grades K-12. Inmates can receive either a G.E.D. or a competency-based high school diploma.

In addition, each correctional unit has a vocational training program. In all, thirty different trades are taught in this program, although not every trade is taught at each institution.

According to Cheryl Moore, Assistant Director of Curriculum at Windham, the adult basic education program offers a diverse curriculum, which includes not only such basics as math, reading, communications, and science, but also music, art, dance, and physical education. The Windham School system is required to offer a wide range of courses to meet the Texas Education Agency's curriculum standards for school districts.

Inmates who score at a fifth-grade level or below on the Test of Adult Basic Education must participate in the basic education program until such time as they can score above the fifth-grade level on the test. After that, participation in the program is completely voluntary. Inmates can enter or leave the program at any time.

Inmates in the Texas prison system must work at some kind of a job within the system. According to Ms. Moore, participation in the education program does not excuse inmates from this obligation. Inmates typically attend school the equivalent of one day per week and work for four days per week.

The average daily count for the Windham School System is about 12,000 inmates. Ms. Moore stated that the system has a very high turnover rate, and considerably more inmates participate at some point during the year than is indicated by the daily average. The Texas correctional system as a whole has a population of approximately 34,000 inmates. The budget for the Windham School system was about $11,000,000 in FY 82.

College courses are available through the TDC Division of Continuing Education. The TDC contracts with community colleges and a few universities in Texas to have instructors come to the institution and teach courses. Associate, Bachelor of Arts, and Bachelor of Science degrees are available to inmates through this program.

However, not all of the institutions in the Texas correctional system offer college courses. Inmates in institutions without college programs who desire to take courses can request a transfer to an instituion that does offer college courses. But, because the prisons in the Texas system are classified by categories of inmate population, inmates

may not be eligible for transfer to some institutions. Furthermore, as the Texas correctional system has become more crowded, inmates may have to wait for substantial periods of time before space is available at another institution.

According to Ms. Moore, the Texas State Education Agency pays for the tuition of full-time community college students. The Department of Corrections pays for the first three credit hours of college for inmates, the inmates must pay for their next three credit hours, and the Texas Education Agency pays for any additional classes.

In addition to basic education and college, the Texas Department of Corrections also offers an apprenticeship program for inmates. The program is designed to meet the standards established by the Texas Labor Board, which certifies tradesmen. Inmates in this program receive some class work, but also practice their trade at the institution to which they are assigned. The kinds of trades available for apprenticeship are limited to those that are practiced at a particular institution. Trades currently available to inmates for apprenticeship include cooks, auto mechanics, butchers, and dental technicians.

Employment

Texas Department of Corrections officials frequently cited the strong emphasis the Department places on work ethic as a means of rehabilitation. As noted earlier, all Texas state prisoners are required to work. Prisoners are not paid for their labor, but receive "good time credits" for their work. Inmates may receive a maximum of two days credit for one day worked. The amount they receive is dependent upon the skill level of their employment and their behavior.

According to Charles Brown, Assistant Director of Public Affairs for the Department of Corrections, inmates entering the system begin by working at unskilled agricultural labor for a probationary period. If they demonstrate that they can adapt to the demands of regular work, they are given a job in one of the areas of corrections operation. These jobs may be in maintenance, food service, education, medical care, and many of the other operations of the Department. In addition, Texas operates a prison industry program which employs a substantial number of inmates. If inmates lack necessary skills to move straight into these positions, they are provided with on-the-job training.

It is generally agreed that Texas has the most comprehensive prison industry program in the nation. The state prison system manufactures

virtually all of its product needs, including the production of its own food, the spinning of its own cotton for clothing, and the manufacturing of shoes for its prisoners. The system has 63,000 acres of land to grow its corn and cotton and to raise its 16,000 head of cattle. The Texas program also has a number of specialized industries; e.g., microfilming and data processing of state agency records and refurbishing fire trucks and school buses.

Prior to 1979, state law prohibited the sale of prison-made products to any agency other than the Texas Department of Corrections. The statute has since been amended to allow goods to be sold to state and federal agencies and foreign governments on a contractural basis.

According to John Bradley, with the Texas Department of Corrections, the state prison system is able to realize substantially lower operating costs than most systems because of its extensive use of prison labor. Most bookkeeping in the plants, for example, is done with inmate labor. The system's 23 factories are managed with a supervision ratio of 9 inmates to 1 supervisor.

Treatment Programs

According to Charles Brown, the Texas Department of Corrections Treatment Division is the umbrella organization for several different types of services. The Windham School System, the Division of Continuing Education, health services, social services, and the chaplaincy program are all administered by the Treatment Division. This division is where those rehabilitative programs not related to inmate work are contained.

Mr. Brown stated that the Behavioral Medicine program offered a broad range of psychological treatment to fit the needs of the inmates. Programs include individual and group counseling, and medication. However, inmates who need very intensive mental health care are referred to the state mental hospital.

The Treatment Division also operates a pre-release program which assists inmates in obtaining employment, medical care and social services upon their release from prison. The Treatment Division also offers alcohol abuse treatment programs for inmates.

* * *

We hope we have provided a useful overview of the education and rehabilitatior programs provided to inmates of the Texas correctional system. If you have any questions, or should you want us to provide more detailed information on a particular program mentioned in this memorandum, please do not hesitate to contact us.

JS/sj

High Court Asked to Give Police 'Room for Mistakes'

By Fred Barbash
Washington Post Staff Writer

The Supreme Court was asked yesterday to give police "room for some mistakes" by relaxing the controversial "exclusionary rule," which bars illegally seized evidence from criminal trials.

Illinois Assistant Attorney General Paul R. Biebel Jr. asked the court to establish a "good faith" exception to the 69-year-old rule: illegal evidence would be allowed when authorities could show they did not know it was illegal.

The exclusionary rule has become a symbol for many conservatives who believe there is an imbalance in the criminal justice system that lets criminals off on technicalities. Legislation has been introduced in Congress to create a good-faith exception.

But many groups, including the American Bar Association, support the strict application of the exclusionary rule, saying that it is the only effective deterrent to police abuse in searches and seizures.

The debate over the rule's application is considered one of the most important criminal justice disputes to come before the court in the last 20 years.

The case began on May 3, 1978, when police in Bloomingdale, Ill., received an anonymous letter alleging that Susan and Lance Gates "make their living on selling drugs." The letter said that the couple had more than $100,000 worth of drugs in their basement and soon would be traveling to Florida to obtain more. Authorities verified the couple's address and, with the help of the Drug Enforcement Administration, located the couple in Florida, where they were placed under surveillance.

While the Gates were returning to Illinois, police obtained a search warrant for the couple's home and car. On May 7, when the couple returned home, police conducted the search and found 350 pounds of alleged marijuana in the trunk of their car and more in the house, along with weapons, ammunition and drug paraphernalia. The couple was indicted on drug charges.

But before their trial an Illinois judge, in a ruling subsequently affirmed by the state's supreme court, ruled that the search warrant had been invalid because it was based on an anonymous letter. Under the exclusionary rule, all the evidence seized from the couple's car and home was declared inadmissible at trial. Illinois appealed to the U.S. Supreme Court.

If the Supreme Court upholds the "good faith" exception to the rule sought yesterday, the evidence could be admitted because the police thought that they had a valid warrant.

"There is no evidence that the police acted in a willful, negligent way," Biebel told the justices. "Their action can only be characterized as thorough and professional . . . . This is clearly not the kind of police activity the exclusionary rule was meant to deter."

His argument was supported on behalf of the Reagan administration by Solicitor General Rex E. Lee.

"On the cost side," Lee said, "highly relevant and probative evidence" was excluded, damaging the "judicial integrity" of the legal process. "On the benefit side, it is difficult to see anything that would be deterred. The police obtained the warrant . . . . They did what they should have done."

No one argued yesterday that the police had done anything wrong. This is why criminal law experts viewed the case as the perfect test of the exclusionary rule, first enunciated by the court in 1914.

The problem, it was conceded, was with the magistrate who issued the warrant based on the anonymous letter. The Fourth Amendment to the Constitution says that "no warrants shall issue, but upon probable cause" for believing that they will produce evidence of a crime.

Justice Sandra D. O'Connor, whose vote is crucial for opponents of the exclusionary rule, asked how could the courts then deter "improper or even flagrant decisions by magistrates?"

"Under your view," she told Lee, "that would be perfectly all right."

"Not perfectly . . . ," Lee started to say before being interrupted by O'Connor.

"Perhaps there is a secondary motive [for the exclusionary rule]," she said. "Perhaps it's to make sure" that the government as a whole, and not just the police, "doesn't engage in misconduct."

Justice John Paul Stevens picked up the theme.

"How do you deter magistrates," he wanted to know. "Are you saying it's all right for magistrates to issue warrants on less than probable cause?"

The Gates' lawyer, James W. Reilley, also addressed this issue. Application of a good-faith exception in this case, he warned, "will immunize the warrant process" from review by courts. Reilley added that it would "establish a lesser standard for warrants" than the Constitution requires.

Reilley avoided the merits of the case almost entirely yesterday, while appealing to the Burger's court's sympathy for states' rights. He told the justices that the Illinois courts based their decision on state law and state court rulings and that the Supreme Court should not even be reviewing it.

While procedural, this argument has proven effective in other cases in attracting votes from conservatives.

Yesterday was the second time the court has heard *Illinois vs. Gates*. In the first oral argument, in October, the "good-faith" exception was not an issue. The court specifically asked to have the case reargued on that point. This was an unusual action that required five votes and signaled the likelihood of a favorable ruling from a majority of the justices.

Estelle says working with youth answer to rising prison population

By DAN HILL
Staff Writer

Texas Department of Corrections Director W.J. Estelle challenged a crowd gathered at the monthly Chamber of Commerce First Friday luncheon, to "do something" about the rising prison population, by working with young people in their own community to keep them out of the criminal justice system.

"We've all got to stop and re-evaluate our priorities," Estelle said. "They don't just turn 18 years old, and suddenly turn criminal, they grow up that way."

Estelle said it was every individual's responsibility to take care of the children in his own home and community, and take enough interest in them to let them know that there are alternatives to crime.

"You and I have taken that interest in our own children, most of us have anyway, but there are many others who have not, and that's why our prisons are full," Estelle said.

Estelle added that working on the problem of keeping individuals out of trouble is something that's going to take a lot of work.

"The real heroes in the criminal justice system are those who are spending their valuable time working with troubled youth, and even bigger heroes are those that totally get involved with our young people before they get in trouble, giving them something wholesome to do, to keep them out of trouble in the first place."

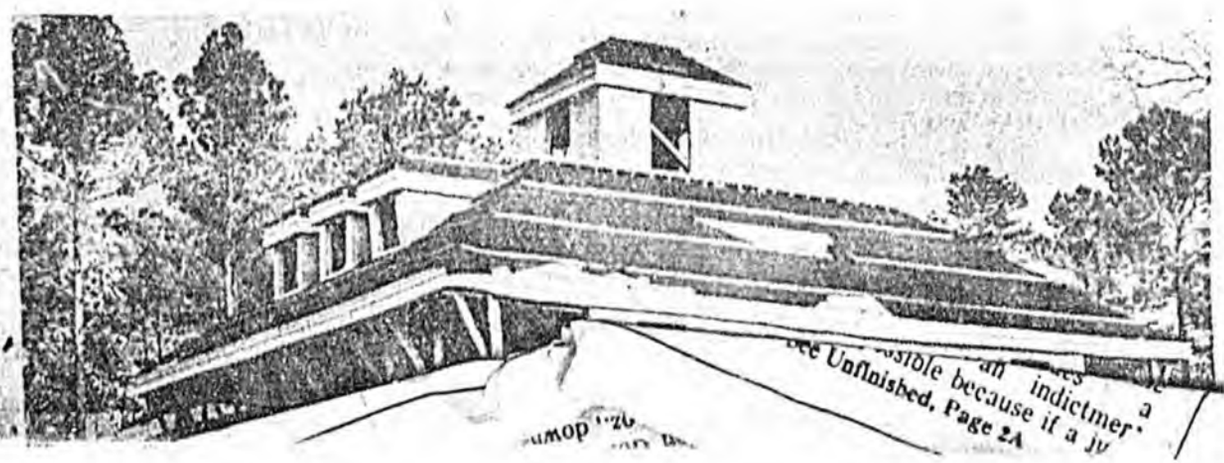
Estelle said that the time has come for action and for a commitment to the children and youth, and that it had to start on the neighborhood and community level.

"We've got to come to the understanding that we've got to solve the problem ourselves, and you can start by controlling what goes on within a one-mile radius of where you work and live," he said.

Estelle said that everyone understands that you have to pay taxes to have good schools, and he

See Estelle, Page 2A

ed house center of controversy



...sible because if a ju... indictmer... a

...ee Unfinished, Page 2A



Estelle speaks

s Department of Corrections Director W. J. Estelle
ts at the Lufkin Chamber of Commerce First Friday
con. (Staff Photo)

tertainers signed up '83 Houston Rodeo

n Livestock Show and
ficials announced Friday
up of performers sched-
the Show, February 23
larch 6.

ers include:
23, Kool and the Gang.
24, Mel Tillis.
25, Merle Haggard.
26, Hank Williams, Jr,
ard, Lacy J. Dalton.
27, Eddie Rabbitt,
sh.
28, Conway Twitty,

1, Ricky Scaggs, Janie

— March 2, Don Williams.
— March 3, Crystal Gayle.
— March 4, Larry Gatlin and the Gatlin Brothers Band.
— March 5, Charley Pride.
— March 6, Oak Ridge Boys.

Ticket sales began Saturday, Dec. 4 at the Astrodome box office, Ticket Master, and Ticketron outlets. Prices are $8 and $4.

They are also available by mail. Write Rodeo Ticket Director; P.O. Box 25395; Houston, Texas; 77265.

Rodeo tickets include admission to all livestock show events, except the NCHA World's Championship Finals and the World's

Estelle

Continued from Page 1A

said that the same sort of idea applies in the criminal justice system — you can't have the protection you want without paying for it.

Estelle has been the
the TDC since 1972, a
sought-after speaker
lecturer in the field o
justice.

Abortion

Continued from Page 1A

abortion," Taylor said.

"Some people (in Planned Parenthood) are very well-meaning," Martin said, and do not know Planned Parenthood includes abortions in their counseling.

Taylor said Planned Parenthood does not actually perform abortions but provides "referral listings of places they can have it done."

The organization will recommend to the woman that she not have an abortion after the first trimester of pregnancy, Taylor said.

Planned Parenthood serves a need in Angelina County, Prince said. About 3,800 people in the county received services from it last year.

"We'll have to make a decision that is best for the majority. We can't satisfy everybody," he added.

Planned Parenthood in Lufkin will receive $2,500 from United Way this year, according to Prince, less than one percent of the $285,000 distributed by United Way in the county, That is about two percent of Planned Parenthood's total budget.

The Right to Life board is trying to incorporate for two reasons. Members want to become a tax-exempt charitable organization and to be more credible. "In the eyes of the public, you're more credible if you have an organization with structure," Martin said.

Right to Life also plans to form a political action committee. During elections the committee will publish a list of candidates and their positions on abortion, Martin said.

Eventually, the board would like to provide a counseling service for women on abortion alternatives. "If you take a stand against something, you have to provide viable options," Martin said.

Until then, they will work closely with Birthright, a national counseling service with an office in Nacogdoches.

Mrs. Karen Castillo, director of Birthright there, said the service provides counseling on alternatives such as adoption and maternity homes.

Birthright is not church-

Birthright will offer
services and teach Rig
volunteers how to counse

Since Birthright is not
in politics, Mrs. Castillo s
to Life will handle the
aspect.

Martin said there a
national pro-life, anti
movements, and the loc
hasn't decided which one
ate with.

Dr. Brian Carlin, a me
the group, said his view
abortion are "fairly mil
pared to the views o
Right-to-Life members. T
doctor said he is not ab
certain when the unborn b
human.

He said he is against a
because there is a possibil
life begins at conception
least a person can say is tha
possibility," he said. "If the
possibility that there is a
there, you ought not to s
out."

Carlin said that if the unb
human, then it has the right
process of law before death.
don't have any reasons for
the kid."

Most abortions are done be
of the inconvenience of the
gnancy, he said.

Even if the pregnancy i
result of rape, Carlin said
unborn has rights. "The
didn't do anything."

One of the national Right to
organization's main goals
passage of an amendment to
U.S. Constitution that would m
abortion unlawful, Martin said.

Martin said Right to Life
nothing to do with birth cont
but "once a life has been
duced, that life must be
tected."

Martin said that although Ri
to Life opposes pro-abort
movements, they "don't plan to
ugly to anybody about it. You'
not going to change anybody
mind by being ugly. With an iss
that's as emotional as that, y
need to present it so people kno
you're doing it out of love for th
unborn, rather than out of hate fo
someone else."

Although most people involved i
Right-

MSG 03-00001278 PRTY 1 03/17/83 10:36:56 ORIG: LA07 IN= 0002 OUT= 0019
FROM: CAROL TO: JUNEAU LIO
TARGET: LJHL SUBJ: POM

TO: REPRESENTATIVE ADAMS, CHAIRMAN, HOUSE FINANCE COMMITTEE
REPRESENTATIVES BETTISWORTH, FLOOD, GRUSSENDORF, HURLBERT, LINDAUER, MARTIN, PESTINGER, WARD, ZHAROFF, AND DUNCAN
REPRESENTATIVE CHARLIE BUSSELL, CHAIRMAN, HOUSE JUDICIARY COMMITTEE

FROM: THELMA P. LANGDON
EXEC. ASSISTANT TO JOHN GARVIN
ALASKA CHILDREN'S SERVICES
1200 E. 17TH AVENUE
ANCHORAGE 99504 276-4515

DR

RE: CSHB 103

WE ARE OPPOSED TO TRANSFERRING JUVENILE CORRECTIONS INTO THE NEW DEPARTMENT OF CORRECTIONS FOR SEVERAL REASONS. THE PHILOSOPHY OF TREATMENT FOR JUVENILES NEEDS TO BE DIFFERENT THAN THAT FOR ADULTS.

JUVENILE DELINQUENTS HAVE MORE IN COMMON WITH CHILDREN IN NEED OF AID THAN THEY DO WITH ADULT CRIMINALS.

WE RECOMMEND THAT IT REMAIN IN DHSS.

****

****

FROM: JEAN HIGGS, 2910 W. NORTHERN LIGHTS BLVD, 9-E, ANCH 99503
H 248-3750 W 561-1905

I STRONGLY URGE YOU TO CONSIDER APPROPRIATION FOR SB 158, SECTION 15. RECOMMEND HOUSE BILL 202 BY ADAMS AND LISKA. RECOMMEND HOUSE BILL 103 BY JUDICIARY COMMITTEE. THE ABOVE ARE CONCERNS FROM AN ALASKAN CITIZEN.



FROM: SHIRLEE ANC LIO TO: POMS JUNEAU INFO
TARGET: LJHL SUBJ: POM

4/1/83, SHIRLEE ANC LIO, 4992

Duo Ref

TO: ALL MEMBERS, ALASKA LEGISLATURE

FROM: JOHN W. MORRILL, 3621 CARLTON AVE., ANCHORAGE 99503
H 248-4644 W 561-1433

RE: HB 103

PLACING JUVENILE OFFENDERS IN A DEPARTMENT EMPHASIZING INCARCERATION OVER TREATMENT AND REHABILITATION WOULD INCREASE JUVENILE AND ADULT CRIME. PRESENTLY INSTITUTIONALIZATION MEANS THE CHILD WILL BE AVAILABLE FOR INTENSIVE COUNSELING AND EDUCATION. COMMUNITY PLACEMENTS CAN'T GUARANTY AVAILABILITY. MR. ENDELL'S INSTITUTIONS WON'T PROVIDE TREATMENT; THEREFORE, JUVENILE OFFENDERS BECOME ADULT CRIMINALS.

****

4/1/83, SHIRLEE ANC LIO, 4995

TO: ALL MEMBERS, ALASKA LEGISLATURE

FROM: MIKE SHORT, 8631 TURF COURT, ANCHORAGE 99504
H 337-5167 W 561-1433

I WOULD ENCOURAGE MEMBERS OF THE LEGISLATURE TO KILL HOUSE BILL 103. IF ADEQUATE RESEARCH IS DONE BY THE MEMBERS, I BELIEVE THE CHOICE IS OBVIOUS. THE BILL WOULD BE A TERRIBLE ALTERNATIVE TO THE CURRENT SYSTEM. PROBLEMS DO EXIST, BUT WOULD ESCALATE IF HB 103 IS APPROVED.

****

TO: ALL MEMBERS OF THE LEGISLATURE

FROM: GORDON HAYS, 7800 DEBARR #514, ANCHORAGE 99504
333-9946 H 561-1433 EXT 83 W

RE: HB 103

RESEARCH THROUGHOUT THE US INDICATES A SIGNIFICANT DIFFERENCE BETWEEN JUVENILE AND ADULT CRIME AND THE OFFENDERS THEMSELVES. THE FOCUS OF FAMILY AND YOUTH SERVICES IS TREATMENT OF THE CAUSE; OF CORRECTIONS THE INCARCERATION OF OFFENDERS. T IE TWO CANNOT BE COMBINED WITHOUT THE JUVENILE, THE FAMILY, THE ALASKAN SOCIETY SUFFERING.

****

MSG 03-00005014 PRTY 1 04/01/83 12:18:40 ORIG: LA01 IN= 0006 OUT= 0038
FROM: SHIRLEE ANC LIO TO: POMS JUNEAU INFO
TARGET: LJHL SUBJ: POM



JUD. Ref

4/1/83, SHIRLEE ANC LIO, 5014

TO: ALL MEMBERS, ALASKA LEGISLATURE

FROM: ALBERT PHELAN, 7201 PECK, ANCHORAGE 99504
H 338-5664 W 561-1433

I AM STRONGLY OPPOSED TO HOUSE BILL 103. I THINK IT WOULD BE A DETRIMENT TO THE EMPLOYEES OF H&SS WHO WORK AT MCLAUGHLIN AND TO THE MCLAUGHLIN YOUTH CENTER PROGRAM.

****

TO: ALL MEMBERS OF THE LEGISLATURE



FROM: LINDA VESPER, 533 A NORTH KLEVIN, ANCHORAGE 9954
274-5156 H 561-1433 EXT 230 W

RE: HB 103

DISGREE WITH THIS BILL BECAUSE OF THE INCLUSION OF JUVENILES.

EOM

4/1/83, SHIRLEE ANC LIO, 5056



TO: ALL MEMBERS, ALASKA LEGISLATURE

FROM: TRACY ALLEN, 6630 WEIMER, APT. 1, ANCHORAGE 99502
H 243-6753 W 561-1433

I AM ADAMANTLY OPPOSED TO HOUSE BILL 103. JUVENILE CRIME RATE IS UP. TO RETURN THEM TO THE STREET WOULD BE ENCOURAGING MORE OFFENDERS. THERE IS A BETTER REHABILITATION RATE WITH JUVENILES. WE NEED STRICTER JUVENILE LAWS. LETS HELP THEM SO THAT WE WON'T HAVE THEM IN ADULT JAILS.

****

MSG 03-00003309 PRTY 1 03/24/83 1 :03:43 ORIG: LF01 IN= 0008 OUT= 0110
FROM: ANNIE IN FAIRBANKS TO: JUNEAU INFO.
TARGET: LJHL SUBJ: POM

JR

TO: ALL MEMBERS OF THE HOUSE

FROM: MARSHA SCHNEIDER, ALASKA CHAPTER NATIONAL ASSOC. OF SOCIAL WORKERS,
P.O.BOX 10430, FAIRBANKS 99701 HOME 456-5914

RE: CSHB103 (JUD)

THE ALASKA CHAPTER OF N.A.S.W. OPPOSE CSHB103(JUD). JUVENILE CENTERS
SHOULD REMAIN UNDER THE JURISDICTION OF THE DIV. OF FAMILY YOUTH SERVICES
FOR PURPOSE OF REHABILITATION AND TREATMENT.

EOM**********

MSG 83-00004764 PRTY 1 03/31/83 '3:01:14 ORIG: LA02 IN= 0001 OUT= 0048
FROM: JUNE, ANC LIO TO: POM, JNU INFO
TARGET: LJHL SUBJ: POM

3/31/83, JUNE, ANC LIO, MSG 4764

TO: ALL MEMBERS OF THE LEGISLATURE

FROM: CHARLES VESPER, 533-A NORTH KLEVIN, ANCHORAGE, AK 99504
(H) 274-6156 (W) 561-1433-EX-87

I VEHEMENTLY OPPOSE HB 103 BECAUSE OF THE INCLUSION OF JUVENILES.



JR

3/31/83, SHIRLEE ANC LIO, 4746

TO: ALL MEMBERS, ALASKA LEGISLATURE

FROM: JACK K. VANDELAAR, 2423 KENSINGTON DRIVE, ANCH 99504
H 333-6326 W 864-1201

I OPPOSE HOUSE BILL 103. JUVENILE CORRECTIONS SHOULD BE SEPARATE, NOT INCLUDED WITH ADULTS.

****

TELEGRAM

ALASCOM, INC.
PHONE: 586-6442
JUNEAU, AK 99802

JR



MAR 1983
RECEIVED

1983 MAR 24 PM 12 19

#

02017 NL ANCHORAGE AK 50 03-24 1920 AST

PMS REP CHARLIE BUSSELL

POUCH V 1600

JUNEAU AK

PLEASE SUPPORT RECONSIDERATION OF CSHB103 AND AMENDED TO DELETE SECTIONS THAT TRANSFER JUVENILE DELIQUENTS TO PROPOSED NEW CORRECTIONS DEPARTMENT

CLAUDIA MARTIN

SRA BOX 1629

ANCHORAGE AK 99507

MSG 83-00003091 PRTY 1 03/24/83 10:18:20 ORIG: LA01 IN= 0091 OUT= 0025
FROM: SHIRLEE ANC LIO TO: POMS JUNEAU INFO
TARGET: LJHL SUBJ: POM

3/24/83, SHIRLEE ANC LIO, 3091

JR

TO: REPRESENTATIVES BARNES, B[redacted]L AND HAYES

FROM: DEBORAH BODKIN, 101 SWEET GALE COURT, ANCHORAGE 99502
H 349-8175

I DO NOT SUPPORT CS HB 103, AS JUVENILE DELINQUENTS SHOULD NOT BE INCLUDED IN THE ADULT CORRECTIONS SYSTEM.

****

MSG 3-000002587 PRTY 1 03/22/83 17:28:28 ORIG: LA02 IN= 0003 OUT= 0027
FROM: JUNE, ANC LIO TO: FOM, JNU INFO
TARGET: LJHL SUBJ: FOM

3/22/83, JUNE, ANC LIO, MSG 2587

JR

TO: SENATORS FAIRKS, V. FISCHER, HALFORD, JOSEPHSON, KELLY, PETTYJOHN, RODEY, AND STURGULEWSKI

REPRESENTATIVES ABOOD, BARNES, BUSSELL, CLOCKSIN, FLOOD, FURNACE, HAYES, LINDAUER, LISKA, MARTIN, PESTINGER, PHILLIPS, TISCHER, UEHLING, AND WARD

FROM: LIANNE WESLEY, 5520 EAST 97TH, ANCHORAGE, AK
MAILING ADDRESS: P. O. BOX 1251, ANCHORAGE, AK 99510
(H) 349-1478

RE: CSHB 103

I OPPOSE INCLUDING JUVENILE CORRECTIONS IN THE NEW DEPARTMENT OF CORRECTIONS FOR THE FOLLOWING REASON:

I DON'T WANT MONEY SIPHONED FROM YOUTH CORRECTIONS TO ADULT CORRECTIONS. YOUTH SERVICES WORKS WELL IN THE DIVISION OF FAMILY AND YOUTH SERVICES. I PREFER THAT IT NOT BE PUT IN THE CONFUSION OF THE NEW DEPARTMENT OF CORRECTIONS.

****

STATE OF ALASKA

BILL SHEFFIELD, GOVERNOR

DEPARTMENT OF PUBLIC SAFETY
OFFICE OF THE COMMISSIONER

POUCH N
JUNEAU, ALASKA 99811
PHONE: 465-4322

March 9, 1983



The Honorable Charlie Bussell
Chairman
House Judiciary Committee
Pouch V
Juneau, AK 99811

Dear Representative Bussell:

During your hearing last Friday on Cleary vs. Bierne, you asked Deputy Fire Marshal Gordon Brunton to clarify the fire protection requirements for correctional facilities with Mr. Roger Endell, Director, Division of Corrections.

State fire safety regulations require an automatic fire extinguishing system throughout a facility in which the personal liberties of the occupants are restrained. Mr. Brunton advises that either a water sprinkler system or an approved halon system is acceptable.

I hope this satisfies your concern. Mr. Brunton advised me that Mr. Endell is going to explore the feasibility of each system.

Sincerely,

Robert J. Sundberg
Commissioner

cc: Roger Endell, Director
Division of Corrections

Gordon Brunton
Fire Prevention

12-L2LH

CRIME: punishment vs. prevention

Crime wins hands down as the political issue most likely to appear in every campaign. The anti-crime bandwagon is one nearly every candidate is ready to ride—waving slogans and solutions: capital punishment, tougher laws, stiffer penalties, more police, more jails, and more money.

Alaskan candidates were no exception this fall. They called for stronger anti-crime measures, although six new jails are in the works for Anchorage and the state's new criminal code is putting people behind bars at an extraordinary rate.

More jails and police may make the populace sleep a little sounder, but those who study crime, criminals and the justice system seem to agree that although these measures will cost a lot of money, they won't work.

"What we need to look at is alternatives to the use of law," said John Angell, director of Justice Center at the University of Alaska, Anchorage. "The only thing the law can do is administer retribution, and retribution doesn't seem very effective.

"We appear to be dealing with crime and corrections using the common sense of people who have not studied the problem, and the result is public policy that is not consistent with research findings on how to deal with the problem.

"The common sense solution to crime may be to build more prisons so you can lock more people up for longer periods of time, but it's the common sense of people who haven't studied the problem.

"Common sense, for example, tells you that conspicuous police patrols will control crime. It was tried and studied and it didn't change the incidence of crime," said Angell.

"We know that increasing the harshness of the criminal code will increase prison populations, but there has never been any research to show that tougher laws lead to a decrease in crime rates."

After Alaska's new criminal code was developed, modified by the legislature, and enacted in 1980, the prison population grew 28.3 percent in one year—the highest jump in the nation next to Mississippi's (28.8 percent).

"Alaska may soon be leading the pack in the proportion of its citizens behind bars, but that doesn't mean there will be less crime," Angell said.

Roger Endell, corrections specialist at the Justice Center, concurred. "Crime prevention strategy is the only strategy that makes sense in the light of what we now know.

"In Anchorage there are many calls for increasing the number of police officers: more police, more arrests, more people in the justice system, more people in jail. But we don't hear the question, *What do we get for all this?* Public policy should be newsworthy. We ought to be looking at the why.

"The policy decisions that are made are not always consistent with the recommendations of professionals and the best information we have on what is effective.

"Instead, society tends to fund projects and then, after the fact, try to evaluate the results. We need to design the evaluation into our justice projects. Funds should be provided to evaluate the effect of the public policy before it is put into effect.

"The legislature adopted a new criminal code that has resulted in the jailing of many more people, which is very costly, but it doesn't mean we now have a society. The probable impact of the code wasn't studied before it was adopted," said Endell.

Angell pointed out that justice-related policies are often formulated from recommendations of citizen's crime commissions that are popular in most cities and states.

"No one would think of appointing a citizen's committee of non-engineers to figure out how to get to the moon, and the problems associated with crime are infinitely more complex," he said.

"Unfortunately, people recognize the value of research for technology, but there seems to be no strong feeling that we should put money into research related to social problems. In the justice area, people are willing to spend money for things they can see, like police and jails, but not for understanding the problem.

"Politicians have made putting more police on the street a priority issue, although it's never been shown that this will cut crime. And there is no evidence that enacting the death penalty reduces violent crime. The homicide rate in North Carolina went up after the death penalty was imposed. It may be that the death penalty in some way legitimizes the violence by formalizing the punishment that will be inflicted."

The popular anti-crime measures often advocated in public will have no effect on that half of all criminal acts which are never reported to authorities. They are also unlikey to affect the "white collar" crimes committed by people of a higher socio-economic status than the majority of people who end up in jail.

"Punative laws have the largest impact with people who have something to loose—status, reputation, money—and there are many people who don't have these things," Endell said.

"We have to get away from the punishment model, because research clearly indicates that punishment has no effect on the crime rate."

If common sense and punishment don't work, how can we have a safer society?

The first step advocated at the Justice Center was meeting the need to obtain a clear picture of what crimes are being committed, where, when and by whom. The second was the urgent need to develop alternatives to the punishment model, and the third was to improve what happens to people who are put in jail.

"One thing we're aware of is the need for a statewide system for collecting adequate data," Angell said. "People talk about rising crime rates, but we really don't know if life in Alaska is more hazardous today. We need to improve our record keeping system. And because 50 percent of all crimes are unreported, we need to carry out vicitimization studies."

Rather than counting the number of known crimes, vicitimization studies are

designed to find out how many people have been the victim of a criminal act.

The major source of data used to measure the trend and distribution of crime in the state is the Uniform Crime Reporting (UCR) Program. Data is collected by law enforcement agencies as crimes are reported. Seven offense categories representing the most common local problems, are defined as Crime Index Offenses: murder, forcible rape, robbery and aggravated assault make up the violent crimes; burglary, larceny-theft and motor vehicle theft make up the property crimes. They are serious because of their nature and the frequency with which they occur.

The UCR program was established in 1930 by the International Association of Chiefs of Police to provide crime statistics through which the nature and scope of the nation's crime problem could be understood. The Federal Bureau of Investigation took over the responsibility of receiving, tabulating and publishing the crime statistics, which are voluntarily submitted by police agencies. They are published each year as *Crime in the United States*.

There are several problems with the UCR program, according to *Crime in Alaska*, the state report prepared by the Office of Justice Assistance of the state Department of Law.

"The population bases which are used in computing crime rates are sometimes only estimates. This is especially true in non-census years. Also, crime may be either undiscovered and therefore unreported, or, as recent victimization surveys have indicated, unreported even though discovered.

"Despite these problems, UCR statistics do represent the basis for public awareness of crime and are the major source for a statistical understanding of the national crime problem. It is more reasonable to improve the existing program than to scrap it in favor of a new collection system which might prove more fallible," the report states.

A basic measurement in crime statistics is the crime index rate, defined as the number of incidents per 100,000 inhabitants. Because it relates the incidence of crime to the total population, it provides a means of comparing current and historical data for the state and allows Alaskan statistics to be compared with nationwide data.

During 1981, the Crime Index rate for Alaska was 5,949 per 100,000 persons, which represented a one half percent increase over the 5,918 rate for 1980 and was slightly higher than the nationwide rate.

"It is important to understand how statistics are accumulated and what they represent," Endell said. In Alaska, the incidence of violent crime seems to be disproportionately high in smaller communities, but is underreported. Non-violent crimes, white-collar crimes and corporate crimes are also likely to be unknown.

It is important to realize that crime statistics can be manipulated by changing the way things are classified," Endell said. "In Oakland, there was a very high burglary rate, which included all parking meter break-ins. Removing parking meter break-ins from the burglary catagory resulted in a two-thirds drop in the burglary rate in one year."

Endell said that in another city, the crime statistics showed a large drop in the number of drug-related offenses in one year. A law enforcement official was called to Washington to be commended for this success in combating crime. However, it was actually caused by a money-saving cutback in the number of law enforcement agency clerks, which reduced the quality of record keeping and resulted in the apparent victory in the war against crime.

Endell described our current corrections system as an economic drain which has done little more than create warehouses of crime.

"One-half to two-thirds of the prison population is receiving far more custody than required, and the greater the degree of custody, the greater the cost," he said. "We need to look at alternative programs and facilities."

He said the concept of requiring offenders to make restitution for their crimes is a reasonable one that should be politically appealing.

"We could institute programs through which non-violent inmates earn their way out of prison by working at public service jobs, such as construction of public projects in rural areas; or through employment in prison industries. The state has an obligation to provide inmates with legitimate work opportunities for which a legitimate wage is paid."

Under a restitution program, a person found guilty of a crime would be evaluated in terms of the threat he or she posed to society, and an evaluation would be made of the monetary restitution appropriate for the crime committed.

The criminal code would include a provision under which the court could choose to order restitution and the inmate would be assigned to work through which he or she could earn an eventual release from custody.

"We need to shift our focus from catching and convicting criminals to preventing criminal behavior," Endell said. "But we also need to improve what we're doing in corrections. It's a question of whether a person comes out of jail better or more bitter."

Another development which may lead to more effective policies is the bio-environmental approach to understanding and control of criminal behavior. Bio-environmental criminology uses genetics, biochemistry, psychology and sociology to explore questions about the early detection of deviancy and the environmental aspects of crime.

"There is no one cure all for the problem of crime, but there is no magic in time-only punishment either," Endell said.

It may be impossible to have a society that is completely free of fear, but our justice system seems to hold much room for improvement in the effort to reduce both crime, and the fear of crime.

At the Justice Center, this kind of understanding and impact is the goal.

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Overcrowding Forces States to Re-Examine Sentencing Philosophy

Keeping the Lid on Prisons

By David Rash
National Law Journal Staff Reporter

THE ENTHUSIASM of state lawmakers for a tougher response to crime is beginning to be tempered by the cold, hard fact that prison beds are a scarce commodity.

In a handful of states, the lack of space for prisoners has already caused legislators to change their minds about who should go to prison and how long they should stay there.

And, in some states, lawmakers are having these decisions made for them. At the end of last year, 31 states were under court order to reduce overcrowding and, in instances where a state has been slow to respond to judicial pressure, judges have even ordered the early release of prisoners.

Even in the states that are willing to bite the bullet and construct more prisons — and many are — the overcrowding problem is frequently so massive that the new supply of beds cannot keep up with the demand. In fact, a report prepared for the National Institute of Justice estimates that, at a cost of $32,000 to $40,000 per

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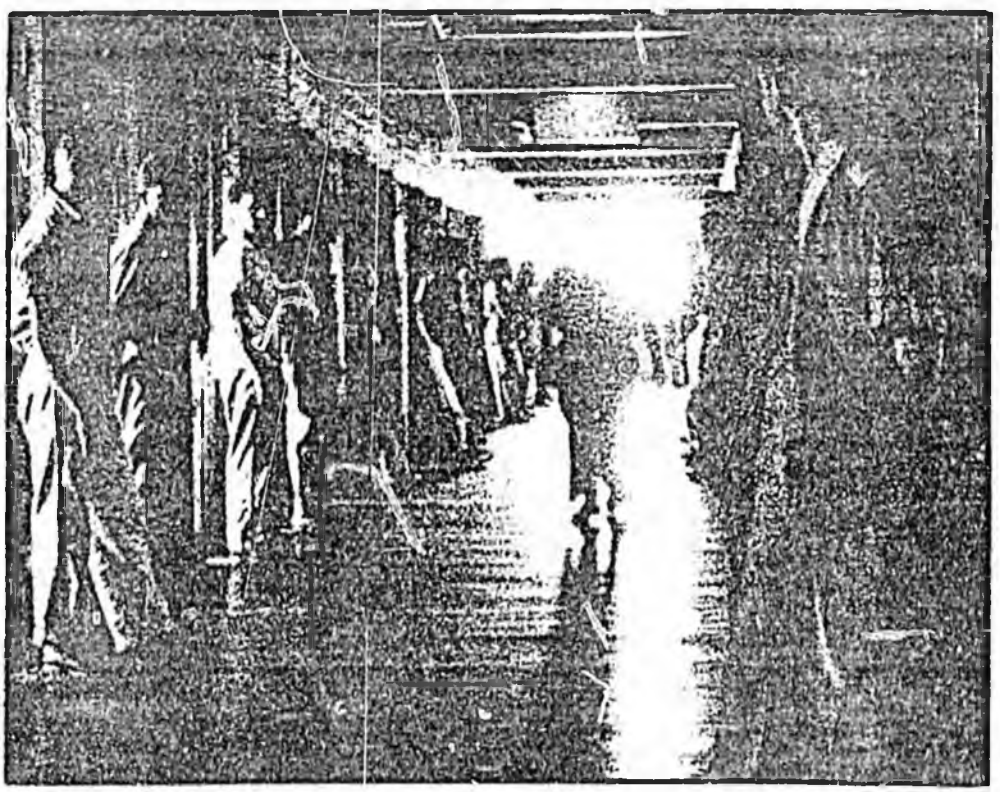

HIGHLIGHTS

Marshals Revolt p. 2

U.S. DEPUTY marshals in Miami are suing their superiors, claiming that promotions have been improperly blocked.

'Even a Man of Wealth Can Have Trouble Findin



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By Jam
Nationa

and prisons that are horrendously overcrowded — and getting more so all the time — have begun to alter their thinking about who should be imprisoned, and for how long.

"What appears to be happening is that people who work in the [corrections] system are realizing that prisons are a scarce resource," said Deborah Jackson of Abt Associates, a consulting firm based in Cambridge, Mass., which is studying prison overcrowding for the National Institute of Justice, a federal agency. "It is very expensive to incarcerate people and very expensive to build prisons," she added. "Ten or 15 years ago, I don't think that was widely accepted."

"There are states where they are really beginning to look at what they are doing" with regard to incarceration policies, particularly "states that can't afford to keep on building [prisons]," echoed Gerald Kaufman, head of the Prison Overcrowding Project. The project, based in Philadelphia, is working with "decision-makers" in four states to develop strategies for controlling prison population size.

Ideally, taking into account the availability of prison beds may not be the best way to decide who goes to prison and how long they stay there, but it is a practical, rational approach to the overcrowding problem, said Diane Steelman of the National Council on Crime and Delinquency.

Those states that are giving serious consideration to overcrowding when setting criminal justice policies — and they are in the minority — have responded to the problem in a variety of ways.

A few of them are attacking the problem head-on, either by deciding to send fewer offenders to prison or by reducing their sentences. Others have decided to push prisoners out "the back door" — release them earlier

but it is a practical approach to the problem.

legislators have focused their attention on releasing prisoners sooner to relieve congestion. The state has adopted a systematic plan for the early parole of non-dangerous prisoners when the inmate population reaches capacity.

Not all states, however, have pulled back from the idea of "getting tough" on crime after considering the costs involved. In Pennsylvania, Gov. Richard Thornburgh simultaneously proposed mandatory minimum sentences and appropriation of $102 million for new prison construction. The legislature approved both plans.

Following is a closer look at what some of these states have done — or not done — because of prison overcrowding.

South Carolina

When South Carolina legislators proposed stiffer penalties for habitual criminal offenders, including a mandatory life sentence for anyone convicted of three property offenses, they gave minimal consideration to the effect longer prison terms would have on the state's miserably overcrowded prison system, which is currently at 140 percent of capacity.

But William D. Leeke, commissioner of the state Department of Corrections, made it impossible for the legislators to ignore the bill's potential impact. His staff developed data which demonstrated that, if employed to the maximum extent possible, the proposed longer sentences would create a demand for as many as 3,748 new prison beds by 1998.

Considering construction costs of $40,000 per bed and $5,000 in annual operating costs for each prisoner, the total bill through 1998 could be as much as $387.1 million, corrections officials estimated.

The legislators ultimately passed a property offenders — to receive prison sentences.

The emphasis on violent crimes made the guidelines "very easy to sell politically," said Ms. Knapp, and they were approved by the legislature in 1980.

Michigan

In 1978, Michigan voters approved a referendum abolishing the accumulation of "good time" — reduction of sentences for good behavior — for prisoners convicted of a felony. This measure, combined with the voters' rejection of a proposal to raise the state income tax to build more prisons, was a major contributor to prison overcrowding. That situation, in turn, led to passage of the Prison Overcrowding Emergency Powers Act.

The law, which took effect in January 1981, provides a mechanism for reducing the inmate population whenever it exceeds the state prison system's design capacity of 13,047 for 30 consecutive days.

When state prison officials inform the governor that this has occurred the governor "triggers" the emergency powers act and orders the officials to subtract 90 days from the minimum sentence of all inmates convicted of non-violent offenses.

This creates a pool of prisoners who are eligible for parole sooner than expected. But the prisoners' records are still scrutinized by the parole board, and only those who meet the board's qualifications are released.

The net effect is that prisoners who would have been paroled anyway are released up to 90 days ahead of time, said state corrections commission spokesman Calvin Goddard. "If you are not eligible for parole, you are not going to get out," he said. "That is the safeguard as far as the community is concerned."

that many plus an additional 500 to relieve present overcrowding, according to Mr. Miller.

Mr. Blumstein, a professor at Carnegie-Mellon University in Pittsburgh who once taught Mr. Miller, said Pennsylvania initially considered mandating minimum sentences for a broader range of offenses but decided that would be too expensive. "I think it would be irresponsible not to [make such calculations] at a time when prisons are overflowing," he said.

* * *

That, however, is precisely what most states have been doing. And Mr. Blumstein, along with many other corrections experts, believes that will continue to be the rule rather than the exception.

The prison overcrowding problem, according to these experts, should be prodding state officials into a fundamental rethinking of their criminal justice systems, but that is unlikely to happen.

At best, more states are going to adopt the "Michigan plan" for their own use, which will ease overcrowding without addressing the underlying causes. "We are going to see more and more relief valves," said Allen F. Breed, director of the National Institute of Corrections, a prison reform group based in Washington.

Mr. Breed also predicts a "rebirth of parole" in states that have abolished the practice or curbed it by instituting mandatory sentences. Most experts, however, expect the well-established trend toward tough, mandatory sentences to continue.

"The pressure on the states to continue as they are, because of the popularity of the political position [of being tough on crime] is enormous," Ms. Steelman said. "I think very often the pressure will be [on legislators] to say: 'This will cost a lot down the pike. We will get to that later.' "

Can Early Release Plans Keep the Lid on Prison?

Continued from page 1

new prison bed, between $8 billion and $10 billion in new prison construction is needed merely to meet the current demand for space in state and federal institutions.

And the space problem is getting worse. According to the latest federal Bureau of Justice Statistics data, the nation's prison population this year is growing at an annual rate of 14.3 percent, the biggest spurt ever. A major contributor to this population explosion, according to the bureau, is the abolishment of parole in four states, and the implementation in a number of states of mandatory and determinate sentencing laws.

These laws have generally been passed without an analysis of their impact on a state's prison population, according to corrections experts. Instead, legislators are merely pushing more people into state prisons — and making sure they stay there longer — without providing state corrections officials with the funding they need to absorb the flood of new arrivals.

The result, noted one prison reformer, has been "more and more bodies and less and less space."

A Change in Thinking

"Pushing tougher sentences can be viewed as the legislative version of the free lunch," said Alfred Blumstein, an expert in prison demographics and chairman of the Pennsylvania Commission on Crime and Delinquency.

Recently, however, some states faced with the twin problems of recession-induced fiscal restraints and prisons that are [illegible] than their sentences would normally permit.

State officials in some states have gone on record in favor of alternatives to incarceration.

Earlier this year, Georgia Gov. George Busbee wrote a letter to state judges asking them to consider alternatives to incarceration, such as victim restitution and "intensive probation," for non-violent offenders. And in Nevada, which claims the highest incarceration rate of any state, some legislators' support for alternatives was spurred by the State Department of Prisons' request for $70 million in new prison construction.

Similarly, in South Carolina, legislators decided against passing a tougher sentencing law after learning they would need to undertake an exorbitantly expensive prison construction program to accommodate the growth in inmate population that would result.

Utilizing a unique approach, Minnesota has altered its sentencing guidelines with an eye toward the available number of prison beds. The guidelines are designed to reduce the prison population slightly.

And in Michigan, where the state prison system has been found to be unconstitutionally overcrowded, the "watered-down version" of the bill earlier this year that has had little impact on the state prison population, according to state officials.

"We weren't arguing that the legislature shouldn't incarcerate [habitual offenders] for long periods of time," said Mr. Leeke. "Our argument was: where are you going to put these people? . . . Don't put an impossible burden on the corrections system until you know you can pay for it."

Minnesota

When the Minnesota legislature established a Sentencing Guidelines Commission in 1978, it asked the commission to take current "correctional resources" into consideration when developing new guidelines. The commission staff, interpreting this broadly, responded by proposing guidelines that were designed so that the average projected prison population would be 95 percent of capacity.

The result, according to Mr. Blumstein, is "a very good illustration of establishing a sentencing policy that tries to be responsible in terms of its impact."

The commission also sought to give less weight to an offender's past crime's than the earlier sentencing guidelines. Previously, property offenders with moderate criminal histories were likely to receive prison sentences, but first offenders, even if convicted of "a fairly serious crime," were rarely sent to prison, said Kay A. Knapp, commission director.

Consequently, the new guidelines call for a greater proportion of violent offenders — and a lesser number of

Taking into account the availability of prison beds may not be the best way to decide who goes to prison and how long they stay there, but it is

A "prison overcrowding emergency" has been declared three times since the law was passed, enabling the early release of about 2,300 inmates.

Four other states — Connecticut, Georgia, Iowa and New Jersey — have adopted similar laws, according to the National Institute of Corrections.

The so-called Michigan plan, said Ms. Steelman, "is terrific. I wish all these states would adopt it. What they have done is provide a rational and orderly way to deal with prison overcrowding."

Even when states have the money for prison construction, it takes four or five years to build a prison, she said. In the meantime, "the only logical way to deal with excess people is to let them out."

Pennsylvania

Governor Thornburgh, a former U.S. attorney in Pittsburgh, has earned a reputation for being tough on crime. So it was no surprise when he pushed the legislature to pass a tough new mandatory sentencing law that calls for a minimum of five years' imprisonment for those who are repeat violent offenders, those who commit violent crimes on public transportation and those who commit violent crimes with a firearm.

But, unlike most politicians, Mr. Thornburgh also asked for $102 million for new prison construction to handle the expanded inmate population the tougher sentences are expected to produce.

"We knew if we were going to put people away, we had to know where we were going to put them" said Harold D. Miller, an aide to the governor who helped develop the new corrections program. The state, estimating that the new sentencing laws will create a demand for a minimum of 1,880 new beds, has decided to build that many plus an additional 500 to

Ketchikan Daily
News
Ketchikan, AK

State given time to reduce jail crowding

ANCHORAGE (AP) — The state has been given more time to reduce the inmate population of the crowded Sixth Avenue jail.

Superior Court Judge Victor Carlson said Friday he is convinced "the executive branch of government, at its highest levels, is making an effort to deal with the problem."

Carlson cited recent legislative approval of a request from Gov. Jay Hammond to add 70 new prison guards to the state system.

Assistant Attorney General Mike Stark asked for additional time to complete the hiring and training of a staff for the recently renovated 45-bed wing at Post Six, known formerly as the Ridgeview Correctional Center.

The wing is to be used to handle the overflow from the Sixth Avenue facility where the population fluctuates between 120 and 150, although the design capacity of the jail is 100.

A pre-trial detention center is under construction on Post Road, just east of the downtown area, and is expected to be completed by December. Until then, prisoners awaiting trial will continue to be mixed with convicted prisoners.

Tim Stearns, an attorney for a group of inmates who sued the state in 1977 over jail conditions, objected to the 30-day extension granted by Carlson.

"If corrections had wished to comply with the court order, it would have been complied with by now," Stearns said. "I don't think a delay in moving the people from Sixth Avenue is going to help that institution or the other institutions."

While Carlson gave the state until March 15 to get the Sixth Avenue population down to 100, he ordered an April 12 court appearance to prove that the state has complied with a 1979 order mandating general improvements at the jail.

Among other things, prisoners complain about cold food, a lack of linens and toiletries, and having to sleep on the floor without mattresses.

Anchorage Times
Anchorage, AK

Court upholds 'emergency aid doctrine'

Associated Press

The state Court of Appeals has ruled that police acting in response to an immediate life-saving emergency legally can enter a private home without permission and gather incriminating evidence without a warrant.

The court issued that decision Thursday in upholding the conviction of David Gallmeyer of Wrangell on a charge of being a felon in possession of a firearm.

Police were called to the Gallmeyer home on April 12, 1978, by his wife, Linda. She told them by telephone that her husband had pushed her out of the house after a fight, and she asked their help in getting her 15-month-old baby out of the house.

While officers were en route, Gallmeyer placed the baby on the porch. When they arrived, Mrs. Gallmeyer told them her husband was intoxicated and had several guns in the house.

One of the responding officers decided he should talk with Gallmeyer to make certain he was calm before any attempt was made to remove the baby.

The officer called to Gallmeyer, then entered the home without permission. Once inside, he saw that Gallmeyer had a gun stuck in the waistband of his trousers. He grabbed it, and Gallmeyer was charged with being in possession of a firearm while intoxicated.

Police subsequently discovered that Gallmeyer was a convicted felon, and he was charged with and convicted of being a felon in possession of a firearm.

In upholding the conviction, the Court of Appeals said the "emergency aid doctrine" justified the warrantless entry of the home because police held a reasonable belief that a life-threatening emergency existed.

Anchorage Daily
News
Anchorage, AK

Overcrowded Sixth Avenue Jail hits deadline today

By SHEILA TOOMEY
Daily News reporter

A court-ordered deadline for reduction of the population at the overcrowded Sixth Avenue Jail expires today and a Superior Court Judge is expected to rule this afternoon on a state request that the deadline be extended to March 15.

Dec. 17, Judge Victor Carlson found the state in contempt of a 1979 court order and gave corrections officials 60 days to reduce the number of prisoners at Sixth Avenue to no more than 100. The jail population Thursday was 140, but was expected to fall to the high 120's today due to scheduled releases, according to Superintendent Russ Moody. An additional 45 pre-trial prisoners are being houseing in a wing at Post Six (formerly Ridgeview(, he said.

Prisoner affadavits filed in Superior Court Thursday, in preparation for today's hearing, complain of inadequate sanitary facilities, a lack of towels and sheets and inmates being forced to sleep on the floor because of a bed shortage.

The Legislature approved the hiring of 70 new corrections officiers last week, according to Assistant Attorney General Mike Stark. The requested deadline extension will give the Division of Corrections enough time to hire and train the personnel needed to staff another 45 beds at Post Six by March 15, Stark said. Moddy plans to transfer inmates with low security classifications to the Post Six facility as soon as it is staffed, he said.

Today's hearing is the altest in a battle that began in 1977 when a group of prisoners filed suit against the state demanding that prison conditions be improved. In 1979, Judge James Singleton ordered seven pages worth of improvements including areas such as food, medical care, clothing, exercise, plumbing, bedding, censorship of outgoing mail and telephone access. "With the aparent exception of mail censorship, defendants continue to be in violation of the above provisions of (Judge Singleton's) order," charged lawyer Tim Stearns, who represents the inmates.

The Sixth Avenue Jail houses arrested men awaiting trail and some convicted felons awaiting sentencing. The building is old, with poor plumbing and a faulty heating system. It consists mostly of dormitories holding up to 32 prisoners each. "We are overcrowded and understaffed," Moody said Thursday. "All things considered, and by comparison to any other institution like ours, I think we're doing very good.

Stearns charged that most of the violations at sixth avenue ar enot directly related to overcrowding.

Anchorage Times
Anchorage, AK

Court to study jail conditions

Overcrowding at Anchorage's Sixth Avenue jail is scheduled to come under court scrutiny again today when the state asks for more time to relieve the overcrowded conditions.

In December, Superior Court Judge Victor Carlson gave corrections officials 60 days to reduce number of prisoners at the jail to no more than 100. On Thursday, the jail population was about 140.

But state officials, who hired 70 new correctional officers last week, say they need an extension until March 15.

Carslon will hear arguments in the case this afternoon.

The Peninsula
Clarion
Kenai, AK
FEB 19 1982

33 indictments of false native dental care

ANCHORAGE (AP) — A Delta Junction dentist has been indicted on 33 counts of fraud for allegedly cheating the government by submitting claims for care never provided natives in rural Alaska, U.S. Attorney Michael Spaan says.

The indictments against James Goodman, 32, were returned Wednesday.

According to Spaan, the dentist was under contract with the U.S. Public Health Service to provide the care.

Anchorage Daily News
Anchorage, AK
FEB 1982

Jail given another month to cut population

By SHEILA TOOMEY
Daily News reporter

State corrections officials won a one-month reprieve in Superior Court Friday when Judge Victor Carlson gave them until March 15 to reduce the prisoner population at the Sixth Avenue Jail to no more than 100 inmates.

Assistant Attorney General Mike Stark asked for the additional time to permit the hiring and training of guards for a new 45-bed wing at Post Six, formerly Ridgeview Correctional Center. The recently renovated wing is intended to house the overflow from the crowded Sixth Avenue Facility.

Noting recent legislative approval of a request from Gov Jay Hammond for 70 new prison guards, Carlson said he is convinced "the executive branch of government, at its highest levels, is making an effort to deal with the problem."

The inmate population at Sixth Avenue fluctuates between about 120 and 150 prisoners awaiting trials or sentencing. A new pre-trial jail is now under construction on Post Road, east of downtown. It is scheduled to open in December.

While he agreed to a 30-day extension, Carlson ordered the state to appear in court April 12 prepared to prove that it has complied with a 1979 court order mandating seven pages of general improvements in jail conditions. Carlson also ordered Sixth Avenue supervisor Russ Moody to report to him by Monday on the current availability of blankets, towels, sheets, toothbrushes and soap in the jail.

The judge instructed Moody to take the temperature of food served to inmates over the weekend in order to test inmate charges that jail food is usually served cold.

In December, Carlson gave the state until Feb. 19 to comply with the requirements of the 1979 court order.

Tim Stearns, an attorney representing a group of inmates who filed suit against the state in 1977, argued against any extension. "If corrections had wished to comply with the court order, it would have been complied with by now," Stearns said. "I don't think a delay in moving the people from Sixth Avenue is going to help that institution or the other institutions."

Stearns said he believes Moody's personal efforts to improve jail conditions are not being supported by his superiors. Affidavits from inmates, filed with the court Thursday, charge that prisoners often have to sleep on the floor without blankets or sheets. They also complain about the alleged lack of medical care and physical exercise.

Carlson agreed that he, too, was concerned about the possibly explosive situation in the overcrowded jail.

Assistant Attorney General Stalk called the complaints "a long recipe list," with some charges false, some exaggerated and some true."

Fairview halfway house approved

By LARRY CAMPBELL
Daily News reporter

Fairview residents turned out in force Monday night to argue against allowing a halfway house for recently discharged mental patients to be located in their neighborhood.

But the Anchorage Planning and Zoning Commission, by a 5-1 vote, approved a permit allowing the center to remain in operation.

Residents' comments — heavily weighted against what mental health experts call a "transitional living center" — came during a public hearing before the commission. The commission earlier had approved a permit for the facility, which has been operating in a limited capacity since November, but a technical gaff required the issue to be considered again.

Fairview Community Council officials and area residents said they feel the neighborhood's opinions were ignored. The hearing was held at the Fairview Community Center.

Gordon Glaser, president of the Fairview Community Council, told

See Back Page, FAIRVIEW

Fairview residents oppose halfway house, but permit is approved

Continued from Page A-1

commissioners the prior decision on the halfway house violated the neighborhood's sense of involvement with the planning and implementation of the project.

"Community involvement and fear in this community are linked," Glaser said.

Glaser emphasized the involvement of Fairview residents with other community programs such as S.T.A.R. (Stand Together Against Rape) and the AWAIC (Abused Women's Aide in Crisis) shelter. Both programs are located in the Fairview area.

"We are participating wholeheartedly in programs like these," Glaser said. But with the halfway house, "nobody seemed to bother to ask us."

Dr. Gary Vreeman, director of the Anchorage Community Mental Health Center, testified that the halfway house is needed, and that the Fairview area is an ideal location for the facility because it is located close to public transportation, shopping centers, recreational facilities and a Post Office.

Vreeman tried to allay fears expressed by some residents that the halfway house might bring patients with violent tendencies into the neighborhood.

"People with a mental illness are typically withdrawn," Vreeman said. "A center like this helps to make them feel they are not failures."

He said the center's screening procedures for accepting residents to the facility eliminates patients with histories of violence, sexual aberration or alcohol or drug abuse.

But most of the Fairview residents who spoke at the hearing were unconvinced.

"They never consulted us and we are bitterly against this halfway house," said Helen Mason, secretary of the community council. "This isn't a good place to be if you don't get community cooperation."

Mason also spoke of concerns felt by a number of residents that the Fairview area already was inundated with social service facilities, such as those mentioned by Glaser.

The halfway house was originally granted a permit in November to operate as a quasi-institutional facility designed to assist newly released mental patients from Alaska Psychiatric Institute and other mental institutions in re-entering society.

Residents receive basic training in housekeeping, cooking, shopping and other self-support skills. Eventually, halfway house residents who successfully complete the program will leave the center and live on their own.

Eight patients had already moved into the six-plex at 921 E. 10th Ave. when community residents appealed the commission's earlier permit approval. When it was learned that a malfunctioning tape recorder made it impossible to provide a verbatim transcript of the earlier proceeding, a new permit and hearing process was begun.

In the interim, the halfway house was prevented from accepting 10 more residents.

Overhaul of prisons advised

By HAL SPENCER
The Associated Press

JUNEAU — Gov. Bill Sheffield should create a separate department for Alaska's beleaguered prison system, build more jails including a maximum security prison and put prisoners to work, a task force said Monday.

The task force, headed by Roger Endell, a University of Alaska, Anchorage, professor, also recommended that the state launch alcohol and drug abuse programs in jails, keep a number of violent offenders in the Federal Bureau of Prisons system and close no existing correctional facilities, with the exception of the Anchorage Careage House, until replacement facilities are found.

The Careage House should be used as the Division of Corrections headquarters, the task force said.

The task force also recommended that jail construction be viewed as a high priority among all units of state government, that corrections be managed on a decentralized, regional basis and that corrections staff be well trained.

The recommendations were among 35 presented to the governor, who said the suggestions "will be highly valuable to the administration as we prepare the state budget and possible bills for introduction to the 1983 Legislature."

Sheffield appointed the panel in mid-December with instructions that it forge solutions to Alaska's growing corrections crisis — a crisis most evident in the state's overcrowded jails.

But Sheffield had no immediate reaction to the specific proposals, and his office said he would have none pending further study.

No cost figures were attached to the task force's recommendations. Independent work now being done by various state agencies will develop the potential costs of the recommendations, according to John Greely, Sheffield's deputy press secretary.

See Back Page, TASK

Task force recommends overhaul of state corrections system

Continued from Page A-1

"It is clear that there is a crisis in corrections," the task force said. "It is also clear that with sound, long-term and professional management, most of the current problems can and will be resolved."

The Division of Corrections, currently within the Department of Health and Social Services, should be elevated to cabinet-level status, the task force said.

Citing what it called a "crisis in correctional management," the panel said, "We have found unanimous agreement from virtually all persons interviewed, from all regions of the state, and from segments of the criminal justice system — police, courts, corrections, law — and from the citizen sector that departmental status is not only justified but necessary."

The task force said the department should be created in a "quick and clean" fashion through executive decree.

"The division has been managed by four different directors in the past six-year period," the panel said. "The most recent director as well as the current director were both hired by the previous administration to move the Division of Corrections toward a more stable management situation. Their task was made more difficult because of their lack of knowledge of the unique problems and potential advantages of Alaska corrections."

The Division of Corrections is currently headed by Robert Hatrak, who could not be reached for comment on the study Monday.

The panel also said a commissioner of corrections should be appointed as soon as possible. A deputy commissioner and four regional directors should be appointed by the commissioner, the task force said.

"In regard to the need for a maximum security facility in Alaska, the task force received clear and compelling testimony from state and local police, the court system" and others that the state needs such a facility.

The group also urged that "new site acquisitions, construction additions and building renovations be completed expeditiously as the highest priority through the channels of state government while minimizing both hindrances and costs."

The task force said the Department of Transportation and Public Facilities "should recognize prison construction as a high priority. Building supplies and prisoner labor should be used in building renovations and in the construction of non-secure buildings."

"The prisoner population should be put to work," the panel said.

The task force said corrections "must be given the resources to provide meaningful work opportunities for the offender population," listing as examples clearing land, rehabilitating streams and maintaining parks.

Recognizing that alcohol and drug abuse help to swell jail populations, the task force said the state, in cooperation with local governments, should provide prisoners with substance abuse programs. "There is a crucial need for a comprehensive approach to the problem of substance abuse," the panel said.

Overhaul of prisons advised

By HAL SPENCER
The Associated Press

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State chief will support KILA home

NEWS MINER 3-4-85

By SCOTT YATES
Staff Writer

Deciding there had been "adequate public dialogue" a state corrections official said he will recommend that the state sign an agreement with KILA Inc. to run a 56-bed halfway house near Ester.

Walt Jones, assistant director of corrections, made the announcement near the end of a KILA board of director's meeting which saw 42 Ester residents show up to express their concern over the facility. Although the halfway house has been occupied by 21 persons since Feb. 26 under an existing agreement with the state, a contract amendment has not yet been signed to take into account the expanded capacity.

Rep. Mike Davis, who listened to the meeting over a teleconference hookup, said he did not think a KILA board of directors meeting constituted an adequate public hearing.

He was surprised to learn that the facility has been occupied despite earlier objections by Ester residents.

Leaders of the Ester opposition meanwhile said they will continue to wage their fight against the halfway house. Mark Davis said this morning he's "almost positive" that residents will go to court.

"The people of Ester were denied due process."

Apologies notwithstanding, residents remained unsatisfied with the explanations of KILA board President John Link Thursday night. Explaining that he was out of town when the controversy surfaced, Link said, "From what I can reconstruct, I think we are all suffering from the disability of not knowing what's going on."

Link told the group that he never considered the halfway house part of Ester and he accepted blame for not talking with residents.

"We never for a minute thought the people of Ester would raise a fuss. Believe me, if we had, we would have been out at the community center. Whatever blame there is rests on my shoulders. You have our apology."

After presenting a brief history of KILA, w[illegible]h means "friendly spirit" in Inupi[illegible] Executive Director Frank Gold sat silently through most of the proceedings while Link and Jones were bombarded with questions.

Residents were told that security at the facility relies primarily on an

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HOME . . .

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alarm system. Doors are wired to a central switchboard which lights if they are opened. Two teams of six supervisors each will work at the halfway house and at least two people will be awake at all times. The personnel will not, however, be responsible for restraining individuals. If someone leaves, state troopers will be called to apprehend them.

"Before we get excited about that, let me tell you the type of person lodged there is not the type who would go into a community, either Fairbanks or Ester and raise havoc," Link said.

Jones added that the prisoners are screened and only those posing the lowest risk possible will be considered.

"They have to show they can function in that environment. Everyone who is eligible doesn't go through a halfway house," Jones said.

Jones said that of 314 people who went through halfway houses during the past year, 265 completed the program successfully, that is, they didn't violate any rules which caused them to be sent back to jail.

Jones explained that those who fail the program usually commit infractions like drinking or returning late.

Armed with the contract between the state and KILA, residents asked who is ultimately responsible for the prisoners and any damage they might cause. A clause in the contract says the state is held harmless, but there was a difference of opinion whether that would hold up in court. Several members of the audience asked that the attorney general make a determination as to responsibility.

Link said during the meeting that KILA had spent $30,000 of its own funds getting the building opened. He indicated the mortgage came due Thursday and was now deliquent because the state contract hadn't been signed.

New prisons chief scraps Woronzof jail

By TOM KIZZIA
Daily News reporter

1/7/83

The new head of Alaska's prison system said Thursday he wants to set aside plans for a new prison at Point Woronzof and find a way to solve overcrowding problems without immediate construction of a new jail in Anchorage.

Roger Endell, a university professor and former Alaska corrections official, was named Thursday to replace Robert Hatrak as chief of corrections. A spokesman for Gov. Bill Sheffield said the change was made to bring "fresh ideas and fresh leaders" to the prison system.

The new approach was immediately evident. A plan outlined Thursday by Endell would do away with the proposed jail at Point Woronzof, west of Anchorage International Airport. Former Gov. Jay Hammond and Mayor Tony Knowles agreed last November to build a new prison there.

Endell's plan also would close the controversial Carriage House jail in the middle of a Tudor Road residential neighborhood. Endell said he wants to convert it to a Southcentral headquarters for corrections within weeks after he begins his job Monday.

As an alternative, Endell wants to purchase and remodel as jails existing facilities in the Matanuska-Susitna and Kenai Peninsula boroughs. He also wants to keep open the Ridgeview Correctional Center, which the Hammond administration had declared decrepit and wanted to close.

Endell said his plan would be a cheaper and quicker way to relieve overcrowding in Alaska's prisons. It also would do away with the long-standing problem of finding a new prison site in Anchorage.

The Point Woronzof site would require a lengthy permit process by the municipality and a costly extension of utilities, Endell said.

A likely alternative site appears to be a former missile base at Goose Bay, on the

See Back Page, CORRECTIONS

Corrections chief decides against Point Woronzof jail

Continued from Page A-1

north side of Knik Arm. Allen Korhonen, acting commissioner of the Department of Health and Social Services, said Thursday that corrections officials favored it as a site for a medium-security prison and planned to tour the base next week.

Other sites under discussion include the Wildwood Center in Kenai, a former radar base on Ohlson Mountain in Homer, and sites in Seward and Palmer.

Under the Hammond administration, corrections officials had argued that a medium-security prison was essential in Anchorage.

Medium-security prisons for 100 inmates at any two of the new locations possibly could be erected in a year, using modular materials, Endell said. These sites could also be used for maximum-security prisoners, according to Endell, who said the state may reconsider its earlier decision to build a single 300-bed prison for its biggest security risks.

Endell said he favored small regional facilities and said problems could develop if all the most difficult prisoners were housed together.

The need for minimum-security space in Anchorage can be met by keeping the Ridgeview and Third Avenue jails open, Endell said. The state had previously planned to close them after a new pretrial facility on Post Road opens sometime this spring.

Endell, who was head of a special Sheffield administration task force on corrections, is inheriting most of the same problems faced by Hatrak, who was on the job only nine months.

The task force report appeared to give more attention to concrete solutions to overcrowding than to rehabilitation programs. But it could be called only a moderate shift of emphasis from his predecessor's reliance on "community-based" programs such as halfway houses.

"He's a professional corrections administrator," Endell said of Hatrak, who was not criticized by name in the task force report. "A number of the problems in corrections he obviously inherited."

The task force was critical of the high turnover in corrections management. The next director, the task force said, should be someone already familiar with the state's jails.

The job description fits 42-year-old Endell well. A resident of the state for more than two decades, he served as assistant superintendent of the Juneau Correctional Center from 1971-73, the Third Avenue Jail in Anchorage from 1973-74, and the Eagle River Correctional Center from 1974-76.

He was most recently an associate professor of justice at the University of Alaska, Anchorage Justice Center. A Sheffield spokesman said Endell has written extensively about the penal systems in the Soviet Union and Finland.

The Endell task force recommended that corrections be removed from the Department of Health and Social Services and placed in a new Department of Corrections. Endell said Thursday he expected the new department would be created soon, with him as commissioner, but he was not sure whether it would be created by the legislature or by executive decree.

Anchorage Daily News

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Let convicts do jobs for the city

Petty criminals may spend time behind a broom instead of behind bars under a promising state-municipal proposal that could spruce up the city while easing overcrowding in local jails. Still in the discussion stages, the proposal would put selected individuals convicted of misdemeanors to work sweeping bike trails, clearing roadside rubbish or even shelving library books instead of cooling their heels in already overcrowded jails.

Under the program, individuals convicted of such non-violent crimes as shoplifting, writing bad checks and littering could be assigned community service instead of jail time or a suspended sentence. Predetermined guidelines would screen out offenders inappropriate for the program, which could put up to 2,500 to work for the community at a cost of $150,000.

The local proposal dovetails appropriately with a report released Monday by the Governor's Task Force on Corrections. The report recommends community services opportunities as a method of acquiring eight-hour-a-day work habits and law-abiding skills. The report emphasizes the need for such programs now. We agree.

Although community service is not a new idea — the state Pretrail Intervention Program already coordinates community service projects with local non-profit agencies — the public works aspect of this proposal makes it especially attractive at a time of dwindling dollars and overcrowded prisons. It costs money to incarcerate a person; idle hours in overcrowded conditions do not make that money well spent.

Although a rough draft of the proposal is still a month off, we think this expanded local intervention program has merit — especially in light of the city's budget crunch and the state's jail crunch. If properly implemented, it's a program that could benefit the city — which is raising taxes to help fund basic capital projects maintenance — the jails, and even the petty offenders who could be channeled through the system in a productive, positive manner.

Welcome mat

NEW STATE JAILS and maybe a maximum security prison or two will be hot topics on the political scene during the coming legislative session. Let's hope the legislators will not overlook offers from communities that want this kind of business.

Seward, for one, has invited state officials to consider their port city as the site of a new jail or prison. For one thing, it would be good for the community's economy, bringing a new and steady payroll to town along with considerable construction dollars. For another, new detention facilities have to go *someplace*, and Seward would be fulfilling a civic duty by providing the site and the support required.

The Kenai Native Association has proposed converting the old Wildwood military station near Soldotna, which it now owns, into a minimum security prison. The Kenai Peninsula Borough gave it a strong endorsement and state officials, we're happy to say, apparently have responded favorably. Opposition, however, has surfaced in the form of an editorial in the Peninsula Clarion that took issue with Wildwood as a site. It said "putting a prison in the midst of a community is dubious public policy," and suggested better options should be available.

SEWARD AND KENAI are possibilities, obviously. And other smaller cities, looking for a steady addition to the local economic base, likewise might be receptive to the prospect of playing host to a state jail or prison.

But there still seems to be a lack of enthusiasm among those in the corrections system to give serious consideration to outlying areas.

The attention always seems to have been focused on Anchorage. Detention facilities here are more convenient for the lawyers, the judges, the convicts and the state employees in the system.

And if those are the primary criteria, it's no wonder there hasn't been much serious discussion of sites beyond the confines of urban and suburban Anchorage.

But with the stated interest from Seward and the Kenai Native Association, there is reason to think the prospect of finding new locations is not as gloom-and-doom as officials would have people believe.

IT HAS BEEN suggested that surplus pipeline camps be used and that's a worthy idea.

A former congressman from the East captured headlines earlier this year by proposing the use of an uninhabited Aleutian Island as a federal prison. That's not necessarily a hair-brained idea.

No matter what solution is found eventually, there's no doubt the problem will be a big ticket item for the new adminstration and the legislature to address. But it is not a problem that can't be solved — with enough thought (and probably a lot of dollars).

Oops

AN EDITORIAL in these columns the other day said nice things about Sen. Don Gilman's efforts to learn more about what's going on in Anchorage, since he now represents the south end of town even though he lives in Kenai.

The same opinion piece expressed the hope that Sen.-elect Paul Fischer of Kasilof, who represents the same district with Mr. Gilman, would follow suit.

Well, it turns out that Mr. Fischer was in attendance at the now-famous secret meeting this week when the municipality presented the mayor's $196-million "wish list" to area legislators.

The mix-up came because it was inaccurately reported that the Fischer who was present was Sen. Vic, not Sen. Paul. Whoever did the reporting got the two confused.

State may need to double space

3-4-83

Prisons said to be 'busting at seams'

By DAVID RAMSEUR
News-Miner Bureau

JUNEAU—Alaska may have to double its prison space to nearly 2,000 beds within four years at a cost of perhaps $130,000 a bed, if the state is to keep up with the skyrocketing number of persons convicted of crimes.

That's one of the findings of a newly released report by the research arm of the state House of Representatives.

The 60-page report says the state's prison population is expected to exceed 2,000 by 1987, compared to the current inmate population of nearly 1,300.

The current rate means that one out of every 400 Alaskans is in prison, which is significantly higher than the national average of one in every 600 persons.

Release of the report comes on the heels of considerable state activity on prison issues. Gov. Bill Sheffield recently proposed creating a separate state Department of Corrections.

His capital budget submitted to the Legislature calls for the construction of a new $45 million, 302-bed maximum security prison.

And lawmakers are considering a multitude of measures to tighten state criminal laws on everything from sexual assault to drunk driving. Many of those revisions will result in more inmates who would require additional prison space.

The House Research Agency report, authored by Betty Barton and Jon Sherwood, says the crime rate is partly responsible for the growing need for prisons.

In 1980, Alaska's crime rate was less than one percent lower than the national rate. In that year, Alaska ranked 14 among the states for its crime rate. Between 1980 and 1981, Alaska's violent crime rate—murder, assault, rape and robbery—increased 27 percent.

The report points to several reasons for that increase. Among them: an increase in the population of young adult males who are responsible for a large percentage of crime; poor economic conditions; and social problems such as alcohol abuse.

Other factors will affect a growing prison population in Alaska, says the study. One of the most important is a 1981 class action suit filed by an inmate which requires the state to relieve over-crowding and improve prison conditions.

The report outlines several courses state officials can take on corrections issues. Those include:

- Increasing prison bed space, which appears to be the most popular among the Sheffield administration and key legislators.
- Modifying state laws that determine who goes to prison and for how long.
- Strengthening prison management through reorganization.
- Improving communications and

(See PRISONS, page 5)

PRISONS . . .

(Continued from page 1)

decision-making in criminal justice agencies.

Some state officials, such as those in former Gov. Jay Hammond's think-tank agency, say building more prisons without looking at other problems is an incorrect solution to a skyrocketing prison population.

But "locking them up and throwing away the key" appears a popular notion with this Legislature and administration.

The report reaches no conclusions about the dilemma other than to suggest any answer will be costly.

"The rate of increase in prison populations—at least in the immediate future—is expected to grow," concludes the report.

"In light of this, it is becoming increasingly important that government become more efficient in its management of offender populations and its use of existing facilities."

More than $153 million is budgeted for this year for the administration of justice, an increase over 1982 of nearly 30 percent.

Sheffield has proposed an $83.9 million prison building program for next year which includes an 80-bed Fairbanks pre-trial facility and 32 additional beds for the youth wing in Fairbanks.

Prison staffing fortified

by Jeff Berliner 1/28/83
Times Writer

Fourteen new corrections staffers begin work at the Palmer prison today and 40 guards remain on mandatory overtime in the wake of two escapes last week.

An emergency situation continues at the prison, said superintendent Stanley Zaborac.

"Prison policies and procedures have been modified to limit the freedom of inmates to move from their living areas to other areas of the institution," Zaborac said today.

"Correctional officers are working 12-hour shifts and we're bringing people in on their days off," Zaborac said. Each guard is averaging one day of overtime per week, Zaborac said.

Zaborac has asked the legislature to declare the situation an emergency and approve a supplemental budget to pay for the 14 new staff members and overtime for the entire 54-person corrections staff.

Funding to complete a fence around the medium security wing of the prison also is in the request. One hundred of the prison's 242 inmates are in medium security. The minimum security section houses 142 prisoners. The prison is designed to hold 206 men.

Although all 14 people hired by Zaborac are termed temporary, he said he is seeking additional money to make them a permanent part of the staff.

The need for more staff is so critical, Zaborac said, that the new officers will receive an abbreviated training course: they'll complete 16 hours of classroom training today and then spend the weekend under the tutelage of experienced staff before being put on their own Monday.

Although the state of emergency continues at the prison, Zaborac said the facility is more secure than it has been in the past.

Five inmates escaped in two separate incidents. All five were recaptured and have been charged with escape.

Anchorage Daily News

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Report on prisons deserves attention

No pricetag has been attached yet, but the ideas collected in a single report by a special task force on state prisons represent an apparent consensus on Alaska's corrections needs. Expect state policy to begin to coalesce around the major conclusions.

The major themes: construction of more jails and a maximum security prison; elevation of the Division of Corrections to department status; and creation of "meaningful work opportunities" for prisoners. Other important aims: establishing drug and alcohol abuse programs in Alaska prisons, decentralization and regionalization of prison administration, an end to persistent "crisis in correctional management," and greater stability at the head of the system.

There are weaknesses in the report -- chiefly the shorthanded consideration of alternatives to incarceration, in a state that imprisons more of its citizens than it can handle — but the conclusions and recommendations will be useful as Gov. Sheffield and the legislature begin coping with current stresses in the system. What's important about this effort is that it gives added currency to important ideas about prison management.

The most intriguing is the idea of putting prisoners to work — for both themselves and the society. Meaningful labor long has been the missing component in prisons whose stated aims included "rehabilitation." But rehabilitation is an elusive goal when enforced idleness — not to mention boredom, substance abuse, overcrowding and actual or potential violence — is the major fact of prison life. Assuming proper security safeguards can be arranged, prisoners put to work clearing land, rehabilitating streams or maintaining parks, to name a few tasks, could both spend their time usefully and repay their debt to society in a constructive way.

Substance abuse, too, deserves serious attention. It has become almost cliche for prison studies to point out the impact of alcohol and drug abuse on prison populations, and the overwhelming need for prisoners to cope with their compulsions before re-entering society. What the task force report accomplishes is to add that perspective to the public agenda — to encourage a response from the political system on what should be a mainstay of prison programs in Alaska.

In all, the task force has produced a useful report. The conclusions are neither startling nor revolutionary — but they deserve attention in Alaska's halls of power in the months and years to come.

Document Name: HB 103
Diskette Name: CHARLI

March 26, 1983

ΨaΨ

Dear ΨsΨ:

Thank you for taking the time and effort to send a Public Opinion Message conveying your thoughts on HB 103.

As you know, this Bill passed from the House on a 40/0 vote as CSHB 103 Judiciary. A great deal of work by myself and the entire Judiciary staff resulted in the Bill as presently written.

It is my belief Roger Endell, with the oranization he is building, will be able to improve the operation of Adult Corrections to an acceptable level, as well as properly transfer Youth Corrections on July 1, 1983, as provided for in HB 103.

It is my further belief that the elevation of Youth Corrections to a Division status within the new Department of Corrections will enable that Division to continue its improvement, from the sad state of affairs it was in such a short time ago, joining properly to perform for the State its agency tasks in a manner and mode acceptable and desired by all.

Thank you again for taking the time to become involved with the Legislative process. Together we can make a differnce.

With best regards I remain,
Sincerely,

Representative Charlie Bussell
Chairman, Committee on Judiciary

CB:cmz

Document Name: add HB 103
Diskette Name: CHARLI

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Corrections director searches out site for prison

2/13/83

By RONNIE CHAPPELL
Daily News correspondent

☐ Native corporation optimistic state will pick Wildwood site. Story, Page B-2

KENAI — Corrections Director Roger Endell has crisscrossed the Kenai Peninsula since taking office earlier this year, making stops in Homer, Kenai and Seward. Next week, he returns to visit Nikiski.

The reason for all of this travel is simple. He's got 1,500 prisoners on his hands right now and there's space for only 900 in the state's existing prisons. He is looking for places to build new prisons, and he is looking for communities that want them.

According to Endell, there are two such communities on the Peninsula.

People in Seward are actively encouraging the state to build a new $40 million, 300-man maximum-security prison there. Endell said earlier this week that plans to develop a 220-man medium-security prison near Kenai have won the endorsement of the local City Council.

A decision on the maximum security prison — and where to put it — will be made by the legislature this year.

The state had planned to build the new facility near Palmer, but that changed late last year when the Seward City Council contacted the Division of Corrections.

Endell described Seward's business and government leadership as "outright enthusiastic" over the prospect of becoming the home of the state's first penitentiary. "They are in an excellent position to be a contender" for the prison, he said.

The medium-security prison would be developed at Wildwood, an old Air Force Base that is owned by the Kenai Native Association. The Native corporation has offered to lease a three-story, concrete barracks building, garage and gymnasium to the state.

Endell is enthusiastic about

See Page B-2, CORRECTIONS

Corrections director on a search for site for state prison

Continued from Page B-1

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the Wildwood site. "It has the highest potential of any existing site" now being considered for use as a corrections facility, he said.

Once the state has completed its evaluation of the buildings offered by the Native corporation, Endell said he plans to move quickly to close negotiations on the acquisition.

"We're close to an agreement now," he said. "In the next couple of weeks we hope to sit down and finalize it."

According to Endell, the state is looking for a long-term lease with the option to purchase at a fixed price.

The Native corporation has offered to lease the state three buildings for 20 years for $600,000 a year. The corporation would like to retain title to the property, said corporation President George Miller, but is willing to consider a sale if the state insists.

The value of that transaction to the Native corporation could increase substantially in coming weeks as the state is now talking about acquring seven buildings instead of three, Miller said.

A movie theater, medical clinic, bowling alley and grocery store with ample cold storage space are all adjacent to the concrete barracks building that would form the heart of the new prison.

If the Native corporation and the state conclude an agreement later this month, the new prison could be up and running by early fall, Endell said.

A "nucleus staff" will be dispatched to Kenai immediately to oversee renovation of the physical plant, begin program development, establish contact with local businesses and begin the process of screening and hiring 40 to 70 new employees.

Endell estimated it will cost about $1 million to convert the old Air Force base into a prison. A sprinkler system will have to be installed in the barracks building. Wooden doors will be replaced with metal ones, and existing windows will be replaced with secure ones.

Control rooms and an electronic security system also will be installed.

The perimeter of the 10-acre prison will be surrounded by two security fences that are 20 feet apart. Both will be 18 feet high and topped with razor ribbon. An observation tower will be constructed on top of the three-story barracks building.

The proposed prison has not earned the support of everyone in the community. More than 250 Central Peninsula residents signed a petition opposing the Wildwood site.

In response to that opposition, the borough assembly rescinded a resolution endorsing the idea. In its place it enacted a measure calling on the Division of Corrections to hold public hearings on the Peninsula before reaching a final decision on the Wildwood site.

Endell said he is satisfying that request by meeting with city councils and chambers of commerce in Seward, Homer, Kenai and Nikiski.

Endell assures those he talks with the state will not locate a prison in a community where there is strong public oppostion, and he said he hasn't seen strong opposition on the Peninsula.

Assemblyman Kenn Stephens, who fought the prison, agrees opposition to the proposal has cooled.

"People have calmed down," Stephens said. "Folks aren't complaining on Soundoff (a radio call-in show broadcast by a Kenai radio station), and I haven't gotten any phone calls on it at all."

"The state's got its mind set, and people are resigned to the fact that there's going to be something there."

State prison chief urges legislators to create corrections department

By HAL SPENCER 1/21/83
The Associated Press

JUNEAU — The problems facing Alaska's prison system are firmly rooted in poor management — a situation that would change with creation of a corrections department, Roger Endell, state corrections chief, said Wednesday.

A corrections commissioner, who would oversee the department, could "pick up the phone and hire people, and more significantly, can pick up the phone and fire them," Endell told a joint meeting of the House and Senate health, education and social services committees.

Endell, whose corrections division is now within the Department of Health and Social Services, said that under the current situation, management officials, with the exception of the corrections director, are classified employees who cannot be easily dismissed.

The joint committee met to consider Gov. Bill Sheffield's Executive Order 54, which calls for creation of a corrections department. The move was recommended by a corrections task force, of which Endell was chairman.

The lawmakers deferred action, agreeing to meet in separate committees to take a closer look at the projected cost of the department.

Endell was able to provide only the "bottom-line" figures — about $250,000 for the rest of fiscal 1983, ending June 30, and almost $1 million for fiscal 1984.

"I can't believe it would be that high," said Sen. Rick Halford, R-Chugiak.

Endell said the department would have six management level employees and "support staff." The six would include a commissioner; two deputy commissioners working in Juneau and Anchorage respectively; and three regional directors overseeing correctional facilities in Southcentral, Southeast and the Bush respectively.

Endell urges prison industry

by Steve Rinehart 1/19/83
for The Times

Homer — Prison industry — everything from growing potatoes to building campsites — could help the corrections system pay its bills while teaching inmates better skills, said new state corrections chief Roger Endell.

While inmates can't be forced to earn their keep, he said, "my attitude is they will have to earn their privileges."

"I'm not advocating a return to the ball and chain," Endell said in a speech here this week. "It will be the inmates' choice. But those who chose not to work would be 'warehoused,' with space to sleep and little else."

Endell was in Homer to address the Homer Chamber of Commerce. Ohlson Mountain, a former military installation near Homer, is being considered as a site for a new medium-security prison.

Endell, who was appointed director of corrections by Gov. Bill Sheffield, said it has been his experience that most inmates prefer to work, gain some skills, and make some money.

Legally, inmates can be paid up to half the minimum wage, he continued, although they can also be charged for some services and forced to use a portion of their wages for family support.

Among suggestions Endell offered were that inmates do park and recreation work in remote locations. Trails, recreation cabins and fire pits could all be built by inmates.

There are many prison industries which would not compete with private enterprise, he said. For example, inmates could grow potatoes in the Palmer area since local growers can't meet consumer demand.

Currently, Endell said, the state contracts with a Canadian firm to do the laundry for the state ferry system. Juneau inmates could do the job as well and for less cost, he said.

As for the traditional prison industry — stamping license plates — Endell said he has been told there aren't enough vehicles in Alaska to make the business pay. However, he said, the state has sign-making equipment in storage, which could easily be put to use by prisoners making road and street signs for state and local governments.

Inmate labor could also be used to renovate prison sites, Endell said, thus lessening the high cost of needed improvements in the prison system.

Jail overcrowded — now

By CHRIS JARVIS 1/26/83
Empire Staff Reporter

Although Gov. Bill Sheffield has proposed a $81.8 million appropriation for construction of new jails, that doesn't help the overcrowding now being experienced at the Southeast Regional Correctional Institute at Lemon Creek.

Officials there are hoping a new maximum security wing now under construction will house prisoners by fall, easing some of the crowded conditions.

The rated capacity at Lemon Creek is 111 beds with 18 extra beds for those being held before arraignment and people serving weekend sentences. Monday night, however, 146 people were housed at Lemon Creek, jail Superintendent Bill Huston said today.

While no major disturbances have occurred at the jail because of the overcrowding, Huston said a series of "small things you just don't put your finger on" often lead to troubles.

"The emotional level increases when you have this many people being held against their will," he said.

"Some discipline problems crop up when you have a lot of bodies," he said. For an example he cited a prisoner turning over a table in the mess hall out of frustration caused by tensions from overcrowding.

With only 45,000 square feet of living space, problems are bound to happen, Huston said. Until the new 58-bed maximum security unit is opened and other facilities are built in the state, there is potential for problems.

The Lemon Creek construction project started this fall and should be ready for occupancy by the fall of 1983, Huston said.

Eventually, Huston would like to convert the 24 and 22 bed dormatories now at the jail into single and double bed cells.

When you have 24 people living together in the same room during a long period of time, problems and tensions often come to the surface, Huston said.

The jail also needs additional space for activities, Huston said. But until the need for beds is lessened, none of the existing living space will be eliminated, he said.

Another problem facing jail administrators is the inability to plan ahead, especially on weekends when bookings increase because of arrests made by Juneau Police and Alaska State Troopers.

Noting that troopers and police have the option to not jail people arrested for traffic and other offenses, Huston said he is unwilling to second guess their actions.

"It's easy to sit back and say how Roger Staubach should have thrown that ball, but it's different when you're out there," he said referring to decisions police and troopers must make in the field.

"They not only are responsible for public safety but for the safety of the person too," Huston said.

Because police and troopers seldom want to make crack downs public before carrying them out, and unlike the Lower 48 where short term prisoners are housed in city and county jails, Lemon Creek must house long term prisoners as well as make room for those prisoners arrested or there for weekends or awaiting trial.

3-4-83

y TOM KIZZIA
nd RONNIE CHAPPELL
aily News reporters

The state has proposed to onvert three surplus federal ites into medium-security risons in an attempt to elim-ate prison overcrowding by anuary.

In a plan ordered by Supe-ior Court Judge Douglas Ser-ahely as part of a settlement a class action lawsuit over rison conditions, Director of orrections Roger Endell also roposes to build a 250-bed rison from scratch at Point oronzof in Anchorage, as ell as a maximum-security rison at an undetermined" ocation.

The plan calls for the state o increase the number of misdemeanants diverted from jail to community programs, and proposes to increase the number of "soft beds" used primarily by offenders with chronic alcohol problems.

Endell said that Alaska currently has 1,445 inmates — 431 more than it has room for.

The state could move 220 inmates into a former military base at Wildwood near Kenai in six to nine months, the plan says. In addition, the state has proposed to convert a former missile base at Goose Bay on the north side of Knik Arm into a jail for 200 inmates by fall of 1984 and a federal communications site at Chiniak, 49 miles by road from Kodiak, into a jail for 130 to 150 inmates, perhaps in early 1984.

However, at a public hearing in Kenai Thursday night, Endell said that a final decision on whether to put a prison at Wildwood has not been made.

"It's a plan, that's all," he said, adding that the state has not yet negotiated an agreement with the owners of the base, Kenai Native Association.

Endell said the state would not develop the Wildwood site if residents oppose it. "If you don't want us here, we'll fold up our tents and go somewhere else," he told a crowd of about 150 attending the hearing.

About half of those testifying at the hearing opposed putting a prison at Wildwood. Petitions containing the names of 400 people in opposition were presented to Endell.

Others, however, testified in favor of the prison, and the Kenai Chamber of Commerce and Kenai Peninsula Fire Chiefs' Association gave Endell resolutions supporting it.

Endell said the Goose Bay site is owned by the federal government, while the other two sites are now in private hands.

With these three sites in hand, the plan would scrap plans to expand an $11.7 million pre-trial facility in Fairbanks and a $9 million pre-trial facility in Juneau.

The plan does not outline the costs of the three proposed prisons, but said they would result in "tremendous cost savings."

The legislature would have to approve $45 million to build a maximum-security prison for 300 to 400 prisoners. Sites under consideration are Palmer, Seward, Kenai and Haines.

The state would also have to come up with $35 million to build a new jail in Anchorage to hold sentenced prisoners waiting for a permanent assignment to prison. This new facility would allow the state to retire the existing Third Avenue and Sixth Avenue jails.

The state is seeking $5.6 million to finish a 50 to 80 bed Nome Regional Correctional Center, and plans to add a new 50-bed jail in Bethel with existing funds.

Endell said lack of funding from the legislature, plus "poor management practices" by previous administrations, has contributed to the overcrowding problem.

Endell said factors that have led to overcrowding include a stronger criminal code, fewer releases by the Board of Parole, tougher sentencing, and an increase in the number of police and prosecutors.

"Getting tough is admirable, but it is also tremendously expensive. It is now time to pay the bill," he said.

Remote prison sites

THE MENTION of putting state prisons in remote areas brings cries of horror from the lawyers, the courts — and the prisoners.

They are quick to say that prisoners need easy access to their lawyers and to the courtrooms. They also say the prisoners need to be close to law libraries, psychiatrists and counselors.

A re-orientation of that kind of thinking could be in order.

It's true that these services and various aids to prisoner welfare are mandated by the legislature and the courts.

But there's no reason why the lawyers and doctors and books and counselors can't be taken to the prisoners when they're needed, rather than having the prisoners themselves in the center of things.

Selecting prison sites for the convenience of the prisoners doesn't make much sense, particularly the long-term prisoners. This is especially true when it's so difficult to get residents of a community to accept a prison as a neighbor.

There are exceptions. Prisoners on trial or awaiting sentence or whose terms are measured in days, not months or years, for instance, really do need to be close to their lawyers and the courtrooms. But the ones with lengthy terms don't.

Alaska is a land of remote places. It should be easy to find sites for prisons.

Governor names Endell prisons chief

1/4/83

by Jeff Berliner
Times Writer

Director of Corrections Robert Hatrak resigned Wednesday at the request of Gov. Bill Sheffield, and was immediately replaced by University of Alaska professor Roger Endell.

Endell, 42, headed a Sheffield-appointed corrections task force that offered policy recommendations radically opposed to those followed by Hatrack.

Endell, a 22-year Alaska resident and a 1966 graduate of UA-Fairbanks, has been an associate professor of justice at the University of Alaska for six years. For six years before that, he served as an assistant superintendent at state prisons in Anchorage, Eagle River, and Juneau.

Hatrak's nine-month stint as prisons chief was marred by accusations of conflict of interest, charges that he had improperly let corrections contracts, and questions about his past.

While pison superintendent at New Jersey's Rahway State Prison, he was the object of a criminal investigation in New Jersey and later fired. Then, as Multnomah County (Ore.) correction director, a Portland grand jury recommended that he be fired from the job.

Endell said today that the Division of Corrections will steer state corrections in a different direction than it was going under Hatrak.

Endell will take over the helm Monday. His first task will be "getting the division reorganized and set up as a department, assuming the governor agrees it will go to department status," he said.

The task force headed by Endell recommended that the Division of Corrections be taken out of the Department of Health and Social Services and that it be elevated to department status run by a commissioner who answers to the governor.

Prisoners will be moved out of the controversial Careage House — the nursing home turned prison which caused a storm of protest from the mayor and neighbors of the Tudor and Lake Otis facility — and the building will be transformed into the state corrections headquarters, Endell said today.

The efforts of Hatrak and assistant attorney general Mike Stark to settle an inmate lawsuit will be dropped, Endell said, indicating he'll work with the new attorney general to fight the inmate's suit over prison conditions. That was another task force recommendation.

"Serious prison overcrowding has to receive the constant attention of the director," Endell said.

But Endell said he thinks the problem can be solved at a lot less expense than proposed by the Hammond administration, notably Hatrak and acting commissioner of health and social services Allen Korhonen.

Without naming a dollar

Endell

(Continued from page A-1)

amount, Endell said, "I'm hoping we can do it for less."

Endell said he has ideas for coming up with as many as 400 new prison beds without "building concrete structures from the ground up."

He said the "very serious problems facing corrections are solvable" but will require "cooperation between the judicial, legislative and executive branches."

The corrections system has "a lot of catching up to," Endell said, so that the state prison system can handle all the people being funneled into it by the courts and as a result of new laws passed by the Legislature.

The task force report showed "very clearly there were substantial problems in management," Endell said, noting that the report stopped short of singling out Hatrak by name.

Endell said he will meet with the prison superintendents at the outset and anticipates none of the in-fighting and management problems which marked Hatrak's tenure as prison chief.

The "crisis in correctional management" can be solved with "sound, long-term and professional management," Endell's task force wrote, noting that the department has had four directors in six years.

But Endell called his appointment as the fifth director "a positive sign," proving that qualified Alaskans are available (a reference to selecting the last two directors from out of state), and because he already has a good working relationship with corrections.

"I know most of the people. I know most of their strengths and weaknesses," he said.

Endell said there may be a shake-up within corrections as a result of task force recommendations to establish regional corrections centers in Fairbanks, Juneau and the Bush. Attrition, through retirements of superintendents, may also clear some positions.

Endell candidly acknowledged Hatrak's problems but called him "a professional."

"He's had some tough experiences," Endell said of Hatrak. "He tried to do an admirable job. He's had some difficulties. But when he was appointed, the man knew he might be out of a job with the change in administrations."

Hatrak said today he was not told why he was losing his job — only that "my resignation would be accepted."

Hatrak, 45, was given the news Wednesday by acting commissioner of health and social services Korhonen.

Calls to Korhonen were returned by the governor's office and Sheffield spokesman Pete Spivey said the change was prompted by the governor's "desire to change leaders."

"The division of corrections has obviously gone through a lot of turmoil and I assume Hatrak's part of it," Spivey said.

The main finding of the task force, Sprivey said, was that "the division has not had very much strong leadership."

Hatrak said he had no warning of the sudden change.

"The governor has the right and perogative to field his own team. And he's probably better off fielding his own team. I feel strongly about that. It's his choice."

Hatrak said corrections problems promise to be a big issue in the Legislature in the coming session and "corrections needs to go into this with as strong a position as possible."

MSG 83-00005696 PRTY 1 04/05/83 14:53:30 ORIG: LA01 IN= 0025 OUT= 0106
FROM: MARCIE, ANC INFO TO: POM, JUNEAU INFO
TARGET: LJHL SUBJ: P O M

Judiciary Referral

TO: ALL MEMBERS OF THE LEGISLATURE

FROM: ANDY KAPALKO, 2221 MULDOON ROAD #277, ANCHORAGE 99504
338-3121 H 561-1433 . W

RE: HB 103

INFORMATION GATHERED INDICATES THAT IN CREATING A DEPT OF CORRECTIONS IT WOULD BE BEST TO ALLOW JUVENILE SERVICES TO REMAIN UNDER HEALTH AND SOCIAL SERVICES. PLEASE DON'T IGNORE GOOD ADVISE AND COMMON SENSE. VOTE AGAINST ANY BILL THAT WILL MOVE YOUTH CORRECTIONS TO THE NEW DEPT OF CORRECTIONS.

EOM

Juvenile Referral

Alaska Foster Parents Association

P. O. BOX 8651 • ANCHORAGE, ALASKA 99508

April 13, 1983



Mr. Charlie Bussell
Pouch V
Juneau, AK 99811

Dear Mr. Bussell:

Alaska Foster Parent Association urges you to not pass HR 103 as written. We are opposed to the inclusion of juvenile corrections with adults under the New Department of Corrections for the following reasons:

1) With the many urgent tasks confronting a new Department of Corrections juveniles would be the last considered and be overlooked.

2) The philosophical treatment of juvenile offenders is and needs to continue to be different. Juvenile corrections is still ahome, family, and community oriented treatment and rehabilatative program rather than punitive.

3) Crimes of juvenile offenders are different from adult--
   a) mostly property crime status offenses,
   b) less successful and less finanical involvement,
   c) mostly non-violent, without weapons.

4) Juvenile offenders have a greater link with the Department of Health and Social Services than with adult corrections. They are often victims of child abuse, neglect and family breakdown. The biggest difference between juvenile delinquents and child in need of aid in foster homes is the delinquents have been caught! There must be strong coordination between those responsible to child in need of aid care and juvenile corrections as many move from one system to the other. When the new Department of Corrections is being set up we fear we will loose the treatment, the prevention like that now exist under the Department of Health and Social Services. There must be close coordination between juveniles in foster home placements and youth correctional facilities.

5) In many cases a juvenile under corrections is able to go into a foster home while still on probation. This not only saves the state a significant amount of money (over $100 per day per child) but is a more successful treatment mode. Division of Family and Youth Services has recently developed a specialized foster care program to provide more services and support to foster homes to enable more juveniles to be kept in foster homes rather than youth correctional facilities. Also, in rural Alaska you would have to duplicate services now carried under the Division of Family and Youth Services: i.e. new foster homes and therefore be more costly.

In closing we urge you to not include juvenile corrections under the new Department of Corrections but keep them under Department of Health and Social Services. One suggestion to counter the argument that juvenile offenders are just like adults is to strengthen the waiver laws to allow more serious juvenile offenders to be tried as adults.

If you need more information please do not hesitate to call or write the Alaska Foster Parent Association.

Sincerely,

Louiese Rodoni

Louiese Rodoni, President
Alaska Foster Parent Association
333-2323

JR



4/4/83, SHIRLEE ANC LIO, 5403

TO: ALL MEMBERS, ALASKA LEGISLATURE

FROM: GRANT KLOTZ, 251 MCCARREY ST., UNIT 14, ANCH 99504
H 333-4302 W 561-1433

I OPPOSE HOUSE BILL 103. I FEEL IT WOULD BE DETRIMENTAL TO ALL JUVENILES IF PASSED.

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Legislation would create separate state Department of Corrections

The Associated Press News 1/22/83

JUNEAU — Legislation to create a separate state Department of Corrections was introduced in the House by Rep. Milo Fritz, R-Anchor Point.

Gov. Bill Sheffield has proposed the same thing in an executive order. The corrections program is now administered by the state Division of Adult Corrections within the Department of Health and Social Services.

Fritz' bill, introduced Friday, would make the new cabinet-level department responsible for overseeing state prisons and prisoners, probation and parole, and extraditions detainers.

Sheffield submitted his executive order to the Legislature on the opening day of the 1983 session, and it would become law unless the Legislature acts on it within 60 days. Action on the Fritz bill means the Legislature would have its say on if and how the department is to be set up.

The Fritz measure was one of nine bills and resolutions filed in the House Friday. Other legislation introduced included:

- A bill (HB104) to provide compensation for victims of violent crimes, including injury or death. The limit would be $25,000, except in the case of the death of a victim with more than one dependent. Then the compensation could go to $40,000.
- A bill (HB105) requested by the governor to appropriate the capital and operating budgets as well as the Permanent Fund Dividend Program.
- A bill (HB107) to allow an adult person to have an attending physician withhold or withdraw life-sustaining procedures if death is imminent.
- A resolution (HCR12) requesting the governor to order a study of a canal between the Yukon and Kuskokwim rivers.

Sheffield wants to see corrections elevated

NEWS 1/18/83

From staff and wire reports

JUNEAU — The Alaska House Monday was asked by Gov. Bill Sheffield not to block an executive order creating a Department of Corrections.

If legislators do not take action within 60 days, the Division of Corrections, now part of the Department of Health and Social Services, will be upgraded to a cabinet-level department in state government.

Kevin Bruce, Sheffield's special assistant for corrections, said the change is scheduled for April 1.

The governor's order issued Monday followed the recommendation of a task force studying Alaska's corrections system, said Pete Spivey, Sheffield's press secretary.

Some of the division's problems include overcrowding and mismanagement of some corrections programs, he said.

Sheffield had two choices on how to get the division more attention, Spivey said. He could have created a new department, the route he chose, or appointed a deputy commissioner solely for corrections.

Plans call for the new commissioner of corrections to be headquartered in Juneau. An assistant commissioner's office would be located in Anchorage, Bruce said.

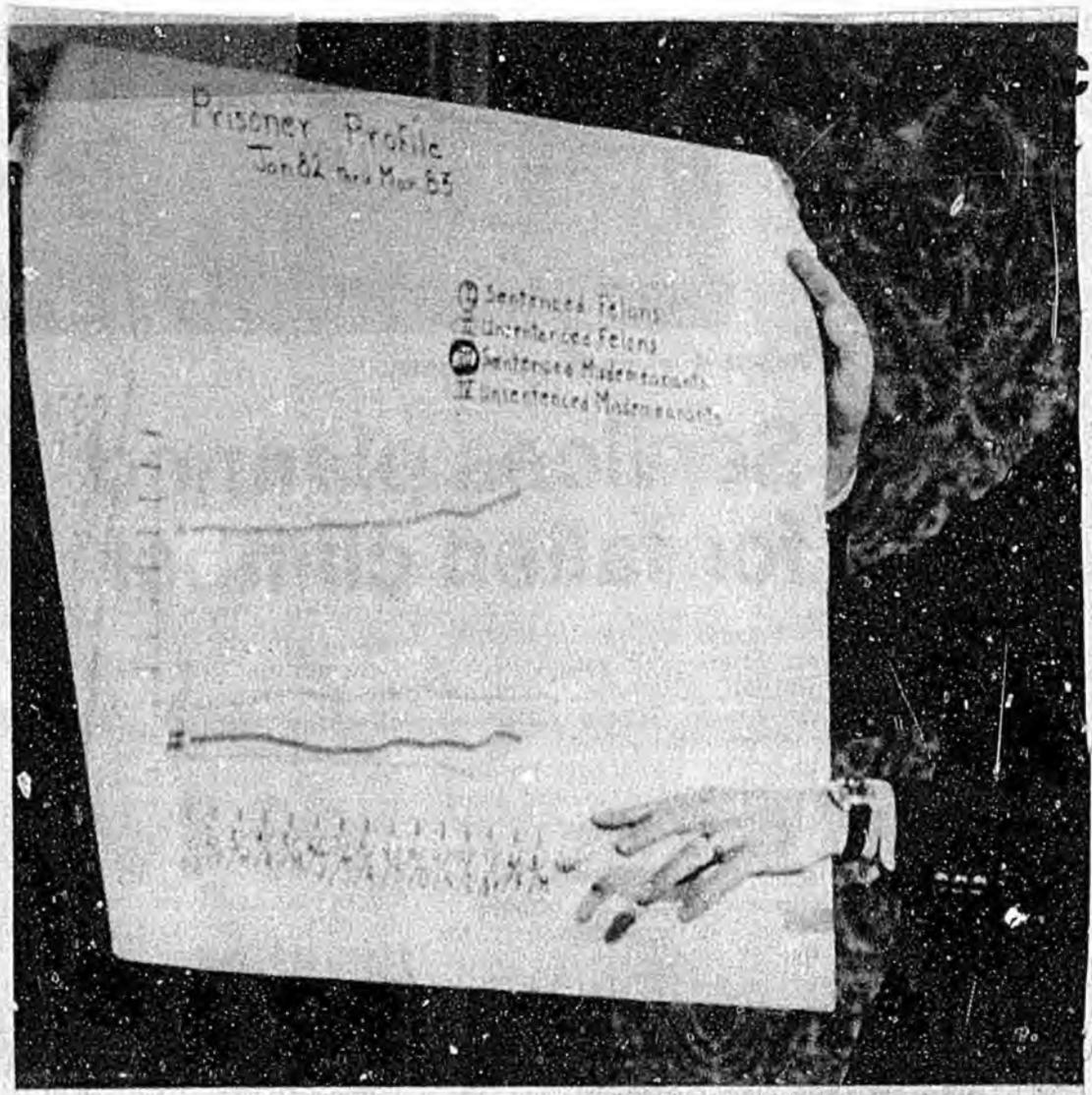
The governor's assistant could not say for certain Monday that Roger Endell, who was appointed last week by Sheffield to head the division of corrections, would be the new commissioner.

"The governor didn't promise to make him the commissioner of corrections but he would be the most likely candidate," Bruce said.

The corrections budget for this year is $40 million.

The new department's proposed budget for fiscal year 1983-84 will be just under $41 million, Bruce said.

HB 105
JR



Roger Endell shows a prisoner profile chart to the Anchorage Chamber of Commerce.

Corrections chief cites hig

J-12-83

By LARRY CAMPBELL
Daily News reporter

Solving Alaska's crowded jail problem will be expensive, the director of the state's division of corrections said Monday.

But Roger Endell said the state, if officials use good business sense, can both protect society and promote reform programs designed to make inmates productive, tax paying members of society.

In a speech to the Anchorage Chamber of Commerce, Endell discussed jails in economic terms, talking of costs, ratios of return for investments and economies of scale.

"We find it's very easy to pass a law to incarcerate offenders, but we're also finding it is very expensive to be tough on crime," Endell said. "There's no doubt that we have a crisis situation in crowding. One out of every 106 Alaskans is in some sort of incarceration now, including juveniles and adults."

As evidence for the cost of jailing criminals, Endell pointed to the $60 million operating budget and $100 million capital improvements budget he is requesting from the legislature for 1983.

While some of that money will be used to take care of current inmates, room also will have to be provided for the estimated 24 new inmates a month that enter the correctional system, he said.

Minimum security facilities have been proposed in buildings in Kenai, Cape Chiniak and Goose Bay, a
said a new maximu
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"Felons require s
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Land pr
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By MARTHA ELIASSEN
Daily News reporter

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HB 103
JTC

House will review proposal to set up prison department

3-21-83
Times

by Bill White
Times Juneau Bureau

Juneau — House members today plan to debate a bill to set up the prison system in its own department, four days after lawmakers rejected a similar proposal offered by Gov. Bill Sheffield.

The House Finance Committee pushed the bill out this morning in a rush to get it to the full House today.

The 27 House majority members voted as a bloc last week in joint session with the Senate to reject Sheffield's proposal in the freshman governor's first major defeat.

But House Majority Leader Ramona Barnes, R-Anchorage, said after that vote she expected the House to pass the bill that would do almost the same thing as Sheffield's executive order.

Lawmakers and administration officials have been pushing for a separate prisons department as a means of dealing more directly with Alaska's inmate crunch. The state's prisons are holding about 400 more inmates than they were designed for.

The finance panel's action came over the objections of Sheffield administration officials. They favored the bill, except for a new provision inserted late last week by the Judiciary Committee.

John Pugh, deputy commissioner of health and social services, told the Finance panel members the new section would put juvenile delinquents under the new prisons department.

Sheffield opposes that action, and so does Roger Endell, who would head up the new department, Pugh said.

Instead, all except the most serious juvenile offenders should continue to be handled by the family services division of his department, he said.

Rep. Charlie Bussell, chairman of the Judiciary Committee, said his panel's version of the bill "will make a strong working department." The department will handle criminal suspects more efficiently and will save the state money if its jurisdiction includes juveniles, the Anchorage Republican said.

Michael Price, head of the family services division, said that when a youth commits a crime it is most often because of a failure within his family. "Ultimately it's the family that will deal with this youth."

Everyone is concerned about juvenile criminals, he added. "The question is what is the most effective way to deal with this problem."

If juvenile delinquents go under the new prisons department, about 220 staffers from the family services division will go with them. But about 240 social workers, who now also deal with offending youths and their families, will not be tranferred, Price said.

Juvenile crime has not been the problem newspaper reports have painted it to be, Price added.

In fact, for the last two years, the juvenile crime rate in Anchorage has stayed level despite a rapidly rising population, he said. In 1981, the last year for which there are figures, 6,120 youths were arrested. Of those, 2,047 committed crimes for which they wouldn't have been charged if they were adults, such as curfew and drinking violations, he said.

Only 60 of the 6,120 were arrested for crimes of violence, he said.

HB103
JR

Prisons department bill stalled in committee

The Associated Press

JUNEAU — The minority Democrats Monday delayed, at least for two days until the Alaska House meets again, passage of a bill to create a Department of Corrections.

The minority prevented the bill (HB103) from moving to the third reading — when it can be approved as law — by preventing the needed three-fourths vote. The vote was 11-25 against movement.

Democrats indicated they want a clear signal from Gov. Bill Sheffield's administration on whether the juvenile corrections should be moved immediately to the new department.

Creating the corrections department separate from the Department of Health and Social Services was the subject of an executive order turned down last week by the Legislature.

At one point, lawmakers said they had been told the administration would be satisfied with juvenile corrections in the new department. But that opinion was a personal one of Division of Corrections Director Roger Endell, according to an Endell letter read by Rep. Jim Duncan, D-Juneau.

Endell, Duncan said, now has taken the Sheffield administration position to delay the shift of juvenile corrections from the health and social services department.

But House Judiciary Chairman Charlie Bussell, R-Anchorage, said as late as Saturday Endell said he could live with the juvenile corrections coming into his department July 1, 1983.

It was when minority Democrats failed to get that date delayed a year that they came up with the parliamentary tactic to hold the bill over a day.

Clocksin and other Democrats fought for keeping juvenile corrections in DHSS so the new department could get itself operating with stability.

POUCH V
JUNEAU, ALASKA 99811
465-4990

P.O. BOX 4-1325
ANCHORAGE, ALASKA 99509
248-1515

CHAIRMAN
HOUSE JUDICIARY COMMITTEE
MEMBER
HOUSE RESOURCES COMMITTEE

Representative Charlie Bussell
ALASKA STATE LEGISLATURE
HOUSE OF REPRESENTATIVES

March 21, 1983

Ms. Patsy Turner
SRA Box 6266
Palmer, Alaska 99649

Dear Ms. Turner:

Thank you for taking the time to express your interest in the legislative process.

After several hours of hearings on HB 103, CSHB 103 was developed in include youth corrections.

Additional hearings were conducted on the bill on the 17th of March which resulted in CSHB 103 being moved from the Judiciary Committee.

It was read across the Floor of the House on the 18th of March and referred to the House Finance Committee.

A copy of the bill is enclosed for your further information.

Thank you again for your interest in the process and taking the time to become involved.

Warm regards,

Representative Charlie Bussell
Chairman, Committee on Judiciary

CB:lyn

enclosure

Patsy Turner
SRA Box 6266
Palmer, AK 99645

March 10, 1983

The Honorable Charlie Bussell, Chairman
House Judiciary Committee
Capitol Room 126
State Capitol
Pouch V
Juneau, Alaska 99811



RE: HB 103 or CSHB 103(HESS)

Dear Chairman Bussell:

I am a Social Work student at the University of Alaska, Anchorage. I am following HB 103 regarding establishing a Department of Corrections as a part of a class on social welfare policies and issues.

I would like to know if this bill is scheduled for a hearing in the Judiciary Committe in the near future, when it will move from your committee and any other information that you may have concerning the status of this bill.

I am also interested to know if there is opposition to CSHB 103 and what position the opposition takes.

Your prompt attention to this matter will be sincerely appreciated. and it will assist me in preparing my report for my class.

Respectfully,

Patsy Turner

CSHB 15(Loans)am

Representative Barnes moved and asked unanimous consent that the roll call on the passage of the bill be considered the roll call on the effective date clause. There being no objection, it was so ordered.

Representative Uehling moved and asked unanimous consent that the House adopt the letter of intent on CSHB 15(Loans)am which appears on page 432 of the journal. There being no objection, it was so ordered.

A drafting error was noticed, and the following engrossing change was necessary for CSHB 15(Loans) am:

Page 2, line 2

After "life" insert "for the individual" and delete [FOR HIM].

Representative Malone gave notice of reconsideration of his vote on the letter of intent.

CSHB 15(Loans)am was referred to the Chief Clerk for engrossment.

HB 103

HOUSE BILL NO. 103 (establishing a Department of Corrections and transferring certain functions of the Department of Health and Social Services to the Department of Corrections; effective date) was read the second time with the Health, Education and Social Services Committee report (page 243 of the journal), the Judiciary Committee report (page 533 of the journal) and the Finance Committee report (page 571 of the journal).

Representative Barnes moved and asked unanimous consent that CSHB 103(Jud) (same title) be adopted in lieu of the original bill.

Representative Clocksin objected.

Representative Barnes moved and asked unanimous consent that the House recess until 4:30 p.m., March 21, 1983. There being no objection, the House recessed at 12:00 noon.

AFTER RECESS

The House was called back to order at 4:37 p.m.

A third roll call showed all members present except Representative Adams who had been previously excused from a call of the House today; and Representatives Goll and Malone.

HB 103

HOUSE BILL NO. 103 was again before the House in second reading at this time.

The question being: "Shall CSHB 103(Jud) be adopted in lieu of the original bill?" The roll was taken with the following result:

CSHB 103(JUD) MOTION

Yeas:	25	Abood, Barnes, Bettisworth, Bussell, Cato, Cowdery, Flood, Fritz, Fuller, Furnace, Grussendorf, Hayes, Herrmann, Hurlbert, Lacher, Lindauer, Liska, Martin, Miller,M.W., Pestinger, Phillips, Ringstad, Shultz, Tischer, Ward
Nays:	11	Clocksin, Davis, Duncan, Koponen, Larson, McBride, Miller,M.M., Szymanski, Vaska, Wendte, Zharoff
Excused:	1	Adams
Absent:	3	Goll, Malone, Uehling

And so, CSHB 103(Jud) was adopted.

CSHB 103(Jud)

Amendment No. 1 by Duncan, M. M. Miller, McBride and Davis:

Page 32, line 22

Delete "1983" and insert "1984".

HB 103, ESTABLISHING A DEPARTMENT OF CORRECTIONS

The proposal to change the division of corrections within the Department of Health and Social Services to departmental status is one that is supported by the Governor's office, correctional professionals, and the House HESS committee.

Elimination of the correctional crisis in this state is of primary concern to me, and I know that members of the Judiciary committee are keenly aware of the problems facing the correctional system. The overcrowding, the mismanagement, the poor conditions and lack of alternatives to incarceration, are all challenges that face us in the current legislative session. You have heard the briefing on the Cleary case and know that the problems are real and that cooperation between all branches of government will be necessary.

With proper administration, budgeting, and organization, the problems can be solved. Proper management is the beginning. The new Department of Corrections and a responsive management team will be the first step. By creating a Department, a commissioner and executive staff can be appointed who answer directly to the commissioner. The existing division of corrections has been plagued with inconsistent management within the division and within the Department of Health and Social Services. The division has placed a disproportionate load on several Department of Health and Social Services programs, and the goal of the division of corrections is not necessarily consistent with the

goals of the Department of Health and Social Services,which are oriented toward public health, public assistance, mental health, and family and youth services.

The proposal to create a new department, as presented to the HESS committee, is to retain 9 existing positions and transfer them to the new department. One existing position in corrections will be retained and ten new positions will be created. Mr. Endell and his staff can speak better to the fiscal and administrative makeup of the department, so I will leave that to him.

The issue of juvenile corrections was discussed by the committee. The consensus of the committee was that juvenile corrections should be included within the new department, but the transition should occur after the new department is established and has been able to correct some of the immediate problems at hand.

The lack of specific information regarding the department of corrections has been frustrating for those of us who must evaluate the proposal. However, in this instance, considering the scope of the problem and the urgency of the problem, I am willing to give the Governor the benefit of the doubt and trust his office to implement an effective corrections program.

MILO FRITZ

EO 54 - Sheffield
HB 103 - Fritz

"Creating a Department of Corrections"

"An Act establishing a Department of Corrections and transferring certain functions of the Department of Health and Social Services to the Department of Corrections; and providing for an effective date."

BACKGROUND INFORMATION:

Executive Order 54 establishes a Department of Corrections, replacing the Division of Corrections currently operating correctional institutions and programs under the Department of Health and Social Services. Adult penal institutions, the correctional industries program and probation and parole is proposed to be placed in the new department's jurisdiction. Juvenile corrections remain the responsibility of the Department of Health and Social Services. Responsibilities for the transportation of prisoners and mentally ill offenders are not addressed.

The "TASK FORCE ON CORRECTIONS STATUS REPORT" was submitted to Governor William Sheffield in December/January, 1982-1983. A summary document of the impact of those thirty four (34) recommendations relative to EO 54 and HB 103 is attached here. As of this date Corrections is reporting that they are currently complying with fifteen (15) of the recommendations; they have future plans to deal with eight (8) of them; eleven (11) of the recommendations they agree with but at the present time have no plans with compliance.

Staff requested "organizational development" information in order to compare staffing levels and requirements of three phases : (a) Pre-transitional Management Team; (b) Transitional Management Team; (c) Operational Department of Corrections.

Staff additionally requested fiscal information relative to previous administrative levels of function and organization within the Division of Corrections as a comparison with the proposed elevation to departmental status and the accompanying fiscal impact that it would address.

As additional support to EO 54. the Division of Corrections through the Department of Health and Social Services has submitted their position paper, attached here for review.

The Committee presently has copies of the "Population Managment Plan" which addresses some of the concerns and issues relative to the Executive Order and House Bill before them. Submission to the Committee of the "Mini Corrections Master Plan" has been requested and it appears as though that will be available some time on or about the fifteenth of the month of March, 1983.

Although the "TASK FORCE ON CORRECTIONS STATUS REPORT" addresses both the problem of juvenile corrections and the transportation of prisoners , these are questions that the committee still has to address to future testimonial before them.

IMPACT:

Sectional Analysis done by staff of HESS is attached.

FISCAL NOTE:

Attached

WITNESSES:

Roger Endell, Corrections

STATUS OF TASK FORCE RECOMMENDATIONS
DIVISION OF ADULT CORRECTIONS

A. COMPLY

NUMBER	TEXT
(1)	Except for the Anchorage Careage House, no correctional facilities should be closed until adequate new correctional space has been prepared.
(2)	The Careage House should be utilized as corrections' South-central Alaska headquarters and as a correctional training center.
(3)	The new Cook Inlet pre-trial facility should not be opened to inmate populations until the facility is ready for secure occupancy and the staff has been properly trained.
(6)	The continued use of Ridgeview should be re-evaluated for potential correctional use in light of economic costs and public benefits.
(8)	Mentally disturbed offenders should continue to be housed temporarily at the Alaska Psychiatric Hospital.
(11)	The state should move immediately to evaluate and obtain additional available sites for expansion of correctional operations in the Kenai and Matanuska-Susitna Boroughs.
(12)	Comprehensive correctional services regional centers should be constructed in both Nome and Bethel utilizing either "stick built" or prebuilt modular units or a combination of both.
(13)	All new correctional construction proposals should be evaluated in relationship to the need for increased bed capacity statewide.
(15)	Either a Matanuska-Susitna or Kenai Borough site should be developed and utilized to provide maximum security prison space.
(17)	A maximum security institution is needed to securely house a portion of the Alaska offender population.
(18)	The recently completed management plan for corrections should not be fully implemented.
(19)	The revised classification system should be implemented in concert with correctional reorganization and development.
(20)	Corrections should be managed on a decentralized regional basis.
(27)	The present partial settlement agreement efforts in the Cleary et al. case should be halted and reviewed immediately.
(34)	A systematic evaluation of approximately 150 parole eligible offenders should be conducted immediately.

B. FUTURE

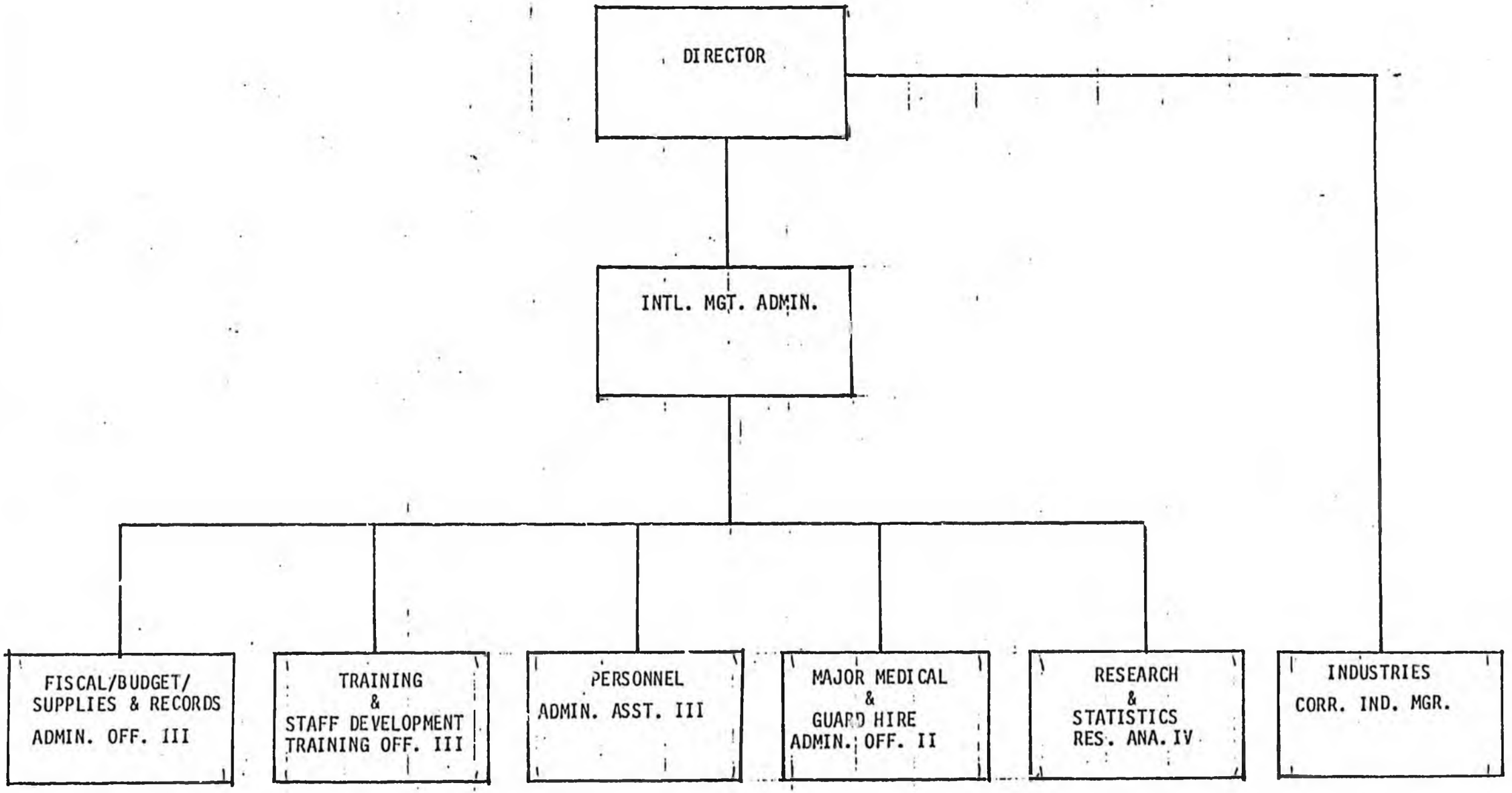
NUMBER	TEXT
(4 & 5)	The Third Avenue and 6th & C correctional centers in Anchorage should be utilized to hold short term offenders and those incarcerated for alcohol related offenses.
(7)	Haland Mountain correctional center near Eagle River must be permitted to return to its original mission.
(9)	Sentenced adult female housing space at Meadow Creek (Eagle River) should be added as necessary with much less expensive architecture than past practice.
(14)	The state should continue to maintain a number of dangerously violent Alaska offenders within the Federal Bureau of Prisons' system.
(21)	All jail contracts should be managed by the Department of Corrections.
(31)	All youth correctional functions should be organized as a separate division within the Department of Corrections when reorganization is completed and functional.
(32)	The prisoner population of the State of Alaska should be put to work.

C. AGREE

NUMBER	TEXT
(10)	The type and methods of construction of the two institutions at Palmer should be copied elsewhere as needed in the State.
(16)	Correctional construction should be recognized as a high priority among all units of state government.
(22)	A well trained correctional staff is mandatory and critical to efficient management.
(23)	The Division of Corrections should be moved quickly and decisively in toto by immediate executive order to Departmental status.
(24)	A Commissioner of Corrections should be appointed by the Governor as soon as possible.
(25)	A cabinet level body should be directed to coordinate policy and law implementation for the effective administration of justice.
(26)	Management personnel of the agencies of justice (state and local) should coordinate the activities of these agencies at the local and regional level.
(28)	Municipalities should not be made responsible for the costs of pre-trial incarceration of offenders held on state criminal charges, but municipal-state coordination is essential.
(29)	The state should move immediately to address the law, policies and procedures with regard to public drunkenness and drunk driving.
(30)	The State Office of Alcoholism and Drug Abuse should provide comprehensive program services to correctional populations in cooperation with local municipalities.
(33)	Offender education and recreational programs should be made available to prison populations during the non-work hours of those prisoners.
(35)	Corrections should provide the opportunity to every offender the resources of a halfway house program for those about to be released -- corrections must correct.

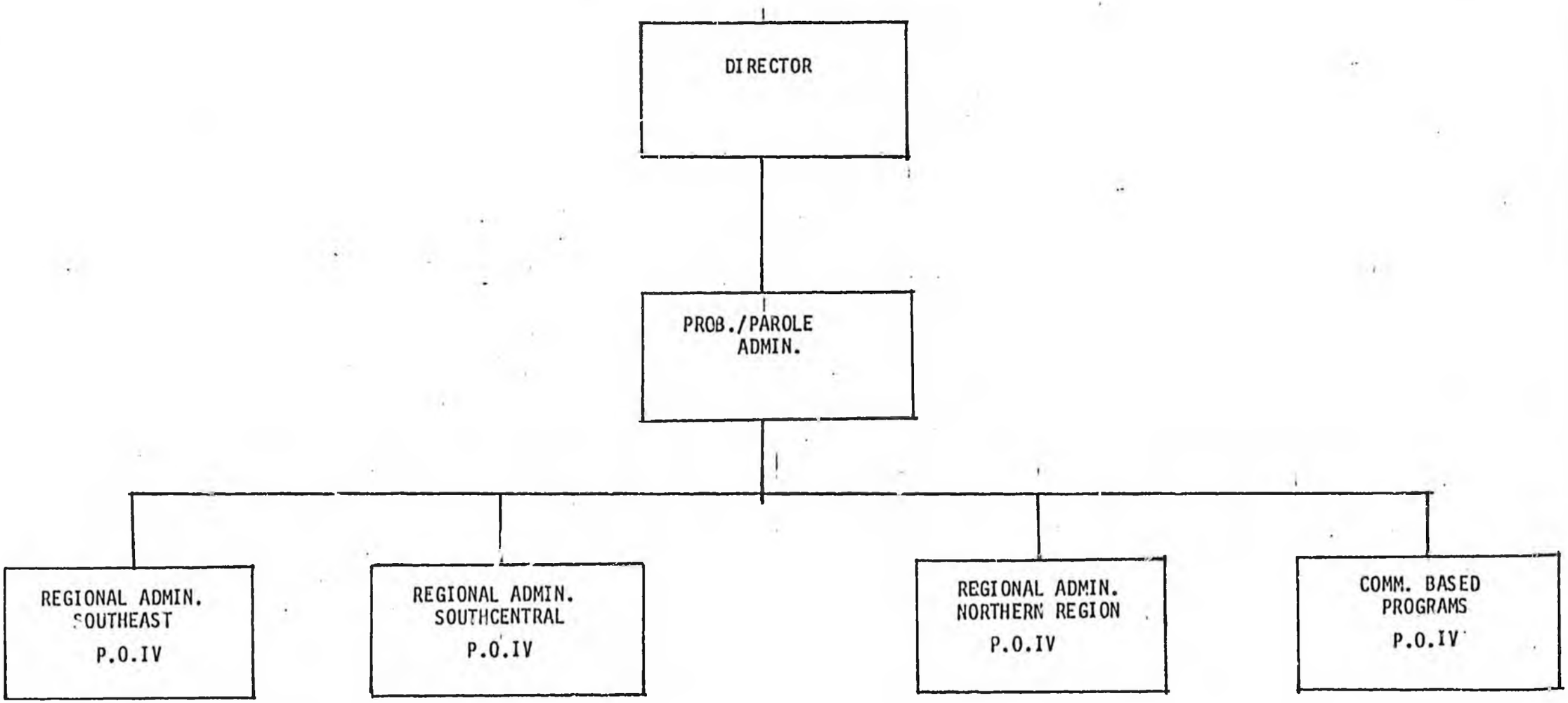
Organizational Chart
prior to transitional
Management Team

DIVISION OF ADULT CORRECTIONS
ADMINISTRATION & SUPPORT



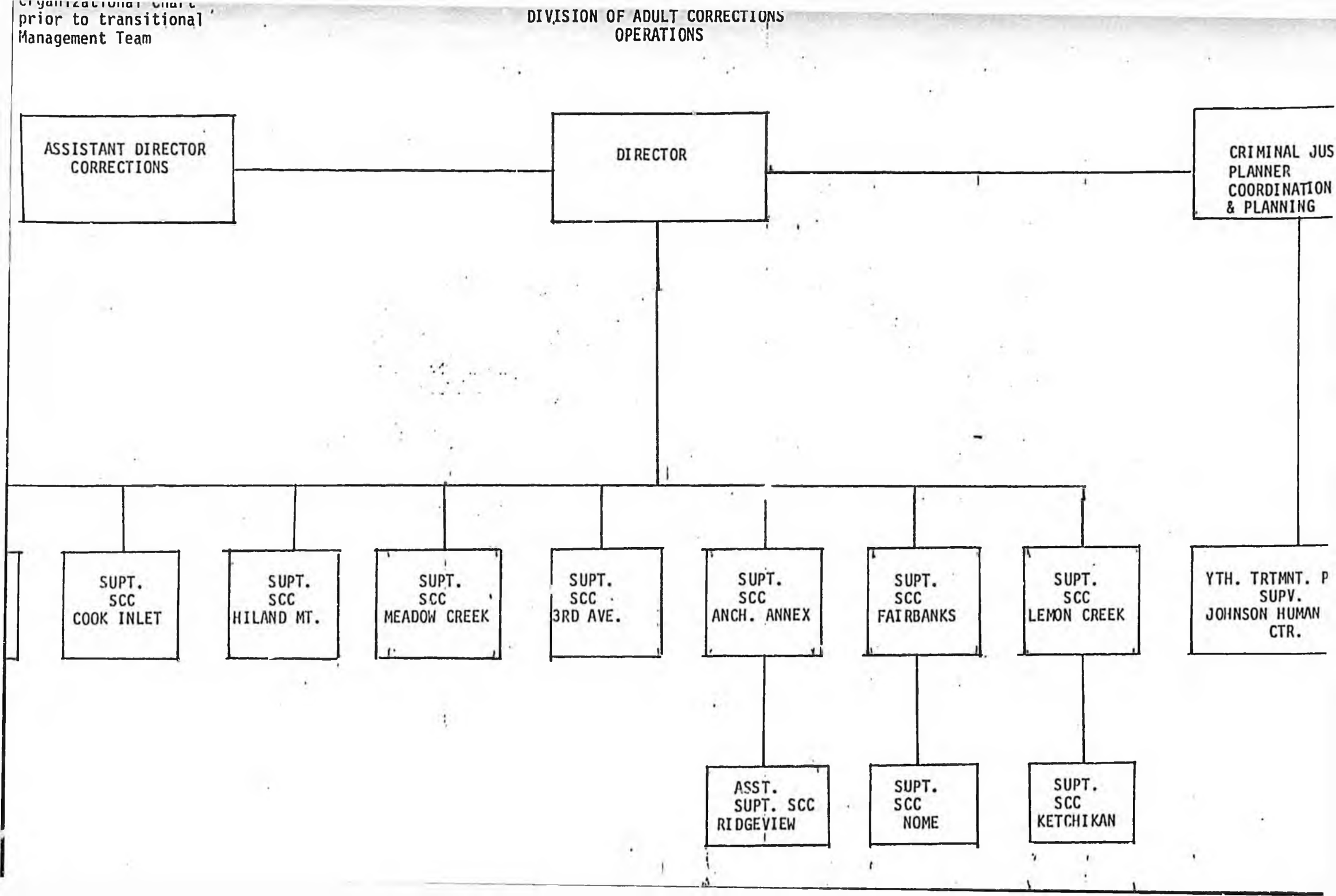
Organizational Chart
prior to transitional
Management Team

DIVISION OF ADULT CORRECTIONS
PROBATION & PAROLE

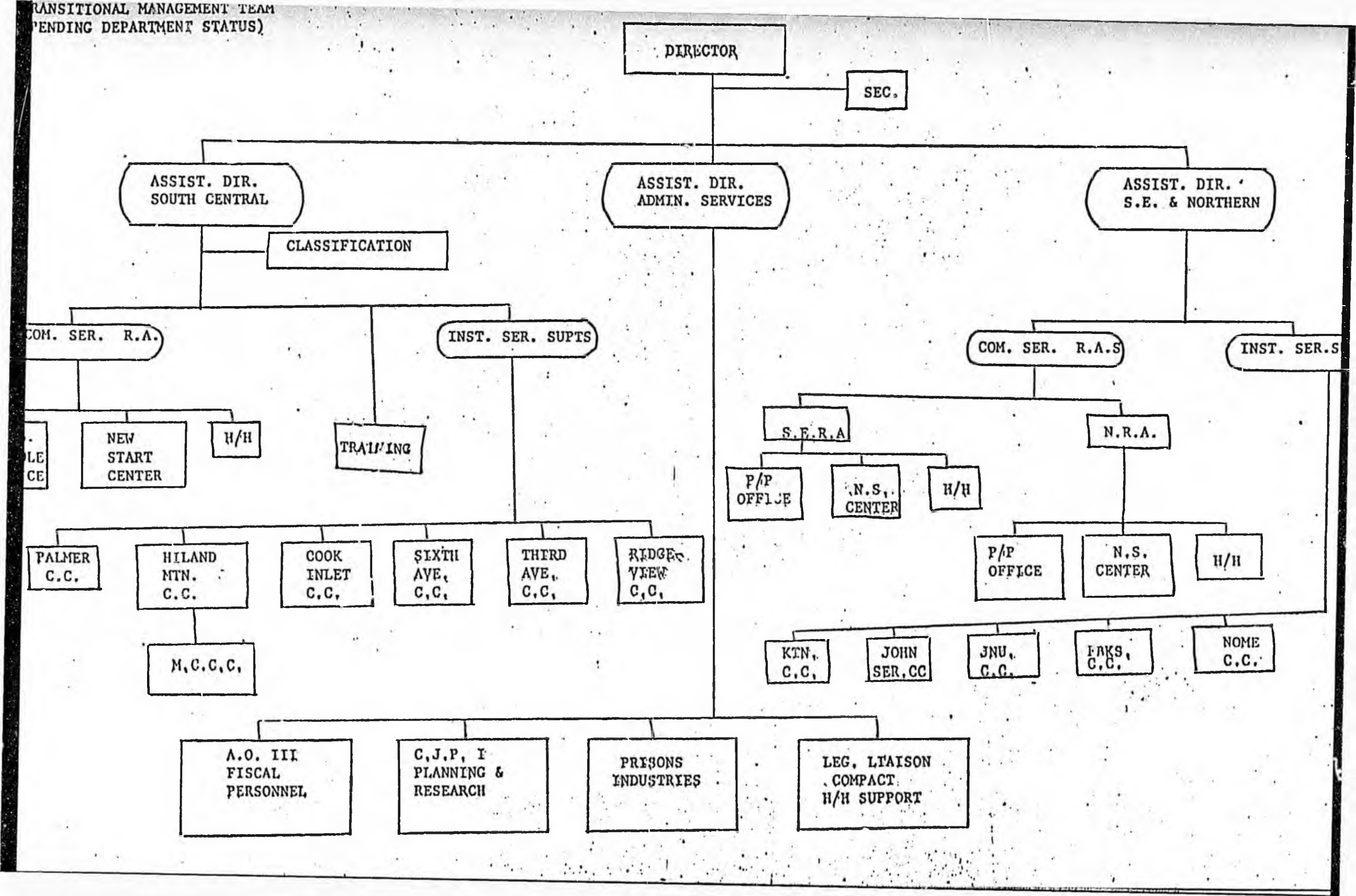


Organizational Chart
prior to transitional
Management Team

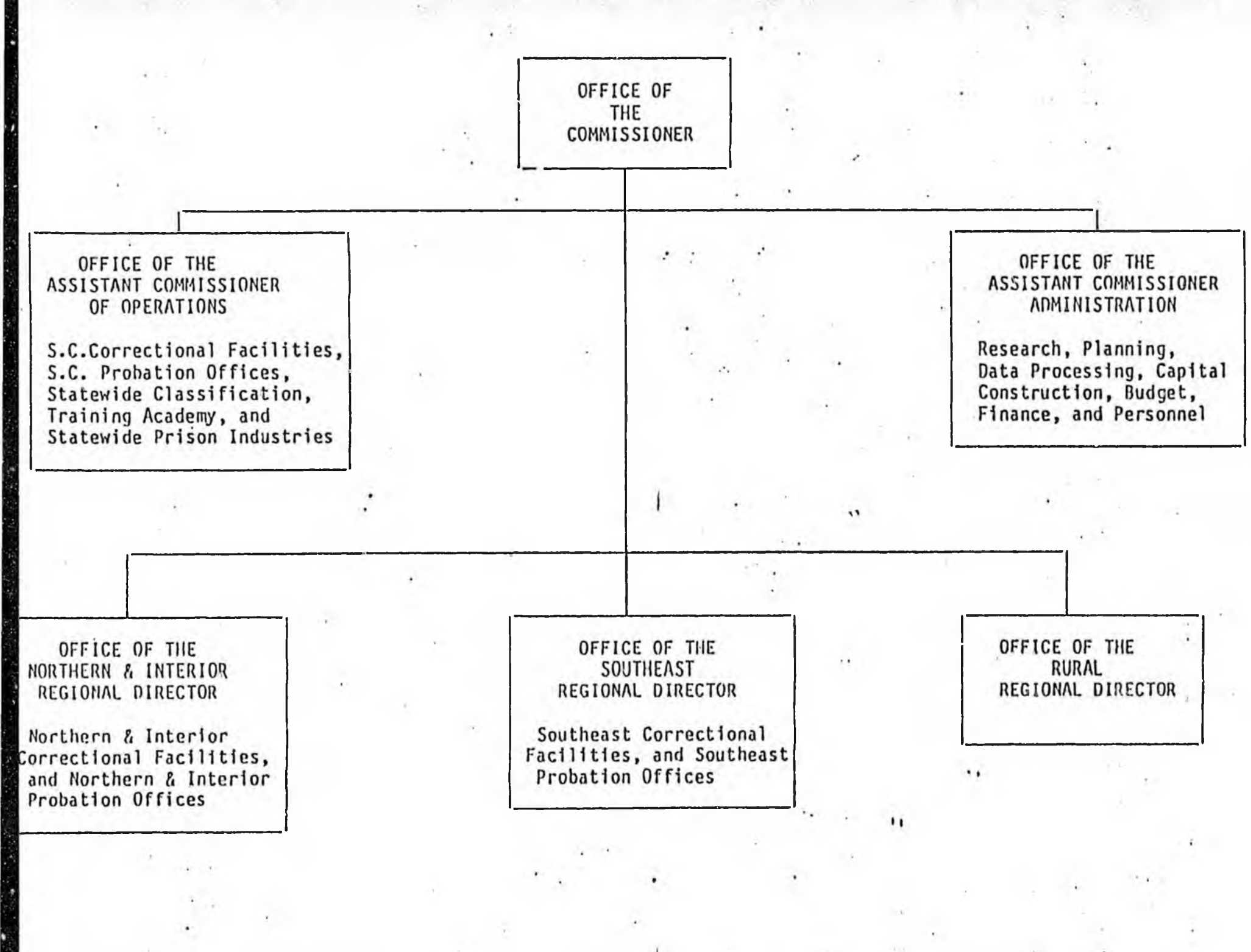
DIVISION OF ADULT CORRECTIONS
OPERATIONS

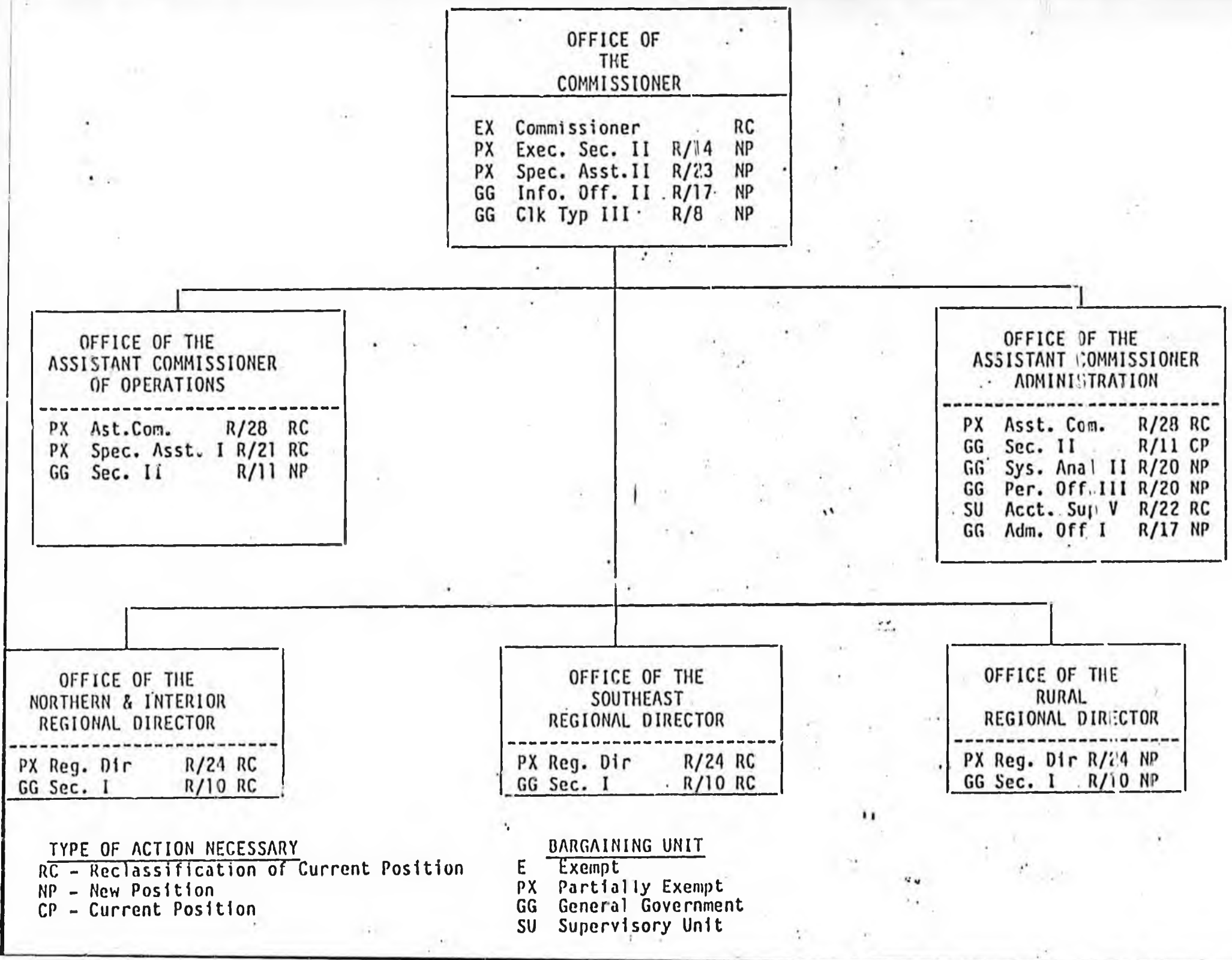


RANSITIONAL MANAGEMENT TEAM
'ENDING DEPARTMENT STATUS)



DEPARTMENT OF CORRECTIONS




OFFICE OF THE COMMISSIONER
EX Commissioner RC
PX Exec. Sec. II R/14 NP
PX Spec. Asst.II R/23 NP
GG Info. Off. II R/17 NP
GG Clk Typ III R/8 NP
OFFICE OF THE ASSISTANT COMMISSIONER OF OPERATIONS
PX Ast.Com. R/28 RC
PX Spec. Asst. I R/21 RC
GG Sec. II R/11 NP
OFFICE OF THE ASSISTANT COMMISSIONER ADMINISTRATION
PX Asst. Com. R/28 RC
GG Sec. II R/11 CP
GG Sys. Anal II R/20 NP
GG Per. Off. III R/20 NP
SU Acct. Sup V R/22 RC
GG Adm. Off I R/17 NP
OFFICE OF THE NORTHERN & INTERIOR REGIONAL DIRECTOR
PX Reg. Dir R/24 RC
GG Sec. I R/10 RC
OFFICE OF THE SOUTHEAST REGIONAL DIRECTOR
PX Reg. Dir R/24 RC
GG Sec. I R/10 RC
OFFICE OF THE RURAL REGIONAL DIRECTOR
PX Reg. Dir R/24 NP
GG Sec. I R/10 NP
TYPE OF ACTION NECESSARY
RC - Reclassification of Current Position
NP - New Position
CP - Current Position
BARGAINING UNIT
E Exempt
PX Partially Exempt
GG General Government
SU Supervisory Unit

1/13/83

New Positions

Range	Title	Loc	Monthly Salary	Variable Benefits	Suppl Benef	Health Insur	Total	FY83 3 mos	FY84 12 mos
14 X	Exec Secretary II	AWA	2241	383	137	240	3001	9003	36012
11	Secretary II	EBA	1862	318	114	240	2534	7602	30408
23 X	Spec. Asst. II	AWA	4149	709	254	240	5352	16056	64224
17	Info. Officer	AWA	2757	471	169	240	3637	10911	43644
8	Clerk Typist III	AWA	1553	265	95	240	2153	6459	25836
24 X	Reg'l Dir.-Rural	AWA	4936	844	303	240	6323	18969	75876
20	Pers. Officer	AWA	3469	593	213	240	5122	15366	61464
17	Admin. Officer I	AWA	2824	483	173	240	4720	11160	44640
20	Systems Anal. II	AWA	3394	580	208	240	4422	13266	53064
9	Secretary I	EBA	1803	308	111	240	2462	7386	29544
							SUBTOTAL	116,178	464,712

Reclassifications

PCN	From	To	Net Change: 3 mos	12 mos
4001	Director, Div of Corrections	Commissioner, Dept of Corrections	1380	5520
4840	Dep. Director Operations	Asst. Comm. Operations	3210	12840
4613	Dep. Director Administration	Asst. Comm. Administration	3210	12840
4813	Internal Mgmt. Administrator	Accounting Supervisor V	-0-	-0-
4159	Asst. Superintendent	Regional Director (Fbks)	7032	28128
4036	Probation/Parole Admin.	Regional Director (Juneau)	-0-	-0-
4513	Clerk Typist III	Secretary I (Juneau)	759	3036
4679	Clerk Typist III	Secretary I (Anchorage)	759	3036
4510	Asst. Director Corrections	Special Assistant I	-0-	-0-
		SUBTOTAL	16,350	65,400
		GRAND TOTAL	132,528	530,112

DEPARTMENT OF HEALTH AND SOCIAL SERVICE POSITIONS WHICH ARE TRANSFERING TO THE NEW DEPARTMENT OF CORRECTIONS OFFICE OF ASSISTANT COMMISSIONER OF ADMINISTRATION

FROM DIVISION OF MANAGEMENT AND BUDGET

Title	Range	PCN	Loc
Program Budget Analyst III	R/19	0004	AWA
Public Facilities Planner II	R/21	0501	AWA
Public Facilities Planner I	R/20	0503	EBA
Public Facilities Planner I	R/20	0502	EBA
Accounting Clerk I	R/8	0504	AWA
Clerk Typist II (PPT)	R/7	0505	EBA

FROM DIVISION OF ADMINISTRATIVE SERVICES

Title	Range	PCN	Loc
Personnel Officer I	R/16	0056	EBA
Clerk IV	R/9	0095	AWA
Accounting Clerk I	R/8	0046	EBA
Clerk Typist III	R/8	0058	EBA
Acct. Clerk II	R/9	0020	AWA
Acct. Clerk II	R/9	0016	AWA
Acct. Clerk II	R/9	0049	AWA

FY 82

STATE OF ALASKA -- BUDGET UNIT SUMMARY 10:54 7/02/81

CATEGORY: ADMINISTRATION OF JUSTICE PROGRAM: CORRECTIONS ADMIN & SUPPORT
AGENCY: DEPARTMENT OF HEALTH & SOCIAL SERVICES

COMPONENT DESCRIPTION	FY81 ATH	FY81 SUP	CONT	REQUEST	GOV AMD	GOVERNOR	HOUSE	SENATE	F.C.C.	BILLS	LEG.REC.
ADMINISTRATION & SUPPORT	1583.2		1478.4	1478.4		1467.9	1394.5	1335.0	1815.0		
TRAINING & CAREER DEVELOPMENT			270.9	270.9		270.9	257.3				
** TOTAL	1583.2		1749.3	1749.3		1738.8	1651.8	1335.0	1815.0		
** CHANGE VERSUS FY81 ATH				10.4%	-100.0%	9.8%	4.3%	-15.6%	14.6%		
OBJECT DESCRIPTION											
PERS. SERV.	1114.4		1264.5	1264.5		1264.5	1201.3	965.2	965.2		
TRAVEL	79.5		89.2	89.2		89.2	84.7	58.0	58.0		
CONTRACTUAL	295.4		354.4	354.4		343.9	326.7	288.7	288.7		
COMMODITIES	31.5		33.2	33.2		33.2	31.5	15.5	15.5		
EQUIPMENT	12.4		8.0	8.0		8.0	7.6	7.6	7.6		
GRANTS, CLMS											
MISC.	50.0								480.0		
FUNDING SOURCE											
GENERAL FUND	1583.2		1749.3	1749.3		1738.8	1651.8	1335.0	1815.0		
** GENERAL FUND CHANGE VS. FY81 ATH				10.4%	-100.0%	9.8%	4.3%	-15.6%	14.6%		
POSITIONS											
FULL-TIME	34.0		32.0	32.0		32.0	32.0	27.0	27.0		
STAFF-MONTHS	408.0		384.0	384.0		384.0	384.0	324.0	324.0		

CATEGORY: ADMINISTRATION OF JUSTICE PROGRAM: ADULT PROBATION & COMM PROGRAM
AGENCY: DEPARTMENT OF HEALTH & SOCIAL SERVICES

COMPONENT DESCRIPTION	FY81 ATH	FY81 SUP	CONT	REQUEST	GOV AMD	GOVERNOR	HOUSE	SENATE	F.C.C.	BILLS	LEG.REC.
ADULT PROBATION 1ST JUD DIST	210.8		370.5	489.2		468.8	370.0	370.0	417.8		
ADULT PROBATION 2ND DIST			101.1	159.2		159.2	144.0	144.0	144.0		
ADULT PROBATION 3RD JUDICIAL D	945.6		1344.2	1400.1		1360.5	1286.4	1286.4	1319.7		
ADULT PROBATION 4TH JUDICIAL D	452.1		532.4	704.7		672.2	590.0	590.0	657.0		
COMMUNITY BASED PROGS.	1018.0		1173.1	1173.1	644.1	1125.4	1658.6	1658.6	2052.7		
** TOTAL	2626.5		3521.3	3926.3	644.1	3786.1	4049.0	4049.0	4591.2		
** CHANGE VERSUS FY81 ATH				49.4%	-75.4%	44.1%	54.1%	54.1%	74.8%		
OBJECT DESCRIPTION											
PERS. SERV.	1621.8		2225.3	2528.3		2528.3	2285.0	2285.0	2428.8		
TRAVEL	29.8		39.6	66.6		66.6	60.3	60.3	62.2		
CONTRACTUAL	918.0		1056.4	1090.3	644.1	988.1	1531.2	1531.2	1538.7		
COMMODITIES	17.9		22.0	28.4		28.4	25.1	25.1	26.3		
EQUIPMENT	5.9		140.0	174.7		174.7	147.4	147.4	150.2		
LANDS/BLDGS	33.1		38.0	38.0							
GRANTS, CLMS									385.0		
FUNDING SOURCE											
GENERAL FUND	2626.5		3521.3	3926.3	644.1	3786.1	4049.0	4049.0	4591.2		
** GENERAL FUND CHANGE VS. FY81 ATH				49.4%	-75.4%	44.1%	54.1%	54.1%	74.8%		
POSITIONS											
FULL-TIME	51.1		58.0	67.0		67.0	64.0	64.0	66.0		
PART TIME	1.0		1.0	1.0		1.0	1.0	1.0	1.0		
STAFF-MON'HS	612.0		702.0	810.0		810.0	774.0	774.0	798.0		

STATE OF ALASKA -- BUDGET UNIT SUMMARY 10:50 7/02/81

CATEGORY: ADMINISTRATION OF JUSTICE PROGRAM: ADULT CONFINEMENT
AGENCY: DEPARTMENT OF HEALTH & SOCIAL SERVICES

COMPONENT DESCRIPTION	FY81 ATH	FY81 SUP	CONT	REQUEST	GOV AMD	GOVERNOR	HOUSE	SENATE	F.C.C.	BILLS	LEG.REC.
PALMER CORR. CNTR	1492.6		1479.6	1694.1		1694.1	1552.4	1495.3	1694.1		
ANCH.STATE CORR.CNTR	1270.9		1529.5	1529.5		1529.5	1453.1	1453.1	1529.5		
JUNEAU CORR.CNTR.	2377.5		2694.1	2694.1		2474.3	2350.6	2350.6	2474.3		
FAIRBANKS CORR.CNTR.	2677.0		3157.5	3157.5		3157.5	2999.7	3059.7	3174.0		
KETCHIKAN CORR.CNTR.	819.8		945.6	945.6		917.6	871.5	871.5	917.6		
ANC.ANNEX CORR.CNTR.	1713.9		1938.0	1938.0		1938.0	1841.0	1841.0	2052.6		
EAGLE RIVER CORR. CNTR	2314.0		2641.4	2641.4		2641.4	2509.4	2509.4	2609.2		
RIDGEVIEW MANOR	1046.8		1226.6	1226.6		1028.8	977.5	977.5	1018.5		
HOME CORRECTION CENTER	755.3		866.9	866.9		781.8	742.8	742.8	781.8		
JUNEAU WOM & JUV. FAC.				156.5	445.5	156.5	394.0	394.0	394.0		
MASTER PLAN STATEWIDE POOL	366.1		584.5	584.5		584.5	555.3	555.3	555.3		
PRISON INDUSTRIES			155.7	155.7		155.7	147.9	147.9	147.9		
LOCAL FACILITIES	1127.0		1412.2	1522.2		1522.2	1446.1	1446.1	1522.2		
OUT OF STATE CONTRACTUAL	2519.5		4175.5	4175.5		4175.5	3966.8	3966.8	4175.5		
MAJOR MEDICAL & GUARD HIRE	750.7		768.9	968.9		968.9	920.5	920.5	968.9		
** TOTAL	19231.1		23576.0	24257.0	445.5	23726.3	22728.6	22731.5	24015.4		
** CHANGE VERSUS FY81 ATH				26.1%	-97.6%	23.3%	18.1%	18.2%	24.8%		
OBJECT DESCRIPTION											
PERS. SERV.	10682.3		12785.7	13141.2	133.2	13141.2	12520.4	12463.3	13316.3		
TRAVEL	106.8		141.8	141.8	10.2	141.8	144.5	144.5	149.8		
CONTRACTUAL	5465.9		7583.1	7705.6	174.9	7394.7	7110.5	7110.5	7432.8		
COMMODITIES	1872.2		2031.4	2034.4	81.2	2034.4	1972.0	1972.0	2033.1		
EQUIPMENT	205.1		88.9	88.9	32.6	88.9	89.3	89.3	91.8		
LANDS/BLDGS	203.5		219.8	219.8							
GRANTS, CLMS	575.3		725.3	925.3	13.4	925.3	891.9	891.9	931.6		
MISC.	120.0							60.0	60.0		
FUNDING SOURCE											
GENERAL FUND	19231.1		23576.0	24257.0	445.5	23726.3	22728.6	22731.5	24015.4		
** GENERAL FUND CHANGE VS. FY81 ATH				26.1%	-97.6%	23.3%	18.1%	18.2%	24.8%		
POSITIONS											
FULL-TIME	308.0		308.0	319.0	6.0	319.0	323.0	321.0	328.0		
PART TIME	4.0		3.0	3.0		3.0	3.0	3.0	3.0		
STAFF-MONTHS	3727.0		3987.0	4119.0	72.0	4119.0	4167.0	4143.0	4227.0		

FY 83

STATE OF ALASKA -- BUDGET UNIT SUMMARY 13:21 6/10/82

AGENCY: DEPARTMENT OF HEALTH & SOCIAL SERVICES PROGRAM: CORRECTIONS ADMIN & SUPPORT
CATEGORY: ADMINISTRATION OF JUSTICE

COMPONENT DESCRIPTION	FY82 ATH	FY82 SUP	CONT.	REQUEST	GOV AMD	GOVERNOR	HOUSE	SENATE	F.C.C.	BILLS	HOUSE 2
DIRECTORS OFFICE	1815.0		1270.2	1526.8	1364.0	1364.0	1275.1	1364.0		336.7	1275.1
CAREER ENHANCEMENT TRAINING			277.9	277.9	281.1	283.9	269.5	281.1			269.5
CORRECTIONS CAREER ENHANCEMENT	130.3										
** TOTAL	1945.3		1548.1	1804.7	1645.1	1647.9	1544.6	1645.1		336.7	1544.6
** CHANGE VERSUS FY82 ATH				-7.2%	-15.4%	-15.2%	-20.5%	-15.4%	-100.0%		
OBJECT DESCRIPTION											
PERS. SERV.	1055.7		1145.1	1312.7	1229.9	1229.9	1143.0	1229.9			1143.0
TRAVEL	70.1		91.0	142.8	106.0	106.0	106.0	106.0			106.0
CONTRACTUAL	308.7		279.9	307.1	279.9	279.9	279.9	279.9			279.9
COMMODITIES	23.2		27.1	31.1	24.3	27.1	27.1	24.3			27.1
EQUIPMENT	7.6		5.0	8.0	5.0	5.0	5.0	5.0			5.0
LANDS/BLDGS										336.7	
MISC.	480.0						-16.4				-16.4
FUNDING SOURCE											
GENERAL FUND	1945.3		1548.1	1804.7	1645.1	1647.9	1544.6	1645.1		336.7	1544.6
** GENERAL FUND CHANGE VS. FY82 ATH				-7.2%	-15.4%	-15.2%	-20.5%	-15.4%	-100.0%		
POSITIONS											
FULL TIME	29.0		29.0	33.0	30.0	30.0	30.0	30.0			30.0
STAFF MONTHS	348.0		348.0	396.0	360.0	360.0	360.0	360.0			360.0

STATE OF ALASKA -- BUDGET UNIT SUMMARY 13:20 6/10/82

AGENCY: DEPARTMENT OF HEALTH & SOCIAL SERVICES PROGRAM: ADULT PROBATION & COMM PROGRAM
CATEGORY: ADMINISTRATION OF JUSTICE

COMPONENT DESCRIPTION	FY82 ATH	FY82 SUP	CONT.	REQUEST	GOV AMD	GOVERNOR	HOUSE	SENATE	F.C.C.	BILLS	HOUSE 2
ADULT PROBATION 1ST JUD DIST	417.8		455.8	455.8	460.3	465.0	436.1	460.3		56.4	436.1
ADULT PROBATION 2ND DIST	144.0		177.4	177.4	175.6	177.4	166.2	175.6		93.6	166.2
ADULT PROBATION 3RD JUDICIAL D	1319.7		1327.7	1327.7	1318.2	1341.3	1256.9	1318.2			1256.9
ADULT PROBATION 4TH JUDICIAL D	657.0		676.3	676.3	726.4	683.3	640.9	726.4			640.9
COMMUNITY BASED PROGS.	2052.7		1751.5	2026.5	1966.0	2026.5	1985.5	1966.0			1985.5
** TOTAL	4591.2		4388.7	4663.7	4646.5	4693.5	4485.6	4646.5		150.0	4485.6
** CHANGE VERSUS FY82 ATH				1.5%	1.2%	2.2%	-2.3%	1.2%	-100.0%		
OBJECT DESCRIPTION											
PERS. SERV.	2428.8		2583.2	2583.2	2632.9	2613.0	2452.1	2632.9		93.2	2452.1
TRAVEL	62.2		104.0	104.0	104.0	104.0	104.0	104.0		22.6	104.0
CONTRACTUAL	1538.7		1654.8	1929.8	1876.1	1929.8	1929.8	1876.1		28.8	1929.8
COMMODITIES	26.3		28.7	28.7	27.3	28.7	28.7	27.3		1.9	28.7
EQUIPMENT	150.2		18.0	18.0	6.2	18.0	18.0	6.2		3.5	18.0
LANDS/BLDGS											
GRANTS, CLMS	385.0										
MISC.							-47.0				-47.0
FUNDING SOURCE											
GENERAL FUND	4591.2		4388.7	4663.7	4646.5	4693.5	4485.6	4646.5		150.0	4485.6
** GENERAL FUND CHANGE VS. FY82 ATH				1.5%	1.2%	2.2%	-2.3%	1.2%	-100.0%		
POSITIONS											
FULL TIME	66.0		65.0	65.0	65.0	65.0	65.0	66.0		3.0	65.0
PART TIME	1.0		1.0	1.0		1.0	1.0				1.0
STAFF MONTHS	798.0		786.0	786.0	780.0	786.0	786.0	792.0		26.0	786.0

POSITION PAPER/Department of Health & Social Services

POSITION PAPER

EXECUTIVE ORDER 54

Executive Order 54 would establish a Department of Corrections. Departmentalization of Corrections would (1) ensure that Corrections is in fact a full partner in the criminal justice system; (2) enable the needs and problems of Corrections to be routinely presented to the Governor; (3) enable the agency to actively and effectively support its budget request throughout the administrative and legislative process; (4) provide continual professional guidance based on sound correctional experience, training, and management expertise in correctional systems from top departmental administrators; and (5) streamline the organizational structure for more effective correctional management.

Within the Alaska criminal justice system, a Department of Corrections would exceed the Judicial Branch and Department of Law, both in number of employees and in size of budget. Corrections is exceeded in size only by the Department of Public Safety. All criminal justice system agencies, including the Division of Adult Corrections, are budgeted together in the Administration of Justice category for appropriations. Corrections is in practice and responsibility a full partner in the criminal justice system. However, Public Safety and the court system organization are such that administrative heads are selected due to a refined knowledge in their specialized fields. The Director of the Division of Adult Corrections possesses that expertise; however, those in the DHSS Commissioner's Office must advocate for a broad range of human services, including Corrections. For the benefit of the criminal justice system, the increasing complexity of corrections makes it important that top administrators be expert corrections practitioners; they should not have their attention segmented to the other human service needs.

While, generally, Corrections and other divisions would be likely to benefit from the result of this departmentalization, the effect of separation would not be entirely beneficial to components of Department of Health and Social Services. The dual constitutional mandate for protection of the public and rehabilitation of the offender makes it essential that a human service emphasis be included among the highest Corrections' goals and objectives. Since most of the State's social and human support services are available from agencies within the Department of Health and Social Services, there is some cause to continue Corrections as a component agency within this department. While needed Department of Corrections' services could be secured from Department of Health and Social Services' agencies by negotiated agreement, there is great value in providing these services within the departmental planning and policy development structure in order to most effectively integrate social and human support services within the State. Creation of a separate department would not entirely relieve other Department of Health and Social Services' divisions and agencies from Corrections' demands for services since the need will continue to exist and the demand will simply be made by a separate department rather than by another division within this same department.

In terms of administrative support, the creation of a Department of Corrections could be beneficial to both the criminal justice component of DHSS, as well as to the remaining divisions and offices of the Department. The

POSITION PAPER/Department of Health & Social Services

urgency and nature of Corrections' issues require an increasingly larger portion of the efforts and attention of top DHSS administrators. Not only are the other human service programs impacted by more top administrative time being directed to corrections' issues, but also by an increasing portion of the Department's fiscal resources being committed to address Corrections' urgent needs. It must be remembered that the basic human services programs are not incidental, but rather are vital programs impacting every Alaskan. It is not likely that the demands of Corrections will slow significantly in future years. Each new institution will require a large number of new employees and pending litigation offers the prospect for committing the state to continued policy and program development, extensive renovation of existing facilities, and the need for even more fiscal resources to support expanded operations.

The Department of Health and Social Services believes the creation of a Department of Corrections would allow increased focus on the critical problems inherent in the operation of programs for adult offenders, would increase the effectiveness of the criminal justice system as a whole, and would be generally beneficial to the operation of other offices and divisions within DHSS. The Department supports the approval of Executive Order 54.

Recommended by: _____
Roger V. Endell
Director
Division of Adult Corrections

Date: 2/8/83

Approved by: _____
Robert London Smith, P.H.D.
Commissioner
Department of Health and
Social Services

Date: 2/22/83

MEMO TO: Health, Education and Social Services Committee
FROM: Dave Palmer
SUBJECT: Executive Order 54 and HB 103
DATE: January 25, 1983

HB 103	11.71.305	Places rehabilitation of persons convicted of personal use of controlled substances with the Dept. of Corrections instead of the Dept. of Health and Social Services.
HB 103	12.55.025	Transfers authority from DHSS to DOC for determining which facility is to be used for those people imprisoned and not on bail.
EO 54		not addressed.
HB 103	12.55.055	Changes jurisdiction of prisoners performing community work from DHSS to DOC.
EO 54	"	Same
HB 103	12.55.185	Repeals the definition of the division of corrections within DHSS.
EO 54	"	Same
HB 103	12.70.220 (c)	Changes from DHSS to DOC authority to comment on extraditions. (Should probably refer to §(b) also).
EO 54	"	Same
HB 103	33.05.080	Changes definition from DHSS to DOC in Title 33, Probation, Prisons, and Prisoners.
EO 54	"	Same
HB 103	33.15.260	Substitutes Commissioner of DOC for Commissioner of DHSS in definitions of Title 33.
EO 54	"	Same
HB 103	33.30.130	Transfers authority from Dept. of Public Safety to DOC for transportation of persons pending arraignment or commitment.
EO 54	"	Not changed

HB 103	33.30.900	Changes reference from commissioner of DHSS to commissioner of DOC in Title 33.
EO 54	"	Not Changed
HB 103	33.32.070	Changes from DHSS to DOC in reference to Correctional Industries Program.
EO 54		
HB 103	33.35.010	Reference to Commissioner of DHSS is changed to Commissioner of DOC pertaining to the Agreement on Detainers.
EO 54	"	Referenced, but not changed
HB 103	33.35.040	Same as 33.35.010.
EO 54	"	Same
HB 103	33.36.040	Authorizes commissioner of DOC, not commissioner of DHSS to implement interstate corrections compact.
HB 103	33.36.100	Changes reference from DHSS to DOC pertaining to the Western Interstate Corrections Compact.
EO 54	"	Same
HB 103	41.20.110 (b)	Changes reference from Commissioner, DHSS to Commissioner, DOC for volunteer trail work by prisoners.
EO 54	"	Not Addressed
HB 103	44.17.005	Adds Dept.of Corrections to list of State of Alaska departments.
EO 54	"	Same
HB 103	44.29.020 (9)	Excludes administration of correctional institutions from DHSS duties (leaves probation and parole, however).
HB 103	44.29.020 (17)	repeals probation and parole from DHSS duties.
EO 54	44.29.020 (17)	same as above, but creates 44.28.010 to add probation, parole, and adult penal institutions to DOC.

HB103	47.08.050 (8)	Changes authority from DHSS to DOC for medical services for people in custody.
EO 54	"	Not addressed
HB 103	47.17.020 (a)	Changes reference from division of corrections to department of corrections relating to child abuse cases.
EO 54		Not addressed
HB 103	47.21.010 (b)	Changes from division of corrections to department of corrections authority over juvenile offenders. ADVENTURE BASED EDUCATION HSS
EO 54		Not addressed
HB 103	47.30.845 (5)	Changes authority from division of corrections to department of corrections regarding confidential records
EO 54	"	Not addressed
HB 103	47.37.040 (3)	Changes from division of corrections to department of corrections the agency to work with the office of alcoholism of DHSS for programs for inmates or parolees.

STATE OF ALASKA
THE LEGISLATURE

LEGISLATIVE AFFAIRS AGENCY

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

JAN 27 '83

M E M O R A N D U M January 26, 1983

SUBJECT: Department of Corrections
(HB 103)

TO: Representative Milo Fritz

FROM: LHA Linn H. Asper
Legislative Counsel

In preparing a Senate duplicate of HB 103 we have determined that an additional section should be added to your bill to delete a reference to the division of corrections that I missed when I prepared the draft of HB 103. This could be added in a committee substitute by the Health, Education and Social Services committee. The proposed addition is as follows:

Page 4, after line 1, insert a new section to read:

* Sec. 9. AS 33.15.010 is amended to read:

Sec. 33.15.010. STATE BOARD OF PAROLE. There is in the department a board of parole consisting of five members to be appointed by the governor, subject to confirmation by a majority of the members of the legislature in joint session. One of the members, who shall be chairman of the board, shall be a person with training or experience in the field of probation and parole, [AND THAT MEMBER MAY BE AN OFFICIAL OR EMPLOYEE OF THE DEPARTMENT] but that member may not be an official or employee of the department [DIVISION OF CORRECTIONS]. The term of each of the other four members of the board is four years and until a successor is appointed and qualified. Successors are appointed in the same manner as provided for the board members first appointed. A vacancy shall be filled for the unexpired term.

Renumber succeeding bill sections accordingly.

LHA:ljb

THE LEGISLATURE OF THE STATE OF ALASKA
THIRTEENTH LEGISLATURE

I. REQUEST
Bill/Resolution No. EO 54
Title Executive Order Creating Department of Corrections
Requested by Governor

II. FISCAL DETAIL
Agency Affected Department of Corrections
Program Category Affected Administration of Justice
BRU, Program, Or Subprogram(s) Affected Director's Office
(Note: If more than one budget component is affected, separate line-item amounts and funding for each component in the analysis section.)

EXPENDITURES (Thousands of Dollars)

	FY 83	FY 84	FY 85	FY 86	FY 87	FY 88
100 PERSONAL SERVICES	132.5	530.1	561.9	595.6	631.4	669.2
200 TRAVEL	45.0	48.0	50.9	54.0	57.2	60.6
300 CONTRACTUAL	60.5	356.5	377.9	400.6	424.6	450.1
400 COMMODITIES	4.0	17.0	18.0	19.1	20.2	21.4
500 EQUIPMENT	8.0					
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC.						
TOTAL	250.0	951.6	1008.7	1069.3	1133.4	1201.3

FUNDING (Thousands of Dollars)

GENERAL FUND	250.0	951.6	1008.7	1069.3	1133.4	1201.3
FEDERAL FUNDS	-0-	-0-	-0-	-0-	-0-	-0-
OTHER (Specify Source)	-0-	-0-	-0-	-0-	-0-	-0-
	-0-	-0-	-0-	-0-	-0-	-0-
	-0-	-0-	-0-	-0-	-0-	-0-

POSITIONS

FULL TIME	10.0	10.0	10.0	10.0	10.0	10.0
PART TIME	-0-	-0-	-0-	-0-	-0-	-0-
TEMPORARY	-0-	-0-	-0-	-0-	-0-	-0-
	-0-	-0-	-0-	-0-	-0-	-0-

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

The Executive Order will create the Department of Corrections necessitating the transfer of the Division of Corrections and Parole Board from the Department of Health & Social Services to the new department, creation of ten new positions, the reclassification of nine Division of Corrections positions and the transfer of 13 positions from the Department of Health & Social Services Divisions of Management and Budget and Administrative Services to the new Department.

	FY.83	PFT	PPT
Adult Confinement	33402.1	498.0	4.0
Probation & Parole	4928.1	72.0	-0-
Admin. & Support	1645.1	30.0	-0-
Parole Board	258.3	4.0	-0-
	40233.6	604.0	4.0

IV. DATE 1/13/83 PREPARED BY Marsha Hubbard 1/14/83
AGENCY Dept. of Health & Social Services
PHONE 465-3331

Original: Legislative Finance
cc: Budget and Management
Prime Sponsor (First Legislator Named)
33-001 (Rev. 12/81)

STATE OF ALASKA
PRELIMINARY STATEMENT OF FISCAL IMPACT

Bill No: Executive Order No. 54 Date on Bill:
Title: Creating a Department of Corrections
Sponsor: Governor
Requestor:

1. Estimated fiscal impacts on: Department of Corrections

a. Expenditures:

(Thousands of Dollars)

			FY 83	FY 84	FY 85	FY 86		
Capital								
Operating			250.0	951.6	1008.7	1069.3		
Total								

b. Revenues:

Revenue								

2. Source of funds to offset fiscal impact of bill:

For FY 83 a delete/add supplemental appropriation request has been submitted. The funds are to be deleted from the Permanent Fund Dividend Hold Harmless BRU.

FY 84 funding will be included in budget revisions submitted by the Department of Corrections.

3. Assumptions:

4. Disclaimer:
This statement has not been reviewed by the OMB in the Office of the Governor. It does not represent the policy of the Sheffield Administration or the final estimate of fiscal impact.

Prepared By: Division of Budget & Administration — C. Phillips Phone: 465-8082
Division: Division of Budget & Administration Date: February 17, 1983

Approved by Commissioner: Robert Lindsay Smith, M.D. Date: 2/22/83
Department: Health & Social Services

5. Distribution:
Original to Legislative Finance
Copy to OMB
Copy to Sponsor
Copy to Requestor

2/8/83

FISCAL NOTE

I. REQUEST
Bill/Resolution No. HB 103
Title Creating a Department of Corrections
Requested by House HESS Committee Date Feb. 9,1983

II. FISCAL DETAIL
Agency Affected Department of Corrections
Program Category Affected Administration of Justice
BRU, Program, Or Subprogram(s) Affected Director's office
(Note: If more than one budget component is affected, separate line-item amounts and funding for each component in the analysis section.)

EXPENDITURES (Thousands of Dollars)

	FY 83	FY 84	FY 85	FY 86	FY 87	FY 88
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 COMMODITIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS,CLAIMS,ETC.						
TOTAL		951.6	1008.7	1069.3		

FUNDING (Thousands of Dollars)

GENERAL FUND		951.6	1008.7	1069.3		
FEDERAL FUNDS		0	0	0		
OTHER (Specify Source)		0	0	0		
		0		0		
				0		

POSITIONS

FULL TIME						
PART TIME						
TEMPORARY						

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

Functions of the department of corrections under HB 103 are essentially identical to Executive Order 54. This note is based on the fiscal note prepared for EO 54 and preceeds the Dept. of Health and Social Services note, which is not expected to arrive for the hearing.

IV. DATE February 9,1983 PREPARED BY Dave Palmer
AGENCY House HESS committee
PHONE 465-3777

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

33-001 (Rev. 12/82)

MEMORANDUM

March 7, 1983

TO: Representative Charlie Bussell
Chairman, House Judiciary Committee

FROM: Mark K. Johnson
Staff Counsel, Rep. Flood

SUBJECT: Executive Order 54 and HB 103: Creating a Dept. of Corrections

---

As you may know, before coming to the legislature, I worked for the Department of Health & Social Services amd was directly involved in preparing the operating budget for the Division of Corrections. I continue to be in touch, on a personal level, with several members of the staff of that agency.

On at least two separate occasions, agency personnel have indicated to me that the fiscal note prepared in support of Executive Order 54 is inadequate and would not provide sufficient funds to cover the expenses of departmentalization.

Thus, funds for supply and personnel functions in the new department do not exist.

One area that might deserve the attention of the committee is the resources that are being given up by the Department of Health & Social Services in the administrative area. Corrections represents a major portion of the work load on the Division of Administrative Services and the Division of Management & Budget of the present department. Will the separation of Corrections result in transfers of appropriate personnel and funds?? The answer to this question is probably not. The creation of the new Department of Corrections is seen privately by some members of the Department of Health & Social Services as an opportunity to reduce their workload without related reductions in staff.

I would be pleased to discuss this matter further with you if you desire.

STATE OF ALASKA
PRELIMINARY STATEMENT OF FISCAL IMPACT 3-17-83

Bill No: CSHB 103 (Jud) Date on Bill:
Title: "An Act establishing a Department of Corrections . . ."
Sponsor: Reps. Fritz, Koponen, Furnace, Goll, and Davis
Requestor:

1. Estimated fiscal impacts on:

a. Expenditures:

(Thousands of Dollars)

			FY 83	FY 84	FY 85	FY 86		
Capital			-0-	-0-	-0-	-0-		
Operating			*	951.6	1008.7	1069.3		
Total			*	951.6	1008.7	1069.3		

b. Revenues:

Revenue								

2. Source of funds to offset fiscal impact of bill:

Funding source for FY 83 is add/delete in SB 158 submitted by the Governor.

3. Assumptions:

House Bill No. 103 will create the Department of Corrections necessitating the transfer of the Division of Corrections and Parole Board from the Department of Health & Social Services to the new department, creation of ten new positions, the reclassification of nine Division of Corrections positions and the transfer of 13 positions from the Department of Health & Social Services Division of Management and Budget and Administrative Services to the new Department.

Transfer of Juvenile Corrections will delete 220 employees and 11 million dollars from DHSS and add the same amount to the Department of Corrections. The additional cost for 4 positions may be necessary to cover the administrative and personnel responsibilities associated with the transfer of the 220 positions to the Department of Corrections.

4. Disclaimer:
This statement has not been reviewed by the OMB in the Office of the Governor. It does not represent the policy of the Sheffield Administration or the final estimate of fiscal impact.

Prepared By: David R. Palmer Phone: 465-3777
Division: House HESS Committee Date: 3/17/83

Approved by Commissioner: Date:
Department:

5. Distribution:
Original to Legislative Finance
Copy to OMB
Copy to Sponsor
Copy to Requestor

2/8/83

AGENCY: DEPARTMENT OF HEALTH & SOCIAL SERVICES PROGRAM: YOUTH CORRECTIONAL SERVICES
CATEGORY: ADMINISTRATION OF JUSTICE

COMPONENT DESCRIPTION	FY83 ATH	FY83 SUP	CONT.	REQUEST	GOV AMD	GOVERNOR	HOUSE	SENATE	F.C.C.	BILLS	LEG.REC
ADMINISTRATION	178.5		226.7	226.7		178.5					
FIRST DISTRICT	498.1		527.1	591.2		527.1					
THIRD DISTRICT	1126.5		1164.2	1260.8		1164.2					
SECOND & FOURTH DISTRICT	890.5		907.6	956.7		907.6					
MCLAUGHLIN YOUTH CENTER	5956.6		6062.7	6327.8		6062.7					
FAIRBANKS YOUTH FACILITY	1319.0		1379.8	1499.6		1379.8					
NOME YOUTH FACILITY	975.4		987.3	987.3		902.3					
JUNEAU WOMEN'S & JUVENILE FAC.	151.0		148.7	156.8		148.7					
KETCHIKAN FACILITY	180.0										
** TOTAL	11275.6		11404.1	12006.9		11270.9					
** CHANGE VERSUS FY83 ATH				6.4%	-100.0%		-100.0%	-100.0%	-100.0%		
OBJECT DESCRIPTION											
PERS. SERV.	8895.1		9112.6	9581.6		9066.2					
TRAVEL	177.3		176.9	176.9		165.1					
CONTRACTUAL	1114.4		1084.0	1084.0		1009.0					
COMMODITIES	574.9		569.0	584.1		569.0					
EQUIPMENT	85.4		12.7	47.7		12.7					
GRANTS, CLMS	428.5		448.9	532.6		448.9					
FUNDING SUMMARY											
GENERAL FUND	11275.6		11404.1	12006.9		11270.9					
** GENERAL FUND CHANGE VS. FY83 ATH				6.4%	-100.0%		-100.0%	-100.0%	-100.0%		
POSITIONS											
FULL TIME	222.0		222.0	222.0		221.0					
PART TIME	1.0		1.0	1.0		1.0					
STAFF MONTHS	2857.0		2847.0	2847.0		2835.0					

FISCAL NOTE

I. REQUEST
Bill/Resolution No. HB 103
Title Creating a Department of Corrections
Requested by House HESS Committee Date Feb. 9,1983

II. FISCAL DETAIL
Agency Affected Department of Corrections
Program Category Affected Administration of Justice
BRU, Program, Or Subprogram(s) Affected Director's office
(Note: If more than one budget component is affected, separate line-item amounts and funding for each component in the analysis section.)

EXPENDITURES (Thousands of Dollars)

	FY 83	FY 84	FY 85	FY 86	FY 87	FY 88
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 COMMODITIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS,CLAIMS,ETC.						
TOTAL		951.6	1008.7	1069.3		

FUNDING (Thousands of Dollars)

GENERAL FUND		951.6	1008.7	1069.3		
FEDERAL FUNDS		0	0	0		
OTHER (Specify Source)		0	0	0		
		0	0	0		
				0		

POSITIONS

FULL TIME						
PART TIME						
TEMPORARY						

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

Functions of the department of corrections under HB 103 are essentially identical to Executive Order 54. This note is based on the fiscal note prepared for EO 54 and preceeds the Dept. of Health and Social Services note, which is not expected to arrive for the hearing.

IV. DATE February 9,1983 PREPARED BY Dave Palmer
AGENCY House HESS committee
PHONE 465-3777

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

33-001 (Rev. 12/82)

(7)

COMMITTEE REPORT

HOUSE

2/14

FURTHER: JUDICIARY
FINANCE

1/21/83

Date: Feb 11, 1983

Mr. Speaker:

The Committee on HESS has had HB 103 An Act establishing a Department of Corrections and transferring certain functions of the Department of Health and Social Services to the Department of Corrections; and providing for an effective date.

under consideration and reports it back as follows:

[ ] do pass [ ] do not pass

[ ] do pass with attached amendments(s)

[✓] replace with CS for HB 103(HESS) [X] same title [ ] new title

and recommends it do pass

[ ] AND attaches a "Letter of Intent" [X] ~~New~~ Fiscal Note Sup #8 [ ] Zero Fiscal Note Attached

[ ] reports it back without recommendation

[ ] referred to the _____ Committee

MEMBERS SIGNING DO PASS

Peter Jacobs
Nicholas Kosmas
Mike Davis
Michael W. Miller
MILO H. FRITZ
Mae Fischer

MEMBERS HAVING OTHER RECOMMENDATIONS:

Mae Fischer
CHAIRMAN
MILO H. FRITZ

H 60

AMENDED TITLE:
AN ACT ESTABLISHING A DEPARTMENT OF CORRECTIONS & TRANSFERRING CERTAIN FUNCTIONS OF THE DEPARTMENT OF HEALTH & SOCIAL SERVICES TO THE DEPARTMENT OF CORRECTIONS; AND PROVIDING FOR AN EFFECTIVE DATE

PRIME SPONSOR: FRITZ.

CO-SPONSORS: KOPONEN, FURNACE, GOLL, DAVIS.

CURRENT STATUS: 2/14/83 IN (H) JUDICIARY REFERRAL: FINANCE

DATE	SEQ	PAGE	LEGISLATIVE ACTION
01/21/83	01	0080	FIRST READING -- COMMITTEE REPORTS
02/14/83	02	0243	HESS -- CS06
02/14/83	03	0243	F/NOTE HSE SUPPL #8
			JUDICIARY
			FINANCE
			RULES
****	**	**	*** *** ***

HB

104

STATE OF ALASKA
PRELIMINARY STATEMENT OF FISCAL IMPACT

Bill No: HB 104 Date on Bill: 1/21/83
Title: An Act relating to compens. for victims of violent crimes; eff. date
Sponsor: Clocksin, Koponen, Zharoff, Malone, Goll and Davis
Requestor: HOUSE JUDICIARY

1. Estimated fiscal impacts on:

a. Expenditures:

(Thousands of Dollars)

			FY 83	FY 84	FY 85	FY 86		
Capital								
Operating			120.4	333.6	351.1	362.1		
Total			120.4	333.6	351.1	362.1		

b. Revenues:

Revenue								

2. Source of funds to offset fiscal impact of bill:

Not indicated by sponsors of bill

3. Assumptions:

If the proposed legislation is enacted, it is anticipated there would be an increase of approximately 50 claims. It is estimated we would receive 40 assault claims (the statute covers only Assault I and II) of which we estimate 26 claims would receive compensation, and we would receive 10 death claims and 5 would be awarded, including 2 claims with one dependent per inciden and 3 claims with multiple dependents. There will be additional hearings as with the change in the statute, the Board will want to be certain the offender will not receive any of the compensation.

4. Disclaimer:
This statement has not been reviewed by the OMB in the Office of the Governor. It therefore does not represent the final estimate of fiscal impact.

Prepared By: Nola K. Capp, Administrator Phone: 465-3040
Division: Violent Crimes Compensation Board Date: 2/3/83

Approved by Commissioner: Date: 2/28/83
Department: PUBLIC SAFETY

5. Distribution:
Original to Legislative Finance
Copy to OMB
Copy to Sponsor
Copy to Requestor

2/15/83

FISCAL NOTE DETAIL
BILL NO. HB 104

EXPENDITURES		FY 83	FY 84	FY 85	FY 86
100	Personal Services	8.9	26.6	28.2	29.9
200	Travel	2.6	7.9	8.4	8.9
300	Contractual	10.7	9.6	10.2	10.8
400	Commodities				
500	Equipment	2.5			
600	Land & Structures				
700	Grants, Claims, etc.	95.7	287.0	304.2	322.5
800	Miscellaneous				
	TOTAL	120.4	333.6	351.0	372.1
FUNDING					
	General Fund	120.4	333.6	351.0	372.1
	Federal Funds				
	Program Receipts				
	Inter-Agency Receipts				
	Other				
POSITIONS					
	Full Time	1	1	1	1
	Part Time/Seasonal				
	Non-Perm				
	Months	4	12	12	12

ANALYSIS:

If the proposed legislation is enacted, it is anticipated there would be an increase of approximately 50 claims. It is estimated we would receive 40 assault claims (the statute covers only Assault I and II) of which we estimate 26 claims would receive compensation. The average award is $4500.00 per claim so 26 claims would total $117,000. It is estimated the program would receive 10 death claims and 5 would be awarded: 2 claims at one dependent per incident would be $50,000 and 3 claims for multiple dependents would be $120,000 for a total estimated grant money of $287,000.

Because there will be an increase of claims, it is determined it will be necessary to have one more board meeting at a cost of $1500.00. Because of the repeal of the statute it is anticpated there would be 8 hearings at $800 for travel per hearing. The reason for more hearings is because of the change in the statute, the Board will want to be certain the offender will not receive any of the compensation and because of circumstances in some cases, they may order a hearing prior to a final determination by the Board.

The current staff for the Violent Crimes Compensation Board consists of two persons. This change in the statute would necessitate the addition of a clerk typist (range 8) and associated costs, including equipment.

(continued)

Under contractual services, there would be a need for a terminal only for the IBM displaywriter at $3000.00 per year. There would be the cost of hearing officers' fees for 8 hearings at $700 per hearing and a total cost of $5600. Since this will be a major change in the statute, the public must be made aware through TV spots, radio and newspapers. Production of the TV spots will be a one time expense as will the radio spots. These spots should cost around $6500 plus another $1000 for public notices in newspapers around the state.

The costs are assumed to begin 3/1/83.

1.	POSITION TITLE: Clerk-Typist III			RANGE/STEP: 8B	BARG. UNIT: G	FORM 12 PAGE/LINE	GOV.	APPROV.	DISAPP.
2.	TYPE OF POSITION: PFT	STAFF MONTHS: 12	RP NUMBER	PCN NUMBER	BRU PRIORITY	LOCATION: Juneau	ELECTION DISTRICT: 4	LEG.		
3.	CONTINUATION LEVEL		ADDITION						

4.	TYPE OF EXPENDITURE		AMOUNT
	1	2	3
	PERSONAL SERVICES		
5.	Salary	19,176	
6.	Benefits	3,367	
7.	Supplemental Benefits	1,175	
8.	Fixed Benefits	2,880	
9.	TOTAL PERSONAL SERVICES 01		26,598
10.	Travel 02		
11.	Contractual 03		
12.	Commodities 04		
13.	Equipment 05		2,484
14.	Other		
15.	TOTAL COST		29,082

	RECEIPT CODE	FUNDING SOURCE		
16.		Federal Receipts	1002	
17.		G.F. Match	1003	
18.		General Funds	1004	29,082
19.		I-A Receipts	1005	
20.		Program Receipts	1028	
21.		Other		

FOR B&M USE ONLY
4A KEY NUMBER __ __ - __ __ - __ __ - __ __ - __ __

JUSTIFICATION

The number of claims received annually by the Violent Crimes Compensation Board has doubled since 1976 and is projected to double again during the two-year period ending 6/30/84. Yet the program has only the same two-person staff it had in 1973.

It is anticipated the change in the statute will increase the number of claims by 50. This increase, on top of the existing understaffing, will necessitate the addition of a clerk-typist and associated costs, including equipment.

Since this is a major change in the statute, all the applications, brochures and posters will have to be redone. The public must be made aware of the changes through TV, radio and newspapers, again much clerical work. There will be an increase in hearings, which must be transcribed verbatim.

The equipment costs include a desk, chair, file cabinet, table, calculator and transcriber.

13 REQUEST FOR NEW POSITION

AGENCY: Department of Public Safety
PROGRAM: Crime Identification & Apprehension
BRU: Violent Crimes Compensation Board
COMPONENT:

Revised Date 2/2/83

FY 84

STATE OF ALASKA
FISCAL NOTE

Revision Date , 1983

I. REQUEST

Bill/Resolution No.: SS HB 104
Title: An Act Relating to Compensation, etc.
Sponsor: Clocksin
Requestor: House Judiciary

II. FISCAL DETAIL

Agency Affected: Public Safety
Program Category Affected: Admin. Justice
BRU, Program of Subprogram(s) Affected: Violent Crimes Compensation Board

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 83	FY 84	FY 85	FY 86	FY 87	FY 88
OPERATING						
100 PERSONAL SERVICES		125.1	132.6	140.6	149.0	158.8
200 TRAVEL		40.9	43.4	46.0	48.7	51.7
300 CONTRACTUAL		50.3	46.4	49.2	52.2	55.3
400 COMMODITIES		1.5	1.6	1.7	1.8	1.9
500 EQUIPMENT		10.0				
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC		2537.0	2689.2	2850.6	3021.7	3203.0
TOTAL OPERATING		2764.8	2913.2	3088.1	3273.4	3470.7
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND		2764.8	2913.2	3088.1	3273.4	3470.7
FEDERAL FUNDS						
OTHER (Specify Source)						

POSITIONS:

FULL-TIME		4	4	4	4	4
PART-TIME						
TEMPORARY						

III. SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

IV. ANALYSIS: Attach a separate page for any Analysis

Prepared By: Sue Johnson, Administrative Assistant Phone: 465-3040
Division: Violent Crimes Compensation Board Date: 5/28/83

Approved by Commissioner: Date: 6/3/83
Department: Public Safety

Distribution:
Original to Legislative Finance
Copy to Office of Management and Budget (for Legislature introduced bills)
Copy to Department (for Governor introduced bills)
Copy to Sponsor
Copy to Requestor (if different from Sponsor)

3/8/83

FISCAL NOTE ANALYSIS
SS HB 104

Costs were derived for this fiscal note by taking the costs of the the relative exclusion repeal, and adding to that the additional costs for the OMVI inclusion. The OMVI provision would mean an additional 500 claims per year. The relative exclusion repeal would mean an additional 50 claims per year. Costs for FY 84 are as follows:

PERSONAL SERVICES

SS HB 104 would require a total of four new positions.

Relative Repeal			OMVI		
Clerk Typist III	Range 8	26.6	Clerk Typist III	Range 8	26.6
			Admin. Asst. I	Range 12	31.7
			Investigator II	Range 16	40.2
TOTAL FY 84 COSTS		26.6			98.5
TOTAL SS HB 104 FY 84		125.1			

TRAVEL

Relative Repeal		OMVI	
1 more Board meeting	1.5	6 more Board meetings	9.0
8 more hearings	6.4	30 more hearings	24.0
TOTAL FY 84 COSTS	7.9		33.0
TOTAL SS HB 104 FY 84	40.9		

CONTRACTUAL

Relative Repeal		OMVI	
8 hearing officer fees	5.6	30 hearing officer fees	21.0
telephone, copier, etc.	1.7	telephone, copier, etc.	6.5
1 displaywriter terminal	3.0	1 displaywriter terminal	3.0
		1 displaywriter printer	3.0
SUBTOTAL FY 84 COSTS	10.3		33.5

ADD $6500 for advertising, one time only expense, same amount needed for either version-

TOTAL FY 84 cost	16.8		33.5
TOTAL SS HB 104 FY 84	50.3		

COMMODITIES

Relative Repeal		OMVI	
		Office supplies	1.5
TOTAL SS HB 104		1.5	

EQUIPMENT

Relative Repeal		OMVI	
Office furniture and equipment for one new position	2.5	Office furn and equip for 3 new positions	7.5
TOTAL FY 84 COSTS	2.5		7.5
TOTAL SS HB 104 FY 84	10.0		

GRANTS

Relative Repeal		OMVI	
50 claims (see HB 104 breakdown)	287.0	500 claims @ 4.5	2250.0
TOTAL FY 84 COSTS	287.0		2250.0
TOTALS - Relative Repeal	340.8	OMVI	2537.0

FY 84 GRAND TOTAL $2764.8

Number of OMVI claims was derived by examining three recent years of fatal alcohol related Alaska traffic accident statistics, showing only 25% of those victims were not the drunk driver himself or his passengers. Highway Safety statistics show a total of about 5,000 alcohol related traffic accident injuries during the year 1980.

25% x 5,000 is 1,250. Insurance industry statistics indicate 40% of Alaska drivers are uninsured. 1,250 x 40% is 500. Average amount currently awarded per claim is about $4,500. Assuming about 500 eligible victims apply and there is a very small denial rate on OMVI claims due to their nature, $4,500 x 500 is $2,250,000.

Awards for relatives were derived by assuming a high denial rate due to the nature of many of these claims, with 26 assault claims awarded @ $4,500, totalling 117.0, plus 10 death claims totalling 170.0.

Note regarding contractual services:

The original fiscal note for HB 104 contained an error in addition of contractual costs. The costs shown for contractual on this fiscal note are correct.

1.	POSITION TITLE Clerk-Typist III				RANGE/STEP 8B	BARG. UNIT G	FORM 12 PAGE/LINE	GOV.	APPROV.	DISAPP.
2.	TYPE OF POSITION PFT	STAFF MONTHS 12	RP NUMBER	PCN NUMBER	BRU PRIORITY	LOCATION Juneau	ELECTION DISTRICT	LEG.		

3.	CONTINUATION LEVEL	ADDITION	
4.	TYPE OF EXPENDITURE		AMOUNT
	1	2	3
	PERSONAL SERVICES		
5.	Salary	19,176	
6.	Benefits	3,367	
7.	Supplemental Benefits	1,175	
8.	Fixed Benefits	2,880	
9.	TOTAL PERSONAL SERVICES	01	26,598
10.	Travel	02	
11.	Contractual	03	
12.	Commodities	04	
13.	Equipment	05	2,484
14.	Other		
15.	TOTAL COST		29,082

	RECEIPT CODE	FUNDING SOURCE		
16.		Federal Receipts	1002	
17.		G.F. Match	1003	
18.		General Funds	1004	29,082
19.		I-A Receipts	1005	
20.		Program Receipts	1026	
21.		Other		

FOR O&M USE ONLY
4A KEY NUMBER __ __ - __ __ - __ __ - __ __ - __ __

JUSTIFICATION

This position is needed primarily to type verbatim transcripts of hearings. With a projected 38 hearings per year with this change in the statute, there would be a total of about 46 hearings per year. This is nearly one hearing per week, and each transcript is 30-75 pages, requiring two to four working days to complete. Other duties would include distribution of the Annual Report, updating the mailing list and handling inventory and supplies, as well as miscellaneous clerical work as needed.

13 REQUEST FOR NEW POSITION

AGENCY Department of Public Safety

PROGRAM Administration of Justice

BRU Violent Crimes Compensation Board

COMPONENT

Page 1 of 1

Revised Date

FY 84

1.	POSITION TITLE: Clerk-Typist III			RANGE/STEP: 8B	BARG. UNIT: G	FORM 12 PAGE/LINE	GOV.	APPROV.	DISAPP.
2.	TYPE OF POSITION: PFT	STAFF MONTHS: 12	RP NUMBER	PCN NUMBER	BRU PRIORITY	LOCATION: Juneau	ELECTION DISTRICT	LEG.		

3.	CONTINUATION LEVEL		ADDITION
4.	TYPE OF EXPENDITURE		AMOUNT
	1	2	3
	PERSONAL SERVICES		
5.	Salary	19,176	
6.	Benefits	3,367	
7.	Supplemental Benefits	1,175	
8.	Fixed Benefits	2,880	
9.	TOTAL PERSONAL SERVICES	01	26,598
10.	Travel	02	
11.	Contractual	03	
12.	Commodities	04	
13.	Equipment	05	2,484
14.	Other		
15	TOTAL COST		29,082

	RECEIPT CODE	FUNDING SOURCE		
16.		Federal Receipts	1002	
17.		G.F. Match	1003	
18.		General Funds	1004	29,082
19.		1-A Receipts	1005	
20.		Program Receipts	1028	
21.		Other		

FOR B&R USE ONLY
4A KEY NUMBER ___ - ___ - ___ - ___ - ___

JUSTIFICATION

This position is needed to type correspondence on new claims. Presently, with about 13 claims received each month in FY 83 and at least five letters sent on each new claim, 65 letters a month are typed for new claims. With this change in the statute, the addition of 550 new claims per year would mean 230 more letters each month just for new claims. The position would also type about 108 followup letters per month on pending claims, and assemble about 60 new claims files each month. Other duties as assigned would include necessary routine clerical work, including photocopying the 2,100 copies of claims which would be necessary for the Board members.

13 REQUEST FOR NEW POSITION

AGENCY Department of Public Safety

PROGRAM Administration of Justice

BRU Violent Crimes Compensation Board

COMPONENT

Page 1 of 1

Revised Date

FY 84

01-1136 (7/82) - 13

1.	POSITION TITLE Investigator II			RANGE/STEP 16	BARG. UNIT G	FORM 12 PAGE/LINE	GOV.	APPROV.	DISAPP.
2.	TYPE OF POSITION PFT	STAF. MONTHS 12	RP NUMBER	PCN NUMBER	BRU PRIORITY	LOCATION Juneau	ELECTION DISTRICT	LEG.		

3.	CONTINUATION LEVEL	ADDITION	
4.	TYPE OF EXPENDITURE		AMOUNT
	1	2	3
	PERSONAL SERVICES		
5.	Salary	29,556	
6.	Benefits	2,188	
7.	Supplemental Benefits	5,574	
8.	Fixed Benefits	2,880	
9.	TOTAL PERSONAL SERVICES	01	40,188
10.	Travel	02	
11.	Contractual	03	
12.	Commodities	04	
13.	Equipment	05	2,484
14.	Other		
15.	TOTAL COST		42,672

	RECEIPT CODE	FUNDING SOURCE	
16.		Federal Receipts 1002	
17.		G.F. Match 1003	
18.		General Funds 1004	42,672
19.		I-A Receipts 1005	
20.		Program Receipts 1028	
21.		Other	

FOR B&M USE ONLY
4A KEY NUMBER — — — — — — — — — — — —

JUSTIFICATION

This position is essential to ensure that all 700 claims each year would be thoroughly investigated prior to being presented to the Board for a decision. The Board would want to be sure that the offender did not benefit in cases where the victim is a relative, and to be sure all claims met eligibility requirements. It is particularly important, in light of the Board's history of underfunding, to conserve the Board's limited resources by eliminating cases of fraud or deception and ensuring that collateral sources are utilized whenever possible.

The position would conduct personal interviews with claimants, witnesses, police officers, district attorneys, doctors and others, as needed, to thoroughly investigate each of the 700 claims per year.

13 REQUEST FOR NEW POSITION

AGENCY Department of Public Safety

PROGRAM Administration of Justice

BRU Violent Crimes Compensation Board

COMPONENT

Revised Date

FY 84

1.	POSITION TITLE: Administrative Assistant I			RANGE/STEP: 12	BARG. UNIT: G	FORM 12 PAGE/LINE	GOV.	APPROV.	DISAPP.
2.	TYPE OF POSITION: PFT	STAFF MONTHS: 12	RP NUMBER	PCN NUMBER	BRU PRIORITY	LOCATION: Juneau	ELECTION DISTRICT	LEG.		
3.	CONTINUATION LEVEL	ADDITION							

4.	TYPE OF EXPENDITURE	2	AMOUNT 3
	PERSONAL SERVICES		
5.	Salary	22,668	
6.	Benefits	2,188	
7.	Supplemental Benefits	3,980	
8.	Fixed Benefits	2,880	
9.	TOTAL PERSONAL SERVICES	01	31,716
10.	Travel	02	
11.	Contractual	03	
12.	Commodities	04	
13.	Equipment	05	2,484
14.	Other		
15.	TOTAL COST		34,200

	RECEIPT CODE	FUNDING SOURCE		
16.		Federal Receipts	1002	
17.		G.F. Match	1003	
18.		General Funds	1004	34,200
19.		I-A Receipts	1005	
20.		Program Receipts	1028	
21.		Other		

FOR B&M USE ONLY
4A KEY NUMBER ___ - ___ - ___ - ___ - ___

JUSTIFICATION

Primary duties of this position would be handling public requests, either by mail or telephone, for information about the program. It is estimated that the Violent Crimes Compensation Board receives four requests for information for every one claim filed, in other words, three of these requests never show up in the claims statistics, but may still require considerable time and effort expended in responding.

If we receive 700 claims during FY84, it is estimated we would receive at least 2,800 inquiries. This position would deal with those inquiries. Additional inquiries for information could be expected from programs and agencies in other states, as well as our own state legislature.

The position would also take over the handling of statistical research for budgeting forecasts and legislative requests, as the existing AA position would be primarily busy with claims followup, assisting the investigator, and preparing the budget.

13 REQUEST FOR NEW POSITION

AGENCY Department of Public Safety

PROGRAM Administration of Justice

BRU Violent Crimes Compensation Board

COMPONENT

FY 84

Page 1 of 1

Revised Date

01-1136 (7/82) - 13

HB

107

alaska state hospital association

319 Seward St., Juneau, Alaska 99801 • (907) 586-1790

REPRESENTING ACUTE, LONG TERM AND OUTPATIENT FACILITIES

Chairman of the Board
Ronald A. Pavelias
Humana Hospital Alaska
Anchorage

Chairman Elect
Mark Hawkins
Sitka Community Hospital
Sitka

Immediate Past Chairman
Tom Mingen
Fairbanks Memorial Hospital
Fairbanks

Secretary/Treasurer
Edward Zeine
Cordova Community Hospital
Cordova

Delegate to the American Hospital Association
Al M. Camosso
Providence Hospital
Anchorage

Alternate Delegate to the American Hospital Assoc.
Michael Lockwood
Central Peninsula Hospital
Soldotna

Delegate to the American Health Care Association
Jack Buck
St. Ann's Nursing Home
Juneau

Alternate Delegate to the American Health Care Association
Emma G. Ivy
Wrangell General Hospital
Wrangell

Delegate to the Association of Western Hospitals
Michael Herring
South Peninsula Hospital
Homer

Alternate Delegate to the Association of Western Hospitals
Daniel Van Wieringen
Kodiak Island Hospital
Kodiak

Trustee Delegate to the American Hospital Assoc.
Moe Kadish
Trustee, Providence Hospital
Anchorage

Alternate Trustee Delegate to American Hospital Association
Robert Jensen
Central Peninsula Hospital
Soldotna

Physician Member of the Board
Keith Brownsberger, M.D.
Anchorage

President
Dennis L. DeWitt
Juneau

January 25, 1983

The Honorable Don Clocksin
Alaska House of Representatives
State Capitol
Pouch V
Juneau, AK 99811

Dear Representative Clocksin:

The Alaska State Hospital Association is pleased to offer our support for HB 107, An Act Relating to the Right for a Natural Death. This is a responsible approach to resolving a critical, ethical and legal medical problem.

A question does come to mind as to what would happen to a physician and/or a health facility when care is withheld pursuant to a "valid" declaration, but subsequent to death a discovery is made that a revocation existed.

We look forward to working with you on this measure.

Sincerely,

Dennis L. DeWitt
President

cc: House HESS
House Judiciary

THE LEGISLATURE OF THE STATE OF ALASKA
THIRTEENTH LEGISLATURE

FISCAL NOTE

I. REQUEST
Bill/Resolution No. House Bill No. 107
Title "An Act relating to the right to a natural death."
Requested by House HESS Committee Date 2/1/83

II. FISCAL DETAIL
Agency Affected Health and Social Services
Program Category Affected Health
BRU, Program, Or Subprogram(s) Affected
(Note: If more than one budget component is affected, separate line-item amounts and funding for each component in the analysis section.)

EXPENDITURES (Thousands of Dollars)

	FY 83	FY 84	FY 85	FY 86	FY 87	FY 88
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 COMMODITIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS,CLAIMS,ETC.						
TOTAL		0	0	0		

FUNDING (Thousands of Dollars)

GENERAL FUND		0	0	0		
FEDERAL FUNDS						
OTHER (Specify Source)						
		0	0	0		

POSITIONS

FULL TIME						
PART TIME						
TEMPORARY						

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

This Bill prescribes procedures to allow adult persons to control decisions relating to the withholding or wirndrawal of life-sustaining procedures when they suffer from a terminal illness or injury.

IV. DATE 2/1/83 PREPARED BY Dean F. Tirador, M.D.
AGENCY Health and Social Services
PHONE 465-3150

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

33-001 (Rev. 12/82) OMB REVIEWED BY: NANCY DUNN

THE LEGISLATURE OF THE STATE OF ALASKA
THIRTEENTH LEGISLATURE

FISCAL NOTE

I. REQUEST
Bill/Resolution No. House Bill No. 107
Title "An Act relating to the right to a natural death."
Requested by House HESS Committee Date 2/1/83

II. FISCAL DETAIL
Agency Affected Health and Social Services
Program Category Affected Health
BRU, Program, Or Subprogram(s) Affected
(Note: If more than one budget component is affected, separate line-item amounts and funding for each component in the analysis section.)

EXPENDITURES (Thousands of Dollars)

	FY 83	FY 84	FY 85	FY 86	FY 87	FY 88
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 COMMODITIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS,CLAIMS,ETC.						
TOTAL		0	0	0		

FUNDING (Thousands of Dollars)

GENERAL FUND		0	0	0		
FEDERAL FUNDS						
OTHER (Specify Source)						
		0	0	0		

POSITIONS

FULL TIME						
PART TIME						
TEMPORARY						

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

This Bill prescribes procedures to allow adult persons to control decisions relating to the withholding or wirhdrawal of life-sustaining procedures when they suffer from a terminal illness or injury.

IV. DATE 2/1/83 PREPARED BY Dean F. Tirador, M.D.
AGENCY Health and Social Services
PHONE 465-3150

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

33-001 (Rev. 12/82) OMB REVIEWED BY: NANCY DUNN

REPRESENTATIVE DON CLOCKSIN

Alaska House of Representatives

ASSISTANT MINORITY LEADER

1527 H STREET
ANCHORAGE, ALASKA 99501
(907) 278-4188

WHILE IN JUNEAU
POUCH V
JUNEAU, ALASKA 99811
(907) 465-3704

RECEIVED MAY 1983

M E M O R A N D U M

TO: Members of the House Judiciary Committee

DATE: May 16, 1983

FROM: Rep. Don Clocksin

SUBJECT: HB 107 - An Act Relating to the Right of a Natural Death

I have attached a copy of an article which appeared in the Reader's Digest and a reader's request to "Dear Abby" for information on a living will. I believe this information will be helpful in your consideration of HB 107.

DC:JR:blg

Attachment

Dear Abby

By Abigail Van Buren

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DEAR ABBY: About 10 years ago you advertised the Living Will in your column, saying readers could send for it by sending a few dollars to the non-profit organization called Concern for Dying, 250 West 57th St., New York, N.Y. 10019.

Recently you advertised the Living Will and told readers they could get copies by writing to the Society for the Right to Die, 250 West 57th Street, New York, N.Y. 10019.

Did the Concern for Dying organization change its name?

CURIOUS IN DELAWARE

DEAR CURIOUS: No. Concern for Dying and the Society for the Right to Die are two separate organizations. They were formerly affiliated, but due to some internal differences they parted company. They both distribute the Living Will and are equally legitimate, but are constantly confused because they both maintain offices in the same building.

The only fundamental difference is that the Society for the Right to Die extends its function to trying to get the various state legislators to make "the right to die with dignity" part of the state law. It has been successful in many states.

• • •

DEAR ABBY: I am a 52-year-old divorced male who has dated "T," a 44-year-old divorcee for the last [illegible] became intimate during [illegible] married this [illegible]

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"I Cried, but Not for Irma"

By Max Ferber

"I Cried, but Not for Irma"

Condensed from Los Angeles Times

Max Ferber

It was six months ago that Irma and I first drove to the hospital. The internist had been concerned about my wife's occasional spotting. The gynecologist, apprehensive about what his examination indicated, had suggested a hysterectomy.

Following the operation, the surgeon came up to me in the waiting room. After some preliminary words he said: "It's terminal cancer."

It's terminal cancer.

In something of a whisper, I asked, "How long does she have?"

"It's difficult to say. It could be six months to five years."

Now Irma is dead, after six months, at 75.

It was not over her sure death that I cried. It was for the ignominious way of her going: the degradation of the spirit that was once her, the flagellation of her body, the torture inflicted by medical ethics and by a society that values the flesh over the spirit.

Irma recovered from the operation. She came home after three weeks in the hospital. During her convalescence she was up and about. She was at the table for meals. We visited friends, attended the theater, dined out. The pills were effective: there was no pain.

Had there been a remission? Were the doctors only mortals who had guessed wrong? Were we witnessing a miracle?

Two months of hope, then began the journey to the other shore. Irma was tired. Tempting her to eat was futile. Sedation was needed on a regular schedule. In vigils through the night, we reacted to a gesture, kept adjusting her pillow. Terminal cancer: *Please let her not have pain.*

In time, the burden of caring became too great, even with family

---

Max Ferber is a Los Angeles businessman who earned his bachelor's degree in philosophy at the University of Chicago in 1922 and his master's in liberal arts at the University of Southern California in 1973.

Los Angeles Times (November 28, 1971). © 1971 by Los Angeles Times Co., Times Mirror Square, Los Angeles, Calif. 90053

members sharing the shifts. Exhaustion set in—physical, mental, emotional. The only alternative was the hospital. "There are to be no heroic measures," I said. "I just don't want her to have any pain."

They said that they understood, but it was not to be.

The first ten days in the hospital were a time for gratitude. The nurses were kind and compassionate. Medication was given as needed. Irma's position in bed was changed on schedule to prevent bed sores and to provide comfort. A tube hung from a bedside stand for intravenous feeding.

Irma was not aware of the world—but she was comfortable. There was no pain.

Each day, I watched, wondered—dulled to what was taking place but grateful to the nurses for their concern.

One morning of the third week, I entered the room and was startled. The intravenous tube had been removed from Irma's arm. Instead, she was being fed through a tube inserted in her nose.

She lay on her back in the bed, her hands tied to the rails. I asked why this had to be. "Because," the nurse said, "she was pulling out the tube."

Everyone was considerate. The nurses changed her position every two hours, retying her hands to the rails. They provided pillows to support her changed position. I saw her that evening on her side, tied down for immobility. Only her fingers twitched.

That night, at home in bed, I tried the various positions I had observed Irma take. I could hold each position for only 15 minutes, having to shift to relieve the tension, to release the straining of my muscles. *But it was all right. Irma's position was being changed every two hours. She had no pain.*

In the fifth week, a catheter was introduced to catch her urine. Now the chemicals that dripped through the tube inserted in her nose passed through her body and emptied efficiently into a pouch at the foot of her bed. In this way Irma was being kept alive. I paled at the sight.

The sixth week showed a change. Irma looked better: there was a flush in her cheeks. I wondered what this could mean.

"We pulled her through pneumonia by suctioning the mucus from her lungs," they said. "She is resting more easily now."

How thoughtful. The idea came to me: *Irma will make a good-looking corpse, thanks to medical science.*

Through it all I was led to believe—by comments, by shrugging shoulders—that it would be a matter of only two weeks. Always two weeks, by increments. At the end of three months, I was told Irma could no longer be kept in the hospital: she would have to be moved to a sanitarium.

That night I went to look over the

sanitarium they had chosen. I was disheartened. The place was dim; it seemed gloomy and desolate.

The next morning, as usual, I stopped at the hospital. Irma's room was empty. She had been moved to the sanitarium earlier than I had expected. I hurried there. In daylight it looked better than it had by night.

I found the room where Irma was imprisoned. Yes, that word was inescapable. She was receiving the same care and attention as in the hospital. Again the tube was inserted in her nose, again the catheter pouch hung at the foot of her bed, again her hands were tied to the bed rails.

Irma's squirming had caused her sheet to slip off, and she was lying nude. I covered her and kissed her forehead.

The nurses, again, were kind and compassionate. Sedation came on schedule. Irma was suffering no pain.

Another six weeks passed.

Then, at last, I was privileged to watch Irma being ferried across the River Styx. It had been a long journey, not because the river was wide —from where I stood, I had long since seen the opposite shrouded shore—but because the man-made current was almost irresistible. The force of public opinion, of medical and legal ethics, had run furiously, almost vengefully, resisting Irma's passage.

As I sat, patiently watching, I saw her finally reach the other shore and disappear into the mist of infinity. Her trials were over. It was Saturday, exactly 11 17 a.m. Society had claimed its last ounce of flesh, and after a while I could stop crying.

I left the sanitarium. As I drove away, a seething anger swept over me. It was a fetish, nothing less, for society to worship the flesh while it destroyed the spirit.

At any hospital, the dedication is heedlessly to prolong life. No, not just to prolong life but to do so by using ingenious devices that not only measure the semblance of life but also confirm that the machinery itself is functioning.

Why had Irma been subjected to degradation that made a mockery of living? What does society want, and in heaven's name, why?

The anger has not left me. It will consume me as long as I live. Why are those who value living so insensitive to dying? In memory of Irma —for all the Irmas of this world —I make a simple but heartfelt plea: let us rise, all of us, to defend the defenseless body against the machine.

Distributed by

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HB

109

POSITION PAPER/Department of Health & Social Services

POSITION PAPER

CS FOR HOUSE BILL 109 am
PAGE 1

"An act relating to persons 16 or 17 years of age who are charged with unclassified or Class A felonies; and amending the childrens waiver proceedings."

This Bill would make several changes in the manner of dealing with older juvenile offenders accused of serious or violent crimes. It would

1. Require the prosecution of 16 and 17 year old juveniles accused of unclassified or Class A felonies within the adult criminal system;

2. Change the standard for judicially waiving serious or repeat juvenile offenders who would not be subject to automatic exclusion from juvenile jurisdiction, and define factors which the court must consider in making waiver decisions; and

3. Define sentencing and confinement procedures for juveniles who are waived to adult jurisdiction.

AUTOMATIC WAIVER

Under the provisions of CS HB 109 the only method for dealing with juveniles 16 and 17 years of age who are accused of unclassified or Class A felonies would be through criminal proceedings under the adult jurisdiction of the Superior Court. Any such youth suspected by police of having committed an unclassified or Class A felony would be subject to arrest, prosecution, and pre-trial confinement in precisely the same way as would an adult.

Automatic or legislative waiver of the most serious juvenile offenders is an excellent concept that can help resolve one of the most difficult problems of the juvenile justice system. Dealing with older juveniles accused of the most violent crimes within the adult criminal system will allow more appropriate sanctions to be imposed by the court and will provide sufficient time for rehabilitative efforts to be effective.

However, the Department opposes the inclusion of Class A offenses within the category requiring automatic waiver. Inclusion of Class A offenses makes the category of automatically waiveable offenses too broad and would require the waiver of a number of juveniles who could be effectively controlled and rehabilitated within the juvenile justice system. Narrowing the category of automatically waiveable offenses to only unclassified felonies is preferable for several reasons: 1) it would be more economical and the fiscal impact of the bill would be reduced; 2) though serious in nature, Class A category offenses also include offenses which differ significantly from unclassified offenses

POSITION PAPER/Department of Health & Social Service

in the degree of actual violence or harm done to victims; 3) the strengthened judicial waiver mechanism would allow for adequate protection of the public by selectively identifying those juveniles accused of Class A felonies who should be dealt with in the adult criminal system. This selective identification would allow for differentiation among juveniles based on the actual seriousness of the offense and prior behavior of the youth rather than relying solely on the arbitrary classification of offenses. Those juveniles who did not present a danger to the public could be retained within the juvenile system. This flexibility would prevent the development of problems in the adult correctional system in attempting to integrate a group of young, unsophisticated, non-dangerous youth in adult corrections facilities where such youths could potentially fall prey to abuses by adult inmates.

JUDICIAL WAIVER STRENGTHENED

In addition to instituting an automatic waiver this Bill would strengthen the existing judicial waiver. The existing waiver mechanism would be strengthened by a change in the standard of proof necessary for making waiver determinations. In addition, the Bill defines nine specific factors which must be considered by the court in determining the likelihood of successfully rehabilitating a youth within the juvenile system.

This would be far superior to the existing judicial waiver and would provide better definition to the waiver process and guidance for the court in making waiver determinations. The less stringent standard of proof required for waiver would make waiver of juveniles easier to accomplish and would undoubtedly increase the willingness of prosecutors to attempt waivers. The court's ability to determine the weight to be given each of the nine factors it must consider and to make a waiver decision based on any one or a combination of the factors provides the court with a substantial degree of discretion and is also likely to make waivers far easier to accomplish.

SENTENCING OF WAIVED JUVENILES

Under the provisions of CS HB 109 as amended 16 and 17 year old juveniles automatically waived to adult jurisdiction would be sentenced within the adult system unless they were convicted of a lesser included offense that was not an unclassified or Class A felony. In such cases disposition would be within the juvenile system. This would justly deal with youths who, though charged with an automatically waiveable offense, are actually convicted of a lesser offense which would not have made

POSITION PAPER/Department of Health & Social Services

them eligible for automatic waiver. This would also provide adequate safeguards to preclude punitive or discriminatory overcharging by police or prosecutors in order to make certain juveniles subject to the more stringent sanctions of the adult system. This provision greatly strengthens the Bill and makes it far superior and more just than the original version.

Another provision of this Bill is very effective in dealing with the problem of differences in levels of maturity and sophistication of juveniles who would be subject to the automatic or judicial waiver. It would also allow for consideration of the differences in the specifics and seriousness of the offenses committed by those juveniles. This provision would require that, although juveniles waived to adult criminal jurisdiction would be sentenced as adult offenders and confined within the adult correctional system, they would not be subject to mandatory minimum or presumptive sentences upon a first felony conviction. This would maintain the integrity of the Bill in holding juvenile offenders accountable for their offenses, but allow the court adequate discretion to consider all pertinent facts in sentencing waived juveniles. Since exclusion from juvenile jurisdiction under the automatic waiver provision is based solely on the offense committed such discretion would be necessary. Studies show that all serious offenses are not the culmination of delinquent careers and that disparity in the sophistication and history of delinquent behavior among waived juveniles must be expected. Sentencing discretion such as is provided by this provision is necessary to justly address this disparity.

CONFINEMENT OF WAIVED JUVENILES

Under this Bill all juveniles subject to adult criminal jurisdiction under either the automatic or judicial waiver provisions would, if confined to custody following arrest, while awaiting trial or sentencing, or after sentencing, be confined in adult correctional facilities.

These provisions are straightforward but unfortunately do not provide sufficient procedural protections. Juveniles would be housed in adult facilities from the time of arrest. The decision about where juveniles should be housed would, then, essentially be made at the discretion of the arresting officer based on the crime the officer chose to allege. Youths would be subject to the unreviewed judgement of police officers and could be housed in adult facilities based on police officer error, punitive overcharging, or discrimination in alleging a more serious charge than would be indicated or could be proven from the facts.

POSITION PAPER/Department of Health & Social Services

These problems could be avoided and a more equitable and more certain system provided by requiring that juveniles be housed in juvenile facilities until procedural reviews had occurred. Such reviews would include a grand jury or preliminary hearing before the court, from which an indictment or finding of probable cause had been found to believe that the juvenile had committed an automatically waiveable offense. This would avoid the possibility that juveniles were charged with waiveable offenses simply to allow their incarceration in an adult facility.

EFFECTS OF THE BILL

With the suggested changes CS HB 109 would adequately address the problem of dealing with older, violent, serious, or repetitive juvenile offenders by holding them accountable in the same manner as adults. This would focus directly on the highly publicized problem which is the cause of much public misperception of juvenile crime and juvenile offenders. It would also allow the juvenile justice system to focus on those youths for whom the likelihood of rehabilitation is much greater.

The juvenile justice system could maintain the comprehensive approach to protecting the public and rehabilitating youths through diversion, intervention and services to strengthen families without the necessity of structuring programs, services, and facilities to deal with those older, violent juveniles who differ significantly from the vast majority of juvenile offenders.

The effect of CS HB 109 as amended would be to increase the number of juveniles subject to prosecution under the adult criminal statutes and to increase the liability of these juveniles to sanctions more severe, both in nature and duration than those to which they would have been liable under the juvenile code. With the suggested narrowing of the automatic waiver to include only those juveniles accused of unclassified felonies the Bill would appropriately focus the liability of adult prosecution on older, violent juvenile offenders and other juveniles who had committed specifically heinous crimes or who had records of repetitive delinquent behavior and either had not or would not be likely to be rehabilitated under the aegis of the juvenile justice system.

DHSS POSITION

The Department strongly supports the concepts embodied in CS HB 109. It is the Department's position that, though few in number, older youths accused of heinous or violent crimes require sanctions qualitatively and quantitatively different from those available under the jurisdiction of

POSITION PAPER

CS FOR HOUSE BILL 109 am
PAGE 5

the juvenile court. This Bill, with the suggested changes, would provide an effective and comprehensive approach to dealing with older serious, and repeat juvenile offenders. The charges suggested are merely refinements which provide necessary procedural protections to guard against abuses or human error. With the inclusion of suggested refinements the Bill would increase protection of the public and public confidence in the justice system while delaing justly and equitably with juvenile offenders.

RECOMMENDED: Yvonne Eckes Wiebe for
Michael L. Price, Director
Division of Family and
Youth Services

DATE: 5/13/83

APPROVED BY: Robert London Smith
Robert London Smith, Ph.D.
Commissioner

DATE: 5/24/83

POSITION PAPER/Department of Health & Social Services

STATE OF ALASKA
FISCAL NOTE

Revision Date , 1983

I. REQUEST CS for HB
Bill/Resolution No.: #109 (Jud.) a.m.
Title: ..persons 16 or 17 yrs. old..amend.
Sponsor: Rep. Pestinger
Requestor:

II. FISCAL DETAIL
Agency Affected: Health & Social Services
Program Category Affected: Justice
BRU, Program of Subprogram(s) Affected:
Adult Confinement

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 83	FY 84	FY 85	FY 86	FY 87	FY 88
OPERATING						
100 PERSONAL SERVICES				985.2	1044.3	1106.9
200 TRAVEL			2.0	6.4	6.8	7.2
300 CONTRACTUAL		14.4	43.9	184.0	195.0	206.7
400 COMMODITIES		24.8	75.4	187.0	198.2	210.1
500 EQUIPMENT				5.9		
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC		2.5	9.5	30.0	31.8	32.0
TOTAL OPERATING	-0-	41.7	130.8	1398.5	1476.1	1562.9
CAPITAL	-0-	9052.0	-0-	-0-	-0-	-0-
REVENUE	-0-	-0-	-0-	-0-	-0-	-0-

FUNDING: (Thousands of Dollars)

GENERAL FUND	-0-	9093.7	130.8	1398.5	1476.1	1562.9
FEDERAL FUNDS						
OTHER (Specify Source)						

POSITIONS:

FULL-TIME	-0-	-0-	-0-	23	23	23
PART-TIME						
TEMPORARY						

III. SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

The source of funds to offset the fiscal impact of this bill have not been identified by the sponsor.

IV. ANALYSIS: Attach a separate page for any Analysis

Prepared By: Roger C. Lange Roger C. Lange 5/18 Phone: 465-3376
Division: Adult Corrections Date: May 11, 1983

Approved by Commissioner: Kent Foulton Smith, Ph.D. Date: 5/16/83
Department: Health & Social Services

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3/8/83

IV. ANALYSIS

A. Assumptions

1. If CSHB 109 (Judiciary) am is implemented, there will be a requirement for 62.25 beds. The calculation for this follows:

Annual Frequency of Convictions	Presumptive Sentence	Est. Avg. Sent. for 16-17 Yr. Olds Convicted As An Adult	Actual Time to Serve w/Credit For Good Time
1 unclassified felony	20 Years	15 Years	11.25 x 1 = 11.25
5 Class A felonies (w/firearm)	7 Years	6 Years	4.5 x 4 = 18.0 Yrs. 1 probation
8 Class A felonies (w/o firearm)	5 Years	4 Years	3 x 8 = 18.0 Yrs. 2 probation
1 sexual assault 1st (w/firearm)	10 Years	7 Years	5.25 x 1 = 5.25 Yrs.
3 sexual assault 1st (w/o firearm)	8 Years	5 Years	3.75 x 2 = 7.5 Yrs. 1 probation
	Non-Presumptive		
2 Class B felonies	0-10 Years	2 Years	1.5 x 1 - 1.5 Yrs. 1 probation
2 Class C felonies	0-5 Years	1 Year	.75 x 1 = .75 Yrs. 1 probation
			Total 62.25 Man Years

2. Inflation of 6% for all expenditure object groups was assumed calculating subsequent fiscal years.

B. Program Summary

1. Positions

It is estimated that 23 positions will be required to provide security and supervision for the 62 additional bed spaces. The positions are:

1 - Correctional Officer III
20 - Correctional Officers II
2 - Probation Officers II

These positions would be needed July 1, 1985, the estimated opening date for the new beds.

2. Other Expenditures

a. Capital Expenditures: Because of the serious nature of the offenses, construction of maximum security beds were originally considered appropriate at $162,000 per bed. However, because of the age of the offenders, it is now assumed they will be placed in medium security beds, but separate from older inmates. The number of beds was also rounded to 62, at a cost of $146,000 per bed.

62 beds @ $146,000 per bed
62 x $146,000 = $9,052,000

b. Incremental cost will be incurred for 16 and 17-year-olds beginning in FY 1984. These costs include:

Contractual Services: Medical costs at $1800 per inmate year for 8 full time equivalent inmates. 8 x $1800 = $14,400
Commodities: Food, clothing, bedding, etc. for 8 full time equivalent inmates at $8.43 per day. 8 x $8.43 x 365 = $24,762
Grants: Inmate gratuities paid for work crew participants. Estimated need $2,500.

FY 1986 Costs - Adult Confinement

Personal Services	$ 985,200
Travel	6,400
Contractual Services	184,000
Commodities	187,000
Equipment	5,900
Inmate Gratuities	30,000
TOTAL	$1,398,500

D. Economic Impact:

Passage of this bill will have effect on the state budget, but little impact on the State's economy.

E. Impact on Local Governments:

Passage of this bill will not have impact on local government units.

POSITION TITLE		RANGE/STEP	BARG. UNIT	FORM 12 PAGE/LINE	GOV.	APPROV.	DISAPP.
Probation Officer II (2)		16/A	G				
TYPE OF POSITION	STAFF MONTHS	RP NUMBER	PCN NUMBER	BRU PRIORITY	LOCATION	ELECTION DISTRICT	LEG.		
PPT	24								

CONTINUATION LEVEL | | ADDITION | |

TYPE OF EXPENDITURE		AMOUNT
1	2	3
PERSONAL SERVICES		
Salary	61,752	
Benefits	10,554	
Supplemental Benefits	3,786	
Fixed Benefits	5,760	
TOTAL PERSONAL SERVICES 01		81,852
Travel 02		
Contractual 03		
Commodities 04		
Equipment 05		
Other		
TOTAL COST		81,852

RECEIPT CODE	FUNDING SOURCE	
	Federal Receipts 1002	
	G.F. Match 1003	
	General Funds 1004	81,852
	I-A Receipts 1005	
	Program Receipts 1020	
	Other	

FOR OMB USE ONLY
AA KEY NUMBER __ __ - __ __ - __ __ - __ __ - __ __

JUSTIFICATION

Single Position Cost

Salary 2573/Mo.	$30,876
Variable Benefits	5,277
SBS	1,893
Health Insurance	2,880
	~~$38,046~~ 40,926

These positions would provide counseling, pre-release planning and preparation for Parole Board Applications.

3 REQUEST FOR NEW POSITION

AGENCY Department of Corrections

PROGRAM Offender Confinement, Reformation & Supervision

BRU Adult Confinement

COMPONENT

Page of

Revised Date

FY 84

POSITION TITLE				RANGE/STEP	BARG. UNIT	FORM 12 PAGE/LINE	COV.	APPROV.	DISAPP.
Correctional Officer II (20)				13/B	G				
TYPE OF POSITION	STAFF MONTHS	RP NUMBER	PCN NUMBER	BRU PRIORITY	LOCATION	ELECTION DISTRICT	LEG.		
PFT	240								

CONTINUATION LEVEL | ADDITION

TYPE OF EXPENDITURE		AMOUNT
1	2	3
PERSONAL SERVICES		O.T. 76,000
Salary	519,840	Shift
Benefits	156,660	Diff 10,000
Supplemental Benefits	35,920	
Fixed Benefits	57,600	
TOTAL PERSONAL SERVICES	01	856,020
Travel	02	
Contractual	03	
Commodities	04	
Equipment	05	
Other		
TOTAL COST		856,020

RECEIPT CODE	FUNDING SOURCE		
	Federal Receipts	1002	
	G.F. Match	1003	
	General Funds	1004	856,020
	I-A Receipts	1005	
	Program Receipts	1028	
	Other		

R B&M USE ONLY
NA KEY NUMBER — — - — — - — — - — — - — —

JUSTIFICATION

Single Position Cost

Salary 2166/Mo.	$25,992
Overtime	3,800
Shift Differential	500
	$30,292
Peace Officer Retirement	2,827
Variable Benefits	5,006
SBS	1,796
Health Insurance	2,880
	$42,801

These positions would provide security coverage for prisoners.

REQUEST FOR NEW POSITION

AGENCY Department of Corrections

PROGRAM Offender Confinement, Reformation & Supervision

BRU Adult Confinement

COMPONENT

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Revised Date

FY 84

POSITION TITLE	RANGE/STEP	BARG. UNIT	FORM 12 PAGE/LINE	COMP.	APPROV.	DISAPP.
Correctional Officer III	15/A	G				
TYPE OF POSITION: PFT	STAFF MONTHS: 12	BP NUMBER	PCN NUMBER	BRU PRIORITY	LOCATION	ELECTION DISTRICT	LEG.		
CONTINUATION LEVEL: .	ADDITION:								

TYPE OF EXPENDITURE		AMOUNT
1	2	3
PERSONAL SERVICES		O.T. 4,118 Shift Diff. 600
Salary 2398	28,776	
Benefits	8,956*	
Supplemental Benefits	2,040	
Fixed Benefits	2,880	
TOTAL PERSONAL SERVICES	01	47,370
Travel	02	
Contractual	03	
Commodities	04	
Equipment	05	
Other		
TOTAL COST		47,370

RECEIPT CODE	FUNDING SOURCE	
	Federal Receipts 1002	
	G.F. Match 1003	
	General Funds 1004	47,370
	I-A Receipts 1005	
	Program Receipts 1020	
	Other	

FOR OMB USE ONLY
AA KEY NUMBER __ __ - __ __ - __ __ - __ __ - __ __

JUSTIFICATION

This position would provide supervision for Correctional Officer II staff as well as security for prisoners.

3 REQUEST FOR NEW POSITION

AGENCY Department of Corrections

PROGRAM Offender Confinement, Reformation & Supervision

BRU Adult Confinement

COMPONENT

Page of

Revised Date

FY 84

February 15, 1983



House Judiciary Committee
Rep. Charles Bussell, Chair
Pouch V
Juneau, Alaska 99811

Dear Rep. Bussell & Members of the House Judiciary Committee:

I am writing to express my conc[illegible]out HB109 which is now before you. This legislation proposes ch[illegible] present state law relating to the court's jurisdiction over min[illegible]s who are charged with certain crimes. At present, AS 47.10.060 statutes provide that any minor, regardless of the crime he/she has committed, is dealt with by the juvenile court unless a hearing determines that the minor should be prosecuted as an adult. In that event, the court "waives" jurisdiction of the juvenile over to the adult courts. In my opinion, present statutes provide adequately for the protection of both the juvenile and society, and do not need to be changed.

In considering changes to AS 47.10.060 I would urge the committee to consider that -

1. No accurate data has been compiled of the actual incidence of juvenile waiver in Alaska nor of the commission of class A or unclassified felonies by juveniles.

2. Research into the effects of similar legislation in New York & Minnesota revealed that instead of increasing the incarceration of juveniles, conviction rates for serious juvenile crime proved to be lower and utilized more frequently than would have been the case in juvenile court.

3. The fiscal implications of this bill for an already over-burdened court and corrections system will be substantial.

4. If the concern is to clarify the use of the juvenile waiver or provide for longer sentences for juveniles convicted of serious crimes there are other, better ways to accomplish the goal than enacting "wholesale" legislation.

Section 2 of HB109 appears to be addressing the sponsors' concern that without legislation mandating the waiver of certain juveniles to adult court, the judge will not do so. Yet, the only actual criteria for the use of the waiver are -

1. age of the juvenile

2. probable causes to believe that the minor
   a. has committed an unclassified or Class A felony
   b. is a delinquent

The non-amenability to treatment provision is extremely difficult to assess and could become meaningless. If the legislature wishes to insure use of the waiver then adding additional specific criteria for its use is, in my opinion, a better way to accomplish the goal. For instance, I believe the court should be required to consider such things as; (1) the minor's past record of offenses, (2) mitigating circumstances, (3) harm to the victim(s), (4) use of a weapon etc.

Section 1 of HB109 is laudable in its intent to incarcerate a juvenile in a juvenile correctional facility even though an adult court would do the sentencing. The incidence of homosexual rape in correctional facilities is well know. I believe, however, that if the intention of HB109 is to incarcerate juveniles convicted of serious crimes longer than is presently possible, another approach is preferrable. Alaska Statutes presently provide that a juvenile can only be institutionalized for two years or until his/her 19th birthday unless the State petitions the court for a longer sentence and the juvenile agrees. In such a case the juvenile can be institutionalized until aged 21.

I would suggest that Title 47 might be amended to provide that where the juvenile is institutionalized as the result of having been found guilty of a Class A or unclassified felony that the State be given the power to petition for the extension of the juvenile's sentence <u>without</u> the concurrence by the juvenile if the State believes the juvenile needs additional treatment. Such a provision could serve to lengthen the availability of treatment without subjecting the young person to the adult correctional systems' dangers.

If the legislature believes that the present statutes need to be amended, then I suggest a more thoughtful and comprehensive approach. In 1975 and 1976 when reform of children's law was deemed necessary, the legislature established the Children's Code Task Force to review those statutes, study other State's laws and recommend coordinated and comprehensive revisions. I had the privilege to be a member of that Task Force and believe it to be a rational and progressive method of statute review which has obvious advantages over a piecemeal approach. I urge you to consider establishing a similar commission or task force to recommend needed statute changes to the legislature. The issues addressed in HB109, together with other issues legislators believe need attention, could be assigned to such a task force with requirements for a report to the Second Session of the 13th Alaska Legislature.

In closing, may I reiterate that the very small number of juveniles represented by this legislation and the adequacy of present statutes for dealing with these cases in my opinion make this legislation unnecessary.

Sincerely,

Cecilia Kleinkauf

Cecilia Kleinkauf, MSW, ACSW
Associate Professor
Chair, Social Work Department
University of Alaska, Anchorage

CK:par

NOTE: These views are my own and do not reflect a University position.

[1] Kiersh, Edward, "Minnesota Cracks Down on Chronic Juvenile Offenders," Correction Magazine, (New York) 7 (6) 21-28, 1981

Roysher, Martin; Edelman, Peter, Treating Juveniles as Adults in New York: What Does It Mean & How Is It Working? Albany, New York State Division for Youth 1980

Sobie, Merrie, The Juvenile Offender Act: A Study of the Acts' Effectiveness & Impact on the New York Juvenile Justice System, New York Foundation for Child Development, 1981.

3/25/83, JUNE, ANC L[illegible]O, MSG 3652

TO: REPRESENTATIVES BARNES, [redacted], CLOCKSIN, HAYES, LISKA, MALONE, AND WENDTE

JR

FROM: SHARON EGGERS, AK YOUTH ADVOCATES
204 EAST 5TH AVENUE, ANCHORAGE, AK 99501
274-6541

NOT ENOUGH DATE TO MAKE SUCH A DRASTIC CHANGE AS HB 109 PROPOSES, STATES WITH SIMILAR LEGISLATION HAVE HAD UNFAVORABLE RESULTS. COST WOULD BE MILLIONS AND PRESENT PROBLEMS WOULD ONLY BECOME WORSE. DO YOU HAVE ENOUGH INFORMATION TO ABOLISH THE REHABILITATION MODEL? IMPROVING EXISTING STATUTES WILL BRING BETTER RESULTS.

****

FROM: SHARON EGGERS, AK YOUTH ADVOCATES
204 EAST 5TH AVENUE, ANCHORAGE, AK 99501
274-6541

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3/25/83, JUNE, ANC LIO, MSG 3652

TO: REPRESENTATIVES BARNES, BUSSELL, CLOCKSIN, HAYES, LISKA, MALONE, AND WENDTE

FROM: SHARON EGGERS, AK YOUTH ADVOCATES
204 EAST 5TH AVENUE, ANCHORAGE, AK 99501
274-6541

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****

Alaska State Legislature

HOUSE MAJORITY LEADER
MEMBER
RULES COMMITTEE
JUDICIARY COMMITTEE
LEGISLATIVE COUNCIL
POLICY COMMITTEE
ALASKA REPRESENTATIVE
STATES RIGHTS COORDINATING COUNCIL
WESTERN LANDS TASK FORCE
CITIZENS ADVISORY COMMISSION
ON ALASKA LANDS

House of Representatives

REPRESENTATIVE
RAMONA I BARNES

ANCHORAGE
2230 PAXSON
ANCHORAGE, ALASKA 99504
(907) 337-7904

POUCH V
JUNEAU, ALASKA 99811
(907) 465-3716



March 1, 1983

Ms. Cecilia Kleinkauf, MSW, ACSW
Associate Professor
Chair, Social Work Department
University of Alaska
Anchorage, Alaska 99504

Dear Ms. Kleinkauf:

Thank you for your letter of February 15th regarding HB 109; proposing changes in criminal prosecution of minors.

It may be that present statutes provide adequately in this regard as you assert. If this is true, however, then the interpretation and implementation of those statutes by the courts are woefully inadequate, in my opinion.

Regarding the appointment of a task force, I believe the need is urgent enough that we must take some immediate corrective action. The appointment of such a task force collection of data, hearings, etc. could go in ad infinitum Meanwhile, juveniles commit atrocious crimes and escape with little more than a "wrist tapping" sentence.

I do agree with you that this legislation in large measure is attempting to do what judges were either unwilling or unable to do in handling juveniles convicted of serious crimes under present statutes. I also agree that the provision of the current law that a juvenile cannot be imprisoned past age 19 unless the juvenile concurs is patently absurd, and must be changed. I cannot comprehend how supposedly intelligent people could have enacted such a law.

In large measure, I do agree with you on the need for special handling and understanding of juvenile criminals. However, those who commit heinous crimes must be removed

from society until it is reasonably certain they have been rehabilitated, or they have served a sufficiently long sentence to serve as a deterrent to themselves and others from such criminal activities.

Your comments are always welcome.

Sincerely,

Ramona

Rep. Ramona L. Barnes
House Majority Leader

RLB/rv
cc: Rep. Bussell ✓

MSG 83-00012215 PRTY 1 04/26/83 12:18:09 ORIG: LA01 IN= 0005 OUT= 0060
FROM: SHIRLEE ANC LIO TO: POMS JUNEAU INFO
TARGET: LJHL SUBJ: POM

TO: ALL MEMBERS, ALASKA HOUSE OF REPRESENTATIVES

JR

FROM: ROBERT CLARK, P.O. BOX 4-1908, ANCHORAGE 99509
(RES: ATKINSON DR.) H 333-5295 W 266-1680

RE: HOUSE BILL 109

A TRAVESTY OF JUSTICE OCCURS IN SOME CASES OF VIOLENT JUVENILE CRIME. THE PERPETRATOR MAY BE 17 YEARS OLD, BUT BY THE TIME HIS CASE COMES UP, HE HAS ATTANINED MAJORITY. THEN HE IS FREED AND HIS RECORD IS DESTROYED. PLUG THIS LOOPHOLD AND PASS HB 109.

****

Document Name: letter HB 109
Diskette Name: CHARLI

March 26, 1983

¥a¥

Dear ¥s¥:

Thank you for taking the time and effort to send a Public Opinion Message containing your thoughts on HB 109. HB 109 has had extensive hearing and Committee work in the House Judiciary Committee.

CSHB 109 passed from the Committee this past week and is now in the House Finance Committee. I'm enclosing a copy of the bill in it's present form and as you can see, it applies only to 16 and 17 year olds who have been charged with a class "A" or unclassified felony.

Any person so charged, in the opinion of the majority of the Committee and I dare say the majority of Alaska's people, believe that that person should be charged as an adult.

Any fears you may have about the bill affecting rehabilitation are invalid, as the bill does not address any form of reduction on that subject.

As the new Department of Corrections is formed, an correction activity will have one boss at least and the new department will be able to provide far greater, better managed and there by more sucessful rehabilitation services to all inmates.

Thank you again for letting me know your views and becoming involved with the Legislative process.

Best regards,

Representative Charlie Bussell
Chairman, Committee on Judiciary

Enc.
CB:cmz

Document Name: add HB 109
Diskette Name: CHARLI

VaVMatthew A. Johnson
7217 Violet Place
Anchorage, Alaska 99502
VsVMr. Johnson

VaVJanice Stump
PO Box 325
Eagle River, Alaska 99577
VsVMs. Stump

VaVMarsha Schneider
Ak Chapter Nat'l Assoc.
of Social Workers
PO Box 10430
Fairbanks, Alaska 99701
VsVMs. Schneider

VaVThelma P. Langdon
Alaska Children's Services
1200 East 27th Avenue
Anchorage, Alaska 99504
VsVMs. Langdon

Alaska State Legislature

Received 2/18/83

Speaker of the House of Representatives

Pouch V
State Capitol
Juneau, Alaska 99811
(907) 465-3720

Official Business

February 2, 1983

Kathy Apple, RN
Family Therapist

Rosemary Unterseher, ACSW
Clinical Supervisor

Family Connection
204 East Fifth Avenue, Suite 215
Anchorage, AK 99501

Dear Ms. Apple and Ms. Unterseher:

One of the major concerns of the Thirteenth Legislature and the Majority Coalition continues to be reduction of crime and improvements to the justice system. In the pursuit of those goals, input from agencies such as yours and people with experience in the system is appreciated.

I have enclosed a copy of House Bill 109 which addresses some of the concerns of your letter of January 17. Your letter is being referred to the Judiciary Committee of the House for review and possible action.

As you follow the legislation introduced this session, please do not hesitate to contact me on issues that are of concern to you. Thank you for taking the time to advise me on these issues.

Very truly yours,

Joe L. Hayes
Speaker of the House

cc: Rep. Charles Bussell, Chairman
Judiciary Committee

JLH/jd

FAMILY CONNECTION

A counseling agency for youth and their families

204 E. 5th Ave., Suite 215, Anchorage, Alaska 99501 (907) 279-0551

JAN 19 1983

January 17, 1983

Representative Joe L. Hayes
Pouch V
Juneau, Alaska 99811

Dear Mr. Hayes:

As staff members of Family Connection, Inc., a non-profit family counseling agency, we would like to share and articulate some serious, but correctable difficulties we have observed within the State's juvenile justice system.

Family Connection has provided Family Therapy services to a variety of youth institutionalized at McLaughlin Youth Center for the past three years. We are contracted to join the treatment team for a particular youth by either McLaughlin staff or Juvenile Probation staff. We have worked primarily with youth and their families prior to release from McLaughlin. Our goal has been to facilitate a smooth transition for the youth back into the family and community and to reduce the rate of recidivism. We specifically look at how the family functions and the interactional process that produces delinquent behavior.

We have been impressed with the expertise and professionalism of both McLaughlin staff and Juvenile Probation staff. They work with dedication to treat, rehabilitate and return youth to the community. However, present legalities place great limitations on the expertise of these professionals.

We support the Waiver of Jurisdiction Statute, Section 47.10.060 of the Alaska Statutes. The waiver allows for a procedure that determines if a minor is amenable to treatment, and if so, the minor is sent to McLaughlin Youth Center for rehabilitation, rather than to the Adult Justice System. We believe that if there are indications that a youth is amenable to treatment, society is better served by providing treatment services along with punishment. Unfortunately, our experience has shown us that the waiver statute has been abused in two ways.

First, the waiver is not used enough. Clearly, there have been youth who should have been waived to adult status for committing atrocious, violent crimes. This sentiment has been expressed by many in the past year. Why isn't the waiver being used effectively? How could this process be changed to facilitate more frequent use?

Secondly, the present statute contains serious limitations that has made the members of the juvenile justice system appear ineffective. As an example, if a youth is amenable to treatment but after an intensive course of treament the youth is still unchanged and dangerous, according to State law the youth must still be released. There is no other recourse. This has been a difficult moral and ethical dilemma for professionals within the Juvenile Justice System. How can we ethically release a youth into the community knowing the youth is a danger to society.

Another problem involves the length of institutionalization. A youth cannot be held longer than two years or until their 19th birthday. We have observed a youth who committed a violent murder receive a sentence of less than one year. In this case the youth simply refused to participate in treatment. Therefore, he is not adequately treated or punished. Again, treatment staff are put in a bind by the court as they are given an impossible task to perform with no recourse to protect either the treatment process or the community.

The State of Alaska has done well in providing rehabilitation for youth, while at the same time protecting the safety of our people. However, there are serious handicaps in Alaska's Juvenile Law that we feel need immediate attention, particularly with the present climate of overreaction. We would be greatly discouraged to see the State lose the flexibility in our laws to rehabilitate and punish by giving way to oversimplified, reactionary solutions.

We hope this letter will initiate a process of change. We are willing to devote our time to this issue and would like your feedback as to where we might direct our energies. Also, we would like to know what the role of your office will take in initiating change.

Sincerely,

Kathy Apple

Kathy Apple, RN
Family Therapist

Sincerely,

Rosemary Unterseher

Rosemary Unterseher, ACSW
Clinical Supervisor

KA/RU/MT
cc: all Judicial Members

Alaska State Legislature

House of Representatives

Judiciary
Received
1/31/83

Official Business

Pouch V
State Capitol
Juneau, Alaska 99811

MEMORANDUM

DATE: January 28, 1983

TO: ALL SPONSORS OF HB 109

FROM: Rep. Mike Szymanski

Attached is correspondence regarding the issue of legal age of majority. I am forwarding you this because a copy of your bill was included in the material sent to me by Family Connection.

I think they raise some valid points and I am a little concerned that HB 109 might result in inflexibility in the juvenile justice system. If I am reading Section 2 correctly, sub-paragraph (1) could result in every minor over the age of 16 being prosecuted as an adult.

As I noted in my return letter to Family Connection, I do not believe that all minors should be prosecuted as adults. My experience in working with delinquent youth has convinced me that positive redirection is possible with proper treatment.

I would appreciate hearing your views.

Attachments

FAMILY CONNECTION

A counseling agency for youth and their families

204 E. 5th Ave., Suite 215, Anchorage, Alaska 99501 (907) 279-0551

January 17, 1985

Representative Mike Szymanski
Pouch V
Juneau, Alaska 99811

Dear Mr. Szymanski:

As staff members of Family Connection, Inc., a ~~non-profit~~ family counseling agency, we would like to share and articulate some serious, but correctable difficulties we have ~~observed~~ within the State's juvenile justice system.

Family Connection has provided Family Therapy services to a variety of youth institutionalized at McLaughlin Youth Center for the past three years. We are contracted to join the treatment team for a particular youth by either McLaughlin staff or Juvenile Probation staff. We have worked primarily with youth and their families prior to release from McLaughlin. Our goal has been to facilitate a smooth transition for the youth back into the family and community and to reduce the rate of recidivism. We specifically look at how the family functions and the interactional process that produces delinquent behavior.

We have been impressed with the expertise and professionalism of both McLaughlin staff and Juvenile Probation staff. They work with dedication to treat, rehabilitate and return youth to the community. However, present legalities place great limitations on the expertise of these professionals.

We support the Waiver of Jurisdiction Statute, Section 47.10.060 of the Alaska Statutes. The waiver allows for a procedure that determines if a minor is amenable to treatment, and if so, the minor is sent to McLaughlin Youth Center for rehabilitation, rather than to the Adult Justice System. We believe that if there are indications that a youth is amenable to treatment, society is better served by providing treatment services along with punishment. Unfortunately, our experience has shown us that the waiver statute has been abused in two ways.

First, the waiver is not used enough. Clearly, there have been youth who should have been waived to adult status for committing atrocious, violent crimes. This sentiment has been expressed by many in the past year. Why isn't the waiver being used effectively? How could this process be changed to facilitate more frequent use?

Secondly, the present statute contains serious limitations that has made the members of the juvenile justice system appear ineffective. As an example, if a youth is amenable to treatment but after an intensive course of treament the youth is still unchanged and dangerous, according to State law the youth must still be released. There is no other recourse. This has been a difficult moral and ethical dilemma for professionals within the Juvenile Justice System. How can we — ? ethically release a youth into the community knowing the youth is a danger to society.

Another problem involves the length of institutionalization. A youth cannot be held longer than two years or until their 19th birthday. We have observed a youth who committed a — WAIVER CASE violent murder receive a sentence of less than one year. In this case the youth simply refused to participate in treatment. Therefore, he is not adequately treated or punished. Again, treatment staff are put in a bind by the court as they are given an impossible task to perform with no recourse to protect either the treatment process or the community.

The State of Alaska has done well in providing rehabilitation for youth, while at the same time protecting the safety of our people. However, there are serious handicaps in Alaska's Juvenile Law that we feel need immediate attention, particularly with the present climate of overreaction. We would be greatly discouraged to see the State lose the flexibility in our laws to rehabilitate and punish by giving way to oversimplified, reactionary solutions.

We hope this letter will initiate a process of change. We are willing to devote our time to this issue and would like your feedback as to where we might direct our energies. Also, we would like to know what the role of your office will take in initiating change.

Sincerely,

Kathy Apple

Kathy Apple, RN
Family Therapist

Sincerely,

Rosemary Unterseher

Rosemary Unterseher, ACSW
Clinical Supervisor

KA/RU/MT
cc: all Judicial Members

Alaska State Legislature

House of Representatives

Official Business

Pouch V
State Capitol
Juneau, Alaska 99811

January 26, 1983

Kathy Apple and Rosemary Unterseher
Family Connection
204 East Fifth Avenue, Suite 215
Anchorage, Alaska 99501

Dear Kathy and Rosemary:

Thank you for your letter of January 17 regarding the State juvenile justice system. It was very well written and informative.

I am aware that there are several bills in the making which will affect the age of majority regarding criminal prosecution. Most favor lowering the age to 16 for felonies. I am not sure that they are reactionary.

As you pointed out, current Alaska law has been abused as written. The waiver provision has not been used enough. I believe this has resulted in general public distrust of the entire juvenile justice system. It is unfortunate, but a fact. And as legislators we are responsive to the public will. WE ARE ??

But like you, I would also hate to see the State lose its ability to be flexible in cases involving misguided youth. I agree that society is best served if treatment can rehabilitate problem youth and reintegrate them into society as productive citizens.

The key, as you also pointed out, is to write laws that provide for both flexibility and sternness. There are some cases where the youth is not amenable to treatment and should be treated as an adult in order to protect society. A good law would deal justly with both situations.

I personally do not anticipate drafting any legislation on this subject this session. I am also not serving on any committees which will deal with the bills that have been introduced.

I am, however, very interested in youth rehabilitation and plan to follow the issue closely. Any information or suggestions you can provide me would be greatly appreciated. If you have specific recommendations on the proper design of a law, please forward them and I will discuss them with my fellow legislators.

Also, if you have not already done so, I would advance your concerns to all members of both the Senate and House Judiciary Committees. It is in Judiciary that the proposed bills will first be heard. Representatives Clocksin, Bussell, Liska, Hayes, Barnes, Malone and Wendte are serving on the House Judiciary Committee. I do not have a list of Senate members.

Thank you again for expressing your concerns. If you have any questions please contact me or my staff in Juneau at 465-4978.

Sincerely,

Mike Szymanski
Representative

Alaska State Legislature

SENATOR
FRITZ PETTYJOHN
SRA BOX 2385 M
ANCHORAGE. ALASKA 99510
907/345-5174

LEGISLATIVE ADDRESS

POUCH V - STATE CAPITOL
JUNEAU. ALASKA 99811
907/465-3473

Senate

2-10-83
CB

TO: Representative Barnes
Representative Bussell
Representative Hayes
Representative Liska
Representative Pestinger

FROM: Senator Fritz Pettyjohn

DATE: February 8, 1983

SUBJECT: Juvenile Justice

Attached is a copy of a Letter to the Editor of the Anchorage Daily News from staff members of Family Connection, Inc. in regards to juvenile justice.

Point 1 is addressed by HB 109. Points 2 and 3 could also be looked into?

Attachment

Anchorage Daily News 4/8/83

LETTERS FROM THE PEOPLE

Suggestions for juvenile justice

As staff members of Family Connection, Inc., a non-profit family counseling agency, we would like to share and articulate some serious, but correctable difficulties we have observed within the state's juvenile justice system.

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We have been impressed with the expertise and professionalism of both McLaughlin staff and juvenile probation staff. They work with dedication to treat, rehabilitate and return youth to their community. However, present legalities place great limitations on the expertise of these professionals.

We support the Waiver of Jurisdiction Statute, Section 47.10.060 of the Alaska Statutes. The waiver allows for a procedure that determines if a minor is amenable to treatment, and if so, the minor is sent to McLaughline Youth Center for rehabilitation, rather than to the adult justic system. We believe that if there are indications that a youth is amenable to treatment, society is better served by providing treatment services along with punishment.

Unfortunately, our experience has shown us that the waiver statute has been abused in two ways.

First, the waiver is not used enough. Clearly, there have been youths who should have been waived to adult status for committing atrocious, violent crimes. This sentiment has been expressed by many in the past year. Why isn't the waiver being used effectively? How could this process be changed to facilitate more frequent use?

Secondly, the present statute contains serious limitations that has made the members of the juvenile justice system appear ineffective. As an example, if a youth is amenable to treatment but after an intensive course of treatment the youth is still unchanged and dangerous, according to state law the youth still must be released. There is no other recourse. This has been a difficult moral and ethical dilemma for professionals within the juvenile justice system. How can we ethically release a youth into the community knowing the youth is a danger to society?

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— Kathy Apple, RN
Family Therapist
— Rosemary Unterseher, ACSW
Clinical Supervisor
Family Connection

STATE OF ALASKA
FISCAL NOTE

Revision Date , 1983

I. REQUEST

Bill/Resolution No.: CSHB 109
Title: "..amending...waiver...provisions."
Sponsor: Rep. Pestinger
Requestor: House Finance Committee

II. FISCAL DETAIL

Agency Affected: Department of Law
Program Category Affected: Adm. of Justice
BRU, Program of Subprogram(s) Affected: Prosecution

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 83	FY 84	FY 85	FY 86	FY 87	FY 88
OPERATING		27.0				
100 PERSONAL SERVICES			33.9	35.9	38.1	40.4
200 TRAVEL		2.5	3.2	3.4	3.6	3.8
300 CONTRACTUAL		4.0	5.1	5.4	5.7	6.0
400 COMMODITIES		2.8	1.0	1.1	1.2	1.3
500 EQUIPMENT		1.5	-0-	-0-	-0-	-0-
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC						
TOTAL OPERATING	-0-	37.8	43.2	45.8	48.6	51.5
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND	-0-	37.8	43.2	45.8	48.6	51.5
FEDERAL FUNDS						
OTHER (Specify Source)						

POSITIONS:

FULL-TIME						
PART-TIME	-0-	1	1	1	1	1
TEMPORARY						

III. SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

Not specified by sponsor.

IV. ANALYSIS: Attach a separate page for any Analysis

Prepared By: Richard L. Pegues, Director Phone: 465-3672
Division: Administrative Services Division Date: April 5, 1983

Approved by Commissioner: Richard L. Pegues /for Norman C. Gorsuch, Attorney General Date: April 5, 1983
Department: Department of Law

Distribution:
Original to Legislative Finance
Copy to Office of Management and Budget (for Legislature introduced bills)
Copy to Department (for Governor introduced bills)
Copy to Sponsor
Copy to Requestor (if different from Sponsor)

3/8/83

CSHB 109
Analysis

This bill provides that persons 16 or 17 years of age who are charged with unclassified or class A felonies will be prosecuted as adults. Unlike the original version of the bill, CSHB 109 (Jud.) makes the waiver of these persons from juvenile to adult court automatic; there is no need for a hearing in juvenile court prior to the waiver. The elimination of the need for these hearings will result in a major savings of prosecutor time and resources.

It is estimated that approximately 30-35 persons a year will be waived into adult court under this bill. This figure includes those persons who are now waived, in the judge's discretion, following a hearing on the person's "amenability to treatment." Considering this, and the fact that the district attorney's offices currently handle those few cases which actually proceed to trial in the juvenile system, it is estimated that the net impact of this bill will be approximately 20 additional felony cases a year statewide, a burden which can largely be absorbed into the current workload of the various district attorney's offices.

CSHB 109
Fiscal Analysis

The changes made in the bill, by the committee substitute, making the waiver from juvenile to adult court automatic, will decrease the resources needed from one full-time Attorney IV and a part-time Legal Secretary to just one part-time Attorney IV. For the purposes of this analysis, position costs are based on salary schedule A. The first year of funding (FY 84) is based on 10 months of expenses to account for the time it takes to establish a new position. Costs beyond FY 84 are on a 12 month basis and include a 6% annual inflation factor.

1st Year (10 months)

	AIV (PPT)
Personal Services	27.0
Travel	2.5
Contractual	4.0
Commodities - ongoing	.8
Commodities - single time	2.0
Equipment - single time	1.5
Total	37.8

2nd Year (12 months + 6% annual inflation)

Personal Services	33.9
Travel	3.2
Contractual	5.1
Commodities	1.0
Total	43.2

1.	POSITION TITLE Attorney IV			RANGE/STEP 24A	BARG. UNIT X	FORM 12 PAGE/LINE	GOV.	APPROV.	DISAPP.
2.	TYPE OF POSITION PPT	STAFF MONTHS 10	RP NUMBER	PCN NUMBER	BRU PRIORITY	LOCATION Anchorage	ELECTION DISTRICT	LEG.		

3.	CONTINUATION LEVEL	ADDITION	
4.	TYPE OF EXPENDITURE		AMOUNT
	1	2	3
	PERSONAL SERVICES		
5.	Salary 2,126 x 10	21,260	
6.	Benefits 15.42	3,278	
7.	Supplemental Benefits	1,303	
8.	Fixed Benefits	1,200	
9.	TOTAL PERSONAL SERVICES 01		27,041
10.	Travel 02		2,500
11.	Contractual 03		4,000
12.	Commodities 04		2,800
13.	Equipment 05		1,500
14.	Other		
15.	TOTAL COST		37,841

	RECEIPT CODE	FUNDING SOURCE	
16.		Federal Receipts 1002	
17.		G.F. Match 1003	
18.		General Funds 1004	37,841
19.		I-A Receipts 1005	
20.		Program Receipts 1028	
21.		Other	

FOR B&M USE ONLY
4A KEY NUMBER __ __ - __ __ - __ __ - __ __ - __ __

JUSTIFICATION

This part-time Attorney position will be needed to handle the estimated 20 additional felony cases that will occur as a result of the automatic waiver from juvenile to adult court if CSHB 109 becomes law. The Attorney IV, or full working level of Attorney will be required because those cases to be tried will be either Class A or unclassified felonies, which are the most serious criminal offenses.

13 REQUEST FOR NEW POSITION

AGENCY DEPARTMENT OF LAW

PROGRAM ADMINISTRATION OF JUSTICE

BRU PROSECUTION

COMPONENT THIRD JUDICIAL DISTRICT

Revised Date

FY 84

The Anchorage Times

Saturday, April 30, 1983

HB109 file

Juvenile crime bill gets support

Times Staff
and Associated Press

Juneau — A bill that requires some juveniles accused of violent crimes to be tried as adults all but passed the House Friday on a 29-8 vote.

If the proposal doesn't come up for a second vote today, it will be sent automatically to the Senate.

The bill would let 16- and 17-year-old minors be tried as adults for the most serious felonies, called unclassified and class A felonies. They include murder, attempted murder, kidnapping, attempted kidnapping, rape, arson and possession of explosives with intent to commit murder or kidnapping.

Within hours after the House vote, the Senate Judiciary Committee took up a similar version of the bill.

But the Senate bill contains two major differences. It would limit the crimes for which a juvenile 16 or 17 years old must be prosecuted as an adult to unclassified felonies, the most serious violent crimes. And it would let a minor tried as an adult but convicted by a jury of a lesser charge to be handled by juvenile courts.

Both bills also would make it easier for prosecutors to get judges to send a juvenile charged with lesser felonies up to the adult courts for trial.

On the House floor, Rep. Don Clocksin, D-Anchorage, tried to amend the bill so that a minor tried as an adult but convicted of a lesser offense could be sentenced to treatment by the juvenile courts.

But bill sponsor Rep. Sam Pestinger, R-Anchorage, said his proposal gives the judge the choice of sentencing the minor to prison, probation or treatment.

Rep. Mike Miller, D-Juneau, said the bill would destroy the concept that a person is innocent until proven guilty. If a teen-ager is convicted of a lesser crime, the state shouldn't sentence him as an adult, he said.

Clocksin's amendment failed on a 20-17 vote.

Pestinger called his bill "practical crime prevention."

"It identifies the most serious crime, and applies our resources to the most serious crimes," he said.

But Clocksin said the bill doesn't prevent crime. It deals with how to handle teen-agers after they've been charged with a crime.

In the Senate Judiciary Committee, debate bogged down over what standard judges should apply when deciding whether to send a minor to the adult court.

The bill before them called for no waiver if there's a "substantial liklihood" the minor will commit no more crimes.

Sen. Bill Ray, D-Juneau, said if the juvenile has committed crimes in the past he's likely to commit more.

But Gail Horetski, an assistant attorney general, said murder and rape often are crimes of passion that are the first offenses committed by juveniles.

STATE OF ALASKA
PRELIMINARY STATEMENT OF FISCAL IMPACT

Bill No.: House Bill No. 109 Date on Bill: January 24, 1983
Title: "An Act relating to the criminal prosecution of minors."
Sponsor: Representatives Pestinger, Furnace, Uehling, Flood, Barnes, and Bussell
Requestor:

1. Estimated fiscal impacts on:

a. Expenditures:

(Thousands of Dollars)

			FY 83	FY 84	FY 85	FY 86		
Capital				15,714.0	-0-	-0-	-0-	-0-
Operating				-0-	-0-	3,389.7	3,563.0	3,776.7
Total				15,714.0	-0-	3,389.7	3,563.0	3,776.7

b. Revenues:

Revenue				-0-	-0-	-0-	-0-	-0-

2. Source of funds to offset fiscal impact of Bill:

Funding source not identified by Bill author.

3. Assumptions:

Available statistical data indicates there would be 31 juveniles arrested annually for unclassified or class A felonies. This would represent an increase of 28 in the number of juveniles subjected yearly to prosecution as adults. An average of 3 juveniles are waived from juvenile court jurisdiction each year under the existing judicial waiver mechanism. Of the additional 28 juveniles subjected to adult prosecution, 18 would be convicted and sentenced to imprisonment for periods of up to 20 years if adult prosecution and conviction rates are assumed. The first two years of the sentence would be served in a juvenile facility with up to 13 years served in an adult facility if it is assumed all offenders earn their maximum good time based on a formula of one day good time for three days served.

4. Disclaimer:
This statement has not been reviewed by the OMB in the Office of the Governor. It does not represent the policy of the Sheffield Administration or the final estimate of fiscal impact.

Prepared By: Roger C. Lange and Michael L. Pride Phone: 465-3376 & 465-3170
Division: Adult Corrections and Family and Youth Services Date: February 22, 1983

Approved by Commissioner: Robert Loeber Smith, Ph.D. Date: 3/4/83
Department: Health & Social Services

5. Distribution:
Original to Legislative Finance
Copy to OMB
Copy to Sponsor
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2/8/83

"An Act relating to criminal prosecution of minors."

COST ESTIMATES

A. Enactment of House Bill No. 109 will have a significant fiscal impact on the Department of Health and Social Services, both in juvenile and adult corrections. Since the new language would class individuals sixteen years and older as adults for unclassified and class A felonies, the time served by convicted sixteen and seventeen year-olds would increase substantially.

It is the estimate of the Department of Health and Social Services that ultimately an additional 97 beds will be needed to care for this group of individuals in a secure setting. Details of this estimate follow.

B. Youth Services Impact

1. FY 84 Capital Expenses: The construction of facilities to house 40 juveniles sentenced as adult prisoners is based upon the most recent available arrest data (1981).

2. This data shows that approximately 28 additional juveniles would annually be subject to prosecution under adult criminal statutes for unclassified and class A felony offenses. Assuming a conviction rate equal to the conviction rate for adult offenders similarly accused it might be expected that 18 juveniles would be convicted of such offenses annually and sentenced as adults under the provisions of House Bill No. 109.

Analysis of the arrest data yields expected frequency of convictions and sentences which would result in all juveniles sentenced as adults serving at least two years in the juvenile facility prior to transferring to an adult facility and two youths expected to serve their entire sentence of 3.75 years in a juvenile facility. Within two years 36 juveniles would then be serving adult sentences of at least two years in juvenile facilities. This population would stabilize after two years at approximately 38-40 because of the transfer of prisoners to adult facilities.

The FY 84 estimate is based upon 464 square feet for each of 40 maximum security cells; plus 1 station for each of the 2 detention units: one to accommodate 5 staff and 1 to accommodate 6 staff including the typist; and 1 common day room that can be utilized for meals, a rehabilitative program (counseling and education), and recreation. (No costs are included for a kitchen, as meals would be prepared in the existing facilities at McLaughlin and carried to the units.) It is also assumed that the Department's major study for

expansion would be revised to accommodate construction of the two units to connect with the existing building.

DOT/PF cost estimates for 464 square feet in a maximum security facility during the FY 85 construction season is $162.0. This includes design and planning costs which would begin in FY 84. The remaining funds would be carried over into FY 85 for construction and equipping the units.

$162.0 x 40 cells = $6,480.0

3. FY 86Operating Costs and Juvenile Expenses

June 30, 1985 would be the estimated completion date. Operating costs are estimated as follows:

100 Personal Services	$1,391.6
200 Travel	24.5
300 Contractual Services	119.0
400 Commodities	131.6
500 Equipment	22.6
700 Benefits to Individuals	109.4
	$1,798.7

The above estimates are based upon 30% of the related costs for the McLaughlin Youth Center's FY 84 Governor's Budget, with 6% added for FY 85 and FY 86.

Personal Services includes 1 Unit Leader, 3 Youth Counselor III's, 5 Youth Counselor II's, and 4 Youth Counselor I's for each unit. The staffing pattern is based on the necessity of operating the units as maximum security facilities. This level of security is required due to the high escape risk presented by those juveniles to be housed and upon the nature of the offenses for which they are sentenced. An Assistant Cook will serve in the existing kitchen, and a Clerk Typist III will provide all clerical support for both units.

Travel of staff to meetings, conferences, courses, and for transportation of new hires is included.

Contractual Services are estimated for the additional costs for communications, utilities, copier usage, equipment rental, inmate laundry, and fire, accident, and liability insurance.

Commodities include purchase of food, replacement of tableware, glassware, bedding, janitorial and cleaning supplies, and general office supplies.

Equipment items necessary for on-duty staff, closed circuit TV monitor of units and a camera for inmate ID are included.

Benefits to Individuals includes costs for medical and dental care, and a work program for 20 inmates.

C. Adult Confinement

It is assumed that no appreciable bed impact will be experienced by the Division of Adult Corrections until FY 1986. This is based on the assumption that the average age of offenders affected by this legislation will be 17 years, and that they will serve two years in a juvenile facility prior to transfer to an adult facility. This fiscal note identifies a need for 57 additional beds in an adult facility.

Based on arrest data indicating 28 additional persons 16 and 17 years of age being subject to adult prosecution annually for crimes in the unclassified or class A felony categories, and using conviction rates and average sentence lengths for adult offenders, the following is predicted:

1. Unclassified Felony

   One conviction per year with an average sentence of 15 years to serve (20 years less good time) will require 13 additional beds.

2. Sexual Assault I (Rape) With Gun, Dangerous Weapon, and/or Caused Serious Physical Injury

   One conviction per year with a sentence of 7.5 years to serve (10 years less good time) will require 5.5 beds.

3. Sexual Assault I (Rape) Without Weapon/Injury

   Three convictions per year with a sentence to serve of 6 years (8 years less good time) will require 12 beds.

4. Class A Felony With Gun

   Five convictions per year with a sentence to serve of 5.25 years (7 years less good time) will require 16.25 beds.

5. Class A Felony Without Gun

   Eight convictions per year and two sentenced so as to serve all time in a juvenile facility. Therefore, 6 individuals will serve an average of 1.75 years in an adult facility.

   $6 \times 1.75 = 10.5$ beds

6. Total beds required is 57 (rounded).

7. Cost Estimates

a. Capital Expenditures: Because of the serious nature of the offenses, construction of maximum security beds was considered appropriate at $162,000 per bed.

57 beds @ $162,000 per bed
57 x $162,000 = $9,234,000

b. Operating Expenditures: It is estimated that 23 positions will be required to provide security and support for these 57 beds: 1 Correctional Officer III, 20 Correctional Officer II's, and 2 Institutional Counselors. Costs for these positions will not occur until FY 1985, the anticipated opening data for the new beds.

FY 1986 Costs - Adult Confinement

Personal Services	$1,177,700
Travel	6,400
Contractual Services	184,000
Commodities	187,000
Equipment	5,900
Inmate Gratuities	30,000
TOTAL	$1,591,000

Inflation of 6% for all expenditure object groups was assumed calculating subsequent fiscal years.

POSITION PAPER

HOUSE BILL NO. 109
PAGE 1

"An Act relating to criminal prosecution of minors."

House Bill No. 109 would add additional provisions to AS 12.55 and AS 47.10 to accomplish two major purposes. The Act would: 1) alter and further define the process by which a determination is made to waive juvenile court jurisdiction over certain minors and subject them to prosecution as adults; and 2) define the type of facility in which minors who have been prosecuted and sentenced as adults are to serve their terms of imprisonment.

Section 2 of HB 109 would maintain the existing judicial waiver mechanism and mandate waiver of juveniles 16 years old or older upon a court finding of probable cause to believe they had committed an unclassified or class A felony. This Bill would embody in statute the presumption that older youths accused of serious violent crimes are responsible and should be held accountable for their acts as would adults similarly accused. The focus in dealing with such youth under the adult criminal code would be primarily upon retribution and deterrence rather than upon the equal balancing of the interests of the public and the youth under the juvenile code.

The effect of Section 2 of the Bill would be to increase the number of juveniles subject to prosecution under the adult criminal statutes and to increase the liability of such juveniles to sanctions more severe, both in nature and duration, than those to which they would have been liable under the juvenile code. Based on Calendar Year 1981 arrest data, it can be estimated that approximately 31 persons 16 and 17 years of age are arrested annually for crimes in the unclassified and Class A felony categories and would be, therefore, subject to prosecution as adults under the provisions of House Bill No. 109. This would represent an approximate increase of 28 in the number of juveniles prosecuted each year as adults.

The Department supports the conceptual basis for the alteration of AS 47.10.060 proposed in House Bill No. 109 - the presumption that older juvenile offenders accused of serious and violent crimes should be held accountable as adults. It is the Department's position that, though few in number, older youths accused of heinous violent crimes require sanctions qualitatively and quantitatively different from those available under the jurisdiction of the juvenile court. An additional provision is suggested, however, to protect the interests of those juveniles who, though accused of offenses which would require their waiver to adult jurisdiction, are ultimately acquitted or convicted only of lesser included offenses which would not mandate waiver of the juvenile. Such a provision could be added as AS 47.10.060(f) and be worded as follows:

> (f) Any person over whom jurisdiction is waived under (a)(1) of this section who is prosecuted as an adult but is acquitted or convicted of a lesser included offense which would not make him eligible for waiver under (a)(1) shall be subject to juvenile court

jurisdiction for disposition and for subsequent unlawful conduct other than that governed under (a)(1) or (a)(2).

In addition, the Department supports maintaining the existing judicial waiver allowing for adult prosecution of those persistent, repetitive juvenile offenders who have not or are unlikely to respond to treatment within the juvenile justice system. A discretionary waiver mechanism also allows for the prosecution as an adult for the rare juvenile below the age of 16 who has committed an egregious violent crime and is not amenable to rehabilitative treatment within the juvenile justice system.

Section 1 of House Bill No. 109 would provide statutory definition of the type of facility in which minors who have been sentenced as adults are to serve their terms of imprisonment. The Bill would add provisions to AS 12.55.015 to require that those juvenile defendants who had been prosecuted and convicted as adults would, if sentenced to a term of imprisonment, be confined in a juvenile correctional facility until reaching age 19, after which they would be transferred to an adult facility if more than one year remained on their terms of imprisonment. The Department opposes this provision.

It is expected that youth receiving substantial adult sentences for serious crimes would require a much greater level of security than would be provided in juvenile institutions. In addition, administrative prudence would also require that such youths be separated from other less sophisticated juveniles and be provided with rehabilitative programs differing markedly from those designed for younger juvenile offenders. Older youths convicted of serious, violent crimes would best be dealt with in a system designed to provide a continuum of security and rehabilitative program levels to address the range of maturity and sophistication of young adult offenders. Such a continuum could best be provided within the adult correctional system.

Housing juvenile offenders convicted as adults in juvenile facilities on an interim basis would tend to make rehabilitative programs within those facilities less effective. The interim nature of programs designed for juveniles sentenced as adult offenders would render the programs less effective and decrease the level of motivation of those offenders involved in them. In addition, the presence within a juvenile facility of a group of older, more sophisticated, violent offenders would be a disruptive influence on treatment programs for younger offenders. Finally, it is the position of the Department that the protection of sentenced juvenile offenders from abuse or exploitation by adult prisoners within the adult correctional framework would be best achieved administratively rather than through legislation such as Section 1 of HB 109. A classification system assessing each individual offender's characteristics and circumstances and assigning the offender to a facility and program which provides adequate security and appropriate rehabilitative programming is a more appropriate method of providing necessary protection and a decidedly more flexible mechanism for managing prisoner populations.

POSITION PAPER/Department of Health & Social Services

In summary, the Department is supportive of the concept of holding older juveniles accused of serious, violent crimes accountable within the adult criminal system. However, the Department suggests an additional provision which would preclude any inequities for those juveniles ultimately acquitted after prosecution in the adult system for waivable offenses or after having been convicted of lesser offenses which would not make them eligible for mandatory waiver. The Department opposes the provision requiring juveniles convicted and sentenced under the adult criminal statutes to be housed in juvenile facilities.

RECOMMENDED BY: Yvonne Elder Walker
Yvonne Elder Walker
Acting Director
Division of Family and
Youth Services

DATE: February 3, 1983

RECOMMENDED BY: for Roger C. Endell
Roger Endell, Director
Division of Adult
Corrections

DATE: February 14, 1983

APPROVED BY: for John R. Smith
Robert London Smith, Ph.D.
Commissioner

DATE: 2/18/83

STATE OF ALASKA
PRELIMINARY STATEMENT OF FISCAL IMPACT



Bill No: HB 109 Date on Bill: 1-24-83
Title: An Act relating to criminal prosecution of minors
Sponsor: Rep Pestinger
Requestor: House Judiciary

1. Estimated fiscal impacts on:

a. Expenditures:

	(Thousands of Dollars)				
	FY 83	FY 84	FY 85	FY 86	
Capital					
Operating					
Total	-0-	-0-	-0-	-0-	

b. Revenues:

Revenue					

2. Source of funds to offset fiscal impact of bill:

Source of funds not identified by sponsor

3. Assumptions:

No fiscal impact

4. Disclaimer:
This statement has not been reviewed by the OMB in the Office of the Governor. It therefore does not represent the final estimate of fiscal impact.

Prepared By: Francis C. Allan Phone: 269-5691
Division: Alaska State Troopers Date:

Approved by Commissioner: [signature] Date: 3/4/83
Department: Public Safety

5. Distribution:
Original to Legislative Finance
Copy to OMB
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2/15/83

STATE OF ALASKA
PRELIMINARY STATEMENT OF FISCAL IMPACT

Bill No: HB 109 Date on Bill: 1/24/83
Title: "An Act relating to criminal prosecution of minors."
Sponsor: Representative Pestinger
Requestor: House Judiciary Committee

1. Estimated fiscal impacts on:

a. Expenditures:

(Thousands of Dollars)

			FY 83	FY 84	FY 85	FY 86		
Capital								
Operating				91.8	101.7	107.8		
Total				91.8	101.7	107.8		

b. Revenues:

Revenue								

2. Source of funds to offset fiscal impact of bill:

No information provided.

3. Assumptions: This bill provides that juvenile offenders may be waived to adult court for criminal prosecution if the court finds after a hearing in juvenile court that the minor (1) has committed an unclassified or class A felony or (2) has committed any offense and is not amenable for treatment as a juvenile. It would require a hearing in every case where a waiver is sought, and this would require the commitment of additional prosecution resources. Based upon current statistics, it is estimated that approximately 30-40 hearings a year would be held. In addition, more attorney and staff resources would be required to prosecute as adults those juvenile offenders who are successfully waived.

4. Disclaimer:
This statement has not been reviewed by the OMB in the Office of the Governor. It does not represent the policy of the Sheffield Administration or the final estimate of fiscal impact.

Prepared By: Daniel W. Hickey Phone: 465-3428
Division: Department of Law- Criminal Division Date: 2/15/83

Approved by Commissioner: Norman C. Gorsuch, Attorney General Date: 2/15/83
Department: Department of Law

5. Distribution:
Original to Legislative Finance
Copy to OMB
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2/8/83

STATE OF ALASKA
BILL SHEFFIELD, GOVERNOR
DEPARTMENT OF LAW
CRIMINAL DIVISION
POUCH KC – STATE CAPITOL
JUNEAU, ALASKA 99811
PHONE: (907) 465-3428

March 17, 1983

The Honorable Charlie Bussell, Chairman
House Judiciary Committee
Alaska State Legislature
Pouch V
Juneau, Alaska 99811

Dear Representative Bussell:

In response to a request from Mr. Steve Cramer, I am sending you a copy of a bill drafted by the Department of Law regarding the "waiver" of juveniles charged with serious felony crimes from juvenile to adult court. The bill is provided for your use (if desired) as the basis of a committee substitute for HB 109, now before the House Judiciary Committee. I am also sending a copy of the bill to Senator Ray, Chairman of the Senate Judiciary Committee.

As you know, under the current law, minors accused of committing criminal offenses are handled in the children's court system unless they are "waived" into adult court after a hearing under AS 47.10.060 (i.e., when the special procedures required for minors are waived). Even for the most serious crimes, waiver under existing law is permitted only if the prosecution can prove to the court that the offender is "not amenable to treatment." If a minor charged with a serious offense has not previously come to the attention of the criminal justice authorities, and thus has never been "treated" under the children's criminal justice system, it is extremely difficult to prove that the minor would not be amenable to treatment, despite the heinous or brutal nature of the crime. If retained in the children's system, the offender must be released when he or she reaches the age of 20. Children's court jurisdiction cannot be extended beyond that point, regardless of an offender's lack of progress in treatment or his or her continuing to be a danger to the community.

The attached bill transfers jurisdiction over persons aged 16 and 17 who are accused of unclassified or class A felonies from the children's court to adult criminal court. The bill retains the children's court's ability to waive, in its discretion, in appropriate cases and after a full hearing, the children's proceedings for minors of any age who are charged with felony offenses. The standard for waiver is somewhat altered, however. Upon motion of the prosecutor, an offender charged with a felony will be transferred to adult court if the court finds that there is "no substantial likelihood"

3-07LH

that the person can be successfully rehabilitated under the jurisdiction of the children's court. The bill lists several factors which the court must consider when determining the likelihood of successful rehabilitation under the children's justice system.

If convicted of the original charge or of any lesser included offense, the defendant would be sentenced as an adult under the current AS 12.55. In order to allow the sentencing judge to consider all relevant factors, however, an offender under the age of 18 would not be subject to mandatory minimum or presumptive sentences on his or her first felony conviction. He or she would be subject to mandatory minimum and presumptive sentences for second or subsequent convictions.

If confined to custody while awaiting trial, or sentenced to a period of incarceration following conviction, the person will be committed to the custody of the Department of Health and Social Services for confinement in an adult facility. It is not considered appropriate to confine persons convicted of serious or brutal felonies to a children's facility, where they could have a detrimental influence upon other, less sophisticated young offenders.

Once a person is tried and sentenced as an adult, that person will be prosecuted as an adult for all subsequent criminal violations. This is to preclude the possibility that a person who has been convicted as an adult and has perhaps served a sentence in an adult facility could be confined in a children's facility following conviction for s subsequent, less serious offense. Again, it is not considered desirable to mingle these older, more sophisticated offenders with the general population found in children's facilities.

This letter is a brief summary of the more important aspects of the attached bill. I would be happy to answer any questions you might have about the bill, and to work with you or the committee staff on incorporating its provisions into HB 109.

Sincerely yours,

NORMAN C. GORSUCH
ATTORNEY GENERAL

DANIEL W. HICKEY
CHIEF PROSECUTOR

By: Gayle A. Horetski
Gayle A. Horetski
Assistant Attorney General

GAH/lb-09

Attachment

HOUSE JUDICIARY COMMITTEE OBSERVER/WITNESS SIGN-UP SHEET

DATE: 2-14-83 SPONSOR: Pestinger

SUBJECT(S): HB 109

NAME	REPRESENTING	ADDRESS	PHONE	OBSERVER	WITNESS	FOR	AGAINST
John R. Pugh	DHSS	Pouch H-01	5-3030		X		
Richard L. Price	"	" "	5-3030				
Dave Phillips	Environmental Conservation	Box 1994 Kenai					
GAYLE HORETSKI	AK. DEPT. OF LAW	POUCH K	5-3428		X		
SAM PESTINGER	LEG.	POUCH V			X		

HB

117

FROM: JANET JONES, SRA BOX 1688-A, ANCHORAGE 99507
H 345-0399

DR

AS A CONCERNED MOTHER, I URGE YOUR SUPPORT IN THE PASSING OF HOUSE BILL 117 AND SENATE BILL 74 IN THIS SESSION.

MSG 83-00004751 PRTY 1 03/31/83 12:31:04 ORIG: LA01 IN= 0006 OUT= 0042
FROM: SHIRLEE ANC LIO TO: POMS JUNEAU INFO
TARGET: LJHL SUBJ: POM

3/31/83, SHIRLEE ANC LIO, 4751

JR

TO: ALL MEMBERS, ALASKA LEGISLATURE

FROM: CELIA WARRIOR, 632 NORTH PINE, ANCHORAGE 99504
276-7292

I AM APPEALING TO YOU TO ADDRESS ISSUE OF CHILD SEXUAL ABUSE IN ALASKA. YOU MUST BE AWARE THAT IT IS AT EPIDEMIC PROPORTIONS. REALIZE YOU ARE BUSY; SOME OF YOU ARE ALREADY WORKING ON THE PROBLEM; THE REST OF YOU, PLEASE SEARCH YOUR CONSCIENCE AND MAKE LAWS TO HELP PREVENT CHILD MOLESTATION.



****

JR

TO: ALL MEMBERS, ALASKA LEGISLATURE

FROM: CELIA WARRIOR, 632 NORTH PINE, ANCHORAGE 99504
276-7292

I WANT TO THANK ALL OF YOU AND APPRECIATE THE RESPONSE THAT YOU HAVE GIVEN ON ME ON PROBLEM OF CHILD SEXUAL ABUSE. I JUST WISH THAT ALL OF YOU WOULD HAVE A VERY NICE, HAPPY EASTER.



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COMMENTARY AND SECTIONAL ANALYSIS
FOR THE PROPOSED 1983 AMENDMENTS TO ALASKA'S LAWS
RELATING TO SEXUAL ASSAULT AND SEXUAL ABUSE OF A MINOR

Section 1. AS 11.41.410, Sexual Assault in the First Degree.

This section repeals paragraphs (a)(3) and (4) of the Sexual Assault in the First Degree statute. These subsections are reclassified in section 3, below, as Sexual Abuse of a Minor in the First Degree.

Section 2. AS 11.41.420, Sexual Assault in the Second Degree.

This section accomplishes two things. It amends the current Sexual Assault in the Second Degree statute to define the crime as "sexual contact with another person without consent of that person." The amended language is consistent with that used in the Sexual Assault in the First Degree statute, which prohibits sexual penetration without consent. Under the current Sexual Assault in the Second Degree law the prosecutor must prove that the victim was "coerced" to submit to the sexual contact by the express or implied threat of imminent death, imminent physical injury, or imminent kidnapping. Technically, the defendant's use of force without any threats may not be sufficient to establish this crime; felony charges have been lost through a literal application of these terms.

The second change which this section makes is to raise the current class C felony offense of Sexual Assault in

the Third Degree, penetration with a person who is suffering from a mental defect or is incapacitated, to Sexual Assault in the Second Degree, a class B felony punishable by up to ten years in prison.

Section 3. AS 11.41.430, Sexual Abuse of a Minor In the First Degree.

This section creates a new classification of offense, Sexual Abuse of a Minor in the First Degree. The section prohibits sexual penetration with a person who is under the age of 13 and at least three years younger than the actor. It also prohibits sexual penetration with a person under 18 who is entrusted to the actor's care by authority of law or because the person is his son or daughter, including illegitimate or adopted children and stepchildren.

Basically, this provision covers conduct which is currently classified as Sexual Assault in the First Degree, but the language here adds the requirement of a three year age difference between the actor and the victim. This requirement is added to ensure that a child who engages in sexual play with another child of the same age level could not be charged with a felony. (Such behavior may in some circumstances be cause for parental concern, but it is not considered appropriate or useful to classify it as a crime.) Forcible sexual penetration of

any person, including a child, would continue to be punishable as Sexual Assault in the First Degree (AS 11.41.410), an unclassified felony.

The language in this section addresses a problem which has arisen under the present sexual assault laws by deleting the requirement that the actor be 16 years of age or older. The provisions of the law are thus made applicable to juvenile offenders. This is important; studies of adult sexual offenders indicate that many convicted offenders began to commit sexual assaults in their early teen years. Early identification and treatment of juvenile sexual offenders may ultimately decrease the number of adult offenders.

Sexual Abuse of a Minor in the First Degree is a class A felony offense. It carries a maximum sentence of up to 20 years in prison, and a presumptive term of five years upon conviction for a first offense.

Section 4. AS 11.41.435, Sexual Abuse of a Minor in the Second Degree.

This section creates a new classification of crime, Sexual Abuse of a Minor in the Second Degree. It includes the offenses found in the current Sexual Abuse of a Minor statute (AS 11.41.440), with the addition of the requirement that the

actor be at least three years older than the victim. This language exempts teenagers who have consensual sexual relations with other teens near their own age (a 17-year-old boy and his 15-year-old girlfriend, for example) from prosecution. As in Section 3, above, the amendment deletes the requirement that the actor be 16 years of age or older, thus making the statute applicable to juvenile offenders who assault children much younger than themselves--the babysitter/toddler situation, for example.

Paragraph 3 creates a new offense to address an omission in the current law. Under current law sexual contact by a parent or guardian with his own child is prohibited only if the child is under 13 (a class C felony) or under 16 (a class A misdemeanor). Since fondling of a child's genitals or breasts by a parent is a serious violation of the trust and authority relationships within a family, and is often the precursor of a more serious assault, this provision raises to the age of 17 those children who are protected under the law. This conduct is a class B felony offense, punishable by up to ten years in prison.

Section 5. AS 11.41.440, Sexual Abuse of a Minor in the Third Degree.

This section creates a new classification of offense entitled Sexual Abuse of a Minor in the Third Degree. Basically, this is the current Contributing to the Delinquency of a Minor statute raised from its present classification as an A misdemeanor to a class C felony offense. Class C felonies are punishable by up to five years in prison.

Section 6. AS 11.51.130(a)(4), Contributing to the Delinquency of a Minor.

Section 6 repeals the "sexual contact" paragraph of the present Contributing to the Delinquency of a Minor statute. The seriousness of this conduct has been increased in Section 5, above, to Sexual Abuse of a Minor in the Third Degree, a class C felony.

Section 7. AS 11.41.460, Indecent Exposure.

This section creates a new crime entitled Indecent Exposure, which is the intentional exposure of a person's genitals, buttock, anus or female breast to another person with reckless disregard for the offensive, insulting or frightening effect that the exposure that might have on the other person. Under current law this conduct is considered "Disorderly Conduct", a class B misdemeanor offense with a maximum penalty of ten days in jail. Some recent studies indicate that exposure

is sometimes the first step for sex offenders who later increase the seriousness of their conduct to sexual contact or penetration. The current law treats this behavior much too leniently. This section raises the classification of Indecent Exposure to an A misdemeanor level if the object of the exposure is a child under the age of 16. The offense remains a B misdemeanor if the witness to the exposure is an adult.

Section 8. AS 11.41.470, Definitions.

This section removes the requirement in the definition of "without consent" that an express or implied threat of death or kidnapping be "imminent". Threats to inflict harm of this magnitude are inherently coercive, and the prosecution should not have to prove exactly when the defendant intended to cause the death or kidnapping. A threatened physical injury must still be "imminent" to fit within the definition.

Section 9. AS 11.61.110(a)(7), Disorderly Conduct.

Section 9 repeals the current "exposure" paragraph of the Disorderly Conduct statute. This conduct is included in the Indecent Exposure provisions set out in section 7.

Section 10. AS 12.10.020, Specific Time Limitation.

This section creates an exception to the general five year statute of limitations (AS 12.10.010) to allow prosecution for a sexual offense against a child to be commenced within one year after the child reaches the age of 16, or reports the crime to a law enforcement officer, whichever occurs first. The period of limitation cannot be extended by more than ten years, however.

This change is necessary because sexual offenses against young children (especially intrafamilial abuse) are frequently not discovered until the child reaches sufficient maturity to realize the wrongfulness of the conduct and to identify those adults to whom the conduct may safely be reported. A child of 12, 13 or 14 will often report for the first time sexual abuse which has been occurring since he or she was 4 or 5 years old. While the most recent assaults may be prosecuted, these offenses may be classified as less serious than the earlier ones, because of the child's older age. In those situations where the sexual abuse has been a continuing course of conduct which spans several years of a child's life the trier of fact should be entitled to reach and consider all aspects of the adult's conduct.

COMMENTARY AND SECTIONAL ANALYSIS
FOR CSHB 117 (JUDICIARY)

Section 1. AS 11.41.420, Sexual Assault in the Second Degree.

This section does two things. It amends the current Sexual Assault in the Second Degree statute to define the crime as "sexual contact with another person without consent of that person." The amended language is consistent with that used in the Sexual Assault in the First Degree statute, which prohibits sexual penetration without consent. Under the current Sexual Assault in the Second Degree law the prosecutor must prove that the victim was "coerced" to submit to the sexual contact by the express or implied threat of imminent death, imminent physical injury, or imminent kidnapping. Technically, if a defendant physically forces a person to have sexual contact with him, rather than coercing the victim through the use of threats, the defendant has not committed Sexual Assault in the Second Degree. The amended language establishes that any sexual contact with a person without that person's consent is a class B felony.

The second change which this section makes is to raise the current class C felony offense of Sexual Assault in the Third Degree, penetration with a person who is suffering from a mental defect or is incapacitated, to Sexual Assault in the Second Degree, a class B felony (punishable by up to ten years in prison). The language describing the crime has not been altered.

Section 2. This section adds three new statutes to the Criminal Code, as described below.

AS 11.41.434, Sexual Abuse of a Minor In the First Degree.

This section creates a new classification of offense, Sexual Abuse of a Minor in the First Degree. The section prohibits a person 16 years of age or older from engaging in sexual penetration with a person who is under the age of 13. It also prohibits a person 18 years of age or older from engaging in sexual penetration with a person under 18 who is entrusted to the adult's care by authority of law or is his son or daughter, including illegitimate or adopted children and stepchildren.

Basically, this provision takes conduct which is currently labelled Sexual Assault in the First Degree (subsections (a)(3) and (a)(4) of present AS 11.41.410) and moves it to a new section entitled Sexual Abuse of a Minor in the First Degree. The conduct continues to be punishable as an unclassified felony, which carries a maximum sentence of up to 30 years

in prison and a presumptive term of eight years upon conviction for a first offense. Forcible sexual penetration of any person, including a child, would continue to be punishable as Sexual Assault in the First Degree, an unclassified felony.

AS 11.41.436, Sexual Abuse of a Minor in the Second Degree.

This section creates a new classification of crime, Sexual Abuse of a Minor in the Second Degree. It includes all three types of conduct now prohibited in the Sexual Abuse of a Minor statute (AS 11.41.440), but raises the classification of the crime from a C to a B felony level. In subsection (a)(1) the requirement that the defendant be at least four years older than the victim has been added. This language would exempt from prosecution those teenagers who have consensual sexual relations with other teens near their own age (a 17-year-old boy and his 15-year-old girlfriend, for example).

Paragraph 3 creates a new offense to address an omission in existing law. Under current law, sexual contact by a parent or guardian with his own child is a crime only if the child is under 13 (a class C felony) or under 16 (a class A misdemeanor). Fondling of a child's genitals or breasts by a parent is a serious violation of the trust and authority relationships within a family, and is often the precursor of a more serious assault. Existing law in this area is not sufficiently serious nor comprehensive. This provision extends the protection of the law to all children under age 18, and raises the classification of the conduct to a B felony level, punishable by up to ten years in prison.

AS 11.41.438, Sexual Abuse of a Minor in the Third Degree.

This section creates a new classification of offense entitled Sexual Abuse of a Minor in the Third Degree. Basically, this is the current Contributing to the Delinquency of a Minor statute (AS 11.51.130(a)(4)) raised from its present classification as an A misdemeanor to a class C felony level. Class C felonies are punishable by up to five years in prison.

The contributing statute now applies to defendants who are 19 years of age or older. The threshold age in this provision has been dropped to 16 to be consistent with the other sexual abuse provisions, but the requirement that there be at least a four year age difference between the defendant and the victim excludes consensual sexual contact between teenagers of approximately the same age.

Section 3. AS 11.41.440, Sexual Abuse of a Minor in the Fourth Degree.

This section creates a new provision to address a problem which has arisen under the present sexual assault laws. Virtually all of the statutes which deal with sexual offenses against children require that the actor be 16 years of age or older. Unfortunately, prosecutors and social workers have discovered numerous instances where an older child has sexually mistreated a much younger child, often while "babysitting" the younger child. This section prohibits all sexual contact or penetration between a child under 16 and another child who is three or more years younger, and makes such contact a class A misdemeanor.

The three year age difference requirement is included to ensure that a child who engages in sexual play with another child of approximately the same age may not be charged with a crime. Such behavior may, in some circumstances, be cause for parental concern, but it is not generally considered appropriate or useful to classify it as a crime. The purpose of making it a misdemeanor for a child to prey upon a much younger child is to establish the violation of a law which would allow intervention by the juvenile courts or social service workers. This intervention could be important; studies of adult sexual offenders indicate that many convicted offenders began to commit sexual assaults in their early teen years. Early identification and treatment of juvenile sexual offenders may ultimately decrease the number of adult offenders.

Section 4. AS 11.41.460, Indecent Exposure.

This section creates a new crime entitled Indecent Exposure, which is the intentional exposure of a person's genitals, buttock, anus or female breast to another person with reckless disregard for the offensive, insulting or frightening effect that the exposure that might have on the other person. Under current law this conduct is Disorderly Conduct, a class B misdemeanor offense with a maximum penalty of ten days in jail.

Some recent studies indicate that it is not uncommon for sex offenders to begin their assaultive behavior by exposing themselves to young children, and to gradually increase the seriousness of their conduct to sexual contact or penetration. Current law treats sexual exposure, especially to young children, much too leniently. This section raises the classification of Indecent Exposure to an A misdemeanor level (maximum sentence of one year) if the object of the exposure is a child under the age of 16. The offense remains a B misdemeanor (maximum sentence of 90 days in jail) if the witness to the exposure is an adult.

Section 5. AS 11.41.470, Definitions.

This section amends the definition of "without consent" to remove the requirement that the death or kidnapping with which the defendant threatens the victim be "imminent". Threats to inflict harm of this magnitude are inherently coercive, and the prosecution should not have to prove exactly when the defendant intended to cause the death or kidnapping. A threatened physical injury must still be "imminent" to fit within the definition.

Section 6. AS 12.10.020, Specific Time Limitation.

This section creates an exception to the general five year statute of limitations for prosecution for a crime (AS 12.10.010). If the five year limitation period has expired, this provision would allow prosecution for a sexual offense against a child to be commenced within one year after the child reaches the age of 16, or reports the crime to a law enforcement officer, whichever occurs first. In no case will the period of limitation be extended by more than five years, however.

This change is necessary because sexual offenses against young children (especially intrafamilial abuse) are frequently not discovered until the child reaches sufficient maturity to realize the wrongfulness of the conduct and to identify those adults to whom the conduct may safely be reported. A child of 12, 13 or 14 will often report for the first time sexual abuse which has been occurring since he or she was 4 or 5 years old. While the most recent assaults may be prosecuted, these offenses may be classified as less serious than the earlier ones, because of the child's older age. In those situations where the sexual abuse has been a continuing course of conduct which spans several years of a child's life the trier of fact should be entitled to reach and consider all aspects of the adult's conduct.

Section 7. AS 12.55.125(i), Sentences of Imprisonment for Felonies.

This section amends existing penalty provisions to conform to the change in the title of the offense described in new AS 11.41.434, Sexual Abuse of a Minor in the First Degree. Under current law this conduct is labelled Sexual Assault in the First Degree and is included in AS 11.41.410(a)(3) and (4).

Sections 8 and 9. AS 01.05.031(c), Use of Personal Pronouns.

In 1982 the legislature passed ch. 58, SLA 1982, which required the revisor of statutes to alter the language of statutes to avoid the use of personal pronouns denoting masculine or feminine gender. These changes are to be made both when new laws are enacted, and when the printed pamphlets of statutes are scheduled for reprinting. This directive, as it applies to the criminal code, is merely a matter of form, as all criminal laws, including those relating to sexual assault and sexual abuse of a minor, are "sex neutral." See AS 01.10.-050 and the Legislative Commentary to the Criminal Code.

In many criminal statutes, including some amended in this bill, the complete elimination of the use of personal pronouns cannot be accomplished without rewriting the statutes. This rewriting raises the potential for unintentional alteration of the meaning of a provision and a change in the way the law is interpreted by a court. There is a well established rule of statutory interpretation (called the "rule of lenity") which establishes that any ambiguity in a criminal statute must be construed against the state and in favor of the defendant. Criminal statutes are also subject to constitutional challenge of the statutory language is vague, or fails to give clear notice of what conduct is prohibited.

Because the elimination of personal pronouns accomplishes no substantive purpose (the code is already sex neutral), and may cause obscurity or ambiguity in the statutory language which could hamper the effective enforcement of the laws, sections 7 and 8 of the bill amend the law to allow the continued use of personal pronouns in Titles 11 and 12, the Criminal Law and Criminal Procedure Codes.

Section 10. AS 18.66.900(6), Definitions

This section amends the definition of "sexual assault" as used in the violent crimes compensation law to include the crime of Unlawful Exploitation of a Minor (making child pornography). It also deletes a reference to AS 11.51.-130(a)(4), which is repealed by this bill. The content of that statute has been included in the new AS 11.41.438.

Section 11. Repealed sections.

This section repeals those statutes whose content has been incorporated into the provisions discussed above.

An Act revising the laws relating to sexual abuse of a minor, sexual assault, and indecent exposure; and extending the time limitation for prosecution of sexual offenses; and amending AS 01.05.031 c and section 4 chapter 58 SLA 1982.

Change all age references to "three years"

STATE OF ALASKA
THE LEGISLATURE

LEGISLATIVE AFFAIRS AGENCY

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

M E M O R A N D U M May 27, 1983

SUBJECT: Single subject rule
(CSHB 117 (Judiciary))

TO: Representative Charlie Bussell
Chairman, House Judiciary Committee

FROM: James H. Lear
Legislative Counsel JHL

I have prepared the committee substitute to HB 117 as requested. In my opinion this committee substitute creates a probable violation of the single subject rule.

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

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

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

The test which broadly stated:

> "Ultimately the decision in cases of this kind must be made on a basis of practicality and reasonableness. In determining whether a bill is confined to one subject we agree with the statement:

> 'All that is necessary is that the act should embrace some one general subject; and by this is meant, merely, that all matters treated of should fall under some one general idea, be so connected with or related to each other, either logically or in popular understanding, as to be parts of, or germane to, one general subject.'"

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

I can see no relationship between sex crimes and the exception to sex-neutral pronouns in AS 11 and AS 12 which are logically or in popular understanding so connected or related to each other as to be part of one general subject.

This committee substitute also violates the provision in section 13 requiring the subject of each bill to be expressed in the title. The language in the committee substitute title merely cites the sections that pertain to sex-neutral pronouns. That alone is insufficient to state the subject under Alaska's constitutional guidelines.

Basically, these constitutional deficiencies would jeopardize prosecution of any crime set out in this bill because the enactment of the bill would be invalid.

JHL:ljb
27/011

Alaska State Legislature

House of Representatives

Sam Pestinger
Finance Committee
Chairman
Sub-Committee on Education

Official Business

WHILE IN SESSION
Pouch V
State Capitol
Juneau, Alaska 99811
(907) 465-3706

OUT OF SESSION
716 W. 4th Ave., Suite 400
Anchorage, Alaska 99501
(907) 279-3531

S.R.A. Box 35M
Anchorage, Alaska 99507
(907) 344-7770

MEMORANDUM

May 26, 1983

TO: Rep. Charlie Bussell, Chairman
House Judiciary Committee

FROM Rep. Sam Pestinger

RE: CSHB 117/ Jud
(Relative To Criminal Law and Procedure)

I request that the committee reconsider raising from "three" to "four" years, the age difference between the offender and the victim, required before criminal liability can be imposed upon the offender.

Using "three" years in place of "four" is concurrent with existing statutes where age disparity is addressed.

During the last legislature, a three year age difference was adopted regarding new drug laws. (A.S. 11.71.010(a) and A.S. 11.71.030(a)).

Current sexual assault statutes recognize this disparity in prosecution of a person over 16 who sexually assaults someone under 13 (A.S. 11.41.410(3)).

The three year age difference strongly condemns the actions of an older person who takes unfair advantage of the immaturity and vulnerability of children while at the same time not injecting criminal law in an area where parental guidance and moral and religious training is the more appropriate response.

(7)

4/7

COMMITTEE REPORT

HOUSE

FURTHER: JUDICIARY
FINANCE

1/26/83

Date: _____

Mr. Speaker:

The Committee on HESS has had HB 117

An Act relating to sexual abuse of a minor.

under consideration and reports it back as follows:

[ ] do pass [ ] do not pass

[ ] do pass with attached amendments(s)

[ ] replace with CS for HB 117 (Hess) [ ] same title [X] new title

and recommends _____

[ ] AND attaches a "Letter of Intent" [X] ~~New~~ Fiscal Note Sup 35
[ ] Zero Fiscal Note Attached

[ ] reports it back without recommendation

[ ] referred to the _____ Committee

MEMBERS SIGNING
DO PASS

[illegible] Miller Do Pass

[illegible]

[illegible]

MEMBERS HAVING
OTHER RECOMMENDATIONS:

Otto Kopman do pass when amended

Peter Jacobs do pass if amended

[illegible] do pass if amended

[illegible]

CHAIRMAN

CO-

H 60

THE LEGISLATURE OF THE STATE OF ALASKA
THIRTEENTH LEGISLATURE

FISCAL NOTE

I. REQUEST

Bill/Resolution No. House Bill No. 117
Title "An Act relating to sexual abuse of a minor"
Requested by Representative Pestinger Date Jan. 26, 1983

II. FISCAL DETAIL

Agency Affected Health & Social Services
Program Category Affected Offender Confinement Reformation & Supervision
BRU, Program or Subprogram(s) Affected Adult Confinement
(Note: If more than one budget component is affected, separate line-item amounts and funding for each component in the analysis section.)

EXPENDITURES (Thousands of Dollars)

		FY 83	FY 84	FY 85	FY 86	FY 87	FY 88
100	PERSONAL SERVICES						
200	TRAVEL						
300	CONTRACTUAL						
400	COMMODITIES						
500	EQUIPMENT						
600	LAND & STRUCTURES						
700	GRANTS, CLAIMS ETC.						
	TOTAL	2044.0	-0-	64.1	370.0		

FUNDING (Thousands of Dollars)

GENERAL FUND	2044.0	-0-	64.1	370.0		
FEDERAL FUNDS						
OTHER (Specify Fund Source)						

POSITIONS

FULL TIME						
PART TIME						
TEMPORARY						

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

This bill relates to the crime of sexual abuse of a minor in the first and second degrees.

IV. DATE February 4, 1983 PREPARED BY Roger C. Lange
AGENCY Division of Adult Corrections
PHONE 465-3376

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

33-001 (Rev. 12/79)

STATE OF ALASKA
FISCAL NOTE

Revision Date , 1983

I. REQUEST

Bill/Resolution No.: CSHB 117 (Judiciary)
Title: "...laws relating to sexual abuse..."
Sponsor: House Judiciary (Orig.-Pestinger)
Requestor: House Finance Committee

II. FISCAL DETAIL

Agency Affected: Department of Law
Program Category Affected: Admin. Justic
BRU, Program or Subprogram(s) Affected: Prosecution

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 83	FY 84	FY 85	FY 86	FY 87	FY 88
OPERATING		27.0	34.1	36.1	38.3	40.6
100 PERSONAL SERVICES		2.5	3.2	3.4	3.6	3.8
200 TRAVEL		4.0	4.3	4.6	4.9	5.2
300 CONTRACTUAL		2.8	1.0	1.1	1.2	1.3
400 COMMODITIES		1.5				
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC						
TOTAL OPERATING	-0-	37.8	42.5	45.2	48.0	50.9
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND	-0-	37.8	42.5	45.2	48.0	50.9
FEDERAL FUNDS						
OTHER (Specify Source)						

POSITIONS:

FULL-TIME						
PART-TIME	-0-	1	1	1	1	1
TEMPORARY						

III. SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

Not specified by sponsor.

IV. ANALYSIS: Attach a separate page for any Analysis

Prepared By: Richard I. Pegues, Director — Phone: 465-3672
Division: Administrative Services Division — Date: June 2, 1983

Approved by Commissioner: Richard I. Pegues/for Norman C. Gorsuch, Attorney General — Date: June 2, 1983
Department: Department of Law

Distribution:
Original to Legislative Finance
Copy to Office of Management and Budget (for Legislature introduced bills)
Copy to Department (for Governor introduced bills)
Copy to Sponsor
Copy to Requestor (if different from Sponsor)

CSHB 117 (Judiciary)
Fiscal Note
Analysis

This bill is a comprehensive revision of current law regarding sexual assault and sexual abuse of a minor. Current laws dealing with sexual offenses against children appear in several different areas of the criminal code. Depending upon the age of the child victim, current law authorizes vastly different penalties for essentially similar conduct on the part of the adult offender; some conduct which is extremely harmful to children is not covered at all.

Sexual offenses against children include many types of conduct. This bill groups all of this conduct in one area of the code, and labels most of it "Sexual Abuse of a Minor." The conduct is divided into four degrees of seriousness, and penalties appropriate to the classification of the crime are attached.

In most instances the penalties which may be imposed upon conviction for conduct constituting sexual abuse of a minor are raised. These increases in the possible penalties for offenders are needed to protect children from sexual abuse, and to punish and isolate offenders, but will not have any appreciable effect upon the costs of prosecution. Fiscal impact will occur only in those limited areas where a new crime is created to prohibit conduct which is not included under current law. It is estimated that the additional coverage in these limited areas will require an increase in prosecution resources equivalent to .5 of an attorney position.

Fiscal Analysis - CSHB 117 (Judiciary)

The impact of CSHB 117 is expected to result in the addition of one-half the time of an Attorney IV on a statewide basis. Actual placement of cumulative positions and costs can only be determined after the Legislature has acted and we know what bills and fiscal notes have been approved. For purposes of the analysis, salary schedule A has been used.

The first year of the analysis is FY 84 and costs have been calculated on a 10 month basis to account for the time required to establish new positions and the time it takes to get a new program underway. The costs after FY 84 are on a 12 month basis and include a 6% annual inflation factor.

1st Year (10 months)

	Atty IV (PPT)	Total
Personal Services	27.0	27.0
Travel	2.5	2.5
Contractual	4.0	4.0
Commod. - ongoing	.8	.8
Commod. - single time	2.0	2.0
Equipment - single time	1.5	1.5
		37.8

2nd Year (12 months + 6% annual inflation)

Personal Services	34.1	34.1
Travel	3.2	3.2
Contractual	4.3	4.3
Commodities	1.0	1.0
		42.5

1.	POSITION TITLE Attorney IV			RANGE/STEP 24A	BARG. UNIT X	FORM 12 PAGE/LINE	GOV.	APPROV.	DISAPP.
2.	TYPE OF POSITION PPT	STAFF MONTHS 10	RP NUMBER	PCN NUMBER	BRU PRIORITY	LOCATION Anchorage	ELECTION DISTRICT 8	LEG.		
3.	CONTINUATION LEVEL		ADDITION						

	TYPE OF EXPENDITURE		AMOUNT
	1	2	3
	PERSONAL SERVICES		
5.	Salary 2,215 X 10 mos.	21,250	
6.	Benefits	3,278	
7.	Supplemental Benefits	1,303	
8.	Fixed Benefits	1,200	
9.	TOTAL PERSONAL SERVICES 01		27,031
10.	Travel 02		2,500
11.	Contractual 03		4,000
12.	Commodities 04		2,800
13.	Equipment 05		1,500
14.	Other		
15.	TOTAL COST		37,831

	RECEIPT CODE	FUNDING SOURCE	
16.		Federal Receipts 1002	
17.		G.F. Match 1003	
18.		General Funds 1004	37,831
19.		I-A Receipts 1005	
20.		Program Receipts 1028	
21.		Other	

FOR B&M USE ONLY
4A KEY NUMBER __ __ - __ __ - __ __ - __ __ - __ __

JUSTIFICATION

Enactment of the revisions to the current law regarding sexual assault and sexual abuse of a minor, contained in this bill, will require the services of an Attorney IV, on a part time basis. The additional workload occurs in a few limited areas where a new crime is created to prohibit conduct that is not included under current law. Because sexual assault and abuse offenses are difficult to try, a skilled litigator, at the full working level of Attorney IV, will be required.

13 REQUEST FOR NEW POSITION

AGENCY DEPARTMENT OF LAW

PROGRAM ADMINISTRATION OF JUSTICE

BRU PROSECUTION

COMPONENT THIRD JUDICIAL DISTRICT

Page 1 of 1

Revised Date

FY 84

01-1136 (7/82) - 13

HB

124

[illegible] 3/14 8:00 AM

TO: ALL LEGISLATORS

FROM: PAULA GIAUQUE
PO BOX 1722
PALMER 99645

WE WOULD LIKE TO HAVE YOUR SUPPORT ON HB 124. THERE ARE MANY FARMERS WHO WILL SURELY BE OUT OF BUSINESS WITHOUT SOME RELIEF UNDER THIS LEGISLATION. A WORKABLE A.R.L.F. WITH THE CAPABILITY OF ADJUSTING SOMEWHAT TO THE CURRENT CONDITIONS IS REALLY NEEDED AT THIS TIME.

MAR 1983 RECEIVED

HB

126

AMENDMENT

OFFERED IN THE HOUSE: BY: Judiciary

TO: _____ HOUSE BILL No. 126

SENATE BILL No. _____

PAGE: 1 LINE: 18

Insert at the end of line 18: This limitation does not apply to commercial operations where the Civil Aeronautics Board or the Alaska Transportation Commission has issued certification or authorization.

MEMO to Committee
5/16/83
From Staff Counsel
HB 126--by Rep. Hurlburt

In the files are two House Research Agency reports, dated 1/28/82 and 2/10/82.

The first one contains copies of California statutes on the subject.

The sponsor suggests the following amendment: at end of line 18:

This limitation does not apply to commercial operations where the Civil Aeronautics Board or the Alaska Transportation Commission has issued certification or authorization.

This would mean that a pilot, flying a private plane and not a commercial operation, would not be liable--except for intoxication or gross negligence--when an individual asks for a lift as a guest on the private plane on a non-commercially scheduled flight.

5/16/83

HOUSE BILL 126

WHAT HOUSE BILL 126 WOULD DO WOULD BE TO DISALLOW THE RECOVERY OF DAMAGES TO A GUEST ABOARD AN AIRCRAFT RESULTING FROM AN ACCIDENT.

AS EVERYONE IS AWARE ALASKA HAS A HIGHER NUMBER OF PILOTS AND AIRCRAFT PER CAPITA THAN ANY STATE IN THE NATION. THE REASON FOR THIS IS BECAUSE OF THE VAST DISTANCE BETWEEN CONCENTRATIONS OF POPULATIONS AND MOST OF THEM ARE OFF OF THE ROAD SYSTEM, HENCE THE BEST WAY TO TRAVEL IS BY AIRCRAFT. ALSO AIRCRAFTS ARE POPULAR BECAUSE OF THEIR RECREATIONAL VALUE. IN A SITUATION AS WE HAVE IN ALASKA IT IS PRACTICAL THAT WE UTILIZE EVERY AVAILABLE SEAT. PILOTS IN GENERAL ARE OFTEN VERY HAPPY TO GIVE SOMEONE A RIDE IF THEY ARE BOTH GOING IN THE SAME DIRECTION AND THERE ARE SEATS AVAILABLE. THE PROBLEM IS THAT A PILOT TAKES THE RISKS OF BEING LIABLE FOR SUIT FOR STRICTLY DOING SOMEONE A FAVOR. THIS BILL IS INTENDED TO COVER THE PRIVATE AIRCRAFT OWNER, NOT THE COMMERCIAL OPERATOR.

THE RESULT OF THIS IS THAT PILOTS ARE OFTEN RELUCTANT TO GIVE RIDES BECAUSE OF THE LIABILITY AND A LOT OF SEAT MILES ARE LOST. HOPEFULLY THIS BILL WOULD REMEDY THIS.

ALASKA STATE LEGISLATURE
HOUSE OF REPRESENTATIVES
RESEARCH AGENCY

Pouch Y, State Capitol
Juneau, Alaska 99811
(907) 465-3991

February 10, 1982

MEMORANDUM

TO: Representative Terry Martin

FROM: David Teal
Research Staff

RE: Aircraft Accident Statistics
Research Request Number 82-21

As discussed with Mary Isaacs of your staff, some of the specific information you requested is not readily available. Following is a list of your specific requests with accompanying comments and the information which I am able to provide at this time. If you would like this agency to perform additional work, please call.

Air Taxi Accidents, Fatalities, and Injuries

Attachment A to this memorandum is a list of aviation accidents involving Alaskan air taxi operators. The list was obtained from the Federal Aviation Administration (FAA) and contains information on injuries and fatalities as well as other details of air taxi accidents. Eugene Morris, who provided the figures, says the FAA collects but does not compile records on injuries. The injury and fatality figures in attachment A have been compiled by hand, but the fatality count does not always agree with the fatality count compiled by the FAA. Also, some duplication was discovered on the list so it does not appear to be a reliable data source in its present form.

The fatality count on the list is 44 in 1978, 30 in 1979, 29 in 1980, and 19 in 1981. Judging from a comparison of these figures, which are generally less than the FAA fatality count presented in the following table, the injury count may be somewhat understated. Mr. Morris also warned that injury figures may be underreported because injuries are not required to be reported to the FAA. I have not attempted to adjust the count of injuries; I simply counted the number of injuries on attachment A and added the sums to the compiled information supplied by the FAA and presented in the following table.

Air Taxi Accidents in Alaska--1976 through 1981

Year	Accidents	% of Total Accidents	Fatal Accidents	% of Fatal Accidents	Fatalities	% of Total Fatalities	Injuries
1976	63	21	8	22	26	32	NA
1977	51	20	7	22	24	29	NA
1978	58	21	14	25	44	36	54
1979	64	28	12	36	34	52	27
1980	68	29	10	33	30	45	53
1981*	60	27	11	29	30	32	16
TOTAL	364	24	62	28	188	37	

*Preliminary

Source: Federal Aviation Administration (FAA) 1/82

==========

The table shows that air taxi operators were involved in roughly one out of every four aviation accidents in Alaska during the past six years. Using fatal accidents as a guide, the data indicate that air taxi accidents tend to be more serious than other aviation accidents involving small aircraft. An average of three people died in each fatal air taxi crash while the average for other aviation was two deaths per fatal accident. Twenty-eight percent of fatal accidents from 1976 through 1981 involved air taxis.

Air Taxis Involved in Accidents

I assume you are interested only in operators that have had numerous accidents, not in a complete listing of all accidents. (Note, however, that attachment A lists all air taxi accidents from 1978 through 1981.) Operators that have had four or more accidents in four years include those listed below. The number of accidents may have little meaning when considered alone; accidents per hour flown would be a more relevant statistic. However, as noted in this memorandum, information on hours flown is not yet available.

Rush Air, Inc
Samuelson's Flying
Yute Air Alaska
Armstrong Air
Peninsula Airways
Aurora Air Service
Temsco Helicopters
Southeastern Skyways
Sea Airmotive
Western Yukon Air

Average Hours Flown by Air Taxis in Alaska

The Air Carriers Association estimated that air taxi pilots fly an average of 800 to 1000 hours per year, but could not provide information on the number of planes in operation. Hours flown by air taxis are reported to the Alaska Transportation Commission. The Commission is in the process of computerizing its records and will be unable to provide information for two months or more. Records for prior years have not been tabulated by the Commission.

Awards for Injuries and Deaths, Both Total and Per Incident and Premiums for Hull and Liability Insurance

A survey of insurance carriers would be required to separate:

a) awards for hull damage from liability (injury and death) awards;

b) awards for incidents involving air taxi operators from other awards for aviation accidents;

c) premiums for hull insurance from premiums for liability coverage; and

d) premiums collected for air taxi operations versus premiums for other types of aviation.

Although a survey might be difficult to complete within a time-frame acceptable to the Committee, this agency will attempt to gain further information if requested to do so. However, responses from insurance companies which were contacted in order to complete this memorandum were not encouraging. Russ Neville, from Brady and Associates (a major aviation insurance broker in Alaska), has done similar research in the past. He pointed out that there is no requirement to report a breakdown of awards or premiums and that insurance brokers are not risk bearers so have no interest in maintaining or providing a breakdown.

Mr. Neville estimated that his insurance company would require about three days of work to produce the information requested. Mr. Neville has also contacted London underwriters in his attempts to gain information, but was told to contact the local contract-holders. London would not provide a list of domestic contacts.

The Division of Insurance was able to provide some information on total awards granted for aviation accidents. This information is presented in the discussion below.

The following (full page) table reports total premiums collected and total losses paid by aviation insurance carriers operating in Alaska. As noted earlier, I was unable to separate premiums and awards related only to air taxis. The table includes premiums, losses, and accident statistics for all private aviation in Alaska from 1976 through 1980.

The table should be interpreted with caution. Because carriers are not required to report losses to the Division of Insurance, the loss figures in the table do not necessarily reflect all losses. There may also be some misleading information due to accident and payment of award for that accident occurring in different years.

Columns 1 and 2 show premium and loss data for admitted carriers--those who applied and subjected themselves to State regulation--and for non-admitted carriers such as Lloyds of London. Column 3 gives the loss ratio, which is defined as losses divided by premiums. The loss ratio shows that the higher premiums experienced in recent years are in response to increasing insurance losses by carriers.*

Columns 4 through 9 indicate the amount of awards (for both hull damage liability) per incident. The number of accidents show large variations from year to year with no clear trend visible. The awards per incident show a steady upward trend. From 1976 to 1980, the average award per accident increased by 182 percent, average award per fatal accident increased by 169 percent, and average award per fatality increased by 175 percent. Average awards in 1980 were roughly double the average awards in 1979. The data in the following table indicate that the primary cause of higher losses is the increase in average award per incident, not a greater number of accidents.

Workers Compensation Death Benefits

Attachment C is the wording of State law relating to death benefits through Workers Compensation. Because of exclusions for age and disability of beneficiaries, there is no fixed limit on the total amount of death benefits that can be collected. According to the Department of Labor, the average death benefit is roughly $104,000. Although there are complicating factors which are too technical for the purposes of

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*Attachment B to this memorandum was provided by the Division of Insurance and shows that admitted carriers lost money (had a loss ratio greater than 1.00) insuring aviation from 1973 through 1978. Attachment B also shows all carriers selling aviation insurance from 1970 through 1980.

Aviation Accident Statistics--1976 through 1980
State of Alaska

Year		Premiums ($000)	Losses ($000)	Loss Ratio	Accidents	Loss per Accident	Fatal Accidents	Loss per Fatal Accident	Fatalities	Loss per Fatality
1976	N	10,465	4,919	.47						
	A	1,379	2,789	2.02						
		11,844	7,708	.65	296	$26,040	36	$214,110	81	$95,160
1977	N	10,928	5,064	.46						
	A	2,194	4,096	1.87						
		13,122	9,160	.70	252	$36,350	32	$286,250	83	$110,360
1978	N	13,902	7,307	.53						
	A	2,676	6,429	2.40						
		16,578	13,736	.83	271	$50,690	55	$249,745	122	$112,590
1979	N	12,842	8,563	.67						
	A	1,292	277	.21						
		14,134	8,840	.63	231	$38,270	33	$267,880	66	$133,940
1980	N	16,704	15,633	.94						
	A	1,884	1,667	.88						
		18,588	17,300	.93	236	$73,305	30	$576,670	66	$262,120

Note: N represents non-admitted insurance carriers.
A represents admitted insurance carriers.

Source: House Research Agency 2/82

this memorandum, the maximum death benefit under normal conditions is $375,544 paid over a period of ten years.

Because the benefits are paid over a period of time, the benefit amount should be discounted to the present period if a comparison with a lump sum settlement is desired. The table below gives the present value of the flow of Workers Compensation death benefits at various rates of interest.

At current market interest rates, the present value of the maximum death benefit is roughly $200,000. Fewer than two percent of Alaskan workers earn enough to qualify for maximum benefits. The present value of the average death benefit (at a 12 percent interest rate) is about $60,000.

Present Value of $375,544 in Workers Compensation
Death Benefits at Various Rates of Discount

Interest Rate	Present Value
3 %	$332,922
6	296,924
9	266,360
12	240,278
15	217,902
18	198,609

Source: House Research Agency 2/82

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Additional data on hours flown has been requested but may take a few months to arrive. I hope the limited information presented here is useful. If you have questions on any of the material, please call.

Attachments

ENT REMARKS

0116 AL01 CESSNA RUSSIAN MISSION AK LAND-ROLL FW TERRAIN/SNIC CALCR ATCO VFR DAY COM 01000 00100 00

95H AL01 135F WESTERN YUKON A 17 SNU DIR CNTL LOOP RWY/ALIGN SNOBNK APAX LSNO OCST UNKN 00060 11000 00

STRUCK SNOW BERM ON EDGE OF SNOW-COVERED RUNWAY ON LANDING. POOR RUNWAY MAINTENANCE A FACTOR.

0123 AL01 GRUMAN DUTCH HARBOR AK FOG UNKNOWN GRND/WTR UNK ACOM UNK DAY COM 00237 00106 00

469 AL01 G21A PENINSULA AIRWA MISSING WX MAIL UNKN OCST PILT 00106 16068 00

LOST AT SEA. FOUND AIRCRAFT^S WING PONTOON. LOW CEILING AND ICING IN CLOUDS. CAUSE OF CRASH UNKNOWN.

0125 AL01 ENSTRM ANCHORAGE AK LAND-PWR ON VERT CNTL/IMTFR UNSIT ATCO VFR NIT CPF 00440 00120 00

674 AL01 F28C ALYESKA AIR SER CNTLD COLL PLAN/ACPERF PRECLD OTHR NOWX OCST PILT 00040 02613 00

SMOKE ODOR. ELECTED TO LAND. CRAMPED COCKPIT CAUSED CONTROL INTERFERENCE. ROTORS HIT HILL. SOLVENT, OIL IN AIR DUCT

0126 AL01 CESSNA CLARK^S POINT AK FOG APPR-VFR PTRN CIRC FLY/SPB WXBRD ATCO IFR DAY COM 01000 00023 00

279Q AL01 U206 08 SNU STALL PLAN/WX WX APAX CEIL OBSC PILT 00023 03035 00

WEATHER DETERIORATED RAPIDLY NEARING AIRPORT. STALLED, TURNING BASE DUE TO NEAR ZERO VISIBILITY.

10421 AL01 BELL HOMER AK HOVERING WHITE OUT WXBRF ATCO VFR DAY COM 00731 00056 00

275G AL01 206B MARITIME HELICO SNU CNTLD COLL GRND/WTR MISCL APAX CEIL BRKN PILT 00056 03633 00

DRIFTED IN ROCKS ON MOUNTAIN-SIDE HOVERING IN WHITEOUT. PILOT FAILED TO MAINTAIN OUTSIDE REFERENCE IN HOVER.

10509 AL01 CESSNA MARSHALL AK APPR-GO ARND VFR INIT/GOAR MISTK OTCO VFR DAY CPF 00150 00150 00

374M AL01 207A COASTAL AVIATIO OVERSHOOT DWNDRF APAX NOWX CLER PILT 00110 01400 00

AIRCRAFT CRASHED WHEN PILOT ABORTED LANDING AND ATTEMPTED GO-AROUND. FACTOR WAS TURBULENCE.

10523 AL01 STEROS ALEXANDER LAKE AK LAND-ROLL FW BRAKE/GRDCTL MISJG ATCO VFR DAY ATF 00501 00260 00

03A AL01 SC73 DIR CNTL LOOP SOFTSH ACAR NOWX CLER PILT 00174 05260 00

DURING LANDING ROLL, AIRCRAFT WHEEL ROLLED ONTO SOFT SHOULDER. AIRCRAFT SWERVED AND NOSE WHEEL COLLAPSED.

10604 AL01 BEECH ANVICK AK ATCO 00

46PA 16S ALASKA EXPRESS ACAR 00

CRASHED AFTER DEPARTURE.

10611 AL01 CESSNA NAPASKIAK AK FOG CRUISE-FCD/PREC LD CARBHT/DEIC MISJG ATCO IFR DAY CPF 00200 00316 00

958X AL01 172A WESTERN YUKON A CNTLD COLL TERRAIN/UNSU EMLAND APAX LTRN OCST PILT 00011 01023 00

ENGINE QUIT ON TAKEOFF. DITCHED IN RIVER. NO ENGINE DEFECTS. CONDITIONS GOOD FOR CARBUREATOR ICING.

10630 AL01 DHAV ANCHORAGE AK TKOF-INIT CLIMB GRND/WTR MISJG ATCO VFR DAY ATF 00020 00120 00

411F AL01 DHC2* 13 WAKE TURB AC/SPACE MISCL APAX NOWX SCAT PILT 00026 09000 00

AIRCRAFT CRASHED DURING TAKEOFF WHEN IT GOT IN WAKE TURBULENCE FROM AIRPLANE THAT PREVIOUSLY TOOK OFF.

10701 AL01 CESSNA MOOSE PASS AK ATCO 0

2259 300CESSNA ACAR 0

AIRCRAFT APPEARS TO HAVE NOSED INTO GLACIER.

10702 AL01 CESSNA NIGHTMUTE AK LAND-ROLL FW BRAKE/GRDCTL MISJG ATCO VFR DAY ATF 00030 00016 0

03-38 AL01 185 EXECUTIVE CHART 02 DIR CNTL DRAG DRIFT MISCL UNKN NOWX SCAT PILT 00015 03000 0

```
E  DD  ACFT MAKE    CITY              ST  DIST PHASE OF FLIGHT    CAUSAL    SUPPTF TFLYP FLTCP LTCON CERT TRN   TSB   FAT
R  PRDD ACFT MODEL  DWN OFR NAME      RWAY RWYC ACCIDENT TYPE     CAUSAL    CONTRF TFLYS FLYCS SKCON PROF TNK99 TOTHR INJ
INT REMARKS
1218 AL61 CESSNA    BEERING           AK                                  ATCO                              382
82H      207                                                              APAX                              666

5115 AL61 DHAU      CORLOVILLE        AK                                  ATCO                              866
59T      DHC2MK3                                                                                            363
   AIRCRAFT CRASHED WHILE ATTEMPTING SKI LANDING.

3568 AL62 DHAU      KLAWOCK           AK  FOG  CRUISE-LO LVL OF  ENRT/TERRAIN CARLS ACOM VFR  DAY  COM  03024 00214 382
384  AL62 DHC2*     TYEE AIRLINES          CNTLD COLL            PLAN/WX     WX    ACAR FOG  SCAT PILT 00214 03654 666
   PILOT ALLOWED AIRCRAFT TO STRIKE TREE DURING ATTEMPT TO REMAIN IN VFR CONDITIONS BELOW CLOUDS.

3619 AL62 DHAU      TAKU RIVER        AK       GRND GRD TAXI      FLAN/ACFERF MISJG ATCO VFR  DAY  COM       .00050 962
756  AL62 DHC2*     CHANNEL FLY INC          COLL-OTHER                      MISCL FERY NOWX CLER UNKN 00030 00000 666
   TRIED TO MAKE A DOWN-RIVER TAKEOFF. ABORTED. CURRENT CARRIED SEAPLANE INTO TREES AND A SUBMERGED LOG NEAR SHORE.

3882 AL62 CESSNA    YUKUTAT           AK                                  ATCO                              866
53Z      206CESSNA  GULF AIR TAXI                                        APAX                              266
   WIND GUST CAUGHT LEFT WING AND FLIPPED AIRCRAFT ON BACK.

3882 AL62 CESSNA    DRY BAY           AK  RAI  GRND GRD TAXI      WX/COND     MISJG ATCO VFR  DAY  COM  00245 00223 866
537  AL62 206CESSNA GULF AIR TAXI     89       BLOWN OVER                      WIND FERY WIND CCST PILT 03083 11446 666
   SEVERE SURFACE WIND GUST STRUCK AND OVERTURNED AIRPLANE AS IT WAS TURNING FOR A BEACH TAKEOFF. FRONTAL PASSAGE.

3667 AL62 DHAU      KETCHIKAN         AK                                  ATCO                              862
51E      DHC2*                                                                                              66:

1111 AL62 CESSNA    HIDDEN LAKES      AK       LAND-LVL OFF TOUCH GEAR/HUME.  CARLS ATCO VFR  DAY  COM  06366 00230 662
145  AL62 185       RON SALMON               WHLS DWN WTR                    MISCL ACAR NOWX CCST UNKN 00230 06360 662
   FORGOT TO RETRACT GEAR ON AMPHIBIOUS FLOATS FOR WATER LANDING. AIRPLANE FLIPPED OVER IN WATER ON TOUCHDOWN.

1231 AL62 DHAU      SITKA             AK                                  ATCO                              662
396      DHC2*                                                            APAX                              666
   BEGAN RIGHT BANK ON TAKEOFF. UNABLE TO STOP BANK. HIT WATER, SANK.
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[illegible] AL61 CESSNA [illegible] AK [illegible] ATCO [illegible]

38 185 EXECUTIVE CHART [illegible] [illegible] [illegible]

EVENT REMARKS

19707	AL01	CESSNA	ANCHO	AK	APPR-GO AROUND VFR	INIT/GO	MISJG	ATCO	VFR	DAY	ATF	00015	00015	00
4936	AL01	177RG	ALASKA AIR SERV	34	COLL-OTHER	OBJECT/AVOID	MISCL	APAX	NOWX		PILT	00015	04500	00

AIRCRAFT WHEEL HIT LOG ON RUNWAY. AS PILOT MADE GO-AROUND, WHEEL WAS TORN OFF AND GEAR COLLAPSED DURING LANDING.

18730	AL01	CESSNA	KENAI	AK				ATCO						00
308M		207	NORTHWIND AIR S					APAX						00

LOSS OF POWER DURING TAKEOFF. STALLED AND OVERTURNED.

0809	AL01	PIPER	WILD MAN LAKE	AK				ATCO						00
64P		PA18						APAX						00

STATE OF ALASKA FISH SURVEY. LOST ENGINE. TRIED TO LAND.

2817	AL01	PIPER	TOKSOOK BAY	AK				ATCO						00
341		PA34200						APAX						00

DURING ROLLOUT THE RIGHT LANDING GEAR BROKE OFF THE CASTING.

3021	AL01	DHAV	CORDOVA	AK	LAND-LVL OFF TOUCH	BRAKE/GRDCTL	MISJG	ATCO	VFR	DAY	CPF	00658	00410	00
532	AL01	DHC2*	CHISUM FLYING S		NOSE-UP-OVR	DRIFT	MISCL	APAX	LTRN		PILT	00256	04171	00

DURING TAKEOFF WIND DRIFTED FLOAT PLANE INTO SANDBAR CAUSING IT TO FLIP INVERTED.

3901	AL01	CESSNA	BIG RIVER	AK	TKOF-GRND ROLL	TERRAIN/UNSU	MISJG	ATCO	VFR	DAY	COM	00392	00407	00
331	AL01	206CESSNA	INTL AIR TRANSP		DIR CNTL LOOP		MISCL	APAX	NOWX	CLER	PILT	00012	01035	00

LOST DIRECTIONAL CONTROL IN SOFT SAND IN ATTEMPT TO DEPART A SAND BAR. AIRPLANE GROUND-LOOPED INTO TREES.

4901	AL01	CESSNA	COLORADO STATIO	AK	TKOF-ABORTED	7622KF	TIRE	ATCO	VFR	DAY	ATF	00290	00213	00
737	AL01	U206F	AECCOINC		COLL-TREES	INIT/GEAR		PXCG	NOWX	CLER	PILT	00061	02434	00

AIRPLANE SLOWED ON TAKEOFF RUN, ABORTED LATE, RAN INTO TREES AT END OF RUNWAY. EXHAUST BLOCKED BY MUFFLER BAFFLES.

4967	AL01	CESSNA	ANCHORAGE	AK	TKOF-GRND ROLL	TERRAIN/UNSU	MISJG	ATCO	VFR	DAY	CPF	13060	00150	00
75	AL01	206CESSNA			NOSE-UP-OVR		HAZOBS	APAX	NOWX	CLER	PILT	00150	23000	00

AIRCRAFT FLOATS HIT SANDBAR AND FLIPPED INVERTED DURING TAKEOFF ON RIVER.

913	AL01	CESSNA	DIKEMAN	AK	APPR-GO AROU VFR	RWY/ALIGN	UNSIT	ATCO	VFR	DAY	COM	00500	00232	00
50	AL01	206CESSNA	HAROLD'S AIR SE		COLL-TREES	OBJECT/AVOID	WISOBS	ACAR	NOWX	CLER	PILT	00067	16000	00

LANDING BETWEEN TREES ON RIVER. BLINDED BY SUN OFF WATER. BEGAN GOAROUND, WING CAUGHT TREES. AIRCRAFT CARTWHEELED.

812	AL01	CESSNA	AKIACHAK	AK	SNO TKOF-INIT CLIMB	PLAN/PERF	MISJG	ATCO	IFR	DAY	CPF	00181	00181	00
50	AL01	207	EXECUTIVE CHART	28	NOSE-UP-OVR		ICESLS	APAX	LSNO	OCST	PILT	00101	01070	00

TRIED TAKEOFF ON SHORT POT-HOLED SLUSH-COVERED RUNWAY AT GROSS WEIGHT. UNABLE TO SUSTAIN FLIGHT.SETTLED, NOSED OVER

284	AL01	PIPER	TUNTUTULIAK	AK				ATCO						00
32		PA32300						APAX						00

284	AL01	PIPER	TUNTUTULIAK	AK				ATCO						00
32		PA32300						APAX						00

ON ATTEMPTED LANDING DESCENDED STRAIGHT S-FED AND HIT A BANK

ACCIDENT REPORT FOR ALASKA AIR TAXIS AS OF AUG 12, 1981 PAGE 1

DATE DD ACFT MAKE CITY ST VRSY PHASE OF FLIGHT CAUSE SUPPTF TFLYS FLTCP TCON CERT TMM TTO FAT
KNUM PROD ACFT MODEL OWN OPR NAME RWAY RWYC ACCIDENT TYPE CAUSAL CONTRF TFLYS FLYCS SKCON PROF TM90 TOTHR INJ
EVENT REMARKS

780116 ALO1 PIPER SCAMMON BAY AK LAND ROLL FW INIT/BOAT UNSLT ATCO VFR DAY CON 00049-00049-003
121VC ALO1 PA31T1 BUSH AIR GEAR COLL APT/COND ICESLS ACAR NOWX PILT 00049 02130 000
A OPERATING AS WIEN AIR FLT 3397. ADT 2621 OVR MAK END3 3JT ADVSD RWOD PRIOR TO DEPARTURE.

780120 ALO1 BRORA TOKSOOK BAY AK CRUISE NORMAL GRND/LTR MISJG ATCO UNK DWN GPF 00179-00184-001
869JA NW05 BN2A9 BUSH AIR INC CNTLD COLL WX ACAR TORN PILT 00179 01783 000
A ACFT IN AREA DURING SAME TIME PERIOD REPORTED POOR VIS DUE TO SNOWFLLS.

780130 ALO1 CESSNA KIPNUK AK LAND ROLL FW TERRAIN/SNIC CARLS ATCO VFR DAY GPF 00350-00330-000
91304 ALO1 180H SAMUELSON'S FL NOSE-UP-OVR SNOBNK APAX NOWX PILT 00200 05450 001
A SNOW BERM NOT DISCERNIBLE FROM AIR. GUSTS TO 20KTS. OPERATOR CALLED FLT. FOLD LAKE OK TO LAND ON.

780214 ALO1 GROMAN PILOT POINT AK TKOF GRND ROLL 3230SYAC CRACK ATCO IFR DAY CON 03700-001-95-000
37189 ALO1 G44 PENINSULA AIRW DIR CNTL LOOP APAX HSNO PILT 00130 16000 002
A COMPANY SPECIAL VFR GUST TO 10KTS. R MAIN L/G RETRACT STRUT FAILED

780216 ALO1 AMTR HOOPER BAY AK LAND ROLL FW 3210SYMG CRACK ATCO VFR DAY ATP 00160-00259-003
69WW ALO1 2079051 BUSH AIR, INC WHEELS UP TAXI/PARK PXCG NOWX PILT 00149 07760 000
A LANDING GEAR COLLAPSED DURING LANDING ROLL. BRACE LOCK PIN SHEARED/FAILED.

780227 ALO1 EVNAIR MERRILL PASS AK UNKNOWN GRND/LTR UNK ATCO UNK DAY ATP 01203-00205-003
4508L ALO1 4500300 YUTE AIR ALASK AIRFRAME-ON GRD UNDET PXCG TORN PILT 00205 05500 000
A UX CONDITION IN PASS RPRTD BY PIREP. RECOVERY DATE 2/26/78.

780418 ALO1 DHAV CORDOVA AK TKOF INIT CLIMB FLY/SPD CARLS ATCO VFR DAY CON 00000-00017-002
97475 SW10 DHC2MK1 CHITNA AIR SER STALL GRND/FLTCNTL MISCL ACAR NOWX PILT 00047 11030 000
A

780418 ALO1 PIPER ANCHORAGE AK TKOF INIT CLIMB 2020SYFD FUELC ATCO VFR DAY CON 00525-00430-000
83356 ALO1 PA31200 SOLDOTNA AIR CNTLD COLL PREFLT/INSP PXCG NOWX PILT 00095 02530 000
A ACFT SERVICED WITH WRONG FUEL

780423 ALO1 CESSNA AKIACHAK AK TKOF ABORTED TKOF/DELAY MISTK ATCO VFR DAY CPF 00800-00300-000
51870 ALO1 TU206A SAMUELSONS FLY CNTLD COLL EARLY/LIFTOF WETRWY APAX NOWX PILT 00250 03080 000
A STUBBLE BRUSH IN CLEARWAY ON COMPANY FLT PLAN VILLAGE DIRT STRIP.

780508 ALO1 CESSNA ICY BAY AK LAND LVL OF TOUCH GRND/FLTCNTL UNSLT ATCO VFR DAY ATP 01500-00230-000
72018 ALO1 TU206A MERLE K. SMITH HARD LAND GRND/LTR DWNDRF ACAR NOWX PILT 00215 03156 000
A

780510 ALO1 CESSNA NEW STUYAHOK AK LAND ROLL FW 3240SYBK CRACK ATCO VFR DAY CON 00025-00030-000
7621K ALO1 180E ARMSTRONG AIR DIR CNTL LOOP BRAKE/GRDCTL APAX NOWX PILT 00010 01023 000
A CROSS WIND FROM RIGHT AT 15 KNOTS. LEFT BRAKE TORQUE PLATE FAILED.

780512 ALO1 GULSTM PORT MOLLER AK TKOF GRND ROLL GRND/LTR UNSKL ATCO VFR DAY ATP 00054-00061-000
1042 ALO1 JRF2 GIFFORD AVIATI CNTLD COLL MISCL APAX NOWX PILT 00033 02855 003
A LAGOON OPEN WATER DURING TKOF RUN L WING FLOAT STAYED IN WATER. 33PIC IN TYPE.

780611 ALO1 CESSNA AK LAND ROLL FW TERRAIN/UNSU MISJG ATCO VFR DAY CON 01928-00151-000
34887 ALO1 180E NOSE-UP-OVR MISCL ACAR NOWX PILT 00120 01502 000
A

PREPARED BY AAL 253 E A105

Attachment A

DATE / NUM / EVENT	DO / PROD	ACFT MAKE / ACFT MODEL	CITY / OWN OPR NAME / REMARKS	ST / RWAY	YRST / RWYC	PHASE OF FLIGHT / ACCIDENT TYPE	CAUSAL / CAUSAL	SUPPTF / CONTRF	TFL-YR / TFLYS	FL-TOP / FLYCS	LICON / SKCON	CERT / PROF	TMM / TMM90	T90 / TOTHR	FAT / INJ
780620	ALO1	CESSNA	GULKANA	AK		TKOF-INIT CLIMB	2820SYFD	CRACK	ATCO	VFR	DAY	COM	09999	00055	003
70286	ALO1	A185E				COLL-TREES	TERRAIN/UNSU		APAX	NOWX		PILT	00065	13000	002
A	FUEL PUMP DRIVE SHAFT FAILED AT UNDET TIME.														
780710	ALO1	CESSNA	ANCHORAGE	AK		TKOF-GRND ROLL	BRAKE/GRDCTL	UNSKL	ATCO	VFR	DAY	COM	00800	00025	000
756RD	ALO1	TU206A	ALASKA BUSH CA			NOSE-UP-OVR	OBJECT/AVOID	MISCL	APAX	NOWX		PILT	00025	01500	000
A	FLOAT PLANE OPERATION AREA.WITNESS STATED ACFT ATTEMPTING TKOF AHOF ANOTHER CO ACFT.														
780729	ALO1	EVNAIR	TOGIAK	AK		LAND-ROLL FW	RET/GEAR	CARLS	ATCO	VFR	DAY	COM		00032	000
8501L	ALO1	8500300SERS2	BOB HARRIS FLY			GEAR-COLL		MISCL	APAX	NOWX		PILT	00032	01219	002
A															
780807	ALO1	CESSNA	PT. POSSESSION	AK		LAND-ROLL FW	TERRAIN/UNSU	MISJG	ATCO	VFR	DAY	COM	01975	00072	000
98C19	ALO1	180E	TOTEM AIRWAYS			COLL-OTHER	OBJECT/AVOID	MISCL	APAX	NOWX			00002	12510	000
A	STRUCK ROOT OF DRIFTWOOD SNAG WHILE LANDING ON BEACH AT HIGH TIDE														
780811	ALO1	DHAV		AK		CRUISE-NORMAL	WX/VFR	RCKLS	ATCO	IFR	DAY	COM	00110	00206	000
53190	ALO1	DHC6300				UNCTLD-COLL	GRND/LTR	WX	APAX	FRIA		PILT	00105	01235	003
A															
780909	ALO1	CESSNA		AK		TKOF-INIT CLIMB	FLY/SPD	CARLS	ATCO	VFR	DAY	COM	00250	00185	000
501*U	ALO1	TU206A				STALL	TAKEOFF/DW	MISCL	APAX	NOWX		PILT	00025	02460	000
A															
780913	ALO1	DHAV	WHITTIER	AK		UNKNOWN	GRND/LTR	UNK	ATCO	IFR	DAY	COM	00106	00206	006
37781	ALO1	DHC2*	ALASKA TRAVEL			UNDETERMINED		MISCL	APAX	FOG		PILT	00100	03158	000
A	FLOAT EQUIPPED NO ANT FOR ELT														
780918	ALO1	CESSNA	MISSING AIRCRAF	AK		CRUISE-NORMAL	CNTL/WX	WXBRF	ATCO	IFR	DSK	CPF	00390	00300	003
IEC	ALO1	411	VIKING AIR SER			MISSING A/C	OTHER/MISC	ICING	APAX	FZTP		PILT	00085	02200	000
A	INJURY INDEX AND DAMAGE PRESUMED.														
780930	ALO1	CESSNA		AK		TKOF-GRND ROLL	BRAKE/GRDCTL	LASUP	ATCO	VFR	DAY	COM	00017	00002	000
3488Y	ALO1	180				DIR-CNTL-LOOP	CNTL/INTER	MISCL	PXCG	NOWX		PILT	00002	02578	000
A															
781008	ALO1	BELL	KENAI	AK		TKOF-INIT CLIMB	6561SXTR	CRACK	ATCO	VFR	DAY	ATP	03990	00170	003
2215W	ALO1	205A1	ERA HELICOPTER			UNCTLD-COLL			APAX	LIRN		PILT	00150	07350	000
A	FLOAT EQUIPPED.TAIL ROTOR PITCH CONTROL CHANGE CHAIN PAD 21.5 HOUINCE INSTALLATION.														
781011	ALO1	CESSNA	CHIGNIK LAKE	AK		LAND-ROLL FW	3210SYMG	CRACK	ATCO	VFR	DAY	ATP	00007	00119	000
3963C	ALO1	4028	GIFFORD AVIATI			GEAR-COLL			APAX	NOWX		PILT	00007	16153	000
A	LEFT MAIN GEAR RETRACT ROD ATTACH LUG FAILED.														
781021	ALO1	CESSNA	ILIAMNA	AK		TKOF-INIT CLIMB	EOP/DEF	RCKLS	ATCO	VFR	DAY	CPF	00200	00150	000
7365T	ALO1	A185E	TED GERKIN			DIR-CNTL-DRAG	MISC/PILACT	MISCL	PXCG	NOWX		PILT	00150	01720	000
A	DMGD WING & AILERON DRG PREVIOUS LDG.														
781030	ALO1	PIPER	LIME VILLAGE	AK		APPR-FINAL VFR	LAND/UNDER	MISJG	ATCO	VFR	DAY	COM	00100	00251	000
4043R	ALO1	PA32300	HUB AIR SERVIC			UNDESIGNOT		MISCL	APAX	NOWX		PILT	00096	00750	000
A	APCH TO RIVER GRAVEL BAR.														

DATE NNUM EVENT	DD PROD	ACFT MAKE ACFT MODEL	CITY OWN OPR NAME	ST RWAY	YRST RWYC	PHASE OF FLIGHT ACCIDENT TYPE	CAUSAL CAUSAL	SUPPTF CONTRF	TFLYF TFLYS	FLTCP FLYCS	LTCON SKCON	CERT PROF	TMP90 TMP90	FAT TOTFR	INJ INJ
781030	ALO1	CESSNA	NAPASKIAK	AK		TKOF-ABORTED	TERRAIN/SNIC	MISJG	ATCO	IFR	DAY	CPF	00800	00170	000
18AA	ALO1	207	BUSH AIR INC.			OVERSHOOT	PLAN/ACPERF	ICESLS	APAX	NOWX		PILT	00180	01990	000
A	ACFT CAME TO REST IN DRAINAGE DITCH.														
781030	ALO1	CESSNA	PEDERSON POINT	AK		LAND-LVL OFF TOUCH	GRND/FLTCNTL	MISJG	ATCO	VFR	DAY	COM	00030	00392	000
7654K	ALO1	180E	PENNINSULA AIR			NOSE-UP-OVR	TERRAIN/UNSU	MISEL	PXGG	LTRN		PILT	00030	01696	000
A	RWY HAD BUMP IN CENTER WITH SOFT SPOTS.														
781103	ALO1	LEAR	UNALASKA	AK		LAND-ROLL FA	OV/SHOOT	MISJG	ATCO	VFR	DAY	ATP	00809	00191	000
855JA	ALO1	24D	JET ALASKA INC	12	WET	OVERSHOOT		WETRWY	ACAR	LTRN	DGST	PILT	00136	05874	000
A	LNDED LONG & FAST ON WET RWY WITH ICE PATCHES. UNABLE TO STOP. RAN OFF END. GUSTY CROSSWIND.														
781104	ALO1	HWKSLY		AK		STATIC-STARTUP	RET/GEAR	SUPFC	ATCO	VFR	NIT	CPF	01970	00087	000
6000J	ALO1	BH1254000A				GEAR COLL	3230SYAC	MISEL	APAX	NOWX		PILT	00066	14795	000
A															
781111	ALO1	GULSTM	AKUTAN BAY	AK		TKOF-LAND ROLL	BRAKE/GROCTL	CARLS	ATCO	VFR	DAY	COM	04350	00098	000
95867	ALO1	JRF2	AIRPAC INC.			DIR-CNTL-DRAG		MISCL	PXGG	NOWX		PILT	00090	09940	000
A	GUSTS TO 30 KNTS. A/C COLLIDED WITH SHIPS BUOY.														
781121	ALO1	PIPER	OLD HARBOR	AK		UNKNOWN	ENRT/TERRAIN	JXBRU	ATCO	UNK	DSK	CPF	00338	00123	001
8284R	ALO1	PA32300	FLIRITE AIRLIN			CNTLD-COLL		UX	ACAR	TURB	DGST	PILT	00029	04838	000
A	INDICATES AIRPLANE OPERATED INTO ADVERSE WIND AND WEATHER IN MOUNTINA PASS. STRUCK ROCK WALL IN LEVEL FLIGHT.														
781129	ALO1	PIPER		AK		TKOF-INIT CLIMB	CNTL/ATVFR	UNOPS	OTCO	VFR	NIT	COM	00008	00080	000
3976X	ALO1	PA32300				UNNTLD-COLL	FLTCNTL/AIR	FIRE	APAX	FOG		PILT		01580	004
A															
781208	ALO1	CESSNA	SHELDONS POINT	AK		TKOF-GRND ROLL	TERRAIN/SNIC	CARLS	ATCO	VFR	DAY	COM	00140	00140	000
5187U	ALO1	TU206A	SAMUELSONS FLY			NOSE-UP-OVR		SNOBNK	APAX	NOWX		PILT	00140	00965	001
A	SIX INCH SNOW DEPTH ON ICE COVERED LAKE.														
781218	ALO1	CESSNA		AK		TKOF-ABORTED	7200SYEN	NOICE	ATCO	VFR	DAY	COM	00856	00071	000
8949N	ALO1	180J				CNTLD-COLL			APAX	NOWX		PILT	00033	05020	000
A															
781219	ALO1	CESSNA		AK		CRUISE-FCD/REC LD	7200SYEN	UNDET	ATCO	VFR	DAY	COM	00250	00158	000
2216T	ALO1	A185E				CNTLD-COLL			APAX	NOWX		PILT	00158	02030	000
A															
781219	ALO1	RKWELL		AK		LAND-LVL OFF TOUCH	PLAN/WX	CARLS	ATCO	IFR	DAY	ATP	00217	00055	000
7770T	ALO1	720RKWELL				HARD-LAND	FLY/SPD	ICING	ACAR	HFZR		PILT	00012	03130	000
A															
781222	ALO1	CESSNA		AK		UNKNOWN	UNDETER	SUPFC	ATCO	UNK	UNK	COM	00000	00000	002
7605U	ALO1	207A				UNDETERMINED		UNDET	APAX	TORN		PILT	00000	00000	005
A															
790119	ALO1	PIPER	NONDALTON	AK	FOG	TKOF-GRND ROLL	OBJECT/AVOID	CALCR	ATCO	IFR	DAY	COM	00582	00110	000
7934N	ALO1	PA28235	TALARIK CREEK A	26	SNO	DIR-CNTL-DRAG		SNOBNK	OTHR	NOWX	DGSC	PILT	00190	03617	000
A	PILOT ATTEMPTED TAKEOFF ON SNOW COVERED RUNWAY. LOST CONTROL AND COLLIDED WITH SNOW BANK.														

ACCIDENT REPORT FOR ALASKA AIR TAXIS AS OF AUG 12, 1991 PAGE 4

DATE / NMSN / EVENT	OD / PRDO	ACFT MAKE / ACFT MODEL	CITY / OWN OPR NAME	ST / RWAY	VRST / RWYC	PHASE OF FLIGHT / ACCIDENT TYPE	CAUSAL / CAUSAL	SUPPTF / CONTRF	TFLYF / TFLYS	FLTGP / FLYCS	LTCON / SKCON	CERT / PROF	TNM / TPM	T90 / TOTHR	FAT / INJ
790222	AL01	CESSNA	KEWAI	AK		APPR-FORCE LAND	7200SYEN	UNDET	ATCO	VFR	DAY	COM	00500	00019	000
16530	AL01	195	DICKS FLYING SE	IT		NOSE-UP-OVR	TERRAIN/UNSU		APAX	NOWX	CLER	PILT	00020	01550	000
A	ENGINE STOPPED ON APPROACH TO AIRPORT. LANDED SHORT OF RUNWAY IN SNOW. FLIPPED OVER. CAUSE OF ENG FAILURE UNKNOWN.														
790322	AL01	CESSNA	NIGHTMUTE	AK	SNO	CRUISE-NORMAL	WX/VFR	CARLS	ATCO	IFR	DAY	COM	00288	00178	002
733CT	AL01	206CESSNA	VILLAGE AVIATIO			CNTLD-COLL	WHITE-OUT	WX	PXCG	CEIL	OCST	PILT	00078	02378	005
A	PILOT OPERATED VFR INTO AREA OF WHITEOUT CONDITION. ATTEMPTED A COURSE REVERSAL, FLEW INTO THE GROUND.														
790326	AL01	CESSNA	KODIAK	AK		LAND-ROLL FW	GEAR/NONE	CARLS	ATCO	VFR	DAY	COM	00121	00176	000
756NW	AL01	U206				WHLS-DWN-WTR		MISCL	FERY	NOWX		PILT	00072	01828	001
A	PILOT LANDED ON WATER WITH WHEELS OF AMPHIBIOUS FLOATS IN THE DOWN POSITION. FLIPPED OVER.														
790328	AL01	CESSNA	BETHEL	AK		LAND-ROLL FL	32428K	CRACK	ATCO	VFR	DAY	COM	02600		000
10951	AL01	185		36	DRY	DIR-CNTL-LOOP				NOWX	OCST		00100	06060	000
A	THE BRAKE DISC HAD FAILED AND BROKEN AWAY FROM THE WHEEL.														
790329	AL01	PIPER	KING COVE	AK	FOG	TKOF-FORCE LAND	PLAN/WX	CARLS	OTCO	IFR	DAY	CPF	00665	00110	000
4074R	AL01	PA32300	PENINSULA-AIRWA	29		GEAR-COLL		PRECLD	ACAR	FOG		PILT	00083	02738	000
A	PILOT TRIED LANDING DURING LOWERING WEATHER CONDITIONS. ATTEMPT TO LAND ON SANDBAR WAS UNSUCESSFULL, GEAR COLLAPSED														
790401	AL01	OKAV	BETHEL	AK		TKOF-INIT CLIMB	RWY/ALIGN	MISJG	ATCO	VFR	DAY	ATP	05285	00085	000
580PA	AL01	OH6	SEA-AIRMOTIVE-I	11	WET	COLL-OTHER	DRIFT	MISCL	ACAR	WIND	CLER	PILT	00081	15638	000
A	PREMATURE LIFT OFF. DRIFTED OFF RUNWAY. HIT OIL DRUMS. CONTINUED TO OTHER AIRPORT. LANDED MINUS GEAR.														
790513	AL01	HELIO	EMMONAK	AK		LAND-ROLL FW	TERRAIN/UNSU	MISJG	ATCO	VFR	DAY	COM	00610	00230	000
8469K	AL01	300	HOME FLYING SER	03		COLL OTHER		HAZOBS	APAX	NOWX	CLER	PILT	00095	08030	000
A	LANDING GEAR BROKE THROUGH SOFT SPOT ON DIRT RWY DURING LANDING ROLL. NOTAM ON AIRPORT RWY COND. FIELD NOT CLOSED														
790608	AL01	CESSNA	ANCHORAGE	AK		LAND-ROLL FW	BRAKE/GRDCTL	UNSKL	ATCO	VFR	DAY	CPF	00011	00250	000
97516	AL01	180	SPERNAK-AIRWAYS	33	DRY	DIR-CNTL-LOOP		MISCL	PXCG	NOWX	SCAT	PILT		01752	000
A	MADE WHEEL LNDG. ALLOWED ACFT TO GROUND-LOOP WHEN TAIL CAME DOWN. OVER CONTROLLED.														
790608	AL01	PIPER	OPHIR	AK		TKOF-INIT CLIMB	PLAN/ACPERF	CARLS	ATCO	VFR	DAY	ATP	00058	00138	000
6475J	AL01	PA28180	HUB-AIR-SERVICE	01	DRY	COLL-TREES	TAKEOFF/OW	MISCL	APAX	NOWX	SCAT	PILT	00004	01736	001
A	PILOT SAID THE WIND WAS CALM WHEN HE STARTED HIS TAKEOFF BUT STRONG TAILWIND CAME UP DURING TAKEOFF.														
790609	AL01	CESSNA	ST MARYS	AK	RAI	TKOF-GRND ROLL	BRAKE/GRDCTL	OTHER	ACOM	VFR	DAY	COM	01000	00206	000
91399	AL01	180	WESTERN-YUKON-A	14	WET	DIR-CNTL-LOOP		MISCL	APAX	WIND	OCST	PILT	00060	10000	000
A	PLANE ENCOUNTERED STRONG GUSTY CROSSWIND ON TAKEOFF ROLL. LOST CONTROL. ACFT GROUND LOOPED.														
790611	AL01	CESSNA	PLATINUM	AK		CRUISE-ECD/PREC LD	7221SXPW	CRACK	ACOM	VFR	DAY	CPF	00205	00215	003
6255H	AL01	207	BUSH-SUPPORT-SY			FORCED-LDG-DAMAGE			MAIL	NOWX		PILT	00200	01175	000
A	#3 ROD FAILED AT CRANKSHAFT ATTACH END. FOUND LOOSENESS OF TORQUE OF CRANKCASE HALVES.														
790615	AL01	CESSNA	NEW KOLIGANEK	AK	RAI	LAND-LVL OFF TOUCH	LVL/OFF	UNSIT	ATCO	IFR	DAY	CPF	00038	00103	000
180HM	AL01	180J	SW-AIRWAYS, INC			HARD-LAND	DRIFT	FOG/IC	ARAX	CEIL		PILT	00038	02133	000
A	LEVELED OFF TOO HIGH FOR LANDING, DRIFTED OFF RUNWAY. LANDED IN MUD AT EDGE OF RUNWAY. GEAR COLLAPSED.														
790726	AL01	CESSNA	EMMONAK	AK	RAI	LAND-ROLL FW	OV/SHOOT	CALCR	ATCO	VFR	DAY	COM	00097	00330	000
9129M	AL01	207	BIG-RED-FLYING		WET	OVERSHOOT		WETRWY	ACAR	LTRN		PILT	00077	04077	000
A	PILOT OVERSHOT RUNWAY WHEN LANDING ON SHORT, WET STRIP. CLAIMS BRAKES FAILED, BUT NO EVIDENCE TO SUBSTANTIATE.														

PREPARED BY AAI--DST--A--ADS

DATE / NNUM / EVENT	DO / PROD	ACFT MAKE / ACFT MODEL	CITY / OWN OPR NAME	ST / RWAY	VRST / RWYC	PHASE OF FLIGHT / ACCIDENT TYPE	CAUSE / CAUSAL	SUPPTF / CONTRF	TFLYS	FLTCP / FLYCS	LTCON / SKCON	CERT / PROF	TMM / TMPO	T90 / TOTHR	FAT / INJ
790630	ALO1	CESSNA	KOTLICK	AK		CRUISE-FCD/PREC LD	2800SYF	FUELC	ATCO	VFR	NIT	CPF	00051	00161	000
I991U	ALO1	206CESSNA	BIG RED'S FLYIN			NOSE-UP-OVR	PRETKOFASP		ACAR	NOWX	CLER	PILT	00045	01056	001
A	ENGINE LOST POWER AND QUIT. LANDED ON ROUGH TUNDRA. FLIPPED OVER. FOUND WATER, RUST IN FUEL.														
790702	ALO1	ENSTRM	PORTAGE	AK		CRUISE-FCD/PREC LD	7221SKPW	CRACK	ATCO	VFR	DAY	CPF	00088	00179	000
532H	ALO1	F28C	ALYESKA AIR SER			FORCED LDG-DAMAG			APAX	WIND	CLER	PILT	00082	01322	000
A	ENGINE QUIT. AUTOROTATED TO LANDING ON SOFT TUNDRA. MAIN ROTORS SEVERED TAIL BOOM. CONNECTING ROD CAP FAILURE.														
790712	ALO1	CESSNA	ANCHORAGE	AK	RAI	CLMB-TO CRUISE	GRND/WTR	MISJG	ATCO	IFR	DAY	COM	01715	00188	007
102TH	ALO1	402B	SOLDOTNA AIR			CNTLD-COLL	INSTMFROC	WX	APAX	GEIL	OGST	PILT	00022	07726	000
A	DEPARTED ON IFR CLEARANCE. RADAR CONTACT. FLEW INTO RISING TERRAIN IN CLOUDS, FAILED TO FLY HEADINGS ISSUED BY ATC.														
790713	ALO1	CESSNA	HALIBUT COVE	AK		LAND-ROLL FA	GEAR/NONE	CARLS	ACOM	VFR	OSN	ATP	00215	00013	000
70279	ALO1	185	COOK INLET AVIA			GRLS OWN WTR		DLADST	MAIL	NOWX	OGST	PILT	00030	03315	000
A	AMPHIBIAN PLT FAILED TO RETRACT LNDG G[illegible] LAND TAKEOFF. LANDED IN BAY WITHGEAR DOWN. FLIPPED OVER.														
790713	ALO1	CESSNA	TOGIAK	AK		LAND-ROLL FA	OV/SHCOT	MISJG	ATCO	VFR	DAY	COM	00200	00255	000
2435F	ALO1	180	ARMSTRONG AIR S	28	WET	DIR CNTL LOOP	32428K	WETRWY	APAX	NOWX	SCAT	PILT	00081	03960	000
A	MADE CROSSWIND WHEEL LNDG. PLT STATED HE LANDED LONG, BRAKE FAILED. GROUND-LOOPED TO STOP ON RUNWAY.														
790805	ALO1	CESSNA		AK	RAI	UNKNOWN	GRND/WTR	WXNBR	ATCO	VFR	NIT	ATF		00081	004
734YS	ALO1	206CESSNA	ALASKA AIR SERV			MISSING A/C		MISCL	APAX	LTRN	OGST	PILT	00081	04775	000
A	DEPARTED VFR ON DARK NIGHT WITH LOW CEILING & RAIN. BECAME MISSING. FOUND PILOT'S BODY FLOATING IN COOK INLET.														
790807	ALO1	CESSNA	NIKISHKA	AK	RAI	TKOF-INIT CLIMB	PLAN/LTBAL	CARLS	ATCO	VFR	DAY	ATF	02000	00303	001
6469H	ALO1	207A		33		COLL-TREES	PLAN/ACPERF	MISCL	ACAR	NOWX	OGST	PILT	00303	09500	001
A	OVERLOADED AIRPLANE LIFTED OFF LAST 3RD OF RUNWAY. FALED TO CLIMB. HIT TREES. POSSIBLE THROTTLE CREEP, POWER LOSS.														
790809	ALO1	PIPER	LONG LAKE	AK		TKOF-ABORTED	PLAN/WTBAL	CARLS	ATCO	VFR	DAY	COM	00085	00177	000
7853H	NW61	PA12	SILVER TIP LODG			NOSE-UP-OVR	TKOF/FUELAY	MISCL	APAX	NOWX	SCAT	PILT	00085	01970	001
A	PILOT ATTEMPTED TAKEOFF FROM LAKE. AIRCRAFT WAS OVERLOADED. PILOT ABORTED TAKEOFF. HIT SHORE AND FLIPPED OVER.														
790908	ALO1	CESSNA	ANCHORAGE	AK		TKOF-INIT CLIMB	PLAN/ACPERF	CALCR	ATCO	VFR	DAY	COM	00716	00368	000
756SN	ALO1	206CESSNA	KETCHUM AIR SER			CNTLD-COLL		DWNDRF	ACAR	NOWX	SCAT	PILT	00171	03522	001
A	PILOT ATTEMPTED TAKE OFF FROM SMALL LAKE.CRASHED ON DEPARTURE END.CLAIMED DOWNDRAFT AFTER LIFT OFF.150 MILES NW ANC														
790918	ALO1	BELL	YAKATAGA	AK		TKOF-VERTICAL	2800SYF	FUELC	ATCO	VFR	DAY	COM		00130	000
1321X	ALO1	N7G381				FORCED LDG-DAMAGE	PREFLT/INSP		FERY	NOWX	DRKN	UNKN	00100	15000	000
A	ENGINE FAILED DURING TAKEOFF. WATER WAS DISCOVERED IN FUEL SYSTEM.														
790920	ALO1	BLANCA	OLD HARBOR	AK		LAND-LVL OFF TOUCH	LVL/OFF	CARLS	ATCO	VFR	DAY	COM	00298	00090	000
86932	ALO1	80CBC	FLIGHTEX INC.			HARD-LAND		GLASSY	APAX	NOWX		PILT	00090	00890	000
A	PILOT LANDED ON GLASSY WATER. AIRCRAFT SWERVED AND SETTLED ON ITS LEFT SIDE INTO THE WATER.														
790928	ALO1	CESSNA	BETHEL	AK		TKOF-GRND ROLL	BRAKE/GRDCTL	CARLS	ATCO	VFR	DAY	COM	00563	00518	003
8695E	ALO1	185	EXECUTIVE CHART			DIR-CNTL-DRAG		MISCL	APAX	NOWX	CLER	PILT	00518	01339	000
A	PILOT DUG A FLOAT IN THE WATER WHILE TAXIING. WING TIP HIT WATER.														
791000	ALO1	CESSNA	ANCHORAGE	AK	RAI	TKOF-INIT CLIMB	2800SYF	FUELC	ATCO	VFR	DAY	COM	00590	00250	008
6424H	ALO1	207	SPERNAK AIRWAYS	33	WET	COLL-BLDGS	OBJECT/AVOID		APAX	NOWX	BRKN	PILT	00250	11120	000
A	AIRCRAFT CRASHED INTO HANGAR RIGHT AFTER TAKEOFF. WATER WAS FOUND IN FUEL STORAGE FACILITIES OF OPERATOR.														

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EVENT REMARKS															
791114	ALO1	CESSNA	CANTWELL	AK		TKOF-ABORTED	PLAN/ACPERF	MISJG	ATCO	VFR	DAY	PPF	00167	00032	000
28605	ALO1	185	GOLDEN NORTH AI	20	SNO	DIR CNTL LOOP	TERRAIN/SNIC	MISCL	AGAR	NOWX	OCST	PILT	00021	03019	000
A	SKI & WHEEL EQUIPPED AIRCRAFT VEERED OFF RUNWAY DURING ABORTED TAKEOFF ROLL. WHEELS CAUGHT IN RUTTED RUNWAY.														
791202	ALO1	LEAR	DUTCH HARBOR	AK		TKOF-GRND ROLL	TERRAIN/SNIC	MISJG	ATCO	VFR	DAY	ATP	02000		000
300JA	ALO1	24	JET ALASKA	30	SNO	DIR CNTL LOOP	APT/FAC	ICESLS	APAX	NOWX	CLER	PILT		18756	000
A	SLOWED BY RUTTED, SLUSHY AREA ON TAKEOFF. VEERED INTO ROCKS ON EDGE OF RUNWAY. AIRPORT NOTAMED CLOSED. MANAGER OKED.														
791206	ALO1	CESSNA	AKIACHAK	AK		LAND-ROLL FL	32405YBK	JAMML	ATCO	VFR	DSK	COM	00100	00041	000
70020	ALO1	185	SAMUELSON FLY-S	28	ICE	DIR CNTL LOOP			APAX	NOWX	OCST	PILT	00041	02335	000
A	NO BRAKE ON ONE WHEEL ON TAIL WHEEL TYPE LANDING, ON ROUGH ICY RUNWAY. ELECTED TO GROUND-LOOP TO STOP. HIT DITCH.														
800106	ALO1	CESSNA	KASIGLUK	AK		LAND-ROLL FL	TERRAIN/SNIC	MISJG	ATCO	IFR	DAY	COM	00720	00351	000
99376	ALO1	172	NELSON ISLAND A		SNO	NOSE UP OVR		MISCL	APAX	NOWX	OCST	PILT	00180	03204	000
A	NOSED OVER IN SNOWDRIFT, LANDING ON SNOW AND ICE-COVERED STRIP.														
800121	ALO1	PIPER	CHIGNIK	AK		LAND-ROLL FL	TERRAIN/UNSU	UNSIT	ATCO	VFR	DAY	COM	00687	00075	000
29148	ALO1	PA32300	ROY SMITH FLYIN	OB	SNO	GEAR COLL	ART/COND	ICESLS	APAX	NOWX	CLER	PILT	00067	09285	000
A	LEFT LANDING GEAR FAILED ON LANDING ROLL. ATTACH BOLTS SHEARED FROM OVERLOAD. LARGE CHUNKS OF FROZEN SNOW ON RUNWAY														
800122	ALO1	OHAV	KENAI	AK	FOG	APPR-FINAL	INST/PROC	WXBRF	ACOM	IFR	NIT	ATF	01250	00022	000
332MA	ALO1	OH C6100	ALASKA AERO INC	19	SNO	CNTLD COLL	GRND/AIR	WX	MAIL	HSNO	OBSC	PILT	00022	02105	003
A	NEGLECTED TO MONITOR ALTITUDE ON IFR APPROACH. LANDED ON SNOW-COVERED FROZEN LAKE 5 MILES FROM RUNWAY. STRUCK SHORE														
800213	ALO1	CESSNA	MT. VILLAGE	AK		LAND-ROLL FW	BRAKE/GROCTL	UNSKL	ATCO	VFR	DAY	ATP	00037	00130	000
7395M	ALO1	185	WESTERN YUKON A	35	ICE	DIR CNTL LOOP	PLAN/ACPERF	SNOBNK	APAX	WIND	CLER	PILT	00012	05300	000
A	LANDED TAIL DRAGGER IN STRONG CROSSWIND. AIRPLANE GROUND-LOOPED INTO A SNOW BANK.														
800228	ALO1	CESSNA	PLATINUM	AK		LAND-ROLL FW	TERRAIN/UNSU	WXBRF	ATCO	VFR	DAY	ATP	01900	00219	000
93118	ALO1	185	SEA AIRMOTIVE I	07	IGE	GEAR COLL	EQUIP/MGT	SNOBNK	APAX	WIND	CLER	PILT	00040	03211	000
A	WHEELS STRUCK ICE RIDGE ON RUNWAY SEVERING LEFT MAIN GEAR AND DAMAGING RIGHT MAIN. HAD SKIS RETRACTED.														
800306	ALO1	CESSNA	SOUTH NAKNEK	AK	FOG	LAND-ROLL FL	RWY/ALIGN	MISJG	ACOM	IFR	DAY	CPF	00271	00271	000
1722U	ALO1	207	KODIAK AIR TAXI	30	WET	HARD-LAND	VX/VFR	ICING	ACAR	FZTP	OCST	PILT	00271	02318	001
A	TRIED TO LAND IN LOW CEILING & VISIBILITY WITH WINDSHIELD ICE-COVERED. HIT RUNWAY ON ANGLE. BOUNCED. HIT BANK.														
800309	ALO1	CESSNA	DILLINGHAM	AK	FOG	CRUISE-NORMAL	WHITE OUT	WXNBR	ATCO	IFR	DAY	COM	01084		000
1297M	ALO1	206CESSNA	YUTE AIR ALASKA			COLL TREES	VX/VFR	VX	ACAR	FOG	BRKN	PILT	00015	01038	001
A	ENCOUNTERED FOG & OR WHITEOUT. STRUCK TREES ATTEMPTING TO MAKE A 180 TURN TO RETURN TO VFR CONDITIONS.														
800326	ALO1	GRUMAN	KARLUK	AK	SNO	GRND FRM LAND	BRAKE/GROCTL	MISJG	ACOM	IFR		ATP	00485	00102	000
87U	ALO1	G21A	KODIAK AIR TAXI			DIR CNTL LOOP	CARBHT/DEIC	MISCL	APAX	LSNO	OCST	PILT	00072	07940	000
A	ENGINES FAILED TO RESPOND EVENLY ON STEP TAXI AFTER LANDING. SWERVED ONTO BEACH. FUEL GRADE USED INVITES CARB ICE.														
800425	ALO1	BLANCA	KODIAK	AK	SNO	CRUISE-NORMAL	WHITE OUT	WXBRF	ATCO	IFR	DAY	COM	00028	00133	000
29750	ALO1	8GCBC	FLIRITE INC			STALL	FLY/SRO	VX	APAX	CEIL	OCST	PILT	00005	00531	000
A	FLEW INTO WHITEOUT CONDITIONS IN MOUNTAIN PASS. STALLED AIRPLANE INTO SNOW ATTEMPTING TO TURN BACK.														
800519	ALO1	PIPER	NUNAVARCHUK	AK		TKOF-GRND ROLL	OBJECT/AVOID	MISJG	ATCO	VFR	DAY	COM	01202	00105	000
2077X	ALO1	PA32300	ARMSTRONG AIR S			GOLL OTHER	MISC/PILACT	MISCL	APAX	NOWX	BRKN	PILT	00061	03450	000
A	PILOT TRIED TAKEOFF, HIT PLANE ON RUNWAY. COULD HAVE BEEN OVER-LOADED.														

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800608	ALOI	CESSNA	TALKEETNA	AK		LAND-ROLL FW	TERRAIN/UNSU	CALCR	ATCO	VFR	DAY	CPF	00200	00105	000
92CP	ALOI	180	K2 AVIATION			NOSE-UP-OVR		ICESLS	APAX	NOWX	CLER	PILT	00100	01700	000
A	PILOT LANDED ON GLACIER AND ONE SKI DUG INTO SNOW, FLIPPING AIRCRAFT INVERTED.														
800617	ALOI	CESSNA	ILIAMNA	AK		TKOF-FORCE LAND	7160SYIT	CRACK	ATCO	VFR	DAY	COM		00015	000
4557F	ALOI	185	AIR MARTEL			CNTLD-COLL	EQUIP/SERV		APAX	NOWX	BRKN	PILT		07420	001
A	ENGINE QUIT ON CLIMBOUT. CRASH-LANDED ON BANK OF LAKE. FOUND AIR VALVE SHAFT AIR BOX BROKEN. IMPROPER MAINTENANCE.														
800701	ALOI	PIPER	TOGIAK	AK	FOG	CRUISE-NORMAL	GRND/LTR	MISJG	ATCO	IFR	DAY	CPF	01085	00278	000
15775	GLIB	PA32300	YUTE AIR ALASKA	24		COLL-TREES	DRIFT	UX	APAX	LTRN	OGST	TEAG	00266	03145	001
A	STARTED TURN-AROUND IN A VALLEY DUE TO WORSENING WEATHER, WIND. DRIFTED AIRPLANE CLOSE TO RIDGE. STRUCK TREES.														
800702	ALOI	CESSNA	SQUAW CREEK	AK		CRUISE-LO LVL OF	MISC/PILACT	CALCR	ATCO	VFR	DAY	COM	01500	00110	000
5083K	ALOI	185				AIRFRAME-IN FLT	3700SYWO	MISCL	PXCG	NOWX	CLER	PILT	00080	03135	000
A	PILOT ATTEMPTED TO FERRY AIRCRAFT AFTER TEMPORARY REPAIR. STRUCTURE FAILED IN TURBULENCE & AIRPLANE CRASHED.														
800707	ALOI	PIPER	EGIGIK	AK		CRUISE-FCD/PREC LD	7200SYEN	UNDET	ATCO	IFR	DAY	COM	00602	00251	000
28130	ALOI	PA32300	PENINSULA AIRWA			CNTLD-COLL			APAX	LTRN	OGST	PILT	00251	02447	000
A	ENGINE QUIT. CRASH-LANDED ON ROLLING TUNDRA. ENGINE CHECKED OUT OF. CAUSE OF LANDING UNDETERMINED.														
800709	ALOI	BELL	FALKEETNA	AK		GRND ACFT TAXI	TERRAIN/UNSU	CALCR	ATCO	VFR	DAY	COM	01180	00015	000
373EH	SWO8	206B	ERA HELICOPTERS			CNTLD-COLL	GRND/WTR	MISCL	APAX	NOWX	OCST	PILT	00015	04836	002
A	LANDED ON IMPROVISED WILDERNESS PAD. TRIED TO LIFT-OFF TO MOVE LATERALL. SKID HOOKED ON TREE ROOT. COPTER ROLLED														
800711	ALOI	PIPER	FALSE PASS	AK	FOG	APPR-VFR PTRN CIRC	FLY/SFD	MISJG	ACOM	IFR	DAY	ATP	00500	00125	001
5537Y	ALOI	PA23250	PENINSULA AIRWA	13		STALL		MISC/PILACT	MISCL	MAIL	CEIL	CCST	PILT	00060	14000	000
A	PILOT EXCUTED RIGHT & LEFT VERTICAL BANKS AT 300 FEET ALTITUDE AFTER TAKEOFF. STALLED IN VERTICAL BANK.														
800718	ALOI	CESSNA	COLLINSVILLE	AK					ATCO						000
9855X		185							APAX						000
A															
800721	ALOI	CESSNA	PILOT STATION	AK		LAND-LVT OFF TOUCH	OBJECT/AVOID	OTHER	ATCO	VFR	DAY	ATP	00350	00222	000
7320U	ALOI	207		07		COLL-OTHER		VISOBS	APAX	NOWX	CLER	PILT	00220	04600	004
A	AIRCRAFT HIT EQUIPMENT ON RUNWAY DURING LANDING.														
800728	ALOI	EVNAIR	BETHEL	AK		LAND-ROLL FW	BRAKE/GROCTL	MISTK	ATCO	VFR	DAY	CPF	00305	00530	000
6501L	ALOI	4500300	YUTE AIR ALASKA	19		OTR-CNTL-LOOP		MISCL	APAX	WIND	CLER	PILT	00225	03253	000
A	PILOT LOST DIRECTIONAL CONTROL AND GROUND-LOOPED AIRCRAFT DURING LANDING.														
800725	ALOI	CESSNA	DILLINGHAM	AK		TKOF-INIT CLIMB	EARLY/LIFTOF	MISJG	ATCO	VFR	DAY	CPF	00162	00185	000
7621K	ALOI	180	ARMSTRONG AIR	09		CNTLD-COLL	FLTCNTL/AIR	MISCL	APAX	NOWX	CLER	PILT	00007	15700	000
A	MADE EARLY LIFT OFF FROM ROUGH STRIP UNABLE TO CLIMB. SETTLED ONTO ROUGH TUNDRA OFF END RUNWAY. WRONG FLAP SETTING														
800728	ALOI	CESSNA	KENAI	AK		LAND-ROLL FW	3220SYNG	CRACK	ATCO	VFR	OSK	COM	00153	00303	000
71961	ALOI	206CESSNA	SOUTH CENTRAL A	33		NOSE-UP-OVR	LVL/OFF		ACAR	NOWX	SCAT	PILT	00085	02872	001
A	LANDED NOSE WHEEL FIRST. BOUNCED, LOST NOSE WHEEL ASSEMBLY, NOSED OVER. FAILURE DUE TO FATIGUE CRACK AND OVERLOAD.														
800730	ALOI	DHAV	CORDOVA	AK		CRUISE-FCD/PREC LD	MGT/FUEL	INATT	ATCO	VFR	DAY	ATP	01300	00415	000
67676	ALOI	DHC2	CHITINA AIR SER			FORCED-LDG-DAMAG	2842NGOU	PLTFAT	APAX	NOWX	OCST	PILT	00300	05510	001
A	RAN FUEL TANK DRY. DITCHED IN RIVER. FACTORS DESIGN AMBIGUITY OF FUEL SELECTORS & GAGES. PILOT FATIGUE.														

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800803	ALO1	DHAV	TOGIAK	AK		CLIMB-TO CRUISE	ENRT/TERRAIN	MISJG	ATCO	IFR	DAY	ATP	00300		002
63368	ALO1	DHC3	YUTE AIR ALASKA			CNTLD COLL	WX/VFR	FIRE	APAX	CEIL		PILT		03400	002
A	ENCOUNTERED GROUND FOG. STRUCK HILL IN CLIMBING TURN TO REVERSE COURSE. AIRPLANE BURNED.														
800806	ALO1	AEROSP	GULKANA	AK		TKOF-ABORTED	RD	RFM	MISJG	ATCO	VFR	DAY	COM	01509	00166	000
62406	ALO1	SA340	INTL AIR TRANSP			HARD-LAND			PREGLD	APAX	NOWX	SCAT	PILT	00166	05727	001
A	BELIEVED UNABLE TO CLEAR TREES AFTER LIFTOFF ON CLIMB. ABORTED. MADE HARD LANDING.															
800819	ALO1	CESSNA	EEK	AK						ATCO						000
70168		185														000
A																
800819	ALO1	PIPER	EKUK	AK	FOG	TKOF-GRND ROLL	TKOF/DELAY	CARLS	ATCO	VFR	DAY	COM	00119	00350	000
80890	ALO1	PA32300	ARMSTRONG AIR S	01	WET	NOSE-UP-OVR		WEIRWY	APAX	WIND		PILT	00117	04629	000
A	PILOT TRIED TO ABORT TAKEOFF TOO LATE AND RAN OFF END OF RUNWAY INTO SWAMP.															
800816	ALO1	PIPER	EKUK	AK						ATCO						000
80899		PA28														000
A																
800821	ALO1	GRUMAN	KARLUK	AK		GRND GRD TAXI	GRND/WTR	MISJG	ACON	VFR	DAY	ATP		00150	000
3282	ALO1	G21A	KODIAK-WESTERN			CNTLD COLL	PLAN/WTBAL	MISCL	ACAR	NOWX	CLER	PILT	00128	02682	000
A	HULL OF AMPHIBIAN STRUCK BOTTOM DURING WATER TAXI. AIRPLANE WAS LOADED OVER GROSS WEIGHT.															
800826	ALO1	DHAV	KUKALEK LAKE	AK		TKOF-GRND ROLL	GRND/WTR	MISJG	ATCO	VFR	DAY	COM			000
92982	ALO1	DHC2	KATMAI AIR INC			CNTLD COLL	USE/EQUIP	MISCL	APAX	NOWX	OCST	PILT		03500	000
A	FORGOT TO LOWER FLAPS FOR RIVER TAKEOFF. STRUCK RIVER BANK AT BEND IN RIVER.															
800906	ALO1	CESSNA	NONDALTON	AK		TKOF-INIT CLIMB	TAKEOFF/DW	MISJG	ATCO	VFR	DAY	COM	00500	00130	000
756CA	ALO1	U206				COLL-TREES	PLAN/ACPERF	MISCL	APAX	WIND	OCST	PILT	00110	03720	000
A	PILOT CLAIMS WIND SHIFT AFTER BEGINNING TAKEOFF WHICH CAUSED AIRCRAFT TO CRASH INTO TREES.															
800915	ALO1	CESSNA	KARLUK	AK		TKOF-GRND ROLL	PLAN/ACPERF	CARLS	ATCO	VFR	DAY	COM	02000	00250	000
75570	ALO1	207A	KODIAK AIR SVC	04		NOSE-UP-OVR	UNAUTH/ACT	MISCL	PXCG	LIRN	OCST	PILT	00250	02000	002
A	TRIED TO TAKEOFF ON CLOSED RUNWAY TOO SHORT FOR AIRPLANE PERFORMANCE. LIFTED BRIEFLY AT END RUNWAY. FLIPPED OVER															
800928	ALO1	CESSNA	NIKISKI	AK		TKOF-INIT CLIMB	EQUIP/MGT	MISJG	ATCO	VFR	DAY	CPF	01203	00133	000
62498	ALO1	207A	WINDWARD PASSAG	33		COLL-TREES	PLAN/WTBAL	DWNDRF	PXCG	NOWX	BRKN	PILT	00183	02311	002
A	OVER GROSS WEIGHT ON TAKEOFF WITH FULL FLAPS. FAILED TO CLIMB. STRUCK TREES. POSSIBLE DOWNDRAFT. GUSTY WIND.															
800929	ALO1	CESSNA	LEVELOCK	AK		TKOF-INIT CLIMB	PLAN/FUELQT	CARLS	OTGO	VFR	DAY	COM	00900	00110	000
16230	ALO1	207	KODIAK WESTERN	25		FORCED-LDG-DAMAG		EMLAND	APAX	NOWX	CLER	PILT	00110	02296	001
A	ENGINE QUIT JUST AFTER TAKEOFF. PILOT ATTEMPTED LANDING OFF END OF RUNWAY. NO FUEL IN SELECTED TANK.															
801011	ALO1	CESSNA	PILOT POINT	AK		TKOF-INIT CLIMB	EARLY/LIFTOF	MISJG	ATCO	VFR	DAY	COM	01000		000
7950N	ALO1	206CESSNA	ARMSTRONG AIR			NOSE-UP-OVR	PLAN/ACPERF	MISCL	APAX	NOWX	BRKN	UNKN		25000	000
A	AIRPLANE SETTLED BACK TO WATER IN TAKEOFF ATTEMPT. STRUCK BANK OF LAKE & FLIPPED OVER.															
801212	ALO1	PIPER	COLD BAY	AL	FOG	CRUISE-NORMAL	CNTL/LX	UNOPS	ATCO	IFR	NIT	COM	00850	00218	004
22430	ALO1	PA32300	PENNINSULA AIRW			UNNTLD-COLL	EXPER LEVEL	ICING	APAX	HSNO	BRKN	PILT	00210	03257	000
A	LOST CONTROL IN HEAVY SNOW SQUALL ON NIGHT MEDIVAC FLIGHT. LACKED 6 MONTH INSTRUMENT CHECK.															

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801218	ALO1	CESSNA	KASIGLUK	AK		LAND-ROLL FW	DRIFT	MISTK	ATCO	VFR	DAY	COM	01102	00153	000
25552	ALO1	185	BUSH AIR, INC.			DIR CNTL DRAG		MISCL	ACAR	NOWX	CLER	PILT	00042	00010	000
A	PILOT ALLOWED AIRCRAFT TO DRIFT TO ONE SIDE OF ICE STRIP DURING LANDING, WHICH CAUSED WING TO DIG IN BERM OF RUNWAY														
801218	ALO1	CESSNA	PILOT STATION	AK		STATIC-IDLE ENG	WALK/PROP	CARLS	OTCO	VFR	DAY	CPF	03500	00235	000
7318U	ALO1	207	WESTERN YUKON		SNU	PROP/RTR-PERS	FLT/SUPERV	MISCL	APAX	WIND	CLER	PILT	00150	13050	001
A	PILOT LEFT AIRPLANE WITH IDLING ENGINE. PASSENGER DEPLANED AND WALKED INTO PROP. HAD BEEN WARNED NOT TO EXIT.														
810116	ALO1	CESSNA	RUSSIAN MISSION	AK		LAND-ROLL FW	TERRAIN/SNIC	CALCR	ATCO	VFR	DAY	COM	01000	00180	000
7395H	ALO1	185F	WESTERN YUKON A	17	SNU	DIR CNTL LOSS	RWY/ALIGN	SNOBNK	APAX	LSNO	OCST	UNKN	00060	11000	000
A	STRUCK SNOW BERM ON EDGE OF SNOW-COVERED RUNWAY ON LANDING. POOR RUNWAY MAINTENANCE A FACTOR.														
810123	ALO1	GRUMAN	DUTCH HARBOR	AK	FOG	UNKNOWN	GRND/WTR	UNK	ACOM	UNK	DAY	COM	00237	00136	002
95468	ALO1	G21A	PENINSULA AIRWA			MISSING A/C		UK	MAIL	UNKN	OCST	PILT	00106	16068	000
A	LOST AT SEA. FOUND AIRCRAFT'S WING PONTOON. LOW CEILING AND ICING IN CLOUDS. CAUSE OF CRASH UNKNOWN.														
810125	ALO1	ENSTRM	ANCHORAGE	AK		LAND-PWR ON VERT	CNTL/INTER	UNSIT	ATCO	VFR	NIT	CPF	00440	00120	000
51674	ALO1	F28C	ALYESKA AIR SER			CNTLD-COLL	PLAN/ACPERF	PREGLD	OTHR	NOWX	OCST	PILT	00040	02613	000
A	SMOKE DOOR. ELECTED TO LAND. CRAMPED COCKPIT CAUSED CONTROL INTERFERENCE. ROTORS HIT HILL. SOLVENT, OIL IN AIR DUCT														
810126	ALO1	CESSNA	CLARK'S POINT	AK	FOG	APPR-VFR PTRN CIRC	FLY/SPD	UXBRU	ATCO	IFR	DAY	COM	01000	00023	000
82790	ALO1	U206		08	SNU	STALL	PLAN/LX	WX	APAX	CEIL	OBSC	PILT	00023	03035	000
A	WEATHER DETERIORATED RAPIDLY NEARING AIRPORT. STALLED, TURNING BASE DUE TO NEAR ZERO VISIBILITY.														
810207	ALO1	CESSNA	KODIAK	AK					ATCO						002
5646X		206CESSNA							ACAR						000
A	PILOT AND PASSENGER FOUND IN KARLUK AK. AIRCRAFT NOT LOCATED.														
810421	ALO1	BELL	HOMER	AK		HOVERING	WHITE OUT	UXBRF	ATCO	VFR	DAY	COM	00731	00056	000
10756	ALO1	206B	MARITIME HELICO		SNU	CNTLD-COLL	GRND/WTR	MISCL	APAX	CEIL	DRKN	PILT	00056	03633	001
A	DRIFTED IN ROCKS ON MOUNTAIN-SIDE HOVERING IN WHITEOUT. PILOT FAILED TO MAINTAIN OUTSIDE REFERENCE IN HOVER.														
810515	ALO1	STBROS	SLATE CREEK	AK					ATCO						000
700A		SC7	GIFFORD AVIATIO						ACAR						002
A	NOSE WHEEL COLLAPSED ON LANDING. AIRCRAFT NOSED OVER AND TORN WING OFF.														
810608	ALO1	BEECH	ANVICK	AK					ATCO						001
196PA		18S	ALASKA EXPRESS						ACAR						000
A	CRASHED AFTER DEPARTURE.														
810611	ALO1	CESSNA	NAPASKIAK	AK					ATCO						000
7958X		172							APAX						000
A	CRASHED IN THE RIVER.														
810630	ALO1	DHAV	ANCHORAGE	AK					ATCO						000
9811F		DHC2							APAX						001
A	APPEARED TO HIT THE WAKE OF ANOTHER SEAPLANE.														
810701	ALO1	CESSNA	MOOSE PASS	AK					ATCO						005
72258		206CESSNA							ACAR						000
A	AIRCRAFT APPEARS TO HAVE NOSED INTO GLACIER.														

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810701	AL01	DOUG	PILOT POINT	AK				ATCO								003
11151		DC3						ACAR								000
REMARKS: A HAULING FISH. LOST POWER TO ONE ENGINE OVER TOWN. CRASHED ON A MUD FLAT.																
810729	AL01		ANCHORAGE	AK				ATCO								000
50134								APAX								000
A UNABLE TO EXTEND NOSE GEAR. SLID TO STOP ON MAIN GEAR AND NOSE OF AIRCRAFT.																
810730	AL01	CESSNA	HOM	AK				ATCO								000
6388H		207	NORTHWIND AIR S					APAX								000
A LOSS OF POWER DURING TAKEOFF. STALLED AND OVERTURNED.																
810804	AL01	BELL	HOMER	AK				ATCO								000
90178		206B						APAX								000
A PILOT HEARD NOISE AND LOST POWER FORCING HIM TO LAND IN WATER.																
810807	AL01			AK				ATCO								000
31618																006
A																
810810	AL01	PIPER	WILD MAN LAKE	AK				ATCO								001
9664P		PA18						APAX								001
A STATE OF ALASKA FISH SURVEY. LOST ENGINE, TRIED TO LAND.																
790117	AL61	OHAV	BARROW	AK		CRUISE-NORMAL	GRND/WTR	MISJG	ATCO	IFR	USK	ATP	00500	00150	000	
14567	AL01	DHC2MK3	SEA AIRMOTIVE			CNTLD-COLL		UX	ACAR	FOG		PILT	00015	03106	000	
A COMPANY FLT PLAN.																
780129	AL61	CESSNA	POINT SPENCER	AK		CRUISE-LO LVL OF	GRND/WTR	MISJG	ATCO	IFR	DAY	CPF	00000	00000	000	
29179	AL61	U206C	NOME FLYING SE			CNTLD-COLL	WX/VFR	MISCL	AXCG	HSNO		PILT	00000	03500	004	
A WX BRIEF BY COMPANY.																
780129	AL61	CESSNA	BREVIG MISSION	AK		CRUISE-NORMAL	GRND/WTR	CARLS	ATCO	IFR	DAY	COM	00391	00141	000	
1485K	AL61	U206E	TELLER AIR SVC			CNTLD-COLL		MISCL	APAX	OTHR		PILT	00040	02211	001	
A A/C COLLIDED WITH FROZEN SNOW COVERED BAY. WX BRIEF FROM OPERATOR HOME.																
780630	AL61	CESSNA	OMALIK	AK		CRUISE-ECO/PREC LD	WX/VFR	CALCR	ATCO	IFR	DAY	ATP	00473	00315	001	
1789U	AL61	207A	AURORA AIR SER			CNTLD-COLL	GRND/AIR	UX	ACAR	LTRK		PILT	00297	06528	000	
A PIREP STATED CLOUDS OBSCD WINDY CREEK DRAINAGE AREA.																
780707	AL61	CESSNA	UNALAKLEET	AK		LAND-ROLL FL	32405?BK	INSTL	ATCO	VFR	DAY	COM	00101	00200	000	
185SH	AL61	A185F	SEWARD-PENNINS			DIR-CNTL-LOOP			ACAR	WIND		PILT	00101	00447	000	
A BRAKE SYSM NIPPLE FITTING OVER TORQUED CAUSING LOSS OF HYD PRESS.ED BRAKES IN FLT.																
780711	AL61	CESSNA	KOTZEBUE	AK		TKOF-GRND ROLL	TERRAIN/UNSU	CARLS	ATCO	VFR	DAY	ATP	00392	00250	000	
5885T	AL61	A185E	MAXSON-AUTTIO			NOSE-UP-OVR	PLAN/ACPCRF	MISCL	APAX	NOWX		PILT	00030	19332	001	
A																
780718	AL61	HUGHES	WISEMAN	AK		CRUISE-ECO/PREC LD	65205?TA	CRACK	ATCO	VFR	DAY	ATP	01200	00230	000	
8689F	AL61	369HE	TEMSCO-HELICOP			AIRFRAME-IN-FLT			APAX	FRIA		PILT	00200	03310	000	
A 15FT CABLE WITH HOOK AT FREE END ATTACHED TO BOTTOM OF FUSELAGE-C REACH T/R. T/R NOT RECOVERED.																

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780719	AL61	CESSNA	BIG DELTA	AK			RWY/ALIGN	MISJG	ATCO	VFR	DWN	COM	00092	00067	000
22131	AL61	A185E	ALASKA AVIATIO			GEAR COLL	DRIFT	HIGHVG	PXCG	NOWX		PILT	00042	02537	000
A															
780722	AL61	DHAV	KOTZEBUE	AK		CRUISE-FCD/PREC LD	7200SYEN	UNDET	ATCO	IFR	DAY	COM	00510	00200	000
28641	AL61	DHC3	MAXSON AVIATIO			CNTLD COLL	ENRT/TERRAIN		AGAR	CEIL		PILT	00200	02641	000
A															
780722	AL61	HILLER	LIVENGOOD	AK		HOVERING	GRND/FLTCNTL	UNSKL	ATCO	VFR	DAY	COM	00036	00100	000
97620	AL61	UH12E	ROCKY MOUNTAIN			COLL-TREES		MISCL	APAX	NOWX		PILT	00035	02637	003
A	LOSS OF CYCLIC CONTROL FOR UNDETERMINED REASON.COLLIDED WITH TREERING UNCONTROLLED R/H TURNS.														
780722	AL61	DHAV	ANAKTUVUK PASS	AK		APPR-VFR PTRN CIRC	FLY/SPD	INATT	ATCO	VFR	DAY	ATP	00044	00250	00
99717	NA61	DHC2MKI	FRONTIER FLYIN			STALL		MISCL	APAX	NOWX		PILT	00030	20030	00
A	FLOAT EQUIPPED														
780730	AL61	CESSNA	BETTLES	AK		CRUISE-NORMAL	WX/VFR	RCKLS	ATCO	IFR	DAY	COM	00080	00115	001
10419	AL61	TU206A	BAKER AVIATION			CNTLD COLL	ENRT/TERRAIN-FIRE		AGAR	CEIL		PILT	00080	02671	000
A	VACUM PUMP REPORTED TO BE INOPERATIVE.														
781013	AL61	DHAV	BARROW	AK		LAND-LVL OFF TOUCH	3012RTAF	JAMML	ATCO	IFR	DAY	ATP	00891	00116	001
40488	AL61	DHC6	ARCTIC GUIDE A			UNCTLD COLL	2710SYAL		PXCG	NOWX		PILT	00116	04301	001
A	IMPROPERLY INSTALLED DE-ICE BOOTS ON HORIZONTAL STABILIZER.														
781020	AL61	CESSNA	ATKASUK	AK		TKOF-ABORTED	EARLY/LIFTOF	MISJG	ATCO	IFR	DAY	COM	00292	00335	000
73010	AL61	207A	CAPE SMYTHE AI			CNTLD COLL	PLAN/AGPERF	MISCL	APAX	NOWX		PILT	00275	01635	000
A	RUNWAY HAS 5 UPSLOPE,COVERED WITH 6 TO 8 INCHES OF SNOW.														
781108	AL61	CESSNA	TELLER,AK	AK		TKOF-GRND ROLL	PROC/INST	SUPFC	ATCO	VFR	DAY	COM	00000	00000	000
34897	AL61	A185F	TELLER AIR SER			DIR CNTL LOOP		SHIFT	PXCG	NOWX		PILT	00000	00000	000
A	PLT STATED FREIGHT AGAINST PETALS.														
781110	AL61	BEECH	UNALAKLEET	AK		CRUISE-FCD/PREC LD	7221SXPW	CRACK	ATCO	VFR	DAY	COM	00462	00052	000
7512N	AL61	A36	GALENA AIR SER			ENGINE MALF	TERRAIN/UNSU		APAX	NOWX		PILT	00046	01950	000
A															
790121	AL61	PIPER	GALENA	AK		CRUISE-FCD/PREC LD	7320SYFC	JAMML	ATCO	VFR	DAY	COM	00353	00150	000
8329	AL61	PA18	GALENA AIR SER			COLL-TREES	TERRAIN/UNSU		APAX	NOWX	OCST	PILT	00050	02137	000
A	MIXTURE CONTROL WIRE BROKE,SPRING LOADED CONTROL WENT TO IDLE CUTOFF,ENGINE STOPPED,HIT TREES LANDING IN DEEP SNOW														
790128	AL61	DHAV	ANAKTUVUK PASS	AK	SNO	CRUISE-NORMAL	ENRT/TERRAIN	CARLS	ATCO	IFR	DAY	COM	05000	00186	000
85178	AL61	DHC6200	CAPE SMYTHE AIR			COLL-OTHER		WX	ACAR	HSNO		PILT	00150	14650	000
A	AIRCRAFT FLOWN INTO WHITE OUT CONDITIONS AT LOW ALTITUDE. STRUCK MOUNTAIN TRYING TO CLIMB TO SAFE ALTITUDE.														
790128	AL61	CESSNA	POINT HOPE	AK		TKOF-GRND ROLL	OTHER/MISC	CARLS	ATCO	VFR	NIT	COM	00375	00250	000
21369	AL61	195	CAPE SMYTHE AIR	19		DIR CNTL LOOP	RWY/ALIGN	SNOBNK	APAX	WIND		PILT	00061	02300	000
A	PILOT ATTEMPTED TO TAKEOFF DIAGONALLY ACROSS RUNWAY DUE TO CROSSWIND. HIT SNOW DRIFT, LOST DIRECTIONAL CONTROL.														
790525	AL61	DHAV	BULLEN POINT	AK		TKOF-INIT CLIMB	PLAN/WTBAL	CARLS	1352	IFR	DSK	ATP	02630	00250	003
58174	AL61	DHC6	SEA AIRMOTIVE,	04	DRY	UNCTLD COLL	PREFLT/INSP	SHIFT	ACAR	CEIL	OCST	PILT	00103	14000	000
A	AIRCRAFT CRASHED ON TAKEOFF. SUSPECT LOAD SHIFT OR IMPROPER LOADING. LOADMASTER HAD NO TRAINING.														

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EVENT REMARKS															
790608	AL61	HILLER	LIBERTY	AK		SFL-AUTO ROT	FLTCNTL/AIR	MISJG	ATCO	VFR	DAY	COM	00085	00085	000
9618M	AL61	UH12C	TENSCO HELICOPT			UNKTLD COLL	GRND/STR	BUNDRF	AGAR	NOWX	SCAT	PILT	00085	05350	001
A	HELICOPTER WITH SLING LOAD OF LOGS HIT DOWNDRAFT.LOGS HIT GROUND,ACFT HIT GROUNDAFTER COMING TO END OF CABLE.														
790627	AL61	DOUG	BETTLES	AK	RAI	LAND-ROLL FW	TAKEOFF/OW	MISJG	ATCO	VFR	DAY	ATP	00558	00233	000
59318	AL61	DC3	FRONTIER FLY SE	01	WET	DIR CNTL LOOP	OV/SHOOT		JETRWY	ACAR	FOG	OCST	PILT	00233	12808	000
A	LANDED FAST AND DOWNWIND HALF WAY DOWN RWY. UNABLE TO STOP WITH HEAVY BRAKING. GROUND LOOPED TO STOP.														
790701	AL61	DHAV	TRAIL CREEK	AK		LAND-ROLL FW	OV/SHOOT	CALCR	ATCO	VFR	DAY	COM	01000	00285	000
91575	AL61	DHC3	MAXSON AVIATION		WET	OVERSHOOT			WETRWY	ACAR	NOWX	OCST	PILT	00285	03500	000
A	LANDED LONG AND FAST ON A WET SAND BAR AND SLID OFF END INTO A DITCH. COLLAPSED LANDING GEAR.														
790810	AL61	CESSNA	BORNITE	AK		TKOF-FORCE LAND	2800SYF	FUELC	ATCO	VFR	DAY	COM	01000	00235	000
91AAV	AL61	180	AURORA AIR SERV	36		NOSE-UP-OVR	PREFLT/INSP		APAX	NOWX	OCST	PILT	00012	10520	000
A	ENGINE QUIT ON TAKEOFF. LANDED OFF END OF RUNWAY. HIT TREE. STOPPED INVERTED. WATER IN FUE..														
790816	AL61	CESSNA	SHELDONS POINT	AK	RAI	LAND-ROLL FW	TERRAIN/UNSU	MISJG	ATCO	VFR	DAY	COM	00400	00210	000
70098	AL61	185	GALENA AIR SER.	23		NOSE-UP-OVR	APT/COND	MISCL	APAX	LTRN	OCST	PILT	00030	02580	000
A	LANDED ON UNOPENED AIRPORT RUNWAY. TIRE HIT SOFT SPOT. AIRCRAFT FLIPPED OVER.														
790908	AL61	CESSNA	NANUSHUK RIVER	AK	FOG	CRUISE-FCD/PREC LD	7221SXPW	CRACK	ATCO	VFR	DAY	CPF	00115	00435	000
175NU	AL61	207	JEN AIR FLY SER			NOSE-UP-OVR	TERRAIN/UNSU		APAX	FOG	OCST	PILT	00030	01795	000
A	ENGINE QUIT WHILE LOOKING FOR MOOSE AT LOW ALTITUDE. LANDED SOFT TUNDRA. FLIPPED OVER. FOUND BROKEN CRANKSHAFT.														
790908	AL61	CESSNA	UMIAT	AK	FOG	CRUISE-FCD/PREC LD	TERRAIN/UNSU	UNSIT	ATCO	VFR	DAY	CPF	00115	00405	000
1759U	AL61	207	JEN AIR FLY SER			NOSE-UP-OVR	7221SXPW		EMLAND	PXCG	NOWX	OCST	PILT	00030	01795	000
A	ENGINE FAILURE EN ROUTE. LANDED ON SOFT TUNDRA. AIRPLANE FLIPPED OVER. FOUND BROKEN CRANKSHAFT.														
790908	AL61	CESSNA	NANUSHUK	AK	FOG	CRUISE-FCD/PREC LD	7221SXPW	CRACK	ATCO	VFR	DAY	CPF	00115	00435	000
175NU	AL61	207	JEN AIR FLY SER			NOSE-UP-OVR	TERRAIN/UNSU		APAX	FOG	OCST	PILT	00030	01795	000
A	ENGINE QUIT WHILE LOOKING FOR MOOSE AT LOW ALTITUDE. LANDED SOFT TUNDRA. FLIPPED OVER. FOUND BROKEN CRANKSHAFT.														
791011	AL61	CESSNA	GALENA	AK		LAND-ROLL FW	BRAKE/GROCTL	UNSKL	ATCO	VFR	DAY	COM	00004	00058	000
61855	AL61	180K	HAROLD'S AIR SE	25	DRY	DIR CNTL DRAG		MISCL	APAX	NOWX	SCAT	PILT	00004	01090	000
A	PILOT LOST CONTROL DURING LANDING ROLLOUT.														
791019	AL61	DHAV	KOYUK	AK	SNO	TKOF-ABORTED	TKOF/DELAY	WXBRF	ATCO	VFR	DAY	COM			000
48196	AL61	DHC3		20	WET	COLL-OTHER	TERRAIN/SNIC	ICESLS	ACAR	HSWO	OCST	PILT			000
A	PILOT ATTEMPTED TAKEOFF DURING HEAVY SNOW. ABORTED TAKEOFF TOO LATE AND WENT OFF END OF RUNWAY.														
791025	AL61	BEECH	KOTZEBUE	AK		TKOF-ABORTED	OP/TEMP	UNSIT	ATCO	VFR	DAY	COM	00040		000
877GM	AL61	E18S	AURORA AIR SERV	08		COLL-OTHER		EMLAND	ACAR	NOWX	CLER	PILT	00020		000
A	PILOT LOST POWER ON ONE ENGINE. CRASHED DURING ABORTED TAKEOFF.														
791025	AL61	CESSNA	VENETIE	AK	SNO	UNAUTH LOW LEVEL	ENRT/TERRAIN	MISJG	ACOM	IFR	DAY	ATP	00400	00333	001
1868U	AL61	207	AIR NORTH			CNTLD COLL	THROT/800 ST	FOGICE	PXCG	FZTP	OCST	PILT	00005	02573	003
A	FLYING LOW DUE TO WEATHER. WINDSHIELD ICED. SAW HILL COMING UP, OPENED THROTTLE ABRUPTLY. ENGINE DIED. HIT TREES.														
791025	AL61	CESSNA	VENETIE	AK	HAZ	CRUISE-FCD/PREC LD	MGT/FUEL	INATT	ACOM	IFR	DAY	ATP	00400	00383	001
1688U	AL61	207	AIR NORTH			COLL-TREES	ENRT/TERRAIN	FOGICE	PXCG	LFZR	OCST	PILT		02573	003
A	ICED-OVER WINDSHIELD, LOW ALTITUDE, LOW CEILING. OPENED THROTTLE TO CLEAR HILL. ENGINE QUIT. FUEL SELECT EMPTY CELL														

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791120	AL61	BELL	GOLD KING	AK		TKOF-GRND ROLL	RWY/ALIGR	MISJG	OTCO	VFR	DAY	COM	00500	00300	000
206JP	AL61	206B	AURORA AIR SERV	09	SNO	NOSE UP-OVR		SNOBNK	APAX	NOWX	OCST	PILT	00015	02700	000
A	RAN OFF EDGE OF SNOW-PACKED RUNWAY ON TAKEOFF. WHEEL HIT SNOWBANK. AIRPLANE NOSED OVER.														
791203	AL61	DHAV	NOME	AK	SNO	CLIMB-TO CRUISE	ENRT/TERRAIN	MISJG	ACOM	IFR	NIT	ATP	00731	00034	001
8061V	AL01	DHC6	EVERGREEN HELIC			CNTLD COLL	PLAN/WX	WX	MAIL	FOS	OCST	PILT	00034	03453	000
A	AIRPLANE DEPARTED IN DARKNESS ON A SPECIAL VFR INTO IFR CONDITIONS. STRUCK SIDE OF MOUNTAIN DURING CLIMB.														
800119	AL61	CESSNA	SHUNGNAK	AK		APPR-FINAL VFR	GRND/LTR	UNK	ATCO	VFR	DAY	COM	04000	00010	007
1690Z	AL61	185A	AMDER AIR SERV	09		CNTLD COLL		MISCL	APAX	NOWX	CLER	PILT	00010	06050	002
A	AIRCRAFT CRASHED SHORT OF RUNWAY ON APPROACH END. LANDING INTO SUNSET COULD HAVE BEEN A FACTOR.														
800208	AL61	CESSNA	ATKASUK	AK		TKOF-INIT CLIMB	391OSYSC	JAMML	ATCO	VFR	NIT	ATP	00202	00007	000
1736U	AL61	207	JEN AIR	22		CNTLD COLL	GRND/LTR		MAIL	TURB	CLER	PILT	00003	02315	005
A	PILOT FLEW INTO GROUND AFTER TAKEOFF. INVESTIGATION REVEALED STATIC SYSTEM MALFUNCTION.														
800218	AL61	PILATS	BARROW	AK	HAZ	TKOF-INIT CLIMB	FLY/SPD	MISTK	ATCO	VFR	DAY	COM	00023	00100	003
3603R	AL61	PC6B1H2	UMIAT ENTERPRIS			STALL	GRND/LTR	FIRE	APAX	NOWX	CLER	PILT	00023	02034	000
A	AIRCRAFT STALLED & CRASHED RIGHT AFTER TAKEOFF. UNABLE TO DETERMINE WEIGHT & BALLANCE DUE TO FIRE.														
800412	AL61	CESSNA	WALES	AK	HAZ	LAND-ROLL FW	FUEL/LOW	CARLS	ATCO	VFR	DAY	COM	00710	00311	000
8895C	AL61	185F	FOSTER AVIATION	11		FORCED LDG-DAMAGE		EMLAND	APAX	NOWX	CLER	PILT	00253	03430	000
A	AIRCRAFT RAN OUT OF FUEL AND CRASHED DURING EMERGENCY LANDING.														
800423	AL61	CESSNA	STEBBINS VILLAG	AK	HAZ	TKOF-ABORTED	TKOF/DELAY	MISJG	ATCO	VFR	DAY	ATP	00129	00318	000
7396U	AL61	207	FOSTER AVIATION			DIR CNTL DRAG	GRND/LTR	ICESLS	APAX	NOWX	SCAT	PILT	00129	07725	
A	PILOT ATTEMPTED TO ABORT TAKEOFF ON SNOW AND ICE RUNWAY. ONE WHEEL DUG IN AND CAUSED CRASH.														
800423	AL61	CESSNA	STEBBENS	AK	HAZ	TKOF-ABORTED	TKOF/DELAY	MISJG	ATCO	VFR	DAY	ATP	00129	00318	000
7396U	AL61	207	FOSTER AVIATIN			DIR CNTL DRAG	GRND/LTR	ICESLS	APAX	NOWX	SCAT	PILT	00129	07725	000
A	PILOT ATTEMPTED TO ABORT TAKEOFF ON SNOW AND ICE RUNWAY. ONE WHEEL DUG IN AND CAUSED CRASH.														
800618	AL61	CESSNA	ALDER CREEK	AK		TKOF-INIT CLIMB	PLAN/ACPERF	MISJG	ACOM	VFR	DAY	ATP	01005	00280	000
1833J	AL61	207	AIR NORTH	26		COLL-TREES	TERRAIN/UNSU	MISCL	MAIL	NOWX	BRKX	PILT	00210	02608	002
A	TRIED TO TAKE OFF ON SOFT UPHILL STRIP. BECAME AIRBORNE. ABORTED. SUSPECT POWER LOSS. RAN INTO TREES. ENGINE O.K.														
800629	AL61	PIPER	ST MICHAELS	AK	RAI	LAND-ROLL FW	3210SYMG	CRACK	ATCO	VFR	DAY	COM	00092	00233	000
5668G	AL61	PA32300	BERING AIR		WET	GEAR COLL	TERRAIN/UNSU		APAX	LIRN	OCST	PILT	00046	08073	000
A	LEFT MAIN GEAR BROKE OFF WHILE LANDING ON A RUTTED, MUDDY, GRAVEL STIP. FACTORS: CROSSWIND, WATER HOLES IN RUNWAY.														
800708	AL61	PIPER	FAIRBANKS	AK					ATCO						000
108NS		PA32R300													.000
A															
800712	AL61	CESSNA	GOLOVIN	AK	FOG	UNKNOWN	ENRT/TERRAIN	WXBRF	ATCO	IFR	DAY	ATP	00107	00391	008
90238	AL61	402CESSNA	RYAN AIR SERVIC			CNTLD COLL	PLAN/WX	WX	APAX	CEIL	OCST	PILT	00009	06185	000
A	EVIDENCE INDICATES AIRPLANE STRUCK SIDE OF HILL ON CAPE NEAR SHORE OF BAY AREA, AT CRUISE SPEED. LOW CLOUDS, FOG.														
800723	AL61	BELL	DEADHORSE	AK		LAND-LVL OFF TOUCH	FUEL/LOW	CARLS	ATCO	VFR	DAY	COM	00129	00129	000
390EH	AL01	206B	ERA HELICOPTER			FORCED LDG-DAMAGE		EMLAND	HELI	NOWX	CLER	PILT	00129	01899	000
A	PILOT CONTINUED FLIGHT UNTIL FUEL EXHAUSTION. HELICOPTER DAMAGED DURING FORCED LANDING.														

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800730	AL61	CESSNA	GALENA	AK					ATCO						000
64083		172													000
A															
800802	AL61	HUGHES	KIVALINA	AK		CRUISE-FCO/PREC LD	7322GV	JAMML	ATCO	VFR	DAY	ATP	01188	00256	000
50SC	AL01	369	INTL AIR TRANSP			FORCED LDG-DAMAG			PXGG	NOWX	SCAT	PILT	00238	04978	000
A	N 2 RPM WENT INTO OVERSPEED, THROTTLE BACK. MADE HARD AUTOROTATE LANDING. FOUND FUEL GOVERNOR MALFUNCTION.														
800912	AL61	CESSNA	FAIRBANKS	AK		TKOF-FORCE LAND	2800SYF	FUELC	OTCO	VFR	DAY	ATP	00108	00255	000
1657U	AL61	207	AURORA AIR SER	01R	DRY	NOSE UP OVR	PREFLT/INSP		APAX	NOWX	CLER	PILT	00108	06155	001
A	ENGINE QUIT ON INITIAL CLIMB AFTER TAKEOFF. LANDED OFF RUNWAY. NOSED OVER. FOUNDWATER IN FUEL.														
801011	AL61	CESSNA	FORT YUKON	AK		APPR-GO ARND VFR	OBJECT/AVOID	MISJG	ATCO	VFR	DAY	COM	01103	00361	000
34856	AL61	1708	ARTIC CIRCLE AI	01	SNW	COLL-TREES	INIT/GOAR	MISCL	ACAR	NOWX	SCAT	PILT	00120	03182	000
A	DRAGGED GRAVEL BAR LANDING STRIP TO CHECK SNOW COVER. DELAYED GO-AROUND. HAD TO LAND IN WILLOWS TO AVOID TREES.														
801019	AL61	CESSNA	DEADHORSE	AK	FOG	APPR-FINAL	GRND/JTR	WXBRF	ATCO	IFR	NIT	CPF	00040	00059	002
59199	AL61	U206F	AUDI AIR	06		CNTLD COLL	CNTL/WX	WX	APAX	LFZR	OBSC	PILT	00040	00639	000
A	CRASHED DURING SPECIAL VFR APPROACH TO AIRPORT IN FREEZING RAIN. INDICATES PILOT LOST CONTROL OF AIRPLANE.														
801126	AL61	CESSNA	FT YUKON		FOG	APPR-FINAL VFR	CARBHT/DEIC	CARLS	ATCO	VFR	DAY	COM	00118	00013	000
75LE	AL61	185				STALL	FLY/SPD	EMLAND	APAX	NOWX	CLER	PILT	00013	02582	000
A	ENGINE QUIT ON FINAL APPROACH FOR LANDING. NO ENGINE PROBLEM COULD BE FOUND. FOG & ICING CONDITIONS EXISTED.														
801230	AL61	RKWELL	GAMBELL	AK					ACOM						001
113MR		680FL							APAX						
A															
810319	AL61	CESSNA	TELLER	AK	FOG	CRUISE-NORMAL	PLAN/WX	WXBRF	ATCO	IFR	DAY	COM	03000		000
73503	AL61	207A	RYAN AIR SERVIC			STALL	MISC PILACT	ICING	APAX	LFZR	OBSC	PILT		08379	001
A	ENCOUNTERED ICING, LOW CEILING & VISIBILITY. ICE ON WINDSHIELD. ELECTED TO LAND. STALLED. FLIPPED OVER ON IMPACT.														
810327	AL61	PIPER	GALENA	AK					ATCO						000
66856		PA32							APAX						000
A	CRASHED ON GO-AROUND.														
810501	AL61	CESSNA	NOME	AK		LAND-ROLL FL	BRAKE/GRDCTL	MISJG	ATCO	VFR	DAY	COM	00100	00120	000
70008	AL61	185A	FOSTER AVIATION	27	DRY	DIR CNTL LOOP	3220SYNG	MISCL	APAX	NOWX	SCAT	PILT	00120	10000	000
A	LOST CONTROL, GROUND-LOOPED ON LANDING. TAIL WHEEL LOCK HAD BEEN REMOVED. RECOMMEND REINSTALLATION OF SAME.														
810628	AL61	FRCHLD	BEETLES	AK					ATCO						000
8682		C119GJEHAWKN							ACAR						000
A	DEVELOPED ENGINE PROBLEM AND CRASH LANDED ON SAND BAR.														
810721	AL61	HELIO	UMIAT	AK					ATCO						000
8366F		500													002
A	ON HOVER HELICOPTER STARTED MOVING FORWARD. REAR CYCLIC APPLIED, DID NOT RESPOND. ROTORS STRUCK GROUND.														
810730	AL61		TOBIN CREEK	AK					ATCO						000
326W			AURORA AIR SERV												000
A	ON LANDING RAN OFF RUNWAY.														

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780703	AL62	DHAV	PELICAN	AK		CRUISE-NORMAL	ENRT/TERRAIN	MISJG	ATCO	IFR	DAY	CPF	00125	00225	000
8690	AL62	DHC2MKI	SOUTHEAST SKYW			STALL	FLT/SPD	WX	APAX	FOG		PILT	00025	05150	003
A	FLOAT EQUIPPED.ENTERED NARROW CHANNEL AT 100FT AGL.														
780729	AL62	HUGHES	KETCHIKAN	AK		CRUISE-FCD/PREC LD	6520SYTA	OTHER	ATCO	VFR	DAY	COM	01000	00135	000
8318F	AL62	369HE	TEMSCO HELICOP			HARD-LAND	ROTOR/RPM		APAX	NOWX		PILT	00195	03022	001
A	T/R BLADE PROTECTIVE TAPE CAME OFF IN FLT.PILOT COULD NOT IDENTIFOBLEM.														
780825	AL62	GRUMAN	LABOUCHER BAY	AK		UNKNOWN	GRND/WTR	UNK	ATCO	IFR	DAY	COM	00684	00269	012
1045	AL62	G21A	WEBBER AIRLINE			UNCTLD COLL	PLAN/WTR-L	WX	PXCG	FRTA		PILT	00092	05727	000
A	ACFT DMG & INJURY INDEX PRESUMED.FOUR BODIES RECOVERED.														
780909	AL62	HILLER		AK		APPR-FINAL VFR	6510SYMN	CRACK	ATCO	VFR	UNK	COM	01003	00336	003
5384V	AL62	UH12C				AIRFRAME-IN-FLT			APAX	FRTA		PILT	00054	05382	000
A															
780915	AL62	RKWELL	ITALIO RIV	AK		TKOF-GRND ROLL	PLAN/ACPERF	CARLS	ATCO	VFR	DAY	CPF	00325	00115	000
26588	NW61	560				CNTLD COLL		MISCL	ACAR	NOWX		PILT	00110	02500	001
A	A/C RAN OFF END OF SAND BAR INTO RIVER.APPROX 1900LBS FISH REMOVER INVESTIGATION STARTED.														
781019	AL62	HILLER		AK		CLIMB-TO CRUISE	2820SYFD	FUELC	ATCO	VFR	DAY	COM	00129	00180	000
64867	AL62	UH12C				HARD-LAND	2200SYAF		ACAR	NOWX		PILT	00101	02253	000
A															
781121	AL62	DHAV	CRAB BAY	AK		LAND-ROLL FW	GEAR/NONE	CARLS	ATCO	VFR	DAY	COM	00800	00250	000
3382	AL62	DHC3	CHANNEL FLYING			WHLS DWN WTR		MISCL	ACAR	NOWX		PILT	00150	10800	000
A	AMPHIBIOUS.														
781125	AL62	DHAV		AK		CRUISE-NORMAL	ENRT/TERRAIN	CARLS	ATCO	IFR	DAY	COM	00990	00279	005
3790G	AL62	DHC2*				CNTLD COLL	WX/VFR	WX	PXCG	FRTA		PILT	00274	02362	000
A															
790123	AL62	DHAV	KETCHIKAN	AK		APPR-GO ARND VFR	OBJECT/AVOID	UNOPS	ATCO	VFR	DAY	COM	00019	00019	000
68086	AL62	DHC2*	TYEE AIRLINES I			COLL-TREES	FLT/SUPERV	FIRE	TRNG	NOWX	CLEA	PILT	00019	00825	002
A	ATCO TRAINING FLIGHT.INSTRUCTOR HAD PILOT MAKE A STEEP TURN ON GO AROUND.STRUCK TREE.														
790916	AL62	BELL	SITKA	AK	FOS	TKOF-VERTICAL	OBJECT/AVOID	MISJG	ATCO	IFR	DAY	COM	00582	00132	003
16877	AL62	206BELL	EAGLE AIRT INC.			NOSE-UP-OVR	TERRAIN/UNSU	HAZOBS	HELI	FOG	OCST	UNKN	00133	03828	000
A	PILOT ATTEMPTED TAKEOFF FROM UNSUITABLE TERRAIN. SKID CAUGHT TREE ROOT & TIPPED OVER, CAUSING SUBSTANTIAL DAMAGE.														
791003	AL62	CESSNA	JUNEAU	AK	RAI	UNKNOWN	CNTL/WX	WXBRF	ATCO	IFR	DAY	PPF	00020	00340	003
1726U	AL62	207	SE SKYWAYS INC			SPIN	FLY/SPD	WX	PXCG	HVRN	OCST	PILT	00020	02623	000
A	PLANE WAS SEEN SPINNING OUT OF CLOUDS TOO LOW TO THE GROUND TO RECOVER. TOXICOLGY ALCOHOL TEST POSITIVE.														
791206	AL62	CESSNA	WRANGELL	AK		APPR-FINAL VFR	3230SYAC	JAMML	ATCO	VFR	DAY	COM	02300	00317	003
84627	AL62	185	WRANGELL AIR			CNTLD COLL			APAX	NOWX	OCST	PILT	00317	06730	000
A	LANDED AMPHIBIOUS FLOATPLANE IN WATER WHEN UNABLE TO LOWER GEAR. LEFT GEAR NOT FULL UP. DUE WING IN WATER ON LNDG.														
800115	AL62	HUGHES	PETERSBURG	AK	SNO	CRUISE-FCD/PREC LD	WX/VFR	RCKLS	ATCO	IFR	DAY	COM	00699	00076	000
8852F	AL62	369D	TEMSCO HELICOPT			OTHER	EQUIP/MGT	ICING	APAX	HSNO	OCST	PILT	00076	05130	001
A	FLYING IN HEAVY SNOW. AIR INTAKE BLOCKED BY ICE, SNOW. ENGINE QUIT. DITCHED IN OCEAN. NO RESTART OR DEPLOY FLOATS.														

DATE	OO	ACFT MAKE	CITY	ST	WRST	PHASE OF FLIGHT	CAUSAL	SUPPTF	TFLY	FLTGP	LTCON	CERT	TMM	T90	FAT
NNUM	PROD	ACFT MODEL	OWN OPR NAME	RWAY	RWYC	ACCIDENT TYPE	CAUSAL	CONTRF	TFLYS	FLYCS	SKCON	PROF	TMM90	TOTHR	INJ
EVENT REMARKS															
800209	AL62	CESSNA	KETCHIKAN	AK		GRND FRM LAND	BRAKE/GRUCTL	CARLS	ATCO	VFR	DAY	COM	00550	00300	000
25652	AL62	185	STIKINE AIR SER			DIR CNTL DRAG	MISC/PILACT	MISCL	APAX	NOWX	CLER	PILT		02100	000
A	PILOT WAS WATER TAXIING ON STEP AND LOST CONTROL DRAGGING WING TIP.														
800711	AL62	CESSNA	RODMAN PASS	AK	FOG	CRUISE-NORMAL	ENRT/TERRAIN	MISJG	ATCO	IFR	DAY	COM	02100		000
89606	AL62	185	MOUNTAIN AVIATI			COLL-TREES	WX/VFR	WX	APAX	FOG	BRKN	PILT		06000	003
A	FLEW INTO AREA OF DENSE FOG IN MOUNTAIN PASS. STRUCK TREES IN ATTEMPT TO TURN BACK. WEATHER BRIEF VFR														
800720	AL62	GRUMAN	JUNEAU	AK	FOG	LAND-LVL OFF TOUCH	LVL/OFF	MISJG	ATCO	IFR	DAY	CPF	00081	00280	000
97502	AL62	G21A	SOUTHEAST SKYWA	03		HARD-LAND	PLAN/WX	WX	APAX	LTRN	OCST	PILT	00081	01499	000
A	ENCOUNTERED FOG-P[illegible] AFTER VFR DEPARTURE. MADE HARD WATER LANDING, BEACHED AMPHIBIAN. IMPACT BENT WINGS & HULL.														
800812	AL62	HUGHES	SITKA	AK		APPR-FINAL VFR	GRND/WTR	MISJG	ATCO	VFR	DAY	COM	01500	00157	000
90528	AL62	369HS	RAVEN COPTERS			HARD LAND	PLAN/WIBAL		APAX	NOWX	CLER	PILT	00157	04530	009
A	HARD LANDING FROM UNCHECKED HIGH SINK RATE ON APPROACH. POSSIBLE DOWNDRAFT OR SETTLING WITH POWER. OVER GROSS.														
800826	AL62	HUGHES	WRANGELL	AK		STATIC-IDLE ROTOR	MISC/PILACT	INATT	ATCO	VFR	DAY	COM	00157	00157	000
92077	AL62	369	TEMSCO HELICOPT			UNNTLD-COLL	PROC/INST	MISCL	APAX	NOWX	SCAT	UNKA	00157	01317	000
A	PASSENGERS OFF-LOADED WITH ROTORS TURNING. PILOT SECURED CONTROLS. GOT CUT, HELICOPTER FELL OFF HELIPAD.														
801006	AL62	CESSNA	KETCHIKAN	AK	RAI	TKOF-INIT CLIMB	GRND/WTR	WXNBR	ATCO	VFR	DAY	COM	09020	00300	001
21749	AL62	A185F	REVILLA FLYING			COLL-TREES	FLTCNTL/AIR	DWNDRF	APAX	LTRN	OCST	PILT	00300	10020	002
A	MADE DOWNWIND TURN OVER SHORE FROM WATER TAKEOFF. HIT DOWNDRAFT IN NEAR VERTICALBANK. HIT TREES. MISJUDGEMENT.														
810508	AL62	DHAV	KETCHIKAN	AK					ATCO						000
64380		DHC2*	TYEE AIRLINES						APAX						001
A	ENCOUNTERED PATCHY FOG AND LOW STRATUS. LEFT WING HIT TREE.														
810619	AL62	CESSNA		AK					ATCO						000
75826		207	SOUTHEAST SKYWA						APAX						000
A	ENCOUNTERED DOWN DRAFT. NO ROOM TO TURN.														
810802	AL62	CESSNA	YUKUTAT	AK					ATCO						000
80632		206CESSNA	GULF AIR TAXI						APAX						
A	WIND GUST CAUGHT LEFT WING AND FLIPPED AIRCRAFT ON BACK.														

AVIATION EXPERIENCE - ADMITTED INSURERS - 1970 TO 1980 (000) OMITTED
STATE OF ALASKA

	1970		1971		1972		1973		1974		1975		1976		1977		1978		1979		19[illegible]	
	EP	IL	EP	IL	EP	IL	EP	IL	EP	IL	EP	IL	EP	IL	EP	IL	EP	IL	EP	IL	EP	IL
ACTNA CASUALTY & SURETY CO	-	-	-	-	17	114	0	13	0	(1)	-	-	-	-	-	-	-	-	-	-	-	-
AETNA INSURANCE CO	-	-	-	-	21	19	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
AMERICAN EAGLES	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
AMERICAN HOME INS CO	-	-	0	84	0	(84)	-	-	12	0	41	0	0	82	2	2	78	19	36	143	57	
AMERICAN MOTORISTS INS CO	-	-	-	-	1	0	-	-	-	-	1	0	-	-	-	-	-	-	-	-	-	-
ARGONAUT INS CO	-	-	-	-	3	1	3	0	3	1	112	332	0	(34)	0	(74)	-	-	-	-	-	-
ARSENAL	48	22	30	18	87	69	71	72	60	32	70	19	82	49	122	42	181	109	147	87	242	
CALVERT INSURANCE CO	-	-	-	-	-	-	-	-	5	0	-	-	-	-	-	-	-	-	-	-	-	-
CENTENNIAL INS CO	417	35	466	(14)	193	83	426	349	64	(22)	(1)	(12)	-	-	-	-	-	-	-	-	-	-
CENTRAL NATIONAL INS CO	-	-	-	-	-	-	-	-	-	-	-	-	64	43	477	1,435	376	1,455	332	395	722	
CHARTER INSURANCE CO	-	-	-	-	-	-	-	-	-	-	-	-	210	126	437	236	218	225	(1)	(24)	0	
CHUBB GROUP	33	(1)	49	0	20	2	0	(2)	0	(1)	-	-	0	(10)	0	30	0	(2)	0	(2)		
COMMERCIAL UNION INS CO	1	0	1	7	-	-	-	-	-	-	-	-	-	-	-	-	0	21	0	(1)		
CONTINENTAL INS CO	-	-	0	21	-	-	0	5	0	(2)	0	36	0	(2)	0	1	-	-	-	-		
CONTINENTAL NATIONAL INDEMNITY	-	-	4	0	-	-	-	-	-	-	-	-	-	-	-	-	0	3	-	-		
FEDERAL INS CO	-	-	-	-	1	0	-	-	1	0	3	0	-	-	1	0	3	(2)	0	(1)	-	
FIDELITY & CASUALTY CO	24	0	11	0	-	-	3	0	13	0	6	414	(1)	(2)	0	(33)	7	3	1	(24)	-	
FIDELITY & DEPOSIT CO OF MD	-	-	30	0	3	0	-	-	-	-	-	-	-	-	-	-	-	-	-	-		
FIRE & CASUALTY INS CO	211	43	40	34	-	-	2	18	0	11	5	40	0	(1)	-	-	-	-	-	-	-	
FIRST STATE INS CO	-	-	-	-	-	-	-	-	1	0	-	-	-	-	-	-	-	-	-	-	-	
GIANT AMERICAN INS CO	24	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	0	(1)	-	-	-	
GLACIER INS CO	-	-	-	-	-	-	6	24	20	(1)	3	0	6	1	7	24	2	17	237	331	154	
GLACIER INS CO	-	-	-	-	-	-	-	-	-	-	34	0	31	0	24	0	5	8	1	24	-	
GLACIER PARK INS CO	82	37	-	-	-	-	-	-	-	-	-	-	-	-	-	-	0	7	0	(2)	-	
HARTFORD INSURANCE CO	-	-	-	-	-	-	-	-	-	-	2	0	2	0	2	0	-	-	-	-	-	
IDEAL	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	0	3	1	0	-	
INA	-	-	4	(1)	11	0	18	148	22	43	70	27	24	6	1	(1)	2	0	3	0	3	
INSURANCE CO OF NORTH AMERICA	-	-	-	-	-	-	-	-	-	-	1	0	-	-	-	-	-	-	-	-	-	
INSURANCE CO OF THE WEST OF AC	-	-	-	-	-	-	-	-	-	-	1	0	1	0	-	-	-	-	-	-	-	
INSURANCE CO OF NORTH AMERICA	-	-	101	-	46	182	47	(1)	4	0	64	17	37	313	31	111	2	0	1	0	1	
INSURANCE CO.	-	-	-	-	-	-	-	-	-	-	103	344	11	(22)	-	-	-	-	(24)	(2)	0	
JAMES AMERICAN INS CO.	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	0	242	0	(24)	0	
JAMES RIVER INS CO	-	-	-	-	-	-	-	-	-	-	1	0	4	9	7	15	21	2	23	0	12	
LAND ALASKAN AGENCY	12	2	440	221	687	435	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	
OLD REPUBLIC INS CO	-	-	-	-	-	-	-	-	124	279	98	(21)	1	(44)	0	110	0	(74)	2	1	-	
PACIFIC INDEMNITY INS CO	0	(1)	0	0	0	2	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	
PACIFIC INS GROUP CO	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	
PAN AMERICAN INS CO	-	-	26	7	1000	332	900	300	341	212	341	1,041	437	314	337	(43)	-	-	-	-	-	
PEERLESS INS CO	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	443	1 321	81	
PHOENIX INS CO	-	-	-	-	-	-	-	-	-	-	-	-	877	323	432	1,770	1,137	2,107	(12)	28	116	
SAFECO INS CO	-	-	3	-	64	43	82	82	87	209	77	487	182	128	-	-	-	-	-	-	-	
SAFEWAY INS CO	-	-	-	-	20	81	68	9	95	77	147	274	137	337	(2)	(22)	0	(2)	0	234	-	
SEABURY INS CO	17	3	1	(2)	1	0	103	679	87	77	385	679	(64)	(172)	0	183	0	(32)	-	-	-	
SOUTH EASTERN INS CO	-	-	-	-	2	0	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	
STATE INSURANCE CO	-	-	-	-	-	-	13	2	12	478	331	900	13	72	0	877	-	-	-	-	-	
U.S. FIRE INS CO	-	-	24	0	-	-	-	-	-	-	-	-	-	-	1	0	1	2,132	228	(1,304)	82	
U.S. CASUALTY INS CO	-	-	-	-	-	-	-	-	-	-	341	113	170	171	(1)	847	0	(132)	0	20	-	
WORKMEN'S INS CO	5	0	-	-	-	-	-	-	0	2	-	-	-	-	-	-	-	-	-	-	-	
TOTALS	11/0 913	132	15/2 4,278	811	16/7 4,745	4,040	13/8 4,937	4,843	16/8 4,781	2,821	22/9 2,357	9,134	18/9 4,307	2,781	15/6 2,119	4,046	14/6 2,676	4,427 2117	15/5 1,298	877	10/ 1,453	
LOSS RATIO	41.5%		89.1%		62.1%		128.1% 124		162.1%		218.2%		202.2%		184.7%		240.2% 111.2%		21.4% 177.8%		82.7	

11 YEAR LOSS RATIO IL ÷ EP = LR 25,691 ÷ 18,512 = 138.8%

EP = EARNED PREMIUM IL = INCURRED LOSS WP = WRITTEN PREMIUM PL = PAID LOSS
PREPARED ALASKA DIVISION OF INSURANCE
DATE 2-20-80 (SEC)

Attachment B

NON ADMITTED INSURERS 1970-1979 AVIATION EXPERIENCE (000) OMITTED	1970 WP	1970 PL	1971 WP	1971 PL	1972 WP	1972 PL	1973 WP	1973 PL	1974 WP	1974 PL	1975 WP	1975 PL	1976 WP	1976 IL	1977 WP	1977 PL	1978 WP	1978 PL	1979 WP	1979 PL	19[illegible] WP
	4,034	1,570	3,992	1,915	3,177	1,028	2,412	1,890	3,033	10,044	1,470	5,642	14,466	4,917	7,443	4,430	13,902	7,208	12 872	8,563	

AVIA[illegible] EXPERIENCE - NON ADMITTED INSURERS - 19[illegible] 1980

(000) OMITTED

STATE OF ALASKA

	1970		1971		1972		1973		1974		1975		1976		1977		1978		1979		1980	
	P	L	P	L	P	L	P	L	P	L	P	L	P	L	P	L	P	L	P	L	P	L
ALASKA 100 INS. INC	1	0	-	-	-	-	-	-	-	-	-	-	-	-	-	-	1	0	-	-	*	
ALEXANDER & ALEXANDER	537	523	687	237	607	787	535	660	684	198	981	678	1,579	1,193	2,233	1,629	2,992	3,004	*2,653	3,965	2,[illegible]	[illegible]
AMERICAN HOME MARINE INSUR.	-	-	3	0	-	-	22	0	106	104	241	0	241	384	183	7	361	210	304	367	[illegible]	[illegible]
ARCTIC ALASKA INS. INC.	-	-	-	-	-	-	-	-	-	-	-	-	-	-	4	0	7	0	31	0	-	-
BACE & BENNETT, LTD	-	-	-	-	-	-	22	0	-	-	-	-	-	-			-	-	-	-	-	-
BANK, MARINE & FIRE INS. LTD	-	-	-	-	-	-	-	-	66	55	119	35	28	0	386	135	1,132	819	1,624	940	*1,361	
BEARD & ASSOCIATES	-	-	-	-	-	-	-	-	-	-	-	-	-	-	64	0	2,681	1,957	2,038	1,755	*3,345	
BENSINGER MARINE AGCY	-	-	-	-	-	-	-	-	-	-	-	-	-	-	1	0	-	-	-	-	-	-
[illegible]	180	178	170	0	143	0	-	-	-	-	(1)	0	-	-	83	0	234	211	114	177	* 43	1
[illegible]	-	-	-	-	-	-	-	-	-	-	-	-	-	-	8	0	15	0	16	0	-	-
[illegible]	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	6	0	7	0	* 25	
[illegible]	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	* 21	
CANADA INSURANCE CO	42	5	6	93	33	48	3	11	22	7	123	12	1,103	676	688	3,672	193	773	324	0	246	7
CHARLES GERSON AGCY	-	-	-	-	-	-	-	-	-	-	32	0	51	0	-	-	-	-	-	-	-	-
CHUBB & PROVIDENCE CO	111	0	87	16	17	1	34	0	36	0	69	0	7	0	-	-	-	-	-	-	-	-
[illegible]	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	235	0	325	*	56	
[illegible]	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	39	340	(2)	0	-	-
CNA INSURANCE COMPANIES	35	42	10	14	13	0	23	27	19	7	22	27	22	7	34	225	23	*	81	*	99	0
FIRE & MAR - ALASKA	771	266	869	712	697	473	688	1,490	1,190	2,733	1,944	2,783	2,722	0	1,999	(1,731)	650	(338)	196	28	*218	
FIRE & MAR - FEIC	-	-	-	-	-	-	-	-	191	433	531	0	111	10	49	55	8	42	7	0	6	0
F.B. SEATTLE CO	-	-	-	-	-	-	-	-	-	-	-	-	113	132	133	182	523	12	4343	0	*3,031	
FRED S. JAMES	-	-	-	-	-	-	-	-	-	-	-	-	89	626	320	97	66	0	62	0	18	9
GACHE HAAB GENL AGCY	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	26	0	737	
GAFFNEY & CO INC	-	-	-	-	-	-	-	-	7	0	11	9	1	0	-	-	3	0	(1)	0	-	-
GRANTHAM & CO GENL	-	-	-	-	-	-	-	-	13	0	-	-	-	-	-	-	5	0	-	-	-	-
HANSEN & HOWARD INS	-	-	-	-	-	-	-	-	57	45	53	119	2	56	-	-	-	-	-	-	-	-
HARTT MARINE AGENCIES	-	-	-	-	5	0	(2)	0	-	-	57	0	406	31	288	30	243	13	526	191	*234	
HAWSON & ASSOC.	-	-	-	-	-	-	15	0	40	4	41	155	97	20	-	-	115	0	9	0	22	0
HOH INSURANCE	-	-	-	-	-	-	-	-	2	13	4	0	-	-	-	-	-	-	-	-	-	-
LOCKWOOD FIRE[illegible]	170	0	130	111	(2)	32	538	304	311	312	790	200	-	-	-	-	-	-	-	-	-	
[illegible]	6	0	139	0	90	0	(51)	0	-	-	-	-	122	90	181	114	11	0	-	-	-	-
MARSH & MCLENNAN INC	-	-	-	-	-	-	-	-	-	-	-	-	191	0	165	0	-	-	38	0	160	0
MARSH & MCLENNAN SEA	-	-	-	-	98	0	2	0	51	0	135	0	1,530	0	1,127	0	1463	0	1,241	0	*1,618	
MARTIN INSURANCE AGENCY	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	42	0	* 39	
MARINE INTERNATIONAL INC	130	41	79	62	79	53	102	70	136	139	155	87	206	94	149	53	128	260	1	145	-	-
[illegible]	195	178	171	98	43	72	16	13	19	4	18	0	17	26	18	36	10	26	9	0	4	0
[illegible]	-	-	-	-	-	-	-	-	-	-	-	-	3	0	-	-	-	-	-	-	-	-
[illegible]	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	88	0	*121	
[illegible]	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	9	0	-	-	-	-
[illegible]	470	306	1,296	113	900	112	731	2,112	2,180	2,973	2,235	1,535	2,603	1,344	1,602	980	1,063	191	1,109	38	1,785	
SAFAD & CO	10	0	3	1	2	0	2	0	1	0	-	-	-	-	-	-	-	-	-	-	-	-
SAMUELS & GAINSBURG	61	7	53	8	23	2	9	1	9	29	5	2	1	0	-	-	-	-	-	-	-	-
[illegible]	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	11	0	*55	
[illegible]	(33)	0	-	-	16	0	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
[illegible]	(48)	0	874	0	104	0	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
[illegible]	17	0	6	0	6	8	7	0	19	0	81	0	132	66	331	77	983	*	506	1,223		
[illegible]	-	-	-	-	-	-	-	-	4	0	(1)	0	10	8	-	-	-	-	1	0	-	-
[illegible]	-	-	-	-	-	-	-	-	1	0	-	-	1	0	1	0	12	0	23	0	* 25	
	4,434	1,570	3,342	1,405	3,177	1,368	2,772	4,840	5,246	10,044	7,470	5,842	10,965	4,919	10,928	6,014	13,912	7,307	12,872	8,343	14,845	
	35.4%		35.9%		43.1%		174.2%		191.1%		78.2%		47.0%		54.3%		52.5%		64.7%		N/A	

10 YEAR LOSS RATIO 1970-1979

L ÷ P = LR

51,178 ÷ 74,520 = 68.7%

(000) OMITTED

P = PREMIUM
L = LOSSES
LR = LOSS RATIO
* = PRELIMINARY DATA
N/A = NOT AVAILABLE

PREPARED BY: ALASKA DIVISION OF INSURANCE
SOURCE: ANNUAL INSURANCE REPORTS
DATE: APRIL 2, 1981

nently and totally disabled. The death benefits payable to a widow or widower are not subject to reduction under (f) of this section after the widow or widower has attained the age of 52 years.

(h) In the event a deceased worker is survived by children of a former marriage not living with the surviving widow or widower, then those children shall receive the amount being paid under a decree of child support; the difference between this amount and the maximum benefit payable under this section shall be distributed pro rata to the remainder of those entitled.

(i) In the event the total amount of all benefits computed under (a)(2) of this section exceeds the maximum benefit provided in AS 23.30.175, the maximum benefit under AS 20.30.175 shall be prorated among entitled survivors. (§ 8 ch 193 SLA 1959; am § 1 ch 9 SLA 1962; am § 3 ch 99 SLA 1966; am § 1 ch 12 SLA 1968; am § 34 ch 32 SLA 1971; am § 1 ch 56 SLA 1974; am §§ 88, 89 ch 127 SLA 1974; am §§ 7—12 ch 83 SLA 1975; am §§ 5—8 ch 75 SLA 1977)

Cross references. — For construction of 1975 version of AS 23.30.175, see note to AS 23.30.175.

Effect of amendments. — The 1977 amendment rewrote paragraphs (2) and (3) of subsection (a), substituted "accordance with § 155 of this chapter" for "the same manner" and "provided in AS 23.30.175" for "temporary total disability compensation" in subsection (b), deleted "same" preceding "weekly maximum limitation" in subsection (b), rewrote subsection (e), and added subsections (f) through (i).

Legislative history reports. — For report on ch. 83, SLA 1975 (CSSB 146 am H), see 1975 Senate Journal, p. 1175.

NOTES TO DECISIONS

This section lays out the basic structure for death benefits. Wien Air Alaska v. Arant, Sup. Ct. Op. No. 1796 (File Nos. 3620, 3717), 592 P.2d 352 (1979).

Subsection (a) indicates the percentage of the deceased employee's wages which specified claimants receive. Wien Air Alaska v. Arant, Sup. Ct. Op. No. 1796 (File Nos. 3620, 3717), 592 P.2d 352 (1979).

Subsection (b) tells how to calculate the maximum limitation on death benefits. Wien Air Alaska v. Arant, Sup. Ct. Op. No. 1796 (File Nos. 3620, 3717), 592 P.2d 352 (1979).

AS 23.30.175 contains the maximum limitation on death benefits because of two things: its own language ("the weekly rate of compensation for disability or death") and by the cross-reference from subsection (b) of this section. Wien Air Alaska v. Arant, Sup. Ct. Op. No. 1796 (File Nos. 3620, 3717), 592 P.2d 352 (1979).

Determination of maximum limitation. — AS 23.30.175 determines the maximum limitation on death and disability payments by reference to increasing percentages of the state's average weekly wage. Wien Air Alaska v. Arant, Sup. Ct. Op. No. 1796 (File Nos. 3620, 3717), 592 P.2d 352 (1979).

Explanation for explicit language of section. — The explicit language of this section may be explained in part by the general policy of avoiding speculation in damage awards where causation is uncertain. In re Estate of Pushruk, Sup. Ct. Op. No. 1398 (File No. 2974), 562 P.2d 329 (1977).

Dependency is determined according to facts and circumstances existing at the time of death. In re Estate of Pushruk, Sup. Ct. Op. No. 1398 (File No. 2974), 562 P.2d 329 (1977).

The terms "married" and "widow" are defined by AS 23.30.265(15) and (21). Burgess Constr. Co. v. Lindley, Sup. Ct. Op. No. 853 (File No. 1705), 504 P.2d 1023 (1972).

Benefits granted to divorced wife. — See Burgess Constr. Co. v. Lindley, Sup.

(3) if the widow or widower remarries, she or he is entitled to be paid in one sum an amount equal to the compensation to which the widow or widower would otherwise be entitled in the two years commencing on the date of remarriage as full and final settlement of all sums due the widow or widower;

(4) if there is no widow or widower or child or children, then for the support of father, mother, grandchildren, brothers and sisters, if dependent upon the deceased at the time of injury, 35 per cent of the average weekly wage of the deceased to such beneficiaries, share and share alike, not to exceed $20,000 in the aggregate.

(b) In computing death benefits, the average weekly wage of the deceased shall be computed under AS 23.30.220 and shall be paid in accordance with AS 23.30.155 and subject to the weekly maximum limitation in the aggregate as provided in AS 23.30.175, but the total weekly compensation may not be less than $45 for a widow or widower nor less than $15 weekly to a child or $30 for children.

(c) All questions of dependency shall be determined as of the time of the injury, or death.

(d) Compensation under AS 23.30.005 — 23.30.270 to aliens not residents (or about to become nonresidents) of the United States or Canada is the same in amount as provided for residents, except that dependents in a foreign country are limited to widow or widower and child or children, or if there is no widow or widower and child or children, to surviving father or mother whom the employee has supported, either wholly or in part, for a period of one year before the date of injury. The board, at its option, or upon the application of the insurance carrier, may commute all future installments of compensation to be paid to an alien dependent who is not a resident of the United States or Canada by paying or causing to be paid to him one-half of the commuted amount of the future installments of compensation as determined by the board.

(e) Death benefits payable to a widow or widower in accordance with (a) of this section shall abate as that person ceases to be entitled and does not inure to persons subject to continued entitlement. In the event a child ceases to be entitled, that child's share shall inure to the benefit of the surviving spouse subject to adjustment as provided in (f) of this section.

(f) Except as provided in (g) of this section, the death benefit payable to a widow or widower shall

(1) five years following date of death of the deceased worker be reduced to $66^2/_3$ per cent of the benefit being then paid;

(2) eight years following date of death of the deceased worker be reduced to 50 per cent of the benefit being then paid;

(3) terminate 10 years following death of the deceased worker.

(g) The provisions of (f) of this section do not apply to a widow or widower who at the time of death of the deceased worker is perma-

determinant of earning capacity. Hewing v. Alaska Workmen's Comp. Bd., Sup. Ct. Op. No. 916 (File No. 1625), 512 P.2d 896 (1973).

Lack of motivation. — The fact that one who is physically disabled from manual labor and is unqualified in other types of work is not motivated to seek work, is not the equivalent of a physically competent person being unemployed due to lack of motivation. For lack of motivation to be significant, there must be a showing that work is available within the employee's capabilities. Hewing v. Peter Kiewit & Sons, Sup. Ct. Op. No. 1758 (File No. 3511), 586 P.2d 182 (1978).

The wording of subsection (a) is substantially identical with that of 33 U.S.C. § 908(h) of the Federal Longshoremen's and Harbor Workers' Compensation Act. Hewing v. Alaska Workmen's Comp. Bd., Sup. Ct. Op. No. 916 (File No. 1625), 512 P.2d 896 (1973).

"Other factors" under 33 U.S.C. § 908(h). — Courts have applied 33 U.S.C. § 908(h) to require compensation boards to consider the employee's age, education, industrial history, trainability, and availability of suitable work in the community as being "other factors" affecting earning capacity. Hewing v. Alaska Workmen's Comp. Bd., Sup. Ct. Op. No. 916 (File No. 1625), 512 P.2d 896 (1973).

When consideration of "other factors" ensures fair determination. — Consideration of "other factors" will ensure a fair determination of wage-earning capacity in those circumstances where the employee has no post-injury earnings or when the board determines that post-injury earnings do not accurately represent earning capacity. Hewing v. Alaska Workmen's Comp. Bd., Sup. Ct. Op. No. 916 (File No. 1625), 512 P.2d 896 (1973).

The Workmen's [now Workers'] Compensation Board erred in not considering factors including the fact that the post-injury income was from sales of junk and barbeque rather than from employment, the lack of breakdown between gross and net income, the difference in wage levels between the two time periods, and the state employment counselor's testimony as to lack of any suitable employment for claimant because of his work-related disabilities. Hewing v. Peter Kiewit & Sons, Sup. Ct. Op. No. 1758 (File No. 3511), 586 P.2d 182 (1978).

The board should have supported its ultimate finding of decrease in wage-earning capacity with subsidiary findings relating to the other factors and circumstances referred to in subsection (a), where claimant had no post-injury earnings and since the board implicitly rejected his total lack of earnings as fairly representing earning capacity. Hewing v. Alaska Workmen's Comp. Bd., Sup. Ct. Op. No. 916 (File No. 1625), 512 P.2d 896 (1973).

Sec. 23.30.215. Compensation for death. (a) If the injury causes death, the compensation is known as a death benefit and is payable in the following amounts to or for the benefit of the following persons:

(1) reasonable and necessary funeral expenses not exceeding $1,000;

(2) if there is a widow or widower or a child or children of the deceased, the following percentages of the average weekly wages of the deceased:

(A) $66^2/_3$ per cent for the widow or widower with no children;

(B) $33^1/_3$ per cent for the widow or widower with one child and $33^1/_3$ per cent for the child;

(C) 20 per cent for the widow or widower with two or more children and $46^2/_3$ per cent divided equally among the children;

(D) [deleted]

(E) $66^2/_3$ per cent for an only child when there is no widow or widower;

(F) [deleted]

(G) $66^2/_3$ per cent, divided equally, if there are two or more children and no widow or widower;

ALASKA STATE LEGISLATURE
HOUSE OF REPRESENTATIVES
RESEARCH AGENCY

Pouch Y, State Capitol
Juneau, Alaska 99811
(907) 465-3991

January 28, 1982

MEMORANDUM

TO: Representative Jack Fuller

FROM: David Teal
Research Staff

RE: Aircraft Liability Insurance
Research Request Number 81-195

Legal Services forwarded a request by your office to identify and evaluate options that would address a problem experienced by "Bush" air transport operators. The problem specified was financial hardship caused by high aircraft liability insurance rates.

Although aircraft operators in other states may make similar claims about insurance, Linn Asper (Legal Services) and Don Koch (Division of Insurance) are not aware of recent specific action taken by any State to reduce aircraft liability insurance rates.

The primary factors producing high aircraft liability insurance rates in Alaska are 1) high awards by the court system (roughly $450,000 per fatality) and 2) high aircraft accident rate (approximately five times the rate experienced in the rest of the country).

The options below are those identified by this agency as potential means of alleviating the problem of high insurance rates. The list is not exhaustive and does not evaluate all aspects of each option. Additional options will be forwarded to your office if such options come to the attention of agency staff.

HB634 would limit the amount of damages that could be awarded in legal action against a registered air carrier in Alaska. The bill appears to offer an effective means of reducing premiums via reduced awards. However, Linn Asper, Legislative Counsel, stated that the bill may violate the equal protection clause of the U.S. Constitution, in that there may be no justifiable reason to treat air carrier plaintiffs differently from all other plaintiffs. There are at least four options which might solve potential constitutional conflicts while retaining the desired effect of reducing premiums by reducing awards for damages.

- Place a limit on awards for all causes of wrongful death. This may remove objections based on equal protection, but would have effects outside the aviation industry. Due to decreased awards, aircraft liability insurance premiums would be likely to decline if this option were adopted.

- Model a statute after AS 9.65.135 (attachment A), which limits liability of ski area operators. Assumption of risk is an established principle of tort law. One could argue that when voluntarily participating in activities with recognized high inherent risk, the individual should assume a portion of the risk (or purchase personal insurance to cover that risk).

  Accident statistics clearly indicate that Alaska has roughly five times the aircraft accident rate experienced in the contiguous states. In acknowledgment of the high risk of flying in Alaska, the law could require that passengers relinquish rights to claim damages above a statutory limit.

  In Linn Asper's opinion, if accident statistics are acceptable to the Supreme Court as "reasonable, not arbitrary" justification for separate treatment of a group of potential plaintiffs, the equal protection clause may not be violated.

  A ceiling on awards for aircraft accidents might succeed in lowering premiums by allowing air carriers to decrease insurance coverage, but a ruling that the ceiling is unconstitutional could cause severe financial hardship to air carriers that might be responsible for damages awarded in excess of the ceiling.

- Model a statute after California law (attachment B), which places limits on liability of aircraft owners, but leaves an option for plaintiffs to claim damages above the established limits. Damages above the limits could be imposed for the sake of example or punishment. The California limits are dated 1953.

- Provide a fair and equitable exhange for the injured parties' right to sue. Constitutionally tested exchanges include no-fault auto insurance and workers' compensation. In both cases, the right to sue was exchanged for a "no proof required" payment of damages.

  A schedule of payments for injury or death will not necessarily reduce premiums. Although huge awards may be eliminated, proof of liability would no longer be required so that the number of awards and total amount of damages awarded may increase. This could put upward pressure on premiums. On the other hand, elimi-

nation of huge awards might decrease the average award and therefore tend to stabilize rates and draw more insurance carriers into the market. Increased competition among the insurance carriers may result in rate decreases.

A requirement that all aircraft carry minimum insurance coverage would expand the premium base and might reduce rates for air carriers, but such action may have the effect of reducing the number of pilots flying for pleasure. A relatively high proportion of private aircraft in Alaska are presently uninsured and some pilots may discontinue flying if insurance coverage were mandatory. Based on experience with mandatory automobile insurance, this option would be likely to incur high enforcement costs.

Reciprocal exchanges (groups which exchange contracts of insurance in order to spread risk) or other cooperative, mutual, or group insurance plans might reduce premiums somewhat via reductions in administrative costs and/or industry profits. These options are available under current law and would not require State involvement.

Other options require participation by the State. SB277 would establish a quasi-public corporation to provide aircraft insurance in the state. The bill received support from the aviation industry but the insurance industry strongly objected to the bill. Some criticism of the concepts in SB277 could be avoided if direct State participation were eliminated. That is, the State could stay out of the business of selling insurance to individual operators and instead act only through insurance companies. The State could act as reinsurer by establishing an "Excess Award Fund" which would reimburse insurance companies for individual claim payments in excess of some arbitrary amount. An alternative form of such a Fund might reimburse insurance carriers based on the ratio of total premium income to total losses over some arbitrary period of time.

State participation might bring the danger of inflated claims for damages due to knowledge of the existence of a deep pocket to provide funds. State participation in insurance awards also raises questions concerning potential sources for this type of financial backing. If aircraft owner/operators provide the funds--directly or through premiums--the fund may offer no great advantage. If the financial resources were provided by State revenues, premiums could be expected to decrease, but the State would then be subsidizing air transportation through the insurance industry.

Some argue that the only sure way of reducing insurance costs is to reduce the accident rate. Various safety programs have been proposed. Two steps that have been proposed are conducting pilot safety training and increasing the number of navigational aids.

If you desire to explore more fully any of the options discussed in this memorandum, please do not hesitate to contact us.

Attachments

parties temporarily without funds, subsection (b) of this section suggests that it is contemplated that such services typically are to be performed by a private agency. Granato v. Occhipinti, Sup. Ct. Op. No. 1962 (File No. 3756), 602 P.2d 442 (1979).

Performance of "other services" cannot be compelled. — There is no implied grant of power in subsection (a) or (c) of this section to compel the performance of "other services" by a state agency not wishing to perform them. Granato v. Occhipinti, Sup. Ct. Op. No. 1962 (File No. 3756), 602 P.2d 442 (1979).

The vague directive of this section that in a private custody dispute the court may order that "services be provided for the protection of the child" does not empower a court to command the aid of the department of health and social services in a private custody dispute. Granato v. Occhipinti, Sup. Ct. Op. No. 1962 (File No. 3756), 602 P.2d 442 (1979).

Distinctions between AS 47.10.020 and this section. — See Granato v. Occhipinti, Sup. Ct. Op. No. 1962 (File No. 3756), 602 P.2d 442 (1979).

Quoted in Chavre v. Chavre, Sup. Ct. Op. No. 1691 (File No. 3349), 598 P.2d 81 (1979).

Sec. 09.65.135. Limitations on claims arising from skiing. (a) A skier may not recover from a ski area operator for injury resulting from an inherent risk of skiing unless the injury occurred when the ski area operator was not providing the information required by (b) of this section.

(b) A ski area operator shall post trail signs at prominent locations within a ski area which shall include a list of the inherent risks of skiing and the limitation on liability of the ski area operator provided by this section.

(c) In this section

(1) "inherent risks of skiing" means the dangers or conditions which are an integral part of the sport of skiing, including, but not limited to,

(A) changing weather conditions;

(B) variations or steepness in terrain;

(C) snow or ice conditions;

(D) surface or subsurface conditions such as bare spots, forest growth, and rocks;

(E) collisions with lift towers, other structures, and their components unless the skier is on the lift;

(F) collisions with other skiers; and

(G) a skier's failure to ski within the limits of his own ability;

(2) "injury" means a personal injury or property damage or loss;

(3) "skier" means a person in a ski area engaged in the sport of skiing, sliding downhill on snow or ice on skis, a toboggan, a sled, a tube, a ski-bob, or other device for recreation in snow;

(4) "ski area" means all ski slopes, trails and other places under the control of a ski area operator and administered as a single enterprise in the state;

(5) "ski area operator" means the operator of a ski area. (§ 2 ch 80 SLA 1980)

ATTACHMENT B

§ 21004. Exercise of powers granted to division by this part as matters of public necessity
§ 21005. Right of State to regulate airport hazards by zoning not limited
§ 21006. Operation or landing of helicopters in populated areas not restricted
§ 21006.5. "Department"
§ 21007. "Division": "California Aeronautics Commission"
§ 21008. "Director"
§ 21008.5. "Board"
§ 21009. "Person"
§ 21010. "Political subdivision"
§ 21011. "Aeronautics"
§ 21012. "Aircraft"
§ 21013. "Airport"
§ 21014. "Air navigation facility"
§ 21015. "Operation of aircraft": "Operate aircraft"
§ 21015.5. "Parachute jump"
§ 21016. "Airman"
§ 21017. "Airport hazard"
§ 21018. "Airway"
§ 21019. Violation of part other than § 21407.5: Punishment

§ 21001. Citation of part

This part may be cited as the "State Aeronautics Act."

Legislative History:

1. Added by Stats 1953 ch 151 § 1 p 927. Based on Stats 1947 ch 1379 § 27 p 2941.
2. Amended by Stats 1961 ch 2071 § 2 p 4312, deleting "Commission" after "Aeronautics."

Collateral References:

Cal Jur 2d Aviation § 2.
McKinney's Cal Dig Aeronautics § 1.
8 Am Jur 2d Aviation § 17.

Law Review Articles:

Enforcement of safety regulations by Civil Aeronautics Authority. 25 CLR 280.

Attorney General's Opinions:

33 Ops Atty Gen 106 (it is not legal duty of California aeronautics commission to determine whether some airport permittees must purchase runway clear zones in order to secure benefits under federal rule or law).

§ 21002. Purpose of part

The purpose of this part is to further and protect the public interest in aeronautics and aeronautical progress by the following means:

(a) Encouraging the development of private flying and the general use of air transportation.

(b) Fostering and promoting safety in aeronautics.

(c) Effecting uniformity of the laws and regulations relating to aeronautics consistent with federal aeronautics laws and regulations.

(d) Granting to a state agency such powers and imposing upon it such duties that the State may properly perform its functions relative to aeronautics and effectively exercise its jurisdiction over persons and property, assist in the development of a state-wide system of airports, encourage the flow of private capital into aviation facilities, and cooperate with and assist political subdivisions and others engaged in aeronautics in the development and encouragement of aeronautics.

(e) Establishing only those regulations which are essential and clearly within the scope of the authority granted by the Legislature, in order that persons may engage in every phase of aeronautics with the least possible restriction consistent with the safety and the rights of others.

(f) Providing for cooperation with the federal authorities in the development of a national system of civil aviation and for coordination of the aeronautical activities of those authorities and the authorities of this State.

Legislative History:

Added by Stats 1953 ch 151 § 1 p 927. Based on Stats 1947 ch 1379 § 2 subd (a) p 2929.

Cross References:

Encouragement of aeronautics: § 21241.
Co-operation with federal agencies: §§ 21249, 21250.
Assistance to political subdivisions: §§ 21601–21603.
Airport district: §§ 22001 et seq.
Authority of supervisors concerning airports: Gov C §§ 26020 et seq.
Powers and duties of cities and counties concerning airports: Gov C §§ 50470 et seq.
Airport Approaches Zoning Law: Gov C §§ 50485 et seq.
Aircraft facilities of San Francisco harbor: H & N C §§ 1940 et seq.

Collateral References:

Cal Jur 2d Aviation §§ 2, 13, 17.
McKinney's Cal Dig Aeronautics § 1.
8 Am Jur 2d Aviation § 17.

Law Review Articles:

Sovereignty of airspace. 36 CLR 41.
Public control and regulation of aviation. 2 SCLR 430.
Law governing acts done in course of flight. 2 SCLR 483, 36 CLR 41.
Responsibility of the landowner to the airplane overhead. 8 Hast LJ 230.
Proposed uniform state aeronautical code. 8 LA Bar B 92.

Annotations:

Aeroplanes and aeronautics. 69 ALR 316, 83 ALR 333, 99 ALR 173.

municipal airport in action by them against commercial airlines operating jet aircraft in and out of airport where, though plaintiffs alleged that defendants' flight operations constituted nuisance, aircraft involved were operated with federal airworthiness certificates in federally certificated, scheduled passenger service, in conformity with federal safety regulations, in manner not creating imminent danger, and in furtherance of public interest in safe, regular air transportation of goods and passengers. Loma Portal Civic Club v American Airlines, Inc. (1964) 61 C2d 582, 39 Cal Rptr 708, 394 P2d 548.

State action in field of commercial aircraft flight operations has not been precluded by extensive pattern of federal regulation such field, especially in view of express declaration in Federal Aviation Act that nothing therein contained shall in any way abridge or alter remedies now existing at common law or by statute and that the provisions of act are in addition to such remedies. Loma Portal Civic Club v American Airlines, Inc. (1964) 61 C2d 582, 39 Cal Rptr 708, 394 P2d 548.

A temporary invasion of air space by aircraft over the land of another is privileged so long as it does not unreasonably interfere with persons or property on the land. Pacific Gas & Elec. Co. v Peterson (1969) 270 CA2d 434, 75 Cal Rptr 673.

§ 21404. Liability for death of passengers

Subject to Section 21406, the liability of the owner or pilot of an aircraft carrying passengers for injury or death to the passengers is determined by the rules of law applicable to torts on the land or waters of this state, arising out of similar relationships. Every owner of an aircraft is liable and responsible for death or injury to person or property resulting from a negligent or wrongful act or omission in the operation of the aircraft, in the business of the owner or otherwise, by any person using or operating the same with the permission, express or implied, of the owner.

Legislative History:

1. Added by Stats 1953 ch 151 § 1 p 934. Based on Stats 1947 ch 1379 § 2 subd (f) p 2929.

2. Amended by Stats 1968 ch 1458 § 1 p 2890, adding the last sentence to the section.

Collateral References:

Cal Jur 2d Aviation §§ 59, 63.
McKinney's Cal Dig Aeronautics § 3.
8 Am Jur 2d Aviation §§ 64 et seq.

Law Review Articles:

The liability of the aviator to third persons. 2 SCLR 405.
Res ipsa loquitur in aviation law. 18 SCLR 15.

Attorney General's Opinions:

12 Ops Atty Gen 28 (questions respecting liability of owner or pilot for injury or death of passenger discussed).

Annotations:

Negligence in connection with aircraft and aviation. 69 ALR 316, 83 ALR 333, 99 ALR 173.

Tort liability of one granting or loaning aeroplane to another. 4 ALR2d 1306.
Res ipsa loquitur in aviation accidents. 6 ALR2d 528.
Death or injury to occupant of aeroplane from collision or near collision with another aircraft. 12 ALR2d 677.
Limitation of liability for personal injury by air carrier. 13 ALR2d 337.
Defenses of fellow servant and assumption of risk in actions involving injury or death of member of aeroplane crew. 13 ALR2d 1137.
Liability of operator of flight training school for injury or death of trainee. 17 ALR2d 557.
Pre-flight inspection and maintenance of aircraft. 30 ALR2d 1172.

Notes of Decisions

In action for death of one of two pilots in airplane crash, burden is on plaintiff to prove that decedent was not guest riding in plane without giving compensation for such ride or while engaged in joint enterprise with airman flying it, where it is not claimed that death resulted from intoxication or wilful misconduct of airman. Whittemore v Lockheed Aircraft Corp. (1944) 65 CA2d 737, 151 P2d 670.

Where president of construction company took prospective customer and his wife on flight in company owned plane over two ranches in which customer was interested and which would require construction work, and then crashed in attempting to land at third ranch where parties planned to do some hunting, evidence sustained finding that pilot was acting within scope of his employment by construction company at time of accident, it being common knowledge that businessmen often entertain customers and prospective customers for business reasons. Halbert v Berlinger (1954) 127 CA2d 6, 273 P2d 274.

In action for personal injuries in wrongful death arising when plane crashed in attempting landing at ranch, jury finding that pilot's negligence was proximate cause of accident was sustained by evidence that wind conditions were turbulent, that pilot was unable to locate ranch at first and then, on seeing landing strip, attempted sharp turn toward it, but plane did not have enough speed when turn was attempted, and that pilot should have circled strip before attempting a landing. Halbert v Berlinger (1954) 127 CA2d 6, 273 P2d 274.

Properly handled by competent pilot, airplane is not inherently dangerous instrument within rule imposing absolute liability on bailors in connection with ultrahazardous activities. Boyd v White (1954) 128 CA2d 641, 276 P2d 92.

Possibility that one who chartered plane was going to commit suicide would not give pilot such information as to put him on notice that one chartering plane would take it and attempt to fly it. Fresno Air Service v Wood (1965) 232 CA2d 801, 43 Cal Rptr 276.

At no time has either federal law or FAA Regulations invested the Federal Aviation Agency or its administrator with any authority to "deny" the owner of private property the right to perform construction work on his property, and to do so would be an outright violation of the concluding clause of U. S. Const., 5th Amend. Rader v Apple Valley Bldg. & Dev. Co. (1968) 261 CA2d 308, 68 Cal Rptr 108.

§ 21404.1. Same: Limitation of liability: Exemplary or punitive damages

(a) The liability of an owner, bailee of an owner, or personal representative of a decedent imposed by Section 21404 and not arising through the relationship of principal and agent or master and servant is limited to the amount of fifteen thousand dollars ($15,000) for the death of or injury to one person in any one accident and, subject to the limit as to one person, is limited to the amount of thirty thousand dollars ($30,000) for the death of or injury to more than one person in any one accident and is limited to the amount of five thousand dollars ($5,000) for damage to property of others in any one accident.

(b) An owner, bailee of an owner, or personal representative of a decedent is not liable under this section for damages imposed for the sake of example and by way of punishing the operator of the aircraft. Nothing in this subdivision makes an owner, bailee of an owner, or personal representative immune from lia-

bility for damages imposed for the sake of example and by way of punishing him for his own wrongful conduct.

Punitive damages

Legislative History:

Added by Stats 1968 ch 1458 § 2 p 2691.

Collateral References:

Cal Jur 2d Aviation §§ 59, 63.
McKinney's Cal Dig Aeronautics § 3.
8 Am Jur 2d Aviation § 108.

§ 21405. Liability for collision of aircraft

Subject to Section 21406, the liability of the owner of one aircraft to the owner of another aircraft, or to operators or passengers on either aircraft, for damage caused by collision on land or in the air, is determined by the rules of law applicable to torts on land.

Legislative History:

Added by Stats 1953 ch 151 § 1 p 934. Based on Stats 1947 ch 1379 § 2 subd (g) p 2929.

Collateral References:

Cal Jur 2d Aviation §§ 59, 65.
McKinney's Cal Dig Aeronautics § 3(6).
8 Am Jur 2d Aviation §§ 88 et seq., 98.

Law Review Articles:

The liability of the aviator to third persons. 2 SCLR 405.
Res ipsa loquitur in aviation law. 18 SCLR 15.
Liability for damages to ground victims resulting from flight of aircraft. 2 UCLA LR 598.
Strict liability for aircraft crashes and forced landings on ground victims outside of established landing areas. 5 Hast LJ 1.

Annotations:

Negligence in connection with aircraft and aviation. 69 ALR 316, 83 ALR 333, 99 ALR 173.
Tort liability of one granting or loading aeroplane to another. 4 ALR2d 1306.
Res ipsa loquitur in aviation accidents. 6 ALR2d 528.
Death or injury to occupant of aeroplane from collision with another aircraft. 12 ALR2d 677.
Pre-flight inspection and maintenance of aircraft. 30 ALR2d 1172.

Notes of Decisions

In consolidated actions for damages for death resulting from collision of two airplanes which were under control of defendants and in which deceased persons had been riding as passengers, where no explanation of cause of collision was furnished by plaintiffs' evidence, which clearly left it doubtful as to whether ultimate cause of collision was negligence of defendants, it was proper to instruct jury as to doctrine of res ipsa loquitur. Parker v Granger (James), Inc. (1935) 4 C2d 668, 52 P2d 226, cert den 298 US 644, 80 L Ed 1375, 56 S Ct 958.

In action for damages for destruction of airplane rented to defendant, where there was

evidence that at time of accident pilot took off straight into wind and then made two turns so that wind was at his back and plane lost altitude rapidly, and expert testified that he made pilot errors in choosing short runway under conditions then present and in pulling ship off ground before it had flying speed, and plaintiff's president testified that if pilot had difficulty in climbing he should have landed in field straight ahead and that he discussed with pilot characteristics of plane and airport, there was substantial evidence precluding court from withdrawing issue of negligence from jury. United Air Services, Ltd. v Sampson (1938) 30 CA2d 135, 86 P2d 366.

Assuming that competent flying instructor knew his student to be incompetent, such fact is not enough to render owner, who rented airplane to instructor, knowing it was to be flown by student, liable for damages caused by airplane while flown by student, under rule that bailor who entrusts vehicle to person he knows to be incompetent is liable for bailee's negligent acts. Boyd v White (1954) 128 CA2d 641, 276 P2d 92.

§ 21406. Liability for personal injuries to or death of "guest" in aircraft

A guest riding in or upon any aircraft without giving compensation, or any other person, does not have any right of action for civil damages against the airman flying the aircraft or against any other person otherwise legally liable for the conduct of the airman, on account of personal injury to, or the death of, the guest during such ride, unless the plaintiff in the action establishes that the injury or death proximately resulted from the intoxication or wilful misconduct of the airman.

helps general aviation

Legislative History:

Added by Stats 1953 ch 151 § 1 p 934. Based on:

(a) Stats 1947 ch 1379 § 15, as added by Stats 1949 ch 653 § 1 p 1157.

(b) Stats 1929 ch 850 § 183, as added by Stats 1933 ch 438 § 1 p 1135.

Collateral References:

Cal Jur 2d Aviation §§ 62, 75.
McKinney's Cal Dig Aeronautics § 3(5).
8 Am Jur 2d Aviation §§ 81–84.

Law Review Articles:

Jurisdiction and venue in aviation accident cases. 36 CLR 41.

Tort liability of air carriers to air passengers. 39 CLR 541.

Liability for ground damaged from crashes or forced landings of aircraft. 43 CLR 309.

Interpretation of California "guest statute" applicable to airplane accidents. 16 SCLR 358.

Attorney General's Opinions:

12 Ops Atty Gen 28 (questions respecting liability of owner or pilot for injury or death of passenger discussed).

Words and Phrases:

"Airplanes": Cal Words, Phrases and Maxims.

Annotations:

Liability for injury to guest in aeroplane. 12 ALR2d 656.

Liability of operator of flight training school for injury or death of trainee as that of owner or operator to guest or passenger. 17 ALR2d 557.

STATE OF ALASKA
FISCAL NOTE

Revision Date , 1983

I. REQUEST

Bill/Resolution No.: HB 126
Title: "...liability of aircraft owners..."
Sponsor: Repr. Hurlburt
Requestor: House Labor & Commerce

II. FISCAL DETAIL

Agency Affected: Department of Law
Program Category Affected: General Govt.
BRU, Program of Subprogram(s) Affected: Legal Services

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 83	FY 84	FY 85	FY 86	FY.87	FY 88
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 COMMODITIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND	-0-	-0-	-0-	-0-	-0-	-0-
FEDERAL FUNDS						
OTHER (Specify Source)						

POSITIONS:

FULL-TIME	-0-	-0-	-0-	-0-	-0-	-0-
PART-TIME						
TEMPORARY						

III. SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

N/A

IV. ANALYSIS: Attach a separate page for any Analysis

Prepared By: Richard L. Pegues Richard I. Pegues, Director Phone: 465-3672
Division: Administrative Services Division Date: April 13, 1983

Approved by Commissioner: Richard L. Pegues/for Norman C. Gorsuch, Attorney General Date: April 13, 1983
Department: Department of Law

Distribution:
Original to Legislative Finance
Copy to Office of Management and Budget (for Legislature introduced bills)
Copy to Department (for Governor introduced bills)
Copy to Sponsor
Copy to Requestor (if different from Sponsor)

The liability of aircraft owners or operators for personal injury or death to guest passengers and the limitation thereof, is a matter between private parties. Such matters, unless they involve social concerns for which the state has provided some form of statutory protection, generally do not involve the Department of Law. Consequently, no fiscal impact will occur to the department's operations.

(7)

COMMITTEE REPORT

4/14

HOUSE

FURTHER: JUDICIARY

Date: 4-7-83

1/26/83

Mr. Speaker:

The Committee on LABOR & COMMERCE has had HB 126

"An Act limiting the liability of aircraft owners or operators for personal injury or death to guest passengers."

under consideration and reports it back as follows:

[X] do pass [ ] do not pass

[ ] do pass with attached amendments(s)

[ ] replace with CS for _____ [ ] same title [ ] new title

and recommends _____

[ ] AND attaches a "Letter of Intent" [ ] New Fiscal Note [X] Zero Fiscal Note Attached

[ ] reports it back without recommendation

[ ] referred to the _____ Committee

MEMBERS SIGNING DO PASS

John Pengstad

MEMBERS HAVING OTHER RECOMMENDATIONS:

Ron Wardle DO NOT PASS

John J. Cauchy NO Rec

Walter Kopman no rec.

Rick Uehling (no rec.)

Rick Uehling

Vice CHAIRMAN

H 60

HB

128

From the D.A.'s Desk

Sex offenders go to Jail

During December 1982, Superior Court Judge Charles R. Tunley held to his stated position that persons who commit sex crimes in his district will be sentenced to serve time in jail. As a result, nine men are greeting the new year from behind bars.

Gabriel J. Amuktoolik, 29 years, of Golovin was sentenced on December 13, 1982 to four years imprisonment for an attempted rape occurring in Golovin on August 22, 1982. Since it was his second felony he will not be eligible for parole. He was also sentenced to ten years for assaulting a second woman in Golovin with a knife by stabbing her while she slept.

Keith Anagick Sr., 50 years, of Unalakleet, was sentenced on December 16, 1982 to one year imprisonment with six months suspended, probation for two years for engaging in sexual contact with a young girl under sixteen years of age during 1979 and 1980. The incidents were discovered through the efforts of the Nome office of the Division of Family and Youth Services, and since the incidents had occurred within the past five years, criminal charges were filed.

William M. Otten, 24 years, of Stebbins, was sentenced to one year imprisonment with six months suspended, probation for two years for having sexual contact with a young girl under sixteen years of age in Stebbins during 1979. The judge found that Mr. Otten was one of the worst type offenders, since he had prior convictions involving assaults on children and women.

Jerome Trigg Jr., 44 years, of Nome, was sentenced on December 13, 1982 to eighteen months imprisonment with twelve months suspended, probation for the maximum possible period of five years. Mr. Trigg had been convicted of sexual assault in the third degree on a member of his family which had occurred on July 17, 1982.

Adam J. Raymond, 51 years, of Stebbins, was sentenced on December 16, 1982 to imprisonment for two years with one year suspended, probation for five years, for having committed an incestuous sexual assault on his daughter in Stebbins on July 9, 1982. Testimony at the sentencing revealed that Mr. Raymond had been engaging in sexual relations with his daughter for many years.

Donald Outwater, 43 years, of Nome, was sentenced on December 17, 1982 to four years imprisonment with two years suspended, probation for five years, for the offense of having sexual relations with his teenage daughter.

Melvin T. Apassingok, 26 years, of Gambell, was sentenced on December 21, 1982 to imprisonment for two years with one year suspended, probation for two years and a fine of $1,000 for having sexual intercourse with a fifteen-year-old girl in Gambell during January, 1982. The girl was baby-sitting for a relative when Mr. Apassingok, who was the V.P.S.O. at the time, entered the house and had sexual intercourse with her.

Tommy Amaktoolik, 29 years, of Golovin had his probation revoked because of three incidents of drinking alcohol in violation of conditions of his probation, and was sentenced to serve six months in jail. Mr. Amaktoolik had earlier been convicted of incest and received a two year suspended sentence. Since he would not stop drinking and was dangerous when he drank, the court sentenced him to serve time in jail.

Kenneth W. Dewey Jr., 21 years, of Koyuk, was sentenced on December 22, 1982 to eight years imprisonment with three years suspended for a rape occurring in Nome on May 18, 1982. Mr. Dewey was convicted by a jury after trial in Nome during September.

One goal of sentencing is to deter other persons from committing similar crimes. Deterance will take place as people come to realize that sex offenses will be reported, that reported sex offenses will be prosecuted, and that convicted sex offenders will go to jail.



Among the ancient Greeks it was considered good for the crops to plant a piece of year-old cake along with the seeds.

YYYYYYYYYYYYYYYYYYY

YES

ATTACHMENT G

Alaska State Legislature

HOUSE MAJORITY LEADER
MEMBER
RULES COMMITTEE
JUDICIARY COMMITTEE
LEGISLATIVE COUNCIL
POLICY COMMITTEE
ALASKA REPRESENTATIVE
STATES RIGHTS COORDINATING COUNCIL
WESTERN LANDS TASK FORCE
CITIZENS ADVISORY COMMISSION
ON ALASKA LANDS

House of Representatives

REPRESENTATIVE
RAMONA L. BARNES

ANCHORAGE
2230 PAXSON
ANCHORAGE, ALASKA 99504
(907) 337-7904

POUCH V
JUNEAU, ALASKA 99811
(907) 465-3718



MEMORANDUM

TO: REP. CHARLIE BUSSELL
CHAIRMAN, HOUSE JUDICIARY COMMITTEE

AND

REP. MAE TISCHER, REP. MILO FRITZ
CO-CHAIRPERSONS, HEALTH, EDUCATION
AND SOCIAL SERVICES

RLB

FROM: REP. RAMONA L. BARNES
HOUSE MAJORITY LEADER

DATE: March 18, 1983

The attached petitions bearing 383 signatures were forwarded to me by Society's League Against Molestation (SLAM). They advise that more are forthcoming.

They bring a message that we are hearing from all across the state ...that sexual abuse, particularly against children has completely gotten out of hand. I'm sure you agree that something must be done.

I would appreciate your comments on how we should proceed. It appears to me that the copy of the California statute previously provided the Judiciary Committee could readily be adopted. In that regard, the criminal records referred to (paragraph 3 of the petition text) would pertain to the records of sex crimes only.

Your consideration will be greatly appreciated.

RLB/rw

PETITION

WE, THE UNDERSIGNED ALASKAN VOTERS AND CITIZENS PETITION OUR LEGISLATORS TO ENACT LEGISLATION WHICH WOULD CHANGE SEXUAL ABUSE OF A MINOR FROM A CLASS C FELONY TO A CLASS B FELONY. AS A CLASS C FELONY, IT DOESN'T REQUIRE STIFF ENOUGH PENALTIES.

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WE ALSO ASK THAT YOU PASS A BILL THAT AN EMPLOYER UPON REQUEST BE PROVIDED WITH THE CRIMINAL RECORDS OF ANYONE APPLYING FOR A POSITION WHERE THEY WOULD HAVE SUPERVISION OVER MINORS.

WE PETITION THAT OUR JUDGES BE DISCIPLINED WHEN THEY HAND DOWN UNREASONABLY LIGHT OR SUSPENDED SENTENCES IN CRIMINAL CASES WITHOUT JUSTIFICATION. WE BELIEVE ALASKAN JUDGES DEVIATE TOO MUCH FROM THE ALASKA CRIMINAL CODE.

WE URGENTLY PLEAD FOR PROMPT ACTION ON THESE PETITIONS BECAUSE CRIMES AGAINST OUR CHILDREN ARE OF EPIDEMIC PROPORTIONS AND CRIMINALS ARE GOING UNPUNISHED.

PRINT NAME	SIGNATURE	ADDRESS	DATE
Martin, Carolyn	Carolyn Martin	4503 Spinard Rd	2/16/83
Solomon, Beverly	Beverly Solomon	APU 3500 University Dr	2/16/83
Mary M. Wilson	Mary M. Wilson	1422 "O"	2/16/83
SARAH B. LUEDTKE	[illegible]	314 So. Flower A/A 99504	2-16-83
Barbia Davis	Barbia Davis	5640 Gatekeeper	2-17-83
Ray Wall	Ray A. Wall	1929 Nerene St	2-17-83
Bill Gauther	Bill Gauther	3610 Gayat Dr	2-18-83
Penelope B. Thompson	Penelope B. Thompson	1923 Aleutian St.	2-18-83
Bernice A. Hopkins	Bernice A. Hopkins	3201 Madison Way	2-18-83
Michael G. Hopkins	Michael G. Hopkins	3201 Madison Way	2-18-83
Lon E Stoll	[illegible]	5463 East 4th Ave #6	2-18-83
BROWN, CLARKE E.	Clarke E Brown	4640 REKA DR. ANCH.	2-18-83
Dorsh, Robin	[illegible]	[illegible]	2/18/83
[illegible]	[illegible]	3145 [illegible]	2/18/83
Marcia [illegible]	[illegible]	3504 [illegible]	2/18/83
Frances Larkins	Frances Larkins	331 W. 33rd Apt. 9	2/18/83
JACQUELINE MIDDLETON	J. Middleton	331 W. 33 rd. Apt 9	2/18/83
[illegible] WILLIAMS	[illegible]	SRA [illegible]	[illegible]

PETITION

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PRINT NAME	SIGNATURE	ADDRESS	DATE
BLACK NORMAN	[illegible]	1833 POST RD.	Feb 17
SAMMY KALLANDER	Sammy Kallander	226 S HOYT	FEB 17
Celia L. Warrior	Celia L Warrior	632 N Pine St	Feb 17-83
Marti Williams	Marti Williams	5424 E 19th Ave [illegible]	February 18-83
MICHAEL R. HALES	Michael R. Hales	1001 BONIFACE, SPACE 18A ANCHORAGE	1 march 83

UPON REQUEST OF APPLICANTS . WHERE THERE IS A CONVICTION FOR SEXUAL OFFENSES ONLY

PETITION

ECTION:

I. WE, THE UNDERSIGNED ALASKAN VOTERS AND CITIZENS PETITION OUR LEGISLATORS TO ENACT LEGISLATION WHICH WOULD CHANGE SEXUAL ABUSE OF A MINOR FROM A CLASS C FELONY TO A CLASS B FELONY. AS A CLASS C FELONY, IT DOESN'T REQUIRE STIFF ENOUGH PENALTIES.

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PRINT NAME	SIGNATURE	ADDRESS	DATE
Marie Penrod	Marie Penrod	3821 Nuns Dr.	2-17-83
Harbetta Chihuly	Harbetta Chihuly	75 Sumner WA	2-17-83
Catherine McQuigg	Catherine McQuigg	74 Ala Harbor	2-17-83
TODD PALMATIER	R. Todd Palmatier	241 McCarrey	2-17-83
Isabelle Johnson	Isabelle Johnson	4610 Reka Dr 7A	2-17-83
Karen Lawson	Karen S. Lawson	4011 E 20th B7	2-17-83
Jennie Halverson	Jennie Halverson	4543 Lake Otis #204	2-17-83
Laurie LeMay	Laurie LeMay	320 E. 46th #3	2-17-83
HOWARD K. NUNOORUK	Howard Nunoruk	P O Box 95 Nome AK	2-17-83
Katheryn Allen	Katheryn Allen	P.O Box 1056 Anchorage AK	2-17-83
Elmo W. Locker	Elmo W. Locker	P.O. Box 3792 Anch AK	2-17-83
E. Jean Smith	Ellen Jean Smith	3306 Thompson Ave	2-17-83
Gloria Ruttle	Gloria Ruttle	401 Mumford #3	2-17-83
Shawn Stinson	Shawn Stinson	2830 Patricia Ln	2-17-83
KATHLEEN LEITGEB	Kathleen Leitgeb	SR10474A Fbx	2-17-83

PETITION

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PRINT NAME	SIGNATURE	ADDRESS	DATE
Glen E. Josey	Gr E Josey	SRA Box 4053 J 502	14 Feb. 83
Carla W. Carin	Carla W. Carin	Box 18 Citation Rd E.R. 99577	16 Feb 1983
Lou E Lovell	[illegible]	P.O. Box 145	16 Feb 83
These 3 people do not wish to receive mail - of any type!			
A.G. Liljquist	[illegible]	337½ E. 3rd Ave	16 Feb 83
Melvin Old	Melvin A. Old	3514 E 19th Anch AK	16 Feb 83
Daniel D. English	[illegible]	PO Box 329 Girdwood Ak	16 Feb 83
TONI L. TURNER	Toni L. Turner	21-676-D Apricot EAFB	16 FEB 83
Mitchell Bertram			16 FeB 67
Rebecca Rupright	Rebecca Rupright	4000 E. Sixth Ave Anchorage AK 99504	16 FEB 83
TERESA K. Brown	Teresa K. Brown	8633 Turf Ct Anch. AK 99504	16 Feb 83
Harriet Cassidy Harriet L Cassidy	Harriet L Cassidy	801 Airport Hts. #173	16 Feb. 83
Christine M. Byrd	Christine Byrd	SRA 4162-A	16 Feb. 83
Linda C. Bruen	Linda C. Bruen	SRA 4164 Anch 99504	16 Feb 83

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PRINT NAME	SIGNATURE	ADDRESS	DATE
HEIDI MAXSON	Heidi Maxson	SR 1 Box 2458 Chugiak 99567	2/16/83
Sylvia Tee Tee	Sylvia Tee Tee	STAR RT. #2806 Chugiak	2-16-83
JOHN MAIN	John M. Main	SRA 478-N Anch 99507	2-16-83
SHARON FERRARA	Sharon Ferrara	757 Strawberry	2-16-83
KAREN L. JOHNSON	Karen L. Johnson	Box 652 Palmer 99645	2-16-83
E. Laine Bass	ELAINE BASS	702 N Park #2	2-16-83
FRED ALFORD	Fred Alford	133 NORTH LANE ST	2-16-83
ALAN WALKOR	ALAN WALKOR		2-16-82
Carol Alexander	Carol Alexander	325 Irwin Apt #10	2-16-83
Austin Alexander	Austin Alexander	325 Irwin Apt #10	2-16-83
Sharann A. Kellie	Sharann A. Kellie	504 N Hoyt #1 Anch 99504	2-16-83
Earlene Dixon	Earlene Dixon	PO Box 353 325 Jaggs Valdez	2-16-83
Lawrence Dixon	Lawrence E. Dixon	Box 353 325 Jaggs Valdez 99686	2-16-83
JESUS Christ	Jesus Christ	HEAVEN	2-16-83
Shelly C. Dushkin	Shelly C. Dushkin	Gen. Del. Wasilla AK	2-16-83

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PRINT NAME	SIGNATURE	ADDRESS	DATE
[illegible]	[illegible]	2001 E 3 1/4 A	2.16.83
PATRICIA RISKI	Patricia Riski	801 Valley Rd	2-16-83
Robt. Banks	Robert Banks	5919 E 22nd	2-16-83
Germaine Slate	Germaine Slate	222 McCarrey	2-16-83
MARGARET FRANZ	Margaret Franz	3444 E 18th	2-16-83
EUGENE JERRY	Eugene Jerry	Wash. State	2-16-83
Adrionne Wilson	Adrienne Wilson	802 N. LAKE #4	2-16-83
Cathryn A. Campbell	Cathryn A. Campbell	1611 430 Salonde #4	2-16-83
Hank W. Kinsell	Hank W. Kinsell	3101 80th Anch.	AK 2/16/83
Kelley S. Bramlett	Kelley S. Bramlett	P.O. Box 934 Eagle River, AK.	2/16/83
JEAN M LEADER	Jean M Leader	7123 McBarr Rd	2-16-83
HARRY E. HOERTER	Harry E Hoerter	801 Airport Hts #96 Anc. 99504	16-F-683
Colleen Wilson	Colleen Wilson	4220 Baxter	2/16/83
Winfred Whidden	Winfred Whidden	8001 E. 6th Ave	2-16-83
Jessica Warrior	Jessica Warrior	632 Northpine	2-16-83

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PRINT NAME	SIGNATURE	ADDRESS	DATE
Gene Cecil	Gene Cecil	1110 W 6th	2/16/83
Jo Sherwood	Jo Sherwood	3802 Peterkin	2/16/83
Trina Abernathy	TRINA Abernathy	20390-G Cherry Dr	2/16/83
SAMUEL E HAYES	Samuel E Hayes	801 AIRPORT HTS #221	2/16/83
Judith Bagley	Judith Bagley	4141 E. 66th AVE	2-16-83
E. Johengen	E. Johengen		2-16-83
Lois Crouse	Lois Crouse	415 Dst #1	2-16-83
Ella Ring	Ella Ring	Bx 3212	2-16-83
C. P. Mahle	C. P. Mahle	" "	" "
C. P. Blankenship	C. P. Blankenship	5901 E 6th Sp 255	2-16-83
David G. Andrews	David G. Andrews	435 - So. Bragaw	2-16-83
Evelyn J. Wilson	Evelyn J. Wilson	SART I Box 284 Chugiak	2-16-83
Dora Lynn Shade	DORA Lynn Shade	511 S. Bragaw #3	2/16/83
Christine Moore	Christine Moore	617 N. Bragaw #2	2-16-83
Russell Mason	Russell Mason	SR1 Box 2458	2-16-83

PETITION

WE, THE UNDERSIGNED ALASKAN VOTERS AND CITIZENS PETITION OUR LEGISLATORS TO ENACT LEGISLATION WHICH WOULD CHANGE SEXUAL ABUSE OF A MINOR FROM A CLASS C FELONY TO A CLASS B FELONY. AS A CLASS C FELONY, IT DOESN'T REQUIRE STIFF ENOUGH PENALTIES.

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PRINT NAME	SIGNATURE	ADDRESS	DATE
Winter Sheehan	[illegible]	317 N. Klevin	2/15/83
w/Michael Mitchell	/	266-A Chilikoof-R	2/15/83
Ronnie Morrison	Ronnie Morrison	1435 L St	2-15-83
Charles Thomas	C.D. Thomas	1415 Otter St	2-16-83
Frank G. Stewart	Frank G. Stewart	3317 Tarwater St	2-16-83.
Diane D. Ronchetti	Diane Ronchetti	1835 So. Bragaw	2-16-83
Carol A. Smith	Carol A. Smith	9499 Brayton Sp 24	2/16/83
Alaska H Shiers	Alaska Shiers	4200 E 4th Sp. 131	2/16/83
John Hatzenbiler	John Hatzenbiler	3401-W. 88th #17	2/16/83
Henry Wheeler	Henry Wheeler	125 Heinteleman Dr	2/16/83
Connie Labrum	Connie Labrum	3209 Richmond #4 Anch. AK 99508	2/16/83
Donna Crane	Donna L. Crane	427 Little Diomede Eagle Rv	2-16-83
E. Kujalowicz	[illegible]	427 Little Diomede Eagle River	2-16-83
[illegible]	[illegible]	2601 E 5th	2/17/83
Susan Kiee	Susan Kiee	617 N. Bragaw #4	2/16/83

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PRINT NAME	SIGNATURE	ADDRESS	DATE
Velda Click	Velda Click	1340 S. Bragaw	February 16 '83
Jennifer Evans	Jennifer Evans	4424 E. 8th	2-16-83
Isabel Clark		Just moved into Alaska	"
Ruth S Dunlap	RUTH S. DUNLAP	"	"
April Hebert	April Hebert	426 N. Bragaw	2/16/83
Patti J. Lamar	PATTI Lamar	1504 Rosemary	2-17-83
Susan Heuer	Susan Heuer	300 Bunnell St	2-17-83
K. Cronin	Karl Cronin	3214 Montclaire Ct	2-17-83
Cynthia D. Neff	Cynthia Dewitt	1320 Richardson Vista	2-17-83
Laura M. Gale	Laura M. Gale	516 Caribou St Eagle River	
THEA MARIA		1280 E 17th Ave #104	2-17-83
Tommy M. Whitetree	Tommy M Whitetree	975 TARPIN Ln	17/2/83
JoAnn Wilson	JoAnn Wilson	7150 Dawnlight	2-17-83
GRACE CLAYTON	Grace Clayton	4670 Rcte. DR	2-17-83
MARIA FLAINA FENERSON	Maria Elaina Fenerson	435 PINE S. Apt 2	2/17/8

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PRINT NAME	SIGNATURE	ADDRESS	DATE
Renita Yahara	Renita Yahara	2510 Kilkenny Ct. Anch AK	2-16-83
M. DAVIS	M. Davis	1400 State Anch	2-16-83
Edna Shugak	Edna Shugak	PO Box 479 SITKA	2-16-83
Gail Hutchinson	Gail Hutchinson	501 Airport Hts	2-16-83
Curtis Hutchinson	Curtis Hutchinson	801 Airport Hts	2-16-83
Audrey Oliver	Palmer	Box 58-58	2/16/83
Margie Cook	Margie Cook	387 S. Bragaw	2/16/83
Mary Jane Henrickson	Mary Jane Henrickson	2938 Princeton Dr	2/16/83
Barbara Macaman	Barbara Macaman	537 E 24th	2-16-83
John LEFOR	John Lefor	1846 COLUMBINE	2-16-83
Lynda Locke	Lynda Locke	825 N Bragaw	2-16-83
Peggy Newby	Peggy Newby	General Del. Girdwood Alaska	2-16-83
Colleen Lemberopolos	Colleen Lemberopolos	137-W-23	2-16-83
Linda Gehrl	LINDA GEHRL	1601 medfra Sp 27 Anchorage	2-16-83
Christer Thorbrogelus		137 West 23rd	2/16/83

PETITION

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PRINT NAME	SIGNATURE	ADDRESS	DATE
ELIZABETH M. CAMERON	Elizabeth Cameron	801 Airport Hts Dr. Sp #1	2/16/83
Ruth Marian Smith	Ruth Marian Smith	801 Airport Hts #175	2-16-83
Rebecca C. Burge	Rebecca C. Burge	1734 Thunderbird Pl	2-16-83
Jean E. Lamb	Jean E. Lamb	1831 Logan	2-16-83
Barbara A. Baird	Barbara A. Baird	4032 R-Lin D- Mdlkt #1	2-16-83
Debra D. Mardel	Debra Mardel	701 Skyhun Sp Ht 1	2-16-83
ANN H. TURNER	Ann H. Turner	720 DOGWOOD ANC. AK 99501	2-16-83
Linda Erickson ↔	LINDA ERICKSON	SR2 Box 1422 Chugiak AK	2-16-83
Robert Aiken Jr. ↔	Robert Aiken Jr.	Box 494 BRW. AK.	2.16.83
NANCY BARROS	Nancy Barros	3550 Orbit Cir.	2-16-83
Cynthia Gonzalez	Cynthia Gonzalez	8610 TURF CT	2-16-83
Cheryl Brown	Cheryl Brown	801 Airport Heights 316	2-16-83
JaCqueline Schnittgrund	Jacqueline Schnittgrund	2611 W. 19th Ave.	2-16-83
Rev. Robert E. Lee			
Robert E REED	Robert E Reed	4021 E 5th Ave.	2-16-83

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PRINT NAME	SIGNATURE	ADDRESS	DATE
Lorena Carlock	Lorena Carlock	Anch. AK	2/17/83
Betty I. Ghan	Betty I. Ghan	6409 Citadel Ln.	2/17/83
Sally Reinertsen	Sally Reinertsen	Anch. Ak	2-17-83
Tamera Lindsey Suttles	TAMERA LINDSEY SUTTLES	Soldotna, Ak	2/17/83
Brinda Hill	Brinda Hil	Anch.	2/17/83
Alfreda Hill	Alfreda Hill	30-331 A Cherry Rd. Anch	2/17/83
Mindy Talbot	MINDY TALBOT	7518 E. 4th Ave. anch.	2/17/83
Michael Hyls	Michael S Hyls	801 Airport Hgts Anch	2/17/83
G. FRANK BONEY	G. Frank Boney	1707 Sunrise Dr	2/17/83
Bonita Stewman	Bonita Stewman	438 S. Pine	2/17/83
KIM Notti	Kim Notti	4400 McPhee #2	2/17/83
Minnie Sophie Henriksen	Minnie Henriksen	4400 McPhee #2	2/17/83
W.G. DUNKELBERGER	Wm G. Dunkelberger	320 Lucky Art Anch.	2/17/83
Doug Drover	Doug Drover	3201 Tarwater	2/17/83
MARSHA MOORE	Marsha Moore	3201 Tarwater	2/17/83

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PRINT NAME	SIGNATURE	ADDRESS	DATE
Stephen M. Waggoner	[illegible]	664 W. 34 # 405 99503	2-17-83
Leslie A. Koch	Leslie A. Koch	821 F St Anch AK 99501	2/17-83
Cheryl A. Henry	Cheryl A. Henry	2541 Davis Arch AK 99521	2-17-83
Dwane Taylor	[illegible]	1402 Nelchina Anch AK	2/17-83
Christy Harris	Christy Harris	Box 354 Haines, AK	2/17/83
Calvin A Chatman	Calvin A. Chatman	921 E 20 ANCH AK	2/17/83
Becky Overman	Becky Overman	3805 Greenland Dr.	2/17/83
Alvin W Runstetler	Alvin W Runstetler	Anchorage AK 99504 1001 Boniface Pkwy SP. 16B	
Ellen L. Doig	Ellen L Doig	PO Box 4684 Kenai	2/17/83
Russ Doig	[illegible] Doig	P.O. Box 4684 Kenai	2/17/83
~~Pamela Ashton~~ Pamela Ashton	Pamela Ashton	PO Box 103803 Cty	2/17/83
BETTY HICKLING	Betty Hickling	SR1 Box 2605 Chugiak	2/17/83
JANET BEVER	Janet Bever	P.O. BOX SR1 CHUGIAK	2-17-83
Barbara Rath	Barbara L Rath	PO BOX A-35 CHUGIAK	2-17-83
F R Penrod	[illegible]	3821 Truro Dr Anch.	2-17-83

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PRINT NAME	SIGNATURE	ADDRESS	DATE
Carolyn Baker	Carolyn Baker	8942 Blackberry #608	2-16-83
CARL BAKER	Carl Baker	8942 BLACKBERRY #608	2-16-83
GARY GORDON	Gary Gordon	5901 E. 6th	2-16-83
Brian Williams	Brian Williams	4235 Spenard	2-17-83
CHRISTOPHER HAZLITT	[illegible]	4777 Wright ST.	2-17-83
Blake Crisp	Blake Crisp	2200 Glacier ST	2-17-83
MARK Keenan	Mark Keenan	30-3424 Chase Dr	2-17-83
Michael Guest	Michael Guest	P.O. Box 169 Eagle River	12 Feb 83
William Danderson	[illegible]	Box 1577 SRA Anch	12 Feb 83
BETTY GARCIA	Betty Garcia	9235 Elgin Pl Anch	2-17-83
LISA MURPHY	[illegible]	SRA BOX 4000K Anch	2-17-83
Cathy Erickson	[illegible]	P.O. Box 1107 Anch	2-17-83
[illegible]	JRANDALL HARVEY	SRA - 465-F	2-17-83
Marty Waddell	MARTY WADDELL	4029 W. 84th Ave	2-17-83
Robert [illegible]	Robert [illegible]	6235 Eastwood ct	" " "

UPON REQUEST, OF APPLICANTS , WHERE THERE IS A CONVICTION FOR SEXUAL OFFENCES AGAINST MINORS, ONLY!

PETITION

SECTION:

I. WE, THE UNDERSIGNED ALASKAN VOTERS AND CITIZENS PETITION OUR LEGISLATORS TO ENACT LEGISLATION WHICH WOULD CHANGE SEXUAL ABUSE OF A MINOR FROM A CLASS C FELONY TO A CLASS B FELONY. AS A CLASS C FELONY, IT DOESN'T REQUIRE STIFF ENOUGH PENALTIES.

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PRINT NAME	SIGNATURE	ADDRESS	DATE
[illegible]	MARK HOFFMAN	340 G	2/17/83
Sandra J Duncan	Sandra J Duncan	224½ N Pine Anchorage	2-17-83
Michael W Cooper	M Cooper	Po Box 3531 Palmer	2-17-83
Venita Cooper	V Cooper	PO Box 3531 Palmer	2-17-83
Hannah I. Broussard	Hannah I. Broussard	1200 Columbine #12 Anchorage 99504	2-17-83
LaNae Mattingley	LaNae Mattingley	3520 Glen Don Dr.	2-17-83
FRED E. TOMLIN	Fred E Tomlin	308 [illegible] Lane	2.17.83
Elizabeth J Ball	Elizabeth J Ball	453 OAKLA Homer	2-17-83
ANN GROVE	[illegible]	705 Muldoon Rd #34	2-17-83
[illegible]	[illegible]	BX 1164 Homer	2-17-83
W A Dake	W A Dake	Po Box 1215 Anch	2/17/83
Tim Hansen	Tim Hansen	731 Mumford #6	2/17/83
Mary A. Maurer	Mary A Maurer	731 Mumford #6	2/17/83
Darleen Beltz	Darleen Beltz	508 N Flower	2/17/83
Monika E. Coleman	Monika E. Coleman	SR Box 3200 Wasilla	2/17/83

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PRINT NAME	SIGNATURE	ADDRESS	DATE
Cora D Weaver	Cora D Weaver	P.O. Box 3037	2-16-83
[illegible]			
Kowanna Holland	Kowanna Holland	1580 Beaver Pl	337-7205
Lori Rosch	Lori Rosch	1601 N Chena Sp 32	2/16/83
SANDRA BUSCH	Sandra Busch	376 So. Lane Anch 99504	2-16-83
Ronald Busch	Ronald Busch	376 So Lane Anch 99504	2-16-83
Louise J Martin	Louise J Martin	801 Airport Hts Sp #117	2-16-83
ROGER D KING	Roger D King	816 N PINE #4	2-16-83
Vikki Vega	[illegible]	SPA Box 1783	2-16-83
MARY HENSCHLER	Mary Henschler	S.C. Box 10592 - Fairbanks AK. 99701	2-16-83
Jim Hoge (Jim Hoge)	Jim Hoge	415 N. Bragaw	2-16-83
NANCY K. PECK	Nancy K Peck	21-460F Citrus EAFB	2-16-83
Ann M. Lee	Ann M. Lee	574 So. Hoyt	2-16-83
Mary Ellen Erickson	Mary Ellen Erickson	3148 E. 19th Ct. 99504	2-16-83
Robert D. Willard	Robert D Willard	3605 Arctic #622	2-16-83

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PRINT NAME	SIGNATURE	ADDRESS	DATE
Judy Slanaker	Judy Slanaker	Wasilla	2-17-83
Ethel A Damian	ETHEL A DAMIAN	9204 KIRKWALL	2-17-83
[illegible]	Elizabeth L Hogged	5026 E 9th Ct [illegible]	2-17-83
Cindy L. Kendall	Cindy L. Kendall	2134 Wayne St	2-17-83
[illegible]	[illegible]	4900 [illegible]	2-17-83
Tonnie E Maxim	Tonnie E. Maxim	PO Box 13 Pedro Bay AK	2-17-83
Sharon Dietrich	Sharon Dietrich	1339 Jackson Anch AK	2-17-83
Randy Chambers	Randy Chambers	4208 14th #8	2-17-83
Linda Hood	Linda Hood	8500 Pioneer Dr	2-17-83
Beverly A Raymer	Beverly Raymer	7800 [illegible] Sp 309	2-17-83
Joyce Rodgers	Joyce Rodgers	3721 Matthews Dr	2-17-83
Judy Bickford	Judy A. Bickford	SR2 B7574 Northwoods Chugiak	2-18-83
Linda Bartels	Linda L Bartels	Box 3622 Kenai	2-18-83
Dan Barnes	Dan Barnes	SR A Box 81 E Anch 99502	2/17/83
David A. Garganta	David A. Garganta	P.O Box 792 ER AK	2/17/83

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PRINT NAME	SIGNATURE	ADDRESS	DATE
MELISSA ZIMMERMAN	Melissa G. Zimmerman	3031 W. 43rd Ave #2	2-16-83
LINDA IRVIN	Linda Irvin	2506 W 27th #3	2-16-83
Lorri I Slorier	Lorri I Slorier	4001 Apex #B	2-16-83
Johnnie Gay	1823 Thunderbird	JOHNNIE GAY	2-16-83
Anda Allen	Anda Allen	SRA Box 2802 Anchor	2-16-82
James Gay JAMES GAY	James Gay	1823 Thunderbird	2-16-83
Deehan Gay	Deehan Gay	" "	2-16-83
Debbie Bunch	Debbie Bunch	8301 Majestic Dr	2-16-83
Cindy Bunch	Cindy Bunch	8301 Majestic Dr.	2-16-83
Page Williams	Page Williams	" "	2-16-83
Pamela Spencer	Pamela Spencer	801 Airport Hts #95	2-16-83
Carmen Price	CARMEN PRICE	4349 E. 2nd	2-16-83
Mary Temchin	Mary Temchin	% Ebasco 1227 W. 9th Ave	2-16-83
Sarah E Gore	SARAH E GORE	801 Airport Hts #74	2-16-83
Elaine Burgeson	Elaine Burgeson	266 South Hoyt	2-16-83

PETITION

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PRINT NAME	SIGNATURE	ADDRESS	DATE
Rebecca A. Neil	Rebecca A. Neil	4219 San Francisco	2/17/83
Pearl Vitolo	Pearl Vitolo	342 Dewey Circle	2/17/83
Nancy Hall		366 - Flower Apt 4	2/17/83
Opal Jackson			333-4424
Leah Herz	Leah Herz	Brooklyn, N.Y.	2/17/83
Blanche Reeves		2621 Happy Lane Anch	2/17/83
Betty Hedstrand		2120 Tudor Hills Dr	2/17/83
Linda Spohn	Linda Spohn	5321 Tudor Top. Circle	2/17/83
Jackie Worly	Jackie Worly	P.O. Box 8529	17 Feb 83
Julie Mowl Ds	Julie Mowl Ds	4200 E 4th SP 135	2-17-83
Michael Painter	Michael Painter	P.O. Box 39118 Nwt Chk	2/17/83
Richard Campbell	Richard Campbell	P.O. Box 8119	2/17/83
LaVonne Henriks	LaVonne Henriks	1545 S Hoyt SP 66	2-17-83
Barb de Spain	Barb de Spain	5811 Miley 99504	2-17-83
Dave Hanson	David Hanson	1511 Atkinson	2-17-83

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PRINT NAME	SIGNATURE	ADDRESS	DATE
Richard D Burson	Richard D Burson	231 N. Bunn St 1 Anchorage AK 99504	2-17-83
Margaret Bishop	Margaret Bishop	801 Airport Hgk SP 169	2-17-83
K. Vincent	K. [illegible]	SRA 1550-P Anch. AK 07	2-17-83
Brett S. Millard	Brett S. Millard	138 N. Klevin St. APT #3	2-17-83
Bonita Carlisle	Bonita Carlisle	General Delivery Eagle River AK	2-17-83
Francis Warren			
Lawless D McCord	Lawless D McCord	9499 Brayton Anchorage SP 161	2-17-83
Cynthia O McCord	Cynthia O McCord	9499 Brayton Dr. Anch SP 161	2-17-83
Michael R Suttles	Michael R Suttles	2951 Soldotna AK 99514	2-17-83
Laurel C. Keenan	Laurel C. Keenan	4301 E. 7th Anchorage 99504	2-17-83
BRYAN SAMPSON	Bryan Sampson	4301 E. 7th "	3-17-83
LORING SAMPSON	Loring Sampson	"	"
Bill McCain	William McCain	4200 E 4th #150	2-17-83
Edna Lee	Edna Lee	433 E Dowling	2-17-83
Wilbur L Lee	Wilbur L Lee	433 E. Dowling	2-17-83

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PRINT NAME	SIGNATURE	ADDRESS	DATE
Dolores KOHRING	Dolores Kohring	P.O. B 515 Wasilla AK 99687	2-17-83
Tom Page	[illegible]	2114 Wayne St	2-17-83
PAUL F. WOODS	Paul F. Woods	801 AIRPORT HEIT. #132	2-17-83
Margaret Mayes	Margaret Mayes	705 E 4th Ave 334	2-17-83
Patricia McKay	Patricia McKay	Sid 9834 Palmer	2-17-83
William Doler	William Doler	202 N. Klevin #C-1 Hnd	2-17-83
[illegible]	[illegible]	Box 369 Kasilof AK	262-9057
CONNIE D. BLANTON	Connie D Blanton	534 Turpin #2, Anc. 99504	333-6298
Ines Pennington			
Roger DeVive	Roger J. DeVive	333 Concrete St. Ank	2-17-83
[illegible]	[illegible]	Boise	Idaho
Lewis C. Olson	Lewis C Olson	Boise	Idaho
PETER ESSER	P M Esser	8509 BOUNDARY ANCH	2-17-83
Tricia Esser	Tricia L. Esser	8509 BOUNDARY ANCH	2-17-83
MIKE HALE	Michael Hale	4324 THOMPSON ANCH	2-17-83

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PRINT NAME	SIGNATURE	ADDRESS	DATE
Marcell Pedersen	[illegible]	4324 Thompson Ave	2-17-83
Tracey Jones	Tracey Jones	7230 Kiska Circle	2-17-83
Kerry Jones	Kerry Jones	7230 Kiska Circle	2-17-83
Lendsy Wiley	Lendsy Wiley	1241 E 12th Apt 4	2-17-83
Fannie Patterson	Fannie Patterson	5340 E 26th Apt 4	2-17-83
DON ALLISON	Don Allison	BOX 53 TALKEETNA	2-17-83
MILLIE GRAY	Millie Gray	BOX 53 TALKEETNA	2-17-83
PAMELA LUTGEN	Pamela Lutgen	1605 Kepner	2-17-83
Zita Brink	Zita Brink	424 N Park	2-17-83
Patti Bennett	Patti Bennett	4240 East 8th	2-17-83
LINDA HUECKER	Linda Huecker		2-17-83
Michael D. Roderick	Michael D. Roderick	Box 97 Chugiak	2-17-83
KATHY URQUHART	Kathy Urquhart	SRA BOX 27Q	2.17.83
George Mabry	George Mabry Jr.	P.O. BOX 8627	Feb. 17, 1983
LYNNE KEARNAN Lynne A Kearnan	Lynne A Kearnan	231 N. Bunn #1 Anch 99504	2-17-83

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PRINT NAME	SIGNATURE	ADDRESS	DATE
DONALD L. McCRAY	[illegible]	425 FREDRICKS DR.	2-26-83
Gloria Nitschke	Gloria Nitschke	8942 Blackberry #609	2-26-83
Carolyn Baker	Carolyn Baker	8942 #608 Blackberry	2-26-83
Carol Douglas	Carol Douglas	8942 # 607 Blackberry	2-26-8
EDITH DOUGLAS	Edith Douglas	8942 # 607 Blackberry	2-26-8
Elfriede Davis	Elfriede Davis	8942 Blackberry	2-26-83
Janet Graham	Janet Graham	8964 Blackberry	2-26-83
Bruce Christian	BRUCE Christian	8964 BLACKBERRY	2-26-83
Angela Vera	Angela Vera	8964 Blackberry St	2-26-83
Clio Metcalf		8964 Blackberry St	2-26-83
Jimmie C. Eskridge	Jimmie Eskridge	8964 Blackberry	2-26-83
Betty Hadden	Betty Hadden	8962 Blackberry St	2-26-83
Beverly A. Dunbar	Beverly A. Dunbar	8962 Blackberry	2-26-83
Anna Anvil	AnnA Anvil	8962 Blackberry St	2-26-83
Moses Anvil	Moses Anvil	8962 Blackberry St	2-26-83

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PRINT NAME	SIGNATURE	ADDRESS	DATE
Kathleen Toriday	Kathleen Toriday	411 K St Anchorage	2/17/83
TERRI VANN	Terri Vann	3762 Glacier	2/17/83
Greg Carter	Greg Carter	4205 [illegible]	2/18/83
Robert Trujillo	Robert Trujillo	4501 Muldoon Blvd #5	2/17/83
Robert Leach	Robert Leach	4001 Greenhill Dr	2/18/83
Ted Pittman	Ted Pittman	2420 Scarborough Dr	2/18/83
Steve Pittman	Steve Pittman	" "	2/18/83
Neil Harris	Neil Harris	1106 Norman #16	2-18-83
Mary Kuzear	Mary Kuzear	443 Sr Lane	2-18-83
Steve G. Stavros	STEVE G. STAVROS	4007 GILMORE CIR.	2-18-83
Michael Guest	Michael Guest	P.O.Box169 EagleRiver	18Feb83
Timothy Monk	Timothy Monk	3242 Wisconsin	2-18-83
Allan Eckman-R	Allan Eckman	3421 E 42nd Ct	2-18-83
Dan Tamond	Daniel M. Tamond	1409 Twining	2/18/83
Richard Erwin	Richard Erwin	6830 GIMRICH	2/18/83

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PRINT NAME	SIGNATURE	ADDRESS	DATE
Tony N. Lucas	Tony N Lucas	8561 Montra Cir Anc AK 99502	18 Feb 83
George P Dodge III	G Cone P Dodge III	POB 17309 Big Lake 99687	18 Feb 83
Charlene Vaclina	Charlene Vaclina	5847 E. Debarr #7	2-18-83
Bradley E Porter	Bradley E. Porter	PO Box 4-2021 99509	2-18-83
Peter Wawrzyniak	Peter Wawrzyniak	4366 Spinard Rd #21	2-18-83
Geoff Brewington	G. Brewington	P.O. Box 4-1654 Anch. AK	18 FEB 83
Mark Reys	Mark R Reys	4620 Reka B-20 Anch 99504	18-FEB-83
Richard Shawalter	Richard Shawalter	2401 Forhall Anch AK 99504	18-Feb-83
Rae Ann Lappo	Rae Ann Lappo	ST RT Box 143-A Eagle River AK 99577	18-Feb 83
[illegible]	[illegible]	[illegible]	18 Feb 83
Ruth Moore	Ruth Moore	855 La Touch #1018	18 feb 83
[illegible]	[illegible]	341 [illegible]	2-18-83
Hollea Van Horn	Hollea Van Horn	2106 Lincoln	2-18-83
Fred Metcalf	Fred Metcalf	8960 Blackberry [illegible] Anchorage [illegible]	2-18-83
Janet Nosek	Janet Nosek	1226 'P' St Anch	2-18-83

83

(7)

2/2

COMMITTEE REPORT

HOUSE

FURTHER: JUDICIARY
FINANCE

Date: _____

1/26/83

Mr. Speaker:

The Committee on HESS has had HB 128

An Act raising the penalties for promoting child prostitution.

under consideration and reports it back as follows:

[✓] do pass [ ] do not pass

[ ] do pass with attached amendments(s)

[ ] replace with CS for _____ [ ] same title [ ] new title

and recommends _____

[ ] AND attaches a "Letter of Intent" [ ] New Fiscal Note [ ] Zero Fiscal Note Attached

[ ] reports it back without recommendation

[ ] referred to the _____ Committee

MEMBERS SIGNING DO PASS

Mae Fisher
M. W. Miller
Mike Davis
Betty Cate
Nick B. Kooman
[illegible]
Milo H. Fritz

MEMBERS HAVING OTHER RECOMMENDATIONS:

Milo H. Fritz
CHAIRMAN
Mae Fisher

H 60

AMENDED TITLE:
AN ACT RAISING THE PENALTIES FOR PROMOTING CHILD PROSTITUTION

PRIME SPONSOR: LINDAUER.
CO-SPONSORS: FLOOD, GRUSSENDORF, HURLBERT, PESTINGER, TISCHER, MILLER,M.W., LISKA.
CURRENT STATUS: 3/02/83 IN (H) JUDICIARY REFERRAL: FINANCE

DATE	SEQ	PAGE	LEGISLATIVE ACTION
01/26/83	01	0114	FIRST READING -- COMMITTEE REPORTS
03/02/83	02	0381	HESS -- DP07
			JUDICIARY
		—	FINANCE
			RULES
****	**	**	*** *** ***

ALASKA NETWORK ON DOMESTIC
VIOLENCE AND SEXUAL ASSAULT

P.O. BOX 809

JUNEAU, ALASKA 99802
586-3650

POSITION PAPER
HB128: An Act raising the penalties for promoting child prostitution

The Alaska Network on Domestic Violence and Sexual Assault is a non-profit corporation composed of twenty-one programs statewide that provide domestic violence, sexual assault, and adult crisis intervention services to members of their respective communities. Network programs are funded in part through grants and contracts awarded by the Council on Domestic Violence and Sexual Assault.

The Network was established in 1978, and has as one of its primary focuses the elimination of domestic violence and sexual assault through provision of shelter, advocacy, and education/prevention services.

The Network supports the intent of HB128 in its efforts to discourage the perpetration of abusive behavior towards minors.

Representative John Lindauer
District 10-A
3933 Geneva Place
Anchorage, AK 99508

Alaska State Legislature

While in Juneau
Pouch V
Juneau, AK 99811
465-3709

House of Representatives

March 4, 1983

TO: House Judiciary Committee

FROM: Representative John Lindauer

RE: House Bill 128: "An Act raising the penalties for promoting child prostitution."

Child prostitution is a growing problem within the United States as well as within Alaska. Those who promote young people in prostitution commit a heinous crime and need to be punished to the fullest extent possible.

This bill raises the penalty for those who promote individuals under sixteen yeasrs of age. The minimum penalty would change from four to seven years with the maximum sentence going from ten to twenty years.

Attached are a group of articles detailing areas of concern within the national and local press.

THE LEGISLATURE OF THE STATE OF ALASKA
THIRTEENTH LEGISLATURE

FISCAL NOTE

I. REQUEST

Bill/Resolution No. House Bill No. [illegible]
Title "An Act raising the [illegible] child prostitution"
Requested by Representative [illegible] Date Jan. [illegible]

II. FISCAL DETAIL

Agency Affected [illegible]
Program Category Affected [illegible] Management, Information & [illegible]
BRU, Program or Subprogram(s) Affected [illegible] Confinement
(Note: If more than one budget component is affected, separate line-item [illegible] for each [illegible] in the analysis section.)

EXPENDITURES (Thousands of Dollars)

		FY 83	FY 84	FY 85	FY 86	FY 87	FY 88
100	PERSONAL SERVICES						
200	TRAVEL						
300	CONTRACTUAL						
[illegible]	COMMODITIES						
[illegible]	EQUIPMENT						
600	LAND & STRUCTURES						
700	GRANTS, CLAIMS ETC.						
	TOTAL						

FUNDING (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER (Specify Fund Source)						

POSITIONS

FULL TIME						
PART TIME						
TEMPORARY						

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

Enactment of House Bill No. 128 would raise the penalties for promoting child prostitution from a Class B felony to a Class A felony.

* (Unable to determine fiscal impact with data available.).

IV. DATE February 4, 198[illegible] PREPARED BY Roger C. Lange
AGENCY Division of Adult Corrections
PHONE 465-3376

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

33-001 (Rev. 12/79)

BILL NUMBER House Bill No. 128

EXPENDITURES (Thousands of Dollars)

		FY 83	FY 84	FY 85	FY 86	FY 87	FY 88
000	PERSONAL SERVICES						
200	TRAVEL						
300	CONTRACTUAL						
400	COMMODITIES						
500	EQUIPMENT						
600	LAND & STRUCTURES						
700	GRANTS, CLAIMS ETC.						
	TOTAL	*	*	*	*	*	*

FUNDING (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER (Specify Fund Source)						

POSITIONS

FULL TIME						
PART TIME						
TEMPORARY						

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

If enacted, House Bill No. 128 would raise the penalties for promoting child prostitution from a Class B felony to a Class A felony.

* No data is available to indicate the frequency of this crime, the number of arrests or convictions. Therefore, no estimate can be made as to the fiscal impact if this legislation enacted. Since statistical data is not available, it is assumed that this offense is rarely encountered and any potential fiscal impact would be minimal, particularly since the bill is only raising an existing crime to a classification with longer sentences.

STATE OF ALASKA
PRELIMINARY STATEMENT OF FISCAL IMPACT

Bill No: SB 128 Date on bill: 1/26/83
Title: An Act relating to penalties for promoting child prostitution
Sponsor: House Rules
Requestor:

1. Estimated fiscal impacts on:

a. Expenditures:

	(Thousands of Dollars)				
	FY 83	FY 84	FY 85	FY 86	
Capital					
Operating					
Total	-0-	-0-	-0-	-0-	

b. Revenues:

Revenue					

2. Source of funds to offset fiscal impact of bill:

Source of funds not identified by sponsor.

3. Assumptions:

No fiscal impact

4. Disclaimer:
This statement has not been reviewed by the OMB in the Office of the Governor. It therefore does not represent the final estimate of fiscal impact.

Prepared By: Paul Conger Phone: 465-4338
Division: Administrative Services Date: 2/28/83

Approved by Commissioner: [signature] Date: 2/25/83
Department: Public Safety

5. Distribution:
Original to Legislative Finance
Copy to OMB
Copy to Sponsor
Copy to Requestor

2/15/83

TERMS OF IMPRISONMENT

OCTOBER 1, 1982

	FIRST FELONY CONVICTION	SECOND FELONY CONVICTION	THIRD FELON CONVICTION
MURDER I	[20] -- 99	[20] -- 99	[20] -- 99
KIDNAP. II & KIDNAP. & M. I. C. S. I	[5] -- 99	[5] -- 99	[5] -- 99
SEXUAL ASSAULT 1ST **	5 --(10)-- 30 HB127 (12)	7 1/2 --(15)-- 30	12 1/2 --(25)-- 30
SEXUAL ASSAULT 1ST	4 --(8)-- 30 HB127 (10)	7 1/2 --(15)-- 30	12 1/2 --(25)-- 30
A FELONY **	3 1/2 --(7)-- 20	5 -- (10) -- 20	7 1/2 -- (15) -- 20
A FELONY ↑ HB128	2 1/2--(5) -- 20	5 -- (10) -- 20	7 1/2 -- (15) -- 20
B FELONY ↑ HB117	0 -- 10	0 -- (4) -- 10	3 -- (6) -- 10
C FELONY	0 -- 5	0 -- (2) -- 5	0 -- (3) -- 5

**APPLIES WHEN A DEFENDANT POSSESSED A FIREARM, USED A DANGEROUS WEAPON OR CAUSED SERIOUS PHYSICAL INJURY EXCEPT FOR MANSLAUGHTER.

NUMBERS IN (BRACKETS ARE) PRESUMPTIVE SENTENCES. NUMBERS ENCLOSED BY [BOXES] ARE MANDATORY MINIMUM SENTENCES. NUMBERS TO LEFT OF BRACKETS ARE LOWEST MITIGATED SENTENCES. NUMBERS TO RIGHT ARE HIGHEST AGGRAVATED SENTS.

Anchorage Times 3/1/83

Rodriquez may not get closed trial, judge says

by Jeff Berliner
Times Writer

Although a secret court hearing was held Monday, state superior court judge Victor Carlson said later in an interview that this does not mean Carlos "Chico" Rodriquez will have a closed trial.

Rodriquez, 46, is being held on a $1 million cash-only bail at the Sixth Avenue jail on 29 felonies related to an alleged juvenile pornography and prostitution ring run out of his house at 1302 W. 26th Ave.

Carlson ordered the courtroom cleared of spectators, the press and other attorneys when a hearing was held for Rodriquez Monday afternoon.

The so-called "in camera" hearing was requested by public defender Carmen Gutierrez. Behind closed doors, she explained to the judge why the state public defender agency — which represents all indigent defendants — could not represent Rodriquez.

Since the public defender agency represents some of the youths who were allegedly sexually abused by Rodriquez, Gutierrez said it was would be a conflict of interest for her agency to represent both Rodriquez and his accusers.

Twelve youths who testified against Rodriquez in grand jury proceedings are identified only by initials and age, and Monday's hearing was closed to keep their identities secret.

Although only names arose at Monday's hearing, the unidentified witnesses are expected to take the witness stand when Rodriquez goes to trial. Asked if these proceedings might also be closed on the same grounds, Carlson said no motions have yet been filed seeking a closed trial. He added that there is no precedent for it.

A U.S. Supreme Court decision in an Alaskan case ruled to keep its trial open when it found that the protection of a defendant rights (to face his accusers) are more important than the protections of witnesses' identities, Carlson said.

Meanwhile, Rodriquez — who was indicted Nov. 19, arrested in Miami, Fla. a few days later and returned to Alaska last Thursday — still has no lawyer.

In cases where the public defender agency has a conflict of interest with a client, the law firm of Drathman and Weidner is appointed. However, an attorney from that firm rerpresents another youth who testified against Rodriquez.

Carlson asked the firm of Lynch, Farney & Crosby to provide Rodriquez with a lawyer and tell the court today whether it would do so.

Rodriquez said he wants to hire a local private attorney to defend him but doesn't have the money.

horage Times

Saturday, February 26, 1983

City/State

•On The Record
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B

odriquez denies sex charges



Norris Klemon of The Times

ico' Rodriquez is delivered to the courtroom for arraignment Friday

by Jeff Berliner
Times Writer

Wild sex parties involving "kids" were frequent at his house, Carlos "Chico" Rodriquez said Friday during a brief interview before his arraignment on charges that he operated a juvenile pornography and prostitution ring here.

But, Rodriquez asserted, he is innocent of the rape charges and said others may be involved.

Rodriquez, a small, neatly dressed, soft-spoken man, about 5-foot-8, and weighing about 150 pounds, sat quietly and intently through his first Alaskan court hearing since his arrest more than three months ago.

Rodriquez said he is eager to face his accusers. He said he is innocent, although 12 youths told a grand jury that Rodriquez had sexually abused them, induced them to rob for him, and forced them to perform in sex movies in exchange for drugs and money.

And, Rodriquez hinted, many of the alleged activities really did go on in his house and he may be prepared to place the blame on unnamed others. Rodriquez is charged with crimes that allegedly occured between 1978 and 1980.

Police have acknowledged that others are under investigation as part of a continuing probe of the juvenile pornography and prostitution operation they claim Rodriquez ran.

Among the 29 felonies lodged against him are rape, attempted rape, sexual abuse of a minor, promoting prostitution, unlawful exploitation of a minor, attempted lewd acts to children, contributing to the delinquency of a minor and lewd or lascivious acts toward children.

Rodriquez, 46, is being held at the Sixth Avenue jail on a $1 million cash-only bail.

After court, public defender Carmen Gutierrez told Rodriquez not to speak to anyone except his attorney because his "case is a very hot case."

Gutierrez said she would seek a court ruling Monday — when a trial date will be set — asking corrections officials to notify attorneys if anyone tries to contact Rodriquez.

"A lot of investigation will be necessary to adequately represent Mr. Rodriquez," Gutierrez told Superior Court Judge Ralph Moody. "There are a number of counts and they are very serious."

Rodriquez may not stand trial until summer, Gutierrez indicated. But Rodriquez told The Times he is eager to go to trial.

Rodriquez repeated many things he said in an earlier interview with The Times: that groups of young people gathered at his house to party and have sex and that he did not force the activities to occur nor did he force himself upon anybody.

He insisted that he was not always present at these parties and that others with keys may have hosted them in his absence.

Rodriquez was secretly indicted Nov. 19 and arrested several days later at his Miami, Fla., home.

Anchorage Times 3/13/83

Child sex abuse 'epidemic' hits home

by Jeff Berliner
Times Writer

"Catastrophic" is the term Anchorage Superior Court Judge Ralph Moody uses.

"Epidemic," proclaims assistant Attorney General Gayle Horestki.

Once something thought to occur in New York, Los Angeles and other big cities, it was something you read about in national magazines, something horrible but safely distant.

Now it's hit Anchorage.

Some say it's been here for a long time, but the community refused to admit it or recognize that it existed.

The sexual abuse of juveniles by adults. Alaskan adults sexually attacking Alaskan children.

"It's the grossest, most vicious (thing) you could possibly imagine," says Fairbanks District Court Judge Gerald Van Hoomissen.

"I don't want parents to get paranoid, but we're all vulnerable," says John Niethamer, executive director of the Boys Club of Alaska.

"Anchorage is a big city. We have it," says police chief Brian Porter of widespread sexual abuse of children by adults.

Be it a new problem or not, people in Anchorage are being bombarded by news of it — in the courts, in the press, in everyday life.

See Child, page A-4

THE UGLIEST CRIME

Sexual abuse of Alaska's children

Today The Times begins a multi-part series with an overview of the problem. On Monday, the victims speak out.

Child sexual abuse 'epidemic' hits Anchorage

Continued from page A-1

"The number of prosecutions has mushroomed," says assistant District Attorney Elizabeth Sheley.

"People ought to open their eyes," says Bonnie Schnell, the grand jury foreman who, with 17 other grand jurors, listened to 20 youngsters tearfully reveal their involvement in a pornography and prostitution ring run by adults. The grand jury returned a 29-count indictment against one of the men alleged to be a principal in that operation.

No longer just isolated incidents of a man raping a young girl or a boy being fondled by an adult, the past 12 months have brought case after case of multiple victims, mostly young teenage boys.

In one of the largest, police have evidence of a massive juvenile prostitution and pornography ring that involved at least 60 children, aged 12 to 16, mostly boys.

Many of the cases involve adults in positions of public trust: the former assistant director of the Boys Club stands accused of six separate incidents of molesting boys; a former foster parent and juvenile probation "pass partner" stands accused of eight acts of molesting boys; a rural school superintendent has been sentenced to eight years in jail for molesting boys; a bus driver has been sentenced to 23 years in jail for molesting boys; a former public safety officer has been jailed for molesting boys.

All typical citizens taking typical children and doing previously unmentionable things to them. It's illegal. And in increasing numbers, these adults are getting arrested.



The children most often preyed upon are runaways — many of them running away from the sexual abuse of an incestuous home life. They find that sex-for-sale may be the only way to make a living in the world where you're too young to get a job, you have no skills and you've dropped out of school.

Anchorage had 563 runaways in 1982, according to police reports, and another 325 juveniles are simply listed as "missing." The youths who do not return home often depend on selling their bodies for survival.

Chief Porter has three investigators working on cases of adults sexually molesting children. If he had more money, the chief says, he'd throw more investigators at the problem.

"We're flooding the court system," Sheley says. She works full-time doing nothing but prosecuting adults accused of molesting juveniles. Her collegue in the Anchorage district attorney's office, Paul Olson, spends half his time doing likewise; the rest of his time is spent on adult sexual assault cases.

Olson is preparing to prosecute Carlos "Chico" Rodriguez, indicted for 29 sex crimes against juveniles in what police describe as a child pornography and prostitution ring.

And because there are so many cases cropping up, Anchorage District Attorney Victor Krumm is considering adding a third prosecutor to the sex crimes unit he created just 2½ months ago.

Fifty cases are awaiting prosecution in Anchorage. Two or three new cases are referred to the Anchorage district attorney's office for prosecution every week. That's a 100 percent increase over last year, and more of this year's cases involve multi-

ple victims.

Judges in Anchorage are so sickened by the constant parade of sexual offenders, Sheley says, that prosecutors are winning long jail terms for convicted offenders. One judge — after two straight weeks of hearing juvenile sex abuse cases — opted to have a murder case come before him to get a break from the cases of adults molesting children.

Dr. Roland Summit, a psychiatrist from UCLA, speaking at a sexual abuse symposium in Fairbanks last year, estimated that 500 Alaskan juveniles at any given time are victims of sexual abuse.

Half the boys at McLaughlin Youth Center have been sexually abused, according to George Buhite, the center's clinical services administrator. Even more of the girls have had sexual encounters.

Odyssey House, the national organization leading the fight against child pornography and prostitution, has sent one of its nationally recognized experts, Glen Lambert, to Alaska to help advise McLaughlin counselors — to tell them what to look for, how to spot the problem, how to deal with it.

Lambert, of the Salt Lake City Odyssey House, said his first audience in Fairbanks expressed disbelief when he confronted them with figures on child sexual abuse in Alaska. Last month, when Lambert offered advice to McLaughlin counselors, he said no one questioned the problem's existence.

Incest victims frequently become involved in prostitution, even when they have run away from sexual abuse at home, reports Marguerite Lupori of Parents United, a local group organized to fight incest.

By age 16, one in five girls will be abused and one in 10 boys will have been molested, Lupori says, citing Division of Family and Youth Services figures.

There were 64 cases of sexual abuse reported to the Department of Health and Social Services in 1982, and 385 suspected cases.

Reporting of cases of adults sexually abusing children is up partly because tough new laws require certain professionals — doctors, nurses, social workers, teachers, youth counselors — to report them to the police or face 90 days in jail for not doing so.

Others are reporting the crimes, too: parents, the children themselves and their friends. The taboo against talking about sex — especially sexual abuse and homosexual abuse — is dropping away, leaving people more inclined to report incidents.

This change has been noticed by the police chief, prosecutors and others

"These cases were virtually not prosecuted until two years ago," Sheley says. People simply did not come forward.

Porter and two of his aides give much of the credit for the breakthrough to officer Eric "Frank" Feichtinger, who has won the confidence of sexually assaulted boys. And because they have talked to him, he has been able to gather evidence to bring to court.

Officials are bringing it out in the open, too. Gayle Horetski, who works out of the chief prosecutor's office in Juneau, has testified before legislative committees about the "epidemic." And last week she finished rewriting a package of laws to close loopholes through which she claims some sex offenders slip.

Lupori is working with Marroyce Hall of the Anchorage Crime Commission's juvenile committee to expose the local problem publicly and suggest solutions.

And STAR — Standing Together Against Rape — is proposing to make its educational campaign a permanent part of the public school curriculum — beginning in elementary school.

Anxious to help male and juvenile victims also, STAR reports a ninefold increase in reported sexual assaults against males the last two years. STAR also reports that 43 percent of victims of sexual assaults are youths 18 or younger.

At a recent sentencing, Horetski told the judge the problem has become "epidemic in our society," and the judge, Ralph Moody, handed down a 23-year jail sentence to a man convicted of 22 sex offenses against boys.

"We've got to let people know in this society that we won't stand for this kind of abuse," Moody said.

Adults who turn teen-agers and younger children into sex objects either for pleasure or pay are going to jail. Sheley reports that prosecutors here have a 99 percent conviction rate.

A package of new, tougher laws Horetski has given to the governor may make it even tougher on offenders.

Though the adults may end up behind bars, the children end up scarred, perhaps for life.

Monday: the victims talk.

Children Today September/October 1979

ADOLESCENT PROSTITUTION

by Michael Baizerman, Jacquelyn Thompson, Kimaka Stafford-White and "An Old, Young Friend"

Adolescent prostitution is a topic of public and professional concern in many areas throughout the nation. It has been receiving a great deal of attention in Minnesota, and particularly in the Twin Cities area of Minneapolis-St. Paul. We are aware of our area's notoriety as the home of many young girls who are now working as prostitutes in New York City, Chicago and California. We could not help but be aware of the "Minnesota Strip" in New York City after the news coverage given to efforts of two local policemen to bring home some of the young people involved in prostitution there.

We are concerned, too, that sophisticated pimps are coming into Minnesota from other cities. Compared to many states, Minnesota is rich and until recently it has been an untapped resource as far as organized crime is concerned.

In response, public hearings have been held at city and state levels, and groups have been formed by government agencies and youth workers to study the situation and recommend actions. Programs have begun and legislation has been introduced at the state level.[1] Training sessions have been held for youth workers at the University of Minnesota and elsewhere, and public meetings have been called to present issues to parents and young people.

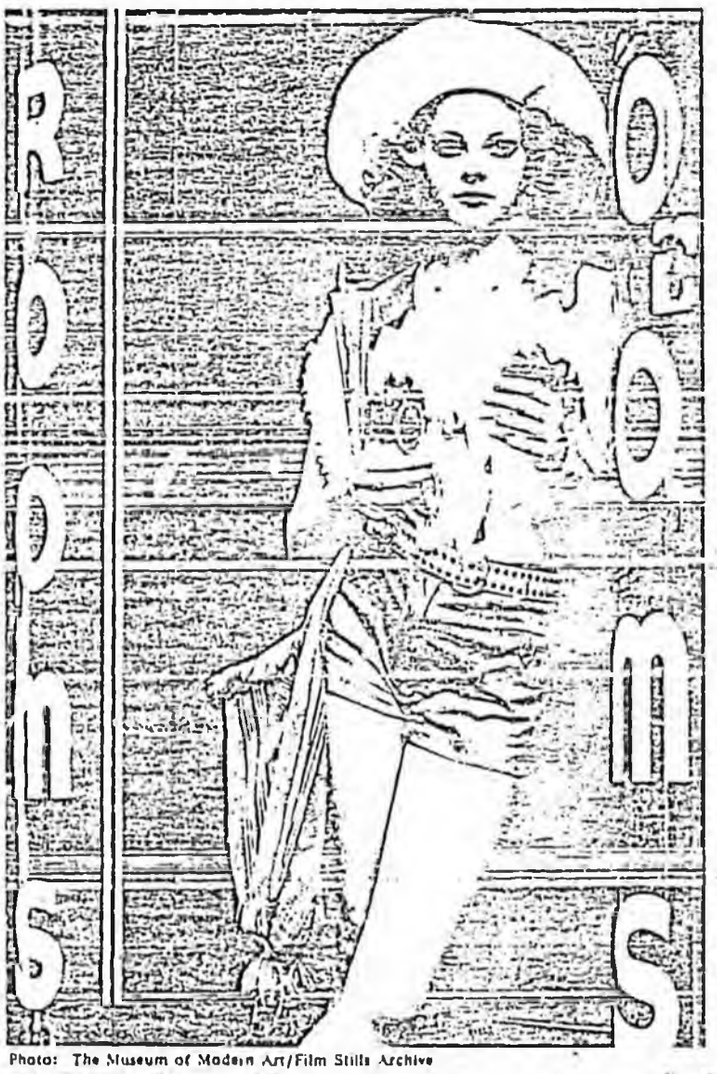


Photo: The Museum of Modern Art/Film Stills Archive

Jodie Foster as a runaway teenage prostitute in the recent film "Taxi Driver."

Michael Baizerman, Ph.D., is Associate Professor, Center for Youth Development and Research, and Associate Professor, Maternal and Child Health, University of Minnesota, Minneapolis. Jacquelyn Thompson and Kimaka Stafford-White are youth counselors with a Twin Cities youth agency. "An Old, Young Friend" is an 18-year-old woman with five year's experience in fee-for-service sex in Minneapolis-St. Paul and other cities.

Taken together, these activities have contributed to the Twin Cities becoming a center of inquiry and action on adolescent female prostitution. (Although there is certainly male prostitution in the Twin Cities area, it is apparently not as prevalent as it is in some other cities and not yet of the same public concern.)

Over a 3-year period, two of us have done direct fieldwork—casefinding, counseling and referral—with more than 300 young prostitutes in the Twin Cities area, including one of the coauthors of this article, "An Old, Young Friend." Most of these girls were native-born, from the Twin Cities or rural areas in the state, and about 70 percent had run away at some time. And, as part of a field study of the Center for Youth Development and Research at the University of Minnesota, three of us have interviewed the youth workers and some of these girls and their pimps. From them we have gathered observations and gained some understanding of the current phenomena of adolescent fee-for-service sex. This article is an introduction to our findings and observations.

A Brief History

Prostitution has been a fact of life in most of recorded history and children and youth have been sellers of sex for almost as long. Only since the early 1900s has youth been considered a separate stage of life; thus we can assume that many young people we now term youths were previously considered to be adults, whether they were involved in prostitution or in other, more conventional activities.

Prostitution by the young has been a form of slavery and of child labor. Young people worked as prostitutes to earn money for their families. Some of this activity was regulated by law—in England, for example, legislation set the minimum age for prostitution at 12 until 1874, at 13 in 1875 and at 16 in 1885.

Is the incidence of adolescent prostitution higher now than in the recent past? We don't know for sure, but we think that it is. We are also hearing more about it now. Some girls may become aware of prostitution as an "easy" way of earning money and decide to try it. Increased public awareness of adolescent fee-for-service sex often results in increased public pressure for police action, which in turn usually results in more arrests and prosecutions and, usually, "convictions." (These young people would be seen in juvenile court where there are hearings and depositions, not convictions.)

In addition, since young prostitutes work "the street" as opposed to working out of bars, hotels or parlors, they are more visible because they tend to congregate on the same streets.

Adolescent prostitution has also been linked to other contemporary youth problems: running away, physical and sexual abuse, incest and child pornography. Federal legislation passed last year, P.L. 95-225, is designed to protect children against sexual exploitation. It also extends the provisions of the Mann Act to apply to boys.

Prostitution in the Twin Cities

In the Twin Cities area, girls of all races are involved in prostitution; their ages range from 13 to 18. Some have a male pimp, others do not, and many make a transition from working independently to working for a pimp. As we have noted, most of the young prostitutes work "the street"—both actual city blocks and other specific locations, such as shopping malls and the areas around some bars and after-hours clubs. Most sex acts take place in cars, although some girls use apartments and, more rarely, motel and hotel rooms.

Many of the girls practice birth control: pills, followed by the IUD, are the two most popular forms. Since girls may begin using the pill at an early age, they may be at risk of resultant medical complications. Use of the IUD could lead, through violence during the sex act, to such serious problems as perforation of the cervix. Condoms seem to be used less as a pregnancy prophylactic than as a preventive for venereal disease.

Many girls do not know much about venereal disease, and what information they do have seems to be obtained from "the street." Some learn from experience that one consequence might be scar tissue on the fallopian tubes, which could prevent pregnancy. Generally, pimps take care of the medical and health expenses of their girls.

Many pimps working in neighborhoods and the metropolitan area do not use hard drugs and do not allow their girls to use them—hard drug use raises the risk of arrest and the cost of the pimp's operation. Hard drugs also compete with a pimp for the girl's dependency. This is not to say that many girls do not have a history of drug use or that some girls may not be intentionally introduced to drugs as a way to secure and control them. However, from what we have observed, this latter pattern is more characteristic of interstate than of local patterns.

All of the pimps are male and most of the younger ones are black. Those who live in the neighborhood where the girls work—"popcorn" or "bubblegum" pimps, or "players"—are about 17, 18 and 19 years old, while those who come from outside the state are usually older, having moved up the "career ladder" from neighborhood pimp to small businessman. Black pimps tend to work on the street while white pimps, usually older, are more likely to be involved with more formally organized action such as call girls, saunas and massage parlors.

In general, the younger pimps come from disadvantaged neighborhoods; they have relatively poor formal education, lack basic skills and have few opportunities to obtain legitimate work. As a result, they are likely to be frustrated, angry, resentful and unsure of themselves. They tend to use fear to control their girls and may attempt to hurt a girl or someone who tries to interfere with their operation. In our experience, however, many of these young men will move out of pimping if other possibilities are found. Those who stay in it do so partly because there are few work opportunities. We do not believe that most stay out of any great pathological or perverse need.

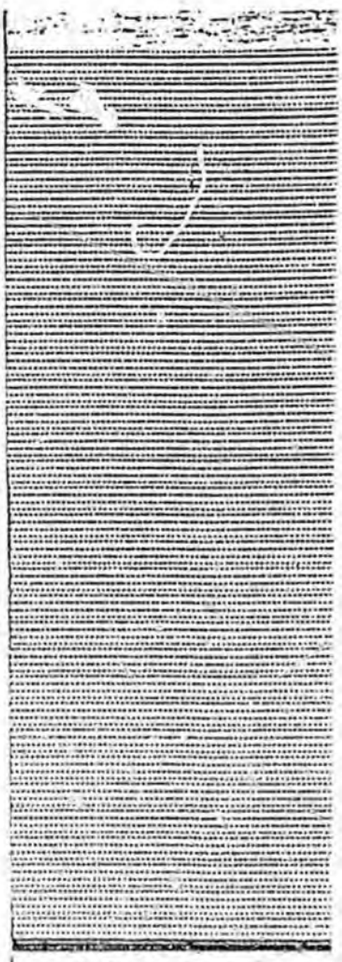
Older and more sophisticated pimps rarely use physical force on their women. Their method of control is psychological and emotional with the goal of having the girls become totally dependent upon them.

The local buyers or johns seem to be white men over 25 years of age, both married and single. We know that many have families of their own—and that some men ask for girls of their daughter's age.

Although a wide variety of sex acts are performed, most men seem to want oral sex or intercourse. The price varies according to the act and the time involved. For ordinary oral sex or intercourse, it is about $25. Other factors—whether the girl works for a pimp, the location of the pick-up, the nature of the sex act, and whether or not there is a big convention in town—also influence the cost.

Most of the action seems to take place from lunchtime to late afternoon, and then later in the evening. These afternoon times fit well within typical male working schedules and allow married men the opportunity to be home in the evening and still engage in—and protect—their activities.

Business hours are also determined by the girls' schedules. Since they may also be students in junior and senior high



school, the girls may choose to work only after school. Afternoon hours are convenient for girls who live at home and work at prostitution part time, without parental knowledge.

Becoming A Teenage Prostitute

One pathway to prostitution is recruitment by a pimp. Why are some girls vulnerable to a pimp's advances? We believe that the risk of a girl being open to recruitment by a pimp increases with the following factors:

She may have a poor self-image. She is unattractive, possibly overweight and a "loner." She lacks knowledge of normal teenage boy-girl relationships, and she desires acceptance and attention. Aware of this, a pimp will take her to nice restaurants, buy her gifts and make her feel desirable.

She may be a runaway. Girls leave home for a variety of reasons, many of which reflect "healthy" or normal feelings of adolescens—the desire for adventure, to explore something new, to meet new people. Others, however, run away from problems, including physical and sexual abuse, family violence, other intrafamilial tensions and crises and problems with school, work or friends.

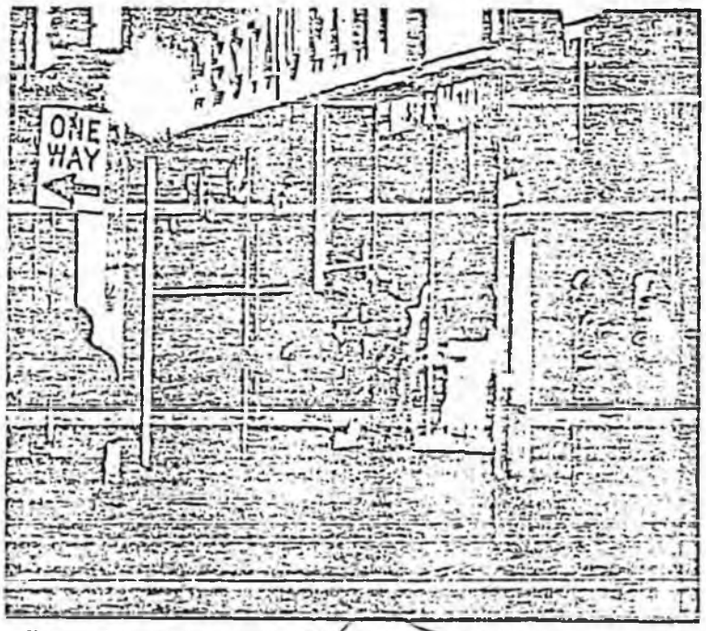
In our experience, it is the girl who runs away from abuse and/or family crises, who urgently wants and needs friendship, security and affection, who is most responsive to the solicitations of a pimp.

The need for money also makes a runaway—who is lonely, tired and hungry and has no place to go—vulnerable to such advances. Working for a pimp may seem to her to be a safe way to organize her work life—she sees him as offering protection against abuse and violence by the "trick," help with the police and the court and offering material and physical security.

To understand why and when these girls leave home is to understand a part of why they are vulnerable to a pimp. What is important here is not only the kind and severity of the incidents but the girl's experiences and understanding of these and her learned behaviors about being in her family. It is important to remember, however, that not all girls who run away from home respond to a pimp and go into prostitution.

Other girls who do not run away from home, but who experience similar personal and family problems, may also be vulnerable to a pimp's advances.

She may have friends in prostitution. She wants to be accepted by her peers, and she is impressed with the clothes, gifts and other material goods that a pimp provides.



She may be seeking . . . Some girls may be looking for a husband or a man to depend upon; others may seek material goods—expensive clothes, a big car, a luxurious apartment—which the pimp provides.

The girls described here usually do not know that they are being recruited for prostitution. In the first stage of the prostitution "career," a girl is picked out, or put at actual risk of "conversion," by others—other girls working for a pimp, a teenage boy who "fingers" or points her out to a pimp for money or status, or by others in the prostitution system. (In some cases, a girl may ask another prostitute to bring her into "the life.")

The pimp contacts the girl, begins dating her and, playing upon her normal interest in men and dating, works carefully to gain her love and trust—he gives her presents, takes her to parties and night spots and introduces her to sex with him. Because of her relative lack of normal girl-boy relationships—and, often, also because of less than ideal family relationships—she is responsive to him. Her friends are probably as impressed with the pimp as she is and most likely will encourage her to see him.

During this time the girl, if she is living at home, begins staying out late or even all night, and family arguments arise from her behavior. The pimp reassures her that he wants and needs to see her more often; he tells her that her parents are interfering with their happiness, that they don't understand their love.

At this point the girl's ties to home are severely stretched or broken, and she may run away to live with her pimp. He introduces her to his friends and his other women and she finds a new "family" with them. When he asks her to perform sex with others for a fee, she agrees. She continues to show her love by working.

We believe that the "love approach" used by many pimps is a newer pattern in prostitution. Formerly, prostitution seems to have been more straightforward—the girl knew that she was a prostitute. Several of the girls we have talked with say that they are working to make a better life for themselves and their future husband.

From this stage, several "career lines" may be pursued. The girl may be promoted to another level in the prostitution system—moving from working on the street to working indoors, moving to another city or working for a more professional or full-time pimp.

Another line may lead to a change in the girl's status. She becomes pregnant. She may want to become a mother, or she may use her pregnancy as a way of getting out of the life. She may also see pregnancy as a way to keep her man.

Finally, the girl, as "business material," may be "used up" due to hard work, illness, violence, lack of physical stamina and use of drugs.

Working Independently

What about the girl who begins selling sex on her own? How does she learn about this "career," and why does she choose to try prostitution?

In our experience, most of the independent teenage prostitutes are poor, black and live in communities where they see other teenagers and women living at home and "working" as prostitutes. A girl is aware early of this social role and at some time may choose to try prostitution—and then decide to either stop or continue. Of course, most girls do not take this first step.

Within this perspective, the answer to why she decides to try prostitution is unique to each girl and could involve all of the personal, familial and situational factors described for girls who are recruited by pimps. However, the questions one would ask of a girl who began prostitution independently about why she chose to continue or take on a "manager" would be quite different from those one would ask of girls who were recruited by pimps.

Some girls simply need or want the money and think that prostitution provides an "easy" way of earning it. Because of the publicity given to runaways who engage in prostitution, this is a well-know pathway.

A girl who begins prostitution by working independently may "progress" to working for a pimp. Or, she may just experiment with prostitution for a short time and decide to stop. This is not an unusual pattern.

"Love" and Prostitution

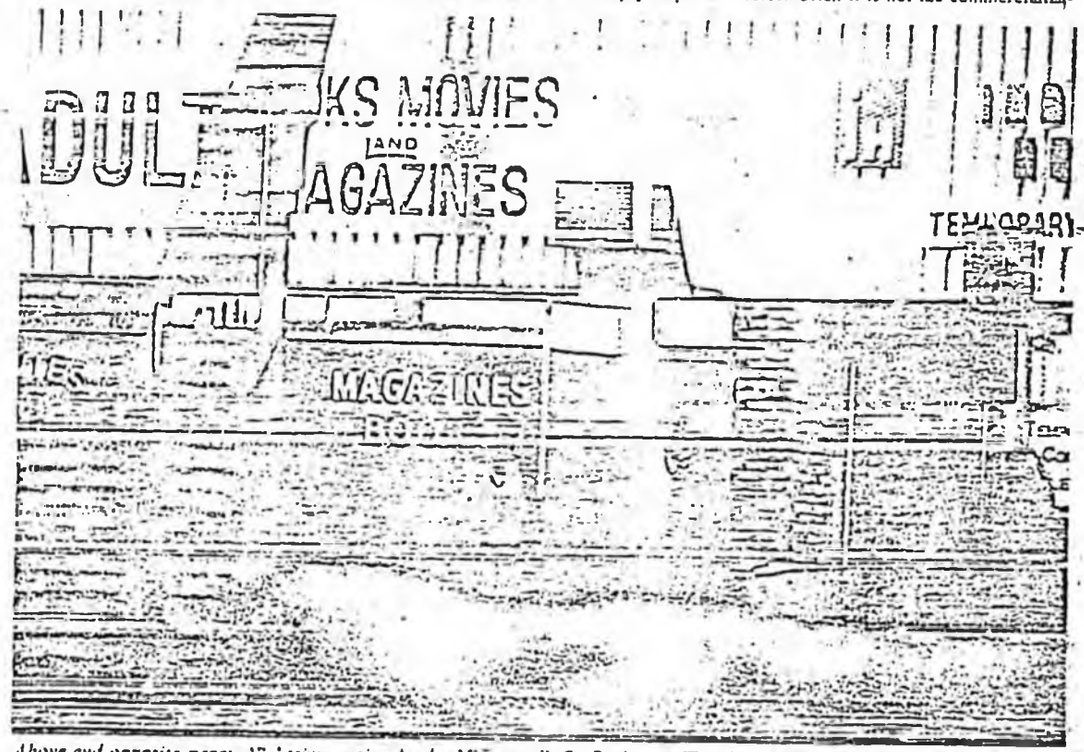
Many adolescent prostitutes and youth workers believe that the main difference between many young prostitutes now and in the recent past is that the girls who now go into prostitution and stay in it do so because they are in love with their pimp.

We think that there is more to it than this, and believe it is useful to distinguish between using the word "love" to describe a total feeling and experience and using it to answer such questions as "Why did you get into prostitution?" and "Why do you stay in it?"

"Love" may be a good answer to these questions: it has the capability of changing the moral and/or psychopathological interpretation of a girl's status and behavior from something that is "bad" or "sick" to something only "sad" and "naive." "Love" is a culturally acceptable reason or explanation for feelings and behavior with which one may be uncomfortable, or which one may dislike or think will be unacceptable to others.

When asked to interpret what love means to them, young prostitutes have used such phrases as "feeling secure," "feeling cared for" and "being paid attention to." What we understand from these responses is that for some girls "prostitution" is not a reality. For them, what is real is that they are the pimp's "lady" or "woman"; this is what love means. (Girls in a "stable" compete with their "sisters" to be the pimp's "main woman" and work together to produce a good living for the pimp—and, thus, for themselves.)

It is precisely this reality which confounds many who seek to understand adolescent prostitution and which makes it so difficult to accept love as the answer to why young girls become prostitutes. Often it is not the commercializa-



Above and opposite page: Nighttime action in the Minneapolis-St. Paul area. The photographs were made from a special type of film used in police surveillance.

tion of sex which is at the root of our discomfort, nor is it the "immorality" of prostitution. Rather, it is the fraudulent manipulation of affection—the "con"—which outrages us. This is "puppy love" twisted and mauled for money and social status.

What Can Be Done?

To begin with a practical point, it should be noted that the involvement of some girls and young male pimps in fee-for-service sex is likely to continue. Efforts should be directed at controlling and keeping the phenomenon relatively small.

We see no simple or single way to control, reduce and/or prevent the phenomenon. No one social institution is solely responsible for action: police and courts alone are no more likely to achieve relative control and prevention than are education, counseling or "treatment." In most jurisdictions, no juvenile prostitution statutes exist. One could use petitions citing incorrigibility to hold the girls (the status offense group, or PINS) in detention homes until their cases are presented in juvenile court. However, in Minnesota, most of the depositions will not be to secure facilities, and the girl is able to return to the pimp.

A law enforcement approach directed toward the pimp will probably be futile. In our experience, attacks on the pimp only serve to bring the girl who loves him closer to him, and they simply move away or "go underground."

We have very little hope of discouraging pimping at the neighborhood level. Too many boys and men see the very few pimp "jobs" as the only ones open to them.

To arrest the buyers is an impossible task, given the size of a typical police force and the mobility of the pimps and girls. Laws focused on the buyer could be effective in raising the risk of going to a young prostitute, but it is likely that differential and selective enforcement of such laws would be seen. It may be easier to turn these men toward older prostitutes—assuming that their interest is in sex with a prostitute, not in sex with a teenager.

Regular customers can usually be spotted, since the girls stay in a relatively well-defined area. Reporters and photographers in the area and the threat of publicity could discourage some action. Community action could also be effective in keeping some men out of the area where young girls are working; however, this might be risky for those involved for some retaliation by pimps could be expected.

A better approach, we think, is to examine the pathways described earlier which lead to adolescent prostitution and to use the insights gained to design multiple ways of intervening. For example, in public meetings or in discussions in schools, community centers and social and youth agencies, adolescent girls could be informed about how pimps recruit, train and supervise girls. They should have opportunities to meet and learn from girls who have engaged in prostitution. Parents, too, should be involved in these meetings. Rather than using a "scare" approach, however, in our work we focus on the larger topics of dating and sexuality, making the point that dating is a normal adolescent activity, one which is fun and necessary to healthy development. Prostitution is presented as a distortion and manipulation of this normal activity. This approach could also be used in high risk neighborhoods and specifically with girls considered at high risk of becoming teenage prostitutes.

Also, the more parents and young people are aware of teenage prostitution and its patterns, the more likely it is that opposition to pimp activity in an area or school will develop.

Education, however, must be coupled with other approaches and actions. For girls who are already involved with a pimp, education is probably not effective. For very young prostitutes, those aged 12 to 15, a law enforcement approach may be the only viable way to achieve temporary separation of the girl from the pimp. However, we believe that many girls who are pulled away by police will try to return to their man.

For all young prostitutes, shelters must be available so that those who want to leave can do so at once, with the knowledge that they will be secure and protected from reprisals by pimps, parents or police. Shelters, or "safe houses," modeled after shelters for battered women, may be a home, a hotel room or part of a runaway house.[2] There girls have opportunities to talk about their experiences and to receive medical help and psychological and vocational counseling. Youth workers can spread the word "on the street" that options to leave do exist and will continue to be available. The girls must know that shelters can be used more than once, and that they will not have to pay—with money or with loss of self-respect—for going there. Getting this information to the girls and creating and sustaining such a service, however, are not simple tasks. In addition, there must be adequate protection—for both the girls and the workers—from retaliation by the pimp.

In the Twin Cities area, we are also making extensive use of street workers from youth agencies, who are available in the areas where the girls work to talk over feelings or problems, mediate crises with their families and pimps, and help them get to a safe house or obtain other assistance.

If all of these actions were undertaken simultaneously in a large city, it is likely that adolescent prostitution still would *not* disappear. Fewer young recruits might enter the life, but adolescent prostitution would probably continue on a lower level of activity and visibility. A community might be able to push out street prostitution, but it is much more difficult and dangerous to attack citywide, statewide and interstate organizations. To control these, Federal law enforcements powers are needed.

However, we do believe that effective action, in the form of public education, the provision of safe houses and the use of street workers, can be taken to reduce the number of young prostitutes. Clearly, there is no easy solution to adolescent prostitution, and we are only now beginning to address another problem: how to orient young girls, who may make as much as $200 a day in prostitution, toward a limited number of legitimate jobs in which they may be expected to earn, at best, a minimum wage. (Although girls working for a pimp turn their "earnings" over to him they receive, in return, support, lavish gifts and recognition from him.) And we must face the fact that there are few jobs for girls aged 12 to 16.

We emphasize that prostitution is, indeed, a dead-end job and provide vocational counseling and training to help them acquire skills for jobs which hold more promise for the future. ◻

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[1] A metropolitan task force has recommended various legislation, including changes in laws which would increase time in prison for pimps and make it easier to convict them, and new legislation which would create service programs for the girls.

[2] In Minneapolis, for example, one shelter for young prostitutes and their children is funded by the Youth Development Bureau, ACYF, as part of the Minneapolis Bridge runaway project.

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The Tragedy of Teenage Prostitution

by FATHER BRUCE RITTER with BOB WEINSTEIN

We must face the shocking facts, says a Catholic priest, and care enough to try to change them.

"I am not going to make it. I am going to die out there. The streets are going to kill me."

He was 17 years old. We'll call him Louis. He was talking to one of the co-authors of this article, the Reverend Bruce Ritter, a 52-year-old Franciscan priest. Two years ago, Father Ritter started Covenant House. It is a shelter for teenagers, most of them runaways, who roam the sinful streets around Times Square in midtown New York.

Wherever there are large numbers of runaways, teenage prostitution is a fact. The problem is already very bad—and getting worse—in cities such as New York, Los Angeles, Miami, and Houston. But it's not just a big-city problem. Those runaways come from almost every corner of the United States. Fleeing or kicked out of their homes, they come to the cities with dreams of glamor and fun.

The Federal Bureau of Investigation keeps statistics on runaways. Between 600,000 and one million young people run away from home every year, the FBI reports. Not all of these, of course, end up in prostitution. In fact, quite a few return home very soon. But almost all teenage prostitutes start out as runaways.

These teenage runaways cannot get honest work. They have not finished school. Rightly or wrongly, they don't want to go home. Or maybe they don't have a home, or parents, anymore. Or maybe their parents don't want them to come home.

Over the past 18 months, 8,000 homeless young people have come to Covenant House. There, they can get a good night's sleep, eat nourishing meals, and clean up. Perhaps most important of all, they can talk about their lives with the volunteers who work there. Like Louis, who fears "the streets are going to kill me," 60 percent of the young people who show up at Covenant House are involved in prostitution.

At 17, Louis has been a hustler for three years. He didn't finish school and can't write very well. He's an alcoholic. He drinks every day, he says, to try to forget what he has to do to survive. He is a naturally bright person who, maybe, could have led a more "normal" life. But his chances, now, of leading anything like a normal life are just about zero.



Teenage runaways head for cities — and ruined lives. Father Ritter fights to save them.

What do volunteer workers say to teenagers like Louis who come to Covenant House and similar shelters around the country? The volunteers have only one hope: to try to convince a teenager that he or she has other choices in life. Maybe (a volunteer may suggest) going back home is better than staying

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Few things get Father Ritter to put aside his work for Covenant House—even for a little while. This article was one of them. We are grateful to Father Ritter and to his co-author, Bob Weinstein, a frequent contributor to this magazine.

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on the streets. But many of these teenagers just can't believe that they can change their lives, that they have any choices at all.

So, they go back on the streets. Hundreds of them have been held prisoner, tortured, raped. Some of them have been murdered. One 16-year-old girl—we'll call her Alice—was held prisoner for a week, after a pimp picked her up in New York's Port Authority Bus Terminal. Alice was drugged, raped repeatedly, but finally escaped. Her pimp found her again and told her he had to have her back. He said he owned her. Besides, Alice was worth thousands of dollars a month to him.

Police have identified about 1,000 pimps in just the New York City midtown area. Each one usually controls between two and four girls like Alice. The prostitute is the "property" of the pimp. Each girl is expected to bring the pimp a certain amount of money a day, usually around $200. She has to. If she doesn't, a brutal beating is about the best she can hope for.

Prostitution has been called a "victimless crime." That means a crime that doesn't hurt anybody. But that leaves out all the young people who are beaten, tortured, held prisoner. And what about those who are murdered? What about the ones who commit suicide out of hopelessness and desperation?

These are the victims. But who, really, are they? Here are some statistics from Covenant House. Fifty percent of the teenage prostitutes are black; 18 percent are Spanish-speaking; 25 percent are white. The rest are of mixed ethnic backgrounds. Seventy-five percent are boys. The median age of both boys and girls is about 17: Almost one-half of them are 17 or younger. Nineteen out of 20 come from one-parent families. If they come from two-parent families, there is almost always alcoholism in the family.

Seventy-five percent of teenage prostitutes are children of the poor. Most of them have suffered child abuse. They have either been thrown out or walked out of homes that have broken up, or homes where there seems to be no love or understanding left.

To an experienced pimp, these needs for attention and security are easy to spot—and easy to prey on. A lot of scared young girls, for example, want to believe that the smooth, expensively dressed young men who seem to fall for them really care. The rude awakening often comes when the girl is asked to prove her love by repaying the man for his generosity. She can repay him, he tells her, by selling her body and making money for them both. For her, it can seem like her only option.

Meanwhile, the "sex industry" is booming. And teenage prostitution and pornography, too, get bigger every day. Business has never been better. Why? There are probably just two answers. They are two of the seven deadly sins—greed and lust. There is big money in selling sex. Greed makes people go after that money. The money comes from other people who lust after children and teenagers. And, of course, the greedy ones want to make sure money keeps rolling in. They are for the most part linked to what we know as organized crime. They have a big stake in being deadly efficient—for them, sex is a $4-billion-dollar-a-year industry. □

Father Bruce Ritter— On Stopping Teenage Prostitution

Senior: With all you've seen—all the pain and suffering—do you think it's possible to end the problem?

Father Ritter: I do. It seems, though, that very few people really want to do anything.

Senior: Do what? You make it sound as if individuals—young individuals—can do something. But is that realistic? What have adults, politicians, the police been able to do?

Ritter: Very little. But I think that's because they've only given lip service to the problem. But they've made little effort to stop it. The problem grows worse every day. But young people can care. Caring is a good way to start. If their sister or brother or close friend were on a street corner, it wouldn't be so hard to care. Caring is the first step in accepting responsibility—for yourself and for others.

Senior: That sounds good. But it also sounds like a lot of other things people have said before about love and caring making things all right....

Ritter: Wait a minute. That's only a beginning. The caring makes people *act*. And that's what it takes to make them realize they have power.

Senior: What kind of power?

Ritter: The power to put people into office—and to take them out. Politicians respond to the people who write them—people who care, people who vote. Letters are a good way for your readers to start. And before long, they'll be voting. They can vote against the uncaring politicians and judges and the do-nothing district attorneys.

Senior: But statistics show that not many young people actually vote.

Ritter: I know! That's immoral and irresponsible. I hear young people say that their vote doesn't count. But they don't even try to find out if that's true. They may shake their heads over a problem like teenage prostitution, but they don't try to *do* anything.

Senior: But why should they *really* care—about a problem that seems so far away?

Ritter: I thought I already gave them some good reasons. But here's another. Some day, they will have children of their own. And they have to decide if they want those children growing up in a world where young people are bartered like sacks of potatoes. They can't afford to wait until then... until those children are teenagers and maybe thinking of running away. That will be too late. The problem can't be—won't be—stopped overnight. It's going to take time. And the time to start is *now*. □

Society November/December, 1979

grams for prevention and treatment. Their paper is the first to address adolescent abuse from the standpoint of a combination of factors, involving parents, children and social stresses, and is intended to guide future work on the subject.

Teen-Age Prostitutes

Adolescent prostitution has been receiving a great deal of attention in Minnesota, and particularly in the Twin Cities area of Minneapolis-St. Paul. The area is notorious as the home of many young girls who are now working as prostitutes in New York City, Chicago, and California; so notorious that one section of New York with numerous adolescent prostitutes has become known as the "Minnesota Strip."

Based on 3 years of direct fieldwork, Michael Baizerman, Jacquelyn Thompson, Kimaka Stafford-White, and "An Old, Young Friend"—an 18-year-old woman with five years' experience in prostitution—have written of this problem in *Children Today*.

In the Twin Cities area, girls of all races are involved in prostitution; their ages range from 13 to 18. Some have a male pimp, others do not, and many make a transition from working independently to working for a pimp. Generally speaking, most of the young prostitutes work "the street"—both actual city blocks and other specific locations, such as shopping malls and the areas around some bars and after-hours clubs. Most sex acts take place in cars, although some girls use apartments and, more rarely, motel and hotel rooms.

Many of the girls practice birth control; pills, followed by the IUD, are the two most popular forms. Since girls may begin using the pill at an early age, they may be at risk of resultant medical complications. Use of the IUD could lead, through violence during the sex act, to such serious problems as perforation of the cervix. Condoms seem to be used less as a pregnancy prophylactic than as a preventive for venereal disease.

Many girls do not know much about venereal disease, and what information they do have seems to be obtained from "the street." Some learn from experience that one consequence might be scar tissue on the fallopian tubes, which could prevent pregnancy. Generally, pimps take care of the medical and health expenses of their girls.

Many pimps working in neighborhoods and the metropolitan area do not use hard drugs and do not allow their girls to use them—hard drug use raises the risk of arrest and the cost of the pimp's operation. Hard drugs also compete with a pimp for the girl's dependency. This is not to say that many girls do not have a history of drug use or that some girls may not be intentionally introduced to drugs as a way to secure and control them. However, this latter pattern is more characteristic of interstate than of local patterns.

All of the pimps are male and most of the younger ones are black. Those who live in the neighborhood where the girls work—"popcorn" or "bubblegum" pimps, or "players"—are about 17, 18 and 19 years old, while those who come from outside the state are usually older, having moved up the "career ladder" from neighborhood pimp to small businessman. Black pimps tend to work on the street while white pimps, usually older, are more likely to be involved with more formally organized action such as call girls, saunas, and massage parlors.

In general, the younger pimps come from disadvantaged neighborhoods; they have relatively poor formal education, lack basic skills, and have few opportunities to obtain legitimate work. As a result, they are likely to be frustrated, angry, resentful, and unsure of themselves. They tend to use fear to control their girls and may attempt to hurt a girl or someone who tries to interfere with their operation. It is likely, however, that many of these young men will move out of pimping if other possibilities are found. Those who stay in it do so partly because there are few work opportunities. Most do not stay out of any great pathological or perverse need.

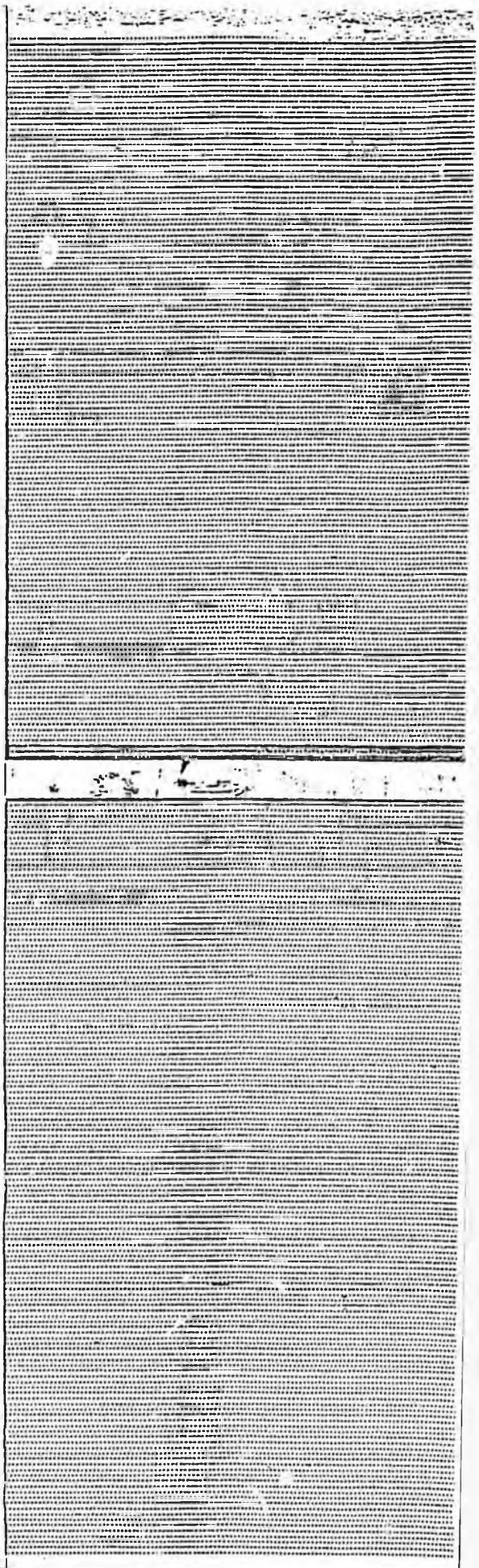
Older and more sophisticated pimps rarely use physical force on their women. Their method of control is psychological and emotional, with the goal of having the girls become totally dependent upon them.

The local buyers or Johns seem to be white men over 25 years of age, both married and single. We know that many have families of their own—and that some men ask for girls of their daughters' age.

Although a wide variety of sex acts are performed, most men seek to want oral sex or intercourse. The price varies according to the act and the time involved. For ordinary oral sex or intercourse, it is about $25. Other factors—whether the girl works for a pimp, the location of the pick-up, the nature of the sex act, and whether or not there is a big convention in town—also influence the cost.

Most of the action seems to take place from lunchtime to late afternoon, and then later in the evening. These afternoon times fit well within typical male working schedules and allow married men the opportunity to be home in the evening and still engage in—and protect—their activities.

Business hours are also determined by the girls' schedules. Since they may also be students in junior and senior high school, the girls may choose to work only after school. Afternoon hours are convenient for girls who live at home and work at prostitution part time, without parental knowledge.



Jury deliberates pimp case

By JULIE ANNE GOLD
Daily News reporter

The fate of Willie B. Bell, an Anchorage man accused of setting up three teenage girls in lives of prostitution, was being contemplated Wednesday night by a jury of six men and six women.

Closing arguments brought an end Wednesday to the eight-day trial in which three former teen-age prostitutes explained the ins and outs of working the streets of Anchorage to the jury.

Bell was arrested in May for allegedly forcing two of the girls, and attempting to induce the third, to engage in prostitution. He was also indicted on a fourth charge of illegally running a prostitution business.

If convicted, Bell, who has pleaded indecent to all the charges, could face up to 5 years in jail, according to the district attorney's office.

The case is the first time in many years the state has brought an alleged pimp to trial on felony charges, the district attorney's office said.

Prosecutor Martha Beckwith relied heavily Wednesday on the testimony of the three teenagers to prove the state's case against Bell.

Under oath the girls, ages 15, 16 and 17, pointed to the defendant — usually slouched in his chair — as their former pimp who often beat them and threaten to kill them for not making more money from "johns" or "dates."

Bell's lawyer, Peter Mysing, claimed Bell never agreed to be their pimp and that they were free to leave him any time, but decided live with him while they — on their own —engaged in prostitution.

Mysing acknowledged Bell on occasion drove the girls downtown, accepted money from them and slapped them during "domestic" quarrels. However, he denied his client ever "induced or forced" them to be prostitutes.

In order to convict Bell on first-degree pimping charges, the state must prove he intended cause or force the girls to engage in prostitution.

In an effort to discredit the girls' testimony, Mysing recounted Bell's testimony of driving one of the girls to the Big Timbers motel for a "date."

The room cost $37 and the girl received $20, Mysing said. Bell would have to be an "extremely bad pimp" if he had set up the meeting.

Beckwith defended the testimony of the girls. "She basically went through the wringer to come in and testify candidly," Beckwith said, defending the veracity of one of the girl's statements.

That girl admitted under cross-examination to being a prostitute and living with several men for a few months at a time before agreeing to live and work for Bell in January.

"Ladies and gentlemen, ask yourselves why Mr. Bell was involved with these young girls, these juveniles," Beckwith said. "Why did he give them rides" downtown, wait for them and pick them up.

"If it were not like men like Mr. Bell, perhaps juveniles would not run to the street. Bell performed a function on that street," Beckwith claimed.

If the jury reaches a verdict Wednesday, one court source said, the results would be sealed and not made public until this morning.

Pimp gets sentence of 3 years

By TERRY CARR
Daily News reporter

A 35-year-old father of five was sentenced to three years in prison Wednesday for running a prostitution ring of teen-age girls.

Willie B. Bell, who has been in jail since he was arrested on pimping charges in May, is the first person to be convicted and sentenced to prison under a 1969 law outlawing the promotion of prostitution among juveniles, prosecutors said.

Superior Court Judge Milton Souter said he added one year to Bell's sentence because of testimony Wednesday by another jail inmate, William Smith. Smith told the court Bell Wednesday morning threatened to harm him and his daughter unless Smith gave testimony favorable to Bell.

Bell denied making the threat.

Souter ordered Bell to prison despite pleas from defense attorney Peter Nysing, who called his client's offenses "a detour in his life" and said Bell was an "adoring father."

If Souter gave him probation, Bell told the judge, "you'll never see me in another courtroom for anything."

Souter called the crimes for which Bell was convicted in October a "dirty business."

"This sentence has to serve as a deterrent" to Bell and others engaged in prostitution, he said.

Souter also said he was influenced heavily by trial testimony and evidence that the Bell used violence and the threat of violence to control the girls in his prostitution ring.

Teen-agers who worked for Bell testified during the trial that Bell often beat them and threatened to kill them.

Souter said "the great majority of women would not engage in prostitution" unless threatened with violence, lured with the promise of narcotics, or by other means of persuasion.

"Here, the powerful persuasion was threats of violence and, on at least one occasion, the use of violence," he said.

Bell, who sat silently throughout most of Wednesday's sentencing, spoke only to plead for probation and to contest the testimony of Smith, the inmate who claimed Bell had threatened him.

"I've been in jail," Bell said. "I learned my lesson in jail. I don't need to spend any more time in jail."

Smith, who was arrested here in December on an Arkansas theft charge, said he became friendly with Bell in jail. "You better get me out of this," Smith quoted Bell as telling him.

Smith, who at first refused to testify but relented under Souter's order, said Bell also threatened Smith's 14-year-old daughter unless Smith testified favorably.

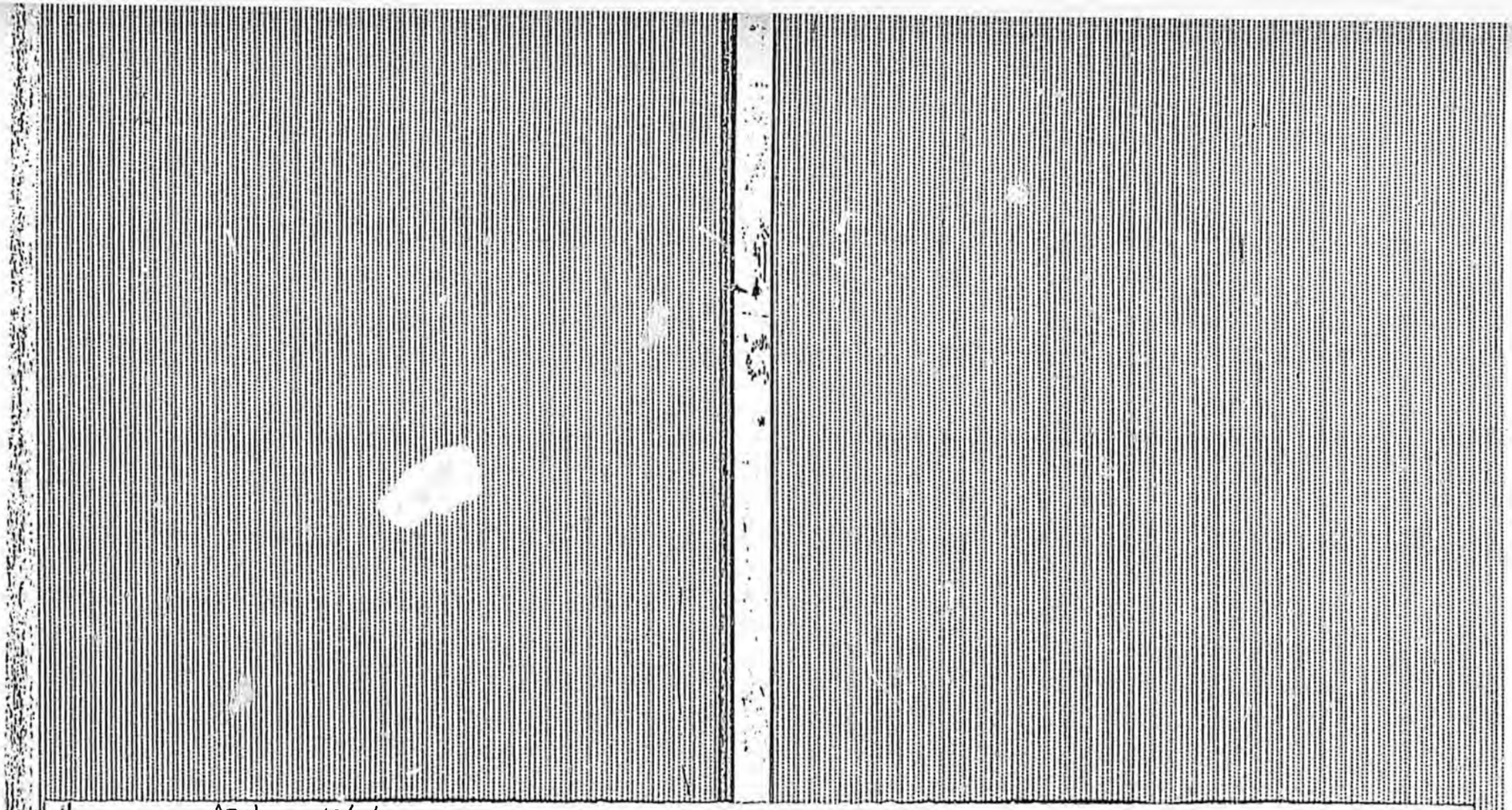
Bell denied he threatened Smith or his daughter.

"All I told him was to come to court and testify and tell the truth," Bell said.

Souter, however, said he believed Smith and that he added a year to the sentence because of the threats.

"I think Mr. Bell needs to sit in jail and think about that. We're not going to tolerate that sort of behavior," Souter said.

Souter gave Bell credit for the 240 days he has already spent in jail. Bell will be eligible for parole after serving one-third of his sentence.



ADN 10/10/80

Willie Bell convicted in teen-ager prostitute case

By JULIE ANNE GOLD
Daily News reporter

Willie B. Bell, accused as a Fourth Avenue pimp, was convicted of inducing a 14-year-old girl into a life of prostitution by a Superior Court jury Thursday.

The 29-year-old Bell faces up to 10 years for the first-degree felony charge.

In a complex reading of six separate verdicts, the jury found Bell innocent of forcing two other girls, ages 15 and 16, into prostitution, but guilty of promoting them to become prostitutes.

These lesser, third-degree charges carry possible prison sentences of up to a year and 90 days.

Delivering its sixth verdict in the case, the jury found Bell guilty of managing and supervising a prostitution enterprise, other than in a place of prostitution. The felony offense holds a maximum sentence of five years in prison.

Bell, nervously looking around the nearly empty courtroom Thursday, buried his heads in his hands after the clerk read the first "guilty" verdict.

"We plan to appeal," said Peter Mysing, Bell's attorney.

"All three ladies' testimony was damaging against Bell," Mysing said. "The issue was who was the jury going to believe."

Even though Bell admitted taking money that he knew came from prostitution from the 16-year-old, according to Mysing, Bell never "caused" or "induced" the 14-year-old to become a prostitute.

However, the jury thought otherwise.

"There was definite evidence to support she was forced into prostitution," one juror said Thursday. "The photos showed she was beaten and bruised."

Prosecutor Martha Beckwith said the 14-year-old's testimony and a tape-recorded confrontation between Bell and the three girls probably were the most damaging evidence against Bell.

"He beat me real bad," a voice — identified by the state as belonging to the 14-year-old — said on the tape.

A series of color snapshots, passed from juror to juror, depicted the teen-ager with cuts and bruises on her face and arms.

However, the testimony of the older girls apparently did not convince the jury that Bell "forced" or "attempted to force" them into prostitution.

One of the girls, who admitted to being a prostitute before she met Bell, told the jury she was his lover for several months before his arrest.

"In her case, it was hard to tell what was a lovers' fight from a business fight," another juror said.

Another juror agreed, saying "there was just not enough evidence for a first-degree conviction" in connection with the two other girls.

But the jurors, gathered around Judge Milton Souter's third-floor jury room for the last time, all agreed there was plenty of evidence to convict Bell of the state's last charge — pimping for the three girls.

"The facts showed he drove them around" Fourth Avenue, one juror said, and "then waited and picked them up."

Mysing called this conviction a "surplus charge." The only way his client could be convicted of inducing the 14-year-old to become a prostitute, Mysing said Thursday, would be by pimping for her.

If Bell is sentenced to both charges the state will be guilty of double jeopardy, Mysing claimed.

Beckwith disagreed, saying she "was pleased" with the verdicts.

It was the first time "in at least four or five years" the state has successfully prosecuted someone for street pimping, she said.

Trick

(Continued from page A-1)

been a part of the prostitutes' migration pattern between Honolulu, Seattle, San Francisco and Los Angeles.

And for others, it is the promise of making a bundle during the Fur Rendezvous celebration that begins next weekend, and the military's Brim Frost maneuvers, that bring some 60,000 potential customers to Alaska to play war games in the Interior and see the sights of Anchorage afterward.

Tim Casper, a veteran on the vice squad, said the number of prostitutes on The Avenue rises and falls in a pattern. "It's something you can really count on," he said. "In January, they're all over, and they'll be that way until we put the pressure on them."

The "pressure" starts when the public outcry rises above a tolerant grumble. Until then, police are encouraged to spend the taxpayers' money going after the less visible crimes: robberies, rapes and burglaries.

But prostitution takes its toll on Anchorage's streets. Customers are rolled. Men are robbed by the women they willingly pay for, as the girls try to make more money for their "men."

Of the 23 murders that occurred in Anchorage in 1982, three of them were directly related to prostitution, police say. In two of the homicides, it was the hooker who killed. In the third, a pimp shot a girl's customer.

Caspar said 30 to 40 percent of all the robberies and at least 60 percent of the pickpocketing in Anchorage is related to prostitution and street people on Fourth Avenue.

"We could put a lot of man hours into trying to build a felony theft case against one guy, and get very poor results. Or we could use the same number of officers and drag a few of the prostitutes off the streets and clean it up for a while," he said.

"My theory is to arrest them on loitering charges, and enforce their (probation) restrictions. Let them know Anchorage isn't going to tolerate it. Maybe then they'll leave, and with them the pimps will go, and the crime will go, too."

Most of the women are charged with loitering for purposes of prostitution, a misdemeanor. Because state laws about prostitution are ambiguous, and because a woman will almost always say she works alone, men are seldom arrested, and rarely prosecuted.

In this business, men may pay the money, but the women pay the price.

Joanne Baker, 26, is six months pregnant. She was arrested for soliciting Sunday night. It was her second arrest for prostitution since coming to Anchorage from Miami last year.

There were no extra beds at the Sixth Avenue Jail Sunday night; she slept on the floor.

Looking haggard as she gazed through the plexiglass window in the vistor's room, Joanne scratched her stringy blonde hair. Her blue eyes were watery and her arms were speckled with small red blotches. She didn't want to talk, especially to a reporter.

She said she turned to selling her body after she couldn't find work as a bar maid. Asked about the weekend sweep, Joanne said, "Police, they told us it was because of Fur Rondy. That's why. That's why they're hitting on us."

And when she gets out on the streets again? "Well, we'll just move to a different area. There's always a different area to go to," she replied.

However, Joanne isn't sure how she is going to make bail. She appeared panicky. She says she has no pimp to fork out the $300. "I don't know how I'm going to get it. I don't know. I don't know. Maybe, I'll call a friend."

Joanne and 20 other women were arraigned Monday before District Court Judge John D. Mason. They sat in the courtroom chained together.

Most of them were given bail and a court date, with the provision that they no longer sell their wares in the downtown area between Third and Sixth, from D Street to Barrow.

But most of them will. And many will go to jail. For the second, third, even seventh and eighth times.

Scott Sidell, a municipal prosecutor, said he has seen the same faces and names over and over again. Their names and ages are usually phony. But those arrested are all too often teen-agers posing as adults. Girls, posing as women, selling off their childhood bit by bit in exchange for an allowance, or a home, for a man who says he loves them.

It's shortly before midnight and Veronica stood in the doorway of an adult book store. She pulled her rabbit fur coat tighter around her. Her eyes searched for a possible customer. But no one was around.

During a brief conversation, Veronica said she's not worried about the police clampdown on her livelihood. "We'll be trickling back out again. The cops do this a couple of times a year. No big deal."

Standing alone again later, she spotted a man wearing an Army fatigue jacket, walking slowly near the Elbow Room. She waited until he passed right in front of her before she said, "Hey, you want to party?"

Her breath formed a tiny white cloud as she spoke.

They walked quickly together, neither of them speaking.

Anchorage Times 2/2/83

Prostitutes' survival — old but tricky business

"Oh, the Sisters of Mercy, they are not departed or gone."
—Leonard Cohen

by Krys Holmes
and Ellis E. Conklin
Times Writers

Under the neon lights of the Scandanavian Club, Denise, a 22-year-old hooker, stood alone Monday night.

After a deep yawn, she lit up a cigarette, kicked the slush from her maroon leather boots and ambled down The Avenue.

Few people walked by her. And those who did didn't seem to notice. Denise is a Fourth Avenue fixture like the drunks and the hot chili at the Panhandle Cafe.

At $50 a crack and several "tricks" a night, Denise can make as much as $600 to $1,000 a week. All the money, however, goes to her pimp. And, as one police officer put it: "They all say they work alone, but there isn't one girl out there who doesn't have a pimp."

The pimp takes care of her room and board, clothing, and the modest accessories necessary to perform nightly in this ancient profession.

"Things are quiet now," she said. "They (police) made the big bust and there ain't nothing left for 'em, 'cept for me and couple of other girls.

"I think they want to get the streets clean for Fur Rondy," Denise said bitterly.

She quickened her pace, turned the corner at Fourth and Barrow, and decided she "don't want to talk no more."

There aren't many prostitutes talking right now. After a crackdown last weekend, most of them are scared. Others are in hiding "until the heat cools down." And many of them are still in jail dressed in blue jump suits, waiting for their pimps to post bail.

In the past 72 hours, Anchorage police, dressed in street clothes, have made 54 arrests for loitering and solicitation. Some of the women were collared as many as three times during the weekend. Chief Brian Porter said he can't remember seeing that much jail activity in several years here.

During the weekend, Porter said, the streets were thick with prostitutes, a competition among the women was fier Some actually tried to stop traffic or cli into cars, Porter said. A police officer wa ing down the street discovered a prostit with her "trick" having sex in the ma car. She got her $50 for the deal — and w arrested on the spot. One local woman s her husband was propositioned as th walked to a restaurant in the Sunshine Ma

There were no customers arrested, a not a single pimp.

Police say many of the women now wo ing the streets came from Canada, Haw and the West Coast. Some came for m money; some because Anchorage has it

See Trick, page A

HB

131

((7)

COMMITTEE REPORT

HOUSE

5/11

FURTHER: JUDICIARY

1/28/83

Date: 5/10/83

Mr. Speaker:

The Committee on LABOR & COMMERCE has had HB 131

An Act relating to unlawful practices in the sale or rental of real property.

under consideration and reports it back as follows:

[ ] do pass [ ] do not pass

[ ] do pass with attached amendments(s)

[X] replace with CS for HB 131 [X] same title [ ] new title

and recommends

[ ] AND attaches a "Letter of Intent" [ ] New Fiscal Note [ ] Zero Fiscal Note Attached

[ ] reports it back without recommendation

[ ] referred to the Committee

MEMBERS SIGNING DO PASS

[signature] Do Pass

[signature] Do Pass

MEMBERS HAVING OTHER RECOMMENDATIONS:

Rich Uehling (No Rec)

W. Furnace No Rec

[signature] Do not pass

[signature] Do not pass

[signature] (No Rec)

[signature] Furnace

CHAIRMAN

H 60

I. REQUEST

Bill/Resolution No.: HB131
Title: Unlawful Practices Sale or Rental
Sponsor: Hurlbert
Requestor: House Labor & Commerce

II. FISCAL DETAIL

Agency Affected: Administration
Program Category Affected:
BRU, Program of Subprogram(s) Affected:

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 83	FY 84	FY 85	FY 86	FY 87	FY 88
OPERATING						
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 COMMODITIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC						
TOTAL OPERATING		0	0	0	0	0
CAPITAL		0	0	0	0	0
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER (Specify Source)						
		0	0	0	0	0

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						
		0	0	0	0	0

III. SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

IV. ANALYSIS: Attach a separate page for any Analysis

Prepared By: Rebecca Burch RB
Phone: 465-2200
Division: Commissioner's Office
Date: 3/16/83

Approved by Commissioner: for Lisa Rudd
Date: 3/16/83
Department: Administration

Distribution:
Original to Legislative Finance
Copy to Office of Management and Budget (for Legislature introduced bills)
Copy to Department (for Governor introduced bills)
Copy to Sponsor
Copy to Requestor (if different from Sponsor)

3/8/8

Quoted in Hotel & Restaurant Union Local 878 v. Alaska State Comm'n for Human Rights, Sup. Ct. Op. No. 1853 (File No. 4248), 595 P.2d 653 (1979).

Sec. 18.80.210. Civil rights. The opportunity to obtain employment, credit and financing, public accommodations, housing accommodations and other property without discrimination because of sex, marital status, changes in marital status, pregnancy, parenthood, race, religion, color or national origin is a civil right. (§ 6 ch 117 SLA 1965; am § 4 ch 42 SLA 1972; am § 8 ch 104 SLA 1975)

NOTES TO DECISIONS

Cited in Loomis Electronic Protection, Inc. v. Schaefer, Sup. Ct. Op. No. 1262 (File No. 2684), 549 P.2d 1341 (1976).

Collateral references. — Actionability under state statutes of discrimination because of complaining party's association with persons of different race, color, or the like. 35 ALR3d 869.

Recovery of damages for emotional distress resulting from racial, ethnic, or religious abuse or discrimination. 40 ALR3d 1290.

Racial or religious discrimination in furnishing of public utilities, services, or facilities. 53 ALR3d 1027.

Recovery of damages for emotional distress resulting from discrimination because of sex or marital status. 61 ALR3d 944.

Trailer park as place of public accommodation within meaning of state civil rights statutes. 70 ALR3d 1142.

Recovery of damages as remedy for wrongful discrimination under state or local civil rights provisions. 85 ALR3d 361.

Identification of job seeker by race, religion, national origin, sex, or age, in "situation wanted" employment advertising as violation of state civil rights laws. 99 ALR3d 154.

Sec. 18.80.215. Activities in aid of housing for minority groups. The activities of a nonprofit and noncommercial organization on a nonremunerative basis in aiding minority group members to obtain housing opportunities so as to further the purpose of this chapter are not considered a violation of AS 08.88.161. (§ 3 ch 119 SLA 1969)

Sec. 18.80.220. Unlawful employment practices. (a) It is unlawful for

(1) an employer to refuse employment to a person, or to bar him from employment, or to discriminate against him in compensation or in a term, condition, or privilege of employment because of his race, religion, color or national origin, or because of his age, physical handicap, sex, marital status, changes in marital status, pregnancy or parenthood when the reasonable demands of the position do not require distinction on the basis of age, physical handicap, sex, marital status, changes in marital status, pregnancy or parenthood;

WHERE HAVE ALL the CHILDREN GONE?

TODAY, THROUGHOUT THE U.S., 27% OF ALL RENTAL HOUSING IS NOT OPEN TO PARENTS WITH MINOR CHILDREN. IN JUNEAU THE FIGURE IS MUCH HIGHER. WE ARE WORKING TO GIVE ALL FAMILIES THE SAME OPPORTUNITIES THAT SINGLES AND COUPLES WITHOUT CHILDREN HAVE.... BELOW ARE A FEW QUESTIONS AND ANSWERS ABOUT FAIR HOUSING.... PLEASE GIVE IT SOME THOUGHT.



ANCHORAGE DAILY NEWS 6/1/81

COZY 2 2 BR. 1½ bath, excellent cond. near West High, fireplace, carport, w/d, dw, gd. $450/mo no pets or child. Call Joyce, 376 8010 or 344 1061

DOWNTOWN WALK TO WORK

NOW RENTING!
Apartments in newly-renovated building. 1 blk from park strip, off street parking and laundry room for your convenience, no dogs or children.
EFFICIENCY $375
1 BR $315
1 BR $360
ALL UTIL. INCLUDED
Resident Manager, 277-7151

from, JUNEAU EMPIRE 10/15/80

2 br. apt., adults only, no pets. $500 plus $150 cleaning deposit. Call between 7-9 p.m. Available Nov. 1st.

from, JUNEAU EMPIRE 10/9/80

2 br. unfurnished and 1 br. furnished, in West Juneau. Carpeting, dishwasher, garbage disposal, off street parking. No pets or children. Mature adult preferred. 586

Q: AREN'T MAINTAINENCE COSTS HIGHER WHEN YOU RENT TO FAMILIES WITH CHILDREN?

A: ACCORDING TO A NEW YORK COMPANCY WHICH SUPPLIES THE INSURANCE INDUSTRY WITH NATIONWIDE STATISTICS ON DAMAGES, THERE IS NO EMPIRICAL DATA TO PROVE THAT THE PRESCENCE OF FAMILIES RESULTS IN GREATER DESTRUCTION TO PROPERTY.

Q: WOULDN'T A FAIR HOUSING LAW FORCE LANDLORDS TO OVERCROWD THEIR APARTMENTS?

A: NO. FAIR HOUSING LAWS ARE REASONABLE AND ARE NOT WRITTEN IN AN ARBITRARY MANNER. A LANDLORD WOULD NOT HAVE TO RENT A ONE BEDROOM APARTMENT TO A PARENT OR PARENTS WHO HAD THREE CHILDREN. OR, A PROJECT DESIGNED FOR THE ELDERLY OR HANDICAPPED WOULD NOT BE FORCED TO ACCEPT TENANTS WHO HAD CHILDREN. A FAIR HOUSING LAW WOULD BE REASONABLE AND GIVE EQUAL OPPORTUNITIES TO PARENTS AND INSURE THAT AN ADEQUATE SIZED APARTMENT WOULD NOT BE DENIED TO THEM BECAUSE OF PARENTHOOD.

Q: ISN'T THE SOLUTION TO BUILD MORE HOUSING?

A: THIS SOLUTION IGNORES THE FACT THAT OFTEN NEW BUILDINGS WILL NOT RENT TO FAMILIES WITH CHILDREN. ALSO, THERE IS NOTHING TO PREVENT EXISTING BUILDINGS TO ADOPT NEW RULES BANNING CHILDREN. IN THE LAST TWO MONTHS TWO APARTMENT BUILDINGS IN JUNEAU HAVE CHANGED THE RULES AND NOW EXCLUDE CHILDREN.

Q: DON'T INSURANCE COMPANIES CHARGE HIGHER RATES FOR BUILDINGS THAT ALLOW CHILDREN?

A: NO. PRUDENTIAL, SAFECO, AETNA, REPUBLIC, NORTHWESTERN, AND CONTINENTAL INSURANCE COMPANIES SAY THAT IT IS THE CONDITION OF THE BUILDING THAT DETERMINES THE RATES, NOT THE AGE OF THE TENANTS. (IT IS IMPORTANT TO NOTE THAT IF TENANT AGE WERE A FACTOR IN SETTING ACCIDENT LIABILITY RATES, THE HEAVIEST BURDEN MIGHT FALL ON THE ELDERLY).

Q: WOULDN'T FAIR HOUSING LAWS FORCE LANDLORDS TO ACCEPT CHILDREN IN BUILDINGS THAT ARE UNSAFE FOR THEM?

A: THIS ISSUE IS MISLEADING. ACCORDING TO OUR STATE AND LOCAL BUILDING CODES, ANY BUILDING WHICH IS UNSAFE FOR A CHILD IS ALSO UNSAFE FOR ADULTS. THE REAL SAFETY ISSUE IS THAT ANTI-CHILD RENTAL POLICIES FORCE MANY FAMILIES TO LIVE IN THE MOST DILAPIDATED, UNSAFE, AND OVERCROWDED HOUSING.

Q: ARE THERE FAIR HOUSING LAWS IN OTHER AREAS OF THE COUNTRY?

A: YES. LAWS TO PROTECT RENTERS WITH CHILDREN HAVE BEEN PASSED IN MANY AREAS THROUGHOUT THE UNITED STATES. ARIZONA, MICHIGAN, ILLINOIS, NEW JERSEY, NEW YORK, DELAWARE, CONNECTICUT, MINNESOTA, AND THE DISTRICT OF COLUMBIA HAVE PASSED FAIR HOUSING LAWS. NUMEROUS CITIES HAVE ENACTED LAWS THAT PROTECT FAMILIES AND CHILDREN, THEY INCLUDE SAN FRANCISCO, SPOKANE, LOS ANGELES, OAKLAND, AND SEATTLE.

With pullout section: Page B1

THE CHRISTIAN SCIENCE MONITOR

Tuesday, August 12, 1980 40¢

2

Opening apartment doors closed to kids

By Randy Shipp

Boston

Anyone trying to find an apartment that accepts children will not be surprised by the conclusions of a recent US Housing and Urban Development survey. It shows that, nationwide, 26 percent of all rental units have "no children" policies, and many that do accept children have restrictions on the number, sex, or age of the youngsters.

These restrictions affect roughly 2 million families, says Elizabeth Roistacher, HUD's deputy assistant secretary for policy development and research.

The report adds that restrictive rental policies also may mean that families may be split up, with children being sent to live with other relatives, until parents can find some place for them to live, or doubling up with another family, leading to increased family tension.

"There is also a real feeling among people who are hit by this that society thinks there's something wrong in having children," Dr. Roistacher says. "Children react to this. They are hurt, they're parents are hurt. They're all really disturbed by the fact that children don't seem to be wanted."

The problem is growing worse. The number of rental units unavailable to families with children is rising. And with more apartment buildings switching to "no children" policies, and more one-bedroom rather than multi-bedroom units being built, it is likely to continue to rise.

In Massachusetts, state law prohibits such discrimination in dwellings with three or more units. Violations carry a fine of up to $1,000. Even so, discrimination against families with children is "the biggest problem right now for housing," according to a spokesman for the Massachusetts Commission Against Discrimination. Because of exemptions under the law, he says, very few rental units actually are affected.

The California-based Fair Housing for Children Coalition (FHCC) conducted a survey of apartment ads in newspapers. In Los

Focus

Angeles, 71 percent allowed no children of any age, and Fresno, San Diego, and San Jose showed 53 percent, 65 percent, and 70 percent respectively.

"We've dealt with people who are living with six kids in a station wagon on the Santa Monica pier, and a woman living with two kids in a tent on the beach," says FHCC executive director Dora Ashford.

FHCC also gets calls from pregnant women worried that they will lose their apartment when they have their baby.

"We had a recent case of a couple in Santa Monica who had a baby a few months ago. They got a letter from [the apartment management company] saying, 'Congratulations on your new baby -- and we would like you to find another place to live in 60 days.'"

But when FHCC lawyers took the case and pointed out that the family would not be violating any occupancy codes, and that a local ordinance forbade age discrimination, the family was allowed to stay.

The generally tight housing market is a major cause of the problem, Ms. Ashford says.

"As long as the housing crisis worsens [the discrimination problem] will, too. Families with children are in a worse position to buy their way out, as are the elderly, when housing crunches hit, so they're hurt a lot worse than other people."

Helen Blank of the Children's Defense Fund (CDF) says positive steps are being taken. The HUD study, for instance, is an example of interest in the issue on the part of the federal government.

Moreover, anti-discrimination statutes have been passed in Arizona, Connecticut, Delaware, Illinois, Massachusetts, Minnesota, New Jersey, New York, and the District of Columbia. The California Legislature is considering similar legislation.

The CDF has set up a national network of organizations concerned with discrimination against families with children. Its purpose, Ms. Blank says, is ". . . to communicate with each other about local ordinances they are working on, share strategy, and give each other mutual support."

Dr. Roistacher says increasing the number of available homes and apartments would help solve the problem. She says HUD is looking into possible roles that it can take, and also would like state and local governments to get involved with the issue.

FAIR HOUSING FOR CHILDREN COALITION

P.O. BOX 5077 SANTA MONICA, CA 90405
(213) 393-1093

The Extent and Effects of Discrimination against Children in Rental Housing

A Study of Five California Cities



Dorian Ashford
Bella Estor

The Fair Housing Project

December 1979

The Extent and Effects of

Discrimination against Children in Rental Housing

A Study of Five California Cities

Dora J. Ashford
Perla Eston

The Fair Housing Project

December 1979

This report was prepared under a grant from the Rosenberg Foundation.

Cover by Vanann Allen
Maps by Maurice Herman

Cover: Ads are shaded to indicate those which state in print they will not accept children--full shading means no children of any age, diagonal shading indicates a portion of the complex excludes children, "X's" indicate age restrictions such as "infants only." Section was taken from a 1973 Los Angeles newspaper survey. Follow-up phone calls to the remaining ads (unshaded) revealed an additional 50% would not accept children.



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P. O. Box 5877
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(213) 393-1093

PREFACE

In 1977, the following "action item" appeared in the California Statewide Housing Plan, a publication of the California Department of Housing and Community Development:

> The Fair Housing Act and the Unruh Civil Rights Act should be amended so that they contain identical lists of the factors upon which discrimination is prohibited, and to add to those lists at least "families with children."

Statewide attention was turning to the plight of renters who are denied housing solely because they have children.

This interest prompted a state senator from Hollywood, David A. Roberti, to introduce three consecutive pieces of legislation designed to extend fair housing protections to renters with children.[1] Several local governments also passed ordinances to protect renters with children from discrimination.[2] However, during extensive public hearings on these laws it became apparent that there was little statewide or multi-city data available on the extent and effects of anti-child rental policies.

This report attempts to supply some of that information. We hope it will encourage others to examine the housing problems of families with children and to re-evaluate public and private policies that exclude children from shelter.

---

[1] SB-440, the last of these bills, was narrowly defeated in January 1980 in the California State Senate. On March 19, 1980, Sen. Roberti introduced SB-2024 which prohibits all arbitrary housing discrimination based on age. In addition to families with children, SB-2024 also protects other tenants from age discrimination, e.g., single young adults in their twenties, who may be stereotyped as "swinging singles."

[2] Ordinances have been adopted in San Francisco (1975), Berkeley (1975), Davis (1979), Santa Monica (1979), Los Angeles (1980), and the County of Santa Clara (1979).

SUMMARY

The findings of this study are as follows:

1. The percent of families with children who are renters ranged from 28 percent in San Jose, to 55 percent in San Francisco, in every case a significant percentage of all families. For the state as a whole, 30 percent of families with children are renters.

2. A sample survey of newspaper advertisements for available apartments in Los Angeles found that only 14 percent surveyed allowed children with no age restrictions, and 15 percent allowed only certain ages. Thus, 71 percent of the apartment units surveyed allowed no children of any age.

Surveys in Fresno, San Diego, and San Jose found that 53 percent, 65 percent, and 70 percent, respectively, of units surveyed would not allow children of any age.

In contrast, the same type of survey in San Francisco, which has an ordinance prohibiting "no-kids" rentals, found that only 12 percent of units surveyed banned all children.

3. In all cities except San Francisco, the child-exclusion rate was significant even among larger units. In the 4 cities where child discrimination is legal, only 17 to 32 percent of two-bedroom units, and between 24 and 45 percent of three-bedroom units accept children.

4. Exclusion of families with children is being perpetuated in newly constructed rentals. Seventy-four percent of new rental units surveyed in Los Angeles exclude children. By comparison, only 10 percent of new units surveyed in San Francisco exclude children.

5. In every city studied except San Francisco, median rents are higher for equivalent sized units that allow children as compared to those which exclude children.

6. Renter families with children are inadequately housed significantly more often than renters without children. This tendency is true in all of the cities studied as well as for the state as a whole (45 percent of renters with children are inadequately housed, compared to 32 percent of renters without children).

7. Even when income is held constant, families with children are more often inadequately housed than childless renters. Among moderate and upper income renters, the rate of inadequate housing is twice as great for families with children as for those without children.

8. In all cities studied and for the state as a whole, approximately half of all renter families with children are inadequately housed. Between 81 and 98 percent (varies by city) of very low income renters with children are inadequately housed.

9. Holding number of persons per household constant, families with children are inadequately housed more often than other renters. In all cities studied and for the state as a whole, among two-person renter households, families with children are inadequately housed nearly twice as often as families without children.

10. When family size and income are simultaneously held constant for the state as a whole, two-person middle and upper income renter households with children are inadequately housed 10 times more often than their childless counterparts.

11. In all 5 cities, minority and especially female-headed families with children are renters significantly more often than non-minority or male-headed families with children, and thus are affected more severely by all renter housing problems. (It should be noted that although minorities are disproportionately affected by rental housing problems, the majority of inadequately housed renters with children are "white."[1])

12. Exclusion of renters with children from a major portion of the rental market is, in effect, excluding most minorities and women.

13. While minority renter households with children are inadequately housed to a significantly greater degree, minority renters without children do not face housing problems any more often than "white" renters of comparable income.

Similarly, female-headed renter households with children tend to

---

[1] "White" as used here means other than Black or Hispanic. It may include other minority groups which represent smaller portions of the population.

be ill-housed to a greater extent than all other renters with children, while female-headed renter households without children have a level of housing problems identical to other childless renters.

14. Renters with children are concentrated in a number of neighborhoods in each city. These concentrations correlate with concentrations of minorities and women, demonstrating that "no-children" housing tends to reinforce, if not create, segregated living patterns by age, race, and sex.

15. Since families with children make up less than a third of the renter household population, a non-discriminatory housing market would mean that in a representative building, childless renters would outnumber renters with children by at least 2 to 1, thus eliminating the undesirably high concentrations of children revealed by this study.

16. With respect to landlord concerns about decreased property values, the presence or absence of children is not a factor in determining a building's market value.

17. No empirical evidence was found to show that operating and maintenance costs are higher for buildings that allow children.

18. The presence of children in rental buildings does not affect liability or property insurance rates.

19. Building code and safety standards are identical for apartment buildings with and without children. Swimming pool fencing ordinances apply to all buildings whether or not children are in residence.

ACKNOWLEDGEMENTS

We wish to thank the Rosenberg Foundation for their concern for the welfare of children, and the following hardworking and persistent persons for assisting the project:

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And finally, thanks to Anna, Fred, Ian, Alisa, and Skip for their patience.

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*Source:

1970 U. S. Census of Housing and Population
Bureau of the Census/HUD Annual Housing Surveys (1975, 1977, 1978)
1979 Housing Assistance Plans for the Cities of Fresno, Los Angeles, San Diego, San Francisco, and San Jose
1979 California Statewide Housing Plan

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"Children's issues are not 'kiddie' issues--they are issues of social justice and the wider social welfare of the nation."

--Kenneth Keniston

INTRODUCTION

This report presents the results of a 1979 study on the extent and effects of discrimination against families with children in rental housing in California. Five cities were selected for study: Fresno, Los Angeles, San Diego, San Francisco and San Jose.[1] These cities represent all areas of the state and together comprise more than 30 percent of the state's population. In addition, data for the state as a whole were extensively analyzed.

The data presented are based on analysis of U.S. census materials, local "mid-decade" censuses, local housing surveys and plans, and original survey research.

---

[1] At the time of the study, San Francisco was the only city of these 5 that prohibited housing discrimination against families with children. Los Angeles passed a similar fair housing law in 1980.

Originally this project covered 6 cities, but Redding was dropped because census and housing survey information necessary to develop the tabulations shown in the report are not available for cities of that size outside Standard Metropolitan Statistical Areas (SMSA's).

THE HOUSING SHORTAGE FOR RENTERS WITH CHILDREN

Several factors have contributed to the housing crisis facing California renters with children. Among these are: 1) low vacancy rates; 2) high cost of home ownership; 3) exclusion of families from existing rentals; and 4) exclusion of families from newly-constructed rentals.

Low Vacancy Rates

A healthy rental vacancy rate is considered to be between 5 and 6 percent. Such a rate is high enough to allow people opportunities to move and to allow for the absorption of population growth and new household formation, but is low enough to allow owners of rental property to meet their costs.

Table 1 shows vacancy rates for the State of California and the 5 target cities. The state overall has an extremely low vacancy rate, less than half the "healthy" 5 percent. The low vacancy situation in rentals has been exacerbated by the low level of new construction of rental units and by condominium conversions, which reduce the available rental stock.

In such low vacancy situations renters must compete for available units, with the result that "less desirable" tenants, such as families with children, are excluded from major portions of the market. This exclusion cuts the true vacancy rate for the excluded class to a fraction of the overall vacancy rate. In Los Angeles, for example, where the overall renter vacancy rate is 2.6%, the effective vacancy rate for families with children is less than eight-tenths of one percent.

In San Jose, where the renter vacancy rate is at a healthy level (5.4%), the effective vacancy rate for families with children is only 1.6%.

High Cost of Homeownership

An ever-increasing percentage of families with children in California are renters. To a large degree this shift toward renting is a result of the high cost of homeownership.

Table 1

VACANCY RATES

	Overall	Owner	Renter
State of California	3.2%	N.A.	N.A.
City of Fresno	1.6%	1.3%	2.0%
City of Los Angeles	2.5%	2.3%	2.6%
City of San Diego	3.9%	4.1%	3.7%
City of San Francisco	2.4%	0.4%	3.4%
City of San Jose	3.5%	2.6%	5.4%

Source: 1979 Housing Assistance Plans for the five cities
1979 California Statewide Housing Plan

According to the California Department of Housing and Community Development, in 1979 the median sales price of a single-family home in California was between $90,000 and $100,000. Few families can afford the traditional option of buying a home in which to raise a family because although the median value of a home rose by 220 percent in the past 9 years, the median income of a household rose by only 98 percent during the same period.

In another example, the SCAG[1] Regional Housing Element found that while a middle-income family ($10,000/year) in 1970 could afford to buy about half the homes in the state, in 1977 the equivalent-income family ($15,000/year) could afford less than 15 percent of those homes.

Exclusion of Families with Children from Existing Rental Units

Data Sources and Methods - To document the problem of exclusion of families with children, a survey of 5 California cities was used. The survey was conducted on two dates, approximately one month apart, in each city. Using rental listings in the major newspapers in each city, surveyors called the available rentals as if they were seeking to rent the units and asked whether children were allowed. The results were tallied by rent levels, by number of bedrooms, by whether the apartment was furnished or unfurnished, and by number of units in the building. A copy of the survey instruments are included in Appendix A. The results were used to determine child-exclusion rates and types of age restrictions.

In addition to this survey, an earlier survey of 10,000 Los Angeles rentals was used to compare rents on apartments which allow children to those which prohibit children.

Newspaper surveys have been used by a variety of agencies to determine rental rates, costs and availability. The Southern California Association of Governments, U.S. Department of Housing and Urban Development, public housing agencies and city planning departments are among the groups who have found newspaper rental listings to be an excellent source of housing market data. Furthermore, not only are newspaper advertisements

[1] Southern California Association of Governments

the most frequently used information source for active searchers, they also prove to be the most effective means for most who obtain housing.[1]

Findings - The survey conducted for this study found that children are excluded from the majority of rental units in every city studied, except San Francisco where "adults only" rentals are prohibited by local ordinance:

	Accept Children	No Children	Age Restrictions
Fresno	24%	53%	23%
Los Angeles	14%	71%	15%
San Diego	23%	65%	13%
San Francisco	86%	12%	2%
San Jose	22%	70%	8%

Thus, in all of the cities where exclusion of children is allowed, less than one-fourth of all rentals allow children of any age. Even including buildings with age restrictions, less than one-half of the units surveyed allow children.

The problem is most severe in San Jose, San Diego, and Los Angeles, where 70, 65, and 71 percent, respectively, of rentals allow no children of any age.

In contrast, the same type of survey in San Francisco, where local ordinance prohibits "no-kids" rentals, found that only about 12 percent of rentals surveyed banned all children, and only 2 percent placed age restrictions on tenant children.

The San Diego survey results are matched almost perfectly by a study performed by the San Diego Apartment Owners Association which found that only 34 percent of San Diego City rentals allow children.

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[1] Kevin F. McCarthy, Housing Search and Mobility, The Rand Corporation, R-2451-HUD, September 1979. (Note: The Rand study suggests that illegal racial discrimination may cause some low-income searchers in racially mixed areas to depend more on friends and relatives as information sources rather than on newspapers. That theory, if true, would only apply to one survey--San Francisco's--because discrimination against children is neither illegal nor covert in the other 4 cities studied.)

Table 2 shows the same survey results tabulated by number of bedrooms in the unit. The exclusion rate remains high even in the units which by any standard should be large enough to accommodate families with children. The vast majority (about 75%) of renter families with children have only one or two children, and would therefore need a two-bedroom or smaller unit. Yet only about one-fourth of the two-bedroom units surveyed accept children without restrictions. In San Jose and Los Angeles over 70 percent of the two-bedroom rentals prohibit children of any age.

Even among three or more bedroom units, which should accommodate families, the majority of available rentals in every city studied, except San Francisco, either accepted no children or imposed age restrictions. In San Jose, Fresno, and Los Angeles, only 38, 35, and 24 percent, respectively, of three-bedroom rentals allow children.

The argument is often made that many buildings must exclude children because the available units are not appropriate for family use. The results of the survey indicate that, while the larger rentals do allow children somewhat more often than the smaller units, the exclusion rate is high even among rentals which would be considered "appropriate" for family tenancy. In this regard it is also interesting to note that in 3 of the 5 cities surveyed efficiency (or zero-bedroom) units are more likely to be available to families with children than are one-bedroom units, a situation which clearly does not support the "appropriateness" argument.

Exclusion of Families from Newly-Constructed Rentals

The argument is often made that the housing problems of families with children could be solved by simply building more rental units. While more rental construction is clearly a partial solution in that it eases pressure on the rental market, it does not appear to be the answer, or even a major component of the answer to the problem.

A survey was conducted of newly completed rentals in Los Angeles City, using building permits issued in 1977 to insure that the units involved had been completed and were occupied at the time of the survey in September 1979.

Table 2

ACCEPTANCE OF CHILDREN BY NUMBER OF BEDROOMS

No. of Bedrooms	Accept Children		No Children		Age Restricted		Total	
	#	%	#	%	#	%	#	%
Fresno								
0	1	7.7%	12	92.3%	0	0	13	100.0%
1	18	9.9%	133	73.5%	30	16.6%	181	100.0%
2	99	32.4%	125	40.8%	82	26.8%	306	100.0%
3+	6	35.3%	6	35.3%	5	29.4%	17	100.0%
Total	124	24.0%	276	53.3%	117	22.6%	517	100.0%
Los Angeles								
0	6	12.2%	38	77.6%	5	10.2%	49	100.0%
1	34	9.0%	283	74.7%	62	16.4%	379	100.0%
2	64	17.4%	264	71.9%	39	10.6%	367	100.0%
3+	26	24.3%	54	50.5%	27	25.2%	107	100.0%
Total	130	14.4%	639	70.8%	133	14.7%	902	100.0%
San Diego								
0	18	20.5%	63	71.6%	7	8.0%	88	100.0%
1	76	17.0%	306	68.6%	64	14.3%	446	100.0%
2	90	27.9%	198	61.3%	35	10.8%	323	100.0%
3+	19	45.2%	17	40.5%	6	14.3%	42	100.0%
Total	203	22.6%	584	65.0%	112	12.5%	899	100.0%
San Francisco								
0	72	90.0%	8	10.0%	0	0	80	100.0%
1	145	78.8%	33	17.9%	6	3.3%	184	100.0%
2	110	92.4%	9	7.6%	0	0	119	100.0%
3+	41	95.3%	0	0	2	4.7%	43	100.0%
Total	368	86.4%	50	11.7%	8	1.9%	426	100.0%
San Jose								
0	5	9.4%	47	88.7%	1	1.9%	53	100.0%
1	17	18.1%	72	76.6%	5	5.3%	94	100.0%
2	37	25.2%	103	70.1%	7	4.8%	147	100.0%
3+	12	37.5%	6	18.8%	14	43.8%	32	100.0%
Total	71	21.8%	228	69.9%	27	8.3%	326	100.0%

Source: Fair Housing Project Survey, 1979

A total of 3,148 units were surveyed, representing a sample of one-third of the rental building permits issued by Los Angeles in 1977. They include permits issued from all district offices. The findings are as follows:

Total Units Surveyed	3,148
Number converted to condominium	354
Condominiums allowing children	79 (22%)
Adults-only condominiums	275 (78%)
Number available for rent	2,794
Rentals allowing children	728 (26%)
Adults-only rentals	2,066 (74%)

Thus only about one-fourth of the new rental units in Los Angeles are available to families with children. The exclusion of families with children in the rental market is being perpetuated in new construction. New units are therefore not alleviating the problems faced by renters with children in Los Angeles.

By contrast, in San Francisco a study of 493 units revealed that only 10 percent of new units prohibited children. Also, none of the condominium conversions in San Francisco excluded children, as compared to 78 percent in Los Angeles. The findings were:

Total Units Surveyed	493
Number converted to condominiums	147
Condominiums allowing children	147 (100%)
Adults-only condominiums	0
Number available for rent	346
Rentals allowing children	311 (90%)
Adults-only rentals	35 (10%)

Clearly, San Francisco's ban on rental discrimination against children has had a positive effect on the availability of new rental units to families. A secondary effect appears to be the carry-over of nondiscriminatory policies from apartments to condominiums.

ECONOMIC IMPACT OF DISCRIMINATION AGAINST RENTERS WITH CHILDREN

Renters with children, as a class, are in the curious position of paying the price of their own exclusion. As explained by economist Claude Elias, "...the fact that families with children are arbitrarily excluded from certain units represents a limitation to their choice of units, and so to that extent, they pay the cost of that arbitrary restriction."[1]

Higher Rents

The same survey discussed earlier found that rentals which allow children tend to command a higher rent than those which exclude children.

Table 3 shows the survey results by rent category. With the exception of San Francisco where an ordinance prohibits discrimination against families with children in rental housing, the most expensive units (rents of $450 per month and over) are most likely to rent to families with children.

Table 4 shows the median rent by bedroom size for rentals which allow, exclude, or restrict children. No clear pattern is evident for units that restrict children. However, comparing units which accept children to those which absolutely exclude children, in every case except San Francisco, median rents are higher for equivalent sized units that allow children. Rents are generally between $20 and $30 more per month higher for equivalent units that allow children, with the smaller difference being in one-bedroom rentals in Fresno, where buildings which allow children had the same median rents as "no-children" buildings. The biggest difference is in three-or-more bedroom units in Los Angeles where rentals that allow children have median rents $97 higher than similar sized units which exclude children.

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[1] Testimony of Dr. Claude Elias, Jr., President, Real Estate Research Council of Southern California, in the case of Marina Pt. Ltd. vs. Wolfson, Culver City Municipal Court, June 16, 1979.

Table 3
ACCEPTANCE OF CHILDREN BY RENT CATEGORY

Rent Category	Accept Children		No Children		Age Restricted		Total	
	#	%	#	%	#	%	#	%
Fresno								
0 - 149	5	12.8%	33	84.6%	1	2.6%	39	100%
150 - 249	96	25.7%	191	51.2%	86	23.0%	373	100%
250 - 349	17	20.5%	44	53.0%	22	26.5%	83	100%
350 - 449	6	27.2%	8	36.4%	8	36.4%	22	100%
450+	0	-	0	-	0	-	0	-
Total	124	24.0%	276	53.3%	117	22.6%	517	100%
Los Angeles								
0 - 149	3	60.0%	2	40.0%	0	-	5	100%
150 - 249	16	13.2%	87	71.9%	18	14.3%	121	100%
250 - 349	32	10.2%	246	78.1%	37	11.7%	315	100%
350 - 449	42	14.6%	192	66.9%	53	18.5%	287	100%
450+	37	21.3%	112	64.4%	25	14.4%	174	100%
Total	130	14.4%	639	70.8%	133	14.7%	902	100%
San Diego								
0 - 149	1	9.1%	10	90.9%	0	-	11	100%
150 - 249	122	23.0%	318	59.9%	91	17.1%	531	100%
250 - 349	64	21.3%	217	72.1%	20	6.6%	301	100%
350 - 449	12	27.9%	30	69.8%	1	2.3%	43	100%
450+	4	30.8%	9	69.2%	0	-	13	100%
Total	203	22.6%	584	65.0%	112	12.5%	899	100%
San Francisco								
0 - 149	10	100.0%	0	-	0	-	10	100%
150 - 249	52	83.9%	8	12.9%	2	3.2%	62	100%
250 - 349	96	94.1%	6	5.9%	0	-	102	100%
350 - 449	81	91.0%	8	9.0%	0	-	89	100%
450+	129	79.1%	28	17.2%	6	3.7%	163	100%
Total	368	86.4%	50	11.7%	8	1.9%	426	100%
San Jose								
0 - 149	0	-	1	100.0%	0	-	1	100%
150 - 249	19	19.4%	74	75.5%	5	5.1%	98	100%
250 - 349	40	23.8%	120	71.4%	8	4.8%	168	100%
350 - 449	9	17.3%	30	57.7%	13	25.0%	52	100%
450+	3	42.9%	3	42.9%	1	14.3%	7	100%
Total	71	21.8%	228	69.9%	27	8.3%	326	100%

Source: Fair Housing Project Survey, 1979

Table 4

MEDIAN RENTS BY NUMBER OF BEDROOMS*

No. of Bedrooms	Accept Children	No Children	Age Restricted
Fresno			
0	N.A.	$125	N.A.
1	$185	$185	$187
2	$218	$226	$207
3+	$337	$275	$200
Overall Median	$214	$209	$207
Los Angeles			
0	N.A.	$404	$313
1	$338	$328	$297
2	$366	$347	$411
3+	$515	$418	$438
Overall Median	$380	$348	$371
San Diego			
0	$2[illegible]	$183	$217
1	$233	$222	$221
2	$273	$248	$239
3+	$325	$316	$316
Overall Median	$246	$239	$228
San Francisco			
0	$218	$263	N.A.
1	$339	$463	N.A.
2	$455	$525	N.A.
3+	$514	N.A.	N.A.
Overall Median	$381	$460	N.A.
San Jose			
0	$204	$225	N.A.
1	$267	$246	$238
2	$309	$298	$292
3+	$375	$366	$382
Overall Median	$296	$276	$352

*unfurnished units

Source: Fair Housing Project Survey, 1979

It is noteworthy that in San Francisco, where over 85 percent of all units surveyed allow children, rents tended to be higher for buildings that prohibit children, placing the cost of illegal discrimination on those practicing discrimination rather than on the excluded class.

The findings of this survey are further supported by earlier surveys of more than 10,000 units in Los Angeles. Table 5 compares average rents for restricted vs. not-restricted buildings from that survey. Again, particularly among the larger bedroom sites, rentals which allowed children were significantly more expensive than those which did not.

Inadequate Housing Conditions

Having established that there is widespread discrimination against families with children in rental housing and that the restricted market is forcing families to pay higher rents, the study sought to examine additional effects of this discrimination. For example, if families with children could afford to pay more for housing or if the available stock, although limited, was sufficient to accommodate the need for family rental housing, then the discrimination problem could be said to have insignificant economic impacts. Consequently, the study compared inadequate housing conditions for renter families with children to those without children using federal and California state definitions of inadequate housing:

-- overpaying: paying more than 25% of gross income for rent
-- overcrowding: more than 1.01 persons per room
-- substandard: living in a unit which lacks one or more essential systems (plumbing, heating, etc.) or has a major defect or combination of defects which make the unit unsafe or unsanitary

The study found consistently that renters with children are inadequately housed more often than those without children.

Data Sources & Methods - The study of the effects of discrimination is based on analysis using the following data sources:

-- U.S. Census of Housing and Population, special cross-tabulations
-- local "mid-decade" censuses and housing surveys to update census materials in each of the 5 cities

Table 5

"HOMES UNLIMITED" SURVEY
(LOS ANGELES)

	1976 1746 Listings			1977 2689 Listings			1978 6059 Listings			Total 10,494 Listings		
	No.	%	Avg. Rent	No.	%	Avg.Rent	No.	%	Avg.Rent	No.	%	Avg.Rent
"ACCEPT CHILDREN"	440	25.2%	$390	985	36.6%	$468	1817	29.9%	$471	3242	30.9%	$460
Single	7		204	25		181	59		201	91		196
1 Bedroom	73		223	93		257	182		292	348		268
2 "	223		365	520		463	960		454	1703		445
3 "	119		500	327		561	560		559	1006		553
4 "	13		690	20		635	53		753	86		716
5+ "	5		775	-		-	3		875	8		813
"NO CHILDREN"	678	38.8%	$252*	1077	40.0%	$321	2529	41.7%	$331	4284	40.8%	$316
Single*	170		157	234		193	520		205	924		193
1 Bedroom	242		206	439		282	1077		301	1758		283
2 "	245		350	372		431	364		434	1481		419
3 "	18		406	31		561	66		472	115		486
4 "	3		423	-		-	2		380	5		405
5+ "	-		-	-		-	-		-	-		-
"WILL CONSIDER"**	409	23.4%	$375	495	18.4%	$395	1271	20.9%	$425	2175	20.7%	$418
Single	5		177	17		182	51		200	73		194
1 Bedroom	90		229	68		[illegible]	263		300	421		283
2 "	212		371	295		43[illegible]	695		435	1202		423
3 "	100		524	108		562	251		560	459		552
4 "	2		425	7		639	11		758	20		683
5+ "	-		-	-		-	-		-	-		-

* The average rents shown on the Table includes all sizes of apartments; but because some "singles" are not suitable for families, rents have been refigured for averages without singles: 1976 - $284; 1977 - $357; 1978 - $363; Total - $349. Even not counting singles, average rents for apartments refusing children are significantly lower than those accepting.

** A small number of listings (5 - 7%) indicate that they will accept or will consider children on an age-restricted basis, usually infants or older teenagers.

SOURCE: Brief of Amicus Curiae Fair Housing for Children Coalition, Wolfson v. Marina Point, Ltd., Los Angeles County Superior Court, September 18, 1978.

-- The Census/HUD Annual Housing Survey for San Francisco, San Diego, and Los Angeles
-- The California Statewide Housing Plan and other materials supplied by the California Department of Housing and Community Development (HCD)

Findings - For the State of California as a whole, 45% of renters with children are inadequately housed, as compared to 32% of renters without children.[1]

A similar comparison held true for each of the five cities studied. To summarize:

City	Percent of Renters Inadequately Housed	
	With Children	Without Children
State of California	45%	32%
Fresno	46%	35%
Los Angeles	49%	35%
San Diego	48%	42%
San Francisco[2]	50%	38%
San Jose	51%	41%

Holding income constant, the results are even more striking. Table 6 compares inadequate housing by income group. Low income is here defined as income below $15,000 per year (or about 80% of the statewide median); moderate income is $15,000 - $22,499 (or 80 - 120% of the statewide median); and upper income is defined as $22,500 and up. These are standard State of California definitions.

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[1] Note that in this comparison and all subsequent comparisons of inadequate conditions the data presented are for households with two or more persons. Since single-person households do not have children, they do not provide a valid comparison to households with children, and therefore were excluded from the analysis.

[2] Please note that statistics on inadequate housing for San Francisco are not current enough to reflect any changes caused by the local anti-discrimination ordinance, and in any case the ordinance has not been in effect long enough to affect the overall living patterns in that city as reflected in this analysis.

Table 6

PERCENT OF INADEQUATELY-HOUSED RENTERS BY INCOME LEVEL
(RENTERS WITH CHILDREN COMPARED TO RENTERS WITHOUT CHILDREN)

	Low Income	Moderate Income	Upper Income
State of California			
With Children	63%	13%	12%
Without Children	53%	6%	5%
City of Fresno			
With Children	56%	12%	6%
Without Children	47%	3%	*
City of Los Angeles			
With Children	65%	22%	14%
Without Children	56%	7%	4%
City of San Diego			
With Children	62%	16%	8%
Without Children	49%	5%	2%
City of San Francisco			
With Children	68%	21%	13%
Without Children	64%	11%	5%
City of San Jose			
With Children	71%	20%	12%
Without Children	65%	6%	2%

* Less than 1%.

As Table 6 shows, the majority of low income renters in California face some housing inadequacies. However, it is consistently found that all income renters with children are more often inadequately housed than those without children.

Among moderate and upper income renters who should be able to function adequately in the housing market, a substantial percentage of families with children continue to be inadequately housed, while less than half as great a percentage of renters without children face these problems. In three of the 5 cities, Los Angeles, San Jose and San Francisco, more than 20 percent of moderate income renters with children are inadequately housed. Even for upper incomes, for the state as a whole and for three of the 5 cities surveyed, more than 12 percent are inadequately housed. This compares to between 2 and 5 percent of renters without children.

It is evident, therefore, that insufficient rentals are available to families with children at all incomes, and that even those families who, by virtue of their income, could be expected to be able to obtain decent housing at affordable rents, are forced to overpay or overcrowd in order to be housed.

Table 7 details the findings by income group. It shows that holding income constant, families with children are consistently more often inadequately housed than renters without children.

Inadequate housing conditions were also compared holding family size constant in order to investigate whether renters with children were overpaying and overcrowding more often than childless renters because of the greater number of people in the household. Table 8, therefore, shows inadequate housing conditions by number of persons per houshold. Consistently, renters with children are less well-housed than other renters. For the state as a whole, among two-person households, renter families with children are inadequately housed nearly <u>twice as often</u> as those without children, as shown by Table 8a:

Table 7

INADEQUATE HOUSING CONDITIONS FOR TWO OR MORE PERSON HOUSEHOLDS BY INCOME
(RENTERS WITH CHILDREN COMPARED TO RENTERS WITHOUT CHILDREN)

	Renters With Children			Renters Without Children		
	Total (In Thousands)	Inadequately Housed (In Thousands)	Percent Inadequately Housed	Total (In Thousands)	Inadequately Housed (In Thousands)	Percent Inadequately Housed
State of California						
Income						
$0-$ 7,499	292.4	284.0	97%	282.8	232.6	82%
$ 7,500-$14,999	431.8	173.4	40%	394.0	127.8	32%
$ 15,000-$22,499	270.7	35.9	13%	300.5	16.6	6%
$ 22,500-$34,999	98.0	12.3	12%	158.1	9.2	6%
$ 35,000 and up	29.1	2.9	10%	63.6	2.6	4%
Total	1122.0	508.5	45%	1199.0	388.8	32%
City of Fresno						
Income						
$0-$ 7,499	5.7	4.6	81%	4.9	3.8	78%
$ 7,500-$14,999	6.0	2.0	33%	5.8	1.2	21%
$ 15,000-$22,499	2.5	0.3	12%	2.6	0.1	3%
$ 22,500-$34,999	0.8	*	5%	0.8	*	1%
$ 35,000 and up	0.4	*	7%	0.5	0.0	0%
Total	15.4	7.0	46%	14.6	5.1	35%
City of Los Angeles						
Income						
$0-$ 7,499	50.5	46.6	92%	47.4	41.2	87%
$ 7,500-$14,999	72.3	33.8	47%	65.1	21.4	33%
$15,000-$22,499	42.6	9.5	22%	46.0	3.4	7%
$22,500-$34,999	17.1	2.5	14%	18.9	0.8	4%
$35,000 and up	10.2	1.2	12%	13.7	0.4	2%
Total	192.7	93.6	49%	191.1	67.2	35%
City of San Diego						
Income						
$0-$ 7,499	12.7	12.3	97%	13.2	12.4	94%
$ 7,500-$14,999	19.4	8.3	43%	25.0	10.0	40%
$15,000-$22,499	9.7	1.6	16%	11.0	0.6	5%
$22,500-$34,999	3.3	0.2	7%	3.8	0.1	2%
$35,000 and up	1.8	0.1	7%	2.2	0.1	2%
Total	46.8	22.5	48%	55.2	23.2	42%
City of San Francisco						
Income						
$0-$ 7,499	10.8	10.5	96%	15.1	13.6	90%
$ 7,500-$14,999	16.1	9.3	57%	23.1	10.8	47%
$15,000-$22,499	12.2	2.7	22%	18.0	2.0	11%
$22,500-$34,999	5.6	0.9	15%	9.4	0.6	6%
$35,000 and up	3.6	0.4	11%	6.0	0.1	2%
Total	48.3	23.9	50%	71.6	27.0	38%
City of San Jose						
Income						
$0-$ 7,499	6.5	6.4	98%	5.5	5.3	96%
$ 7,500-$14,999	11.4	6.7	59%	8.9	4.0	45%
$15,000-$22,499	8.0	1.6	20%	5.8	0.3	6%
$22,500-$34,999	2.7	0.4	14%	2.1	*	2%
$35,000 and up	1.4	0.1	6%	1.0	*	2%
Total	29.9	15.2	51%	23.4	9.6	41%

*less than 0.1%

Table 8

PERCENT OF INADEQUATELY HOUSED RENTERS BY NUMBER OF PERSONS PER HOUSEHOLD
(RENTERS WITH CHILDREN COMPARED TO RENTERS WITHOUT CHILDREN)

Household Size	Renters With Children			Renters Without Children		
	Total Households (In 1000's)	Inadequately Housed (In 1000's)	Percent	Total Households (In 1000's)	Inadequately Housed (In 1000's)	Percent
State of California						
2 persons	88.5	57.1	65%	1009.1	338.8	34%
3-4 persons	664.2	248.7	37%	175.5	42.3	24%
5 or more persons	369.3	202.7	55%	14.4	7.7	54%
Total	1122.0	508.5	45%	1199.0	388.8	32%
City of Fresno						
2 persons	1.1	0.8	74%	11.7	4.5	39%
3-4 persons	7.9	3.1	39%	2.7	0.5	20%
5 or more persons	6.4	3.1	48%	0.2	0.1	46%
Total	15.4	7.8	46%	14.6	5.1	35%
City of Los Angeles						
2 persons	19.0	12.4	65%	165.2	57.3	35%
3-4 persons	114.7	45.4	40%	24.5	9.2	38%
5 or more persons	59.0	35.8	61%	1.4	0.7	51%
Total	192.7	93.6	49%	191.1	67.2	35%
City of San Diego						
2 persons	2.8	2.0	71%	32.5	13.2	41%
3-4 persons	20.8	9.1	44%	6.0	2.7	44%
5 or more persons	9.8	5.0	51%	0.9	0.5	50%
Total	33.4	16.1	48%	39.4	16.4	42%
City of San Francisco						
2 persons	4.2	3.2	77%	59.0	22.4	38%
3-4 persons	27.8	12.3	44%	11.7	4.1	35%
5 or more persons	16.3	8.5	53%	0.9	0.5	50%
Total	48.3	23.9	50%	71.6	27.0	38%
City of San Jose						
2 persons	1.7	1.3	73%	18.5	7.2	39%
3-4 persons	17.7	7.7	43%	4.3	2.1	48%
5 or more persons	10.5	6.3	60%	0.6	0.3	50%
Total	29.9	15.2	51%	23.4	9.6	41%

Note: Totals and percents may not compute exactly as shown due to rounding.

Table 8a
SUMMARY OF STATE PERCENTAGES FROM TABLE 8

Persons per Household	Percent Inadequately Housed Renters	
	With Children	Without Children
2	65	34
3-4	37	24
5+	55	54
Total	45	32

These results are consistent among the 5 cities studied. Clearly, therefore, the greater problem faced by families with children does not result from their larger size. In this regard it is also noteworthy that two-person renter families with children are ill-housed (65% statewide) more often than large (5+ person) families with children (55% indadequately housed statewide).

Finally, Table 9 holds both income and family size constant for renters with and without children. At every income and for all areas studied, renters with children are more often inadequately housed. Again, the most striking comparison is among middle and upper income households. For the state as a whole, Table 10 shows that of two-person households with incomes above $15,000 per year, families who should, by income and family size standards, have available to them the majority of rental units, experience inadequate housing 10 times as often as the percentage of renters with no children.

With all other factors held constant, the renter with a child is, therefore, much more likely to overpay, overcrowd, or live in substandard conditions than the all-adult household.

Table 9

PERCENT OF INADEQUATELY HOUSED TWO-PERSON HOUSEHOLDS BY INCOME
(RENTERS WITH CHILDREN COMPARED TO RENTERS WITHOUT CHILDREN)

	$0 to $7,499	$7,500 to $14,999	$15,000 to $22,499	$22,500 to $34,999	$35,000 or more	Total
State of California						
Two-Person Renters						
With Children	95%	44%	33%	30%	17%	64%
Without Children	87%	36%	4%	3%	1%	34%
City of Fresno						
Two-Person Renters						
With Children	83%	34%	8%	0%	0%	65%
Without Children	78%	22%	1%	1%	0%	39%
City of Los Angeles						
Two-Person Renters						
With Children	89%	62%	18%	12%	2%	65%
Without Children	85%	30%	6%	3%	1%	35%
City of San Diego						
Two-Person Renters						
With Children	89%	50%	40%	13%	0%	71%
Without Children	86%	25%	2%	6%	2%	40%
City of San Francisco						
Two-Person Renters						
With Children	100%	50%	40%	12%	2%	77%
Without Children	90%	45%	9%	5%	0%	38%
City of San Jose						
Two-Person Renters						
With Children	100%	60%	8%	0%	0%	73%
Without Children	84%	46%	3%	^	0%	39%

^ less than 1%

SOCIAL AND PSYCHOLOGICAL IMPACT

In addition to economic burdens, there are other negative effects associated with housing discrimination against children. Among these are psychological damage to children, de facto discrimination against a large percentage of women and minorities,[1] and segregation by age, race, and sex.

Effect on Children

"Since every human being depends upon his cumulative experiences with others for cues as to how he should view and value himself, children who are consistently rejected understandably begin to question and doubt whether they, their family, and their group really deserve no more respect from the larger society than they receive."

--Kenneth B. Clark, Dark Ghetto: Dilemmas of Social Power, 1965

"The problems children face as public liabilities are related directly to the way our larger economic and political system operates. It is a system that is making life harder in our schools, our communities, and our families. It threatens not only our children's humanity, but the possibilities of their being able to live as citizens in a political democracy."

--Will Riggan, "Children as Social Liabilities: Working Paper #9," Childhood and Government Project, UC Berkeley, 1976

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[1] California's Unruh Civil Rights Act and Rumford Fair Housing Act collectively protect renters from discrimination based on race, religion, national origin, ancestry, sex, marital status, and physical disability. The courts have extended these protections to unmarried couples, homosexuals, men with long hair, and persons of "unusual" political views. However, as now interpreted, it is perfectly legal under state law to refuse to rent to any person who has a child. This legal loophole is being challenged by a couple who were evicted for having a baby in an adults-only complex. Their case, Wolfson v. Marina Point, Ltd., is on appeal before the California Supreme Court.

According to sociology researcher Dr. Susan Robbins, "It is clear from these and other psychological and sociological studies that discrimination against children can result in grave damage to the essential social structures upon which society depends--the family, the socialization of the young, and the integrated social structure as a whole."

Impact on Minority and Female-Headed Households

Black, Hispanic and female-headed families with children are renters more often than "white"[1] or male-headed families with children. Consequently, they are more deeply affected by any problems related to rental housing. Charts 1-3 show that, statewide, a major percentage of minority renters (41% for Blacks, 54% for Hispanics) and female-headed renter families (62%) have children.[2]

Table 10 compares minority and female-headed households to total and "white" households with children as to the percent who are renters. So, for example, in Fresno where 36% of all families with children are renters and only 30% of "white" families with children are renters, as many as 57% of Black, 47% of Hispanic, and 72% of female-headed families with children are renters. Thus, in Fresno, Blacks with children rent nearly twice as often as "whites," and female-headed households are renters twice as often as families with children overall.

In all 5 cities, a far greater percentage of minority and female-headed families with children are renters than is true of non-minority or male-headed families.

From this data alone it is apparent that exclusion of families with children also tends to exclude minorities and female-headed families.

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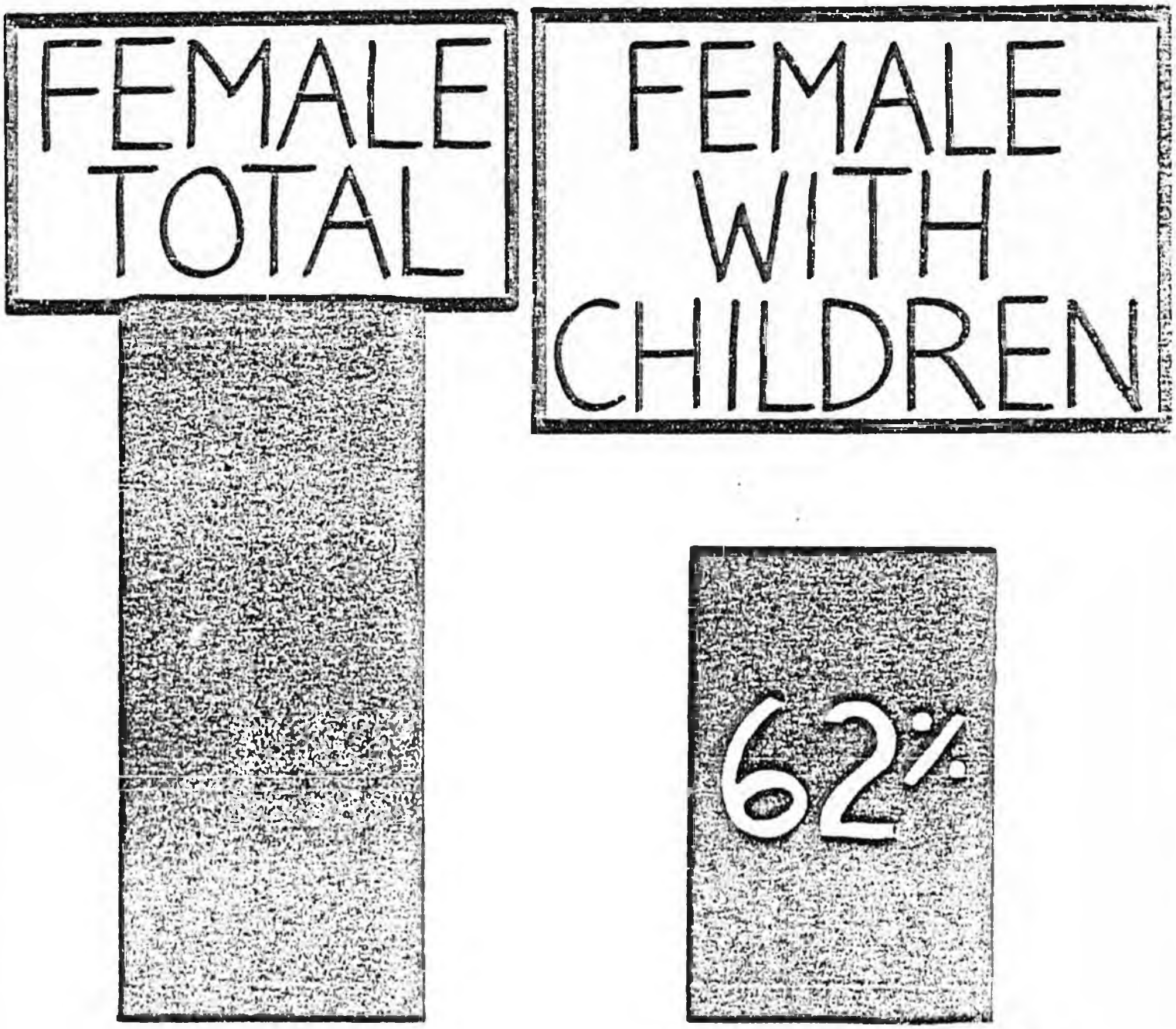
[1] "White" as used here means other than Black or Hispanic. It may include other minority groups which represent smaller portions of the population.

[2] Although each chart includes all households which fit the category description, some households fall into more than one category, e.g., some Black renter households are also female-headed. Therefore, the categories cannot be added together to obtain a grand total.

Chart 1

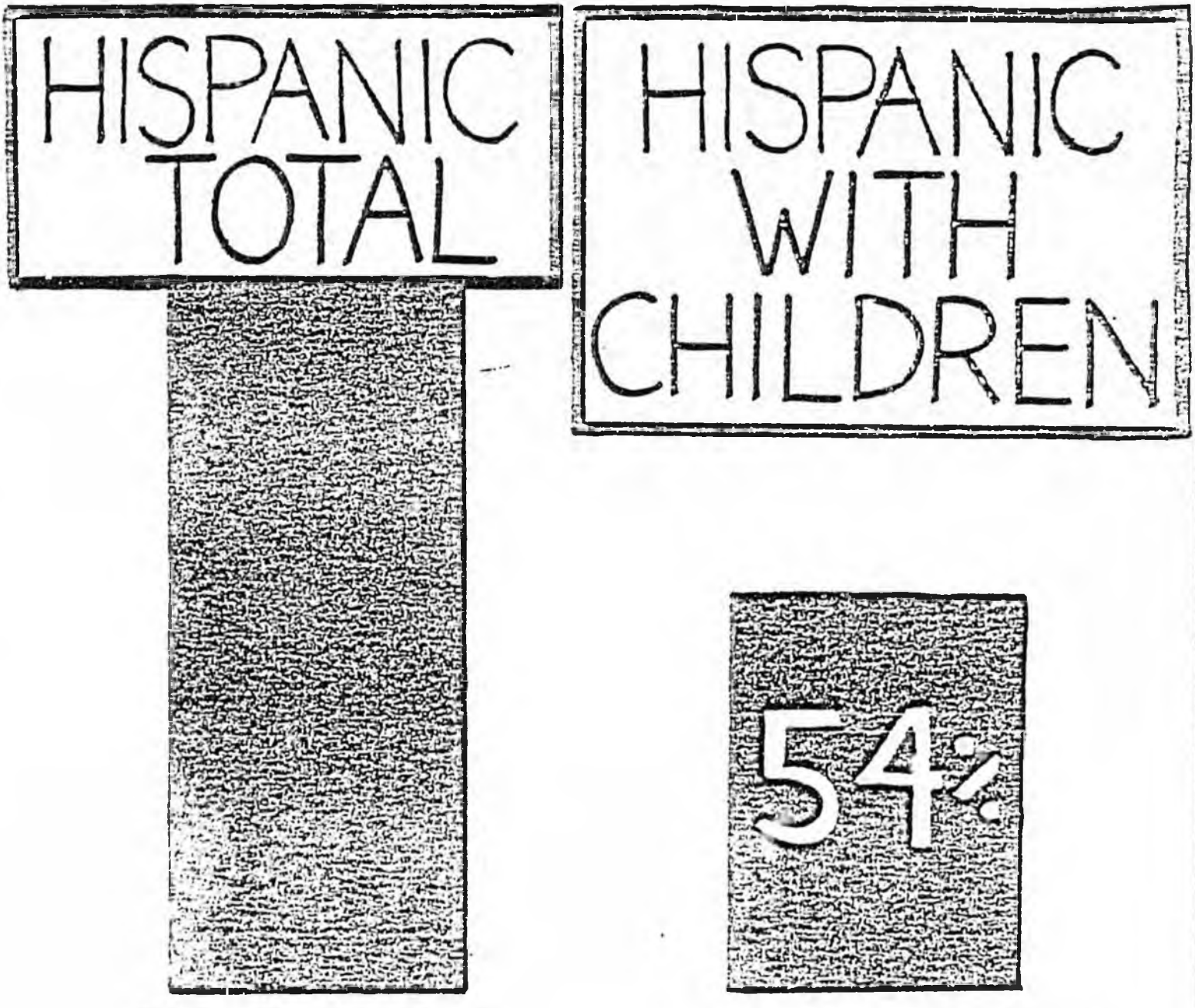
CALIFORNIA RENTERS



Source: California Department of Housing & Community Development, July 1978

Chart 2

CALIFORNIA RENTERS



Source: California Department of Housing & Community Development, July 1978

Chart 3

CALIFORNIA RENTERS

BLACK TOTAL



399,000

BLACK WITH CHILDREN

41%

165,000

Source: California Department of Housing & Community Development, July 1978

Table 10

RENTERS WITH CHILDREN AS A PERCENT OF TOTAL HOUSEHOLDS WITH CHILDREN
BY RACIAL, ETHNIC AND FEMALE-HEADED HOUSEHOLDS

City	Total Households With Children	Black Households With Children	Spanish Surname Households With Children	"White" Households With Children	Female-Headed Households With Children
Fresno	36%	57%	47%	30%	72%
Los Angeles	49%	62%	69%	38%	73%
San Diego	41%	57%	50%	37%	65%
San Francisco	55%	65%	66%	46%	75%
San Jose	28%	47%	42%	24%	60%

Table 11 summarizes an analysis of inadequate housing conditions for minority and female-headed as compared to "white" families with children. The table shows that among all groups studied, renter families with children have worse housing than renters without children.

In addition, minority and female-headed households are consistently inadequately housed more often than "white" households with children, even holding income constant.

More importantly, while minority and female-headed renter families with children are inadequately housed to a significantly greater degree, minority renters without children do not appear to face housing problems any more often than "white" renters of similar income.

Thus, to the extent that discrimination against minorities and women exists in the California housing market, it appears to be directed at families with children. When racial and sex discrimination lead to inadequate living conditions, it appears that they are confined to families with children.

These findings further suggest that exclusion of renters with children from a major portion of the rental market is in effect excluding minorities and women. They certainly show a disproportionately large impact on minority and female-headed households even when income is taken into consideration.

Clustering/Segregation

To quote economist Claude Elias, "...the results of arbitrary exclusion will be (the) clustering (of) families with children and that would impose certain social problems, such as the need for additional schooling facilities, transportation patterns, differential traffic controls, more police protection, more recreational facilities--and these costs are borne by the general taxpayer, by society as a whole."[1] Dr. Elias concludes that clustering does not strike housing economists as an economic method for solving the housing allocation problem.

Renters with children do tend to become clustered as a result of their exclusion from the majority of the housing market. In California, families

[1] Elias, Ibid., June 20, 1979.

Table 11

PERCENT INADEQUATELY HOUSED MINORITY AND FEMALE-HEADED RENTERS
COMPARED TO TOTAL "WHITE" RENTERS WITH AND WITHOUT CHILDREN BY INCOME

	"White"* Renters		Black Renters		Hispanic Renters		Female-Headed Renters	
	Low Income	Middle + Income	Low Income	Middle + Income	Low Income	Middle + Income	Low Income	Middle + Income
State of California								
With Children	77%	17%	99%	29%	95%	30%	98%	31%
Without Children	72%	9%	89%	17%	94%	16%	95%	15%
City of Fresno								
With Children	69%	11%	73%	33%	75%	33%	97%	38%
Without Children	67%	4%	69%	4%	61%	4%	61%	5%
City of Los Angeles								
With Children	68%	20%	76%	25%	74%	32%	95%	38%
Without Children	61%	10%	66%	5%	61%	13%	93%	20%
City of San Diego								
With Children	76%	15%	72%	21%	74%	31%	97%	51%
Without Children	74%	7%	73%	4%	70%	10%	96%	26%
City of San Francisco								
With Children	86%	20%	75%	26%	83%	29%	97%	63%
Without Children	79%	14%	74%	11%	80%	12%	97%	6%
City of San Jose								
With Children	88%	20%	89%	35%	83%	34%	98%	59%
Without Children	82%	9%	82%	13%	75%	10%	97%	7%

* "White" as used here means other than Black or Hispanic. It may include other minority groups which represent smaller portions of the population.

with children comprise just over 30 percent of all renters. The availability surveys of rental ads done in 1979 by the Fair Housing Project indicate that between .6 and 35 percent of all rental buildings allow children. Consequently, virtually all renters with children must be concentrated in those buildings to the exclusion of families without children. Such buildings then become "children's ghettos."

Further, by mapping renter families with children by census tract, it was found that they are concentrated in certain areas of each of the cities studied. Maps 1-5 show these clusters. (See Appendix B)

The study also found a correlation between "children clustering" and "racial clustering." Each of the census tracts identified as having a concentration of renters with children was examined for racial composition and proportion of female-headed households. It was found that in the majority of census tracts with high concentrations of renters with children, there were also more minority families and more female-headed households than the citywide norm.

Table 12 summarizes these results. In every city studied there was a correlation between renters with children and minority households. In all but Fresno there was a correlation with female-headed households. The correlation between the isolation of children and minorities was strongest in Los Angeles (78%). The correlation between the isolation of children and female-headed households was strongest in San Jose (93%) with a very strong correlation (83%) also appearing in San Diego.

These correlations occur partly because minority and female-headed households with children tend to be renters more often than "white" male-headed families with children. However, the clustering does demonstrate that "no-children" housing tends to reinforce, if not create, segregated living patterns by age, race and sex.

Not surprisingly, a recent study found that discrimination against children intensifies racial imbalances in schools. "Both the exclusion of middle class white renters from the city and the exclusion of poor minority renters from the suburban housing markets intensify the problem of school segregation."[1] "Jurisdictions which permit discrimination

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[1] Dr. Gary Orfield, "Desegregation Principles for Los Angeles: A Report to the Superior Court of the State of California for the County of Los Angeles," November 1, 1978, p. 79.

Table 12

CONCENTRATIONS OF RENTERS WITH CHILDREN CORRELATED WITH CONCENTRATIONS OF MINORITIES AND FEMALE-HEADED HOUSEHOLDS

	Census Tracts With Concentrations of Renters With Children				
	Total Number	Tracts with Greater than Citywide Percentage of Black/Hispanic Households		Tracts with Greater than Citywide Percentage of Female-Headed Households	
City		Number	Percent	Number	Percent
Fresno	5	3	60%	2	40%
Los Angeles	69	54	78%	52	75%
San Diego	18	11	61%	15	83%
San Francisco	8	5	63%	6	75%
San Jose	15	9	60%	14	93%

against children in the rental or sale of housing should be asked to examine its impact on school segregation and the future enrollment in their local public schools. This discrimination almost certainly produces 'white flight' of families with school children from the city and some suburbs."[1]

Finally, the adverse effects of age segregation are not limited to children and their families. A recent study of housing preferences of the elderly strongly recommended that "...alternatives should be provided that allow older persons to live in age-integrated environments if they so desire. The vast majority of the community elderly stated a preference for age-integrated surroundings, if given a choice."[2] A related manual on house-sharing explained the benefits of age-integration: "It appears that intergenerational contact, providing it is under favorable conditions, can promote more positive attitudes toward the young and greater willingness to share with them."[3]

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[1] Orfield, p. 81.

[2] Fernando Torres-Gil, et al., Housing: The Diverse Aged, Project MASP, Andrus Gerontology Center, University of Southern California.

[3] "Intergenerational House-Sharing: A Feasibility Study and Resource Manual," Project MASP, Andrus Gerontology Center, University of Southern California.

LANDLORD CONCERNS

Concern is often expressed that the presence of children in apartment buildings may lower property values, increase operating costs, and require owners to make substantial "safety" improvements.

Research under this project found no empirical data to support these claims. In any case, the results of the survey of available rentals (see Tables 3-5) show that even if it is true that it is more expensive to rent to families with children, it is also true that rentals which allow children command higher rents.

Property Values

According to the California State Savings and Loan Commissioner and two major savings and loan institutions,[1] there is no known policy in the industry that would result in underappraisal of property because of the presence of children. In fact, the Society of Real Estate Appraisers (SREA) indicates that member appraisers do not even record whether or not buildings accept children when determining the value of a building--it simply is not an important factor.

Maintenance Costs

The following agencies were contacted in an effort to determine whether or not maintenance costs were higher in buildings which accept children as compared to those that were adults-only: Real Estate Research Council of Southern California, U.S. Department of Housing & Urban Development/Los Angeles Area Office, and the Society of Real Estate Appraisers. None of these sources was able to provide us with data on maintenance cost comparisons of buildings with and without children, nor could they refer us to any agency which had this information.

In addition to the above inquiries, questionnaires were sent to the following associations requesting information on any such studies they

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[1] Home Federal Savings and Great Western Savings & Loan Association

might have done: 1) Apartment Association/Los Angeles-Western Cities; 2) Apartment House Association Consolidated, San Francisco; 3) Fresno Apartment Association; 4) Tri-County Apartment Association; 5) California Apartment Association; 6) San Diego Apartment & Rental Owners Association; 7) San Fernando Valley Apartment Association; 8) Foothills/Pasadena Apartment Association; 9) Affiliated Cities Apartment Association; and 10) California/Southern Cities Apartment Association. The first five associations responded, but other than a suggestion to contact individual apartment owners, none was able to supply the information requested.

A request for maintenance data was also made of a witness in a child-evictior case who testified that, "Basically, the presence of children in an apartment project tends to cause the operating cost of that project to be greater than they would otherwise be and also tend to cause the ability of the project to command premium rent from other tenants to be less than what might otherwise be."[1] No supporting data for this statement was introduced as evidence during the trial, and subsequent inquiries have also failed to produce back-up data.

Finally, a review of the available published literature regarding discrimination against children revealed only one reference to higher maintenance costs in buildings which accept children. However, that claim was based on an interview with one apartment owner and, again, no supporting data was cited.[2]

It appears that there is no empirical data which compares maintenance costs in buildings which do and do not allow children. Should this type of study be made, care should be taken to hold constant such factors as building age, location, amenities, and so forth, as these will clearly affect maintenance costs. Also, the percentage of renters with children in the sample should not exceed their percentage in the general renter population in order to avoid any distortion caused by "ghettoization."

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[1] Stephen Roulac, Questor Associates, in the case of Marina Point, Ltd., v. Wolfson, Culver City Municipal Court, October 6, 1977.

[2] Dennis Shaw, Journal of Family Law, V. 16, 1977-78.

Finally, in assessing the importance of maintenance cost studies as a rationale for child-discrimination, it should be determined whether or not comparisons of this sort could be used to discriminate against other classes of renters if it were found that buildings occupied solely by these other classes had higher maintenance costs. In both cases, it can reasonably be argued that other factors are involved.

Insurance Rates

According to the California State Department of Insurance, "It has been this Department's experience...that an apartment's liability and property rates are not affected by whether or not children are residing in the apartment building. Also, we have never received a rating complaint regarding the residence of children in an apartment building."[1]

Additional information was received from the Transamerica Insurance Group, stating that although "some apartment building features do influence premiums," that was due to "the inherent hazard of such features, not the presence of children."[2] The fact that children do not raise insurance rates for apartment buildings was also confirmed by representatives for the Kemper Insurance Company and Farmer's Insurance Company, both in Los Angeles.

The findings of this study are that the insurance industry, with its enormous amounts of data on claims, does not consider the presence of children a significant factor in setting rates for apartment buildings.

Building Modifications/Safety Standards

Information was obtained from building departments in the 5 cities studied. In all cases, owners of dwellings are subject to either state or local housing codes, building codes--and their amendments--and various

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[1] Letter from Janet S. Galiley, Insurance Rate Analyst, California Department of Insurance, to Eden Council for Housing Opportunities, April 24, 1978.

[2] Letter from E. J. Cogan, Transamerica Insurance Group, December 14, 1979, to Fair Housing Project.

swimming pool codes, irrespective of whether or not children are in residence. According to a representative of the Los Angeles Building Department, if an adults-only building were inspected and found to be safe and up to code, and a child subsequently moved in, no modifications would be required.[1] One of the California legislative proposals emphasized this point by declaring that protecting families from rental discrimination shall not "be construed to require a landlord to make an improvement to a housing accomodation beyond the minimum standards established by building codes and regulations approved by a state or local agency which has the responsibility to approve building plans and designs."[2]

None of this has been interpreted as disregard for the safety of children, but rather an acknowledgement of the fact that living in an apartment instead of a house presents no special high-risk situations for children. Sadly, Los Angeles County statistics confirm this observation. In 1979, of the 35 children under 12 years of age who drowned in swimming pools, 32 (or 91%) were found in private home pools. One child was found in an apartment house pool. In other types of drownings, three children under the age of 10 died in bathtubs, one in a river, and one in a lake.[3]

It is clear that a variety of situations, including taking a bath, can be dangerous to young, unsupervised children and that parents have the ultimate responsibility for their children's safety -- whether inside or outside of a dwelling unit.

In denying a family shelter for "safety reasons" (e.g., pools, stairways, balconies, parking lots), it may be that the real safety issue is missed. As documented elsewhere in this report, many families are living in dilapidated, substandard, and overcrowded housing. These are dangerous conditions over which their parents have little control because they are deprived of choice in the housing market.

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[1]Interview with John Feliciello, Assistant Superintendent of Building and Safety, City of Los Angeles, August 21, 1979.

[2]Senate Bill 440 (Roberti, et al.), February 22, 1979, amended April 25, 1979.

[3]Letter from Los Angeles County Department of Chief Medical Examiner-Coroner to Fair Housing Project, April 22, 1980.

"A decent home and a suitable living environment for every American family."

--a national goal since 1949
--a state goal since 1970

CONCLUSIONS AND RECOMMENDATIONS

It is apparent from this study that the basic human need for adequate shelter is not being met for a large percentage of California's renters with children. Part of the problem is caused by an insufficient supply of units, but a significant part is caused by the arbitrary exclusion of families with children from those units which do meet their needs.

In order to lessen the burden of this housing shortage-within-a-shortage for families with children, and to encourage intergenerational housing patterns in the future, serious consideration should be given to the following actions:

1. Enactment of a statewide law, similar to those in effect in 7 other states, prohibiting housing discrimination against renters based exclusively on age, parenthood, pregnancy, or the potential or actual tenancy of a minor child.[1]

2. Adoption of local ordinances in the absence of statewide protection for renter families with children.

3. An increase in public incentives to private industry to meet the housing needs of families--especially those with 3 or more children--i.e., expansion of all federal rental programs and increases in rent limits to realistic levels.

4. Enforcement of existing regulations which prohibit discrimination against families with children in publicly financed or publicly insured housing projects.

5. Adoption of local regulations and plans that give incentives for construction of developments which offer a mix of 2 or more bedroom

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[1] Although such protections normally cover only rentals, their expansion to owner-occupied units may be necessary to deal with the growing child-exclusion problem in the sale of condominiums, cooperatives, mobile homes, and "planned communities."

units with 0-1 bedroom units and which include amenities for all age groups.

Note: These actions deal mainly with the unavailability of housing for families with children. For a broader look at the housing problem, please see the California Statewide Housing Plan, 1979 Update, especially Section II, "Policies and Action Items," and Section III, "Farmworker Housing Plan Update." Available from the Department of Housing and Community Development, 921 Tenth Street, Sacramento, CA 95814.

6. At the federal level, serious consideration should be given to amending civil rights legislation so that it will protect families with children from housing discrimination.

A P P E N D I X

"A"

Survey Forms

Compiled by: _____

City: _____

Newspaper/Date: _____ _____

Apartment Survey

"CHILDREN OK"

Rent per Month	$0-99	$100-149	$150-199	$200-249	$250-299	$300-349	$350-399	$400-449	$450-499	$500 up
UNFURNISHED UNITS No. of Bedrooms										
0										
1										
2										
3										
4+										
(office use)										
FURNISHED UNITS No. of Bedrooms										
0										
1										
2										
3										
4+										
(office use)										

TOTAL NO. OF UNITS IN EACH BUILDING CONTACTED (office use)

Compiled by: _____

City: _____

Newspaper/Date: _____

Apartment Survey

"NO CHILDREN"

Rent per Month	$0-99	$100-149	$150-199	$200-249	$250-299	$300-349	$350-399	$400-449	$450-499	$500 up
UNFURNISHED UNITS No. of Bedrooms										
0										
1										
2										
3										
4+										
(office use)										
FURNISHED UNITS No. of Bedrooms										
0										
1										
2										
3										
4+										
(office use)										

TOTAL NO. OF UNITS IN EACH BUILDING CONTACTED (office use)

Compiled by: _____

City: _____

Newspaper/Date: _____

Apartment Survey

"AGE RESTRICTIONS"

Rent per Month	$0-99	$100-149	$150-199	$200-249	$250-299	$300-349	$350-399	$400-449	$450-499	$500 up
UNFURNISHED UNITS No. of Bedrooms										
0										
1										
2										
3										
4+										
(office use)										
FURNISHED UNITS No. of Bedrooms										
0										
1										
2										
3										
4+										
(office use)										

TOTAL NO. OF UNITS IN EACH BUILDING CONTACTED (office use)

RESTRICTIONS: (e.g., teens only, infants only, etc.) _____

_____

_____ (cont. on back)

A P P E N D I X

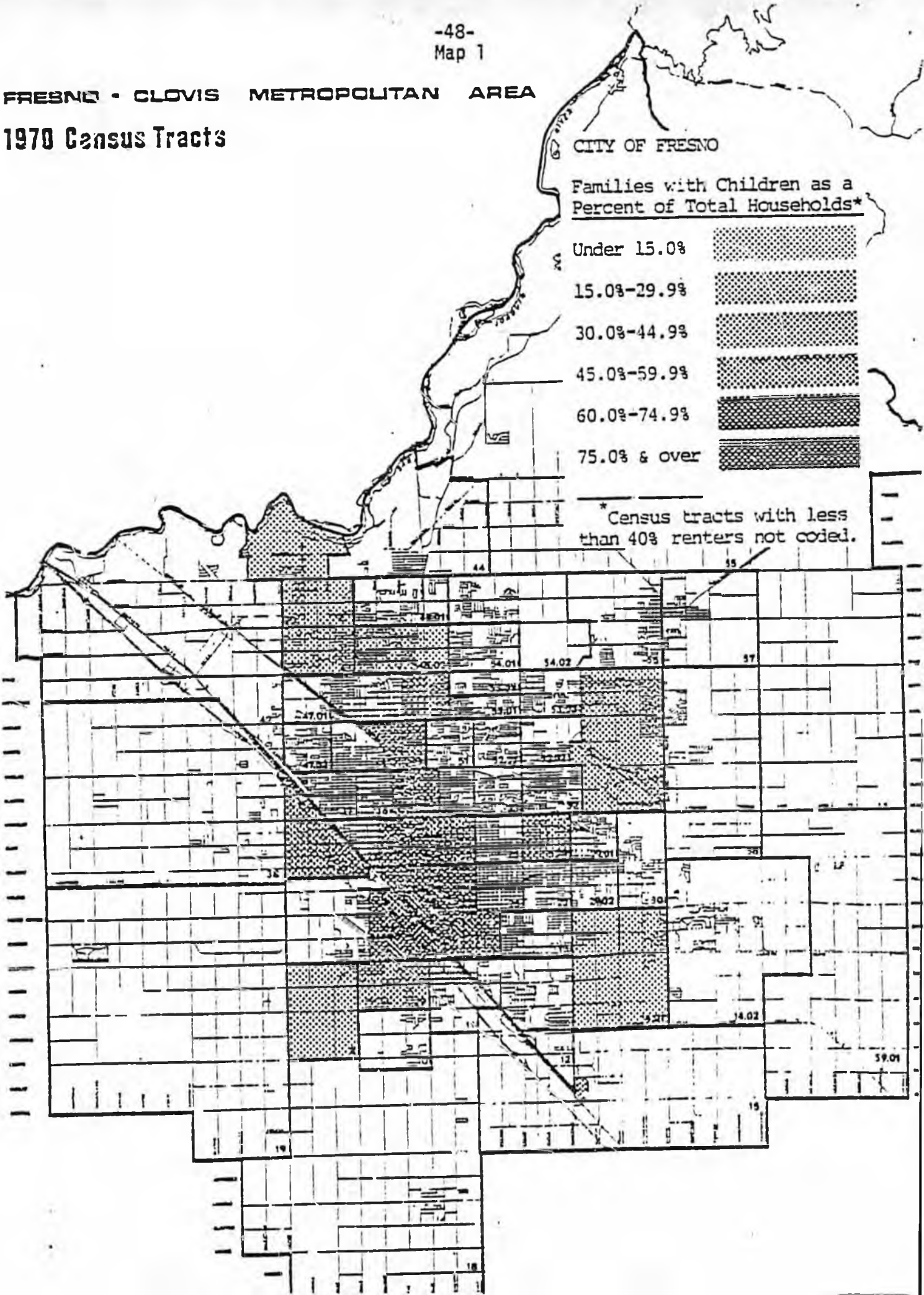
"B"

Age Clustering Maps

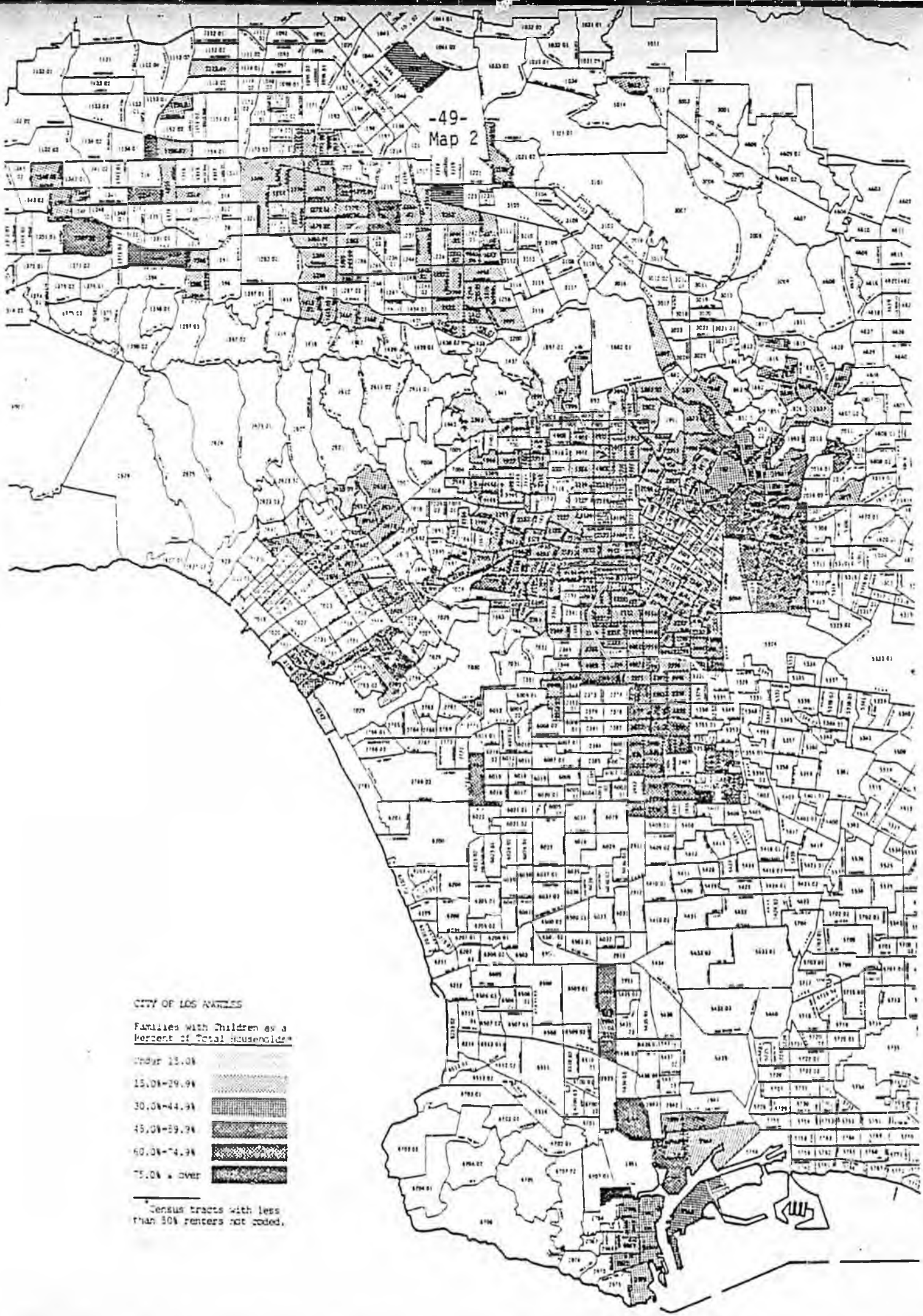
Map 1

FRESNO - CLOVIS METROPOLITAN AREA

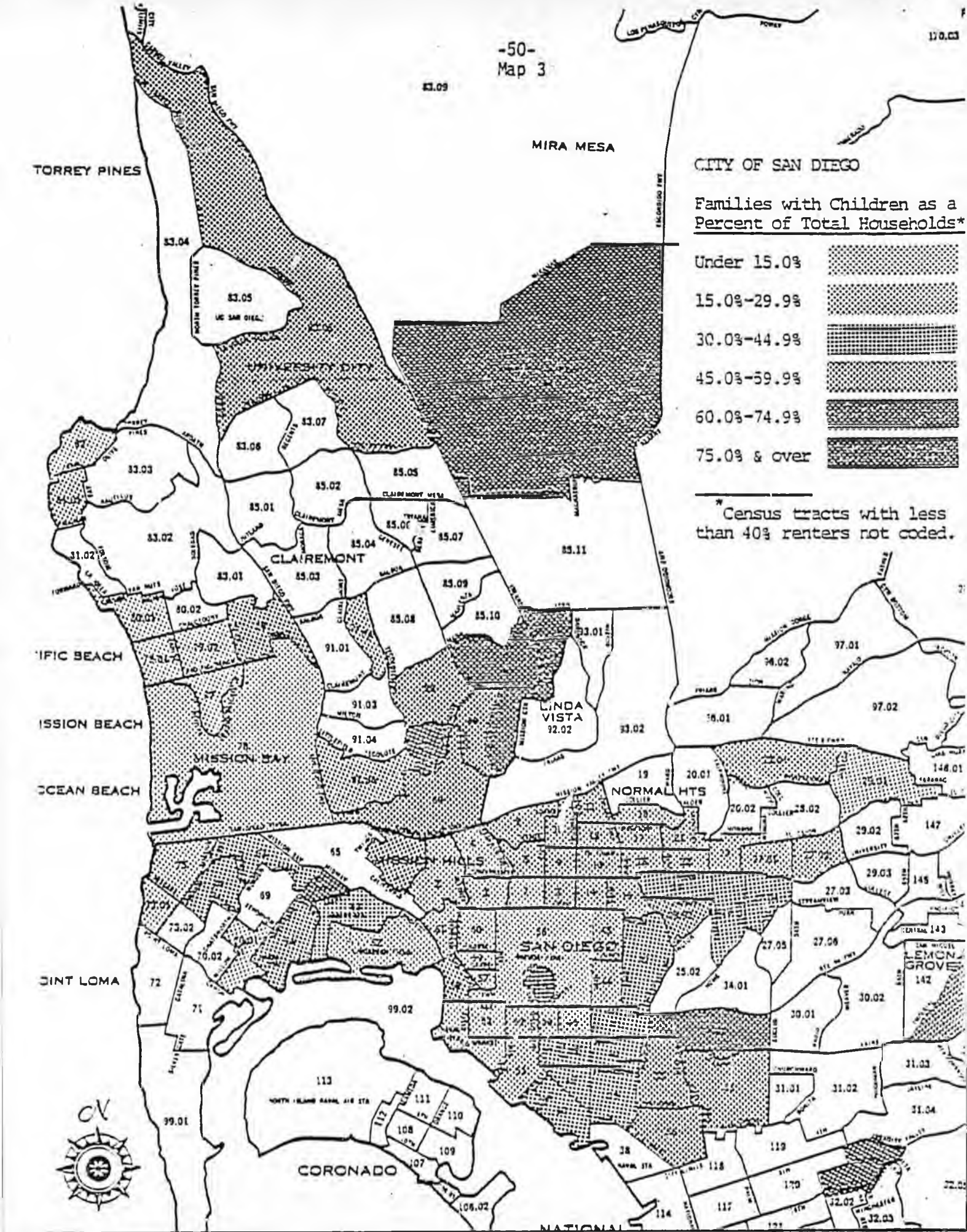
1970 Census Tracts



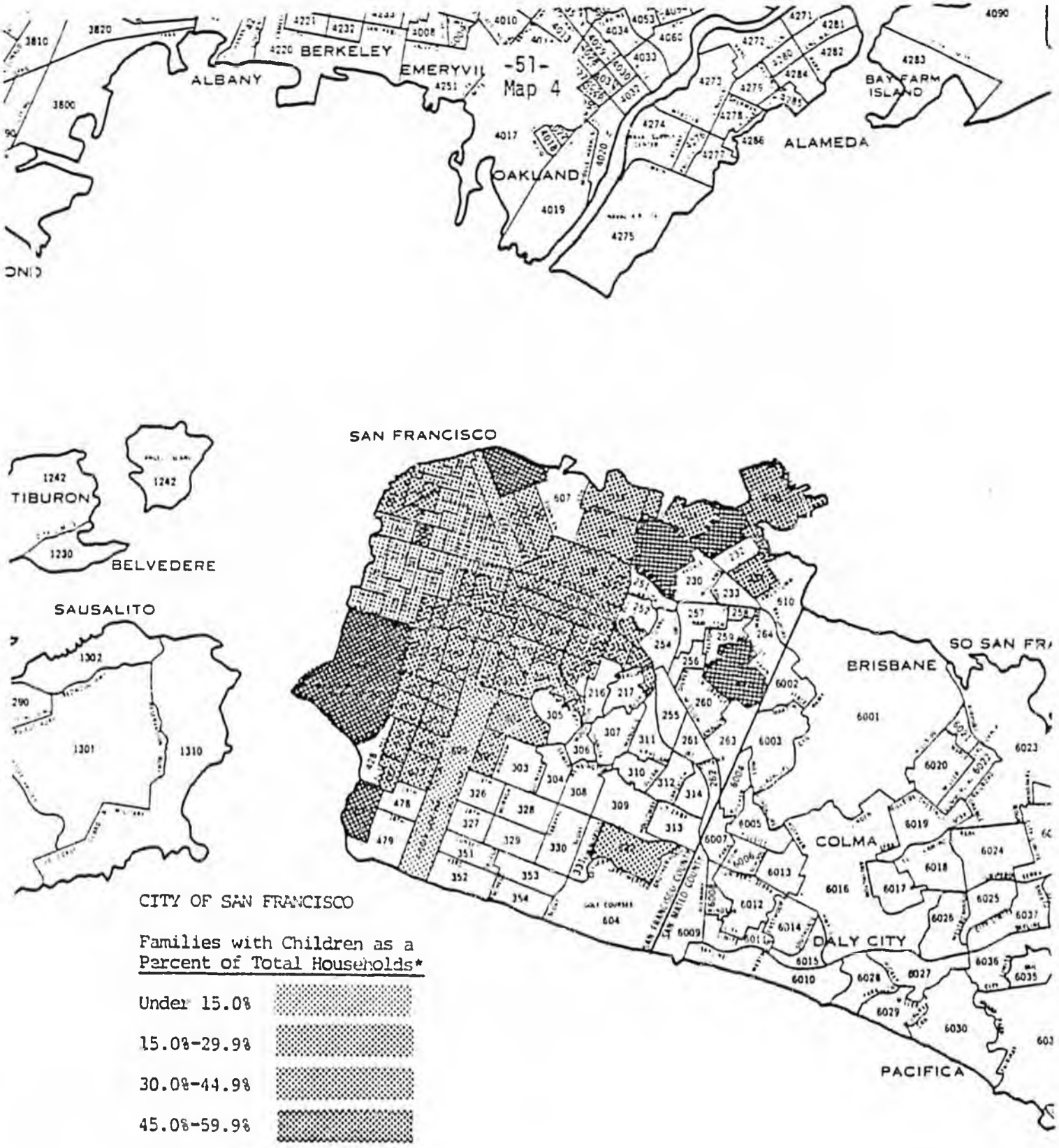
Map 2


CITY OF LOS ANGELES
Families with Children as a Percent of Total Households*
Under 15.0%
15.0%-29.9%
30.0%-44.9%
45.0%-59.9%
60.0%-74.9%
75.0% & over
*Census tracts with less than 30% renters not coded.

Map 3


MIRA MESA
TORREY PINES
UNIVERSITY CITY
CLAIREMONT
LINDA VISTA
92.02
MISSION BAY
NORMAL HTS
MISSION HILLS
SAN DIEGO
CORONADO
CITY OF SAN DIEGO
Families with Children as a Percent of Total Households*
Under 15.0%
15.0%-29.9%
30.0%-44.9%
45.0%-59.9%
60.0%-74.9%
75.0% & over
*Census tracts with less than 40% renters not coded.

Map 4

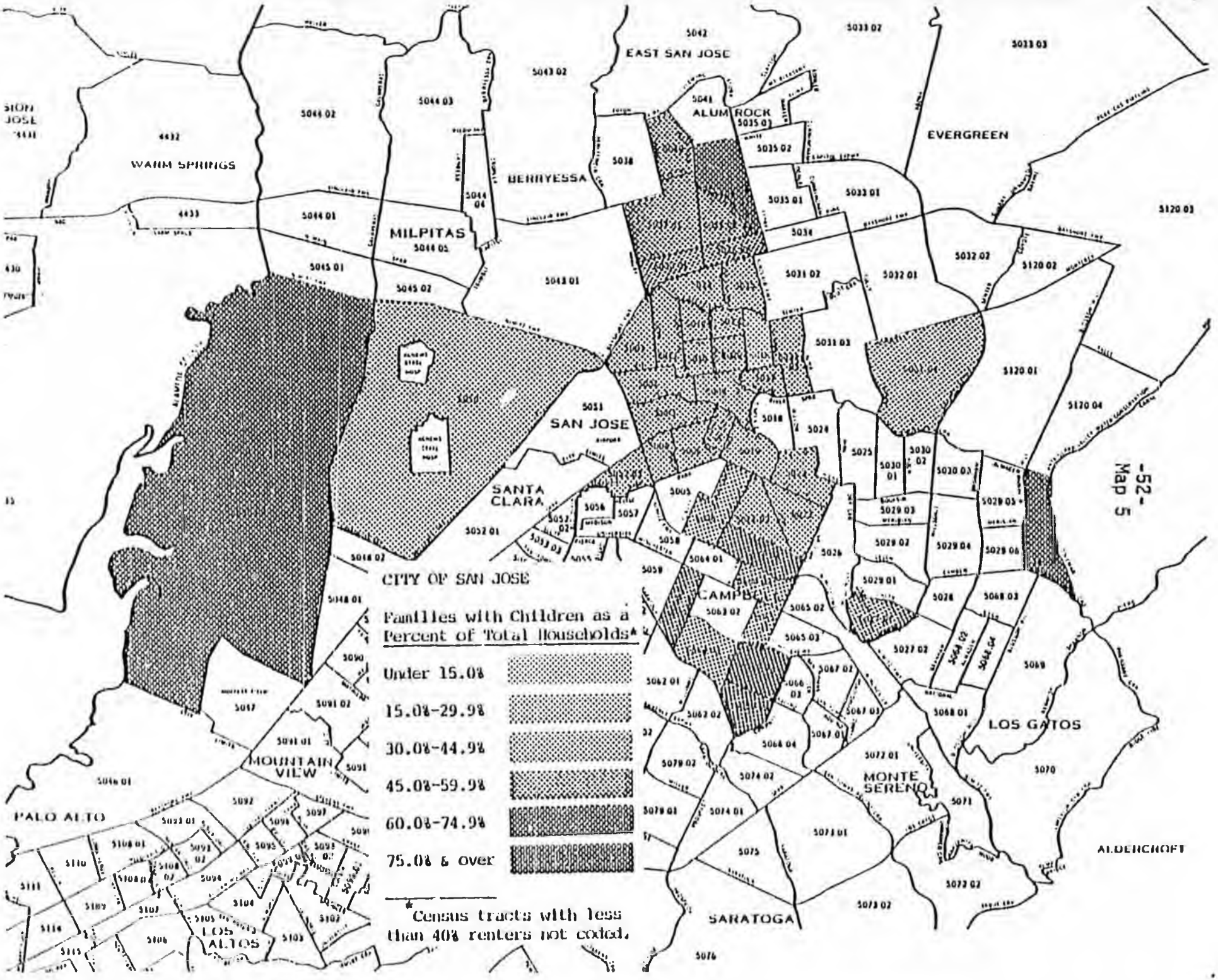


CITY OF SAN FRANCISCO

Families with Children as a Percent of Total Households*

Under 15.0%	
15.0%-29.9%	
30.0%-44.9%	
45.0%-59.9%	
60.0%-74.9%	
75.0% & over	

*Census tracts with less than 50% renters not coded.


EAST SAN JOSE
WARM SPRINGS
BERRYESSA
ALUM ROCK
EVERGREEN
MILPITAS
SAN JOSE
SANTA CLARA
CAMPBELL
LOS GATOS
MONTE SERENO
MOUNTAIN VIEW
PALO ALTO
LOS ALTOS
SARATOGA
ALDERCROFT
CITY OF SAN JOSE
Families with Children as a Percent of Total Households*
Under 15.0%
15.0%-29.9%
30.0%-44.9%
45.0%-59.9%
60.0%-74.9%
75.0% & over
*Census tracts with less than 40% renters not coded.

STATE OF ALASKA
THE LEGISLATURE

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM April 15, 1982

SUBJECT: Discrimination in rental housing accommodations (Work Order No. 12-2776)

TO: Representative Hugh Malone

FROM: Tamara Brandt Cook
Legislative Counsel

You have asked whether a recent California case, Marina Point, Ltd. v. Wolfson, 180 Cal. Rep. 496 (California 1982), has any application under Alaska law. The case deals with the question of whether an owner of an apartment complex may refuse to rent an apartment to a family solely because the family includes a minor child. The California Supreme Court concluded that the owner could not, but two justices dissented.

Although the exclusionary policy was challenged on the basis of an impermissible infringement on state and federal constitutional rights of familial privacy and equal protection of the law as well as on the basis of statutory rights, the case was decided under the Unruh Civil Rights Act of California. The court specifically declined to reach either state or federal constitutional contentions. Marina Point, supra, page 497, page 501. The dissent noted that equal protection and due process principles place no restrictions on purely private actions, but affect only state action. Marina Point, supra, page 512.

In general, a case decided by another state court has no precedential value in Alaska. Nevertheless, had the case been decided on federal constitutional grounds the reasoning in the case could have been directly applied. The Alaska court could also have rejected the reasoning of the California court in interpreting the federal constitution. Although each state court interprets its own constitution and its own statutes, the Alaska court relies on case law from other jurisdictions to support similar conclusions.

The court could rely on the reasoning in this case, especially if the court were interpreting a statute similar to the Unruh Civil Rights Act of California. However, AS 18.80.230 and AS 18.80.240 differ considerably from the Unruh Act, so I suspect that Marina Point, supra, would be deemed to be of little value in interpreting Alaska law.

The pertinent part of the Unruh Act, Civil Code section 51 provides:

> All persons within the jurisdiction of this state are free and equal, and no matter what their sex, race, color, religion, ancestry or national origin are entitled to the full and equal accommodations, advantages, facilities, privileges or services in all business establishments of every kind whatsoever.

The phrase "all business establishments" has been held to apply to the business of renting housing accommodations. Marina Point, supra, page 501. In addition, the California court has interpreted the statute to prohibit all arbitrary discrimination by business establishments, with the particular bases of discrimination listed (sex, race, color, etc.) being illustrative rather than restrictive. In re Cox, 474 P.2d 992 (California 1970). This judicial interpretation has not been disturbed by the legislature. The court notes that the legislature is presumed to be aware of and to have acquiesced in the judicial construction when it amends a statute without altering the portions that have been construed as was done with the Unruh Act in 1974. Marina Point, supra, page 504. The court bases its holding that an owner may not refuse to rent an apartment to a family solely because the family includes a minor child on the fact that this amounts to arbitrary discrimination within the terms of the Unruh Act as judicially construed.

The pertinent Alaska statutes have not been judicially construed to forbid any arbitrary discrimination as was done in California nor have they been construed to forbid discrimination on any basis other than those specifically listed in the statute. AS 18.80.230 forbids discrimination in public accommodations on the basis of "sex, marital status, changes in marital status, pregnancy, parenthood, race, religion, color or national origin". (Emphasis added). AS 18.80.240 deals with the discrimination in the sale or rental of real

property separately from the section that deals with discrimination in public accommodations. Discrimination is forbidden on the basis of "sex, marital status, changes in marital status, pregnancy, race, religion, color or national origin". Discrimination in public accommodations and discrimination in rental of property are treated the same under the Unruh Act, while discrimination in these two areas are treated differently in Alaska. In fact, AS 18.80.250(1) and (2) specifically authorizes discrimination in the rental of housing as between married and single people. It would be difficult for the court in Alaska to conclude, as the court in California concluded, that the legislature intended to forbid all arbitrary discrimination with respect to the rental of housing. The fact that "parenthood" is included in the list of protected classes for purposes of public accommodations and excluded from the list for purposes of rental housing suggests the opposite, that the legislature intended to forbid discrimination in the rental of housing only on the basis of specifically listed factors.

In conclusion, since the decision in Marina Point, supra, is based on a statutory scheme that differs markedly from the statutory scheme in Alaka, it will have no direct affect on Alaska law.

TBC:ljb

ALL OF THE FOLLOWING MESSAGES GO TO :

HOUSE LABOR AND COMMERCE, REPRESENTATIVES: FURNACE, UEHLING, RINGSTAD, COWDERY, [redacted]L, LISKA, VASKA, GOLL, LARSON AND REPS. DAVIS, BETTISWORTH KOPONEN, M.W.MILLER AND SENATORS MOSS, FAHRENKAMP, AND BENNETT

RE: HOUSE BILL 131 AN ACT RELATING TO UNLAWFUL PRACTICES IN THE SALE OR RENTAL OF REAL PROPERTY.

FROM: BILL WORTMAN, DISPLACED HOMEMAKERS, 516 2ND AVE. ROOM 220, FAIRBANKS 99701 HOME 479-3624 WORK 456-8428

RE: HB 131

THIS AGENCY SUPPORTS HB131 BECAUSE HOUSING IS ONE OF THE MAJOR PROBLEMS IN FAIRBANKS AT THE PRESENT TIME AND AVAILABLE HOUSING UNITS WHICH DO NOT ALLOW CHILDREN ADDS TO THE EXISTING HOUSING PROBLEM. MANY OF OUR CLIENTS HAVE A DIFFICULT TIME FINDING ACCEPTABLE HOUSING WHICH ACCEPTS CHILDREN.

EOM**********

FROM: TERESA A. SNOWDEN, P.O.BOX 60129, FAIRBANKS 99706 HOME 452-7059
WORK 456-8428

RE: HB 131

I SUPPORT HB131 BECAUSE HOUSING IS VERY DIFFICULT TO FIND AND THE DISCRIMINATION AGAINST CHILDREN MAKES IT EVEN MORE DIFFICULT. WE MOVED HERE IN AUGUST AND IT TOOK US UNTIL FEBRUARY TO FIND ACCEPTBALE HOUSING WHICH ACCEPTS CHILDREN.

EOM**********

FAIRBANKS 3/31/83

FROM: LESLIE SIMAR, S.R. BOX 40122, FAIRBANKS 99701 HOME 456-5289
WORK 456-8473

RE: HB 131

I SUPPORT HB 131. HOUSING SITUATION IN FAIRBANKS IS A DISGRACE. FEW VACANCIES EXIST AND THESE AT EXHORBITANT RATES. DISCRIMINATION AGAINST PERSONS WHO HAVE CHILDREN IS UNFAIR. CHILDREN AND PETS SEEM TO BE IN THE SAME CATEGORY WHEN RENTING - BOTH UNDESIRABLE. I URGE PASSAGE OF HB 131, PLEASE.

EOM**********

HOUSE LABOR AND COMMERCE, REPRESENTATIVES: FURNACE, UEHLING, RINGSTAD, COWDERY, [redacted], LISKA, VASKA, GOLL, LARSON AND REPS. DAVIS, BETTISWORTH KOPONEN, M.W.MILLER AND SENATORS MOSS, FAHRENKAMP, AND BENNETT

RE: HOUSE BILL 131 AN ACT RELATING TO UNLAWFUL PRACTICES IN THE SALE OR RENTAL OF REAL PROPERTY.





FROM: JERADELL DEZARN YOUNG, S.R. BOX 10289.7, FAIRBANKS 99701
HOME 479-5036

RE: HB131

I SUPPORT THE ADDITION OF THE WORD "PARENTHOOD" TO THE DISCRIMINATION IN HOUSING ACT. LET'S NOT MAKE IT ANY MORE DIFFICULT THAN ALREADY IS TO RENT OR BUY HOUSING.

TO: HOUSE LABOR AND COMMERCE FBY 3/31

FROM: SHARON VAUGHN AND RICHARD BARRICKMAN, 1215 BUNNELL, APT. 34., FAIRBANKS 99701 HOME 456-7341

RE: HB131

I'VE HAVE EXPERIENCED THE PROBLEM OF NOT BEING ABLE TO RENT WITH CHILDREN MANY TIMES AND I WOULD APPRECIATE ANY HELP YOU WILL GIVE TO SEE THAT THIS BILL PASSES.

COM**********

FAIRBANKS 3/31/83

FROM: MARY K. WHITMIRE, 2007 CAPE ST., FAIRBANKS, 99701 HOME 456-4905

RE: HB131

I SUPPORT HB131 AS HOUSING IS A MAJOR PROBLEM IN FAIRBANKS. IT IS BECOMING INCREASINGLY HARDER FOR SINGLE PARENTS WITH CHILDREN TO FIND SUITABLE HOUSING. THIS DISCRIMINATION IS UNFAIR AND NEEDS TO BE CORRECTED.

END OF ALL MESSAGES**********

JR

March 18, 1983



Charlie Bussell, Chairman
Judiciary Committee
House of Representatives
Pouch V
Juneau, Alaska 99811

Dear Chairman Bussell:

Re: House Bill 1 and 131

We would like to voice our opposition to the portion of House Bill 1 which allows 45 calendar days, rather than 30 days written notice to terminate month to month tenancy and substantial changes to rental agreements. We believe that 30 days is adequate and would not be especially good for either landlord or tenant. Most people who are renting on a month to month basis want the flexibility of being able to move within a month's time. We believe putting a longer time period on is apt to give landlords reason to require a month and a half rath r than last month's rent which would be a hardship on tenants. On the landlord's side we believe the longer time would increase problems and lost rents if you have a tenant problem. Landlords must increase rents to recoup lost revenue so in the long run the tenant is the loser.

We also oppose House Bill 131. in its entir ty. It just adds more rules and regulations. Most buildings which can adequately hold children rent to parents so it seems a waste and will only add problems. Also, landlords must know the number of tenants in an apt. and keep records which could be misconstrued as "keeping records of someone's parenthood status".

Please consider these views when the bills come before your Committee.

Sincerely,

Ken & Arlene Brovald

Ken & Arlene Brovald
3524 Alamosa Drive
Anchorage, Alaska 99502

The drunken slaughter must halt

The years are gone but the pain, emptiness and grief remain. Haunting memories have returned. It is a nightmare I've lived through three times in thirteen years.

In what was called the worst accident in Anchorage my 17-year-old niece, one of three Anchorage East High cheerleaders, was killed by a drunken driver as she returned from a wrestling match in 1970.

In 1977, another niece was assisting a motorist on the Seward Highway when she was struck and killed, again by an impaired driver.

Two weeks ago tragedy struck again. While I have yet to learn all the details, I do know my lovely young 20-year-old nephew was obeying all traffic laws and minding his own business when his vehicle was smashed into by a participant in a drag race on Benson Blvd. Police records indicate drinking, speeding and running a red light. My nephew is now dead.

I know that nothing I can do can bring my nephew back but I feel I can and must attempt to save the lives of others like he and my two nieces.

I have questions and I want answers. Those who read this should want answers, too!

Why was there no publicity surrounding my nephew's accident? I'm aware of two other accidents involving similar circumstances the same evening. All three accidents occured sometime after a concert at the Sullivan Sports Arena. None of them received any media attention. Why?

Ironically, the following week there were public hearings regarding the sale of beer and wine at the arena. Is the city so interested in the profit of such sales that information about accidents on the night of concerts are routinely and purposefully suppressed? I would suggest the municipal fathers take another look at this issue. If we are truly attempting to rid ourselves of the menace of drunken drivers it astounds me to think our municipal government is pushing the sale of intoxicating beverages and suppressing the possible consequences. You can be assured I will be knocking on the door of the mayor and members of the assembly to see this decadence stopped.

MADD, I'll be knocking on your door too. It is time for the wanton slaughter of innocent people on our roads and highways to cease forever.

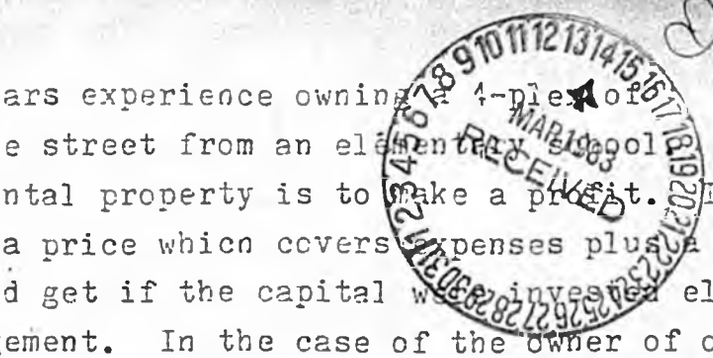
— *Mrs. Lucy Whitehead*

...and humane decision

News 3/10/83

These are my feelings, too Alice Blevins

Comments Regarding HB 131



OR

from a landlady of 17 years experience owning a 4-plex of three bedroom units across the street from an elementary school.

The purpose of owning rental property is to make a profit. The way to do this is to rent at a price which covers expenses plus a profit equal to what you would get if the capital were invested elsewhere plus a factor for management. In the case of the owner of one 4-plex, this management factor is usually represented by his own time and energy.

In an era when the State is being asked to provide endless social services, cultural uplift, sports palaces, indoor high school hockey rinks, senior citizen recreation centers, free abortions, birth control pills for minors without parental notification, etc., it would seem that the State would appreciate a small business person trying to provide for their own retirement.

Unless the State wishes to take over the rental housing industry-with its risks - it would do well to make the laws as clear, brief and non restrictive as possible regarding that industry.

The repeated references to parenthood in this bill are disturbing because it is not clear whether this means parenthood or children. We at Alaska Landlord and Property Managers Ass'n.of which I am on the executive board, had always thought it meant a human being who was a father or a mother. The Human Rights Commission in Anchorage seems to think it means parents with children occupying the same dwelling unit. There seems to be little or no case law on the subject.

It is immaterial to me whether a tenant has experienced parenthood or not. However, a tenant with a child between 15 months and 8 yrs. living with him is a different matter. I have found that putting tenants with such children on the upper floor disturbs the tenant below. It is primarily the sound of their running and playing over head that bothers the lower tenant. This is very real. It is much more satisfactory for all concerned to put such families on the lower level of my 4-plex. Also I am selective of the parents; do they appear to be able to control the kids in respect to others' property and their quiet enjoyment of the areas they share in common with other tenants?

I consider families with children desirable because they stay longe I am very strongly against #0131 because I would lose tenants if I had to place certain children in those upper units.

Alice Brewer
1201 West 45th Ave
Anchorage Alaska 99503

VR

March 15, 1983



Mr. Walter Furnace
House of Representatives
Juneau, Alaska 99811

Dear Mr. Furnace,

I am writing concerning HB 131 which is up for consideration before the Labor and Commerce Committee. Let me say that I as a landlord and property owner am opposed to any legislation that will make a criminal out of me because I am compelled by law to rent, lease any of my property to anyone who may cause damage, or by their actions or life style cause problems for me. I have no quarrel with the sex, race, religion, or national origin but I do feel that because of the nature of some of my rentals I have to be able to exercise some control over to whom I rent. Some of my tenants work irregular hours and need to have quiet, this may not be possible if I were compelled to rent to tenants with children. In some instances when I do rent to tenants with children, I feel that I should have the right to determine the number of children I feel the apartment can comfortably and safely accomodate. We are becomming more aware of child abuse and I feel that over-crowded conditions contribute to this social problem.

Also, I feel that the sale and rental of property are two different ball games. As long as I own the property I have to be responsible for the condition of the property and the welfare of the other tenants. If I chhose to sell the property, and I am referring move to single family dwellings, then it becomes the property of the buyer and he is turn can do with the property as he wishes without having to concern himself with the well-being of the other tenants.

I trust you will take into consideration some of the rights of the property owners as well as the tenant when you review this bill. As a property owner, I have a much larger investment in my property than a tenant who at most may have a few hundred dollars set aside as a security deposit. In most cases the security deposit will notbegin to compensate for the damage an inconsiderate tenant can do.

Sincerely,

Ralph S. Hanson

Ralph S. Hanson
12? East Potter Dr.
Anchorage, Alaska 99502

cc: Mr. Charles Russell
Mr. Rick Uehling
Mr. Cowdery
Mr. Joe Hayes
Ms. Ramona Barnes
Mr. John Lindauer

HB

140

#1

HB 140 AN ACT AUTHORIZING CAPITAL PUNISHMENT, CLASSIFYING MURDER IN THE FIRST DEGREE AS A CAPITAL FELONY, AND ESTABLISHING SENTENCING PROCEDURES FOR CAPITAL FELONIES

PRIME SPONSORS: PESTINGER

CO-SPONSORS: WARD FLOOD LISKA SHULTZ

	DATE	SEQ. NO.	JOURNAL PAGE	HOUSE ACTION	DATE	SEQ. NO.	JOURNAL PAGE	SENATE ACTION
	01/28/83	01	0131	FIRST READING -- COMMITTEE REPORTS				
	04/13/84	02	3324	JUD -- CS02, NR02				
	04/13/84	03	3324	JUD F/NOTE EQUALS ZERO				
**	04/13/84	04	3325	JUD F/NOTE HSE SUPPL #128				
				FINANCE				
				RULES				

HB 141 AN ACT MAKING A SPECIAL APPROPRIATION TO THE DEPARTMENT OF COMMERCE AND ECONOMIC DEVELOPMENT FOR PAYMENT AS A GRANT FOR THE IDITAROD TRAIL COMMITTEE, INC., FOR CONSTRUCTION PERMANENT RACE HEADQUARTERS;PROVIDE EFFECT DATE

PRIME SPONSORS: LARSON

CO-SPONSORS: FULLER

	DATE	SEQ. NO.	JOURNAL PAGE	HOUSE ACTION	DATE	SEQ. NO.	JOURNAL PAGE	SENATE ACTION
	01/28/83	01	0131	FIRST READING -- COMMITTEE REPORTS				
**	03/22/84	02	3012	L&C -- CS04				
				FINANCE				
				RULES				

Execution set for Monday

By CHARLES C. HILL
The Associated Press

New 1/24/83

HUNTSVILLE, Texas — Attorneys for convicted murderer Thomas Andy Barefoot, sentenced to die Tuesday by lethal injection, will ask a U.S. district judge Monday to put off the execution because they say there is new evidence in the case.

Barefoot's lawyers, who also have appealed to the Supreme Court for a stay of execution, will go before U.S. District Judge Lucius Bunton in El Paso on Monday.

Barefoot, convicted of killing a Harker Heights policeman, is scheduled to die before dawn Tuesday in the same death chamber where Charlie Brooks Jr. on Dec. 7 became the first U.S. inmate to be executed by lethal injection.

Barefoot's execution would make Texas the first state to put to death more than one prisoner since the Supreme Court reinstated the death sentence in 1976.

Barefoot, 37, maintains he is innocent and said that if the state kills him, it would be committing the "most premeditated of murders."

His latest appeals came after the 5th U.S. Circuit Court of Appeals on Thursday rejected defense lawyers' contentions that a stay should be granted on grounds that two psychiatrists' testimony should not have been allowed and that a witness now says she lied when she said a man she saw near the time of the shooting resembled Barefoot.

The former oilfield roughneck was convicted of capital murder in the death of policeman Carl Levin, 31, on Aug. 7, 1978, in Harker Heights, a central Texas town.

Prosecutors said Barefoot shot Levin while being questioned about a nightclub fire. They said Barefoot feared the officer would discover Barefoot was a fugitive, wanted in New Mexico on charges that he raped a 3-year-old girl and escaped from jail.

midnight, the prison warden would give the condemned man a chance to say his last words. Then the warden would give word to start the execution.

The executioner, who be hidden behind a locked door and a wall with a one-way mirror, would inject the intravenous solution by means of a tube snaking through the wall to the inmate. Death should come within minutes. Two other drugs are also injected to assure death.

Brooks, convicted of murdering an auto mechanic in Fort Worth, was the first Texas inmate executed since 1964.

He previously had served a year in in prison for cocaine possession in Louisiana and another year for possession of a sawed-off shotgun in Oklahoma.

Prison officials say that if his appeals fail, Barefoot would be executed at The Walls prison in the same manner as Brooks:

About 11:30 p.m. Monday, two needles would be inserted into his arms and connected to neutral intravenous solutions. A few minutes after

Ignore liberals; fry the murderers

Reinstatement of the death penalty is long overdue. The bleeding heart liberals would have you believe these murders were altar boys on holiday. I say fry the creeps.

NEWS 3-7-83 — *Frank O'Dell*

Capital punishment views sought

To the editor:

I am writing this in hopes that thinking people will become aware of House Bill 140, which as of this writing was awaiting a hearing in the House Judiciary Committee. This bill, if passed, would authorize capital punishment for certain offenses within the state.

With this bill, we seem to once again put aside the information gathered on the subject and resort to the ancient eye-for-an-eye and tooth-for-a-tooth philosophy. Admittedly, our justice system needs a radical overhaul, but the short-term solution of killing people for killing people makes little sense to me. Many of the people who call themselves "experts" on criminology have basically come to similar conclusions, namely, the death penalty does not stop the kind of crimes it is designed to, but tends to show a lower stage of development for the societies which use it.

I'd like to again call on all those thinking people who feel other solutions should be sought in place of state-sanctioned killing, to write to our representatives on this bill. I'd like to especially appeal to my friends in the pro-life movement and hope that their desire for consistency will compel them to speak out on this issue.

Greg Stevens
Juneau

LETTERS TO THE EDITOR are the readers' opportunity to speak out on any legitimate or timely topic. Letters should be typed or neatly handwritten. Brevity is desireable. Anonymous letters will not be published, and the editor reserves the right to edit as necessary. Letter writers should include their address and phone number for the editor's reference.

Death penalty debate

News 2-15-83

Legislators and onlookers in the Alaska Senate got a rueful chuckle out of committee referrals made by Senate President Jalmar Kerttula for a death penalty bill introduced last week. Sen. Kerttula sent the bill to both the Judiciary and Finance committees, noting that "it costs money" when the latter assignment drew guffaws. Sen. Joe Josephson, who chairs the Senate Health and Social Services Committee occasioned further chuckles with his observation that the bill "has certain health implications as well."

The laughter no doubt served to break the tension surrounding a very serious matter for all concerned. But committee referrals to at least two different panels indicate that the Senate will give the idea plenty of scrutiny before moving on any death penalty bill this session. And that scrutiny suggests a further consideration for chairmen planning committee hearings: the need for broad public participation in any decision to embrace the death penalty in our state.

The death penalty implicates every citizen in a cycle of violence the state seeks to stop. Before any death penalty bill can advance to a vote of the legislature, it must bear widespread scrutiny and debate among all Alaskans. Public hearings must be held around the state; reputable research about the death penalty and its impacts must be widely distributed and debated; the methods and circumstances of imposing capital punishment must be carefully defined; and, finally, Alaska citizens and their leaders must forthrightly confront the moral dimensions of a painful issue. Such scrutiny would be difficult at best, but it is the very least demanded of a democratic state that would adopt the authority to impose a penalty of death.

News - 2-8-83 — *Bennett E. Taber*

Death penalty instills respect

Your Jan. 30 editorial opposing the death penalty begs reply. Illegal executions is very much in force and has been. All victims of illegal execution (murder) are innocent. This overwhelms the concerns that the state might mistakenly condemn the wrong person.

No proponent I know of wants revenge. We want that potentially violent minority we live with to have respect for society and its laws. In place of respect there is arrogance and contempt. I've seen guns waved and murder threats casually performed.

Sometime in the future, social evolution will take us to that plateau of civilization where we no longer need state executions. How could you state that the victim's pain is acknowledged and properly mourned. Very untrue! No one can imagine the Hitchcock nightmare of a fear-ravaged poor soul fending off repeated strikes of a sharp knife. Or the silent struggle of a woman, her neck in the strong grip of the strangler.

Please print this as soon as possible so it will work as a reply to your editorial.

— *Harold Hermann*

69th year FRIDAY, JANUARY 28, 1983 25¢

Pestinger proposes death penalty

by Bill White
Times Juneau Bureau

Juneau — A bill to resurrect the death penalty in Alaska after a 28-year absense from the state's law books was introduced today by freshman Rep. Sam Pestinger.

The bill would allow a judge to sentence to death some criminals convicted of first degree murder. The method of execution would be decided by the state agency in charge.

"During my campaign, there was strong voter support throughout our district for a carefully reasoned law that would permit capital punishment," said Pestinger, R-Anchorage.

"I believe this is such a law."

Sen. Fritz Pettyjohn, R-Anchorage, is working on a similar bill for introduction in the Senate.

The death penalty was abolished in Alaska in 1957. Co-sponsor of that bill was Sen. Vic Fischer, D-Anchorage, then a member of the territorial legislature.

"It's anti-Christ," Fischer said Thursday of Pestinger's proposal.

"As punishment it violates the commandments," he said, citing the one that states, "Thou shalt not kill."

"And it violates the (state) constitution," he added, citing the section that says, "Penal administration shall be based on the principle of reformation and upon the need for protecting the public."

Alaska executed nine criminals before the death penalty was abolished. The last to die was Eugene La Moore, who was hanged in 1950 at the Juneau federal jail for the murder and robbery of a local grocer.

Pestinger's bill calls for the jury to advise the judge on whether to sentence a first degree murderer to death or life in prison. The judge would need to find one of seven "aggravating factors" to exist before imposing the death sentence. They include:

- The defendant tortured or committed aggravated battery on the victim.
- The defendant was a paid assassin.
- The defendant murdered a police officer, fire fighter, prison guard or prosecutor.
- The defendant belonged to a gang or terrorist group of at least five members, and the murder was committed to further the group's criminal goals.

Pestinger said the jury's advice — which may be ignored — and the aggravating circumstances provide needed checks on the judge's sentence.

"When you're talking about taking a man's life, then you need a lot of checks and balances," he said.

Pettyjohn said his bill proposes one main difference. The jury, not the judge, would impose sentence after a separate hearing on the sentence.

Gov. Bill Sheffield said during his election campaign he supports capital punishment. But he refused to comment on Pestinger's bill without reading it, then reviewing it with Cabinet members, the legislature and the public.

Supreme Court blocks killer's execution

Associated Press Time 1/20/83

Huntsville, Texas — Less than a day before convicted police killer Thomas Andy Barefoot was to be put to death, his execution was blocked by the U.S. Supreme Court.

In a surprise move, the court in Washington scheduled a hearing on Barefoot's case April 26 and told Texas authorities to keep him alive at least until they use his case to decide how federal courts should handle emergency death penalty appeals.

Barefoot had been waiting today in a 7 foot by 9-foot cell a few feet from the death chamber in The Walls prison in downtown Huntsville. He was transferred to The Walls today from death row at the Ellis Unit, about 13 miles northeast of Huntsville, prison spokesman Rick Hartley said.

Barefoot, 37, was convicted of killing a Harker Heights policeman in 1978. He insists he is innocent and that his execution by lethal injection would be "the most premeditated of murders."

Barefoot shot police officer Carl Levin, 31, on Aug. 7, 1978, while being questioned about a nightclub fire. Officials said Barefoot feared Levin would learn he was wanted in New Mexico on charges that he raped a 3-year-old girl and escaped from jail.

The 5th U.S. Circuit Court of Appeals on Thursday rejected a motion to stay the execution.

The defense in the appeal argued that a trial witness has admitted lying when she said she saw a man resembling Barefoot around the time of the slaying, and it said that testimony was improperly allowed.

Six states have executed one man each since the Supreme Court approved reinstatement of capital punishment.

The execution of Charlie Brooks Jr. on Dec. 7 in Texas was the most recent and was the first time an execution was carried out by lethal injection.

Barefoot has twice served one-year prison terms, in Louisiana for cocaine possession and in Oklahoma for possession of a sawed-off shotgun.

1/12/83

tne main concern. Parents wanted to know whether

"My son ha[illegible]ready been displaced twi[illegible]he said.

is tallied.

The meeting began with presentation by Eagle Riv

court report

Child molesting trial opens

A jury of three women and nine men on Tuesday listened to the prosecution's opening statement in the sexual molestation trial of Gillie Jacko, 77. Jacko, of Pedro Bay, is charged with molesting five elementary school-aged girls during the past few years. In her opening statement, Assistant District Attorney Betsy Sheley told the jury that the girls themselves, their confidants and public officials would testify during the trial this week. Defense lawyer Dan Hensley will make an opening statement after Sheley presents her case. There are 45 felony child molesting cases currently open in Anchorage, according to Sheley.

Change of venue granted

The trial of an accused escapee was moved to Palmer Tuesday. Thomas Nelson, 31, allegedly climbed the Palmer Jail fence and escaped late Sept. 30. He was caught walking toward Glennallen at at Mile 131.5 of the Glenn Highway, according to court papers. Nelson is serving time for selling stolen outboard motors. Nelson apparently boycotted his scheduled trial Tuesday, remaining at Sixth Avenue Jail until a talk with his lawyer convinced him to show up. Then defense lawyer Jonathon Katcher moved to move the trial to Palmer, largely for the convenience of witnesses. Judge Karl Johnstone consented to the Palmer jury.

From Daily News staff reports

Two evening win slots on

Two competing night news shows won prime tir slots on the statewide sat lite system at a special mee ing of the Rural Alaska Te vision Network (RATNe board in Anchorage Tuesday

The network, which co trols access to state satelli channels in about 150 v lages, agreed that KIMO-T and KTTU-TV, both of A chorage, may air half-ho statewide news programs the satellite system for t next two years. Quarterly views will assure that produ tion quality is maintain over the two-year period, cording to Helene Nelso Project Coordinator for t state Satellite TV Project.

RATNet's decision is es cially important for KIM because it means a move fr their present undesirable p.m. time slot to 6:30 p.m. considered prime time news shows.

KTTU will retain the 5

would begin.

ll ask the members before they leave their appoint an acting director. Some of the nembers may be reappointed, he said.

ive director John Blaine, who was hired 1980, said he was not surprised by 's action. "I'm surprised only by the ," he said Tuesday. "I was expecting him to have his imprint on the arts. The erves at the pleasure of the governor. I e that the gains the council has made over few years aren't lost."

Gordon Smith, president of the Alaska Arts Alliance, a statewide group of arts organizations that receives state money, said the alliance will recommend criteria for appointing new council members.

"We'll recommend the kind of individual that might be appropriate," Smith said.

During last July's controversy between the council and arts groups, the alliance claimed the council was holding, for its own programs, $1.8 million of the $5.4 million that the legislature [illegible]ed as grants to arts groups.

several resolutions calling utiny of the council's pro- sed to fund arts groups. id the council had "always vices with money from its t the council's founding mention grants."

the editor

The death penalty

Dear Editor:

I am writing this in hopes that thinking people will become aware of House Bill 140, which as of this writing is awaiting a hearing in the House Judiciary Committee. This bill, if passed, would authorize capital punishment for certain offenses within the state.

With this bill, we seem to once again put aside the information gathered on the subject and resort to the ancient eye for an eye and tooth for a tooth philosophy. Admittedly our justice system needs a radical overhaul, but the short term solution of killing people for killing people makes little sense to me.

Many of the people who call themselves "experts" on criminology have basically come to similar conclusions, namely, the death penalty does not stop the kind of crimes it is designed to, but tends to show a lower stage of development for the societies that use it.

Greg Stevens
Juneau

HB 140
JR

Opinion

JUNEAU EMPIRE

WILLIAM S. MORRIS III
PRESIDENT and PUBLISHER

JEFFREY A. WILSON
GENERAL MANAGER

CARL SAMPSON, Managing Editor
FRED HOWARD, Circulation Manager
TOM BLUMENSHINE, Production Manager

We favor the death penalty

Eight people are shot to death and then se afire aboard a fishing boat anchored near Craig.

Six McCarthy residents are gunned down i cold blood.

Four Anchorage teen-agers are chased dow and shot to death as they walk through a park.

Two elderly Juneau residents are bound, stal bed 60 times until they die and then sexuall assaulted.

Listed above are multiple murders that ha pened in our state during the last year. These a not just crimes; they are outrages against societ The grief they have caused cannot be measured prison sentences; it is not enough just to tal those criminals off the streets.

For crimes so shocking, so hateful, we belie the death penalty should be imposed.

The death penalty cannot be debated witho emotion.

In arguing against it, many people believe a "civilized society" should never take a life. They argue the "eye for an eye" tenet should never be applied, and that the sentence is not a deterrent.

In the vast majority of cases, those arguments stand up. A person who acts in a moment of passion, even if he kills another person, should be given the benefit of the doubt and no death penalty should be allowed.

In the some cases, though, the criminal has suspended the rules of humanity.

Multiple murders — when a person kills one person and then keeps on killing — do not qualify the criminal for the compassion of society.

Neither do planned murders.

Neither does the killing of a law officer.

A death sentence should be imposed only after all possible avenues of appeal are pursued, and there exists no shadow of a doubt that the criminal's rights have been protected and that he or she is guilty as charged.

The Alaska Legislature is reviewing proposals to reinstate the death penalty. We urge its members to adopt such a proposal, as long as it guarantees that all appeals may be pursued.

We do not take joy in advocating such a position. In fact, sometimes it hurts to advocate what we believe is the right thing. But it hurts us not nearly as much as it hurts the friends and families of victims of such horrible crimes and the society that allows such criminals to live.

Call for the death penalty

NEWS 1/12/83

Three murders in Anchorage the last week of 1982 prompt me to urge Gov. Sheffield to deliver on his promise to enact the death penalty as soon as possible.

I'm keenly interested because the lives of 1983 murder victims are at stake. I want to save some of them.

— Harold Hermann

Capital punishment

TIMES 2-26-83

Dear Editor:

So called enlightened experts on criminology may have come to conclusions about the death penalty not stopping the crimes it is supposed to. But us poor, uneducated and unenlightened non-experts are getting fed up to the eyeballs with your garbage and the continued killing by your "rehabilitated" criminals who roam the streets making it unsafe to go out of one's own house.

I refer to several incidents in this community such as the high school girl killed at Eastertime two or three years ago, the woman and her son who were killed about one and a half years ago and the most recent one at Russian Jack Springs Park less than one year ago, when four teen-agers died.

We have had enough. The death penalty may not deter killing in some people's point of view. But I'll tell you what: It sure as shooting eliminates second offenders. It's about time more people became aware of this — politicians and bureaucrats included.

A. Ulen
Soldotna

[redacted]



FROM: THOMAS WOOD, SR BOX 5209, EAGLE RIVER 99577
H 694-9430 W 562-2243

IF WE ARE EVER TO CONTROL THE OUT-OF-CONTROL RATE WHICH PERMEATES OUR CODDLING SOCIETY, WE NEED HARD AND FAST DETERRANTS FOR THE WOULD-BE CRIMINALS. ENOUGH OF THESE "GOODY TWO SHOES" REHABILITATORS AND THE GARBARGE THEY EXPOUND. DICK SCHULTZ IS ON THE RIGHT TRACK; CAPITAL PUNISHMENT IS A START IN THE RIGHT DIRECTION.

MAR 1983
RECEIVED

HB 235 140

****

3/11/83, SHIRLEE ANC LIO, 14662

AB 235
140

TO: ALL MEMBERS, ALASKA LEGISLATURE

FROM: RUTH TADDA, 4511 FOLGER, ANCHORAGE 99507
H 561-8809 W 269-5534

REFERENCE CAPITAL PUNISHMENT: DO NOT SUPPORT UNDER ANY CIRCUMSTANCES. "THOU SHALT NOT KILL." I DO NOT BELIEVE CAPITAL PUNISHMENT EVEN IN THE NAME OF THE JUSTICE SYSTEM HAS THE RIGHT TO WAIVE THAT RULE.

****

MSG 83-00012745 PRTY 1 03/03/83 18:25:27 ORIG: LA01 IN= 0020 OUT= 0108
FROM: SHIRLEE ANC LIO TO: POMS JUNEAU INFO
TARGET: LJHL SUBJ: POM

3/3/83, SHIRLEE ANC LIO, 12745

TO: ALL MEMBERS, ALASKA LEGISLATURE

FROM: JAMES PLUMLEY
BOX 75, PRINCE OF PEACE DRIVE, EAGLE RIVER, AK 99577
(H) 694-5416 (W) 694-9511

IT IS TIME TO STOP TALKING AND VOTE ON THE DEATH PENALTY (HB 140) BEFORE THE STATE HAS ANY MORE MASS MURDERS.



****

TO: SENATORS ALL SENATORS

REPRESENTATIVES ALL REPRESENTATIVES

FROM: BRENDA STEPHENS
BOX 669
SOLDOTNA, ALASKA 99669 (H) 262-4443

I WOULD LIKE TO SEE A BILL SUCH AS H.B. 140 ADOPTED AS STATE LAW

WE HAVE BEEN PASSIVE AND CONDESCENDING FOR TOO LONG.

FROM: BRENDA STEPHENS
P.O. BOX 679
SOLDOTNA, ALASKA 99669 (H) 262-4443

FROM WHAT I UNDERSTAND, ALASKA RECEIVES APPROXIMATELY [illegible] MILLION OF FEDERAL MONEY YEARLY. IT IS THE HIGHEST PERCENTAGE OF FEDERAL FUNDING NATIONWIDE.

ALTHOUGH I REALIZE THAT IT IS NOT [illegible] AMOUNT, MY LEGISLATURE LIKES TO SPEND EVERY DOLLAR IT CAN (INCLUDING THE PERMANENT FUND), WE SHOULD WORK TO BECOME INDEPENDENT FROM FEDERAL FUNDING.

4/26/83, SHIRLEE ANC LIO, 12215

TO: ALL MEMBERS, ALASKA HOUSE OF REPRESENTATIVES

FROM: ROBERT CLARK, P.O. BOX 4-1908, ANCHORAGE 99509
(RES: ATKINSON DR.) H 333-5295 W 266-1680

GILBERT AND SULLIVAN'S OPERA, THE MIKADO, STATED IT CLEARLY:
"LET THE PUNISHMENT FIT THE CRIME." SO THOSE FOUND GUILTY
OF VIOLENT CRIME DESERVED EXECUTION. AND IN THE BIBLE
GOD COMMANDED THAT MEN CONVICTED OF VIOLENT CRIME WERE TO
BE STONED TO DEATH. PASS HB 140.

****

BOARD OF CHURCH AND SOCIETY
ALASKA MISSIONARY CONFERENCE
915 SECOND AVENUE
FAIRBANKS, AK 99701

January 19, 1984



Mr. Charlie Bussell, Chairman
House Judiciary Committee
Pouch V M/S 3100
Juneau, Alaska 99811

Re: HB 140

Dear Mr. Bussell:

Although other Western nations have largely abolished the death penalty; and after a decade-long moratorium on this ancient form of social vengeance, there now seems to be growing pressure to return it here in Alaska.

It is my hope that this pressure will be resisted and that HB 140 (seeking to reinstate the death penalty in Alaska) will not be supported.

The General Conference of The United Methodist Church has long opposed the death penalty. It is based on the "lex tallionis" which Jesus repudiated (see Matthew 5:38-39). "Gregg V. Georgia", although permitting the use of the death penalty as retribution, conceded the lack of evidence presented to the Supreme Court that it reduced violent crime.

Perhaps the most persuasive case against the death penalty is its history of falling unfairly and unequally upon outcast minorities.

For your information, I quote from the current Book of Discipline of The United Methodist Church:

> "We support governmental measures designed to reduce and eliminate crime, consistent with respect for the basic freedom of persons. We reject all misuse of these necessary mechanisms, including their use for the purpose of persecuting or intimidating those whose race, appearance, life style, economic condition, or beliefs differ from those in authority, and we reject all careless, callous, or discriminatory enforcement of law...In the love of Christ who came to save those who are lost and vulnerable, we urge the creation of genuinely new systems of rehabilitation that will restore, preserve, and nurture the humanity of the imprisoned. FOR THE SAME REASON, WE OPPOSE CAPITAL PUNISHMENT AND URGE ITS ELIMINATION FROM ALL CRIMINAL CODES." (Emphasis mine.)

Thank you for taking time to read this letter. I hope you will do whatever you can to prevent a backward step from bein taken in Alaska with regard to the death penalty.

Sincerely,

Richard K. Heacock, Jr.

Church & Society Chairman for Alaska Methodists

cc: Alaska Legislators, UM churches in Alaska

METHODISM
For Two Centuries
PROCLAIMING
Grace and Freedom

POUCH V
JUNEAU, ALASKA 99811
465-4990

P.O. BOX 4-1325
ANCHORAGE, ALASKA 99509
248-1515

OR

CHAIRMAN
HOUSE JUDICIARY COMMITTEE
MEMBER
HOUSE RESOURCES COMMITTEE
MEMBER
SPECIAL COMMITTEE ON FISHERIES
MEMBER
LEGISLATIVE COUNCIL
MEMBER
ALASKA CODE REVISION COMMISSION

Representative Charlie Bussell

ALASKA STATE LEGISLATURE
HOUSE OF REPRESENTATIVES

May 2, 1983

W. C. Jones
337 East 24th Avenue
Anchorage, Alaska 99503

Dear Mr. Jones:

As you well know, I agree totally with you in regards to the issue of capital punishment in Alaska.

We need to figure a way to get it through the Legislature which as you know contains just enough liberals to break such legislation. In an attempt to circumvent that problem I put out a ballot proposition. I know the results will heavily favor instituting capital punishment for certain crimes in Alaska.

Armed with these results maybe we can lend some backbone to enough of the spineless ones to get the legislation through.

Thanks for the support and I hope we are out of here in a few days.

Best regards,

Representative Charlie Bussell
Chairman, Committee on Judiciary

CB:lyn

Anchorage AK

The Honorable Charlie Bussell Apr 23, 1983

Dear Sir,

I wish to express my support for Capitol punishment now being proposed.

To say it is not a deterrent goes against human nature. I think it would be a deterrent in many cases.

I am enclosing an article from Newsweek (May 24, 1982) This lists just a few examples. Of course we have our own cases of Meach and Hastings among many others who have wantonly murdered their victims.

Think of the recent case of three teenagers who murdered a helpless old lady for her car and a small amount of money. Can anyone say they would not have been deterred by the threat of a death penalty?

No one likes Capitol punishment. But we must think of the victims of murder, and perhaps more importantly, the tradegy for the loved ones they leave behind.

Sincerely,

W. C. Jones

W. C. JONES
337 E. 24
Anchorage, AK 99503



The Value of Punishment

GEORGE F. WILL

Last February Jimmy Lee Smith walked out of Soledad Prison. His partner in murder nineteen years ago, Gregory Powell, is scheduled for release from another California institution June 18. These and other parole cases, including Sirhan Sirhan's, have stirred proper fury.

On March 9, 1963, Ian Campbell and Carl Hettinger, young Los Angeles policemen, stopped a car that had made a suspicious U-turn. The occupants, Powell and Smith, pulled guns, disarmed the officers, drove to an onion field near Bakersfield and murdered Campbell. Hettinger escaped. The day Campbell was buried, a kidnapper and rapist named Miranda was arrested. Miranda's case generated one of the Warren Court expansions of defendants' rights. It became the basis of one of the blizzard of motions that caused the Powell-Smith case to consume almost seven years and fill 159 volumes—45,000 pages. The harrowing story is in Joseph Wambaugh's superb book (and movie) "The Onion Field."

Smith and Powell were sentenced to death. Retried, Smith was sentenced to life, Powell to death again. In 1972 California's capital-punishment law was declared unconstitutional, sparing Powell and 101 others, including Sirhan, who now says he should be paroled because his victim, Robert Kennedy, were he alive, would agree that he, Sirhan, has suffered enough.

Crime: It is grotesque for Sirhan to put words into the mouth of the man he silenced. And it is grotesque that in 1975—just seven years after his crime—the parole board set a 1986 release date, now moved up to Sept. 1, 1984. The board acted without knowledge of two letters he has written threatening to kill three people. To his lawyer he wrote concerning an author: "Hey Punk . . . if he [the author] gets his brains splattered—he will have asked for it like Robert Kennedy did . . . neither of you is beyond my reach." These threats may be a sufficient reason, but are not the best reason, for denying him parole. The best reason is that fifteen years in jail is not a punishment that fits his crime.

Sirhan has mastered the buzzwords of the playacting that is a normal part of parole processes. He promises to work "to improve the quality of life" if he gets the parole that he says is dictated by "equal treatment under the laws." Actually, the parole board has treated him as it does other murderers. But he did not just murder a man, he assaulted and maimed the democratic system that so many have died defending.

Punishment always involves a judgment of proportionateness. Of the 102 men who in 1972 were sentenced to die in San Quentin's apple-green gas chamber, 29 have been paroled and 25 have release dates. Steve Grogan, 30, was convicted with Charles Manson (another man saved in 1972). A witness to Grogan's crime quoted him saying: "So I had this big machete and I chopped his head off and it went bloop, bloop and rolled out of the way." Grogan has a 1987 release date. Another murderer, who was paroled after 1972, committed a second murder and is back on death row under a new capital-punishment law. Of the 2,173 men serving life sentences for murder in California, only two have been in prison more than twenty years. Increasingly, a life sentence is seen as a fraud that mocks the dead and jeopardizes the living by trivializing the crime of murder and diluting the indignation society needs for self-defense.

It is grotesque for Sirhan to put words into the mouth of the man he silenced.

William Fain, 36, has twice had his parole from San Quentin blocked by public pressure. In 1967 he flagged a passing car, shotgunned a 17-year-old student and raped two young women. The murder victim's family has gathered 62,500 signatures protesting parole. A court has held that "awareness of the public hostility" is a legitimate reason for denying parole.

It may be unfortunate that parole decisions have become political issues. And it may be unconstitutional for them to be influenced by mass pressure tactics. However, a legitimate function of the political process is to serve as a safety valve when judges or bureaucracies lacerate the public's sensibilities. Furthermore, law has an expressive function, expressing and thereby sustaining certain values. There also is a cathartic function of expressive state action. The Nuremberg tribunals, however problematic they were jurisprudentially, performed the vital function of civilizing the vengeance that was going to be expressed, one way or another.

Retribution: In 1952 Justice Hugo Black wrote: "Retribution is no longer the dominant objective of criminal law. Reformation and rehabilitation of offenders have become important goals of criminal jurisprudence." Today, after 30 years of rising crime and recidivism, we at least know what we do not know—how to reform and rehabilitate. In 1972 Justice Thurgood Marshall wrote that "punishment for the sake of retribution is not permissible under the Eighth Amendment." That is absurd. The element of retribution—vengeance, if you will—does not make punishment cruel and unusual, it makes punishment intelligible. It distinguishes punishment from therapy. Rehabilitation may be an ancillary result of punishment, but we punish to serve justice, by giving people what they deserve.

From plea bargaining through sentencing through paroling, the criminal-justice system is riddled with exercises of discretion that are unjustified by sufficient knowledge, and unrationalized by coherent theories. This is especially true at the parole stage, where judgments often presuppose—rashly—knowledge of rehabilitation and individual predictability.

In penology, as in other fields of social reform, the millennium has been indefinitely postponed. For now, we should do what we know how to do, for reasons we can explicate. We should use the criminal-justice system to isolate and punish—that is, to protect society from physical danger—and to strengthen society by administering condign punishments that express and nourish, through controlled indignation, the vigor of our values. We should be ashamed and alarmed to live in a society that does not intelligently express through its institutions the public's proper sense of proportionate punishment for the likes of Smith, Powell and Sirhan. We are in danger of becoming demoralized—literally, de-moralized.

HB 140
To File

JAN 1984
RECEIVED

1666 Patterson
Anchorage, Alaska 99504
January 24, 1984

Rep. Charlie Bussell, Chair
House Judiciary Committee
Pouch V M/S 3100
Juneau, Alaska 99811

Dear Representative Bussell:

Just want to add my word of opposition to the Death Penalty concept for our life style here in Alaska.

When I compare actual societies, I would prefer one in which there is not the concept of ultimate revenge at the point of taking a life for a life.

It seems to me that we are saying "we will kill you to prove how wrong killing is". Doesn't make sense to me.

Sincerely,

John J. Shaffer

John J. Shaffer

Enclosures: some statements on the subject that might be helpful to your deliberations.

Death penalty raises opposition

'Taking life diminishes each of us,' religious leaders say

(Compiled From News Releases

INDIANAPOLIS — Religious leaders here voiced opposition to capital punishment as the state scheduled the execution of convicted murderer Steven Judy earlier this month.

Protestant and Catholic leaders urged the governor to commute the death sentence to life imprisonment prior to the execution, saying that "taking another life only compounds the tragedy and diminishes each of us."

Bishop James Armstrong, the United Methodist leader of the Indianapolis area, was the spokesperson at a news conference four days before the execution along with the Rev. Harold B. Statler of the Indiana Council of Churches and Rabbi Dennis C. Sasso.

Contrary to Will of God

Concern was expressed for the convicted murderer, for the families of both the victims and Judy's foster parents, for those who carried out the execution and for "the values of a civilized society and the conviction that capital punishment is contrary to the will of God."

Their opposition was based on four reasons: "it is morally wrong to continue the cycle of killing," "capital punishment is used in a discriminatory manner," "there is no conclusive evidence that it is a deterrent to crime," and "it is irrevocable — an error cannot be undone."

The 20 district superintendents of the UMC's North and South Indiana annual conferences also requested the governor to commute the sentence.

Several hundred persons gathered for an ecumenical prayer service in St. Ann of the Dunes Catholic Church near the state prison the Sunday before and joined in a candlelight vigil outside the prison.

A statement decrying violence — that which shaped Steven Judy's life, the violence he committed in taking the lives of four innocent victims, and that executed by the state in taking his life — was prepared by Bishop James Armstrong of the Indianapolis Area and read during funeral services March 12 for the convicted murderer.

Bishop Armstrong had been asked to participate in the service by Mr. Judy's foster parents, Mr. and Mrs. Robert Carr, but he could not because of a meeting of the Methodist bishops of four denominations in Atlanta at the same time.

Bishop Armstrong's statement, which included a prayer for the victim's family, was read by the Rev. David Felton, a staff member of the Indiana Council of Churches who conducted the service at a funeral home.

"The Lord of the Christian faith, referring to a primitive law of retaliation, quoted it and said, 'It was said of old, an eye for an eye and a tooth for a tooth; but I say unto you . . .'

"Only the quality of life, expressed in routines of daily life, can overcome the prevailing, spreading climate of violence," the bishop said. "As the Epistle of I John suggests: 'Love must not be a matter of words or talk; it must be genuine and show itself in action (I John 3:18 NEB).' "

The Social Principles of the United Methodist Church state the denomination's official opposition to capital punishment and urges its elimination from all criminal codes.

Public support for the death penalty, however, has reached the highest point in 28 years, with 66 percent now supporting execution for persons convicted of murder, says the latest Gallup Poll.

The poll taken Jan. 30 to Feb. 2 found that 25 percent of the American public opposed capital punishment and nine percent had no opinion.

Public support increasing

Support for capital punishment has risen steadily from a low of 42 percent in 1966. But, while a large majority now favor the death penalty for murder, only 37 percent favor it for persons convicted of rape, 39 percent for treason and 22 percent for airplane hijacking.

Four persons have been executed in the U.S. since the 1976 Supreme Court decision lifting the ban on capital punishment.

Eight women and 731 men are on death row, more than 500 in Deep South states.



A TIME TO SPEAK

Capital punishment

by Most Rev. Michael Kenny
Bishop of the Diocese of Juneau

The first time I met him two years ago, I liked him at once. He had just been named auxiliary bishop of Cleveland. At 41, he was the youngest member of the American hierarchy, and a black. He had an air of confidence about him that was in no way threatening. He was definitely a man on fire, but with a calm and without anger. And he had a warm and welcoming smile.

Since that first meeting, Bishop James Lyke has become not only a friend, but a man I greatly admire and respect. Among the bishops he has become an eloquent spokesman for the poor. Without pointing a finger or being self-righteous, he has challenged the bishops to be consistent, accountable and, above all, faithful to the Gospel. When he speaks, the bishops listen because he is serious, knowledgeable and on target.

At the conclusion of the National Conference meeting in November of 1980, Bishop Lyke took the assembly to task for spending an inordinate amount of time on items of lesser importance that came early on the agenda (e.g. the translation of a prayer for the Mass for St. Kateri Tekakwitha), and not leaving enough time for items of greater significance that came up later (e.g. a statement on capital punishment). The bishops accepted his point and the meeting in 1981 reflected a definite change.

On the capital punishment issue, Bishop Lyke had wanted to speak out in strong opposition. As a black he knew firsthand how unequally the death penalty is meted out to poor people and to minorities. But infinitely more important to him, as a Christian and as a Franciscan, he desired to proclaim how contrary to the compassion and gentleness of Jesus the execution of our brothers and sisters truly is. The bishop had wanted to say these things back in 1980, but time had run out.

Perhaps this is providential. For this month Bishop James Lyke has been given his moment to speak his mind and heart, and to tell others his reading of the Gospel. The circumstances grace his words with an eloquence, a power and a credibility that is inescapable.

On January 1, his 59-year-old brother Amos was murdered in his own home, brutally suffocated by four assailants. In the funeral homily Bishop Lyke spoke his truth.

"For those who killed my brother, we beg God's mercy and forgiveness. With St. Paul, we believe deeply that we shall overcome evil with good. We listen intently to Christ's words, 'Love your enemies; pray for your persecutors.'

"While we would want some form of justice, I would not desire the death penalty. Capital punishment is inconsistent with the way and thinking of Jesus, who could have called twelve legions of angels to his defense, but instead chose to die that even his enemies might have life.

"In a very real way, we are all on trial. So much of what all of us do fosters a climate of violence in our society and feeds the systems of aggression that cheapen human life.

"When we attempt to solve family problems through physical force or vitriolic words, when we applaud the injury of others, when we view television programs or attend movies wherein violence is glorified, when we use or condone the use of drugs, when we join gangs that bring fear and terror to our neighborhoods, when we purchase 'hot' goods, when we participate in these and so many like activities, we support and feed the climate of violence and the systems of aggression."

Thank you, Jim. God comfort you and your family. God give your brother eternal life. And God bless and forgive your brother's murderers.

THE BISHOP'S SCHEDULE

Feb. 2	Holy Name School, Catholic Schools Week
Feb. 2	St. Rose, Wrangell: Parish Council Meeting
Feb. 3	St. Paul's, Juneau
Feb. 6-7	St. Gregory's, Sitka
Feb. 14	Juneau: Br. Loughlan with lay and religious
Feb. 15-17	Sitka: Br. Loughlan, Priests Meeting
Feb. 17	Sitka: Br. Loughlan with lay and religious
Feb. 21	Ketchikan: Br. Loughlan with lay and religious
Feb. 21-23	Mt. Angel Seminary: consultation on social justice
Feb. 24	Cathedral, Ash Wednesday
Feb. 26	Anchorage: Anniversary of Papal Visit
Feb. 27	Cathedral: Rite of Election
Feb. 28	St. Peter's: Rite of Election
	St. Paul's: Rite of Election
	St. Therese, Skagway: Rite of Election

Former state corrections director opposes death penalty

By CHARLES F. CAMPBELL

Lately there has been quite a lot of talk on the part of candidates for public office about reinstitution of the death penalty in Alaska.

The news reports I have seen suggest to me that those advocating capital punishment legislation, in the course of their political efforts, have not taken the trouble to look into this matter except, perhaps, to read the polls which indicate that 75 percent of the people of Alaska favor the death penalty.

The fact of the matter is that for all of the controversy surrounding it, very few people appear to know what needs to be known about this unhappy subject. For example, it is assumed that, if nothing else, the death penalty would save the state money, when in fact, the data indicates that the death penalty is the most costly remedy available in the criminal justice process.

I will take time here to comment on only one of the considerations which have so thoroughly convinced me that we should continue to reject the notion of capital punishment. The most compelling of these considerations is the matter of the probable effect of executions on those who



might be predisposed to violent crime. During the eight-year moratorium following the decision in Furman v. Georgia, the U.S. Supreme Court listened to reams of testimony on the issue of deterrence and was unable to conclude tht there was a deterrent value to capital punishment.

And now we have extensive research conducted by Bowers and Pierce of Northeastern University, supported by the findings of other investigations, which indicates that executions are *more likely to incite than to deter* potential murderers.

A judgment cannot yet be made as to the validity of the various studies on the question of deterrence, except to say that the weight of the evidence at present strongly argues against use of the death penalty, if our real concern is with the matter of reducing the incidence of major violent crime.

We really should not be surprised at the findings of the Bowers-Pierce research. They tell us something that we already should have realized — that responding to violence with violence begets more violence. The state has no business sinking to the level of the behavior it has the responsbility to punish. Who is helped when the state engages in the grisly act which an execution inevitably is? Certainly not the victim or the victim's loved ones, and, as has become clearer, certainly not the potential victims of major violent crimes.

Apart from the question of deterrence, reinstitution of the death penalty would create a morass of ugly, cultural-

ly divisive, costly problems for the state, while accomplishing nothing of value.

Assuming that they are truly concerned about the best interests of the people of the state, I would strongly urge Mr. Fink and others running for political office, who have chosen to make use of the death penalty question in their political campaigns, to study this serious matter more carefully before talking about it further.

☐ Charles F. Campbell is former director of the Alaska Division of Corrections.

letters from the people

Communication



Sept 78

Capital Punishment

From Bishop Jack Tuell

Oregonians face a number of moral issues in the balloting this November, but one that is as clear cut as any is Ballot Measure 8, which would restore the death penalty in certain cases. The United Methodist Church has taken a strong position on the subject: "We oppose capital punishment and urge its elimination from all criminal codes." (Discipline, Page 100.)

I agree with all of my heart that the death penalty is wrong and urge Oregonians to vote "no" on Ballot Measure 8. A brief summary of reasons:

Non-deterrence: The most common argument for imposing the death penalty is that it will deter crime. That is a lie. No reputable study bears out the contention that it will deter crime. Many studies show it to be irrelevant.

Irreversibility: No sentence can be more final than death. Yet frequently new evidence arises in murder cases and a person who has served ten years in prison is found to be innocent and is freed. What if that person were dead, killed by us? A Christian faith that teaches hope and reverence for life cannot condone such action.

Barbarousness: The death penalty is barbarous. "It is a killing done with extensive premeditation, with the long foreknowledge of the victim, with great ceremony, under cover of law and with widespread public approval." (Henry Schwartzchild) Furthermore, we do this act of barbarity, as the State acts in our names. How can a Christian participate in such slaughter?

Unfairness: It is a well-established fact that the people who end up on death row are the poor or the non-white. Of 3,859 people executed in the United States between 1930 and 1968, 53.5% were black. How often has a well-to-do white person accused of murder ended up being executed? And in one of the few situations in the world which may be discriminatory agninst men, over 99% of those 3,859 executed were men.

Those who favor the death penalty often accuse those who oppose it as caring more for criminals than for their victims. Nothing could be further from the truth! But as someone has asked, "Why do we kill people who kill people to prove that killing is wrong?"

Oregon has gained a reputation over the years as a humane and forward looking State. Let us not take this giant step backwards at the November elections.

Faithfully yours,
Jack M. Tuell

PORTLAND PASTOR HONORED

The Reverend Mr. Peter Warner, Pastor of the Parkrose United Methodist Church was honored June 20 by receiving a certificate of recognition by The National Conference of Christians and Jews of Portland. The citation is "For distinguished and uncommon contributions to and dedicated concern for varied segments of our community." "For a sensitive and empathetic spirit contributing to the lowering of barriers and changing of attitudes in the community, all being in the highest traditions of National Conference of Christians and Jews and bringing to bear 'the Brotherhood of Man.' "

Rev. Peter Warner, has been an American citizen for just five years but has been a member of this conference for several years, coming here from Jamaica, where he had been a member of the British Methodist Church and missionary to Jamaica.

In the nomination of Rev. Warner for this award, Barbara Roberts, Multnomah County Commissioner gave evidence of his community service and concern as she describes the several innovative activities in which he and his church are engag Mrs. Roberts states "He is a professi counselor for Northwest Counsel Associates, chairman of the Parkr School Board, referee for both amateur professional soccer. He is the innov for an exciting new mental he program called "David's Harp'."

"David's Harp" is a socialization pro for patients being discharged from me hospitals. The concept of the program i build a bridge between hospital community, by developing self-confide and social skills in returning patie More than 150 person from congregation have volunteered t services, and so far 75 persons h been trained and are working in project that has come to be known "David's Harp."

The United Methodist expresses congratulations to Peter Warner for significant award and the spirit ministry which he performs for Parkr United Methodist Church and Portland community. The entire c ference can add its note of appreciation this member of the annual conference having received this citation.



A PART OF the United Methodist participants in the International School of Christian Mission held at Portland University are: (from left) Don Crego, Smith, Roberta Dykes, Dr. Don Struche New York, and Marji Tuell.

Marji Tuell Contributes Article

Marji Tuell, a Certified Director of Music, speaks of TREADMILLS, TRENDS, AND TREATS, in an article written by her for Music Ministry, a monthly magazine for church musicians. The article appeared in the June, 1978 issue of the paper, edited by our curriculum resources of the United Methodist Church.

Everyone in the conference knows Marji as a person dedicated to good music in the church and one who has led many persons an groups in hymnsinging workshops in churches in Oregon and Idaho. Marji also taught a hymnody class at the April Assembly of The United Methodist Women in St. Louis.

The article is worthy of your attention and reading. It would be well for all church musicians and pastors to read it and share its wisdom within the Church.

Odell Church Plans Addition

October 1, has been set for the build of a new entrance ramp to the Odell U The covered ramp will make easy acc to the basement dining room and upper sanctuary for wheel chair us The building program also calls relocation of restrooms in the church keeping with modern plans related wheel chair persons.

The total cost of the project will amo to $18,000. All of the money has co donations to the project except for $5, from the Mid-Columbia Economic velopment District Area on Aging. new ramp will help the church expand program to senior citizens in community. The Rev. Mr. Ed. Stubb Pastor of the Odell church.

World Communion

Ron Ray, Diane Serving In Africa

Oregon-Idaho Conference's latest con- Hausa, the trade language of the N

Daily News

Winner, 1976 Pulitzer Prize Gold Medal for Public Service

Katherine Fanning
Editor and Publisher

Howard Weaver
Managing Editor

Gerald E. Grilly
General Manager

Steve Lindbeck
Editorial Page Editor

Lawrence Fanning Editor and Publisher 1967 to 1971
Alaska's Only Morning Newspaper • Founded in 1946 by Norman C. Brown

2/27/83

Public reassurance in a civilized way

Superior Court Judge Victor Carlson admirably carried two big burdens in an Anchorage courtroom last week: protecting public safety and dealing with an angry outcry in the wake of the conviction of Charles L. Meach for the murder of four Alaska youths.

There was little doubt, once a Fairbanks jury convicted Mr. Meach of first-degree murder, that the circumstances demanded the stiffest possible sentence for one of Alaska's most brutal and vicious crimes. Charles Meach gunned down four separate victims in cold blood and without the least provocation. Eight years earlier he had killed a 22-year-old grocery clerk and been hospitalized for mental disease or defect. The public needed reassurance that he would never walk the streets again, and so it was done: Judge Carlson sentenced Mr. Meach to 396 years in prison — without chance of parole — in what was the maximum possible sentence and the longest prison term in state history.

But he did more than that. The remarkable part of Judge Carlson's sentencing comments was what he had to say about the "hue and cry for capital punishment" arising from the cold-blooded killings last spring. "I want this record to demonstrate," wrote the judge, "that capital punishment would be wrong and not in the public's interest if capital punishment was available in this case . . ."

And he listed seven concise reasons why the death penalty is inappropriate to a society pretending to call itself humane:

- Homicide on behalf of the state is inconsistent with our culture's most basic respect for human life;
- The expense of trying a capital case is large, since absolutely "no stone can be left unturned" by either side when the life of a defendant is at stake;
- The extra emotional cost to all, especially jurors, encourages acquittals when the prosecution might otherwise meet its burden of proof beyond a reasonable doubt;
- The criminal justice system is not above error, but there can be no recourse if an innocent person is put to death;
- The death penalty skews the administration of justice when defendants — acutely aware that the trial process is not infallible — plead guilty to lesser offenses to avoid the threat of a death penalty;
- Imposition of the death penalty has not been without bias. A greater than representative number of illiterates, poor, minorities and political criminals have faced the death penalty in the United States; and
- Two wrongs do not make a right. The death of a murderer is only symbolic retribution, and can never bring back the victim.

Judge Carlson was correct to impose a sentence designed to keep Charles Meach behind bars the rest of his life — and equally correct to insist that taking still another life would serve no civilized purpose.

HB

140

#2

STATE OF ALASKA 1984 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date: 1/13/84

REQUEST
Bill/Resolution No.: HB 140
Title: "An Act Authorizing Capital Punishment"
Sponsor: Rep. Pestinger
Requestor: House Judiciary
Date of Request: 1/11/84

FISCAL DETAIL
Agency Affected: Dept. of Administration
Program Category Affected: Due Process
BRU, Program or Subprogram(s) Affected: Public Defender Agency

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 84	FY 85	FY 86	FY 87	FY 88	FY 89
OPERATING						
100 PERSONAL SERVICES		1271.9	1348.2	1429.1	1514.8	1605.7
200 TRAVEL		169.0	179.1	189.8	201.2	213.3
300 CONTRACTUAL		710.0	752.6	797.8	845.7	896.4
400 SUPPLIES		34.0	36.0	38.2	40.5	42.9
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS						
800 MISCELLANEOUS						
TOTAL OPERATING	-0-	2233.9	2315.9	2454.9	2602.2	2758.3
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND	-0-	2233.9	2315.9	2454.9	2602.2	2758.3
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS:

FULL-TIME		22.0	22.0	22.0	22.0	22.0
PART-TIME						
TEMPORARY						

SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

GENERAL FUND

ANALYSIS: Attach a separate page for analysis

Prepared By: Dana Fabe
Division: Public Defender Agency
Phone: 279-7541
Date: 1/13/84

Approved by Commissioner: Lisa Rudd
Agency: Administration
Date: 1/17/84

Distribution (by Agency preparing fiscal note):
Legislative Finance
Legislative Sponsor
Requestor
Office of Management and Budget
Impacted Agency(ies)

12/1/83

House Bill 140
Fiscal Note Analysis
Prepared by Public Defender Agency
Department of Administration

Date: January 16, 1984

If this death penalty bill is enacted, representation of the poor in death cases must be adequate. This is due to the possibility that an innocent person might be killed by mistake. Some degree of mistake is of course a potential problem in all criminal cases. But in non-death cases, the system stands ready to correct those mistakes where they become known. An execution can never be corrected.

Due to these considerations, the processing of a death case is much more complex and expensive than other criminal cases. Not only are extraordinary amounts of attorney time and substantial expert fees necessary in the guilt phase of a trial, but the penalty phase, in which a jury determines whether or not to put a person to death, takes on tremendous significance. This penalty phase requires extensive preparation, the use of psychiatric experts and family and friends from out of state, and other necessary expenditures.

Finally, even after the death penalty has been imposed, the appeal procedures in death penalty cases are lengthy and time consuming. After guilt and penalty phases of a case, the following procedures would be routinely necessary:

(1) Appeal of conviction to the Alaska Court of Appeals.

(2) Petition for Hearing to the Alaska Supreme Court.

(3) Automatic sentence review by Alaska Supreme Court.

(4) Writ of certiorari to the United States Supreme Court.

(5) Post-conviction relief proceedings in state court.

(6) Appeal of post-conviction relief proceedings in the Court of Appeals.

(7) Petition for Hearing of post-conviction relief proceedings to the Alaska Supreme Court.

(8) Writ of certiorari to the United States Supreme Court.

(9) Petition for Writ of Habeus Corpus in the Federal District Court.

(10) Appeal to the United States Court of Appeals.

(11) Rehearing in the United States Court of Appeals.

(12) Writ of certiorari to the United States Court of Appeals.

(13) Commutation applications to executive branch.

(14) Emergency stays to the United States Supreme Court.

The figures in this fiscal note are based on the average number of cases which would have qualified under the bill as capital cases which were handled by this agency during the past two fiscal years. This agency handles approximately 30 first degree murder cases each year which would qualify as capital cases under this bill. The specific figures were arrived at as follows:

(1) Personal Services. This agency is currently 13 attorneys short of the LEAA standards for the maximum number of cases to be handled by an attorney to ensure competent representation when no death penalty cases are involved. Death penalty cases take substantially more attorney time than other cases. For example, the Florida Legislature has adopted standards which permit an attorney to handle no more than eight death penalty trial cases per year, or five death penalty appeal cases per year. For comparison, the LEAA figures are 150 non-death felonies or 25 appeals a year. Some states have applied far more stringent standards. For example, the California state appellate defender permits attorneys to handle only two death penalty appeals per year. Given the fact that the attorneys who handle death penalty cases will have to be given drastic caseload relief, their extra cases will be loaded onto the caseloads of attorneys whose caseloads already exceed recommended maximums. Thus, at a minimum, this agency must be brought close to the nationally recommended number of attorneys required to handle the caseload as it exists without the death penalty. This necessitates the addition of twelve additional attorneys, plus necessary investigation and clerical support staff.

(2) Travel and Contractual Fees. The New York State Defender Association has estimated that a minimum figure for expert witness fees must be $30,000 for the guilt phase and $30,000 for thepenalty phase per case. Thus, the contractual and travel costs for expert witnesses has been calculated at $60,000 per case. This figure does not include any expert fees which might be necessary at the appellate stages. The amount of contractual fees estimated in this fiscal note is substantially less than that amount estimated by the New York Defender Association.

(3) Equipment and Supplies. Other costs include expanded office space for additional personnel as well as equipment and supply money for additional personnel.

House Bill 140
Fiscal Note Analysis
Prepared by Public Defender Agency
Department of Administration

Date: January 16, 1984

The above costs do not take into account contingencies such as reversals and retrials after appeal, travel to Seattle and Washington, D.C. to argue before the Ninth Circuit Court of Appeals and the United States Supreme Court and other costs which at this time are difficult to predict. However, the cost of defending a capital case is tremendous given the unique nature of the death penalty, and without adequate representation a conviction will not withstand appellate challenge.

BUDGET SUMMARY

Personal Services		
An Attorney IV at Sitka-	70.2	
Juneau-	67.9	
Bethel-	88.2	
Palmer-	70.2	
Nome/Kotzebue	91.4	
Three Attorney IV at Fairbanks-	231.9	
Four Attorney IV at Anchorage-	271.6	
Two Investigator III at Fairbanks-	106.4	
Two Investigator III at Anchorage-	93.6	
A Legal Secretary I at Sitka-	29.4	
Bethel-	35.9	
Juneau-	28.6	
Fairbanks	31.9	
Two legal secretaries for Anchorage-	57.2	
TOTAL		1271.9
Travel:		
Based on 30 capital cases per year		
Guilt phase-		
Penalty phase-		
Appellate phase-		169.0
Contractual:		
Based on 30 capital cases per year		
Guilt phase-		
Penalty phase-		
Appellate phase-		
Additional office space for Fairbanks and Anchorage-	70.0	710.0
New Office Space for Sitka	20.0	
Supplies:		34.0
Equipment:		49.0
TOTAL		2,233.9

STATE OF ALASKA
THE LEGISLATURE

POUCH Y STATE CAPITOL
JUNEAU ALASKA 99811
907 465-3800

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM January 17, 1984

SUBJECT: Sectional analysis of HB 140

TO: Representative Charlie Bussell
Chairman, House Judiciary Committee

FROM: Edward H. Hein
Legislative Counsel

Section 1 makes first degree murder a capital felony.

Section 2 provides that a person convicted of a capital felony is subject to a mandatory sentence of 20 - 99 years' imprisonment or death.

Section 3 adds a new section, AS 12.55.115, to the statutes. Subsection (a) allows an automatic appeal to the Alaska Supreme Court of a death sentence for a period of 60 days after the sentence is handed down. The court may extend the time limit. Such an appeal must be given first priority by the court and the court may adopt special rules for hearing such an appeal. The court is required to make three determinations:

(1) was the sentencing influenced by passion, prejudice or arbitrariness?;

(2) was the finding of an aggravating factor supported by the evidence?; and

(3) is the death penalty imposed in similar cases?

Under subsection (b), if the Alaska Supreme Court upholds the death sentence, the trial court is required to specify the time, place and manner of execution.

Section 4 adds five new sections to the statutes:

(1) AS 12.55.177 establishes a procedure for the sentencing of a person convicted of a capital felony. Under subsection (a), sentencing is a separate proceeding following the trial or guilty plea. The proceeding is conducted before the trial jury or, if there was no jury trial, before a specially impaneled jury. Under subsection (b), the state and the defendant may present any relevant evidence concerning aggravating and mitigating factors, so long as the evidence was not obtained in violation of the state or federal constitution and so long as the defendant has the opportunity to rebut hearsay statements.

It is not clear whether subsection (b) is intended to disallow invocation of evidentiary privileges in a sentencing proceeding. The rules relating to evidentiary privileges are the only rules of evidence which are specifically made applicable to sentencing proceedings by Rule 101 of the Alaska Rules of Evidence. In light of the requirements of the Alaska Constitution and of Uniform Rule 39(c) that bills must note any changes being made to court rules, it would be prudent to clarify the legislative intent of subsection (b).

(2) AS 12.55.178 requires the sentencing jury to produce an advisory sentence for the court. The jury must decide three questions:

(A) did aggravating factors exist that justify a death sentence?;

(B) were there mitigating factors involved that outweigh the aggravating factors?; and

(C) should the sentence be a term of imprisonment or death?

(3) AS 12.55.179 requires the sentencing court to consider the evidence and the jury's advisory sentence and to enter a sentence. Subsection (a) provides that if a death sentence is imposed, the court must state in writing the aggravating

factors that exist to justify the sentence and any mitigating factors considered by the court. Subsection (b) restates the fact that a death sentence may be automatically appealed to the Alaska Supreme Court under AS 12.55.115.

(4) AS 12.55.180 lists seven aggravating factors, any one of which could justify imposition of a death sentence if not outweighed by mitigating factors. The aggravating factors are:

(A) committing torture or aggravated battery amounting to deliberate cruelty during the crime;

(B) creating a risk of imminent physical harm to three or more persons;

(C) having a prior conviction of a violent felony;

(D) committing the crime under contract or for money;

(E) committing the crime while on release for another felony charge or for a conviction involving assault as a necessary element;

(F) the victim was a judge, prosecuting attorney, police officer, correctional employee or fireman and the crime was committed during or because of the victim's exercise of official duties; and

(G) the crime resulted from a conspiracy of five or more persons.

(5) AS 12.55.181 lists four mitigating factors:

(A) the defendant committed the crime under duress, coercion, threat or compulsion;

(B) the defendant was young and was influenced to commit the crime by a more mature person;

(C) the defendant acted in response to serious provocation by the victim; and

(D) the defendant helped authorities detect or apprehend others involved in the crime.

At page 4, line 12, the bill states that all mitigating factors, including the four that are listed, must be considered. Thus, a defendant is entitled to raise anything that could be construed as a mitigating factor, even if it is not listed. This statute, however, does not specify who must consider the mitigating factors. Is it the court, the jury, or both? Likewise, this statute does not say whose judgment controls on the question of whether the mitigating factors outweigh any aggravating factors that exist. Under AS 12.55.178(2), the sentencing jury would be required to balance mitigating factors against aggravating factors. But the jury's findings are only advisory. It is not clear, under AS 12.55.181, whether a finding by the jury that the mitigating factors outweigh the aggravating factors is sufficient to prevent imposition of the death sentence if the judge disagrees with the jury's findings. In light of the gravity of this determination, legislative intent should be made clear. This could be done by using the active voice instead of the passive voice at page 4, lines 10-13. The same considerations just discussed apply to the language at page 3, lines 16-18.

Section 5 removes from the jurisdiction of the state court of appeals cases in which a death sentence has been imposed. Note that under the 1984 legislative drafting manual, nothing less than a full subsection should be amended in a bill. Thus, the full text of AS 22.07.020(a) should appear in section 5.

Section 6 The purpose of this section is not clear. Apparently this section is an attempt to remove appeals of death sentences from the jurisdiction of the state court of appeals. The statute being amended, however, deals only with jurisdiction over appeals of sentences of imprisonment. Thus, section 6 is both confusing and superfluous.

EHH:ojb
J2/C34

STATE OF ALASKA 1984 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date: January 17, 1984

REQUEST:
Bill/Resolution No.: HB 140
Title: "An Act authorizing capital punishment...."
Sponsor: Pestinger, Ward, Flood and Liska
Requestor:
Date of Request:

FISCAL DETAIL:
Agency Affected: ADULT CORRECTIONS AGENCY
Program Category Affected: Administration of Justice
BRU, Program or Subprogram(s) Affected:

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 84	FY 85	FY 86	FY 87	FY 88	FY 89
OPERATING						
100 PERSONAL SERVICES			986.4	1016.0	1046.5	1077.9
200 TRAVEL			5.5	5.7	5.9	6.1
300 CONTRACTUAL			7.6	7.8	8.0	8.2
400 COMMODITIES			6.6	6.8	7.0	7.2
500 EQUIPMENT			2.6	-0-	-0-	-0-
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC.						
800 MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	1008.7	1036.3	1067.4	1099.4
CAPITAL	-0-	1900.5	-0-	-0-	-0-	-0-
REVENUE	-0-	-0-	-0-	-0-	-0-	-0-

FUNDING: (Thousands of Dollars)

GENERAL FUND	-0-	1900.5	1008.7	1036.3	1067.4	1099.4
FEDERAL FUNDS						
OTHER (Specify Source)						
TOTAL	-0-	1900.5	1008.7	1036.3	1067.4	1099.4

POSITIONS:

FULL-TIME	-0-	-0-	18	18	18	18
PART-TIME						
TEMPORARY						
TOTAL	-0-	-0-	18	18	18	18

SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

The funding source was not identified by the author of the bill.

ANALYSIS: Attach a separate page for any Analysis.

Prepared By: William W. Ladwig (William W. Ladwig) Phone: 465-3376
Division: Administrative Services Date: January 17, 1984

Approved by Commissioner: William W. Ladwig for Roger Endell Date: January 18, 1984
Department: ADULT CORRECTIONS AGENCY

Distribution:
Legislative Finance
Legislative Sponsor
Requestor
Office of Management and Budget
Impacted Agency (ies)

12/1/8

ANALYSIS

A. Assumptions:

Enactment of House Bill No. 140 would change the State law to permit capital punishment for the crime of murder in the first degree. Current estimates indicate three convictions per year for this offense would involve executing the death penalty. Because of the lengthy appeal process in cases where the death penalty has been imposed, it is anticipated that a significant number of persons would have to be confined in a separate confinement area. The national average length of time between sentencing and execution of the death penalty is 6 to 7 years. Therefore, we are predicting the need for a maximum of 20 death row beds.

1. Capital expenditures required to provide specialized space not currently available in existing State correctional centers. Details follow in B-1.

2. The new space will be adjacent to an existing facility, but isolated. Existing authorized staff could not provide for the necessary security of inmates housed in the area designated for prisoners sentenced to execution.

3. Two additional fixed guard posts to be created and one post for roving patrol due to the high security and high risk nature of the unit. To man one post 24 hours per day, 7 days per week requires 5 Correctional Officers II plus 1 Supervisor Correctional Officer III.

4. Inflation is estimated at 6% per year except as noted.

5. The unit will be available for occupancy July 1, 1985.

B. Estimated Costs

1. Capital Expenditures

a. Functions and square footage allocations are derived from accepted space standards and are adjusted to an existing design for a 20-cell complex.

b. Assumes this structure will be an addition to an existing institution with all activity for prisoners sentenced for execution to be limited to this maximum security unit.

Analysis (continued)

c. Assumes only the usual 6% equipment factor and does not include costs for whatever type of equipment would be appropriate for the specified method of execution.

d. It is estimated that the cost will be $281.00 per square foot, considering the fact that this unit must be more secure than other facilities under construction and the relatively small size of the building.

e.

Area Identification	Square Footage	
Secure Control Room	120	
20 cells w/commodes @ 80 sq. ft. per cell	1600	
Day room/Dining area	300	
Shower Rooms (Male, Female)	140	
Counseling/Attorney Room	120	
Secure visiting room	90	
Sallyport	75	
Hot cart/storage	80	
Exercise area (inside)	80	
Execution chamber/anteroom	600	
Net Area	3,205	sq. ft.
	x 1.6	net to gross area factor
Gross Area	5,128	sq. ft.
	x $281	
	$ 1,440,968	bldg. cost 10/81
	20,988	secure outdoor rec. yard
	$ 1,461,956	bldg. & yard
	438,587	30% admin/ overhead factor
Total Projected Cost	$ 1,900,543	

Analysis (continued)

2. Salaries & Related Costs Starting in FY 1986

a. Staff
Based on FY85 Budget
Costs + 4%

15 Correctional Officer II Positions Salary/Benefits	$ 825,762
3 Correctional Officer III Positions	160,661
Total	$ 986,423

b. Other Costs

Travel (Staff Training)	5,500
Utilities, Cable TV, Subscriptions	7,600
Food, Clothing, Bedding	6,600
Equipment	2,600
Total	$ 1,008,723

c. For years after FY86 assumes 3% inflation factor.

NOTE:

It is assumed that State expenditure will also occur in the Department of Law and the Public Defender's Office for the lengthy appeal process. The costs for the other two agencies are not addressed in this fiscal note.

ADULT CORRECTIONS AGENCY
Pouch T
Juneau, Alaska 99811

POSITION PAPER
House Bill No. 140

Amended
January 17, 1984

"An Act authorizing capital punishment, classifying murder in the first degree as a capital felony, and establishing sentencing procedures for capital felonies."

House Bill No. 140 classifies first degree murder as a capital offense and establishes the death penalty as an available penalty under specified circumstances.

With the Furman vs. Georgia ruling in 1967, the United States Supreme Court declared what amounted to a moratorium on capital punishment. The moratorium was, in effect, lifted in 1975 when the Court approved death penalty legislation which had been passed in Florida, Georgia, and Texas. Thirty-seven states have subsequently passed death penalty legislation but, despite continuous, vigorous effort on the part of state prosecutors, there has been little success in implementation of these statutes. As of December 31, 1982, there had been five executions. Gary Gilmore, executed by a firing squad in January 1977 in Utah, and Jesse Walter Bishop, executed by a gas chamber in Nevada in October 1979, did not appeal and succeeded in obtaining court rulings prohibiting others from proceeding with the appeal process in their behalf. Steven Judy, who was electrocuted in Indiana on March 9, 1982, also elected to forego the appeal process. Therefore, John Spenkelink, who was electrocuted in Florida in May 1979, and Charlie Brooks, Jr., who was injected intravenously in Texas in December of 1982, are the only two people to have been involuntarily executed. Persons were executed during 1983, however, these statistics are not yet available from the US Bureau of Census.

Meanwhile, the number of men and women on death rows around the country has risen to almost 1050. All of these offenders are in various states of the appeal process. The legal costs and the associated costs to these states are enormous. The maintenance of a "death row" is also extremely expensive because of space and staff requirements. There is a likelihood that the death penalty is the most costly remedy possible in a criminal proceeding, even more costly than life imprisonment.

House Bill No. 140 presumably uses model provisions which are designed to meet constitutional requirements for a legal capital punishment statute. The bill does not, however, speak to the method of execution. Neither does the bill indicate what agency of the State would be assigned to this responsibility. A determination would have to be made as to whether the State would electrocute, hang, shoot, gas or lethally inject the guilty party and who would do it. We can be certain that no other state or jurisdiction would be willing to take on this kind of task for us by contract. The costs, the confusion, the controversy, and the negative psychic impact that would surely accompany our having to take on this function for ourselves would be profound.

Perhaps undertaking this new approach to punishing murderers in Alaska would be worthwhile if we could be sure that the result would be fewer murders. There is no doubt that capital punishment effectively deters those subjected to it, but whether it has any value in deterring others, especially those with the most serious homicidal tendencies, is questionable. During the eight-year moratorium, the United States Supreme Court listened to a great deal of testimony on the issue of deterrence, but was unable to conclude from the evidence presented that there was a deterrent value to capital punishment.

Prepared by: Susan E. Knighton
Susan E. Knighton
Research Analyst IV

Date: 1/17/84

Approved by: William W. Ladwig
William W. Ladwig
Assistant Commissioner
for Administration
Adult Corrections Agency

Date: January 18 1984

POUCH V
JUNEAU, ALASKA 99811
(907) 465-4990

Alaska State Legislature
HOUSE OF REPRESENTATIVES

REPRESENTATIVE
CHARLIE BUSSELL
CHAIRMAN

Committee on Judiciary

Passed Out 1/10/84

HB 140
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1. "Reinstating the Death Penalty"
Nancy Pease, Legislative Analyst, House Research Agency.
2. "Death Penalty Laws"
Mary Fairchild, Researcher, National Conference of State Legislatures.
3. Capital Punishment Survey Among the States
Corrections Compendium, December 1982.
4. "Alaska Death Penalty"
Juneau Empire, 22 February, 1957.
5. Past Alaska Legislation
Senate Bill No. 73, 1981.
6. "Surprising Facts About the Death Penalty"
Institute for Southern Studies, Durham, NC.

B. Capital Punishment--Alaskan Perspectives:
1. STATE OF ALASKA v. NEWTON LAMBERT
a. "Lambert Sentenced to 99 Years in Prison"
Juneau Empire, 18 January, 1984.
b. Projected Custodial Costs
House Research Agency.
2. Editorials and Public Sentiment News Clippings
Juneau Empire, Anchorage Daily News, Anchorage Times.

MEMBERS:
REP. JOHN LISKA, VICE CHAIRMAN; REP. RAMONA BARNES, EMERITUS;
REP. JOE HAYES; REP. HUGH MALONE; REP. DON CLOCKSIN; REP. RON WENDTE

3. Senate Judiciary Hearings on SB 121
   a. Testimony, Timothy V. Ewell, Executive Director, Moral Majority of Alaska.
   b. Testimony, Dana Fabe, Public Defender.
   c. Testimony, Judy Zimicki, Citizen.
   d. "Debate Heats Up Over Capital Punishment Bill", Anchorage Times, 19 March, 1983.

C. Capital Punishment as a National Issue:
   1. "Capital Punishment 1982", Bureau of Justice Statistics Bulletin.
   2. "Capital Punishment: Pro and Con Arguments", Congressional Research Service, Education and Public Welfare Division, 3 August, 1966.
   3. "An Eye for an Eye", Time, 24 January, 1983.
   4. "Pro and Con: Revive the Death Penalty?", U.S. News & World Report, 20 April, 1981.
   5. "America's Inability to Resolve...", The Washington Post, 15 June, 1982.
   6. "Supreme Court's Death Row Dilemma", U.S. News & World Report, 17 October, 1983.
   7. "American Justice: ABC's of How it Really Works", U.S. News & World Report, 1982.
   8. "Capital Losses: The Price of the Death Penalty for New York State." Public Defense Back-up Center to the Senate Finance Committee, the Assembly Ways and Means Committee and the Division of the Budget, New York State Defenders Association.

D. Capital Punishment--Effect as a Deterrent:
   1. "The Effect of Harsher Penalties on Crime" Jonathan Sherwood, Legislative Analyst, House Research Agency.
   2. "Deterrence, Death, and the Victims of Crime: A Common Sense Approach", Vanderbilt Law Review, Frank G. Carrington.
   3. "The Deterrent Effect of Capital Punishment: A Cross-State Analysis of the 1960's", Minnesota Law Review, Brain E. Forst.
   4. "Strong and Weak Research Designs for Detecting the Impact of Capital Punishment on Homicide", Rutgers Law Review, David P. Phillips.
   5. "Statistical Evidence on the Deterrent Effect of Capital Punishment", The Yale Law Journal.
   6. "The Deterrent Effect of the Death Penalty: A Statistical Test", Stanford Law Review, Peter Passell.
   7. "The Deterrent Effect of the Death Penalty: Facts v. Faith", The Supreme Court Review, Hans Zeisels.

VII. Capital Punishment Statutes:
A. Code of Alabama 1975, Volume 12, 15.18.81 - 15.18.85.
   A federal court declared this Alabama law unconstitutional in June of 1980. A new "constitutional" law was passed in 1981 reinstating the death penalty.
B. Colorado Revised Statutes 1973, Volume 8, 16.11.402 - 16.11.404.
C. General Statutes of Connecticut, Volume 9, 54.99 - 54.101.
D. Idaho Code 1982, Volume 4, 27.19.2701 - 27.19.2716.
E. Montana Code Annotated, 46.19.103; 46.19.201.
F. West's Revised Code of Washington Annotated 1982, 10.70.020.

APPENDIX

Below is a list of individuals and agencies contacted during the course of this research.

The Alaskan Judicial Council

Leigh Bienen,
New Jersey Public Advocacy Special Project

The Center for Jury Studies

The Justice Center,
University of Alaska Anchorage

Martin Kaplan, Professor of Psychology,
University of Northern Illinios

Jeanne Marsh, School of Social Service Administration
University of Chicago

The National Association of District Attorneys

The National Conference of State Legislatures

The National Institute of Mental Health

Bruce Sayles, Professor of Psychology,
University of Arizona

The Southern Poverty Law Center

The following agencies were contacted on our behalf by the National Conference of State Legislatures.

The National Information Center of the National Institute of Corrections

The National Institute on Crime and Delinquency

Mr Chairman & Committee #1

THE CHAIR IS BOLTED TO THE FLOOR NEAR THE BACK OF A 12 FT. BY 18 FT. ROOM. YOU SIT ON A SEAT OF CRACKED RUBBER SECURED BY ROWS OF COPPER TACKS. YOUR ANKLES ARE STRAPPED INTO 1/2 -MOON-SHAPED FOOT CUFFS LINED WITH CANVAS.

A 2 IN. WIDE GREASY LEATHER IS SECURED AROUND YOUR WAIST, JUST ABOVE THE HIPS. A COOL METAL CONE ENCIRCLES YOUR HEAD. YOU ARE NOW ONLY MOMENTS AWAY FROM DEATH.

BUT YOU STILL HAVE A FEW SECONDS LEFT. TIME BECOMES STRETCHED TO THE OUTERMOST LIMITS. TO YOUR RIGHT YOU SEE THE MAHOGANY FLOOR DIVIDED THAT SEPERATES FOUR BROWN CHURCH-TYPE PEWS FROM THE REST OF THE ROOM. THERE IS ANOTHER DOOR AT THE BACK THROUGH WHICH THE WITNESSES ARRIVE AND SIT IN THE PEWS. YOU STARE UP AT TWO GROUPS OF FLOURESCENT LIGHTS ON THE CEILING. THEY ARE ON. THE PAINT ON THE CEILING IS PEELING.

YOU FIT IN NEAT AND SNUG. BEHIND THE CHAIR'S BACK LEG ON YOUR RIGHT IS A CABLE WRAPPED IN GREY TAPE. IT WILL JUICE THE ELECTRICAL CURRENT TO THREE OHER WIRES: TWO GOING TO EACH OF YOUR FEET AND THE THIRD TO THE CONE ON TOP OF YOUR HEAD. THE ROOM IS VERY QUIET. THE AIR WENT ABOVE YOUR HEAD IN THE CEILING BEGINS TO HUM. THE EXECUTIONER HAS TURNED ON THE FAN TO SUCK UP THE SMELL OF BURNING FLESH. THERE IS NO TIME LEFT. ON YOUR RIGHT YOU CAN SEE THE WAIST-HIGH, ONE-WAY MIRROR IN THE WALL. BEHIND THE MIRROR IS THE EXECUTIONER, STANDING BEFORE A GREY MARBLE CONTROL PANEL WITH GAUGES, SWITCHES, AND A FOOT LONG LEVER OF WOOD AND METAL AT HIP LEVEL.

THE EXECUTIONER PULLS THIS LEVER 4 TIMES. EACH TIME 2,000 VOLTS WILL CURSE THROUGH YOUR BODY, MAKING YOUR EYEBALLS FIRST BULGE, THEN BURST AND THEN BROILING YOUR BRAINS.

Don Mueller
10260 Jamestown #28
Anchorage Ak 99507

H/344-1771
B/337-4547

~~Dep. of Committee~~

TODAY, AN OLD ARRAY OF TOUGH QUESTIONS DEALING WITH CAPITOL PUNISHMENT IS BEING EXAMINED. ~~SENATE BILL NO. 121~~ House bill NO 140 "AN ACT AUTHORIZING CAPITOL PUNISHMENT, CLASSIFYING MURDER IN THE FIRST DEGREE AS A CAPITAL FELONY, AND ESTABLISHING SENTENCING PROCEDURES FOR CAPITOL FELONIES" IS ON ITS WAY TO US THE VOTERS.

ALASKA HAS ~~NEVER~~ HAD A DEATH PENALTY ~~AND~~ IT IS NOT TIME FOR ONE NOW OR VER. TODAY I AM GOING TO EXAMINE THREE QUESTIONS DEALING WITH CAPITOL PUNISHMENT.

--IS CAPITOL PUNISHMENT A DETERRENT TO MURDER?

--IS CAPITOL PUNISHMENT FAIR?

THAT IS DOES IT FALL EQUALLY ON THE WEALTHY WHITE SURGEON REPRESENTED BY EDWARD BENNETT WILLIAMS AND THE INDIGENT BALCK WITH COURT APPOINTED COUNSEL?

--IS IT CIVILIZED TO TAKE A LIFE IN THE NAME OF JUSTICE?

THE IDEA OF DETERRENCE CAN BE QUICKLY REDUCED TO VERY PERSONAL RUDIMENTS: IF I KNOW I WILL BE PUNISHED SO SEVERELY FOR A CRIME, I WILL NOT COMMIT THE CRIME. ACCORDING TO NY UNIVERSITY LAW PROFESSOR ANTHONY AMSTERDAM "WAHT DETERS EOPLE FROM CRIME IS THE LIKELY'OOD OF GETTING CAUGHT AND UNDERGOING PUNISHMENT" TODAY EVEN AT A RATE OF 100 EXECUTIONS ANNUALLY, AN IMPLAUSIBLY HIGH FIGURE GIVEN TODAYS JUDICIAL GUARANTEES AND APPEALS PROCESS, A KILLERS CHANCES OF GETTING CAUGHT, CONVICTED AND EXECUTED WOULD FOR HIM STILL BE COMFORTABLY LOW, 250 TO 1.

IS IT FAIR? PROSECUTORS HAVE GREAT LEAWAY IN DECIDING WHICH HOMICIDES TO TRY AS CAPITOL MURDERS. A KILLER CAN BE PERSUADED TO TESTIFY AGAINST AN CCOMPLICE TO SAVE HIS OWN LIFE. A MURDERER BROOKS, WAS CONVICTED AND EXECUTED; FOR THE SAME MURDER HIS PARTNER MUST SERVE ONLY EIGHT MORE YEARS IN PRISON. A RECENT STUDY ON HOMICIDE CASES IN HUSTON'S HARRIS COUNTY IS TROBLING. IN

IN CASES WHERE A BLACK OR CHICANO HAD KILLED A WHITE, 65% of the defendants WERE TRIED FOR CAPITOL MURDER.\ WHILE ONLY 25% OF WHITES WHO KILLED A BLACK OR HICANO FACED THE DEATH PENALITY.\ A SERIOUS PROBLEM IS THE QUALITY OF LEGAL HELP FOR MURDER DEFENDANTS. THE TEXAS STUDY FOUND THAT 3/4 OF THE MURDERERS WITH COURT APPOINTED LAWYERS WERE SENTENCED TO DEATH AGAINST ABOUT A THIRD OF THOSE REPRESENTED BY PRIVATE ATTORNEYS. CHARLETTE HOLDMAN DIRECTOR OF FLORIDAS CLEARINGHOUSE ON CRIMINAL JUSTICE SAYS "EVERY PERSON SENTENCED TO DIE COMES FROM A CASE FOUGHT WITH ERRORS. IF YOUR ADEQUATELY REPRESENTED YOU DON'T GET DEATH. IT"S THAT SIMPLE". ACCORDING TO ACLU'S SCHWARSCHILD, "A SOCIETY THAT BELIEVES THAT THE KILLING OF A HUMAN BEING IS A SOLUTION TO ANY PROBLEM IS DEEPLY UNCIVILIZED. THE MARGINALLY DEMENTED GUY, SAYS SCHWARSCHILD SEES AN EXECUTION AS A PERSCRIPTION NOT A THREAT. HE THINKS \ IF THE STATE HAS A QUARREL WITH GARY GILMORE IT KILLS HIM. IF I HAVE A QUARRELL WITH SOMEONE I'LL KILL HIM'. THE ELECTRIC CHAIR CAUGHT ON SLOWLY IN THE US AND NOT AT ALL ABROAD. DURING THE 1920s and 30s THE CYANIDE GAS CHAMBER BECAME STAE OF - THE AMERICAN ART. NOW THERE ARE LETHAL INJECTIONS WHICH ARE SEEN AS STILL MORE "HUMANE." THIS LATEST TECHNICAL REFINEMENT WHICH THE EUROPEAN PRESS FINDS, CHILLING AND FACINATING SEEMS TO REMAIN STRICTLY A US PRACTICE.

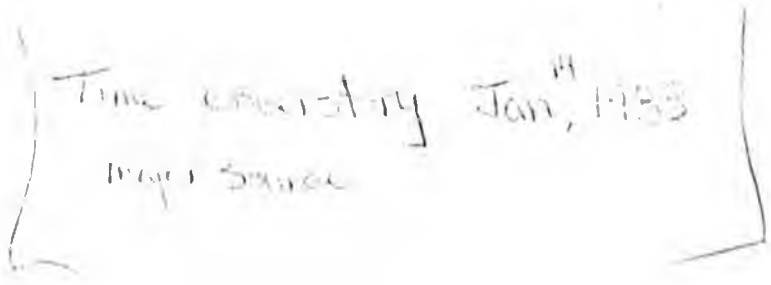
NOTRE DAME THEOLOGY PROFESSOR SUMS UP OUR OBSESSION WITH "HUMANE" CAPITAL PUNISHMENT LIKE THIS: "THIS SEARCH FOR A HUMANE WAY OF KILLING IS A BUNCH OF SENTIMENTAL SECULAR HUMANISM. WHY DO YOU WANT IT TO BE HUMANE? TO REASSURE YOURSELF?

EVIDENCE SHOWS CAPITOL PUNISHMENT IS NOT A DETERRENT OT MURDER.\ CAPITOL PUNISHMEN CASES ARE NOT HEARD FAIRLY AND WITH OUT EXAGURATED BIASIS.\ WE SAY WE THINK HUMAN LIFE IS SCARED. AND THEN, TO PROVE THAT, WE KILL SOMEBODY. WE CALL THAT CIVILIZED.!'

House Bill No 140

BY VOTING DOWN ~~SENATE BILL NO 121~~ WE ARE NOT LEFT WITHOUT ANY ALTERNATIVE. TODAY CURRENT LAW DEMANDS AT LEAST 20 YEARS BUT NOT MORE THAN 99 YEARS IN A CONVICTION OF FIRST DEGREE MURDER.

IN THE MAJORITY OF CASES THIS SENTENCE IS SUFFICENTLY HARSH. STATISTICS SHOW THAT FEWER THAN 1% OF FREED MURDERERS KILL AGAIN AFTER THEIR RELEASE FROM PRISON. DO WE WANT TO TAKE THAT CHANCE? ARE YOU WILLING TO PUT THE LIFE OF YOUR WIFE OR CHILDREN ON THE LINE? ARE YOU WILLING TO RIST THAT A MURDERER LIKE CHARLES MANSON WILL NOT REPEAT HIS HIDIOUS CRIME? AS IT STANDS NOW, MANSON WILL BE ELIGIBLE FOR PAROLE IN 1985. WHAT I ADVOCATE IS A LIFE SENTENCE WITHOUT PAROLE. THIS MEETS ALL THE CRITERIA FOR JUST PUNISHMENT. A LIFE SENTENCE IS IN ITS SELF UNIMAGINABLY HARSH. AND IT PROTECTS OUR SOCIETY OUTYAND ME FROM REPEAT OFFENCES. AS JAYCEES AND ALASKANS WE MUST SEE THAT HOUSEBILL NO. 121 DOES NOT BECOME LAW. WHEN IT APPEARS ON YOUR BALLOT VOTE NO ON A DEATH PENALTY. STATE SANCTIONED MURDER IS UNQUESTIONABLY WRONG!



STATE OF ALASKA
THE LEGISLATURE

POUCH V STATE CAPITOL
JUNEAU ALASKA 99811
907 465 3800

LEGISLATIVE AFFAIRS AGENCY

M E M O R A N D U M April 10, 1984

SUBJECT: Sectional analysis of CSHB 140(Judiciary)

TO: Representative Charlie Bussell
Chairman, House Judiciary Committee

FROM: Edward H. Hein
Legislative Counsel

Section 1 makes first degree murder a capital felony.

Section 2 amends AS 12.30.040(b) to provide that a person convicted of a capital felony may not be released on bail either before sentencing or pending appeal.

Section 3 provides that a person convicted of a capital felony is subject to a mandatory sentence of 20 - 99 years' imprisonment or death.

Section 4 adds a new section, AS 12.55.115, to the statutes. Subsection (a) allows an automatic appeal to the Alaska Supreme Court of a death sentence for a period of 60 days after the sentence is handed down. The court may extend the time limit. Such an appeal must be given first priority by the court and the court may adopt special rules for hearing such an appeal. The court is required to make three determinations:

(1) was the sentencing influenced by passion, prejudice or arbitrariness?;

(2) was the finding of an aggravating factor supported by the evidence?; and

(3) is the death penalty imposed in similar cases?

Under subsection (b), if the Alaska Supreme Court upholds the death sentence, it is required to issue a death warrant and deliver it, with a copy of the court's opinion, to the commissioner of corrections. The commissioner then

specifies the time, place and manner of execution. The defendant may choose death by lethal injection or by firing squad.

Under (c) firing squad executions must take place at a state prison. The squad consists of six peace officers chosen by the commissioner of corrections and paid in an amount set by the commissioner.

Under (d) the commissioner must consult with a licensed physician and then select a method of injection and a drug or combination of drugs to be used in executions by injection.

Under (e) the commissioner and a licensed physician must be present at each execution. The commissioner may invite up to nine citizens to witness an execution, including, among others, relatives and religious persons designated by the defendant.

Under (f) the commissioner of corrections must certify the death of the person executed.

Under (g) six members of the news media may attend an execution and serve as a pool for other news media.

Under (h) cameras and other recording equipment may not be used at the execution site until the execution is completed and the body is removed. Violation of this provision is a class B misdemeanor.

Under (i) persons attending an execution may be searched.

Under (j) the only additional persons who may attend an execution are necessary staff designated by the commissioner of corrections. Minors may not attend.

Under (k) the Department of Corrections must adopt regulations governing attendance at executions.

Section 5 adds six new sections to the statutes:

(1) AS 12.55.177 establishes a procedure for the sentencing of a person convicted of a capital felony. Under subsection (a), sentencing is a separate proceeding following the trial

or guilty plea. The proceeding is conducted before the trial jury or, if there was no jury trial, before a specially impaneled jury. Under subsection (b), the state and the defendant may present any relevant evidence concerning aggravating and mitigating factors, so long as the evidence was not obtained in violation of the state or federal constitution and so long as the defendant has the opportunity to rebut hearsay statements.

It is not clear whether subsection (b) is intended to disallow invocation of evidentiary privileges in a sentencing proceeding. The rules relating to evidentiary privileges are the only rules of evidence which are specifically made applicable to sentencing proceedings by Rule 101 of the Alaska Rules of Evidence. In light of the requirements of the Alaska Constitution and of Uniform Rule 39(e) that bills must note any changes being made to court rules, it would be prudent to clarify the legislative intent of subsection (b).

(2) AS 12.55.178 requires the sentencing jury to produce an advisory sentence for the court. The jury must decide three questions:

(A) did aggravating factors exist that justify a death sentence?;

(B) were there mitigating factors involved that outweigh the aggravating factors?; and

(C) should the sentence be a term of imprisonment or death?

(3) AS 12.55.179 requires the sentencing court to consider the evidence and the jury's advisory sentence and to enter a sentence. Subsection (a) provides that if a death sentence is imposed, the court must state in writing the aggravating factors that exist to justify the sentence and any mitigating factors considered by the court. Subsection (b) restates the fact that a death sentence may be automatically appealed to the Alaska Supreme Court under AS 12.55.115.

(4) AS 12.55.180 lists seven aggravating factors, any one of which could justify imposition of a death sentence if not outweighed by mitigating factors. The aggravating factors are:

(A) committing torture or aggravated battery amounting to deliberate cruelty during the crime;

(B) creating a risk of imminent physical harm to three or more persons;

(C) having a prior conviction of a violent felony;

(D) committing the crime under contract or for money;

(E) committing the crime while on release for another felony charge or for a conviction involving assault as a necessary element;

(F) the victim was a judge, prosecuting attorney, police officer, correctional employee or fireman and the crime was committed during or because of the victim's exercise of official duties; and

(G) the crime resulted from a conspiracy of five or more persons.

(5) AS 12.55.181 lists four mitigating factors:

(A) the defendant committed the crime under duress, coercion, threat or compulsion;

(B) the defendant was young and was influenced to commit the crime by a more mature person;

(C) the defendant acted in response to serious provocation by the victim; and

(D) the defendant helped authorities detect or apprehend others involved in the crime.

(6) AS 12.55.182(a) provides that if there is reason to believe that a person sentenced to death is incompetent or pregnant, the commissioner of corrections must notify the sentencing court, the prosecuting attorney and the person's defense counsel. The sentence of execution is then stayed until further order of the court. The term "incompetent" is not defined.

Under (b) the mental condition of the person who is thought to be "incompetent" or pregnant must be examined in accordance with AS 47.30.060 - 47.30.070. These statutes, however, were repealed in 1981. If the person is found to be incompetent, the person shall be committed. It is not clear what happens if the person later is found to be competent after being committed. If the person is found to be competent in the initial examination, that finding must be sent to the supreme court and the commissioner of corrections. The supreme court then must issue another death warrant and deliver it to the commissioner with another copy of finding that the person is competent. This warrant must specify a date of execution 30 to 60 days thereafter.

Under (c) if the defendant is pregnant, the (trial?) court must transmit a certificate making that finding to the supreme court and the commissioner of corrections. The execution is then stayed until the defendant is no longer pregnant. Immediately after the child is born or the pregnancy is otherwise terminated the (trial?) court must certify that fact to the supreme court and the commissioner of corrections. The supreme court must then issue another death warrant specifying a date of execution 30 to 60 days thereafter.

Section 6 removes from the jurisdiction of the state court of appeals cases in which a death sentence has been imposed. Note that under the 1984 legislative drafting manual, nothing less than a full subsection should be amended in a bill. Thus, the full text of AS 22.07.020(a) should appear in section 5.

Section 7 the purpose of this section is not clear. Apparently this section is an attempt to remove appeals of death sentences from the jurisdiction of the state court of appeals. The statute being amended, however, deals only with jurisdiction over appeals of sentences of imprisonment. Thus, section 6 is both confusing and superfluous.

EHH:ajb
J6/017

STATE OF ALASKA
THE LEGISLATURE

LEGISLATIVE AFFAIRS AGENCY

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

MEMORANDUM January 17, 1984

SUBJECT: Sectional analysis of HB 140

TO: Representative Charlie Bussell
Chairman, House Judiciary Committee

FROM: Edward H. Hein
Legislative Counsel

Section 1 makes first degree murder a capital felony.

Section 2 provides that a person convicted of a capital felony is subject to a mandatory sentence of 20 - 99 years' imprisonment or death.

Section 3 adds a new section, AS 12.55.115, to the statutes. Subsection (a) allows an automatic appeal to the Alaska Supreme Court of a death sentence for a period of 60 days after the sentence is handed down. The court may extend the time limit. Such an appeal must be given first priority by the court and the court may adopt special rules for hearing such an appeal. The court is required to make three determinations:

(1) was the sentencing influenced by passion, prejudice or arbitrariness?;

(2) was the finding of an aggravating factor supported by the evidence?; and

(3) is the death penalty imposed in similar cases?

Under subsection (b), if the Alaska Supreme Court upholds the death sentence, the trial court is required to specify the time, place and manner of execution.

Section 4 adds five new sections to the statutes:

(1) AS 12.55.177 establishes a procedure for the sentencing of a person convicted of a capital felony. Under subsection (a), sentencing is a separate proceeding following the trial or guilty plea. The proceeding is conducted before the trial jury or, if there was no jury trial, before a specially impaneled jury. Under subsection (b), the state and the defendant may present any relevant evidence concerning aggravating and mitigating factors, so long as the evidence was not obtained in violation of the state or federal constitution and so long as the defendant has the opportunity to rebut hearsay statements.

It is not clear whether subsection (b) is intended to disallow invocation of evidentiary privileges in a sentencing proceeding. The rules relating to evidentiary privileges are the only rules of evidence which are specifically made applicable to sentencing proceedings by Rule 101 of the Alaska Rules of Evidence. In light of the requirements of the Alaska Constitution and of Uniform Rule 39(e) that bills must note any changes being made to court rules, it would be prudent to clarify the legislative intent of subsection (b).

(2) AS 12.55.178 requires the sentencing jury to produce an advisory sentence for the court. The jury must decide three questions:

(A) did aggravating factors exist that justify a death sentence?;

(B) were there mitigating factors involved that outweigh the aggravating factors?; and

(C) should the sentence be a term of imprisonment or death?

(3) AS 12.55.179 requires the sentencing court to consider the evidence and the jury's advisory sentence and to enter a sentence. Subsection (a) provides that if a death sentence is imposed, the court must state in writing the aggravating

factors that exist to justify the sentence and any mitigating factors considered by the court. Subsection (b) restates the fact that a death sentence may be automatically appealed to the Alaska Supreme Court under AS 12.55.115.

(4) AS 12.55.180 lists seven aggravating factors, any one of which could justify imposition of a death sentence if not outweighed by mitigating factors. The aggravating factors are:

(A) committing torture or aggravated battery amounting to deliberate cruelty during the crime;

(B) creating a risk of imminent physical harm to three or more persons;

(C) having a prior conviction of a violent felony;

(D) committing the crime under contract or for money;

(E) committing the crime while on release for another felony charge or for a conviction involving assault as a necessary element;

(F) the victim was a judge, prosecuting attorney, police officer, correctional employee or fireman and the crime was committed during or because of the victim's exercise of official duties; and

(G) the crime resulted from a conspiracy of five or more persons.

(5) AS 12.55.181 lists four mitigating factors:

(A) the defendant committed the crime under duress, coercion, threat or compulsion;

(B) the defendant was young and was influenced to commit the crime by a more mature person;

(C) the defendant acted in response to serious provocation by the victim; and

(D) the defendant helped authorities detect or apprehend others involved in the crime.

At page 4, line 12, the bill states that all mitigating factors, including the four that are listed, must be considered. Thus, a defendant is entitled to raise anything that could be construed as a mitigating factor, even if it is not listed. This statute, however, does not specify who must consider the mitigating factors. Is it the court, the jury, or both? Likewise, this statute does not say whose judgment controls on the question of whether the mitigating factors outweigh any aggravating factors that exist. Under AS 12.55.178(2), the sentencing jury would be required to balance mitigating factors against aggravating factors. But the jury's findings are only advisory. It is not clear, under AS 12.55.181, whether a finding by the jury that the mitigating factors outweigh the aggravating factors is sufficient to prevent imposition of the death sentence if the judge disagrees with the jury's findings. In light of the gravity of this determination, legislative intent should be made clear. This could be done by using the active voice instead of the passive voice at page 4, lines 10-13. The same considerations just discussed apply to the language at page 3, lines 16-18.

Section 5 removes from the jurisdiction of the state court of appeals cases in which a death sentence has been imposed. Note that under the 1984 legislative drafting manual, nothing less than a full subsection should be amended in a bill. Thus, the full text of AS 22.07.020(a) should appear in section 5.

Section 6 The purpose of this section is not clear. Apparently this section is an attempt to remove appeals of death sentences from the jurisdiction of the state court of appeals. The statute being amended, however, deals only with jurisdiction over appeals of sentences of imprisonment. Thus, section 6 is both confusing and superfluous.

EHH:ojb
J2/034

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NATIONAL CONFERENCE OF STATE LEGISLATURES
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NCSL STAFF CONTACT: MARY FAIRCHILD
303/292-6600

REV. DATE: 01/07/84

DEATH PENALTY LAWS

BACKGROUND

In FURMAN v. GEORGIA, 408 U.S. 238 (1972), the U.S. Supreme Court found that the procedures by which to impose the death penalty were "arbitrary and capricious" and therefore in conflict with the 8th and 14th amendments. The court did not declare the death penalty itself to be unconstitutional. Rather, the court found that the GEORGIA law did not provide any standards to guide the sentencing authority when deciding which defendants convicted of a capital offense should be sentenced to die and which should live.

After the FURMAN decision, GEORGIA and many other states designed new capital punishment laws to comply with the court decision. State legislatures generally enacted two types of laws: mandatory death penalty laws for persons convicted of a certain capital offense and laws to provide objective standards to guide the sentencer in determining what punishment should be imposed. Both types of law were written to reduce and define the discretion of the sentencer. Mandatory laws completely removed the decision of whether or not to impose the death penalty from the judge or the jury and were later declared unconstitutional. In WOODSON v. NORTH CAROLINA, 96 S. Ct. 2978 (1976) and ROBERTS v. LOUISIANA, 96 S. Ct. 3001 (1976), the U.S. Supreme Court held that a sentence of death cannot be an automatic consequence of guilt and such sentences must consider the circumstances of the case and the individual offender.

In 1976, the laws of GEORGIA, FLORIDA, AND TEXAS were upheld by the United States Supreme Court (See GREGG v. GEORGIA, 96 S. Ct. 2909; PROFFITT v. FLORIDA, 96 S. Ct. 2960; and JUREK v. TEXAS, 96 S. Ct. 2950). Each law provides standards to guide the sentencing authority in deliberations regarding the punishment of death. The following common characteristics can be found in these laws. First, the procedure is two-tier; a trial is held to determine guilt and a separate sentencing hearing is held to determine the appropriate punishment, life imprisonment or death. Second, during the sentencing hearing, the sentencing authority must consider certain factors, issues and circumstances specified or required by law. Evidence is introduced and both the prosecutor and the defendant can present arguments relating to these issues. Third, any decision to impose the death penalty is reviewed by the state supreme court. Although the laws are similar, each state has taken a somewhat different approach to establish standards to govern sentencing procedures.

In TEXAS and FLORIDA, sentencing hearings are held before a jury (Tex. Code Crim. Pro. 37.071 and Fla. Stat. Ann 921.141). GEORGIA law allows the judge or the jury to consider evidence during the sentencing hearing (GA Code Ann. 27-2503).

In order for a death sentence to be imposed in GEORGIA, the sentencing body must find at least one aggravating circumstance specified by law to exist and make a recommendation that the individual be sentenced to death (GA Code Ann. 26-3102 and 27-2534.1) A history of assaultive behavoir is an example of an aggravating circumstance. Unlike Georgia, FLORIDA lists both aggravating and mitigating circumstances to be considered by the sentencing jury. The sentencing jury then submits an advisory sentence to the court (Fla. Stat. Ann. 921-141). Among the circumstances considered to be mitigating factors are the defendant's state of mind and if the defendant is of a particularily young age. When considering the appropriate sentence to be imposed, the mitigating factors can outweigh the aggravating factors. The trial judge in FLORIDA makes the final decision of what sentence to impose, life imprisonment or death.

Neither aggravating or mitigating circumstances are specified in TEXAS law. However, the jury must consider three issues and render a verdict of "yes" or "no" on each issue. First, did the offender behave in a deliberate manner? Second, is the offender likely to commit future acts of violence? Third, if evidence has been presented to show that the offender was provoked by the victim, were the actions of the offender unreasonable in light of the provocation? If the jury answers "yes" to each issue it must consider, the court is required to sentence the offender to death (Tex. Code Crim. Proc. 37.071). In JURECK v. TEXAS, the court held that although "Texas has not adopted a list of statutory aggravating circumstances...its action in narrowing the categories of murders for which a death sentence may ever be imposed serves much the same purpose." (JURECK v. TEXAS, at 2955). The Texas Penal Code limits capital homicides to intentional and knowing murders committed in five situations (Tex. Penal Code 19.03, 1974).

In reviewing a death sentence, the GEORGIA state supreme court is required by state law to determine, 1) if the sentence was imposed in an arbitrary, prejudicial or passionate manner, 2) if the evidence supports the sentencing authority's finding of the aggravating circumstances, and 3) if the sentence is disproportionate or excessive to other sentences imposed in similar cases (GA Code Ann. 27-2537). Neither FLORIDA nor TEXAS laws direct the state supreme court to conduct a certain kind of review but review is automatic (Fla. Stat. Ann. 921-141 and Texas 37.071).

By specifying circumstances and issues for consideration when determining the appropriate sentence of a capital offender, the legislatures of GEORGIA, TEXAS and FLORIDA have provided an acceptable mechanism to reduce arbitrary decision-making. Supreme court review is an extra safeguard to protect against totally discretionary sentencing.

RECENT LEGISLATION

To date, thirty-eight states and the federal government have laws to impose the death penalty for certain crimes.

STATE	METHOD	# OF PERSONS ON DEATH ROW
ALABAMA Act. No. 81-178, H.B. 297, Regular Session 1981, 1981 Acts p. 203	electrocution	67
ARIZONA Ariz. Const. art. 22, sec. 22 Ariz. Rev. Stat. Ann. Secs. 13-703, 704.	gas	52
ARKANSAS Ark. Stat. Ann. secs. 41-803, 41-1351, 41-3952	lethal injection (or choice of electrocution for those sentenced before March 24, 1983)	24
CALIFORNIA Calif. Penal Code Secs. 37, 190 et. seq., 3604, 4500 (Deering)	gas	144
COLORADO Colo. Rev. Stat. 16-11-401, 18-1-105, 18-1-409	gas	1
CONNECTICUT Conn. Gen. Stat. 53A-46 Revised 1981	electrocution	0
DELAWARE Del. Code Ann. Tit. 11, [illegible] 4209	lethal injection	6
FLORIDA Fla. Stat. Ann. sec. 922.10 (West)	electrocution	204
GEORGIA GA Code Ann. sec. 27-2512	electrocution	112
IDAHO Idaho Code sec. 18-11-19 (2716)	lethal injection or firing squad	7
ILLINOIS Ill. Ann. Stat. Ch. 38 secs. 119-5, 1005-1-[illegible]	electrocution	64
INDIANA Ind. Code Ann. 35-1-46-9 (Burns)	electrocution	20

KENTUCKY KY Rev. Stat. Ann. sec. 431.220 (Baldwin)	electrocution	18
LOUISIANA LA Rev. Stat. Ann. Sec 15:569 (West)	electrocution	38
MARYLAND MD Ann Code Art 27, sec. 71	gas	11
MASSACHUSETTS MA General Laws, Chap. 279, Sect. 55 and 56		0
MISSISSIPPI Miss. Code Ann. sec. 99-19-51	gas	39
MISSOURI MO Ann. Stat. sec. 546.720 (Vernon)	gas	23
MONTANA Mont. Rev. Codes Ann. sec. 95-2303	hanging or lethal injection	4
NEBRASKA NE Rev. Stat. sec. 29-2532	electrocution	11
NEVADA Nev. Rev. Stat. sec. 176.355	lethal injection	20
NEW HAMPSHIRE NH Rev. Stat. Ann. sec. 630:5	hanging	0
NEW JERSEY Public Law 1982, Ch. 111	lethal injection	1
NEW MEXICO NM Stat. Ann. secs. 31-14-11 et seq. 31-18-2	lethal injection	5
NEW YORK NY Penal Law, Section 60.06	electrocution	1
NORTH CAROLINA N.C. Gen. Stat. secs. 15-187,188	gas or lethal injection	35
OHIO Ohio Senate Bill 1, adopted 1981	electrocution	16
OKLAHOMA OK Stat. Ann. tit. 22, sec. 1014	lethal injection	39

PENNSYLVANIA Pa. Stat. Ann. Tit. 18, secs. 1102, 1311; 585. 19 sec. 1121 (Pardon)	electrocution	50
SOUTH CAROLINA SC Code secs. 16-3-20, 24-3-530	electrocution	29
SOUTH DAKOTA 1979 SD Session Laws. Crim Pro. Ch. 160 sec. 10, 20-27	electrocution	0
TENNESSEE Tenn. Code Ann. sec. 40-3117	electrocution	34
TEXAS Tx. Code Crim. Proc. Ann. art. 43.14	lethal injection	162
UTAH UT. Code Ann. sec. 77-36-16	firing squad (recent amendment repealed hanging as an optional method)	4
VERMONT VT. Stat. Ann. Tit. 13, sec. 7106	electrocution	0
VIRGINIA Va. Code sec. 53-318	electrocution	20
WASHINGTON Wa. Rev. Code Ann. sec. 10.70.090	hanging or lethal injection	3
WYOMING WY. Stat. Sec. 7-13-405	gas	3

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Papp, Dennis M., "State Capital Punishment Schemes Expressly Upheld by NEW YORK

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ALASKA STATE LEGISLATURE
HOUSE OF REPRESENTATIVES
RESEARCH AGENCY

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Juneau, Alaska 99811
(907) 465-3991

January 27, 1984

MEMORANDUM

TO: Representative Charlie Bussell

FROM: Nancy Pease *Nancy Pease*
Legislative Analyst

RE: Reinstating the Death Penalty
Research Request 84-2

Craig Lovell of your staff requested information on the reinstatement of the the death penalty in other states. Specifically, he asked about the steps that were taken in other states to reinstitute or oppose the death penalty, and the issues that were raised. He also asked for a description of past Alaska legislation aimed at reinstating the death penalty.

Reinstatement through Legislation

A summary of death penalty laws released by the National Conference of State Legislatures on January 7, 1984 lists 38 states which prescribe capital punishment for heinous crimes (see Attachment A). In many of these states, the death penalty had at one time been abolished, declared unconstitutional, or invalidated by its similarity to death penalty statutes that were ruled unconstitutional in other states. In most cases, legislation was the means of reinstating or substantially revising the death penalty to meet constitutional requirements.

States where new death penalty statutes have been enacted through legislation include; New Jersey (1982); Connecticut, Idaho, Ohio and Washington (1981); Alabama (1980); South Dakota (1979); Maryland, Pennsylvania, Arizona, Maine, Maryland and South Carolina (1978); Illinois, Indiana, Missouri, Mississippi, Montana, Missouri, Nevada and North Carolina (1977); Florida, Georgia and Oklahoma, (1976); and Texas (1974).

Although legislation has been the method by which the death penalty has been reinstated in most states, the support or opposition of the executive branch, the judiciary, and the public have been strong factors in other states.

Public Initiatives and Referenda

In Massachusetts, voters reinstated the death penalty by approving a referendum amendment. In California, a ballot initiative succeeded in increasing the types of crimes and the circumstances in which the death penalty could be imposed. In Oregon, since 1914, voters have twice abolished and twice reinstated the death penalty (through both public initiatives and one legislative referendum). Most recently in Oregon, petitioners failed to collect enough signatures to place the two measures on the state ballot that would be necessary to reinstate the death penalty (a constitutional amendment of the Oregon Criminal Code and a statute providing for capital punishment). Michigan proponents of the death penalty also failed last year in their attempt to petition for a ballot vote on amending the Michigan constitution which currently prohibits capital punishment.

States Without A Death Penalty

The following states and U.S. jurisdictions do not have a death penalty: Alaska, District of Columbia, Hawaii, Iowa, Kansas, Maine, Michigan, Minnesota, North Dakota, Oregon, Rhode Island, West Virginia, Wisconsin and Guam.

As you are probably aware, both Alaska and Hawaii abolished capital punishment as territories, and, as states, have never instituted capital punishment laws. The District of Columbia has established through case law a criminal code which does not prescribe the death penalty. Guam has also never had a death penalty, and a referendum to institute one in the late 1970s failed through the electorate.

Michigan is the only state whose constitution prohibits capital punishment. According to Henry Schwarzchild of the American Civil Liberties Union's (ACLU) Capital Punishment Project, the northern tier of midwestern states have historically opposed the death penalty, dating back to the progressive farmer/labor movement of the mid-nineteenth century. Although South Dakota broke with that tradition in 1979, Mr. Schwarzchild guardedly predicted that the traditional opposition to the death penalty in the upper Midwest is "unlikely to be undone" in the near future. In Michigan, a 1983 referendum drive to amend the constitutional prohibition of capital punishment failed to collect enough valid signatures to place the amendment on the ballot. In Wisconsin, death penalty legislation is regularly introduced--and regularly fails to pass.

Gubernatorial Opposition

In other states, a strong stand by the governor has been a factor in preventing reinstatement of the death penalty. According to Mr. Schwarzchild of the ACLU, the governor of New York has vetoed death penalty statutes passed by that state's legislature in each of the past nine years. The Governor of Kansas also vetoed death penalty legislation in three recent years. In New Jersey, according to the assistant director of the New Jersey Department of Criminal Justice, the previous governor vetoed every death penalty bill approved by the state legislature during his eight-year tenure; only with the election of a new governor in 1982 did the death penalty become law. The previous Governor of Kentucky also blocked legislation to reinstate the death penalty for the length of his term in office.

Action on the Death Penalty Issue in Four States

In response to your interest in the dynamics and the debate surrounding death penalty legislation in other states, we contacted directly several states where the issue has recently been subject to public debate.

In South Dakota, Dennis Holmes of the Attorney General's office said that until recently, the death penalty issue had been in abeyance in his state for a number of years, partly because there were few sentencings in the 1950s and 1960s. In 1977, the legislature removed the death penalty from the statutes when its constitutionality was called into question by U.S. Supreme Court rulings against similar statutes in other states. In 1979, despite some public protest, a new death penalty was enacted by the South Dakota legislature as part of a major recodification of criminal procedure to meet federal guidelines. Since the reenactment, only three capital offenders have been prosecuted in South Dakota, and all three offenders were sentenced to life imprisonment. Mr. Holmes estimates that since the reenactment of the death penalty, opposition has dwindled, and public support has grown.

In Pennsylvania, according to Assistant Attorney General Rosalyn Robinson, the executive and the legislative branches have opposed one another on the death penalty issue in recent years. In 1971, the attorney general issued an opinion ordering the release of death row prisoners and the dismantling of the state's electric chair. In 1978, the legislature overrode the governor's veto of a new death penalty bill and amended three Pennsylvania statutes. The amended statutes provide for a bifurcated trial for capital crimes, procedural guidelines for weighing aggravating and mitigating circumstances, and an automatic review by the Pennsylvania Supreme Court of every death sentence. The new statutes have been upheld in the three cases appealed to the Pennsylvania Supreme Court to date.

An assistant attorney general in Vermont reported that his state is considered to be a de facto abolition state because the current death penalty is probably unconstitutional under the rulings of the U.S. Supreme Court in Furman v. Georgia. According to the assistant attorney general, capital punishment is limited to a very few crimes and because there are very few incidences of such crimes in Vermont. Although electrocution is the prescribed method of killing, Vermont has no electric chair, and no one has been executed in Vermont since the 1940s.

Except for an unsuccessful bill to revise the death penalty several years ago, there has been no real movement for or against the death penalty in Vermont. Th assistant attorney general perceived minimal legislative or gubernatorial interest in the issue, and said that public advocacy of the death penalty appeared to be insignificant.

By contrast, in Oregon, the death penalty has been hotly debated for the past seventy years. In 1914, a petition initiative amended the Oregon Constitution to abolish capital punishment. In 1920, voters in a primary election instituted capital punishment for unmitigated cases of first degree murder. In 1964, the people adopted a legislatively referred repeal of the death penalty. In 1971, the revision of the Criminal Code made no provision for the death penalty. In 1978, an initiative campaign succeeded in making aggravated murder a capital offense, but the Oregon Supreme Court disapproved the specified trial procedure. In 1981, a bill to reinstate the death penalty died in judiciary because the Oregon Constitution specifies that the penal system must provide rehabilitation and not retribution, and also specifically prohibits cruel and unusual punishment.

According to Stevie Remington of the Oregon chapter of the ACLU, death penalty bills have been introduced in every session of the Oregon legislature since 1963, and have died in committee almost every year. In one instance, the Rules Committee passed a measure on to the full chamber where it was defeated by a 2 to 1 margin. However, the current governor of Oregon supports capital punishment and public opinion polls show 80 percent of Oregon residents favor it. A petition drive is again under way to place a constitutional amendment and a death penalty statute on the ballot in 1984.

Debate of Death Penalty Issues

Our conversations with legal and legislative professionals and with advocacy groups in several states seem to confirm that capital punishment has aroused the same moral, ethical, legal and political controversies wherever and whenever it has been considered. Because of the complexity of the death penalty issues, none of the states we contacted

were able to furnish a brief summation of either the public or legislative debate. However the issues have been well summarized by respected scholars of the subject in a number of books and articles.

For advocates on both sides of the issue, Hugo Bedau's The Death Penalty in America has been for many years a useful repository of the facts and the main arguments. In his third edition of this "thinker's reference", Bedau has included a section of powerful arguments favoring capital punishment from such eloquent advocates as Walter Berns, Ernest van den Haag, and Glen D. King. These statements are balanced by such well-known abolitionists as Anthony G. Amsterdam, Charles L. Black, Jr., and Henry Schwarzchild. Both sides deal with the philosophical considerations that must be resolved in deciding whether or not the state has a right to kill a convicted felon. We will be happy to provide you with a library copy of The Death Penalty in America if you are not already familiar with this comprehensive reference.

In addition, we also have available two other summaries of the moral and legal issues that seem to have risen every time and place the death penalty has been considered.

History of Death Penalty Legislation in Alaska

Since the abolition of the death penalty in Alaska in 1957, legislators have introduced at least seven measures relating to capital punishment. Six of these measures, including three pending in the current session, would provide for reinstatement of the death penalty. The seventh related measure, introduced in the First Alaska Legislature, redefined "felony offense" to omit reference to punishment by death. Attachment A describes the death penalty bills and notes their sponsors, dates of introduction, and their assignments to committees. None of the bills to reinstate the death penalty in previous sessions succeeded in passing through the committee review process in both chambers of the legislature.

In addition to these bills, it is possible that the death penalty could have been proposed as part of broader revisions of the criminal code and stricken by amendments before the bill's passage.

* * *

We hope this information is helpful to you. If you have further questions on this or other subjects, please let us know how we can help.

NP

Attachments

ATTACHMENT A
ALASKA LEGISLATION RELATING TO THE DEATH PENALTY
1958-1984

Thirteenth Legislature

House Bill No. 140, sponsored by Rep. Pestinger and cosponsored by Reps. Ward, Flood, Liska, and Shultz, would authorize the death sentence in Alaska and classify first degree murder as a capital felony, punishable by 20-99 years in prison or by death. (Amends AS 11.41.100(b) relating to first degree murder and AS 12.55.125 relating to the sentence.)

Establishes procedures for automatic review by the Supreme Court of any death sentence handed down. Establishes sentencing procedures for capital felonies. In any sentence of death, the court must issue written finding of the aggravating factors that exist to justify the sentence and the mitigating factors considered by the court. Lists aggravating and mitigating factors to be considered in capital felonies. At least one aggravating factor must be found to exist in order to impose the death sentence. Aggravating factors must not be outweighed by mitigating factors, Does not provide for effective date (effective 90 days after Governor's signature).

Introduced January 28, 1983 and referred to Judiciary and Finance.

House Bill No. 235, sponsored by Rep. Bussell and cosponsored by Reps. Uehling, Liska and Shultz, would authorize an advisory vote on whether to institute the death penalty in Alaska for first degree murder. The question would appear on the ballot at the next general or special election in the following form: "Shall the Legislature of the State of Alaska enact laws instituting capital punishment for first degree murder?" Effective immediately.

Introduced March 4, 1983 and referred to Judiciary.

Senate Bill No. 121, sponsored by Sen. Pettyjohn and cosponsored by Sens. Kelly, P. Fischer and Faiks. Identical to HB 140, with one change. In HB 140, the jury would be responsible for issuing an advisory sentence to the court for capital felonies. The court would then deliberate and enter a sentence of death or a term of imprisonment. Under SB 121, the advisory sentence provision is eliminated and the jury would be directly responsible for issuing either the death sentence or a prison sentence.

Introduced February 11, 1983 and referred to Judiciary and Finance.

Twelfth Legislature

Senate Bill No. 73, sponsored by Sen. Bradley, would make first degree murder a capital felony (amendment to AS 11.41.100(b)) punishable by a definite term of imprisonment of from 20 to 99 years or by death (amendment to AS 12.55.125(a)). Currently murder in the first degree is an unclassified felony and is punishable by a definite term of imprisonment of from 20 to 99 years.

Adds new sections to AS 12.55 requiring automatic review of any death sentence by the Supreme Court within 60 days; outlining the sentencing procedure for a capital felony; requiring the jury to give an advisory sentence for a capital felony including aggravating or mitigating factors or whether the defendant should be sentenced to jail; and listing aggravating and mitigating factors to be considered in a capital felony case.

Amends the jurisdiction of the Court of Appeals to specifically state that the court does not have appellate jurisdiction in actions and proceedings commended in the superior court involving prosecution for a capital felony for which a death sentence is imposed (amendment to AS 22.07.020(a)(1) & (b)). Does not provide for an effective date.

Introduced January 14, 1981 and referred to State Affairs and Judiciary.

House Bill No. 458, sponsored by Rep. Hurlbert, is identical to SB 73

Introduced April 2, 1981 and referred to Judiciary.

Eighth Legislature

House Bill No. 675, sponsored by Rep. Saylors, relates to the imposition of the death penalty and changing Rule 35, Rules of Criminal Procedure. Amends AS 11.05 by adding a new section (Sec 11.05.015) entitled PUNISHMENT FOR CERTAIN MURDER CONVICTIONS.

Introduced February 21, 1974 and referred to Judiciary.

First Legislature

Senate Bill No 255, sponsored by the Judiciary Committee, reclassified crimes and redefined felonies and misdemeanors, removing punishment by death from the definition of felony; amending Sec. 65-2-2, ACLA 1949 as amended by Sec. 3, Ch. 132, SLA 1957; and providing for an effective date.

Signed into law on March 31, 1960.

Compiled, with revisions, from Alaska legislative records.

#2

A Point of View article submitted for publication in the Anchorage Daily News, Anchorage, Alaska, by Pastor Jack R. Bacher, Scenic Park Bible Church, 7145 Nadelynne Drive, Anchorage, Alaska 99504

never published JB

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Recently (August 23, 1982) the readers of the Anchorage Daily News were editorially told that "Alaskans must reject it" (the death penalty).

I personally take issue with the tenor and conclusions of that editorial. It is riddled with glaring contradictions when compared to revealed truth; it describes as "uncivilized" those who hold the position of capital punishment.

There are many of us who take the position as taught in the Bible that capital punishment is fundamental to law as instituted by God. Therefore any statements made to demean or ridicule the principle are perceived as made directly against an all-wise God. The question I ask is this: why do we creatures resist the clear teaching of our Creator?

I believe I found the answer to that question in the first mention of capital punishment in the Bible. It is found in Genesis 9:6, "Whoso sheddeth man's blood, by man shall his blood be shed; for in the image of God made he man." This was stated long before the giving of the Ten Commandments and other precise statements of "Mosaic" law.

The stance of the entire law system in our country is "justice for all;" it comes directly from the Bible. Explicit instruction is recorded regarding the taking of life from another human being with premeditation (murder in the first degree). The person so doing and found guilty was put to death. Even the concept of second degree

--more, page 2

murder and manslaughter are carefully described and the punishment proscribed to fit the crime.

Many of us who believe the Bible do not believe that is subject to debate by finite social scientists who see themselves as "civilized". The continual debates, studies, research polls, on ad infinitum on the "deterrent" issue are nothing mor- than the product of our own thinking. It is obvious from the standpoint of Scripture that punishment is a deterrent to crime. However, that principle will not apply unless the punishment fits the crime, as ordained of God. Confusion and polarization always permeates a society which rejects Divine principles.

Perhaps some who are reading this are "seething" at this point because of their total rejection of Biblical concepts. However I have not yet made my point which really explains why we have such polarization of basic issues like capital punishment. It is found in the passage quoted above, Genesis 9:6. The words not only give the concept for capital punishment but also the reason for it. The reason why a murderer's life is to be taken: "for in the image of God made he man!"

Man is in a category of "equal importance." To God, the man's life who is taken in murder is equally important to the life of the one who took it. It is obvious that the man who took the life of another did not feel that way. And when we do not obey God and take the life of the murderer we side with the murderer who decided the life of his victim was not as important. And we call that position "civilized." Hardly!

----more, Page 3

But that does not explain why we have this difference of opinion in our society today. This difference exists because many people do not believe that man "was created in the image of God." The Humanist teaching of the evolutionary hypothesis on origins has degraded our image of our fellow man. To many, man is only a creature of chance, with no particular reason for existence and certainly no destiny of any importance. (Today many animals enjoy greater protection under law than does man himself.)

Logically therefore we can take the position that the murderer is more important than his dead victim. After all, the murderer is still alive; his victim is dead. This same evolutionary thought has brought us to positions of difference over abortion and will become more apparent as the issues of infanticide and euthanasia are debated.

I certainly do not want to convey the "all is over for us attitude." The equal time debate on teaching Scientific Creation/ Evolution is a healthy sign that the generation now being schooled will have an opportunity for an alternative philosophical base. Scientists by the hundreds are withdrawing their support of the exclusivist position of offering only the evolutionary explanation on origins. Hopefully the American sense of fairness will demand that Scientific Creationism will be given equal time.

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Deterrence, Death, and the Victims of Crime: A Common Sense Approach

*Frank G. Carrington**

I. Introduction

The concept of deterrence is one of the most important in the formulations of the victim advocate, primarily because of two essential premises that underlie the entire field of victim advocacy. The first, but not necessarily the most important, of these premises concerns the policy that favors assuaging the plight of persons after they have been victimized. This relief can be provided in a number of different ways: compensation to innocent victims from the states; restitution to victims as a condition of granting probation to the criminal; victim counselling;[1] and victim/witness assistance programs.[2] The second premise of victim advocacy, namely, preventing victimization from ever occurring, is also of critical importance because, obviously, in each instance in which a given act of victimization is prevented, the palliative measures described above will not be necessary.

This preventive goal can be effectuated through two types of activity. First, victim advocates often engage in activity that encourages and assists the potential victim of crime to help himself in programs such as neighborhood watch, inscription of identifying serial numbers on personal property, and other citizen crime prevention programs. The second type of activity, with which this Article primarily deals, entails efforts by victim advocates to structure the system to deter would-be criminals from engaging in acts of victimization. It also requires efforts to deter third parties—for example, parole officials, whose duties include making decisions

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1. An example of this type of counselling occurs within rape crisis centers.

2. A number of these programs have been established in various prosecutors' offices across the country.

that may place dangerous criminals in a position to victimize again—from acting to the detriment of potential victims.

In sum, the notion of deterrence has assumed critical dimensions in the area of victim advocacy and assistance. Part II of this Article deals with deterrence generally as a common sense concept and emphasizes the potential impact that different attitudes toward this concept have on crime victims. Part III then focuses on particular aspects of deterrence in the capital punishment controversy—again by emphasizing the effect on victims. The final part of the Article explores a rather new area of the law that applies the concept of deterrence—by threatening civil liability for gross negligence in the handling and release of prisoners—to third party custodial officials in an attempt to prevent future victimization. The Article concludes that a common sense approach to the question of deterrence, rather than one which is based on delaying any decision until all the empirical evidence is compiled, is necessary to combat the serious crime problem that now faces the country.

II. Deterrence: A Common Sense Concept

To deter an individual from a contemplated activity, one must discourage or restrain that individual from acting or proceeding through the inducement of fear, doubt, or some sense of deprivation. Deterrence does not act as a direct restraint on conduct; rather, it works to manipulate the motives or incentives behind that conduct. The deterrence rationale depends on a conception of human motivation that is based on a function of cost over gain. Successful deterrence, therefore, requires that the certainty and quantum of punishment sufficiently outweigh any expectation of possible gain in the mind of the would-be wrongdoer.[3]

The value of punishment as deterrence rests not on how it affects individual offenders, but on how it affects the future conduct of the general public.[4] Indeed, in the individual case deterrence already has failed. As one contemporary proponent of deterrence, Ernest van den Haag, has pointed out, "[d]eterrent effects largely depend on punishment being meted out according to the crime, so that a prospective offender can know the likely cost of the offense and be deterred by it."[5] In other words, members of the public

3. *See, e.g.*, E. van den Haag, Punishing Criminals 113-14 (1975); J. Wilson, Thinking About Crime 53-55 (1975).

4. *See* E. van den Haag, *supra* note 3, at 60-61.

5. *Id.* at 61.

the poor face in attempting to improve their situation to the level of a literal truth, this argument assumes its conclusion. It boldly equates the condition of life in the inner cities with the conditions found in Attica, Green Haven, Soledad, or San Quentin. Indeed, if this argument were extended to its logical conclusion, it would identify every person who lives in the ghetto with a felon who is behind bars because society has deemed that he is too dangerous to be at liberty. The argument completely ignores the great majority of inner-city dwellers who are decent, hard-working individuals. These people admittedly live under conditions that are deplorable, but they do not become criminals; rather, they want nothing more than to conduct their affairs in relative freedom from criminal harm. If everyone who resided in the inner city were a criminal and found prison life preferable to ghetto life, this argument might have some superficial merit; the facts, however, simply do not support such a proposition.

A positive correlation between poverty and crime undoubtedly does exist, but, as James Q. Wilson contends, "[t]he desire to reduce crime is the worst possible reason for reducing poverty. . . . Reducing poverty and breaking up the ghettoes are desirable policies in their own right, whatever their effects on crime."[13] Opponents of deterrence, however, apparently conclude that if poverty is in some sense a cause of crime, then only the elimination of this cause will reduce crime. Wilson finds that these opponents have "become so preoccupied with dealing with the causes of the crime (whether . . . social conditions or police inadequacies) that [they] have almost succeeded in persuading [them]selves that criminals are radically different from ordinary people—that they are utterly indifferent to the costs and rewards of their activities."[14] He argues that no evidence exists to support this conclusion, and that regardless of whether criminals are prone to accept greater risks or have a weaker sense of morality than an average citizen, "if the expected cost of crime goes up without a corresponding increase in the expected benefits, then the would-be criminal . . . engages in less crime."[15]

Opponents of deterrence often base a second argument on sta-

13. J. WILSON, *supra* note 3, at 203. In response to the notion that poverty causes crime, Wilson notes that the dramatic increase in crime during the last fifteen years has occurred "concurrently with a general rise in the standard of living and thus could not be explained by worsening social conditions." *Id.* at 74.

14. *Id.* at 175.

15. *Id.* at 175-76.

must expect that if they commit a particular crime, their punishment will be comparable to what past offenders have received. If these offenders repeatedly are paroled, or if they are never apprehended at all, then the ostensible threat of a stiff statutory penalty has virtually no deterrent effect.[6]

These notions of a perceived threat and cost versus gain do not require that potential criminals perform some rational calculation of the cost/benefit ratio. Irrespective of their intellectual capacity to understand a concept, human beings are capable of responding to threats, learning from experience, and forming habits.[7] Deterrence, therefore, does not depend on the rationality of a response, but merely on the likelihood and regularity of a response to a particular threat.[8]

Some commentators, however, reject this theory of deterrence for a variety of reasons. One respected federal judge, for example, dismissed the concept outright in a recent article.[9] This criticism of the deterrence rationale primarily rests on two arguments, neither of which can withstand careful scrutiny. First, the article advances the theory that living in the inner city is worse than living in a prison, and that the threat of incarceration, therefore, has no deterrent effect on those who live in the ghettos.[10] From the premise that most crime is committed by members of "an underclass of brutal social and economic deprivation . . . [who] are raised in deteriorating, overcrowded housing . . . [and who] are denied [a] sense of order, purpose, and self-esteem,"[11] the article succinctly concludes that "the threat of prison may be a meaningless deterrent to one whose urban environment is itself a prison."[12]

By elevating a metaphorical illustration of the difficulties that

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6. *See infra* notes 16-20 and accompanying text.

7. *See* E. VAN DEN HAAG, *supra* note 3, at 113. Van den Haag notes,

> Prospective offenders need be no more rational than rats are when taught by means of rewards or punishments to run a maze. Experimenters must calculate the effects they desire and the means appropriate to achieve them. So must legislators. But the rats do not calculate, nor do the subjects of legislation need to.

Id.

8. *See* J. WILSON, *supra* note 3, at 174-77. Wilson contends that criminals may be less likely to respond to a given threat because they are willing to run greater risks. *Id.* at 175. He also argues that increasing the certainty of punishment deters crime more effectively than increasing its severity. *Id.* at 174.

9. Bazelon, *Crime: Toward a Constructive Debate*, 67 A.B.A.J. 438 (1981).

10. *Id.* at 440.

11. *Id.*

12. *Id.* (citing Diana Gordon, currently president of the ultrapermissive National Council on Crime and Delinquency).

tice, "an impotent society."[20]

Judge Bazelon candidly acknowledged in his article in the *American Bar Association Journal* that he has no ready answers for the country's crime problem.[21] This author makes the same acknowledgement.[22] The point of the foregoing discussion is simply that considering the unparalleled difficulties in apprehending and convicting criminals, the lack of a significant drop in crime rates as incarceration and lengths of sentences increase cannot alone support an argument against deterrence.

Many people today talk in reverent terms of empirical evidence—primarily statistics—as if this were the touchstone of any argument. The conclusion to Judge Bazelon's article typifies this approach:

> We need to know much more about the precise costs of an effective program of deterrence before we can dismiss the recent proposals. At the present time, however, the case for deterrence has not been convincingly made. After a comprehensive review of the literature a panel of the National Academy of Sciences concluded: "Despite the intensity of the research effort, the empirical evidence is still not sufficient for providing a rigorous confirmation of the existence of a deterrent effect. . . . Policy makers in the criminal justice system are done a disservice if they are left with the impression that the empirical evidence, which they themselves are frequently unable to evaluate, strongly supports the deterrence hypothesis."[23]

Nevertheless, the unifying theme of this Article is that considering all the variables at issue in such a volatile area as criminal justice, and taking into account all the statistics for and against deterrence, the entire matter ultimately reduces to principles of common sense.

The disagreement over the question of deterrence between the pragmatists—Wilson, van den Haag, and others[24]—and the theoreticians—represented by Judge Bazelon and the National Academy

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20. Address by Chief Justice Warren E. Burger, American Bar Association Annual Convention (Feb. 6, 1981), *noted in* Bazelon, *supra* note 9, at 438.

21. Bazelon, *supra* note 9, at 438.

22. *But see* U.S. DEP'T OF JUSTICE, ATTORNEY GENERAL'S TASK FORCE ON VIOLENT CRIME: FINAL REPORT (1981) [hereinafter cited as TASK FORCE REPORT]. This report contains a number of recommendations on bail abuse, admissibility of evidence, limitations on post-conviction release, and other procedural aspects of the criminal justice system that are designed to streamline the process and restore a balance between the rights of accused and convicted criminals and the rights of the law-abiding members of society. The author was a member of the Task Force and is naturally prejudiced in favor of the Report. Nevertheless, the recommendations at least are worthy of consideration in dealing with the current crisis in crime in this country.

23. Bazelon, *supra* note 9, at 441.

24. *See* E. VAN DEN HAAG, *supra* note 3; J. WILSON, *supra* note 3; authorities cited *infra* note 32.

tistics that purport to prove the ineffectiveness of deterrence; these statistics support the determination that although both the rates of incarceration and the lengths of sentences have risen, the crime rate has not diminished.[16] Thus, the argument concludes, increases in the probability or length of confinement must not deter offenders. This argument, however, ignores the distinction between the likelihood of punishment after apprehension and conviction and the likelihood of actually being apprehended and convicted. The greatest prerequisite of the deterrence argument is that for an action or threat of action to be effective as a deterrent, those against whom the threat is directed—in this case, criminals—must perceive the cost of their deeds to be greater than their prospective gain. In addition, the threat must be total, that is, it consistently must be credible from the time of arrest to actual imprisonment. Despite an almost certain probability of being arrested, an offender will not be greatly deterred from commiting a crime if he foresees only a negligible chance of going to jail. Conversely, the certainty of a long prison sentence after conviction is no deterrent to one who expects never to be apprehended.

Unfortunately, this consistency is absent today. A criminal of even marginal intelligence must know that although his chances of going to prison for a longer time are slightly higher now than they were in the past, his chances of ever being apprehended and convicted—especially in our major metropolitan areas—remain sufficiently minimal that the cost/gain ratio still favors committing the crime. Indeed, crime has reached such epidemic proportions that the police simply cannot deal with all of it, and the victims of this epidemic are bearing the burden. Moreover, our criminal justice system has instituted such a thicket of restraints on police activity and such a morass of contrived protections around criminal suspects—for example, the exclusion of evidence and confessions,[17] an almost unlimited right to bail despite the commission of other crimes while on bail,[18] and open-ended, post-conviction remedies[19]—that we indeed have become, in the words of the Chief Jus-

16. *See, e.g.*, Bazelon, *supra* note 9, at 440-41.

17. *See, e.g.*, Miranda v. Arizona, 384 U.S. 436 (1966); Mapp v. Ohio, 367 U.S. 643 (1961).

18. *See, e.g.*, The Bail Reform Act of 1966, 18 U.S.C. §§ 3146-3150 (1976).

19. *See* Finley, *The Appellate System: On a Vulnerable Plateau*, TRIAL, Nov.-Dec. 1971, at 19; Hanley *Habeas Corpus Ad Infinitum*, NATIONAL SHERIFF, Dec. 1973-Jan. 1974, at —, 23-24.

The analogy between the current epidemic of crime and a medical emergency is in no way attenuated, and society thus needs to adopt measures that will abate the alarming rise in crime immediately—not some distant point in the future when everyone concludes that the concept of deterrence breeds no harmful side effects.

As individuals continue to become victims of crime, society's attempts to solve the problem remain frustrated because of the tension between the need for immediate action and the quest for reasonable certainty about the effectiveness of deterrence. No single aspect of the criminal justice system highlights this tension more clearly than the arguments for and against deterrence and the death penalty, which this Article discusses below. The thesis of the Article is that the plight of the victim should be society's overriding consideration, and that the only viable solution to the present stalemate lies in a common sense approach to deterrence and capital punishment.

III. Death and Deterrence: The Capital Punishment Controversy

Proponents of the deterrent value of capital punishment—or, for that matter, any other aspect of deterrence—find themselves in the unenviable position of having to prove a negative. If a person is deterred from doing something, then, by definition, he does not do it. Thus, the numbers of people who refrained from committing felonies because of their fear of execution are difficult to ascertain. Rarely does a resident drop by the station house in his local police precinct to confide to the desk sergeant, "You know, I was planning to kill my wife for the insurance money, but the thought of the death penalty kept me from doing it." Homicide figures in the United States roughly indicate how many people obviously were not deterred from killing, but the number of those who actually were deterred remains—and must remain—incalculable.

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virus—commonly known as swine flu—creating an epidemic among the American public during the following winter concerned United States public health officials. Researchers soon developed an effective vaccine, but it had potentially serious side effects for various segments of the population. Despite a sharp debate among policymakers about these risks compared to the benefits of a national immunization program, *see* Time, April 26, 1976, at 36, President Ford announced a $135 million program to innoculate the entire United States population. At that time, the Food and Drug Administration, which normally is the body that must approve such drugs before they are made available to the public, had neither tested the vaccine nor certified it as safe and effective. N.Y. Times, March 25, 1976, at 1, col. 1.

of Science panelists—can be stated clearly and succinctly. The former in effect argue that if the threat of punishment increases, or if the perceived cost of crime rises to exceed the perceived gain, then society will deter criminals. The theoreticians, on the other hand, take a conservative, cautious approach; they apparently would argue that policymakers must study the question of deterrence to a far greater degree—until they are clearly convinced of its soundness—before they would alter the system toward a more truly deterrent model.

The argument for delay ignores two salient points. First, criminal justice is not a finite science, and deterrence is not a finite concept. Theorists probably will never know with certainty the inner and outer limits of the deterrence model as a solution to the crime problem. This fundamental reality is the reason that this Article favors a common sense view of deterrence. Since no other approach has produced the desired results, a return to traditional notions about human behavior appears to be the only sensible alternative. Although some people might view this response as simplistic, the cost versus gain rationale is intrinsically logical, and no reason exists not to attempt to apply these principles to criminal justice, particularly when the more complex alternatives have failed demonstrably.

Second, from a pragmatic point of view, crime has reached such alarming proportions that society cannot afford the time that would be necessary to perform leisurely studies of deterrence—gathering empirical data on a gradual basis until the more learned professors are satisfied that deterrence works. Medical scientists, for example, have worked for years to produce cures for chronic, preexisting maladies such as the common cold, influenza, and arthritis that do not place the patient's life in danger. Studies and tests are time controlled: they are conducted first *in vitro* and then *in vivo* by beginning with laboratory animals and progressing to human experiments only under the most rigid conditions. This approach is known as the scientific method, and it is perfectly proper when the urgency is not immediate. The situation, however, is entirely different in emergency circumstances caused by a raging killer epidemic such as a plague or a new and deadly virus that is decimating the population. At this point, any potential remedy that appears likely to cure the disease or prevent its spread will be used without first undergoing rigid testing in clinical conditions.[25]

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25. In the spring of 1976, for example, the possibility of a new strain of an influenza

of this debate reinforce the contention that if the statistical theoreticians cannot agree—based on the best empirical evidence—whether capital punishment deters murderers, then perhaps returning to a common sense evaluation of the question, which all citizens are capable of making, will be a more feasible and productive approach to the problem.

This common sense perspective begins with a concession from capital punishment proponents that the threat of the death penalty cannot and will not deter every murderer. Crimes of passion, crimes committed by the certifiably insane, and crimes calculatedly undertaken for revenge are all examples of murders that no known threat can deter. Notwithstanding this admission, however, the proposition does not follow that because capital punishment does not deter all murderers, it deters *no* murderers. Justice Stewart succinctly articulated this theme in *Gregg v. Georgia*,[33] in which the Supreme Court affirmed—with Justices Brennan and Marshall dissenting—three state death penalty statutes. Justice Stewart reasoned,

> Although some of the studies suggest that the death penalty may not function as a significantly greater deterrent than lesser penalties, there is no convincing empirical evidence either supporting or refuting this view. We may nevertheless assume safely that there are murderers, such as those who act in passion, for whom the threat of death has little or no deterrent effect. But for many others, the death penalty undoubtedly is a significant deterrent. There are carefully contemplated murders, such as murder for hire, where the possible penalty of death may well enter the cold calculus that precedes the decision to act.[34]

The first noteworthy aspect of the common sense analysis of the death and deterrence question is a simple cause and effect relationship. The several states quit executing murderers in 1966, a year in which slightly more than 10,000 murders were recorded.[35] This hiatus—initially de facto, but after 1972, de jure[36]—lasted approximately ten years, and during that period, the number of murders doubled to over 20,000 in 1976.[37] Undoubtedly, other factors also contributed to this increase, including population growth, deteriorating urban conditions, and an increasing disrespect for the law. The fact remains, however, that abandonment of the supreme

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Deterrent Effect of Capital Punishment: Another View, 85 AM. ECON. REV. 445 (1977); *A Symposium: Capital Punishment in the United States*, 14 CRIM. L. BULL. 5 (1978).

33. 428 U.S. 153 (1976).
34. *Id.* at 185-86.
35. *See* F. CARRINGTON, *supra* note 28, at 86.
36. *See* Furman v. Georgia, 408 U.S. 238 (1972).
37. F. CARRINGTON, *supra* note 28, at 86.

This discussion is not intended to suggest that those who are interested in statistics and empirical evidence have remained uninvolved in the deterrent controversy; indeed, a spirited, if rather arcane, debate currently is being waged among those who would seek to translate numbers and other variables into conclusions about the deterrent value of capital punishment. Of course, any detailed description of these statistical arguments about the death penalty and its deterrent effect is far beyond the scope of this Article. Briefly, sociologists and behavioral scientists initiated the discussion and purported to show—by comparing homicide rates in contiguous states that had adopted opposing positions on the death penalty—that capital punishment was not a crime deterrent.[26] Students of the crime problem accepted these findings almost without reservation for a good number of years.[27]

The debate subsequently widened with the entry of a new group of academic theorists: the econometricians. Using an econometric model that identified the various relevant determinants of murder, Isaac Ehrlich, a respected economist and opponent of the death penalty, published a paper in 1975[28] criticizing the sociologists' and behavioral scientists' method and indicating that each actual execution between 1933 and 1967 could have deterred an average of eight murders.[29] Ehrlich's conclusion drew immediate criticism,[30] to which he responded,[31] and the statistical warfare has continued up to the present.[32] The inconclusive results

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26. *See, e.g.*, J. SELLIN, THE DEATH PENALTY 34 (1959).

27. *See, e.g.*, W. RECKLESS, THE CRIME PROBLEM 508 (4th ed. 1967). *But see* van den Haag, *On Deterrence and the Death Penalty*, 60 J. CRIM. L.C. & P.S. (1969), *reprinted in* CAPITAL PUNISHMENT 111 (J. McCafferty ed. 1972).

28. Ehrlich, *The Deterrent Effect of Capital Punishment: A Question of Life and Death*, 65 AM. ECON. REV. 397 (1975). An amicus curiae brief in Gregg v. Georgia, 428 U.S. 153 (1976), cited Ehrlich's article. In many legal circles, it is credited with influencing the Court in its holding in *Gregg* that carefully drawn statutes providing for the death penalty are constitutional. For accounts of the Supreme Court's inconsistent holdings regarding the death penalty beginning with Furman v. Georgia, 408 U.S. 238 (1972), in which the Court held state death penalty statutes constitutionally invalid as "arbitrary and discriminatory," through *Gregg*, in which it reinstated the death penalty, see F. CARRINGTON, NEITHER CRUEL NOR UNUSUAL 143-92 (1977); M. MELTSNER, CRUEL AND UNUSUAL (1973).

29. Ehrlich, *supra* note 28, at 398, 414.

30. Bowers & Pierce, *The Illusion of Deterrence in Isaac Ehrlich's Research on Capital Punishment*, 85 YALE L.J. 187 (1975).

31. Ehrlich, *The Deterrent Effect of Capital Punishment: Reply*, 67 AM. ECON. REV. 452 (1977).

32. *See generally* F. CARRINGTON, *supra* note 28, at 82; Ehrlich, *Capital Punishment and Deterrence: Some Further Thoughts and Additional Evidence*, 85 J. POL. ECON. 741 (1977); Ehrlich & Gibbons, *On the Measurement of the Deterrent Effect of Capital Punishment and the Theory of Deterrence*, 65 J. LEGAL STUD. 35 (1977); Passell & Taylor, *The*

A dissenting opinion in a capital punishment case written by the late Justice Marshall McComb of the California Supreme Court[41] provides another example of the average criminal's perception of the death penalty's deterrent effect. To demonstrate the deterrence factor, Justice McComb collected statements from police files of fourteen arrested criminals who had failed to use deadly force in the commission of their crimes because of their fear of being executed. The police had arrested one of these criminals for assault with a knife. She told investigating officers: " 'Yeh, I cut him and I should have done a better job. *I would have killed him but I didn't want to go to the gas chamber.*' "[42] In another case the police arrested three persons, two of whom had prior criminal records, for robbery. Using toy pistols, these offenders had forced their victims into a back room and bound them. When the investigating officers asked them why they had used toy guns instead of real ones, all three agreed that " 'real guns were too dangerous, as if someone were killed in the commission of the robberies, they would all receive the death penalty.' "[43] In yet another example cited by Justice McComb, an ex-convict with at least four aliases and a felony record that dated from 1941 was arrested for robbery. He had used guns in prior robberies in other states, but only pretended to carry a gun in the robbery in question. He told investigating officers that although he had spent only one month in the state, he had known about the California death penalty. When questioned about the gun bluff, he said, " '*I knew that if I used a real gun and that if I shot someone in a robbery, I might get the death penalty and go to the gas chamber.*' "[44] Overall, the offenders demonstrated an awareness of the potential penal consequences of their conduct in each of the fourteen cited cases, and they all intentionally placed themselves in a situation in which an unacceptably adverse result—namely, capital punishment—could not possibly occur. Justice McComb concluded from this evidence that

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that "these people were simply telling the cops what they thought they wanted to hear." This explanation for the results of the survey might well be accurate, but the fact remains that the condition which gave rise to the study—that the weapon either was not used or could not be used—existed *before* the criminals knew that they would be apprehended, much less before they know whether they would be questioned about their failure to use the weapon.

41. People v. Love, 56 Cal. 2d 720, 366 P.2d 33, 16 Cal. Rptr. 777 (1961).

42. *Id.* at 735, 366 P.2d at 41, 16 Cal. Rptr. at 785 (McComb, J., dissenting) (emphasis in original).

43. *Id.*

44. *Id.* (emphasis in original).

penalty corresponded to a spectacular and unprecedented rise in the number of capital murders. At the very least, this ten year period of enlightenment—or softness—toward capital punishment created no parallel sense of gratitude in the hearts of potential killers. On the contrary, a more reasonable conclusion is that these people cynically and calculatedly took advantage of the new permissiveness. With the death penalty defunct and state parole laws allowing for release in a relatively few years, they justifiably believed that the murder of the victims of an armed robbery to avoid being identified, for example, was not an unacceptable risk considering the potential gain.

Another type of input offers additional support for the proposition that the relationship between the abandonment of capital punishment and the rise in the number of murders is one of cause and effect. Because actual thought processes and motivations are necessarily private matters that others can only approximate, criminals themselves may provide unique insights into their feelings about the death penalty. In 1970 and 1971 the Los Angeles Police Department surveyed persons whom they had arrested for violent crimes, but who either had carried no weapons, had not used their weapons, or had carried inoperative weapons.[38] Of the ninety-nine criminals who responded to the question about why they had not killed, or, alternatively, why they deliberately had avoided placing themselves in a position where they could have killed, their responses indicated that fifty percent were deterred by fear of the death penalty; about eight percent were unaffected by the death penalty because it was not being enforced; ten percent were undeterred by the death penalty and would kill whether it was enforced or not; and approximately thirty-two percent were unaffected by the death penalty because they would not carry a weapon under any circumstances, primarily because of a fear either of being injured themselves or of injuring someone else.[39] Thus, one out of every two persons who had avoided circumstances in which they might have killed provided the best possible empirical basis for believing in the deterrent effect of the death penalty—their own statements that a fear of the gas chamber governed their actions.[40]

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38. Los Angeles Police Dep't, A Study on Capital Punishment (February 1971).

39. *Id.*

40. This study was one of the rare instances in which the proponents of deterrence actually were able to "prove the negative." In discussions with capital punishment experts—both retentionists and abolitionists—the author often has encountered the caveat

fenders. By committing one or more violent crimes—murder, rape, robbery, mayhem, kidnapping with violence, and aggravated assault—an individual unequivocally demonstrates that he is a danger to the community. When this individual is apprehended, convicted, or confined to a mental institution, the government takes full control of him through some form of incarceration or commitment. Similarly, the government assumes partial responsibility for an individual when it places him on parole, probation, work release, or the like. If correctional officials release the individual or permit him to escape under circumstances that constitute some form of negligence, or if they negligently supervise or control him, then these officials arguably should be held liable for any injury that results from the individual's future violent conduct. Liability also could be imposed for a negligent failure to warn certain potential victims either of threats against them or of the offender's dangerous tendencies.

Under this theory of liability, therefore, either the victim or the victim's survivors avoid suing the perpetrators of the crime and instead proceed against those third parties whose negligence—or gross negligence—actually put the offender in a position to victimize. According to the theory, the deterrence value arises from the perceived likelihood that the custodial officials or the government entities for which they work will be held civilly liable for gross negligence in the release or handling of prisoners. The theory holds that this threat will ensure—through the mechanism of enlightened self-interest—that these officials make their decisions and dispositions with the proper regard for the safety of society. By giving officials an incentive to be wary in their decisionmaking, and by deterring them from taking unnecessary risks, this approach may well prevent a good many of the current victimizations.

Several courts have begun to implement this deterrent rationale by permitting actions against correctional officials. *Grimm v. Arizona Board of Pardons and Paroles*,[47] for example, which the Supreme Court of Arizona decided in 1977, is a landmark case in this area. In 1973 Mitchell Blazak robbed a tavern in Tucson and killed John Grimm in the process. Blazak was a parolee whom the Arizona Board of Pardons and Paroles had released after he had served one-third of a 1967 sentence for armed robbery and assault with intent to kill. The Parole Board had released Blazak despite his criminal record dating from 1961, which included—besides the

47. 115 Ariz. 260, 564 P.2d 1227 (1977) (en banc).

the death penalty was indeed an effective deterrent.[45]

The final argument in this common sense analysis of deterrence and the death penalty concerns those people who are most directly affected by the acts of violent criminals—the murder victims themselves. If one concedes that neither side in this debate can prove conclusively that capital punishment does or does not deter murderers, then two—and only two—options remain: either the death penalty does not deter any would-be murderers or it deters at least some of them. If the first possibility proves to be true, then the invocation of capital punishment will not save the lives of any potential victims. Society, however, will be rid of some of its most dangerous predators, and the possibility that these people will kill again should they be released or escape will be foreclosed. On the other hand, if the second possibility is true, then the deterrent effect of making the threat of execution a credible one actually will save a given number of innocent victims from being killed.

The essential question regarding the acceptance of a death penalty with an unproved deterrent value, therefore, becomes whether society should favor the lives of convicted murderers over the lives of innocent victims. Viewed from the perspective of its potential to spare lives, one unquestionably can save convicted murderers by not executing them, but only at a continued high cost in terms of the lives of the innocent. On the other hand, although saving the lives of innocent victims by executing criminals may be less certain, the costs to society of not doing so are also much more severe. Simply stated, a common sense, victim-oriented approach resolves the uncertainty about deterrence in favor of the potential victims rather than the convicted criminals.

IV. Positive Deterrence Through Third Party Victims' Rights Litigation

This part of the Article deals with an area of the law that advocates of victims' rights are just now beginning to accept: litigation on behalf of a crime victim against negligent, or grossly negligent, correctional officials.[46] This approach focuses on the concept of positive deterrence, which relies upon the threat of legal action to eliminate victimization opportunities for potential repeat of-

45. *Id.* at 734-35, 366 P.2d at 40-41, 16 Cal. Rptr. 784-85 (McComb, J., dissenting).

46. For the sake of brevity and convenience, the term "correctional officials" includes parole boards, probation officers, wardens, sheriffs, and anyone else who has a duty to handle prisoners in some manner.

Citing the Arizona statute that set forth the criteria for parole release,[52] the court held that the Board's action in granting parole resulted in a voluntary assumption of responsibility over the convict.[53] The court reasoned that the supervision of a person having dangerous tendencies raises a duty to individual members of the general public and renders the Board liable for injury to individuals stemming from "grossly negligent or reckless release of a highly dangerous prisoner."[54] Under these circumstances, the court held that

> members of the Board are under a duty to inquire further before releasing the prisoner. . . . If the entire record of the prisoner reveals violent propensities and there is absolutely no reasonable basis for a belief that he has changed, then a decision to release the prisoner would be grossly negligent or reckless.[55]

Taylor v. State,[56] a 1973 jury verdict in a lower court case in the State of Washington, reached a result similar to that in *Grimm*. In *Taylor* the warden of the maxi-security state penitentiary in Washington had instituted an ill-conceived and unauthorized "take-a-lifer-to-dinner" program, under which prisoners serving life sentences were permitted to go to dinner outside the prison as a rehabilitative device. One of the beneficiaries of this program was a convict serving a life term who had a prior criminal record of forty-one felony convictions and seventeen escape attempts. The prisoner went to dinner at the home of an unarmed prison baker, crawled out the bathroom window, and subsequently murdered Mr. Taylor and wounded his wife during an armed robbery. Mrs. Taylor's suit against both the State of Washington and the warden—in his personal capacity—resulted in a jury award of $186,000.[57]

Grimm and *Taylor* are typical of those cases in which either victims or their survivors sue correctional officials for gross negligence in the handling of convicted criminals that results in harm to third parties. Despite several decisions in which courts have denied

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52. *Id.* at 262, 564 P.2d at 1229. The Arizona statute provides,

> If it appears to the board of pardons and paroles, from a report by the department of corrections, or upon the application by the prisoner for a release on parole, that there is a reasonable probability that the applicant will live and remain at liberty without violating the law, then the board may authorize the release of the applicant upon parole.

ARIZ. REV. STAT. ANN. § 31-412 (1976).

53. 115 Ariz. at 267, 564 P.2d at 1234.

54. *Id.* at 267, 564 P.2d at 1234.

55. *Id.*

56. No. 211-30 (Pierce County, Washington, Super. Ct., September 1, 1973).

57. *Id.*

armed robbery and assault with intent to kill—convinctions for burglary (twice), parole violation, and possession of marijuana.[48] In addition, the Board arguably possessed other evidence about the danger to society of releasing Blazak. The court in its opinion summarized eight different psychiatrists' prison evaluations that described him as

> "an extremely dangerous person who should not be free in society until some major psychological changes take place." He is a paranoid schizophrenic whose psychosis prevents him from distinguishing between right and wrong and from controlling his conduct. He has never made an adequate adjustment to society for any prolonged period and is unlikely to change. He has a definite potential for violence.[49]

In any event, the Board released Blazak after he had served only a fraction of his sentence, and shortly thereafter he murdered Mr. Grimm. Mrs. Grimm sued the members of the Parole Board for the wrongful death of her husband based on their gross negligence in the release; the Board defended on the grounds of an absolute immunity for public officials. On appeal, the Arizona Supreme Court ruled that the Parole Board members owed a duty to individuals when they make a decision "to release on parole a prisoner with a history of violent and dangerous conduct."[50] In holding that plaintiffs had stated a cause of action—subject, of course, to proof of all the other elements of actionable negligence—the court rejected the Board's absolute immunity rationale and affirmed the need for some method of accountability for bureaucratic decisionmaking. The court stressed the need to deter grossly negligent official action:

> We have come to this conclusion because of the increasing power of the bureaucracy—the administrators—in our society. The authority wielded by so-called faceless bureaucrats has often been criticized. . . . While society may want and need courageous, independent policy decisions among high level government officials, there seems to be no benefit and, indeed, great potential harm in allowing unbridled discretion without fear of being held to account for their actions for every single public official who exercises discretion. The more power bureaucrats exercise over our lives, the more we need some sort of ultimate responsibility to lie for their most outrageous conduct. There may even be some deterrent value in holding officials responsible for shocking outrageous actions. In any case, democracy by its very definition implies responsibility. In this day of increasing power wielded by governmental officials, absolute immunity for nonjudicial, nonlegislative officials is outmoded and even dangerous.[51]

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48. *Id.* at 262, 564 P.2d at 1229.
49. *Id.* at 263, 564 P.2d at 1230.
50. *Id.* at 267, 564 P.2d at 1234.
51. *Id.* at 266, 564 P.2d at 1233 (citations omitted).

tion to victimize. Thus, the harmful result is not as immediately foreseeable, and a simple negligence standard arguably is inappropriate.

Correctional officials perform the most difficult and demanding job in criminal justice today. To second-guess every disposition made in good faith by these officials by permitting civil lawsuits might unfairly burden and unduly restrict their decisionmaking process. At the same time, a standard requiring intentional malefaction provides too little control over their actions. The proper balance between these two competing considerations, therefore, lies in the concept of gross negligence as a prerequisite for liability. Indeed, almost every court that has held correctional officials liable has based its decision on a finding of gross negligence.[61] The court in *Grimm*, for example, relied on this standard;[62] it reasoned that the standard struck "the proper balance between the competing interests. The public has an interest in protection from premature release of highly dangerous prisoners as well as an interest in holding public officials responsible for outrageous conduct. The Board members have an interest in freedom from suit for reasonable decisions."[63] Similarly, the recently published final report of *The Attorney General's Task Force on Violent Crime* also recommended a gross negligence standard in these situations.[64] For these reasons, a gross negligence standard, which requires a higher degree of culpability than a simple good faith mistake, strikes a proper balance between the unfettered discretion of correctional officials and the policy against second-guessing mistaken dispositions that are made reasonably in good faith. In any event, the wave of victim litigation against third parties is not likely to abate—nor should it. As long as the courts continue to be vigilant in maintaining an appropriate balance between competing societal interests, this type of litigation is the kind of benign, positive deterrence that furthers the policy goals of the American criminal justice system.

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61. *See, e.g.*, Grimm v. Arizona Bd. of Pardons & Paroles, 115 Ariz. 260, 267, 564 P.2d 1227, 1234 (1977) (en banc).

62. *Id.*

63. *Id.* at 268, 564 P.2d at 1235 (footnote omitted).

64. TASK FORCE REPORT, *supra* note 22, Recommendation 63. Recommendation 63 states that "the Attorney General should study the principle that would allow for suits against appropriate federal governmental agencies for *gross negligence* involved in allowing early release or failure to supervise obviously dangerous persons or for failure to warn expected victims of such dangerous persons." *Id.* (emphasis added).

recovery—principally on the traditional grounds of sovereign immunity[58]—these cases represent a discernible trend in the courts toward permitting recovery when the requisite elements of a negligence or gross negligence cause of action are present.[59] This line of cases is presented solely to illustrate the potential—and growing trend—for victims to utilize the civil courts in lawsuits against third parties, not only to vindicate their own rights—either as victims themselves or as victims' survivors—but also, and perhaps more importantly, to use the law itself as a deterrent against those who are far too willing to experiment with the safety and security of the innocent to advance their own rehabilitative theories.[60]

This application of the deterrence concept to tort litigation presents a difficult theoretical problem of determining the proper standard of care that correctional officials owe to each member of the public. In many, if not most, personal injury lawsuits, the connection between the defendant's action and the plaintiff's injury is relatively easy to foresee. In cases against correctional officials, however, the defendants are not the actors who directly cause the injury; rather, their negligence merely places the criminal in a posi-

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58. *See, e.g.*, Martinez v. California, 444 U.S. 277 (1980). *But see* Pate v. Alabama Bd. of Pardons & Paroles, 409 F. Supp. 478 (M.D. Ala. 1976); Thompson v. County of Alameda, 27 Cal. 3d 741, 614 P.2d 728, 167 Cal. Rptr. 70 (1980); Lloyd v. State, 251 N.W.2d 551 (Iowa 1977); Carrington, Martinez *Ruling Won't Bar Suits on Negligent Custodial Releases*, Nat'l L.J., Feb. 11, 1980, at 26, col. 1.

59. *See, e.g.*, Payton v. United States, 636 F.2d 132 (5th Cir. 1981) (reargued en banc Sept. 24, 1981); Rieser v. District of Columbia, 563 F.2d 462 (D.C. Cir. 1977), *aff'd en banc*, 580 F.2d 647 (1978); Semler v. Psychiatric Inst., 538 F.2d 121 (4th Cir. 1976); Patricia J. v. Rio Linda Union School Dist., 61 Cal. App. 3d 278, 132 Cal. Rptr. 211 (1976). *See generally* Carrington, *The Crime Victims Legal Advocacy Institute: A Victims' Legal Rights Organization Is Formed in Virginia*, 6 VA. B.A.J. 4 (1980); Carrington, *Victims' Rights Litigation: A Wave of the Future*, 11 U. RICH. L. REV. 447 (1977); Carrington, *Victims' Rights: A New Tort*, TRIAL, June 1978, at 39; Rottenberg, *Crime Victims Fighting Back*, PARADE MAGAZINE, March 16, 1980, at 1; Comment, *Victims' Suits Against Government Entities and Officials for Reckless Release*, 29 AM. U.L. REV. 595 (1980); Barbash, *Victims' Rights: New Legal Weapon*, Washington Post, Dec. 17, 1979, at 1, col. 1.

60. Areas other than the handling of prisoners also have utilized the concept of positive deterrence through victim lawsuits against negligent third parties. For example, victims who have been injured because of a failure of security on leased premises have successfully sued and recovered. *See, e.g.*, Kline v. 1500 Massachusetts Ave. Apt. Corp., 439 F.2d 477 (D.C. Cir. 1970); Duarte v. State, 84 Cal. App. 3d 729, 148 Cal. Rptr. 504 (1978); O'Hara v. Western Seven Trees Corp., 75 Cal. App. 3d 798, 142 Cal. Rptr. 487 (1977). Likewise, innkeepers have been held liable for the failure to provide proper security for guests who were victimized. *See, e.g.*, Garzilli v. Howard Johnson's Motor Lodges, Inc., 419 F. Supp. 1210 (S.D.N.Y. 1976). Finally, owners of premises have been held liable to business invitees. *See, e.g.*, Quinn v. Smith, 57 F.2d 784 (5th Cir. 1932); Taylor v. Centennial Bowl, 65 Cal. 2d 114, 416 P.2d 793, 52 Cal. Rptr. 569 (1966); Earle v. Colonial Theater Co., 82 Mich. App. 54, 266 N.W.2d 466 (1978).

V. Conclusion

This Article has attempted to demonstrate that only a paucity of actual knowledge is available on the concept of deterrence. Although the theory of cost versus gain—a pure threat of sanction as a deterrent to criminal activity—is logically compelling, hardly anything in this area can be proven even by a preponderance of the evidence, much less with mathematical certainty. The question that society must address, therefore, is whether to accept the reasonable, but concededly unprovable, proposition that a would-be criminal's motivation to commit lawless and violent acts will diminish in direct proportion to the extent that the criminal justice system provides a credible threat of swift and certain apprehension and punishment. The only alternative solution apparently is to wait—as the theoreticians cited above would advocate[65]—until the concept of deterrence can be proven empirically. The thesis of this Article is that this latter approach is in large part responsible for the lamentable situation in which our criminal justice system now finds itself. The time has come for society to adopt a common sense approach to the question of deterrence and to return the rights of innocent victims to their rightful position as the principal priority of the American criminal justice system.

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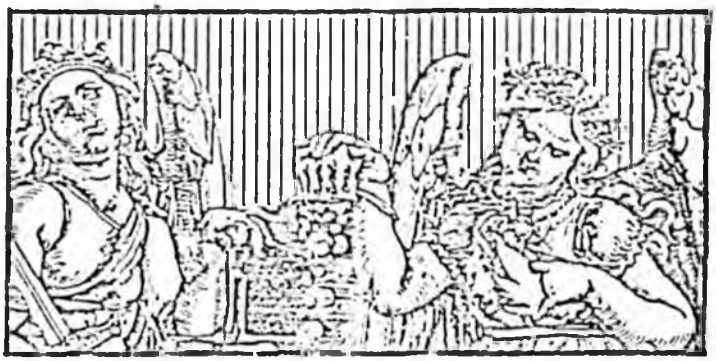
65. *See supra* note 23 and accompanying text.

Corrections
COMPENDIUM

VOL VII NO 5 KNOWLEDGE IS POWER DECEMBER 1982

CRIME & CRIMINALS
CAPITAL PUNISHMENT
ENTER



CAPITAL PUNISHMENT

QUESTIONS:

1. Does your state currently have the authority to impose the death penalty?

2. If yes, for what crimes can the death penalty be imposed?

3. Is there any legislation currently underway to abolish the death penalty?

   To instigate the death penalty?

4. When was the most recent change in death penalty statutes in your state?

5. Have any important cases involving the death penalty been litigated in the past two years in your state?

6. By law, can minors/juveniles be sentenced to death?

7. Does your state have "Life Without Parole" sentence?

Not Responding:
Connecticut
Delaware
Puerto Rico

N/A = Not Applicable

— — — No Answer Provided

* * * * * * * * * *

Next month's *Compendium* will continue our look at capital punishment, covering methods of execution and death row inmate statistics.

STATE	Does State Have Death Penalty Provision	If Yes, For What Crimes Can Death Penalty Be Imposed	Legislation: Abolish / Instigate	Most Recent Change In Death Penalty In State	Important Cases Involving Capital Punishment Litigated In State	Can Minors/Juveniles Be Sentenced to Death In State	Does State Have Life Without Parole Sentences
ALABAMA	Yes	Murder	No N/A	May 1980—new death penalty law.	Yes; Federal Courts struck down old death law. New one enacted in 1980. Courts ordered new trials for those convicted under old law.	No	Yes
ALASKA	No	N/A	N/A Yes	Never in the statutes.	No	N/A	No
ARIZONA	Yes	Murder	No N/A	October 1, 1978	Yes; United States District Court ruled Arizona Death Penalty unconstitutional — overturned by United States Court of Appeals 9th Circuit Court — on appeal to the United States Supreme Court.	Yes	Yes
ARKANSAS	Yes	Capital Murder	No N/A	Yes; provides procedural provisions to impose the Death Penalty.	No	Yes; only if the individual is tried as an adult.	Yes
CALIFORNIA	Yes	Murder; Treason; Kidnapping, if death occurs; Rape, if death occurs; Arson, if death occurs; Robbery, Sodomy, Oral Copulation, Lewd and Lascivious Conduct with a Child, Burglary, Train Wrecking, if death occurs.	No N/A	Initiative measure increasing crimes/circumstances effective November 8, 1978.	Yes; *People v. Jachim* and *People v. Harris* upheld death penalty as constitutional.	No	Yes
COLORADO	Yes	Murder, Treason, Kidnapping, Assault during escape.	No N/A	— — —	No	No; must be an adult.	No
DISTRICT OF COLUMBIA	No	N/A	N/A No	None; accomplished by case law.	No	N/A	No
FLORIDA	Yes	Murder	No N/A	Unknown	No	Yes	No
GEORGIA	Yes	Murder; Rape	No N/A	March, 1973, new death penalty signed. 1976 U.S. Supreme Court ruled constitutional.	— — —	— — —	No
HAWAII	No	N/A	N/A No	June, 1957	No	N/A	Yes
IDAHO	Yes	Murder	No N/A	January 1981; Type of death.	Yes	Yes	Yes
ILLINOIS	Yes	Murder; while committing another felony, multiple or heinous.	No N/A	June 21, 1977	No	No	Yes

STATE	Does State Have Death Penalty Provision	If Yes, For What Crimes Can Death Penalty Be Imposed	Legislation Abolish / Instigate	Most Recent Change In Death Penalty In State	Important Cases Involving Capital Punishment Litigated In State	Can Minors/Juveniles Be Sentenced to Death In State	Does State Have Life Without Parole Sentences
INDIANA	Yes	Murder	No N/A	October 1, 1977; Amended statute to conform to U.S. Supreme Court cases.	Yes; *Judy v. State*, 416 N.E. 2d 95 (1980); *Brewer v. State*, 417 N.E. 2d 889 (1981); *Williams v. State*, 430 N.E. 2d 759 (1982); *Lowery v. State*, 434 N.E. 2d 868 (1982).	Yes	No ; Prior to October 1, 1977, Indiana did have life sentences. No parole was specifically provided. A parole could be obtained only after the sentence was commuted by the Governor. After September 1, 1979, those persons who were serving a single life sentence became eligible for parole after 15 years for crime other than murder and after 20 years for murder.
IOWA	No	N/A	N/A No	July, 1964; Legislative.	No	N/A	No
KANSAS	No	N/A	N/A No	– – –	No	N/A	No
KENTUCKY	Yes	Murder; Kidnapping unless the defendant voluntarily releases the victim alive, substantially unharmed and in a safe place prior to trial.	No N/A	1978; Provided for automatic appeal to State Supreme Court.	No	Yes	No
LOUISIANA	Yes	Murder	No N/A	Effective September 8, 1978 the sentencing court signs death warrant instead of Governor.	No	Yes	Yes
MAINE	No	N/A	N/A No	– – –	No	N/A	No
MARYLAND	Yes	Murder	No N/A	July 1978; Reinstated.	No; There is one case pending.	Yes; If over age 16.	Yes
MASSACHUSETTS	No	N/A	N/A Yes	The State Supreme Court ruled that a 1979 law reinstating capital punishment violated the constitutional ban on cruel and unusual punishment and discriminated against minorities.	Yes; See question No. 4.	N/A	– – –
MICHIGAN	No	N/A	N/A No	Abolished in 1846.	No	N/A	No
MINNESOTA	No	N/A	N/A No	Abolished in 1911.	No	N/A	No
MISSISSIPPI	Yes	Capital Murder; Hijacking.	No N/A	February 1977; Bring death penalty in line with U.S. Supreme Court ruling.	No	Yes, If certified for trial as an adult.	Yes
MISSOURI	Yes	Murder	No N/A	The law was passed in 1977 and was amended as to part of the punishment phase in 1980.	– – –	Only if they are declared to be adults by the court.	Have 50 years without parole.

STATE	Does State Have Death Penalty Provision	If Yes, For What Crimes Can Death Penalty Be Imposed	Legislation Abolish / Instigate	Most Recent Change In Death Penalty In State	Important Cases Involving Capital Punishment Litigated In State	Can Minors/Juveniles Be Sentenced to Death In State	Does State Have Life Without Parole Sentences
MONTANA	Yes	Murder; Aggravated Kidnapping with death.	No N/A	July 1977; Recodification, nothing major.	No	No	Yes
NEBRASKA	Yes	Murder	Yes (1981-82 legislative session)	1977; New criminal code and classification of offenses. Effective date January 1, 1979.	No	No; Juvenile under age 18 at time of offense cannot be sentenced to death. Age of majority in Nebraska is 19.	Yes; Commutation to term of years is necessary for parole of lifer.
NEVADA	Yes	Murder	No N/A	1977, Legislative.	No	Yes, If certified as an adult.	Yes
NEW HAMPSHIRE	Yes	Murder for Hire; Murder of Kidnap Victim; Murder of Law Officer.	No N/A	1974, Established capital murder statute.	No	No	Yes
NEW JERSEY	No	N/A	N/A Yes	January 1982	No	N/A	No
NEW MEXICO	Yes	Murder	No N/A	July 1979; Allows for certain circumstances.	No	Yes	No
NEW YORK	No	N/A	N/A Yes	1977; Law declared unconstitutional.	No	N/A	No
NORTH CAROLINA	Yes	Murder	No N/A	June 1, 1977; New capital punishment law.	Yes; All cases under litigation via automatic appeals process.	Yes	No
NORTH DAKOTA	No	N/A	N/A No	July 1975; Abolished death penalty.	No	N/A	No; 30 years without parole only.
OHIO	Yes	Murder	No N/A	October 19, 1981.	No	No	No
OKLAHOMA	Yes	Murder	No N/A	Crime in 1976 (July); Punishment in 1977 (April).	Yes; *Hayes v. Murphy, et al; Chaney v. State.*	No	No
OREGON	No	N/A	No; Attempt to place on ballot by referendum failed to acquire enough signatures.	– – –	No	N/A	All murder sentences are for life. The Board of Parole has the option to deny parole in any case, and did so in nine of the last 34 cases handled.
PENNSYLVANIA	Yes	Murder	No N/A	September 1978; Replacing statute ruled unconstitutional by State Supreme Court in December 1977.	– – –	– – –	Yes
RHODE ISLAND	No	N/A	N/A No	1979; Supreme Court (U.S.) ruled Rhode Island death law unconstitutional reversing a Superior Court decision.	Yes; *State of Rhode Island v. Paul Cline; State of Rhode Island v. Sidney Clark.*	N/A	No; All lifers are eligible after 10 years. If a paroled lifer violates parole on a new charge he cannot be paroled on new charge.

STATE	Does State Have Death Penalty Provision	If Yes, For What Crimes Can Death Penalty Be Imposed	Legislation Abolish / Instigate	Most Recent Change In Death Penalty In State	Important Cases Involving Capital Punishment Litigated In State	Can Minors/Juveniles Be Sentenced to Death In State	Does State Have Life Without Parole Sentences
SOUTH CAROLINA	Yes	Murder	No N/A	June 1978; 1978 Act No. 555.	Yes; All death are currently under appeal or seeking other post conviction relief.	Yes	No
SOUTH DAKOTA	Yes	Murder; Kidnapping.	No N/A	1979; Reestablished.	No	Yes; By state law, if a juvenile is tried as an adult he can be given the death sentence, however, recent U.S. Supreme Court decision which was remanded places doubt on the constitutionality.	Yes
TENNESSEE	Yes	Murder	No N/A	– – –	No	Yes	No
TEXAS	Yes	Murder	No N/A	1974; Panel Code Revised.	No	No	No
UTAH	Yes	Murder	No N/A	– – –	Yes	Yes	No
VERMONT	Yes	Murder	No N/A	13 USA § 2303; 1979.	No	Yes	No
VIRGINIA	Yes	Murder	– – – N/A	– – –	No	No	No
WASHINGTON	Yes	Murder	– – – N/A	May 14, 1981 ; Amended.	No	Yes, If tried as an adult.	Yes
WEST VIRGINIA	No	N/A	N/A No	February 1965; Abolished.	No	N/A	Yes
WISCONSIN	No	N/A	N/A No; Each legislative session there is a bill introduced to instigate the death penalty.	1853; Death penalty repealed.	– – –	N/A	No
WYOMING	Yes	Murder	No N/A	– – –	No	Yes	Yes
GUAM	No	N/A	N/A – – –	Guam has never had a death penalty; but referendum for death penalty several years ago failed through the electorate.	No	N/A	Yes
FEDERAL BUREAU OF PRISONS	Yes	Hijacking	No N/A	None	No	No	Yes

JUNEAU - Death by hanging (being) Alaska's most severe penalty for the commission of a crime would be abolished under terms of a bill passed by the territorial House today.

By a 14-9 vote, with one member absent, the House passed and sent to the Senate a bill that would strike all forms of capital punishment from the territorial law.

The vote followed a day and a half of debate in which the co-author of the bill, a lawyer, said "the hideous mistake of executing an innocent man" makes it impossible "ever to bring him out of the grave into God's (?)."

"I have been unfortunate enough to witness execution." said Rep. Warren Taylor (D-Fairbanks) "and the cold-blooded methodical way they are carried out makes you wonder if it isn't legal murder."

Taylor, who introduced the bill with Rep. Vic Fischer (D-Anchorage) told the House and a packed gallery yesterday that he had been a lawyer in Alaska 30 years next month.

"I've taken part in 31 homicide trials, quite a few in the first degree." he said, "both as a prosecutor and a defense attorney." he added.

"I recall a case in Valdez where I was prosecuting a very good friend of mine. A combination of cabin fever and raw alcohol led him to trouble, and unfortunately the jury brought in a verdict in the second degree. Had it been different, I would have carried to the grave that scar on my soul."

One of the strong opponents to the bill, Rep. Dora Sweeney (D-Juneau) recalled two famous cases in support of her argument that the death penalty should be continued.

"Remember Winnie Ruth Judd," Rep. Sweeney said, "A Juneau girl who horribly hacked up two persons and tried to ship their bodies all over everywhere in a trunk, she lives today in an institution, from which she has escaped several times."

Then she pointed to the recent case of John Gilbert Graham, the Colorado youth executed for planting a bomb aboard a commercial airliner and killing more than 50 persons.

"If that happens in Alaska," Mrs. Sweeney said, "and this bill passes , we could not penalize him with any more than life imprisonment -- from which he eventually could be freed."

Rep. Seaborn J. Buckalew, Jr. (D-Anchorage) protested that the bill "protects a class of people who don't deserve the consideration we are giving them."

Taylor said Rep. Sweeney believed in the commandment "of thou shall not kill-but," Taylor added: "There is a period after kill."

"And Mr. Buckalew," Taylor said, "has the District Attorney complex--show them no mercy."

THE LEGISLATURE OF THE STATE OF ALASKA
TWELFTH LEGISLATURE

FISCAL NOTE

I. REQUEST
Bill/Resolution No. SB 73
Title "An Act classifying murder in the first degree as a capital felony,
Requested by Sen. Fischer Date 1/20/81
and establishing sentencing prodecures for capital felonies."

II. FISCAL DETAIL
Agency Affected Department of Law
Program Category Affected Administration of Justice
BRU, Program, or Subprogram(s) Affected Prosecution
(Note: If more than one budget component is affected, separate line-item amounts and funding for each component in the analysis section.)

EXPENDITURES (Thousands of Dollars)

		FY 81	FY 82	FY 83	FY 84	FY 85	FY 86
100	PERSONAL SERVICES						
200	TRAVEL						
300	CONTRACTUAL						
400	COMMODITIES						
500	EQUIPMENT						
600	LAND & STRUCTURES						
700	GRANTS, CLAIMS, ETC.						
	TOTAL	Unknown					

FUNDING (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER (Specify Fund Source)						

POSITIONS Unknown

FULL TIME						
PART TIME						
TEMPORARY						

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

This bill requires imposition of capital punishment for the crime of first degree murder in the presence of certain aggravating factors enumerated in section 12.55.180 of the bill. Obviously, should these factors be present, a most vigourous and lengthy defense can be expected from defendants' counsel. The amount of state resources required to prosecute capital cases is unquantifiable at this time. It is bound, however, to be considerable, both at the trial and appellate levels. Recent experience in other states suggests that very protracted and expensive litigation may be necessary to implement the provisions of the Act.
The Territorial Legislature abolished the death penalty in Alaska in 1957, and we simply do not have any historic data upon which we can make an accurate projection.

IV. DATE January 21, 1981 PREPARED BY Richard L. Pegues
Richard L. Pegues Dir Admin Services
AGENCY Department of Law
PHONE 465-3695

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

33-001 (Rev. 12/80

INSTITUTE FOR SOUTHERN STUDIES PO BOX 531 DURHAM, NC 27702 (919)688-8167



Surprising Facts About The Death Penalty

No white has ever been executed for the rape of a black in the U.S.

Nearly three quarters of all murders involve members of a family or acquaintances.

Since 1900, there has been, on the average, one case per year in the U.S. in which an entirely innocent person was convicted of murder.

Of all the people executed in the U.S. since 1930, over 54 percent were black. The population of the U.S. during this period was 9 percent black.

At the last public execution in the U.S. (a Kentucky hanging in 1938) 20,000 people turned out to watch.

Numerous studies have examined the risk presented by paroled murderers and the findings have always been the same: their rate of parole violation is by far the lowest of all classes of offenders.

In 1970, the average time spent in prison under sentence of death was 32.6 months.

The vast majority of capital crimes is committed during a moment of great emotional stress, in fear, or under the influence of drugs or alcohol. The question of deterrence seems inapplicable here.

States that have reinstated the death penalty after abolishing it have not shown a decreased rate of criminal homicide: In Deleware, for example, there was no death penalty from 1958 to 1961. After restoration, homicide increased by 3.7 persons per 100,000 population.

Though blacks constitute 54 percent of murder victims, only 13 percent of the persons currently on death row had black victims.

Since 1972, 62 percent of death row inmates were unskilled, service, or domestic workers; 60 percent were unemployed at the time of their crimes.

As of April 1980, nearly 75 percent of the national death row population is in the Deep South.

In Georgia, between 1973 and 1977, over three times as many convicted defendants who had killed white victims received a death sentence as did those who had killed

black victims.

During the same period, *geographical* discrepancies within the state were also significant: persons sentenced within Georgia's central region were four times as likely to get "death" as were those sentenced in the Atlanta area.

Never in the history of Florida has a white person been executed for a crime against a black person.

America's opinion of who should be killed has changed radically over the years. During the colonial years, King George III required the death penalty for 156 different crimes, including such offenses as stealing apples from an orchard, breaking the dam of a fishpond, cutting down trees in Putney Park — and the cultivation of tobacco plants.

Most prisoners under sentence of death are poor and so are represented by state-appointed lawyers. Most states make no provision for state-financed legal representation beyond the trial and direct appeals.

More than 650 men and women were on death row as of May, 1980, and the number is growing at the rate of over 10 a month. This is the largest death row population in U.S. history and may be the largest in the world.

Georgia has put 366 persons to death since 1930 — the highest rate for any state.

Of 455 men executed for rape in the U.S. since 1930, 405 (90 percent) were black; all but two of these executions occurred in the South.

Despite widespread publicity before and after the May 25, 1979, execution of John Spenkelink, Florida's first execution in 15 years, the state's murder rate jumped 14.4 percent during the first six months of 1980.

The state of Georgia has already spent nearly $1 million in preparation for Jack Potts' execution; meanwhile the condemned man has received only minimal medical attention for injuries sustained during his arrest six years ago, when a bullet hit his mouth, shattered his teeth and tongue and lodged 1 cm. from his spine.

In capital cases involving more than one participant, the prosecutor seldom asks for the death penalty for more than one of them. In order to obtain the powerful evidence necessary to win a death sentence, he will make a deal with all participants except one. The defendants who successfully "plea bargain" testify against the defendant chosen for the gallows and in return receive sentences of imprisonment or less. Thus, John Spenkelink died in the electric chair; his partner, Frank Brum, who cooperated with the prosecution, confessed to participation in the same murder and went free.

For a punishment to be a deterrent, it must be consistently and promptly employed: between 1930 and 1960, there was one execution for every 70 homicides, and the rate has dropped sharply since then.

In 1978, nearly 70 percent of U.S. whites favored capital punishment while only 24 percent of blacks felt the same. Juror selection can have serious implications for the outcome of capital cases.

A Delaware policeman who had forcefully argued for restoration of capital punishment in that state on the grounds of its deterrent value killed his wife just 10 days after the penalty was restored in 1961.

Between 1928 and 1949, average homicide rates in death penalty states were between two and three times higher than in abolition states.

Of the 553 people executed in the history of the U.S. for the crime of rape, 497 or 90 percent were black even though blacks comprise only about 11 percent of the nation's population. In 1976, the Supreme Court decided it was unconstitutional for a state to execute a person for the crime of rape. The 553 people lived — and died — too early in our country's history to enjoy their full Constitutional protections.

:GISLATURE

9 MARCH, '83
ANCH. TIMES

Debate heats up over capital punishment bill

Moral Majority for, Catholics against it

teve Hansen
s Writer

Two of the state's largest religious organizations — the Catholic Archdicese of Anchorage and the Moral Majority — have taken opposite sides in the emotional debate over imposing the death penalty in Alaska.

The archdiocese adamantly opposes capital punishment, while Moral Majority strongly favors it.

The religious organizations presented their opinions during a state Judiciary Committee public hearing here Friday.

In addition, more than a dozen others stated their opposition to the bill which, if approved, would allow juries to sentence to death people convicted of first-degree murder.

The meeting was marked by impassioned and emotional outbursts. Sen. Fritz Pettyjohn, R-Anchorage, one of four co-sponsors of the bill, argued several times with people who spoke against the legislation.

Few of those who testified addressed the bill itself. Most appeared to want a chance state their feelings on the controversial subject.

Father Steven Moore, who represented the archdiocese and Archbishop Francis T. Hurley at the hearing, said the death penalty is contrary to the teachings of Jesus.

"Jesus himself rejected a notion of punishment base on 'an eye for an eye, and a tooth for a tooth,' " Moore said. "Instead he urged forebearance in the face of evil, compassion and love.

"The ministry of Jesus was one of salvation, healing, and reconcillation."

But Tim Ewell, executive director of Moral Majority of Alaska, said, "Capital punishment is definitely a means God set forth for society."

About three-quarters of those who spoke Friday were against the death penalty. But during a recess late in the day, Pettyjohn said he didn't feel the testimony was representative of public sentiment.

"It's been 90 percent attorneys, a couple of ministers and one guy who's a private citizen," he said. "The people in my district are at work."

Pettyjohn represents South Anchorage. He estimated about 75 percent of his constituents favor the death penalty.

But Sen. Joe Josephson, D-Anchorage, co-chairman of the committee, said he opposed the bill. "I think the testimony shows the bill has many defects," he said.

Most of those opposing the bill said they didn't think the death penalty was a workable deterent against murder, that it tends to discriminate against minorities and that there is a chance an innocent person could be executed.



Norris Klesman of The Times

Dick Eliason, Joe Josephson and Fritz Pettyjohn, left to right, listened to arguments for and against the death penalty for first-degree murder Frida

Attorney Lynn Allingham added that someone sentenced to life imprisonment can always be released if new evidence is uncovered which proves innocence.

"But if we execute someone, there's no turning back," she said.

Former attorney general John Havelock said, "What you are doing is firing a cannonball into the air and no one knows where it'll land. I think it's is a dud."

But those in favor said capital punishment was needed to protect the public from killers.

Citing the 1982 murders of four Anchorage teen-agers by Charles Meach and six killings in McCarthy earlier this month, Burton Carney, a Moral Majority official, said, "I think there is a place in our society for capital punishment."

STATE OF ALASKA v. NEWTON LAMBERT

Lambert sentenced to 99 years in prison

No parole for 50 years, judge orders in killing

By CHRISTOPHER JARVIS
The Juneau Empire

Convicted murderer Newton Lambert was sentenced to 99 years in prison in Juneau Superior Court this morning and will not be eligible for parole for 50 years.

"I suppose this is the worst murder ever committed in this city," Juneau Superior Court Judge Rodger Pegues said as he handed down the sentence. "It was a gruesome, awful crime."

After hearing arguments for and against the maximum sentence, Pegues said "it all adds up to the maximum sentence."

Lambert, 21, declined the opportunity to speak on his behalf and showed no emotion as the sentence was pronounced.

"I don't have anything to say," a handcuffed Lambert said on leaving the courtroom.

Lambert will not be eligible for parole until the year 2034, when he will be 10 years older than Anne Benolken was when she has murdered.

Lambert was convicted in November of the April 4, 1982, beating and stabbing death of 61-year-old Mrs. Benolken in her South Franklin Street apartment. She was beaten, stabbed 60 times and sexually assaulted.

Lambert was acquitted of the beating and stabbing death of her 63-year-old husband James who was killed at the same time. He too was sodomized.

"People who are inherently law abiding don't need a criminal justice system, except to protect them," Pegues said.

Defense attorney Tom Findley called the length of the prison term "a death sentence" after arguing that Lambert should be sentenced to 40 years in prison with 10 suspended. That would have allowed Lambert's release at age 51.

After speaking of the drugs and alcohol Lambert said he took the hours before the murder, Findley said, "I don't offer Newton Lambert's condition as an excuse, but an observation."

Lambert was "not the deliberate, calculating cold-blooded killer," who deserved the maximum sentence, Findley argued.

Lambert testified at his trial he was on a binge of alcohol, cocaine, LSD and amphetamines in the days before the murder.

Lambert denied "and still denies" any involvement in the killings, Findley said.

His only memory before waking up in the bathtub of the dead couple's apartment was drinking a Heineken beer at a downtown Juneau bar after leaving a birthday party for him at the Indian Village, Lambert said during his trial.

Lambert said he entered the living room of the Lower F&L



Photo by Brian Wallis

Newton Lambert: 99-year sentence.

apartment where he found Anne Benolken's body on a mattress on the floor and the her dead husband's partially clad body kneeling over the end of it.

Findley argued that Lambert was not a "leader" in the crime, saying Svobodny alleged throughout the trial that co-defendant Emanuel Telles was the instigator.

Telles was acquitted of both murders during his trial.

Lambert should receive a shorter sentence and the opportunity to "at least give him the end of his life" out of prison, Findley said.

"The way it is now, he'll probably be dead before he gets the opportunity to go before a parole board and wheeze 'I'm 71, please let me out,'" Findley said.

Allowing him to live the last years of his life as a free men, Findley told Pegues, "is hardly asking you for a break."

Findley's recommendation would send the message that "if you participate in a murder, you will spend 30 years behind bars and 10 years on probationary status before society will let go of you," Findley said.

Pegues denied Lambert any "glimmer of hope," by ordering he serve at least 50 years in prison, Findley said later.

"Mr. Svobodny and Mr. Collins want you to turn out the light," Findley told Pegues. Robert Collins was the probation officer who prepared Lambert's presentence report.

No sentence rendered by the court would be sufficient, Svobodny said, "to bring back to society a member of this community," or to "wash away the fear" in the community during the year after the elderly couple's death.

"I wish I was a better orator," Svobodny said in urging Pegues to hand down the maximum sentence. "I wish I could make it clear to everyone in the courtroom what Mrs. Benolken went through just speaking the words."

Society was warned of what Lambert would do, Svobodny said, particularly after psychologist Dr. Anthony Mander said two months before the couple's death that Lambert had homicidal thoughts and could become assaultive at the "slightest criticism."

"There is nothing left to do but put him in a jail setting, frankly, for the rest of his life," Svobodny said.

Because of the record of assaults, two felony arrests, one felony conviction and a history of alcohol-related offenses, all since he was 13, "we had all kinds of notice about what Mr. Lambert was going to do the rest of his life," Svobodny said of any chance for rehabilitation.

The "legal profession is not a science but probably more an art," Svobodny said. Sentencing is "the most difficult part of the criminal justice system," because it requires balancing to assure justice is served while attempts are made to rehabilitate the criminal.

"This is one of the easiest sentences I've come to," Svobodny said, because "I can not find any factor to suggest Newton Lambert should be sentenced to anything less than 99 years."

HOUSE OF REPRESENTATIVES

OFFICE OF THE MAJORITY LEADER

Room 216
STATE CAPITOL

HB 140



TO: Rep Bursell

ATTN: _____

REMARKS:

A recent story (Jan 18) in the Juneau Empire told of Newton Lambert's being sentenced to 99 years - 50 without parole - for "sexually assaulting" and killing Anne Benolken by beating and stabbing her 60 times. (He was found not guilty of killing her husband, who also was sodomized and killed by beating and stabbing)

The attached printout (from House Research) shows the projected cost of nurturing and caring for him for the next 50 years. (used $88 per day and 6% inflation; obtained from Corrections

TOTAL COST $ 9,325,571

J Wood

Year	per [illegible]	annual cost	total cost
1	88.00	32,120.00	32,120.00
2	93.28	34,047.20	66,167.20
3	98.88	36,090.03	102,257.23
4	104.81	38,255.43	140,512.66
5	111.10	40,550.75	181,063.41
6	117.76	42,983.80	224,047.20
7	124.83	45,562.82	269,610.02
8	132.32	48,296.59	317,906.61
9	140.26	51,194.38	369,100.99
10	148.67	54,266.04	423,367.03
11	157.59	57,522.00	480,889.02
12	167.05	60,973.32	541,862.34
13	177.07	64,631.71	606,494.05
14	187.70	68,509.61	675,003.65
15	198.96	72,620.18	747,623.83
16	210.90	76,977.38	824,601.22
17	223.55	81,596.02	906,197.24
18	236.96	86,491.78	992,689.02
19	251.18	91,681.28	1,084,370.30
20	266.25	97,182.15	1,181,552.45
21	282.23	103,013.07	1,284,565.53
22	299.16	109,193.86	1,393,759.39
23	317.11	115,745.49	1,509,504.88
24	336.14	122,690.20	1,632,195.08
25	356.31	130,051.61	1,762,246.69
26	377.68	137,854.70	1,900,101.39
27	400.35	146,125.97	2,046,227.36
28	424.37	154,893.53	2,201,120.90
29	449.83	164,187.12	2,365,308.02
30	476.82	174,038.34	2,539,346.36
31	505.43	184,480.63	2,723,826.99
32	535.75	195,549.44	2,919,376.44
33	567.90	207,282.42	3,126,658.85
34	601.97	219,719.35	3,346,378.20
35	638.09	232,902.50	3,579,280.71
36	676.37	246,876.65	3,826,157.36
37	716.96	261,689.23	4,087,846.59
38	759.97	277,390.58	4,365,237.16
39	805.57	294,033.97	4,659,271.13
40	853.91	311,675.98	4,970,947.11
41	905.14	330,376.53	5,301,323.64
42	959.45	350,199.12	5,651,522.76
43	1,017.02	371,211.04	6,022,733.80
44	1,078.04	393,483.68	6,416,217.48
45	1,142.72	417,092.70	6,833,310.18
46	1,211.28	442,118.19	7,275,428.37
47	1,283.96	468,645.25	7,744,073.62
48	1,361.00	496,763.93	8,240,837.55
49	1,442.66	526,569.80	8,767,407.35
50	1,529.22	558,163.91	9,325,571.26

SB 121

TESTIMONY ON THE DEATH PENALTY

Dana Fabe, Public Defender, March 18, 1983

There are many ethical and moral reasons for not adopting the death penalty. The state is legitimizing the premeditated killing of humans. The death penalty is most often racially and economically discriminatory in its application. Innocent people can be killed by mistake. The death penalty does not act as a deterrent and in fact has a brutalizing impact on a community or society as a whole.

I oppose the death penalty for these reasons and many more. However, I would like to take my time for testifying to address the costs of implementing this bill, focusing on the costs of defending a death penalty case.

If this death penalty bill is enacted, representation of the poor in death cases must be adequate. This is due to the possibility that an innocent person might be killed by mistake. Some degree of mistake is of course a potential problem in all criminal cases. But in non-death cases, the system stands ready to correct those mistakes when they become known. An execution can never be corrected.

Due to these considerations, the processing of a death case is much more complex and expensive then other criminal cases. Not only are extraordinary amounts of attorney time and substantial expert fees necessary in the guilt phase of a trial, but the penalty phase, in which a jury determines whether or not to put a person to death, takes on tremendous significance. This penalty phase requires extensive attorney preparation, the use of psychiatric experts and family and friends from out of state, and other necessary expenditures.

Finally, even after the death penalty has been imposed, the procedures in death penalty cases are lengthy and time consuming. After the guilt and penalty phases of a case, the following procedures would be routinely necessary:

(1) Appeal of conviction to the Alaska Court of Appeals.

(2) Petition for Hearing to the Alaska Supreme Court.

(3) Automatic sentence review by Alaska Supreme Court.

(4) Writ of certiorari to the United States Supreme Court.

(5) Post-conviction relief proceedings in state court.

(6) Appeal of post-conviction relief proceedings in the Court of Appeals.

(7) Petition for Hearing of post-conviction relief proceedings to the Alaska Supreme Court.

(8) Writ of certiorari to the United States Supreme Court.

(9) Petition for Writ of Habeus Corpus in the Federal District Court.

(10) Appeal to the United States Court of Appeals.

(11) Rehearing in the United States Court of Appeals.

(12) Writ of certiorari to the United States Supreme Court.

(13) Commutation applications to executive branch.

(14) Emergency stays to the United States Supreme Court.

The Public Defender Agency estimates that it would cost approximately 3.5 million dollars next fiscal year to defend the estimated number of capital cases which would be assigned to this statewide agency. The figures in this fiscal note are based on the number of cases which would have qualified under the bill as capital cases which were handled by this agency during Fiscal Year 1982. This agency handled 30 first degree murder cases which would qualify as capital cases under this bill. The specific figures were arrived at as follows:

(1) Personal services. This agency is currently 11.5 attorneys short of the LEAA standards for the maximum number of cases to be handled by an attorney to ensure competent representation when no death penalty cases are involved. Death penalty cases take substantially more attorney time than other cases. For example, the Florida Legislature has adopted standards which permit an attorney to handle no more than 8 death penalty trial cases per year, or 5 death penalty appeal cases per year. For comparison, the LEAA figures are 150 non-death felonies or 25 appeals a year. Some states have applied far more stringent standards. For example, the California state appellate defender permits attorneys to handle only 2 death penalty appeals per year. Given the fact that the attorneys who handle death penalty cases will have to be given drastic caseload relief, their extra cases will be loaded onto the caseloads of attorneys whose caseloads already exceed recommended maximums. Thus, at a minimum, this agency must be brought up to the minimum number of attorneys required to handle the caseload as it exists without the death penalty. This necessitates the addition of twelve additional attorneys, plus necessary investigation and clerical support staff.

(2) Travel and Contractual Fees. (a) The New York State Defender Association has estimated that a minimum figure for expert witness fees must be $30,000 for the guilt phase and $30,000 for the penalty phase per case. Thus, the contractual and travel costs for expert witnesses has been calculated at $60,000 per case. This does not include any expert fees which might be necessary at the appellate stages.

(3) Equipment and Supplies. Other costs include expanded office space for additional personnel as well as equipment and supply money for additional personnel.

The costs described above do not take into account contingencies such as reversals and retrials after appeal or travel to Washington, D.C. to argue before the United States Supreme Court and other costs which at this time are difficult to predict. Furthermore, the cost of defending a death case is just one component of the total cost to the system of processing a capital case. The New York Defender's Association estimates the total of defense, prosecution and court costs of procesing a capital case at $1,498.100 prior to any appeals and $1,828,100 once all appeals have been processed. This figure does not include such costs as special telephone lines running from the prison to the Unted States Supreme Court or Governor's office. The cost of extra police personnel for crowd control and helicopter security are also hidden costs. Finally the cost of an actual execution can be high. The State of Georgia which executes by electrocution spent more than $250,000 solely for the anticipated but aborted, execution of Jack Howard Potts in 1980.

March 18, 1983

My name is Judy Zimicki. My address is SRA 4007-A, Anchorage, AK., 99502. I represent myself today as a citizen concerned about the degrading effect that the death penalty would have on the moral fabric of our society.

In January, 1977, a 10 year moratorium on capital punishment ended with the execution of Gary Gilmore in response to a rapidly rising crime rate and, maybe more importantly, the resultant dramatic increase in the fear of crime. The result is an institution of death at the hands of the state for certain types of homicide.

The strength of the cry for the death penalty can be directly correlated to specific events. In our state, the Meach killings last year brought close to home for all Anchorage residents the grim reality of murder. And, more recently, the seemingly calculated cold-blooded McCarthy killings bring out our animal instincts with a desire to kill, literally, a person who could commit such acts.

But the institution of the death penalty is much more than an emotional reaction. When capital punishment is legalized, the effects are profound and subtle, and still unknown.

The most common argument for the death penalty is deterrence. There seems to be no statistics to back this claim. The only study since 1945 that supports the deterrence argument was released in 1975 by an economist named Isaac Erlich. Review of his economic models immediately put his methodology under fire by both critics and proponents of capital punishment.

A look at some statistices may be helpful here. In 1033, the homicide rate in the United States was 9.7 murders per 100,000 people. During the 1930's executions averaged 150 per year. Through the post war years of 1945-60, the homicide rate fluctuated with a maximum of 6.4/100,000. In 1960, there

were 4.7 murders/100,000/ Executions at this time of relatively low homicide rates, however were down to an average of 24 per year, only 16% of the 1930's execution rate.

By 1973, the homicide rate had climbed to 9.4 and it currently rests at 9.8/100,000. Reasons offered to explain the high rate include such diverse factors as economic hard times (analogous to the 30's), the increased availability of hand-guns and the "coming-of-age" of the post-war baby boom. Looking at other countries, England, and abolitionist state, has a homicide rate of 1.1 while Japan, which practises capital punishment, has a rate of 1.0/100,000.

The moral argument against the death penalty is harder to express. In a few words, the state does not have a right to kill, no matter what heinous act someone has committed. Violations of human rights by individuals do not give the State a right to violate human rights. The United States is held up worldwide as an example of guaranteed civil liberties. The reinstitution of the death penalty in the United States is thus viewed as the first step in lessening of these rights and may promulgate executions elsewhere in the world. We watch with horror and disgust news reports of abuses of state power in other countries in the name of fighting terrorism or maintaining state stability. How, then, can we justify State murder in our own country in the name of reducing crime? And shouldn't we question the subtle negative effect state-sponsored murder might have by serving as an example of what to do when we think a wrong has been committed?

Let us look briefly at the number of criminals that would be considered for capital punishment in Alaska. In 1980, a review of felony sentences by the Alaska Judicial Council determined that 1.04% (or 5/481) sentences in urban courts were for first degree murder. During the same period, no first degree murder sentences were recorded in the 372 rural location felony sentences. Therefore, statewide, first

degree murders in 1980 accounted for 5/853 or just under one-half of one percent of felony sentences. In light of the moral questions mentioned above, is the institution of capital punishment for such a small percentage of felonies worth risking the uncertainties, biases, cost and moral degredation?

My final point today addresses the fear of crime which I mentioned earlier as one of the prime factors in the cry for the reinstitution of the death penalty. Crime is a frightening aspect of our daily lives, and the fear grows whenever we read a report of a burgulary, murder or rape situation in which the victim could have easily been ourselves or someone close to us.

As legislators and leaders in the State, you should be directing your efforts to the improvement of the criminal justice system and to the identification of and elimination of the social conditions that foster crime and unrest in our state. Capital punishment is not the answer. It is not a deterrent to crime and thus will not affect the crime rate nor ease our fears. Reinstitution of the death penalty in Alaska is only a symbolic and ineffective gesture of retribution. As such, instead of deterring crime, capital punishment would offer a false sense of security and ultimately delay any more positive measures.

Thank you for the opportunity to testify today.

TESTIMONY BEFORE THE HESS COMMITTEE OF THE SENATE OF THE STATE OF ALASKA

TIMOTHY V. EWELL
EXECUTIVE DIRECTOR
MORAL MAJORITY OF ALASKA
P.O. BOX 101779
ANCHORAGE, ALASKA 99510

Thank you for the opportunity to come before you today. It is indeed a privilege to be a part of my State Government. I feel as do many others, that it is not only my privilege but my duty to let you know how I feel on legislation that affects me and the people I represent.

My qualifications are not as great as those learned jurors that have appeared before you this morning. However, I am a citizen of the State of Alaska for some years now and I have been active in the social/political areas of our State for much of that time. I have served on the Anchorage Crime Commission and as lobbyist in Juneau.

I support the reinstitution of the Death Penalty in the State of Alaska and I support Senate bill number 121 as a means to do that.

First, let me clear up some misconceptions you may have. I have read a lot of letters to the editor lately that improperly quote Biblical references and because I believe in the Bible and its principles, I would like to clear those issues up. The one that comes up the most often is the commandment that is translated in the King James Version of the Bible as "Thou shalt not kill." In 16th century England the meaning was clear but today our language does not properly do it justice. The proper translation in modern language is "Thou shalt not commit murder."

The Bible is clear in showing that God imposed the death penalty and not just for murder offenses but in lesser cases also. And He did not always deal out the punishment directly but used the government established and in effect at the time to carry out that punishment.

God has the right to give life and the right to take it away. And God gave rules by which we must conduct ourselves. To disobey these rules is to subject oneself to the appropriate penalty. It was not judged on wealth, or who one knew but was given out the same to Kings and paupers.

Our founding fathers recognized that God was the creator of the universe and the giver of all laws. Upon that principle they built this land. But we have become a nation of people who not only refuse to recognize God's sovereignty but also that He exists at all.

I go through all this because what we are talking about today is very much a moral issue. And we must have a base for a moral consciousness or we cannot even communicate, which I fear is half our problem anyway.

Let us therefore make some suppositions. Let us assume that at all times and for all reasons, murder is unacceptable in our society. Then it follows that those who commit murder do so against the wishes of society.

If society offers no punishment for the crime, then what is to keep people from ignoring societies wishes.

I submit to you that human beings are more satisfied in their daily lives if they live within boundaries. That living within boundaries is the true test of freedom. The person who works at a job where the boss never says you're doing a good job or doing a bad job is liable to be insecure because he doesn't know what his boundaries of acceptability are. The person drives a car beyond the speed limit or in a reckless fashion does so with the clear feeling that he is overstepping the boundaries that have been established for him.

This is especially evident in the child abuse crimes that are now coming to light here in the city of Anchorage. I have known about this investigation for some time and I am glad it is finally out where it can be seen. I believe that the reason we are seeing such an increase in child abuse and the problems it creates is because of the past generation of "Spock" children who are now adults who were not disciplined properly and who were taught the philosophy "if it feels good, do it."

This problem did not exist 20 years ago like it does today. But the problem is that the parents did not establish boundaries for their children, there were no taboos, no rights and wrongs and hence the children experiment, often into adulthood to try to find where the real boundaries lie. They push it as far as they can.

Now don't get me wrong. I don't advocate child abuse in any form but corporal punishment, "The board of education applied properly to the seat of understanding" is proper and just.

And just as much as a child needs to know his boundaries, so do we as members of society need to establish and live within socially accepted boundaries.

One of those who testified this morning said that only "desperate and angry people cause crime and often under the effects of drugs and alcohol." This is blatently false. There are many people who commit crimes simply for financial gain. They don't <u>need</u> more money they just want it. And there are a great number of people who commit crimes "under the influence of drugs or alcohol" who in fact premeditated the crime and then used that as an excuse.

The public defender who spoke this morning said this bill would legitimitize premeditated murder. I disagree. I believe that the 1973 Roe vs. Wade decision which allowed the taking of unborn "innocent" human life, is the legitimitizing of premeditated murder. I further believe that this bill merely sets standards of conduct beyond which society will take certain action and it warns the would be offender that should he/she go beyond societies standards and take a human life, that the penalty shall be death.

That is truly justice. It should be fairly and equally meted to all.

When she spoke she also alluded to some statistics about Florida in 1979, and how that despite the institution of the death penalty, homicides had risen. She failed to speak to the fact that at this same time there was an influx of hundreds of thousands of Cuban/Haitian refugees into the south Florida area and that crime in general saw a great upsurge because of trying to deal with this unexpected situation.

Now I say that to say this, that statistics are really meaningless unless all factors involved are considered. For instance, when we talk about the rate of homicide we must look at the other social/economic conditions at work at the same time and not just the fact of whether or not capital punishment was in effect at the time.

Now just a few words about cost. What is the cost of trying the case in proportion to one "innocent" human life - I.E. the Charles Meach case. Four people might be alive today if he had earlier been found guilty of murder in the first degree and executed.

And this is not for the sake of revenge, but for the protection of society.

Now let's talk about the court system that deals with the problem. I am amazed at how our system of justice has changed over the last 60 or 90 years. I will bet that there is not more than one lawyer in this room who has spent any time at all seriously studying the law of Blackstone.

Today, we study case law which is not law it is "justice by precedent." But it is not justice because it cannot be equally handed down to all people. Instead, ever since supreme court justice Oliver Wendell Holmes, we have evolving law that changes not by what our elected legislators create, but by what a judge determines in his mind the law means at any given point in time in relation to any given set of circumstances.

And we see the results. We do not have justice. The attorneys who have testified here today have all told you about the fact that there is a disproportionate share of minorities in prison. That is because we do not have justice,

we have "judge law."

Now let me say a few words about the "American Image."

The nations of the world look to America to see how we are handling our crime problems. We are not doing a very good job. They see us as weak and inefficient. A strong statement on crime and punishment will strengthen our image abroad, not weaken it.

Now let me say a little bit about the jury process. Mr. Hitchcock seemed to hold some disdain for their ability to reach a reasoned determination of guilt or innocence. I submit that the jury probably has more ability in such matters than a whole school of judges and lawyers. That is why the system was established and that is why it has remained and been effective. But there are some who hold an elitist point of view that believe they know what is best for us. The question I would ask is: "Did your I.Q. and common sense miraculously become greater than that of the common man when you were graduated from law school or were appointed to the bench?" I believe there are those who believe so.

And as for the delegating to another the responsibility to make life and death decisions, i.e. a supreme court review or for that matter, the persons who actually perform the execution, they are hired by society to perform that job. If they do not wish to accept the responsibility, they do not have to hold the job.

But I think it all boils down to one thing. Either there is life after death, or there is not. If there is no life after death, then where is the sanctity in human life. However, if, as I believe, there is life after death, then God will be the final judge. He rules now in everything we say and do and He will rule then.

SENATE JUDICIARY COMMITTEE

SPECIAL HEARING IN ANCHORAGE

MARCH 18, 1983

on

SB 121

The meeting was called to order at 9:30 a.m. on the 5th floor of the court building located at 303 K Street, Anchorage, by Senator Josephson, Co-chairman.

Present at the hearing were Senators Josephson, Eliason and Pettyjohn.

The following individuals, most if not all of whom were members of or affiliated with the Moral Majority of Alaska, testified in favor of the bill:

Cecilia Young

Tim Ewell, executive Director of the Moral Majority of Alaska, who stated, among other things, that "God doesn't change, He gives you different ways to be saved".

John S. Jacobsen;

Burton Cortney;

George Steinberg;

Kenneth Anderson;

David Liddington;

Carolyn Glover on behalf of her husband;

Michael Hick;

Teresa Jones;

Richard Phillips.

The following individuals testified against the bill:

Tim Stearns, an attorney representing prisoners in the pending Cleary litigation, who focused on the lack of objective standards in Senate Bill 121 as presently drafted;

John Katcher, a Public Defender;

Linda Kincaid, on behalf of Judy Zimicki, a private citizen;

Dr. John Garvin, a member of the United Methodist Clergy and a Social Worker;

Dana Fabe, Public Defender, who focused on the cost of implementing the bill;

Robert Wagstaff, an attorney, who focused on having to deal with the reality of death as a human being;

Brant McGee, an attorney and life-long Anchorage resident;

Ron Zobel, an attorney, who cited a law review article by Jack Greenberg, (91 Yale L.J. 908);

John Havelock, the Director of Legal Studies, UAA, and former state Attorney General, whose statements included the following:

> This bill is basically a "dud" and no one will ever be executed under it because it is very poorly drafted and leaves open many crucial constitutional and interpretetional questions
>
> The bill promises what it just can't deliver and poses an endless series of headaches
>
> The bill will have a serious, adverse impact on racial relations
>
> The bill confuses charging elements and sentencing factors
>
> The bill establishes false standards incapable of being measured, and there are a number of mitigating factors missing
>
> Constitutional issues are raised by the fact that the bill utilizes factors as part of its sentencing procedure that other states use as elements of the crime itself
>
> An analysis of first degree murder convictions in Alaska in the past 10 years should be made.

Lynn Allingham, an attorney, who stated that the death penalty is simply barbaric;

Lewis Gordon, an attorney, co-founder and local leader of Amnesty International;

John Angell, a professor at UAA and the Director of the Justice

Center, who stated that the American Psychiatric Association opposes capital punishment because it's counter-productive;

Nancy Gordon, an attorney member of the Alaska A.C.L.U.;

Walter Share, an attorney who specializes in criminal appeals;

Murphy Archibold, an attorney;

John Suddock, an attorney appearing on behalf of the Alaska Academy of Trial Lawyers;

Father Steve Moore, on behalf of the Archdiocese of Anchorage;

Robert Burk, a private citizen;

Sylvia Short, an attorney and the Area Coordinator for the Unitarian Council;

Mark Johnson, a senior at West High in Anchorage, who had two main objections to the bill: (1) its cost and (2) the danger that a mistake will be made and an innocent person will be executed;

Roger Miller, a private citizen whose main message was that "we must not codify blood revenge";

John Murtagh, an attorney in private practice specializing in criminal matters, who focused on a number of defects and ambiguities in the present bill;

John M. Richards;

Karla Huntington;

Doug Elliot;

Phillip Weidner.

The meeting broke for lunch between noon and 1:30 p.m. and adjourned at 4:26 p.m.

SEN. HALFORD/Connie Halford

TRUE-LIFE DRAMA

LOUISE LACORTE KEEPS A KILLER IN JAIL



When she heard that the man who had murdered her daughter was up for parole after only seven years in prison, a peace-loving California beautician turned herself into a fighter overnight. This is the story of what she did—and why. By JOSEPH N. BELL

There's a 38-year-old convicted murderer at the California Men's Colony in San Luis Obispo named Richard Lanill Johnson. On February 11, 1976, he held a .22 rifle to the forehead of an 18-year-old girl he'd never seen before and shot her four times between the eyes. Less than seven years later—on October 26, 1982—a parole board met with Richard Johnson to decide whether or not to set him free.

Louise LaCorte of Arcadia, Calif., is the mother of Johnson's victim. In her half-century of life, she has survived two shocks almost beyond human endurance. The first was being told that her daughter, Cathy, had been brutally murdered. The second was learning that Cathy's killer—once sentenced to death—might be paroled. She couldn't do anything about the first shock. But she could—and did—do a whole lot about the second.

When the deeply concerned police officer who had originally found and arrested Cathy's killer told Louise and her husband, Sam, about Johnson's scheduled parole hearing, Louise turned her neighborhood beauty shop over to an assistant and charged head-on into battle. In the end, she not only managed to block Richard Johnson's parole, but also focused public attention on a system that makes it possible—even commonplace—for vicious killers to be turned loose into society.

The situation that faced Louise LaCorte was far from unique, especially in the state of California. In 1976, only a few weeks after Johnson was convicted of the murder of Cathy LaCorte, the California Supreme Court ruled that the state's death penalty law was unconstitutional. When the decision was handed down, Johnson became one of 104 men awaiting execution whose sentences were changed to life imprisonment. By now, 29 of these have been paroled, and 25 more have release dates! (One of those paroled committed a second murder and is back on death row again, under a new capital punishment law which was upheld in 1978. Since that law does not apply retroactively to people who had been sentenced before its passage, it does not affect Johnson.) Of the 2,175 people serving life sentences for murder in California, only two have been in prison more than 20 years, and the average convicted murderer has been confined about 12 years.

Among those who have been considered for parole in recent years are members of the Manson gang, the onion-field killers of Joseph Wambaugh's novel, and Sirhan Sirhan, the man who murdered Robert Kennedy.

The situation is not limited to California. In Utah, a convicted murderer named Jack Henry Abbott got a lot of national attention last year when author Norman Mailer and several literary colleagues argued eloquently and successfully for his release after he wrote a critically acclaimed book about prison life. Six weeks after he was paroled, he killed again. More recently, a Texas judge pledged to work for changes in the parole system because a man he had sentenced to 60 years in prison—the admitted killer of 13 women—would be eligible for parole in 20 years.

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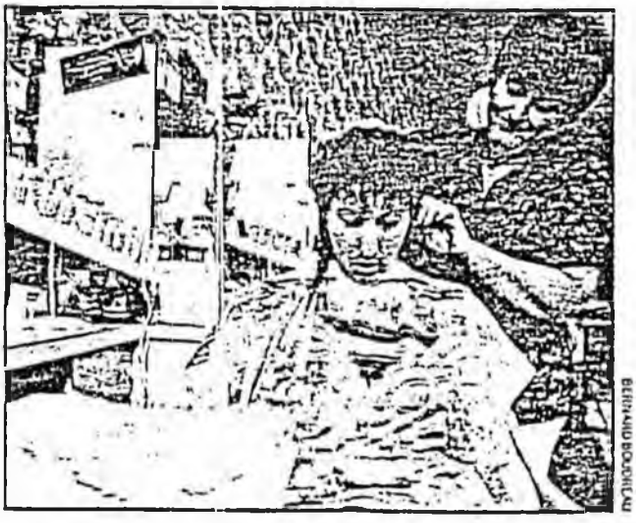
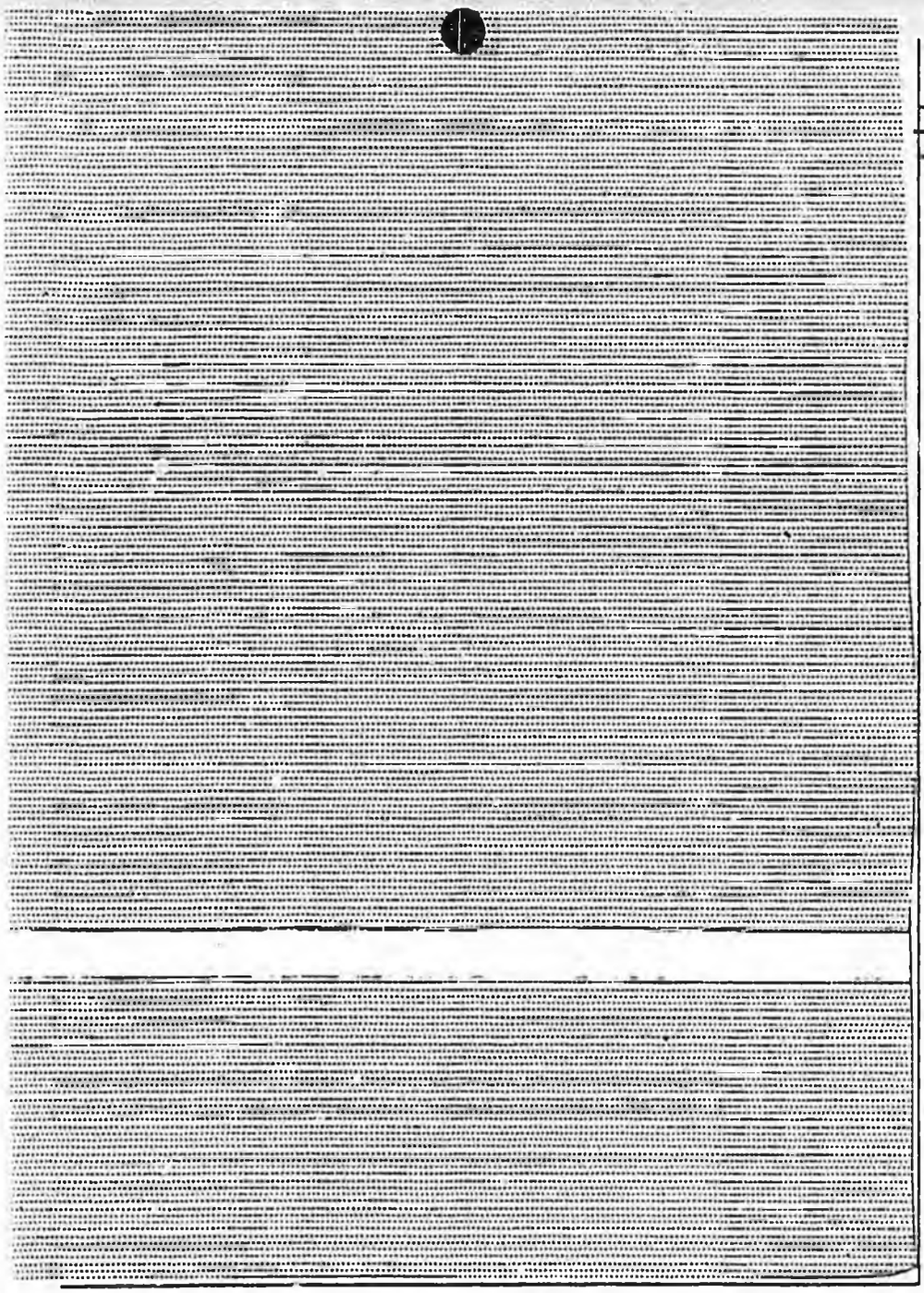


To prepare for the next round of their battle to keep their daughter's killer in jail, Sam and Louise LaCorte continue to collect petitions (*top, left*). Behind them, in the living room of their Arcadia, Calif., home is a portrait of their late daughter, Cathy. At right, Louise at work in her neighborhood beauty shop. Her "customer" is her daughter, Linda, now 28, married and the mother of a daughter.



KEEP KILLERS IN JAIL

From page 50

Johnson's two-week trial in October 1976 had been agony for Louise and Sam LaCorte. Day after day they sat in the courtroom, watching their daughter's killer stare impassively at witnesses, with never a trace of emotion. (What the LaCortes wanted, of course, was a chance to confront him with one question: *Why did you kill her? Why?* But they never got their chance. Johnson remained as inflexibly mute as he had been during prior police questioning.) He never took the stand in his own defense.

The evidence was damning: A gun found in his house was identified by ballistics experts as the murder weapon; a fingerprint found at the scene matched a set of Johnson's prints on record from a previous arrest.

The verdict was guilty; the sentence, death. The LaCortes thought the sentence was fair (they are not opposed to capital punishment), as did Detective Frank Salerno, the man who had tracked down Johnson. Says Salerno, "He was wanted for rape and murder in St. Louis when we arrested him. He is one of the most coldblooded individuals I've ever met. People like him have no more feeling for the value of human life than that piece of paper on my desk. If they want something, they take it. This was the most brutal, senseless murder I've seen in 21 years of law-enforcement work."

When Johnson's sentence was changed to life imprisonment as a result of the Supreme Court decision, Louise and Sam were able to accept that as the law of the land. "But at the time," Louise says, "we thought that a life sentence meant *life*. We didn't know it could mean only seven years."

After Johnson had been locked up, the LaCortes set about trying to get their lives on track again. They couldn't afford to give in to grief. At the time, their youngest child, Kenneth, was only 10 (their daughter Linda was 21 and married), and Louise felt that "if I was going to give Kenneth anything like a normal life, he wasn't going to see his mother in tears every day. If I needed to cry, I did it in the car on my way home from work."

The tears had long since dried when Frank Salerno called the LaCortes last May with an appalling message: A parole hearing date had been set for Richard Johnson. Sam took the call, and Louise came home from a long day of work to find her husband badly shaken. "I kept asking myself," Sam recalls, "if Cathy's life was worth just seven years of her killer's life."

Louise turned shock and anger to instant action. She called Salerno and asked what they could do to prevent Johnson's parole. He told her to find as many people as she could to write letters of protest to the parole board. But time was short. The hearing was to be held on June 22, and any relevant material had to be in the hands of the board 10 days before the hearing. That gave the LaCortes only two weeks to muster the troops.

Sam LaCorte is a gentle and introspective man; Louise is outspoken and impulsive. So by mutual consent, Louise took charge of the campaign while Sam tended to his contracting business. "I couldn't believe the change in her," he says. "Normally, she would never say anything to upset anyone. But when she is fighting for Cathy's rights, she becomes a different person."

First, Louise assembled the family and told each of them to find as many letter writers as they could. Then she turned to the regular customers at her beauty shop. "Most of them didn't know about Cathy, and I couldn't stand there all day and tell the story over and over, so I put it all in a letter I left on the front counter for anyone to read."

The letter described Cathy as an 18-year-old freshman at Pasadena Bible Institute who had been known at Arcadia High School for her effervescent friendliness. It told how her boyfriend, Robert Morton, had come by the LaCorte home in his ancient VW van at noon on February 11, 1976, to take Cathy to school. A cleaning woman heard them discuss first driving into the hills behind Arcadia for a look at Los Angeles on a rare clear crisp day. They were never seen alive again. Their bodies were discovered at 4:30 that afternoon in the back of the van, parked on a dirt turnout overlooking the city. Cathy had been shot in the face and Bob—bound and gagged—had been killed by three shots in the back of the head.

It had taken nine months to find and convict the man who killed them—possibly for the $11 which was found missing from Bob's wallet. Now this man was being considered for parole, and Louise was looking for help. She concluded her letter: "This has been very hard for me to write; it opens old wounds. But we *must* take a stand. We must protect ourselves and our children from him and others like him. If we sit back and do nothing, he will be released from prison to stalk others. And don't kid yourself, *he will kill again.*"

The response was instantaneous. So many outraged customers wanted to pass the word on to others that Louise had the letter printed and within a few days handed out several hundred copies. Still, she couldn't be sure how many people were actually writing letters, so she looked for a more effective avenue of protest. When she tried local newspapers and TV stations, she found they weren't interested. ("We didn't have enough numbers yet.") Then she heard about an organization called Citizens for Truth. Formed by a young computer executive named John Mancino, the organization had been influential in preventing the release of Sirhan Sirhan by flooding the parole board with petitions. Public response to this effort was so positive that Mancino was now offering the help of his organization wherever it was needed to "keep killers, rapists and child molesters off the streets." Louise called Mancino, and he advised her to forget letters and circulate petitions instead, concentrating on big numbers. "He told me that the courts and politicians will *hate* to listen if you get enough people," says Louise.

Along with her daughter, Linda, and three close friends, Louise set out to do just that. "I don't think I went to bed for a week," she says. "I called everywhere I knew groups would be coming together—churches, beauty shops, clubs, shopping malls—and people who took petitions kept coming back for more. I also called on every public official I could think of whose support would help our campaign. Within five days, we had 10,000 signatures."

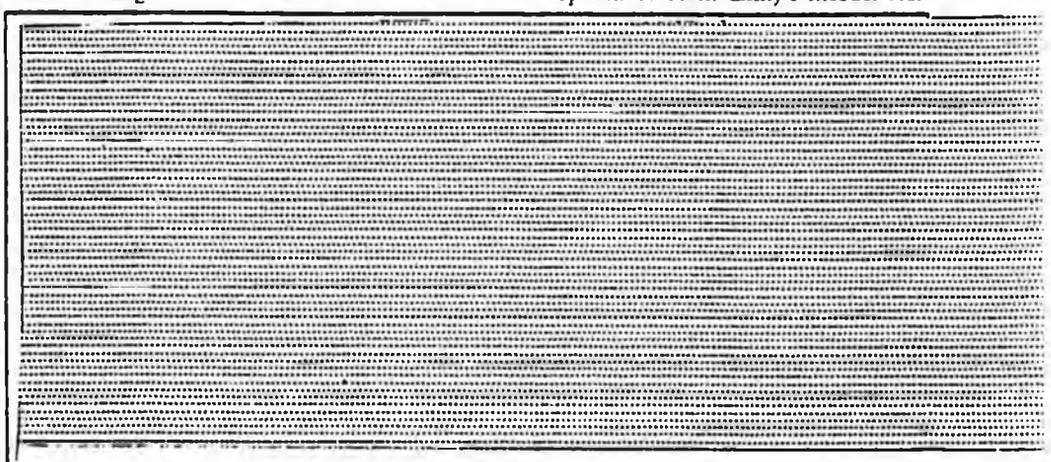
That's when Louise went back to the media. The local CBS station picked it up first. Then, with Mancino's help, Louise and Sam held a press conference that was covered by virtually every TV station and newspaper in the area, including the prestigious *Los Angeles Times*. At the same time, Louise was going after even bigger game. She called the Attorney General, a half-dozen state legislators, the Los Angeles County District Attorney and the court officials who would present the public's side in the parole hearing. When her calls weren't returned, she kept boring in, pleading with officials who had offered help to put pressure on those who hadn't.

She was indefatigable, and she won converts by the thousands. Before her two weeks were up, Louise had collected a total of 24,671 signatures on petitions protesting the release of Richard Johnson. Then, two days before the deadline, the LaCortes learned from a friendly newspaper reporter that the parole hearing had been canceled indefinitely, ostensibly because Johnson's attorney had gone to court to demand that his client be allowed to see the letters protesting his parole before the hearing took place.

Louise and Sam delivered their petitions to the prison anyway, followed by a horde of TV and newspaper reporters. They were received by Carl Weaver, acting classification and parole representative. When Louise handed him the petitions, she insisted on written assurance that they be notified by registered letter of the new hearing date. Recalls Sam: "Weaver was really gritting his teeth, because Louise was very demanding."

Now there was nothing to do but wait. Meanwhile, two related events happened rather quickly. First, California voters passed a proposition permitting the families of victims to testify at parole hearings. The proposition was quickly tested in the Supreme Court, declared constitutional and is now a law in the state of California. Second, a hearing was held on Richard Johnson's petition to see the letters before the hearing. Many of Louise's letter writers were terrified at the prospect of a vindictive killer at large who knew they had protested his release. The court agreed, ruling Johnson could see the letters but only with names and addresses removed. Johnson's parole hearing was then rescheduled for October 26, 1982.

People involved in Cathy's murder feel



strongly that rehabilitation is not an issue in Johnson's case. Says Frank Salerno: "You can't rehabilitate people who have broken the law as often as Johnson has and who have shown they don't want to—or can't—live lawfully within society."

The question of rehabilitation is basic to the concept of parole, first introduced in New York State in 1877 by social reformers who believed punishment should fit the criminal and not the crime. Within four decades, parole had spread to the Federal penal system and virtually all of the states, providing a means for early release of prisoners who were judged by a politically appointed parole board ready to be "rehabilitated."

The obvious inequities and unevenness of the system and a hardening attitude toward law and order in the last decade have spawned two different approaches to parole reform. The Federal penal system has now adopted a carefully weighted set of specific guidelines to evaluate a prisoner's parole "score," thus removing subjective judgments. At the same time, a growing number of states have adopted a form of determinate sentencing in which punishment for specific crimes is fixed by statute and the possibility of parole is much more severely limited. In spite of these reforms, however, thousands of convicted killers are walking the streets of America, and the horror stories pile up. While the LaCortes awaited Johnson's parole hearing, for example, a 10-year-old child was raped and murdered in their area, and the prime suspect was a man with a long record of child molesting who had just been paroled from prison.

The LaCortes don't want Richard Johnson out of prison—ever. And on October 26, 1982, in San Luis Obispo, they were allowed to testify to that point at Johnson's parole hearing. They were also allowed to present their petitions and argue the case for their dead daughter directly before the people who would decide whether or not to free her killer. The verdict: parole denied to Richard Lanill Johnson.

The LaCortes are pleased but wary. They know that under the existing law Johnson will come up for parole again and again. They've won this one, but there is a seemingly endless series of similar challenges looming ahead. They know that public support will be harder to muster as time goes on. But that doesn't moderate their determination.

"I feel so angry," says Louise, "to have had to go through that first parole hearing. And yet I know in a few years we'll have to go through it all again. We'll be waiting—and watching. I'll fight his parole as long as I have breath in me.

"If I could do anything to make up for Cathy's death, it would be to make our country a better place by fighting for changes that need to be made in our laws and our parole system. If what we've done can help bring that about, it almost makes the pain worthwhile." ■

We favor the death penalty

Juneau Empire 3/7/83

Eight people are shot to death and then set afire aboard a fishing boat anchored near Craig.

Six McCarthy residents are gunned down in cold blood.

Four Anchorage teen-agers are chased down and shot to death as they walk through a park.

Two elderly Juneau residents are bound, stabbed 60 times until they die and then sexually assaulted.

Listed above are multiple murders that happened in our state during the last year. These are not just crimes; they are outrages against society. The grief they have caused cannot be measured in prison sentences; it is not enough just to take those criminals off the streets.

For crimes so shocking, so hateful, we believe the death penalty should be imposed.

The death penalty cannot be debated without emotion.

In arguing against it, many people believe a "civilized society" should never take a life. They argue the "eye for an eye" tenet should never be applied, and that the sentence is not a deterrent.

In the vast majority of cases, those arguments stand up. A person who acts in a moment of passion, even if he kills another person, should be given the benefit of the doubt and no death penalty should be allowed.

In the some cases, though, the criminal has suspended the rules of humanity.

Multiple murders — when a person kills one person and then keeps on killing — do not qualify the criminal for the compassion of society.

Neither do planned murders.

Neither does the killing of a law officer.

A death sentence should be imposed only after all possible avenues of appeal are pursued, and there exists no shadow of a doubt that the criminal's rights have been protected and that he or she is guilty as charged.

The Alaska Legislature is reviewing proposals to reinstate the death penalty. We urge its members to adopt such a proposal, as long as it guarantees that all appeals may be pursued.

We do not take joy in advocating such a position. In fact, sometimes it hurts to advocate what we believe is the right thing. But it hurts us not nearly as much as it hurts the friends and families of victims of such horrible crimes and the society that allows such criminals to live



Killing criminals is no solution

To the Editor:

I am unconditionally opposed to the reinstitution of the death penalty in Alaska. A close look at homicide rates at different periods of our country's history demonstrates no correlation between the number of homicides and the practice of capital punishment. The recent increase in the U.S homicide rate from 4.7/100,000 in 1960 to the current 9.8/100,000 cannot be reversed or even slowed by the enactment of death penalty statutes on a state or federal level. People who commit murder do *not* stop to fully weigh the consequences of their acts and, therefore, will not be deterred by the threat of state-sponsored murder.

In most respects, the U.S. is a shining example in the world of consideration for civil liberties and fundamental human rights. In the industrialized world only Japan, South Africa, the Soviet Union and the United States still practise capital punishment. Reinstitution of the death penalty in the U.S. diminishes our credibility in our efforts to promote "liberty and justice for all" worldwide. Let's not be hypocrites. Instead of capital punishment we should concentrate on determining and then eliminating the causes for violent crimes. Killing individual criminals is not the answer.

— *Judy Zimicki*



Murder any way you slice it

Dear Sir:

Charles Meach was convicted of an unpardonable crime: murder Let's hope the state does not react by implementing murder as a legislative policy. Capital punishment is not a deterrent. It's institutionalized murder.

— *Sara Juday*



Don't turn justice system into circus

In Texas within the past four months, a crowd gathered outside the Huntsville Prison for the midnight execution of a convicted murderer. Anticipating a possible reprieve, certain supporters of the execution shouted encouragement with pep rally-style slogans. Vendors sold hot dogs. There was no reprieve and the convicted killer was executed.

Another man, tried on the same charge as the man who was executed, was convicted and received 40 years in jail. It was never proven which man pulled the trigger. One was executed, and one . . . paroled in a few years?

More recently, Andy Barefoot was granted a stay of execution just hours before he was to die. Since then a key witness has recanted her testimony and Barefoot will likely receive a new trial.

These cases present the death penalty in action; a definite, irrevocable punishment administered by an imperfect and inequitable system.

That some criminals deserve to die, I would not argue. That we can be perfect in our justice, I *would* argue.

As much as anyone, I wish such criminals removed from society. I want them locked away forever. And deep down, I know that if it happened to me and mine, I'd want to kill. However, justice is what we attempt with our laws. We seek equity, fairness and we seek to establish standards of morality, rather than succumb to base emotion.

Inequity, uncertainty, circuses, finality — the price exacted by the death penalty. Perfection of judgment is demanded, yet impossible to achieve.

The Alaska Legislature is now considering legislation that would establish the death penalty in this state.

Tell them no.

— *Roger Miller*



Death sentences do protect society

Contrary to belief, the death penalty has always been in effect in Alaska.

Criminals and murderers have been sentencing innocent people to death (without a trial) regularly. There is no reason why our society should feed and house a convicted murderer, (such as Meach) for the rest of his life.

It is my firm belief that even Meach would have gotten off with a slap on the wrist if the public hadn't been so outraged by his acts. A person, quite often, murders someone, gets a light sentence, then gets out on parole early, and the people who testified against him live a life of fear because the murderer may retaliate against them.

Is it any wonder our good citizens try not to get involved?

The death penalty may not, (although I think it will) deter anyone from committing his first murder but, he sure as hell won't commit a second!

It is time we quit coddling criminals with jail time, with TV and game rooms, etc. and make them pay according to their crime.

Yes, by all means, the death penalty should be reinstated.

— *Ben Rule*

A. Death penalty is no bargain

A common argument made in support of the proposed reinstatement of the death penalty is that the state and its taxpayers should not have to bear the cost of supporting for life those who have committed murder or other heinous crimes. Yet if the experience of other states holds true for Alaska, the cost of the death penalty to this state's citizens would be far greater than the present system of incarceration.

The reason for this is the extraordinarily high legal cost associated with the death penalty. Protracted appeals to the Court of Appeals, the Supreme Court and federal courts, including motions for stays of executions, and various emergency motions; probable appointment of two attorneys at state expense for defendants in capital cases, and challenges to the constitutionality of the statute itself ensure that tremendous expense will be borne by all Alaskans. Even though a prisoner sentenced to life imprisonment may be housed at state expense for decades, comparison of overall costs suggests it would be more economical to continue with thepresent system.

Numerous compelling non-economic arguments against the death penalty can be made. For those conceived primarily with the economics of capital punishment, it's high time to face the fact that the death penalty is no "bargain."

— *Lewis Gordon*

A. Let's not condone murder by state

A common argument for reinstitution of the death penalty is that others will be deterred from committing these horrible crimes once the criminals are executed. The studies on deterrence have proven nothing conclusively. It can be argued though, that most murders are committed impulsively, not in a premeditated manner, and that the death penalty would not deter these people.

Furthermore, I disagree with the state issuing a death sentence; as if the state carrying out the act made it justified. Murder is just that, no matter who commits it.

The recent introduction of lethal injections to carry out murder is by no means more humane or has it been proven painless. How can taking another person's life be considered painless or humane? Some doctors have stated their opposition to the use of medical practices to carry out a death sentence since their purpose (the doctors and their practices) is to heal people and preserve life.

Finally, in debating this issue both sides should remember the victim and the family and that neither are served by revenge. To serve a long sentence, a possible life sentence, and pay with the loss of freedom is a much more just and fitting punishment.

— *John Loin*

A. Life is a basic human right

There can be no justification for the violation of the most fundamental of human rights — life. There can be no justification even if a murder can be proven. Governments do not have the right to violate human rights regardless of the violations by the individuals; by doing so governments give tacit approval FOR the violation of human rights. Human rights are fundamental and therefore universal. There can be no exceptions made or we are all in danger.

— *Kimberly McGee*

A. Executions actually cost more

Just a thought on the Death Penalty issue: There are some people who believe it is cheaper to kill someone than it is to maintain them in a prison. According to the New York State Defender's Association, it is estimated to cost $1.5 million to prosecute a capital punishment case (1982 estimate), before any appeal was filed. We all know how many appeals can be filed. In comparison a year in prison in Alaska averages $21,500. You don't need to be a mathematical wizard to see where the "bargain" really is.

— *George Shedlock Jr.*

Q. "What is your view of the death penalty?

A. Too much talk about mercy

The death penalty should not be taken lightly. But what of the victims? Were they shown mercy? Did they die a painless death? What of the animals that kill children? In some cases, even here in Anchorage, the method of murder is enough to make you sick. There are those that say life sentences are excessive. Come on. Enough is enough. Mercy? I think not. Let the punishment fit the crime.

— *Richard Nofich*

A. Executions degrade society

The reintroduction of the death penalty would be a step backwards for Alaska. These industrialized countries have abolished capital punishment because it degrades the humanity of society without contributing to crime prevention. The homicide rates in the abolitionist countries are often much lower than in the United States. How many Alaskans would feel any safer in New York, Illinois or Florida where the death penalty exists. The effect of the death penalty has often been to discourage juries from convicting the accused of murder. Thus, instead of creating a real deterrent, the penalty can result in more acquitals. Given the weaknesses of the deterrance argument, the death penalty must be considered blood revenge. This state should not degrade itself by taking a person's life in revenge.

— *Bruce M. Landon*

A. Eye for eye makes a lot of sense

There are reasons other than a deterrent to crime (which the death penalty apparently is not) for re-instituting the death penalty.

1) When a person is murdered or rendered a basket case by torture, mutilation, etc., society has lost the beneficial services of that person, to say nothing of the suffering and deprivation of family and friends. To execute the person and/or persons responsible for this loss would be a very effective way of ensuring that those particular individuals would not ever cause such a loss again.

2) Not only has the criminal removed a productive individual from contributing to society but the criminal, if imprisoned rather than executed, costs society even more than the initial loss in terms of sheer upkeep in prison. It is a valid question to ask whether in point of fact that money could be used for a more productive purpose. Perhaps some of it could be used to compensate the victim's family; some could be used in social programs to aid elderly or economically disadvantaged families. Especially now, given the recession, such social help programs are greatly underfunded. What better use to put money than for something positive, rather than maintaining a social drain by supporting a criminal.

3) Regardless of whether the crime was perpetrated by a sane or an insane individual, the effect is the same: the loss of the beneficial contribution of the victim. The perpetrator is a negative contributor, not only removing a beneficial contributor but causing other negative effects, such as social stress, diversion of funds for upkeep of the criminal instead of using the money for social good, etc. Thus, sanity or insanity should have no bearing on the use of the death penalty in any particular case. The crime has been committed, period; society has suffered an irreplaceable loss and there is little logic in throwing good money after bad.

I realize that there is the danger of executing an innocent person. However, innocent people can be convicted and ruined just as effectively now under our current judicial system. The point is that society has to balance the cost of criminal maintenance versus execution and use of maintenance funds for other more generally beneficial social causes.

The Biblical axiom of an "eye for an eye and tooth for a tooth" may had greater social benefit than we have given it credit for.

— *Margaret Archey*

A. Don't tarnish image of U.S.

The United States has a substantial position as a world leader. Major elements of our life from our art to our government are exported to other countries. We set standards for other countries to follow if they are to receive our aid and/or favorable diplomatic treatment. In taking this kind of leadership in the world it is important that the U.S. set an example in the area of the death penalty. While some of us may see substantial differences in the way a U.S. court metes out the death penalty and the way a particular dictator, for example, dispatches that judgment, that perception of difference is unlikely to be clear to those without an intimate knowledge of our system. To effectively influence those in power in various countries with poor human rights records it is important that we set irreproachable standards for ourselves. We must not give those with lower human rights standards or irreverence for human life any excuse to abuse their power by using comparisons to the capital punishment standards of the U.S. (no matter how incorrect this perception may be). The death penalty should be abolished.

— *Robert L. Bu*

Death penalty debated

By TOM KIZZIA
Daily News reporter

3-1983

A long line of lawyers, academics and clergymen went to the podium of the Supreme Court chambers here Friday to call the state's proposed death penalty immoral, ineffective and, in some cases, counter-productive.

Their testimony was followed at the end of the day by that of the executive director of Moral Majority, a half-dozen representatives of a Christian academy and several others who said a death penalty would bring the power of retribution and justice to Alaska.

The state legislature is considering several bills that would, for the first time since territorial days, provide Alaska with the death penalty for certain aggravated murders.

Sen. Joe Josephson, D-Anch., who chaired Friday's hearing of the Senate Judiciary Committee, said at the end of the day that a poll of Alaskans today would probably find a majority in favor of the death penalty. "But my responsibility is to act on information," he said, "and I think the public attitude would change if they had the opportunity to hear the testimony today."

Josephson said he would vote against the death penalty bill.

R-Anchorage, who introduced the bill with three other senators, said no testimony in a public hearing would change his mind about the need for a death penalty. It would only help refine the legislation, he said.

Asked at noon about the morning's testimony, which had been unanimously against the proposed bill, Pettyjohn said, "My neighbors in south Anchorage aren't here. And I know how they feel about it."

Several speakers referred to capital punishment as "premeditated murder" and spoke of the chances for making mistakes, Where they contended that long prison terms would effectively isolate dangerous criminals from society, others who spoke at the end of the day said society demanded more.

Citing several multiple murders in Alaska, Burton Carney of Harvester Academy said, "I think there is a place for retribution."

"The way things are going now, you're either a killer or a killed," said Kenneth Anderson. "I'd rather be a member of a state with capital punishment than be on a list of the killed."

The abstract idea of capital punishment may be able to carry public opinion polls, said former Attorney General John Havelock, but he predicted public opinion would reverse itself if the bill were passed and the state actually executed somebody.

leveled his criticism at the legislators themselves and what he called "the Pontius Pilate aspects of the bill." The Senate bill would leave it to the state Supreme Court to decide the method of execution for criminals, and Wagstaff said legislators were ducking an unpleasant issue.

"You have to deal with the reality of death," Wagstaff said. "You cannot wash your hands and let the Supreme Court decide."

A number of speakers Friday cited studies that found imposition of the death penalty in other states had not deterred the crime of murder. In some cases, they argued, publicity surrounding an execution was credited with an increase in the number of murders over the next four to six weeks.

Dana Fabe, head of the Anchorage Public Defenders office, said the death penalty would mean 12 new appeal steps and cited a New York State estimate of the cost of a capital trial and appeals at $1.8 million. Fabe and others said the death penalty has historically been used disproportionately against blacks and Native Americans and in particular against murderers whose victims were white.

There would be a "serious impact on race relations . . . if the first person out of the chute that you're going to execute is an Eskimo," said Havelock, who is now director of legal studies for the University of Alaska.

Methodist minister John Garvin said he feared the state would "sweep the problems under the rug" by passing a death penalty when "social restoration" and pre-

Garvin questioned the motives of "law and order advocates who want to 'get the bastards.' "

To that, an embattled Pettyjohn responded, "What do you want to do with the bastards? Change their souls, right?"

"That's very well summed up," Garvin said.

Pettyjohn finally received some reinforcement about 3 p.m. when Tim Ewell, executive director of Moral Majority, said the death penalty was necessary to strengthen the line between right and wrong. "If society offers no punishment for the crime, then what is to keep people from ignoring society's wishes?" he asked.

He said the Bible's commandment "Thou shalt not kill" was actually a poor translation. The proper translation, he said, should be "Thou shalt not commit murder."

A different theological interpretation was offered the Judiciary Committee by the Rev. Steven Moore, who said that capital punishment would increase the cycle of violence in society by teaching "that the answer to vio-

DEATH PENALTY DEBATED CONT'D

lence is violence." Said Moore: "Law is a teacher of the values of society as well as the protector of values."

The Senate bill says a jury could apply the death penalty if a defendant:

- Was deliberately cruel and the murder involved torture or "aggravated battery."
- Endangered more than two other people.
- Has a prior violent felony conviction.
- Committed murder for pay.
- Was on release for another felony charge or conviction that involved assault.
- Killed a law enforcement officer acting in the line of duty.
- Committed murder to further the criminal objectives of an organized group of five or more persons.

Against these seven aggravating factors, a jury would have to balance four mitigating factors:

- The defendant's conduct was in some way forced.
- A young defendant was influenced by an older person.
- The defendant was seriously provoked by the victim.
- The defendant helped authorities capture others involved in the crime.

A similar bill in the state House would leave the balancing decision on the sentence to the judge. Several who testified Friday criticized separating the jury proceeding for sentencing in the Senate version, which would allow hearsay and other evidence not admitted during the criminal trial.

The name of repeat murderer Charles Meach was raised several times by proponents of the death penalty. "Four people might be alive today if he had earlier been found guilty of murder in the first degree and executed," said Ewell.

Opponents of the bill said life without parole would have been just as effective in getting Meach out of the way, and pointed out that Meach had not gone to jail for the first murder because of a successful insanity plea.

Pettyjohn observed that the state had since toughened its insanity statute. But attorney John Murtagh said that under the capital punishment proposal and the new guilty-but-mentally ill law, "society could spend 12 years restoring a person to mental health and then kill him."

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Arch Times A-5 4/26/83

High court to review death row appeals

Associated Press

Washington — The Supreme Court is considering a case that may yield a life-and-death timetable for some 1,200 condemned murderers nationwide.

The justices are expected to use a Texas case argued before them today to decide, by July, how federal appeals courts should handle emergency appeals from death row.

At issue is what standard those 12 appeals courts should use in deciding whether to postpone the execution of a death row inmate who has filed a new appeal with them.

The 5th U.S. Circuit Court of Appeals, based in New Orleans, has adopted a policy of denying postponement requests unless the death row inmate can show the underlying appeal likely will be successful.

Other appeals courts use a much less demanding standard, granting execution delays if the underlying appeal is not frivolous.

The standard the Supreme Court selects could result in months, even years, of added court proceedings and execution delays.

Also at issue in the case of Thomas Barefoot, sentenced to die by lethal injection for the 1978 murder of a Texas police officer, is whether psychiatrists should be allowed to testify about a convicted murderer's "future dangerousness."

Juries now hear such testimony in choosing between the death penalty or life in prison as an appropriate punishment.

Barefoot was to die last Jan. 25, but less than 12 hours before his scheduled execution the Supreme Court ordered that he be kept alive and that his emergency appeal be made a test case.

Barefoot was convicted of the Aug. 7, 1978 shooting death of Carl Levin, a Harker Heights, Texas, police officer who had been investigating a night club fire.

A New Iberia, La., native, Barefoot was then a fugitive wanted in New Mexico on criminal charges. Prosecutors said he shot Levin in the head at close range to avoid arrest.

Barefoot's case attracted considerable unsolicited advice for the high court.

The Legal Defense Fund, a civil rights group active in representing death row inmates, and the American Bar Association, the nation's largest organization of lawyers, opposed the 5th circuit court's standard.

"A stay should be granted unless it can be determined on the face of the available documents that the inmate's claims are frivolous," ABA President Morris Harrell argued.

But the conservative Washington Legal Foundation urged the justices to uphold the 5th circuit court's more stringent standard.

"The instant case offers a primary illustration of the problems (of delay) which currently plague the administration of capital punishment . . . and undermine public confidence in the criminal justice system," the foundation's lawyers said.

The American Psychiatric Association urged the justices to ban psychological testimony on future dangerousness.

Use of such testimony "is constitutionally invalid because it undermines the reliability of the fact-finding process," the association contended.

"Because the prejudicial impact of such assertedly 'medical' testimony far outweighs its value, it should be barred altogether in capital cases," the association said.

It added: "At the minimum, psychiatrists should not be allowed to offer medical opinions concerning the likelihood of long-term future dangerousness unless they have conducted an in-depth psychiatric examination of the defendant."

Barefoot's jury, in determining his punishment, heard from psychiatrists who had not examined him but were asked hypothetical questions about his future danger to society.

Who needs protection?

This evening's March 19 TV news report pictured Sen. Joe Josephson stating, "We must be very, very careful to protect the rights of the A.P.I. residents to be different." The recent murders of four teenagers in Russian Jack Park is the finest example of protecting their rights to be different.

I would like to remind the Honorable Mr. Josephson that he should be equally careful to protect my right to not be murdered.

— Edward M. Boyd

Capital punishment

Dear Editor:

It seems our legislators forget that they represent the opinion of those who elected them. I believe the m jority of their constituents favor ..pital punishment. It is unfor..ate that those who are now ba..ing at passage of such a bill did ..t voice that opinion during the election campaign.

Re: a remark by one of these mental giants, "If we can't do it right, we shouldn't do it at all."

If his logic holds true, he should have never gone to Juneau.

Another profain remark: "Capital punishment discriminates against minorities."

Hogwash. This may be true in the Lower 48, but most of the likely candidates for capital punishment up here are white. Most Alaskans don't judge a person by his race or national origin, but on his own worth.

I agree that capital punishment is not a detereent to crime, but it's apparent the system we have now isn't either. Capital punishment will certainly deter second offenses. The automatic review and appeals in these capital convictions, along with the trial by jury, beyond a shadow of a doubt, should minimize mistakes.

I think it's time that our elected officials voice the will of the people they represent, even though it does not coincide with their own beliefs. If they canot represent us because of inner conflict, they should step down. Do it our way, or get out.

R. Wolf
3182 Prescot

Capital punishment

Dear Editor:

I don't want people getting the death penalty, because they have a right to live. They can live in jail.

I read about Charles Brooks being killed with a poison needle. The most common sentences to the death penalty are the gas chambers and the electric chair.

It's not right to kill. The Ten Commandents say, "Thou shall not kill" and "Forgive thy neighbor." People should not kill other people. Bread and water does not cost that much. The government could build more prisons for the overcrowding in the jails.

Do you know there are 1,137 people waiting to be executed? The executer will pull a lever four times. Each time it unleashes 2,000 volts of electricity. The first jolt will bulge your eyes, then it bursts you eyes and then it fries your brains.

If you're going to execute people by the electric chair you should at least get a new chair. The one in New York is almost 100 years old.

Darryl Leiser
6th grade student
Tudor School

Death Penalty

Dear Editor.

I often find myself at odds with you and the people of Juneau. I am one of those "fools and fanatics" who was and still is in favor of moving the capital.

However, I am strongly in agreement with your editorial reprinted in the Anchorage Times. It is the most eloquent argument I have heard yet in favor of the death penalty.

You are right when you say that the death penalty cannot be debated without emotion. I have wanted to write to the Anchorage papers to try to counter all the emotional letters and have been unable to find an unemotional way to express my views on this subject and I have thus been afraid that anything I say would just add to the heat and probably not change any minds.

Yet the best argument in favor of capital punishment is an emotional one. It is based on one of the most natural and decent of human emotions. That is revulsion to atrocities.

As you point out, many homicides may not warrant the death penalty. When a person kills one person in a moment of passion and perhaps even with some provocation, society cannot condone his act, but can show him some degree of compassion. But those who deliberately commit sadistic, perverted or debased acts and show absolutely no compassion for others are not themselves worthy of any compassion whatever.

Massachusetts recently became the 38th state to adopt a death penalty. Alaska should become the 39th. If our legislators are hesitant to act on this matter, then let them do as Massachusetts did and let the people vote on it at the next election. I feel confident that Alaska voters would approve reinstatement of the death penalty.

Sincerely,

Garry St. John
3322 Seppala, B
Anchorage 99503

What others say

Arguments in favor of the death penalty

Times 3-17-83

From The Juneau Empire

EIGHT PEOPLE are shot to death and then set afire aboard a fishing boat anchored near Craig.

Six McCarthy residents are gunned down in cold blood.

Four Anchorage teen-agers are chased down and shot to death as they walk through a park.

Two elderly Juneau residents are bound, stabbed 60 times until they die and then sexually assaulted.

LISTED ABOVE are multiple murders that happened in our state during the last year. These are not just crimes; they are outrages against society. The grief they have caused cannot be measured in prison sentences; it is not enough just to take those criminals off the streets.

For crimes so shocking, so hateful, we believe the death penalty should be imposed.

The death penalty cannot be debated without emotion.

In arguing against it, many people believe a "civilized society" should never take a life. They argue the "eye for an eye" tenet should never be applied, and that the sentence is not a deterrent.

In the vast majority of cases, those arguments stand up. A person who acts in a moment of passion, even if he kills another person, should be given the benefit of the doubt and no death penalty should be allowed.

IN SOME CASES, THOUGH, the criminal has suspended the rules of humanity.

Multiple murders — when a person kills one person and then keeps on killing — do not qualify the criminal for the compassion of society.

Neither do planned murders.

Neither does the killing of a law officer.

A death sentence should be imposed only after all possible avenues of appeal are pursued, and there exists no shadow of a doubt that the criminal's rights have been protected and that he or she is guilty as charged.

The Alaska Legislature is reviewing proposals to reinstate the death penalty. We urge its members to adopt such a proposal, as long as it guarantees that all appeals may be pursued.

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Capital punishment is no crime

This is the mentality that leads to murder, rape and robbery. The criminal feels that the chances are excellent that he won't get caught or if caught that there will not be sufficient evidence to make an arrest, or that if arrested he won't be brought to trial, or if brought to trial that he won't be convicted and that if convicted he won't have to serve all his time.

This kind of thinking highlights the shortcomings of our "justice" system. Justice is defined by Webster as "the assignment of merited rewards or punishments." Meaningful words like "adultery, virginity, ethics, honor and justice" have fallen into disuse in our modern, enlightened age.

House Bill 140, authorizing capital punishment, is an attempt to turn this attitude around. Some say, "You can't legislate morality." Legislation is in itself an expression of the moral values held by that community or state. In my district, 88 percent of the voters favor capital punishment. If we care about the concept of justice we should overwhelmingly support this piece of legislation.

For those who feel capital punishment is wrong or anti-Biblical, I would like to make a few comments. Capital punishment is not a violation of the Sixth Commandment, "Thou shalt not kill." The Hebrew word translated "kill" in that commandment means "murder" and should be read "Thou shalt not murder."

Within the same context of the next chapter the commandment is given to execute persons for specific crimes and it says, "the murderer shall surely be put to death." The Sixth Commandment is given to individuals, not state or judicial council. Who would accuse a policeman or soldier of murder when killing in self-defense or in defense of others?

In the New Testament, Christ did not abolish death for a murderer. He stated in Matthew 26:52, "All they that take the sword shall perish with the sword," which is a restatement of the law of capital punishment found in Genesis 9:6, "Who so sheddeth man's blood, by man (courts and government) shall his blood be shed."

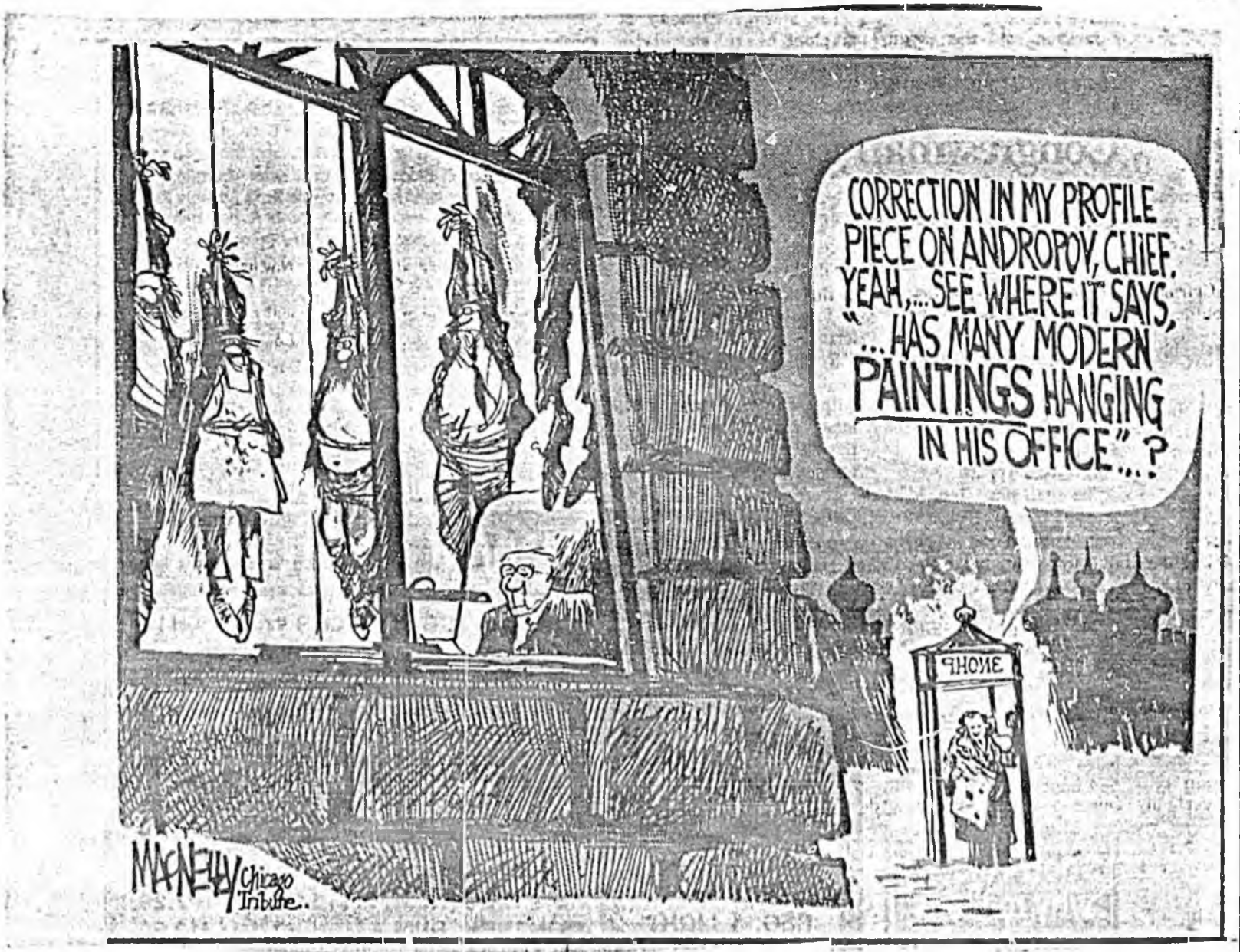
If you can't imagine Christ pulling the switch on the electric chair, read Matthew Chapter 23 or 25:41 where he says, "Depart from me, ye cursed, into everlasting fire, prepared for the devil and his angels." Even as far over in the Scriptures as Revelation 13:10 we find Christ speaking to John saying, "he that killeth with the sword must be killed with the sword," a clear reaffirmation of the original law of capital punishment found in Genesis. In Deut. 19:11-13, God actually promises to bless the nation that obeys his command that the murderer be executed saying, "that it may go well with thee."

Mercy shown to a willful murderer is really cruelty to all mankind because the murderer has the potential to murder more people including you, me and our families. The murderer will find it easy to continue to kill those in society as well as in prison since he knows no worse punishment is awaiting him.

Some say those who support capital punishment must think we have an infallible system of justice. No so! However, let's not confuse the law with the administration of the law, as that would be like "throwing out the baby with the bathwater." A man should never be condemned to die until all doubt of his guilt has been satisfied. Many of those charged with murder are conclusively guilty, such as Hinkley.

Blackstone, the great authority on Anglo-Saxon law said, "Capital punishment for murder is the capstone of the arch of justice." Remove the capstone, and the whole structure will fall.

— Paul M. Anthony


CORRECTION IN MY PROFILE PIECE ON ANDROPOV, CHIEF. YEAH,... SEE WHERE IT SAYS, "...HAS MANY MODERN PAINTINGS HANGING IN HIS OFFICE"...?
PHONE
MACNELLY/Chicago Tribune.

Capital punishment

Times
3-4-83

Dear Editor:

The commandment "Thou Shalt Not Kill," was not meant only for the "bad guys." It is meant for All. This includes our legislators, and you and I: Everyone!

If House Bill 140 is passed into law, not only are our legislators guilty of murder but also those who sit back and make no effort to influence their vote are guilty.

I do not know how many times innocent men have been executed but I do know it has happened. Can we justify taking the life of an innocent person by mistake to punish the guilty?

"Vengence is mine, saith the Lord!" Not yours! Not mine! And He will have vengence on murders!

Passage of this bill would be a sin against God! And anyone allowing it to be passed will be guilty of murder each time a convict is executed!

Dorothy Bell
P.O. Box 3-672

Capital punishment

TIMES 2-26-83

Dear Editor:

So called enlightened experts on criminology may have come to conclusions about the death penalty not stopping the crimes it is supposed to. But us poor, uneducated and unenlightened non-experts are getting fed up to the eyeballs with your garbage and the continued killing by your "rehabilitated" criminals who roam the streets making it unsafe to go out of one's own house.

I refer to several incidents in this community such as the high school girl killed at Eastertime two or three years ago, the woman and her son who were killed about one and a half years ago and the most recent one at Russian Jack Springs Park less than one year ago, when four teen-agers died.

We have had enough. The death penalty may not deter killing in some people's point of view. But I'll tell you what: It sure as shooting eliminates sec- offenders. It's about time more people became aware of this — politicians and bureaucrats included.

A. Ulen
Soldotna

capital requirements are large in relation to

material of reprints by readers is welcome.

Malone questioned on judicial challenge stand

To the editor:

An open letter to Rep. Hugh Malone:

I understand you are a surveyor, I hope you get your transit out and take a good look at where you're going, as I understand you opposed the Milo Fritz bill which would repeal the law of peremptory challenge. By letting this law stay in running Judge Hornaday out of Homer, do you for one think this will solve the problem?

When there is a new judge assigned, regardless of his attitude toward drunken driving and other crimes, this will only tell lawyers who use this law to load their pockets with taxpayers' money. Apparently Chief Justice Burke and Judge Rowland want to keep this law on the books, perhaps for the day when they topple and have to take defending drunken drivers. I am told when Judge Rowland was a visiting judge in Homer, he apparently wasn't interested in saving taxpayers money, as he flew his own plane, landing on Lake Beluga. Another visiting judge recently, along with a district attorney and a game warden, were seen as they ran aground on the bar and he was so hard aground, he didn't show up to court till 2 p.m. the next afternoon. Judge Hornaday is a skilled navigator and keeps his ship off the bar.

If this peremptory law is so all-fired necessary, why not put our courts on a paying basis and let them pay for visiting judges, instead of having people who are able to survive the drunken drivers, as in most states one found guilty or the loser in a civil action is required to pay the cost of court. As of now, we the taxpayers are not only paying the cost, we're also paying for a public defender who apparently uses excess time with this peremptory or other laws, stalling to feather his own nest, telling people who want to plead guilty to plead not guilty so they can run up expense. Also, I know of one case where a man had a quite steady job on the Slope and a public defender, defending him on a criminal trespass case.

WHO is paying?

I'm almost to the point of advocating a repeat of history, as was in Colonial Williamsburg, Virginia, in 1658.

I hope you'll see the light.

Some questions for anyone interested in such subjects:

1. Why not breath-test equipment in all bars and places liquor is sold?

2. Why not let the people vote for all judgeships as long as we are paying their salaries?

3. Why couldn't we send other peremptied judges for a Homer visiting judge?

4. Why, as heard on a teleconference before a committee, are three Anchorage judges not sent as visiting judges to Homer — maybe too tough or lawyers can't dictate to?

5. I am told you are against the bill, Rep. Malone. Why?

I and many of the voters are watching to see if our representatives are satisfying the will of the people.

Calvin H. Hand,
Anchor Point

Capital punishment views sought

To the editor:

I am writing this in hopes that thinking people will become aware of House Bill 140, which as of this writing was awaiting a hearing in the House Judiciary Committee. This bill, if passed, would authorize capital punishment for certain offenses within the state.

With this bill, we seem to once again put aside the information gathered on the subject and resort to the ancient eye-for-an-eye and tooth-for-a-tooth philosophy. Admittedly, our justice system needs a radical overhaul, but the short-term solution of killing people for killing people, makes little sense to me. Many of the people who call themselves "experts" on criminology have basically come to similar conclusions, namely, the death penalty does not stop the kind of crimes it is designed to, but tends to show a lower stage of development for the societies which use it.

I'd like to again call on all those thinking people who feel other solutions should be sought in place of state-sanctioned killing, to write to our representatives on this bill. I'd like to especially appeal to my friends in the pro-life movement and hope that their desire for consistency will compel them to speak out on this issue.

Greg Stevens
Juneau

Letters to the editor

LETTERS TO THE EDITOR are the readers' opportunity to speak out on any legitimate or timely topic. Letters should be typed or neatly handwritten. Brevity is desireable. Anonymous letters will not be published, and the editor reserves the right to edit as necessary. Letter writers should include their address and phone number for the editor's reference.

Quotables

Resolved: to live with all my might while I do live. Resolved: never to lose one moment of time, to improve it in the most profitable way I can. Resolved: never to do anything which I should despise or think meanly of in another. Resolved: never to do anything out of revenge. Resolved: never to do anything which I should be afraid to do if it were the last hour of my life.

• *Johnathan Edwards*

Public reassurance in a civilized way

Superior Court Judge Victor Carlson admirably carried two big burdens in an Anchorage courtroom last week: protecting public safety and dealing with an angry outcry in the wake of the conviction of Charles L. Meach for the murder of four Alaska youths.

There was little doubt, once a Fairbanks jury convicted Mr. Meach of first-degree murder, that the circumstances demanded the stiffest possible sentence for one of Alaska's most brutal and vicious crimes. Charles Meach gunned down four separate victims in cold blood and without the least provocation. Eight years earlier he had killed a 22-year-old grocery clerk and been hospitalized for mental disease or defect. The public needed reassurance that he would never walk the streets again, and so it was done: Judge Carlson sentenced Mr. Meach to 396 years in prison — without chance of parole — in what was the maximum possible sentence and the longest prison term in state history.

But he did more than that. The remarkable part of Judge Carlson's sentencing comments was what he had to say about the "hue and cry for capital punishment" arising from the cold-blooded killings last spring. "I want this record to demonstrate," wrote the judge, "that capital punishment would be wrong and not in the public's interest if capital punishment was available in this case . . ."

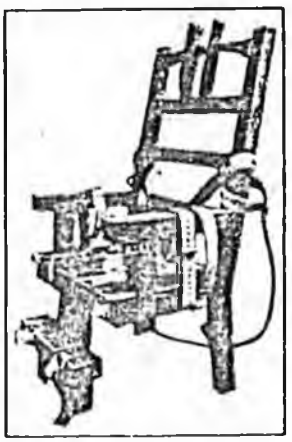
And he listed seven concise reasons why the death penalty is inappropriate to a society pretending to call itself humane:

- Homicide on behalf of the state is inconsistent with our culture's most basic respect for human life;
- The expense of trying a capital case is large, since absolutely "no stone can be left unturned" by either side when the life of a defendant is at stake;
- The extra emotional cost to all, especially jurors, encourages acquittals when the prosecution might otherwise meet its burden of proof beyond a reasonable doubt;
- The criminal justice system is not above error, but there can be no recourse if an innocent person is put to death;
- The death penalty skews the administration of justice when defendants — acutely aware that the trial process is not infallible — plead guilty to lesser offenses to avoid the threat of a death penalty;
- Imposition of the death penalty has not been without bias. A greater than representative number of illiterates, poor, minorities and political criminals have faced the death penalty in the United States; and
- Two wrongs do not make a right. The death of a murderer is only symbolic retribution, and can never bring back the victim.

Judge Carlson was correct to impose a sentence designed to keep Charles Meach behind bars the rest of his life — and equally correct to insist that taking still another life would serve no civilized purpose.

THE PUNISHMENT OF DEATH

it may deter a few; does it deter the many?



Who can quarrel with the intent of the death penalty? Its purpose is to validate the preciousness of human life by imposing the ultimate punishment on those who commit the ultimate crime.

Too bad it doesn't work that way.

Consider who qualifies for the death penalty.

Not the enraged individual who in unpremeditated fury kills a spouse or a barroom adversary—the single most common kind of murder.

Not the person who kills by accident or negligence.

Not the rare person who is so mentally deranged that he cannot be held legally accountable for his actions.

That leaves the professional and the otherwise premeditated murderer (both are statistically rare species) and the felony murderer who kills during the commission of another crime, such as robbery, burglary or home invasion.

In truth, the last is the only class of killer from whom innocent society needs systematic protection and for whom society demands execution. But most felony murderers do not intend to kill and do so out of panic, rage or accident. In the absence of prior intent to commit a capital crime, they are not deterred by prior considerations of capital punishment.

Which leaves a subclass of felony murderer whom society has every right to hate and fear: the sadistic psychopath, who doesn't just kill in the course of robbing but may commit robbery as an excuse to kill, terrorize or maim. This is the fellow who holds up the mom-and-pop grocery store for $60 and then pumps bullets into the owner pleading for his life or who takes the wallet from an unresisting victim and then sticks a knife in him.

Only the most principled humanitarian would spare these killers' lives—and maybe a few criminologists who find the threat of death not a deterrent to murderous behavior but an inducement to it.

Psychologists who specialize in violent antisocial behavior have long recognized that the most dangerously hostile, aggressive and sadistic criminals tend to be mentally deranged but legally sane individuals who are embarked on a campaign of self-destruction. Most of those criminals would laugh at that idea; and it certainly doesn't seem that way to their innocent victims. But where the badly troubled person from the so-called upper classes tends to turn his hostility inward, sink into an abyss of depression and end his own life with a bottle or a bullet, his less introspective and socialized counterpart takes his frustration and aggression out on others until he is caught or killed.

For this person, brutality has the immediate payoff of compensating for an intolerable sense of impotence; the ultimate reward is to be transformed by society into a celebrity murderer, attended regally by a vengeful justice system, and then to be solemnly and ceremonially executed by the state. To "ride the lightning."

The percentage of murderers who kill in order to be killed is unknowable, but it seems likely they outnumber those who rationally weigh the prospect of execution and are deterred.

Add to that another unhappy fact of criminal behavior: The rational felon whose planned or unplanned act could cost him his life may well elect to leave no living witnesses.

And add to that a cultural effect of capital punishment that to students of violent behavior is the most worrisome of all. By performing executions in the name of justice, the state validates the idea that killing is an appropriate response to sufficiently wicked or intolerable behavior. Which happens to be the exact frame of mind that prevails in the most common of murder situations—the bedroom or barroom rage. Whether cloaked in legal pageantry or performed in a moment of white fury, the message is the same: *The son of a bitch had it coming!*

Not even the Supreme Court has suggested that the death penalty deters murder. In 1976, it took, instead, the curiously honest position that execution primarily serves a retribution function, that it fulfills an emotional need of citizens outraged and frustrated at the prevalence of crime and violence. That it certainly does. Contrary to the lofty position of the true humanitarian, the less philosophical citizen may in fact derive comfort and genuine satisfaction from bloody vengeance. But a wiser court and wiser men in public office might have considered that the transient satisfaction of a blood sacrifice may well be paid for by additional violence and suffering inspired by its lethal example.

Death penalty debate

juds. 2-15-83

Legislators and onlookers in the Alaska Senate got a rueful chuckle out of committee referrals made by Senate President Jalmar Kerttula for a death penalty bill introduced last week. Sen. Kerttula sent the bill to both the Judiciary and Finance committees, noting that "it costs money" when the latter assignment drew guffaws. Sen. Joe Josephson, who chairs the Senate Health and Social Services Committee occasioned further chuckles with his observation that the bill "has certain health implications as well."

The laughter no doubt served to break the tension surrounding a very serious matter for all concerned. But committee referrals to at least two different panels suggest that the Senate will give the idea plenty of scrutiny before moving on any death penalty bill this session. And that scrutiny suggests a further consideration for chairmen planning committee hearings: the need for broad public participation in any decision to embrace the death penalty in our state.

The death penalty implicates every citizen in a cycle of violence the state seeks to stop. Before any death penalty bill can advance to a vote of the legislature, it must bear widespread scrutiny and debate among all Alaskans. Public hearings must be held around the state; reputable research about the death penalty and its impacts must be widely distributed and debated; the methods and circumstances of imposing capital punishment must be carefully defined; and, finally, Alaska citizens and their leaders must forthrightly confront the moral dimensions of a painful issue. Such scrutiny would be difficult at best, but it is the very least demanded of a democratic state that would adopt the authority to impose a penalty of death.

Senate finds some humor in crime bill

The Associated Press NEWS 2-1-85

JUNEAU — Alaska senators on Friday found some light humor in a grim subject — capital punishment.

The laughter followed the introduction of a bill to authorize the execution of murderers in Alaska. A similar bill was filed in the House last month.

Senate President Jay Kerttula, D-Palmer, referred the measure to the Finance Committee, which drew guffaws from senators.

"Hey. It costs money," Kerttula said.

When the laughter subsided, Sen. Joe Josephson, D-Anchorage, rose to say "I think it has certain health implications as well," which drew another roar from the lawmakers.

The measure (SB121), sponsored by Sen. Fritz Pettyjohn, R-Anchorage and others, would provide that a person convicted of a capital felony "shall be sentenced to a definite term of imprisonment of at least 20 years but not more than 99 years, or shall be sentenced to death."

The bill, which also will be reviewed by the Judiciary Committee, would classify murder as a capital felony.

The measure also would require a death sentence to be approved by the Alaska Supreme Court.

A similar bill was filed in the House by Rep. Sam Pestinger, R-Anchorage. The measure (HB140) is still in the House Judiciary Committee.

TIMES 4/6/83

editor

The death penalty

Dear Editor:

Sylvia Short's "capital punishment" letter of March 26, faults Moral Majority and certain Christian organizations for favoring the death penalty because she thinks it contradicts the teachings of the Prince of Peace. She admits to being puzzled.

It might help this widespread misunderstanding by non-Christians to know that while Jesus came to provide a way of salvation, he also spoke of the destruction of sinners. In Matthew 10:34, he said, "Think not that I come to send peace on earth: I came not to send peace but a sword."

The death penalty is clearly demanded by the word of God. An accused person who was tried and condemned by his peers was led outside the city gates and stoned to death.

In suggesting the head of Moral Majority be crucified like Christ, Ms. Short recommends the very violence she claims to abhor.

Bob Clark
P.O. Box 4-1908

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HV 8694 ED 153

CAPITAL PUNISHMENT:

PRO AND CON ARGUMENTS

JOYCE VIALET
Education and Public Welfare Division

August 3, 1956

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SECTION 1

AGAINST CAPITAL PUNISHMENT

I. THE STATE SHOULD NOT KILL

The central argument against capital punishment may be summarized as follows: In the absence of a clearly demonstrable benefit to society, it is morally wrong and pragmatically unsound for the State to be invested with the right to take the life of its citizens.

Abolitionists argue, first, that it is morally wrong to kill, and no less so for the State than for the private individual. Michael V. DiSalle, the former Governor of Ohio, writes:

> First of all, I believe that taking a human life, even to pay for a life already taken, is immoral....Society, echoing the Ten Commandments, says: Thou shalt not kill. Then society illogically continues: Killing is wrong, and in order to prove it is wrong, we will kill you if you kill.1/

While the moral argument, based as it is on the belief in the sanctity of human life, leads some abolitionists to argue that capital punishment is wrong regardless of whether or not it benefits society, this absolute stand is unusual. The following statement by Herbert L. Packer, Professor of Law at Stanford University, is representative of the more prevalent view:

> The case is not that the sanctity of human life is an absolute but rather that it is a highly cherished value that should give way only upon a persuasive showing that some other, more important end will thereby be served.... Unless it can be shown that capital punishment serves prime social purposes that cannot otherwise be served, the claims of its proponents are unconvincing.2/

1/ Michael V. DiSalle, The Power of Life or Death (1965), p. 6.
2/ Herbert L. Packer et. al., "Mr. Barzun and Capital Punishment," The American Scholar (Summer 1962), p. 449.

Abolitionists argue, secondly, that this belief in the sanctity of the individual human life is the central value of our society and should be supported by the actions of the State. They contend that, if the institution of capital punishment does not actually undermine this value, and many believe that it does, it clearly does nothing to reinforce it. Governor Edmund G. Brown of California writes:

> I oppose capital punishment, too, because it brutalizes man; because a society that takes human life cannot invest its citizens with respect for human life.1/

A New York Herald Tribune editorial entitled "The State Should Not Kill" puts it more strongly:

> Whenever the state takes life it cheapens life. Capital punishment panders to man's basic instincts, cloaking retribution in the mantle of the law, coloring vengeance with respectibility, setting a public example for private violence.2/

Third, abolitionist argue that the State should be granted legal power to take the lives of its citizens only if this is clearly necessary for self-defense which, in the case of capital punishment, means the protection of its law-abiding citizens. In the United States, this argument takes the traditional form of the need to protect the rights of the individual against the State, and is summarized as follows by Michael V. DiSalle:

> Those of us who are interested in the freedom of the individual realize that government exists only with those powers that have been delegated to it by the people, and the more restrictions we place upon government and the exercise of the powers that have been delegated to it, the more certain we are that we will have a democratic type of society where the freedom of the individual prevails. It should certainly not be the purpose of people within a society to delegate to government any more authority than that necessary to perform its functions; I feel that the delegation of the right to take away

1/ Edmund G. Brown, Statement on Capital Punishment (1963), p. 2.
2/ "The State Should Not Kill," New York Herald Tribune (March 27, 1960), in Capital Punishment, ed. Grant S. McClellan (1961), pp. 83-84.

> life can only be justified when a certain purpose is to be served; that purpose might be the preservation of society itself against a threat from the outside or a threat from within.1/

In general, abolitionists in the United States are more willing to grant that the death penalty would be justified by its clear necessity for the protection of "society itself against a threat from the outside or a threat from within," than are, for instance European abolitionists. The latter tend to be more concerned than American abolitionists with the danger that capital punishment will be used illegitimately by the State. A representative European view on this issue is expressed as follows by the late Albert Camus:

> ...for 30 years crimes of state have vastly exceeded crimes of individuals. I shall not even mention wars--general or local.... I am referring here to the number of individuals killed directly by the State, a number that has grown to astronomic proportions and infinitely exceeds that of "private" murders. There are fewer and fewer men condemned by common law, and more and more men executed for political reasons.... It is now so much against the individual killer that our society must protect itself than, as against the State. Perhaps this equation will be reversed in another thirty years. But for the present, a legitimate defense must be made against the State, before all else. Justice and the most realistic sense of our time require that the law protect the individual against a State given over to the follies of sectarianism and pride.2/

In summary, then, most American abolitionists argue that the death penalty should stand or fall on proof that it is necessary to protect society. Furthermore, because of the moral and practical evils they see as inherent in the institution of the death penalty, abolitionists argue that the burden of proof rests with its supporters.

1/ American Bar Association, Section of Criminal Law, 1959 Proceedings (1960), pp. 5-6.
2/ Albert Camus, "Reflections on the Guillotine", Evergreen Review (No. 3, 1957), p. 48.

It is generally agreed by both sides in the capital punishment controversy that there are two ways in which the death penalty might afford society unique protection. First, it might be a more effective deterrent against major crime that life imprisonment. The deterrent issue is defined as follows by Hugo Adam Bedau:

> The only question [regarding deterrence] which must be settled is this: is long term imprisonment (on the assumptions that it is less savage and more easily administered by the judicial system than capital punishment) as good a deterrent for the major crimes currently punished by death? This formulation leaves open, as it should, the question of how close either penalty is to a completely effective deterrent; and it does not raise the further question, as it shouldn't, whether death might be a better deterrent for certain crimes (e.g., against property) that no one would think of punishing in this way. To put it another way, the real dispute over deterrence is this: how many capital crimes, if any, have been (or might be) prevented by the threat of execution, which would not have been (or would not be) prevented by the threat of imprisonment?1/

Second, the death penalty might be the only way of protecting society against the incorrigibly dangerous. The debate with regard to this second function centers around the issue of whether or not the death penalty is in fact necessary, whether this protection is not provided equally well by measures short of execution.

Abolitionists argue that the death penalty has failed as a deterrent and is unnecessary as a protective measure. They argue that it should be abolished because there is no demonstrable proof that it affords society the unique protection which alone would justify its retention.

1/ The Death Penalty in America, ed. Hugo Adam Bedau (1964), p. 261.

II. DETERRENCE

Hugo Adam Bedau defines the doctrine of deterrence and comments on its importance in the capital punishment controversy as follows:

> ...by far the most common way to employ a punishment as a preventative of crime is to adopt a sufficiently severe penalty so as to compel general obedience out of fear of the consequences of disobedience--the classic doctrine of deterrence. Even though deterrence cannot override every other concern in formulating a rational penal philosophy, there is no doubt that the death penalty's efficacy as a deterrent is the major factual issue in dispute between abolitionists and retentionists.1/

Abolitionists argue that the death penalty's efficacy as a deterrent is, at the very least, called into serious question both by the available statistics and by the evidence of modern psychology.

A. The Statistics

In a study of the death penalty which he prepared at t request of the American Law Institute, Thorsten Sellin notes:

> Any one who carefully examines the... data is bound to arrive at the conclusion that the death penalty, as we use it, exercises no influence on the extent or fluctuating rates of capital crimes. It has failed as a deterrent.2/

Sellin analyzes the four ways in which the deterrent value of the death penalty would be evident it it, in fact, existed:

> It seems reasonable to assume that if the death penalty exercises a deterrent or preventive effect on prospective murderers, the following propositions would be true:
>
> (a) Murders should be less frequent in states that have the death penalty than in those that have abolished it, other factors being equal. Comparisons of this nature must be made among states

1/ Bedau (ed.), op. cit., p. 260.
2/ Thorsten Sellin, The Death Penalty (1959), p. 63.

> that are as alike as possible in all other respects—character of population, social and economic condition, etc.—in order not to introduce factors known to influence murder rates in a serious manner but present in only one of these states.
>
> (b) Murders should increase when the death penalty is abolished and should decline when it is restored.
>
> (c) The deterrent effect should be greatest and should therefore affect murder rates most powerfully in those communities where the crime occurred and its consequences are most strongly brought home to the population.
>
> (d) Law enforcement officers would be safer from murderous attacks in states that have the death penalty than in those without it.1/

In general, the various statistical studies which have been made in an attempt to test the deterrent value of capital punishment concern themselves with one or more of these four propositions.

It will be noted that the majority of the studies in this field have been conducted by Sellin. Professor Emeritus of Sociology at the University of Pennsylvania and President of the International Society of Criminology, Thorsten Sellin has been described as the "foremost statistician in the field of criminal law in the world."2/ He was the principal consultant to Great Britain's Royal Commission on Capital Punishment as well as to the majority of other official government commissions studying this subject. Bedau notes:

> ...[Sellin's] evidence has managed over the past decade to convince a wide variety of legislative committees throughout the English-speaking world, and not in every case were the members of these committees initially receptive to his conclusions.3/

1/ Sellin, op. cit., p. 21.
2/ California Legislature, Senate Committee on Judiciary, Hearing Report and Testimony... (1960), p. 65.
3/ Bedau (ed.), op. cit., p. 265.

Contiguous Jurisdictions - Sellin's studies of the homicide rates in contiguous jurisdictions with and without the death penalty are, in Bedau's words, "the cornerstone of the case against the deterrent superiority of the death penalty over imprisonment."[1] Table 1 below shows the results of four of these studies, described by Mr. Sellin as follows:

> The only fair comparison is one that takes into account regional differences and therefore compares the homicide rates of an abolitionist state with that of its neighbor states. The diagrams shown... [see below] are based on such comparisons. They show the annual size of the homicide death rate per 100,000 population for the period 1920-1958 and the general trend of the rate for each set of states compared.[2]

Sellin's conclusion on the basis of these studies follows:

> The striking thing about these diagrams is that within each set of states the rates are so nearly the same annually and the trends so closely alike that if the lines were not identified with each specific state, no one would dare to guess which lines represented the abolition states....
>
> It is proper to conclude that states which are similar in the character of their population, their urban and industrial development, and their mores have similar homicide rates, whether or not they have the death penalty. In other words, the presence of the death penalty for murder in a state appears to have no more influence on its homicide rates than the absence of the penalty in a comparable state has on the rates of that state. And, if our basic assumption is correct, what holds true for the homicide rates would hold true for the capital murder rates, were they obtainable.
>
> When it once becomes generally understood that the amount and the trends of murder depend on demographic, social, economic, and political conditions, one would realize that the explanation for rises or falls in the statistics of this crime must be sought through a study

1/ Bedau (ed.), op. cit., p. 263.
2/ Thorsten Sellin, "Capital Punishment," Federal Probation (Sept. 1961), p. 6. See also Sellin, The Death Penalty, pp. 23-34.

of these conditions, and that through such a study alone could any possible remedy be found. To hope that this remedy could be found in the application of the death penalty or in its introduction is to grasp at a straw.1/

TABLE 1

CONTIGUOUS JURISDICTIONS: HOMICIDE DEATH RATES FOR SELECTED STATES2/

DIAGRAM I

Homicide Death Rates, per 100,000 Population, in Maine, New Hampshire, and Vermont: 1920-1958

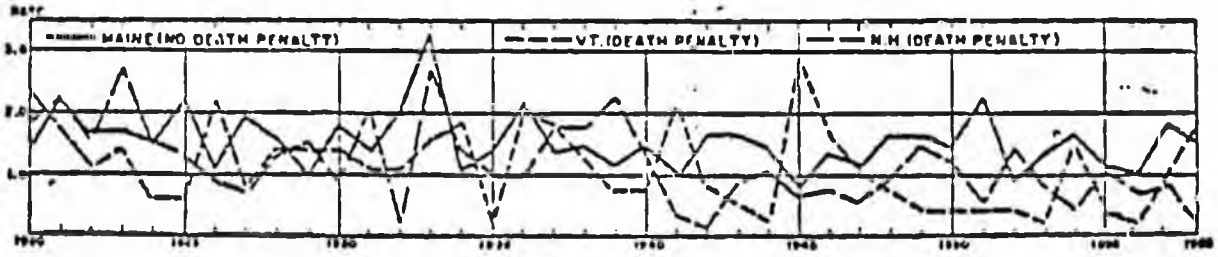


DIAGRAM II

Homicide Death Rates, per 100,000 Population, in Massachusetts, Connecticut, and Rhode Island: 1920-1958

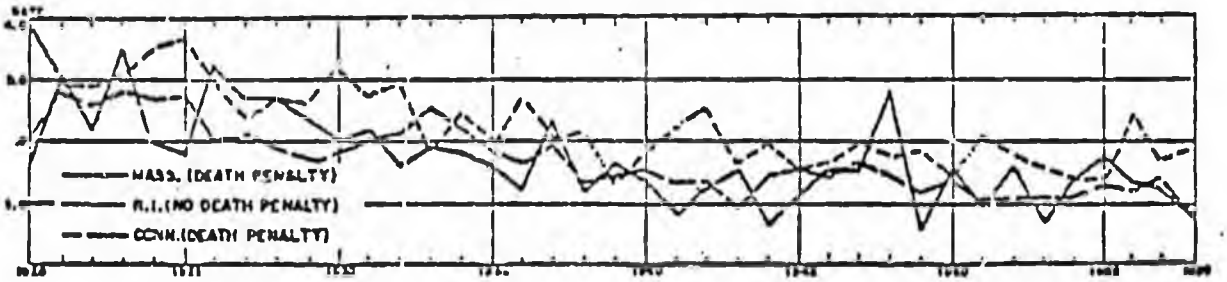
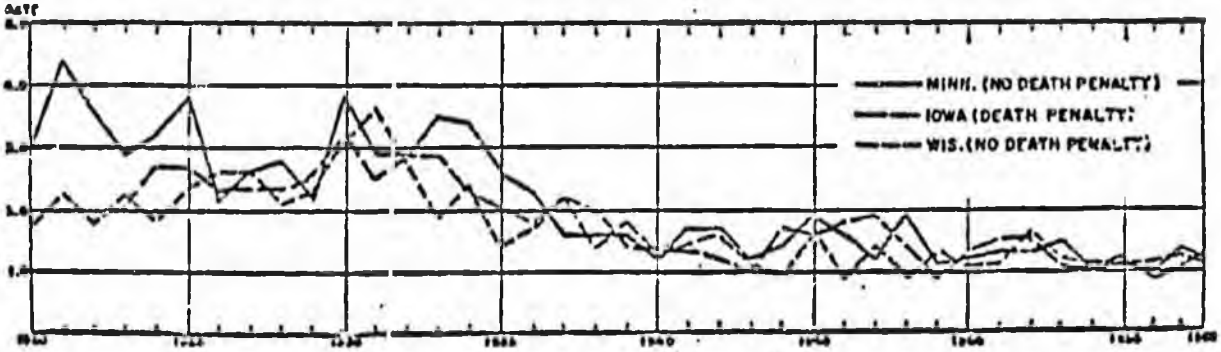


DIAGRAM III

Homicide Death Rates, per 100,000 Population, in Minnesota, Iowa, and Wisconsin: 1920-1955

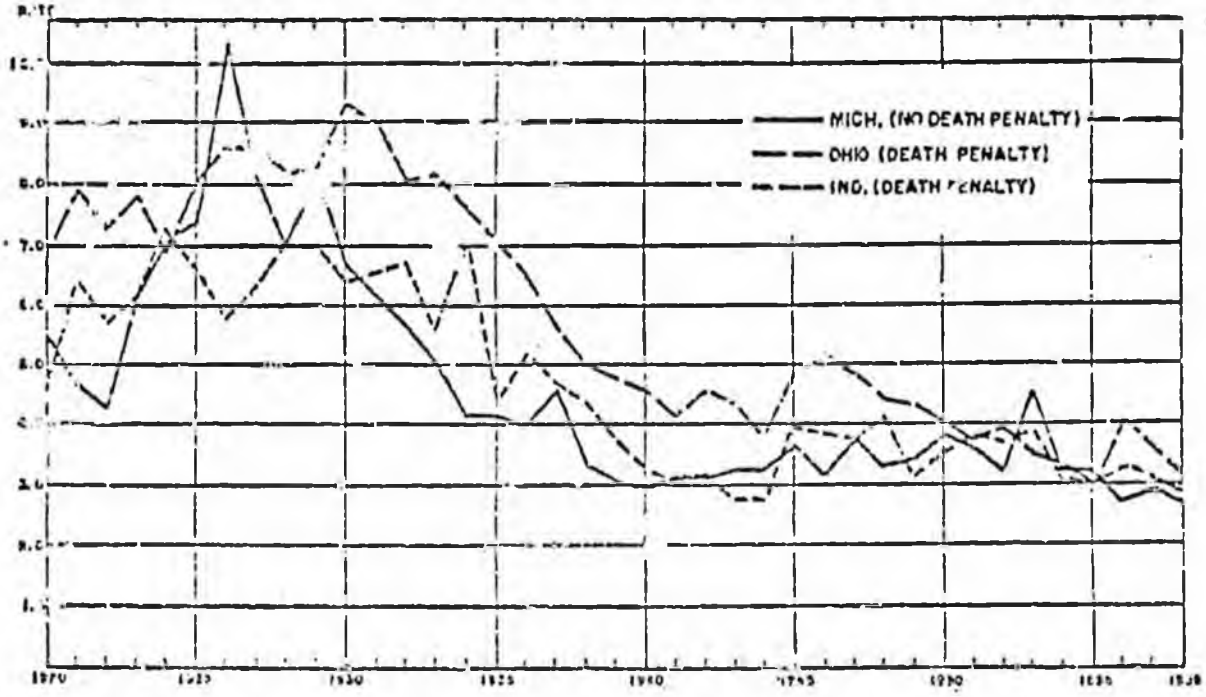


1/ Sellin, "Capital Punishment," p. 6.
2/ Ibid., pp. 7-8.

TABLE 1 (coht)

DIAGRAM IV

Homicide Death Rates, per 100,000 Population, in Michigan, Indiana, and Ohio: 1920-1952



Abolition and the Criminality Curve in the Same Jurisdiction -

Several studies have been made on the second assumption stated above by Sellin; namely, that, if capital punishment is a deterrent to murder, the homicide rate in a given jurisdiction should increase with the abolition of the death penalty and decrease with its restoration. Sellin has conducted such a study on the basis of the statistics available from states in this country which have abolished the death penalty. In his summary of this study, Bedau writes,

> The selection by Professor Sellin shows that in every abolition state, whether or not it later restored capital punishment, there is no correlation between the status of the death penalty and the homicide rate. This strongly suggests that in the ten states that abolished the death penalty and later restored it the reasons had nothing to do with the measurable effects of death vs. imprisonment as a deterrent to murder.1/

In general, the statistics available from other countries which have either partially or totally abolished capital punishment appear to follow the same pattern: abolition is not followed by an increase in crime. The United Nations report, Capital Punishment, contains the following observation on the effects of partial abolition:

> All the information available appears to confirm that such a removal has, in fact, never been followed by a notable rise in the incidence of the crime no longer punishable with death. This observation, moreover, confirms the nineteenth century experience with respect to such offenses as theft and even robbery, forgery and counterfeiting currency, which have progressively ceased to be punishable with death: indeed, these crimes, so far from increasing, actually decreased after partial abolition.2/

With regard to total abolition, the U.N. report concludes that, "The same general observation can usually be made regarding the total abolition of the death penalty."3/

The Effect of Executions on a Community - Studies have been made on the effect of a series of executions on the capital crime rate in the community where the executions occurred. The reasoning behind these studies is described by Sellin as follows:

1/ Bedau (ed.), op. cit., pp. 333-334.
2/ United Nations, Department of Economic and Social Affairs, Capital Punishment (1962), p. 54.
3/ Ibid., p. 55. See also Sellin, The Death Penalty, pp. 34-50.

> If the death penalty is a deterrent, its greatest effect should be shown through executions which are well publicized. Furthermore, the effect should be most noticeable in the community where the offense occurred, where the trial aroused wide publicity and the offender lived and had relatives, friends and acquaintances.1/

Such a study was conducted in Philadelphia by Robert H. Dann.2/ He compared the number of homicides occurring 60 days before and 60 days after five different executions. A total of 91 homicides occurred in the periods preceding the executions; 113 homicides occurred in the periods following them. Nineteen of the 204 homicides resulted in a sentence of first degree murder. Of these, nine occurred in the "before" period and ten occurred in the "after" period. A study conducted by Leonard D. Savitz in Philadelphia a number of years later yielded similar results. Savitz concluded:

> There emerges, therefore, no pattern that would indicate deterrence.... It can be said in summary, that the author is aware that the short period of time under analysis and the extremely small number of murders dealt with prevent conclusive findings, but we must conclude from the data at hand that there was no significant decrease or increase in the murder rate following the imposition of the death penalty on four separate occasions.2/

Police Safety - The two extensive studies of the comparative safety of the police in jurisdictions with and without capital punishment do not indicate that the death penalty affords the police greater protection. Sellin conducted a major study of the comparative safety of metropolitan police, described by him as follows for the American Bar Association Section of Criminal Law:

1/ Sellin, The Death Penalty, p. 50.
2/ Robert Dann, The Deterrent Effect of Capital Punishment (1935); see James A. McCafferty, "Major Trends in the Use of Capital Punishment," Federal Probation (Sept. 1961), p. 20.
2/ Leonard D. Savitz, "The Deterrent Effect of Capital Punishment in Philadelphia" (1958), in Bedau (ed.), op. cit., pp. 321-322. See also William F. Graves, "The Deterrent Effect of Capital Punishment in

> A few years ago, I sent a questionnaire to the chiefs of police in all cities with more than 10,000 population in the six states that at that time did not have the death penalty for murder, and in the states that bordered on them--seventeen in all. I asked them to give us year by year, beginning in 1920, the number of police killed by a criminal with a lethal weapon. We got a pretty good response--47 per cent--at least from all but the big metropolitan cities; a few of these responded but not enough to really make any comparison easy. We broke the information down in groups of cities by size; there were five or six population groups, so that the large city would not distort the information gained from smaller cities. We computed rates and found to our surprise that there was no difference in the information gathered between the states that had the death penalty and those that did not have it. There were as many police killed in the states with the death penalty, considering the size of the cities involved, as in the states without the death penalty. The argument of the police on the basis of that study falls by the wayside.1/

This study indicated that the rate of police killings was in fact higher in death penalty states than in abolition states: 1.3 per 100,000 in the former, compared to 1.2 per 100,000 in the latter.2/

A companion study of the comparative safety of state police was conducted by Donald R. Campion, S. J. Father Campion summarized his findings as follows:

> ...we conclude that the data available to us after a survey of half the state police forces of the United States do not lend empirical support to the claim that the existence of the death penalty in the statutues of a state provides a greater protection to the police than exists in states where that penalty has been abolished.3/

1/ American Bar Association, Section of Criminal Law, op. cit., p. 23.
2/ Sellin, The Death Penalty, p. 55.
3/ Donald R. Campion, "Does the Death Penalty Protect State Police?" (1955), in Bedau (ed.), op. cit., pp. 314-315.

B. The Psychology of Deterrence

In the opinion of many abolitionists, the deterrent value of capital punishment has been seriously called into question by the evidence of modern psychology and penology. As the U.N. report on capital punishment notes, the majority of specialists in these fields are themselves abolitionists:

> ...it will be noted that, among the leading authorities in penal science, the supporters of abolition appreciably outnumber those who favour the retention of capital punishment. The specialists of the social sciences, criminologists, sociologists, penologists, psychologists, doctors and writers on social science and criminology are, in their great majority, abolitionists.1/

This is substantiated by Bedau in his discussion of what Americans think about the death penalty:

> ...psychiatrists, penologists and possibly social scientists and social workers generally, as well as higher government officials, tend to oppose the death penalty in this country at this time.2/

In his anthology, The Death Penalty in America, Bedau summarizes what in his opinion are the two major abolitionist arguments; one of these arguments is a comprehensive statement of the abolitionist objections to the psychological validity of the death penalty as a special deterrent to murder.3/ According to this argument, murders are either premeditated, or they are not. In the case of unpremeditated murders, no punishment will be effective as a deterrent. Mr. Bedau's comment here reflects the conviction held by many that

1/ United Nations, op. cit., p. 62.
2/ Bedau (ed.), op. cit., p. 236.
3/ Ibid., pp. 270-272. See p. 16 below for a discussion of the second argument.

this category comprises a considerable percentage of those who commit violent crimes:

> When one considers that most of the undeterrables are likely to be suffering from one or another form of mental illness, and that considerable evidence exists to show that murderers and condemned men generally include a large proportion who are sick, it seems pointless to threaten such offenders with death.1/

The argument continues that premeditated murders are committed by people who either do or do not expect to be caught. About the latter category, those who expect to be apprehended, Bedau comments:

> In the latter case, there is nothing whatever gained (so far as controlling his behavior is concerned) by threatening to kill him as his punishment; for he is likely to try to kill himself (just as he is likely to surrender to the police right after his crime). Such cases are by no means rare.2/

Abolitionists argue that, for this type of murderer the death penalty is, in fact, more apt to be an inducement than a deterrent. Sellin has noted the existence of

> ...good evidence that the availability of instruments used to inflict the punishment of death has induced people of unbalanced mind to seek that punishment as a devious means of suicide.3/

In a section entitled "Capital Punishment as Cause for Murder" in the study he made for the American Law Institute, Sellin itemizes cases of people attempting to commit suicide by execution.4/

It is equally difficult to see, the argument continues, what value as a deterrent the death penalty has for those who plan their murder on

1/ Bedau (ed.), op. cit., p. 271.
2/ Ibid.
3/ Sellin, "Capital Punishment," p. 4.
4/ Sellin, The Death Penalty, pp. 65-69.

the assumption that they will get away with it. Bedau comments:

> Gangland killings, kidnappings for ransom, and a large proportion of all serious crimes are committed by those who think they will never be caught. The obvious, and probably the only, way to deter such persons is by increasing the effectiveness of law enforcement and criminal prosecution in the courts.1/

This category of murderers, including as it does the gangland killer, is of considerable importance. It would seem that the deterrent theory should be applicable here, if anywhere: the gangster, murdering as a means to an end, would seem to be capable of rationally considering other possible ends of his action--for instance, his own death. However, the facts seem to justify the conviction of those engaged in organized crime that they have virtually no reason to fear the death penalty. Sellin testified as follows before the New Jersey Commission to Study Capital Punishment:

> Defenders of the death penalty would probably feel that if anybody deserved this punishment, it will be the hired killer in organized crime. It's a well-established fact that such murderers enjoy almost complete immunity, that the instances in which even a conviction has been secured are extremely rare, and that deterrence plays no role in this connection.2/

This leaves one final category: "those who are sane and cautious enough to weigh the risk of punishment against the anticipated gain from crime, and who would decide that the risk is too great if the threatened punishment is death, but not great enough to deter them if it is only imprisonment."3/ Bedau quotes the following passage

1/ Bedau (ed.), op. cit., p. 271.
2/ New Jersey Commission to Study Capital Punishment, Report (1964), p. 13. See also Sellin, "Capital Punishment," p. 5.
3/ Bedau (ed.), op. cit., p. 272.

from the Ceylon Report on Capital Punishment as the answer to the question, "How many such persons are there in the total population?":

> It would be most exceptional for a man to be insufficiently sane and normal to be deterred by the risk of a sentence of protracted imprisonment but yet sufficiently sane and normal to be deterred by the risk of his own execution, when both risks are at a level of contingency which he is doing his utmost to avoid.1/

C. The Administration of the Death Penalty

Those opposed to the death penalty argue that the very way in which it is necessarily administered undercuts whatever deterrent effect it might have for those capable of exercising some degree of rationality. Bedau considers this to be one of the two major abolitionist arguments, and discusses it in some detail:

> Since the time of Beccaria, Bentham, Rush and Livingston, most penologists have agreed that for any punishment to have optimum efficacy as a deterrent, the penalty must be imposed consistently, immediately and inexorably; that is, on all offenders, promptly after their crime, and in such a way that the general public expects exactly this. But in practice, not one of these conditions is satisfied by the way capital punishment is administered. Only a small proportion of first degree murderers are sentenced to death and even fewer are executed. The delay in convicting and executing those who do get a death sentence is increasing and notorious. So, almost anyone who contemplates some horrible crime can see some chance in getting away with it, or at least in not having to pay the supreme penalty. If, in practice, the death penalty is no more effective a deterrent for murder, rape and kidnapping than imprisonment is, this may be the reason. One must either admit it, and keep capital punishment on other grounds, in the knowledge that it cannot be made a better deterrent than it is; or else abandon the jury system, the right of appeal, and deprive the accused of most of his basic constitutional rights in all capital cases, in the hopes of improving the deterrent efficacy of the death penalty; or else get rid of the death penalty itself in the confidence that imprisonment is on the evidence as good a deterrent and considerably simpler to administer.2/

1/ Quoted by Bedau (ed.), op. cit., p. 272.
2/ Bedau (ed.), op. cit., p. 270.

III. THE DEATH PENALTY AS A PROTECTIVE MEASURE

Most abolitionists agree that the institution of the death penalty would be justified by its necessity as a protective measure against the incorrigibly dangerous. The debate here differs from the debate about deterrence in that there is clearly no question about the effectiveness of capital punishment as a protective measure. The argument turns on the issue of whether or not the death penalty is, in fact, necessary. In so far as there actually is a danger to society from those found guilty of capital crimes, is it possible to provide protection by some means short of their death? Abolitionists argue that this danger is considerably exaggerated by retentionists and, more importantly, that life imprisonment is a completely adequate protective measure. Sellin comments:

> In the last analysis, the argument that the life sentence does not offer an adequate safeguard against further homicidal criminality by a murderer who is not executed appears untenable. Basically, those who advance it probably feel that the life sentence, in practice, is not an adequate punishment for murder.1/

The abolitionist arguments on the issue of incapacitation are summed up as follows by the late Lewis E. Lawes, the warden for many years of Sing Sing Prison:

> Murderers make the best prisoners. They are least troublesome to any warden, and often they accomplish a great deal behind bars. I know of none released during my wardenship at Sing Sing who reverted to crime. Furthermore, it is not true—at least in New York State—that a murderer whose death sentence is commuted to life imprisonment can easily obtain his freedom. The average period of incarceration among those who receive the second commutation is about twenty years. Granted that other states are too lenient,

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1/ Sellin, The Death Penalty, pp. 78-79.

> that would be an argument for a better administration of justice, not for putting people to death.1/

A. "Murderers Make the Best Prisoners"

It is generally agreed that murderers do, in fact, make the best prisoners and that the percentage of violent crime committed by them in prison is negligible. A survey conducted in 1950 by the International Penal and Penitentiary Commission comparing the behavior of prisoners serving sentences for murder with the behavior of those serving sentences for other offenses clearly indicated this to be the case in countries abroad. Sellin discusses the results of this survey and continues:

> The same views as those...expressed by prison administrations in many European countries are held by American wardens and superintendents of correctional institutions. Lifers are generally considered to be among the best behaved prisoners. It would be unnatural were they not at times involved in disciplinary violations, and examples are known when some lifer has committed an assult in prison and even a homicide, but these appear to be very rare exceptions. Generally speaking, such murderous offenses are committed by prisoners serving sentences for other crimes than murder.2/

B. The Danger from Released Murderers

Statistics indicate that the behavior of first degree murderers released on parole is, in the words of Sellin, "very good, much better than that of other prisoners who have been paroled, especially property offenders."3/ This is equally true of those who have been pardoned. Bedau comments:

1/ Lewis E. Lawes, "Capital Punishment," Encyclopedia of Criminology, ed. Vernon C. Brannam and Samuel B. Kutash (1949), p. 44.
2/ Sellin, The Death Penalty, p. 72. See also Bedau (ed.), op. cit., pp. 400-401.
3/ American Bar Association, Section of Criminal Law, op. cit., p. 24.

> The general position of American penologists on the matter of pardoning (or paroling) murderers was stated succinctly a decade ago by the retired Director of the Federal Bureau of Prisons, Sanford Bates, when he informed the Royal Commission on Capital Punishment: "Cases of murder committed by persons pardoned from the death penalty are rare if not almost unknown." This is almost as true of all murderers, whether sentenced to death and commuted by the governor or sentenced to life imprisonment by the jury, and whether kept in prison or released....1/

Abolitionists are generally agreed that the misguided release of those who remain a danger to society indicates a need for the reform of a state's parole practices, rather than for retention or reinstatement of capital punishment. In the words of Robert G. Caldwell, a lawyer and noted criminologist:

> For example, it is clear that the possibility of releasing dangerous prisoners into the community could be reduced by improving the rehabilitative facilities of our correctional institutions and by strengthening our pardon and parole procedures. An execution, it is true, absolutely eliminates this possibility; but since it is to be prescribed as punishment for a crime, one can hardly maintain that in a given case it should be used not so much because a certain offense has been committed but because we are too lenient and inefficient in the operation of our correctional systems.2/

Moreover, abolitionists argue that the low rate of recidivism among paroled murderers indicates that in general dangerous prisoners are not being released, and that the danger of such releases is greatly exaggerated.

Finally, the abolitionist position on the alleged lack of a satisfactory alternative penalty is summed up as follows by Donal E. J.

1/ Bedau (ed.), op. cit., p. 397; see pp. 397-399 for state statistics.
2/ Robert G. Caldwell, "Why is the Death Penalty Retained?", The Annals (Nov. 1952), pp. 48-49. For statistics and a discussion of the actual length of life sentences in various states, see Sellin, The Death Penalty, pp. 72-76.

MacNamara, Dean of the New York Institute of Criminology:

> The record in abolition jurisdictions, some without the death penalty for more than one hundred years, both in the United States and abroad, in which imprisonment for indeterminate or stated terms has been substituted for the penalty of death, is a clear demonstration that alternative penalties are of equal or greater protective value to society than is capital punishment.1/

1/ Donal E. J. MacNamara, "The Case Against Capital Punishment," Social Action (April 1961), p. 12.

IV. RETRIBUTION VS. VENGEANCE

Abolitionists do not accept the argument that capital punishment is defensible on the grounds of retribution, apart from any benefit it may afford society either as a superior deterrent or as a necessary protective measure. According to many proponents of capital punishment, some criminals are simply unfit to live; they have committed acts so heinous that the only appropriate punishment is death. This function of the death penalty is commonly referred to on the retentionist side as retribution and on the abolitionist side as vengeance.

Abolitionists argue that the motivation behind this use of the death penalty is of the same order as the irrationality which provoked the criminal to the act for which he is being executed. Arthur Koestler comments:

> Yet though easy to dismiss in reasoned argument on both moral and logical grounds, the desire for vengeance has deep, unconscious roots and is roused when we feel strong indignation or revulsion--whether the reasoning mind approves or not. This psychological fact is largely ignored in abolitionist propaganda--yet it has to be accepted as a fact. The admission that even confirmed abolitionists are not proof against occasional vindictive impulses does not mean that such impulses should be legally sanctioned by society, any more than we sanction some other unpalatable instincts of our biological inheritance. Deep inside every civilized being there lurks a tiny Stone Age man, dangling a club to rob and rape, and screaming an eye for an eye. But we would rather not have that little fur-clad figure dictate the law of the land.1/

The purpose of the criminal law is to provide protection against man's irrationality and violence, not to furnish a means of expressing it. Abolitionists contend that the death penalty is a violation of

1/ Arthur Koestler, Reflections on Hanging (1957), p. 100.

this purpose. In the words of Theodore McKeldin, former Governor of Maryland:

> The function of the criminal law is to protect the law-abiding, not to sate society's lust for revenge. Only as a protector of the lives and property of honest men does it deserve the respect and support of honest men. Hence anything that tends to associate it with the idea of vengeance impairs its dignity and subtracts from the respect that intelligent people accord it. The argument that the death penalty is needed to allay public excitement is an argument against capital punishment, not in its favor.1/

In summary, then, of the central argument against capital punishment, those who oppose the penalty believe that it does not deter would-be murderers more effectively than life imprisonment, and that life imprisonment is a fully adequate safeguard against those who have committed murder. In the words of Thorsten Sellin:

> The belief that the death penalty is a unique instrument for the protection of society against murder and superior to life imprisonment in this respect is not supported by any credible evidence now available to us.2/

In the absence of "credible evidence" that the death penalty is necessary to protect society, abolitionists argue that its only purpose is to satisfy man's desire for vengeance. The acceptance of vengeance as a legitimate goal of the criminal law of a civilized state is, according to abolitionists, morally wrong and pragmatically dangerous.

1/ Maryland Committee on Capital Punishment, Report (1962), p. 25.
2/ Sellin, "Capital Punishment," p. 9.

V. THE DEATH PENALTY AND CRIMINAL JUSTICE

A number of the arguments against capital punishment relate to its alleged incompatibility with equitable and efficient criminal justice. The following statement by Herbert L. Packer of Stanford Law School is representative of the opinion of many, particularly in the legal profession, who oppose capital punishment:

> The case for abolition rests most securely, I think, on pragmatic considerations. Very simply, capital punishment is more trouble than it is worth. Criteria for its even-handed application are totally lacking; its effect on the administration of justice is malign and pervasive; it brings the law into disrepute.1/

A. The Possibility of Error

A major argument in this area is the danger that an innocent man will be executed. The Marquis de Lafayette once said, "I shall ask for the abolition of the penalty of death until I have the infallibility of human judgment demonstrated to me."2/ The argument remains the same today. Sellin writes:

> Human justice can never be infallible. No matter how conscientiously courts operate, there still exists a possiblity that an innocent person may, due to a combination of circumstances that defeat justice, be sentenced to death and even executed. That possibility is made abundantly clear when one considers the many instances in which innocent persons have been saved from the extreme penalty either by the last minute discovery of new evidence or by a commutation followed, perhaps after many years in prison, by the discovery of the real criminal.3/

In The Death Penalty in America, Bedau abstracts "seventy-four cases occurring in the United States since 1893, in which a wrongful conviction

1/ Packer, op. cit., p. 441.
2/ Quoted by Otto Pollak, "The Errors of Justice," The Annals (Nov. 1952), p. 115.
3/ Sellin, The Death Penalty, p. 63.

of criminal homicide has been alleged and, in most cases, proved beyond doubt."[1] These cases resulted in the following penalties:[2]

Death sentence executed	8
Death sentence not executed	23
Life sentence	30
Less than life sentence	10
Conviction averted	3
Total	74

Bedau comments that while there is some doubt whether the right men executed were innocent, "no doubt, however, attaches to the fact that nearly two dozen men have been sentenced to death for crimes they demonstrably did not commit."[3] He also points out that 11 of the 30 life sentences occurred in abolition states.

> Had the death penalty not been abolished in these states, it is likely that at least some of these eleven men would have received a death sentence and been executed.[4]

Several governors who have had to make the final decisions on executions have been particularly emphatic about the reality and seriousness of the danger of executing the innocent. Both Governor Edmund Brown of California[5] and Michael V. DiSalle, former Governor of Ohio,[6] recount incidents which illustrate this danger. Bedau points out that, reputedly, the States of Maine, Rhode Island, and Wisconsin abolished the death penalty during this century because of the hanging of innocent men.[7]

1/ Bedau (ed.), op. cit., p. 436; see pp. 434-452.
2/ Ibid., p. 438.
3/ Ibid., p. 440.
4/ Ibid., p. 438.
5/ Brown, op. cit., p. 6.
6/ DiSalle, op. cit., p. 6.
7/ Bedau (ed.), op. cit., p. 1[illegible].

B. Inequality of Application

Opponents of the death penalty are universal in their denunciation of the injustice with which this penalty is enforced. Mr. Bedau speaks for abolitionists in general in his comment that, "The whole pattern of treatment of capital convictions by the higher courts seems devoid of rhyme or reason."[1/]

Abolitionists charge that racial prejudice, particularly against Negroes, is a major factor in the unequal application of the death penalty. They cite particularly statistics on executions for rape. The Federal Bureau of Prisons, in its 1965 national prisoner statistics bulletin on executions, indicates that during the period 1930-1964, nine-tenths of all executions for rape have been of non-white males.[2/] On this subject, Bedau notes:

> ...as National Prisoner Statistics shows, of the nineteen jurisdictions that have executed men for rape since 1930, a third of them have executed only Negroes. In those six states, the very existence of rape as a crime with an optional death penalty is, in the light of the way it has been used, strong evidence of an original intent to discriminate against non-whites. This was probably the purpose behind the decision in Tennessee in 1915 to abolish capital punishment for murder and treason, but to retain it for rape.[3/]

According to abolitionists, a second factor in the inequitable use of the death penalty is reflected in the fact that with few exceptions, it is the "poor and friendless" who are executed. Because of the very nature of our law courts, the difference between life and death is frequently determined by the ability of the accused to provide himself with skilled legal counsel. Former

1/ Bedau (ed.), op. cit., p. 410.

Governor DiSalle writes:

> I have never seen a person of means go to the chair. It is the well-heeled gangster, the professional killer who can afford the best legal talent to defend him, who gets off with a lesser sentence. It is the poor, the illiterate, the underprivileged, the member of the minority group—the man who because he is without means is defended by a court-appointed attorney—who becomes society's blood sacrifice.
>
> The court-appointed defender, diligent though he may be, is always handicapped. Sometimes he is inept—there is no criterion of experience in criminal law to guide a court appointment—and always he lacks the staff and funds available to the prosecution. Without funds and personnel to investigate the background of jurors and witnesses, to check alibis and examine the evidence before trial, the court-appointed attorney and his client have two strikes against them before they even enter a plea.1/

Abolitionists argue that the inequalities involved in the actual use of the death penalty undermine the justification of it on the basis of the protection it may offer society. They maintain the facts indicate that, far from serving a rational, legitimate purpose, the death penalty is an instrument of class and racial prejudice and a test of expensive legal ingenuity.

Abolitionist argue further that the way in which the death penalty is actually used completely invalidates any possible defense of it on the grounds of society's right to retribution. They state for instance, that it is difficult to defend the position that Negro rapists merit death while white rapists, for the most part, do not. Sellin comments:

> ...If I were an adherent of the view of retributive justice, I might—if my emotions did not deprive me of my reason—wish to find out if retributive justice is efficiently and properly administered....
> If only about 4 percent of those who actually commit murders in the first degree [are executed], a figure based on what we conservatively estimate to be the

1/ [illegible] -- [illegible] -- 10-11.

> number of capital murders committed annually in the United States and the accurate knowledge we have of the number of executions, it is obvious that, whatever the elements may be that produce the attrition, retribution is but rarely achieved and in no equitable manner. Therefore, just as the death penalty has proved to fail as a special means of social protection, so it has failed as an instrument of retributive justice.1/

C. The Administration of Criminal Justice

Abolitionists contend that the existence of the death penalty has a bad effect on the administration of criminal justice. This point of view is summed up as follows in the report of the Florida Special Commission for the Study of the Abolition of Death Penalty in Capital Cases:

> When the life of an accused person is at stake, it is more difficult and takes longer to impanel juries because prospective jurors dislike such cases and are frequently disqualified because they do not believe in the death penalty. Trials become longer and more expensive and emotions are especially likely to confuse the issues. Indeed, the guilty person is more likely to escape punishment altogether because of the reluctance of the jury to convict and thereby make the death penalty a possibility. Appeals are more likely to result in reversals, and this brings on new and equally expensive trials. More are of the opinion that there would be many convictions for what are now capital crimes if life imprisonment replaced execution.2/

The issue of the disproportionate amount of time involved in capital cases was the subject of a study conducted in 1961 by the American Bar Foundation, the research branch of the American Bar Association. The Foundation concluded that that the long delays in capital trials and in the carrying out of death sentances weakened public confidence in the law.3/ The study was prompted by the Caryl Chessman case, which began

1/ Sellin, "Capital Punishment," op. cit., p. 10.
2/ Florida Special Commission for the Study of the Abolition of Death Penalty in Capital Cases, Report (1965), p. 26.

in June 1948 and ended with his execution on May 2, 1960. Abolitionists argue that, while this case is an extreme, it is not an anomaly. In 1957, two prisoners were executed in California after seven years of appeals and trials.

As the report of the Florida Special Commission indicates, another major objection in this area is that the emotion aroused by the spectacle of a man fighting for his life is not compatible with the just and rational administration of the law. Governor Edmund G. Brown of California has referred to the capital trial as "our modern equivalent of the Roman Circus."[1/] The effect of this emotion on the trial itself is seen by many eminent lawyers to be deplorable. Mr. Justice Frankfurter, in his appearance as a witness before the British Royal Commission, said:

> When life is at hazard in a trial, it sensationalizes the whole thing almost unwittingly; the effect on juries, the bar, the public, the judiciary, I regard as very bad. I think scientifically the claim of deterrence is not worth much. Whatever proof there may be in my judgment does not outweigh the social loss due to the inherent sensationalism of a trial for life.[2/]

The retentionist response to this category of arguments is that they indicate the need for legal reform, not the abolition of capital punishment.[3/] Those opposed to the death penalty reply that recommending legal reform is no answer unless retentionists are, to quote Herbert L. Packer, "prepared to propose the solution that has so far eluded all students of the subject."[4/] In fact, many abolitionists argue that the death penalty is a major factor operating against the

1/ Brown, op. cit., p. 5.
2/ Quoted by Richard C. Donnelly, "Capital Punishment," Congressional Record, Aug. 24, 1960, p. A6285.
3/ See below, pages 61-65.

reform of our criminal law. The late Professor Sam Bass Warner of Harvard Law School said that "the existence of the death penalty for first degree murder is one of the principal reasons, if not the main reason, why it is extremely difficult to get judges and legislators to remove procedural barnacles from our law."[1] Dr. Sheldon Glueck, a professor at Harvard Law School and an eminent sociologist, comments that the death penalty "bedevils the administration of criminal justice all the way down the line and is the stumbling block in the path of general reform."[2]

D. Technicalities of the Law

In the majority of jurisdictions which retain capital punishment, a person convicted of murder can only be sentenced to death if he is found to be legally sane and guilty of murder in the first degree. A number of eminent lawyers have argued that many of the abuses surrounding the death penalty stem directly from the inadequacy of the legal definition of sanity and the vagueness of what Herbert Ehrmann refers to as the "metaphysical" distinction between first and second degree murder.[3]

Mr. Justice Cardozo commented as follows on the distinction between first and second degree murder:

> I think the distinction is much too vague to be continued in our law.... The statute is framed along the lines of a defective and unreal psychology.... The present distinction is so obscure that no jury hearing it for the first time can fairly be expected to assimilate and understand

1/ Quoted by Herbert B. Ehrmann, "The Death Penalty and the Administration of Justice" (1952), in Bedau (ed.), op. cit., p. 433.
2/ Quoted by James A. McCafferty, "Major Trends in the Use of Capital Punishment," Federal Probation (September 1961), p. 21.
3/ Ehrmann, op. cit., p. 429. For a discussion of the distinction between first and second degree murder and its historical development,

> it. I am not at all sure that I understand it myself after trying to apply it for many years and after diligent study of what has been written in the books. Upon the basis of this fine distinction with its mystifying psychology, scores of men have gone to their deaths.1/

Professor Packer of Stanford Law School points out that the arbitrariness with which the death penalty is used is directly related to the lack of guidance afforded by the law in this area:

> All students of the subject agree that the grading of murder into degrees, characteristic of most American penal codes, is hopelessly inept. Tacit recognition that this is so underlies the fact that in most jurisdictions the grading of murder has been reinforced by conferring discretion on the jury to decide whether persons convicted of first degree murder shall be executed or imprisoned. The result is that in practice the selection of those to be executed is the result of arbitrary, whimsical and uninformed choice. At this most crucial point in the administration of even-handed justice, law abdicates completely. The choice of life or death reflects mainly the strains and tensions of our society, most notably in the Southern states, but throughout the country as well.2/

The stand taken by abolitionists on the issue of legal sanity in capital trials centers around their objection to the M'Naghten Rule, the test of sanity in most jurisdictions. This rule is based on a decision handed down in 1843 and states, in essence, that a person is legally sane if, at the time of the commission of his crime, he was capable of distinguishing between right and wrong. The abolitionist view of the effect of this ruling on criminal justice is summed up as follows in the report of the Florida Special Commission:

> Many feel that the death penalty makes the issue of insanity as a defense to a charge of capital crime a thorn in the side of the administration of criminal justice. Insanity of the accused is often in issue, but the law's test of ability to distinguish between right and wrong is hard

1/ Quoted by Ehrmann, op. cit., p. 429.
2/ Packer, op. cit., p. 441.

> to apply because modern medicine does not even recognize this type of "insanity" as a clinical entity. As a result, the expert medical witnesses often testify that the accused is suffering from mental disease, but then the judge tells the jury, in effect, that this is not the "insanity" recognized by the criminal law.1/

A prominent San Francisco psychiatrist, Dr. Bernard L. Diamond, testified before the California Legislative Subcommittee on Capital Punishment that "Only a driveling idiot has no conception of right and wrong." He went on to describe the consequences of the M'Naghten rule as follows:

> The result is that a given psychiatrist will answer, as to the knowledge of right and wrong, on the part of an accused person, in accordance with his own prejudices, or (worse yet) with the wishes of the side that hired him. The conclusion is, therefore, unescapable that the right and wrong test satisfies the requirements of neither psychology nor medicine, nor, indeed, of the law itself.2/

In summary, then, many, particularly in the legal profession, argue that our present laws on who shall and shall not be sentenced to death are inadequate. Furthermore, it is argued that these laws, particularly with regards to the issue of legal sanity, are essentially inaccessible to reform within the framework of the law as it now stands. In the opinion of many, it is no accident that the law relating to capital punishment has not been reformed along the lines of a more realistic view of psychology. This would mean opening the doors to a deterministic view of individual responsibility which is essentially incompatible with the assumptions underlying our system of law. Arthur Koestler writes in his book, Reflections on Hanging:

1/ Florida Special Commission, op. cit., p. 26.
2/ Quoted by Eugene B. Block, And May God Have Mercy (1962), p. 80.

> The reason why the law relating to capital punishment cannot be reformed is basically simple. It could only be reformed at the price of undermining the concept of criminal responsibility by such deterministic notions as "irresistible impulse" or "diminished responsibility"--that is, by making determinism statutory, as it were. This necessity does not arise in the case of other offenses, because the sentence is elastic.... To sum up. The deficiencies of the capital law are irremediable because the death-penalty is based on a philosophical concept of criminal responsibility which does not admit the compromises with the determinist view practiced in other courts. Regarding all other offences, the administration of the law is elastic; the death-penalty, by its nature, excludes gradings of culpability. This rigidity and finality, which is the very essence of the capital law, is at the same time the reason of its attractiveness and symbolic value for the anti-progressive forces in society.1/

Furthermore, abolitionists argue that it is essentially impossible to determine the degree to which an individual is responsible for his behavior with sufficient certainty to base a life and death decision on it. Koestler comments on this point:

> Yet even by revolutionizing the basic concepts of Common Law for the sole purpose of making capital law a little less barbaric, its self-contradictions would remain. Since the frontiers between "responsible" and "irresponsible" are fluid, problematical and bedevilled by metaphysical problems, any drawing of the line by legal definition would be arbitrary. And since it is impossible to define when a man acted freely and ought to die, or when he acted under compulsion and ought to live, the only solution is to bring capital law into line with the remaining body of the Common law by eliminating the unique, fixed, all-or-nothing penalty which admits of no gradations.2/

Abolitionists tend to see the difficulty of determining individual responsibility as relevant only to the death penalty, not to lesser sentences, or to penology in general. Many retentionists regard abolition of capital punishment as a triumph for the view that

1/ Arthur Koestler, Reflections on Hanging (1957), pp. 102-104.
2/ Ibid., p. 103.

criminal behavior is an illness which should be cured, not punished—a step in the transition, prophesied by Jacques Barzun, from law to social work.[1] Abolitionists argue that precisely the opposite is true, that it is the existence of the death penalty which has forced criminal justice to become embroiled in the issue of psychological determinism. Packer writes:

> But what...has been primarily responsible for the extremist position that criminals should all be regarded as sick rather than bad? Demonstrably, it has been capital punishment. This is the spur and this is the rallying point for the attack upon law. The polemic battle that has enlisted so much psychiatric talent has been waged almost entirely with reference to capital punishment. It is in the murder trial that the issue of the extent to which the mental condition of the defendant should excuse or mitigate has been most often and most acrimoniously litigated. As Chief Justice Weintraub of N.J. said: "For all practical purposes the furor...is confined to the disposition of offenders convicted of murder. It is the death penalty that sparks the quarrel."[2]

1/ Jacques Barzun, "In Favor of Capital Punishment" (1962), in Bedau (ed.), op. cit., p. 157. See page 57 below.

2/ Packer, op. cit., p. 442.

V. THE RELIGIOUS ARGUMENT

Many Protestant churches have taken an official stand against capital punishment. While the Roman Catholic Church has not taken a stand on either side, according to the recent U.N. study it has in recent years been moving more towards the view that the death penalty should be abolished.[1/] Most Jewish organizations are officially opposed to the death penalty.

The religious argument against the death penalty generally centers around the belief that even sinful men are the objects of God's redemptive love, and that vengeance belongs to God, not man. In the words of Bishop John Wesley Lord of the Washington, D.C. Conference of the Methodist Church:

> A Christian view of punishment must look beyond correction to redemption. It is our Christian faith that redemption by the grace of God is open to every repentant sinner, and that it is the duty of every Christian to bring to others by every available means the challenge and opportunity of a new and better life. We believe that under these circumstances only God has the right to terminate life.[2/]

Similarly, the following resolution was adopted in 1958 at the General Convention of the Episcopal Church:

> Inasmuch as the individual life is of infinite worth in the sight of Almighty God; and
> Whereas the taking of human life falls within the providence of Almighty God and not within the right of man; Therefore be it Resolved, That the General Convention goes on record as opposed to capital punishment.[3/]

The Bible is used by both sides in the capital punishment controversy. Abolitionists cite Romans, XII, 17, in which Paul says:

1/ United Nations, op. cit., p. 64.
2/ Maryland Committee, op. cit., p. 24.
3/ Quoted by Florida Special Commission, op. cit., p. 24.

> Recompense to no man evil for evil....avenge not yourselves, but rather give place unto wrath: for it is written, Vengeance is mine; I will repay, saith the Lord.

In the Old Testament, they point, first, to the fact that Cain was not put to death (Genesis IV, 15), and to the adjuration in Leviticus, XIX, 18:

> Thou shalt not avenge, nor bear any grudge against the children of they people, but thou shalt love thy neighbor as thyself: I am the Lord.

More generally, those opposed to capital punishment for religious reasons argue that the whole Christian concept of love and redemption as presented in the New Testament runs counter to use of the death penalty in a system of justice. In support of this, they refer specifically to the Sermon on the Mount (e.g., Matthew V, 44) and to Luke VI, 35.

In addition to the Old and New Testaments, abolitionists quote St. Augustine in opposition to capital punishment. The following passage is from a plea that some Donatists, a heretic African sect, who had confessed to the heinous murder of Christians, be spared the death penalty:

> We do not wish to have the the sufferings of the servants of God avenged by the infliction of precisely similar injuries in the way of retaliation. Not, of course, that we object to the removal from these wicked men of the liberty to perpetrate further crimes, but our desire is rather that justice be satisfied without the taking of their lives or the maiming of their bodies in any particular; and that, by such coercive measures as may be in accordance with the laws, they be drawn away from their insane frenzy to the quietness of men in their sound judgment, or compelled to give up mischievous violence and betake themselves to some useful labour.1/

1/ Quoted by Koestler, op. cit., p. 100.

VII. PUBLIC OPINION

The four most recent Gallup Poll surveys indicate a steady decrease of public support for the death penalty. In each case, the question asked was, "Are you in favor of the death penalty for persons convicted of murder?" The results of the four polls are shown below:[1]

	1966	1965	1960	1953
Yes	%42	%45	%51	%68
No	47	43	36	25
No Opinion	11	12	13	7

The waning public support for the death penalty is reflected on the state level by the fact that in 1965 alone four states abolished it.[2] On the federal level, 1965 saw the Justice Department's break with its previous official postion of neutrality on the issue. Deputy Attorney General Ramsey S. Clark wrote in a letter to the House District Committee:

> We favor the abolition of the death penalty.... This nation is too great in its resources and too good in its purposes to engage in the light of present understanding in the deliberate taking of human life as either a punishment or a deterrent to domestic crime.[3]

A number of sociologists have commented on the extent to which the retention or abolition of capital punishment depends on the public attitude toward it,[4] and have predicted that the current trend of increasing opposition will culminate in the abolition of the death penalty in this country, at least in practice if not in law. After itemizing

1/ Washington Post, July 2, 1966, p. A3.
2/ Iowa and West Virginia abolished it completely; New York and Vermont abolished it except for special crimes (e.g., killing a policeman acting in the line of duty).
3/ New York Times, July 24, 1965, p. 1.
4/ Bedau (ed.), op. cit., pp. 231-232.

various factors that have contributed to the decline of public support, Sellin concludes that:

> ...it is not difficult to explain the rapid downward trend in the number of executions annually from a high of 199 in 1935 to 57 in 1960. And this trend is likely to continue, barring unforeseen social crises, until executions will become a much greater rarity than today and will ultimately be abandoned.1/

There were seven executions in 1965, an all-time low in the history of this country.

SECTION 2

IN FAVOR OF CAPITAL PUNISHMENT

I. THE STATE SHOULD PROTECT THE LAW-ABIDING CITIZEN

The central argument in defense of capital punishment is that the first responsibility of the State, and thus of the criminal law, is the protection of the law-abiding. As long as there is substantial reason to believe that capital punishment serves this function, it should be retained. This argument is expressed as follows in the majority report of the New Jersey Commission to Study Capital Punishment:

> This Commission has an obligation to the people of the State of New Jersey. Our citizens deserve the maximum degree of protection from injury both to their persons and to their property. In case of doubt as to which method will create the most likely optimum of protection, this Commission is bound to retain the type of punishment which throughout history has proved to be the most severe. ... It seems clear that those who seek the abolition of capital punishment are concerned with the saving of the lives of those convicted of the crimes in question....Yet most, if not all of those seeking abolition would, the Commission is certain, retain the death penalty if they were satisfied that it would save innocent lives. One abolitionist witness thought that the saving of a single life would not be enough. The Commission, however, in its obligation to the people of this State, is not justified in gambling the life of a single citizen.1/

Retentionists argue that if this goal of providing the law-abiding citizen optimum protection conflicts with the welfare of the criminal, then it is the criminal who must be sacrificed.

1/ New Jersey Commission to Study Capital Punishment, Report (1964), pp. 7-8.

Retentionists assert that the death penalty affords the law-abiding unique protection in two ways. It is, they argue, superior to life imprisonment as a deterrent to would-be murderers, and it is necessary as a protective measure against the incorrigibly dangerous. Furthermore, those in favor of capital punishment contend that because of the responsibility of the State to protect its citizens, the burden of proof rests with the abolitionists. Those opposed to capital punishment must, according to retentionists, prove conclusively that the death penalty is ineffective as a deterrent and unnecessary as a protective measure before abolition can be seriously considered.

II. DETERRENCE

A. The Evidence of Experience

The case for retaining the death penalty has the support of a majority of the law enforcement profession. Ralph G. Murdy, Managing Director of the Baltimore Criminal Justice Commission, writes,

> There is no question that a large majority of law-enforcement officers throughout the country favor capital punishment. The June 1960 issue of the official publication of the International Association of Chiefs of Police was entirely devoted to capital punishment without any expression from a police administrator encountered who favored its abolition. Occasionally an endorsement will be seen from a police administrator in a noncapital punishment state. However, only a few are active in presenting a case against capital punishment.1/

Sheriff Peter Pitchess of Los Angeles County testified as follows before the California Senate Committee on the Judiciary,

> But I can tell you that the overwhelming majority of people in law enforcement—the ones who are dealing with these criminals, the ones who are seeing them not as statistics but real live human beings, and who are studying their human behavior—are overwhelmingly convinced that capital punishment is a deterrent.2/

J. Edgar Hoover, Director of the Federal Bureau of Investigation since 1925, is unqualifiedly opposed to the abolition of capital punishment. The 1959 issue of The Uniform Crime Reports for the United States contains the following statement by Mr. Hoover:

> The professional law enforcement officer is convinced from experience that the hardened criminal has been and is deterred from killing based on the prospect of the death penalty.... For the law enforcement officer the

1/ Ralph G. Murdy, "A Moderate View of Capital Punishment," Federal Probation (Sept. 1961), p. 13.
2/ California Legislature, Senate Committee on Judiciary, Hearing Report and Testimony... (1960), p. 150.

> time-proven deterrents to crime are sure detection, swift apprehension, and proper punishment. Each is a necessary ingredient.1/

The importance of the support of the death penalty by members of the law enforcement profession is evidenced by the weight placed on it in the following passage from the New Jersey Commission majority report:

> The Commission is convinced that capital punishment does deter some potential murderers from committing capital crimes. More particularly, it is believed that the deterrence is most significant in the area of felony murder and in the area of a truly premeditated crime. While the statistical information presently available does not indicate a significant difference in the homicide rates between abolition states and capital punishment states, even when adjoining, this statistical information was admittedly not restricted to capital crimes, did not include the incidence of felony murders, the relationship of aggravated assaults to homicides, or the relationship of Police woundings. Those presenting only raw homicide figures admitted that these were as yet the best available, and for the purpose of further analysis they would like to have available the additional information set forth above. On the other hand, those most intimately concerned with law enforcement gave evidence and their conclusions that capital punishment is a deterrent in some cases.2/

The conclusion that capital punishment has a deterrent value "in the area of felony murder and in the area of a truly premeditated crime" is emphasized and backed with evidence in the majority of the defenses of capital punishment. The following is the introductory paragraph of a report from the Los Angeles Police Department presented as evidence at hearings before the California Senate Committee on Judiciary:

1/ Federal Bureau of Investigation, The Uniform Crime Reports of the United States (1959), p. 14.
2/ New Jersey Commission, op. cit., pp. 8-9.

> "The following defendants in conversations with reporting officers stated that they either: (1) used toy guns; or (2) empty guns or (3) simulated guns in robberies rather than take a chance on killing someone and getting the gas chamber."1/

The report then discusses 13 defendants who had been involved in a total of 28 felonies, with 28 potential victims.

In his statement before the American Bar Association Section of Criminal Law in 1959, Richard E. Gerstein, as State's Attorney of the Eleventh Judicial Circuit of Florida, cited the following instances from testimony given by law enforcement officers concerning the deterrent value of the death penalty:

> (1) Criminals who have committed an offense punishable by life imprisonment, when faced with capture, refrained from killing their captor though by killing, escape seemed probable. When asked why they refrained from the homicide, quick responses indicated a willingness to serve a life sentence but not to risk the death penalty.
> (2) Criminals about to commit certain offenses refrained from carrying deadly weapons. Upon apprehension, answers to questions concerning absence of such weapons indicated a desire to avoid more serious punishment by carrying a deadly weapon, and also to avoid use of the weapon which could result in imposition of the death penalty.
> (3) Victims have been removed from a capital punishment state to a non-capital punishment state to allow the murderer opportunity for homicide without threat to his own life. This in itself demonstrates that the death penalty is considered by some would-be killers. Statistics cannot tell us how many lives have thus been saved.

In several cases, the indication of the clear awareness and consideration on the part of the criminal of the capital laws of different states have led abolition states to reinstitute the death penalty. Thorsten Sellin testified before the British Royal Commission as follows:

1/ Quoted by California Senate Committee, op. cit., p. 17.
2/ American Bar Association, Section of Criminal Law, 1959 Proceedings (1960), p. 15.

> South Dakota reintroduced the death penalty because a couple of Illinois convicts, who had finished serving their terms, tramped across the state and killed a couple of filling-station attendants, if I remember correctly--they were robbery murders.1/

The Attorney General of Kansas testified before the British Royal Commission that:

> One of the contributing factors leading to the re-enactment [in the State of Kansas] of the death penalty for first degree murder was the fact that shortly prior thereto numerous deliberate murders were committed in Kansas by persons who had previously committed murders in states surrounding Kansas, where their punishment, if captured, could have been the death penalty. Such murders in Kansas were admittedly made solely for the purpose of securing a sentence to life imprisonment in Kansas if captured.2/

More recently, a letter was intercepted by the Delaware State Police in which a murderer wrote that he had known before he killed that the most he could get was 15 years. The murder occurred after Delaware had repealed capital punishment in 1958 and was a major factor in the reinstitution of the death penalty in that state in 1961.3/

B. The Psychology of Deterrence

> The majority report of the New Jersey Commission noted:
>
> No punishment would be a deterrent for a crime of passion, or a crime committed by one who is insane. These are not the persons who generally receive the death penalty.4/

The fact that many murders appear to be either crimes of passion or acts of insanity is interpreted by retentionists not as an indication of the death penalty's uselessness as a deterrent, but of its success in

1/ Quoted by Hugo Adam Bedau (ed.), The Death Penalty in America (1964), p. 336.
2/ Ibid.
3/ Maryland Committee on Capital Punishment, Report (1962), pp. 30-31.
4/ New Jersey Commission, op. cit., p. .

deterring people from premeditated murder. The following is from the Canadian Parliamentary Committee's Report on Capital Punishment:

> One measure of its [the death penalty's] deterrent effect was afforded by an analysis of murders which indicated that a considerable proportion, probably in excess of half, are committed under the compulsion of overwhelming passion or anger where no deterrent could have been effective. This would seem to demonstrate that the death penalty, coupled with the excellent standards of law enforcement prevailing in Canada, has been successful in deterring the commission of deliberate, premeditated murders and reducing their incidence to minimum proportions. The deterrent effect may also be indicated by the widespread association of the crime of murder with the death penalty which is undoubtedly one reason why murder is regarded as such a grave and abhorrent crime.1/

The minority report of the Massachusetts Special Commission contains a related observation:

> ...we believe that the death penalty threat is effective in preventing large numbers of wrongdoers from ever allowing themselves to reach that stage of criminality where they become victims of uncontrollable impulses and subjects of murder commissions. It is in this early grey zone of murder premeditation that the death penalty threat is most apt to be operative and effective.2/

As indicated in the passage from the Canada report quoted above, retentionists also believe that the death penalty is effective as a deterrent in the broadest sense, by reinforcing the public abhorrance of murder. It is argued that the death penalty reinforces the public's belief in the sanctity of human life by associating this abstract moral concept with the strong instinctive fear of one's own death. Richard Gerstein comments on this point as follows:

1/ Quoted by Bedau (ed.), op. cit., p. 268.
2/ Massachusetts Special Commission Established for the Purpose of Investigating and Studying the Abolition of the Death Penalty in Capital Cases, Report and Recommendations (1958); the minority report is reprinted in Capital Punishment, ed. Grant S. McClellan (1961), p. 82.

> Furthermore, as the Royal Commission [of Great Britain] opined, the death penalty helps to educate the conscience of the whole community, and it arouses among many people a quasi-religious sense of awe. In the mind of the public there remains a strong association between murder and the penalty of death. Certainly one of the factors which restrains some people from murder is fear of punishment and surely, since people fear death more than anything else, the death penalty is the most effective deterrent.1/

C. The Statistics2/

Those in favor of capital punishment assert that the question of the superior deterrent value of the death penalty to life imprisonment most probably cannot be—and certainly has not been—definitively answered by statistical studies. This argument is supported by the following passage from the Florida Special Commission's report on capital punishment:

> Superficial consideration might lead one to conclude that this question [whether the death penalty is superior to imprisonment in deterring those persons who would otherwise commit serious crimes] might be answered by scientific and statistical studies, but such is not the case. There is no reliable method for determining who has contemplated committing a capital crime but refrained due to the fear of the death penalty as distinguished from other forms of criminal punishment.... It is probably impossible to subject deterrence to scientific study in any direct way. The facts cannot be ascertained so that they can be subjected to scientific analysis and interpretation.3/

1/ American Bar Association, Section of Criminal Law, op. cit., p. 17.

2/ The statistical studies of the deterrent effect of the death penalty are discussed in detail in Section 1, pp. 5-12 above. The following comment from the State of Florida's Report of the Special Commission for the Study of Abolition of Death Penalty in Capital Cases is relevant here:

> One caution is appropriate at this point: it is those opposed to the death penalty who have been active in research and who are responsible for the statistical studies discussed herein (p. 19).

3/ Florida Special Commission for the Study of the Abolition of Death Penalty in Capital Cases, Report (1965), pp. 13-14.

First, as the Florida report indicates, there is the obvious point that those who are deterred do not show up as statistics. Secondly, both abolitionists and retentionists agree that the available statistics are inadequate. Hugo Adam Bedau, an abolitionist, writes in The Death Penalty in America:

> In a word, there is no exact information anywhere as to the volume of capital crimes in the United States. Difficult as it is to specify the capital laws for the nation as a whole, it is impossible with the present sort of criminal statistics to specify the exact amount of capital crimes for even one jurisdiction in even one year for even one crime! Ten years ago, George B. Vold complained, "There are no general statistics available as to the number of offenses committed per year for which death is the required penalty." Nothing has changed in the interim.1/

The major difficulty is that the only murder figure available for use in attempting to gauge the effect of capital punishment on the murder rate is the "murder and non-negligent manslaughter" figure reported by the Federal Bureau of Investigation in its annual publication, Uniform Crime Reports for the United States. As Mr. Bedau points out:

> Since some states have no death penalty for murder, the national totals of "murder and non-negligent manslaughter" will exceed the number of homicides punishable by death. What is even more important, the F.B.I. does not distinguish between total murders (or first degree murders), which alone carry the death penalty, and all lesser forms of non-negligent criminal homicide, in particular second degree murder and voluntary manslaughter, crimes usually punished by imprisonment. Instead, all voluntary or non-negligent criminal homicides are lumped together in Uniform Crime Reports under the title, "murder and non-negligent manslaughter."... What one wants to know, of course, is what fraction of the totals entered in this fashion are murders; and what fraction of this fraction are capitally punishable homicides, i.e., murders where a normal adult (not a child, juvenile, or lunatic) is the

1/ Bedau (ed.), op. cit., pp. 56-57.

> criminal and where a capital indictment might issue (excluding, therefore, those cases where the murderer commits suicide). It is impossible to supply this information at present.[1]

Mr. Bedau comments as follows on the validity of this "murder and non-negligent manslaughter" figure for the purpose of capital punishment statistics:

> One of the first criminologists to discuss the statistical relationship between general homicides and capitally punishable homicides was the late Professor Edwin H. Sutherland. In 1925, he pointed out that although (a) the number of homicides far exceeded the number of first degree murders (and, by inference, the number of capitally punishable homicides), (b) the ratio of the two was sufficiently constant to use the former as a guide to the latter.... there is no doubt that [(a)]...is true. But what about (b)? It is extremely difficult to determine what evidence it is based on. Sutherland himself offered none, but advanced it as a plausible assumption. In the intervening generation, no criminologist has done any better.[2]

Mr. Bedau subsequently analyzes in some detail one specific difficulty involved in relying on inferences from homicide rates to capitally punishable murder rates:

> We have already seen...how sketchy the known connection is between the two rates. To whatever degree the former is an unreliable guide to the latter -- which we have no way of directly measuring at all -- to that degree all the studies... [relying on it] are unreliable at the crucial point: is the death penalty an effective deterrent for those kinds of homicides punishable by death? Here is one kind of difficulty that arises when one expects homicide statistics to provide a conclusive answer to this question. Data reported [in an article by Thorsten Sellin]...show that the ten-year average of annual homicide rates in Ohio fell during the 1920's from 7.9 per 100,000 of population to 3.8 in the 1930's. Yet if the death penalty had been abolished in Ohio at the beginning of this period and if (let us suppose) abolition had been followed by a dozen or so more murders each year thereafter, the general homicide rate would have decreased almost exactly as

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1/ Bedau (ed.), op. cit., p. 61.
2/ Ibid., pp. 68-69.

> in fact it has, and at no time would the rate for any given year be more than a tenth of one per cent greater than it has been. Thus, while we could truthfully say that the abolition of the death penalty in Ohio had been followed by a decrease in the general homicide rate, it would also have been true that abolition resulted in an increase in the total number of murders, and this despite the constancy of the ratio of total homicides to murders (except in the first year after abolition). For all we know, this is exactly what has happened in all the abolition states, which without exception show a steadily declining general homicide rate over the past several decades. The number of crimes at stake here is so small that they would never be noticed by anyone who relies on the ordinary vital and criminal statistics of homicide.1/

The report of the Florida Special Commission contains the following comment on the inadequacy of statistical comparisons based on the F.B.I. murder and non-negligent manslaughter figure:

> Perhaps it is fortunate that the judgment of most persons who have studied them is that they do not prove much; that while they do not prove that the death penalty is a superior deterrent, they do not prove that it is not .... J. Edgar Hoover, Director of the Federal Bureau of Investigation, favors retention of the death penalty, but he has charged that statistical comparisons [based on inferences from homicide rates to first degree murder rates] are "completely inconclusive."2/

D. The Need to Protect the Police

The defense of the death penalty on the grounds that it is necessary for police protection is a special case of the argument that its deterrent value is superior to that of the penalty of life imprisonment. It might be noted that two of the thirteen states which have generally abolished capital punishment have retained it for the offense of killing a policeman acting in the line of duty.

1/ Bedau (ed.), op. cit., pp. 265-266.
2/ Florida Special Commission, op. cit., p. 17.

Members of the law enforcement profession are generally convinced that the death penalty protects the police. The minority report of the Massachusetts Special Commission comments:

> We have been impressed by the urgent demands of large numbers of law-enforcement officers that the death penalty be retained. These men have not made the speculative study of the problem with which they are confronted that would enable them to present their conclusions in compelling statistical form. Their point of view is not, however, for this reason to be taken lightly, especially in view of their insistence that their own lives are endangered by their efforts to protect the lives and property of their fellow men....1/

1/ Massachusetts Special Commission, in McClellan (ed.), op. cit., p. 79.

III. THE DEATH PENALTY AS A NECESSARY PROTECTIVE MEASURE

Those in favor of the death penalty argue that the second way in which it affords society unique protection is by guaranteeing that certain criminals who have committed particularly heinous crimes will not have the opportunity to do so again. Jacques Barzun, Provost of Columbia University, defends the death penalty on these grounds as follows:

> The uncontrollable brute whom I want put out of the way is not to be punished for his misdeeds, nor used as an example or a warning; he is to be killed for the protection of others, like the wolf that escaped not long ago in a Connecticut suburb. No anger, vindictiveness or moral conceit need preside over the removal of such dangers. But a man's inability to control his violent impulses or to imagine the fatal consequences of his acts should be a presumptive reason for his elimination from society.1/

Retentionists do not accept the abolitionist position that life imprisonment is in all cases a sufficient safeguard. They argue that some criminals are incorrigibly anti-social and will remain potentially dangerous to society for the remainder of their lives. These men constitute a danger to prison officials and to the other inmates, and there is always the chance that they may escape.

Furthermore, retentionists argue that, because the life sentence rarely means that an offender is in reality imprisoned for life, there is a serious possibility that dangerous men will be released on parole. Mr. Barzun points out that it is impossible to be certain that a murderer has, in fact, been "cured":

1/ Jacques Barzun, "In Favor of Capital Punishment" (1962), in Bedau (ed.), op. cit., pp, 155-156.

> The "scientific" means of cure are more than uncertain. The apparatus of detention only increases the killer's anti-social animus.... Some of these are indeed "cured"—so long as they stay under a rule. The stress of the social free-for-all throws them back on their violent modes of self-expression. At that point I agree that society has failed—twice: it has twice failed the victims, whatever may be its guilt toward the killer.1/

The defense of the death penalty on the grounds that it is a necessary protective measure is directly related to the argument that there is no satisfactory alternative sentence for those criminals who clearly constitute a continuing danger to society The obvious possible alternative is the life sentence without the possibility of parole. However, a number of penologists believe that this is a highly unsatisfactory solution. They argue that such a sentence removes all inducement to improve and thus greatly increases the difficulty and danger involved in handling the man so sentenced. The Maryland report noted the reaction of Ralph G. Murdy, the Managing Director of the Baltimore Criminal Justice Commission, to such a suggestion as follows:

> ...Mr. Murdy observed that many penal experts believe the no-parole sentence for life-terms creates a hard core of incorrigibles in prisons who fear no authority because they can never be set free. They are robbed of the incentive to behave, he said.2/

Thorsten Sellin comments on the absolute life sentence as follows:

> Recent legislation in some states and proposed in others, depriving a person sentenced to life for murder of that hope [of future release], may prove to be most inadvisable.3/

The former Director of the Maryland Department of Parole and Probation, Mr. Wallace Reidt, indicated to the Maryland Commission that

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1/ Barzun, in Bedau (ed.), op. cit., p. 159.
2/ Maryland Committee, op. cit., p. 20.
3/ Thorsten Sellin, The Death Penalty (1959), p. 72.

the possibility of the no-parole life sentence replacing the death penalty was a major reason for his opposition to the repeal of capital punishment in that state:

> If capital punishment is abolished, there will be considerable pressure to prevent parole in life terms and there will be removed what I believe is a great deterrent in the handling of prisoners in institutions.
>
> Most persons connected with institutions feel that unless there is some fear of punishment or hope of reward that a good many life-termers would cause a great deal of trouble in the institutions and make the work of prison officials much more dangerous than it now is.1/

A. The Second-Time Murderer

Several states which have generally abolished capital punishment have retained it for a person found guilty of murder who then murders again. The argument that the death penalty should be retained for those who murder a second time is a limited version of both the argument that the death penalty is necessary as a protective measure, and the argument that it is more effective than life imprisonment as a deterrent. Sidney Hook, Professor of Philosophy at New York University, comments:

> ...in a sub-class of murderes, i.e., those who murder several times, there may be a special group of same murderers who, knowing that they will not be executed, will not hesitate to kill again and again. For them the argument from deterrence is obviously valid. Those who say that there must be no exceptions to the abolition of capital punishment cannot rule out the existence of such cases on a priori grounds. If they admit that there is a reasonable probability that such murderers will murder again or attempt to murder again, a probability which usually grows with the number of repeated murders, and still insist

1/ Maryland Committee, op. cit., p. 23.

> they would never approve of capital punishment, I would conclude that they are indifferent to the lives of the human beings doomed, on their position, to be victims.1/

Of the thirteen states which have generally abolished capital punishment, four of them retain it for some type of second-time murder, as follows:

> New York: Killing a peace officer acting in the line of duty; and murder committed by a prisoner acting under sentence of life imprisonment.
>
> North Dakota: Murder in the first degree committed by a prisoner already serving a sentence for murder in the first degree.
>
> Rhode Island: Murder committed by a prisoner under sentence of life imprisonment.
>
> Vermont: Second conviction of murder, at discretion of jury, provided the two cases are not related; and first-degree muder of a police officer or prison guard who is on duty.

1/ Sidney Hook, "The Death Sentence" (1961), in Bedau (ed.), op. cit., p. 153.

IV. RETRIBUTION AND THE SANCTITY OF HUMAN LIFE

Capital punishment is defended by some on the grounds that it satisfies a legitimate communal need for retribution aroused by particularly heinous crimes. Society's desire that a man pay with his life for a violent crime represents both society's moral condemnation of such acts, and the closing of the ranks against those who violate society's laws. Thus, Lord Justice Denning testifie before the British Royal Commission on Capital Punishment that:

> The punishment inflicted for grave crimes should adequately reflect the revulsion felt by the great majority of citizens for them. It is a mistake to consider the objects of punishment as being deterrent of reformative or preventive and nothing else.... The ultimate justification on any punishment is not that it is a deterrent, but that it is the emphatic denunciation by the community of a crime; and from this point of view, there are some murders which, in the present state of public opinion, demand the most emphatic denunciation of all, namely the death penalty.1/

Closely related to the defense of the death penalty on the grounds that it satisfies the legitimate public demand for retribution is the argument that capital punishment is, in fact, a public and official testimony to the belief in the sanctity of human life. This argument was stated as follows by Roy A. Gustafson, District Attorney of Ventura County, before the California Senate Committee on the Judiciary:

> Capital punishment...is based upon our concept of the high value placed upon life. We consider life to be the most precious possession and, therefore, when the crime is the most heinous and most grave of all crimes, then we make the man forfeit the thing that is most precious to him, namely, life.2/

1/ Quoted by Richard C. Donnelly, "Capital Punishment," in Congressional Record, Aug. 24, 1960, p. A6284.
2/ California Legislature, Senate Committee on Judiciary, op. cit., p. 103.

In answer to the abolitionist assertion that capital punishment is, in fact, a violation of the sanctity of human life, retentionists argue as follows:

> There is too much loose talk about the sacredness of human life. A life is sacred only when it makes itself sacred; when it respects the lives and rights of others.... A cold-blooded murderer, having cunning intelligence without moral restraint, is infinitely more dangerous than any other animal on earth.1/

J. Edgar Hoover characterizes as "maudlin" the view that "the most wanton slayer [is] 'a child of God' who should not be executed," and continues, commenting on a crime committed recently in California:

> Was not this small, blonde six-year-old girl a child of God? She was choked, beaten, and raped by a sex fiend whose pregnant wife reportedly helped him lure the innocent child into his car and who sat and watched the assault on the screaming youngster. And when he completed his inhuman deed, the wife, herself bringing a life into the world, allegedly killed the child with several savage blows with a tire iron. The husband has been sentenced to death. Words and words and words may be written, but no plea in favor of the death penalty can be more horribly eloquent than the sight of the battered, sexually assaulted body of this child, truly a "child of God."2/

1/ Evelle J. Younger, "A Sharp Medicine Reconsidered" (1956), in McClellan (ed.), op. cit., p. 16.
2/ J. Edgar Hoover, "Statements in Favor of the Death Penalty" (1961), in Bedau (ed.), op. cit., p. 133.

V. THE ABOLITION MOVEMENT AND MODERN LIBERALISM

There is a strong feeling among those in favor of capital punishment that the abolition movement of today is in many respects a corrollary of the permissive, deterministic view of individual behavior which characterizes much modern psychology and is reflected in the thinking of many liberal intellectuals. With regard to penology, this view is characterized—so the retentionist argument goes—by a belief that society is responsible, and thus to blame, for the ills of its misfits, and by a preference for the black sheep over the white. Retentionists point to such passages as the following to illustrate their case:

> By the establishment of a motive, an understanding of the crime, at least in the legal sense, is achieved, and no more official effort is extended from or charged to the authorities to go beyond and find a deeper insight into the true motivation of the mind of the man who kills.
>
> Acceptance in legal procedures of the motive at large is based on the presumption that, unless it is proved otherwise through the intricacies and formalities of the court trial, the individual [murderer] is like any other person, who could exercise at pleasure any function he chose. There is no recognition of the fact that if he had been in possession of such perfect powers of reasoning and such ideal forces of will, he could have prevented the occurrence of the fatal act. In reality, he is in his predicament for the very reason that he was incapable of behaving like a complete man, the master of himself. However, people in general refuse to look upon him as an invalid, and find considerable gratification in obtaining for society a maximum security and protection by imposing a maximum retribution.1/

The distance between this approach and that of many retentionists may be seen by contrasting the above passage with the following statement by Jacques Barzun, Provost of Columbia University:

1/ Ralph S. Banay, "Study in Murder," The Annals (Nov. 1952), p. 33.

> I happen to think that if a person of adult body has not been endowed with adequate controls against irrationally taking the life of another, that person must be judicially, painlessly, regretfully killed before that mindless body's horrible automation repeats.1/

Barzun sums up the general viewpoint discussed above as follows:

> Social science tends steadily to mark a preference for the troubled, the abnormal, the problem case. Whether it is poverty, mental disorder, delinquency or crime, the "patient material" monopolizes the interest of increasing groups of people among the most generous and learned. Psychiatry and moral liberalism go together; the application of law as we have known it is thus coming to be regarded as an historic prelude to social work, which may replace it entirely. Modern literature makes the most of this same outlook, caring only for the disturbed spirit, scorning as bourgeois those who pay their way and do not stab their friends. All the while the determinism of natural science reinforces the assumption that society causes its own evils. A French jurist, for example, says that in order to understand crime, we must first brush aside all ideas of Responsibility. He means the criminal's and takes for granted that of society. The murderer kills because reared in a broken home or, conversely, because at an early age he witnessed his parents making love. Out of such cases, which make pathetic reading in the literature of modern criminology, is born the abolitionist's state of mind: we dare not kill those we are beginning to understand so well.2/

Generally speaking, retentionists argue that, regardless of the developments of the day in the field of psychology, law and order cannot exist unless people are held individually responsible for their actions and thus subject to the control of punishment if they fail to obey the law. Those in favor of capital punishment argue that it reflects, both pragmatically and symbolically, this fundamental tenet of our society, and that its abolition could well be seen as an endorsement of the kind of liberalism described by Mr. Barzun—a view which,

1/ Barzun, in Bedau (ed.), op. cit., p. 159.
2/ Ibid., pp. 157-158.

if incorporated into our laws, would lead to social anarchy. Richard Gerstein commented on this point as follows before the American Bar Association:

> Society must also consider what effect the abolition of capital punishment could have upon the philosophy of the youth of our country. Many of them might very well look upon the criminal code, including that part of it forbidding murder, as a mere convention of society which advanced thinking and progressive social theories permit them to set aside as a matter of no consequence. This theory leads to the belief that each is a law unto himself; that each may choose the laws which he will obey, and that he may violate the rest. This type of thinking would eventually lead us into virtual anarchy.1/

More specifically, retentionists argue that the concern of abolitionists for the criminal has led them to place far too much emphasis on rehabilitation, as opposed to deterrence and protection, as the purpose of punishment. Richard Gerstein comments that, "we must not forget that reformation is an enjoyable by-product, not the sole goal of punishment."2/ The minority report of the Massachusetts Special Commission notes,

> ...it might be well here to point out that it is the opinion of the minority that the majority report lays too great stress on the welfare of the individual criminal subject to a sentence of execution. It is not our intent to deprive the criminal of every consideration which may be afforded to him by the executive powers of the state subsequent to his sentencing to execution. However, the urge that this one could be rehabilitated or that one could be given psychiatric treatment and therefore they all are salvable does not solve the problem of suppressing potential murderers. If one becomes convinced that the drastic measure of execution is the effective deterrent, then it must logically follow that the innocent lives saved thereby

1/ American Bar Association, Section on Criminal Law, op. cit., p. 18.
2/ Ibid.

> are of far greater import than the criminal life sacrificed. This method of thinking must of necessity divorce itself from any thought of the rehabilitation of the properly condemned criminal.1/

The New Jersey Commission majority report comments in a similar vein,

> The great increase of crime in this State has coincided with a greater tendency to emphasize the rehabilitation factor in criminology as against the punishment or retributive and deterrent aspects of criminology. The Commission cannot conclude that easing the lot of the murderer will cause less crime or fewer criminal homicides.2/

The supporters of capital punishment contend that this misplaced emphasis on rehabilitation as well as the general willingness to "brush aside all ideas of Responsibility" is a corollary of the fact that many abolitionists argue from theory rather than from a direct experience with the realities of crime and law enforcement. J. Edgar Hoover comments,

> As a representative of law enforcement, it is my belief that a great many of the most vociferous cries for abolition of capital punishment emanate from those areas of our society which have been insulated against the horrors man can and does perpetrate against his fellow beings.3/

Direct experience with law enforcement has led most members of this profession to support the death penalty. Sheriff Pitchess of Los Angeles County testified as follows before the California Senate Committee investigating capital punishment:

> ...When I was in law school, I remember that I prepared a paper supporting the abolition of capital punishment. I changed my mind. I went directly from law school into the F.B.I. I can't tell you whether it was within a year or two years, but it wasn't long after I had been in the active field of investigating that I changed my mind, and I have become progressively more convinced.

1/ Massachusetts Special Commission, in McClellan (ed.), op. cit., p. 78.
2/ New Jersey Commission, op. cit., p. 7.
3/ Hoover, in Bedau (ed.), op. cit., p. 130.

> I wish I could be as positive and as certain as the proponents of abolition--I wish I could be. I am as certain as I can be, after searching my own conscience, that it is a deterrent, but my change--and I am not ashamed to admit that I did change my mind--was based on my direct contact with the criminals, who convinced me that it was a deterrent to them.1/

1/ California Legislature, Senate Committee on Judiciary, op. cit., pp. 150-151.

VI. THE DEATH PENALTY AND CRIMINAL JUSTICE

With regard to the complex of arguments relating to capital punishment and criminal justice (see pp. 23-33), retentionists contend, first, that the institution of capital punishment should stand or fall on the issue of whether or not it provides maximum security for the law-abiding, and not on the fact that certain abuses exist in its use, or that it is time-consuming and expensive to adminster. Secondly, they argue that many of the abuses alleged by abolitionists either do not actually exist or are remediable through a reform of the courts. Supporters of the death penalty point out that its efficacy as a deterrent is itself undermined by the inequalities and inefficiencies in the administration of criminal justice; what is indicated here is not the need to abolish the death penalty, but the need to reform criminal procedure.

A. The Possibility of Error

A major issue in this area is the alleged danger of executing the innocent. First, there are those who argue that this is not, in fact, a real possibility, given the precautions taken by the courts in capital cases. Judge Learned Hand commented,

> Our procedure has always been haunted by the ghost of the innocent man convicted. It is an unreal dream.1/

There have been no known cases of the execution of an innocent man in this country.2/

1/ Quoted by Florida Special Commission, op. cit., p. 29.
2/ Bedau (ed.), op. cit., p. 440; see pp. 23-24 above.

The position of those retentionists who admit that the possibility of error does exist is summed up by the Florida report as follows:

> Proponents of capital punishment who admit that the possibility of convicting an innocent man is present maintain that such a possibility is extremely remote today due to the painstaking care that the courts take and the many avenues for correcting trial error. . The task of conducting capital punishment trials is carried out with every possible precaution in favor of an accused thereby making the chance of a miscarriage of justice infinitely small.1/

Those who support the death penalty argue that, insofar as there is a risk that an innocent man will be executed, it is justified by the protection afforded to society by the death penalty. This argument is stated as follows by the minority report of the Massachusetts Special Commission:

> We do not feel, however, that the mere possibility of error, which can never be completely ruled out, can be urged as a reason why the right of the state to inflict the death penalty can be questioned in principle.... All that can be expected of [human authorities] is that they take every reasonable precaution against the danger of error. When this is done by those who are charged with the application of the law, the likelihood that errors will be made descends to an irreducible minimum. If errors are then made, this is the necessary price that must be paid within a society which is made up of human beings and whose authority is exercised not by angels but by men themselves. It is not brutal or unfeeling to suggest that the danger of miscarriage of justice must be weighed against the far greater evils for which the death penalty aims to provide effective remedies.2/

1/ Florida Special Commission, op. cit., p. 29.
2/ Massachusetts Special Commission, in McClellan (ed.), op. cit., p. 61.

B. The Alleged Inequality of Application

Abolitionists allege that there is a discrimination in the use of the death penalty, based primarily on race, wealth, and legal counsel. The retentionist answer to this allegation is well stated as follows by Hugo Adam Bedau, himself an abolitionist:

> One of the contentions of abolitionists in this country, popularized by the late Warden Lawes, is that "only the poor, the friendless and the foreign-born" are sentenced to death and executed. As a description of the class of persons executed, this is probably fairly accurate (though, with the virtual curtailment of immigration, the place of the foreign-born has been taken by native non-whites). But if it is meant to imply deliberate discrimination by trial courts, appellate courts and boards of pardons, it remains unproved. The vast majority of all prisoners throughout our country's history have been the poor, the friendless and the foreign-born (or non-white). It has yet to be shown that murderers or prisoners under death sentence differ significantly in these respects from other criminals.1/

On the specific issue of the high percentage of Negroes sentenced to death, it has been noted:

> Much previous research in criminal homicide, which includes murder in the first degree, has demonstrated the fact that a disproportionate contribution to the homicide rate is made by Negroes. It is no surprise, therefore, that as many as thirty-six per cent of persons placed on death row are Negro. Consistent with independent research and the Uniform Crime Reports, Negroes comprise between three and four times more of the criminal homicide cases (either as offenders or as victims) than they do of the general population.2/

1/ Bedau (ed.), op. cit., pp. 411-412. For statistics which substantiate Bedau's argument, see California Legislature, Senate Committee on Judiciary, op. cit., pp. 106-108.

2/ Marvin E. Wolfgang, Arlene Kelly, and Hans C. Nolde, "Executions and Commutations in Pennsylvania" (1962), in Bedau (ed.), op. cit., p. 473.

C. The Need for Reform

As indicated above, retentionists view the existence of abuses in the administration of the death penalty not as an argument for abolishing the death penalty, but for reforming the courts and the criminal procedure. Mr. Barzun's comment on the danger of executing the innocent is generally relevant here:

> ...what is at fault in our present system is not the sentence [of death] but the fallible procedure.... What the miscarriages point to is the need for reforming the jury system, the rules of evidence, the customs of prosecution, the machinery of appeal.1/

Retentionists contend that if the death penalty is a less effective deterrent than it might be, a major reason is the rarity of its use. A number of abolitionists concur. Thorsten Sellin comments:

> We arrive then at the conclusion that if the death penalty is to have any restraining effect there must be an adequate threat of execution, but no one has ventured to calculate how great the risk of possible execution must be in order to constitute an adequate threat.2/

Bedau develops this argument at some length:

> Since the time of Beccaria, Bentham, Rush and Livingston, most penologists have agreed that for any punishment to have optimum efficacy as a deterrent, the penalty must be imposed consistently, immediately and inexorably; that is, on all offenders, promptly after their crime, and in such a way that the general public expects exactly this. But in practice, not one of these conditions is satisfied by the way capital punishment is administered. Only a small proportion of first degree murderers are sentenced to death and even fewer are executed. The delay in convicting and executing those who do get a death sentence is increasing and notorious. So, almost anyone who contemplates some horrible crime can see some chance of getting away with it, or at least in not having to pay the supreme penalty. If, in practice, the death penalty is no more effective a deterrent for murder, rape and kidnapping than imprisonment is, this may be the reason.3/

1/ Barzun, in Bedau (ed.), op. cit., p. 163.
2/ Sellin, The Death Penalty, pp. 20-21.
3/ Bedau (ed.), op. cit., p. 270.

Those in favor of retaining the death penalty do not accept the abolitionist argument that it is impossible to effect the reforms necessary to make capital punishment a more credible threat to the man contemplating a horrible crime. The Massachusetts Special Commission minority report comments:

> I does not seem logical to say that the death penalty should be abolished because statistics prove that it is not a deterrent. It seems more consistent to urge that every effort be made to minimize the influence on the effectiveness of the death penalty of factors extrinsic to itself, and thus to realize to the maximum its intrinsic value.... If we admit that the state has, in principle, the right to inflict it, we should admit likewise a corresponding obligation on the part of the state to make it effective and we should not urge failure to do this as proof that the death penalty itself is not necessary.1/

1/ Massachusetts Special Commission, in McClellan (ed.), op. cit., p. 77.

VII. THE RELIGIOUS ARGUMENT

The defense of capital punishment on religious grounds rests primarily on two points. First, it is argued that the death penalty is a testimony to the sacredness of life, and—in the case of the Hebrew-Christian tradition—that the Bible clearly differentiates between murder and the death penalty as a just punishment for the taking of God-given life. This argument is supported by the following passages, as well as others, from the Old Testament:

> Whoso sheddeth man's blood, by man shall his blood be shed: for in the image of God made he man (Genesis, 9:6).
>
> He that smiteth a man, so that he die, shall be surely put to death....But if a man come presumptuously upon his neighbor to slay him with guile; thou shalt take him from mine altar, that he may die (Exodus, 21: 12, 14).
>
> Whose killeth any person, the murderer shall be put to death by the mouth of witnesses.... Moreover ye shall take no satisfaction for the life of a murderer, which is guilty of death; but he shall be surely put to death ...and the land cannot be cleansed of the blood that is shed therein, but by the blood of him that shed it (Numbers, 35: 30, 31, 33).

Turning to the New Testament, it is argued that the law of love preached by Jesus implies the need for the existence of a strong civil law, and that it is a misreading of the New Testament to see it as advocating leniency for criminal behavior. This argument is summed up as follows by Rev. Jacob J. Vellenga who, since 1958, has served as Associate Executive of the United Presbyterian Church in the United States:

> The law of love, also called the law of liberty, was not presented to do away with the natural laws of society, but to inaugurate a new concept of law written on the

> Church is ever to strive for superior law and order, not to advocate a lower order that makes wrongdoing less culpable...wherever and whenever God's love and mercy are rejected, as in crime, natural law and order must prevail, not as extraneous to redemption but as part of the whole scope of God's dealing with man.1/

He continues:

> The law of capital punishment must stand as a silent but powerful witness to the sacredness of God-given life. Words are not enough to show that life is sacred. Active justice must be administered when the sacredness of life is violated.2/

In addition to the Old and New Testaments, St. Thomas Aquinas is also quoted in support of capital punishment: "It is lawful to kill an evil-doer insofar as it is directed to the welfare of the whole community."3/

1/ Jacob J. Vellenga, "Christianity and the Death Penalty" (1959), in Bedau (ed.), op. cit., pp. 127-128.
2/ Ibid., p. 129.
3/ St. Thomas Aquinas, Summa Theologica. New York, Benziger Bros., 1947, II, 1467.

VIII. PUBLIC OPINION

Thirty-seven states, the District of Columbia, and the Federal Government have the death penalty. Of the thirteen states which have abolished it, only eight have done so completely. Five retain it on a limited basis, for such crimes as killing a policeman acting in the line of duty and the killing of a prison guard by an inmate who is serving a life term for murder. Jacques Barzun's assertion that his views in favor of the death penalty "are now close to unpopular" has been answered by Jerome Hathanson, a leading abolitionist, as follows:

> When I read this I wondered if he and I live in the same United States. How close is close?...A few years ago a special Massachusetts commission recommended abolition of the death penalty, whereupon the legislature promptly voted against its own commission. A few years ago Delaware abolished capital punishment. Subsequently, as has happened elsewhere, an especially outrageous crime led to a demand for its restoration. The legislature responded favorably to the demand, the Governor vetoed the measure, and it was passed again over his veto. The Governor of California is a supporter of abolition, but there is hardly the ghost of a chance, after the furor over the Chessman case, that it will be realized during his administration, even if he is elected to another term in office.... One could go on and on...After working a number of years in behalf of abolition, I have the contrary impression that the preponderance of popular sentiment is on [Mr. Barzun's] side.1/

The reason for such public support--and its importance as an argument in favor of the retention of the death penalty--is commented on by Mr. Ralph G. Murdy, Managing Director of the Baltimore Criminal Justice Commission, as follows:

> Traditionally, our people have believed capital punishment necessary to control attacks on body and life. A majority today still holds that belief despite evidence of growing hesitation and question. To fly in the face of such

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1/ "Capital Punishment"

> conviction by completely doing away with the death penalty would only serve to further weaken the faith of our citizens in the administration of justice.1/

The abolitionist argument that such popular feelings are based on emotion and prejudice rather on a knowledge of the facts is answered by the retentionists as follows:

> Abolitionists say the public is not enlightened. That argument is always used to rationalize a minority point of view; but it is no more valid in this case than in any other case where two points of view exist and the question is resolved in accordance with the democratic process.2/

1/ Mundy, op. cit., p. 13.
2/ Younger, in McClellan (ed.), op. cit., p. 17.

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COVER STORY

An Eye for an Eye

Death Row (pop. 1,137) may soon lose a lot more residents to the executioner

The chair is bolted to the floor near the back of a 12-ft. by 18-ft. room. You sit on a seat of cracked rubber secured by rows of copper tacks. Your ankles are strapped into half-moon-shaped foot cuffs lined with canvas. A 2-in.-wide greasy leather belt with 28 buckle holes and worn grooves where it has been pulled very tight many times is secured around your waist just above the hips. A cool metal cone encircles your head. You are now only moments away from death.

But you still have a few seconds left. Time becomes stretched to the outermost limits. To your right you see the mahogany floor divider that separates four brown church-type pews from the rest of the room. They look odd in this beige Zen-like chamber. There is another door at the back through which the witnesses arrive and sit in the pews. You stare up at two groups of fluorescent lights on the ceiling. They are on. The paint on the ceiling is peeling.

You fit in neat and snug. Behind the chair's back leg on your right is a cable wrapped in gray tape. It will sluice the electrical current to three other wires: two going to each of your feet, and the third to the cone on top of your head. The room is very quiet. During your brief walk here, you looked over your shoulder and saw early morning light creeping over the Berkshire Hills. Then into this silent tomb.

The air vent above your head in the ceiling begins to hum. This means the executioner has turned on the fan to suck up the smell of burning flesh. There is little time left. On your right you can see the waist-high, one-way mirror in the wall. Behind the mirror is the executioner, standing before a gray marble control panel with gauges, switches and a foot-long lever of wood and metal at hip level.

The executioner will pull this lever four times. Each time 2,000 volts will course through your body, making your eyeballs first bulge, then burst, and then broiling your brains . . .

That big old mahogany armchair is practically antique, but it still works. First used in 1890, it is the world's oldest and most prodigious electric chair: 695 convicted men and women died in its grip, nearly one a month for the better part of a century. For most of those years it was housed at Sing Sing, contributing to that place's hellhole notoriety. Now it squats on the fourth floor of Green Haven prison in New York.

But the state has killed no one since the summer of 1963, when Eddie Lee Mays was electrocuted at Sing Sing. And for some time to come, this prototypical electric chair with the flip nickname ("Old Sparky") seems likely to remain nothing more than a grim curiosity. The state's new Governor, Mario Cuomo, promises to veto any capital-punishment statute the New York legislature passes, just as his predecessor did every chance he got.

But New York is not typical of these angry times. The country's decade-long moratorium on capital punishment ended in 1977 when Gary Gilmore dared Utah to shoot him and, six years ago this week, Utah obliged. Five men have been executed since. One shared Gilmore's flashy passion for martyrdom: Jesse Bishop, who gunned down a newlywed during a casino holdup, practically volunteered for Nevada's gas chamber. Three were electrocuted: John Spenkelink in Florida, for killing a ne'er-do-well like himself; Steven Judy in Indiana, for strangling a motorist he waylaid and drowning her three children, ages two to five; and Frank Coppola in Virginia, for bludgeoning to death his robbery victim. Last month in Texas, Charlie Brooks Jr., the only black among the six, achieved a milestone when he became the first American ever executed by means of a drug overdose.

Other states seem anxious to get in step. Two weeks after Brooks was executed, Massachusetts became the 38th state with a death penalty on the books, and Oregon seems likely to become the 39th, 20 years after capital punishment was abolished there by popular vote.*

The national death-row population today is 1,137. That is 200 more than a year ago, twice as many as in 1979, and larger, moreover, than ever before. Florida alone has 189 death-row prisoners, Texas has 153, Georgia and California 118 each. The inmates include about a dozen teen-agers, 13 women (five of them in Georgia) and six soldiers. Half of the condemned are white.

The long-building public sentiment to get tough with violent criminals, to kill the killers, seems on the verge of putting the nation's 15 electric chairs, nine gas chambers, several gallows and *ad hoc* firing squads back to regular work. In addition, five states have a new and peculiarly American technique for killing, lethal anesthesia injections, which could increase public acceptance of executions. Experts on capital punishment, both pro and con, agree that as many as ten to 15 inmates could be put to death this year, a total not reached since the early 1960s. "People on death rows are simply running out of appeals," says the Rev. Joe Ingle, a prison activist and death-penalty opponent. "I fear we are heading toward a slaughter."

For years, the capital-punishment debate has been sporadic and mainly intramural—professor *vs.* professor, lawyer *vs.* lawyer—as executions took place only once or twice annually at most. Says Florida's Governor Robert Graham, who signed Spenkelink's death warrant in 1979: "We haven't enforced the death penalty much, so we've been able to avoid all the responsibilities that go with that experience."

But now an old array of tough questions—practical, legal, moral, even metaphysical—is being examined. Is the death penalty an effective, much less a necessary, deterrent to murder? Is it fair? That is, does it fall equally on the wealthy white surgeon represented by Edward Bennett Williams and the indigent black with court-appointed (and possibly perfunctory) counsel? Most fundamental, is it civilized to take a life in the name of justice?

Fear, pure and simple, is behind the new advocacy of the death penalty. Between 1960 and 1973, the U.S. homicide rate doubled, from 4.7 murders per 100,000 people to 9.4. The rate has leveled off considerably and stands at 9.8 per 100,000 today. (Other countries' rates are, by U.S. standards, amazingly low: England, 1.1, and Japan, 1.0, are typical.) No more precipitous increases are expected this century: criminologists believe that the murder spree of the '60s and early '70s was mostly the doing of World War II baby-boom children passing through their crime-prone years of adolescence and young adulthood. As it happened, the number of young people and cheap, readily available handguns burgeoned at the same time. Handguns are used in 50% of U.S. murders.

But a U.S. public that has felt terrorized by murderers and thugs is unreceptive to promises that the worst may be over and understandably finds the current level of violent crime intolerable. According to a Gallup poll last fall, 72% of Americans now favor capital punishment, up from just 42% in 1966. "People are frightened and upset about crime in the streets," says William Bailey, a Cleveland State University sociologist. "Nothing seems to be done to solve the problem, so the feeling grows that if we

*Other states now without a death penalty: Alaska, Hawaii, Iowa, Kansas, Maine, Michigan, Minnesota, North Dakota, Rhode Island, West Virginia and Wisconsin.

"I Didn't Like Nobody"



On the night of June 3, 1973 a Chevrolet Caprice, driven by a woman, was forced off Interstate 57 in southern Cook County, Ill., by a car carrying four men. One of them pointed a 12-gauge pump shotgun at her, ordered her to strip and then to climb through a barbed-wire fence at the side of the road. As she begged for her life, her assailant thrust the shotgun barrel into her vagina and fired. After watching her agonies for several minutes, he finished her off with a blast to the throat. Less than an hour later, the marauding motorists stopped another car and told the man and woman inside it to get out and lie down on the shoulder of the road. The couple pleaded for mercy, saying that they were engaged to be married in six months. The man with the shotgun said, "Kiss your last kiss," then shot both of them in the back, killing them. The total take from three murders and two robberies: $54, two watches, an engagement ring and a wedding band.

The man ultimately convicted of the "I-57 murders" now sits confined in the Menard Condemned Unit, the official name for death row in the Illinois prison system. Yet Henry Brisbon Jr., 28, does not face execution for those three killings nearly ten years ago. Illinois' death penalty was invalidated in 1972 and was not restored until 1977, the year that Brisbon was finally brought to trial. At that time, the judge sentenced him to a term of 1,000 to 3,000 years in prison. It took Brisbon less than one year to kill again, this time stabbing a fellow inmate at Stateville Correctional Center with the sharpened handle of a soup ladle. At the trial for this murder, Will County State's Attorney Edward Petka described Brisbon as "a very, very terrible human being, a walking testimonial for the death penalty." The jury agreed.

Brisbon's eleven months on death row have been quiet, compared with his Stateville years, when he took part in 15 attacks on inmates and guards, instigated at least one prison riot, trashed a courtroom during a trial and hit a warden with a broom handle. "I'm no bad dude," he says, "just an antisocial individual." The third of 13 children, Brisbon thinks that his upbringing by a strict black Muslim father made him different: "I was taught to be a racist and not like whites. As I grew up, I decided I didn't like nobody."

Brisbon has 90 well-supervised minutes each day outside his small (7 ft. 7 in. by 5 ft. 10 in.) cell. He works out with weights, keeping his 155 lbs. (on a 5-ft. 9-in. frame) in shape. He complains about his confinement: "Can't take two steps in this cage. It's inhuman. And that dull-ass color blue on the walls in no way brightens my life." He has devised a novel idea about judicial reform: "All this talk about victims' rights and restitution gets me. What about my family? I'm a victim of a crooked criminal system. Isn't my family entitled to something?" The shadow of the death penalty does not faze him: "I don't see that happening to me. What would killing me solve? Isn't that just another murder? If I get to die, it's going to be of natural causes." The state of Illinois thinks otherwise. Says Michael Ficaro, who prosecuted the I-57 case: "On the day he dies in the chair at Stateville, I plan to be there to see that it's done. Nobody I've heard of deserves the death penalty more than Henry Brisbon."

can't cure murderers, something we *can* do is kill them." Jim Jablonski, 44, a Chicago steelworker, speaks for a lot of furious citizens. "Murderers got to pay," he says. For him the next sentence follows self-evidently: "I say, fry the bastards."

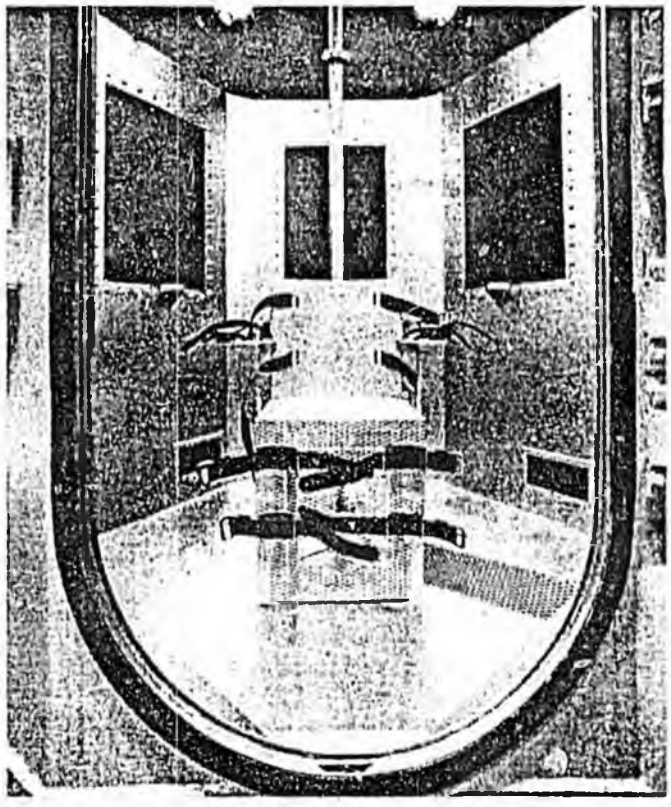
Execution by injection may be too new to have its tough-guy slang like "fry." But last month outside the prison at Huntsville, Texas, the sentiment was the same. As Charlie Brooks waited to be injected, a crowd of 300 gathered to celebrate. Some of the pro-execution revelers, mostly college students, carried placards; KILL 'EM IN VEIN, said one. "Most of the people I know are for capital punishment," declared Paula Huffman, 21, a Sam Houston State University senior at the deathwatch. "And so am I. Definitely." Nevertheless, when the moment arrived, just after midnight, she and the rest of her shivering, smiling chums suddenly turned quiet and grave.

Historically, American executions were public, the last in Kentucky in 1936. Hanging was standard for 200 years, through the 1800s. More primitive means—burnings in particular—were extreme rarities even in the 17th century. Up until 1900, nearly all executions were carried out by local jurisdictions; lynchings were as frequent as legal hangings. But by the start of the Depression, state authorities had mostly taken over the grim chore.

At that time, the U.S. was hardly less murderous than it is today. In 1933 there were 9.7 homicides per 100,000 Americans, which is just shy of the 1981 figure. The murder rate began a steady decline in 1934, but judges and juries meted out death sentences at a ferocious clip for the rest of the '30s. As many as 200 people a year were legally executed, more than ever before or since in the U.S. During the '30s, and even through the '50s, executions were so routine that they merited at most a paragraph or two in out-of-town newspapers.

Not just murderers were put to death. Rapists were executed every year in the U.S. until 1963.* After 1930, there were 455 men executed for rape, most of them in the South and 89% of them black, a majority grotesquely out of proportion to black sexual offenses. Black murderers too were executed much more frequently than white killers, a pattern that prevailed through the 1960s.

*There is still one man condemned to die for a crime other than murder: Lusious Andrews, 31, sentenced in Florida in 1981 for the "sexual battery of a child."



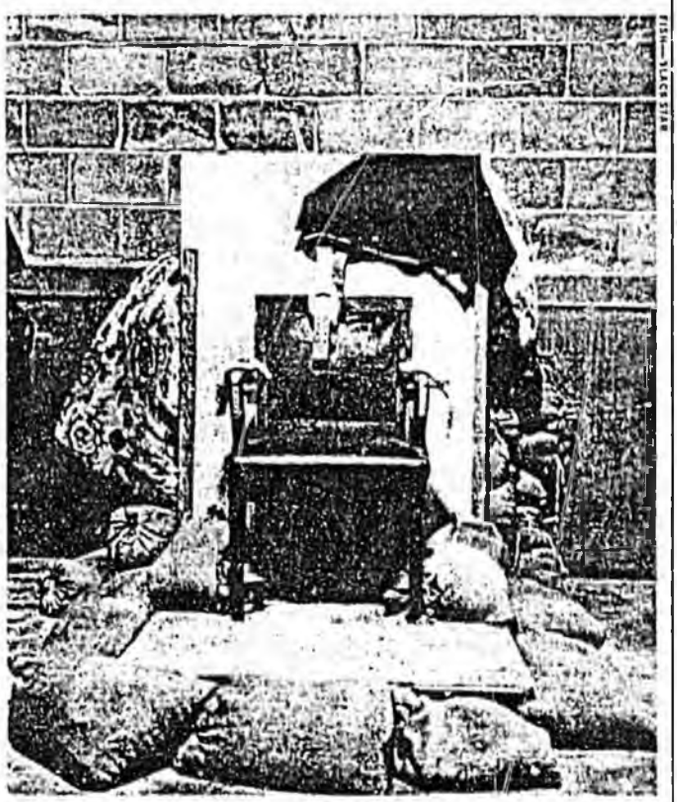
Maryland's gas chamber: 14 people wait

After World War II, executions became less popular. The reduction was steady: 82 by 1950, 49 in 1959 and finally just two in 1967, one of whom was Aaron Mitchell, a California murderer denied clemency by then Governor Ronald Reagan. The nation's chairs, gallows and gas chambers were temporarily retired partly because judicial standards became more scrupulous—often after legal battles waged by the NAACP Legal Defense Fund (L.D.F.) and the American Civil Liberties Union—and, more ineffably, as an extension of two centuries of penal reform *(see box)*. But most important, during the decade and a half after the war, the U.S. homicide rate stayed fairly constant and unalarming, never rising above 6.4 per 100,000 (in 1946). Year after year, there were roughly 8,000 killings (a third of the 1981 total), seemingly as predictable and steady as deaths from accidental drownings (5,000 a year) or falls (19,000). Americans felt unthreatened. They could afford the emotional luxury of indulging their instincts for reason. During 1964 and 1965, three states (Oregon, Iowa and West Virginia) abolished capital punishment, and Vermont narrowed its applicability mainly to those who murdered policemen or prison guards.

But in most places the retreat from capital punishment was not a formal, statutory change. At any one time no more than a third of the states have been without a death-penalty provision. It seems that Americans want it both ways, retaining the right to exterminate miscreants, as well as having the option not to exercise that awful power. It is easy and sometimes appealing to talk tough and demand mercilessness in the abstract. But to *really* "fry the bastards"? How many? Which ones? "What a person says on a public opinion poll," observes Thomas Reppetto, president of the Citizens Crime Commission of New York City, "and what they'll say on a jury, might well be two different things."

The ambivalence seemed apparent in last November's elections, when capital punishment was a potent political issue but not a decisive one. Like New York, Massachusetts this month inaugurated a Governor opposed to the death penalty. But just three weeks earlier, the legislature in Boston had once again legalized executions. Even increasingly hard-line voters in California chose an attorney general who disapproves of capital punishment.

The uneasiness with capital punishment has led this nation



Utah's rifle range: the chair in which Gary Gilmore died in 1977

"I Don't Think I'm Guilty"



Texas law-enforcement officials and Claude Wilkerson, 28, agree on one point: when the murder for which he was later tried, convicted and sentenced to death took place, Wilkerson was locked up in Houston's Harris County jail. Beyond that incontrovertible fact stretches a tangle of contradictions. Two of Wilkerson's confederates have been tried for the same murder and now face execution. A fourth man, who admitted being present at the scene of the crime, is serving a life sentence, a leniency granted for his cooperation with investigators. Says Wilkerson from his cell on Texas' death row in Huntsville: "I don't think I'm guilty of capital murder, and I don't think the court proved I was."

Wilkerson's road to extraordinary trouble began with an ordinary childhood. The son of a pipefitter, he moved with no particular distinction through his education. He recalls, with irony: "In a high school science class we took a straw poll on the subject of capital punishment. I voted in favor of it." Wilkerson dropped out of Mesa College in Colorado after one year, married, divorced and knocked about in a couple of ill-fated business schemes. He then went to work for Houston Businessman Don Fantich, who local police suspected was an operator in the penumbra of the underworld.

On Jan. 23, 1978, Fantich disappeared, along with a woman who ran a jewelry store, which Fantich owned, and an apparently innocent bystander, Dr. William Fitzpatrick. Police picked up Wilkerson for questioning. While he was in custody, all three missing persons were shot and buried about 100 miles west of Houston. From testimony pieced together from a variety of sources, police found the bodies and deduced that the victims were part of an extortion and kidnaping scheme that Wilkerson had masterminded. While Wilkerson owned up to the plot, he denied any involvement in the murders. Prosecutor Don Stricklin scoffs at this: "He could have told us earlier and saved those people's lives."

Wilkerson's first trial ended in a hung jury, but the second resulted in his conviction. [For reasons of strategy, prosecutors limited charges to the murder of the doctor.] Says Sherman Ross, now a judge, who represented Wilkerson both times: "The district attorney's office good-old-boyed him into a death penalty." For his part, Wilkerson tries to make the best of life on death row: "It takes a great deal of personal effort to not become hard within yourself and hate the free world."

A pudgy soft-spoken man, he has used his abundant time to polish his skill in drawing. Late last year a friend in New York City asked Wilkerson to send samples to be sold at a party. The prisoner netted $200 and has since sold some other artwork. He uses a typewriter in his cell for a widespread correspondence with, among others, some leaders in the American Indian movement. A grandmother of his was a Catawba Indian, and Wilkerson has grown intensely interested in this heritage and its culture. He has taken an Indian name, Ches-ne-o-na-eh, which translates as "the man who kills the wolves." Wilkerson suggests another meaning that this name could convey: "a beautiful being in a scarred world."

"I Want to Die"



"I've put life in one hand and death in the other and weighed the two. To me, death is my only route to freedom." Doris Ann Foster speaks from a small cell at the end of a third-floor hallway at the Maryland Correctional Institution for Women in Jessup, a small town midway between Baltimore and Washington. A heavy door marked "Maximum Security" isolates her not just from the outside world but from other prisoners as well. She is on death row and could become the first woman ever to be executed by the state of Maryland.

Foster says she is ready: "I have thought it out very carefully. I know what I am doing." She has sent a letter to the Maryland Court of Appeals and the U.S. Supreme Court requesting them to pay no attention to the efforts of her public defender lawyers, who have been trying to get her sentence reduced to life, with parole then a possibility after 12½ years. She does not know whether the courts will heed her request, but she dreads the prospect of a long, drawn-out appeal: "If the court says you're guilty and you're going to die, why spend all this money to fight it? Let them carry it out. They will be satisfied, and I will have peace."

Foster previously served four years in other states for robbery and passing bad checks, so she knows about prison. Continuing on death row strikes her as intolerable: "This is ruining my body and eventually would ruin my mind. I could see what I'd be like after ten years here. I don't want to be hostile. I don't want to lose my peace. I have no desire to continue on in such an inhumane existence."

Her acceptance of punishment does not exactly constitute an admission of guilt. Although she was convicted last year of stabbing a 71-year-old woman motel keeper to death with a screwdriver during a holdup, Foster now says, "I couldn't have done it. And if I did, I would not do it with a screwdriver, not to some old lady." This declaration sounds less than ringing. Moreover, it was testimony from her husband Tommy, who had checked into the motel with her, that helped convict Doris Ann. Yet she seems to bear him no grudge. He is in a different Maryland prison, where he is serving a lighter sentence for theft and obstruction of justice, and she corresponds with him regularly. She has 35 other pen pals, including some Indians on death rows elsewhere.

A thin, wide-eyed woman with long, lustrous dark hair, Foster claims to be three-quarters Cherokee (she also says she is 27; Maryland lists her as 38). The walls of her cell are decorated with bold, dark drawings of Indian faces. Books on Indian lore are piled together with other texts on Buddhism, martial arts and the occult. She is allowed half an hour out of her cell each morning for a shower and an hour of exercise later in the day, but she has felt increasingly estranged from other inmates and no longer takes a recreation period. She receives no visitors because she says her surroundings would depress relatives and friends.

She is aware of the notoriety gained by other prisoners who have asked to die, and wants no part of it: "I'm not a Gary Gilmore. I don't want anyone to write a book about me. I want to die or be free. I have a dream to go West with my people. If I got out, that's what I would do." She does not expect that to happen. Instead, she hopes to arrange for the presence of an Indian medicine man at her execution.

of tinkerers to an odd inventiveness. Elsewhere in the world where executions are still regularly carried out—among industrialized nations, only Japan, South Africa and the Soviet Union—the bullet and the noose are used exclusively. Yet in the U.S., only half a dozen states call for old-fashioned firing squads or hangings. The electric chair killed quickly and, it was thought, painlessly. It seemed, in any case, up to date, civilized. (This progressive image is somewhat at odds with the testimony of Willie Francis, 17, who survived a sublethal shock by Louisiana's portable apparatus in 1946. Francis said the experience was in all "plumb miserable." His mouth tasted "like cold peanut butter," and he saw "little blue and pink and green speckles." Added Francis: "I felt a burning in my head and my left leg, and I jumped against the straps." A year later, back in the chair, he was successfully executed.)

The electric chair caught on slowly in the U.S. and not at all abroad. During the 1920s and '30s, the cyanide-gas chamber became state-of-the-American-art. It too was popular only in the U.S. Now there are lethal injections, which are seen as still more "humane." This latest technical refinement, which the European press finds chilling and fascinating, seems sure to remain strictly a U.S. practice. Sums up Notre Dame Theology Professor Stanley Hauerwas: "This search for a humane way of killing is a bunch of sentimental secular humanism. Why do you want it to be humane? To reassure yourself?"

The dilemma of whether to kill the killers comes up in only a small fraction of all U.S. homicides. The criteria for capital murder vary from state to state and even, inevitably, from case to case. In general, there must be "aggravating circumstances." These can be as specific as the murder of a fireman or one by an inmate serving a life sentence; as common as a homicide committed along with a lesser felony, like burglary; and as vague as Florida's law citing "especially heinous, atrocious or cruel" killings. It is estimated that about 10% of U.S. homicides currently qualify, or some 2,000 murders last year. Those killings are the ones the threat of capital punishment is meant to prevent.

The idea of deterrence can be quickly reduced to very personal rudiments: *If I know I will be punished so severely, I will not commit the crime.* The logic is undeniable. Yet in the thickets of real life and real crime, deterrence, while central to practically all punishment, is often very uncertain, and its effect on prospective murderers is especially unclear. Unfortunately, public discussion usually consists of flat-out pronouncements. Capital punishment, says Conservative Commentator William F. Buckley, "is a strong, plausible deterrent." No, declares New York Governor Cuomo, "there has never been any evidence that the death penalty deters." Neither is altogether wrong, but the stick-figure oversimplifications on both sides do a disservice to a complicated question.

The scholarly evidence is not quite as unequivocal as some abolitionists claim. But it does not make much of a case for deterrence. The most persuasive research compared the homicide rates of states that did and did not prescribe the death penalty. For instance, Michigan, which abolished capital punishment in 1847, was found to have had a homicide rate identical to adjacent states, Ohio and Indiana, that were executing. Similarly, Minnesota and Rhode Island, states with no death penalty, had proportionately as many killings as their respective neighbors, Iowa and Massachusetts, which had capital punishment. In 1939 South Dakota adopted and used the death penalty, and its homicide rate fell 20% over the next decade; North Dakota got along without capital punishment for the same ten years, and homicides dropped 40%.

Similar before-and-after studies in Canada, England and other countries likewise found nothing to suggest that capital punishment had deterred murderers any better than the prospect of long prison terms. Used in Britain during the 1950s, a typical "lifer" actually served only about seven years, compared with a much tougher average U.S. "life" term today of 20 years. A comprehensive study in the U.S., by the National Academy of Sciences in 1978, also found that the death penalty had not proved its worth as a deterrent.

Were it not for the work of Economist Isaac Ehrlich, the deterrence debate would be entirely one-sided. Using econometric

modeling techniques to build a "supply-and-demand" theory of murder, Ehrlich argued in a 1975 paper that capital punishment prevents more murders than do prison sentences. Because of the 3,411 executions carried out from 1933 to 1967, Ehrlich speculates, enough potential murderers were discouraged so that some 27,000 victims' lives were saved.

That stunning conclusion drew immediate attacks. Critics, and they are legion, cite a variety of defects: Ehrlich did not compare the effectiveness of the death penalty with that of particular prison terms; his formula does not work if the years between 1965 and 1969 are omitted; and in accounting for the increase in homicides during the '60s, he neglects the possible influences of racial unrest, the Viet Nam War, a loosening of moral standards and increased handgun ownership.

To work at all, deterrence requires murderers to reckon at least roughly the probable costs of their actions. But if a killer is drunk or high on drugs, that kind of rational assessment might be impossible. Passions are often at play that make a cost-benefit analysis unlikely. Most killers are probably not lucid thinkers at their best. Henry Brisbon Jr. *(see box)* may be legally sane, but he is by ordinary standards demented enough to make a mess of any theory of deterrence. Says New York University Law Professor Anthony Amsterdam: "People who ask themselves those questions—'Am I scared of the death penalty? Would I not be deterred?'—and think rationally, do not commit murder for many, many reasons other than the death penalty."

Former Prosecutor Bernard Carey, until 1980 state's attorney for Cook County, favors capital punishment, sparingly used. Yet he says, "I don't think it's much of a deterrent because the kinds of people who commit these crimes aren't going to be deterred by the electric chair." Some might be encouraged. "For every person for whom the death penalty is a deterrent," says Stanford Psychiatry Professor Donald Lunde, "there's at least one for whom it is an incentive." Such murderers, says Amsterdam, "are attracted by the Jimmy Cagney image of 'live fast, die young and have a beautiful corpse.' "

The arguments for capital punishment are usually visceral or anecdotal. Ernest van den Haag, professor of jurisprudence and public policy at Fordham University, says flatly, "Nobody fears prison as much as death." Florida's Governor Graham, who has signed 45 death warrants, cites the case of a restaurant robbery seen by a customer. "Afterward," recounts Graham, "he was the only witness. So the two guys took him out to the Everglades and shot him in the back of the head. If they had felt that being convicted for robbery and first-degree murder was sufficiently different, they might have had second thoughts."

In a sense, death's deterrent power has never really been given a chance in the U.S. Even during the comparative execution frenzy of the 1930s, hardly one in 50 murderers was put to death, a scant 2%. Reppetto estimates that if 25% of convicted killers were executed, 100 a week or more, there might be a deterring effect. But it is unthinkable, he agrees, that the U.S. will begin dispatching its villains on such a wholesale basis. Even at a rate of 100 executions annually, an implausibly high figure given today's judicial guarantees, a killer's chances of getting caught, convicted and executed would for him still be comfortably low: 250 to 1.

Even if executions were on television, there is no guarantee that prospective ax murderers would pay heed. As Camus noted in his 1957 essay against capital punishment: "When pickpockets were punished by hanging in England, other thieves exercised their talents in the crowds surrounding the scaffold where their fellow was being hanged."

But U.S. society is not unprotected just because it lacks weekly or daily executions. "The issue is not whether we slay murderers or free them," notes University of Michigan Law Professor Richard Lempert. "It is whether we send them to their death or to prison for life." Prison is a far more manageable weapon than death, and the U.S. is not at all hesitant to put criminals behind bars: the population there has doubled since 1970, to 400,000. "One trouble with the death penalty," says Henry Schwarzschild, an A.C.L.U. official, "is that it makes 25 years seem like a light sentence."

Opponents of capital punishment feel that prison terms

"I Can't Stop Crying"



At Dunbar High School in Fort Myers, Fla., he was a triple threat: in football, an all-state wide receiver; in basketball, an all-conference playmaking guard; in track and field, a state champion in the 440-yd. run. An honors student, he went on to Edison Community College in Fort Myers but dropped out after 1½ years to enlist in the Army. He was given a medical discharge after 17 months because of attacks of grand mal epilepsy. He married, fathered a son and went back to college, this time in California. His marriage soured, and he returned to Fort Myers, where he sank into alcoholism and despair. Sometime between Oct. 13 and 15, 1973, a woman named Margaret Mears, 68, was raped and beaten to death.

Doug McCray, now 32, had been on a drinking binge and could not account for his whereabouts at the time of the crime when police arrested him for murder six weeks later. The F had matched his palm print with one found in Mears' apartment. Nearly ten years later, McCray says he still does not know whether he is guilty. He has passed two polygraph tests, which prosecutors would not permit in evidence at his trial. An eyewitness who placed McCray in the woman's neighborhood at the time of the slaying later recanted, saying police had coached and coerced him. The physical evidences of rape could not be linked to McCray.

Nevertheless, he now awaits his fate on death row in Florida State Prison at Raiford. McCray looks back in anger: "I feel victimized by the Florida Supreme Court, which waited 5½ years to rule on my case, which granted me a new trial and then abruptly took it away. [A 4-3 decision last March in McCray's favor was reversed six months later when one justice changed his vote without explanation.] I feel victimized by my clemency lawyer, who never even bothered to read the transcript of my trial. I feel victimized by a lawyer who took my mother's few dollars and never came to see me for almost eight years."

Outside observers, including New York *Times* Columnist Anthony Lewis, have rallied to McCray's defense. When a St. Petersburg attorney phoned him and volunteered to help, McCray remembers, "I started to cry. I can't stop crying in this place. It meant so much to me, after all the other things that happened, that this man cared."

McCray lives in a 6-ft. by 9-ft. cell. He and the other 194 inmates on Florida's death row each have a small black-and-white TV. He uses the light from the set to read constantly. "I've read thousands of books. Prison can be as rewarding as college if you actually have a desire to improve your mind." Yet his thoughts always wheel back to the central mystery that has brought him to this place. "The state says it's convenient for me to say I don't remember. But if it were convenient, I could have plea-bargained or made up some alibi. My girlfriend and one of my brothers say I was with them all that night. I wish I knew, even if it meant knowing that I'd done it. Who would want to live after committing such a terrible crime?" Since last fall, McCray has grown progressively more despondent. He now says he will not seek another stay of execution. "I'm tired. I hurt. I just wish to lie in peace. I will allow the state to do what it may.

"I am tired."

without parole would deter as many potential murderers as the death penalty. Says Amsterdam: "The *degree* of punishment is not necessarily a deterrent even to someone who thinks rationally. What deters people from crime is the *likelihood* of getting caught and undergoing punishment." Reppetto agrees: "I always favor something that will get tough with a lot of offenders instead of getting very tough with just a handful."

Two diehard proponents of the death penalty, deterrence hardly matters anyway. Declares Buckley: "If it could be absolutely determined that there was no deterrent factor, I'd still be in favor of capital punishment." Taking the lives of murderers has a zero-sum symmetry that is simple and satisfying enough to feel like human instinct: the worst possible crime deserves no less than the worst possible punishment. "An eye for an eye," says Illinois Farmer Jim Hensley. "That's what it has to be. People can't be allowed to get away with killing." Counters Amsterdam: "The answer can hardly be found in a literal application of the eye-for-an-eye formula. We do not burn down arsonists' houses." The scriptures do preach mercy as well as retribution. Last Saturday, in fact, Pope John Paul II sweetly recommended "clemency, or pardon, for those condemned to death."

The Moral Majority's Rev. Jerry Falwell relies more peculiarly on Christian authority. He claims that Jesus Christ favored the death penalty. On the Cross, Falwell says, He could have spoken up: "If ever there was a platform for our Lord to condemn capital punishment, that was it. He did not."

But was Jesus ever vengeful? Ordinary people are. "Execution is primarily a vengeance mechanism," says Notre Dame's Hauerwas, a pacifist, "but that is not necessarily a bad thing. Vengeance is a way society gestures to itself that justice has forced against injustice." A main point of criminal laws, after all, is to make private feuds unnecessary. "No society should put the burden on me to seek personal retribution," says New York University's Herbert L. London, a social historian. "The state has an obligation not to make me a killer."

During troubled times in the ancient Greek colonies, prominent men would volunteer to be scapegoats. Each was housed and well fed by the authorities, and then, after a year of comfortable

Revenge Is the Mother of Invention

Socrates was lucky. Found guilty of heresy and "corruption of the young," he was condemned to drink a cup of hemlock, a relatively honorable and painless death. By the standards of history, his execution in 399 B.C. was singularly humane.

Not until the Enlightenment, 200 years ago, did societies seriously question the states' right to kill. Until then, the only dilemma had been to find the most ingenious and cruel methods of execution. Boiling, burning, choking, beheading, dismembering, impaling, crucifying, stoning, strangling, burying alive—all were in vogue at various times. The Crucifixion of Jesus Christ was, for its day, only a routine execution.

In ancient China, an occasional penalty was "death by the thousand cuts," the slow slicing away of bits of the body. A 19th century French traveler described an excruciating method in India during the rule of the rajahs: "The culprit, bound hand and foot, is fastened by a long cord, passed round his waist, to the elephant's hind leg. The latter is urged into a rapid trot through the streets of the city, and every step gives the cord a violent jerk, which makes the body of the condemned wretch bound on the pavement . . . Then his head is placed upon a stone, and the elephant executioner crushes it beneath his enormous foot."

What kinds of crime incurred such punishments? Murder and treason have almost always ensured death. Under the Mosaic law, capital offenses ranged from gathering sticks on the Sabbath and adultery to the sacrifice of children to the god Molech. A medieval German code decreed: "Should a coiner [counterfeiter] be caught in the act, then let him be stewed in the pan or a cauldron."



Execution by elephant in 19th century India

England's response to the bewildering social evils caused by the Industrial Revolution was unique even in a world long used to such officially sanctioned slaughter as the Spanish Inquisition, when tens of thousands of convicted heretics were burned. The English meted out the death penalty for more than 200 offenses, including stealing turnips, associating with gypsies, cutting down a tree or picking pockets. "Hanging days" were public holidays, and in 1807 a crowd of 40,000 became so frenzied at an execution that nearly a hundred were trampled to death. Frequently both victims and executioner were drunk, and occasionally the job was botched, with the condemned man being hanged two or even three times. Afterward, the crowds surged toward the corpse, because it and the scaffold were believed to have curative powers.

Death sentences were often arbitrarily applied. The social standing, sex, citizenship or religion of the victims usually determined the degree of horror they would suffer. Death alone was rarely considered a sufficient penalty unless it was preceded by terror, torture and humiliation, preferably in public. One of history's most spectacular executions was that of Damiens, the unsuccessful assassin of Louis XV, in Paris in 1757. His flesh was torn with red-hot pincers, his right hand was burned with sulfur, his wounds were drenched with molten lead, his body was drawn and quartered by four horses, his parts were set afire and his ashes scattered to the winds. The execution was accomplished before a large crowd.

"The more public the punishments are, the greater the effect they will produce upon the reformation of others," declared Seneca in ancient Rome. Over the centuries, many societies came to believe otherwise. The rituals of execution, rooted perhaps in a primitive need for sacrifice, catharsis and revenge, seemed less to cast out the evils of humanity than to feed its blood lust. By the late 18th century, a reform movement had taken hold in Europe, aided by the invention of such "humane" devices as the hanging machine and the guillotine.

Today the death penalty has been abolished in Canada, at least officially in much of Latin America, and in most of Western Europe. In Eastern Europe only Albania has abandoned capital punishment, and it remains in force throughout Asia and the Islamic world. Last year, the world leader in announced executions was Iran, with more than 600.

and black killer, but only 13% when a white had killed a black.

A serious problem is the quality of legal help for murder defendants. The Texas study, conducted by the Governor's judicial council, found that three-quarters of murderers with court-appointed lawyers were sentenced to death, against about a third of those represented by private attorneys. Amsterdam, who has argued eight capital cases before the Supreme Court, contends that "great lawyering at the right time would save virtually everybody who is going to be executed." Scharlette Holdman, director of Florida's Clearinghouse on Criminal Justice, persuades volunteer lawyers to represent death-row inmates. "Every person sentenced to die comes from a case fraught with errors," she says. "If you're adequately represented you don't get death. It's that simple."

Aside from public defenders, there are only about a dozen attorneys working full time on behalf of the condemned. Court-appointed lawyers in most states are not required to stay on a murderer's case after a conviction. "Drunk lawyers, lazy lawyers, incompetent lawyers, no lawyers," says Holdman. "You can have all the correct issues for appeal, but if you don't have a good lawyer to raise them, they don't mean a damn thing." Of 2,000 death sentences imposed during the post-*Furman* decade, about half have been reversed or vacated by the courts.

The careful legal course demanded by the Supreme Court is expensive. Last year the New York State Defenders Association estimated the trial costs for a typical capital-punishment case: a defense bill of $176,000, about $845,000 for the prosecution and court costs of $300,000. The total: $1.5 million, and this before any appeal is filed. Getting a writ before the Supreme Court, just one appellate step, might cost $170,000.

It is often argued, with blithe inhumanity, that there are good fiscal reasons for executing murderers: prison is too costly. It is cheaper to send a student to Stanford for a year than it is to keep a con in nearby San Quentin ($10,000 *vs.* $20,000). But imprisoning one inmate for 50 years would require less than $1 million in New York, not bad compared with the costs of the painstaking appeal process.

Everyone seems afraid of imposing bona fide life sentences, however, and for reasons unconnected with expense. Seventeen states have laws providing for life without parole for those convicted of murdering a robbery victim. Abolitionists say such a sentence is excessive. Statistics show that fewer than 1% of freed murderers kill again after their release from prison, in part because of their advanced age. But if capital punishment is abandoned, it may make sense, politically and emotionally, to permit the public some vengeful satisfaction. Life without parole is unimaginably harsh. But it would be a way occasionally to formalize the revulsion at Charles Manson and his ilk. As it is, Manson will be eligible for parole in 1985.

On death rows, the emotional tone is stuck in some weird, high-strung limbo between hope and hopelessness. Inmates' optimism is the manic wishfulness of losing gamblers. Their fatalism is generally not wise but numb, a brute shrug.

In Illinois, death row is up on a bluff in a sandstone prison opened in 1878. The 49 current inmates have a 19th century landscape artist's view—the Mississippi River and miles of rich farmland beyond—except for the bars and razor wire. Menard Correctional Center (pop. 2,600) is the principal industry of Chester, Ill. (pop. 8,000). The inmates, two of whom are scheduled to be electrocuted this spring, are alone in their cells for at least 21 hours a day. When they are in transit, once a day to the law library and once a day to the recreation room, they are handcuffed. Four of them are "honor residents," permitted to roam unchained in the gray hallways. One of these is John Wayne Gacy, 39, the building contractor and amateur clown convicted three years ago of murdering 33 young men and boys.

Death row is about the same size in Alabama, where 55 men await the chair in Holman. Mitchell Rutledge, 23 years old, I.Q. 84, is among them. "You're just sitting there waiting for somebody to come kill you," says Rutledge of his purgatory, "just like a dog out there in the dog pound." But he does not claim innocence. No: he did kill a man two days before Christmas 1980. Rutledge was doped up and drunk with two friends. One pal brought along a gun, and with it they took off on a joyride in the van of a driver they had robbed of $20 and stashed in the back. It was decided that the victim, Gable Holloway, 28, should die. He begged for his life. But Rutledge, like a zombie, took the pistol and fired. He fired again and again, five shots in all.

On death row, Rutledge, who was orphaned as a teen-ager, is visited only by his lawyer. He seems full of remorse. "I can't make nobody feel sympathy for me for what I did," he says. "But I just want to let everybody know that I'm sorry for what I did."



Texas' needle: last month the first execution by injection

To most people the life of a foolish punk like Rutledge does not count for much. He is defective. His death would not be unbearably sad, but his destruction by the state of Alabama would be: not a large tragedy, not final proof that the U.S. is barbaric, but still better left undone. Executing Rutledge would be a waste, not so much of his diminished humanity, but of society's moral capital. The gunslinging heroes of corny adventure fiction had it right: there are guys not *worth* killing. Let Rutledge sit and stew in his 8-ft. by 5-ft. pen in Alabama. Forget him.

But then blue-eyed, kind-looking Lawrence Bittaker jerks into view, disrupting high-minded composure. Bittaker, 42, is on death row at San Quentin for kidnaping and murdering five teen-age girls. But that is not all. He and a partner raped and sodomized four of them first, for hours and days at a time, sometimes in front of a camera. But that is not all. He tortured some of the girls—pliers on nipples, ice picks in ears—and tape-recorded the screams. But that is not all. The last victim was strangled with a coat hanger, her genitals mutilated and her body tossed on a lawn so that he could watch the horror of its discovery.

If not for the Bittakers (and Judys, Gacys, Mansons, Specks and Starkweathers), the capital-punishment debate might already have been decided in the abolitionists' favor. Bittaker's prosecutor had an apt beyond-the-pale phrase for Bittaker and his partner: "mutants from hell." Can they be human? Without killers in this league, more of America's logic and instinctive sense of mercy could prevail. There might be more electorates like Michigan's and more Governors like New York's who declare that capital punishment is unworthy of a decent society.

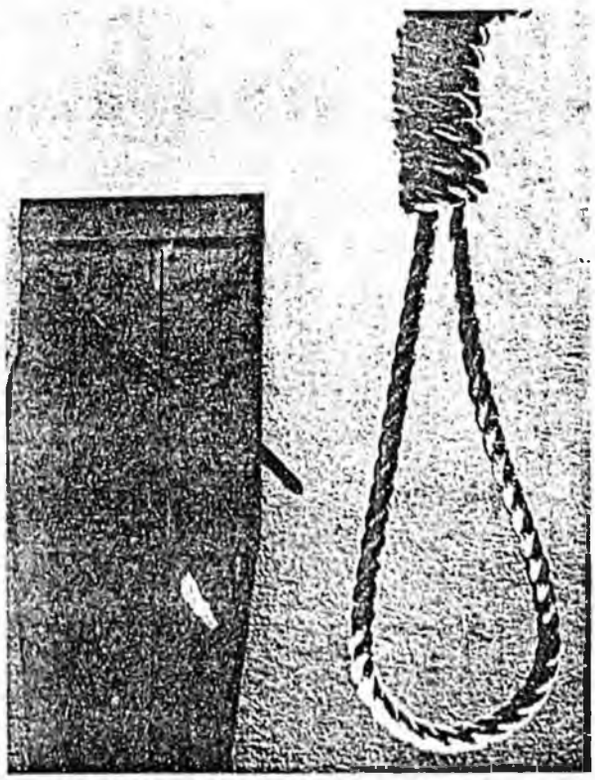
Administration of the death penalty perhaps cannot be made fair enough. As a deterrent, it is probably not necessary. But public passions are inflamed by the inevitable monsters. Civil reason is suspended in the face of what looks like evil incarnate. "It's an emotional issue. It's not a rational issue." Says who? Lawrence Bittaker, an emotional man, whose life is very hard to save. *—By Kurt Andersen. Reported by Lee Griggs/Chicago, B.J. Phillips/Atlanta and Janice C. Simpson/New York*

confinement, taken outside the city and stoned to death. In the view of some death-penalty abolitionists, contemporary executions are not really so different. Each execution is mere "spectacle," according to the A.C.L.U.'s Schwarzschild, "a dramatic, violent homicide under law." Says he: "A society that believes that the killing of a human being is a solution to any problem is deeply uncivilized." Executing murderers does not demonstrate resolute regard for the sanctity of victims' lives. "The marginally demented guy," says Schwarzschild, sees an execution as a prescription, not a threat. "He thinks, 'If the state has a quarrel with Gary Gilmore, it kills him. Then if I have a quarrel with someone, I'll kill *him*.' We say we think human life is sacred. And then to prove that, we kill somebody. That's crazy."

Capital punishment, says L.D.F. Lawyer Joel Berger "attempts to vindicate one murder by committing a second murder. And the second murder is more reprehensible because it is officially sanctioned and done with great ceremony in the name of us all." Not simply just as bad, but worse: this may be the central emotional truth for those who most passionately disapprove of executions. The cretinous killer or the seething psychopath is a loose cannon. But the well-orchestrated modern execution, careful, and thoroughly considered, is horrible because of its meticulous sanity. Executions are worse, in the abolitionists' moral scheme, because the government is always in control; it knows better, but kills anyway.

Proponents see the distinction between murder and state-sanctioned executions in a different light. "One is legal, the other is not," Van den Haag says. "If I take you and put you in a room against your will, it is called kidnaping. If I put on a uniform and put you in a room against your will, it's called arrest."

What was once perhaps the most potent argument against capital punishment arises less often these days. Yet there is a good chance that an innocent man was hanged in England in the 1950s. And in the U.S. today, as death rows swell and the pace of executions quickens, the risks of such a mistake grow. "You know there are going to be some," warns Michael Millman, a California state public defender. Abolitionist Sanford Kadish, a leading authority on criminal law, is less worried. Says he: "The chances are exceedingly remote."



Washington's gallows: only four states still prescribe hanging

Kadish puts his trust in the exhaustive system of judicial review that is now required in capital cases. Today no death-row inmate will be executed until his case has been brought to the attention of his state's highest court, a federal district court, a federal circuit court of appeals and the U.S. Supreme Court. The process is properly slow. In California it takes an average of three years after conviction for a capital case to work its way through the state court system alone. The improbably named James Free, 27, is on death row in Illinois for a double murder. Confesses Free: "I'll use every appeals route I can dream up. That will buy time, maybe five or ten more years."

In 1953, by contrast, a pair of Missouri kidnapers were executed only eleven weeks after their crime. A quarter of the people executed during the 1960s had no appeals at all, and two-thirds of their cases were never reviewed by any federal court.

The historic decision came in 1972, after five years without an execution, and just as fierce public majorities were forming in support of capital punishment. In *Furman* vs. *Georgia*, the Supreme Court nullified all 40 death-penalty statutes and the sentences of 629 death-row inmates, declaring that judges and juries had intolerably wide discretion to impose death or not. This lack of standards made the death sentence "freakishly imposed" on "a capriciously selected random handful" of murderers, wrote Justice Potter Stewart. "These death sentences are cruel and unusual in the same way that being struck by lightning is cruel and unusual." Within a few years, 37 state legislatures had passed statutes designed especially to meet the court's objections.

Most of the new laws went too far, mandating death for certain murders regardless of circumstances, and were overturned by the court. But the statutes adopted by Georgia, Florida and Texas were ruled acceptable. Death is a constitutional punishment, the court decided, not cruel or unusual as long as the judge and jury have given due consideration to the murderer's character and the particulars of his crime, the "mitigating factors."* Against these are weighed the aggravating factors that distinguish capital murder from ordinary homicide.

The court's decisions since have essentially been refinements and tidying addenda. Last January in *Eddings* vs. *Oklahoma*, for instance, the Justices ruled that the judge or jury must consider any mitigating factor the convict claims. Yet to many observers, that sounds like a return toward uncontrollable discretion, the very flaw the court prohibited in 1972. Says former L.D.F. Lawyer David Kendall: "We're right back to *Furman*."

Abolitionists hope so, anyway. They are now arguing a subtle paradox. The prudence and selectivity required by the court, they say, means that executions will be carried out only rarely, and thus will remain arbitrary and freakish, a sort of death lottery. There is always caprice along the way to death row. Prosecutors have great leeway in deciding which homicides to try as capital murders. A killer can be persuaded to testify against an accomplice to save his own life. Brooks was convicted and executed; for the same murder his partner must serve only eight more years in prison.

The Supreme Court's refusal last month to stay Brooks' execution does not give abolitionists much hope for a new landmark ruling in their favor. "We've become technicians," says the L.D.F.'s Berger of his small litigious corps. "The great moral issues have been removed from the legal arena."

At the time of *Furman* it was widely recognized that the system was unquestionably stacked against black defendants, especially in the "death belt" of the South. Some of the racism has been wrung out. Yet clear bias remains, much attributable to prosecutorial choices. A recent study of homicide cases in Houston's Harris County is troubling. In cases where a black or Chicano had killed a white, 65% of defendants were tried for capital murder; only 25% of whites who killed a black or Chicano faced the death penalty. "I don't think it's overt racism," says University of Texas Law Professor Ed Sherman. But prosecutors want to win, and they "perceive that a Texas jury is more likely to give the death penalty to a black who killed a white." A similar South Carolina study found an almost identical pattern: local prosecutors over four years sought death sentences in 38% of homicides involving a white victim

*Of the nine on today's Supreme Court, only Thurgood Marshall and William Brennan believe that the death penalty itself is unconstitutional.

20, April 1981

Pro and Con

Revive the Death Penalty?

YES—"It is morally required as the only appropriate punishment for some crimes"



Interview With Professor Walter Berns

Resident Scholar, American Enterprise Institute

Q Professor Berns, why do you favor the death penalty?

A It is morally required as the only appropriate punishment for some crimes: Treason, particularly heinous forms of murder and particularly heinous rapes, such as the rape of a child or a mass rape of one victim by several individuals. I do not say it ought to be applied to every convicted murderer or even to every convicted first-degree murderer.

Q Doesn't the death penalty verge on the kind of "cruel and unusual punishment" that the Constitution prohibits?

A The men who wrote the Constitution didn't see it that way. The proof is contained in the language of the Constitution itself. The due process clauses of the Fifth and 14th Amendments both speak of the necessity to provide due process when depriving a person of life.

Q Some argue that when society itself takes away life, this undermines the sanctity of life and sets a poor example for citizens—

A On the contrary. The law and the legal community make their respect for life very clear when they threaten to punish murderers by executing them, just as they manifest their respect for property by threatening to jail or fine a person for taking property illegally.

Q Isn't there the danger of punishing the wrong person and then being unable to correct the injustice?

A That possibility always exists, and it becomes a terrible thing when you make a mistake of this sort. Maximum caution must be exercised, and the wording of the statutes ought to embody such caution. A good example is the Florida statute, which makes it absolutely clear to the court that the assessment of the death penalty is—and should be treated as—an extraordinary event.

But in this country, you will search the records in vain for a single example of the wrong person being executed. I know that this has been alleged in the case of Bruno Hauptmann, who was executed in the Lindbergh kidnapping, but I am not persuaded that he was indeed innocent. It has also been alleged in the cases of Sacco and Vanzetti, but I think the evidence clearly shows that Sacco was certainly guilty of those murders and that Vanzetti was executed because he—perhaps foolishly—stood loyally by Sacco and refused to exculpate himself.

Q Is there any real proof that capital punishment deters crime?

A The evidence on this point is inconclusive. For a long time, sociologists in this country made studies that came to the conclusion that the death penalty did not have a deterrent effect greater than that of life imprisonment. But then Isaac Ehlich, an econometrician at the University of Chica-

NO—"Terribly mixed-up people" won't be deterred by the threat of the death penalty



Interview With Patrick V. Murphy

President of the Police Foundation

Q Mr. Murphy, why do you oppose the death penalty?

A Because I don't believe it would have a significant impact on crime. It wouldn't reduce it. Look at the people we've executed recently—like Steven T. Judy, who murdered a woman and then drowned her three children. These are terribly mixed-up people. The threat of the death penalty won't deter people like that from committing murder.

Q Not any of them?

A I've been a policeman for over 35 years, and I've dealt with many of these psychos. Cops always say, "I'd much rather go up against an experienced con than against a psycho, a crazy kid who is going to kill you when you say, 'freeze.'"

When it's all over and you've got the handcuffs on them and they're under control, it turns out that most of them have had horrible lives—they were brutalized as children, their old man was an alcoholic, their mother a prostitute. You try to find out how such a psycho could have put a bullet into that old woman's head, and you find it's because that kid doesn't respect life. He never got much respect for his own life from others.

Q Are you saying that because of mitigating circumstances, that killer you have described does not deserve the death penalty?

A No, that's not what I mean. I don't want to be misunderstood as excusing or condoning crime. Never call me soft on crime. After all, I'm a policeman. What I'm saying is that this kind of person is too far gone to be deterred by the threat of execution.

Q Some argue, however, that the death penalty can have a general crime-deterring effect on everybody by increasing respect for the law—

A If you think so, why not go one step further and make the executions public, as was done in the old days? If you think it is going to deter others, why not do it in a big stadium, in front of a large crowd? I don't think anybody is seriously advocating that today.

Actually, the death penalty may well have the opposite effect of leading to an increase in crime.

Q In what way?

A Violence begets violence. I believe that many policemen lost their lives in this country in the last 10 or 15 years because the police used excessive force, including deadly force, in making arrests. By analogy, I think that when the state applies the death penalty, this supports violence in a way which tends to increase violent crimes.

Q It is often argued, though, that there was less violent crime

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go, examined the question with different statistical techniques and came to the conclusion that one execution may—and I emphasize the word *may*—deter as many as eight murders. That conclusion gave rise to a tremendous controversy, and that is where matters now stand.

My argument for the death penalty is not based on the claim that it necessarily reduces the number of murders. I do think, however, that it has a general deterrent effect on crime by promoting law-abidingness.

Q How do you mean?

A Let me illustrate with an example. What is the proper punishment for someone like the Nazi war criminal Adolf Eichmann, who was hanged? You don't punish an Eichmann because you want to deter others. It would be foolish to think you could do that. You surely don't punish him because you want to rehabilitate him. You don't punish him because you want to incapacitate him. After all, he no longer represents a present danger. What that leaves is retribution, which is indeed an altogether proper purpose of punishment. It's altogether proper to pay criminals back, and how do you pay back someone like Eichmann except by putting him to death?

At the sight of crime, law-abiding citizens feel—and ought to feel—a righteous anger. That kind of anger is absolutely essential for a decent, just society. Like love, and unlike greed, for example, anger is a passion that can reach out to other people. It can be a manifestation of caring for other people. We'd all be lost if everyone reacted as people did in the case some years ago of a woman who was screaming because she was being mugged and murdered: No one even bothered to pick up the phone and call the police.

Righteous anger should be satisfied by punishing the criminal. In this way, by rewarding it, you may promote law-abidingness, which is a general deterrent to all kinds of crime. And in the case of particularly heinous crimes, the anger is rightly so intense that only punishment by death will satisfy it.

Q Could the mandatory death penalty backfire—as in the case of a kidnapper who, knowing he faces the electric chair anyway, might decide to murder the only witness to his crime?

A Yes, that could conceivably happen. On the other hand, there is the case of the inmate serving a life sentence who, knowing he cannot be executed, might decide to murder a guard or a fellow prisoner.

Q Do you think that the mandatory death penalty might sometimes make a jury unduly reluctant to convict a guilty person?

A I'm not sure that the death penalty has any more effect in this regard than another drastic form of punishment, such as life imprisonment.

Q Has there been a movement away from the death penalty in the Western World?

A Yes, but on this point there has been a split between the sophisticated intellectual and the man in the street. All the polls show that the professors want to get rid of the death penalty and the people want to keep it. The law is the embodiment of our morality, of our sense of right and wrong. And, in the last 30 years, respect for the law has declined markedly. ☐

at the time when the death penalty was being more widely applied—

A I don't buy that. It's like arguing that since there was less crime during the Depression, it follows that poverty and unemployment have nothing to do with crime. There are factors other than lack of the death penalty that account for the recent rise in crime. The easy availability of handguns—50 million of them—is at the heart of the problem. And the death penalty won't help resolve it.

Q The Bible speaks of "an eye for an eye and a tooth for a tooth," which implies that the punishment should fit the crime. In the case of particularly heinous crimes, wouldn't that call for the death penalty?

A Well, the Catholic bishops of this country have come out against the death penalty. So have the bishops of Italy. So have many Protestant leaders.

Of the Western European countries, only Spain and France still resort to executions.

Q Some argue that life imprisonment is often a more cruel form of punishment than death. Some inmates have said they would prefer death—

A Yes, I know some of these fellows have said they wanted to die. But I still would prefer not to have the state engage in executions. You know, we're all human, and sometimes we're liable to make a mistake and execute the wrong person. And that is something we can never correct.

Furthermore, if you look at the history of the death penalty in this country, you'll find that its application has been arbitrary, capricious and discriminatory.

Q In what ways?

A The poor and minorities tend to be overrepresented on death row. Blacks who kill whites are overrepresented in relation to blacks who kill blacks. That tells us something about the way the system works.

People who can afford expensive lawyers can beat the system when it comes to the death penalty as well as other kinds of punishment.

Also, I'm a bit of a cynical New York cop. I have found in the weeds the bodies of mob guys bumped off by other guys in the mob. Those are the coldest, most calculating kinds of murderers—the mob hit men. Their crimes are well planned, very hard to detect and witnesses don't talk, so those are not the people who get executed for murder.

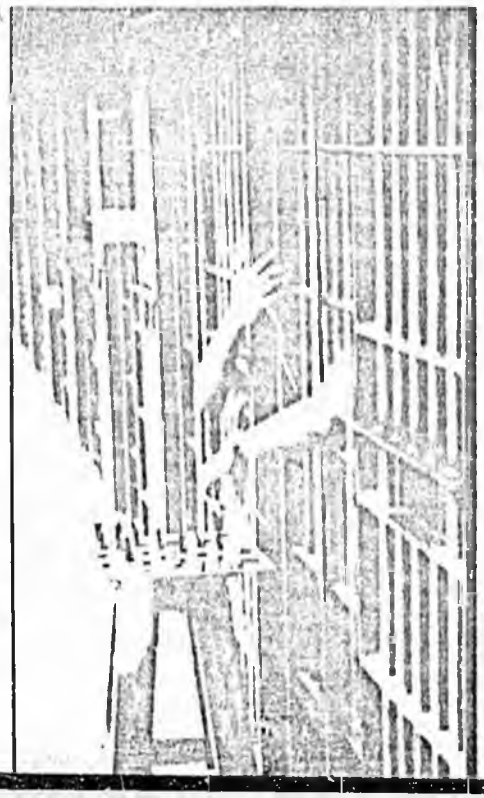
The ones who do get executed are often pathetic, mentally defective people, or are people who killed a wife, a husband, a lover in the heat of passion.

Q What about somebody who is already serving a life sentence and who murders a prison guard? Wouldn't the death penalty be the logical punishment for him?

A You're kidding yourself if you think that by executing one of those types you are going to have a peaceful prison. Those types really place no value on their own life. I'd rather concentrate on preventing that kind of occurrence through reforming our prisons, which are understaffed and overcrowded boiling pots.

How do we deal with crime? I'm looking for the right answers—but I honestly don't believe the death penalty is one of them. ☐

Death-row inmates in a Texas prison play a game of chess between their cells.



America's Inability to Resolve the Cap

COL. I COL. II COL. III

Last of a series

By Phil McCombs
Washington Post Staff Writer

When American University professor Robert Johnson decided last fall to teach a course on the death penalty, he was amazed that 75 students signed up—more than he's ever had in a class. A poll found they favored the penalty 49 to 31 percent with the rest undecided.

Johnson saw it as his job—and moral duty—to change that.

"Death should require absolute guilt on the part of the offender and absolute innocence on the part of the society," he said. "Violence is a social product. . . . Today's capital offenders are invariably drawn from the ranks of the underpriviledged and inadequate. . . . Each and every one of these persons can point to some mitigating circumstances that relieve them of some culpability for their crimes and partially implicate society in their actions."

Like Johnson, most academics and the college-educated oppose the penalty, but polls indicate that Americans as a whole strongly support it.

"Liberals generally feel guilty," said Ernest van den Haag, a Fordham University law professor and conservative theorist. "They think that somehow it's their fault that crimes are being committed. . . . Intellectuals belong to a class that is not greatly endangered by murder. . . . They can afford to be terribly humanitarian . . . People who are less educated and have less money are endangered by violent crime."

America's debate on the death penalty encompasses a wide range of moral, legal and political questions of the sort that seem calculated to raise ideological temperatures on both the left and right. Some of the issues, such as whether the penalty deters criminals, have spawned intricate scholarly analyses; others, such as why the poor are executed with disproportionate frequency, raise painful sociological questions. Finally, there is the simple, awesome question of whether it is ever right to take a human life.

Confronted with questions of such magnitude, the nation's political and judicial systems have been unwilling or unable to definitively resolve the nation's capital punishment dilemma. There is little evidence that this will change soon even though six years ago the U.S. Supreme Court declared the death penalty constitutional and 35 state legislatures passed new death statutes based on the high court guidelines.

While the future of the penalty remains in limbo, its pros and cons are argued by legal scholars, philosophers, law enforcement officials and social scientists as well as ordinary citizens. The debate can be cool and intellectual, with complex arguments and empirical research, or highly emotional, drawing on deeply held feelings of right and wrong. For the most part, the debate "has been waged on moral grounds," wrote Supreme Court Justice William J. Brennan Jr. "The country has debated whether a society for which the dignity of the individual is the supreme value can, without a fundamental inconsistency, follow the practice of deliberately putting some of its members to death."

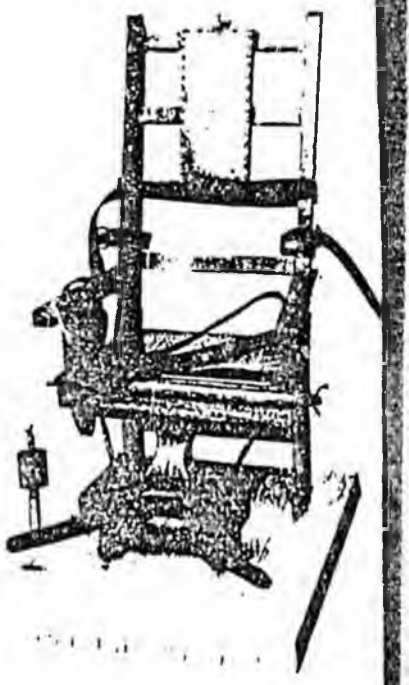
For Henry Schwarzschild, head of the American Civil Liberties Union capital punishment project, the answer is an emphatic no: "Society should not be in the business of killing human beings . . . God knows what [murderers] deserve. The question is not what they deserve, it is what we are entitled to do to each other . . . We have seen in the 20th century states shed torrents and rivers of blood. We create political institutions to protect and enhance human life, not to kill . . . People learn the lesson from executions that killing somebody is an acceptable answer to some problems . . . No society that believes that can consider itself civilized."

The Supreme Court and the D

1972 Decision



Justice Thurgood Marshall, citing evidence that the death penalty does not deter, wrote that it is "morally unacceptable to the people of the United States at this time in their history" . . .



share the earth with you. This is the reason, and the only reason, you must hang."

Schwarzschild called the Berns argument in favor of retribution—and by extension the Arendt argument—"deeply dangerous" and "prefascist."

"I really do take offense at that," said Berns. "Does that say the U.S. is a fascist country in its history when it executed criminals? Was Israel fascist when it executed Eichmann? . . . Was Abraham Lincoln, who signed 262 death warrants, fascist?" Berns said his support of the penalty is contingent on its being applied only to the worst criminals without racial discrimination.

"The thought that murderers are to be given as much right to live as their victims oppresses me," wrote van den Haag. "Never to execute a wrongdoer, regardless of how depraved his acts, is to proclaim . . . no human being can be wicked enough to be deprived of life. Who actually can believe that? I find it easier to believe that those who affect such a view suffer from a failure of nerve."

Johnson, the American University professor, said the ultimate penalty should be life in prison because it "leaves open the door for mercy. You can always reconsider [if there are] dramatic and enduring changes of character . . . or new evidence." And Johnson argues that the conditions on death row itself are so painful as to constitute cruel and unusual punishment.

In its 1976 landmark decision upholding the constitutionality of the death penalty for murder, the U.S. Supreme Court specifically endorsed retribution as "an expression of society's moral outrage." The lead opinion said while this "may be unappealing to many, . . . it is essential in an ordered society that asks its citizens to rely on legal processes rather than self-help to vindicate their wrongs. . . . The decision that capital punishment may be the appropriate sanction [for murder] must be directly related to the personal culpability of the criminal defendant."

Since 1930, 3,859 persons have been executed in the United States, 54 percent of them for murder committed in the southern states. Many of the executions were for crimes that would not be considered capital offenses today. Many were for crimes committed by persons who were juveniles, mentally retarded or insane. Many were for crimes that occurred accidentally as the offender fled during a robbery in a state where 298 of the 366 people executed since 1930 were black.

Two justices, William J. Brennan Jr. and Thurgood Marshall, declared the penalty unconstitutional under any circumstances. "The calculated killing of a human being by the state involves, by its very nature, a denial of the executed person's humanity," wrote Brennan. Marshall cited evidence that the penalty doesn't deter and said, "It is morally unacceptable to the people of the United States at this time in their history."

The decision invalidated death laws of 41 states, the District of Columbia and the federal government and took more than 600 off death row.

In response, 35 state legislatures and Congress drafted new death laws. Polls showed increasing concern with crime and support for the penalty.

In its landmark 1976 decision, the court approved, by a 7-to-2 majority, death-for-murder laws in Georgia, Florida and Texas drafted in response to its 1972 decision. The new laws provided for "guided discretion" in capital sentencing. Factors of aggravation and mitigation would be considered in special sentencing hearings and later reviewed by higher courts to safeguard against prejudice.

"It is an extreme sanction, suitable to the most extreme of crimes," said the lead opinion by Justices Stewart, Lewis F. Powell Jr. and John Paul Stevens. ". . . The concerns expressed in [the 1972 decision] can be met by a carefully drafted statute that [focuses] the jury's attention on the particularized nature of the crime and . . . individual defendant . . . In this way the jury's discretion is channeled. No longer can a jury wantonly and freakishly impose the death sentence."

Concurring, Justices White and William H. Rehnquist and Chief Justice Warren E. Burger scolded opponents of the penalty for

Exactly the opposite, wrote Walter Berns, author of "For Capital Punishment: [illegible]e and the Morality of the Death Penalty," [illegible]e execute the worst criminals "out of moral necessity . . . We want to punish them *to pay them back* [and by doing so] we demonstrate that there are laws that bind men across generations [and] nations. . . . The criminal law must . . . be made awe-inspiring. . . . It must remind us of the moral order by which alone we can live as *human* beings. . . . To punish criminals, even to execute them, is to acknowledge their humanity . . . as responsible moral beings."

Perhaps nothing illustrates so sharply the difference between these two as their views of Ismel's capture, trial and execution in 1961 of former SS Lieutenant Colonel Adolf Eichmann, who sent millions of European Jews to their deaths. Schwarzschild, a Jew who escaped Nazi Germany at 14, adamantly opposed the execution. Berns said justice demanded it, and it was the passion of Nazi-hunter Simon Wiesenthal who made him realize the moral necessity of retribution.

In many ways, the Eichmann case is the ultimate test for an opponent of the death penalty—like asking, on a larger scale, if that opponent would still oppose the penalty for someone who had brutally raped and murdered his wife and 3-year-old daughter. Eichmann provides the "supreme justification of the death penalty," wrote Hannah Arendt in her book, "Eichmann in Jerusalem: a Report on the Banality of Evil." She argued that the justice of retribution for the crime of mass murder might have been better understood had the judges simply told Eichmann:

". . . We are concerned here only with what you did, and not with the possible non-criminal nature of your inner life and of your motives or with the criminal potentialities of those around you. You told your story in terms of a hard-luck story [but] there still remains the fact that you have carried out . . . a policy of mass murder . . . And just as you supported and carried out a policy of not wanting to share the earth with the Jewish people and the people of a number of other nations—as though you and your superiors had any right to determine who should and who should not inhabit the world—we find that no one, that is, no member of the human race, can be expected to want to in extreme cases is an expression of the community's belief that certain crimes are themselves so grievous an affront to humanity that the only adequate response may be the penalty of death."

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While philosophers have struggled with the moral implications, the courts have engaged in a painstaking effort of their own to reach a consensus on capital punishment and when, if ever, it was justified.

In 1636 in New England the death penalty was imposed for idolatry, witchcraft, blasphemy, assault in sudden anger, sodomy, buggery and adultery, among others. By 1850 abolitionist sentiment was strong, and gradually laws making death mandatory for specified crimes were eliminated. Many states dropped the penalty entirely.

By the 1930s, the high point of executions in America, there were 167 executions a year, an average that dwindled to 72 a year in the 1950s. Executions ceased in 1967 as officials waited to see what the Supreme Court would do.

For years the court had avoided the issue entirely. Then in 1972, faced with the increasingly urgent need to provide some guidance, it finally spoke.

In a narrow 5-to-4 decision the court declared the penalty was being administered in an unconstitutional way because juries operating with "untrammeled discretion" were handing it out in an arbitrary, discriminatory, even "freakish" way.

Receiving a death sentence was "cruel and unusual in the same way that being struck by lightning is cruel and unusual," wrote Justice Potter Stewart. Byron R. White added, "There is no meaningful basis for distinguishing the few cases in which it is imposed from the many cases in which it is not." William O. Douglas said the death laws were "pregnant with discrimination" against the black and poor. "One searches our chronicles in vain for the execution of a member of the affluent strata of this society."

One of the court's key concerns in 1972 was possible racial discrimination. The three cases that brought on the decision—a murder and a rape in Georgia and a rape in Texas—all involved black offenders and white victims. The murder, a shooting, had occurred during a robbery.

arguing that no matter how effective the death penalty may be as a punishment, government created and run as it must be by humans, is inevitably incompetent to administer it. This cannot be accepted as a proposition of constitutional law." The penalty is necessary, they said, even though "mistakes will be made and discriminations will occur."

At the same time, the court declared mandatory death laws unconstitutional because they treat "all persons convicted of a designated offense not as uniquely individual human beings, but as members of a faceless, undifferentiated mass."

States like Virginia that had passed mandatory statutes after 1972 quickly redrafted them along "guided discretion" lines. Virginia's new law, patterned after the new Georgia law approved by the Supreme Court in 1976, went into effect in 1977, Maryland's in 1978. The District never drafted a new statute and in 1980 killed the old one. The last execution in a local jurisdiction was in Virginia in 1962.

After the 1976 decision the "capital punishment bar," as the small but devoted band of lawyer-opponents to the penalty is known, switched to delaying tactics and began filing every possible appeal in every death case. Four executions have taken place, but a de facto moratorium on executions in America now exists and the United States in effect has joined most Western nations in either dropping the penalty or letting it fall into disuse.

No one knows how long this may last. American juries continue to send 150 murderers a year to death row, where there are already 1,009 residents, according to the NAACP Legal Defense and Educational Fund Inc.

"My own armchair reading is the public feels comfortable in having [the death penalty] on the books," said Washington attorney David E. Kendall, who has handled death cases, "but there is an enormous inertia and resistance to actually executing people."

Scholars who search for the reasons behind the strong public support for the penalty believe that people are concerned by crime and that they hope the penalty will deter criminals. "I think crime in the streets and law and order have become a genuine concern to a lot of people," said Tufts Uni-

Col. I Col. II Col. III

eath Penalty

1976 Decision



Justice Potter Stewart, in the lead opinion w'in justices Lewis F. Powell Jr. and John Paul Stevens, said that the death penalty is "an extreme sanction, suitable to the most extreme of crimes" . . .

versity philosophy professor Hugo Adam Bedau, editor of "The Death Penalty in America."

Col. IV

Does the death penalty deter criminals?

Ever since the 18th century man of letters Dr. Samuel Johnson observed pickpockets at work in a crowd watching a pickpocket hang, researchers have faced the problem that it is clear when the penalty fails to deter but not when it succeeds.

Early studies by Thorsten Sellin, professor of sociology emeritus at the University of Pennsylvania, found states with the penalty had as many murders and murderous assaults on police as states without it. Murder didn't decrease when states instituted the penalty or increase when they abolished it.

Executions may even encourage murder, said William J. Bowers and Glenn L. Pierce of Northeastern University's Center for Applied Social Research. Studying a 56-year period in New York, they found two additional murders after each execution and decided executions send messages of "lethal vengeance."

But a 1975 analysis by Isaac Ehrlich found each execution in America may have saved eight lives by deterring potential murderers. While Bowers and Pierce said the study has been called into question by other research, the Supreme Court conc'ed death "undoubtedly is a significant ...erent" for "many" potential murderers.

"No other punishment deters men so effectually from committing crimes," said an early expert quoted by the Supreme Court. "This is one of those propositions which it is difficult to prove. . . . It is possible to display ingenuity in arguing against it, but that is all. The whole experience of mankind is in the other direction."

State legislators depend on such experience in passing death laws, and Justice White wrote that their actions should not be viewed "as some form of vestigial savagery or as purely retributive [but as] solemn judgments, reasonably based, that imposition of

clearly racist in a vast majority of cases. Gary Kleck, writing in the American Sociological Review, found "huge racial differentials" in death sentences handed out to blacks and whites for rape because the penalty was used to punish blacks who raped whites in the South. There have been no executions for rape outside the South or border states since 1930, and today death for rape has virtually disappeared. Only two persons are now on death row for rape, and their victims were children. In 1978 the Supreme Court outlawed the penalty for rape of an adult woman.

Studying the racial characteristics of those who received the death penalty since 1930, Kleck found that in 25 of 38 years examined, white murderers were more likely to receive death sentences than black murderers. For the period as a whole, he put the chance of a black convicted murderer receiving a death sentence at .972 percent versus 1.043 percent for a white murderer.

In the South, however, he found blacks more likely to receive death sentences for murder—but only prior to 1950; after that, the rate was the same for both black and white murderers.

Outside the South after 1950, however, white murderers had a higher chance of being sentenced to death than black murderers.

"Every single study consistently indicating discrimination toward blacks was based on older data from southern states," he wrote. ". . . The evidence considered as a whole indicates no racial discrimination in use of the death penalty for murder outside the south [prior to 1950]."

Bowers and Pierce, the Northeastern University social scientists, studied death sentences imposed between 1972 and 1977 and found another kind of discrimination: Blacks who killed whites were far more likely to receive death sentences than killers in any other racial combination.

Writing in the journal Crime & Delinquency, they reported that in Georgia they found a black 33 times as likely to get death for murdering a white as for murdering another black. The same black murderer was also substantially more likely to get death than a white murderer, regardless of whether the white murdered a black or white.

On the other hand, a black who murdered someone of his own race was substantially less likely to get death than a white murderer regardless of the race of his victim.

Bowers and Pierce attributed their findings to the "racist tenet: that white lives are worth more than black lives," although this would not appear to explain why a white was substantially more likely than a black to get death for murdering a black.

Kleck, who also noted that blacks were "devalued" as crime victims, added that "white paternalism," or the view that blacks are "child-like creatures who were not as responsible for their actions as whites," may help explain why a white murderer would be held more accountable than a black murderer in the case where the victim was a "devalued" black.

Like Kleck's, the Bowers-Pierce overall data, if not broken down by race of victim, actually shows white murderers in Georgia taken as a whole twice as likely to be sentenced to death as black murderers.

That is because there were in Georgia almost twice as many black-on-black murders—the combination that got by far the lowest death-sentence rate—as all other murder combinations taken together.

Bowers and Pierce think the court needs to consider their research because "either discrimination by race of offender or disparities of treatment by race of victim of the magnitudes we have seen here are a direct challenge to the constitutionality of the [new] capital statutes."

Supreme Court's Death-Row Dilemma

New confusion over the death penalty spread in early October when a convicted murderer received an 11th-hour reprieve as he lay strapped on a death bed awaiting a lethal injection.

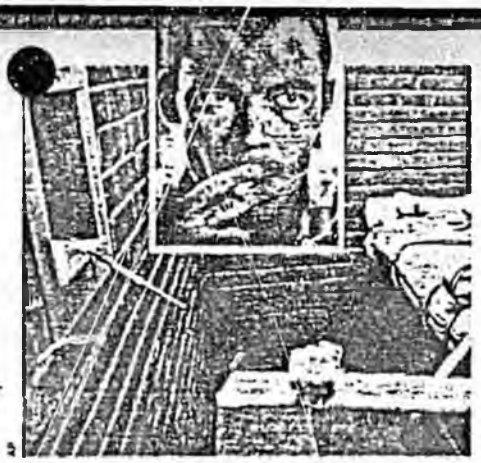
U.S. Supreme Court Justice Byron White granted the unusual stay October 5 just as a saline solution was being pumped into James Autry's veins at the Texas penitentiary in Huntsville to prepare him for execution. Only two days earlier, White was part of the Supreme Court majority that denied Autry's appeal in a 5-to-4 ruling.

The swift turnaround astonished even the condemned man's attorney, Stefan Presser of the American Civil Liberties Union, who said: "On Monday, because he didn't invoke the right words and the right theory, the Court was going to let him die. Then he said the right words, and the Court gave him life."

Autry, 29, was convicted of killing a store clerk in 1980 after she asked him to pay for a six-pack of beer.

Meanwhile, the fate of 1,230 convicts on death rows across the country remained as murky as ever, with prosecutors and defense lawyers alike puzzled over what to do next.

"I don't know how to proceed," said Alan Dershowitz, a Harvard law professor who represents three condemned inmates. He termed the Justices' handling of the Autry case a "scandalous spectacle of ineptitude."



Autry was strapped and awaiting lethal injection when reprieve came down.

Paul Richwalsky, a state prosecutor in Louisville, said: "We as prosecutors look to higher courts, especially the Supreme Court, for guidance. What kind of barometer is this?"

Justice White's switch came after Autry's new lawyers raised a fresh constitutional issue—whether a state must review each death sentence to make sure it is in line with others imposed for similar crimes. The Court hears arguments on that question—raised in a California case—on November 7.

The Justices have made numerous attempts in recent years to clarify how the death penalty can be imposed. But each time they dispose of one issue, defense lawyers raise a new one. Result: Only eight death-row inmates have been executed since 1967. □

Current Quotes

"A very keen sight and sharp pen when it comes to the power of evil and baseness of human beings."
The Nobel Committee naming Britain's William Golding, 72, author of *Lord of the Flies*, as winner of the Nobel Prize for Literature.

"Today's Moral Majority can become tomorrow's persecuted minority."
Senator Edward Kennedy (D-Mass.) reminding a Moral Majority audience of the importance of separation of church and state.

"When comfortable people, relaxing at their country clubs, deplore the alleged decline of the work ethic, they should not be taken too seriously."
AFL-CIO President Lane Kirkland addressing the labor group's convention in Hollywood, Fla.

"Instead of a mean, lean department, we've created a soft, somnolent fatso."
Senator John Danforth (R-Mo.) criticizing a proposed department of international trade and industry to replace the Commerce Department.

"News people are being asked to put 5 pounds of news in a 1-pound package. You can't do that without serious damage."
Retired CBS anchorman Walter Cronkite telling broadcasters that their news stories don't provide enough information.

"This goes a long way toward bringing St. Louis into the 20th century."
St. Louis Mayor Vincent Schoemehl on a new law letting downtown stores open on Sunday for the first time since 1825.

Grass-Roots War Over Gun Control

Firearms advocates and critics are fighting a touch-and-go battle over gun control that stretches from city halls and state legislatures to Congress and the Supreme Court.

The Justices on October 3 left intact a handgun ban in the Chicago suburb of Morton Grove, refusing to consider arguments that the measure violates the constitutional right to "keep and bear arms." The action removed a cloud over antigun measures on the books in several Illinois cities, and now towns across the country are expected to consider similar laws. Other developments cited by gun-control advocates—

- A decrease by one third in Chicago gun murders in 1982, the same year the city barred new handgun registrations.
- A new law in Washington State that lengthens a waiting period to buy a pistol and lets police seize guns from persons accused of domestic violence.
- A federal judge's ruling that gun manufacturers can be held liable for damage that results when their products fall into the wrong hands.

Opponents of gun control, led by the National Rifle Association (NRA), also claim a string of new victories headed by last fall's defeat at the polls of a handgun-registration proposition in California. On the same day, Nevada and New Hampshire approved measures guaranteeing citizens' right to own guns, and Utah residents will vote next year.

Several cities now have ordinances that require residents to own weapons, although the laws are regarded as symbolic and are not enforced.

Only hours after the Supreme Court's Morton Grove decision, trustees in the Chicago suburb of Skokie voted 4 to 3 against banning handguns. Member Frank McCabe, who voted no, said passing an ordinance "with no intent to enforce it causes contempt for the law."

The next big local skirmish is expected in Ft. Lauderdale, Fla., where county officials are considering several gun-control measures.

The U.S. Senate is studying a proposal to relax federal curbs on gun sales—a plan praised by the NRA as an aid to hunters and collectors but assailed by critics who say it would allow criminals to obtain guns by mail.

With firearms used in 60 percent of America's murders, both sides say gun control will be hotly debated in 1984 election campaigns. Said the NRA's Andrew Kendzie: "It will always be one of the country's most volatile issues." □



AMERICAN JUSTICE

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In the wake of a serious crime, justice is swift: Police sift the clues and track down the culprit, the prosecutor throws the book at him; judge and jury do their duty, and the criminal slinks off to prison—a social menace no more.

Then the credits roll and the television show is over. Americans turn their attention back to the real world, where things are different.

The real world, where—

- In 4 out of 5 cases of serious crime, there is not even an arrest, let alone a conviction.
- Of the cases in which arrests do occur, some are dropped, and just about half end in guilty pleas or convictions.
- One lawbreaker might draw a stiff penalty, another a light penalty for the same offense.
- Most convicts serve only a fraction of their prison terms before being put back on the street, and many of them return to crime.

The rate of violent crime has more than quadrupled during the last two decades—creating unprecedented strains. Police and prosecutors are overworked. Courts are staggering under heavy backlogs. Prisons are bursting with surplus inmates. The result: Bitter controversy engulfs almost every method by which our society struggles to cope with lawlessness. Americans are angry. Many of them believe that the institutions of law and order somehow have come unglued, exposing them and their families to a growing risk of death, injury or property loss at the hands of thugs.

Civil proceedings are arousing fears as well. An explosion of lawsuits has made people feel more and more vulnerable to a wrathful passer-by, customer, neighbor, employe, business partner—perhaps even one's own child. The crush of litigation also has quickened concern about the fees and ethics of lawyers, whose ranks have swollen fast.

Yet how the justice system works—how it *really* works—remains a mystery to many. People's "knowledge" often boils down to a stream of half-truths and misimpressions gained from Hollywood, TV and newspapers. This prompted *U.S.News & World Report* to prepare this 24-page section to help readers understand procedures that are designed not only to punish the guilty but also to protect the innocent. □

A Quiz of Your Legal IQ

Here is a simple quiz to measure how much you know about the U.S. system of justice (the answers appear below).

1. How much time does the average police officer spend dealing with crime?
A. 75 percent. B. 15 percent. C. 40 to 50 percent.

2. The average salary of a police officer after five years on the force is:
A. $13,000. B. $22,000. C. $18,000.

3. The job of a grand jury is to:
A. Weigh the defendant's guilt or innocence. B. Determine whether inmates get parole. C. Decide whether a case goes to trial.

4. How many persons slated for trial on serious criminal charges plead guilty?
A. 60 percent. B. 10 percent. C. 80 percent.

5. The average time served in prison by a person convicted of a felony—a serious crime—is:
A. 26 months. B. 6 months. C. Between 5 and 6 years.

6. How many appeals are filed with the Supreme Court each year?
A. 750. B. 5,300. C. 1,500.

7. How may federal judges be removed from office?
A. Impeachment and conviction by Congress. B. Supreme Court order. C. Dismissal by the President, with Senate consent.

8. Which constitutional amendment protects citizens against unreasonable searches?
A. Fourth Amendment. B. First Amendment. C. Fourteenth Amendment.

9. Junior attorneys in law firms are paid an average salary of:
A. $15,900. B. $35,200. C. $26,600.

10. How many civil suits are brought annually in the United States?
A. About 1 million. B. Almost 37 million. C. More than 12 million.

11. Which side wins most often when a civil suit is tried?
A. The plaintiff—the person suing—wins 80 percent of the time. B. The defendant is victorious in 68 percent of cases. C. Each side wins about half the time.

12. The standard used by juries to decide a civil case is:
A. The preponderance of the evidence. B. Guilt beyond a reasonable doubt. C. The reasonable-man standard.

13. In most small-claims courts:
A. Lawyers are required to reduce their fees. B. Disputes under $700 are tried. C. Written evidence is excluded at all times.

Answers:
1.B; 2.C; 3.C; 4.C; 5.A; 6.B; 7.A; 8.A; 9.B; 10.C; 11.C; 12.A; 13.B.

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490,000 officers, plus 210,000 support employes. Of this total, 525,000 work for local governments, 100,000 for states and 75,000 for the U.S. government. Average starting salary for police officers is $14,300; after five years, $18,000.

Cost to taxpayers: [illegible]

[illegible]

284,000 guards, probation and parole officers and others. Of these, 12,000 work for U.S., 163,000 for states and 109,000 for local governments. Typical prison guard is paid about $16,000.

Cost to taxpayers: [illegible]

[illegible]

28,000 judges, plus 141,000 clerks, bailiffs and other court employes, handle civil and criminal cases. About 1,400 judges work in federal courts, 8,000 in state courts and 18,600 in local courts. Average pay for state trial judges is nearly $50,000.

Cost to taxpayers: [illegible]

[illegible]

25,500 lawyers, including 10,000 prosecutors and 7,500 public defenders, plus 62,000 investigators and other aides. Of the total, 8,500 work for the U.S., 24,500 for states and 54,500 for local governments. Prosecutors earn average of $25,000, public defenders $20,000.

Cost to taxpayers: [illegible]

[illegible]

32,000 employes of training, planning and construction units that affect all segments of the justice system.

Cost to taxpayers: [illegible]

[illegible]

The Complex Maze in Criminal Courts

"Adversary justice" pits prosecution against defense in a war that is governed by intricate rules. For a guided tour of the battlefield—

When a person is arrested for a serious crime—and the handcuffs snap shut around his wrists—he enters a legal maze with many possible exits.

He may find one within hours and quickly be back on the streets. Or, if he is one of the unlucky few, he may never know freedom again.

Critics seethe with indignation over procedures that they believe give the guilty too many loopholes for escape. "It's difficult to explain to crime victims the weaknesses and inefficiencies of our system," laments Philadelphia's district attorney, Edward Rendell.

Most defenders acknowledge that the process has its flaws, which smart lawyers and jailhouse-wise hoodlums feel no compunction about exploiting. But they contend that when analyzed step by step the system makes more sense than critics admit.

After an arrest, the first milestone is a hearing to determine whether the *defendant* will be released until trial or held in the county jail. The judge may free the person on his own *recognizance*, a written pledge to appear for trial, or may require deposit of bail that is forfeited if the accused fails to show up in court.

In about half the states, the judge can deny bail altogether if the suspect has a criminal record or seems to be a danger to the community. In the rest of the states and in federal courts, the law allows denial of bail only when there is substantial doubt that the person, if freed, will return for trial. Many judges, however, faced with a defendant perceived to be a social menace, do not hesitate to set bail so high that the suspect cannot pay it.

Nearly 90 percent of those released do show up for trial—but more than 10 percent of them commit new crimes in the meantime.

The DA weighs in. Police lay out the evidence they have for the district attorney and his assistants, who decide whether to prosecute. The basic question these lawyers ask: Is there enough proof to convince a jury of guilt "beyond a reasonable doubt"—the test that prevails in criminal courts?

In a significant number of cases, the answer is "No" and the charges are dropped. Even if a case is acceptable on legal grounds, prosecutors may scuttle it because of a backlog of more-important prosecutions. The majority of law violations in the U.S. are not crimes of violence but lesser offenses such as vandalism and public drunkenness, which are often referred to social-service agencies instead of the courts.

When prosecutors decide to take a case to trial, in about half the states they file an *information* with the court stating the charges.



Defendant and his lawyer face the judge. Fully 80 percent of jury trials are averted or cut short by guilty pleas.

In the rest of the nation, serious criminal accusations are forwarded instead to a panel of six to 23 citizens chosen to sit for periods of several months as a *grand jury*. These sessions are closed to the public. The grand juries hear government lawyers present documents or testimony from major witnesses.

Unless called as a witness, the defendant never sets foot in the grand-jury room and is not permitted to offer a defense. Reason: The grand jury does not seek to determine the truth of the charges, but only whether there is enough evidence to warrant a trial.

If the answer is "Yes," the grand jury votes a *true bill*—an indictment laying out the charges. In theory, this decision is made independently. But most experts agree that with rare exceptions grand juries follow prosecutors' cues.

By this time, the accused more often than not already will have a lawyer—a right of every person charged with a crime. Three fourths of all defendants can't afford to hire an attorney. They rely on publicly paid lawyers who either work full time as public defenders or are appointed by the courts for such work part time.

While the estimated 25,000 lawyers in private criminal-law practice can select their own clients, the typical public defender is overburdened. Often young lawyers no more than a few years out of law school, they grapple with 400 cases a year, or more than one a day.

Truth on trial. The role of defense lawyers in U.S. courts is just as crucial as that of prosecutors.

In many countries, the questioning of witnesses in criminal proceedings is handled by judges or some other neutral official, and guilt and innocence are decided by a judge or panel of judges.

U.S. trial procedures are built on a different premise: That the facts are brought out best—and justice best served—by pitting opposing counsels against one another before a neutral judge and jury. This *adversary system* has defects. For one thing, the lawyers are not always equal in talent. One attorney's superior trial tactics may overshadow the substance of the case.

What's more, appeals to emotion and the withholding of evidence from the other side until the last possible moment are commonplace. Nicholas Kittrie, a professor of law at American University, says "the surprise witness, document or demonstrative evidence" often influences a jury's findings.

Still, most experts agree with Prof. Alan Dershowitz of Harvard Law School that the adversary system "generally produces accurate results" while safeguarding the rights of the accused.

However a case comes out in the end, the defense starts at a disadvantage. "The prosecution has all the police reports, laboratories and computers," says Rick Wilson of the National Legal Aid and Defender Association. "That leaves the defense in the dust."

Squaring off. A defendant's first chance to rebut the charges comes at the *preliminary hearing*, a court session held soon after an indictment. The prosecution presents evidence aimed at establishing a basis for the case to go



Arrest. After a suspect is apprehended, prosecutor and grand jury decide whether the case should go to trial.



Selection of jury. Both prosecution and defense probe the attitudes of jurors carefully before accepting them.

to trial. The defense may make a motion that evidence be excluded on grounds that it was seized unlawfully, that the suspect's rights were violated during police questioning or that some other infraction of civil liberties occurred. These basic protections are outlined in the box on page 40. Attorneys for presidential assailant John W. Hinckley, Jr., were able to bar some police testimony from his trial because his lawyer wasn't present when federal agents first questioned him.

The judge can dismiss all or some of the charges. Usually, he rules that while some evidence may be inadmissible, the case can go to trial.

Many defendants who lose this first round decide to plead guilty. Often, they can win a reduction in the severity of charges—and thus a lesser sentence—by negotiating a *plea bargain* with the prosecutor.

Although most guilty pleas come just before trial, a defendant can plead guilty at any time before the verdict is in. One Virginia man, fearful of getting the death penalty, decided to plead guilty to a reduced murder charge as the jury was deliberating over his case—only to learn later that the jurors had been prepared to acquit him.

At least 80 percent of cases end in guilty pleas. Prosecutors thus avoid costly, time-consuming trials and the risks of acquittals. Defendants get lighter sentences than they might have received had they fought to the bitter end.

Cases that do not end in plea bargains before trial rarely go to trial quickly. A survey of 32 metropolitan areas by the National Center for State Courts showed that the median time from filing of charges to trial ranged from 42 days in Portland, Oreg., to nearly a year in Buffalo.

Court backlogs are only one reason for delays. Defense lawyers often seek to postpone trials in the hope that prosecution witnesses will decide not to testify or will perhaps forget details of the crime. "The world's greatest defense attorney is Father Time," says Tulsa lawyer Patrick Williams.

Day of reckoning. Once the trial date finally arrives, the lawyers match their wits first in the empaneling of the jury. Its makeup is vital because—when the crime is serious—a unanimous vote of 12 jurors is needed to reach a verdict. Selection can take many hours and even many days as the lawyers question potential jurors on their backgrounds and beliefs.

Once the jury is chosen, the prosecutor makes an opening statement, sketchily describing the case against the accused. The defendant's attorney briefly tells the jury what line of defense will be offered.

Next, the prosecutor starts calling witnesses to build his case. When he completes his questioning of each, the defense attorney gets a chance to *cross-examine*—an interrogation often used to attack the witness's credibility. Says legal scholar David Neubauer: "In cross-examination, each side has the opportunity to examine the witnesses' truthfulness, to probe for possible biases and to test what witnesses actually know, not what they think they know."

Then comes the defense's turn to call witnesses, though it is not obliged to do so and may rely entirely on challenging prosecution evidence.

Many legal battles are fought out of the jury's presence, with both sides debating before the judge what evidence may be presented to jurors.

Although some criminal trials are over in a day or less, many take weeks or months as each side raises a string of objections to the other's evidence. Some defense lawyers make no bones that they do this partly in the hope that an appeals court later will overturn a conviction because of an erroneous ruling by the trial judge.

"We are obligated as lawyers to do

Questioning of witnesses. Each side presents testimony buttressing its case.



Cross-examination. Each lawyer has a chance to shake the credibility of the opposition's witnesses.



When Juveniles Run Afoul of the Law

The nation's juvenile-justice system, designed to shield delinquent youths from the harsh treatment given to adult criminals, is doing its job too well.

That is the view of critics of the juvenile courts, who contend that the lenient handling of youthful offenders is as much to blame as anything for the surge of violent crime by the young.

It is an issue on which public attitudes have come full circle in recent decades. When juvenile courts were created at the turn of the century, reformers believed young lawbreakers needed to be sheltered in a variety of ways, in addition to being kept apart from adult criminals.

Juvenile-court hearings and records were closed to the public. A jargon was created so delinquents would not be tainted by criminal-court terms. Youths were accused in a "petition," not an indictment, and were not locked up without bail but rather "detained in their best interests." Instead of being found guilty, they were "adjudicated delinquent" and sent not to prisons but to "training schools."

Without the trappings of the adult justice system, youths often found themselves in court with only a judge, a social worker and their parents.

Over the years, critics came to believe that this closed system—whatever the intent—did not always treat delinquents fairly. Judges' philosophies of treatment varied so much that some youths were sent to prison when they should have been sent home; others were set free when they should have been thrown behind bars.

In a noted 1967 case, *In re Gault*, the Supreme Court declared that youths have the right to a lawyer and other legal protections. Since then, juvenile-court proceedings have become more and more like adult trials, with prosecutors, defense attorneys and stricter rules of evidence. Many hearings now are open.

In recent years, 14 states have passed laws to send to adult courts certain youths under 18 charged with serious crimes. After conviction there, they may end up in adult prisons. Several other states have made it possible for even younger children—some as young as 10—to be sent to criminal court.

Nearly 500,000 youths are jailed in detention units each year, either to await trial or to serve sentences that typically run a year or less. Judges send about 65,000 annually to state training schools—youth prisons where delinquents spend one or two years, on average.

In most states, the jurisdiction of juvenile authorities ends at age 21. For this and other reasons, young offenders tend to spend less time behind bars than adults implicated in similar crimes.

But the conditions in places where juveniles are held are often so poor that critics say they encourage criminality. "The cells at Alcatraz are better than what many of those kids are sitting in today," contends Mark Soler of the San Francisco-based Youth Law Center.

It's too soon to gauge effects of the get-tough drive, analysts say. Harsher measures may keep some violent youths off the streets for longer periods, but experts predict that whether they remain in juvenile courts or are shifted to adult tribunals, delinquents will continue to be treated more leniently than adult criminals.

Says Louis McHardy, director of the National Council of Juvenile and Family Court Judges: "All we're doing is creating a new juvenile-justice system within the adult system. Young criminals require special attention, and most will continue to get it."

everything we can to assist our clients," comments John Ackerman, president of the National Association of Criminal Defense Lawyers. "If we fail to do so, we should be disbarred and can be sued for malpractice."

Once each side has presented its case, including rebuttal testimony, opposing lawyers deliver *final arguments*—perorations putting the evidence in the light they want the jury to see it.

Jury takes the driver's seat. The judge then instructs jurors on how to apply the law to the facts. For example, the jury may be told that it can find the defendant guilty of first-degree murder only if the evidence shows intent to kill and premeditation. By contrast, killing someone through negligence constitutes manslaughter, which carries a far lower penalty.

Jurors sometimes are told the range of penalties for the offenses at issue, so they have an idea what a finding of guilty will mean to the defendant. In a few states, juries recommend punishments or actually impose them. In others, the judge sets the punishment.

Nearly three fourths of trials end in guilty verdicts. Virtually all such verdicts are appealed, if for no other reason than that the courts now afford every defendant the right to an attorney for appeals as well as for trials.

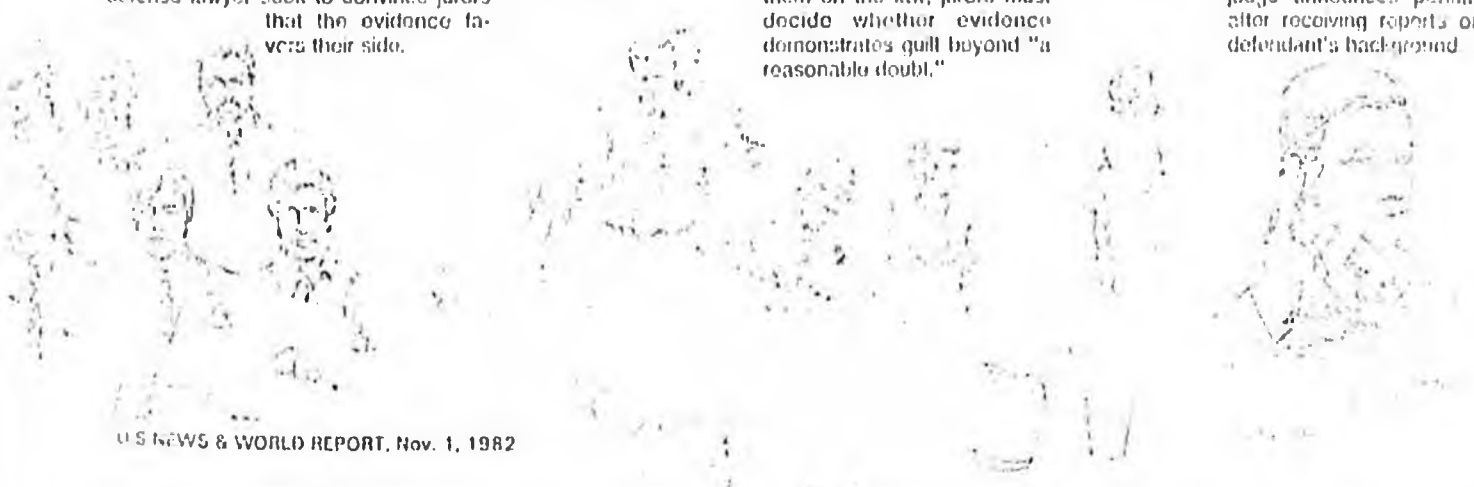
Defendants held in custody before their trials begin serving prison terms—if one is imposed—while the appeal is pending. Some of those who were out on bail before trial are locked up once the jury returns a guilty verdict, but many remain free until appeals are exhausted.

A person can seek reversal of a con-

Final arguments. Prosecutor and defense lawyer seek to convince jurors that the evidence favors their side.

Jury deliberates. After the judge instructs them on the law, jurors must decide whether evidence demonstrates guilt beyond "a reasonable doubt."

Sentencing. The judge announces penalty after receiving reports on defendant's background.





viction from the trial judge, then from an appeals court and then from the state supreme court. Separately, civil suits can be filed either in state or federal courts seeking release on the ground that a conviction was contrary to *due process of law*—a constitutional right not to be deprived of one's liberty except in accordance with fair procedures. These *habeas corpus* suits—a Latin phrase for "You have the body"—are sometimes taken all the way to the U.S. Supreme Court.

In appellate proceedings, no witnesses are called, and there is no jury. The judges simply review the transcript of the trial, read lawyers' briefs and listen to their oral arguments.

Posttrial maneuvering can drag on four or five years or even longer. A task force appointed by Atty. Gen. William French Smith reported in 1981 that "public confidence in the criminal-justice system tends to be eroded by a perception that the law allows a virtually endless stream of attacks on the conviction."

Appeals courts also come under attack for reversing criminal convictions on technical points. However, only a small percentage of guilty findings are in fact reversed.

Contours of a crackdown. Congress, state legislatures and the courts themselves have paid increasing attention in recent years to demands for criminal-justice reforms.

High on the agenda is speeding up the handling of cases. Chief Judge Lawrence H. Cooke of New York State, citing the dozen postponements that occur in the average criminal trial in New York City, has launched a crackdown on delays that he hopes will be a model for the nation.

Declares Cooke: "Judges have got to stiffen up and not give in to the 'easy come, easy go' court system favored by the lawyers."

In 1974, Congress passed a law requiring trials within 100 days of a federal indictment; most states now have similar rules. But the defendant may give up his right to a speedy trial, hoping that a delay will benefit him or her. "Speedy-trial guidelines have had little impact because they are not enforced," says Alexander Aikman of the National Center for State Courts.

Reformers also want to clamp down on appeals. Among changes being considered in Congress and some states are limiting convicts' right to file *habeas corpus* suits and putting time limits on steps in the appeal similar to the speedy-trial laws now on the books.

Others would lessen the restrictions on what is admissible as evidence.

Alaska has eliminated plea bargaining, and some local prosecutors have curtailed the practice, especially for aggravated offenses.

Says Robert Macy, district attorney of Oklahoma City: "If the defense wants to accept my recommendation, fine, but I don't bargain."

Even so, few sweeping changes are likely in what have come to be regarded as basic American rights.

"Due process of law was the weapon used against arbitrary, capricious and unreasonable acts by government officials," declares criminal-law expert Isidore Starr. "It may permit some criminals to escape their just deserts, but it also protects the innocent. The principle should not be changed lightly." □

Our Rights in Court: How They've Changed

Americans accused of crime enjoy a wide array of legal protections rooted in the U.S. Constitution and the body of common law inherited from England.

These safeguards—interpreted, reinterpreted and amended over the decades by the courts, Congress and the state legislatures—"are extended to defendants not because we sympathize with their actions but because in upholding their rights we protect our own," says Judge Damon Keith of the U.S. Court of Appeals for the Sixth Circuit.

Still, there are sharp divisions over how broad these protections should be. Some critics assert that the courts have applied them so sweepingly that the legal system now favors defendants unduly.

For a look at key criminal-law issues and the debate over them—

No unreasonable searches. Since 1961, the Supreme Court has ruled in a series of cases that evidence obtained by police in violation of the Fourth Amendment cannot be used in court. To protect people against "unreasonable searches and seizures," the Constitution requires police to get a warrant from a judge before invading privacy in pursuit of evidence. The Justices have held that warrantless searches can be made only in connection with an arrest or when an object is in plain view.

Police officers complain that the Court has not provided clear and consistent guidance. For example, the Justices ruled that officers need a warrant to search containers in an automobile, and then just a year later reversed themselves.

Critics argue that evidence gathered in good faith should be admissible even if seized in violation of court-mandated procedures. Defenders of current law say this would spur undue intrusions on privacy.

Self-incrimination ban. The Fifth Amendment provides that a person cannot be compelled "to be a witness against himself." The Supreme Court ruled in the 1966 case of *Miranda v. Arizona* that before questioning suspects, police must tell them of their rights to remain silent and to have a lawyer present. Statements obtained under coercion were declared inadmissible, and some convictions have been overturned on this basis. Asserts Chief Justice Robert Donnelly of Missouri: "The *Miranda* rule is an example of tipping the balance in favor of the accused."

Proponents say the procedure keeps law officers from abusing persons in custody. "I wouldn't want to see the third degree come back," says one prosecutor.

Presumption of innocence. Under English common law, accused persons are presumed innocent until they plead guilty or are tried and convicted. Traditionally, they were seen as entitled to release until trial unless there were grounds to believe they would flee.

Because many criminals often commit crimes while on bail, however, the trend in the U.S. has been to give judges the power to deny bail to suspects considered dangerous to the community. Civil libertarians oppose such "preventive detention" as contrary to the presumption-of-innocence principle.

Other defendants' rights—all widely accepted:

- The Sixth Amendment gives defendants the right to a trial "by an impartial jury."
- The Fifth Amendment prohibits double jeopardy—being tried more than once on the same charge.
- Under a traditional doctrine of adversary justice, witnesses may testify only to what they know first hand. Hearsay—secondhand information—is inadmissible because the other side cannot cross-examine the source.
- The self-incrimination ban also bars disclosing a defendant's criminal record to jurors unless he chooses to testify in his own defense.

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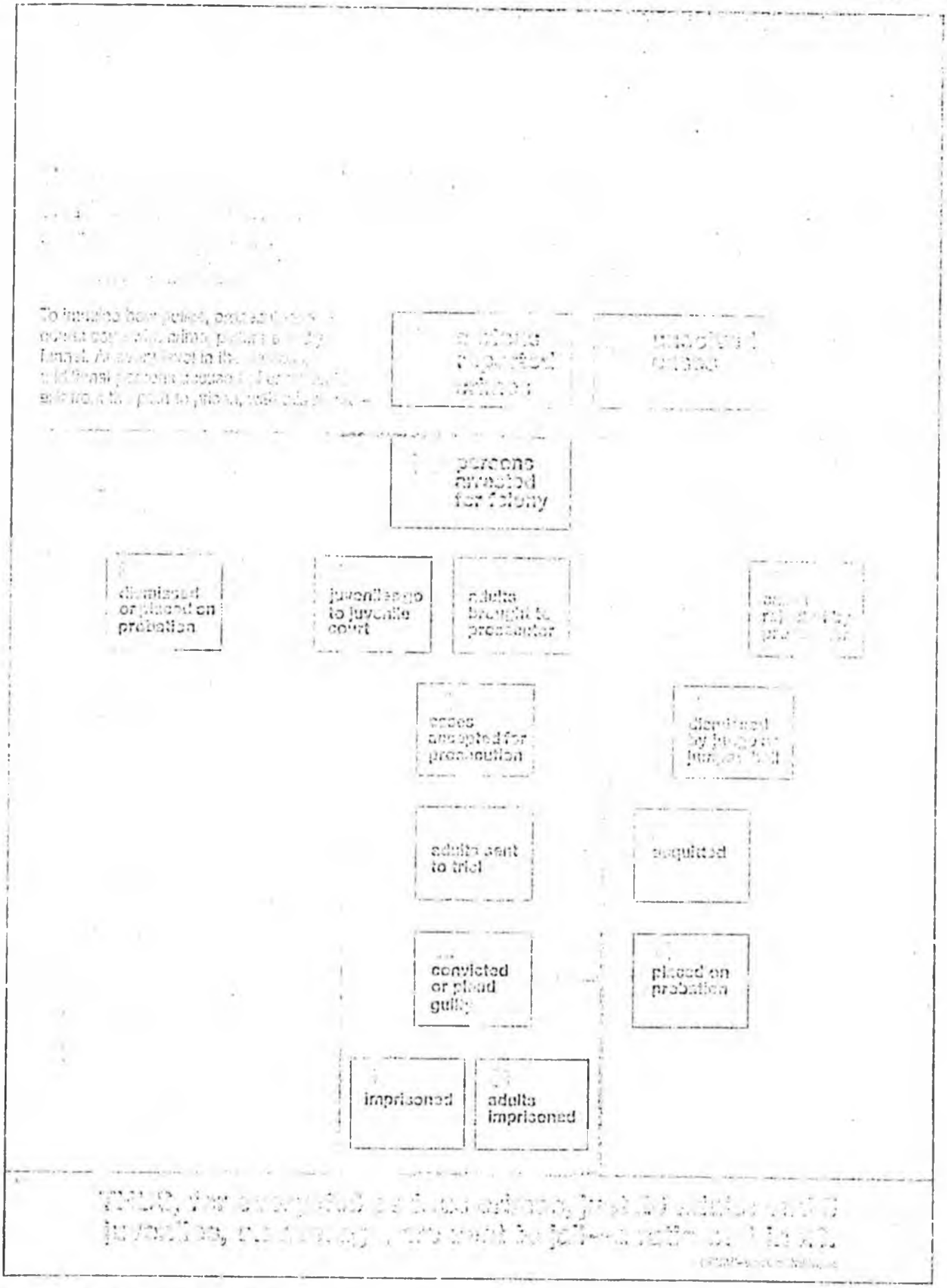
persons arrested for felony
dismissed or placed on probation
juvenile age to juvenile court
adults brought to prosecutor
cases accepted for prosecution
adults sent to trial
acquitted
convicted or plead guilty
plead on probation
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adults imprisoned

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Police Find Themselves in Double Squeeze

It's no wonder the forces in blue don't catch more crooks. Their budgets continue to get tighter and society keeps giving them extra chores.

For America's police, the rise of violent crime during most of the last two decades is only headache No. 1.

Police officers are expected not only to collar lawbreakers but perform a wide array of other community roles as well, from argument settler to dogcatcher. They are what one chief calls with pride, "do-everything guys."

Yet declining revenues and new federal priorities have caused many police forces to shrink even as population, crime volume and paper work swelled.

"Police work used to be a very comfortable world in which we did pretty much what we pleased," says Minneapolis Police Chief Anthony Bouza, a 29-year veteran of law enforcement. "But the pressure of street crime has changed all that and created heavy demands for improved performance."

To meet the challenge, a new breed of cop has emerged, far better trained than his predecessor of only 10 years ago. The language of police chiefs now includes such business-school terms as "cost analysis" and "managing by objective." The computer is becoming as standard a piece of police equipment as the .38 special.

The modern management techniques and new technology have been grafted onto what is probably the most decentralized law-enforcement network in the world, a jumble of overlapping jurisdictions.

Since the first full-time professional foot patrolman was assigned his beat in Manhattan in 1845, five levels of authority have grown up: Municipal forces, ranging from New York City's 23,351 sworn officers to any number of one-constable hamlets; county sheriff's units; state police forces, often dubbed "the highway patrol"; national-government agencies, of which the Federal Bureau of Investigation is only the best known, and many independent, specialized police units such as housing, transit and park police.

Illustrating the potential for chaos in such a system, an Encyclopaedia Britannica writer created a hypothetical European who is studying in California, picks up a young woman in Nevada, brings her back to campus and murders her. The investigation could involve university police, town police, a county sheriff's office, the FBI because the criminal crossed state lines, immigration authorities because the suspect is a foreigner and, if the woman used drugs, narcotics agents.

The sheer numbers of police units in the U.S. boggle the mind. The FBI receives annual crime reports from more than 15,000 units large enough to keep such data. In addition, there may be as many as 3,000 smaller forces. At the federal level, there are armed law-enforcement and investigative officers operating in more than 100 agencies.

Where most Americans live and work, though, the backbone of law enforcement is the local cop, who represents the overwhelming majority of the estimated 490,000 sworn full-time peace officers on duty nationwide. Affirmative-action efforts have brought women into law enforcement in recent years, but 95 percent of U.S. police officers are male.

Many people think of police work as highly dangerous, and there is no doubt that it can be fatal—about 100 police officers die each year in work-related incidents. Still, the law-enforcement death rate is about half that among construction workers, miners, farm laborers and firefighters.

Police careers would be riskier if officers spent all their time patrolling the streets and answering crime-in-progress reports. In all forces except the smallest, however, there are other specialties to be staffed, among them traffic control, detective work, bomb disposal, SWAT commando-type operations, juvenile delinquency, records and communications.

New York officer on his beat. Pressures on police are mounting.



The Washington-based Police Executive Research Forum has found that, as a nationwide average in towns of 50,000 population or more only 45 officers are actually on patrol in the streets out of every 100 on duty at a given time.

Crime time. Other studies have shown that police officers now spend only about 15 percent of their time dealing with crime. Rival demands vary from filling out reports to handling complaints about uncollected trash and answering medical-emergency calls.

Police always have had to juggle such diverse duties. But only recently have they had to contend with the shrinkage of budgets that has come with economic recession, reduced federal aid—including abolition of the federal Law Enforcement Assistance Administration—and, in some instances, voter-demanded cuts in property taxes.

New York City's force declined from 27,632 sworn officers to 23,351 over five



Maryland State Police unit evacuates an injured person; patrolman writes a traffic ticket. Police are only part-time crime fighters.

years. Philadelphia, Los Angeles and Boston have all lost personnel, while ever sprawling Dallas has 1,990 officers, only 22 more than in 1977.

The average-sized U.S. force decreased by nearly 8 percent between 1978 and 1981—from 130 to 120 employes. The rate of serious crime rose by 22 percent in approximately the same period.

The upshot: Hassled cops made arrests in only 19 percent of the 13 million-plus incidents of violent crime and serious property theft last year. In 4 out of 5 cases, the culprits never encountered a prosecutor, let alone a jury or a jail. The wheels of justice had no chance to grind.

Although serious crime dropped by 5 percent in the first half of 1982, the rate remains so high that in high-crime urban areas most reports of lesser offenses are filed and forgotten. There aren't enough officers to investigate them all.

What's more, prosecutors throw out a substantial number of arrests for lack of evidence. Traditionally, police officers have been rated on the number of "collars" they make—not on whether the charges can be made to stick.

Assembling a prosecutable case takes skill and perseverance that not every officer has. Studies have shown that 15 percent of the typical force makes more than half of the arrests that lead to convictions.

New breed. Despite the array of problems facing them, police leaders in many areas are upbeat about the future.

One reason for the optimism, says Chief Kenneth Medeiros of Bismarck, N.D., a 22-year police veteran, is that "the level of intelligence, education and professionalism has risen in the police community. And the screening process has improved. Gone is the day when you'd line up the applicants, look for the biggest, meanest one and give the badge and gun to him."

In 1969, only 10 states required even minimum training for police recruits. Today, all do so, with at least 120 hours of basic training mandatory everywhere and much more in some states. Course topics showcase the changing demands of police work: Crisis-intervention methods, criminal law and job-stress problems.

Even newer is a drive to make high-quality work uniform throughout the country by offering a seal of accreditation to forces that qualify. Sponsored by top police-leadership groups, the Washington-based Commission on Accreditation of Law Enforcement Agencies is field testing about 1,000 procedures. The guidelines deal with subjects such as collective bargaining with increasingly militant police unions, working with prosecutors and the courts, and minimizing use of deadly force.

The police-brutality issue is a source of strain in many departments. The Justice Department gets more than 10,000 complaints annually of officers killing or beating someone without sufficient cause, of which as many as 100 are serious enough to warrant federal prosecution. Others are charged in local courts or named in lawsuits that at times lead to big damage verdicts.

Law-enforcement leaders insist that the brutality problem is waning. Whether this is true or not, a warier breed of cop clearly has come on the scene. In Passaic Township, N.J., for example, police videotape booking procedures—and let the suspect know it. Several officers record all potentially tense street encounters with pocket tape recorders. "In many places," comments Passaic Chief Howard Runyon, "people sue the police for just no reason. In our area, the police are starting to sue such people back."

Police work is being strengthened by use of computers for paper work and by division-of-labor cooperation among neighboring outfits. A small-town unit might patrol on its own but use the sheriff's computer and ambulances.

Above all, however, law officers are striving to revive the police-community working partnership that preceded the crumbling of the inner cities and the shift from foot patrols to squad cars that occurred in the 1950s and 1960s.

"Not our job alone." In towns small and large, citizens are being asked to be the eyes and ears of the law—individually or through watch groups—and to look out for each other as well. One example is the growth of telephone networks among senior citizens. Says Bismarck's Medeiros: "We're going back to the public and saying, 'Look, folks, this is not our job alone. We're the professionals, but you've got to help.'"

Police are seeking to re-establish themselves in community life, aiming, as Houston's Chief Lee Brown puts it, "to utilize the concept of the foot patrol in a motorized way." Houston, like some other municipalities, is decentralizing its force, giving patrol officers long-term assignments to particular neighborhoods and requiring them to bone up on local problems and build a network of contacts.

Leaders of law enforcement say a start has been made toward blending new techniques and old-time enthusiasms.

Yet the outlook remains uncertain as the modern cop struggles to be crime-fighter, watchman, psychologist and "Mr. Fix-It" all wrapped into one—while the police share of public revenues grows smaller and smaller. □

The Prosecutor—In Fiction And In Fact

Most district attorneys are the courtroom crusaders they are depicted to be. But the job has another side that the public knows much less about.

The nation's prosecutors, stung by charges that they bargain justice away in the back rooms of the courthouse, are experimenting with new ways to crack down on criminals.

These 18,000 lawyers perform one of the most powerful, but least visible, roles in the justice system. As Prof. James Vorenberg of Harvard Law School puts it: "The fate of most of those accused of crime is determined by prosecutors, but typically this takes place out of public view."

Although the arrests police make and the sentences judges impose get most of the attention, it is the prosecutor who decides which cases go to court and what law violations are cited.

Grand juries—citizen panels that review criminal cases before they are filed—evolved centuries ago as a check on prosecutors' authority. But they rarely have served that purpose well and nowadays are used routinely in only half the states.

Violations of federal law range from such white-collar crimes as tax evasion, fraud and bank embezzlement to drug peddling, kidnapping and racketeering. These infractions are prosecuted by 94 U.S. attorneys around the country—appointed by the President—and by 1,900 assistant U.S. attorneys and nearly 400 Justice Department lawyers, who are based in Washington, D.C.

But most offenses, from murder and other violent crimes to shoplifting, are prosecuted in state courts by state's or district attorneys, who are elected by the voters.

DA's are the most political figures in law enforcement. The job sometimes is a springboard to higher office and just as often is fought over by rival political factions determined to prevent investigations of themselves or their allies. "The biggest myth about prosecutors is that they charge people for malicious reasons," according to Dean John Jay Douglass of the National College of District Attorneys. "I'm more concerned about what they don't do—by failing to investigate or dismissing cases—than what they do."

Of the some 2 million serious criminal cases filed each year, not 1 case in 5 actually goes to trial. The others end in dismissals or guilty pleas. Critics charge that prosecutors all too often settle for pleas to lesser charges than the offense warrants.

Typical case: A mugger gravely injures his victim and is charged with both robbery and assault. A prosecutor agrees to drop the assault count if the suspect pleads guilty to robbery. That avoids a trial but also reduces the maximum penalty—a result that may anger crime victims and others.

For their part, many prosecutors assert that the large volume of cases leaves them no choice but to plea bargain in many instances. Other DA's say plea bargaining is appropriate only if a prosecutor discovers that he can't prove an initial charge. "The public has the notion that prosecutors are giving away the store, but it's not true," says District Attorney Edwin Miller of San Diego. "And if anyone does go too far, he must answer to the voters."

The public image of prosecutors is largely shaped by television programs and the movies, in which they are portrayed battling defense lawyers in court. That is part of their job, but most of their work is behind the scenes, overseeing the gathering of evidence.

In the past, district attorneys often waited for police to come to them with proof of wrongdoing. Then they reached a decision on whether a case was worth taking to court.

Today, prosecutors increasingly instruct detectives on what evidence is needed to win in court. In complex cases, they supplement police with their own investigators. Says Los Angeles County prosecutor John Van de Kamp: "We can't rely totally on police. We end up picking up the ball in many cases."

Target: The hard core. Simultaneously, district attorneys are stepping up their efforts against "career criminals"—those with long records who commit numerous crimes.

It used to be that chronic criminals often were out on bail committing new offenses while their cases moved slowly through the courts. This still happens sometimes, but prosecutors these days tend to assign such cases to their best aides, with instructions to handle them promptly. "We're getting these cases to trial within two months," says District Attorney Harry Connick of New Orleans, who adds that the pursuit of repeaters is prompting judges to impose stiffer penalties.

Prosecutors also are addressing the long-neglected problems of victims and witnesses. As cases are delayed time and again—often on the day they are scheduled for trial—witnesses and victims who have dutifully reported to court sometimes become frustrated and refuse to participate further.

To avert this, many prosecutors have set up units to inform those interested in a case of its progress. Some DA's also listen to the victim's version of a crime before making a plea agreement with a suspect. "Prosecutors are becoming champions of victims' rights, and our image is improving," says Louisville prosecutor David Armstrong.

While these and other techniques are making life tougher for criminals, prosecutors are sure to remain under fire.

Comments State's Attorney Andrew Sonner of Montgomery County, Md.: "In this job, your enemies accumulate. You investigate someone; you refuse to fix parking tickets; police object when you charge them with brutality. Prosecutors will always be under pressure." □



ILLUSTRATION BY DEAN KILLIAMS

A big part of prosecutors' work is outside court, supervising gathering of evidence.



Jury System Not Perfect, But It Works

The ordinary citizens who decide guilt or innocence get high marks from most experts. Still, they're being put under closer scrutiny than ever.

Despite scientific "proof" that it cannot fly, the bumblebee does. So, too, the jury system: By logic, it shouldn't deliver justice, but it usually does.

"Why should anyone think," asks former U.S. Solicitor General Erwin Griswold, "that 12 persons brought in from the street, selected, in various ways, for their lack of general ability, should have any special capacity to decide controversies between persons?"

Yet much more often than not, most observers agree, when jurors are left to apply their experiences and common sense to the evidence presented to them, they render as impartial a brand of justice as is humanly possible.

Trial by jury is guaranteed by the Sixth and Seventh Amendments to the Constitution. But the system isn't frozen in an 18th-century mold.

A growing reform movement is easing many strains, helping to bring "12 good men and true" into the modern era.

Jury service can be an ordeal. Jurors must endure a tedious and intrusive selection process, sit bemused by lawyers' legerdemain and benumbed by judges' hocus-pocus, and then somehow sift the facts and return what may well be an unpopular verdict.

More than 3 million citizens a year are summoned for jury service. Some are on duty for several months, but the trend is toward the so-called one-day, one-trial system: Jurors who aren't selected go home after one day; those who are chosen serve for just one trial.

The old key-man system of calling only community leaders has been largely abandoned in favor of random lists compiled from voter and tax rolls, telephone books and car registrations. Many potential-juror lists are computerized, but some counties still draw numbers out of a barrel.

Not always a dozen. The number 12 is no longer sacrosanct in civil cases. As few as six jurors now are used in many trials, and 31 states allow less-than-unanimous verdicts.

The citizens summoned are, in a sense, on trial, not for any crime but for their attitudes and prejudices. In what is known as voir dire—old French for "to say the truth"—jurors not accepted by the prosecution or the defense are excused either for cause, or without explanation, up to a limit.

In these choices, lawyers long have relied on ethnic stereotypes and seat-of-the-pants hunches to a degree. Today, however, the emphasis is on more-sophisticated selection techniques.

Firms that specialize in jury research for lawyers use such tools as "micromomentaries," fleeting changes of expression that indicate whether a potential juror is telling the truth; "alpha factors," which indicate juror assertiveness, and trick questions to spot hidden biases.

Elaborate shadow juries, chosen for their similarity to the real jury, observe the trial and each night feed back their impressions to the lawyers trying the case.

Lawyer Robert F. Hanley says simulated opening arguments before surrogate jurors helped win a 1.8-billion-dollar antitrust judgment in 1980 for his client, MCI Communications Corporation, against AT&T. The award was the largest antitrust jury verdict in U.S. history. Hanley and associates honed their case by watching the practice jury deliberate behind a see-through mirror.

Research for the rich? Many lawyers see jury research as just another aid to winning cases.

But critics say all the psychological poking into jurors' backgrounds invades privacy, smacks of unconstitutional manipulation of the justice system and, because of the costliness of such a process, tends to favor the richer side in a dispute.

What's more, jury selection now can take almost as long as the trial itself. In one California murder trial of three defendants, it took five months to question more than 250 potential jurors in a screening that filled more than 18,000 pages of transcript. The trial took seven months.

Jurors' ability in complicated cases to understand the issues and render intelligent and impartial verdicts is increasingly being called into question. In England—the birthplace of the jury in the Middle Ages—and in many other countries juries have been abolished in most civil cases for this reason.

The Supreme Court so far has refused to decide whether some cases are too complex to be decided by a jury. But Chief Justice Warren Burger has commented that "it borders on cruelty to draft people to sit for long periods trying to cope with issues largely beyond their grasp."

Other experts are not so sure. "We currently know little about the capacity of juries to evaluate rationally the evidence in complex cases or about the capacity of judges to do the same," says Richard Lempert of the University of Michigan.

In their classic study, *The American Jury*, Harry Kalven, Jr., and Hans Zeisel of the University of Chicago found that in about 80 percent of the criminal and civil cases examined, judges agreed with jury verdicts. In civil cases, juries were only slightly more generous with damage awards than judges.

Unpopular jury verdicts, such as the insanity acquittal of John W. Hinckley, Jr., President Reagan's assailant, fuel critical scrutiny of the system by the public and press. Nonetheless, an abiding, almost mystical faith in a jury of one's peers is deeply rooted in America. In the words of the late Judge Frank W. Wilson of the U.S. district court in Chattanooga:

"For centuries now, the institution of the jury has helped assure English-speaking people all over the world that they got the kind of justice they wanted, and not just the sort of justice that the experts thought was good for them." □

Getting Onto the Bench

Judges, who serve as the conscience of the justice system—setting its tone and shaping its ground rules—typically reach the bench with a helping hand from politicians. But once installed, they are hard to dislodge.

At the federal level, the 132 appeals and 515 district-court trial judges are nominated by the President and must be confirmed by the Senate. Most are recommended by home state senators, who if they are of the President's party have what amounts to a veto over nominees.

After clearing these hurdles, a federal judge acquires unique job security. Only impeachment and conviction by Congress can remove him—a rare event that has not occurred since 1936. A 1980 law increased the judiciary's power to discipline its members through such steps as suspending a judge's right to hear cases. The power of federal judges is broad: The Supreme Court reviews fewer than 1 percent of their rulings.

In the states. Selection and duties of the 26,000 state and local judges vary widely. All states have supreme courts, 30 have intermediate appeals courts and all states have trial courts. Most cities have courts limited to city-law infractions, mostly traffic cases.

When the nation was founded, most state judges were chosen by governors or legislatures. But by the 1830s, says Larry Berkson of the American Judicature Society, "people resented that property owners controlled the judiciary."

In the decades that followed, most states made judgeships elective and many judges soon came under fire as "political machine" candidates. States then began shifting to merit systems in which judges are chosen by governors but go before voters periodically for a yes-or-no vote.

Today, judges are elected in about two thirds of the states, and appointed in the remainder.

Although all states have agencies to discipline misbehaving judges and recommend removal in extreme cases, it usually takes blatant or repeated wrongdoing before a judge is ousted.



Corruption Is Still a Fact of Life

A cop on the beat palms an apple from a grocer's bin. A prosecutor snares a campaign donation by ignoring evidence of a politician's crime. A judge pockets a bribe to let a defendant off easily.

Despite the rectitude maintained by the majority of public servants, corruption small and large does reach into the justice system at times.

Police. From every sign, the problem is greatest with the police. Patrol officers and detectives come into daily contact with the seamy underside of society, where the itch to make a fast buck can be contagious.

A drug dealer caught with his merchandise, for example, might offer officers valuable narcotics under the table not to book him. More often, the effort is to buy permanent insurance against arrest. The Mafia and other organized-crime elements try to shield their gambling, drug-selling and prostitution rackets by putting cops "on the pad" for regular payments.

This type of police corruption—an old story in the big cities of the East and Midwest—now is a growing concern in the Southeast, where a flood of illicit drugs is coming into the country.

In perhaps the most thorough probe of police wrongdoing ever, conducted a decade ago in New York, the so-called Knapp Commission found "corruption to be widespread." The panel described two kinds of violators: "Meat eaters," who "aggressively misuse their police powers for personal gain," and "grass eaters," who "simply accept the payoffs that the happenstances of police work throw their way."

In a Yale University study of police officers in Boston, Chicago and Washington, D.C., about 20 percent were seen breaking the law or admitted that they do so. Typical offenses: Accepting money or goods from a business in exchange for better protection and overlooking minor infractions; taking bribes to void traffic tickets.

Judges. Like the police, judges can use their power for personal gain. In one recent case, a Washington, D.C., judge was found guilty of accepting free moving services from a firm after dropping hundreds of traffic tickets the company had accumulated.

Peter Coruzzi, a New Jersey trial judge, recently was convicted of receiving $22,000 in bribes for releasing one convict from prison and giving another probation instead of a jail term. Coruzzi was sentenced to five years in prison after the verdict, which he is appealing.

Improper influences can creep into judges' lesser duties, too. State judges often must run for re-election, and much of their campaign aid comes from lawyers who expect in return such favors as allowing them delays in filing court papers.

Prosecutors. State's or district attorneys, themselves elected officials, also can be tempted to breach the law for money or political favors. They have wide discretion in pressing—or dropping—investigations, and most of the decisions they make are not put on the public record.

How common abuses of this power are, no one knows, because prosecutors' decisions are seldom probed. Occasionally, wrongdoing comes to light. In one case, a Michigan prosecutor was convicted of embezzling money allocated for paying informers and using it to buy a house.

Corrections officials. Prison guards and probation and parole officers are subject to bribery attempts by inmates and others wanting special privileges. In Westchester County, N.Y., two state-prison employes pleaded guilty in mid-1982 to taking bribes for permitting drugs behind bars.

Law-enforcement authorities have stepped up efforts in recent years to clean up corruption within their own ranks. A special staff of the New York state attorney general's office has successfully prosecuted several hundred police officers and other justice officials. The U.S. Justice Department's public-integrity section has pursued charges of corruption in law enforcement around the country since 1976.

The result: Most experts believe there is less crookedness in law enforcement today than in the past. Yet with power spread so widely, corruption will never be stamped out entirely. □

Get-Tough Approach Makes a Comeback

Judges are handing out stiffer jail terms these days, but that is no panacea: Prisons already are overflowing and there is no relief in sight.

Lock 'em up and throw away the key!

Crudely put, that increasingly is the rallying cry in an America fed up with violent crime.

The idea that criminals can be reformed into law-abiding citizens is waning after holding sway for almost a century. Edging it out is the urge to punish for the sake of punishment.

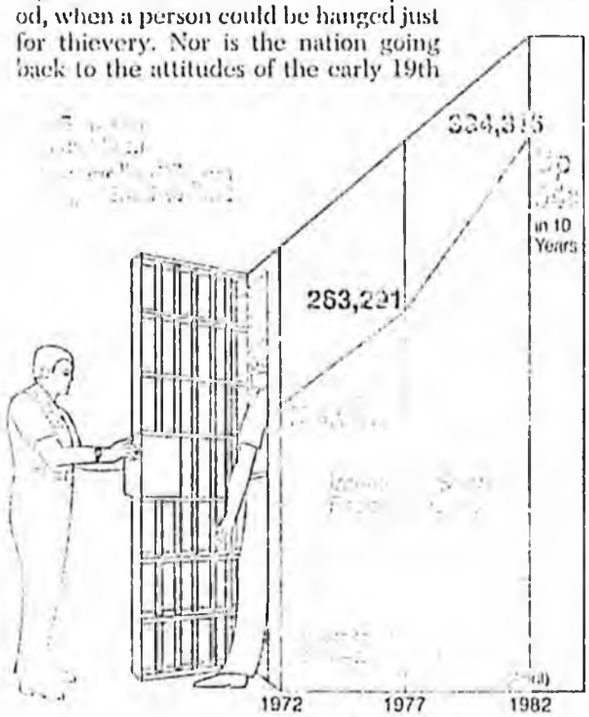
Legislators in state after state, angered by the many ex-convicts who return to crime, have been enacting mandatory prison terms. Judges are handing out longer sentences on their own. "There's a lot of pressure to make the system swift and harsh," says criminologist Sheldon Messinger of the University of California.

The result: America's prisons are bulging with nearly 400,000 convicts, double the total of a decade ago. The U.S.—with one of the world's highest rates of violent crime—also has one of the highest incarceration rates.

No one suggests the country is returning to the harshness of the colonial period, when a person could be hanged just for thievery. Nor is the nation going back to the attitudes of the early 19th century, when Americans invented the penitentiary and, in the words of Thomas Murton, a former Arkansas prison warden, "It was assumed that there was an equation between sin and crime. . . . Inmates were isolated to reflect on their evil deeds until they became converted."

Still, the mood today has more in common with the 1700s and 1800s than with the first two thirds of the 20th century, when "rehabilitation" was the gospel of penologists. That school became entrenched between 1900 and 1920 as most states created systems of probation and parole. Even now, despite the crackdown, these systems supervise three fourths of the 2 million persons under a judge's sentence.

Instead of serving time behind bars, offenders on probation or parole hold jobs or go to school while reporting periodically to a court official. The reasoning is that this helps them adjust to society's pressures and makes them less likely to return to crime than would spending idle time in prison with hardened criminals.



Probationers avoid prison altogether. Parolees are released early; to ease their transition to normal life, many live for a while in halfway houses in residential neighborhoods. Those caught breaking the law or associating with ex-convicts usually are sent back to jail, and may forfeit a chance for such special treatment again.

Studies show that up to 25 percent of probationers and parolees are arrested for new crimes. Defenders of the rehabilitation concept see that as a tolerable success ratio. Critics see it as proof the system is still too lenient.

As for lawbreakers who do considerable jail time, only a small fraction get much job training or education while behind bars. Most prisons do not provide much of either, and many prisoners are not interested in conventional forms of self-improvement, anyway.

Many inmates are in no sense rehabilitated when they leave prison. Recidivism—crime by former convicts—cannot be measured precisely, but it is substantial. The New York-based Criminal Justice Institute reports that about one third of prisoners have served time previously. But some experts believe the true rate of repeat criminality may be 70 percent or more. What the official figures do not show is how many persons return to crime after one conviction but are never caught again.



Arkansas inmates on the "hoe line." Rehabilitation is giving way to punishment more and more.

Increasingly, the view of many judges and other experts is that the best way to cope with recidivism is simply to keep criminals in prison—and off the streets—longer.

Yet there continue to be widespread disparities in sentences. Because each of the country's 28,000 judges has his own idea of justice, of 3 persons committing similar offenses, 1 may be put on probation, another may get a short prison stint and the third a long stay in custody.

In many states, stretches in prison vary by location. In a city where robberies are common, a judge might send an armed robber away for 10 years; the same crime occurring rarely in a rural area might bring 35 years.

Such apparent inequities feed public cynicism and exacerbate prisoners' feelings that the world is stacked against them—feelings that can explode in more antisocial acts later on.

Polls consistently find that Ameri-

cans believe the courts are too lenient in imposing sentences. Judges respond that the public typically knows only the facts of a crime and that jurists, in setting a penalty, must also take into account reports prepared by court officials on defendants' backgrounds.

Propelled by public indignation, many state legislatures in recent years have narrowed the discretion permitted judges and parole boards. Nine states have adopted so-called determinate sentences, which specify in advance the amount of time to be served and bar early release. Another approach, sentence "enhancement," used in 46 states, requires judges to give longer terms to repeat offenders. In some jurisdictions, an extra penalty also attaches to the use of a gun in a crime.

Two states, Minnesota and Pennsylvania, have adopted sentencing guidelines that tell judges what penalty to impose based on facts about the crime and the defendant.

Nationwide, partly as a result of such laws, the average time that convicted felons spend behind bars has risen to 26 months. That average would be longer if more cells were available. But lengthened sentences and stepped-up prosecutions have crammed prisons to overflowing. Parole boards must serve as a "safety valve" at times—releasing inmates early just to make room for new prisoners.

Accordingly, most inmates do far less prison time than what is announced by judges. In many states, one third of a term is routinely chopped off if a prisoner commits no serious infractions while in custody. When other credits are taken into account—such as subtracting time spent in jail awaiting trial—a person with a "life sentence" can be free in less than 10 years.

Bed check. About 90 percent of today's 400,000 prison inmates are in state institutions; the remainder are in federal lockups. Based on the view of corrections experts that inmates should have 60 square feet of space each, the nation's prisons are overcrowded by more than 100,000 persons.

That doesn't even count the 90,000 inmates serving one year or less in local jails and some 70,000 suspects housed there while awaiting trial.

Congestion and other poor conditions have prompted courts in 31 states to order prison improvements. But efforts to keep up with the inmate surge are falling short.

The 90,000 cells either under construction or on the drawing boards will not be enough to accommodate newly arrived prisoners, let alone to reduce overcrowding. Occupancy in what one defense lawyer calls "the crossbar hotel" jumped in 1981 by 40,000—more than 12 percent.

Providing adequate prison space would cost several billion dollars, and there's no sign that either legislators or the voters are willing to foot the bill. A Gallup Poll shows that 57 percent of Americans think their states need more prisons, yet only 49 percent would raise taxes to pay for them.

Fingering "heavy hitters." Many experts doubt that the answer to the crime wave is more prisons, anyway. They say what is needed is a more coherent sorting out of who should be sent to prison and who should not be. "We must make sure that the heavy hitters go to prison but that the lightweights get probation," declares Brad Smith of the National Council on Crime and Delinquency.



Louisiana's electric chair.

Some criminologists believe the stiffest sentences ought to go to persons who have the earmarks of "career criminals." Such things as a history of drug abuse, juvenile delinquency and a poor employment record suggest a likelihood of future lawbreaking, they say.

Criminals who were considered to be better bets for rehabilitation would be placed on probation, which costs only one tenth of the more than $10,000 needed to house a prison inmate for a year.

Critics of this approach argue that no one can accurately predict a person's behavior and that to base sentences on sociological theory is unjust. They contend that respect for the law is undermined unless people are punished evenhandedly for their infractions.

Rehabilitation efforts have not been abandoned. Prison-industry programs are being expanded so that at least some inmates can repay more of the costs of their care and possibly provide restitution to their victims. Even so, many convicts emerge from the penitentiary more disposed than ever to commit crime.

Experts predict that the moves toward more punitive sentences and better rehabilitation opportunities will continue simultaneously, limited by the tax money available.

"Legislators are coming up with patchwork solutions to sentencing," says Robert Cushman of the Sacramento-based American Justice Institute. "They want to banish criminals, but they don't want to pay for it." □

The Legal Logjam On Death Row

Opinion polls show a majority of Americans believe that murderers—in extreme cases—ought to be given a dose of their own medicine.

Yet few of the more than 1,000 persons under sentence of death are likely to be executed soon. Because of fierce legal wrangling, no more than five death-row inmates have been put to death since 1967.

Capital punishment has had a checkered history in America, starting in colonial days when a number of crimes ranging from murder to witchcraft were hanging offenses. In the late 1960s and early 1970s, various legislatures abolished the death penalty as being too harsh. But by the 1980s, many states had restored it, and for a time almost 200 were being executed each year.

In the 1960s, the civil-rights movement was galvanized into action by evidence that blacks were being executed more often than whites committing similar crimes. A legal attack was launched, and in 1972 the Supreme Court held that Georgia, which alone has accounted for nearly 10 percent of the 3,530 U.S. executions in the last 50 years, had violated the Constitution's ban on "cruel and unusual punishment." The ruling struck down all state death-penalty laws.

Though the justices split in this and later cases, the majority holds that the death penalty is constitutional if imposed in a consistent and nondiscriminatory manner for truly heinous crimes.

At present, there is no federal death statute, but since the Court's ruling, 37 states have adopted new laws allowing capital punishment for murder. Some also permit it for aggravated rape or kidnapping.

Death-row inmates seek to prove that even the revised statutes are unfair. Many prisoners' appeals, however, are expected to be exhausted in a few years—perhaps unleashing the biggest round of executions in a half century.

In Prisons, the Pendulum Is Even Headed Worse

Loss of freedom, overcrowding, bad food and dangers behind bars make convicts angry at society. But a close-up look at two prisons shows how improvement of conditions can dampen resentments.

WARTBURG, Tenn.

The man who murdered four people in what he calls "a small reign of terror" has a key to his own cell.

The man who blew off his neighbor's foot and then bashed him in the face with a shotgun butt is treated with respect by his guards.

The man who burgled pharmacies to get drugs can gripe about prison life, and the warden listens.

Here, in a green valley hugged by the high hills of East Tennessee, is the Morgan County Regional Correctional Facility. If there could be such a thing, this would be a prisoner's paradise.

Hell is on the other side of the mountain, a fortress of stone and steel called Brushy Mountain State Prison. The two penitentiaries are just 2 miles apart as the crow flies, 9 miles by winding country road and half a century in terms of how criminals are treated.

There are murderers, rapists, thieves and child molesters in both facilities. Yet one offers a modicum of hope that some criminals can be rehabilitated. The other is simply a place for punishment.

"Brushy," as the convicts call it in tones of awe, looks, smells and feels like a zoo for humans. Behind its 20-foot-high stone walls, topped with guard turrets, concertina wire and 2,300 volts of electricity, are cells in use that, though soon to be improved, have been ruled unfit for human habitation by a state judge. A visitor is led under close escort through cellblocks, shoes crunching scraps of food that the prisoners have tossed onto the corridor through their steel-barred doors. Kept paired in narrow cells stacked four high on each floor and reached by catwalks, men bear the marks of close confinement—nearly every one has a black eye or a puffed lip, cuts, bandaged hands or crude jailhouse tattoos. They look at the passing entourage in the manner of caged creatures, with flat, blank stares or sidelong glances. Their silence is palpable.

Plotting in solitary. Only in the solitary block do the inmates show spirit. Here, seven men call out jeers about their starchy dinner: Grilled cheese on white bread, corn bread, beans and slaw. An escort says that these men, all white, got a pistol into the prison and shot two black inmates to death last February. How they managed to get a weapon into a maximum-security prison is unknown. An official shrugs: "They've got hours and hours to sit there and outthink you."

Still, there has never been a successful escape in the seven years that Brushy Mountain has been a maximum-security prison. James Earl Ray, the assassin of the Rev. Martin Luther King, Jr., somehow got over the walls in 1977 and again in 1979 but was recaptured and finally transferred to the main state prison in Nashville. There are only a few ways out of Brushy: Die, do the time or do good.

With a record of good behavior, even a murderer in Tennessee may win transfer to a medium-security prison such as Morgan County, where most inmates are young first offenders serving time for nonviolent crimes.

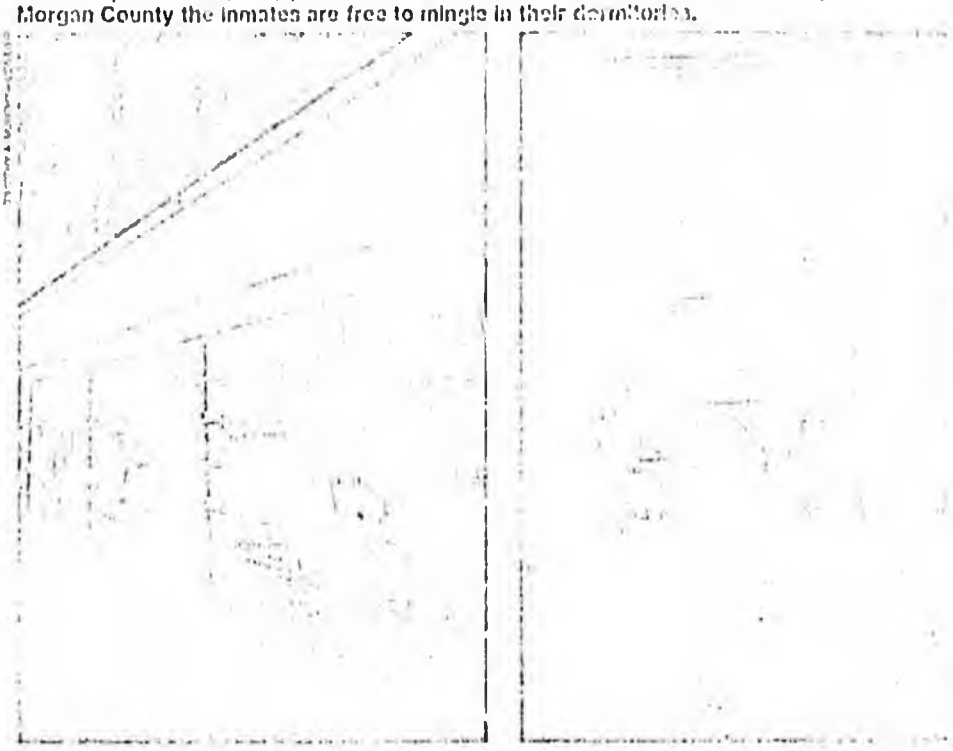
Campus life. From the road, the Morgan County prison looks like a high school with few windows. The warden, Otie Jones, likes to call it a "campus." Inside a 17-acre compound surrounded by a 10-foot-high chain-link fence and arranged in a circle are 16 dormitories that house about 25 men each. All but a few inmates have private rooms with toilet, washbasin, desk, wardrobe and bunk. They can lock their own rooms during daylight hours.

A man can better himself here—if he's ambitious and lacking in basic skills. There are classes that lead to a high-school-equivalency diploma. Also offered are state vocational-school certificates in welding, masonry, small-engine repair, building trades, plumbing and electricity, woodworking and food services. Correction Department officials say they have a good record of finding jobs for those who earn the certificates.

Still, the atmosphere of this institution reeks of servitude, not scholarship. To be inside the compound is to feel less than a man. The prisoners' rooms are hardly bigger than closets—7 by 12 feet—with bare concrete floors and cinderblock walls. At the dining hall, prisoners are given plastic forks with which to eat slabs of tough, unidentifiable meat. There are no plastic knives, the warden says, "because they just take them to their rooms to eat peanut butter."

Four times a day the men must stand like children for a head count, and be prepared to submit to a frisking at any time. There is a correctional officer for every four prisoners. Around the perimeter are three guard towers, each manned by an officer with shotgun, rifle and pistol. Outside

At Brushy Mountain, left, prisoners are locked two to a cell, while at nearby Morgan County the inmates are free to mingle in their dormitories.



the fence is a kennel with four bloodhounds. Most of the inmates pass their days at hard labor under armed guard, tending crops or chopping wood on the prison's surrounding 1,600 acres of farm and forest.

The effect of such a life is evident in the men's manner. And it is odd. Here are 421 hardened men, whose standing among fellow prisoners is based in part on dangerous misdeeds they committed on the outside and on their willingness and ability to fight for themselves on the inside. But faced with a visitor from what they call "the free world," they are diffident, uncertain, even shy. Handshakes are quick and soft; eye contact is brief.



Medium-security convicts at Morgan County work under armed guard to build a shed at kennels of bloodhounds used to track escapees.

Look at reality. To go among them is to lose some notions absorbed from TV cop shows and old James Cagney prison films. At this facility there is a degree of courtesy between guards and convicts, who sometimes exchange greetings and smiles. Convicts questioned say they accept responsibility for being jailed. Only once does an inmate approach a visitor with a tale of innocence: "Got me in here for six years for car theft and forgery, and that forgery charge is wrong because I can't read or write," says a wispy-thin youth with tears in his eyes. Then he adds, "I get out of here tomorrow. They're sending me to the nut house."

More common is the response of French Price, who says, "I should have gotten something for what I did." Price is serving a three-to-five-year term for what he did after, he says, a man tried to lure his daughters—then age 8 and 9—into a car. "I took matters into my own hands," says Price. "I went to his house and he opened the door and I shot him with a double-barrel shotgun. Blew his right foot off. His left calf, too. I wasn't drinking, wasn't trying to kill. I wanted him to suffer. He lay there on the porch and I smashed his face with the gun butt. His folks came out crying, and I said, 'Shut up or I'll shoot him again.' After he cried for a while, I told them, 'O.K., now you can call the ambulance.' Then I sat and waited for police."

In a stunned silence that meets this account, Price searches his cell for a petition for parole that he says has been signed by all the guards. It describes him as "mature, respectful and of a good nature. He does not cause any type of trouble and is not easily provoked."

Plenty of room. Violence, in fact, is rare at Morgan County because, inmates and the warden agree, it is not overcrowded. Designed to house 400 men, it seldom has more than 30 above that limit. In the two years it has been open, officials say, there has never been a knife fight. In early September a woman counselor here was held hostage for 6 hours by a prisoner armed with a sharpened nail fixed to a toothbrush handle. She was freed when tactical-squad officers burst into her office and overpowered the man, who is serving 20 years for murdering a little girl. A week later, the other prisoners were still gritting teeth over the incident: The counselor is popular, and baby killers and child molesters are outcasts in prison society. "We'd have stomped him," said one convict. The inmates say racial tensions are low and homosexual rapes just don't happen. "It's because there are no blind spots in this layout where they can grab you," says an inmate. "It's because I can put my thumb on the bullies," says Warden Jones.

The warden monitors prisoners' complaints through monthly meetings of the inmates' council, made up of one prisoner from each dormitory chosen by his peers. "But the most important things are ignored," claims a former council secretary, W. David Smithe. Among his gripes: TV reception is poor because the prison's antenna is too short to pull in signals over the surrounding mountains; prisoners suffer from gastrointestinal disorders because food trays are often dirty. The warden says he is trying to get cable TV, and a dishwasher will be used soon when a venting system can be installed.

"You want to know what it's like here?" asks Smithe, a burglar doing 10 to 18 years. "It's to become totally dependent again now you are an adult. From when and why you get up in the morning to when and what you eat, decision making is denied. You can't control your own health, your diet. In broad terms you are reduced to nothing.

"Not a moment here you don't feel some tension—a word, a glare, a move. You've got some primitive individuals here. Even if they're young, they're dangerous. It's a lie that prisons are schools for criminals, that a youth going in is learning to crack a safe. But what does occur is a learned willingness to commit crimes that were beyond you before prison. It's a state of mind that's learned. That's what makes people here dangerous."

The man with the most dangerous record here is Jim, who says, "I was an animal. I should have been executed."

Anonymity plea. Jim doesn't want to be further identified "because a certain community would scream if they knew I wasn't doing hard time." Kidnapping, armed robbery and two double murders in 1970 got him a 318-year sentence. With time off for good behavior, he jokes, "I'll get out in year 2121."

But Jim now is a model prisoner, cited by the warden as an example of how one with the right attitude can rehabilitate himself. While doing his time, he has accrued three years of college credits with a 4.0 average. He is writing a novel, working here as a teacher's aide and using his considerable wit to hold his classes' attention. Instead of teaching illiterates to read, "See Dick and Jane run," he offers lines like, "See Trigger Bates kick the warden."

His years behind bars have made him a jailspun penologist with an insider's view of how to rehabilitate criminals.

"Do contract sentencing," he argues. "Set goals for a prisoner when he comes in, that he will earn time off for getting so many years of education, for working in Alcoholics Anonymous, for self-improvement programs. Now you get good time for nothing, just for not making trouble. There's no incentive.

"We don't have prisons run by sadists," he says. "What we have are prisons run by people who are totally apathetic. The public must remember that 97 percent of all men who enter pens return to the free world. If we have guards calling us names, bad food, poor medical treatment, there's nothing we can do about it here. So when we get out, some innocent member of society suffers for the anger we bottle up in the pen. I came out of prisons in Indiana and Kansas truly vicious. I hated everybody and myself. I took off on a small reign of terror. That's why the free world should care about what happens here. Their lives will depend on it." □

The Nature and Pattern of a Lawsuit

For a look at a fast-growing American pastime: How litigation starts, what it costs, the tortuous trail it follows, the odds of winning—

"As a litigant, I should dread a lawsuit beyond almost anything short of sickness and death."

The [illegible] fear that the revered Judge Learned Hand expressed 60 years ago is felt more keenly by Americans today than ever before—and no wonder.

The flood of lawsuits has swelled to a tidal wave in recent decades—more than 12 million suits now are brought each year. Awards in big personal-injury cases are scraping the sky—they jumped almost 25 percent in dollar volume in a recent 12-month period.

Some lawsuits involve billions of dollars; others, goals on which no one could put a price, such as custody of a child. Some suits seek damages for breach of a cut-and-dried contract; others attempt to salve wounded pride.

Lawsuits, fortunately, do not erupt every time someone gets mad. The vast majority of disputes are prevented, settled or resolved out of court.

Moreover, pressure is growing to minimize use of the courts for solving disputes, particularly those that once were settled through church, school and family.

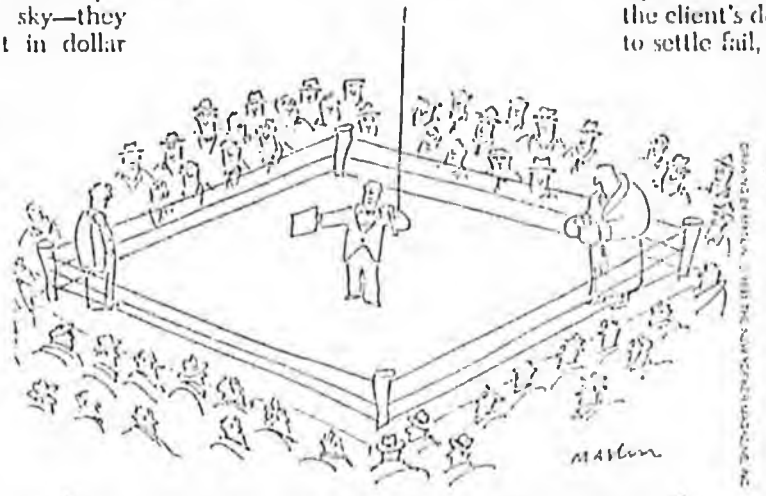
In fact, more than half of the lawyers in the United States rarely if ever set foot in a courtroom. Instead, they may advise corporate clients on tax and other business matters or negotiate sticky situations on their behalf. Many lawyers with individual clients also practice preventive law—preparing wills, trust and estate plans, and advising on financial strategies.

Yet many disputes cannot be prevented by wise planning or tightly written agreements. Planes crash, buildings collapse, and food spoils and poisons people.

New legal hot spots develop in response to changing times: The "palimony" suit against actor Lee Marvin a few years ago triggered similar suits by women who felt jilted by their live-in partners. Corporate marriages have spawned a "takeover bar" that thrives on the Byzantine intricacies of mergers and acquisitions.

Suits in the name of "the public interest" have made the courts a forum for solving a welter of social problems from discrimination to pollution.

"The litigation process was not originally designed to decide broad political questions [or] delicate balances in the allocation of scarce public money," notes Richard Neely, a justice of West Virginia's Supreme Court. He contends that courts often end up making public policy because legislators and bureaucrats all too often duck tough issues.



"In this corner, a man prone to costly and lengthy litigation."

Add to this burden the seemingly limitless spate of "silly suits"—by a schoolboy against the maker of a cookie that was hurled like a discus into his eye, by a wife against her husband for not shoveling snow off the sidewalk, by football fans against a referee's call.

A cause is born. Most lawsuits have their formal beginnings when a person goes to see a lawyer. Ethical standards bar lawyers from actively seeking out clients—so-called ambulance chasing. Lawyers who do so are subject to discipline by the courts, but advertising bans largely have been lifted, making it easier for a person with a legal problem to find a lawyer.

The lawyer either takes the case, explains why there may be no remedy or recommends another lawyer. A lawyer who passes a case on to another often receives a referral fee.

For many persons, the most painful topic during that first interview is not the private details that might have to be discussed—legally protected from disclosure by the doctrine of lawyer-client privilege—but the lawyer's fee.

Veteran practitioners typically demand $100 an hour on average. A day in court costs clients—for the lawyer alone—from $672 in the Northeast to $795 in California.

If the case involves a personal-injury claim, the lawyer will want a contingent-fee arrangement: One fifth to one half of the total money award off the top to him. If no money is received, no fee is paid. But costs of the suit, such as for investigators and expert witnesses and transcribing of testimony, must be paid by the person suing—usually on a pay-as-you-go basis.

Before a case is taken to court, a lawyer typically sends a letter or makes a phone call, vowing legal action unless the client's demands are met. If efforts to settle fail, the case enters the more costly litigation phase.

Most civil suits are filed in state courts. Cases go to federal court only when an issue involving the U.S. Constitution is at stake; when the federal courts are legally bound to take the case, such as with patents or bankruptcies; or when the dispute is between citizens or companies from different states.

First blood. The *plaintiff*, the party bringing the suit, makes allegations in a complaint filed with the court. To give a *defendant* notice and a fair chance to defend himself, a copy must be delivered to each defendant along with a summons, an order to appear in court.

A few states require that the summons be delivered in person. Others allow service by registered mail or legal notice in newspapers. *Long-arm statutes* allow a plaintiff who suffered a legal wrong in his home state to bring his case there rather than in the state of the defendant.

In that first volley, the plaintiff alleges that certain facts are true—for example, that the defendant's auto sideswiped his, injured him and kept him from work for two weeks—and asks for damages to pay for repairs and medical costs not covered by insurance.

In a *class-action suit*, a complaint is filed by one or a small group of persons on behalf of scores or even thousands of

prisoners, stockholders, bank customers or other classes of people with the same grievance.

For instance, 33 makers of corrugated-cardboard containers, who were sued in a flurry of class-action suits a few years back, agreed out of court to pay 325 million dollars. Their opponents, purchasers of their products, claimed they had conspired to fix prices. One firm that held out, Mead Corporation, was found liable and agreed to pay 45 million dollars.

The target of a suit has between 10 and 60 days, depending on the jurisdiction, to file an answer. Failing to do so probably will result in a victory for the plaintiff by default. The defendant also can allege new facts as defenses—for instance, that the plaintiff's speeding actually caused the accident.

In what is called *discovery*, the second stage of a lawsuit, the defendant has a chance to get even. The idea is to turn the contest from blindman's buff into a closer determination of the truth by giving both sides equal access to all of the facts in the case.

The discovery process often promotes out-of-court settlements because it lets parties assess the strengths and weaknesses of their case. Still, some lawyers play legal hardball with pretrial maneuvering, using it to shake their opponents' resolve.

Even in routine cases, there may be much out-of-court testimony. One side—or its witnesses—accompanied by lawyers, goes to the opposing lawyer's office, there to face a barrage of questions that can go on for days. A court stenographer and attorneys' objections to opponents' questions add to the tense courtlike atmosphere as these *depositions* are taken.

In addition, each side peppers the other with *interrogatories*—written questions—or requests for other evidence, such as documents or photos. Here, too, the timing and the scope of the inquiries can be used to tactical advantage.

As a rule, lawyers take the discovery process seriously and turn over even documents that might prove fatal to their case. They know that if they fail to do so, a court may fine or even jail their clients for contempt of court, dismiss a suit or declare a victory for the other side.

Pretrial discovery may take weeks, months or even years, and can add significantly to the length and expense of a lawsuit.

Courtroom crush. There were 205,000 civil cases pending in federal district courts in late 1982, or 399 per federal trial judge, while the median disposition time was 19 months for cases going to trial.

Litigation is even slower in the states. In only two of 32 courts studied by the National Center for State Courts did the median time from filing to jury trial take less than a year. Cases typically took much longer, up to a median time of four years and 135 days in Providence, R.I.

"When it takes four years to get to trial in a civil case, something is radically wrong," says California legal scholar B. E. Witkin. "No one who understands the system can say that it is operating in an efficient manner."

In both state and federal courts, some civil cases jump to the head of the line. Persons seeking emergency action to save a historic building or a rare tree from destruction, or prevent a board of directors from holding a meeting, or allow an election to proceed, ask the court to issue a *temporary restraining order* or an *injunction*. A court will grant the emergency relief if it is convinced that irreparable injury will occur otherwise and that any mon-

Only Trials? Not Every Time

Athenian elders in the time of Pericles, 2,500 years ago, arbitrated civil disputes. Today, clogged courts and widespread vexation over the expense and quality of the judicial system are prompting a second look at arbitration, mediation and other means of settlement.

In more than 180 programs in 50 states, trained mediators or ordinary people help fellow citizens solve their problems. Many issues are picayune, but others involve large sums.

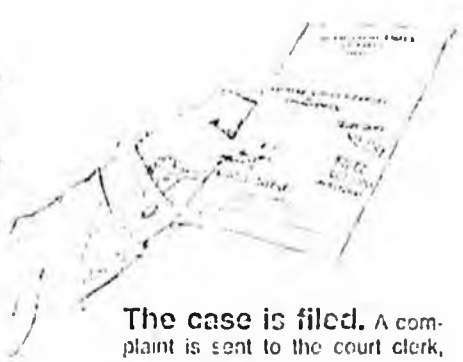
The Community Board in San Francisco trains and supports citizens' panels in several of the city's polyglot neighborhoods. Operating by consensus, the groups mediate neighbors' disputes, simple-assault cases, landlord-tenant issues and the like. The goal, says Director Ray Shonholtz, is to let



Seeing a lawyer. The client explains the problem. The lawyer takes the case, and they agree on a fee.



Getting tough. The lawyer explains his client's position to the other side in an effort to resolve the matter.



The case is filed. A complaint is sent to the court clerk, setting out the allegations, and the document is recorded.



Discovery. Before the trial, each side gathers facts and testimony from the other in transcribed sessions.

"Those who have the greatest stake in a case become directly involved in resolving it."

When a coalition of Colorado environmentalists challenged Homestake Mining Company's plan to mine uranium in Gunnison National Forest, long and costly litigation was avoided. Using the services of the Seattle-based Institute for Environmental Mediation, the two sides hammered out an accord.

In Cleveland, Chief Police Prosecutor José Feliciano set up a mediation program that is expected to handle up to 14,000 complaints a year in hearings conducted by specially trained law students. The program is aimed at the type of complaint that often is dropped by police because it does not meet legal standards or involves friction between close relatives.

New York State Chief Judge Lawrence H. Cooke notes that citizens believe there is more fairness in mediated cases than in adjudicated ones. In one study, 90 percent of defendants in mediated cases said they had a chance to tell their side of the story, compared with 40 percent in court cases, which are governed by much stricter rules of procedure.

Arbitration, a more formal method of dispute resolution in which the arbitrators' decision is binding, is gaining adherents. Chief Justice Warren Burger says arbitration "can cope more effectively with complex business contracts, economic and accounting evidence and financial statements."

Some federal courts have experimented with mandatory arbitration in certain cases in which damages sought are less than $100,000—an approach that Burger asserts "may reduce by as much as half the number of such cases that would otherwise go to trial."

Going private. Shaken by the high costs of litigation, corporations are turning to companies such as Endispute, Inc., to keep them out of court. The Washington, D.C., firm offers "dispute management" services.

One such method: A privately held minitrial, pioneered in 1978 in a dispute between TRW, Inc., and Telecredit, Inc. Lawyers for both sides presented a short version of the case before senior executives of both firms, who then settled their differences.

Another way to skirt clogged courts has been called "rent a judge"—paying a retired judge to hold a full-dress trial, the results of which can be appealed. Los Angeles lawyer Seth Hufstedler resurrected a long-forgotten state law allowing such jurists to hear cases with the consent of both parties. Other litigants have used the same law.

The practice has drawn sharp criticism. Robert Gnaizda, a partner in Public Advocates, Inc., a leading public-interest law firm in San Francisco, calls it "legal apartheid" that allows only wealthy litigants to buy a speedy—and private—solution.

ey that might be awarded if the suit is successful would not compensate for the damage.

At any time before trial, or even during or after trial, the parties to a civil lawsuit can settle. In recent years, *structured settlements* have become the vogue in personal-injury cases—a cash nest egg for the injured victim and attorney fees up front, then periodic payments for life, rather than just one lump-sum payment.

In one such case, parents of a 2-year-old girl who suffered extensive brain damage an hour after birth at Stanford University Hospital agreed in September, 1982, to what at the time was the largest malpractice settlement in U.S. history. Anna Cunningham will never walk, crawl, sit or feed herself, says her lawyer, James Bostwick, but if she reaches 78, her normal life expectancy, she will have received 122 million dollars in annual payments.

Only about 10 percent of cases that enter the litigation phase are tried. The others are dropped, dismissed or settled.

At last: The trial. Civil trials are similar to criminal trials. Prospective jurors are questioned, and six to 12 jurors plus alternates are empaneled. The plaintiff presents his case, with each witness being subject to cross-examination by the opposing attorney. Then the defendant does the same, both sides sum up their cases, and the jury deliberates after getting legal instructions from the judge.

As with criminal prosecutions, rules of evidence can play a large role in shaping the civil case, limiting the evidence to the best, most reliable and relevant information.

Although most civil trials last no more than a day or two, some drag on for many months, straining the stamina and the resources of the litigants and the ability of the judge and jury to sift out the truth.

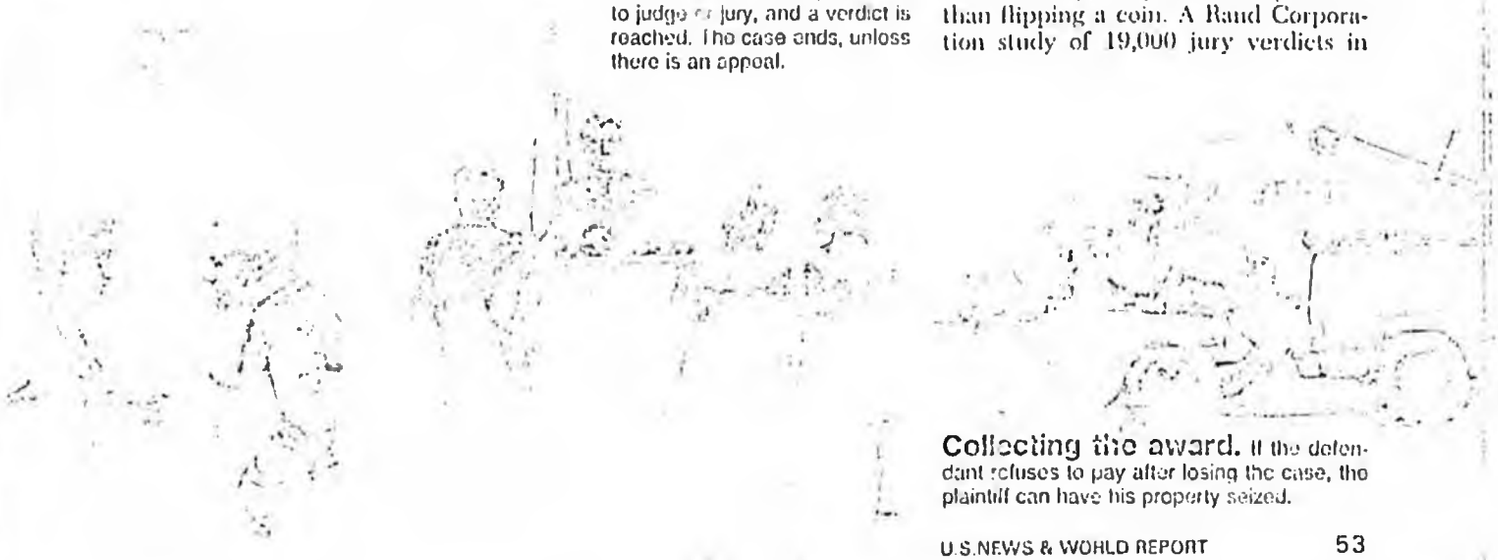
When the trial ends, 31 states do not require, as in most criminal trials, that the verdict be a unanimous one. In all states, however, the agreement of at least two thirds of the jurors—if not more—is required.

The odds of winning?

Statistically, they are hardly better than flipping a coin. A Rand Corporation study of 19,000 jury verdicts in

Settlement talks. With a costly trial approaching, the lawyers make at least one more attempt to resolve the dispute out of court.

Trial. Evidence is presented to judge or jury, and a verdict is reached. The case ends, unless there is an appeal.



Collecting the award. If the defendant refuses to pay after losing the case, the plaintiff can have his property seized.

Cook County, Ill., over a 20-year span, found that plaintiffs won 51 percent of them.

Nevertheless, the same study found that the average damage award, in 1979 dollars, had more than doubled from $30,600 to $69,000 in the previous two decades.

Nationally, malpractice awards against doctors and hospitals averaged $451,000 in 1981.

Infrequently, a judge will overrule the jury or reduce a damage award when it appears that the jury did not act on the basis of "the preponderance of the evidence"—the test applied in civil cases.

The case still may not be over. Either side can appeal to higher courts. If the defendant refuses to pay, the plaintiff might have to get a court order directing the sheriff to seize his property and sell it to satisfy the judgment. Even here, bankruptcy may foil the quest for payment.

Hour of reform. As courts have been strained to the breaking point by the litigation explosion, reformers have sought to reduce case loads. The number of federal judges had increased from 397 in 1975 to 647 by late 1982. Yet the case load per judge actually increased 36.5 percent over the seven-year period.

A study by the National Center for State Courts says the problem is that each of the legal professionals in a suit—the lawyers for both sides and the judge—expects the others to move slowly, so they all move slowly.

The key to ending the logjam, the center says, is "case management" by the judge—setting time standards for each step of the trial and firm trial dates, riding herd on laggards and granting delays only for good cause.

Four judges in Phoenix who tried case management disposed of 39.1 percent more cases than the rest of the court, and 44.7 percent more trials.

Proposed changes in the Federal Rules of Civil Procedure would give judges the power for the first time to control pretrial discovery, preventing its use to "wage a war of attrition or to coerce a party." Lawyers would be penalized for filing frivolous motions.

Suits filed by persons—prisoners, mainly—on their own behalf make up one fourth of the U.S. District Court's case load in Washington, D.C. Screening catches most of the worthless cases, yet too fine a mesh may prevent a case with merit from being heard.

Videotaping evidence, even whole trials, and pretrial telephone conferences are among some of the technological timesaving innovations that have been used successfully in several states.

Yet no such finite solutions exist for reducing American litigiousness—a way of life that shows no signs of abating. The trauma of the lawsuit may never disappear either, but someday it may be over sooner. □

New Patterns in Family Courts

Reflecting deep, wide currents of social change, family courts are in great ferment. No longer is the husband and father the paterfamilias, the absolute ruler of wife and child. Family courts today are busy aligning the new, more evenhanded order of things.

While not long ago these courts were concerned with breaches of promises to marry and with narrow grounds for divorce, today they must tackle thornier issues.

Family courts establish paternity with complex blood tests and deal with artificial insemination and test-tube babies. Unwed fathers, formerly ignored in custody and adoption proceedings, now have rights of notice.

The "best interests of the child" are taken into account in determining custody and visitation rights. Joint custody is allowed in 28 states, and courts no longer automatically assume that the mother is best at caring for children.

All states but Illinois and South Dakota allow no-fault divorces in which couples dissolve their bonds without accusing each other of adultery or mental cruelty. Simplified procedures permit legal clinics to handle divorces for a modest fee.

Dividing the apple. Financial-support arrangements reflect women's new economic independence. The courts are beginning to give financial recognition to the wife's contributions in the home, while also granting alimony to husbands when their ex-wives earn more. All-but-wed partners, now separated, are demanding that courts grant them support, and some are getting it.

"Virtually no tradition or precedent is secure. There is a real conflict of interests," say family-law experts Henry H. Foster and Doris Jonas Freed. "Everyone in the family is entitled to do his or her thing; and like the members of the Swiss Navy, they are all admirals."

What Happens In Little Cases

Criminal cases and big-money lawsuits grab the headlines, but the largest number of people who go to court are involved in traffic offenses or minor disputes.

Traffic court. Driving cases come before a variety of judges ranging from rural, part-time justices of the peace to full-time jurists in metropolitan areas.

Most of the nation's 59 million traffic violations each year are settled when a motorist simply mails in a fine.

To contest a charge, you must be in court on the date listed on the ticket. Experts advise that you bring witnesses and photographs, if appropriate. If your defense is plausible, you may have a good chance of winning.

You probably don't need a lawyer, since most traffic courts operate informally. But if the charge is drunk or reckless driving, which could bring a jail term, legal assistance may be helpful.

Small-claims court. About 3.5 million times each year, people with gripes against local merchants, neighbors or others turn to small-claims court to resolve the matter simply and quickly. A judge or arbitrator hears both sides, then decides the issue either on the spot or in a short time.

Some pointers:

- Monetary damages are limited—$700 maximum on average.
- Special forms to file a complaint are usually provided at the courthouse. A small fee—$2 to $20—is required, and a waiting period of two weeks is common.
- Be sure to show up for the trial on time, although you may have to wait until your case is called. Many small-claims courts are open evenings or weekends.
- Bring papers, receipts, photos and other items that will help prove your case. Witnesses may help if they appear to be reliable.
- In some states, lawyers may not argue a client's case in small-claims court because that would give the client an unfair advantage. But consider retaining one if the other side will have one.
- Don't be concerned about legal niceties, and avoid long-winded explanations. Just state your case as succinctly as you can.

The Pervasive Influence of Lawyers

The ranks of a multitude for whom the law is a profession grow more numerous by the day—as do the controversies over fees, ethics, training.

Little in this country today remains untouched by lawyers. They abound at every turn, from the fight for life's necessities such as air, water, food and shelter to the quest for liberty and the pursuit of happiness. They advocate, regulate, and—their critics say—often obfuscate.

Richly rewarded for interpreting the sacred entrails of the law, lawyers nonetheless pay a steep price for living off the conflicts with which society is riven: Low public esteem in polls that sometimes rank them with used-car salesmen and garbage collectors.

The contemporary tongue-in-cheek comment about St. Ives, a 13th-century lawyer, still brings knowing chuckles: "He was a lawyer, yet not a rascal, and the people were astonished."

The U.S. has 610,000 lawyers, two thirds of the world's total and almost three times as many as in 1951. About 70 percent are in private practice. Half of the rest work for the government.

The growth of the profession's ranks has been so rapid that a glut exists in many urban areas. Recession and deregulation have put a crimp in the once booming law business in Washington, D.C.—home base for some 27,000 lawyers.

Still, eye-popping salaries and hourly fees show no sign of declining. In law firms, partners' "draws" or earnings average $90,000. Some "rainmakers"—well-connected lawyers who bring in the business—such as Washington lawyer Joseph A. Califano, Jr., pull in between a half-million and a million dollars a year. San Francisco antitrust lawyer Moses Lasky won a million-dollar fee from Telex Corporation for filing just one brief at a critical point in its suit against IBM.

Associates—salaried lawyers who are striving to become partners—average $35,200, but young lawyers at a few New York firms start at $43,000 a year. Fees for lawyers with four or five years of experience average $74 per hour, while beribboned veterans such as the legendary Louis Nizer may charge up to $350 per hour.

Some lawyers, denounced as "greedy swashbucklers" by consumer advocate Ralph Nader, are becoming increasingly bold in charging their clients more as the stakes get larger.

In 1981, law practices took in 24.1 billion dollars, or 0.9 percent of the gross national product, more than the air-transport industry and one fifth as much as the health-services economy.

That claim on the GNP might be smaller were it not for laws in all of the states prohibiting nonlawyers from providing legal services. Although wills often are drafted in law offices by paralegals or unlicensed legal assistants, a nonlawyer who sells advice to the public on how to write the same document can be prosecuted.

Bar groups say this monopoly helps protect the public from charlatans, but the closed society that lawyers constitute has come under increasing antitrust scrutiny in recent years. A ban on lawyer advertising, enforced by the bar for decades, was struck down by the Supreme Court in 1977.

Since then, a flowering of storefront legal clinics that offer low, standardized fees in a Spartan setting has occurred. "The Lawyers at Dart Drug" advertise uncontested divorces at $195 next to panty hose at $2.49. This kind of mass marketing offends the traditional sense of propriety felt by many attorneys, but it is making legal services more accessible to the nonaffluent.



Hiring a famed courtroom practitioner such as Louis Nizer of New York can cost $350 an hour.

Ways to Pick A Good Attorney

Legal experts offer the following tips on finding a lawyer competent to deal with your problems—

- Begin by asking friends or others you trust for a recommendation. Get a consensus if you can.
- Bar-association referral services can help, but they list lawyers without evaluating them.
- For a simple will, real-estate closing or some other routine legal need, a low-cost legal clinic may well fill the bill.
- Consider consulting a certified specialist in complex areas such as tax, trusts or trial work.
- Visit the lawyer and see how you get along. Expect to pay for this consultation.
- Don't be shy in asking about the attorney's credentials. The *Martindale-Hubbell Law Directory*, found at your public library, rates lawyers' abilities and notes key clients.
- Check with your state's lawyer-discipline agency to find out whether the lawyer has had an ethics violation.
- Pin down *fees* and costs in writing. Is there a retainer fee to be paid in advance? Will there be an hourly charge or will your lawyer get a percentage of your recovery in a damage suit?

The elastic ethics and the ineptness of some lawyers and the downright dishonesty of others have hurt the reputation of lawyers even more than high fees, and triggered demands for reform from lawyers themselves.

The American Bar Association, which represents half the nation's lawyers, is putting the finishing touches on a new code of professional responsibility that would strengthen the hand of clients who think they have been cheated. Disciplinary procedures, often lengthy and lenient, are being beefed up. And law schools are teaching more ethics and emphasizing "real life" situations more in training.

Even so, lawyers will never be popular, says New York lawyer Eugene C. Gerhart: "They cannot expect to be liked by those they oppose. They can only hope to be respected for their courage, their competence, their integrity and their loyalty to the eternal ideal of justice." □

The "Hidden Judiciary" And What It Does

They are called ALJ's, and you will find their fingerprints on many of the actions taken by bureaucrats both in Washington and in the states.

Bring up the subject of how an individual's legal rights are determined, and most people picture a black-robed judge perched high on his bench in a marble-paneled courtroom.

Yet the average citizen is touched far more often by rulings made in a less august judicial arena, by what some have called the hidden judiciary.

It consists of a special tier of judges who act as checks on state and federal agencies that make millions of administrative decisions each year—dealing with everything from the issuance of drivers' licenses and the payment of jobless benefits and Social Security pensions to the regulation of utility rates and television stations.

The vast majority of these determinations are not challenged. But hundreds of thousands of them annually are appealed to the 1,153 administrative-law judges (ALJ's) employed by federal agencies or to similar judges at the state level.

In addition, when regulations are being written—whether the subject is surface mining, building design for the handicapped, mechanically deboned meat or one of the myriad other areas in which government intervenes—ALJ's preside over the hearings.

While bureaucrats carry out policies through rules and regulations, the job of ALJ's or hearing examiners is to make sure there is due process, that agency decisions are legal and fair.

No jurors. In appeals of agency decisions, they function much like trial judges in nonjury cases. Parties are represented by lawyers in formal hearings, evidence is submitted, witnesses are heard. In most cases, an ALJ renders a written opinion, which is appealable to agency administrators or commissioners, then to the courts.

Most appeals of agency decisions touch on only one person or one firm, but ALJ rulings at times affect citizens and businesses nationwide. A decision by ALJ Chester Naumowicz at the Federal Communications Commission in 1976 opened up the telephone industry to greater competition.

It is ALJ's who initially try the civil suits filed by regulatory agencies. At the Federal Trade Commission, they decide, among other things, whether corporate activities conflict with antitrust laws or FTC guidelines.

In a case involving General Foods' Maxwell House coffee, for example, an administrative-law judge ruled against the FTC staff, holding that the firm had not used unfair methods of competition to dominate the coffee market.

The agency's staff had filed an antitrust suit against General Foods. After losing the first round, bureaucrats of the FTC appealed to their five-member commission.

At the National Labor Relations Board, 110 administrative-law judges in Washington, San Francisco, New York and Atlanta hear about 1,200 unfair-labor-practice and union-representation cases a year, out of 40,000 filings. The rest are settled by NLRB bureaucrats or dismissed.

More than two thirds of the federal ALJ's work for the Social Security Administration in 125 field offices. They hear more than 250,000 cases a year, determining eligibility for benefit payments. Such hearings are short and relatively simple, taking a matter of hours in most instances.

Outside of Social Security, however, administrative hearings often drag on for many months. The so-called American Telephone & Telegraph basic-rate case at the FCC in the mid-1970's spawned a 16,437-page transcript—plus 15,864 additional pages of exhibits—during 103 days of hearings.

Even after the hearings are over, it can be a long time before a case is wrapped up. Several years ago, the General Accounting Office, the audit-

Special Courts For Special Cases

Within the federal system are a number of specialized courts that handle cases in some complicated or technical areas. These courts, most of which are in Washington, D.C., include:

U.S. Claims Court—Established October 1 to replace old U.S. Court of Claims. Its 16 judges handle every type of money claim against the United States except those involving personal injury.

Court of International Trade—Set up in 1980, its nine judges review government actions dealing with imports, such as disputes over classification or valuation of goods and antidumping laws. Handled 3,207 cases in 1981. Sits in New York.

Bankruptcy Court—Established in 1978, ordered reorganized by Supreme Court in 1982. Some 241 judges in 91 district courts across the country handled a record 527,811 filings in year ended June 30, 1982. Under the U.S. Constitution, all personal and corporate bankruptcies and reorganizations are heard by federal courts.

Court of Appeals for the Federal Circuit—Established October 1 to replace old Court of Customs and Patent Appeals. Handles appeals from Claims Court and Court of International Trade plus patent appeals and patent-infringement cases. Its 12 judges sit in three-judge panels.

Foreign Intelligence Surveillance Court—Set up in 1978 to review applications for electronic surveillance by the government of foreign powers and their agents. Seven district judges, serving part time on the court, approved all 431 requests in 1981.

Tax Court—In this agency, established in 1924, 19 judges have about 30,000 cases pending involving deficiencies or overpayments in income, estate and gift taxes. Ten other special trial judges hear "small tax cases," where the tax due is less than $5,000.

Court of Military Appeals—Established in 1950 as the final appellate tribunal to review court-martial convictions in the armed services. Three civilian judges, who serve 15-year terms as presidential appointees, decided 153 cases in 1980.

ing arm of Congress, studied four agencies it considered typical and found the median time from hearing to final agency decision was 352 days.

The delays often draw complaints from Capitol Hill and private citizens. ALJ's bristle at any suggestion that they are to blame, saying it is the bureaucrats who use up most of the time—a contention borne out by the GAO study.

As little known as they are to many Americans, administrative-law judges date to the days of George Washington, when customs officers were appointed to figure the duties payable on imports and to determine which soldiers were disabled. In time, the system lost public respect because agency actions were often merely rubber-stamped.

Congress tried to correct that problem in 1946 by passing the Administrative Procedure Act, which established the autonomy that ALJ's enjoy today.

They are still employes of the various agencies, as previously, but their pay—about $57,000 for most—now is controlled by the Office of Personnel Management. They are assigned cases on a rotating basis and may not be supervised by any official who performs investigative or prosecutory functions.

It is not a job for burned-out legal hacks looking for an easy berth in government. ALJ's are selected through a rigorous merit program, and 70 percent of applicants are rejected. A former chief justice of a state supreme court was among those recently chosen.

Guarding the turf. The issue of their independence is at the core of a burgeoning controversy over a Reagan administration attempt to clean up the disability rolls. State agencies, working with new Social Security Administration (SSA) guidelines, cut off benefits for some 245,000 of the 2.7 million people on the rolls. But about three fifths of those who have appealed have been reinstated by ALJ's using looser standards developed by the U.S. courts.

Alarmed by the high reversal rate, the SSA has been overruling some decisions—and riling many ALJ's. They say the agency wants them to act more as bureaucrats implementing regulations than as independent judicial officers.

One method of assuring greater independence is a corps or central panel of ALJ's, not tied to any agency, that provides trial services on demand. New Jersey, one of eight states with such a pool, also has reported substantial cost savings. Judge Irving Sommer, chairman of the National Conference of Administrative Law Judges of the American Bar Association, sees an intangible plus: "People know they're getting a fair shake because the judge isn't attached to any particular agency." □



The U.S. Supreme Court Building in Washington, D.C.

A Supreme Court With Its Back to the Wall

Overwork and ideological divisions, authorities say, are sapping the effectiveness of the nine Justices who sit at the apex of the judicial system.

The U.S. Supreme Court, deluged with cases and split philosophically, is working under the greatest strains it has faced in its 193-year history.

The Court's nine members, among the world's most prestigious judges, are finding it harder and harder to perform their historic dual role—to insure justice for individual Americans while guiding the nation on the meaning of its laws.

The volume of appeals has reached flood stage, with the result that a citizen today has only a slim chance of having a case heard by the Court.

At the same time, sharp and shifting divisions among the Justices over abortion, racial discrimination, prisoners' rights and many other questions often produce murky decisions that confuse lawyers and judges alike and inspire still more lawsuits. The Justices—five of whom are 73 or older—were besieged in 1981-82 with 5,311 appeals from state and federal courts. When the 1982-83 term began, the docket was already two-thirds full.

Today's Supreme Court is far different from the six-member bench set up in 1789. In the early days, almost every case presented was heard. Now, the 200 cases per year that the Court is able to review in detail make up fewer than 5 percent of the appeals filed. Says former U.S. Solicitor General Erwin Griswold, "All you can do is knock on the door and ask to be let in."

Hotly contested issues involving such subjects as taxes, labor rules and other government regulations can remain unresolved for years. On many such questions, some of the 12 federal appeals courts have ruled in opposite ways.

About one third of the Supreme Court's case load is set by law. Included: Lower-court decisions striking down federal laws, state-supreme-court rulings interpreting the U.S. Constitution and boundary disputes between states.

As for the remainder, the votes of four Justices are needed to grant a full hearing. Beyond that, "there are no rules," says Eugene Gressman, University of North Carolina law professor. "Each Justice votes to grant review of cases he or she thinks are important enough to warrant the Court's attention."

A milestone. Since the famed 1803 case of *Marbury v. Madison*, the Court has claimed the power to strike down laws it decides conflict with the Constitution. Virtually no one challenges that doctrine today.

Yet debate rages over the extent to which Justices can broaden past interpretations of constitutional rights, fill in gaps they perceive in laws, or supervise public institutions. Typifying the criticism of "judicial activism" is the charge of former Senator Sam Ervin, Jr. (D-N.C.) that "the people of our land are being ruled by the transitory personal notions of Justices who occupy for a fleeting moment of history seats on the Supreme Court."

In recent decades, split opinions



Justice Stevens at work with law clerks, whose role at the Court has grown.

have guaranteed women broad rights to have abortions, barred prayer from public schools, given wide rights to criminal suspects, ordered schools desegregated and set minimum standards in prisons and mental hospitals.

The Justices became increasingly willing to strike down U.S., state and local statutes, voiding more since 1920 —761—than the 386 ruled unconstitutional in the previous 130 years, says legal scholar Bruce Fein. Activism reached its peak during the 1950s and 1960s under Chief Justice Earl Warren.

All current Justices have joined activist rulings at least on occasion, but William Brennan, Jr., the Court's senior member, and Thurgood Marshall have done so most often.

On the other end of the spectrum, Chief Justice Warren Burger and Justices William Rehnquist and Sandra Day O'Connor, advocates of "judicial restraint," tend to defer to the legislative and executive branches of government. The other Justices—Harry Blackmun, Lewis Powell, Jr., John Paul Stevens and Byron White—swing from one camp to the other, depending on the issue.

In the 1981-82 term, 33 cases—nearly one fifth of the opinions issued—were decided by a one-vote margin, twice as many as in 1980-81. Justices also are more likely nowadays to issue opinions stating their individual views.

No moot points. Justices have ways of rationing the use of their power. For one thing, no matter how important the issue, they refuse to take a case unless it is a real dispute affecting litigants, not a hypothetical question.

As quarrelsome as they may sometimes seem, the Justices try to resolve differences privately. Once or twice during each week of oral arguments, they gather with no aides present, shake hands with each other, discuss the cases they've heard and take a preliminary vote on their decisions. If the Chief Justice is in the majority, he decides who will write the explanation of the Court's reasoning; otherwise, the senior Justice makes the assignment.

Opinion writing can take months. First, drafts are circulated among Court members who voted together. The Justices may sign the proposed opinion, try to persuade the drafter to alter it, or write their own versions. Occasionally, Justices reverse their initial votes after reading other members' drafts. Wade McCree, Jr., U.S. solicitor general from early 1977 to mid-1981 and at one time a federal appeals judge, describes the give-and-take this way: "Justices fight for language they prefer, but to get others to concur, they may soften their positions. That's what a collegial court is all about."

Policy disagreements on the Court will never end, but reformers have proposed several ways to cope with the increasing case load.

One idea, endorsed by four Justices, is creation of a "National Court of Appeals" to which the High Court could refer cases requiring attention but not raising crucial national issues. Justice Stevens has proposed a new court to decide which cases the Supreme Court should hear. In addition, all of the Justices have asked lawmakers to eliminate the requirement that they hear certain categories of cases.

Justice Powell has called, too, for dividing among the Court members the job of screening appeals, eliminating the tradition that "each Justice has to vote on every doggone petition."

Others would curb or abolish oral arguments, the hour-long sessions in which Justices pepper lawyers with questions about their cases.

Reformers are split over the role of law clerks, young law-school graduates who serve as research aides. As recently as 1950, Justices each had only one clerk; now, most have four.

Some analysts believe the Court needs more clerks to help screen cases; others complain that the longer, more difficult-to-understand opinions being issued today are partly due to the proliferation of the clerks who draft them.

Flak from the right. Many critics would actually narrow the Court's power. Among ideas being pushed by some conservatives: Taking away the authority of federal courts to hear cases on such subjects as abortion and school prayer and forcing federal judges—all of whom are now appointed for life—to run for office periodically. Opponents assert that such measures would dangerously undermine the independence of the nation's judiciary—a vital element in the American system.

Supreme Court Justices themselves have studiously avoided taking a stand on the court-curbing proposals because they would likely decide the constitutionality of any such measure passed by Congress.

The Court has tempered its activism a bit in recent years—a change some analysts attribute to the wave of criticism being leveled at judges.

Over all, however, experts see little chance that a philosophical majority capable of steering a consistent path will reappear at any time soon. The intellectual ferment and doubts that the Justices reflect run deep throughout American society.

Then, too, observes Potter Stewart, who retired in 1981 after 23 years as a Justice: "Unlike any institution in the world, there is no boss of the Court. Your only boss is the Constitution and the law. Nobody can tell another Justice what to do or what not to do." □

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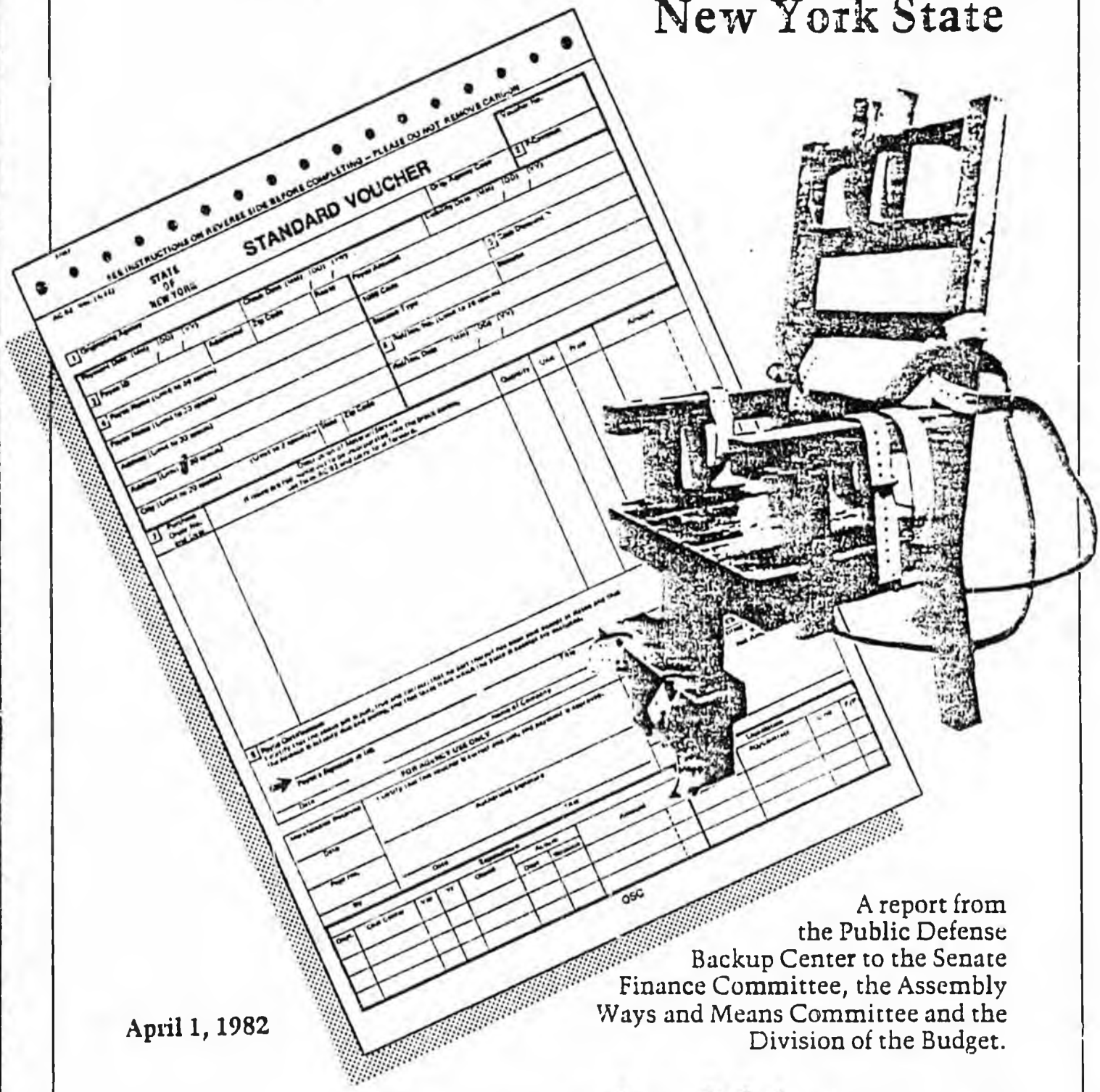
Capital Losses: The Price of the Death Penalty for New York State



A report from the Public Defense Backup Center to the Senate Finance Committee, the Assembly Ways and Means Committee and the Division of the Budget.

April 1, 1982

New York State Defenders Association, Inc.
150 State Street • Albany, NY 12207

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PREFACE

Under its contractual obligation with the state of New York to review, assess and analyze the public defense system, the New York State Defenders Association periodically publishes reports to the Legislature, the Governor, the Judiciary and other appropriate instrumentalities. The report which follows preliminarily examines the costs of capital litigation and the fiscal impact of the death penalty on New York State. This report is directed to those who have a legal responsibility to analyze that fiscal impact.

INTRODUCTION

In the last five years, efforts in both houses of the Legislature have pushed New York closer and closer to the passage of a death penalty. During this time, shrill voices have argued every major proposition with reference to the death penalty except one—its actual cost. The floor debates during this period of time provide little hard cost data, but, as will be seen, they make clear that the death penalty will call for the most irrational and disproportionate expenditure of energy and money in the history of criminal justice in this state.[1]

Despite this reality, one searches in vain for legislative information on the subject of actual cost. The memorandum in support of this year's death penalty bill (S.7600/A.9379), as in the past, states that there are "no fiscal implications." Yet, as late as the end of March 1982, the Senate sponsor of the bill reportedly did not know the fiscal implications of the death penalty.[2] The Senate Research Service states in its death penalty briefing paper, "Insofar as the fiscal implications of the death penalty are concerned, the costs of its imposition and the related appeals process are uncertain."[3] Likewise, though the New York State Department of Correctional Services has recognized the issue,[4] it has not projected costs under a death penalty statute.[5]

At a time when New York State is under tremendous fiscal constraint in its efforts to deliver basic human services, it is ironic that no one in government has attempted to assess and project the actual cost of a death penalty here.

Conventional wisdom suggests that it is less expensive to execute a person than to imprison a person for life. Conventional wisdom is wrong. As Mr. Justice Marshall stated in *Furman v. Georgia*, 408 U.S. 238, 357-8 (1972):

> "As for the argument that it is cheaper to execute a capital offender than to imprison him for life, even assuming that such an argument, if

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[1] The New York State Defenders Association opposes the death penalty for any crime because it is immoral, discriminatory, and inevitably capricious. The penalty provides, and will always provide, the opportunity for masking racism and prejudice. Its history marches in step with the history of genocide; its cadence is the cadence of expediency; its failure, the failure of humankind. The death penalty is obscene violence. There is no excuse for its existence, and someday it will be abolished.

We do not by this paper retreat from these positions.

In the course of this paper, we will comment on sections of the death penalty bill, and, in particular, on those sections dealing with publicly supported defense representation for the poor. Nothing we say here should be read as approval of the bill or an appraisal of its ultimate constitutionality. We are reporting cost data, and that is the purpose of this paper. It is important for state officials and the public to know the price tag which is attached to capital punishment. The costs outlined here are the bottom line. Because death has been held constitutionally to require greater procedural protections, *Gardner v. Florida*, 430 U.S. 349 (1977); *Gregg v. Georgia*, 428 U.S. 153 (1976); *Woodson v. North Carolina*, 428 U.S. 280 (1976), legally required procedures and their attendant costs will continue to escalate.

[2] *Legislative Gazette*, March 29, 1982, at 8, col. 1.

[3] SENATE RESEARCH SERVICE, ISSUES IN FOCUS, No. 82-48, DEATH PENALTY 4 (Jan. 28, 1982).

[4] In July 1978, New York's Department of Correctional Services reported, but did not evaluate the anti-death penalty position that, "... capital punishment is more costly from an economic viewpoint than other alternatives if all costs are counted, including court, prosecution, defense and correctional." DEPARTMENT OF CORRECTIONAL SERVICES, DIV. OF PROGRAM PLANNING, EVALUATION AND RESEARCH, OVERVIEW OF DEATH PENALTY AND REVIEW OF ARGUMENTS FOR AND AGAINST ITS USE 9 (July 1978).

[5] Significantly, states with a death penalty cannot afford the "luxury" of non-examination. The Legislature of Florida knows full well the projection of costs made by Louie L. Wainwright, Director, Florida Division of Corrections. Florida projects an expenditure (absent inflation) of more than $57 million by the year 2000 just to maintain the death row population. BUREAU OF PLANNING, RESEARCH AND STATISTICS, STATISTICAL FACTS, No. SF-80-9, FLORIDA DEP'T. OF CORRECTIONS—DEATH ROW ANALYSIS 2 (Aug. 29, 1980).

true, would support a capital sanction, it is simply incorrect. A disproportionate amount of money spent on prisons is attributable to death row. Condemned men are not productive members of the prison community, although they could be, and executions are expensive. Appeals are often automatic, and courts admittedly spend more time with death cases.

"At trial, the selection of jurors is likely to become a costly, time-consuming problem in a capital case, and defense counsel will reasonably exhaust every possible means to save his client from execution, no matter how long the trial takes.

"During the period between conviction and execution, there are an inordinate number of collateral attacks on the conviction and attempts to obtain executive clemency, all of which exhaust the time, money, and effort of the state. There are also continual assertions that the condemned prisoner has gone insane. Because there is a formally established policy of not executing insane persons, great sums of money may be spent on detecting and curing mental illness in order to perform the execution. Since no one wants the responsibility for the execution, the condemned man is likely to be passed back and forth from doctors to custodial officials to courts like a ping-pong ball. The entire process is very costly.

"*When all is said and done, there can be no doubt that it costs more to execute a man than to keep him in prison for life.*" [Footnotes omitted.] (Emphasis supplied.)

The authority of Mr. Justice Marshall's assertions,[6] as well as other recent work,[7] indicate in general terms, but without contradiction, that a criminal justice system with the death penalty is inordinately more expensive than a criminal justice system without the death penalty.

Seventeen years ago, the State of New York Temporary Commission on Revision of the Penal Law and Criminal Code, in its report recommending the abolition of the death penalty in New York State, said:

". . . [O]wing to their importance, capital cases take longer to litigate at the trial level and obstruct the general administration of criminal justice accordingly; . . . the appellate ramifications are intricate and extensive; . . . the pursuit of other post-judgment remedies leads to many courts, both state and federal, involving substantial segments of the judiciary; . . . the battle to save the 'doomed' man reaches into the executive branch of the government; and, in general, . . . capital cases are disruptive of the orderly process of criminal justice. . . . [W]hatever aspect of the death penalty one examines, one finds nothing but

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[6] T. THOMAS, THIS LIFE WE TAKE 20 (3d ed. 1965); B. ESHELMAN AND F. RILEY, DEATH ROW CHAPLAIN 226 (1962); Caldwell, *Why Is the Death Penalty Retained*, 284 ANNALS 45, 48 (Nov. 1952); McGee, *Capital Punishment as Seen by a Correctional Administrator*, 28 FED. PROBATION, No. 2, at 11, 13-14 (June 1964); Sellin, *Capital Punishment*, 25 FED. PROBATION, No. 3, at 3 (Sept. 1961); Slovenko, *And the Penalty Is (Sometimes) Death*, 24 ANTIOCH REVIEW 351, 363 (1964); Bailey, *Rehabilitation on Death Row*, in BEDAU, THE DEATH PENALTY IN AMERICA 556 (1967 rev. ed.); T. ARNOLD, THE SYMBOLS OF GOVERNMENT 10-13 (1935). See also: *Stein v. New York*, 346 U.S. 156, 196, 73 S.Ct. 1077, 1098, 97 L.Ed. 1522 (1953) (Jackson, J.); cf. *Reid v. Covert*, 354 U.S. 1, 77, 77 S.Ct. 1222, 1261-1262, 1 L.Ed.2d 1148 (1957) (Harlan, J., concurring in result); *Witherspoon v. Illinois*, 391 U.S. 510, 88 S.Ct. 1770, 20 L.Ed.2d 776 (1968); *Carnativo v. California*, 357 U.S. 549, 78 S.Ct. 1263, 2 L.Ed.2d 1531 (1958).

[7] Nakel, *The Cost of the Death Penalty*, 14 CRIM. L. BULL., No. 1, at 69 (Jan. 1978). See also the newly revised BEDAU, THE DEATH PENALTY IN AMERICA (3rd ed. 1982).

obstruction, confusion and waste."[8]

The Commission saw early on the direction of capital litigation in the United States and, accepting the inevitable consequences of the then developing moratorium on executions,[9] rejected the death penalty as an inappropriate adjunct to the administration of criminal justice. Since 1955, while we have lived with and without a death penalty in New York State, and in recent years while we have vigorously debated its reemergence, there has been no systematic effort to identify and compute costs. This paper is a preliminary examination of those costs.

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[8] STATE OF NEW YORK TEMPORARY COMMISSION ON REVISION OF THE PENAL LAW AND CRIMINAL CODE, FOURTH INTERIM REPORT: SPECIAL REPORT ON CAPITAL PUNISHMENT, LEG. DOC. NO. 25, at 97 (1965).

[9] From 1967 until 1977, executions in the United States were suspended by litigation in the federal courts seeking the resolution of constitutional challenges to the death penalty. The United States Supreme Court, in a plurality opinion, declared in *Furman v. Georgia*, 408 U.S. 238 (1972), that discretionary death penalty statutes then in effect constituted cruel and unusual punishment because death was imposed infrequently and in the absence of clear standards. The rare, unpredictable, discretionary use of the sanction of death was deemed to violate the Eighth and 14th Amendments to the United States Constitution. State legislatures responded to *Furman* by enacting either mandatory death statutes or "guided discretion statutes" which utilized bifurcated trial procedures to determine guilt and then punishment. In 1976, the Supreme Court ruled in *Woodson v. North Carolina*, 428 U.S. 280, 310 (1976), that the mandatory death penalty for first degree murder was unconstitutional because it treated all convicted persons not as "... uniquely individual human beings but as members of a faceless, undifferentiated mass to be subjected to the blind infliction of the penalty of death." On the same day, in *Gregg v. Georgia*, 428 U.S. 153 (1976), the Court upheld "guided discretion" statutes which required objective standards to guide, regularize, and make rationally reviewable the process of imposing death. Since *Gregg*, more than a dozen substantial procedural issues have been decided on behalf of defendants by the United States Supreme Court. Capital litigation routinely raises those and other constitutional questions at every stage of review.

PART I:
THE NATURE OF DEFENSE SERVICES UNDER THE PROPOSED DEATH PENALTY BILL

One of the great concerns of the New York State Defenders Association concerning the implementation of the death penalty in New York is whether or not the representation of the poor in death cases will be adequate. The current delivery mechanism for public defense services is clearly inadequate to a death penalty. The County Law leaves to each county responsibility for the development of its own system of defense services. The result is that a crazy quilt of county defender systems exists in the state. The services are insulated, autonomous and unregulated. Resources differ from county to county. It follows that the adequacy of defense representation differs from county to county as well.[10]

The problems of the system have not gone unnoticed in the legislative debate concerning the death penalty in New York. Some representative comments from the Assembly and Senate floor debates follow:

> "The fact is, ladies and gentlemen, we will look at the defense capability. Throughout New York State today there are 20 counties that have . . . no . . . investigators to help in any case, much less a capital case . . . Nine counties have one investigator available, four of them have two and four have three. *Forty-one of our counties—over two-thirds, do not have the investigative capability that the defense attorney needs to defend his client.*" [Emphasis supplied.][11]

> "We are talking in many instances of assigned counsels who are paid very little money by any contemporary standard. *We are talking about a system where the defense really doesn't have the ability to investigate* . . . ***that's the question you are asking yourself, and that's the question each of us has to ask ourselves before we vote on this bill. . . ." [Emphasis supplied.][12]

> "Forty-six counties have asked the New York State Public (sic) Defenders Association for help in doing appeals, the appeal work for the felony criminal matters. *What kind of justice is that, where 46 counties say, after the trial, 'We don't have the expertise and the ability to deal with the appeal process.'* That is the fair trial we are talking about, with an irrevocable penalty." [Emphasis supplied.][13]

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[10] Article 18-B of the County Law requires each county to adopt a systematic plan for furnishing counsel to indigent defendants. The counties may choose: 1)representation by a public defender; 2)representation by contract with a legal aid society; 3) representation by counsel furnished pursuant to an assigned counsel plan of a bar association; or 4) a combination of these. In the greater part of the state, public defense is a part-time job. Training is not a mandatory part of the statutory scheme. Assigned counsel plans are shrinking as a result of the very low fees paid to public defense attorneys. Nationally, New York ranks 45th with the lowest reimbursement rate at the trial and appellate level. There are 76 distinct defender systems in this state. The common thread that binds them together is underfunding at the county level, a lack of standards for their operation, and the unpopularity of the clients they serve.

[11] RECORD OF PROCEEDINGS, ASSEMBLY, STATE OF NEW YORK (Tuesday, February 17, 1981) (statement of Assemblyman Hevesi), at 875.

[12] RECORD OF PROCEEDINGS, ASSEMBLY, STATE OF NEW YORK (Tuesday, February 17, 1981) (statement of Assemblyman Miller), at 1020.

[13] RECORD OF PROCEEDINGS, ASSEMBLY, STATE OF NEW YORK (Tuesday, February 17, 1981) (statement of Assemblyman Hevesi), at 875-876.

"Who is going to get the death penalty? The poor defendant, the defendant with the poor lawyer more likely. I'll tell you one thing, if there is one certainty—if there is one certainty in what you're about to do—it is that, if you pass the bill and it goes into effect, I am certain that no millionaire will ever burn, that no rich person will ever have the sentence carried out, and that's a fact, and I think we all acknowledge that that's a fact. *The victim of this, the person upon whom this penalty will be carried out, will be the poor unfortunate, the person with the lawyer of less skill or experience than others.*" (Emphasis supplied.)[14]

"When you look at the kinds of people who have been convicted and sentenced to death, they invariably are people from the low income bracket and *there are those of us who believe . . . that if you're poor, you do not necessarily get the kind of legal representation that you would if you had the money to afford the right kind of attorney.* I know you will say that that's not the case, and that there is equitable provision under the law and that there is a fair share, and everyone else will get their day in court, but I think the real world proves that poor people generally carry the brunt when they are charged with murder, particularly if there is a difference in ethnicity." (Emphasis supplied.)[15]

All of these comments reflect upon a defense system that is basically inadequate. Three critical aspects are identified. First, there is no set of experiential standards to be met for the representation of defendants in felony cases in this state. Second, there is county-based disparity in the financing of the public defense system such that certain counties are without the resources to provide adequate representation. Third, there are exceedingly low fees for attorneys, experts, investigators, and other necessary auxiliary services.

The Volker/Graber bill (S.7600/A.9379) responds directly to these issues by: a) removing the burden from counties and making the cost of defense services a state charge; b) attempting to create experiential standards for the representation of defendants in capital cases; and c) creating a standard whereby attorneys, experts, investigators and others will be paid the customary fee for similar privately retained representation or services. In pertinent part, the bill states:

§722-g. Assignment of counsel and related services in criminal actions in which the death sentence may be imposed. 1. *Notwithstanding any other provision of law to the contrary*, in every criminal action in which a defendant is charged with an offense defined in section 125.27 of the penal law, *a defendant who is or becomes financially unable to obtain adequate representation or investigative, expert or other reasonably necessary services at any time either* (a) *prior to judgment*, or (b) *after the entry of a judgment imposing a sentence of death but before the execution of that judgment; shall be entitled to the appointment of one or more attorneys and the furnishing of such other services* in accordance with the remaining provisions of this section.

2. If the appointment is made prior to judgment, at least one attorney so appointed must have been admitted to practice in the courts of this

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[14] RECORD OF PROCEEDINGS, SENATE, STATE OF NEW YORK (Monday, January 14, 1980) (statement of Senator Connor), at 145.

[15] RECORD OF PROCEEDINGS, SENATE, STATE OF NEW YORK (Monday, March 23, 1981) (statement of Senator Bogues), at 1279-1280.

state for not less than five years, and must have had not less than three years' experience in the actual trial of felony cases in this state.

3. If the appointment is made after judgment, at least one attorney so appointed must have been admitted to practice in the courts of this state for not less than five years, and must have had not less than three years' experience in the handling of appeals in felony cases.

4. Upon a finding in an ex parte proceeding that investigative, expert or other services are reasonably necessary for the representation of the defendant, whether in connection with issues relating to guilt or sentence, the court shall authorize the defendant's attorneys to obtain such services on behalf of the defendant and shall order the payment of fees and expenses therefore pursuant to the provisions of subdivision five hereof. Upon a finding that timely procurement of such services could not practicably await prior authorization, the court may authorize the provision of and payment for such services nunc pro tunc. The court shall determine reasonable compensation for the services and direct payment to the person who rendered them or to the person entitled to reimbursement.

5. *Notwithstanding the rates and maximum limits generally applicable* to criminal cases and any other provision of law to the contrary, *the court shall fix the compensation to be paid to attorneys* appointed pursuant to this section *and the fees and expenses to be paid for investigative, expert, and other reasonably necessary services* authorized pursuant to subdivision four of this section *at such rates or amounts* as the court determines to be appropriate *in order to provide such defendant with representation by counsel and other services as nearly equivalent as possible to those available to defendants who are financially able to obtain such representation and other services for their defense and appeal.*

6. Any compensation, fee or expense to be paid pursuant to this section *shall be a state charge* payable on vouchers approved by the court which fixed the same, after audit by and on the warrant of the comptroller. [Emphasis supplied.]

The bill is an effort to overcome a defective statutory scheme. It is designed to assure equality of service for the poor. Under its terms, the state must appoint and pay for counsel for those unable to afford a lawyer both prior to judgment and at any time up until the actual imposition of the sentence of death.

Investigative, expert and other auxiliary defense services, as well as counsel fees, will be paid on the basis of customary rates for the services in amounts which will provide the defendant with representation and other services " . . . as nearly equivalent as possible to those available to defendants who are financially able to obtain such representation and other services for their defense and appeal."

The meaning of this language and the full scope and extent of what the Volker/Graber bill means is made crystal clear by a review of statements made by the bill's sponsors in debate on the floor of the Legislature. Referring to §722-g(5), Assemblyman Graber stated in 1978:

" . . . [A]nd I surmise today, as this debate progresses, we are going to hear, and hear loud and clear, from those who will say this bill is an attack at minorities, that they cannot get a fair trial, they cannot obtain good counsel, and to those of you who are going to make comment on that particular issue, please read page 9, line 10, section 5 of the bill—

and I would like it read into the record: 'Notwithstanding the rates and maximum limits generally applicable to criminal cases and any other provisions of law to the contrary, the court shall fix the compensation to be paid to attorneys appointed pursuant to this section, and the fees and expenses to be paid for investigative, expert and other reasonably necessary services authorized pursuant to Subdivision 4 hereof, at such rates or amounts as the court determines to be appropriate in order to provide such defendant with representation by counsel and other services as nearly equivalent as possible to those available to defendants who are financially able to obtain such representation and other services for their defense and appeal.'

"I think that says a lot, for it is in that section we are *guaranteeing to those minorities, those indigent people who in the past have not been able to afford good expert counsel; we here, in the State, are going to pay the bill to make sure that they do get the counsel that they need.*" [Emphasis supplied.][16]

Again in 1980, in moving A.8431, Assemblyman Graber stated:

"I am sure later today we will hear that indigent people are unable to get adequate defense counsel because they cannot afford same. ***[Referring again to proposed §722-g[5]] I think that's brand new as far as this state is concerned, that we provide for adequate defense counsel at state cost *to make it absolutely certain that anyone charged with a capital offense . . . would, in fact, have adequate defense.*" [Emphasis supplied.][17]

Last year, on February 17, 1981, referring again to the same section, Assemblyman Graber stated:

"It provides for the appointment of attorneys with experience of three years, if the defendant is unable to employ such an attorney. I am sure later today we will hear that indigent people are often unable to afford adequate defense counsel, because they cannot afford it. *** [722-g[5]] is a first for New York, I believe. *I don't know of any other state that incorporated that into the text of their law.*" [Emphasis supplied.][18]

Thus, a reading of the Assembly debates makes clear that the intent of the sponsors has been to pass a death penalty bill in New York distinctly different and more extensive than any other such bill in America.

Those who are familiar with New York's defense system may find it anomalous that while New York continues to rank 45th in its assigned counsel fee structure for non-capital cases, its Legislature has declared that it shall pay whatever is necessary in death penalty cases. Any doubt regarding this legislative intent, however, is laid to rest by a review of the remarks of the bill's co-sponsors. In 1980, Assemblyman George Friedman stated:

" . . . [N]ever before, never before in the history of any country operating under a system like we operate in the United States of America,

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[16] RECORD OF PROCEEDINGS, ASSEMBLY, STATE OF NEW YORK (Monday, March 20, 1978) (statement of Assemblyman Graber), at 2040-2041.

[17] RECORD OF PROCEEDINGS, ASSEMBLY, STATE OF NEW YORK (Monday, January 14, 1980) (statement of Assemblyman Graber), at 60.

[18] RECORD OF PROCEEDINGS, ASSEMBLY, STATE OF NEW YORK (Tuesday, February 17, 1981) (statement of Assemblyman Graber), at 854.

have rights of accused individuals been protected as they are in this bill. This bill doesn't say you have a right to counsel; it doesn't say just that the State will give you counsel, *it says that the State will pay the going rate for counsel competent to represent you. That is that under this bill you have the right to get somebody like Percy Foreman to represent you and the State is going to foot the bill. Under no other system do you have that right. . . .*" [Emphasis supplied.][19]

Last year in responding to Assemblyman Hevesi's remarks concerning the inadequacy of counsel and investigative services (*supra* n.11), Assemblyman Friedman stated:

"The bill does not say that investigative services will be provided only where investigators exist or work in the county where the trial is held. No, not at all.

"This bill says that investigative services will be supplied, period, whether it is Onondaga County or Bronx County. If you need investigators for the defense of this accused person, you will get them no matter what county he is in. . . .

"***Any fair-minded person would have to say, yes, it is possible an innocent person might be convicted. But I ask you to consider the other side of it. *This happens to be the most humane and fairest capital punishment bill ever passed in any house of any legislature in any state, and probably any country in the world.*

"*This bill provides . . . for the best lawyers to represent the poor Blacks that you were talking about.* You are right, Blacks in the past, and *minority people in the past, have suffered under capital punishment bills because they have not been able to get the best kind of legal representation. But under this bill, they could, because the bill requires that the State pay the equivalent rate for lawyers in that field. . . .*

***[If] I were accused of a capital crime, I could not hire a lawyer like the fellow now representing Jean Harris down in Westchester County, because he charges some $100 to $150 an hour, and if he was going to put in 100 or 200 hours for my defense, I could not afford it or pay for it. I would have to get one of my friends from Bronx County.

"But a poor person . . . under this bill . . . could go hire Joel Arnou now defending Mrs. Harris; F. Lee Bailey, if he feels like coming in; Mr. Edelstein from Brooklyn, you name it. Under this bill the poor person is going to have that lawyer representing him. It is not just the lawyer, it is the investigative services.

"You know the guys that were found, after their convictions, to have actually been innocent, were found to be innocent because somehow they managed, over the years, to get investigators working for them to dig into the facts and find out what actually happened, and uncover the real truth of the cases. This bill says you are going to have those investigative services at the very beginning. *Whatever is necessary, whatever is needed, if an army is necessary, you can hire them under this bill,* and you can prepare a defense if a defense is necessary." [Emphasis supplied.][20]

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[19] RECORD OF PROCEEDINGS, ASSEMBLY, STATE OF NEW YORK (Monday, January 14, 1980) (statement of Assemblyman Friedman), at 99-100.

[20] RECORD OF PROCEEDINGS, ASSEMBLY, STATE OF NEW YORK (Tuesday, February 17, 1981) (statement of Assemblyman Friedman), at 881-890.

In 1980, Assemblyman Clark Wemple, another Assembly co-sponsor, stated:

> "This bill is as carefully constructed a piece of legislation that has ever come before this house. There is not a single provision in our Penal Law, our Code of Criminal Procedure, absolutely nothing that comes within shouting distance of this particular bill in terms of its attention to the rights of the accused. ***Any defendant under this bill can have *unlimited funds* to hire the top attorney in his community, in his state, in the Nation, to defend him. ***You can get not just competent counsel under this bill, *you can get the best counsel.* That is the point of distinction." [Emphasis supplied.][21]

And again last year, during the debate on this bill, Assemblyman Wemple stated:

> ". . . [T]*his bill goes far beyond anything we have ever had in this State or in the country in terms of providing those constitutional rights and extra-constitutional rights* that you don't generally find." [Emphasis supplied.][22]

Assemblyman Morahan, speaking in 1981 on the floor of the Legislature, stated:

> ". . . [A]nd they have provided adequate money for defense, and I am not talking about the average public defender brand of defense, but *defense equal to those who would have money.*" [Emphasis supplied.][23]

It is apparent that the supporters of the Volker/Graber death penalty bill recognize the inadequacies of the current system for providing public defense services. It is also absolutely clear that the legislative intent of §722-g(5) is to respond to those inadequacies by supplying "unlimited funds" to the defense in capital cases. In what follows, the price of that response and other costs of capital litigation are detailed.

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[21] RECORD OF PROCEEDINGS, ASSEMBLY, STATE OF NEW YORK (Monday, January 14, 1980) (statement of Assemblyman Wemple), at 86-87.

[22] RECORD OF PROCEEDINGS, ASSEMBLY, STATE OF NEW YORK (Tuesday, February 17, 1981) (statement of Assemblyman Wemple), at 908.

[23] RECORD OF PROCEEDINGS, ASSEMBLY, STATE OF NEW YORK (Tuesday, February 17, 1981) (statement of Assemblyman Morahan), at 997.

PART II:
THE COST OF CAPITAL LITIGATION (TEN LEVELS AND BEYOND)

It is now clear that a permanent and indispensible feature of capital litigation involves the review of constitutional, statutory and discretionary questions at a minimum of ten state and federal judicial levels. These include, but are not limited to:

1. the guilt and penalty phases of trial;
2. review by the highest state court of a sentence of death and the underlying conviction;
3. writ of *certiorari* to the United States Supreme Court;
4. post conviction proceedings including evidentiary hearings to vacate judgment or set aside sentence or both;
5. review by the highest state court of adverse determinations in such post-conviction proceedings;
6. writ of *certiorari* to the United States Supreme Court;
7. petition for writ of *habeas corpus* to the United States District Court;
8. appeal of a negative determination of a writ of *habeas corpus* to the Federal Court of Appeals for the circuit encompassing the district wherein the writ was brought;
9. a petition for rehearing *en banc* from a negative determination of the Court of Appeals;
10. a writ of *certiorari* to the United States Supreme Court to review a negative determination of either the Court of Appeals or a rehearing *en banc*.

After final judicial review, commutation applications directed to the executive branch are conducted. Stays at each level or stage of litigation are routine. A litigation process lasting eight to ten years is the norm.[24]

These levels of judicial review are the mandatory daily fare of capital litigation even in states where death penalty statutes, unlike the Volker/Graber bill, fail to provide representation beyond the highest state court.

There is a nationwide network of lawyers, legal workers and organizations routinely seeing to it that lawyers are supplied in the post-conviction stages of capital cases everywhere in the country.[25]

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[24] While nostalgic longing for simpler times may be appealing, it will not change the course or the length of capital litigation in the United States. The most recent death case before the Supreme Court, *Eddings v. Oklahoma*, __U.S.__, 102 S.Ct. 869 (1982), vacated a sentence of death and remanded for resentencing. The decision handed down January 19, 1982, concerned a shooting which occurred April 4, 1977. If *Eddings* is resentenced to death, the appeal process will begin again. This time-consuming judicial resolution of complex legal questions is something to be proud of. It is one of the indicia which distinguishes the United States of America from a host of "overnight republics" which dot the globe. Furthermore, litigation delay is by no means unique in or limited to death cases. *United States v. IBM*, 615 F2d 923 (2d Cir. 1980) was an antitrust suit brought by the Justice Department in 1969. The suit alleged that IBM had, *inter alia*, monopolized the electronic digital computer market. Discovery lasted from approximately 1969 to 1975. In that year the government's direct case commenced. It lasted for almost three years. From 1972 to 1980, IBM appealed at least five orders from the District Court, two of which were appealed to the Supreme Court. The IBM defense began in 1978. In January of 1982 the lawsuit was discontinued. As of 1979, 90,000 pages of testimony had been transcribed, several hundred witnesses had been deposed and 70 trial witnesses had been called.

[25] This network, partially the outgrowth of the death penalty moratorium strategy, is now in permanent place throughout the country. Thus, even in states which do not provide for representation beyond the highest state court, litigation still takes place and generates all the costs of responding to petitions for writs of *certiorari*, *habeas corpus* and other forms of state and federal post-conviction relief. More importantly, the

By an examination of these ten levels of judicial review, it is possible to actually chart the costs of capital litigation (see Table 1).

TABLE 1[26]
A Model Charting System for Projecting Capital Litigation Cost

STATE I

TRIAL						1.
PENALTY PHASE	Defense	Prosecution	Court	Correction	Other	TOTAL
State Charge						
County Charge						
GUILT PHASE	Defense	Prosecution	Court	Correction	Other	TOTAL
State Charge						
County Charge						

[illegible]AL						2.
COURT OF APPEALS	Defense	Prosecution	Court	Correction	Other	TOTAL
State Charge						
County Charge						

WRIT OF CERTIORARI						3.
U.S. SUPREME COURT	Defense	Prosecution	Court	Correction	Other	TOTAL
State Charge						
County Charge						

extent to which capital litigants are entitled to counsel in seeking state and federal post-conviction review (in states failing to provide it) is, itself, a question raised in capital litigation. It is clear that, from an ethical point of view, a lawyer cannot just "drop a capital case." Furthermore, canon 2 of the CODE OF PROFESSIONAL RESPONSIBILITY (DR2-110[A][2]) can be read to require the lawyer in a capital case to pursue the matter in federal court independent of the state's statutory scheme. See also *In Re Anderson*, 69 Cal. 2d 613 (1968). A strong argument that counsel should be required constitutionally to pursue the case into federal court is developing. Sevilla, *Do Court Appointed Counsel In Capital Cases Have A Duty To Pursue The Case In Federal Court?*, 1 DEATH PENALTY REPORTER, No. 9, at 1 (May 1981). It is reasonable to assume that eventually in capital cases a right to counsel for *all* levels of review, similar to the New York State statute, will be constitutionally mandated. The cost of the death penalty in those states that have failed to provide counsel will, at that time, be geometrically increased since such a ruling will no doubt be given retroactive effect.

[26] This chart depicts three channels of review in which capital litigation takes place: "State I," "State II" and "Federal." The stages are numbered in the theoretical order in which a "model" case would proceed. In reality, remands, evidentiary hearings, stays, and certain concurrent proceedings would both alter and add to the numbering system. The boxes represent in graphic form a means to allocate state and county costs across the ten levels of judicial review for defense, prosecution, courts, corrections, and other miscellaneous categories. In our model, "State I" is the first channel of litigation and includes the state trial court proceeding,

STATE II

POST-CONVICTION PROCEEDING						4.
	Defense	Prosecution	Court	Correction	Other	TOTAL
State Charge						
County Charge						

APPEAL						5.
COURT OF APPEALS	Defense	Prosecution	Court	Corrections	Other	TOTAL
State Charge						
County Charge						

WRIT OF CERTIORARI						6.
U.S. SUPREME COURT	Defense	Prosecution	Court	Correction	Other	TOTAL
State Charge						
County Charge						

FEDERAL

PETITION FOR WRIT OF HABEAS CORPUS						7.
DISTRICT COURT	Defense	Prosecution	Court	Correction	Other	TOTAL
State Charge						
County Charge						

APPEAL						8.
U.S. COURT OF APPEALS	Defense	Prosecution	Court	Correction	Other	TOTAL
State Charge						
County Charge						

REHEARING						9.
U.S. COURT OF APPEALS	Defense	Prosecution	Court	Correction	Other	TOTAL
State Charge						
County Charge						

WRIT OF CERTIORARI						10.
U.S. SUPREME COURT	Defense	Prosecution	Court	Correction	Other	TOTAL
State Charge						
County Charge						

EXECUTIVE

COMMUTATION APPLICATION						11.
	Defense	Prosecution	Court	Correction	Other	TOTAL
State Charge						
County Charge						

In what follows, we discuss "State I"—the first three stages of capital litigation. We will trace a death penalty case through trial, appeal, and United States Supreme Court review. To the extent possible, we allocate and chart the costs for defense,[27] prosecution,[28] corrections,[29] courts,[30] and other miscellaneous categories.

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direct appeal to the Court of Appeals, and federal relief in the form of *certiorari* to the United States Supreme Court. In the event that relief is denied in this channel, litigation in "State II" (the state's post-conviction remedy channel) commences. Post-conviction proceedings at the trial level, direct review by the Court of Appeals, and again a writ of *certiorari* to the Supreme Court are envisioned. The "Federal" channel includes *habeas corpus* relief in the U.S. District Court, review of adverse decisions by the U.S. Court of Appeals, discretionary relief by rehearing *en banc* in the U.S. Court of Appeals, and again a writ of *certiorari* for Supreme Court review. The eleventh level of this review process includes executive clemency. It should be noted that the statutory apparatus for clemency in the state of New York does not appear to be procedurally sufficient for death cases. See N.Y. CORRECT. LAW ARTICLE 11 (McKinney 1968).

[27] In addition to other authority cited throughout this paper, in February and March of 1982, the New York State Defenders Association conducted a telephone survey of public defender offices, private attorneys, expert witnesses, investigators, correctional personnel, and others in order to determine costs involved in litigating death penalty cases.

[28] Throughout the remainder of this paper, we apply a uniform formula to estimate capital prosecution costs. This formula is based on existing average statewide disparity rates between prosecution and defense. For the purposes of the estimates, we use the baseline defense costs and apply three prosecution to defense ratios. The first, a 2 to 1 ratio, is applied to counsel costs in the guilt and penalty phases. The second, a 3 to 1 ratio, is applied to expert witness and investigation costs in the guilt and penalty phases. The third, a 1 to 1 ratio, is applied to the cost of appeals to the New York Court of Appeals and the United States Supreme Court. These ratios are a reflection of actual experience based on defense/prosecution cost data. As applied, they will consistently yield what we believe are uniformly conservative dollar amounts. Actual prosecution/defense disparity is much greater than 2 to 1 or 3 to 1. In some jurisdictions, disparity runs as high as 8 or 10 to 1. The reader can thus take the prosecution costs reported hereinafter as the minimum cost of capital prosecution, resting precariously upon the assurance that these costs will be no less than what is reported, and will probably be much more. While we hesitate to say how much more, if recent experience is the bellwether, counties will assuredly go bankrupt as they pay for the cost of prosecution in capital cases. Under the capital litigation scheme envisioned for New York by the Volker/Graber bill, prosecution costs will remain a county charge.

[29] We do not yet know the correctional costs generated by the death penalty at the local level. There will be higher security costs attached to capital incarceration in the areas of housing, monitoring, maintenance, transportation, and feeding. Most local jails will be hard pressed to achieve adequate capital case security. We do not, herein, estimate local correctional costs generated by the death penalty. In the state system (post-verdict), capital incarceration takes a tremendous and distinctly identifiable toll. We discuss certain costs associated with state level incarceration infra at PART III.

[30] The difficulty of retrieving useful data for the purpose of projecting court costs in New York State has previously been recognized. NATIONAL CENTER FOR STATE COURTS, NEW YORK STATE BUDGET REVIEW MANUAL: A REPORT OF THE SENATE SELECT TASK FORCE ON COURT REORGANIZATION (1978). For this reason, in this report we rely on survey data from other states.

THE GUILT AND PENALTY PHASES

A. Death Is Different

The United States Supreme Court has recognized that death penalty cases require greater due process procedural safeguards than do non-capital cases. In *Gardner v. Florida*, 430 U.S. 349, 357 (1977), the Court stated:

> ". . . [F]ive Members of the Court have now expressly recognized that death is a different kind of punishment from any other which may be imposed in this country. [Citations omitted.] From the point of view of the defendant, it is different in both its severity and its finality. From the point of view of society, the action of the sovereign in taking the life of one of its citizens also differs dramatically from any other legitimate state action. It is of vital importance to the defendant and to the community that any decision to impose the death sentence be, and appear to be, based on reason rather than caprice or emotion."

The Legislature's intent to have the state pay the defense bill no doubt arises from court decisions like *Gardner* which establish that death cases require greater procedural protection.[31]

In recognizing this constitutional principle, the Legislature has declared its commitment to this new brand of equal protection. It has stated that where the state seeks the irrevocable sanction of death, inability to pay for the best counsel and auxiliary services will not be a bar to receiving them. Under the Legislature's view of due process, in such cases, the state will pay for representation, no matter what it costs.

In the ordinary criminal case in which the appointment of counsel is made for a person unable to afford counsel, the court will appoint counsel. The legislative debates indicate, however, that, although it is not a requirement of our present statutory scheme and has not yet been recognized as an element of the Sixth Amendment,[32] an indigent defendant facing the death penalty in New York State will have the opportunity to choose the lawyer to be appointed. Additionally, although the mechanism for this process of appointment has not been made clear by the Legislature, the Legislature has explicitly pointed out that this will not just be competent counsel but will be the best counsel money can buy:

> ". . . [W]hat we are saying is that whatever the fees are that F. Lee Bailey and the best attorneys, the best criminal attorneys get, are the kind of fees that the State is going to provide for the defense of accused persons who may come under the restrictions of this bill."[33]

While the use of the name F. Lee Bailey may be somewhat symbolic, there is no

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[31] See *Woodson v. North Carolina*, 428 U.S. 280 (1976); *Gregg v. Georgia*, 428 U.S. 153 (1976); *Furman v. Georgia*, 408 U.S. 238 (1972). Mr. Justice Harlan, concurring in *Reid v. Covert*, 354 U.S. 1, 77 (1957), stated: "I do not concede that whatever process is 'due' an offender faced with a fine or a prison sentence necessarily satisfies the requirements of the Constitution in a capital case." *Gardner* makes clear that a majority of the Court accepted this position.

[32] The U.S. Court of Appeals for the Ninth Circuit has held that a defendant's Sixth Amendment right to counsel is violated when a trial court judge fails to accord appropriate weight to an existing attorney/client relationship in determining whether to grant a continuance founded on the temporary unavailability of the defendant's particular attorney. *Slappy v. Morris*, 649 F.2d 718 (9th Cir. 1981). On March 29, 1982, the United States Supreme Court agreed to review the case. *Morris v. Slappy*, 81-1095. See also *N.Y.L.J.*, March 30, 1982, at 1, col. 4. Thus the question of whether or not a defendant has a federal constitutional right under certain circumstances to "counsel of choice" may soon be resolved.

[33] RECORD OF PROCEEDINGS, ASSEMBLY, STATE OF NEW YORK (Monday, March 20, 1978) (statement of Assemblyman Friedman), at 2079-2080.

question that his fee structure is real. If New York is prepared to pay for the "best" counsel with taxpayers money, it can begin with his law offices in Boston. Bailey's office reported that in serious felony (non-capital) cases, it requires an initial retainer of $50,000. This does not include expenses or per diem trial costs.[14]

Norris Gelman, a Pennsylvania attorney with much trial experience in death penalty cases, stated that an appropriate retainer in a capital case runs anywhere from $25,000 to $50,000 depending on the fact pattern.

Ken Rose, an attorney with Team Defense in Atlanta, an organization that specializes in defending death penalty cases, reported that private attorneys in the Atlanta area require initial retainers ranging from $15,000 to $40,000. The Southern Poverty Law Center similarly found that private attorneys in Alabama require retainers of not less than $25,000.

Fees thereafter will be based on hourly and daily (trial) rates. Fees ranging from $100 to $200 per hour will not be uncommon. The bill provides for the appointment of "one or more attorneys" and it is reasonable to assume that the appointment of two or more attorneys will be the rule, not the exception.[15]

The natural result of the death penalty statute will be that jury trials will be conducted in all capital murder cases. The jury trials will be longer and more expensive than in non-capital cases. Long before the jury is empaneled, however, there will be very high pretrial costs. These include motion practice, investigations, and the use of expert witnesses. A discussion of these follows.

B. Motion Practice

Pretrial motions play an important role in *most* criminal cases. However, a death penalty trial is strikingly different than other felony trials because of the length of each procedural stage and its overall importance to the ultimate objective—preventing the imposition of the sanction of death. Extensive pretrial motions play, therefore, a crucial role in *every* death penalty case.

Motions request specific legal relief or action; they help to educate the trial court and appellate courts as to the standards of extra-special due process that have to be applied to each procedural question in a death case. Motions create a record and set a course of strategy upon which the entire litigation effort in a capital case is patterned.

The usual number of pretrial motions in non-capital cases vary between five and seven. In death penalty cases, every motion will be critical, requiring substantially more time to prepare. Experienced attorneys state that the typical capital case requires the filing of between 10 and 25 trial motions.[16] Many pretrial motions will relate solely to the unique aspects of the defendant's underlying criminal case. Others will be specifically a function of there being a death penalty statute in existence.

Thoroughly researched constitutional attacks on the death statute, motions directed at insulating the jury from ourside influences, and in-depth motions for discovery and the right to inspect and test evidence will be routine. Ordinary motions in criminal

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[14] Significantly, F. Lee Bailey reportedly spent $350,000 for his own defense against charges of conspiracy to defraud investors arising from his involvement with Glenn Turner (*Time*, Feb. 16, 1976, at 50.) Nor is he alone. John Ehrlichman is reported to have spent $400,000 on his defense. (*Time*, Jan. 13, 1975, at 14.)

[15] Unlike the proposed Volker/Graber bill, the California death statute is silent on the number of lawyers to be appointed in capital cases. Nevertheless, the California Supreme Court has held that a court should presumptively appoint a second attorney if such an attorney "... may lend important assistance in preparing for trial or presenting the case." *Keenan v. The Superior Court of the City and County of San Francisco*, 30 Cal. 3d_____ (Feb. 8, 1982).

[16] *Motions for Capital Cases*, Southern Poverty Law Center, 1981, p. 2.

cases take on a different meaning in death cases. Thus, motions to suppress physical evidence or suggestive identification procedures, motions to dismiss the indictment, or motions to contravert search warrants, the routine matter of any criminal case, are longer, more complicated and more heavily litigated in death cases.

In capital cases, motions for the appointment of expert witnesses, the employment of investigators, the utilization of private psychiatrists for trial and sentencing and special motions to increase the court's consciousness of the requirements of "super due process" are not only routine but required as an element of the effective assistance of counsel.

In virtually every death penalty case, the defense will file motions for change of venue, individual *voir dire*, sequestration of jurors during *voir dire*, and sequestration of a petit jury. The motions are essential to offset prejudicial pretrial publicity and to ensure the defendant an impartial jury.[37] There are reported cases of individual examination of potential jurors that have lasted two to four weeks. The cost of sequestering the jury in a trial that, on the average, lasts from four to six weeks in a capital case, is also substantial.[38]

Professor Robert Buckhout, a professor of psychology at Brooklyn College, Brooklyn, New York, has testified in over 80 death penalty cases. His expertise involves the sufficiency of eyewitness identifications as well as conducting juristic psychological surveys. Juristic psychological surveys involve consulting with the attorneys and preparation of sample questionnaires to assist in targeting special jurors during *voir dire*. At times, he has even assisted attorneys in the actual conduct of *voir dire*. Professor Buckhout's fee for the surveys is $500 per day for in-courtroom testimony with a consulting fee of $100 per hour. In 1977, Professor Buckhout submitted a $25,000 bill in a death penalty trial for a juristic psychological survey.

C. Investigators

Once an attorney appears in a death penalty case, and ordinarily before many of the aforementioned pretrial motions are brought, there arises the need for auxiliary defense services. Foremost among these is the need for an investigator.

Investigators' fees, in our survey, range from $500 to $1500 per day. Hourly rates for experienced investigators were reported to range between $75 and $200. The Office of the State Public Defender in California has found the cost for investigators at trial in some death penalty cases to have been in excess of $40,000. Similar amounts were reported by private attorneys. The National College for Criminal Defense in Houston found that the bare minimum needed for investigation is $10,000, and this figure only represents the investigation required for the trial phase. This figure, by New York standards, is concededly low.[39]

The Sixth Amendment right to the effective assistance of counsel in both federal and state courts requires thorough investigations in all criminal cases. Apparently, this has not gone unnoticed by the Legislature. The legislative debate on what would be paid for investigators included a comment by Assemblyman Friedman about defendants who, years after conviction, were able to secure their freedom with "late" investigative

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[37] *Motions for Capital Cases*, Southern Poverty Law Center, 1981, pp. 43-44, 78-83.

[38] This cost is not detailed nor estimated herein. It will, however, be a substantial charge.

[39] In *People v. Gravdon*, 43 A.D.2d 842 (1974), a non-capital murder case involving a shooting in a social club, the American Service Bureau, the private investigation firm on the case, found and interviewed more than 35 witnesses. The work in that non-capital matter included the investigation of each complaining witness and the retrieval of statements. The cost of this alone exceeded $25,000.

help. Referring to this issue he stated, *supra*, at n. 20, "This bill says you are going to have those investigative services at the very beginning."

"Up front" investigative services have been shown to be essential. In the recent case of Johnny Ross, imprisoned in Louisiana at 15 and sentenced at 16 to die for a rape he didn't commit, investigative services set him free. These investigative services should have been available pretrial, but were not supplied until the Southern Poverty Law Center brought a *habeas corpus* petition (in the "Federal" or third litigation channel).

The Southern Poverty Law Center received a letter from Johnny Ross in 1975 pleading his innocence. Ross was 16 at the time—the youngest person on death row in America—and the Center took his case. Ross's 1975 trial had lasted less than one day despite the fact that it was a capital case in which his life was at stake.

Among numerous other things, the Southern Poverty Law Center hired Gary Eldredge, a private investigator from New Orleans, to complete the investigation in the Johnny Ross case:

> "Eldredge read the trial transcript and began tracking down alibi witnesses, interviewing investigating officers and pursuing other leads. In reading the transcript, he noticed that the prosecutor had introduced, through the testimony of a criminalist, the rapist's blood type, as determined from a semen sample taken from the rape scene, but the prosecutor had never tied this piece of evidence to Ross.
>
> "For the sake of thoroughness, Eldredge decided to check it out and contacted Ross to see if he knew his blood type. The rapist's was the 'B' group. Ross didn't know his, but told Eldredge he had donated blood a number of times since he'd been imprisoned. So Eldredge contacted the blood bank that served the prison.
>
> "Each of the numerous times Ross had donated, his blood had been typed, and each time it had come up 'O +.' But these were the results of testing by technicians, not physicians, so after informing [the Southern Poverty Law Center] of his findings, Eldredge arranged for a prominent university doctor to test Ross, and his tests produced exactly the same results. ***[The Southern Poverty Law Center] took the evidence to the district attorney's office. Soon thereafter, Ross was released. He is now living with his sister in Denver."[40]

The price of the Gary Eldredge investigation in the Johnny Ross case was $3500. It took place, however, years later than it should have, in conjunction with a federal *habeas corpus* petition. The waste of taxpayer dollars that ensued from unnecessary litigation is nothing compared to the abuse of Johnny Ross's liberty—a deprivation of freedom arising directly from poverty.

A typical criminal case investigation, obviously heightened in a death case, involves searching for and interviewing every potential favorable and adverse witness. It includes crime scene investigations, photographs, the search for and retention of experts, and the review of testimony presented at pretrial hearings and other evidentiary proceedings. The investigator retrieves evidence, follows leads, and develops factual theories. Frequently, the investigator is deeply involved in surveys to test for prejudice within a community and among potential jury veniremen. In a system which requires the marshalling of facts before they are applied to law, the investigator is a crucial and vital part of the defense team.

Nor should it be forgotten that the sentencing phase of the bifurcated trial process is

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[40] *Poverty Law Report*, Vol. 10, No. 1, Jan./Feb. 1982, at 3.

a co-equal part of capital litigation at the trial level. Thus, the marshalling of facts on the issue of guilt is but 50 percent of the work that a good private investigator will be doing in a capital case.

D. Experts and Auxiliary Services

Experts, such as forensic scientists, juristic psychologists, psychiatrists, crime scene reconstructionists, criminalists, polygraph experts and others contacted in our survey, reported fees ranging from $500 to $1,000 a day for their services. These people are critically necessary to the defense team. While any particular case may require a different configuration of the experts required, all cases will require the extensive use of numerous experts. The fees reported below are exclusive of the expenses required for travel.

Judith Bunker, a technical specialist to the medical examiner in Atlanta, and one of the top crime scene reconstructionists and blood stain analysts in the country, has advised NYSDA that the going rate for such services ranges from $700 to $1,000 per day.

In many capital cases, difficult issues, such as the insanity defense, are often raised. Psychological Evaluations, Inc., in Atlanta, has performed psychiatric and psychological evaluations in death penalty cases throughout the country. Although the individual fees vary, Dr. Anthony Stone, a psychologist, reports the average fee is approximately $700 a day exclusive of expenses.

Our office interviewed Mr. Robbie Robertson of W.A. Robertson and Associates from Atlanta, Georgia. Mr. Robertson is an expert in the administration and analysis of polygraph examinations. He has participated in approximately 25 capital murder cases in which his testimony and analysis were used at pretrial proceedings, and trial and sentencing phases of the bifurcated capital process. His present fee is $200 per day for courtroom testimony. In addition, he charges $150 for the administration of the polygraph examination with the average bill approximating $500 plus expenses.

As stated earlier, Professor Robert Buckhout has appeared in his capacity as an expert witness regarding eyewitness identifications. His courtroom fee is $500 per day. His consulting fee, once again, $100 per hour.

Dr. George Jurow of New York, New York, has been involved in approximately 25 death penalty cases. His expertise centers on *Witherspoon* issues.[41] His research concludes that the exclusion of jurors opposed to the death penalty at trial results in biased juries. His services include consulting with the attorney and sometimes testimony at the pretrial stage. Frequently, he is a witness in support of defense motions to empanel a separate jury for the sentencing phase. His fee is $100 per hour for consulting as well as testimony.

Dr. David Rothstein, of the Michael Reese Medical Center, Chicago, Illinois, is a psychiatrist. Dr. Rothstein has testified in several capital cases in both the trial and penalty phases. His fee is $125 per hour for in-court testimony and $110 per hour for analysis. This fee is exclusive of expenses.

Dr. Seymour Halleck, of the School of Psychiatry at the University of North Carolina at Chapel Hill, has testified in both the trial and penalty phases of capital trials. With a standard fee of $150 per hour, he approximated his average bill to be $2500 for both phases.

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[41] *Witherspoon v. Illinois*, 391 U.S. 510, 522 (1968), held that a death sentence may not be "... carried out if the jury that imposed or recommended it was chosen by excluding veniremen for cause simply because they voiced general objections to the death penalty or expressed conscientious or religious scruples against its infliction."

A typical death case will use these experts or others just like them. A hypothetical case can easily be designed. Let us assume a case in which three days of crime scene reconstruction, a juristic psychological survey and a polygraph examination are required. Let us further assume a *Witherspoon* jury challenge that takes three days of work and four hours of testimony and the use of one psychiatrist who has conducted a five hour exam and testifies for two hours. This relatively modest use of experts will run up a bill for the state of more than $30,000 in just the guilt phase of a capital case. These costs are real. They will be paid by the state. They will be present in every capital trial.

E. Sentencing in the Penalty Phase

Any aspect of the defendant's character or record and any other circumstance offered in mitigation of punishment must be considered by the jury in the penalty phase of a capital trial. *Lockett v. Ohio*, 438 U.S. 586, 604 (1978). *Lockett* followed on the heels of *Woodson v. North Carolina*, 428 U.S. 280 (1976). In *Woodson*, the Supreme Court, in defining the requirements of capital sentencing procedures, stated that courts must consider the:

> "character and record of the individual offender and the circumstances of the particular offense *as a constitutionally indispensible part of the process of inflicting the penalty of death.*" (Emphasis supplied.) *Id.*, at 304.

In *Gardner v. Florida*, 430 U.S. 349, 358 (1977), the Court held that:

> "[I]t is now clear that *the sentencing process*, as well as the trial itself, *must satisfy the requirements of the Due Process Clause* ***[*T*]*he sentencing is a critical stage of the criminal proceeding at which* [*the defendant*] *is entitled to the effective assistance of counsel.* ***The defendant has a legitimate interest in the character of the procedure which leads to the imposition of sentence. . . ." (Citations omitted.) (Emphasis supplied.)

At this critical stage of the proceeding, the defense may use many of the socio-psychiatric witnesses employed during the trial phase. However, this stage additionally requires the investigation of the defendant's family, friends, neighbors, school personnel, and social workers.

The investigation at the sentencing phase requires a complete retrospective analysis of every positive aspect of the defendant's life from the day of birth to the date of sentence. The witnesses called to this proceeding, vital to establishing evidence in mitigation of sentence, must be made available to testify, requiring, in many cases, the reimbursement of travel expenses and accommodations. Military, school, work, and other records must be designated, located and retrieved.

The Volker/Graber bill will permit the court, upon a showing of prejudice, to discharge the trial jury and empanel a new sentencing jury.[42] Hence, defense counsel will undoubtedly make the same motion as was made at trial for individual *voir dire* at the sentencing phase and for sequestration of the sentencing jury. Here again, a lengthy process of individual *voir dire* is, in many cases, the only possible remedy to empanel a fair and impartial jury on the question of sanction. The main reason courts have granted individual *voir dire* is that it is uniquely suited to capital cases.

Death cases ordinarily are accompanied by tremendous publicity and notoriety. Infection of the jury panel by this kind of publicity, and its resultant effect on jury fact-finding, creates reversible error. Therefore, it is in the interest of the court system to

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[42] Proposed CRIM. PROC. LAW §400.27(2), S.7600/A.9379 §8 (1982).

permit individual *voir dire* and sequestration of jurors during *voir dire*. Such *voir dire* enables the defense to delve into the area of prejudice without fear that the answers of one juror will taint the entire panel. Such taint preserves an issue for later litigation.

Three of the mitigating factors described in the proposed death bill for New York require the sentencing jury to consider whether ". . . [t]he murder was committed while the defendant was mentally or emotionally disturbed or under the influence of alcohol or any drug . . . ,"[43] whether ". . . [t]he defendant was under unusual and substantial duress or under the domination of another person . . . ,"[44] and whether ". . . [t]he defendant's mental capacity . . . or his ability to conform his conduct to the requirements of law was significantly impaired. . . ."[45] These circumstances clearly contemplate a situation where the defense will be called upon to present extensive testimony of psychologists and psychiatrists. The previously discussed costs of such services will *again* be incurred by the state. They will probably be higher in the penalty phase of the capital trial since the importance of such testimony is magnified by the omnipresence of death.

Furthermore, since 1978, it has been constitutionally explicit that:

> ". . . [T]he Eighth and Fourteenth Amendments require that the sentencer . . . not be precluded from considering, *as a mitigating factor*, any aspect of a defendant's character or record and any of the circumstances of the offense that the defendant proffers as a basis for a sentence less than death."[46]

The requirements which permit relevant evidence in mitigation also result in the defense calling witnesses to establish the cruelty of the death penalty. Former death row inmates, theologians and witnesses to prior executions are the type of non-traditional expert witnesses that now, under rules laid down by the Supreme Court, testify in the penalty phase of capital litigation. The expense of these experts at the sentencing proceeding will be considerable. Little, if any, of this evidence can be legally excluded from the sentencing phase of a capital trial in the United States.

Mr. Lloyd McClendon, Deputy Administrator, Ohio Penal Industries, Columbus, Ohio, is an ex-death row inmate, having spent two years on death row. He has been certified as an expert witness in approximately six death penalty trials throughout the country. His testimony is used at the sentencing stage to rebut the deterrent effect of the death penalty and to support mitigating factors such as the defendant's positive potential. Mr. McClendon's fee is presently $500 a day for in-court testimony. In a recent case in the state of Florida, he submitted a bill to the public defender's office for approximately $2000.

The array of expert witnesses, including social psychiatrists, criminologists, and counselors, whose testimony will bear on the inadequacy of the death penalty as a sanction, requires preparation for a full blown evidentiary, adversarial proceeding. Experts to testify on the death penalty as it is applied in a particular state, professors to testify on the philosophical question of capital punishment, social scientists to resolve jury doubts, and many others are called as witnesses in the penalty phase. Testimony on the inefficacy of the death penalty as a deterrent, on attitudes toward the

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[43] Proposed CRIM. PROC. LAW §400.27 (8)(f), S.7600/A.9379 §8 (1982).

[44] Proposed CRIM. PROC. LAW §400.27(8)(c), S.7600/A.9379 §8 (1982).

[45] Proposed CRIM. PROC. LAW §400.27(8)(b), S.7600/A.9379 §8 (1982).

[46] *Lockett v. Ohio*, 438 U.S. 586, 604 (1978).

death penalty, on racial prejudice, and on every imaginable issue that can prevent the execution of a human being is permissible and systematically used in the sentencing phase of a capital case.[47]

THE COST OF THE GUILT AND PENALTY PHASES

The first stage of "State I" has been seen to be expensive. We recap costs here.

Defense: Charges for the defense will conservatively total $352,700. One hundred seventy six thousand, three hundred fifty dollars ($176,350) is allocated for each phase (guilt and penalty)[48] as follows:

Attorneys	$106,350
Investigators	40,000
Experts	30,000
	$176,350

Prosecution: Our estimate of prosecution costs at the trial level for the guilt and penalty phase of the average capital case in New York is $845,400.[49]

Court: As previously stated,[50] court data is difficult to retrieve for the purpose of capital litigation cost modeling. We do, however, have a guidepost and, in the absence of hard data, we use it. John Ackerman, dean of the National College for Criminal Defense, reports that a local Texas judge, counting only court-time, employees time and jury sequestration, estimated the county cost of a recent death penalty case at over $300,000. This amount did not include appeal, and the defendant in that case did not receive a sentence of death. In fact, the case is now on appeal.

Correctional Cost: As previously stated,[51] we do not estimate or allocate local jail capital incarceration costs.

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[47] It should be noted that the only experiential competence statutorially required under the Volker/Graber bill is in the *trial* of felony cases (three years). However, the two stages of the bifurcated capital process require experiential competence in both the guilt phase (trial) and the penalty phase (sentencing). The art of sentencing advocacy is a new and developing area. Experience in New York felony court representation, absent more, is not sufficient experience for the sentencing phase of a capital case. Additionally, in New York, experiential competence in similar sentencing proceedings would be virtually impossible to acquire. Although Article 400 of the Criminal Procedure Law presently provides for presentence conferences, summary hearings, and other specified hearing procedures, these proceedings do not approach the complexity or importance of penalty phase proceedings in death cases. Furthermore, the CPL proceedings can only be held before a judge [CPL §§400.10; 400.15(7)(a); 400.16(2); 400.20(a); 400.21(7)(a); 400.30; 400.40(5)] while penalty phase proceedings are held before juries. Although the Volker/Graber bill clearly permits hiring special counsel to assist in penalty phase procedures, including post-trial, presentence motion practice, presentence investigations, hearing preparation and the sentencing hearing itself, we do not independently calculate these fees.

[48] This assumes a concededly low model four week trial of 120 trial hours, exclusive of motions. It assumes two trial lawyers, one investigator, and the expert costs detailed *supra* at D. One hundred twenty five (125) hours of motion work are allocated to the guilt phase, and 344 hours of lawyer time to investigation and preparation (research, witness preparation, client interviews).

[49] See n. 28, *supra*.

[50] See n. 30, *supra*.

[51] See n. 29, *supra*.

We can now allocate and chart some of the costs arising in the first stage of capital litigation—the guilt and penalty phases. (See Table 2 below.)

TABLE 2
COST OF THE GUILT AND PENALTY PHASES

TRIAL						
PENALTY PHASE	Defense	Prosecution	Court	Correction	Other	TOTAL
State Charge	$176,350	—0—	$150,000	—0—	?	$326,350
County Charge	—0—	$422,700	—0—	?	?	$422,700
GUILT PHASE	Defense	Prosecution	Court	Correction	Other	TOTAL
State Charge	$176,350	—0—	$150,000	—0—	?	$326,350
County Charge	—0—	$422,700	—0—	?	?	$422,700

STATE $652,700
COUNTY $845,400
TOTAL $1,498,100

Under the Volker/Graber bill, it will cost New York State and its counties more than $1.4 million to bring a capital case to the point of a death sentence. However, the drain of taxpayers' money will have just begun. The costs associated with the ensuing nine levels of appellate review are substantial.[52] The first two stages of the appellate process within "State I" are detailed below.

DIRECT APPEAL TO THE COURT OF APPEALS

The Volker/Graber bill authorizes a direct appeal to the Court of Appeals from judgment of conviction and sentence of death. The Court of Appeals will review the law and the facts. It will examine the presence of passion, prejudice, or arbitrariness in the sentence. It will review statewide sentencing patterns and determine whether the sentence of death is disproportionate or excessive. The appellate process will increase the total cost of the death penalty procedure by: 1) being more expensive than non-capital appeals; and 2) regenerating the costs of the trial process when cases are remanded for trial. The latter result is not infrequent in death penalty appeals.

The California Office of the State Public Defender reports that nine out of the first 11 death judgment appeals under California's death penalty statute resulted in either

[52] It bears repeating that the proposed bill does not limit the reimbursement of appellate defense counsel to the state appellate forum. Indeed, it requires the appointment of appellate counsel for the federal as well as the state level. The costs associated with "State II" and the "Federal" litigation channel (see Table 1, *supra*) (post-conviction proceedings, appeals, writs of *certiorari*, federal *habeas corpus* petition, federal appeals, rehearings, and writs of *certiorari*) are not detailed in this paper. Furthermore, the Attorney General will represent the state as respondent at each application for a writ of *habeas corpus* and other federal relief. The weighty state costs associated with this representation at three federal stages of litigation are also not detailed herein.

reversals or retrials. That office also reports the cost of a death penalty appeal on the state level to be in excess of $30,000 per case.

The proposed New York bill would require appellate counsel to perfect two appeals at once, i.e., the sentence review[53] and the direct appeal. The expense of this procedure will also be felt by the state and county as they attempt to defend the conviction. The constitutionality of a death penalty statute is almost always attacked on appeal. In New York, this will require the Attorney General's office to appear and defend the constitutionality of this statute.[54]

In our survey on appellate death penalty costs, F. Lee Bailey's office reported a minimum cost of $25,000 to take a non-capital felony appeal. Again, this figure is exclusive of expenses.

The Southern Poverty Law Center reported the cost of an appeal to range from $20,000 to $30,000. Under the New York statute, the costs will be higher.

In order to accurately quantify time involved in a capital case, we examined jurisdictions which have objectified the appellate process by the development of workload standards. In California and Michigan, the state defender offices have quantified non-capital appellate work into work units. By calculating the number of hours to prepare one brief from 300 pages of transcript, the Michigan Appellate Defender Office has developed an "an appellate unit"—a work unit equal to 55 hours of attorney time. Under this formula, a minor non-capital case directly appealed to the highest state court would require 3.7 work units or approximately 203½ hours. This includes an application to appeal, an appellate brief, oral argument, and motion for rehearing. It does not cover reply briefs, client visits, or expenses. The standards for California are substantially similar.

Significantly, the Appellate Section of the National Legal Aid and Defender Association[55] has developed capital case appellate standards and has also done so on the basis of work units. Under these standards, which can permissibly be met under the express provisions of the Volker/Graber bill, 30 work units are the standard work load for one appellate attorney for one year. A direct appeal of a death case to the New York Court of Appeals would constitute 14 work units under these standards.

This figure, which may be somewhat low considering the extensive research and innovation that will be required in the first onslaught of constitutional challenges to the Volker/Graber bill, translates into about five months work or between 800 and 900 billable hours. At the rates charged by the "best" counsel, *supra*, at n. 33, this will translate into defense costs of $80,000.

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[53] The costs associated with the constitutionally required disproportionality review have not been assessed. The death penalty statute will require the arresting police officer, the prosecuting attorney, the defendant's attorney, and the trial judge to file reports with the Court of Appeals in every case where a defendant is indicted for first degree murder. These reports will have to be filed with the Court of Appeals within 30 days of a disposition by a superior court. They will also have to be separately analyzed in conjunction with each death penalty sentence appeal. The contents of the reports will be designed by rule of the Court of Appeals. They are obviously, therefore, not detailed in the bill. It is, however, clear that, independent of other increased capital case judicial costs, the judicial system will need significant additional resources just to carry out disproportionality review.

[54] N.Y. EXEC. LAW, §71 (McKinney 1972).

[55] The workload standards reported here were presented at the National Appellate Defender Conference conducted by the National Legal Aid and Defender Association, April 10-12, 1981, in Indianapolis, Indiana. The capital case workload standards of 30 work units define a capital brief as 10 units, and a petition for *certiorari* as four.

A direct appeal of a capital case to the New York State Court of Appeals will, therefore, cost New York taxpayers no less than $160,000[56] exclusive of correctional and court costs, as indicated in Table 3 below.

TABLE 3
COST OF DIRECT APPEAL TO THE NEW YORK STATE COURT OF APPEALS

APPEAL						
COURT OF APPEALS	Defense	Prosecution	Court	Correction	Other	TOTAL
State Charge	$80,000	—0—	?	?	?	$80,000
County Charge	—0—	$80,000	—0—	—0—	?	$80,000

STATE $80,000
COUNTY $80,000
TOTAL $160,000

SUPREME COURT REVIEW

Final judgments of the Court of Appeals rendered in death penalty cases are next reviewable by the United States Supreme Court by writ of *certiorari*. Bringing such petitions is routine capital practice. Preparation of the petition and the brief on the merits involve complete review of, and familiarity with, the entire trial transcript and all state court proceedings. The transcripts to be reviewed frequently contain thousands and thousands of pages.

Edward Nowak, Public Defender of Monroe County and an able appellate lawyer who successfully argued the landmark case of *Dunaway v. New York*, 99 S.Ct. 2248 (1979), before the Supreme Court, estimates that the amount of time to adequately prepare a non-capital case for Supreme Court review averages between 150 and 200 hours. Seventy to 100 of these hours cover the preparation of the petition for *certiorari*. Once the petition is granted, however, fine points have to be honed and final briefs have to be prepared. Six lawyer weeks is not an unusual amount of time in non-capital cases.

In capital cases, far more is involved. The record is longer, the issues more complex, the stakes higher. More importantly, the constitutional principles involved have frequently only recently been enunciated and are subject to precise case by case refinement. During this process of review, while the cost of defense services will be a state charge, the cost of prosecutorial time will be a county charge.

The Supreme Court does not look at a *certiorari* petition to do justice to an individual litigant. Despite its reputation, the Supreme Court does not sit as a "court of last resort." Rather, in exercising its *certiorari* jurisdiction, the court seeks to either refine existing propositions of law, explore potential areas for applying settled principles of law, or to resolve constitutional conflicts among the state or federal circuits. In death cases, these principles heighten the existing pressure to find novel issues for Supreme Court reversal.

In the most recent case before the Court, *Eddings v. Oklahoma*, ____U.S.____, 102 S. Ct. 869 (1982), the question presented was whether or not the infliction of the death penalty on a minor who was 16 at the time of the crime constituted cruel and unusual

[56] Prosecution costs are calculated at a ratio of 1 to 1 with defense. See n. 28, *supra*.

punishment under the Eighth and 14th Amendments to the Constitution of the United States. A second question was whether or not the Supreme Court should address the plain error committed by the trial court when it refused to consider relevant mitigating evidence. The petition for *certiorari* was 26 pages long. The state's opposition brief, 20 pages long. The brief on the merits, filed for the petitioner, was 68 pages long. It argued three points of law, cited 81 cases, and discussed 95 domestic statutes. It reviewed the statutes of 11 countries. Seventy-seven other authorities were cited in the brief. Five appendices containing in-depth social research were filed.

The *Eddings* case is not an unusual effort on behalf of a capital defendant. It involved hundreds and hundreds of attorney hours to research, prepare and present the case.[57]

Applying the Michigan work unit formula, a non-capital petition for *certiorari*, brief and argument before the United States Supreme Court requires four units or 220 hours of attorney work. The California formula, applied to Supreme Court review in a non-capital case, would require three appellate work units and approximately 200 hours of attorney time for research, preparation, brief writing, and oral argument. Applying the NLADA Appellate Section standards, a petition for *certiorari* in a capital case would require approximately 256 hours of preparation. Supreme Court review itself, including legal research, preparation, *certiorari* petition, briefs, and oral argument would be equal to or surpass 46 percent of an attorney's work year. This is billable at approximately 883 hours.

Under the provisions of the Volker/Graber bill, which provides fees at the rates charged by the "best attorneys," *supra*, at n. 33, this will translate into defense costs of $85,000.

Supreme Court review of a New York capital case will, therefore, cost New York taxpayers no less than $170,000[58] exclusive of correctional costs as indicated in Table 4 below.

TABLE 4
COST OF SUPREME COURT REVIEW

WRIT OF CERTIORARI						
U.S. SUPREME COURT	Defense	Prosecution	Court	Correction	Other	TOTAL
State Charge	$85,000	—0—	?	?	?	$85,000
County Charge	—0—	$85,000	—0—	?	?	$85,000

STATE $85,000
COUNTY $85,000
TOTAL $170,000

[57] Significantly, the Supreme Court decided the narrower of the two questions in *Eddings*. The constitutionality of imposing the death penalty on a 16-year-old thus remains an open question. The case is now in Oklahoma awaiting a resentencing procedure. NYSDA has been informed that a motion has been made seeking the appointment of a new sentencing judge. This will, of necessity, have to be decided before the case can proceed.

[58] Prosecution costs are calculated at a rate of 1 to 1 with defense. See n. 28, *supra*.

PART III:
A NOTE ON THE COST OF THE "CORRECTIONAL" PROCESS

The fiscal wastefulness of a criminal justice system with a death penalty is epitomized by the cost of incarceration. Since 1976, when the death penalty was held not to be unconstitutional *per se* by the Supreme Court, four people have been executed in the United States.[59] The vast majority of capital defendants do not get executed; rather, ultimately, after enormous agony and squandering of the public treasury, they are sentenced to life imprisonment. It will be the same in New York State. New Yorkers will not only pay for the cost of trial, appeal, and nine levels of review, but also for the incarceration of the inmate during the process and most probably for the rest of his life. It would, in the eyes of some, be better at the outset to offer life imprisonment as the only sanction for first degree murder.

The annual cost of maintaining an inmate in a New York State prison was calculated at $15,050 in 1978.[60] Assuming that the average age of persons convicted of first degree murder is 30,[61] and that they will live until age 70, the cost of life imprisonment for 40 years would be $602,000. At a cost of $1.4 million, a death penalty trial alone will exceed the cost of life imprisonment.

For the defendant facing capital punishment, the cost of special death row security must be added to the annual charges above. Thus, according to representatives of the Florida Clearinghouse on Criminal Justice, during the eight to ten years involved in post-conviction appellate review, an additional $15,000 per year for each inmate will probably be required. This security cost reflects the need to deal with the death row inmate individually, to maintain an individual cell, and to separate the inmate from the general population. This issue is certainly not new to correctional administrators.[62]

Richard McGee, then Administrator of the California Youth and Adult Corrections Agency, stated 18 years ago:

> "There is also the argument of cost. Why support some murderer for the rest of his life when we could execute him and save all that money, the argument goes.
>
> "Like so many arguments favoring the death penalty, this does not

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[59] Note that of the four, three—Gary Gilmore (1977); Jesse Bishop (1979); and Steven Judy (1981)—all desired execution. Only John Spenkelink did not wish to die. He is thus the only person to be executed against his will since 1967. Since 1976, eight persons on death row have, however, committed suicide.

[60] D. McDONALD, THE PRICE OF PUNISHMENT: PUBLIC SPENDING FOR CORRECTIONS IN NEW YORK 13 (1980).

[61] Florida reports the average age at admission to its death row is 30.8 years. BUREAU OF PLANNING, RESEARCH AND STATISTICS, FLORIDA DEP'T. OF CORRECTIONS—DEATH ROW ANALYSIS 1, STATISTICAL FACTS (Aug. 29, 1980).

[62] Thorsten Sellin, writing in 1961, said: "It has . . . been claimed that [the death penalty] is an economical way of disposing of criminals who, otherwise, would have to be supported at public expense—perhaps for the rest of their lives. Those who employ this cynical argument may be ignorant of the sometimes mountainous costs of the administration of justice in capital cases and they certainly have no knowledge of the realities of prison administration. It is no doubt true that some prisoners, including some lifers, do not make adequate returns to the state—measured in dollars and cents—for some of them are mentally or physically incapable of doing so. But most lifers work in prison. They perform domestic services, they work in prison shops, they do clerical work. If they were paid a wage commensurate with their services, they would be able to pay the costs of their maintenance, but since they are paid little or nothing, it is easy to forget that they are a source of financial profit to the institution in one way or another. Any prison warden will testify to the fact that it is from the group of lifers that he draws a considerable number of trusted inmate employees." *Capital Punishment*, 25 FED. PROBATION, No. 3, at 3 (Sept. 1961).

hold up under factual analysis. The actual costs of execution, the cost of operating the super-maximum security condemned unit, the years spent by some inmates in condemned status, and a pro-rata share of top level prison official's time spent in administering the unit add up to a cost substantially greater than the cost to retain them in prison the rest of their lives.

"Furthermore, perhaps half of those condemned could make highly useful prisoners. It is a common experience that many long-term prisoners settle down to responsible jobs in the prison community which could conservatively be valued at a minimum of half the salary of an employee in industrial, maintenance, clerical and other roles. This would more than pay for both their own keep and that of the other half.

"*Thus, our studies indicate that just on the basis of prison costs alone, it would actually be cheaper to do away with the death penalty.* When the other costs of death penalty cases are added—the longer trials, the sanity proceedings, the automatic and other appeals, the time of the Governor and his staff—then there seems no question but that economy is on the side of abolition."[63] (Emphasis supplied.)

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[63] McGee, *Capital Punishment as Seen By a Correctional Administrator*, 28 FED. PROBATION, No. 2, at 13-14 (June 1964).

CONCLUSION

Throughout this paper we have suggested the existence of certain indirect costs or made reference to specific costs we do not calculate.[64] These include court costs, jury sequestration, security costs for local correctional facilities, the cost of hiring special penalty phase counsel, and millions of dollars that will be associated with state and federal post-conviction review.

It should by now be clear that government has failed to look at the actual costs of defending and prosecuting capital cases. It has failed to examine the impact of the death penalty on the state's correctional system. It has no idea what the price tag for capital litigation by the Attorney General's office will be.

While prosecution costs in capital cases will probably bankrupt some counties, local governments, already caught in a quagmire over a jail crisis, have yet to examine the impact of capital case security requirements on local correctional facilities.

All these issues must be confronted without appeal to bloodlust. Bloodlust in the name of the public good is a political lie.

And the public? The public is concerned with security on the streets, in homes, at school, in offices. The public is, at best, overlooked by a government's death-bent myopia and, at worst, disregarded.

Crime and justice need to wear a common yoke. The death penalty permanently disengages them one from the other. There can be no murder in the name of justice.

Capital cases do not need to exist. The expenditures outlined in this paper are not necessary. Millions of dollars directly attributable to a death penalty and capital litigation can be instantly saved and redirected by not reinstituting capital punishment in New York State. This is not a choice ordinarily posed to voters or those others who live petrified and diminished by the fear of crime.

Political rhetoric, however, should not be permitted to obscure the true pain of the families of homicide victims. They need closure. For capital defendants, delay and legal review mean life. For the families of homicide victims, delay and legal review mean pain. For both, the process is agonizing.

While many have voiced concern over victims or perpetrators, few seem to know the true agony of either—the agony that comes from the notoriety of five or six appeals, from two or three reviews by the Supreme Court, from being dragged, alone, through the cruel and unusual punishment of waiting.

For the victim's family, it is the seemingly endless grief, memories of the morgue, recounting the report of death, refeeling aloneness.

The death penalty perpetuates victim pain. It also eats at the innards of the accused. Death row:

> ". . . is set up with one thing in mind: to hold a person until execution. None of the programs of education or rehabilitation available to others in even the strictest of prisons are available to death row inmates. The prison is required only to house, feed and then kill the inmate. This makes life on death row far more depressing and meaningless than life normally is in prison. . . . [D]eath row, . . . a ghastly zoo organized and wholly devoted to carrying out the most sordid act imaginable ***is just barely living. It is instinctive existence where the days are stitched together by a thin thread of hope that either the laws under which the penalty was decreed will be ruled unconstitutional or one's conviction will be reversed for some reason. The effects of years of isolation and deprivation, the lack of human contact, touch, and

** See nn. 25, 26, 29, 30, 38, 47, 52, 53, 54, *supra*, and text accompanying them.

sexuality builds unrelievable pressures. The constant possibility of execution added to those pressures makes for a grinding, withering life that is all but intolerable—a 'slow coming dark.' "[65]

The debate on the death penalty has become sordid and loud. It has diminished us all. We have come very far down the road from morality. Too far. The distance is shamefully represented by the theme of this paper—cost. Capital litigation and the costs of the death penalty, however, will not go away until the death penalty is abolished.

As can be seen from Table 5 below, some of the costs of the first three stages of capital litigation will total no less than $1,828,100.

TABLE 5
COST OF STATE I
(Trial, Appeal, Supreme Court)

	Defense	Prosecution	Court	Correction	Other	TOTAL
State Charge	$517,700	—0—	$300,000	?	?	$817,700
County Charge	—0—	$1,010,400	—0—	?	?	$1,010,400

STATE $817,700
COUNTY $1,010,400
TOTAL $1,828,100

By the time the first 40 New York death cases have been tried to verdict, over $59 million will have been expended. By the time the first 21 New York death cases have reached the United States Supreme Court, New York State and its counties will have expended as much as the Governor, in his February crime message, deemed appropriate for the entire statewide Major Offense Prosecution Program. An amount exceeding the Legislature's fiscal year 1982-83 local criminal justice assistance budget will rapidly be spent to pay for the death penalty in New York.

A recent analysis of the criminal justice system[66] indicates that the cost of the system has increased by 120 percent every five years since the early 1900's, while the rate of inflation has only increased by 40 percent every five years. A capital case, therefore, that necessarily taps resources from all facets of the criminal justice system, can be estimated to increase in cost at a similar rate. If 20 percent of the murder cases in New York (251 convictions in 1980)[67] are prosecuted through three stages of litigation as capital offenses at an average cost of $1.5 million, then in current dollars the death penalty will generate costs of approximately $75,000,000. If we assume that the cost will grow in proportion to the cost of the criminal justice system as indicated by the study, then in the year 2000 A.D., the death penalty will cost $1,075,000,000 annually. Perhaps that is what the Temporary Commission on Revision of the Penal Law meant

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[65] D. MAGEE, SLOW COMING DARK: INTERVIEWS ON DEATH ROW 5, 6 (1980).

[66] Sepler, *The Next Twenty-Five Years Facing the Criminal Justice System: Using Standard Celeration Charting for Systems Analyses*, 6 AM. J. CRIM. LAW 47 (1979).

[67] *Annual Report '80—Crime and Justice*, NEW YORK STATE DIVISION OF CRIMINAL JUSTICE SERVICES, at 224.

in 1965 when, regarding the death penalty, it found "nothing but obstruction, confusion and waste."[68]

We have not detailed the costs of an actual execution. They singularly generate inordinate, almost uncontrollable, expense. The state of Georgia, which executes by electrocution, spent more than $250,000 solely for the anticipated, but aborted, execution of Jack Howard Potts in 1980.[69]

Special telephone lines running from the prison to the United States Supreme Court and to the Governor's office are necessary. The cost of extra police personnel for crowd control, helicopter security and the shutdown of federal air space over the prison are but a few items of the irrational cost that will be generated in the rare handful of cases that ever reach the execution stage.

It is our hope that a rational discussion of the costs of the death penalty will lead New York State to a rational conclusion. ■

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[68] See n. 8, *supra*.

[69] *Atlanta Journal*, Feb. 11, 1982, at 1, col. 1.

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FOR IMMEDIATE RELEASE
FEBRUARY 13, 1983
PLEASE CREDIT "ABC NEWS"

One out of five Americans has been a crime victim in the past year, according to a new ABC News poll, and 13 percent of the adult population - nearly 22 million people - have been victims of violent crime.

The results of a special ABC News crime poll on the perceptions and realities of crime will be broadcast nationally during two weeks of special ABC News programming on "Crime in America," beginning Sunday, February 13.

The poll also revealed that three out of 10 Americans living in cities were victims of crime last year, along with nearly one quarter of all suburbanites and about one in seven Americans living in small towns and rural areas.

The ABC News poll also found that:

- Blacks are two-and-one-half times more likely than whites to be confronted by violent criminals. Twenty-six percent of all Blacks say they have been violent crime victims, compared to 10 percent of all whites.

- One in 12 Americans has had a close relative murdered, and one in eight knew someone in their neighborhood who was slain. Blacks are more than three times as likely as whites to have had a relative murdered. Twenty percent of blacks have had a relative slain, compared to six percent of whites.

- Twenty-six percent of those surveyed said they worried at least a "good deal of the time" about being murdered. Forty-three percent of victims of crime worry about being murdered, compared to 23 percent of people who never have been victims of violent crime.

- Nearly half of the women polled - 46 percent - said they worry about rape either a good deal or a great amount. Three percent report that they have been raped.

MORE MORE MORE

- Fifty-eight percent of those polled said unemployment, poverty, and related problems are the factors more responsible for crime in the U.S. Eighteen percent blamed drugs and 15 percent blamed breakdowns in family, society, morals, etc.

- A majority of 56 percent feels most judges have more sympathy for criminals than for their victims. Nearly two-thirds think judges have been giving shorter sentences in the last few years, and 88 percent said that is not the way they want it.

- Seventy-six percent want the death penalty for murderers. Seventy percent approve of building more prisons so that longer sentences can be given to criminals and 88 percent of these people are willing to have their taxes raised to pay for the new prisons.

- Seventy percent felt prisons mainly should be places that "teach criminals how to be useful, law-abiding citizens when they get out" rather than places to "punish criminals."

- Most people - 65 percent - disagree that armed citizen patrols are the only way to solve the crime problem. Forty-seven percent believe the best protection against crime is a strong police department.

- More than two-thirds of the gun owners polled said they would use their firearms if a burglar broke into their home. Nearly half of the American households - 47 percent - have firearms.

- Eighty percent said there would be less crime if more parents strictly disciplined their children. Exactly half of those polled said juveniles between the ages of 14 and 18 should be punished as adults if they commit a crime, and 46 percent said they should not be punished as adults.

Some 2,500 people were interviewed for the ABC News poll between December 7 and 18. The margin of error is plus or minus three percent.

(EDITOR'S NOTE: ABC News' two-week programming effort on "Crime in America" will focus on the myths and realities of crime, law enforcement, criminal justice and the prison system in the U.S. It will begin Sunday, February 13 with a special edition of "This Week with David Brinkley," with guests William Webster, FBI Director and William French Smith, Attorney General. The two weeks of programming (February 13 to February 25) will continue on "World News This Morning," "Good Morning America," World News Tonight," "Nightline," "20/20," "The Last Word" and "Viewpoint."

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U.S. Department of Justice
Bureau of Justice Statistics



Bureau of Justice Statistics
Bulletin

Capital Punishment 1982

July 1983

The capital punishment series began in 1930 with an annual report of the number of executions in each State. Several significant additions to the series have been made over the years. Beginning in 1953, statistics were published on the death-row population at yearend. In subsequent years, the series was expanded to include the number and characteristics of persons sentenced to death each year including age, sex, race, marital status, and education. Statistics were also published on the offender's previous homicide or other felony convictions and on whether the offender was in prison, on probation, or on parole at the time of the capital offense. The frequency of judicial and legislative action on capital punishment in the 1970's led to the annual collection of information on the legal status of the death penalty in each State. More recently, the Bureau of Justice Statistics began collecting information on those States that subject each death sentence to automatic appeal and on the minimum age at which an offender may be sentenced to death.

The complete series of capital punishment statistics is published in an annual report that may be obtained by request from the Bureau of Justice Statistics.

Steven R. Schlesinger
Director

Two persons were executed during 1982, one each in Virginia and Texas, bringing to six the total executed since 1967. All six took place after the last major U.S. Supreme Court rulings on the death penalty in 1976.[1] By year's end, the number of inmates under sentence of death stood at 1,050, the largest ever recorded in the Nation.[2] The number of persons sentenced to death during the year was 264—higher than in any other year except 1975—while departures from death row by means other than execution fell to 68, one of the smallest totals in recent history.

The large number of persons on death row at the end of 1982 reflected both an increase in the number of death sentences handed down over the years and lengthened stays because of long appeals. The 264 persons sentenced to death in 1982 represented an increase of 8% over the number condemned in 1981. Twenty-eight of the 37 States with death penalty laws sentenced inmates during 1982. The largest number of sentences were handed down in California and Florida, each with 39 persons, followed by Texas[3] with 28 and Alabama with 20. Ohio and Wyoming were the only States that sentenced persons during 1982 but not 1981. A new death penalty law was passed in Ohio during 1981.

Since 1976, the number of removals from death row has dropped each year with the exception of 1980, when 42 persons were relieved of the death sentence in Alabama as the result of a major court decision. The relationship between removals and additions has varied from year to year, but by 1982 about four persons received the death sentence for every one relieved of it.

During 1982, only 16 States had departures from death row, 5 fewer than in 1981. The largest number of removals occurred in Texas (24) and Florida (13); each of the remaining 13 States granted 6 or fewer removals (departures prompted by legislative or judicial action).

About half of the 64 persons who left death row by means other than death had both their convictions and their sentences vacated, while the next largest group, 31%, had only their sentences vacated. Six deaths occurred among the condemned population, including two executions, three murders, and one suicide. The total number of persons who have died on death row since 1972 is 32, including the six who were executed.

The 1,050 persons awaiting the death penalty at yearend 1982 was almost double the record high on death row at the time of Furman v. Georgia, 408 U.S. 238, in 1972, and 2-1/2 times the number on death row at the end of 1976, the year from which most of the current laws date. More than two-thirds of the 1982 total were held in Southern States. Only one Northeastern State, Pennsylvania, held prisoners on death row. The largest numbers were under sentence in Florida (189), Texas (148), California (120), and Georgia (100). In all, 31 of the 37 States with the death penalty held at least one condemned prisoner at yearend.

About 40% of those under sentence

[1] A seventh person was executed in Alabama on April 22, 1983. All of the seven were men.

[2] The 1982 figures exclude 6 men with military death sentences held under Armed Forces jurisdiction.

[3] The figures for Texas and Georgia on the table on page 2 exclude condemned inmates still held in county jails but will be revised to include them as they enter the State correctional system.

Status of death penalty statutes and prisoners under sentence of death, by region and State, 1982

Region and State	Death penalty in force as of 12/31/82	Prisoners under sentence of death 12/31/81	Changes during 1982			Prisoners under sentence of death 12/31/82
			Received under death sentence	Removed from death row	Executed	
United States	---	856	264	68[1]	2	1050
Male	---	845	262	66	2	1037
Female	---	11	4	2	0	13
Federal[2]	Yes	0	0	0	0	0
State	---	856	264	68	2	1050
Northeast	---	15	9	0	0	25
Maine	No	0	0	0	0	0
New Hampshire	Yes	0	0	0	0	0
Vermont	Yes	0	0	0	0	0
Massachusetts	No	0	0	0	0	0
Rhode Island	No	0	0	0	0	0
Connecticut	Yes	0	0	0	0	0
New York	Yes	0	0	0	0	0
New Jersey[3]	Yes	0	0	0	0	0
Pennsylvania	Yes	16	9	0	0	25
North Central	---	77	26	3	0	100
Ohio	Yes	0	3	0	0	3
Indiana	Yes	10	5	0	0	15
Illinois	Yes	41	10	2	0	49
Michigan	No	0	0	0	0	0
Wisconsin	No	0	0	0	0	0
Minnesota	No	0	0	0	0	0
Iowa	No	0	0	0	0	0
Missouri	Yes	14	8	1	0	21
North Dakota	No	0	0	0	0	0
South Dakota	Yes	0	0	0	0	0
Nebraska	Yes	12	0	0	0	12
Kansas	No	0	0	0	0	0
South	---	617	157	61	2	711
Delaware	Yes	4	1	0	0	5
Maryland	Yes	8	7	1	0	14
District of Columbia	No	0	0	0	0	0
Virginia	Yes	17	4	1	1	19
West Virginia	No	0	0	0	0	0
North Carolina	Yes	17	12	1	0	28
South Carolina	Yes	21	2	6	0	17
Georgia	Yes	95	8	3	0	100
Florida	Yes	163	39	13	0	189
Kentucky	Yes	9	6	2	0	13
Tennessee	Yes	22	8	1	0	29
Alabama	Yes	16	20	0	0	36
Mississippi	Yes	27	10	0	0	37
Arkansas	Yes	23	3	2	0	24
Louisiana	Yes	14	1	2	0	13
Oklahoma	Yes	36	8	5	0	39
Texas	Yes	145	28	24	1	148
West	---	140	72	4	0	214
Montana	Yes	3	0	0	0	3
Idaho	Yes	2	5	0	0	7
Wyoming	Yes	0	3	0	0	3
Colorado	Yes	1	1	0	0	2
New Mexico	Yes	3	2	0	0	5
Arizona	Yes	38	15	2	0	51
Utah	Yes	3	0	0	0	3
Nevada	Yes	12	5	0	0	17
Washington	Yes	1	2	0	0	3
Oregon	No	0	0	0	0	0
California	Yes	83	39	2	0	120
Alaska	No	0	0	0	0	0
Hawaii	No	0	0	0	0	0

NOTE: Some of the figures for yearend 1981 are revised from those shown in Capital Punishment 1981 (final report), December 1982, NCJ-86484. These figures exclude 5 inmates in Texas who were relieved of the death sentence before December 31,1981, and 1 in Pennsylvania who was reported twice—first in 1979 and again in 1981, and include 24 inmates (6 in Pennsylvania, 6 in Texas, 4 in Georgia, 4 in Louisiana, 2 in Florida, 1 in Tennessee, and 1 in Washington) who, although sentenced to death before the end of 1981, were either reported late to the NPS program or were not in the custody of State correctional authorities by December 31, 1981.

[1]Includes one Maryland inmate who committed suicide and three inmates (one each in Arizona, Oklahoma, and South Carolina) who were murdered by another inmate.

[2]Excludes six prisoners held under Armed Forces jurisdiction.

[3]The death penalty was in effect in New Jersey as of August 6, 1982.

were blacks, roughly the same proportion as in recent years. Twelve members of other races were under sentence—seven American Indians and five Asians.

Twelve States, the largest number since data became available in 1978, held a total of 59 Hispanic inmates under sentence of death. During the 1978-83 period, the number of Hispanics increased more rapidly than the death-row population as a whole—3-1/2 times versus 2.

There were 13 women on death row in eight States, including 4 in Georgia. The number was the highest since data on women have been available. Since 1972, 12 States have sentenced 31 women to death, but 24 women, including 6 sentenced before 1972, have had their capital sentences lifted.

The number of persons on death row was more than double that in 1968, when a sharp increase began because of an informal moratorium on executions. The moratorium allowed the courts to scrutinize the many challenges to the death penalty then being raised at all levels, culminating in the landmark Furman v. Georgia decision in June 1972. In that decision, the High Court held that death penalty statutes as they currently existed were in violation of the Eighth Amendment's protection against cruel and unusual punishment. While the more than 600 persons then on death row waited to have the new ruling applied to them individually, the States began to revise their laws to withstand the Court's scrutiny.

Inasmuch as the Furman decision provided little in the way of guidelines for new legislation, the years that immediately followed it saw a number of attempts and failures by the States to meet standards acceptable to the Supreme Court. These standards emerged gradually through a series of rulings by the Court, mainly in 1976 and 1977. Most current capital punishment legislation, in fact, dates from 1976, modeled after the laws of Georgia, Florida, and Texas that were upheld in rulings during that year.[4]

Today's death penalty laws provide the death sentence only for specific types of murder, for example, murder committed during a felony, murder of a law enforcement officer, and murder for hire.[5] They also provide for

[4]Gregg v. Georgia, 428 U.S. 153 (1976); Proffitt v. Florida, 428 U.S. 242 (1976); Jurek v. [illegible], 428 U.S. 262 (1976).

[5]In addition to specific types of murder, each of the following crimes, most of which have not passed tests of constitutionality at the U.S. Supreme Court level, is a capital offense in at least one State: aircraft piracy resulting in death, armed robbery resulting in death of the (continued on page 3)

"guided discretion," laying down specific guidelines to assist the sentencing judge or jury in weighing both aggravating and mitigating circumstances to the crime. Thus the Court struck a balance between the wide discretion allowed before Furman and the rigidity of mandatory death penalty laws passed in response to Furman but found unconstitutional in several rulings during 1976.

The years that followed the 1976 Supreme Court decisions saw a number of refinements added to the established standards. In 1977, the death sentence was found to be a disproportionate penalty for the rape of an adult woman. Other rulings have held that the capital prisoner is to be afforded every possible legal right, such as the right to have all mitigating circumstances to the crime considered at the time of sentencing.

By the end of 1982, 37 States and the Federal government provided for the death penalty. During the year, New Jersey was added to the list when it enacted a new death penalty law; its previous law had been declared unconstitutional in 1972. For the first time since the Furman ruling, no State's death penalty law had been overturned.

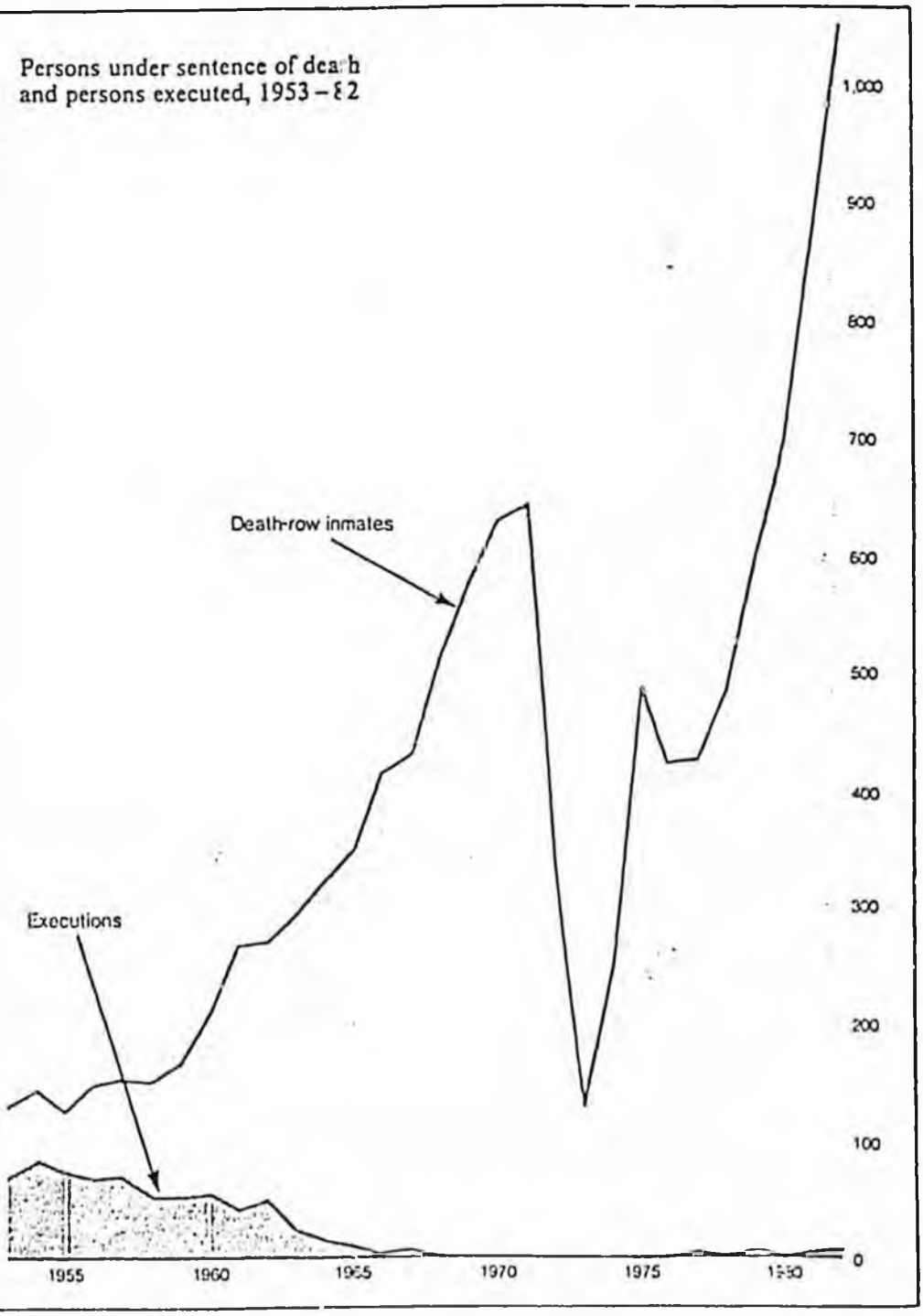
Seven other States made either substantive or procedural changes in their statutes. Arizona provided for a separate sentencing hearing. Idaho added death by a firing squad as an alternative to lethal injection. Nebraska limited the death penalty to those age 18 or older at the time of the crime. Oklahoma further specified the types of murder that constituted capital offenses. South Dakota refined the section of its death penalty law on aggravating and mitigating circumstances. In Utah, revisions were made to the sections dealing with the sentencing hearing and the nature of the jury for that hearing. Virginia made its law more specific by revising the language on murder committed by an inmate confined in a State or local correctional facility.

In addition to legislative actions, a number of court decisions at both the State and Federal level had some impact on the death penalty situation.

In January 1982, the California Supreme Court ruled in California v. Ramos that the required instruction to sentencing juries that a life sentence without parole could be commuted by

[5] (Continued from page 2) victim, assault by a life prisoner resulting in death, hindering preparation for war causing death, kidnaping resulting in severe injury, kidnaping resulting in death, murder by a life prisoner, murder by an inmate of a correctional facility, omitting to note defects in articles of war resulting in death, perjury resulting in the death penalty, rape of a child under age 12, and rape of a child under age 14.

Persons under sentence of death and persons executed, 1953–82



Number of women on death row, yearend 1972–82

late	1972	1973	1974	1975	1976	1977	1978	1979	1980	1981	1982
United States	4	3	3	8	7	6	5	7	9	11	13
Alabama	-	-	-	-	-	-	1	1	-	1	1
California	3	-	-	1	2	-	-	-	-	-	-
Florida	-	-	-	-	1	1	1	1	1	-	-
Georgia	1	2	1	1	1	1	1	2	3	4	4
Kentucky	-	-	-	-	-	-	-	-	1	1	-
Maryland	-	-	-	-	-	-	-	-	-	1	2
Mississippi	-	-	-	-	-	-	-	-	-	-	1
Nevada	-	-	-	-	-	-	-	-	-	-	1
North Carolina	-	1	2	3	-	-	2	1	1	1	1
Ohio	-	-	-	2	3	4	-	-	-	-	-
Oklahoma	-	-	-	1	-	-	-	1	1	1	1
Texas	-	-	-	-	-	-	-	1	2	2	2

the Governor was unconstitutional. However, removal of potentially affected prisoners from death row was suspended pending a review by the U.S. Supreme Court.

In Eddings v. Oklahoma, the U.S. Supreme Court determined that the failure of the State court to consider as a mitigating circumstance a 16-year-old's emotional disturbance and turbulent family history was unconstitutional. The Supreme Court stipulated that sentencing and reviewing courts may determine the weight to be given relevant mitigating circumstances, but that they may not exclude such evidence totally.

In State v. Logan, South Carolina's Supreme Court decided that the State could not try a defendant for capital murder under death penalty statutes that had been declared unconstitutional before the date of the crime. The State had contended that, since only procedural changes were needed to render the old death penalty statutes constitutionally acceptable, the substantive provisions of the law should be considered as if in effect at the time of the murder. The South Carolina Supreme Court, however, held that the death penalty statute in existence when the crime was committed could not be enforced, and that to try the defendant under such circumstances would violate constitutional guarantees against the application of ex post facto laws.

At the end of 1982, Arkansas, New Jersey, New York, and the Federal system were the only jurisdictions whose death penalty statutes did not require an automatic appeal. Some State laws provide for a review of the sentence, while others require a review of both conviction and sentence.

In most States, the youngest age at which a person can be sentenced to death is the age at which they can be tried as an adult. Since in many States this age standard can be waived, the theoretical minimum age for the imposition of the death penalty ranges from age 10 (Indiana) to age 18. Sixteen States reported no minimum age for the imposition of the death penalty.

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July 1983, NCJ-89395

Methodological note

Data on persons under sentence of death are collected annually for the Bureau of Justice Statistics by the U.S. Bureau of the Census as part of the National Prisoner Statistics (NPS) program. Data are obtained from the departments of corrections in each of the 50 States and the District of Columbia. The Bureau of Justice Statistics gratefully acknowledges the cooperation of State officials whose generous assistance and unfailing patience make National Prisoner Statistics possible.

Statistics in this series may vary from other death-row counts for any of the following reasons:

- Inmates are not added to the NPS death-row counts at the time the court hands down sentence, but at the time they are admitted to a State or Federal correctional facility.
- Inmates sentenced to death under statutory provisions later found unconstitutional are removed from the death-row count on the date of the relevant court finding rather than on the dates the finding is applied to individual cases. Thus, persons who are technically under sentence of death, but who are no longer at risk, are not counted.
- NPS death-row counts are always as of the last day of the calendar year and will therefore differ from estimates made for more recent periods.

Further reading

A final report on the death-row population in 1982 will be published in late 1983. To obtain the final 1982 report, Capital Punishment 1982, or be added to the bulletin mailing list, write to the National Criminal Justice Reference Service, Box 6000, Rockville, Md. 20850 (301/251-5500). Other National Prisoner Statistics Bulletins include—

- Veterans in Prison, October 1981, NCJ-79232;
- Prisons and Prisoners, January 1982, NCJ-80697;
- Death-row Prisoners 1981, July 1982, NCJ-83191;
- Prisoners 1925-81, December 1982, NCJ-85861;
- Prisoners and Alcohol, January 1983, NCJ-86223;
- Jail Inmates 1982, February 1983, NCJ-87161;
- Prisoners and Drugs, March 1983, NCJ-87575;
- Prisoners in 1982, April 1983, NCJ-87933.

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under consideration and reports it back as follows:

[ ] do pass [ ] do not pass

[ ] do pass with attached amendments(s)

[ ] replace with CS for HB 760 (Ref) [X] same title [ ] new title

and recommends _____

[ ] AND attaches a "Letter of Intent" [ ] New Fiscal Note

[ ] Zero Fiscal Note Attached

[ ] reports it back without recommendation

[ ] referred to the _____ Committee

MEMBERS SIGNING
DO PASS

MEMBERS HAVING
OTHER RECOMMENDATIONS:

_____ CHAIRMAN

The Deterrent Effect of Capital Punishment: A Cross-State Analysis of the 1960's

Brian E. Forst*

The debate over capital punishment, which for centuries has been waged over essentially nonempirical matters, has focused quite recently on the extent to which executions prevent (or encourage) homicides. Interest in this aspect of capital punishment was considerably heightened when, in the amicus curiae brief submitted in *Fowler v. North Carolina*,[1] the Solicitor General of the United States cited statistical evidence[2] reported by Professor Isaac Ehrlich supporting the hypothesis that capital punishment deters murder.[3]

Before vacating and remanding *Fowler*,[4] the Court received briefs and heard oral arguments in five other death penalty cases,[5] in which the deterrence question, as before, figured prominently.[6] Soon afterward, the Court ruled that "the punishment of death does not invariably violate the Constitution,"[7] and stated that for many murderers "the death penalty undoubtedly is a significant deterrent."[8]

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1. 428 U.S. 904 (1976).
2. Brief for the United States as Amicus Curiae at 35-38.
3. Ehrlich, *The Deterrent Effect of Capital Punishment: A Question of Life or Death*, 65 Am. Econ. Rev. 397 (1975).
4. 428 U.S. 904 (1976).
5. Roberts v. Louisiana, 428 U.S. 325 (1976); Proffitt v. Florida, 428 U.S. 242 (1976); Woodson v. North Carolina, 428 U.S. 280 (1976); Jurek v. Texas, 428 U.S. 262 (1976); Gregg v. Georgia, 428 U.S. 153 (1976).
6. Brief for the United States as Amicus Curiae at 34-45, 9a-16a, Gregg v. Georgia, 428 U.S. 153 (1976).
7. Gregg v. Georgia, 428 U.S. 153, 169 (1976). *But see id.* at 231 (Marshall, J., dissenting); Commonwealth v. O'Neal, 339 N.E.2d 676, 682-85 (Mass. 1975).
8. Gregg v. Georgia, 428 U.S. 153, 185-86 (1976). Although the Court did not support its belief in the deterrent value of capital punishment with empirical evidence, this evidence was not ignored:

The Supreme Court is by no means alone in its belief that capital punishment deters crime. Eighty-four percent of the respondents to a 1977 National Observer plebiscite supported restoration of the death penalty, and belief in the deterrent effect of capital punishment was the reason most often cited.[9] Public support for the death penalty has been similarly revealed by the Gallup Poll[10] and other opinion surveys.[11]

Belief in the deterrent value of the death penalty, however, is less common within the academic community. While support for Ehrlich's research exists,[12] replications of his analysis[13] have shown that his evidence of deterrence depends upon a restrictive assumption about the mathematical relationship between homi-

"Although some of the studies suggest that the death penalty may not function as a significantly greater deterrent than lesser penalties, there is no convincing empirical evidence either supporting or refuting this view." *Id.* at 185 (footnote omitted). Professor Hans Zeisel has taken issue with this opinion, arguing that the evidence about the deterrent effect is, indeed, "quite sufficient" and that "the request for more proof is but the expression of an unwillingness to abandon an ingrained prejudice." Zeisel, *The Deterrent Effect of the Death Penalty: Facts v. Faiths*, 1976 SUP. CT. REV. 317, 319.

9. Egan, *Plebiscite Results: Restore the Death Penalty*, National Observer, Jan. 29, 1977, at 1, col. 3.

10. During the decade ending in April, 1970, support for the death penalty among Gallup Poll respondents rose from 42 percent to 65 percent. *Id.*

11. *See* Vidmar & Ellsworth, *Public Opinion and the Death Penalty*, 26 STAN. L. REV. 1245, 1255 (1974) ("Belief in deterrent effectiveness is probably the most frequently assessed rationale for support of capital punishment.")

12. Although Tullock characterized Ehrlich's study of capital punishment as "sophisticated," the praise was qualified: "Unfortunately, the data available for this study were not what one would hope for, so that much reliance can be put upon his results as one normally would expect to work by such a sophisticated econometrician." Tullock, *Does Punishment Deter Crime?* 36 PUB. INTEREST 103, 108 (Summer 1974). Further support has been expressed in Posner, *The Economic Approach to Law*, Text of the Will E. Orgain Lecture, University of Texas Law School at 19-20, 31 (March 1975) (on file at MINNESOTA LAW REVIEW).

13. *See* Bowers & Pierce, *The Illusion of Deterrence in Isaac Ehrlich's Research on Capital Punishment*, 85 YALE L.J. 187 (1975); Klein, Forst, & Filatov, *The Deterrent Effect of Capital Punishment: An Assessment of the Estimates* (paper commissioned by the National Academy of Sciences, September 1976 draft, to appear in DETERRENCE AND INCAPACITATION: ESTIMATING THE EFFECTS OF CRIMINAL SANCTIONS ON CRIME RATES (A. Blumstein ed. 1977) (forthcoming) [hereinafter cited as DETERRENCE AND INCAPACITATION]; Passell & Taylor, *The Deterrent Effect of Capital Punishment: Another View*, Columbia University Discussion Paper 74-7501 (March 1975), reprinted in Reply Brief for Petitioner, App. E., Fowler v. North Carolina, 428 U.S. 325 (1976).

cides and executions,[14] the inclusion of a particular set of observations,[15] the use of a limited set of control variables,[16] and a peculiar construction of the execution rate, the key variable.[17]

This Article first discusses briefly the strengths and weaknesses of time-series and cross-section analyses to test the hypothesis that capital punishment deters homicides. A method that avoids the more serious of these weaknesses is then described and applied to state data for 1960 and 1970 to test the above hypothesis. The results of this initial test do not support the hypothesis. To ensure that these findings reflect reality rather than simply the way in which the key variable was measured, alternative measures of the execution rate are substituted. Similar attempts are made to eliminate other possible biases that have been identified in the literature. None of these modifications of the basic model is found to alter the initial finding in any important way. It is concluded that the evidence of the 1960's supports the theory that capital punishment does not, on balance, deter homicides.

I. TIME-SERIES AND CROSS-SECTION STUDIES

Professor Ehrlich's landmark statistical test of the hypothesis that capital punishment deters homicide consisted of a regression analysis of aggregate data for the United States for the period 1933 through 1969.[18] His basic approach is commonly referred

14. Bowers & Pierce, *supra* note 13, at 199-203; Klein, Forst, & Filatov, *supra* note 13, at 31-32; Passell & Taylor, *supra* note 13, at 6-8; note 33 *infra*.

15. Ehrlich reported that his deterrence result remained when data from the 1930's were excluded, Ehrlich, *supra* note 3, at 410, but others found that the result disappeared when data from the latter part of the 1960's were excluded. Bowers & Pierce, *supra* note 13, at 197-204; Klein, Forst, & Filatov, *supra* note 13, at 20-28; Passell & Taylor, *supra* note 13, at 5, 21, 22.

16. Klein, Forst, & Filatov, *supra* note 13, at 14-17, 20-30. Control variables are used in the analysis of nonexperimental data to reduce the danger of erroneous inferences about relationships between variables. To the extent that the murder conviction rate influences both the execution rate and the murder rate, for example, its omission from an analysis of the deterrent effect of executions would produce the appearance of an association between executions and homicides even if, in fact, no association existed. *See* notes 21-23 *infra* and accompanying text. In the present analysis this problem is recognized and controlled for. *See* notes 38-41 and accompanying notes *infra*.

17. *See* Klein, Forst, & Filatov, *supra* note 13, at 17-19.

18. Ehrlich, *supra* note 3, at 408, 409. Regression analysis is a standard statistical method for determining the mathematical equation that best describes the relationship between a dependent variable (in this case, the homicide rate) and one or more predictor variables. Ehr-

to as "time-series analysis," since the units of observation consist of a series of time intervals—in this case, individual years.

One of the crucial unresolved issues in Ehrlich's time-series analysis centers around the sensitivity of his findings to the exclusion of data from the 1960's. Specifically, he found no deterrent effect when data for the period since 1964 were excluded from the analysis.[19] This conclusion is not surprising, since during the 1960's the murder rate rose precipitously, after decades of slow decline, while the use of capital punishment diminished until terminated in 1967;[20] but it does raise the question of the extent to which the key statistical relationship found in Ehrlich's time-series analysis reflects a true causal relationship. It is possible that the appearance of deterrence that emerges in Ehrlich's time-series study is primarily the product of variables omitted from the analysis, an omission due largely to the unavailability of data.[21] While all nonexperimental measurements are subject to limitations, inferences about deterrence drawn from the analysis of aggregate time-series data appear to be especially prone to error because only a limited array of factors can be incorporated[22] or otherwise reflected[23] to safeguard against spurious findings.

lich's study was the first to estimate the deterrent effect of capital punishment by: (1) measuring factors other than the death penalty that may have affected the homicide rate; (2) measuring the extent to which the death penalty was used when it existed; and (3) attempting to account explicitly for the reverse effect of homicides on the demand for executions.

19. Ehrlich, *Deterrence: Evidence and Inference*, 85 YALE L.J. 209, 217 (1975). This phenomenon was first reported by Passell & Taylor. Passell & Taylor, *supra* note 13, at 5, 21, 22.

20. *See* FEDERAL BUREAU OF PRISONS, DEPARTMENT OF JUSTICE, NATIONAL PRISONER STATISTICS: CAPITAL PUNISHMENT, table 2, at 2 (No. SD-NPS-CP-3, November 1975).

21. It is, of course, also possible that omitted variables cause the finding to understate the true effect of executions on homicides.

22. A key variable not available on an annual basis is the average term of imprisonment for persons convicted of homicide and not executed. The potential importance of this variable lies in its role as a substitute sanction for capital punishment. In an earlier study based on time-series data, Ehrlich himself found that this variable was an effective homicide deterrent. Ehrlich, *Participation in Illegitimate Activities: A Theoretical and Empirical Investigation*, 81 J. POLIT. ECON. 521, 551 (1973). The aggregate number of homicide convictions, a crucial variable in the analysis, is also not available annually. Aware of the potential importance of this variable, Ehrlich constructed rough approximations of its values from F.B.I. estimates of the annual number of homicides, the annual probability of arrest, and the annual probability of conviction given arrest. Ehrlich, *supra* note 3, at 407.

23. One way of reflecting regional factors is with the use of [illegible]

Professor Ehrlich's second empirical test—based on a regression analysis of data for individual states, with separate results for 1940 and 1950—has been cited to further support the theory that capital punishment deters murder.[24] This "cross-section" technique has certain advantages over analysis based on aggregate time-series data: it allows the researcher to observe larger differences in the relevant factors,[25] to control for specific regional effects,[26] and to include potentially important factors about which information is not available on an annual basis.[27]

Several scholars have suggested that the existing estimates of the deterrent effect of capital punishment can be improved by analyzing data that reflect variation *both* temporally and geographically.[28] A method to accomplish this is set forth in the following section.

II. CROSS-SECTION ANALYSIS OF CHANGES

During the 1960's, after years of gradual decline, the homicide rate for the United States as a whole increased sharply (see Figure 1). Although the homicide rate in most states followed this general pattern, it rose much more sharply in some states

regional variables in data that manifest geographical variation. *See* notes 28 & 41 *infra*.

24. Ehrlich referred to these results in his reply to critics, Ehrlich, *supra* note 10, at 213, 217, and reported them in Punishment and Deterrence: Some Further Thoughts and Additional Evidence, a paper delivered at the Joint Meeting of the Operations Research Society of America and the Institute of Management Science, Las Vegas (November 3, 1975) [hereinafter cited as Ehrlich, Punishment and Deterrence]. Here Ehrlich has described these findings as "preliminary and incomplete." *Id.* at 1, they will not be discussed in detail here.

Professor Peter Passell has also performed a cross-state analysis of the deterrent effect of capital punishment, with separate results for 1940 and 1960. His findings differ sharply from Ehrlich's; he concludes that there is "no reasonable way of interpreting the cross-section data that would lend support to the deterrence hypothesis." Passell, *The Deterrent Effect of the Death Penalty: A Statistical Test*, 28 STAN. L. REV. 61, 80 (1975).

25. *See* note 69 *infra*.

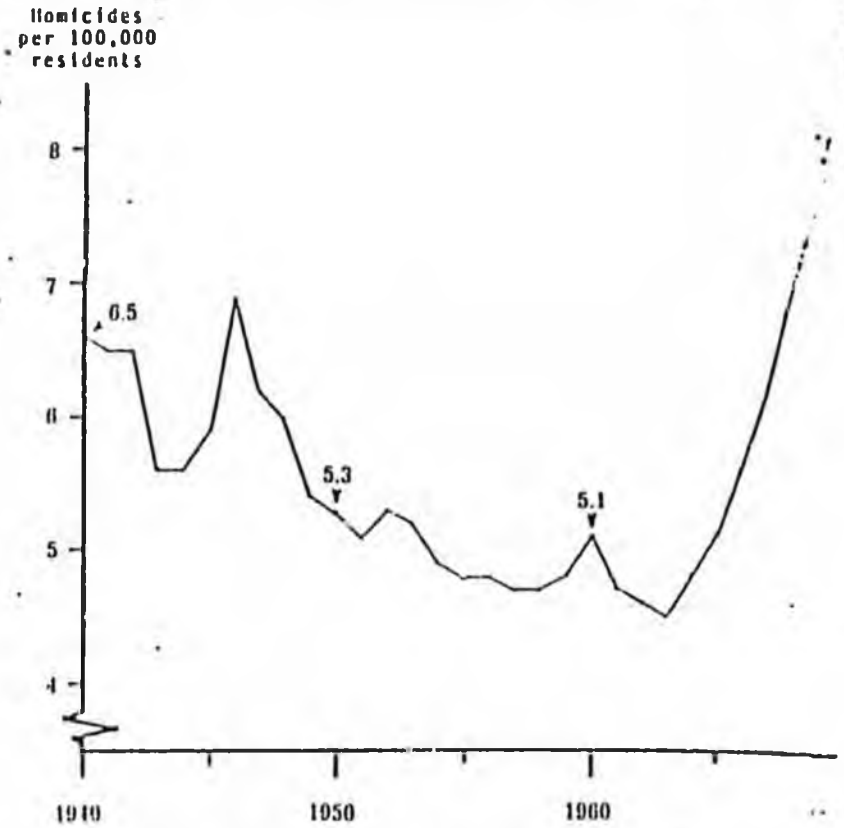
26. Aggregation errors associated with the failure to account for these effects are discussed in Baldus & Cole, *A Comparison of the Work of Thorsten Sellin and Isaac Ehrlich on the Deterrent Effect of Capital Punishment*, 85 YALE L.J. 170, 175-77 (1975).

27. *See* note 22 *supra*.

28. Peck, *The Deterrent Effect of Capital Punishment: Ehrlich and His Critics*, 85 YALE L.J. 359, 361 (1976); Zeisel, *supra* note 6, at 317, 330; [illegible], Book Review, 67 J. CRIM. L. & CRIMINOLOGY 359, 360 (1976) (W. BOWERS, EXECUTIONS IN AMERICA).

than in others, and even declined in a few.[29] This cross-state variation, coupled with the differences from state to state in the rate at which use of the death penalty declined from 1960 to 197[illegible], provides a unique opportunity to estimate the deterrent effect of capital punishment on the commission of homicides. The changes in these and other relevant variables that occurred between 1960 and 1970 in each state for which data are available can be measured and used to estimate the average effect of reductions in the execution rate on the rate at which homicides occur in the population. To the extent that capital punishment deters homicides, the homicide rate should have increased by the largest amounts from 1960 to 1970, *ceteris paribus*, in those states with the greatest reductions in the probability that a person convicted of murder would be executed.

Figure 1. The homicide rate in the United States, 19[illegible]-1970*



* Sources: Uniform Crime Reporting Section, Federal Bureau of Investigation, United States Department of Justice, Index of Crime United States, 1933-1972 (Special tabulation presented to the author in March 1975; copy on file with Minnesota Law Review).

Bureau of the Census, United States Department of Commerce, The Statistical Abstract of the United States, table 2, at 5 (1971).

29. From 1960 to 1970 the homicide rate increased in 43 states, declined in five states (Alabama, Maine, Montana, Oklahoma, and Virginia), and was unchanged in two states (Nevada and North Dakota). It increased mostly sharply in Missouri (from 4.6 homicides per 100,000 residents in 1960 to 10.7 in 1970) and New York (from 2.0 in 1960 to [illegible] in 1970). Federal Bureau of Investigation, Department of Justice, Uniform Crime Reports, table 3, at 38-52 (1960), & table 4, at [illegible] (1970).

Examining the data in this manner should overcome the potentially serious problems associated with aggregate time-series analysis.[30] Analyzing intertemporal changes in the relevant variables across states should also improve the estimates available from conventional cross-section analysis,[31] partly by reducing biases associated with omitted variables.[32] Moreover, the results of this approach appear less sensitive to alternative assumptions about the mathematical form of the model that describes the relationships among the relevant variables than do those of either the conventional time-series or cross-sectional approaches.[33] By

30. *See* notes 10-27 *supra* and accompanying text.

31. The cross-section analyses by Ehrlich and Passell are based on the levels of variables for individual census years. *See* note 24 *supra* and accompanying text. These single-year levels are used to estimate the elasticity of the homicide rate with respect to the probability of execution, given conviction for murder. The elasticity of one variable, y, with respect to another, x, is a number indicating the percentage increase (a negative number indicates a decrease) in y that results from a one percent increase in x. Ehrlich has estimated that the elasticity of the homicide rate with respect to the probability of execution, given conviction for murder, is around −0.00. Ehrlich, *supra* note 3, at 414. Since elasticity is a measure of the *effect of a change* in one variable on another variable, estimating elasticities by analyzing actual changes in variables in a cross-section of jurisdictions has considerably more appeal than estimating them from the levels of variables for any given year.

32. According to Klein, estimates based on cross-sectional data are prone to errors of spatial heterogeneity, although in certain instances, these errors can be eliminated by "differencing" two successive cross sections. Specific biases that can be eliminated under this technique include the bias produced by the failure to measure personality effects in samples of households and that produced by failure to measure entrepreneurial effects in samples of business firms. L. Klein, A Textbook of Econometrics 360, 358 (2d ed. 1974). Commenting on a draft of this article, Professor Klein suggested that interstate differences in social mores may constitute a class of effects that can be accounted for by applying this method to cross-state data.

33. Whether the homicide rate is related to other factors in a linear

estimating the differential of the homicide rate rather than the parent relationship between the homicide rate and its determinants, one can be sure of describing a function that is additive in the differences of the explanatory variables.[34]

Applying this method of analysis to the 1960's is appealing for other reasons as well. More control variables are available for the most recent census years, and their measurement tends to be more accurate than it was in 1940 or 1950.[35] Moreover, there has been a great deal of controversy about the period from

or loglinear fashion is very much in controversy. Bowers & Pierce, *supra* note 13, at 190-206; Ehrlich, *supra* note 3, at 406; Ehrlich, *supra* note 19, at 217-19; Klein, Forst, & Filatov, *supra* note 13, at 3[illegible]; Passell & Taylor, *supra* note 12, at 6e-7e; Peck, *supra* note 26, at 300-01. Estimates of the deterrent effect of capital punishment have been found to be quite sensitive to whether the relationship is assumed to be linear or loglinear. *See* note 14 *supra* and accompanying text.

The assumption of loglinearity and the use of logarithms in previous studies have created additional problems. During 1968, 1969, and 1970 there were no executions. Because it is impossible to take the logarithm of zero, Ehrlich assumed that one execution took place in each of these years so that he could use the loglinear model. Ehrlich, *supra* note 3, at 409 n.6. This procedure, however, builds biases into the analysis.

While the true relationship between the homicide rate and its determinants may be nearly linear or nearly loglinear, it is likely, in fact, to be precisely neither.

34. In regressing the change in the homicide rate on the changes in the relevant independent variables, partial differential coefficients rather than slope coefficients are obtained. Letting the homicide rate, Q/N, be determined by the rate at which convicted murderers are executed, E/C, and by other factors, $X_1, X_2, \ldots$, the general relationship is written as

$$Q/N = f(E/C, X_1, X_2, \ldots).$$

The differential of the homicide rate is of the form

$$d\frac{Q}{N} = \frac{\partial \frac{Q}{N}}{\partial \frac{E}{C}} d\frac{E}{C} + \frac{\partial \frac{Q}{N}}{\partial X_1} dX_1 + \frac{\partial \frac{Q}{N}}{\partial X_2} dX_2 + \ldots,$$

regardless of whether the parent function is linear, loglinear, or any other continuous expression. Since the partial differential coefficients will be constants only if the parent function is linear, the differential of the homicide rate will not generally be a linear function. It will, however, be additive in the differences of the explanatory variables. Hence, the regression coefficients produced in the estimate of the differential equation may be viewed as approximations of the averages of the respective partial differential coefficients over the range of observed values.

35. Ehrlich has also suggested that more recent data are likely to be better. Ehrlich, *The Deterrent Effect of Criminal Law Enforcement*, 1 J. Legal Studies 259, 272 (1972).

1960 to 1970 in the reviews of the available time-series evidence.[36] In short, analyzing changes during this decade cross-sectionally would appear to permit one to discover more directly whether the association between the cessation of capital punishment and the upsurge in the homicide rate during the 1960's was primarily causal or coincidental.

A. The Model

The model that provides the initial structure for this analysis is

(1) $Q/N = f(E/C, C/Q, T, Cr, Age, NW, Male, Urb, Enr, Pop, Div, Y, Pov, Emp, S).$

This equation represents the notion that the homicide rate (Q/N) is potentially influenced by the rate at which persons convicted of murder are executed (E/C), the rate at which murders result in conviction (C/Q), the average prison term served by convicted murderers (T), the factors that determine the rate at which crimes other than homicide are committed (Cr), social and demographic characteristics [age (Age), race (NW), sex (Male), urbanization (Urb), school enrollment rate (Enr), resident population (Pop), divorce rate (Div)], economic variables [median family income (Y), proportion of families in poverty (Pov), employment (Emp)], and a binary variable indicating whether the state is southern (S). The sources of data for these variables are given in the Appendix.[37]

Professor Ehrlich has provided theoretical justification for the inclusion of the criminal justice sanction variables and the economic variables.[38] The social and demographic variables have been added to minimize the degree of spuriousness in the estimates of central concern here, those reflecting the effects of the sanction variables on homicides.[39] The rate at which

36. *See* notes 15 & 19 *supra* and accompanying text.

37. *See* pp. 765-67 *infra*.

38. Ehrlich, *Participation in Illegitimate Activities: An Economic Analysis*, in Essays in the Economics of Crime and Punishment 68, 70-92 (G. Becker & W. Landes eds. 1974); Ehrlich, *supra* note 3, at 398-406.

39. Any factor that influences both the execution rate and the homicide rate, if omitted from the analysis, will tend to distort the estimated effect of executions on homicides. Age, race, sex, schooling, population density and size, and family stability are all basic characteristics that would appear to be capable of producing such distortion. Ehrlich has incorporated the first five of these factors in his study of deterrence. Ehrlich, *supra* note 38, at 93.

crimes other than homicide are committed[40] and a binary Southern variable[41] are incorporated to capture the effects of additional exogenous factors that the other control variables do not specifically measure. Values of each of these variables for 1960 and 1970 are shown in Table 1.

Table 1. Aggregate United States values, mean state values and standard deviations for the variables used in the analysis, 1960 and 1970

	U.S. total*		State means[a]		Standard deviations[a]	
	1960	1970	1960	1970	1960	1970
Variable:						
Q/N[b]	5.1	7.8	4.7	6.6	3.2	3.7
E/C	.0157[c]	0	.0192	0	.0290	0
C/Q	.4132[d]	.3459[d]	.4304	.3729	.1215	.1220
T	82.23[e]	67.54[e]	101.64	70.20	55.60	30.74
Cr[b]	1032.9	2738.5	942.7	2364.1	404.3	954.7
Age	.0482	.0634	.0493	.0636	.0043	.0060
NW	.1143	.1253	.1131	.1164	.1424	.1244
Male	.4926	.4867	.4957	.4893	.0094	.0082
Urb	.6006	.7348	.6189	.6810	.1494	.1444
Enr	.822	.860	.8453	.8873	.0041	.0456
Pop[f]	180.0	203.8	3.324	3.766	4.142	4.791
Div	.0022	.0035	.0031	.0042	.0049	.0029
Y[g]	5600	0586	5418	0172	1002	1467
Pov[d]	.184	.107	.1070	.1154	.0902	.0524
Emp	.4486	.4991	.4250	.4815	.0057	.0588
S	.3333	.3333	.2013	.2813	.4508	.4568

(a) Means and standard deviations are unweighted statistics for the 32 states for which no data were missing or undefined; (b) per 100,000 residents; (c) based on 48 states (Alaska and New Jersey did not report these statistics in 1960); (d) based on the 33 states that reported in both 1960 and 1970; (e) based on data from 34 states; (f) in millions; (g) based on income earned in the previous year.

* Aggregate U.S. values are used only in these two columns, in Figure 1, and in the concluding section of this paper.

Following the rationale described in the preceding section, the effects of interest are estimated by forming the equation of first differences:

40. A rationale for the inclusion of the nonhomicide crime rate is given in Klein, Forst, & Filatov, *supra* note 13, at 17-19, and in text accompanying notes 64-65 *infra*.

41. It has become a standard practice in cross-state econometric analysis to incorporate a binary Southern variable to reflect other social and demographic characteristics. The use of such a variable in an analysis of homicides is further warranted by the fact that the homicide rates in the South are about twice that of the rest of the nation.

$$(2)\quad \Delta(Q/N) = a + b_1\Delta(E/C) + b_2\Delta(C/Q) + b_3\Delta T + c_1\Delta Cr + c_2\Delta Age + c_3\Delta NW + c_4\Delta Male + c_5\Delta Urb + c_6\Delta Enr + c_7\Delta Pop + c_8\Delta Div + c_9\Delta Y + c_{10}\Delta Pov + c_{11}\Delta Emp + c_{12}S,$$

where Δ denotes the change in a variable calculated by subtracting the 1960 level from the 1970 level, "a" denotes a constant term, b_i denotes a partial differential coefficient for a sanction variable, and c_j denotes a partial differential coefficient for a control variable.

II Parameter Estimates

These coefficients can be estimated using ordinary least-squares regression analysis, with the full set of independent variables incorporated as regressors. These estimates are based on data from the 32 states[42] for which values of all the variables shown were reported both for 1960 and 1970:[43]

$$(3)\quad (Q/N) = \underset{(2.70)}{5.011} + \underset{(12.7)}{11.82}\Delta(E/C) - \underset{(1.92)}{5.714}\Delta(C/Q) + \underset{(.00773)}{.001378}\Delta T - \underset{(15.8)}{38.88}\Delta Pov + \underset{(.00006)}{.001708}\Delta Y + \underset{(.0000002)}{.001430}\Delta Cr + \underset{(17.8)}{38.97}\Delta NW - \underset{(139)}{189.2}\Delta Age - \underset{(.877)}{.95053} - \underset{(34.2)}{29.65}\Delta Emp - \underset{(8.52)}{9.021}\Delta Enr + \underset{(15.5)}{11.24}\Delta Urb + \underset{(150)}{92.58}\Delta Div + \underset{(.000000411)}{.000002382}\Delta Pop + 0\Delta Male \qquad (R^2 = .692)$$

The numbers in parentheses are standard errors, and R^2 is the coefficient of determination, a measure of the proportion of the variance in the dependent variable that is explained by the independent variables used. Thus, 69 percent of the cross-state variance in the change in the homicide rate from 1960 to 1970 can be attributed to the set of variables in the right-hand side of equation (3).

42. The 32 states on which these estimates are based are Arizona, California, Colorado, Connecticut, Delaware, Georgia, Hawaii, Idaho, Illinois, Kansas, Kentucky, Maine, Maryland, Massachusetts, Minnesota, Mississippi, Missouri, Montana, Nevada, New Hampshire, New Mexico, New York, North Dakota, Ohio, Oklahoma, South Carolina, South Dakota, Tennessee, Utah, Washington, West Virginia, and Wyoming. Conviction data were missing for 17 states in 1970, and the average term of incarceration was not available for an additional state (Vermont) in that year.

43. Similar results are obtained when the 1960 level of the homicide rate is included as a regressor to account for nonlinearity in Q/N.

The first result provides no support for the hypothesis that capital punishment deters homicide. The positive regression coefficient for the execution rate variable is, in fact, consistent with a counterdeterrent effect,[44] but the standard error of this estimate is too large for this finding to be taken seriously.[45] Equation (3) does provide evidence, on the other hand, of a deterrent effect of convictions on homicides. Those states with the largest reductions in the ratio of homicide convictions to homicide offenses tended to have the largest increases in the homicide rate, other factors held constant.

This regression equation, however, has too many shortcomings to allow it to stand alone as an adequate test of the deterrence hypothesis. Foremost among these is the imprecision in parameter estimation caused by the inclusion of 15 independent variables—ten of which are not significant (at the .10 level)—in an equation constructed from only 32 observations.[46] Eliminating these ten variables, except for the variable of primary interest, Δ(E/C), produces a result that fits the data better:

$$(4)\quad \Delta(Q/N) = \underset{(R^2=.577)}{} - \underset{(2.10)}{4.222} + \underset{(8.55)}{17.84\Delta(E/C)} - \underset{(1.68)}{5.070\Delta(C/Q)} - \underset{(7.52)}{24.91\Delta Pov} + \underset{(.000507)}{.001515\Delta Cr} + \underset{(13.3)}{30.60\Delta NW} + \underset{(.000526)}{.0004679\Delta Y}$$

44. Ehrlich explained the potential for a counterdeterrent effect as follows: "[O]ne may argue that the differential deterrent effect of capital punishment on the incentive to commit murder may be offset by the added incentive it may create for those who actually commit this crime to eliminate policemen and witnesses who can bring about their apprehension and subsequent conviction and execution." Ehrlich, *supra* note 3, at 398. Courts or juries may also be more reluctant "to convict defendants charged with murder when the risk of their subsequent execution is perceived to be undesirably high." *Id.* at 405. This latter possibility is discussed in text accompanying notes 57-59 *infra*. Von Weber has suggested as an alternative explanation that capital punishment may induce suicidally-inclined persons to commit murder. H. von Weber, *Selbstmord als Mordmotiv*, Monatsschrift Für Kriminalbiologie und Strafrechtsreform 161 (1937).

45. If executions had no effect on homicides, the probability is .91 that random factors alone would have caused the ratio of the regression coefficient for (E/C) to its standard error to be at least 0.91, the result in equation (3).

46. Estimates become increasingly precise (that is, subject to less random error) either as the number of observations increases or as the number of insignificant variables in the regression equation diminishes. The importance of precision in the estimation of the deterrent effect of capital punishment has been discussed by Ehrlich, *supra* note 10, at 22.

This result is basically similar to (3) for the variables of principal focus, except that elimination of nine weak independent variables increases the adjusted coefficient of determination, a standard measure of goodness-of-fit,[47] from .44 to .68, and increases the statistical significance of five of the six remaining variables.

Equation (4) provides evidence that the sharp increase in the homicide rate during the 1960's was the product of factors other than the abolition of the death penalty. Accounting for what appear to be the most important of these other factors—the murder conviction rate, economic variables, race, and the factors that caused non-capital offenses to escalate during the 1960's—it is apparent that these states in which the actual use of capital punishment ceased during the 1960's experienced no greater increase in the murder rate than did the states that did not use capital punishment in the first place. Under the theory that capital punishment deters murder, one would have predicted the opposite.

C. Robustness Tests

Before drawing inferences from data that are not produced by controlled experimentation, it is appropriate to test whether the estimates are "robust" to (that is, hold up under) departures from the assumptions on which the estimates are grounded.[48] Equation (4) is based on several assumptions: (1) the murder rate in any given year is influenced by the number of executions in that year; (2) none of the sanction variables is influenced by any of the other variables used in the regression analysis; (3) the variance in the homicide rate is no larger for highly populated states than for the less populated states; and (4) the rate at which non-capital crimes are committed is not affected by, nor does it affect, the other variables in the analysis. Each of these assumptions can be altered to test for robustness, which

47. The formula for the adjusted coefficient of determination, $\overline{R}^2$, is

$$\overline{R}^2 = R^2 - (1 - R^2)\left[\frac{K}{(N - K - 1)}\right]$$

where R^2 is the coefficient of determination, K is the number of independent variables, and N is the number of observations. A. Goldberger, Econometric Theory 217 (1964).

48. The importance of robustness tests is well established in econometric analysis. H. Theil, Principles of Econometrics 615-16 (1971).

will indicate the reliability of the estimates obtained in equation (4).

1. *Alternative Constructions of the Execution Rate*

Since the execution rate is the independent variable of principal focus in this analysis, it is surely appropriate to vary the methods of measuring it.[49] The construction used in equations (3) and (4) is based on the number of executions and convictions in 1960 and 1970. One alternative is to use executions in 1961 and 1971 instead of executions in 1960 and 1970, respectively, as objective forecasts of the probability that a murder conviction will lead to execution, since executions have been reported to lag behind convictions by about a year.[50] The result corresponding to equation (4) using this alternative measure, which is denoted (E_{+1}/C), is

(5) $\Delta(Q/N) = -8.391 + 2.977\Delta(E_{+1}/C) - 5.631\Delta(C/Q)$ $(R^2=.508)$ (2.21) (11.5) (1.83)
$- 27.32\Delta Pov + .0012486\Delta Cr + 42.01\Delta NW$ (8.03) (.000571) (13.3)
$+ .0007816\Delta Y$ (.000565)

This result is fundamentally no different from equation (4), suggesting that lagging executions does not alter the observed effects of executions on homicides.[51]

To reduce the sampling error associated with the small number of executions that occurred around 1960 and test another lag structure, one can make the numerator of the execution rate the average number of executions over the three-consecutive-year period centered about the year of the convictions in the denominator.[52] This execution rate variable is denoted (E_m/C), and is used in place of (E/C) in equation (4), giving

(6) $\Delta(Q/N) = -5.302 + 15.69\Delta(E_m/C) - 5.823\Delta(C/Q)$ $(R^2=.525)$ (2.15) (15.4) (1.78)
$- 26.83\Delta Pov + .001403\Delta Cr + 40.57\Delta NW$ (7.50) (.000551) (14.2)
$+ .0008700\Delta Y$ (.000545)

Again, this alternative does not produce a result that differs in any important respects from equation (4).

Another execution rate variable can be formed by combining the independent variables (E/C) and (C/Q) into the single variable (E/Q). Although this combination causes an important control variable, the murder conviction rate, to be lost, it allows all 50 states to be included in the analysis.[53] The result is

(7) $\Delta(Q/N) = -2.161 + 13.17\Delta(E/Q) - 13.38\Delta Pov$ $(R^2=.521)$ (1.80) (30.1) (6.02)
$+ .001441\Delta Cr + 33.00\Delta NW + .0001917\Delta Y$ (.000480) (13.4) (.000445)

This result is remarkably similar to equation (4) except for the substantial reduction in the proportion of variance in the homicide rate explained by the independent variables, which is produced by the exclusion of the conviction variable and the use of a larger number of observations. This reduction provides further support for the hypothesis that convictions deter homicides, consistent with findings by Ehrlich[54] and Passell[55] and with the results of equations (3) through (6).

A final construction of the execution rate is designed to eliminate whatever bias results from the reverse effect that changes in the homicide rate may have on the execution rate. All of the above regression equations assume that the causality runs strictly from executions to homicides. These results will be biased to the extent that the execution rate is a function of the

50. The potential importance of alternative constructions has been stressed in previous analyses of the deterrent effect of capital punishment. Ehrlich, *supra* note 3, at 407-08; Passell, *supra* note 24, at 74-77.

50. Ehrlich, *supra* note 3, at 407. Using data from the Federal Bureau of Prisons, I calculated that the median delay between sentence and execution for persons executed during the period 1950 through 1961 was 14 months. The distribution is skewed in the positive direction, indicating a mean delay of somewhat more than 14 months. Federal Bureau of Prisons, Department of Justice, National Prisoner Statistics: Executions 1 (No. 23, February 1960).

51. The decline in R^2 from equation (4) to (5) might be regarded as evidence that the homicide rate is less sensitive to variation in lagged executions than to variation in current executions. More fundamentally, however, it appears systematically related to neither.

52. This idea comes from Passell, *supra* note 24, at 68, who used instead a four-year average of executions.

53. *See* note 42 *supra* and accompanying text.

54. Ehrlich, *supra* note 3, at 410-11. Ehrlich's findings suggest that arrests, convictions, and executions each independently deter the commission of homicides, with arrests appearing to have the strongest effect and executions the weakest.

55. Passell, *supra* note 24, at 69-71.

homicide rate, which would occur, for example, if the demand for capital punishment was stimulated by an increase in the homicide rate. This bias can be reduced by replacing the variable $\Delta(E/C)$ with the estimator $\Delta^{\circ}(E/C)$, formed separately by regressing $\Delta(E/C)$ on all the predetermined variables in Table 1.[56] This alternative produces the result

$$\begin{aligned}(8)\quad \Delta(Q/N) = &- \underset{(2.24)}{3.841} + \underset{(12.8)}{23.05}\Delta^{\circ}(E/C) - \underset{(1.71)}{6.003}\Delta(C/Q)\\ &- \underset{(7.82)}{23.60}\Delta Pov + \underset{(.000525)}{.001527}\Delta Cr + \underset{(13.7)}{38.30}\Delta NW\\ &+ \underset{(.000551)}{.0004168}\Delta Y\end{aligned}$$

which, again, is basically the same as the other equations. Thus, the major finding—that decreases in the execution rate are not associated with increases in the homicide rate—is robust with respect to alternative methods of constructing the execution rate variable.

2. *Alternative Structures of Simultaneity*

Although equation (1) assumes that the causation is unidirectional, some variables in the equation may be both determinants of murder and products of either the homicide rate itself or factors that influence the homicide rate. This phenomenon, known generally as "simultaneity," was assumed in equation (8). One variable other than the execution rate that may be determined simultaneously with the homicide rate is the rate at which homicide offenders are convicted; it may both affect the homicide rate, as is hypothesized in equation (1), and be produced by changes in the homicide rate. The latter would occur if, for example, the ability to convict homicide offenders was

56. The predetermined variables are ΔAge, ΔNW, ΔMale, ΔUrb, ΔEnr, ΔPop, ΔDiv, ΔY, ΔPov, ΔEmp, and S. An alternate estimator, constructed from these variables together with ΔCr, produced a similar result. This general method, called the "two-stage, least-squares regression technique," is described in most standard econometrics textbooks. Because the coefficient of determination, described at equation (3), is difficult to interpret under the application of this technique, it is not reported for equations (8), (9), and (10). *See* P. Dhrymes, Econometrics: Statistical Foundations and Applications 240-03 (1970). Application of this technique to the analysis of crime deterrence, however, may create problems, since one cannot be confident that the control variables included in the equation of primary interest actually permit accurate identification of the crime function. Fisher & Nagin, *On the Feasibility of Identifying the Crime Function in a Simultaneous Model of Crime Rates and Sanction Levels*, in Deterrence and Incapacitation, *supra* note 13.

hampered by an increase in the load of homicide cases. Failure to account for this reverse effect, or for the effect of changes in the execution rate on the conviction rate,[57] might bias all the regression coefficients estimated. To deal with this problem, the estimator $\Delta^{\circ}(C/Q)$ is constructed by regressing $\Delta(C/Q)$ on the predetermined variables.[58] This alternative measure of the conviction rate produces the equation

$$\begin{aligned}(9)\quad \Delta(Q/N) = &- \underset{(3.62)}{4.007} + \underset{(10.4)}{17.66}\Delta(E/C) - \underset{(6.63)}{7.634}\Delta^{\circ}(C/Q)\\ &- \underset{(13.3)}{27.13}\Delta Pov + \underset{(.000820)}{.001300}\Delta Cr + \underset{(18.9)}{42.38}\Delta NW\\ &+ \underset{(.000707)}{.0006370}\Delta Y\end{aligned}$$

Once again, the homicide rate appears unaffected by changes in the execution rate.[59]

Another type of simultaneity may exist with regard to the average term of incarceration served by persons convicted of homicide, T. This would result if, for example, sentences were lengthened in response to an increase in the homicide rate, in an attempt to discourage further homicides. The potential bias produced by this simultaneity can be reduced by forming the variable $\Delta^{\circ}T$, constructed by regressing ΔT on the predetermined variables.[60] The result produced under this construction is

$$\begin{aligned}(10)\quad \Delta(Q/N) = &- \underset{(2.12)}{4.580} + \underset{(8.55)}{17.08}\Delta(E/C) - \underset{(1.66)}{6.019}\Delta(C/Q)\\ &+ \underset{(.007b8)}{.000252}\Delta^{\circ}T - \underset{(7.60)}{26.68}\Delta Pov + \underset{(.000521)}{.001363}\Delta Cr\\ &+ \underset{(14.1)}{44.72}\Delta NW + \underset{(.000548)}{.0006326}\Delta Y\end{aligned}$$

This result is basically similar to the others reported above.

The true system of simultaneity among variables is likely to be considerably more complicated than has been hypothesized. The results obtained by treating the execution rate, the conviction rate, and the average term of incarceration as endogenous variables, however, as was done in equations (8), (9), and (10), respectively, indicate that the biases due to failure to capture

57. *See* note 44 *supra*.

58. The predetermined variables under this formulation include those already cited, *supra* note 56, and $\Delta(E/C)$.

59. Alternative estimators of $\Delta(C/Q)$, one formed without $\Delta(E/C)$ and another formed with ΔCr, produce similar results.

60. *See* note 56 *supra*.

these simultaneous effects in equations (3) and (4) are not large.[61]

3. *Use of Weighted Regressions*

In cross-section analysis the variance of the dependent variable is often larger for more heavily populated places. This condition, known in a more general form as "heteroscedasticity," produces biased estimates of standard errors of the regression coefficients and biased tests of statistical significance. The presence of heteroscedasticity is commonly identified by visual inspection of a plot of the data, although more rigorous methods are available.[62] To eliminate this bias each observation is generally adjusted by weighting it by the square root of the population. Applying this weighting technique to the observations, under equation (4), the result is

$$(11)\quad \Delta(Q/N) = -4.627 + 18.59\Delta(E/C) - 6.340\Delta(C/Q) \quad (R^2=.595)$$
$$(2.54) \quad (10.6) \quad (1.80)$$
$$- 26.49\Delta Pov + .001243\Delta Cr + 50.32\Delta NW$$
$$(8.91) \quad (.000478) \quad (15.8)$$
$$+ .0007042\Delta Y .$$
$$(.000564)$$

The similarity of this equation to equation (4) suggests that the general findings are robust with respect to conventional weighting.[63]

4. *Exclusion of the Other-Crimes Variable*

One of the control variables used in equations (1) through (11) is the rate at which crimes other than homicide are committed. It was included in an attempt to account for the factors that caused crime to increase generally during the 1960's, since the failure of previous analyses to capture these effects may have interfered substantially with their ability to isolate a pure deterrent effect of capital punishment.[64] Certain offenses incorporated in this control variable, however, are likely to differ from homicide only in that the victims did not die. Since it is possible that some nonhomicide offenses may themselves be deterred by capital punishment, having them in the right-hand side of the regression equation may have affected the estimates of the deterrent effect that were reported above.

It is possible to test the effect of this potential bias, whose direction is not obvious, a priori, by estimating a counterpart to equation (4) without other offenses as a control variable.[65] The result is

$$(12)\quad \Delta(Q/N) = -5.371 + 9.564\Delta(E/C) - 6.040\Delta(C/Q) \quad (R^2=.420)$$
$$(2.36) \quad (0.27) \quad (1.02)$$
$$- 10.00\Delta Pov + 42.72\Delta NW + .001412\Delta Y .$$
$$(8.37) \quad (15.8) \quad (.000480)$$

As before, the deterrent effect of capital punishment is not apparent. While the omission of factors that caused crimes other than homicide to increase during the 1960's produces a result that differs somewhat from equation (4),[66] it does not, in this analysis, materially alter the finding.

III. CONCLUSION

The aim of this Article was to investigate empirically the deterrent effect of capital punishment. Building on studies by Ehrlich[67] and Passell,[68] the influence of the execution rate on the homicide rate was estimated by controlling for the effects of other variables and for the reverse effects of the homicide rate on the sanction variables. This analysis differs from previous ones, however, both because it focuses on a unique decade during which the homicide rate increased by over 50 percent and the use of capital punishment ceased and because it examines changes in homicides and executions over time and across states.[69]

61. Similar results are obtained by endogenizing the rate at which crimes other than homicide are committed.

62. *See* Goldfeld & Quandt, *Some Tests for Homoscedasticity*, 60 J. AM. STAT. ASS'N 539 (1965).

63. All the unweighted regression results reported in this paper have also been obtained under the weighted technique, with similar results in each instance.

64. *See* note 60 *supra*.

65. When ΔCr is removed from equation (3) the only independent variables that are statistically significant (at .10) are $\Delta(C/Q)$, ΔPov, ΔNW, and ΔY. Hence, our selection of an efficient subset of independent variables, used in equations (4) through (11), is unaffected by the exclusion of ΔCr.

66. The inclusion of ΔCr in equation (4) reduces substantially the appearance of a strong effect of median family income on the homicide rate obtained in (12). Behind this reduction is a large correlation coefficient (.05) for the pair ΔCr and ΔY. The actual relationships between (Q/N), Cr, Y, and other factors are likely to be extraordinarily complex, and, although the topic is important, exploration of these relationships is beyond the scope of this discussion.

67. *See* Ehrlich, *supra* note 3; Ehrlich, Punishment and Deterrence, *supra* note 24.

68. *See* Passell, *supra* note 24.

69. This approach appears also to yield more efficient estimates of

The findings do not support the hypothesis that capital punishment deters homicides. The 53 percent increase in the homicide rate in the United States from 1960 to 1970 appears to be the product of factors other than the elimination of capital punishment. Foremost among these are a decline in the rate at which homicide offenses resulted in imprisonment (from 41.3 percent in 1960 to 34.6 percent in 1970 for the states that reported in both years) and increasing affluence during the 1960's.[70]

To obtain a sense of how well the estimates, based as they are on individual observations of 32 states, generalize to the United States as a whole, the coefficients of the basic equation, (4), can be combined with changes in the respective independent variables given in the first two columns of Table 1. This produces a predicted increase of 2.68 homicides per 100,000 residents. That the actual increase was 2.7, as shown in Table 1, provides some assurance that the estimates generalize to the aggregate of 18 states not analyzed in equation (4).

The apparent strength of the incarceration rate variable and the apparent weakness of the execution rate and term of imprisonment variables as deterrents to homicide lend some support to Cesare Beccaria's two-hundred-year-old suggestion that certainty of punishment deters more effectively than its severity.[71] There are, however, other explanations for these findings. The appearance of a strong deterrent effect of imprisonments on homicides may be the result of changes in factors omitted from this analysis.[72] And the apparent weakness of the deterrent effect of long imprisonments may be the product of the inaccuracy of our term-of-imprisonment variable,[73] since random errors in the measurement of this variable will bias downward estimates of the deterrent effect of the length of imprisonment.

It seems likely, nonetheless, that this finding of a deterrent effect of imprisonments of persons convicted of murder is more real than spurious. Errors in the measure of murder imprisonments are sure to exist, and these are likely to cause estimates of the deterrent effect of incarceration to understate the true effect.[74] Moreover, this particular finding is consistent with empirical results presented by Ehrlich and Passell.[75] And it supports von Hirsch's suggestion that if penalties for homicide were eliminated entirely it is difficult to imagine that the homicide rate would not increase.[76]

The finding that capital punishment, on the other hand, does not deter homicide is remarkably robust with respect to a wide range of alternative constructions of the execution rate, alternative assumptions about simultaneity among the crime and

the relationship of primary interest, based on the coefficients of variation of the relevant variables. A variable's coefficient of variation is the ratio of its standard deviation to its mean value. In the extreme case in which a factor does not vary, it can have no relationship at all with another factor.

In fact, the coefficients of variation of both the homicide rate and the execution rate are substantially larger (0.023 and 1.51, respectively) in this study than the coefficients of variation for the homicide rate (0.157) and execution rate (0.940) based on annual aggregate United States data for the period 1933 to 1969. The coefficients of variation for the aggregate time-series data are calculated from the independent constructions of Q/N and PXQ_1, based on Ehrlich, The Deterrent Effect of Capital Punishment: A Question of Life and Death, Sources of Data at 2, 6 (May 1975) (unpublished paper on file at MINNESOTA LAW REVIEW).

70. One can only speculate as to why the homicide rate rose the most in those states with the greatest increases in wealth. Increased wealth may have provided more attractive targets to potential offenders and produced heightened expectations and frustration. Since the nationwide increases in family income reported here are attributable to real growth and to inflation in roughly equal shares, see U.S. BUREAU OF CENSUS, STATISTICAL ABSTRACT OF THE UNITED STATES, table 1323, at 811 (1972) & Table 1, at p. 752 *supra*, the inflation component may have produced further frustration, thereby exerting additional upward pressure on the homicide rate. According to table 1323, the Consumer Price Index went from 88.7 to 116.3 between 1960 and 1970, an increase of 31.1 percent. During the same period the median family income rose from $5660 to $9586, see Table 1, at p. 752 *supra* (values for variable Y), an increase of 67.6 percent. Thus, the percentage increase in the median family income due to inflation was 46.6.

71. C. BECCARIA, ON CRIMES AND PUNISHMENTS 58 (H. Paolucci trans. 1963).

72. Suppose, for example, that exogenous changes in omitted social factors in the 1960's produced a disproportionate increase in stranger-to-stranger homicides. This would cause an increase in the homicide rate to coincide with a decrease in the imprisonment rate, since it is harder to apprehend those who commit stranger-to-stranger homicides. The appearance of a deterrent effect would then be false.

73. Passell, *supra* note 24, at 67, has discussed potential sources of error in the measurement of this variable. A particularly important potential source of error comes from the fact that the measure of the average term of imprisonment is based on released homicide offenders, exclusive of homicide offenders who die in prison, some of whom had surely already served lengthy terms of incarceration.

74. On the other hand, errors in the measurement of the number of homicides, which appears both as the numerator of the homicide rate, (Q/N), and the denominator of the conviction rate, (C/Q), are likely to bias the estimates toward the appearance of a stronger deterrent effect of incarceration than may really exist. Kleiman, Forst, & Filatov, *supra* note 13, at 17-19.

75. *See* notes 54-55 *supra* and accompanying text.

76. A. von Hirsch, Doing Justice 39 (1976).

sanction variables, whether or not the observations are weighted, and the inclusion of different subsets of available control variables.

Capital punishment may be a justly deserved and appropriate sanction in some instances. It is certainly an effective way to ensure that a person convicted of murder will not commit further crimes. The results of this analysis suggest, however, that it is erroneous to view capital punishment as a means of reducing the homicide rate.

APPENDIX

DATA SOURCES FOR THE VARIABLES USED IN THIS ANALYSIS

Q/N *Criminal Homicide Rate* = Number of murders and nonnegligent manslaughters per 100,000 residents. FEDERAL BUREAU OF INVESTIGATION, DEPARTMENT OF JUSTICE, UNIFORM CRIME REPORTS, table 3, at 38-52 (1960) & table 4, at 72-81 (1970).

E/C *Execution Rate* = Ratio of the number of executions to the number of homicide prisoners received from court. E/C denotes the ratio of executions to murder convictions that occur in the same year. E_{+1}/C denotes the ratio of executions to convictions, with the executions occurring the year after convictions. E_m/C denotes the ratio of executions to convictions, where E_m is the mean annual number of executions over the three-year period centered about the year of the convictions. The source of the number of executions is FEDERAL BUREAU OF PRISONS, DEPARTMENT OF JUSTICE, NATIONAL PRISONER STATISTICS: CAPITAL PUNISHMENT, table 2, at 8-9 (No. 45, August 1969) for 1960 and 1961 data, and table 2, at 18-19 (No. SD-NPS-CP-3, November 1975) and table 3 (No. 20, February 1959) for the construction of 1959 data. The source of the number of homicide prisoners received from the court in 1960 is FEDERAL BUREAU OF PRISONS, DEPARTMENT OF JUSTICE, NATIONAL PRISONER STATISTICS: CHARACTERISTICS OF STATE PRISONERS, table A5, at 50-51 (1960); the source of the 1970 data is FEDERAL BUREAU OF PRISONS, DEPARTMENT OF JUSTICE, NATIONAL PRISONER STATISTICS, STATE PRISONERS: ADMISSIONS AND RELEASES, table A2, at 6 (1970).

C/Q *Incarceration Rate* = Ratio of the number of homicide prisoners received from court to the number of murders and nonnegligent manslaughters. The source of the number of homicide prisoners received from the court is given under E/C. The number of murders and nonnegligent manslaughters is calculated as the criminal homicide rate, described under Q/N, multiplied by the resident population. The source of the resident population is U.S. BUREAU OF THE CENSUS, DEPARTMENT OF COMMERCE, STATISTICAL ABSTRACT OF THE UNITED STATES, table 11, at 12 (1974) [hereinafter cited as CENSUS ABSTRACT].

T *Term of Incarceration* = Mean time, in months, served by homicide prisoners released from prison (including parolees). Calculated from data given in FEDERAL BUREAU OF PRISONS, DEPARTMENT OF JUSTICE, NATIONAL PRISONER STATISTICS: PRISONERS RELEASED FROM STATE AND FEDERAL INSTITUTIONS, tables 6-54, at 22-70 (1960) and FEDERAL BUREAU OF PRISONS, DEPARTMENT OF JUSTICE, NATIONAL PRISONER STATISTICS, STATE PRISONERS: ADMISSIONS AND RELEASES, table R4, at 47-81 (1970).

Cr *Nonhomicide Crime Rate* = Number of offenses other than murder and nonnegligent manslaughter reported to police per 100,000 residents, calculated as the total crime index rate minus the criminal homicide rate described under Q/N. The sources of the total crime index rate data are the same tables that were cited under the description of Q/N.

Age *Proportion of Residents of the Ages 21-24* = Ratio of the number of residents of the ages 21 through 24 to the total resident population. The source of the number of persons of the ages 21-24 for 1960 is CENSUS ABSTRACT, *supra*, table 19, at 27 (1962); the source of the 1970 data is CENSUS ABSTRACT, *supra*, table 36, at 31 (1972). The Census Bureau gives the 1960 data for persons between the ages 20-24, which we multiply by 0.8. The source of the total resident population is given under C/Q.

NW *Proportion of Nonwhites* = Ratio of the number of nonwhite residents to the total resident population. The source of the number of nonwhite residents is CENSUS ABSTRACT, *supra*, table 31, at 29 (1974). The source of the total resident population is given under C/Q.

Male *Proportion of Males* = Ratio of the number of male residents to the total resident population. The source of the number of male residents is CENSUS ABSTRACT, *supra*, table 17, at 25 (1962) & table 25, at 25 (1972). The source of the total resident population is given under C/Q.

Urb *Proportion of Urban Residents* = Ratio of urban population to the total resident population. The source of the urban population is CENSUS ABSTRACT, *supra*, table 18, at 19 (1974). The source of the total resident population is given under C/Q.

Enr *Enrollment Rate* = Ratio of the number of persons enrolled in public elementary and secondary schools to the number of residents of the ages 5-17. CENSUS ABSTRACT, *supra*, table 196, at 122 (1974).

Pop *Resident Population* = Number of residents, in millions, as of July 1. CENSUS ABSTRACT, *supra*, table 11, at 12 (1974)

Div *Divorce Rate* = Ratio of the number of divorces to the number of residents. The source of the number of divorces is CENSUS ABSTRACT, *supra*, table 95, at 67 (1974). The source of the number of residents is given under C/Q

Y *Median Family Income* = Amount of income, in dollars, such that exactly half the resident families earn at least that much. CENSUS ABSTRACT, *supra*, table 627, at 3[illegible] (1974).

Pov *Proportion of Families in Poverty* = Ratio of the number of families below the low income level to the total number of resident families. CENSUS ABSTRACT, *supra*, table 634, at 391 (1974).

Emp *Proportion of Adults Employed* = Ratio of the number of residents employed in nonagricultural establishments to the number of residents at least 16 years of age. The source of the number of employed residents is CENSUS ABSTRACT, *supra*, table 363, at 226 (1972). The number of residents at least 16 years of age is calculated from the CENSUS ABSTRACT, *supra*, table 19, at 27 (1962) & table 36, at 31 (1972), as follows: For 1960 we use the resident population at least twenty years of age plus 0.8 times the number of residents between 15 and 19 years of age. For 1970 we use the resident population at least 18 years of age plus one-half the number of residents between 14 and 17 years of age.

S *Binary Southern Variable* =1 if the state is Alabama, Arkansas, Delaware, Florida, Georgia, Kentucky, Louisiana, Maryland, Mississippi, North Carolina, Oklahoma, South Carolina, Tennessee, Texas, Virginia, or West Virginia; otherwise = 0.

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Answer Critic From Utah

JUNEAU (AP) — Democratic leaders of the Alaska Legislature pointed to the record today in defense of legislative activities which drew the fire of a Republican congressman.

Rep. Dawson (R-Utah), in a House speech yesterday, accused the Democratic controlled territorial Legislature of actions which might endanger Alaska statehood.

Dawson accused Democrats of "playing politics" in the rejection of 26 of 35 nominations to territorial boards and commissions by acting Gov. Waino Hendrickson.

The Utah Republican, a strong statehood supporter, also criticized a pre-legislative proposal by former Rep. Wendell Kay of Anchorage, speaker of the House in 1955, that the governor be stripped of patronage powers.

House Speaker Richard Greuel (D-Fairbanks) commented:

"Apparently Rep. Dawson is unaware of the old political custom in Alaska: the elected Legislature usually turns down a large percentage of the appointed governor's board appointments. Actually, the 1957 Legislature departed from tradition in confirming the vast majority of the governor's appointments."

"In confirming two-thirds of the Republican governor's appointees," said Senate President Victor Rivers (D-Anchorage), "the Alaska Legislature demonstrated its willingness to cooperate."

Rivers, a brother of Alaska's provisional "representative in Washington, Ralph Rivers, added:

"In the interest of harmony and good government, the democratic majority went two-thirds of the way. This is in contrast to the Republican controlled Legislature of 1953 which rejected all appointments of a Democratic governor."

Kay, a registered lobbyist at the 1957 Legislature, commented:

"Unfortunately, Rep. Dawson is 4,000 miles away from the Alaska situation. Perhaps this demonstrates how much we need statehood. I still feel it is obvious that an elected Alaskan can better manage Alaska than an appointed federal official."

There has been introduced in the territorial Legislature a much-criticized Democratic-sponsored bill calling for an elected administrative governor, to serve along side the governor appointed in Washington. The latest version of the proposal would make the appointed governor the first administrative governor, serving until the 1958 general election.

A leading Senate Republican, Sen. Mike Stepovich of Fairbanks, supported Dawson's comments. Stepovich said:

"I think he is correct. We'd bet-

ALASKA DEATH PENALTY

JUNEAU (AP) — Death by hanging for Alaska's most severe crimes, like that of the commission of a crime would be established under terms of a bill passed by the territorial House today.

By a 19-9 vote, with one member absent, the House passed and sent to the Senate a bill that would strike all forms of capital punishment from the territorial law.

The vote followed a day and a half of debate in which the co-author of the bill, a lawyer, said "the hideous mistake of executing an innocent man" makes it

Name Rondy Queen Tonight

(Continued from Page 1)

neau, Clark Monk and Glen Phillips of Sun Valley, Idaho; Leon Johannsen, brother of the famous Sven Johannsen, racing under the colors of the Girdwood Ski Club; Charles Burnham of Elelson Air Force Base; Erik Jorgensen, Danny McDonald and Art Stubbings of Fairbanks and seven University of Alaska students—Bill King, Norm Saunders, Hazel Owens-Ann Price, Dave Teague, Harvey Turner and Donald Boyce.

Luke Zell, president of the Anchorage Ski Club, announced the following lineups, according to classes, for the slalom and downhill racing at Arctic Valley.

Class A — Joe Young, Gary King, Clark Monk, Ronnie Seater, Glen Phillips, Bill Northway, Jerry Edwards, Johannes Berge, Harvey Turner, Ray Morris and Gene Cox.

Class B — Earle Walker, Mike Beavers, Frans Bjorklund, Merle Akers, Dick Brown, Roger Ridgeway, Erik Jorgensen, Joe Jurkiewicz, Ray Erchaney, Dan McDonald, Art Stubbings, Ron Ferch, Butch Schwende and Pat McElroy.

Class C — Charles Burnham, Norm Saunders, Bill King, Alanson Bartholomew, Warren Henry, Edwin Harper, Roger Shaffer, Jerry Palmer, Robert Boehm, Jerry McMillan, Dave Teague, Sperry Zervas, Ron Davis, Ole Aanjensen, Don Boyce, Arne Ewald, E. B. Mackenzie, Dick Quinn, Bill Earl, Luke Zell, Sam Price, Ray Ervais, Larry Connor and DeHar Long.

Women's division — Hazel Owens Linda Crocker, Bonnie Weimer, Marie Simon, Laurita Heiner, Marion Brown, Pat Graham and Valerie Brote.

Fur Rendezvous ski trophies will be presented at a banquet Sunday night, 8 o'clock at Forest Park Country Club.

The Alaska Sled Dog Championship races continue tomorrow and finish Sunday. A 25-mile leg is run each day [illegible] of the territory's [illegible]

been unfortunate enough to witness executions," said Rep. Warren Taylor (D-Fairbanks), "and the cold-blooded, methodical way they are carried out makes you wonder if it isn't legal murder."

Taylor, who introduced the bill with Rep. Victor Fischer (D-Anchorage), told the House and a packed gallery yesterday that he had been a lawyer in Alaska 20 years next month.

"I've taken part in 31 homicide trials, quite a few in the first degree," he said, "both as a prosecutor and a defense attorney," he added:

"I recall a case in Valdez where I was prosecuting a very good friend of mine. A combination of cabin fever and rum alcohol led him to trouble, and fortunately the jury brought in a verdict in the second degree. Had it been different, I would have carried to the grave that scar on my soul."

One of the strong opponents to the bill, Rep. Dora Sweeney (D-Juneau) recalled two famous cases in support of her argument that the death penalty should be continued.

"Remember Winnie Ruth Judd," Rep. Sweeney said. "A Juneau girl who horribly hacked up two persons and tried to ship their bodies all over everywhere in a trunk, she lives today in an institution, from which she has escaped several times."

Then she pointed to the recent case of John Gilbert Graham, the Colorado youth executed for planting a bomb aboard a commercial airliner and killing more than 50 persons.

"If that happened in Alaska," Mrs. Sweeney said," and this bill passes, we could not penalize him with any more than life imprisonment—from which he eventually could be freed."

Rep. Seaborn J. Buckalew Jr. (D-Anchorage) protested that the bill "protects a class of people who don't deserve the consideration we are giving them."

Taylor said Rep. Sweeney believed in the commandment "of thou shall not kill—but," Taylor added: "There is a period after kill."

"And I say, Buckalew," Taylor said, "has the district attorney complex—show them no mercy."

The bill, as passed after amendments, provides for mandatory life imprisonment for persons convicted of first degree murder.

The old statute also was revised in a section which provides for first degree convictions for persons accused of wrecking a railroad train.

The amendment to that would include mandatory life for a person who "places obstruction on [illegible]

DEW Line Bids Opened

[illegible] bids for building two [illegible] stallations in southwest Alaska are $3,461,000 under the best of the government estimates and $2,347,274 under the highest pair of bids.

The bids were opened by the Alaska District Office of the Corps of Engineers here yesterday.

The low bidder was Monsen-Osberg Co. Its bid for the installation at Cold Bay, near the tip of the Alaska Peninsula, was $3,625,536. Its bid for a similar job at Cape Sarichef, about 100 miles to the west on Unimak Island, was $3,717,551.

The firm also said it would knock off $100,000 if it receives both jobs.

Nine bids were submitted. The government estimate for Cold Bay was $4,959,200; for Cape Sarichef $4,719,222.

The other bids, with Cold Bay listed first, were:

Chris Berg, Inc., Seattle, $5,162,077 and $4,681,280.

Baker & Ford, Bellingham, $5,396,446 and $4,509,906.

Peter Kiewit Sons, $4,122,843 and $3,453,324.

Birch-Green Co., $4,830,512 and $3,216,742.

Morrison-Knudsen Co., $5,042,388 for Sarichef; no bid on Cold Bay.

Bock Constructors and Baker & Kiel, Seattle, $5,191,270 on Sarichef only.

S.S. Mullen Co., Seattle, $4,873,259 on Cold Bay only.

Grove, Shepherd, Wilson & Kruse of New York and Seattle and J. A. Jones Co., of Charlottesville, N.C., and Seattle, $5,093,157 and $5,346,942.

The projects are the first two of six planned in an extension of the defense warning system to the Aleutians.

Baby Show Is Tomorrow

Parents entering their children in the Fur Rendezvous Baby Contest are to bring them to the high school cafeteria tomorrow morning.

Children aged nine months to two years will be judged from 9 to 10; two to three years, 10 to 11; and 3 to 4, 11 to 11:45. Winners in each age group will compete at 2 p.m. tomorrow for the crown of baby king or queen.

Entry blanks are still available at the Spenard Hobby Shop, Northern Commercial Baby Department, Stork Shop and Jack and Jill Shop. To save time, parents are asked to have the entry forms filled in before bringing the children to the show.

The Elmore Homemakers are [illegible]

THE PRECEDING DOCUMENT(S) MAY NOT FILM LEGIBLY BECAUSE OF POOR QUALITY OF THE ORIGINAL.

STRONG AND WEAK RESEARCH DESIGNS FOR DETECTING THE IMPACT OF CAPITAL PUNISHMENT ON HOMICIDE

David P. Phillips*

I. Introduction

This article does not attempt to provide a systematic review of studies on the deterrent effect of capital punishment.[1] Instead, the article encompasses two related topics: (1) a discussion of some common methodological shortcomings of many studies on the deterrent effect of capital punishment, and (2) a suggestion for a type of study design that appears to avoid many of these shortcomings.[2]

To determine whether capital punishment influences the homicide rate, one needs to disentangle the effect of capital punishment from the effect of other variables on homicide. This "disentangling" can be accomplished in two major ways. First, one can use a controlled experiment, or an approximation to one. This approach is favored in the natural sciences and has been the method of choice for most research on the effects of capital punishment. Second, one can use statistical techniques, including regression analysis, correlation, analysis of variance, path analysis, etc.

This paper concentrates on studies that use the controlled experiment as a model study design. Most of these investigations have implicitly followed the study design represented in Table 1. A careful examination of this table will help to reveal systematically some of the common shortcomings of research on capital punishment.

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1. Capital studies on the deterrent effect of capital punishment may be found in H. Bedau, "The Death Penalty in America" (1964); W. Bowers, Executions in America (1974); Klein, Forst & Filatov, *The Deterrent Effect of Capital Punishment: An Assessment of the Estimates*, in Deterrence and Incapacitation (1978); Zeisel, *The Deterrent Effect of the Death Penalty: Facts v. Faith*, 1976 Supreme Court Review 317.

2. For examples and criticisms of the type of study, see Bowers & Pierce, *The Illusory Deterrence in Isaac Ehrlich's Research on Capital Punishment*, 85 Yale L.J. 187 (1975); Ehrlich, *The Deterrent Effect of Capital Punishment: A Question of Life and Death*, 65 Am. Econ. Rev. 397 (1975); Ehrlich, *Deterrence: Evidence and Inference*, 85 Yale L.J. 209 (1975); Klein, Forst & Filatov, *supra* note 1; Zeisel, *supra* note 1; P. Passell & J. Taylor, *The Deterrent Effect of Capital Punishment: Another View*, Discussion Paper #74-91, Columbia University Department of Economics (1974).

TABLE 1

A COMMON PARADIGM FOR MANY STUDIES OF THE DETERRENT EFFECTS OF CAPITAL PUNISHMENT

	Time 1	Time 2	
Experimental Group	h(1)	h(2)	$d = h(2) - h(1)$
Control Group	h'(1)	h'(2)	$d' = h'(2) - h'(1)$

II. A Paradigm for Evaluating the Soundness of Some Research on the Deterrent Effects of Capital Punishment

The experimental group in Table 1 consists of a population subject to capital punishment at time 1 and not subject to capital punishment at time 2. Ideally, the control group is identical to the experimental group in every respect except one: unlike the experimental group, the control group is never subject to capital punishment. h(1) denotes the homicide rate of the experimental group at time 1, when it is still subject to capital punishment. h(2) denotes the homicide rate of the same group at time 2, after capital punishment has been abolished. d is the difference between the experimental group's homicide rate before and after capital punishment was abolished. In other words, d denotes the amount by which the experimental group's homicide rate has changed during the study period. h'(1) is the homicide rate of the control group at time 1, while h'(2) is the homicide rate at time 2. d' denotes the amount by which the control group's homicide rate has changed during the study period.

Suppose that the experimental group's homicide rate changes over time in one way, and the control group's homicide rate changes in another way. In other words, suppose that d is different from d'. Because the experimental and control groups are similar in every way except for their experience of capital punishment, a large difference between d and d' may then be plausibly attributed to the difference in exposure to capital punishment in the two groups.

As indicated earlier, this seemingly simple study design has frequently been the model for research on capital punishment. Therefore, it is surprising and regrettable that no investigation in the literature meets all the requirements of this study design. No study provides all four pieces of information, h(1), h(2), h'(1), and h'(2), required in Table 1. Instead, a variety of incomplete study designs prevail. In the following section, these incomplete study designs are

III. Four Types of Inconclusive Study Designs

A. *Only Information on* $\left|\begin{matrix} h(1) & h(2) \end{matrix}\right|$ *Is Provided*

In this type of study, there is no control group. The author merely measures the experimental group homicide rate before and after the abolition of capital punishment. If the homicide rate increases after the abolition of capital punishment, the author may be tempted to attribute this increase to the disappearance of capital punishment. In fact, however, the abolition of capital punishment may be only one of many changes experienced by the experimental group between time 1 and time 2. Any of these other changes may be the real explanation for the increase in the homicide rate.

B. *Only Information on* $\left|\begin{matrix} h(1) \\ h'(1) \end{matrix}\right|$ *Is Provided*

In this type of study, the homicide rate in an experimental group, h(1), is compared with the homicide rate of a control group, h'(1), at a time when the first group is subject to capital punishment and the second group is not. A typical example of this type of study occurs when one compares the homicide rate of a state *with* capital punishment to the homicide rates of adjacent states *without* capital punishment. If the homicide rate of the "capital punishment" state is lower than the homicide rate of the "non-capital punishment" states, the author may wish to attribute the lower rate to the presence of capital punishment. In fact, however, adjacent states differ in a great many ways that have nothing to do with capital punishment. Out of the multitude of differences between adjacent states, it seems unreasonable, without additional evidence, to select the presence of capital punishment as the definitive explanation for a low homicide rate.

C. *Only Information on* $\left|\begin{matrix} h(1) \\ h'(2) \end{matrix}\right|$ *Is Provided*

At first sight, it is difficult to imagine how a careful researcher could produce a study of this sort, in which a group at one time is compared with a different group at another time. In fact, however, it is surprisingly easy to conduct a flawed investigation of the sort. Consider, for example, a comparative study of the United States homicide rates in, say, 1950 and 1960. This appears to be a study of type

$$\left|\begin{matrix} h(1) & h(2) \end{matrix}\right|$$

already discussed, but is actually a study of type

$$\left|\begin{matrix} h(1) \\ h'(2) \end{matrix}\right|$$

of forty-eight states, whereas in 1960 it consisted of fifty states. Thus the group being studied in 1950 is not the same as the group examined in 1960, even though the name of the two groups is identical.

In this example, the effect of the error is not very great, and the flaw in the study design, though embarrassing, may not be serious in some circumstances, however, this type of flaw may be both embarrassing and serious. It is serious, for example, whenever comparisons are made using United States homicide statistics for the period 1900-1932. During this period, vital statistics rates were not known for the entire United States, only for those states eligible for inclusion in the Death Registration Area.[4] The geographic makeup of this area changed continually from 1900 to 1932. (From 1933 on, all forty-eight states were included.) Thus, an examination of "United States" homicide rates in the early part of the century generally involves a constantly changing entity. The changes in this entity are masked, however, because the name of the entity remains unchanged.

D. *Only Information on* $\left|\begin{matrix} & h(2) \end{matrix}\right|$ *Is Provided*

This type of study, fortunately, is more common in the popular than in the professional literature. The author of this type of study notices, for example, that California had a high homicide rate in 1970. Out of the myriad features that characterized California in 1970, the author selects one, the absence of capital punishment, and asserts that this is the reason for the high homicide rate. The author does not attempt to determine whether the California homicide rate was equally high *before* the abolition of capital punishment, nor does he attempt to compare changes in California homicide rates with changes in the homicide rates of a matched control group. It is evident that a study of this type cannot provide compelling evidence on the deterrent effect of capital punishment.

Thus, the paradigm for evaluating some studies of capital punishment

$$\left|\begin{matrix} h(1) & h(2) \\ h'(1) & h'(2) \end{matrix}\right|$$

highlights the shortcomings of four common study designs:

$$\underset{\text{A}}{\left|\begin{matrix} h(1) & h(2) \end{matrix}\right|} \qquad \underset{\text{B}}{\left|\begin{matrix} h(1) \\ h'(1) \end{matrix}\right|} \qquad \underset{\text{C}}{\left|\begin{matrix} h(1) \\ h'(2) \end{matrix}\right|} \qquad \underset{\text{D}}{\left|\begin{matrix} & h(2) \end{matrix}\right|}$$

IV. Other Shortcomings of Research on Capital Punishment

So far, only those shortcomings that are revealed by a close consideration of the paradigm illustrated by Table 1 have been discussed. Two additional shortcomings should also be mentioned.

First, almost all studies in the literature seek to determine whether laws, or the absence of laws, about capital punishment affect the homicide rate. Typically, the researcher seeks to determine whether the abolition or reinstatement of the death penalty changes the homicide rate. This type of research often has two obvious weaknesses, in addition to the shortcomings already discussed above: (1) the death penalty is abolished or reinstated very rarely in any given area, and consequently the researcher has very few cases to study; (2) the fact that a state has a law permitting capital punishment does not necessarily mean that the state actually practices capital punishment. If capital punishment is "on the books" but not practiced, it may not have the same effect as a law that is enforced. For these two reasons, studies of the deterrent effect of capital punishment *laws* may not reveal a deterrent effect, even if such an effect actually exists.

Second, almost all studies on capital punishment use yearly rather than weekly or daily statistics.[7] Research using yearly data has typically failed to find a deterrent effect of capital punishment. Such failure may have occurred because (1) there is no deterrent effect, or (2) there is a deterrent effect, but it cannot be detected with crude yearly data. Short-term deterrent effects are obviously more likely to be discovered with weekly than with yearly statistics.

These methodological shortcomings are common in the literature on capital punishment. The next section of this paper describes a type of research that appears to avoid many of them.[8]

V. The Effect of Publicized Executions on the Level of Homicides

As noted earlier, it is desirable to examine daily or weekly homicide statistics in order to detect short-term effects of capital punish-

[7] Cannot locate only two studies. Besides those cited by the author that use weekly or daily homicide statistics to examine the deterrent effect of executions, see H. Dicks, The Deterrent Effect of Capital Punishment, Home Office Research Unit, Research Bulletin No. 34 (1943); Grove, *A Doctor Looks at Capital Punishment*, 40 J. Crim. L. Criminology & Police Sci. 545 (1950); Phillips, *The Deterrent Effect of Capital Punishment: New Evidence on an Old Controversy*, 86 Am. J. Sociology 139 (1980). Dicks's study found no evidence of a deterrent effect, perhaps because the author examined only five executions. Grove's study also found no deterrent effect but only a small fraction of the executions studied were well publicized.

Additionally, one Pennsylvania study examined the deterrent effect of death penalty *sentences* rather than executions. Only four sentences were examined, and no deterrent effect was found. See Sellin, *A Study of Capital Punishment*, 49 J. Crim. L. & Criminology 189, 190 (1958).

ment. A search of the vital statistics collections of the Library of Congress, the National Library of Medicine, and the British Museum revealed only one jurisdiction, England, that both practiced capital punishment and published weekly homicide statistics over a given period of time. The weekly homicide statistics for London from 1858 to 1921 were available for study.

A list of highly publicized English executions for the same time period was generated from a standard encyclopedia of notorious murderers. Table 2 lists these executions, ranked by the amount of publicity each received, together with the number of homicides before, during, and after the week of each execution. The week in which the execution was publicized in the newspaper will henceforth be termed "the execution week" or "the experimental period." The week just before the experimental period and the week just after will be termed "the control period." It is evident that the London in each control period is nearly identical to the London in the corresponding experimental period, except for the presence of an execution in the experimental period. Thus, this procedure for choosing controls avoids the problem of dissimilar experimental and control periods encountered in other study designs.

If executions deter homicides, then the number of homicides in the experimental period should generally be smaller than the number of homicides in the control period. Table 2, column 6, shows the average weekly number of homicides in each control period; column 7 indicates whether the number of homicides in the experimental period was less than the weekly average in the control period (indicated by a "-1") or more than the weekly average (indicated by a "+1"). In three cases the number in the experimental period equaled the weekly average in the control period. In the remaining nineteen cases in Table 2, there are fifteen "-1"s and four "+1"s. In short, there is a general tendency for homicides to decline in the week of a publicized execution.

These data are consistent with the hypothesis that publicized executions produce a brief decline in homicides. This hypothesis is further supported by an additional piece of evidence: the more publicity given to the execution, the more homicides decline. This is evident from an informal inspection of Table 2 and also from a more refined statistical analysis reported elsewhere.[9]

It is difficult to think of a plausible alternative explanation for the findings. The findings are sufficiently strong so that they cannot easily be attributed to chance fluctuations in the data. In technical terms, the results are statistically significant.[10] The findings cannot result

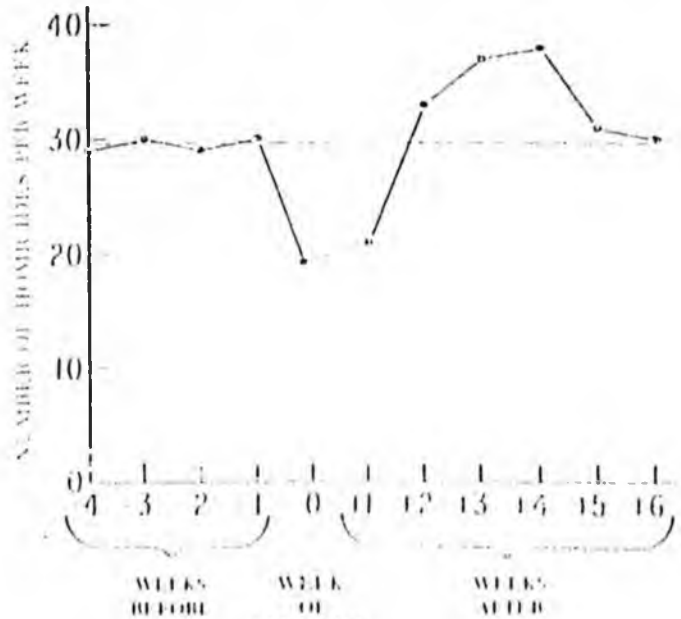
TABLE 2

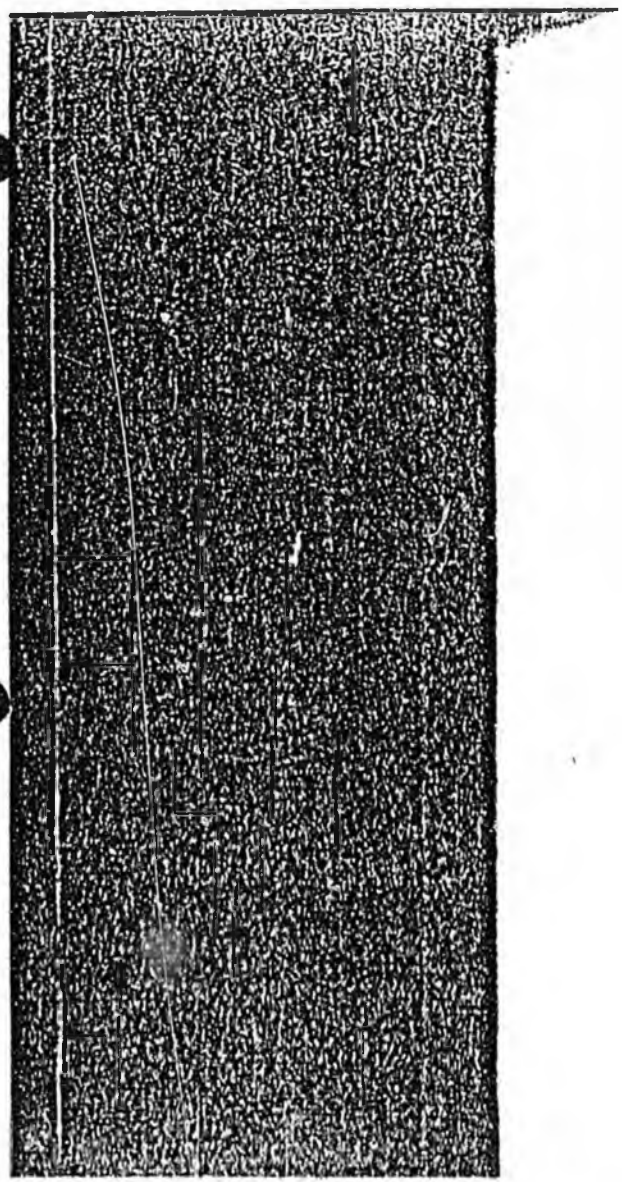
Weekly Homicides Before, During and After Publicized Executions, London, 1858-1921

Name of person executed and date of execution (men in The Times)	No. of homicides during week of execution	Control Period: No. of homicides per week in the 4 weeks before execution week	Control Period: No. of homicides per week in the 3 weeks after execution week	Control Period: No. of homicides per week in the 7 weeks before and after execution week	Average no. of weekly homicides in control period	Difference between observed no. of deaths in execution week and 3 and no. expected (col. 4 − col. 5)
Wainwright 12/22/1875	1000	0	1	0	0.5	−0.5
Coppen 11/23/1910	1550.0	0	1	0	0.5	−0.5
Mullin 11/15/1864	1062.0	1	1	1	1	0.0
Wooler 3/30/1859	922.0	0	2	1	1	1.0
Mapleton 11/29/1881	928.0	2	1		1.0	1.0
Lamson 8/27/1882	930.0	0	0		1.0	−1.0
Seddon 4/19/1912	840.0	1		1	1	0.0
Cream 12/20/1892	958.0	0	1	0	0	0.0
Ruhl & Cass 3/5/1921	650.0	0	1	0	0.0	0.0
Chapman 4/8/1903	1005.0	0	1		1	−1.0
Pace 2/28/1879	963.0	0	1		1	−1.0
Read 12/7/1901	1014.0	2	1		2	0.0
Mahon & Condon 6/4/1849	2016.0	0		1	1.0	−1.0
Owen 8/9/1859	2216.0	0	1	1	1.0	0.0
Dennison 8/16/1911	2154.0	1		0	1	0.0
Marlow 1/30/1911	2014.0	0	1	0	0.5	0.5
Sherrard 12/1/1920	1980.0	2		1	1	1.0
Dowse 12/9/1911	1563.0	1		0.5	0.5	0.5
Bentley 8/11/1901	1270.0	2	1	0.5	1.5	
Parker 10/1/1912	1014.0	0	0		0	0
Dickman 8/10/1910	1014.0	0	1	0.5	0.5	0.5
Stratton Brothers 5/4/1905	2028.0	1	0	0.5	0.5	0.5

from a trend in homicides over time because the selection and treatment of controls corrects for the effects of trend. The findings also cannot be attributed to seasonal fluctuations because the control and experimental periods occur during the same seasons of the year. Similarly, the findings cannot be attributed to day of the week fluctuations in homicides because the experimental and control periods each cover the same days of the week. At present, the best available explanation of the findings is that publicized executions in London from 1858 to 1921 caused a brief decline in homicides during the execution week.

So far, we have examined homicides for a three-week period centered on the execution week. It is instructive to graph the fluctuation of homicides for a longer period of time. When such a graph is made, a curious and unexpected phenomenon is discovered: the dip in homicides just after the execution is canceled by an equally large rise in homicides soon afterwards. Figure 1 shows this pattern quite





clearly. The most plausible explanation of this graph is that homicides are *temporarily* deterred for a two-week period; then these temporarily deterred homicides reappear after the publicized execution has faded from memory. Apparently, the "lesson of the scaffold" is real but only temporary, at least in London from 1858 to 1921.

Without further research, it is inappropriate to generalize these findings to contemporary America. The chief value of the study described herein lies not in its findings, but in its design. The study examines the effect of executions, rather than death penalty legislation; it employs weekly rather than yearly homicide statistics; and finally, it uses a control group that is nearly identical to the experimental group. Because of these features, the study design avoids many of the shortcomings of traditional investigations. Future research should attempt to apply this study design to contemporary American data.

A Comparison of the Work of Thorsten Sellin and Isaac Ehrlich on the Deterrent Effect of Capital Punishment*

David C. Baldus† and James W. L. Colet‡

During the last 20 years, a substantial number of empirical studies—most prominent among them the work of criminologist Thorsten Sellin—have concluded that the death penalty has no measurable deterrent effect beyond that of life imprisonment.[1] A recent study by Isaac Ehrlich, an economist, challenges this traditional view.[2] Ehrlich criticizes Sellin's statistical methods and, on the basis of a more complex statistical procedure, estimates that "an additional execution per year over the period in question [1933-1969] may have resulted, on average, in 7 or 8 fewer murders."[3] In *Fowler v. North Carolina*,[4] the constitutional challenge to the death penalty now pending in the Supreme Court, the Solicitor General presented Ehrlich's findings to the Court and in his amicus brief cited them as "important empirical support for the a priori logical belief that use of the death penalty decreases the number of murders."[5] The Solicitor General asserted that earlier studies, and specifically those of Sellin, suffered from "investigatory flaws" and that only Ehrlich's work provided a reliable basis for judging whether the death penalty has a deterrent effect.[6] Now that *Fowler* has been set for reargument,[7] an assessment of the Solicitor General's claims has particular importance.

A statistical study cannot prove that executions deter murders, nor

* We are grateful for the assistance of David Engels in the preparation of this article.

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1. T. SELLIN, THE DEATH PENALTY (ALI 1959) [hereinafter cited as THE DEATH PENALTY]; Sellin, *Capital Punishment*, 25 FED. PROBATION 3 (1961); Sellin, *Homicides in Retentionist and Abolitionist States*, in CAPITAL PUNISHMENT 135 (T. Sellin ed. 1967) [hereinafter cited as *Homicides*]. For other studies confirming these findings, see W. BOWERS, EXECUTIONS IN AMERICA 19-20 (1974). *See generally* Allen, *Capital Punishment*, 2 INT'L ENCY. SOC. SCI. 290 (1968); F. ZIMRING & G. HAWKINS, DETERRENCE: THE LEGAL THREAT IN CRIME CONTROL (1973).

2. I. Ehrlich, The Deterrent Effect of Capital Punishment: A Question of Life or Death, 1974 (Working Paper No. 18, Center for Economic Analysis of Human Behavior and Social Institutions) [hereinafter cited as Ehrlich 1974]. A condensed version of the paper was recently published as Ehrlich, *The Deterrent Effect of Capital Punishment: A Question of Life or Death*, 65 AM. ECON. REV. 397 (1975) [hereinafter cited as Ehrlich 1975].

3. Ehrlich 1975, *supra* note 2, at 414.

4. State v. Fowler, 285 N.C. 90, 203 S.E.2d 801, *cert. granted sub nom.* Fowler v. North Carolina, 419 U.S. 961 (1974), *argued*, 43 U.S.L.W. 3562 (U.S. Apr. 21, 1975), *restored for reargument*, 422 U.S. 1049 (1975).

5. Brief for the United States as Amicus Curiae at 30 [hereinafter cited as Amicus Brief]. The Solicitor General submitted the Ehrlich Working Paper, *supra* note 2, to the Court on March 4, 1975.

6. *Id.* at 36-38.

can it prove that they do not. Given a hypothesis about a causal relationship, however, a statistical analysis can determine whether that hypothesis is consistent with past experience. Both Sellin and Ehrlich tested the hypothesis that capital punishment deters murders. Both used a variable to represent the threat of capital punishment, and both compared that variable with the behavior of homicide rates in the United States.[8] However, they used different statistical methods to make their comparisons and arrived at different conclusions.

Sellin used a "matching" technique.[9] He selected clusters of neighboring states "closely similar" in "social organization, composition of population, [and] economic and social conditions"; in each grouping at least one state had abolished the death penalty and at least one retained it.[10] He then compared the homicide rates for the years 1920-1955 and 1920-1962 in abolitionist and retentionist states within each group, and found that the rates in abolitionist states were not significantly or systematically different than the rates in retentionist states.[11]

8. Since the public records kept by the FBI do not include statistics on the number of murders committed each year, the researchers in this area must use the number of "murders and nonnegligent manslaughters" as a surrogate measure of the number of murders. This statistic is generally considered adequate on the assumption that the proportion of murders to nonnegligent manslaughters remains constant from one year to the next. Sellin, *Capital Punishment*, *supra* note 1, at 5-6; *see* Ehrlich 1975, *supra* note 2, at 406-07 (accounting for possible increasing trend in fraction of capital murders among all murders by including chronological time as a factor influencing the homicide rate). Throughout this paper we refer to the "homicide rate" in discussing the data analyzed by Sellin and Ehrlich, with the understanding that the underlying theoretical relationship is between executions and the *murder* rate.

9. Sellin also has performed longitudinal studies of crime rates before and after a change in punishment policy in a given jurisdiction. *See* note 16 *infra*.

10. THE DEATH PENALTY, *supra* note 1, at 23.

11. Tables I and II illustrate the results reported in THE DEATH PENALTY, *supra* note 1, at 24-31, and *Homicides*, *supra* note 1, at 130-31.

TABLE I

Comparative Crude Homicide Death Rates in States with and States without the Death Penalty—Average Annual Rate 1920-1955 (Death Penalty States Are Marked †)

Midwest

Matched Group 1			*Matched Group 2*			*Matched Group 3*		
	†	†			†		†	†
Michigan	*Indiana*	*Ohio*	*Minnesota*	*Wisconsin*	*Iowa**	*North Dakota‡*	*South Dakota‡*	*Nebraska*
4.8	4.8	6.1	2.2	1.8	4.7	1.4	1.6	2.7

New England

Matched Group 1			*Matched Group 2*		
	†	†		†	†
Maine	*New Hampshire*	*Vermont*	*Rhode Island*	*Massachusetts*	*Connecticut*
1.6	1.1	1.2	1.7	1.7	2.5

* 1921-1955 ‡ 1921-1955 § 1930-1955

Adapted from I. Ehrlich, *supra* note 1, at 396; see also data from THE

the conclusions of the study as "completely unfounded."[18] If Ehrlich's study is reliable, it may be difficult to claim that the death penalty is "excessive and unnecessary" and therefore violates the Eighth Amendment. Because the technical merits of the Ehrlich study have thus become relevant to an important constitutional adjudication, the *Journal* is publishing what is essentially a statistical debate between Ehrlich and his critics.

In the first article, Messrs. Baldus and Cole defend Sellin and contend that his technique is better than Ehrlich's regression method for testing the deterrence hypothesis; in the second article, Messrs. Bowers and Pierce argue that Ehrlich's data are fundamentally inadequate for the method he uses and that no evidence of a deterrent effect is found when his method is correctly applied. Professor Ehrlich then responds with methodological and statistical arguments in support of his initial study and further elaborates on the basic issues underlying his research. In the next issue of the *Journal*, Professor Jon K. Peck[19] will comment on the debate between Ehrlich and his critics.

The difficulties a court faces in attempting to arbitrate an "abstruse statistical dispute" between parties to a litigation were forcefully noted by Judge J. Skelly Wright in *Hobson v. Hansen*,[20] a suit challenging different per-pupil expenditures among elementary schools in the District of Columbia. Judge Wright commented on "the added difficulties which beset the truth finding process when it is necessary to rely upon easily manipulated statistical analyses," and deplored the "overgrown garden of numbers and charts and jargon" which he suggested had obscured the basic issues in the suit.[21] He added:

> The reports by the experts—one noted economist plus assistants for each side—are less helpful than they might have been for the simple reason that they do not begin from a common data base, disagree over crucial statistical assumptions, and reach different conclusions. Having hired their respective experts, the lawyers in this case had a basic responsibility, which they have not completely met, to put the hard core statistical demonstrations into language which serious and concerned laymen could, with effort, understand.[22]

The articles which follow attempt to meet this "basic responsibility" in the context of the statistical debate over the deterrent effect of capital punishment; to the extent it is not met, the Court must rely, as did Judge Wright, "upon burden of proof, and upon straightforward moral and constitutional arithmetic."[23]

> penalty] concluded that, over the past several decades, each execution actually carried out deterred a significant number of murders. Other studies of the death penalty are infected by serious analytical flaws, and so do not provide support for a contrary conclusion.

Id. at 9.

18. Reply Brief for Petitioner, App. C at 6. *See* Rule[?], *infra* at 19 n.31. Petitioner submitted two statistical critiques of the Ehrlich study, *id.* Apps. C & E.

19. Assistant Professor of Economics, Yale University.

20. 327 F. Supp. 844, 851 (D.D.C. 1971).

21. *Id.* at 865, 870.

22. *Id.* at 870.

These articles also illustrate the inherent vulnerability of complex statistical techniques to the adversary process. Any statistical analysis depends on a variety of explicit and implicit assumptions which can be challenged by opposing parties and on which experts may reasonably differ.[24] Since courts generally have no expertise to resolve statistical disputes, they will tend to ignore the evidence altogether once such a dispute arises.[25] The probative value of any study can be destroyed by raising a large number of technically complex objections, which, if not sufficient to disprove the results of the study, will at least undermine them to the point where the decisionmaker refuses to rely on them. This process tends toward Chief Justice Burger's characterization of the evidence on deterrence in *Furman*—an "empirical stalemate."[26] The usefulness of statistical analyses to the courts may depend on the development of procedures to resolve the technical debates which seem inevitably to arise when such studies are put before them.[27]

24. *See, e.g.*, J. Johnston, Econometric Methods 121-23 (2d ed. 1972) (mathematical statement of assumptions needed for regression analysis).

25. Finkelstein has noted this tendency in administrative proceedings in which regression studies have been introduced. *Regression Models*, *supra* note 15, at 1111. The lack of success in the use of sophisticated statistical evidence in administrative proceedings necessarily raises doubts about the chances for its success in litigation before the courts, because agencies are likely to be both more able and more willing than courts to use this evidence. An agency has a staff which can develop the expertise necessary to construct an econometric model of a regulated industry. *See, e.g.*, Khazzoom, *The FPC Staff's Econometric Model of Natural Gas Supply in the United States*, 2 Bell J. Econ. & M. Sci. 51 (1971). In addition, statistical evidence often bears directly on the predictions and policy decisions that the agency must make. For example, in a ratemaking proceeding, the agency must forecast the effect of the proposed change in rates on demand and supply in the regulated industry—a question which lends itself to econometric analysis. The relevance of the statistical evidence to regulatory decisionmaking may therefore lead agencies to encourage its use. *See, e.g.*, Southern La. Area Rate Proceeding, 10 F.P.C. 530, 626 (1968), *modified*, 41 F.P.C. 301 (1969), *aff'd*, 428 F.2d 407 (5th Cir.), *cert. denied*, 401 U.S. 950 (1970), *quoted in Regression Models*, *supra* at 1156, Madison Gas & Elec. Co., 5 P.U.R.4th 28, 49 (1974).

26. 408 U.S. 238, 395 (1972) (Burger, C.J., dissenting).

27. Finkelstein, in *Regression Models*, *supra* note 15, at 1155-61, proposes that an administrative agency decide in advance on the data to be used in regression studies put before it in a given proceeding and that the agency require a party objecting to the statistical analysis presented to demonstrate the numerical significance of its objections or even to present a superior alternative analysis of the designated data. While possibly quite useful, these procedures are not likely to be sufficient to yield what their proponent describes as

> a progression towards greater refinement and correctness in statistical methodology which will not only be apparent to the decisionmaker, but which may also achieve results meriting at least tacit agreement among experts.

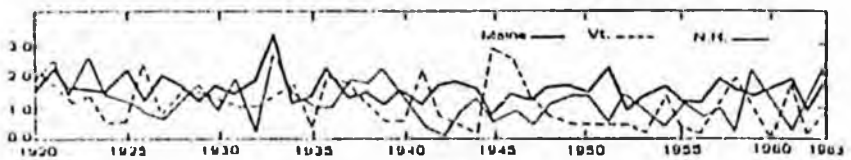
Id. at 1161. Instead, each side, using high speed computers, may be able to "mine" a limited sample of data for results which support its hypothesis. *See id.* at 1119 n.27; Hobson v. Hansen, 327 F. Supp. 844, 869 (D.D.C. 1971) ("the studies by both experts are tainted by a vice well known in the statistical trade: data shopping and scanning to reach a preconceived result"). Although its implications have not been fully discussed, this problem of "data-mining" has been recognized in economic journals. *See, e.g.*, Jorgenson, Hunter & Nadiri, *The Predictive Performance of Econometric Models of Quarterly Investment Behavior*, 38 Econometrica 213-15 (1970).

From this evidence he drew the "inevitable conclusion . . . that executions have no discernible effect on homicide death rates . . . ."[12]

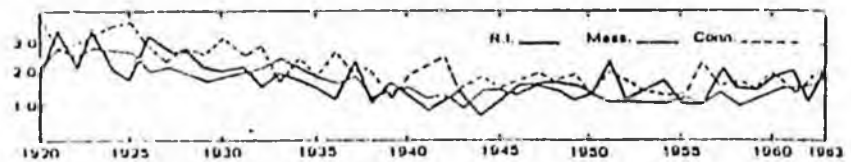
Ehrlich focused instead on the relationship in the nation as a whole between the homicide rate and "execution risk"—the fraction of persons convicted of murder who were subsequently executed. He compared the differences in homicide rate and execution risk for the years 1933-1969, and found a positive simple correlation between changes in the homicide rate and changes in execution risk—increases in execution risk were associated with increases in the homicide rate.[13] However, when he controlled for the influence of other variables on the homicide rate by using a multiple regression analysis, the relationship became negative. More precisely, he estimated that the elas-

TABLE II

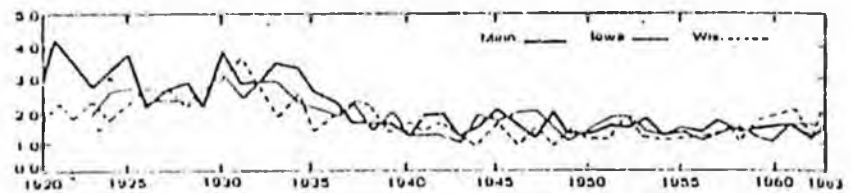
Homicide Death Rates (per 100,000 Population) in Contiguous Abolitionist and Retentionist States, 1920-1963.



Maine is an abolitionist state.



Rhode Island is an abolitionist state.



Minnesota and Wisconsin are abolitionist states.

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12. THE DEATH PENALTY, *supra* note 1, at 34; *see Homicides*, *supra* note 1, at 138 ("The conclusion is inevitable that the presence of the death penalty—in law or practice does not influence homicide death rates.")

13. Ehrlich 1975, *supra* note 1, at 409. Simple correlation analysis does not take into account the influence of other factors on the homicide rate, and hence is statistically less sophisticated than the multiple regression analysis on which Ehrlich relies for his

ticity of the homicide rate with respect to the execution rate was approximately —.06[14]—that is, a .06 percent decrease in the homicide rate was associated with a one percent increase in execution risk. This finding was the basis for his estimate that "on the average the tradeoff between the execution of an offender and the lives of potential victims it might have saved was of the order of magnitude of 1 for 8 for the period 1933-67 in the United States," and for his "tentative and rough calculation [that] the decline in [execution risk] alone might have accounted for about 25 percent of the increase in the murder rate between 1960 and 1967."[15]

In this paper, we compare the work of Sellin and Ehrlich and attempt to assess the reliability of their statistical evidence as a basis for making inferences about the deterrent effect of capital punishment. We consider three aspects of their approach: (1) the choice of a measure to represent capital punishment; (2) the choice of the nation or state as the unit of observation; and (3) the ability to control for factors other than the death penalty which may affect the homicide rate. We then discuss the replication or corroboration of their results by studies using the same or similar methods. While we do not argue that Sellin and others who have followed his approach have proven conclusively that the death penalty has no greater deterrent effect than life imprisonment, we believe that Sellin's work, despite its methodological shortcomings, offers a more reliable basis than Ehrlich's recent work for inferring whether the threat of capital punishment deters murders. Future studies by Ehrlich or others may weaken the credibility of work that went before him, but on the record to date Sellin makes the stronger case.

It is quite true that Ehrlich's approach is statistically more sophisticated than Sellin's. But statistical sophistication is no cure for flaws in model construction and research design. There are many questions which, because of inadequacies of data or theory, are best studied by simpler methods. The deterrent effect of capital punishment is at this point just such a question.

I. Measuring the Threat of Capital Punishment: Actual Use or Legal Status

The Solicitor General criticized Sellin's work on the ground that it "relied not upon the actual *use* of the death penalty, but upon its statutory authorization, as the independent variable against which the

14. *Id.* at 410 (Tables 3 & 4).

15. *Id.* at 399, 411 n.45.

murder rate was compared."[16] This criticism echoed Ehrlich's argument that "the actual enforcement of the death penalty [as measured by execution risk] may be a far more important factor affecting offenders' behavior than the legal status of the penalty."[17]

There is, of course, a necessary link between the legal status and actual use of capital punishment; the penalty cannot be used if it is not authorized. Moreover, the factor which is directly controlled by courts and legislatures is the legal status of the penalty. The precise question now facing the Supreme Court is whether capital punishment must be abolished, not whether its use should be increased or decreased assuming it is retained. For some purposes, it may be of interest to investigate the effects of increasing the number of executions in retentionist jurisdictions. But in the debate over abolition, the essential question is the effect of changing from a retentionist to an abolitionist jurisdiction.[18] Sellin's approach is directly addressed to this policy choice, and Ehrlich's approach is not.

Sellin compared the homicide rates within six clusters of abolitionist and retentionist states.[19] The execution levels in the retentionist states ranged from New Hampshire (one execution in the years 1920-1955) to Ohio (an average of seven executions a year).[20] Assuming that the penalty, if retained, would be applied as infrequently as in the past 15 years,[21] Sellin's comparisons of abolitionist states with retentionist states which rarely executed people become highly relevant. His other comparisons bear directly on the choice between abolition and retention at the higher execution levels of the earlier years.[22]

Ehrlich's comparison of the homicide rates with the ratio of executions to convictions—execution risk—is less relevant to the question of abolition. His analysis focuses on the marginal effects of small changes in execution risk—the number of murders deterred by one

16. Amicus Brief, *supra* note 5, at 36 (emphasis in original).

17. Ehrlich 1975, *supra* note 2, at 415.

18. For a discussion of the relative reliability of various research designs as a basis for making causal inference about the impact of a particular law, see D. Campbell & J. Stanley, "Experimental and Quasi-Experimental Design for Research (1966); Social Experimentation: A Method for Planning and Evaluating Social Intervention 92-116 (H. Riecken & R. Boruch eds. 1974); L. Zeisel & G. Hawkins, *supra* note 1, at 249-320; Campbell, *Legal Reforms as Experiments*, 23 J. Legal Educ. 219-30 (1970).

19. Sellin did not, however, rely simply on the legal status of the penalty. He included in the category of abolitionist states three which had abolished the penalty except for treason and certain types of murders and had never applied the penalty after it was abolished for ordinary murders. The Death Penalty, *supra* note 1, at 1-2.

20. *Id.* at 25, 28, 32.

21. There was an average of 36 executions in the years 1961-1961, seven in 1965, one in 1966, two in 1967, and none since 1967. W. Bowers, *supra* note 1, at 29.

22. Rates of executions for the five year periods between 1930 and

more execution—rather than on the difference between jurisdictions which do and do not use capital punishment. In Ehrlich's regression equation, the estimated homicide rate increases proportionally as execution risk declines. To predict the effect of abolition on the homicide rate, execution risk is simply set equal to zero in the equation. Representing abolition by zero execution risk fails to distinguish de facto abolition—where the death penalty is authorized but not currently applied—from de jure abolition. Yet even the legal possibility, however remote, of execution might have some deterrent effect. Because of its reliance on execution risk rather than the statutory authorization of the penalty, Ehrlich's study could not detect such an effect.

Moreover, for the particular mathematical form in which Ehrlich constructs his equation, zero execution risk implies either an infinitely large or a zero homicide rate (depending on whether the elasticity for execution risk is negative or positive).[23] These absurd implications show the equation was not designed to predict the effect of abolition. Even if one used a mathematical form which could generate a meaningful prediction of the homicide rate after abolition, such a prediction would be unreliable if based on the data used to construct Ehrlich's equation, because the possibility of error increases as the number of executions on which the prediction is based departs from the average (75) over the period which Ehrlich studied.[24]

II. Choice of Unit of Observation: Nation or State

Presumably because adequate data on arrests, convictions and executions—from which the risk of execution after conviction is computed—are not readily available on a state-by-state basis, Ehrlich compared executions and homicides for the nation as a whole. This aggregate approach cannot measure the extent to which changes in the execution

23. Ehrlich posits a "murder supply function" in which the homicide rate is equal to the product of execution risk and six other variables which in theory influence the homicide rate. Ehrlich 1975, *supra* note 2, at 406 (equation (6)); pp. 129-80 *infra*. Each of those seven explanatory variables is raised to an exponent—the elasticity of the homicide rate with respect to that variable. If the elasticity for execution risk is negative, then as execution risk approaches zero, the product of the variables approaches infinity (because multiplication by a quantity raised to a negative exponent is equivalent to division by the same quantity raised to a positive exponent—in this case, by a quantity approaching zero). If the elasticity for execution risk is positive, then as execution risk approaches zero, the product of the variables approaches zero. To perform the regression analysis for the years 1968-1970, in which there were no executions, Ehrlich had to assume that one execution in fact occurred each year. Ehrlich 1975, *supra* note 2, at 409 n.b.

24. See R. Wonnacott & T. Wonnacott, Econometrics 27-31 (1970). The prediction is based on execution risk, not number of executions. But as the latter declines so will [illegible] convictions do not decline in a greater proportion than executions.

rate are associated with changes in the murder rate for *individual* jurisdictions.

To illustrate this problem, consider the simplified example of a nation composed of three states, two retentionist (*R1* and *R2*) and one abolitionist (*A*). Assume that execution risk decreases in *R1* and remains constant in the other states, and that the murder rate increases in one state, not necessarily *R1*, and remains constant in the other two. No matter which of the three states experiences the increase in murders, the nation as a whole would show an aggregate increase in murder rate and decrease in execution risk; analyzing these aggregate figures would suggest a deterrent effect. This inference would be justified only if the increase in the murder rate occurred in *R1*, where execution risk has decreased. If instead the murder rate increased in state *A* or *R2*, the aggregate correlation would be misleading, because the increase in the murder rate in one jurisdiction could not be attributed to lower execution risk in another. The actual behavior of the murder rate and execution risk in different jurisdictions is, of course, far more complicated than in this example. But the point remains that Ehrlich's use of national data obscures the relationships between murder and execution rates and may yield results which seem consistent with a deterrent effect where no such effect actually exists. Sellin's comparison of murder rates in abolitionist and retentionist states, on the other hand, shows us whether or not homicide rates differ substantially in similar jurisdictions which do and do not use capital punishment. Because it examines differences in homicide rates among retentionist and abolitionist jurisdictions, Sellin's work does not contain the aggregation errors which may vitiate Ehrlich's results.

The aggregation approach used by Ehrlich has the further drawback of concealing regional differences. It is well-known that homicide rates are higher in the South than elsewhere in the United States,[26] and it is entirely possible that the deterrent effects, if any, of capital punishment would vary from one part of the country to another. These differences may be of considerable relevance to a decisionmaker considering the abolition of capital punishment in the United States. Sellin's method, which compares data for groups of contiguous states, would reveal regional differences if they existed; Ehrlich's approach, which aggregates the data for the entire United States, cannot. The fact that Sellin observed no deterrent effect in any region does not minimize the importance of taking a regional approach.[28] It merely adds plausibility to his conclusion that the threat of capital punishment has no measurable deterrent effect.

III. Holding Other Factors Constant

The Solicitor General asserted that "perhaps most importantly, [Sellin] failed to hold constant factors other than the death penalty that might influence the rate of murders." The Solicitor General also stated that Ehrlich's study alone was immune from this flaw.[27] We disagree. Sellin's matching method is simply a different technique for taking account of the influence of other variables than the multiple regression analysis used by Ehrlich. With either method there is the risk that variables not taken into account, or imperfectly taken into account, may influence the observed results. The issue is whether Sellin's or Ehrlich's method is more successful in reducing that risk.

Sellin was acutely aware of the problem of controlling for the influence of other variables on the murder rate. He recognized that the problem had been neglected by earlier work on the deterrent effect of capital punishment,[28] and used a matching method as "a deliberate attempt to eliminate differences other than those in punishment policy that might influence the crime rate."[29] A matching method controls for the effect of other variables by comparing areas which are as similar as possible with respect to those variables, but are different with respect to the variable whose effect is being isolated. Sellin assumed that the important factors influencing the murder rate were roughly similar in neighboring states. As Table III shows, this assumption is supported by a state-by-state comparison for a small sample of the law enforcement and socioeconomic factors which Ehrlich has hypothesized as determinants of the murder rate.[30]

26. The matching technique could not be applied in the Deep South, where there are no abolitionist states. However, Sellin did compare homicide rates in Missouri, which has authorized and applied the penalty, and Kansas, which did not enact it until 1935. THE DEATH PENALTY, *supra* note 1, at 32-33.

27. Amicus Brief, *supra* note 5, at 37-38.

28. *See* Sellin, *Capital Punishment*, *supra* note 1, at 6.

29. J. ZEISEL, H. CALVERT & G. HAWKINS, *supra* note 1, at 264. For this reason, Zeisel, Calvert and Hawkins conclude that Sellin's work is "more reliable than nonmatched interstate comparisons." *Id.*

30. Table III presents comparative socioeconomic data for 1960 and law enforcement data for 1960 for the five groups of states matched by Sellin. (The law enforcement data reflect only a small, nonrandom sample of all the jurisdictions in each state, and are therefore unreliable.) The Table shows that the differences in these factors among the states in each group are generally small, and more importantly, that they do not explain the differences in the observed homicide rates. Consider, for example, the match between [illegible] rate of [illegible] and retentionist states

There are, of course, difficulties in attempting to control for other factors through a matching technique. In selecting areas for matching, it always is possible that an important difference among states will be overlooked. But such a difference would not vitiate the results of the matching study unless the difference were consistently and systematically related to the choice of a punishment policy.[31] The Solicitor General suggested that a difference in arrest and conviction rates might be systematically related to a difference in punishment policy, because jurisdictions which abolish capital punishment could use an increased likelihood of arrest and conviction as an alternative deterrent.[32] A finding that the homicide rate in a retentionist state was similar to the rate in an abolitionist state with higher arrest and conviction rates would then be consistent with the hypothesis of a deterrent effect for capital punishment. However, neither the Solicitor General nor Ehrlich offered evidence to support this relationship.[33]

Ehrlich's multiple regression analysis controls for the influence of variables other than execution risk by incorporating a set of additional explanatory variables into a mathematical formula for the homicide rate. Ehrlich posits a "murder function" in which the national homicide rate is determined by execution risk and six other factors. Of the six, two are law enforcement variables: the arrest rate (the fraction of all murders which are cleared by the arrest of a suspect) and the conviction rate (the fraction of suspects arrested for murder who are subsequently convicted of murder). The other four are socioeconomic variables: the labor force participation rate, the unemployment rate,

Massachusetts and Connecticut with homicide rates of 1.1 and 1.6 respectively. All but two of the variables civilian population and percentage of nonwhites suggest that Rhode Island's homicide rate should be *higher* than the neighboring states, while in fact it is lower than the rates in both Massachusetts and Connecticut.

The sources of data in Table III are as follows: *Column 1*–legal status of death penalty, E. Zimring & G. Hawkins, *supra* note 1, at 265; *Column 2*–homicide rate 1960, FBI, Uniform Crime Reports for the United States 31-37 (1961) (Table 2). *Columns 3 & 4*–FBI (unpublished data on file with *Yale Law Journal*); *Columns 5 & 6*–calculated from Bureau of the Census, U.S. Dep't of Commerce, General Social and Economic Characteristics: 1960 Table 5-3 (1961); *Column 7*–calculated from *id.* Table 59; *Column 8*–calculated from formula in M. Thomsen, A Theory of the Consumption Function 1 (1952), using data from F. Kami, The Value of Time and the Demand for Money, 1921, Table 33 (unpublished doctoral dissertation, Univ. of Chicago). U.S. Public Health Serv., Dep't of Health, Education, and Welfare, Vital Statistics Rates in the United States 1900-1960 Table 71 (R. Grove & A. Hetzel eds. 1968); U.S. Dep't of Commerce, Survey of Current Business 10 (Aug. 1966) (Table 1); and U.S. Dep't of Commerce, Survey of Current Business 3 (Aug. 1974) (Table 2); *Columns 9 & 10*–calculated from General Social and Economic Characteristics, 1960, *supra*, Table 5-3; *Column 11*–Bureau of the Census, U.S. Dep't of Commerce, Data by States 1960, at 27 (1961) (Table 15); *Column 12*–*id.* at 29-30 (Table 16).

31. E. Zimring & G. Hawkins, *supra* note 1, at 266.

32. Amicus Brief, *supra* note 5, at 37-38.

33. *Id.* *But see* Ehrlich 1975, *supra* note 1, at 411.

TABLE III

Comparative Law Enforcement and Socioeconomic Data for Four Groups of States Matched by Sellin (1960 Data Except as Indicated)

1	2	3	4	5	6	7	8	9	10	11	12
State	Status of Death Penalty*	Homicide Rate	Probability of Arrest†	Probability of Conviction‡	Labor Force Participation (%)	Unemployment Rate (%)	Population Aged 15-24 (%)	Real Per Capita Income ($)	Nonwhite Population (%)	Civilian Population (1000's)	Per Capita Govt. Expenditures ($)	Per Capita Police Expenditures ($)
Washington		4.8	.75	.85	54.9	6.9	12.7	1292	10.4	7811	365	11.5
Indiana	D	4.3	.83	.55	55.3	4.2	13.4	1176	6.2	4653	289	7.6
Ohio	D	3.2	.85	.33	54.9	5.5	12.9	1278	8.9	9690	338	9.0
Minnesota		1.2	.88	.44	55.3	5.0	13.1	1101	1.3	3409	353	7.5
Wisconsin		1.5	.95	.55	53.8	3.9	12.8	1173	2.4	3947	320	10.6
Iowa	D	.6	.40	.50	54.3	3.2	13.0	1078	1.1	2755	332	6.7
North Dakota		.5	1.00	1.00	53.7	3.6	14.2	899	2.1	626	394	5.5
South Dakota	D	2.1	...	1.00	54.2	4.1	13.4	877	4.2	675	329	5.1
Nebraska	D	2.3	1.00	.40	55.2	3.1	13.0	1080	3.7	1398	372	6.3
Maine		1.7	1.00	.67	53.0	6.5	13.8	999	.6	952	323	6.6
New Hampshire	D	1.8	1.00	...	57.4	4.3	13.0	1094	.5	600	334	6.9
Vermont	D	.3	1.00	0	54.4	4.5	13.9	966	.2	389	374	5.6
Rhode Island		1.0	0	.50	55.6	5.3	13.7	1194	2.3	853	296	10.5
Massachusetts	D	1.4	.80	.29	56.5	4.2	12.7	1304	2.5	5108	355	12.9
Connecticut	D	1.6	.84	.54	58.3	4.6	12.1	1342	4.6	2523	347	11.8

* D = Retentionist State

† 1966 Data (unreliable because based on very small nonrandom sample)

‡ State and Local Governments

the fraction of the population in the age group 14 to 24, and estimated per capita income.[34] The regression analysis applied to these variables yields an algebraic equation which gives a numerical estimate of the effect of each explanatory variable on the homicide rate. In this sense, Ehrlich's study accounts more precisely for the influence of this set of factors than does Sellin's study.

This precision, however, is misleading. In order for the statistical results to be reliable, the equation must include all variables which significantly affect the homicide rate. The omission of any significant variable not only renders the model incapable of fully explaining the behavior of the homicide rate, but distorts the effects of those variables which have been included.[35] The regression method is therefore best suited to testing a hypothesis based on a well-developed theory which isolates a few determinants of the variable under study.

Hypotheses about the causes of murder cannot rely on such a theory. Ehrlich's analysis relies on an economic postulate—"that the propensity to perpetrate such crimes [as murder] is influenced by the prospective gains and losses associated with their commission."[36] There is no reason to think that economics or any other discipline has yet identified the determinants of the murder rate with enough confidence to rely on results obtained from regression analysis. Indeed, there are strong a priori reasons for thinking that the murder rate would be influenced by a number of variables not considered by Ehrlich, such as rates of migration from rural to urban areas, per capita ownership of weapons, and the level of violent crimes against property. As Zimring and Hawkins point out in their discussion of deterrence:

> Very few, if any, studies done on the impact of criminal law variations on crime give us reason to believe that most of the many factors which should be included in such a statistical analysis are present and accounted for.
>
> . . . .

34. Ehrlich 1975, *supra* note 2, at 398-402 (theoretical discussion of factors influencing murder), 406-09 (empirical discussion of data chosen to measure those factors). In substituting the measured for the true homicide rate, Ehrlich inserts a time trend as an explanatory variable. *Id.* at 406-07.

35. The extent to which the regression analysis explains the behavior of the homicide rate is measured by the coefficient of determination, which is not less than zero and not greater than one. A regression which omits a relevant variable will have a lower coefficient of determination than a regression which correctly specifies the relationship. The omission of important variables from the regression model will also bias the results obtained for the variables which are included. *See* J. JOHNSTON, ECONOMETRIC METHODS 169 (2d ed. 1972) ("*Exclusion* of relevant variables from the regression may be a very serious error . . .") (emphasis in original), 211 (omitted variables may cause the statistical problem of serial correlation in the disturbance term).

36. Ehrlich 1975, *supra* note 2, at 398-99. His other "basic proposition" is that these crimes [illegible] rational conflicts involving pecuniary

> . . . Only when the statistical complexity of such methods lulls the researcher into a false sense that all relevant variables have been accounted for, or that natural variations are in fact present, does multiple-correlation analysis become more dangerous than helpful.[37]

Our a priori skepticism about the adequacy of the variables included in Ehrlich's model is supported by the results of reanalyses of his data, which we discuss below.[38] These reanalyses found that the sign of the elasticity for execution risk changes from positive to negative when the recent years are dropped from Ehrlich's data series. The apparent change in the effect of execution risk on the homicide rate indicates that the variables included by Ehrlich do not explain the behavior of the homicide rate in a consistent manner over subperiods in his sample and suggests that variables not included by Ehrlich may be necessary for a better explanation.

Regression analysis requires the assumption not only that the homicide rate is a function of a fixed set of variables, but also that the function has a particular mathematical form. Ehrlich postulated that the homicide rate was equal to the product of seven explanatory variables and a random error term. The equation which Ehrlich actually estimates is a particular characterization of this relationship in which the logarithm of the homicide rate is set equal to the weighted sum of the logarithms of the explanatory variables. The weights provide estimates of the effect of each explanatory variable on the homicide rate. Since other investigators who have performed Ehrlich's regression analysis using natural numbers rather than logarithms have found no evidence of a deterrent effect, Ehrlich's results seem to depend on his assumptions about the mathematical form of the relationship.[39]

Even assuming that Ehrlich's regression equation successfully isolated the true determinants of the murder function and correctly specified its mathematical form, a serious problem remains with Ehrlich's use of the equation to estimate the tradeoff between executions and murders. Ehrlich measures this tradeoff by the partial elasticity of the homicide rate with respect to the execution rate—the percent decrease in homicide rate produced by a one percent increase in execution risk, assuming that the other variables affecting the murder rate are held constant as execution risk varies. The estimated elasticity of −.065 im-

37. F. ZIMRING & G. HAWKINS, *supra* note 1, at 267-68. Multiple correlation analysis is closely related to, but less sophisticated than, the multiple regression technique used by Ehrlich. *See* R. WONNACOTT & T. WONNACOTT, *supra* note 21, at 107-30; note 11 *supra*.

38. Pp. 181-85 *infra*.

39. *See id.*

plies that at the average levels of executions and murders during the period studied, an additional execution would result in seven or eight fewer murders.[40] Yet, as Ehrlich recognizes, the conviction rate is likely to decline as execution risk increases, because juries seem less inclined to convict a defendant charged with murder the greater the chance the defendant will subsequently be executed.[41] Since in Ehrlich's model the conviction rate also has a deterrent effect, the effect of the decline in the conviction rate will tend to offset the effect of the increase in execution risk. Indeed, if a one percent increase in execution risk produces more than a .175 percent decrease in the conviction rate, then the effect on the homicide rate of the decrease in the conviction rate will outweigh the effect of the increase in execution risk. As a result, the increase in execution risk will cause a net increase, rather than a decrease, in the homicide rate.[42] In reporting his estimated tradeoffs between executions and murders, Ehrlich conceded that "[t]he actual tradeoffs . . . depend partly upon the ability of law enforcement agencies to control simultaneously all [law enforcement variables]"—in other words, to hold arrest and conviction rates constant as execution risk increases.[43] Moreover, in performing another regression which eliminated this problem of interaction between execution risk and the conviction rate, he found smaller, although in most cases still significant, deterrent effects.[44]

Given the difficulty of isolating the determinants of the homicide rate, specifying their mathematical form, and adjusting for the interaction between execution risk and the other law enforcement variables, it is not at all clear that Ehrlich's analysis is more reliable than Sellin's. It is certainly not true that Ehrlich's study of the deterrent effect of the death penalty is uniquely successful in holding other factors constant. The problems are not that simple, nor Ehrlich's approach that satisfactory.

IV. Replication and Corroboration by Other Studies

As we have shown, both matching and regression techniques are necessarily imperfect methods for testing the deterrent effect of capital punishment. Given these inherent imperfections in research technique, the credibility attaching to each study depends on the extent to which consistent results are obtained when a similar approach is applied to different data. A crucial test of the reliability of the results is whether they can be reproduced or corroborated by other studies.

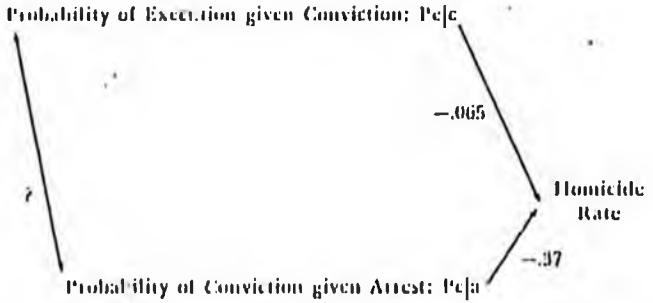
Sellin consistently found no discernible effect of capital punishment on homicide rates in matching a large number of clusters of states. At least four other investigators have used the matching method on different data and reached similar conclusions.[45] Moreover, Sellin's re-

40. Ehrlich 1975, *supra* note 2, at 414 & n.15.

41. *Id.* at 405. In estimating his equations, Ehrlich used a two-stage procedure designed to take account of the interdependence of the law enforcement variables. Ehrlich 1973, *supra* note 2, at 50-60 (statistical appendix). We note that Ehrlich's second stage regression does not hold fixed the four socioeconomic variables which he uses in the first stage but which he does not explicitly include in his murder supply function. Ehrlich 1975, *supra* note 2, at 409 (variables denoted X_1 in Table 2—fraction of nonwhites in residential population, civilian population, per capita real expenditures of all governments, per capita real expenditures on police). Our fundamental criticism, however, is that in using those estimates to calculate the tradeoff between murders and executions, he neglected the interdependence.

42. We owe this point to P. Passell & J. Taylor, The Deterrent Effect of Capital Punishment: Another View, Feb. 1975, at 9-11 (Discussion Paper 74-7509, Columbia Univ. Dep't of Economics) (on file with *Yale Law Journal*). Figure 1 depicts the net effect of the increase in execution risk Pe|c.

Figure 1



The arrows represent causal influences, and the numbers accompanying the arrows represent the elasticities reported by Ehrlich in Equation 3 of his Table 4. Ehrlich 1975, *supra* note 2, at 410. The question mark represents the elasticity of the probability of conviction given arrest, Pc|a, with respect to the probability of execution given conviction, Pe|c. Given the reluctance of juries to convict where execution may follow, this elasticity is expected to be negative, i.e., as Pe|c increases, Pc|a decreases. According to these elasticities, a decline of one percent in the probability of conviction would be associated with a .065 percent increase in the homicide rate. But that same one percent decline in the probability of execution given conviction would lead to some unknown (X percent) increase in the probability of conviction given arrest. And this increase would lead in turn to a decrease of .37 × X percent in the homicide rate, compensating more or less for the increase in the homicide rate resulting directly from the decline in the probability of execution given conviction. In particular, if the elasticity of Pc|a with respect to Pe|c is .175 percent, the result from this causal chain will be a .065 percent (.175 × .37) decrease in the homicide rate. This decrease will exactly offset the .065 percent increase in the homicide rate resulting from the decline in the probability of execution given conviction.

43. Ehrlich 1975, *supra* note 2, at 415.

44. *Id.* at 415 n.16. *But see* P. Passell & J. Taylor, *supra* note 42, at 10-11 (arguing these results are unreliable).

45. W. Bowers, *supra* note 1, at 137-47 (homicide rates in abolitionist states and contiguous retentionist states for four years prior and subsequent to the 1967 judicial moratorium on capital punishment); Bailey, *Murder and the Death Penalty*, 65 J. Crim.

sults are independently corroborated by his comparisons of crime rates in particular jurisdictions before and after capital punishment was either adopted or repealed.[46] These longitudinal studies have imperfections of their own, but as Zimring and Hawkins point out, "the combination of two or more imperfect research approaches may reveal a relatively clear picture about the relation of the variables being studied to rates of crime."[47]

Ehrlich also recognized the need for the broadest possible empirical base for his conclusions. He analyzed his data with six different measures for the key explanatory variable—execution risk—and obtained similar results.[48] He indicated concern that his analysis not be unduly sensitive to changes in the time period to which it was applied, to minor modifications in the selection or computation of variables included in the analysis, or to the use of natural values rather than logarithms as a functional form.[49] Reapplying the statistical analysis to data spanning shorter time periods, he reported results generally consistent, if not in perfect agreement, with his basic conclusions.[50]

However, the efforts of Passell and Taylor to reproduce Ehrlich's results using identical estimation procedures have yielded significant discrepancies, apparently due to minor differences in the data on which the replication was based.[51] These discrepancies necessarily call into

1. & Const'y 116, 121 (1974) (eight groups of states); Schuessler, *The Deterrent Influence of the Death Penalty*, 284 Annals 54, 58 (1952) (five groups); Sutherland, *Murder and the Death Penalty*, 15 J. Crim. L. & Crim'y 522, 526 (1925) (one group of states and one group of cities).

46. The Death Penalty, *supra* note 1, at 34-38 (American states), 38-50 (foreign countries). From the behavior of homicide rates before and after the change in punishment policy, Sellin concluded that the death penalty "exercises no influence on the extent or fluctuating rates of capital crimes." *Id.* at 63. Other longitudinal studies confirm Sellin's results. W. Bowers, *supra* note 1, at 117-57 (comparing homicide rates in states changing from mandatory to discretionary capital punishment); Task, *The Canadian Experiment with Abolition of the Death Penalty*, in W. Bowers, *supra* at 121; Samuelson, *Why was Capital Punishment Restored in Delaware?*, 60 J. Crim. L.C. & P.S. 148, 149 (1969); Schuessler, *supra* note 45, at 58-59.

47. F. Zimring & G. Hawkins, *supra* note 1, at 270.

48. Ehrlich 1975, *supra* note 2, at 407-08 (definition of the six measures of execution risk), 410-11 (regression results for each measure).

49. *Id.* at 412-13.

50. *Id.* at 410 (Table 4), 413 ("[T]he qualitative results . . . are for the most part insensitive to changes in the specific interval . . . time . . . . However, the absolute magnitudes of some of the estimated elasticities . . . do change when estimated from different subperiods.")

51. P. Passell & J. Taylor, *supra* note 12, at 2-4. Ehrlich has provided complete documentation of the data sources for his study in a memorandum released in August, 1975, and dated May, 1975, The Deterrent Effect of Capital Punishment: A Question of Life and Death, American Economic Review (June, 1975); Sources of Data for file with *Yale Law Journal*). This documentation was not available at the time of the replications by Passell and Taylor. Consequently these authors were forced to reconstruct parts of the data base using whatever expenditures seemed most appropriate.

question the reliability of Ehrlich's conclusions. More importantly, further analysis of Ehrlich's data by Passell and Taylor, and later by Bowers and Pierce, indicates that the evidence of a deterrent effect reported by Ehrlich disappears when the model is estimated with natural numbers rather than logarithms or when it is estimated for shorter time periods which exclude the recent years from 1963 to 1969.[52] Furthermore, Ehrlich's model does not explain the homicide rate as well over the long run (1935-1969) as it does in shorter periods, for which it reveals no significant relationship between execution risk and the homicide rate. If a model correctly explains a set of relationships, it will not decrease in explanatory power as more data (years, in the present context) are brought into the analysis. Ehrlich's model has just the opposite property—showing less predictive power over the long run than over the short run. A final piece of evidence on the issue of corroboration is a recent regression study, based on Ehrlich's theoretical model but using 1950 and 1960 data for more than 40 states, which found no deterrent effects associated with execution risk.[53]

Conclusion

It is quite possible that because of the complexity of the social phenomenon involved, we will never know with certainty whether capital punishment does or does not deter murder. Statistical analyses can only test with the available data the hypothesis that a significant deterrent effect exists. On the basis of the work of Sellin and others who have taken his approach, we are inclined to attach more credibility to their view that capital punishment does not have a significant deterrent effect. The credibility we assign to this hypothesis is based upon our confidence in Sellin's choice of a variable to measure the threat of capital punishment, in his use of the state rather than the nation as his unit of observation, his technique for controlling for the influence of other variables which affect the homicide rate, and in the consistent results which he and others have produced applying these methods to different time periods and different jurisdictions.

estimated permanent income and labor force participation as well as particular values from the police expenditure and conviction rate series which Ehrlich had estimated by an unspecified process of interpolation. P. Passell & J. Taylor, *supra* at 3.

52. P. Passell & J. Taylor, *supra* note 12, at 1-8; Bowers & Pierce, *The Illusion of Deterrence in Isaac Ehrlich's Research on Capital Punishment*, 85 Yale L.J. 187 (1975). Ehrlich reported that his "regression results [were] found to be robust with respect to the functional form of the regression equation," but offered no results in support of this statement. Ehrlich 1975, *supra* note 2, at 412.

53. Passell, *The Deterrent Effect of the Death Penalty: A Statistical Test*, 28 Stan.

Given this substantial body of competent research, we are unwilling to abandon the view that it supports on the basis of Ehrlich's single study. Ehrlich's study relies on a measure of the death penalty threat which does not reflect the relationship between executions and murders in specific jurisdictions and which does not focus on the relevant policy question of the effect of abolition. Moreover, Ehrlich's estimated tradeoff rests on the highly doubtful assumptions (1) that the probability of conviction could be kept constant while the probability of execution varies, and (2) that the equation used to control for the effects of variables other than execution risk combines all the significant determinants of the homicide rate in the proper mathematical form.

The use of the Sellin and Ehrlich studies in the context of a constitutional challenge to capital punishment illustrates the need for judicial procedures to evaluate statistical analysis presented by litigants in support of their positions. There is a certain danger in relying on academic work, designed to promote inquiry and further research, as a basis for deciding disputes in a court of law—especially where the stakes involved are high and the implications for society are great. The courts presently do not provide systematic factfinding procedures to resolve issues of "legislative" fact[51] that are critical to the policy judgments courts must make. Until the courts develop procedures to bring complex statistical studies under the scrutiny of the adversary process, it will be necessary to carry on the technical debate over such legislative facts largely in the law reviews.

51. K. Davis, Administrative Law Text § 7.03, at 164 (3d ed. 1972).

The Illusion of Deterrence in Isaac Ehrlich's Research on Capital Punishment*

William J. Bowers† and Glenn L. Pierce††

In this critique of Professor Ehrlich's recent research on capital punishment,[1] we conclude that he has failed to provide any reliable evidence that the death penalty deters murder. His data are inadequate for the purposes of his analysis and he misapplies the highly sophisticated statistical techniques he employs. We begin with an evaluation of the data he uses to measure the critical variables in his theoretical formulation and then consider flaws in his analysis which would invalidate his conclusions even if his data were adequate. We conclude by explaining how Ehrlich's analysis produces results which seem consistent with the deterrence hypothesis when in fact they are not.[2]

I. Inadequacies in Ehrlich's Data

The credibility of Ehrlich's conclusions depends on the quality of the data he has used. For measures of the variables at the core of his theoretical analysis, he relies on the Uniform Crime Reporting System (UCRS) of the FBI.[3] The behavior he seeks to explain (the dependent

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1. Ehrlich, *The Deterrent Effect of Capital Punishment: A Question of Life and Death*, 65 Am. Econ. Rev. 397 (1975) [hereinafter cited as Ehrlich 1975]; I. Ehrlich, The Deterrent Effect of Capital Punishment: A Question of Life and Death, 1973 (Working Paper No. 18, Center for Economic Analysis of Human Behavior and Social Institutions) [hereinafter cited as Ehrlich 1973].

2. The findings presented here are drawn from a more extensive and detailed critique of Ehrlich's work by the present authors. Deterrence, Brutalization, or Nonsense, 1975 (unpublished manuscript, Center for Applied Social Research, Northeastern Univ.). This manuscript includes as appendixes the full regression results for equations used to estimate coefficients in the present paper (id. appendix [illegible] Yale Law Journal) and a complete listing of the data values [illegible] analysis (id. [illegible]

variable) is the annual criminal homicide rate for the United States as reported by the UCRS, and his deterrence variables are the rates of arrest, conviction, and execution for homicide, which also come entirely or in part from the UCRS. Only if these data are sound throughout the full time period covered by Ehrlich's analysis do his findings deserve serious consideration.

A. *The Dependent Variable*

The FBI's national homicide statistics collected in the early years of the UCRS are unreliable. A staff report of the National Commission on the Causes and Prevention of Violence emphasizes this problem:

> [M]any reporting agencies, especially in the nonurban areas, were slow in joining the *UCR* network; there were only 400 agencies reporting to the *UCR* in the 1930's, while today there are about 8,500. Thus, trends of both violent and nonviolent crimes during the early years of the *UCR* are highly questionable as representative of national figures.[4]

Furthermore, the President's Commission on Law Enforcement and the Administration of Justice warns that "figures prior to 1958, and particularly those prior to 1940, must be viewed as neither fully comparable with nor nearly so reliable as later figures."[5]

Ehrlich indicates that he used "readjusted" estimates of the homicide rate supplied by the FBI.[6] The FBI has periodically adjusted their estimates of offenses for earlier years on the basis of recent data on offenses from jurisdictions that entered the reporting program after 1958. Yet to our knowledge there are no published indications of how the readjustments are performed. In any case, the adjustment of figures for as long ago as 40 years on the basis of the current homicide levels of agencies recently added to the sample is of dubious value.

Less problematic are the willful homicide figures compiled by the Bureau of the Census. Unlike the voluntary reporting system of the FBI, Census reports of willful homicide are mandated by law in each state. The annual collection of mortality statistics including willful homicide began in 1900, 30 years before the beginning of the FBI reporting system. By 1933, all states had met the 90 percent coverage requirement for admission to the national Vital Statistics program.[7] Thus, the Census homicide statistics for the nation have been relatively complete since the early 1930's.[8] Furthermore, the classification of "willful homicide" has remained essentially constant over time.[9] For these reasons, perhaps, the Census homicide figures have gained a reputation for reliability, and have been used more widely than the FBI figures in previous studies of the deterrent effects of capital punishment.[10]

If both FBI and Census data provided accurate estimates of the homicide rate, the statistics would, of course, agree. Table II[11] shows that the figures drawn from the two agencies are reasonably well correlated except during the 1930's, when the FBI's reporting system was in its inception. Notably, the FBI homicide estimates are 15 percent below the Census figures for the 1930's, whereas the difference is only about three percent lower for the period after 1940. By all indications, these discrepancies are the result of inadequate sampling, reporting, and estimating in the early years of the UCRS.

4. [illegible] Staff of the Nat'l Comm'n on the Causes and Prevention of Violence, Crimes [illegible] (1969).

5. [illegible] President's Commission on Law Enforcement and Administration of Justice,

7. 1 U.S. Public Health Serv., Dep't of Health, Education, and Welfare, Vital Statistics of the United States 1950, at 29 (1954).

8. Tests of the completeness of birth registrations made in 1940 and 1950 indicated that these statistics were, respectively, 92.5 and 97.9 percent complete. Although precise indices of the completeness of death registrations are not available for this period, the compilers of the Vital Statistics believe that they are even more complete than birth registrations. *Id.*

9. The Department of Health, Education, and Welfare reports:

> Since 1900, the causes of death have been classified according to seven different revisions of the International Classification of Diseases. Each revision has produced some breaks in the comparability of cause-of-death statistics. However, homicide is among the causes for which the classifications are essentially comparable for all revisions.

National Center for Health Statistics, U.S. Dep't of Health, Education, and Welfare, Homicide in the United States 1950-1964, at 9 (1967).

10. *E.g.*, T. Sellin, The Death Penalty (ALI 1959); Schuessler, *The Deterrent Influence of the Death Penalty*, 284 Annals 54 (1952).

11. TABLE I

Correlations Between Homicide Rates Based on FBI and Census Data by Decade

Effective Period	*Annual Homicide Rates*	*Year to Year Changes in Homicide Rates*
1933-1939	.21	-.69
1940-1949	.81	.90
1950-1959	.95	.76
1960-1969	.98	.79

For data sources, see Appendix, nos. 1, 13.

A correlation of .21 between FBI and Census annual homicide rates for the 1930's means that there is little consistency (only six percent common variance) between the two data sets in this decade. A correlation of -.69 between year to year changes in FBI and Census homicide rates means that an increase between adjacent years in one set [illegible] combine years

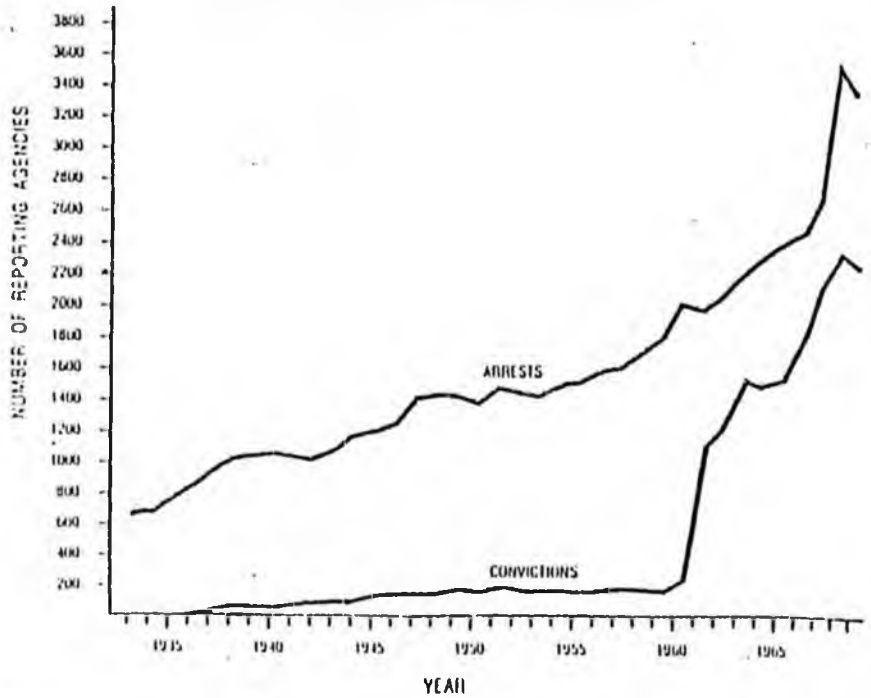
B. *The Deterrence Variables*

The FBI data on arrest and conviction rates are even less reliable. The agencies reporting arrest and conviction statistics have remained a relatively small, self-selected subsample throughout most of the period during which these statistics have been compiled. Indeed, the arrest and conviction figures are based on such small and unrepresentative samples of law enforcement agencies that the FBI has made no effort to readjust earlier arrest and conviction figures on the basis of more recent returns.

As shown in Figure 1,[12] the number of agencies reporting arrest data did not reach 2,000, or about one-quarter of the total number of agencies, until the 1960's, and the number of agencies reporting convictions did not exceed 300 until the 1960's. The abrupt increase between 1960 and 1961 in agencies reporting convictions represents a major change in reporting practices for conviction statistics by the UCRS. Notably, in 1936, the first year in which conviction rates were

12. Figure 1

NUMBER OF AGENCIES REPORTING ARREST AND CONVICTION STATISTICS BY YEAR

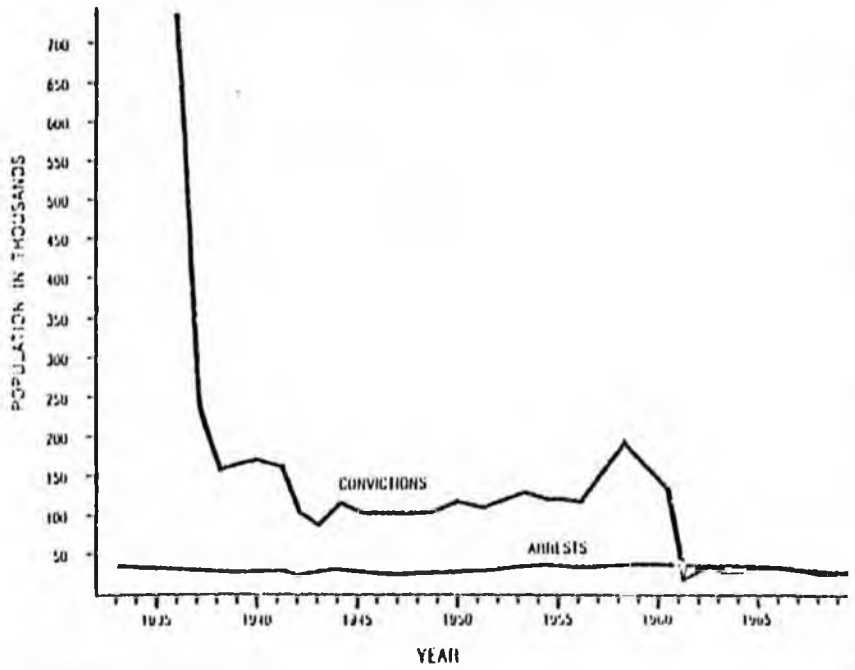


reported, the figure Ehrlich used as a national estimate was based on only 13 jurisdictions.

Figure 2[13] shows that the average size of jurisdictions reporting conviction data declined substantially in the late 1930's and the early 1960's. According to recent evidence, conviction rates are relatively low in the nation's largest jurisdictions.[14] Hence the conviction data drawn from disproportionately large jurisdictions in 1936 and 1937 are apt to underestimate the national conviction levels for these years. In fact, the reported conviction levels for these two years are far below those for other years—respectively −5.91 and −4.51 standard deviations below the mean conviction level for the period 1938-1969. Because the 1936 and 1937 conviction levels figure prominently in Ehrlich's estimation of missing conviction values for the years 1933-1935, the conviction rates for the entire period 1933-1937 are apt to be grossly biased in his analysis.[15]

13. Figure 2

POPULATION COVERAGE PER AGENCY REPORTING ARREST AND CONVICTION STATISTICS BY YEAR



For data sources, see Appendix, nos. 2, 3.

11. In 1971, only 31.9 percent of those charged with homicide in jurisdictions with populations of 250,000 or more were convicted, as compared to approximately 50 percent in smaller jurisdictions. Unpublished FBI data on file with *Yale Law Journal*.

12. A May 1975 memorandum prepared by Ehrlich (The Deterrent Effect of Capital

Finally, the measurement of execution risk—the key explanatory (or independent) variable in Ehrlich's work—is confounded by the inadequacies in the homicide, arrest, and conviction data, because execution risk, as defined by Ehrlich, incorporates all three of these variables.[16] Thus, like his dependent variable, all three of his deterrence variables are subject to potentially serious measurement error. While we do not contend that all of Ehrlich's data are inaccurate, we have identified substantial problems with his core variables which cast doubt on his ability to perform a meaningful regression analysis.

II. Errors in Ehrlich's Regression Analysis

We have independently applied Ehrlich's regression technique to comparable data. On the basis of this replication, we find that his evidence of deterrence emerges only under restrictive assumptions about

Sources of Data (on file with *Yale Law Journal*) supplies the auxiliary equations he used to estimate the missing conviction values for 1933 through 1935. To show the importance of the effect of the values for 1936 and 1937 on the conviction estimates Ehrlich obtains for the missing years, we have estimated conviction rates for the years 1933-1937 on the basis of the data for the 1938-1969 period with the auxiliary equation used by Ehrlich to estimate the years 1933-1935 for the data from the 1936-1969 period. It is instructive to compare our estimated conviction rates with the corresponding values used by Ehrlich:

	Ehrlich's Conviction Rates		*Alternative Estimates*	
	Annual Conviction Estimates	*Standard Deviations from the 1938-1969 Mean*	*Annual Conviction Estimates*	*Standard Deviations from the 1938-1969 Mean*
1937	30.3	−4.51	43.7	−.40
1936	25.8	−5.91	44.1	−.29
1935	28.3	−5.18	44.1	−.26
1934	26.9	−5.59	42.8	−.69
1933	30.2	−4.58	43.3	−.53

We have already noted that the reported conviction rates for 1936 and 1937 are far below the mean for the 1938-1969 period. The above comparison also makes clear that these reported rates are far below the values that would be estimated for these two years by applying Ehrlich's auxiliary equation to the data for the 1938-1969 period. Furthermore, Ehrlich's estimated conviction rates for 1933-1935 are also four to five standard deviations below the mean for 1938-1969; as the alternative estimates show, they would be far higher if they were estimated on the basis of the 1938-1969 time period rather than the 1936-1969 time period.

16. Ehrlich 1975, *supra* note 1, at 401. All of his measures of execution risk are in various ways and degrees biased negatively with respect to the criminal homicide rate. Thus, random error in the number of homicides reported will tend to produce a negative correlation between the homicide rate and execution risk as measured by PXQ_t and PXQ_{t-1} because the number of reported homicides in a given year, Q_t, is both the numerator of the homicide rate and a component in the denominator of these two execution measures. See Appendix, nos. 1, 4. The remaining four measures of execution risk will tend to be negatively correlated with the homicide rate as a result of autocorrelated error in the reported number of homicides, because these measures all incorporate prior (lagged) homicide level, in one way or another.

the form of relationships among the variables and only under a narrow selection of the time period for analysis. The limitations required to obtain these results are not justified, since Ehrlich's regression model fits the data better without them. Thus, even if Ehrlich's data were free of errors, the analysis, when properly conducted, would not show that the death penalty has a deterrent effect.

A. *Replication of Data and Regression Results*

To ensure comparability in the replication of Ehrlich's regression analysis, we attempted to use exactly the same data as Ehrlich. Table II[17] describes Ehrlich's and our variables and gives the means and

17. Table II

Variables Used in the Regression Analysis: Annual Observations 1933-1969
(Means and Standard Deviations in Natural Logarithms)

	Variable	*Our Mean*	*Ehrlich's Mean*	*Our Standard Deviation*	*Ehrlich's Standard Deviation*
D_t	$\left(\frac{Q}{N}\right)^a$ = Crime rate: offenses known per 1,000 civilian population.	−2.853	−2.857	.150	.156
Y_t	P^a_a = Probability of arrest: clearance rates.	4.497	4.997	.038	.038
	$P^a_{c\|a}$ = Conditional probability of conviction: fraction of those charged who were convicted of murder.	3.742	3.741	.172	.175
	$P^a_{e\|c}$ = Conditional probability of execution. PXQ_t = the number of executions for murder in year $t + 1$ as a percent of the total number of convictions in year t.	.172	.176	1.718	1.719
X_t	L_t = Labor force participation rate of the civilian population.	−.544	−.546	.029	.030
	U = Unemployment rate of the civilian labor force.	1.743	1.743	.728	.728
	A = Fraction of residential population in the age group 14-24.	−1.759	−1.740	.122	.118
	Y = Friedman's estimate of permanent income per capita.	6.889	6.868	.337	.338
	T = Chronological time (years).	2.685	2.685	.867	.867
N_t	NW = Percent of nonwhite residential population.	−2.216	−2.212	.061	.063
	N = Civilian population in 1,000's.	11.911	11.911	.161	.161
S_t	$XGOV$ = Per capita (real) expenditures on all governments in million dollars.	−7.753	−7.661	.256	.501
	$XPOL_{t-1}$ = Per capita (real) expenditures on police in dollars lagged one year.	2.200	2.111	.146	.306

For data sources, see Appendix and Ehrlich 1975, *supra* note 1, at 409. In his memorandum, *supra* note 15, Ehrlich indicated that the mean of P^a_a is incorrectly stated in his table, and

standard deviations of their logarithms. In most cases, our means and standard deviations correspond quite closely to Ehrlich's. For 11 of the 13 variables, they differ by no more than three percent, and generally by less than one percent. Differences of two or three percent may indicate that where alternates were available we chose a different data source than Ehrlich did. The two variables that show discrepancies of greater than three percent between the two data sets—the indexes of total per capita expenditures of governments ("XGOV") and of per capita expenditures on police ("XPOL$_{-1}$")—differ primarily in standard deviations.[18] In all cases where discrepancies exist, however, we have checked our data carefully, and we are satisfied that we have accurate measures of the variables.

With these data, we have reproduced Ehrlich's basic regression analysis. Table III[19] contains the estimated effects of six different measures of execution risk on the criminal homicide rate. The effects are represented by partial regression coefficients (or elasticities[20]), and their statistical significance is indicated by the ratio of these coefficients to their standard errors—the *t* values of the coefficients. (*t* values of more than 2.0 indicate statistically significant relationships between the dependent and independent variables.)[21]

The six measures of execution risk are alternative ways of representing the conditional probability of execution given conviction for murder. In five of the six measures, Ehrlich incorporates a delay between conviction and execution by dividing the number of executions in one year by the estimated number of convictions in the previous year.[22] In two cases,[23] he estimates execution risk at a given point in time in terms of the numbers of executions and convictions over a prior period of three or four years.[24]

18. Ehrlich's memorandum, *supra* note 15, describes the procedures that he used in obtaining his variables. For XGOV and XPOL$_{-1}$, the two variables with significant differences between the two data sets, we believe that our measures more faithfully reflect Ehrlich's definitions of the variables. Although Ehrlich described XGOV as per capita expenditures of local, state, and federal governments, his memorandum indicates that he actually used government purchases of goods and services and a price deflator for government purchases, instead of government expenditures and an appropriate price deflator. His memorandum also indicates that he failed to exclude defense purchases or expenditures. This is a serious oversight since defense expenditures and purchases represent resources not available for law enforcement activity. Our measure is based on government expenditures and excludes defense expenditures and purchases.

It was virtually impossible to replicate XPOL$_{-1}$ exactly because Ehrlich used an unspecified auxiliary regression equation to estimate unavailable police expenditure data for odd years prior to 1952. Furthermore, his memorandum indicates that he used a price deflator for government purchases rather than a price deflator for government expenditures, as we did.

We constructed two other variables differently than Ehrlich did. While "A" is described as the proportion of the residential population aged 14-24, Ehrlich's memorandum reveals that he used the number of 14- to 24-year olds in both the residential population and the armed forces overseas as a proportion of the total residential population. This is clearly inappropriate since youngsters in this age group overseas cannot contribute to the domestic homicide rate. The slightly greater standard deviation of our measure based exclusively on residential population figures undoubtedly reflects movements of this age group in and out of the country during the war years.

Secondly, "AW" is described as the proportion of nonwhites in the residential population, but Ehrlich's memorandum indicates that he took the number of nonwhites in the total population as a proportion of all those in the residential population. Moreover, he used annual estimates of the nonwhite population from the *Current Population Reports* for the 1960's (see Appendix, no. 1), instead of readjusted estimates based on the 1970 decennial censuses. Again, our measure, based exclusively on residential population figures and readjusted annual estimates, is a more accurate representation of the variable as originally defined.

For further evidence of comparability between the two data sets, note the values of corresponding correlation coefficients for the period 1934-1969:

	Ehrlich's Correlations	*Our Correlations*
PXQ_1 by P^{*}_{-4}	−.028	−.029
PXQ_1 by $P^{*}_{-1}/_{-4}$	−.19	−.181
PXQ_1 by $\left(\frac{O}{N}\right)^{*}_{-1}$	.110	.133
PXQ_2 by $\left(\frac{O}{N}\right)^{*}_{-1}$	.085	.077
PXQ_3 by $\left(\frac{O}{N}\right)^{*}_{-1}$	.026	.077

19. Table III

Estimated Effects of Execution Risk on the Criminal Homicide Rate

Six Alternative Measures of Execution Risk	*Effective Period*	*Partial Regression Coefficients*	*t Values*
PXQ_1	1935-1969	−.018	−.39
PXQ_2	1935-1969	−.068	−3.15
PXQ_{3-1}	1936-1969	−.023	−1.12
TXQ_1	1938-1969	−.059	−2.76
PDL_4	1939-1969	−.065	−3.45
PXQ_4	1935-1969	−.001	−.113

The definitions of these variables are contained in Ehrlich 1975, *supra* note 1, at 406-09.

20. When the execution and homicide variables are in logarithmic form, see pp. 199-200 *infra*, the partial regression coefficients indicate the elasticity of the homicide rate with respect to execution risk—that is, the percentage change in the homicide rate that can be expected from a one percent change in execution risk. Thus, an elasticity of −.068 (associated with PXQ_2) means that a one percent increase in this measure of execution risk can be expected to yield a decrease of .068 percent in the homicide rate.

21. A *t* value of 2.0 is generally taken as an indication of statistical significance because if the true value of the regression coefficient were actually zero, an estimated regression coefficient with a *t* value greater than 2.0 would only occur approximately five times out of 100. A *t* value greater than 2.0 is required for this level of statistical significance when the number of data observations exceeds the number of explanatory variables by five or less.

22. PXQ_4 does not incorporate such a delay.

23. TXQ_2 and PDL_4.

24. Two of Ehrlich's regression equations—PXQ_{3-1} and TXQ_1 in his Table 3, Ehrlich 1975, *supra* note 1, at 410—appear to be either misspecified or mislabeled in terms of the effective period of analysis. Given his data and analytic procedures, 1935 is the earliest possible beginning date for a regression analysis using any of the measures of execution

Table III shows a negative value for the regression coefficient associated with each of the six measures of execution risk. That is, the results of this initial regression analysis appear to indicate that, other things being equal, as the risk of execution among convicted offenders increases, the homicide rate decreases and, conversely, as execution risk declines, the homicide rate rises. For three of the six measures of execution risk, the estimated effect is at least twice its standard error, suggesting that the effect is not likely to have occurred by chance.

These results are similar to Ehrlich's.[25] He finds negative coefficients, ranging from −.039 to −.068, for the six execution measures. In four cases, his negative coefficients are statistically significant. In

tained prior to 1934 since values of many variables lagged one year are required by the reduced form equation. The modified first differences obtained in the second stage of the regression analysis by the Cochrane-Orcutt procedure cannot be obtained prior to 1935 since all exogenous and endogenous variables must be lagged one year. But with PXQ_{t-1} as the measure of execution risk (*see id.* at 406-09), the earliest starting date is 1936. The reduced form first stage equation requires that a lagged value of PXQ_{t-1} be used to estimate arrest and conviction rates, but the first legitimate value of PXQ_{t-1} is that for 1934, not for 1933, since the denominator of this measure incorporates values of homicides, arrests, and convictions lagged one year. This means that estimated arrest and conviction rates cannot be obtained before 1935 and that modified first differences cannot be estimated for periods beginning before 1936. Since Ehrlich gives 1935 as the beginning of the effective period, he may have used an erroneous (probably zero) value for PXQ_{t-1} in the first stage estimation procedure.

With TXQ_t as the measure of execution risk (*see id.* at 406-09), the earliest beginning point for the effective period should be 1938. Since values of TXQ_t depend on data from three prior years, the first values cannot be obtained before 1936; the first stage estimation of arrest and conviction rates with lagged TXQ_t cannot be made for years earlier than 1937; and hence modified first differences cannot be calculated for effective periods starting earlier than 1938. If, as Ehrlich indicates, 1937 is actually used as the beginning date of the effective period, lagged TXQ_t in the first stage equation will be an arbitrary (probably nonzero) value based on data from only two prior years (and a zero value for the third year).

PXQ_{t-1} and TXQ_t are used more extensively than any of the other execution measures in Ehrlich's regression analyses, and in virtually all cases the effective period of analysis begins one year too soon. The following equations in both of his papers would appear to be misspecified, and therefore improperly estimated, in terms of the effective period of analysis: equations 3 and 4 in Table 4 of Ehrlich 1973, *supra* note 1, at 53, and Table 3 of Ehrlich 1975, *supra* note 1, at 110; equations 2-5 in Table 5 of Ehrlich 1973, *supra* at 54, equations 1-6 in Table 6 of *id.* at 55, and Table 4 of Ehrlich 1975, *supra* at 110, and equations 3 and 4 in Table 7 of Ehrlich 1973, *supra* at 57.

We believe these equations are not simply mislabeled but are, in fact, improperly specified with respect to the effective period of analysis. With the data generated from information in Ehrlich's memorandum, *supra* note 15, we have estimated each of the above equations for its maximum proper effective period and for the apparently incorrect one indicated in Ehrlich's tabulations. In every case, we found that the results reported by Ehrlich correspond more closely with the estimates we have obtained for the incorrectly defined effective period. However, the resulting errors of estimation are relatively small in magnitude since they enter the second stage regression results through [illegible] in the first stage estimation of arrest and conviction rates.

[illegible] note 1, at 409-11.

addition, the relative strengths of the effects of arrest (P^ea), conviction ($P^ec|a$) and execution ($P^ee|c$) are the same as Ehrlich reports.[26] According to Ehrlich, "[t]he regression results regarding the effects of P^ea, $P^ec|a$, and $P^ee|c$ constitute perhaps the strongest findings of the empirical investigation. Not only do the signs of the elasticities associated with these variables conform to the general theoretical expectations, but their ranking, too, is consistent with the predictions . . . ."[27] Thus, by reproducing the rank order of effects among arrest, conviction, and execution rates, we have replicated an especially important aspect of his regression results.[28]

B. *Temporal Specification*

If the results of a time series regression analysis are a faithful representation of underlying causal processes, the values of the estimated coefficients will be independent of the specific time period chosen for the analysis. Thus, if the values of the coefficients associated with the various measures of execution risk change substantially when they are estimated for alternative time intervals, the negative values reported in Table III are not a reliable basis for inferring that capital punishment has a deterrent effect on murder.

Ehrlich addressed this issue by repeating the regression analysis for selected subperiods. He performed seven regressions in which varying numbers of years were removed from the beginning of the time series and two analyses in which three years were dropped from the end of the series. These alterations in the effective period of analysis do not appreciably change the elasticities associated with execution risk.[29] Ehrlich does, however, concede that the deterrent effects of arrest, conviction, and execution rates become weaker when as many as seven years are dropped from the recent end of the time series.[30]

We find that all empirical support for the deterrent effect of capital

26. *Id.*
27. *Id.* at 411.
28. Our results are comparable to Ehrlich's in other respects (see appendix B, *supra* note 2, for the full regression results). The elasticities associated with the alternative measures of execution risk are less in absolute magnitude than those associated with arrest and conviction rates, but relative to their standard errors, they tend to fall between those of the arrest and conviction measures. In addition, the signs of the elasticities associated with the remaining causal factors are the same as those obtained by Ehrlich.
29. Ehrlich 1975, *supra* note 1, at 110; Ehrlich 1973, *supra* note 1, at 54.
30. Ehrlich 1973, *supra* note 1, at 20.

punishment disappears when the five most recent years are removed from the time series that Ehrlich selected for analysis. Table IV[31] shows the estimated effects of execution risk on the criminal homicide rate for 16 periods with successively earlier ending dates. For the period ending in 1964, there are no statistically significant negative elasticities associated with the various measures of execution risk. For the period ending in 1963, the estimated elasticities have become positive in every case. Indeed, of the 24 coefficients reflecting the effects of execution risk for periods ending in 1963 and earlier, 20 are positive and only four are negative.

Furthermore, we find that the regression results are more adequate and consistent for the periods with earlier ending dates. The standard errors of the regressions are less, the F and R^2 statistics are consistently higher, and the Durbin Watson statistics are generally more acceptable for the periods ending in 1960 and 1963 than for those ending in 1966 and 1969.[32] In addition, the estimated coefficients for the other variables in the regression equations for the two shorter periods are generally closer in value than in the equations for the longer periods.[33]

Hence for the periods in which the model gives evidence of being more adequately specified, the regression analysis consistently shows a slightly positive—though not statistically significant—effect of execution risk on the homicide rate.

31. Table IV

Estimated Effects of Execution Risk on the Criminal Homicide Rate for Effective Periods with Successively Earlier Ending Dates (Variables in Natural Logarithms)
(t Values in Parentheses)

Ending Date of Effective Period	Six Alternative Measures of Execution Risk					
	PXQ_t	PXQ_t	PXQ_{t-1}	TXQ_t	PDL_t	$\overline{PXQ}_t$
1969	−.018	−.068	−.023	−.059	−.065	−.001
	(−.69)	(−3.15)	(−1.12)	(−2.70)	(−3.15)	(−.113)
1968	−.026	−.069	−.030	−.059	−.069	−.019
	(−.99)	(−3.50)	(−1.41)	(−2.76)	(−4.09)	(−1.36)
1967	−.041	−.061	−.061	−.061	−.068	−.060
	(−1.36)	(−3.65)	(−3.18)	(−3.61)	(−4.55)	(−4.98)
1966	−.020	−.055	−.053	−.050	−.056	−.013
	(−1.00)	(−3.79)	(−3.31)	(−2.88)	(−3.40)	(−1.59)
1965	−.016	−.041	−.031	−.025	−.037	−.031
	(−.99)	(−1.51)	(−1.20)	(−.98)	(−1.53)	(−1.41)
1964	.028	−.021	−.017	−.009	−.013	.015
	(.91)	(−.70)	(−.58)	(−.31)	(−.40)	(.57)
1963	.057	.003	.003	.005	.008	.017
	(1.77)	(.08)	(.08)	(1.63)	(1.60)	(1.02)
1962	.052	−.030	−.021	.060	.021	.010
	(1.11)	(−.60)	(−.51)	(1.30)	(.35)	(.84)
1961	−.015	.011	.011	.006	.050	−.019
	(−.26)	(.67)	(.29)	(2.10)	(1.02)	(−.33)
1960	.013	.029	.009	.070	.067	.013
	(.24)	(.52)	(.25)	(1.72)	(1.36)	(.22)

32. See equations 1.1 to 1.4 in appendix B, *supra* note 2. These statistical measures are

33. Not only does the evidence for deterrence disappear, but Ehrlich's more general theoretical formulation is weakened by our findings. When we examine the results for periods ending in 1963 or earlier, we find only three instances out of 30 possible results which conform to his rank order predictions of the relative strengths of the deterrence variables. See pp. 196-97 *supra*; appendix B, *supra* note 2.

34. See J. Johnston, Econometric Methods 47-50 (2d ed. 1972); R. Wonnacott & T. Wonnacott, Econometrics 91-98 (1970).

35. Ehrlich 1975, *supra* note 1, at 412-13; Ehrlich 1973, *supra* note 1, at 36-37.

C. *Functional Form*

Seldom does an initial theoretical formulation, such as Ehrlich's economic model of the determinants of murder, unambiguously dictate the mathematical function which describes the true relationships among the variables. When the functional form is open to question or when the analyst wishes to establish the generality of his findings, he will typically examine regression results obtained under different assumptions about the form of the model.

Ehrlich assumes that the factors which determine the murder rate have a multiplicative effect. Adopting a standard regression technique, he uses logarithmic values of the variables, in order to transform this multiplicative relationship into an equivalent linear form suitable for regression analysis.[34] He reports that his regression results are not dependent on the specific assumptions he has made about the form of the relationships among the variables—that there is evidence of a deterrent effect even when he performs the regression analysis with the natural values of his variables (which corresponds to a linear rather than a multiplicative relationship among the variables).[35]

Using the natural values of these variables, we have re-estimated the coefficients shown in Table IV. We show these results in Table V.[36] There are, among the 60 estimates in Table V, more positive than negative coefficients associated with the various measures of execution risk. Only two of them, both positive, are statistically significant. The direction and size of the estimated coefficients do not appear to be systematically affected by the choice of time period. In other words, the last few years of the time series, which are apparently responsible for the evidence of a deterrent effect when logarithmic

values are used, yield no such evidence with the natural values of the variables.

III. Sources of Ehrlich's Deterrence Evidence

We have seen that Ehrlich obtains evidence of a deterrent effect only by imposing highly restrictive conditions on his analysis. One might assume that this evidence of deterrence reflects either a strong deterrent effect operating exclusively in recent years or a more pervasive effect obscured by data inadequacies in the early years. We show instead that Ehrlich's evidence is strictly a statistical artifact, not the reflection of a deterrent effect over the entire period of analysis or the most recent subperiod.

in logarithms, the regression coefficients indicate the change in the homicide rate to be expected from a one unit change in execution risk. For example, a coefficient of −.00061 (for PXQ_t in the period 1935-1969) means that a reduction in the number of executions from 10 to nine (per 100 convictions for murder) can be expected to increase the homicide rate from 5.00000 to 5.00061 (per 100,000 population), or to add 12 homicides for a population of 200 million.

Table V

Estimated Effects of Execution Risk on the Criminal Homicide Rate for Effective Periods with Successively Earlier Ending Dates (Variables in Natural Values)
(t Values in Parentheses)

Ending Date of Effective Period	*Six Alternative Measures of Execution Risk**					
	PXQ_t	PXQ_s	PXQ_{t-1}	TXQ_t	PDL_t	PXQ_t
1969	.00008	−.00061	.00132	.00135	.00085	.00054
	(.05)	(−.73)	(1.02)	(.64)	(.43)	(.35)
1968	.00038	−.00068	.00126	.00131	.00085	.00054
	(.25)	(−.79)	(.96)	(.61)	(.41)	(.34)
1967	.00021	−.00051	.00629	.00106	.00039	.00016
	(.16)	(−.63)	(.56)	(.47)	(.18)	(.11)
1966	−.00023	−.00010	−.00013	.00110	.00016	−.00016
	(−.20)	(−.52)	(−.17)	(.54)	(.22)	(−.38)
1965	−.00027	−.00027	−.00038	.00121	.00087	−.00053
	(−.29)	(−.40)	(−.60)	(.81)	(.52)	(−.54)
1964	.00009	−.00021	−.00031	.00101	.00123	−.00001
	(.11)	(−.37)	(−.57)	(.78)	(.78)	(−.01)
1963	.00026	−.00019	−.00023	.00123	.00189	.00022
	(.29)	(−.28)	(−.37)	(.87)	(1.10)	(.24)
1962	.00030	−.00023	−.00032	.00058	.00120	−.00015
	(.38)	(−.39)	(−.56)	(.53)	(.80)	(−.21)
1961	−.00012	.00027	−.00003	.00117	.00216	−.00011
	(−.20)	(.54)	(−.05)	(1.36)	(2.00)	(−.68)
1960	.00001	.00011	.00005	.00139	.00235	−.00013
	(.04)	(.69)	(.09)	(1.30)	(2.17)	(−.20)

A. *The Recent Years*

What is it about the middle and late 1960's which causes the execution variables to show negative effects on the homicide rate when they are in logarithmic but not in natural form? The answer lies in the opposing trends in the two variables and in the nature of the logarithmic transformation. The national homicide rate, as reported by the FBI, rose precipitously in the middle and late 1960's to levels well above those of the 1940's and 1950's. Indeed, between 1962 and 1969 the homicide rate rose almost 60 percent to a level exceeded only by the rate for 1933. At the same time, executions literally came to an end. Hence execution risk—the number of executions among those convicted of murder—took on extremely low values, approaching zero, in the middle and late 1960's.[37] A property of the logarithmic transformation is to emphasize variations at the lower range of a variable. For example, if execution risk is converted into logarithms, a difference between one and two executions per 1,000 convictions will be greater than a difference between 350 and 650 executions per 1,000 convictions. Consequently, the logarithmic transformation accentuates the decline in execution risk that occurred in the 1960's.

To show the effect of the logarithmic transformation on these low values of execution risk, we present in Table VI[38] the corresponding logarithmic and natural values of one of the six measures of execution risk for the years from 1960 through 1969. The natural values of execution risk have dropped from about one percent in

37. There have been no executions since 1967. In order to extend the effective period of analysis through 1969, Ehrlich had to generate nonzero execution rates for the years after 1967, since the logarithm of zero is not defined. He did this by supplying one nonexistent execution for 1968 and 1969 in the calculation of PXQ_t. Ehrlich 1975, *supra* note 1, at 409 n.h.

38. Table VI

Logarithmic and Natural Values of Execution Risk (PXQ_t) for Each Year 1960-1969

	Logarithms		*Natural Values*	
	The Absolute Value	*Standard Deviations from the Mean*	*The Absolute Value*	*Standard Deviations from the Mean*
1969	−3.823	−2.524	.022	−.123
1968	−3.873	−2.564	.021	−.124
1967	−3.131	−2.103	.044	−.111
1966	−3.771	−2.491	.023	−.123
1965	−1.742	−1.252	.175	−.059
1964	−1.156	−1.077	.233	−.041
1963	−.642	−.580	.526	.011
1962	.171	−.001	1.191	.630

the years 1960-1962 to less than .05 percent for the years 1966-1969. The values for the years after 1964 are all slightly more than one standard deviation below the mean for the entire period from 1933 to 1969. Putting execution risk in logarithmic form greatly accentuates the decline. The difference between 1960 and 1969 in logarithmic values (from .229 to −3.823) is more than three times the corresponding difference in natural values (from 1.257 to .022). In fact, for the period from 1966 to 1969, the logarithmic values of execution risk are all more than two standard deviations below their mean. Thus, by using logarithmic values of execution risk, Ehrlich gives considerably more weight in his regression analysis to the extremely low values of this variable after 1964.

Ehrlich has stated that the recent behavior of arrest and conviction rates as well as that of execution risk plays an important role in his regression results.[39] To examine the effect of using the logarithmic values of execution risk and the possibility that the logarithmic transformation of arrest and conviction rates may also influence the regression results, we present, in Table VII,[40] simple correlations of the arrest, conviction, and execution rates with the criminal homicide rate; these are shown for logarithmic and natural values of the variables and for time intervals with successively earlier ending dates from 1969 through 1960. The data for the recent years have an extraordinary effect on the correlation between the logarithms of execution and homicide rates; adding the last five years reduces the correlation from .836 to .123. In contrast, the recent data have much

39. Ehrlich 1973, *supra* note 1, at 70.

40. Table VII

Correlations of Arrest, Conviction, and Execution Rates with the Homicide Rate for Effective Periods with Successively Earlier Ending Dates (Separately for Logarithmic and Natural Values of the Variables)

	Arrest Rate (P^*a)		*Conviction Rate* (P^*c/a)		*Execution Rate* ($P\Omega X_c$)	
Effective Periods	*Logarithms*	*Natural Values*	*Logarithms*	*Natural Values*	*Logarithms*	*Natural Values*
1933-1969	−.809	−.832	−.504	−.516	.123	.553
1933-1968	−.801	−.818	−.488	−.496	.270	.644
1933-1967	−.793	−.809	−.492	−.497	.442	.720
1933-1966	−.791	−.808	−.496	−.499	.563	.758
1933-1965	−.792	−.809	−.496	−.499	.718	.773
1933-1964	−.795	−.813	−.494	−.497	.806	.772
1933-1963	−.806	−.824	−.488	−.491	.858	.763
1933-1962	−.820	−.837	−.495	−.500	.857	.750
1933-1961	−.819	−.835	−.505	−.511	.846	.741
[illegible]		.631	.518	−.520	.836	.729

less effect on the correlation between the natural values of execution and homicide rates; adding the last five years reduces the correlation only from .729 to .553.[41] These years have virtually no impact on the correlations, in either logarithmic or natural form, of arrest and conviction rates with the criminal homicide rates. Thus, Ehrlich's evidence of deterrence rests heavily on the relationship between the values of execution risk and homicide rates for the years after 1964.

This conclusion might suggest that the use of the death penalty at the very low levels of execution risk in the middle and late 1960's had a deterrent effect strong enough to produce a measurable effect over the entire period when these recent years are combined with earlier years. We examine this possibility in Table VIII.[42] It shows annual changes in the homicide rate relative to national changes in the homicide rate for the period 1962 to 1968 among states that increased or decreased the number of executions imposed for murder. The relative changes in homicide rate are expressed in homicides per 100,000 people, and are obtained by subtracting the changes in the national homicide rate from changes in the individual states.

41. Note, in this connection, that Ehrlich's extension of the time series on execution risk from 1967 to 1969 by supplying executions for 1968 and 1969 in the calculation of PXQ_c, note 30 *supra*, reduces its correlation with the homicide rate in logarithmic values from .442 for 1933 to 1967 to .123 for 1933 to 1969 and in natural values from .720 to .553 for the same periods.

42. Table VIII

Annual Changes in Criminal Homicide Rate Among States Which Have Increased and Decreased Executions Relative to Annual Homicide Rate Changes in the Nation as a Whole for the Period 1962-1968

	States Which Have Decreased Executions			*States Which Have Increased Executions*		
Annual Change	*Relative Homicide Rate Change*	*Number of States*	*Population Proportion*	*Relative Rate Change Homicide*	*Number of States*	*Population Proportion*
1962-1963	−.10	11	.44	−.03	6	.17
1963-1964	.19	8	.33	−.33	3	.06
1964-1965	−.41	3	.13	.88	1	.02
1965-1966	−.93	4	.05	.50	1	.01
1966-1967	.62	1	.01	.09	2	.11
1967-1968	−.23	2	.11	—	—	—

States imposing executions for murder during this period were identified in Appendix A of W. Bowers, Executions in America 200-401 (1974); criminal homicides annually by state were obtained from FBI, Uniform Crime Reports for the United States (Table 4, 1962-1964; Table 4, 1965-1968); annual population estimates by state were taken from U.S. Bureau of the Census, Dep't of Commerce, Current Population Reports: Population Estimates and Projection (Ser. P-25, No. 460, Oct. 1971) (1962-1968). Changes in homicide rates for groups of states that increased and decreased executions are essentially the average of the annual changes in the states that comprise the group weighted [illegible]

Conclusion

We have shown that Ehrlich's findings are not a reliable basis for inferring the effects of capital punishment on the criminal homicide rate. Flaws in Ehrlich's data cast doubt on the ability to perform meaningful regression analysis. The analysis itself yields evidence of a deterrent effect only by relying on the unusual nature of the years after 1961 and on the logarithmic transformation of the data. When the analysis is performed for more appropriate periods, the hypothesis that the death penalty deters murders finds no support.

APPENDIX

Specific Data Sources Used in the Replication of Ehrlich's Regression Analysis

1. $\left(\frac{O}{N}\right)^*$ *Criminal Homicide Rate* = Number of Criminal Homicides per year/annual civilian population.

   (a) O = Annual number of murders and nonnegligent manslaughters from 1933 to 1969. Revised figures (1971) provided by the FBI.

   (b) N = Civilian population of the United States in 1,000's from 1933 to 1969. U.S. Bureau of the Census, Dep't of Commerce, Current Population Reports: Population Estimates and Projections Tables 3, 4 (Ser. P-25, No. 499, May 1973).

2. P^*_a *Clearance Rate for Criminal Homicide* = Fraction of murders and nonnegligent manslaughters cleared by arrest. FBI, Uniform Crime Reports for the United States (1933-1969).

3. $P^*_{c|a}$ *Conviction Rate for Criminal Homicides* = Fraction of individuals found guilty as charged for murder and nonnegligent manslaughter. 1936-1969; *id.* After 1962 separate estimates are reported in the *Uniform Crime Reports* annual bulletin. Estimates from the time series which is continuous over the 1936 to 1969 period were chosen. These estimates were generally based on larger population bases. The value for 1961 is the average of the 1960 and 1962 estimates. 1933-1935: values 1933 to 1935 were obtained from Ehrlich (Ehrlich 1973, *supra* note 1, Figure 1).

4. $P^*_{e|c}$ *Execution Risk for Criminal Homicide* (PXQ_1, PXQ_2, PXQ_{3-5}, TXQ_6, PDL_7, PXQ_8) The measures of execution risk are all variations of the form $\frac{E}{C^*}$, where $C^* = Q \cdot P^*_a \cdot P^*_{c|a}$.

   (a) E = The number of executions for murder. U.S. Bureau of Prisons, Dep't of Justice, National Prisoner Statistics Bulletin Table 1 (No. 46, Aug. 1971).

   (b) [illegible] Number of convictions for murder.

5. L *Labor Force Participation Rates:*

   for 1940-1969 $L = \frac{CL}{(TN - TL + CL)}$

   for 1933-1939 $L = \frac{CL}{(N - P13)}$

   (a) CL, TL = The civilian and total labor force in 1000's from 1933 to 1969. U.S. Bureau of Labor Statistics, Dep't of Labor, Employment and Earnings Table A-1 (Jan. 1971).

   (b) TN = Total noninstitutional population from 1940 to 1969. *Id.*

   (c) N = Annual civilian population as defined in 1(b).

   (d) P13 = Annual population 13 years old and under from 1933 to 1939. U.S. Bureau of the Census, Dep't of Commerce, Current Population Reports: Population Estimates and Projections (Ser. P-25, No. 311, July 1965).

6. U *Unemployment Rate of the Civilian Labor Force, 1941 to 1969.* Employment and Earnings Table A-1, *supra* 5(a).

7. A *Fraction of the Resident Population 14 to 24 Years of Age.*

   $A = \frac{P1424}{RP}$

   (a) P1424 = Number of persons 14 to 24 years of age in the resident population.

   1933-1939: Current Population Reports, *supra* 5(d).

   1940-1949: U.S. Bureau of the Census, Dep't of Commerce, Current Population Reports: Population Estimates and Projections Table 1 (Ser. P-25, No. 98, Aug. 1954).

   1950-1959: *id.* Table 1 (Ser. P-25, No. 310, June 1965).

   1960-1969: *id.* Table 2 (Ser. P-25, No. 519, Apr. 1974).

   (b) RP = Resident population in 1000's.
   References same as given in (a) for each of the respective time periods.

8. Y *Friedman's Estimate of Real Permanent Income per Capita.* The following equation was used to compute Y:

   $Y_t = (.530)\, Y_{t-1} + (.226)\, Y_{t-2} + (.150)\, Y_{t-3} + (.100)\, Y_{t-4} + (.07)\, Y_{t-5} + (.019)\, Y_{t-6} + (.033)\, Y_{t-7} + (.023)\, Y_{t-8}$

   (a) The weights in the above equation were obtained from E. Kami, The Value of Time and the Demand for Money, 1971, Table 33 (unpublished doctoral dissertation, Univ. of Chicago).

   (b) Y_{t-1} through Y_{t-8} are logarithmic estimates of per capita real national income for the years 1925 to 1969. The national income figures were provided by E. Kami. Population figures for per capita estimates were obtained from:

   1925-1929: Current Population Reports, *supra* 1(b), Table 4.
   1930-1968: U.S. Dep't of Commerce, Survey of Current Business Table 7.6 (July 1969).

   (c) The per capita income was measured in terms of 1929 dollars using a price deflator obtained from source (a).

9. NW *Percent of Nonwhite Residential Population.*
   References same as given in 7(a) for each of the respective time periods.

If execution risk had a deterrent effect, states with declining numbers of executions would show a relative increase in homicide rate, and states with rising execution levels would show a relative decrease in homicide rate. But Table VIII demonstrates that there is no such pattern in the years since 1962. Among states which decreased executions, the homicide rate rose more than the national figure for two of the periods[42] and less than the national figure for four. Among states that increased executions, the change in homicide rate was below the national change in one comparison, very nearly the same in one case, and actually above in three of the five comparisons.

Table VIII also shows that the use of capital punishment during this period was restricted increasingly to a small minority of states. After 1961, no more than five states imposed executions in a single year, none of them imposed more than one execution per year, and none imposed executions two years in a row. In this situation, the national homicide rate cannot be expected to reflect possible deterrent effects presumed to occur primarily in the jurisdictions that actively use the death penalty. Thus, apart from problems of temporal specification and functional form, it would have been more appropriate, in view of the progressively restricted use of capital punishment in the nation, for Ehrlich to have shortened the effective period of analysis by removing the years after 1963, when no more than 10 percent of the states imposed executions, than to have extended the period of analysis two years beyond the end of executions in the United States.

B. *The Early Years*

We have already described the unreliability of data for the 1930's. By reproducing his regression analysis for effective periods with later beginning dates, Ehrlich may have hoped to diminish the effects of measurement error in these early years. But he has thereby given greater weight to the years after 1961, which are responsible in the first place for his evidence of a deterrent effect.

To determine the effects of measurement error in the early years, we must first remove the idiosyncratic recent years, and then successively drop years from the beginning of the time series. Accordingly, we have performed regressions for periods with 1963 as the ending date and with successively later beginning dates from 1935 through

[42] However, one of these two periods, 1960-1967, involves only one state, Texas.

1940. The estimated coefficients for logarithmic and natural values of two measures of execution risk are shown in Table IX.[43]

We know from Tables IV and V that the elasticities associated with execution risk for effective periods ending in 1963 and earlier are more often positive than negative, though usually not statistically significant. In Table IX, the coefficients are again predominantly positive, and become even more so as years are successively dropped from the beginning of the time series. In fact, the effective periods beginning in 1938, 1939, and 1940 show positive effects for execution risk in all 12 cases. These positive coefficients are, of course, absurd from the viewpoint of the deterrence hypothesis, although they may not be altogether meaningless.[44] They do, however, indicate unambiguously that data inadequacies in the early years of the time series have not obscured deterrent effects of capital punishment. Indeed, by all indications there are no deterrent effects to obscure.

Table IX

Estimated Effects of Execution Risk on the Criminal Homicide Rate for Effective Periods Ending in 1963 With Successively Later Beginning Dates (Separately for Variables in Logged and Unlogged Form) (t Value in Parentheses)

Beginning Date of Effective Period	*Logarithms*		*Natural Values*	
	PXQ_{t-1}	$P\bar{X}Q_t$	PXQ_{t-1}	$P\bar{X}Q_t$
1935	--	.037	--	.000219
	--	(1.02)	--	(.21)
1936	.003	.031	.000225	.000082
	(.08)	(.86)	(.37)	(.08)
1937	.007	.038	.000079	−.000001
	(.19)	(1.02)	(.12)	(−.00)
1938	.038	.033	.001147	.000833
	(.91)	(.95)	(1.46)	(.64)
1939	.062	.061	.001858	.001772
	(1.39)	(1.73)	(1.35)	(1.29)
1940	.095	.056	.001581	.001818
	(1.99)	(1.56)	(1.93)	(1.19)

Table IX presents the effects of two measures of execution risk, PXQ_{t-1} and $P\bar{X}Q_t$. PXQ_{t-1} is the measure used most frequently by Ehrlich, and $P\bar{X}Q_t$ of all the measures, is least biased by measurement error since its one year lagged homicide rate is only one of 18 variables that figure in its estimation. Equations 13.1-16.3 of appendix B, *supra* note 2, present detailed regression results for selected periods beginning in 1936, 1938, and 1940.

[43] The possibility that because of a "brutalizing effect," capital punishment may encourage rather than deter murders is beyond the scope of this paper but is considered in Bowers & Pierce, *supra* note 2. In particular, we discuss the meaning of the positive regression coefficients we obtained when we substituted the number of executions for execution risk.

11. NGOV *Per Capita Real Expenditures on All Governments in Millions of Dollars.*

$$NGOV = \frac{(FE + SLE\text{-}D)}{RP*PD*10}$$

(a) FE, SLE = Federal and state/local expenditure on all governments.
1933-1938: U.S. Dep't of Commerce, Historical Statistics of the U.S.: Colonial Times to 1957 (1960).

1939-1965: U.S. Dep't of Commerce, The National Income and Product Accounts of the United States, 1929-1965 Statistical Tables (1966).

1966-1969: U.S. Dep't of Commerce, Survey of Current Business (July 1970).

(b) D = National defense expenditures.
1933-1938: U.S. Dep't of Commerce, Historical Statistics of the U.S: Colonial Times to 19.7, *supra* (a).

1939-1952: (purchases of goods and services). National Income and Product Accounts of the United States, *supra* (a), Tables 1.1.

1953-1969: (purchases of goods and services). Survey of Current Business, *supra* (a), Table 3.10.

(c) RP = Residential population as defined by 7(b).

(d) PD = Implicit price deflator for all governments.
1932-1965: National Income and Product Accounts of the United States, *supra* (a), Table 8.4.

1966-1969: Survey of Current Business, *supra* (a).

12. $XPOL_{-1}$ *Per Capita Real Expenditures on Police Lagged One Year in Dollars.*

$$XPOL_{-1} = \frac{POLE*100{,}000}{RP*PD} \text{ where}$$

(a) POLE = Total police expenditure.
1932-1966: 6 U.S. Bureau of the Census, Dep't of Commerce, 1967 Census of Governments, No. 5, at 36 (1969).

1967-1969: U.S. Bureau of the Census, Governmental Finances in 1969-70, at 15 (1971).

(b) RP = Residential population as defined in 7(b).

(c) PD = Price deflator as defined in 11(d).

13. *Alternative Vital Statistics Estimates of Homicide.*
Q = Annual number of willful homicides (minus the annual number of executions after 1918, when the two mortality categories were combined).

1933-1936: U.S. Bureau of the Census, Dep't of Commerce, Mortality Statistics (1933-1936).

1937-1969: U.S. Bureau of the Census, Dep't of Commerce, Vital Statistics of the United States (1937-1945); U.S. Public Health Serv., Dep't of Health, Education, and Welfare, Vital Statistics of the United States (1950-1969).

Deterrence: Evidence and Inference*

Isaac Ehrlich†

Because of space limitations and the short time I have been given to prepare my response to the two critiques of my work published in this issue of the *Journal*, I shall confine myself principally to the critique by Bowers and Pierce.[1] I do that not because the paper by Baldus and Cole[2] does not warrant a detailed reply but because an elaborate response to the central issues they raise is contained in a study of mine now in progress which deals critically with published research by Sellin and others.[3] I choose to focus on the Bowers and Pierce piece also because, as I hope to show, their work largely misinterprets and misapplies the framework I have developed for testing the deterrence hypothesis. Addressing their work critically provides the opportunity to elaborate upon some pertinent aspects of my research, hopefully for the benefit of interested scholars.

The conclusions of my time series study of murder basically are two: (1) that previous research never adequately tested a set of direct and specific implications suggested by a general theory of deterrence and (2) that my empirical findings, while tentative and inconclusive by the very nature of observational statistics, are not inconsistent with rather sharp implications emanating from this theory, including the hypothesized deterrent effect of the conditional risk of execution. Bowers and Pierce tacitly accept the first conclusion and seek to evade the second, evidently on faulty grounds. In their efforts to obscure the empirical findings, they have selectively deleted observations, utilized an inferior regression specification, considered irrelevant variables and correlations, and revealed in the process misunderstanding of elementary statistical concepts, as I discuss in points III, IV, and V below. They do not provide evidence based on a systematic statistical analysis showing that capital punishment, or punishment in general, does not deter crime. Essentially, they make only the point that the observed deterrent effect of the risk of execution *can be* confounded

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1 Bowers & Pierce, *The Illusion of Deterrence in Isaac Ehrlich's Research on Capital Punishment*, 85 Yale L.J. 187 (1975).

2 Baldus & Cole, *A Comparison of the Work of Thorsten Sellin and Isaac Ehrlich on Capital Punishment*, 85 Yale L.J. 170 (1975).

when insufficient regard is shown for proper methods of hypothesis testing. Indeed, my principal response to Bowers and Pierce is that they concern themselves only with making a point (*i.e.*, confounding a result) rather than testing a hypothesis. There is a fundamental difference between a systematic and statistically coherent test of all the ramifications of a general hypothesis and an exercise in search of that set of circumstances which—for purely technical reasons—may weaken the effect of a single variable within a comprehensive model. Bowers and Pierce do not analyze the effects of variables other than the conditional probability of execution—variables such as estimates of apprehension and conviction risks and unemployment and labor force participation rates. Moreover, they do not address themselves at all to the question of the optimal form of testing for the deterrence hypothesis, given the technical limitations of observational statistics.

I shall respond in some detail only to the substantive issues raised by Bowers and Pierce and to a few of the arguments advanced by Baldus and Cole. Also, I shall point out only some of their more serious errors. For expositional convenience, the discussion below is ordered as seven general points.

I. Corroborating Evidence from Bowers and Pierce

First and foremost, the Bowers and Pierce work, however inadvertently, has lent considerable strength to the case for the deterrent effect of capital punishment, because their application of the theory and econometric methods outlined in my paper over the entire period considered in my analysis produces results quite similar to my own. This is noteworthy for several reasons.

A. Their data set is not identical to the set of data that I utilized.[4] Their comments indicate that at least four variables have been constructed differently in their work.[5]

B. In addition, Bowers and Pierce do not accurately execute my

1. A detailed description of the data set that I utilized is contained in the memorandum, I. Ehrlich, The Deterrent Effect of Capital Punishment: A Question of Life and Death, American Economic Review (June, 1975): Sources of Data, May 1975 (on file with *Yale Law Journal*). Mr. Bowers, among others, received a draft of this memorandum, which noted some errata in the published paper, and which was completed in July 1975 by Randall Mark.

5. Bowers & Pierce, *supra* note 1, at 191 n.18. They allege that one of these differences, that concerning $XPOL_{t-1}$, is due to my having used an unspecific auxiliary analysis for estimating missing values of this variable. Their allegation is false: my memorandum on data sources, *supra* note 4, at 17-19, outlines in detail the auxiliary procedure utilized. In addition, Bowers and Pierce utilize different values of P^{ce}'s than did I for the years 1933, 1934, and 1935, because they did not choose to apply the procedure I outlined for estimating these values. Their reference to "Ehrlich's conviction rates" for these years is misleading. Bowers & Pierce, *supra* at 191 n.15.

regression analysis in which two measures of execution risk are used to test the hypotheses of the model. Their results in connection with these measures of execution risk are likely to be inferior to my own because they omit an observation; therefore their results are based on fewer degrees of freedom.[6]

C. Furthermore, Bowers and Pierce may have used computational procedures different from those I utilized. That their regression results and coefficients of serial correlation always differ from mine is consistent with this view.[7]

Yet despite these differences, the regression results which Bowers and Pierce report are "similar to Ehrlich's."[8] More particularly, they confirm not only the apparent restraining effect of the conditional probability of execution on the murder rate but also my predicted ranking of estimates of elasticities of the murder rate with respect to the three deterrence variables—the probability of apprehension, the conditional probability of conviction, and the conditional probability of execution.[9] This is at once a confirmation of the strength of my approach and a corroboration of the basic findings. The results stand out in contrast to previous allegations that no evidence exists suggesting that the death penalty may have a restraining effect on the frequency of murder in the population. How Bowers and Pierce attempt to obscure these results is the subject of the three following points.

II. The Effects of Data Imperfections

Bowers and Pierce attempt to invalidate the results of my empirical investigation of the effects of deterrence variables (and these results

6. Bowers and Pierce suggest that all regressions of mine in which PXQ_{t-1} and TXQ_t are used as measures of the conditional probability of execution are erroneous. Bowers & Pierce, *supra* note 1, at 195 n.21. They argue that I mistakenly utilized PXQ_{t-1} and TXQ_t for the effective periods 1935-1969 and 1937-1969, respectively, whereas, they claim, the absence of data on PXQ_{t-1} in 1933 would require starting the effective period one year later in each case. They then speculate that an "erroneous (probably zero)" value of PXQ_{t-1} must have been inserted by the computer for 1933. *Id.* Contrary to their speculation, however, PXQ_{t-1} in 1933 was estimated for use in all regressions with PXQ_{t-1} and TXQ_t over the periods 1935-1969 and 1937-1969, respectively. The value of PXQ_{t-1} in 1933 is estimated as 7.16299 (percent). The estimate is based on published FBI data for the murder rate and for the murder clearance ratio in 1932 and on an estimated conviction risk in that year.

The degrees of freedom associated with a regression are the excess of data points over the number of regression coefficients estimated.

7. The calculations I reported were computed via the Econometric Software Package, into which R.C. Fair's three-round procedure is integrated. *See* J. Cooper, Econometric Software Package (1973). Bowers and Pierce provide no documentation of their computational procedures.

8. Bowers & Pierce, *supra* note 1, at 196.

9. *Id.* at 197.

alone) by posing, in effect, the extreme argument that data limitations prior to the 1960's preclude any empirical test of the deterrence hypothesis.[10] I do not agree with this general conclusion, and, in addition, I find their analysis concerning particular variables to be superficial and not constructive.

With respect to the dependent variable, the murder rate, the figures I have used are based on the Federal Bureau of Investigation's revised estimates of annual total murders and nonnegligent manslaughters. For the purposes of the empirical investigation, the FBI data are conceptually superior to the homicide series published in the *Vital Statistics of the United States* because the FBI category is defined to include only willful felonious homicides. Law enforcement officials, not health officials, bear the responsibility and undergo training for distinguishing willful felonious homicides from other homicides.[11] Indeed, by definition, the homicide data of the *Vital Statistics* explicitly include justifiable homicides and are likely to include some negligent manslaughters as well.[12] Moreover, the revised homicide data of the FBI reflect that agency's unique opportunity to incorporate into its estimates whatever homicide data have been collected by health officials. In contrast, the homicide figures tabulated for the *Vital Statistics* are never revised after the cutoff date for data collection for a given year.[13] In addition, information on death certificates, on which the *Vital Statistics* figures are based, sometimes may reflect classification of deaths only by medical cause rather than by external cause (such as accident or homicide), especially in those instances when death from homicidal assaults occurs later than the time of assault.

Because the *Vital Statistics* category includes some nonfelonious homicides, one would expect its homicide counts to exceed the FBI estimates. Yet, in every year from 1939 through 1961, the more narrowly defined FBI revised estimates are higher, by more than 900 in some years.[14] These comparisons suggest the importance of the technical considerations cited above that may lead to a significant underestimation of the relevant number of criminal homicides in the *Vital Statistics*. Tests which I have been conducting with independent bodies of data, and which I hope to report in the near future, indicate, nevertheless, that the effects of the deterrence variables—including the conditional probability of execution—on the homicide rate as reported by the *Vital Statistics* are qualitatively the same as those found in my time series investigation.

With respect to the empirical measures of the apprehension and conviction risks, the critics raise the issue of whether the FBI data are "unrepresentative" in the earliest years of the sample period.[15] Yet I have reported results demonstrating that the basic findings of my investigation are observed even without the presence of these early years in the observation set.[16] Moreover, their inference that the conviction data in 1936 and 1937 are biased because of a particular pattern observed in 1974 is purely conjectural and not founded upon any systematic analysis. Imperfections in data notwithstanding, my qualitative results in connection with the effects of apprehension and conviction risks over my entire sample period have been observed by others using the same FBI sources.[17]

More basically, though, the critics' attempt to discredit the empirical investigation on the basis of data quality is self-defeating to their own case. As is well known, "errors of measurement," as they are termed in the econometrics literature, generally lead to underestimation of the true effects of an explanatory variable in a simple regression analysis when that variable is subject to random measurement imperfections.[18] If the true variables of interest were grossly misrepresented by their empirical counterparts, then the statistical implementation of the theory should have *failed* to demonstrate any of the effects theorized. In particular, only a remarkable coincidence could then explain the fact that, as predicted by my theory, the findings show that the probability

10. *See id.* at 187-92. This direct implication of their remarks notwithstanding, Bowers and Pierce subsequently claim that their regression results are "more adequate and consistent" when they examine only subperiods ending early in the 1960's. *Id.* at 198. Yet by their own analysis, data imperfections clearly are less important in the 1960's than in earlier periods. *Id.* at 190-92.

11. Although health officials are expected, when they can, to distinguish homicides from other violent "external" causes of death, namely accidents and suicides, they clearly experience much difficulty in drawing these distinctions. As late as 1970, for example, in which the *Vital Statistics* reports 16,848 homicides, a total of 5,381 violent deaths are classified as due to undetermined cause, *i.e.*, either accidental or purposeful. U.S. Public Health Serv., Dep't of Health, Education, and Welfare, Vital Statistics of the United States 1970, at 256.

12. Homicides inflicted through legal intervention by police are included in the homicide count reported by the *Vital Statistics*. Only beginning in 1959 can such homicides be separated from the total.

13. This failure to revise leads to an understatement of homicides pertaining to a given year [illegible] occurring in that year that were not reported by the cutoff date.

14. Bowers and Pierce's statement, *supra* note 1, at 189, that the FBI estimates differ from those of *Vital Statistics* by only about three percent for the period after 1939 is quite misleading in view of the magnitude of the year to year differences.

15. Bowers & Pierce, *supra* note 1, at 190; *see id.* at 190-92.

16. *See, e.g.*, Ehrlich, *The Deterrent Effect of Capital Punishment: A Question of Life and Death*, 65 Am. Econ. Rev. 397, 410 (1975) (equation 5 of Table 3 and equation 2 of Table 4).

17. *See* W. Vandaele, The Economics of Crime: An Econometric Investigation of Auto Theft in the United States, 1975 (unpublished doctoral dissertation, Univ. of Chicago).

of arrest (measured by the FBI's clearance ratios) had a proportionally larger impact on the murder rate than the conditional probability of conviction (derived from the FBI's statistics) and that the conditional probability of execution had the least effect. The FBI's reported figures on arrest and conviction in the 1930's surely were not tailored to my theoretical predictions 30-odd years later.

III. The Effects of Deleting Observations

Curiously, Bowers and Pierce's remarks in the beginning of Part II of their paper may convey the impression that I have artificially restricted the time span of my empirical investigation to test deterrence effects. The fact is that my empirical investigation was conducted for the longest time period for which necessary data were available at the time of my study. In contrast, Bowers and Pierce conduct the bulk of their analysis over arbitrarily restricted subperiods after deleting specific observations from the complete data set. Their assertion that "Ehrlich's regression model fits the data better without them"[19] is based upon an erroneous method of inference, as I point out in Part V below. Here I shall address the consequences of discarding the information provided by the observations that they choose to omit.

Selective elimination of a sufficient number of observations from a regression analysis is a virtually foolproof method for reversing any single result derived from an original sample. Imagine, for example, a regression line verifying a negative association between the quantity demanded of corn and the price of corn. Since a majority of the data points typically will not lie on the regression line, the selective exclusion of data points can easily turn a significant negative relationship into an insignificant negative association or even a positive one. Such exclusions are particularly disturbing when the entire sample is relatively small. Indeed, the elimination of data points relating to murder in the 1960's—accounting for 17 percent or more of the full sample which I investigated—amounts to, in practice, the selective, nonrandom exclusion of observations crucial to an efficient estimation of the effects of key deterrent variables.

A. Omitting observations from the 1960's drastically reduces the variability in estimates of the conditional probability of execution and in the modified rates of change of these estimates, which are the actual regressors in the analysis. Whereas the rates of change in this variable had been quite stable for the preceding two decades, the objective (measured) risk of execution declined quite sharply starting about 1960. The sharp movements in the rates of change of the conditional risk of execution are, of course, not my invention—they accurately reflect the objective trend in the *true* risk of execution in the 1960's.[20] In addition, murder clearance ratios, used as objective estimates of the probability of arrest for murder, also exhibit little variability over specific subperiods ending in the early 1960's. Thus, variability in arrest and execution risks is particularly small between the late 1930's and the early 1960's.

It is a well known principle that a minimum amount of variability is necessary to perform a regression analysis. Indeed, an *efficient* sample designed for the purpose of estimating via a regression format the partial effects of specific explanatory variables on a dependent variable is one which maximizes the range of variability in the regressors. Imagine, again, the attempt to confirm the negative association between prices and quantities demanded of corn. The attempt would fail if the subperiod selected by a researcher for his regression analysis is one in which corn prices or their rates of change, whichever are relevant, are relatively stable. The appropriate inference, however, is not that the theory of demand fails to explain movements in corn purchases but rather that the selected subperiod cannot be utilized to estimate the partial effect of corn prices on quantities demanded. The importance of such considerations is apparent in my time series analysis not only in connection with deterrence variables but also in

20. The fact that this trend concerns only 20 states that imposed executions in 1960 has no specific relevance in connection with the estimated deterrent effect of execution, contrary to the unsystematic discussion of Bowers and Pierce, *supra* note 1, at 201. Only a subset, and typically a minority, of states enforced the death penalty in any given year. Many fewer than 20 applied the death penalty in every year from 1933 to 1967. Moreover, aggregating over states which had executions and states which did not implies that the estimated elasticity of the murder rate with respect to execution risk is likely to be biased downward relative to the true elasticity. See Ehrlich, *supra* note 15, at 408.

The inferences drawn by Bowers and Pierce, *supra* note 1, at 201-01, concerning murder rate and execution changes in particular states during the 1960's, are based on a faulty methodology. Their analysis of yearly changes in murder rates and executions in specific states over the six-year period 1962-1967 fails to control for the different trends in apprehension and conviction risks or in any other relevant determinants of murder across these states. It considers the absolute number of executions rather than the theoretically relevant conditional risk of execution in each state. It is based on comparisons of contemporaneous changes in executions and murder rates, comparisons which are not capable of identifying the relevant causal relationships in specific cases. Furthermore, the overwhelming trend in all the states compared over this subperiod was toward a complete cessation of executions. The occasional deviations from that trend in each state in a single year cannot serve as a statistically meaningful basis for the classification of states into those with increasing or decreasing executions. These fundamental shortcomings in Bowers and Pierce's independent analysis pertaining to the 1960's further underscores the importance of applying the *full* econometric framework utilized in my study over as long a period as the data permit in order to isolate the

relation to the effect of the unemployment rate on the frequency of murder. While the association between the latter two variables is found to be positive over the entire sample period, this association weakens substantially when the subperiod relating to the 1930's is excluded from the observation set. The significance of the 1930's in connection with movements in the unemployment rate is well known.

B. A related consideration is that the estimates of the objective risk of execution show a strong time trend over the subperiod ending in the early 1960's. Specifically, the graph plotting the logarithms of these estimates over the time period from the late 1930's to the early 1960's appears to be nearly a negatively sloped straight line. Over the same subperiod the murder rate in the United States also exhibits a continual, systematic negative trend. Because of the significant negative trend in estimates of both the frequency of murder and the conditional risk of execution, the estimated effect of the latter on the former over this specific subperiod may simply reflect the effect of pure time trend.

The differences between regression results based on the full sample and those based on subperiods ending in the early 1960's, including those reported by Bowers and Pierce in their appendix B,[21] are consistent with the arguments developed above. Not only does the effect of execution risk appear to become quite weak as data points are deleted, but the effect of apprehension risk also becomes weak due to lack of variability. As indicated above, the effect of unemployment is also sensitive to the deletion of specific subperiods. More importantly, the negative partial effect of the time trend on the murder rate, which was verified over the entire period considered in my study, becomes "insignificant"[22] in Bowers and Pierce's regression results for subperiods ending in the early 1960's, although over those specific subperiods the murder rate continually declined. Hence the effect of pure trend should have been found to be even more pronounced over these periods. The fact that the effects of both the risk of execution and time trend weaken suggests a high degree of competition or multicollinearity[23] between the two variables over subperiods ending in the early 1960's.

C. The absence of variability and the presence of multicollinearity

21. Bowers & Pierce, Deterrence, Brutalization, or Nonsense, 1975, at 24-26 (unpublished manuscript, Center for Applied Social Research, Northeastern Univ.) (appendix B on file with *Yale Law Journal*) [hereinafter cited as Deterrence].

22. The term "significance" here is used heuristically only to indicate relatively low standard errors. Standard tests of significance do not apply in connection with [illegible] estimation procedures.

are hardly unique to my study but occur frequently in time series regression analyses. The conventional remedy to such problems is to *extend* the sample size so that variability may be enhanced and the separate effects of highly related explanatory variables may be extricated and identified. I have pursued this procedure from the outset in my efforts to extend the sample size into the early 1930's and up to the late 1960's. Bowers and Pierce pursue just the reverse course. Following my own report of weak results obtained from subperiods ending in 1963, they go on to perform most of their independent estimations over subperiods in which little meaningful analysis can be conducted.

D. As for the unfounded claim that somehow "significant" deterrent effects of execution risk and other punishment variables are "present" only in a short span of time relating to the 1960's and are not to be found in earlier (or later) periods, I plan to demonstrate in the near future, through evidence based on state-wide data in earlier years, that the deterrent effects of certainty and severity of punishment—including punishment by execution—are not uniquely associated with a specific set of data points.[24]

IV. The Merits of the Logarithmic Format

In the empirical implementation of my general theory of participation in illegitimate activities,[25] I consistently have emphasized a logarithmic-linear specification of the relevant equations. However, as my following comments will show, while the logarithmic-linear specification appears to be preferable on analytical and experiential grounds, the qualitative results from my time series study do not depend exclusively on this functional form.

The logarithmic-linear form can be justified on practical grounds if the elasticities of a dependent variable with respect to a set of explanatory variables are assumed to be constant to the first order of approximation. A logarithmic-linear specification is a superior regression format when the magnitude of the errors in the data are thought to be proportional to the level of the variables that the data purport

24. Further independent evidence on this point is provided by J. Yunker, The Deterrent Effect of Capital Punishment: Comment, Oct. 1975 (unpublished manuscript, on file with *Yale Law Journal*). Yunker's analysis, conducted over a sample period extending through 1974, yields results indicating that the murder rate declines as the risk of execution rises. The statistical methodology he uses, however, is different from my own.

25. *See, e.g.*, Ehrlich, *Participation in Illegitimate Activities: An Economic Analysis*, in Economics of Crime and Punishment 68-134 (G. Becker & W. Landes eds. 1974) [hereinafter

to measure. It would be rather implausible, for example, to assume that the magnitude of underreported and misreported crime is independent of the level of reported crime. This assumption is implicitly invoked by use of the linear specification in the natural values of the variables, the functional form stressed by Bowers and Pierce.[26] More plausibly, one may assume that the magnitude of reporting errors is proportional to the level of the relevant statistics.[27] Furthermore, in the case of murder investigation, the dependent variable of interest is the rate of capital murder rather than the rate of criminal homicide, the actual measure utilized. Previous researchers have assumed that the capital murder rate and the total homicide rate are proportionally related.[28] It would be convenient at least, then, to use a logarithmic-linear specification which enables a direct estimation of elasticities. Moreover, similar considerations also apply to the observed probabilities of apprehension, conviction, and execution, each of which is based upon data relating to reported willful felonious homicides rather than the true level of capital murders. All these considerations suggest that the efficient functional form underlying the murder supply function is likely to be one that utilizes the logarithms of the dependent variable and the key independent variables. And indeed, "prior information" accumulated through my past work on crime has led me to emphasize the logarithmic-linear regression format because of its observed relative efficiency.

Bowers and Pierce could have tested statistically for the optimal functional specification of the estimated supply-of-offenses function. In particular, they could have examined the efficiency of the logarithmic-linear specification relative to a specification that is linear in the natural values of all variables. In research now in progress, I have conducted statistical tests of optimal transformations based on a likelihood ratio method. As I plan to demonstrate, the conclusion emerging from these tests is that the logarithmic-linear format not only is decisively superior to the format using the natural values of the variables but that the former generally cannot be rejected as the optimal form within the class of single-parameter power transformations. Bowers and Pierce's demonstration that their regression results tend to deteriorate when running the regressions with natural numbers shows only that they evade the question of which of the two transformations is more appropriate. Hence they not only prefer testing the deterrence

26. Bowers & Pierce, *supra* note 1, at 199.

27. For an elaboration of this point, see Ehrlich, *Illegitimate Activities*, *supra* note 25, at Section 12, Aug. 1.

hypothesis for subperiods of sharply limited usefulness, but they also prefer an inferior regression format.

As I noted in my paper, the basic results from that study were found to be unaffected qualitatively by the choice of functional form. The regression equation I report below was performed with the antilogarithms (*i.e.*, the natural numbers) of the same set of variables used to derive the results reported in my published paper, and indicates that the qualitative deterrent effects of apprehension, conviction, and execution are not exclusively dependent on a specific functional form.[29] Although the specification in natural numbers appears to be clearly inefficient in view of prior information and other tests, time series regression estimates derived via that format in this equation nevertheless indicate the existence of the expected deterrent effects.[30]

V. Basic Statistical Errors in My Critics' Work

Part II of Bowers and Pierce's critique refers to "errors" in my analysis. The fact is that I have learned of no single error in either my theoretical analysis or the statistical methodology used to implement the theory. In contrast, the work by Bowers and Pierce is riddled with errors and demonstrations of misunderstanding of basic statistical principles. A few examples will illustrate.

A. The "R^2" statistic is essentially irrelevant in connection with a two-stage least squares regression analysis or the related three-round procedure used in my study. Yet, with no qualification whatever, Bowers and Pierce cite this statistic in conjunction with every estimated equation which they report.[31] More seriously, they use the "R^2" statistic as a basis for inference.

B. The "R^2" statistics, as well as standard errors of the regressions, computed for subsamples having different ending dates are relied on

29. $$q^* = \underset{(3.806)}{.215} - \underset{(-3.771)}{.000891}\Delta^*P^*c|a - \underset{(-1.573)}{.000830}\Delta^*P^*a - \underset{(-3.021)}{.00385}\Delta^*PNQ_s - \underset{(-2.176)}{.238}\Delta^*L + \underset{(2.128)}{.147}\Delta^*A + \underset{(5.504)}{.000115}\Delta^*Yp + \underset{(1.162)}{.000269}\Delta^*U - \underset{(-6.857)}{.00372}\Delta^*T.$$

The estimated equation above pertains to the effective period 1935-1969. The murder rate is represented by q^*; the risks of apprehension, conviction, and execution are represented by P^*a, $P^*c|a$, and PNQ_s, respectively; other symbols can be interpreted from Table 2 of my published paper, Ehrlich, *supra* note 16, at 409, and the numbers in parentheses denote ratios of estimated regression coefficients to their standard errors. The estimate for $\hat{\rho}$ is $-.119$. Not only is the direction of the effect of every variable the same as is found with the logarithmic-linear specification, but the predicted ranking of the elasticities of the measures of the three deterrence variables also is observed.

30. J. Yunker, *supra* note 21, performs regressions with natural numbers only. His regression analysis also indicates the existence of a deterrent effect associated with the

by Bowers and Pierce to draw the startling inference that regression results are "more adequate and consistent for the periods with earlier ending dates."[32] Their lack of regard for, indeed their apparent lack of awareness of, the diminishing degrees of freedom associated with smaller and smaller subsamples is astonishing. Even if the regression analysis were based on the ordinary, or classical, least squares procedure, comparison of R^2 statistics and standard errors of the regressions across subsamples with successively smaller degrees of freedom would be improper: as Bowers and Pierce surely know, when the number of degrees of freedom is zero, the R^2 statistic necessarily is unity. It should be noted that the deletion of observations from the full set of observations led Bowers and Pierce to estimate regression equations in which the number of observations is as low as 22 while the number of parameters estimated in the reduced-form regression analysis is 19. They apparently fail to recognize that estimated regression coefficients based on successively smaller degrees of freedom become increasingly imprecise. In particular, estimates based upon so few degrees of freedom as those Bowers and Pierce stress are unlikely to be adequate for rejecting the hypothesis of no deterrent effects.[33]

C. At the end of their article, Bowers and Pierce report results from regressions in which they replace the conditional probability of execution—the theoretically relevant variable—with the absolute number of executions.[34] A finding of a positive association between homicide rates and the number of executions is cited as evidence of the "brutalizing" effects of capital punishment. Bowers and Pierce do not recognize, however, that the positive association may be expected on purely technical grounds. Where there are no homicides there can be no convictions or executions. In contrast, when murder rates rise, with arrest, conviction, and execution risks constant or rising, the number of convictions and executions also would rise. A positive (or zero) association between criminal homicides and the number of executions thus is hardly surprising. Indeed, more than 20 years ago this relationship was noted by Schuessler, who recognized that this correlation does not constitute a test of the deterrence hypothesis.[35]

32. Bowers & Pierce, *supra* note 1, at 190.

33. Unfortunately, on this point, as others, Baldus and Cole, *supra* note 2, at 180 & n.35, 184-85, uncritically accept the inferences drawn by Bowers and Pierce and other critics and, thus, implicitly commit the same errors. Without providing any valid grounds for their assertions, Baldus and Cole even more emphatically assert their judgment that the subperiod analysis provides estimates somehow superior to those obtained from the full sample.

For a definition of the term "degrees of freedom," see note 6 *supra*.

34. Bowers & Pierce, *supra* note 1, at 205 n.15; Bowers & Pierce, Deterrence, *supra* note 21, at 24-26.

35. [illegible] *The Deterrent Influence of the Death Penalty*, 284 Annals 59 (1952),

D. Although I have focused in this discussion on errors contained in the Bowers and Pierce paper, I should point out that the Baldus and Cole paper also is seriously flawed. For example, Baldus and Cole criticize my study because "the second-stage regression does not hold fixed" the cluster of variables denoted as X_2 in Table 2 of my published work.[36] However, these variables serve in the role of "omitted exogenous variables" in the murder supply equation. The remark shows that Baldus and Cole do not understand the simultaneous equation estimation framework underlying my study. Exogenous variables such as those summarized under X_2 *must* not be held constant in estimating the structural murder supply function. If they were, the two-stage least squares procedure would become meaningless. Their effects, however, are integrated appropriately in the estimation procedure through their incorporation in the reduced form regression analysis. This error by Baldus and Cole betrays quite a fundamental misunderstanding of the methodology which they have undertaken to evaluate. Indeed, in their comparisons of my research with that of previous researchers, they do not note the prime benefit of utilizing the simultaneous equation framework—that it attempts to identify the direction of the causal relationship between the frequency of murder and the deterrence variables. The direction of that relationship is not self-evident. For example, in times of high murder rates, states may be more inclined to convict and execute offenders, or even reinstate the death penalty, than in times of low [illegible]r rates. The simple association between these variables thus may give the appearance that, for example, an increase in the risk of execution "leads" to an increase in the murder rate, even though the opposite is true. A simultaneous equation estimation framework is designed to identify causal relations and thus avoid potentially biased results.

VI. The Gap Between Evidence and Inference in Previous Research

Bowers and Pierce and, in greater detail, Baldus and Cole, rely heavily on previous research, especially that of Thorsten Sellin, as

as well as by Baldus and Cole, *supra* note 2, at 183 n.45, who also fail to recognize the technical association between homicide and execution rates. It might be noted that Schuessler, at 59-60, went on to attempt a test of the deterrence hypothesis by measuring the simple correlation coefficient between homicide rates and a measure of the risk of execution in 41 executing states over the period 1937-1949. Although he found the correlation coefficient to be —.26, indicating that the murder rate falls as execution risk rises, and although this negative association turns out to be significant statistically at the five percent level for a one-tail test, neither Bowers and Pierce nor Baldus and Cole mention this result.

36. [illegible] & Cole, *supra* note 2, at 182 n.11.

evidence against the deterrence hypothesis.[37] In this section I shall briefly comment on the research by Sellin and others concerning the deterrence hypothesis.

The principal shortcoming of Sellin's research and related work is that the approach taken and the methods applied do not permit a systematic test of the main implications of the general theory of deterrence, a theory which posits that potential offenders respond to incentives. The shortcoming is basic because the implications following from the *general* deterrence hypothesis are what Sellin was attempting to challenge empirically.[38] Yet his work neither develops nor tests the full range of implications following from the theory that he attempts to reject; nor is a competing theory developed and tested. In addition to implying that punishments in general, and executions in particular, may deter crime, the general deterrence hypothesis provides the testable expectation that punishments imposed only with relative infrequency will have less impact than those imposed with a high degree of certainty. The theory of deterrence predicts not only the direction of effects of, for example, equal percentage changes in the relevant apprehension, conviction, and execution risks, but also the relative order of magnitude of these effects. Although the basic premise of these and other testable implications is that, on balance, potential offenders respond to incentives, Sellin never devised an analytical framework for rejecting this general hypothesis. More significantly, to my knowledge Sellin never reported any parametric or nonparametric statistical tests that could justify his rather strong conclusions. In all, there exists a considerable gap between the limitedly useful evidence provided by Sellin and others following his methodology, and the rather emphatic inferences drawn.

Two examples may illustrate this conclusion. Sellin has compared homicide rates in "abolitionist" and "retentionist" states, as defined by the legal status of the death penalty. But Sellin never accounts for the extent of the actual enforcement of the penalty in retentionist states. Yet by his own analysis, the suggested relevant variable is the risk of execution, not merely its legal status, for "were [the death penalty] present in the law alone it would be completely robbed of its threat."[39] The point is far from being subtle. In a number of "retentionist" states whose homicide rates are compared to neighboring abolitionist states, the execution risk was negligible throughout the entire period investigated by Sellin. For example, in Vermont, New Hampshire, South Dakota, and Nebraska, the death penalty was imposed only rarely after 1920; Massachusetts had no executions after 1917. Not surprisingly, with no allowance for actual execution risks, Sellin's simple graphical comparisons of homicide rates across different states do not *appear*[40] to uncover considerable differences. But could such observations justify his inference: "The conclusion is inevitable that the presence of the death penalty—in law or practice—does not influence homicide death rates?"[41]

This deficiency is even more glaring in tests attempted by Bowers in another work to determine the effect of the moratorium on executions in the United States.[42] Following Sellin's methodology, Bowers compares the levels of murder rates in nine arbitrarily chosen mixes of neighboring states in the four years preceding and subsequent to the judicial moratorium. He reports similar patterns in most groups. However, the plain fact is that *none* of the states in eight of the nine groups had a single execution throughout the period. And in the ninth group, Bowers creates a dubious distinction between New York, classified as abolitionist, and New Jersey and Pennsylvania, classified as retentionist, although New York ceased all executions in 1963—the same year as New Jersey and one year after Pennsylvania. That such comparisons are used as a basis for inference about the deterrent effect of capital punishment taxes one's imagination.

A second general shortcoming characterizing previous research on this issue by Sellin and others is the absence of any systematic standardization of data so that the effect of execution risk can be isolated from the effects of other factors that not only may influence the murder rate but also are expected to be systematically related to the risk of execution. Clearly aware of the general problem, Sellin has emphasized the need to compare states that are "as alike as possible."[43] However, his assumption that neighboring states satisfy this prerequisite is unacceptable. Pairs of neighboring abolitionist and retentionist states, such as Illinois and Wisconsin, Michigan and Indiana, or Massachusetts and Rhode Island, differ in their economic and demographic characteristics, in their crime rates and law enforcement activity, and presumably also in their medical services available to

37. Baldus & Cole, *supra* note 2, *passim*; Bowers & Pierce, Deterrence, *supra* note 21, at [illegible] n.6, 19 n.21.

38. See, e.g., Sellin, *Capital Punishment*, 25 Fed. Probation 3, 4 (1961).

[illegible] at 70.

40. As indicated above, Sellin's observations are not supported by statistical inference tests.

41. Sellin, *Executions in the United States*, in Capital Punishment 138 (T. Sellin ed. 1967).

42. W. Bowers, Executions in America 137-63 (1974). Baldus & Cole, *supra* note 2, at 170 n.1, cite this work by Bowers as corroboration of Sellin's finding.

victims of aggravated assaults.[44] In addition, as my analysis has shown,[45] variation in the legal status of the death penalty occasionally may be a result, rather than a cause, of changes in murder rates and thus may give rise to an apparent positive association between the two variables. For these reasons, the true effect of the death penalty on the murder rate cannot readily be inferred from simple comparisons of the sort performed by Sellin and others.

VII. The Proper Measurement of the Restraining Effect of Capital Punishment

My critics allude to my having inappropriately or incompletely estimated the deterrent effect of capital punishment because I neglected the interdependencies among apprehension, conviction, and execution risks.[46] The fact is that I have stressed and integrated these interdependencies both in my theoretical analysis and in the empirical investigation.[47] Both pairs of authors suggest that the only proper means of estimating the deterrent effect of the death penalty is by allowing apprehension and conviction risks to "vary" with execution risk rather than by holding them "constant," thereby estimating the "total" effect of the penalty. In fact, I have treated empirically both the "partial" effect of execution risk—by controlling for the apprehension and conviction risks—and the observed "total" effect—by estimating the effect of execution risk through a reduced form regression analysis controlling only for exogenous and predetermined variables. The former procedure is without question the only proper way of verifying

44. The performance analysis of Baldus and Cole, *supra* note 2, at 177 n.30, on this point shows little appreciation of the issues involved. At Table 111 their list of data purportedly for one year is a mix of data drawn from two different years (1960 and 1980). Yet the issue on which they are leveling evidence is the extent to which Sellin "controlled for other factors" in each and every year of the 40-odd years considered in his studies. There still exists substantial variation in the variables Baldus and Cole compare within the five groupings of states they consider. They have not presented data for the sixth grouping considered by Sellin. The data sources they cite for the construction of their permanent income measures for the states are not capable of generating such statewide measures. Their inferences about the impact of specific variables on the murder rate in each state are not based on any systematic analysis. In three of their five cases, a retentionist state has the lowest homicide rate within a particular grouping—a fact they choose not to mention. By Baldus and Cole's analysis this fact might be viewed as evidence for deterrence. I am not suggesting, however, that such inference can be justified given the fragmentary nature of the analysis. More generally, I question the logical basis for preferring a statistical method that provides only indirect and incomplete control for specific variables expected to have an impact on the crime rate over a regression analysis attempting to control these variables directly.

45. Ehrlich, *supra* note 16, at 406.

46. *Id.*; *supra* note 21, at 6 n.9; Baldus & Cole, *supra* note

the hypothesized deterrent effect of execution risk, for the theory predicts that an increase in the conditional risk of execution at *given* levels of apprehension and conviction risks would have a deterrent effect on the incentive to commit murder. For the quite distinct purpose of evaluating the overall desirability of capital punishment as an instrument of policy, both estimation procedures, in principle, can provide useful guidance. Indeed, both are reported in my study. Although the "total" effects associated with a few measures of execution risk appear somewhat smaller than their estimated "partial" effects, the quantitative differences are generally small.

It should be pointed out, in this connection, that my critics misconstrue the theoretical predictions relating to the "total" deterrent impact of the risk of execution. While unwarranted movements in execution risk are expected to induce opposite movements in apprehension and conviction risks, the magnitudes of the resulting effects will not necessarily offset the effect of the initial change in execution risk. Moreover, the theory implies that no such compensatory movements[48] are expected when the initial shift in execution is viewed as *warranted*. For example, if there were universal agreement that reinstatement of capital punishment under specific conditions were socially optimal, then there is no compelling reason to expect that juries would be less inclined to convict offenders charged with capital crimes. Levels of apprehension and conviction risks could also be maintained through an appropriate allocation of resources to specific law enforcement activities. Thus estimates of "partial" effects of execution risk, as well as of apprehension and conviction risks, provide useful information from a policy viewpoint.

Concluding Remarks

The basic issue underlying my theoretical and empirical investigation of murder has not been merely the deterrent efficacy of the death penalty but the more general issue of offenders' responsiveness to incentives. My time series analysis of the trend of murder in the United

48. In reference to these possible compensatory changes in apprehension and conviction risks, both Bowers & Pierce, Deterrence, *supra* note 21, at 6 n.9, and Baldus & Cole, *supra* note 2, at 182 n.42, cite an exercise in an unpublished paper by P. Passell & J. Taylor, 'The Deterrent Effect of Capital Punishment: Another View,' Feb. 1975 (Discussion Paper No. 74-7509, Columbia Univ. Dep't of Economics) (on file with *Yale Law Journal*), as evidence that the "total" effect of execution risk on the murder rate is likely to be positive. Ironically, neither pair of authors apparently understands the exercise by Passell and Taylor which has nothing to do with the "compensatory" changes discussed above. In fact, I believe that the exercise by Passell and Taylor is internally inconsistent and irrelevant, but since their paper has not been published yet I

states should not be evaluated as an isolated experiment but rather is part of the more general research into offenders' behavior. Viewed in this more general context, the new research by myself and other social scientists in recent years has lent considerable support to the proposition that, in the aggregate, potential offenders respond to both negative and positive incentives. The growing body of new research by economists and sociologists has indicated the existence of deterrent effects of severity and certainty of punishment as well as other systematic regularities attributable to the effects of incentives.[49] These conclusions have been demonstrated in studies using data from different times and different places. My research on the deterrence effect of capital punishment has produced results compatible with this new evidence.

The bulk of my critics' analyses challenges neither the theoretical formulation of the deterrence hypothesis nor the statistical techniques used in the theory's empirical implementation. Neither Bowers and Pierce nor Baldus and Cole[50] present valid tests that reject the deterrence hypothesis. I hope that their work does not baffle the lawyer pondering the merits of using an economic approach to law or of using statistical techniques to study legal questions. The statistical methodology is quite useful and relevant when appropriately applied. Contrary to the inferences of Bowers and Pierce, their study does not present statistically meaningful evidence that the risk of execution has no deterrent effect, let alone that it has a "brutalizing" effect, on the frequency of murder in the population.

In this reply, I have elaborated upon some aspects of my research which, because of space limitations, have not been fully discussed in my published paper on the death penalty. Needless to say, my discussion here is not a substitute for the published paper. The paper discusses the analytical framework underlying the general deterrence hypothesis, which is the main issue of concern in my research. It also elaborates upon the methodology needed for meaningful tests of that hypothesis. The paper also stresses the limitations of the empirical investigation and the tentative nature of the findings. Indeed, as I stated, conclusions based on studies of historical data necessarily are qualified in view of the difficulties of measuring efficient empirical counterparts of relevant theoretical constructs and in view of intrinsic limitations of statistical inference. However, data imperfections are likely to work *against*, not in favor of, the theorized deterrent effect of punishment and the effects of incentives in general. It is thus remarkable that the evidence of my time series analysis and additional research repeatedly has proven not inconsistent with rather sharp predictions emanating from the deterrence hypothesis. I have not claimed, however, that my research settles the issue of the deterrent effect of capital punishment. Nor have I advocated the use of capital punishment. As I stressed in my paper, the issue of deterrence is but one of a myriad of issues relating to the efficiency and desirability of capital punishment as a social instrument for combatting crime. The study of the deterrent effect of capital punishment is of considerable independent importance in connection with the hypothesis that potential offenders on the whole respond to incentives. Research on this issue undoubtedly will benefit in the long run from legitimate attempts to use more efficient data and statistical techniques than those heretofore employed in studies of capital punishment.

19. *See, e.g.*, B. Peltzman, The Economics of Delinquency (1966); The Economics of Crime and Punishment (S. Rottenberg ed. 1973); A. Smigel-Leibowitz, Does Crime Pay? An Economic Analysis, 1965 (unpublished M.A. thesis; Columbia Univ.); W. Vandaele, *supra* note 17; J. Vanker, *supra* note 21; Carr-Hill & Stern, *An Econometric Model of the Supply and Control of Recorded Offenses in England and Wales*, 2 J. Pub. Econ. 289 (1973); Gibbs, *Crime, Punishment, and Deterrence*, 48 S. Soc. Sci. Q. 515 (1968); Maxwell, Phillips & Votey, *Crime, Youth, and the Labor Market*, 80 J. Pol. Econ. 491 (1972); Tittle, *Crime Rates and Legal Sanctions*, 16 Soc. Probs. 409 (1972). *See also* Ehrlich, *Illegitimate Activities*, *supra* note 25, and references therein. The preceding is only a partial list of relevant studies in this area.

50. Baldus and Cole do not present evidence of their own. They rely mainly upon Sellin's work as evidence, which I discuss briefly at pp. 221-21 *supra*. Their discussion in Section IV merely repeats other authors' inferences and judgments concerning [illegible] which may prove to be unjustified or premature. It is beyond

to organizations which, unlike the typical business corporation, do not seek profit.

In these pages we have distinguished between public service organizations—institutions which channel the largesse of some ... in the interest of others—and mutual benefit organizations, w... in purpose is to allow individuals to pool their income in order ... spend it more efficiently. Public service organizations do not produce income which can easily be assimilated to the "profit" produced by a business for the benefit of investors. Even if this inherent unsuitability of an income tax were disregarded by imposing an arbitrary concept of "income" on their financial activities, the burden of the tax would not reflect the ability to pay of the individual beneficiaries.

The activities of mutual benefit organizations that consist simply in the members' doing together what they could do separately without income tax consequences (such as buying food or operating social facilities) are not fit objects of taxation. But such organizations may also do business with nonmembers or invest in assets which produce income inuring to the benefit of their members. There is no reason to permit income of these types, which would be neither excludable nor deductible from taxable income in the hands of an individual, to escape taxation when acquired under the umbrella of an organization. Frequently, however, the investment income of mutual benefit organizations would not be taxed if it were imputed to (or realized in the first instance by) the group's members, because it is used to defray expenses which the individuals would be entitled to deduct. One example is the investment income of a labor union, used to pay expenses serving the occupational interests of its members; another is a trade association's investment income, used for business expenses or to reduce the members' dues and assessments. In both cases, if the investment income were imputed to (or realized by) the members, they would be entitled to offsetting deductions under § 162. This is why to tax such income would be in effect to penalize taxpayers for doing together what they could do separately without being taxed. In sum, mutual benefit organizations should be taxed only to the extent of their investment income if such income would not be immune from tax in the hands of their members, or to the extent they do business with nonmembers in a way that produces something akin to "profit."

Comments

The Deterrent Effect of Capital Punishment: Ehrlich and His Critics

Jon K. Peck†

Editors' Introduction

In the December issue, the *Journal* published a statistical debate on the deterrent effect of capital punishment between Professor Isaac Ehrlich and two sets of critics, Messrs. Baldus and Cole and Bowers and Pierce. Professor Ehrlich's original study of capital punishment, published last spring in the *American Economic Review*, used sophisticated statistical techniques to arrive at conclusions very different from earlier research in the field.[a] Using regression analysis and economic theory, Ehrlich formulated and tested a model of the determinants of the murder rate, and found a significant deterrent effect associated with the use of the death penalty in the United States over the period from 1935 to 1969. The earlier research of Thorsten Sellin and others had consistently found no evidence of a deterrent effect. The issue of deterrence—in particular the technical merits of the Ehrlich study—has been raised in cases pending before the Supreme Court challenging the constitutionality of capital punishment.[b]

In their critiques in the previous issue of the *Journal*, Baldus and Cole argue that Ehrlich's approach is less appropriate for testing the deterrent effect of capital punishment than are the less complex techniques used in

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a. Ehrlich, *The Deterrent Effect of Capital Punishment: A Question of Life or Death*, 65 Am. Econ. Rev. 397 (1975).

b. *See* Editors' Introduction, *Statistical Evidence on the Deterrent Effect of Capital Punishment*, 85 Yale L.J. 164 69 (1975). Fowler v. North Carolina, *cert. granted*, 419 U.S. 963 (1974), *argued*, 43 U.S.L.W. 3582 (U.S. Apr. 21, 1975), *restored for reargument*, 422 U.S. 1049 (1975), which involves Eighth and Fourteenth Amendment challenges to capital punishment imposed under a mandatory sentencing procedure, was argued last spring and will be set for reargument this Term. The Court has not yet scheduled the reargument in *Fowler*, but it recently granted certiorari in five other death penalty cases and scheduled them for argument on March 30. 44 U.S.L.W. 3439 (U.S. Jan. 22, 1976): Proffitt v. State, 315 So. 2d 461 (Fla. 1975), *cert. granted sub nom.* Proffitt v. Florida; Gregg v. State, 233 Ga. 117, 210 S.E.2d 659 (1974), *cert. granted sub nom.* Gregg v. Georgia; State v. Roberts, 319 So. 2d 317 (La. 1975), *cert. granted sub nom.* Roberts v. Louisiana; State v. Woodson, 215 S.E.2d 607 (N.C. 1975), *cert. granted sub nom.* Woodson v. North Carolina; Jurek v. State, 522 S.W.2d 931 (Tex. Crim. App. 1975), *cert. granted sub nom.* ... For a discussion of the facts of each of these cases, see N.Y. Times, Jan.

earlier research;[c] Bowers and Pierce adopt Ehrlich's approach but argue that no evidence of a deterrent effect is found when his method is correctly applied.[d] Ehrlich's reply defends the findings of his original study and attacks the analysis of his critics.[e] In this issue, Professor Peck comments on the debate between Ehrlich and his critics, and Professor Ehrlich adds a brief Rejoinder.

In his study of the deterrent effect of capital punishment, Professor Ehrlich estimated a sophisticated econometric model of a type common in more traditional areas of economic analysis.[f] As in any empirical analysis, his econometric specification and choice of data require assumptions beyond those which may be derived from his theoretical analysis. These assumptions concern the functional form of the relationship between the murder rate and its determinants, the form of the remaining but unestimated equations in the overall model of the supply and (negative) demand for murder, the nature of the random disturbance term, the stability of the coefficients over time, the accuracy and appropriateness of the data, and the consequences of aggregating the behavior of individuals to the national level. The correctness of many of these assumptions depends on the correctness of others in this list. Ehrlich's assumptions have been challenged by Bowers and Pierce and by Baldus and Cole in articles in the previous issue of this *Journal*. In this Comment, I will discuss some of their criticisms of Ehrlich's analysis, suggest ways of resolving these disagreements, and point out some weaknesses of the paired-state or matching method—the approach which Baldus and Cole prefer to Ehrlich's regression technique. In addition, I will address briefly Ehrlich's reply to the two critiques of his work.[g]

I. Ehrlich's Critics

Both critiques address the issue of the proper functional form of the relationship between the murder rate and its determinants. It is claimed that evidence of a deterrent effect is found with the logarithmic form but not with the linear form, and that therefore Ehrlich's results depend critically on his choice of functional form.[h]

It is quite true that the incorrect use of a logarithmic form can cause the relatively small values for execution risk in the recent years in Ehrlich's sample to appear to be statistical aberrations which strongly influence the regression line. While the critiques point out the difficulty with using a logarithmic form for values of execution risk approaching zero,[i] there are also problems with using the linear form for these values.[j] The theoretical analysis is not much help in choosing the correct functional form, but the data are. Statistical tests applied to the data can determine the best form over a range of possibilities which includes both the linear and logarithmic forms.[k] Of course neither form is likely to be exactly right, but only an approximately correct shape for the function is needed.

The related question of whether the same model adequately covers both the earlier and later sample periods—whether there is a structural change in the underlying relationship over time—is also a testable proposition. Bowers and Pierce find that the sign of the estimated elasticity of the homicide rate with respect to execution risk changes when the most recent years are dropped from Ehrlich's time series. They reject the possibility that the effect of the death penalty changed in recent years and conclude that the negative association between execution risk and the homicide rate is merely a statistical artifact.[l] But neither Ehrlich nor these critics have rigorously tested for structural change over the sample period. One such test recently reported found evidence of a significant structural shift between the periods 1948-1962 and 1963-1969.[m] In other words, in the recent subperiod the murder rate may be determined by different factors or may be determined by the same factors in a different way. However, the evidence of what appears to be structural change may also be the result of an incorrect specification of the model for the entire time period.

c. Baldus & Cole, *A Comparison of the Work of Thorsten Sellin and Isaac Ehrlich on the Deterrent Effect of Capital Punishment*, 85 YALE L.J. 170 (1975).

d. Bowers & Pierce, *The Illusion of Deterrence in Isaac Ehrlich's Research on Capital Punishment*, 85 YALE L.J. 187 (1975).

e. Ehrlich, *Deterrence: Evidence and Inference*, 85 YALE L.J. 209 (1975) [hereinafter cited as *Ehrlich Reply*].

f. An econometric model consists of equations derived from economic theory [illegible] using regression analysis. *See* Editors' Introduction, *supra* [illegible].

g. Baldus & Cole, *supra* note c, at 181; Bowers & Pierce, *supra* note d, at 199-200.

h. *See* Baldus & Cole, *supra* note c, at 175 & n.22; Bowers & Pierce, *supra* note d, at 201-02. For a general discussion of this problem, see Young & Young, *Estimation of Regression Involving Logarithmic Transformations of Zero Values in the Dependent Variable*, 29 AM. STATISTICIAN 118-20 (1975).

i. The linear form uses the natural values of all variables, including execution risk, which can never be less than zero. When execution risk approaches zero, the disturbance term cannot assume large negative values. This constraint causes the estimated regression equations to have a systematic error. *See* H. THEIL, PRINCIPLES OF ECONOMETRICS 628-32 (1971).

j. *See* Box & Cox, *An Analysis of Transformations*, 26 J. ROYAL STAT. SOC'Y 211-52 (1964).

k. Bowers & Pierce, *supra* note d, at 200.

l. P. Passell & J. Taylor, The Deterrent Effect of Capital Punishment: Another View, [illegible] Columbia Univ. Dep't of Economics (on file

2. Bowers and Pierce stress the inaccuracy in Ehrlich's crime data for the early years in his sample.[9] The seriousness of this problem is impossible to judge. However, the FBI procedure—retroactively readjusting the early data based on analysis of the effects of later increases in the coverage of the reporting network—is similar to the accepted Census Bureau method of adjusting economic time series data for the effects of seasonal variation by using adjustment factors computed in part from later data. The time series generated by the FBI procedure may be amenable to regression analysis.

The inaccuracy of the data is compounded by the inability of Bowers and Pierce to replicate Ehrlich's estimates.[10] I do not know who is correct, but the differences seem too large to attribute to small differences in the definition of the variables or to correlations among the explanatory variables.[11] Ehrlich is clearly right in suggesting that the large differences in the estimates of the serial correlation coefficient reported by him and by Bowers and Pierce raise the question of error in the computation of this and other more important coefficients.[12] Good standards of documentation require that authors spell out exactly their computational procedures and identify the computer programs used.[13]

3. As Baldus and Cole emphasize, the level of aggregation of the analysis has an important effect on the validity of the conclusions.[14] If there are substantial state or regional variations in behavior, and if arrest and punishment for homicide primarily involve the behavior of individuals and states, then estimation of the model ought to be done at the level of the state or, better, the individual. Nothing in Ehrlich's general approach precludes an application of his model to more disaggregated data.[15] However, aggregate analysis is frequently

9. Bowers & Pierce, *supra* note d, at 187-92.

10. *Compare id.* at 195 n.19 (Table III) *with* Ehrlich, *supra* note a, at 410 (Table I), *see Ehrlich Reply*, *supra* note e, at 210-11.

11. For an explanation of why this problem—known as multicollinearity—may lead to large differences in estimated coefficients with small differences in the data sample, see R. Wonnacott & T. Wonnacott, Econometrics 59-63 (1970).

12. *Ehrlich Reply*, *supra* note e, at 211. The serial correlation coefficient measures the correlation between successive values of the disturbance term. If there are computational errors in the calculation of this coefficient, there will also be errors in the estimated elasticities for the explanatory variables.

13. In his reply, Ehrlich does identify the computational procedures he used, and they appear to be reliable. *Id.* at 211 n.7.

14. Baldus & Cole, *supra* note c, at 175-77.

15. Ehrlich asserts that his new unpublished research using statewide data supports the findings of his original study. *Ehrlich Reply*, *supra* note e, at 217. Since I have not seen this work, I cannot comment on it. However, a recently published study based on [illegible] theoretical model similar to Ehrlich's found no evidence [illegible] *Deterrent Effect of the Death Penalty: A Statistical Te*[illegible]

performed in conventional economic problems with reasonable effectiveness. Such an analysis will be free of a statistical bias if the additional variables which ought to be included at the disaggregate (*e.g.*, state) level of analysis are unrelated to the explanatory variables at the aggregate level. However, the omissions will reduce the ability of the aggregate model to predict the murder rate.

4. The most basic point raised by Ehrlich's critics is the challenge by Baldus and Cole to his use of economic theory and regression analysis rather than experimentally based statistical procedures. The above enumeration of the problems with Ehrlich's analysis might suggest that an econometric approach to this problem is hopeless and that the paired-state comparisons endorsed by Baldus and Cole should prevail.[16] But there are also difficulties with the latter approach, especially in a situation in which some relevant variables cannot be controlled or even measured.

Ehrlich begins with a careful economic analysis of the determinants of murder. Many researchers, including some economists, might object that his theory applies at best only to a small subset of homicides and that he has failed to identify and take into account some important causal factors. To the extent that these variables can be specified and measured, they can be tested and controlled for; to the extent they cannot be so identified, one must assume they are not related to the other explanatory variables. If this assumption is false, Ehrlich's results are biased. For some of the variables, such as the urban migration rate, which Baldus and Cole suggested should be included,[17] the assumption seems plausible; for others, such as the level of crimes against property, the assumption seems implausible.

Any analysis must proceed conditionally on the specification of the model. Ehrlich's econometric approach involves many assumptions, some of which are testable; if these assumptions are true or nearly true,[18] his method is able to use them to detect effects which might be too small to detect in a less fully specified model. No one claims that the deterrent effect of capital punishment is large, and it is consequently very important to bring the data to bear on the question as efficiently as possible. Ehrlich imposes a theoretical framework on his empirical analysis and necessarily makes more assumptions than are required in the paired-comparison analysis. If these assumptions

16. The paired-state or matching method compares homicide rates in neighboring abolitionist and retentionist jurisdictions which are as alike as possible with respect to the influences on the homicide rate. See Baldus & Cole, *supra* note c, at 171-72, 177.

17. *Id.* at 180.

18. See, *e.g.*, Fisher, *On The Cost of Approximate Specification in Simultaneous*

are wrong, his conclusions are wholly or partially invalid. But many of these assumptions are testable.[19]

The matching approach has its own set of difficulties. It imposes relatively little explicit structure on the problem and is perhaps less likely than the econometric approach to find effects which are weak. The fundamental problem, however, is that the data are not generated in a controlled experiment. In making matched pairwise comparisons, the choice of pairs is inevitably subjective. To ensure that states are matched on all relevant variables requires a theory just as detailed as in an econometric analysis. In a classical experimental procedure, the control states and treatment levels are assigned randomly to observations to ensure that the effects of omitted variables are not systematic. This is obviously impossible in a "social experiment" where the death penalty is the treatment variable. Even if states are correctly matched in terms of the averages of all relevant variables, other differences may be important. For example, of two states with the same average permanent income, one may have a much greater proportion of low income families than the other. If low income families were disproportionately responsible for homicides, the pairing of the two would be inappropriate.

Another difficulty is the problem of spillovers between states. If state *A* has and uses the death penalty and its paired state *B* does not, it is possible that potential murderers would migrate to state *B* to avoid the death penalty and would thereby cause state *B* to have a higher homicide rate. One could not extrapolate from this comparison to a situation where all states or no states used the death penalty, since in that situation no one could avoid the penalty by migrating to an abolitionist state. Put another way, a murderer might be determined to commit the crime, regardless of the penalty, but might choose to commit it in the state where the consequences are less costly to him. The results of this behavior would give the appearance of a deterrent effect when none is present.

A final difficulty is the possible response of punishment policies to homicide rates. For example, if high or rising homicide rates led states to institute the death penalty and low or declining rates led states to abolish the penalty, retentionist states would tend to have higher homicide rates. This relationship could cancel out a possible negative correlation which would be produced if the penalty were in fact a deterrent. The paired-comparison approach cannot adequately

19. The argument for assuming the validity of certain basic (and statistically unverifiable) economic procedures in order to test more specific hypotheses is summarized in

separate these effects, and consequently could fail to yield evidence of an underlying deterrent relationship. On the other hand, the particular regression procedure used by Ehrlich specifically takes account of the possible response of punishment variables to the murder rate.[20]

Any properly executed statistical analysis must include careful diagnostic checking of the model and consideration of alternative models which might also be consistent with the data. When using aggregate time series data, a number of different specifications are usually in general accord with the evidence. Thus the choice among competing models must be based on underlying theoretical analysis and on such empirical clues as particular data points which do not fit the model, correlations among explanatory variables, and stability of the important results under alterations in untestable and weakly maintained assumptions. For the reader to understand and evaluate the author's conclusions, some summary statement of the author's examination of this evidence is vital.[21] Any sound regression analysis must provide such a statement. Diagnostic procedures may be less necessary for a paired-comparison analysis, which requires fewer assumptions, but the diagnostics should include, for example, an investigation of the sensitivity of the findings to the choice of pairings.

II. Ehrlich's Reply

1. In his original article, Ehrlich emphasized as support for his analysis that the ranking in order of magnitude of the estimated effects of his three deterrence variables conforms to his theoretical predictions.[22] In his reply, he emphasizes that Bowers and Pierce, in attempting to replicate his results, obtained the same ranking for these estimates.[23] However, he does not show that this ranking would be inconsistent with other theories of the relationship between capital punishment and the murder rate. In the absence of such a demonstration, this evidence does not provide the strong support he claims.

20. In a regression equation in which the dependent variable (here the murder rate) exerts a causal influence on an explanatory variable (here the fraction of those convicted of murder who are executed), the equation must be estimated as if embedded in a larger model which simultaneously determines both variables. Ehrlich used a procedure appropriate for simultaneous equation estimation. *See* Ehrlich, *supra* note a, at 406; *Ehrlich Reply*, *supra* note c, at 219 (use of three round regression procedure related to two stage least squares).

21. In his reply, Ehrlich states that the results of diagnostic tests performed in the course of his research now in progress show that the logarithmic form is optimal for estimating his equation. *Ehrlich Reply*, *supra* note c, at 218 (likelihood ratio tests for optimal functional form within the class of single parameter power transformations).

22. Ehrlich, *supra* note a, at 411–416.

2. Ehrlich argues that the presence of errors of measurement in a variable can only weaken the variable's estimated effect and hence that improvements in the data could only strengthen his conclusions.[24] Economists are nearly always forced to use imperfect data and yet have drawn many strong empirical conclusions from them. But only the most harmless sorts of measurement error unambiguously reduce the estimated effects of a variable. If measurement errors in a variable are correlated with each other over time or are systematically related to other variables in the analysis, reducing the measurement errors will not necessarily strengthen the estimated effect. For example, when crime rates are high, the police may feel increased pressure simply to arrest someone for a crime even if that person is subsequently released. In Ehrlich's model the probability of arrest of the murderer, which is measured by the percent of murders cleared by an arrest, would then contain a measurement error correlated with the homicide rate. Because of the possibility of nonrandom measurement errors, Ehrlich should not assume that the true effects of execution risk and the other deterrence variables are systematically larger than the estimated effects.

3. Ehrlich argues that Bowers and Pierce have selectively deleted observations in order to distort his empirical findings.[25] However, examining subsets of the data to see if they are mutually consistent is an important part of validating a regression analysis. It is particularly important to examine the recent data, which in Ehrlich's analysis are most affected by the logarithmic transformation and which are in any event most relevant for policy analysis. Ehrlich correctly points out that estimation from a subset will be inefficient because of the reduced variability in the sample,[26] but he overlooks the purpose for estimating over subperiods—checking the specification of the model. When he analogizes the subperiod estimations performed by Bowers and Pierce to the selective deletion of observations in a regression analysis of the relationship between corn prices and quantities of corn demanded, he misses the point. In the terms of his example, Bowers and Pierce are asking whether the nature of the demand for corn has changed since the explosion in food prices of a few years ago; they are not trying to reverse the slope of the regression line by eliminating particular data points that give the line a negative slope.

4. Ehrlich defends his use of the logarithmic form for estimating his equation, but he does not address the problem of how to treat very small or zero values in the variables, a problem which is central to the criticisms made by Bowers and Pierce.[27]

5. Ehrlich attacks the conclusion of Bowers and Pierce that the regression results are better for samples which omit the data from the 1960's.[28] While he correctly identifies statistical errors in their discussion, their basic finding—that whether the estimated effect of execution risk on the murder rate is positive or negative depends on the ending point of the sample period—casts doubt on the stability of Ehrlich's results.

None of the studies considered here can be said to have resolved the question whether the death penalty deters murder. The regression approach can be improved by better specification, better diagnostic testing and disaggregation. The analysis should consider time series data on states in ways that to some extent bring it closer to the paired-comparison method. Thus a resolution and synthesis of these approaches may be possible. Ehrlich concludes in his reply that no statistically meaningful evidence has been presented against his analysis and that his analytical framework withstands the criticisms raised against it. Without denying the usefulness of his approach, which appears to me potentially fruitful, I believe that his particular finding of a deterrent effect rests on as yet inadequately tested assumptions and on an incompletely validated model. I shall await with considerable interest his further contributions on the questions raised in this debate without, for the moment, concluding that he has established a statistically significant deterrent effect.

Finally, I would like to note that according to Ehrlich's equations, a one percent change in per capita income or labor force participation has a much greater effect on the homicide rate than does a one percent increase in the use of capital punishment.[29] Even if the deterrent effect of capital punishment were of statistical significance, it may be so small relative to other influences on the murder rate that it is of little practical significance.

24. *Id.* at 213, 227.

25. *Id.* at 209, 211-17.

26. [illegible] should also be noted that there are alternative estimation pro-

27. *See* p. 361 *supra*. Ehrlich also asserts that using the natural rather than logarithmic values of the variables yields evidence of a deterrent effect. As independent support for this conclusion, he cites an unpublished paper by J. Yunker, The Deterrent Effect of Capital Punishment: Comment, Oct. 1975 (unpublished manuscript, on file with *Yale Law Journal*). I believe Ehrlich would reject the analysis in that paper on grounds similar to his criticism of Sellin's work. Further, Yunker's conclusion that "the real [deterrent] effect is at least five times the size of the effect estimated by Professor Ehrlich" is unmitigated conjecture. *Id.* at 17. The paper also appears to contain technical errors.

28. *Ehrlich Reply*, *supra* note c, at 219-20.

29. *See* Ehrlich, *supra* note a, at 402-10 (Tables 2 & 3) (elasticities for labor force participation and per capita income substantially larger than for conditional probability of execution).

Rejoinder

Isaac Ehrlich†

I appreciate Professor Peck's undertaking to comment on my reply, published in the last issue of this *Journal*, to critics of my work on murder and capital punishment. I wish to address briefly only a few of his remarks.

Peck suggests that the results of my regression analysis concerning the ranking of estimated elasticities of the murder rate with respect to measures of apprehension, conviction, and execution risk could be consistent with alternative theories of crime. In principle, such a possibility never can be denied. I believe his criticism would have been more constructive had he identified what specific theories he has in mind. Unfortunately, he errs in stating that I have not examined this possibility myself. In my own study, I have addressed the issue of whether a theory of crime based upon incapacitating effects of punishment could produce the same ranking of elasticities observed in the study.[1]

I believe that Peck mistakenly ascribes to me an argument that I have not advanced. I have not argued that "errors of measurement" can *only* work against the hypothesized deterrent effect. My reference to the classical case of "errors of measurement" has been quite specific. Curiously, contrary to his own argument, Peck's example in which errors of measurement in apprehension risk are *positively* correlated with the murder rate[2] does, of course, further illustrate why "errors of measurement" are likely to work against the hypothesized deterrent effect of apprehension. My basic point has been that if the variables used in the empirical analysis grossly misrepresent the theoretical variables that they purport to measure, then there is no reason to expect findings consistent with the detailed theoretical predictions.

I am glad Peck agrees with my criticism of statistical errors committed by my critics in their inferences from regression analyses of

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1. Ehrlich, *The Deterrent Effect of Capital Punishment: A Question of Life or Death*, 65 AM. ECON. REV. 397, 413 11 (1975).

2. Peck, *The Deterrent Effect of Capital Punishment: Ehrlich and His Critics*, 85 YALE L.J. 359, 366.

subperiods of the full sample.[3] I do not agree with him, however, that my critics' work has addressed the issue of the stability of the regression equation, since they report no tests of stability. Nor do any of the works cited by Peck provide valid tests of stability. While I could not address this technical issue directly in my reply, I did indicate what I believe are the basic reasons for the apparent weak results obtained from analysis of certain specific subperiods.

Many difficulties in research on criminal behavior should rightfully occupy the thoughts of interested scholars, and skepticism is the essence of scholarly work. I am grateful to the editors of the *Yale Law Journal* for allowing me to express my skepticism on some aspects of the work that has been conducted in this area and to elaborate upon my own research.

3 *Id.* at 367.

It may also be of some interest to note that the test of optimal transformations in connection with the form of the regression equation the Box and Cox procedure - - - Peck suggests as the way of determining the efficiency of the logarithmic-linear form is the same one to which I have already referred in my reply. *Compare id.* at 367 n.6 *with* Ehrlich, *Deterrence: Evidence and Inference*, 85 YALE L.J. 209, 218 (1975). Peck does not recognize, however, that the problem of treating zero values of variables can be overcome through an appropriate transformation.

V. Conclusion

This Article concludes this four-part series on oligopolistic pricing. As has been demonstrated, contrived oligopolistic pricing suits will create many allocative and distributional benefits, particularly when they are brought in industries in which D/QV and P/MC are higher than average. Therefore, I have no doubt about the desirability of prosecuting oligopolistic pricing under the Sherman Act whenever it can be proved that explicit anticompetitive threats or promises have been communicated. In fact, although any final conclusion about this issue must await further evidence about the cost of proving illegal oligopolistic pricing whenever verbal threats or promises cannot be proved directly, I suspect that it also would prove desirable to bring (explicitly or implicitly) contrived oligopolistic pricing suits under the Sherman Act on the basis of the kind of circumstantial evidence described in Part III—at least in industries in which D/QV is not too far below average. Indeed, I even think a very good case can be made for passing new legislation that would condemn natural as well as contrived oligopolistic pricing—or at least for trying to prepare the way for such legislation by attempting to educate the business community and the general public to recognize the harmful effects of this practice and, concomitantly, the desirability of its prohibition. In any case, I believe that it would be desirable to prohibit the kind of premature announcement of prices that facilitates natural oligopolistic pricing.[38] I hope that this Article has established not only these results but also the usefulness of applying a sophisticated welfare economics framework when trying to evaluate micro-economic policies.

38. On the other hand, I doubt the desirability of prohibiting a seller from taking advantage of the fact that his rivals would not charge his customers conventional competitive prices even if he would not respond to their behavior, and I am certain that one should not preclude firms from taking advantage of their own competitive advantages. In brief, I would oppose both such prohibitions because I suspect that they would tend to result in too little QV investment being made in a world in which oligopolistic pricing was prohibited and consumer surplus was abundant. *See* Cha*hot*, *supra* note 11, at 37–38; Three Types, *supra* note 20.

The Deterrent Effect of the Death Penalty: A Statistical Test*

Peter Passell†

Any number of arguments may be brought to bear on the issue of capital punishment. One might, of course, oppose or favor the use of the death penalty on moral considerations alone. Equally reasonably, one's opinion might be shaped by how fairly the punishment is administered in practice; the penalty may be applied selectively[1] or reserved for a narrow range of crimes that resist precise legal definition.[2] For many people such arguments alone are not likely to be persuasive. Execution may be commonly viewed as a distasteful alternative to other forms of punishment, but an alternative that could be defended on pragmatic grounds, if the gains in crime prevention are sufficiently great. Thus, informed public opinion might in theory be strongly influenced by evidence of capital punishment's capacity to deter murder and other crimes. If the death penalty were shown conclusively to deter violent crime, many people with moral or legal reservations would accept the costs of the deterrent to obtain its benefits.

The deterrent effect of the death penalty is of particular interest today because courts and legislatures are in the process of redefining the circumstances under which convicted felons may be executed.[3] While the legal merits of the death penalty could be determined by arguments unrelated to

* The author is extremely grateful for the assistance of Lee Friedman, David Kennett, and John [illegible] in the preparation of this Article.

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1. Indeed, the possibility of selective application was the rationale of *Furman* v. *Georgia*, 408 U.S. 238 (1972): "[W]e know that the discretion of judges and juries in imposing the death penalty enables the penalty to be selectively applied . . . ." *Id.* at 255. "[T]hese discretionary statutes are unconstitutional in their operation. They are pregnant with discrimination and discrimination is an intolerable element not compatible with the idea of equal protection of the laws that is implicit in the ban on 'cruel and unusual' punishments." *Id.* at 256–57.

2. *See* C. Black, Capital Punishment: The Inevitability of Caprice and Mistake 19 (1974) (suggesting standards defining homicide).

3. Since the holding of *Furman* that statutes allowing discretionary application of the death penalty are unconstitutional, *see* note 1 *supra*, the state legislative response has been to enact statutes mandatorily imposing the death penalty for conviction of certain crimes. Thirty states have enacted such statutes, *see* Brief for Petitioner at Appendix A, Fowler v. North Carolina, No. 73-7041 (U.S. [illegible]).

The current death penalty litigation centers on *Fowler*, a convicted murderer's challenge to the North Carolina death penalty statute. The basis of the challenge is that given *Furman*'s proscription of discretionarily applied statutes, statutes enumerating crimes for which the death penalty is mandatory are unconstitutional because they do not eliminate the discretion inherent in arrest and prosecution, where a charge becomes determinative of the crime for which one is convicted and thus in turn whether the sentence of death will be imposed. *See* Brief of Petitioner, *supra* at 16–[illegible]. Argument was heard on [illegible], 1975, but a decision was postponed and reargument was scheduled, [illegible] U.S. [illegible], No. 73-7041, [illegible].

deterrence,[4] to the extent that pragmatic concerns are influential[5] the issue could turn on current research in the area.

I. Isaac Ehrlich and His Critics

Opponents of capital punishment can point to a substantial body of empirical literature in psychology and criminology that finds little evidence of a deterrent effect.[6] Recently, however, an economist, Isaac Ehrlich, has completed what is claimed to be an objectively superior statistical test of capital punishment deterrence in the case of murder.[7] When applied to data collected for the United States over the past four decades, Ehrlich concludes that a deterrent effect is discernible.[8]

Prior to Ehrlich's study researchers attempted to test deterrence hypotheses by comparing murder rates in jurisdictions with capital punishment and those without,[9] or murder rates in the same jurisdiction before and after capital punishment was abolished.[10] Another approach has been to compare murder rates before and after death sentences were imposed, or before and after executions actually took place.[11] Under all three approaches, the goal has been to isolate the effect of the death penalty threat from other factors that might explain variations in homicide rates.

While matching culturally similar states or contiguous time periods in a single city or state may be a reasonably effective device for holding social and economic factors constant, it typically also means that very few observations will be available. This data scarcity makes rigorous statistical hypothesis testing very difficult. Hence, even were one to accept without qualification the validity of such research designs and the accuracy of the data employed, their evidence against deterrence could not be considered conclusive.

Ehrlich's approach—following from recent theoretical contributions to the explanation of illegal behavior[12]—is very different. Rather than using the legality or simple frequency of the application of the death penalty (executions per murder) as a surrogate for the subjective threat of capital punishment, Ehrlich employs executions per homicide conviction. Instead of comparing similar jurisdictions or time periods as a device for holding other explanatory variables constant, he specifies an additional set of explanatory variables (income, unemployment, age structure, etc.) and then uses the statistical technique of multivariate regression to isolate the impact of the death penalty deterrence variable. Observation points consist of annual data for the entire United States covering the time period 1935 to 1969.

Ehrlich's conclusions are as different as his technique. While Sellin and others found no evidence of deterrence, Ehrlich discovers a statistically significant trade-off between the murder rate and executions per conviction. The trade-off implies that a 1.00 percent increase in the execution rate will reduce murders by about 0.06 percent.[13] This translates into the "eight lives saved per execution" figure boasted by the Justice Department[14] and reported in the press.[15]

Ehrlich's findings have been criticized on a number of grounds.[16] These critiques find that Ehrlich's results are extremely sensitive to the choice of the time period included in the regression analysis[17] as well as to the mathematical specification of the regression model[18] and note that Ehrlich assumes the causes of murder are the same in all parts of the United States.[19]

4. *See* notes 1 & 3 *supra*.

5. While pragmatic arguments are traditionally grist only for the legislative mill, even the Supreme Court has discussed the deterrence question, although the legal issue before the Court was framed in terms of the constitutionality of discretionary application. *See, e.g.*, Furman v. Georgia, 408 U.S. 238, 345–55 (1972) (Marshall J., concurring).

6. The principal contributor to this literature is Thorsten Sellin. *See, e.g.*, T. Sellin, The Death Penalty: A Report for the Model Penal Code Project of the American Law Institute (1959); Capital Punishment (T. Sellin ed. 1967); Sellin, *Capital Punishment*, 25 Fed. Probation at 3 (Sept. 1961). *See also* W. Bowers, Executions in America (1974); P. Pan & J. Taylor, The Deterrent Effect of Capital Punishment: Another View, March 1975 (unpublished Columbia University Discussion Paper 74-7509) *reprinted in* Reply Brief for Petitioner, at Appendix E, Fowler v. North Carolina, No. 73-7031 (Oct. Term 1974); Bailey, *Murder and the Death Penalty*, 65 J. Crim. L. & C. 416 (1974).

7. Ehrlich, *The Deterrent Effect of Capital Punishment*, 65 Am. Econ. Rev. 397 (1975). *See also* I. Ehrlich, The Deterrent Effect of Capital Punishment: A Question of Life or Death, Rev. ed. (National Bureau of Economic Research Working Paper No. 18) *reprinted in* Solicitor General's Brief for the United States as Amicus Curiae, Fowler v. North Carolina, No. 73-7031 (Oct. Term 1974).

8. *See* Ehrlich, *The Deterrent Effect of Capital Punishment*, 65 Am. Econ. Rev. 397, 415 (1975).

9. *See* T. Sellin, *supra* note 6, at 23–34; Capital Punishment, *supra* note 6; Sellin, *supra* note 6, at 3.

10. *See* T. Sellin, *supra* note 6, at 33–52; Sellin, *supra* note 6, at 5–6.

11. *See, e.g.*, Dann, *The Deterrent Effect of Capital Punishment* in Friends Society Service Bull. No. 29 (1935); Graves, *The Deterrent Effect of Capital Punishment in California* in The Death Penalty in America (H. Bedeau ed. 1967); Savitz, *A Study in Capital Punishment*, 49 J. Crim. L.C. & P.S. 338 (1958).

12. *See, e.g.*, The Economics of Crime and Punishment (S. Rottenberg ed. 1973).

13. Ehrlich, *supra* note 8, at 414.

14. *See* Solicitor General's Brief for the United States as Amicus Curiae, Fowler v. North Carolina, No. 73-7031 (Oct. Term 1974).

15. *See* Washington Post, April 13, 1975, § A, at 1, col. 1; Los Angeles Times, May 5, 1975, at 26.

16. Two types of critical response have been forthcoming. First, economists have found fault with Ehrlich's model. *See* P. Passell & J. Taylor, *supra* note 6. Second, scholars have questioned the use of econometric models for death penalty research, preferring instead comparative studies such as that by Sellin. *See* D. Baldus & J. Cole, A Comparative Analysis of the Empirical Work of T. Sellin and I. Ehrlich as a Basis for Inferring a Causal Relationship Between Capital Punishment and the Homicide Rate in the United States, May 1975 (unpublished paper on file at the Univ. of Iowa).

17. *See* P. Passell & J. Taylor, *supra* note 6, at 45–56.

18. *See* P. Passell & J. Taylor, *supra* note 6, at 60–70.

19. *See* D. Baldus & J. Cole, *supra* note 16, at 19. By the choice of time series observations for the United States as a whole, Ehrlich is, in certain respects, able to make best use of this data, in other respects not. For example, one might expect annual variations in U.S. unemployment rates to reflect more accurately differences in unemployment than variations in unemployment rates between states in the same year.

On the other hand, the value of aggregate United States time series data for the purpose of econometric testing is limited by the need to make a number of assumptions. First, one must assume that the structure of the system explaining murderers' behavior remains the same, or virtually the same, for the entire time period. Second, there must exist a national market for murder in the sense that a change in some national aggregate (per capita income, unemployment, etc.) must have nearly the same effect on murders no matter what the geographic location of the change. One extra execution

Ehrlich also is subject to criticism for his use of Federal Bureau of Investigation crime data.[20] Furthermore, as Ehrlich has noted himself, the trade-off derived between murders and executions depends upon holding constant all other variables in the system, including arrest and conviction rates.[21] Even a modest reduction in conviction rates associated with a rise in execution rates might reverse the impact of the deterrent; Ehrlich's work is therefore consistent with the conclusion that more executions would result in more murders.[22]

Hence, from a conservative scholarly perspective, little has been demonstrated to date about capital punishment deterrence. Opinions, pro or con, must be derived from other sources, empirical or theoretical. Nonetheless, some might argue that Ehrlich has made a prima facie case for the deterrent effect of the death penalty and therefore the burden shifts to the opposition to find contradictory evidence. However one chooses to evaluate Ehrlich's research and that which preceded it, the desirability of additional tests of the deterrence hypothesis using different data is clear. This Article presents such a test using multivariate regression analysis on cross-section state data for the United States for the census years 1950 and 1960.

II. A Model of Murder

Consider the model

(1) $\quad q/n = q(p, s, z)$,

where murders per capita (q/n) are a function of the subjective probability of punishment (p), the severity of punishment for those convicted (s), and a vector of socio-economic variables (z). At this level of generality the model differs little from crime models proposed by Becker[23] and tested by Ehrlich.[24]

Specifying the model more fully,

(2) $\quad q/n = q(p, t, e, a, i, m)$,

where p = the perceived probability of punishment,
t = the perceived prison sentence for those not executed, given conviction for murder,
e = the perceived probability of execution given conviction,
a = a demographic adjustment for otherwise unaccounted-for variations between age groups in the propensity to commit murder,
i = an economic adjustment for otherwise-unaccounted-for variations between income groups in the propensity to commit murder,
m = an adjustment for the proportion of the population which has few family or social ties in the community.

A theoretical justification of equation (2) merits little space here because the ground is covered thoroughly elsewhere.[25] The variables p, t, e are all deterrence variables in the sense that each influences the expected loss to the murderer. Variable p is the product of two variables, the subjective probability of arrest, and the probability of conviction given arrest used by Ehrlich.[26]

A demographic variable a is included to increase the efficiency of the estimators of the principal deterrence variables, since young adults are believed more prone to commit violent crimes.[27] Similarly, some adjustment i

must have an almost identical impact on total murders, whether the execution takes place in Nebraska or Louisiana.

This is more restrictive than the assumption of a similar structure in every state, since aggregation of similar non-linear systems could introduce errors on its own. Suppose for example, that doubling the number of executions from one to two would have the effect of cutting murder rates by ten percent in either Maine or Louisiana. Suppose further there are 500 murders each year in Louisiana and ten in Maine. An increase of one execution in Louisiana would reduce total murders by 50, while an increase of one execution in Maine would deter only ten murders.

In addition, the use of time series data creates purely econometric problems, introducing additional complexity to the interpretation of estimated coefficients. While the value of any econometric technique employed is dependent on a pyramid of assumptions, (1) hypothesis testing with time series estimators is conditional on a larger set of these assumptions; (2) interpretation of estimates will be more dependent upon large sample properties.

20. While use of Uniform Crime Reports as a data base for any study is subject to criticism because the index contains only *reported* crimes, Ehrlich's study is particularly infirm because he used data from the early years of the index when, due to a smaller and less representative sample, it was much less accurate than it is today. *See* Staff Report to Nat'l. Comm'n on the Causes & Prevention of Violence (1969).

21. Ehrlich, *supra* note 8, at 415.

22. *See* part V *infra*.

23. Becker, *Crime and Punishment: An Economic Approach*, 42 J. Pol. Econ. 169 (1968).

24. *See* Ehrlich, *supra* note 8; Ehrlich, *Participation in Illegitimate Activities: A Theoretical and Empirical Investigation*, 81 J. Pol. Econ. 521 (1973). Note, however, that this Article argues that there exists no purely economic explanation of murder in contrast to sociological or psychological explanations. Presumably, the features that distinguish economic models in this context are assumptions of rationality--attempted maximization of perceived self-interest. Some notion of utility maximization, some consistent relationship in which individuals are influenced by their perceived self-interest does lie behind the model proposed here. At the same time the model is sociological and psychological, since some of the environmental variables considered below could easily be fitted to sociological and psychological explanations of violence.

25. *See* Ehrlich, *supra* note 8; Ehrlich, *supra* note 24; Mathieson & Passell, *Homicide and Robbery in New York City*, 5 J. Legal Studies — (forthcoming 1976).

26. This Article and Ehrlich's study both use objective probabilities as estimates for subjective probabilities in the models. State-by-state data on arrest rates, needed to separate objective arrest and conviction probabilities, are not available. Ehrlich was able to separate the two probabilities because data are available, year-by-year, for the United States as a whole. Note, however, since our theory is on states variable, the subjective probability of execution given conviction, this lack of data makes no difference.

27. This might simply be because the "price" of crime is lower for them--they may lose less income by spending time in prison; their sentences may be less harsh; they may systematically perceive

for the income of the observed population might be justified, since poor people generally commit more crimes.[28] Ehrlich included such demographic variables in another cross-section study.[29]

None of these variables, however, accounts for the individuals who are undeterred by social sanctions against murder for other reasons such as the absence of strong family ties or lack of friends and acquaintances in the community. Including such non-economic variables may be crucial if the model is to generate useful estimates of the deterrent effects. If a relevant variable is excluded from the model to be tested, estimates of the coefficients of the variables that are included may be seriously biased, as may be estimates of the standard errors.[30] The problem is quite intuitive. For example, Ehrlich's failure to control for such variables as increased racial tension and private ownership of handguns during the 1960's[31] might have led to spurious results. The decreased use of the death penalty might explain the jump in the murder rate during the period, but so might factors that created the general rise in crime.[32]

III. The Data

Data that might be used to estimate models of deterrence are largely limited to statistics collected through the agencies of the Justice Department. This study uses cross-section state data for the continental United States in 1950 and 1960, with 41 observations for the former year, 44 for the latter.[33] Although cross-section data are not subject to some of the infirmities of time series data,[34] the former have problems of their own. Many institutional sources of murder rate variation[35] cannot be controlled for. In addition, some states have only a few observations of variables, increasing possible measurement error. Despite unavoidable difficulties, estimates based on the cross-section should provide valuable counterpoint to alternative deterrence hypothesis tests.

a lower probability of arrest and conviction. However, it is not necessary to accept this economic view to believe that age composition affects murder rates; it may simply be a sociological phenomenon.

28. Again such an adjustment could be justified in opportunity-cost terms, *see* note 27 *supra*, since poor people lose less by being imprisoned, or in socio-psychological terms if poor people are more prone to violence due to frustration, fatigue, and other factors.

29. *See* Ehrlich, *Participation in Illegitimate Activities: A Theoretical and Empirical Investigation*, 81 J. Pol. Econ. 521 (1973).

30. *See, e.g.*, J. Johnston, Econometric Methods (2d ed. 1972).

31. *See* Ehrlich, *supra* note 8, at 406–08, 414 n.15.

32. I am indebted to Brian Forst for this point.

33. In 1950 data were incomplete for Georgia, Idaho, Michigan, North Dakota, Rhode Island, South Dakota, Vermont; in 1960 Idaho, New Jersey, North Dakota, Vermont.

34. *See* note 19, *supra*.

35. A model utilizing cross-section data shares with models dependent upon aggregate U.S. data a hypothesized lack of homogeneity which is not captured by the included environmental variables (poverty, age distribution, migrant population). Therefore this study adds a dummy variable (D_i) in some estimated forms to allow for differences among ten Southern states (Alabama, Arkansas, Florida, Georgia, Louisiana, Mississippi, North Carolina, South Carolina, Texas, Virginia) and the rest of the country. $D_i = 0$, not Southern; $D_i = 1$, Southern.

For convenience, observed surrogates for the model variables are printed in upper case.

Q/N = murder and non-negligent manslaughter offenses per capita reported to the FBI.[36] This statistic is an inefficient estimator for state-to-state variations in q/n because: (1) some fraction of murders is not reported to local law enforcement agencies or is misclassified; (2) some local agencies do not report crime statistics to the FBI, thereby introducing sampling error into state data; (3) manslaughter, one component of Q, is not a capital crime, and is therefore unlikely to be affected by punishments for capital crimes. If such errors are random, however, Q/N will yield unbiased estimates of variations in q/n.

$P = C/Q$ = the ratio of state prison commitments for murder and manslaughter to reported murders and non-negligent manslaughters.[37] Two factors reduce the efficiency of P as an estimate of p. First, the commitment statistic for murder and manslaughter is not an accurate measure of convictions for murder and non-negligent manslaughter: the crime categories are defined differently and commitments may not take place in the same year as convictions. Second, variations in the objective probability of conviction may not accurately reflect variations in the subjective probability of conviction. Note once more, however, that only systematic errors will introduce bias into the estimation procedure.

T = the mean (1960)[38] or median (1951)[39] number of months spent in prison by convicted murderers released that year. T is an inefficient estimator of t for the same reasons that P is inefficient for p. Additional sources of inefficiency include: (1) for some states T is based on sentences served by only a few released prisoners; (2) time spent in prison may not constitute a homogeneous punishment across states, since some prison systems treat prisoners more harshly than others; (3) sentences served by prisoners released this year but convicted years earlier reflect both current and past attitudes toward sentencing.

36. Statistics on murders and non-negligent manslaughters per 100,000 of population are based on U.S. Dep't of Justice, Fed. Bureau of Investigation, Uniform Crime Reports: Crime in the U.S. (published annually) [hereinafter cited as UCR]. UCR 1960, at 38–52, Table 3; UCR 1959, at 38–41, Table 3; UCR 1956, at 89, Table 31; UCR 1950, at 90, Table 32; UCR 1949, at 94, Table 36; UCR 1946, at 97, Table 33.

37. Statistics on commitments to state prisons for murder and manslaughter are from U.S. Dep't of Justice, Bureau of Prisons, Characteristics of State Prisoners 50–51, Table A5 (1960); U.S. Dep't of Justice, Bureau of Prisons, Prisoners in State and Fed. Institutions 73–74, Table 40, 41 (1950).

38. The source of data for this variable is U.S. Dep't of Justice, Bureau of Prisons, Prisoners Released from State and Fed. Institutions 15–18, Table 3 (1960).

39. The source of data for this variable is U.S. Dep't of Justice, Bureau of Prisons, Prisoners Released from State and Fed. Institutions 24–27, Table 5 (1951). (No data were available for 1950.)

$Ex = (X_{x-1} + \ldots X_{x+2})/4C_x$, a four-year average of executions for murder divided by current convictions.[40] A four-year average is used (1) because of long lags between sentencing and execution, (2) because of the extremely small number of executions in any given year, (3) because it seems reasonable to assume some lags in the formation of subjective expectations of execution given conviction.

A = the percentage of the resident population between the ages of 15 and 24.[41] A serves as an estimate for a, which presumably is some weighted average of the age distribution of the population. The weights are unknown because the ratio of crimes among age groups attributable to otherwise-omitted variables is unknown. Thus, the study uses the portion of the population in this high murder-prone age group.

I = the percentage of the family population below an arbitrary cash income poverty line (1950 = $2000, 1960 = $3000).[42] The use of the nominal dollar statistic clearly produces an inefficient estimate of i, but it is not apparent that the error will be systematic.

M = the ratio of net non-white migrants in the previous ten years to total population.[43] Where net migration is negative, M is set equal to zero. M is offered as an estimator for the percentage of the population that consists of the displaced and rural poor who have moved to urban areas. Net total migration would not serve this purpose, since much of the population movement of the 1940's and 1950's consisted of suburban expansion and middle-class migration to the West. The estimate is relatively crude since it does omit poor white migrants and intra-state rural-urban migrants.

IV. Ordinary Least Squares (OLS) Estimates

A. *The Deterrent Effect of the Conditional Probability of Execution*

For the equation

$$Q/N = Q(P, T, E, A, I, M) \tag{3}$$

we would by hypothesis expect $\partial Q/\partial P < 0$, $\partial Q/\partial T < 0$, $\partial Q/\partial A > 0$, $\partial Q/\partial I > 0$, $\partial Q/\partial M > 0$.[44] If capital punishment serves as a deterrent, other factors held constant, we would expect $\partial Q/\partial E < 0$. In other words, for an estimate of a linear form for equation (3), the capital deterrence hypothesis would tend to be confirmed if the coefficient of E were negative, rejected if the coefficient of E were zero or positive.

Results. Ordinary least squares estimates of the constant term (a) and the coefficients (b)[45] for the simple linear form of equation (3) for 1950 and 1960 are shown as Table 1, equations (a1) and (a2) with t statistics given in parentheses.[46] With the exception of the execution variable coefficient and the coefficient of A in [a1]), all the estimated parameters are of the hypothesized sign and are significantly different than zero at the 90 percent confidence level.[47] The estimated coefficient of E, however, takes on a perverse sign and is not significantly different than zero:[48] no capital punishment deterrent is in evidence. Note too that the statistical significance of the other parameter estimates and the percentage of variance explained is virtually unchanged when E is excluded from the regression; results are shown as equations (b1) and (b2).[49]

40. Between 1959 and 1962 statistics on executions for murder are based on U.S. Dep't of Justice, Bureau of Prisons, Nat'l Prisoner Statistics, Executions (published annually) [hereinafter cited as Exec]. Exec No. 23, Feb. 1960, at 5, Table 4; Exec No. 26, March 1961, at 5, Table 4; Exec No. 28, April 1962, at 5, Table 4; Exec No. 32, April 1963, at 5, Table 4.

Between 1919 and 1952 statistics on executions for murder are based on Exec No. 5, April 1951, at 4, Table 4; Exec No. 6, Sept. 1952, at 5, Table 4; Exec No. 8, April 1953, at 5, Table 4.

41. Data for this variable are taken from U.S. Bureau of the Census, General Characteristics of the Population, U.S. Summary 167, Table 59 (1960); *id.* at 112, Table 62 (1950).

42. The statistics on the percentage of families below the poverty line are based on U.S. Bureau of the Census, County and City Data Book [hereinafter cited as County]. For 1960 I was calculated to be equal to the percentage of families with incomes below $3000 in 1959 as reported in County 1962 at 3, table 1, vol. 23. For 1950 I was calculated to be equal to the percentage of families with incomes below $2000 in 1949 as reported in County 1952 at 3, table 1, col. 21. Price deflators by state were not available.

43. Statistics for net non-white migration during the previous ten years as a percentage of the population for both 1950 and 1960 were based on U.S. Bureau of the Census, Statistical Abstract of the U.S. 90, Table 55 (1963).

44. Readers not familiar with calculus should note that the symbol $\partial Q/\partial E$ represents the partial derivative of Q (the murder rate) with respect to E (the execution rate). A partial derivative is a mathematical expression of the relationship between changes in an independent variable (here E) and changes in a dependent variable (here Q), all other independent variables (*i.e.*, P, T, A, I, M) being held constant. The symbol $\partial Q/\partial E$ represents the change in the murder rate that would result from a small change in the execution rate. The hypothesis that $(\partial Q/\partial E) < 0$ means that the murder rate would be expected to move in the opposite direction from changes in the execution rate, *e.g.*, if the execution rate rises (falls) the murder rate would be expected to fall (rise).

45. The Greek letter α is used here to refer to the constant term to be estimated in a regression; β refers to the coefficient vector (one or more coefficients) to be estimated in a regression.

46. The numbers presented in Table 1 represent econometric estimates of the constant term and coefficients of the murder equation. These numbers thus represent estimates of the relationship between the murder rate (dependent variable) and the various independent variables hypothesized to influence it. Estimates with positive signs support the hypothesis of a direct relationship between the murder rate (Q) and the independent variable in whose column the estimate is listed, *e.g.*, as the independent variable rises (falls) the murder rate rises (falls). Conversely, estimates with negative signs support the hypothesis of an inverse relationship between the murder rate and the independent variable. Therefore, to verify the hypothesis that increases in the execution rate result in decreases in the murder rate, the numbers in the column marked "Execution" must have negative signs. The greater the absolute value of the estimates, the greater will be the magnitude of the indicated relationship; in other words, for a given change in the independent variable there will be a larger change in the murder rate. The t-statistics given in parentheses provide indications of the degree of confidence that each estimate is significantly different from that which would be obtained by chance.

47. From the perspective of hypothesis testing or prediction, the value of statistical estimates of coefficients depends upon one's confidence that errors in data or misspecification of the model do not seriously affect the result. Given certain technical assumptions about the data and the model, it is possible to estimate confidence intervals around point estimates, *i.e.* a range of values in which the true coefficient lies. Hence the assertion here that the estimated coefficients are significantly different from zero at the 90 percent confidence level means that the probability that the true value takes on the opposite sign is less than 10 percent. For a discussion of confidence intervals and statistical significance, see Ehrlich, *supra* note 30, at 135-52.

48. Acceptance or rejection of an hypothesis (for example, "the coefficient of E is less than zero") depends upon the statistical standard one sets. By convention and common sense, it seems appropriate to accept the hypothesis that E is less than zero unless it is statistically significantly less than zero at the 90 percent confidence level. For a discussion of hypothesis testing with statistical methods see Ehrlich, *Forecasting and Analysis with an Econometric Model*, 52 Am. Econ. Rev. 104 (1962).

49. Addition of the Southern dummy variable (D_s) to the base form, as shown in Table 1, equations (c1) and (c2), makes little difference. Estimates of the coefficient of D_s imply that, other things being equal, Southern states have about 2½ extra murders per hundred thousand population

TABLE 1

ORDINARY LEAST SQUARES ESTIMATES OF MURDER EQUATION

Equation/Year	R^2	Constant	P	T	Execution	A	I	M	D_S
a1	.698	-9.48	-3.51	-.0161	8.48	7.44	.204	1.72	
1950		(-1.27)	(-3.12)	(-2.11)	(1.04)	(1.48)	(4.38)	(2.22)	
a2	.833	-2.18	-3.82	-.0140	2.98	1.86	.169	2.27	
1960		(-4.47)	(-2.14)	(-4.13)	(0.26)	(5.35)	(5.08)	(4.43)	
b1	.689	-9.14	-3.63	-.0163		.731	.207	1.93	
1950		(-1.23)	(-3.24)	(-2.14)		(1.46)	(4.43)	(2.59)	
b2	.833	-22.14	-3.79	-.0140		1.89	.169	2.32	
1960		(-4.77)	(-2.16)	(-4.18)		(5.72)	(5.14)	(5.02)	
c1	.720	-4.86	-3.04	-.0166	7.75	.496	.159	1.51	2.59
1950		(-0.62)	(-2.67)	(-2.18)	(0.96)	(0.96)	(2.97)	(1.97)	(1.60)
c2	.860	-15.1	-4.68	-.0134	4.87	1.45	.122	1.95	2.40
1960		(-2.90)	(-2.78)	(-4.27)	(0.45)	(4.06)	(3.41)	(3.97)	(2.66)

The coefficient estimates obtained in Table 1 are for the most part not surprising, since they largely confirm earlier cross-section regression results on murder rates.[80] The deterrent effect of the likelihood of punishment and the length of prison sentences is supported, as is the influence of environmental variables that meet common sense criteria. The contrast with Ehrlich's time series confirmation of the deterrent effect of capital punishment is, however, quite striking. This highlights the importance of testing the sensitivity of our linear cross-section estimates both for different formulations of the capital punishment variable and different mathematical forms of the variables in the linear least-squares fit.

B. *Legal or* De Facto *Existence of Capital Punishment*

Suppose potential murderers are not influenced in a simple linear fashion by the frequency of execution of convicted murderers, but by the mere presence of a capital punishment statute on the books. Or, suppose that the fact that influences potential murderers is *de facto* abolition: whether executions of convicted murderers actually take place. Some states in 1950 and 1960 had death penalty statutes, but records free of executions for many years.

To test these hypothetical forms of the deterrent, dummy variables D_{s1} and D_{s2} were substituted for E. For states that did not permit capital punishment in 1949–52, 1959–62, $D_{s1} = 0$; for states that did, $D_{s1} = 1$. For states in which no executions took place 1949–52, 1959–62, $D_{s2} = 0$; for states in which they did take place, $D_{s2} = 1$.[81] Hence the deterrent hypothesis would be confirmed by statistically significant estimates of the coefficient of D_{s1} and D_{s2} less than zero.

Results. Regressions showing the alternative specifications are shown in Table 2, equations (d1), (d2), (e1), (e2).[82] Either hypothetical form for the deterrence variable must be rejected. In none of the four cases do statistically significant estimates appear.[83]

...ically. Regressions with dummy variables for two other regions (New England, Northern industrial states) were also attempted, with and without the Southern dummy. Their coefficients, however, were statistically insignificant and they did not markedly change the estimates of the other coefficients. Note, too, that the inclusion of the Southern dummy does not increase the statistical significance of the execution variable.

80. *See* Ehrlich, *supra* note 29; Mathieson & Passell, *supra* note 25.

81. Information needed to determine the states in which the death penalty is not applicable for murder, and states in which the death penalty is not applied for murder is found in Ennis, *supra* note 42. D_{s1} for 1950 and D_{s2} for 1949–52 were obtained from Ennis No. 12, April 1955, at 3–4, 14–15; D_{s1} for 1960 and D_{s2} for 1959–62 were obtained from Ennis No. 32, April 1963, at 4, Table 3.

82. Note that the Southern dummy variable (D_s) is included in equations (d1), (d2), (e1), and (e2) because, as may be inferred from Table 1, the variable explained an additional portion of the variation in murder rates. When D_s is excluded, however, the results are much the same; neither the signs nor the statistical significance of the coefficient estimates for the execution dummies are changed.

83. At the 95 percent confidence level.

TABLE 1

ORDINARY LEAST SQUARES ESTIMATES OF MURDER EQUATION

Equation/Year	R^2	Constant	P	T	Execution	A	I	M	D_S
a1 1950	.698	-9.48 (-1.27)	-3.51 (-3.12)	-.0161 (-2.11)	8.48 (1.04)	7.44 (1.48)	.204 (4.38)	1.72 (2.22)	
a2 1960	.833	-2.18 (-4.47)	-3.82 (-2.14)	-.0140 (-4.13)	2.98 (0.26)	1.86 (5.35)	.169 (5.08)	2.27 (4.43)	
b1 1950	.689	-9.14 (-1.23)	-3.63 (-3.24)	-.0163 (-2.14)		.731 (1.46)	.207 (4.43)	1.93 (2.59)	
b2 1960	.833	-22.14 (-4.77)	-3.79 (-2.16)	-.0140 (-4.18)		1.89 (5.72)	.169 (5.14)	2.32 (5.02)	
c1 1950	.720	-4.86 (-0.62)	-3.04 (-2.67)	-.0162 (-2.18)	7.76 (0.96)	.496 (0.96)	.159 (2.97)	1.51 (1.97)	2.59 (1.60)
c2 1960	.860	-15.1 (-2.90)	-4.68 (-2.78)	-.0134 (-4.27)	4.87 (0.45)	1.45 (4.06)	.122 (3.41)	1.95 (3.97)	2.40 (2.66)

The coefficient estimates obtained in Table 1 are for the most part not surprising, since they largely confirm earlier cross-section regression results on murder rates.[50] The deterrent effect of the likelihood of punishment and the length of prison sentences is supported, as is the influence of environmental variables that meet common sense criteria. The contrast with Ehrlich's time series confirmation of the deterrent effect of capital punishment is, however, quite striking. This highlights the importance of testing the sensitivity of our linear cross-section estimates both for different formulations of the capital punishment variable and different mathematical forms of the variables in the linear least-squares fit.

B. *Legal or* De Facto *Existence of Capital Punishment*

Suppose potential murderers are not influenced in a simple linear fashion by the frequency of execution of convicted murderers, but by the mere presence of a capital punishment statute on the books. Or, suppose that the fact that influences potential murderers is *de facto* abolition: whether executions of convicted murderers actually take place. Some states in 1950 and 1960 had death penalty statutes, but records free of executions for many years.

To test these hypothethical forms of the deterrent, dummy variables D_{a1} and D_{a2} were substituted for E. For states that did not permit capital punishment in 1949-52, 1959-62, $D_{a1} = 0$; for states that did, $D_{a1} = 1$. For states in which no executions took place 1949-52, 1959-62, $D_{a2} = 0$; for states in which they did take place, $D_{a2} = 1$.[51] Hence the deterrent hypothesis would be confirmed by statistically significant estimates of the coefficient of D_{a1} and D_{a2} less than zero.

Results. Regressions showing the alternative specifications are shown in Table 2, equations (d1), (d2), (e1), (e2).[52] Either hypothetical form for the deterrence variable must be rejected. In none of the four cases do statistically significant estimates appear.[53]

[illegible]ally. Regressions with dummy variables for two other regions (New England, Northern industrial states) were also attempted, with and without the Southern dummy. Their coefficients, however, were statistically insignificant and they did not markedly change the estimates of the other coefficients. Note, too, that the inclusion of the Southern dummy does not increase the statistical significance of the execution variable.

50. *See* Ehrlich, *supra* note 29; Mathieson & Passell, *supra* note 25.

51. Information needed to determine the states in which the death penalty is not applicable for murder, and states in which the death penalty is not applied for murder is found in Exec, *supra* [illegible]. D_{a1} for 1950 and D_{a2} for 1949-52 were obtained from Exec No. 12, April 1955, at 3-4, Table 3; D_{a1} for 1960 and D_{a2} for 1959-62 were obtained from Exec No. 32, April 1963, at 4, Table 3.

52. Note that the Southern dummy variable (D_s) is included in equations (d1), (d2), (e1), and (e2) because, as may be inferred from Table 1, the variable explained an additional portion of the variation in murder rates. When D_s is excluded, however, the results are much the same; neither the signs nor the statistical significance of the coefficient estimates for the execution dummies are changed.

53. At the 95 percent confidence level.

TABLE 2

STABILITY OF ORDINARY LEAST SQUARES ESTIMATES

Equation/Year	R^2	Constant	P	T	Execution	A	I	M	D_S
d1 1950 (with E_{D1})	.714	-4.84 (-0.61)	-3.14 (-2.74)	-.0139 (-2.11)	.410 (.479)	.473 (.910)	.162 (2.98)	1.67 (2.22)	2.68 (1.64)
d2 1960 (with E_{D1})	.862	-15.1 (-2.99)	-4.84 (-2.85)	-.0140 (-4.34)	-.493 (-.73)	1.50 (4.40)	.121 (3.39)	2.05 (4.60)	2.30 (2.54)
e1 1950 (with E_{D2})	.715	-4.81 (-.61)	-3.01 (-2.58)	-.0158 (-2.10)	.548 (.59)	.470 (.91)	.157 (2.90)	1.71 (2.28)	2.73 (1.67)
e2 1960 (with E_{D2})	.861	-15.4 (-3.06)	-4.65 (-2.77)	-.0139 (-4.24)	-.256 (-.51)	1.50 (4.37)	.122 (3.40)	2.04 (4.56)	.237 (2.62)
f1 1950 (10th root)	.705	.791 (.471)	-.606 (-2.75)	-.359 (2.73)	.0832 (2.42)	.107 (.08)	.930 (2.39)	.0208 (.57)	
f2 1960 (10th root)	.597	-1.41 (-.74)	-.692 (-2.18)	-.103 (-2.49)	.105 (3.18)	1.99 (1.34)	.536 (1.85)	.00179 (.05)	

C. *Sensitivity to Alternative Mathematical Forms*

A standard alternative to the simple linear form for regressions [$Y = a + \sum_i \beta_i X_i$] where X here indicates the right-hand-side variables, is to estimate a form that is linear in the natural logarithm of the variables [$\ln Y = \ln a + \sum_i \beta_i \ln X_i$]. Ehrlich used the log form exclusively. This is not possible for our cross-section sample because a large number of observations have $E = 0$, for which the log is undefined. Another possible method of testing the sensitivity of the result, and one which is arguably more general, is to estimate an equation linear in the nth power transformation of the actual variables ($0 < n \leq 1$) [$Y^n = a + \sum_i \beta_i (X_i)^n$]. For small values of n, this will approximate the log transformation; for $n = 1$, it is just the linear form shown above.

Results. Equations (f1) and (f2) show the parameter estimates for $n = .1$ (tenth root). Similar results, incidentally, hold for $n = 0.5$ (square root). Note that β_M is greater than zero, while the signs and significance of the other variables are not radically changed. Perhaps the most striking aspect to (f1) and (f2) is that the estimates of β_M are not merely positive, but statistically significant.[34] However, this is not taken to mean that executions cause murders; a more reasonable explanation is that the equations are misspecified. It does suggest that some systematic relationship between murder rates and execution rates may exist. Perhaps high murder rates cause high execution rates. One aspect of the question, the simultaneous determination of Q/N and E_2 is explored in the next section. Another aspect, the possibility that executions in no way affect murder rates, but that murder rates affect execution rates, is explored in Section VI.

V. Two Stage Least Squares ('TSLS) Estimates

A. *Value of TSLS Estimates*

It is well known that the ordinary least squares estimates derived in the previous section will be inconsistent if murder rates are determined simultaneously with one or more of the right-hand-side variables. Risking oversimplification, the estimated coefficients will be inconsistent if the direction of causality goes from left-hand-side to right-hand-side as well as the opposite. Ehrlich very explicitly develops a theoretical simultaneous system in which potential criminals respond to deterrents and society responds to criminal behavior by adjusting the magnitude of the deterrents.[35] Thus murder rates "feed back" on execution rates and conviction rates.

34. At the 95 percent confidence level.
35. *See* Ehrlich, *supra* note 8, at 405.

TABLE 2

STABILITY OF ORDINARY LEAST SQUARES ESTIMATES

Equation/Year	R^2	Constant	P	T	Execution	A	I	M	D_S
d1	.714	-4.84	-3.14	-.0159	.410	.473	.162	1.67	2.68
1950		(-0.61)	(-2.74)	(-2.11)	(.479)	(.910)	(2.96)	(2.22)	(1.64)
(with E_{D1})									
d2	.862	-15.1	-4.84	-.0140	-.493	1.50	.121	2.05	2.30
1960		(-2.99)	(-2.85)	(-4.34)	(-.73)	(4.40)	(3.39)	(4.60)	(2.54)
(with E_{D1})									
e1	.715	-4.81	-3.01	-.0158	.548	.470	.157	1.71	2.73
1950		(-.61)	(-2.58)	(-2.10)	(.59)	(.91)	(2.90)	(2.28)	(1.67)
(with E_{D2})									
e2	.861	-15.4	-4.65	-.0139	-.256	1.50	.122	2.04	.237
1960		(-3.06)	(-2.77)	(-4.24)	(-.51)	(4.37)	(3.40)	(4.56)	(2.62)
(with E_{D2})									
f1	.705	.791	-.606	-.359	.0832	.107	.930	.0208	
1950		(.471)	(-2.75)	(2.73)	(2.42)	(.08)	(2.39)	(.57)	
(10th root)									
f2	.597	-1.41	-.682	-.103	.105	1.99	.536	.00179	
1960		(-.74)	(-2.18)	(-2.49)	(3.18)	(1.34)	(1.85)	(.05)	
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C. *Sensitivity to Alternative Mathematical Forms*

A standard alternative to the simple linear form for regressions [$Y = a + \Sigma_r \beta_r X_r$] where X here indicates the right-hand-side variables, is to estimate a form that is linear in the natural logarithm of the variables [$\ln Y = \ln a + \Sigma_r \beta_r \ln X_r$]. Ehrlich used the log form exclusively. This is not possible for our cross-section sample because a large number of observations have $E = 0$, for which the log is undefined. Another possible method of testing the sensitivity of the result, and one which is arguably more general, is to estimate an equation linear in the nth power transformation of the actual variables ($0 < n \leq 1$) [$Y^n = a + \Sigma_r \beta_r (X_r)^n$]. For small values of n, this will approximate the log transformation; for $n = 1$, it is just the linear form shown above.

Results. Equations (f1) and (f2) show the parameter estimates for $n = 0.1$ (10th root). Similar results, incidentally, hold for $n = 0.5$ (square root). Note that $\hat{\beta}_n$ is greater than zero, while the signs and significance of the other variables are not radically changed. Perhaps the most striking aspect to (f1) and (f2) is that the estimates of $\hat{\beta}_n$ are not merely positive, but statistically significant.[54] However, this is not taken to mean that executions cause murders; a more reasonable explanation is that the equations are misspecified. It does suggest that some systematic relationship between murder rates and execution rates may exist. Perhaps high murder rates cause high execution rates. One aspect of the question, the simultaneous determination of O/N and E, is explored in the next section. Another aspect, the possibility that executions in no way affect murder rates, but that murder rates affect execution rates, is explored in Section VI.

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54. At the 95 percent confidence level.
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A prima facie case can certainly be made for the use of alternative estimation procedures to OLS. It is very important to keep in perspective, however, the desirability of using OLS even when some degree of simultaneity is suspected. Virtually any equation to be estimated belongs in theory to a system of simultaneous equations with feedback mechanisms. Exogeneity (determination outside the system) is a relative, not an absolute, notion. The quantitative importance of the bias built into the OLS estimators will depend upon the specific characteristics of the system in question.

Consider equation (3). Surely A, I, and M are nearly perfectly exogenous, though one could argue that high murder rates might conceivably affect migration. The cases of the three deterrence variables are ambiguous. Prison sentences served by persons currently being released might be partly influenced by current crime rates, as more plausibly might execution rates and conviction rates. Hence, the importance of the feedback is unclear.

It is also useful to remember that the commonly used simultaneous equations procedures such as two stage least squares are designed to generate only consistent and asymptotically efficient (in the limited information sense) estimates of the model parameters. Stated less technically, this means that the estimators will have the desired properties only if the sample of observations is sufficiently large. There is no absolute definition of "large," but one might suspect that a sample as small as the one here is not very large. Finally, one should note that TSLS estimators of the endogenous variable coefficients may not have even asymptotically desirable properties if the endogenous variables are inherently bounded, and the variables often have observed values near the bounds. All of the potentially endogenous variables in our model are bounded at zero, there being no meaning for example to a negative execution or conviction rate. Approximately one-fourth of the observed values have $E = 0$. Alternative procedures to TSLS do exist, but they are computationally cumbersome and not currently available as computer algorithms.[56]

B. *Results*

The basic results for the murder equation are presented in Table 3. The exogenous variables included in the system but excluded in the structural equation are:

F = median nominal family income for the previous year,[57]

V = percentage of voting age population voting in national elections,[58]

H = percentage of residents living in the same house for at least the specified time period,[59]

W = the percentage of the resident population which is white,[60]

U = unemployment rate,[61]

L = percentage of persons 14 and over in the civilian labor force,[62]

Q^* = fractional change in murder rates over the past four years.[63]

These variables were chosen because we believe that they would belong in other equations, were it possible to specify the entire system of relationships determining variations in the endogenous variables. Note that the choice of these excluded exogenous variables is potentially important to the estimation procedure. For example, many of Ehrlich's[64] results may have depended upon the inclusion of the previous year's murder rate in a system explaining this year's murder rate.

Equations (g1) and (g2) in Table 3 are identical in form to (c1) and (c2), except an instrument ($\hat{E}$) is substituted for E in the regression. In other words, only the murder rate and execution rate are considered endogenous to the system. Once again, on the basis of the estimates one must reject the hypothesis that execution deter murders. As in (c1) and (c2) the estimated execution coefficients are positive and insignificant. In fact, the TSLS procedure appears to have very little impact on the regression coefficients in general; the equation seems to be insensitive to estimation procedure as well as to mathematical form.

Equations (h1) and (h2) go a step further, preserving the specification of the model but assuming P, T, and E to be determined simultaneously with Q/N. Again, there are few surprises. The execution coefficient remains statistically indistinguishable from zero. The significance levels of the coefficients of $\hat{P}$ and $\hat{T}$ are somewhat lower, but this would be expected in any event since the TSLS estimation procedure reduces the efficiency of the estimators.

Another indication of the relative stability of the relationship is found in (j1) and (j2). Here again, as an example of the power transformation discussed above, the 10th roots of the right-hand-side variables are regressed against 10th roots of murder rates, with execution rates assumed endoge-

56. *See* Amemiya, *Multivariate Regression and Simultaneous Equation Models When the Dependent Variables are Truncated Normal*, 42 ECONOMETRICA 999 (1974).

57. Median family income for the previous year, in both 1960 and 1950, in nominal dollars is based on U.S. BUREAU OF THE CENSUS, STATISTICAL ABSTRACT OF THE U.S. 317, Table 449 (1971).

58. Data for 1960 for this variable are from U.S. BUREAU OF THE CENSUS, STATISTICAL ABSTRACT OF THE U.S. 475, Table 600 (1972). For 1950 the data are from U.S. BUREAU OF THE CENSUS, STATISTICAL ABSTRACT OF THE U.S. 114, 115, Tables 107, 111 (1956).

59. The data for 1960 are from U.S. BUREAU OF THE CENSUS, *supra* note 41, at 257, Table 112; 1950 data are from *id.* 1950, at 121, Table 70.

60. The data for 1950 and 1960 are from U.S. BUREAU OF THE CENSUS, STATISTICAL ABSTRACT OF THE U.S. 28, Table 30 (1972).

61. Data for the unemployment variable in 1960 are from COMEY, *supra* note 42, 1961 at 4, Table 1, col. 3; 1950 data are from *id.* 1952 at 4, Table 1, cols. 32, 36.

62. 1960 data are from U.S. BUREAU OF THE CENSUS, *supra* note 41, at 264, Table 119; 1950 data are from COMEY 1952, *supra* note 42, at 4, Table 1, cols. 32, 33.

63. $Q^*_{1960} = (Q_{1960} - Q_{1956})/Q_{1956}$; $Q^*_{1950} = (Q_{1950} - Q_{1946})/Q_{1946}$. Q_{1960} is from UCR 1960, at 99, Table 42; Q_{1956} is from UCR 1956, at 97, Table 33; Q_{1950} is from UCR 1960, at 98-99, Table 33; Q_{1946} is from UCR 1956, at 89, Table 31.

64. *See* Ehrlich, *supra* note 50.

TABLE 3

TWO-STAGE LEAST SQUARES (TSLS) ESTIMATES OF MURDER EQUATION

Equation/Year	$\bar{R}^2$	Constant	P	T	Execution	A	I	M	D_S
g1	.720	-4.79	-3.06	-.0162	6.53	.493	.159	1.54	2.60
1950		(-.61)	(-2.67)	(-2.18)	(.52)	(.96)	(2.97)	(1.92)	(1.60)
($\hat{E}$)									
g2	.860	-14.9	-4.71	-.0134	6.48	1.44	.122	1.92	2.41
1960		(-2.61)	(-2.76)	(-4.27)	(.30)	(3.62)	(3.41)	(3.20)	(2.65)
($\hat{E}$)									
h1	.667	-6.29	-5.70	-.0169	12.94	.704	.161	1.29	1.52
1950		(-.65)	(-2.41)	(-1.28)	(.88)	(1.15)	(2.71)	(1.37)	(.78)
($\hat{P}$, $\hat{T}$, $\hat{E}$)									
h2	.818	-8.23	-10.2	-.0157	-9.20	1.20	.0985	1.42	2.96
1960		(-1.06)	(-1.99)	(-2.07)	(-.34)	(2.46)	(2.26)	(1.84)	(2.40)
($\hat{P}$, $\hat{T}$, $\hat{E}$)									
j1	.674	1.22	-.508	-.349	.148	-.0992	.722	-.00248	
1950		(.67)	(1.99)	(-2.52)	(1.87)	(-.07)	(1.80)	(-.05)	
(10th root; $\hat{E}$)									
j2	.417	.851	-.689	-.115	.240	.336	.426	-.0239	
1960		(.34)	(-1.80)	(-2.31)	(3.47)	(.17)	(1.21)	(-.50)	
(10th root; $\hat{E}$)									

nous. As in (f1) and (f2), the coefficients of $\hat{E}$ are positive and statistically significant.

VI. An Execution Equation

Sections IV and V provide evidence that capital punishment does not act as a deterrent. Among the regressions in Tables 1–3 there are no instances in which the execution variable is negative and statistically significant. There are, however, reasons to believe that execution rates and murder rates are not entirely independently determined. Certainly the major impetus for new capital punishment legislation has been public frustration with the explosive growth of murder rates in the past decade.

Perhaps a more testable hypothesis about the relationship is that execution rates—executions per conviction—are a positive function of murder rates because of the attitudes of prosecutors, juries and judges. Given the discretion built into the system at each level it is plausible that, other things being equal, more convicted murderers will be sentenced to death the higher the perceived murder rate.

A proper statistical evaluation of the explanation of variations in the execution rate between states is beyond the scope of this paper. Among other purely econometric problems, the execution rate is a limited dependent variable. As mentioned earlier, since E is frequently equal to the bound value, the estimated coefficients will be biased. It is possible and relevant, however, to explore the issue in a tentative fashion, ignoring these difficulties.

Only a few of a number of alternative regression formulations proposed are shown here. Equations (k1) and (k2) in Table 4 show the OLS estimators for E as a linear function of murder rates lagged by one year, $(Q/N)_{-1}$, and M, the non-white migration variable. Equations (m1) and (m2) are basically the same formulation, but are estimated using TSLS with current murder rates as an endogenous variable. Neither the (k) nor (m) equations provide much insight into the sources of variation in execution rates, though in all four equations the coefficient of M, as would be expected, is significantly positive.

The addition of I, the percentage of the population below the poverty line, and Q^*, the rate of change of murders in the previous four years (estimates not shown) adds no explanatory power. Nor—in seeming contradiction to conventional wisdom—does a Southern states dummy variable. If one eliminates executions for rape and burglary, the South shows no particular propensity to execute convicted criminals.

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TABLE 4

ESTIMATES OF EXECUTION EQUATIONS

Equation/Year	R^2	Constant	O/N	$(O/N)_{-1}$	M
k1 1950 OLS	.112	.0164 (1.43)		-.000172 (-.24)	.0164 (2.26)
k2 1960 OLS	.171	.00201 (.30)		.00144 (1.53)	.0127 (2.70)
m1 1950 TSLS	.145	.00431 (.27)	.00182 (.86)		.0263 (2.41)
m2 1960 TSLS	.154	.00344 (.49)	.00113 (1.15)		.0123 (2.59)
n1 1950 TSLS — 10th root	.360	-1.94 (-3.25)	2.04 (4.09)		.193 (2.18)
n2 1960 TSLS — 10th root	.238	-2.02 (-2.63)	2.08 (3.31)		.155 (1.44)

propriate sign. Whether or not this comes close to capturing the true relationship between E and Q/N remains to be seen. These two equations do, however, suggest why equations (f) and (j) show perversely positive and significant signs for the execution coefficient. E is not an independent variable in the determination of murder rates, but perhaps murder rates do partially determine execution rates. Hence a misspecified form like (f) or (j) may produce a spurious least-squares statistical relationship.

VII. Conclusion

The purpose of the empirical work in this Article is to test the hypothesis that capital punishment deters murder. Two important qualifications to interpretation of the research are necessary. First, statistical techniques test hypotheses only in a limited sense of the word; they can only establish the likelihood that the available evidence is consistent with the hypothesis in question. Thus one might argue—I would not—that Ehrlich confirmed that the idea that extra executions deter murders was consistent with one set of observations. Other explanations that do not include capital punishment deterrence might also be found consistent with Ehrlich's data.

Second, the techniques used here (and those employed by Ehrlich) attempt to isolate the effect of executions on murders, *holding other factors constant*. Since other factors cannot be held constant in practice—changing execution rates might result in changes in arrests, convictions, and prison sentences as well—this study answers a different question than the one generally asked. This is not due to caprice on the part of the investigator, but to a lack of information about the criminal justice system.

Our analysis accounts for as many of the major, quantifiable factors as possible that explain state-to-state variations in murder rates, then tests whether state-to-state variations in execution rates also add explanatory power to the equation. Five variables—conviction rates, average prison sentences, poverty, age, and rural-urban migration—plus a special accounting variable for Southern states, do in fact explain a great deal of these state to-state murder rate variations. Variations in execution rates, however, add no explanatory power.

Estimates derived from regression analysis have value conditional upon the fulfillment of certain assumptions about relationships underlying the behavioral model, as well as assumptions about the sources of error in the data. Since one has relatively little information upon which to base a complete model of the criminal justice system or to analyze the source of errors in the data, it becomes imperative to test the sensitivity of the results to different assumptions.

The results displayed in Tables 1 and 2 establish insensitivity to assumptions about the mathematical form of the equation and to specification of the execution variable itself. For a reasonably broad set of mathematical forms and alternative estimators of the subjective probability of execution, one finds no evidence of an execution deterrent. Section V analyzes the potential bias introduced by simultaneous determination of murder rates with other variables in the system—conviction rates, execution rates, prison sentences. Again, under a range of plausible assumptions, there is no evidence that executions act as a deterrent. Section VI explores the possibility that murder rates may systematically influence execution rates. The results presented in Table 4 support such a hypothesis.

Just how the evidence presented here should influence one's view on the issue of capital punishment deterrence depends in part on one's perspective. It cannot be proven that executions do not serve as a deterrent to murder. Proof is simply beyond the capacities of empirical social science.

At a minimum, however, students of capital punishment must look elsewhere for evidence confirming deterrence. We know of no reasonable way of interpreting the cross-section data that would lend support to the deterrence hypothesis.

It is important to observe that the economic approach to studying crime has value beyond the capital punishment issue. Simply because the threat of execution does not deter murder does not mean that either the length of sentence or certainty of punishment does not influence would-be criminals. The deterrent effect of conviction rates and sentences stands up well in the cross-section regressions published here. Nor does the failure to find statistical support for capital punishment deterrence discredit the use of econometric techniques to formulate and test rigorously hypotheses about criminal behavior. Its purpose is not merely to provide an empirical buttress for specific policy positions on crime prevention, but also to define the dimensions of knowledge about crime and suggest ways of expanding them.

The Play's the Thing: An Unscientific Reflection on Courts Under the Rubric of Theater

Milner S. Ball*

The essay form is the fit instrument for a thinker whose chief concern is to lay bare the contending claims that seek the mediation and authority of society through law, and to give some indication, at least, of how these processes of mediation in fact operate. For the essay is tentative, reflective, suggestive, contradictory, and incomplete. It mirrors the perversities and complexities of life.[1]

The production of plays unlike the production of goods cannot be streamlined.[2] A performance of *King Lear* requires about as much time and labor now as it did in Elizabethan England. Output per man-hour could be significantly increased in the theater only by radically transforming its quality, dynamics and nature, as, for example, by abandoning the intimate medium of live performance for the quite different mass media of television or film. Productivity gains are precluded in live performance because what the performer does is an end in itself and not the means to production of some other good. Inasmuch as it is invulnerable to greater technological efficiency through mass production or speedier processes, theater cannot reduce its costs.

The same is true of the public functions of courts. Some aspects of judicial administration are undoubtedly subject to modifications which would increase its productivity, but there is little that can be done to cut the time and labor of trials and oral arguments. Their costs can only multiply. The question, which gathers urgency as court workloads and docket congestion

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1. F. Frankfurter, Felix Frankfurter on the Supreme Court 203 (P. Kurland ed. 1970), quoted from Frankfurter's book review of B. Cardozo, The Paradoxes of Legal Science (1928), 78 U. Pa. L. Rev. 436 (1929).

2. *See* W. Baumol & W. Bowen, Performing Arts—The Economic Dilemma 161–72 (1966), which explores the relationship of productivity gains and the technology of live performance. The emphasis in this opening paragraph is a pale, partial reflection of their suggestive formulation.

Statistical Evidence on the Deterrent Effect of Capital Punishment

Editors' Introduction

Sophisticated statistical evidence became important in the litigation over the constitutionality of the death penalty a decade ago. As part of its attack on capital punishment, the NAACP Legal Defense and Educational Fund sponsored a statistical study of racial discrimination in the sentences imposed for rape in the South.[1] Abolitionist lawyers have relied on evidence of discriminatory imposition of the penalty to argue that it violated the Fourteenth Amendment's guarantee of the equal protection of the laws and the Eighth Amendment's prohibition of cruel and unusual punishments.[2] Such evidence clearly influenced the decision in *Furman v. Georgia*, in which the Supreme Court, by a five-to-four margin, struck down as cruel and unusual punishment the imposition of the penalty at the discretion of the judge or jury.[3]

A more fundamental statistical attack was directed at one of the underlying legislative rationales for capital punishment—that it is a more effective deterrent to crime than life imprisonment. This attack goes to the very existence of the penalty rather than the manner in which it is imposed. The issue of deterrence received some attention in *Furman*, and is now before the Court in *Fowler v. North Carolina*,[4] which poses Eighth and Fourteenth Amendment challenges to capital punishment imposed under North Carolina's mandatory sentencing procedure.

1. The findings of this study are reported in Wolfgang, *Racial Discrimination in the Death Sentence for Rape*, in W. Bowers, Executions in America 111-29 (1974). This study confirmed earlier findings of the discriminatory imposition of the penalty reported in earlier investigations. See W. Bowers, *supra* at 18-19.

2. Brief for NAACP *et al.* as Amici Curiae at 13-22, Aikens v. California, 406 U.S. 813 (1972) (Eighth and Fourteenth Amendment challenges dismissed as moot after decision of California supreme court in People v. Anderson, 6 Cal. 3d 628, 493 P.2d 880, 100 Cal. Rptr. 152 (1972), that capital punishment violated the state constitution); Maxwell v. Bishop, 398 F.2d 138, 141-48 (8th Cir. 1968), *rev'd on other grounds*, 398 U.S. 262 (1970) (after thorough discussion, then Circuit Judge Blackmun rejected a Fourteenth Amendment challenge, based on the NAACP study of racial discrimination in rape sentencing, note 1 *supra*, to a death sentence imposed under an Arkansas rape statute); Brief for NAACP Legal Defense & Educational Fund, Inc. and National Office for the Rights of the Indigent as Amici Curiae at 51-53, Boykin v. Alabama, 395 U.S. 238 (1969) (Eighth Amendment challenge based in part on statistical evidence of racial discrimination in imposition of death penalty).

The prohibition of cruel and unusual punishments is applicable to the states through the Fourteenth Amendment. See Robinson v. California, 370 U.S. 660, 667 (1972).

3. 408 U.S. 238 (1972). Two of the five Justices who concurred in the judgment of the Court relied at least in part on statistical evidence of the racially discriminatory imposition of the penalty. *Id.* at 250 n.15 (Douglas, J., concurring), 364-65 (Marshall, J., concurring). Two of the dissenters recognized the importance of the evidence for a possible claim of denial of equal protection of the laws. *Id.* at 389-90 n.12 (Burger, C.J., dissenting) ("data of more recent vintage" essential for equal protection claim), 419 n.2 (Powell, J., dissenting). See White, *The Role of the Social Sciences in Determining the Constitutionality of Capital Punishment*, 11 Duq. L. Rev. 279, 281-85 (1973).

4. State v. Fowler, 285 N.C. 90, 203 S.E.2d 803, *cert. granted sub nom.* Fowler v. North Carolina, 419 U.S. 901 (1974), *argued*, 43 U.S.L.W. 3362 (U.S. Apr. 21, 1975), *restored for reargument*, 423 U.S. 809 (1975). See notes 17-18 *infra*.

Of the nine Justices writing separate opinions in *Furman*, Justice Marshall, who along with Justice Brennan would have found the penalty unconstitutional per se, gave the most weight to the statistical evidence on deterrence.[5] From prior cases construing the Eighth Amendment, he derived the principle that a punishment is cruel and unusual if it is "excessive and serves no valid legislative purpose."[6] Devoting more than half of his discussion of the purposes conceivably served by capital punishment to the "hotly contested issue . . . whether it is better than life imprisonment as a deterrent to crime,"[7] he stated that the deterrent effect of capital punishment rested on "logical hypotheses devoid of evidentiary support," and invoked the statistical studies of Thorsten Sellin, which for him "demonstrate that there is no correlation between the murder rate and the presence or absence of the capital sanction."[8] He quoted extensively from Sellin as "one of the leading authorities on capital punishment" and included as appendixes to his opinion several of Sellin's tables comparing homicide rates in neighboring abolitionist and retentionist jurisdictions.[9] After considering and rejecting other possible purposes for capital punishment, he concluded:

> [T]he death penalty is an excessive and unnecessary punishment that violates the Eighth Amendment. The statistical evidence is not convincing beyond all doubt, but it is persuasive. . . . [T]here is sufficient evidence available so that judges can determine, not whether the legislature acted wisely, but whether it had any rational basis whatsoever for acting. We have this evidence before us now. There is no rational basis for concluding that capital punishment is not excessive. It therefore violates the Eighth Amendment.[10]

The "excessive and unnecessary" standard of the Eighth Amendment is essentially equivalent to a substantive due process standard: the penalty is unconstitutional if it lacks a rational basis.[11] This due process analysis

5. 408 U.S. at 315-54 (Marshall, J., concurring). Justice Brennan stated that "the available evidence uniformly indicates, although it does not conclusively prove, that the threat of death has no greater deterrent effect than the threat of imprisonment." *Id.* at 301. Justice Stewart found the statistical evidence on deterrence "inconclusive." *Id.* at 307-08 & n.7. Chief Justice Burger characterized the evidence on deterrence as an "empirical stalemate." *Id.* at 395. Justice Powell observed that statistical studies "tend to support the view that the death penalty has not been proved to be a superior deterrent," but do not approach the showing required to find the penalty unconstitutional. *Id.* at 451, 456. *See* White, *supra* note 3, at 285-86.

6. 408 U.S. at 331. This principle was also put forth by Justice Brennan, *id.* at 279-80, but was sharply attacked by the dissenters, *id.* at 391-96 (Burger, C.J., dissenting), 451 (Powell, J., dissenting).

The other ground relied on by Justices Brennan and Marshall was that the penalty was "morally unacceptable to the people of the United States . . . ." *Id.* at 360 (Marshall, J., concurring); *see id.* at 295-300 (Brennan, J., concurring).

7. *Id.* at 345-54.

8. *Id.* at 347, 350.

9. *Id.* at 348-50, 373-74.

10. *Id.* at 356-59 (footnote omitted).

11. The principle that a punishment is cruel and unusual if it is excessively severe was suggested by Justice Goldberg [illegible]

requires that those challenging the death penalty overcome the "presumption of constitutionality accorded legislative acts."[12] Whereas in a traditional Brandeis brief[13] statistical evidence is used to support that presumption, in *Furman* the evidence was used to attack it.

If the Eighth Amendment does prohibit unnecessarily severe punishments, the findings of Professor Isaac Ehrlich on the deterrent effect of capital punishment, reported a year after *Furman* and published this spring,[14]

Alabama, 375 U.S. 889 (1963), and analyzed as a substantive due process standard in Packer, *Making the Punishment Fit the Crime*, 77 Harv. L. Rev. 1071 (1964). Justice Marshall recognized that his excessive severity principle under the Eighth Amendment "parallels in some ways" a substantive due process analysis:

> The concepts of cruel and unusual punishment and substantive due process become so close as to merge when the substantive due process argument is stated in the following manner: because capital punishment deprives an individual of a fundamental right (*i.e.*, the right to life), . . . the State needs a compelling interest to justify it. . . . Thus stated, the substantive due process argument reiterates what is essentially the primary purpose of the Cruel and Unusual Punishments Clause of the Eighth Amendment—*i.e.*, punishment may not be more severe than is necessary to serve the legitimate interests of the State.

408 U.S. at 359-60 n.111 (Marshall, J., concurring).

12. 408 U.S. at 359 (Marshall, J., concurring).

Justice Marshall did not make entirely clear his view of the strength of the presumption of constitutionality accorded to the legislative enactment of capital punishment. On the one hand, he stated that those challenging the penalty "bear a heavy burden of demonstrating that it is excessive," *id.* at 360 n.111, and on the other, that

> [d]espite the fact that abolitionists have not proved non-deterrence beyond a reasonable doubt, they have succeeded in showing by clear and convincing evidence that capital punishment is not necessary as a deterrent . . . .

Id. at 353.

In recent decades the Court has accorded a greater presumption to legislation restricting economic liberty than to that restricting noneconomic rights. *Compare* Ferguson v. Skrupa, 372 U.S. 726 (1963), Williamson v. Lee Optical Co., 348 U.S. 483 (1955), Lincoln Fed. Labor Union v. Northwestern Iron & Metal Co., 335 U.S. 525 (1949), *and* G. Gunther, Cases and Materials on Constitutional Law 576-96 (9th ed. 1975) *with* Roe v. Wade, 410 U.S. 113 (1973), Griswold v. Connecticut, 381 U.S. 479 (1965), *and* G. Gunther, *supra* at 616-56. Following this double standard, the Court would apply the greater scrutiny to punishments tested for a rational basis under the Eighth Amendment. *Cf.* Comment, *The Death Penalty Cases*, 55 Cal. L. Rev. 1268, 1271-73 (1958). It has been suggested that the double standard may be justified by a theory of judicial review which accords greater deference to legislation supported by instrumental policy considerations—reasons of social utility—than to legislation supported by moral judgments. Wellington, *Common Law Rules and Constitutional Double Standards: Some Notes on Adjudication*, 83 Yale L.J. 222 (1973). Under this analysis, the legislative purpose of deterrence for capital punishment might be subjected to less scrutiny than the other purpose most often advanced, retribution. For discussions of retribution as a justification for capital punishment, see, *e.g.*, Furman v. Georgia, 408 U.S. 238, 303-01 (Brennan, J., concurring), 308 (Stewart, J., concurring), 342-45 (Marshall, J., concurring), 391-95 (Burger, C.J., dissenting), 452-61 (Powell, J., dissenting) (1972); Packer, *supra* note 11, at 1078; Comment, *supra* at 1297-1301.

13. Before he was appointed to the Court, Louis Brandeis submitted a brief supplying extensive factual support from nonjudicial sources for an Oregon law regulating hours of work for women. His brief received favorable comment in Justice Brewer's opinion for the Court upholding the statute, Muller v. Oregon, 208 U.S. 412, 419-20 & n.1 (1908), and has become a classic example of the use of social science data in constitutional litigation. See P. Freund, On Understanding the Supreme Court 86-92 (1949).

14. I. Ehrlich, The Deterrent Effect of Capital Punishment: A Question of Life or Death, 1974 (Working Paper No. 18, Center for Economic Analysis of Human Behavior [illegible] Capital Punishment: A Time

bear importantly on the question now before the Court in *Fowler*. One of the two Justices who have thus far revealed themselves willing to declare the penalty unconstitutional per se has relied in large part on the statistical research of Sellin and others who have followed his approach. Ehrlich criticized the methods used by Sellin—graphical comparisons of homicide rates in neighboring states—and used a more sophisticated technique—multiple regression analysis.[15] He found a significant deterrent effect associated with the use of the death penalty in the United States over the period from 1935 to 1969, specifically that on average for the period studied each additional execution per year resulted in seven or eight fewer murders.[16] The Solicitor General of the United States, in his amicus brief in *Fowler*, called attention to the Ehrlich study as important empirical evidence that capital punishment serves the legitimate legislative purpose of deterring murder;[17] the petitioner, in his reply brief, sharply attacked

15. Multiple regression is a statistical technique for analyzing the relationship between a dependent variable, whose behavior is to be explained, and a set of independent or explanatory variables. The analysis uses a sample of data to estimate an equation in which the dependent variable is set equal to a weighted sum of the explanatory variables. The weights or "coefficients" associated with the explanatory variables are chosen to minimize the sum of the squared differences between the actual values of the dependent variable and the values computed using the regression equation (hence the term "least squares regression"). A graphical representation of a regression equation with only one explanatory variable would be a "least squares" line drawn through the scatter of points generated by plotting the dependent variable on the vertical axis and the explanatory variable on the horizontal axis. Econometrics is concerned with the use of regression analysis to measure and test economic relationships. See B. Wonnacott & T. Wonnacott, Econometrics 1-9 (1970); Finkelstein, *Regression Models in Administrative Proceedings*, 86 Harv. L. Rev. 1442, 1444-55 (1973) [hereinafter cited as *Regression Models*].

Regression analysis is being used with increasing frequency in legal commentary. *See, e.g.*, Brantman, Cohen & Trubek, *Measuring the Invisible Wall: Land Use Controls and the Residential Patterns of the Poor*, 82 Yale L.J. 483 (1973); Breyer & MacAvoy, *The Natural Gas Shortage and the Regulation of Natural Gas Producers*, 86 Harv. L. Rev. 941 (1973); Finkelstein, *A Statistical Analysis of Guilty Plea Practices in the Federal Courts*, 89 Harv. L. Rev. 293 (1975); Posner, Hirsch & Margolis, *Regression Analysis of the Effects of Habitability Laws Upon Rent: An Empirical Observation on the Tobriner-Kennedy Debate*, 63 Cal. L. Rev. 1098 (1975); Note, *Beyond the Prima Facie Case in Employment Discrimination Law: Statistical Proof and Rebuttal*, 89 Harv. L. Rev. 387 (1975). However there has been little discussion in legal journals of the wide range of results which regression studies of a given relationship may produce and the statistical controversies which often arise between authors of these conflicting studies. *But see Regression Models*, *supra* at 1455-75; Levin, *Education, Life Chances, and the Courts: The Role of Social Science Evidence*, 30 Law & Contemp. Probs. 217, 228 (1975) (conflicting statistical evidence on effects of racial integration and compensatory education programs on test scores of minority students). The economic literature reveals the extent of the disagreements provoked by econometric studies even of relationships on which there is considerable theoretical agreement among economists. *See, e.g.*, D. Patinkin, Money, Interest, and Prices 651-61 (2d ed. 1965); Jorgenson, *Econometric Studies of Investment Behavior: A Survey*, 9 J. Econ. Lit. 1111 (1971); Liviatan, *Tests of the Permanent-Income Hypothesis Based on a Reinterview Savings Survey*, in Readings in Economic Statistics and Econometrics 251-83 (A. Zellner ed. 1968); Friedman, *Note on Nissan Liviatan's Paper*, in *id.* at 284-87; Liviatan, *A Reply*, in *id.* at 287-90.

16. Ehrlich 1975, *supra* note 14, at 398, 414.

17. Brief for the United States as Amicus Curiae at 35-38. In the summary of his argument, the Solicitor General described the Ehrlich study in these terms:

> After performing a sophisticated regression analysis that analyzed the effects of many

HANS ZEISEL

THE DETERRENT EFFECT OF THE DEATH PENALTY: FACTS v. FAITHS

I. The Problem

Once again in the 1975 Term, the Justices of the Supreme Court found themselves unable to express a unified position on the validity of the death penalty. The problem is a complex one because of murky precedents, disputed facts, and strong emotional commitments. It is proposed here to address just one of the issues raised in the cases, the question of the data supporting or controverting the deterrent effect of the death penalty.

In one of the opinions in *Gregg v. Georgia*[1]—there was no opinion for the Court—Mr. Justice Stewart, speaking for himself and Justices Powell and Stevens, stated: "Statistical attempts to evaluate the worth of the death penalty as a deterrent to crimes by potential offenders have occasioned a great deal of debate. The results simply have been inconclusive."[2] The Justice went on to cite with approval the position of Professor Charles L. Black, that no conclusive evidence would ever be available on the question of deterrence:[3]

Hans Zeisel is Professor Emeritus of Law and Sociology, The University of Chicago; Senior Consultant, American Bar Foundation.

[1] 96 S. Ct. 2909 (1976).

[2] *Id.* at 2930.

[3] *Id.* at 2931, quoting BLACK, CAPITAL PUNISHMENT: THE INEVITABILITY OF CAPRICE AND MISTAKE 25–26 (1974).

Please insert the following in your copy of *The Supreme Court Review*, [illegible], edited by Philip B. Kurland (University of Chicago Press, 1977):

In Hans Zeisel's article, "The Deterrent Effect of the Death Penalty," figures 5 and 8 (pp. 330 and 337) were transposed. They are given correctly below:

HB-140

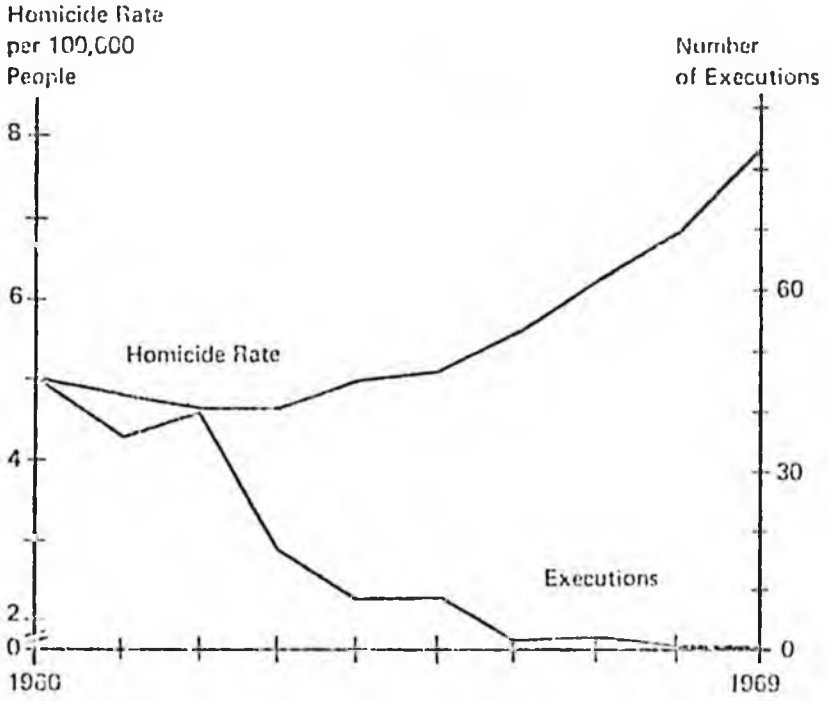
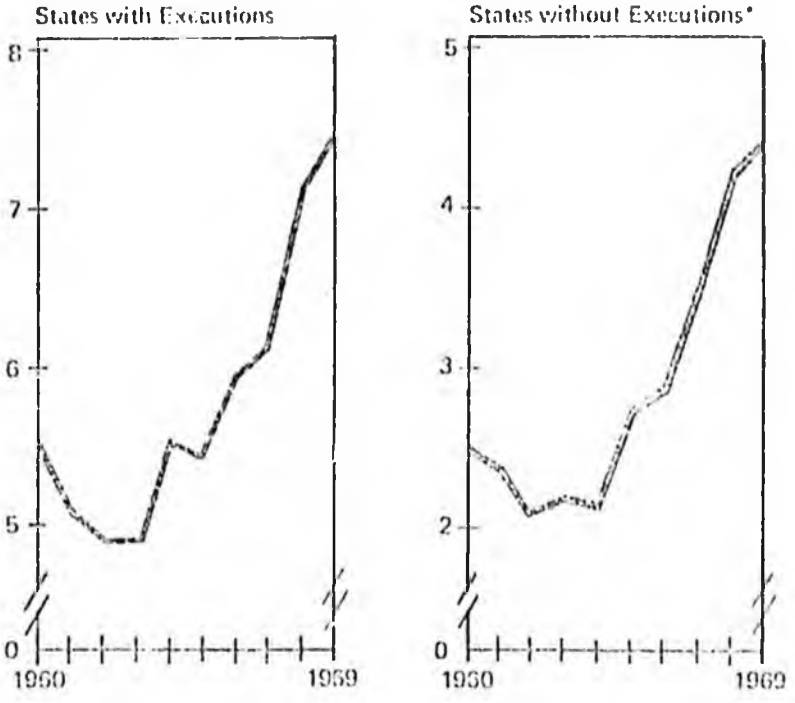


FIG. 5. United States homicide rate and number of executions, 1960–69.



* Abolition states and 6 states with no executions since 1948

FIG. 8. Homicide rates 1960–69 in states with and without executions.

> . . . after all possible inquiry, including the probing of all possible methods of inquiry, we do not know, and for systematic and easily visible reasons cannot know, what the truth about this "deterrent" effect may be. . . .
>
> . . . A "scientific"—that is to say, a soundly based—conclusion is simply impossible, and no methodological path out of this tangle suggests itself.

It is the purpose of this paper to show that both the Court's and Professor Black's views are wrong; that the evidence we have is quite sufficient if we ask the right question; and that the request for more proof is but the expression of an unwillingness to abandon an ancient prejudice.

II. The Structure of the Evidence

All studies that explore the possible deterrent effect of capital punishment are efforts to simulate the conditions of what is conceded to be an impossible controlled experiment. In such an experiment the population would be divided by some lottery process (randomly) into two groups. The members of one group, if convicted of a capital crime, would receive the death penalty; the members of the other group, if convicted of a capital crime, would receive a sentence of life in prison.

The random selection would assure all other conditions that could possibly affect the capital crime rate remain the same—within the calculable limits of the sampling error—in both groups, so that the "death penalty–life sentence" difference remains the only relevant difference between them.

Figure 1 shows the basic analytical structure of such an experiment. This hypothetical graph, denoting the constellation that would confirm the existence of a deterrent effect, begins with two populations of would-be murderers (X + Y + Z), equal in every respect except that the one lives under threat of the death penalty, the other does not. (X) is the number of would-be murderers in both groups deterred, even by the threat of prison; it can be read from the first bar and projected to the second. At the bottom end of each bar (Z) is the proportion of would-be murderers whom even the threat of the death penalty would not deter. It can be read from the second bar and projected to the first. The crucial test is whether a group (Y) can be found which would be deterred by the death penalty but

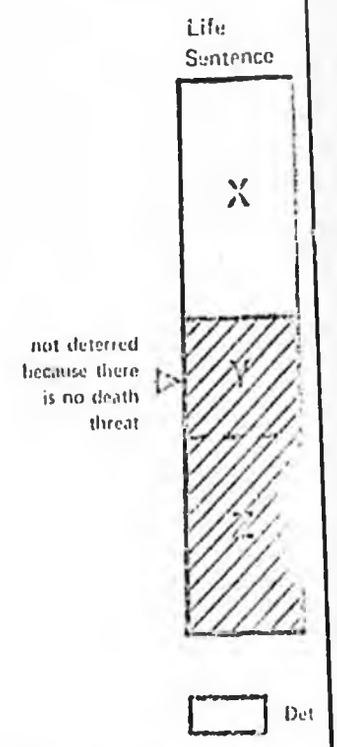


FIG. 1. Experimental paradigm
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reveal a significantly low
death penalty.

In principle, it should
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[1] The paradigm is limited to
Death Penalty: A Neglected Al
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[2] The task of tracing the eff
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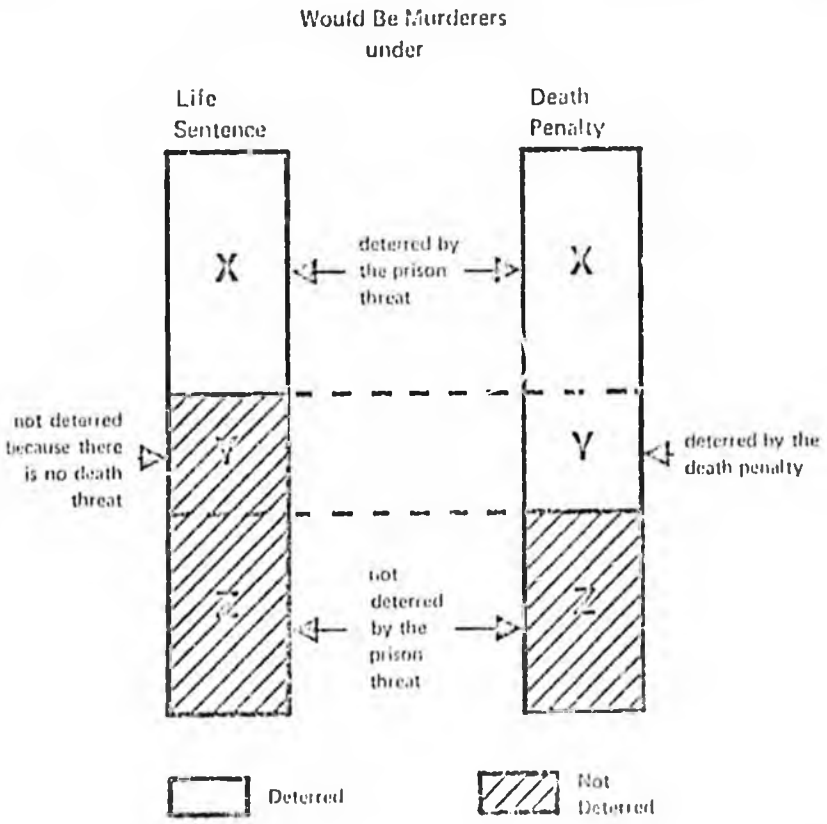

FIG. 1. Experimental paradigm showing a deterrent effect of the death penalty over the life sentence.

would not be deterred if there were only the life sentence. The statistical test that would establish the existence of group (Y) would reveal a significantly lower level of murders[1] under threat of the death penalty.

In principle, it should be possible to identify individual members in each of the three groups. As a practical matter one can identify only the murderers who have not been deterred.[2] Efforts have been

[1] The paradigm is limited to murder. See also, however, Bailey, *Rape and the Death Penalty: A Neglected Area of Deterrence Research*, in BOWERS & PIERCE eds. CAPITAL PUNISHMENT IN THE UNITED STATES 336 (1976).

[2] The task of tracing the effect of an experimental treatment through case histories of the persons who had been affected by it is less difficult if the treatment aims at a positive effect not a negative, deterrent one. See ZEISEL, SAY IT WITH FIGURES ch. II (1968 ed.).

made to identify members of the (Y) group. The Los Angeles Police Department, for instance, filed a report with the California legislature in 1960 to the effect that a number of apprehended robbers had told the police that while on their job they had used either toy guns or empty guns or simply simulated guns "rather than take a chance on killing someone and getting the gas chamber."[6] Quite apart from this being hearsay evidence reported by a very interested party, this is poor evidence, if any, on the issue. The unresolved and probably unresolvable difficulty is whether these robbers would not have minded "killing someone," if the risk had been no more than life in prison.

Figure 2 represents the paradigm diagram for proving the deterrent effect of increasing executions. Proof of deterrence would be established if groups (Y_1) and (Y_2) were found to exist.

III. The Impossible Controlled Experiment

Such diagrammed evidence would be cogent if derived from a controlled experiment. How morally and legally impossible such an experiment is can easily be seen if its details are sketched out. In one conceivable version a state would have to decree that citizens convicted of a capital crime and born on odd-numbered days of the month would be subject to the death penalty; citizens born on even-numbered days would face life in prison. A significantly lower number of capital crimes committed by persons born on uneven days would confirm the deterrent effect. The date of birth here is a device of randomly dividing the population into halves by a criterion that we will assume cannot be manipulated.[7]

The equally impossible experiment that would test the effect of differential frequencies of execution would require at least three randomly selected groups. In the first group everybody convicted of a capital crime would be executed. In the second, only every other such convict (again selected by lot) would be executed. In the third, nobody would be executed.

The data available to us for study of the deterrent effect of the death penalty are all naturally grown: none derive from a controlled

[6] Report of the California Senate on the Death Penalty 16-17 (1960).

[7] Worried, expectant mothers, of course, could demand Caesarian delivery on an even-numbered date. Such intervention, however, would affect the purity of the experiment only if these mothers were also farsighted, *i.e.*, if their artificial birth dates would comprise a higher rate of future murderers than the normal delivery



Fig. 2. Experimental paradigm executions.

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[*] Note 3 *supra*.

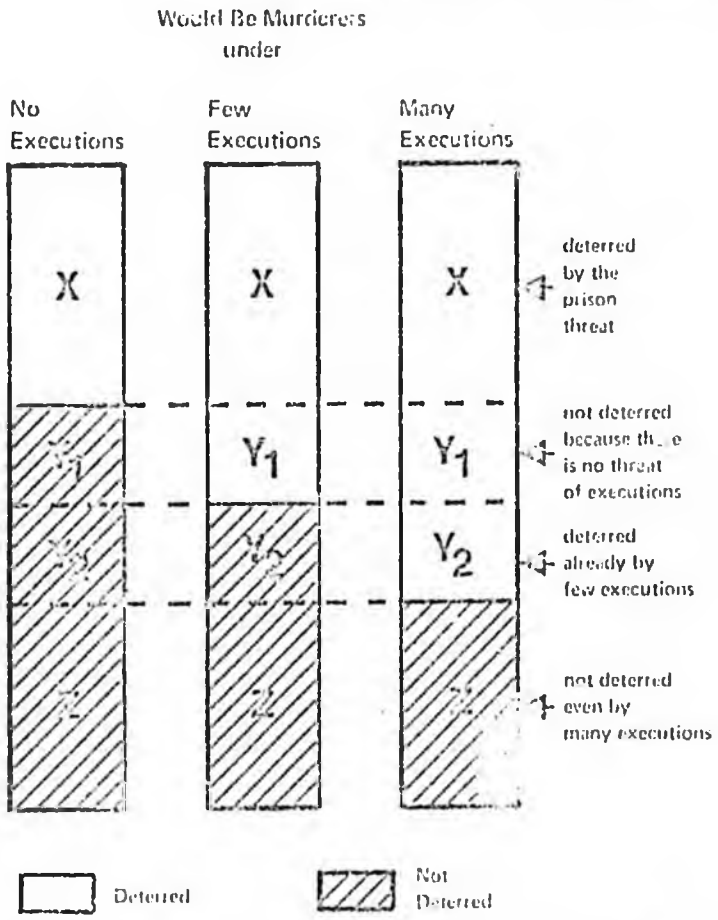

FIG. 2. Experimental paradigm showing a deterrent effect of increasing the rate of executions.

experiment. Yet they all are analyzed as if they had come from a controlled experiment. The structure of analysis is the same. What is missing is the prior randomization which insures comparability in all other respects. The analysis of naturally grown data must try to reproduce comparability by other means. Since none of these means is ever perfect, none of the studies based on naturally grown data ever completely simulates the impossible experiment.

It is this impossibility of the experiment and the unavoidable imperfection of nonexperimental data that account for despair of ever discovering "the truth about this 'deterrent' effect."[8] The despair is unwarranted. Even in the so-called natural sciences proofs that

[8] Note 3 *supra*.

are incomplete have nevertheless, for good reasons, been accepted by the scientific community.

Let us see then what proofs have been afforded by the many studies that have been done. They are stated here, not in their historical sequence, but in terms of the varying degree with which they approximate the ideal of the controlled experiment.

IV. Homicide Rates with and without the Death Penalty

The first approximation to the impossible experiment is the simple comparison of the capital crime rates in jurisdictions with and without capital punishment. The comparison could take two forms. Historically the first and most obvious comparison was made of the capital crime rate in one state before and after the abolition of the death penalty. If it showed no increase, it gave ground for the belief that the withdrawal of the death penalty had no ill effect.[9] The second form of simple comparison was between states that have the death penalty and states that do not have it.[10]

These early comparisons failed to show higher capital crime rates when there was no death penalty. But to take this as proof that the death penalty had no deterrent effect involved important assumptions. The before and after comparison implies that none of the other conditions that could have affected the capital crime rate had changed betw[illegible] the two periods. The state-by-state comparison implies that the states were identical with respect to the other conditions.

The first improvement on the simplistic structure of these comparisons was to put the before-and-after comparison side by side with developments in states which during that period had not changed their death penalty rule. Similarly, the comparison between

[9] The first comprehensive data on before-and-after comparison were presented by Thorsten Sellin to the Royal Commission on Capital Punishment. *The Deterrent Value of Capital Punishment*, Report of the Royal Commission on Capital Punishment App. 6 (Cmd. 8932 1953). Sellin's memorandum is published in the Minutes of the Evidence, 647. *Cf.* also Koestler, Reflections on Hanging App. (1956); United Nations, Capital Punishment, Report (1960); Samuelson, [illegible] *Was Capital Punishment Restored in Delaware?* 60 J. Crim. L.C. & P.S. 148 (19[illegible]).

[10] Sellin, *Homicides in Retentionist and Abolitionist States*, in Sellin, [illegible] Capital Punishment 135 (1967); Reckless, *The Use of the Death Penalty—a Factual Statement*, 15 Crime & Delinq. 43 (1969); Zimring & Hawkins, Deterrence [illegible] (1973); Baldus & Cole, *A Comparison of the Work of Thorsten Sellin and Isaac Ehrlich on the Deterrent Effect of Capital Punishment*, 85 Yale L.J. 170, 171 (197[illegible]).

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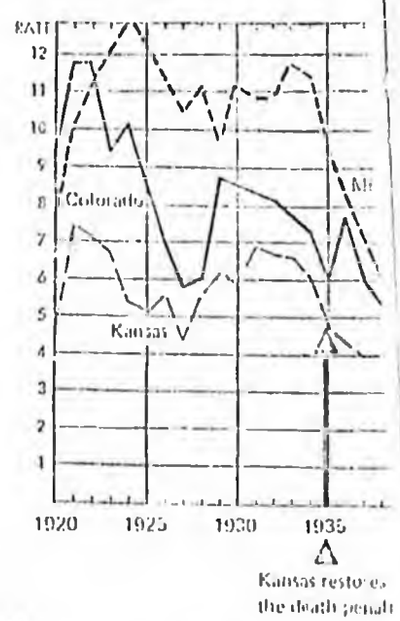

Fig. 3. Homicides per 100,000 population i

[11] Zimring & Hawkins, note 10 *supra*, at 2

[12] From Sellin, note 10 *supra*, at 137.

states was improved by limiting it to contiguous states, for which the assumption of comparability seems more justified.

Table 1 provides an example of contiguous states comparison.[11]

Only in one of the five groups is the homicide crime rate in the no-death-penalty state (Maine) higher than in the other two states. In all others it is either the same or lower. This is neither evidence of a deterrent effect of the death penalty nor clear evidence of its absence. Even contiguous states are nor strictly comparable. Over a span of sixteen years, the period covered by this table, the conditions favoring crime in those states may develop in different directions.

The state-by-state analysis becomes more convincing if averages for a long time period are replaced by the annual figures from which these averages were computed. In figure 3, the homicide rate in Kansas is compared with that of its neighbor states, Missouri and Colorado. Kansas was an abolitionist state until 1935.[12]

Figure 3 allows several observations. First, that annual rates exhibit considerable random fluctuations. It suggests that changes from one



FIG. 3. Homicides per 100,000 population in Missouri, Colorado, and Kansas, 1920–58.

[11] ZIMRING & HAWKINS, note 10 *supra*, at 265.

[12] From SELLIN, note 10 *supra*, at 137.

TABLE 1

HOMICIDE DEATH RATES IN CONTIGUOUS STATES WITH[16] AND WITHOUT CAPITAL PUNISHMENT, 1930-55

(Average annual rate per 100,600 population)

Midwest									
Group 1			Group 2			Group 3			
	D	D		D			D	D	
Michigan	Indiana	Ohio	Minnesota	Wisconsin	Iowa	N. Dakota	S. Dakota	Nebraska	
3.5	3.5	3.5	1.4	1.2	1.4	1.0	1.5	1.8	

New England								
Group 4				Group 5				
	D		D		D		D	
Maine	New Hampshire		Vermont	Rhode Island		Massachusetts	Connecticut	
1.5	0.9		1.0	1.3		1.2	1.7	

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DEMOGRAPHIC PROFILE OF

Status of death penalty	
Homicide rate	
Probability of apprehensi	
Probability of conviction	
Labor force participation	
Unemployment rate (%)	
Population aged 15–24 (%	
Real per capita income ($	
Nonwhite population (%	
Civilian population (000's	
Per capita government expenditures ($)*	
Per capita police expendit	

* State and local

[16] From Bailey & Cole, n

year to the next are unlikely to be significant. Figure 3 also shows that looking only at one state may lead to false conclusions. The Kansas homicide rate, except for the first two years, shows a sharp decline after 1935 and some early observers jumped to the conclusion that it was the restoration of the death penalty that did it. A glance at the homicide rates of Colorado and Missouri warns against this conclusion. The development of the Kansas rate does not noticeably differ from those of the two neighboring states, which had the death penalty throughout the entire span of years.

V. Improving Comparability

Comparing the development of the capital crime rate in contiguous states with and without the death penalty has been challenged on the ground that contiguity is not a sufficiently solid guaranty of likeness. Three responses to this challenge have been forthcoming. One was to show that the contiguous states were in fact alike with respect to a great variety of factors that could, if they had differed from state to state, independently affect the capital crime rate. Table 2 is an example of such efforts.[13]

TABLE 2

Demographic Profile of Contiguous States Compared in Group 1 of Table 1 (1960 data)

	Michigan	Indiana	Ohio
Status of death penalty	...	D	D
Homicide rate	4.3	4.3	3.2
Probability of apprehension	.75	.83	.85
Probability of conviction	.25	.55	.33
Labor force participation (%)	54.9	55.3	54.9
Unemployment rate (%)	6.9	4.2	5.5
Population aged 15–24 (%)	12.9	13.4	12.9
Real per capita income ($)	1,292	1,176	1,278
Nonwhite population (%)	10.4	6.2	9.8
Civilian population (000's)	7,811	4,653	9,690
Per capita government expenditures ($)*	363	289	338
Per capita police expenditures ($)*	11.3	7.6	9.0

* State and local.

[13] From Babbus & Cole, note 10 *supra*, at 178.

Michigan, the state without a death penalty, had no higher homicide rate than neighboring Indiana, even though it had a lower probability of apprehension and conviction, a higher unemployment rate, a larger proportion of blacks in the population, greater population density—all factors which should tend to increase the capital crime rate. On the other hand, it had a higher per capita police expenditure. Ohio had a lower homicide rate and a higher apprehension rate. On most of the remaining characteristics Ohio was in an intermediary position.

The second analytical device for improving comparability was to replace the comparison of entire states by comparing more homogeneous subsections of these states, such as communities of comparable size or counties of comparable income levels.[14] The third, most sophisticated response to the problem of comparability was to apply to it a tool called regression analysis. This is an instrument designed mainly to resolve problems such as this which call for separating the effect of one particular variable from the possible effect of a multitude of others.

Before discussing regression analysis in more detail, I turn to two additional efforts to sharpen the analytic approach aimed at detecting the existence of a deterrent effect for the death penalty.

VI. Sharpening the Measure of Capital Crime

If the death penalty deters murder, the rate of wilful homicides should show the effect. There are, however, grades of wilfulness and some type of homicide will have a higher likelihood of resulting in the death penalty. These types of homicide should provide a more sensitive index for detecting deterrent effect, if one exists, than the overall homicide rate.[15]

The difficulty of developing such an index, of course, is the lack of adequate data. With one exception, namely, the killing of a police officer, records are not generally separated according to the type of homicide committed. An effort has been made to obtain counts of

[14] Cf. e.g., Sutherland, *Murder and the Death Penalty*, 15 J. Crim. L.C. & P.S. 520 (1925); Campion, *Does the Death Penalty Protect the State Police?* in Bedau, ed., The Death Penalty in America 361 (1967); Vold, *Can the Death Penalty Protect Police?* 12 Prison J. 4 (1932).

[15] Zimring & Hawkins, *Deterrence and Marginal Groups*, J. Res. in Crime & Delinq. 100 (July 1968).

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	Rate of Murd (Per 10 yea
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Rhode Island	
Michigan*	
Minnesota	
Wisconsin	
N. Dakota	
Detroit, Mich.	

* Without Detroit.
† 1928–41.

VII. The Effect of Execu

A sentence is likely to
it engenders in the would-be

[16] Bailey, *Murder and Capital Pu*
note 4 *supra*, at 314.

[17] Sellin, *The Death Penalty and P*
144, 145.

first degree murders from the country's prisons.[16] But these numbers are affected by regionally differing apprehension and conviction rates, and indirectly also by differential standards of plea bargaining and jury nullification. Suffice it to note that this effort too failed to detect a deterrent effect of the death penalty.

Killing a policeman is a genuine "high death penalty risk" category and it is well recorded and counted. Again it was Thorsten Sellin who investigated them; table 3 summarizes his findings.[17] Even this measure, rightly thought to be more sensitive than the general homicide rate, failed to reveal any difference between the threat of the death penalty and that of life imprisonment.

TABLE 3
RATE OF MUNICIPAL POLICE KILLINGS, 1920–54
(Per 10 years and 100,000 population)

No Capital Punishment		Capital Punishment	
Maine	.00	Vermont	.00
Rhode Island	.17	New Hampshire	.14
		Massachusetts	.22
		Connecticut	.14
Michigan*	.36	Ohio	.61
		Indiana	.64
		Illinois	.31
Minnesota	.42	Iowa	.56
Wisconsin	.53		
N. Dakota	.53	S. Dakota	.00
		Montana	1.58
		New York	.25
Detroit, Mich.	.85	Chicago, Ill.†	1.54

* Without Detroit.
† 1928–44.

VII. The Effect of Executions

A sentence is likely to deter by the differential degree of fear it engenders in the would-be perpetrator. It has been argued, there-

[16] Bailey, *Murder and Capital Punishment: Some Further Evidence*, in BEDAU, note 4 *supra*, at 314.

[17] Sellin, *The Death Penalty and Police Safety*, in SELLIN, note 10 *supra*, at 138, 141, 145.

fore, that the dichotomy of jurisdictions with and without capital punishment is but a crude approximation to the reality of the threat. What matters was not the death penalty on the books but the reality of executions.

One response to this consideration was to transform the death penalty–life sentence dichotomy into the gradations provided by the number of executions carried out during any one year. I will return to this approach later. The other response was to try to find out whether publicized executions had a short-range depressing effect on the homicide rate.

Leonard Savitz recorded the homicide rates during the eight weeks before and after well-publicized executions in Philadelphia.[18] He found no depressing effect of these executions, although he used one of the potentially more sensitive measures of deterrence, the frequency of felony murders rather than the overall homicide rate.[19]

A similar effort with California data showed an effect, albeit an ambiguous one. William Graves compared homicide rates during execution weeks with non-execution weeks.[20] He had the weeks begin on Tuesday in order to keep Fridays, the execution day in California, at the midpoint. The comparison (fig. 4a) suggested a depressing effect during the days preceding the execution and an increase in homicides on the days following it. Graves was puzzled; others considered the data as proof of a counter-deterrent effect. Conceivably the data could be rearranged, as in figure 4b, with the week beginning on Friday, the execution day. The results would then suggest a reduction of homicides during the first three days following executions compensated by an increase during the rest of the week. In any event, Graves's data show, at best, a delaying rather than a deterrent effect, and the failure of the more sensitive Philadelphia data to show any effect casts doubt on the strength of the California result.

[18] Savitz, *A Study in Capital Punishment*, 49 J. Crim. L.C. & P.S. 338 (1958).

[19] A count of felony murders (for the non-lawyer: a homicide committed in the course of another felony such as robbery) can be made only with great difficulty and only in places, such as Philadelphia, where detailed police records are kept.

[20] Graves, *The Deterrent Effect of Capital Punishment in California*, in Bedau, The Death Penalty in America 322 (1967). (The rearrangement in figure 4b is not precise because the curves for Tuesdays through Thursdays will change under the redefinition.)



FIG. 4.—Homicides during week

VII. The Contributio

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was indeed formidable,
additional execution per
fewer murders."[21] The ba
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[21] Ehrlich, *The Deterrent Eff*
Death, Working Paper No. 18,
paper was subsequently publish
Am. Econ. Rev. 397 (1975).

[22] 96 S. Ct. 3212 (1976).

[23] Ehrlich, note 20, *supra*, 65 A



FIG. 4. Homicides during weeks with and without executions.

VII. THE CONTRIBUTION OF ISAAC EHRLICH

Isaac Ehrlich was the first to introduce regression analysis to efforts designed to determine whether the death penalty had a deterrent effect beyond the threat of life imprisonment.[21] This was a new, powerful way of coping with the task of isolating the death penalty effect, if it should exist, uncontaminated by other influences on the capital crime rate. Ehrlich's paper was catapulted into the center of legal attention even before it was published, when the Solicitor General of the United States cited it with lavish praise in his Amicus Curiae Brief in *Fowler v. North Carolina*,[22] and delivered copies of the study to the Court. The Solicitor General called it "important empirical support for the a priori logical belief that use of the death penalty decreases the number of murders."[23]

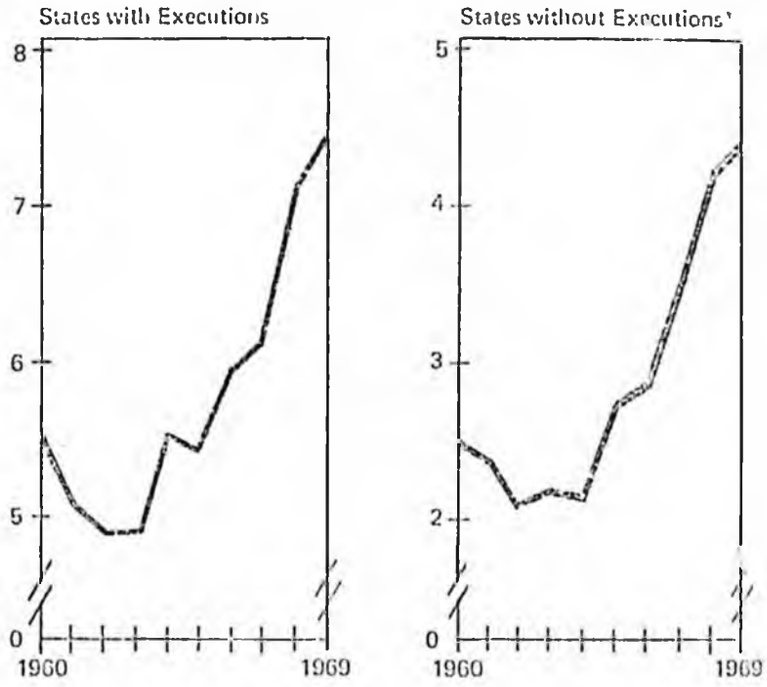
In view of the evidence available up to that time, Ehrlich's claim was indeed formidable, both in substance and precision: "[A]n additional execution per year . . . may have resulted in . . . 7 or 8 fewer murders."[24] The basic data from which he derived this conclusion were the executions and the homicide rates as recorded in the

[21] Ehrlich, *The Deterrent Effect of Capital Punishment: A Question of Life and Death*, Working Paper No. 18, National Bureau of Economic Research (1973). The paper was subsequently published under the same title in an abbreviated form in 65 AM. ECON. REV. 397 (1975).

[22] 96 S. Ct. 3212 (1976).

[23] Reply Brief, p. 36.

[24] Ehrlich, note 20, *supra*, 65 AM. ECON. REV. at 414.



* Abolition states and 6 states with no executions since 1938

FIG. 5. United States homicide and execution rates, 1960–69.

United States during the years 1933 to 1969, the former generally decreasing, the latter, especially during the sixties, sharply increasing.[25] Figure 5 presents the crucial divergence between 1960 and 1969. Ehrlich considered simultaneously other variables that could affect the capital crime rate through calculations I shall discuss presently.[26]

IX. Regression Analysis

Regression analysis proceeds essentially in the following manner. Suppose one knew for certain that, aside from the possible

[25] Data on murders from *The Deterrent Effect of Capital Punishment: A Question of Life and Death*, Sources and Data, May 1975, Memorandum by I. Ehrlich. Data on executions from: National Prisoner Statistics, U.S. Bureau of Prisons.

[26] Ehrlich's analysis included the following variables: the arrest rate in murder cases; the conviction rate of arrested murder suspects; the rate of labor force participation; the unemployment rate; the fraction of the population in the age group 14 to 24; and per capita income.

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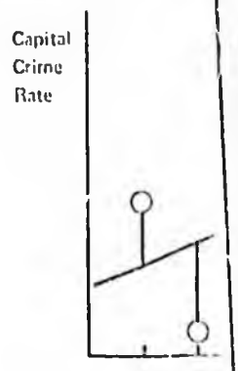

FIG. 6. Hypothetical relationship b
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deterrent effect of executing murderers, there was but one other factor that influenced the capital crime rate: the proportion of men between the ages of 17 and 24 in the total population. The analysis would then begin by relating the capital crime rate in the various states to the proportion of young men in those states, as in figure 6.

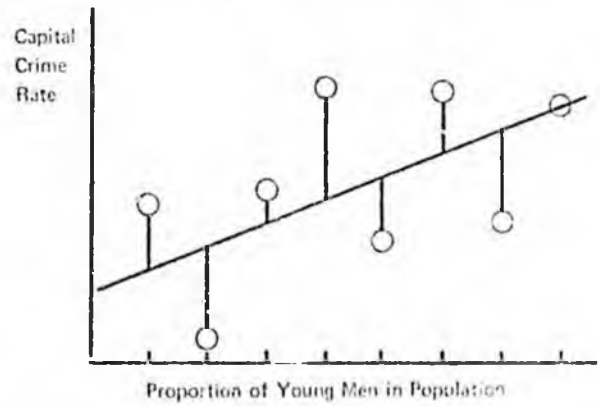

FIG. 6. Hypothetical relationship between the capital crime rate and the proportion of young men in the population.

The points in this graph may represent either different jurisdictions at one point of time, or different points of time in the same jurisdiction, or both. The straight line (the regression line) represents the best estimate of the relationship between the proportion of young men in the population and the capital crime rate. The vertical distance of each point from the regression line represents the residual part of the variations in the capital crime rate, the part that remains unexplained after the effect of the "proportion of young men" has been eliminated. One then proceeds to test whether these residuals are related to the frequency of executions, by plotting them against the number of executions in the respective states as in figure 7. If no relationship exists, a horizontal regression line will indicate that executions have no deterrent effect (a): No matter how executions vary, the capital crime rate remains the same. If a relationship exists (b), the downward slope of the regression line would indicate that as the frequency of executions increases, capital crime decreases. That graph, one will note in passing, is in appearance indistinguishable from the finding of a controlled experiment, if one could be made.

The complete apparatus of regression analysis is more compli-

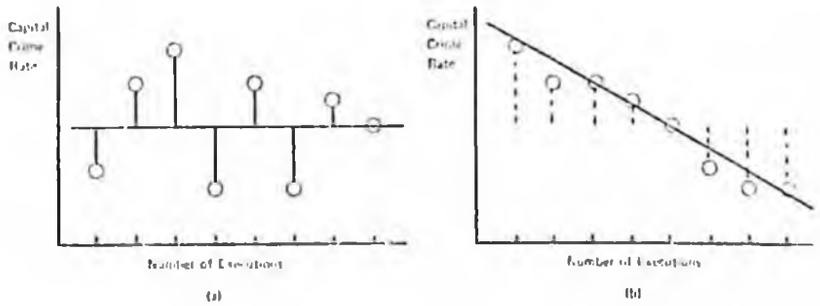

FIG. 7. Two hypothetical relationships between the frequency of executions and the residual capital crime rate.

cated, primarily by encompassing several control variables, not just one, as in our example. Many more problems must be resolved along the way. One requirement is to include all variables that affect the outcome. If one is omitted its effect could be erroneously attributed to one of the included variables. This danger of spurious correlation is particularly great if the analysis is concerned with so-called time series data, such as corresponding constellations of executions and capital crime over a series of consecutive years.

Another requirement is that the analysis account for feedback effects. Estimates of deterrent effects of punishment, for example, may be distorted if they fail to separate the simple statistical association between crime and punishment into its potential two components: the effect of punishment on crime, and the possible reverse effect of crime on punishment. For example, an increase in crime may overload the law enforcement system and thereby increase the defendant's chances of a lower sentence in the plea bargaining process.

All these and other technical refinements of the regression analysis have but one goal: to isolate, through a process of mathematical purification, the effect of any one variable upon the other, under conditions that exclude the interference from other variables. Regression analysis, thus, is but another effort to simulate with the help of nonexperimental data the experimental conditions outlined in figure 2 of this paper.[25] These examples suggest the sophistication

[25] A more elaborate effort by me to explain regression analysis to the non statistician is in preparation and will be published in the *American Bar Foundation Research Journal*.

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X. Ehrlich's Deterrence

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[28] Passell & Taylor, *The Deterrent I*
March 1975 (unpublished Columbia
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[29] *Id.* at 6–8.

[30] Kenneth L. Avio, *Capital Punis*
Deterrent Hypothesis (mimeo. 1975).

[31] *Id.* at 22.

[32] Bowers & Pierce, *The Illusion*
Capital Punishment, 85 Yale L.J. 187

of this analytic instrument, but its sophistication is matched by a corresponding measure of delicacy. Applied to nonexperimental data, regression analysis is not a naturally robust instrument. Its results can be drastically affected by minor changes in the analytic pattern, for which the investigator has, as a rule, many options.

X. Ehrlich's Deterrence Claim Evaporates

Ehrlich's study, because it ran counter to all the hitherto available evidence except that of Graves, and because it was introduced into a litigation of historic import, received extraordinary attention from the scholarly community.

First, Peter Passell and John Taylor attempted to replicate Ehrlich's finding and found it to hold up only under an unusually restrictive set of circumstances.[28] They found, for example, that the appearance of deterrence is produced only when the regression equation is in logarithmic form; in the more conventional linear regression framework, the deterrent effect disappeared.[29] They found also that no such effect emerged when data for the years after 1962 were omitted from the analysis and only the years 1933–61 were considered.[30]

An effort to duplicate Ehrlich's findings from Canadian experience also failed.[31] Kenneth Avio of the University of Victoria, after analyzing the thirty-five-year span, concluded that "the evidence would appear to indicate that Canadian offenders over the period 1926–60 did not behave in a manner consistent with an effective deterrent effect of capital punishment."[32]

During 1975, the *Yale Law Journal* published a series of articles reviewing the evidence on the deterrent effect of capital punishment. Included in this series was a second attempt to replicate Ehrlich's result by William Bowers and Glenn Pierce.[33] In replicating Ehrlich's work, they confirmed the Passell-Taylor finding that

[28] Passell & Taylor, *The Deterrent Effect of Capital Punishment: Another View*, March 1975 (unpublished Columbia University Discussion Paper 74-7509), reprinted in Reply Brief for Petitioner, *Fowler v. North Carolina*, App. C, at 4a–6a.

[29] *Id.* at 6–8.

[30] *Id.* at 5, 6.

[31] Kenneth L. Avio, *Capital Punishment in Canada: A Time-Series Analysis of the Deterrent Hypothesis* (mimeo, 1976).

[32] *Id.* at 22.

[33] Bowers & Pierce, *The Illusion of Deterrence in Isaac Ehrlich's Research on Capital Punishment*, 85 Yale L.J. 187 (1975).

Ehrlich's results were extremely sensitive to whether the logarithmic specification was used and whether the data for the latter part of the 1960s were included.[31] Bowers and Pierce also raised questions about Ehrlich's use of the FBI homicide data in preference to vital-statistics data.[35]

Ehrlich defended his work in this series in the *Yale Law Journal* by addressing some of the criticisms raised against his study.[36] He refuted some, but not the crucial ones. In his article he referred to a second study he made of the problem, basing it this time on a comparison by states for the years 1940 and 1950. Ehrlich claimed that the new test bolstered the original claim. But he described these findings as "tentative and inconclusive."[37] In the meantime, Passell made a state-by-state comparison for 1950 and 1960 but did not find what Ehrlich allegedly had found. Passell concluded: "We know of no reasonable way of interpreting the cross-section [*i.e.*, state-by-state] data that would lend support to the deterrence hypothesis."[38]

A particularly extensive review of Ehrlich's time series analysis was made by a team led by Lawrence Klein, president of the American Economic Association.[39] The authors found serious methodological problems with Ehrlich's analysis. They raised questions about his failure to consider the feedback effect of crime on the economic variables in his model,[40] although he did consider other feedback effects in his analysis. They found some of Ehrlich's technical manipulations to be superfluous and tending to obscure the accuracy of his estimates.[41] They, too, raised questions about variables omitted from the analysis, and the effects of these omissions on the findings.[42]

Like Passell-Taylor and Bowers-Pierce, Klein and his collaborators replicated Ehrlich's results, using Ehrlich's own data, which by

[31] *Id.* at 197–205.

[35] *Id.* at 187–89.

[36] Ehrlich, *Deterrence: Evidence and Inference*, 85 YALE L.J. 209 (1975).

[37] *Id.* at 209.

[38] Passell, *The Deterrent Effect of the Death Penalty: A Statistical Test*, 30 STAN. L. REV. 61, 80 (1975).

[39] Klein, Forst & Filatov, *The Deterrent Effect of Capital Punishment: An Assessment of the Estimates*. Paper commissioned by the Panel on Research on Deterrence, National Academy of Sciences (June 1976).

[40] *Id.* at 18, 19–24.

[42] *Id.* at 14–17.

[41] *Id.* at 14.

[1976] 317]

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[43] *Id.* at 24, 25.

[45] *Id.* at 28–30.

[47] *Id.* at 17–19.

that time he had made available.[43] As in previous replications, Ehrlich's results were found to be quite sensitive to the mathematical specification of the model and the inclusion of data at the recent end of the time series.

By this time, Ehrlich's model had been demonstrated to be peculiar enough. Klein went on to reveal further difficulties. One was that Ehrlich's deterrence finding disappeared after the introduction of a variable reflecting the factors that caused other crimes to increase during the latter part of the period of analysis.[44] The inclusion of such a variable would seem obligatory not only to substitute for the factors that had obviously been omitted but also to account for interactions between the crime rate and the demographic characteristics of the population.

Klein also found Ehrlich's results to be affected by an unusual construction of the execution rate variable, the central determinant of the analysis. Ehrlich constructed this variable by using three other variables that appear elsewhere in his regression model: the estimated homicide arrest rate, the estimated homicide conviction rate, and the estimated number of homicides. Klein showed that with this construction of the execution rate a very small error in the estimates of any of these three variables produced unusually strong spurious appearances of a deterrent effect.[45] He went on to show that the combined effect of such slight errors in all three variables was likely to be considerable, and that in view of all these considerations, Ehrlich's estimates of the deterrent effect were so weak that they "could be regarded as evidence . . . [of] a counterdeterrent effect of capital punishment."[46] In view of these serious problems with Ehrlich's analysis, Klein concluded: "[W]e see too many plausible explanations for his finding a deterrent effect other than the theory that capital punishment deters murder." And further: "Ehrlich's results cannot be used at this time to pass judgment on the use of the death penalty."[47]

The final blow came from a study by Brian Forst, one of Klein's collaborators on the earlier study. Since it had been firmly established that the Ehrlich phenomenon, if it existed, emerged from developments during the sixties, Forst concentrated on that

[43] *Id.* at 24, 25.
[44] *Id.* at 28–30.
[45] *Id.* at 17–19.
[46] *Id.* at 18.
[47] *Id.* at 33.

decade.[18] He found a rigorous way of investigating whether the ending of executions and the sharp increase in homicides during this period was causal or coincidental. The power of Forst's study derives from his having analyzed changes *both* over time and across jurisdictions. The aggregate United States time series data Ehrlich used were unable to capture important regional differences. Moreover, they did not vary as much as cross-state observations; hence they did not provide as rich an opportunity to infer the effect of changes in executions on homicides.

Forst's analysis is superior to Ehrlich's in four major respects: (1) It focuses exclusively on a period of substantial variation in the factors of central interest. (2) Its results are shown to be insensitive to alternative assumptions about the mathematical form of the relationship between homicides and executions. The results were also invariant to several alternative methods of constructing the execution rate, to alternative assumptions about the nature of the relationships between homicides, and other offenses, executions, and convictions and sentences, and to alternative technical assumptions. (3) By not requiring conversion of the data to logarithms, Forst's model does not require that false values be used when the true values of the execution are zero. (4) It incorporates more control variables.

Forst's study led to a conclusion that went beyond that of Klein: "The findings give no support to the hypothesis that capital punishment deters homicide."[19] "Our finding that capital punishment . . . does not deter homicide is remarkably robust with respect to a wide range of alternative constructions."[20]

XI. The Overlooked Natural Experiment

Forst saw that Ehrlich, by using aggregate data for the United States as a whole, was forced to disregard the differences between states that had capital punishment and executions, and states that had either abolished the death penalty or at least had ceased to carry it out. Ehrlich's model thus could not evaluate the natural experiment which legislative history had built into the data. If Ehrlich's thesis—that it was the reduction of executions during the

[18] Forst, *The Deterrent Effect of Capital Punishment: A Cross State Analysis of the 1960s* (September 1976, mimeograph).

[19] *Id.* at 27. [20] *Id.* at 29.

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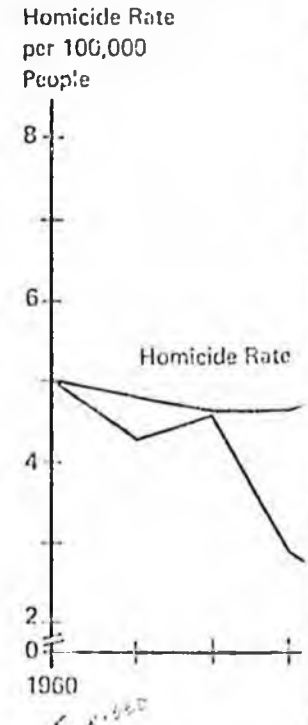

Fig. 8. United States homicide

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sixties that made the capital crime rate grow—were correct, then no such growth should obtain in the states in which there could be no reduction in executions because there had been none to begin with. Yet as figure 8 shows, the growth of the capital crime rate during the crucial sixties was as large in the states without executions as in states with executions.

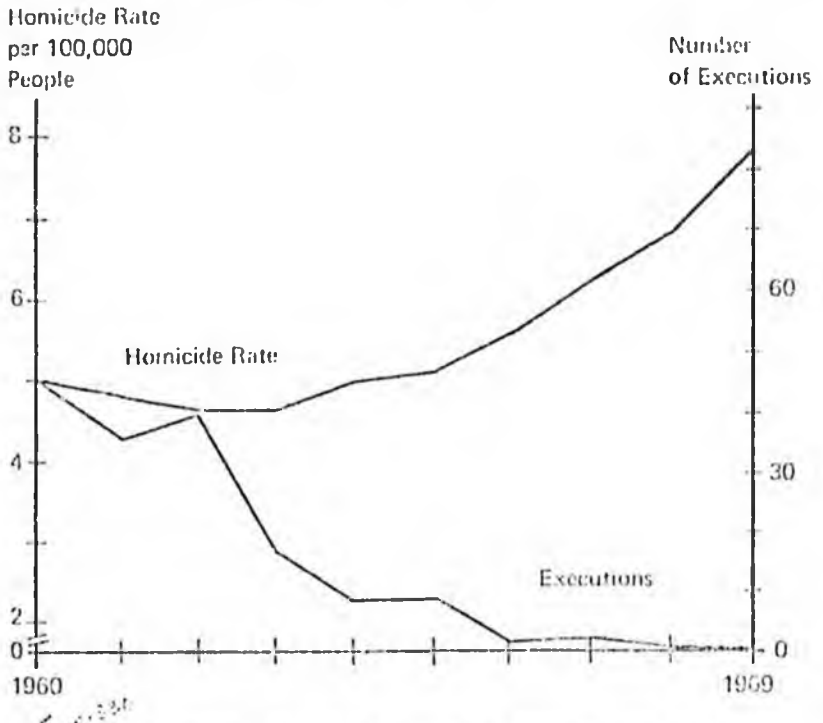

FIG. 8.—United States homicide rate and number of executions, 1960–69.

XII. Evidence versus Ancient Sentiment

The evidence on whether the threat of the death penalty has a deterrent effect beyond the threat of the life sentence, its normal substitute, is overwhelmingly on one side. None of the efforts to sharpen the measurement yardstick by replacing the overall homicide rate through more sensitive measures succeeded in discovering a deterrent effect. Nor did any effort to sharpen the analytical instruments of analysis help. Even regression analysis, the most sophisticated of these instruments, after careful application by the scholarly community failed to detect a deterrent effect.

This then is the proper summary of the evidence on the deterrent effect of the death penalty: If there is one, it can only be minute, since not one of the many research approaches—from the simplest to the most sophisticated—was able to find it.[51] The proper question, therefore, is whether an effect that is at best so small that nobody has been able to detect it, justifies the awesome moral costs of the death penalty.

I can only speculate why the question concerning the deterrent effect of the death penalty has always been posed in its unanswerable form: whether or not it has such an effect. I suspect that at the root of the resistance to the evidence is the very ancient and deeply held belief that the death penalty is the ultimate deterrent.

The Solicitor General has called it a "logical a priori" belief. The logic probably runs as follows: If punishment has any deterrent effect (and surely it often has) then the most severe punishment should deter more than all others. Confronted with the failure to detect such an effect, those who share the belief have narrowed the claim. Only certain types of capital crime, they say, not all, are likely to be deterred. The Court in *Gregg v. Georgia* gave two examples, the hired killer and the "free murder" by a life prisoner:[52]

> We may nevertheless assume safely that there are murderers, such as those who act in passion, for whom the threat of death has little or no deterrent effect. But for many others, the death penalty undoubtedly is a significant deterrent. There are carefully contemplated murders, such as murder for hire, where the possible penalty of death may well enter into the cold calculus that precedes the decision to act. And there are some categories of murder, such as murder by a life prisoner, where other sanctions may not be adequate.

If these are the best examples, the others must be poor indeed. The murderer for hire, knowing himself fairly safe from detection, is not likely to be concerned over the difference between death and prison

[50] The one exception pointing in the other direction, the dubious California finding that executions appear to postpone some homicides for a few days, is of small import. An effort to duplicate the finding in Philadelphia failed. See text *supra* at notes 18 and 20.

[52] 96 S. Ct. at 2951. Further examples are afforded in a footnote: "Other types of calculated murders, apparently occurring with increasing frequency, include the use of bombs or other means of indiscriminate killings, the extortion murder of hostages or kidnap victims, and the execution-style killing of witnesses to a crime." *Id.* at n.33.

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[55] 96 S. Ct. at 2930, quoting

for life. The "cold calculus" that moves the hired killer must surely tell him how small the probability is that he will be caught.[58] A good part of his careful contemplation goes to avoiding traces.

The life prisoner who kills is even a more interesting example. At first glance, the argument seems so irrefutable, that this type of homicide is occasionally the last capital crime on the statute books before the death penalty is abolished. It is a prize example because on "logical a priori" grounds his is by definition the "free murder" under the law. Again it is useful to look at the facts which Sellin was the first to illuminate. He found that, in 1965, the year for which he collected the data, sixteen prison homicides had been committed by men convicted of murder. Since not all murderers in prison are there with a life sentence, the true number of these "free murders" is likely to be even smaller.[59] In fact, of course, the "free murder" is probably altogether a figment because most life prisoners have some hope of being released before the end of their natural life, a hope that would be destroyed by a second murder. A prison, moreover, has ways of its own of punishing such a double murderer.

It is only fair, however, to take these examples of the Court for what they are, efforts to bolster with reasons the unwillingness to abandon the ancient sentiment. In that sentiment, the belief in deterrence plays but a small part. It is the belief in retributive justice that makes the death penalty attractive, especially when clothed in a functional rationalization. The belief has ancient roots, even if the rationale is modern. The Court in *Gregg* approvingly cites *Furman v. Georgia*:[60]

> The instinct for retribution is part of the nature of man, and channeling that instinct in the administration of criminal justice serves an important purpose. . . . When people begin to believe that organized society is unwilling or unable to impose upon criminal offenders the punishment they "deserve," then there are sown the seeds of anarchy.

[58] An interview comes to mind with a former warden of the Cook County Jail who did not believe in the death penalty. The interviewer asked him, "You mean, you would even hesitate to execute a hired killer?" The warden's answer, as I remember it was: "I shall cross that bridge when I come to it. In my many years here in the Cook County Jail, I have yet to meet the first hired killer. They are never caught, although Chicago would be a good place to catch them."

[59] Sellin, *Prison Homicides*, in SELLIN, note 10 *supra*, at 154, 156; see also Butler, *Prison Killings and Death Penalty Legislation*, 53 Prison J. 11 (1974).

[60] 96 S. Ct. at 2930, quoting 408 U.S. 238, 308 (1972).

The depth of this feeling was revealed in a strange interchange during oral argument between Mr. Justice Powell and Professor Anthony Amsterdam, counsel for the petitioners:[56]

> *Mr. Justice Powell:*
>
> Let me put a case to you. You've heard about Buchenwald, one of the camps in Germany in which thousands of Jewish citizens were exterminated. . . . If we had had jurisdiction over the commandant of Buchenwald, would you have thought capital punishment was an appropriate response to what that man or woman was responsible for?
>
> *Mr. Amsterdam:*
>
> . . . We all have an instinctive reaction that says, "Kill him." . . . But I think the answer to the question that your Honor is raising, . . . [to] be consistent with the 8th Amendment to the Constitution . . . my answer would be, "No."

Mr. Justice Powell asked the same question again, this time about a man who might destroy New York City with a hydrogen bomb. Amsterdam's answer, of course, was again no.

Significantly, both examples went to the issue of retribution, not deterrence. It is hard to think of any crime that would be less deterred by the difference between the death penalty and life imprisonment, for instance, in Spandau prison. The sentiment in favor of the death penalty does not stem from the belief in its deterrence and perhaps we overestimate altogether the importance of that issue.

Nowhere was the worldwide decline of the death penalty significantly connected with arguments about its effectiveness or the lack thereof. In some countries abolition became simply the logical end-point of a gradual decline in executions, probably accompanied by a parallel change in moral sentiments.

In other countries, abolition was clearly an expression of moral sentiment. The first de jure abolition of executions in czarist Russia goes back to A.D. 1020. Capital punishment reappeared in the fourteenth century but was again abolished when Elizabeth ascended the throne in 1742. On both occasions, the issue was one of morality not expediency.[57] In Germany, the 1946 Constitution abolished the death

[56] The colloquy occurred during argument in *Woodson & Wanton v. North Carolina*; transcribed record No. 75-5491, at 20.

[57] "Do not kill anyone, either guilty or not . . . . Do not destroy a Christian soul, even in case death is well deserved." Testament of the Grand Prince of Kiev,

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penalty as a deliberate act of repudiation of the Hitler era, when the death penalty, legally or illegally imposed, claimed millions of lives. In Great Britain, after a century of controversy, the abolitionists won when a man, protected by all the vaunted safeguards of British justice, was executed for a crime that he had not committed.

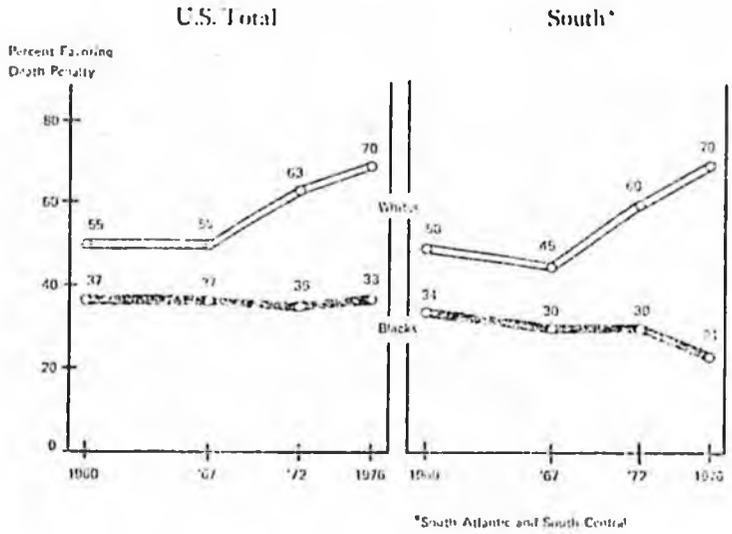
Ceylon abolished the death penalty when it acquired its independence, as an act of Buddhist faith. In Austria, the movement toward abolition reflected primarily moral sentiments. The parliament of the first Austrian republic unanimously abolished capital punishment as a renunciation of the monarchical past. In 1933, a semi-fascist chancellor restored the death penalty primarily as a political threat to the underground opposition. The second republic again abolished the death penalty, first in ordinary criminal cases and then also for cases triable under martial law, last used against the socialist political opposition in the civil war of 1934.

Abolition of the death penalty thus has reflected in the main a change in cultural sentiments, if not of the people, so at least of its legislators or its government. In the United States also capital punishment will end only when our cultural sentiments change. The people, a majority of whom now favor the death penalty, will be the last to change. The legislators will probably change before them; and our Supreme Court Justices conceivably may change even earlier.

Sentiment for the death penalty in the United States has grown during the last decade, stimulated by the unprecedented rise in violent crime during the second half of the sixties. In such times the demand for the death penalty grows because it is so easy to believe it will make law enforcement more effective. It is interesting to analyze the growth of this popular sentiment. In figure 9, four Gallup polls on the death penalty spanning sixteen years are analyzed. Sentiment for the death penalty did not rise until 1967, and then only among the white population. Black sentiment for the death penalty, always far below the corresponding figures for whites, remained unchanged. In the South, sentiment for the death penalty among whites and blacks has traditionally been below the average for the country. For the blacks, this is still true; their propor-

1135 AD. Elizabeth purportedly promised God that if she were selected she would take no life. Adams, *Capital Punishment in Imperial and Soviet Criminal Law*, 18 VAND. J. COMP. L. 575, 576 (1970).

tion favoring the death penalty has been declining, reaching in 1976 a new low of 24 percent. Among the whites, sentiment in the South has caught up with that of the country as a whole, at 70 percent.



* South Atlantic and South Central.

FIG. 9. Proportion of whites and blacks favoring the death penalty, 1960-76 (Gallup Poll).

The petitioners in *Gregg* all came from the South. In the last analysis the Court held that it had no power to override legislation that was grounded in a belief that even some of the Justices must have shared.

Still, one must not give up hope. The realization that the deterrent effect, if it exists at all,[58] can be only minute, should force us to look

[58] Two of the best studies—those of Forst and Bassell—showed even a counter-deterrent balance for the death penalty. In both studies it was statistically insignificant. The possibility of a counterdeterrent effect does not come as a total surprise. It has theoretical support of long standing. There is the suicide through-murder theory advanced first by STEKEL & ALEXANDER, THE CRIMINAL, THE JUDGE, AND THE PUBLIC: A PSYCHOLOGICAL ANALYSIS (1931); see also H. von Weber, *Selbstmord als Mordmotiv*, MONATSSCHRIFT FÜR KRIMINALBIOLOGIE UND STRAFRECHTSREFORM 161 (1937). Then there is concern over the generally brutalizing effect of the death penalty which just adds one more killing in cold blood. Also, as long as some states still consider crimes other than murder (e.g., rape) to be capital offenses, the old argument that killing the victim-witness may somehow "improve" the

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The conclusion that play a decisive role is str Massachusetts Supreme *O'Neal*,[60] which held a m for rape-murder to be an the deterrence issue the United States Supreme C sachusetts court accepted the death sentence to de deprived the government the death penalty.

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criminal's situation is still valid the case of Gary Gilmore, the the first person executed in the p. 1.

[59] Chief Justice Warren, writi (1958).

[60] 339 N.E.2d 676 (Mass. 1975)

once more at the balance sheet, and weigh against the, at best, minimal benefit, the awesome costs of the death penalty: the inhumanity of the act, the ever present danger of error, the ultimate impossibility to make a fair decision as to who is to die and who is to live.

For the committed who believe that there should be more search for the elusive deterrent effect, a new opportunity has arisen. By the grace of the Court we are in the midst of a new natural experiment. After a number of years during which, through *Furman*, the death penalty was held in abeyance throughout the land, some of our states will resume executions. There is thus another opportunity to see whether the capital crime rate in these states will decline compared to the states that still have no executions.

In the end one must remain skeptical as to the power of evidence to change ancient beliefs and sentiments. The greater hope lies in the expectation that with better times our sentiments will reach the "standards of decency that mark the progress of a maturing society."[59] Justices Brennan and Marshall thought—wrongly it appears—that we had already sufficiently matured.

The conclusion that the personal sentiments of the judges play a decisive role is strengthened by reading the decision of the Massachusetts Supreme Judicial Court in *Commonwealth v. O'Neal*,[60] which held a mandatory death sentence upon a conviction for rape-murder to be unconstitutional. That court had before it on the deterrence issue the very same evidence that was before the United States Supreme Court in *Gregg*. Yet the majority of the Massachusetts court accepted the evidence as proof of the inability of the death sentence to deter. The lack of proof of deterrent effect deprived the government of a "compelling state interest" to justify the death penalty.

Why did the Supreme Court and the Massachusetts court arrive at a different decision? The decisive factor was the simple fact that in the United States Supreme Court only two of the nine Justices felt that "the standard of decency" required abolition while on the Massachusetts court five out of seven felt that way.

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criminal's situation is still valid. *Cf.* Bowe, *supra* note 20, at 264 n.7. Consider also the case of Gary Gilmore, the Utah convict who succeeded in his objective to be the first person executed in the post *Furman* period. See N.Y. Times, 18 Jan. 1977, p. 1.

[59] Chief Justice Warren, writing for the Court, in Trop v. Dulles, 356 U.S. 86, 101 (1958).

[60] 339 N.E.2d 676 (Mass. 1975).

(2) To develop additional programs whereby the offenders may be afforded the opportunity to contribute to society and the support of their families through restitution programs; and

(3) To develop pilot programs of counseling, training and job placement whereby restitution may be accomplished; such programs may be residential or nonresidential as appropriate. (Acts 1980, No. 80-588, p. 928, § 13.)

Article 5.

Death Penalty.

§ 15-18-81. Confinement until execution; certain persons may visit condemned person.

Code commissioner's note. — Acts 1979, No. 79-426, p. 667, effective October 1, 1979, abolished the board of corrections and vested all its rights, duties, power, property, etc., in the governor, and authorized him to exercise such functions and duties himself or through designated administrators. See §§ 14-1-15 through 14-1-17, and also Acts 1979, No. 79-154, p. 253.

§ 15-18-82. Execution by electrocution; where and by whom executions conducted.

Code commissioner's note. — Acts 1979, No. 79-426, p. 667, effective October 1, 1979, abolished the board of corrections and vested all its rights, duties, power, property, etc., in the governor, and authorized him to exercise such functions and duties himself or through designated administrators. See §§ 14-1-15 through 14-1-17, and also Acts 1979, No. 79-154, p. 253.

§ 15-18-85. Return of execution warrant, certificate and statements; payment for transportation of body.

Code commissioner's note. — Acts 1979, No. 79-426, p. 667, effective October 1, 1979, abolished the board of corrections and vested all its rights, duties, power, property, etc., in the governor, and authorized him to exercise such functions and duties himself or through designated administrators. See §§ 14-1-15 through 14-1-17, and also Acts 1979, No. 79-154, p. 253.

CHAPTER 19.

YOUTHFUL OFFENDERS.

Nothing in the constitution or this chapter guarantees youthful offender treatment to all defendants under 21 years of age. Thompson v. State, 354 So. 2d 1128 (Ala.), rev'd on other grounds, 354 So. 2d 1132 (Ala. 1977).

Duty is upon trial judge, etc.

In accord with bound volume. See Rainer v. State, 398 So. 2d 771 (Ala. Crim. App. 1981); Bledsoe v. State, 409 So. 2d 924 (Ala. Crim. App. 1981).

Duty is upon the trial judge to call the Youthful Offender Act to the attention of the youthful offender, just as much as it is the duty of the trial judge to explain to a defendant his constitutional rights when he enters a plea of guilty. Logan v. State, 56 Ala. App. 425, 322 So. 2d 108 (1975).

Supreme court has placed the burden on the trial judge to call the benefits of the Youthful Offender Act to the attention of an eligible defendant, and has analogized that burden and duty to the duty of a trial judge to explain a defendant's constitutional rights before accepting his guilty plea. Whitfield v. State, 56 Ala. App. 653, 324 So. 2d 793, cert. quashed, 295 Ala. 428, 324 So. 2d 796 (1975); Thompson

426, p. 667, § 5, effective October 1,

lict with the act are repealed. Since this section ppears to be inconsistent with or in conflict with the act, it is treated as repealed. See § 14-1-15 through 14-1-17.

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overnor and the legislature in matters tions, pardons and paroles and related ernor and the legislature at least 30 ruction of permanent facilities or any No. 91, p. 118; Code 1940, T. 45, § 8; s 1978, No. 595, p. 717, § 3.)

tions and duties himself or through such administrative divisions or such officers or employees as he may designate. See §§ 14-1-15 through 14-1-17.

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tions, and vested all its rights, duties, power, etc., in the governor, and authorized him to exercise such functions and duties himself or through such administrative divisions or such

officers or employees as he may designate. See §§ 14-1-15 through 14-1-17.

§ 14-1-15. Duties, authority, property, rights, etc., of board of corrections vested in governor.

All duties, responsibilities, authority, power, assets, liabilities, property, funds, appropriations, contractual rights and obligations, property rights and personnel, whether accruing or vested, by operation or by law and which are not in conflict with §§ 14-1-15 through 14-1-17 and which are presently vested in the board of corrections under Title 14, chapters 1 through 12, as amended, and by any other laws or parts of laws of this state, are hereby vested in the governor of the state of Alabama. (Acts 1979, No. 79-426, p. 667, § 1.)

This section and §§ 14-1-16 through 14-1-18 vest responsibility for the state prison system in the governor to represent the state's interests for judicial purposes. Graddick v. Newman, — U.S. —, 102 S. Ct. 4, 69 L. Ed. 2d 1025 (1981).

§ 14-1-16. Board of corrections abolished; rights, duties, powers, property, etc., vested in governor.

Effective October 1, 1979, the board of corrections of the state of Alabama is hereby abolished and all rights, all duties, responsibilities, powers, assets, liabilities, contractual rights and obligations and property rights, whether accruing or vested in the abolished agency, are hereby vested in the governor of the state of Alabama. (Acts 1979, No. 79-426, p. 667, § 2.)

Sections 14-1-15 through 14-1-18 vest responsibility for the state prison system in the governor who thereby represents the state's interests for judicial purposes. Graddick v. Newman, — U.S. —, 102 S. Ct. 4, 69 L. Ed. 2d 1025 (1981).

Cited in Mixon v. State, 407 So. 2d 588 (Ala. Crim. App. 1981).

§ 14-1-17. Governor authorized to exercise functions, designate administrator, set salary and designate duties.

All functions and duties of the department shall be exercised by the governor, acting by himself or by and through such administrative divisions or such officers or employees or individuals as he may designate. The governor is hereby further authorized to set the salary of such individual or individuals and make one such person responsible to him as administrator of the corrections institutions throughout this state. The governor is further authorized to set the salary of such administrator at the same level of any cabinet officer or at a reasonable level in excess thereof. Any administrator shall have the authority and the duties which the governor may designate and all of the power and authority incident to carrying out the functions and duties assigned. (Acts 1979, No. 79-426, p. 667, § 3.)

Colorado Revised Statutes 1973

1982 CUMULATIVE SUPPLEMENT

VOLUME 8

1978 REPLACEMENT VOLUME

CRIMINAL JUSTICE AND CHILDREN'S CODE

This volume of the 1982 Cumulative Supplement contains all the laws of a general and permanent nature enacted or amended by the Fifty-first General Assembly at its First Regular Session in 1977 by House Bill No. 1589, effective July 1, 1978, and as amended by House Bill No. 1001, effective April 1, 1979, enacted by the Fifty-first General Assembly at its First Extraordinary Session in 1978 and by Senate Bill No. 101, effective July 1, 1979, enacted by the Fifty-first General Assembly at its Second Regular Session in 1978, by the Fifty-second General Assembly at its First Regular Session in 1979, by the Fifty-second General Assembly at its Second Regular Session in 1980, by the Fifty-third General Assembly at its First Regular Session in 1981, and by the Fifty-third General Assembly at its Second Regular Session in 1982, pertaining to Titles 16, 17, 18, 19, 20, and 21 of Colorado Revised Statutes 1973.

Edited, Collated, and Revised
Under the Supervision and Direction of the
COMMITTEE ON LEGAL SERVICES
by
DOUGLAS G. BROWN, OF THE COLORADO BAR,
REVISOR OF STATUTES
AND THE
OFFICE OF REVISOR OF STATUTES

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To be Recnacted by the General Assembly of the State of Colorado as the Statutory Law of Colorado of a General and P...

ance with subsection (2) of this section but submitted only a general verdict form on the violent offender count, the enhanced punishment imposed for having committed a violent crime was improper. People v. Stroup, ___ Colo. App. ___, 624 P.2d 913 (1980).

Requirement of specific findings not applied retroactively. Where defense counsel did not object to the verdict forms and there is no showing of harm from the form of the verdict, the requirement that the court submit special interrogatories to the jury will not be applied retroactively. People v. Swanson, ___ Colo. ___, 638 P.2d 45 (1981).

Penalty for first-degree assault committed in "heat of passion". Where a defendant charged with first-degree assault can establish that he acted in the "heat of passion", he cannot constitutionally receive a greater penalty than he would have received had he been convicted of manslaughter. People v. Grable, 43 Colo. App. 518, 611 P.2d 588 (1979).

Verdict of not guilty of "crime of violence" not inconsistent with guilty verdicts on other charges. Guilty verdicts on the charges of first-degree sexual assault, sexual assault on a child, and aggravated incest are not inconsistent as a matter of law with a jury finding of not guilty on a charge of "crime of violence". People v. Fierro, 199 Colo. 215, 606 P.2d 1291 (1980).

Fifteen to 20-year sentence was not excessive for aggravated robbery and a "crime of violence". People v. Colasanti, ___ Colo. ___, 626 P.2d 1136 (1981).

Applied in People v. Smith, 195 Colo. 404, 579 P.2d 1129 (1978); People v. Warren, 196 Colo. 75, 582 P.2d 663 (1978); People v. Girard, 196 Colo. 68, 582 P.2d 666 (1978); People v. Vigil, 43 Colo. App. 121, 602 P.2d 884 (1979); People v. Swain, 43 Colo. App. 343, 607 P.2d 396 (1979); People in Interest of R.R., 43 Colo. App. 208, 607 P.2d 1013 (1979); People v. Martinez, 43 Colo. App. 419, 603 P.2d 359 (1979); Watson v. District Court, 199 Colo. 76, 604 P.2d 1165 (1980); People v. Hardin, 199 Colo. 229, 607 P.2d 1291 (1980); People v. Cabral, ___ Colo. ___, 629 P.2d 575 (1981); People v. Lichtenstein, ___ Colo. ___, 630 P.2d 70 (1981); People v. Francis, ___ Colo. ___, 630 P.2d 82 (1981); People v. Valencia, ___ Colo. ___, 630 P.2d 85 (1981); People v. Jones, ___ Colo. ___, 631 P.2d 1132 (1981).

ion. Except as provided in section 7 of elating to the power of the governor to cerated person shall be unconditionally piration of his sentence, less the deduc 17, C.R.S. 1973.

; R & RE, L. 79, p. 666, § 10.

PART 4

DEATH PENALTY - EXECUTION

16-11-402. Appliances - sentence executed by executive director. The exec tive director of the department of corrections, at the expense of the sta of Colorado, shall provide a suitable and efficient room or place, enclos from public view, within the walls of the correctional facilities at Canon C and therein construct and at all times have in preparation all necessary app ances requisite for carrying into execution the death penalty by means the administration of lethal gas. The punishment of death in each case death sentence pronounced in this state shall be inflicted by the executi director or his designee in the room or place and with the appliances provid for inflicting the punishment of death by the administration of lethal gas.

Source: Amended, L. 79, p. 682, § 11.

16-11-403. Week of execution - warrant. When a person is convicted of class 1 felony, the punishment for which is death, and the convicted pers is sentenced to suffer the penalty of death, the judge passing such senten shall appoint and designate in the warrant of conviction a week of time with which the sentence must be executed; the end of such week so appoint shall be not less than ninety days nor more than one hundred twenty da from the day of passing the sentence. Said warrant shall be directed to t executive director of the department of corrections or his designee comman ing said executive director or his designee to execute the sentence impos upon some day within the week of time designated in the warrant and sh be delivered to the sheriff of the county in which such conviction is ha who, within three days thereafter, shall proceed to the correctional faciliti at Canon City and deliver the convicted person, together with the warra to said executive director or his designee, who shall keep the convict in co finement until infliction of the death penalty. No person shall be allow access to said convict, except his attendants, counsel, and physician, a spi tual adviser of his own selection, and members of his family, and then on in accordance with prison regulations.

Source: Amended, L. 79, p. 682, § 12.

16-11-404. Execution - witnesses. The particular day and hour of the exec tion of said sentence within the week specified in said warrant shall be fix by the executive director of the department of corrections or his design but shall not be made public by him, and he shall be present thereat or sh appoint some other representative among the officials or officers of the co rectional facilities at Canon City to be present in his place and stead. The shall also be present a physician and such guards, attendants, and other pe sons as the executive director or his designee in his discretion deems desi able, not to exceed fifteen persons. The executive director or his design shall notify the governor of the day and hour for the execution as soon it has been fixed.

Source: Amended, L. 79, p. 682, § 13.

(5) The jury, or the court if no jury trial is had, in any such case shall make a specific finding as to whether the accused did or did not use, or possessed and threatened to use, a deadly weapon during the commission of such crime or whether such serious bodily injury or death was caused by the accused. If the jury or court finds that the accused used, or possessed and threatened the use of, such deadly weapon or that such injury or death was caused by the accused, the penalty provisions of this section shall be applicable.

Source: L. 76, p. 547, § 5; L. 77, pp. 865, 888, 902, § § 11, 78, 4.

Editor's note: Amendments made to this section by House Bill No. 1589 of the 1977 Session, effective April 1, 1979, are contained in the supplement to this volume.

Cross reference. As to classification of felonies and the penalities for such, see § 18-1-105.

The general assembly intended that this section define sentencing standards rather than create a substantive offense by its placement in the criminal code among other sections relating to sentencing, in the article entitled "Imposition of Sentence". Brown v. District Court, ____ Colo. ____, 569 P.2d 1390 (1977).

No preliminary hearing is required for a charge under this section. Brown v. District Court, ____ Colo. ____, 569 P.2d 1390 (1977).

PART 4

DEATH PENALTY - EXECUTION

16-11-401. Death penalty inflicted by lethal gas. The manner of inflicting the punishment of death shall be by the administration of lethal gas within the time prescribed in this part 4, unless for good cause the court or governor may prolong the time.

Source: R & RE, L. 72, p. 250, § 1; C.R.S. 1963, § 39-11-401.

Am. Jur. See 21 Am. Jur.2d, Criminal Law, § 598; 40 Am. Jur.2d, Homicide, § § 552, 557.

C.J.S. See 24B C.J.S., Criminal Law, § § 2001-2003.

Law review. For article, "Criminal Procedure in Colorado — A Summary, and Recommendations for Improvement", see 22 Rocky Mt. L. Rev. 221 (1950).

16-11-402. Appliances - sentence executed by superintendent. The governing authority of the state penitentiary, at the expense of the state of Colorado, shall provide a suitable and efficient room or place, enclosed from public view, within the walls of the state penitentiary and therein construct and at all times have in preparation all necessary appliances requisite for carrying into execution the death penalty by means of the administration of lethal gas. The punishment of death in each case of death sentence pronounced in this state shall be inflicted by the superintendent of the state penitentiary maximum security unit in the room or place and with the appliances provided for inflicting the punishment of death by the administration of lethal gas.

Source: R & RE, L. 72, p. 250, § 1; C.R.S. 1963, § 39-11-402; L. 76, p. 530, § 3.

16-11-403. Week of execution - warrant. When a person is convicted of

a class 1 felony, the punishment for which is death, and the convicted person is sentenced to suffer the penalty of death, the judge passing such sentence shall appoint and designate in the warrant of conviction a week of time within which the sentence must be executed; the end of such week so appointed shall be not less than ninety days nor more than one hundred twenty days from the day of passing the sentence. Said warrant shall be directed to the superintendent of the state penitentiary maximum security unit commanding said superintendent to execute the sentence imposed upon some day within the week of time designated in the warrant and shall be delivered to the sheriff of the county in which such conviction is had, who, within three days thereafter, shall proceed to the state penitentiary and deliver the convicted person, together with the warrant, to said superintendent, who shall keep the convict in confinement until infliction of the death penalty. No person shall be allowed access to said convict, except his attendants, counsel, and physician, a spiritual adviser of his own selection, and members of his family, and then only in accordance with prison regulations.

Source: R & RE, L. 72, p. 250, § 1; C.R.S. 1963, § 39-11-403; L. 76, p. 531, § 4.

Am. Jur. See 21 Am. Jur.2d, Criminal Law, § 403.

C.J.S. See 24B C.J.S., Criminal Law, § 2002.

Annotator's note. Since § 16-11-403 is similar to repealed § 39-11-3, C.R.S. 1963, CSA, C. 48, § 538, and laws antecedent thereto, relevant cases construing these provisions have been included in the annotations to § 16-11-403.

Meaning of "week of time". The week of time which is required by this section to be appointed and designated in capital cases within which the sentence must be executed, is a period of time extending from 12 midnight Saturday until 12 midnight the following Saturday, but an error in the designation of the week is rendered immaterial when the execution is stayed by the supreme court pending review. Mora v. People, 19 Colo. 255, 35 P. 179 (1893).

Court fixes date of execution following stay. The court has authority to fix the date of execution in cases of affirmance, where the execution has been stayed upon appeal or supersedeas. Mora v. People, 19 Colo. 255, 35 P. 179 (1893).

But definite date set in order granting stay did not deny due process. The fact that the state supreme court set a definite execution date pending determination of post-conviction relief was not "suggestion of predetermination" in violation of due process and did not constitute an implied direction to deny petitioner relief. Bell v. Patterson, 279 F. Supp. 760 (D. Colo. 1968), aff'd, 402 F.2d 394 (10th Cir. 1968), cert. denied, 403 U.S. 955, 91 S. Ct. 2279, 29 L. Ed. 2d 865 (1971).

Procedure of delivery of prisoner by sheriff held not improper. See Agnes v. People, 104 Colo. 527, 93 P.2d 891 (1939).

Applied in Medley, Petitioner, 134 U.S. 160, 10 S. Ct. 384, 33 L. Ed. 835 (1890).

16-11-404. Execution - witnesses. The particular day and hour of the execution of said sentence within the week specified in said warrant shall be fixed by the superintendent but shall not be made public by him, and he shall be present thereat or shall appoint the deputy superintendent of the maximum security unit or some other representative among the officials or officers of the state penitentiary to be present in his place and stead. There shall also be present a physician and such guards, attendants, and other persons as the superintendent in his discretion deems desirable, not to exceed fifteen persons. The superintendent shall notify the governor of the day and hour for the execution as soon as it has been fixed.

Source: R & RE, L. 72, p. 250, § 1; C.R.S. 1963, § 39-11-404; L. 76, p. 531, § 5.

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pending appeal. 84 C. 566. Cited. 132 C. 303.

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Sec. 54-99. Period within which death penalty inflicted. Unless a reprieve or stay of execution is granted by competent authority, the penalty of death shall be inflicted within a period of not less than one month nor more than six months after conviction and sentence. All executions of the death penalty shall take place according to the provisions of this section and section 54-100 on the day, or within five days after the day, designated by the judge passing sentence.

(1949 Rev., S. 8815.)
Cited. 121 C. 197.

Sec. 54-100. Electrocution. The method of inflicting the punishment of death shall be by electrocution. The warden of the Connecticut Correctional Institution, Somers, is directed to appoint a suitable person to perform the duty of executing sentences of the court requiring the infliction of the death penalty. Such person shall receive, for such duty, such compensation as is determined by the directors of the Connecticut Correctional Institution, Somers. When any person is sentenced by any court of this state having competent jurisdiction to be electrocuted, he shall, within twenty days after final sentence, be conveyed to the Connecticut Correctional Institution, Somers, and such punishment shall be inflicted only within the walls of said institution in Somers, within an enclosure to be prepared for that purpose under direction of the warden of the Connecticut Correctional Institution, Somers, and the board of directors thereof, which enclosure shall be so constructed as to exclude public view. Besides the warden or deputy warden and such number of guards as he thinks necessary, the following persons may be present at the execution, but no others: The sheriff of the county in which the prisoner was tried and convicted, the board of directors, the physician of the Connecticut Correctional Institution, Somers, the clergyman in attendance upon the prisoner and such other adults, as the prisoner may designate, not exceeding three in number, representatives of not more than five newspapers in the county where the crime was committed, and one reporter for each of the daily newspapers published in the city of Hartford.

(1949 Rev., S. 8816; 1953, P.A. 28, S. 6; P.A. 74-84.)

Cited. 121 C. 197. Death penalty does not constitute cruel and unusual punishment and courts will not vitiate legislative determination of punishment for crimes. 158 C. 341.

Sec. 54-101. Disposition of person becoming insane after death sentence. When any person detained at the Connecticut Correctional Institution, Somers, awaiting execution of a sentence of death appears to the warden thereof to be insane, the warden may make application to the superior court for the judicial district of Tolland having either civil or criminal jurisdiction or, if said court is not in session, to any judge of the superior court, and, after hearing upon such application, notice thereof having been given to the state's attorney for the county or judicial district wherein such person was convicted, said court or such judge may, if it appears advisable, appoint three reputable physicians to examine as to the mental condition of the person so committed. Upon return to said court or such judge of a certificate by such physicians, or a majority of them, stating that such person is insane, said court or such judge shall order the sentence of execution to be stayed and such person to be transferred to any state hospital for mental illness for confinement, support and treatment until he recovers his sanity, and shall cause a mittimus to be issued to the sheriff of Tolland county, or either of his deputies, for such commitment. If at any time thereafter, the superintendent of the state hospital to which such person has been committed is

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PHILLIP M. BARBER
WILLIS E. SULLIVAN JESS B. HAWLEY, JR.
COMMISSIONERS

VOLUME 4

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CHAPTER 27
EXECUTION

SECTION.
19-2716. Infliction of death penalty.

19-2701. Authority for execution of judgment.

Cross-ref. Stay of execution, I.C.R. 38.

19-2703. Execution of judgment of imprisonment.

Putting Affairs in Order.

If the trial courts intend to give a defendant time to get his affairs in order prior to commencing serving his sentence, the court should delay the imposition of that sentence until the end of the period of time that the defendant is allowed free to get his affairs in order. State v. Johnson, 101 Idaho 581, 618 P.2d 759 (1980).

19-2705. Death warrant and confinement thereunder.

Cross-ref. Procedure where death penalty authorized, I.C.R. 33.1, 33.2.

19-2706. Conviction of murder — Transmission of statement to governor.

Cited in: State v. Wagenius, 99 Idaho 273, 581 P.2d 319 (1978).

19-2708. Suspension of judgment of death.

Cross-ref. Stay of execution, I.C.R. 38.

19-2716. Infliction of death penalty. — The punishment of death shall be inflicted by continuous, intravenous administration of a lethal quantity of an ultra-short-acting barbituate in combination with a chemical paralytic agent until death is pronounced by a physician licensed under the provisions of chapter 18, title 54, Idaho Code, in accordance with accepted medical standards. The director of the department of corrections shall determine the substance or substances to be used and the procedures to be used in any execution; provided, however, that, in any case where the director finds it to be impractical to carry out the punishment of death by administration of the required lethal substance or substances for the reason that it is not reasonably possible to obtain expert technical assistance, should such be necessary to assure that infliction of death by administration of such substance or substances can be carried out in a manner which causes death without unnecessary suffering, the sentence of death may be carried out by firing squad, the number of members of which shall be determined by the director; and provided further, that any infliction of the punishment of death by

administration of the required lethal substance or substances in the manner required by this section shall not be construed to be the practice of medicine and any pharmacist or pharmaceutical supplier is authorized to dispense drugs to the director or his designee, without prescription, for carrying out the provisions of this section, notwithstanding any other provision of law. This act shall apply to all executions carried out on and after the effective date [March 31, 1982] of this enactment, irrespective of the date sentence was imposed. [Cr. Prac. 1864, § 467; R.S., R.C., & C.L., § 8020; C.S., § 9063; I.C.A., § 19-2616; am. 1978, ch. 70, § 1, p. 140; am. 1982, ch. 257, § 1, p. 668.]

Compiler's notes. Section 2 of S.L. 1982, ch. 257 declared an emergency. Approved March 31, 1982.

Delegation of Power.

The legislature did not improperly delegate the power to inflict the death penalty to the board of corrections under this section since the standards formulated for guidance, although general, are capable of reasonable application and it cannot be assumed that the director of the department of corrections will act in other than a reasonable manner. State v. Osborn, — Idaho —, 631 P.2d 187 (1981).

CHAPTER 28

APPEALS TO SUPREME COURT

19-2801. Criminal judgments and orders appealable — Time for taking appeals.

Cross-ref. Juvenile proceeded against as an adult, bail, § 16-1806A.

Cited in: State v. Wagenius, 99 Idaho 273, 581 P.2d 319 (1978).

19-2804. Criminal judgments and orders appealable — Time for taking appeals.

The Supreme Court had authority, under Art. 5, § 9, to review the decision of the district court which granted defendant's motion to dismiss criminal charges, even though an order granting a motion to dismiss was not listed in this section as one of the six orders or rulings from which appeal could be taken by the state. State v. Lewis, 96 Idaho 743, 536 P.2d 738 (1975), overruling State v. Ridenbaugh, 5 Idaho 710, 51 P. 750 (1897).

19-2827. Review of death sentences — Preservation of records.

Sec. to sec. ref. This section is referred to in I.C.R. 33.2.

Cited in: State v. Lindquist, 99 Idaho 766, 589 P.2d 101 (1979).

Failure to Object.

Where the defendant in a sentencing hearing following a guilty plea to a first-degree murder charge, acquiesced without objection to the use of the transcript of the preliminary hearing instead of introducing live witness testimony, such failure to object did not preclude the Supreme Court from considering an alleged error in using the transcript since this section mandates that the court examine not only the death sentence but also the procedure followed in imposing that sentence regardless of whether an appeal is even taken, and since the gravity of a death sentence and the infrequency with which it is imposed outweighs any rationale that might be proposed to justify refusal to consider errors not objected to below. State v. Osborn, — Idaho —, 631 P.2d 187 (1981).

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MONTANA CODE ANNOTATED



ANNOTATIONS

issues arise. The courts have recognized the infirmity of imposing a fine as a sentence and then converting it into a jail term simply because the defendant is indigent and cannot forthwith pay the fine in full. 38 A.G. Op. 61 (1980).

Collateral References

Fines ⇦ 6.

36 C.J.S. Fines § 9.

21 Am. Jur. 2d Criminal Law § 599, et seq.

46-19-103. Execution of death.

Commission Notes

Source: [R.C.M. 1947, sections 94-8007, 94-8016 through 94-8018.]

This section does not change the law in any way but merely combines into one provision separate statutes dealing with execution of the death sentence. It should be noted that the commission has not considered the propriety of capital punishment, but has redrafted a law in conformity with what appears to be the present public policy of this state.

Cross-References

Execution of death sentence justified, 45-3-109.

Case Notes

Hanging Not Cruel and Unusual Punishment: There is no evidence that shows that death from hanging, when properly carried out, is anything other than swift and immediate or that hanging results in any more suffering than that associated with other modes of execution. The Supreme Court has no power to change the legislatively settled provisions of the sentence in the absence of constitutional violation. St. v. Coleman, ____M____, 605 P2d 1000 (1979).

Collateral References

Criminal Law ⇦ 1219.

24 C.J.S. Criminal Law §§ 1613 through 1615; 24B C.J.S. Criminal Law §§ 2001 through 2003.

21 Am. Jur. 2d Criminal Law § 595, et seq.

Manner of inflicting death sentence as cruel or unusual punishment. 40 ALR 1118; 30 ALR 1452.

Effect of permitting day fixed for execution to pass without carrying out sentence. 34 ALR 314.

Part 2

Suspension of Execution of Death

46-19-201. When and how mental fitness of defendant determined.

Commission Comments

Source: New.

This provision will replace R.C.M. 1947, sections 94-8009 and 94-8010 which set forth a special procedure for determining the sanity of the defendant. This special procedure is no longer necessary because the chapter dealing with competency of the accused provides for this determination.

Collateral References

Criminal Law ⇦ 981(2).

24 C.J.S. Criminal Law §§ 1569, 1619.

Remedy of one convicted of crime while insane. 121 ALR 267; 10 ALR 213.

that an illegal arrest could be resisted lawfully. That rule encouraged resistance and breaches of the peace. This section requires submission to arrest. If the arrest is illegal (a determination which few citizens can make while being arrested), the arrestee should pursue civil and criminal remedies rather than resort to self-help. In applying this section a number of caveats are in order: First, the section has no application to persons fleeing from a possible arrest or from a stop under the new Stop and Frisk statute (MCA, 46-5-401, 46-5-402). Second, the arresting officer must identify himself to the arrestee. If the arrestee does not know that the person making the arrest is authorized to do so, he may justifiably defend himself. Third, the section has been interpreted by the Illinois courts as not preventing an arrestee from protecting himself from unlawful and excessive force by the arresting officer. The wording for this section is identical to the Illinois source.

Cross-References

Use of force in defense of person, 45-3-102.
Resisting arrest, 45-7-301.
Method of arrest, 46-6-104.
Manner of arrest without a warrant, 46-6-106.

Case Notes

Prosecutor's Quasi-Judicial Immunity From Prosecution: Plaintiff's civil action against a County Attorney, based upon alleged unlawful arrest by certain policemen and challenging the legality of the criminal prosecution against him, must be dismissed because the County Attorney enjoys absolute immunity for prosecutorial actions done in a quasi-judicial capacity. Hall v. Lympus, 478 F. Supp. 644 (D.C. Mont. 1979).

In General: When a person is known to be a policeman in the performance of his lawful duties, it is the duty of persons being arrested by him to submit peacefully. People v. Gnatz, 8 Ill. App.3d 396, 290 N.E.2d 392, 395 (1972). Even if a probable cause for arrest is lacking, the arrestee has no right to resist. People v. Suriwha, 2 Ill. App.3d 384, 276 N.E.2d 490, 496 (1971). See also People v. Carroll, 133 Ill. App.2d 78, 272 N.E.2d 822 (1971); People v. Franks, 108 Ill. App.2d 438, 247 N.E.2d 811 (1969); People v. Fort, 91 Ill. App.2d 212, 234 N.E.2d 384 (1968), certiorari denied 393 US 1014 (1969); People v. Shinn, 5 Ill. App.3d 468, 283 N.E.2d 502 (1972).

Instructions: Refusal of an instruction on use of force in making an arrest is proper where such an instruction is not accompanied by an instruction on use of force in defense of person. People v. Shinn, 5 Ill. App.3d 468, 283 N.E.2d 502 (1972).

Burden of Proof: To sustain a charge of resisting arrest, the prosecution must show that the defendant knowingly resisted performance of an authorized act by a person known to the defendant to be a peace officer acting within his official capacity. People v. Royer, 101 Ill. App.2d 44, 242 N.E.2d 288, 290 (1968).

Law Review Articles

The Uniform Arrest Act, Warner, 28 Va. L. Rev. 316 (1942).
Some inadequacies in the law of arrest, Waite, 29 Mich. L. Rev. 448 (1931).

Collateral References

Assault and Battery ⇦ 67; Homicide ⇦ 116; Obstructing Justice ⇦ 8.
6A C.J.S. Assault and Battery § 92; 40 C.J.S. Homicide § 137; 67 C.J.S. Obstructing Justice § 16.

45-3-109. Execution of death sentence.

Criminal Law Commission Comments

Source: Ill. C. C. 1961, Chapter 38, § 7-10.

This section states an obvious aspect of justification for homicide. It is included for the sake of completeness, and because it is one of the more commonly described statutory instances of justification. Section 94-3-109 [now MCA, 45-3-109] is intended to state the essentials of the prior provision in language similar to that of the other sections of this chapter. However, in view of the deliberate nature of the homicide, the explicit legal instructions concerning the execution and the much more relaxed time element involved in an execution as compared with self-defense, arrest, or escape, no need exists for recognizing a reasonable but mistaken belief of the executioner as to his authority for or method of performing his duty.

Compiler's Comments

Annotator's Note [see preface to Title 45 for origin]: This section preserves the former Montana provision listed above. The wording is identical to the Illinois source.

Cross-References

Death penalty, 46-18-301 through 46-18-310.
Execution of death, 46-19-103.

Law Review Articles

Comment. Congressional rebirth of the death penalty: Guiding the jury past Furman v. Georgia. 68 NW. U. L. Rev. 893 (1973).

The Proposed Federal Criminal Codes: A Prosecutor's Point of View, Connelly, 68 NW. U. L. Rev. 826, 835 (1973).

Justification for Injury, Beale, 41 Harv. L. Rev. 553 (1928).

Collateral References

Homicide ⇦ 104.
40 C.J.S. Homicide §§ 106, 137.

45-3-115. Affirmative defense.

Criminal Law Commission Comments

Source: Ill. C. C., 1961, Chapter 38, § 7-14.

A defense based upon any of the provisions of this chapter is an affirmative defense, and if not put in issue by the prosecution's evidence, the defendant, to raise it as an issue, must present some evidence thereon.

Compiler's Comments

Annotator's Note [see preface to Title 45 for origin]: Montana law requires that the prosecution prove the defendant guilty of each element of the offense charged beyond all reasonable doubt (MCA, 46-16-601). But, the prosecution is not required to negate in the first instance all possible defenses which might be raised by the defendant. After the prosecution has developed a prima facie case, the defense has the burden of going forward with evidence to raise doubt as to the defendant's guilt. The amount of evidence which the defendant must submit in raising an affirmative defense is not stated in this section. Relatively recent Montana case law makes it clear that the Legislature can determine the amount of evidence required to raise a particular affirmative defense, whether only a "reasonable doubt" or a "preponderance of the evidence". The statutory burden imposed under the former insanity defense statute (former MCA, 46-14-201(1), repealed, L. 1979) was a "preponderance of the evidence. St. v. McKenzie, ___M___, 608 P2d 428 (1980). Where the Legislature is silent, the court can, and in some instances has, determined the extent of the defendant's burden of going forward with the evidence in establishing an affirmative defense. The defendant need only raise a reasonable doubt where the affirmative defense offered is self-defense (St. v. Grady, 166 M 168, 531 P2d 681 (1975)), but

the minimum mandatory sentence. St. v. Nelson, ___M___, 603 P2d 1050 (1979).

46-18-223. Hearing to determine application of exceptions.

Cross-References

Duty of court to advise at initial appearance, 46-7-102.
Right to counsel, 46-8-101.
Court to advise defendant of rights, 46-12-202.
Right to counsel — parole hearing, 46-23-204.
Court to advise defendant of rights — extradition proceedings, 46-30-217.

Case Notes

Finding of No Mitigating Factors Supported in Record — Alcohol and Sexual Problems: Where the trial court considered defendant's drinking and sexual problems but concluded that those conditions did not excuse defendant from accountability for his acts, and the evidence presented at the hearing and in the presentence investigation report supported the trial court's conclusion, there was no abuse of discretion in sentencing defendant as a persistent felony offender. St. v. Metz, ___M___, 604 P2d 102 (1979).

Part 3
Death Penalty

Part Case Notes

Constitutionality of Former Death Sentence Statute: Section 94-5-105, R.C.M. 1947 (now repealed), which provided a procedure for the imposition of a sentence of death for a conviction of deliberate homicide, was constitutional on its face. St. v. Fitzpatrick, ___M___, 606 P2d 1343 (1980).

Increase of Sentence After New Trial — Due Process: The defendant, who had been sentenced to 100 years' imprisonment for deliberate homicide, was not denied due process of law when, after a new trial on the same charge, he was sentenced to death. The due process clause is not offended by all possibilities of increased punishment upon retrial after appeal, but only those that pose a realistic likelihood of vindictiveness. When the District Court Judge was replaced for the new trial and sentencing and the new judge stated his reasons for imposing the death penalty with clarity, the threat of vindictiveness was not a realistic likelihood. St. v. Fitzpatrick, ___M___, 606 P2d 1343 (1980).

Sentencing Under Statutes Amended After Date of Crime: The sentencing of the defendant to death for a conviction of aggravated kidnapping under statutes amended after section 94-5-304, R.C.M. 1947 (now repealed), was declared unconstitutional did not violate the constitutional prohibition against ex post facto laws. The amendments were ameliorative in nature and did not deprive defendant of a substantial right or immunity that he possessed at the time the crime was committed. St. v. Fitzpatrick, ___M___, 606 P2d 1343 (1980).

Review of Death Sentence — Disproportionate Application: The Supreme Court, in reviewing a death sentence to determine whether it is disproportionate, reviews the circumstances of the crime of which the defendant is accused and in light of those circumstances, the judgment and the sentence thereupon imposed. It examines cases involving similar crimes, for the single purpose, making certain that as far as the defendant in this particular case is concerned, there has been no discriminatory action on the part of the sentencing judge and no abuse of discretion by the sentencing judge and that the sentencing judge has considered and applied fairly and without discrimination the applicable law. The Supreme Court looks for the even-handed application of death sentences without regard to sex, color, creed, or race or any

other discriminating consideration. When this has occurred, as here, the death sentence must be upheld. St. v. Coleman, ____M____, 605 P2d 1000 (1979).

Retroactive Application of Death Penalty Provisions — No Ex Post Facto Violation: Where after the commission of the crime of homicide, the U.S. Supreme Court found the death penalty statute unconstitutional and the state Legislature took only the procedural step of redefining the punishment, not the crime, there is no ex post facto violation in upholding the previous death penalty imposed, since the defendant had "fair warning" of the consequences of homicide. St. v. Coleman, ____M____, 605 P2d 1000 (1979).

Constitutionality:

Montana's statutory scheme for imposing the death penalty meets the standards established by the U.S. Supreme Court. The penalty is not cruel and unusual simply because Montana's criminal statutes allow its imposition in this case for the crime of aggravated kidnapping but not for the crime, as committed here, of deliberate homicide. St. v. Coleman, ____M____, ____P2d____, 36 St. Rep. 1134 (1979).

In light of recent U.S. Supreme Court decisions (Woodson v. N. Carolina, 428 US 280 (1976); Coker v. Georgia, 433 US 584, 97 S Ct 2861, 53 L Ed 2d 982 (1977); Roberts v. Louisiana, 431 US 633, 97 S Ct 1993, 52 L Ed 2d 637 (1977)), section 94-5-304, R.C.M. 1947 (since repealed), as it existed at the time of the defendant's trial, was unconstitutional on its face as a mandatory death penalty statute. St. v. Coleman, ____M____, 579 P2d 732 (1978).

While the statutes did not provide for the jury in the bifurcated sentencing procedure, they were within the constitutional boundaries of recent U.S. Supreme Court cases. The sentence of death in this case was rested on a narrowly defined type of murder or kidnapping. The former statute provided for the sentencing judge to consider mitigating circumstances. In addition, appellate judicial review and other sentence review was provided. St. v. McKenzie, 171 M 278, 557 P2d 1023 (1976).

By an earlier decision of the U.S. Supreme Court, statutes allowing the sentencer discretion as to whether to impose the death penalty were unconstitutional; although the conviction would be upheld, a sentence of death made at the discretion of the court under a former statute was unconstitutional and would be commuted to life imprisonment. St. v. Rhodes, 164 M 455, 524 P2d 1095 (1974).

Requisites of a Valid Death Penalty: The U.S. Supreme Court seems to have established three general criteria that are requisite to a valid death penalty statutory scheme: (1) there must be at least one statutory aggravating circumstance before a death sentence may be considered; (2) the defense must be afforded the opportunity to bring before the sentencing body at a separate sentencing hearing any mitigating circumstances relating to the individual defendant; and (3) there must be available prompt judicial review of the sentencing decision by a court of statewide jurisdiction. The statutory scheme in existence at the time of commission of the crimes charged in the instant case met the above criteria. St. v. McKenzie, ____M____, 581 P2d 1205 (1978).

Prospective Juror's View of Death Penalty: Two prospective jurors were properly excluded under the exception to the general rule of Witherspoon v. Illinois, 391 US 510 (1968), because they were irrevocably committed to voting against conviction because of the possibility of a death penalty. St. v. Coleman, ____M____, 579 P2d 732 (1978).

Part Law Review Articles

Montana's Death Penalty After State v. McKenzie, Tweeten, 38 Mont. L. Rev. 209 (1977).

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TITLE 10

CRIMINAL PROCEDURE

CHAPTER 10.70—COMMITMENTS AND EXECUTIONS

Cross References

Execution of death sentence, see § 10.95.010 et seq.

10.70.020 Mittimus upon sentence to imprisonment

1. In general

Superintendent of correctional institution is required by § 72.13.150 to receive all male persons convicted of a felony, unless local jurisdictions agree to house such prisoners; department of social and health services has duty to take charge of felon when conviction is entered, and transfer is not to be delayed beyond 40 days after conviction even where appeal is pending. Kanekoa v. Washington State Dept. of Social & Health Services (1981) 95 Wash.2d 446, 626 P.2d 6.

10.70.040 to 10.70.130 Repealed by Laws 1981, ch 138, § 24, eff. May 24, 1981

Annotations Under Repealed Sections

[SECTION 10.70.050]

United States Supreme Court

Due process; sentence of death may not be imposed where jury is not permitted to consider lesser included noncapital offense supported by the evidence, see Beck v. Alabama (1980) 100 S.Ct. 2382, 447 U.S. 625, 65 L.Ed.2d 392.

Equal protection; statute interpreted to permit death sentence for murder that was outrageously or wantonly vile, horrible, or inhuman, provided inadequate guidance and thereby allowed arbitrary and capricious infliction of the death penalty, see Godfrey v. Georgia (1980) 100 S.Ct. 1759, 446 U.S. 420, 64 L.Ed.2d 398.

2. Constitutionality of death penalty

Statutory procedure under § 10.94.010 et seq. (repealed; see, now, § 10.95.010 et seq.) for imposing death penalty was unconstitutional, whether defendant pleaded guilty or was found guilty by jury. State v. Frampton (1981) 95 Wash.2d 469, 627 P.2d 922.

HB

157

BILL SHEFFIELD, GOVERNOR

DEPT. OF COMMUNITY & REGIONAL AFFAIRS

OFFICE OF THE COMMISSIONER

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FEB 23 1983

February 23, 1983

POSITION PAPER

RE: HB 157

SPONSOR: Representative Adams

Program Effects of Bill

Expands right to petition for a local option election to include unincorporated communities with municipal boundaries.

Comments

No comments

STATE OF ALASKA
PRELIMINARY STATEMENT OF FISCAL IMPACT

Bill No: HB 157 Date on Bill: 2/4/83
Title: Expand the right to petition for local option election
Sponsor: Representative Adams
Requestor: House Community & Regional Affairs Committee

1. Estimated fiscal impacts on: Department of Community & Regional Affairs

a. Expenditures:

(Thousands of Dollars)

			FY 83	FY 84	FY 85	FY 86		
Capital				-0-	-0-	-0-		
Operating				-0-	-0-	-0-		
Total				-0-	-0-	-0-		

b. Revenues:

Revenue								

2. Source of funds to offset fiscal impact of bill:

3. Assumptions:

Expansion of the right to petition for a local option election to include unincorportated communities within municipal boundaries. Will have no fiscal impact on this Department.

4. Disclaimer:
This statement has not been reviewed by the OMB in the Office of the Governor. It therefore does not represent the final estimate of fiscal impact.

Prepared By: Richard Rainery RR Phone: 465-4703
Division: Commissioner's Office Date: 2/23/83

Approved by Commissioner: [signature] Date: 2/23/83
Department: Community & Regional Affairs

5. Distribution:
Original to Legislative Finance
Copy to OMB
Copy to Sponsor
Copy to Requestor

2/15/83

Alaska State Legislature

House of Representatives

Al Adams
Chairman
Committee on Finance

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Official Business

February 21, 1983

MEMORANDUM

TO: Representative Barbara Lacher, Chair
Community and Regional Affairs Committee

FROM: Representative Al Adams AA

SUBJECT: House Bill 157 - An Act to expand the right to petition for a local option election

House Bill 157 amends the General Provisions Chapter of Title 4, Alcholic Beverages, by expanding the definition of "established village".

In 1981, the Legislature enacted legislation clarifying provisions in Title 4 so that alcohol local option elections could be held. As a result of these changes a municipality, as well as an established village, could hold an election.

In spite of the Legislature's best efforts to clarify the law, a question has arisen as to the ability of an unincorporated community within a borough to conduct an election. Three communities, Point Lay, Karluk and Tyonek, wanted to hold an election, but were unable to due to this defect in the law. HB 157 clarifies the language to ensure that all communities, regardless of status, may conduct an election.

Additional background information is attached.

I. INTRODUCTION

On June 19, 1981, Governor Hammond signed Senate Bill 65, which cleared up difficulties with the 1980 Title 4 alcohol local option law, AS 04.11.490-04.11.506. Pursuant to the statute "municipalities" may conduct their own alcohol local option elections. "Established villages" may also request alcohol local option elections. These latter elections are conducted by the lieutenant governor.

Under the law, municipality is defined as "an incorporated city, an organized borough, or a unified municipality established under AS 29.68." AS 04.21.080(b)(11). A Municipalit may hold a special election and vote upon one of the following four options:

1. Prohibition of the sale of alcoholic beverages. AS 04.11.490.

2. Community liquor license. AS 04.11.492.

3. Prohibition of the sale and importation of alcoholic beverages. AS 04.11.496.

4. Prohibition of the sale of alcoholic beverages except by selected licenses. AS 04.11.500.

An "established village" is defined under the statute as "an unincorporated area that

(A) is within the circumference of a circle described by drawing a five-mile radius around a post office station;

(B) has 25 or more permanent residents."

AS 04.11.080(b)(8). An established village may in a special election conducted for that purpose by the lieutenant governor, vote upon one of the following three options:

1. Prohibition of the sale of alcoholic beverages. AS 04.11.490.

2. Prohibition of the sale and importation of alcoholic beverages. AS 04.11.496.

3. Prohibition of the sale of alcoholic beverages except by selected licenses. AS 04.11.500.

Alcohol abuse constitutes a very serious problem in Alaska. The state Title 4 alcohol local option law, AS 04.11.490-04.11.506, has allowed individual communities to deal with the problem on a local level and thus choose a legal remedy which fits the local problem. The results have been largely successful both as a means of controlling alcohol abuse and as an experiment in pure democracy. As of this writing, forty-one communities have held alcohol local option elections and ten more are currently waiting to hold them. Moreover, over twenty other communities have expressed interest in holding alcohol local option elections to the Alaska Legal Services Corporation Alcohol Project. Of the forty-one communities which have already voted, thirty-seven have voted to prohibit the sale and importation of alcoholic beverages.

II. THE PROBLEM

Simply put, the problem is that communities within organized boroughs cannot utilize the state Title 4 alcohol local option law unless separately incorporated because the power of legislation in those communities rests

with virtual exclusivity in the borough government. AS 04.11.080(b)(8) defines "established village" as "an unincorporated area." Since a borough is incorporated, a village lying within a borough cannot be an unincorporated area.

Boroughs exercise certain powers, such as operating a school system and planning, platting, and zoning on an areawide basis, both inside and outside cities within the borough boundaries. AS 29.33.010-29.33.290. Pursuant to AS 29.38.020, second-class boroughs exercise certain municipal powers in areas of the borough outside the cities. These include such things as regulating fireworks, providing water pollution control, constructing local roads, etc. Boroughs can also acquire other powers outside cities by an election of the voters outside cities.

AS 29.48.035 gives municipalities certain regulatory powers. AS 29.48.035(10) provides that a municipality may regulate "alcoholic beverages as provided by 4.15.070." AS 4.15.070 is now repealed but there is a cross-reference to 4.21.010 "for present provisions concerning municipal regulation." AS 4.21.010(a) allows a municipality to adopt ordinances governing barter, sale, consumption of alcoholic beverages as necessary for orderly selling of alcohol within the municipality. AS 4.21.010(b) allows a municipality to adopt an ordinance making sale or importation a misdemeanor after a valid election on the option to prohibit the sale and importation of alcoholic beverages has been held.

The above provisions of Title 29, along with the definition of established village in Title 4, suggest that power to regulate alcohol in a borough in the area outside the borough's cities is given to the borough.

Nonetheless, at least one village, Karluk, in the Kodiak Island Borough, has evinced a desire to hold a local option election and cannot under present law.

An organized borough generally contains more than one community and often contains several. At the time of this writing, no organized borough has yet held an alcohol local option election. The difficulties involved in a multi-community election of this sort are evident. Should a borough hold an alcohol local option election, a strong vote for prohibition in the outlying villages and municipalities could impose that measure upon communities with no desire or need to embrace so draconian a resolution. Conversely, a strong vote to maintain the privilege of buying and consuming alcohol in the larger communities could prevent other communities within the borough from taking effective action to deal with a chronic local problem.

A preferable arrangement would allow the voters of each community in an organized borough to decide for that community and that community alone how the state Title 4 alcohol local option law can best be used. Voters in a community will probably be better informed as to local conditions than they will be to borough-wide conditions. A better informed electorate will naturally make more intelligent decisions at the polls. More importantly, their decision will only affect local conditions and not conditions in other communities within the borough of which they are much less likely to be adequately informed.

III. THE SOLUTION

The proposed legislation will allow villages within organized boroughs to hold an alcohol local option election subject to the same conditions

imposed upon villages outside organized boroughs. The proposed legislation accomplishes this essentially by enlarging the definition of "established village" to include those villages lying within organized boroughs.

The proposed legislation is designed to enlarge the powers of villages within organized boroughs only as regards to their ability to hold local option elections. Section 2 of the proposed legislation expressly limits itself to those purposes. Alaska already has a well established and complex municipal code by which the respective powers of various types of communities are delegated. The proposed legislation will have only a strictly limited effect on the municipal code. It is designed and intended only to allow communities not separately incorporated which lie within organized boroughs to hold alcohol local option elections pursuant to AS 04.11.490-04.11.506. No other impact upon the respective powers of the state, organized boroughs, organized communities, or unorganized communities is foreseen or intended.

LAW OFFICES OF

ALASKA LEGAL SERVICES CORPORATION

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ANCHORAGE, ALASKA 99501

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MEMORANDUM

TO: Persons Interested in the Current Status of Rural Communities With Respect to the State Title 4 Alcohol Local Option Law

FROM: Alaska Legal Services Corporation Alcohol Project

RE: Statewide Village Status Report

DATE: January 14, 1983

The ALSC Alcohol Project was funded by the State Office on Alcoholism and Drug Abuse ("SOADA") to provide statewide on-site community legal education and technical legal assistance on the state Title 4 alcohol local option law. During its existence, the ALSC Alcohol Project worked closely with rural communities throughout Alaska. The ALSC Alcohol Project has terminated.

Approximately 130 rural communities were visited and 50 other rural communities were assisted in some fashion. "Assistance" means a community either requested a petition form, cover letter, and memorandum explaining the law, or a legal opinion of their local village ordinance concerning alcohol control. This Statewide Village Status Report from the ALSC Alcohol Project is a final attempt to provide an adequate profile of individual rural community activity with respect to the state Title 4 alcohol local option law.

Presently, 74 alcohol local option elections have been held. Some communities have now held two elections, with differing results. The present tally is: 1 community has voted for a community liquor license, 51 communities have voted to forbid the sale and importation of alcoholic beverages, 10 communities have defeated the sale and importation option, 2 communities approved and 1 defeated the no sale option, and 1 community defeated the private liquor license option. Several more elections are presently scheduled and many other petitions are being circulated.

If you have any additional information or questions on specific communities, please contact Vivian Kortie at the Alcoholic Beverage Control Board, 201 East 9th Avenue, Anchorage, Alaska, 99501, or call (907) 277-8638.

STATEWIDE VILLAGE STATUS REPORT

Village (Municipality or Village)	Petition Sent (ALSC Visit*)	Option Considered or Voted Upon	Election Results (yes/no[2])	Effective Dates	Notes
ALEUTIAN/PRIBOLOF REGION					
Atka (EV)	11/10/82	--	--	--	Petitions sent 10/10/82.
St. Paul (M)	5/10/82*	Ban Sale & Import (V)	47/141	--	ALOL[3] did not pass.
ANCHORAGE/MATNA REGION					
Chitina (V)	3/03/82*	Ban Sale & Import (C)	--	--	Petition invalid 10/14/8
Copper Center (V)	3/27/82*	--	--	--	new petitions sent 12/23
Mentasta (V)	10/05/82*	--	--	--	
BRISTOL BAY REGION					
Aleknagik (M)	4/08/82*	Ban Sale & Import (V)	26/23	--	Many questioned ballots; majority vote.
Ekwok (M)	11/29/82	Ban Sale & Import (V)	20/03	7/1/82	
Iliamna (V)	11/24/81*	Ban Sale (V)	35/24	--	Liquor license(s) revoke
Egegik (V)	11/10/82	Ban Sale & Import (C)	--	--	Election scheduled by DC
Manokotak (M)	11/23/81*	Ban Sale & Import (C)	--	--	Petitions sent 1/13/83.
Newhalen (M)	11/02/82*	Ban Sale & Import (V)	6/22	--	ALOL[3] did not pass.
Portage Creek (V)	12/01/82*	Ban Sale (C)	--	--	Petitions sent 11/30/82.
Togiak (M)	11/24/81*	Ban Sale & Import (V)	93/23	6/1/82	
Twin Hills (V)	12/22/81*	Ban Sale & Import (C)	--	--	Election being considere
Nondalton (M)	12/17/81*	--	--	--	
FAIRBANKS/DOYON REGION					
Arctic Village (V)	7/23/81	Ban Sale & Import (C)	--	--	
Chalkyitsik (V)	7/15/82*	Ban Sale & Import (V)	21/02	8/1/82	

Village (Municipality or Village)	Petition Sent (ALSC Visit*)	Option Considered or Voted Upon	Election Results (yes/no[2])	Effective Dates	Notes
Dot Lake (V)	10/01/82*	Ban Sale (C)	--	--	
Eagle (V)	9/30/82*	--	--	--	
Fort Yukon (M)	12/01/81	Ban Sale & Import (C)	--	--	
Huslia (M)	3/02/82*	Ban Sale & Import (V)	40/53	12/1/82	Second election; changed v
Kaltag (M)	11/11/82*	Ban Sale & Import (V)	50/27	1/3/83	Second election; same vote
Mentasta (V)	10/05/82*	--	--	--	
Minto (V)	6/23/81*	--	--	--	
Northway (V)	9/29/82*	Ban Sale & Import (C)	--	--	
Nulato (M)	1/07/82	--	--	--	Petitions sent 1/7/82.
Ruby (M)	8/02/82	--	--	--	Petitions sent 8/2/82.
Stevens Village (V)	4/28/82*	Ban Sale & Import (C)	--	--	Petitions sent 4/28/82.
Tanacross (V)	9/28/82*	--	--	--	
Tanana (M)	9/23/82*	Community Liquor Store (V)	90/15	--	Applying for a liquor lice
Tetlin (V)	10/04/82*	Ban Sale & Import (V)	54/7	1/1/83	
JUNEAU/SEALASKA REGION					
Angoon (M)	4/06/82*	Ban Sale & Import (V)	72/94	--	ALOL[3] did not pass.
Hydaburg (M)	2/24/82*	Selected Liquor Lic. (V)	43/63	--	ALOL[3] did not pass.
Klawock (M)	10/20/82*	Community Liquor Store (C)	--	--	
Metlakatla (Reservation)	2/14/81*	--	--	--	ALOL[3] not applicable.
Thorne Bay (M)	12/01/82	Ban Sale (V)	--	--	Election improprieties; selected liquor license ap plied for in January, 198
KODIAK REGION					
Larsen Bay (M)	7/19/82*	Ban Sale & Import (V)	17/38	--	ALOL[3] did not pass.
Old Harbor (M)	6/19/81*	--	--	--	Emergency ordinance to ba sale and import, 7/20/82.

Village (Municipality or Village)	Petition Sent (ALSC Visit*)	Option Considered or Voted Upon	Election Results (yes/no[2])	Effective Dates	Notes
KOTZEBUE/NANA REGION					
Ambler (M)	11/23/81*	Ban Sale & Import (V)	29/21	1/1/82	May schedule new electio
Buckland (M)	10/02/81*	Ban Sale & Import (V)	52/06	6/1/82	No special election ordi
Deering (M)	11/24/81*	Ban Sale & Import (V)	32/24	6/1/82	
Kiana (M)	2/03/82*	Ban Sale & Import (V)	80/60	12/1/82	Second election -- same results.
Kivalina (M)	9/29/81*	Ban Sale & Import (V)	65/27	5/1/82	
Kobuk (M)	11/18/82*	--	--	--	Petitions sent 11/12/82.
Noatak (V)	6/10/82*	Ban Sale & Import (V)	69/53	1/1/83	
Noorvik (M)	5/29/81*	Ban Sale & Import (V)	95/46	5/1/82	
Selawik (M)	11/23/81*	Ban Sale & Import (V)	67/66	1/1/82	
Shungnak (M)	11/24/81*	Ban Sale & Import (V)	59/23	4/1/82	
NOME/BERING STRAITS REGION					
Diomede (M)	9/07/81*	Ban Sale & Import (V)	27/12	10/1/81	
Elim (M)	6/18/81*	Ban Sale & Import (V)	47/17	9/1/81	
Gambell (M)	7/22/81*	Ban Sale & Import (V)	79/10	9/1/81	
Golovin (M)	9/16/81*	Ban Sale & Import (V)	26/19	7/1/81	
Koyuk (M)	7/13/81*	Ban Sale & Import (V)	57/08	9/1/81	
St. Michael (M)	10/14/82*	Ban Sale & Import (V)	—	--	1/83 special election ord
Savoonga (M)	8/20/81*	Ban Sale & Import (V)	103/81	11/1/81	nance enacted, new sale a
Shaktoolik (M)	9/14/81*	Ban Sale & Import (V)	30/23	11/1/81	importation petition beir circulated; election cont
Shishmaref (M)	10/12/82*	Ban Sale & Import (V)	82/47	2/1/83	plated.
Stebbins (M)	6/26/81*	Ban Sale & Import (V)	49/07	8/1/81	
Teller (M)	10/11/82*	--	--	--	
Unalakleet (M)	9/10/81*	--	--	--	

Village (Municipality or Village)	Petition Sent (ALSC Visit*)	Option Considered or Voted Upon	Election Results[2] (yes/no)	Effective Dates	Notes
Wales (M)	7/05/81*	Ban Sale & Import (V)	29/21	9/1/81	
White Mountain (M)	7/16/81*	Ban Sale & Import (V)	29/16	4/1/82	Not officially recorded.
NORTH SLOPE REGION					
Anaktuvuk Pass (M)	11/11/81*	Ban Sale & Import (V)	78/11	1/1/83	
Point Hope (M)	9/15/81*	Ban Sale & Import (V)	62/39	8/1/82	
Point Lay (V)	2/09/82*	--	--	--	Within incorporated borough; ALOL[3] not applicable.
Wainwright (M)	6/11/81	Ban Sale & Import (V)	61/42	8/1/82	
YUKON/KUSKOKWIM REGION					
Akiachak (M)	2/02/82*	--	--	--	
Akiak (M)	2/02/82	Ban Sale & Import (V)	--	--	Election improprieties.
Akolmiut (M)	--	Ban Sale & Import (V)	106/35	10/1/81	Not assisted by ALSC.
Alakanuk (M)	3/25/82	Ban Sale & Import (V)	92/24	8/1/81	
Aniak (M)	7/22/82*	Ban Sale & Import (V)	42/129	--	ALOL[3] did not pass.
Atmautluak (M)	9/01/81*	Ban Sale & Import (V)	60/12	6/1/82	
Brevig Mission	8/26/82	--	--	--	Petitions sent 12/82.
Chefornak (M)	9/08/82*	Ban Sale & Import (V)	48/29	11/1/82	Second election.
Chevak (M)	--	Ban Sale & Import (V)	--	--	Election improprieties.
Chuathbaluk (M)	10/08/81*	Ban Sale & Import (C)	--	--	
Crooked Creek (V)	12/09/81*	--	--	--	
Eek (M)	10/19/81*	Ban Sale & Import (V)	90/15	12/1/82	
Emmonak (M)	9/03/81	Ban Sale & Import (V)	54/12	11/1/81	
Goodnews Bay (M)	4/21/82	--	--	--	
Grayling (M)	12/02/81	Ban Sale & Import (V)	34/34	--	ALOL[3] did not pass; needs majority.

Village (Municipality or Village)	Petition Sent (ALSC Visit*)	Option Considered or Voted Upon	Election Results (yes/no[2])	Effective Dates	Notes
Holy Cross (M)	7/10/81*	Ban Sale & Import (V)	50/60	--	Election results never ce
Hooper Bay (M)	10/28/82*	Ban Sale & Import (C)	--	--	Election planned for mid-February.
Kipnuk (V)	9/20/81*	Ban Sale & Import (V)	82/07	11/1/82	
Kongiganak (V)	9/17/81*	Ban Sale & Import (V)	50/09	8/1/82	
Kotlik (M)	3/09/81*	Ban Sale & Import (V)	63/15	10/1/81	
Kwethluk (M)	10/12/81*	Ban Sale & Import (V)	82/30	3/1/82	
Lime Village (V)	1/21/82*	--	--	--	
Lower Kalskag (M)	1/15/82*	Ban Sale & Import (C)	--	--	Petition died.
Marshall (M)	--	Ban Sale & Import (V)	42/16	8/1/81	Not assisted by ALSC.
Mekoryuk (M)	5/21/81*	Ban Sale & Import (V)	48/10	10/1/81	
Mountain Village (M)	5/21/81*	--	--	--	
Napakiak (M)	10/02/81*	Ban Sale & Import (V)	54/14	4/1/82	
Napaskiak (M)	9/08/82*	Ban Sale & Import (V)	55/04	12/1/82	
Newtok (M)	11/26/82	--	--	--	Petition received 11/26/8
Nightmute (M)	9/08/82*	Ban Sale (V)	39/03	1/1/83	Second election expected.
Nunapitchuk (EV)	7/10/81*	--	--	--	Using emergency ordinance
Pilot Station (M)	7/10/81*	--	--	--	Using emergency ordinance
Platinum (M)	--	Ban Sale & Import (V)	11/08	2/1/82	CRA[3] assisted with electi
Quinhagak (M)	9/14/81*	Ban Sale & Import (V)	79/26	11/1/81	
Red Devil (V)	1/21/82	Ban Sale (V)	12/22	--	ALOL[3] did not pass.
St. Mary's (M)	9/01/81*	Ban Sale & Import (V)	63/48	10/1/81	
Scammon Bay (M)	11/09/81*	Ban Sale & Import (V)	57/10	1/1/82	
Shageluk (M)	6/22/82*	Ban Sale & Import (V)	--	--	ALOL[3] did not pass.

Village (Municipality or Village)	Petition Sent (ALSC Visit*)	Option Considered or Voted Upon	Election Results (yes/no[2])	Effective Dates	Notes
Sheldon Point (M)	9/03/81*	--	--	--	
Sleetmute (V)	8/10/82*	Ban Sale & Import (V)	23/20	8/1/82	
Stony River (V)	8/12/82*	--	--	--	
Toksook Bay (M)	10/03/81*	Ban Sale & Import (V)	78/32	12/1/81	
Tuluksak (M)	9/09/82*	Ban Sale & Import (V)	61/16	11/1/82	
Tununak (M)	5/21/81*	Ban Sale & Import (V)	90/11	9/1/81	
Tuntutuliak (V)	12/01/81*	Ban Sale & Import (V)	47/20	9/1/82	
Upper Kalskag (M)	1/15/82*	--	--	--	

NOTE[1]: The four option choices for municipalities (first and second-class and homerule cities) are:

1. Selected liquor license;
2. Community liquor license;
3. Banning the sale of alcoholic beverages;
4. Banning the sale and importation of alcoholic beverages.

Established villages may choose option 1, 3, or 4.

NOTE[2]: For those villages which have chosen the option to ban sale and importation, a "yes" vote means that a voter wishes to stop the sale and importation of alcoholic beverages. A "no" vote means that a voter does not wish to stop the sale and importation of alcoholic beverages under the state alcohol local option law.

NOTE[3]: ALOL -- Alcohol Local Option Law.
ALOE -- Alcohol Local Option Election.
CRA -- Community and Regional Affairs; Division of Local Government Assistance.

NOTE[4]: As of May 18, 1982, the United States Department of Justice approved the Alaska State Title 4 alcohol local option law submission under Section 5 of the Voting Rights Act. The state of Alaska is a "Voting

Rights Act State," which means that when there is any "change in the standard practice or procedure" in voting, the state or other appropriate agency is required to obtain approval from the United States Department of Justice.

This approval means that the alcohol local option law elections already held by municipalities in the state of Alaska are valid. This approval also means that the established villages can hold alcohol local option law elections with the assistance of the Division of Elections.

This approval means that no objection under the Voting Rights Act can be raised with respect to the alcohol local option law elections held unless someone has actually been denied his or her right to vote, thus prejudicing the election.

NOTE[5]: After receiving encouragement from many rural Alaskan priests, religious organizations and residents, the Alaska House of Representatives and Senate passed a law, Senate Bill 765, dealing with the sacramental wine exception to the state Title 4 alcohol local option law.

The new law changed A.S. 04.11.496 (b), which is the law allowing communities to vote to prohibit the sale and importation of alcoholic beverages. The amendment of A.S. 04.11.496 (b) stated that if a majority of the people in a community vote to prohibit the sale and importation of alcoholic beverages, a person "may not knowingly send, transport, or bring an alcoholic beverage into the municipality or established village, unless the alcoholic beverage is sacramental wine to be used for bona fide religious purposes based on tenets or teachings of a church, is limited in quantity to the amount necessary for religious purposes, and is dispensed only for religious purposes by a person authorized by the church or religious body to dispense sacramental wine."

This language means that the only alcoholic beverages which can come legally into a community which has voted to stop sale and importation of alcoholic beverages is wine to be used only in a religious service. The wine is to be an amount to be used only in religious service. Only a priest or someone authorized by the priest can receive the wine and give it to people in a religious ceremony.

(2) the use of the premises for storage is authorized by local zoning ordinances; and

(3) the premises are accessible for inspection as provided in AS 04.11.630. (§ 4 ch 131 SLA 1980)

Sec. 04.21.070. Enforcement. Peace officers shall investigate and report to the board violations of this title. (§ 4 ch 131 SLA 1980)

Sec. 04.21.080. Definitions. (a) In this title

(1) a person acts with "criminal negligence" with respect to a result or to a circumstance described by a provision of law defining an offense when he fails to perceive a substantial and unjustifiable risk that the result will occur or that the circumstance exists; the risk must be of such a nature and degree that the failure to perceive it constitutes a gross deviation from the standard of care that a reasonable person would observe in the situation;

(2) a person acts "knowingly" with respect to conduct or to a circumstance described by a provision of law defining an offense when he is aware that his conduct is of that nature or that the circumstance exists; when knowledge of the existence of a particular fact is an element of an offense, that knowledge is established if a person is aware of a substantial probability of its existence, unless he actually believes it does not exist; a person who is unaware of conduct or a circumstance of which he would have been aware had he not been intoxicated acts knowingly with respect to that conduct or circumstance;

(3) a person acts "recklessly" with respect to a result or to a circumstance described by a provision of law defining an offense when he is aware of and consciously disregards a substantial and unjustifiable risk that the result will occur or that the circumstance exists; the risk must be of such a nature and degree that disregard of it constitutes a gross deviation from the standard of conduct that a reasonable person would observe in the situation; a person who is unaware of a risk of which he would have been aware had he not been intoxicated acts recklessly with respect to that risk

(b) In this title

(1) "alcoholic beverage" includes, but is not limited to, whiskey, brandy, rum, gin, wine, ale, porter, beer, and all other spirituous, vinous, malt and other fermented or distilled liquors intended for human consumption and containing more than one percent alcohol by volume;

(2) "board" means the Alcoholic Beverage Control Board;

(3) "bottling" means to put into a bottle, can, or other container;

(4) "designated premises" means any or all designated portions of a building or structure, rooms or enclosures in the building or structure, or real estate leased, used, controlled, or operated by a licensee for the

(5) "director" means the director of the Alcoholic Beverage Control Board;

(6) "distributing point" means a location where alcoholic beverages are distributed from a warehouse;

(7) "drunken person" means a person whose physical or mental conduct is substantially impaired as a result of the introduction of an alcoholic beverage into his body and who exhibits those plain and easily observed or discovered outward manifestations of behavior commonly known to be produced by the overconsumption of alcoholic beverages;

(8) "established village" means an unincorporated area that

(A) is within the circumference of a circle described by drawing a five-mile radius around a post office station;

(B) has 25 or more permanent residents;

(9) "licensed premises" means any or all designated portions of a building or structure, rooms or enclosures in the building or structure, or real estate leased, used, controlled, or operated by a licensee in the conduct of business for which he is licensed by the board at the specific address for which the license is issued;

(10) "local governing body" means, as appropriate, a city council, a borough assembly, or a traditional village council, but does not include a corporation established under the Alaska Native Claims Settlement Act;

(11) "municipality" means an incorporated city, an organized borough, or a unified municipality established under AS 29.68. (§ 4 ch 131 SLA 1980)

Am. Jur. 2d and C.J.S. references. — 45 Am. Jur. 2d Intoxicating Liquors §§ 4-21.

48 C.J.S. Intoxicating Liquors §§ 1-19.

STATE OF ALASKA
PRELIMINARY STATEMENT OF FISCAL IMPACT

Bill No. HB 157 Date on Bill: 2/4/83
Title: An act to expand the right to petition for a local option election"
Sponsor: Adams
Requestor: House Community and Regional Affairs Committee

1. Estimated fiscal impacts on:

a. Expenditures:

(Thousands of Dollars)

			FY 83	FY 84	FY 85	FY 86		
Capital								
Operating								
Total				-0-	-0-	-0-		

b. Revenues:

Revenue							

2. Source of funds to offset fiscal impact of bill:

3. Assumptions: The Division does not expect an upsurge of petitions for local option elections as a result of this legislation, as it appears that the end of the "Alcohol Project" by Alaska Legal Services has contributed to a decrease of petition activity.

4. Disclaimer:
This statement has not been reviewed by the OMB in the Office of the Governor. It do not represent the policy of the Sheffield Administration or the final estimate of fis impact.

Prepared By: TPThoma Phone: 4611
Division: Elections Date: 2/23/83

Approved by Commissioner: Date:
Department:

5. Distribution:
Original to Legislative Finance
Copy to OMB
Copy to Sponsor

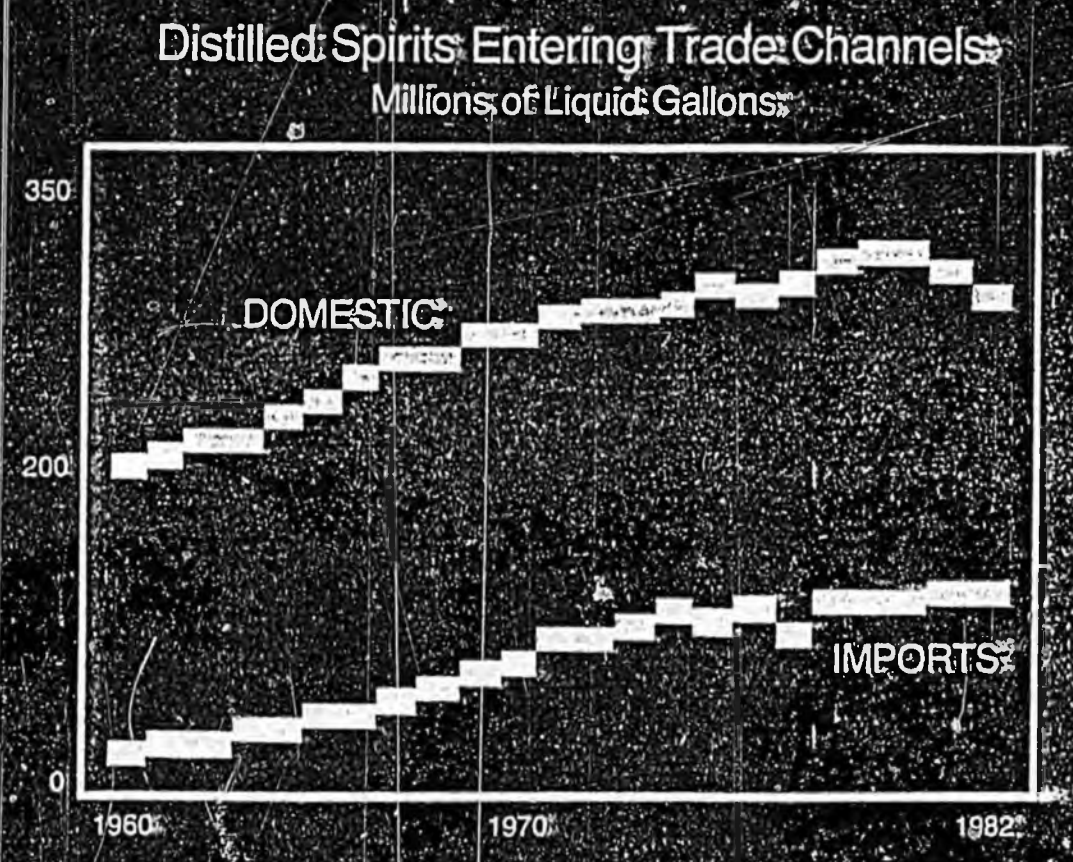
HB

158

City	Population 12/31/82	Pop Estimated 12/31/83	Bev decp	Pkg store	Restaurant Eating pl	Club	Total
Anchorage	204216	230846	146	124	129	17	416
Cordova	2241	2307	6	6	—	2	14
Fairbanks	25747	27103	44	24	18	6	92
Haines	1049	1079	5	3	1	2	11
Homer	2897	3237	10	7	2	1	20
Juneau	22836	27519	27	16	16	2	61
Kenai	5231	5721	11	4	4	4	23
Ketchikan	7777	8414	21	15	15	6	57
Kodiak	5873	6072	13	6	4	2	25
McGrath	497	535	2	3	—	—	5
Nome	3430	3620	8	4	3	1	16
Palmer	2524	2738	6	3	2	2	13
Petersburg	3040	3046	4	5	2	2	13
Valdez	3694	3687	9	5	3	2	19
Wasilla	2386	2944	6	2	2	1	11
Wrangell	2376	2376	5	6	—	1	12
Seward	1828	1828	10	4	2	2	18

Annual Statistical Review 1982

DISTILLED SPIRITS INDUSTRY







DISTILLED SPIRITS COUNCIL OF THE UNITED STATES

City	Present # of on Premise Barlicenses	present Population	Population needed for 1 license for 1500	Population needed for Bill 1 for 2500
anchorage	145	230,000	(217,000)	362,500
Craig	4	907	6,000	10,000
Soldotna	7	3300	10,500	17,500
Kenai	11	5500	16,500	27,500
Fairbanks	44	27,000	66,000	110,000
Seward	10	1800	15,000	25,000
Homer	10	3200	15,000	25,000
Cordova	6	2300	7,500	15,000
Ketchikan	22	14,300	33,000	55,000
Sitka	11	8,200	16,500	27,500
Juneau	27	27,500	40,500	67,500
Wrangel	5	2300	7,500	12,500

anchorage is the only city where more licenses could be granted under 1 license per 1500 population

Table 40. Adult[a] Per Capita Consumption of Distilled Spirits, Wine, and Beer, by State, 1982

(Wine or Liquid Gallons)

State	Distilled Spirits	Wine	Beer	Adult Population[b] (000)
LICENSE STATES				
Alaska	4.64	4.80	42.75	297
Arizona	2.78	3.42	42.17	2,049
Arkansas	1.67	1.05	25.02	1,642
California	2.99	6.03	33.47	18,239
Colorado	3.11	3.87	37.76	2,219
Connecticut	3.19	3.84	25.52	2,370
Delaware	3.50	2.85	37.09	443
District of Columbia	7.09	8.67	35.10	494
Florida	3.29	3.34	37.17	7,987
Georgia	2.74	1.81	28.50	4,011
Hawaii	3.01	4.02	43.50	716
Illinois	2.82	3.02	34.20	8,310
Indiana	2.01	1.57	31.37	3,926
Kansas	1.77	1.11	29.26	1,761
Kentucky	2.01	0.99	27.76	2,625
Louisiana	2.67	2.53	36.44	3,020
Maryland	3.33	2.98	33.55	3,154
Massachusetts	3.23	4.17	41.05	4,366
Minnesota	2.94	2.31	33.04	2,993
Missouri	1.72	1.80	33.27	3,629
Nebraska	2.20	1.73	36.40	1,145
Nevada	6.59	6.45	47.79	651
New Jersey	3.01	4.41	29.47	5,534
New Mexico	2.30	2.94	40.83	937
New York	2.88	4.02	30.43	13,151
North Dakota	2.99	1.50	37.29	477
Oklahoma	2.20	1.38	28.63	2,296
Rhode Island	2.74	4.64	32.32	725
South Carolina	2.66	1.73	30.16	2,278
South Dakota	2.59	1.52	31.30	490
Tennessee	1.85	1.17	27.26	3,390
Texas	2.23	2.22	44.24	10,751
Wisconsin	3.04	2.56	46.92	3,451
License States	**2.77**	**3.34**	**34.16**	**119,527**
CONTROL STATES				
Alabama	1.92	1.49	24.23	2,812
Idaho	2.07	2.60	35.71	655
Iowa	1.73	1.09	33.63	2,109
Maine	2.71	2.58	31.92	824
Michigan	2.63	2.39	32.88	6,530
Mississippi	2.19	0.94	29.10	1,752
Montana	2.71	2.74	44.21	570
New Hampshire	6.21	4.93	45.91	697
North Carolina	2.24	1.80	25.94	4,402
Ohio	1.74	1.87	31.47	7,818
Oregon	2.32	4.41	32.01	1,938
Pennsylvania	1.82	1.93	34.71	8,876
Utah	1.47	1.26	24.83	974
Vermont	3.31	4.27	36.04	376
Virginia	2.31	2.26	30.00	4,053
Washington	2.62	4.41	32.05	3,105
West Virginia	1.46	1.19	26.90	1,405
Wyoming	3.21	2.01	43.38	347
Control States	**2.17**	**2.21**	**31.55**	**49,243**
United States	**2.59**	**3.01**	**33.57**	**168,769**

NOTE: Because of rounding, detail may not add to total.

[a] "Adult" is defined as persons 18 years of age and older.

[b] Adult population as of July 1, 1982.

Sources: Distilled Spirits Council of the United States, Inc.; Wine Institute; United States Brewers Association; Bureau of the Census, U.S. Department of Commerce.

Table 52. Number of Retail Outlets or Licenses Issued for the Sale of Distilled Spirits, Number of Outlets/Licenses per 1,000 Population, and Number of Persons per Outlet/License, 1982

State	Number of Outlets/Licenses				Total Population July 1, 1982 (000)	Number of Outlets/Licenses per 1,000 Population				Number of Persons per Outlet/License			
	On Premise	Off Premise	On and Off Premise	Total Licenses		On Premise	Off Premise	On and Off Premise	Total Licenses	On Premise	Off Premise	On and Off Premise	Total Licenses
LICENSE STATES													
Alaska	759	446	—	1,205	438	1.73	1.01	—	2.75	577	982	—	364
Arizona	1,275	1,361	1,523	4,159	2,860	0.45	0.48	0.53	1.45	2,243	2,101	1,878	688
Arkansas	553	676	—	1,229	2,291	0.24	0.30	—	0.54	4,143	3,389	—	1,864
California	14,274	11,416	—	25,690	24,724	0.58	0.46	—	1.04	1,732	2,166	—	962
Colorado	3,687	1,373	—	5,060	3,045	1.21	0.45	—	1.66	826	2,218	—	602
Connecticut	3,341	1,869	—	5,210	3,153	1.06	0.59	—	1.65	944	1,687	—	605
Delaware	456	293	177	926	602	0.76	0.49	0.29	1.54	1,320	2,055	3,401	650
District of Columbia	821	347	—	1,168	631	1.30	0.55	—	1.85	769	1,818	—	540
Florida	1,311	568	6,284	8,163	10,416	0.13	0.05	0.60	0.78	7,945	18,338	1,658	1,276
Georgia	1,773	1,586	—	3,359	5,639	0.31	0.28	—	0.60	3,180	3,555	—	1,679
Hawaii	1,071	769	—	1,840	994	1.08	0.77	—	1.85	928	1,293	—	540
Illinois	—	—	19,932	19,932	11,448	—	—	1.74	1.74	—	—	574	574
Indiana	1,193	1,704	3,495	6,392	5,471	0.22	0.31	0.64	1.17	4,586	3,211	1,565	856
Kansas	1,182	1,114	—	2,296	2,408	0.49	0.46	—	0.95	2,037	2,162	—	1,049
Kentucky	1,217	904	88	2,209	3,667	0.33	0.25	0.02	0.60	3,013	4,056	41,670	1,660
Louisiana	6,747	2,742	—	9,489	4,362	1.55	0.63	—	2.18	647	1,591	—	460
Maryland	554	1,065	3,261	4,880	4,265	0.13	0.25	0.76	1.14	7,699	4,005	1,308	874
Massachusetts	6,214	1,790	—	8,004	5,781	1.07	0.31	—	1.38	930	3,230	—	722
Minnesota	2,375	700	1,112	4,187	4,133	0.57	0.17	0.27	1.01	1,740	5,904	3,717	987
Missouri	—	4,110	4,295	8,405	4,951	—	0.83	0.87	1.70	—	1,205	1,153	589
Nebraska	430	564	2,058	3,052	1,586	0.27	0.36	1.30	1.92	3,688	2,812	771	520
Nevada	926	599	839	2,364	881	1.05	0.63	0.95	2.68	951	1,471	1,050	373
New Jersey	1,460	1,947	8,109	11,516	7,438	0.20	0.26	1.09	1.55	5,095	3,820	917	646
New Mexico	217	79	1,308	1,604	1,359	0.16	0.06	0.96	1.18	6,263	17,203	1,039	847
New York*	23,672	4,098	—	27,770	17,659	1.34	0.23	—	1.57	746	4,309	—	636
North Dakota	77	91	1,065	1,233	670	0.11	0.14	1.59	1.84	8,701	7,363	629	543
Oklahoma	—	831	—	831	3,177	—	0.26	—	0.26	—	3,823	—	3,823
Rhode Island	1,448	311	—	1,759	958	1.51	0.32	—	1.84	662	3,080	—	545
South Carolina	1,542	1,151	—	2,693	3,203	0.48	0.36	—	0.84	2,077	2,783	—	1,189
South Dakota	886	585	—	1,471	691	1.28	0.85	—	2.13	780	1,181	—	470
Tennessee	954	572	—	1,526	4,651	0.21	0.12	—	0.33	4,875	8,131	—	3,048
Texas	7,813	3,458	—	11,271	15,280	0.51	0.23	—	0.74	1,956	4,419	—	1,356
Wisconsin	12,699	1,763	—	14,462	4,765	2.67	0.37	—	3.04	375	2,703	—	329
Subtotal License States	100,927	50,882	53,546	205,355	163,597	0.62	0.31	0.33	1.26	1,621	3,215	3,055	797
CONTROL STATES													
Alabama	2,090	136	—	2,226	3,943	0.53	0.03	—	0.56	1,887	28,993	—	1,771
Idaho	885	132	—	1,017	965	0.92	0.14	—	1.05	1,090	7,311	—	949
Iowa	4,610	212	—	4,822	2,905	1.59	0.07	—	1.66	630	13,703	—	602
Maine	1,168	130	—	1,298	1,133	1.03	0.11	—	1.15	970	8,715	—	873
Michigan	9,217	3,883	—	13,100	9,109	1.01	0.43	—	1.44	988	2,346	—	695
Mississippi	584	677	—	1,261	2,551	0.23	0.27	—	0.49	4,368	3,768	—	2,023
Montana	—	145	1,528	1,673	801	—	0.18	1.91	2.09	—	5,524	524	479
New Hampshire	1,014	70	—	1,084	951	1.07	0.07	—	1.14	938	13,586	—	877
North Carolina	1,143	385	—	1,528	6,019	0.19	0.06	—	0.25	5,266	15,634	—	3,939
Ohio	11,867	427	—	12,294	10,791	1.10	0.04	—	1.14	909	25,272	—	878
Oregon	1,531	231	—	1,762	2,649	0.58	0.09	—	0.67	1,730	11,468	—	1,503
Pennsylvania	4,030	726	15,032	19,788	11,865	0.34	0.06	1.27	1.67	2,944	16,366	789	600
Utah	164	113	163	440	1,554	0.11	0.07	0.10	0.28	9,476	13,752	9,534	3,532
Vermont	1,069	63	—	1,132	516	2.07	0.12	—	2.19	483	8,190	—	456
Virginia	1,855	245	—	2,100	5,491	0.34	0.04	—	0.38	2,960	22,412	—	2,615
Washington	2,481	376	—	2,857	4,245	0.58	0.09	—	0.67	1,711	11,290	—	1,486
West Virginia	1,229	157	—	1,386	1,948	0.63	0.08	—	0.71	1,585	12,408	—	1,405
Wyoming	684	96	178	958	502	1.36	0.19	0.35	1.91	734	5,229	2,820	524
Subtotal Control States	45,621	8,204	16,901	70,726	67,938	0.57	0.12	0.25	1.04	1,489	8,282	4,020	961
TOTAL UNITED STATES	146,548	59,086	70,447	276,081	231,535	0.63	0.26	0.30	1.19	1,580	3,919	3,287	839

NOTE: Because of rounding, detail may not add to total.
*New York outlet data are for 1981.

FAIRBANKS NORTH STAR BOROUGH SCHOOL DISTRICT
P.O. Box 1250, Fairbanks, Alaska 99707-1250 (907) 452-2000

KENNETH STEPHEN BURNLEY
Superintendent of Schools



October 6, 1983

Mr. Richard Loeb
Alaska Distributors Co.
P. O. Box 549
Fairbanks, Alaska 99707

Dear Mr. Loeb:

On behalf of the Board of Education, I want to express my appreciation for your generous gift to the School District. "Preventing Alcohol Abuse" will be a vital curriculum resource for those developing classroom lessons on this important subject.

As I reviewed the brochure provided, I was very impressed by the emphasis on factual, nonjudgmental information. Moreover, the tailoring of learning units to specific age groups will greatly facilitate the use of the teaching materials.

Altogether, your contribution demonstrates the best traditions of corporate social consciousness and community involvement. Please accept my personal gratitude for this outstanding gift, and for your keen sense of public commitment.

Sincerely,

Kenneth S. Burnley
Superintendent

KSB:M
c Board of Education

STATE OF ALASKA
THE LEGISLATURE

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

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM February 28, 1984

SUBJECT: Liquor licenses (HB 158)

TO: Representative Charlie Bussell
Chairman, House Judiciary Committee

FROM: Russ Josephson
Legislative Counsel

In the committee discussions of CSHB 158(C&RA), there has been a fair amount of confusion about the language of AS 04.11.400, the statute setting population limitations for liquor licenses. In an attempt to clarify this section and, thus, the bill, I have rewritten this section in part. Although the concepts in this section remain complicated, I think that this rewrite is an improvement.

Please note that in this new draft subsection (k) has been eliminated, replaced by additional language inserted into subsections (a) and (b). Another change in this draft concerns the transfers of liquor licenses. There has been some confusion about transfers of licenses because there are two types, transfers of ownership and transfers of location. To clarify this distinction, I have changed the word "transfer" to "relocation" when referring to a transfer of the location of licensed premises. (If this change is acceptable, the references to transfers of this type throughout the title would be changed, as well, to read "relocation" rather than "transfer".)

Please let me know what you think of the following version of AS 04.11.400(a) and (b) and whether you would like a substitute bill drafted along these lines.

(a) Except as provided in (g)(2), (h), and (i) of this section, a new license may not be issued, and licensed premises may not be relocated, if the premises for the new license or if the relocated licensed premises would be located

(1) outside an incorporated city, a unified municipality, or an established village and, after the issuance or relocation, there would be within a radius of five miles of the licensed premises or location of premises sought to be licensed more than one beverage dispensary license and one package store license for each 3,000 population or fraction of 3,000 population and one license of each other type for each 1,500 population or fraction of 1,500 population; in determining the maximum number of a type of license allowed in a given area under this paragraph, the board shall include in its calculations the number of licenses of that type issued under (g) and (h) of this section for premises in that area;

(2) inside an incorporated city, a unified municipality, or an established village and, after the issuance or relocation, there would be inside the boundaries of the city, municipality or village more than one beverage dispensary license and one package store license for each 3,000 population or fraction of 3,000 population and one license of each other type for each 1,500 population or fraction of 1,500 population; in determining the maximum number of a type of license allowed in a given area under this paragraph, the board shall include in its calculations the number of licenses of that type issued under (g) or (h) of this section for premises in that area.

(b) If an application for a new license or for relocation of licensed premises is for premises to be located outside of an incorporated city, unified municipality, or established village and the radius described in (a)(1) of this section encompasses all of the city, municipality, or village and the population residing within the radius is less than

(1) 3,000, the board may deny the

(A) issuance of a beverage dispensary license or package store license;

(B) relocation of premises licensed as a beverage dispensary or package store;

(2) 1,500, the board may deny the issuance of any license or the relocation of any licensed premises.

If you have any questions or comments, please do not hesitate to call.

RJ:ojb
J4/013

BILL SHEFFIELD, GOVERNOR

DEPARTMENT OF REVENUE

ALCOHOLIC BEVERAGE CONTROL BOARD

201 EAST 9TH. AVENUE
ANCHORAGE, ALASKA 99501

March 5, 1984



The Honorable Charlie Bussell, Chairman
House Judiciary Committee
Alaska State Legislature
Pouch V
Juneau, AK 99811

Re: CSHB 158 (C&RA)

Dear Representative Bussell:

During our testimony on the above bill at the committee meeting held on January 27, members of the committee requested that I submit a letter outlining the ABC Board's alternative or preference concerning population limitations for issuance of liquor licenses. Simply stated, the board would prefer merely amending present law to raise population from 1,500 persons for each type of license to 2,500 persons. The board believes there is currently a sufficient number of issued licenses to serve the needs of the public. If in the future an application warrants and public need is shown, the board may grant a license under AS 04.11.400(j), public convenience and necessity.

A draft bill showing the board's proposed amendment is attached. Thank you for extending additional time for the board to respond. If I can provide the committee with any additional information, please do not hesitate to call.

Sincerely,

Patrick L. Sharrock
Director

PLS:vk
Enc.

cc: Representative Mike M. Miller, Sponsor
Robert D. Heath, Commissioner of Revenue
Members, ABC Board
Kay Gouwens, Asst. Attorney General

of all alcoholic beverage licenses; and providing for an effective date."

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

* Section 1. AS 04.11.400(a) is amended to read:

(a) Except as provided in (g),(h), (i), and (j) of this section, a new license may not be issued or an existing license transferred to a new location

(1) outside an incorporated city, a unified municipality, or an established village if after the issuance or transfer there would be more than one license of each type for each 2,500 [1,500] population or fraction of 2,500 [1,500] population, including licenses which have been approved or issued under (g) or (h) of this section, in a radius of five miles of the licensed premises or location of premises sought to be licensed.

(2) inside an established village, an incorporated city, or a unified municipality if after the issuance or transfer there would be more than one license of each type for each 2,500 [1,500] population or fraction of 2,500 [1,500] population, including licenses which have been issued or approved under (g) or (h) of this section, inside the boundaries of the village, city or municipality.

* Sec. 2. AS 04.11.400(b) is amended to read:

(b) If the application is for a license outside of an established village, incorporated city, or unified municipality and the radius described in (a)(1) of this section encompasses all of the established village, incorporated city, or unified municipality and the population resident inside and outside the village, city, or municipality but inside the radius described in (a)(1) of this section is less than 2,500 [1,500], the board may deny the issuance or transfer of the license.

* Sec. 3. This Act takes effect immediately in accordance with AS 01.-0.070.

NOTICE OF PROPOSED CHANGES IN THE
REGULATIONS OF THE ALCOHOLIC BEVERAGE CONTROL BOARD

Notice is hereby given that the Alcoholic Beverage Control board, under the authority of AS 04.06.100, proposes to amend certain current regulations and adopt new regulations as described below.

Application Periods for Licenses

The Board proposes to establish application periods for licenses and clarify when a license becomes available. The statutes to be interpreted and implemented are AS 04.06100, AS 04.11.010, AS 04.11.260, AS 04.11.320(a)(9), and AS 04.11.400(a).

Competing Applications

The Board proposes to:

(1) establish the procedure for choosing among competing applicants when there are more applicants than available licenses;

(2) establish criteria that will guide the board's choice among competing applicants;

(3) provide for random selection among competing applicants in some cases; and

(4) establish the procedure for local governing bodies to protest competing applications. The statutes to be interpreted and implemented are AS 04.06.100, AS 04.11.400(a), AS 04.11.010, AS 04.11.260, and AS 04.11.510.

Local Governing Body Protests

The Board proposes to adopt clarifying regulations when a local governing body protest may be determined to be arbitrary,

capricious, or unreasonable, and relating to government protests where there are competing applicants. The statutes to be interpreted and implemented are AS 04.06.100, AS 04.11.480, AS 04.11.510, and AS 04.11.520.

Determining Population

The Board proposes to establish how population will be determined in establishing the number of available licenses. The statutes to be interpreted and implemented are AS 04.06.100 and AS 04.11.400(a).

Denying, Suspending, and Revoking Licenses in the Public Interest

The Board proposes to establish criteria that will guide the Board in deciding when in the public interest a license will be denied, revoked or suspended, or a request for renewal or transfer will be denied. The statutes to be implemented and interpreted are AS 04.06.100, AS 04.11.320(a)(1), AS 04.11.330(a)(1), AS 04.11.340(2), AS 04.11.360(1), AS 04.11.370(2), and AS 04.11.370(2).

License Renewal

The Board proposes to clarify and establish procedures and deadlines for renewal of licenses. The statutes to be implemented and interpreted are AS 04.06.100, AS 04.11.270, AS 04.11.330, AS 04.11.540, AS 04.11.550, and AS 04.11.680.

Minors: Employment and Dining

The Board proposes to adopt criteria for designation of licensed premises for employment of minors and dining by minors. The statutes to be implemented and interpreted are AS 04.06.100 and AS 04.16.049.

Drinking Age

The Board proposes to amend several regulations to reflect that the drinking age has been statutorily raised from 19 to 21. The statutes to be implemented and interpreted are AS 04.06.100, AS 04.11.080, AS 04.11.110, AS 04.11.460, AS 04.16.049, AS 04.16.050, AS 04.16.051, AS 04.16.052, AS 04.16.060, AS 04.16.200, AS 04.21.020, and AS 04.21.050.

Employment of Parolees, Probationers, and Prisoners

The Board proposes to repeal a regulation prohibiting employment of parolees and probationers, and to adopt a regulation restricting employment on licensed premises of parolees, probationers, and prisoners. The statute to be interpreted and applied is AS 04.06.100.

Transfer of Licenses to Another Person

The Board proposes to adopt regulations:

(1) disallowing transfers within three years after initial issuance;

(2) requiring that a license be surrendered while an application to transfer the license to another person is pending;

(3) providing for temporary permits to operate while a transfer application is pending;

(4) requiring public notice to creditors of the proposed transfer;

(5) defining what creditors' claims may prevent the transfer;

(6) establishing a creditors' claim period after which creditors' claims may be denied;

(7) providing for hearings on certain creditors' claims;

(8) requiring escrow of the purchase price to protect creditors; and

(9) providing for a transfer application fee.

The statutes being implemented and interpreted are AS 04.06.100, AS 04.11.280, AS 04.11.360, and AS 04.11.040.

Special Conditions on Licenses

The Board also proposes to adopt regulations regarding when special conditions may be placed on a license, and what kinds of conditions may be imposed. The statute being implemented and interpreted is AS 04.06.100.

Any person interested may present oral or written statements or arguments relevant to any of the proposed action at a hearing to be held in Fairbanks at 10:00 a.m. on February 16, 1984, in the Fairbanks North Star Borough Assembly Chambers, 520 Fifth Avenue, Fairbanks, Alaska; or at a hearing to be held in Anchorage at 10:00 a.m. on February 24, 1984, at the Municipality of Anchorage Assembly Chambers, 3500 Tudor Road, Anchorage, Alaska; or at a hearing to be held in Juneau at 8:00 a.m. on March 6, 1984, in the City and Borough of Juneau Assembly Chambers, 155 South Seward Street, Juneau, Alaska. In addition, written statements or arguments may be sent to Alcoholic Beverage Control Board, 201 E. 9th Avenue, Anchorage, Alaska 99501, to be received no later than March 1, 1984.

Copies of the proposed regulations may be obtained by writing to the Alcoholic Beverage Control Board, 201 E. 9th Avenue, Anchorage, Alaska 99501.

These actions are not expected to require an increased appropriation.

The Alcoholic Beverage Control Board, upon its own motion or at the instance of any interested party, may adopt proposals after the hearing within the scope of this notice without further notice, or may decide to take no action on them.

DATE: February 8, 1984

Patrick L. Sharrock, Director
Alcoholic Beverage Control Board

ARTICLE ___

MUTUALLY EXCLUSIVE APPLICATIONS

15 AAC 104. . MUTUALLY EXCLUSIVE APPLICATIONS. (a) Applications are mutually exclusive when issuance of one or more new licenses or the transfer of one or more existing licenses will require the denial of one or more other applications based upon the population quota for licenses.

(b) Within an established village, incorporated city, and unified municipality, the board will give reasonable public notice of application for the last available license of each kind. All mutually exclusive applications received within 30 days after the date of the last notice, and all mutually exclusive applications received within 30 days before the date the application for the last available license was received, are competing applications.

(c) Outside an established village, incorporated city, and unified municipality, each mutually exclusive application received within 30 days after receipt of the immediately preceding mutually exclusive application is a competing application.

(d) All competing applications will be decided at the same time. All other mutually exclusive applications will be considered separately, in the order in which they were received. Applications received before the competing applications will be decided first. Applications received after the competing applications will be decided after the final decision on all the competing applications. If necessary, the same procedure for identifying and considering competing applications will be repeated for applications received after the first group of competing applications.

15 AAC 104. . PROCEDURE FOR DECISION ON COMPETING APPLICATIONS. (a) The board will initiate a consolidated administrative hearing on all competing applications by filing a statement of issues under the Administrative Procedure Act.

(b) If an applicant does not appear in the administrative hearing, the application will be denied and the denial is final.

(c) If a local governing body protests a competing application, the protest will be incorporated in the statement of issues. The local governing body must appear in the administrative hearing or its protest will be considered arbitrary, capricious and unreasonable.

(d) Upon hearing, the board will determine whether to deny any competing applications under AS 04.11.320 or AS 04.11.480.

(e) After determining whether to deny any applications under as 04.11.320 or AS 04.11.480, the board will in its discretion approve applications which are no longer mutually exclusive, and will conduct a drawing to determine which competing applications to approve. All other competing applications will be denied without prejudice.

PUBLIC INTEREST CONSIDERATIONS

15 AAC 104.___. DENIAL IN THE PUBLIC INTEREST. (a) Except for good cause shown, the board will, in its discretion, deny an application for a new license or transfer of an existing license if the board finds, after review of all the evidence, that:

(1) the application is incompatible with the character or public interests of the surrounding neighborhood;

(2) issuance would tend to create a law enforcement problem;

(3) there is, or issuance would result in, an excessive number of licenses in the area. In the absence of guidelines from the local governing body, it will be presumed that there is an excessive number of licenses in an area where there are more than ___ licensed premises within a one-half mile radius or more than ___ licensed premises within a two-mile radius of the premises;

(4) there is, or issuance would tend to result in, a high crime rate or a high incidence of alcohol-related accidents in the area. In the absence of guidelines from a local governing body, the board will generally assume that the crime rate or incidence of alcohol-related accidents is "high" if the frequency or severity of such events in the area significantly exceeds the city -, village -, or municipality-wide average;

(5) there are inadequate parking facilities to accommodate a reasonably expected increased demand for parking created by issuing or transferring the license;

(6) access to the premises will create an unreasonable traffic hazard;

(7) a reasonably expected increase in traffic will overtax existing road systems;

(8) the proposed premises are already constructed, and do not substantially comply with state and local fire, health, and safety codes, and cannot be made to comply without extensive structural modification;

(9) under the proposed management plan, the licensee will have insufficient control over the conduct of the proposed business;

(10) the applicant or the applicant's affiliates have had a liquor license revoked in the year preceding the application;

(11) the applicant or the applicant's affiliates have had a liquor license suspended in the six months preceding the application;

(12) the applicant or the applicant's affiliates have been criminally convicted, within 5 years before the application, of any felony, any violation of Title 04 of the Alaska Statutes; or any violation of the alcoholic beverage control law of another state, as a licensee of that state;

(13) the applicant or the applicant's affiliates have demonstrated that they are untrustworthy or unfit to conduct the operation of a licensed business, or are a potential source of harm to the public;

(14) the proposed premises or business is not financially feasible.

(b) The factors listed in (a) of this section are neither exclusive nor conclusive. The board will in its discretion find that a license should not be issued in the best interests of the public based on factors not identified in (a) of this section, and will in its discretion consider other factors that offset or moderate a negative factor identified in (a) of this section.

CONDITIONS OF LICENSES

15 AAC 104.___. CONDITIONS ON LICENSES. If grounds exist for the denial, revocation, suspension, or refusal to renew a license, and the licensee or applicant requests it, the board may place reasonable restrictions on a license if it finds the conditions are likely to remove or substantially moderate the grounds for denial, revocation, suspension, or refusal to renew. Conditions may include, but are not limited to, the following subjects:

(1) hours of sale;

(2) display of signs;

(3) employment of designated persons;

(4) entertainment permitted or prohibited on the premises;

(5) alcoholic beverages to be served only with food; and

(6) matters pertaining to the personal conduct of the licensee.

POPULATION

15 AAC 104.605 DETERMINING POPULATION CRITERIA. is amended as follows:

Subsection (a) is amended to read:

(a) The board will employ population figures generated by the Department of Community and Regional Affairs to establish a population figure for determining the quota of licenses available under AS 04.11.400(a)(2). The Department of Community and Regional Affairs figures, will be adjusted, however, in the following respects:

(1) prison populations will be excluded;

(2) the populations of colleges and universities will be discounted by the number of students who, according to best available information are domiciled in states other than Alaska. If not such information is readily available to the director, college and university populations will be discounted by ____%.

(3) the population of military bases and installations will be discounted by the number of military personnel and their families who, according to best available information, are domiciled in states other than Alaska. If no such information is readily available to the director, the population of military bases and installations will be discounted by ___%. Former subsection (b) is redesignated as subsection (d) and new subsections (b) and (c) as follows are added:

(b) The population of established villages, incorporated cities, and unified municipalities will be determined annually by the director, within a reasonable time after the figures generated by the Department of Community and Regional Affairs are made available to the director.

(c) If figures of the Department of Community and Regional Affairs are not available to the director by _____ of any year, the director shall employ the best available information to establish population figures in determining the quota of available licenses.

LOCAL GOVERNMENT PROTESTS

15 AAC 104.145 LOCAL GOVERNING BODY PROTEST. is amended by adding new subparagraphs (c), (d), and (e) as follows:

(c) A local governing body protest will generally be considered not to be arbitrary, capricious, or unreasonable where:

(1) the protest is pursuant to an ordinance, resolution, or statement of policy adopted by the governing body before it considered the application, or the applicant otherwise had reasonable notice before making application of the factors to be considered and the standards applied by the local governing body;

(2) the applicant was provided a reasonable opportunity to defend the application before a meeting of the local governing body; and

(3) the protest has a reasonable basis in fact and is not contrary to law.

(d) A local governing body protest may be based upon facts that render the particular application objectionable to the local body, or may be based upon a general public policy. If based on a general public policy, the policy must have a reasonable basis in fact, may not be contrary to law, and may not be patently inapplicable to the particular application being protested. The board will not substitute its judgment for that of the local governing body on matters of public policy that have reasonable factual support.

(e) If the application is denied because of the protest, and the applicant requests a hearing, the local governing body shall be a party to the hearing and to any subsequent appeals, and shall undertake the defense of its protest.

EMPLOYMENT OF PRISONERS, PAROLEES, AND PROBATIONERS

15 AAC 104.665 is amended to read as follows:

15 AAC 104.665. EMPLOYMENT OF PRISONERS, PAROLEES, AND PROBATIONERS. (a) A licensee shall not employ on licensed premises a prisoner convicted of a felony unless the prisoner is on a work furlough program from the prison or other incarceration facility, and the employment and duties of the prisoner on the licensed premises have been expressly approved in writing by authorized personnel of the prison or other facility. The licensee shall maintain the original or photocopy of the written approval on the licensed premises and allow inspection of the approval by agents and employees of the board.

(b) A licensee shall not employ on licensed premises a person on parole for a felony or a person on supervised probation for a felony unless the employee's parole or probation officer specifically approves the employment in writing. The licensee shall maintain the original or photocopy of the written approval on the licensed premises and allow inspection of the approval by agents and employees of the board. For purposes of this subparagraph a person is on "supervised probation" if a probation officer has been appointed to the person.

(c) A licensee shall not employ on licensed premises a person who is on unsupervised probation for a felony offense, unless the licensee has reviewed a copy of the probation conditions imposed by the sentencing court, and those conditions do not specifically prohibit the employment. The licensee shall maintain on the licensed premises a certified copy of the probation conditions imposed by the sentencing court and shall make it available for inspection by agents and employees of the board. For purposes of this subparagraph, a person is on "unsupervised probation" if no probation officer has been appointed to the person. (Eff. / / , Register).

Authority: AS 04.06.100

ALCOHOLIC BEVERAGE CONTROL BOARD

PROPOSED REGULATIONS

KEMG DRAFT 1-17-84

15 AAC 104 is amended by adding a new Article as follows:

ARTICLE 4. TRANSFER OF A LICENSE TO ANOTHER PERSON.

SECTION.

. No Transfer Within ___ Years

. Applications

. Escrow of Purchase Price

. Notice to Creditors

. Creditors' Claim Period

. Creditors' Claims

. Hearing on Disputed Claims

. Issuance of License to Transferee

. Termination of Operations; Temporary Permits

15 AAC 10.4____. NO TRANSFER WITHIN ( ) YEARS. No license applied for or transferred to the current holder after the effective date of this regulation may be transferred to another person until ___ years after the date it is issued.

15 AAC 104.____. APPLICATIONS. (a) An application to transfer a license to another person must be accompanied by:

(1) the license proposed to be transfered;

(2) any escrow agreement required by 15 AAC 104.___;

(3) a list of all the outstanding creditors of the licensed business, sworn to by the licensee (under penalty of perjury);

(4) proof of the publication required by 15 AAC 104.___ ;

(5) a transfer application fee of $500.00, unless the proposed transfer is to the licensee's spouse, to a bankruptcy trustee or receiver, to surviving partners of a partnership

licensee, or to a corporation whose oustanding stock are 100% owned by the licensee, in which case the application fee is $75.00.

15 AAC 104.___. ESCROW OF PURCHASE PRICE. If the proposed transfer involves a purchase price or other tangible consideration, the licensee and proposed transferee shall establish an escrow with some person, corporation, or association not a party to the transfer, and the proposed transferee shall deposit with the escrow holder the entire amount of the purchase price or consideration. The licensee and proposed transferee shall enter into an agreement deposited with the escrow holder, directing the escrow holder, in accordance with instructions received from the board, to either (1) pay the claims of all creditors of the licensed business as identified in a notice given by the Board to the escrow holder and acknowledged by the licensee to be bona fide creditors of the licensed business, with the balance to be paid to the licensee, or (2) return the purchase price to the proposed transferee.

15 AAC 104.___. NOTICE TO CREDITORS. The licensee shall give notice to its creditors that a transfer of the license is proposed. The notice must be mailed to all outstanding creditors known to the licensee, and must be published in a major newspaper of general circulation in this state, at least once a week for three consecutive weeks. The notice must state that the transfer will not occur until all bona-fide creditors of the licensed business are paid or satisfied, and must direct creditors to submit their claims to the board, in writing, by two months from the date of the first publication.

15 AAC 104.___. CREDITORS' CLAIMS PERIOD. Except for good cause shown, a creditor's claim will not bar a transfer if it is presented to the board more than two months after the first date the notice to creditors was published in accordance with 15 AAC 104.___.

15 AAC 104.___. CREDITORS' CLAIMS. (a) A creditor's claim will not prevent transfer of a license unless the claim arises from the conduct of the business licensed.

(b) A claim arises from the conduct of the business licensed to the extent that it arises from conduct that involved or was closely associated with the manufacture, distribution, sale, or service of alcoholic beverages. A claim does not arise from the conduct of the business licensed to the extent that it arises from conduct actually and reasonably distinct from and unassociated with the manufacture, distribution, sale, or service of alcoholic beverages.

(c) Creditors whose claims must be paid or satisfied to allow transfer under this section include, but are not limited to employees, suppliers, materialmen, consultants, banks and other financial institutions, attorneys, and accountants.

(d) The board will determine on a case by case basis what claims involve or are closely associated with the manufacture, distribution, sale, or service of alcoholic beverages. However, the following examples will guide the board's determinations:

(1) Conduct related to food service in a licensed restaurant will generally be deemed to be closely associated with the sale of alcoholic beverages. Conduct related to food service in a non-licensed cafe of a restaurant complex which also contains a licensed restaurant will not generally be deemed to be closely associated with the sale of alcoholic beverages.

(2) A bank loan for purchase of liquor inventory will generally be deemed to be closely associated with the sale of alcoholic beverages. A bank loan to renovate hotel guest rooms will generally not be deemed to be closely associated with the sale of alcoholic beverages.

(e) If it cannot reasonably be determined what portion of a claim arises from the conduct of the business licensed, if there is a reasonable basis on which the board can otherwise apportion the claim, it may do so.

15 AAC 104.___. HEARING ON DISPUTED CLAIMS. If any creditor presents a claim to the board within two months after the date of the initial publication required by 15 AAC 104.___, which is not acknowledged by the transferor to be bona-fide, a hearing shall be held to determine the validity and amount of the claim. The hearing will be conducted in accordance with AS 44.62.330-.650. Except for good cause shown, all disputed claims will be considered together at a single, consolidated hearing. The board will deny the claim of any creditor who, after notice, fails to appear at the hearing.

15 AAC 104.___. ISSUANCE OF LICENSE TO TRANSFEREE. (a) If there are no disputed creditors claims, and the board approves the transfer, the license will be issued to the transferee as soon as practicable after approval.

(b) If there were disputed creditors claims, and the board otherwise approves the transfer, the license will not be issued to the transferee until expiration of the time within which aggrieved parties may initiate an appeal. The license will be issued after such period unless the issuance is stayed by the board or by order of a court of competent jurisdiction.

15 AAC 104.___. TERMINATION OF OPERATIONS; TEMPORARY PERMIT. The licensee must cease to operate the licensed business [or must cease to sell, serve, or manufacture alcoholic beverages] upon applying for the transfer. However, the director may issue a temporary permit to allow the continued [sale, service, or manufacture of alcoholic beverages] operation of the licensed business if all the following terms and conditions are satisfied:

(1) the proposed transferee consents to the continued operation an agrees that, if the transfer occurs, the transferor will be jointly and severally liable for the bona fide creditors' claims of the business incurred while the business is operated under the temporary permit;

(2) the licensee presents to the director sworn statements from suppliers and other necessary creditors of the business that

they agree to continue to provide goods and services to the licensed business and that they have received security satisfactory to them for any and all obligations of the licensed business that may arise under the temporary permit;

(3) the licensed business has been operating for at least 90 consecutive business days prior to the application for transfer; and

(4) all other conditions reasonably required by the director for the protection of creditors, compliance with the laws pertaining to alcoholic beverages, and administrative convenience, have been met.

(b) A permit issued under this section shall authorize the permit holder to conduct the same business authorized under the license sought to be transferred, and no other.

(c) A permit issued under this section shall be for not more than sixty days. The permit may be renewed on application to the director provided there is continuous compliance with the conditions of this section.

RESTAURANT DESIGNATIONS

15 AAC 700.____ Minors born on or before December 31, 1964. [This provision expires on January 1, 1986.] Minors who were born on or before December 31, 1964, may enter and remain on licensed premises for purposes of dining and employment, notwithstanding AS 04.16.049. However, they shall not be regarded as adults for purposes of accompanying other minors on licensed premises under AS 04.16.049(a) and (c).

15 AAC 104.7___. APPLICATION FOR DESIGNATION. (a) A licensee desiring designation as a restaurant, hotel, or eating place under AS 04.16.049 must file with the director an application on prescribed forms, together with an application fee of $50.00.

(b) The application shall include:

(1) a statement of the type of designation requested, whether for employment of minors under AS 04.16.049(c), dining by minors unaccompanied by their guardians under AS 04.16.049(a)(2);

(2) a description of the location of the premises for which the designation is desired;

(3) if available, a copy of the menu, including lists of alcoholic beverages such as a wine list. If a menu is not available, the applicant shall state what the menu is expected to be;

(4) if the premises are constructed and decorated, photographs of each room for which the designation is requested. Each photograph must be taken from the center of the room, and the applicant must include at least one photograph of each quadrant of the room. The applicant must designate on the reverse of each photograph which quadrant is depicted;

(5) if the premises are not constructed and decorated, a blueprint or drawing of the proposed premises;

(6) a statement of the manner of food and beverage service offered or anticipated, whether table service, buffet service, counter service, or other;

(7) if the premises have operated for six months or more, a statement of the gross revenues of the business, and the percentages attributable to the sale of food and non-alcoholic beverages, to the sale of alcoholic beverages, and to entertainment, including cover charges;

(8) a statement whether an owner, manager, or assistant manager is always present on the premises during business hours;

(9) any other information required by the board

15 AAC 140.7___. DINING BY MINORS. (a) The board will designate a licensed premise for dining by minors unaccompanied by their parents, legal guardians, or adult spouses, only if it finds the premise is a bona fide restaurant, that there is adequate supervision on the premise to reasonably insure that minors will not obtain alcoholic beverages, and that it is unlikely minors will enter and remain on the premise for purposes other than dining.

(b) A licensed premise generally will be presumed to be a bona fide restaurant for purposes of this section if:

(1) it is licensed as a restaurant or eating place;

(2) at least _____ % of its gross revenue is from the sale of food and non-alcoholic beverages; or

(3) it is the only dining facility connected with a hotel or motel.

(c) The board generally will presume that premises are unlikely to be entered by minors other than for purposes of dining if no entertainment other than dining is provided or

available. "Entertainment" includes live music, dancing, pool and other table games, bowling and other sports, pinball, and video machines.

(d) The board generally will presume that there exists supervision sufficient to reasonably insure against consumption of alcoholic beverages by minors if alcoholic beverages [food and beverages?] are available by table service only, and an owner, manager, or assistant manager is present on licensed premises at all times.

(e) The presumptions in (b), (c), and (d) of this section are neither conclusive nor exclusive. On relevant facts, the board may find that a premises which satisfies the presumptions is not a bona-fide restaurant or does not provide adequate supervision. The board may find that premises not satisfying the presumptions are nonetheless bona-fide restaurants with adequate supervision.

(f) The consent required by AS 04.16.049(a)(3) must be in writing, must identify the minor to whom it applies, and must be signed and dated by the minor's parent or adult legal guardian. The consent may be particular or general. For example, the consent may be for a particular date or for an indefinite period of time. It may identify a particular premise or may apply to all designated premises. It may identify by name, one or more adults authorized to accompany the minor or may identify a category of authorized adults by title or position. For example, the consent may authorize a minor to enter a particular premise on a particular date in the company of a particular adult. For another example, the consent may authorize a minor to enter any designated premises at any time if accompanied by any adult teacher, coach, or administrative officer of the minor's school.

15 AAC 104.7___. PROTECTION OF MINORS. The board will not designate a premises as a restaurant, eating place, or hotel under AS 04.16.049 if the board believes that a minor's health, safety, welfare, or morals may be harmed by being present on the licensed premises. Without limiting the foregoing, the board will not designate premises that feature or allow erotic dancing or other erotic entertainment or which have a history of violations of Title 04 of the Alaska Statutes, or which have a history of incidents involving breaches of the peace.

15 AAC 104.7___. DESIGNATION OF PORTION OF PREMISES. The board will in its discretion designate only portions of a licensed premises.

ALCOHOLIC BEVERAGE CONTROL BOARD

PROPOSED REGULATIONS

(Miscellaneous)

15 AAC 104.105. is amended as follows:

15 AAC 104.105. APPLICATIONS. (a) Application for new licenses or permits and for renewals [or transfers] of existing licenses must be on prescribed forms and must contain the information required by AS 04.11.260. In addition the application must contain the following [information]:

(1) a statement of the criminal convictions of the applicant and the applicant's affiliates [, if the applicant is an individual, or officers and shareholders holding more than 10 percent of the applicant's outstanding common stock, if the applicant is a corporation, for a felony; and] for any felony, any violation of Title 04 of the Alaska Statutes, and any violation, as a licensee of another state, or the liquor laws of that state;

(2) written authorization for release of criminal and arrest records;

(3) a statement that no one other than the applicant has a financial interest in the licensed business; and

(4) if the applicant is a partnership or joint venture, a copy of its partnership or joint venture agreement, if any; if the applicant is a corporation, a copy of its certificate of incorporation, articles of incorporation, and bylaws.

(b) A fee in the amount required by AS 04.11.090 - 04.11.250 must accompany every application for a new license or for renewal of an existing license.

(c) An application which is incomplete may be returned to the applicant.

(d) A non-refundable [An] application fee of $150 [$50] must accompany all applications for licenses.

15 AAC 104.100. WHEN LICENSES BECOME AVAILABLE. Any application received by the board at a time when there are no available licenses of the kind applied for will be denied. In this chapter, a license becomes available:

(1) on December 31, where the license becomes available because of an increase in the population during the preceding year;

(2) ten (10) days after the period for renewing licenses has expired, where the license becomes available because a license has expired and not been renewed;

(3) on the conclusion of all appeals of the revocation, or on waiver of appeal by the licensee, whichever is later, where the license becomes available because of the revocation of another license;

(4) on the date determined by the board or the director in any other case.

PROPOSED REGULATIONS

ALCOHOLIC BEVERAGE CONTROL BOARD

(changing 19 to 21 throughout)

15 AAC 104.315 is amended to read:

15 AAC 104.315. BEVERAGE DISPENSARY LICENSE. The licensed premises of a beverage dispensary licensee [license] may include the designated lane area of a bowling alley if that area is adjacent to the main bar area. The licensee must show that he has authority and will exercise control over conduct of the licensed business in that area. Access to the lane area by persons under 21 [19] years of age is permitted only during designated periods when no alcoholic beverages are served or consumed there. The periods during which persons under 21 [19] years may be permitted access must be clearly posted on the premises and the board must give prior approval of that access upon application by the licensee. (Eff. / /84, Register).

Authority: AS 04.06.100
AS 04.11.090

15 AAC 104.335(a)(2) is amended to read:

(2) There is community support, which must be shown by a petition signed by a majority of the residents 21 [19] years of age or over within one mile of the proposed premises; and

15 AAC 104.435 is deleted (replaced with new Article 7 provisions).

15 AAC 104.445 is deleted (replaced with new Article 7 provisions).

15 AAC 104.645(a)(1) is amended to read:

(1) The order must be in writing and from a person known to the licensee to be at least 21 [19] years of age; and

Article ___ of 15 AAC 104 is amended by the addition of a new section 900 as follows:

15 AAC 104.900. DEFINITIONS. (a) As used in 15 AAC 104:

(1) "Affiliate" means an individual's general partners and joint venturers, and any corporation of which the individual owns ten percent (10%) of the stock or of which the individual is an officer or director; a partnership's partners or joint venturers and their affiliates, any corporation of which the partnership or any individual partner holds ten percent (10%) or more stock or of which any partner is an officer or director; a corporation's shareholders who hold ten percent (10%) or more of the corporation's stock, a corporation's officers and directors, a corporation's partners or joint venturers and their affiliates, and the other corporation of which the corporation owns ten percent (10%) or more of the stock, or of which the corporation appoints one or more directors, or of which ten percent (10%) or more of the stock is held by a shareholder holding ten percent (10%) or more of its own stock. The board may in its reasonable discretion find that persons not having any of the relationships described above are affiliated with one another.

(b) When used in Title 04,

(1) "Guardian" means legal guardian.

STATE OF ALASKA
THE LEGISLATURE

LEGISLATIVE AFFAIRS AGENCY

POUCH V STATE CAPITOL
JUNEAU ALASKA 99811
907 465 3800

MEMORANDUM January 13, 1984

SUBJECT: Sectional Analysis of House Bill 158

TO: Representative Charlie Bussell
Chairman, House Judiciary Committee

FROM: Russ Josephson
Legislative Counsel

You have requested a sectional analysis of HB 158. The analysis follows:

This bill consists of a single section that amends AS 04.11.320 (relating to the denial of new licenses and permits) by adding an additional ground for denial of an application for a new license. The proposed amendment would require applications for new alcoholic beverages licenses to be denied until the number of licenses per capita in this state no longer equals or exceeds the per capita rate for the rest of the United States. (Only those persons 21 years of age or older are included in the ratio, and community liquor licenses are excluded from the ratio.) In other words, under this amendment, no new licenses would be issued until the ratio of licenses to adults decreased to the level in the rest of the country.

RJ:lmb
L3/083

STATE OF ALASKA
PRELIMINARY STATEMENT OF FISCAL IMPACT

Bill No: HB 158 Date on Bill: 2/4/83
Title: Limitation of Liquor Licenses
Sponsor: Representative M.M. Miller
Requestor: House Community and Regional Affairs

1. Estimated fiscal impacts on:

a. Expenditures:

(Thousands of Dollars)

			FY 83	FY 84	FY 85	FY 86		
Capital				-0-	-0-	-0-		
Operating				-0-	-0-	-0-		
Total				-0-	-0-	-0-		

b. Revenues:

Revenue								

2. Source of funds to offset fiscal impact of bill:

3. Assumptions:

No fiscal impact upon any state agency.

4. Disclaimer:
This statement has not been reviewed by the OMB in the Office of the Governor. It does not represent the policy of the Sheffield Administration or the final estimate of fiscal impact.

Prepared By: Richard Rainery RR Phone: 465-4703
Division: Commissioner's Office Date: 3/9/83

Approved by Commissioner: Date: 3/9/83
Department: Community & Regional Affairs

5. Distribution:
Original to Legislative Finance
Copy to OMB
Copy to Sponsor
Copy to Requestor

2/8/83

STATE OF ALASKA
PRELIMINARY STATEMENT OF FISCAL IMPACT

Bill No: HB 158 Date on Bill: 2/4/83
Title: "An act limiting number of liquor licenses."
Sponsor: M.M. Miller
Requestor: House Community and Regional Affairs; & Judiciary

1. Estimated fiscal impacts on:

a. Expenditures:

(Thousands of Dollars)

	FY 83	FY 84	FY 85	FY 86
Capital	-0-			
Operating	-0-			
Total	-0-			

b. Revenues:

Revenue				

2. Source of funds to offset fiscal impact of bill:

3. Assumptions:

This bill has no fiscal impact.

4. Disclaimer:
This statement has not been reviewed by the OMB in the Office of the Governor. It therefore does not represent the final estimate of fiscal impact.

Prepared By: Mary Pehlsad Phone: 465-2390
Division: Commissioner's Office Date: 2/23/83

Approved by Commissioner: Robt D. Heath Date: 2/23/83
Department: Revenue

5. Distribution:
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2/15/83

4

STATE OF ALASKA
OFFICE OF THE GOVERNOR

BILL ANALYSIS

Department	Sponsor (Principal)	Bill Number
Community & Regional Affairs	M.M. Miller	HB 158

Department Position

Neutral

Division Director	Date	Commissioner's Signature	Date
			3/9/83

GOVERNOR'S OFFICE USE

Comments:

☐ Position Noted	By	Date

SUMMARY

1. a) Related Bills (Similar or Conflicting	1. b) Other Agencies Affected by Bill
2. a) Organizational Support for Bill	2. b) Organizational Opposition to Bill

3. Program Effects of Bill

See Attached.

4. Fiscal Impact: ☐ None ☐ Fiscal Note Attached

5. Amendments Proposed:

6. Comments:

See Attached.

STATE OF ALASKA

DEPT. OF COMMUNITY & REGIONAL AFFAIRS

OFFICE OF THE COMMISSIONER

BILL SHEFFIELD, GOVERNOR

☐ *POUCH B*
JUNEAU, ALASKA 99811
PHONE: (907) 465-4700

☐ *225 CORDOVA STREET · BLDG B*
ANCHORAGE, ALASKA 99501
PHONE: (907) 264-2294

March 9, 1983

Position Paper

Re: HB 158

Sponsor: Representative M.M. Miller

Program Effects of Bill

Amends the number of liquor licenses that may be issued in Alaska.

Comments

No comments.

Mark Lewis, Commissioner
Community and Regional Affairs

STATE OF ALASKA
THE LEGISLATURE

LEGISLATIVE AFFAIRS AGENCY

POUCH Y STATE CAPITOL
JUNEAU ALASKA 99811
907 465 3800

MEMORANDUM February 4, 1983

SUBJECT: Liquor permits
(Work Order No. 13-0741)

TO: Representative M. Mike Miller

FROM: RJ Russ Josephson
Legislative Counsel

I have consulted the statutes further and have telephoned the Alcoholic Beverage Control Board for further information. The reason "permit" is used instead of "license" in a few situations is that permits are issued for unusual situations: caterer's permits, special events permits, and conditional contractor's permits (for construction sites outside a city and within a military or naval reservation). As I noted the other day, neither "permit" or "license" is defined in Title 4. There is no effect on your bill that I can see, however.

On the side issue of community liquor licenses, I would refer you to AS 04.11.190 in addition to AS 04.11.492 and AS 04.11.502. The latter section is the local option election procedure. Also, "municipality", a term used in the above-mentioned sections, is defined in AS 04.21.080 to suggest that not all villages can obtain a community liquor license. So, the possible numbers of community liquor licenses that might be excepted from the ratio referred to in your bill is unclear.

I am enclosing a copy of AS 04.11.400, Population Limitations. This section does not appear to affect your bill, but it is for your information as a means of limiting licenses that are presently in effect. If this section is of interest, you will also want to refer to 15 AAC 104.605, Determining Population Criteria.

If I can be of further assistance, please do not hesitate to call.

Martin's Retail Liquor License No. 1517, 15 Alaska 171 (1954).

Am. Jur. 2d, ALR and C.J.S. references. — 45 Am. Jur. 2d Intoxicating Liquors §§ 183-194.

Validity of statute or rule making specified conduct or condition the ground for cancellation or suspension of license irrespective of licensee's personal fault, 3 ALR2d 107.

"Grandfather clause" of statute or ordinance, 4 ALR2d 667.

Hearing before revocation or suspension of liquor license, 35 ALR2d 1067.

Sale of liquor to homosexuals or permitting their congregation at licensed premises as ground for suspension or revocation of liquor license, 27 ALR3d 1254.

Revocation or suspension of liquor license because of drinking or drunkenness on part of licensee or his associates, 36 ALR3d 1301.

Sale or use of narcotics or dangerous drugs on licensed premises as ground for revocation or suspension of liquor license, 51 ALR3d 1130.

Loss of liquor license as compensable in condemnation proceeding, 58 ALR3d 581.

48 C.J.S. Intoxicating Liquors §§ 174-180.

Article 5. Restrictions on Issuance and Transfer of Licenses.

Section		Section	
390.	Residence requirements	420.	Zoning limitations
400.	Population limitations	430.	Person and location
410.	Restriction of location near churches and schools	450.	Prohibited financial interest
		460.	Prior public approval

Sec. 04.11.390. Residence requirements. (a) A beverage dispensary license or package store license may not be issued to a person or association of persons who have not resided in the state for at least one year before the date of application.

(b) A beverage dispensary license or package store license may not be issued to either a domestic corporation which has not been issued a certificate of incorporation or a foreign corporation which has not been issued a certificate of authority to transact business in the state at least one year before the date of the application. (§ 2 ch 131 SLA 1980)

Personal qualification for liquor dealer not prescribed. — No law of Alaska prescribes any personal qualifications for a liquor dealer. What his qualifications must be, if any are required, are not set forth, but are, by inference, left entirely to the city council or the individuals residing out of incorporated towns. In re Kaye, 11 Alaska 556 (1948), decided under earlier statutes.

Am. Jur. 2d and C.J.S. references. — 45 Am. Jur. 2d Intoxicating Liquors § 148.

48 C.J.S. Intoxicating Liquors § 135.

Sec. 04.11.400. Population limitations. (a) Except as provided in (g), (h), (i), and (j) of this section, a new license may not be issued or an existing license transferred to a new location

(1) outside an incorporated city, a unified municipality, or an established village if after the issuance or transfer there would be more than one license of each type for each 1,500 population or fraction of 1,500 population, including licenses which have been issued under (g) or (h) of this section, in a radius of five miles of the licensed premises or location of premises sought to be licensed;

(2) inside an established village, an incorporated city, or a unified municipality if after the issuance or transfer there would be more than one license of each type for each 1,500 population or fraction of 1,500 population, including licenses which have been issued under (g) or (h) of this section, inside the boundaries of the village, city or municipality.

(b) If the application is for a license outside of an established village, incorporated city, or unified municipality and the radius described in (a)(1) of this section encompasses all of the established village, incorporated city, or unified municipality and the population resident inside and outside the village, city, or municipality but inside the radius described in (a)(1) of this section is less than 1,500, the board may deny the issuance or transfer of the license.

(c) In this section "unified municipality" means a unified municipality established under AS 29.68.

(d) In this section "radius" means the circular area or distance limited by the sweep of a straight line originating at the proposed licensed premises and extending outward.

(e) In (a)(1) of this section, "population" includes only those persons residing inside the radius but outside of an established village, an incorporated city, or a unified municipality as of December 31 of the year preceding the date of application.

(f) In (a)(2) of this section, "population" includes only those persons residing inside an established village, an incorporated city, or a unified municipality as of December 31 of the year preceding the date of application.

(g) The board may, in its discretion, approve the issuance or transfer of location of a beverage dispensary or restaurant or eating place license without regard to (a) of this section if it appears that the issuance or transfer will encourage the tourist trade by encouraging the construction or improvement of

(1) a hotel, motel, resort, or similar business relating to the tourist trade having

(A) a minimum of 10 rental rooms, and

(B) a dining facility, which requirement may be waived if most of the rental rooms have kitchen facilities; or

(2) an airport terminal

(h) A restaurant or eating place license may be issued or transferred notwithstanding (a) of this section if

(1) the premises of the restaurant or eating place are more than 18 miles from the corporate limits of a city or unified municipality;

(2) the premises will serve food to the traveling public; and

(3) the board finds that the public convenience will be served by the issuance or transfer.

(i) An application requesting a transfer of location of licensed premises shall be granted notwithstanding (a) of this section if the new location is less than one mile from the original location and

(1) no ground for denial exists under AS 04.11.340(1) or (3); and

(2) relocation of the licensed premises is necessary due to

(A) termination of a lease or rental agreement;

(B) condemnation of the premises;

(C) the substantial destruction of the premises by any cause.

(j) The board may issue a new license in a municipality notwithstanding the provisions of (a) of this section if the board finds that issuance of the license is necessary for the public convenience. (§ 2 ch 131 SLA 1980)

Population and zoning limits must be met. — The Alcoholic Beverage Control Board is prohibited by statute from issuing licenses except as meet population limitations and zoning limitations. Queen of N., Inc. v. Legrue, Sup. Ct. Op. No. 1670 (File No. 3512), 582 P.2d 144 (1978), decided under former AS 04.10.210.

Am. Jur. 2d and C.J.S. references. — 45 Am. Jur. 2d Intoxicating Liquors § 138.

48 C.J.S. Intoxicating Liquors § 136.

Sec 04.11.410. Restriction of location near churches and schools. (a) A beverage dispensary or package store license may not be issued and the location of an existing license may not be transferred if the licensed premises would be located in a building the public entrance of which is within 200 feet of a school ground or a church building in which religious services are regularly conducted, measured by the shortest pedestrian route from the outer boundaries of the school ground or the public entrance of the church building. However, a license issued before the presence of either cause of restriction within 200 feet of the licensed premises may be renewed or transferred to a person notwithstanding this subsection.

(b) If a beverage dispensary or package store license for premises located within 200 feet of a school ground or church building in which religious services are regularly conducted is revoked, expires or is transferred to another location, a beverage dispensary or package store license may not be issued or transferred to the formerly licensed premises until the cessation of either cause of restriction. (§ 2 ch 131 SLA 1980)

Legislative intent. — The intent of the legislature in enacting former AS 04.15.020, covering the subject matter of this section, must have been the desire to protect children attending school from direct exposure to some of the demoralizing circumstances which, by the authority of common knowledge, seem incident to the traffic in intoxicating liquor. Application of Wakefield, 10 Alaska 599 (1945), decided under former AS 04.15.020.

Am. Jur. 2d, ALR, and C.J.S. references. — 45 Am Jur. 2d Intoxicating Liquors §§ 140-146.

Measurement and computation of distances for purpose of statute or ordinance prohibiting license or sale of intoxicating liquor within given distance from certain institutions or property, 96 ALR 778.

Reasonableness of statutory or local regulation, prohibiting license for sale of intoxicating liquors within prescribed distance from church, school or other institutions, 119 ALR 643.

"School," "schoolhouse," or the like within statute prohibiting liquor sales within specified distance thereof, 49 ALR2d 1103.

STATE OF ALASKA
THE LEGISLATURE

POUCH V STATE CAPITOL
JUNEAU ALASKA 99811
907 465 3800

LEGISLATIVE AFFAIRS AGENCY

M E M O R A N D U M April 13, 1983

SUBJECT: Liquor licenses
(HB 158)

TO: Representative M. Mike Miller

FROM: Russ Josephson
Legislative Counsel

CS HB 158 (C4RA)

Enclosed is a revised draft of SSHB 158. As requested, rather than repealing all of AS 04.11.400(g), only (g)(1) is repealed. The following is the sectional analysis that you requested with the above change.

Section 7 is the key to this bill. This section adds a subsection (k) to AS 04.11.400. The new subsection requires a ratio of 3,000 people in a given area for each new or transferred beverage dispensary (bar) or package store (liquor store) license.

Sections 1, 3, and 8 amend existing law by inserting a reference to the new language provided in Sec. 7, in three places where the limiters on the issuance of new licenses or the transfer of existing licenses are already mentioned. Inasmuch as Sec. 7 has added a new provision limiting licensing, these amendments simply reflect the existence of the new provision.

Sections 2, 4, and 5 are simple amendments to sections of existing law that refer to AS 04.11.400(j). To indicate that this section has been repealed, the amendments insert the word "former" before the statutory reference.

Section 6 contains a technical amendment reflecting the repeal of AS 04.11.400(g)(1) and (j).

Section 9 repeals AS 04.11.400(g)(1) and (j).

In summary, this bill limits bar and liquor store licenses by using the ratio of one license for each 3,000 persons

Draft 2 minimis

[illegible] minimals

instead of the ratio of one license for each 1,500 persons required under AS 04.11.400 now. In addition, the bill eliminates two exceptions to the license/population ratio. The tourist trade exception for hotels, motels, resorts, and similar businesses, and the public convenience exception have been repealed.

If I may be of further assistance please advise.

RJ:ljb
14/019

City	Population	Beverage Dispensary	Package Store	Restaurant	Club	Total Est.
Anchorage	180740	114	113	112	15	384
Pop required for new lic.		2160 00	1695 00	1680 00	22500	
Cordova	2223	6	6	+0-	2	14
Pop required		9000	9000		3000	
Fairbanks	25568	43	24	15	5	87
Pop required		64500	36000	22500	7500	
Haines	1017	5	3	1	2	11
Pop required		7500	4500	1500	3000	
Homer	2588	9	7	2	1	19
Pop required		13500	10500	3000	1500	
Juneau	21050	27	15	15	2	59
Pop required		40500	22500	22500	3000	
Kenai	7338	11	4	4	3	22
Pop required		16500	6000	6000	4500	
Ketchikan	7200	23	16	6	6	51
Pop required		34500	24000	9000	9000	
Kodiak	4678	12	6	1	2	21
Pop required		18000	9000	6000	3000	
Kodiak	343	2	3	-0-	-0-	5
Pop required		3000	4500	-	-	
Nome	3039	7	4	2	1	14
Pop required		10500	6000	3000	1500	
Palmer	2275	6	3	2	2	13
Pop required		9000	4500	3000	3000	
Seward	2345	5	6	-0-	1	12
Pop required		7500	9000	-	1500	
Total	132086	300	210	163	42	715
Persons Per Lic		2774	1105	1124	5526	325

Bev. dispensary licenses do not provide convenience or duplicates

STATE OF ALASKA
FISCAL NOTE

Revision Date , 1983

I. REQUEST

Bill/Resolution No.: CSHB158 (C&RA)
Title: Limitation of Liquor Licenses
Sponsor: C&RA (original - M.M. Miller)
Requestor: House Judiciary Comm

II. FISCAL DETAIL

Agency Affected: Department of Revenue
Program Category Affected: Public Protecti
BRU, Program of Subprogram(s) Affected:
Alcoholic Beverage Control Board

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 83	FY 84	FY 85	FY 86	FY 87	FY 88
OPERATING						
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 COMMODITIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER (Specify Source)						

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

III. SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

Passage of this legislation will not have any fiscal impact on this BRU.

IV. ANALYSIS: Attach a separate page for any Analysis

Prepared By: Patrick L. Sharrock Phone: 277-8638
Division: Alcoholic Beverage Control Board Date:

Approved by Commissioner: J McDonough Date: 6/7/83
Department: Revenue

Distribution:
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3/8/83

HB

162

Alaska State Legislature

Barbara Lacher, Chairman
Mae Tischer, Vice-Chairman
Randy Phillips
Milo Fritz
Don Clocksin
Jack McBride
Mike Szymanski

Room 104
State Capitol
Juneau, Alaska 99811

Pouch V
Juneau, Alaska 99811

House of Representatives
Committee on Community & Regional Affairs

HOUSE COMMUNITY AND REGIONAL AFFAIRS AGENDA

APRIL 6th, 1983

1). Call to order.

2). Roll Call.

3). The first order of business will be HB 162.

4). Witnesses presentation.

5). Closing.

6). Adjournment.

Bill Sheffield, Governor

DEPT. OF COMMUNITY & REGIONAL AFFAIRS

OFFICE OF THE COMMISSIONER

POUCH B
JUNEAU, ALASKA 99811
PHONE: (907) 465-4700

April 6, 1983

POSITION PAPER

RE: HB 162

SPONSOR: Representative Ward

PROGRAM EFFECTS OF BILL

This bill allows municipalities to limit, by ordinance, the number of consecutive full terms that a person may serve as mayor or as a member of the assembly or council.

COMMENTS

This bill would give each municipality an option regarding whether or not inividual elected officials should be turned out of office not by the voters but by a limitation on the consecutive number of terms they may serve. There are advantages and disadvantages to limiting terms of office, but the Department will not debate them here. The overriding consideration is that this legislation provides for a local option on the question, a philosophy this Department generally favors.

Mark Lewis, Commissioner

STATE OF ALASKA
FISCAL NOTE

Revision Date , 1983

I. REQUEST

Bill/Resolution No.: HB 162
Title: Limit terms of Municipal Officials
Sponsor: Ward, et al
Requestor: DCRA

II. FISCAL DETAIL

Agency Affected: DCRA
Program Category Affected: Development
BRU, Program of Subprogram(s) Affected:
Local Government Assistance Division

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 83	FY 84	FY 85	FY 86	FY 87	FY 88
OPERATING		-0-	-0-	-0-	-0-	-0-
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 COMMODITIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC						
TOTAL OPERATING		-0-	-0-	-0-	-0-	-0-
CAPITAL		-0-	-0-	-0-	-0-	-0-
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER (Specify Source)						

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

III. SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

IV. ANALYSIS: Attach a separate page for any Analysis

Prepared By: Richard Rainery
Phone: 465-4703
Division: Commissioner's Office
Date: 4/6/83

Approved by Commissioner:
Date: 4/6/83
Department: Community & Regional Affairs

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3/8/83

Alaska State Legislature

Barbara Lacher, Chairman
Mae Tischer, Vice-Chairman
Randy Phillips
Milo Fritz
Don Clocksin
Jack McBride
Mike Szymanski

Room 104
State Capitol
Juneau, Alaska 99811

Pouch V
Juneau, Alaska 99811

House of Representatives
Committee on Community & Regional Affairs

TO: House Community and Regional Affairs Committee

FROM: House Community and Regional Affairs Staff

DATE: April 6th, 1983

RE: House Bill 162

Under current statutes, municipalities do not have the authority to limit the number of terms elected officials may serve.

House Bill 162 provides that General Law Boroughs and cities may limit, by ordinance, the number of terms that may be served by assembly members, borough mayors, city council members, and city mayors.

Proposed CS HB 162 expands the provisions of HB 162 in that it is applicable to home rule as well as general law municipalities and, requires that limitations on the number of terms served by members of the governing bodies be ratified by the voters.

STATE OF ALASKA
THE LEGISLATURE

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

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM March 31, 1983

SUBJECT: Limits on terms of municipal officials (CSHB 162 (C&RA))

TO: Representative Barbara Lacher
Chairman, House Community and Regional Affairs Committee

FROM: Tamara Brandt Cook
Legislative Counsel TBC

Here is the sectional analysis of the draft of CSHB 162 (C&RA) that you requested.

Section 1. This makes material added in secs. 3 - 5 of this draft applicable to home rule municipalities as home rule limitations. Since AS 29.23.050 is a home rule limitation now under AS 29.13.100(3), no addition is needed to include the material in sec. 2 as a home rule limitation.

Section 2. Unless ratified by the voters, no limit may be placed on the total number of terms or number of consecutive terms that a person may serve on the assembly of a home rule or general law borough.

Section 3. Unless ratified by the voters, no limit may be placed on the number of terms or number of consecutive terms a person may serve as mayor of a home rule or general law borough.

Section 4. Unless ratified by the voters, no limit may be placed on the number of terms or number of consecutive terms a person may serve as mayor of a home rule or general law city.

You have also asked me to compare this draft to HB 172. Under sec. 29.20.140 of that bill, no limit may be placed on the number of terms or number of consecutive terms a person may serve on the governing body. This applies to all home rule and general law municipalities. The section is made a

home rule limitation under sec. 29.10.200(4). Under sec. 29.20.230(c) of HB 172 no limit may be placed on the number of terms or number of consecutive terms a person may serve as mayor of a general law city or borough. That section does not apply as a home rule limitation. HB 172 differs from this draft in that the restrictions on limiting the terms of mayors do not apply to home rule municipalities. Otherwise, the restrictions on limiting terms are the same in that bill and in the draft of CSHB 162 (C&RA).

TBC:ljb

13/001

(b) If a proposed charter is rejected, the charter commission shall prepare another proposed charter to be submitted to the voters at a regular or special election to be held within one year after the date of the first charter election. If the second proposed charter is also rejected, the charter commission shall be dissolved and the question of adoption of a charter shall be treated as if it had never been proposed or approved. (§ 2 ch 118 SLA 1972; am § 9 ch 200 SLA 1972)

Effect of amendment. — The 1972 amendment, effective July 1, 1972, substituted "Department of Community and Regional Affairs" for "Local Affairs Agency" in paragraph (2) of subsection (a).

Sec. 29.13.080. Charter amendment. A municipal charter may be amended as provided in the charter or by initiative referendum as provided in AS 29.28.060—29.28.110, except that no amendment shall be effective unless ratified by the voters. (§ 2 ch 118 SLA 1972)

Article 2. Home Rule Limitations.

Section
100. Limitation of home rule powers

Sec. 29.13.100. Limitation of home rule powers. Only the following provisions of this title apply to home rule municipalities as prohibitions on acting otherwise than as provided. They supersede existing and prohibit future home rule enactments which provide otherwise:

(1) AS 29.13.080 (charter amendment)

(2) AS 29.18.140 (borough transition)

(3) AS 29.23.020—29.23.050 (city representation and vote on borough assembly)

(4) AS 29.23.250(a) (election and term of mayor)

(5) As 29.23.540 (prohibitions respecting appointment and removal of personnel)

(6) AS 29.23.560 (municipal reports)

(7) AS 29.23.580 (meetings public)

(8) AS 29.28.010, 29.28.020(b) — 29.28.030 (municipal elections)

(9) AS 29.28.130—29.28.250 (recall)

(10) AS 29.33.010(b) (areawide borough powers)

(11) AS 29.33.290(c) (acquisition of additional areawide powers)

(12) AS 29.43.020—29.43.040 (powers of cities outside boroughs)

(13) AS 29.48.033 (garbage and solid waste services)

(14) AS 29.48.035(b) (effect of areawide exercise of borough power).

(15) AS 29.48.035(c) (borough building code jurisdiction within cities)

(16) AS 29.48.037 (extraterritorial jurisdiction)

(17) AS 29.48.040—29.48.100 (utilities)

(18) AS 29.48.180 (codification)

(19) Repealed by § 8 ch 147 SLA 1972, effective September 10, 1972.

(20) AS 29.48.210 (expenditure of borough revenue)

(21) AS 29.48.220 (post audit)

(22) AS 29.53.010—29.53.350, 29.53.400 (borough and city property tax)

(23) AS 29.53.415(d) (interest on sales tax)

(24) AS 29.58.180(b) (security for bonds)

(25) AS 29.58.115 (bond attorneys, bond and financial consultants)

(26) AS 29.68.010 (annexation and exclusion)

(27) AS 29.68.030—29.68.110 (merger and consolidation)

(28) AS 29.68.500—29.68.580 (dissolution)

(29) AS 29.73.020 (eminent domain)

(30) AS 29.73.030 (adverse possession)

(31) AS 29.73.040 (taxation of municipalities)

(32) AS 29.73.050 (municipal name changes)

(33) AS 29.23.555 (conflict of interest). (§ 2 ch 118 SLA 1972; am §§ 2, 8 ch 147 SLA 1972)

Revisor's note (1972).—In ch. 118, SLA 1972, AS 29.48.035(b) was omitted from the list in AS 29.13.100. Since, by its own terms, it applies to home rule municipalities, it has been included here as AS 29.13.100(14); succeeding paragraphs (including the one added by § 2, ch. 147 SLA 1972) have been renumbered. For specific discussion of AS 29.13.100, see 1972 House Journal, p. 1720 or 1972 Senate Journal Supplement No. 3, p. 3.

Effect of amendment. — The 1972 amendment, effective September 10, 1972, added paragraph (33) and repealed paragraph (19).

Chapter 18. Incorporation.

Article
1. Requirements (§§ 29.18.010—29.18.030)
2. Procedures (§§ 29.18.050—29.18.150)
3. Transitional Assistance (§§ 29.18.180—29.18.200)
4. Development Cities (§§ 29.18.220—29.18.460)

Article 1. Requirements.

Section
10. First class cities
20. Second class cities
30. Organized boroughs

Sec. 29.18.010. First class cities. A community having 400 or more permanent residents may incorporate as a first class city. (§ 2 ch 118 SLA 1972)

in (b) of this section shall be tolled until a final judgment is rendered in an action brought under this subsection.

(g) This section applies to home rule and general law boroughs. (§ 2 ch 118 SLA 1972; am § 12 ch 118 SLA 1972; am § 9 ch 200 SLA 1972)

Cross reference.—See Editor's note to AS 29.18.120.

Effect of amendments. — The first 1972 amendment rewrote this section.

The second 1972 amendment, effective July 1, 1972, substituted "Department of Community and Regional Affairs" for "Local Affairs Agency" in the last sentence of subsections (c) and (d), and in the first sentence of subsection (f).

This section provides a convenient method for reapportioning whenever necessary. 1965 Op. Att'y Gen., No. 5.

It does not indicate what population data may be used by the reapportioning agency. 1965 Op. Att'y Gen., No. 5.

However, the agency may use population data other than official census figures in reapportioning seats or votes. 1965 Op. Att'y Gen., No. 5.

The only limit imposed by this section is that a reapportionment plan may not take effect until the next assembly election. 1965 Op. Att'y Gen., No. 5.

Sec. 29.23.030. Election and appointment.

Repealed by § 16 ch 118 SLA 1972.

Cross reference.—See Editor's note to AS 29.18.120.

Editor's note.—The repealed section derived from § 2, ch. 118, SLA 1972.

Sec. 29.23.040. Regular term of office. Assemblymen are selected for three-year terms and until their successors are selected and have qualified unless different terms not exceeding four years are prescribed by borough charter or ordinance. However, if under a borough apportionment city councilmen are appointed as assemblymen or elected to dual assembly-council seats, they may not be replaced until their assembly term expires as provided by city charter or ordinance, or they cease to be a member of either the assembly or council. The current term of incumbent assemblymen may not be altered under this section. This section applies to home rule and general law boroughs. (§ 2 ch 118 SLA 1972; am § 13 ch 118 SLA 1972)

Cross reference.—See Editor's note to AS 29.18.120.

Effect of amendment. — The 1972 amendment rewrote this section.

Editor's note.—Section 20, ch. 118, SLA 1972, provides: "The terms of elected officials who are incumbents on September 10, 1972, are not affected by this Act. Their terms expire as provided before enactment of this Act."

Sec. 29.23.050. Qualifications. A resident of the borough is eligible to be an assemblyman if he is a borough voter. An assemblyman who ceases to be a borough voter immediately forfeits his office. An assemblyman elected from or selected to represent a borough area less than the borough area at large and who becomes a resident of another area may continue to serve only until the next regular election. The assembly may by ordinance establish residence requirements for assemblymen not exceeding three years.

This section applies to home rule and general law boroughs. (§ 2 ch 118 SLA 1972; am § 14 ch 118 SLA 1972)

Cross reference.—See Editor's note to AS 29.18.120.

Effect of amendment. — The 1972 amendment rewrote this section.

Sec. 29.23.060. Procedure. (a) The assembly shall meet at least once every month, unless otherwise provided by ordinance. All meetings shall be public meetings. Special meetings may be held on the call of the chairman, the presiding officer, or one-third of the members, upon not less than 24 hours written or oral notice communicated to each member. In an emergency a special meeting shall be a legal meeting if all members are present or there is a quorum and all absent members have waived in writing the required notice. A waiver may be either before or after the time of the meeting. The waiver shall be attached to and made a part of the journal for that meeting.

(b) The assembly shall elect from among its members a presiding officer and a deputy presiding officer to serve at its pleasure, except that in manager plan boroughs the borough mayor serves as presiding officer. If the presiding officer is not present or disqualifies himself, the deputy presiding officer shall preside.

(c) The assembly shall determine its own rules and order of business and provide for keeping a journal of its proceedings.

(d) A majority of the membership authorized by law constitutes a quorum. In the absence of a quorum, any number less than a quorum may recess or adjourn the meeting to a later date. Actions of the assembly are adopted by a majority of the votes authorized on the question. All assemblymen present shall vote unless the assembly for special reasons permits a member to abstain, except no assemblyman may vote on a question in which he has a substantial direct or indirect financial interest.

(e) The final vote on each ordinance, resolution, or substantive motion is a recorded "yes" or "no", except that if the vote is unanimous it is necessary only so to state.

(f) Repealed by § 16 ch 118 SLA 1972.

(g) Repealed by § 16 ch 118 SLA 1972.

(h) Repealed by § 16 ch 118 SLA 1972.

(i) Repealed by § 16 ch 118 SLA 1972.

(j) Repealed by § 16 ch 118 SLA 1972. (§ 2 ch 118 SLA 1972; am § 16 ch 118 SLA 1972)

Cross reference.—See Editor's note to AS 29.18.120.

Effect of amendment. — The 1972 amendment repealed subsections (f), (g), (h), (i) and (j).

Sec. 29.23.070. Departments. (a) The assembly may establish departments and distribute administrative functions among them.

(b) Each department is administered by a department head. With the consent of the assembly, the borough mayor may serve as

the head of one or more departments or may appoint one person as the head of two or more departments. (§ 2 ch 118 SLA 1972)

Sec. 29.23.080. Assembly vacancies. The assembly shall provide by ordinance the manner in which a vacancy in assembly representation occurs. A vacancy is filled by the majority of the remaining assemblymen, who designate a voter and, if the assembly seat vacated is other than an at-large seat, a resident of the borough area to which the seat was apportioned, to serve until the next regular election. However, if under a borough apportionment city councilmen are appointed as assemblymen or elected to dual assembly-council seats, a vacancy in a councilman's seat on the assembly shall be filled by a councilman designated by a majority of the remaining membership of the council to serve until the next regular election. (§ 2 ch 118 SLA 1972; am § 15 ch 118 SLA 1972)

Cross reference.—See Editor's note to AS 29.18.120.

Effect of amendment. — The 1972 amendment rewrote this section.

Sec. 29.23.090. Reapportionment.

Repealed by § 16 ch 118 SLA 1972.

Cross reference.—See Editor's note to AS 29.18.120.

Editor's note.—The repealed section derived from § 2, ch. 118, SLA 1972.

Sec. 29.23.100. Borough sections.

Repealed by § 16 ch 118 SLA 1972.

Cross reference.—See Editor's note to AS 29.18.120.

Editor's note.—The repealed section derived from § 2, ch. 118, SLA 1972.

Article 2. Borough Executive and Administrator.

Section
130. Power generally
140. Powers and duties of borough administrator
150. Executive absence
160. Assembly participation
170. Veto
180. Filling a vacancy

Sec. 29.23.130. Power generally. (a) If the borough has not adopted a manager plan, the borough executive and administrative power is vested in an elected borough mayor. If the borough has adopted a manager plan, the administrative power is vested in an appointed manager and the executive power in an elected borough mayor who has the same functions as those of the mayor of a manager-plan city under § 240 of this chapter.

(b) A borough voter is eligible to be borough mayor.

(c) The borough mayor's regular term of office is three years and until a successor is elected and has qualified and begins on the first Monday following his election, which is held the first Tuesday of October, unless a different date of election is provided by ordinance. The assembly may provide by ordinance for a different term

not to exceed four years, except that the current term of an incumbent borough mayor may not be altered.

(d) A borough may adopt or abandon a manager plan at any time, as provided in §§ 410—480 of this chapter. The borough mayor may not veto an ordinance or resolution calling for an election on this question. The manager has all the powers and duties of the borough mayor as chief administrative officer. If the manager plan is adopted, it becomes effective following certification of the results of the first regular election occurring at least six months after adoption of the plan. The borough mayor then serves as borough executive. (§ 2 ch 118 SLA 1972)

Editor's note.—Section 20, ch. 118, SLA 1972, provides: "The terms of elected officials who are incumbents on September 10, 1972, are not affected by this Act. Their terms expire as provided before enactment of this Act."

Borough chairman cannot serve on borough assembly. — To permit the borough chairman to serve on the borough assembly would constitute a clear violation of this section, and would violate the common law prohibition against holding incompatible offices. 1963 Op. Att'y Gen., No. 27.

Sec. 29.23.140. Powers and duties of borough administrator. The borough mayor or manager as the case may be, as the chief administrative officer, is responsible for the proper administration of all borough affairs. The mayor or manager of the borough shall

(1) appoint borough employees and administrative officers, except as provided otherwise in § 360 of this chapter and AS 29.33.050; he may hire necessary administrative assistants and may authorize an appointive administrative officer to appoint, suspend, or remove subordinates in his department;

(2) suspend or remove by written order borough employees and administrative officers, except as provided otherwise in § 360 of this chapter and AS 29.33.050;

(3) supervise enforcement of borough law;

(4) prepare the annual budget and capital improvements program for the assembly;

(5) execute the budget and capital improvement program as adopted;

(6) make monthly reports to the assembly on borough finances and operations;

(7) report to the assembly at the end of each fiscal year on the finances and administrative activities of the borough;

(8) prepare and make available for public distribution an annual report on borough affairs;

(9) serve as borough personnel officer unless the assembly authorizes him to appoint a personnel officer;

(10) direct and supervise the administration of

Article 3. City Council.

Section
200. Composition, eligibility, election and term
210. Procedure
220. Filling a vacancy

Sec. 29.23.200. Composition, eligibility, election and term. (a) Each first class city has a council of six members elected by the voters at large. Each second class city has a council of seven members elected by the voters at large. The council of a first or second class city may by ordinance provide for election of members other than on an at-large basis for all members.

(b) A city voter is eligible to hold the office of councilman. A council member who ceases to be eligible to be a city voter immediately forfeits his office.

(c) An election is held annually on the first Tuesday of October, unless a different election date or interval of years is provided by ordinance, to choose councilmen for three-year terms and until their successors are elected and have qualified. The regular term of office begins on the first Monday following the election. The council may provide by ordinance for different terms not to exceed four years, except that the current term of incumbent councilmen may not be altered. (§ 2 ch 118 SLA 1972)

Editor's note.—Section 20, ch. 118, SLA 1972, provides: "The terms of elected officials who are incumbents on September 10, 1972, are not affected by this Act. Their terms expire as provided before enactment of this Act."

Sec. 29.23.210. Procedure. (a) The council shall meet at least once every month, unless otherwise provided by ordinance. Special meetings may be held on the call of the mayor or two councilmen upon not less than 24 hours written or oral notice communicated to each member.

(b) The council shall determine its own rules and order of business and provide for keeping a journal of its proceedings.

(c) Four councilmen constitute a quorum. Four affirmative votes are required for the passage of an ordinance, resolution, or motion.

(d) The final vote on each ordinance, resolution, or substantive motion is a recorded roll call vote. All councilmen present shall vote unless the council, for special reasons, permits a member to abstain. (§ 2 ch 118 SLA 1972)

Votes must be recorded. — To the extent that no vote is recorded in the minutes of the city council, there is a failure to comply with this section. Carr v. City of Anchorage, 17 Alaska 116, 243 F.2d 482 (9th Cir. 1957).

But requirement does not affect liability of city on fully performed oral contract. — While it is true that the recording of votes under this section serves a useful purpose, the requirement of the recording is no more designed to protect the public than to protect the party dealing with the public. It has no effect on the substance of a contract, and a municipality is as subject to liability where it has benefited from a fully performed oral contract as would be a natural person. Carr v. City of Anchorage, 17

11 Alaska 48, 66 F. Supp. 520 (D. Alas. 1946).

Since mayor may not direct officers contrary to council's will.—The mayor is without power to direct the actions of the city officers contrary to the lawfully expressed will of the council, which has the superior authority. Reherd v. Manders, 11 Alaska 48, 66 F. Supp. 520 (D. Alas. 1946).

And it is only the city council which can enact ordinances and resolves. Reherd v. Manders, 11 Alaska 48, 66 F. Supp. 520 (D. Alas. 1946).

Sec. 29.23.250. Election and term of mayor. (a) A voter of a home rule or general law city is eligible to hold the office of mayor, except that a home rule city may prescribe additional residency requirements by charter.

(b) The mayor of a first class city is elected at large for a term of three years and until a successor is elected and has qualified. The council may provide by ordinance for a different term not to exceed four years, except that the current term of an incumbent mayor may not be altered.

(c) The mayor of a second class city is elected by and from the council for a term equal in length to a councilman's term.

(d) The mayor's regular term begins on the first Monday following his election, which is held on the first Tuesday of October, unless a different date of election is provided by ordinance. The council of a second class city shall meet on the first Monday after the regular election date and elect a mayor who takes office immediately. (§ 2 ch 118 SLA 1972)

Editor's note.—Section 20, ch. 118, SLA 1972, provides: "The terms of elected officials who are incumbents on September 10, 1972, are not affected by this Act. Their terms expire as provided before enactment of this Act."

Sec. 29.23.260. Mayor's vote. (a) The mayor of a first class city is not a council member and may vote only in the case of a tie.

(b) The mayor of a second class city is a council member and may vote on all matters. (§ 2 ch 118 SLA 1972)

Tie allowing mayor to vote. — See In re Kaye, 11 Alaska 556 (1948).

Sec. 29.23.270. Veto. (a) The mayor of a first class city may veto any ordinance, resolution, motion, or other action of the council and may, by veto, strike or reduce items in appropriation ordinances except, in a city outside an organized borough, for school budget items. He shall submit to the council at its next regular meeting a written statement advising of his veto and giving his reasons. A veto is overridden by the vote of two-thirds of the authorized membership of the council.

(b) The mayor of a second class city has no veto power. (§ 2 ch 118 SLA 1972)

ALR reference.—Passing bill over veto, 2 ALR 1593.

Sec. 29.23.28
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1972, subst

FEB 10

Alaska State Legislature

House of Representatives

REPRESENTATIVE JERRY WARD
DISTRICT 13

MEMBER FINANCE COMMITTEE
CHAIRMAN OF SUBCOMMITTEE ON
COMMERCE & ECONOMIC DEVELOPMENT
CHAIRMAN OF SUBCOMMITTEE ON LABOR

P.O. BOX 2716
ANCHORAGE, ALASKA 99510

WHILE IN JUNEAU
POUCH V
JUNEAU, ALASKA 99811

February 9, 1983

The Honorable Barbara Lacher, Chairman
Alaska State Legislature
House Committee on Community and Regional Affairs

Dear Representative Lacher:

In support of House Bill No. 162 which I have introduced, I have attached a copy of a letter from Fairbanks North Star Borough discussing the problem as well as a copy of a resolution passed by Fairbanks North Star Borough. The voters of both Fairbanks North Star Borough and Matanuska-Susitna Borough have passed advisory propositions on this matter.

Briefly, the legislation simply puts the power to limit the number of terms of elected officials back into the hands of the local governments where it belongs.

Yours very truly,

Jerry Ward
State Representative

Attachments

fairbanks north star borough

p.o. box 1267 520 fifth ave. fairbanks, alaska 99707 907-452-4761

January 26, 1983

JAN 31 1983

The Honorable Jerry Ward
Alaska State Legislature
Pouch V (MS 3100)
Juneau, Alaska 99811

Dear Representative Ward:

Enclosed please find the following resolutions which were adopted at the regular meeting of the Fairbanks North Star Borough Assembly on January 13, 1983, which was reconvened on January 19, 1983.

Resolution No. 83-2. A Resolution Relating To Limitation Of Terms For The Assembly And Mayor.

Resolution No. 83-3. A Resolution Requesting The Alaska State Legislature For Funding Of An Annual Spring Hockey Tournament.

Please note that Resolution No. 83-2 has been extensively discussed and we would certainly like to see some action during this 13th Session of the Legislature.

If you have any further questions, please feel free to contact me.

Sincerely

Gaye J. Patrick

GAYE J. PATRICK
Borough Clerk

GJP:mgc

enclosures (2)

Bob Blake
Juanita Helms
B. B. Allen
Bruce Wammack
Mike Ribar
Bill Walley
Sandra Stringer
Paul Chizmar
Buzz Otis

Introduced: 01/13/83
Adopted: 01/13/83

RESOLUTION NO. 83-2

A RESOLUTION RELATING TO LIMITATION OF TERMS FOR THE ASSEMBLY AND MAYOR

WHEREAS, an advisory proposition on the question of limiting the terms of assemblymen and the mayor was placed on the October 5, 1982, ballot; and

WHEREAS, this advisory proposition was passed 11520 - 5197 by the voters of the Fairbanks North Star Borough; and

WHEREAS, this question was also passed 2700 - 1100 by the voters of the Matanuska-Susitna Borough on October 6, 1981; and

WHEREAS, an Attorney General's opinion has been rendered stating general law municipalities do not have the power to place such a limitation on elected officials:

NOW, THEREFORE, BE IT RESOLVED by the Fairbanks North Star Borough Assembly that the Twelfth Legislature of the State of Alaska is urged to revise Title 29 to allow general law municipalities the option of placing a limitation on the number of consecutive full terms a person may serve.

PASSED AND APPROVED THIS 13th DAY OF JANUARY, 1983.

Presiding Officer

ATTEST:

Clerk of the Assembly

(7)

COMMITTEE REPORT

4/7

HOUSE

FURTHER: JUDICIARY

2/4/83 Date: _____

Mr. Speaker:

The Committee on C & RA has had HB 162

An Act authorizing general law municipalities to limit the number of consecutive full terms certain municipal officials may serve.

under consideration and reports it back as follows:

[ ] do pass [ ] do not pass

[ ] do pass with attached amendments(s)

[X] replace wi[illegible]S for HB 162 (C&RA) [X] same title [X] new title

and recommends _____

[ ] AND attaches a "Letter of Intent" [ ] New Fiscal Note [ ] Zero Fiscal Note Attached

[ ] reports it back without recommendation

[ ] referred to the _____ Committee

MEMBERS SIGNING DO PASS:

[signature]

[signature]

MILO H PRITZ

MEMBERS HAVING OTHER RECOMMENDATIONS:

[signature]

D. Clocks — No rec

[signature] Mr. Brenda Tee Not Pass

[signature]

CHAIRMAN

H 60

STATE OF ALASKA
FISCAL NOTE

Revision Date , 1983

I. REQUEST

Bill/Resolution No.: HB 162
Title: Limit terms of Municipal Officials
Sponsor: Ward, et al
Requestor: HCRA

II. FISCAL DETAIL

Agency Affected: DCRA
Program Category Affected: Development
BRU, Program of Subprogram(s) Affected: Local Government Assistance Division

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 83	FY 84	FY 85	FY 86	FY 87	FY 88
OPERATING		-0-	-0-	-0-	-0-	-0-
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 COMMODITIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC						
TOTAL OPERATING		-0-	-0-	-0-	-0-	-0-
CAPITAL		-0-	-0-	-0-	-0-	-0-
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER (Specify Source)						

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

III. SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

IV. ANALYSIS: Attach a separate page for any Analysis

Prepared By: Richard Rainery
Phone: 465-4703
Division: Commissioner's Office
Date: 4/6/83

Approved by Commissioner:
Date: 4/6/83
Department: Community & Regional Affairs

Distribution:
Original to Legislative Finance
Copy to Office of Management and Budget (for Legislature introduced bills)
Copy to Department (for Governor introduced bills)
Copy to Sponsor
Copy to Requestor (if different from Sponsor)

3/8/

HB

163

CSHB 163 (Resources) "An Act relating to harassment of persons engaged in hunting, fishing, or trapping."

SECTIONAL ANALYSIS

Section .925 would make it illegal to interfer with a person who is lawfully engaged in hunting, fishing or trapping; to disturb fish or game with the intent to interfer with their taking; or to enter or remain upon public or private land with intent to do one or the other of the above. A violation would be punishable by a fine of up to $500 or 30 days in jail, or by both.

Section .926 mandates that a wildlife protection agent shall order a person to desist from a violation of section .925, if he has observed the violation, or has probable cause to believe the person has engaged in or intends to engage in such activities. The officer shall inform the violator of penalties applicable to failure to desist - a fine of up to $1000 or 90 days in jail, or both.

Section .927 provides civil remedies allowing: a court injunction to stop the harassment; the aggrieved party to recover general damages for expenses rendered futile by the harassment; and the court to award punitive damages.

STATE OF ALASKA
PRELIMINARY STATEMENT OF FISCAL IMPACT

Bill No: HB 163 Date on Bill: 2/4/83
Title: An Act providing for punishment for obstructing the lawful use of public land
Sponsor: Rep. Shultz
Requestor:

1. Estimated fiscal impacts on:

a. Expenditures:

(Thousands of Dollars)

	FY 83	FY 84	FY 85	FY 86
Capital				
Operating				
Total	-0-	-0-	-0-	-0-

b. Revenues:

Revenue	

2. Source of funds to offset fiscal impact of bill:

3. Assumptions:

No fiscal impact.

4. Disclaimer:
This statement has not been reviewed by the OMB in the Office of the Governor. It therefore does not represent the final estimate of fiscal impact.

Prepared By: Colonel Robert J. Stickles Phone: 269-5532
Division: Fish & Wildlife Protection Date: 2/15/83

Approved by Commissioner: [signature] Date: 2-22-83
Department: Public Safety

5. Distribution:
Original to Legislative Finance
Copy to OMB
Copy to Sponsor
Copy to Requestor

2/15/83

STATE OF ALASKA
FISCAL NOTE

Revision Date , 1983

I. REQUEST

Bill/Resolution No.: CS HB 163 (Res)
Title: "Harassment of Persons Engaged in ....
Sponsor: House Resources
Requestor: House Resources

II. FISCAL DETAIL

Agency Affected: Public Safety
Program Category Affected: F&WP
BRU, Program of Subprogram(s) Affected: Fish & Wildlife Protection

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 83	FY 84	FY 85	FY 86	FY 87	FY 88
OPERATING						
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 COMMODITIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC						
TOTAL OPERATING		-0-	-0-	-0-	-0-	-0-
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER (Specify Source)						

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

III. SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

IV. ANALYSIS: Attach a separate page for any Analysis No Fiscal Impact Anticipated

Prepared By: Paul Conner Phone: 465-4338
Division: Administrative Services Date: 3/17/83

Approved by Commissioner: [signature] Date: 3/18/83
Department: Public Safety

Distribution:
Original to Legislative Finance
Copy to Office of Management and Budget (for Legislature introduced bills)
Copy to Department (for Governor introduced bills)
Copy to Sponsor
Copy to Requestor (if different from Sponsor)

3/2/

(9)

3/21

COMMITTEE REPORT

HOUSE

FURTHER: JUDICIARY

2/4/83 Date: MARCH 18, 1983

Mr. Speaker:

The Committee on RESOURCES has had HB 163

An Act providing for punishment for obstructing the lawful use of public land.

under consideration and reports it back as follows:

[WAIVED] do pass [ ] do not pass

[ ] do pass with attached amendments(s)

[✓] replace with CS for HB 163 (Rel.) [ ] same title [✓] new title

and recommends DO PASS

[ ] AND attaches a "Letter of Intent" [ ] New Fiscal Note [✓] Zero Fiscal Note Attached

[ ] reports it back without recommendation

[ ] referred to the _____ Committee

MEMBERS SIGNING DO PASS

HULTZ Dick Thompson

USSELL

-ISKA John J. Diska

OWDERY John J. Crowley

INGSTAD John Ringstad

MEMBERS HAVING OTHER RECOMMENDATIONS:

LARSON Ronald J. Larson No rec.

VASKA Tony Vaska No rec.

(Co-) John Ringstad
CHAIRMAN

H 60

AMENDED TITLE:
AN ACT PROVIDING FOR PUNISHMENT FOR OBSTRUCTING THE LAWFUL USE OF PUBLIC LAND

PRIME SPONSOR: SHULTZ.
CO-SPONSORS:
CURRENT STATUS: 3/21/83 IN (H) JUDICIARY

DATE	SEQ	PAGE	LEGISLATIVE ACTION
02/04/83	01	0173	FIRST READING -- COMMITTEE REPORTS
03/21/83	02	0572	RES -- CS05, NR02
03/21/83	03	0572	RES F/NOTE EQUALS ZERO
			JUDICIARY
			RULES
****	**	**	**** ** ****

HB 407

January 24, 1983

Representative Dick Schultz
State Capitol Building
Juneau, Alaska 99801

Dear Dick:

On January 5, 1983 the Tok Cutoff-Nabesna Road Advisory Committee met in a general meeting to discuss hunting regulations. There were several things discussed with two of them pertaining to you.

#1 We would like to see legislation written and passed that would control or rather stop harrassment of hunters, trappers, and fishermen. We would be able to carry on our life-style without harrassment from the "greenies".

#2 We would like to see legislation written and passed that would eliminate the $25 trophy tag for resident grizzly/brown bear hunters. We believe the State is rich enough without charging its residents a $25 fee.

Our committee will be meeting within a few weeks and correspondence from you would be appreciated. I would like to able to tell the folks something about these two items.

Good luck and if there is anything I or this committee can do to help, please let me know.

Sincerely,

Bill Ellis, Chairman
Tok Cutoff-Nabesna Rd. Advisory Committee
S. R. Box 350
Tok, Alaska 99780
907/822-3426

friends of animals, inc. 11 West 60th Street, New York, N.Y. 10023 • (212) 247-8120

TIPS FOR HUNT SABOTEURS

Fourteen million Americans will be shouldering their rifles and shotguns within the next few months, marching off to their annual offensive against our wildlife. These legions, which are more numerous, and generally better equipped than the entire Nazi armies of the Second World War, will take a bloody toll before the season ends. They will kill deer and rabbits, ducks, dogs, cats, a few children, and even a few hunters.

It is time for friends of animals to start organizing a defense that will serve to at least temper the wanton destruction. There are many ways that a friend of animals can become a forest partisan on behalf of our wildlife, and we offer here a few suggestions that range in effort, depending upon a person's abilities and commitment:

1. Deny the hunter the land to hunt on. Much hunting is done on private lands. To protect these animals, encourage your neighbors, especially those who own large tracts such as farms and ranches, to post their land and forbid hunting. Try to convince them that hunters invariably cause more damage to agriculture than the wild animals do.

2. Many areas have hunting restricted to a specified number of hunters who have special permits. Commonly, these permits allow the hunter to use a particular blind or hunt less common species, such as bear. Apply for these permits yourself. The permits are usually awarded by a simple lottery selection. If you're lucky, you'll win a permit and deny a hunter his kill.

3. Get into the woods yourself the day before the hunting season. If you're familiar with the most commonly hunted areas, try to drive wildlife away. A stroll through the forest with a nice loud radio and a dog on a leash, will serve to make wildlife more wary of humans. This is particularly important for younger animals that have not yet had the traumatizing experience of being hunted.

4. Certain substances, such as rotten eggs, when rubbed into hunting blinds, make these enclosures even more uncomfortable for the hunters. Uncomfortable hunters are irritable, and are also poorer shots. Plastering the floor of a hunting blind with cow dung is another good idea.

5. If you're familiar with wildlife habits in your neighborhood, try to encourage them to break these habits shortly before hunting season. For instance, many hunters like to stalk along deer tracks which are pretty well defined to a good woodsman. Placing deer repellent (available at many feed and hardware stores) along these tracks will encourage the deer to move away and leave the hunter with a route devoid of the species. If you want to save money, just scoop up a bag of human hair from a local barber shop and hang handfuls of it in little bags about two or three feet from the ground, along the deer track. The deer will soon get the message that there are humans in the area and will drift away.

6. If there is much hunting with dogs in your area, try to get hold of a female dog in heat and lead her, on a leash, through an area that is heavily hunted. Male dogs in the hunter's pack will "get wind" of the female and lose their enthusiasm for chasing rabbits or deer.

7. Hunters frequently like to ambush their prey by setting out food and then hiding in blinds. Commonly, bushels of apples are set out a few days before hunting season to encourage deer to browse in this area. When hunting season comes, the hunter merely comes to the site, climbs into a blind, and waits for the deer to come to him. To disrupt this, there are two alternatives. First, remove all apple piles immediately on finding them during the days preceding hunting season. Second, if there are just too many apples to carry away, give them a good spraying with deer repellent and spread barber shop hair clippings all over the area.

8. Encourage your municipality to pass an ordinance that bans, in the interest of public safety, the use of all weapons within its limits. Rifles, shotguns, bows and arrows have been known to kill people too.

9. If you have a portable tape recorder, get a cassette recording of wolf howls. Play this in the woods a few times in the days before hunting season. It will make wildlife wary.

10. Try to develop strong anti-hunting sentiment in your community by writing letters to the editor of your local newspapers, meeting with neighbors, getting on talk shows. Creating public awareness of the problem is a vital point. Let your neighbors know that the law recognizes wildlife as belonging to all people, and they are not the exclusive property of hunters until after they have been murdered.

11. Work on a project to get your State to pass a law that would require all hunters to carry written permission from the landowners of the places they hunt. This further curbs the hunter's battlegrounds because many farmers are reluctant to sign permits that would allow people to hunt on their lands. Also, much land is owned by summer residents, corporations, etc. that are nearly impossible to get hold of.

12. Approach your Congressperson and Senators with demands that hunting and trapping be prohibited on national wildlife refuges and all public land.

13. If you have any old, stuffed animal toys, set these around commonly hunted areas. Hunters often don't take the time to check if an animal is real. Better to have a hole in a cotton rabbit than a real one - and the noise of the gun going off might serve to scare away other wildlife.

14. We will be trying to put together a better activist's guide for next hunting season, so if you have any ideas or procedures you've found effective, please let us know. Mail them in to Bill Clark, Friends of Animals, 11 West 60th Street, New York, NY 10023.

Use your imagination. There are plenty of ways to frustrate the hunt, depending on your own abilities and enthusiasm. The main point here is to do something. By your work, you will be helping animals in two ways. First, you will be protecting them from the hunters and second, you will be letting the hunters know that friends of animals are in the woods. This serves to anger them, and angry hunters do not stalk so quietly, their aim is not so precise. Emotions can play heavily in the success of a hunt, and the most effective killers are cool and methodical. Disrupt!

ANTI-HUNTERS VS. HUNTERS: WAR IN THE WOODS

Greenpeace fanatics are harassing hunters in the field. It's a vicious and very dangerous movement, and you could be the next victim. Here's what to expect plus some very good advice on what not *to do about it.*

By Richard Starnes, Editor-at-Large

The lush alpine valleys and rugged highlands of northeastern British Columbia have witnessed the opening skirmishes in what threatens to become all-out war between big-game hunters and anti-hunting zealots who have sought to stop them by harassment, abuse, intimidation and—it is charged—physical violence.

How much violence has occurred to date is in dispute, but there have been several angry confrontations involving hunters and anti-hunting activists, one beating has already taken place, and feeling is running so high that Canadian provincial authorities are alarmed at the prospect of more violence when the big-game season opens this fall.

"It's only a question of time before some hothead loses his composure and someone gets hurt," said one hunter who was victimized by the anti-hunters.

Arrayed against each other in the conflict are the hunters, outfitters, and game-management officials of British Columbia, and a dedicated, well-financed, implacable organization of anti-hunters who call themselves Greenpeace.

Greenpeace is no collection of saloon conspirators content to crank out mimeographed anti-hunting diatribes and picket sporting-goods stores. It is slick, professional, worldwide, and growing rapidly. Its Vancouver chapter alone budgets nearly $500,000 a year for anti-hunting activities. Its tools are $1,000-a-day helicopters, expensive sound cameras, and self-confessed expertise at manipulating the press and television. Its tactics are harassment, confrontation, and attempts physically to restrain hunters. Its leader, Dr. Patrick Moore of Vancouver, made it clear in an interview with OUTDOOR LIFE that episodes of harassment and intimidation that took place in the rich hunting grounds of British Columbia in 1979 and 1980 were only the opening salvos in the conflict.

"We'll be back this year," he said. "They can't stop us. We intend to stop trophy hunting, first in British Columbia, ultimately all over the world."

How Greenpeace seeks to frustrate hunters is perhaps best told in the words of Richard A. Mielke, a 50-year-old Pontiac, Michigan, fire fighter who last year took a 21-day hunt-of-a-lifetime in the rugged, 1.6-million acre Spatsizi Wilderness Park in British Columbia. He and his partner, Darryl Hastings, 40, a computer broker from Rochester, Michigan, encountered the Greenpeacers on the first day of the hunt.

"They barged right into our camp," Mielke said. "They stuck sound cameras right in our faces. They harangued and abused us. One of them screamed at me, 'Is there something wrong with your sex life? Is that why you're up here killing animals?' When we tried to ride out of camp they locked arms across the trail to stop us. One of them grabbed the bridle of my horse. That was dangerous. That's rough country up there. If the horse had shied and fallen I could have been badly hurt."

Eventually the hunters and their guide broke free and continued the hunt, but on nearly every day of the hunt the harassment continued. On one day Mielke took his rifle—unloaded—to a dock on tiny Bug Lake to scope a wolf that had been howling near the camp.

"One of these Greenpeace guys crowded up against me, bumped me, and yelled, 'You're not going to shoot that animal while I'm here!' He grabbed my rifle, and then he fell into the lake."

"They would haunt you in every way they could," Hastings added. "You

couldn't even go to the john without one of them sticking a camera in. It's hard to keep your cool under those circumstances, yet I couldn't give them the satisfaction of bothering me."

Although the Greenpeacers scornfully characterize hunters such as Mielke and Hastings as "jet-set headhunters," both are men of modest means.

"I scrimped and saved and worked at odd jobs for two years to get the money for that hunt," Mielke said. "By the time I'd paid air fares, outfitters' fees, and license and trophy fees it cost me around $10,000."

Hastings put the cost of his hunt at near $12,500, and noted it would be a long time, if ever, before he could afford another hunt of that magnitude.

Both hunters report that attempts to reason with the anti-hunters were futile.

"We were after Stone sheep, principally," Hastings said. "But they kept alluding to them as 'bighorns.' I told one of them, 'You're such a phony; you don't even know what species you're talking about.' "

Both men got trophy sheep as well as other trophy specimens, but the Greenpeace activitists succeeded in blighting what would otherwise have been an idyllic hunt.

"There were several days when I didn't hunt because of them," Hastings said.

Complaints to provincial wildlife authorities were to no avail. "Early in the hunt a park ranger came into our camp," Hastings said. "We asked him why he wouldn't protect our right to carry on a lawful activity. I'd paid around $1,000 for licenses and tags, and these people were trying to deprive me of my right to hunt. The ranger replied that there was nothing he could do. 'It's a public park,' he told me. 'They can go anywhere they please.' "

Later, after the anti-hunter fell (Greenpeacer Moore says he was pushed) into the lake, four Royal Canadian Mounted Police officers and two B.C. Fish and Wildlife Department officials arrived at the Mielke-Hastings camp by helicopter. Again the two hunters repeated their plea for protection, again the officials said there was nothing they could do.

"They told us they were trying to figure out how to resolve the issue," Hastings told OUTDOOR LIFE. "But all they did was to tell us, 'We want you fellows to be patient and keep the peace.' " (There are indications, however, which we will come to later, that B.C. officials are preparing to abandon their policy of noninterference when the 1981 season opens.)

Illustration by Domenick D'Andrea

Violence against them would give Greenpeace "proof" that all hunters are thugs and violence-prone killers.

Even after Mielke and Hastings quit their camp to return home, the Greenpeace contingent pursued them. After alerting press and television, the anti-hunters continued their tactics of harassment. They followed the two hunters into the airport at Vancouver, taunting them, haranguing and vilifying them, and waving professionally-made anti-hunting placards for the benefit of news and television cameras. Several wore animal costumes, including horns or antlers. The Greenpeacers drove the two hunters to take refuge in the airport lounge, where the bartender did what the Royal Canadian Mounted Police and game department officials had been unable or unwilling to do. He chased the anti-hunters out of the place.

What was possibly an even uglier incident took place during the 1979 season in Spatsizi. Gary Zechel, an engineer with the Ford Motor Company, who lives in the Detroit area, was hunting Ranger Creek with his wife Jo-Carole, who is a hunter, but wasn't hunting on this occasion. Accompanied only by an Indian guide, the Zechels were traversing one of the wildest, most primitive areas in North America.

"We were six or eight hours by horseback from our base camp, staying in a spike camp," Zechel recalled, "when these Greenpeace people showed up. There were seven men and one woman. There was lots of taunting, harassment, and intimidation. They said they would do whatever they could to stop us. They said if they couldn't persuade us to abandon our hunt they would restrain us physically. When we rode out for a day of hunting, they locked arms in front of us. When I tried to go to my wife's aid, one of them grabbed my horse's reins. Eventually our guide broke through, and my wife and I got away from them. They chased us several hundred yards up the trail, and our guide's horse fell into a bog. That was very dangerous. Even a minor injury is serious in that remote wilderness."

Like Mielke and Hastings, Zechel is an experienced hunter and outdoorsman, clearly able to take care of himself. But some insight into the psychological impact of the Greenpeace tac-

In the fall of 1980, the Gary Zechel hunting party camped in the Spatsizi wilderness in British Columbia and ran into harassment by eight Greenpeace agitators (left). When Zechel and his wife rode out of their camp for a day of hunting with their guide, the Greenpeacers locked arms across the trail to block their way and screamed abuse. A female Greenpeacer grabbed Zechel's reins to hold him back. The guide broke through the human barrier, and the Zechels pulled away and rode around them. Gary Zechel stated that his greatest fear was that one of the horses would spook and injure or kill someone. The painting is based on a photograph supplied by the Greenpeacer organization! At right, Greenpeacers in animal costumes harass Richard A. Mielke and Darryl Hastings in the Vancouver airport after their successful hunt.



tics can be won when Zechel says, "One of those guys had an ice ax he kept waving in my face. I felt more fear than I have felt in a long time."

Zechel's wife seems to have been singled out for particular attention by the Greenpeacers.

"They ran raving and yelling at her," he reported. "It was like a riot. They came within five or ten feet of her."

Exercising what can only be described as saintly restraint, the Zechels and their guide did their best to ignore the anti-hunters.

"This drove them into a frenzy," Zechel said. "They acted nearly hysterical, obviously looking to cause some action or incident." Not surprisingly, the Greenpeace tactics finally wore down Jo-Carole's emotional reserves. "She was terrified and finally broke down crying and screaming for them to leave us alone. They refused and she ran into the tent, sobbing 'They're crazy—I'm afraid of them.' She spent the final days of the hunt in her tent."

When the Zechels broke camp and returned to Smithers, he filed an assault charge against the Greenpeace anti-hunters. Although technically the charge is still pending, it has been "stayed" and provincial authorities made it clear they have no plans to prosecute it.

Ralph Aldrich, chief conservation officer of the British Columbia fish and wildlife agency, undertook to explained why.

"From an enforcement point of view we can only follow the law," he said in an interview. "There is no law against yelling. It's just like picketing. Of course, if they threaten assault and take some overt action, that may be assault."

Is it illegal to impede hunters' horses? Aldrich's reply was something less than definitive. "It depends," he said. Thereupon he passed the buck to Peter Ewart, crown counsel (prosecuting attorney) for the Spatsizi district. From Prince George, B.C., Ewart indicated that, while still open, the charges laid by Gary Zechel against the Greenpeacers would likely never be prosecuted.

"We took a look at the evidence and the probable outcome of a trial and put a 'stay' on the case," Ewart said. But then, plainly choosing his words carefully, Ewart laid out what may be provincial officials' plan to end the threat to one of British Columbia's prime industries. "I would have been much happier," he said, "if the charge had been intimidation instead of assault." British Columbia, he said, has a statute making it illegal to "impede or attempt to impede any person from carrying out a lawful activity" by threats, harassment, or coercion.

"What he says is a crock," bluntly charged Ray Collingwood, whose firm outfitted both the Zechel and Mielke-Hasting parties. "They didn't prosecute because of the expense of getting witnesses back up here to testify. I've lost all respect for the government."

Collingwood revealed what apparently is not known by provincial authorities—real violence has already broken out.

"One of these [Greenpeace] guys tried to stop one of our pilots from taking off from an airstrip we maintain in the park," he told OUTDOOR LIFE. "He grabbed a wing strut of the Beaver and tried to force our pilot to abort his take-off. The plane got off anyway and later the pilot returned, landed the aircraft, and punched the guy out. He knocked him down and slapped him around some. He just hung a little licking on him."

Despite the degree of restraint exercised by Mielke, Hastings and Zechel, provincial authorities are acutely aware of the potential for violence. Like the hunters themselves, provincial officials see the tactics of Greenpeace as calculated provocations designed to spark violent reaction. All agree that would be counterproductive and, as one put it, "would give Greenpeace 'proof' that all hunters are thugs and violence-prone killers." Chief conservation officer Aldrich pointedly noted that there will be combined Royal Canadian Mounted Police and game department patrols in Spatsizi during the 1981 season.

Greenpeace's Moore airly dismissed the prospect of being prosecuted under the intimidation statue.

"The attorney general (of British Columbia) hired a man last summer especially to research the question," he said. "He concluded there was no law that could stop us. Our activities are as legal as the hunters'. All we're doing is occupying nonconsumptive space, competing for resources with the hunters. They can't say we're interfering with their rights. Those [game] animals don't belong to anyone until they're actually taken into possession."

It is clear that Patrick Moore is the architect, principal voice, and presiding genius of Greenpeace. He conceived and created the organization while a graduate student at the University of British Columbia (he is now a doctor of ecology) five years ago. His title is Canadian director of Greenpeace International, but plainly his sway extends to the worldwide branches of the organization. He is one of 12 salaried, full-time employees of Canadian Greenpeace, and he is paid $1,200 a month. There are offices in Vancouver,

"We intend to shut down trophy hunting in Spatsizi to show that it can be done."

Victoria, Toronto, and Montreal, as well as branches in the United States, the United Kingdom, the Netherlands, France, New Zealand, and Australia. A Greenpeace "secretariat" in Washington coordinates the activities of the international branches, and it has an annual budget of $120,000.

"Our forte," Moore said in an interview, "is organizing expeditions into remote areas in order to confront in a nonviolent manner acts that we consider environmentally detrimental. Our funding is entirely private—donations from individuals that are generally less than $50. We have no foundation or government grants. Our methods are too controversial to attract money from conservative quarters."

Greenpeace's first confrontation took place when Moore and others chartered an 85-foot vessel and sailed to the Aleutian island of Amchitka in an attempt to halt the testing of nuclear bombs. "We lost that battle but we won the war," he said. "They've stopped testing now and Amchitka is a wildlife preserve."

Later Greenpeace made expeditions to the South Seas in an attempt to stop nuclear testing by France (they failed), and they have conducted offensives against whalers and seal hunters.

"But we cut our teeth on nuclear testing," Moore said. "From it we learned how to deal with the media and how to understand international politics. We're fortunate in having people who understand the media—that's how you communicate with people in the modern world, knowing what sort of images appeal to the media."

Although Canadian authorities are tippy-toeing around the Greenpeace campaign of intimidation in Spatsizi, the government ended similar tactics that were attempted against commercial hunters of harp seals in Newfoundland.

"They enacted what they called 'seal protection regulations'," Moore said, "just to keep us out. It's ironic, and very undemocratic."

Moore insists that ending all hunting is not his goal. "Hunting can be part of a harmonious relationship with nature," he said. "Indian bowhunters lived in a balanced state with nature for

10,000 years. But what we're saying is that the relationship between man and animals has changed dramatically. These hunters are an extension of the Detroit urban-industrial ecosystem. They have no place in Spatsizi. In a park set aside for protecting these animals, we must stop thinking of them as a natural resource and think of them as a national treasure."

Moore's disclaimer notwithstanding, Greenpeace's program would effectively end hunting. It would totally rule out all trophy hunting, even under the rigidly controlled conditions prevailing in Spatsizi. It would prohibit hunting by all outsiders, insisting that only food hunters "that are part of the (local) environment be permitted to hunt." It would, in short, permit only subsistence hunting, and then only if the cessation of hunting would "dramatically affect" the life-style of the hunter, and only if subsistence hunting remained in "balance" with the environment.

Moore repeatedly insisted that the hunters who were assailed by the Greenpeacers were unthinking trophy freaks who habitually left the meat of their animals to spoil after removing horns, antlers, and capes. All three hunters heatedly denied the charge, noting that they had painstakingly packed all usable meat back to camp, either for shipment home or for use by the outfitter's crew. The outfitters confirmed this. In fact, British Columbia law requires that the meat of game animals be removed and used for food, and in its exhaustive investigation of the incidents, the provincial game department found no violations of the law by the hunters.

For the record, Moore denies any of the Greenpeace activists at Spatsizi committed assault by grabbing anyone's arm. He denies that Mielke's rifle was pushed, but he insists that either Mielke or his companion shoved one of the Greenpeacers into the icy waters of Bug Lake. He concedes that they tried to block progress of the hunters' horses, but denies any member of his group seized them by the bridles. "They ran their horses at us," he insisted.

"They're crazy—I'm afraid of them," Gary Zechel's wife said. She spent the final days of the hunt in her tent.

"Our intention is to be there again this year. We intend to shut down trophy hunting in Spatsizi to show that it can be done. They say we are intefering with them. We deny that. We're competing, as is our right, and they can't stop us."

Perhaps more philosophical than many hunters would be, Richard Mielke warns future hunters of Spatsizi that the Greenpeace anti-hunters "are trying to provoke you into taking a poke at them. And that's the last thing anyone should do. It's exactly what they want."

Unfortunately, however, it isn't the last thing that's likely to happen—unless British Columbia takes a page from Newfoundland's book and contrives a way to keep the Greenpeace people away from the hunters. There are some indications B.C. officialdom, perhaps belatedly, is now working hard to find a way to end the harassment of hunters. In reply to a letter of complaint from Mielke, B.C. Minister of Environment Stephen Rogers wrote:

"I wish to extend my personal apologies for the harassment you suffered (and) I also want to congratulate you and your hunting partner for the restraint you both showed under trying circumstances. The hunters in Spatsizi by their good behavior, as opposed to the conduct of Greenpeace, gained in general public stature while Greenpeace suffered.

"We are working with the Parks Branch to see what can be done to prevent situations such as you experienced from recurring."

The Force Behind Friends of Animals

Alice Herrington Raises the Hackles of Sportsmen in Her War on Hunting



Alice Herrington

By E. J. NILSSON
Gnt Staff Writer

Whether Alice Herrington is right or wrong, she is anything but a bore. As founder and president of Friends of Animals (FOA), Herrington arouses strong feelings among sportsmen and others in her crusade against hunting.

Herrington, who lives with eight cats in Little Silver, N.J., founded FOA in 1957 to try to reduce the numbers of stray dogs and cats. And that is still the major purpose of the organization, she said.

But the group's chief claim to fame is Herrington's verbal bouts with hunters and trappers.

"To call this a sport is just pure nonsense," she said about hunting. "It's a real cruelty. It can't be justified."

IN HERRINGTON'S view, the only people worse than hunters are trappers.

"Deer hunters are not nearly as bad as trappers," she said. "I can't imagine how hunters, who pride themselves on fine shooting, ally themselves with trappers, who practice sadism. Deer hunters are due a little credit for at least the speed of their kill."

Despite the fireworks that FOA ignites with its "full program of hunting and trapping disruption," Herrington wants to convince the public that there "are two cruelties."

Besides the killing of "free animals, which are called wildlife," she explained, she's concerned about man's treatment of all domesticated animals—including pets and livestock.

"It's an American syndrome to love kittens and puppies but then throw out dogs and cats," she said, adding that millions of dogs are killed "in American municipal dog pounds, but they were loved as puppies."

In 1970, Herrington organized low-cost spaying programs for 20,000 animals. By 1980, the number had risen to 60,000.

Last September in Neptune, N.J., she opened a low-cost spaying clinic, said to be "a model of its kind with room for 80 animals and two veterinarians." Across the nation, her group pays for part of the cost of spaying in cooperation with 750 participating veterinarians.

ONE OF the prime targets of Herrington and the FOA is the food business.

"Cruelty to animals is practiced on a larger scale by the food industry than by any other single sector of human activity," an FOA publication asserts.

And Herrington adds:

"If people want to support an industry that is destroying the land, then they can continue to eat these creatures. But if not they can eat vegetables."

Other institutions also are criticized by FOA, including zoos.

"Zoos must be phased out," said an FOA publication.

Herrington's concern for animals was heightened when she returned to the United States in 1954. Working as a War Department statistician, she had seen relatively few animals running loose in Europe.

In the United States, she said, "I was shocked to find stray animals everywhere."

HERRINGTON, a graduate of the University of Wisconsin in Madison, put her statistical talents to work calculating the rate of increase of dogs and cats. She said she realized that cutting the prolific birthrate was the only long-range solution.

This realization led to the founding of FOA, which worked with volunteers until 1967. Now the group has 12 full-time em-

Herrington was asked whether she would advise FOA members to take traps that were legally set.

"Yes! Why not? Certainly," she said.

But wouldn't the "solution" be stealing?

"You could say that it's stealing if you like," she replied, "but the Robin Hood approach to life is still a very nice way to go."

Humane Group To Seize Animal Leghold Traps

By STEVE GRANT

Friends of Animals Inc. said Friday it is going to trip up trappers by setting off their leghold traps when the season opens next week.

The organization said it will ask its 4,500 members in Connecticut to look for the traps, touch them off with a stick and remove them, because it believes the traps are inhumane.

"We can't as an organization advise people to remove legally set leghold traps. It wouldn't be a smart thing to do. What we're asking them to do is remove illegally set traps. Our guess is most of them are illegal," said Priscilla Feral, the organization's Connecticut director.

Game laws require all leghold traps to have the owner's name on them and they must be placed underwater or in an animal's burrow.

A spokesman for trappers questioned the new campaign, which will begin next Saturday, when the season opens.

"They're setting up a vigilante group. Vigilantes in any situation are not good. They don't know enough and they tend to break the law themselves," said Robert Crook of Madison, a member and former president of the Connecticut Trappers Association, which has about 800 members.

"I wouldn't object to anybody coming out and checking my traps, as long as they had the permission of the landowner, and as long as they didn't steal them, set them off or take animals out. But I really don't think that's their responsibility," Crook added.

He said the state Department of Environmental Protection is responsible for seeing that trapping is conducted legally and that he understood the group was told by DEP not to remove illegal traps but instead to report them to a game warden.

Ms. Feral said a trapper's name legally can be placed anywhere on a trap, so members would have to trip them to check. She said members would not be advised to reset legal traps.

"DEP can read the riot act to me if it wishes. But no way will we aid the trapper. Our object is to get rid of the leghold trap," she said.

The organization has argued that the trap, which has two steel jaws that slam shut when an animal touches a piece of bait, is barbaric because some animals die slowly or are left crippled. Ms. Feral said domestic animals also have been caught in the traps. There are other traps available that are more humane, she said.

Crook estimated that there are 8,000 trappers in Connecticut, with the average trapper placing 50 or 100 traps in the wild.

The most commonly trapped animal in the state is the muskrat, which can yield a pelt that will fetch up to $8. Raccoon, fox, mink, opposum, weasel, skunk and beaver also can be trapped legally, though the season for some of those animals does not begin fintil later.

Friends of Animals, which is based in New York, has waged other campaigns against hunters. Some members went into the Connecticut woods recently to play recorded wolf howls to alert animals of danger when the deer hunting season opened.

BACKGROUND IN SUPPORT OF HOUSE BILL 2291

During the past several years certain groups and individuals have appeared in hunting areas each fall with the expressed objective of disrupting a hunt. While their efforts were not notably successful, they did generate a lot of hostile reaction from hunters. Incidents of this kind have been increasing. They will likely produce a serious confrontation some day, and this situation poses a threat to the safety of all concerned, including state peace officers.

An example of this problem is the sheep hunt conducted annually in Unit 33, a portion of the Catalina Mountains near Tucson. What began a few years ago as a one-man protest against the hunt has recently drawn as many as 8-10 active participants who march through the area firing guns, blowing whistles and following hunters to frustrate their purpose of taking a sheep. Tempers run high; Arizona sheep hunting is often a once-in-a-lifetime experience which is the culmination of years of planning and can involve the expenditure of several thousand dollars. Someone is going to get injured if this interference continues.

The buffalo hunt conducted at Raymond Ranch near Flagstaff also has drawn protesters during past seasons. One year, a group of emotionally charged persons, apparently aroused by a television movie, actually threatened to stand in front of a buffalo herd in range of the gunners. The threat was not carried out but the hunt proceeded with assistance from a large contingent of DPS officers called in to keep the peace.

Now, one clear purpose of these demonstrators is attracting publicity to their cause. And though many of us deplore the irrationality we see in the anti-hunting crusade, we do not dispute the right of all persons to be heard. In fact, public forums abound where anti-hunting views can be expressed. Each year, for example, the buffalo and sheep seasons are discussed and then established in open, well publicized meetings of the Game and Fish Commission. The Commissioners themselves are citizens from all areas of the state who are readily accessible to anyone wanting to influence Game and Fish policy. For that matter, demonstrations could be conducted in the field without harassing others and would be appropriate.

The proposed legislation is designed only to prevent actual interference with hunters or disturbance of game in

public hunting areas. It will apply in certain, defined places where the Game and Fish Commission has found, after public hearing, that a hunt disruption is likely to occur. The law includes specific language excepting ranchers, miners and others on public lands who might inadvertently disturb a hunt. But it will allow the removal or arrest of demonstrators who do interfere, intentionally, with hunters. Moreover, such persons may be liable to the hunter for civil damages.

The law answers the problems experienced repeatedly on sheep and buffalo hunts. Should these incidents continue to happen, and recent history suggest that they will, the law can be used to preserve the peace before a serious incident does occur. But aside from the state's concern for order and safety, the law serves clear notice that the right of protest is not unlimited and that it ceases to exist when protesting citizens purposely interfere with the lawful activities of other citizens in a public place.

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HB

165

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ANALYSIS OF CSSSHB165

General Overview: The purpose of this legislation is to clean up the Campaign Disclosure Laws without sacrificing their original intent. In order to accomplish this goal, the following changes are proposed: 1) raise reporting threshold relating to monetary transactions; 2) clarify the roles of campaign officers; 3) simplify required reports; and 4) more clearly contrast the applicability of statutes as to groups or candidates.

Specific amendments to existing statutes are as follows:

P. 1, l. 14: Raises yearly threshold for reporting campaign contributions to candidates from $100 to $250 in the aggregate.

P. 1, l. 18: Adds reference to revised section 60(a) which deals with certification of reports and statements.

P. 1, l. 21-28: This section deals with groups. It has been rewritten to parallel (a) which pertains to candidates. This section raises aggregate yearly threshold for reporting contributions made to the group to $250. It incorporates former section (c), which has subsequently been listed for repeal in section 19. Former subsection (1) has been omitted since it is duplicated in 60(b). This section references revised section 060(a) which delineates who may certify the reports and statements required by law to be filed with APOC.

P. 2, l. 1-3: Language added to clarify that section applies to groups which are not primarily organized for political purposes and are not raising funds for the purposes of influencing the outcome of an election.

P. 2, l. 6: Raises threshold for reporting total contributions made to a candidate or group in a year from $100 to $250.

P. 2, l. 7: Adds "independent" to expenditure. See new (g) which defines meaning of "independent".

P. 2, l. 10: Adds "or against any candidate, ..." This clarifies that the intent of the expenditure is to influence the outcome of the election either negatively or positively.

P. 2, l. 12-19: Definition section added to clarify that the transaction referred to in section 40(d)(2) is not made in cooperation with an affected entity.

P. 2, l. 21-29: Clarifies roles of campaign officers for groups and candidates. Requires groups to appoint chairman along with treasurer.

Specifies that candidate will be assumed to be officer if another's name has not been filed with APOC.

P. 3, l. 1-2: Specifically states that a candidate may perform function of treasurer even if campaign treasurer is another person.

P. 3, l. 4-6: Adds group campaign chairman to officers required to be on file with APOC.

P. 3, l. 7-11: This paragraph restricts persons from acting in the capacity of campaign chairman or treasurer for a candidate if their names and addresses are not on file with APOC. The candidate's assumption of responsibility for the treasurer's duties has been transferred to new section 60(a). Former section required candidate to file name of campaign treasurer with APOC within a specific time period.

P. 3, l. 13-18: Added language specifies that section pertains to groups and expands scope to include all officers whose appointment is required under new section 60(b). Penalties for non-compliance by candidates are removed from section.

P. 3, l. 20-25: Changes responsibility for filing name of deputy campaign treasurer from the candidate to the person responsible for appointing them (the treasurer). Explicitly bars deputy campaign treasurers from certifying reports or statements.

P. 3, l. 27-29: Delineation of responsibility. Candidate is responsible for the performance of the campaign treasurer who is responsible for the performance of the deputy campaign treasurer(s).

P. 4, l. 1-4: Removes language joining legal responsibility of candidate with treasurer.

P. 4, l. 5-11: New section specifies that only officers specifically mentioned within this chapter may receive or expend funds. Applies to both groups and candidates.

P. 4, l. 13: Raises threshold for cash contribution to $250.

P. 4, l. 17: Raises threshold for cash expenditure to $250.

P. 4, l. 28: Changes officer required to be stated in disclaimer on literature or communications from campaign chairman to campaign treasurer. Listing the campaign treasurer is more consistent with the actual duties of this officer as set forth by statute.

P. 5, l. 2: Adds reference to new section 60(a) relating to certification of reports.

P. 5, l. 13: Changes due date for year-end report from three days prior to December 31st to 15 days after December 31st. (See AS 15.13.110(a).)

P. 5, l. 17-22: Changes the Twenty-Four Hour Report. Expands period to 9 days, eliminates reporting of expenditures, raises threshold for

reporting contributions from $250 to $500, specifies that it is receipt of contribution which brings it under the purview of this reporting requirement (ref. l. 18 "made" to "received"), and expands report intervals from 24 hours to 48 hours. Specifies that this report applies to both candidates and groups.

P. 5, l. 24-25: Added language specifies campaign treasurer rather than candidate and expands scope of this paragraph to apply to treasurers of groups.

P. 6, l. 8-9: Added language refers specifically rather than generally to campaign treasurer of a group since new 60(a) mandates appointment of group treasurers who, then, are solely responsible for certifying reports and statements.

P. 6, l. 10: Repealers. 40(c) is incorporated in re-write of (b). Sections 70(f) and 70(g) are campaign expenditure ceilings and inflation adjustment clauses which were declared unconstitutional for national campaigns by the U.S. Supreme Court in Buckley v. Valeo. An Alaska Attorney General Opinion of 1976 subsequently declared sections void for enforcement purposes on state level.

P. 6, l. 11: Immediate effective date.

'(7)

4/7

COMMITTEE REPORT

HOUSE

FURTHER: JUDICIARY

3/2/83

Date: 4/6/83

Mr. Speaker:

The Committee on STATE AFFAIRS has had SSHB 165

An Act relating to the Public Offices Commission; and providing for an effective date.

under consideration and reports it back as follows:

[X] do pass [ ] do not pass

[ ] do pass with attached amendments(s)

[X] replace with CS for SSHB 165 (SA) [X] same title [ ] new title

and recommends

[ ] AND attaches a "Letter of Intent" [ ] New Fiscal Note [X] Zero Fiscal Note Attached

[ ] reports it back without recommendation

[ ] referred to the Committee

MEMBERS SIGNING DO PASS

Walt Furnace

Ronald F. Fanna

John J. Caudery

MEMBERS HAVING OTHER RECOMMENDATIONS:

~~Do~~ M. M. Miller DO PASS IF AMENDED

John J. Caudery
CHAIRMAN

H 60

STATE OF ALASKA
PRELIMINARY STATEMENT OF FISCAL IMPACT

Bill No: HB 165 Date on Bill: 02/04/83
Title: "An Act relating to reports to the Public Offices Commission"
Sponsor: Uehling, Barnes, Bussell, Cowdery, Furnace, Ward and Herrmann
Requestor:

RECEIVED
MAR 4 1983

1. Estimated fiscal impacts on:

a. Expenditures:

(Thousands of Dollars)

			FY 83	FY 84	FY 85	FY 86		
Capital								
Operating								
Total			0	0	0	0		

b. Revenues:

Revenue								

2. Source of funds to offset fiscal impact of bill:

3. Assumptions:

4. Disclaimer:
This statement has not been reviewed by the OMB in the Office of the Governor.

Prepared By: Theda S. Pittman Theda S. Pittman /sjw Phone:
Division: Alaska Public Offices Commission Date: March 4, 1983

Approved by Commissioner: Lisa Rudd Rebecca Brink for the Commissioner Date: March 4, 1983
Department: Administration

5. Distribution:
Original to Legislative Finance
Copy to OMB
Copy to Sponsor
Copy to Requestor

2/8/83

HB

172

THE LEGISLATURE OF THE STATE OF ALASKA
THIRTEENTH LEGISLATURE

FISCAL NOTE

I. REQUEST
Bill/Resolution No. CSHB 172(C&RA) Page 1 of 2
Title "An Act Relating to Municipal Government"
Requested by Governor's Office Date 1/5/83

II. FISCAL DETAIL
Agency Affected Department of Community & Regional Affairs
Program Category Affected Development
BRU, Program, Or Subprogram(s) Affected Local Government Assistance Grants
(Note: If more than one budget component is affected, separate line-item amounts and funding for each component in the analysis section.)

EXPENDITURES (Thousands of Dollars)

	FY 83	FY 84	FY 85	FY 86	FY 87	FY 88
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL				175.0	175.0	
400 COMMODITIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS,CLAIMS,ETC.		100	150	450.0	350.0	250.0
TOTAL		100.0	150.0	625.0	525.0	250.0

FUNDING (Thousands of Dollars)

GENERAL FUND		100.0	150.0	625.0	525.0	250.0
FEDERAL FUNDS						
OTHER (Specify Source)						

POSITIONS

FULL TIME		0	0	0	0	0
PART TIME						
TEMPORARY						

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

SEE ATTACHED

IV. DATE 1/5/83 PREPARED BY Terry Earley
AGENCY Community & Regional Affairs
PHONE 465-4730

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

33-001 (Rev. 12/82)

Article 3 of the Bill appears to be the only portion that has fiscal impact on this Division. That Article "TRANSITIONAL ASSISTANCE" provides for organizational grants to newly formed and newly reclassified cities. These grants are $50,000 the first year and $25,000 the second year.

Additionally, the bill provides for organization grants to newly formed Boroughs in the following amounts:

$300,000 for the first fiscal year
$200,000 for the second fiscal year
$100,000 for the third fiscal year

Finally, it provides for the department to establish an initial sales tax structure and an initial property tax structure.

Assumptions: In estimating the fiscal impact of the bill the following assumptions were made.

1. There would be two incorporations or reclassifications each year. This would produce an FY 84 cost of $100,000 and an annual cost of $150,000 from that point forward.

2. There will be one Borough Incorporation in 1986. This incorporation would necessitate expenditure of the 3 step organization grant in 1986, 1987, and 1988. Based on this assumption it is also estimated that contractual costs for setting up the two tax systems would be $350,000 in contractual costs spread over a 2 year period.

STATE OF ALASKA 1984 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date: 03/26/84

REQUEST
Bill/Resolution No: CSHB 172 (C&RA)
Title: An act relating to municipal government.
Sponsor: C&RA Committee
Requestor: House Judiciary
Date of Request:

FISCAL DETAIL
Agency Affected: Revenue
Program Category Affected: General Government, Property Tax
BRU, Program of Subprogram(s) Affected: Administrative Services Division
Petroleum Revenue Division

EXPENDITURES/REVENUES: (Thousands of Dollars)

		FY 84	FY 85	FY 86	FY 87	FY 88	FY 89
	OPERATING						
100	PERSONAL SERVICES	-	-0-	-	-	-	-
200	TRAVEL	-	-0-	-	-	-	-
300	CONTRACTUAL	-	-0-	-	-	-	-
400	SUPPLIES	-	-0-	-	-	-	-
500	EQUIPMENT	-	-0-	-	-	-	-
600	LANDS & STRUCTURES	-	-0-	-	-	-	-
700	GRANTS, CLAIMS	-	-0-	-	-	-	-
800	MISCELLANEOUS	-	-0-	-	-	-	-
	TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-
	CAPITAL	-0-	-0-	-0-	-0-	-0-	-0-
	REVENUE	-0-	-0-	-0-	-0-	-0-	-0-

FUNDING: (Thousands of Dollars)

	GENERAL FUND	-	-0-	-	-	-	-
	FEDERAL FUNDS	-	-0-	-	-	-	-
	OTHER	-	-0-	-	-	-	-
	TOTAL	-	-0-	-	-	-	-

POSITIONS:

	FULL-TIME	-	-0-	-	-	-	-
	PART-TIME	-	-0-	-	-	-	-
	TEMPORARY	-	-0-	-	-	-	-

SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

ANALYSIS: See attached.

Prepared By: Ervin B. Jones
Phone: 465-2313
Division: Administrative Services
Date: 03/29/84

Approved by Commissioner: Bruce McKellan
Date: 3/29/84
Agency: Revenue

Distribution (by Agency preparing fiscal note):
Legislative Finance
Legislative Sponsor
Requestor
Office of Management and Budget
Impacted Agency(ies)

Analysis for CSHB 172 (C&RA):

Section 11, 29.45.080, is a restatement of Section 29.53.045, which is currently on the books. There is no change.

Section 64 of the bill makes a technical amendment to the language of the section which shares tax revenues collected from taxes levied by AS 43.75 (Fisheries Business Tax). This would appear to be a technical amendment made necessary by the new definitions section which defines "unified municipality".

Section 89 repeals, among other things, AS 43.20.016 (Municipal Assistance). Since Section 91 provides for a right or liability of a municipality existing on July 1, 1984 (e.g. the right to receive a distribution from the municipal assistance fund) there would appear to be no administrative or fiscal impact on the Department of Revenue in fiscal year 1985. However, starting with fiscal year 1986 the municipal assistance fund and the distributions made therefrom would cease. The administrative effect of repealing the municipal assistance and the related distribution would be insignificant, in that the total effort expended by the Department of Revenue in distributing those funds takes a maximum of three working days for one accounting technician during the entire fiscal year.

TITLE 29 FACT SHEET

SUMMARY OF HB 172/SB 1 - TITLE 29 (MUNICIPAL CODE)

HB 172 and SB 1 are comprehensive bills that reorganize and clarify Title 29 (Municipal Code), but do not substantially change that part of the state statutes that direct the operation of local government in Alaska.

History: The current Title 29, last revised in 1972, is a hodgepodge of 13 years worth of amendments. It is very difficult for the average citizen to read and understand.

Recognizing the problem, the Legislature adopted SCR 66 in 1980, directing the rewrite of Title 29. A broadly representative policy committee, with the assistance of a technical committee, prepared a revised code after an exhaustive series of meetings, hearings, and public presentations.

HB 170 and SB 180 were introduced in 1981. More hearings were held during the 1981 legislative session, during the interim, and continuing through the 1982 session. SB 180 passed the legislature, but because of controversial floor amendments, Governor Hammond vetoed the bill.

In 1983, SB 1 was introduced by Senators Sturgulewski and Gilman; HB 172, by Governor Sheffield. Both bills are basically the same as the bill that had passed the previous year minus the controversial amendments. More committee work was done in both the House and Senate on the 204 page bill.

Changes: For the most part, these bills reorganize and reword Title 29 for clarity and flexibility. Policy changes of any substance are very few. The main changes are:

Third Class Boroughs: The existing third class borough, Haines Borough, continues in existence, but there is no provision for incorporating new third class boroughs in the future.

Home Rule Status: Second class cities and unincorporated areas are authorized to adopt home rule charters, which must be ratified by a vote of the people.

Municipal Powers: A general grant of municipal powers is given to municipalities, instead of a long list of enumerated powers. The difference is more semantic than actual, since the list includes almost every conceivable municipal power. There is no change in the manner in which boroughs acquire powers.

Organizational Grants/Feasibility Studies: The organizational grants are increased and expanded, depending on the category of local government. Studies for the feasibility of local government are authorized.

Incorporation Requirements: The minimum number of people required for incorporation as either a first class or home rule city is increased from 400 to 600.

Ordinance Violation: Penalties for ordinance violations are increased from a maximum $500 and 30-days to class B misdemeanor penalties, which are a maximum of $1000 and 90-days.

Extraterritorial Jurisdiction: Solid and septic waste disposal, utility services, wharves, harbors, and other marine services are added to the list of powers that may be exercised outside the boundaries of the municipality, if the municipality has the authority to exercise the power inside its boundaries.

Economic Development: Allow economic development as a non-areawide power for second class

boroughs, without requiring a vote of the people to exercise it.

Franchise: Requires a vote on franchises of more than 5 years; current law requires a vote on all franchises.

Eminent Domain: Removes the requirement that second class cities get permission from the Department of Community and Regional Affairs and the voters before exercising the power of eminent domain.

Planning, Platting, and Land Use: Updates the language, changing "zoning" to "land use".

Run-Off Elections: Allows run-off election procedures and requirements to be changed by ordinance.

Personal Property: Allows exemption of personal property from taxation.

Taxation of Boats: Removes the $5 and $15 property tax limit on boats if assessed on the basis of net tonnage.

Penalties and Interest: Increases the maximum penalty on delinquent property and sales tax from 10% to 20% and interest from 8% to 15%.

Revenue Bonds: Authorizes revenue bonds to be payable solely from the revenue and property of the project.

Municipal Assistance Fund: Moves the administration of the Municipal Assistance Fund from the Department of Revenue to the Department of Community & Regional Affairs.

Municipal Property Disposal: Requires municipalities to adopt formal procedures by ordinance; current law sets out procedures including requiring an election on the disposal of any property valued at more than $25,000.

The substantive differences between SB 1 and HB 172 are:

Hospital Definition: Proposed CSHB 172 (CRA) adds "special" hospitals to the definition section for revenue sharing eligibility.

Farm Use Greenhouses: Senate CRA amendment to SB 1 provides for the assessing of farm use greenhouses on the basis of full and true value for farm use.

Annexation and Detachment: Senate CRA amendment to SB 1 adds detachment language to the annexation sections and establishes a time deadline for Local Boundary Commission action.

Education Powers: Senate CRA recommends amending the powers section to provide for a double majority vote before a second class city or an unincorporated area in an REAA can assume the education power when incorporating as a first class or home rule city. The vote would be both in the proposed incorporating area and the rest of the REAA.

Alaska Municipal League
Prepared February 23, 1984

STATE OF ALASKA
THE LEGISLATURE

LEGISLATIVE AFFAIRS AGENCY

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

MEMORANDUM March 1, 1984

SUBJECT: Proposed amendment to the municipal code revision bill (CSHB 172 C&RA))

TO: Representative Mike W. Miller
Chairman
House Community and Regional Affairs

FROM: Tamara Brandt Cook TBC
Deputy Director
Division of Legal Services

You have asked what the legal effect would be of adding language to Sec. 29.60.140(b) in CSHB 172 (C&RA) so that the subsection would read:

> (b) In this section "unincorporated community" means a place in the unorganized borough or within an organized borough that is not incorporated as a city and in which 25 or more persons reside as a social unit. (New language underlined)

That section provides for aid to unincorporated communities. It replaces the current program of aid to Native village governments contained in AS 29.89.050 to reflect the way the program has actually been administered. Under sec. 29.60.140 each unincorporated community in the unorganized borough may receive an annual entitlement of $25,000 if there is a qualified entity in the community to receive and spend the money. The amendment changes the definition of "unincorporated community" to include communities in boroughs as well as communities outside of boroughs. Under this amendment, an unincorporated community, no matter where it is located in the state, can qualify to receive a grant.

You have also asked whether this amendment would have any fiscal impact. Since under the section as it now appears, only certain communities may receive a grant (those in the unorganized borough), and since the amendment would have the effect of increasing the number of communities that would

qualify for a grant by including communities in all the organized boroughs, it seems that the number of grants awarded under the section could increase substantially. Assuming an effort is made to fully fund the program, the program as amended will probably be significantly more expensive than it would have been under the original section. I have no way to determine how much additional money would be needed to fully fund the program.

You have also asked whether this amendment will encourage the formation of municipalities. I can think of no legal reason that this amendment would have that effect. Granting money to communities would not remove the limitation on incorporation of a cities under sec. 29.05.020 of the bill. In addition, some communities that would qualify for a grant on the basis of population would not be able to incorporate as a city for lack of 25 voters required to sign an incorporation petition. This is the minimum number of voters necessary for incorporation of a city. (See 29.05.060 (12)). To receive a grant, all that is needed is 25 residents, including children and others who might not be voters.

TBC:ojb
J4/029

Alaska State Legislature

Representative Milo Fritz
District 5
P.O. Box 158
Anchor Point, Alaska 99556
(907) 235-8366

While in Juneau
Pouch V
Juneau, Alaska 99811
(907) 465-4833

House of Representatives

MILO FRITZ

MEMORANDUM

TO: Representative Mike W. Miller
Chairman, House C & RA

FROM: Representative Milo H. Fritz
Interim Chairman, House C & RA Committee

DATE: January 17, 1984

SUBJ: HB 172 Problems

During the interim, my staff and I have studied HB-172 and its effects and implications. I have three changes to suggest that the Committee consider. I believe that current amendments #2 and #7 will not have the effect which is desired.

Amendment #2 eliminates the "legal grounds" for a recall election. Although this would remove the legal problem of determining the sufficiency of grounds, it leaves totally open the right to purse a recall. If any group has an inclination to start a recall, they state "a reason" and start collecting signatures. It would indeed be difficult to gather the amount of signatures necessary to have a recall election. However, the group will have received much media attention, the person who they are trying to recall has had his/her image tarnished and the whole political process put into a state of turmoil. This is not even considering the mental anguish caused by this action.

I do not want to see a group have the ability to singularly influence the destiny of a city or borough by the use of a threat of recalling one or more members of the governing body. If we do not have the "grounds" of a "recall", we will be allowing the recall system to be used for purely political/personal interest purposes.

Amendment #7 would eliminate the exemption of greenhouses from assessment at full valuation for tax purposes. The argument against this exemption was that "the purpose of the exemption was to allow farms to continue in spite of otherwise inflated land prices, and the corresponding taxes. I believe that the greenhouses in our state also need this help. If a greenhouse is to be successful, it must have the ability to get its produe to market, which is the urban population centers. The law is written so that a highly prosperous greenhouse, will be taxed at a high "true value of farm use". This exemption will allow our fledgling greenhouse industry a chance to grow.

The report to the 13th State Legislature examining court decisions and opinions of the Attorney General construing Alaska Statutes showed a problem with the local preference law. AS 04.11.490 states that one or "several questions" can be placed before the voters. The succeeding paragraphs which have been updated specifically state that only one question can be placed before the voters at a time. Correcting this oversight will only take a short amendment removing the words "or several questions". This action was suggested on page 78 of the report.

BILL SHEFFIELD, GOVERNOR

DEPT. OF COMMUNITY & REGIONAL AFFAIRS

OFFICE OF THE COMMISSIONER

☐ POUCH B
JUNEAU, ALASKA 99811
PHONE: (907) 465-4700

☐ 225 CORDOVA STREET - BLDG B
ANCHORAGE, ALASKA 99501
PHONE: (907) 264-2294

February 27, 1984

POSITION PAPER

RE: HB 172
SPONSOR: Rules by Request of the Governor

PROGRAM EFFECTS:

HB 172 is a bill that reorganizes and clarifies Title 29 of the Alaska Statutes, which is the Municipal Code.

COMMENTS:

HB 172 is the product of the work of the Community and Regional Affairs Committees of both Houses of the Legislature, the Alaska Municipal League, many of the League's affiliate organizations, and the Department of Community and Regional Affairs.

This bill clarifies the Municipal Code, better organizes it, and eliminates ambiguities and conflicts from existing law.

The Department supports passage of this legislation, as well as considers it one of its highest priorities.

APPROVED: Emil Notti
Emil Notti, Commissioner

21-P1LH

Alaska MUNICIPAL League

TELEPHONES
(907) 586-1325
(907) 586-6526

105 MUNICIPAL WAY, SUITE 301
JUNEAU ALASKA 99801

RESOLUTION OF THE ALASKA MUNICIPAL LEAGUE

A RESOLUTION REQUESTING THE THIRTEENTH ALASKA STATE LEGISLATURE TO ADOPT THE REVISED TITLE 29

WHEREAS Title 29 of the Alaska Statutes deals with local governments and is badly in need of revision; and

WHEREAS a proposed revision of Title 29 has been prepared and was introduced during the First Session of the Thirteenth Alaska State Legislature; and

WHEREAS the North and Northwest Alaska Mayors' Conference has previously endorsed this revision on several occasions;

NOW, THEREFORE, BE IT RESOLVED that the Alaska State Legislature act on the proposed Title 29 as revised without controversial amendments.

Adopted November 5, 1983

Alaska MUNICIPAL League

TELEPHONES
(907) 586-1325
(907) 586-6526

105 MUNICIPAL WAY, SUITE 301
JUNEAU, ALASKA 99801

1984 POLICY PRIORITIES

New Title 29 Adoption: The League urges the Alaska State Legislature to pass legislation adopting the proposed Title 29 as revised without controversial amendments. The League encourages the Governor and the Legislature to recognize the significance of the effort to revise Title 29, the Municipal Code, and the importance of insuring that the legislation contain only the fundamental elements and guidelines for a basic municipal code. The League requests other proposals which would constitute major policy revisions or innovations in the function of local government be considered in separate legislation, which, if approved, would be incorporated into Title 29 once the basic code has been adopted.

Full Funding for Municipal Assistance at the Statutory Level: The League supports the funding of the FY 85 Municipal Assistance Fund at the statutory level of an amount equal to or greater than 30% of the FY 84 corporate income tax proceeds so that communities can continue to provide important needed services while holding down local taxes.

Funding for Revenue Sharing: The League urges the Legislature to provide a stable and predictable level of funding for Revenue Sharing, Chapter 88 - Municipal Tax Resource Equalization, with annual increases to reflect population and inflation changes so that local officials can maintain an orderly continuation of operations. The League also urges full funding for Revenue Sharing, Chapter 89 - State Aid for Miscellaneous Municipal Purposes, which establishes entitlements for road maintenance, hospital and health facility operations, volunteer fire departments in the unorganized borough, grants for unincorporated communities, and cost-of-living adjustments.

Consolidation of Municipal Assistance and State Revenue Sharing Programs: The League endorses consolidation of the administration of the Municipal Assistance and Revenue Sharing Programs with the Department of Community and Regional Affairs in order to simplify the program process for municipalities and the state.

Revenue Sharing Task Force: The League requests the Governor to form a high-level commission composed of members of the State Administration, the Legislature, local government elected and appointed officials, and the academic and private sectors to study and make recommendations on the following:

1. What are the basic services mandated by state constitution, state statutes, and local charter?

2. Which entity has responsibility for providing these services?

3. What plan or method would best finance the provision of those services in Alaska?

4. What process would best ensure equity in the distribution of state resources among all communities and citizens in the state?

Full Funding of the Senior Citizen Property Tax Exemption Program: The League urges the Alaska State Legislature to adopt legislation to provide a supplemental appropriation for the FY 84 shortfall in funding for the Senior Citizens Homeowners Property Tax Exemption Program. The League also requests full funding of the program in FY 85 so that the taxpayers of those municipalities not receiving entitlements will not have to bear the burden of the shortfall in program funds.

State Compliance with Local Subdivision Ordinances: The League urges passage of legislation which requires the State of Alaska to comply with all local subdivision ordinances and regulations in connection with the state land disposal programs. The state should meet the same local requirements imposed on private citizens.

Local Prevailing Wage: The League urges the Legislature to adopt legislation to permit local governments the autonomy to administer local construction projects. Title 36, the Public Contracts Code, should be amended to permit local governments to establish their own notice, reporting, and prevailing wage requirements for local construction.

Adopted by the AML Board of Directors
January 31, 1984

ALASKA CONFERENCE OF MAYORS

WHEREAS, Title 29 of the Alaska Statutes, the Municipal Code, has not been revised since 1972; and

WHEREAS, eleven years of amendments to Title 29 have created a confusing patchwork that is very difficult to read and understand; and

WHEREAS, the proposed revision of Title 29 reorganizes and clarifies the Municipal Code without making major policy changes; and

WHEREAS, major policy changes to Title 29 should be considered in separate legislation in order to keep the Title 29 revision a "clean" bill;

NOW, THEREFORE, BE IT RESOLVED, that the Alaska Conference of Mayors respectfully requests the Alaska State Legislature adopt this session the revised Title 29, as proposed, without any controversial amendments.

Adopted by the Alaska Conference of Mayors on March 5, 1984 in Juneau, Alaska.

Jon D. Halliwill

Jon D. Halliwill, President

APPROVED
Date: 3-6-84

Requested by: Assemblywoman Maser
Prepared by: Municipal Clerk
For Reading: March 6, 1984

ANCHORAGE, ALASKA

AR NO. 84-65 (Amended)

A RESOLUTION OF THE ANCHORAGE MUNICIPAL ASSEMBLY URGING THE STATE LEGISLATURE AND THE GOVERNOR TO PROCEED EXPEDITIOUSLY WITH THE PASSAGE OF TITLE 29 REWRITE.

WHEREAS, the current Title 29, last revised in 1972, is a hodgepodge of 13 years worth of amendments, and

WHEREAS, it is very difficult for the average citizen to read and understand, and

WHEREAS, recognizing the problem, the legislature adopted SCR 66 in 1980, directing the rewrite of Title 29, and

WHEREAS, a broadly representative policy committee, with the assistance of a technical committee, prepared a revised code after an exhaustive series of meetings, hearings, and public presentations, and

WHEREAS, SB 180, the original bill, was passed by the legislature in the 1982 session but because of controversial floor amendments, Governor Hammond vetoed the bill, and

WHEREAS, HB 172, the rewrite of Title 29, is a number one priority of the Alaska Municipal League.

BE IT, THEREFORE, RESOLVED, the Anchorage Municipal Assembly hereby requests the State Legislature and the Governor to proceed expeditiously with the passage of HB 172.

PASSED and APPROVED this 6th day of March, 1984.

MAR 1984
RECEIVED

Chairman

ATTEST:

Municipal Clerk

Presented by: The Manager
Introduced: 03/22/84
Drafted by: G.L.S.

RESOLUTION OF THE CITY AND BOROUGH OF JUNEAU, ALASKA

Serial No. 1027

A RESOLUTION URGING THE ALASKA LEGISLATURE TO TAKE IMMEDIATE ACTION TO ADOPT THE REVISED MUNICIPAL CODE.

WHEREAS, the present municipal code (Title 29 of the Alaska Statutes) was adopted in 1972 and was a consolidation of the former Title 29 that dealt with cities and the former Title 7 that dealt with boroughs, and

WHEREAS, such consolidation was the first effort at integrating the codes applying to these two forms of local government in Alaska, and

WHEREAS, local governments in Alaska have matured substantially since 1972 and now face different problems, and

WHEREAS, the Twelfth Legislature adopted a comprehensive revision of the municipal code, but the bill was vetoed by the governor because of certain controversial floor amendments that were added, and

WHEREAS, "clean" versions of the municipal code revision were introduced in each house by the Thirteenth Legislature during its first session, and

WHEREAS, the proposed municipal code revision reorganizes and clarifies Title 29 without making major policy changes, and

WHEREAS, the municipalities in Alaska need the proposed revisions to Title 29 to eliminate the existing confusion that exists within Title 29 and to provide municipalities in Alaska with a legal framework more suited to the 1980's;

NOW, THEREFORE, BE IT RESOLVED BY THE ASSEMBLY OF THE CITY AND BOROUGH OF JUNEAU, ALASKA:

That the Alaska State Legislature is urged to act immediately on the proposed Title 29 revision and to pass out a "clean" version without additional policy changes or controversial amendments.

Adopted this 22nd day of March, 1984.

Jean Ulmer
Mayor

Attest:

Peggy Garrison
Clerk



Suggested by: Mayor Tom Wagoner

CITY OF KENAI

RESOLUTION NO. 84-30

A RESOLUTION OF THE COUNCIL OF THE CITY OF KENAI, ALASKA URGING THE 13TH ALASKA STATE LEGISLATURE TO ADOPT THE REVISED TITLE 29 AS PROPOSED PRIOR TO ADJOURNMENT OF THE 13TH ALASKA STATE LEGISLATIVE SESSION.

WHEREAS, Title 29 of the Alaska Statutes, the Municipal Code, has not been revised since 1972, and

WHEREAS, eleven years of amendments to Title 29 have created a confusing patchwork that is both difficult to read and to understand, and

WHEREAS, the proposed revision of Title 29 reorganizes and clarifies the municipal code without making major policy changes, and

WHEREAS, major policy changes to Title 29 should be considered in separate legislation in order to keep the Title 29 revision a clear and understandable bill.

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF KENAI, ALASKA, that the Kenai City Council respectfully request the 13th Alaska State Legislature to adopt the proposed revision of Title 29 as submitted without any major or controversial amendments.

PASSED BY THE COUNCIL OF THE CITY OF KENAI, ALASKA this 21st day of MARCH, 1984.

Tom Wagoner

Tom Wagoner, Mayor

ATTEST:

Janet Whelan

Janet Whelan, City Clerk

KODIAK ISLAND BOROUGH
RESOLUTION NO. 84-20-R

A RESOLUTION OF THE KODIAK ISLAND BOROUGH ASSEMBLY SUPPORTING SENATE BILL 1 AND HOUSE BILL 172 WHICH REVISE AND REORGANIZE ALASKA STATUTES TITLE 29.

WHEREAS, Alaska Statutes Title 29 is that portion of State Law which governs municipal government within the State of Alaska, and

WHEREAS, Title 29 has been in need of revision and reorganization for many years, and

WHEREAS, Senate Bill 1 and House Bill 172 were filed during the First Session of the 13th Legislature, and

WHEREAS, either one of these bills would accomplish the needed revision and reorganization, and

WHEREAS, the bills do not contain any of the provisions which were criticized by Governor Hammond in his July 15, 1982 veto, and

WHEREAS, the bills make many non-controversial improvements that are long overdue and necessary for the smooth working of municipal government in our state

NOW, THEREFORE, BE IT RESOLVED by the Kodiak island Borough Assembly that the Alaska State Legislature's urge to pass Senate Bill 1 and/or House Bill 172 during the Second Session of the Thirteenth Legislature.

BE IT FURTHER RESOLVED that the Legislature refrain from making controversial amendments to these bills.

AND BE IT FURTHER RESOLVED that copies of this resolution be sent to:

The Honorable Bob Mulcahy, State Senate

The Honorable Fred F. Zharoff, House of Representatives

The Honorable Bill Ray, Chairman, Senate Judiciary Committee

The Honorable Mike W. Miller, Chairman, House Community and Regional Affairs Committee

The Alaska Municipal League

PASSED AND APPROVED this 1st day of March, 1984.

KODIAK ISLAND BORCUGH

By Jerome M. Selby
Borough Mayor

ATTEST:

By Shirley Miller, CMC
Borough Clerk

City of Ketchikan

334 Front Street
Ketchikan, Alaska 99901
907 225-3111



March 19, 1984

Representative Charlie Bussell
Chairman, House Judiciary Committee
House of Representatives
Pouch V (MS310[illegible])
Juneau, Alaska 99811

Dear Representative Bussell:

Enclosed is a copy of City of Ketchikan Resolution No. 1371 passed by the City Council March 15, 1984.

The Council supports the reorganization of Title 29 and urges the State Legislature to pass House Bill 172 (CSHB 172).

Your consideration of this resolution is appreciated.

Sincerely,

Karen Miles

Karen Miles
City Clerk

KM/kms

Enc. 1

CITY OF KETCHIKAN, ALASKA

RESOLUTION NO. 1371

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF KETCHIKAN, ALASKA, SUPPORTING THE REORGANIZATION OF TITLE 29 FOR CLARITY AND FLEXIBILITY AND URGING PASSAGE OF HOUSE BILL 172 (CSHB 172), AND ESTABLISHING AN EFFECTIVE DATE.

WHEREAS, in 1980 the Legislature adopted SCR 66 which directed that Title 29 be reviewed and rewritten to provide clarity and readability; and

WHEREAS, a broadly representative policy committee representing rural and urban communities, with the assistance of a technical committee, prepared a revised code after an exhaustive series of meetings, hearing, and public presentations; and

WHEREAS, Title 29 as clarified was introduced as HB 170 and SB 180 in 1981; and

WHEREAS, more hearings were held during the First and Second Session of the Twelfth Alaska State Legislature and hearings were also held in the interim between sessions; and

WHEREAS, SB 180 passed the Legislature during the Second Session; and

WHEREAS, because of controversial floor amendments, the City of Ketchikan joined other local governments urging Governor Hammond to veto the bill; and

WHEREAS, Title 29 as clarified was again introduced as SB 1 and HB 172 during the First Session of the Thirteenth Alaska legislature; and

WHEREAS, both bills are basically a reorganization and rewording of Title 29 to enhance its clarity and flexibility; and

WHEREAS, the Council of the City of Ketchikan strongly feels that this clarification is in the best interests of all local governments in Alaska and that the content and intent of the bill is not controversial; and

WHEREAS, the City Council appreciates the hours of time and effort expended on this bill by Alaskans who harbor a great concern for the well-being of Alaska Local Government and believes those hours should not have been expended in vain.

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Ketchikan, Alaska as follows:

Section 1: The Council of the City of Ketchikan supports the reorganization of Title 29 for clarity and flexibility and urges the State Legislature to pass House Bill 172 (CSHB 172).

Section 2: The City Council supports this bill in its basic form and requests other proposals which would constitute major policy revisions or innovations in the function of local government be considered in separate legislation.

Section 3: The Council further requests that all committees expeditiously consider House Bill 172 (CSHB 712) to assure action prior to adjournment of the Thirteenth Alaska Legislature.

Section 4: The City Clerk is hereby directed to send copies of this resolution to Representative McBride, Representative Wendte, Senator Ziegler, the House Community and Regicnal Affairs Committee, the House Judiciary Committee, and the House Rules Committee, the Senate Community and Regional Affairs Committee, the Senate Judiciary Committee, the Senate Finance Committee, the Senate Rules Committee, and the Alaska Municipal League.

Section 5: This resolution shall be effective immediately upon passage and approval.

PASSED AND APPROVED THIS 15 day of March, 1984.

Edward W. Zastrow, Mayor

ATTEST:

Karen M. Sund, Deputy Clerk

OFFICE OF THE MUNICIPAL ATTORNEY
KETCHIKAN GATEWAY BOROUGH
AND
CITY OF KETCHIKAN

334 FRONT STREET
KETCHIKAN, ALASKA 99901
(907) 225-3111, Ex. 327

March 13, 1984



Representative Charley Bussell
Judiciary Committee Chairman
Alaska State Legislature
Pouch V (MS 3100)
Juneau, Alaska 99811

Re: CS for HB 172 (CRA)

Dear Representative Bussell:

I am writing to urge a favorable vote and passage of HB 172.

As you may be aware, a number of members of both the House and the Senate, and also a wide spectrum of persons from many, if not most, of the rural and metropolitan communities, served on the joint legislative committee that devoted virtually hundreds of hours in reviewing and drafting language deemed necessary to clarify and reorganize existing Title 29 (government code) so as to be more understandable and workable for both the small as well as larger communities. In addition, a comprehensive technical committee, composed of bond, tax and other experts spent many hours reviewing and clarifying provisions to assure clarity and utility of the code.

We feel this clarifying bill is vitally needed and passage will greatly enhance the ability of local communities and municipalities to provide responsive local government.

We respectfully request a favorable vote and passage of this bill this session.

Yours very truly,

Russell W. Walker
Municipal Attorney

EG/1/29

HAINES BOROUGH

P.O. BOX H
HAINES, ALASKA 99827
(907) 766-2711



March 22, 1984

The Honorable Charles Bussell
Chairman
House Judiciary Committee
Pouch V
Juneau, AK 99811

Dear Chairman Bussell:

The Haines Borough, along with many other municipalities, has been working very closely with the Legislative committees re-writing the Municipal Code, Title 29.

We feel very strongly that this legislation (HB172 Rules) must be passed during the current legislative session. A new Legislature would require more public hearings going over the same material we've testified on so many times before.

We would appreciate any help that you could give us to get this bill out of committee and on to the floor of the House and then to the Senate.

Sincerely,

Bob Henderson

Bob Henderson, Mayor

REH:AMJ

cc/Rep. Peter Goll
Sen. Dick Eliason



HAINES BOROUGH

Resolution 222

A RESOLUTION REQUESTING THE ALASKA STATE LEGISLATURE TO ADOPT THIS SESSION THE REVISED TITLE 29 (HB 172 Rules), WITHOUT AMENDMENTS.

WHEREAS, Title 29 Municipal Code of Alaska Statutes has not been revised since 1972; and

WHEREAS, many years of amendments of Title 29 have created a confusing, unclear and difficult to understand code; and

WHEREAS, committees of Alaska State Legislature have been working on revisions and holding hearings for four consecutive years; and have produced a clear, concise code; and

WHEREAS, a new Legislature would require several more years of work;

NOW, THEREFORE, BE IT RESOLVED, that the Haines Borough respectfully requests the Alaska State Legislature to adopt this session the revised Title 29 (such as HB 172 Rules);

BE IT FURTHER RESOLVED, that no new amendments be added to this bill, but instead be passed as separate bills and later added to the Code.

ADOPTED March 20, 1984

R E Henderson

R. E. Henderson, Mayor

ATTEST:

Frank M. Haas

Frank M. Haas, Assembly Clerk

RESOLUTION 84-1

A RESOLUTION OF THE CITY OF HOUSTON, ALASKA ENDORSING THE ADOPTION BY THE ALASKA STATE LEGISLATURE OF HB 172, A REVISION OF THE MUNICIPAL CODE.

WHEREAS, as a second class City, the operation of City functions is mandated by Title 29 of the Alaska Statutes, and

WHEREAS,proposed Legislatiion in HB 172 will provide clarification and continuity of said Statutes,

NOW, THEREFORE BE IT RESOLVED, that the City Council of the City of Houston does endorse and encourage passage of HB 172 during the 1984 Legislative session.

ADOPTED THIS 9th DAY OF February 1984.

John J. Eder, Deputy Mayor

ATTEST:

Elsie M. O'Bryan, City Clerk

P.O. BOX 27 • HOUSTON, ALASKA 99694 • 992-6869

CITY OF UNALASKA
UNALASKA, ALASKA

RESOLUTION 84-16

A RESOLUTION SUPPORTING HOUSE BILL 172
WHICH AMENDS ALASKA STATUTES TITLE 29.

WHEREAS: Alaska Statutes 29 is the section of the statutes which deals with operation of local governments, and

WHEREAS: This title has been amended many times since statehood but not recodified in recent years, and

WHEREAS: That recodification is seriously needed to enable local government officials and citizens interested in local government to make more efficient use of the state law.

NOW, THEREFORE BE IT RESOLVED, that:

The City Council of the City of Unalaska supports the present recodification of Title 29 which is contained in HB 172 now under consideration by the Alaska Legislature.

Passed and approved this 8th day of March, 1984 by the City Council of the City of Unalaska, Alaska.

William Fisher
Mayor

Glenda Martin Currier
City Clerk

CITY OF FORT YUKON

INCORPORATED 1959

Post Office Box 269

Fort Yukon, Alaska 99740

Telephone (907) 662-2479 or 2379

RESOLUTION 84-07

WHEREAS, Title 29 of the Alaska Statutes, the Municipal code, has not been revised since 1972; and

WHEREAS, Eleven years of amendments to Title 29 have created a confusing patchwork that is very difficult to read and understand; and

WHEREAS, The proposed revision of Title 29 reorganizes and clarifies the Municipal code without making major policy changes; and

WHEREAS, Major Policy changes to Title 29 should be considered in separate legislation in order to keep the Title 29 revision a "Clean" bill;

NOW THEREFORE BE IT RESOLVED, That the City of Fort Yukon, Inc. respectfully requests the Alaska State Legislature adopt this session the revised Title 29, as proposed, without any controversial amendments.

PASSED AND APPROVED by the City council of the City of Fort Yukon, Alaska this 20 day of March, 1984.

MAYOR

ATTEST:

Valerie A. Englishoe

City Clerk

Submitted By:
Mayor Rasmussen
Action Taken:
Yes /5/ No /0/

CITY OF NOME, ALASKA
RESOLUTION

R-84-3-2

"A RESOLUTION REQUESTING
THE ALASKA STATE LEGISLATURE
ADOPT THE REVISED TITLE 29."

WHEREAS, Title 29 of the Alaska Statutes, the Municipal Code, has not been revised since 1972; and,

WHEREAS, eleven years of amendments to Title 29 have created a confusing patchwork that is very difficult to read and understand; and,

WHEREAS, the proposed revision of Title 29 reorganizes and clarifies the Municipal Code without making major policy changes; and,

WHEREAS, major policy changes to Title 29 should be considered in separate legislation in order to keep the Title 29 a "clean" bill;

NOW, THEREFORE, BE IT RESOLVED by the Nome Common Council that the Alaska State Legislature adopt during this session the revised Title 29, as proposed, without any controversial amendments.

SIGNED and DATED this 12th day of March, 1984.

Leo B. Rasmussen, Mayor

ATTEST:

Linda E. Conley, City Clerk

City of Tenakee Springs

RESOLUTION 84-11

In the Council
March 22, 1984

Introduced by the
Council President

A RESOLUTION REQUESTING ADOPTION OF REVISED ALASKA TITLE 29

WHEREAS, Title 29 of the Alaska Statutes, the Municipal Code, has not been revised since 1972; and

WHEREAS, eleven years of amendments to Title 29 have created a confusing patchwork that is very difficult to read, understand and administer; and

WHEREAS, the proposed revision of Title 29 reorganizes and clarifies the Municipal Code without making major policy changes; and

WHEREAS, major policy changes to Title 29 should be considered in separate legislation in order to keep the Title 29 revision a "clean" bill; then

THEREFORE, BE IT RESOLVED, that the Council of the City of Tenakee Springs respectfully requests the Alaska State Legislature adopt this session the revised Title 29, as proposed, without any controversial amendments.

ADOPTED 5 YEA - 2 ABSENT THIS 22 DAY OF MARCH, 1984

Robert A. Pegues
City Council President
ex officio MAYOR

ATTEST:

Lawrence K. Hoare
Lawrence K. Hoare
City Clerk

HB 172 SUMMARY

HB 172 is a comprehensive bill to clean up the language and reorganize the contents of Title 29, the State Municipal Code. Its primary purpose is to make necessary language and format changes to Title 29 to achieve a more clearly organized, simplified and more readily useable set of statutes. Although the bill is lengthy, for the most part it involves moving existing provisions of Title 29 from one part of the code to another or making changes in wording to clarify current law.

The Department of Community and Regional Affairs has worked extensively over the past five years to achieve passage of the legislation. Because of years of patchwork amendments to Title 29, there now exists a confusing and often controversial mass of state law dealing with municipalities. Most of the changes in the bill are necessary for this reason and are supported by the department. They are also supported by the Alaska Municipal League and, except for some disagreement with certain isolated specific language, by all local governments.

The following analysis summarizes some of the major changes to Title 29 which are included in the bill and how these changes will make program administration easier for the Department of Community and Regional Affairs.

ORGANIZATION AND FORMAT OF TITLE 29

One of the most difficult problems of working with the current law is that it is not always easy to ascertain with any degree of certainty whether a particular statute applies to all classes of municipalities or whether certain classes are governed by language found elsewhere in Title 29. HB 172 resolves this problem by organizing most sections by class of municipality, making it much easier to refer to specific sections and determine which classes of municipalities are affected.

In addition, language within the revisions has been modified so that the terms of reference to municipalities, governing boards, etc., are held constant. The term "municipality" refers to all local governments with a subsequent distinction drawn between "home rule" and "general law." This consistency now makes it possible, by checking general references alone, to ascertain whether or not a particular class and type of municipality is affected by specific statutes.

These changes in the organization of the statutes and the use of consistent and more precise terminology mark these revisions to Title 29 as a great improvement over existing statutes.

2/21/84
from Terrance
May + Mike
Worley - C+RA dept.

CHANGES TO THE EXISTING LAW

Aside from effecting a better organization of the contents of Title 29 and improved terminology, HB 172 also proposes some important improvements to the current body of municipal law.

Certain powers and responsibilities are clarified in HB 172, particularly in the areas of extraterritoriality and land disposal. Other portions of the bill create new flexibility for local communities, particularly in the areas of reclassification, home rule and zoning. Some changes are of great benefit to the department in its administration of programs, such as revenue sharing for unincorporated communities. These are all worthwhile changes that argue in favor of the bill.

Municipal Incorporation and Reclassification

- HB 172 provides for second class municipalities to reclassify directly to home rule governments. Existing statutes restrict this reclassification to municipalities of the first class.

Extraterritorial Powers

- Extraterritorial power for all municipalities has been expanded to allow for the operation of additional facilities outside of municipal boundaries, including solid and septic waste facilities, wharfs, harbors and other marine facilities.

- A municipality which provides a facility outside its boundaries may regulate its use to the extent that the jurisdiction in which the facility is located does not regulate it. Under existing statutes, no right to regulate was provided for the municipality within which the facility was located.

Eminent Domain

- The exercise of eminent domain and declaration of taking is extended to second class cities. Under current law, second class cities must first receive the approval of the Department of Community and Regional Affairs before they can exercise this power in a specific instance.

Land Disposal

- Municipal land disposal provisions have been simplified, requiring only that the local governing body establish a set of formal procedures by ordinance.

Planning and Zoning

- Zoning laws have been broadened to allow for "land use regulations," thus providing a wider range of options for local governments to implement their local plans and programs.

All of these modifications must be viewed as important, positive and long sought after improvements to Title 29.

Revenue Sharing

- HB 172 would combine the state's two most important programs of shared revenues with municipalities -- State Revenue Sharing and Municipal Assistance. The effects of this consolidation would include simplified program administration, a streamlined application procedure, and predictability of funding.

- Cleans up an existing provision of Title 29 which makes revenue sharing funds available to "Alaska Native Village" governments, which an Attorney General's opinion ruled was unconstitutional. HB 172 would resolve this problem by making revenue sharing available to all unincorporated communities in the unorganized borough, not just those with Native village governments.

Incorporation and Transition Grants

- Raises the organization grant paid by the state to newly formed cities from $10 per voter to a $50,000 in the first year and $25,000 in the second year. Boroughs would be eligible to receive a grant of $300,000 in the first year, $200,000 in the second, and $100,000 in the third year following incorporation. Boroughs now receive $25,000 on incorporation or $10 per voter, whichever is higher. The increased organizational grants will make it much easier for communities or regions of the state to organize as municipalities.

Municipal Property Taxation

In the sections which deal with local property taxation, the bill clarifies several points which are confusing under current law. In addition, it allows municipalities more flexibility in the area of asssessment policy.

In the past, property taxes were required to be levied equally against both real and personal property. HB 172 allows municipalities to exempt property in either category if it wishes to do so, an option which has been badly needed in some communities.

In addition, the Office of the State Assessor responds to numerous questions each year which are caused by the inferior organization of assessment and taxation laws under the current Title 29. The improved arrangement of these laws in HB 172 will be helpful in reducing the number of inquiries that the office currently addresses.

Second Class Borough Powers

Mandatory Powers

1. Assessment and collection of taxes. AS 29.33.030.
2. Education. AS 29.33.050.
3. Planning, platting, and zoning. AS 29.33.070-245.

Optional Areawide Powers (by ordinance, without a vote of the people)

1. Transportation systems. AS 29.48.030(b).
2. Licensing, impounding, and disposal of animals. AS 29.48.035(a)(5).
3. Water pollution control. AS 29.48.035(a)(17).
4. Air pollution control. AS 29.48.035(a)(18).
5. Licensing of day care facilities. AS 29.48.035(a)(20).

Optional Non-areawide Powers (by ordinance, without a vote of the people)

1. Fireworks. AS 29.48.020(1).
2. Animal control. AS 29.48.020(2) & AS 29.48.035(a)(5).
3. Licensing & operation of motor vehicles & operators. AS 29.48.020(3) & Title 28.
4. Snow vehicles. AS 29.48.020(4) & AS 05.30.070.
5. Garbage & solid waste collection and disposal. AS 29.48.020(5).
6. Water pollution control. AS 29.48.020(6) & AS 29.48.035(a)(17).
7. Housing rehabilitation for energy conservation. AS 29.48.020(7).
8. Local service roads & trails. AS 29.48.020(8).
9. Emergency communications centers. AS 29.48.020(9).
10. Transportation systems. AS 29.030(b).
11. Licensing of day care facilities. AS 29.48.035(a)(20).

Changes in HB 172

1. Economic development. New nonareawide power authorized in HB 172.
2. Air pollution control. In current law, authorized just areawide; in HB 172, both areawide and nonareawide.
3. Day care facilities. In current law, authorized both areawide and nonareawide; HB 172, just nonareawide.
4. Snow vehicles. HB 172 deletes reference, but power remains the same because of authority in Title 5.
5. Motor vehicles. HB 172 deletes reference; grant of power remains in Title 28, but not as clearly as in current Title 29.

Prepared by the Alaska Municipal League
February 27, 1984

Existing Title 29

Chapter 29.03 Unorganized Borough

Chapter 29.08 Classification of Municipalities
Reclassification 29.08.040

Chapter 29.13 Home rule municipalities
Charter procedures
List of Title 29 sections which apply to home rule

Chapter 29.18 Incorporation of municipalities

Chapter 29.23 Officers and employees
Reapportionment 29.23.021-.033
Assembly and city council
Mayor
Borough and city administrator
Other officers, municipal clerk 29.23.360-.390
Boards and commissions 29.23.401
Manager plan 29.23.410-.480
Oaths of office 29.23.500
Discrimination 29.23.540
Conflict of interests 29.23.555
Vacancies in office 29.23.570
Public meetings 29.23.580

Chapter 29.28 Elections
Election contests 29.28.050
Initiative and referendum
Recall

Chapter 29.33 Areawide borough powers

Chapter 29.38 Nonareawide borough powers

Chapter 29.41 Third class boroughs (Haines only)

Chapter 29.43 Cities outside boroughs powers

Chapter 29.48 Additional powers of municipalities
City powers
Procedures for boroughs to acquire other powers
Acts required to be by ordinance, 29.48.130
Ordinance procedures 29.48.140-.180
Budget 29.48.190
Maximum criminal penalties 29.48.200
Sale of public land 29.48.260

Chapter 29.53 Assessment and taxation
Tax exemptions
Assessment, board of equalization
Tax foreclosure and sales

City proprty tax 29.53.400
Sales tax 29.53.414-.460

Chapter 29.58 Municipal debt
General obligation bonds
Revenue bonds

Chapter 29.63 Special Assessments and service areas
Local improvement districts - city or borough
Service areas - local exercise of borough powers

Chapter 29.68 Boundaries
Annexation
Detachment
Unification

Chapters 29.73 and 29.78 Miscellaneous
Condemnation (eminent domain)
Municipal name change
Definitions

Chapter 29.88 Municipal tax resource equalization entitlement

Chapter 29.89 State aid
Revenue sharing

Proposed Title 29

Chapter 29.03 Unorganized borough

Chapter 29.04 Classification of municipalities
Reclassification 29.04.040-.060

Chapter 29.05 Incorporation

Chapter 29.06 Boundaries
Name change
Annexation and detachment
Unification

Chapter 29.10 Home rule
Charter procedures
List of limitations on powers

Chapter 29.20 Officers and employees
Conflict of interest 29.10.010
Public meetings 29.20.020
Reapportionment
Assembly and city council
Vacancies 29.20.170, .180, .280
Administrator
Mayor
Boards and commissions
Other officers
Manager plan 29.20.470-.520
Oaths of office 29.20.600

Chapter 29.25 Ordinances
Acts required to be by ordinance 29.25.010
Ordinance procedures 29.25.020-.050
Maximum criminal penalties 29.25.070

Chapter 29.26 Elections
Procedures
Contest 29.26.070
Initiative and referendum 29.26.100-.190
Recall 29.26.240-.360

Chapter 29.35 Municipal powers
General powers 29.35.010
Borough areawide powers 29.35.150-.180
First class borough 29.35.200
Second class borough 29.35.210
Third class borough (Haines only) 29.35.220
Cities inside boroughs 29.35.250
Cities outside boroughs 29.35.260
Additional powers procedures 29.35.300-.340
Service areas 29.35.450-.490

Chapter 29.40 Planning and platting

Chapter 29.45 Taxation
Tax exemptions 29.45.030-.050
Assessment, board of equalization
Tax foreclosures and sales
City property tax 29.45.550-.600
Sales tax 29.45.650-.710

Chapter 29.46 Special assessments
Local improvement districts

Chapter 29.47 Municipal debt
General obligation bonds
Revenue bonds

Chapter 29.55 Municipal programs
Historical preservation 29.55.010-.020

Chapter 29.60 State programs
Municipal tax residence equalization entitlements 29.60.010-.080
Revenue sharing 29.60.100-.180
Municipal assistance 29.60.350-.360

Chapter 29.60 Land grant
Land selections

Chapter 29.71 Miscellaneous
Definitions

HB

188

STATE OF ALASKA
THE LEGISLATURE

LEGISLATIVE AFFAIRS AGENCY

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

M E M O R A N D U M

February 25, 1983

SUBJECT: Big game hunting by nonresidents (HB 188)

TO: Representative John Ringstad
Chairman, House Resources Committee

FROM: Edward H. Hein
Legislative Counsel

You have asked whether HB 188 raises any additional constitutional issues or problems not present in the existing law that the bill amends.

HB 188 repeals and reenacts AS 16.05.407. The only substantive change the bill makes is to allow an Alaska resident over 19 years of age to accompany his or her nonresident in-laws without a guide while hunting brown bear, grizzly bear, polar bear or sheep. Under existing law, the nonresident must be related to the resident by blood within the second degree of kinship in order to hunt without a guide. Under this bill, the relationship between the resident and the nonresident, whether by blood or marriage, would still have to be within the second degree of kinship. This includes the parents, grandparents, brothers and sisters, children and grandchildren of the resident or the resident's spouse.

The change proposed by this bill does not affect the constitutionality or unconstitutionality of AS 16.05.407.

EHH:ljb

Bill Analysis

HB 188

Under current law, blood relatives of resident Alaskans can hunt brown bear, grizzly bear, polar bear, or sheep without a guide if they are within and including second degree of kindred and are personally accompanied by their Alaska relative.

HB 188 would allow the same criteria to also apply to persons related by marriage.

Example: Your brother comes to Alaska to hunt Dall Sheep. You may legally take him without a guide.

However, you cannot legally take your brother-in-law on the same hunt.

HB 188: Under the changes proposed in this law, your brother-in-law would legally be able to participate in the hunt.

Second Degree of kindred includes, under present law:

1) Son, Daughter
2) Father, Mother
3) Grandfather, Grandmother
4) Grandchildren
5) Brother, Sister - their children

In addition, under HB 188, the following relatives would be included:

1) Son, Daughter of Spouse
2) Father-in-law, Mother-in-law
3) Grandfather, Grandmother of Spouse
4) Grandchildren of Spouse
5) Brother-in-law, Sister-in-law - their children

(B) Subunit 26(B) – that portion of Unit 26 lying east of Subunit 26(A) and west of the west banks of the Canning River and Marsh Fork of the Canning River between the Arctic Ocean and Carter Pass;

(C) Subunit 26(C) – that portion of Unit 26 lying east of Subunit 26(B). (In effect before 1980; am 7/4/80, Reg. 75; am 4/5/81, Reg. 78; am 9/3/81 – 9/12/81, Reg. 80; am 9/30/81, Reg. 79)

Authority: AS 16.05.255(a)(1),(2) and (7)

5 AAC 90.020. DEFINITIONS. In 5 AAC 81 – 5 AAC 90

(1) "airport" means an Alaska airport listed in the Federal Aviation Agency Alaska Airman's Guide and chart supplement;

(2) "bag limit" means the greatest number of game species permitted to be taken by any one person in the unit or portion of a unit in which the taking occurs; however, additional numbers of a species may be taken in another designated open unit or portion of a unit where a greater limit on that species is prescribed; in no case may the total or cumulative bag for one person exceed the limit set for the unit or portion of a unit in which the additional game was taken;

(3) "big game animals" includes black bear, brown and grizzly bear, polar bear, bison, caribou, Sitka blacktail deer, elk, mountain goat, moose, muskoxen, mountain or Dall sheep, wolf and wolverine;

(4) "camp" means a structure erected for the purpose of providing overnight shelter and equipped with bedding and eating facilities for occupants;

(5) "closed season" means the time during which game may not be taken;

(6) repealed 7/2/75;

(7) "cub bear" means a brown, grizzly or polar bear in its first or second year of life, or a black bear (including the cinnamon and blue color phases) in its first year of life;

(8) "fur animals" includes beaver, coyote, arctic fox, red fox, lynx, marten, mink and weasel, muskrat, land otter, sea otter, raccoon, red squirrel, flying squirrel, ground squirrel and marmot, wolf and wolverine, excepting domestically raised fur animals;

(9) "highway" means the driveable surface of any constructed road;

(10) repealed 7/2/75;

(11) "motorized vehicle" means a motor-driven land, water or air conveyance;

(12) "open season" means the time during which game may lawfully be taken; each period of time prescribed as an open season includes the first and last days of the period prescribed;

(13) "poison" means any substance which is toxic or poisonous upon contact or ingestion;

(14) "raw ivory" means a walrus tusk (upper canine tooth) which has not been endowed with functional, cultural or aesthetic qualities by altering its natural form or surface through carving, drilling, cutting, filing, or engraving; raw ivory is not altered, in the connotation of this definition, by surface polishing or for a head mount; the latter consisting of ivory (tusks) in a skull or part of a skull;

(15) "regulatory year" means July 1 to June 30, inclusive;

(16) "seal pup" means a seal that weighs less than 50 pounds;

(17) "second degree of kindred" means the relatives who are parents, grandparents, children, grandchildren and sisters or brothers of the person acting as a guide;

(18) "small game" means all species of grouse, hares, rabbits, ptarmigan and waterfowl, and Wilson or jacksnipe;

(19) "three-quarter curl horn" means the horn of a mature mountain sheep, the tip of which has grown through three-quarters of a circle (270°) described by the outer surface of the horn, as viewed from the side;

(20) "transport" means shipping, carrying, importing, exporting, or receiving or delivering for shipment, carriage or export;

(B) Subunit 26(B) – that portion of Unit 26 lying east of Subunit 26(A) and west of the west banks of the Canning River and Marsh Fork of the Canning River between the Arctic Ocean and Carter Pass;

(C) Subunit 26(C) – that portion of Unit 26 lying east of Subunit 26(B). (In effect before 1980; am 7/4/80, Reg. 75; am 4/5/81, Reg. 78; am 9/3/81 – 9/12/81, Reg. 80; am 9/30/81, Reg. 79)

Authority: AS 16.05.255(a)(1),(2) and (7)

5 AAC 90.020. DEFINITIONS. In 5 AAC 81 – 5 AAC 90

(1) "airport" means an Alaska airport listed in the Federal Aviation Agency Alaska Airman's Guide and chart supplement;

(2) "bag limit" means the greatest number of game species permitted to be taken by any one person in the unit or portion of a unit in which the taking occurs; however, additional numbers of a species may be taken in another designated open unit or portion of a unit where a greater limit on that species is prescribed; in no case may the total or cumulative bag for one person exceed the limit set for the unit or portion of a unit in which the additional game was taken;

(3) "big game animals" includes black bear, brown and grizzly bear, polar bear, bison, caribou, Sitka blacktail deer, elk, mountain goat, moose, muskoxen, mountain or Dall sheep, wolf and wolverine;

(4) "camp" means a structure erected for the purpose of providing overnight shelter and equipped with bedding and eating facilities for occupants;

(5) "closed season" means the time during which game may not be taken;

(6) repealed 7/2/75;

(7) "cub bear" means a brown, grizzly or polar bear in its first or second year of life, or a black bear (including the cinnamon and blue color phases) in its first year of life;

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(19) "three-quarter curl horn" means the horn of a mature mountain sheep, the tip of which has grown through three-quarters of a circle (270°) described by the outer surface of the horn, as viewed from the side;

(20) "transport" means shipping, carrying, importing, exporting, or receiving or delivering for shipment, carriage or export;

STATE OF ALASKA
FISCAL NOTE

Revision Date , 1983

I. REQUEST

Bill/Resolution No.: HB 188
Title: "Big Game Hunting by Nonresidents"
Sponsor: Representative Ringstad
Requestor: House Judiciary

II. FISCAL DETAIL

Agency Affected: Public Safety
Program Category Affected: F&WP
BRU, Program of Subprogram(s) Affected: Fish & Wildlife Protection

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 83	FY 84	FY 85	FY 86	FY 87	FY 88
OPERATING						
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 COMMODITIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC						
TOTAL OPERATING		-0-	-0-	-0-	-0-	-0-
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER (Specify Source)						

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

III. SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

IV. ANALYSIS: Attach a separate page for any Analysis No fiscal impact anticipated

Prepared By: Paul A. Conger Phone: 465-4338
Division: Administrative Services Date: 3/22/83

Approved by Commissioner: [signature] Date: 3/22/83
Department: Public Safety

Distribution:
Original to Legislative Finance
Copy to Office of Management and Budget (for Legislature introduced bills)
Copy to Department (for Governor introduced bills)
Copy to Sponsor
Copy to Requestor (if different from Sponsor)

3/8/83

STATE OF ALASKA
PRELIMINARY STATEMENT OF FISCAL IMPACT

Bill No: HB 188 Date on Bill: Introduced 2/11/83
Title: Relating to big game hunting by nonresidents
Sponsor: Ringstad
Requestor:

1. Estimated fiscal impacts on:

a. Expenditures:

(Thousands of Dollars)

			FY 83	FY 84	FY 85	FY 86		
Capital								
Operating								
Total			-0-	-0-	-0-	-0-		

b. Revenues:

Revenue								

2. Source of funds to offset fiscal impact of bill:

3. Assumptions:

No Fiscal Impact

4. Disclaimer:
This statement has not been reviewed by the OMB in the Office of the Governor. It therefore does not represent the final estimate of fiscal impact.

Prepared By: Col. Robert J Stickles Phone: 269-5532
Division: Fish & Wildlife Protection Date: 2-18-83

Approved by Commissioner: [signature] Date: 2/25/83
Department: Public Safety

5. Distribution:
Original to Legislative Finance
Copy to OMB
Copy to Sponsor
Copy to Requestor

2/15/83

THE LEGISLATURE OF THE STATE OF ALASKA
THIRTEENTH LEGISLATURE

FISCAL NOTE

I. REQUEST
Bill/Resolution No. HB 188
Title An Act relating to big game hunting by nonresidents
Requested by Ringstad Date 2/25/83

II. FISCAL DETAIL
Agency Affected Department of Fish and Game
Program Category Affected
BRU, Program, Or Subprogram(s) Affected Game
(Note: If more than one budget component is affected, separate line-item amounts and funding for each component in the analysis section.)

EXPENDITURES (Thousands of Dollars)

	FY 83	FY 84	FY 85	FY 86	FY 87	FY 88
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 COMMODITIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS,CLAIMS,ETC.						
TOTAL	Ø	Ø	Ø	Ø	Ø	Ø

FUNDING (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER (Specify Source)						
	Ø	Ø	Ø	Ø	Ø	Ø

POSITIONS

FULL TIME						
PART TIME						
TEMPORARY						
	Ø	Ø	Ø	Ø	Ø	Ø

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

IV. DATE 2/25/83 PREPARED BY Robert A. Hinman
AGENCY Department of Fish and Game
PHONE 465-4190

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

33-001 (Rev. 12/82)

HOUSE RESOURCES COMMITTEE
February 25, 1983
3:05 p.m.

Members Present: Rep. Shultz, Chair
Rep. Ringstad
Rep. Bussell
Rep. Cowdery
Rep. Goll
Rep. Liska
Rep. Uehling

Members Absent: Rep. Vaska

COMMITTEE CALENDAR

HB 187 "An Act relating to regulation, licensing, and fee for fur farming."

HB 188 "An Act to big game hunting by non-residents."

WITNESS REGISTER

Bob Hinman, Dep. Director
AK. Dept. of Fish & Game
Juneau, Alaska 99811
465-4190
Position Statement: In favor of HB 187; neutral position on HB 188 (gave no testimony on HB 188-open for questions)

Ron Somerville
Interior Wildlife
Juneau
789-3450
Position Statement: Testified on HB 188.

PREVIOUS ACTION

HB 187 No previous action to record.

HB 188 No previous action to record.

ACTION NARRATIVE

TAPE #7, SIDE A
Number 006 Meeting called to order by Rep. Dick Shultz, Chairman for today's meeting.

Number 018 HB 188 was brought before the committee.

Number 021 Rep. John Ringstad, sponsor of HB 188: Basically, the intent of this legislation is

just to do some clean up of what a lot of people have assumed was already on the books. Currently, in order for a non-resident to hunt brown bear, grizzly bear and polar bear and sheep, they need to be accompanied by a guide or a relative of the second degree of kindred who is an Alaskan resident. The part that was left out on a lot of these was a second degree of kindred and it was suggested that we change it and put it as second degree of kindred by blood or marriage. The "or marriage" part would include the in-laws so that, on the sheet that is in your file, you can have your in-laws going hunting without requiring the guide.

The bill, the way it is physically written, is to repeal and re-enact and what our legal people did is restructure the (d), (b), (c) and the 1, 2, 3 part but the only real change is where it says "by marriage" on line 19, in the existing statute. There has been a question posted in our listing of which relatives are included. We had asked our legal people across the street to give us a list of who is included currently, and who would be included under the law if this bill is passed. They gave us the list on the bill analysis sheet before you. However, Rep. Larson was just pointing out that in the State Affairs Committee they were giving a different definition or giving different options for that definition. So, at this point, I am questioning what there actual definition is and maybe we should take a further look into that. Most of the people that I've spoken with have been under the assumption that that was the intent of the law all along and you could legally do that. My guess is that most of the in-laws that wanted to come up and go hunting have gone out and done it anyway, assuming that it was legal.

Number 063 Rep. Uehling made a point of clarification.

Number 067 Rep. Ringstad confirmed Uehling's statement.

Number 079 Bob Hinman, Deputy Director from the Division of Game: The Department's position on this bill is neutral and my only comments or reason for showing up here is just to answer questions. I certainly have no objection to this legislation.

Number 084 Rep. Ringstad: Mr. Hinman, do you have with you, a list of how the Fish and Game Regulations now lists second degree kindred? Is there a definition in there that would differ from what our attorneys gave us?

Number 089 Hinman: I'd have to try to recite it from memory. We do have it in regulations...of the person you're talking about; his father, mother, his son or daughter, grandfather, grandmother, grandson, granddaughter relationship would not include under the present definition in being related by marriage.

Number 097 Rep. Liska: Bob, I think you can recall several years ago, Ron Somerville was in Fish & Game self-central district at that time, why sheep got on there in the first place was because, if you recall we had a estimate in the Wrangell Mountains, we had a non-resident running around up in the mountains and was lost. The way this pertains to us in this particular issue, Mr. Chairman, is that most of us have hunted in Alaska, we've been up here a few years, and we know of the dangers experienced up here. I'm sure that most of us could guide our next of kin just about as good as a guide could. I think that's a good section to have in this, that at least gives us an opportunity to hunt with our kin, and give the Alaskans a break.

Number 122 Bob Hinman was excused.

Number 125 Ron Somerville, representing the Interior Wildlife Association (a trappers and sportsmen group in Fairbanks), also as Legislative Chairman for the Alaska Sportsmen Council: I haven't taken a position for or against it, I would like to comment briefly, pretty well pointing out the misconceptions as Rep. Ringstad has indicated of people feeling that they could probably do that anyway has been occurring. One thing they wanted me to point out was there was some concern for how many additional non-residents might be allowed to hunt.

Number 158 Rep. Cowdery: If they were a non-resident it would still require licensing.

Number 164 Rep. Liska made a point of clarification - it would still require the purchasing of a

license, but he wouldn't have to pay the expense of a guide.

Number 171 Ron Somerville was excused.

Number 173 Rep. Cowdery: In State Affairs they were addressing nepatism and we got a ruling that we might like to review before going on.

Number 178 Rep. Ringstad referred to the memo to the Chairman of the State Affairs Committee from our Committee Council, Lynn Asper. It says that "first degree of kindred to a person includes the parents and children of that person. Second degree includes brothers, sisters, grandparents and grandchildren. Third degree includes nephews, nieces, aunts and uncles. It says in the proposed CSHB 49 which is the nepatism bill which the committee was referring to; aunts and uncles are included within the definition of second degree of kindred, although they would normally be considered to be third degree of kindred. So, in this one condition, it would appear to me that they're being put into a different category. At this point I'm not sure what the intent of the other committee is to do. It should be pointed out since the definition of second degree of kindred is the proposed CSHB 49 only applies to the section in which it appears. So, it would not necessarily apply here. From that, my understanding would be that this definition that they provided us earlier would be proper.

Number 208 Rep. Ringstad: This is in our Fish & Game Regulations here; second degree of kindred is defined as "means of relatives who are parents, grandparents, children or grandchildren, sisters, or brothers of a person acting as the guide. What "by marriage" would do is to allow the in-laws there. What I might suggest that we do would be with the other idea here, go back and answer some of the questions on legal position, if we want to adjust that the way they are adjusting it here.

Number 226 Rep. Shultz: We will be holding this bill over for additional clarification.

HOUSE RESOURCES COMMITTEE
March 7, 1983
3:08pm

Members Present: Rep. Shultz, Chair
Rep. Cowdery
Rep. Goll
Rep. Larson
Rep. Liska
Rep. Ringstad
Rep. Vaska

Members Absent: Rep. Bussell
Rep. Uehling

COMMITTEE CALENDAR

HB 188 "An Act related to big game hunting by non-residents."

WITNESS REGISTER

HB 188 No witnesses to record.

PREVIOUS ACTION

HB 188 See minutes from 2/25/83.

ACTION NARRATIVE

TAPE #11, Side A
Number 006 Rep. Shultz, Chair, called the meeting to order at 3:08pm.

Number 011 HB 187 cancelled from today's meeting.

Number 012 Reason for cancellation: the two commissioners from DNR and DEC, who were to testify, but were not prepared at that time.

Number 019 Shultz: At this time we will hear testimony on HB 188.

Number 025 Ringstad: Last time we had this up, Rep Larson had mentioned that they were working in State Affairs; there was a memo sent to the State Affairs Committee dealing with the definition of kindred. In the last paragraph they point out that in defining in HB 49, that definition only applies to the section that that bill applied to. We have also been told, basically that there is nowhere in the statutes that's generally defined how it applies all the way across the board. In Fish & Game matters it's basically set up in regulation. It does not appear that there is a real problem with conflicting definitions. Our original analysis of who would be added to the list was

accurate, and that basically, would include your in-laws. The change is not necessarily defining anything in statute; what it is doing is changing or adding to the guidelines under which the definition is made in regulation.

Number 052 Ringstad: Basically, we have a guideline at this point, (second degree of kindred by blood), and have a regulation set out under that guideline and all this does is expand it by marriage to allow the in-laws.

Number 061 Shultz: If there are no additional questions, it is the intention of the Chair to move this out of committee today.

Number 063 Cowdery made a motion that HB 188 be moved out of committee with individual recommendations.

Number 065 Shultz: No objections,..it is so ordered.

Number 069 Ringstad: Rep. Shultz and I have been discussing the subject of confirmations. We have a list of commissioners and boards of commissions that the committee will be addressing for confirmation. We're hoping to get the subject on the table and working with it. We will have some more information; given resumes, names, etc. We're hoping to take the first look on Friday. Commissioner Wunnicke, Commissioner Neve and Commissioner Collinsworth will be coming up for that.

Number 107 Ringstad: I will get a list of who this committee confirms to all of the committee members in the next day or two.

Number 110 Vaska: Basically, we make recommendation to the full body.

Number 117 Larson: I think this, for further clarification, is the full body in joint session.....

Number 120 Ringstad: We will have a joint session, specifically to deal with confirmations at a date sometime in the future.

Number 129 Shultz: The work session on wednesday on the homestead bills..... As a result of the teleconference we had last Friday...we're going to go over some of the concerns that were raised.

Number 141 Ringstad: It is our intent, on Wednesday, to get different ideas on what is and isn't homesteading.

Number 148 Cowdery: Will it be your intention, before the next meeting on the homestead bill to do a one page summary

of the teleconference on the points, to refresh our minds?

Number 157 Shultz: We will have some of the major points itemized.

Number 162 Ringstad: There will be a committee substitute coming out.

Number 168 Shultz adjourned the meeting at 3:20p.m.

END OF TAPE #11, Side A

HB

195

MSG 03-00002446 PRTY 1 03/22/83 13:55:45 ORIG: LA01 IN= 0009 OUT= 0089
FROM: JUNE, ANC LIO TO: POM, JNU INFO
TARGET: LJHL SUBJ: POM

3/22/83, JUNE, ANC LIO, MSG 2446

JR

TO: ALL MEMBERS OF THE LEGISLATURE

FROM: SUSAN RICHARDSON
9.9 MILE EAST END ROAD
HOMER, AK

STAR ROUTE A BOX 63
HOMER, AK 99603 (H) 235-7380 (W) 235-8141

I AM IN FAVOR OF HB 195. I WOULD LIKE YOU TO WORK TOWARDS PASSING THIS BILL. THANK YOU VERY MUCH.

****

MSG 83-00002356 PRTY 1 03/22/83 11:40:15 ORIG: LA01 IN= 0007 OUT= 0048
FROM: SHIRLEE ANC LIO TO: POMS JUNEAU INFO
TARGET: LJHL SUBJ: POM

3/22/83, SHIRLEE ANC LIO, 2356

TO: ALL MEMBERS, ALASKA LEGISLATURE

FROM: HENRY POTOPOWITZ, 3800 ROBIN ST., ANCHORAGE 99504
H 333-7857 W 333-6516

REGARDING HOUSE BILL 195, I WOULD APPRECIATE A FAVORABLE VOTE FOR THIS BILL.

****

MSG 83-00002343 PRTY 1 03/22/83 11:28.55 ORIG: LA01 IN= 0005 OUT= 0043
FROM: SHIRLEE ANC LIO TO: POMS JUNEAU INFO
TARGET: LJHL SUBJ: POM

3/22/83, SHIRLEE ANC LIO, 2343

TO ALL MEMBERS, ALASKA LEGISLATURE

FROM: BILL RICHARDSON, SRA BOX 63, HOMER 99563
H 235-7380

I SUPPORT HOUSE BILL 195.

****

MSG 03-00002372 PRTY 1 03/22/83 12:16:30 ORIG: LA05 IN= 0004 OUT= 0060
FROM: MARCIE, ANC INFO TO: POM, JUNEAU INFO
TARGET: LJHL SUBJ: P O M

TO: REPRESENTATIVES RUSSELL, LISKA HAYES, BARNES, MALONE, CLOCKSIN AND WENDTE

JR

FROM: MARGARET M. COOK, 2500 RASBERRY
MAIL: BOX 8918, ANCHORAGE 99508 243-1616 H 552-5317 W

PLEASE CONSIDER HB 195 NECESSARY FOR EXPANSION AND REPLACEMENT OF THE CIVIL AIR PATROL AIR FLEET TO FURTHER AND ENHANCE OUR SEARCH AND RESCUE EFFORT.

EOM

MSG 83-00011125 PRTY 1 04/21/83 18:01:26 ORIG: LA01 IN= 0w48 OUT= 0232
FROM: SHIRLEE ANC LIO TO: POMS JUNEAU INFO
TARGET: LJHL SUBJ: POM

TO: ALL MEMBERS, ALASKA HOUSE OF REPRESENTATIVES

FROM: JOSEPH KOSS, JR., 9321 ARLENE STREET, NO. 2, ANCH 99502
H 243-0462 W 272-5508

I SUPPORT HOUSE BILL 195 AND I WOULD APPRECIATE YOUR SUPPORT AS WELL.

Received

1/26/83, JUNE, ANC LIC, MSG (2900

JR

TO: ALL REPRESENTATIVES

FROM: JIM CLINE, P. O. BOX 3-069, ANCHORAGE, AK 99501
(RES) 835 NORTH LANE, ANCHORAGE, AK
(H) 272-3184 (W) 279-5326

I URGE YOUR SUPPORT OF HB 195 WHICH ALLOWS CIVIL AIR PATROL TO RECEIVE CONFISCATED AIRCRAFT FOR SEARCH AND RESCUE SERVICES. THOUGH THE CONFISCATION PROGRAM IS NOTHING MORE THAN LEGALIZED THEFT, I FEEL THE BEST USE OF THESE AIRCRAFT SHOULD BENEFIT THE PILOTS AND PASSENGERS FLYING PRIVATELY AND COMMERCIALLY IN ALASKA.

ALASKA STATE LEGISLATURE

INTERIM OFFICE:
P.O. BOX 81435
FAIRBANKS, ALASKA 99708

IN SESSION:
POUCH V
JUNEAU, ALASKA 99811
(907) 465-4930/4941

CHAIRMAN
1983 INTERIOR DELEGATION

MEMBER
TRANSPORTATION
HEALTH, EDUCATION AND SOCIAL SERVICES
LABOR SUBCOMMITTEE
JOINT OIL AND GAS
RURAL EDUCATION ATTENDANCE AREAS

Representative Mike Davis
House District 19

MEMORANDUM

To: Rep. McBride, Rep. Abood, Rep. Hurlbert, Rep. Bussell
Bob Head, Department of Administration
Dick Rountree, Department of Military Affairs

From: Rep. Mike Davis

Date: April 8, 1983

Re: House Bill 195

Attached is a substitute version of House Bill 195 which will be brought up before the House Judiciary Committee on Friday, April 15. The purpose of this substitute is to further clarify the original legislative intent of HB 195.

(c) A person who, either by himself or with another, wilfully deprives a member of the National Guard or Naval Militia of his employment or prevents his being employed by himself or another, or obstructs or annoys the member of the National Guard or Naval Militia or his employer in respect of his trade, business or employment, because the member of the National Guard or Naval Militia is a member, or in any way dissuades any person from enlisting in the National Guard or Naval Militia by threat or injury to him in respect of his employment, trade or business, if he so enlists, is guilty of a misdemeanor, and upon conviction is punishable by a fine of not more than $100.

(d) All matters relating to the organization, discipline and government of the National Guard or Naval Militia, not otherwise provided for by the laws of the United States, this chapter, or regulations issued by the president shall be governed by regulations issued by the adjutant general and approved by the governor, and the regulations when adopted, have the same force and effect as though enacted in this chapter. (§ 36 ch 150 SLA 1955; am §§ 18 — 20 ch 34 SLA 1973)

Sec. 26.05.345. Civil Air Patrol. The adjutant general shall make the necessary administrative arrangements for maintaining liaison between the state and the Civil Air Patrol and the expenditure of funds appropriated to the department for the state contribution toward the support of the authorized activities of the Alaska Wing, Civil Air Patrol, under its charter. (§ 3 ch 70 SLA 1965; Executive Order No. 33 (1968))

Revisor's note. — The following executive order, signed by Governor Walter J. Hickel, was transmitted to the legislature on January 23, 1968. It was not disapproved by the legislature during the 1968 session and therefore became law under the provisions of sec. 23, art. III of the Alaska Constitution and AS 24.30.130.

"EXECUTIVE ORDER NO. 33. Pursuant to the authority vested in me by Sec. 23, Art. III, Constitution of the State of Alaska, the State's responsibilities toward the Alaska Wing, Civil Air Patrol, as set forth in AS 44.33.110, are hereby transferred from the Department of Commerce to the Department of Military Affairs. The effective date of such transfer shall be July 1, 1968.

"Dated at Juneau, Alaska this 22nd day of January, 1968."

This section, except for the designation of the responsible official, formerly was AS 44.33.110.

Editor's note. — Chapter 70, SLA 1965, included the following: "Sec. 1. Purpose. The Civil Air Patrol is an auxiliary of the United States Air Force operating under charter from Congress, and it operates in all states and the District of Columbia and the Commonwealth of Puerto Rico. The Civil Air Patrol has as its purpose the organizing of public-spirited citizens in civil aviation into a volunteer semi-military organization to assist in civil defense efforts, train teen-age cadets in pre-flight instruction, conduct missing-aircraft search service, and assist in search and rescue missions, and special missions for state and federal agencies. It is the purpose of this Act to make formal provision for the administration of the financial support of the state's participation in the program of the Civil Air Patrol."

Sec. 26.05.350. Short title. This chapter may be cited as the Military Code of Alaska. (§ 1 ch 150 SLA 1955)

STATE OF ALASKA

BILL SHEFFIELD, GOVERNOR

ROBERT J. SUNDBERG
COMMISSIONER

DEPARTMENT OF PUBLIC SAFETY

DIVISION OF FISH & WILDLIFE PROTECTION

P. O. BOX 6188, ANNEX
ANCHORAGE, ALASKA 99502

February 18, 1983

Representative Mike Davis
Alaska State Legislature
Pouch V
Juneau, Alaska 99811

Dear Representative Davis:

The Division of Fish and Wildlife Protection is the primary agency within the Department of Public Safety that becomes involved in the seizure and subsequent forfeiture of aircraft. Neither the Division nor I see any problem with HB 195.

Sincerely,

Robert J. Sundberg
Commissioner

2-L12LH

MAR 2 1983

STATE OF ALASKA

DEPARTMENT OF PUBLIC SAFETY

DIVISION OF FISH & WILDLIFE PROTECTION

BILL SHEFFIELD, GOVERNOR

ROBERT J. SUNDBERG
COMMISSIONER

P. O. BOX 6188, ANNEX
ANCHORAGE, ALASKA 99502

February 18, 1983

Representative John Ringstad
Chairman, House Resources Committee
State Capitol
Pouch V
Juneau, Alaska 99811

Dear Representative Ringstad:

I would like to present the following position which the Division of Fish and Wildlife Protection, Department of Public Safety holds with regard to the subsequent House Bill under proposal:

HB 195 - Neutral

This Bill should be carefully researched to insure Alaska constitutional provisions and procedures are not by-passed in the transfer of State property.

The majority of aircraft forfeited to the State are in the cub class, which may not be the appropriate plane for civil air patrol. Most aircraft that have been forfeited to the State in the past have needed extensive repair in order to be airworthy. This would require facilities or funds for putting an aircraft in an airworthy condition. The State should not be held liable for the condition of the aircraft at the time of transfer of ownership.

Sincerely,

Robert J. Sundberg
Commissioner

2-L12LH

Alaska State Legislature

INTERIM OFFICE:
1024 WEST SIXTH AVENUE
ANCHORAGE, ALASKA 99501
(907) 274-2843
HOME (907) 274-3102

IN SESSION:
POUCH V
JUNEAU, ALASKA 99811
(907) 465-4947

HOUSE MAJORITY WHIP
CHAIRMAN
STATE AFFAIRS
MEMBER
TRANSPORTATION
LEGISLATIVE COUNCIL

Representative Mitch Abood
HOUSE DISTRICT 11

MEMORANDUM

TO: Representative John Ringstad, Co-Chairman
Representative Richard Shultz, Co-Chairman
House Resources Committee

FROM: Representative Mitch Abood

DATE: March 1, 1983

RE: HB 195
"An Act permitting transfer of forfeited aircraft to the Alaska Wing, Civil Air Patrol"

The Civil Air Patrol is providing a great service to the public in its search and rescue efforts, and the transfer of confiscated aircraft to the Civil Air Patrol would tremendously benefit this outstanding operation.

The Civil Air Patrol provides emergency search and rescue services to those individuals who wind up in trouble in the vast outlying areas of Alaska. Because of the age of the aircraft and the great number of hours the CAP spends on search and rescue efforts, it is imperative that the aircraft and equipment used in service be replaced periodically to insure the utmost in safety of the operations. The CAP is currently replacing its aircraft with funds of their own, and the process is quite lengthy in their efforts to procure new aircraft from Outside.

It is with this in mind that I highly recommend the passage of HB 195, "An Act permitting transfer of forfeited aircraft to the Alaska Wing, Civil Air Patrol".

cc: Representative Mike Davis

STATE OF ALASKA
FISCAL NOTE

Revision Date ____, 1983

I. REQUEST

Bill/Resolution No.: CSHB 195 (JUD)
Title: An Act Permitting Transfer Of....
Sponsor: House Judiciary
Requestor: House Judiciary

II. FISCAL DETAIL

Agency Affected: Public Safety
Program Category Affected: FWP
BRU, Program of Subprogram(s) Affected:
Fish & Wildlife Protection

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 83	FY 84	FY 85	FY 86	FY 87	FY 88
OPERATING						
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 COMMODITIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC						
TOTAL OPERATING		-0-	-0-	-0-	-0-	-0-
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER (Specify Source)						

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

III. SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

IV. ANALYSIS: Attach a separate page for any Analysis : No Fiscal Impact Anticipated

Prepared By: Paul Conger Phone: 465-4338
Division: Administrative Services Date: 4/14/83

Approved by Commissioner: [signature] Date: 4/14/83
Department of Public Safety

Distribution:
Original to Legislative Finance
Copy to Office of Management and Budget (for Legislature introduced bills)
Copy to Department (for Governor introduced bills)
Copy to Sponsor
Copy to Requestor (if different from Sponsor)

3/8/83

STATE OF ALASKA
PRELIMINARY STATEMENT OF FISCAL IMPACT

Bill No: House Bill 195 Date on Bill: 2/14/83
Title: Transfer of Forfeited Aircraft to CAP
Sponsor: Davis, Hurlbert, and McBride
Requestor: Rep. Hurlbert

1. Estimated fiscal impacts on:

a. Expenditures:

(Thousands of Dollars)

			FY 83	FY 84	FY 85	FY 86		
Capital			-0-	-0-	-0-	-0-		
Operating			-0-	-0-	-0-	-0-		
Total			-0-	-0-	-0-	-0-		

b. Revenues:

Revenue								

2. Source of funds to offset fiscal impact of bill:

3. Assumptions:

No apparent fiscal impact.

4. Disclaimer:
This statement has not been reviewed by the OMB in the Office of the Governor. It does not represent the policy of the Sheffield Administration or the final estimate of fiscal impact.

Prepared By: Richard L. Rountree Phone: 465-4601
Division: Administrative Services Date: 2/16/83

Approved by Commissioner: Major General Edward G. Pagano Date: 2/16/83
Department: Military Affairs

Distribution:
Original to Legislative Finance
Copy to OMB
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Copy to Requestor

2/8/83

MAR 2 1983

STATE OF ALASKA
PRELIMINARY STATEMENT OF FISCAL IMPACT

Bill No: HB 195 Date on Bill: 2/14/83
Title: an act permitting transfer of forfeited aircraft to the Alaska wing, Civil Air Patrol
Sponsor: Davis, Hurlbert & McBride
Requestor: HOUSE RESOURCES

1. Estimated fiscal impacts on:

a. Expenditures:

(Thousands of Dollars)

			FY 83	FY 84	FY 85	FY 86		
Capital								
Operating								
Total			0	0	0	0		

b. Revenues:

Revenue			0	0	0	0		

2. Source of funds to offset fiscal impact of bill:

3. Assumptions:

No fiscal impact

4. Disclaimer:
This statement has not been reviewed by the OMB in the Office of the Governor. It therefore does not represent the final estimate of fiscal impact.

Prepared By: Colonel Robert J. Stickles Phone: 269-5532
Division: Fish & Wildlife Protection Date: Feb. 18, 1983

Approved by Commissioner: [signature] Date: 2/26/83
Department: PUBLIC SAFETY

5. Distribution:
Original to Legislative Finance
Copy to OMB
Copy to Sponsor
Copy to Requestor

2/15/83

(9)

3/4

COMMITTEE REPORT

HOUSE

FURTHER: JUDICIARY

Date: MARCH 2, 1983

2/14/83
Mr. Speaker:

The Committee on RESOURCES has had HB 195

An Act permitting transfer of forfeited aircraft to the Alaska Wing, Civil Air Patrol.

under consideration and reports it back as follows:

[X] do pass [ ] do not pass

[ ] do pass with attached amendments(s)

[ ] replace with CS for _____ [ ] same title [ ] new title

and recommends _____

[ ] AND attaches a "Letter of Intent" [ ] New Fiscal Note

[X] Zero Fiscal Note Attached 5 2

[ ] reports it back without recommendation

[ ] referred to the _____ Committee

MEMBERS SIGNING DO PASS

HULTS Dick Shultz

KINGSTAD

RUSSELL

ISKA

EHLING

WOERY

MEMBERS HAVING OTHER RECOMMENDATIONS:

Dick Shultz
CO- CHAIRMAN

H 60

AMENDED TITLE:
AN ACT PERMITTING TRANSFER OF FORFEITED AIRCRAFT TO THE ALASKA WING, CIVIL AIR PATROL

PRIME SPONSOR: DAVIS.
CO-SPONSORS: HURLBERT, MCBRIDE, ABOOD.
CURRENT STATUS: 3/04/83 IN (H) JUDICIARY

DATE	SEQ	PAGE	LEGISLATIVE ACTION
02/14/83	01	0246	FIRST READING -- COMMITTEE REPORTS
03/04/83	02	0399	RES --- DP 06
03/04/83	03	0399	RES CMTE F/NOTE EQUALS ZERO JUDICIARY RULES
****	**	**	*** *** ***

HB

200

TESTIMONY OF DEAN GUANELI
MARCH 3, 1983

My name is Dean Guaneli, Assistant Attorney General with the Department of law. My initial reaction in listening to the brief overview was that there was some problems with the way the bill was described. I think what I heard was that other states have laws that give peace officers similar rights to other persons and I guess that the suggestion is that this bill does that. I would take strong exception to that. I my view this bill gives peace officers a lot more protection than ordinary citizens have in ways that are completely unappropriate. This bill addresses a number of situations and addresses the situation of when a peace officer is accused of committing a crime, accused of taking some action that might subject him to some putative action, disciplinary action or done something that might subject him to civil liability. Under those circumstances, this bill gives peace officers a lot more rights than the ordinary citizens would have. Particularly as it relates to criminal investigations. There are eleven rights that this bill sets out that gives a peace officer accused of a crime, that ordinary citizens do not have.

The first I suppose would be the written notice of the charges. No defendant is entitled to written notice of the charges before he is interviewed. This gives the peace officer a right to have a witness participate in the interview. Ordinary citizens can have an attorney if they are in custody and other witnesses then can be present at the interview but they cannot participate in the interview. It limits the interviews to reasonable hours. It gives peace officers pay during the time of their interviews. It goes on and on and on. It in fact limits the way in which criminal investigation can be conducted when the subject of that investigation is a peace officer. And I really question whether that was the committee's intent in this legislation. It is completely inappropriate for peace officers to have greater rights as criminal suspects than anybody else in our society and I could invision a criminal defendant coming before a court and saying that I have been denied equal protection of the law, if I was a peace officer this kind of statement wouldn't have been taken from me without being given all these rights. It goes far beyond what ordinary citizens have and it is going to hamstring investigations. Peace officers are in a peculiar situation in our society. They are in a position of trust. They carry weapons, they carry concealed weapons. They are entitled to effect arrests and in some circumstances shoot people when ordinary citizens would not be able to. Under those circumstances, when they are accused of a crime, it's inappropriate to limit the investigation of that crime.

As for the other parts of the bill that relate to internal disciplinary matters. These rights that peace officers would be given, seems to me and I've discussed the matter with the Division of Labor Relations and also the Department of Public Safety, would inappropriately tie the hands of administrators in managing the internal affairs of their police department. In effect it would drive a wedge between employees, peace officers and the chiefs of police in local police departments. In many cases it would put prosecutors in the middle of some kind of dispute between policemen and their managers. Under state personnel rules, if

something goes in a personnel file that is grievable under the contract. But to give a person a right to have all these rights in an internal disciplinary matter, I think is going beyond what ought to be legitimate concern of this legislature. I understand that the Association of Alaska Chiefs of Police has reviewed the bill and is opposed to it. That's understandable, they are managers. They feel that as managers of police departments they have to have control over their officers. They have to be able to take disciplinary action and do it quickly without having to jump through a lot of hoops. For a number of reasons peace departments function as paramilitary organizations. The officers are given orders and they take orders. And like a paramilitary organization they seem to function better that way. And I think that a bill of this sort goes along way towards changing the way a police department functions and for those reasons we strongly oppose this legislation. We being, as far as I know, the Administration, the Department of Law, the Division of Personnel, the Division of Labor Relations and the Department of Public Safety and from that stand point I am not certain what other aspects the Administration would be interested.

PUBLIC EMPLOYEE POLITICAL RIGHTS

CALIFORNIA GOVERNMENT CODE

§ 3201. Legislative finding

The Legislature finds that political activities of public employees are of significant statewide concern. The provisions of this chapter shall supersede all provisions on this subject in the general law of this state or any city, county, or city and county charter except as provided in Section 3207.

§ 3202. Application of chapter; Definitions

This chapter applies to all officers and employees of a state or local agency.

(a) "Local agency" means a county, city, city and county, political subdivision, district other than a school district, or municipal corporation. Officers and employees of a given local agency include officers and employees of any other local agency whose principal duties consist of providing services to the given local agency.

(b) "State agency" means every state office, department, division, bureau, board, commission, superior court, court of appeal, the Supreme Court, the California State University and Colleges, the University of California, and the Legislature.

§ 3203. Restriction of political activities prohibited

Except as otherwise provided in this chapter, or as necessary to meet requirements of federal law as it pertains to a particular employee or employees, no restriction shall be placed on the political activities of any officer or employee of a state or local agency.

§ 3204. Unlawful use of influence

No one who holds, or who is seeking election or appointment to, any office or employment in a state or local agency shall, directly or indirectly, use, promise, threaten or attempt to use, any office, authority, or influence, whether then possessed or merely anticipated, to confer upon or secure for any individual promotion, or to aid or obstruct any individual person in securing, or to prevent any individual person from securing, any position, nomination, confirmation, promotion, or change in compensation or position, within the state or local agency, upon consideration or condition that the vote or political influence or action of such person or another shall be given or used in behalf of, or withheld from, any candidate, officer, or party, or upon any other corrupt condition or consideration. This prohibition shall apply to urging or discouraging the individual employee's action.

§ 3205. Solicitation from other officers or employees

An officer or employee of a local agency shall not, directly or indirectly, solicit political funds or contributions, knowingly, from other officers or employees of the local agency or from persons on the employment lists of the local agency. Nothing in this section prohibits an officer or employee of a local agency from communicating through the mail or by other means requests for political funds or contributions to a significant segment of the public which may include officers or employees of the local agency.

§ 3206. Participation in political activities while in uniform

No officer or employee of a local agency shall participate in political activities of any kind while in uniform.

§ 3207. Local rules and regulations

Any city, county, or city and county charter or, in the absence of a charter provision, the governing body of any local agency and any agency not subject to Section 19251 by establishing rules and regulations, may prohibit or otherwise restrict the following:

(a) Officers and employees engaging in political activity during working hours.

(b) Political activities on the premises of the local agency.

§ 3208. Further limitations prohibited

Except as provided in Section 19251, the limitations set forth in this chapter shall be the only restrictions on the political activities of state employees.

§ 3209. Solicitation or receipt of funds to promote passage or defeat of ballot measures

Nothing in this chapter prevents an officer or employee of a state or local agency from soliciting or receiving political funds or contributions to promote the passage or defeat of a ballot measure which would affect the rate of pay, hours of work, retirement, civil service, or other working conditions of officers or employees of such state or local agency, except that a state or local agency may prohibit or limit such activities by its employees during their working hours and may prohibit or limit entry into governmental offices for such purposes during working hours.

§ 3304. Protection of procedural rights

(a) No public safety officer shall be subjected to punitive action, or denied promotion, or be threatened with any such treatment, because of the lawful exercise of the rights granted under this chapter, or the exercise of any rights under any existing administrative grievance procedure.

Nothing in this section shall preclude a head of an agency from ordering a public safety officer to cooperate with other agencies involved in criminal investigations. If an officer fails to comply with such an order, the agency may officially charge him with insubordination.

(b) No punitive action, nor denial of promotion on grounds other than merit, shall be undertaken by any public agency without providing the public safety officer with an opportunity for administrative appeal.

§ 3305. Filing of adverse comments in personnel file

No public safety officer shall have any comment adverse to his interest entered in his personnel file, or any other file used for any personnel purposes by his employer, without the public safety officer having first read and signed the instrument containing the adverse comment indicating he is aware of such comment, except that such entry may be made if after reading such instrument the public safety officer refuses to sign it. Should a public safety officer refuse to sign, that fact shall be noted on that document, and signed or initialed by such officer.

§ 3306. Time for filing response to adverse comment

A public safety officer shall have 30 days within which to file a written response to any adverse comment entered in his personnel file. Such written response shall be attached to, and shall accompany, the adverse comment.

§ 3307. Polygraph examination

No public safety officer shall be compelled to submit to a polygraph examination against his will. No disciplinary action or other recrimination shall be taken against a public safety officer refusing to submit to a polygraph examination, nor shall any comment be entered anywhere in the investigator's notes or anywhere else that the public safety officer refused to take a polygraph examination, nor shall any testimony or evidence be admissible at a subsequent hearing, trial, or proceeding, judicial or administrative, to the effect that the public safety officer refused to take a polygraph examination.

§ 3308. Disclosure of financial status

No public safety officer shall be required or requested for purposes of job assignment or other personnel action to disclose any item of his property, income, assets, source of income, debts or personal or domestic expenditures (including those of any member of his family or household) unless such information is obtained or required under state law or proper legal procedure, tends to indicate a conflict of interest with respect to the performance of his official duties, or is necessry for the employing agency to ascertain the desirability of assigning the public safety officer to a specialized unit in which there is a strong possibility that bribes or other improper inducements may be offered.

§ 3309. Search of locker

No public safety officer shall have his locker, or other space for storage that may be assigned to him searched except in his presence, or with his consent, or unless a valid search warrant has been obtained or where he has been notified that a search will be conducted. This section shall apply only to lockers or other space for storage that are owned or leased by the employing agency.

§ 3309.5. Proceeding for violations of rights and protections

(a) It shall be unlawful for any local public safety department to deny or refuse to any local public safety officer the rights and protections guaranteed to them by this chapter.

(b) The superior court shall have initial jurisdiction over any proceeding brought by any local public safety officer against any local public safety department for alleged violations of this section.

(c) In any case where the superior court finds that a local public safety department has violated any of the provisions of this chapter, the court shall tender appropriate injunctive or other extraordinary relief to remedy the violation and to prevent future violations of a like or similar nature, including, but not limited to, the granting of a temporary restraining order, preliminary, or permanent injunction prohibiting the local public safety department from taking any punitive action against the local public safety officer.

(d) This section shall apply only to local public safety officers who are peace officers as defined in Section 830.1 of the Penal Code, and shall not apply to public safety officers who are peace officers as defined in subdivisions (a) and (b) of Section 830.2 of the Penal Code.

§ 3310. Exception as to public agencies providing protections of rights

Any public agency which has adopted, through action of its governing body or its official designee, any procedure which at a minimum provides to peace officers the same rights or protections as provided pursuant to this chapter shall not be subject to this chapter with regard to such a procedure.

§ 3311. Mutual aid agreements

Nothing in this chapter shall in any way be construed to limit the use of any public safety agency or any public safety officer in the fulfilling of mutual aid agreements with other jurisdictions or agencies, nor shall this chapter be construed in any way to limit any jurisdictional or interagency cooperation under any circumstances where such activity is deemed necessary or desirable by the jurisdictions or the agencies involved.

PUBLIC SAFETY OFFICERS BILL OF RIGHTS
CALIFORNIA GOVERNMENT CODE

§ 3300. Short title

This chapter is known and may be cited as the Public Safety Officers Procedural Bill of Rights Act.

§ 3301. Definition; Legislative finding and declaration

For purposes of this chapter, the term public safety officer means all peace officers, as defined in Section 830.1 and subdivisions (a) and (b) of Section 830.2 of the Penal Code, including peace officers who are employees of a charter city or county. The term public safety officer also means all persons employed by the State of California and designated by law as peace officers.

The Legislature hereby finds and declares that the rights and protections provided to peace officers under this chapter constitute a matter of statewide concern. The Legislature further finds and declares that effective law enforcement depends upon the maintenance of stable employer-employee relations, between public safety employees and their employers. In order to assure that such stable relations are continued throughout the state and to further assure that effective services are provided to all people of the state, it is necessary that this chapter be applicable to all public safety officers, as defined in this section, wherever situated within the State of California.

§ 3302. Political activity

(a) Except as otherwise provided by law, or whenever on duty or in uniform, no public safety officer shall be prohibited from engaging, or be coerced or required to engage, in political activity.

(b) No public safety officer shall be prohibited from seeking election to, or serving as a member of, the governing board of a school district.

§ 3303. Subjection to interrogation; Temporary reassignment

When any public safety officer is under investigation and subjected to interrogation by his commanding officer, or any other member of the employing public safety department, which could lead to punitive action, such interrogation shall be conducted under the following conditions. For the purpose of this chapter, punitive action is defined as any action which may lead to dismissal, demotion, suspension, reduction in salary, written reprimand, or transfer for purposes of punishment.

(a) The interrogation shall be conducted at a reasonable hour, preferably at a time when the public safety officer is on duty, or during the normal waking hours for the public safety officer, unless the seriousness of the investigation requires otherwise. If such interrogation does occur during off-duty time of the public safety officer being interrogated, the public safety officer shall be compensated for such off-duty time in accordance with regular department procedures, and the public safety officer shall not be released from employment for any work missed.

(b) The public safety officer under investigation shall be informed prior to such interrogation of the rank, name and command of the officer in charge of the interrogation, the interrogating officers, and all other persons to be present during the interrogation. All questions directed to the public safety officer under interrogation shall be asked by and through no more than two interrogators at one time.

(c) The public safety officer under investigation shall be informed of the nature of the investigation prior to any interrogation.

(d) The interrogating session shall be for a reasonable period taking into consideration gravity and complexity of the issue being investigated. The person under interrogation shall be allowed to attend to his own personal physical necessities.

(e) The public safety officer under interrogation shall not be subjected to offensive language or threatened with punitive action, except that an officer refusing to respond to questions or submit to interrogations shall be informed that failure to answer questions directly related to the investigation or interrogation may result in punitive action. No promise of reward shall be made as an inducement to answering any question. The employer shall not cause the public safety officer under interrogation to be subjected to visits by the press or news media without his express consent nor shall his home address or photograph be given to the press or news media without his express consent.

(f) The complete interrogation of a public safety officer may be recorded. If a tape recording is made of the interrogation, the public safety officer shall have access to the tape if any further proceedings are contemplated or prior to any further interrogation at a subsequent time. The public safety officer shall be entitled to a transcribed copy of any notes made by a stenographer or to any reports or complaints made by investigators or other persons, except those which are deemed by the investigating agency to be confidential. Affidavit Confidential

No notes or reports which are deemed to be confidential may be entered in the officer's personnel file. The public safety officer being interrogated shall have the right to bring his own recording device and record any and all aspects of the interrogation.

(g) If prior to or during the interrogation of a public safety officer it is deemed that he may be charged with a criminal offense, he shall be immediately informed of his constitutional rights.

(h) Upon the filing of a formal written statement of charges, or whenever an interrogation focuses on matters which are likely to result in punitive action against any public safety officer, that officer, at his request, shall have the right to be represented by a representative of his choice who may be present at all times during such interrogation. The representative shall not be a person subject to the same investigation. The representative shall not be required to disclose, nor be subject to any punitive action for refusing to disclose, any information received from the officer under investigation for noncriminal matters.

This section shall not apply to any interrogation of a public safety officer in the normal course of duty, counseling, instruction, or informal verbal admonishment by, or other routine or unplanned contact with, a supervisor or any other public safety officer, nor shall this section apply to an investigation concerned solely and directly with alleged criminal activities.

(i) No public safety officer shall be loaned or temporarily reassigned to a location or duty assignment if a sworn member of his department would not normally be sent to that location or would not normally be given that duty assignment under similar circumstances.

Revised Code of Washington Annotated



Titles 39 to 40

Title 41—Ch. 41.01 to 41.27

unfit person to be employed in the public

GISLATIVE HISTORY

§ S p 29.

ROSS REFERENCES

ss cities: RCWA Chapter 41.20.
WA 41.12.090.
).

ATERAL REFERENCES

e §§ 28, 31, 37.
ons §§ 576–585.

2d, Civil Service, § 57:13 (notice of claim of illegal removal).

bringing or defending action affecting per-

refusal to answer questions asked during an

ment of prisoner as ground for removal).
employee to pay creditors as ground for re

s ground for discharge).

P184, 185.

TES OF DECISIONS

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com- ion of on in peri- ion in or in posi- er pe- on in

police department, but with longer combined period of service in same position in police and fire departments. State ex rel. George v Seattle (1936) 184 Wn 560, 52 P2d 360.

In cases of tenure under civil service where policeman shall hold office until removed or retired, it is implied that he can be removed for cause only and then only after due notice and hearing or opportunity to be heard. Luellen v Aberdeen (1944) 20 Wn 2d 594, 148 P2d 849.

Aberdeen civil service ordinance contemplated that person was to

removed for cause, and was common rule that accused policeman was entitled to hearing on charges made against him after reasonable notice thereof had been given notwithstanding that ordinance was silent as to hearing, notice, or opportunity to be heard. Luellen v Aberdeen (1944) 20 Wn 2d 594, 148 P2d 849.

41.12.090 Procedure for removal, suspension, demotion or discharge—Investigation—Hearing—Appeal. No person in the classified civil service who shall have been permanently appointed or inducted into civil service under provisions of this chapter, shall be removed, suspended, demoted or discharged except for cause, and only upon written accusation of the appointing power, or any citizen or taxpayer; a written statement of which accusation, in general terms, shall be served upon the accused, and a duplicate filed with the commission. Any person so removed, suspended, demoted or discharged may within ten days from the time of his removal, suspension, demotion or discharge, file with the commission a written demand for an investigation, whereupon the commission shall conduct such investigation. The investigation shall be confined to the determination of the question of whether such removal, suspension, demotion or discharge was or was not made for political or religious reasons and was or was not made in good faith [f]or cause. After such investigation the commission may affirm the removal, or if it shall find that the removal, suspension, or demotion was made for political or religious reasons, or was not made in good faith for cause, shall order the immediate reinstatement of [or] reemployment of such person* in the office, place, position or employment from which such person was removed, suspended, demoted or discharged, which reinstatement shall, if the commission so provides in its discretion, be retroactive, and entitle such person to pay or compensation from the time of such removal, suspension, demotion or discharge. The commission upon such investigation, [in] lieu of affirming the removal, suspension, demotion or discharge may modify the order of removal, suspension, demotion or discharge by directing a suspension, without pay, for a given period, and subsequent restoration to duty, or demotion in classification, grade, or pay; the findings of the commission shall be certified, in writing to the appointing power, and shall be forthwith enforced by such officer.

All investigations made by the commission pursuant to the provisions of this section shall be had by public hearing, after reasonable notice to the accused of the time and place of such hearing, at which hearing the accused shall be afforded an op-

portunity of appearing in person and by counsel, and presenting his defense. If such judgment or order be concurred in by the commission or a majority thereof, the accused may appeal therefrom to the court of original and unlimited jurisdiction in civil suits of the county wherein he resides. Such appeal shall be taken by serving the commission, within thirty days after the entry of such judgment or order, a written notice of appeal, stating the grounds thereof, and demanding that a certified transcript of the record and of all papers on file in the office of the commission affecting or relating to such judgment or order, be filed by the commission with such court. The commission shall, within ten days after the filing of such notice, make, certify and file such transcript with such court. The court of original and unlimited jurisdiction in civil suits shall thereupon proceed to hear and determine such appeal in a summary manner: *Provided, however*, That such hearing shall be confined to the determination of whether the judgment or order of removal, discharge, demotion or suspension made by the commission, was or was not made in good faith for cause, and no appeal to such court shall be taken except upon such ground or grounds.

LEGISLATIVE HISTORY

Enacted Laws 1937 ch 13 § 9 p 30.
See RRS § 9558a-9.

REVISER'S NOTE

* The enrolled bill is paragraphed at this point.

COLLATERAL REFERENCES

15 Am Jur 2d Civil Service §§ 45 et seq.
CJS Municipal Corporations §§ 579, 580.

Forms:

4 Am Jur Legal Forms 2d, Civil Service, § 57:13 (notice of claim of civil service employee after illegal removal).

5 Am Jur Pl & Pr Forms (Rev ed), Civil Service, Forms 11 et seq. (removal, suspension, demotion or discharge of civil service city police).

16 Am Jur Pl & Pr Forms, Public Officers, Forms 16:577 et seq. (review of board's discharge of civil service city police).

Modern Legal Forms, § 6181 (preliminary notice of suspension).

See also forms set out below, following Notes of Decisions.

Law Review Articles:

35 Wn LR 220 (due process requirements in suspension of civil service employee).

Annotations:

125 ALR 263 (constitutionality of statute pr review by court of com nission's order).

145 ALR 767 (acquiescence or delay as affec ployee illegally discharged or suspended).

171 ALR 175 (validity of removal or dischar cer or employee as affected by absence of mem sion from hearing).

16 ALR2d 1126 (power of civil service body o out notice or hearing to reconsider or set aside sal of employee).

Key Number Digests:

Municipal Corporations ⇐185(3-13).

NOTES OF DECISIONS

1. In General.
2. Power to Remove, Suspend, Demote, or Discharge; Grounds.
3. Administrative Proceedings.
4. — Notice and Opportunity to be Heard.
5. Judicial Review.
6. — Specific Instances.

1. IN GENERAL

Provision for removals, suspensions, demotions, and discharges is not applicable to cities and towns which prior to date statute was adopted, established civil service in police departments. Yantsin v Aberdeen (1959) 54 Wn 2d 787, 315 P2d 178.

Though police officer has no property rights in public employment which are protected by constitutional requirement of due process, his rights as civil service employee include, at least, procedure, prerequisites, and conditions set forth in applicable charter, statute or ordinance. Reynolds v Kirkland Police Com. (1963) 62 Wn 2d 720, 384 P2d 819.

Local ordinance attempting to implement provisions of this chapter failed to accomplish its purpose where it established single commission with inconsistent func-

tions, name ry, investig functions w in commiss land Police 720, 384 P2d

2. POWER DEMOT

Power to municipal erning body cannot be or inferior ly granted, kane city c police office board of p such board pend. Bring 27 Wn 202, 6

Where pol er to suspen ed rule pro ber of police pended by c proval of board with was invalid, (1902) 27 Wn

In cases service where office until

g in person and by counsel, and presenting judgment or order be concurred in by the rity thereof, the accused may appeal there- original and unlimited jurisdiction in civil herein he resides. Such appeal shall be commission, within thirty days after the en- or order, a written notice of appeal, stating nd demanding that a certified transcript of papers on file in the office of the commis- ing to such judgment or order, be filed by such court. The commission shall, within ing of such notice, make, certify and file such court. The court of original and un- civil suits shall thereupon proceed to hear appeal in a summary manner: *Provided,* earing shall be confined to the determina- dgment or order of removal, discharge, de- made by the commission, was or was not cause, and no appeal to such court shall such ground or grounds.

EGISLATIVE HISTORY

3 § 9 p 30.

REVISER'S NOTE

ragraphed at this point.

LATERAL REFERENCES

ice §§ 45 et seq.
tions §§ 579, 580.

s 2d, Civil Service, § 57:13 (notice of claim of r illegal removal).
rms (Rev ed), Civil Service, Forms 11 et seq. motion or discharge of civil service city po-

rms, Public Officers, Forms 16:577 et seq. (re- of civil service city police).
6181 (preliminary notice of suspension).
below, following Notes of Decisions.

ocess requirements in suspension of civil serv-

Annotations:

125 ALR 263 (constitutionality of statute providing for appeal to or review by court of commission's order).

145 ALR 767 (acquiescence or delay as affecting rights of public employee illegally discharged or suspended).

171 ALR 175 (validity of removal or discharge of governmental officer or employee as affected by absence of member of board or commission from hearing).

16 ALR2d 1126 (power of civil service body on own motion and without notice or hearing to reconsider or set aside order relating to dismissal of employee).

Key Number Digests:

Municipal Corporations ⇐185(3-13).

NOTES OF DECISIONS

1. In General.
2. Power to Remove, Suspend, Demote, or Discharge; Grounds.
3. Administrative Proceedings.
4. — Notice and Opportunity to be Heard.
5. Judicial Review.
6. — Specific Instances.

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1. In General

Provision for removals, suspensions, demotions, and discharges is not applicable to cities and towns which prior to date statute was adopted, established civil service in police departments. Yantsin v Aberdeen (1959) 54 Wn 2d 787, 345 P2d 178.

Though police officer has no property rights in public employment which are protected by constitutional requirement of due process, his rights as civil service employee include, at least, procedure, prerequisites, and conditions set forth in applicable charter, statute or ordinance. Reynolds v Kirkland Police Com. (1963) 62 Wn 2d 720, 384 P2d 819.

Local ordinance attempting to implement provisions of this chapter failed to accomplish its purpose where it established single commission with inconsistent functions, namely, appointive, accusatory, investigative, and adjudicative functions with no separation within commission. Reynolds v Kirkland Police Com. (1963) 62 Wn 2d 720, 384 P2d 819.

2. Power to Remove, Suspend, Demote, or Discharge; Grounds

Power to remove or suspend municipal officer rests with governing body of municipality, and cannot be exercised by individual or inferior board unless specifically granted, and hence, under Spokane city charter, providing that police officers may be removed by board of police in certain cases, such board has no power to suspend. Bringgold v Spokane (1902) 27 Wn 202, 67 P 612.

Where police board, having power to suspend public officers, passed rule providing that any member of police force might be suspended by chief of police with approval of board, suspension by board without consent of chief was invalid. Bringgold v Spokane (1902) 27 Wn 202, 67 P 612.

In cases of tenure under civil service where policeman shall hold office until removed or retired, it

is implied that he can be removed for cause only and then only after due notice and hearing or opportunity to be heard. Luellen v Aberdeen (1944) 20 Wn 2d 594, 148 P2d 849.

Under Seattle Charter, art 16 § 12, permitting removal of officer or employee only on filing with civil service commission of statement of reasons therefor, and providing for review of removal on demand, order of commission, finding that patrolman was not guilty of charge on which he was removed by chief of police ("conduct unbecoming an officer, being in a compromising position with a respectable married woman"), but sustaining removal on ground that patrolman was guilty of conduct unbecoming an officer in cultivating acquaintance of woman, was not improper, as sustaining removal on ground not specified by chief of police. State v Seattle (1911) 65 Wn 645, 118 P 821.

3. Administrative Proceedings

Any defects as to sufficiency or timeliness of policeman's protest against discharge were waived when civil service commission proceeded to investigate charges made. Luellen v Aberdeen (1944) 20 Wn 2d 594, 148 P2d 849.

Chief of police and another member of police department, who served city manager's written accusation on certain other police officers who were being discharged by city manager, were not "plaintiffs" in the discharge proceeding as the term is used in RCWA 4.28.070 and civil service statutes and ordinances which require service of process to be made by person other than plaintiff, where persons making service had no right to claim, and did not seek, legal redress from officers being charged for any reasons stated in the written accusation. Vancouver v Jarvis (1969) 76 Wn 2d 110, 455 P2d 591.

4. — Notice and Opportunity to be Heard

Where member of city police force was discharged by commissioner of public safety, written notice of discharge signed by chief of police, though irregular in some respects, did not invalidate order of discharge. State ex rel. Miller v Tacoma (1934) 177 Wn 689, 33 P2d 88.

"Opportunity to be heard" required to be given civil service employee sought to be discharged consists of right to know seasonably charges preferred, right to meet charges with witnesses and evidence, and right to have aid of counsel. Luellen v Aberdeen (1944) 20 Wn 2d 594, 148 P2d 849.

If no statement of charges made against police officer are given him, nor any notice of any hearing having been given are accorded him, his removal is illegal and of no force or effect. Luellen v Aberdeen (1944) 20 Wn 2d 594, 148 P2d 849.

Where mayor wrote registered letter to police officer enclosing accusation and advising him he was suspended, and officer signed delivery receipt therefor, officer was not properly "served" within rules of civil service commission requiring service in manner prescribed for service of civil process. Schultz v Pasco (1951) 39 Wn 2d 262, 235 P2d 168.

Special appearance in which accused police officer objects to jurisdiction of civil service commission on ground that there has been no service of accusation on him, is not waived by subsequent defense on merits. Schultz v Pasco (1951) 39 Wn 2d 262, 255 P2d 168.

5. Judicial Review

Where there is some competent evidence to sustain action of civil service commissioners in discharging policeman, its weight and sufficiency cannot be inquired into on appeal. State ex rel. Boltin v Cotterill (1923) 125 Wn 533, 216 P 851.

Where civil service commission exonerates police officer from charge given by chief of police for his discharge, but sustains his dismissal "for the good of the service," courts cannot review action, where there was no arbitrary action in receiving or refusing to receive evidence. Bridges v Patterson (1925) 135 Wn 436, 237 P 998.

On removal of police officer within classified civil service, in which appointing power has filed written statement of reasons for removal, on charges that cannot be said to be utterly frivolous, after full opportunity to be heard, and in which there was competent evidence tending to prove charges, courts will not inquire into weight or sufficiency of evidence. State ex rel. Price v Seattle (1944) 20 Wn 2d 17, 145 P2d 286.

Neither trial court nor supreme court can substitute its judgment for independent judgment of civil service commission in dismissing policeman. State ex rel. Perry v Seattle (1966) 69 Wn 2d 816, 420 P2d 704.

6. — Specific Instances

Sufficiency of evidence on which chief of police of city discharged police officer for stated offense of offering to release from custody certain persons, whom he had arrested for gambling, on payment to him of certain sum of money, and evidence on which civil service

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6. — Specific Instances

Sufficiency of evidence on which chief of police of city discharged police officer for stated offense of offering to release from custody certain persons, whom he had arrested for gambling, on payment to him of certain sum of money, and evidence on which civil service commission confirmed act of chief of police, will not be reviewed by court on writ of error, where city vested in such officers exclusive authority to discharge employees, and reason for discharge being sufficient. Ford v Seattle (1921) 117 Wn 55, 200 P 568.

On certiorari to review discharge of patrolman by civil service commission of city, superior court had power to reverse discharge for offenses of supplying information to federal secret service agent concerning conduct of federal employee and of violation of rule of police department for which patrolman had been suspended, where record showed that commission acted arbitrarily, though city charter provided that its decision should be final. State ex rel. Mowre v Civil Service Com. (1934) 178 Wn 325, 34 P2d 873.

Judgment sustaining action of civil service commission in dismissing police officer will be affirmed, where it appears that he was charged with insubordination and offensive conduct toward his superior officers, he was granted hearing before commission at which time he was represented by counsel, he heard witnesses testify against him and introduced evidence on his own behalf, and evidence sustained charges and justified action of commission in dismissing him. State ex rel. Schussler v Matthiesen (1946) 24 Wn 2d 590, 166 P2d 839.

City police officer refusing to take advantage of offer by city's attorney to continue hearing before city civil service commission on charges against officer, so that he could meet new evidence of misconduct not referred to in bill of particulars furnished by city public safety commissioner, waived right to complain of intro-

Note 6

duction of such evidence on appeal from judgment sustaining his dismissal by commission. State ex rel. Schussler v Matthiesen (1946) 24 Wn 2d 590, 166 P2d 839.

FORMS

Complaint to Civil Service Commission Regarding Conduct of Police Department Employee

[*Caption*]

To: Civil Service Commission, City of ....[1]....., State of Washington.

The undersigned, ...[2]....., hereby files a complaint with the above entitled Civil Service Commission, regarding the conduct of one ....[3]....., a duly appointed member of the police department of the City of ....[4]....., State of Washington, in that said ....[5]....., on ....[6]....., 19..[7]., committed the following acts: ....[8].....

Dated ....[9]....., 19..[10]...

....[11].....

Notice by Civil Service Commission to Police Department Employee as to His Removal or Suspension from Service

[*Caption*]

To: ....[1].....

A complaint having been filed against you with this commission on ....[2]....., 19..[3]., by ....[4]....., wherein the said ....[5]..... accused you of performing the following acts on or about ....[6]....., 19 ; ....[8]..... ;

And it appearing that such conduct constitutes a violation of Revised Code of Washington Section 41.12.080 in that ....[9].....,

You are hereby notified that you are ....[10]..... [removed *or as the case may be*] from the service of the police department of the City of ....[11]....., State of Washington.

Dated ....[12]....., 19..[13]...

....[14].....
Chairman

Demand by Police Department Employee Charges Filed Against

[*Caption*]

To: Civil Service Commission, City of ....[1]... ton.

The undersigned, having been removed fr with the police department of the City of ... ington, pursuant to an order of the Civil Se on ....[4]....., 19..[5]., hereby, pursuant to t Code of Washington Section 41.12.090, de circumstances relative to a complaint filed a by one ....[7].....

Dated ....[8]....., 19..[9]...

Notice of Hearing on Charges Filed A

[*Caption*]

To: ....[1].....

You are hereby notified that pursuant to vestigation of the charges filed against you w ....[2]....., 19..[3]., a public hearing will be h ....[4]..... o'clock ....[5]..... m., in the offices of t mission on ....[6]....., 19..[7]...

Dated ....[8]....., 19..[9]...

Order of Commission Affirming or Disaffir of Police Department Empl

[*Caption*]

This Commission, after due and proper notic investigation by public hearing held on ....[1]..... filed against one ....[2]....., a member of the p City of ....[4]....., State of Washington, by one 19..[7]., alleging that the said ....[8]..... commit namely: ....[9]....., and said Commission having sented by complainant and having heard testim ....[10]....., and having heard argument of ....[11].

NEW MEXICO STATUTES 1978

ANNOTATED

Chapter 29: Law Enforcement

Pamphlet 49: 29-1-1 through 29-12-4

1979 REPLACEMENT PAMPHLET

Pamphlet 49 includes laws enacted through the First Regular Session of the Thirty-Fourth Legislature (1979) and annotations through 590 P.2d 1391, 438 U.S. 421, 561 F.2d 1346, 464 F. Supp. 393, 80 F.R.D. 751 and 1979 Op. Att'y Gen. No. 79-13.

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of the section and made other minor changes.

29-2-9. Probationary period; length; permanent commission; salary.

All new appointments as members of the New Mexico state police shall be for a probationary period of two years. During such probationary period such new members may be removed or suspended at the discretion of the chief of the New Mexico state police. At the end of two years of satisfactory service and upon recommendation of the chief and with concurrence of the New Mexico state police board, the appointee may receive a permanent commission as a member of the New Mexico state police. However, the probationary period may be extended beyond a two-year period upon the recommendation of the chief with the concurrence of the board.

The salaries of all members of the New Mexico state police, probationary and permanent, and that of the chief shall be fixed by the board.

History: 1941 Comp., § 40-209, enacted by Laws 1941, ch. 147, § 9; 1953, ch. 80, § 2; 1953 Comp., § 39-2-9; Laws 1977, ch. 257, § 25; 1979, ch. 202, § 20.

The 1979 amendment substituted "chief" for "director" in three places, inserted "and with concurrence of the New Mexico state police board" and "as a member of the New Mexico state police" in the third sentence in the first paragraph, added the last sentence in the first paragraph, substituted "board" for "secretary" at the end of the section and made other minor changes.

29-2-10. Promotions.

All promotions in the New Mexico state police to the rank of sergeant shall be made after written examinations; provided, however, that on such examination for the rank of sergeant, the record of the party seeking promotion as a member of the New Mexico state police and his length of service shall be given a weight of forty percent in such examination. All promotions above the rank of sergeant shall be made by the chief after concurrence and approval by the New Mexico state police board. The ranks of sergeant, lieutenant and captain shall be permanent unless established as an exempt rank by the chief with the concurrence of the board. All promotions above the rank of captain are by executive appointment of the chief with concurrence of the board and such persons shall serve at the pleasure of the chief with the concurrence of the board.

History: 1941 Comp., § 40-210, enacted by Laws 1941, ch. 147, § 10; 1953 Comp., § 39-2-10; Laws 1979, ch. 202, § 21.

The 1979 amendment added the catchline, inserted "to the rank of sergeant" and "for the rank of sergeant" in the first sentence, inserted "New Mexico" preceding "state police" near the middle of the first sentence and added the second, third and fourth sentences.

29-2-11. Disciplinary proceedings.

No member of the New Mexico state police holding a permanent commission shall be removed from office, demoted or suspended except for incompetence, neglect of duty, violation of a published rule of conduct, malfeasance in office or conduct unbecoming an officer, and only on specific written charges filed with the New Mexico state police board with timely and adequate notice thereof to the person charged, and after a hearing on such charges by the board. The person so charged has the right to be represented by counsel at such hearings. A complete record of the hearing shall be made and, upon request, a copy thereof shall be furnished to the person charged. Such person may require that the hearing be public. In the event the board determines that the person charged shall be removed, hearing shall be made and, upon request, a copy thereof shall be furnished to the person charged. Such person may require that the hearing be public. In the event the board determines that the person charged shall be removed, demoted or suspended for a period in excess of thirty days, such person may appeal from the decision of the board to the district court of the district wherein the alleged cause or any one of the alleged causes for the proceeding arose. Such appeal shall be filed within twenty days after the decision of the board is rendered and the court shall determine promptly whether there is substantial

evidence to support the board's action and dispose of the appeal accordingly. Such determination shall be made on the basis of the record except that, for cause shown, the court shall permit either the board or the person charged to introduce new evidence; provided, however, that the chief of the New Mexico state police may suspend members of the New Mexico state police for disciplinary reasons for periods of not to exceed thirty days. Any member holding a permanent commission thus suspended by the chief shall have the right to have such suspension reviewed by the board, but no further review or appeal shall be allowed.

History: 1941 Comp., § 40-211, enacted by Laws 1941, ch. 147, § 11; 1953, ch. 80, § 3; 1953 Comp., § 39-2-11; Laws 1970, ch. 5, § 1; 1977, ch. 257, § 27; 1979, ch. 202, § 22.

The 1979 amendment inserted "New Mexico" preceding, and deleted "division" following, "state police" in the first sentence and preceding "may suspend" in the ninth sentence, substituted "New Mexico state police" for "advisory" preceding, and deleted "and the secretary" following, "board" near the middle of the first sentence, deleted "advisory" preceding, and "and the secretary" following, "board" at the end of the first sentence, substituted "board" for "secretary" in the fifth, seventh, eighth, ninth, and tenth sentences, substituted "chief" for "director" in the ninth and tenth sentences, substituted "New Mexico state police" for "division" preceding "for disciplinary reasons" near the end of the ninth sentence and made other minor changes.

Compiler's note. — The fifth and sixth sentences inadvertently repeat preceding and following provisions and first appeared in Laws 1970, ch. 5, § 1, which amended this section.

Incompetence includes physical inability to perform. — Incompetence includes physical inability to perform, which inclusion fits in with the pattern and purpose of the statutory plan. A termination or removal for physical unfitness is no less final than one for another form of incompetence. Tafoya v. New Mexico State Police Bd., 81 N.M. 710, 472 P.2d 973 (1970).

Physical inability to perform constitutes voluntary resignation not governed by section. — Request by officer injured in line of duty who had used all his sick leave for leave of absence which was improper under Rule 7, regulatory rule promulgated by state police board, issued pursuant to 29-2-22 NMSA 1978, and his physical inability to perform the functions of his job as a senior patrolman, constituted a voluntary resignation, not a termination governed by this section. Bundgher v. New Mexico State Police Bd., 82 N.M. 787, 487 P.2d 489 (1971).

Officer must first pursue administrative remedy. — Police officer who was wrongfully dismissed and who claimed salary and other benefits must first pursue them administratively. Tafoya v. New Mexico State Police Bd., 81 N.M. 710, 472 P.2d 973 (1970).

Transcript expense may be incurred by board. — Such expense as is necessary may be incurred to enable the board to make a factual determination in a disciplinary proceeding. It would be absurd to vest disciplinary power in the board and then hamstring such proceedings by refusing to pay the necessary expenses thereof. For this reason, if in their discretion the board feels a copy of the transcript is necessary, such expenditure is permissible. 1957-58 Op. Att'y Gen. No. 58-212.

No moneys expended for transcript expense in appeal. — If a transcript is necessary for the board to weigh disciplinary action, the transcript expense would be expendable in the same fashion as the board might incur a different type of expense for the same purpose. On the other hand, if the expense of the transcript is to be incurred wholly or partially to assist in the appeal of a judgment rendered personally against a state policeman, then and in that event such moneys cannot be expended either from the budgeted line item of "professional services" or from any other public moneys appropriated to the department. 1957-58 Op. Att'y Gen. No. 58-212.

Board is required to meet statutory procedures when it desires to terminate office, and if this is not done consequently the severance from service is short of statutory right. Tafoya v. New Mexico State Police Bd., 81 N.M. 710, 472 P.2d 973 (1970).

Where doubts as to right to procedural safeguards. — Any doubt as to the right to procedural safeguards should be resolved in the officer's favor unless the right to remove at will or pleasure is clearly expressed. Tafoya v. New Mexico State Police Bd., 81 N.M. 710, 472 P.2d 973 (1970).

No hearing required when reduction in rank. — The procedures of advancement, not a promotion, and reduction in rank resulting from regulation providing that all ranks above captain will be appointments and not permanent enable the chief to shift key personnel to positions where their interest and ability are used to best advantage, without the necessity of a hearing by New Mexico state police board. Wimberly v. New Mexico State Police Bd., 83 N.M. 757, 497 P.2d 968 (1972) (decided under former law).

C.J.S. reference. — 81A C.J.S. States § 110.

29-2-12. Oath.

All members of the New Mexico state police and the New Mexico state police board shall take the oath of office required of all state officials.

History: 1941 Comp., § 40-212, enacted by Laws 1941, ch. 147, § 12; 1953 Comp., § 39-2-12; Laws 1977, ch. 257, § 28; 1978, ch. 82, § 3; 1979, ch. 202, § 23.

The 1978 amendment deleted "and bond" at the end of the catchline, and "and the director and such other members of the state police or clerical employees of the state police division may direct shall give bond in such amount as the division shall direct for the faithful performance of their duties" at the end of the section.

The 1979 amendment inserted "New Mexico" preceding, and "and the New Mexico state police board" following, "state police" near the beginning of the section.

C.J.S. reference. — 81A C.J.S. States § 91.

29-2-21. Details.

The governor of New Mexico may from time to time detail all or any part of the New Mexico state police to such part of the state as in his judgment may be necessary to bring about proper law enforcement in the state to handle disturbances or to investigate specific law violations.

History: 1941 Comp., § 40-220, enacted by Laws 1941, ch. 147, § 20; 1953 Comp., § 39-2-20; Laws 1977, ch. 257, § 36; 1979, ch. 202, § 30.

The 1979 amendment deleted "order the secretary of the criminal justice department to" preceding "detail all or any part" near the beginning of the section.

29-2-22. Rule-making power; rules to establish standards of conduct.

The New Mexico state police board shall have authority to make and promulgate rules and regulations for the purpose of carrying out the provisions of Sections 29-2-1 through 29-2-29 NMSA 1978. The New Mexico state police board shall establish by rules, from time to time, standards of conduct for members of the New Mexico state police and a copy thereof shall be delivered to each such member and displayed at each station of the department. Such rules shall be filed pursuant to the State Rules Act [14-3-24, 14-3-25, 14-4-1 to 14-4-9 NMSA 1978].

History: 1941 Comp., § 40-221, enacted by Laws 1941, ch. 147, § 21; 1953, ch. 80, § 5; 1953 Comp., § 39-2-21; Laws 1977, ch. 257, § 37; 1978, ch. 82, § 5; 1979, ch. 202, § 31.

The 1978 amendment substituted "state police director, with the approval of the secretary of the criminal justice department" for "state police director" near the beginning.

The 1979 amendment substituted "board" for "director" and "29-2-29" for "29-2-28" in the first sentence, in the second sentence, substituted "board" for "division" preceding "shall establish," substituted "New Mexico state police" for "division" near the middle of the sentence and substituted "department" for "division" at the end of the sentence and made other minor changes.

Board's authority to make rules controlled by statute. — Authority of the police board to promulgate rules and regulations must be found in and is limited by statute. Such authority is not limited to those powers expressly granted by statute, but includes, also, all powers that may fairly be implied therefrom. Winston v. New Mexico State Police Bd., 80 N.M. 310, 454 P.2d 967 (1969).

Agency's authority includes express and implied powers granted. — It is a fundamental principle of administrative law that the authority of an agency is not limited to those powers expressly granted by statute, but includes, also, all powers that may fairly be implied therefrom. Wimberly v. New Mexico State Police Bd., 83 N.M. 757, 497 P.2d 968 (1972).

Temporary rank adjustments within scope of powers. — Where New Mexico state police board has adopted a regulation providing that "all ranks above captain will be appointments and not permanent," and the officers who hold these ranks are given additional salary and emoluments, but these ranks, according to the record, are considered by the board and the department to be temporary, plaintiff's adjustments in rank from captain to major and major to lieutenant colonel were not promotions as such but were temporary advancements within the framework of administration of the New Mexico state police and both chief of police and the board acted within the scope of their authority under the laws of the state of New Mexico in adjusting plaintiff's rank from lieutenant colonel to major and from major to captain. Wimberly v. New Mexico State Police Bd., 83 N.M. 757, 497 P.2d 968 (1972) (decided under former law).

As well as regulation allowing director to shift key personnel. — The procedures of advancement and reduction in rank resulting from regulation providing that all ranks above captain will be appointments and not permanent enable the chief of police to shift key personnel to positions where their interest and ability are used to best advantage. Wimberly v. New Mexico State Police Bd., 83 N.M. 757, 497 P.2d 968 (1972) (decided under former law).

No authority for rule requiring mandatory retirement after 30 years. — There is no delegated authority for the state police board to promulgate a rule requiring mandatory retirement after 30 years of service; such rule would be unreasonable, arbitrary and conflict with the retirement by age 65 requirement of 29-2-6 B NMSA 1978. 1967 Op. Att'y Gen. No. 67-72.

And such rule is invalid. — State police board regulation providing for involuntary retirement of all police officers who had completed 30 years of service, even where such officers had not reached mandatory retirement age, exceeded statutory authority of the board and therefore was invalid. Winston v. New Mexico State Police Bd., 80 N.M. 310, 454 P.2d 967 (1969).

Effect of using all of sick leave. — Rule 7 of regulation promulgated by state police board filed pursuant to this section makes it clear that under no circumstances can an officer who was injured in line of duty but who has used up all of his sick leave be granted a leave of absence from the police department, and request for such leave constitutes a voluntary resignation. Budagher v. New Mexico State Police Bd., 82 N.M. 787, 487 P.2d 489 (1971).

29-2-23. Repealed.

Repeal. — Laws 1979, ch. 202, § 53, repeals 29-2-23 NMSA 1978, relating to the transfer of powers and duties in the bureau of identification of the department of justice to the technical services bureau of the

STATE OF ALASKA
THE LEGISLATURE

LEGISLATIVE AFFAIRS AGENCY

POUCH Y STATE CAPITOL
JUNEAU ALASKA 99811
907-465-3500

MEMORANDUM March 18, 1983

SUBJECT: Individual rights of peace officers (HB 200)

TO: Representative Charlie Bussell
Chairman, House Judiciary Committee

FROM: James H. Lear
Legislative Counsel JHL

Steve Cramer of your staff has asked our office for a sectional analysis of HB 200 ("An Act relating to individual rights of peace officers").

HB 200 addresses the rights of a peace officer when subjected to an investigation that can result in four different types of sanctions. Those sanctions are set out in descending order of severity starting with conduct of a peace of officer which would subject the peace officer to criminal prosecution (sec. 18.65.530); followed by sanctions in the form of punitive action (sec. 18.65.531) and disciplinary action (sec. 18.65.532) against a peace officer by the employer of the peace officer instead of criminal prosecution; and a final sanction in the form of civil liability of the peace officer (sec. 18.65.533).

The rights of a peace officer during an investigation with those four different possible outcomes may vary slightly according to the severity of the outcome. For example, under sec. 18.65.530, a peace officer subject to criminal action is entitled to all of the rights granted the accused under law, but is also granted specific rights set forth for the benefit of a peace officer subjected to punitive action.

Sec. 18.65.531 establishes specific rights for a peace officer subject to punitive action that might not otherwise be available because the peace officer would not be charged with a criminal offense entitling him to the full panoply of constitutional rights. The specific rights are set out in eleven paragraphs as follows:

(1) The peace officer has a right to be informed of the nature of the investigation if instituted by the employing agency, or a formal written complaint if instigated by a complainant. The peace officer must also be informed of his rights under this section.

(2) The peace officer is entitled to have a witness or other person present to participate on behalf of the peace officer.

(3) This paragraph ensures that the interrogation or interview would not be an extreme imposition on the peace officer.

(4) Under this paragraph the peace officer would be entitled to compensation if interviewed while not on duty.

(5) This paragraph ensures that the peace officer would be free from harrassment during the interview and establishes that punitive action may not be taken against the peace officer for failure to answer questions unless he is informed that such failure could result in punitive action. The peace officer can exercise the right to remain silent if the peace officer's alleged conduct would be criminal.

(6) The peace officer may record the interrogation or interview and have access to the employer's tape recording, if any is made.

(7) This paragraph guarantees access to transcripts and other relevant information, including information in the peace officer's personnel file, if not confidential.

(8) This paragraph addresses the right of the peace officer to review adverse material before it is placed in the peace officer's personnel file and affords the peace officer an opportunity to respond to such material and have the response included in the peace officer's personnel file.

(9) The peace officer may not be compelled to submit to a polygraph examination.

(10) Certain personal information may not be coerced from a peace officer.

(11) The peace officer's locker space or other space assigned to the peace officer is free from unlawful search and seizure.

Under sec. 18.65.532 a peace officer subjected to disciplinary action has the same rights specified for a peace officer subject to more severe penalties in the form of punitive action, as outlined in the above eleven paragraphs. In addition, the peace officer has the right to have the personnel file purged of disciplinary proceeding matters within one year and is presumed to be innocent unless proven otherwise.

Under sec. 18.65.533 if a peace officer is subject to possible civil liability, the peace officer may exercise those same rights set out in the above eleven paragraphs and is entitled to have an attorney present at the peace officer's expense during the investigation.

Under sec. 18.65.534 a peace officer may not be subjected to any reprisals for exercising rights specified in this bill.

Section 2 of HB 200 amends AS 23.10.037(b) to provide that a police department may polygraph an applicant for employment but may not require a polygraph of an employee.

JHL:ljb
10/010

M E M O R A N D U M

March 15 , 1983

TO: Committee on Judiciary File

FROM: Staff

SUBJ: Requested Amendment to HB 200, "An Act relating to individual rights of peace officers."

A M E N D M E N T # 1

page one (1); line seventeen (17) and eighteen (18);
delete:

" in addition to the rights specified in AS 18.65.531"

ANALYSIS OF SB 115 AND HB 200

Sec. 18.65.531(1) (a) When a person is arrested by warrant or summons, a copy of the complaint is given to suspect.

(b) If not, arraignment is held within 24 hours and at that time he/she is advised of charges against him/her.

(c) At a minimum, when placed under arrest, an individual is informed verbally of charges.

(d) At a bail hearing, immediately after arrest, circumstances surrounding alleged offense are told to a magistrate/judge in front of the accused and on tape.

(e) If suspect is being interviewed prior to arrest, person is advised of the nature of the offense which promulgated the interview.

(2) (a) Right to have an attorney as per mirandar.

(b) Right of an employee to have a representative present in an interview which could lead to punitive action as per Weingarten, 420 VS 251 (1975) and Material Research Corporation, 262 NLRB 122 (1982).

(3) (a) Unless seriousness of offense requires otherwise, it is standard procedure to conduct an interview with suspect during the day or directly after work.

(4) Any employer that calls an employee in to work is required to compensate him/her under the Federal and State Wage and Hour Laws (although the state and political subdivisions are currently exempt).

(5) All suspects are allowed to take the fifth amendment and employees are not required to answer questions put to them by an employer in an interview. This section gives peace officers less rights in that it allows for punitive action to be taken if the peace officer fails to answer questions unless the conduct would be criminal.

(6) Same as criminal rules of discovery of evidence.

(7) Same as criminal rules of discovery of evidence.

(8) If a person is a suspect in a case and is found to be innocent, no record is kept in the state law enforcement computer. A peace officer, on the other hand, can have allegations put into his/her personnel file before it is determined that he/she is innocent.

(9) No other persons are required to take a polygraph and polygraph results, if voluntarily given, are not admissible in court.

(10) A peace officer is granted less rights than an other person with regard to potential conflict of interests, otherwise, the rights are subject to rules of discovery of evidence, the same as any other individual.

(11) These rights for all other persons exist and cannot be abridged unless a valid search warrant is obtained.

Sec. 18.65.532 (3) All persons are presumed innocent until proven guilty.

TAX RULINGS

With Pocketbook Impact—

IRS powers. Taxpayers who take a "who will ever know" attitude in filling out tax returns need to note the awesome powers granted the Internal Revenue Service to protect federal income.

When the IRS denied many deductions claimed by Daniel Leimel and demanded $2,287 in added taxes, Leimel petitioned his case to the Tax Court. The IRS then proposed a conference to let him present his evidence. Leimel appeared but offered only a few miscellaneous receipts. He ignored other IRS requests for evidence and spurned a Tax Court order setting a deadline for production of proof. At trial recently, he tried to present evidence allegedly substantiating his deduction claims. Now, in a brief decision, the court has excluded that evidence and sided with the IRS.

Commuting. A worker may manage to deduct some of his cost incurred in driving to work in order to carry the tools of his trade, but only if he can prove costs that he would not have without the need to transport tools.

Alonzo McLaughlin, Jr., obviously needed to drive his car in order to take 75 pounds of tools. And in court he argued that, otherwise, he would have taken the Long Island Railroad to work. So he deducted the difference in cost. But now the Tax Court has ruled that McLaughlin failed to show that he drove to work only because of his need to carry tools.

Note: Even if he had convinced the court, his deduction would be limited to the difference between his driving cost with the tools and driving without them.

Pregnancies. Sick-leave pay during normal pregnancies is no longer exempt from Social Security payroll taxes, the IRS points out in a new ruling that implements tax amendments recently enacted by Congress. Effective January 1 of last year, such payments during the first six months of absence from work are taxable.

Requests for citations should be addressed to Reader Service, 2300 N Street, N.W., Washington, D.C. 20037.

NEWS-LINES®

Court and Government Decisions With Impact on Business, Employes, Consumers

CHEMICAL HAZARDS to unborn children must be amply demonstrated before fertile women can be barred from certain jobs, decides a U.S. appeals court in remanding a case for further consideration. The policy of the Olin Corporation in excluding women of childbearing capacity from areas where hazards to fetuses may exist must be objectively justified, says the court. The company must show, it concludes, that support for its view is so considerable within the scientific community that an informed employer could not responsibly fail to believe that its opinion might be the accurate one.

A SEX-BIAS finding does not entitle a victim to automatic back pay or promotion, finds a U.S. appeals court. A female school administrator, not considered for an opening because of her sex, is denied back pay and promotion, because the Greenwood, S.C., school district shows that two other women would have been selected over her.

A COURT ORDER specifying how the Labor Department must carry out an affirmative-action program is denied because a U.S. district court says it cannot second-guess the department's discretionary conduct. The order was sought by black workers unhappy with government handling of an affirmative-action program for the Philadelphia construction industry. While not enforced to the degree the workers would have wished, the record does not justify judicial intrusion, holds the court.

DISABILITY BENEFITS may not be ended because an employe's union goes on strike, decides the National Labor Relations Board. Conoco's contract with employes ruled out disability payments during strikes. But the NLRB rejects this, determining that employes on disability before the strike are entitled to payments until their disability ends or benefits are exhausted.

DISCLOSURE LAWS requiring public access to family finances of nonpolicymaking city employes are unconstitutional, holds a U.S. district court. A challenge to a New York City disclosure law by firefighters and police officers is upheld. The court finds that "Americans do not lose their right to privacy by accepting public employment." It adds that at times reasons for the public to know may exist, but these must be stated before information is dispensed.

FAILURE TO REPORT that a hospital patient took the wrong medicine is not ground for a nurse's dismissal, finds an arbitrator. A patient nearly died after a nurse, who knew he had been given the wrong medication, failed to mention the mix-up. Noting favorable endorsements from three doctors, the arbitrator rules that the nurse be reinstated but that any subsequent serious error will justify her discharge.

PUNITIVE DAMAGES are recoverable from the estate of a dead person, decides the West Virginia Supreme Court of Appeals. While traditionally courts deny such damages because "the dead cannot be punished by earthly judgment," the state court finds punitive damages serve other important functions, for example, providing benefits to injured parties and serving as a deterrent to others.

REVISED PAY and work rules at federal projects are struck down by a U.S. district court. The changes ordered by the administration would have allowed 2 semiskilled "helpers" for every 3 journeymen at federal projects and excluded wage rates at federal work sites or adjacent metropolitan areas as factors in determining rates for rural areas. The court, however, allows a change in the criteria for "prevailing wage rates"—from wages being paid to at least 30 percent of workers to wages being paid to a majority of workers. The revisions had been designed to save 600 million dollars annually.

Conclusions expressed here are based on decisions of courts, government agencies and Congress. For reasons of space, these decisions cannot be set forth in detail. On written request, U.S.News & World Report *will refer readers to the basic material.*

HB 200 or SB 115	CURRENT A.P.D. CONTRACT
AS 18.65.530	Article V Sec. 1 & 1g7
AS 18.65.531 a1	Article V Sec. 1g3
AS 18.65.531 a2	Article V Sec. 1b
AS 18.65.531 a3	Article V Sec. 1g1
AS 18.65.531 a4	Article V Sec. 1g2
AS 18.65.531 a5	Article V Sec. 1g5
AS 18.65.531 a6	Article V Sec. 1g6
AS 18.65.531 a7	Article V Sec. 1g6
AS 18.65.531 a8	Article V Sec. 1h
AS 18.65.532 a2	Article V Sec. 1h
AS 18.65.532 a3	Article V Sec. 1b
AS 18.65.533 1&2	Article V Sec. 1g5(a)
AS 18.65.534 1&2	Article V Sec. 1e

Sec 18.65.530 If the complaint against the officer causes criminal action, the officer has all the rights afforded any other defendant in a criminal investigation

Sec 18.65.531a When the investigation is internal or criminal charges could evolve and punitive action may be taken then the following shall apply:

(1) The officer shall be informed of the allegation or given a copy of the complaint when first interviewed.

(2) The officer can have a person of their choice present at each state of the investigation.

(3) Interview will be during the officer's on duty time unless the seriousness demands otherwise.

(4) If the officer is called in when off duty, compensation will be given at the regular rate.

(5) If the allegation is criminal in nature the officer has the right to remain silent. If the allegation is not criminal and if founded would result in employing agency internal punitive action; days off, written letter, etc., the officer will be informed that to not cooperate with the investigation in itself could result in punitive action, but the officer will not be subject to adverse language.

(6) Either party has the right to tape record any interview and both will have access to those tapes.

(7) The officer can have a copy of all material within the investigation except that of confidential nature.

(8) Adverse information must be signed by the officer and a copy provided to the officer prior to that being placed in the officer's personnel file. The officer has 30 days to file a response. All unfounded complaints or information must be promptly removed from the officer's personnel file.

(9) If the officer declines a polygraph examination in any investigation, this cannot be used or held against the officer and no record of that can be kept.

(10) Personal matters of the officer's will remain so unless the employing agency is looking into possible conflict of interest with respect to official duties and all matters are subject to rules of discovery of evidence.

(11) The right of privacy and the expectation of such with regards to assigned lockers, briefcases and sole use areas is the same as assigned school lockers, gym lockers, and a student's book bag.

Sec 18.65.532b Action taken by the employing agency which is noncriminal in nature; days off, dismissal, reprimand, etc.

Sec 18.65.532a When a complaint filed if found to be true will result in only disciplinary action. No criminal.

(1) The officer has all the rights in Sec 18.65.531.

(2) Any record of disciplinary action must be removed after one year.

(3) The officer is presumed innocent until guilt is proven.

(3b) If the complaint is founded, disciplinary action may be taken by the employing agency against the officer but does not apply to minor on the spot admonishments.

Sec 18.65.533 If the officer under investigation may be subject to civil liability the officer can:

(1) Excerise the rights in Sec 18.65.531.

(2) Have at the officer's expense, an attorney present in all investigative steps.

Sec 18.65.534 No officer will suffer reprisals or be in anyway disadvantaged for exercising any rights in Sec 18.65.531 thru 18.65.533:

(1) As evidence against the officer in any proceedings.

(2) Cannot be used to change the officers work schedule, wages or working conditions.

Sec 2 AS 23.10.037b Excludes peace officers from polygraph examinations after being hired and employed by any agency. Still allows for preemployment polygraph examinations.

Individual Rights Under	Prisoner Rights Under
SB115/HB200	7AAC 60.400-505
SEC 18.65.531a1	7AAC 60.410C
SEC 18.65.531a2	7AAC 60.420 b4C
SEC 18.65.531a3	7AAC 60.415 Uses working days
SEC 18.65.531a4	7AAC 60.425 Uses working days
SEC 18.65.531a5	Prisoner is not compelled to answer questions.
SEC 18.65.531a6	7AAC 60.420 b4C
SEC 18.65.531a7	Right of Appeal
SEC 18.65.531a8	7AAC 60.465a 7AAC 60.480b
SEC 18.65.531a9	No Polygraph in any criminal or infraction hearing.
SEC 18.65.531a10	Right of Privacy
SEC 18.65.531a11	Right of Privacy
SEC 18.65.532.3	7AAC 60.455
SEC 18.65.533.2	7AAC 60.440e
SEC 18.65.534	7AAC 60.480 c & h -- No execution of punishment until appeals are complete.

The following items are taken from 7 AAC 60.400 - 480 which governs DISCIPLINE of a prisoner in a state institution:

7 AAC 60.400	Prohibited conduct Major infractions are listed as homicide, rioting, etc. High Moderate infractions are listed as fighting, stealing over $100 value, sexual acts, etc. Low Moderate infractions are listed as indecent exposure, stealing more than $50 less than $100 value, false statement, etc. Minor infractions are listed as gambling, stealing or damaging state property under $50 value. It should be noted that those infractions contained in Low Moderate and Minor are same as misdemeanor crimes.
7 AAC 60.405	States that any infraction must be reposted to the superintendent and that those of a Low Moderate or Minor nature may be handled by a staff member informally (non-criminal) or referred to the superintendent for formal action.
7 AAC 60.410	If formal disciplinary action is to be taken, a report is to be written citing the rule violated.
7 AAC 60.410 (c)	A copy of the disciplinary report must be given to the prisoner no later than five working days after the infraction occurred.
7 AAC 60.410 (e)	If no hearing is scheduled for the infraction, the prisoner is to be treated as not guilty and all reports are to be removed from his institutional file.
7 AAC 60.415	A prisoner must have 48 hour notice prior to his disciplinary committee hearing.
7 AAC 60.415 (c)	After the notice of a hearing, the prisoner must inform the committee in writing of any witnesses or evidence he wishes to introduce.
7 AAC 60.420 (b4c)	The accused prisoner or his advocate may call witnesses or introduce evidence.
7 AAC 60.420 (c2)	The disciplinary committee must consider the evidence the prisoner or his advocate present.

7 AAC 60.425 (b) The accused prisoner can postpone his appearance before the disciplinary committee for two working days.

7 AAC 60.430 (a) The accused prisoner can present witnesses or evidence at any hearing.

7 AAC 60.440 (b) The staff advocate may be from correctional offices, institutional counselors or probation officers.

7 AAC 60.440 (e) The accused prisoner has a right to counsel in any hearing where felony prosecution may result. The felony prosecution is eliminated if the district attorney indicates in response to an injury under Section 460 of this chapter that no felony complaint will be filed.

7 AAC 60.455 A prisoner is presumed innocent of the infraction and the institution has the burden of establishing guilt.

7 AAC 60.460 The superintendent will notify the district attorney of any infraction which if found true would constitute a violation of a felony criminal statute.

7 AAC 60.465 If the prisoner is found to have not committed the infraction, the disciplinary report and any other documentation which mentions the incident must be removed from the prisoner's file.

7 AAC 60.470 Punishment: The disciplinary committee will impose at least one and may impose any or all the penalties in this section. Some examples are:

1. Reprimand
2. Suspension of activities
3. Confinement to punitive segregation

The following items are taken from 7 AAC 60.485 - 505 which govern SEGREGATION in a state institution:

7 AAC 60.485 A prisoner may be temporarily assigned to administrative segregation under different reasons, one of which is, the prisoner represents a substantial immediate threat to the security of the institution or requires protective custody.

7 AAC 60.485 (b) Prisoners assigned administrative segregation must be immediately informed of the reason.

7 AAC 60.485 (c) The prisoner will be granted a hearing no later than three days after he is placed in segregation.

7 AAc 60.485 (e) The prisoner is entitled tc written notice at least 24 hours in advance of the hearing, can have a staff advocate at the hearing, offer evidence, present witnesses and cross examine witnesses.

EBEN H. LEWIS
2073 ARLINGTON DRIVE NORTH
ANCHORAGE, ALASKA 99503

February 1, 1983

Honorable Jan Faiks
Alaska State Senate
State Capitol, Pouch V
Juneau AK 99811

Dear Jan:

A couple of weeks ago I was seated next to Joe Hayes on a flight down from Fairbanks, and had a chance to discuss with him some ideas I have had about reinforcing the criminal justice system in Alaska, which is now in such disarray. I have followed up on the discussion by sending on to Joe some material I had prepared several years back on providing some legislative limitation on the courts' application of the so-called 'exclusionary rule', which bars the use of criminal evidence seized under circumstances which a court may later determine violated a defendant's right against 'unreasonable search and seizure'. The courts have been extremely restrictive in allowing use of emidence taken without a warrant, even though the officer may have been acting in good faith at the time it was taken. The time is long overdue for legislative bodies to take the matter in hand and provide some definition of what a 'reasonable search' is, and I submit that legislation along the lines suggested in Fritz Pettyjohn's SB 49 ought to be strongly supported. Since I don't have a copying machine at home, I would hope Joe Hayes could have any of the material I sent him made available for your use and that of other interested legislators.

My 15 years on the bench strongly persuaded me that the Indispensable component of an effective criminal justice system is a professional police organization. I feel that Anchorage is fortunate in having such an organization serving the community. Like any large organization there are morale and personality problems present in its continuing function, which Ifeel deserve attention. I have a good friend of many years' standing who is serving on the legislative committee of the Anchorage Police Officers Associaton, who tells me there is some dispute with management over a policy requiring officers to submit to a polygraph examination under certain circumstances, under pain of discharge from the force if he/she refuses. The Association is supporting a Peace Officers Bill of Rights which, if enacted by the Legislature, would bar such practise.

My experience judicially with the polygraph dictates my conclusion that the Association's anti-polygraph position is correct. I researched the question thoroughly several years ago when I was assigned for retrial the case of State v. Fageriak, in which refusal of a key witness to submit to a pre-trial polygraph became relevent. I found that only a few jurisdictions

permit any reference to the polygraph in any circumstances, and then, only under the most stringently controlled limitations. It is never allowed as evidence against a criminal defendant. Interpretation of polygraph results is a highly subjective matter with the individual operator, subject to widely swinging variations in results. It is patently unfair to require a police officer under investigation to submit involuntarily to a test like this, particularly after a highly stressful incident, such as shooting at a suspect, when the officer's emotions could substantially affect the result. I suspect that the APD policy requiring the test, in fact, may violate the 5th amentment of the U S Constitution. Any bold lawyer who suggests otherwise can't show an Alaska case supporting his position.

The polygraph does have useful functions, when voluntarily taken by suspects to assist in deciding if they should remain under suspicion, and also as a pre-hiring management tool in interviewing applicants for sensitive positions (including police officers). An officer under investigation might even wish to have a polygraph examination to assist with the investigation, and in clearing himself, but such uses involve no due process questions. I hope, if you have an opportunity to consider this question, you will give my comments careful consideration.

There are also other bills pending on other matters of concern to peace officers safety: HB 100 and companion SB 24, which includes causing physical injury to a public safety officer among the acts constituting (felony) third-degree assault. Also, HB 2, a sentence-enhancing proposal, provides for substantially increased sentence, without probation, if a person uses 'armor piercing' ammunition in a gun while committing any crime of violence. Badly needed legislation.

Shirley and I were delighted that your campaign was successful, and that you have the opportunity to serve our interests in Juneau. Best of luck!

Sincerely,

Eben H. Lewis

March 4, 1983

Mr. Jim Stirling
Anchorage Police Department
Employees Association
701 West 58th Avenue
Anchorage, Alaska 99502

Dear Mr. Stirling:

The Anchorage Native Caucus supports and endorses HB 200 and SB 115. We believe that no person should be discriminated against because of race, religion, or occupation. Individual protection under the law should be equal for all people.

The above endorsement was passed by vote of our membership on March 2nd, 1983, during a regularly scheduled meeting.

Please keep us informed of the progress of these pieces of legislation and if we can be of further assistance please do not hesitate to call me at 278-4787.

Sincerely,

Clifford A. Black
President

Anchorage Native Caucus • P.O. Box 3534 • Downtown Station • Anchorage, Alaska 99510

ANCHORAGE FIRE FIGHTERS UNION
LOCAL 1264
INTERNATIONAL ASSOCIATION OF FIRE FIGHTERS
AFL-CIO

801 W. Fireweed, #102
ANCHORAGE, ALASKA 99503

3-10-83

TO: Members of the House Judiciary Committee

Dear Legislators,

As president of the 270 person Anchorage Firefighters Union I wish to inform you of the total support of our union for House Bill 200.

We believe that Peace Officers and other emergency responders should enjoy the same rights as other citizens, and should not be subjected to interrogations of a type that are not admissible for the very people these officers protect, at great personal risk. It is interresting to note that the Anchorage Fire Department in a current review of their personnel rules and regulations is proposing polygraph examinations for firefighters and paramedics, as well as support personnel working for the department.

In the interest of protecting the rights of all citizens of our state, I would strongly urge your support for the passage of HB 200 into law.

Sincerely,

John Kiewik, President
Anchorage Firefighters Union
Local 1264, IAFF

Anchorage Crime Commission

March 10, 1983

Mr. James Stirling
Anchorage Police Department Employees' Association
701 West 58th
Anchorage, Alaska 99502

Dear Mr. Stirling:

The Anchorage Crime Commission is pleased to inform you that the Board of Directors, at their March 7, 1983 meeting, unanimously voted to support HB200 and SB115, an act relating to individual rights of peace officers.

It is our belief that the constitutional right of due process should be afforded to every citizen and not be denied to peace officers because of their occupation.

You may use this letter of support to communicate the Anchorage Crime Commission's position on this issue.

Sincerely,

I. "Ski" Olsonoski, Chairwoman
Anchorage Chamber of Commerce Crime Commission

cc: Board of Directors)
and) Anchorage Chamber of Commerce
Advisors to the Board) Crime Commission

STATE OF ALASKA
PRELIMINARY STATEMENT OF FISCAL IMPACT

Bill No: House Bill 200 Date on Bill: February 14, 1983
Title: An Act relating to individual rights of peace officers
Sponsor: Bussell, Liska, Barnes, Sovmanski & Lindauer
Requestor:

1. Estimated fiscal impacts on:

a. Expenditures:

(Thousands of Dollars)

			FY 83	FY 84	FY 85	FY 86	
Capital							
Operating							
Total			-0-	-0-	-0-	-0-	

b. Revenues:

Revenue			-0-	-0-	-0-	-0-	

2. Source of funds to offset fiscal impact of bill:

N/A

3. Assumptions:

N/A

4. Disclaimer:
This statement has not been reviewed by the OMB in the Office of the Governor.

Prepared By: Lucy Thompson Phone: 465-4404
Division: Labor Relations Date: February 22, 1983

Approved by Commissioner: [illegible] Date: [illegible]
Department: [illegible]

5. Distribution:
Original to Legislative Finance
Copy to OMB
Copy to Sponsor
Copy to Requestor

2/8/83

7/0222-09/BDGSF1

STATE OF ALASKA
PRELIMINARY STATEMENT OF FISCAL IMPACT

Bill No: HB 200 Date on Bill: 2-14-83
Title: An Act relating to individual rights of peace officers
Sponsor: Bussell
Requestor: House Judiciary

1. Estimated fiscal impacts on:

a. Expenditures:

(Thousands of Dollars)

			FY 83	FY 84	FY 85	FY 86		
Capital								
Operating								
Total			-0-	-0-	-0-	-0-		

b. Revenues:

Revenue								

2. Source of funds to offset fiscal impact of bill:

Source of funds not identified by sponsor

3. Assumptions:

No fiscal impact

4. Disclaimer:
This statement has not been reviewed by the OMB in the Office of the Governor. It therefore does not represent the final estimate of fiscal impact.

Prepared By: Francis C. Allan Phone: 269-5691
Division: Alaska State Troopers Date: 2-23-83

Approved by Commissioner: [signature] Date: 3/1/83
Department: Public Safety

5. Distribution:
Original to Legislative Finance
Copy to OMB
Copy to Sponsor
Copy to Requestor

2/15/83

SPONSOR: Rep Bussell - H. Judiciary
leg non-leg pub hear work sess inv hear

DATE TAKEN/BY 3/8 Carol

SUBJECT: HB 200 - Rights of Piece

T/C DATE/DAY Fri - 3/11

TIME: 1:30-2:30 PACIFIC
12:30 1:30 YUKON
11:30 - 12:30 ALASKA
10:30-11:30 BERING

MAILING ADDRESS: Officiers

Catherine

PHONE 4990 CONTACT Katherine Zalewski

SITES PARTICIPATING:

North Slope
Anaktuvuk Pass
* Barrow
Kaktovik
Point Hope
Wainwright

ALL ALASKA
ALL LIO's
WASH., D.C.

NANA
Ambler
* Kotzebue
Noorvik
Selawik

Norton Sound
Gambell
Hooper Bay
* Nome
Savoonga
Shishmaref
** Unalakleet

Bristol Bay
Aleutians
* Bethel
* Dillingham
St. Paul
Sand Point
** Unalaska

Interior
* Delta Junction
* Fairbanks
** Fort Yukon
Galena

South Central
* Anchorage
Homer
* Kenai (Sol)
* Kodiak
* Mat-Su
Seward
* Valdez

Southeast
Cordova
Haines
Hoonah
* Juneau *
* Ketchikan
* Petersburg
* Sitka
Wrangell
Yakutat

Chairing Site/Person JUN - Rep Bussell

Special Offnet Location/Phone#

Catherine Zalewski

Signature of Sponsor/Contact Person Date

------TELECONFERENCE OFFICE USE ONLY------

2-Wire ✓ 4-Wire
Bridges: #1 (206)447-0620
#2 (206)447-1654
#3 (206)447-5627
#4 (206)447-9479
Bridge operator (800)426-3282
JNU trouble #'s 586-1282
465-3836

Publicity:
Local calls/list attached
Media/P.S.A. attached

Can expect:
Lengthy back-up
Bill summary
Participants list

POST TELECONFERENCE NOTES

Site/Date:

Local Moderator

T/C Started: T/C Ended
T/C Recorded?
Testified/Participated:
Unable to Testify:
Observers:
Total Number

Red Henderson Palmer Police Chief

MSG 83-00014740 PRTY 1 03/11/83 13:27:51 ORIG: LA08 IN= 0007 OUT= 0004
FROM: BARBARA IN ANC TO: TOM IN JNU
TARGET: LJ03 SUBJ: (H) JUDICIARY, T/C, 3/11 PAGE 0001

TO TESTIFY IN ANCHORAGE:
1. RICHARD POTTER, ANCHORAGE POLICE DEPT. EMPLOYEES ASSOCIATION
2. R.B. ZAKRZEWSK, APEA, EPIC
3. JAMES STIRLING, 625 C STREET, ANC.,
4. JOHN R. YARBOR, APEA ANCHORAGE EPIC, CHUGIAK, AK
5. HOLLI PLOOG, APEA, 701 W. 58TH , ANCHORAGE, 99502, 561-1158

NXT MSG U/R/S _ PREV MSG U/R/S _ RESEND _ CANCEL _

STATE OF ALASKA
PRELIMINARY STATEMENT OF FISCAL IMPACT

Bill No: HB 200 Date on Bill: 2-14-83
Title: "An Act relating to individual rights of peace officers."
Sponsor: Representative Bussell
Requestor: House Finance Committee

1. Estimated fiscal impacts on:

a. Expenditures:

(Thousands of Dollars)

				FY 83	FY 84	FY 85	FY 86		
Capital									
Operating									
Total									

b. Revenues:

Revenue									

2. Source of funds to offset fiscal impact of bill:

No information provided.

3. ASSUMPTIONS: This bill gives peace officers who are the subject of internal disciplinary investigations broad substantive and procedural rights, even during investigations of conduct which may constitute a crime. Passage of the bill will seriously impair a police agency's ability to conduct investigations of police officers who are accused of criminal behavior. Requirements such as advance written notice of the commencement of an investigation and giving the officer evidence as it is gathered during the course of the investigation would substantially interfer with the course of an investigation. It is estimated that passage of the bill would have little or no fiscal impact on the Department of Law, other than it would preclude criminal investigations in situations where an investigation would be instituted under current law.

4. Disclaimer:
This statement has not been reviewed by the OMB in the Office of the Governor. It therefore does not represent the final estimate of fiscal impact.

Prepared By: Daniel W. Hickey, Chief Prosecutor Phone: 465-3428
Division: Department of Law, Criminal Division Date: 3-3-83

Approved by Commissioner: Norman C. Gorsuch, Attorney General Date: 3-3-83
Department: Law

5. Distribution:
Original to Legislative Finance
Copy to OMB
Copy to Sponsor
Copy to Requestor

2/15/83

HB200 JR

POUCH V
JUNEAU, ALASKA 99811
465-4990

P.O. BOX 4-1325
ANCHORAGE, ALASKA 99509
248-1515

CHAIRMAN
HOUSE JUDICIARY COMMITTEE
MEMBER
HOUSE RESOURCES COMMITTEE

Representative Charlie Bussell

ALASKA STATE LEGISLATURE
HOUSE OF REPRESENTATIVES

March 24, 1983

Mr. Michael O'Neill
O'Neill Security Services
3707 Woodland Drive
Anchorage, Alaska 99503

Dear Mr. O'Neill:

Thank you for your letter of March 17, 1983, inquiring about legislation regarding the uses of the polygraph.

During testimony taken at committee hearings in the House Judiciary Committee an operator of a polygraph testified, Richard Potter, Anchorage Police Department, 701 W. 58th Avenue, Anchorage, Alaska 99502, phone 561-1158, regarding the polygraph and its uses in the State of Alaska. He also remarked about its history.

If we can be of further assistance, please do not hesitate to contact us.

Very truly yours,

Representative Charlie Bussell
Chairman, Committee on Judiciary

CB:lyn

enclosure: House Bill 200

O'NEILL
SECURITY
SERVICES

3707 Woodland Dr.
Anchorage, Alaska
99503
907-248-2677

Prudhoe Bay
Box 6449
Anchorage, Alaska
99502
907-659-5140

Kuparuk
Box 6105
Anchorage, Alaska
99502
907-659-7213



March 17, 1983

Representative Charles Bussell
Chairman - House Judiciary Committee
State House of Representatives
Juneau, Alaska

Dear Representative Bussell:

A recent Anchorage Times article indicates that there is some legislation pending concerning the Polygraph. Would you please send me a copy of the bill and/or any information relating to the Polygraph, Polygraph Examiners and use of the Polygraph.

I would like to be advised when any hearings are set on anything relating to Polygraph and may wish to testify.

Thank you for your attention to this inquiry.

Sincerely,

R. Michael O'Neill

R. Michael O'Neill

(Retired - Dep. Court Judge)

EBEN H. LEWIS
2073 ARLINGTON DRIVE NORTH
ANCHORAGE, ALASKA 99503

February 1, 1983

(Delivered By Jim Sterling)
Anch Police Dept.
625 C Street
Anch 99501
#264-4128

Honorable Jan Faiks
Alaska State Senate
State Capitol, Pouch V
Juneau AK 99811

Dear Jan:

A couple of weeks ago I was seated next to Joe Hayes on a flight down from Fairbanks, and had a chance to discuss with him some ideas I have had about reinforcing the criminal justice system in Alaska, which is now in such disarray. I have followed up on the discussion by sending on to Joe some material I had prepared several years back on providing some legislative limitation on the courts' application of the so-called 'exclusionary rule', which bars the use of criminal evidence seized under circumstances which a court may later determine violated a defendant's right against 'unreasonable search and seizure'. The courts have been extremely restrictive in allowing use of emidence taken without a warrant, even though the officer may have been acting in good faith at the time it was taken. The time is long overdue for legislative bodies to take the matter in hand and provide some definition of what a 'reasonable search' is, and I submit that legislation along the lines suggested in Fritz Pettyjohn's SB 49 ought to be strongly supported. Since I don't have a copying machine at home, I would hope Joe Hayes could have any of the material I sent him made available for your use and that of other interested legislators.

My 15 years on the bench strongly persuaded me that the indispensable component of an effective criminal justice system is a professional police organization. I feel that Anchorage is fortunate in having such an organization serving the community. Like any large organization there are morale and personality problems present in its continuing function, which Ifeel deserve attention. I have a good friend of many years' standing who is serving on the legislative committee of the Anchorage Police Officers Associaton, who tells me there is some dispute with management over a policy requiring officers to submit to a polygraph examination under certain circumstances, under pain of discharge from the force if he/she refuses. The Association is supporting a Peace Officers Bill of Rights which, if enacted by the Legislature, would bar such practise.

My experience judicially with the polygraph dictates my conclusion that the Association's anti-polygraph position is correct. I researched the question thoroughly several years ago when I was assigned for retrial the case of State v. Fageriak, in which refusal of a key witness to submit to a pre-trial polygraph became relevent. I found that only a few jurisdictions

permit any reference to the polygraph in any circumstances, and then, only under the most stringently controlled limitations. It is never allowed as evidence against a criminal defendant. Interpretation of polygraph results is a highly subjective matter with the individual operator, subject to widely swinging variations in results. It is patently unfair to require a police officer under investigation to submit involuntarily to a test like this, particularly after a highly stressful incident, such as shooting at a suspect, when the officer's emotions could substantially affect the result. I suspect that the APD policy requiring the test, in fact, may violate the 5th amentment of the U S Constitution. Any bold lawyer who suggests otherwise can't show an Alaska case supporting his position.

The polygraph does have useful functions, when voluntarily taken by suspects to assist in deciding if they should remain under suspicion, and also as a pre-hiring management tool in interviewing applicants for sensitive positions (including police officers). An officer under investigation might even wish to have a polygraph examination to assist with the investigation, and in clearing himself, but such uses involve no due process questions. I hope, if you have an opportunity to consider this question, you will give my comments careful consideration.

There are also other bills pending on other matters of concern to peace officers safety: HB 100 and companion SB 24, which includes causing physical injury to a public safety officer among the acts constituting (felony) third-degree assault. Also, HB 2, a sentence-enhancing proposal, provides for substantially increased sentence, without probation, if a person uses 'armor piercing' ammunition in a gun while committing any crime of violence. Badly needed legislation.

Shirley and I were delighted that your campaign was successful, and that you have the opportunity to serve our interests in Juneau. Best of luck!

Sincerely,

Eben H. Lewis

HB

211

MSG 83-00016105 PRTY 1 05/09/83 17:33:52 ORIG: LA05 IN= 0010 OUT= 0174
FROM: MARCIE, ANC INFO TO: POM, JUNEAU INFO
TARGET: LJHL SUBJ: P O M

TO: ALL MEMBERS OF THE HOUSE OF REPRESENTATIVES

FROM: CLAUDE LAWS, 941 WEST 77TH AVE., ANC 99502 H 344-5146 W 2775605

RE: HB 211(RE: CONTRACTS/ARCHITECTURAL ENGINEERING)

I'D LIKE TO GIVE MY SUPPORT TO THIS BILL.

EOM

5/9/83, JUNE, ANC LIO, MSG 16135

TO: ALL REPRESENTATIVES

FROM: LEWIS E. DICKINSON, 4017 NORTH POINT DRIVE, ANCHORAGE, AK 99502
H- 243-1079 W- 562-2000

I URGE YOU TO SUPPORT HB 211-CONTRACTS/ARCHITECTURAL ENGINEERING.

****

MSG 83-00016129 PRTY 1 05/09/83 18:51:54 ORIG: LD01 IN= 0005 OUT= 0193
FROM: ROBERTA/KODIAK TO: JUNEAU
TARGET: LJHL SUBJ: PUBLIC OPINION MESSAGE

TO: ALL MEMBERS HOUSE OF REPRESENTATIVES
ALL MEMBERS SENATE



FROM: JACK JOHNSTON
P.O. BOX 1065, KODIAK, AK. 99615 486-3823

RE: HB 17 DRINKING BILL

I WOULD LIKE TO SEE THE DRINKING AGE RAISED TO THE AGE OF 21 YEARS OLD.
I SUPPORT HB 17 AND URGE YOU TO DO THE SAME.

'G 83-00016024 PRTY 1 05/09/83 15:40:38 ORIG: LA02 IN= 0012 OUT= 0137
OM: JUNE, ANC LIO TO: POM, JNU INFO
RGET: LJHL SUBJ: P . O M

9/83, JUNE, ANC LIO, MSG 16024

: ALL MEMBERS OF THE HOUSE OF REPRESENTATIVES

OR

OM: KENNETH J. HUSEBY, P.E.
7201 EAST 17TH AVENUE
ANCHORAGE, AK 99504 H- 333-0920 W- 274-3660

URGE YOUR SUPPORT FOR HB 211, CONTRACTS/ARCHITECTURAL ENGINEERING BILL. FEEL THIS BILL IS IN THE BEST INTERESTS OF THE STATE AND THE TAX PAYING JBLIC. THIS BILLWILL BE THE STATE EQUIVALENT OF THE BROOKS BILL FOR THE EDERAL GOVERNMENT, WHICH HAS BEEN THE LAW FOR THE LAST SEVERAL YEARS.

S/ KENNETH J. HUSEBY, P.E.

****

SG 83-00016062 PRTY 1 05/07/83 16:50:14 ORIG: LA02 IN= 0013 OUT= 0163
ROM: JUNE, ANC LIO TO: POM, JNU INFO
ARGET: LJHL SUBJ: P O M

/9/83, JUNE, ANC LIO, MSG 16061

JR

O: ALL REPRESENTATIVES

ROM: BILL HAMM, 3324 KNIK, ANCHORAGE, AK 99503
H- 243-1004 W- 562-2000

LEASE PASS HB 211 TO ESTABLISH THE PROPER PROCEDURE FOR SELECTION OF
ESIGN PROFESSIONALS FOR PUBLIC PROJECTS. WE NEED THE MOST QUALIFIED
ND EXPERIENCED INDIVIDUALS WHEN THE HEALTH AND SAFETY OF THE USING
UBLIC IS AT STAKE. HIGH QUALITY DESIGNS WILL BE THE MOST ECONOMICAL
N THE LONG RUN.

****

MSG 83-00016224 PRTY 1 05/10/83 10:46:32 ORIG: LA05 IN= 0001 OUT= 0039
FROM: MARCIE, ANC INFO TO: POM, JUNEAU INFO
TARGET: LJHL SUBJ: P O M



TO: ALL MEMBERS OF THE HOUSE OF REPRESENTATIVES

FROM: DALE A. NELSON, 1012 WEST 53RD AVE, ANC W 276-3633
MAIL: 430 WEST 7TH AVE., SUITE 210, ANC 99501 H 562-5159

RE: HB 211(CONTRACTS/ARCH., ENG., LAND SURV. SERVICES)

YOUR SUPPORT IN THE PASSAGE OF HB 211 WOULD BE APPRECIATED. THE PASSAGE OF THIS BILL WILL ALLOW FOR THE SELECTION OF ARCHITECTURAL, ENGINEERING OF LAND SURVEYING FIRMS OR PERSONS BASED ON DEMONSTRATED COMPETENCE AND QUALIFICATIONS.

EOM

MSG 83-00014902 PRTY 4 03/11/83 17:06:59 ORIG: LA02 IN= 0008 OUT= 0105
FROM JEAN, ANCH LIO TO: POMS, JUNEAU INFO 1
TARGET: LJHL SUBJ: POMS

3/11/83 JEAN, ANC LIO, MSG 14902

TO: ALL MEMBERS OF THE HOUSE JUDICIARY COMMITTEE
REPRESENTATIVES RUSSELL, LISKA, HAYES, BARNES, MALONE,
CLOCKSIN, WENDTE

FROM: BILL HAMM
3324 KNIK
ANCHORAGE, AK 99503 (W) 562-2000 (H) 243-1004

I HAVE REVIEWED A COPY OF HB 211, WHICH YOUR COMMITTEE WILL CONSIDER SOON, AND AM CONVINCED IT IS IN THE BEST INTEREST OF THE PUBLIC TO ENACT THIS BILL INTO LAW AS SOON AS POSSIBLE.

********** ********** **********

FROM: VELI KALLIO
SRA 455-C
ANCHORGE, AK 99507 (H) 345-6417 (W) 277-5605

I AM CALLING IN SUPPORT OF HB 214. I AM AGAINST BIDDING FOR THE PREFORMANCE OF PROFESSIONAL ENGINEERING SERVICES BECAUSE I FEEL VERY STRONGLY THAT IT WILL RESULT IN THE DEVELOPMENT OF LESS DETAIL DURING THE DESIGN PHASE AND RESULT IN THE PLACEMENT OF CRITICAL ENGINEERING DESICIONS ON CONSTRUCTION FORCES.

FROM: VELI KALLIO
SRA 455-C
ANCHORGE, AK 99507 (H) 345-6417 (W) 277-5605

I AM CALLING IN SUPPORT OF HB 214. I AM AGAINST BIDDING FOR THE PREFORMANCE OF PROFESSIONAL ENGINEERING SERVICES BECAUSE I FEEL VERY STRONGLY THAT IS THIS WILL RESULT IN THE DEVELOPMENT OF LESS DETAIL DURING THE DESIGN PHASE AND RESULT IN THE PLACEMENT OF CRITICAL ENGINEERING DESICIONS ON CONSTRUCTION FORCES.

JR

MSG 83-00000286 PRTY 4 03/14/83 14:52:43 ORIG: LA03 IN= 0003 OUT= 0083
FROM: JUNE, ANC LIO TO: POM, JNU INFO
TARGET: LJHL SUBJ: POM

3/14/83, JUNE, ANC LIO, MSG 286

TO: REPRESENTATIVES FURNACE, UEHLING, RINGSTAD, COWDERY, MALONE, WENDTE, KOPONEN, BUSSELL, BARNES, AND CLOCKSIN

FROM: ART JACOBS
706 SATURN CIRCLE
ANCHORAGE, AK 99504 (H) 337-6843 ,(W) 274-3660

THE NATURE OF ENGINEERING AND ARCHITECTURAL DESIGN CONTRACTS, AS OPPOSED TO CONTRACTS FOR CONSTRUCTION, IS SUCH AS TO NECESSITATE NEGOTIATION RATHER THAN BIDDING. PASSAGE OF HB 211 IS DEFINITELY IN THE PUBLIC INTEREST. PRESENT PROCEDURES OF DOT/PF PARALLEL THE INTENT OF THIS BILL.

****



MSG 03-00000824 PRTY 1 03/15/83 18:25:54 ORIG: LA02 IN- 0005 OUT= 0130
FROM JUNE, ANC L10 TO: POM, BRU INFO
TARGET: LJHL SUBJ: POM

3/15/83, JUNE, ANC L10, MSG 824

JR

TO: REPRESENTATIVES FURNACE, MALONE, BUSSELL, AND HAYES

FROM NELS KGELSTAD, PE & LS
2220 NORTH STAR #23
ANCHORAGE, AK 99503 (H) 277-6810 (W) 277-5605

REGARDING HB 211, RELATING TO CONTRACTS FOR ARCHITECT ENGINEER AND LAND SURVEYING SERVICES, I BELIEVE THAT THE STATE OF ALASKA AND ALASKA PROFESSIONALS WILL BE BEST SERVED BY PASSAGE OF THIS LEGISLATION. PELASE SUPPORT HB 211.

****

MSG 83-00000991 PRTY 1 03/16/83 12 17:39 ORIG LA01 IN= 0006 OUT= 0046
FROM SHIRLEE AND LIO TO [illegible] INFO
TARGET [illegible]

3/16/83 SHIRLEE AND LIO, 991

JR

TO REPRESENATIVES FURNACE AND BUSSELL

FROM FRED BROWN, 5621 ARCTIC BLVD., ANCHORAGE 99502
W 561-2120

AS A PROFESSIONAL ENGINEER AND THE ANCHORAGE OFFICE MANAGER FOR SHANNON & WILSON, INC., I STRONGLY URGE YOU TO SUPPORT HB 211. IT IS IN THE BEST INTEREST NOT TO HAVE A COMPETITIVE BID SITUATION WHEN A CONCEPT OR DESIGN IS NEEDED RATHER THAN A TANGIBLE PRODUCT.

****

MSG 03-00001442 PRTY 1 03/17/03 15:13:19 ORIG LA01 IN= 0013 OUT= 0057
FROM: SHIRLEE ANC LIO TO FOM2 JUNEAU INFO
TARGET: LJHL SUBJ: FOM

3/17/03, SHIRLEE ANC LIO, 1442

JR

TO REPRESENTATIVES [redacted], FURNACE AND PHILLIPS

FROM: ART RONIMUS, 3041 SANCTUARY DRIVE, EAGLE RIVER 99577
H 694-5157 W 277-5605

I SUPPORT HOUSE BILL NO. 211 KNOWN AS THE MINI-BROOKS BILL.
I URGE YOU TO SUPPORT THIS LEGISLATION.

****

MSG 03-00001507 PRTY 1 03/17/83 17 06 46 ORIG: LA01 IN= 0015 OUT= 0106
FROM: JUNE, ANC LIO TO: POM, JNU INFO
TARGET: LJHL SUBJ: POM

3/17/83, JUNE, ANC LIO, MSG 1507

JR

TO: REPRESENTATIVES RUSSELL AND FURNACE

FROM: TED TRUEBLOOD
1621 WINTERSET DRIVE
ANCHORAGE, AK 99504 (H) 561-0274 (W) 265-2457

ON BEHALF OF THE 446 ANCHORAGE AREA CIVIL ENGINEERS, I URGE YOU TO SUPPORT THE ENACTMENT OF HB 211.

S/ TED TRUEBLOOD
PRESIDENT OF THE ANCHORAGE BRANCH
AMERICAN SOCIETY OF CIVIL ENGINEERS

****

4/26/83. SHIRLEE ANC LIO, 12215

TO: REPRESENTATIVES RUSSELL, LISKA, HAYES, BARNES, HALDANE, WENDTE AND KOPONEN

FROM: LEWIS DICKINSON, 4040 B STREET, ANCHORAGE 99503
W 562-2000

I REQUEST THAT YOU SUPPORT HOUSE BILL 211. IT IS VERY IMPORTANT TO ESTABLISH A STRONG PROFESSIONAL APPROACH FOR NEGOTIATING ENGINEERING/ARCHITECTURAL CONTRACTS. PLEASE CALL IF THERE ARE ANY QUESTIONS.

/S/ LEWIS DICKINSON, CONSULTING ENGINEER

4/26/83, SHIRLEE ANC LIO 12346

TO: REPRESENTATIVES RUSSELL, LISKA , HAYES, BARNES, MALONE, CLOCKSIN, AND WENDTE

FROM: BRIAN MAITHER, 2346 LOUSSAC DRIVE ANCHORAGE 99503
H 248-1846 W 276-0521

I URGE YOUR SUPPORT OF HOUSE BILL 211.

4/27/83 JUDY ANC LIO, 12679

OR

TO: REPRESENTATTVES BUSSELL, LISKA, MALONE, CLOCKSIN, WENDTE

FROM: ROBERT L. ENGELBACH, T.E., 7813 ARLENE STREET, ANCHORAGE 99502 W - 279-0543

I SUPPORT HB 211 WITH AWARD OF STATE CONTRACTS TO PROFESSIONAL ENGINEERS, ARCHITECTS AND LAND SURVEYORS BASED ON COMPETENCE AND QUALIFICATION.

PLEASE SUPPORT THIS BILL. IT IS IN THE BEST INTERESTS OF THE STATE TO MAINTAIN DESIGN QUALITY.

MSG 83-00012725 PRTY 1 04/27/83 15:52:54 ORIG: LA02 IN= 0008 OUT= 0138
FROM: JEAN, ANCH LIO TO: JUNEAU INFO, POMS
TARGET: LJHL SUBJ: POMS

4/27/83 JEAN, ANCH LIO #12725

JR

TO: REPRESENTATIVE CHARLES BUSSELL

FROM: JONATHAN KUMAN
3301 DENALI STREET
SUITE 200
ANCHORAGE, AK 99503 (W) 276-4311

I AM IN FAVOR OF HB 211 BEING PASSED.

****

4726783, JUNE, ANC. LIO, MSG 12527

Agency Referral

TO: REPRESENTATIVES BUSSELL AND HAYES

FROM: KATHRYN GILLESPIE, 3290 MONTCLAIRE COURT, ANCHORAGE, AK 99503
(H) 276-5262 (W) 277-2641

I SUPPORT HB 211, AND URGE YOUR APPROVAL OF BILL AS REVISED BY THE HOUSE LABOR AND COMMERCE COMMITTEE.

/S/ KATE GILLESPIE
ASSOCIATE MEMEBER OF AMERICAN INSTITUTE OF ARCHITECT

****

PEPP

PROFESSIONAL ENGINEERS IN PRIVATE PRACTICE

- Alaska Chapter -

11 March 1983

Dear Representative Charlie Bussell
Pouch V
Juneau, Alaska 99811

Dear Representative Charlie Bussell:

Our organization at its March 9 meeting voted to send you this letter requesting your support of HB No. 211. This bill provides for State agencies to award contracts for professional services on the basis of competence and qualifications rather than low bid. We feel that sufficient competition exists in Alaska due to the large number of qualified firms ready to do business that a low bid procedure will not increase competition.

Rather, we feel that bidding will drive all efforts to the lowest common denominator, which will result in the barest minimum contract documents being supplied to clients. This in turn will result in much larger costs 'downstream' when the construction contract is awarded and the Contractor must either bid high to cover himself for deficiencies in the contract documents, or apply for extras afterward to cover specified items just to finish the project.

Thus, more poorly engineered projects at higher total cost will result which are not in the best interest of the general public. We feel that the health, welfare and safety of the general public is best served by the passage of this bill and urge your support.

Sincerely,

Professional Engineers in Private Practice

Kenneth J. Huseby, P.E.
Chairman, PEPP

KJH:lbh

JR

CONSULTING ENGINEERS
COUNCIL OF ALASKA

2550 Denali Street, 8th Floor
Anchorage, Alaska 99503
907/278-2551

March 22, 1983

Mr. Walt Furnace, Chairman
Labor and Commerce Committee
House of Representatives
Pouch V
Juneau, AK 99811



Subject: House Bill 211

Dear Mr. Furnace:

I want to thank you very much for the time that you spent with myself and Mitch Gravo last Thursday, March 17, working with House Bill 211. I believe that your interest and effort during the mark-up process will be helpful in the progress of the bill. After mark-up, the revised wording made the changed version a more palatable document than that which was originally proposed. However, the clarity of the bill's intent and the problems of some of the using agencies as imposed by the regulations built into the document, as we expressed to you, continue to make it awkward.

After more lengthy and rational study of the effect of the effort we put in on Thursday, I believe that some additional refinement, change in wording, and clarification, including the word flow in the bill, will be essential as it progresses through the legislative process with the ultimate objective to develope a final form that will be acceptable to the using agencies and the architects and engineers whose contracting-selection methods are directly affected by the bill.

Again, we appreciate very much your time and interest spent with us, and we look forward to the successful movement of the bill out of your committee.

Very truly yours,

CONSULTING ENGINEERS COUNCIL, ALASKA

Walter E. Steige, Jr., P.E.
President

WES/wlf

PRESIDENT W.E. Steige, CREWS, MACINNES & HOFFMAN
VICE PRESIDENT C.W. Tryck, TRYCK, NYMAN & HAYES
SECRETARY A.R. Jacobs, ANDERSEN-BJORNSTAD-KANE-JACOBS
TREASURER S.E. Clark, ARCTIC ENVIRONMENTAL ENGINEERS

Alaska State Legislature
House of Representatives

Pouch V
Juneau, Alaska 99811
(907) 465-4990

Committee on Judiciary

Judiciary Referral

April 19, 1983

Mr. Donald R. Dent
2064 Delair Drive
Anchorage, Alaska 99503

Dear Mr. Dent:

Pursuant to our conversation I have enclosed the minutes from the House Labor and Commerce Committee regarding House Bill 211 along with a copy of the bill.

Thank you.

Very truly yours,

Charlie

Representative Charlie Bussell
Chairman, Committee on Judiciary

CB:lyn

enclosures

DONALD R. DENT PE/RLS
Professional Engineer
Land Surveyor
Civil • Forensic

2064 Delair Drive • Anchorage, Alaska 99503
(907) 277-6855

Alaska State Legislature
House of Representatives

Pouch V
Juneau, Alaska 99811
(907) 465-4990

Committee on Judiciary

RE: HB 211 RE/CONTRACTS/ARCHITECTURAL ENGINEERING; ED

Charlie:

You requested a transcript of the hearings on HB 211 from the Labor and Commerce Committee. The first day of hearings is almost complete. They are requesting clearification on exactly what your request is for. Is it for all the hearings or are you interested in one particular issue? Do you want a package of all the paperwork submitted? Let me know.

Thanks,

Cyndi

YES
- it's for the people who over flew Juneau that day —

POUCH V
JUNEAU, ALASKA 99811
(907) 465-4990

Alaska State Legislature
HOUSE OF REPRESENTATIVES

Committee on Judiciary

REPRESENTATIVE
CHARLIE BUSSELL
CHAIRMAN

May 7, 1983

Donald R. Dent, PE
National Director
2064 Belair Dr.
Anchorage, Alaska 99503

Dear Don:

HB 211 under went a couple of minor changes to clean up typo's and zipped right through the the Judiciary Committee on the 27th of April. It is now in the Rules Committee and likely will come through the House this session.

Thanks for taking the time to become involved with the legislative process. If I can be of further help, please give me a call.

Best regards,

Representative Charlie Bussell
Chairman, Committee on Judiciary

CB:cmz

MEMBERS:
REP. JOHN LISKA, VICE CHAIRMAN; REP. RAMONA BARNES, EMERITUS;
REP. JOE HAYES; REP. HUGH MALONE; REP. DON CLOCKSIN; REP. RON WENDTE

The Alaska Society of Professional Engineers

Address Reply To:

Donald R. Dent, PE
National Director
2064 Belair Dr.
Anchorage, AK 99503

(907) 277-6855

April 30, 1983

MAY 1983 RECEIVED

Representative Charles Bussell
Chairman, Committee on the Judiciary
Alaska State House of Representatives
Pouch V
Juneau, AK 99811

Re: CS HB 211 (L&C)

Dear Charlie;

I must apologize for being remiss in acknowledging the hospitality you showed Vlad Paten and me on March 20th. It was appreciated.

I also want to thank you for the materials forwarded on the Labor and Commerce Committee hearings on HB 211, and the L&C Substitute. The info points out several areas in which there is a chance for misunderstanding by others who will be looking at the bill in committee and on the floor.

I do wish that I would have been able to attend the March 21st hearing when the question regarding the pending US DOJ suit was broached. With the research I've done and contacts with the NSPE Legal staff, it was evident that Mr. Barry was transmitting the information given him by the AG's office. That info is short on complete facts involved, with the latest case history omitted. It is understandable that the relation between the suit and HB 211 would come up. In my opinion, however, the DOJ suit is irrelavant to the purpose and importance of HB 211.

The form of CS HB 211 (L&C) forwarded to your committee is virtually the same as originally introduced, with the only change being made on page 1, line 12, by addition of "AS 36.98.010(3)". Without this change it would appear that the bill would have been a "catch 22" situation.

The only change I would suggest in the bill is on page 1, line 29, where it states, "(c) Subject to the criteria in (c) of this section..." I think that there was a typographical error and it should read, "(c) Subject to the criteria in (b) of this section,..."

Do you anticipate committee hearings on CS HB 211 (L&C) this session, or before the next session? If so, I would appreciate advance notice in order to schedule an appearance and to notify others.

Sincerely,

Don

Donald R. Dent, PE

AMENDMENT

OFFERED IN THE HOUSE: BY: Judiciary

TO: CS HOUSE BILL No. 211 (I&C)

SENATE BILL No. _____

PAGE: 1 LINE: 29

Delete: the second (c).

Replace with (b)

AMENDMENT

OFFERED IN THE HOUSE: BY: Judiciary

TO: CS HOUSE BILL No. 211 (L&C)

SENATE BILL No. _____

PAGE: 2 LINE: 22

Delete: AS 37.98.080

Replace with AS 37.05.230

THE CITY AND BOROUGH OF JUNEAU
CAPITAL OF ALASKA
155 SOUTH SEWARD ST. JUNEAU, ALASKA 99801

April 27, 1983

House Judiciary Committee
Pouch V
Juneau, Alaska 99811

File: Legislature - 1983 - House Bill 211
(Prohibition on Competitive Bidding
for Engineering, Architectural and
Surveying Services)

Ladies and Gentlemen:

Committee substitute for HB 211 (L & C) would prohibit municipalities from discussing with engineers, architects and surveyors the cost of their services prior to selection of the person or firm to do the work. In addition, it would require the municipality to select the person or firm "best qualified to perform the desired work" based on considerations of competence and qualifications.

If adopted, this Bill would have the effect of requiring municipalities (and the State of Alaska) to use the larger and more prestigious architectural and engineering consulting firms. These are the same firms which, because of their prestige are able to command a higher fee. When a municipality seeks the professional services of an engineer for a simple engineering job that can be done by anyone with a license, it will still be required to select the person or firm best qualified. This will only insure that our projects cost more as we will be hiring more expensive talent than is required to accomplish the job.

The idea that professionals, whether they be physicians, lawyers, or engineers, should not be permitted to compete with each other, particularly on price, has been thoroughly discredited in recent years. Even the United States Supreme Court in National Society of Professional Engineers v. U. S., 98 S.Ct. 1355 (1978) rejected out of hand the idea that this scheme was necessary to assure public safety or to avoid engineers submitting deceptively low bids. The municipality and the state are both charged with protecting the public health, safety and welfare. The legislature should permit municipalities to determine for themselves, in each case, how best to protect the public health, safety and welfare when it selects engineering and architectural professionals. Indeed, one should be very suspicious when the industry itself proposes that its contracting procedures be regulated for public safety, especially when the proposed regulation would have the effect of raising the price of those services and limiting the number of firms and persons that could provide those services to the state and municipalities. Not only is the Bill unjustified as a matter of public policy, it will probably create unnecessary work for attorneys. For lucrative

contracts, there are likely to be challenges of determinations by the state and municipality as to which firm is the "best qualified." In addition, once the "best qualified" has been selected, there are likely to be challenges of what is a "fair and reasonable price" for the work. This will probably be rather difficult to prove because the municipality is not permitted to inquire what others would charge for the work in the process of selecting the firm or person. It appears that the municipality and the state will merely be at the mercy of the "best qualified" architectural and engineering firms in the state.

The spector of liability both for inadequate or unsafe design work hangs over every architect, engineer and surveyor when he provides professional services. This probably provides more incentive to do safe and adequate work than the amount of compensation being received or the method by which that compensation is determined. In addition, it would seem that if there isn't, there should be a canon of ethics for such professionals that requires them to produce designs which are safe and adequate. Also, it would seem that the licensing process (which is controlled by the profession) should be structured to insure that only those who are competent are licensed. Problems of adequate performance should be solved by the profession at the licensing level, not at the contracting level.

We urge you not to pass this Bill out of committee.

Sincerely,

Lee Sharp

Gerald L. Sharp
City-Borough Attorney

GLS:jr

cc: Mayor and Assembly
Manager

CONSULTING ENGINEERS
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April 26, 1983

Mr. Charlie Bussell, Chairman
House Judiciary Committee
House of Representatives
State of Alaska
Pouch "V"
Juneau, AK 99811

Subject: House Bill 211

Dear Mr. Chairman:

You have before you House Bill 211 which has passed from Labor and Commerce Committee after considerable testimony and deliberation. The bill was altered measurably from its original version, and then realtered back to a form which is similar in nature to the original bill. The bill, as now represented, is acceptable to us with one recommended alteration. It is our suggestion that under Section 1., Paragraph C., Line 2 on Page 2, that the words "is not required" be deleted and the words "may be established" be added.

Twenty-one states have currently adopted laws calling for the selection of architect/engineers based on qualifications, and another twenty either prohibit or exempt architect/engineers from general bidding requirements.

We believe that architectural and engineering services should be obtained through a selection process that ascertains the qualifications and capabilities of interested A/E's to design public works projects. Fair and reasonable fees should be established by negotiation after selection and discussion of scope of work. It is not in the best interest of the public and, in some cases, public safety to obtain these services by price proposals or competitive bidding.

The procurement of professional services provided by members of the learned professions has traditionally been considered apart from technical and other tradespeople. The competitive bidding concept, which may work well for bidding work of the trades, cannot function properly for securing professional services The concept does not provide appropriate consumer safeguards.

PRESIDENT W.E. Sloan, CREWS, MACINNES & HOFFMAN/VITRO
VICE PRESIDENT C.W. Tryck, TRYCK, NYMAN & HAYES
SECRETARY A.R. Jacobs, ANDERSEN-BJORNSTAD-KANE-JACOBS
TREASURER S.E. Clark, ARCTIC ENVIRONMENTAL ENGINEERS

Rather, it encourages poor use of public funds, since the importance of "value received" is subjugated to "money spent." The risk of making any selection on the basis of a lowest common denominator when the stakes are the highest, as they are here in Alaska, seems to us to be just converse to the results that must be achieved when considering in projects design in Alaska.

Many of the benefits of A/E services must be measured against final construction and operating costs of the facility or structure. Costs that are not clearly determined until after the A/E services have been completed. Injecting price in an initial selection may lower the A/E fee and time spent, but it will also most likely lower the quality of the final product, since price competition can inhibit the ability of the A/E to provide full cost saving services due to inadequate compensation for innovative and thorough work. It may even cause more talented A/E firms not to offer their services, thus lowering the overall quality of the services available to the agency. Thus, the public is not well served.

We believe the process of competitive selection for architect/engineer firms in the State of Alaska makes even more sense than the same considerations in any of the other 49 states. As you are all aware, our state has more unique and diverse needs than any of the other 49. Alaska has many varied climatological zones and sensitive environmental factors that must be considered during the design of any project. The environmental problems are significant enough and are further complicated by the committee hearings, committee review, agency reviews, maintenance considerations, operation costs, maintenance complexities, and in many of the bush areas, a lack of qualified maintenance personnel. In order for these problems to be met effectively, the only rational method from which to make a selection of an A/E firm is by addressing the qualifications of the responding firms and selecting the highest ranked firm on the basis of those qualifications. Only then, based on the quality and experience of the selected A/E firm, can the project design objective be effectively met and the public resources most effectively protected.

We believe that House Bill 211 provides for those measures and protection, insuring that the public need, through the use of competitive selection, will be most successfully met. I urge your positive consideration of House Bill 211.

Respectfully Submitted,

Walter E. Steige, P.E.
CECA President

WES/wlf

HOUSE LABOR & COMMERCE
STANDING COMMITTEE MEETING
RE: HOUSE BILL NO. 211
March 18, 1983

TAPE #38 (Side A)

Number 003 Chairman Furnace: Today is 3/18/83. The present time is 8:50. The House Labor and Commerce is now in session. The legislation for consideration this morning is House Bill 211 and that's related to contracts for architectural, engineering and land surveying services and providing for an effective date. Let the record show that those members present are: Representative Wendte, Koponen, Ringstad, Cowdery and Chairman Furnace. Is Representative Uehling out of town?

Number 015 The reply is that he's in Anchorage today.

Number 017 Chairman Furnace: The purpose of the meeting this morning is to hold the initial hearing on House Bill 211. I understand that there is a number of persons to be heard. And I'd like for at this time ... let's see the list ... Jeff?

Number 022 Jeff Barry: Yes, Sir?

Chairman Furnace: Do you have the list of persons to be heard?

Jeff Barry: I'm getting it.

Number 027 Chairman Furnace: Okay, now let's see now. Okay, why don't you given me the first couple of names. Representative Bussell did you want to address this issue?

Number 028 Representative Bussell: No. Thank you, Mr. Chairman, no I don't. I'm here as an observer only. Thank you.

Number 030 Chairman Furnace: Thank you. ... The first person to be heard this morning is Mr. Walter Steige.

Number 046 Walter Steige: Steige.

Chairman Furnace: You want to come before us then? State your last your last name and for the record would you represent.

Number 050 Walter Steige: My name is Walt Steige. The last name is spelled S T E I G E. I represent the Consulting Engineers Council of Alaska. We are the persons most notably responsible for bill being considered today and as it is our thrust that prompted its introduction. I have beside me, and you may or may not have, the general copies of the testimony I have prepared for today and those of you that do not have copies of this document, and I understand some of you may, I would like to see that you do have a copy.

Number 064 There is discussion on the copies of Mr. Walter Steige's prepared testimony.

Number 068 Walter Steige: It's not my intent to review word-for-word from this document perhaps but I do want to highlight some of the principal areas that I mentioned here. In representing Consulting Engineers Council of Alaska I should tell you that that group currently represents 32 engineering firms within the State of Alaska and within those 32 firms approximately 500 employees. The bill we are considering today as introduced, House Bill 211, is referred to by many as Mini-Brooks Bill and that support that we're asking, and we represent for this particular bill as introduced, does not only comes from ourselves but the Alaska Chapter of the American Institute of Architects and other selected professionals who you may have heard from by way of telegram, telephone calls, letters, and so on. The bill today has reference to architects, engineering and land surveying; you will notice that in the amended draft for Section 1 that you will have perhaps seen, or will see this morning, the provision for land surveying has been removed from the place of that revision so that it only speaks to architectural and engineering services. In the definition of architect, engineering and land service taken from the Federal Brooks Bill that that action is defined in the last page of this amended version. And it's our intention only that the surveying be considered as a part of the design services that an architect or engineer might otherwise provide. So it's not spoken to directly and it's only our desire that that incidental services cover those portions of land surveying that fall within the general design requirements of the professional when he is performing his work.

Number 113 There is discussion on the amendment.

Number 127 Walter Steige: In the general sense for your background at this time 21 states have adopted laws calling for the selection of architects/engineers based on qualifications, and another 20 either prohibit or exempt architects/engineers from general bidding requirements. The thrust of this particular act is to select engineering and architectural services from the basis of qualification and not dollars, and we'll discuss that a little bit further. The remaining states, with the exception of Maryland, leave the selection procedure up to methods developed by various agencies within the states and the predominance of which makes selection by qualifications. The one state, Maryland, which has adopted bidding which makes price a basis for selection in that state that procedure is not proving to be overwhelming satisfactory. Of course, the score is not totally in yet; it's only been in operation in Maryland for about 6 years now, 6 to 7 years, but in any event it is not proving to be from their perspective the best way to proceed. Architectural engineering services we believe should be obtained through a selection process that highlights qualifications and capabilities as the number one priority. I think many of you

are probably familiar with but I'll review that architects and engineers are professionals from what's termed 'the learned profession' and to practice in this State the individual must be licensed through written examination, reviewed by their peers, in other words the Board of Registration, they must have minimum background of experience in the direction of qualified practitioners. Consequently, the members of these professions exercise judgments and make decisions only after thoroughal assessment, analysis, calculation, research and investigation of the problems. One of the areas, and I should point out and maybe you've already noticed in this material I've handed you, I have some attachments to that which you might find interesting reading which gives some view what others have done and some perspective from other areas on this particular problem we're addressing today. I want to add that the contracting authority, purchasing agent, individual owner, cannot in our opinion, without prior discussions of intended scope of work with an experienced architect or engineer, establish in detail the efforts that the professional must expend to achieve the required results in a project. The competitive bidding for professional services does not provide consumers safe guards. We believe it encourages poor use of public funds since the importance of the value received is subjugated to monies spent. You will notice in this particular attachment I've included an article written by a gentlemen, Mr. Charles Avara, who represented Baltimore City in the Maryland Legislature, and you might find his comments rather interesting. One of the comments that he makes, which I would like to share with you, which he says and I'm going to quote this: is inheriting AE services and not generally for other types of services is the extent to which quality can effect the ultimate efficiency, effecting the economy of the facility or structure. Consider the cost of the design portion of the project compared to the overall project costs. The report by the U.S. General Accounting Office states that design costs represent a very small portion, probably less than 1% of the cost that will be incurred over the life of a building. And I think I'm going to add that that's very key to this issue today, when they say the 'life of a building', in Alaska that's means the loss that goes into operation and that you're all aware of operating our facilities because of the high cost in this State are very germane to the issue. He also notes that the decision made during the expenditure of this, less than 1% determines pretty nearly all costs that follow. And, of course, we believe that's very true, more so in Alaska probably than any of the other states. We believe that that, of course, that price is definitely a factor in the cost in the competitive negotiation process, and by the time the number one rank firm reaches the negotiation table, and that's the thrust of this bill that you're looking at today, that selection by the person, the firm, that you're considering his ability to perform his qualifications being the foremost major of his ability to perform. So that by the time that first rank firm reaches the negotiation table with the representative agency that firm, as

well as the agency, can collectively define this scope of the project being requested. And, of course, at the end of that process then the selected firm has examined all the requirements that have, that he's been able to identify, and that then can provide a basis for which a fee can be determined, until that appropriate scope of work is accomplished with the agency and with the client there's no practical way that that price can really enter the picture until that process has been achieved with the client. The process in the bill says that whoever the agency is can if they're not successful in dealing with the first firm in terms of arriving at a fair and equitable cost, first ranked firm, then they can break off negotiations and go to the second firm, and then the third firm. And we believe that that in itself provides the sufficient competitive nature to see that fair and reasonable costs are achieved through this process. I would like to summarize, particularly at this point, that we believe the process of competitive selection for architect/engineer firms in the State of Alaska makes even more sense than the same considerations in any of the other 49 states. As you are aware, our State has more unique and diverse needs than any of the other 49. Alaska has many varied climatological zones, sensitive environmental factors, that must be considered during the design of any project. Environmental problems are further complicated by the problems of dealing with the many codes and regulations, we have budget constraints, and we have many, many, many hearings and processes which we use, we have to address life safety issues, multiple use, life cycle costs, alternate energy uses, operational costs, maintenance complexities. And, of course, maintenances, the maintenances, maintenance excuse me, and the ability to deal with those problems in many of the areas outside the main cities and metropolitan areas are a real concern to everyone in Alaska. And just that issue in itself as it is coupled with the operating costs is a major consideration why low dollar is the consideration for the selection of a firm just cannot work. In order then for these problems we believe to be met effectively, the only rational method from which to make the selection of a AE firm is by addressing the qualifications of the responding firms and selecting the highest rank firm on the basis of those qualifications. Only then, based on the quality and experience of the selected AE firm, can the project design objectively, effectively, meet and the public resources most effectively protected. We believe that House Bill 211, and as it's perhaps enhanced by the section marked 'a', would provide and insure that the public need is effectively meet through the competitive selection process utilizing the qualifications as a base, we believe that the State and the public can be satisfactorily protected. And I want to urge your positive consideration of House Bill 211. I want to add that it is our intent where the definition of state appears in this bill and that definition has been defined and it is defined the last page of the amended material called 'a', which it says in this section state includes political subdivisions of the state and agencies of the state and its

political subdivisions, to make sure that we all understand that statement is intended as far as we're concerned to mean municipalities, cities, boroughs, school districts, and REAAs, as well as appropriate state agencies. Thank you very much for your time.

Number 292 Chairman Furnace: Thank you, Mr. Steige. Let the record show that Representative Hugh Malone is present at this time. Two persons acknowledged to be, have some questions. Let me remind the committee, too, we'll have approximately 35 or 40 minutes, there are five persons to be heard this morning, we will want most of all to get those testimonies taken so ... Representative Cowdery and Ringstad.

Number 298 Representative Cowdery: Thank you, Mr. Chairman. Mr. Steige?

Number 299 Walter Steige: Steige. Yes?

Number 300 Representative Cowdery: In many cases in the recent past, I know being in the contracting business with their present help aid, economic climate that we've all been fortunate to experience has been many disputes between contractors and homeowners and architects and engineers. And I've been in this trade for over 30 years, and it seems to be just recently, or in the last 5 years, much more legal action has been required for settlement for disputes and interpretation of design or specifications. I know in one particular case, a school project, that the school project had something like a two million dollar legal case hanging over that project in addition to the original cost of the project. The question is do you think that the reason for maybe this, is it your belief the reason for this that the present system is not adequately designed to cover the administration and qualifications of the architects, engineers and people ... What do you think is the cause of this situation is?

Number 320 Walter Steige: I think principally the process, there's nothing wrong with the process and that the current process is pretty much follows the practices that we're advocating now. One of the problems, and that maybe highlighted by your example, is that we are seeing, at least the professional group is seeing, a greater than ever before thrust on accountability and I think, but within that accountability which has been somewhat brought back to us because of the lack of economic soundness in the South '48 and the competitive nature, but that;s been imposed on the contractors in Alaska perhaps to be more sensitive to the problems that come up on any project. We're not, no one is perfect, and none of the projects that is ever bid or designed is without problems. But in trying to address this accountability we have found in the professional area that we are expected now to virtually do our work without error and there are those who are looking for every area to drive their wedge in and put responsibility on someone. We found ourselves as being refocused against the professional

community more than it has ever occurred before. But to address your question, I don't think the processes that we've been working under from before are wrong, I think there will always be bad experiences even with the best process. The processes that are traditional that this bill addresses however, have generally been followed throughout the country ever since the use of professionals services have been used. And for the most part, by far the majority, they've been proven to be a very successful way to bring a project to final completion but that isn't to say that it works 100%.

Number 354 Chairman Furnace: Additional questions from Representative Cowdery? Representative Ringstad?

Representative Ringstad: I'll pass this time.

Chairman Furnace: Representative Koponen?

Number 355 Representative Koponen: Thank you. The alternative version which was handed in version 'a' excludes a registered land surveyor. I know that they have a method to arriving at a solution yet, but ...

Number 359 Walter Steige: It's my understanding that that there's been some problems with addressing the land surveying issue and in that draft it was purposely omitted so that there wouldn't be a controversy of professional nature of the survey work as it might be contrast with construction surveying which it falls out of the professional aspect which we are discussing today. The intent is that the surveying aspect, as they are required by the design process, and in fact that that could be construed to include all other services in the design process, perhaps even soil testing, that falls under the definition of incidental services that are necessary during the design process. And you will note that on the last page of that document is that definition which though not for architectural and engineering but it references incidental services. And we believe that it is satisfactory to work surveying, soil testing, perhaps other miscellaneous services, that are required within that incidental services definition without referencing that by name.

Number 377 Chairman Furnace: Representative Wendte?

Number 378 Representative Wendte: Should this legislation be adopted, and I am assume you are concerned for the members of your organization, how does the Alaska preference, is out the window then?

Number 381 Walter Steige: Well.

Number 382 Representative Wendte: I mean I hate to see this legislation used as bringing in a bunch of firms from outside.

Number 383 Walter Steige: Well, that particular issue in your 'a' version has been addressed. And if I can find the particular paragraph,

this version gives a basic outline of some evaluation procedures and limits to be used with the bill and on paragraph 'h', which is on Page 5, where it discusses how responses will be evaluated, one of those evaluation criteria states: points shall be awarded for being a qualified Alaskan firm. And that provides a vehicle to recognize Alaska preference in this draft.

Number 395 Representative Wendte: Okay, but the other existing situation that we're, or at least in the bid situation, refers specific with apparent legal with the same emphasis, or hopefully even greater emphasis, be placed by this? Or has this been research? Or did you prepare this? Or ...

Number 400 Chairman Furnace: Yes, we did. The recommendation did come from staff and as to working with Mr. Steige and other parties, we felt this was a better alternative to the original bill.

Number 403 Representative Wendte: Well, my concern is obviously is that we don't dilute the intent of that Alaska preference. It's, you know, very well established in the bidding process.

Number 406 Walter Steige: ... Our group has sometimes mixed emotions. If you were to take a vote from our group for whether or not that aspect is helpful or not necessarily to our needs in terms of looking at firms coming in from the South '48, which is a mad rush now in last couple of years because they see the golden apples on the trees up here and there's none down there and they've been trying to pluck some of our fruit so to speak. The emphasis on qualifications, in many cases from a professional's opinion, the qualifications exist here and those firms who don't deal with Alaskan conditions on a day-to-day basis just don't have the qualifications in a general sense as those who have been dealing with the problems day-in and day-out. So, I think in a practical nature we believe when you just look at qualifications, the firms here in Alaska are those which have and possess the greatest ability to solve the problems that we face up here, and the ones down south, outside as we use the term, may create more than they solve, but there are instances when specific technical expertise must come from outside, but 99% of it does remain in the State of Alaska.

Number 423 Representative Wendte: I assume it's that Alaska experience in this aspect of a project in creating estimates whether it's on the Tyee Projects or anywhere else, it's absolutely crucial in terms of planning for projects. That Alaskan experience is there ...

Number 428 Walter Steige: Well, the Alaskan experience comes into play in a lot of various estimates just as being one. Estimating is difficult at best and certainly understanding the conditions is one that estimating is necessary for those individuals in the estimating business. The problems which are more difficult to solve go far beyond estimating and that is solving the design

problems is caused by the environmental conditions that we must design under in Alaska. And the perspective of a firm in Washington or Oregon or even Northern Minnesota do not solve the problems that we have, it is really the different situation and those firms that don't deal with it day-in and day-out in many cases miss the subtle points that those working with those same problems day-to-day to here do not miss.

Number 440 Chairman Furnace: Additional questions Representative Wendte?

Representative Wendte: No, Mr. Chairman.

Number 441 Chairman Furnace: Thank you, Mr. Steige. We will go to the next person then. I would recommend to the committee at this time, let's just take the balance of the testimony, there are four other persons and I want to make sure we get those on the record ... We do have a floor session at 10.00 today. The next person is Wally DeBoff. Sir, again if you would state your name, spell the last name and who you represent for the record.

Number 446 Wally DeBoff: My name is Wallace DeBoff. My last name is spelled D E capital B O F F, and I will be very brief. I represent the Board of Engineers, Architects and Land Surveyors. And in my brief I will say that the Board of Engineers, Architects and Land Surveyors believe that the best process for obtaining any professional architect, engineer or land surveyor is through the process of selection and negotiation. And basically that's all I have, and most of things that Walt stated, you know mentioned, was something probably the Board is most agreeable to.

Number 454 Chairman Furnace: Thank you, Sir, for your testimony. The next person is Vernon Akin.

Vernon Akin: Akin. Right.

Number 456 Chairman Furnace: Again, Sir, if you will state your name.

Number 457 Vernon Akin: I'm Vernon Akin. The last name is spelled A K I N. I'm a mechanical engineer here in Juneau; been registered in the State for 28 years. I guess I'm also today going to represent the Alaska Society of Professional Engineers, being as the President did not get in from Anchorage. All right. I'm in favor of this bill; passage of the bill. The present system is selective; it's not the cons on this bill are saying well we want to bid it to make it competitive or we want to make it fair for everyone. It is fair for everyone as Mr. Steige said. The selection process, anyone can come in for selection, any firm that is qualified or wants to can come in for selection for a job. That is, we get down by the owner, or this case mostly state or municipal governments, it's we get down to where we get two or three primary people, the one that they feel is the most qualified. Then the owner goes to the

one that they think is the most qualified and tries to negotiate with him, fine if they find that they can come to an agreement on the scope of the work and what they want, and the last thing, of course, is price that they came to because you have to set the scope for the work first and what is required, what is desired in the building. If they can't do that they go to number two if they can't come to an agreement. So the owner has his selection of who he wants. All right. The bidding process, now, if you put it out for bids whoever gets the lowest bid on it is usally the one that has to do it because if you're a governmental agency if you don't pick the lowest bid you have to have a very good excuse as to why not you've picked. The, okay, the owner, the main reason or the main concern of the owner is to get what he wants at a reasonable price. Now, most of these jobs, most of the buildings, the owner doesn't know what he wants because he's not an expert in that field, he's not qualified. There have been clients that have come to an architect and said I want a building, I want it, I have so much money, I want it roughly so many square feet, but as for the layout of the building and what is in it and the quality or the type of mechanical system or the type of lights, he knows nothing about that that's why he comes to the expert for it, the owner or the architect on it or the design team. So, he doesn't know what he wants. So, if you put it out for bids there's no way you can pin down down to the last nut and bolt what quality you're going to get. You have to depend upon the judgment of the architect or the design team and his expertise as to what is best suited for this particular occasion. And so, if you put it out for bids, which is what this bill is trying to prohibit, you're going, the designer is if he doesn't get low, if he doesn't come in low, he's not going to get the job. So what the bidding process does is let's get the price way down as low as we can on here, in other words it might be an incompetent person or someone that doesn't know what he is doing but if he bids low on it or if he figures you're going to get a 'cheapy' job, he's going to get the bid and you're stuck with it; the owner's stuck with it. As Mr. Steige said, the cost of the design is, he said 1%, there have been other figures up to ranging 5 to 6% is what the cost of the design is; only cost. Now, you've all heard of life cycle cost in here a few years back, couple years back, there was a big push in the State on going to life cycle costing, which means how much is that building going to cost you over the total length of the building, and it's very minimal, the design portion is way down in the 1 to 5%. So, but yet all the push has been on these buildings to get the design costs down, yet well I beg your pardon, the design cost is probably 1%; the construction costs now, the cost of the construction of the building and life cycle costing runs I've heard about 7 to 8% that's the construction cost. So the actual cost of the building is a very small percentage of the total cost of that, the operating costs of that building for the life of it. So you're talking about a very minimum percentage of the total cost of what it's going to cost to the owner. Most people

don't realize what is involved in designing a building and as to the quality, the different things you can have in a building, different innovations. So, I would like to offer analogy of something that you can all relate to as a house. Let's say you as the owner are going to build a house. Now, at the present time you'd probably look around and find an architect that you liked to build that house; you would go to him and talk to him and tell him well I want this, I want that; you'd work together on the plans and try to get what you want in there in the certain price range, but there are a lot of things that you don't know you have to leave that to that architect as for the quality of the construction, the mechanical system, let's say the heating system, the plumbing system, the quality of fixtures, things like that, you have to rely on his judgment on that because you're not the expert on it. But anyway, you can pick the architect you want and you tell him what you want. Now, let's assume that you had to bid that, you were like a public entity and you had to bid that job, you could tell him all this but if then you, actually you'd have to have a program or in order to get what you actually want you'd have to write down every nut and bolt down there when you put it out to bids and say this is what I want in my house. Otherwise, if you didn't do that and low bidder comes in on it, let's say he is someone some contractor, I mean some architect, that you don't know anything about, you have no confidence in him maybe you've even had heard bad things about him, but nevertheless if you put it out for bid you're going to have to accept him and you're stuck with it whether you like him or not whether you want the product, the quality of product he turns out, you're stuck with it. You can't, an entity can't hardly backoff and take second low bid without as I said without a very good excuse. There's anything about it. Let's say that you get the low bidder on a job to design it. Now, naturally he is going to have to cut his costs to meet his bid; it's all based on dollar value. So, you have a very good chance of the drawings and the specifications that he turns out are going to be minimal. In other words, he can't spend, he can't give you pay an 'a' rated job for a class 'c' price on it in bidding anything. So, your drawings, your specifications, could be very vague and then if, as gentlemen sit over, you get into legal problems and you have change orders and by the time you end up you have paid more than you if you'd had gone to a person that you trusted, relied on, had a good reputation, had it designed for a certain agreed amount. So it can run into a lot of problems there; you can't pin down everything in a job. And the house now is more is very much more simple than a complicated building let's say a hospital, a school or something like that, there are innovations that you can design into that building that's going to cut down your life cycle cost in price on there; you could put in heat recovery systems if it's applicable; you can change your ventilation around, I'm talking mechanical now of course; you can change your ventilation around whether you use full outside air or mixed outside air. Now, it's cheaper probably to design a full outside air system,

very much simpler, but it's very expensive to operate. It costs the owner for now to 40 years down the line, it costs him a lot of money. So, it is just to us, to me, it doesn't make sense that you're bid anything. When the contractor bids a product or bids the specification he has it down in black and white supposedly; he has the plans well drawn out, detailed, he has the specifications are drawn out down to the general equipment, the actual installation you can't cover that, but you can cover what quality the materials you get in that job. There are clients, as I said in previous, they come they don't know what they want, they say build me a building, this much size, I have so much money to spend. So, there's no way you can pin down that design to the last nut and bolt. You can pin it down when the contractor on designed documents, when the contractor bids on it, so it's a different ball game altogether. Another typical example I might say is on this bidding, let's say you wanted a portrait done of yourself. Can you imagine trying to put that out for bid for someone to paint an oil painting of you? If you put out for bid, you know, if you're going to, you know you're going to get just what you pay for and maybe not that much. I think that's about all I have now.

Number 599 Chairman Furnace: Thank you sir, we appreciate your testimony this morning. The next person to be heard is Jon Scribner.

Number 604 Jon Scribner: Mr. Chairman, my name is Jon Scribner. I'm Acting Deputy Commissioner for the Southeast Region for the Department of Transportation and Public Facilities. I'm probably going to be the least popular guy here today. On this particular bill I haven't had a chance to review that draft that they have been circulating ... I have a copy of it, but I have not yet had an opportunity to do it ... From the testimony I can tell you that the Department that I represent shares very much the concerns about competitive bidding and about having people involved with the process that maybe aren't familiar with the way the consultants do their business. And from the testimony I was pleased. I think one good step has been taken to take out the land surveyors because that was one of our concerns, and so that seems to be a positive step toward resolving some of the concerns we have. I don't have some good answers at this point but I do have some concerns and I'll just share them with you briefly. I guess our primary concern is the fact that this bill it restricts the process entirely to just the qualifications and the capabilities of the firm. It doesn't allow any other possibilities to be used in the selection process. For example, if the scope is known and I would suggest that there are times when public agencies can have the capability to properly define the scope, there are times when that's not occurring but there are times when it does occur, and in those cases it would seem to us that there should the flexibility to consider other factors in the selection process. We've heard about price as being as, it's kind of an either or situation, either you're competitive bidding, and I think we all disagree with that concept, or you're not competitive

bidding. And I guess what I would suggest in behalf of the Department is that there may be something in between or to balance off the quality of the job that you're dealing versus the cost or effort that goes into it. And this is a hard concept to sell but that's the way we feel. At this point the bill does not allow cost in any manner whatsoever to enter into it or even not just talking about cost, maybe cost is not something we need to consider maybe it's just the percent of effort that goes into various parts of the job. If we were able to have that I think it would make the bill more something that we could better live with.

Number 641 Chairman Furnace: Would you expand upon that by what you mean by percent of effort.

Number 642 Jon Scribner: Okay, what I mean is in a particular, maybe it's a harbor project, and as part of that harbor project we have to go out and do some, we're going need large rocks to provide for the breakwater, for example. And so part of this scope of work would say that we have to analyze the soils to find proper rock. So there you're going to have to analyze soils and make some recommendations there, then you're going to have to design the breakwater. And so you're going to as the designer, you're going to have to say how much effort am I going to spend in determining where there's proper sized rock available. And so as you're reviewing the proposals that come in you may find that one consultant says well I'm going to go out there and just do one test hole that's what I have when you start negotiating with them you may only have one test hole, that's where his efforts going to be and the rest of the efforts going to be in the designing of the breakwater. Another consultant may come in and you find that he's going to put, he's going, really concerned about his legal liabilities and so he's going to be darn sure that he knows about that material out there where that rock is, and so he's going to go out and drill 200 holes and maybe that's a over, too much of a split, but to get the point across, 200 holes. So what we find is then all of our costs are going into to try to find the good rock source rather than the design of the facility ... (END OF TAPE)

TAPE#38 (Side B)

Number 000 Jon Scribner: So that's what I'm trying to ... We really don't think, we're not as concerned at all about this, interested in trying to create a competitive bidding atmosphere. We really think that there can and should be a better balance. We're concerned about if there is no price or no restrictions on the effort type of thing that we can and have often found ourselves in position of having I want to, probably not a very good term to use but a gold-plated design, where there was no, it was of high quality of the very best design that was provided, you know, so there was no question that that was the most qualified and capable person designing that facility, but we really don't have the funds to support that type of facility on capital expenditures. And so we're suggesting that, you know,

if we can include price or some other mechanism to get a balance to say yes that is the best but we don't have the funds to support that either through the capital expenditures or the life cycle cost of the facility. Some balancing mechanism to insert in there. And now, another point that the consultants bring up is that during negotiation is the time that we should get at our price. Say, you know, select them on quality and capabilities and then during the negotiation if you don't like the person's price go on to the next person. In practice from my experience with it in our Department I wonder an awful a lot of pressure to get these projects out quickly. We spend a awful lot of time negotiating with the selecting consultants. It takes us a minimum of two months for large consulting contracts to select those people. Two months is, can mean a whole season lost, and we have a tremendous amount of pressure from you all and the public to get these projects out on the street. So at two months time we've got our three consultants laid out and we start negotiating with that top consultant; what we're pretty certain we're going to with that consultant even if his price is not what we like. We really don't have the time to drop back down and start the ball going again with a new consultant, now that is often the case. Now sometimes, you know, it gets to the point where we do in fact go through that process. We simply can't live with the price or the way the negotiation is going and we do drop down to the next person but it causes further delays and those are the things that we have to wrestle with. And so that's one of the problems that we see with that and why we would again suggest that there be some kind of balancing mechanism. And unfortunately I can't suggest to you specifically what it is. I would hope that we could continue to meet with the consultants on this and try to arrive at some accommodations in it.

Number 068 Chairman Furnace: Thank you, Mr. Scribner. We have two other persons and time is running fast, so let's take those testimonies. Mr. Charlie Tryck.

Number 073 Charles Tryck: Mr. Chairman, my name is Charles Tryck, T R Y C K. I'm a backup for the Walt Steige and the Consulting Engineers Organization; also speaking on behalf of myself and our engineering firm which is in the business in Alaska for over 30 years. We have worked with all agencies of government, federal, local and state, so on, and all divisions I think of the federal government. This bill is patterned after the Mini-Brooks Bill under which the federal government procures its A and E services. They have some of the problems that Mr. Scribner has outlined which seem to exist very well within the frame work of their legislative authorization. One way they overcome the problem is recited, is their staff will prepare their own fair cost estimate for the project which delineates the scope of work which they expect to see done in various aspects of the project. Then when they select their most preferred consultant, you go in with your fair cost estimate of the work, they have their fair cost estimate of the work

itemized by man-hours and man-days depending on the size of the project, and you try to reach a meeting of the minds on what level of effort should go into what phases of the work. This seems to work out very well. If you have a wide divergents in opinion of what the work should consist of and you can't reach an accommodation on what should be done, you just thank each other and go your way and they go and talk to the next person. One other thing that I think that should be mentioned is that our engineering organizations had monitored A and E projects where price consideration is a factor in the bid process, and it is a bid process, and where the price consideration is submitted at the time the engineer's qualifications is submitted; it usually is the deciding factor of who gets the work which doesn't give you necessarily the people that you should have doing the project. I can go on and on on many things but I don't think that I can add much to what's been said. I think other than to say that we support the work, I mean support the project that it needs work. Thank you.

Number 128 Chairman Furnace: Thank you, Sir, for your testimony. The last person is Brian Emerich.

Brian Emerich: Emerich.

Chairman Furnace: Again, Sir, if you'd spell your last name and state who you represent.

Number 133 Brian Emerich: My name is Brian Emerich. E M E R I C H. I represent the American Institute of Architects, the Alaska Chapter. We support this effort in passing this bill. Some of the points that I would like to mention, I would like to address a couple that were brought up earlier as against this bill. It's the talk about the problem of directing a professional as to which way he should do his services, do tests holes over here or pour money into the design of the building, etc. One of the reasons and one of the intents of hiring a professional is to have his direction to tell you what you should, where you should go. If you know and you have a positive direction that you want them to take that can be included in the scope of services. And a professional can elect to either take that job or not take that job if he feels it's going to jeopardize the project. This is one of the aspects of a professional. Another part is the attitude of picking, afraid to pick a consultant or architect or a mechanical engineer because he's going to get gold-plated design and they can't afford to budget. One of the responsibilities and requirement of hiring a professional is there is a direction usually given to that person to keep the project within a specific budget. And that is one of the things that can happen and one of the qualifications that professional represents himself on, has projects that have come within budget, they've been within the scope of services, they've been delivered on time. The instance of part of the problem always seems to be around is the competitiveness to get the best price and that's

part of a serious problem that government agencies always face is to try to protect the public's interest so that they're not both getting 'ripped off'. Well, one of the things that's competitive here is you look at the price of a building like Vern Akin stated earlier, about the value of the building and the cost of the design stage is very minimal, the cost of the construction becomes more substantial, and the cost of operation becomes astronomical over a period of time, and Alaska is now facing that very serious problem with the cost of buildings or hiring a professional that understands that and knows that. The price difference you may pay for somebody is hard to determine one factor or another one. You can't always tell when you're hiring somebody whether you are going to get the longest range, best project over the life cycle. However, one of the things you are selecting a professional on is his past history and his past history reflects buildings that have been built and that are continually operating and the clients are happy with. The problem with competitive bidding and one of the things that the strongest competitive bid requirement, for instance in this State, is the construction bid, and by law they have to take the lowest bid unless there are some very, very strong reason why they can't take the lowest bid on a construction contract. Well, the purpose of that is obvious, but what happens is these professionals that you are hiring are designing those projects to get that lowest bid. And one of the problems the State has faced notoriously is if you have a bad project that goes out, you get a contractor that under bids it, and you have a series of change orders, a project can all of a sudden go from one million to two million dollars because the project wasn't properly designed. And what did you say, maybe 5,000, maybe 10,000, maybe even 100,000 dollars on the design fees? And you're giving a project that's not qualified and there is no real recourse for the State other than through the legal acts of putting that individual out of business, taking away his insurance to disqualify that bidder the next time he comes around to do a similar project just right down the street if he's licensed to do business in the State, and it's very difficult to take away a license from a professional like this. You're going to end up with the same, that same individual, and the same problems repeating itself. One of the statements was made earlier of in going after the lowest price and just accepting that as part of the criteria to hire a professional firm. It was stated earlier, and I want to repeat it, that when you put a price on any kind of a service within a state agency, a state government, you are just about bound and locked into that price. And even if they write-in the intent that the price is only to be a guideline, we feel that that guideline is going to be used as the number one choice to do the work. And we don't feel that's quite the way it should be. There was one last statement as to the, earlier, when you do bid, when you go to competitive or when you to ask for professional services, and you cannot negotiate a contract with the first profession you can go down the list until you get is the absolute lowest price of all the consultants, and one of the

things that you'll be faced with and you'll see it is that the amount of services that you require will continue to go down with the price of what you're getting. And I think that the quality of work in the profession and the end results will follow that same line, you will start losing the level. And I think that the intent of government here is on competitiveness or the spirit of a capitalistic society is to keep competitiveness alive. Maybe we should start and consider quality as a competitive aspect which it is and not just the price alone. Thank you.

Number 245 Chairman Furnace: Good. Thank you, Sir, for your testimony. Unfortunately because of the time we do have a floor session starting at 10:00. We'll have to conclude the meeting at this time.

Number 251 The meeting is adjourned at this time.

HOUSE LABOR & COMMERCE
STANDING COMMITTEE MEETING
RE: HOUSE BILL NO. 211
March 21, 1983

TAPE #39 (Side A)
Recording
Number 003 Chairman Furnace: The date is 3/21/83. The present time is 8:53, or somewhere in there. Those members present are: Representatives Koponen, Ringstad, Cowdery and Chairman Furnace. We do have quorum. We'll have some persons to be heard. Just stand at ease for a second. Let me get my file The meeting this morning is to continue work on the bill. You may note that we have what I call exhibit a that I handed out the other day and it was recommended new language in lieu of the language in the original bill. We have a couple of persons to be heard. Mr. Akin, you spoke the other day, is this a continuation or is it a different?

Number 024 Vernon Akin: It's regarding the amendment 'a' which we did not have a chance to read.

Number 025 Chairman Furnace: I see. Okay.

Number 026 Vernon Akin: It was passed out during the meeting last time.

Number 027 Chairman Furnace: All right, Sir. If you'd like to address the committee at this time we'll take your testimony.

Vernon Akin: Thank you.

Number 029 Chairman Furnace: We'll take your testimony. For the record if you'd state ...

Number 030 Vernon Akin: Right. My name is Vernon Akin. The last name is spelled A K I N. I'm an engineer, have an engineering firm here. I'm also speaking in behalf of the Alaska Society of Professional Engineers; a group of about 305 engineers in the State of Alaska. At the last meeting we received this amendment 'a' which was passed out I believe after the when the meeting started we did not have a chance to look at it or study it. After having a chance to study it I would like to comment on it a little bit. The original bill was mainly, the original bill I submitted, House Bill 211, was to prohibit the bidding of fees, engineering fees. The amendment the way I get it read it essentially throws this out the window. If you want to look on Page, let's see what is it, 2, no Page 1, this section of the chapter applies to contracts for architects and engineering services provided the State unless the total amount of the contract does not exceed 25 thousand dollars. Now, what that says to me is that if you have a contract from under 25 thousand

dollars you can bid it and that is not the intent of the original bill. The bill was to prohibit all fees from being bid and that's the subject of which I spoke at the last meeting. If you're going to bid anything over 25 well let's face it most of the contracts, the small contracts, are under 25 thousand dollars fee so that would mean that there would be very few that would be prohibited from bidding. There was another item in here. This bill was rewritten it looks like strictly for DOTPF because it refers in here to the commissioner; it pins down that you advertise it so many days, you would do this, you were, if the commissioner says that you can do this fine then you can deviate from it. The original bill was for multi-agency, use for the use of the State, for the use of the borough, for the use of city. If you're going to write a bill which pins it down and talks about commissioner I think you're going to have trouble forcing onto a borough or a city. It should be, the bill should be written in a general nature to say you do this, you do that, as far as the advertising of a bill whether it's three times, five times; if it's a borough public works they should be able to set how many times they want or at least within limits, not pin it down to the exact amount or how they would like to conduct their interviews and things like that, whether it'd be three primaries by that I mean they reduce it down to three or whatever amount they want. So I think the bill should be written generally. If the DOTPF passes specifics they could put it in their policies, they could enter other details in their policies. The other part of it seems to be all right except that I think that you have lost the true sense of the original bill by some of these items that they've put in this amendment. I think that's all I have.

Number 119 Chairman Furnace: Thank you, Sir. Representative Cowdery, then Representative Ringstad.

Number 120 Representative Cowdery: Yes, thank you, Mr. Chairman. Just this point of information on normal contracts, like small contracts or large ones, there's normally a fee, a negotiated fee or determined by some way of means, of charges for the design work and architectural work, but many times there's some the architectural firm they administer the contract. Now that is a separate, that's not what we're talking about?

Number 129 Vernon Akin: No.

Representative Cowdery: The total fee? Is that ...

Number 130 Vernon Akin: If they're going to administrate the contract, contract administration, that is it could be done as extra services in the contract or they could lump it together however the owner wants it.

Number 135 Representative Cowdery: But this is not addressed this possibility. I mean getting back to your 25 thousand dollar fee ...

Vernon Akin: Yes.

Number 137 Representative Cowdery: Sometimes the administration of the contract can be a large ...

Number 138 Vernon Akin: Oh, yes. Yes. You know, yes, that is very true ...

Number 140 Representative Cowdery: ... percentage. So this is the point I was making. I don't know if this addressed in this bill of, you stated earlier you was against this not to exceed 25 thousand.

Number 143 Vernon Akin: Correct.

Representative Cowdery: And so ...

Number 144 Vernon Akin: Because the only time or most the time on the bill, the contract administration in our particular phase of buildings, that usually only happens on the very large building but even at that contract administration again is, should not bid it should be negotiated on that. Now, we have a large, I have, I'm a member I mean a consultant on a large job here in Juneau, and it's contract administration; it's on a time and expense basis not to exceed, all the inspections and all the contract administration is the time and expense basis. So that's the way it is normally done. Contract administration on a job is a very, it's actually better if they can use it on a time and expense because a lot of times you're many trips involved or other expenses. So it can be done either way on jobs; either a lump sum or ...

Number 169 Representative Cowdery: I was just wondering if this was addressed in this amendment or should it be?

Number 171 Vernon Akin: Should it be as far as contract administration? I don't think it should be because the whole what we're trying to do is get a bid coming out, a job put out on a negotiated basis. Now, this particular job I was talking about, it was a negotiated basis for a lump sum but the contract administration was under the extra services part of the contract. So I think that it could be handled under, it could either be negotiated at the time at that time or it could be extra services.

Number 185 Chairman Furnace: Representative Ringstad?

Number 186 Representative Ringstad: Thank you, Mr. Chairman. I question here basically on the same point as the 25

thousand. The total amount of contract does not exceed 25 thousand. Are you saying that a lot of your contracts to, all your contracts are a total of 25 thousand dollars for the services or the fees you was talking about? Is the 25 thousand?

Number 194 Vernon Akin: 25 thousand the way I read it that's the amount of the contract to the AE, architect engineer.

Number 196 Representative Ringstad: So, basically let me run ...

Number 197 Vernon Akin: It says for architectural and engineering services.

Number 198 Representative Ringstad: So if I, so the State wants it to put up this building they'll come to you and offer you a contract of 12 thousand dollars to design this building. The contract even though the building, it's a million dollar building, the contract to you is 12 thousand.

Number 203 Vernon Akin: Right.

Representative Ringstad: That what you're saying ...

Vernon Akin: That's what I'm saying and that's would be what they're talking about here the 25 thousand.

Number 205 Chairman Furnace: Representative Uehling.

Number 206 Representative Uehling: Thank you, Mr. Chairman. Just to sort of follow up along those lines. So your main objection would be the 25 thousand dollar restriction put in there then from what you're telling ...

Number 208 Vernon Akin: My main objection is that as I've pointed out Friday, there should be no bidding of architectural and engineering services. Architectural and engineering services are and aren't the same as an artist. There are no two engineers or architects that will accomplish the purpose the same way. It's their, you're buying their services, their expertise to do that work and there will be no two the same; so it's not like a contractor where everything is tied down and you build it this way, that way, that way and the plan is ... It's an art; it's an awful lot like an artist painting a picture, no two do it the same. And so this is what I am saying.

Number 220 Chairman Furnace: ... Additional questions from the committee? I have a couple of questions to Mr. Akin.

Vernon Akin: Yes.

Chairman Furnace: You mention the work of the, speaking of the commissioner, you may recall under the original bill that it's stated here that not withstanding the provision of

39.36.98.040, the State shall select person or firm for the performance of architectural, engineering and land surveying services, so you're speaking of the State in the amendment, we're still speaking of the State and the commissioner. And I'd ask you is the person of the State that you'd normally be dealing with, so I this the commissioner is probably proper. On Page 4 there are two mentionings of the commissioner and it does not apply, let's see the contract agency demonstrates that there is a single source of expertise or knowledge required of that one person, firm clearly performs, and that it indicates here that the commissioner has the responsibility to make that determination which appears to be proper at that stage there ... Under 2, the commissioner may make a written determination that the public necessity will not permit delays incident to the proceeding of the work required by this chapter and it appears that the mentioning of commissioner does not hinder what you're proposing to do. It's supportive language as opposed to not supportive. Do you read it that way?

Number 248 Vernon Akin: The apprehension I have is the fact that that the borough is, boroughs and cities are going to say that this is not does not apply to them and because it's specifically written for the State agency. And if we could reword it some way so we could, in better language. We do not have commissioner in the definitions in the back.

Number 256 Chairman Furnace: I know. I know, I just noticed that. There's a definition of commissioner.

Number 258 There is discussion regarding the definition.

Number 262 Chairman Furnace: I believe commissioner is probably already defined in the statute. Commissioner means the commissioner of administration except that contracts entered into by commissioner of transportation and public facilities. It seems to me that the commissioner of transportation and public facilities, I don't understand it ...

Number 266 Vernon Akin: That, I don't think that applies then.

Number 267 Chairman Furnace: Okay, point's well taken. As we walk through this, we'll look, address that.

Number 268 Vernon Akin: I realize that down the line there will be a lot of changes, but we would wish that you'd keep this in mind as going back to the original concept of no bidding on anything as far as our services, architectural and engineering services.

Number 272 Chairman Furnace: Mr. Akin, while you're with us, I propose a couple of things today with the committee, is to walk through the original bill and then look at the draft substitute language. But there's other questions I think we may

get into and I'm not sure we'll be able to conclude that today. So I would like to perhaps enter that for the committee members you have a packet of information, some can perhaps make reference to a suit by the United States, some of the Department of Justice, outlining concern of the non-competitive, non-bidding policy. I'm reading through the information I understand that the Attorney General, on at least two occasions, have asked that the Board rescind its regulation having, what is it, to do with the non-competitive and the non-bid factor. How do you respond? Or how would you as an engineer respond to that and address the suit, the Federal suit?

Number 290 Vernon Akin: Are you referring ...

Number 291 Chairman Furnace: I'm referring to Rule 36.233 which provides that each architectural, engineering and land survey shall seek professional employment on the basis of qualifications, etc., etc. And that has been I guess challenged by ...

Number 295 Vernon Akin: DOJ.

Chairman Furnace: ... attorney.

Vernon Akin: Right. It's been challenged by DOJ based on some different suits that have happened there in various states. They had Supreme Court hearing, NSEP, of course, were rejected on this. According to the information I have received this rejection was essentially on a technicality or it wasn't on the main basic subject. In answer to your question, I would say I am very, we are very much in favor of leaving that clause, that restriction in. Right now it's under rules and regulations on that statute. There is a proposed bill, I think that is one that you are eluding to, that takes it out of there and puts it in a statute; and if they want that they would try to get that statute through the Legislature which under the, as I understand it, the Attorney General's Office said that if they would take it out of the regulation and put it in the statute it would mute the suit, the DOJ suit. And I believe this is one of the subjects that they wanted to discuss at this meeting. So is this not inflated to bring up at this meeting by talking on the proposed bill?

Number 318 Chairman Furnace: Yes. Well, in fact, let me just read, to address the question again. Just my brief reading of the packet here tells me that the Department of Justice is concerned with the restraining phrase that that particular statement, that particular rule in your, I guess, administrative procedure is a restraining phrase, and on how do you, Sir, the thing we're trying to do here is address the concern or whatever; I hope you realize that. We're aggressively moving forward on to do that. But where

there's a pending law suit and as I read the AG has said hold off and let us try and handle this legislatively, and it appears that one of the ways to handle this legislatively is to to do away either with the non-competitive nature of bidding or approach it in some other way. And that's what we're attempting to do here, is to address it. Perhaps I should pose that question to, let's see well, Mitch, can you answer that?

Mitch Gravo: Yes, Mr. Chairman. It is my understanding that the interpretation of our Attorney General is that if this legislation to have the Department of Justice to go away because the regulation will therefore become mute and the legislation will be the commanding, the commanding rule. And that the concern of the Department of Justice. There are other states that have what their, there are other states that have Mini-Brooks legislation, the kind of legislation what you're looking at, and they don't have a problem with the Department of Justice. The reason this State has the problem is because we don't have any legislation however we do have the regulation. And it is my understanding that the Department of Justice said passed legislation that is the same as your regulation and you can do it by legislation but you can't do it just by ... through regulation.

Number 347 Chairman Furnace: Does that answer your question?

Vernon Akin: Maybe I can explain it a little bit more. The Mini-Brooks law and this House Bill 211 what it does is says the State will not put the jobs out for bidding, that what this is written for, the State will not put the jobs out for bidding. And I understand from Mr. Barry that this is legal, they can do whatever they want, the State can do whatever they want to, put what restrictions on the money that they are spending. Now if this 211 passes, it will catch the State and borough and the cities; it will not affect, it will not prohibit bidding of private jobs, private owners that want to put a job out to bid. The proposed bill which the DOJ suit is against this clause, the prohibitive bidding in the regulations. The proposed bill moves it from the regulations to a statute. If that were passed, if that bill were passed, then that would prohibit it for everyone. What it does is it gets the other end of it; it prohibits the engineers and architects from accepting work for bids. In my estimation we need both bills. One of them is to prohibit the jobs from being put out on a bid basis by the governmental entities. The other one is to prohibit the people from accepting it. As I say, the 211 can only get the public works but they can still, unless we have this other bill, well they can still bid on privately.

Number 373 Chairman Furnace: Let me recognize Representative Koponen.

Number 374 Representative Koponen: Thank you, Mr. Chairman. I was wondering, I see that was the original language of the bill suggested by the Board or by the Attorney General?

Number 377 Chairman Furnace: Which original language?

Representative Koponen: The original version of 211.

Number 378 Chairman Furnace: I'm trying to think. I don't recall. Jeff, do you recall?

Number 379 Jeff Barry: Yes. Maybe I can clarify something on that. 211 has not really addressed by the Attorney General's Office for the simply reason ...

Number 382 Chairman Furnace: No, Jeff ...

Jeff Barry: Well ...

Chairman Furnace: No, wait a minute. The question was, where did this original language come from? Please address that ...

Number 383 Jeff Barry: Okay, the original language in 211 is the Mini-Brooks bill and it came from the Board and the members in the profession.

Number 385 There is discussion on where the original language came from with committee members and Wallace DeBoff.

Number 387 Chairman Furnace: Let me ask Mitch. Mitch, I think you, in turn can give us, where did you get this original language?

Number 388 Mitch Gravo: The original language came from the group that testified on Friday, the Consulting Engineers Council of Alaska which is a group of 32 principals in architectural and engineering firms in the State that represent 500 individual architects and engineers.

Number 392 Chairman Furnace: Was this gleamed from the Mini-Brooks Act?

Number 393 Mitch: It was ... The Mini-Brooks was used as a model. It's not exactly like the Mini-Brooks but very close to it.

Number 394 The question is asked, the Washington State legislative model?

Number 395 Mitch Gravo: The ABA model and the Mini-Brooks model, both of those. They're slightly different but that's the model that was used in drafting the original 211.

Number 398 Chairman Furnace: Okay. Representative Koponen?

Representative Koponen: The reason I raised the question is that the Attorney General Designate Gorsuch apparently replying to the U.S. District Court did indicate that they would be ...

Number 401 Chairman Furnace: Which document?

Representative Koponen: This is one of the ones in the law case ... Civil Act from filed November 12th, '82. ... And it doesn't include anything, it's merely the agreement that they would, move to the about the tenth one down in that pile we got, it essentially reviews the case. It's in support of the defendant's motion for state proceeding.

Number 408 Chairman Furnace: Okay, I'm still trying to find the same thing that you have.

Number 409 Representative Koponen: It begins on Introduction and Summary after the court has informed by letter, a new attorney general undertook a review of this status ... I was just wondering whether the Attorney General had reviewed the matter since he is now the defending attorney whether, you know, it's the matter that he had drawn up, whether he feels that this would satisfy the case or, you know, in other words since he is your and our lawyer in the case, and he feels that this would satisfy. That's the only reason why I raised the question. I'm curious. And whether we should ask his opinion on this. So that we do change, you know, put forth legislation that will satisfy the requirements, that's all.

Number 422 Chairman Furnace: Mitch, comment briefly.

Number 423 Mitch Gravo: Mr. Chairman. Representative Koponen. It is my understanding that the Attorney General's Office has taken a look at the initial 211. And correct me if I'm wrong Jeff, but has indicated that that would serve the purpose of making the DOJ suit ... that's their understanding.

Number 427 Jeff Barry: No. Well, no. They drafted up a specific bill to address the law suit. The 211 is the State as a consumer in its choice of what it wants to do in its contract and procedures. The Department of Justice suit is the State using its police powers through the regulation and the licensing of engineers, architects and land surveyors of saying that they shall not be allowed to continue in business if they give a price estimate or bid to anyone and the regulation is separate, it's totally separate. 211 addresses what the State as a consumer will do, it's perfectly legal, it's a choice for the State to make as to how they want to handle their own money. The law suit has to do with the regulatory power of the State delegated to the Board of saying that if a person, a member of the profession, responds

to a request for a price. If saying if an individual walks in and says how much will you survey my plot of land for and they give him the answer they may loose their license. That's using the police power and the allegation is that's in violation of Sherman Anti-Trust Act. And there were three suits brought that were settled that said yes it was. They proposed some other legislation, the Governor would not introduce that legislation and they sent the Board down here saying maybe you guys will introduce that particular legislation. The law suit this is totally separate and apart; this is a choice matter; it's perfectly legal and doesn't impact that at all; and it should be treated separately as that being ...

Number 450 Representative Koponen: Mr. Chairman, there was a reason I raised the question. I was wondering whether we were going to be looking at other legislation and that, you know, as a bundle to meet these questions.

Number 453 Chairman Furnace: It's quite possible, Representative Koponen. The one we have in front of us now, the one that I would like to resolve first, get that in place, is either go with the original version of 211 or go to the recommended amended which in turn would be a Committee Substitute.

Number 456 Representative Koponen: It's just in reading this and listening to the testimony made me realize that there are other matters pending that are not addressed by the bill.

Number 457 Chairman Furnace: It's going to be important now for committee members to read all of this material, get a good handle. And what I propose to do today again is to walk through this, try to mark it up and then let's make sure we do our homework. This is a substantial piece of legislation and we need to have a good handle on it. But let's get on with the business of the hearing. Mr. Akin, are there additional questions?

Number 462 Vernon Akin: I would like to correct one thing that Mr. Barry said. Using an example that you could not go, the engineer or the architect or land surveyor, anyway, could go in and give a price. This is not what the legislation, not the regulations, says, it says he may not knowingly solicit or submit proposals for professional services on the basis of competitive bidding. That's the way, that's what is prohibited. The fact that someone says how will you do this job for me that is essentially what we're doing now is we get the job, I mean the architect or engineer, they talk over the scope and then at the tail end of the negotiation is the how much do you want for doing this. That's not what we're objecting to, we're objecting to competitive bidding. This is the main crux of it. That you put it in and you're bidding against another professional man. And this we say is detrimental if you go on this basis, it's detrimental to

the owner because you're putting the services on a monetary basis rather than a expertise basis.

Number 477 Chairman Furnace: Good. Thank you, Mr. Akin. Let's go now to the next gentlemen to be heard ... Mr. DeBoff.

Number 479 Wallace DeBoff: Chairman Furnace, I wasn't really planning on testifying.

Chairman Furnace: For the record, Sir, would you again state your name and who ...

Number 480 Wallace DeBoff: My name is Wallace DeBoff. I'm Chairman of the Board of Engineers, Architects and Land Surveyors. My last name is D E capitol B O F F. I really wasn't planning on testifying for 211 today. I was really more interested in what we're going to do with the bill that the Board proposed. And I understand that you'd like to take one thing at a time. So I believe that I'm on the back burner again. Is that ...

Number 485 Chairman Furnace: Okay. Are you speaking of the original draft of 211?

Number 486 Wallace DeBoff: No, I'm speaking of a bill that was brought down and given to Jeff and asked, you know, we asked him if he'd ask you to introduce it for us.

Number 487 Chairman Furnace: I've not seen that, do you have that?

Number 488 Chairman Furnace calls an at ease.

Number 499 Chairman Furnace: ... let's now concentrate the energy, if we will. There are no other persons to be heard. We do have two potential pieces of legislation. What the Chair would propose we do is to go through these and make some determination of support. Jeff, would you take the seat down here, walk through an analysis on 211, and then we'll go through the recommendation.

Number 505 Jeff Barry: On 211 or also with 'a'?

Number 507 Chairman Furnace: Let's walk through 211 first, then we'll go through the recommend ...

Number 508 Jeff Barry: 211 basically is a change to chapter 36.98 which is professional services and that's this, and it fits within this as an exemption to the normal requirements for the professional services contracting, and I think it's helpful that way to see exactly how it fits in the whole scheme of things. Section 1 on architectural, engineering and land surveying contracts, as it would be straight 211 version, is language which defines how the architectural, engineering and land surveying contracts will be handled by

the State and it's political subdivisions. In the various methodology that's proposed in Section 1. Section 2 adds a new paragraph under 36.98.080 which is a definition that defines an emergency where under Section 1 the procedures would not apply. Section 3 amends AS 37.05.240 which is, with its sister portion AS 37.05.230, has to do with competitive bids, Alaska preference, definition of responsible and the competitive bid aspect and various other sections. And what it does is put a reference back to Section 1 in there that for contracts and architectural, engineering and land surveying shall be treated under Section 1 and not under 230 or 240. Section 4 is adding a new definition under the definitions; that just reiterates that 36.98.041 of Section 1 will be used in the architects, engineering and land surveying. Section 5 says that it will apply after the effective date. And Section 6 is the effective date clause. Did you ... In Section 1 did you want to go through what the methodologies are that are being proposed?

Chairman Furnace responds yes.

Number 541 Jeff Barry: Section A says not withstanding the provisions of AS 36.98.040, and 36.98.040 has to do with the evaluation of proposals and award of contract. The significant part in there it says that only on the basis of demonstrative competence and qualification, 040 provides for both for the competence qualification but it also, under Part C of 36.98.040, says the contract, well, it defines a number of specific criteria that have to be meet the evaluation, the contracting agency, and it requires the request for proposal which is part of the area of whether or not that constitutes a competitive bidding, and that's what this is clearly trying to get away from is competitive bidding or pricing. B is in awarding the contract and it's a selection that it shall be strictly on the basis of demonstrative competence and professional qualifications. C, and that is your basis criteria, is that C it says subject to the criteria in B of this section a particular procedure for the selection of architects, engineers or land surveyors or for the award of contract is not required. And it says the State may publicly rank proposes or offers received in response to a request for services. That's pretty well leaves it wide open, whereas in 36.98 there are some set procedures because of various problems that occurred in the past. D and E, D is an exemption to this procedures for emergencies and E a definition that in this section State includes political subdivisions of the State and agencies of the state and its political subdivisions. It's a straight definition. And basically, ...

Number 573 Chairman Furnace: Let's go through A, then ...

Number 575 Jeff Barry: A again goes back basically to 36.98 which was legislation that was passed last year and tries to bring and

set forth a procedure to be followed. And Part A is just stating that it's the policy of the State to publicly announce the requirements and to negotiate contracts only on the basis of demonstrative competence and qualification for the type of professionals services required and a fair and reasonable prices not withstanding the provisions of 36.98.040. Part B says the section this section chapter, applies to contracts for architectural and engineering services provided to a State agency unless one total amount of the contract does not exceed 25 thousand.

Number 587 Chairman Furnace: Jeff, where did that language come from?

Jeff Barry: That language comes from 36.98.010. It's the exact language ...

Number 588 Chairman Furnace: Statute?

Jeff Barry: Yes, Sir. It's on the small printout putting that in Session Laws '82. The 25 thousand dollar figure was a compromise reached among all parties. Last year when this, what was then House Committee Substitute for Senate Bill 156, was going through the process there were about four or five bills rolled into to clean up the abuses in the professional services area not aimed at architects, engineering and land surveying, but the consultants and across the board in those. The 25 thousand dollar figure was a compromised figure. There were components, the Ombudsman Frank Flavin, former Ombudsman, who it wanted zero, no exception. There were others saying well we have small contracts we need the flexibility to be able to sole source them if we want or anything else. So the 25 thousand figure was just a figure arrived at by compromise. That's saying that it goes over, this will apply, under 25 thousand basically do what you want.

Number 602 Chairman Furnace: Now that's total contract dollars as opposed to 25 thousand in fees?

Number 603 Jeff Barry: Well, it could be read either way. Quite honest ...

Chairman Furnace: ... Well, what was the intent there? What were they thinking? Are we talking contract dollars? ...

Number 604 Jeff Barry: The actual contract dollars to the individual or firm. So it, the interpretation that Mr. Akin had would be probably be correct. It would consistent with the history of 36.98 that the award or the contract to the individual firm would have to exceed 25 thousand.

Number 608 Chairman Furnace: Let me take Representative Ringstad, then Uehling.

Number 609 Representative Ringstad: My recollection was that, or my understanding was that, the intent here was for the larger contracts, contracts meaning or the interpretation I think was that the job was going to be more than 25 thousand, not necessarily the fee.

Number 613 Chairman Furnace: Okay, but that's just what he said, wasn't it?

Representative Ringstad: Well, I think it depends on how we look at it. Now, if we're going to give out a million dollar job, a million dollars is more than 25 thousand. Okay, that's a big job. We want, it would not qualify here as being under 25 thousand. But if the contract is written so that I'm contracting with you to do this million dollar, to oversee architectural million dollar project. The contract with you is only 20 thousand so it fars under this. It's two different contracts. I think that's where the misunderstanding was.

Number 621 Jeff Barry: It's ambiguous in the regard that basically the legislation was aimed at the consulting areas of which it would be a consulting contract, that's end of and in itself rather than a project where elements could be broken out. So it is ambiguous from that aspect.

Number 624 Chairman Furnace: I'm going to take a question here, Representative Uehling?

Number 625 Representative Uehling: Yes, maybe you can explain that further. What, well, what two types of contracts are you talking about? You said if there's a million dollar situation and then you've got 25 thousand what is the, I just don't understand at all.

Number 628 Jeff Barry: Well, it could read either way and that's what I think everyone is saying. That actually B should be changed in here, you know, applies to contracts unless and then under 1 the total amount of instead of putting in contract put in the word fee, in which case it would clearly designate that and then set whatever dollar amount you want or delete it. This was just taken from above but as specifically pertains to the profession would be appropriate to clarify that so that there is not ambiguity.

Number 636 Chairman Furnace: Rick, additional questions?

Representative Uehling: I just didn't see the difference between the fee and the contract. ...

Jeff Barry: Well, in the project contract if it were a building, the building itself in the total CIP may be two and a half million dollars, but the contract with the architect and engineer for that may be only 20 thousand.

Number 639 Chairman Furnace: ... Representative Koponen.

Jeff Barry: So which would be covered or not and that's ...

Representative Koponen: Thank you, Mr. Chairman.

Chairman Furnace: Representative Koponen.

Number 640 Representative Koponen: Mr. Akin's referred that it would open it up to competitive bidding if the low contract, it can also be read that under 25 thousand dollars that agency or department of the State is not required to inquire into the competency of the ...

Number 643 Chairman Furnace: Absolutely.

Representative Koponen: Which might be one of the things that we don't want to open up. Just grab somebody off the street.

Number 644 Chairman Furnace: Okay, thank you, Representative Koponen. Mr. Ringstad?

Representative Ringstad: I was just going to ...

Number 645 Chairman Furnace: I'm sorry. Let me, I think Mr. Cowdery was ...

Representative Cowdery: I'm going to be ...

Number 646 Chairman Furnace: Mr. Ringstad?

Representative Ringstad: No, I was just going to try and further explain the ...

Number 647 Chairman Furnace: Okay. Mr. Malone?

Representative Malone: I don't have any questions.

Number 648 Chairman Furnace: Let the record show that, did you note that? Continue. Suffice that number 1 under B needs some cleaning up if it is to ...

Number 650 Jeff Barry: Right. It should address B and then the figure amount is was just taken out of 010 and there's no rational basis. Whatever would be. In 2 is and it's bracketed because there's a question people wonder why that was the contract, is an employment contract for services to be performed under the direct supervision regardless of the existence. That basically has to do where people have brought in from outside right directly in-house whether it's to teach new techniques, to clean up, to work on the projects, specific because of a time crunch ... (END OF TAPE)

TAPE #39 (Side B)

Recording Number 002 — Chairman Furnace: Let's break at that point again. I wanted to adjourn the meeting unless there's some objection to it. And have a chance to work with Mr. DeBoff and Mr. Gravo, and Jeff and I to work out some things here. We do have a floor session that's coming up here in about 20 minutes. Give the committee, you a chance to get back to your offices to get prepared for that. Representative Ringstad?

Number 010 — Representative Ringstad: Can we get copies of these things so we can take them with us and play with them?

Number 012 — Chairman Furnace: Do you want to take your file with you?

Number 013 — There was discussion by the Chairman and committee members regarding the committee files. Chairman Furnace then spoke of the agenda for tomorrow's meeting regarding continuation of HB 211 and introduction of HB 197.

Number 031 — The meeting is adjourned.

HOUSE LABOR & COMMERCE
STANDING COMMITTEE MEETING
RE: HOUSE BILL NO. 211
March 22, 1983

TAPE #40 (Side A)
Recording
Number 005 Chairman Furnace: The Chairman has called the meeting to order. The day 3/22/83. Those persons present are: Representatives Wendte, Ringstad, Cowdery and Chairman Furnace present. The time is 8:50. The legislation for consideration today is the continuation of the discussion on House Bill 211, "An Act relating contracts for architectural, engineering and land surveying services; and providing for an effective date.". We have before you this morning an amendment that is recommended for substitution of the Section 1 of the bill. I'd like to walk through the amendment this morning and to see what the greatest importance here. Does everyone, do you have a copy of that?

Number 013 There is discussion regarding if committee members have a copy of the amendment.

Number 020 Chairman Furnace: All right, let's go to the amendment then.

Number 021 The question is asked, that's the one defined as 'a'?

Chairman Furnace: Yes, that's the one that's defined as 'a'. First of all, has each member had a chance to read the amendment? Are there particular sections of it that you have concerns with? If not, we'll start from the top and just walk through it. ... Section A then is the policy of the State to publicly announce all requirements for architectural and engineering service and to negotiate contracts architectural and engineering services only on a basis of demonstrated competency and qualification for the type of professional service required and that a fair and reasonable price not withstand the provision of chapter 40 the section 36. Any problems with that? Representative Ringstad.

Number 029 Representative Ringstad: I've just one question maybe I'm off base but that's stating that this is the policy. Are we accomplishing what we want to accomplish? In that just 'cause that's policy doesn't mean that necessarily they have to do it that way.

Number 032 Chairman Furnace: What are you suggesting or recommending? I don't follow you.

Number 033 Representative Ringstad: Are we better off to state that this is the way it will be done? Rather than to establish general policies that always have exceptions to the rules and this and that and the other?

Number 035 Chairman Furnace: Well, it might be in our legal terminology. It appears to be that this to understand the language, Representative Ringstad. Would you other suggest language you would like to insert there?

Number 037 Representative Ringstad: Well, you know, and if you're trying to accomplish something, most legislation that I have dealt with is this is the way we shall do it.

Number 039 Chairman Furnace: I think you should read more into the bill and to the amendment shall and ...

Number 041 Representative Ringstad: That type of language is there.

Chairman Furnace: Yes.

Number 042 Representative Ringstad: Your first paragraph is kind of coming across as ...

Chairman Furnace: This is an amendment to be inserted into ...

Number 043 Representative Ringstad: Well, the way I read it, you're taking out this whole thing here. It's starting out as a rewrite of the whole bill the way I read it.

Number 045 Chairman Furnace: The question, Representative Ringstad, do you have a problem with Section A? If so what is your recommendation?

Number 046 Representative Ringstad: Well, it was just a question. To me this would read as intent language ...

Number 048 Chairman Furnace: It's a policy statement.

Representative Ringstad: Okay. Fine.

Number 049 Chairman Furnace: Okay. Section B. This chapter applies to contracts for architectural and engineering services provided to a State agency unless the total amount, and there was a recommendation to change contract to fees. does not exceed 25 thousand dollars. Any problem with that statement? Representative Cowdery.

Number 052 Representative Cowdery: Yes. It seems to me in the real world that the fees out there, the interpretation of whatever the architect or engineering fee would be to a particular project could be in the administration of contracts and everything, this could all be in the fee that was tithed. And I just have problems with the 25 thousand dollars or putting a figure on this with due respect to the qualifications, some maybe think that if we don't put a fee that we're overlooking the small individual, but I still think that in top here it says here demonstrative competence of qualifications that that is the key to me of what the intent of this is to try to get competence

and qualification into this bill, 211. And I think that if we, with due respect to the small guy, I think that the 25 thousand dollar figure is not what unlike a person trying to getting into the contracting business and he builds himself a reputation to the bonding markets to deal with the bond jobs and that is the process through tries to work for large firms or out on your own and demonstrating your competence 'til finally you can get the competence of a bonding company to back you. And too, to the larger amount then I think that's probably, I just have a little problems with putting a fee into the price.

Number 072 Chairman Furnace: So is there a recommendation?

Representative Cowdery: I don't think that there should be a dollar amount.

Number 073 Chairman Furnace: Is there a motion to that effect then? To exclude that language?

Number 075 Representative Cowdery: Yes, I would make a motion that we ...

Number 076 Representative Ringstad: A point of inquiry here. I want to address this to Representative Malone because he's had a little more experience on these. Can we be amending and adopting a draft substitute before we adopt a substitute?

Number 079 Representative Malone: I think that's a decision the Chair should make, Representative Ringstad.

Number 080 Representative Ringstad: I didn't know if the Rules addressed that ...

Number 081 Representative Malone: Committee procedures are fairly informal so whatever the best way to handle something as far as ...

Number 082 Chairman Furnace: Representative Cowdery has the floor. Are you proposing a motion to delete Line 1 under Section B?

Number 084 Representative Cowdery: Yes. With, I would like, we have heard from many people here mainly the architects, we haven't heard from Associated General Contractors I don't believe and from the Department of Transportation, you know, that's maybe that would be in order to get input from them on this issue. But right now I would propose that we delete the sentenced total amount from the fee or contract does not exceed.

Number 089 Chairman Furnace: Is that a motion then, Representative Cowdery?

Representative Cowdery: Yes.

Number 090 Chairman Furnace: We have a motion to delete Line 1, Section B, all in favor of that motion?

Number 091 Representative Wendte: Mr. Chairman, I would like to call a discussion.

Chairman Furnace: Discussion? Let me recognize Representative Wendte, then Malone.

Number 093 Representative Wendte: I note that the entire section there B is in the existing statute. Why are we proposing another bill to put this exact language in the statute when it's already in there? ... Although you're putting it in another section. Verbatim that's taken out of the existing statutes.

Number 098 It was stated: Representative Wendte. The entire section of the statute you are referring to before does no longer applies to this particular rule, if this is adopted. So there would be absolutely no procedures and this is establishing procedures for that particular group. So you're exempting them from the requirements of 36.98 and ...

Number 103 Representative Wendte: You mean you're re-establishing the same procedures in this bill?

It was responded: Or some procedures, yes.

Number 104 Representative Wendte: In this case, exact verbatim word-for-word procedure.

Number 105 Chairman Furnace: Let's see ... Where did you find that in the statutes?

Representative Wendte: 36.98.010.

Number 107 Chairman Furnace: 010?

Representative Wendte: Yes.

Number 110 Representative Wendte: That's my concern and I don't see any reason in the statute to exempt them from one and then completely redraft the same.

Number 112 There is brief discussion.

Number 115 Representative Wendte: Well, I guess my concern is that directly to the point of your motion ... The wording that you're trying to get out is already in the statute for professional contracts, professional services contracts.

There is more brief discussion.

Number 118 Chairman Furnace: Okay, let's, Representative Wendte has the floor ...

Representative Wendte: Sections for everything from section, all of Section B is in the statute; down to the start of

Section C; and really Section C is a restating of 36.98.020 except you're adjusting it some, though it's not verbatim but it's model after that as well.

Number 124 Chairman Furnace: Okay, Representative Malone, do you a comment concerning that?

Representative Malone: I guess, do we have a motion pending?

Number 125 Chairman Furnace: There's a motion of the floor we have to handle it.

Representative Malone: It would delete this total amount of the contract does not exceed 25 is what basic ...

Number 127 Chairman Furnace: That's the extent of the motion.

Number 128 Representative Malone: And so it that it would require even in the case of small contracts under this section the State or local government agency to go through all the steps except I guess they wouldn't have to have at least six firms ... That's in fact ...

Number 133 Chairman Furnace: That's one portion of it. Now, be mindful that 36.98.010 applies to the professional services contract; the new section 36.98.041 applies to architects and engineers, so it is a new section of the statute. And so the process here would be to repeat certain existing language in this to make it more conclusive, unless this committee elects to take some of this out and once we go through and adjust this document. The question is, have we violated any statute requirements or whatever, and that would the second effort. We're still on discussion, Representative Malone.

Number 143 Representative Malone: Well, it just .. basically then you'd have no exemptions from 041. Might be ... state operations, might not be ...

Number 147 Chairman Furnace: Additional discussions? Representative Ringstad.

Representative Ringstad: I tend to agree with Representative Wendte about that whole Section B. I'm not sure what ...

Number 149 Chairman Furnace: Well, Representative Ringstad, we're dealing with Section B, Number 1, at this time. That is the motion on the floor.

Number 151 Representative Ringstad: Okay. ... We're all going to amend the motion or you want me to discuss it?

Number 152 Chairman Furnace: We're having a discussion right now.

Representative Ringstad: Well, that's what I'm trying to discuss ... If you want a motion, we can do that too.

Number 152 Chairman Furnace: Well, we have a motion on the floor to deal with Section B, Item 1.

Number 154 Representative Ringstad: Okay.

Chairman Furnace: To take out the total amount of the contract does not exceed 25 thousand. Additional discussion on that. Are you ready to vote to delete that?

Number 156 The response is discussion.

Number 157 Chairman Furnace: Representative Ringstad.

Representative Ringstad: Well, to me in addressing what Representative Wendte's point, I think we can do without the whole Section. Why go through line-by-line and leave out every line?

Number 159 Chairman Furnace: Then would you wish to amend the motion to take out the entire section? ... that amendment.

Number 160 Representative Ringstad: Yes, I would with Representative Cowdery's concurrence I would amend to move the original motion to leave out Section B here.

Number 163 Representative Cowdery: Okay.

Chairman Furnace: Well, then the amendment to the motion is to take out Section B in its entirety. Discussion on the amendment? No discussion? All in favor of taking out Section B in its entirety show by a raise of hand. All opposed? The motion carries. Section B is deleted. Section C. You gentlemen can read as good as I can. Any concerns with Section C? Representative Wendte.

Number 171 Representative Wendte: Mr. Chairman, I guess I ... We have a section that address professional services, and now we're creating a whole new section for a series of statutes that deal with contracts with architectural and engineering services. So I guess as a drafting concern Section B, Section C rather and throughout, we go back to describing as professional services contracts when you have a whole set of statutes that deal with professional services contracts. Well, I guess it's our intent, as I understand it, to take a section of professional services contract and call them architectural and engineering services. Although that doesn't mean that your professional any more but we are, I can see problems throughout where going back and referring to professional services contracts. Does that mean that professional services contracts for architects and engineers, does that apply to both? Existing statutes do we got and then this one as well?

Number 186 Chairman Furnace: I'll restate my comments from a minute ago. What we're doing now is adding a new section of statute covering architectural and engineering services. In essence, I would assume here that has the intent of taking architectural and engineering services out of the professional services statute and setting up a different sections governing that. That is the request that we've had and that is what we are dealing with now.

Number 191 Representative Wendte: So my concern is let's not take out the wording where they use professional services contracts in this bill. Continue to call it to be consistent with what you just stated. Architectural and engineering services contracts.

Number 194 Chairman Furnace: I believe that that has been done in the amendment.

Representative Wendte: Well, if you go through if you read through C you'll see regular reference to professional services contracts.

Number 197 Chairman Furnace: I don't think, you know, that's not awardable I believe, but let's read that. The State agency proposes to enter into a contract architectural and engineering services the agency shall give public notice soliciting a request for qualification for the professional service contract by qualification at least three times in one more newspapers in general circulation. Now, that particular instance, we have professional services contract and that covers, excuse me, a wide array of other practioneers. In this particular instance, we're speaking of principally to architects and engineering services, that contract is still called a professional services contract. And that is perhaps the distinction you have professional service contract to land surveyors for example. One of the recommendations is to not include land surveyors in this particular bill only to the extent that in they may interact with an architect or engineer. That's another adjustment that we'll have to make. Does that make it plainer?

Number 211 Representative Wendte: Well, the only I guess the point is that if you wanted to add a definitional section that says in every instance in this statue where they discuss professional services contract ...

Number 214 Chairman Furnace: ... statute ...

Representative Wendte: ... that you're ... that you are in effect, you need a definition of what you're talking about when you're talking about that, so that you don't have the conflict between the two sections of the statutes.

Number 218 Chairman Furnace: So noted. We can put that definition in the ...

Number 219 Representative Wendte: You have a definition for, in this section, architects and engineering services includes professional services, so you define it that way ... It is mostly just a drafting ...

Number 222 Chairman Furnace: ... as a recommendation. Let's go back now. Sec. 3 is there a motion concerning Sec. 3? Is there a desire to delete portions or all of Sec. 3? Section C, I'm sorry. Representative Ringstad.

Number 227 Representative Ringstad: We're requesting, let's see, the agency should give public notice soliciting a request for qualifications. Under current statue what we're doing is giving public notice, soliciting proposals. So the change here is that we're requesting qualifications and not proposals?

Number 232 Chairman Furnace: Well, perhaps let me explain that. In the engineering and architectural situation, the company is judged upon its ability and its qualification, and that qualification often times is spread upon two particular documents, Form 255 and 254. If an engineering firm wishes to bid on sewer job for example, on 255 they would list their history and involvement in sewer jobs. Often times they would pick based upon their qualifications first, and then negotiation as to price and other design characteristics is somewhat of a second phase, you see. So the first solicitation is a request for qualification, and that is probably unique to the engineering and architectural ...

Number 246 Representative Ringstad: Well, ... address that to me, part of your proposa., to make a proposal, well that's the basis they're going to determine it on your proposal will have that. That's if you don't submit your qualifications as, and all you give them is money, then you have half a proposal and your proposal's no good.

Number 250 Chairman Furnace: Perhaps what we need to do, Representative Ringstad, is to walk through again the process of solicitation of a job, an A and E job. Mitch, can you share that with us? Can you join us here?

Number 254 Mitch Gravo: Mr. Chairman, as I understand it how the process works, Representative Ringstad, is that the State first advertises for a request for qualifications for a job. For example, design a bridge, and they solicit responses from qualified architectural and engineering firms. And the only thing that the A and E firms submit are their qualifications or their experiences to do a design for a bridge. And then once the State gets all of those, what are called RFQs, they take a look at them and they see who the six best or three best qualified firms are. And then once they make that short list, they talk to the person, most qualified firm based on the request for qualification. And that at time they ask the most qualified firm to submit a proposal to design the bridge. And then in

that proposal they ask for a request for proposal at that time. So there is a distinction between a request for qualification which occurs initially and up to the point when they determine who the short list is. Once they determine what the short list is, then they ask the most qualified firm of, they request a proposal to do the project. They're terms of ... they have very firm definition within the AE field.

Number 272 Chairman Furnace: Thank you. Representative Ringstad.

Number 273 Representative Ringstad: So basically that's the way they're doing it now?

Number 274 Mitch Gravo: Yes.

Number 275 Representative Ringstad: Effectively what they're doing then is a majority of the people submitting for the job don't put in a bid?

Number 277 Mitch Gravo: No.

Representative Ringstad: Price bid.

Mitch Gravo: No. No. Not at all.

Number 278 Representative Ringstad: So by putting this in here basically you aren't changing anything in this paragraph? ...

Number 279 Mitch Gravo: That qualifies pretty much the standard procedures, at least the Department of Transportation. Now, how Fairbanks or how Unalakleet or how the Anchorage School District solicits paying services may vary a little bit. But that's the standard procedure at least for the Department of Transportation. That's the one that I am most familiar with.

Number 284 Chairman Furnace: Representative Ringstad.

Representative Ringstad: Okay, so the testimony we had the other day, they were trying to get to the local, the local areas too, so this may or may not apply to them at this point?

Number 287 Mitch Gravo: It would apply to them because in the substitute draft that you have before you states that it's defined to include political subdivisions.

Number 289 Chairman Furnace: At this point?

Mitch Gravo: Yes.

Chairman Furnace: It does not necessary apply, that's just the way DOT does i

Number 290 Mitch Gravo: Right.

Chairman Furnace: Representative Ringstad, one of the attempts here again is in this particular contracting there should be some predictability and some uniformity. Now, what we may be doing is asking other political subdivisions to comply with the statute if this indeed does go into statute. DOTPF has a pretty recognized and respected system and the burden would be upon the municipalities into coming to some type of compliance ... Is this section here okay? ... Representative Ringstad, additional questions? Representative Wendte?

Number 302 Representative Wendte: Mitch, would you, almost everything in this bill in fact aside from dropping out some sections in the existing statutes, would you go through and point out where this bill differs, is a difference from the existing statute? Which I understand was just adopted last year.

Number 306 Mitch Gravo: Representative Wendte, I didn't draft this Committee Substitute, so I'm not totally familiar with it. But I think that if you read it closely the first paragraph, if you turn back to the first paragraph, the only exception to 36.98 that is made here is the exception that 36.98.040, and that is the section in 36.98 that could allow price bidding. That's the only section in 36.98 accepted. So I think if you read it closely, the rest of 36.98 applies. Or could apply.

Number 315 Representative Wendte: I guess I get back to my original question. Why are we going through and putting all the same language back in?

Number 316 Chairman Furnace: How would you suggest handling that then, Representative Wendte?

Number 317 Representative Wendte: I would suggest that whoever drafted it go back and completely redoes it, the whole thing. All we're doing is duplicating statute.

Number 319 Chairman Furnace: Well, Representative Wendte, be mindful now, we're creating a new section of statute.

Number 320 Representative Wendte: I know that.

Chairman Furnace: New section to cover architectural and engineering. Now, I'm not totally positive on this but it appears when if you're going to do that I guess what you're saying, you want to reference back to professional contracts as opposed to making this a separate ... and section all of its own. Which means that you're going to repeat somethings which happens all the way through the statutes, if there is a redundancy here.

Number 326 Representative Wendte: I guess for all concerned I guess the present system isn't, is it working or does not properly apply to architectural and engineering services.

Number 328 Chairman Furnace: Perhaps the best statement is that it does not particularly address the concerns and the intent of codifying more specifically those contracts and the contractual relationship between architects and engineers in a State and political subdivision. I don't think it's a pertain question not necessarily working but an attempt to codify it.

Number 333 Representative Wendte: Well, as I understand it the intent of the bill is just to get competitive bidding out of the process in terms of the dollar figure going to essentially to inquire determinations be made on the basis of qualifications.

Number 336 Chairman Furnace: That is ...

Representative Wendte: If that's the case, it just seems to me that there would be a whole lot cleaner way to do that rather than going back and creating a whole new series of sections of statutes that repeats what's, you know, the previous section of statutes.

Number 339 Chairman Furnace: Yes, but do you have some recommendation for that, Representative Wendte.

Number 340 Representative Wendte: I guess my recommendation is we request whoever drafted this to start over again without doing that.

Number 342 Chairman Furnace: Well, you know we could request them to start over again without some specific direction; we've requested that and this is the information ... Now, without some specific recommendation as to what you'd like to see, going back to the drafters aren't going to accomplish what you want. Representative Ringstad.

Number 347 Representative Ringstad: Question to Mr. Gravo. Mitch, now you were saying that the first paragraph in our draft here exempts architects and engineers from section 040.

Number 351 Mitch Gravo: That's the only thing that architects and engineers are exempted for in this Title 36.98.

Number 353 Representative Ringstad: The way I read that that first paragraph that proposes scrutiny.

Number 354 Mitch Gravo: That's the section 36.98 that causes the A and Es some concern because that the section which could allow for question.

Number 356 Chairman Furnace: Which section is this again? Okay.

Representative Ringstad: 36.98.040 is what we're exempting then from. So I follow that one step further by exempting them only from the section, they're still under all the rest of this 36.98. And paragraph B matches up with 36.98.01, paragraph C matches up 36.98.030, and it kind just go back down, and as

Representative Wendte was saying, we're duplicating. So maybe what we need to do in drafting this thing is go back and only address 040, we're going to exempt from that, all we have to do is exempt from that and state specifically ...

Number 373 Mitch Gravo: Mr. Chairman?

Chairman Furnace: For the record, Mitch.

Mitch Gravo: Mr. Ringstad, I think that that is with original HB 211. It just addressed the issue of price bidding, precludes price bidding, and does not say anything about a procedure, and left that procedure up to DOT or the statutes that exist now or the local government or the local school district or whatever.

Number 379 Chairman Furnace: Representative Ringstad.

Representative Ringstad: So in leaving it up to the existing statues or whatever, this is the rest of this 36.98 is the existing statutes, the guideline that is already there. So what we need to do is just make sure that we exempt from 040 and it still by doing that it would still fall in to this and make sure that the State and all political subdivisions thereof fall into that.

Number 389 Chairman Furnace: Question? Continue.

Representative Ringstad: Mr. Chairman, in direction of where Representative Wendte was going is to how do we redraft this to address that. I think that that we are in fact duplicating in saying this still in the existing statute. Maybe what we ought to do is go back to the basis of addressing only the one section that we're exempting architects and engineers from. We don't have to address all the rest of this which we seem to be doing on several pages. I think we can leave to section page on that Page 1, 2, 3, and 4, or 5 out.

Number 401 Chairman Furnace: Are you putting that in motion, Representative Ringstad? Or is that simply ...

Number 401 Representative Ringstad: Well, let me keep working on it to make sure ... you know far we need to go here.

Number 403 Chairman Furnace: Let me recognize Representative Malone.

Number 404 Representative Malone: Well, Mr. Chairman, I understand that , I understand that the same way that we're duplicating a lot of the language and procedures set out in the earlier section, but we're also providing a new contracting mechanism different from 36.98.040 and when you do that you have to set out the procedures you're going to use. That's what this bill does. And I think on that basis it's properly drafted. I mean I suppose you can go in and say that the only section that doesn't apply under 36.98.010 to whatever the end of the chapter is, is 040,

but when you do that you're going to have to make some conformance changes to the rest of it and I think the cleanest way to do it is with a new section. Just from a procedural standpoint.

Number 421 Chairman Furnace: Representative Ringstad.

Representative Ringstad: Mr. Chairman, I would propose or if we so choose a motion form that we redraft this, have this redrafted for us basically so that we would include paragraph A and then paragraphs I, J, K and L. And if we need to we can state in there maybe ... that other procedures within this Title 36.98 would still apply. Something along that line. Within 36.98 it's stated in all these sections and then 36.98 is stated all over again. Perhaps what's already on the books all we have to do is, by implication I think it's there, but if not we can just refer back and say that A and E's still under the guidelines of other parts ...

Number 439 Chairman Furnace: Let's make sure what you're proposing to take out is. Your motion is to ...

Number 440 Representative Ringstad: Well, we've already taken out B, so ...

Number 441 Chairman Furnace: Your motion then addresses taking B through ...

Number 442 Representative Ringstad: Let me take on the positive form.

Chairman Furnace: Okay.

Number 443 Representative Ringstad: I would move to have this redrafted for us so as to include paragraph A, Section 1 on Page 1, Page 5, paragraph I, and all of Page 6. And I think once we get that and we get a chance to review that, we'll work with that and maybe we can see if we need to add something to reference it back to what's currently in statute or that's implied.

Number 453 Chairman Furnace: Okay, we have a motion on the floor. Discussion? Let's take a second to see ...

Number 468 Chairman Furnace: Additional time to review? Are you ready to handle the motion? Additional discussion? Are you ready for the vote on the motion? All in favor of the motion in its present state to adopt of this Section A ... Section 1 A and move to Page 5, Items A ... I, all of Page 6? That is ... A problem with that?

Number 480 Representative Ringstad: You're doing fine.

Chairman Furnace: All in favor of the motion show by a raise of hand. All opposed to the motion show by a raise of hand. The motion does carry. We'll redraft it to cover that. I want to have a chance again to read back between the two documents.

Number 484 Representative Ringstad: Mr. Chairman?

Chairman Furnace: Representative Ringstad.

Number 485 Representative Ringstad: I would suggest that in reviewing that, Billy can have ... for us and we can study that one a little bit and compare that to this one and compare it to existing statute, compare it to the original bill, and ...

Number 489 Chairman Furnace: Okay. Is there any more discussion on that? All right. We will have to reschedule this, I'll set a date. We've got a fairly heavy calendar ... we'll make it in relationship to another meeting. Are there persons to be heard on HB 211 at this time? Any other comments? If not, that ends discussion on 211.

Number 499 Chairman Furnace then brought the next item on the agenda, HB 19?, before the committee.

A/ HB 211 3/12/83

*Section 1. AS 36.98 is amended by adding a new section to read:

Sec. 36.98.041 ARCHITECTS AND ENGINEERS.

(a) It is the policy of the state to publicly announce all requirements for architectural and engineering services, and to negotiate contracts for architectural and engineering services only on the basis of demonstrated competence and qualification for the type of professional services required and at fair and reasonable prices notwithstanding the provisions of AS 36.98.040.

(b) This section chapter applies to contracts for architectural and engineering services provided to a state agency unless

(1) the total amount of the contract does not exceed $25,000;

[[[(2) the contract is an employment contract for services to be performed under direct supervision regardless of the existence of an employer-employee relationship and a written justification signed by the person responsible for awarding the contract is filed with the commissioner.]]]

(c) When a state agency proposes to enter into a contract for architectural and engineering services, the agency shall give public

notice soliciting a request for qualifications for the professional services contract by publication at least three times in one or more newspapers in general circulation in the state and, when appropriate, in a newspaper in local circulation where the work is to be performed. The first notice shall be published not less than 30 days before the date on which the agency expects to enter into the contract and each subsequent notice shall be published at intervals of no more than three days thereafter. The notice shall include

(1) a general description of the proposed project for which the agency is seeking professional services; and

(2) the procedure by which a person or firm interested in the professional services contract may submit its response to the agency for consideration for the contract.

(d) In addition to complying with the publication requirements of (c) of this section, when a state agency proposes to enter into a contract for architectural and engineering services it shall

(1) review the register of professional services contractors maintained by the commissioner under AS 36.98.020; and

(2) provide a notice of a request for qualifications for the proposed professional services contract to each prospective contractor who, after review of the register of professional services contractors under (1) of this subsection, the agency finds is qualified for consideration for the contract.

(e) Requests for qualification from at least six persons or firms with the required expertise shall be solicited for contracts equal to or greater than $100,000. Requests for qualification from at least three persons or firms with the required expertise shall be solicited for contracts of less than $100,000 if the expertise required is available. If the expertise required is not available to enable an agency to solicit the number of requests for qualification otherwise required under this subsection, the agency shall solicit requests for qualification

(1) from each person or firm listed on the professional services contractors register maintained under AS 36.98.020 who appears to possess the required expertise;

(2) from each person or firm responding to the public notice given under (a) of this section who appears to possess the required expertise.

(f) The provisions of this section do not apply if

(1) the contracting agency demonstrates that there is a single source of the expertise or knowledge required or that one person or firm can clearly perform the required tasks more satisfactorily because of the person's or firm's prior work; however, this exemption applies only if the head of the state agency has submitted a written request to the commissioner that details the reasons for the exemption and the commissioner or deputy commissioner has authorized in writing the state agency to enter contract negotiations with the single source;

(2) the commissioner makes a written determination that public necessity will not permit delay incident to the procedures otherwise required by this chapter; or

(3) the service is to be provided by another state agency, a federal agency, or a political subdivision of the state.

(g) The agency must provide a description of the work to be performed under the contract and the agency shall conduct discussions regarding anticipated concepts and the relative utility of alternative methods of approach for furnishing the required services. The state agency must provide a description of the factors that will be considered when it evaluates the request for qualifications received.

(h) After the responses are submitted, the state agency shall publically evaluate them. The evaluation shall consist of assigning point values to factors considered by the agency in evaluating each proposal. Points shall be awarded for being a qualified Alaska firm..

(i) The state shall negotiate a contract with the highest qualified firm for architectural and engineering services at compensation which the state determines is fair and reasonable to the state. In making such determination, the state shall take into account the estimated value of the services to be rendered, the scope, complexity, and professional nature of the services. Should the state be unable to negotiate a satisfactory contract with the firm considered to be the most qualified, the state shall undertake negotiations with

the second most qualified firm. Failing accord with the second most qualified firm, the state shall enter negotiations with other contractors, in order of ranking until an agreement is reached. The state may reject all or part of a proposal.

(j) This section does not apply to contracts awarded in an emergency if the person responsible for execution of the contract on behalf of the state certifies in writing that an emergency exists.

(k) In this section "state" includes political subdivisions of the state and agencies of the state and its political subdivisions.

(l) In this section "architectural and engineering services" includes those professional services of an architectural or engineering nature as well as incidental services that members of these professions and those in their employ may logically or justifiably perform.

STATE OF ALASKA
FISCAL NOTE

Revision Date 4/11 , 1983

I. REQUEST

Bill/Resolution No.: CSHB 211
Title: Arch/Engr/Land Surveying Contracts
Sponsor: Furnace, Abood, Barnes, etc.
Requestor: House Labor & Commerce

II. FISCAL DETAIL

Agency Affected: DOT&PF
Program Category Affected: Transportation
BRU, Program or Subprogram(s) Affected:

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 83	FY 84	FY 85	FY 86	FY 87	FY 88
OPERATING						
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 COMMODITIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC						
TOTAL OPERATING		-0-	-0-	-0-	-0-	-0-
CAPITAL			SEE ANALYSIS			
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER (Specify Source)						

POSITIONS:

FULL-TIME		-0-	-0-	-0-	-0-	-0-
PART-TIME						
TEMPORARY						

III. SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

IV. ANALYSIS: Attach a separate page for any Analysis

Prepared By: Jonathan W. Scribner Phone: 364-4339
Division: Deputy Commissioner, S.E. Region Date: 4/13/83

Approved by Deputy Commissioner: Jonathan W. Scribner Date: 4/13/83
Department: Department of Transportation & Public Facilities

Distribution:
Original to Legislative Finance
Copy to Office of Management and Budget (for Legislature introduced bills)
Copy to Department (for Governor introduced bills)
Copy to Sponsor
Copy to Requestor (if different from Sponsor)

3/8

ANALYSIS

One would be hard pressed to readily identify a cost of this Bill to the State, however, the prohibition against using price in any way to select consultants cannot help but impact the competition process with regard to the cost of the work done. The restrictive nature of this bill could conceivably increase the cost of capital projects as follows:

Assume:	Cost of Consultant fee for Design	=	7% of CIP
	Cost of Bill	=	5% of Consultant Fee
	CIP	=	$200 Million/year
	Cost of CSHB 211	=	0.05 X 0.07 X $200 Million
		=	$700,000 per year

CENTURY ENGINEERING, INC. CONSULTING ENGINEERS • PLANNERS

RECEIVED 3-22-83

March 17, 1983

Representative Mike Szymanski
Pouch V
Juneau, Alaska 99811

Dear Mike:

John and I have read over House Bill No. 211 concerning architectural and engineering services. The procedures outlined sound pretty much like the way things have been handled lately, at least as far as our recent experience is concerned.

I would think something in the bill giving guildlines as to how "fair and reasonable prices" are determined might be helpful. Most national professional organizations, such as the National Society of Professional Engineers or American Institute of Architects have booklets to help owners determine fee ranges for project types.

On page 2 of the bill, line 23 makes reference to "bids". A bid is usually a monetary figure and would then seem to conflict with other portions of the bill. Possibly "offers of or proposals for" would be more suitable language.

Thanks for allowing me the time to comment on this legislation which affects an area of direct impact on my profession..

Sincerely,

CENTURY ENGINEERING, INC.

Robert J. Peters, P.E.
Project Engineer

RJP/css

500 "L" STREET, SUITE 200 | ANCHORAGE, ALASKA 99501 | (907) 277-0584/276-1248 | TELEX 26-364

Labor & Commerce

STUTZMANN ENGINEERING ASSOC., INC.

P. O. BOX 1429

FAIRBANKS, ALASKA 99707

907 452-4094

March 23, 1983

MAR 24 1983

John Ringstad
House of Representatives
Pouch V
Juneau, Alaska 99811

Dear Sir:

It has just come to my attention that committee revisions to H.B. 211 have the effect of deleting the profession of land surveying from the context of this bill.

As both a professional engineer and a professional land surveyor, I have supported this bill in its original form as introduced February 17, 1983 and strongly urge your support in passing it as such.

The deletion of land surveying and other amendments proposed in committee do a tremendous disservice to the land surveyor's profession, some two thousand strong in this State; also, its exclusion would have a deleterious effect on the quality of land surveys in the future by aiding in the degradation of this highly skilled profession into sub-professional status.

Sub-standard land survey work has already been a major problem in land title work in our State, one of the newest in the Union, and any regulation of land surveying out of professional status can only contribute to more disastrous results.

H.B. 211, as introduced, is a fine and much needed piece of legislation which brings State government procurement practices in line with professional standards in use in other States and by the Federal government.

Again, I urge you to support this bill in <u>original</u> form and resist any modifications thereto.

Very truly yours,

STUTZMANN ENGINEERING ASSOC., INC.

Paul E. Stutzmann

Paul E. Stutzmann

BRO-HB

FAIRBANKS SOCIETY OF PROFESSIONAL LAND SURVEYORS

SR 30113
P.O. Box 2572
Fairbanks, Alaska 99701

March 24, 1983

Rep. Niilo Koponen
Pouch V
Juneau, AK 99811

MAR 24 1983

Dear Rep. Koponen:

The Fairbanks Chapter of the Alaska Society of Professional Land Surveyors wants to express strong support for HB 211 in its original form. We also wish to express our strong onjection and dismay at the Committee Substitute for HB 211 which eliminates Land Surveyors from this bill.

As a profession, we are classified under AS 48 in the same category as Architects and Enginners. We are registered by the same Board of Occupational Licensing and licenced by State of Alaska. Our Professional Certificates are signed by the "Board of Architects, Engineers, and Land Surveyors." Each Professional Land Surveyor receives a Professional License which must renewed annually by the the State of Alaska.

When a Registered Land Surveyor (RLS) signes and places his professional seal on a survey plat, his reputation and that of the entire profession are being offered as surety that the plat is correct and the land survey legal and complete. When a member of the profession is found guilty of unprofessional work, his license and professional status can be stripped by the State Board of Architects, Engineers, and Land Surveyors.

This attempt by the Committee Substitute to remove Professional Land Surveyors from the bill has the effect of removing one-third of the category which the bill addresses. We strongly urge you and others of the Fairbanks delegation, and members of the appropriate legislative committees, to re-instate Land Surveyors as a part of HB 211. It is a good bill, but the Committee Substitute must be rescinded.

Sincerely yours,

Patrick H. Kalen, RLS
Patrick H. Kalen, President
Fairbanks Chapter, ASPLS

Copy: Rep. Bob Bettisworth
Rep. John Ringstad
Rep. Mike Davis
Rep. Mike Miller
Rep. Hugh Malone, RLS
Rep. Furnace, Chair, Labor & Commerce
Speaker Joe Hayes, PE, RLS
Sen. Bettye Fahrenkamp
Sen. Don Bennett

§ 541. Definitions

As used in this subchapter

(1) The term "firm" means any individual, firm, partnership, corporation, association, or other legal entity permitted by law to practice the professions of architecture or engineering.

(2) The term "agency head" means the Secretary, Administrator, or head of a department, agency, or bureau of the Federal Government.

(3) The term "architectural and engineering services" includes those professional services of an architectural or engineering nature as well as incidental services that members of these professions and those in their employ may logically or justifiably perform.

June 30, 1949, c. 288, Title IX, § 901, as added Oct. 27, 1972, Pub.L. 92–582, 86 Stat. 1278.

Legislative History. For legislative history and purpose of Pub.L. 92-582, see 1972 U.S.Code Cong. and Adm.News, p. 4767.

Library References
United States ⇨35.
C.J.S. United States §§ 35, 37, 62 to 64.

§ 542. Congressional declaration of policy

The Congress hereby declares it to be the policy of the Federal Government to publicly announce all requirements for architectural and engineering services, and to negotiate contracts for architectural and engineering services on the basis of demonstrated competence and qualification for the type of professional services required and at fair and reasonable prices.

June 30, 1949, c. 288, Title IX, § 902, as added Oct. 27, 1972, Pub.L. 92–582, 86 Stat. 1279.

Legislative History. For legislative history and purpose of Pub.L. 92-582, see 1972 U.S.Code Cong. and Adm.News, p. 4767.

Library References
United States ⇨35.
C.J.S. United States §§ 35, 37, 62 to 64.

1. Grant-funded procurements

Architectural and engineering procurement procedures contained in sections 543 and 544 of this title, mandatory for federal procurements for such architectural and engineering services, were not per se applicable to procurements by the Licking County Regional Planning Commission, a grantee under a community development grant by the Department of Housing and Urban Development. 1980, 59 Comp.Gen. 251.

§ 543. Requests for data on architectural and engineering services

In the procurement of architectural and engineering services, the agency head shall encourage firms engaged in the lawful practice of their profession to submit annually a statement of qualifications and performance data. The agency head, for each proposed project, shall evaluate current statements of qualifications and performance data on file with the agency, together with those that may be submitted by other firms regarding the proposed project, and shall conduct discussions with no less than three firms regarding anticipated concepts and the relative utility of alternative methods of approach for furnishing the required services and then shall select therefrom, in order of preference, based upon criteria established and published by him, no less than three of the firms deemed to be the most highly qualified to provide the services required.

June 30, 1949, c. 288, Title IX, § 903, as added Oct. 27, 1972, Pub.L. 92–582, 86 Stat. 1279.

Legislative History. For legislative history and purpose of Pub.L. 92-582, see 1972 U.S.Code Cong. and Adm.News, p. 4767.

Library References
United States ⇨35.
C.J.S. United States §§ 35, 37, 62 to 64.

§ 544. Negotiation of contracts for architectural and engineering services

(a) The agency head shall negotiate a contract with the highest qualified firm for architectural and engineering services at compensation which

making such determination, the agency head shall take into account the estimated value of the services to be rendered, the scope, complexity, and professional nature thereof.

(b) Should the agency head be unable to negotiate a satisfactory contract with the firm considered to be the most qualified, at a price he determines to be fair and reasonable to the Government, negotiations with that firm should be formally terminated. The agency head should then undertake negotiations with the second most qualified firm. Failing accord with the second most qualified firm, the agency head should terminate negotiations. The agency head should then undertake negotiations with the third most qualified firm.

(c) Should the agency head be unable to negotiate a satisfactory contract with any of the selected firms, he shall select additional firms in order of their competence and qualification and continue negotiations in accordance with this section until an agreement is reached.

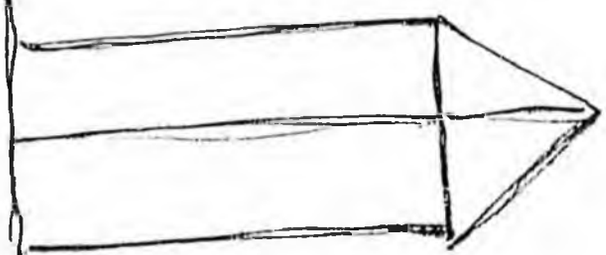
June 30, 1949, c. 288, Title IX, § 904, as added Oct. 27, 1972, Pub.L. 92–582, 86 Stat. 1279.

Legislative History. For legislative history and purpose of Pub.L. 92-582, see 1972 U.S.Code Cong. and Adm.News, p. 4767.

Library References
United States ⇨35.
C.J.S. United States §§ 35, 37, 62 to 64.

1. Factors considered

Factors which were used in fulfilling requirement to negotiate contracts for architectural and engineering services on basis of demonstrated confidence and qualifications for type of professional services required and which included institutional maturity, organizational framework, management plans and approach, management group experience, and availability of disciplines were not violative of this chapter as unduly stressing those factors most likely to yield selection of a large, established firm than a small minority one with individual rather than institutional competence and qualifications. Milkbilnent v. United Engineers & Constructors, Inc., D.C.Pa.1980, 485 F. Supp. 1292.



(7)

COMMITTEE REPORT

4/14

HOUSE

FURTHER: JUDICIARY

2/17/83

Date: 4/11/83

Mr. Speaker:

The Committee on LABOR & COMMERCE has had HB 211

"An Act relating to contracts for architectural, engineering, and land surveying services; and providing for an effective date."

under consideration and reports it back as follows:

[ ] do pass [ ] do not pass

[ ] do pass with attached amendments(s)

[X] replace with CS for HB (L+C) [X] same title [ ] new title

and recommends _____

[ ] AND attaches a "Letter of Intent" [ ] New Fiscal Note [ ] Zero Fiscal Note Attached

[ ] reports it back without recommendation

[ ] referred to the _____ Committee

MEMBERS SIGNING DO PASS	MEMBERS HAVING OTHER RECOMMENDATIONS:
[signature]	
[signature]	
[signature]	
[signature]	
[signature]	

[signature]
CHAIRMAN

H 60

STATE OF ALASKA
FISCAL NOTE

Revision Date 4/11 , 1983

I. REQUEST

Bill/Resolution No.: CSHB 211
Title: Arch/Engr/Land Surveying Contracts
Sponsor: Furnace, Abood, Barnes, etc.
Requestor: House Labor & Commerce

II. FISCAL DETAIL

Agency Affected: DOT&PF
Program Category Affected: Transportation
BRU, Program or Subprogram(s) Affected:

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 83	FY 84	FY 85	FY 86	FY 87	FY 88
OPERATING						
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 COMMODITIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC						
TOTAL OPERATING		-0-	-0-	-0-	-0-	-0-
CAPITAL			SEE ANALYSIS			
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER (Specify Source)						

POSITIONS:

FULL-TIME		-0-	-0-	-0-	-0-	-0-
PART-TIME						
TEMPORARY						

III. SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

IV. ANALYSIS: Attach a separate page for any Analysis

Prepared By: Jonathan W. Scribner Phone: 364-4339
Division: Deputy Commissioner, S.E. Region Date: 4/13/83

Approved by Deputy Commissioner: Jonathan W. Scribner Date: 4/13/83
Department: Department of Transportation & Public Facilities

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3/8/

ANALYSIS

One would be hard pressed to readily identify a cost of this Bill to the State, however, the prohibition against using price in any way to select consultants cannot help but impact the competition process with regard to the cost of the work done. The restrictive nature of this bill could conceivably increase the cost of capital projects as follows:

Assume:	Cost of Consultant fee for Design	=	7% of CIP
	Cost of Bill	=	5% of Consultant Fee
	CIP	=	$200 Million/year
	Cost of CSHB 211	=	0.05 X 0.07 X $200 Million
		=	$700,000 per year

HB

212

(7)

COMMITTEE REPORT

HOUSE

FINANCE

FURTHER:

Date: 24 March 83

3/17/83
Mr. Speaker:

The Committee on JUDICIARY has had CS HB 212 (JUD) 2

An Act relating to crime victim compensation; and providing for an effective date.

under consideration and reports it back as follows:

[X] do pass [ ] do not pass

[ ] do pass with attached amendments(s)

[X] replace with CS for HB 212 (JUD) [ ] same title [ ] new title

and recommends

[ ] AND attaches a "Letter of Intent" [ ] New Fiscal Note [ ] Zero Fiscal Note Attached

[ ] reports it back without recommendation

[ ] referred to the Committee

MEMBERS SIGNING
DO PASS

MEMBERS HAVING
OTHER RECOMMENDATIONS:

CHAIRMAN

H 60

STATE OF ALASKA

OFFICE OF THE GOVERNOR

BILL ANALYSIS

Department	Sponsor (Principal)	Bill Number
Public Safety	Pestinger & Clocksin	HB212

Department Position

Support

Division Director	Date	Commissioner's Signature	Date
Nola K. Capp	2/22/83		

GOVERNOR'S OFFICE USE

Comments:

☐ Position Noted	By	Date

SUMMARY

1. a) Related Bills (Similar or Conflicting	1. b) Other Agencies Affected by Bill
SB 86 HB 104 SB 107	
2. a) Organizational Support for Bill	**2. b) Organizational Opposition to Bill**

3. Program Effects of Bill

This bill would add a new paragraph which would enable the Board to pay the provider directly for services provided as a result of the personal injury or death of the victim. The bill also provides a new paragraph which would enable the Board to deny a claim if the claimant refuses to give reasonable cooperation to law enforcement in their efforts to apprehend and convict the offender for the crime resulting in the personal injury, unless good cause for the refusal is shown the Board. The bill would also repeal the Section of the Act which now excludes relatives and victims living with offenders. The bill, under Section 18.67.130(c), deletes the sentence, "all payments must be made in a lump sum." (continued on page 2)

4. Fiscal Impact: ☐ None ☒ Fiscal Note Attached

5. Amendments Proposed:

6. Comments:

The Board supports adding the paragraph in Section 18.67.080(a)(4), as many times in the past the provider has not been paid because the service had to be paid in a joint warrant and this warrant did not always get sent to the provider. This would also be less of a hassle for the claimant. The Board supports the deletion of the lump sum payment requirement as they feel long term payments would insure the award was not exhausted before the dependent reaches majority or the claimant is able to return to work. The Board also supports adding paragraph (5) to Section 18.67.130(b), as they feel there are a few cases where the claimant is justified in fearing retribution from the offender. The Board also supports repealing the Section 18.67.130(b)(1) and (2), as they feel many people in the bush and outlying areas are truly innocent victims, but are not included in the present act because they are living in the same residence as the offender. This repeal would also mean innocent dependent children could receive loss of support when one spouse killed the other spouse and left the children homeless. (continued on page 2)

Program Effects (continued from page 1)

A new paragraph is added stating a person awarded compensation is ineligible for subsequent compensation for additional personal injuries inflicted by the same offender if the offender is a relative or member of the same household as the victim.

Comments (continued from page 1)

The Board supports the deletion of the lump sum payment requirement, as they feel long term payments would insure the award was not exhausted before the dependent reaches majority or the claimant is able to return to work. Section 18.67.135 would keep the offender from benefitting from his actions and speaks to this concern.

from Rep. Tischer

CRIME VICTIMS IMPACT STATEMENT

A manual for crime victims citizen associations, judges and prosecutors to provide due process for victims in the criminal justice system

Washington Legal Foundation

This Crime Victims Impact Statement Manual is prepared and distributed by the Washington Legal Foundation to State and Federal Judges and Prosecutors in all 50 States and the District of Columbia. The purpose of this manual is to help develop a system whereby the victim of crime participates in a constructive manner in the sentencing process of a criminal case.

The Washington Legal Foundation, a nonprofit public interest legal center with 80,000 members nationwide, has been a pioneer in the field of crime victims' rights. Besides the preparation of this manual, WLF has provided legal assistance to victims to enable them to file civil actions against the criminals and third parties for damages suffered by the victim. WLF has also submitted proposals with the United States Parole Commission that, if adopted, would require victim compensation as one of conditions for parole. WLF also has participated in many programs concerning victims' rights as part of WLF's commitment to educate the public on this important issue.

We encourage users of this manual to submit comments and suggestions to the Foundation on the use of the Victim Impact Statement as well as on other crime victims' rights issues.

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INTRODUCTION

A violent crime now occurs every 24 seconds somewhere in the United States. Every 23 minutes, a murder is committed. A woman is raped every 6 minutes. There's a robbery every 58 seconds, and an aggravated assault every 48 seconds.

The striking truth about crime is that we are all vulnerable to its random selection, and becoming increasingly vulnerable as America's crime clock continues to tick at a faster rate, with violent crime increasing 11% in 1980.

There has been much written and spoken of the pervasive fear of violent crime which threatens the American way of life. The Chief Justice of the U.S. Supreme Court has recently and poignantly spoken out on the subject of violent crime, noting the "reign of terror" which has made Americans "hostages within the borders of our own self-styled, enlightened, civilized country."

Fighting violent crime has been declared a high priority of the Reagan Administration's Justice Department.

The Washington Legal Foundation believes the victim of violent crime should be given the highest priority in America's continuing struggle to deal with the issue of violent crime.

The diligent efforts of progressive criminologists, jurists and legislators over the past two decades have borne fruit. Caught up on providing social justice for the criminal offender, the American taxpayer has been footing the bill for the millions of dollars being spent on programs for criminal offender-oriented rehabilitation and court reform. We now offer criminal offenders every conceivable right and legal service interpreted to be due them under the law.

Law enforcement officials, the courts and the entire criminal justice system have focused their efforts on the rights of the accused, providing to the offender "massive safeguards" in the words of Chief Justice Warren Burger.

Unfortunately, no one has made such a zealous effort on behalf of the innocent victims of crime, who have become the forgotten factor in the criminal justice equation.

For far too long, the words "Criminal Justice" have been interpreted to mean "Justice for the Criminal." We have forgotten that for every crime, there is at least one victim.

The initial shock and dismay felt by the victim of a violent crime is exacerbated by a criminal justice system that seems to care more for the offender than the victim. Perhaps the saddest commentary on America's criminal justice system is that the victim of a violent crime is not only victimized by the crime itself, but he or she can expect to be re-victimized again and again by an archaic process which is supposed to administer justice, to right the wrong the victim has experienced.

The process by which our society prosecutes the criminal is based on the theory of the law that the government itself, "society", is the victim of crime. The very manner in which criminal cases are titled provides an indication of the victim's status. No matter how severe the crime committed and the injury suffered by the victim, it is the State vs. Criminal, not Victim vs. Criminal. The victim of violent crime finds that he has become, at best, merely the State's witness in their case, a piece of evidence, his status collectivized by society.

The semantics of criminal prosecution would not be significant if the issue were merely one of how we title our court cases. However, the criminal justice system has failed to recognize that every person who commits a criminal act not only violates the law, but also violates a person. The victim of violent crime learns firsthand that America's law enforcement mechanisms are geared to apprehending, prosecuting, and allegedly punishing those who criminally offend society. In the process, the victim is neglected, his rights as an injured person subrogated.

As if it isn't bad enough that the victim of crime has been relegated to an observer status in the prosecution of the offender, the crime victim is further denied the right to even observe. It is well recognized that the crime victim does not even receive complete and timely information regarding the status of the case, from arrest on through to prosecution, plea bargaining, and sentencing, if any.

It is no wonder the victim feels detached from the criminal justice system.

The Washington Legal Foundation proposes that courts throughout the United States can and should assist in improving the rights of the victims of violent crime by establishing a system whereby the victim participates in a constructive manner in the sentencing process of a criminal case.

The Sentencing Process

In all states, criminal procedure laws require a pre-sentence investigation prior to the imposition of a sentence upon a defendant who has been found guilty. The primary focus of the investigation, which is usually conducted and presented to the court by a probation or corrections officer, is on the person to be sentenced, the criminal. The particular areas of pre-sentence investigation include the past delinquencies of the criminal, his employment history, family background, economic status, education and personal habits.

In theory, the court weighs these factors with the circumstances of the criminal offense to determine a just and proper sentence. The investigation report may also include a recommendation of an appropriate sentence. Although a judge is not bound by the report's findings and recommendation, he usually shows deference to the reporting officer's judgment. Thus, the pre-sentence investigation and report is an important element in the judge's decision on an appropriate sentence, including whether the offender should be released on probation or confined to prison, and, if imprisoned, the duration of the jail term.

It seems, then, that this is a crucial juncture along the road to justice, and it is exactly at this juncture that the victim's views should be considered. The use of a Victim Impact Statement provides a mechanism by which the crime victim may directly participate in the sentencing process.

What is a Victim Impact Statement?

Simply put, a Victim Impact Statement is a tool to be used by prosecutors and judges in an effort to make the criminal justice system more accountable to the victims of violent crime.

The "Statement" itself is a questionnaire intended to be voluntarily completed by the crime victim and included in

the information provided to the Court prior to the imposition of sentencing.

The answers to questions included in the Victim Impact Statement will provide the Court with the physical, psychological and economic effects which the crime has had on the victim and his or her family. The information is provided directly by the victim, who has an opportunity to also set forth his attitude and concerns as the victim of a violent crime.

The Washington Legal Foundation recognizes that the weight which the Court places on a Victim Impact Statement will depend on the particular circumstances of each case, taken on an individual basis. In no way does the Washington Legal Foundation wish to suggest that the Court should be necessarily bound by the contents of the Victim Impact Statement. Rather, the Victim Impact Statement is meant to provide the Court with additional assistance in the discretionary exercise of its sentencing powers.

At the same time, the solicitation of a Victim Impact Statement will demonstrate to the crime victim that the criminal justice system is concerned with the victim's plight.

CONCLUSION

This Victim Impact Statement Manual includes not only a sample Victim Impact Statement, but a thorough analysis of all State laws that relate to the input by the victim in the criminal justice system. The Foundation hopes that the information provided in this Manual will serve as a catalyst to advance the rights of all victims of violent crime.

The Foundation strongly suggests that members of the public and citizens' groups encourage their local judges and prosecutors to utilize Victim Impact Statements in the sentencing process. With a concerted effort by all concerned, we hope to advance the rights of victims and their families as well as to reduce the occurrences of violent criminal activity.

VICTIM IMPACT STATEMENT

STATE VS._____

CASE #_____

SENTENCING DATE_____

_____

_____

TO ASSIST THE COURT IN ITS EFFORT TO WEIGH ALL FACTORS PRIOR TO IMPOSING SENTENCE, WE REQUEST YOUR *VOLUNTARY* COOPERATION IN COMPLETING THIS FORM. THIS STATEMENT IS INTENDED TO BE SUBMITTED TO THE JUDGE IMPOSING SENTENCE HEREIN.

_____

_____

NAME OF VICTIM:_____

ADDRESS: _____
STREET CITY STATE ZIP CODE

DATE OF BIRTH:_____

1. Please describe the nature of the incident in which you were involved.

_____

_____

_____

2. As a result of this incident, were you physically injured?_____
If yes, please describe the extent of your injuries.

_____

_____

_____

3. Did you require medical treatment for the injuries sustained?_____

If yes, please describe the treatment received and the length of time treatment was or is required.

_____

_____

4. Amount of expenses incurred to date as a result of medical treatment received:

$_____

Anticipated expenses:

$_____

5. Were you psychologically injured as a result of this incident?_____
If yes, please describe the psychological impact which the incident has had on you.

6. Have you received any counselling or therapy as a result of this incident?_____
If yes, please describe the length of time you have been or will be undergoing counselling or therapy, and the type of treatment you have received.

7. Amount of expenses incurred to date as a result of counselling or therapy received:

$_____

8. Has this incident affected your ability to earn a living?_____
If yes, please describe your employment, and specify how and to what extent your ability to earn a living has been affected, days lost from work, etc.

9. Have you incurred any other expenses or losses as a result of this incident?_____
If yes, please describe.

10. Did insurance cover any of the expenses you have incurred as a result of this incident? If yes, please specify the amount and nature of any reimbursement.

11. Has this incident in any way affected your lifestyle or your family's lifestyle?_____
If yes, please explain.

12. Are there any other residual effects of this incident which are now being experienced by you or members of your family?

13. Please describe what being the victim of crime has meant to you and to your family.

14. What are your feelings about the criminal justice system? Have your feelings changed as a result of this incident? Please explain.

15. Do you have any thoughts or suggestions on the sentence which the Court should impose herein? Please explain, indicating whether you favor imprisonment.

THIS FORM IS SUBSCRIBED AND AFFIRMED BY THE VICTIM AS TRUE UNDER THE PENALTIES OF PERJURY. THE INFORMATION AND THOUGHTS YOU HAVE PROVIDED ARE VERY MUCH APPRECIATED.

DATE: _____

_____
SIGNATURE

STATE LAWS AND THEIR APPLICATION TO THE USE OF A VICTIM IMPACT STATEMENT

No state explicitly denies the right of the victim to be considered during the pre-sentence investigation and mentioned in the pre-sentence report. Only four states--Indiana, Connecticut, Illinois and Kansas--have statutes that explicitly require a statement from or concerning the victim in the pre-sentencing report. The text of these statutes is contained later in this publication.

Indiana provides an exemplary procedure for consideration of the victim in the sentencing process. The State of Indiana provides that a pre-sentence report must include any written statements submitted to the prosecuting attorney by the victim, and any written statements submitted to the probation officer by a victim. This concern for the victim, whom the law defines as "a person who has suffered harm as a result of an offense", was enacted by the Indiana Legislature in 1978. The statute also provides that if no written statements are submitted to the probation officer, the probation officer must certify to the Court that an attempt was made to contact the victim, and that if the victim was contacted, the probation officer offered to accept the victim's written statement or to reduce the victim's oral statements to writing concerning the sentence, including the acceptance of any recommendation, i.e., the victim has a say in the plea bargaining process.

The Connecticut and Kansas statutes call for an inquiry into the attitude of the complainant or victim, or in the case of the victim's death, the victim's immediate family.

The Illinois statute requires the pre-sentence report to set forth the effect of the crime upon the victim, as well as any sentencing scheme that would allow the victim to be compensated by his offender. Illinois is noteworthy in that it is the only state in the union which statutorily calls upon the probation officer to devise a restitutive scheme for the benefit of the victim.

The Oregon rules of criminal procedure allow for a post-conviction hearing to determine if an aggravation or mitigation of punishment is warranted. A victim may appear at this hearing and state his views for aggravating or mitigating the punishment, but the focus of the Oregon pre-sentencing report is primarily on the defendant.

The Minnesota statute alludes to the victim when it requires an account of "... the circumstances of the offense and harm caused thereby to others and to the community", but does not specifically mention or require anything of the nature of a victim impact statement, although it is clear that such a statement would not be unwelcomed.

Although most of the remaining state statutes are defendant-specific, there is room for a victim impact statement in nearly all of them. There are roughly three categories in which the remaining statutes are divided (with some overlap). The first category includes those statutes that require the gathering of information with respect to the circumstances attending the commission of the offense. On the surface, this would simply require the reporting officer to describe the nature of the offense. It seems, however, that the consequent or resultant circumstances of the offense can be included here; that is, a victim impact statement describing the effects of the crime on the victim and the victim's attitude toward sentencing, would seem to fall within the purview of the statutes having this requirement. Sixteen state statutes contain this requirement or one with language similar to it.

The second category includes those statutes that allow the reporting officer to include in his report any matter which he deems relevant to the question of sentence or those that allow the report to contain any information the court orders to be included. Thirteen states have statutes that contain this or similar language. Under these rules the reporting officer and the court are allowed a good deal of latitude in determining the contents of the report. If they deem it proper, they may include a victim impact statement.

The remaining sixteen statutes are predominantly defendant oriented, **with no mention of the victim.** Thirteen of those statutes simply require a pre-sentence investigation prior to the announcement of sentence with no specific guidelines, or are worded loosely enough to allow a victim impact statement. Four states--Alaska, Delaware, Missouri

and Utah--have specific guidelines that clearly exclude the victim. Additional or revised language would be required to allow such a statement in those states.

INDIANA

35-50-1A-10 SCOPE OF PRESENTENCE INVESTIGATION AND REPORT--SOLICITATION OF VICTIM'S STATEMENTS,--(a) The presentence investigation consists of the gathering of information with respect to the circumstances attending the commission of the offense, the convicted person's history of delinquency or criminality, social history, employment history, family situation, economic status, education and personal habits. Such investigation may also include any other matter which the probation officer conducting the investigation deems relevant to the question of sentence, and must include:

(1) Any matters the court directs to be included;

(2) Any written statements submitted to the prosecuting attorney by a victim under IC 35-5-6 (35-5-6-1 --35-5-6-5); and

(3) Any written statements submitted to the probation officer by a victim.

(b) If there are no written statements submitted to the probation officier, he shall certify to the court:

(1) That he has attempted to contact the victim; and

(2) That, if he has contacted the victim, he has offered to accept the written statements of the victim, or to reduce his oral statements to writing, concerning the sentence, including the acceptance of any recommendation.

(c) As used in this section, the terms "recommendation" and "victim" have the meanings set out in IC 35-5-6-1. [IC 35-4.1-4-10, as added by Acts 1973, P.L. 325, §4, p. 1750; 1978, P.L. 146, §5, p. 1331.]

35-5-6-1. DEFINITIONS.--AS USED IN THIS CHAPTER:

(a) "Prosecutor" means prosecuting attorney or deputy prosecuting attorney.

(b) "Recommendation" means a proposal by the prosecutor to a court that:

(1) A charge be dismissed; or

(2) A defendant, if he pleads guilty to a charge, receive less than the maximum penalty permitted by law.

(c) "Victim" means a person who has suffered harm as a result of an offense. [IC 35-5-6-1, as added by Acts 1975, P.L. 332, §1, p. 1768; 1978, P.L. 146, §1, p. 1331.]

35-5-6-1.5. NOTICE TO VICTIM OF PROSECUTOR'S RECOMMENDATION,--(a) In making a recommendation on a felony charge, a prosecutor must:

(1) Inform the victim that he has entered into discussions with defense counsel or the court concerning a recommendation;

(2) Inform the victim of the contents of the recommendation before it is filed; and

(3) Notify the victim so that he might be present when the court considers the recommendation.

(b) A court may consider a recommendation on a felony charge only if the prosecutor has complied with this section. [IC 35-5-6-1.5, as added by Acts 1978, P.L. 146, §2, p. 1331.]

CONNECTICUT

§ 54-109. WHEN INVESTIGATION OF DEFENDANT REQUIRED

No defendant convicted of a crime, other than a capital felony, the punishment for which may include imprisonment for more than one year, shall be sentenced, or his case otherwise disposed of, until a written report of investigation by a probation officer has been presented to and considered by the court, if (1) the defendant is so convicted for the first time in this state or (2) his record, as shown by the prosecuting official, discloses a conviction obtained prior to three years from the finding of guilty in the present prosecution; but any court may, in its discretion, order a presentence investigation for a defendant convicted of any crime or offense other than a capital felony. Whenever an investigation is required, the probation officer shall promptly inquire into the circumstances of the offense, the attitude of the complainant or victim, or of the immediate family where possible in

cases of homicide, and the criminal record, social history and present condition of the defendant. All local and state police agencies shall furnish to the probation officer and restitution specialist such criminal records as the probation officer and restitution specialist may request. When in the opinion of the court or the investigating authority it is desirable, such investigation shall include a physical and mental examination of the defendant. If the defendant is committed to any institution, the investigating agency shall send the reports of such investigation to the institution at the time of commitment. (1976, P.A. 76-336, §6; 1978, P.A. 78-188, §5, eff. July 1, 1978.)

KANSAS

62-2238. PRESENTENCE INVESTIGATIONS UPON REQUEST OF DISTRICT COURT; PROCEDURE. Whenever a defendant is convicted of a crime or offense, the court before whom the conviction is had may request a presentence investigation by a probation officer. Whenever an investigation is requested, the probation officer shall promptly inquire into the circumstances of the offense; the attitude of the complainant or victim, and of the victim's immediate family, where possible, in cases of homicide; and the criminal record, social history, and present condition of the defendant. All local and state police agencies shall furnish to the probation officer such criminal records as the probation officer may request. Where in the opinion of the court it is desirable, the investigation shall include a physical and mental examination of the defendant. If a defendant is committed to any institution, the investigating agency shall send a report of its investigation to the institution at the time of commitment. [L. 1957, ch. 331, §13; July 1.]

ILLINOIS

§ 1005-3-2. PRESENTENCE REPORT

(a) The presentence report shall set forth:

(1) the defendant's history of delinquency or criminality, physical and mental history and condition, family situation and background, economic status, education, occupation and personal habits;

(2) information about special resources within the community which might be available to assist the defendant's rehabilitation, including treatment centers, residential facilities, vocational training services, correctional manpower programs, employment opportunities, special educational programs, alcohol and drug abuse programming, psychiatric and marriage counseling, and other programs and facilities which could aid the defendant's successful reintegration into society;

(3) the effect the offense committed has had upon the victim or victims thereof, and any compensatory benefit that various sentencing alternatives would confer on such victim or victims;

(4) information concerning the defendant's status since arrest, including his record if released on his own recognizance, or the defendant's achievement record if released on a conditional pre-trial supervision program;

(5) when appropriate, a plan, based upon the personal, economic and social adjustment needs of the defendant, utilizing public and private community resources as an alternative to institutional sentencing; and

(6) any other matters that the investigatory officer deems relevant or the court directs to be included.

(b) The investigation shall include a physical and mental examination of the defendant when so ordered by the court. If the court determines that such an examination should be made, it shall issue an order that the defendant submit to examination at such time and place as designated by the court and that such examination be conducted by a physician, psychologist or psychiatrist designated by the court. Such an examination may be conducted in a court clinic if so ordered by the court. The cost of such examination shall be paid by the county in which the trial is held.

(c) Nothing in this Section shall cause the defendant to be held without bail or to have his bail revoked for the purpose of preparing the presentence report or making an examination. Amended by P.A. 80-1099, §3, eff. Feb. 1, 1978.

CATEGORIES OF STATE LAWS RELATING TO VICTIM INPUT ON SENTENCING

Category I : Statutes which specifically mention or allude to the victim.

Category II : Statutes requiring the gathering of information with respect to the circumstances of the crime.

Category III : Statutes allowing the reporting officer to include, or the Court to order, any matter considered relevant to the issue of sentencing.

Category IV : Statutes which merely call for a pre-sentence investigation.

Category V : Statutes which are defendant-specific and would require revised language in order to implement a Victim Impact Statement.

STATE	STATUTE	CATEGORY
Alabama	Ala. Stat. Ann. Tit. 42 §21	II
Alaska	Alaska Stat., Crim. §12.55.085	V
Arizona	Ariz. Revised Stat. Ann., Rules of Crim. Pro. 26.4	IV
Arkansas	Ark. Stat. Ann. 43-2335	III
California	Cal. Govt. Code. Ann., Penal §1203	II
Colorado	Col. Rev. Stat., §16-11-102	IV
Connecticut	Conn. Gen. Stat. Ann. §54-109	I & II
Delaware	Del. Code Ann. §11.4331	V
Florida	Fla. Stat. Ann. §921.231	II
Georgia	Ga. Code Ann. §27-2710	IV
Hawaii	Hawaii Rev. Stat. §806.73	IV
Idaho	Idaho Code Ann. §20-220	II
Illinois	Ill. Ann. Stat. §38:105-3-2	I
Indiana	Ind. Stat. Ann. §35-50-1A-10 §35-5-6-1.5	I, II, III
Iowa	Iowa Code, Title 295 §16	IV
Kansas	Kan. Stat. Ann. Tit. 62 §21-4604	I
Kentucky	Ken. Rev. Stat. Ann. §532.050	II & III
Louisiana	La. Stat. Ann. Crim. Pro. Article 875	III
Maine	Maine Rev. Stat. Ann. Tit. 34 §1552	IV
Maryland	Md. Ann. Code Art. 41 §124	IV
Massachusetts	Mass. Am. Laws Crim. Pro. Rules 28(d)	III
Michigan	Mich. Stat. Ann. §28.1144	II
Minnesota	Minn. Stat. §609.115	I & II
Mississippi	Miss. Code Ann. §47-7-33	IV
Missouri	Missouri Rev. Stat. §549.245	V
Montana	Mon. Rev. Code Ann. Tit. §2203-05	IV
Nebraska	Neb. Rev. Stat. §29-2261	III
Nevada	Nev. Rev. Stat. Ann. §176-135	IV
New Hampshire	N.H. Rev. Stat. Ann. §651.4	IV
New Jersey	N.J. Stat. Ann. Tit. 2C:44-6	III
New Mexico	N.M. Stat. Ann. §31-21-9	IV
New York	N.Y. Ann. Stat. §390-30 (McKinney's)	II & III
North Carolina	N.C. Gen. Stat. §15A-1332	II
North Dakota	N.D. Century Code Ann. Rules of Crim. Pro. 32(c) [2]	III
Ohio	Ohio Rev. Code. Ann. §2951.03	II
Oklahoma	Oklahoma Stat. Ann. Tit. 22§982	II
Oregon	Oregon Rev. Stat. §137.090 §137.530	I & II
Pennsylvania	Penn. Con. Stat. Ann. §1332	II & III
Rhode Island	R.I. Gen. Laws Rules of Crim. Proc. 32(c)	II & III
South Carolina	S.C. Code of Laws §24-21-420	II
South Dakota	S.D. Codified Laws §23A-27-6	III
Tennessee	Tenn. Code Ann. §40-2904	II
Texas	Tex. Stat. Ann. Art. 42.12-4	II
Utah	Utah Code Ann. §76-3-404	V
Vermont	Vt. Stat. Ann. Crim. Pro. Rules 32(c) [2]	IV
Virginia	Va. Code Ann. §19.2-299	III
Washington	Wash. Rev. Code Ann. §9.95.031	II
West Virginia	W. Va. Code §6-2-12.7	III
Wisconsin	Wisc. Stats. §972.15	IV
Wyoming	Wyoming Stat. Ann. §7-13-302	II & IV

cases of homicide, and the criminal record, social history and present condition of the defendant. All local and state police agencies shall furnish to the probation officer and restitution specialist such criminal records as the probation officer and restitution specialist may request. When in the opinion of the court or the investigating authority it is desirable, such investigation shall include a physical and mental examination of the defendant. If the defendant is committed to any institution, the investigating agency shall send the reports of such investigation to the institution at the time of commitment. (1976, P.A. 76-336, §6; 1978, P.A. 78-188, §5, eff. July 1, 1978.)

KANSAS

62-2238. PRESENTENCE INVESTIGATIONS UPON REQUEST OF DISTRICT COURT; PROCEDURE. Whenever a defendant is convicted of a crime or offense, the court before whom the conviction is had may request a presentence investigation by a probation officer. Whenever an investigation is requested, the probation officer shall promptly inquire into the circumstances of the offense; the attitude of the complainant or victim, and of the victim's immediate family, where possible, in cases of homicide; and the criminal record, social history, and present condition of the defendant. All local and state police agencies shall furnish to the probation officer such criminal records as the probation officer may request. Where in the opinion of the court it is desirable, the investigation shall include a physical and mental examination of the defendant. If a defendant is committed to any institution, the investigating agency shall send a report of its investigation to the institution at the time of commitment. [L. 1957, ch. 331, §13; July 1.]

ILLINOIS

§ 1005-3-2. PRESENTENCE REPORT

(a) The presentence report shall set forth:

(1) the defendant's history of delinquency or criminality, physical and mental history and condition, family situation and background, economic status, education, occupation and personal habits;

(2) information about special resources within the community which might be available to assist the defendant's rehabilitation, including treatment centers, residential facilities, vocational training services, correctional manpower programs, employment opportunities, special educational programs, alcohol and drug abuse programming, psychiatric and marriage counseling, and other programs and facilities which could aid the defendant's successful reintegration into society;

(3) the effect the offense committed has had upon the victim or victims thereof, and any compensatory benefit that various sentencing alternatives would confer on such victim or victims;

(4) information concerning the defendant's status since arrest, including his record if released on his own recognizance, or the defendant's achievement record if released on a conditional pre-trial supervision program;

(5) when appropriate, a plan, based upon the personal, economic and social adjustment needs of the defendant, utilizing public and private community resources as an alternative to institutional sentencing; and

(6) any other matters that the investigatory officer deems relevant or the court directs to be included.

(b) The investigation shall include a physical and mental examination of the defendant when so ordered by the court. If the court determines that such an examination should be made, it shall issue an order that the defendant submit to examination at such time and place as designated by the court and that such examination be conducted by a physician, psychologist or psychiatrist designated by the court. Such an examination may be conducted in a court clinic if so ordered by the court. The cost of such examination shall be paid by the county in which the trial is held.

(c) Nothing in this Section shall cause the defendant to be held without bail or to have his bail revoked for the purpose of preparing the presentence report or making an examination. Amended by P.A. 80-1099, §3, eff. Feb. 1, 1978.

WASHINGTON LEGAL FOUNDATION

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VICTIMS RIGHTS WEEK, 1981

BY THE PRESIDENT OF THE UNITED STATES OF AMERICA

A PROCLAMATION

For too long, the victims of crime have been the forgotten persons of our criminal justice system. Rarely do we give victims the help they need or the attention they deserve. Yet the protection of our citizens — to guard them from becoming victims — is the primary purpose of our penal laws. Thus, each new victim personally represents an instance in which our system has failed to prevent crime. Lack of concern for victims compounds that failure.

Statistics reported by the Federal Bureau of Investigation and other law enforcement agencies indicate that crime continues to be a very serious national problem. But statistics cannot express the human tragedy of crime felt by those who are its victims. Only victims truly know the trauma crime can produce. They have lived it and will not soon forget it. At times, whole families are entirely disrupted — physically, financially and emotionally. Lengthy and complex judicial processes add to the victim's burden. Such experiences foster disillusionment and, ultimately, the belief that our system cannot protect us. As a Nation, we can ill afford this loss of faith on the part of innocent citizens who have been victimized by crimes.

We need a renewed emphasis on, and an enhanced sensitivity to, the rights of victims. These rights should be a central concern of those who participate in the criminal justice system, and it is time all of us paid greater heed to the plight of victims.

Ronald Reagan
April 8, 1981

THE WASHINGTON LEGAL FOUNDATION
1612 K Street, N.W.
Washington, D.C. 20006

crowding is an epidemic-scale problem, but the only response now being considered is billions of dollars of new prison construction. If all the prisons proposed today are actually built, they would cost at least 5.6 billion dollars.[18] Finding better ways to deal with criminal offenders is not only timely; it is a matter of life and death. And fortunately, these better ways are readily available.

Alternative Punishments

There are several alternatives to incarceration which may well prove to be better measures of punishment, both for society and for the offender, than imprisonment. They could improve public safety, save taxpayers huge amounts, and offer far better hope for rehabilitation of offenders. These alternatives constitute "just punishment," often far more just than imprisonment. Let's briefly consider several of these alternatives.

A. Restitution

"Restitution" requires the offender to repay the crime victim for property loss or property or personal damages. Though an alternative to prison, a restitution sentence is not an "easy out." The offender's schedule is rigidly controlled, often through his/her return at the end of the work day to a half-way house. The offender's pay is diverted into channels beyond his/her control: repayment of the victim, compensation of the state, supporting the offender's family, and establishing a capital reserve which will help keep an offender from being impelled back toward crime by poverty after release.

Because of growing public concern for crime victims, the restitution concept holds great promise of gaining broad support. Many surveys, for example, indicate that a high percentage of Americans would prefer to have a nonviolent offender repay his victim rather than serve time in prison at public expense. Likewise, offender repayment is preferred over governmental compensation of crime victims through tax dollars.[19]

Several states have instituted restitution programs in which corrections staff may negotiate the amount of repayment, monitor the payment schedule and, in some instances, offer employment assistance to unemployed offenders to guarantee that the victim will be repaid.

Restitution has gone past the theory stage in dozens of communities across the country. Though problems inevitably arise, as with all new programs, the results have been encouraging. Programs in Florida, Saginaw, MI and Elkhart, IN, among others, show both the practicality and effectiveness of the restitution alternative.[20]

B. Community Service Orders

A criminal act is an offense against particular victims, of course, but it is also an offense against society. Both suffer loss: an individual is violated, and public safety is diminished; the offender is thereby said to incur a "debt to society." But as long as punishment and imprisonment are considered synonymous, neither the victim nor society is compensated; to the contrary, both then incur the additional heavy costs of imprisonment. We have discussed restitution by offenders to their individual victims. Is there a comparable approach to compensating society?

Too often offenders now pay their "debt to society" in prison. The resulting waste of valuable human resources is easy to document. For instance, the prisoner operating the washing machine next to Charles Colson at Maxwell Federal Prison had been a prominent doctor, convicted of stock fraud. There was no resident doctor in this particular prison, so the many inmates with medical needs had to rely on a paramedic while a qualified doctor spent his days putting dirty underwear into the washing machine each morning and taking it out each afternoon. Later he volunteered to help meet a shortage of doctors

A Perspective on American Prisons, 1981

Provided by: Rep. Mae Fischer

in the surrounding community by working nights, but his offer was refused. Such shortsightedness serves neither the victim, the offender nor society.

Instead of being sent to prison, offenders could be required to work for a period of years, either at a very modest pay or none at all, in ghettoes, hospitals, or other areas of public need. Such alternatives need not be limited to white-collar offenders. Present community service programs provide work opportunities for skilled and unskilled workers alike. California is operating some 50 Community Service Alternatives for offenders.[21] Similar Community Service Orders have been employed in England with dramatic success.[22]

C. *House Arrest*

This alternative is primarily for convicted felons whose probation reports indicate they are unlikely to be involved in further criminal behavior. Many of those sentenced to house arrest are first-time offenders with no record of prior criminal activity. In California, for example, a nurse in Berkeley was sentenced to house arrest for one year for the fatal shooting of her husband. (Mitigating circumstances were present.) The alternative was approved by a committee of Alameda County officials in response to prison overcrowding and the high cost of incarceration. The convicted woman was required to report each morning and evening, seven days a week, to the County's Probation Department. This sentence permitted her to maintain her nursing job and care for her child.[23]

D. *Probation and Contract Probation*

Probation is one of the most widely used alternatives. Offenders on probation are sentenced to obey specific behavior guidelines under the supervision of a Probation Officer. Violation of the guidelines can result in incarceration, so the offender

has every incentive to avoid that prospect.

Contract probation is usually offered as an alternative to incarceration by one of the lawyers involved (interestingly enough, often the prosecutor's office advocates the program). The judge is presented with a program of punishment, often including Community Service or restitution. Under the guidelines set down, the offender reports to an authority designated by the court throughout the term of the parole.

E. *Deferred Sentencing*

Offenders assigned this alternative to incarceration plead guilty to their charge, and undergo a pre-sentence investigation. The presiding judge then defers sentencing for several months, during which the offender is referred to service agencies—alcohol and drug treatment, for example. If the offender's response is positive, the judge may impose a sentence of probation with the stipulation of continued participation in rehabilitative programs.

F. *Suspended Sentencing*

This alternative involves establishment of a fixed sentence by the presiding judge, who then suspends the sentence for a specified period of time, subject to the offender's compliance with behavioral guidelines. If the guidelines are violated, the original sentence takes effect.

G. *Fines*

Assessment of fines is already a typical penalty for many crimes, but such sentences could be more widely used in place of imprisonment for nonviolent offenses. However, the amount of a fine should be based on both the seriousness of the offense and the offender's ability to pay. Only thus can the United States reduce the blatant discrimination which leads to incarceration of a disproportionate number of the poor—those unable either to pay fines or secure sophisticated legal representation.



Nov. 15, 1982
Newsweek

Provided by Rep. Mavroules

Paying My Debt to Society

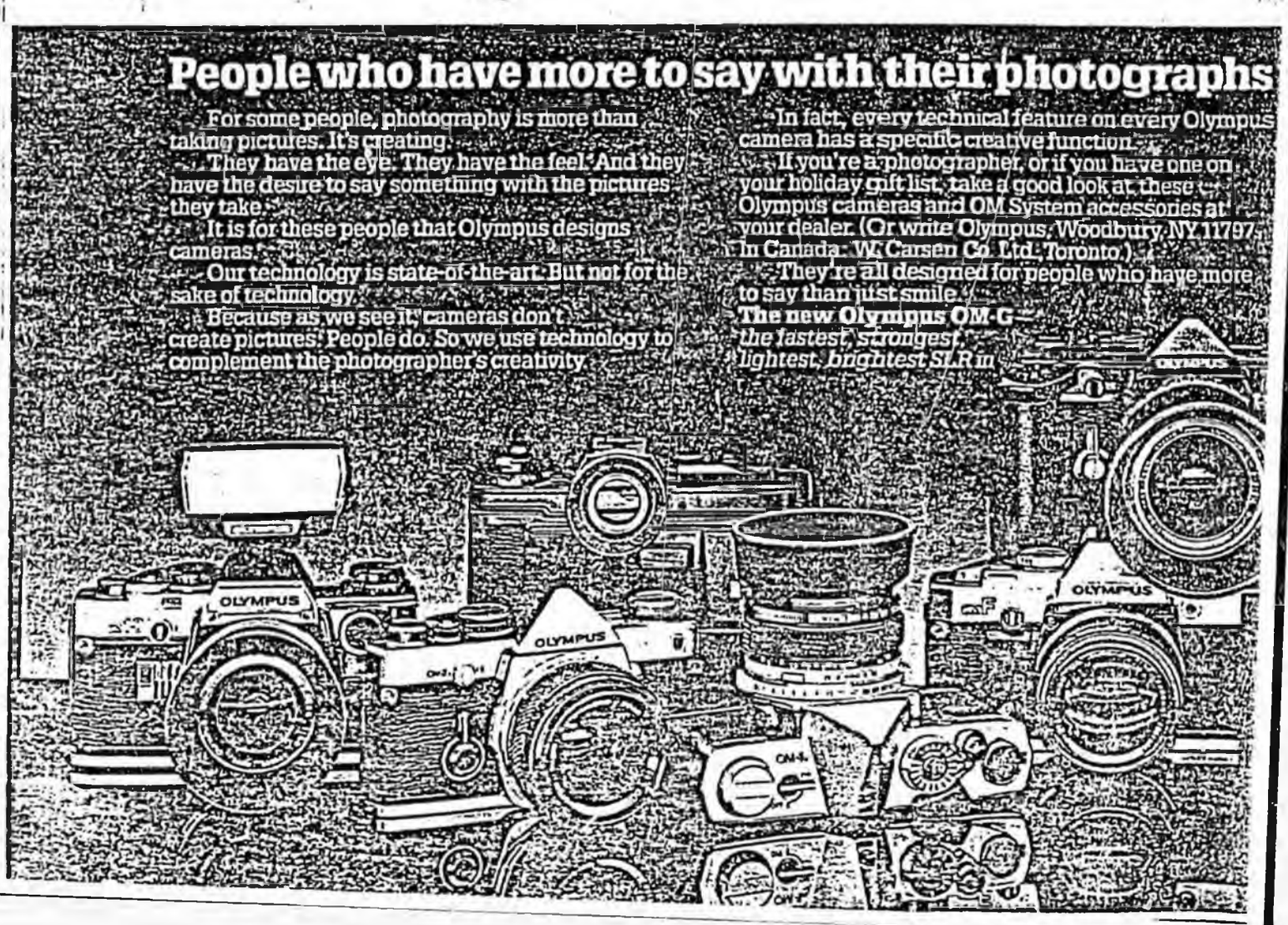
MY TURN/MARCUS W. KOECHIG

The money looked good. There were tall stacks of it, mostly tens and twenties, just for the taking. There was no casing of the joint and no gunplay. The job was done in less than 60 seconds, and the total take came to $1,444. Not bad wages for one minute's work. Of course, it also cost me another two years in prison, as well as additional time for my parole violation. The fact that this is my third prison stint shouldn't pose any problem. But it gets harder, especially now that my wife has told me to make arrangements to have my things moved out of the house. She cannot take it any longer, and I do not blame her.

The cost of going to prison keeps going up, and not just for me. There is, of course, the victim's initial loss. In addition, his tax dollars paid for my defense and go toward my upkeep here in prison, to the tune of $10,000 to $15,000 per year. He will pay again if my family is forced to go on welfare and yet again if, when I am released, I am unable to find work. I will simply go on welfare, and he will foot the bill.

Victim: In the time I have spent in prisons, it has been repeatedly stressed to me that I must pay my debt to society. So society proceeds to feed, clothe and house me for however long I must remain behind bars and perhaps even beyond; this is not so much a repayment of debt as an abdication of responsibility. In fact, I owe nothing to society and society owes nothing to me. I owe my victim $1,444, and society owes him the opportunity to get that money back. Justice can only be served by my paying back what I have taken.

The average thief in here is "rehabilitated" by performing janitorial duties for a total of perhaps 30 minutes a day. Say an inmate has a two-year sentence: to rehabilitate himself, to pay his debt, he must spend 365 hours pushing a broom. Then he has paid for his crime. The institution perpetuates itself in this way. More inmates means that more cleaning needs to be done. One might spend one's time more fruitfully by sweeping out orphanages or hospitals. The way the system now works is enough to make even the most dour convicts laugh up



sleeves. For a man who has nothing, crime pays quite well.

It is difficult to find and implement solutions to this kind of problem—particularly in the bureaucratic morass that constitutes any department of corrections. (The name presumes that some correcting is going on.) Confining perpetrators of nonviolent property crimes and victimless crimes is of absolutely no use and may even be quite harmful. Rehabilitation is the act of pointing out the errors of an individual and then reinforcing that behavior which will lead to a successful reintegration into society. As it now stands, however, rehabilitation begins and ends with the convict adjusting to the prison routine, an eerie, Pavlovian system of bells, whistles and gross depersonalization of the individual.

Sitting: Rehabilitation does not and can not occur in existing penal facilities. There is nothing that frustrates a person more than sitting in a cell or dormitory 24 hours every day knowing that all he must do to pay for his crime is push a broom 30 minutes each day. What becomes of his sense of worth?

Why should anyone care about some convict's sense of worth? Because convicts get out of prison and go back to communities just like yours. People who have been convicted of crimes love, hate, hurt and feel good just as regular people do. They sometimes hurt so bad, though, that they are not able to handle it. In order to deal with their hurt, they will, most often unintentionally, do something to get themselves put back in the one place where they can be assured of some certainty in otherwise uncertain and frightening lives. It comes to the point where they decide that what the prison has been telling them all along must be true: that they are of no value to anyone, not even themselves. They then strike out and come back "home."

Our prisons make even a dour convict laugh up his sleeve. For a man with nothing, crime pays quite well.

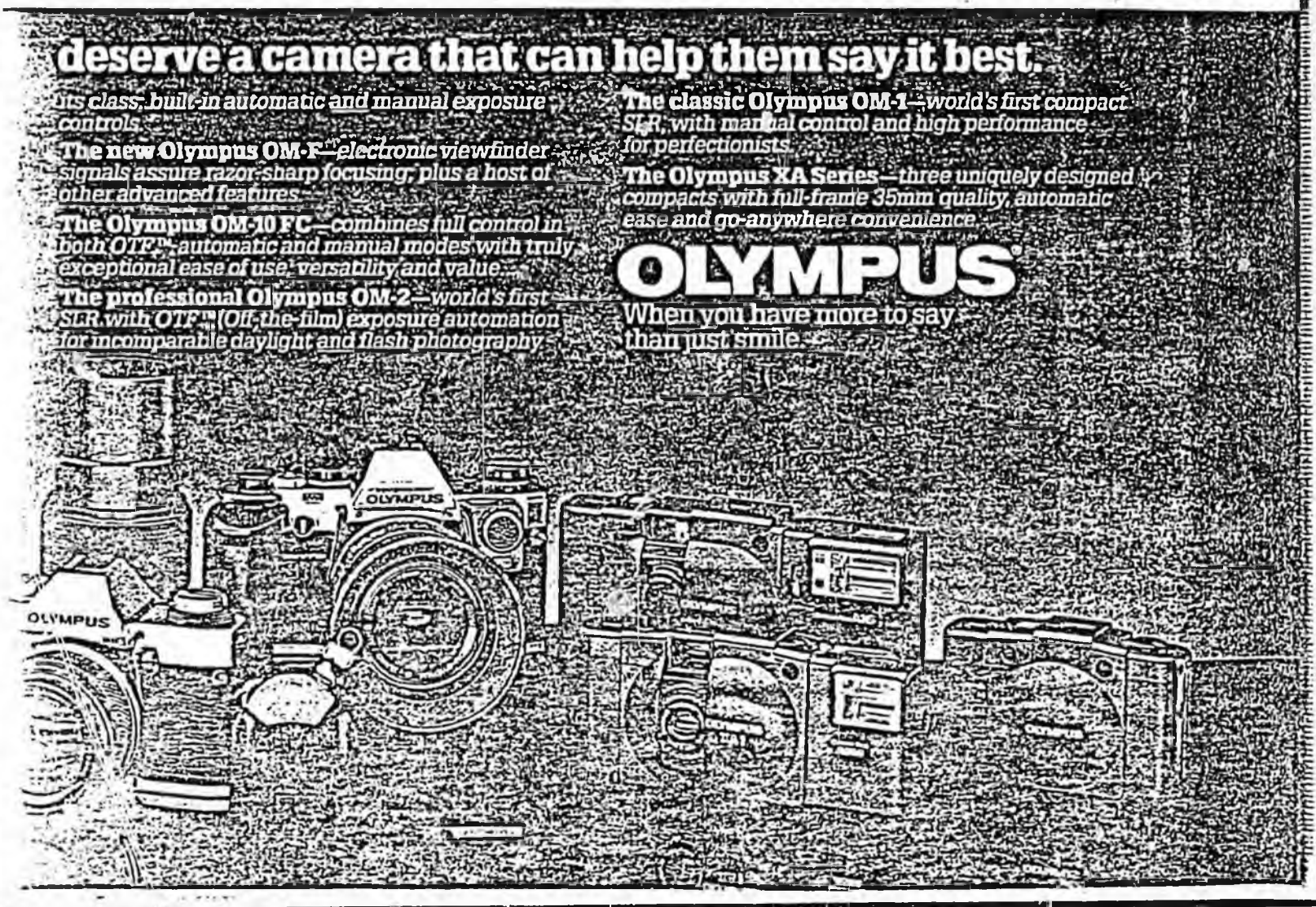
You have a very large stake in seeing to it that convicts are rehabilitated in fact and not just on paper—if for no other reason than that it is your money that goes toward getting the job done. If the state legislature tells you that the prison system serves as anything other than a warehouse, then you are being told a blatant lie. You have every right to know that correctional officials, acting as agents of the courts and state legislatures, are freeing people who are no more equipped to function in the community than a rabid dog.

Respect: One solution may be mandatory restitution administered in a penal setting. Forcing the criminal to restore to his victim what he took in the first place has the potential of instilling in him not only respect for the property of others but also some shred of self-respect. He would learn that there is no such thing as a free lunch when it comes to paying his debt.

Programs of this type could pay for themselves. The convict could receive the minimum wage for necessary public-service work in the county in which he was convicted, with a percentage of his wages going directly to the victim and a percentage to the state for his upkeep. This approach is so simple that it just might work.

For my part, my victim will be paid back as soon as I am able. I have satisfied the requirements of the law. It is time to satisfy the requirements of conscience.

Koechig is an inmate at the Westville Correctional Center in Westville, Ind.



COMMENTS

COMPENSATION FOR VICTIMS OF CRIME—THE TEXAS APPROACH

by Paul M. Koning

During the 1979 session, the Texas Legislature enacted Senate Bill 21,[1] the Crime Victims Compensation Act (the Act),[2] placing Texas in the forefront of the rapidly growing trend to provide state administered programs for the financial compensation of individuals injured by violent crimes. Increased crime rates and welfare costs have focused concern on victims' rights.[3] In response, the Act establishes a compensation program that has the potential to equal or exceed the effectiveness of programs existing in other states.

Victim compensation is not a novel concept; the theory of state compensation to victims of crimes occurring within the state can be traced back at least 4,300 years to the Code of Hammurabi.[4] In modern times, however, the crime victim has been afforded relatively little aid. Apart from recovery under one of the recently formed state victim compensation programs, the victim is limited to three basic alternatives to the absorption of the loss.[5] The first alternative is a civil action brought against the offender. Since civil recovery requires both the apprehension of the criminal and his financial solvency, this device has been accurately described as impotent.[6] A victim may also recover his crime-related losses from his insurer, pro-

1. 1979 Tex. Sess. Law Serv., ch. 189, §§ 1-19, at 402-10 (Vernon).

2. TEX. REV. CIV. STAT. ANN. art. 8309—1, §§ 1-18 (Vernon Supp. 1980).

3. A study of the diffusion pattern of state victim compensation programs has shown that the states most likely to enact victim compensation programs are those that experience the greatest increases in per capita welfare expenditures, violent crime rates, and median family income. Doerner, *The Diffusion of Victim Compensation Laws in the United States*, 4 VICTIMOLOGY 119 (1979).

4. Sections 22-24 of the Code of Hammurabi state:

> [§ 22] If a man has committed robbery and is caught, that man shall be put to death.
>
> [§ 23] If the robber is not caught, the man who has been robbed shall formally declare whatever he has lost before a god, and the city and the mayor in whose territory or district the robbery has been committed shall compensate him for whatever he has lost.
>
> [§ 24] If (it is) the life (of the owner that is lost), the city or the mayor shall pay one mana of silver to his kinsfolk.

2 THE BABYLONIAN LAWS 21 (G. Driver & J. Miles eds. 1955). For a comprehensive treatment of victim compensation and victim's rights throughout history, see S. SCHAFER, VICTIMOLOGY: THE VICTIM AND HIS CRIMINAL 5-32 (1977).

5. *See* Lamborn, *Remedies for the Victims of Crime*, 43 S. CAL. L. REV. 22 (1970); McAdam, *Emerging Issue: An Analysis of Victim Compensation in America*, 8 URB. LAW. 346 (1976).

6. McAdam, *supra* note 5, at 348.

vided that he has adequate coverage.[7] The most frequent victims of crime, however, are those who can least afford insurance, both because they are poor and because they live within the highest premium areas.[8] For this reason, insurance is hardly a choice for the average victim. The third alternative is restitution. Restitution programs allow criminal justice agencies to establish direct obligatory relationships between the offender and his victim, often as a condition of sentence modification.[9] Typically, a state restitution program encourages courts to condition probation on the repayment of the victim's losses by the performance of services or by cash payments.[10] Restitution forces the criminal to confront the problems caused by his actions; theoretically, this confrontation is rehabilitative.[11] Pragmatically, however, restitution is no more an alternative to the victim than a civil suit, because the majority of criminals are never convicted.[12] Victim compensation programs, on the other hand, offer hope to the victim because they are not linked to the apprehension of the criminal. Instead, these programs are generally based on one or more theories of state obligation[13] and are funded either from the general revenues or, as in Texas, from a pool of small fines collected from criminals upon conviction.[14]

New Zealand established the first modern victim compensation program in 1963,[15] immediately followed by Great Britain.[16] California initiated

7. For an analysis of the crime exclusions in certain policies, see Starrs, *A Modest Proposal to Insure Justice for Victims of Crime*, 50 MINN. L. REV. 285, 301-05 (1965).

8. Haas, *An Argument for the Enactment of Criminal Victim Compensation Legislation in Oregon*, 10 WILLAMETTE L.J. 185, 196 (1974); McAdam, *supra* note 5, at 348.

9. *See generally* Laster, *Criminal Restitution: A Survey of its Past History and an Analysis of its Present Usefulness*, 5 U. RICH. L. REV. 80 (1970); Schafer, *Restitution to Victims of Crime—An Old Correctional Aim Modernized*, 50 MINN. L. REV. 243 (1965).

10. *See* Cohen, *The Integration of Restitution in the Probation Services*, in CONSTRUCTIVE THE VICTIM 332-33 (J. Hudson & B. Galaway eds. 1975). TEX. CODE CRIM. PROC. ANN. art. 42.12, § 6(m) (Vernon Supp. 1980) authorizes a court to order that, as a condition of probation, the offender "pay a percentage of his income to the victim of the offense, if any, to compensate the victim for any property damage or medical expenses sustained by the victim as a direct result of the commission of the offense."

11. Schafer, *The Proper Role of a Victim-Compensation System*, 21 CRIME & DELINQUENCY 45 (1975).

12. The United States Department of Justice has reported that for every 100 offenses known to police, only 5.5 persons are apprehended and found guilty as charged. U.S. DEPT. OF JUSTICE, SOURCEBOOK OF CRIMINAL JUSTICE STATISTICS — 1977, at 512 (1978) [hereinafter cited as SOURCEBOOK]. "The President's Commission on the Causes and Prevention of Violence reported that only 1.8 percent of victims of crime ever collect damages from the perpetrator." 2 BROWN & DANA, STATE LEGISLATURES 7 (1976), *cited in* Gross, *Crime Victim Compensation in North Dakota: A Year of Trial and Error*, 53 N.D.L. REV. 7, 8 n.1 (1976).

13. For a discussion of the theoretical justifications underlying state victim compensation legislation, see notes 63-80 *infra* and accompanying text.

14. TEX. REV. CIV. STAT. ANN. art. 8309—1, § 14 (Vernon Supp. 1980) establishes a fund for the payment of compensation under the Act, which is to be made up of $10 and $5 court costs exacted from convicted felons and certain misdemeanants. *See* note 59 *infra*.

15. Criminal Injuries Compensation Act, STAT. N.Z. No. 134 (1963), *reprinted in* 43 S. CAL. L. REV. 240 (1970); *see* Weeks, *The New Zealand Criminal Injuries Compensation Scheme*, 43 S. CAL. L. REV. 107 (1970).

16. COMPENSATION FOR VICTIMS OF CRIMES OF VIOLENCE, CMND. No. 2323 (1964), *reprinted in* Samuels, *Compensation for Criminal Injuries in Britain*, 17 U. TORONTO L. REV. 20, 46-49 (1967).

the first program in the United States in 1965.[17] By the mid-seventies a definite trend had been established toward state victim compensation programs, a trend partially attributable to a series of federal bills aimed at subsidizing state programs.[18] At the present time, twenty-nine states have some form of victim compensation program.[19]

This Comment explores the significant provisions of the Texas Act and analyzes in greater depth two controversial restrictions: the financial stress requirement and the household exclusion. Finally, this Comment stresses the need for effective implementation of the Act's publicity provisions and discusses the intriguing "Son of Sam" sections in light of the constitutional problems that they present.

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17. CAL. GOV'T CODE §§ 13959-13974 (West Supp. 1980).

18. Since the mid-sixties, a number of bills aimed at providing federal compensation to victims of violent crimes have been introduced before Congress, but as yet none has passed both Houses. The earlier bills were intended to establish a federally financed national crime victim compensation program. S. 2155, 89th Cong., 1st Sess. (1965); H.R. 11818, 89th Cong., 1st Sess. (1965). Since 1972, however, the most significant federal crime victim compensation bills have taken a two-pronged approach; these bills would provide for 100% compensation to victims of crimes subject to exclusive federal jurisdiction and a partial subsidization of state programs that qualify. *E.g.*, S. 2994, 92d Cong., 1st Sess. (1971). For a detailed history of the federal legislative attempts, see H. EDELHERTZ & G. GEIS, PUBLIC COMPENSATION TO VICTIMS OF CRIME 191-209 (1974).

One of the bills currently before the Judiciary Committee, H.R. 957, 96th Cong., 1st Sess. (1979), shows promise because it is a result of a conference committee compromise of the 1977 bill, H.R. 7010, 95th Cong., 1st Sess. (1977). If passed, H.R. 957 would authorize federal subsidization of 25% of the current cost of state programs that qualify. The Texas Act, TEX. REV. CIV. STAT. ANN. art. 8309—1, §§ 1-18 (Vernon Supp. 1980), meets all the criteria of H.R. 957, which include a right to judicial or administrative review, a requirement for cooperation with local law enforcement agencies, and state rights of subrogation. Several similar bills are before the Judiciary Committee. *See* S. 190, 96th Cong., 1st Sess. (1979); H.R. 4257, 96th Cong., 1st Sess. (1979); H.R. 1961, 96th Cong., 1st Sess. (1979); H.R. 1899, 96th Cong., 1st Sess. (1979); H.R. 99, 96th Cong., 1st Sess. (1979). It is probable that the pendency of federal legislation not only encourages states to adopt victim compensation programs, but influences the nature of state programs by establishing minimum criteria for subsidization.

19. ALASKA STAT. §§ 18.67.010-.180 (1974 & Supp. 1979); CAL. GOV'T CODE §§ 13959-13974 (West Supp. 1980); CONN. GEN. STAT. §§ 54-201 to -215 (1979); DEL. CODE ANN. tit. 11, §§ 9001-9017 (1979); FLA. STAT. ANN. §§ 960.01-.25 (West Supp. 1979); GA. CODE ANN. §§ 47-518 to -526 (1979); HAWAII REV. STAT. §§ 351-1 to -70 (1976 & Supp. 1979); ILL. ANN. STAT. ch. 70, §§ 71-84 (Smith-Hurd Supp. 1979); IND. CODE ANN. §§ 16-7-3.6-1 to -17 (Burns Supp. 1979); KAN. STAT. ANN. §§ 74-7301 to -7318 (Supp. 1979); KY. REV. STAT. §§ 346.010-.180 (1977 & Supp. 1978); MD. ANN. CODE art. 26A, §§ 1-17 (1973 & Supp. 1979); MASS. ANN. LAWS ch. 258A, §§ 1-8 (Michie/Law. Co-op 1968 & Supp. 1980); MICH. COMP. LAWS ANN. §§ 18.351-.368 (West Supp. 1967-1979); MINN. STAT. ANN. §§ 299B.01-.17 (West Supp. 1980); MONT. REV. CODES ANN. §§ 53-9-101 to -133 (1979); NEV. REV. STAT. §§ 217.010-.270 (1977); N.J. STAT. ANN. §§ 52:4B-1 to -21 (West Supp. 1979-1980); N.Y. EXEC. LAW §§ 620-635 (McKinney 1972 & Supp. 1972-1979); N.D. CENT. CODE §§ 65-13-01 to -20 (Supp. 1979); OHIO REV. CODE ANN. §§ 2743.51-.72 (Page Supp. 1979); OR. REV. STAT. §§ 147.005-.365 (1977); PA. STAT. ANN. tit. 71, §§ 180-7 to -7.16 (Purdon Supp. 1979-1980); R.I. GEN. LAWS §§ 12-25-1 to -14 (Supp. 1979); TENN. CODE ANN. §§ 23-35-101 to -117 (Supp. 1979); TEX. REV. CIV. STAT. ANN. art. 8309—1, §§ 1-18 (Vernon Supp. 1980); VA. CODE §§ 19.2-368.1 to .18 (Supp. 1979); WASH. REV. CODE ANN. §§ 7.68.010-.910 (Supp. 1978); WIS. STAT. ANN. §§ 949.01-.18 (West Supp. 1979-1980). The Rhode Island statute does not become active until the enactment of federal crime victim legislation. The Nevada and Georgia statutes are limited to "good Samaritan" victims, those who are injured in an attempt to stop an ongoing crime or while aiding police officers.

I. THE TEXAS CRIME VICTIMS COMPENSATION ACT

The Act is a hybrid of provisions culled from various existing statutes as well as from the Uniform Crime Victims Reparations Act.[20] The purpose of the program,[21] like that of almost every compensation program in existence, is to compensate victims of violent crimes for the pecuniary losses[22] incurred as a result of their physical injuries. Neither property loss[23] nor pain and suffering[24] are compensable under the Act. Furthermore, a

20. This Act has been adopted in North Dakota and Ohio and represents an effort of the commissioners on Uniform State Laws to come to grips with the difficult issues involved in victim compensation legislation.

21. The formal purpose of the Act is declared in § 2:

> The legislature recognizes that many innocent persons suffer personal injury or death as a result of criminal acts. Crime victims and persons who intervene in crimes on behalf of peace officers may suffer disabilities, incur financial burdens, or become dependent on public assistance. The legislature finds and determines that there is a need for indemnification of victims of crime and citizens who suffer personal injury or death in the prevention of crime or the apprehension of criminals.

TEX. REV. CIV. STAT. ANN. art. 8309—1, § 2 (Vernon Supp. 1980).

22. The Act includes a typical definition of pecuniary loss, which defines the limits of financial compensation for each individual:

> (7) "Pecuniary loss" means the amount of expense reasonably and necessarily incurred:
> (A) regarding personal injury for:
> (i) medical, hospital, nursing, or psychiatric care or counseling, and physical therapy;
> (ii) actual loss of past earnings and anticipated loss of future earnings because of a disability resulting from the personal injury at a rate not to exceed $150 per week; and
> (iii) care of minor children enabling a victim or his or her spouse, but not both of them, to continue gainful employment at a rate not to exceed $30 per child per week up to a maximum of $75 per week for any number of children; and
> (B) as a consequence of death for:
> (i) funeral and burial expenses;
> (ii) loss of support to a dependent or dependents not otherwise compensated for as a pecuniary loss for personal injury, for as long as the dependence would have existed had the victim survived, at a rate of not more than a total of $150 per week for all dependents; and
> (iii) care of minor children enabling the surviving spouse of a victim to engage in lawful employment, where that expense is not otherwise compensated for as a pecuniary loss for personal injury, at a rate not to exceed $30 per week per child, up to a maximum of $75 per week for any number of children.
> (C) Pecuniary loss does not include loss attributable to pain and suffering.

Id. § 3(7).

23. No compensation program in existence today allows recovery for the loss of property, although some, such as Tennessee, expressly exclude hearing aids and eyeglasses from the definition of property. TENN. CODE ANN. § 23-35-106(5)(b) (Supp. 1979). The exclusion of property loss may be justified on three grounds: first, the economic infeasibility of such a program; secondly, the opportunity for fraud that such a program would present; and thirdly, "property damage does not destroy a person's only indispensable asset, that is, the ability to earn a living." Childres, *Compensation for Criminally Inflicted Personal Injury*, 39 N.Y.U. L. REV. 444, 460 (1964); *see* Fry, *Justice for Victims*, 8 J. PUB. L. 191, 193 (1959).

24. TEX. REV. CIV. STAT. ANN. art. 8309—1, § 3(7)(C) (Vernon Supp. 1980). Only one state, Hawaii, allows compensation for pain and suffering. HAWAII REV. STAT. § 351-33(4) (1976). The lack of criteria upon which to base awards is a difficulty faced by the Hawaii program, and other states have chosen to avoid this problem. Tennessee makes one exception, and allows recovery for pain and suffering in cases involving rape or sexual deviancy. TENN. CODE ANN. § 23-35-106(5)(C) (Supp. 1979).

number of restrictions and qualifications limit the class of eligible claimants and the recovery available to each. The Act directs the Industrial Accident Board (the Board), the agency normally in charge of workers' compensation, to administer the program.[25]

A. *Eligibility*

Before an individual can recover under the Act, the Board must be satisfied by a preponderance of the evidence[26] that the requirements of the Act have been met. The threshold requirement is that the individual is a "victim" within the meaning of the Act. Victims include Texas residents[27] who suffer personal injury[28] or death as a result of criminally injurious conduct,[29] intervenors,[30] dependents of deceased victims,[31] and those who, in

25. TEX. REV. CIV. STAT. ANN. art. 3309—1, § 10 (Vernon Supp. 1980). States have varied widely in their choice of administrative agencies. Many, such as New York and Connecticut, have established a compensation board unaffiliated with any existing agency. The Massachusetts and Tennessee programs are administered by state courts. Other states have allowed compensation programs to be subsumed by existing agencies in charge of workers' compensation (Texas, Washington), or public safety (Alaska). California had originally delegated control of its compensation program to the Department of Social Welfare, but transferred authority to the State Board of Control upon the realization that the compensation program had taken on the undesirable aura of welfare. *See* H. EDELHERTZ & G. GEIS, *supra* note 18, at 82-85.

26. TEX. REV. CIV. STAT. ANN. art. 8309—1, § 6(a) (Vernon Supp. 1980).

27. *Id.* § 3(9)(A). Not only must the victim be a Texas resident, but the criminally injurious conduct must have occurred in Texas as well. *Id.* § 3(4)(A). Other states that limit recovery to residents include California, Delaware, and Washington. States that do not limit recovery to residents include Illinois, Maryland, and Minnesota.

28. *Id.* § 3(9)(A). While the definition of "victim" requires *personal* injury, the Act requires that the victim suffer *physical* injury in order to recover. *Id.* § 6(b). The § 6(b) requirement of physical injury is the result of a house committee substitute amendment. Under S.B. 21, 1979 TEX. SESS. LAW SERV., ch. 189, §§ 1-19, at 402-10 (Vernon), as originally proposed, pecuniary loss incurred as the result of personal injury was compensable, including psychological counseling of rape victims who suffer mental, but not physical, injury. It is estimated that 25% of all rape victims seek no medical attention. SOURCEBOOK, *supra* note 12, at 346.

29. TEX. REV. CIV. STAT. ANN. art. 8309—1, § 3(9)(A) (Vernon Supp. 1980). *Id.* § 3(4) defines criminally injurious conduct:

> (4) "Criminally injurious conduct" means conduct that:
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> (A) occurs or is attempted in this state;
>
> (B) poses a substantial threat of personal injury or death;
>
> (C) is punishable by fine, imprisonment, or death, or would be so punishable but for the fact that the person engaging in the conduct lacked capacity to commit the crime under the laws of this state; and
>
> (D) is not conduct arising out of the ownership, maintenance, or use of a motor vehicle, aircraft, or water vehicle except when intended to cause personal injury or death in violation of Section 38, Uniform Act Regulating Traffic on Highways, as amended (Article 6701d, Vernon's Texas Civil Statutes), or Article 6701l—1 or 6701l—2, Revised Civil Statutes of Texas, 1925, as amended.

The words "criminally injurious conduct" are used to avoid giving an artificial meaning to the word "crime." Not all crimes will give rise to compensation under the Act. *See* UNIFORM CRIME VICTIMS REPARATIONS ACT § 1, Comment. Some states, such as Hawaii, instead of using the broad brush approach chosen by Texas, use a list of crimes to describe the conduct that can lead to compensation. HAWAII REV. STAT. § 351-32 (1976). The Hawaiian practice risks penalizing innocent victims of crimes omitted by oversight.

30. TEX. REV. CIV. STAT. ANN. art. 8309—1, § 3(9)(B) (Vernon Supp. 1980) incorporates a "good Samaritan" statute within the Act. *Id.* § 3(8) provides:

the case of a deceased victim, legally or voluntarily assume the medical or burial expenses of the victim.[32] Once the Board determines that a claimant[33] is a victim, it must be satisfied that as a result of criminally injurious conduct, the victim suffered physical injury[34] or death, which in turn resulted in pecuniary loss.[35] The Board must be convinced that the victim is unable to recoup this pecuniary loss without suffering financial stress.[36] In addition, the victim's recovery may be denied or reduced to the extent that the victim's pecuniary loss is compensated from collateral sources.[37]

Three restrictions further narrow the eligible class. First, victims failing to file applications with the Board within 180 days after the crime,[38] or victims failing to report the crime to the appropriate local law enforcement agency within seventy-two hours,[39] must be denied recovery. Secondly,

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(8) "Intervenor" means a person who goes to the aid of another and is killed or injured in the good faith effort to prevent criminally injurious conduct, to apprehend a person reasonably suspected of having engaged in such conduct, or to aid a police officer. Intervenor does not include a peace officer, fireman, lifeguard, or person whose employment includes the duty to protect the public safety acting within the course and scope of his or her employment.

31. *Id.* § 3(9)(C). Section 3(5) defines dependent by reference to I.R.C. § 152, with the addition of surviving spouses and posthumous children of deceased victims.

32. *Id.* § 3(9)(D).

33. *Id.* § 3(2) defines claimant as "a victim or an authorized person acting on behalf of any victim."

34. *Id.* § 6(b); *see* note 28 *supra*.

35. TEX. REV. CIV. STAT. ANN. art. 8309—1, § 6(b) (Vernon Supp. 1980); *see* note 22 *supra*.

36. TEX. REV. CIV. STAT. ANN. art. 8309—1, § 6(b) (Vernon Supp. 1980). For a discussion of the financial stress requirement, one of the major issues in victim compensation legislation, see notes 83-109 *infra* and accompanying text. For the statutory definition of financial stress, see note 88 *infra*.

37. TEX. REV. CIV. STAT. ANN. art. 8309—1, §§ 6(b), 6(d)(4) (Vernon Supp. 1980) both preclude recovery to the extent of compensation from a collateral source, which is defined in *id.* § 3(3):

(3) "Collateral source" means a source of benefits or advantages for pecuniary loss awardable other than under this Act which the victim has received, or which is readily available to him or her from:

(A) the offender under an order of restitution to the claimant imposed by a court as a condition of probation;

(B) the United States or a federal agency, a state or any of its political subdivisions, or an instrumentality of two or more states, unless the law providing for the benefits or advantages makes them in excess of or secondary to benefits under this Act;

(C) Social Security, Medicare and Medicaid;

(D) state-required temporary nonoccupational disability insurance;

(E) workers' compensation;

(F) wage continuation programs of any employer;

(G) proceeds of a contract of insurance payable to the victim for loss which he or she sustained because of the criminally injurious conduct; or

(H) a contract providing prepaid hospital and other health care services, or benefits for disability.

38. *Id.* § 6(c)(1). The 180-day period may be extended by the Board "for good cause shown." *Id.* § 4(c). States vary as to the time limit for filing a claim. MICH. COMP. LAWS ANN. § 18.355(2) (West Supp. 1967-1979), allows the shortest period, 30 days, while ALASKA STAT. § 18.67.130(a) (1974 & Supp. 1979); CONN. GEN. STAT. § 54-211(a) (1979); ILL. ANN. STAT. ch. 70, § 73(q) (Smith-Hurd Supp. 1979); and WIS. STAT. ANN. § 949.08(1) (West Supp. 1979-1980) allow two years in which to file a claim.

39. TEX. REV. CIV. STAT. ANN. art. 8309—1, § 6(c)(1) (Vernon Supp. 1980). The re-

recovery will be denied if the victim knowingly and willingly participated in the criminally injurious conduct.[40] Thirdly, if the criminal offender or his accomplice resided in the same household as the victim, no compensation may be awarded to the victim.[41] If, after consideration of the foregoing restrictions and requirements, the Board considers the victim eligible for compensation, recovery may still be denied or reduced if the victim has not "substantially cooperated" with law enforcement authorities,[42] or if the victim's behavior at the time of the incident giving rise to the claim was such that he or she bears responsibility for the criminal act or omission.[43]

Once the Board approves the victim's application, it may compensate the victim for his pecuniary loss by means of a lump-sum cash payment or by a series of payments,[44] which awards may not exceed $50,000 in the aggregate.[45] Alternatively, the Board may refer the claimant to state voca-

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quirement for reporting the crime to police is intended to encourage aid and cooperation in law enforcement efforts. Section 4(b) allows the 72-hour period to be extended if the extension "is justified by extraordinary circumstances as determined by the board." Most states have either a 72- or 48-hour requirement, although New Jersey allows three months. N.J. STAT. ANN. § 52:4B-18 (West Supp. 1979-1980). Hawaii and Delaware have no police reporting requirement.

40. TEX. REV. CIV. STAT. ANN. art. 8309—1, § 6(c)(2) (Vernon Supp. 1980). All state compensation statutes contain a similar provision; it seems natural to prevent the criminal or his accomplice from benefiting from his crime. The statute denies recovery if the person whose injury or death gave rise to the application participated in the crime, thus disallowing recovery to the child or spouse of a slain criminal. *Id.*

41. *Id.* § 6(c)(4). For a discussion of the household exclusion, see notes 110-46 *infra* and accompanying text.

42. TEX. REV. CIV. STAT. ANN. art. 8309—1, § 6(d)(1) (Vernon Supp. 1980). Section 5(e)(1) authorizes the Board to request information from prosecuting attorneys and law enforcement agencies for the purpose of determining claimant cooperation. One of the anticipated benefits of the program is an increase in police cooperation engendered by § 6(d)(1). *See* Edelhertz, Geis, Chappell & Sutton, *Part II—Public Compensation of Victims of Crime: A Survey of the New York Experience*, 9 CRIM. L. BULL. 101, 103-05 (1973).

43. TEX. REV. CIV. STAT. ANN. art. 8309—1, § 6(d)(3) (Vernon Supp. 1980). The question of victim precipitation or responsibility plays a large role not only in victim compensation legislation, but in the nascent field of victimology. *See, e.g.*, Silverman, *Victim Precipitation: An Examination of the Concept*, in VICTIMOLOGY: A NEW FOCUS (I. Drapkin & E. Viano eds. 1974). Most state programs include such a provision, which is understandably difficult to administer. One of the most common applications of this provision occurs when the victim is criminally injured a short time after soliciting a prostitute. *See* COMMITTEE ON THE OFFICE OF ATTORNEY GENERAL, NATIONAL ASSOCIATION OF ATTORNEYS GENERAL, LEGAL ISSUES IN COMPENSATING VICTIMS OF VIOLENT CRIME 24-25 (1976) [hereinafter cited as ISSUES]. Other situations in which compensation may possibly be denied include illegal hitchhiking or wearing furs or jewelry in areas well-known for high crime rates.

44. TEX. REV. CIV. STAT. ANN. art. 8309—1, § 7(c) (Vernon Supp. 1980). Pecuniary loss accrued to the date of the award shall be paid in a lump sum, and future expenses are to be paid in installments unless the Board finds a lump sum payment will promote the interest of the claimant, or the present value of all future pecuniary loss does not exceed $1,000. *Id.* §§ 7(c)-(d).

45. *Id.* § 7(b). The $50,000 maximum is a limit on the aggregate compensation awarded to all claimants whose claim arises out of the injury or death of the same victim. *Id.* The Act establishes the highest maximum award of all the state programs, except for Ohio, which also allows $50,000. OHIO REV. CODE ANN. § 2743.60(E) (Page Supp. 1979) The lowest of the state limits is $10,000, shared by California, Connecticut, Delaware, Florida, Hawaii, Illinois, Massachusetts, New Jersey, Tennessee, Virginia, and Wisconsin. The

tional facilities or provide counseling services.[46] Upon the awarding of compensation, the state becomes subrogated to all the claimant's rights to receive or recover benefits from collateral sources to the extent that the state has awarded compensation.[47] The Act also provides that the Board shall award reasonable attorneys' fees to attorneys representing successful claimants.[48]

B. *Procedure*

After a victim submits an application to the Board, a clerk appointed by the Board reviews the application for completeness.[49] A complete application is then reviewed by one Board member who determines whether a hearing is necessary.[50] A hearing on the application must be held if the Board member deems it necessary or if either the attorney general or the claimant requests a hearing.[51] The Act gives the Board the special power to order the victim to submit to a mental or physical examination or to order an autopsy of a deceased victim "if the mental, physical, or emotional condition of a victim is material to a claim"[52] and if the order is "for

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Texas maximum is commendable, for in many instances criminal injuries are permanently debilitating, and $10,000 is quickly exhausted.

Many states also have a minimum claim amount. These states include Connecticut and Delaware ($25), Illinois ($200), Kansas, Kentucky, Maryland, Michigan, Minnesota, New Jersey, New York, North Dakota, Tennessee, and Virginia (all $100). Commentators tend to view a minimum claim requirement with disfavor. *See, e.g.*, H. EDELHERTZ & G. GEIS, *supra* note 18, at 47.

46. TEX. REV. CIV. STAT. ANN. art. 8309—1, §§ 7(a)(2)-(3) (Vernon Supp. 1980). In addition to providing public counseling services the Board may contract with private entities to provide these services. *Id.*

47. *Id.* § 11(a). Section 11(a) is an unfortunately drafted section that is susceptible to the extreme interpretation that once a claimant has received any award from the Board, the state becomes subrogated to the *total* amount of collateral recovery available to the claimant, even if that amount is much greater than the compensation awarded by the Board. Section 11(a) provides: "If compensation is awarded, the state is subrogated to all the claimant's rights to receive or recover benefits for pecuniary loss to the extent compensation is awarded from a source which is or if readily available to the claimant would be a collateral source." *Id.*

Naturally, the state's right of subrogation should be limited to the amount awarded by the state to the claimant. The ambiguity of § 11(a) could be simply remedied by an amendment that moves the phrase "to the extent compensation is awarded" to a position immediately preceding "the state is subrogated."

48. *Id.* § 12 provides:

> As part of an order, the board shall determine and award reasonable attorney's fees, commensurate with services rendered, to be paid by the state to the attorney representing the claimant. Additional attorney's fees may be awarded by a court in the event of review. Attorney's fees may be denied on a finding that the claim or appeal is frivolous. Awards of attorney's fees shall be in addition to awards of compensation. It is unlawful for an attorney to contract for or receive any larger sum than the amount allowed. Attorney's fees may not be paid to an attorney of a claimant unless an award is made to the claimant.

49. *Id.* § 5(a).

50. *Id.* § 5(e).

51. *Id.* The attorney general shall be sent a copy of every application received by the Board, and may appear at hearings and present evidence either supporting or opposing approval of the application. *Id.* § 5(b).

52. *Id.* § 5(e)(3). Upon request the Board must give the person examined, or the claim-

good cause shown."[53]

At any time after the denial or award of compensation, the Board may, on its own motion or at the request of the claimant, reconsider its decision.[54] In addition, a claimant has the right to judicial review of a final ruling.[55] To preserve this right, the claimant must file a "notice of dissatisfaction" with the Board within twenty days of the ruling and bring suit in district court within twenty days of the filing of notice.[56] The district court will then determine the issues de novo.[57]

The costs of awards and administration are to be paid exclusively from the Compensation to Victims of Crime Fund, established in the state treasury.[58] This fund is solely comprised of additional court costs imposed on convicted criminals:[59] $15 in the case of a felony and $10 in the case of a

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ant in the case of a deceased victim, a copy of the physician's or psychologist's report. *Id.* § 5(f).

53. *Id.*

54. *Id.* § 9(a).

55 *Id.* § 9(c). The right to judicial review has been a perennial qualification for federal subsidization in the series of federal victim compensation bills. *See, e.g.*, H.R. 957, 96th Cong., 1st Sess. § 4(a)(2) (1979).

56. TEX. REV. CIV. STAT. ANN. art. 8309—1, § 9(c) (Vernon Supp. 1980).

57. *Id.*

58. *Id.* § 14(a).

59. The funding of compensation programs through fining or imposing court costs on convicted criminals is a relatively recent development. California, Connecticut, Delaware, Florida, Maryland, and Washington also use this method of funding, although program appropriations are not limited to this source. One commentator has suggested that "[i]t is . . . an illusion to look to criminal fines, or subrogation, as a substantial source for financing reparations to crime victims." H. EDELHERTZ & G. GEIS, *supra* note 18, at 290. The Texas program will test the accuracy of this prediction.

The method of funding may give rise to a constitutional challenge. One problem arises from the fact that all convicted criminals, except those convicted of misdemeanors with fines less than $200, must pay the court costs irrespective of whether their offense was violent or nonviolent. Arguably, since the court costs are to be used solely for the purpose of compensating victims of violent crime, the statutory classification of those individuals who will pay the court costs is not reasonably related to the purpose of the legislation and contravenes the equal protection clause of the fourteenth amendment. *See, e.g.*, McLaughlin v. Florida, 379 U.S. 184, 190-91 (1964).

This equal protection argument was made before the Supreme Court of Florida in State v. Champe, No. 53,811 (Fla. Dec. 14, 1978). In *Champe*, the supreme court overruled the lower court's finding that the funding provisions of the statute were unconstitutional. Chief Justice England stated:

> Laws which classify violent and non-violent offenders together for purposes related solely to the prevention of violent crimes have consistently been upheld against equal protection attacks. *See* United States v. Brown, 484 F.2d 418, 423 (5th Cir. 1973), *cert. denied*, 415 U.S. 960 (1974). . . . It is not irrational for the legislature similarly to combine all lawbreakers for the purpose of remedying the consequences of violent crime.

Id., slip op. at 7. *Brown*, however, dealt with the constitutionality of a law proscribing the interstate transportation of firearms by convicted felons, regardless of the violent nature of the felony. The broad brush classification in *Brown* bears a far more rational relation to the purpose of the statute than does the *Champe* classification. The *Brown* classification can be viewed as based not only on the criminal offense, but on post-crime experience in prison, and can be justified by the high rate of crimes committed by ex-convicts. In *Champe* a shoplifter was fined to help pay for injuries suffered at the hands of rapists, murderers, and armed robbers. Unlike *Brown*, the statutory classification in *Champe* was not based on a reasonable attempt to protect the public, nor was it based on any harm directly caused by

misdemeanor punishable by imprisonment or by a fine greater than $200.[60] The legislature deleted a proposed provision that would have allowed courts to impose fines up to $10,000 on individuals convicted of violent crimes.[61] Legislative estimates project that under the current Act, the collection of additional court costs should yield approximately two million dollars annually.[62]

II. The Theoretical Justification for Victim Compensation

Commentators traditionally have advanced two theories to justify the state's assumption of the duty to compensate crime victims.[63] An examination of these theoretical justifications is essential to an analysis of the restrictions and qualifications embodied in the Act. The first theory is that of "state obligation."[64] The state obligation theory postulates that the state is under a duty to protect the citizenry and that when a person is criminally injured the state has failed in this duty; consequently, the state is obligated to compensate the victim.[65] The state's obligation further arises from the fact that the laws of the state prevent the victim from seeking personal retribution against the criminal and impede the victims' civil recovery by incarcerating the criminal.[66] The second theory, the social welfare theory,[67] is predicated upon moral considerations. This theory postulates that "an innocent victim ought to be entitled to aid, to maintain that degree of dignity, security, and comfort which he seeks to earn for himself and his family,"[68] and that the state should provide this aid.

At least one author has recognized that the provision for the general welfare is merely a motive behind victim compensation legislation, not a justification for it.[69] The social welfare theory begs the question; the state's power to provide for the general welfare offers no explanation for the state's exercise of the power in this particular instance. Yet for some, the state's moral obligation is sufficient reason for victim compensation pro-

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the offender. Since the funding provisions of the Texas Act are similar to those of Florida, Texas should expect a challenge similar to that in *Champe*.

60. Tex. Rev. Civ. Stat. Ann. art. 8309—1, § 14b (Vernon Supp. 1980).

61. Proposed S.B. 21 was amended Apr. 26, 1979, to delete § 15. House Floor Amendments to S.B. 21, Tex. H.R.J. 1903 (1979). A remnant of old § 15 may be seen in § 3(10), which defines crimes of violence although there is no longer any reference to crimes of violence in the Act. Tex. Rev. Civ. Stat. Ann. art. 8309—1, § 3(10) (Vernon Supp. 1980).

62. Fiscal Note accompanying S.B. 21, Apr. 10, 1979.

63. *See* Galaway & Rutman, *Victim Compensation: An Analysis of Substantive Issues*, in Considering the Victim, *supra* note 10, at 421-22; Schafer, *Victim Compensation and Responsibility*, 43 S. Cal. L. Rev. 55, 58-59 (1970).

64. Schafer, *supra* note 63, at 58.

65. *See* McAdam, *supra* note 5, at 351.

66. The argument that the state impedes the victim's civil recovery by incarcerating the criminal is somewhat incongruous with the argument that the state is at fault for not apprehending the criminal; nevertheless, both are often advanced together. *See, e.g.*, Galaway & Rutman, *supra* note 63, at 421-22.

67. *See* Schafer, *supra* note 11, at 48.

68. Note, *The New Jersey Criminal Injuries Compensation Act*, 27 Rutgers L. Rev. 727, 728-29 (1974) (quoting N.J. Violent Crimes Compensation Board, First Annual Report 5 (1973)).

69. McAdam, *supra* note 5, at 351.

grams. The distinguished English jurist Rupert Cross stated, "If there is a widely recognized hardship, and if that hardship can be cheaply remedied by state compensation, I should have thought that the case for such a remedy was made out, provided the practical difficulties are not too great."[70]

The state obligation theory appears to provide a sounder basis for victim compensation programs than does the social welfare theory, but its premises are rather questionable. The state obligation theory is predicated upon the failure of the state to protect the victim; however, ascribing fault to the state is erroneous.[71] The criminal is at fault, and to place blame on the state is to engage in a fiction and to ignore the individual will of the criminal.[72] A state cannot protect all people at all times, and it is debatable whether a state should attempt to do so.

Other theories advanced in justification of compensation programs are often merely additional benefits of such legislation, not underlying justifications. Among these prospective benefits are the increased cooperation with law enforcement agencies engendered by eligibility requirements,[73] anti-alienation of the victim,[74] and even the political benefit accruing to sponsors of victim compensation who act because "this . . . is what the people want."[75]

If a primary justification for the state's assumption of the duty to compensate victims must be identified, perhaps it is that the state is in the best position to spread the severe losses incurred by a relatively small group of victims. The loss-spreading function of victim compensation programs has long been recognized,[76] but rarely suggested as a justification for state compensation.[77] A state's unique ability to spread these losses efficiently, combined with a state's general duty to provide for the public welfare, implicates a state duty to establish these programs. In a sense, victim compensation may be viewed as the statutory analogue of the common law doctrine of vicarious liability. In both cases, liability is not based on fault but is imposed with the belief that it is better to subject all of society to

70. Cross, *Compensating Victims of Violence*, THE LISTENER 815, 816 (May 16, 1963), *quoted in* Childres, *supra* note 23, at 448.

71. Childres, *supra* note 23, at 455.

72. *Id.*

73. *See* McAdam, *supra* note 5, at 353.

74. For a discussion of the theory of victim anti-alienation, see text accompanying note 100 *infra*.

75. *See* MCADAM, *supra* note 5, at 353.

76. Margery Fry, the English penal reformer who is frequently given credit for the rebirth of victim compensation, spoke of the loss-spreading aspects of victim compensation in her seminal article. Fry, *Justice for Victims*, 8 J. PUB. L. 191, 192-93 (1959).

77. Robert Childres, an influential commentator during the nascent stages of state victim compensation stated:

> [A] sufficient, independent basis for compensation rests on common sense rather than the metaphysics of causation and responsibility. Endemic losses ought to be spread. That violence and damage criminally inflicted are endemic to American society cannot be disputed. This premise alone is a sufficient basis for the conclusion that the damage ought to be spread among all potential victims.

Childres, *supra* note 23, at 457.

small increments of loss rather than to allow individuals to suffer radical shifts in their economic status.[78] Under the doctrine of vicarious liability, society must eventually shoulder the loss incurred by an individual injured by a negligent employee; the loss is reflected in the goods purchased from the employer, and thereby society pays the true cost of the goods.[79] Likewise, victim compensation programs allow the loss suffered by a crime victim to be reflected as a true cost of living in society, either directly, through the imposition of taxes, or indirectly, by the assessment of criminal fines.[80]

III. Controversial Restrictions in the Texas Act

The assumption that loss-spreading is the primary justification of the state's duty to compensate victims of crime raises questions concerning the validity of some of the major restrictions on recovery included in the Texas Act. Certain provisions bear no relation to either the loss-spreading or the state obligation theories. These provisions include the exclusion of victims who live in the same household with the criminal,[81] and the requirement that the victim, regardless of the size of his loss, show that he will suffer financial stress as a result of his injury.[82] These two requirements are particularly important because of the breadth of their application. This Comment, therefore, examines these restrictions in light of the reasons offered for their support and the detrimental effects they may cause.

A. *Financial Stress*

Perhaps the most contentious issue concerning victim compensation legislation today is whether recovery should be contingent upon a showing of financial need or stress. Those in favor of such a requirement claim that fiscal limitations demand a restriction on program outlays because a needs requirement will cut back on the total amount awarded and thereby ensure compensation for the neediest individuals.[83] The proponents of need requirements are invariably the legislators, perhaps because legislators are naturally most sensitive to the potential budgetary ramifications of proposed legislation.[84] Objective commentators and experienced victim compensation program administrators,[85] however, have rarely favored

78. *See* F. Harper & F. James, The Law of Torts 759-64 (1956).

79. *See* Calabresi, *Some Thoughts on Risk Distribution and the Law of Torts*, 70 Yale L.J. 499 (1961).

80. The method of funding adopted by Texas, the imposition of additional fines upon criminal offenders, Tex. Rev. Civ. Stat. Ann. art. 8309—1, § 14(c) (Vernon Supp. 1980), may be seen as a partial recapture by society of the loss suffered as a result of the crimes. In a sense, under the Texas method, society pays the cost of victim compensation in advance.

81. *Id.* § 6(c)(4).

82. *Id.* § 6(c)(3).

83. *See* Note, *Virginia Adopts Statute to Compensate the Victims of Crime*, 11 U. Rich. L. Rev. 679, 682 (1977).

84. *See* H. Edelhertz & G. Geis, *supra* note 18, at 31-35.

85. In an opinion survey taken of 20 victim compensation program administrators, only three felt that the victim's need should be a prerequisite in making an award. Brooks, *Crime Compensation Programs: An Opinion Survey of Program Administrators*, 11 Criminology 258, 269-70 (1973).

requirements of financial need or stress; in fact, many ardently oppose such provisions.[86] Nevertheless, approximately half of the states with victim compensation plans use some sort of financial means test.[87] The Texas Act includes a typical provision: "The board shall deny the application if: . . . the claimant will not suffer financial stress as a result of the pecuniary loss arising out of the criminally injurious conduct."[88] The generally accepted reason for the inclusion of such a provision is the anticipated reduction in expenditures.[89] Whether it is reasonable to anticipate a substantial reduction in expenditures is a question that this Comment addresses later in this section, after the general undesirability of financial stress tests is examined.

General Undesirability of a Financial Stress Test. A financial stress test is undesirable for a number of philosophical and practical reasons. The requirement that a claimant show financial need essentially changes the focus of the program from the compensation of crime victims to the provision of welfare.[90] As mentioned earlier, one of the primary goals of a victim compensation program should be to spread effectively the losses resulting from crime related injuries,[91] and this goal can only be achieved by adopting a restitutionary approach that ignores the economic status of the victim. Instead of functioning as a loss-spreading device, an act including a financial stress test serves to reallocate wealth by limiting eligibility for recovery to those who meet a certain standard of need. While compensation programs are admittedly enacted to benefit the general welfare, they should not be transformed into welfare programs because victims of crime are not limited to any one income group.[92] The drafters of the Uniform

86. *See, e.g.*, Chilures, *supra* note 23, at 462; H. EDELHERTZ & G. GEIS, *supra* note 18, at 83-85.

87. CAL. GOV'T CODE § 13964(2) (West Supp. 1980); FLA. STAT. ANN. § 960.13(7) (West Supp. 1979); KAN. STAT. ANN. § 74-7305(d) (Supp. 1979); KY. REV. STAT. § 346.140(3) (1977); MD. ANN. CODE art. 26A, § 12(f)(1) (1973 & Supp. 1979); MICH. COMP. LAWS ANN. § 18.361(5) (West Supp. 1967-1979); N.Y. EXEC. LAW § 631.6 (McKinney 1972); TEX. REV. CIV. STAT. ANN. art. 8309—1, § 6(c)(3) (Vernon Supp. 1980); VA. CODE § 19.2-368.13 (Supp. 1979); WIS. STAT. ANN. § 949.06(b) (West Supp. 1979-1980) use financial means tests. ALASKA STAT. § 18.67.080(3)(c) (1974 & Supp. 1979), allows consideration of financial need, but does not require a showing of need.

88. TEX. REV. CIV. STAT. ANN. art. 8309—1, § 6(c)(3) (Vernon Supp. 1980). Financial stress is defined in *id.* § 3(6):

> (6) "Financial stress" means financial hardship experienced by a claimant as a result of pecuniary loss from criminally injurious conduct giving rise to a claim under this Act. A claimant suffers financial stress only if he or she cannot maintain his or her customary level of health, safety, and education for himself or herself and his or her dependents without undue financial hardship. In making its finding, the board shall consider all relevant factors, including:
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> (A) the number of the claimant's dependents;
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> (B) the usual living expenses of the claimant and his or her family;
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> (C) the special needs of the claimant and his or her dependents;
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> (D) the claimant's income and potential earning capacity; and
>
> (E) the claimant's resources.

89. *See* H. EDELHERTZ & G. GEIS, *supra* note 18, at 32.

90. *Id.* at 91-92.

91. *See* notes 76-80 *supra* and accompanying text.

92. *See* SOURCEBOOK, *supra* note 12, at 318.

Crime Victims Reparations Act recognized the danger of this transformation: "If the test is included, however, a real threat to the integrity of the program is posed because a strict 'needs' requirement will limit benefits of the program to persons already on welfare and thus be merely an exercise in bookkeeping."[93]

In addition to these problems, the financial stress test creates substantial practical difficulties. Instead of focusing on the claimant's injury, the Board will spend a great deal of time investigating the claimant's wealth. The amount of administrative effort directed at the determination of financial need should not be underestimated. The New York Crime Victims Compensation Board consistently reported that the most difficult problem faced was the determination of serious financial hardship.[94] Thus, the financial stress test certainly will substantially increase the time required to process each claim, as well as distract the administrators from other investigatory tasks. Perhaps more importantly, the procedure for determining financial stress is necessarily demeaning.[95] Each applicant will be forced to divulge whatever private financial information the Board considers necessary for its decision.[96] The victim cannot help feeling that he is on trial when he is put in the uncomfortable position of proving he is poor enough to deserve recovery.[97] A California Board official charged with coordinating the determination of need stated:

> [I]t's making the program exceedingly unpopular because the people come in again and again and say because I was frugal, because I saved a dollar, I'm being deprived of my compensation, whereas the man who threw the money away, or the woman who threw it away, is going to get money from you. This story you hear over and over again, and the Board is getting sick of it.[98]

The public sentiment expressed against the programs using a need requirement bears on another issue. One of the recognized benefits of victim compensation programs is the anti-alienating effect on individual victims.[99] Theoretically, state-provided compensation for victims should help dissipate the disillusionment of individuals who, having suffered criminal injuries, suffer additionally through losses of time and income incurred as a result of their attempts to cooperate in prosecution efforts.[100] If victims who innocently suffered are denied compensation because their income level is not low enough, this achievement is likely to go unrealized. In fact, the experience of other states suggests that, if anything, the programs that use a financial stress test increase alienation.[101]

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93. UNIFORM CRIME VICTIMS REPARATIONS ACT § 5(g), Comment.
94. H. EDELHERTZ & G. GEIS, *supra* note 18, at 58-59.
95. *Id.* at 272.
96. TEX. REV. CIV. STAT. ANN. art. 8309—1, § 4(d)(5) (Vernon Supp. 1980) allows the Board to require that an application contain whatever information it considers necessary
97. *See* H. EDELHERTZ & G. GEIS, *supra* note 18, at 62-63 (applicant stated upon leaving hearing: "I feel like a criminal").
98. *Id.* at 92.
99. Schafer, *supra* note 11, at 48.
100. *Id.*
101. The chairman of the New York Board has been quoted as remarking at a confer-

The Fiscal Benefit. Although the detrimental effects of the financial stress requirement are widely recognized, Texas and a large number of other states have included such provisions in their victim compensation statutes. As previously mentioned, the popularity of the stress requirements can be attributed to the legislative perception that such restrictions will result in substantial fiscal savings. On the whole, however, the savings to be achieved from these provisions have been greatly overestimated. First, the administrative costs associated with the financial stress test are perhaps the highest of any one phase of the investigatory procedure.[102] In addition to the time spent analyzing financial data submitted by the claimant, officials will necessarily spend a great deal of time cross-checking this information with employers, banks, and other sources.[103] The Board will have to make an individual judgment in each case, weighing the factors specified in the Act as well as any additional standards it may choose to adopt.[104] Secondly, those individuals who would be excluded by a financial stress test are very likely to be compensated by some collateral source, such as insurance, medicare, or workers' compensation.[105] Thus, to the extent of the collateral compensation, these victims would be precluded from recovery irrespective of the financial stress test.[106] Furthermore, wealthier victims are less likely to be willing to go through the compensation process to recover a relatively small loss.[107]

The combination of the substantial increase in administrative cost and the fact that a large number of those who would be excluded by the financial stress test would also be excluded by other restrictions indicates that the fiscal benefits of the test are not likely to be very large. The New York Board has estimated that the elimination of the stress test from the New York program would result in only an additional $150,000 in overall expenditures, an increase of ten percent.[108]

The decision to adopt or retain a financial stress test involves a comparison of the fiscal benefits of the provision with the potential detrimental effects. Considering the probability that a relatively small increase in costs would result from an abandonment of the test, the victim alienation and the inequitable denials of recovery that will accompany the test should compel the abandonment of the financial stress requirement. The majority

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ence of compensation board administrators, "I don't know about you, but the letters we get no newspaper would publish, believe you me, when we turn down someone on serious financial hardship." H. EDELHERTZ & G. GEIS, *supra* note 18, at 59.

102. *Id.* at 272.

103. *See* Comment, *New York Crime Victims Compensation Act: Four Years Later*, 7 COLUM. J.L. & SOC. PROB. 25, 31 (1971).

104. In determining financial stress, the Board is to "consider all relevant factors," including those listed in §§ 3(6)(A)-(E). TEX. REV. CIV. STAT. ANN. art. 8309—1, § 3(6) (Vernon Supp. 1980).

105. *See* Geis, *California's New Crime Victim Compensation Statute*, 11 SAN DIEGO L. REV. 880, 904 (1974).

106. *See* note 37 *supra*.

107. *See* Geis, *supra* note 105, at 904.

108. H. EDELHERTZ & G. GEIS, *supra* note 18, at 59. This figure is based on the expected increase in awards minus the expected administrative savings.

of administrators of existing programs, as well as most commentators, oppose basing victim compensation programs on need and recognize that it is preferable that administrators spend their limited time processing claims instead of prying into innocent victims' private affairs.[109] This Comment, therefore, proposes that the financial stress provision of the Texas Act be deleted.

B. *The Relational Exclusion*

Almost every compensation program in existence contains some type of relational[110] exclusion provision.[111] These provisions establish a class of victims who, regardless of the severity of their need, are denied compensation solely because a statutorily prescribed relationship exists between them and the criminal responsible for their injury. In some states this relationship is defined by degrees of consanguinity.[112] A number of states deny recovery to victims involved in sexual relationships with the criminal,[113] while others limit the exclusion to those victims residing in the same household as the criminal.[114] These three provisions are sometimes combined within a single statute.[115] The Texas Act uses the household exclusion: "The board shall deny the application if . . . the victim resided in the same household as the offender or his or her accomplice."[116] Unfortunately, the Act does not define "household,"[117] nor does it specify whether

109. Texas narrowly missed disqualification for federal subsidization under the 1979 Victims of Crime Act bill, H.R. 957, 96th Cong., 1st Sess. (1979). H.R. 957 is the result of conference committee compromises of the 1977 bill, H.R. 7010, 95th Cong., 1st Sess. (1977). The Senate had proposed an amendment to H.R. 7010 that would exclude from federal subsidization states using means tests.

> The conferees note that Senator Kennedy, one of the managers on the part of the Senate, believes quite strongly that States receiving funds under this Act should not impose financial means tests when determining eligibility. He believes that no innocent victim of a crime should be required to bear the economic burden of a crime, that a uniform standard of eligibility should be used nationwide, that means tests are not only arbitrary but also demeaning, that such tests may have the effect of discouraging claimants from applying for compensation, and that there has been no conclusive showing that such tests are cost effective.

H.R. REP. No. 1762, 95th Cong., 2d Sess. 11 (1978). The conference committee decided not to adopt the Senate amendment, however, reasoning that in light of the relatively small (25%) federal contribution to the state programs, the states should be free to make their own determinations concerning the desirability of a means test. *Id.*

110. The term "relational" is used in this Comment to describe exclusions based on some relationship between the victim and the criminal. These exclusions are sometimes referred to as familial, but this term fails to describe the variety of relationships that may give rise to exclusion.

111. Only California and Delaware do not have relational exclusions.

112. *E.g.*, MD. ANN. CODE art. 26A, § 2(d) (1973).

113. *E.g.*, ALASKA STAT. § 18.67.130(b)(2) (Supp. 1979).

114. *E.g.*, MICH. COMP. LAWS ANN. § 18.354(4)(2)(c) (West Supp. 1967-1979).

115. *E.g.*, CONN. GEN. STAT. § 54-211(b) (1979); FLA. STAT. ANN. § 960.04(2) (West Supp. 1979); KY. REV. STAT. § 346.050(2) (1977).

116. TEX. REV. CIV. STAT. ANN. art. 8309—1, § 6(c)(4) (Vernon Supp. 1980).

117. The statutory appearance of the word "household" has previously caused disagreement. *Cf.* Gaston v. Gardner, 247 F. Supp. 441 (D.S.C. 1965) (interpretation of "household" determinative of child's right to social security benefits). The Michigan Act expressly excludes domestic emp
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the exclusion applies only to those residing together at the time of the incident or to those who have resided together at any time in the past.[118] For example, whether the exclusion would apply to a wife assaulted by her husband when the couple had separated one week before the incident is unclear.

The household exclusion may yield a harsh result. The most obvious example occurs in the case of interspousal murder. When a husband murders his wife, the children suddenly find themselves alone, their mother dead and their father in jail. No victims are more innocent nor more deserving of society's aid than such children. Yet because these victims of crime resided with their parents, they are denied funds that the state distributes to others in far less need.[119]

The household exclusion does not contribute to the program's goal of loss-spreading because there is no reason to assume that pecuniary loss suffered as a result of a crime committed by a co-resident should be less severe than a loss accompanying an injury suffered at the hands of a stranger. Commentators, however, generally advance four justifications to support the policy of relational exclusion: (1) prevention of fraud and collusion;[120] (2) prevention of the criminal from benefiting from his crime;[121] (3) limitation of expenditures;[122] and (4) avoidance of grants to victims who are partially responsible for the crime.[123] While these arguments all involve valid considerations, they either are based on assumptions that have proven invalid in light of experience, or focus on problems that can adequately be solved through more equitable alternative methods.

Fraud, Collusion, and Indirect Benefit. The first two arguments in favor of relational exclusions are conceptually linked. Those who favor a relational exclusion fear that the relative or co-resident responsible for the injury will ultimately benefit from his or her act through the compensation allowed the victim. Similarly, when the victim and the offender are acquainted, the proponents of relational exclusions perceive a greater opportunity for fraud and collusion. Little if any merit attaches to either of these arguments, however, especially since the problems of fraud and indirect benefit are adequately prevented by other provisions of the Act.

In the first place, the victim must suffer physical injury in order to be eligible,[124] and then he can recover only for documented pecuniary loss

excludes domestic employees from the household exclusion. MICH. COMP. LAWS ANN. § 18.354(2)(e) (West Supp. 1979).

118. The statutes of other states are generally quite clear as to the time of cohabitation that will cause an exclusion. *See, e.g.*, ALASKA STAT. § 18.67.130(b)(2) (1974 & Supp. 1979) (cohabitation at time of incident).

119. *See* Note, *Illinois' Crime Victims Compensation Act*, 7 LOY. CHI. L.J. 351, 359-61 (1976).

120. *See* McAdam, *supra* note 5, at 361-63.

121. *See* Brooks, *How Well Are Criminal Injury Compensation Programs Performing?*, 21 CRIME & DELINQUENCY 50, 54 (1975).

122. *See* H. EDELHERTZ & G. GEIS, *supra* note 18, at 269.

123. *Id.*

124. TEX. REV. CIV. STAT. ANN. art. 8309—1, § 6(b) (Vernon Supp. 1980).

such as medical expenses.[125] The number of people willing to injure themselves seriously enough to require medical attention in order to defraud the program is likely to be negligible. If an individual wanted to defraud the program by seeking recovery for an accidental injury, he could blame an imaginary stranger instead of a relative.[126]

The Act's requirement for cooperation with the local law enforcement agency,[127] however, most strongly rebuts both the indirect benefit and fraud arguments. In order to be eligible for compensation, a claimant must report the crime within seventy-two hours[128] and fully cooperate with the police.[129] Presumably, this cooperation involves filing a complaint and aiding in all prosecutorial efforts. In order to benefit from his crime, therefore, the criminal would first sacrifice his freedom. Furthermore, the victim's willingness to prosecute should operate to create a rebuttable presumption of a lack of collusion.[130]

Finally, those who cling to the indirect benefit theory can be satisfied by an alternative to relational exclusions that does not result in the exclusion of a large class of innocent and needy victims. The drafters of the Uniform Crime Victims Reparations Act have abandoned the relational exclusion in favor of a more equitable test: "Reparations may not be awarded to a claimant who is the offender or an accomplice of the offender, nor to any claimant if the award would unjustly benefit the offender or accomplice."[131] In addition to the unjust benefit clause, the Uniform Crime Victims Reparations Act includes an optional addendum that creates a presumption of unjust benefit in certain relational situations. This section is to be used or omitted "according to the legislative appraisal of the options involved."[132] Although this addendum could cause a hardship in certain circumstances,[133] it is preferable to the absolute exclusions in common usage, for it gives the Board an option:

> [Unless the Board determines that the interests of justice otherwise require in a particular case, reparations may not be awarded to the spouse of, or a person living in the same household with, the offender or his accomplice or to the parent, child, brother, or sister of the offender or his accomplice.][134]

North Dakota[135] and Ohio[136] have both adopted the Uniform Crime

125. *Id.* § 7(a)(1).

126. Program reports from various states have revealed that the fraud that was expected to accompany the programs has simply not materialized. See H. EDELHERTZ & G. GEIS, *supra* note 18, at 279-81.

127. TEX. REV. CIV. STAT. ANN. art. 8309—1, § 6(d)(1) (Vernon Supp. 1980).

128. *Id.* § 6(c)(1).

129. *Id.* § 6(d)(1).

130. *See* Note, *supra* note 119, at 359.

131. UNIFORM CRIME VICTIMS REPARATIONS ACT § 5(c).

132. *Id.* § 5(c), Comment.

133. One author has suggested that a rebuttable presumption of unjust benefit might cause a hardship on children seeking recovery. McAdam, *supra* note 5, at 362.

134. UNIFORM CRIME VICTIMS REPARATIONS ACT § 5(c) (brackets in original).

135. N.D. CENT. CODE § 65-13-06(3) (Supp. 1979).

136. OHIO REV. CODE ANN. § 2743.60(B) (Page Supp. 1979).

Victims Reparations Act exclusions, and the head of the North Dakota program has evaluated the provision as valuable and equitable.[137]

Fiscal Considerations and the Participatory Theory. Members of society generally perceive that a high proportion of violent crimes occur in domestic settings.[138] Garnering additional support from the indirect benefit theory, legislators have included relational exclusions with the view that the elimination of this large class of claimants will ease the constraints of a limited budget. Yet the experience of the New York program, which employs a familial exclusion,[139] suggests that such financial benefits have been overestimated. In the first four years of the program, of 3,238 claims filed, 1,380 were denied.[140] Only seventeen of these 1,380 denials were based on the relationship between the offender and the victim.[141]

Nevertheless, the emendation of the household exclusion undeniably would result in an increase in administrative costs, even though the actual increase in claims may be negligible. An increase in administrative costs is likely because it is probable that more administrative time will be spent in examining the possibility of victim participation in an interfamilial crime than in a crime committed by a stranger.[142] In fact, the idea that the victim of an interfamilial crime is usually partially responsible for the crime is a multifarious concept underlying the exclusions.[143] When a wife has been severely beaten by her husband, the police, the courts, and the community too often believe that " 'she must have done something terrible to provoke such a response.' "[144] The public perception of victim participation in interfamilial crimes, however, cannot justify the relational exclusion because the Act already includes a provision for reducing recovery to the extent that the victim precipitated the crime, and every claim will be examined in this light.[145] Although the Board possibly might choose to devote more time to the determination of victim precipitation in interfamilial crimes, precluding a sizeable class of victims from recovery on the mere suspicion

137. Gross, *supra* note 12, at 35. Indiana has responded directly to the inequitable potential of the relational exclusion by limiting exceptions to the exclusion of legal non-spousal dependents of the criminal:

> A person who commits a violent crime upon which an application is based, or an accomplice of that person or a member of the family of that person, is not eligible for assistance under this chapter. However, if the victim is a legal non-spousal dependent of the person who commits a violent crime, compensation may be awarded where justice requires.

IND. CODE ANN. § 16-7-3.6-5(b) (Burns Supp. 1979).

138. *See* H. EDELHERTZ & G. GEIS, *supra* note 18, at 269. This perception is somewhat distorted because the Department of Justice estimates that less than 10% of all aggravated assaults are inflicted upon relatives. SOURCEBOOK, *supra* note 12, at 334-35. The public perception finds justification in the statistics of murder, however, for approximately 30% of all murders are either interfamilial (22%) or romantically related (7%). *Id.* at 457.

139. N.Y. EXEC. LAW § 624(2) (McKinney Supp. 1972-1979).

140. H. EDELHERTZ & G. GEIS, *supra* note 18, at 43.

141. *Id.* at 53.

142. *Id.* at 269.

143. *Id.*

144. T. DAVIDSON, CONJUGAL CRIME 74 (1978).

145. TEX. REV. CIV. STAT. ANN. art. 8309—1, § 6(d)(2) (Vernon Supp. 1980).

that the investigation of their claims will prove more costly than another group of claimants is unjust.

In summary, no valid reason exists for the exclusion of the broad classes of victims affected by the relational exclusion provisions. The fears of fraud and collusion are rendered nugatory by the requirement for cooperation in the apprehension and prosecution of the victim. The possibility of indirect benefit to the criminal is also lessened by the cooperation requirement and may be eliminated completely by the adoption of the Uniform Crime Victims Reparations Act proposal.[146] The fiscal benefits accruing to a program from relational exclusions are minimal, and neither the slight decrease in claims nor the reduction of administrative costs associated with an undocumented perception of victim precipitation justifies the exclusion of a large class of innocent victims.

IV. The Need for Adequate Publicity and Effective Claim Forms

While the need for adequate publicity cannot be termed a legal issue, the extent of public education and information largely determines the effectiveness of any compensation statute. How the public is informed, the ease of access to the application forms, and the nature of the forms themselves can have a substantial impact on the number of claims filed and the amount of administrative effort spent in processing claims.

The experience of the New York program demonstrates the relation between public awareness and the number of victims aided. The New York program was underpublicized; after four years some prosecutors were unaware of its existence.[147] Even today, there is no statutory provision for publicity and, although initially several short-lived media "blitzes" were attempted,[148] the chairman of the compensation board has admitted that the largest number of claims arise from knowledge of the program obtained by word of mouth.[149] In 1969, the third year of the program's operation, only 929 claims were filed.[150] In that same year, New York law enforcement agencies received 40,049 reports of murder, manslaughter, rape, and aggravated assault.[151] Despite the benevolent intent underlying compensation programs, if the victims themselves are not informed of the availability of state compensation, the programs will be "nothing more than public placebos, tranquilizing showpieces aimed at placating the public and protecting the politician, all for a negligible price."[152]

Fortunately, Texas has taken steps to avoid this problem. Sections 10(e) and (f) of the Texas Act provide:

146. *See* note 131 *supra* and accompanying text.
147. King, *If You Are Maimed by a Criminal You Can Be Compensated (Maybe)*, N.Y. Times, Mar. 26, 1972, § 6 (Magazine), at 31.
148. H. Edelhertz & G. Geis, *supra* note 18, at 46.
149. *Id.*
150. Comment, *supra* note 103, at 35.
151. *Id.* at 34.
152. H. Edelhertz & G. Geis, *supra* note 18, at 238.

(e) Every hospital licensed under the laws of this state shall display prominently in its emergency room posters giving notification of the existence and general provisions of this Act. The board shall set standards for the location of the display and shall provide posters, application forms, and general information regarding this Act to each hospital and physician licensed to practice in the State of Texas.

(f) Every local law enforcement agency shall inform victims of criminally injurious conduct of the provisions of this Act and provide application forms to victims who desire to seek assistance. The board shall provide application forms and all other documents that local law enforcement agencies may require to comply with this section. The attorney general shall set standards to be followed by local law enforcement agencies for this purpose and may require them to file with him or her a description of the procedures adopted by each agency to comply.

These provisions closely resemble those adopted by California after that state experienced difficulties similar to those of New York.[153]

While the Texas Act is admirable for its inclusion of such a provision, it is crucial that the provisions be vigorously applied. Furthermore, law enforcement agencies must develop an efficient procedure for the dissemination of information. Finally, in addition to the statutorily prescribed publicity, the Board should use mass media to publicize the Act and develop adequate screening procedures to cope with the number of claims generated from such publicity.

Apart from the lesson learned from the New York experience, two other factors demonstrate that publicity requires particular attention. First, although the statute speaks in unequivocal language, directing that "[e]very hospital . . . *shall* display . . . [and] [e]very local law enforcement agency *shall* inform . . . ,"[154] it provides no sanction for noncompliance with these duties. The absence of a statutory sanction requires the close monitoring of the compliance of hospitals and law enforcement agencies. If cooperation is not received, perhaps a penalty for noncompliance should be added to the statute. Secondly, the Act divides the control of publicity between the Board and the attorney general. Although the Board is in charge of providing application forms to the law enforcement agencies,[155] the attorney general is responsible for setting the standards for the distribution of these forms.[156] Since the manner of distribution and procedural organization has a substantial impact on the choice of the claim form,[157] the attorney general and the Board must work closely together to assure a smooth operation. At one time the California program involved the same division of authority.[158] Apparently, the split proved unwieldy in practice,

153. CAL. GOV'T CODE §§ 13968(b)-(c) (West Supp. 1980); *see* Geis, *supra* note 105, at 885.

154. TEX. REV. CIV. STAT. ANN. art. 8309—1, §§ 10(e)-(f) (Vernon Supp. 1980) (emphasis added).

155. *Id.* § 10(f).

156. *Id.*

157. *See* Gross, *supra* note 12, at 20.

158. CAL. GOV'T CODE § 13968(c) (1974) (amended by 1977 Cal. Stats. ch. 636, § 4).

for California amended its act in 1977 by placing all authority for law enforcement publicity procedures in the hands of the administrative agency in charge of the compensation program.[159]

For the present, the Texas attorney general controls the procedure by which Texas law enforcement agencies distribute information.[160] Since the Act places a duty upon every local law enforcement agency to provide information and application forms to every victim of criminally injurious conduct, the police are essentially the public representatives of the Board, and their efforts are likely to account for the majority of claims filed. The procedures adopted for the distribution of this information will influence the effectiveness of the program, but the limited manpower and budget of law enforcement agencies conflict with the need for widespread distribution of information and applications. Faced with this conflict, California has developed a system for the dissemination of information that promises to be effective as well as efficient, and Texas should consider the adoption of a similar plan. In a memo sent to all local law enforcement agencies, California Attorney General Younger outlined the standard procedure:

> (1) Law enforcement officers are required to provide to victims of [*sic*] their families a sheet describing the victim program and where to obtain application forms. This sheet shall also identify a Victims of Violent Crime Liaison Officer and his telephone number. Every reporting officer shall indicate in his police report the date when potential claimants were provided with the sheet. Alternatively, a law enforcement agency may devise a system whereby potential claimants are notified by mail of the availability of the program and are advised of the name of the Liaison Officer from whom further information may be obtained;
>
> (2) All law enforcement agencies shall appoint a Victims of Violent Crime Liaison Officer. This officer will coordinate closely with the State Board of Control and shall obtain from the Board application forms which are to be disseminated to the interested public;
>
> (3) The program shall be discussed in general agency meetings and new and trainee officers shall be made aware of the program's existence.[161]

The establishment of a liaison officer serves several purposes. The local agency will benefit from this centralization of responsibility because less time will have to be spent on the education of the entire force. The public will benefit because such an officer will become well-versed in the provisions of the Act and, as a result, will be able to respond to specific inquiries with greater accuracy. The Board will benefit because a liaison officer can serve as a watchdog by checking that the information is being distributed in accordance with the statutory mandate.

Although the statutory delegation of publicity duties to law enforcement

159. *Id.* (West Supp. 1980). The chief administrator of the North Dakota Crime Victims Compensation Board requested that all sections concerning the attorney general's participation be eliminated. *See* Gross, *supra* note 12, at 29.

160. TEX. REV. CIV. STAT. ANN. art. 8309--1, § 10(f) (Vernon Supp. 1980).

161. ISSUES, *supra* note 43, at 15.

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166. *See* Gross
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agencies establishes an efficient device for information distribution, the police can only inform those who report a crime. Over fifty percent of all personal victimizations go unreported.[162] The Act attempts to lower this percentage in Texas by conditioning eligibility on a report of the crime to the appropriate agency within seventy-two hours.[163] If this ancillary goal of increased crime reporting is to be reached, information about the Act, and the seventy-two hour provision in particular, should be conveyed by sources other than the police. In all likelihood, the best way to reach those who would otherwise choose to avoid involvement with law enforcement agencies is through extensive media coverage. The wide reach of the media, however, creates additional problems. The New York Board discovered that media "blitzes" resulted in a deluge of claims filed by individuals clearly ineligible for recovery—persons seeking a government handout, or persons looking for lost property.[164] These claims resulted in serious administrative backlogs, and the media efforts were quickly discontinued.[165]

The problems experienced by the New York Board may perhaps be avoided, however, by the adoption of a simple claim procedure. Besides eliminating the increase in applications of ineligible individuals, this procedure generally will reduce the amount of screening that would otherwise be performed by the limited staff of the Board. This procedure, already used in North Dakota and Minnesota,[166] consists of a two-stage claim process. Before a potential claimant is allowed to fill out a claim form, he or she must fill out a "declaration of eligibility."[167] This declaration would

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162. SOURCEBOOK, *supra* note 12, at 302.
163. TEX. REV. CIV. STAT. ANN. art. 8309—1, § 4(b) (Vernon Supp. 1980).
164. H. EDELHERTZ & G. GEIS, *supra* note 18, at 46.
165. *Id.* at 46-47.
166. *See* Gross, *supra* note 12, at 20, 26.
167. The following is a proposed declaration of eligibility form for Texas, adapted from the North Dakota form appearing in Gross, *supra* note 12, at 36.

DECLARATION OF ELIGIBILITY

NAME_____ PHONE____

ADDRESS_____ ZIP____

By completing this form you determine whether you are eligible to apply for compensation under the Texas Crime Victims Compensation Act. Check the statements that apply in your case. If you cannot truthfully check all statements, you are not eligible for compensation through the Act and you will not receive a claim form.

__ 1. The incident for which I am declaring my eligibility for compensation occurred on or after January 1, 1980.
__ 2. The claimant (and/or victim) suffered bodily injury (or death) as a result of the criminal actions of another.
__ 3. This injury (or death) was not the result of an automobile accident.
__ 4. The incident occurred in Texas.
__ 5. The incident was reported to law enforcement officials within 72 hours or would have been reported except for a valid excuse.
__ 6. The claimant (and/or victim) cooperated with law enforcement officials during their investigation of the incident.
__ 7. The person whose death or injury gives rise to this claim did not knowingly and willingly participate in the criminal incident.
__ 8. The claimant (and/or victim) did not reside in the same household as the criminal offender or his or her accomplice.

consist of a series of statements concerning threshold eligibility, such as "The incident occurred in Texas." The applicant could only receive a claim form after responding affirmatively to each of the statements on the declaration of eligibility form. Each form should also include a warning to the applicant that it is a class A misdemeanor knowingly to respond falsely to the questions posed in the form.[168] The use of the declaration of eligibility form would screen out the obviously ineligible applicants, and thereby facilitate the use of the media by preventing a deluge of frivolous claims from reaching the administrative stage. In addition, this procedure should lower administrative costs and thus increase the availability of funds to victims.

Efforts directed toward publicity are likely to have a direct effect on the success of the Texas program, and the Texas Act reflects recognition of that fact. The publicity provisions of the Act must be administered with a strong hand, however, and the attorney general should consider adopting a procedure for police publicity and application distribution similar to that of California. Moreover, the Board should take advantage of the mass media to assure full exposure and to help increase police cooperation. The adoption of a declaration of eligibility claim form would ease the extra administrative burden that media exposure can cause.

V. THE SON OF SAM PROVISION

Immediately prior to the final passage of Senate Bill 21,[169] sections 16 through 18 were added to the Act by a house floor amendment.[170] The

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years.[177]

— 9. This claim is being filed within 180 days of the incident.
—10. The person whose death or injury gives rise to this claim was a Texas resident at the time of the crime.

I hereby swear that all of the above statements to which I have attested are true, and understand that I will be guilty of a class A misdemeanor for any false statement I have made in connection with this declaration of eligibility

Signature

168. Although the Act does not expressly provide a penal sanction for falsification of application forms, such a falsification would qualify as a violation of TEX. PENAL CODE ANN. § 37.10 (Vernon 1974).

169. 1979 Tex. Sess. Law Serv., ch. 189, §§ 1-19, at 402-10 (Vernon).

170. House Floor Amendments, Apr. 26, 1979, amendment No. 3, added the following sections to the Act:

Escrow account

Sec. 16. Every firm, person, corporation, association, or other legal entity contracting with a person or the representative or assignee of any person, accused or convicted of crime in this state, with respect to the reenactment of the crime in a movie, book, magazine article, tape recording, phonograph record, radio or television presentation, live entertainment, or from the expression of the accused or convicted person's thoughts, feelings, opinions, or emotions regarding the crime shall submit a copy of the contract to the board and pay to the board any money that would otherwise by terms of the contract be owing to the accused or convicted person or his representatives. The board shall deposit the money in an escrow account.

Funds available to victim

Sec. 17. Money placed in an escrow account is available to satisfy a judgment against the accused or convicted person in favor of a victim of the crime

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enactment of these sections establishes in Texas a modified version of New York's controversial "Son of Sam" law.[171] These sections are inappropriate in a victim compensation statute because they create no new substantive rights or remedies for victims.[172] Instead, the Son of Sam sections prevent the criminal from disposing of assets received from his crime-related literary efforts so that the victim will be able to pursue an ordinary civil remedy with the assurance that the defendant will not be judgment proof. Underlying this practical consideration is the sentiment that criminals should not profit from their misdeeds. Despite the admirable motives behind these sections, the Son of Sam provision presents potential constitutional problems.[173]

Sections 16 through 18 provide that any person contracting with an accused[174] or convicted criminal with respect to the reenactment of the crime in a book, movie, or other medium, or merely with respect to the criminal's thoughts or feelings about the crime, must pay the Board the money that would otherwise be paid to the criminal under the contract.[175] The Board is then to establish an escrow account with that money, which will be available for the satisfaction of any civil judgment awarded to a victim for damages caused by the crime.[176] Unless the money is used to satisfy a judgment for the victim, it will be returned to the criminal after five years.[177]

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if the court in which the judgment is taken finds that the judgment is for damages incurred by the victim caused by the commission of the crime.

Maintenance of escrow account

Sec. 18. The board shall pay money in an escrow account to the accused person if he is acquitted of the crime. The board shall pay the money in the account to the accused or convicted person if five years elapse from the date when the account was established and the money has not been ordered paid to a victim in satisfaction of a judgment.

171. N.Y. EXEC. LAW § 632-a (McKinney Supp. 1972-1979). Section 632-a is commonly referred to as the Son of Sam law because the proposal of the bill was directly motivated by the series of random murders committed by a person calling himself Son of Sam and the willingness of publishers to pay large amounts of money for the murderer's story. *See* Comment, *Compensating the Victim From the Proceeds of the Criminal's Story—The Constitutionality of the New York Approach*, 14 COLUM. J.L. & SOC. PROB. 93, 94 n.6 (1978) (statement of justification by sponsor of § 632-a).

172. Victim compensation programs distribute funds directly to the victims, thus creating an alternate source of recovery. The Son of Sam sections merely impose upon the criminal's rights by preventing him from disposing of the profits from his crime related literary efforts, thereby ostensibly augmenting the victim's chances for traditional civil recovery.

173. *See* notes 185-90 *infra* and accompanying text.

174. TEX. REV. CIV. STAT. ANN. art. 8309—1, § 16 (Vernon Supp. 1980). There is no definition of the term "accused" in § 16. The problems of free speech and due process mentioned later in this Comment are aggravated by the inclusion of accused persons in § 16. *See* Comment, *supra* note 171, at 114.

175. TEX. REV. CIV. STAT. ANN. art. 8309—1, § 16 (Vernon Supp. 1980).

176. *Id.* § 17.

177. *Id.* § 18. The five-year time limit specified in § 18 may be interpreted as establishing not only an escrow period, but a new cause of action, because in most cases the statute of limitations will have expired long before the five-year deadline. The Appellate Division of the New York Supreme Court took this position in Barrett v. Wojtowicz, 66 A.D.2d 604, 414 N.Y.S.2d 350 (1979). In *Barrett* a bank robber, whose profits from the movie "Dog Day Afternoon" had been put into escrow by the New York Crime Victims Compensation Board, was sued for assault and false imprisonment by one of his hostages. Although the

The New York statute, upon which the Texas provision is based, has been the focus of much controversy.[178] The constitutionality of the statute has been questioned by the Library of Congress' legal research service, a House Judiciary subcommittee staffer, and the New York Civil Liberties Union,[179] but at this date, the New York statute still stands. The adoption of the Texas provision may be attributed to the several victim compensation bills introduced into Congress during the last few years.[180] At one time a strong possibility existed that one of the prerequisites for federal subsidization of state victim compensation programs would be a Son of Sam act in the state.[181] The 1979 bills,[182] however, are based generally on a conference committee compromise of the 1977 bill,[183] in which the conference committee recognized that since the constitutionality of the Son of Sam act was uncertain, a bill conditioning state subsidization on the adoption of such a statute was undesirable.[184]

At least two aspects of the provision present constitutional difficulties. First, sections 16 through 18 contain no provisions for a hearing of any kind. No procedure is provided to determine whether a criminal's efforts come within the scope of the section, and the individual obligated to pay the criminal must decide at his own risk whether to pay the Board instead.[185] Because the Act may effectively deprive the criminal of his property without a hearing, it is in potential contravention of the due process requirements of the fourteenth amendment.[186] The second area of possi-

suit was brought long after the statute of limitations had run, the court refused to dismiss the suit, holding that N.Y. EXEC. LAW § 632-a (McKinney Supp. 1972-1979) established a new in rem cause of action with a five-year limitation. 414 N.Y.S.2d at 357. The New York statute, however, states that money from the account will be paid provided that the "victim, within five years of the date of the crime, brings a civil action" and recovers a judgment. N.Y. EXEC. LAW § 632-a(1) (McKinney Supp. 1972-1979). The Texas statute does not link the five-year limit with the victim's civil recovery, but treats each in a separate section. TEX. REV. CIV. STAT. ANN. art. 8309—1, §§ 17-18 (Vernon Supp. 1980). This distinction may prove crucial in the interpretation of the effect of the Texas Act on the statute of limitations.

178. *See, e.g.*, Comment, *supra* note 171; Comment, *Criminals-Turned-Authors: Victims' Rights v. Freedom of Speech*, 54 IND. L.J. 443 (1979).

179. Smith, *Briefs*, in JURIS DOCTOR, Nov. 1977, at 6.

180. *See generally* note 18 *supra*.

181. *See, e.g.*, H.R. 7010, 95th Cong., 1st Sess. § 4(7) (1977).

182. *See, e.g.*, H.R. 957, 96th Cong., 1st Sess. (1979). For treatment of past and present federal victim compensation legislation, see note 18 *supra*.

183. H.R. 7010, 95th Cong., 1st Sess. (1977).

184. H.R. REP. No. 1762, 95th Cong., 2d Sess. 10 (1978).

185. TEX. REV. CIV. STAT. ANN. art. 8309—1, § 16 (Vernon Supp. 1980), places the burden on the individual contracting with the criminal to decide if the contract falls within the provisions of the statute.

186. The due process ramifications of prejudgment seizures are still unsettled; the Supreme Court has alternatively expanded and contracted the process that is due a debtor under state prejudgment garnishment or replevin statutes. *See* North Ga. Finishing, Inc. v. Di-Chem, Inc., 419 U.S. 601 (1975); Mitchell v. W.T. Grant Co., 416 U.S. 600 (1974); Fuentes v. Shevin, 407 U.S. 67 (1972). Although the Supreme Court has shifted its view of the precise requirements of due process in such situations, most notably with regard to the timing of a hearing, the Court has uniformly held that a hearing is essential to due process when property is seized before judgment. *E.g.*, North Ga. Finishing, Inc. v. Di-Chem, Inc., 419 U.S. 601, 606 (1975). TEX. REV. CIV. STAT. ANN. art. 8309—1, §§ 16-18 (Vernon Supp. 1980) operates so that the escrow account can be established and dispersed without an op-

ble difficulty involves the first amendment. Although Senator Gold, the sponsor of the New York bill, was technically correct in stating that "[w]e don't stop a prisoner from writing,"[187] a statute authorizing the publisher of a criminal's literary efforts to pay money owed the criminal into a five-year escrow account is a clear disincentive for the criminal.[188] To the extent that the criminal will refrain from seeking publication of his work, or insofar as he attempts to confine his efforts to topics not prescribed by the statute, the public will be deprived of the right to be informed.[189] For example, a criminal's expressions of his thoughts at the time of the commission of a capital crime could be valuable to the study of the deterrent effect of capital punishment.[190] Thus, the statute appears to have a chilling effect both on the criminal's right to free speech and on the public's right to know.

The Texas version of New York's Son of Sam act is likely to cause more problems than it will solve.[191] The provision is certain to encounter strong constitutional challenges, and the litigation of the first and fourteenth amendment issues may devour more state funds than the statute will make available to victims.[192] Because there is no longer a serious threat that federal subsidization will be contingent upon the existence of such a provision, sections 16 through 18 should be repealed.

VI. Conclusion

The Texas Crime Victims Compensation Act creates a practical means of recovery for the victims of violent crimes, supplementing the relatively ineffectual alternatives of civil recovery, insurance, and restitution. The legislature has taken strong action in attempting to alleviate the plight of the victim, and this progressive legislation has the potential to bring about substantial public benefits. By taking a hybrid approach, the drafters of the Act had the opportunity to select the provisions that have proven most desirable in the light of experience. For the most part, they were successful in this selection process; of particular merit are the provisions for distribu-

portunity for a hearing of *any* kind. For a comprehensive treatment of this issue, see Comment, *supra* note 171, at 99-105.

187. Smith, *supra* note 179, at 6.

188. *See* Comment, *supra* note 171, at 110-11.

189. The Supreme Court has indicated that it is "the heart of the natural right of members of an organized society . . . to . . . acquire information about their common interests." Grosjean v. American Press Co., 297 U.S. 233, 243 (1936); *see* Comment, *supra* note 171, at 105-09.

190. Comment, *supra* note 171, at 109.

191. From a practical standpoint, the statute may even prove to be somewhat self-defeating. To the extent that criminals are discouraged from writing because of their inability to collect profits, there will be *less* money available to satisfy the judgments held by victims. Thus, the opportunities for victim recovery actually may be reduced by the statute, a result that the legislature probably did not consider when it hurriedly enacted §§ 16-18. *See* Comment, *supra* note 171, at 109.

192. The number of victims whose injuries result from a crime that attracts enough public attention to merit a contract with the criminal is extremely small. Senator Gold, the sponsor of the New York act, estimated that his act might affect one person every two years. Smith, *supra* note 179, at 6.

tion of applications and information, the lack of a minimum claim requirement, and a high maximum award. Several provisions were included, however, despite widespread acknowledgment of their detrimental capacity.

Perhaps the main weakness of the Act is the financial stress requirement. The financial stress test imposes a substantial administrative burden on the Board and involves an unwarranted invasion of the victim's financial privacy. The investigation of financial stress is neither fiscally justified nor related to the primary goal of loss-spreading.

Another flaw in the Act is the household exclusion, because the exclusion of victims living in the same household as the criminal responsible for their injuries results in substantial injustices when applied to innocent children. The arguments advanced to justify the household exclusion are eviscerated by the presence of provisions that prevent fraud and the compensation of victims partially to blame for the crime. The unjust benefit exclusion of the Uniform Crime Victims Reparations Act is an adequate alternative to the household exclusion.

The Son of Sam provision raises constitutional problems that may consume more funds through litigation expenses than the provision will make available to crime victims. Although the provision serves the noble purpose of preserving the criminal's crime-related profits for the victim's civil recovery, the means adopted to serve this purpose may violate the first and fourteenth amendments to the Constitution. While the lack of due process may perhaps be remedied by the provision for a hearing, the Son of Sam provision's chilling effect on speech cannot easily be alleviated.

Notwithstanding these imperfections, the Texas Crime Victims Compensation Act is a laudable effort that ranks among the best of the state victim compensation acts. If the program is sufficiently publicized and adequately staffed, the Act promises to benefit substantially the criminally injured. States that have not yet enacted victim compensation legislation would be well advised to follow the progress of the Texas program and to adopt the most successful provisions for their own acts.*

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* Author's Note: At the time this Comment went to print, the Board was able to report the following statistics, covering the period between January 1 and April 10, 1980:

Claims filed	306
Claims finalized	38
Awards made	13
Total amount awarded	$32,094
Amount collected in Fund	$151,000
Claims rejected	25
Grounds for Rejection:	
Failure to cooperate with authorities	9
No financial stress	7
Behavior of victim	6
Participation in event	2
Residing in same household	1

The only publicity efforts made by the Board at present are the statutorily required distribution of posters and forms to hospitals and physicians, and responses to media inquiries. Telephone conversation with Bud Donnelly, examiner for Crime Victims Compensation Division of the Board, April 22, 1980.

Provided by Rep. Fischer

The Council of State Governments

Georgia's Residential Restitution Centers

GEORGIA'S RESIDENTIAL RESTITUTION CENTERS

By
J. Robert Weber

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EXECUTIVE SUMMARY

Restitution, both monetary and public service, is an age-old procedure widely used in a variety of ways by both juvenile court and criminal court judges. Restitution does not have to be combined with a residential program to be valid. Some offenders, however, can gain more benefits from a residential restitution program than from incarceration in a prison. From a cost point of view, restitution centers are in the state's interest because incarceration costs are usually less than for prisons.

The Georgia restitution centers are offender-focused rather than victim-focused. Thus, they differ from state victim compensation programs. Victim compensation refers to money or services provided to a victim by the state, whereas restitution refers to money or services provided to the victim by the offender.

In Georgia, 10 restitution centers serve designated judicial districts. The district court judge makes the decision to place an offender in a restitution center rather than a prison. The centers serve as an alternative to prison incarceration, not as an alternative to probation supervision. Georgia's restitution centers have relieved prison overcrowding.

The preferred method of intake, after an offender has been sentenced to a term of imprisonment, is for center staff members to interview offenders in the county jail while they await transportation to the state prison. If the offenders and center staff members believe a restitution center program would be appropriate, a recommendation is made to the sentencing judge who may then modify the original sentence to placement in a residential restitution center as a condition of probation.

The centers' programs operate 24 hours a day, seven days a week. Offenders are employed and relinquish their paychecks to center staff members for division according to a contract. Restitution includes monetary payment for damages and public service activities.

A typical participant in the program is a 19-year-old offender who was convicted of a property offense, and who has been on probation for an earlier offense. Average length of stay in the center is about four months.

A major cost benefit of Georgia's restitution centers program is the short-term leasing of center facilities. Uneconomical tourist courts located on state highways now bypassed by interstate highways are favorite lease locations.

The key to successful operation of a correctional residential restitution center is community acceptance. The restitution center needs to be viewed by community leaders as *their* program.

I. A SEARCH FOR ALTERNATIVES

The steadily rising crime rate during the past decade has prompted a variety of responses from all levels of government across the nation. Funding for criminal justice agencies has increased, and the federal Omnibus Crime Control and Safe Streets Act provided millions of grant-in-aid dollars to state and local agencies. Some state legislatures have enacted new laws that mandate determinate and sometimes longer prison terms for a variety of crimes. Many judges, responding to increased public agitation about crime, are issuing stiffer prison sentences.

Nationwide, the prison population has grown dramatically. In 1977 over 275,000 prisoners were incarcerated—an increase of 25,000 over 1976 (see Table 1). Various theories have been advanced to explain this increase in prison populations. The depressed state of the economy, longer prison sentences, better law enforcement and prosecution, and the "baby boom" are factors often cited for the increased prison population. Whatever the cause, rapid growth has placed enormous pressure on existing state correctional facilities. Lack of beds, proper sanitary facilities, and recreation areas are only a few of the conditions often found in overcrowded prisons. Conditions in some state prisons have become so bad that federal judges have issued orders preventing the state from accepting new inmates until conditions are improved.

Traditionally, state legislators have been reluctant to allocate funds for prison construction. But, the continued growth in prison population and the resultant overcrowding of old, outdated facilities have forced a number of states to initiate the planning and building of new facilities. The construction and maintenance of a new prison, however, is an expensive undertaking. The National Clearinghouse for Criminal Justice Planning and Architecture in 1977 calculated that the construction of a typical prison costs about $30,000 per cell. Add the initial capital expense to the Clearinghouse's estimated annual cost for operating a prison, usually between $1 million and $2 million for a 400-bed facility, and it readily becomes apparent that prisons are not cheap.

Most state officials recognize the need for prisons in order to protect society from habitually dangerous individuals, but many also realize that committing every individual convicted of a crime to prison is not economically feasible or socially desirable. Certain offenders, due to the nature and circumstance of their crime, could benefit from some form of punishment other than incarceration. While probation is an alternative for many offenders, its effectiveness sometimes is limited. Probation staffs are usually overloaded with cases, and the supervision they offer each individual is minimal. In cases where something more than probation is advisable as a criminal sanction, in many states the only alternative is incarceration.

An Alternative

Community-Based Correction

Growing skepticism among correctional administrators and elective officials about the likelihood of rehabilitating offenders in large, oppressive prisons, and the increasing costs of constructing and maintaining these institutions, have prompted state officials to search for alter-

Table 1

1977 *Corrections Magazine* Survey of Inmates in State and Federal Prisons

State	Number of Inmates 1/1/76	1/1/77	% Change
ALABAMA	4,420	3,096(2,300)**	+22***
ALASKA	349	543	+56
ARIZONA	2,712*	3,072	+13
ARKANSAS	2,336	2,445	+ 5
CALIFORNIA	20,007	20,914	+ 4
COLORADO	2,039*	2,324	+14
CONNECTICUT	3,060	3,186	+ 4
DELAWARE	701	953	+36
D.C.	2,330*	2,617	+12
FLORIDA	15,709	18,229(373)**	+18***
GEORGIA	11,067	11,423(533)**	+ 8***
HAWAII	366	413	+13
IDAHO	593	725	+22
ILLINOIS	8,110	10,002	+23
INDIANA	4,392	4,430	+ 1
IOWA	1,857	1,956	+ 1
KANSAS	1,696	2,126	+25
KENTUCKY	3,257	3,659	+12
LOUISIANA	4,774	4,695(1,714)**	+34***
MAINE	643	622	- 3
MARYLAND	6,606	6,860(1,070)**	+20***
MASSACHUSETTS	2,278	2,701	+19
MICHIGAN	10,882	12,462	+25
MINNESOTA	1,630*	1,684	+ 3
MISSISSIPPI	2,429	2,135(125)**	- 7***
MISSOURI	4,160	4,748	+14
MONTANA	377	500	+33
NEBRASKA	1,259	1,339	+ 6
NEVADA	893	953	+ 7
NEW HAMPSHIRE	302	297	- 1
NEW JERSEY	5,277	5,987(200)**	+17***
NEW MEXICO	1,118	1,359	+22
NEW YORK	16,056	17,791	+11
NORTH CAROLINA	12,486	13,261	+ 6
NORTH DAKOTA	205	242	+18
OHIO	11,451	12,626	+10
OKLAHOMA	3,435	4,106	+19
OREGON	2,442	2,848	+17
PENNSYLVANIA	7,054	7,584	+ 7
RHODE ISLAND	400*	544	+36
SOUTH CAROLINA	6,100	6,985	+14
SOUTH DAKOTA	372	521	+40
TENNESSEE	4,569	5,350	+17
TEXAS	18,934	20,708	+ 9
UTAH	696	827	+19
VERMONT	343*	386	+12
VIRGINIA	6,092	7,001(1,375)**	+11***
WASHINGTON	3,063	3,767	+23
WEST VIRGINIA	1,213	1,216	—
WISCONSIN	2,992*	3,340	+12
WYOMING	384	355	- 7
TOTAL STATES AND D.C.	225,908	247,913(7,290)**	+12***
U.S. BUREAU OF PRISONS	24,134	27,665	+15
TOTAL U.S.	250,042*	275,578(7,690)**	+13***

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natives to institutionalization. One avenue being examined by various states is community-based correction. (For example, see Dick Howard and Mike Kannensohn: "A State-Supported Community Corrections System: The Minnesota Experience," The Council of State Governments. February 1977.) Community-based correction advocates stress that keeping offenders within the community increases the chances of reorienting them to society's values. Continued residence in the community strengthens the offender's family ties, enhances vocational and educational opportunities and provides treatment for any psychological and emotional problems in a community setting.

Restitution

Corresponding with the interest in establishing community-based corrections programs has been an increased awareness of the plight of crime victims. This concern has led to legislation in a number of states which compensates or provides restitution to victims. While compensation and restitution often are used interchangeably, they do have different basic definitions. Victim compensation refers to money or services granted a victim by the state, whereas restitution refers to money or services provided to a victim by the offender.

Restitution is a sanction becoming increasingly a part of community corrections programs. Restitution most frequently is used by judges as a condition of probation, in connection with the use of a suspended sentence, or as a part of the program of community corrections centers. Restitution performed before sentencing is considered a mitigating circumstance in the final imposition of sentence by most courts. In some instances, restitution is used in pretrial diversion programs. Restitution is seldom used with offenders sentenced to security institutions. The limited opportunities for earning income because of low or nonexistent inmate wages in most security institutions generally preclude the use of monetary restitution in most jurisdictions.

Recently, several states have enacted statutes establishing standards and guidelines for restitution. In 1973, Iowa made restitution a condition of a deferred sentence or probation (Senate File 26, 65th General Assembly, 1973, State of Iowa). In 1976, Colorado permitted courts to order restitution in conjunction with fines, probation, imprisonment or parole. (Colorado Crime Victim Restitution Act, Second Regular Session, 50th General Assembly, 1976).

In Minnesota and Georgia, the idea of merging the concept of restitution with a community-based residential program has been implemented. The Minnesota Restitution Center Program was initiated in 1972. In 1975, Georgia instituted a community-based restitution program in four cities as an alternative to prison incarceration.[1]* Table 2 presents descriptive data on a number of restitution programs.

The Need for Change in Georgia

The condition of Georgia's correctional system was described by one state official as "bleak and disheartening." In 1975, the Georgia Department of Corrections and Offender Rehabilitation (DCOR) identified major problems as "over-crowded conditions, a high recidivism rate, a lack of adequately trained staff, a need for expanded, centralized coordination, and a lack of objective data for program planning and evaluation."[2] By 1977, Georgia's prison population was over 11,000 and was projected to reach 16,000 by 1980. The percentage of individ-

*See footnotes at end of report.

Table 2
A SURVEY OF SELECTED RESTITUTION PROGRAMS

Name of program	*Level of system*	*Clients*	*Type of program*
Albany Restitution Center Albany, Georgia	Probation and parole	Adults only	Residential
Arbitration as an Alternative to the Criminal Warrant New York, New York	Pretrial diversion	Usually adults only	Nonresidential
Atlanta Restitution Center Atlanta, Georgia	Probation and parole	Young adults (ages 17-25)	Residential
Community Accountability Program of the City of Seattle Seattle, Washington	Pretrial diversion and probation	Juveniles	Nonresidential
Community Arbitration Program Annapolis, Maryland	Pretrial diversion	Juveniles	Nonresidential
Macon Restitution Center Macon, Georgia	Probation and parole	Adults only	Residential
Minnesota Restitution Center Minneapolis, Minnesota	Parole	Adults only	Residential
Night Prosecutor's Program Columbus, Ohio	Pretrial diversion	Adults	Nonresidential
Pilot Alberta Restitution Center Calgary, Alberta	Pretrial and probation	Adults only	Nonresidential
Pima County Attorney's Adult Diversion Project Tucson, Arizona	Pretrial diversion	Adults	Nonresidential
Restitution and Effective Diversion from the Criminal Justice System Milwaukee, Wisconsin	Probation and parole	Adults	Nonresidential
Restitution in Probation Experiment Des Moines, Iowa	Probation	Adults	Residential and nonresidential components
Restitution Work Program Salt Lake City, Utah	Pretrial diversion and probation	Juveniles	Nonresidential
Rideau-Carlton Restitution Project Ottawa, Ontario	Provincial jails	Adults	Residential
Rome Restitution Center Rome, Georgia	Probation and parole	Adults	Residential
Seventh Circuit Court Victims' Assistance Program Rapid City, South Dakota	Pretrial diversion and probation	Adults and Juveniles	Nonresidential
Victims' Assistance Program Las Vegas, Nevada	Pretrial diversion and probation	Juveniles	Nonresidential
Victim-Offender Reconciliation Project Kitchener, Ontario	Pretrial diversion and probation	Juveniles and Adults	Nonresidential
Washington County Restitution Center Hillsboro, Oregon	Probation and parole	Adults	Residential

Source: Hudson, Galaway, and Chesney, "When Criminals Repay Their Victims: A Survey of Restitution Programs," *Judicature*, Vol. 60, No. 7, February 1977, p. 319.

uals 18-44 years of age in prison represents the highest per capita incarceration rate of all 50 states.[3]

The problems of a large prison population in overcrowded and inadequate facilities were compounded by the condition of the probation and parole programs. In 1976, the total probation/parole caseload was over 33,000 and the average caseload was 132 per counselor. (In 1977, parole supervision was removed from the DCOR and established in a separate and autonomous agency—the Parole Board. This, however, did not solve the problem of large caseloads; it just transferred the responsibility.) In the past five years, the probation/parole caseload has increased 83 percent. Due to the size of caseloads handled by counselors, judges became increasingly reluctant to place some offenders on probation. If an offender was not placed on probation, the only alternative a judge had was incarceration, but incarceration only exacerbated the overcrowding in state correctional facilities.

After identifying and examining the problems confronting the Georgia correctional system, the DCOR developed a long-range plan called Operation Performance which was designed to correct deficiencies in the system and to make offenders directly responsible for the consequences of their own behavior. One part of the plan was development of a network of community-based residential restitution centers.

II. ESTABLISHING COMMUNITY RESTITUTION CENTERS IN GEORGIA

The initiation of community restitution centers in Georgia followed the general reorganization of state government in 1972. An Executive Reorganization Plan created the Department of Corrections and Offender Rehabilitation (DCOR) and authorized it to "administer the supervision of parolees, probationers, and other offenders who are being treated outside correctional institutions." In addition, the Georgia Probation Act (1968) states: "The courts shall determine the terms and conditions of probation and may provide that the probationer shall remain within a specific location and shall make reparation or restitution to any aggrieved person for the damage or loss caused by his offense in an amount determined by the court..." (Ga. Laws 1968, p. 324).

On the basis of the above statutory language, in October 1975 the DCOR established the community resitution center program by making residence at a center and participation in the program a special condition of the probation order. Initially, four community restitution centers were established with financial support from the Law Enforcement Assistance Administration. In addition to the restitution centers, the state also was developing five community-based adjustment centers. These residential adjustment centers were used to house probationers, and the program design had a rehabilitation focus with a strong emphasis on counseling. The restitution centers influenced the adjustment centers. The adjustment centers began using restitution as the core of their program. As federal support of the restitution centers diminished, the two programs were merged and the state legislature voted to begin funding the restitution centers in the 1977 fiscal year in addition to the adjustment centers which were reprogrammed as restitution centers. Currently, there are 10 restitution centers in the state, the tenth having opened in early 1978 at Thomasville.

Organization of the Georgia Corrections System

The Georgia Department of Corrections and Offender Rehabilitation is composed of two administrative and three field divisions. The DCOR Community Facilities Division administers the residential restitution program and several other community-based programs (e.g., pre-release centers, transitional centers, work release centers).

Although the Community Facilities Division is responsible for the operation of the centers, the success of the program depends on the assistance of a number of individuals inside and outside the DCOR. The cooperation of judges, probation officers, local officials and community residents is necessary to establish and maintain a restitution center. Judges are responsible for selecting offenders who will reside at the center and for determining the amount of financial restitution. Many judges also monitor the performance of offenders they place in a center. Probation officers, who are DCOR employees, oversee the activities of an offender discharged from a center. Local officials advise the department in selecting a center location. Local officials and community residents sit on restitution center advisory boards and help locate and provide resources needed by the residents. The size of the boards varies

from one center to another. They perform a valuable function in advising the center director about problems and in conveying information to citizens in the community about the center. The boards provide both a public relations function and an advisory function to the center director. Some centers have a formalized community advisory board while others rely on ad-hoc arrangements according to need. Although forms, contracts, case folders, and other items are similar in content for all centers, they vary in format according to the style of the director.

Location of Restitution Centers

The 10 community restitution centers in Georgia are located in Albany, Athens, Atlanta (2), Augusta, Cobb County, Gainesville, Macon, Rome and Thomasville.

Eventually, the DCOR hopes to establish one community restitution center in each of the state's 42 judicial districts. Selecting the location and establishing management procedures for the first four centers, however, raised certain procedural and intergovernmental questions. The DCOR had no previous experience with a residential restitution program and there was a lack of information concerning methods and standards. In addition, the department had not determined the formal agency and governmental linkages required to maintain and operate a center. Consequently, the first year was a period of development and experimentation. Each center developed in its own way resulting in differences in operation. On the positive side, these differences reflected the uniqueness of the communities. From this experience, the DCOR was able to develop and standardize specific policies and procedures where increased uniformity was considered desirable.

In locating the first four facilities (Albany, Atlanta, Macon and Rome), the department selected judicial districts in which judges had expressed a strong interest in the restitution concept. Once a center was established in a judicial district, the center staff concentrated on serving the offenders from that district. Judicial and community support of the original centers prompted citizens and judges in other districts to seek the establishment of a restitution center in their communities. Presently, the demand for new centers is greater than the funds available to the DCOR for meeting the requests.

Center Size and Staff

All 10 restitution centers operate 24 hours a day, seven days a week. Maximum residential capacity ranges from 20 to 40 offenders, with an average capacity of about 36 (see Table 3). Because an offender usually resides at a center for only four or five months, each center can serve between 112 and 130 offenders per year. For fiscal year 1978, the legislature allocated $1,140,460 to operate eight centers. The other two centers are financed with federal funds. For fiscal year 1979, the DCOR is requesting $2 million for 10 facilities, an average of $200,000 per center.

All the facilities used to house the residents are leased by the department. Motels, vacant dormitories, and large houses are among the types of buildings that have been converted into restitution centers. The department has discovered that old, unprofitable motels on secondary highways offer excellent accommodations. Usually, only minimal alteration is required. In many cases a center is located in an area that is a mixture of residential and commercial or light industrial uses. While DCOR officials prefer a center that has central kitchen facilities, a few

centers are located in buildings that are not equipped to prepare meals. Alternate arrangements are made for food service.

State DCOR staff members vary from 8 to 13 per center. A typical staffing pattern would include one superintendent, one business manager, one clerk typist, one probation supervisor, one counselor and four counselor aides or correctional officers. Centers with kitchen facilities also employ a cook. The cook works on a split shift and prepares breakfast and a bag lunch for those who work during the day, and then returns to prepare dinner. Administrative staff work the 8 a.m. to 5 p.m. shift while most residents are at work. Counselors are available to provide education and counseling services in the afternoon and evenings. Security is supplied by a night duty correctional officer. Supervisory staff are present and share cooking responsibilities with the residents on the weekends.

In order to supplement the basic counseling staff, a number of centers use Comprehensive Employment and Training Act (CETA) employees, VISTA workers, student interns and citizen volunteers to provide supervision and program assistance. These individuals enable a center to provide additional educational and counseling services it is not financially able to provide. Community residents who volunteer to assist the center staff also form a valuable contact between the community and the center.

Table 3
OPERATING BUDGET AND CAPACITY OF RESTITUTION CENTERS

CENTER	OPERATING BUDGET FISCAL YEAR 1978	MAXIMUM CAPACITY
Albany Restitution Center	$135,775	28
Athens Adjustment/Restitution Center*	230,271	40
Atlanta Restitution Center	131,897	30
Augusta Restitution Center	222,722	40
Cobb Adjustment/Restitution Center*	241,963	40
Gainesville Adjustment Restitution Center	184,603	40
Gateway Adjustment Restitution Center (Also in Atlanta)	222,985	40
Macon Restitution Center	118,604	35
Rome Restitution Center	123,874	32
Total State and Federal	$1,612,694	325
Total State	$1,140,460	245

*These centers are financed with federal funds. In fiscal year 1979 the state will assume responsibility for funding the centers. The Thomasville Center opened in early 1978, thus figures are not included.

III. OPERATING A RESTITUTION CENTER

The procedure for selecting individuals to participate in the residential restitution program and the service provided to an offender vary to some degree from center to center. The DCOR has established operational standards and policies, but department officials recognize the need for each center to have a certain amount of flexibility. Staff capabilities, the needs of a constantly changing offender population, and the physical environment of a center all will have an impact on the type of program operated by a restitution center.

Selecting Participants

The requirements for admission to the residential restitution program vary slightly among the 10 centers. Most of these variations reflect the different conditions in the judicial districts where centers are located. One policy area in which they do not differ is that none of the centers accept offenders who have been convicted of committing a violent crime. In addition, due to the lack of facilities and drug treatment programs, a center will not admit an individual who has a history of drug addiction or alcohol abuse. A typical participant in the program is 19 years old, has been convicted of a property offense, and has been previously placed on probation for an earlier offense. The following are criteria used by the staff at many of the centers to identify offenders eligible to enter the program:

—Offender would have otherwise been incarcerated, had the program been unavailable,

—Offender has committed a property crime not involving the use of a weapon or any act of violence and has not been arrested for a violent crime for the preceding five years,

—Offender's crime involves the victim in a fashion whereby restitution can be made using a payment schedule compatible with the amount of restitution to be paid and the time he is to serve at the facility,

—Offender is 17 years of age or older,

—Offender is not regarded as a professional criminal (to be determined by his previous record of offenses),

—Offender's level of intelligence is not below a point (usually I.Q. 60) precluding employment and participation in the center's program, and

—Offender is willing to enter into a contract with the center establishing objectives which must be achieved before release.

In addition to the above criteria, center staff members employ several subjective indicators for screening out offenders who would not benefit from the restitution program or who would pose a threat to the community. At most district courts the screening process takes place between conviction and sentencing and is part of the pre-sentence investigation process conducted by probation personnel. Some offenders are eliminated from further consideration after this investigation because they do not meet the previously stated objective requirements of the center. Other cases may be excluded as inappropriate for the restitution program after discussion with the local district attorney and the

offender. The remaining cases are then presented to the court with a restitution recommendation and with a proposed restitution plan. The judge can accept, modify, or reject the restitution recommendation and levy another type of sentence. An offender who is sent to a restitution center is placed as a condition of probation and is under the jurisdiction of the court. If the offender fails to make satisfactory progress or repeatedly violates the center's rules, the offender can be returned to the court for probation revocation. In nearly every revocation case the offender is sent to a state prison.

In one judicial district, Cobb County, the selection process is slightly different, reflecting the preferences of the presiding judge. Program staff reviews the cases of all offenders after they have been sentenced to prison from the Cobb Judicial Circuit Court and while they are awaiting jail transportation to the prison. Based on an examination of the offender's record and interviews with the district attorney, defense attorney, probation personnel, family, employer, and the offender, the center staff members select for program participation the nondangerous offenders who can be safely supervised in a community facility environment. The judge is then asked to amend the sentence to probation conditional upon the offender successfully completing the Cobb Center program. This program has the added merit of insuring that restitution is used as a substitute for incarceration since participation is at the instigation of the DCOR, though the judge makes the final decision.

The Program Contract

Once accepted in a restitution center, the offender enters a two-week orientation period. During this time a contract is negotiated between the staff and the resident. The amount of restitution occasionally is determined between the prosecuting attorney and defense attorney and approved by the judge at the time of sentencing.

Rarely does a resident have a job prior to admittance to the restitution center. During orientation, obtaining a job is the primary task. Each center has access to daily job listings issued by the Georgia Department of Labor. In addition, each center has developed its own "job bank" from staff contacts with employers. The resident is referred to job openings. When accepted for employment, the amount of pay is determined. The contract that is developed between the staff and the resident addresses the division of the resident's paycheck. DCOR policy calls for the resident to pay $4 a day for room and board. This amount was set administratively in 1975 before the DCOR had any experience with the program. It has not been changed. It does not cover the cost of room and board. The contract determines the amount to be deducted from each paycheck for restitution. The contract includes an amount to be deducted for savings and an allowance for the resident's weekly expenses. The contract also designates the program activities the resident will participate in during his stay in the center.

All paychecks are turned over to center staff. The dollars are divided according to the contract. In general, restitution dollars will accumulate until the offender completes the program. The amount of restitution collected is then submitted to the court for transfer to the victim. On occasion, there is face-to-face encounter between the offender and victim and payment is made direct. This is an exceptional practice, however, and is done only when deemed a therapeutic experience for both victim and offender.

Another aspect of the contract is public service restitution. The resident agrees to serve a specified number of hours in public service in

addition to the monetary restitution. During fiscal year 1977, more than 8,000 hours were spent in public service restitution activities.

Some examples of community service activities in which offenders participate include: helping in mental hospitals and health centers, repairing the houses of elderly pensioners to prevent condemnation, maintaining the grounds for youth recreation groups, assisting civic and charity organizations in money-making projects, constructing playground equipment for church and neighborhood child care centers, collecting and repairing toys for needy children at Christmas, and conducting community clean-up projects.

Daily Life in the Center

The basic program in essentially the same for each center but there is variation. Some centers allow residents access to automobiles while others do not. The type of classes taught at the restitution centers generally depends on a center's access to volunteers.

A typical day for a resident begins with room cleaning. Breakfast is then served and the resident picks up a sack lunch. The resident will provide some service in the upkeep and maintenance of the center during the day. This might occur in the morning or after he returns from work. The resident then goes to work. In some centers residents drive their own automobiles to work; in others, the resident relies on public transportation. Upon return from the job, the resident may have some recreation time or may be assigned to a work detail. After the evening meal, the resident participates in an evening program of group discussion, counseling, classes, or tutorial sessions.

Evening classes may involve GED preparation, tutoring, or orientation to the world of work. The schedule for a particular resident is part of the negotiated contract.

A point system for reward and discipline also is employed in the centers. Points are received for room inspections, punctuality and attendance at assigned programs, and satisfactory completion of work details. Points are also earned by residents for meeting the obligations of their contracts. Points are deducted for disciplinary reasons, for not complying with contracts, or for an altercation with another resident. The points earned result in specified numbers of hours for weekend passes. Weekend passes range from 12 hours to an entire weekend. All residents on passes return to the center Sunday evenings. On an average, a resident will spend four months in the center before resuming regular probation supervision. Release to regular probation supervision is decided by the judge on the recommendation of center staff.

IV. ASSESSMENT

Importantly, citizens in the communities view the state-operated restitution centers as their own community programs. Judges see the centers as extensions of court services—a sentencing alternative to incarceration. Police have been cooperative and amicable. Even colleges see the center as a resource for intern learning experiences. Although the centers maintain low profiles, clearly center directors devote a good deal of time to cultivating and maintaining good relationships with key persons in the community. Many restitution centers view the judge as the key. "He can make us or break us," one center director said. Some centers serve more than one circuit court and in these instances, the director must maintain relationships with several judges. As noted earlier, the demand for new centers is greater than the funds available to the DCOR for this purpose.

Some centers maintain a structured community advisory group with quarterly meetings. This device provides information to the community and permits the center program to tap community resources.

State probation staff support the restitution centers, but some negative feelings by probation staff were reported. These persons criticized the centers for not keeping offenders long enough. When offenders return to regular probation supervision before restitution is fully paid, an additional assignment for the probation officer is to supervise the collection of restitution. Probation officers believe they have enough to do without these additional responsibilities.

How do you measure success? In general, the DCOR staff decided to reject the idea of recidivism, however defined, as a criteria of success.

The original goals for a residential restitution center were to:

(1) Reduce the projected increase in prison population by diverting eligible offenders to the restitution program,

(2) Involve citizen volunteers in the rehabilitation of offenders from their local community,

(3) Demonstrate various effective methods of offender restitution, and

(4) Determine the cost/benefit factors associated with a residential restitution program.

To a considerable extent, the objectives were met. In 1976, Georgia had the highest percentage of prison inmates in the 18-44 age bracket of all 50 states.[4] Over two-thirds of the admissions to the restitution centers successfully avoided prison incarceration. Although the prison population was not reduced, it would have increased even more without the centers. During the first year of operation, Cobb County, for example, reduced the number of prisoners sentenced to prison by 51 percent.

Volunteers were recruited, trained, and involved in center activities, but citizen involvement varied from one center to another.

During the 12-month period ending June 30, 1977, $128,437 in restitution was paid to victims. The other method of offender restitution used to date, community service, has resulted in 8,372 hours of work. It is difficult to put a value on this time, but at the minimum wage of $2.65, it totals $22,185.

The cost/benefits are more difficult to assess. The per-diem cost of

prison incarceration and center residency is essentially the same, excluding capital construction costs for prisons and rental fees for the centers. If these figures were added to the per-diem cost, the centers would be considerably cheaper. Another cost factor is the turnover of population in a center compared to the turnover in a prison. In a center, the average stay is about four months. For similar offenses, prison stays are at least 12 months, and average closer to 15 months before parole. Thus, total costs of care per individual are much cheaper for the center than for the prison.

There are other cost/benefits. The offender is employed, paying taxes, and supporting his family. There is a savings in welfare costs. A total of $164,472 was paid in state and federal taxes for the 12-month period ending June 30, 1977. Income to the state in the amount of $206,880 was paid during this period for room and board. Further, during this same period of time, an estimated $208,922 was spent in the community by residents for clothing, transportation, recreation, and personal items (see Table 4).

The DCOR estimates that 35 percent of new admissions to the Georgia prison system meet the objective criteria for entrance into a restitution center and the state does plan to expand the number of restitution centers.

Transferability

The Georgia restitution center concept should have wide appeal to other states which have overcrowded prisons and are looking for alternatives to prison incarceration. Even with county-operated probation departments, a state could subsidize county-operated restitution centers as a strategy to reduce population. It is important, however, to remember that the residential restitution program is offender-focused rather than victim-focused.

In the fall of 1977, the second National Restitution Symposium was held in St. Paul, Minnesota. Several speakers at this conference warned of the undesirable effect of "widening the nets" with restitution programs. Kenneth Schoen, Director of the Minnesota Department of Corrections, cautioned that "restitution may have the unintended effect of 'widening the net' of control by the system over the offender." In Georgia, if a resitution center is used as an alternative to a suspended sentence or probation, this would be an example of "widening the net" of control. Thus, of major importance in any state's consideration of restitution centers are built-in safeguards against inappropriate intake into a residential setting when alternative sanctions are less expensive and more appropriate to the offense.

The Georgia experience has illustrated that the best safeguard against inappropriate intake into restitution centers is an intake decision which is made after the judge has already sentenced the offender to a period of time of imprisonment. The Cobb County Restitution Center is illustrative of this practice. Sentenced prisoners in the county jail waiting to be picked up and transferred to the prison comprise a pool of potential residents for the restitution center. The center staff members interview prisoners, study case files with particular attention to the pre-sentence investigation report compiled by the probation staff, and, when deemed appropriate for entry into the restitution center, make recommendations to the judge who sentenced the prisoners. The judge rarely disagrees with such recommendations and new court orders are issued changing sentences to placement in the restitution center as a condition of probation. Again, Georgia's Cobb County pro-

TABLE 4
RESTITUTION CENTER OFFENDER CUMULATIVE EARNINGS AND DISBURSEMENTS*
July 1976 - June 1977

Center	Gross Earnings	Taxes and Other Deductions	Net Earnings	Room and Board Assessments	Food, Clothing, Medical, Personal Items, Transportation	Mandatory Savings	Financial Assistance to Families	Court Ordered Restitution Fines: Monetary Restitution and Fines	Court Ordered Restitution Fines: Compulsory Public Service (Hours)
Albany Restitution Center	$110,737	$15,789	$94,948	$12,526	$41,572	$4,597	$5,175	$33,882	410
Athens Adjustment /Restitution Center	108,667	18,902	89,764	26,891	15,671	9,149	3,417	8,178	2,178
Atlanta Restitution Center	60,165	10,154	50,011	20,783	10,675	2,730	3,728	3,809	1,650
Augusta Adjustment/ Restitution Center	116,429	24,405	92,024	27,459	27,959	22,399	5,663	8,844	12
Cobb Adjustment/ Restitution Center	128,350	19,798	108,552	34,735	15,796	5,775	25,707	16,433	1,240
Gainesville Adjustment Restitution Center	110,039	21,153	88,885	18,625	17,512	6,646	4,223	9,899	263
Gateway Adjustment/ Restitution Center	75,595	13,774	61,822	28,916	11,916	2,240	1,700	1,302	4
Macon Restitution Center	99,439	20,817	78,623	21,988	33,689	4,107	8,652	13,424	848
Rome Restitution Center	116,112	19,680	96,432	14,957	34,132	4,750	890	32,666	1,767
TOTAL	$925,533	$164,472	$761,061	$206,880	$208,922	$62,393	$59,155	$128,437	8,372

*Rounded to nearest dollar. No figures presently available for Thomasville.
Source: Georgia Department of Corrections and Offender Rehabilitation.

gram insures that judges do not use the restitution program as an alternative to probation. There is some indication that in some of the other districts offenders who would otherwise be placed on probation sometimes are placed in restitution centers. There are other economic reasons for insuring that restitution is not used as a substitute for probation. In a paper prepared two years ago, Bill Read of the General Services Division of the DCOR explained:

> The importance of diversion certainty for a residential diversion-from-incarceration program can easily be seen by considering a few basic cost figures. The annual cost of operating a 30-resident restitution center has proven to be approximately $116,000.* The annual cost of supervising 30 offenders on probation...($205/offender/year) is $6,150. The annual cost of incarcerating 30 offenders ($4,045/offender/year) is $121,350. It is, therefore, quite clear that a residential restitution center cannot be basically cost-effective if it serves offenders diverted from probation. For example, a restitution center serving 50 percent divertees from probation and 50 percent divertees from incarceration would have a basic comparative cost-effectiveness of $116,000 versus $63,750 ($3,075 for field supervision cost plus $60,675 for incarceration cost). In short, the restitution center would not be cost-effective. Therefore, a primary objective in diversion from incarceration programs is an offender selection method which guarantees 100 percent diversion certainty (i.e., post-sentence selection method using either a judicially amended sentence or a conditional parole).[5]

One of the major cost savings of Georgia's restitution centers is the short-term leasing of facilities in contrast to capital cost outlays in purchasing or constructing a community residential facility. Uneconomical tourist courts located on state highways now bypassed by interstate highways are to be found in most communities of any size. The Georgia experience has demonstrated high utility of these tourist courts as well as downtown hotels.

Although per diem costs in Georgia between prisons and restitution centers are about the same, the shorter turnaround time of an individual offender in a restitution center also represents a cost savings in contrast to the longer amount of time an incarcerated offender spends in prison. Mr. Read also mentioned this aspect of restitution centers in his previously cited paper:

> The importance of the offender turnover rate can also be easily seen by again considering the previous basic cost figures. If we make the fair assumption that most property criminals who are sentenced to prison will normally serve a minimum of 12 months, it is clear that a restitution center can dramatically increase its basic cost-effectiveness by increasing its turnover rate. For example, since the annual cost of operating a 30-resident center will remain essentially constant, a center with an average turnover rate of six months can serve 60 offenders in 12 months at a cost of $116,000. However, assuming 100 percent diversion from incarceration, the comparative cost of incarcerating these 60 offenders for 12 months is $242,700. Likewise, comparative figures for a center with an average three-month turnover rate are $116,000 versus $485,400 for incar-

*Present restitution center costs are projected at $200,000 annually.

ceration. Obviously then, an increased turnover rate represents a substantial increase in cost-effectiveness. Thus, another primary objective of a residential restitution program is an offender selection method which allows program staff to be somewhat selective of referral eligibles. In this way, program staff can use priority selection criteria which would operate to increase the total percentage of offenders who could be stabilized relatively quickly and could finish making their restitution on a non-residential basis.

The Georgia restitution centers have been successful in attracting resources from other state and federal programs for both core services and supplemental resources supported by state appropriations. VISTA volunteers, CETA employees, and library services are just a few examples of some of these resources. Volunteers are valuable in the program. Service clubs are attracted to sponsor certain aspects of the restitution program. These resources also exist in other states.

The key to the successful operation of a correctional residential facility is community acceptance. Key community leaders, particularly judges, must be involved in the beginning stages of planning for a restitution center. The restitution center needs to be viewed by community leaders as *their* program. And by making the program voluntary, the state corrections agency avoids trying to implement a restitution center in a community where it is not wanted. Additionally, the public service restitution aspect of the program has large appeal to community agencies, organizations, and political leaders. The concept of restitution itself has appeal to persons with both conservative and liberal political views. The former like restitution as a means to secure justice for the victim; the latter also appreciate its quality as an alternative to incarceration. Although for different reasons, it would seem that in selling the concept of a restitution center to a community, the concept itself goes a long way toward selling itself. In Georgia, in several communities with restitution centers, there is now a demand for a center for women.

Another lesson learned from the Georgia experience is that the state agency must allow each center flexibility in its operations and procedures as each community differs, political structures vary, judges have different views as to how offenders should be treated, and job markets are not the same. For the center to be adopted by the community as its own, the center program must reflect the uniqueness of that particular community. The availability of employment opportunities is a key factor in deciding on a site location of the center. Without the income derived from employment, offenders' restitution to victims is not possible. Thus, placement of restitution centers in remote areas may not be advisable. Of course, if public transportation is not available, alternative transportation modes must be considered. Georgia officials restrict travel to jobs to within the metropolitan area where the center is located. In Atlanta, this sometimes means a distance of 15 miles; in smaller towns, much less.

The need to find jobs for offenders; the need to locate other community resources such as volunteers, assistance from service clubs, library services, counseling; and the need to work closely with community leaders, especially judges, are important considerations in staffing residential restitution centers. Georgia's experience suggests that the center directors should have community organization skills, and such skills are probably more important than penology/criminal justice expertise. In this connection, Georgia-type restitution center advisory boards can also be quite useful.

Obviously, a state interested in establishing restitution centers must

determine if enabling legisiation is required or if existing statutes allow for establishment of restitution centers. In recent years, most states reviewing their criminal codes specifically have listed restitution as a legitimate sanction. Residential centers that emphasize restitution as a key component of their programs seldom are specified in the statute. Many of the statutes, however, are broadly conceived and can easily be construed to include a residential center.

Conclusions

Restitution is an increasingly popular concept both as a sole sanction and as a condition of probation. Residential centers are not necessary for a restitution program, but those states with prison overcrowding might consider this alternative. Residential centers are viewed as an alternative to incarceration and a cost-effective response in reducing prison population.

FOOTNOTES

1. Other states reporting restitution programs are: California, Colorado, Connecticut, Florida, Iowa, Minnesota, Mississippi, Ohio, Oklahoma, South Dakota, Tennessee, Utah, and Washington. For the most part, these restitution programs are not combined with residential programs. In the past [illegible], three more states passed statutes allowing restitution—North Carolina, Texas, and Virginia.

2. *Operation Performance: Six Year Action Plan for Corrections* (Executive Summary), Georgia Department of Corrections and Offender Rehabilitation, July 1975, p. 2.

3. *Prison Population and Policy Choices,* Vol. I, ABT Associates, National Institute of Law Enforcement and Criminal Justice, 1977, p. 27.

4. Ibid.

5. A paper on the Georgia Restitution Center Program, prepared for the Southern Conference on Corrections, February 25-27, 1976, Tallahassee, Florida.

When criminals repay their victims:

a survey of restitution programs

by Joe Hudson, Bert Galaway and Steve Chesney

Restitution to crime victims is an ancient concept that is receiving new attention in the criminal justice system today. The idea itself, of course, was part of a variety of pre-modern legal systems,[1] and historically its proponents include such famous writers as Sir Thomas More, Jeremy Bentham, Herbert Spencer, Raffaele Garofalo and Margery Fry.[2]

Recently, the idea has received endorsement from the National Advisory Commission on Criminal Justice Standards and Goals,[3] the American Bar Association,[4] The American Law Institute,[5] The Model Sentencing Act,[6] the 1972 Annual Chief Justice Earl Warren Conference on Advocacy in the United States,[7] and the Law Reform Commission of Canada.[8] And two states, Iowa and Colorado, have already enacted laws emphasizing the importance of restitutive sanctions. In 1974, Iowa made restitution a condition of a deferred sentence or probation,[9] and in 1976, Colorado said courts could order restitution in conjunction with fines, probation, imprisonment or parole.[10]

Most important, perhaps, the idea of restitution has become a reality through formal restitution programs in a number of places across the country. The prototype for many restitution programs, the Minnesota Restitu-

1. Nader and Elaine Combs-Schilling, *Restitution in Cultural Perspective* in Joe Hudson, RESTITUTION IN CRIMINAL JUSTICE, (St. Paul, Minnesota Department of Corrections

2. Thomas More, UTOPIA 23-24, (J. C. Collins

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3. Advisory Commission on Criminal Justice and Goals, CORRECTIONS 150 (Washington: Government Printing Office, 1973).

4. Bar Association Project on Standards Justice, STANDARDS RELATING TO SENTENCING ALTERNATIVES AND PROCEDURES (New Institute of Judicial Administration, September, STANDARDS RELATING TO PROBATION (New Institute of Judicial Administration, 1970)

5. MODEL PENAL CODE, *Article on Suspended Sentences, Probation and Parole*, 1962, § 301.1 (2) (h).

6. Council of Judges of The National Council on Crime and Delinquency, *Model Sentencing Act, Second Edition*, 18 CRIME AND DELINQUENCY 356-359 (October, 1972).

7. Annual Chief Justice Earl Warren Conference on Advocacy in the United States, A PROGRAM FOR PRISON REFORM 11 (Cambridge, Massachusetts: Roscoe Pound-American Trial Lawyers Foundation, 1972).

8. Law Reform Commission of Canada, Working Paper No. 3: The Principles of Sentencing and Dispositions (Ottawa: Information Canada, 1974) at 7-10; Working Papers Nos. 5 and 6: Restitution and Compensation; Fines (Ottawa: Information Canada, 1974) at 5-15.

9. Senate File 26 of the 65th General Assembly, 1973, State of Iowa.

10. COLORADO CRIME VICTIMS RESTITUTION ACT, Second Regular Session, Fiftieth General Assembly, 1976.

tion Center, was established in 1972 by the Minnesota Department of Corrections.[11] The residents, who have all committed property crimes, become part of the program only when they have completed four months of their sentence in prison. They live in the center, work in the community and make the agreed-upon restitution. In 1975, Georgia opened four restitution shelters for probationers and parolees.[12]

We recently completed a survey of nineteen restitution programs in the United States and Canada, mainly through telephone interviews. We do not know the total number of restitution programs, but our telephone survey clearly did not reach all of them. Thus, the information we gathered reflects tendencies which may or may not apply to all such programs. (We will also present information from a recent study of restitution as a condition of probation.)

We think that unless critical attention and careful investigation is given to the most appropriate way to implement restitution, the classes of offenders from whom to require it, and its effects on victims and offenders, this practice could become another in a long line of criminal justice sanctions which promises more than it delivers.

At least four major questions should be asked about any contemporary restitution program: What should be the nature of the restitution? How should the amount of restitution be determined? What should be the relationship of restitution to other criminal justice sanctions? And should the victim be involved in the restitution decision? This article will address each of these questions in turn.

Nature of restitution

Two areas of confusion arise in defining a restitution sanction—first, confusion between restitution and victim compensation and, second, confusion about the various forms which restitution may take. Victim compensation usually involves a state-administered form of insurance designed to provide at least partial reimbursement for a specified class of crime victims for their losses. The arrest or conviction of an offender is not a prerequisite for compensation payments, and such schemes usually operate outside the criminal justice system.[13] Restitution, as distinct from victim compensation, involves the offender paying the victim, either directly or through third parties, as redress for damages.

Restitution may take diverse forms. Unlike victim compensation schemes, a restitution program provides benefits to crime victims. But restitution is generally not an efficient mechanism for providing compensation to crime victims because most crimes are not solved by an arrest, and many do not result in convictions. Even when convictions are secured, restitution may not be an appropriate sanction. In short, restitution is likely to provide compensation for only a very limited number of crime victims.[14]

Most of the operational restitution programs we surveyed appear to recognize this fact. Ten of the nineteen programs stated that their primary purpose was offender rehabilitation, and only four indicated that providing reparations to crime victims was their major aim.

While restitution most commonly takes the form of money, many programs also use service restitution, in which offenders work for either the crime victim or larger community. Community service restitution is more common than direct service restitution by the offender to the crime victim. Nine of the nineteen restitution programs estimated that community service was required in at least 80 per cent of all service restitution cases.

Community service restitution schemes commonly require the offender to provide services to public or private social welfare agencies. Typical services include repairing homes for the elderly, working with youth in organized recreational pro-

11. Joe Hudson and Burt Galaway, *Undoing the Wrong*, 19 SOCIAL WORK 313-318 (May 1974).

12. Bill Read, *The Georgia Restitution Program*, included in Hudson, *supra* note 1 at 216-227.

13. Joe Hudson and Burt Galaway, editors, CONSIDERING THE VICTIM: READINGS IN RESTITUTION AND VICTIM COMPENSATION (Springfield, Illinois, C. C. Thomas, 1975.)

14. John A. Stookey, *The Victim's Perspective in American Criminal Justice*, in Hudson, *supra* note 1 at 4-12.





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and volunteer counselling work with drug abuse programs. Direct service restitution to victims could take several forms, such as a vandal repairing the damage he did.

Amount of restitution

Restitution programs usually require some procedure for determining the amount of restitution to be made. An obvious problem in using service restitution is equating the value of the services with the damages done. This is most often accomplished by using minimum wage rates or the hourly wages the offender might command in legitimate employment.

A second problem is assessing the accuracy of the damage claims reported by victims. Programs commonly report concern that victims may inflate their claims and almost unanimously note problems in determining and validating the amount of restitution to be made. This concern is shared by offenders and, in the case of juvenile offenders, their parents.[15]

While victims may inflate their losses, however, offenders may tend to underestimate the extent of loss, either out of ignorance or self-justification. A recent study of juvenile offenders found that the damage estimates of parents, victims probation officers and police officers were relatively consistent, but the juveniles themselves tended to report substantially lower loss estimates.[16]

Two procedures are commonly used to determine the required amount of restitution. One is to use a third party such as a probation officer, judge or other criminal justice official to weigh the different claims and arrive at a fair determination. The other is to bring the victim and offender together in a negotiation process with an agent of the criminal justice system acting as a mediator to arrive at a loss figure. The Minnesota Restitution Center has had considerable success in directly involving victims with offenders in face-to-face negotiations over the extent of damages. Once the parties concur, they develop a written agreement and if the parole board approves it, the offender is released on parole to the program.[17]

In addition to the question of determining the amount of damages, there is the question of whether 100 per cent restitution should always be required. Are there circumstances in which the required restitution should be less than the total damages? Or are there circumstances in which it may be fair to require restitution exceeding the actual amount of damages?

Most existing programs appear to favor full restitution and try to equate the restitution with the actual extent of damages.

15. Burt Galaway and William Marsella, An Exploratory Study of the Perceived Fairness of Restitution as a Sanction for Juvenile Offenders (paper presented at the Second International Symposium on Victimology, Boston, Massachusetts, September, 1976.)

16. *Id.* at 18.

17. Hudson and Galaway, *supra* note 13.

How one judge uses alterna

In states that lack formal restitution programs, some judges promote a similar [idea] through "alternative sentencing" in which the offender must help others as a condition of probation. Here's one example.

In an appropriate case, alternative sentencing can be imaginative and just.

In an embezzlement case, for example, a defendant in San Francisco had taken funds where between $1000 and $4000 from the government by falsifying overtime claims. He resigned a career civil service position as a result of the conviction. The court ordered that his sentence be suspended and that he be placed on probation for five years under these conditions:

1. He must pay a fine of $5000. (He did by selling much of his furniture and household furnishings.)

2. In lieu of one year in the county jail he must work four hours a day, five days a week for one year at St. Anthony Dining Room. (He did.)

St. Anthony Dining Room is run by the gentle and compassionate Franciscan priest the Reverend Alfred Boeddeker, and it

...udge us... ...ernative sentencing

by Francis McCarty

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...ed more than 12 million free meals to ...people over the last 26 years. More than ...turkey dinners were served on Thanks... Day last year, and 4500 more on ...mas Day. It is called "The Miracle on ... Street" because it never runs out of

...endants assigned there have worked as ...s, handymen, dishwashers, waiters ...ooks. One did bookkeeping and ac...ing. "It is a good lesson," said the ...end Boeddeker. "It's better than let... them sit in jail."

...er institutions to which defendants ... been assigned for community service ...he Senior Citizen Center, the Youth ...ance Center, the Veterans' Hospital, ...ighthouse for the Blind, the Recrea... Center for the Handicapped and the ...gency Hospital.

...s difficult to set down exact and precise ...elines for the use or nonuse of alterna... sentencing. The judge must make his ...sion in relation to the particular facts of ...se. Obviously, crimes of violence and ...s involving the use of lethal weapons ...ot proper subjects of such sentencing.

The value of such sentencing is fourfold.

1. It is a benefit to the people served, such as the poor, the ill, the severely handicapped and the mentally retarded.

2. It makes the defendant realize that many are less fortunate than he. He serves his fellow man.

3. It saves taxpayers the cost of food, clothing, bedding, cleaning and medical services at the county jail, where the daily cost of maintaining a prisoner is about $27.

4. Because of these benefits, it makes for a closer attainment of pure justice—the ultimate objective of our judicial system.

Alternative sentencing does not make sentencing easier, but it could make punishment a more worthwhile experience for the offender and a less costly one for society. And through alternative sentencing, the offender can return to society knowing that in some sense his efforts entitle him to reassume his place there.

Properly used, imaginative sentencing is good for all of us. □

FRANCIS McCARTY is a judge of the San Francisco Superior Court.

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...seventeen programs responding to an ...concerning full and partial restitution, ...een stated that full restitution was re...ed for more than 80 per cent of the ...ly admitted offenders. Only one pro... demanded partial restitution in the ...rity of cases, and three programs indi...d that roughly equal proportions of full ...partial restitution obligations were re...ed.

...uity theorists in social psychology gen... support the use of full restitution. ...reason that wrongdoers experience an ... "distress" at having benefited from an ...st act. People relieve this distress either ...ompensating their victim or by justify... their crime. Experiments show that peo...re more likely to make restitution when ... can give back an amount equal to what they have taken.[18] If they can give back only an excessive amount (or an insufficient amount), they tend to justify their original conduct.

A different perspective on this issue has been raised by Stephen Schafer[19] and Kathleen Smith[20] who have recommended that

18. Elaine Walster, Ellen Berscheid, G. William Walster, *New Directions in Equity Research*, 25 JOURNAL OF PERSONALITY AND SOCIAL PSYCHOLOGY 151 (1973).

19. Stephen Schafer, COMPENSATION AND RESTITUTION TO VICTIMS OF CRIME 117–129 (Montclair, New Jersey: Patterson Smith, 1970); *The Proper Role of a Victim-Compensation System*, 21 CRIME AND DELINQUENCY 45 (January, 1975).

20. Kathleen T. Smith, A CURE FOR CRIME: THE CASE FOR THE SELF-DETERMINANT PRISON SENTENCE, (London: Gerald Duckworth and Company, 1965); *Implementing Restitution Within a Penal Setting: The Case for the Self-Determinant Sentence*, in Hudson, *supra* note 1 at 228–245.

restitution should exceed the damages done. Schafer has advocated the explicitly punitive use of restitution on the grounds that restitution as the sole sanction might allow some serious offenders to purchase their freedom with a relatively mild sanction. Similarly, Kathleen Smith's concept of the self-determinant sentence involves a restitution requirement supplemented by a discre-

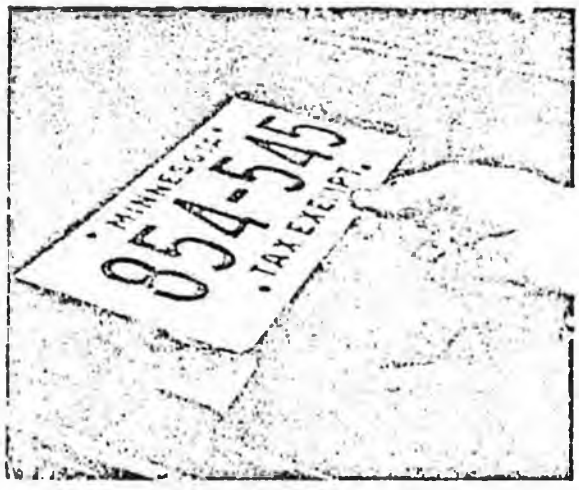

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PHOTO BY BILL POWERS

tionary fine imposed by the court. To the extent that they are used in conjunction with restitution, fines have the effect of requiring excessive restitution—the offender is required to repay both the victim and society.

It can be argued, however, that in some cases where exceedingly large dollar losses resulted from the offense, full restitution may impose such undue hardships as to be unjust. Several policy proposals and standards have recommended partial restitution on such grounds. Clearly, however, most of the available evidence concerning the amount of loss resulting from criminal victimizations suggests that full restitution would not impose an undue hardship for most offenders. For example, the 1974 Uniform Crime Reports indicates that the average dollar loss in a burglary was $391 while the average value of property stolen in a theft was $156.[21]

A related issue concerns the specific criminal offenses for which the individual is to be held officially responsible. Should restitution be limited to offenses for which the offender was found guilty? If so, restitution might not cover a wide range of offenses settled by plea bargaining or ones that do not proceed through adjudication for whatever reason. From the victim's perspective, at least, the result would be partial restitution.

Alternative sanctions

What is the appropriate relationship of restitution to other criminal justice sanctions? To what extent does restitution interfere with the use of other sanctions and objectives of the criminal justice system? Available evidence suggests that while probation officers and judges in Minnesota tend to think restitution helps rehabilitate the offender, there is concern that restitution may reduce the offender's ability to care for himself and family.[22] In this instance, restitution may work against the rehabilitative objectives of corrections programs. But since offenses against property result in such limited damages, it seems legitimate to ask whether in most cases restitution is a sufficiently severe sanction.

Although restitution is occasionally imposed as a sole sanction, most jurisdictions appear reluctant to use it except in conjunction with other sanctions and treatments. The survey of Minnesota probation practices suggests that victims desire sanctions in addition to restitution.[23] Similarly, Galaway and Marsella found that when given a choice of a single sanction, victims, probation officers and police overwhelmingly preferred supervised probation to restitution. When asked to combine sanctions, the respondents overwhelmingly chose supervised probation with restitution.[24]

Similarly, most operational restitution programs tend to add restitution to existing sanctions or treatments. For example, restitution is most commonly employed in conjunction with supervised probation as a condition of pretrial diversion programs or as a condition of participation in a resi-

21. CRIME IN THE UNITED STATES, 1974 (Washington, D.C.: U.S. Government Printing Office, November, 1975) at 29, 31.

22. Steven L. Chesney, *An Assessment of Restitution in the Minnesota Probation Services*, included in Hudson, *supra* note 1 at 159–161.

23. *Id.* at 165.

24. Galaway and Marsella, *supra* note 15 at

Restitution programs surveyed

Program	*Level of system*	*Clients*	*Type of program*
estitution Center Georgia	Probation and parole	Adults only	Residential
as an Alternative minal Warrant New York	Pretrial diversion	Usually adults only	Nonresidential
estitution Center Georgia	Probation and parole	Young adults (ages 17-25)	Residential
Accountability the City of Seattle Washington	Pretrial diversion and probation	Juveniles	Nonresidential
Arbitration Program Maryland	Pretrial diversion	Juveniles	Nonresidential
estitution Center Georgia	Probation and parole	Adults only	Residential
a Restitution Center is, Minnesota	Parole	Adults only	Residential
secutor's Program Ohio	Pretrial diversion	Adults	Nonresidential
ta Restitution Center Alberta	Pretrial and probation	Adults only	Nonresidential
t, Attorney's ers on Project Arizona	Pretrial diversion	Adults	Nonresidential
n and Effective from the Criminal System Milwaukee,	Probation and parole	Adults	Nonresidential
on in Probation ent es, Iowa	Probation	Adults	Residential and nonresidential components
on Work Program City, Utah	Pretrial diversion and probation	Juveniles	Nonresidential
Carlton Restitution Ottawa, Ontario	Provincial jails	Adults	Residential
estitution Center orgia	Probation and parole	Adults	Residential
Circuit Court Assistance Program South Dakota	Pretrial diversion and probation	Adults and Juveniles	Nonresidential
Assistance Program Nevada	Pretrial diversion and probation	Juveniles	Nonresidential
Offender Reconcilia- ect Kitchener, Ontario	Pretrial diversion and probation	Juveniles and Adults	Nonresidential
on County Restitution sboro, Oregon	Probation and parole	Adults	Residential

community-based corrections program. In each case, the usual pattern is to impose participation in some form of treatment activity such as group or individual counseling in addition to the restitution requirement.

The relative benefits of restitution as a sole sanction or in conjunction with other sanctions is an important question requiring serious examination. The increasing cost and questionable effectiveness of presently available criminal justice sanctions suggest the need to explore alternative sanctions for specified classes of offenders. Restitution may be one practical alternative.

The victim's role

Another set of questions concerns the appropriate role of the victim in a restitution scheme. Some approaches avoid making the victim part of the decision-making process for restitution; others encourage participation.

In the Minnesota probation services, victims generally do not become involved with offenders in restitution schemes, and in a substantial number of cases, victims were not even aware that they would receive restitution.[25] The probation officer apparently arranged for restitution without the victims' knowledge and, when ultimately collected, the restitution would be forwarded to the victims. Of the nineteen restitution programs we surveyed, only five usually involved the victim with the offender in developing a restitution agreement. Nine programs stated that such involvement occurred only occasionally, and five stated that it never occurred.

Data from the study of Minnesota probation practices indicate that direct victim-offender contact is overwhelmingly discouraged by judges on the grounds that such a practice would be against the wishes of the victims or might lead to further victimization.[26] Contrary evidence can be found to suggest that personal contact between victim and offender can minimize the offender's use of rationalization concerning the harm that he has done.[27] In short, [illegible] arguments can be made for or against [illegible] involvement in restitution programs, [illegible] empirical evidence exists to support [illegible] position. It is known, however, that [illegible] restitution programs emphasizing [illegible] offender contact and involvement in [illegible] development of restitution agreements [illegible] major problems have been reported. No [illegible] gram forces victim involvement, alth[illegible] we do not know the extent to which [illegible] may feel pressure from the program to [illegible] with the offender.

Another question concerns the weight [illegible] be given the views of the victim on whether [illegible] the offender should be offered an opportunity to participate in a restitution plan. [illegible] becomes particularly important if restitution [illegible] is perceived as a less severe sanction than [illegible] the alternative. For example, the [illegible] County Attorney's Adult Diversion Project [illegible] in Tucson has instituted the principle [illegible] victim approval as a prerequisite for the use [illegible] of restitution.[28] Apparently, victims [illegible] veto the admission of offenders into the [illegible] program. It is not clear, however, whether [illegible] cases likely to be vetoed are screened out [illegible] program staff.

Our survey of restitution programs [illegible] that only four programs allowed victims [illegible] exercise veto power. In general, then, the [illegible] pattern is one of not providing victims [illegible] the power to veto and substituting community service restitution in those cases where [illegible] victims do not wish to receive restitution [illegible] be otherwise involved.

To what extent will the fairness and appropriateness of the restitution requirement vary with the nature of the victims? Should restitution be limited to situations in which the victim is an individual, or should it [illegible]

25. Chesney, *supra* note 22.
26. *Id.* at 63.

27. Steward Macaulay and Elaine Walster, *Structures and Restoring Equity*, 27 JOURNAL OF SOCIAL ISSUES 173 (1971). Ellen Berscheid and Elaine Walster, *When Does a Harm-Doer Compensate a Victim?* 6 JOURNAL OF PERSONALITY AND SOCIAL PSYCHOLOGY 435 (August, 1967); J. L. Freedman, J. Wallington, and E. Bless, *Compliance Without Pressure: The Effect of Guilt*, 7 JOURNAL OF PERSONALITY AND SOCIAL PSYCHOLOGY 117 (October, 19[illegible]

28. David A. Lowenberg, Pima County Attorney's Adult Diversion Project's Second Annual Report, October, 1973 through September, 1975, (unpublished research report, October 29, 1975).

...d when victims are large busi... insurance companies? If so, is ...anger that the restitution require... lead to the victimization of the ...

...Nader has expressed concern that ... will perpetuate a pattern of "in...donial imperialism" in which indi...ffenders are held accountable for ...restitution to corporate victims ...any corresponding requirement that ...offenders make restitution to indi...victims.[29] The obvious solution to ...ractice, of course, is to make both ...ties responsible for making good ...nal damages.

...ome of the relative extent to which ...im is functionally responsible for ...timized is receiving increased at... and raises further questions about ...of the victim in a restitution scheme. ...e past several years, a considerable ...of evidence has accumulated to sug...t the criminal act can most fully be ...ood as resulting from the behavior of ...tim and offender.[30] Either through ...ce or culpability, individuals may ... their own victimization. To what ...should such considerations influence ...s regarding the amount and type of ...on to be made?

...question has been largely neglected ...ational restitution programs; seven...nineteen programs said they made no ...ent of victim responsibility in arriv... either the form or the amount of ...d restitution. Similar findings were ...d in the survey of Minnesota proba...tices.[31]

...mplications of victim culpability are ...t. It is reasonable to suggest however ...in situations provoked by victims, ...s choose from among a variety of ...ve behaviors and should therefore be held accountable for the behavior that is chosen.

Conversely, program managers might consider using the concept of contributory negligence to permit reduction of restitution in relation to the culpability of the victim. Victim compensation programs generally provide that compensation payments can be decreased or denied on the basis of victim culpability.[32] At the same time, however, administrators of compensation programs note great difficulty in assessing culpability and report few denials or reductions of payments on this basis.

In this article we have identified and discussed several major questions arising from the use of restitution within criminal justice programs: the nature of the restitution sanction, the amount of restitution to be ordered, the role of the victim in a restitution scheme, and the relationship of restitution to other criminal justice sanctions. Gaps are apparent in both the operational use of the idea and in the evaluation and assessment of it. Given the limited amount of research evidence available, we simply lack an adequate basis for assessing the utility of the idea.

While a host of program and research needs are apparent, several areas deserve immediate attention. First, we must clarify what we mean by restitution. In particular, we need case studies of how restitution is implemented in different programs. Second, we need information and assessment of the use of restitution as the sole sanction, not supplemented by other treatments and criminal justice sanctions. Finally, we must develop ways in which victims can participate in restitution schemes and assess the benefits of their involvement for the victim, the offender, and the system of justice. □

...and Combes-Schilling, *supra* note 1.

...n E. Wolfgang, PATTERNS IN CRIMINAL ... Philadelphia: University of Pennsylvania ... David J. Pittman and William Handy, ... *Criminal Aggravated Assault*, JOURNAL OF ... LAW, CRIMINOLOGY AND POLICE SCIENCE, ...ober, 1964); Menachem Amir, *Patterns in ...ape* (Chicago: University of Chicago Press, ...

...ssley, *supra* note 25 at 159–160.

32. Burt Galaway and Leonard Rutman, *Victim Compensation: An Analysis of Substantive Issues*, in Hudson and Galaway, *supra* note 13 at 127–128.

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BURT GALAWAY is an instructor in the School of Social Development at the University of Minnesota at Duluth.
STEVEN CHESNEY is a research analyst for the Minnesota Department of Corrections.

A new program helps offenders "make good" the losses they have caused—and regain their place in society.



PHOTO BY BILL POWERS

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osses they

How restitution works in Georgia

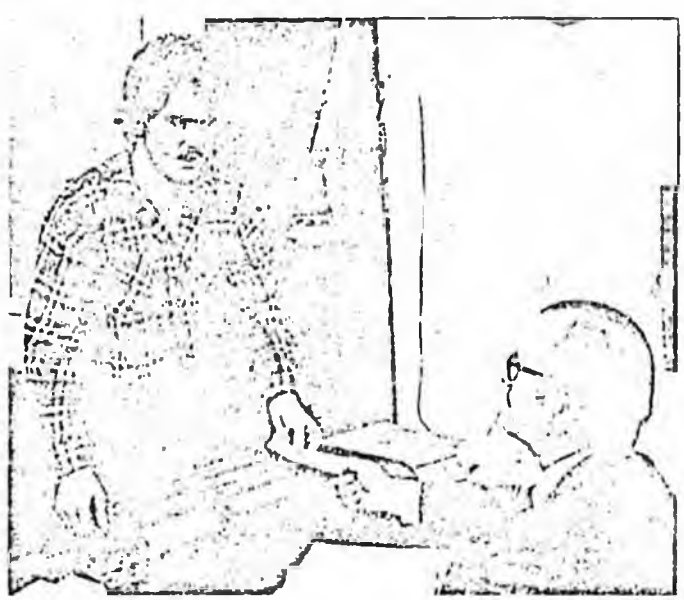
By Bill Read



most states, Georgia has traditionally
the restitution sanction through un-
ured local programs. Restitution in
gia has most frequently been used as a
tion of probation or in connection with
pended sentence and is administered
by the judiciary and the Adult Proba-
Division.

Although recommendations regarding the
opriateness of restitution are often
by district attorneys and probation
visors in presentence investigation re-
the judiciary has historically received
or no state-level guidance in making
ution decisions. Before 1975 there were
ormal programs within which to use
ution.

In the last two years, the Georgia Department of Corrections/Offender Rehabilitation (DCOR) has begun to formally structure the use of the restitution sanction and to experiment with residential and nonresidential restitution programs. In 1975, DCOR initiated a two-year, LEAA-funded, pilot residential restitution program designed to divert offenders from incarceration. This program allows courts and the parole board to require



A Minnesota offender signs a restitution ment.

An offender in one of Georgia's residen- estitution centers turns in his paycheck to enter's business manager. The offender s a weekly living allowance and the busi- manager supervises regular restitution ents to victims via check. The rest of the eck goes for room and board at the center, support and savings.

offenders to make financial and/or community service restitution while living at the restitution center under close supervision.

This program proved so popular both with citizens and criminal justice personnel that the Georgia legislature voted—in a year of austerity budgeting—to assume state funding of the program beginning in fiscal 1977. Most of the DCOR's other residential community facilities have since been modified to incorporate the restitution program policies and procedures developed by the pilot grant.

The second restitution program, also funded by a two-year LEAA pilot grant, is intended to develop a formal, research-based, nonresidential restitution system. This program draws heavily upon experience gained from the residential program. It is applicable to a wide variety of offenders, it can be implemented at any time from presentence to post-incarceration, and it can be easily expanded in Georgia or replicated in other states.

Residential restitution

The original two-year discretionary grant established residential centers in four metropolitan areas: Albany, Atlanta, Macon and Rome. The goals of the program were (1) to reduce the prison population by diverting eligible offenders to the restitution program; (2) to involve citizen volunteers in the rehabilitation of offenders from their own community; (3) to demonstrate effective methods of offender restitution; and (4) to determine the cost-benefit factors of residential restitution.

Offender eligibility: The program is open to "any male offender whom the judiciary or the parole board would normally incarcerate in lieu of program participation and for whom restitution would be appropriate." Referrals are obtained through direct court sentencing, direct parole, and revocation proceedings. Thus, the restitution program is a diversion from prison for eligible probationers and parolees.

The Restitution Center Program began under the legal auspices of existing legislation which enabled the DCOR to make participation in the restitution program a special condition of the probation order or parole decree. If an offender fails to participate satisfactorily in the restitution program, his parole or probation may be revoked and he may be imprisoned.

Program administration: The four centers have capacities ranging from twenty-seven to thirty-three offenders. The total residential capacity is 120. Each center has a basic staff of nine—usually a superintendent, a business manager, a typist, a probation/parole supervisor, a counselor, and four correctional aides and/or correctional officers.

This core staff is supplemented by various volunteers, student interns, and citizen volunteers. Citizen volunteers take on a variety of responsibilities. Individuals provide direct one-to-one contact with offenders; schools, churches, and civic organizations give general support and sponsorship to the restitution center program.

Each restitution center is encouraged to develop specific treatment programs based on the needs and abilities of their residents and staffs and the resources of their communities. Staff members help offenders to find jobs in the community and to develop a realistic budget. The offender must turn all his pay checks to the business manager who disburses the money into specific budget category accounts against which the offender draws on a regularly scheduled basis.

Close surveillance of an offender's behavior and activities continues throughout his residence at the center. He must sign out each time he leaves the center, report his destination and return to the center at a specified time. He can visit his family overnight periodically if he has obeyed center rules and satisfactorily participated in treatment programs.

Each offender receives basic counseling

Above: *An offender resident installs the sign at the new Athens, Georgia, Restitution-Adjustment Center.*

Below: *The Athens center is located in a renovated suburban house. It typifies the kind of community facility the Georgia Department of Corrections and Offender Rehabilitation is striving to promote.*



from center staff, and he can get specialized help from community resource agencies. Also, citizen volunteers are actively involved in in-house educational and informational programs and in helping individual offenders in a variety of ways. Every effort is made to involve the local community in the treatment and rehabilitation of local public offenders and to increase the offender's awareness of community responsibility.

Mechanisms of restitution: The Restitution Center Program uses both financial and community service restitution. With probationers, the judge determines whether the probationer must make full or partial financial restitution. The probationer then begins residence at the restitution center and allots a certain amount of each paycheck toward restitution. Sometimes he is required to live at the center until the total restitution has been paid. More often, however, a probationer who has demonstrated adequate stability and responsibility for several months will be allowed to complete his restitution on a non-residential basis. Probationers may be required to make community service restitution in lieu of or in addition to financial restitution.

Eligible parolees are typically required by the parole board to live at the restitution center for a specified period of time, to maintain stable employment, and to participate in unpaid community service after work on evenings or weekends. The center staff determine the actual nature and extent of the community service to be required. To date, numerous forms of community restitution have been used. Residents have worked in mental hospitals and health centers, repaired the houses of aged pensioners to prevent condemnation, worked with children in recreational programs, assisted in volunteer counseling with juvenile offenders, and conducted community clean-up projects.

Victim involvement: The extent of victim/offender contact in the Restitution Center Program has been minimal. Most victims prefer simply to recover their losses without meeting the offender. Consequently, the victim typically is sent a letter explaining that the enclosed check represents financial restitution being made by the offender. In occasional cases in which confrontation is feasible and is deemed important, center staff will arrange for the offender to repay the victim face-to-

Every effort is made to involve the community in the treatment and rehabilitation of local offenders.

Most such confrontations have been received by both victims and offenders.

Professional reactions: Professional reactions to the Restitution Center Program have been extremely positive. Judges like the program because it gives them an intermediate sentencing alternative stronger than regular probation and less harsh than prison. The parole board likes the program because it can release eligible parolees to a transitional experience in the community—a better alternative than regular parole supervision or release without supervision at the end of sentence. Probation/parole supervisors like the program because it is a meaningful alternative which they can recommend to the judge in lieu of revocation to incarceration. And the supervisors who work directly in the Restitution Center Program enjoy the opportunity to work intensively with their men. Social workers like the Restitution Center Program because it doesn't disrupt the family relationship; the social worker can help the offender and his family within the local community, and the offender can continue to support his family so they don't become dependent upon welfare.

Community reaction: Community reaction to the Restitution Center Program concept has also been strongly positive. Citizens particularly appreciate the fact that the Restitution Center Program may make it possible for them to obtain either

estitution of their losses if they ever a victim. They also like the idea of working constructively, paying al partially defraying the cost of rehabilitation. Generally, citizens restitution concept as a much more response to crime than prisons he state spends money to support virtual idleness.

wever, most offenders seem to genuppreciate an opportunity to redress tial unacceptable behavior through ent direct and relevant positive be-

ram statistics: Almost all offenders d in the Restitution Center Program en property offenders. The most offenses are burglary, theft, and Eighty-five per cent of the residents mmitted felonies; 15 per cent are restitution for misdemeanors. wo per cent are probationers; 18 per e parolees. Fifty-seven per cent are 3 per cent are black. Of the 504 rs accepted into the program through 976, 120 remain in residential status, have left the program. Sixty-three of these were positive terminations chieved release or release to nontal supervision), and 37 per cent egative terminations (they were re- they absconded).

eal 1976, offenders making restitutesidential centers:

- aid $62,500 to victims.
- Paid $172,500 in state and federal
- eturned $256,800 to the state in projcome (room and board maintenance
- ent $336,300 in the local communiliving expenses such as food, clothsportation, and personal items.
- d $113,100 for financial support of milies, thus reducing state welfare
- ved $61,600 as nest eggs to use when released from residential supervi-

effectiveness: Three basic factors diaffect the program's overall costness. These factors are diversion certainty, turnover rate and efficiency rate. All figures used here are based on current DCOR statistics.

1. *Diversion certainty.* The importance of diversion certainty can easily be seen by considering a few basic costs. The annual cost of operating a thirty-resident restitution center is about $116,000. The annual cost of supervising thirty offenders on probation or parole (at $205 per offender per year) is $6,150. The annual cost of imprisoning thirty offenders (at $4,045 per offender per year) is $121,350.

Therefore, a residential restitution center cannot be basically cost-effective if it serves only offenders diverted from probation. Thus, a restitution center in which half the residents are divertees from probation and half are divertees from prison will cost $116,000—far more than the $63,750 that usual sanctions cost ($3,075 for field supervision cost plus $60,675 for incarceration cost).

Therefore, a primary objective in diversion-from-prison programs is to ensure that the method of selecting offenders guarantees that program participants are people who would otherwise be imprisoned. Such a method would either have judges subsequently amend the prison sentence of those chosen for the program or have parole boards give parole conditional upon participating in the program.

2. *Turnover rate.* A restitution center can dramatically increase its basic cost-effectiveness by increasing its turnover rate. For example, since the annual cost of operating a thirty-resident center will remain essentially constant, a center with an average turnover rate of six months can serve sixty offenders in twelve months at a cost of $116,000. If we make the assumption that most property criminals who are sentenced to prison will normally serve a minimum of twelve months, then the comparative cost of imprisoning those sixty offenders is $242,700. Thus, another primary objective of a residential restitution program is to select offenders who could be stabilized relatively quickly and could finish making their restitution on a nonresidential basis.

3. *Efficiency rate.* The efficiency rate, or

the percentage of program successes versus program failures (revocations and absconders), is another important factor in cost-effectiveness. Program failures reduce both diversion cost-effectiveness (failures are imprisoned, thus reducing comparative imprisonment cost-savings) and turnover rate cost-effectiveness (failures consume space and time, thereby reducing the number of successful program participants who can flow through the program). Here again, one important key to increasing program efficiency is to ensure that the program staff controls admissions of eligible offenders to the center. Efficiency should increase only because of increased selectivity, also because of a greater staff commitment working with those offenders who are personally selected.

Of course, reality is much more complex than these examples. These three factors interact constantly, and there are many other factors, both subtle and overt, that influence the ultimate cost-effectiveness of the program. But a residential restitution center which ignores these three basic factors will probably never be cost-effective and is courting fiscal disaster.



These restitution center residents are working on a community service project—repairing the [illegible] of aged pensioners to prevent their condemnation for building code violations. The construction materials are either donated by charities or supplied by the homeowners.

esidential restitution

s nonresidential Sole Sanction Res- Program began in fiscal 1977 as a search grant to the DCOR from the . The goals of this grant program are develop a research-based restitution which realistically addresses and the needs of the criminal justice victims, and offenders; and (2) to research into the costs and benefits a program.

is program, restitution is the sole probation supervision continues til restitution has been made. The emphasizes citizen-supervised nity service restitution for indigent rs, and it redefines the role of the on supervisor as a community organ- izen manager.

gram administration: The Sole Sanc- estitution Program is being imple- at both the sentencing and post- eration levels in four of Georgia's wo judicial circuits and involves a seventeen. At the state level, the an is coordinated by a planner, a re- r, and a secretary. They are respon- r the overall planning, development, mplementation of both program and h objectives and they work with personnel, the parole board, and the to accomplish grant goals.

ach of the four judicial circuits, three implement the program—a restitu- pecialist, a correctional casework aide, typist. They develop the program in d and help collect research data. They directly with offenders, victims, and minal justice system.

the field prison level, the program is mented by one restitution specialist typist who serve as liaisons between ole board, the DCOR, and field cir- rsonnel. They screen incoming pris- from the four experimental circuits at orgia Diagnostic and Classification and develop restitution plans which ole board will review.

nder selection procedure: Admission program is restricted to those offend- in the four experimental judicial cir- who have committed non-violent crimes for which restitution is suitable and who can realistically complete restitution within eighteen months. Grant personnel conduct presentence or post-incarceration investigations on all offenders who meet program consideration criteria and work with the offender to develop a proposed restitution plan to submit to the court or parole board. Random selection is used to generate comparable experimental and control groups.

The restitution plan: The restitution plan consists of a performance agreement which specifies the extent of restitution—both the amount and the type—which the offender agrees to make. The restitution specialist develops this plan with the offender and submits it for court or parole board approval, at which time the restitution specialist acts as an offender advocate. If the court or parole board modifies the plan in a way the offender will not accept, he can choose not to participate in the program. (For probationers, the restitution agreement is made a part of the conditions of probation.)

Once his restitution plan is approved, the inmate receives a conditional reprieve from the parole board, and his parole depends upon completing restitution. Normally, the performance agreement specifies that completing restitution will end the offender's involvement with the criminal justice system. Monthly progress reports on the offender's progress go to the court or parole board, and any offender who fails to keep his agreement is returned to the criminal justice system for appropriate disposition.

Financial restitution: Full financial restitution is paid by those offenders who have the earning power to make such restitution and still meet their financial obligations. Those offenders who can afford to make only partial financial restitution must complete the remainder of their obligation through community service restitution. The restitution specialist helps the offender in budget planning, debt consolidation, and vocational counseling, including agency referrals.

Community service restitution: When an offender cannot make full financial restitution, he can substitute community service restitution—unpaid work for the good of the

general local community. The dollar value of restitution owed is converted to equivalent hours of service restitution based on the type of service performed, in a manner which reflects fair market value. Service restitution may be either "in-kind" or general service restitution. "In-kind" restitution is

Through service restitution, the public offender becomes a community resource, rather than a community liability.

an activity related to the original offense (working on a community beautification project after a conviction for littering); general service restitution is an activity unrelated to the original offense (working on community beautification after a conviction for disorderly conduct). To avoid the risk of further victimization or lawsuits, offenders never make service restitution directly to victims.

The restitution specialist organizes citizen advisory committees of local community leaders from all walks of life—businessmen, labor officials, ministers, members of volunteer and charitable organizations, and others. The committees identify suitable tasks which offenders can perform to benefit the local community. Since people recognize the value of these tasks, the public offender becomes a community resource and asset rather than a community liability.

All community service activities are formally sponsored by local community organizations. A "key volunteer" member of each organization works along with the offenders to supervise the tasks. Supervision may be continuous, intermittent, or nominal, depending on the nature of the task. It is only necessary that a few people in service organization know the offender' tus; he himself need not reveal his stat anyone. This arrangement eliminates s stigma so that community service can positive experience for the offender. program tries to find offenders who shown an interest in performing a partic type of community service as a mean making restitution. Then they try to m sure he realizes that the community va his efforts.

Victim involvement: After determi the nature and extent of restitution t made, the restitution specialist notifies victim by letter of the outcome of the and what restitution he can expect. W the offender is making restitution, the vic is kept informed of the offender's progr If the offender is making financial rest tion, his payments serve as the prog reports. If the offender is making serv restitution, the restitution specialist se the victim quarterly progress reports al the activities. If the offender defaults u his agreement, the restitution specialist t the victim what happened and what to pect (delayed payment, revocation proce ing, etc.). Each victim, of course, can wi draw at any time from further contact w the restitution program.

Potential impact: Like all pilot progra this grant program is small in relation Georgia's total problems and has had lit initial impact on the problems facing t DCOR. But, a well-planned experimen program, like a tiny acorn, can lead to impressive outcome in a fertile enviro ment.

This grant program could reshape a revitalize the traditional use of the restit tion sanction in Georgia. By making t probation supervisor a community organiz or citizen manager who ensures restitutio by offenders, the supervisor acquires a vehi cle to enlist citizen support of communit correctional efforts. If a truly effective mea of offender restitution can be develop through this program, the presently loo and varied use of the restitution concept Georgia can be consistently structured stat wide as the program concept expands int

...circuits. And, if self-determinant, ...tion restitution proves effective, ...caseloads would probably be re... result of faster, more rehabilita... ...ker turnover. The restitution pro... ...tion could then become the norm ... non-custodial sentencing and com... ...stitution facilities could continue ... the ebb and flow of offenders ... halfway house supervision.

...on for prisoners

...restitution has not been used to any ...nt degree with Georgia prisoners ...e legal limitations placed on prison ... and low or non-existent inmate ... viable prison industries program ...ke restitution as successful with ... as it is with probationers and parol... ...example, inmates could earn earlier ...onsideration by making restitution ...es in prison industries. Some of the ... salaries could be returned to vic... ...me could be used to subsidize the ...system, and some could be retained ... offender to receive when he is re... The restitution sanction has consid... ...potential usefulness for the entire ... justice system—both fiscally and ...matically.

...e directions

...orgia DCOR is already expanding ...tion programming. We hope to even... ...establish one restitution program in ... Georgia's forty-two judicial circuits. ...ly such expansion will require time, ... and local community support. To ...e that support, we plan to emphasize ...at the community can participate in ...gram. The DCOR has already begun ...ize local civic and community lead... ...serve on Citizen Advisory Boards for ...nty correctional programs in their ... We are also encouraging the establish... ... Community Correctional Associa... ... local communities to help generate ... for improved community correc... ...programs of all types.

...lso plan to increase the use of com... ...service restitution both alone and in ...tion with financial restitution. The typically low earning power of the offender and his frequent inability to make full financial restitution is the primary reason for this shift in program emphasis. Furthermore, community service restitution appears to be the area within which the rehabilitative potentials of restitution programming can best be realized.

Finally, we plan to use ongoing research to improve the efficiency of specific restitution programs. We need to determine the costs and social benefits of these programs so that future programs can maximize services while minimizing costs. Research will show what kinds of participants benefit most from each type of restitution program. Thus, we will know whom to select for each program and what results to expect.

The Georgia DCOR—grappling with excessive probation caseloads, seriously overcrowded prisons, and a narrow range of sentencing alternatives—is presently acknowledged to be largely ineffective. But DCOR administrators are dedicated to providing the leadership required to correct deficiencies in the current system and to make each offender directly responsible for the consequences of his own behavior. This long-range plan emphasizes pretrial diversion programs, a broad range of specialized alternatives to traditional criminal justice sanctions, a positive and objective system of contracting with inmates whereby they must *earn* their release from prison, and pre-release/aftercare programs designed to reintegrate ex-offenders into society.

Thus, restitution programming is only one aspect of the comprehensive system which Georgia is building. Since the DCOR firmly believes that offenders must be held responsible and accountable for their behavior, the development and expansion of meaningful restitution programs as an integral part of the improvement of the criminal justice system in Georgia seems inevitable. □

BILL READ is a program development specialist with Georgia's Department of Corrections/ Offender Rehabilitation. He has written more about "The Georgia Restitution Program" in the anthology Restitution in Criminal Justice.

STATE OF ALASKA
PRELIMINARY STATEMENT OF FISCAL IMPACT

Bill No: HB 212 Date on Bill: 2/17/83
Title: An Act relating to crime victim compensation; providing effective date
Sponsor: Pestinger and Clocksin
Requestor: HOUSE JUDICIARY

1. Estimated fiscal impacts on:

a. Expenditures:

(Thousands of Dollars)

	FY 83	FY 84	FY 85	FY 86
Capital				
Operating	120.4	333.6	351.1	362.1
Total	120.4	333.6	351.1	362.1

b. Revenues:

Revenue	

2. Source of funds to offset fiscal impact of bill:

Not indicated by sponsors of bill

3. Assumptions:

If the proposed legislation is enacted, it is anticipated there would be an increase of approximately 50 claims. It is estimated we would receive 40 assault claims (the statute covers only Assault I and II) of which we estimate 26 claims would receive compensation, and we would receive 10 death claims and 5 would be awarded, including 2 claims with one dependent per incident and 3 claims with multiple dependents. There will be additional hearings as with the change in the statute, the Board will want to be certain the offender will not receive any of the compensation.

4. Disclaimer:
This statement has not been reviewed by the OMB in the Office of the Governor. It therefore does not represent the final estimate of fiscal impact.

Prepared By: Nola K. Capp, Administrator Phone: 465-3040
Division: Violent Crimes Compensation Board Date: 2/22/83

Approved by Commissioner: Date: 2/28/83
Department: PUBLIC SAFETY

5. Distribution:
Original to Legislative Finance
Copy to OMB
Copy to Sponsor
Copy to Requestor

2/15/83

FISCAL NOTE DETAIL
BILL NO. HB 212

EXPENDITURES		FY 83	FY 34	FY 85	FY 86
100	Personal Services	8.9	26.6	28.2	29.9
200	Travel	2.6	7.9	8.4	8.9
300	Contractual	10.7	9.6	10.2	10.8
400	Commodities				
500	Equipment	2.5			
600	Land & Structures				
700	Grants, Claims, etc.	95.7	287.0	304.2	322.5
800	Miscellaneous				
	TOTAL	120.4	333.6	351.1	372.1
FUNDING					
	General Fund	120.4	333.6	351.1	372.1
	Federal Funds				
	Program Receipts				
	Inter-Agency Receipts				
	Other				
POSITIONS					
	Full Time	1	1	1	1
	Part Time/Seasonal				
	Non-Perm				
	Months	4	12	12	12

ANALYSIS:

If the proposed legislation is enacted, it is anticipated there would be an increase of approximately 50 claims. It is estimated we would receive 40 assault claims (the statute covers only Assault I and II) of which we estimate 26 claims would receive compensation. The average award is $4500.00 per claim so 26 claims would total $117,000. It is estimated the program would receive 10 death claims and 5 would be awarded: 2 claims at one dependent per incident would be $50,000 and 3 claims for multiple dependents would be $120,000 for a total estimated grant money of $287,000.

Because there will be an increase of claims, it is determined it will be necessary to have one more board meeting at a cost of $1500.00. Because of the repeal of the statute it is anticpated there would be 8 hearings at $800 for travel per hearing. The reason for more hearings is because of the change in the statute, the Board will want to be certain the offender will not receive any of the compensation and because of circumstances in some cases, they may order a hearing prior to a final determination by the Board.

The current staff for the Violent Crimes Compensation Board consists of two persons. This change in the statute would necessitate the addition of a clerk typist (range 8) and associated costs, including equipment.

(continued)

Under contractual services, there would be a need for a terminal only for the IBM displaywriter at $3000.00 per year. There would be the cost of hearing officers' fees for 8 hearings at $700 per hearing and a total cost of $5600. Since this will be a major change in the statute, the public must be made aware through TV spots, radio and newspapers. Production of the TV spots will be a one time expense as will the radio spots. These spots should cost around $6500 plus another $1000 for public notices in newspapers around the state.

The costs are assumed to begin 3/1/83.

1.	POSITION TITLE: Clerk-Typist III			RANGE/STEP: 08	BARG. UNIT: G	FORM 12 PAGE/LINE	GOV.	APPROV. / DISAPP.
2.	TYPE OF POSITION: PFT	STAFF MONTHS: 12	RP NUMBER	PCN NUMBER	BRU PRIORITY	LOCATION: Juneau	ELECTION DISTRICT: 4	LEG.

3.	CONTINUATION LEVEL	ADDITION	
4.	TYPE OF EXPENDITURE		AMOUNT
	1	2	3
	PERSONAL SERVICES		
5.	Salary	19,176	
6.	Benefits	3,367	
7.	Supplemental Benefits	1,175	
8.	Fixed Benefits	2,880	
9.	TOTAL PERSONAL SERVICES	01	26,598
10.	Travel	02	
11.	Contractual	03	
12.	Commodities	04	
13.	Equipment	05	2,484
14.	Other		
15.	TOTAL COST		29,082

	RECEIPT CODE	FUNDING SOURCE		
16.		Federal Receipts	1002	
17.		G.F. Match	1003	
18.		General Funds	1004	29,082
19.		I-A Receipts	1005	
20.		Program Receipts	1028	
21.		Other		

FOR B&M USE ONLY
4A KEY NUMBER __ __ - __ __ - __ __ - __ __ - __ __

JUSTIFICATION

The number of claims received annually by the Violent Crimes Compensation Board has doubled since 1976 and is projected to double again during the two-year period ending 6/30/84. Yet the program has only the same two-person staff it had in 1973.

It is anticipated the change in the statute will increase the number of claims by 50. This increase, on top of the existing understaffing, will necessitate the addition of a clerk-typist and associated costs, including equipment.

Since this is a major change in the statute, all the applications, brochures and posters will have to be redone. The public must be made aware of the changes through TV, radio and newspapers, again much clerical work. There will be an increase in hearings, which must be transcribed verbatim.

The equipment costs include a desk, chair, file cabinet, table, calculator and transcriber.

13 REQUEST FOR NEW POSITION

AGENCY: Department of Public Safety

PROGRAM: Crime Identification & Apprehension

BRU: Violent Crimes Compensation Board

COMPONENT:

Revised Date 2/22/83

FY 84

STATE OF ALASKA
PRELIMINARY STATEMENT OF FISCAL IMPACT

Bill No: HB 212 Date on Bill: 2/17/83
Title: An Act relating to crime victim compensation; providing effective date
Sponsor: Pestinger and Clocksin
Requestor:

1. Estimated fiscal impacts on:

a. Expenditures:

(Thousands of Dollars)

			FY 83	FY 84	FY 85	FY 86		
Capital								
Operating			120.4	333.6	351.1	362.1		
Total			120.4	333.6	351.1	362.1		

b. Revenues:

Revenue								

2. Source of funds to offset fiscal impact of bill:

Offender Programs

3. Assumptions:

If the proposed legislation is enacted, it is anticipated there would be an increase of approximately 50 claims. It is estimated we would receive 40 assault claims (the statute covers only Assault I and II) of which we estimate 26 claims would receive compensation, and we would receive 10 death claims and 5 would be awarded, including 2 claims with one dependent per incident and 3 claims with multiple dependents. There will be additional hearings as with the change in the statute, the Board will want to be certain the offender will not receive any of the compensation.

4. Disclaimer:
This statement has not been reviewed by the OMB in the Office of the Governor. It therefore does not represent the final estimate of fiscal impact.

Prepared By: Nola K. Capo, Administrator Phone: 465-3040
Division: Violent Crimes Compensation Board Date: 2/22/83

Approved by Commissioner: [signature] Date: 2/24/83
Department:

5. Distribution:
Original to Legislative Finance
Copy to OMB
Copy to Sponsor
Copy to Requestor

2/15/83

REPRESENTATIVE DON CLOCKSIN

Alaska House of Representatives

ASSISTANT MINORITY LEADER

1527 H STREET
ANCHORAGE. ALASKA 99501
(907) 278-4188

WHILE IN JUNEAU:
POUCH V
JUNEAU. ALASKA 99811
(907) 465-3704

M E M O R A N D U M

TO: Rep. Charlie Bussell
Chairman
House Judiciary Committee

DATE: March 17, 1983

FROM: Rep. Don Clocksin

SUBJECT: HB 104 - Violent Crimes Compensation

I've enclosed backup material for HB 104. Please note that this information refers to bills filed in 1982. Also attached are the two memos I have previously sent to you on HB 104.

The material can also be used as backup for HB 212.

DC:JR:blg

cc: Rep. Sam Pestinger

Attachment

VIOLENT CRIMES COMPENSATION BOARD
POSITION PAPER
ON
HB 869 (HALFORD & CLOCKSIN)

"An Act relating to crime victim compensation; and providing for an effective date."

The majority of the Board (one member was unavailable for comment) supports this bill, with the exception of 18.67.130(a)(2) and 18.67.135, to which they are opposed. The Board feels these two amendments would unfairly penalize certain claimants, who because of fear of the offender, may move to dismiss criminal charges. This is particularly true in cases where both parties reside in a small, isolated community and the offender is expected to receive an extremely light sentence or will be released on bail, a common occurrence.

The Board presently has the discretion to deny claims in cases where the victim does not cooperate in prosecuting the offender, and would prefer to retain this discretion so that those few victims who can show just cause for dismissing charges are not arbitrarily denied. While the Board agrees compensation should not be awarded on a "revolving door" basis to victims of domestic violence, they feel it would be inappropriate to make a blanket exclusion such as these amendments.

The Board would prefer 18.67.135 be amended to delete the portion dealing with dismissal and forfeiture of awards, while retaining the restriction on subsequent incidents involving the same offender when the victim initiates dismissal of criminal charges.

It should be emphasized, however, that this position does not include the opinion of the Chairman of the Board, who is the member unavailable for comment prior to the hearings on this bill.

The Department of Public Safety supports in concept HB 869.

Recommended by Sue C. Johnson

Sue C. Johnson
Acting Administrator
Violent Crimes
Compensation Board

Date 2-24-82

Approved by William R. Nix

William R. Nix
Commissioner
Department of Public
Safety

Date 2-24-82

STATE OF ALASKA

JAY S. HAMMOND, GOVERNOR

DEPARTMENT OF PUBLIC SAFETY

COUNCIL ON DOMESTIC VIOLENCE AND SEXUAL ASSAULT

POUCH N
ROOM 312, GOLDSTEIN BUILDING
JUNEAU, ALASKA 99811
PHONE:

February 23, 1982

POSITION PAPER

HOUSE BILL NO. 869

AN ACT RELATING TO CRIME VICTIM COMPENSATION

This Bill would amend the present Violent Crimes Compensation Act in order to include family members.

The Council on Domestic Violence and Sexual Assault agrees that innocent victims should be compensated no matter what their relationship is to the assailant. Therefore, the Council supports this Bill

The Council believes that Sec. 3 (a)(2), line 25 is a reasonable protection for the use of state funds and may be an incentive for people not to initiate dismissal of criminal charges.

William R. Nix, Chair

16LH

POSITION PAPER
ON
CS FOR HOUSE BILL NO. 345 (HESS)

"An Act relating to compensation for victims of violent crimes; and providing for an effective date."

The Department's former concern that legislation was necessary so the perpetrator did not receive the compensation has been resolved by the compensation being paid directly to the provider in domestic violence crimes. Section 3 (c) limiting compensation to $25,000 per victim per incident also seems reasonable.

The Department of Health and Social Services supports the Committee Substitute for House Bill No. 345.

Recommended by: Elizabeth Muktarian
Elizabeth Muktarian
Director
Division of Adult and
Aging Services

Date: 4/6/81

Approved by: Helen D. Beirne
Helen D. Beirne
Commissioner
Dept. of Health and
Social Services

Date: 4/18/61

OSITION PAPER/Department of Health & Social Services

M E M O R A N D U M

TO: Representative Charlie Bussell DATE: February 9, 1983

FROM: Representative Don Clocksin SUBJECT: HB 104 Violent Crimes Compensation

This memo is to request action on HB 104.

Basically, the bill allows victims of domestic violence to receive compensation under the Violent Crimes Compensation Program. The present law prohibits compensation where the victim lives with the attacker or is related to him. See AS 18.67.130 (b) (1) and (2).

The present exclusion for domestic violence victims is unfair, and denies to victims of these crimes the funds necessary to pay for treatment of their injuries. Protection from fraudulent claims is provided in this bill by the provision allowing vender payments, e.g. directly to the hospital to pay the emergency room charges.

The bill expands the rights of victims of crime, and is, in my opinion, good public policy.

We have requested a fiscal note and will provide it to you as soon as possible. Last year the Violent Crime Compensation Board and the Department of Public Safety supported a similar bill.

Thank you.

DC:JR:blg

M E M O R A N D U M

TO: Rep. Charlie Bussell
Chairman
House Judiciary Committee

DATE: March 9, 1983

FROM: Rep. Don Clocksin

SUBJECT: HB 104-Violent Crimes Compensation

On February 9 I sent you a memo requesting action on HB 104 and indicating that I would provide a fiscal note to you as soon as it is available. Attached is the fiscal note provided by the Violent Crimes Compensation Board.

That fiscal note is too high.

For an almost identical bill filed by me in 1982, the same person estimated a fiscal impact of $199,800. The fiscal note for HB 104 is $333,600. Included in the fiscal note is almost $50,000 in additional staff and equipment. This bill does not necessitate those expenditures. My bill should not be used as an excuse to increase the budget of the Violent Crimes Compensation Board because of other, unrelated workload problems.

DC:blg

Attachment

bcc: Co-Sponsors:
Rep. Davis
Rep. Goll
Rep. Koponen
Rep. Malone
Rep. Zharoff

HB

214

HB 590 cont'd

"It is the intent of the Legislature that the superior court judgeship in ~~Wrangell~~ shall not be filled until the Supreme Court eliminates the ~~Wrangell-Petersburg~~ district court judgeship". VALUE

HB 694

The Labor and Commerce Committee considered CS FOR HOUSE BILL NO. 694 (L&C) (Alaska Municipal Bond Bank Authority) and a majority of the committee recommends it do pass. The report was signed by Senator Mulcahy, Chairman and concurred in by Senators Ziegler, Anderson and Fahrenkamp.

CS FOR HOUSE BILL NO. 694 (L&C) was referred to the Finance Committee.

HB 835

The Labor and Commerce Committee considered CS FOR HOUSE BILL NO. 835 (FIN) am (health and safety) and recommends it be replaced with SENATE CS FOR CS FOR HOUSE BILL NO. 835 (L&C), entitled:

"An Act relating to the Alaska Safety Advisory Council."

and reports it back as follows: Senator Mulcahy, Chairman and Senator Fahrenkamp signed "do pass". Senators Ziegler and Anderson signed "no recommendation".

CS FOR HOUSE BILL NO. 835 (FIN) am was referred to the Finance Committee.

SB 777

The Rules Committee considered SENATE BILL NO. 777 (legislative professional staff loan program) and recommends it be replaced with CS FOR SENATE BILL NO. 777 (RLS) and be placed on the May 4 calendar. The report was signed by Senator Kelly, Chairman and concurred in by Senators Ziegler and Ferguson.

The above bill appears on today's calendar.

SB 794

The Rules Committee considered SENATE BILL NO. 79 [illegible]ishing certain areas as units of the state ma[illegible] system) and recommends it be placed on the May 4 with the Finance CS. The report was signed by Sena[illegible] Chairman and concurred in by Senators Dankworth an[illegible]

The above bill appears on today's calendar.

SB 206

The Rules Committee considered CS FOR HOUSE BILL NO. [illegible]termination of rental agreements of mobile home par[illegible] and tenants) and recommends it be placed on the May [illegible] ental calendar with the following amendment:

Page 1, line 11: After "provision" insert ", enforceable under AS 34.03.130,"

The report was signed by Senator Kelly, Chairman and [illegible] by Senators Ziegler and Ferguson.

CS FOR HOUSE BILL NO. 206 (JUD) appears on today's [illegible] tal calendar.

SB 318

The Rules Committee considered CS FOR HOUSE BILL NO. [illegible] control of bee disease) and recommends it be repl[illegible] SENATE CS FOR CS FOR HOUSE BILL NO. 318 (RLS) and [illegible] the May 4 supplemental calendar. The report was [illegible] Senator Kelly, Chairman and concurred in by Senator [illegible] and Ferguson.

[illegible] FOR HOUSE BILL NO. 318 (RES) appears on today's s[illegible] tal calendar.

SB 386

The Rules Committee considered HOUSE BILL NO. 386 [illegible] corporations) and recommends it be replaced with S[illegible] FOR HOUSE BILL NO. 386 (RLS), entitled:

"An Act relating to business corporation[illegible] reinstatement of certain dissolved Alaska Native Claims Settlement Act village corporations to corporate status; and providing for an effective date."

LAW OFFICES
HAGANS, BROWN & GIBBS
A PROFESSIONAL CORPORATION
310 K STREET, SUITE 704
ANCHORAGE, ALASKA 99501

CHARLES HAGANS
KEITH E. BROWN
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LINDA M. O'BANNON
LIAM J. MORAN
ROY W. MATTHEWS III

TELEPHONE 276-5294
AREA CODE 907

WILLIAM J. MORAN
OF COUNSEL

April 13, 1983



Representative Charlie Bussell
Alaska State Legislature
Pouch V (MS 3100)
Juneau, AK 99811

Dear Sir:

This is in regard to a matter which greatly concerns me and a number of other attorneys practicing in the Third Judicial District, containing Anchorage and the surrounding area.

There is a very real problem with flooded court calendars, overworked judges, and trailing calendars. The problem is that each judge in Anchorage is assigned over 900 cases and because of the work load, the judges are putting in many more hours than they should be expected to. This has also created a crisis in court calendaring in the sense that major civil cases are now being calendared up to 12 months from the time of the pre-trial conference. This results in clients who become angry with the inordinate length of time in resolving civil disputes, and when they ask us why, we tell them that we don't have enough judges in town to try the cases.

This is a request then, for a legislative appropriation which would permit the Alaska Court System to fund the creation of two additional superior court judgeships. As you may recall, the last superior court judgeships to be created in the Third Judicial District was three years ago, in 1980. In that interim three-year period, we have seen a phenomenal growth in the population of the Municipality of Anchorage, along with increased commerce, business, and crime. The increase in crime has resulted in superior court judges assigned to try the felony case load who have been unable to absorb these additional criminal cases which have been spread out among the superior court judges assigned to try civil cases. I would therefore request your help in securing funds to allocate two additional superior court judgeships in the Third Judicial District.

Thank you for your attention to this matter, and please contact me if I may provide any further information. With kindest personal regards, I remain,

Very truly yours,

Roy W. Matthews III, J.D.
Attorney & Counselor at Law

RWM/mc

Alaska State Legislature
HOUSE OF REPRESENTATIVES

POUCH V
JUNEAU, ALASKA 99811
(907) 465-4990

Committee on Judiciary

Charlie:

Proposed asnwer to Roy Matthews, a personal friend. Perhaps it would be wise NOT to include the 4th and 5th paragraphs herein, but rather than I should call him and sound him out.....Joe

POUCH V
JUNEAU, ALASKA 99811
465-4990

P.O. BOX 4-1325
ANCHORAGE, ALASKA 99509
248-1515

Representative Charlie Bussell
ALASKA STATE LEGISLATURE
HOUSE OF REPRESENTATIVES

CHAIRMAN
HOUSE JUDICIARY COMMITTEE
MEMBER
HOUSE RESOURCES COMMITTEE
MEMBER
SPECIAL COMMITTEE ON FISHERIES
MEMBER
LEGISLATIVE COUNCIL
MEMBER
ALASKA CODE REVISION COMMISSION

April 27, 1983

Mr. Roy W. Matthews, III, Esquire
HAGANS, BROWN & GIBBS
310 "K" Street
Anchorage, Alaska 99501

Dear Mr. Matthews:

Thank you for bringing to my attention the very serious matter of the overcrowded calendar of court cases in the Anchorage area. In general, I believe the public is well aware that an adequate number of judicial officers are needed under the conditions of population increase, crime increase and back-logged civil cases that you describe.

This year the Alaska Court System did not request any additional judgeships be created as you perhaps know. However, Representative Bette Cato of Valdez introduced a bill, HB 214, that would elevate the position of District Court to that of Superior Court in her area. This measure was passed out of the House Judiciary Committee on April 8th and is now in the House Finance Committee.

Without denigrating any need for more far-reaching judicial services in Valdez, your letter points out that the real crunch appears to be in the Anchorage area. I am having my staff look into this matter more closely and perhaps staff counsel will be in touch with you.

Incidentally, would you be adverse to the idea of creating a single-level trial court in this State? I understand there is more than one way that can be accomplished, such as (1) increasing the jurisdiction of District Court Judges to both civil and criminal cases; and (2) elevating all District Judges to a position with some new name or designation, such as "Associate Superior Court Judges."

Under (1) above, it might be that more District Judges would have to be added, but they could assist in the criminal area and in the civil backlog if they were to have the same jurisdiction (for example, perhaps by assignment for

hearing felony cases or civil matters beyond their present jurisidictional limit of $10,000 as the amount in controversy). Under (2) above, an "Associate" Superior Court Judge could be assigned to hear felony matters from start to finish including trial and sentencing and to civil matters of great impact as well.

Please let me know your further thoughts on these matters that could be of assistance to me and/or the Committee.

Thank you for involving yourself in the legislative process.

Very truly yours,

Representative Charlie Bussell
Chairman, Committee on Judiciary

CB:lyn

LETTER OF INTENT

HOUSE JUDICIARY COMMITTEE
April 8, 1983

It is the intent of the House Committee on Judiciary that the superior court judgeship in Valdez shall not be filled until the Supreme Court eliminates the Valdez district court judgeship.

April 8, 1983

HB 214--By Rep. Cato

Statistics phoned in from Anchorage today:

In the past 16 months, to date, there have been 9 trips from Anchorage by Superior Court judges to hold court sessions in Valdez and Cordova. (Four trips to Cordova, Five to Valdez)

Five different Superior Court judges of Anchorage were involved in handling the nine trips.

Total number of days scheduled for them was 36 working days, although one of the 5-day schedules was canceled, making 31 actual days expended by a judge away from Anchorage.

For May, June & July, 1983, there are three five-day trips scheduled, two to Valdez and one to Glennallen, for a total of 15 projected work days. (These will be handled by Judge Cutler, out of Palmer).

STATE OF ALASKA
FISCAL NOTE

Revision Date , 1983

I. REQUEST

Bill/Resolution No.: HB 214
Title: Number of Superior Court Judges
Sponsor: Cato
Requestor: Judiciary & Finance

II. FISCAL DETAIL

Agency Affected: Alaska Court System
Program Category Affected: Justice
BRU, Program of Subprogram(s) Affected:
Alaska Court System

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 83	FY 84	FY 85	FY 86	FY 87	FY 88
OPERATING		21.4	21.4	21.4	21.4	21.4
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 COMMODITIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC						
TOTAL OPERATING		21.4	21.4	21.4	21.4	21.4
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND		21.4	21.4	21.4	21.4	21.4
FEDERAL FUNDS						
OTHER (Specify Source)						

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

III. SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

IV. ANALYSIS: Attach a separate page for any Analysis

Prepared By: Robert G. Fisher, Fiscal Officer Phone: 264-0561
Division: Alaska Court System, Administration Date: 3/31/83

Approved by Commissioner: Date:
Department:

Distribution:
Original to Legislative Finance
Copy to Office of Management and Budget (for Legislature introduced bills)
Copy to Department (for Governor introduced bills)
Copy to Sponsor
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3/8/83

FY 84 COST OF IMPLEMENTING HB 214

PERSONNAL SERVICES:

Salary (Superior Court Judge - Valdez)	$ 82,368
Benefits (Retirement, variable & fixed)	80,129
Total Cost of Superior Court Judge	$162,515
Less: Budgeted funds for exisiting District Court Judge position.	141,157
Net cost of upgrading Valdez court to superior court level.	$ 21,358

ANALYSIS:

This bill would upgrade the district court judge position in Valdez to the superior court level. The fiscal impact is limited to the increased costs of salary and benefits. There appears to be adequate clerical support in Valdez at the present staffing level.

While it would be beneficial to the court to add a law clerk ($38,000/year total cost) this is not requested at this time.

STATE OF ALASKA
PRELIMINARY STATEMENT OF FISCAL IMPACT

Bill No: HB 214 Date on Bill: 2-21-83
Title: "An Act relating to the number of superior court judges;..."
Sponsor: Cato
Requestor: House Judiciary

1. Estimated fiscal impacts on: No fiscal impact is anticipated.

a. Expenditures:

(Thousands of Dollars)

			FY 83	FY 84	FY 85	FY 86		
Capital								
Operating								
Total			0	0	0	0		

b. Revenues:

Revenue								

2. Source of funds to offset fiscal impact of bill:

3. Assumptions:

4. Disclaimer:
This statement has not been reviewed by the OMB in the Office of the Governor. It therefore does not represent the final estimate of fiscal impact.

Prepared By: Francis C. Allan F.C.A. Phone: 269-5691
Division: Alaska State Troopers Date: 2-24-83

Approved by Commissioner: [signature] Date: 3-1-83
Department: Department of Public Safety

5. Distribution:
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2/15/83

APR 7 1983

STATE OF ALASKA
FISCAL NOTE

Revision Date , 1983

I. REQUEST

Bill/Resolution No.: HB 214
Title: "Superior Court Judges"
Sponsor: Rep. Cato
Requestor: House Judiciary Committee

II. FISCAL DETAIL

Agency Affected: Department of Law
Program Category Affected: Adm. of Justice
BRU, Program of Subprogram(s) Affected: Prosecution

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 83	FY 84	FY 85	FY 86	FY 87	FY 88
OPERATING						
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 COMMODITIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC						
TOTAL OPERATING	-0-	15.0	15.9	16.9	17.9	19.0
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND	-0-	15.0	15.9	16.9	17.9	19.0
FEDERAL FUNDS						
OTHER (Specify Source)						

POSITIONS:

FULL-TIME	-0-	-0-	-0-	-0-	-0-	-0-
PART-TIME						
TEMPORARY						

III. SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

Not specified by sponsor.

IV. ANALYSIS: Attach a separate page for any Analysis

Prepared By: Richard I. Pegues, Director (Richard I. Pegues) Phone: 465-3672
Division: Administrative Services Division Date: April 5, 1983

Approved by Commissioner: Norman C. Gorsuch, Attorney General (Richard I. Pegues / FOR) Date: April 5, 1983
Department: Department of Law

Distribution:
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HB 214
Analysis

This bill would establish a superior court judge position in Valdez, Alaska. The prosecution of criminal cases in Valdez is currently handled through the maintenance of a small office staffed by a paralegal in Valdez, and the services of an attorney from the District Attorney's office in Palmer. An assistant district attorney now travels to Valdez approximately once a month, and stays there for about one week. If a superior court judge were permanently assigned to Valdez, it is estimated that the increased workload would require that this assistant district attorney travel to Valdez twice a month for about a week each time.

Caseload statistics indicate that the Palmer District Attorney's office can satisfactorily service the Valdez area through periodic visits. Some members of the Valdez community have expressed a desire for a fully staffed district attorney's office located in their area, however. At a minimum, the opening of a complete district attorney's office in Valdez would require the addition of one full-time prosecuting attorney, one full-time secretary, more office space, and basic legal research materials.

HB 214
Fiscal Analysis

It is estimated that the establishment of a superior court in Valdez will increase district attorney travel to Valdez from one week each month to two weeks per month. Current annual travel expenses for Valdez are estimated at $15,000 including witness subsistence expenses. A doubling of this effort would require an additional $15,000 in travel funds. This is the total amount being requested in this fiscal note.

Caseload statistics indicate that the Valdez area can be satisfactorily serviced from other offices until such time as the caseload warrants a full-time resident prosecutor. At the present time Valdez is being handled by our two attorneys from the Palmer office where Valdez cases represent only 20% of their total caseload.

Creation of a full service prosecutor's office at Valdez would require the addition of one Attorney V and one Legal Secretary I, as well as associated support costs for expanded office space, equipment, word processing, a small law library, and increased communications. The following additional costs would be incurred to establish such an office on a 10 month year start-up basis:

Personel Services	94.2
Travel (single time transfer cost)	7.5
Contractual (expanded office space & communications)	10.0
Commodities - on-going	4.0
Commodities - single time	6.0
Equipment - single time	17.5
Total	$139.2

HB

217

HOUSE JUDICIARY COMMITTEE OBSERVER/WITNESS SIGN-UP SHEET

DATE: 5/22/83 SPONSOR: Cota

SUBJECT(S): HB 217

NAME	REPRESENTING	ADDRESS	PHONE	OBSERVER	WITNESS	FOR	AGAINST

STATE OF ALASKA
FISCAL NOTE

Revision Date , 1983

I. REQUEST

Bill/Resolution No.: House Bill No. 217
Title: "An Act relating to estab. of pris. fac.
Sponsor: Reps. Cato & Lindauer
Requestor: House HESS

II. FISCAL DETAIL

Agency Affected: Health & Social Services
Program Category Affected: Adm. of Just.
BRU, Program of Subprogram(s) Affected: Adult Confinement

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 83	FY 84	FY 85	FY 86	FY 87	FY 88
OPERATING						
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 COMMODITIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-
CAPITAL	-0-	-0-	-0-	-0-	-0-	-0-
REVENUE	-0-	-0-	-0-	-0-	-0-	-0-

FUNDING: (Thousands of Dollars)

GENERAL FUND	-0-	-0-	-0-	-0-	-0-	-0-
FEDERAL FUNDS						
OTHER (Specify Source)						

POSITIONS:

FULL-TIME	-0-	-0-	-0-	-0-	-0-	-0-
PART-TIME						
TEMPORARY						

III. SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

Not applicable.

V. ANALYSIS: Attach a separate page for any Analysis

Prepared By: Roger C. Lange — Phone: 465-3376
Division: Adult Corrections — Date: March 29, 1983

Approved by Commissioner: Robert London Smith, Ph.D — Date: 3/30/83
Department: Health & Social Services

Distribution:
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3/8/83

(7)

COMMITTEE REPORT

HOUSE

5/9

FURTHER: JUDICIARY

2/21/83

Date: 5/6/83

Mr. Speaker:

The Committee on H.E.S.S. has had HB 217

"An Act relating to the establishment of prison facilities."

under consideration and reports it back as follows:

[ ] do pass [ ] do not pass

[ ] do pass with attached amendments(s)

[✓] replace with CS for HB 217 (Hess) [✓] same title [ ] new title

and recommends [illegible]

[ ] AND attaches a "Letter of Intent" [ ] New Fiscal Note [✓] Zero Fiscal Note Attached

[ ] reports it back without recommendation

[ ] referred to the _____ Committee

MEMBERS SIGNING DO PASS

MEMBERS HAVING OTHER RECOMMENDATIONS:

Mae Fischer No Rec

[illegible] Dont Pass

[illegible]

[illegible] No Rec

Aulo Koponen No Rec

[illegible] No Rec

CO - Mae Fischer
CHAIRMAN

CO - [illegible]

H 60

HB

221

Teens tried as adults in House measure

The Associated Press

JUNEAU — The House has approved a measure requiring some juveniles accused of violent crimes be tried as adults.

The measure would let 16- and 17-year-olds accused of such crimes as murder, rape and arson be tried in adult court.

Rep. Don Clocksin, D-Anchorage, on Friday tried to have the bill (CSHB109) amended so that the charge on a 16- or 17-year-old would not dictate that the person automatically would be sentenced as an adult if convicted of a lesser offense.

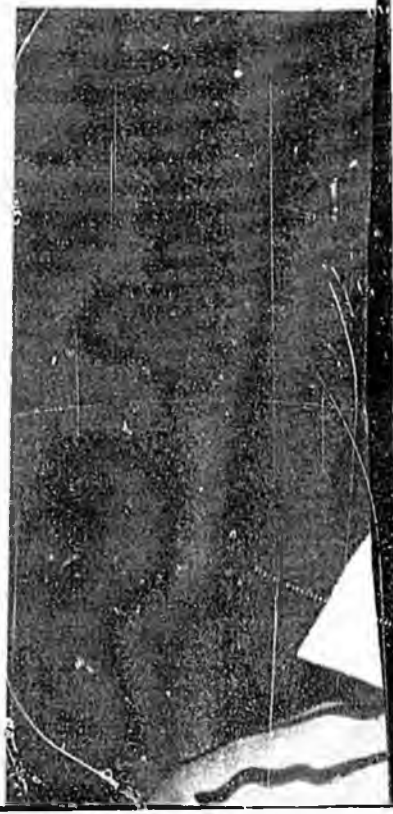
But bill sponsor Rep. Sam Pestinger, R-Anchorage, said a section of the bill gives a judge discretion on whether to sentence someone as an adult.

House Minority Leader Mike Miller, D-Juneau, said that one of the laudable things about the judicial system is that persons are innocent until proven guilty and the bill would destroy that.

Miller said that if a jury or judge finds the teen-ager guilty of a lesser crime, then the state shouldn't want to sentence as an adult.

House Majority Leader Ramona Barnes, R-Anchorage, said that the section giving the judge discretion also precludes presumptive sentencing.

Clocksin, after his amendment failed on a 17-20 vote, said the



Bill would send home stranded

3-30-83

by Bill White
Times Juneau Bureau

Juneau — Stranded Outsiders may get one-way tickets out of Alaska courtesy of the state under a bill approved by the House Judiciary Committee Tuesday.

The bill would create an office under the attorney general whose staff would seek out and identify stranded nonresidents who might request assistance and whose immediate departure is in the best interests of the state."

Before the stranded alien could get aid, a judge, magistrate or police chief must consent, under the bill.

The proposal is an "effort to save the state a lot of money and at the same time help some people who may will be in desperate need of help," said Rep. John Lindauer, R-Anchorage, the bill's sponsor.

Lindauer has offered a companion bill that would let the governor pardon a released prisoner if that person leaves the state within 14 days of release and doesn't return to Alaska for

See Bill, page A-

Bill offers way out

Continued from page A-1

three years.

Rep. Charlie Bussell, the committee chairman, said the second bill didn't move today because the panel is waiting for information on the measure's cost.

Lindauer's bill was endorsed by the head of Alaska Psychiatric Institute and by officials of the Salvation Army in Alaska.

Dr. Harold Conrad, head of API, said that one year 121 of the patients referred to his hospital had been in Alaska less than a year. And 42 of them were in the state less than a month.

The average stay in API is 30 days, which costs about $6,000, he said. The cost of shipping out those who want to leave the state is about $500 each, he added.

Capt. David Clitheroe of the Salvation Army in Anchorage said the bill "is something that is definitely needed." He averages 30 requests a month for one-way tickets Outside, none of which he can grant unless a private donor gives the money, he said.

Capt. Floyd Bacon of the Salvation Army in Juneau said he gets six to 10 such requests a month.

Rep. Don Clocksin, D-Anchorage, said told his fellow committee members he didn't "think the bill is necessary. The only thing that's necessary is some money."

The Department of Law, which would run the program, apparently is lukewarm to the idea.

"Grant funds to return just 1,000 stranded nonresidents would cost $330,000. This number of stranded nonresidents may seem excessive, but it may prove very low once the state signals that it is willing to subsidize the cost of job hunting to the unemployed living outside the state," Richard Pegues, budget chief for the Law Department, said in a note that estimates the effort will cost $740,300 next year.

But Lindauer said the requirement that a judge or police chief approve the aid is enough to avoid abuse.

"I'm referring to the young man who came up here thinking he's going to work in construction or up at Prudhoe Bay," Lindauer said. "He loses his job, cannot find another one and holds up a Qwik Stop (store). He's caught in a vicious cycle of poverty and degradation — no place to stay and live, stays out on the streets, gets in trouble, goes to jail, gets involved in narcotics or other problems, gets back on the street — is caught in this vicious cycle. It's a way to break this vicious cycle, allow the people who wish to leave the freedom to leave," he said.

Island

Continued from page A-1

And according to Sohio Intercom, the firm's employee newspaper, the gravel doesn't surrender easily. In permafrost, it is being blasted loose, plowed with ripper blade-equipped tractors, then loaded onto the trucks for the 14-mile haul.

The first six of those 14 miles are over a tundra ice road that is at least six inches thick. After the trucks reach the coast, the haul is on an ice road scraped on the surface of the frozen Beaufort Sea.

Sohio exploration manager Roger Herrera said $100 million will be spent in building Mukluk, including erection of a portable camp near Oliktok for equipment operators and support staff.

'Get-out-of-state' bill faces legal questions

by Bill White 4/13/85
Times Juneau Bureau

Juneau — A second House committee has approved a bill to give some stranded Outsiders one-way tickets out of Alaska despite a warning that the proposal might be unconstitutional.

The Finance Committee Tuesday voted to send the bill to the Rules Committee so it can be scheduled for a floor vote.

The bill would create an office under the attorney general whose staff would "identify stranded non-residents who might request assistance and whose immediate departure is in the best interests of the state."

Before the state would buy a ticket for a stranded Outsider, a judge, magistrate or police chief must consent, under the bill.

Rep. John Lindauer, sponsor of the proposal, lauded its virtues.

The bill could cut the crime rate, ease overcrowding of prisons, save the state money and help people who want to leave but can't afford to. Anchorage has a similar program for getting stranded villagers back home, he said.

But the Department of Law said the bill also could be unconstitutional.

The department also warned that the program could lure to Alaska job hunters who might request a free trip home. The annual cost of the program was pegged at $740,000.

Rep. Joe Flood, R-Anchorage, said he was concerned that "we're going to get a reputation as Alaska's boat people."

But Lindauer asked, "Why should we at our own expense spend a fortune helping a person who doesn't want to be helped?"

The bill offers an opportunity to "break the vicious cycle of poverty and degradation" that infects the lives of some people in Alaska, Lindauer said.

It would "let these young people on Fourth Avenue and comparable areas be able to return to their home instead of going out to Eagle River (rehabilitation center) or holding up a Qwik Stop or deteriorating into some kind of social problem," he has said.

Salvation Army officials have testified in favor the proposal Capt. David Clitheroe of the Salvation Army in Anchorage said he averages 30 requests a month for one-way tickets Outside, none of which he can grant unless a private donor gives the money.

Dr. Harold Conrad, head of the Alaska Psychiatric Institute, also has endorsed the bill. The average stay in API is 30 days, which costs about $6,000, he said. Airplane tickets home might cost $500 and do the patient a lot of good, he said.

STATE OF ALASKA
PRELIMINARY STATEMENT OF FISCAL IMPACT

Bill No: HB 221 Date on Bill: 2-23-83
Title: "An Act relating to...stranded nonresidents"
Sponsor: Lindauer
Requestor: H. Judiciary

1. Estimated fiscal impacts on: No fiscal impact is anticipated.

a. Expenditures:

(Thousands of Dollars)

			FY 83	FY 84	FY 85	FY 86		
Capital								
Operating								
Total			0	0	0	0		

b. Revenues:

Revenue								

2. Source of funds to offset fiscal impact of bill:

3. Assumptions:

4. Disclaimer:
This statement has not been reviewed by the OMB in the Office of the Governor. It therefore does not represent the final estimate of fiscal impact.

Prepared By: Francis C. Allan F.C.A. Phone: 269-5691
Division: Alaska State Troopers MCIC Date: 3-2-83

Approved by Commissioner: [signature] Date: 3/8/83
Department: Public Safety

5. Distribution:
Original to Legislative Finance
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2/15/83

Alaska State Legislature

Representative John Lindauer
District 10-A
3933 Geneva Place
Anchorage, AK 99508

While in Juneau
Pouch V
Juneau, AK 99811
465-3709

House of Representatives

March 4, 1983

TO: House Judiciary Committee

FROM: Representative John Lindauer JL

RE: House Bill 221: "An Act relating to the creation of a program for stranded nonresidents."

People tend to become stranded nonresidents when they run out of work and money. These are the people who may turn to crime.

We have a social duty and financial interest in helping those who request our assistance to return to their homes and families.

STATE OF ALASKA
PRELIMINARY STATEMENT OF FISCAL IMPACT

Bill No: HB 221 Date on Bill: 2/23/83
Title: "An Act relating to the creation of a program for stranded nonresidents."
Sponsor: Representative Lindauer
Requestor:

1. Estimated fiscal impacts on:

a. Expenditures:

(Thousands of Dollars)

			FY 83	FY 84	FY 85	FY 86		
Capital								
Operating				740.3	790.5	837.9		
Total				740.3	790.5	837.9		

b. Revenues:

Revenue								

2. Source of funds to offset fiscal impact of bill:

No information provided.

3. Assumptions:

This bill would establish a program in the Office of the Attorney General to provide aid, in the form of transportation to Canada or to the other states, to stranded nonresidents. The bill requires that the department seek out, identify and screen stranded nonresidents, and that the department staff and administer the program with an Assistant Attorney General. The bill's primary criteria for eligibility is that a nonresident lacks or is otherwise unable to obtain the resources to return to Canada or the other states, requests the state's assistance, and that it is in the best interests of the state that he or she immediately depart.

4. Disclaimer:

This statement has not been reviewed by the OMB in the Office of the Governor. It therefore does not represent the final estimate of fiscal impact.

Prepared By: Richard I. Pegues, Director Phone: 465-3672
Division: Administrative Services Division Date: 3-10-83

Approved by Commissioner: Richard I. Pegues/for Norman C. Gorsuch, Attorney General Date: 3-10-83
Department: Department of Law

5. Distribution:

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2/15/83

The funds necessary to operate such a program could be considerable. In addition to an Assistant Attorney General, support staff and other resources would be necessary to handle outreach and public information efforts, establish and maintain eligibility controls and to provide grants-in-aid accounting services.

There is no accurate means of determining the number of people who might be eligible for the assistance that the bill would provide. It is easily supposed, however, that the promise of a free trip home will encourage a large number of job seekers from the other states, which are now experiencing the most unemployment since the great depression. A survey of airfares between Seattle and Alaska employment centers such as Anchorage, Fairbanks, Juneau, Ketchikan, Kodiak, Dillingham, and Unalaska reveals that the average one-way airfare is $330. Grant funds to return just 1,000 stranded nonresidents would cost $330,000. This number of stranded nonresidents may seem excessive, but it may prove very low once the state signals that it is willing to subsidize the cost of job hunting to the unemployed living outside the state.

The department therefore recommends that a minimum amount of $500,000 be provided for relocation grants if this bill becomes law. The department cautions that if this amount is insufficient, a supplemental appropriation may be necessary during 1984 Legislative Session.

HB

223

Legislators enter fray over overtime pay

by Bill White
Times Juneau Bureau

Juneau — A bill that would deny oilfield workers from $5 million to $50 million in back pay has become the battleground for labor and management forces in this year's legislative session.

"This is the most obnoxious piece of special interest legislation that I have seen in my 11 years in the legislature," said Rep. Hugh Malone, D-Kenai, of the bill.

But backers of the bill say the pay rules were changed unfairly, with little notice to them.

If the bill fails to pass, "the impact on the business climate in Alaska could be nothing less than devastating," warned Chuck Becker of the Alaska Support Industry Alliance, in a hearing on the measure.

The bill would forgive oil industry businesses for paying their workers too little overtime between 1978 and when the proposal becomes law.

That forgiveness provision is "unfair and arbitrary," according to the state Labor Department. It is likely unconstitutional, said Ron Lorensen, deputy attorney general, and Tom Sofo, a lawyer for the legislature.

Rep. Charlie Bussell, R-Anchorage, introduced the bill last February. When asked why, he said, "I didn't know anything about it until I got into it." He said he sponsored it at the urging of Dresser Industries officials and Mitch Gravo, lobbyist for the Petroleum Equipment Suppliers Association.

Bussell is chairman of the Judiciary Committee, which passed out the bill last week.

Its next stop is the Labor and Commerce Committee. But as soon as that panel got the proposal, its chairman, Rep. Walt Furnace, R-Anchorage, asked permission for the bill to skip his committee and go right to the full House. That request caused a furor among opponents of the measure, and Furnace withdrew his request.

The issue came up in 1979 when Clyde Woody, through the Labor Department, sued Dresser Industries Inc. over $3,957 in back pay.

Woody was paid under what is known as the flexible work week arrangement and by the other 49 states. But it was outlawed in Alaska in a 1978 regulation.

FWW is a method of computing overtime pay in the oil industry. Normally, a worker who is paid $10 an hour is paid $15 — one an one-half times his regular pay — for every hour over 40 he works. He would get $475 for 45 hours of work.

But under FWW, he would be paid $467 for that 45-hour week. That figure is derived by dividing the 45 hours into $400 — the total if he'd worked only 40 hours — to get an hourly rate of $8.89, not $10. He would get $13.34 an hour — one an one-half times the $8.89 — not $15 an hour for overtime.

Under FWW, the more hours he works, the less money he is paid.

Woody won his case in September 1981 in the state Supreme Court.

But while his case was in court, Dresser and other companies continued to pay according to FWW.

Eight lawsuits, three of them class action suits, have been filed against businesses that use FWW.

Tony Sholty, a lawyer with the firm that is representing the workers, estimates the businesses owe between $5 million and $10 million in back pay. That figure would be doubled because businesses that break the regulations must pay twice the actual damages.

Becker and other industry spokesmen estimate they might owe as much as $50 million, or $100 million when the double liability is factored in.

The regulation "has created an enormous managerial and employee compensation problem that is not conducive to a healthy business climate. This regulation has created a potentially disastrous unjust economic impact on my firm and others operating in this state," John Martin, area manager for Dresser Atlas, told lawmakers

"The nature of the oil and gas service business makes work hours next to impossible to predict," he said. "The fluctuating work week system lends itself perfectly to this work environment."

Bussell said he didn't pay much attention to the bill as it cruised through his committee. But now, as reporters have begun asking questions about the bill, he is well versed in the proposal.

"I am now convinced that the Department of Labor did something improperly" in issuing the regulations in 1978, he said. The department inadequately notified the businesses using FWW the regulations were coming, and after the new rules were final they did a poor job of announcing the fact, Bussell said.

Labor Department records concerning the regulations have disappeared mysteriously, he charged. The announcement in 1978 of public hearings on the then-proposed regulations used the word "overtime" rather than the more familiar "flexible work week," he said.

When asked why the department would conspire to dupe the industry, Bussell said he didn't know.

Alaska State Legislature
HOUSE OF REPRESENTATIVES

POUCH V
JUNEAU, ALASKA 99811
(907) 465-4990

Committee on Judiciary

MAY 4th, noon:

CHARLIE: -Today's Committee Agenda----: (I'm working on HB 7 w/Jeff Day & Jeff Bush,AG)

1-- HB223..Has fiscal note & could be voted out;

2--Doc Fritz will be here for HB 338, Payment of Overtime"--It has zero fiscal note, letter and form from Al Gay of Seair, and my memo to you and all committee members in file.

3--HB 352--Doc Fritz here for that, too. Has Zero Fiscal Note, HESS Dept. position paper and HESS Committee Do Pass Report

4--HB 334--Admin. Procedures Act change of language...Zero fiscal Note, my memo to you and committee members, and Xeroxed case of Supreme court where federal authority (Moore) suggests language, which I bracketed and underlined in case footnote. Peter Froelich of Dept. of Law, civil, may be here to say a few words on it.

5--HB 282--Steve worked on that & will clue you on that one.

Joe

4/11/83, JUNE, ANC LIO, MSG :306

TO: REPRESENTATIVES BARNES, HAYES, LISKA, AND RUSSELL

FROM: SONJA ALEXANDER, 5378 SILLARY CIRCLE, ANCHORAGE, AK 99504
(H) 338-3204 (W) 561-1344

I WOULD LIKE TO SUPPORT HB 223. I DON'T BELIEVE ALASKA COMPANIES SHOULD BE PENALIZED WHEN THEY ARE ALREADY PAYING FAIR AND EQUITABLE WAGES. WINDFALL GIFTS IS NOT THE ANSWER.

RECEIVED
APR 1983

STATE OF ALASKA
DEPARTMENT OF LABOR

A F F I D A V I T

I, DONALD R. WILSON, being first duly sworn and deposed, say that,

1. I am Donald R. Wilson,

2. that I currently am employed by the State of Alaska as Deputy Director of the Labor Standards and Safety Division,

3. that sometime in the early part of 1979, to the best of my recall in the middle or latter part of January, 1979, I caused to be delivered to the following three companies notice of promulgation of regulations in Title 8 of the Administrative Code concerning a prohibition on the use of the fluctuating workweek as an overtime plan in the State of Alaska; specifically, these regulations were published in Register 68 of the Administrative Code and specifically addressed in 8 AAC 15.100 (d)(1), (2) and (3):

1. Dresser Atlas, at their office on the Kenai Peninsula,

2. Dowell, a Division of Dowell Chemical Company, at their office on the Kenai Peninsula, and

3. Otis Engineering, at their office on Fireweed Lane in Anchorage.

The notice to Dowell and Dresser Atlas were sent by mail. The notice to Otis was hand delivered by myself to their manager in Anchorage.

Further affiant sayeth naught.

Dated this 13th day of April, 1983 at Anchorage, Alaska.

Donald R. Wilson

Donald R. Wilson

Subscribed and sworn to before me this 13th day of April, 1983.

Sherry A. Ithal

Notary Public in and for the State of Alaska
My Commission Expires: 4-5-85

HOUSE JUDICIARY COMMITTEE OBSERVER/WITNESS SIGN-UP SHEET

DATE: 5-4-83 SPONSOR: Fritts

SUBJECT(S): HB 352

NAME	REPRESENTING	ADDRESS	PHONE	OBSERVER	WITNESS	FOR	AGAINST
E.L. Rabeau	DHoSS	HOB Room H-06	3090		✓	✓	

POUCH V
JUNEAU, ALASKA 99811
(907) 465-4990

Alaska State Legislature
HOUSE OF REPRESENTATIVES

REPRESENTATIVE
CHARLIE BUSSELL
CHAIRMAN

Committee on Judiciary

REVISED - May 4, 1983
Week of May 1, 1983
1:30 p.m., Room 124, Capitol

Monday, May 2

	HB 312	An Act relating to harming a police dog. aut
	SSHB 7	An Act relating to motor vehicles; and providing for an effective date.

Tuesday, May 3

	SSHB 7	An Act relating to motor vehicles; and providing for an effective date.

Wednesday, May 4

	HB 223	An Act relating to methods for the payment of overtime; and providing for an effective date. aut
	HB 282	An Act relating to notices for occupational safety and health violations. aut
**	HB 334	An Act relating to stays during appeals of administrative orders under the Administrative Procedure Act (AS 44.62). aut
	HB 94	An Act relating to the seizure of items used in or in aid of fish and game violations.
**	HB 338	An Act relating to the payment for overtime; and providing for an effective date. aut
	HB 352	An Act relating to the definition of death; and providing for an effective date. aut

Thursday, May 5

**	HB 375	An Act relating to access to certain criminal justice information.
**	HB 360	An Act relating to permits issued for games of chance and contests of skill.
	HB 84	An Act relating to smoking in public places and vehicles.

Friday, May 6

	HB 126	An Act limiting the liability of aircraft owners or operators for personal injury or death to guest passengers.
**	HCR 33	Proposing the addition of a preamble relating to the ethics to the Uniform Rules of the Alaska State Legislature.
**	HCR 34	Proposing certain amendments to the Uniform Rules of the Alaska State Legislature.

MEMBERS:
REP. JOHN LISKA, VICE CHAIRMAN; REP. RAMONA BARNES, EMERITUS;
REP. JOE HAYES; REP. HUGH MALONE; REP. DON CLOCKSIN; REP. RON WENDTE

14 THE WALL STREET JOURNAL
Wednesday, May 4, 1983

Charter Co. Increases Tesoro Petroleum Stake

By a WALL STREET JOURNAL Staff Reporter

SAN ANTONIO, Texas — Charter Co. raised its stake in Tesoro Petroleum Corp. closer to an agreed limit of 30% by buying 948,800 common shares, according to a filing with the Securities and Exchange Commission.

According to SEC figure, the purchase raised Charter's stake in Tesoro to 30.2%, but according to Tesoro's calculations, the Charter holding is 26.2%. The difference is in the way the SEC and the company count preferred shares, a Tesoro spokesman said.

Charter's filing said it holds 2,397,285 shares of Tesoro common plus 2,875,000 preferred shares convertible into 2,500,100 common shares. Charter is based in Jacksonville, Fla.

In Jacksonville, a Charter spokeswoman said the oil and insurance company raised its stake for investment purposes and doesn't intend to take over Tesoro.

April 26, 1983

The Honorable Charlie Bussell
House of Representatives
Chairman, House Judiciary Committee
Alaska State Legislature
Capitol, Room 124
Pouch V
Juneau, AK 99811

Dear Sir:

I would like you to know that I support HB 223. I feel it is a law that we need.

Sincerely,

David C. Sharp

David C. Sharp
SRA Box 1153
Anchorage, AK 99502

Jim Robison
Business Manager/Secretary-Treasurer

Joe J. Thomas
President

ALASKA STATE DISTRICT COUNCIL OF LABORERS

Laborers International Union of North America, AFL-CIO

P. O. Box 899 • 2501 Commercial Drive
Anchorage, Alaska 99510 • 907/276-1640
Telex 26-540

April 16, 1983

TO: Representative Charlie Bussel
Representative John Liska
Representative Ramona Barnes
Representative Don Clocksin
Representative Joe Hayes
Representative Hugh Malone
Representative Ron Wendte

Legislative Hearing on House Bill No. 223

House Bill No. 223 poses two alterations in the present Wage and Hour Act. First, Section 2 of the Bill allows an employer to avoid liquidated damages through ignorance of the Wage and Hour laws. Secondly, the Bill would retroactively extinquish hundreds of employee's wage claims sought from several employers found in violation of the Wage and Hour Act.

Senate Bill 223 follows Senate 886(1982) as the second attempt made to excuse several employer's unlawful wage formulas. This legislation would retroactively reverse the decisions of the Alaska Department of Labor, the Supreme Court for the Third District, the Alaska Supreme Court and the United State Supreme Court. Despite the arguments of Attorneys Harper and Kuhn of Houston, Texas, the employee's claims and

the Alaska Wage and Hour Act itself were upheld and affirmed. A retroactive attack on these decisions by its proponents is an abuse of our legislative process with serious constitutional implications.

The Wage and Hour Act has prohibited the use of the fluctuating work week as a means of determining a person's wage. The public policy behind this wage protection is to safeguard existing minimum wage and overtime standards which are necessary to maintain the health, efficiency and general well being of workers against unfair wagecutting competition. This proposed Bill is directly contrary to this policy.

Theoretically, the fluctuating work week would accomodate employees with work hours that may vary above or below a 40 hour workweek by providing a regular salary basis. If the amount of hours differ the employee still receives the same straight-time compensation by, after the fact, readjusting the hourly rate of pay so that it computes to the basic sum. Therefore an employee may earn a different hourly rate each and every week.

In practice however, virtually <u>every</u> use of the fluctuating work week approach has been used to <u>lower</u> an employee's hourly rate. This system is only utilized by those companies who employ their worker well <u>beyond</u> a 40 hour work week.

Regarding Section 2 of the Bill, which detracts from the present liquidated damage provisions, the practical impacts are obvious. From experience, I can say that requiring the employee to also show a bad faith motive for an employer's failure to pay the proper wage will seriously weaken protection and enforcement of a worker's rights. Proof of this element will require costly litigation for employees and discourage voluntary compliance and settlement, thereby placing further demands on the Department of Labor's resources. And, to say the least, it would encourage employer ignorance of the Wage and Hour laws as a means of defense to wage claim actions.

Respectfully submitted,

Kevin Dougherty
General Counsel
Alaska State District
Council of Laborers

HB 223

AFOGNAK LOGGING, Inc.

P.O.Box 682 Kodiak, Alaska 99615 (907) 486 - 3544

April 19, 1983



The Honorable Charlie Bussell
Chairman
Alaska State House of Representatives
Committee on Judiciary
Pouch V (Mail Stop 3100)
Juneau, AK 99615

Dear Representative Bussell:

Afognak Logging is an Alaska corporation involved in logging timber on Afognak Island near Kodiak, Alaska. We support House Bill 223 and urge you that you should actively support it as well. We also support the Committee Substitutes which eliminate Section 1 and which would allow flexible pay plans to be used in Alaska.

In the logging industry, as with other industries in Alaska which require employees at remote locations, some flexibility in the pay system is an absolute must. In some job classifications an employee spends only a few hours a day doing actual work. There is little for him to do in his own free time and, therefore, a flexible pay method benefits both him and his employer.

House Bill 223 will eliminate an unfair situation for many companies unaware that the payment methods they had used for years had been changed without their knowledge. House Bill 223 with its "good faith" sections is definitely needed and makes common sense.

I ask your support for this bill, and am sure that you will agree that to impose a devastating financial burden on employers in this state, and then to automatically double that burden, is grossly unfair.

Please vote in favor of House Bill 223. Please actively urge everyone you can to support it.

Very truly yours,

AFOGNAK LOGGING, INC.

Al Schafer

Al Schafer, President

AS:bw

LAW OFFICES OF

Kalamarides, MacMillan & Richard

628 F STREET

ANCHORAGE, ALASKA 99501

JOSEPH A. KALAMARIDES
TIM MACMILLAN
JOHN MARSTON RICHARD

TELEPHONE:
(907) 276-2135
279-4018



March 22, 1983

Rep. Charlie Bussell
Pouch V
Juneau, Ak 99811

RE: House Bill 223

Dear Mr. Bussell:

I have read the House Bill 223 and wish to state my objection to it. House Bill 223 legalizes what has been illegal since 1978. That is, the use of the fluctuating work week formula. That formula allows an employee who is hired on a weekly pay basis to have his overtime computed by dividing the number of hours which he works into his weekly wage. Thus, under this formula the rate at which overtime is paid decreases as the employee's hours increase. This is presently illegal and should not be adopted. Employees of this State deserve better treatment.

Subsection 3 also is appalling. It allows all those employers who have intentionally violated the current law to escape liability for large sums of money that are due and owing employees. In considering this bill, I would urge that you examine all the factors in question, especially the effect on employees in the State.

Sincerely yours,

KALAMARIDES, MACMILLAN & RICHARD

Joseph A. Kalamarides, Esq.

JAK/acs

NORMAN C. BANFIELD
OF COUNSEL
MICHAEL M. HOLMES
WILLIAM B. ROZELL
LAWRENCE J. FEENEY
CHARLES R. GRENNAN
ANTHONY M. SHOLTY
JAMES R. WEBB
JOHN F. CLOUGH, III
GREGORY C. COOK

HERBERT L. FAULKNER (1882-1972)
FRANK M. DOOGAN (1923-1977)

LAW OFFICES OF
FAULKNER, BANFIELD, DOOGAN & HOLMES
A PROFESSIONAL CORPORATION
801 WEST TENTH STREET, SUITE 300
P. O. BOX 1150
JUNEAU, ALASKA 99802-1150
(907) 586-2210
TELEX 090-45-335

ANCHORAGE OFFICE
DENALI TOWERS NORTH
550 DENALI, SUITE 700
ANCHORAGE, ALASKA 99
(907) 274-0666
TELEX 090-26-45

RANDALL J. WEDDLE
MICHAEL A. BARCOTT
KAREN L. RUSSELL
LEE S. GLASS
RICHARD B. BROWN
TIMOTHY A. McKEEVER
RICHARD L. WAGG
ROBIN G. WILCOX



APR 1983 RECEIVED

March 11, 1983

APR 1983 RECEIVED



Representative Charlie Bussell
Chairman, House Judiciary Committee
Capital Building, Room 126
Pouch Y
Juneau, Alaska 99811

Re: House Bill 223

Dear Chairman Bussell:

John and Robert Eshleman, who met with you on the afternoon of March 10, asked me to write to you concerning some of the comments you made to them about HB 223. A close reading of the bill indicates that it may, in its current form, have some highly undesirable impacts.

First, the Eshlemans received the impression that you felt HB 223 would not affect anything which was "in adjudication". If the quoted phrase is intended to encompass law suits which have already been filed and are now pending in the courts, then I think the statement is incorrect. HB 223 does affect pending litigation. Section 3 states:

> An employer is not liable in a civil or criminal action if the employer used methods prohibited in sec. 1 of the Act during the period beginning December 9, 1978, and ending on the effective date of this Act unless the action was pending on the effective date of this Act, <u>in which case the employer is liable for costs of the action and reasonable attorney fees</u>.

Section 4 makes sections 1, 2 and 3 retroactive to December 9, 1978 and extinguishes "any penalty, forfeiture or liability incurred or right accruing or accrued" under the current law which, among other things, makes illegal the use of a fluctuating work week overtime compensation scheme.

Without question, sections 3 and 4 would take away from the employee who has a lawsuit pending the overtime wages he was entitled to be paid under the law and was not paid. The employee's wages would be kept by the employer who illegally failed to pay them to its employee. The only recovery section 3 would leave to the wronged employee is the costs of litigation and reasonable attorney's fees the employee incurred because his employer violated the law. Of course, if the employer had obeyed the law, the employee would never have incurred those expenses.

The effect of HB 223 can be dramatically demonstrated by an example. An employee works, between January 1, 1979, and December 31, 1980, for an employer who illegally computes overtime according to an FWW scheme. The difference, over those two years, betwen the amount actually paid to the employee and the amount the employee was entitled to be paid under the law is $20,000. In June, 1981, the employee sues for $20,000. Between June, 1981, and the date HB 223 becomes law, the employee incurs $3,000 in legal expenses and attorney's fees. Once HB 223 becomes law, the employee can recover his $3,000 in legal expenses, which presumably he will pay to his lawyer, he loses the $20,000 he had earned under the law, and the employer keeps the $20,000 which rightfully belongs to the employee.

Second, the Eshlemans indicated you thought wronged employees, such as the Eshlemans, would be entitled to representation by the State on their overtime compensation claims if HB 223 passes. While that is a desirable result, HB 223 does not accomplish this. HB 223 says nothing about State representation of employees. The Alaska Wage and Hour Act, at AS 23.10.110 authorizes the Commissioner of Labor to take an assignment of an employee's claim for violation of the Wage and Hour Act. The Commissioner is not required to take the assignment. The regulation promulgated under AS 23.10.110 limits the ability of the Commissioner to accept assignments of claims. 8AAC15.175(b) states:

> The department will not accept an assignment of a claim under AS 23.10.050-23.10.150 in excess of $5,000, excluding liquidated damages.

HB 223 does nothing to alter this regulation.

Finally, you indicated that prohibiting FWW by statute rather than regulation would give the prohibition more teeth. If that is all HB 223 would do, there would be no problems with it. As discussed above, HB 223 does much more. And the

regulation itself does have teeth. See the enclosed Alaska Supreme Court decision, which upheld the regulation prohibiting FWW.

I appreciate your consideration of these comments. I would be very happy to further discuss this with you, or your staff, at a time convenient to you.

Very truly yours,

Tony Sholty

Anthony M. Sholty

AMS:rh

Enclosure

cc: Bob Eshleman
Box 8035 NRB
Kenai, AK 99611

John Eshleman
Box 1145
Wasilla, AK 99687

bcc Randy Weddle

DRESSER INDUSTRIES, INC. 5600 'B' STREET, SUITE 201, ANCHORAGE, ALASKA 99502

MAR 1983
RECEIVED

3833 Locarno Drive
Anchorage, Alaska 99504
March 22, 1983

Representative Charlie Bussell
Chairman, House Judiciary Committee
Capitol Building, Room 126
Pouch Y
Juneau, Alaska 99811

Regarding House Bill 223

Dear Chairman Bussell:

By now you should be receiving large contingencies of support for House Bill 223. As I review the opposition, I see only plaintiffs anticipating windfall gifts and attorneys from one firm seeking avenues of profitability through glitches in our governmental system.

The Wage and Hour Administration of the Department of Labor has created a monstrous problem through the promulgation of a poorly planned and administrated regulation. This type of promulgation is an insult to industry operating in and supporting our state.

I assure you that there is strong support for the passage of HB 223, not only from the support industry, but also from other astute business people in our community. Public Opinion Messages and letters should be confirming this fact.

I fully realize your schedule is hectic and prioritizing must be extremely difficult. I encourage you to do whatever you can to hastily push HB 223 through your committee and on through the House system for ratification.

Best regards,

John R. Martin
Alaska Area Manager
Dresser Atlas

JRM:tjs

DOWELL DIVISION OF DOW CHEMICAL U.S.A.
4665 Business Park Blvd., Anchorage, Alaska 99503

RECEIVED
MAR 1983

March 21, 1983

Dear Rep. Charlie Bussell

I would like to take this opportunity to express my support of House Bill No. 223. This bill is an opportunity for the Legislature to create a more positive business climate in Alaska.

House Bill 223 would:

1. Make the Alaska labor laws more consistent with the laws of the other 49 states.

2. Eliminate penalties against employers that in good faith entered into agreements with employees and paid a fair wage.

3. Not deprive employees of the right to recover unpaid overtime or unpaid minimum.

Your favorable consideration to this bill would be perfectly appreciated.

Yours truly,

J.A. Parks
District Manager

JAP/gk

TRI-STATE OIL TOOL INDUSTRIES, INC. Shreveport • Bossier City
Reply to: P. O. Box 4-2095, Anchorage, Alaska 99503 • Telephone (907) 279-6511



March 24, 1983

Honorable Charlie Bussell
Representive
House of Judiciary
Capitol Room 126
Juneau, Alaska 99811

Subject: House Bill 223

I wanted to let you know that I support House Bill 223. I feel that the employees of these companies have been paid fair and equitable wages and had full knowledge of these wages and type of pay when they took their respected jobs.

We have too many workers today that expect a days pay without a days work. This has brought our country to its knees. I think it is time we stand up and get things back in perspective and get a days work and then the days pay.

Sincerely,

John P. Davis
Alaska Regional Manager

cc: Chuck Becker, The Alliance

DRESSER INDUSTRIES, INC. 5600 'B' STREET, SUITE 201, ANCHORAGE, ALASKA 99502

3833 Locarno Drive
Anchorage, Alaska 99504
March 25, 1983

Representative Charlie Bussell
Chairman, House Judiciary Committee
Capitol Building, Room 126
Pouch V
Juneau, Alaska 99811

Dear Chairman Bussell:

I have heard through the Alliance and PESA associations that House Bill 223 will have a Judicial Committee hearing sometime during the week of April fourth. This is great! Testimonies have already been drafted and practice sessions taking place.

On other matters, as one of your district's constituents, I want to assure you of my support. I appreciate your obvious follow through of campaign commitments concerning a straight forward, practical and factual approach to government. You are proving Charlie Bussell will not bow down to the "status quo" that runs so rampant through most of our legislative and subsequent governmental affairs.

Keep up the good work, you have a lot of folks waving your flag.

Best regards,

John R. Martin

JRM:tjs



Arctic Hosts, inc.



March 18, 1983

MAR 1983
RECEIVED

Charlie Bussell, Representative
State Capitol
Pouch V
Juneau, AK 99811

Dear Representative Bussell:

Through our affiliation with the Alaska Support Industry Alliance, it has been brought to our attention that the House Judiciary Committee is currently holding a hearing on HB223 which is a bill that will correct a great injustice that has been done to several members of the oil support industries. Even though Arctic Hosts, Inc. is not affected by this bill, we feel very strongly that your support of this bill is necessary to maintain a reasonable work environment for corporations and companies doing business in the State of Alaska.

HB223 addresses a problem with the fluctuating work week method of computing overtime payment that has been an acceptable method of payment under Federal Wage and Hour Acts for many, many years and was very commonly in use throughout the United States including Alaska for many years prior to 1978. However, in December of 1978 the State Department of Labor instituted a change in their regulations which prohibited the use of this plan; later some employees filed suit against various support companies who had used this plan and are claiming absurd amounts of past overtime pay due. All of these employees had been more than fairly compensated for their wages and the companies felt that they were legally and morally correct in the way they were paying them. It is simply a case of some prior employees trying to capitalize on a quirk in the regulations

Your support of HB223 is very much desired, and we will sincerely appreciate your efforts in vote on this matter.

Sincerely,

William F. Webb

William F. Webb
President

4790 Business Park Blvd., Bldg. D, Suite 4, Anchorage, Alaska 99503/(907) 562-HOST



To: Representatives,
Charlie Bussel
John Lindauer
Patrick Rodey
Arlis Sturgulewski
AK State Legislature
Pouch V
Juneau, AK 99811

From: Tom Standley
6841 Cheryl
Anchorage, AK 99502

This letter is being written to ask for your support of House Bill 223. My reasons are as follows:

A. The legislation enacted in 1978 23.10.060 through 23.10.110 was poorly publicized with only one hearing held and no attendes available to date to confirm attendance.

B. Should the bill not be approved, the oil service industry and ultimately the oil companies themselves will be adversly affected in a substantial manner.

C. Past employees and current employees such as myself worked under the FWW plan of pay and were more than fairly paid. My pay for 77'-35K, 78'-38K, 79'-40K, with many other known employees making in excess of 50K in 81' to date under FWW.

D. The current law creates a windfall profit of 250K+ EA for present and past employees who worked under the plan.

E. Only in Alaska is FWW banned.

F. Current law creates a pay system whereby employees cannot count on a minimum livable salary as we could with FWW.

In summery, please support this bill. I have worked in the oil industry since 1972 as a warehouseman, serviceman, expeditor, etc., what I see happening is not fair. This not only to the worker who has chosen not to take advantage of these windfall profits and remain loyal to their employer, but also to the industry as a whole that is now seeing the most dramatice downturn ever.

Please consider this request with much thought as much as we may or may not like it, oil has made our lives much nicer in Alaska.

Sincerely,

T. Standley

March 21, 1983



Charlie Bussell
State Capital
Pouch U
Juneau, Alaska 99811

Dear Charlie Bussell:

We need your support for HB223. The state took away basic security for our work force when they out lawed FWW pay plans.

Under the FWW our work force had a weekly pay check even when they were not working. It was nice to be able to have a check even when they were sick or on days off. They do not enjoy that security now.

Please support HB223. Why penalize companys who in good faith paid FWW wages?

J. E. Wright
10820 Kamishak
Anchorage, Alaska 99502

TELEGRAM

ALASCOM, INC.
PHONE: 586-6442
JUNEAU, AK 99802

02056 POM ANCHORAGE AK 15 03-23 1028 AST

PMS REP CHARLIE BUSSELL

JUNEAU

I ENGOURAGE YOU TO DO EVERYTHING YOU CAN TO SUPPORT HOUSE BILL

223.

G KENT EDWARDS

2113 DUKE DR

ANCHORAGE AK 99504

1983 MAR 23 PM

MAR 1983 RECEIVED

MSG 83-00-03408 PRTY 4 03/24/83 19:02:25 ORIG: LA01 IN= 0013 OUT= 0020
FROM: JUNE, ANC LIO TO: POM, JNU INFO
TARGET: LJHL SUBJ: POM

3/24/83 JUNE, ANC LIO, MSG 3408

TO: ALL MEMBERS OF THE LEGISLATURE

FROM: SARAH STANLEY, 6841 CHERYL STREET, ANCHORAGE, AK 99502
(H) 349-2986 (W) NONE

PLEASE SUPPORT HB 223. I DO NOT BELIEVE THAT A WINDFALL GIFT TO EMPLOYEES WILL CREAT A FAVORABLE BUSINESS CLIMATE IN OUR STATE. IT IS IMPERATIVE THAT THIS BILL PASS.

****

MSG 83-00003640 PRTY 1 03/25/83 16 14:40 ORIG: LA01 IN= 0013 OUT= 0032
FROM: JEAN ANCH LTD

MSG 83-00003684 PRTY 1 03/25/83 17:50:40 ORIG: LL00 IN= 0017 OUT= 0108
FROM: DEE,SOLDOTNA . TO: JUNEAU, INFO.
TARGET: LJHL SUBJ: P.O.M.

TO: ALL REPRESENTATIVES

FROM: ART BURDICK
RT. 1. BOX 353-16
KENAI, AK. 99611 (H) 776-8693

AS A LEADER OF GOVERNMENT IN ALASKA. I URGE YOU TO SUPPORT HB-223, WHICH UNDERSCORES ALASKA'S COMMITMENT TO AN IMPROVED BUSINESS IMAGE. WIND FALL GIFTS ARE NOT THE ANSWER TO DEVELOPING A FAVORABLE BUSINESS CLIMATE IN OUR STATE. WIND FALL GIFTS ARE A DISGRACE TO THE STATE.

DWL-284-A
PRINTED IN U.S.A.

DOWELL



March 23, 1983

Mr. Charlie Bussell

This is to inform you that Im in favor of H.B. 223. As Chairman Im sure you understand how important its passage is to all business in alaska.

Thanks for your help

Richard F. Crull

7818 Raymar Circle
Anc. Ak. 99502
Dist 10-B

BAKER PACKERS
COMPLETION DIVISION
A BAKER OIL TOOLS COMPANY

P.O. Box 3048 Houston, Texas 77001 Telephone (713) 923-9351 Telex 76-2833

REPLY TO:

5401 Fairbanks Street
Suite 6
Anchorage, Ak. 99502

907 561-1939

MAR 1983
RECEIVED

March 21, 1983

Honorable Charlie Bussell
Representative
House Judiciary Committee
Capitol Room 126
Juneau, Alaska 99811

Subject: House Bill 223

Dear Mr. Bussell,

As the Alaska Manager for Baker Packers, I feel it is in the best interest for the non-salaried field employee to see HB 223 enacted as soon as possible.

Our field people work on equal time on job and equal time off. This relates to six months on and six months off.

Under the present law when the men are off, they receive absolutely no salary or wages.

If any class action suit for wage settlements were made against Baker, it would only result in reduction of people and higher prices for our commodities, and this would be of no help to the vast majority of our employees.

Sincerely,

W. J. Deen

W. J. Deen
Alaska Region Manager

c

SG 03-03003273 PRT\ 1 03/24/93 14:42:25 ORIG: LA01 IN= 0010 OUT= 0073
FROM: SHIRLEE ANC LIO TO: POMS JUNEAU INFO
TARGET: LJHL SUBJ: PON

3/24/93, SHIRLEE ANC LIO, 3273

TO: REPRESENTATIVES [redacted], LISKA, HAYES, BARNES,
UEHLING, AND CLOCKSIN

SENATORS FISCHER AND JOSEPHSON

FROM: TONI STEVENS, 1427 P STREET, ANCHORAGE 99501 H 279-1128
W 563-3233

YOUR SUPPORT OF HOUSE BILL 223 IS NEEDED. WHY PENALIZE
ALASKA COMPANIES WHO PAID FAIR AND EQUITABLE WAGES. A
POSITIVE CLIMATE TO KEEP AND ATTRACT BUSINESS IN ALASKA IS
NEEDED. HOUSE BILL 223 WILL HELP CREATE SUCH A CLIMATE.

****

3/22/83, SHIRLEE ANC LIO, 2276

TO REPRESENTATIVES BUSSELL, LISKA, HAYES, PHILLIPS AND BARNES

FROM EVERETT KENT, P. O. BOX 1535, EAGLE RIVER 99577
H 694-3434 W 694-9012

PASS HB 223.

MSG 83-00003679 PRTY 1 03/25/83 17:23:16 ORIG: LL00 IN= 0016 OUT= 0104
FROM: DEE,SOLDOTNA TO: JUNEAU, INFO.
TARGET: LJHL SUBJ: P.O.M.

TO REPRESENTATIVES: [redacted], CATO, FRITZ, MALONE.

FROM: ART BUDICK
RT. 1 BOX 353-16
KENAI, AK. 99611 (H) 776-6382

YOUR SUPPORT OF HB-223 IS NEEDED. MANY ALASKAN COMPANIES ARE FACED WITH THE POTENTIAL OF ENORMOUS WIND FALL PAYMENTS TO EMPLOYEES WHO ACKNOWLEDINGLY RECEIVED FAIR AND EQUIVOCAL WAGES. I WENT TO WORK FOR DRESSER KNOWING HOW I WAS TO BE PAID AND FEEL I WAS FAIRLY PAID. THIS RETROACTIVE AWARD IS A DISGRACE TO THE STATE OF ALASKA.

3/23/93, SHIRLEE ANC LIO, 2910

TO: REPRESENTATIVES [redacted] LISKA, HAYES, AND BARNES

FROM: SPENCER SNEED, 4740 KENT, ANCHORAGE 99503
H 562-5369 W 274-3576

SUPPORT HOUSE BILL 223; AVOID WINDFALLS AT THE EXPENSE OF COMPANIES DOING BUSINESS IN ALASKA.

****

3/23/83, SHIRLEE ANC ! IO, 2917 ·

TO: REPRESENTATIVES [redacted]L, LISKA, HAYES AND BARNES

FROM: LOUISE MARTIN, 3C33 LOCARNO D.IVE, ANCHORAGE 99504
H 562-4106

I TOTALLY SUPPORT HOUSE BILL 223. WHY PENALIZE ALASKA COMPANIES WHO IN GOOD FAITH PAID FAIR AND EQUITABLE WAGES?

****



JIM Rhodes
664 HighLander Cir
Anch. AK 99502

MAR 1983
RECEIVED

Dear Mr. Bussell

I want you to know that I strongly urge you to help get HB 223 passed.

The adverse impact of the Dept of Labors regulations concerning out-lawing the fluxuating work week is felt by everyone. Not only did such action take industry in Alaska by surprise, it is a totally unfair action that simply results in the payment of unearned wages to employees who have abroad been fairly compensated

TELEGRAM

ALASCOM, INC.
PHONE: 586-6442
JUNEAU, AK 99802

#

1983 APR 5 PM 4 36

02216 POM TDA EAGLE RIVER AK 15 04-05 1255P AST

PMS REP CHARLIE BUSSELL

POUCH V

JUNEAU

OPPOSED TO HB223 BELIEVE IT IS NOT IN THE BEST INTEREST

OF ALASKAN WORKERS.

VIC MENICHETTIE

BOX 2515

EAGLE RIVER AK 99577

TELEGRAM

ALASCOM, INC.
PHONE: 586-6442
JUNEAU, AK 99802

#

Ø2209 POM TDA EAGLE RIVER AK 15 Ø4-Ø5 1255P AST

PMS REP CHARLIE BUSSELL

POUCH V

JUNEAU

OPPOSED TO HB223 BELIEVE IT IS NOT IN THE BEST INTEREST

OF ALASKAN WORKERS.

ANTHONY MENICHETTIE

BOX 2515

EAGLE RIVER AK 99577

TELEGRAM

ALASCOM, INC.
PHONE: 586-6442
JUNEAU, AK 99802

#

02197 POM ANCHORAGE AK 15 04-05 1205P AST

1983 APR 5 PM 4 17

PMS REP CHARLIE BUSSELL

POUCH V

JUNEAU

STRONGLY OPPOSE BH223. PROVIDES FOR ILLEGAL PAYMENT OF OVERTIME AND ROBS ME OF WAGES EARNED.

RUSS GARTRELL

4101 WESTLAND

ANCHORAGE AK 99502

MSG 83-00005567 PRTY 1 04/05/83 11:33:30 ORIG: LA01 IN= 0009 OUT= 0051
FROM: SHIRLEE ANC LIO TO: POMS JUNEAU INFO
TARGET: LJHL.SUB': POM

4/5/83, SHIRLEE ANC LIO, 5567

TO: . REPRESENTATIVES UEHLING, CLOCKSIN, [redacted]ELL, LISKA,
HAYES AND BARNES

FROM: BOB BRINK, P. O. BOX 91, ANCHORAGE 99510 H 274-1460
(SUNBURST CIRCLE) W 274-3576

PLEASE SUPPORT HB 223. THIS OVERTIME PAY PROVISION IS PARTICULARLY SUITED TO RESOURCE DEVELOPMENT AND SERVICE INDUSTRIES INVOLVING REMOTE WORK SITE STANDBY TIME. FORTY-NINE OTHER STATES AGREE.

****

SG 83-00005666 PRTY 1 04/05/83 13:43:50 ORIG: LF01 IN= 0006 OUT= 0097
ROM: GAIL/FBX TO: JUNO INFO
ARGET: LJHL SUBJ: POM

O: REP'S B[redacted]L, LISKA, HAYES, BARNES, MALONE, CLOCKSIN & WENDTE

R: JOHN ALLEN, P O BOX 1349, FBX 99707 PH: 452-7882

E: HB223

SG: I AM OPPOSED TO HB223 DEALING WITH THE FLEX TIME METHOD OF PAYMENT.

---EOM

MSG 83-00005724 PRTY 1 04/05/83 15:39:16 ORIG: LF02 IN= 0002 OUT= 0120
FROM: GAIL/FBX TO: JUNO INFO
TARGET: LJHL SUBJ: POM

TO: H JUD CMTE: REP'S BUSSELL, LISKA, HAYES, BARNES, MALONE, CLOCKSIN & WENDTE

FR: BARRY HAIGHT, FBX FIREFIGHTER'S ASSC., S R BOX 20184, FBX 99701
PH: 455-6293 (H), 452-1558 (W)

RE: HB 223

MSG: WE STRONGLY OPPOSE PASSAGE OF THIS BILL. A FLUCTUATING WORK WEEK WOULD BE DISASTROUS TO THOSE OF US WHO ALREADY WORK LONG SHIFTS AND WORK WEEKS. FIRE FIGHTERS ALREADY LACK PROTECTION UNDER THE LAW REGARDING WAGES, HOURS, AND WORKING CONDITIONS. THIS WOULD MAKE A BAD SITUATION WORSE.

----------EOM



126 W. Int'l Airport Rd • Anchorage, AK 99502 • (907) ~~276-3330~~ 562-2022

Dear Represenatative/Senator Barbie Bussell & Walt Gurnace.

I want you to know that we/I/our firm strongly supports the passage of House Bill 223. We believe that this is an important step in bringing about an even-handed balance to Alaska's labor laws. Passage of the Bill will ensure proper notice for all employers in Alaska that the Fluctuating Work Week ("FWW") and Belo Plan pay methods are improper. It also permits an employer to raise a good faith defense to a claim for double liquidated damages for unpaid overtime.

As you no doubt know, FWW and the Belo pay methods are legal under federal law. We personally believe they should be legal in Alaska. If, however, that is not to be the case, then, at the very least, they should be prohibited prospectively after passage of a law, and not by adoption of regulation which receives little or no publicity.

This Bill doesn't take anything away from an employee, except for a windfall that he never expected.

As an employer in Alaska, we are tired of dealing with regulations which seem bent on stopping or preventing business. This Bill helps to counter that movement. We ask that you give it your full support.

Very truly yours,

David Jordan President



****

4/5/83, SHIRLEE ANC LIO, 5795

TO: REPRESENTATIVES [redacted], HAYES, BARNES, MALONE, LISKA, CLOCKSIN AND WENDTE

FROM: WILLIAM J. WHITAKER, 9499 BRAYTON, SP. 215, ANCH 99507
H 344-3879

IN REGARDS TO HOUSE BILL 223, AS AN ALASKAN AND FORMER EMPLOYEE OF TWO COMPANIES INVOLVED, I KNOW THAT THESE COMPANIES HOLD ALASKA, THEIR LAWS AND PEOPLE IN TOTAL DISREGARD IN SEARCH OF PROFITS. PLEASE DO NOT ALLOW THESE PEOPLE TO MANIPULATE US ANY FURTHER.

MSG 83-00005840 PRTY 1 04/05/83 19:03:04 ORIG: LA01 IN= 0032 OUT= 0190
FROM: MARCIE, ANC INFO TO: POM, JUNEAU INFO
TARGET: LJHL SUBJ: P O M

TO: REPRESENTATIVES [redacted], LISKA, BARNES, CLOCKSIN, HAYES, MALONE, AND WENDTE

FROM: TIM DONOVAN, SRA BOX 1557D, ANCHORAGE 99507
RESIDENCE: 3861 TAIGA DRIVE, ANC
345-0720 H

WHEN A MAN ROBS A BANK IS HE THEN FREED WHEN HE SAYS HE'S SORRY, HE DIDN'T KNOW IT WAS AGAINST THE LAW. HB 223 SEEMS TO SAY THE SAME. IT SOUNDS LIKE BIG BUSINESS IS TRYING TO BUY ITS WAY OUT OF KNOWING BREAKING ALASKA LAW. PLEASE VOTE NO.

EOM

GL 6267 FBX LIO 4/7/83

TO REP. RUSSELL, REP. LISKA, REP. HAYES, REP. BARNES, REP. MALONE, REP. CLOCKSIN, REP. WENDTE

FR R. E. CARLSON, 409 WEDGEWOOD MANOR 39K, FBX 99701 PH. 456-5247

RE HB 223

MSG I OPPOSE HB 223 REGARDING FLEX TIME.

----------EOM

TO: REP. RUSSELL, REP. BARNES, REP. MALONE, REP. CLOCKSIN, REP. LISKA REP. HAYES, REP. WENDTE

FR: DONALD KELLY, 123 4TH AVE. FBX 99701 PH. 456-8909

RE: FLEX TIME

MSG: I AM OPPOSED TO HB 223 REGARDING FLEX TIME.

----------EOM

FR: , CHARLES ...; --

RE: HB 223

MSG: I OPPOSE HB 223 REGARDING FLEXTIME.

----------EOM

FR: JACK ROSENBAUM, 1546 CUSHMAN, #16, FBX 99701 PH: --

RE: HB 223& INTERTIE

MSG: I'M OPPOSED TO FLEXTIME, BECAUSE IT STARTS VOLUNTARY BUT SOON BECOMES MADATORY, LEAVING ME NO WAY TO PLAN MY OFF TIME.

WHY WAS THE INTERTIE DELETED FROM THE GOVERNOR'S BUDGET, SINCE THE INTERIOR NEEDS MORE ECONOMIC POWER AND THE LONGER IT'S DELAYED, THE MORE EXPENSIVE IT GETS?

----------EOM

FR: KATHLEEN BRENNAN, SPT. 630, NORTHWARD BUILDING, FBX 99707 PH: 456-8330

RE: HB 223

MSG: I OPPOSE PASSAGE OF HB 223. THE WORKING PEOPLE IN THIS COUNTRY NEED A BREAK. THIS BILL IS DESIGNED TO WEAKEN OUR UNIONS WHEN IT IS NOW THAT WE NEED STRENGTH.

----------EOM

FR: GUY GIORDANO, 89 SLATER DR., FBX 99701 PH:--

RE: HB 223

MSG: I OPPOSE BILL 223 BECAUSE IT'S NOT FOR THE PEOPLE, IT'S AGAINST THEM & I'M NOT FOR THAT.

----------EOM

FR: GORDON VALLY, 1546 CUSHMAN ST., FBX 99701 PH. ---------

RE: FLEX TIME HB 223

MSG: I OPPOSE HB 223 REGARDING FLEX.TIME.

----------EOM

FR: RON PUNTON, 851 6TH AVE, FBX 99701 PH: 456-4248 (W)

RE: HB 223/ AND INTERTIE

MSG: HB 223: I AM OPPOSED TO REP'S BUSSELL'S FLEXTIME BILL AND WOULD VERY MUCH LIKE TO SEE IT NOT GET OUT OF COMMITTEE. IT'S A STEP BACK FOR ALL ALASKANS.

ON THE INTERTIE, WHAT HAPPENED TO THE $40,000,000 THAT WAS IN THE GOVERNOR'S APPROPRIATIONS FOR INTERTIE CONSTRUCTION? WE IMMEDIATELY NEED ADDITIONAL FUNDING PUT BACK IN TO BEGIN CONSTRUCTION THIS YEAR.
----------EOM

FR: JOHN H COLE, 2640 KUSKOQUIM, FBX 99701 PH: 452-6444(H)

RE: HB 223

MSG: I FEEL ALL MEN AND WOMEN SHOULD GET PAID EQUALLY FOR THE HOURS THAT THEY WORK. IF A PERSON SHOULD WORK ANY OVERTIME, HE OR SHE SHOULD GET PAID FOR THE OVERTIME THEY WORKED AT OVERTIME SCALE.

THANK YOU.

----------EOM

FR: MARY F. MCBRIDE, 208 8TH AVE., FBX 99701 PH: 456-2781 (H)

RE: HB 223

MSG: I OPPOSE PASSAGE OF HB 223 BECAUSE IT IS NOT IN THE BEST INTERESTS OF THE WORKING PEOPLE OF OUR STATE.

----------EOM

MSG 83-00006325 PRTY 1 04/07/83 12:43:29 ORIG: LF01 IN= 0003 OUT= 0071
FROM: GAIL/FBX TO: JUNO INFO
TARGET: LJHL SUBJ: POMS

TO: ALL OF\THE FOLLOWING POMS GO TO :
1) HSE JUDICIARY CMTE: REP'S BUSSELL, LISKA, HAYES, BARNES, MALONE, CLOCKSIN, & WENDTE
2) INTERIOR DELEGATION: REP'S DAIVS, BETTISWORTH, RINGSTAD, KOPONEN, & M W MILLER, & SEN'S BENNETT, FAHRENKAMP & MOSS

ALL OF THE FOLLOWING POMS ARE REGARDING HB223....

FR: TIMOTHY A. MASSEY, 3965 GEIST RD, BLDG F #7, FBX 99701 PH:--

RE: HB 223

MSG: I OPPOSE BILL 223 BECAUSE IT'S NOT FOR THE PEOPLE. I FEEL IT'S NOT RIGHT.

----------EOM

FR: JOHN REYNOLDS, 655 UNIVERSITY AVE., APT H3, FBX 99701 PH: 479-3846 H

RE: HB 223

MSG: I WOULD LIKE TO GO ON RECORD AS OPPOSING HB 223 AS I THINK THE POSSIBILITY FOR ABUSE IS TOO GREAT.

THANK YOU.

----------EOM

FR: LOTTIE MILLER, 120 FORTY MILE AVE., APT 5, FBX 99701 PH: 452-7299 H

RE: HB 223

MSG: I AM AGAINST THE ABOVE BILL.

----------EOM

FROM: ANNIE IN FAIRBANKS TO: JUNEAU INFO.
TARGET: LJHL SUBJ: POM

ALL OF THE FOLLOWING MESSAGES GO TO HOUSE JUDICIARY AND INTERIOR DEL.

TO: HOUSE JUDICIARY AND INTERIOR DELEGATION: REPRESENTATIVES [redacted], LISKA, HAYES, BARNES, MALONE, CLOCKSIN, WENDTE, AND DAVIS, BETTISWORTH, RINGSTAD, KOPONEN, M.W.MILLER,,,, AND SENATORS BENNET, FAHRENKAMP, MOSS

FROM: BOB HORAN, 455 3RD AVE., FAIRBANKS 99701 NO PHONE

RE: HB223

I OPPOSE HOUSE BILL 223 REGARDING FLEX TIME. I FEEL ADDITIONAL FUNDS SHOULD BE PLACED IN THE INTERTIE BUDGET (BETWEEN FBX. AND ANCH.) I CANNOT FIGURE OUT WHY THE GOV. DELETED THIS MONEY.

****

FAIRBANKS, 4/7/83, 6265

FROM: ANDREW MCPHERSON, 2763 MACK ROAD, FAIRBANKS 99701 HOME 479-6870

RE: HB223

I OPPOSE HB223, REGARDING FLEX TIME, IF THIS TYPE OF WORKMAN HOURS IS PUT INTO EFFECT IT WILL DESTROY HARMONY, MORALE AND ANY CONSTRUCTIVE ABILITY FOR WORKMEN TO DO THEIR WORK, IN A GOOD MANNER.

ALSO, THE FUNDING FOR THE INTERTIE BETWEEN ANC. AND FAIRBANKS WAS DELETED BY THE GOV. IN THE AMOUNT OF 40,000,000 AND I WOULD LIKE TO KNOW WHY AND IT SHOULD BE PUT BACK IN THE BUDGET.

EOM**********

MSG 83-00006207 PRTY 1 04/07/83 10:18:11 ORIG: LM01 IN= 0001 OUT= 0012
FROM: MARTIE/MATSU TO: JUNEAU INFORMATION
TARGET: LJHL SUBJ: POM

TO: REPRESENTATIVES BUSSELL, LISKA, HAYES, BARNES, MALONE, CLOCKSIN, WENDTE

POM: GALEN LEWIS
PO BOX 787
WASILLA 99687
PHONE: 376 2531

I'M TOTALLY OPPOSED TO HB 223, SPONSORED BY CHARLIE BUSSELL.

MSNG 6072 MARTTE/MATSU 4/06 12:45 PM

TO: REPS. [redacted], LISKA, HAYES, BARNES, MALONE, CLOCKSIN, AND WENDTE

FROM: KELLY B. BROWN
PO BOX 3336
PALMER, 99645

MESSAGE NO. 3

INSTEAD OF FACING UP TO THEIR RESPONSIBILITY TO PAY IN ACCORDANCE WITH THELAW, THEY HAVE TURNED TO THE LEGISLATURE TO BAIL THEM OUT OF THEIR PROBLEM. HB223 IS A POKE IN THE EYE OF THE WORKING PEOPLE OF THIS STATE. THE IDEA THAT LAWS CAN BE BROKEN IN THIS MANNER AND THE WRONGED EMPLOYEE BE UNABLE TO RECOVER THE WAGES HE OR SHE HAS EARNED, MUCH LESS DAMAGES FOR BEING DEPRIVED OF THESE WAGES FOR SO LONG, HITS ME WRONG.

****

FROM: KELLY B. BROWN
PO BOX 3336
PALMER 99645

MESSAGE NO. 4.

RE: HB223
THIS BILL, IF ADOPTED, WOULD TAKE AWAY MORE THAN MONEY. IT WOULD TAKE AWAY THE RIGHT OF A WORKER TO BE PROTECTED BY THE LAW, FROM UNFAIR AND ILLEGAL PAY PLANS. I THINK THIS IS A QUESTION THAT WAS ANSWERED PLAINLY IN HIGHEST COURT. IF THERE ARE VIOLATIONS OF THE ALASKA WAGE AND HOUR LAWS, THERE IS A PENALTY OF DOUBLE DAMAGES. THE DETERRENT AGAINST NOT PAYING AN EMPLOYEE THE WAGES HE OR SHE IS GUARANTEED BY LAW, IS A PENALTY.

****

FROM: KELLY BROWN
PO BOX 3336
PALMER 99645

MESSAGE NO. 2
IN SUCH A CASE, THE STATE OF ALASKA ON BEHALF OF HARLEY WOODY, TOOK DRESSER INDUSTRIES TO COURT IN OCTOBER 1979. THAT COURT RULED IN FAVOR OF MR. WOODY, AS DID THE SUPERIOR COURT AND THE UNITED STATES SUPREME COURT IN SEPTEMBER 1981 ALL UPHELD THE ANTI FWW REGULATION. DURING THIS LITIGATION, DRESSER INDUSTRIES AND A NUMBER OF OTHER COMPANIES CONTINUED TO USE THE FWW FORMULA. NOW THERE ARE AS MANY AS FIVE CASES PENDING ON THIS SAME QUESTION.

****

FROM: KELLY B. BROWN
PO BOX 3336
PALMER 99645
MESSAGE NUMBER 1.
I AM WRITING TO EXPRESS MY OPINION ON HOUSE BILL 223. I BELIEVE THIS BILL WOULD HAVE UNDESIREABLE IMPACTS ON THE PEOPLE IN ALASKA IF ADOPTED.
UNDER THE PRESENT ALASKA WAGE AND HOUR REGULATIONS, IT IS ILLEGAL TO USE A FLUCTUATING WORK WEEK FORMULA IN COMPUTING OVERTIME PAY. SINCE DECEMBER 1978 WHEN THE DEPARTMENT OF LABOR ADOPTED THIS LAW, SOME COMPANIES IN THIS STATE HAVE ILLEGALLY USED THE FWW PAY SCHEME. BECAUSE OF THEIR FAILURE TO COMPLY WITH THIS LAW, SOME OF THE COMPANIES HAVE BEEN SUED BY THEIR EMPLOYEES FOR OVERTIME WAGES NOT PAID IN COMPLIANCE WITH THE LAW.
EOM #1.

****

MSNG 6072 MARTIE/MATSU 4/06 12:55 PM

TO: REPS. [redacted] LISKA, HEYES, BARNES, MALONE, CLOCKSIN, AND WENDTE

FROM: KELLY B. BROWN
PO BOX 3336
PALMER 99645



MESSAGE NO. 5

RE: HB 223

WHAT PROTECTION COULD THERE BE IF NO PENALTY EXISTS TO ENSURE THAT THE LAW IS ENFORCEABLE? HB 223 WOULD SERIOUSLY AFFECT AN EMPLOYEE'S CHANCES FOR RECOVERY OF WAGES EARNED FOR HOURS WORKED UNDER THE ILLEGAL FLUCTUATING WORK WEEK FORMULA. THIS BILL WOULD BENEFIT A FEW COMPANIES WHICH ARE UNWILLING TO COMPLY WITH THE ALASKA WAGE AND HOUR REGULATIONS. THOSE PEOPLE EMPLOYED BY THIS GROUP AND ANYONE ELSE WHO WORKS OVERTIME WOULD NLOSE THE CURRENT LAW'S PROTECTION.

I APPRECIATE YOUR TAKING THE TIME TO CONSIDER MY COMMENTS IN THIS AND PRECEDING MESSAGES, AND HOPE YOU WILL HELP.
KELLY B. BROWN

****

4/8/83; SHIRLEE ANC L10; 5928

TO: REPRESENTATIVES RUSSELL, LISKA, HAYES, BARNES, MALONE, CLOCKSIN AND WENDTE

FROM: MARC DOBKOWSKI, P. O. BOX 1644, EAGLE RIVER 99577
H 694-3936 W 659-2815

RE: HOUSE BILL 223

I FEEL THAT THIS BILL IS UNFAIR TO ME BECAUSE WHILE STATING TO A FIRMER NOTE THAT THE FLEXIBLE WORK WEEK IS ILLEGAL, IT ALSO ALLOWS MY EMPLOYER TO ESCAPE ANY PENALTIES OR BACK WAGES THAT I AM ENTITLED TO WHEN THEY WILLFULLY BROKE THE LAW FOR NEARLY THREE YEARS.

/S/ MARC DOBKOWSKI

****



FROM: GAIL/FBX TO: JUNO INFO
BUDGET: LJHL SUBJ: MORE POMS

ALL OF THE FOLLOWING GO TO:

1) HSE JUDICIARY CMTE: REP'S RUSSELL, LISKA, HAYES, BARNES, MALONE CLOCKSIN, & WENDTE
2) INTERIOR DELEGATION: REP'S DAVIS, BETTISWORTH, RINGSTAD, KOPONEN, & M W MILLER, & SEN'S BENNETT, FAHRENKAMP & MOSS

ALL OF THE MESSAGES ARE REGARDING **HB 223**

FR: WILLIE LEWIS, LABORERS LOCAL 942, 315 BARNETTE ST., FBX 99701
PH: 479-5842 (H), 452-3139 (W)

RE: HB 223

MSG: I TRULY OPPOSE THIS BILL BECAUSE IT INFRINGES UPON MY RIGHT AND THE RIGHTS OF OTHERS, AND IT'S THE WORST BILL FOR THE WORKING MEN AND WOMEN OF THIS STATE. IT WIPES OUT ANY RESPONSIBILITY OF MANAGEMENT AND DOESN'T HOLD THEM RESPONSIBLE FOR ANY PENALTY OR LIABILITY THAT WILL ACCRUE UPON THEM.

FR: DALE WARNER, 1100 CUSHMAN ST., FBX 99701 RM 211 PH: 452-4421

RE: HB 223

MSG: I'M IN OPPOSITION TO HB 223.

---EOM

FR: GARY POE, 1100 CUSHMAN, FBX 99701 PH: 452-4421

RE: HB 223 & INTERTIE FUNDING

MSG: I OPPOSE HB 223.

I WOULD LIKE TO SEE THE ADDITIONAL FUNDS PLACED IN THE INTERTIE BUDGET, AND I CANNOT FIGURE WHY THE GOVERNOR DELETED THIS FUNDING.

---EOM

FR: DANIEL E KUPISZEWSKI, S R BOX 30050, FBX 99701 PH: 456-8723

RE: HB 223

MSG: THIS BILL WAS DIFFICULT TO READ AND UNDERSTAND BUT IT IS CLEAR THAT THE BILL SHOULD NOT BE PASSED. THIS BILL IS NOT IN THE BEST INTEREST OF US WHO LIVE AND WORK IN ALASKA. OUR PAST AND CURRENT WAGE AND HOUR LAWS HAVE AND ARE SERVING ALASKANS WELL.

---EOM

POM #5 FBX 4/7/83 GL6353

FR: TERRIE LINNE WELLS, 1215 3RD AV., FBX 99701 PH: 456-1804 (H)

RE: HB 223

MSG: I OPPOSE PASSAGE OF THIS BILL AS I THINK IT'S VERY DISCRIMINATORY. I ALSO THINK IT BENEFITS THE EMPLOYER AND NOT THE EMPLOYEE, ALLOWING ME TO WORK LONGER HOURS FOR LESS PAY, ALLOWING THEM TO USE THE EMPLOYEE FOR THEIR BENEFIT.

----------EOM

FR: MARK LINDSEY, BOX 65, FBX 99707 PH: --

RE: HB 223

MSG: I OPPOSE THE HB 223 BECAUSE I DON'T WANT TO BE PUSHED AROUND LIKE A BUNCH OF GOATS.

----------EOM

FR: VERNON DALE OWENS, P O BOX 73503, FBX 99707 PH: 456-8134 (H)

RE: HB 223

MSG: I VERY STRONGLY OPPOSE HB 223. NEVER BEFORE HAVE I SEEN SUCH NONSENSE WRITTEN ON PAPER. IT NOT ONLY INFRINGES ON MY RIGHT AS A WORKER BUT IT IS A TREMENDOUS WASTE OF TIME, MONEY AND EFFORT ON THE LEGISLATURE'S SESSIONS. IT WOULD BE A DISASTEROUS STEP BACKWARDS FOR ALL PEOPLE CONCERNED. PLEASE STOP HB 223. AFTER ALL, I THOUGHT SWEAT SHOPS WERE ABOLISHED.

FR: MIKE J OWENS, P O BOX 1683, FBX 99707 PH: 479-8309 (H)

RE: HB 223

MSG: I AM DEEPLY CONCERNED TO HEAR OF A PROPOSED BILL (#223) THAT IS NOT IN MY BEST INTEREST OR THE BEST INTEREST OF ANY MAN OR WOMAN WORKING FOR AN HOURLY WAGE IN THE STATE OF ALASKA. THIS BILL DENIES AN INDIVIDUAL A JUST HOURLY WAGE.

----------EOM

MSG 83-0000635? PRTY 1 04/07/83 13:39:15 ORIG: LF02 IN= 0008 OUT= 0094
FROM: ANNIE IN FAIRBANKS TO: JUNEAU INFO.
TARGET: LJHL SUBJ POD

TO: HOUSE JUDICIARY AND INTERIOR DELEGATION
REPRESENTATIVES: [redacted] LISKA, HAYES, BARNES, MALONE, CLOCKSIN, WENDTE, AND DAVIS, BETTISWORTH, RINGSTAD, KOPONEN, M.W.MILLER
SENATORS: MOSS, FAHRENKAMP, AND BENNETT

RE: HOUSE BILL 223

**********ALL OF THE FOLLOWING MESSAGES GO TO THE ABOVE MEMBERS**********

FAIRBANKS, 4/7/83, 6359

FROM: DON ILGENFRITZ, 929 COPPET ST., FAIRBANKS 99701
HOME 452-5641 WORK 452-8131

RE: HB223

I URGE YOU TO OPPOSE THIS BILL 223. WHEN WE HAVE LAWS TO TAKE CARE OF WAGES AND HOURS WORKED, THIS BILL SHOULD NOT BE ALLOWED ON THE FLOOR.

****

FROM: WALTER N. WENT, P.O.BOX 1683, FAIRBANKS 99707 HOME 479-8309

RE: HB 223

I'M IN OPPOSITION TO THIS BILL. IT DOES NOT REPRESENT THE WORKING MAN'S VIEW HERE IN ALASKA AND TAKES ADVANTAGE OF HIS RIGHTS.

****

FROM: JAMES A. SAMPSON, S.R. 51478, FAIRBANKS 99701 HOME 452-3207/
WORK 452-3139

RE HB 223

QUITE CONCERNED OVER HB 223 - THIS TYPE OF LEGISLATION SEVERELY HURTS OUR ALASKAN WORKING PEOPLE. WAGE AND HOUR LAWS SHOULD NOT BE MANIPULATED BY THE OIL COMPANIES AND THEIR SUPPLIERS. NOTHING BUT A BAIL OUT FOR DRESSER INDUSTRIES.

**********END OF ALL MESSAGES**********

FROM: BRADLEY LARSSEN, P.O.BOX 72942, FAIRBANKS 99707

RE: HB223

I OPPOSE HB223. HAVING BEEN TO LAW SCHOOL, I HAVE CONSIDERABLE EXPERIENCE READING STATUTES. I FIND THIS BILL "INTENTIONALLY" VAGUE. LABOR FOUGHT 50 YEARS FOR FAIR PAY FOR OVERTIME. THIS BILL ATTEMPTS TO REVOKE THIS FOR THE PRIVATE BENEFIT OF A HANDFULL OF COMPANIES SPONSORING THE BILL. IT ALSO SHAMELESSLY ATTEMPTS TO EXEMPT THEM FROM PAST VIOLATIONS OF EXISTING LAW.

****

FROM: CARSON D. CRITES, BOX 94, FAIRBANKS 99707 HOME 452-5550

RE: HB 223

I WISH TO STATE MY OPPOSITION TO HB 223. BESIDES BEING POORLY WRITTEN, I VEHEMENTLY OPPOSE WHAT THIS BILL WILL DO TO THE ALASKAN WORKER. WORKING IN ARCTIC ALASKA IS DIFFICULT ENOUGH WITHOUT THE ADDED BURDEN OF WORKING FOR LONGER HOURS FOR NO EXTRA PAY. REMEMBER, DRESSER SELLS TO RUSSIANS.

****

FROM: ALFORD JACKSON, 1913 TURNER, FAIRBNAKS 99701 HOME 456-5879

RE: HB223

I WOULD LIKE TO TAKE THIS OPPORTUNITY TO URGE YOU TO VOTE AGAINST HOUSE BILL 223. THIS BILL IS A THREAT TO THE WAGES AND WORKING CONDITIONS OF ALL WORKING PEOPLE IN ALASKA. A FAIR HOURLY WAGE IS WHAT THE WORKING MAN HAS FOUGHT FOR ALL HIS LIFE AND ANY LAW THAT WOULD EFFECT THESE RATES AS WELL AS OVERTIME SEEMS TO BE UNFAIR AND UNNECESSARY. ESPECIALLY WHEN BIG COMPANIES WOULD BE RELIEVED FROM LIABILITY THEY ALREADY INCURRED.

****

RE: HB 223

I AM AGAINST HB 223. I FEEL IT WOULD BE A GREAT BLOW TO THE WORKING MAN IN THE STATE OF ALASKA.

****

FROM: RONALD D. CLONDUS, P.O.BOX 74514, FAIRBANKS 99707 HOME 479-8309

RE: HB 223

I AM COMPLETELY OPPOSED TO HB223 BECAUSE I BELIEVE THAT IT DOES NOT ACT IN THE BEST INTEREST OF LABOR OR THE WORKING MAN IN ALASKA AND ALSO HB223 TAKES ADVANTAGE OF THE WORKING MAN'S RIGHTS FOR A FAIR DAYS PAY FOR A FAIR DAYS WORK. PLEASE COUNT MYSELF AND MY FAMILY AS A OPPOSITION TO THIS BILL.

****

MSG 83-00006338 PRTY 1 04/07/83 12:58:06 ORIG: LF01 IN= 0004 OUT= 0079
FROM: GAIL/FBX TO: JUNO INFO
TARGET: LJHL SUBJ: POMS

ALL OF THE FOLLOWING POMS ARE TO:

1) HSE JUDICIARY CMTE: REP'S [redacted], LISKA, HAYES, BARNES, MALONE CLOCKSIN, & WENDTE
2) INTERIOR DELEGATION: REP'S DAVIS, BETTISWORTH, RINGSTAD, KOPONEN, & M W MILLER, & SEN'S BENNETT, FAHRENKAMP & MOSS

ALL ARE REGARDING HB 223.

POM # 9 FBX 4/7/83 GL 6338

FR: TOM KELTNER, S R 30564-L, FBX 99701 PH: 452-6965 (H)

RE: HB 223

MSG: THIS BILL WILL MAKE IT EASIER FOR CARPETBAGGERS FROM THE LOWER 48 TO GET OUR JOBS AND TAKE OUR PAYCHECKS OUT OF THIS STATE.

---EOM

POM #10 FBX 4/7/83 GL 6338

FR: GEORGE S LEWIS, 1629 MADISON, FBX 99701 PH: 479-5842 (H), 852-8466 (W)

RE: HB 223

MSG: I BELIEVE THAT THIS BILL IS UNJUST AND UNCONSTITUTIONAL. IN A WAY IT SOUNDS GOOD ALL THE WAY UP TO SECTION IV. THEN IT CONTRADICTS EVERYTHING IT SAYS AND TRIES TO MESS YOU OVER. BECAUSE OF THIS, I BELIEVE THIS BILL SHOULD BE OUSTED OR TROUBLE IN OUR COMMUNITY MAY START.

---EOM

FROM: GAIL/FBX TO: JUNO INFO
TARGET: L JHL SUBJ: POMS

ALL OF THE FOLLOWING POMS ARE TO:

1) HSE JUDICIARY CMTE: REP'S RUSSELL, LISKA, HAYES, BARNES, MALONE CLOCKSIN, & WENDTE
2) INTERIOR DELEGATION: REP'S DAVIS, BETTISWORTH, RINGSTAD, KOPONEN, & M W MILLER, & SEN'S BENNETT, FAHRENKAMP & MOSS

POM #6 FBX 4/7/83 GL6338
RE: HB 223

FR: WILLIAM H DAWSON, 2218 MERCIER ST., FBX 99701 PH: 456-3462

MSG: WE ARE OPPOSED TO THIS BILL BECAUSE IT IS AGAINST THE WORKING PEOPLE.

----------EOM

POM # 7 FBX 4/7/83 GL 6338

FR: THOMAS BROSE, 401 SLATER, APT 8, FBX 99701 PH: 452-6569(H), 659-2611 (W

RE: HB 223

MSG: I FIRMLY OPPOSE HB 223 BECAUSE IF AFFECTS THE HOURLY WAGE. THAT WAGE SHOULD BE PROTECTED BY YOU FOR ALL WORKERS. MEN SHOULD NOT HAVE TO WORK OVERTIME AND NOT GET PAID A PREMIUM WAGE. THE BILL DOES NOT SERVE THE PURPOSE OF HELPING THE WORKING CLASS IN ALASKA, FOR OTHERS TO PROFIT AT THEIR EXPENSE.

----------EOM

POM #8 FBX 4/7/83 GL 6338

FR: DANIEL J SULLIVAN, P O BOX 73177, FBX 99707 PH: 479-5378 (H)

RE: HB 223

MSG: I OPPOSE BILL 223 FOR THE REASON IT IS GROSSLY UNFAIR & UNREASONABLE FOR ANY ALASKAN.

----------EOM

MSG 83-00006335 PRTY 1 04/07/83 12:52:38 ORIG: LF02 IN= 0007 OUT= 0081
FROM: ANNIE IN FAIRBANKS TO: JUNEAU INFO.
TARGET: LJHL SUBJ: FOM

TO: HOUSE JUDICIARY AND INTERIOR DELEGATION:

REPRESENTATIVES: [redacted], LISKA, HAYES, BARNES, MALONE, CLOCKSIN, WENDTE, DAVIS, BETTISWORTH, RINGSTAD, KOPONEN, AND M.W.MILLER
SENATORS: BENNETT, FAHRENKAMP, AND MOSS

FAIRBANKS, 4/7/83, 6335

FROM: STEVE REIDLINGER, 3020 CHINOOK DRIVE, FAIRBANKS 99701

RE: HB 223

THIS IS NOT IN THE INTEREST OF WORKING PEOPLE. BIG COMPANIES HAVE BEEN REAPING THE PROFIT LONG ENOUGH.

****

FAIRBANKS, 4/7/83, 6335

FROM: SCOTT K. FULTON, P.O.BOX 80313, COLLEGE, ALASKA 99708
HOME 479-3833

RE HB223

STOP HOUSE BILL 223, IT GOES AGAINST EVERYTHING WE'VE WORKED FOR AND HURTS INCENTIVE TO WORK MORE AND WORK HARDER.

THANK YOU.

****

FAIRBANKS, 3/7/83, 6335

FROM DAVID GUTTENBERG, LOCAL 942, BOX 80734, COLLEGE 99708
HOME 455-6394

RE HB 223

I'M VOICING MY OPPOSITION TO THIS BILL. IT WOULD NOT BE IN THE INTEREST OF THE COMMON MAN.

****

TO: HOUSE JUDICIARY AND INTERIOR DELEGATION:

REPRESENTATIVES: BUSSELL, LISKA, HAYES, BARNES, MALONE, CLOCKSIN, WENDTE, DAVIS, BETTISWORTH, RINGSTAD, KOPONEN, AND M.W.MILLER
SENATORS: BENNETT, FAHRENKAMP, AND MOSS

FAIRBANKS, 3/7/83, 6335

FROM: DAVID D. RASLEY, FAIRBANKS CENTRAL LABOR COUNCIL
819 1ST AVE., FAIRBANKS, 99701 WORK 452-8131

RE: HB 223

I URGE YOU TO VIGOROUSLY OPPOSE HB223. IT IS MY OPINION THAT THE SPONSOR OF THIS BILL, REP. BUSSELL, HAS A DIRECT FINANCIAL INTEREST IN THIS BILL. MANY BUSH WAGE EARNERS WILL LOSE THOUSANDS OF DOLLARS WHICH IN TURN WILL GO TO THOSE EMPLOYERS LIKE BUSSELL ELECTRIC. THEREFORE, IT IS A CONFLICT OF INTEREST AND IS ETHICALLY AND MORALLY IMPROPER, IF NOT TOTALLY UNCONSTITUTIONAL. AS REPRESENTATIVES OF ALL THE VOTERS OF ALASKA IT IS YOUR DUTY TO OPPOSE THIS TYPE OF SELF INTEREST LEGISLATION.

****

FAIRBANKS, 3/7/83, 6335

FROM: LEE JOHNSON, BOX 1768 (2.8 MILE GILMORE TRAIL), FAIRBANKS 99707
HOME 456-2785

RE: HB 223

I DON'T THINK THIS BILL IS IN THE BEST INTEREST OF WORKING PEOPLE IF IT ALLOWS EMPLOYERS IN VIOLATION TO ESCAPE CIVIL OR CRIMINAL SUITS PENDING AGAINST THEM. SECTION 1(B) SOUNDS GOOD.

****

FAIRBANKS, 3/7/83, 6335

FROM: GEORGE V. PHIPPS, P.O.BOX 183 (512 CRAIG ST.) FAIRBANKS 99707
HOME 456-2724

RE HB 223

I WOULD LIKE TO MAKE YOU AWARE OF MY OPPOSITION TO HB223. PASSAGE OF THIS BILL WOULD BE A GREAT DETRAMENT TO THE WORKING PERSON OF THIS STATE AND AFFECT OUR FUTURE PAY SCALE FOR YEARS.

****

MSG 83-00006335 PRTY 1 04/07/83 12:52:38 ORIG: LF02 IN= 0007 OUT= 0081
FROM: ANNIE IN FAIRBANKS TO: JUNEAU INFO.
TARGET: LJHL SUBJ: POM

TO: HOUSE JUDICIARY AND INTERIOR DELEGATION:

REPRESENTATIVES: RUSSELL, LISKA, HAYES, BARNES, MALONE, CLOCKSIN, WENDTE, DAVIS, BETTISWORTH, RINGSTAD, KOPONEN, AND M.W.MILLER
SENATORS: BENNETT, FAHRENKAMP, AND MOSS

FAIRBANKS, 3/7/83, 6335

FROM: NANCY C. STRAND, 2110 B. MCCULLAM, FAIRBANKS 99701
HOME 456-8804

RE: HB 223

I VEHEMENTLY OPPOSE PASSAGE OF HB223. THIS BILL UNDERMINES THE STRENGTH OF LABOR UNIONS IN THE STATE.

****

FAIRBANKS, 3/7/83, 6335

FROM: JOE STEINAKER, P.O.BOX 2472, FAIRBANKS 99707 HOME 452-7811

RE: HB 223

AT THIS TIME I WOULD LIKE TO STATE MY OPPOSITION TO HB223 WHICH IS BEING REVIEWED TODAY. I AM OPPOSED TO THIS ON THE GROUNDS THAT FLEX TIME IS TOO BROAD OF A TERM FOR THE WORKING CLASS.

****

FAIRBANKS, 4/7/83, 6335

FROM: LELAND D. CORKRAN, BOX 73324, FAIRBANKS 99707
HOME 456-5405 WORK 456-5421

RE: HB 223

PRESENT LAWS HAVE STABLISHED A WORK DAY AND THE WORK WEEK BOTH ATTHE STATE FEDERAL LEVELS. THIS BILL WOULD BE COMPLETELY CONTRARY TO THE INTENT OF THOSE LAWS.

I AM OPPOSED TO THE PASSAGE OF THIS BILL.

**********END OF ALL MESSAGES**********

MSG 83-00006338 PRTY 1 04/07/83 12:58:06 ORIG: LF01 IN= 0004 OUT= 0079
FROM: GAIL/FBX TO: JUNO INFO
TARGET: LJHL SUBJ: POMS

ALL OF THE FOLLOWING POMS ARE TO:

1) HSE JUDICIARY CMTE: REP'S BUSSELL, ISKA, HAYES, BARNES, MALONE CLOCKSIN, & WENDTE
2) INTERIOR DELEGATION: REP'S DAVIS, BETTISWORTH, RINGSTAD, KOPONEN, & M W MILLER, & SEN'S BENNETT, FAHRENKAMP & MOSS

ALL ARE REGARDING HB 223.

POM #1 FBX 4/7/83 GL 6338

FR: JUDITH C JACOBY, P O BOX 1711, FBS 99707 PH: 456-8804 (H), 456-4584 (W)

RE: HB 223

MSG: I VEHEMENTLY OPPOSE PASSAGE OF HB 223. THIS BILL UNDERMINES THE STRENGTH OF LABOR UNIONS IN THIS STATE. PEOPLE SHOULD BE PAID BY THE HOUR -- THEIR PAY SHOULD NOT BE RE-ADJUSTED.

---EOM

POM #2 FBX 4/7/83 GL 6338

FR: PATRICIA L HOUSE, P O 1686, FBX 99707 PH: 452-3154(H)

RE: HB 223

MSG: I THINK THAT PEOPLE SHOULD BE PAID BY THE HOUR AND IT SHOULD NOT BE RE-ADJUSTED BY ONE FIXED SUM. SO BILL # 223 SHOULD DEFINITELY BE OPPOSED.

---EOM

MSG 83-00006338 PRTY 1 04/07/83 12:58:06 ORIG: LF01 IN= 0004 OUT= 0079
FROM: GAIL/FBX TO: JUNO INFO
TARGET: LJHL SUBJ: POMS

ALL OF THE FOLLOWING POMS ARE TO:

1) HSE JUDICIARY CMTE: REP'S RUSSELL, LISKA, HAYES, BARNES, MALONE CLOCKSIN, & WENDTE
2) INTERIOR DELEGATION: REP'S DAVIS, BETTISWORTH, RINGSTAD, KOPONEN, & M W MILLER, & SEN'S BENNETT, FAHRENKAMP & MOSS

POM #3 FBX 4/7/83 GL6338

FR: BERNARD MCGUIGAN, 1545 EIELSON, FBX 99701 PH: 452-3186 (H)

RE: HB 223

MSG; I THNK PEOPLE SHOULD BE PAID BY THE HOUR, GOOD UNION WAGES & NO SUBCONTRACTORS.

----------EOM

POM #4 FBX 4/7/83 GL6338

FR: EDDIE B BENSON, 2618 MERCIE, P O BOX 952, FBX 99707 PH:--

RE: HB 223

MSG: IT'S DAMAGING. I, EDDIE BENSON, OPPOSE THIS BILL 223.

----------EOM

POM #5 FBX 4/7/83 GL 6338

FR: E M MILLER, 1106 GORDON WAY, FBX 99701 PH: 456-7682

RE: HB 223

MSG: WE ARE AGAINST THE BILL BECAUSE IT DENIES US AS WORKING PEOPLE A FAIR WAGE.

----------EOM

MSG 83-00005817 PRTY 1 04/05/83 17:53:19 ORIG: LA01 IN= 0031 OUT= 0176
FROM: SHIRLEE ANC LIO TO: POMS JUNEAU INFO
TARGET: LJHL SUBJ: POM

4/5/83, SHIRLEE ANC LIO, 5817

TO: ALL MEMBERS, ALASKA LEGISLATURE
ATTN: REPRESENTATIVES [redacted] AND LINDAUER
ATTN: SENATORS STURGULEWSKI AND RODEY

FROM: TOM STANDLEY, 6841 CHERYL, ANCH 99502 H 349-2986
W 563-3990

SIRS: IN ADDITION TO MY LETTER REGARDING HOUSE BILL 223, WHEN FWW WAS LEGAL AND DRILLING ACTIVITY SLOW, A MAN COULD AT LEAST MAKE ENDS MEET. BUT NOW WITH RIG COUNTS CONTINUING TO DROP, A MAN ON 40 HOURS PER WEEK CANNOT SURVIVE. PLEASE SUPPORT HOUSE BILL 223 AND FWW (FLUCTUATING WORK WEEK).

****

HOUSE JUDICIARY COMMITTEE OBSERVER/WITNESS SIGN-UP SHEET

DATE: 4-16-88 SPONSOR: Russell

SUBJECT(S): HB 223

NAME	REPRESENTING	ADDRESS	PHONE	OBSERVER	WITNESS	FOR	AGAINST
Don Rouleau	District Council of Laborers	369 S. Franklin, Ste 200, Juneau	586-2707	✓			✓
Snova Lochaby-Smith	Dept. of Labor	P.O. Box 6530, Juneau	465-4842	✓			
Tom Cooke	IBEW Local 1547	124 Front Juneau	586-3050	✓			✓

SPONSOR: House Judiciary

(leg) non-leg (pub hear) work sess inv hear

SUBJECT: HB223 Overtime Wages

MAILING ADDRESS: _____

PHONE 4990 CONTACT Katherine

DATE TAKEN/BY KRB/4/8

T/C DATE/DAY Sat Apr 16

TIME: 11:00 PACIFIC
10:00 YUKON
9:00 ALASKA
8:00 BERING
4 hours

SITES PARTICIPATING: All Alaska

North Slope
- Anaktuvuk Pass
- * Barrow
- Kaktovik
- Point Hope
- Wainwright

NANA
- Ambler
- * Kotzebue
- Noorvik
- Selawik

Norton Sound
- Gambell
- Hooper Bay
- * Nome
- Savoonga
- Shishmaref
- ** Unalakleet

Bristol Bay
Aleutians
- * Bethel
- * Dillingham
- St. Paul
- Sand Point
- ** Unalaska

Interior
- * Delta Junction
- * Fairbanks
- ** Fort Yukon
- Galena

South Central
- * Anchorage
- Homer
- * Kenai (Sol)
- * Kodiak
- * Mat-Su
- Seward
- * Valdez

Southeast
- Cordova
- Haines
- Hoonah
- * Juneau
- * Ketchikan
- * Petersburg
- * Sitka
- Wrangell
- Yakutat

ALL ALASKA
ALL LIO's
WASH., D.C.

Chairing Site/Person JNU - Rep Bussell

Special Offnet Location/Phone# _____

Katherine Daurnski 4/8/83
Signature of Sponsor/Contact Person Date

------TELECONFERENCE OFFICE USE ONLY------

2-Wire ____ 4-Wire X

Bridges: #1 (206)447-0620
#2 (206)447-1554
#3 (206)447-5627
#4 (206)447-9479

Bridge operator (800)426-3232

JNU trouble #'s 586-1062
465-3836

Publicity:
____ Local calls/list attached Committee mtg Contact.
X Media/P.S.A. attached

Can expect:
____ Lengthy back-up
____ Bill summary
____ Participants list

POST TELECONFERENCE NOTES

Site/Date: _____

Local Moderator _____

T/C Started: _____ T/C Ended _____

T/C Recorded: _____

Testified/Participated: _____

Unable to Testify: _____

Observers: _____

Total Number: _____

HOUSE JUDICIARY COMMITTEE OBSERVER/WITNESS SIGN-UP SHEET

DATE: SPONSOR:

SUBJECT(S):

	NAME	REPRESENTING	ADDRESS	PHONE	OBSERVER	WITNESS	FOR	AGAINST
11#	JERRY SHEEHAN	GEARHART IND.	PO Box 2436 ANCH 99510	562-2538		✓	✓	
12	LARRY COMPTON	TIME SAVER GROCERY	3519 BERNARD RD ANCH 99503	248-2900		✓	✓	
13#	RICHARD CRIALL	DOWELL, DIV OF DOW	4665 Bus Park Ave Anch AK	561-1324		✓	✓	
14#	Paul L. Preston	Halliburton Svc.	Box 6287 Anc AK	562-2100		✓	✓	

HOUSE JUDICIARY COMMITTEE OBSERVER/WITNESS SIGN-UP SHEET

DATE: 4-7-83 SPONSOR: Bussell

SUBJECT(S): HB 223- payment of OT wages

	NAME	REPRESENTING	ADDRESS	PHONE	OBSERVER	WITNESS	FOR	AGAINST
1#	Chuck Becker	Alaska Support Industry Alliance	P.O. Box 100100 Anch 99510	562-0100		✓	✓	
2#	John Martin	Dresser Atlas	5600 B, Suite 201 Anch.			✓	✓	
3#	Theodore Fleischer	P.E.S.A. EG&R	510 L, Suite 700 Anch. 99501	276-5121		✓	✓	
4#	Jim Robison	Dept of Labor	Box 1149 Juneau AK	465-2700		✓		
7#	Marlene Neve'	AFL-CIO	SR Box 20948 FBKS	456-2030		✓		✓
5#	Gary Amendola	Dept. of Labor	Box 1149 Juneau	465-2700		✓		
	Paul Dillon	RHBA&P	130 Seward St. Juneau AK	586-2890	✓			
8#	Michael Barcott	Parties to Litigation	2550 Denali-Suite 700 Anch.	274-0666		✓		✓
9#	John Eshleman	AWSA/SELF	P O Box 1145 Wasilla AK	376-2045		✓		✓
10#	Robert Eshleman	AWSA/SELF	P.O. Box 8035 WRB; Kenai	770-8589		✓		✓
15#	Tom Sofo	LAA/Legal Services		465-2450		✓		
	Joan Metcalf	Rep Szymanski	Juneau	465-4979	✓			
14#	Tom Cashen	IBEW L.U. 1547	124 Front Juneau	586-1342				✓
6#	Ron Lovensen	AG Office	Juneau			✓		
17#	James Wakefield	Labor's Union 942	Juneau					

MULA for figuring FWW pay:

ALLY BASE + BONUS ÷ TOTAL NUMBER OF HOURS = Pay per hour.

hat figure is lower than minimum, use the minimum per hour.

week is figured separately.

figure OVERTIME:

No. of hours -40 ÷ 2 + No. of hours.

Total No. of hours x hourly rate

MPLE: (If pay is $229 per week with minimum 4.58 per hour)

WEEK #1 -- 109 hours + 196.13 bonus

229.80 + 196.13 = 425.13 ÷ 109 = $3.90 per hour

109 - 40 ÷ 2 + 109 = 143.5

143.5 hours times $4.58 = $657.23

WEEK #2 -- 124 hours + 765.47 bonus

229.80 + 765.47 = 994.47 ÷ $8.02

124 - 40 ÷ 2 + 124 = 166

166 x 8.02 = $1,331.32

Total Pay for 2 weeks	657.23
	1,331.32
	$1,988.55

Hyprin

5.76

BASE 288

BONUS 506.33

MILES 114

288 ÷ 50 = 5.76 (MIN EFFECTIVE RA

$$\frac{288 + 506.33}{114} = 6.97$$

$6.97 \times (114 + \frac{1}{2}(74)) = 151$

$6.97 \times 151 = 1052.47$

Dx11 to
6-7-82

Hypothetical #2

Base $ 288
Bonus $ 506.33
Hours 120.

288 ÷ 50 = 5.76

$$\frac{288 + 506.33}{120} = 6.62$$

6.62 × 160 = 1059.20

Dx 12 Ba
6-2-82

Base $288
Service $506.30
Hours 130.

$$\frac{288 + 506.33}{130} = 6.11$$

$$175 \times 6.11 = 1069.25$$

D x 13bq
6-2-80

SCHLUMBERGER-NAM

Interoffice Correspondence

Date: April 21, 1982

CONFIDENTIAL

To: All AKD Engineers and Managers

File No:

From: Alaska Division

Subject: Alaska State Legislature Senate Bill # 886

As I believe you are all aware, we have recently changed our Operator Pay Package in Alaska to comply with a recent Supreme Court ruling outlawing the previous fluctuating work week method. This ruling was retroactive to January 1, 1979. This leaves a very high potential liability for back wage payment. Because we believe our method of wage payment has always been fair and just to our employees, we are presently lobbying in the Alaska Legislature to reduce this liability. In conjunction with an organization called Petroleum Equipment Suppliers Association (PESA), we are introducing Senate Bill # 886 to the State Legislative session to remove this back wage payment liability. April 28th is the last day of this session so our time is very short to get our bill passed. To facilitate this passage, we are encouraging all of our Management personnel to support this bill by actively informing our legislature of our feelings on this issue.

A wire or telex may be sent to our legislators by calling either of the following numbers and expressing your support for S.B. #886:

278-3668

or

Zenith-9500 (Operator Assisted)

We encourage your support as Schlumberger Managers to inform any or all of the people listed below of your feelings on this issue:

Robert Hulcahy	Chairman of Senate Labor Committee
Vic Fischer	Chairman of State Affairs Committee
Jalmar Kerttula	President of the Senate
Mike Colletta	Senator
Patrick Rodey	Senator
Robert Ziegler	
Mitch Abood	
Mike Beirne	
Joe Paynes	
Terry Martin	

Thank you for your support on this issue.

[illegible] Manager

JRC/cb

WHILE YOU WERE AWAY

FOR Cathy DATE 4/5 TIME 2:35 A.M. P.M.

M Tim Donovan

OF

PHONE 345-0720
AREA CODE NUMBER EXTENSION

MESSAGE Votes you on HB223

Is this going to be a teleconference? Cy

SIGNED

	TELEPHONED
	RETURNED YOUR CALL
	PLEASE CALL
	WILL CALL AGAIN
	CAME TO SEE YOU
	WANTS TO SEE YOU

TOPS FORM 4002

WHILE YOU WERE AWAY

FOR _____ DATE _____ TIME ___ ___ A.M. P.M.

M Tony Sholly

OF

PHONE 586-2210
AREA CODE NUMBER EXTENSION

MESSAGE HB 223

SIGNED

	TELEPHONED
	RETURNED YOUR CALL
	PLEASE CALL
	WILL CALL AGAIN
	CAME TO SEE YOU
	WANTS TO SEE YOU

TOPS FORM 4002

Ron Lorensen
Deputy A.G.
Dept of Law
3600
copies!

April 26, 1983



The Honorable Charlie Bussell
House of Representatives
Chairman, House Judiciary Committee
Alaska State Legislature
Capitol, Room 124
Pouch V
Juneau, Alaska 99811

Dear Sir:

I would like to express my support for H.B. 223 which is now pending in your committee. When the work schedules were set up with the F.W.W. or Belo pay plan, there were no complaints and people were happy to have employment. This is another case of some opportunist lawyer trying to make a case out of something that was approved by the past employee. If the employee did not approve of the plan, then he should have resigned.

Sincerely,

Roger J. Seibert

RJS:te

Address: Roger Seibert
SRA Box 1735-I
Anchorage, AK 99507



April 26, 1983

The Honorable Charlie Bussell
House of Representatives
Chairman, House Judiciary Committee
Alaska State Legislature
Capitol, Room 124
Pouch V
Juneau, AK 99811

Dear Sir:

I would like you to know that I support HB 223. I feel it is a law that we need.

Sincerely,

David C. Sharp

David C. Sharp
SRA Box 1153
Anchorage, AK 99502

I.

FACTUAL BACKGROUND

The flexible work week (hereafter FWW)[1/] method of computing overtime payment has been recognized as an acceptable method of payment under the Federal Wage and Hour Act since 1968. 29 C.F.R. 778.114 specifically allows the use of the fluctuating work week payment method. This method of payment is particularly suited to resource development and service industries where there is frequently a considerable amount of standby service time at remote locations and a variety in the number of hours of work available from week to week. The plan generally provides employees greater certainty in planning their financial budgets and guarantees them a specific amount in their pay checks each pay period thus easing the ups and downs in income which would result from a straight overtime pay plan method. This continuity of income allows employees to reflect a more stable cash flow to loan institutions when qualifying for home loans and the like and also serves to reduce the likelihood of a potentially devastating interruption of income to the employee. Without the FWW plan an employee may find himself returning to work from a two week R&R at a time when work is unexpectedly slack and then leaving on his next two week R&R when work picks up. Thus six weeks may pass

---

1/ There are accounting differences in the various plans generally referred to as FWW plans or BELO plans which do not affect the questions raised herein. Both FWW and BELO plans will hereafter be referred to as FWW.

I.

FACTUAL BACKGROUND

The flexible work week (hereafter FWW)[1/] method of computing overtime payment has been recognized as an acceptable method of payment under the Federal Wage and Hour Act since 1968. 29 C.F.R. 778.114 specifically allows the use of the fluctuating work week payment method. This method of payment is particularly suited to resource development and service industries where there is frequently a considerable amount of standby service time at remote locations and a variety in the number of hours of work available from week to week. The plan generally provides employees greater certainty in planning their financial budgets and guarantees them a specific amount in their pay checks each pay period thus easing the ups and downs in income which would result from a straight overtime pay plan method. This continuity of income allows employees to reflect a more stable cash flow to loan institutions when qualifying for home loans and the like and also serves to reduce the likelihood of a potentially devastating interruption of income to the employee. Without the FWW plan an employee may find himself returning to work from a two week R&R at a time when work is unexpectedly slack and then leaving on his next two week R&R when work picks up. Thus six weeks may pass

---

1/ There are accounting differences in the various plans generally referred to as FWW plans or BELO plans which do not affect the questions raised herein. Both FWW and BELO plans will hereafter be referred to as FWW.

while his bills pile up before he can scramble back to catch up if his next two weeks on the job happen to coincide with an increase in work hours.

Prior to 1978 the use of the flexible work week method of payment was legal under Alaska law. See AS 23.10.060; Attorney General Opinion February 10, 1978. On December 8, 1978, the Department of Labor instituted a change by adopting a new regulation, 8 AAC 15.100, which declared that these flexible work week plans were no longer in compliance with the overtime provisions of Alaska's wage and hour laws.

This change in the administrative regulations was poorly publicized, with little if any input from Alaskan employers. The primary industries affected by the new regulation are the oil and gas support industries with additional effect on mining and other industries. It is estimated that, since this regulation was adopted in 1978, possibly as many as 100 Alaska businesses, unaware that the long standing custom and practice in their industry has been changed by administrative regulation, have continued using the same flexible work week plan they had used for years and, in doing so, may have incurred substantial liability.

In October, 1979, almost a year after the regulatory change, Dresser Industries (the first company to be sued) was named as a defendant in a suit filed by a former employee for $4,000 in back wages. The case was opposed on constitutional

grounds and appealed to the Alaska Supreme Court. In September 1981, the Alaska Supreme Court upheld the power of the Department of Labor to promulgate regulations on this subject. The U.S. Supreme Court later declined to review the case. Dresser paid the judgment and the case was closed. In November 1981, Dresser was sued by another former employee who agreed to stay action on his case awaiting a U.S. Supreme Court decision on whether to review the case. The case for this one individual has since been settled and dismissed.

In December 1981, two years after the regulatory change, Dresser was again sued, this time in a class action filed by a third employee seeking back wages on behalf of all Dresser employees in an amount exceeding $15,000,000. At least three other companies, including FMC and Schlumbeger, have since been sued. All of these cases are in the preliminary stages, no trial dates have been set at this time and none of the lawsuits have as yet resulted in a judgment against any of the defendant companies.

In addition to the financial liability created by the flexible work week prohibition, Alaska law provides for mandatory liquidated damages which doubles any back wage or overtime award regardless of the good faith efforts on the part of the employer to abide by the wage and hour statutes. AS 23.10.110; AAI, Inc. v. Mussara, 602 P.2 1240 (Alaska 1979). Even if an employer relies on the Department of Labor's opinion or otherwise makes an innocent error in computation of pay, the court has no choice but to award double the amount of damages. The accumulated liability

resulting from the 1978 administrative action coupled with Alaska's double damage statute has resulted in a potential economic disaster for many Alaskan employers.

II.

PROPOSED REMEDY

A multitude of companies and organizations proposed during the latter part of the 1982 legislative session that the FWW administrative prohibition be amended to include a good faith exception and provide that any liability arising out of the regulatory prohibition be extinguished retroactively. A bill to accomplish this, SB 886, was introduced in the Senate.

The bill, as proposed, would have the following effects. The proposed regulation will have no effect on the two individuals who have already brought suit and either received a final judgment from which appeal cannot be taken or settled their case. As to those people who have filed suit, either individually or on behalf of a class of employees, and whose suit is still pending awaiting trial or on appeal, their cases would be dismissed subject to the right of employees to recover expenses of litigation. Companies would be given a period of time to convert over from the FWW pay systems and relieved of the massive potential liability raised by the regulation. Past employees would not receive a windfall gain.

III.

QUESTIONS PRESENTED

1. Does the Alaska legislature have the power to repeal the administrative regulation?

2. Does a retroactive repeal of the regulation constitute an unconstitutional impairment of the right to contract by taking away vested contractual rights of employees?

Question 1 above has been directly addressed by the Alaska courts. Under AS 44.62.320 (Legislative Annulment of Regulations and Review), the legislature was granted the authority to annul a regulation of an agency by concurrent resolution. In 1980 the Alaska Supreme Court in State v. A.L.I.V.E., 606 P.2d 769 (Alaska 1980) held that the legislature could not annul a regulation by concurrent resolution but did set out the proper procedure by which the legislature could annul a regulation. In the A.L.I.V.E. case the Alaska Supreme Court indicated that by a vote of both houses and passage of a new Act the legislature does have the power to annul an agency regulation by following normal legislative procedures. AS 01.10.090 requires that in order for the statute annulling the regulation to have retrospective effect, it must expressly declare in the statute that it is intended to be retrospective. In addition, under AS 01.10.100 (Effect of Repeal or Amendments) the legislature has been specifically granted the power to annul a regulation, the only qualification being that if the annulment is to be retroactive and is to affect any penalty or liability incurred, it must expressly state that this is the legislative intent.

As to question #2 above, the argument that a retroactive repeal or annulment of a regulation and the consequent extinguishing of liability on the part of employers for penalties, forfeitures or back wages is an unconstitutional denial of due process because it violates the fifth amendment prohibition against impairment of contracts or Article I, § 10 of the Constitution has been raised numerous times in the past in various cases and has over the years been resoundingly rejected by literally hundreds of court decisions.

In 1947 the United States Congress faced a situation similar to the problem now facing the Alaska legislature. The United States Supreme Court in Anderson v. Mt. Clemens Pottery Co., 328 U.S. 680 interpreted the existing Fair Labor Standards Act as requiring payment for time spent in preliminary and incidental activities on the employer's premises prior to actually beginning work at the employees' work stations. This decision changed the existing custom and practice in industry and between July of 1946 and January of 1947, some 2,000 cases were filed in Federal Court alone seeking back pay in excess of five billion dollars. (House Committee on the Judiciary Report No. 71, Feb. 25, 1947.)

In response to this situation, Congress passed the Portal to Portal Act of 1947 which specifically extinguished any claim arising out of the Fair Labor Standards statutes and relieved employers from liability and punishment from existing claims

whether commenced prior to, or on or after the date of the Act. The Act provided that unless an activity was covered by an express provision of a written or nonwritten contract between the employee and his employer or was a custom or practice in effect at the time of employment, any liability for existing or future claims would be extinguished.

The report of the House Committee on the Judiciary specifically addressed the constitutionality and vested contract right question in passing the Portal to Portal Act and noted that:

> Claims for minimum wages, overtime compensation, liquidated damages and penalties are not vested property rights within the protection of the Fifth Amendment. They are purely statutory rights which may be withdrawn by the Congress at any time before they have ripened into a final judgment from which appeal cannot be taken. (citations omitted).

In the years following passage of the Portal to Portal Act the constitutionality of the retroactive grant of immunity from liability has been challenged many times in many courts. It has been upheld consistently.

In Seese v. Bethlehem Steel Co., 168 F.2d 58 (4th Cir. 1948) the court noted at page 61 that the constitutionality of the Portal to Portal Act was beyond question:

> Its constitutionality has been upheld by the circuit court of appeals of the sixth circuit . . . and by more

> than 100 decisions of federal district courts and state courts to which our attention has been called. We list below those available in the federal supplement which we had opportunity to read.

The plaintiffs in Seese argued that the statute violated the constitution because:

> . . . they deprived plaintif s of vested rights under existing contracts in violation of the due process clause of the fifth amendment.

The court's response to this contention was clear:

> We think that both contentions are entirely without merit.
>
> * * *
>
> The question raised under the fifth amendment is that the statute takes property without due process in that it strikes down vested rights under existing contracts. The answer is that even rights arising out of contract cannot fetter congress in the exercise of a power granted it by the constitution, and that the rights stricken down by the statute are not rights arising out of contract at all, but rights created by statute as an incident of the statutory regulation of commerce.

The court held that the Fair Labor Standards Act does not provide payment for employees engaged in the commerce which Congress sought to regulate but rather provides a means by which wages may be regulated. The Court stated that when it becomes apparent that the instrument of regulation is about to be used in such a way as to

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injure the very commerce it is designed to help it is idle to say that the legislature is without power to amend it in such a way as to avoid the evil that is threatened.

The proposed bill before the Alaska legislature will not strike down any right which is based on a contract, a custom or a practice. What is sought to be taken away is purely a statutory right. This is clearly constitutional:

> What was taken away was the right to recover on claims of purely statutory origin, claims given by statute not as compensation for labor performed but as a means of regulating wages and hours of work in interstate commerce. (Seese, supra, at p. 64, citations omitted.)

By both logic and legal reasoning, since the legislature may repeal its own Act, it clearly has the right to take away something which has no existence save by virtue of that Act.

Looked at in another way, the legislature is merely validating contracts and agreements between employers and employees which were only made invalid by reason of the regulation in effect during a period of the employment contract. The legislature's power to validate prior contracts which were invalid by statute has been upheld repeatedly by the U.S. Supreme Court. Westside Belt R Co. v. Pittsburg Construction Co., 219 U.S. 92; McNair v. Knott, 302 U.S. 369.

The argument that the provisions of the Alaska regulation prohibiting FWW must be read into the contract of employment and that the right to recover compensation in accordance with the terms of the regulation becomes a part of the contract and accrues upon the rendering of services provides no basis for rendering a repealing statute unconstitutional.

> . . . that act validates the real contract between the parties and merely takes away a statutory remedy given by the prior act. Even if the provisions of the Fair Labor Standards Act be read into contracts of employment, so also must be read the constitutional power of congress to change that act . . . not only are existing laws read into contracts in order to fix obligations as between the parties, but the reservation of essential attributes of sovereign power is also read into contracts as a postulate of the legal order. (Seese, supra, at 65, citations omitted.)

The Alaska Supreme Court has directly addressed this issue and in Bidwell v. Sheele, 355 P.2d 584 (Alaska 1960) joined the array of State, Federal and Supreme Court decisions upholding the power of the legislature to retroactively extinguish statutory rights. Dealing with the repeal of section 16-1-131, Alaska Compiled Laws Annotated 1949, which abolished the requirement for a bond in title dispute cases, the Court addressed the constitutionality of the repeal in the face of challenges based on both the 14th Amendment of the U.S. Constitution and Section 7, Art. 1 of the Alaska Constitution. The Court noted that:

> In 1871 the Supreme Court of the United States ruled that a party cannot have any

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> vested right in a remedy conferred by an act of Congress to prevent Congress from modifying it or adding new conditions to its exercise, or from withdrawing the remedy altogether.

The Portal to Portal Act does not stand alone as an example of the constitutionality of legislative action extinguishing prior liabilities. The question has been argued and has been upheld by a staggering majority of Courts in other areas as well.

In American Can Co. v. Davies, 559 P.2d 898 (Or. 1977), the Supreme Court of Oregon upheld the power of the public utilities commissioner to change rates already set by a private contract with the utility. The company contended that:

> Crown contends that the power of the Commissioner to change rates or other conditions memorialized in a written contract between a public utility and one of its customers constitutes an impairment of the contract rights, and as such is in violation of Aritcle 1, § 10 of the United States Constitution.

The Court answered the argument first with legal authority:

> We disagree. In Midland Co. v. K. C. Power Co., 300 U.S. 109, 57 S.Ct. 345, 81 L.Ed. 540 (1937), the court said:
>
> > . . . [T]he State has power to annul and supersede rates previously established by contract between utilities and their customers. It has power to require service at nondiscriminatory rates, to prohibit service at rates too low to yield the cost rightly attributable to it, and to require utilities to publish their rates and to adhere to them.

In Louisville and N.R. Co. v. Mottley, 219 U.S. 467, the court dealt with an act of Congress which retroactively struck down a contract made in settlement of a personal injury case and upheld Congress' power. In Norman v. Baltimore and O.R. Co., 294 U.S. 240 the U.S. Supreme Court noted that Congress has the power to retroactively strike down gold clauses in private contracts and that such power is not unconstitutional. In National Car Loading Corp. v. Phoenix-El Paso Express, 176 S.W.2d 564, the Supreme Court of Texas dealt with the Interstate Commerce Act, 49 U.S.C.A. § 1001 et seq., which wiped out any punishment or liability imposed upon freight forwarders who may have violated existing ICC tariff regulations and upheld its constitutionality in the face of identical arguments. In McNair v. Knott, 302 U.S. 369 the United States Supreme Court upheld the constitutionality of Congress' grant of retroactive validity to invalid pledges of securities by national banking associations.

In Moss v. Hawaiian Dredging Co., 187 F.2d 442 (9th Cir. 1951) the appellate court considered Public Law 393, popularly known as the Overtime-on-Overtime Act. The Act provided in substance that retroactive amendments would validate prior invalid or illegal contracts which were only invalid or illegal by virtue of wage and hour statutes. The argument was again made that such a retroactive enactment was void as it resulted in a deprivation

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and second with common sense reasoning:

> Furthermore, were such an argument upheld, then the whole public interest in utility regulation would become meaningless, since by making separate contracts with all or any of its individual customers, the utility and the customer could effectively bypass all or any relevant part of the public utility regulatory statutes and the regulations governing the public utility.

The same logical conclusion would flow from the argument that the legislature is unable to alter contracts in the wage and hour field. Employer and employee would be free to bypass any regulation by the simple expedient of making a contract about it. For that reason legislative enactments in this area are valid, notwithstanding by their terms, they apply to and affect antecedent contracts for the performance of services. 16A C.J.S. Constitutional Law § 349.

Whether plaintiffs have sought to argue that the legislature is prohibited by the due process clause of the Constitution or by Article 1, § 10 from interferring with vested rights of private employment contracts, the result has always been the same. -- No matter how the obligations or rights are denominated, imposed or insured with respect to wages and overtime compensation they are:

> . . . subject to change or abrogation, and are not subject to any of the juridical principles applicable to contractual rights or statutory rights. May v. General Motors Corp., 73 F. Supp. 878.

of property without due process of law in violation of the fifth amendment. The argument was again defeated. The plaintiffs based their right to recover on the following familiar arguments:

> 1. These, they say, were vested rights, contractual in nature.
>
> * * *
>
> 2. . . . became part and parcel of their employment contracts, and hence immune to retroactive legislation modifying those provisions.
>
> * * *
>
> 3. What is here sought, it is said, is no windfall result of a surprise decision . . .

The court resoundingly dealt with these arguments and again reaffirmed that prior decisions:

> . . , establish that if it may be said that private rights, contractual in nature, arose from the overtime provisions of the Fair Labor Standards Act, yet the character and quality of such rights are such that they must yield to the sovereign power to regulate commerce by legislation . . .

The court finally concluded that:

> There is nothing in law or in reason which forbade congress to give validity to these contracts retroactively, . . .

VI.

CONCLUSION

The constitutionality of a retroactive invalidation of a statutory right appears unassailable in light of the repeated

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court opinions over the years. So long as the legislative action does not interfere with a written contract between individuals but deals purely with a statutory granted right, the fact that that right is considered a part of an employment contract will not affect the legislature's power. The legislature has a constitutional right to give and to take away what it has given and that right is not affected even if what it has given has by law become part of a contract. As stated by Chief Justice Hughes of the U.S. Supreme Court in Norman v. Baltimore and O. Ry. Co., 294 U.S. 240:

> Parties cannot remove their transactions from the reach of dominent constitutional power by making contracts about them.

The proposed remedy is constitutional.

STATE OF ALASKA
FISCAL NOTE

Revision Date Original, 1983

I. REQUEST

Bill/Resolution No.: House Bill 223
Title: "...Payment of overtime;..."
Sponsor: Representative Bussell
Requestor: Judiciary

II. FISCAL DETAIL

Agency Affected: Labor
Program Category Affected: Worker Protection
BRU, Program of Subprogram(s) Affected: Labor Standards and Safety

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 83	FY 84	FY 85	FY 86	FY 87	FY 88
OPERATING						
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 COMMODITIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC						
TOTAL OPERATING		0	0	0	0	0
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND		0	0	0	0	0
FEDERAL FUNDS						
OTHER (Specify Source)						

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

III. SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

N/A

IV. ANALYSIS: Attach a separate page for any Analysis

Prepared By: PRC Robert J. Bacolas, Sr. Phone 465-4870
Division: Labor Standards & Safety Date: April 4, 1983

Approved by Commissioner: Jim Robison Date: 465-2700
Department: Labor
LEG:A:39

Distribution:
Original to Legislative Finance
Copy to Office of Management and Budget (for Legislature introduced bills)
Copy to Department (for Governor introduced bills)
Copy to Sponsor
Copy to Requestor (if different from Sponsor)

STATE of ALASKA

MEMORANDUM

RECEIVED
Department of Law
Juneau, Alaska
OCT 26 1977
AM 7 8 9 10 11 12 1 2 3 4 5 6 PM

TO: Ronald W. Lorensen,
Assistant Attorney General
Department of Law

THRU: Wilson L. Condon, Deputy Att'y. Gen.

THRU: William E. Spear, Deputy Commissioner

FROM: Dale W. Cheek
Director
Wage and Hour/Mechanical
Engineering Division
Department of Labor

DATE: October 24, 1977

SUBJECT: Request for Opinion
re: AS 23.05.160 and
AS 23.10.060

The Department of Labor respectfully requests of the Department of Law, an interpretation of whether "Flex-time" would or would not be an acceptable condition of employment under AS 23.05.160 and AS 23.05.060. It has always been the Department of Labor's position that flex-time would be contrary to the intent of the Alaska Wage & Hour Act as we read it. This would appear to be supported by the stronger law provision under the FLSA.

We would very much appreciate an early determination of this issue as it bares directly to the outcome of case now pending before the Department of Labor and will have a related effect on other employers, particulary in the oil industry.

We have attached position papers, re: the instant case of Kluting, R. vs. Dowell Division of Dow Chemical Company. In our investigation of this complaint, Investigator Don Wilson of our Wage and Hour Division, Anchorage, has worked closely with Assistant Attorney General, Pat Kennedy of your staff for legal guidance.

Thank you for your attention and the continuing cooperation we enjoy with the Department of Law.

DWC/rh

Attachment

cc: E.T. Lee Leland, Supervisor

STATE of ALASKA

MEMORANDUM

TO: Dale Cheek, Director
Wage & Hour Division
Department of Labor
P. O. Box 630
Juneau, Alaska

DATE: September 28, 1977

FILE NO:

TELEPHONE NO:

Thru:

Benny Joy, Supervisor

SUBJECT: Kluting, R. vs: Dowell Division of Dow Chemical Co. (Fluctuating Workweek)

From: Donald R. Wilson
W/H Supervisor II
Wage & Hour Division
Department of Labor
650 W. Int'l Airport Road
Suite 100 Int'l Bldg. Annex
Anchorage, Alaska 99502

The Anchorage Regional Office is currently processing a wage claim as captioned above.

This is a claim in which the department, as assignee for the claimant, disputes the validity, under Alaska Statutes, of a wage payment plan known as the "Fluctuating Workweek."

On August 19, 1977 we met with legal counsel for the defendant corporation and agreed, as a means to reconcile this matter, to submit our separate position statements to the Attorney General's Office for their interpretation of Alaska Statutes and specifically to the validity of the "Fluctuating Workweek," in Alaska.

Therefore, enclosed are the position statements for your review with our request that these positions be forwarded to the Department of Law for their review and opinion.

There is a pay plan under Federal Wage and Hour Law which provides for an irregular workweek (fluctuating hours) for fixed weekly pay. This plan is more commonly known as the "Fluctuating Workweek, (FWW)," and is addressed in Title 29, Part 778 of the "Code of Federal Regulations," Section 778.114.

While the department concedes that the "FWW," is a valid pay plan under Federal Regulations, the department contends that the plan is not now, nor has it ever been recognized as valid for employers engaged in commerce or business within the state of Alaska. We have no specific "Case," upon which to base this conclusion, but instead use the Alaska Statute, Title 23 and "Common Knowledge" to support our rationale.

Specifically, AS SEC. 23.10.060. Payment of Overtime. states:

> No employer who employs employees engaged in commerce, or other business, or in the production of goods or materials in Alaska may employ an employee not acting in a supervisory capacity, either male or female, for a workweek longer than 40 hours or for more than eight hours a day, except that if an employer finds it necessary to employ an employee in excess of 40 hours a week or eight hours a day, compensation for overtime at the rate of one and one-half times the regular rate of pay shall be paid, and this provision is considered included in all contracts of employment.

Additionally, AS SEC. 23.05.160. Notice of Wage Payments. states:

> An employer shall notify his employee in writing at the time of hiring of the day and place of payment, and the rate of pay, and of any change with respect to these items on the payday before the time of change. An employer may give this notice by posting a statement of facts, and keeping it posted conspicuously at or near the place of work where the statement can be seen by each employee as he comes and goes to his place of work.

Since Alaska Statute, for the purpose of overtime, incorporates the eight hour law along with the Federal 40 hour law, overtime payment would have to be made for weeks of less than 40 hours where days in excess of eight hours were worked. It would therefore work to the employer's detriment since if the wage rate slides downward after 40 hours it would have to slide upward for

WAGE & HOUR DIVISION
ALASKA DEPARTMENT OF LABOR
INTERNATIONAL BLDG. ANNEX, SUITE 100
650 WEST INTERNATIONAL AIRPORT ROAD
ANCHORAGE, ALASKA 99502

weeks where less than 40 hours were worked, but days in excess of eight hours were worked.

Additionally, since Alaska Statute contains a provision that requires an employer to make notification of changes of the rate of pay, in writing, on the payday before the date of change, an employer attempting to use the "FWW," could not possibly comply with AS 23.05.160.

Accordingly, the "FWW," since it requires continuous rate changes, (everytime overtime is required, or less than 40 hours are worked) cannot be in compliance with the legal requirements to notify employees as set forth in AS SEC. 23.05.160.

Final reference is made to AS SEC. 23.10.095. Adoption of Federal Regulations. We have made diligent search through our department and can find no instance where any commissioner, including the current administration, has adopted that portion of the Code of Federal Regulations that addresses the FWW. To the contrary, and in support of our rationale of "Public Knowledge," we would invite your attention to the attached letter from the U.S. Department of Labor as Enclosure #1.

WAGE & HOUR DIVISION
ALASKA DEPARTMENT OF LABOR
INTERNATIONAL BLDG. ANNEX, SUITE 100
650 WEST INTERNATIONAL AIRPORT ROAD
ANCHORAGE, ALASKA 99502

U.S. DEPARTMENT OF LABOR
EMPLOYMENT STANDARDS ADMINISTRATION
WAGE AND HOUR DIVISION

P.O. Box 1097
Anchorage, Alaska 99510

Date: September 19, 1977

Reply to Attn of:

Subject: Fluctuating work week pay plans

To: Mr. Doh R. Wilson
Alaska State Department of Labor
Wage and Hour Division
Suite 100, International Bldg. Annex
650 W. International Airport Road
Anchorage, Alaska 99502

Dear Mr. Wilson:

I am in receipt of your letter of September 15th regarding my instructions or comments to employers concerning the fluctuating work week pay plan.

The fluctuating work week pay plan is a valid pay plan under the Fair Labor Standards Act and employers or employees who ask about it are so advised. I have also made it a practice to advise them that even though it is a legal system under the federal law it is not a valid plan under the State of Alaska labor law and that they should contact the State Wage and Hour Division.

I trust that this letter will answer your questions regarding my comments to persons or firms regarding the applicability of the federal labor laws.

If I can be of further assistance please contact me.

Very truly yours,

Jack E. Harty

Jack E. Harty
Compliance Specialist

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SEP 21 19??
LABOR LAW COMPLIANCE DIV.
Anchorage Office

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September 30, 1977

RECEIVED
OCT 3 1977
LABOR LAW COMPLIANCE DIV.
Anchorage Office

For Submission to:
The Office of the Attorney General
State of Alaska

RE: Alaska Wage and Hour Act
Fluctuating Workweek Question

Dear Sirs:

This position paper is being submitted to the Office of the Attorney General on behalf of the Dowell Division of the Dow Chemical Company ("Company"), pursuant to an agreement between Dowell and the Wage and Hour Division of the Alaska Department of Labor. It is requested by Dowell and the Wage and Hour Division that the Attorney General render a legal opinion regarding the controversy which has arisen between the two parties and which is more fully disclosed below.

INTRODUCTION

On May 19, 1977, the Wage and Hour Division of the Alaska Department of Labor in Anchorage issued a wage claim against the Dowell Division of the Dow Chemical Company. The claim, filed on behalf of Mr. Randy Kluting, asserted that Dowell had failed to provide the claimant with his full overtime pay entitlement while he was in the Company's employ as a service operator from March 3, 1976 until April 28, 1977.

The claim asserted by the Alaska Department of Labor is part of what appears to be a broad challenge to the method by which the Company had paid its employees for several years -- the so-called "fluctuating workweek method". This method of compensation is geared to the special problems confronted by employers and employees in businesses where work schedules vary considerably from day to day and week to week. The uncertain and drastically variable conditions of operations within the oil industry in Alaska have made such

a plan especially suited to the needs of Dowell and many other companies engaged in oil production.

The fluctuating workweek method is essentially a salary plus overtime plan. It provides a guaranteed weekly salary to an employee regardless of the number of hours which he actually works. For example, whether an individual employee works 30 hours or 50 hours in a given week, he is guaranteed to receive his previously specified salary for that week's work.

In addition to that guaranteed salary, however, the employee, under federal and state law, is also entitled to overtime compensation for those hours which he works in excess of 40 per week or 8 per day. The amount of this additional compensation is determined by multiplying the number of overtime hours by one-half of the employee's hourly rate for that week. This is done because the employee, under the fluctuating workweek method, is deemed to have been fully compensated, on a straight time basis, for any overtime hours worked.

assumes hours work of employee who works many hours in a week is worth less than one who works only a few hours

The hourly rate of pay for an individual employee under this system is the focal point of the present dispute. Under the fluctuating workweek method the hourly rate, also known as "regular rate of pay", varies from week to week as a function of the number of hours actually worked in that week. In other words, for the purpose of calculating overtime, it is necessary to determine an employee's regular rate of pay during the week in question. This is accomplished by dividing the guaranteed weekly salary by the number of hours actually worked during that week. Once this regular rate of pay has been determined, it is merely divided in half and multiplied by the number of hours of overtime worked by the employee for that week. This result is then added to the weekly salary to arrive at the employee's total compensation for that particular week.

The legitimacy of the fluctuating workweek method has consistently been recognized by the federal courts and in federal regulations adopted pursuant to the Fair Labor Standards Act. For this reason, and because it is so well suited to the particular circumstances of employment in the oil industry in Alaska, many companies throughout the state have implemented the fluctuating workweek method as the standard wage formula for employee compensation.

The fluctuating workweek method of compensation is attractive both to employers, and to employees who work weeks of irregular hours. It enables both parties to make reasonable forecasts with regard to the amount of weekly wages that will be paid. This is especially convenient for employees and their families who otherwise would be uncertain from week to week how much compensation they could expect to receive.

In the present matter, the Alaska Department of Labor is claiming that the fluctuating workweek method is not valid under applicable Alaska wage and hour statutes. Such a determination by the Department of Labor has potentially far reaching ramifications because of the large number of companies currently using the fluctuating workweek method. In this particular action the Department is seeking recovery of the amount of overtime pay which Mr. Kluting would have received under applicable wage and hour statutes if the fluctuating workweek method had not been utilized.

At a meeting on August 19, 1977, in Anchorage, Dowell and the Wage and Hour Division agreed that the Office of the Attorney General would provide an impartial forum for evaluation of the arguments opposing and in support of the fluctuating workweek method of compensation. Since the ultimate resolution of this matter rests upon sophisticated legal analysis and construction of various statutes and other authority, it was agreed that an Attorney General's Opinion should be procured before the Wage and Hour Division expands the application of its internal decision.

II.

ISSUE PRESENTED

Is the fluctuating workweek method of compensation acceptable under the Alaska Wage and Hour Act and/or have companies operating in Alaska, including Dowell, justifiably relied upon the plain language of that statute in utilizing the fluctuating workweek method?

III.

ARGUMENT

A. The Alaska Wage and Hour Act Expressly Recognizes That Its Administration and Construction Are to Be Governed by Prevailing Federal Authority Concerning the Federal Fair Labor Standards Act and the Regulations Adopted Under It

The Alaska Wage and Hour Act is codified in the State statutes in §§23.10.050 - .150. Section 23.10.060 of those statutes sets forth the State's payment for overtime provisions, in pertinent part as follows:

> "No employer who employs employees engaged in commerce, or other business, or in the production of goods or materials in Alaska may employ an employee not acting in a supervisory capacity, either male or female, for a workweek longer than 40 hours or for more than eight hours a day, except that if the employer finds it necessary to employ an employee in excess of 40 hours a week or eight hours a day, compensation for the overtime at the rate of one and one-half times the regular rate of pay shall be paid, and this provision is considered included in all contracts of employment." [Emphasis added.]

here we my rate is weekly not hourly

Later in the Wage and Hour Act, §23.10.145 provides:

> "Terms used in §§50-150 of this chapter shall be defined, where applicable, as they are defined in the federal Fair Labor Standards Act of 1938, as amended, or the regulations adopted under it."

Clearly the operative language in the first above-quoted section is the underlined term "regular rate of pay". Under §23.10.060, overtime compensation is absolutely dependent upon the amount of pay deemed included in an employee's "regular rate". The fluctuating workweek question with which we are here concerned is also intimately connected with that term. The fluctuating workweek approach is essentially a method of ascertaining an employee's regular rate of pay. The corresponding "regular rate" term in the

federal Fair Labor Standards Act has always been defined to include the fluctuating workweek method as acceptable under that statute.

The question to be resolved, therefore, is whether the term "regular rate of pay" in Alaska statute §23.10.060 encompasses the fluctuating workweek method. The answer is clearly provided in §23.10.145. That section unambiguously states that the terms utilized in the Wage and Hour Act are to be defined as they are defined in the federal Fair Labor Standards Act or the regulations adopted under it.

The only possible complication connected with §23.10.145 arises from the "where applicable" phrase contained therein. Nevertheless, there is no merit in a contention that the term "where applicable" gives the State Department of Labor the discretion to ignore clear and unambiguous federal pronunciations regarding specific provisions of the Act.

Section 23.10.145 contains language which is clearly mandatory and not discretionary. It states that terms used in the Wage and Hour Act "shall be defined" as they are defined under federal law. It is well recognized in the law that the word "shall" in a legislative enactment demonstrates the legislature's intention that the body charged with administration of that statute is obligated to perform the stated function. The fact that this section of the Wage and Hour Act contains such mandatory language is strong evidence that the legislature of Alaska did not intend to grant any particular discretion to the Department of Labor in regard to the definition of terms.

The inclusion of the term "where applicable" does nothing to require a different conclusion. It should be read as though the legislature were saying that if federal law has defined a particular term which appears in the Wage and Hour Act, that federal definition should be applied by the Department of Labor in administering the Alaska statute. Support for this interpretation is found in the definition of the words used in that statutory section. Webster's Dictionary defines the word "applicable" primarily as "capable of being applied." This definition of "applicable" was approved in Thomas v. City of Huntington, 80 Ind. App. 476, 141 N.E. 358, 359 (1928), and Hodges v. Canal Ins. Co., Miss. 223 So.2d 630, 633 (1969). That definition does not contain a discretionary element. In the present context it

merely indicates that if a federal definition can possibly be applied, it must be applied. Any other interpretation of the words "where applicable" would be without foundation.

It is obvious, therefore, that in accordance with §23.10.145 guidance must be sought from the federal Fair Labor Standards Act regarding the definition of "regular rate of pay".

B. The Fair Labor Standards Act and Its Regulations Explicitly Recognize and Support the Use of the Fluctuating Work Week Method of Compensation

Section 7 of the Fair Labor Standards Act provides that overtime must be paid to an employee for all hours worked in excess of 40 hours in a single workweek at a rate not less than one and one-half times the "regular rate" at which he is employed. Extensive regulations have been promulgated by the Federal Department of Labor to explain and define Section 7's "regular rate" term. Those explanations and definitions are codified in Title 29 of the Code of Federal Regulations, beginning at Section 778. As stated in Section 788.1, those regulations constitute "the official interpretation of the Department of Labor with respect to the meaning and application of the maximum hours and overtime pay requirements contained in Section 7 of the Act."

The actual definitions of the "regular rate" term begin with Regulations Section 788.108. It is there stated:

> "The 'regular rate' of pay under the Act cannot be left to a declaration by the parties as to what is to be treated as the regular rate for an employee; it must be drawn from what happens under the employment contract."

Section 778.109 states:

> "The 'regular rate' under the Act is a rate per hour. . . . The regular hourly rate of pay of an employee is determined by dividing his total remuneration for employment (except statutory exclusions) in any workweek by the total number of hours actually worked by him in that

workweek for which such compensation was paid. The following sections give some examples of the proper method of determining the regular rate of pay in particular instances."

Section 778.114 of the Regulations contains the example of the proper method of determining the regular rate of pay in instances where fixed salaries are paid for fluctuating hours of work. That section provides:

"(a) An employee employed on a salary basis may have hours of work which fluctuate from week to week and the salary may be paid him pursuant to an understanding with his employer that he will receive such fixed amount as straight time pay for whatever hours he is called upon to work in a workweek, whether few or many. Where there is a clear mutual understanding of the parties that the fixed salary is compensation (apart from overtime premiums), for the hours worked each workweek, whatever their number, rather than for working 40 hours or some other fixed weekly work period, such a salary arrangement is permitted by the Act if the amount of the salary is sufficient to provide compensation to the employee at a rate not less than the applicable minimum wage rate for every hour worked in those workweeks in which the number of hours he works is greatest, and if he receives extra compensation, in addition to such salary, for all overtime hours worked at a rate not less than one-half his regular rate of pay. Since the salary in such a situation is intended to compensate the employee at straight time rates for whatever hours are worked in the workweek, the regular rate of the employee will vary from week to week and is determined by dividing the number of hours worked in the workweek into the amount of the salary to obtain the applicable hourly rate for the week. Payment for overtime hours at one-half such rate in addition to the salary satisfies the overtime pay requirement because such hours have

already been compensated at the straight-time regular rate, under the salary arrangement.

"(b) The application of the principles above-stated may be illustrated by the case of an employee whose hours of work do not customarily follow a regular schedule but vary from week to week, whose overtime work is never in excess of 50 hours in a workweek, and whose salary of $80.00 a week is paid with the understanding that it constitutes his compensation, except for overtime premiums, for whatever hours are worked in the workweek. If during the course of 4 weeks this employee works 40, 44, 50 and 48 hours, his regular hourly rate of pay in each of these weeks is approximately $2.00, $1.82, $1.60, and $1.67, respectively. Since the employee has already received straight-time compensation on a salary basis for all hours worked, only additional half-time pay is due. For the first week the employee is entitled to be paid $80.00; for the second week, $83.60 ($80.00 plus 4 hours at 91 cents, or 40 hours at $1.82 plus 4 hours at $2.73); for the third week $88.00 ($80.00 plus 10 hours at 80 cents, or 40 hours at $1.60 plus 10 hours at $2.40); for the fourth week approximately $86.72 ($80.00 plus 8 hours at 84 cents or 40 hours at $1.67 plus 8 hours at $2.51).

"(c) The 'fluctuating workweek' method of overtime payment may not be used unless the salary is sufficiently large to assure that no workweek will be worked in which the employee's average hourly earnings from the salary fall below the minimum hourly wage rate applicable under the Act, and unless the employee clearly understands that the salary covers whatever hours the job may demand in a particular workweek and the employer pays the salary even though the

> workweek is one in which a full schedule of hours is not worked. Typically, such salaries are paid to employees who do not customarily work a regular schedule of hours and are in amounts agreed on by the parties as adequate straight-time compensation for long workweeks as well as short ones, under the circumstances of the employment as a whole. Where all the legal prerequisites for use of the 'fluctuating workweek' method of overtime payment are present, the Act, in requiring that 'not less than' the prescribed premium of 50 percent for overtime hours worked be paid, does not prohibit paying more. On the other hand, where all the facts indicate that an employee is being paid for his overtime hours at a rate no greater than that which he receives for non-overtime hours, compliance with the Act cannot be rested on any application of the fluctuating workweek overtime forumla."

It is absolutely clear from the regulation quoted above that the fluctuating workweek method is included within, and is an integral part of, the definition of "regular rate of pay" under the Fair Labor Standards Act. It is equally clear that since the Alaska Wage and Hour Act looks to the federal Fair Labor Standards Act for its definition of that term, the "regular rate of pay" term in the Alaska statute also includes the fluctuating workweek method. The logic of this reasoning is inescapable.

C. The Lawfulness of the Fluctuating Workweek Method has Consistently Been Upheld Under Federal Case Law

The above conclusion has been strongly and consistently supported by the decisions of the federal courts. Almost immediately after the Fair Labor Standards Act of 1938 was enacted, the United States Supreme Court was confronted with a challenge to the fluctuating workweek method of compensation. That challenge was identical to the present case in that the controversy focused on the meaning of the term "regular rate of pay." In Overnight Transportation Company v. Missel, 316 U.S. 572 (1942), the employee worked

as a "rate clerk" for a corporation engaged in interstate motor transportation as a common carrier. An agreement had been entered into between the company and the employee whereby the employee received a fixed weekly wage for irregular hours, and a rate equal to one and one-half times his "regular rate of pay" for all hours in excess of the statutory maximum. In upholding the use of the phrase "regular rate of pay" interpreted as the total weekly compensation divided by the total number of hours worked (the FWW interpretation), the Court stated:

> "No problem is presented in assimilating the computation of overtime for employees under contract hours which are the actual hours worked, to similar computations for employees on hourly rates. Where the employment contract is for a weekly wage with variable or fluctuating hours, the same method of computation produces the regular rate for each week. As that rate is on an hourly basis, it is regular in the statutory sense inasmuch as the rate per hour does not vary for the entire week, though week by week the regular rate varies with the number of hours worked. It is true that the longer the hours the less the rate and the pay per hour. This is not an argument, however, against this method of determining the regular rate of employment for the week in question. Apart from the Act, if there is a fixed weekly wage, regardless of the length of the workweek, the longer the hours the less are the earnings per hour. This method of computation has been approved by each circuit court of appeals which has considered such problems. It is this quotient which is the 'regular rate at which an employee is employed' under contracts of the types described and applied in this paragraph for fixed weekly compensation for hours, certain or variable." 316 U.S. at 580.

Numerous federal cases have been guided by the principle established in Overnight Transportation Company. The interpretation of Section 7 of the Fair Labor Standards

Act made in that case has been repeatedly utilized to sanction fluctuating workweek programs. In the Ninth Circuit, for example, "regular rate of pay" was similarly defined in Robertson v. Alaska Juneau Gold Mining Company, 157 F.2d 876 (9th Cir. 1946). In striking down a particular pay plan which provided a "regular rate" for seven hours of the working day and so-called "overtime" for the additional one hour of the working day, the court described the plan as "artificial." In finding that the scheme was designed to circumvent the application of the Act, the court stated:

> "The Act [FLSA] does not necessarily require an increase of wages, nor does it forbid a decrease, so long as the wages paid are above the statutory minimum. But it does require that all wages or things of value forming part of the normal working income be used to determine the 'regular rate,' and that that regular rate be applied to the first 40 hours worked, and for all hours worked in addition a rate one and one-half times the regular rate must be paid."

In another much cited case, Landreth v. Ford, Bacon & Davis, 147 F.2d 446 (8th Cir. 1945), the Eight Circuit Court of Appeals also held that the fluctuating workweek method, employing the term "regular rate of pay", is immune from attack in federal courts:

> "If his [an employee's] employment is for a fixed weekly compensation for a week of variable or fluctuating hours, the employee's regular rate of pay must be determined by dividing his fixed weekly compensation by the number of hours actually worked in any workweek; and in cases of employment at a fixed weekly compensation for a workweek of fluctuating hours, the regular rate of an employee will necessarily vary from week to week according to the number of hours worked."

Accord, Mumbower v. Callicot, 526 F.2d 1183 (8th Cir. 1975); Masters v. Maryland Management Co., 493 F.2d 1329 (4th Cir. 1974); Usery v. Godwin Hardware, Inc., 426 F.Supp. 1232 (S.D. Mich. 1976). See, Conkland v. Hofgesang, 407 F.Supp. 1090 (W.D. Ky. 1975).

The same interpretation of the "regular rate" phrase as it is used in §7 of the FLSA has also been adopted in regulations promulgated under the Act, 29 C.F.R. §778.114, which are cited above.

In short, it is inescapable that the drafters of the Alaska statute, by using the key phrase "regular rate of pay" and by expressly stating that the federal interpretation of the terms of the statute should govern, envisioned fluctuating workweek plans similar to those consistently upheld under federal law. Since the meaning of the phrase "regular rate of pay" is beyond dispute under federal law, and since no Alaska statutes or regulations suggest a contrary interpretation, the federal definition should prevail and the use of the fluctuating workweek method of compensation should be acceptable under Alaska law.

D. The Fact That Alaska Requires the Payment of Overtime for Hours Worked in Excess of Eight Hours in a Single Workday, Unlike the Federal Fair Labor Standards Act, Has No Impact Whatsoever on the Use of the Fluctuating Workweek Method

As indicated above, the Fair Labor Standards Act requires overtime to be paid for hours worked in excess of 40 hours in a single workweek. Many state laws, Alaska's included, provide for overtime payments for hours worked in excess of 40 hours in a single workweek or eight hours in a single workday. This is a difference without a distinction as far as the fluctuating workweek question is concerned.

Two federal statutes specifically provide for the payment of overtime for all hours worked after 40 hours in a single week or eight hours in a single day. Those statutes are the Walsh-Healey Public Contracts Act, 41 U.S.C. §§327-333 (covering federal government suppliers) and the Contract Work Hours and Safety Standards Act, 40 U.S.C. §§327-333 (covering federal government construction and service contractors). Both of those statutes rely upon the Fair Labor Standards Act, in the same manner as the Alaska Wage and Hour Law does, for a definition of "regular rate of pay" or similar terms, and both of those statutes recognize the applicability of the fluctuating workweek method.

Walsh-Healey Act Regulations codified at 41 C.F.R. §50.201.103 provide:

> "(a) Employees engaged in, or connected with the manufacture, fabrication, assembling, handling, supervision, or shipment of materials, supplies, articles, or equipment used in the performance of the contract may be employed in excess of 8 hours in any one day or in excess of 40 hours in any one week, provided such persons shall be paid for any hours in excess of such limits [at] the overtime rate of pay which has been set therefor by the Secretary of Labor.
>
> "(b) Until otherwise set by the Secretary of Labor, the rate of pay for such overtime shall be one and one-half times the basic hourly rate received by the employee. The 'basic hourly rate' means an hourly rate equivalent to the rate upon which time and one-half overtime compensation may be computed and paid under Section 7 of the Fair Labor Standards Act of 1938, as amended." (CCH WH ¶26,200.010.)

These Walsh-Healey Act regulations, just like the Alaska Wage and Hour Act, adopt the Fair Labor Standards Act definition for "regular rate of pay". They, therefore, also adopt the fluctuating workweek method which is embodied within the FLSA definition of "regular rate of pay".

Case law and administrative rulings under the Walsh-Healey Act have also specifically approved the use of the fluctuating workweek method of determining overtime. In re Noble Street Motors, Inc., 15 W.H.Cases 517 (1962); In re Richland Lime Co., 10 W.H. Cases 365 (1951); In re B.&W. Sportswear, Inc., 6 W.H. Cases 1224 (1947); Kelly Steel Works, Inc., Ruling of the Secretary of Labor, P.C.-228, March 21, 1947; Edwin & Louis Bry, Inc., Ruling of the Secretary of Labor, P.C.-199, August 26, 1946, CCH WH ¶26,104.27.

The United States Labor Department has similarly determined that the "basic rate of pay" under the Contract Work Hours and Safety Standards Act is to be computed in the same manner as the regular rate of pay is computed under the Fair Labor Standards Act and has expressly recognized the applicability of the fluctuating workweek method under that

statute. CCH WH ¶27,056; BNA WHM §99:345; U.S. Department of Labor Compliance Manual.

The two federal Acts discussed above have the same overtime provisions as the Alaska Wage and Hour Act. Also like that Alaska statute, they rely upon the Fair Labor Standards Act for a definition of the term, "regular rate of pay". In this manner they incorporate the fluctuating workweek method which is embodied in the FLSA "regular rate of pay" definition. The mere fact that these statutes have eight-hour overtime provisions, unlike the Fair Labor Standards Act, does not in any way affect this adoption of the fluctuating workweek method.

Arguments that state eight-hour overtime provisions establish a higher standard which must take precedence over Fair Labor Standards Act procedures are similarly unconvincing. There is no question that Fair Labor Standards Act provisions do not excuse noncompliance with higher statutory overtime standards. The Fair Labor Standards Act itself so provides in 29 U.S.C. §218(a), which reads:

> "No provision of this chapter or of any order thereunder shall excuse non-compliance with any federal or state law or municipal ordinance establishing a minimum wage higher than the minimum wage established under this chapter or a maximum workweek lower than the maximum workweek established under this chapter."

See also, Brennan v. State of New Jersey, 364 F.Supp. 156 (D. N.J. 1973); State v. Comfort Cab, Inc., 118 N.J.Super. 162, 286 A.2d 742 (1972).

Applying the fluctuating workweek method to the Alaska statute, however, would not in any way derogate from that state's eight-hour overtime requirement. The fluctuating workweek method is totally consistent with eight-hour overtime provisions as is demonstrated by its use in connection with the Walsh-Healey and Contract Work Hours Acts. The fluctuating workweek is simply a method for determining an employee's regular rate of pay. Once that regular rate of pay is determined, it can be utilized just as readily in connection with a 40-hour, eight-hour overtime provision like the Alaska statute as it can in connection with a mere 40-hour requirement such as the Fair Labor Standards Act.

Under an Alaska-type statute, overtime would be paid for all hours worked in excess of eight hours in a single day even under the fluctuating workweek method. The only difference is that the regular rate of pay would be determined by dividing total remuneration by total hours worked that week instead of by a standard 40 hours, as the Alaska Department of Labor wishes to do. There is no obstacle whatsoever to utilizing a fluctuating workweek method under both daily and weekly overtime requirements.

E. Because the Statutory Language Involved in the State Statute Is Clear and Unambiguous on Its Face, Dowell Was Entitled to Rely Upon the Facts of the Statute Absent Any Contrary Interpretations of the Act by the State of Alaska

As indicated above, the prevailing interpretation of the term "regular rate of pay" is clear and unambiguous. No cases, statutes, or regulations exist in Alaska or elsewhere which suggest in any way that the regular rate of pay definition under the Fair Labor Standards Act is not applicable to the Alaska Wage and Hour law. That being the case, Dowell and other companies operating in Alaska are totally justified in relying upon the face value of the Alaska statute and taking the position that the fluctuating workweek method may be utilized under the State's Wage and Hour law.

The only authority which has even come close to addressing this particular issue in the State of Alaska is the case of Cameron v. Chickagof Min. Co., 82 F.Supp. 665, 12 Alaska Rpts. 103 (N.D. Alaska 1948). There, consistent with prevailing authority, the district court in Alaska held that "rate of pay" under the Fair Labor Standards Act is determined by dividing the fixed weekly compensation by the number of hours actually worked. It stated that:

> "The [U.S.] Supreme Court has repeatedly pointed out that the regular rate must be the quotient of the amount actually paid divided by the number of hours actually worked; that it must be the actual, not fictitious rate agreed upon and paid." (Citations omitted.) 12 Alaska Rpts., at 108.

Of course, while reported in Alaska, this case was determined in federal court under the federal Fair Labor Standards Act. Nevertheless, it is the only authority of any type reported in Alaska from which guidance could be sought by Dowell and other companies currently using the fluctuating workweek concept. In view of this fact, Dowell, and the other similarly situated companies, could reasonably rely upon the facet of the Wage and Hour Act as justifying their use of the fluctuating workweek method.

It would surely place an onerous burden upon Dowell and those other companies if it were held at this time that they were liable for backpay despite their good faith reliance upon the explicit provisions of the Wage and Hour Act and despite the fact that there has never been any previous indication that the Fair Labor Standards Act definition of "rate of pay" would not apply under the Alaska act. Such a holding would also contravene governing Constitutional due process requirements.

F. Since An Employee's Rate of Pay Can Always Be Determined by Utilizing the Appropriate Formula, There Is No Merit in an Argument That the Fluctuating Workweek Method is Rendered Unacceptable by the Terms of Alaska Statute §23.05.160 as a Pay Rate Change Without Prior Notification

Alaska statute §23.05.160 was relied upon by the Wage and Hour Division of the Department of Labor in its initial condemnation of the fluctuating workweek method. That section reads as follows:

> "An employer shall notify his employee in writing at the time of hiring of the day and place of payment, and the rate of pay, and of any change with respect to these items on the payday before the time of change. An employer may give this notice by posting a statement of the facts, and keeping it posted conspicuously at or near the place of work where the statement can be seen by each employee as he comes or goes to his place of work."

It was contended that this section bars the use of the fluctuating workweek method because under that system of

computation, an employee's rate of pay will be subject to change from week to week. There are three reasons why such an argument cannot be supported.

First, §23.05.160 is not a part of the Alaska Wage and Hour Act. The Wage and Hour Act is found in §§23.10.050 to 23.10.150. Because it is not included in the Act, §23.05.160 cannot serve as an independent basis upon which the Wage and Hour Division can rely in precluding the use of the fluctuating workweek method. This conclusion is clear from the terms of §23.10.075 which creates and empowers the Wage and Hour Division of the Department of Labor. There, and in §23.10.085, the scope of the Wage and Hour Division's authority is expressly limited to administering §§50 to 150 of the Wage and Hour chapter. It does not have jurisdiction to implement a section which is outside of the statutory scope of its powers.

Second, even assuming arguendo that §23.05.160 could be a sufficient ground, it is apparent that the express terms of that section do not, in any way, preclude the use of the fluctuating workweek method. All that §23.05.160 requires is that an employee be informed of the rate of pay he will receive at the time of his hiring, and that he be notified of any changes in his rate of pay which might occur subsequent to that time. Section 23.05.160 is, therefore, essentially a notice statute. Its primary focus is to guarantee that an employee is given sufficient prior notice of any change in his wage rate.

Despite Wage and Hour Division assertions to the contrary, under the fluctuating workweek method, the requirements of this section are satisfied. It should be kept in mind that the fluctuating workweek method is basically a salary approach to employee compensation. As indicated previously, employees working under that method receive a guaranteed weekly salary which remains the same even though the amount of hours they work per week may fluctuate. of course, the rate per hour under such a system may differ from week to week depending on the number of hours worked, but this is true of all salary compensation programs. While the hourly rate may fluctuate, the salary remains the same.

Of course, the calculation of overtime compensation may cause differences in the amount of an employee's weekly compensation, but this, once again, is a situation typical of all employees. Overtime compensation of necessity

fluctuates for all employees depending upon whether, and to what extent, overtime is worked.

Third, §23.05.160 cannot be a bar to the fluctuating workweek method since it has been held not to bar Belo plans. The Alaska Department of Labor has on several occasions indicated that it finds no problem in accepting the use of a Belo plan method of compensation. A Belo plan, like the fluctuating workweek method, involves a system whereby an employee's hourly wage rate changes on a weekly basis relative to the number of hours worked that week. But the guaranteed salary remains the same, just as under the fluctuating workweek method. The theory behind the two methods is identical. If the Belo plan is not precluded by §23.05.160 then logically the fluctuating workweek method should not be subject to attack on this ground.

IV

CONCLUSION

The procedural understanding between Dowell and the Wage and Hour Division calls for the simultaneous submission of position papers to the Attorney General's Office. The decision of the Attorney General's Office is to be based upon those position papers and any additional information which the parties may be called upon to submit. Dowell hereby requests that prior to the issuance of any decision adverse to its position set forth above, it be granted an opportunity to submit additional information, either by further documentation or by an oral presentation, to address points contained in the tentative decision of the Attorney General's Office.

If you have any questions regarding this matter, or if we can supply any additional information whatsoever, please do not hesitate to contact me.

Very truly yours,

Garry G. Mathiason

Garry G. Mathiason

cc: Local Counsel
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STATE OF ALASKA

BILL SHEFFIELD, GOVERNOR

DEPARTMENT OF COMMERCE & ECONOMIC DEVELOPMENT

ROYALTY OIL AND GAS ADVISORY BOARD

620 E. 10TH AVENUE
SUITE 203
ANCHORAGE, ALASKA 99501
(907) 276-7979

November 28, 1983

NOTICE OF MEETING

The Alaska Royalty Oil & Gas Development Advisory Board

The Alaska Royalty Oil & Gas Development Advisory Board will meet on December 9, 1983. The meeting will be held at 1:30p.m. in the conference room, 620 E. 10th Avenue, Room 203, Anchorage, Alaska.

Further information may be obtained by calling the Royalty Board office (907) 276-7979.

STATE OF ALASKA

Bill Sheffield, Governor

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

POUCH K – STATE CAPITOL
JUNEAU, ALASKA 99811
PHONE: (907) 465-3600

April 7, 1983



The Honorable Charlie Bussell
Representative
Chairman, Committee on Judiciary
Alaska State Legislature
Pouch V
Juneau, Alaska 99811

Re: Materials relating to subject of House Bill 223

Dear Representative Bussell:

This responds to your two letters of March 30, 1983 requesting information from the Department of Law concerning certain regulations of the Department of Labor (8 AAC 15.100) regarding flexible-work-week employment.

Since I was the attorney in the Department of Law who worked with the Department of Labor in adopting those regulations back in 1978, I thought it appropriate that I respond to your inquiry directly. Pursuant to your request of this morning, I will make myself available to the Committee to address the issues raised in HB 223. I will also be asking Assistant Attorney General Gary Amendola, who now works with the Department of Labor, to attend your Committee's hearings on the bill.

In response to your questions:

1. The Department of Law has not issued any opinions regarding the constitutionality of the current regulations regarding flexible-work-week employment (8 AAC 15.100). However, the Alaska Supreme Court did address the validity of those regulations in 1981 in its decision of Dresser Industries, Inc. v. Alaska Department of Labor 633 P.2d 998. A copy of that decision is attached for your information. Also, back in early 1978 I did prepare a formal opinion to the Department of Labor advising them on their authority to adopt regulations dealing with flexible-work-week employment. A copy of that February 10, 1978 opinion is also attached. As you will note, the Alaska Supreme Court agreed with my analysis.

2. In response to your request for documentation of the process which led to the adoption of the Department of Labor's regulations on this subject, I am attaching copies of the relevant materials contained in the Lt. Governor's files. These include Affidavits of Publication from the Southeast Alaska Empire, the Fairbanks Daily News Miner, and the Anchorage Daily News, an Affidavit of Oral Hearing indicating that a hearing on these proposed regulations was held in Anchorage on September 15, 1978, an Affidavit of Notice of Adoption of Regulation indicating that the requirements of AS 44.62.190 regarding provision of notice of proposed adoption of regulations was complied with by the Department of Labor, and the memorandum by the Department of Law's regulations attorney, Arthur Peterson, approving these regulations for filing with the Lieutenant Governor. The original of all these documents is on file with the Lieutenant Governor and can be reviewed in his offices.

I hope this information will be of assistance to you and the Committee in your deliberations on HB 223.

Sincerely,

NORMAN C. GORSUCH
ATTORNEY GENERAL

By:
Ronald W. Lorensen
Deputy Attorney General

RWL:vrb

cc: Gary Amendola
Assistant Attorney General

Jim Robison
Commissioner
Department of Labor

regarding cancellation of the contract on two weeks' notice. The argument based on Davis's claim that he was the band's leader can be disposed of summarily: no evidence has been produced from which it can be inferred that this statement induced Johnson to enter into the contract. *See Restatement (Second) of Contracts* § 309 (Tent. Draft No. 11, 1976). The second argument, based on Davis's alleged promise that the band's engagement could be cancelled on two weeks' notice, must fail for the same reason. Even granting that failure to warn a party of his possible misapprehension of a contract term may constitute a misrepresentation,[8] we are unable to conclude that Johnson may have been passively misled in that fashion. She fails to assert any assumption on her part that the written agreement embodied the purported oral promise. No evidence was presented from which it can be inferred either that she failed to read the contract or, having read it, failed to understand its terms. Her affidavit indicates neither that she in any way misapprehended the content of the written agreement nor that she was induced to sign it by any deception, active or passive, on Davis's part. Absent any evidence that Johnson was induced to enter into the contract on the basis of a misrepresentation as to the terms it contained, the district court was correct in granting summary judgment in favor of the band on this ground.

We agree with the district court's conclusion that Johnson's evidence, even interpreted in the light most favorable to her, was insufficient to support her defenses to enforcement of the written contract. That court's entry of summary judgment in favor of the band members must therefore be AFFIRMED.



DRESSER INDUSTRIES, INC., Appellant,

v.

ALASKA DEPARTMENT OF LABOR, Appellee.

No. 5625.

Supreme Court of Alaska.

Sept. 18, 1981.

Employer appealed from entry of summary judgment by the Superior Court, Third Judicial District, Anchorage, Seaborn J. Buckalew, Jr., J., upholding validity of

8. Restatement (Second) of Contracts § 301 (Tent. Draft No. 11, 1976) defines a misrepresentation as "an assertion that is not in accord with existing facts." Section 303 provides that:

> A person's non-disclosure of a fact known to him is equivalent to an assertion that the fact does not exist only if
>
> . . . . . .
>
> (b) he knows that disclosures of the fact would correct a mistake of the other party as to a basic assumption on which that party made the contract and if non-disclosure of the fact amounts to a failure to act in good faith and in accordance with reasonable standards of fair dealing, or
>
> (c) he knows that disclosure of the fact would correct a mistake of the other party as to the contents or effect of a writing, evidencing or embodying an agreement in whole or in part . . . .

This section is clarified in Comment e as follows:

> *Known mistake as to a writing.* One party cannot hold the other to a writing if he knew that the other was mistaken as to its contents or as to its legal effect. He is expected to correct such mistakes of the other party and his failure to do so is equivalent to a misrepresentation which may be grounds either for avoidance under § 306 or for reformation under § 308. . . . The failure of a party to use care in reading the writing so as to discover the mistake may not preclude such relief (§ 314). In the case of standardized agreements, these rules supplement that of § 237(d), which applies, regardless of actual knowledge, if there is reason to believe that the other party would not manifest assent if he knew that the writing contained a particular term. Like the rule stated in Clause (b) that stated in Clause (c) requires actual knowledge and is limited to non-disclosure by a party to the transaction.

regulation promulgated by Department of Labor which prohibited flexible work week. The Supreme Court, Rabinowitz, C. J., held that: (1) Director of Wage and Hour Division of Department of Labor was authorized to promulgate regulation, and (2) regulation did not exceed power delegated by legislature and was reasonable and not arbitrary method of furthering policies of wage and hour statutes requiring increased overtime compensation and promoting spreading of employment.

Affirmed.

1. States ⇐9

Text of Alaska Statehood Act makes it clear that federal legislative enactments were to be carried over unless overruled by State Constitution or state legislature, but Act did not automatically incorporate and maintain federal case law, or administrative law, unless and until changed by legislature. Alaska Statehood Act, § 8(d), 48 U.S.C.A. prec. § 21.

2. Labor Relations ⇐1101

Section of Wage and Hour Act which manifests intent to safeguard existing minimum wage and overtime standards is expression of general public policy and not specific prohibition of change. AS 23.10.050.

3. Labor Relations ⇐1101

Although section of Wage and Hour Act governing definitions directs courts to apply federal regulatory definitions "where applicable," such definitions are "applicable" only when Director of Wage and Hour Division and Commissioner of Labor have refrained from defining terms of state regulations, pursuant to their discretionary authority under sections of statute governing scope of administrative regulations and adoption of federal regulations. AS 23.10.085(b), 23.10.095, 23.10.145.

4. Labor Relations ⇐1101
States ⇐9

Alaska Statehood Act did not automatically incorporate federal case law or administrative law unless and until changed by legislature, provision of Wage and Hour Act which manifests intent to safeguard existing minimum wage and overtime standards is not prohibition of change, and direction to court to apply federal regulatory definitions "where applicable" means that such definitions are applicable only when Director of Wage and Hour Division and Commissioner of Labor have refrained from defining terms of state regulations; thus, Director was authorized to promulgate regulation which prohibited flexible work week. Alaska Statehood Act, § 8(d), 48 U.S.C.A. prec. § 21; AS 23.10.050, 23.10.085(b), 23.10.095, 23.10.145.

5. Stipulations ⇐3

Stipulations as to law are not binding upon court.

6. Labor Relations ⇐1425

Sections of Wage and Hour Act governing scope of administrative regulation and adoption of federal regulations constitute delegation of authority from legislature to agency to formulate policies, leaving to agency discretion issue of whether federal definitions of regular rate of pay and other terms can be applied consistently with Wage and Hour Act; thus, standard of review in determination of validity of regulation prohibiting flexible work week was whether regulation was reasonable and not arbitrary. AS 23.10.085, 23.10.095.

7. Labor Relations ⇐1439

While under standard hourly wage salary, as worker's overtime hours increase, average hourly wage increases, under flexible work week, as worker's overtime hours increase, average hourly wage decreases in contravention of policies requiring increased overtime compensation and promoting spreading of employment; thus, regulation of Department of Labor which defined "regular rate of pay" so as to exclude use of flexible work week was consistent with, and reasonably necessary to carry out purposes of statute governing wages and hours, did not exceed power delegated by legislature, and was reasonable and nonarbitrary method of furthering statute's policy. AS 23.10.050 et seq.

John K. Norman and Wev W. Shea, Hartig, Rhodes, Norman & Mahoney, Anchor-

age, and A. J. Harper II and Jeffrey S. Kuhn, Fulbright & Jaworski, Houston, Tex., for appellant.

Elizabeth Page Kennedy, Asst. Atty. Gen., Anchorage, and Wilson L. Condon, Atty. Gen., Juneau, for appellee.

Before RABINOWITZ, C. J., and CONNOR, BURKE, MATTHEWS and COMPTON, JJ.

OPINION

RABINOWITZ, Chief Justice.

This is an appeal from a summary judgment granted by the superior court. Its sole issue is the validity of 8 AAC 15.100(d)(3),[1] a regulation promulgated by the Department of Labor which prohibits the "flexible work week" (FWW), purportedly under the authority of the Alaska Wage and Hour Act. The superior court concluded

1. This regulation reads:

(d) The following are not acceptable methods of complying with the payment of overtime provisions of AS 23.10.060:

. . . . . .

(3) flex-time or flexitime plans established under 29 C.F.R. 778.114 providing a fixed salary for fluctuating hours up to a predetermined maximum number of hours in a workweek.

The federal regulation referred to, 29 C.F.R. 778.114, reads as follows:

§ 778.114 *Fixed salary for fluctuating hours.*

(a) An employee employed on a salary basis may have hours of work which fluctuate from week to week and the salary may be paid him pursuant to an understanding with his employer that he will receive such fixed amount as straight time pay for whatever hours he is called upon to work in a workweek, whether few or many. Where there is a clear mutual understanding of the parties that the fixed salary is compensation (apart from overtime premiums) for the hours worked each workweek, whatever their number, rather than for working 40 hours or some other fixed weekly work period, such a salary arrangement is permitted by the Act if the amount of the salary is sufficient to provide compensation to the employee at a rate not less than the applicable minimum wage rate for every hour worked in those workweeks in which the number of hours he works is greatest, and if he receives extra compensation, in addition to such salary, for all overtime hours worked at a rate not less than one-half his regular rate of pay. Since the salary in such a situation is intended to compensate the employee at straight time rates for whatever hours are worked in the workweek, the regular rate of the employee will vary from week to week and is determined by dividing the number of hours worked in the workweek into the amount of the salary to obtain the applicable hourly rate for the week. Payment for overtime hours at one-half such rate in addition to the salary satisfies the overtime pay requirement because such hours have already been compensated at the straight time regular rate, under the salary arrangement.

(b) The application of the principles above stated may be illustrated by the case of an employee whose hours of work do not customarily follow a regular schedule but vary from week to week, whose overtime work is never in excess of 50 hours in a workweek, and whose salary of $250 a week is paid with the understanding that it constitutes his compensation, except for overtime premiums, for whatever hours are worked in the workweek. If during the course of 4 weeks this employee works 40, 44, 50, and 48 hours, his regular hourly rate of pay in each of these weeks is approximately $6.25, $5.68, $5, and $5.21, respectively. Since the employee has already received straight-time compensation on a salary basis for all hours worked, only additional half-time pay is due. For the first week the employee is entitled to be paid $250; for the second week $261.36 ($250 plus 4 hours at $2.84, or 40 hours at $5.68 plus 4 hours at $8.52); for the third week $275 ($250 plus 10 hours at $2.50, or 40 hours at $5 plus 10 hours at $7.50); for the fourth week approximately $270.88 ($250 plus 8 hours at $2.61 or 40 hours at $5.21 plus 8 hours at $7.82).

(c) The 'fluctuating workweek' method of overtime payment may not be used unless the salary is sufficiently large to assure that no workweek will be worked in which the employee's average hourly earnings from the salary fall below the minimum hourly wage rate applicable under the Act, and unless the employee clearly understands that the salary covers whatever hours the job may demand in a particular workweek and the employer pays the salary even though the workweek is one in which the full schedule of hours is not worked. Typically, such salaries are paid to employees who do not customarily work a regular schedule of hours and are in amounts agreed on by the parties as adequate straight-time compensation for long workweeks as well as short ones, under the circumstances of the employment as a whole. Where all the legal prerequisites for use of the 'fluctuating workweek' method of overtime payment are present, the Act, in requiring that 'not less than' the prescribed premium of 50 percent for overtime hours worked be paid, does not prohibit paying more. On the other hand, where all the facts indicate that an employee is being paid for his over-

ed the regulation was valid, and Dresser Industries (Dresser) has appealed. We affirm.

The case was presented to the superior court on the basis of the parties' "Stipulations of facts, issues, and procedure," providing in part:

1. Dresser Industries, Inc. is doing business in the State of Alaska and is subject to the jurisdiction of this court.

2. The person on whose behalf the action has been instituted is Clyde Woody (herein claimant), who has assigned his rights to the Department of Labor pursuant to AS 23.05.220.

3. The Department of Labor is the proper party plaintiff to bring this suit under AS 23.05.230 and suit has been timely and properly instituted.

4. The court has jurisdiction of the subject matter and the parties.

5. This action arises under the provisions of the Alaska Wage and Hour law (AS 23.10.050 *et seq.*) and the regulations of the Department of Labor promulgated thereunder (8 AAC 15.100).

6. The interpretative regulation at issue was properly promulgated in accordance with the Alaska Administrative Procedure Act (AS 44.62).

7. Claimant is due the sum of $3,956.76 if the position of plaintiff is sustained and is not due any monies if the position of defendant is sustained.

8. This case is ripe for adjudication on the stipulated facts and issues and the parties agree this stipulation shall constitute cross-motions for summary judgment.

9. The predicates which served as the Administrator's basis in adopting the challenged regulation were:

(A) The 'fluctuating work week' is not applicable under the Alaska Act because,

(1) AS 23.05.160 requires an employee to be told of his 'rate of pay' at the time of hire and of any changes therein before payday; and

(2) AS 23.10.060 requires that employers have to pay overtime for hours worked over eight (8) hours per day, even if less than forty (40) hours per week are worked, and this is to the employer's detriment.

Dresser presented two arguments in support of its contention that 8 AAC 15.100(d)(3) is invalid. It asserted, first, that the definition of "regular rate of pay" in the federal regulations, which countenances use of the FWW, *see* note 1 *supra*, is binding upon the State Wage and Hour Division under two statutory provisions: section 8(d) of the Statehood Act [2] and the Alaska Wage and Hour Act itself, specifically AS 23.10.050 [3] and AS 23.10.145.[4] Second, Dresser

time hours at a rate no greater than that which he receives for nonovertime hours, compliance with the Act cannot be rested on any application of the fluctuating workweek overtime formula.

2. The entire text of section 8(d) of the Statehood Act reads:

(d) Upon admission of the State of Alaska into the Union as herein provided, all of the Territorial laws then in force in the Territory of Alaska shall be and continue in full force and effect throughout said State except as modified or changed by this Act, or by the constitution of the State, or as thereafter modified or changed by the legislature of the State. All of the laws of the United States shall have the same force and effect within said State as elsewhere within the United States. As used in this paragraph, the term 'Territorial laws' includes (in addition to laws enacted by the Territorial Legislature of Alaska) all laws or parts thereof enacted by the Congress the validity of which is dependent solely upon the authority of the Congress to provide for the government of Alaska prior to the admission of the State of Alaska into the Union, and the term 'laws of the United States' includes all laws or parts thereof enacted by the Congress that (1) apply to or within Alaska at the time of the admission of the State of Alaska into the Union, (2) are not 'Territorial laws' as defined in this paragraph, and (3) are not in conflict with any other provisions of this Act.

Alaska Statehood Act, P.L. 85-508, § 8(d).

3. AS 23.10.050 reads, in relevant part: "It is the public policy of the state to ... (2) safeguard existing minimum wage and overtime compensation standards ...."

4. AS 23.10.145 reads:

Definitions. Terms used in §§ 50–150 of this chapter shall be defined, where applica-

argued that even if the State Wage and Hour Division was authorized to promulgate 28 AAC 15.100(d)(3), the regulation is inconsistent with the state Wage and Hour Act and unreasonable and arbitrary, and thus cannot withstand judicial review.

A. *Carry-over of federal law.*

It is undisputed that the FWW is sanctioned under federal wage and hour law. *See Overnight Motor Transport Co., Inc. v. Missel*, 316 U.S. 572, 62 S.Ct. 1216, 86 L.Ed. 1682 (1942). Early federal regulations specifically endorsed its use, under the provisions defining "regular rate of pay." 29 C.F.R. 778.3 (1950).

Dresser asserts that this federal definition of "regular rate of pay" carried over into state law because no change in that definition was made by the state legislature. Pointing to the section of the Statehood Act which continued in full force and effect all Territorial laws except as modified or changed by the Statehood Act itself, by the state constitution, or by the legislature of the new state, Dresser argues that coverage, meaning, and interpretation of the Alaska Act should parallel that of the Fair Labor Standards Act absent a clear legislative directive to the contrary. Dresser's position seems to be that although the state can choose to diverge from federal law in this area, it should only be able to do so by virtue of legislative enactment, and that in this action the burden is on the state to show that statutory provisions passed by the state legislature mandated issuance of the regulation at issue. Otherwise, Dresser contends, the state agency could not, merely by issuing regulations, overrule the treatment of the FWW under federal/Territorial law, carried over into state law by the Statehood Act.

[1] We do not find this argument persuasive. We think that the text of section 8(d) of the Statehood Act made it clear that federal legislative enactments were to be carried over unless overruled by the state constitution or the state legislature.[5] We do not interpret it as having automatically incorporated and maintained federal case law or, as Dresser argues, administrative law, unless and until changed by the legislature. This court has not held itself bound by federal judicial rulings entered prior to the date of statehood, regardless of whether or not the state legislature has acted in a given area.[6] We think it would be equally awkward to hold state agencies bound by federal regulations extant as of statehood. Such a result would unduly restrict state agencies and inordinately burden the legislature.

[2] Nor are we convinced that the terms of the Alaska Wage and Hour Act evince an intent to bind the State Wage and Hour Division to federal regulatory definitions. It is true that AS 23.10.050 manifests an intent to safeguard "existing" minimum wage and overtime standards, but we cannot give this the strained reading of having petrified wage and hour law as of the time of its enactment. That provision is an ex-

ble, as they are defined in the federal Fair Labor Standards Act of 1938, as amended, or the regulations adopted under it.

5. The language of section 8(d), *see* note 2 *supra*, indicates that its primary concern was with "laws enacted by Congress."

6. *See, e. g., Howarth v. Pfeifer*, 443 P.2d 39, 44 (Alaska 1968) ("What may be considered a just disposition of a dispute at one stage of history may not be the same at another stage, considering changing social, economic, and other conditions of society.... Thus, we hold under the principles we have discussed in this opinion that one may now maintain an action for negligent misrepresentation, even though that may not have been the case under the common law in years gone by."); *In re Mackay*, 416 P.2d 823, 837 (Alaska 1964) ("We do not agree with the respondent's contention that there should be read into section 8(d) of the Alaska Statehood Act an intent to limit the powers of the Supreme Court of Alaska.... Congress cannot limit this court's power to discipline Alaskan lawyers either directly or by continuing in force the provision of a territorial statute claimed by the respondent to have that effect."). *Cf. Surina v. Buckalew*, 629 P.2d 969 (Alaska 1981) (prosecutor's non-statutorily based promise of immunity in return for testimony is binding under Alaska Constitution regardless of federal rule).

expression of general policy, not a specific prohibition of change.

[3] Dresser's next argument is based upon AS 23.10.145, which indicates that "[t]erms used in [the Alaska Wage and Hour Act] shall be defined, where applicable, as they are defined in the federal Fair Labor Standards Act of 1938, as amended, or the regulations adopted under it." On its face, this provision presents a strong indication that the federal definition of "regular rate of pay" is binding on the State Wage and Hours Division. However, two other statutory provisions undercut this position. AS 23.10.085(b) provides that the state regulations to be issued by the Wage and Hour Division "may . . . define terms used in [the Alaska Wage and Hour Act]";[7] and AS 23.10.095 provides that the state Commissioner of Labor "may adopt regulations and interpretations which are made by the administrator of the Wage and Hour Division of the federal Department of Labor and which are not inconsistent with [the Alaska Wage and Hour Act]."[8]

We must interpret the statutory scheme as a whole and in such a way that separate provisions do not conflict.[9] Here, we agree with the state's argument that AS 23.10.145 directs the courts to apply federal regulatory definitions "where applicable," and that such definitions are "applicable" only when the state director of the Wage and Hour Division and the Commissioner of Labor have refrained from defining terms in the state regulations, pursuant to their discretionary authority under AS 23.10.085 and 23.10.095.[10] We reject Dresser's contention that AS 23.10.145 is a mandatory directive to both courts and agencies, to be overruled only by the legislature. Such an interpretation would substantially nullify AS 23.10.085 and 23.10.095.

[4] For the above reasons, we conclude that the Director was authorized to promulgate 8 AAC 15.100(d)(3).

7. AS 23.10.085 reads:

Scope of administrative regulations. (a) The director may issue, amend or rescind such administrative regulations not inconsistent with the purposes and provisions of §§ 50–150 of this chapter which are necessary for the administration of §§ 50–150 of this chapter.

(b) The regulations may, without limiting the generality of (a) of this section, define terms used in §§ 50–150 of this chapter, and the restriction or prohibition of industrial homework or of the other acts or practices which the director finds appropriate to carry out the purpose of §§ 50–150 of this chapter, or to prevent the circumvention or evasion of §§ 50-150 of this chapter.

(c) The regulations may permit deductions by an employer from the minimum wage applicable under §§ 50–150 of this chapter to his employees for the reasonable cost, as determined by the director on an occupation basis, of furnishing board or lodging if board or lodging is customarily furnished by the employer and used by the employee.

8. As 23.10.095 reads:

Adoption of federal regulations. The commissioner may adopt regulations and interpretations which are made by the administrator of the Wage and Hour Division of the federal Department of Labor and which are not inconsistent with §§ 50–150 of this chapter.

9. *See In re Estate of Hutchinson*, 577 P.2d 1074, 1075 (Alaska 1978); *State v. City of Anchorage*, 513 P.2d 1104, 1110 (Alaska 1973).

10. This interpretation is consistent with our ruling in *McGinnis v. Stevens*, 543 P.2d 1221, 1238–39 (Alaska 1975), where we held that a prison inmate was not entitled to the minimum wage for institutional jobs. We relied partially on AS 23.10.065:

> AS 23.10.065 is based on the federal Fair Labor Standards Act of 1938 and the terms used in the Alaska statute are defined in the same way as in the federal act. A prisoner is not an 'employee' of the state under the federal act, and therefore is not so by virtue of AS 23.10.065. Moreover, even were we to regard the inmates here as employees, state employees are excluded, by virtue of AS 23.10.055(5), from the operation of the statute. Finally, the legislative history indicates that Congress did not intend the Fair Labor Standards Act to cover prisoners, and we find no indication that the state statute was not meant to have parallel 'non-coverage.' We simply cannot say that the distinction between prisoners in institutions and free citizens on the labor market is suspect.

Id. (footnotes omitted). *McGinnis* did not involve a state regulation explicitly rejecting the FLSA rule on prisoners, however, so our application of the federal definition there was in accordance with our present holding.

B. *Validity of 8 AAC 15.100(d)(3).*

The parties have attempted to stipulate to two matters affecting the scope of this court's review: (1) that 8 AAC 15.100(d)(3) is an interpretative regulation, and thus subject to review under the independent judgment standard; and (2) that the sole statutory provisions which form the basis for the regulation are AS 23.05.160 and AS 23.10.060.

[5] Although the parties' efforts toward simplifying the issues in a case are always appreciated, stipulations as to the law are not binding upon the court. "Counsel ... may agree as to the facts, but they cannot control this court by stipulation as to the sole or any question of law to be determined under them." *San Francisco Lumber Co. v. Bibb*, 139 Cal. 325, 73 P. 864, 865 (1903).[11] This rule regarding stipulations of law is particularly appropriate where, as here, the case involves a matter of public policy. *See generally* Annot., 92 A.L.R. 663, 666 (1934). We think these considerations require us to look beyond the parties' stipulation in our analysis of the applicable law.

[6] We conclude that the regulation here is "quasi-legislative". In *Kelly v. Zamarello*, 486 P.2d 906, 909–11 (Alaska 1971), (footnotes omitted), we distinguished between quasi-legislative and interpretative rule-making:

> Professor Davis characterizes the difference in judicial attitude toward certain administrative rules as a distinction between 'legislative regulations' and 'interpretative regulations.' He has defined 'legislative rule' as 'the product of an exercise of legislative power by an administrative agency, pursuant to a grant of legislative power by the legislative body.' 'Interpretative rules,' he states, 'are rules which do not rest upon a legislative grant of power (whether explicit or inexplicit) to the agency to make law.' The distinction is not always easy to draw, since as Davis points out, 'Interpretative rules sometimes rest upon statutory authority to issue them. • • •'
>
> ....
>
> [T]he distinction between legislative and interpretative rule-making is a helpful one when reviewing regulations adopted by state administrative agencies. We hold, therefore, that when a regulation has been adopted under a delegation of authority from the legislature to the administrative agency to formulate policies and to act in the place of the legislature, we should not examine the content of the regulation to judge its wisdom, but should exercise a scope of review not unlike that exercised with respect to a statute.
>
> ....
>
> Thus, where an administrative regulation has been adopted in accordance with the procedures set forth in the Administrative Procedure Act, and it appears that the legislature has intended to commit to the agency discretion as to the particular matter that forms the subject of the regulation, we will review the regulation in the following manner: First, we will ascertain whether the regulation is consistent with and reasonably necessary to carry out the purposes of the statutory provisions conferring rule-making authority on the agency. This aspect of review insures that the agency has not exceeded the power delegated by the legislature. Second, we will determine whether the regulation is reasonable and not arbitrary. This latter inquiry is proper in the review of any legislative enactment.

We think it clear that AS 23.10.085 and 23.10.095[12] constitute a delegation of authority from the legislature to the agency to formulate policies, leaving to the agency's discretion the issue whether federal definitions of "regular rate of pay" and

11. *See also Anchorage v. Geber*, 592 P.2d 1187, 1191-92 & 1192 n.8 (Alaska 1979), where we overruled as "ill advised" that portion of *Layland v. State*, 535 P.2d 1043 (Alaska 1975) suggesting that parties' concessions regarding interpretations of law are binding upon the courts.

12. *See* notes 7 and 8 *supra*.

other terms can be applied consistently with Alaska's Wage and Hour Act. Thus, we hold that the "reasonable and not arbitrary" test is applicable.

[7] The parties stipulated to the specific statutory provisions upon which the state relies to justify the regulation. These are AS 23.05.160,[13] which requires that an employee be informed of his rate of pay at the time of hiring and of any change in that rate on the payday prior to the change, and AS 23.10.060,[14] which requires the one and one-half overtime rate not only for hours worked over forty per week, but also for hours worked over eight per day.

Dresser argues that 8 AAC 15.100(d)(3) furthers neither of these statutory provisions; and indeed, our assessment of the parties' arguments indicates that the regulation is related only tenuously, if at all, to these provisions. However, the state's brief argues that the regulation is grounded in policy considerations beyond those contained in the two statutes. Although Dresser argues that this disregard of the stipulation is improper, we have concluded for the reasons noted above that the stipulation is not binding upon this court. In another case in which the parties had attempted to stipulate to the purpose of a legislative enactment, the New York Court of Appeals noted:

> We are not bound by stipulations in respect of the purpose of legislation. Laws are not to be declared invalid upon the consent of parties. We must determine their purpose and tendency for ourselves.

E. Fougera & Co., Inc. v. City of New York, 224 N.E. 269, 120 N.E. 642, 643 (1918).

The public policy underlying the Alaska statutory scheme is given as follows in AS 23.10.050:

> *Public Policy.* It is the public policy of the state to
>
> (1) establish minimum wage and overtime compensation standards for workers at levels consistent with their health, efficiency and general well-being, and
>
> (2) safeguard existing minimum wage and overtime compensation standards which are adequate to maintain the health, efficiency and general well-being of workers against the unfair competition of wage and hour standards which do not provide adequate standards of living.

On the basis of these policy pronouncements, the state argues that the basic concern of the legislature was protection of the worker's well-being against unfair wage and hour standards, and that this concern is of particular importance in Alaska, where the cost of living is higher than in other states. The state also argues that prohibiting the FWW would be to the worker's advantage, and cites the present case as an illustration: claimant Woody would be entitled to $3,956.76 if the regulation were upheld.

More specifically, the state argues that as the number of hours worked in a particular week increases, the "regular rate of pay" decreases; as the "regular rate" decreases, the resultant "overtime rate" decreases; and thus the effect of allowing the FWW is counter-productive to the stated purposes of the Act. The state insists, further, that the FWW makes it financially advantageous

13. As 23.05.160 reads:

> *Notice of wage payments.* An employer shall notify his employee in writing at the time of hiring of the day and place of payment, and the rate of pay, and of any change with respect to these items on the pay day before the time of change. An employer may give this notice by posting a statement of the facts, and keeping it posted conspicuously at or near the place of work where the statement can be seen by each employee as he comes or goes to his place of work.

14. The applicable portion of AS 23.10.060 reads:

> *Payment for overtime.* No employer who employs employees engaged in commerce, or other business, or in the production of goods or materials in Alaska may employ an employee not acting in a supervisory capacity, either male or female, for a workweek longer than 40 hours or for more than eight hours a day, except that if the employer finds it necessary to employ an employee in excess of 40 hours a week or eight hours a day, compensation for the overtime at the rate of one and one-half times the regular rate of pay shall be paid, and this provision is considered included in all contracts of employment.

for an employer to hire an employee to work long overtime hours rather than to hire more workers, contrary to one purpose of the overtime provision, which was to force employers to spread employment by hiring more persons.[15]

We are persuaded that the state's position is correct. Under a standard hourly wage salary, as a worker's overtime hours increase, the average hourly wage increases. Under the FWW, as a worker's overtime hours increase, the average hourly wage decreases. This contravenes the policies of requiring increased overtime compensation and promoting the spreading of employment.

Thus, we must conclude that the regulation's definition of "regular rate of pay" so as to exclude use of the FWW is consistent with, and reasonably necessary to carry out, the purposes of the relevant statutory provisions. The regulation does not exceed the power delegated by the legislature. Further, 8 AAC 15.100(d)(3) is a reasonable and non-arbitrary method of furthering the statute's policies.[16]

Dresser raises several collateral arguments concerning the regulation's prohibition of the "Belo" pay plan, *see Walling v. A.H. Belo Corp.*, 316 U.S. 624, 62 S.Ct. 1223, 86 L.Ed. 1716 (1942); 29 U.S.C.A. § 207(f), and the permissibility of piece-work and commission pay plans. The validity of these provisions is not before us, and we perceive no inconsistency so blatant as to render the prohibition of the FWW unreasonable or arbitrary.

The judgment of the superior court is AFFIRMED.



15. The United States Supreme Court has repeatedly emphasized this point. In *Bay Ridge Operating Co. v. Aaron*, 334 U.S. 446, 460, 68 S.Ct. 1186, 1194, 92 L.Ed. 1502, 1514 (1948), the Court said, "The purpose was to compensate those who labored in excess of the statutory maximum number of hours for the wear and tear of extra work and to spread employment through inducing employers to shorten hours because of the pressure of extra cost."

16. The parties have not addressed, and we express no opinion concerning, the question whether there may be any conflict between 8 AAC 15.100(d)(3) and AS 23.10.060(17) and (18), enacted in ch. 31, § 1, SLA 1980.

David LEUCH, Appellant,

v.

STATE of Alaska, Appellee.

No. 5255.

Supreme Court of Alaska.

Sept. 25, 1981.

Defendant was convicted, pursuant to guilty pleas, before the Superior Court, Fourth Judicial District, Fairbanks, James R. Blair, J., of two counts of grand larceny, and he appealed sentence. The Supreme Court, Rabinowitz, C. J., held that: (1) where an offense is against only property, involving no physical threats or violence, where it is the offender's first felony conviction, and where there is no background of unsuccessful paroles or probations which would indicate that probation is unsuitable to protect the public, to deter the offender, and to further his rehabilitative process, probation, coupled with restitution, is the appropriate sentence unless other factors militate against it, and (2) concurrent sentences of eight years with four suspended was excessive and upon remand defendant should receive concurrent sentences which, including any period of suspension and probation, did not exceed five years in total length.

Sentence reversed and remanded.

Matthews, J., dissented and filed opinion in which Burke, J., joined.

1. Criminal Law ⇐986.2(1)

Absent a conviction, an indictment is absolutely no evidence of guilty conduct.

OPINION NO. 7

STATE OF ALASKA

JAY S. HAMMOND, GOVERNOR

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL / POUCH K—STATE CAPITOL
JUNEAU 99811

February 10, 1978

Edmund N. Orbeck
Commissioner
Department of Labor
P.O. Box 1146
Juneau, Alaska 99802

Re: Use of Flex-Time Contracts under State Wage and Hour Act; A.G. File J-66-263-78

Dear Commissioner Orbeck:

You have asked our opinion as to whether certain methods for compensating employees, referred to generally as "flex-time", "flexitime", or "fluctuating workweek" plans, may be used by employers in Alaska consistent with the payment for overtime provision of the state's Wage and Hour Act, AS 23.10.060. We understand these plans are used frequently by employers to provide a steady income level to employees whose hours of work vary considerably from week to week. Your question arises because these "fluctuating workweek" pay plans are specifically recognized as valid under the Fair Labor Standards Act of 1938, as amended (FLSA), 29 U.S.C. § 201 et seq., the federal counterpart to the state's overtime provisions. However, these kinds of plans are not addressed under

relevant state laws or regulations dealing with overtime. At least one employer in the state is presently using flex-time plans to compensate certain of its employees, and the Wage and Hour Division of your department has taken the position that the employer's use of those plans is inconsistent with the state's Wage and Hour Act, AS 23.10.050 - 23.10.150.

The fact that flex-time is permissable under the FLSA does not, in and of itself, require that the State of Alaska also permit its use by employers within the state. The FLSA prescribes only minimum requirements with which all covered employers in the United States must comply, however, it does not prohibit the states from adopting wage and hour requirements more stringent than those established in the FLSA. See, sec. 18(a), FLSA; 29 U.S.C. § 218(a); also 29 C.F.R. § 778.5. The question, then, is whether the state has in fact adopted a more stringent approach to the payment of overtime than that taken under the FLSA. It is our conclusion that the state has not done so. We believe, however, that your department may prohibit the use of flex-time plans in Alaska through proper adoption of appropriate regulations.

The basic payment of overtime provisions of the state and federal law are quite similar. /1 Sec. 7(a)(1) of the FLSA, 29 U.S.C. § 207(a)(1) provides, in pertinent part, as follows:

> [N]o employer shall employ any of his employees . . . for a workweek longer than forty hours unless said employee receives compensation for his employment in excess of the hours above specified at a rate not less than one and one-half times the regular rate at which he is employed. (emphasis added)

AS 23.10.060 provides in pertinent part:

> No employer . . . may employ an employee . . . for a workweek longer than 40 hours . . . except that if the employer finds it necessary to employ an employee in excess of 40 hours a week . . . compensation for the overtime at the rate of one and one-half times the regular rate of pay shall be paid. (emphasis added)

/1 The state act does require that overtime be paid for hours worked in excess of eight in one day in addition to the requirement of both acts that overtime be paid for work in excess of 40 hours in a week, however that difference is not at issue here.

Under both statutes the employee's "regular rate of pay" must be determined before his overtime entitlement can be computed. By way of regulation, the U.S. Department of Labor has stated that "flex-time" pay plans are an acceptable method of determining the employee's "regular rate". 29 C.F.R. § 778.114. It has been suggested that your department must also recognize flex-time as a valid method of compensating for overtime as the result of AS 23.-10.145 which provides:

> Terms used in §§ 50-150 of this chapter shall be defined, where applicable, as they are defined in the federal Fair Labor Standards Act of 1938, as amended, or the regulations adopted under it.

For two reasons, we do not read this provision as requiring the adoption of flex-time in Alaska, however. First, 29 C.F.R. § 778.114, the "fluctuating workweek" provision, is not a "definition" of a term. It is merely one of many "interpretations" recognized by the federal government in implementing the FLSA. The federal regulations, themselves, explicitly state that the various provisions of 29 C.F.R. § 778, of which "fluctuating workweek" is a part, are "the official interpretation of the Department of Labor with respect to the meaning and application of

the maximum hours and overtime pay requirements of section 7 of the [FLSA]." (emphasis added). The state Wage and Hour Act specifically recognizes this distinction between "definitions" and "interpretations". AS 23.10.095 authorizes, but does not require, adoption of regulations and "interpretations" made under the federal act, while AS 23.10.145 clearly requires adoption of federal definitions, "where applicable".

But even if 29 C.F.R. § 778.114 could be described as a "definition" for purposes of AS 23.10.145, it would still only be binding on the state if it is "applicable". We take the statute's use of "where applicable" to mean if it fits a given situation; if it is fit, suitable, pertinent, appropriate, or capable of being applied; if it is applicable to the habits and conditions of society. McQueeney v. Catholic Bishop of Chicago, 159 N.E.2d 43, 47 (App.Ct. Ill. 1959); Whitney v. American Fidelity Company, 215 N.E.2d 767, 768 (Mass. 1966); Fuchs v. Goe, 163 P.2d 783, 792 (Wyoming 1945). Therefore, the department could determine upon examination that a given definition contained in the FLSA or the regulations adopted under it does not adequately or appropriately address working conditions or the work situation in Alaska. Once the department has made that determination, it may properly adopt a different definition, appropriate to Alaska. In doing so, however, it must

adopt that definition as a regulation under the procedures prescribed in the State's Administrative Procedure Act (AS 44.62) if it is to have any enforceable effect.

The preceding discussion sets out some of the general parameters of the relationship between the FLSA and the state's Wage and Hour Act. The state act specifically looks to the federal provisions for substance. In adopting this legislative scheme, we think the Legislature evidenced a clear intention to follow the federal approach to wages and hours closely, except in those situations where the Department of Labor determines that the federal provisions are inadequate or inappropriate when applied to working in Alaska. Consequently, if the state determines that certain aspects of its Wage and Hours Act should be applied in a manner more stringent than required under the FLSA and the regulations adopted under it, the areas of difference between the federal and state laws should either be set out clearly in the Act or in the department's regulations adopted under the Act.

Nothing in the state's current statutes or regulations indicates that flex-time is not an acceptable method of compensating for overtime work under the Alaska act. At the same time, the federal regulations clearly permit flex-

time under the FLSA, after which the state act is closely patterned. Under those circumstances, the department may not simply make independent ad hoc determinations of acceptable methods of overtime compensation. Unless the state act is clear on its face, the department must either establish its own standards (regulations) or follow those established under the FLSA.

There are at least two independent reasons for the department adopting its own wage and hour standards. First, properly adopted and enforceable regulations implementing the state Wage and Hour Act will assure that employers have adequate notice of the requirements with which they must comply in Alaska. In the absence of state standards, Alaska employers have only the federal law and regulations for determining how to comply with applicable wage and hour laws. Second, established standards also insure that the department's wage and hour enforcement activities will be consistent throughout the state.

Since the only standards for overtime entitlement currently in existence are those adopted under the federal FLSA, we must conclude that the department may not presently

refuse to recognize flex-time plans established under 29 C.F.R. § 778.114. The state act does not, on its face, prohibit flex-time plans. As indicated above, the state and federal overtime provisions are quite similar, and the federal provision has been interpreted to permit flex-time. We have no doubt, therefore, that the state provision can also be so interpreted. We are also of the opinion that the department could, through adoption of an appropriate regulation, interpret the state act as not permitting flex-time plans. However, until the department adopts regulations which either specify exclusive standards for the determination of overtime entitlement or reject specific portions of the federal standards, employers in Alaska are entitled to rely on their compliance with the federal standards as also constituting compliance with the state's Wage and Hour Act.

Sincerely yours,

AVRUM M. GROSS
ATTORNEY GENERAL

By: Ronald W. Lorensen
Assistant Attorney General

RWL:jf

ADVERTISING ORDER

NOTICE TO PUBLISHER

INVOICE MUST BE IN TRIPLICATE SHOWING ADVERTISING ORDER NO., CERTIFIED AFFIDAVIT OF PUBLICATION (PART 2 OF THIS FORM) WITH ATTACHED COPY OF ADVERTISEMENT MUST BE SUBMITTED WITH INVOICE.

DEPT. NO.	A.O. NO.
AO- 07	2595

PUBLISHER:
Southeast Alaska Empire
235 2nd Street
Juneau, Alaska 99801

VENDOR NO.: SAE 734

DATE OF A.O.: August 21, 1978

DATES ADVERTISEMENT REQUIRED:
August 30, 31 and September 1, 1978

THE MATERIAL BETWEEN THE DOUBLE LINES MUST BE PRINTED IN ITS ENTIRETY ON THE DATES SHOWN.

FROM:
Department of Labor
Wage and Hour Division
P.O. Box 630
Juneau, Alaska 99811

BILLING ADDRESS:
Alaska Department of Labor
Administrative Services
Fiscal Section
P.O. Box 1149
Juneau, Alaska 99811

AFFIDAVIT-OF-PUBLICATION

UNITED STATES OF AMERICA
STATE OF Alaska } ss
DIVISION.

BEFORE ME, THE UNDERSIGNED, A NOTARY PUBLIC THIS DAY PERSONALLY APPEARED Jeff A. Wilson WHO, BEING FIRST DULY SWORN, ACCORDING TO LAW, SAYS THAT HE/SHE IS THE Gen. Manager OF S.E. Alaska Empire PUBLISHED AT Juneau IN SAID DIVISION AND STATE OF Alaska AND THAT THE ADVERTISEMENT, OF WHICH THE ANNEXED IS A TRUE COPY, WAS PUBLISHED IN SAID PUBLICATION ON THE 30th DAY OF August 1978, AND THEREAFTER FOR 2 CONSECUTIVE DAYS, THE LAST PUBLICATION APPEARING ON THE 1st DAY OF September 1978, AND THAT THE RATE CHARGED THEREON IS NOT IN EXCESS OF THE RATE CHARGED PRIVATE INDIVIDUALS.

Jeff A. Wilson

SUBSCRIBED AND SWORN TO BEFORE ME
THIS 25th DAY OF September 1978

Norma J. Grunow

NOTARY PUBLIC FOR STATE OF
COMMISSION EXPIRES My Commission Expires September 14, 1980

NDER—
ES AND PROOF OF PUBLICATION.

NOTICE OF PROPOSED CHANGES IN THE REGULATIONS OF THE DEPARTMENT OF LABOR

Notice is hereby given that the Alaska Department of Labor, under the authority vested by AS 23.10.085, proposes to repeal and adopt regulations in Title 8 of the Alaska Administrative Code to implement AS 23.10.150, as follows:

11 8 AAC 15 is amended by repealing sections 010 through 070 in their entirety and adopting and replacing with new sections as follows:

ARTICLE 1.

Article 1 stipulates minimum wages, maximum hours and computation of overtime applicable to employment in Alaska.

ARTICLE 2.

Article 2 provides certain exemptions from the payment of minimum wages or overtime.

ARTICLE 3.

Article 3 stipulates those deductions from an employee's wages that are permissable and those deductions that are prohibited.

ARTICLE 4.

Article 4 establishes the procedures for assignment of claims and/or the conduct of investigative hearings and conferences.

ARTICLE 5.

Article 5 defines miscellaneous terms as used in this chapter and AS 23.10.

Notice is also given that any interested party may present oral or written statements or arguements relevant to the action proposed at a hearing to be held at the DIVISION OF AVIATION BUILDING CONFERENCE ROOM, 4111 AVIATION AVENUE, (next to Lake Hood) Anchorage, Alaska 99502 at 1:30 p.m. o'clock on September 18, 1978.

Copies of the regulations may be obtained by writing to: Wage and Hour Division, Alaska Department of Labor, P.O. Box 630, Juneau, Alaska 99811.

The Department of Labor upon its own motion or at the instance of any interested person, may after September 30, 1978 adopt the proposals substantially as described above without further notice or may decide to take no action on them.

Date 8/21/78

William E. Spear
Deputy Commissioner
Department of Labor

Publish: Aug. 30, 31, Sept. 1, 1978
809-82

AFFIDAVIT OF PUBLICATION

UNITED STATES OF AMERICA
STATE OF ALASKA
FOURTH DISTRICT
} ss.

Legal 13,544

NOTICE OF PROPOSED CHANGES IN THE REGULATIONS OF THE DEPARTMENT OF LABOR

Notice is hereby given that the Alaska Department of Labor, under the authority vested by AS 23.10.085, proposes to repeal and adopt regulations in Title 8 of the Alaska Administrative Code to implement AS 23.10.050-AS 23.10.150, as follows:

(1) 8 AAC 15 is amended by repealing sections 010 through 070 in their entirety and adopting and replacing with their new sections as follows:

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Notice is also given that any interested party may present oral or written statements or arguments relevant to the action proposed at a hearing to be held at the DIVISION OF AVIATION BUILDING CONFERENCE ROOM 4111 AVIATION AVENUE (next to Lake Hood) Anchorage, Alaska 99502 at 1:30 p.m. o'clock on September 15, 1978.

Copies of the regulations may be obtained by writing to: Wage and Hour Division, Alaska Department of Labor, P.O. Box 630, Juneau, Alaska 99811.

The Department of Labor upon its own motion or at the instance of any interested person, may after September 30, 1978 adopt the proposals substantially as described above without further notice or may decide to take no action on them.

Date 8/21/78

William E. Spear
Deputy Commissioner
Department of Labor

PUBLISH: August 30, 31, September 1, 1978

Before me, the undersigned, a notary public, this day personally appeared FRANCES PFEIFFER, who, being first duly sworn, according to law, says that he/she is an Advertising Clerk of the Fairbanks Daily News-Miner, a newspaper published at Fairbanks, in said Fourth District and State, and that the advertisement, of which the annexed is a true copy, was published in said paper on the following day(s),

8/30/78	8/31/78
9/01/78	

, and that the rate charged thereon is not in excess of the rate charged private individuals with the usual discounts.

Frances Pfeiffer

Subscribed and sworn to before me this 30 TH day of SEPTEMBER 1978

Notary Public in and for the State of Alaska.

My commission expires APRIL 10, 1981

CUSNR. 11592 LEGAL NO. 13544-0

ADVERTISING ORDER

NOTICE TO PUBLISHER

INVOICE MUST BE IN TRIPLICATE SHOWING ADVERTISING ORDER NO., CERTIFIED AFFIDAVIT OF PUBLICATION (PART 2 OF THIS FORM) WITH ATTACHED COPY OF ADVERTISEMENT MUST BE SUBMITTED WITH INVOICE.

DEPT. NO.	A.O. NO.
AO- 07	2595

PUBLISHER

Anchorage Daily News
P.O. Box 40
Anchorage, Alaska 99501

VENDOR NO. ADN 501

DATE OF A.O. August 21, 1978

DATES ADVERTISEMENT REQUIRED:
August 30, 31 and September 1, 1978

THE MATERIAL BETWEEN THE DOUBLE LINES MUST BE PRINTED IN ITS ENTIRETY ON THE DATES SHOWN.

FROM

Department of Labor
Wage and Hour Division
P.O. Box 630
Juneau, Alaska 99811

BILLING ADDRESS *Alaska Department of Labor
Administrative Services
Fiscal Section
P.O. Box 1149
Juneau, Alaska 99811

AFFIDAVIT-OF-PUBLICATION

UNITED STATES OF AMERICA
STATE OF Alaska } ss
Third DIVISION.

BEFORE ME, THE UNDERSIGNED, A NOTARY PUBLIC THIS DAY PERSONALLY APPEARED Nathalia M. Chevalier WHO, BEING FIRST DULY SWORN, ACCORDING TO LAW, SAYS THAT HE/SHE IS THE Legal Clerk OF THE ANCHORAGE NEWS PUBLISHED AT Anchorage IN SAID DIVISION Third AND STATE OF Alaska AND THAT THE ADVERTISEMENT, OF WHICH THE ANNEXED IS A TRUE COPY, WAS PUBLISHED IN SAID PUBLICATION ON THE 30 DAY OF August 1978, AND THEREAFTER FOR 3 CONSECUTIVE DAYS, THE LAST PUBLICATION APPEARING ON THE 1 DAY OF Sept. 1978, AND THAT THE RATE CHARGED THEREON IS NOT IN EXCESS OF THE RATE CHARGED PRIVATE INDIVIDUALS.

3x 61 inches $81.90

Nathalia M. Chevalier

SUBSCRIBED AND SWORN TO BEFORE ME THIS 1 DAY OF Sept 1978.

Patricia Lindsay

NOTARY PUBLIC FOR STATE OF Alaska
MY COMMISSION EXPIRES 5/1/82

NOTICE OF PROPOSED CHANGES IN THE REGULATIONS OF THE DEPARTMENT OF LABOR

Notice is hereby given that the Alaska Department of Labor, under the authority vested by AS 23.10.055, proposes to repeal and adopt regulations in Title 8 of the Alaska Administrative Code to implement AS 23.10.050 — AS 23.10.150, as follows:

(1) 8 AAC 15 is amended by repealing sections 010 through 070 in their entirety and adopting and replacing with new sections as follows:

ARTICLE 1.
Article 1 stipulates minimum wages, maximum hours and computation of overtime applicable to employment in Alaska.

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Article 2 provides certain exemptions from the payment of minimum wages or overtime.

ARTICLE 3.
Article 3 stipulates those deductions from an employee's wages that are permissable and those deductions that are prohibited.

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Article 4 establishes the procedures for assignment of claims and/or the conduct of investigative hearings and conferences.

ARTICLE 5.
Article 5 defines miscellaneous terms as used in this chapter and AS 23.10.

Notice is also given that any interested party may present oral or written statements or arguments relevant to the action proposed at a hearing to be held at the DIVISION OF AVIATION BUILDING CONFERENCE ROOM, 4111 AVIATION AVENUE, (next to Lake Hood) Anchorage, Alaska 99502 at 1:30 p.m. o'clock on September 15, 1978.

Copies of the regulations may be obtained by writing to: Wage and Hour Division, Alaska Department of Labor, P.O. Box 630, Juneau, Alaska 99811.

The Department of Labor upon its own motion or at the instance of any interested person, may after September 30, 1978 adopt the proposals substantially as described above without further notice or may decide to take no action on them.

Date: 8/21/78

/s/ William E. Spear
Deputy Commissioner
Department of Labor

Pub: Aug. 30, 31, Sept. 1, 1978

L79168

REMINDER—
ATTACH INVOICES AND PROOF OF PUBLICATION.

STATE OF ALASKA)
) ss.
THIRD JUDICIAL DISTRICT)

AFFIDAVIT OF ORAL HEARING

I, Don Wilson, W/H Investigator II of the Department of Labor, being sworn depose and state the following:

On September 15, 1978 at 1:30 p.m., in the Division of Aviation Conference Room, 4111 Aviation Avenue, Anchorage, Alaska, I presided over a public hearing held in accordance with AS 44.62.210 for the purpose of taking testimony in connection with the adoption of 8 AAC 15.100-200.

Date: September 15, 1978
Anchorage, Alaska

Donald R. Wilson

SUBSCRIBED AND SWORN TO before me this 15th day of September, 1978.

Sherry A Schad
NOTARY PUBLIC IN AND FOR ALASKA

My Commission Expires: 4-5-81

STATE OF ALASKA)
) SS.
FIRST JUDICIAL DISTRICT)

AFFIDAVIT OF NOTICE OF ADOPTION OF REGULATION

I, E.T. "Lee" Leland, W/H Investigator III, of the Department of Labor, being sworn, depose and state the following:

As required by AS 44.62.190, notice of the proposed adoption of 8 AAC 15.100-200 has been given by

(1) being published in a newspaper or trade publication

(2) being mailed to interested persons,

(3) being mailed or delivered to appropriate state officials,

(4) being furnished to the Department of Law,

(5) being furnished to incumbent state legislators.

Date: 10-3-78
Juneau, Alaska

E.T. Lee Leland
E.T. "Lee" Leland

SUBSCRIBED AND SWORN TO before me this 3rd day of October, 197__.

James A. O'Brien
Notary Public in and for Alaska

My Commission Expires: Oct 30, 78

ORDER REPEALING AND ADOPTING REGULATIONS
OF THE DEPARTMENT OF LABOR

The attached twelve (12) pages of regulations, dealing with 8 AAC 15, Alaska Wages and Hours, are hereby adopted and certified to be correct copies of the regulations which the Department of Labor repeals and adopts, under authority vested by AS 23.10.085 and after compliance with the Administrative Procedure Act (AS 44.62), specifically including notice under AS 44.62.190 and 44.62.200 and opportunity for public comment under AS 44.62.210.

This order takes effect on the 30th day after it has been filed by the Lieutenant Governor as provided in AS 44.62.180.

DATE: 13 October 1978

Wm Spear

William E. Spear
Deputy Commissioner

Designee to
I, Avrum M. Gross, , Lieutenant Governor for the State of Alaska, certify that on November 9, 1978, at 10:20 a.m., I filed the attached regulations according to the provisions of AS 44.62.040 - 44.62.120.

Lieutenant Governor's Designee

Effective December 9, 1978.)
Register 68, January 1979.)

STATE OF ALASKA

OFFICE OF LIEUTENANT GOVERNOR

DELEGATION OF AUTHORITY

IN ACCORDANCE WITH AS 44.17.010, THE AUTHORITY AND RESPONSIBILITY FOR ADOPTING REGULATIONS OF THE DEPARTMENT OF LABOR, UNDER THE ALASKA ADMINISTRATIVE PROCEDURE ACT, IS HEREBY DELEGATED TO WILLIAM E. SPEAR,

(NAME)

DEPUTY COMMISSIONER

(POSITION)

SIGNED: Edward N. Carlick

COMMISSIONER

DEPARTMENT OF LABOR

SIGNED AND SWORN BEFORE ME THIS 23rd DAY OF March, 1978.

SIGNED: Mary Jean Smith

NOTARY PUBLIC IN AND FOR THE STATE OF ALASKA

COMMISSION EXPIRES: 2/10/80

PLEASE RETURN TO THE OFFICE OF LIEUTENANT GOVERNOR BY MARCH 31, 1978

ALASKA

MEMORANDUM

TO: William E. Spear
Deputy Commissioner
Alaska Department of Labor

DATE: November 8, 1978

FILE NO:

TELEPHONE NO:

FROM: Avrum M. Gross
Attorney General

By:
Arthur H. Peterson
Assistant Attorney General
and Regulations Attorney

SUBJECT: Regulations re Alaska wages & hours (8 AAC 15)
Our File: J-99-095-78

We have reviewed these regulations in accordance with AS 44.-62.060, and approve them for filing by the lieutenant governor. A duplicate original of this memorandum is being furnished the lieutenant governor, along with your regulations and related documents.

Under AS 44.62.125(b)(6), a few, very minor corrections have been made in this material, as shown on the attached copy.

AHP:md

cc: Ronald W. Lorensen
Assistant Attorney Ceneral

LIEUTENANT GOVERNOR
JUNEAU

CERTIFICATE

I, LOWELL THOMAS, JR., LIEUTENANT GOVERNOR OF THE STATE OF ALASKA, as authorized by AS 44.19.050 designate Avrum M. Gross, Attorney General, as temporary custodian of the state seal and as the officer to perform the authenticating functions of the lieutenant governor during such time as I succeed to the office of governor, act as governor, am absent from the state, or am otherwise unavailable at the state capital to perform these functions.

In the absence of Attorney General Gross, I designate Bill Allen, Commissioner of Administration, to perform the functions stated above.

In the absence of Commissioner Allen, I designate Donald Barris, Commissioner of Transportation and Public Facilities, to perform the functions stated above.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed hereto the Seal of the State of Alaska, at Juneau, the Capital, this Twentieth day of June, A.D. 19 78.

NORMAN C. BANFIELD
OF COUNSEL
MICHAEL M. HOLMES
WILLIAM B. ROSELL
LAWRENCE T. FEENEY
CHARLES N. BRENNAN
ANTHONY M. SMOLTY
JAMES R. WEBB
JOHN F. CLOUGH, III
GREGORY F. COOK

HERBERT L. FAULKNER (1882-1972)
FRANK M. DOOGAN (1923-1977)

LAW OFFICES OF
FAULKNER, BANFIELD, DOOGAN & HOLMES
A PROFESSIONAL CORPORATION
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RANDALL J. WEDDLE
MICHAEL A. BARCOTT
KAREN L. RUSSELL
LEE S. GLASS
RICHARD B. BROWN
TIMOTHY A. MCKEEVER
RICHARD L. WAGG
ROBIN G. WILCOX

March 4, 1983

The Honorable John Cowdery
Representative
Capital, Room 409
Juneau, Alaska 99811

Re: HB 223

Dear Representative Cowdery:

We represent the Alaska Wage Security Association, a newly formed association concerned about House Bill 223. Sections 3 and 4 of HB 223 would retroactively eliminate civil and criminal liability of employers who illegally used a fluctuating workweek plan to pay their employees less in overtime than they were entitled to be paid under the Alaska wage and hour law. This legislation would violate the Constitution by denying the employees their existing contract right to payment in accordance with the law.

The Association's members include employees who, if HB 223 passes in its present form, will lose the overtime compensation they have already earned under the law. It also includes individuals who simply believe that it is unjust to take away what Alaskans have earned through their hard labors and to excuse past violations of the law by mainly large, non-Alaskan companies. Among the members are former Senate President Chancy Croft and former Commissioner of Labor Gil Johnson.

Briefly, the law which the companies violated went into effect in January, 1979. The affected companies were given notice before the law became effective, and the Wage and Hour Division of the Department of Labor wrote to three of the largest companies, Otis Engineering, Dresser Industries, and Dowell Division of Dow Chemical, informing them of the new regulation concerning overtime. Nevertheless, the companies chose to ignore the law. Dresser was sued in October, 1979, by the Department of Labor, and lost in both the Superior and Supreme Courts. Incredibly, only in November, 1981, did Dresser finally decide it should comply with the law.

Since the first lawsuit, additional lawsuits have been brought against the companies. The precedent set by the litigation brought by the Department of Labor provides a clear indication that the companies will lose again. Thus, having violated the law, having been sued because of it and having lost, and now facing additional lawsuits which they will lose, the companies seek to evade the law and the judicial process through HB 223.

The precedent that would be set if the current version of HB 223 passes bears close scrutiny. Essentially, the bill asks the Legislature to choose sides in the pending litigation, and to choose the side of large, non-Alaskan companies that have violated the law. The judiciary is the appropriate branch of government to decide the litigation, not the Legislature. If the Legislature involves itself in these lawsuits, it will set a precedent which will be looked to by other parties involved in litigation which they believe they will lose, and by others who have violated the law and seek an easy way out.

We ask only that before you vote, you consider seriously the implications HB 223 has for our systems of law and justice. If you have any questions or need further information, I encourage you to contact me. The members of the Association and others who will unfairly be affected by this legislation are also anxious to discuss this with you.

Very truly yours,

FAULKNER, BANFIELD, DOOGAN
& HOLMES

By Anthony M. Sholty
Anthony M. Sholty

ALASKA WAGE AND HOUR ACT
BRIEFING PAPER - THE FLUCTUATING WORK WEEK

Several inaccurate and misleading claims are being made in support of the position that the Alaska Wage and Hour Act should be amended to eliminate employee claims which are currently pending in court. The employees' claims are for overtime wages which were never paid because of their employers' use of an unlawful payment formula known as the fluctuating work week (FWW). The questions raised by these arguments are discussed below

1. Did Employers Have Reason to Know of the FWW Regulations?

Prior to adoption of the regulation, the Department of Labor mailed notices of the proposed rule-making directly to affected businesses. Hearings were then held in Juneau, Fairbanks and Anchorage. Shortly after the regulation was adopted, Donald R. Wilson, the Department's Wage and Hour investigator in Anchorage, wrote letters to three oilfield service companies -- Otis Engineering, the Dowell Division of Dow Chemical, and Dresser Industries -- informing them of its adoption.

In October 1979 the Department of Labor sued Dresser Industries, one of the companies now being subjected to a class action, claiming a violation of the regulation. In October 1980 the Superior Court entered a judgment in favor of the Department. In September of 1981 the Supreme Court affirmed this judgment. Dresser did not bring its payment system into compliance with the law until November 1981.

Evidence discovered in a class action lawsuit filed against Schlumberger Limited seeking unpaid wages arising from that company's use of an FWW scheme indicates that awareness of the regulation and the litigation seeking to enforce it was wide-spread among employers. A memorandum obtained from Schlumberger and dated January 23, 1981, states that Schlumberger was assisting with Dresser's legal fees through the Petroleum Equipment Suppliers Association (PESA), an industry trade organization. Another Schlumberger memorandum, dated June 25, 1980, discusses an in-house study "to determine the impact of discontinuing FWW", though this memo does not specifically mention the Dresser lawsuit. Schlumberger did not modify its FWW system until March 1982, five months after the Supreme Court upheld the validity of the FWW regulation.

2. Are Employers Facing "Open-Ended" Liability?

Assuming that somehow employers could have reasonably remained ignorant of the FWW regulation in spite of the public rule-making proceedings and PESA's financing of Dresser's litigation, any excuse for remaining ignorant ended in September 1981, when the Supreme Court upheld the regulation. Since the Wage and Hour Act contains a two years statute of limitations, employers who brought their systems into compliance with the law in a timely fashion and who have not been sued will soon be insulated from liability entirely.

3. Will Employees Receive a Windfall if the Proposed Bill is not Passed?

If an employer tells a worker he will be paid less than the minimum wage or that he will not receive extra compensation for overtime and is then sued for his unlawful conduct, he cannot defend against the lawsuit by arguing that the employee had no basis for expecting to be paid more. Employees have a right to expect that their employers will obey the law when determining their regular and overtime compensation. It is ridiculous to argue that employees, like those who are seeking to recover overtime wages which remain unpaid because of use of the FWW regulation, are somehow obtaining a windfall. They are, of course, merely seeking to obtain what they had a right to receive in their original paychecks.

ALASKA WAGE AND HOUR ACT
BRIEFING PAPER - LIQUIDATED DAMAGES

It has been argued that the mandatory liquidated damages provision is unfair and that Alaska should adopt the "good faith" standard applied by the federal government since 1947. In 1959, when the Alaska legislature adopted a mandatory double damages provision, it wisely chose not to imitate the federal approach. The consequences of adopting the federal standard now will be that employees with small or moderate sized claims will face economic hurdles which will prevent them from enforcing their rights under a statute which depends, in large part, on private enforcement efforts. Adoption of a "bad faith" requirement for double damages will also eliminate an important deterrent to violations. These factors are discussed in greater detail below.

1. The Economic Hurdles.

Though the Department of Labor can prosecute claims for cases involving $5,000.00 or less in unpaid wages [see, 8AAC §15.175(b)], claims in excess of 5,000.00 must be pursued through private attorneys. A "good faith" standard would be extraordinarily difficult to prove to the satisfaction of the court without conducting complex and expensive pre-trial depositions and document searches. Absent "smoking pistols" obtained during pre-trial discovery, many employers will, no doubt, elect to take their chances at a trial at which the employee will bear the burden of proving bad faith. Few people nominally covered by the protection of the Wage and Hour Act would be able to afford such an expensive and lengthy process. Though at the present time, lawyers frequently take such cases on a contingent fee the Code of Professional Responsibility governing attorney conduct requires the client to be ultimately responsible for litigation and discovery expenses, regardless of the outcome. Furthermore, lawyers would soon learn that the imprecision and elasticity of a "good faith" standard make it uneconomical to handle small or moderate claims. The obvious result of these economic disincentives is that many people will simply be unable to enforce their rights.

2. Private Enforcement of the Wage and Hour Act.

Though the Department of Labor has authority to enforce the Wage and Hour Act, it cannot be expected to monitor all activities of all employers of the State and to prosecute all potential wage claims, at least not without an extensive and costly expansion of its current bureaucracy. The current double damages provision in the Wage and Hour Act makes it more economically realistic for private parties to obtain the legal assistance required to redress violations, and, thus, creates an efficient, privately funded enforcement mechanism.

3. Deterrence.

As noted above, it would be difficult to disprove an employer's claim that it was acting in good faith when it underpaid its employees. The current double damages provision encourages employers to educate themselves as to the law's requirements. It also encourages employers to monitor changes in the regulations and in the Wage and Hour Act and to speedily adapt their compensation systems to these changes. The need for such encouragement is demonstrated by the behavior of employers involved in the fluctuating work week litigation, for some of these employers delayed months beyond the issuance of the Supreme Court's final decision adjudicating the validity of the FWW regulation before actually changing their pay systems.

The proposed elimination of mandatory liquidated damages would create a different incentive by encouraging employers to cultivate ignorance of the Wage and Hour laws enacted for the protection of their employees.

HB 223
April 7,1983

Members present: Bussell, Liska, Hayes, Wendte
Members absent: Barnes, Clocksin, Malone

003 The roll was taken, visitors and guests welcomed. Chairman Bussell stated that the business for the day was HB 223, An Act relating to methods for the payment of overtime; and providing for an effective date. States that the intention of the Chair is to meet till 3:00 p.m., recess till 7:00p.m. and continue with the testimonies to accommodate those that have come from out of town.

065 Mr. Chuck Becker is called to testify. He is in support of HB 223. (He written testimony and explanation of the Alliance is attached.)

THE ALLIANCE
P.O. Box 100 / Anchorage, Alaska 99510 / (907) 277-0010

MR. CHAIRMAN, MEMBERS OF THE COMMITTEE, I AM CHUCK BECKER, EXECUTIVE DIRECTOR OF THE ALASKA SUPPORT INDUSTRY ALLIANCE. THE ALLIANCE IS A BUSINESS LEAGUE INCORPORATED UNDER THE STATE'S NON-PROFIT STATUTE AS A 501(c)(6) CORPORATION, AND REPRESENTS OVER 150 FIRMS WHICH PROVIDE EQUIPMENT, SUPPLIES AND SERVICES TO ALASKA'S OIL, GAS AND MINING INDUSTRIES.

THE GOAL OF THE ALLIANCE IS TO FOSTER THOSE ACTIONS REQUIRED TO ESTABLISH ALASKA'S POSITION AMONG OTHER STATES AS A GOOD PLACE IN WHICH TO DO BUSINESS. THE ALLIANCE SUPPORTS POLICIES WHICH ARE DESIGNED TO STIMULATE ECONOMIC DEVELOPMENT IN ALASKA - DEVELOPMENT INITIATED BY THOSE FIRMS CURRENTLY OPERATING IN THE STATE AND BY NEW FIRMS WHICH MIGHT BE ATTRACTED AS A RESULT OF THOSE POLICIES.

WE HEARTILY APPLAUD THE ACCOMPLISHMENTS ACHIEVED DURING THE PAST THREE LEGISLATIVE SESSIONS WHICH WERE CLEARLY AIMED AT SPURING INVESTMENT IN ALASKA. BOLD FIRST STEPS HAVE BEEN TAKEN IN CREATING A POSITIVE BUSINESS CLIMATE IN ALASKA. OUR CONGRATULATIONS AND THANKS TO EACH OF YOU WHO HAD A ROLE IN THESE ACHIEVEMENTS.

THESE ACCOMPLISHMENTS, ALONG WITH OTHERS WHICH HAVE BEEN PROPOSED FOR THIS YEAR - INCLUDING HB 223 - ARE DESTINED

Alaska Support Industry Alliance . . . for responsible economic development

[illegible] Mathis, President
Universal Services, Inc. Int'l
Milton Byrd, Vice President
[illegible] Companies of Alaska
[illegible], Secretary/Treasurer
[illegible] Services, Inc. Int'l

Len Kelley
Greyhound Support Services, Inc.
Bill Woodland
Quality Cleaners
Roger Spencer
Alaska Russell Electric

Steve Simmons
Drilling Supply and Rental
Val Molyneux
VECO
Ron Jordan
Northern Drilling Services

Ann [illegible]
Crowley Maritime
Richard Danley
Arctic Alaska Drilling
Chuck Becker, Executive Director

TO SUBSTANTIALLY IMPROVE ALASKA'S IMAGE AMONG CORPORATE DECISIONMAKERS, BOTH FOREIGN AND DOMESTIC, AS WORD OF THESE INITIATIVES IN STATUTORY AND REGULATORY REFORM SPREADS AMONG THE NATION'S BUSINESS COMMUNITY, ALASKA IS SURE TO BE PLACED ON THE LIST OF STATES AS LOGICAL PLACES FOR CORPORATE INVESTMENT.

AND WORD WILL SPREAD QUICKLY. I ASK THE COMMITTEE'S INDULGENCE WHILE I READ INTO THE RECORD EXERPTS FROM AN ARTICLE WHICH APPEARED IN THE MARCH 3 ISSUE OF THE WALL STREET JOURNAL. IT IS HEADLINED...WEST VIRGINIA TRIES TO CHANGE ITS IMAGE. "WEST VIRGINIA IS TRYING TO CHANGE THE IMPRESSION THAT IT IS A POOR PLACE TO DO BUSINESS. THE LEGISLATURE RECENTLY LIMITED THE SCOPE OF A CONTROVERSIAL 1978 COURT DECISION THAT ALLOWS WORKERS TO SEEK PUNITIVE DAMAGES - DAMAGES THAT GO BEYOND ACTUAL COMPENSATION FOR LOSS - FOR ON-THE-JOB INJURIES. MORE THAN 200 LAWSUITS TOTALING BILLIONS OF DOLLARS IN CLAIMS HAVE BEEN FILED AGAINST EMPLOYERS SINCE THE COURT RULING. UNDER THE NEW LAW, EMPLOYEES, OR SURVIVORS OF WORKERS KILLED ON THE JOB, MAY STILL COLLECT COMPENSATORY DAMAGES IF A COURT FINDS THAT EMPLOYERS HAVE FAILED TO MEET A NUMBER OF SAFETY REQUIREMENTS".

"THE NEW LAW TAKES EFFECT IN MAY. AN IMPROVEMENT IN THE EYES OF EMPLOYERS, WEST VIRGINIA IS STILL MORE GENEROURS TOWARD WORKER INJURY CLAIMS THAN MOST STATES, WHERE WORKER'S COMPENSATION IS THE SOLE REMEDY EXCEPT IN CASES OF CRIMINAL INTENT TO DO HARM".

"THE STATE IS ALSO TAKING A CLOSE LOOK AT ITS BUSINESS AND BANKING LAWS. PART OF A PROPOSED TAX OVERHAUL COULD INVOLVE REPLACING AN UNPOPULAR TAX ON GROSS SALES WITH A PROFITS TAX. A BANKING REFORM LAW PASSED LAST YEAR PERMITS BANKS TO BRANCH, MERGE AND FORM MULTIBANK HOLDING COMPANIES". THE ARTICLE CONCLUDES, "FINALLY, WEST VIRGINIA BOOSTERS TAKE MODEST PLEASURE IN THE STATE'S SHOWING IN AN ANNUAL SURVEY CONDUCTED BY THE ACCOUNTING FIRM OF ALEXANDER GRANT AND COMPANY OF HOW STATES RATE AS SITES FOR MANUFACTURING. WEST VIRGINIA MOVED TO 39th PLACE FROM DEAD LAST A YEAR AGO." END OF QUOTE..

WE SUBMIT THAT THESE INITIATIVES UNDERTAKEN BY THE WEST VIRGINIA STATE LEGISLATURE WERE JUDGED TO BE IN THE BEST INTEREST OF ALL CITIZENS OF THAT STATE - THAT SUCH ACTIONS ARE EXPECTED TO MAKE WEST VIRGINIA AN ATTRACTIVE PLACE FOR CORPORATE INVESTMENT, LOGICALLY LEADING TO EMPLOYMENT OPPORTUNITIES FOR ITS RESIDENTS AND TO A REINVIGORATED ECONOMY.

MOREOVER, WE SUBMIT, THAT YOU HERE TODAY, HAVE A SIMILAR OPPORTUNITY BEFORE YOU IN HB 223.

WE ARE HERE TODAY TO TESTIFY IN SUPPORT OF HB 223. WE ARE PREPARED TO OFFER A RECOMMENDATION FOR AN AMENDED VERSION OF HB 223 WHICH WOULD ELIMINATE SECTION 1 OF THE BILL. MR. FLEISCHER WILL PRESENT THAT AMENDMENT TO THE COMMITTEE DURING HIS PRESENTATION. SINCE THE PROHIBITION IN THE REGULATIONS ALREADY HAS THE EFFECT OF LAW, WE

DESIRE TO SEE THAT SECTION DROPPED FROM THE COMMITTEE'S REVISED VERSION. NEEDLESS TO SAY, IT HAS BEEN DIFFICULT TO EXPLAIN TO OUR MEMBERSHIP PRECISELY WHY WE WOULD SUPPORT THE PROHIBITION WHEN MANY ARE, IN FACT, OPPOSED TO IT.

IN 49 OTHER STATES IN THESE UNITED STATES, THE FLUCTUATING WORK WEEK PAY PLAN IS PERFECTLY LEGAL AND OPERATES TO THE BENEFIT OF BOTH EMPLOYEES AND EMPLOYERS.

ALTHOUGH THE ALLIANCE HAS ENDORSED THE BILL AS IT HAD BEEN ORIGINALLY INTRODUCED, WE DID SO IN THE BELIEF, BASED ON CONVERSATIONS HELD LAST YEAR, THAT THE STATE DEPARTMENT OF LABOR WOULD TACITLY SUPPORT THE MEASURE IN ITS ENTIRETY. FROM WHAT I HAVE RECENTLY LEARNED, IT WOULD APPEAR THAT A MISCOMMUNICATION HAS OCCURRED SOMEWHERE ALONG THE LINE.

MOREOVER, WERE THIS BODY TO TAKE ACTION TO CODIFY THE REGULATION, THE DOOR TO RECONSIDERATION OF THE MERITS OF THE PAY PLAN, MIGHT BE FIRMLY CLOSED. THIS COMMITTEE MIGHT WELL BE HEARING FROM THOSE WHO WOULD ADVOCATE LEGALIZING, ONCE AGAIN, THE FLUCTUATING WORK WEEK PAY PLAN AS A VIABLE OPTION IN ALASKA. I WOULD CALL TO THE ATTENTION OF THE COMMITTEE A BRIEF REPORT CONTAINED IN THE PUBLICATION, HIGHLITES OF NATIVE BUSINESS, WHICH COMMENTS ON A STUDY UNDERTAKEN BY THE UNIVERSITY OF ALASKA WITH THE SUPPORT OF A GRANT FROM THE FEDERAL GOVERNMENT. THE STUDY IS EXPLORING METHODS TO MAKE IT POSSIBLE FOR ALASKA NATIVES TO ENTER THE JOB MARKET WITH THE LEAST POSSIBLE CULTURAL DISTURBANCE. THEY PROPOSE TO DO THIS BY STUDYING WAYS OF ALTERING HIRING PRACTICES AND WORK RULES. FOR EXAMPLE, ONE WAY MIGHT BE TO

MAKE INDUSTRIAL PRACTICES MORE LIKE TRADITIONAL SUBSISTENCE ACTIVITIES. IT IS SUGGESTED THAT NATIVES MIGHT BE EMPLOYED FOR PERIODS OF 14 - 16 HOURS A DAY FOR TWO WEEKS, FOLLOWED BY 5 - 6 WEEKS OFF THE JOB, WHICH CORRESPONDS TO THE INTENSE EFFORTS OF THE ALASKA NATIVES DURING WHALING AND FISH RUN PERIODS.

AN INITIATIVE TO OVERTURN THE PROHIBITION AGAINST THE FLUCTUATING WORK WEEK PAY PLAN, HOWEVER, WILL NOT BE ESPOUSED BY THE ALASKA SUPPORT INDUSTRY ALLIANCE. WE HAVE SUFFICIENT CONCERN SIMPLY FOCUSING OUR ENERGIES ON EXTINGUISHING CLAIMS OF EMPLOYEES FOR UNFAIR WINDFALL COMPENSATION AND DOUBLE DAMAGES. TO PERMIT ENFORCEMENT OF THESE CLAIMS WOULD, WE BELIEVE, SET ALASKA APART AS AN UNSTABLE AND UNPREDICTABLE BUSINESS ENVIRONMENT. WE ARE CONVINCED THAT WOULD BE UNHEALTHY FOR THE STATE'S ECONOMY AND FOR EMPLOYERS AND EMPLOYEES ALIKE, NOT TO MENTION THE STATE TREASURY.

AT THE TIME THE STATE DEPARTMENT OF LABOR PROPOSED TO PROHIBIT THE FLUCTUATING WORK WEEK PAY PLAN IN ALASKA, NOTICE OF THE PROPOSED PROHIBITION WAS POORLY PUBLICIZED WITH LITTLE, IF ANY. INPUT FROM ALASKA EMPLOYERS OR EMPLOYEES IN THE SINGLE HEARING HELD ON THE SUBJECT. OUR MEMBERS, THE OIL, GAS AND MINING SUPPORT COMPANIES, WERE MOST AFFECTED BY THIS PROHIBITION. IT IS ESTIMATED THAT SINCE THIS REGULATION WENT INTO EFFECT IN 1978, POSSIBLY AS MANY AS 100 ALASKA BUSINESSES, UNAWARE THAT THE LONG-STANDING CUSTOM AND PRACTICE IN THEIR INDUSTRY HAD BEEN BANNED ADMINISTRATIVELY, HAD CONTINUED USING THE FLUCTUATING WORK WEEK PAY PLAN THEY HAD USED LEGALLY FOR YEARS AND MAY HAVE

INCURRED SUBSTANTIAL LIABILITY INADVERTENTLY. THE MAGNITUDE OF THAT LIABILITY HAS BEEN ESTIMATED TO APPROACH AND EXCEED $100 MILLION WERE PENALTIES TO BE INCLUDED

A CHANGE IN THE REGULATIONS, INDEED IN THE LAW, WHICH IS SO SIGNIFICANT AND HAS SUCH AN IMMENSE IMPACT ON ALASKA BUSINESS SHOULD NOT HAVE BEEN ACCOMPLISHED ADMINISTRATIVELY WITH A MINIMUM OF NOTICE, BUT RATHER SHOULD HAVE BEEN FULLY DEBATED IN THIS LEGISLATIVE BODY. MOREOVER, THE DEPARTMENT OF LABOR CLEARLY MUST HAVE HAD SOME UNDERSTANDING OF THE EXTENT OF USE OF THE FWW PAY PLAN AND THOSE FIRMS WHICH WERE USING THE METHOD AT THE TIME THE DEPARTMENT PROPOSED TO PROHIBIT THE METHOD. SURELY A FORM LETTER FROM THE STATE TO THOSE COMPANIES AND EMPLOYEES WHO WERE DESTINED TO BE AFFECTED BY THE CHANGE, WOULD HAVE BEEN IN ORDER.

INDEED, EVEN AFTER THE BAN WENT INTO EFFECT, THE DEPARTMENT OF LABOR FAILED TO ENFORCE THE PROHIBITION. ASSUMING THE DEPARTMENT HAD SOME INKLING OF THOSE FIRMS WHICH WERE USING THE FLEXIBLE WORK WEEK, IT COULD READILY HAVE GONE TO THOSE FIRMS TO ENFORCE THE PROHIBITION OR THE DEPARTMENT COULD HAVE FILED SUIT AGAINST THEM. THEY TOOK NO SUCH ACTION.

INSTEAD, THIS SMALL AD - DEVOID EVEN OF THE TERM FLUCTUATING OR FLEXIBLE WORK WEEK - NOTICED ONE HEARING TO BE HELD AT THE DIVISION OF AVIATION CONFERENCE ROOM ON WHAT ALMOST APPEARS TO BE THE SUBJECT OF MINIMUM WAGE. I WILL TELL YOU THAT THE ISSUE OF MINIMUM WAGE IS AS ALIEN TO OUR MEMBERS TODAY AS IT WAS DURING THE WINTER OF 1978-79. THEIR EMPLOYEES WERE EARNING NEARLY $50,000 A YEAR WORKING ONLY ONE HALF TO 2/3 OF THE YEAR.

SO THE HEARING WAS HELD - WE ASSUME - HOWEVER THE DEPARTMENT HAS TOLD US THAT NO EVIDENCE OF A RECORD CAN BE FOUND IN THEIR FILES - THE REGULATION BECAME LAW AND ABOUT A YEAR LATER ONE OF OUR MEMBERS WAS SLAPPED WITH A SUIT BY A FORMER EMPLOYEE FOR BACK WAGES. THAT, I RESPECTFULLY SUBMIT, IS ONE HECK OF A WAY TO RUN A GOVERNMENT.

DISTINGUISHED MEMBERS OF THE COMMITTEE - MEMBERS OF THE ALASKA SUPPORT INDUSTRY ALLIANCE ARE - TO USE AN ACCEPTABLE UNDERSTATEMENT- EXTREMELY DISAPPOINTED OVER THIS UNFAIR PREDICAMENT THE STATE ADMINISTRATION GOT THEM INTO AND ARE LOOKING TO YOU TO GET THEM OUT OF IT.

THANK YOU FOR YOUR TIME.

The Alliance is an association of businesses, many of which vigorously compete with each other in the marketplace, but are able to unite under the common goal of making Alaska a good place in which to do business. Should HB 223 fail to be enacted, the impact on the business climate in Alaska would be nothing less than devastating. I happen to be the Chairman of the Anchorage Chamber of Commerce Economic Development Committee. My group is working to establish a comprehensive initiative designed to attract industry - principally manufacturing firms - to Alaska. This effort will place Anchorage in a big league ballgame in which the competition is intense. We want to be ale to point with pride to legislative and administrative policies and actions which will capture the attention of corporate decisionmakers and cause them to seriously consider opening up operations in Alaska. Enactment of HB 223 will go far towards assisting us in our mission.

Throughout the decade of the 70s, the predatory taxation initiatives targeted at Alaska's oil industry, coupled with perceptions of a government philosophy which overtly and covertly appeared to discourage development, crippled the image worked so hard on by Alaska's early pioneers - a message which said to all that Alaska was a land of opportunity and welcomed those who were capable of making our state a great state. That anti-development, anti-business philosophical trens has been reversed both by the Legislature and by the new administration. I earnestly ask that nothing be done to tarnish that perception. Failure to adopt HB 223 would do just that.

instance was any evidence turned up by any firm to demonstrate any warning that their traditional pay plans were about to be declared illegal.

We surveyed a number of our members in an attempt to determine if they had any record whatever of the hearing which led to the prohibition against the fluctuating work week pay plan. We asked that they not only check their files in their Alaska offices but also to have their corporate headquarters review their files. In no

255 Wendte - Do you know of any presentation by the oil and gas industry that does not indicate that the business climate in Alaska is not appropriate for the oil and gas industry.

Becker - I can not answer that because this is the first time I have appeared in Juneau to testify for a piece of legislation.

Wendte - Your alliance main purpose is to improve the business situation in Alaska and make it a fair and equitable place in which to live.

Becker - Yes, of course.

280 Wendte - the deletion of section 1, as you have suggested, would be to removed the liability and any financial obligation from firms.

Becker - that is right.

Bussell - states that there is copies of the statutes as they were in 1978

297 Wendte - how much money is at stake here.

Becker - as far as we have been able to determine is 100 million.

They converse back and forward regarding the amount of money due to the employees. The point of whether the firms were notified by the Dept. of Labor correctly. Becker states that the company did not become aware of the new regulation until they were faced with a law suit over a year later.—

340 Wendte - asks if the alliance is in favor of keeping the regulation as is.

Becker - we will not attempt to overturn the regulation. States that the company has redone the pay system and it is now is accordance with the laws of the state of Alaska.

360 Bussell states that we must move on to expand the record.

371 John Martin from Dresser Atlas takes the chair to testify. (attached is written testimony.

Good afternoon Mr. Chairman, Committee members, and guests. My name is John Martin. I am the Area Manager for Dresser Atlas, a division of Dresser Industries. I have resided and have been registered as an Alaska citizen for the past six years.

I am here today, in that I strongly believe that a 1978 Alaska Department of Labor regulation prohibiting the use of the fluctuating work week pay plan has created an enormous managerial and employee compensation problem that is not conducive to a healthy business climate. This regulation has created a potentially disastrous unjust economic impact on my firm and others operating in this state.

Dresser Atlas employs the fluctuating work week plan in all of the United States where we operate. It is proven to be the best pay plan suitable to the oil and gas service business for both the employee and employer. Dresser Atlas' largest Alaskan core of operation is on the North Slope. Our employees work one week on duty and one week off. During the week on, our employees may be dispatched to a remote location where they may remain on standby waiting in a camp, sleeping, eating or relaxing for hours before they are actually called for to perform the well logging or perforating services. Often the direct true productive working time on the job is minimal compared to the unproductive waiting time. The nature of the oil and gas service business makes work hours next to impossible to predict. The

unpredictability of the Arctic weather and normal drilling problems creates actual job timing merely guess work. This inherent industry problem is fully appreciated by all that have knowledge of the business.

The fluctuating work week system lends itself perfectly to this work environment. First of all, it guarantees the employees a base steady income, even when they are off duty at their homes. Our average Senior Operator was guaranteed $530.00 per week in 1981 whether they were off duty or on duty. This enabled them to maintain standard income levels even when they were off work whether it be due to their days off or low activity periods which are inherent to our business. When they were on the job, they received a guaranteed 16 hours per day, C.O.L.A., isolated location allowance and job bonuses. In 1981, our average Operator made $60,678.00 and a Senior Operator made $67,829.00. Please keep in mind this is unskilled labor, most of which is hired in Alaska. They are also making over double what their Lower 48 counterparts make and have much more personal time off. There was also never a complaint about the fluctuating work week system and each employee was well versed on computation of his earnings.

The unpredictable nature of hours and remoteness makes it virtually impossible to hire additional personnel to spread out the total hours over more employees. As a businessman, what would you think about changing out your employees every eight

hours when the shift coming in had been sleeping in a camp for their eight hours of work? And what about the high cost of flying the personnel back and forth every eight hours and the safety implications of flying in Alaska, frankly, it is totally unacceptable; both economically and from a safety standpoint.

Through some infinite wisdom, the Alaska Department of Labor determined it should abolish the fluctuating work week system. Dresser Atlas was not asked, or any other company to my knowledge our opinion of the use of the fluctuating work week system in determining why it should be banned. It seems incredible to me, how one state agency could make a judgement on the validity of a pay plan that is acceptable in the other forty-nine states and approved by the Federal Government. Such a gross adjustment from the normal accepted and proven way of doing things in the United States would appear to me to be a responsibility of the state legislature.

To make matters worse, the Alaska Department of Labor did not notify our company or any other company, to my knowledge, of the fluctuating work week abolishment. Dresser Atlas management and corporate management has absolutely no record or knowledge of any correspondence either written or oral from the Alaska Department of Labor informing us of such a drastic change in wage administration. Attorneys on several occasions have formally requested that the Alaska Department of Labor furnish correspondence records depicting the

Department's notices before and after the regulation. The only correspondence discovered was a short hearing notice published in the Anchorage Daily News on August 30, 31 and September 1 of 1978. It is also incredible that the words fluctuating work week were not mentioned in the small print common to public hearing notices.

This entire matter did not come to Dresser's attention until the Department of Labor filed a $4,000 suit against Dresser Swaco in 1979 for an employee who was paid under the fluctuating work week plan. Dresser chose to challenge the Department of Labor's suit regarding the validity of the regulation. When losing in the State Supreme Court, Dresser immediately had no choice but to bow down and submit to the Alaska Department of Labor's regulation prohibiting the use of the fluctuating work week pay plan. We changed pay plans seven weeks after the State Supreme Court ruling. Within one month after changing pay plans, we were served a summons in the form of a class action lawsuit. Within a very few months, four other companies were served class action suits for past use of the fluctuating work week plan. These suits are all being handled by one law firm. Two of these suits alone called for judgements in excess of thirty five (35) million dollars!

An Alaska Department of Labor spokesman has estimated that there may be up to 90 companies affected with an excess of 100 million dollars in liability.

H.B. 223 would prohibit retroactive recovery by employees who were paid under the fluctuating work week system during the period the regulatory prohibition was being appealed in the courts.

I encourage you to strongly consider the possible consequences if H.B. 223 does not pass. It would create a definite windfall profit for many past and present employees. Definite windfall, because facts prove these employees were paid fair and equitable wages, which were fully agreed upon and expected by our employees. Who else may profit? One law firm! What is 33.3% of 100 million dollars?

I cannot say I enjoy being here today. I have a business to run as you do a state government. Please keep in mind that my firm and many others have a lot to lose on this issue and the opposition has only to gain. To conclude, I must add that it is totally ironic that in the State of Alaska under the fluctuating work week plan, Dresser had the lowest turnover rate of operators in all of the United States. But yet it is the only state where this fair and just pay plan has been banned and consequently our business stands in financial jeopardy.

I feel your fair and moral judgement will lead you to support H.B. 223.

Thank you for this opportunity to testify.

480 Hayes asks the name of the law firm.

Martin - The Banfield, Logan, Bates. they are in Juneau.

490 Wendte - Comments on when the regulations took effect, Dec. 9, 1978. the bill is asking that we forfeit liability from the date of effect.

Martin - my statement was to distinguish the liability from the test case. Many companies sat back and watched what happened with us. When they saw that the case was lost they then changed their pay systems.

Wendte - you did not changed your pay system at that time, why?

Martin - we thought that we had a good case and a fair chance of winning. We did not want to take away the employees security of knowing what their salary was going to be. The pay system was changed on Nov. 6, 1981. States that the company became aware of the regulations at the time of the Woody case being filed. About six months after the regulations came into effect.

525 Wendte - speaks of the time of the firm knowing of the regulations and the time the firm switched the pay plan. It was actually only from Dec. 1978 to the summer of 1979, which was the time the Woody case was filed.

Martin - states that they did pay their employees fair and square. The majority of them earned over $60,000 a year. Their firm had the least amount of turn overs in the states. States that changing a complete pay plan is a very complicated operation. It took weeks. There had to be time for the employees to make adjustments in their personal lives. They did not have a guaranteed salary.

575 Hayes asks if the salary for an operator under the new pay plan will exceed the pervious $60,000 plan, if not is the 100 million dollar liability a result of the overtime interruption.

Martin states it was difficult to change since there was many ways of paying. When the changed was made they did not intend to pay them any more than before. Some are making a little more, some a little less so it is averaging out.

They converse.

620 Hayes asks if the new way is more cost effective.

Martin replies that in some insistences it is in other not. Because now the employee does not get any compensation when they are off work.

633 Bussell asks is there any work done by the firm concerning cost plus work for the oil industry.

Martin replies no.

644 Hayes follows up on comments of Rep. Wendte on concerning the pay. Would the employees make the same amount of money on either plan.

Martin answers that the cost would be about the same and the company would not have had to pay out any more money.

(turn of tape)

027 Liska how many hours do your employees average.

Martin that is easy to answer now. Before it was any where up to 16 hours a day, they were guaranteed that much. But they are now averaging about 12 to 13 hours a day.

060 Wendte asks if the pay is about the same they must have more employees at this time and asks about the relation of it to the oil and gas companies.

Martin comments on the reason for the stable amount of pay due to the fact of the overtime that was paid. Talks of the way it is now easier and more beneficial for the people to live out of state. Does not believe that it has much to do with the oil company.

Hayes comments.

144 Theodore [illegible]. Fleischer gives testimony. (a basic outline is attached, it was briefly revised before the reading of it, some of which are not included)

TENTATIVE DRAFT - REVISED BEFORE TESTIMONY

TESTIMONY OF THEODORE E. FLEISCHER

My name is Theodore E. Fleischer. I am a partner in the law firm of Ely, Guess & Rudd. I have been retained by Petroleum Equipment Suppliers Association, which I will refer to as PESA, to provide a legal opinion on the constitutionality of legislation under consideration by the Committee. I will get to that in a moment, but first I will briefly describe PESA.

PESA is a trade association with approximately 340 members in the petroleum equipment, service and supply industry. Depending on industry demand, which can be seasonal in nature, several dozen or more of PESA's members are typically active in Alaska. PESA does not of course represent its members in litigation, and therefore is not a party to the lawsuits filed by employees against various of its members which seek overtime compensation and liquidated damages.

You have heard testimony from witnesses describing events since December 8, 1978, to the present on which date the Department of Labor adopted the regulation prohibiting FWW plans. A lawsuit was filed in 1979 by an employee seeking damages, based on the Department of Labor regulation. In September of 1981, after the Supreme Court upheld the Department's authority to

promulgate the regulation, various companies in the petroleum support industry, which had become defendants in ~~similar~~ these lawsuits, decided to seek a legislative remedy. A bill was introduced near the end of the 1982 session of the Legislature, but was not enacted.

During this period PESA became increasingly aware of the potential economic impact of class action lawsuits on its members with Alaska operations. Since then the association has coordinated the efforts of its Alaska members in seeking a legislative solution to what is now seen as an industry-wide problem in the state.

I have been retained as special counsel to PESA to review the proposed legislation, which was drafted last year, and to provide a legal opinion on whether such legislation would be constitutional. PESA desired an opinion from an independent firm not otherwise involved in the litigation; my firm does not represent any party which is a defendant in the lawsuits filed by employees. I have now completed my research and submitted my opinion to PESA. At its request I have provided copies of that opinion to the Committee. After briefly summarizing the opinion I will make several recommendations for revisions in the present version of HB 223.

My analysis focuses on the section of the bill which extinguishes the claims of employees who worked under FWW plans since December 8, 1978. Other witnesses have addressed the question of whether it is wise, fair or necessary to do so. I will address only the issue of whether the legislation, if enacted by the Legislature, would be constitutionally valid.

In connection with preparing my opinion, I have reviewed a letter from Thomas A. Sofo of the Legislative Counsel to ~~Chairman Bu~~ Rep. Walt Furnace ~~sell~~ dated March 2, 1983. Mr. Sofo briefly notes several possible challenges to the constitutionality of the bill, and concludes, without citing any case law or authority, that he is "not convinced that the Alaska Supreme Court would be persuaded" to uphold the legislation. I have also been provided a copy of a letter from counsel for the Alaska Wage Security Association, whose members apparently include employees who have sued to collect overtime compensation. The letter asserts that the legislation violates the constitution, but it provides no argument or authority in support of that statement. In any event, I have examined the legislation to determine whether it could be upheld, if challenged on any of the grounds typically asserted by a plaintiff in challenging legislation which has retroactive effect.

I should first report that I have found no case decided by any court which presents exactly the same scenario as present here. I would have been surprised if I had found such a case. On the other hand, there is a considerable body of case law in which courts have ruled on the constitutionality of legislation which retroactively changes the rights and obligations of private individuals who have entered into contracts. And there are cases involving legislative action to extinguish past claims of employees for overtime compensation and damages in which the fact situations are quite similar to those presented here.

In many of these cases, though certainly not all, courts have upheld the legislature's constitutional power, under certain circumstances, to reach backwards in time and to change and even abrogate the rights of private individuals. For example, courts have upheld the legislature's power to impose taxes retroactively, to modify the rights of mortgage holders, and to limit the right of depositors to make withdrawals from building and loan associations. Obviously, then, the legislature is not precluded as a matter of constitutional law from enacting a law which retroactively affects the rights of individuals.

The question, therefore, is not whether the legislature can enact retroactively effective laws. Clearly the legislature can do so. The pertinent question is whether the proposed legislation, which abrogates the claims of employees to overtime compensation and liquidated damages, would withstand a challenge on the grounds of constitutionality.

A legal challenge to a retroactive law is ordinarily brought under the Contract Impairment Clause of the United States Constitution or the equivalent provision in a state constitution. The Federal Constitution provides that "no state shall . . . pass any law impairing the obligation of contracts." Often a plaintiff will also assert a Fifth Amendment Due Process claim, arguing that the state has, by retroactively affecting his rights, taken his property without due process of law. For practical purposes, the analysis under the Contract Clause and the Due Process Clause are substantially the same and the court deals with them in the same fashion and I will not attempt to distinguish them in my discussion.

On its face, the Contract Clause appears to be an absolute prohibition against any impairment of a contract. However, the Contracts Clause has not been interpreted by the Supreme Court of the US to prevent use of legislative power to carry out legislative purposes which, on balance, are believed to be reasonable. The

Supreme Court has often upheld statutes which impair the obligation of contracts, where the legislature has reasonably exercised its legislative power in order to achieve a legitimate policy goal.

In reviewing the cases it becomes quickly apparent that courts have not developed a formula or test to which the facts in our case can be applied, which will mechanically produce a result. Courts look at many factors when considering challenges to retroactive laws, but arrange them in various combinations depending on the circumstances. For the sake of convenience, in my opinion I have grouped my review of the factors considered by courts into two categories: one is "public interest" and the other is "fairness to the affected individuals". I want to discuss each of these areas briefly.

When considering a challenge to a retroactive law, a court looks to see what state policy was served by enactment of the law. To the extent that there is any legislative history available reflecting legislative intent, the court will review this. In effect, courts look for answers to these questions: does the law affect the state, its economy, and one or more industries operating in the state, or merely one company or individual or a small group? Did the legislature act reasonably in tailoring the law to remedy the problem? Did the

legislature know who would be affected by the law when it adopted it? The answers to these questions will help a court to determine whether the legislature acted reasonably to implement a significant state policy, rather than acting in ignorance of the individuals who would be impacted by the law. Following are examples of some state policies which courts have held could be implemented by retroactively effective legislation: promotion of the integrity of land titles, protection of the financial health of savings institutions, and relieving commercial enterprises of potential adverse impact of lawsuits by employees.

In addition to probing the public policy behind retroactive legislation, courts will look closely at what the contracting parties actually expected when they entered into a contract, which is later modified by legislative action. There have been situations where the parties to a contract have entered into the contract in violation of, or in ignorance of, a legal requirement, and as a result the contract is illegal and unenforceable according to the terms agreed to by the parties. In such cases legislatures have on occasion changed the law, and made the change retroactive, in order to validate the contract as agreed to by the parties. Courts have routinely upheld this type of exercise of legislative power. The result is that the party's reliance on their agreement, and

their reasonable expectations, are confirmed. For example, courts have upheld legislation which validated retroactively a usurious loan, a defective power of attorney, and an invalid pledge of security by a bank.

It is also important to determine the nature of the right which is extinguished by retroactive legislation. Certain types of rights, such as property rights, are ranked as more deserving of protection, although even these are subject to modification and even destruction by a legislative enactment. One particular species of rights is peculiarly subject to revision by the legislature. These are rights created, in statutes, by the legislature itself. Rights given by the legislature can later be taken away by the legislature. Alaska's Supreme Court ruled that a defense to a lawsuit, set out in a statute, could be repealed by the legislature. Other examples include a retroactive change in usury laws, which make a loan contract legal, which was illegal when originally entered into. The point is that the legislature is free to deprive individuals of rights which the legislature itself originally granted, if it acts reasonably in doing this.

A series of cases decided by courts in the late 1940's are particularly relevant, and bring together the factors considered above (the public interest and the reliance of the

parties). After the Second World War the United States Supreme Court decided a case in which it interpreted the Fair Labor Standards Act to require payment, including time and one-half for overtime, for certain activities which previously had not been considered compensable work. For example, changing into work clothing on the employer's premises. This interpretation of the law created a potential liability to employers numbering in the billions of dollars. Congress responded with the Portal-to-Portal Act of 1947 which provided that no employer would be subject to liability for failure to pay wages for such incidental activities, unless there was an express contract provision providing for such payment or it was the custom at the establishment where the employee worked to pay wages for these activities.

Workers attacked the constitutionality of the act as violating the Due Process Clause. In ~~literally~~ over hundreds of cases, courts universally held that the Act was constitutional. They held that where the right to recover on claims is of purely statutory origin, as in the case of claims for overtime compensation, the legislature may later change the law to take away the claim originally granted by law, if it concludes this would produce a fair and equitable result. After looking at the legislative history of the Portal-to-Portal Act, the courts determined that Congress was

justified in preventing a serious adverse economic impact on industry by extinguishing the rights of employees to receive "windfall" payments for activities that they did not expect to be compensated for when they were performing them.

In a somewhat similar situation several years later Congress enacted what became known as the Overtime-on-Overtime LAW Act. This law retroactively extinguished employer liability for overtime claims and liquidated damages which would otherwise clearly have been due to employees. That case has a fact situation even closer to the facts presented to the Legislature than Portal to Portal here. There employees had asserted claims, and filed lawsuits against employers, pursuant to an interpretation of the statute in their favor issued by a wage and hour administrator. Unlike the Portal-to-Portal cases, only several millions of dollars were involved, and only a small segment of industry exposed to liability. Nevertheless, the Ninth Circuit Court of Appeals followed the holdings in the Portal-to-Portal cases. The court held that the statute was constitutional for substantially the same reasons as expressed by numerous courts in the Portal-to-Portal cases. It should be noted that the court followed the ruling in the Portal-to-Portal cases despite the fact that millions of dollars, rather than billions, were at stake, and the impact was on only one industry in California, rather than nationwide in scope.

State Supreme courts also apply the above principles. For example, the California Supreme Court in 1982 upheld a statute which retroactively invalidated claims against lenders for damages for charging unlawful interest rates. In 1978 the high court in Massachusetts held constitutional a statute by which the Massachusetts Legislature retroactively re-wrote clauses in insurance contracts, since the Legislature concluded that it would be unfair to enforce the clauses which had been agreed to by customers with insurance companies. Thus the principles of law discussed above are not merely of ancient origin and application, but have continued vitality in courts today.

It is against the above legal backdrop that the legislature must act on the proposed legislation. In my opinion, the legislature can retroactively extinguish employees claims for compensation and liquidated damages, if it makes certain findings based on testimony and facts available to it. I suggest that the findings should be along the following lines:

First, the Legislature could determine that payment by employers of pending and potential claims of employees for overtime and damages would pose adverse economic consequences on an industry important to the state's economy, and perhaps to the state itself;

Second, it could find that from December 8, 1978 to the present employees and employers voluntarily entered into employment contracts by which employees would be compensated under FWW plans; both unaware of the Department of Labor regulation because there was no widespread publicity directed at informing employers or employees of the drastic change in that law; and Finally employees expected to be paid pursuant to the terms of their agreement and not on some other basis.

In my opinion, if the Legislature makes findings such as these, then the Legislature is free to balance the claims of employees for strict enforcement of the Department of Labor regulation against the adverse economic impact on, and unfairness to, the industry, and possibly the state itself. If in the Legislature's opinion the balance weighs in favor of the industry's position, as opposed to permitting a limited class of employes to collect "windfall" compensation and penalties, then the Legislature can constitutionally extinguish those claims.

The attached opinion is more detailed than the testimony I have presented here. ~~In summary, I have concluded that the legislature can, if it makes certain findings, retroactively extinguish employee claims for overtime compensation and liquidated damages.~~ It comes to the same conclusion that I have stated here. If the ~~legislature~~ legislature

decides to do so, I recommend that it, through its committee reports, clearly state its intent and the policy reasons for adopting the legislation. In the event of a legal challenge, I believe this will materially assist the court to determine that the Legislature acted reasonably to implement a legitimate public purpose in adopting the legislation.

I have recommended several revisions to HB 223 to PESA and have prepared a committee substitute incorporating these:

1. Section 1, which prohibits FWW, has been deleted. This deletion has been explained in earlier testimony. ~~As noted~~, it has no practical effect because of the ~~the~~ Department of Labor regulation presently accomplishes the same purpose in any event.

2. Section 2, which was inadvertently made retroactively effective, is to be effective for the future only.

3. The title has been amended to give notice of the bill's purpose of extinguishing the existing claims of employees for overtime compensation and liquidated damages.

4. The immediate effective date clause has been removed.

5. There are other minor language clarifications, which do not change the substance of the original bill.

Thank you for the opportunity to appear today.

450 Wendte comments that since there was some conflicting statements made by Fleischer in relation to Mr. Sofo comments perhaps it would be a good idea to hear from Mr. Sofo at this time. Mr. Sofo is the legal counsel that drafted the bill.

Bussell states that there is only ten minutes are left and we will be able to talk Mr. Sofo at a later time. The committee will again be meeting at 7:00p.m. this evening.

Bussell comments on the responsibility of the Dept. of Labor to notify the individuals which are involved. Asks what he feels is the obligation of the Dept. of Labor.

505 Fleischer states that during the court cases the thought of whether the regulation was properly litigated was never brought up.

They discuss this point.

530 Wendte asks about the advertising of bids by large companies for work and relates it to this in the area of the person complaining to the firm.

Fleischer I believe that a person that feels he was dealt with unfairly would go to the company. And on the other had the obligation of the government to notify is totally different than a private firm's obligation.

548 Wendte asks concerning if there is any state statutes that cover the area of notification.

Fleischer there is a law that states that the affected individuals have to be contacted.

Bussell comments on the people trusting the Dept. to notify them of such things.

They discuss the notifying of the Dept. of Labor.

590 The Committee discusses the recess of the Committee and reconvening.

612 The meeting is recessed till 7:00. The time is 2:56.

The meeting is called back to order by Chairman Bussell at 7:00p.m. Members present: Bussell, Liska, Wendte, Malone. Speaker Hayes entered shortly after the meeting begun.

Tape #52

004 Roll, welcome, etc.

033 Jim Robison, Dept. of Labor. States he will be brief to allow to have to two attorneys to testify one for each point of view. Refers to the package of materials that the Dept. delivered to the Committee. Believes that all the proceedings started with a law suit with Dowell back in 1976 having to do with the FWW. That action was put in limbo to decide on the action to take in relations to the regulations. States that there was letters sent to Dowell, Dresser in relation to this matter as soon as the issue was set into place.

100 Bussell asks if he has copies of the those letters. He states he does not but there are people to testify to the fact under oath that they were sent thus the companies were notified.

110 Wendte asks on the time frame of the letters. He states that it was after regulations were enacted, late 1979 early 1980.

117 Robison states that they have no problem with the deletion of section 1, as already mentioned they do have those regulations. There are some problems with the other sections. They had Gary Amendola research. He will testify. Asks where everyone is coming up with the 100 million dollar figure. The dept. has not been able to come with any figures at this time.

150 Wendte comments on the legal aspect of the Department's notice of the regulation. Relates it to the case of Dresser in the stipulation of the regulation.

Bussell comments on this and states that it is not the issue before us.

182 Gary Amendola, Dept. of Law representing the Dept. of Labor. Will restrict the comments to sections 3 & 4. There are 3 serious conflicts with the constitutional provisions. (1) Is the impairment of contract Article 1 Section 15. There has been some cases upheld in this area. Some states do uphold FWW ours do not. Refers to AS 23.10.060 which refers to the overtime provisions. This states that it is part of all contracts within the state. (2) Article 2 Section 19 is probably the most important with deal with Special Legislation. Does the legislation deals with general public interests and public purpose? This is a question to put to the test to see if they apply. The Committee has determine if this is a state wide concern and not just an specific area. He feels there are equal protection problem. Because those that used the FWW during the period in question would be exempt from liability those that did not used it would be liable for the overtime payment. Also the employees will have a reason to file due to the fact whether he worked for an employer that had FWW or not. Those with the FWW could recover funds. (3) there is conflict with AS 23.10.050 which is the public policy statement by the legislature. Also 23.10.130 is that statute of limitations.

370 Bussell refers to 23.10.055 states that it covers a broad range of people and firms. Comment on the impairment of contract cause. The employees had contracts with their employers and so when the regulation was issued it then violated those contracts, so wouldn't those be impaired. Should this work both ways.

395 Amendola refers to the point of the legislature passing regulations and they override the contracts.

420 Ron Laursen, Deputy Attorney General with the Dept. of Law. Worked for the Dept. of Labor at the time the regulations were adopted. Believes the wage claim was in 1976 in part of Dowell Corp. The firm and Dept. of Labor had disagreement as to the FWW. Dowell thought FWW was right. Dowell and Dept. of Labor came to agreement to submit a brief of their standpoint on the FWW. They reviewed the arguments. He issued an opinion in February of 1978 that Dowell was right because the Dept. of Labor at the time did not have regulation about FWW. The Dept. of Labor could state that FWW was not in the best interest of the state but would have to do it threw regulations. The first publication of the regulation was in August, 1978. Talks of the notice to be given to interested parties were complied with as in AS 44.62.190. States that that is when the suit against Dresser was brought up.

530 Talks of Section 3 dealing with the retroactive provisions. HB 223 deals with four issues really One should or should not continue FWW. Second whether or not modify liquefy damages or penalties in reference to pay Section 2 provides lead way for the employer that did not mean to take advantage of the employee but did due to lack of knowledge of the regulation. Section 3 says that any one that did not comply with the regulation from Dec. 9, 1978 is off the hook. section 4 goes about getting people off the hook for the FWW and violation of the wage and hour act. If this is past the constitutionality will be brought before the court until the Supreme decides on it. Comments on the thought of the constitutionality of this. States the courts will be faced with this question. States that there is far greater likelihood that where you are taking away or changing a penalty that previously existed that that will be held constitutional. It is less than a contract right that has been established as employee right against their employer. States that the people will not stand for being told that they can not collect funds for their past overtime.

615 Wendte directs question to all. Did the legislature have the power to repeal the regulation in 1978.

Lauren state that the legislature has the power to repeal any regulations.

630 Wendte asks if there is a date as to when the Dresser case was filed.
No I do not.

635 Lauren comments on the people who abide by the law and those who did not abide by the law

650 Turn of tape #52

003 Bussell comments on his personal experience in business.. States that he knows more about the regulations now than he has during his twenty years of doing business. Reminds the meeting that the cost factor of the pay did not change. The employer treated them the same. The only thing different was the way of contracting. States it did not affect him. He does a lot of cost plus contracts. The change over would have had ruined him in that issue. He is displeased with the effort by the Dept. of Labor and the Dept. of Law to notify people and firm before and after the fact.

082 Malone comments that the dates of publication was given.

They talk of the notification.

150 The committee talks of the equal amount of pay under both plans.

210 Bussell states that the reference to the oil companies is out of place due to the fact that there is not one oil company present here today and probably will not be.

230 Marlene Neve' represents AFL-CIO. Against the Bill. States HB 223 purposes two alternations to the present wage and hour act. First section 2 allows employers to avoid liability because lack of knowledge of the wage and hour laws. Secondly the bill retroactively distinguish thousands of claims of employees now filed. This is the second try to do this. FWW would help the employees that have different hours per week, a little higher or a little lower than 40 hours. But usually the FWW is used to lower the pay of the employees. It is used in areas where the employees work well over 40 hours per week. Request teleconference for the employees that can not afford to fly to Juneau. Hopes the Committee is as concerned about the employees as the employers.

296 Wendte asks about the part that the Superior Court, state and US. They basically had four chances to change over during the process.

310 Liska asks about the number of employees that are involved.

She states that there are a great number that can not afford to file the claims.

340 They talk of a teleconfernce. Bussell states that the POM's are basically from Anchorage. States that he called several of them and they all said that they did not know what they said and that their foreman told them to do so. Neve' states that the foreman's job is to protect the employees.

410 Michael Barcott, lawyer for the employees for the claims on the FWW. States that this bill if actual for FWW, but is just asking to be forgiven for past sins. Claims Dresser knew the impact of this regulation at the beginning. They had the best lawyers went all the way to the US Supreme Court. States that they could have changed their system as easily in 1979 as they did in 1981. Refers to the Woody case. The company just sat back to see what would happen. If Dresser Industries and others had changed their pay system in 1979, all claims would have been void due to the statute of limitations. States they knowingly violated the laws of the state. The only windfall with be for the firms. Dresser is one of the seven largest firms in the world.

Does not believe that this bill is constitutional. If this bill passes the ground will be shakey. States this committee has great responsibilities in this state. If this passes, many people will see if they can violate the laws of the state and try to see if the legislature will bail them out. This is exactly what the companies are doing now. A stable state in which to do business is that the business know what are and abide by the laws of the state. He wishes the claim of 100 million dollars was true. It only has potential amount of this from the time of the regulation coming into effect. Half of the claims have been dismissed due to the fact of the statute of limitations. States that the claims from Dresser employees are 75-80, from Slumberjack, 75-80 and a few from other firms, maybe totaling two hundred in all. The amount of the claims actually are only about 10-20 million dollars. States that if the Committee wants to give the future businesses an impression of lawlessnes, then pass this bill because that is what it does.

550 Wendte comments on the number of employees and amount of claims. They discuss.

560 They talk of cases filed and the dates thereof.

580 Barcott comment on the difference of the hours and the wage then and now. If the employees worked the same amount of hours they would be making more money. The companies cut back the time that the employees put in now. That is why they claim that it is the same.

The Committee discusses the cost now and then.

646 Bussell comments on the notification by the Dept. of Labor.

658 Change of tape.

Tape #53.

003 Barcott states he had nothing to do with the notification. But firmly believes that it was done properly.

The Committee talks of the knowledge of the firms of the regulation.

155 Wendte ask if these are union. Barcott state they are not, that they are individual contracts. Most are just verbal contracts. Wendte asks if the employees filing claims are still working for the companies. It is noted that some are and some are not.

186 Liska asks if he was familiar with the first bill dealing with this.

Barcott was familiar. It is noted that none of the 3 attempts were passed from the first committee of referral.

210 John Eshleman, opposes the bill. Member of the Alaska Wage and Security. Former employee of Dresser. He describes his former position, feels that he was a skilled laborer. States that when he went to work he did not know the exact amount of his pay. He was told it was very complicated. It would average about $50,000 a year. He did file a claim against the firm. He feels he was discriminated against and they tried to get him to terminate. Relates the story of why he filed. At the time of the pay change, John Martin told them that the firm did not feel that they owed the employees no additional money and if they thought otherwise they should go see a lawyer. He proceed to go to Mr. Barcott. Passes out a example of how they were paid.

300 He describes the pay system. Gives examples that the people on the new plan do indeed make more money, he did. Urges them not to pass HB 223.

367 Wendte asks if he had a written contract.

J. Eshleman no I didn't. It was just estimated at $50,000 year.

375 Wendte comments then all that needed to be done is to state that there was going to be a pay change. Eshleman agrees. States that most like the new system

394 Hayes confirms that he worked under the new and old system for Dresser. Comments on the wage he received. They talk of the hours that are worked. His wage was $12.94 when he left. There is bonus paid and then additional on the bonus.

440 Bussell was this the first time you worked in this system. Yes, states that he changed because of the better time scheduled. At the previous job he knew exactly how much he was paid. Bussell talks of why he took the job that he did not know how much he was being paid. States that all the electricians know exactly how much he will be paid and can figure it out.

477 Robert Eshleman former Dresser employee. Representing himself. Is a plaintiff with Dresser. Opposes HB 223. He was not paid on FWW he was paid as a salary exempt employee. It was a verbal contract. At the beginning had no question to pay. States the overtime was figured on the Huston base. He was asked to represent all the salary exempt employees from the North Slope. They wanted to go to a week to week schedule, they wanted their overtime changed and they wanted an eye care package. The firm felt 2 and 1 was fair. They stated the employees did have a valid claim as to the overtime. It was stated that it would checked into. States Dresser was not union. They did change the pay plan. Their pay almost doubled. The discrimination followed. He was terminated due to poor job performance. States he made the same in less that 10 months working less time than in a year of working almost twice as much. He believes that he dealt fairly with Dresser in his claim because he did not file at the first possible moment. He tried to negotiate with them. He feels that Dresser knowingly disobeyed the law. His statute of limitations is almost up. He urges the Committee not to pass the legislation.

580 Liska comments on the fact that many of the people are lower 48 individuals. Asks what percentage of Alaskans are affected by this.

Eshleman feels that most of the are Alaskans affected and those that are from out state decided to stay.

The point that the employees are mostly Alaskans is clarified by Mr. Barcott. And that the companies are primarily outside companies.

600 Bussell asks if he feels he is a professional. He feels that he is a semi-professional.

607 Bussell asks what is a salary exempted employee.

Eshleman there are several. Some are on hours some get salary and are allowed overtimed. Bussell reads the statute concerning this.

The Committee and Eshleman discuss the term professional employees. And they talk of the terms fair and equitable. Eshleman does not feel that he was dealt with in that manner.

654 turn of tape.

015 Malone asks to be excused to check on his constituent teleconference.

050 Jerry Sheelon, Alaska Division Manager of Gearhart, Industries. He feels that all that he has wanted to say has been said. States he was never informed of the changed of the regulation till the claims. He supports the bill. He talks of his system of pay. That their employees always knew their pay. Relates some examples. States that Arco and Sohio now will not allow the employees to stay on the job more than 12 hours a day. He does not feel that the legislature should be held responsible for this. Hopes that the Dept of Labor will keep people informed from now on. His company's pay expenses have stayed the same.

170 End of testimony. There is short comments on the 12 hours of legislature.

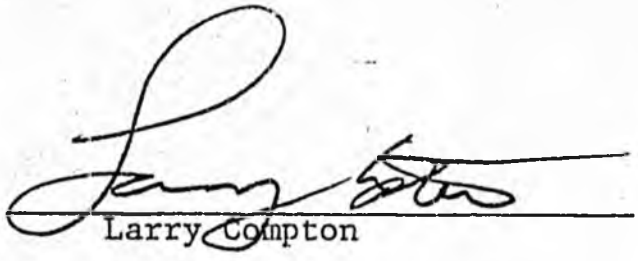
181 Bussell asks how many employees in Alaska. 50. How long in business. Since 1969. Were you ever notified of the change. Never.

They discuss the pay system and notification.

240 Mr. Becker reads a statement written by Larry Compton. Mr. Compton had to fly back to Seattle. (Attached.)

TESTIMONY ON HB 223

Mr. Chairman, Members of the Committee, my name is Larry Compton, President and Owner of Time Saver Grocery INC., I have lived in Alaska since 1954 and may I add have no connections with the Gas and Oil Industry. I regret that I was unable to stay and testify in person. I have nothing to gain by this passage of HB 223. However, I do feel I have some thing to lose if it fails. I will lose faith in a system that has beenfair and equitable in my eyes for 30 years. A system that is supposed to deal fairly with Employee and Employer alike. I only ask that you continue to apply that same fairness in the future by passing HB 223.



Larry Compton

259 Richard Crull is Regional Operations Manager for Alaska. Has been in position for seven months. Can not add much more than what has been said. He does support the bill.

262 Wendte asks if he is a member of the Alliance. Yes. When was it formed. 1979. Are you a member of PESA. Yes.

307 Wendte is Dowell part of the lawsuit. Not that I am aware of.

310 Bussell asks if the Committee asked for information from their company in relation to this matter. Mr. Crull would assume yes.

They discuss the possible information that may be obtained in relation to Dept of Labor notification and the FWW.

387 Paul Preston, Halliburton Services, Supports HB 223. Everything has been said we add our support.

394 Hayes if Halliburton Services part of the lawsuit. No Sir.

400 Thomas Sofo (transcribed testimony attached.)

Testimony of Thomas Sofo
April 7, 1983

My name if Tom Sofo, I am employeed by the Legislative Affair Agency, as a legislative counsel in the Legal Services Division across the street. We drafted the subject bill. There really is no need at this point I think, in my opinion, to go into any complicated legal analysis. The office would basically agree with everything Mr. Laursen has said. I think that there has been some misimpressions created as to certain ways that we might be able to address this and improve on the bill.

First of all, it is of course not in the policy of us to comment on the position of the bill. We do not comment on whether there should be a FWW or not we have no opinion on the issue, neither do we have an opinion whether the people on the slope are being overpaid or underpaid under either of the two plans. Neither do we have any legal analysis that we have done regarding section two of the bill which involves the penal provisions although we would add that. In our view that provision is less likely than a toss up to withstand a court challenge. I believe Mr. Laursen said that that would be 50/50 on a constitution matter. We would probably give it an one chance out of three if those things can be quantified.

As you know I am the attorney for each of you at this table. And the function we have is to protect the work of the Legislature. I would just reiterated what Mr. Laursen has said, this is a loser. You are at least buying a law suit by passing it and you are probably, most every attorney that would review this bill across the street, would predict, which all we can do is predict, maybe the thing to do is pass it and give it its day in court. but if we were advising clients this is the kind of case that we would consider almost a certain loser.

Now there have been a couple of impressions created by testimony that I think that did not directly state these facts but these are the impressions that I came away with. One was that if we could include the proper amount of findings or purpose as an addendum to this bill on the front end of it, that we could some how cure the unconstitutionality if it is indeed unconstitutional. And I will try to remember to say "if" because we do not have any statement to that effect.

Now by the judicial form that we are bound by and I do agree with Mr. Fleischer statement earlier when he submitted a summary of his brief that there are no cases directly on point. So in one sense this is a issue that the court could look at anew. But if they follow the authority that seems to be in the field they will probably strike it down as unconstitutional. And we who deal in these areas as to legislative findings and intent and purpose are aware of a long line of cases which shows on various subjects that it is seldom if ever the case that you can cure the unconstitutionality of a bill by merely stating that the legislature finds X and X to be the case. Not when the flaw in it is of a constitutional magnitude.

There is another impression that I am not sure as to where I came by this information. It was in the course of drafting and listening to testimony today I have heard the Cee's case referred to several times as one of the primary cases that is most likely to be used in an argument to support the bill and I agree that it would be used in support. It is one of the strongest cases in support of this kind of legislation. Although I do not have a full copy of the case as a matter of fact I do not believe that I even have a summary of the case with me. I have read the case and although no one has misstated statements in the case, they have neglected to tell you that the Portal to Portal which was sustained in that case did not allow for the withdrawal of the remedy if there was a written contract governing that right under question. No one has stated that it did, but everyone has failed to state that that was one of the exception. That if there was a written contract which protected that right even the Portal to Portal Act did not preport to revoke that right.

And the other thing that I think I would like to focus the Committee's attention on is that the constitutionality of this bill does not depend at all on the amount of money that is involved. Does not matter what any one is getting paid and it doesn't matter whether the damages are $10 or 10 million dollars. The court in question to which this may end up going would decide if there are indeed damages. It may be unconstitutional even if there is no recovery. And I think a lot of the discussion has involved what the amount is and although that is of some interest, for instance on a public policy purposes it might be relevant. Really for the kinds of defects in the bill that we see, the impairment of contracts, probably an equal protection argument and special legislative, which I believe have been discussed fully before. Almost all of those arguments will not be effected if the recovery is $1 or 1 million dollars.

The office has not really responsed to any requests to research this choroughly. We have nothing like a thirty page memorandum. I did not know that we were going to be asked to testify here till 4:30 yesterday. So we are prepared to answer questions or do the appropriate research if any one cares to pose a question that we can not answer at this time. That is the only statement that we were prepared to make at this time.

467 Wendte states that there has been interest shown that this is special interest legislature.

Sofo states it may be considered as such. He did not know the names of the defendants involved until testimony was given. He does not know whose special interest it would served.

490 Bussell asks him who had requested him to come and testify.

Mr. Clocksin.

496 Liska asks if he had drafted the bill.

The version that you are using now, yes.

506 Liska asks how much research actually went into this.

Sofo states that is usually brief unless that someone asks for a special brief and the red flags that they point out.

527 Tom Cashen, lobbyist for the electricians. The union does not think that this is good legislation and hopes that it dies in Committee.

538 Bussell asks if he ever took a job that he did not know what he was being paid. Never.

546 James Wakefield, Lobbyist for Local 942. Most has been said. They are against the bill. Feel it is bad legislation and would set a poor example.

563 Bussell states that there will be a teleconference set up.

569 Adjourns the meeting. The time is 9:50.

STATE OF ALASKA
THE LEGISLATURE
LEGISLATIVE AFFAIRS AGENCY

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

MEMORANDUM February 3, 1983

SUBJECT: Retroactivity of overtime pay provisions (Work Order No. 13-0714)

TO: Representative Charlie Bussell

FROM: Thomas A. Sofo
Legislative Counsel

The subject work order includes a request for a retroactive clause to the attached draft bill concerning methods of overtime payment. A retroactive clause may make the bill subject to legal challenge.

I do not know enough about the facts surrounding the proposal contained in the draft bill to advise you in precise terms, but would caution you that the retroactive portion of the bill may be challenged on constitutional grounds. One basis for challenge would be the prohibition against impairment of contracts, found in both the United States and the Alaska Constitutions (U.S. Constitution, Article I, section 10; Alaska Constitution, Article I, section 15). Another basis would be the due process guarantees in the Fifth and Fourteenth Amendments of the U.S. Constitution and Article I, section 7 of the Alaska Constitution.

If challenged on these grounds, the court would likely examine the rights and expectations affected by the bill, whether those rights and expectations were substantial and whether those rights or expectations were unfairly defeated by the bill. Some vested rights are immune from legislative interference, but, as indicated above, we are not able to ascertain whether such rights are involved here since we do not have sufficient factual information.

If you wish to discuss this facet of the bill further, please give me a call at your convenience.

TAS:ljb

STATE OF ALASKA

BILL SHEFFIELD, GOVERNOR

DEPARTMENT OF LABOR

OFFICE OF THE COMMISSIONER

P.O. BOX 1149
JUNEAU, ALASKA 99802
PHONE: (907) 465-2720

April 5, 1983



Honorable Charlie Bussell
Chairman, Committee on Judiciary
House of Representatives
Alaska State Legislature
Pouch V
Juneau, AK 99811

Dear Representative Bussell:

In response to your letter dated March 30, 1983, enclosed are copies of the following documents pertaining to the December 9, 1978 amendments to the Department's wage and hour regulations in 8 AAC 15.

Enclosure #1: Regulations as proposed on 8/21/78 including the notice of proposed changes.

Enclosure #2: Affidavit of notice of adoption of proposed regulation.

Enclosure #3: Affidavits of Publication from the Anchorage Daily News, Southeast Alaska Empire, and Fairbanks Daily News Miner.

Enclosure #4: Affidavit of oral hearing, and the hearing attendance roster indicating that no one appeared to testify.

Enclosure #5: Proposed regulations as submitted to the Department of Law on 10/9/78 for final review and filing by the Lt. Governor's office.

Enclosure #6: Regulations as filed by the Lt. Governor and the signed order of adoption.

Enclosure #7: Regulations in effect prior to the December 9, 1978 amendments.

07-G9LH

These enclosures include copies of the correspondence between the Departmentof Labor and Department of Law on these regulations.

If you have further questions concerning the promulgation of these regulations, please let me know.

Sincerely,

Jim Robison
Commissioner

Enclosures

ENCLOSURE # 1

NOTICE OF PROPOSED CHANGES IN THE
REGULATIONS OF THE DEPARTMENT OF LABOR

Notice is hereby given that the Alaska Department of Labor, under the authority vested by AS 23.10.085, proposes to repeal and adopt regulations in Title 8 of the Alaska Administrative Code to implement AS 23.10.050 - AS 23.10.150, as follows:

(1) 8 AAC 15 is amended by repealing sections 010 through 070 in their entirety and adopting and replacing with new sections as follows:

ARTICLE 1.

Article 1 stipulates minimum wages, maximum hours and computation of overtime applicable to employment in Alaska.

ARTICLE 2.

Article 2 provides certain exemptions from the payment of minimum wages or overtime.

ARTICLE 3.

Article 3 stipulates those deductions from an employee's wages that are permissable and those deductions that are prohibited.

ARTICLE 4.

Article 4 establishes the procedures for assignment of claims and/or the conduct of investigative hearings and conferences.

ARTICLE 5.

Article 5 defines miscellaneous terms as used in this chapter and AS 23.10.

Notice is also given that any interested party may present oral or written statements or arguments relevant to the action proposed at a hearing to be held at the DIVISION OF AVIATION BUILDING CONFERENCE ROOM, 4111 AVIATION AVENUE, (next to Lake Hood) Anchorage, Alaska 99502 at 1:30 p.m. o'clock on September 15, 1978.

Copies of the regulations may be obtained by writing to: Wage and Hour Division, Alaska Department of Labor, P. O. Box 630, Juneau, Alaska 99811.

The Department of Labor upon its own motion or at the instance of any interested person, may after September 30, 1978 adopt the proposals substantially as described above without further notice or may decide to take no action on them.

Date 8/2/78

Wm. Spear.

William E. Spear
Deputy Commissioner
Department of Labor

To be published August 30, 31 and September 1, 1978.

TITLE 8. LABOR

PART 1. INDUSTRIAL WELFARE

CHAPTER 15. ALASKA WAGES AND HOURS

Section
10-70. Repealed

8 AAC 15.010 SUMMARY: ALASKA WAGE AND HOUR ACT. Repealed / / .

8 AAC 15.015 EXEMPTIONS FOR SEARCHING FOR PLACER OR HARD ROCK MINERALS. Repealed / / .

8 AAC 15.020 EXEMPTIONS FOR INDIVIDUALS UNDER 18 WHO ARE PART TIME EMPLOYEES. Repealed / / .

8 AAC 15.030 DETERMINING THE NUMBER OF EMPLOYEES FOR PURPOSES OF AS 23.10.060(1). Repealed / / .

8 AAC 15.040 SMALL MINING OPERATIONS. Repealed / / .

8 AAC 15.050 DEDUCTIONS FROM AN EMPLOYEE'S WAGES. Repealed / / .

8 AAC 15.060 PLACE OF EMPLOYMENT FOR PURPOSES OF RECORD KEEPING. Repealed / / .

8 AAC 15.070 DEFINITIONS OF MISCELLANEOUS TERMS USED IN AS 23.10.050 - 23.10.150. Repealed / / .

Article

1. Minimum wages and overtime
2. Exemptions
3. Deductions from wages
4. Procedures relating to violations, investigations or hearings
5. General provisions

ARTICLE 1.

MINIMUM WAGES AND OVERTIME

Section
100. Payment for overtime
105. Minimum wage

8 AAC 15.100 PAYMENT FOR OVERTIME. (a) An employee's regular rate is the basis for computing overtime. The regular rate is an hourly rate figured on a weekly basis. Employees need not actually be hired at an hourly rate; they may be paid by piece-rate, salary, commission or any other basis agreeable to the employer and employee. However, the applicable compensation basis must be converted to an hourly rate when determining the regular rate for computing overtime compensation.

(b) The regular rate referred to in (a) is that fixed hourly amount determined from an employee's hourly wage, salary, commission, piece-rate or other basis of compensation that he is to be paid for all contract hours up to the daily or weekly maximum, established under AS 23.10.060, that he is regularly employed to work during a work week.

(c) When computing an employees hours for the purpose of determining overtime, the employer shall count all hours the employee worked during that week including periods of "on call" and "standby or waiting time" required for the convenience of the employer which were a necessary part of the employee's performance of his employment. However, if the employee is completely relieved from all duties for a certain period during which he may use the time effectively for his own purposes, then these hours need not be counted.

(d) The following are not acceptable methods of complying with the payment of overtime under the provisions of AS 23.10.060:

(1) guaranteed weekly pay for variable hours plan ("Belo" contracts) established under sec. 7(f) of the Fair Labor Standards Act of 1938, as amended (29 U.S.C. 207(f) as implemented in 29 C.F.R. 778-402-778.414;

(2) compensatory time off in lieu of payment for overtime; and

(3) flex-time or flexitime plans established under 29 C.F.R. 778.114 providing a fixed salary for fluctuating hours up to a predetermined maximum number of hours in a work-week. (Eff. / / , Register)

Authority: AS 23.10.060
AS 23.10.085

8 AAC 15.105. MINIMUM WAGE. As used in AS 23.10.065, "prevailing Federal Minimum Wage Law" means that rate established in Sec. 6(a)(1) of the Fair Labor Standards Act of 1938, as amended (29 U.S.C. 206(a)(1)) as the minimum wage generally applicable to employees subject to that Act. (Eff. / / , Register)

Authority: AS 23.10.065
AS 23.10.085

ARTICLE 2.

EXEMPTIONS

Section
120. Minimum wage exemption for handicapped persons
125. Minimum wage exemption for student learners
130. Exemption for searching for placer or hard rock minerals
135. Exemption for individuals under 18 who are part time employees
140. Determining the number of employees for purposes of AS 23.10.060(1)
145. Small mining operations

8 AAC 10.120. MINIMUM WAGE EXEMPTION FOR HANDICAPPED PERSONS. (a) An application to employ a person at less than the minimum wage established under AS 23.10.065 must be made either on a form provided by the department or by filing an application for a special certificate to employ a handicapped person (29.C.F.R. Part 525) with the Regional Director of the Wage and Hour Division, U.S. Department of Labor, 909 First Avenue, Seattle, Washington, 98104.

(b) An application filed with the department must set out the facts showing that the person's productive capacity to do the work he is to perform is impaired by physical or mental deficiency, age or injury. A medical certificate will be required in all cases in which the handicap is not clearly obvious. The information in the application must be complete and must be certified by a responsible person who has knowledge of the facts.

(c) If the commissioner determines from the information provided in the application that the person would otherwise be deprived of employment opportunity, he will in the exercise of his discretion, approve a wage rate lower than established under AS 23.10.065 based on that information. With the exception of very extreme cases where the person is so seriously impaired that he is unable to engage in competitive employment, that rate will not be less than 50 percent of the minimum wage established under AS 23.10.065.

(d) If an approval is issued under (c) of this section, it will specify the approved wage rate and the period for which it is effective. An application for renewal of an exemption must be made in the same manner as the original but must also include an evaluation of that person's productivity, comparing the degree of productivity between the initial application and the renewal.

(e) As a general rule, approval for payment of a wage lower than that established under AS 23.10.065 to persons with a temporary handicap will not be granted.

(f) Persons undergoing rehabilitation treatment or therapy relating to narcotics or alcoholism are not considered handicapped for the purposes of AS 23.10.070 and this section. (Eff. / / , Register)

Authority: AS 23.10.070(1)
AS 23.10.085

8 AAC 15.125 MINIMUM WAGE EXEMPTION FOR STUDENT LEARNERS. (a) An exemption for student learners from the minimum wage requirement of AS 23.10.065 is available when the student learner is enrolled in a course of study and training in a cooperative vocational training program under a recognized state or local educational authority or in a substantially similar program conducted by a private school.

(b) An application for an exemption under (a) of this section must be made on a form provided by the department. The information required must be complete and must be signed by the employer and the student learner's school coordinator or principal. To qualify for the exemption, the employment must meet all the requirements set out in AS 23.10.325-370 and Chapter 5 of this Title relating to the employment of children.

(c) A wage rate authorized under this section will not be less than 75 percent of the minimum wage established under AS 23.10.065.

(d) The exemption from minimum wages for full-time students established by Sec. 14(b) of the Fair Labor Standards Act of 1938, as amended, (29 U.S.C. 214(b)) as implemented in 29 C.F.R. 519.1 - 519.2 does not apply to employment subject to the provisions of AS 23.10.065. (Eff. / / , Register)

Authority: AS 23.10.070(3)
AS 23.10.085

8 AAC 15.130 EXEMPTION FOR SEARCHING FOR PLACER OR HARD ROCK MINERALS. The exemption from AS 23.10.050-23.10.150 provided by AS 23.10.055(10) applies to those activities commonly referred to as "prospecting" and does not apply once development of and production from a known mineral source has been begun. (Eff. / / , Register)

Authority: AS 23.10.055(10)
AS 23.10.085

8 AAC 15.135 EXEMPTION FOR INDIVIDUALS UNDER 18 WHO ARE PART TIME EMPLOYEES. The exemption from AS 23.10.050-23.10.150 provided by AS 23.10.055(11) does not apply during any work week in which an individual normally within the ambit of AS 23.10.055(11) is employed in excess of 30 hours. (Eff. / / , Register)

Authority: AS 23.10.055(11)
AS 23.10.085

8 AAC 15.140 DETERMINING THE NUMBER OF EMPLOYEES FOR PURPOSES OF AS 23.10.060(1). In determining the number of employees that an employer employs for purposes of AS 23.10.060(1), all officers of a corporation who actively engage in the business and all part time employees will be counted regardless of the number of days or hours worked.

Authority: AS 23.10.060(1)
AS 23.10.085

8 AAC 15.145 SMALL MINING OPERATIONS. (a) A mining season, for purposes of AS 23.10.060(5), means the cumulative period of time during which mining operations are carried on during a calendar year, but not exceeding 20 weeks.

(b) The exemption from the payment for overtime requirements of AS 23.10.060 for employers engaged in small mining operations provided by AS 23.10.060(5) is available to the employer for a maximum of 14 consecutive weeks, commencing on the first day the mine begins active operations in a calendar year. In determining the available period of exemption, periods during which the mine is not actively engaged in mining operations for such reasons as, but not limited to, assessment work and repair or construction of buildings or equipment are not part of the exemption period.

(c) During the exemption period described in (b), an employer engaged in small mining operations remains responsible for payment of overtime at the rates established by AS 23.10.060 for work performed by an employee in excess of 12 hours a day or 56 hours a week. (Eff. / / , Register)

Authority: AS 23.10.060(5)
AS 23.10.085

ARTICLE 3.

DEDUCTIONS FROM WAGES

Section
160. Deductions from an employees wages

8 AAC 15.160. DEDUCTIONS FROM AN EMPLOYEE'S WAGES. (a) AS 23.10.085(c) does not limit the right of an employer and employee to enter into a written agreement to provide for deductions of monetary obligations of an employee other than the cost of board or lodging. However, a written agreement for deductions is not valid if it would have the effect of reducing an employee's wage below the statutory minimum wage or requiring an employee to reimburse the employer for any of the following:

(1) customer checks returned due to insufficient funds or any other reasons;

(2) non-payment for goods or services as a result of customers walk-out or defaulting on credit;

(3) cash or cash register shortages for which the employee does not acknowledge responsibility;

(4) lost or stolen property or alleged theft by the employee for which the employee does not acknowledge responsibility;

(5) damage or breakage costs unless they are clearly due to willful conduct on the part of the employee, the responsibility for which has been acknowledged by the employee.

(b) Written agreements for deductions from wages are not required for any lawful deduction otherwise authorized or required by state or federal law or by order of a court of competent jurisdiction.

(c) An employer subject to AS 23.10.050-23.10.150 shall furnish each person employed by him who is not exempted from the coverage of those sections by AS 23.10.055 a statement of earnings and deductions for each pay period. The statement of earnings and deductions shall contain the following information:

(1) employee's rate of pay;

(2) the beginning and ending dates of the pay period and the weekly hours actually worked during the period;

(3) federal income tax deductions;

(4) federal insurance contribution act deductions;

(5) Alaska income tax deduction;

(6) Alaska school tax deduction;

(7) Alaska employment security act contributions;

(8) board and lodging costs;

(9) advances; and

(10). other authorized deductions. (Eff. / / , Register)

Authority: AS 23.10.085

ARTICLE 4.

PROCEDURES RELATING TO VIOLATIONS, INVESTIGATIONS OR HEARINGS

Section
175. Assignment of claims
180. Investigations, conference and persuasion

8 AAC 15.175. ASSIGNMENT OF CLAIMS. (a) A person who believes that he has not been paid wages due him under AS 23.10.050 - 23.10.150 may assign his claim to the department for collection.

(b) The department will not accept an assignment of a claim under AS 23.10.050 - 23.10.150 in excess of $5,000, excluding liquidated damages. (Eff. / / , Register)

Authority: AS 23.10.085
AS 23.10.110(b)

8 AAC 15.180. INVESTIGATIONS, CONFERENCES AND PERSUASION. (a) The wage and hour division will investigate potential violations of AS 23.10.050-150 on its own motion or on the assignment to it of a claim under sec. 175 of this chapter.

(b) If after investigation the division finds that probable cause exists for believing that a violation of AS 23.10.050 - 23.10.150 has occurred, it will attempt to correct the unlawful practice by conference and persuasion as follows:

(1) the division will provide the employer believed to have violated AS 23.10.050 - 23.10.150 with a copy of the assignment or a description of the alleged violation and inform him of the results of its investigation; and

(2) the division will schedule an informal conference with the employer to discuss the matter and attempt to eliminate the alleged violations.

(c) If the informal conference succeeds in correcting the alleged violation, no further action will be taken by the division against the employer.

(d) If an alleged violation is not rectified by the informal conference or if the employer fails to attend the conference without good cause shown, the director may, at his discretion;

(1) conduct a further investigation into the matter;

(2) enforce the claim through initiation of an adjudicative hearing under provisions of the Administrative Procedures Act (AS 44.62);

(3) enforce the claim through filing of an action in court of competent jurisdiction.

(e) If the director determines under (d)(1) of this section that a further investigation into the matter should be conducted, he may provide that it be carried out by initiation of an investigative proceeding conducted in accordance with secs. 10 through 30 of chapter 25 of this title. (Eff. / / , Register)

Authority: AS 23.10.080
AS 23.10.085
AS 23.10.090

ARTICLE 5.

GENERAL PROVISIONS

Section
195. Place of employment for purposes of recordkeeping
200. Definitions

8 AAC 15.195. PLACE OF EMPLOYMENT FOR PURPOSES OF RECORDKEEPINC. For purposes of AS 23.10.100, the place where an employee is employed means a central office of the employer located within the state. However, the employer may keep duplicate records at the sites or premises where the work is performed. (Eff. / / , Register)

Authority: AS 23.10.085
AS 23.10.100

8 AAC 15.200. DEFINITIONS. In this chapter and in AS 23.10.050 - 23.10.150, unless the context requires otherwise:

(1) "administrative" means an employee;

(A) whose primary duty consists of work directly related to management policies or supervising the general business operations of his employer;

(B) who customarily and regularly exercises discretion and independent judgment;

(C) who performs his work under only general supervision;

(D) who is paid on a salary or fee basis;

(E) who regularly and directly assists a proprietor or an exempt executive employee of the employer; and

(F) who performs work along specialized or technical lines requiring special training, experience or knowledge and does not devote more than 20 percent of his weekly hours to activities which are not described in this paragraph or paragraphs (7) or (11) of this section.

(2) "casual employee" as used in AS 23.10.065(15), means an employee engaged in an activity which occurs without regularity and is not in the usual course of trade, business, occupation or profession of his employer.

(3) "commissioner" means the commissioner of labor.

(4) "department" means the Alaska Department of Labor.

(5) "director" means the director of the wage and hour division of the department or his designee.

(6) "domestic service in or about a private home" as used in AS 23.10.055(4), means a person employed in or about a private home of a person by whom he is employed and who performs such services or activities as a babysitter, a cook, a butler, a valet, a maid, a housekeeper, a governess, a janitor, a launderess, a caretaker, a handyman, a garderner, a footman, a groom or a chauffeur of automobiles for family use.

(7) "executive" means an employee:

(A) whose primary duty consists of the management of the enterprise in which he is employed or of a customarily recognized branch, department or subdivision of the enterprise;

(B) who customarily and regularly directs the work of two or more other employees;

(C) who has the authority to hire or fire or effect any other change of status of other employees or whose suggestions or recommendations regarding these kinds of changes is given particular weight;

(D) who customarily and regularly exercises discretionary authority;

(E) who does not devote more than 20 percent of his weekly hours to activities which are not directly and closely related to the work described in this paragraph or paragraphs (1) or (11) of this section; and

(F) who is compensated on a salary basis.

(8) "nonprofit" as used in AS 23.10.055(6), means an organization no part of the income or profit of which is distributable to its members, directors or officers and the status of the enterprise has been determined by the U.S. Internal Revenue Service as nonprofit.

(9) "on call" means time that an employee is required to remain on call on the employer's premises or so close to them that he cannot use the time effectively for his own purposes, but does not include the time an employee is not required to remain on or near his employer's premises but is merely required to leave word at his home or with the employer where he may be reached.

(10) "outside salesman" means a person who is employed for the purpose of making sales, contracts for sales, consignments or shipments for sale or obtaining orders for services or for use of facilities for which a consideration will be paid by the client or customer and whose hours of work of a nature other than that described in this paragraph or paragraph (12) do not exceed 20 percent of the hours worked in the workweek.

(11) "professional" means an employee, except for the classifications of registered nurse and licensed practical nurse;

(A) whose primary duty is:

(i) to perform work requiring knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction and study, as distinguished from a general academic education or from an apprenticeship or from training in the performance of routine mental, manual or physical process; or

(ii) to perform work that is original and creative in character in a recognized field or artistic endeavor (as opposed to work which can be produced by a person with general manual or intellectual ability and training), and the result of which depends primarily on the invention, imagination, or talent of the employee; or

(iii) to teach, tutor, instruct, or lecture in the activity of imparting knowledge, and who is employed and engaged in this activity as a teacher certified or recognized as such in a school or other educational establishment or institution; and

(B) whose work:

(i) requires the consistent exercise of discretion and judgement in its performance;

(ii) is predominately intellectual and varied in character (as opposed to routine mental, manual, mechanical, or physical work) and is of such character that the output produced or the result accomplished cannot be standarized on a time basis; and

(iii) is compensated on a salary or fee basis.

(12) "salesman employed on a straight commission basis" means a person who is regularly employed on the business premise of his employer and is compensated on a straight commission basis for the purpose of making sales, contracts for sales, consignments or shipments for sale or in obtaining orders for services or the use of facilities for which a consideration will be paid by the client or customer and whose hours of work of a nature other than that described in this paragraph or paragraph (10) do not exceed 20 percent of the hours worked in the workweek.

(13) "standby or waiting time" means time that an employee is required to be at or near his post or place of employment and is required to wait for work or an assignment or because of shutdown or repair and during which he cannot use the time effectively for his own purposes.

(14) "supervisory capacity" means those primary duties performed, except for the classifications of registered nurse and licensed practical nurse, by an employee who is employed solely for the purpose of regularly assigning and directing the activities of other employees, and is responsible for results of the work performed, and who does not perform duties regularly performed by the employees supervised, except for brief periods of time not to exceed 20 percent of the hours worked in the workweek. For the purpose of AS 23.10.060, it does not apply to any employee required by the employer to perform such activities on an intermittent or substitute basis during the course of his employment.

(15) "workweek" means a fixed and regularly recurring period of 168 hours, i.e. seven consecutive 24 hour periods. It may begin on any day of the week and need not coincide with the calendar week. An individual employee's workweek is the statutory or contract number of hours that he is to regularly work during that period. The workweek may not be artificially adjusted for the purpose of avoiding the payment of overtime, however the workweek may be changed for any other purpose in the manner provided in AS 23.05.160. (Eff. / / . Register)

Authority: AS 23.10.055
AS 23.10.060
AS 23.10.085

ENCLOSURE # 2

STATE OF ALASKA)
) SS.
FIRST JUDICIAL DISTRICT)

AFFIDAVIT OF NOTICE OF ADOPTION OF REGULATION

I, E.T. "Lee" Leland, W/H Investigator III, of the Department of Labor, being sworn, depose and state the following:

As required by AS 44.62.190, notice of the proposed adoption of 8 AAC 15.100-200 has been given by

(1) being published in a newspaper or trade publication

(2) being mailed to interested persons,

(3) being mailed or delivered to appropriate state officials,

(4) being furnished to the Department of Law,

(5) being furnished to incumbent state legislators.

Date: 10-3-78
Juneau, Alaska

E.T. "Lee" Leland

SUBSCRIBED AND SWORN TO before me this 3rd day of October, 197___.

Notary Public in and for Alaska
My Commission Expires: Oct 30, 78

ADVERTISING ORDER

ENCLOSURE # 3

AO- 07

TO: Anchorage Daily News
P.O. Box 40
Anchorage, Alaska 99501

PURCHASE NO: ADN 501

DATE OF A.O: August 21, 1978

DATES ADVERTISEMENT REQUIRED: August 30, 31 and September 1, 1978

THE MATERIAL BETWEEN THE DOUBLE LINES MUST BE PRINTED IN ITS ENTIRETY ON THE DATES SHOWN

FROM: Department of Labor
Wage and Hour Division
P.O. Box 630
Juneau, Alaska 99811

*Alaska Department of Labor
Administrative Services
Fiscal Section
P.O. Box 1149
Juneau, Alaska 99811

AFFIDAVIT-OF-PUBLICATION

UNITED STATES OF AMERICA
STATE OF Alaska
Third DIVISION. } ss

BEFORE ME, THE UNDERSIGNED, A NOTARY PUBLIC THIS DAY PERSONALLY APPEARED Nathalia M. Chevalier WHO, BEING FIRST DULY SWORN, ACCORDING TO LAW, SAYS THAT HE/SHE IS THE Legal Clerk OF THE ANCHORAGE NEWS PUBLISHED AT Anchorage IN SAID DIVISION Third AND STATE OF Alaska AND THAT THE ADVERTISEMENT, OF WHICH THE ANNEXED IS A TRUE COPY, WAS PUBLISHED IN SAID PUBLICATION ON THE 30 DAY OF August 19 78 AND THEREAFTER FOR 3 CONSECUTIVE DAYS, THE LAST PUBLICATION APPEARING ON THE 1 DAY OF Sept. 19 78 AND THAT THE RATE CHARGED THEREON IS NOT IN EXCESS OF THE RATE CHARGED PRIVATE INDIVIDUALS.

3x 61 inches $81.90

Nathalia M. Chevalier

SUBSCRIBED AND SWORN TO BEFORE ME THIS 1 DAY OF Sept 19 78.

Patricia Lindsay

NOTARY PUBLIC FOR STATE OF Alaska
MY COMMISSION EXPIRES 5/1/82

NOTICE OF PROPOSED CHANGES IN THE REGULATIONS OF THE DEPARTMENT OF LABOR

Notice is hereby given that the Alaska Department of Labor, under the authority vested by AS 23.10.025, proposes to repeal and adopt regulations in Title 8 of the Alaska Administrative Code to implement AS 23.10.050 — AS 23.10.150, as follows:

(1) 8 AAC 15 is amended by repealing sections 010 through 070 in their entirety and adopting and replacing with new sections as follows:

ARTICLE 1.
Article 1 stipulates minimum wages, maximum hours and computation of overtime applicable to employment in Alaska.

ARTICLE 2.
Article 2 provides certain exemptions from the payment of minimum wages or overtime.

ARTICLE 3.
Article 3 stipulates those deductions from an employee's wages that are permissable and those deductions that are prohibited.

ARTICLE 4.
Article 4 establishes the procedures for assignment of claims and/or the conduct of investigative hearings and conferences.

ARTICLE 5.
Article 5 defines miscellaneous terms as used in this chapter and AS 23.10.

Notice is also given that any interested party may present oral or written statements or arguments relevant to the action proposed at a hearing to be held at the DIVISION OF AVIATION BUILDING CONFERENCE ROOM, 4111 AVIATION AVENUE, (next to Lake Hood) Anchorage, Alaska 99502 at 1:30 p.m. o'clock on September 15, 1978.

Copies of the regulations may be obtained by writing to: Wage and Hour Division, Alaska Department of Labor, P.O. Box 630, Juneau, Alaska 99811.

The Department of Labor upon its own motion or at the instance of any interested person, may after September 30, 1978 adopt the proposals substantially as described above without further notice or may decide to take no action on them.

Date 8/21/78

/s/ William E. Spear
Deputy Commissioner
Department of Labor

Pub: Aug. 30, 31, Sept. 1, 1978

L79168

REMINDER —
ATTACH INVOICES AND PROOF OF PUBLICATION.

ADVERTISING ORDER

DEPT NO	A.O. NO
AO- 07	2595

PUBLISHER	Southeast Alaska Empire 235 2nd Street Juneau, Alaska 99801	VENDOR NO: SAE 734 DATE OF A.O.: August 21, 1978 DATES ADVERTISEMENT REQUIRED: August 30, 31 and September 1, 1978
FROM	Department of Labor Wage and Hour Division P.O. Box 630 Juneau, Alaska 99811	THE MATERIAL BETWEEN THE DOUBLE LINES MUST BE PRINTED IN ITS ENTIRETY ON THE DATES SHOWN *Alaska Department of Labor Administrative Services Fiscal Section P.O. Box 1149 Juneau, Alaska 99811

AFFIDAVIT-OF-PUBLICATION

UNITED STATES OF AMERICA
STATE OF Alaska } ss
_____ DIVISION.

BEFORE ME, THE UNDERSIGNED, A NOTARY PUBLIC THIS DAY PERSONALLY APPEARED Jeff A. Wilson WHO, BEING FIRST DULY SWORN, ACCORDING TO LAW, SAYS THAT HE/SHE IS THE Gen. Manager OF S.E. Alaska Empire PUBLISHED AT Juneau IN SAID DIVISION _____ AND STATE OF Alaska AND THAT THE ADVERTISEMENT, OF WHICH THE ANNEXED IS A TRUE COPY, WAS PUBLISHED IN SAID PUBLICATION ON THE 30th DAY OF August 1978, AND THEREAFTER FOR 2 CONSECUTIVE DAYS, THE LAST PUBLICATION APPEARING ON THE 1st DAY OF September 1978, AND THAT THE RATE CHARGED THEREON IS NOT IN EXCESS OF THE RATE CHARGED PRIVATE INDIVIDUALS.

[signature]

SUBSCRIBED AND SWORN TO BEFORE ME
THIS 25th DAY OF September 1978

[signature]

NOTARY PUBLIC FOR STATE OF _____
MY COMMISSION EXPIRES _____

NOTICE OF PROPOSED CHANGES IN THE REGULATIONS OF THE DEPARTMENT OF LABOR

Notice is hereby given that the Alaska Department of Labor, under the authority vested by AS 23.10.085, proposes to repeal and adopt regulations in Title 8 of the Alaska Administrative Code to implement AS 23.10.150, as follows:

(1) 8 AAC 15 is amended by repealing sections 010 through 070 in their entirety and adopting and replacing with new sections as follows:

ARTICLE 1.

Article 1 stipulates minimum wages, maximum hours and computation of overtime applicable to employment in Alaska.

ARTICLE 2

Article 2 provides certain exemptions from the payment of minimum wages or overtime.

ARTICLE 3

Article 3 stipulates those deductions from an employee's wages that are permissible and those deductions that are prohibited.

ARTICLE 4

Article 4 establishes the procedures for assignment of claims and/or the conduct of investigative hearings and conferences.

ARTICLE 5

Article 5 defines miscellaneous terms as used in this chapter and AS 23.10.

Notice is also given that any interested party may present oral or written statements or arguments relevant to the action proposed at a hearing to be held at the DIVISION OF AVIATION BUILDING CONFERENCE ROOM, 4111 AVIATION AVENUE, next to Lake Hood, Anchorage, Alaska 99502 at 1:30 p.m. o'clock on September 15, 1978.

Copies of the regulations may be obtained by writing to: Wage and Hour Division, Alaska Department of Labor, P.O. Box 630, Juneau, Alaska 99811.

The Department of Labor upon its own motion or at the instance of any interested person, may after September 20, 1978 adopt the proposals substantially as described above without further notice or may decide to take no action on them.

Date 8-21-78

William E. Spear
Deputy Commissioner
Department of Labor

Publish: Aug. 30, 31, Sept. 1, 1978
900-82

REMINDER –
ATTACH INVOICES AND PROOF OF PUBLICATION

AFFIDAVIT OF PUBLICATION

UNITED STATES OF AMERICA
STATE OF ALASKA
FOURTH DISTRICT
} ss.

Legal 13,544

NOTICE OF PROPOSED CHANGES IN THE REGULATIONS OF THE DEPARTMENT OF LABOR

Notice is hereby given that the Alaska Department of Labor under the authority vested by AS 23.10.085, proposes to repeal and adopt regulations in Title 8 of the Alaska Administrative Code to implement AS 23.10.050-AS 23.10.150, as follows:

(1) 8 AAC 15 is amended by repealing sections 010 through 070 in their entirety and adopting and replacing with their new sections as follows:

ARTICLE 1

Article 1 stipulates minimum wages, maximum hours and computation of of overtime applicable to employment in Alaska

ARTICLE 2

Article 2 provides certain emptions from the payment of minimum wages or overtime.

ARTICLE 3

Article 3 stipulates those deductions from an employee's wages that are permissable and those deductions that are prohibited

ARTICLE 4

Article 4 establishes the procedures for assignment of claims and/or the conduct of investigative hearings and conferences

ARTICLE 5

Article 5 defines miscellaneous terms as used in this chapter and AS 23.10

Notice is also given that any interested party may present oral or written statements or arguments relevant to the action proposed at a hearing to be held at the DIVISION OF AVIATION BUILDING CONFERENCE ROOM, 4111 AVIATION AVENUE (next to Lake Hood) Anchorage, Alaska 99502 at 1:30 p.m. o'clock on September 15, 1978.

Copies of the regulations may be obtained by writing to: Wage and Hour Division, Alaska Department of Labor, P.O. Box 430, Juneau, Alaska 99811

The Department of Labor upon its own motion or at the instance of any interested person may after September 30, 1978 adopt the proposals substantially as described above without further notice or may decide to take no action on them

Date 8/21/78

William E. Spear
Deputy Commissioner
Department of Labor

Publish August 30 31 September 1 1978

Before me, the undersigned, a notary public, this day personally appeared FRANCES PFEIFFER, who, being first duly sworn, according to law, says that he/she is an Advertising Clerk of the Fairbanks Daily News-Miner, a newspaper published at Fairbanks, in said Fourth District and State, and that the advertisement, of which the annexed is a true copy, was published in said paper on the following day(s),

8/30/78	8/31/78
9/1/78	

, and that the rate charged thereon is not in excess of the rate charged private individuals with the usual discounts.

Frances Pfeiffer

Subscribed and sworn to before me this 5th day of September, 1978

Notary Public in and for the State of Alaska.

My commission expires [illegible]

ENCLOSURE # 4

STATE OF ALASKA)
) ss.
THIRD JUDICIAL DISTRICT)

AFFIDAVIT OF ORAL HEARING

I, Don Wilson, W/H Investigator II of the Department of Labor, being sworn depose and state the following:

On September 15, 1978 at 1:30 p.m., in the Division of Aviation Conference Room, 4111 Aviation Avenue, Anchorage, Alaska, I presided over a public hearing held in accordance with AS 44.62.210 for the purpose of taking testimony in connection with the adoption of 8 AAC 15.100-200.

Date: September 15, 1978
Anchorage, Alaska

Donald R. Wilson

SUBSCRIBED AND SWORN TO before me this 15th day of September, 1978.

Karen O. Michael
NOTARY PUBLIC IN AND FOR ALASKA

My Commission Expires: 4-5-81

PLEASE PRINT

TITLE 23

HEARING - PROPOSED REGULATIONS

FRIDAY, SEPTEMBER 15, 1978

	NAME	ADDRESS	ORGANIZATION REPRESENTED	WILL YOU BE OFFERING TESTIMONY ORAL	WRITTEN	BOTH
1.		1:30 pm opened				
2.		2:15 pm Closed				
3.						
4.						
5.						
6.		No attendance				
7.						
8.						
9.						
0.						
1.						
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0.						
1.						
2.						

ENCLOSURE # 5

October 9, 1978

Arthur H. Peterson
Assistant Attorney General
and Regulation Attorney
Department of Law

THRU: William E. Spear
Deputy Commissioner

Dale W. Cheek
Director
Wage and Hour/Mechanical
Engineering Division
Department of Labor

8 AAC 15. as adopted by
the Department of Labor

Please find enclosed, original and 3 copies of 12 pages of regulations adopted by the Department of Labor concerning Wages and Hours under TITLE 23. Alaska Wage and Hour Act with related affidavits and documents as required under the provisions of AS 44.62.

We respectfully request your final review and transmittal of the regulations and documents to the office of the Lieutenant Governor for filing.

Thank you.

DWC/rh

Enclosure

ORDER REPEALING AND ADOPTING, REGULATIONS
OF THE DEPARTMENT OF LABOR

The attached twelve (12) pages of regulations, dealing with 8 AAC 15. Alaska Wages and Hours, are hereby adopted and certified to be correct copies of the regulations which the Department of Labor repeals and adopts, under authority vested by AS 23.10.085 and after compliance with the Administrative Procedure Act (AS 44.62), specifically including notice under AS 44.62.190 and 44.62.200 and opportunity for public comment under AS 44.62.210.

This order takes effect on the 30th day after it has been filed by the Lieutenant Governor as provided in AS 44.62.180.

DATE: 13 October 1978

Wm Spear
William E. Spear
Deputy Commissioner

I, _____, Lieutenant Governor for the State of Alaska, certify that on _____, 197___, at_____.m., I filed the attached regulat'ons according to the provisions of AS 44.62.040 - 44.62.120.

_____
Lieutenant Governor

Effective_____.)
Register_____.)

TITLE 8. LABOR

PART 1. INDUSTRIAL WELFARE

CHAPTER 15. ALASKA WAGES AND HOURS

Section
10-70. Repealed

8 AAC 15.010 SUMMARY: ALASKA WAGE AND HOUR ACT. Repealed 11/ 4/74.

8 AAC 15.015 EXEMPTIONS FOR SEARCHING FOR PLACER OR HARD ROCK MINERALS. Repealed / / .

8 AAC 15.020 EXEMPTIONS FOR INDIVIDUALS UNDER 18 WHO ARE PART TIME EMPLOYEES. Repealed / / .

8 AAC 15.030 DETERMINING THE NUMBER OF EMPLOYEES FOR PURPOSES OF AS 23.10.060(1). Repealed / / .

8 AAC 15.040 SMALL MINING OPERATIONS. Repealed / / .

8 AAC 15.050 DEDUCTIONS FROM AN EMPLOYEE'S WAGES. Repealed / / .

8 AAC 15.060 PLACE OF EMPLOYMENT FOR PURPOSES OF RECORD KEEPING. Repealed / / .

8 AAC 15.070 DEFINITIONS OF MISCELLANEOUS TERMS USED IN AS 23.10.050 - 23.10.150. Repealed / / .

Article

1. Minimum Wages and Overtime
2. Exemptions
3. Deductions from Wages
4. Procedures Relating to Violations, Investigations or Hearings
5. General Provisions

ARTICLE 1.

MINIMUM WAGES AND OVERTIME

Section
100. Payment for overtime
105. Minimum wage

8 AAC 15.100 PAYMENT FOR OVERTIME. (a) An employee's regular rate is the basis for computing overtime. The regular rate is an hourly rate figured on a weekly basis. Employees need not actually be hired at an hourly rate; they may be paid by piece-rate, salary, commission or any other basis agreeable to the employer and employee. However, the applicable compensation basis must be converted to an hourly rate when determining the regular rate for computing overtime compensation.

(b) The regular rate referred to in (a) is that fixed hourly amount determined from an employee's hourly wage, salary, commission, piece-rate or other basis of compensation that he is to be paid for all contract hours up to the daily or weekly maximum, established under AS 23.10.060, that he is regularly employed to work during a work week.

(c) When computing an employee's hours for the purpose of determining overtime, the employer shall count all hours the employee worked during that week including periods of "on call" and "standby or waiting time" required for the convenience of the employer which were a necessary part of the employee's performance of his employment. However, if the employee is completely relieved from all duties for a certain period during which he may use the time effectively for his own purposes, then those periods need not be counted.

(d) The following are not acceptable methods of complying with the payment of overtime provisions of AS 23.10.060:

(1) guaranteed weekly pay for variable hours plan ("Belo" contracts) established under sec. 7(f) of the Fair Labor Standards Act of 1938, as amended (29U.S.C. 207(f) as implemented in 29 C.F.R. 778-402-778.414);

(2) compensatory time off in lieu of payment for overtime; and

(3) flex-time or flexitime plans established under 29 C.F.R. 778.114 providing a fixed salary for fluctuating hours up to a predetermined maximum number of hours in a work-week. (Eff. / / , Register)

Authority: AS 23.10.060
AS 23.10.085

8 AAC 15.105. MINIMUM WAGE. As used in AS 23.10.065, "prevailing Federal Minimum Wage Law" means that rate established in Sec. 6(a)(1) of the Fair Labor Standards Act of 1938, as amended (29 U.S.C. 206(a)(1)) as the minimum wage generally applicable to employees subject to that Act. (Eff. / / , Register)

Authority: AS 23.10.065
AS 23.10.085

ARTICLE 2.

EXEMPTIONS

Section
120. Minimum wage exemption for handicapped persons
125. Minimum wage exemption for student learners
130. Exemption for searching for placer or hard rock minerals
135. Exemption for individuals under 18 who are part time employees
140. Determining the number of employees for purposes of AS 23.10.060(1)
145. Small mining operations

8 AAC 10.120. MINIMUM WAGE EXEMPTION FOR HANDICAPPED PERSONS. (a) An application to employ a person at less than the minimum wage established under AS 23.10.065 must be made either on a form provided by the department or by filing an application for a special certificate to employ a handicapped person (29.C.F.R. Part 525) with the Regional Director of the Wage and Hour Division, U.S. Department of Labor, 909 First Avenue, Seattle, Washington, 98104.

(b) An application filed with the department must set out the facts showing that the person's productive capacity to do the work he is to perform is impaired by physical or mental deficiency, age or injury. A medical certificate will be required in all cases in which the handicap is not clearly obvious. The information in the application must be complete and must be certified by a responsible person who has knowledge of the facts.

(c) If the commissioner determines from the information provided in the application that the person would otherwise be deprived of employment opportunity, he will, in the exercise of his discretion, approve a wage rate lower than that established under AS 23.10.065. With the exception of very extreme cases where the person is so seriously impaired that he is unable to engage in competitive employment, that rate will not be less than 50 percent of the minimum wage established under AS 23.10.065.

(d) If an approval is issued under (c) of this section, it will specify the approved wage rate and the period for which it is effective. An application for renewal of an exemption must be made in the same manner as the original but must also include an evaluation of that person's productivity, comparing the degree of productivity between the initial application and the renewal.

(e) As a general rule, approval for payment of a wage lower than that established under AS 23.10.065 to persons with a temporary handicap will not be granted.

(f) Persons undergoing rehabilitation treatment or therapy relating to narcotics or alcoholism are not considered handicapped for the purposes of AS 23.10.070 and this section. (Eff. / / , Register)

Authority: AS 23.10.070(1)
AS 23.10.085

8 AAC 15.125 MINIMUM WAGE EXEMPTION FOR STUDENT LEARNERS. (a) An exemption for student learners from the minimum wage requirement of AS 23.10.065 is available when the student learner is enrolled in a course of study and training in a cooperative vocational training program under a recognized state or local educational authority or in a substantially similar program conducted by a private school.

(b) An application for an exemption under (a) of this section must be made on a form provided by the department. The information required must be complete and must be signed by the employer and the student learner's school coordinator or principal. To qualify for the exemption, the employment must meet all the requirements set out in AS 23.10.325-370 and chapter 5 of this title relating to the employment of children.

(c) A wage rate authorized under this section will not be less than 75 percent of the minimum wage established under AS 23.10.065.

(d) The exemption from minimum wages for full-time students established by Sec. 14(b) of the Fair Labor Standards Act of 1938, as amended, (29 U.S.C. 214(b)) as implemented in 29 C.F.R. 519.1 - 519.2 does not apply to employment subject to the provisions of AS 23.10.065. (Eff. / / , Register)

Authority: AS 23.10.070(3)
AS 23.10.085

8 AAC 15.130 EXEMPTION FOR SEARCHING FOR PLACER OR HARD ROCK MINERALS. The exemption from AS 23.10.050-23.10.150 provided by AS 23.10.055(10) applies to those activities commonly referred to as "prospecting" and does not apply once development of and production from a known mineral source has been begun. (Eff. / / , Register)

Authority: AS 23.10.055(10)
AS 23.10.085

8 AAC 15.135 EXEMPTION FOR INDIVIDUALS UNDER 18 WHO ARE PART TIME EMPLOYEES. The exemption from AS 23.10.050-23.10.150 provided by AS 23.10.055(11) does not apply during any work week in which an individual normally within the ambit of AS 23.10.055(11) is employed in excess of 30 hours. (Eff. / / , Register)

Authority: AS 23.10.055(11)
AS 23.10.085

8 AAC 15.140 DETERMINING THE NUMBER OF EMPLOYEES FOR PURPOSES OF AS 23.10.060(1). In determining the number of employees that an employer employs for purposes of AS 23.10.060(1), all officers of a corporation who actively engage in the business and all part time employees will be counted regardless of the number of days or hours worked.

Authority: AS 23.10.060(1)
AS 23.10.085

8 AAC 15.145 SMALL MINING OPERATIONS. (a) A mining season, for purposes of AS 23.10.060(5), means the cumulative period of time during which mining operations are carried on during a calendar year, but not exceeding 20 weeks.

(b) The exemption from the payment for overtime requirements of AS 23.10.060 for employers engaged in small mining operations provided by AS 23.10.060(5) is available to the employer for a maximum of 14 consecutive weeks, commencing on the first day the mine begins active operations in a calendar year. In determining the available period of exemption, periods during which the mine is not actively engaged in mining operations for such reasons as, but not limited to, assessment work and repair or construction of buildings or equipment are not part of the exemption period.

(c) During the exemption period described in (b), an employer engaged in small mining operations remains responsible for payment of overtime at the rates established by AS 23.10.060 for work performed by an employee in excess of 12 hours a day or 56 hours a week. (Eff. / / , Register)

Authority: AS 23.10.060(5)
AS 23.10.085

ARTICLE 3.

DEDUCTIONS FROM WAGES

Section
160. Deductions from an employee's wages

8 AAC 15.160. DEDUCTIONS FROM AN EMPLOYEE'S WAGES. (a) AS 23.10.085(c) does not limit the right of an employer and employee to enter into a written agreement to provide for deductions of monetary obligations of an employee other than the cost of board and lodging. However, a written agreement for other deductions payable to the employer or person acting in the employer's behalf or interest, other than the cost of board or lodging, is not valid if it would have the effect of reducing an employee's wage rate below the statutory minimum wage or requiring an employee to reimburse the employer for any of the following:

(1) customer checks returned due to insufficient funds or any other reasons;

(2) non-payment for goods or services as a result of customers walk-out or defaulting on credit;

(3) cash or cash register shortages for which the employee does not acknowledge responsibility;

(4) lost or stolen property or alleged theft by the employee for which the employee does not acknowledge responsibility;

(5) damage or breakage costs unless they are clearly due to willful conduct on the part of the employee, the responsibility for which has been acknowledged by the employee.

(b) Nothing in (a) prohibits deductions from earnings based on a written agreement whereby the employer has been directed by the employee to pay a sum for the benefit of that employee to a creditor, donee, or other thrid party and neither the employer nor any person acting in his behalf or interest derives any profit or benefit from the transaction.

(c) Written agreements for deductions from earnings are not required for any lawful deduction otherwise authorized or required by state or federal law or by order of a court of competent jurisdiction.

(d) An employer subject to AS 23.10.050-23.10.150 shall furnish each person employed by him who is not exempted from the coverage of those sections by AS 23.10.055 a statement of earnings and deductions for each pay period. The statement of earnings and deductions shall contain the following information:

(1) employee's rate of pay;

(2) the beginning and ending dates of the pay period and the weekly hours actually worked during the period;

(3) federal income tax deductions;

(4) federal insurance contribution act deductions;

(5) Alaska income tax deduction;

(6) Alaska school tax deduction;

(7) Alaska employment security act contributions;

(8) board and lodging costs;

(9) advances; and

(10) other authorized deductions. (Eff. / / , Register ,)

Authority: AS 23.10.085

ARTICLE 4.

PROCEDURES RELATING TO VIOLATIONS, INVESTIGATIONS OR HEARINGS

Section
175. Assignment of claims
180. Investigations, conference and persuasion

8 AAC 15.175. ASSIGNMENT OF CLAIMS. (a) A person who believes that he has not been paid wages due him under AS 23.10.050 - 23.10.150 may assign his claim to the department for collection.

(b) The department will not accept an assignment of a claim under AS 23.10.050 - 23.10.150 in excess of $5,000, excluding liquidated damages. (Eff. / / , Register)

Authority: AS 23.10.085
AS 23.10.110(b)

8 AAC 15.180. INVESTIGATIONS, CONFERENCES AND PERSUASION. (a) The wage and hour division will investigate potential violations of AS 23.10.050-23.10.150 on its own motion or on the assignment to it of a claim under sec. 175 of this chapter.

(b) If after investigation the division finds that probable cause exists for believing that a violation of AS 23.10.050 - 23.10.150 has occurred, it will attempt to correct the unlawful practice by conference and persuasion as follows:

(1) the division will provide the employer believed to have violated AS 23.10.050 - 23.10.150 with a copy of the assignment or a description of the alleged violation and inform him of the results of its investigation; and

(2) the division will schedule an informal conference with the employer to discuss the matter and attempt to eliminate the alleged violations.

(c) If the informal conference succeeds in correcting the alleged violation, no further action will be taken by the division against the employer.

(d) If an alleged violation is not rectified by the informal conference or if the employer fails to attend the conference without good cause shown, the director may, at his discretion;

(1) conduct a further investigation into the matter;

(2) enforce the claim through initiation of an adjudicative hearing under provisions of the Administrative Procedures Act (AS 44.62);

(3) enforce the claim through filing of an action in a court of competent jurisdiction.

(e) If the director determines under (d)(1) of this section that a further investigation into the matter should be conducted, he may provide that it be carried out by initiation of an investigative proceeding conducted in accordance with secs. 10 through 30 of chapter 25 of this title. (Eff. / / , Register)

Authority: AS 23.10.080
AS 23.10.085
AS 23.10.090
AS 23.10.110

ARTICLE 5.

GENERAL PROVISIONS

Section
195. Place of employment for purposes of recordkeeping
200. Definitions

8 AAC 15.195. PLACE OF EMPLOYMENT FOR PURPOSES OF RECORDKEEPING. For purposes of AS 23.10.100, "the place where an employee is employed" means a central office of the employer located within the state. However, the employer may keep duplicate records at the sites or premises where the work is performed. (Eff. / / , Register)

Authority: AS 23.10.085
AS 23.10.100

8 AAC 15.200. DEFINITIONS. In this chapter and in AS 23.10.050 - 23.10.150, unless the context requires otherwise:

(1) "administrative" means an employee;

(A) whose primary duty consists of work directly related to management policies or supervising the general business operations of his employer;

(B) who customarily and regularly exercises discretion and independent judgment;

(C) who performs his work under only general supervision;

(D) who is paid on a salary or fee basis;

(E) who regularly and directly assists a proprietor or an exempt executive employee of the employer; and

(F) who performs work along specialized or technical lines requiring special training, experience or knowledge and does not devote more than 20 percent of his weekly hours to activities which are not described in this paragraph or paragraphs (7) or (11) of this section;

(2) "casual employee" as used in AS 23.10.065(15), means an employee engaged in an activity which occurs without regularity and is not in the usual course of trade, business, occupation or profession of his employer;

(3) "commissioner" means the commissioner of labor;

(4) "department" means the Alaska Department of Labor;

(5) "director" means the director of the wage and hour division of the department or his designee;

(6) "domestic service in or about a private home" as used in AS 23.10.055(4), means a person employed in or about a private home of a person by whom he is employed and who performs such services or activities as a babysitter, a cook, a butler, a valet, a maid, a housekeeper, a governess, a janitor, a launderess, a caretaker, a handyman, a gardener, a footman, a groom or a chauffeur of automobiles for family use;

(7) "executive" means an employee:

(A) whose primary duty consists of the management of the enterprise in which he is employed or of a customarily recognized branch, department or subdivision of the enterprise;

(B) who customarily and regularly directs the work of two or more other employees;

(C) who has the authority to hire or fire or effect any other change of status of other employees or whose suggestions or recommendations regarding these kinds of changes are given particular weight;

(D) who customarily and regularly exercises discretionary authority;

(E) who does not devote more than 20 percent of his weekly hours to activities which are not directly and closely related to the work described in this paragraph or paragraphs (1) or (11) of this section; and

(F) who is compensated on a salary basis;

(8) "nonprofit" as used in AS 23.10.055(6), means an organization no part of the income or profit of which is distributable to its members, directors or officers and whose status has been determined by the U.S. Internal Revenue Service as nonprofit;

(9) "on call" means time that an employee is required to remain on call on the employer's premises or other place of employment or so close to them that he cannot use the time effectively for his own purposes, but does not include the time an employee is not required to remain on or near his employer's premises or other place of employment but is merely required to leave word at his home or with the employer where he may be reached;

(10) "outside salesman" means a person who is employed for the purpose of making sales, contracts for sales, consignments or shipments for sale or obtaining orders for services or for use of facilities for which a consideration will be paid by the client or customer and whose hours of work of a nature other than that described in this paragraph or paragraph (12) do not exceed 20 percent of the hours worked in the workweek;

(11) "professional" means an employee, except for the classifications of registered nurse and licensed practical nurse;

(A) whose primary duty is:

(i) to perform work requiring knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction and study, as distinguished from a general academic education or from an apprenticeship or from training in the performance of routine mental, manual or physical processes; or

(ii) to perform work that is original and creative in character in a recognized field of artistic endeavor (as opposed to work which can be produced by a person with general manual or intellectual ability and training), and the result of which depends primarily on the invention, imagination, or talent of the employee; or

(iii) to teach, tutor, instruct, or lecture in the activity of imparting knowledge, and who is employed and engaged in this activity as a teacher certified or recognized as such in a school or other educational establishment or institution; and

(B) whose work:

(i) requires the consistent exercise of discretion and judgment in its performance;

(ii) is predominately intellectual and varied in character (as opposed to routine mental, manual, mechanical, or physical work) and is of such character that the output produced or the result accomplished cannot be standardized on a time basis; and

(iii) is compensated on a salary or fee basis;

(12) "salesman employed on a straight commission basis" means a person who is regularly employed on the business premise of his employer and is compensated on a straight commission basis for the purpose of making sales, contracts for sales, consignments or shipments for sale or in obtaining orders for services or the use of facilities for which a consideration will be paid by the client or customer and whose hours of work of a nature other than that described in this paragraph or paragraph (10) do not exceed 20 percent of the hours worked in the workweek;

(13) "standby or waiting time" means time that an employee is required to be at or near his post or place of employment and is required to wait for work or an assignment, whether or not because of shutdown or repair, and during which he cannot use the time effectively for his own purposes;

(14) "supervisory capacity" means those primary duties performed, except for the classifications of registered nurse and licensed practical nurse, by an employee who is employed solely for the purpose of regularly assigning and directing the activities of other employees, and is responsible for results of the work performed, and who does nct perform duties regularly performed by the employees supervised, except for brief periods of time not to exceed 20 percent of the hours worked in the workweek. For the purpose of AS 23.10.060, it does not apply to any employee required by the employer to perform such activities on an intermittent or substitute basis during the course of his employment;

(15) "workweek" means a fixed and regularly recurring period of 168 hours, i.e. seven consecutive 24 hour periods. It may begin on any day of the week and need not coincide with the calendar week. An individual employee's workweek is the statutory or contract number of hours that he is to regularly work during that period. The workweek may not be artificially adjusted for the purpose of avoiding the payment of overtime, however the workweek may be changed for any other purpose in the manner provided in AS 23.05.160. (Eff. / / . Register)

Authority: AS 23.10.055
AS 23.10.060
AS 23.10.085

RECEIVED
NOV 27 1978
OFFICE OF THE COMMISSIONER

ORDER REPEALING AND ADOPTING REGULATIONS
OF THE DEPARTMENT OF LABOR

The attached twelve (12) pages of regulations, dealing with 8 AAC 15, Alaska Wages and Hours, are hereby adopted and certified to be correct copies of the regulations which the Department of Labor repeals and adopts, under authority vested by AS 23.10.08 and after compliance with the Administrative Procedure Act (AS 44.62), specifically including notice under AS 44.62.190 and 44.62.200 and opportunity for public comment under AS 44.62.210.

This order takes effect on the 30th day after it has been filed by the Lieutenant Governor as provided in AS 44.62.180.

DATE: 13 October 1978

Wm Spear

William E. Spear
Deputy Commissioner

Designee to
I, Avrum M. Gross, , Lieutenant Governor for the State of Alaska, certify that on November 9, 1978, at 10:20 a.m., I filed the attached regulations according to the provisions of AS 44.62.040 - 44.62.120.

Lieutenant Governor's Designee

Effective December 9, 1978.)
Register 68, January 1979.)

02 001B (Rev 10/76)

STATE
of ALASKA

MEMORANDUM

6a

TO: William E. Spear
Deputy Commissioner
Alaska Department of Labor

DATE: November 8, 1978

FILE NO:

TELEPHONE NO:

cc: Wett

FROM: Avrum M. Gross
Attorney General

By:
Arthur H. Peterson
Assistant Attorney General
and Regulations Attorney

SUBJECT: Regulations re Alaska wages & hours (8 AAC 15)
Our File: J-99-095-78

We have reviewed these regulations in accordance with AS 44.-62.060, and approve them for filing by the lieutenant governor. A duplicate original of this memorandum is being furnished the lieutenant governor, along with your regulations and related documents.

Under AS 44.62.125(b)(6), a few, very minor corrections have been made in this material, as shown on the attached copy.

AHP:md

cc: Ronald W. Lorensen
Assistant Attorney General

RECEIVED

NOV 09 1978

OFFICE OF THE COMMISSIONER

TITLE 8. LABOR

PART 1. INDUSTRIAL WELFARE.

CHAPTER 15. ALASKA WAGES AND HOURS.

Publisher. Please be sure that the chapter listing for Title 8 sho the chang in the Ch.. heading, r in 1974. Thx

Section
10-70. Repealed

8 AAC 15.010 SUMMARY: ALASKA WAGE AND HOUR ACT. Repealed 11/ 4/74.

8 AAC 15.015 EXEMPTIONS FOR SEARCHING FOR PLACER OR HARD ROCK MINERALS. Repealed / / .

8 AAC 15.020 EXEMPTIONS FOR INDIVIDUALS UNDER 18 WHO ARE PART TIME EMPLOYEES. Repealed / / .

8 AAC 15.030 DETERMINING THE NUMBER OF EMPLOYEES FOR PURPOSES OF AS 23.10.060(1). Repealed / / .

8 AAC 15.040 SMALL MINING OPERATIONS. Repealed / / .

8 AAC 15.050 DEDUCTIONS FROM AN EMPLOYEE'S WAGES. Repealed / / .

8 AAC 15.060 PLACE OF EMPLOYMENT FOR PURPOSES OF RECORD KEEPING. Repealed / / .

8 AAC 15.070 DEFINITIONS OF MISCELLANEOUS TERMS USED IN AS 23.10.050 - 23.10.150. Repealed / / .

Article

1. Minimum Wages and Overtime (8 AAC 15.100 — 8 AAC 15.105)
2. Exemptions (8 AAC 15. 120 — 8 AAC 15.145)
3. Deductions from Wages (8 AAC 15. 160)
4. Procedures Relating to Violations, Investigations or Hearings (8 AAC 15. 175 — 8 AAC 15. 180)
5. General Provisions (8 AAC 15.900 — 8 AAC 15.910)

ARTICLE 1.

MINIMUM WAGES AND OVERTIME.

Section
100. Payment for overtime
105. Minimum wage

8 AAC 15.100 PAYMENT FOR OVERTIME. (a) An employee's regular rate is the basis for computing overtime. The regular rate is an hourly rate figured on a weekly basis. Employees need not actually be hired at an hourly rate; they may be paid by piece-rate, salary, commission or any other basis agreeable to the employer and employee. However, the applicable compensation basis must be converted to an hourly rate when determining the regular rate for computing overtime compensation.

(b) The regular rate referred to in (a) is that fixed hourly amount determined from an employee's hourly wage, salary, commission, piece-rate or other basis of compensation that he is to be paid for all contract hours up to the daily or weekly maximum, established under AS 23.10.060, that he is regularly employed to work during a work week.

(c) When computing an employee's hours for the purpose of determining overtime, the employer shall count all hours the employee worked during that week including periods of "on call" and "standby or waiting time" required for the convenience of the employer which were a necessary part of the employee's performance of his employment. However, if the employee is completely relieved from all duties for a certain period during which he may use the time effectively for his own purposes, then those periods need not be counted.

(d) The following are not acceptable methods of complying with the payment of overtime provisions of AS 23.10.060:

(1) guaranteed weekly pay for variable hours plan ("Belo" contracts) established under sec. 7(f) of the Fair Labor Standards Act of 1938, as amended (29U.S.C. 207(f) as implemented in 29 C.F.R. 778-402-778.414);

(2) compensatory time off in ~~lieu~~ place of payment for overtime; and

(3) flex-time or flexitime plans established under 29 C.F.R. 778.114 providing a fixed salary for fluctuating hours up to a predetermined maximum number of hours in a work-week. (Eff. / / , Register)

Authority: AS 23.10.060
AS 23.10.085

8 AAC 15.105. MINIMUM WAGE. As used in AS 23.10.065, "prevailing Federal Minimum Wage Law" means that rate established in Sec. 6(a)(1) of the Fair Labor Standards Act of 1938, as amended, (29 U.S.C. 206(a)(1)) as the minimum wage generally applicable to employees subject to that Act.
(Eff. / / , Register)

Authority: AS 23.10.065
AS 23.10.085

ARTICLE 2.

EXEMPTIONS.

Section
120. Minimum wage exemption for handicapped persons
125. Minimum wage exemption for student learners
130. Exemption for searching for placer or hard rock minerals
135. Exemption for individuals under 18 w are part time employees
140. Determining the number of employees for purposes of AS 23.10.060(1)
145. Small mining operations

8 AAC 10.120. MINIMUM WAGE EXEMPTION FOR HANDICAPPED PERSONS. (a) An application to employ a person at less than the minimum wage established under AS 23.10.065 must be made either on a form provided by the department or by filing an application for a special certificate to employ a handicapped person (29.C.F.R. Part 525) with the Regional Director of the Wage and Hour Division, U.S. Department of Labor, 909 First Avenue, Seattle, Washington, 98104.

(b) An application filed with the department must set out the facts showing that the person's productive capacity to do the work he is to perform is impaired by physical or mental deficiency, age, or injury. A medical certificate will be required in all cases in which the handicap is not clearly obvious. The information in the application must be complete and must be certified by a responsible person who has knowledge of the facts.

(c) If the commissioner determines, from the information provided in the application, that the person would otherwise be deprived of employment opportunity, he will, in the exercise of his discretion, approve a wage rate lower than that established under AS 23.10.065. With the exception of very extreme cases where the person is so seriously impaired that he is unable to engage in competitive employment, that rate will not be less than 50 percent of the minimum wage established under AS 23.10.065.

(d) If an approval is issued under (c) of this section, it will specify the approved wage rate and the period for which it is effective. An application for renewal of an exemption must be made in the same manner as the original but must also include an evaluation of that person's productivity, comparing the degree of productivity between the initial application and the renewal.

(e) As a general rule, approval for payment of a wage lower than that established under AS 23.10.065 to persons with a temporary handicap will not be granted.

(f) Persons undergoing rehabilitation treatment or therapy relating to narcotics or alcoholism are not considered handicapped for the purposes of AS 23.10.070 and this section. (Eff. / / , Register)

Authority: AS 23.10.070(1)
AS 23.10.085

8 AAC 15.125 MINIMUM WAGE EXEMPTION FOR STUDENT LEARNERS. (a) An exemption for student learners from the minimum wage requirement of AS 23.10.065 is available when the student learner is enrolled in a course of study and training in a cooperative vocational training program under a recognized state or local educational authority or in a substantially similar program conducted by a private school.

(b) An application for an exemption under (a) of this section must be made on a form provided by the department. The information required must be complete and must be signed by the employer and the student learner's school coordinator or principal. To qualify for the exemption, the employment must meet all the requirements set out in AS 23.10.325-23.10.370 and chapter 5 of this title relating to the employment of children.

(c) A wage rate authorized under this section will not be less than 75 percent of the minimum wage established under AS 23.10.065.

(d) The exemption from minimum wages for full-time students established by Sec. 14(b) of the Fair Labor Standards Act of 1938, as amended, (29 U.S.C. 214(b)) as implemented in 29 C.F.R. 519.1 - 519.2 does not apply to employment subject to the provisions of AS 23.10.065. (Eff. / / , Register)

Authority: AS 23.10.070(3)
AS 23.10.085

8 AAC 15.130 EXEMPTION FOR SEARCHING FOR PLACER OR HARD ROCK MINERALS. The exemption from AS 23.10.050-23.10.150 provided by AS 23.10.055(10) applies to those activities commonly referred to as "prospecting" and does not apply once development of and production from a known mineral source has ~~been~~ begun. (Eff. / / , Register)

Authority: AS 23.10.055(10)
AS 23.10.085

8 AAC 15.135 EXEMPTION FOR INDIVIDUALS UNDER 18 WHO ARE PART TIME EMPLOYEES. The exemption from AS 23.10.050-23.10.150 provided by AS 23.10.055(11) does not apply during any work week in which an individual normally within the ambit of AS 23.10.055(11) is employed in excess of 30 hours. (Eff. / / , Register)

Authority: AS 23.10.055(11)
AS 23.10.085

8 AAC 15.140 DETERMINING THE NUMBER OF EMPLOYEES FOR PURPOSES OF AS 23.10.060(1). In determining the number of employees that an employer employs for purposes of AS 23.10.060(1), all officers of a corporation who actively engage in the business and all part time employees will be counted regardless of the number of days or hours worked. (Eff. / / , Register)

Authority: AS 23.10.060(1)
AS 23.10.085

8 AAC 15.145 SMALL MINING OPERATIONS. (a) A mining season, for purposes of AS 23.10.060(5), means the cumulative period of time during which mining operations are carried or during a calendar year, but not exceeding 20 weeks.

(b) The exemption from the payment for overtime requirements of AS 23.10.060 for employers engaged in small mining operations provided by AS 23.10.060(5) is available to the employer for a maximum of 14 consecutive weeks, commencing on the first day the mine begins active operations in a calendar year. In determining the available period of exemption, periods during which the mine is not actively engaged in mining operations for such reasons as, but not limited to, assessment work and repair or construction of buildings or equipment are not part of the exemption period.

(c) During the exemption period described in (b), an employer engaged in small mining operations remains responsible for payment of overtime at the rates established by AS 23.10.060 for work performed by an employee in excess of 12 hours a day or 56 hours a week. (Eff. / / , Register)

Authority: AS 23.10.060(5)
AS 23.10.085

ARTICLE 3.

DEDUCTIONS FROM WAGES.

Section
160. Deductions from an employee's wages.

8 AAC 15.160. DEDUCTIONS FROM AN EMPLOYEE'S WAGES. (a) AS 23.10.085(c) does not limit the right of an employer and employee to enter into a written agreement to provide for deductions of monetary obligations of an employee other than the cost of board and lodging. However, a written agreement for other deductions payable to the employer or person acting in the employer's behalf or interest, other than the cost of board or lodging, is not valid it it would have the effect of reducing an employee's wage rate below the statutory minimum wage or requiring an employee to reimburse the employer for any of the following:

(1) customer checks returned due to insufficient funds or any other reason ;

(2) non-payment for goods or services as a result of customers walking out or defaulting on credit;

(3) cash or cash register shortages for which the employee does not acknowledge responsibility;

(4) lost or stolen property or alleged theft by the employee for which the employee does not acknowledge responsibility;

(5) damage or breakage costs unless they are clearly due to willful conduct on the part of the employee, the responsibility for which has been acknowledged by the employee.

(b) Nothing in (a) of this section prohibits deductions from earnings based on a written agreement whereby the employer has been directed by the employee to pay a sum for the benefit of that employee to a creditor, donee, or other third party and neither the employer nor any person acting in his behalf or interest derives any profit or benefit from the transaction.

(c) Written agreements for deductions from earnings are not required for any lawful deduction otherwise authorized or required by state or federal law or by order of a court of competent jurisdiction.

(d) An employer subject to AS 23.10.050-23.10.150 shall furnish each person employed by him who is not exempted from the coverage of those sections by AS 23.10.055 a statement of earnings and deductions for each pay period. The statement of earnings and deductions ~~shall~~ must contain the following information:

(1) employee's rate of pay;

(2) the beginning and ending dates of the pay period and the weekly hours actually worked during the period;

(3) federal income tax deductions;

(4) federal insurance contribution act deductions;

(5) Alaska income tax deduction;

(6) Alaska school tax deduction;

(7) Alaska employment security act contributions;

(8) board and lodging costs;

(9) advances; and

(10) other authorized deductions. (Eff. / / , Register)

Authority: AS 23.10.085

ARTICLE 4.

PROCEDURES RELATING TO VIOLATIONS, INVESTIGATIONS, OR HEARINGS.

Section
175. Assignment of claims
180. Investigations, conference and persuasion

8 AAC 15.175. ASSIGNMENT OF CLAIMS. (a) A person who believes that he has not been paid wages due him under AS 23.10.050 - 23.10.150 may assign his claim to the department for collection.

(b) The department will not accept an assignment of a claim under AS 23.10.050 - 23.10.150 in excess of $5,000, excluding liquidated damages. (Eff. / / , Register)

Authority: AS 23.10.085
AS 23.10.110(b)

8 AAC 15.180. INVESTIGATIONS, CONFERENCES AND PERSUASION. (a) The wage and hour division will investigate potential violations of AS 23.10.050-23.10.150 on its own motion or on the assignment to it of a claim under sec. 175 of this chapter.

(b) If, after investigation, the division finds that probable cause exists for believing that a violation of AS 23.10.050 - 23.10.150 has occurred, it will attempt to correct the unlawful practice by conference and persuasion as follows:

(1) the division will provide the employer believed to have violated AS 23.10.050 - 23.10.150 with a copy of the assignment or a description of the alleged violation and inform him of the results of its investigation; and

(2) the division will schedule an informal conference with the employer to discuss the matter and attempt to eliminate the alleged violations.

(c) If the informal conference succeeds in correcting the alleged violation, no further action will be taken by the division against the employer.

(d) If an alleged violation is not rectified by the informal conference or if the employer fails to attend the conference without good cause shown, the director may, at his discretion;

(1) conduct a further investigation into the matter;

(2) enforce the claim through initiation of an adjudicative hearing under provisions of the Administrative Procedures Act (AS 44.62);

(3) enforce the claim through filing of an action in a court of competent jurisdiction.

(e) If the director determines under (d)(1) of this section that a further investigation into the matter should be conducted, he may provide that it be carried out by initiation of an investigative proceeding conducted in accordance with secs. 10 through 30 of chapter 25 of this title. (Eff. / / , Register)

Authority: AS 23.10.080
AS 23.10.085
AS 23.10.090
AS 23.10.110

ARTICLE 5.

GENERAL PROVISIONS

Section
~~900~~ 195. Place of employment for purposes of recordkeeping
~~910~~ 200. Definitions

8 AAC 15.~~195~~ 900. PLACE OF EMPLOYMENT FOR PURPOSES OF RECORDKEEPING. For purposes of AS 23.10.100, "the place where an employee is employed" means a central office of the employer located within the state. However, the employer may keep duplicate records at the sites or premises where the work is performed. (Eff. / / , Register)

Authority: AS 23.10.085
AS 23.10.100

8 AAC 15.910. DEFINITIONS. In this chapter and in AS 23.10.050 - 23.10.150, unless the context requires otherwise:

(1) "administrative employee" means an employee;

(A) whose primary duty consists of work directly related to management policies or supervising the general business operations of his employer;

(B) who customarily and regularly exercises discretion and independent judgment;

(C) who performs his work under only general supervision;

(D) who is paid on a salary or fee basis;

(E) who regularly and directly assists a proprietor or an exempt executive employee of the employer; and

(F) who performs work along specialized or technical lines requiring special training, experience or knowledge and does not devote more than 20 percent of his weekly hours to activities which are not described in this paragraph or paragraphs (7) or (11) of this section;

(2) "casual employee," as used in AS 23.10.065(15), means an employee engaged in an activity which occurs without regularity and is not in the usual course of trade, business, occupation or profession of his employer;

(3) "commissioner" means the commissioner of labor;

(4) "department" means the Alaska Department of Labor;

(5) "director" means the director of the wage and hour division of the department, or his designee;

(6) "domestic service in or about a private home" as used in AS 23.10.055(4), means a person employed in or about a private home of a person by whom he is employed and who performs such services or activities as a babysitter, a cook, a butler, a valet, a maid, a housekeeper, a governess, a janitor, a launderess, a caretaker, a handyman, a gardener, a footman, a groom, or a chauffeur of automobiles for family use;

(7) "executive employee" means an employee:

(A) whose primary duty consists of the management of the enterprise in which he is employed or of a customarily recognized branch, department, or subdivision of the enterprise;

(B) who customarily and regularly directs the work of two or more other employees;

(C) who has the authority to hire or fire or effect any other change of status of other employees or whose suggestions or recommendations regarding these kinds of changes are given particular weight;

(D) who customarily and regularly exercises discretionary authority;

(E) who does not devote more than 20 percent of his weekly hours to activities which are not directly and closely related to the work described in this paragraph or paragraphs (1) or (11) of this section; and

(F) who is compensated on a salary basis;

(8) "nonprofit" as used in AS 23.10.055(6), means an organization no part of the income or profit of which is distributable to its members, directors, or officers and whose status has been determined by the U.S. Internal Revenue Service as nonprofit;

(9) "on call" means time that an employee is required to remain on call on the employer's premises or other place of employment or so close to them that he cannot use the time effectively for his own purposes, but does not include the time an employee is not required to remain on or near his employer's premises or other place of employment but is merely required to leave word at his home or with the employer where he may be reached;

(10) "outside salesman" means a person who is employed for the purpose of making sales, contracts for sales, consignments, or shipments for sale or obtaining orders for services or for use of facilities for which a consideration will be paid by the client or customer and whose hours of work of a nature other than that described in this paragraph or paragraph (12) do not exceed 20 percent of the hours worked in the workweek; → of this section

(11) "professional" means an employee, except for the classifications of registered nurse and licensed practical nurse,

(A) whose primary duty is:

(i) to perform work requiring knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction and study, as distinguished from a general academic education or from an apprenticeship or from training in the performance of routine mental, manual, or physical processes; or

(ii) to perform work that is original and creative in character in a recognized field of artistic endeavor (as opposed to work which can be produced by a person with general manual or intellectual ability and training), and the result of which depends primarily on the invention, imagination, or talent of the employee; or

(iii) to teach, tutor, instruct, or lecture in the activity of imparting knowledge, and who is employed and engaged in this activity as a teacher certified or recognized as such in a school or other educational establishment or institution; and

(B) whose work:

(i) requires the consistent exercise of discretion and judgment in its performance;

(ii) is predominately intellectual and varied in character (as opposed to routine mental, manual, mechanical, or physical work) and is of such character that the output produced or the result accomplished cannot be standardized on a time basis; and

(iii) is compensated on a salary or fee basis;

(12) "salesman employed on a straight commission basis" means a person who is regularly employed on the business premise of his employer and is compensated on a straight commission basis for the purpose of making sales, contracts for sales, consignments, or shipments for sale or in obtaining orders for services or the use of facilities for which a consideration will be paid by the client or customer and whose hours of work of a nature other than that described in this paragraph or paragraph (10) of this section do not exceed 20 percent of the hours worked in the workweek;

(13) "standby or waiting time" means time that an employee is required to be at or near his post or place of employment and is required to wait for work or an assignment, whether nor not because of shutdown or repair, and during which he cannot use the time effectively for his own purposes;

(14) "supervisory capacity" means those primary duties performed, except for the classifications of registered nurse and licensed practical nurse, by an employee who is employed solely for the purpose of regularly assigning and directing the activities of other employees, and is responsible for results of the work performed, and who does not perform duties regularly performed by the employees supervised, except for brief periods of time not to exceed 20 percent of the hours worked in the workweek; For the purpose of AS 23.10.060, it does not apply to any employee required by the employer to perform ~~such~~ activities on an intermittent or substitute basis during the course of his employment;

(15) "workweek" means a fixed and regularly recurring period of 168 hours, i.e. seven consecutive 24 hour periods. It may begin on any day of the week and need not coincide with the calendar week; An individual employee's workweek is the statutory or contract number of hours that he is to regularly work during that period; The workweek may not be artificially adjusted for the purpose of avoiding the payment of overtime, however the workweek may be changed for any other purpose in the manner provided in AS 23.05.160. (Eff. / / . Register)

Authority: AS 23.10.055
AS 23.10.060
AS 23.10.085

ENCLOSURE # 7
8 AAC 10.310
8 AAC 15.030

employees with the skills or qualifications possessed by the individual;

(14) "temporary employment" means employment for less than 90 calendar days. (Eff. 6/23/74, Reg. 50; am 4/29/77, Reg. 62)

Authority: AS 23.15.380 AS 23.15.500
AS 23.15.450 AS 23.15.520

CHAPTER 15.
ALASKA WAGES AND HOURS

Section
10. (Repealed)
15. Exemption for searching for placer or hard rock minerals
20. Exemption for individuals under 18 who are part-time employees
30. Determining the number of employees for purposes of AS 23.10.060(1)
40. Small mining operations
50. Deductions from an employee's wages
60. Place of employment for purposes of record keeping
70. Definitions of miscellaneous terms used in AS 23.10.050–23.10.150

8 AAC 15.010. SUMMARY: ALASKA WAGE AND HOUR ACT. Repealed. (Eff. 11/4/74, Reg. 52)

8 AAC 15.015. EXEMPTION FOR SEARCHING FOR PLACER OR HARD ROCK MINERALS. The exemption from AS 23.10.050 – 23.10.150 provided by AS 23.10.055(10) applies to those activities commonly referred to as "prospecting" and does not apply once development of and production from a known mineral source has been begun. (Eff. 11/4/74, Reg. 52)

Authority: AS 23.10.055(10)
AS 23.10.085

8 AAC 15.020. EXEMPTION FOR INDIVIDUALS UNDER 18 WHO ARE PART-TIME EMPLOYEES. The exemption from AS 23.10.050 – 23.10.150 provided by AS 23.10.055(11) does not apply during any work week in which an individual normally within the ambit of AS 23.10.055(11) is employed in excess of 30 hours. (Eff. 11/4/74, Reg. 52)

Authority: AS 23.10.055(11)
AS 23.10.085

8 AAC 15.030. DETERMINING THE NUMBER OF EMPLOYEES FOR PURPOSES OF AS 23.10.060(1). In determining the number of employees that an employer employs for purposes of AS 23.10.060(1), all officers of a corporation who actively engage in the business and all part-time employees will be counted regardless of the number of days or hours worked. (Eff. 11/4/74, Reg. 52)

Authority: AS 23.10.060(1)
AS 23.10.085

8 AAC 15.040. SMALL MINING OPERATIONS. (a) A mining season, for purposes of AS 23.10.060(5), means the cumulative period of time during which mining operations are carried on during a calendar year, but not exceeding 20 weeks.

(b) The exemption from the payment for overtime requirement of AS 23.10.060 for employers engaged in small mining operations provided by AS 23.10.060(5) is available to the employer for a maximum of 14 consecutive weeks, commencing on the first day the mine begins active operations in a calendar year. In determining the available period of exemption, periods during which the mine is not actively engaged in mining operations for such reasons as, but not limited to, assessment work and repair or construction of buildings or equipment are not part of the exemption period.

(c) During the exemption period described in (b), an employer engaged in small mining operations remains responsible for payment of overtime at the rates established by AS 23.10.060 for work performed by an employee in excess of 12 hours a day or 56 hours a week.
(Eff. 11/4/74, Reg. 52)

Authority: AS 23.10.060(5)
AS 23.10.085

8 AAC 15.050. DEDUCTIONS FROM AN EMPLOYEE'S WAGES. AS 23.10.085(c) does not limit the right of an employer and employee to enter into a written agreement to provide for deductions of other monetary obligations of an employee; however, no deduction is permitted except those expressed in the written agreement.

(b) An employer subject to AS 23.10.050 – 23.10.150 shall furnish each person employed by him, who is not exempted from the coverage of those sections by AS 23.10.055, a statement of earnings and deductions for each pay period. The statement of earnings and deductions shall contain the following information:

(1) employee's rate of pay;

(2) daily and weekly hours worked;

(3) federal withholding tax;

(4) federal insurance contribution act;

(5) Alaska withholding tax;

(6) employment security deduction;

(7) school tax;

(8) board and lodging;

(9) advances;

(10) other.
(Eff. 11/4/74, Reg. 52)

Authority: AS 23.10.085

8 AAC 15.060. PLACE OF EMPLOYMENT FOR PURPOSES OF RECORD KEEPING. For purposes of AS 23.10.100, the place where an employee is employed means a central office of the employer located within the State; however, the employer may keep duplicate records at the sites or premises where the work is performed.
(Eff. 11/4/74, Reg. 52)

Authority: AS 23.10.085
AS 23.10.100

8 AAC 15.070. DEFINITIONS OF MISCELLANEOUS TERMS USED IN AS 23.10.050 – 23.10.150. (a) "Administrative," as used in AS 23.10.055(9), means an employee whose primary duty consists of work directly related to management policies or supervising the general business operations of his employer and who customarily and regularly exercises discretion and independent judgment and who performs his work under only general supervision and who does not devote more than 39 percent of his workweek to general or routine tasks performed by other employees of his employer.

(b) "Casual employee," as used in AS 23.10.060(15), means an employee engaged in an activity which occurs without regularity and is not in the usual course of trade, business, occupation or profession of his employer.

(c) "Domestic service in or about a private home," as used in AS 23.10.055(4), means a person employed in or about a private home of the person by whom he is employed and who

performs such services or activities as a babysitter, a cook, a butler, a valet, a maid, a housekeeper, a governess, a janitor, a launderess, a caretaker, a handyman, a gardener, a footman, a groom, or a chauffeur of automobiles for family use.

(d) "Executive," as used in AS 23.10.055(9), means an employee

(1) whose primary duty consists of management of the enterprise in which he is employed and whose hours worked in a workweek do not exceed 20 percent in activities not essential to the management of the business operations of his employer; or

(2) who customarily and regularly exercises discretionary power and regularly directs the work of other employees of the enterprise or a recognized department or division of the enterprise and who has the authority to hire or fire, or accomplish any other change of status, including advancement or promotion of other employees or whose recommendations regarding change of status are given particular weight.

(e) "Nonprofit," as used in AS 23.10.055(6), means an organization no part of the income or profit of which is distributable to its members, directors or officers.

(f) "Outside salesman," as used in AS 23.10.055(9), means a person who is employed for the purpose of and who is customarily and regularly engaged away from his employer's place of business in making sales, contracts for sale, consignments or shipments for sale or in obtaining orders for services or for use of facilities for which a consideration will be paid by the client or customer and whose hours worked in a workweek do not exceed 20 percent in activities performed by nonexempt employees.

(g) "Professional," as used in AS 23.10.055(9), means an employee, except for the classifications of registered nurse and licensed practical nurse, whose primary duty consists of

(1) work requiring knowledge acquired through prolonged study of an advanced or specialized nature and neither routine in process or gained through general academic education or apprenticeship training; or

(2) work which is inventive or creative and dependent upon the talent of the employee and which does not require more than 20 percent of the hours in a workweek of the employee to be devoted to activities which are not an essential part of, or a necessary incident to the employee's specialized work.

(h) "Supervisory," as used in AS 23.10.060, means a person, except for the classifications of registered nurse and licensed practical nurse, who directs the activities of other employees and who does not perform duties which are regularly performed by the employees supervised, except for brief periods of time not to exceed more than 8 hours in the supervisor's workweek. (Eff. 11/4/74, Reg. 52)

Authority: AS 23.10.055
AS 23.10.060
AS 23.10.085

HB

235

POSITION PAPER/Department of Health & Social Serv

POSITION PAPER

House Bill No. 235 a.m.

"An Act relating to authorizing an advisory vote by the qualified voters of the state on instituting death penalty for first degree murder; and providing for an effective date."

The capital punishment issue has historically been one of controversy nationwide. Placing the advisory question as to whether the Alaska Legislature should enact laws to institute death penalty for first degree murder on the ballot is viewed as an appropriate approach to resolving this issue.

Recommended by: for Roger C. Lange
Roger V. Endell, Director
Division of Adult Corrections

Date: 5/12/83

Approved by: Robert London Smith
Robert London Smith, Ph.D.
Commissioner

Date: 5/13/83

STATE OF ALASKA
FISCAL NOTE

Revision Date , 1983

I. REQUEST

Bill/Resolution No.: HB #235 a.m.
Title: "..advisory note.. death penalty "
Sponsor: Bussell
Requestor: Judiciary Committee

II. FISCAL DETAIL

Agency Affected: Health & Social Services
Program Category Affected: Justice
BRU, Program of Subprogram(s) Affected: Adult Corrections

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 83	FY 84	FY 85	FY 86	FY 87	FY 88
OPERATING						
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 COMMODITIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-
CAPITAL	-0-	-0-	-0-	-0-	-0-	-0-
REVENUE	-0-	-0-	-0-	-0-	-0-	-0-

FUNDING: (Thousands of Dollars)

GENERAL FUND	-0-	-0-	-0-	-0-	-0-	-0-
FEDERAL FUNDS						
OTHER (Specify Source)						

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

III. SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

IV. ANALYSIS: Attach a separate page for any Analysis

Prepared By: Roger C. Lange Roger C. Lange Phone: 465-3376
Division: Adult Corrections Date: May 10, 1983

Approved by Commissioner: Robert Loudon Smith Date: 5/13/83
Department Health & Social Services

Distribution:
Original to Legislative Finance
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Copy to Department (for Governor introduced bills)
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3/8/83

IV. ANALYSIS

The placement on a ballot of an advisory question which would institute death penalty for first degree murder would not result in any expenditures for Corrections.

If the advisory vote would result in legislation being passed to institute death penalty, there would be costs related to the legislation. These costs, however, would be identified on a fiscal for the specific bill as presented.

HB235
JR

Times
3-21-83

Capital punishment

Dear Editor:

The position of the Moral Majority and certain Christian organizations in Anchorage in favor of the death penalty is puzzling. Rather than argue that this attitude does not comport with the teachings of the Prince of Peace, perhaps we would emulate the state-sanctioned death of their leader and execute here by means of crucifixion.

Sylvia L. Short
Anchorage

Rights

Dear Editor:

This evening's TV news report pictured Sen. Joe Josephson stating, "We must be very very careful to protect the rights of the A.P.I. residents to be different."

The recent murders of four teen-agers in Russian Jack Park is the finest example of protecting their rights to be different.

I wold like to remind him that he should be equally careful to protect my right not to be murdered.

Edward M. Boyd
206 W. Northern Lights Blvd.

POSITION PAPER/Department of Health & Social Services

POSITION PAPER

House Bill No. 235

"An Act relating to authorizing an advisory vote by the qualified voters of the state on instituting capital punishment for first degree murder; and providing for an effective date."

The capital punishment issue has historically been one of controversy nationwide. Placing the advisory question as to whether the Alaska Legislature should enact laws to institute capital punishment for first degree murder on the ballot is viewed as an appropriate approach to resolving this issue.

Recommended by: for Roger C. Lange
Roger V. Endell, Director
Division of Adult Corrections

Date: March 22, 1983

Approved by: Robert London Smith 4/18/83
Robert London Smith, Ph.D.
Commissioner

FISCAL NOTE Revision Date 1983

I. REQUEST

Bill/Resolution No.: HB No. 235
Title: ". .advisory vote. .on capital punishme
Sponsor: Bussell
Requestor: Judiciary Committee

II. FISCAL DETAIL

Agency Affected: Health & Social Services
Program Category Affected: Admin. of Justice
BRU, Program of Subprogram(s) Affected:

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 83	FY 84	FY 85	FY 86	FY 87	FY 88
OPERATING						
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 COMMODITIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-
CAPITAL	-0-	-0-	-0-	-0-	-0-	-0-
REVENUE	-0-	-0-	-0-	-0-	-0-	-0-

FUNDING: (Thousands of Dollars)

GENERAL FUND	-0-	-0-	-0-	-0-	-0-	-0-
FEDERAL FUNDS						
OTHER (Specify Source)						

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

III. SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

Not applicable.

IV. ANALYSIS: Attach a separate page for any Analysis

Prepared By: Roger C. Lange Roger C. Lange Phone: 465-3376
Division: Adult Corrections Date: March 16, 1983

Approved by Commissioner: Robert London Smith, Ph.D. Date: 4/18/83
Department: H & SS

Distribution:
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IV. ANALYSIS

The placement on a ballot of an advisory question which would institute capital punishment for first degree murder would not result in any expenditures for Corrections.

If the advisory vote would result in legislation being passed to institute capital punishment, there would be costs related to the legislation. These costs, however, would be identified on a fiscal note for the specific bill as presented.

STATE OF ALASKA
FISCAL NOTE

Revision Date , 1983

I. REQUEST

Bill/Resolution No.: HB 235
Title: Advisory Vote of Capital Punishment
Sponsor: Rep Bussell
Requestor: House Judiciary

II. FISCAL DETAIL

Agency Affected: Public Safety
Program Category Affected: Crime ID
BRU, Program of Subprogram(s) Affected: Alaska State Troopers

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 83	FY 84	FY 85	FY 86	FY 87	FY 88
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 COMMODITIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC						
TOTAL OPERATING		-0-	-0-	-0-	-0-	-0-
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER (Specify Source)						

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

III. SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

IV. ANALYSIS: Attach a separate page for any Analysis No Fiscal Impact Anticipated

Prepared By: Francis C. Allan
Phone: 269-5526
Division: Alaska State Troopers
Date: March 16, 1983

Approved by Commissioner: [signature]
Date: 3/18/83
Department: Public Safety

Distribution:
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3/8/83

STATE OF ALASKA
FISCAL NOTE

Revision Date , 1983

I. REQUEST

Bill/Resolution No.: HB 235
Title: "...advisory vote...capital punishment"
Sponsor: Repr. Bussell
Requestor: House Judiciary Committee

II. FISCAL DETAIL

Agency Affected: Department of Law
Program Category Affected: Adm. of Justice
BRU, Program or Subprogram(s) Affected: Prosecution

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 83	FY 84	FY 85	FY 86	FY 87	FY 88
OPERATING						
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 COMMODITIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND	-0-	-0-	-0-	-0-	-0-	-0-
FEDERAL FUNDS						
OTHER (Specify Source)						

POSITIONS:

FULL-TIME	-0-	-0-	-0-	-0-	-0-	-0-
PART-TIME						
TEMPORARY						

III. SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

N/A

IV. ANALYSIS: Attach a separate page for any Analysis

Prepared By: Richard I. Pegues, Director
Phone: 465-3672
Division: Administrative Services Division
Date: April 15, 1983

Approved by Commissioner: Richard I. Pegues, Norman C. Gorsuch, Attorney General
Date: April 15, 1983
Department: Department of Law

Distribution:
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3/8

HB 235
Fiscal Note
Analysis

This bill provides for an advisory vote for instituting capital punishment for first degree murder. The bill itself, which only authorizes a vote, will not have a fiscal impact on the Department of Law. The department cannot speak to the cost of capital punishment legislation until such legislation is written and its [illegible] form and substance are known.

Obviously if capital punishment is reinstituted there will be significant fiscal impact felt by Law, Public Safety, the Courts and, to a lesser degree, Corrections. For instance, Utah's Attorney General has two attorneys who are assigned solely to capital punishment appeals. Based on this experience, we could probably expect that our department would have to annually expend between $200.0 and $250.0, in attorney costs, for its own appeals effort.

STATE OF ALASKA
FISCAL NOTE

Revision Date , 1983

I. REQUEST

Bill/Resolution No.: HB 235
Title: Advisory Vote on Capital Punishment
Sponsor: Representative Bussell
Requestor: House Judiciary

II. FISCAL DETAIL

Agency Affected: Office of the Governor
Program Category Affected: Exec. Operation
BRU, Program of Subprogram(s) Affected: Division of Elections

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 83	FY 84	FY 85	FY 86	FY 87	FY 88
OPERATING						
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 COMMODITIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND	-0-	-0-	-0-	-0-	-0-	
FEDERAL FUNDS						
OTHER (Specify Source)						

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

III: SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL: Not provided.

IV. ANALYSIS: The passage of HB 235 will have no fiscal impact on the Division of Elections.

IV. ANALYSIS: Attach a separate page for any Analysis

Prepared By: Dana C. Coffman, Deputy Director
Phone: 586-6181
Division: Division of Elections
Date: April 18, 1983

Approved by Commissioner:
Date: 4.18.83
Department: Lieutenant Governor

Distribution:
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3/8/83

EOM

FROM: SARAH RUE 2003 PARKVIEW CIRCLE, ANCHORAGE 99501
H 277-6109 W 264-4531

WE DON'T NEED AN ADVISORY VOTE ON THE DEATH PENALTY AND WE CERTAINLY DON'T NEED ANY LEGISLATION REINSTITUTING THE DEATH PENALTY.

MAY 1983 RECEIVED

2/16 POM, MARCIE, ANC INFO MSG 8979

TO: ALL MEMBERS OF THE LEGISLATURE

FROM: KATHY GLIVA, 8203 COUNTRY WOODS DRIVE, ANCHORAGE 99502
349-3827

I'M STRONGLY OPPOSED TO THE DECOMPRESSION CHAMBER. I FIND IT ARCHAIC AND INHUMANE.

EOM

HB

247

COMMITTEE REPORT

HOUSE

(7) FURTHER:

3/31/83

Date: 4-19-83

Mr. Speaker:

The Committee on JUDICIARY has had HB 247

An Act relating to tampering with an item in commerce that is a food, drug, device or cosmetic.

under consideration and reports it back as follows:

[X] do pass [ ] do not pass

[ ] do pass with attached amendments(s)

[X] replace with CS for HB 247(JUD) [ ] same title [X] new title

and recommends _____

[ ] AND attaches a "Letter of Intent" [ ] New Fiscal Note

[ ] Zero Fiscal Note Attached

[ ] reports it back without recommendation

[ ] referred to the _____ Committee

MEMBERS SIGNING
DO PASS

MEMBERS HAVING
OTHER RECOMMENDATIONS:

CHAIRMAN

Open hostility flares on judiciary panel

NEWS 4/20/83

By HARRY McFARLAND
The Associated Press

JUNEAU — Open hostility flared in a House Judiciary Committee meeting when a minority Democrat protested the lack of debate on one bill and the absence of testimony on another.

Rep. Don Clocksin, D-Anchorage, found himself looking at a committee substitute on a measure (HB247) he said he hadn't read. Judiciary Chairman Charlie Bussell, R-Anchorage, asked immediately for a vote, saying that the information on the bill was contained in the member's packet.

"You're not even going to allow debate?" Clocksin asked.

Bussell said the committee had debated the bill, and the committee substitute was the result of testimony. The measure was approved on a 4-1 vote.

A second measure (HB163) was introduced to the committee, with Bussell stating he saw no real need to have testimony.

"This is a travesty on the legislative process," Clocksin said. "It's a railroad."

Backed by other members of the majority — including House Speaker Joe Hayes and House Majority Leader Ramona Barnes, both R-Anchorage — Bussell won his way, and the measure was approved on a 5-2 vote.

After the meeting, an angry Clocksin stormed up to Bussell, using foul language, demanding to know why he was being treated in such a manner.

Food and Drug Administratio
Rockville MD 20857

MAR 2 9 1983

STATEMENT BY

ARTHUR HULL HAYES, JR., M.D.

COMMISSIONER

FOOD AND DRUG ADMINISTRATION

PUBLIC HEALTH SERVICE

DEPARTMENT OF HEALTH AND HUMAN SERVICES

BEFORE THE

SUBCOMMITTEE ON HEALTH AND THE ENVIRONMENT

COMMITTEE ON ENERGY AND COMMERCE

HOUSE OF REPRESENTATIVES

—

OCTOBER 15, 1982

FOR RELEASE ONLY UPON DELIVERY

Mr. Chairman:

I am here today to discuss with you the events surrounding the recent contamination of Extra-Strength Tylenol capsules and to share with you our thoughts and concerns regarding this tragic event. On behalf of Secretary of Health and Human Services Richard Schweiker and myself, I would like to acknowledge the excellent cooperation we have received from industry, State and local authorities, and the Federal Bureau of Investigation who have responded swiftly and effectively to this emergency.

Based on the September 30, 1982 report of deaths in Chicago by a Cook County medical examiner, the manufacturer of Tylenol, McNeil Consumer Products Co. of Fort Washington, Pennsylvania immediately removed the lot from the marketplace nationwide which had been linked to the deaths. On October 1, the manufacturer removed a second lot from the marketplace nationwide which had been linked to an additional death. In the greater Chicago area, all Extra-Strength Tylenol capsules were withdrawn.

At the same time, the Food and Drug Administration (FDA) issued press releases on September 30 and October 1 (a press conference was also held on October 1) advising consumers not to use Extra-Strength Tylenol capsules until circumstances surrounding the deaths could be clarified. Additionally, FDA began sampling Extra-Strength Tylenol nationally on October 1. Sampling in the Chicago area had begun immediately upon learning of the Tylenol-related deaths on September 30.

FIELD ACTIONS

During the next four days, over a million and a half Tylenol capsules were sampled and tested. Over 1,100 FDA field personnel were committed to collecting and analyzing samples of Tylenol capsules and immediately investigating all reports of deaths or illnesses which might have been associated with the use of Tylenol. Samples were collected in practically all of the States and forwarded to our district laboratories for analysis. I would like to make special mention of the enormous task our analysts faced. Each individual capsule was physically examined and its ingredients chemically analyzed. It was truly an extraordinary effort.

In one instance, our field efforts may have, indeed, prevented an additional death. One bottle taken from the shelves by FDA in the Chicago area proved to be contaminated with cyanide. This was the only bottle containing cyanide that was not associated with a death. None of the capsules outside the Chicago area showed cyanide contamination.

In addition, both plants where the lots involved had been produced were inspected to insure that the contaminant had not been introduced into the product during the manufacturing process. The Philadelphia District Office began inspecting the Fort Washington, Pennsylvania plant on September 30 and the Houston District Office inspected the Round Rock, Texas plant on October 1. We concluded that the contamination was the result of tampering after the capsules had been

shipped to distribution points and, most likely, after they reached the retail shelves. Some of the reasons were:

-- The only cases of injury and death associated with cyanide-contaminated capsules were in the Chicago area and had all occurred within three days--September 29 to October 1.

-- The control numbers directly associated with the injuries and deaths were produced in two widely separated plants at three different times: Fort Washington, Pennsylvania and Round Rock, Texas in January, March, and April 1982.

-- There was no uniformity in the amount of cyanide present in the capsules that were analyzed.

-- FDA laboratory testing of capsules containing cyanide revealed that the gelatin capsule begins to deteriorate 6 to 7 days after being in contact with the cyanide, and samples of capsules collected and analyzed by FDA from a Schaumberg, Illinois drug store and FDA analysis of capsules from victims' bottles revealed beginning stages of such deterioration.

-- The first two control numbers implicated were both shipped to the Chicago area in mid-August 1982. The third lot was first shipped to distribution points in Pennsylvania in May 1982. Subsequent shipments of code 1801 MA were after that date and therefore all were available for adulteration in Chicago at about the same time.

-- The bottle of capsules implicated in one death contained both Regular Strength and Extra-Strength capsules. Only the Extra-Strength capsules contained cyanide. Inspection of the plants revealed distinctly separate processes for the manufacture of the two kinds of capsules and these processes are physically separated one from the other.

-- Local law enforcement agencies have announced that they believe at this time that the tampering took place after the product left the manufacturing plant.

By October 4, FDA also had checked reports of more than twelve deaths or illnesses in areas other than Chicago and none proved to be related to Tylenol. On that same date FDA issued another press release to provide this updated information and to continue to advise against the use of nonprescription Tylenol capsules. Also, from the day the deaths were first reported, my colleagues and I utilized national TV and radio news programs, press conferences and other available means of communication to convey this message to the public.

As authorities continued to investigate the cyanide poisoning deaths in the Chicago area, a report of a Tylenol-related illness involving an Oroville, California man was received by FDA late on Monday evening, October 4. Field investigators were immediately assigned to the area to investigate the incident and acquire samples. Although the man recovered, subsequent analysis of the Extra-Strenth Tylenol capsules from the bottle he had used revealed the presence of strychnine. At this time, although all contaminated Tylenol products were Extra-Strength Tylenol, retailers were notified nationwide on October 5 by the manufacturer to withdraw both Extra- and Regular Strength Tylenol capsules from their shelves. FDA also issued another press release on that date summarizing McNeil's announcement regarding the Oroville situation and restating its warning to consumers to avoid Extra-Strength and Regular nonprescription Tylenol capsules nationwide.

As of today, over 150 reports of deaths or illnesses that might have been related to the use of Tylenol capsules have been received by FDA from across the country. We have investigated each of these reports and have been unable to prove that any subsequent cases have been linked to the taking of contaminated Tylenol. We are continuing to monitor and follow up on additional reports we receive.

HEADQUARTERS ACTIONS

In addition to the efforts undertaken in the field and because of the continuing serious emergency involving the tampering with nonprescription drug products, I utilized our existing emergency procedures for headquarters personnel and 24-hour coverage was provided by the staff. I also created a formal emergency Task Force devoted to the Tylenol problem. The group met at least twice daily to review, discuss and direct the activities of headquarters and field personnel.

These events have, quite understandably, generated concern about package integrity and product security. After discussion with the Secretary, I conferred with The Proprietary Association, a trade association which represents a large number of nonprescription drug manufacturers, on October 3 suggesting that they organize an industry task force to address this problem. They agreed to do so and immediately established the Joint Committee on Product Security. I met with the Committee on October 5 to explore measures to improve product packaging in order to discourage tampering.

Further, a special Expert Technical Committee was appointed to develop standards for tamper-resistant packaging. This group met on

October 7 and 11 and reviewed technologies available to deal with this problem, and a number of packaging types were identified as tamper resistant by a definition developed by the group. An integral part of these discussions has been the availability of necessary packaging that are agreed upon. In addition, individual drug companies have been examining their own packaging to determine what can be done to develop and implement additional tamper-resistant procedures. As you know, the Board of Directors of The Proprietary Association met yesterday and received the report from the Expert Technical Committee. I am advised that Mr. Cope will discuss the substance of that report in his testimony.

There is a need for a Federal standard to implement the packaging requirement. Such requirements and their technical feasibility are the subject of discussion within FDA and The Proprietary Association.

Of concern to us has been the development of State and local laws or proposals to require some form of tamper-resistant packaging. These laws or proposals are an understandable response in the face of this tragic situation. It is important, however, that there not be conflicting laws affecting nationally distributed products in such a way that it is impracticable to market such products. Therefore on October 5, Secretary Schweiker requested FDA to immediately begin drafting a regulation that would require some kind of tamper-resistant packaging for nonprescription drugs. The Secretary stressed the need for uniform consistent standards that adequately protect the public while assuring the availability of nonprescription drug products nationwide.

FDA currently possesses the legal authority to promulgate regulations governing the design of containers to discourage or indicate the occurrence of tampering. Specifically, section 501(a)(2)(B) of the Federal Food, Drug, and Cosmetic Act [21 U.S.C. sec. 351(a)(2)(B)] authorizes FDA to issue good manufacturing practice regulations (GMPs) for drug products.

GMPs are those measures that manufacturers take to assure that their drug products are of adequate quality, including measures to assure that products remain of adequate quality throughout the chain of distribution. This GMP authority has been used to require drug containers to guard against foreseeable external factors that could cause product deterioration or contamination. These regulations were not intended to cover tampering. Tampering has been uncommon and sporadic, and has therefore not been considered, until now, to be the type of threat to product integrity for which an industry-wide response is necessary. But, in the light of the recent events in Chicago and Oroville, it is clear that good manufacturing practices should now include the use of tamper-resistant packaging to discourage or indicate the occurrence of tampering. Such packaging is necessary to assure that over-the-counter (OTC) drug products meet Federal requirements for safety, quality, and purity at the time of purchase by the ultimate consumer.

It must be recognized that the initiatives described above will not happen overnight. Although we expect to publish the regulation in the near future, it is going to take time for industry to get the equipment in place in the plants and to begin marketing these products. It

should also be emphasized that a tamper-proof package is not possible. However, we believe that we can improve upon the packaging for these products using existing and developing technologies by making them more resistant to tampering of any sort. At the same time, we must help to educate consumers to be alert to signs that indicate tampering. Our goal in these efforts is to reduce the risk of injuries or deaths to consumers now and in the future. I want to assure you that Secretary Schweiker and I give this matter the highest priority.

CONSUMER INITIATIVES

Initiatives are underway by health professionals, the industry and FDA to develop ways in which we can best inform and educate the public about how critical it is for all of us to be as observant as possible with regard to the condition of the products we buy. We will be building upon our existing programs through cooperation with the private sector to develop ways to disseminate information and to impress upon consumers that they have a personal responsibility to heighten their sense of awareness in this area. In fact, the National Council on Patient Information and Education plans to form a group which will deal with various aspects on patient and consumer responsibility. We are working closely with the Council. The Council, headed by former Congressman Paul Rogers, held its first meeting on October 12, 1982.

INTERNATIONAL COMMUNICATIONS

We also undertook to disseminate information to the international community.

On Friday, October 1, the text of Dr. Novitch's statement at the noon press conference was sent by telegram to the World Health Organization (WHO) offices in Geneva, Copenhagen, and Washington. An all-post telex was sent Friday evening by the Department of State. That evening, a telex explaining events up to that time was also sent to 64 government drug regulatory authorities and WHO.

Over the next two days, we continued to provide WHO and the State Department with additional information as it became available and requested that the various health ministries be provided with this updated information. Another telex was sent to international drug regulatory authorities.

Further, on October 8, we again contacted the State Department updating domestic information on the Tylenol situation, listing the 11 foreign countries in which Tylenol capsule products are manufactured and/or marketed, and providing information on the Johnson and Johnson preferred method of disposing of bottled Tylenol capsules. We provided a list of the 11 foreign affiliates of Johnson and Johnson and explained that these affiliates had already established communications with the local health ministries regarding sales of Extra-Strength Tylenol capsules. We transmitted this same information to WHO Headquarters, WHO regional offices, and the European Economic Community. This information was also transmitted to international drug regulatory authorities.

The willful contamination of products intended to benefit consumers is repulsive to us all. I can assure you that the Secretary and I are personally committed to moving quickly to provide additional safeguards to help protect the public.

Thank you Mr. Chairman. This concludes my prepared testimony. I will be happy to answer any questions you may have.

HHS NEWS

MAR 2 6 1983

U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES
FOR RELEASE AT 8:00 A.M., EST
Thursday, November 4, 1982

Claire Dorrell - (202) 245-6343

HHS Secretary Richard S. Schweiker said today he has formally approved and sent to the Federal Register for publication uniform standards for nonprescription drug manufacturers to follow in providing tamper-resistant packaging for their products--effective within 90 days in many cases.

Manufacturers could choose among various techniques--seals, shrink bands, and bubble or strip packs, for example--but would be required to highlight the barrier with a distinctive design that would be hard to duplicate. Each product would also have to prominently display an advisory that the product should not be purchased or used if the seal or barrier was not intact when the product was bought.

FDA Commissioner Arthur Hull Hayes Jr., M.D., said the regulation "allows manufacturers flexibility as to which methods of tamper-resistant packaging will be used. We realize new methods are being developed all the time, and we want to encourage new protection methods," said Dr. Hayes.

"While it is virtually impossible to make any package tamper-proof, it is possible to manufacture packages in such a way that tampering is much more difficult, and that if a product is tampered with, it can more easily be detected by a careful consumer," Schweiker said. "That is the intent of this regulation."

The regulation is a result of the tampering--the opening and refilling of Tylenol capsules with cyanide after they left the manufacturer--which killed seven people in the Chicago area at the end of September and other reports of product tampering since that time.

The regulation becomes effective in steps. The first effective date, in 90 days, requires tamper-resistant packaging on most nonprescription capsule and

(More)

liquid drugs (including eyedrops), except topical dermatologic products. The new packaging would also be required in 90 days on certain cosmetic products that may be susceptible to tampering, such as mouthwashes.

In 180 days tablets and suppositories--which are considered less susceptible to tampering--would be required to have tamper-resistant packaging, too. The delay is designed to ensure that the more susceptible products, such as liquids and capsules, have priority in obtaining the technology and machinery needed to make them secure.

Also at 180 days, the label statement and the distinctive design for barriers would be required. This delay recognizes the practical difficulties these features may pose, although some manufacturers may be able to beat the deadline by months. In fact some expect to begin marketing products in new tamper-resistant packages within the next few weeks. In 15 months, no over-the-counter drug could be sold without tamper-resistant packaging.

Since the Chicago deaths, FDA and the major manufacturers of nonprescription drugs have been working together to review what technology and machinery is available, and how to most effectively protect the public from product tampering.

"The manufacturers of over-the-counter drugs have been extremely cooperative in moving quickly toward better protection. They have acted responsibly and in good faith, and I believe this regulation will give them the uniform national standards they need," said Schweiker.

# # #

NOTE REGARDING THE FOLLOWING FRAME(S) ON MICROFILM:
COMPLETE DOCUMENT IS AVAILABLE IN ORIGINAL FILES.
TITLE PAGE ONLY HAS BEEN FILMED.

federal register

Friday
November 5, 1982

MAR 2 9 1983

Part IV

Department of Health and Human Services

Food and Drug Administration

Tamper-Resistant Packaging Requirements; Certain Over-the-Counter Human Drugs and Cosmetic Products; Contact Lens Solutions and Tablets; Final Rules

HB 247

(Effective January 1, 1980)

Sec. 11.46.480. Criminal mischief in the first degree. (a) A person commits the crime of criminal mischief in the first degree if, having no right to do so or any reasonable ground to believe he has such a right,

(1) with intent to cause a substantial interruption or impairment of a service rendered to the public by a utility or by an organization which deals with emergencies involving danger to life or property, he damages or tampers with property of that utility or organization and causes substantial interruption or impairment of service to the public;

(2) with intent to damage property of another by the use of widely dangerous means, he damages property of another in an amount exceeding $100,000 by the use of widely danagerous means; or

(3) he intentionally damages an oil or gas pipeline or supporting facility.

(b) Criminal mischief in the first degree is a class B felony. (§ 4 ch 166 SLA 1978)

Cross reference. — As to liability for destruction of property by minors, see AS 34.80.020.

Am. Jur. reference. — 34 Am. Jur., Malicious Mischief, § 1 et seq.

STATE OF ALASKA
FISCAL NOTE

Revision Date , 1983

I. REQUEST

Bill/Resolution No.: CS for HB #247(Jud.)
Title: ..tampering with an item in commerce
Sponsor: Rep. Liska
Requestor: Judiciary Committee

II. FISCAL DETAIL

Agency Affected: Health & Social Services
Program Category Affected: Justice
BRU, Program of Subprogram(s) Affected: Adult Confinement

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 83	FY 84	FY 85	FY 86	FY 87	FY 88
OPERATING						
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 COMMODITIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC						
TOTAL OPERATING		*	*	*	*	*
CAPITAL						
REVENUE						

* See Analysis.

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER (Specify Source)						

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

III. SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

IV. ANALYSIS: Attach a separate page for any Analysis

Prepared By: Roger C. Lange Roger C. Lange A/A Phone: 465-3376
Division: Adult Corrections Date: April 26, 1983

Approved by Commissioner: Robert Pinkus Smith, Ph.D. Date: 4/28/83
Department: Health & Social Services

Distribution:
Original to Legislative Finance
Copy to Office of Management and Budget (for Legislature introduced bills)
Copy to Department (for Governor introduced bills)
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3/8/83

IV. ANALYSIS

There is no statistical data regarding the activity which would become a crime under this act. The Division has no information regarding the annual number of occurrences, arrests, or convictions for tampering with an item in commerce that is a food, drug, device, or cosmetic where physical injury is intended. Therefore, no estimate can be made regarding the fiscal impact of this proposed legislation.

APR 4 1983

STATE OF ALASKA
FISCAL NOTE

Revision Date , 1983

I. REQUEST

Bill/Resolution No.: HB 247
Title: "...tampering with...food, drug,..."
Sponsor: Rep. Liska
Requestor: House Judiciary

II. FISCAL DETAIL

Agency Affected: Department of Law
Program Category Affected: Admin. of Justic
BRU, Program of Subprogram(s) Affected: Prosecution

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 83	FY 84	FY 85	FY 86	FY 87	FY 88
OPERATING						
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 COMMODITIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND	-0-	-0-	-0-	-0-	-0-	-0-
FEDERAL FUNDS						
OTHER (Specify Source)						

POSITIONS:

FULL-TIME	-0-	-0-	-0-	-0-	-0-	-0-
PART-TIME						
TEMPORARY						

III. SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

IV. ANALYSIS: Attach a separate page for any Analysis

Prepared By: Richard L. Pegues Richard I. Pegues, Director Phone: 465-3672
Division: Administrative Services Division Date: March 31, 1983

Approved by Commissioner: Richard L. Pegues Norman C. Gorsuch, Attorney General Date: March 31, 1983
Department: Department of Law

Distribution:
Original to Legislative Finance
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HB 247
Analysis

This bill makes tampering with an item in commerce that is a food, drug, device, or cosmetic a class B felony. There is no history of such tampering occurring in the state. After such tampering as the Tylenol poisoning in Chicago, however, this bill could serve to help prevent future similar occurrences from happening in Alaska by providing strict penalties for any tampering. Prosecutors believe that the incidence of tampering will be slight and, consequently, no measurable fiscal impact will result due to enactment of this legislation.

STATE OF ALASKA
FISCAL NOTE

Revision Date , 1983

I. REQUEST

Bill/Resolution No.: House Bill No. 247
Title:"..tampering with an item in commerce
Sponsor: Rep. Liska
Requestor: Judiciary Committee

II. FISCAL DETAIL

Agency Affected: Health & Social Services
Program Category Affected: Justice
BRU, Program or Subprogram(s) Affected:
Adult Confinement

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 83	FY 84	FY 85	FY 86	FY 87	FY 88
OPERATING						
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 COMMODITIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC						
TOTAL OPERATING		*	*	*	*	*
CAPITAL						
REVENUE						

* See Analysis.

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER (Specify Source)						

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

III. SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

IV. ANALYSIS: Attach a separate page for any Analysis

Prepared By: Roger C. Lange Roger C. Lange 4/1/83 Phone: 465-3376
Division: Adult Corrections Date: April 1, 1983

Approved by Commissioner: Robert London Smith Date: 4/7/83
Department: Health & Social Services

Distribution:
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3/8/83

IV. ANALYSIS

There is no statistical data regarding the activity which would become a crime under this act. The Division has no information regarding the annual number of occurrences, arrests, or convictions for tampering with an item in commerce that is a food, drug, device, or cosmetic where physical injury is intended. Therefore, no estimate can be made regarding the fiscal impact of this proposed legislation.

HB
261

```
ELECT - QUERY
0002 ALL SECTION EQ 22.15.190

S22.15.190  DOCUMENT=        1 OF         1

     CHAPTER  = 22.15
     SECTION  = 22.15.190
     TITLE    = 22
EADINGS  TITLE 22.
         JUDICIARY.
         CHAPTER 15.
         DISTRICT COURTS.
         ARTICLE 1.
         DISTRICT JUDGES AND MAGISTRATES.
ITATION  SEC. 22.15.190.
ATCH LINE
          ASSIGNMENT OF DISTRICT JUDGES AND MAGISTRATES.
EXT      EACH DISTRICT JUDGE AND EACH MAGISTRATE SHALL HOLD COURT AT SUCH
         TIMES AND PLACES AS ARE ASSIGNED BY THE PRESIDING JUDGE OF THE
         SUPERIOR COURT OF THE DISTRICT.  THE PRESIDING JUDGE IN ANY
         JUDICIAL DISTRICT MAY ASSIGN ANY DISTRICT JUDGE OR MAGISTRATE
         WITHIN THE DISTRICT TO SERVE TEMPORARILY IN ANY OTHER JUDICIAL
         DISTRICTS.  RULES AND PROCEDURES FOR TEMPORARY ASSIGNMENT
         INCLUDING THE EMERGENCY SITUATION WHERE A SUPERIOR COURT JUDGE IS
         NOT READILY AVAILABLE TO ASSIGN A DISTRICT JUDGE OR MAGISTRATE
         SHALL BE AS PRESCRIBED BY THE SUPREME COURT.
ISTORY   (SEC. 14 CH 184 SLA 1959; AM SEC. 3 CH 24 SLA 1966)

0601 * END OF DOCUMENTS IN LIST - ENTER RETURN OR ANOTHER COMMAND.
```

Alaska State Legislature
HOUSE OF REPRESENTATIVES

POUCH V
JUNEAU, ALASKA 99811
(907) 465-4990

Committee on Judiciary

JR-

MEMORANDUM

TO: Representative Al Adams
Chairman, Committee on Finance

FROM: Representative Charlie Bussell
Chairman, Committee on Judiciary

DATE: March 14, 1983

RE: Alternative Solutions to the Peremptory Disqualification Problem

Please note the enclosed House Bill 261 that I introduced March 11, 1983, in order to hopefully rush the legislative process along.

Thank you.

CB:lyn

Alaska State Legislature

House of Representatives

Al Adams
Chairman
Committee on Finance

WHILE IN SESSION
Pouch V
State Capitol
Juneau, Alaska 99811
(907) 465-3706

OUT OF SESSION
P.O. Box 333
Kotzebue, Alaska 99752
(907) 442-3320

1024 W. 6th
Anchorage, Alaska 99501
(907) 274-0615

Official Business

March 9, 1983



MEMORANDUM

TO: Representative Milo Fritz
✓ Representative Charlie Bussell

FROM: Representative Al Adams AA

SUBJ: Alternative Solutions to the Peremptory Disqualification Problem

For your information only, I would like to draw to your attention the enclosed bill, introduced by Senator Ray last Friday. It would help to alleviate the problem illustrated by Judge Hornaday's experience in Homer. The bill would not allow a district court judge to serve outside of his district for more than 90 days without his consent. Thus, a judge could not be transferred permanently to another location unless he consents to such an arrangement.

Another solution, which I also think merits further attention, would be to raise minimum sentence levels for drunk driving convictions. This would go a long way towards achieving stricter penalties for drunk driving --- which I believe is the real impetus for public outcry regarding Judge Hornaday's transfer. Mitch Abood's HB 6 is an excellent vehicle for this kind of solution.

AA: lc
Enclosure

STATE OF ALASKA
FISCAL NOTE

Revision Date , 1983

I. REQUEST

Bill/Resolution No.: CS for HB 261
Title: Assignment of Judges
Sponsor: Bussell
Requestor: House Judiciary

II. FISCAL DETAIL

Agency Affected: Alaska Court System
Program Category Affected: Justice
BRU, Program of Subprogram(s) Affected:

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 83	FY 84	FY 85	FY 86	FY 87	FY 88
OPERATING						
100 PERSONAL SERVICES						
200 TRAVEL		10.0	10.6	11.2	11.9	12.6
300 CONTRACTUAL						
400 COMMODITIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC						
TOTAL OPERATING		10.0	10.6	11.2	11.9	12.6
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND		10.0	10.6	11.2	11.9	12.6
FEDERAL FUNDS						
OTHER (Specify Source)						

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

III. SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

IV. ANALYSIS: Attach a separate page for any Analysis

Prepared By: Richard P. Barrier, Deputy Admin. Director Phone: 264-0545
Division: Alaska Court System Date: 4/21/83

Approved by Commissioner: Date:
Department:

Distribution:
Original to Legislative Finance
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ANALYSIS FOR FISCAL IMPACT: CS FOR HB 261

The CS for HB 261 (Judiciary) stipulates that "a district judge who has been assigned to an established court within a judicial district may not be permanently reassigned by the presiding judge to another court within that judicial district." In the third judicial district, the presiding judge has stated that he plans to permanently reassign the Homer district judge to Anchorage. If this legislation prohibits the permanent reassignment of the Homer judge, the court will incur additional travel and per diem expenses to transport the Homer judge to Anchorage and Anchorage judges to Homer to cover disqualifications. The estimated cost of this travel and per diem is $10,000/year.

HB

262

American Academy of Pediatrics

Alaska Chapter

Chairman
Clinton B. Lillibridge, M.D.
4001 Dale Street, Suite 213
Anchorage, 99508

Alternate Chairman
Tom Porter, M.D.
Dept. of Pediatrics
Box 7-741
Anchorage 99510

Secretary-Treasurer
Charles Ryan, M.D.
3300 Providence Drive, Suite 206
Anchorage 99504

In support of Senate Bill 163
and House Bill 262

WHY DOES ALASKA NEED TOUGH CHILD PASSENGER SAFETY LEGISLATION?

1. THE GREATEST KILLER of KIDS is the CAR/TRUCK

   a. More children are killed by motor vehicles than by the next two greatest killers combined--more than birth defects, congenital heart lesions, brain malformations, leukemia, cancer, etc. together.

   b. Children under age 6 are PHYSICALLY more susceptible to HEAD INJURY. Twenty-five percent of children's weight is in their head (compared to 9 percent for adult). When the vehicle slows suddenly, the child is thrown HEADFIRST into the dashboard like an arrow. The child's SKULL is more FRAGILE, and BRAIN DAMAGE occurs more easily.

2. WOULD INTENSE EDUCATION ACHIEVE GOOD RESULTS?

   a. No. Several other states have spent hundreds of thousands of dollars on TV, newspaper, pediatric office teaching, etc. with NO MEASURABLE DIFFERENCE IN USAGE or death rate, because young people (parents) naively believe accidents always happen only to other people.

3. WOULD A TOUGH LAW INCREASE USAGE and SAVE LIVES?

		Pre-Law	With Law
Yes.	Massachusetts Usage:	14%	70%

		Pre-Law	With Law
Yes.	Tennessee:	12 deaths/year	1 death/year

Yes. Washington: Death rate over 10 years and 39,600 accidents is 13 times greater for children riding loose than restrained.

Clinton B Lillibridge MD

STATE OF ALASKA
FISCAL NOTE

Revision Date , 1983

I. REQUEST
Bill/Resolution No.: HB 262
Title: "...child safety devices..."
Sponsor: Clocksin
Requestor:

II. FISCAL DETAIL
Agency Affected: Public Safety
Program Category Affected: Admin/Justice
BRU, Program of Subprogram(s) Affected: Alaska State Troopers

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 83	FY 84	FY 85	FY 86	FY 87	FY 88
OPERATING						
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 COMMODITIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC						
TOTAL OPERATING	0	0	0	0	0	0
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER (Specify Source)						

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

III. SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

Not identified by sponser

IV. ANALYSIS: Attach a separate page for any Analysis No fiscal impact is anticipated.

Prepared By: Francis C. Allan F.C.A. Phone: 269-5691
Division: Alaska State Troopers MCK Date: 3-22-83

Approved by Commissioner: R.J. Sundberg Date: 3/29/83
Department: Public Safety

Distribution:
Original to Legislative Finance
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3/8/83

I. REQUEST #2

Bill/Resolution No.: 262

Title: Use of Child Safety devices in motor,etc

Sponsor: Clocksin, Szymanski & Koponen

Requestor:

II. FISCAL DETAIL

Agency Affected: Health & Social Services

Program Category Affected:

BRU, Program of Subprogram(s) Affected

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 83	FY 84	FY 85	FY 86	FY 87	FY 88
OPERATING						
100 PERSONAL SERVICES	-0-	-0-	-0-	-0-	-0-	-0-
200 TRAVEL	-0-	-0-	-0-	-0-	-0-	-0-
300 CONTRACTUAL	-0-	-0-	-0-	-0-	-0-	-0-
400 COMMODITIES	-0-	-0-	-0-	-0-	-0-	-0-
500 EQUIPMENT	-0-	-0-	-0-	-0-	-0-	-0-
600 LAND & STRUCTURES	-0-	-0-	-0-	-0-	-0-	-0-
700 GRANTS, CLAIMS, ETC	-0-	-0-	-0-	-0-	-0-	-0-
TOTAL OPERATING		-0-	-0-	-0-	-0-	-0-
CAPITAL	-0-	-0-	-0-	-0-	-0-	-0-
REVENUE	-0-	-0-	-0-	-0-	-0-	-0-

FUNDING: (Thousands of Dollars)

GENERAL FUND	-0-	-0-	-0-	-0-	-0-	-0-
FEDERAL FUNDS	-0-	-0-	-0-	-0-	-0-	-0-
OTHER (Specify Source)	-0-	-0-	-0-	-0-	-0-	-0-
	-0-	-0-	-0-	-0-	-0-	-0-

POSITIONS:

FULL-TIME	-0-	-0-	-0-	-0-	-0-	-0-
PART-TIME	-0-	-0-	-0-	-0-	-0-	-0-
TEMPORARY	-0-	-0-	-0-	-0-	-0-	-0-
	-0-	-0-	-0-	-0-	-0-	-0-

III. SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

IV. ANALYSIS: Attach a separate page for any Analysis

Prepared By: Vernellia Randall Phone: 465-3104

Division: Public Health Date: 3/22/83

Approved by Commissioner: Robert London Smith, Ph.D. Date: 3/30/83

Department: Health & Social Services

Distribution:

Original to Legislative Finance

Copy to Office of Management and Budget (for Legislature introduced bills)

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3/8

5/3

COMMITTEE REPORT

HOUSE

JUDICIARY

(7)

FURTHER: FINANCE

3/11/83

Date: 5/2/83

Mr. Speaker:

The Committee on HEALTH, EDUCATION AND SOCIAL SERVICES has had HB 262

"An Act relating to child safety devices for motor vehicles; providing for a child safety device loan program; and providing for an effective date."

under consideration and reports it back as follows:

[ ] do pass [ ] do not pass

[ ] do pass with attached amendments(s)

[✓] replace with CS for HB 262 (HESS) [X] same title [ ] new title

and recommends [illegible]

[ ] AND attaches a "Letter of Intent" [ ] New Fiscal Note [2] Zero Fiscal Notes Attached

[ ] reports it back without recommendation

[ ] referred to the _____ Committee

MEMBERS SIGNING DO PASS

Milo H. Fritz

[illegible]

M W Miller

[illegible]

MEMBERS HAVING OTHER RECOMMENDATIONS:

Adelbert Herrmann No Rec.

Mae Tinker Do Not Pass

CHAIRMAN

Co - Milo H. Fritz

H 60

American Academy of Pediatrics

Alaska Chapter

Chairman
Clinton B. Lillibridge, M.D.
4001 Dale Street, Suite 213
Anchorage, 99508

Alternate Chairman
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Box 7-741
Anchorage 99510

Secretary-Treasurer
Charles Ryan, M.D.
3300 Providence Drive, Suite 206
Anchorage 99504

In support of Senate Bill 163
and House Bill 262
Judiciary Referral

WHY DOES ALASKA NEED TOUGH CHILD PASSENGER SAFETY LEGISLATION?

1. THE GREATEST KILLER of KIDS is the CAR/TRUCK

   a. More children are killed by motor vehicles than by the next two greatest killers combined--more than birth defects, congenital heart lesions, brain malformations, leukemia, cancer, etc. together.

   b. Children under age 6 are PHYSICALLY more susceptible to HEAD INJURY. Twenty-five percent of children's weight is in their head (compared to 9 percent for adult). When the vehicle slows suddenly, the child is thrown HEADFIRST into the dashboard like an arrow. The child's SKULL is more FRAGILE, and BRAIN DAMAGE occurs more easily.

2. WOULD INTENSE EDUCATION ACHIEVE GOOD RESULTS?

   a. No. Several other states have spent hundreds of thousands of dollars on TV, newspaper, pediatric office teaching, etc. with NO MEASURABLE DIFFERENCE IN USAGE or death rate, because young people (parents) naively believe accidents always happen only to other people.

3. WOULD A TOUGH LAW INCREASE USAGE and SAVE LIVES?

		Pre-Law	With Law
Yes.	Massachusetts Usage:	14%	70%

		Pre-Law	With Law
Yes.	Tennessee:	12 deaths/year	1 death/year

Yes. Washington: Death rate over 10 years and 39,600 accidents is 13 times greater for children riding loose than restrained.

Clinton B Lillibridge MD

American Academy of Pediatrics

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In support of Senate Bill 163
and House Bill 262 JR

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Yes.	Tennessee:	12 deaths/year	1 death/year

Yes. Washington: Death rate over 10 years and 39,600 accidents is 13 times greater for children riding loose than restrained.

Clinton B Lillibridge MD

STATE OF ALASKA
FISCAL NOTE

Revision Date , 1983

I. REQUEST

Bill/Resolution No.: CSHB 262(HESS)
Title: "...Child Safety Devices..."
Sponsor: Clocksin, Szymanski, Koponen
Requestor: House Judiciary

II. FISCAL DETAIL

Agency Affected: Public Safety
Program Category Affected: Admin/Justice
BRU, Program of Subprogram(s) Affected: Alaska State Troopers

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 83	FY 84	FY 85	FY 86	FY 87	FY 88
OPERATING						
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 COMMODITIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC						
TOTAL OPERATING	0	0	0	0	0	0
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER (Specify Source)						

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

III. SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

Not identified by sponser

IV. ANALYSIS: Attach a separate page for any Analysis No fiscal impact is anticipated.

Prepared By: Michael Korhonen Phone: 269-5646
Division: Alaska State Troopers Date: 5-9-83

Approved by Commissioner: R.J. Sundberg Date: 5/18/83
Department: Public Safety

Distribution:
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3/8/83

MSG 83-00015214 PRTY 1 05/05/83 14:36:00 ORIG: LA01 IN= 0019 OUT= 0133
FROM: SHIRLEE ANC LIO TO: POMS JUNEAU INFO
TARGET: LJHL SUBJ: POM

2.

TO: REPRESENTATIVE BUSSELL

FROM: PHYLISS JONES, 5800 GLENN HIGHWAY, ANCHORAGE 9950[illegible]
H 333-6233

I URGE YOU TO VOTE FOR HOUSE BILL, 262.

MAY 1983
RECEIVED

****

HB

270

POSITION PAPER/Department of Health & Social Services

POSITION PAPER

CS for SS for House Bill No. 270

"An Act relating to child pornography."

CS for SS for House Bill No. 270 raises the penalty for exploitation of a minor from a Class C felony to a Class B felony in AS 11.41.455. House Bill No. 270 also adds a new section, Sec. 11.61.125, to Alaska State Statutes which makes distribution of child pornography a Class C felony. The Department estimates that one additional medium security bed will be necessary to house offenders convicted of unlawful exploitation of a minor and/or distribution of child pornography.

Recommended by: Roger C. Endell
for Roger V. Endell, Director
Division of Adult Corrections

Date: 4-12-83

Approved by: Robert London Smith
Robert London Smith, Ph.D.
Commissioner

Date: 4/14/83

STATE OF ALASKA
FISCAL NOTE

Revision Date , 1983

I. REQUEST

Bill/Resolution No. CS for SS H.B. #270
Title:"An Act relating to child porno."
Sponsor: HESS Committee
Requestor: Judiciary Committee

II. FISCAL DETAIL

Agency Affected:Health & Social Services
Program Category Affected:Justice
BRU, Program of Subprogram(s) Affected:
Adult Confinement

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 83	FY 84	FY 85	FY 86	FY 87	FY 88
OPERATING						
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL		2.4	5.1	5.4	5.7	6.1
400 COMMODITIES		2.5	5.3	5.6	6.0	6.3
500 EQUIPMENT						
600 LAND & STRUCTURES			-	-	-	-
700 GRANTS, CLAIMS, ETC		.2	.2	.3	.3	.4
TOTAL OPERATING		5.1	10.6	11.3	12.0	12.8
CAPITAL	-0-	146.0	-0-	-0-	-0-	-0-
REVENUE	-0-	-0-	-0-	-0-	-0-	-0-

FUNDING: (Thousands of Dollars)

GENERAL FUND	-0-	151.1	10.6	11.3	12.0	12.8
FEDERAL FUNDS						
OTHER (Specify Source)						

POSITIONS:

FULL-TIME	-0-	-0-	-0-	-0-	-0-	-0-
PART-TIME						
TEMPORARY						

III. SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

The source of funds to offset the fiscal impact of this bill has not been identified by the sponsor.

IV. ANALYSIS: Attach a separate page for any Analysis

Prepared By: Roger C. Lange Roger C. Lange Phone: 465-3376
Division: Adult Corrections Date: April 11, 1983

Approved by Commissioner: Robert Loudon Smith, M.D. Date: 4/14/83
Department: Health & Social Services

Distribution:
Original to Legislative Finance
Copy to Office of Management and Budget (for Legislature introduced bills)
Copy to Department (for Governor introduced bills)
Copy to Sponsor
Copy to Requestor (if different from Sponsor)

3/8/83

IV. ANALYSIS

A. Assumptions

Based on conversations with Department of Law staff, it is assumed that there will be one additional Class B felony conviction and four Class C felony convictions per year. It is assumed all will be first time offenders. Therefore it is estimated that 50% of the Class B and 20% of the Class C felony offenders will receive terms of confinement. This will result in approximately 1.5 person years per year of jail time will be served.

It is further assumed that the distributors of child pornography will remove these materials from their visible stock and convictions for distribution of child pornography will decrease from the original estimate of four per year.

Therefore, it is estimated that one additional medium security bed will be required if this proposed legislation is enacted.

B. Program Summary

1. Positions - An average of one position is required for every 2½ beds. Since only one bed is requested in the fiscal note, no positions are identified as being needed.

2. Other expenditures

a. Contractual Services
Medical care and counseling services $2400

b. Commodities
Food and clothing $2500

c. Grants
Inmate gratuities for kitchen, janitorial or other assigned tasks $200.

C. Impact

There will be no significant economic or local government as a result of passage of this bill.



ADMINISTRATIVE OFFICES
325 WEST POTTER DRIVE, ANCHORAGE, ALASKA 99502



Judiciary Committee
Alaska State House of Representatives
Pouch V
Juneau, Alaska 99811

April 30, 1983

Further reference House Bill # 270.
This is addendum to Book Cache packet dated April 23, 1983.

Attached is a copy of page S 316 of The Congressional Record of January 26, 1983 containing S.57, A bill to amend title 18 of the United States Code relating to the sexual exploitation of children; to the Committee on the Judiciary in the United States Senate.

I have highlighted that portion of the Congressional Record that deals with the reference we have made in our letter of April 23 regarding Senator Spector's proposal for an affirmative defense.

We continue to be concerned about protection of children. We are also concerned about the protection of the First Amendment rights of all citizens. Since it appears that the amendment proposed to the U.S. Senate will be adopted, it would seem appropriate that similar language be included in either HB 270 or SB 221.

If further information can be of assistance please call.

Sincerely,

Russ Riemann
President

(2) thousands of children including large numbers of runaway and homeless youth are exploited in the production and distribution of pornographic materials; and

(3) the use of children as subjects of pornographic materials is harmful to the physiological, emotional, and mental health of the individual child and to society.

SEC. 3. Chapter 110 of title 18, United States Code, is amended to read as follows:

"CHAPTER 110—SEXUAL EXPLOITATION OF CHILDREN

"Sec. 2251. Definitions for chapter.
"Sec. 2252. Sexual exploitation of children.
"Sec. 2253. Certain activities relating to material involving the sexual exploitation of minors.
"Sec. 2254. Defense.

"§ 2251. Definitions for chapter

"For the purposes of this chapter, the term—

"(1) 'minor' means any person under the age of eighteen years;

"(2) 'sexually explicit conduct' means actual or simulated—

"(A) sexual intercourse, including genital-genital, oral-genital, anal-genital, or oral-anal, whether between persons of the same or opposite sex;

"(B) bestiality;

"(C) sado-masochistic abuse (for the purpose of sexual stimulation);

"(D) masturbation; or

"(E) lewd exhibition of the genitals or public area of any person;

"(3) 'simulated' means the explicit depiction of any conduct described in clause (2) of this section which creates the appearance of such conduct and which exhibits any uncovered portion of the genitals or buttocks;

"(4) 'producing' means producing, directing, manufacturing, issuing, publishing, or advertising; and

"(5) 'visual or print medium' means any film, photograph, negative, slide, book, magazine, or other visual or print medium.

"§ 2252. Sexual exploitation of children

"(a) Any person who knowingly employs, uses, persuades, induces, entices, or coerces any minor to engage in, or who has a minor assist any other person to engage in, any sexually explicit conduct for the purpose of producing any visual or print medium depicting such conduct, shall be punished as provided under subsection (c), if such person knows or has reason to know that such visual or print medium will be transported in interstate or foreign commerce or mailed, or if such visual or print medium has actually been transported in interstate or foreign commerce or mailed.

"(b) Any parent, legal guardian, or person having custody or control of a minor who knowingly permits such minor to engage in, or to assist any other person to engage in, sexually explicit conduct for the purpose of producing any visual or print medium depicting such conduct shall be punished as provided under subsection (c) of this section, if such parent, legal guardian, or person knows or has reason to know that such visual or print medium will be transported in interstate or foreign commerce or mailed or if such visual or print medium has actually been transported in interstate or foreign commerce or mailed.

"(c) Any person who violates this section shall be fined not more than $75,000 or imprisoned not more than 10 years, or both, but, if such person has a prior conviction under this section, such person shall be fined not more than $150,000 or imprisoned not less than 2 years nor more than 15 years, or both.

"§ 2253. Certain activities relating to material involving the sexual exploitation of minors

"(a) Any person who—

"(1) knowingly transports or ships in interstate or foreign commerce or mails any visual or print medium, if—

"(A) the producing of such visual or print medium involves the use of a minor engaging in sexually explicit conduct; and

"(B) such visual or print medium depicts such conduct; or

"(2) knowingly receives any visual or print medium that has been transported or shipped in interstate or foreign commerce or mailed, if—

"(A) the producing of such visual or print medium involves the use of a minor engaging in sexually explicit conduct; and

"(B) such visual or print medium depicts such conduct;

shall be punished as provided in subsection (b) of this section.

"(b) Any person who violates this section shall be fined not more than $75,000 or imprisoned not more than 10 years, or both, but, if such person has a prior conviction under this section, such person shall be fined not more than $150,000 or imprisoned not less than two years nor more than 15 years, or both.

"§ 2254. Defense

"In any prosecution brought under this chapter for the production or distribution of a visual or print medium depicting sexually explicit conduct as defined in section 2251 (1)(2)(D) or (E), it shall be an affirmative defense that the medium, when taken as a whole, possesses serious literary, artistic, scientific, social, or educational value.".

SEC. 4. Section 1961 of title 18, United States Code, is amended in clause (1)(B) by inserting after "section 1955 (relating to the prohibition of illegal gambling businesses)," the following: "sections 2252 and 2253 (relating to the sexual exploitation of children),".

SEC. 5. Section 1964 of title 18, United States Code, is amended in subsection (c) by striking out "his business or" and inserting in lieu thereof "his person, business, or".

By Mr. SPECTER:

S. 58. A bill to authorize incarceration in Federal prisons of convicts sentenced to life imprisonment under the habitual criminal statute of a State; to the Committee on the Judiciary.

S. 58—INCARCERATION UNDER HABITUAL OFFENDER STATUTES

Mr. SPECTER. Mr. President, I now send to the desk two bills which are meant to supplement the Armed Career Criminal Act of 1983, which I just introduced.

The first of these bills, S. 58, grants the Attorney General authority to incarcerate in Federal facilities persons convicted and sentenced to life imprisonment in State courts under their habitual offender statutes.

Permitting these persons to be transfered to Federal prisons will encourage more prosecutions under State career-criminal statutes. These statutes normally allow judges to sentence habitual offenders for significant periods in order to keep them from engaging in further criminal activity. Often, local district attorneys have task forces specially created to target career criminals. Unfortunately however, long-term incarceration of these criminals is nearly impossible due to already crowded State prison conditions. Prisoners are sometimes set free early to make room for the continuing stream of newly convicted persons.

By holding persons sentenced to life imprisonment under a State's career criminal statute, the Federal Government is reducing the burden of overcrowding caused by prisoners serving long sentences.

Recent statistics show that the State prison population continues to increase at an alarming rate. Since 1975 the total U.S. prison population grew by only 1.2 percent. In the first 9 months of 1982, the State prison population exploded with a 10.4-percent rate of increase over 1981 prison population figures. Over the same 9 month period, the Federal prison population increased only 4.5 percent, much of that attributed to unsentenced prisoners under the jurisdiction of the U.S. Immigration and Naturalization Service.

The States need help from the Federal Government to reduce overcrowded conditions. This bill provides this assistance by allowing special targeting efforts to be directed at career criminals.

I ask unanimous consent that the bill be printed in the RECORD.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 58

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) Congress finds that—

(1) career criminals commit a large percentage of the violent and major felonies afflicting society, causing immeasurable physical injury to innocent persons and damage, destruction, or loss to their property estimated at billions of dollars annually, thereby terrorizing law-abiding citizens, disrupting the community, and undermining respect for law;

(2) the continuing criminal activity of career criminals adversely affects interstate commerce;

(3) despite prior convictions for serious offenses, many repeat offenders are placed on probation or sentenced to unduly short terms of imprisonment by State judges, to the detriment of public safety;

(4) many repeat offenders cannot reasonably be rehabilitated and, unless incarcerated for life, will commit further felonies;

(5) many States have "habitual criminal" statutes providing for life sentences for repeat offenders, upon subsequent felony convictions;

(6) many State prison systems are severely overcrowded, understaffed, and unable to confine convicts sentenced to life imprisonment under such statutes in a safe, secure, and humane manner;

(7) State judges may be deterred by the lack of sufficient prison space, staff, and funding from imposing life sentences for repeat offenders as provided by State law, and the legislatures in those States without habitual criminal statutes may be dissuaded by such considerations from enacting such statutes;

(8) the interests of justice and public safety would be served if State authorities felt free to impose life sentences for repeat major offenders unrestrained by such considerations;

HB

225

REQUEST

Bill/Resolution No.: House Bill No. 275
Title: "An Act relating to estab. of prison fac.
Sponsor: Reps. Larson & Lacher
Requestor: House HESS

FISCAL DETAIL

Agency Affected: Health & Social Services
Program Category Affected: Admin. of Justic
BRU, Program of Subprogram(s) Affected: Adult Confinement

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 83	FY 84	FY 85	FY 86	FY 87	FY 88
OPERATING						
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 COMMODITIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-
CAPITAL	-0-	-0-	-0-	-0-	-0-	-0-
REVENUE	-0-	-0-	-0-	-0-	-0-	-0-

FUNDING: (Thousands of Dollars)

GENERAL FUND	-0-	-0-	-0-	-0-	-0-	-0-
FEDERAL FUNDS						
OTHER (Specify Source)						

POSITIONS:

FULL-TIME	-0-	-0-	-0-	-0-	-0-	-0-
PART-TIME						
TEMPORARY						

III. SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

Not applicable.

IV. ANALYSIS: Attach a separate page for any Analysis

Prepared By: Roger C. Lanoe Roger C. Lanoe
Division: Adult Corrections
Phone: 465-3376
Date: March 23, 1983

Approved by Commissioner: Robert Loeber Smith, M.D.
Department: Health & Social Services
Date: 3/30/83

Distribution:
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3/8

5/9

COMMITTEE REPORT

HOUSE

FURTHER: JUDICIARY

(7)

3/18/83

Date: 5/6/83

Mr. Speaker:

The Committee on HEALTH, EDUCATION AND SOCIAL SERVICES has had HB 275

"An Act relating to the establishment of prison facilities."

under consideration and reports it back as follows:

[ ] do pass [ ] do not pass

[ ] do pass with attached amendments(s)

[✓] replace with CS for HB 275 (Hess) [✓] same title [ ] new title

and recommends [illegible]

[ ] AND attaches a "Letter of Intent" [ ] New Fiscal Note [✓] Zero Fiscal Note Attached

[ ] reports it back without recommendation

[ ] referred to the _____ Committee

MEMBERS SIGNING DO PASS	MEMBERS HAVING OTHER RECOMMENDATIONS:
	Mae Fischer No Rec
	[illegible] No Rec
	M W Miller No Rec
	Adelheid Herrmann No Rec
	Nilo Kopman No Rec
	[illegible] Do not pass

CO - Mae Fischer
CHAIRMAN

CO - [illegible]

H 60

HB

279

STATE OF ALASKA 1984 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date:

I. REQUEST

Bill/Resolution No.: HB 279
Title: An Act Amending JRS & PERS
Sponsor: Bussell
Requestor:
Date of Request:

II. FISCAL DETAIL

Agency Affected: Alaska Court System
Program Category Affected:
BRU, Program of Subprogram(s) Affected

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 84	FY 85	FY 86	FY 87	FY 88	FY 89
OPERATING						
100 PERSONAL SERVICES	508.9	549.6	593.5	641.0	692.3	747.7
200 TRAVEL						
300 CONTRACTUAL						
400 COMMODITIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC						
TOTAL OPERATING	508.9	549.6	593.5	641.0	692.3	747.7
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND	508.9	549.6	593.5	641.0	692.3	747.7
FEDERAL FUNDS						
OTHER (Specify Source)						
TOTAL						

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						
TOTAL						

III. SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

IV. ANALYSIS: Attach a separate page for any Analysis

Prepared By: J.K. Humphreys, Director J.K. Humphreys Phone: 465-4460
Division: Retirement & Benefits Date: 11-9-83

Approved by Commissioner: Lisa Rudd Date:
Department: Administration

Distribution:
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9/14/83

State of Alaska

Fiscal Note

HB 279

IV Analysis: This is a revised fiscal note for HB 279.

- o This bill would effect PERS by reducing PERS cost to the court systems by 13.18% of magistrates covered payroll of $966,690 ($21,015 average X 46 magistrates) for FY 84.
- o This bill would effect JRS by increasing JRS cost to the court systems by 65.82% of the magistrates covered payroll of $966,690 for FY 84.
- o The net effect of this bill would be an increase in cost to the state of 52.64% (65.82% - 13.18%) of the magistrates covered payroll or $508,900 ($966,690 X 52.64%) for FY 84.
- o This revision is a result of new salary data provided by the Alaska Court System.

Position Paper

HB 279

The Department strongly opposes this bill. This bill would transfer the magistrates from the PERS to the Judicial Retirement System. It would serve no apparent, useful public purpose to offset the much higher costs to the State. The rationale which has been advanced for the extraordinary benefits provided judges and justices--that they are necessary to attract and retain first-rate attorneys who would earn more money in private practice--does not appear to apply in the case of Magistrates. Magistrates are presently provided adequate coverage under the PERS.

J.K. Humphreys

J.K. Humphreys, Director, Division of Retirement & Benefits — 5/4/83 Date

Lisa Rudd

Lisa Rudd, Commissioner of Administration — 5/5/83 Date

STATE OF ALASKA
FISCAL NOTE

Revision Date May 4 , 1983

I. REQUEST
Bill/Resolution No.: HB 279
Title: An Act Amending JRS & PERS
Sponsor: Bussell
Requestor:

II. FISCAL DETAIL
Agency Affected: Alaska Court System
Program Category Affected:
BRU, Program of Subprogram(s) Affected:

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 83	FY 84	FY 85	FY 86	FY 87	FY UP
OPERATING						
100 PERSONAL SERVICES						
200 TRAVEL		508.9	549.6	593.5	641.0	692.3
300 CONTRACTUAL						
400 COMMODITIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC						
TOTAL OPERATING		508.9	549.6	593.5	641.0	692.3
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND		508.9	549.6	593.5	641.0	692.3
FEDERAL FUNDS						
OTHER (Specify Source)						

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

III. SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

IV. ANALYSIS: Attach a separate page for any Analysis

Prepared By: J.K. Humphreys J.K. Humphreys, Director Phone: 465-4460
Division: Retirement & Benefits Date: 5-4-83

Approved by Commissioner: Lisa Rudd, Commissioner for Date: 5-4-83
Department: Administration

Distribution:
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3/8/83

State of Alaska

Fiscal Note

HB 279

IV Analysis: This is a revised fiscal note for HB 279.

- o This bill would effect PERS by reducing PERS cost to the court systems by 13.18% of magistrates covered payroll of $966,690 ($21,015 average X 46 magistrates) for FY 84.
- o This bill would effect JRS by increasing JRS cost to the court systems by 65.82% of the magistrates covered payroll of $966,690 for FY 84.
- o The net effect of this bill would be an increase in cost to the state of 52.64% (65.82% - 13.18%) of the magistrates covered payroll or $508,900 ($966,690 X 52.64%) for FY 84.
- o This revision is a result of new salary data provided by the Alaska Court System.

Judiciary Referral

FROM THE DESK OF IRIS A. LATHROP

P.O. BOX 187, TOK, ALASKA 99780
907-883-5172



April 18, 1983

The Honorable Charlie Bussell
Alaska State Legislature
Pouch V, Mail Stop 3100
Juneau, Alaska 99811

Dear Representative Bussell:

Re: House Bill #279
Magistrate's Retirement

I wish to thank you for introducing the subject bill on behalf of the Alaska Association of Magistrates. It is a good feeling to know that the magistrates have your support.

If you wish information from me as to why I feel magistrates should be included in the judicial retirement system, I would be more than happy to send copies of letters I have sent to individual legislators this year as well as in the past. I am hesitant to burden you with more reading material than time will permit.

Again, my appreciation for your support of this bill.

Sincerely,

Iris A. Lathrop

Iris A. Lathrop

HB-279

Association of Alaska Magistrates
Box 735
Wrangell, Alaska 99929
March 15, 1983



To:
Sen. Bill Ray
Sen. Joe Josephson
Sen. Richard Eliason
Sen. Robert Ziegler, Sr.
Sen. Fritz Pettyjohn
Sen. Don Bennett
Sen. John Sackett
Sen. Frank Ferguson
Sen. Jan Faiks
Sen. Vic Fischer
Sen. Bob Mulcahy
Sen. Pappy Moss
Rep. Charlie Bussell
Rep. John Liska
Rep. Joe Hayes
Rep. Ramona Barnes

Rep. Hugh Malone
Rep. Donald Clocksin
Rep. Ron Wendte
Rep. Al Adams
Rep. Robert Bettisworth
Rep. Vern Hurlbert
Rep. Sam Pestinger
Rep. Ben Grussendorf
Rep. Terry Martin
Rep. Jerry Ward
Rep. Joe Flood
Rep. John Lindauer
Rep. Jim Duncan
Rep. Fred Zharoff
Rep. Jack McBride

Enclosed are copies of materials and correspondence relating to Senate Bill 20. Senator Ziegler sponsored this bill and it is now co-sponsored by Senator Moss. A companion bill will be filed in the House within the next few days.

On behalf of the magistrates in the State of Alaska I ask your support of this bill. If you have any questions, please contact me at 874-2311 or 874-3989; a board member of the Association (listing attached); or your local magistrate.

Thank you for your interest and assistance.

Sincerely,

Linda Hartshorn

Linda Hartshorn
Secretary/Treasurer

ASSOCIATION OF ALASKA MAGISTRATES

BOARD MEMBERS

First District

Linda Hartshorn, Secretary/Treasurer
Box 869
Wrangell, Alaska 99929 — 874-2311 or 874-3989

Marilyn Hanson
P.O. Box 910
Sitka, Alaska 99835 — 747-6271

Second District

Marie Beans
Box 211
Mt. Village, Alaska 99632 — 591-2149

Lowell Anagick
Box 185
Unalakleet, Alaska 99684 — 624-3015

Third District

Jess Nicholas
Pouch I
Kenai, Alaska 99611 — 283-3110

Sheldon Sprecker, President
Box 86
Glennallen, Alaska 99588 — 822-3405 or 822-3726

Brian Johnson
Box 860
Palmer, Alaska 99645 — 745-4284

Fourth District

Alice Lathrop
Box 187
Tok, Alaska 99780 — 883-5171

Barbara Macfarlane
Box 41
Healy, Alaska 99743 — 683-2213 or 683-2589



Trial Courts
State of Alaska

FIRST JUDICIAL DISTRICT
P. O. BOX 869
WRANGELL, ALASKA
99929

March 10, 1983

Senator Robert H. Ziegler, Sr.
pouch V
Juneau, Alaska 99811

Dear Senator Ziegler:

Enclosed are copies of a letter and Senate Bill 20 which were sent to each magistrate in the state. I am also enclosing copies of the information received from Alaska Court System fiscal officer Bob Fisher and Supreme Court Order No. 544 relating to magistrate salaries.

It seems the lack of enthusiasm for this bill is based on the thought that magistrates are not judges, per se, and an aversion to the administrative paperwork which would inevitably follow passage of the bill. We feel we are judges and would hazard a guess that most persons who have come before us would be of the same opinion. In support of our stand we offer the following:

Buckalew v Holloway 604 P2d 240 (1979)
Alaska Supreme Court determination that magistrates are "judges" within the meaning of Article IV, Section 4 of the Alaska Constitution.

AS 22.15.020
Number of district court judges and magistrates listed for the district court of each judicial district.

AS 22.15.100 and 22.15.110
Lists functions, powers and additional duties of district court judges and magistrates.

AS 22.15.120
Limitations on proceedings which a magistrate may hear.

AS 22.15.220(c)
Requirement that district judges and magistrates must file an affidavit monthly to receive salary.

AS 22.15.240
Appeals from magistrate judgments are handled the same as those from a district court judge judgment.

AS 22.20.010

Judicial officer defined. "The term 'judicial officer' means a supreme court justice, including the chief justice, a judge of the court of appeals, a judge of the superior court, a district court judge and a magistrate."

Criminal Rule 56(b)

Definitions. "Magistrate" includes magistrates, district court judges, superior court judges and any other judicial officer authorized by law to conduct a preliminary examination of a person accused of a crime.

Administrative Rule 21(b)

Requirement of magistrate to wear black judicial robe as do all other judges.

Administrative Rule 24(f)

Assignment of Judicial Officer. "In this rule, 'judicial officer' means a superior court judge, district court judge or magistrate."

Administrative Rule 28(b)

Judicial vacations and leave outlined for district court judges and magistrates.

AS 22.25.010(g)

Magistrates not included as "judges" under the judicial retirement system.

The last citation is the only one which excludes magistrates as judges. We feel the duties we perform are those of a district court judge with some jurisdictional limitations. We are on 24-hour call, as required by statute and rule, to perform "judicial" functions. Many of us sit as masters in superior court matters and are standing masters in children's cases.

I have copied those sections of the statutes and rules pertaining to jurisdiction, duties, etc,, and would make these available to you if you so desire.

Mr. Van Doran has agreed to supply me with a copy of the fiscal note on this bill as soon as your office receives it. I spoke with Bob Fisher yesterday and he said the fiscal note should be in Juneau by tomorrow.

Thank you for you continued support of the magistrates.

Sincerely,

Linda Hartshorn

Linda Hartshorn
Magistrate

THE SUPREME COURT OF THE STATE OF ALASKA
ORDER NO. 544

Relating to Magistrate Salaries.

IT IS ORDERED:

Supreme Court Order No. 451 is rescinded and the following is adopted as the magistrate salary schedule:

1. There are established six salary levels for magistrate posts. The base annual salary for each level is as follows:

Magistrate I	$10,161
Magistrate II	$14,335
Magistrate III	$20,430
Magistrate IV	$31,291
Magistrate V	$39,832
Magistrate VI	$46,476

Geographic cost of living adjustments shall be provided in accordance with applicable statutes.

2. Each magistrate location has been assigned to a salary level based on the number of hours which the court system expects the magistrate at that location to work in order to accomplish the estimated court workload at that location. The minimum number of hours of work required of the magistrates in each salary level are as follows:

Salary Level	Hours Per Week (annual average)
Magistrate I	15
Magistrate II	20
Magistrate III	27.5
Magistrate IV	37.5
Magistrate V	37.5
Magistrate VI	37.5

This is an annual average of the weekly work hours. Seasonal variations in workload at certain locations will require the magistrates at those locations to work longer hours during some parts of the year and shorter hours during other parts of the year.

The salaries listed in section 1. above are for the number of hours per week listed in section 2. plus 24-hour on-call availability for emergencies. These salaries also include compensation for full-time attendance at all required training courses.

3. Magistrate positions are allocated to the salary levels as follows:

Magistrate VI

Kenai Kodiak Palmer

Magistrate V

Glennallen Seward Sitka

Magistrate IV

Barrow	Haines	Tok
Bethel	Kotzebue	Unalaska
Cordova	Nenana/Healy	Wrangell
Craig	Nome	
Dillingham	Petersburg	

Magistrate III

Cold Bay	Hoonah
Ft. Yukon	Naknek
Galena	Yakutat

Magistrate II

Aniak	Selawik	Skagway
Delta Jct.	Seldovia	

Magistrate I

Angoon	Kiana	Pt. Hope	Shungnak
Emmonak	McGrath	Sand Point	Tununak
Gambell	Mekoryuk	Savoonga	Unalakleet
Hooper Bay	Mt. Village	St. Mary	Whittier
Kake	Noorvik	St. Paul Island	

4. Step increases.

A. Frequency and amount.

All magistrates are eligible for step increases of 3.5% annually for the first five years of their service. The procedure for granting step increases shall be patterned after that which applies to classified employees except that part-time magistrates will not be required to work 1,950 hours before being eligible to receive an annual raise. There will be a total of five steps of annual increases followed by longevity steps after the seventh, ninth, fourteenth and eighteenth years of continuous employment at one salary level.

If a magistrate's salary level is raised, the magistrate's salary step within the higher level will be determined by the same method used for classified employees (see Personnel Rule 6.02.03).

B. Criteria for receiving step increases.

1. Tenure - one year.
2. Written approval by presiding judge stating that the magistrate is performing adequately.
3. Passing scores on all correspondence courses required for that level in that region of the state (required by either the presiding judge or the administrative director).

4. For Magistrates I through V: written verification by the presiding judge that the following are being adequately maintained:
   a. dockets
   b. indexes
   c. library books (that is, that the Statutes, Administrative Code and Rules are kept up to date)
   d. case files and the case numbering system
   e. tape recordings of formal hearings and the binder for duplicate copies of all log notes
   f. accounting records (receipts, revenue deposits, trust deposits, trust checks and proper recording of all accounting data on the case dockets)

C. Implementation.

All magistrates who are in office on January 1, 1981 will start at Step A of their designated salary level. The anniversary date for all such magistrates will be January 16. The anniversary date of all magistrates hired or promoted after January 1, 1981 will be the 16th of the month following their date of hire or promotion.

5. Review of Classification.

All magistrate positions shall be reviewed annually by the director of personnel to assure correct classification. These reviews shall be based on statistical evaluation of duties accomplished by each magistrate. The magistrate salary at every location must be re-evaluated by the director of personnel whenever a vacancy occurs. Vacancies may not be advertised until the salary for that position has been re-evaluated and any recommended changes for reclassification of the position have been approved by the chief justice.

6. Change in Classification.

The director of personnel shall recommend to the chief justice salary increases based upon reclassification of magistrate positions after first conferring with the area court administrator and the presiding judge of the judicial district in which the magistrate is located. The director of personnel shall recommend to the chief justice that a magistrate position be refilled at a lower level upon the position becoming vacant, after first conferring with the area court administrator and presiding judge for that judicial district.

7. Compensation for part-time magistrates asked to do extra work.

If a part-time magistrate (Levels I, II and III) is asked to serve in another court location to replace another magistrate or a district court judge for a period of time, the part-time magistrate must receive compensation for the additional hours worked.

DATED: September 24, 1982

EFFECTIVE DATE: March 16, 1982

Chief Justice

Justice

Justice

Justice

Justice

March 9, 1983

Dear Fellow Magistrates:

As most of you know, the Association of Alaska Magistrates has had a bill in the legislature the past several years to include magistrates in the Judicial Retirement System. Senator Robert Ziegler has introduced Senate Bill 20 in the thirteenth legislature on our behalf. A copy of that bill is enclosed for your information.

The contribution rate under the Judicial Retirement System (JRS) is 7% as compared to the 4.25% we currently pay under the Public Employees Retirement System (PERS). Under SB 20, to receive credit for service as a magistrate prior to July 1, 1983, the magistrate must:

1) withdraw from PERS
2) receive a refund of contributions under PERS
3) elect to receive credit for service prior to July 1, 1983, and
4) make retroactive contributions for service as a magistrate after January 3, 1959.

Retroactive contributions may be set up as a payroll deduction over a reasonable period of time.

Following is my understanding of the differences between PERS as outlined in AS 39.35 and JRS as outlined in AS 22.25:

PERS - Contribution rate is 4.25% of base salary
Benefits paid:
1) Age 55 with 5 years of service; or
2) 30 years of service; or
3) Early retirement at 50 years of age and 5 years of service with adjustment for early retirement

Computation of benefits:
2% of average monthly wage for 3 high years times years of service
PLUS COLA (if remain in Alaska) of $50.00 or 10% of the benefit, whichever is greater
PLUS medical insurance coverage

JRS - Contribution rate is 7% of base salary
Benefits paid:
1) Mandatory retirement at 70 years of age
2) Age 60 with 5 years of service
3) Early retirement at 55 years of age or 20 years of service with adjustment for early retirement

Computation of benefits:
5% for each year of service (up to 15 years or 75%) times base monthly wage paid incumbents at the time of the benefit payment
PLUS medical insurance coverage

Please read the statutes cited above for further information on the two plans.

Examples of approximate monthly retirement benefits based on 5 years of service and current base monthly salaries are:

		PERS	JRS
Magistrate I	(15 hours/week)	$ 84.60	$211.50
Magistrate II	(20 hours/week)	119.40	298.50
Magistrate III	(27.5 hours/week)	170.20	425.50
Magistrate IV	(37.5 hours/week)	260.70	651.75
Magistrate V	(37.5 hours/week)	331.90	829.75
Magistrate VI	(37.5 hours/week)	387.30	968.25

The information provided to me indicates that the average age of the magistrates is 42 years with an average length of service of 6.8? years. There are 49 positions authorized by Supreme Court Order No. 54? and they are distributed as follows:

Magistrate I	19
Magistrate II	5
Magistrate III	6
Magistrate IV	13
Magistrate V	3
Magistrate VI	3

The Senate Judiciary Committee has set up a teleconference with the magistrates at 11:30 A.M. on March 25, 1983 in Anchorage. They will hear testimony at that time from one or two magistrates but we ask that everyone attend, if possible. This was coordinated at our request and will determine if Senate Bill 20 goes from the Judiciary to the Finance Committee with a "do pass" recommendation.

We will have a meeting of the Association of Alaska Magistrates in the early part of the conference week and can discuss the issue further at that time. Please jot down any other issues you wish to discuss.

I look forward to seeing all of you at the conference. It promises to be a good experience with varied topics and beneficial discussion periods.

Sincerely,

Linda Hartshorn

Linda Hartshorn
Secretary/Treasurer
Association of Alaska Magistrates

PCN	CLASS	COURT	TITLE	INCUMBENT	RANGE/ STEP	MONTHLY SALARY	ANNUAL SALARY	SERVICE
8109	XG17	AKA	MAGISTRATE IV	HANSON		2,793	33,516	9.50
8111	XG19	AKB	MAGISTRATE IV	HARTSHORN		2,793	33,516	10.00
8110	XG17	AKA	MAGISTRATE IV	REDEKER		2,793	33,516	5.70
8101	XG18	AEA	MAGISTRATE III	DENNIS		1,762	21,144	4.50
8102	XG19	CKB	MAGISTRATE IV	HEINMILLER		2,687	34,644	14.70
8103	XG18	AWA	MAGISTRATE III	SAVLAND		1,885	22,620	11.50
8104	XG16	AKR	MAGISTRATE I	CHENEY		907	10,884	8.30
8105	XG16	ARK	MAGISTRATE I	VACANT		907	10,884	
8106	XG17	CKA	MAGISTRATE II	WURLEY		1,322	15,864	3.10
8107	XG17	CSA	MAGISTRATE II	GALLAGHER		1,322	15,864	4.30
8108	XG16	ARD	MAGISTRATE I	HOWARD		907	10,884	2.30
8015	XG17	HIA	MAGISTRATE IV	VACANT		3,105	37,260	
8201	XG19	MEA	MAGISTRATE IV	CROSS		3,429	41,148	
8202	XG19	KAA	MAGISTRATE IV	SINKEY		3,429	41,148	
203	XG16	JWB	MAGISTRATE I	VACANT		1,152	13,824	
204	XG16	EWC	MAGISTRATE I	KAMEROFF		1,121	13,452	11.50
205	XG16	HSA	MAGISTRATE I	APANGALOOK		1,152	13,824	3.10
206	XG16	ESA	MAGISTRATE I	~~NAPOLEON~~ Nanemg		1,152	13,824	7.80
207	XG16	KGD	MAGISTRATE I	HENRY		1,113	13,356	1.10
208	XG16	KBC	MAGISTRATE I	HARVEY		1,113	13,356	2.40
209	XG16	KYA	MAGISTRATE I	LISBOURNE		1,152	13,824	3.30
210	XG16	EWG	MAGISTRATE I	ANDREWS		1,121	13,452	6.90
211	XG16	HSG	MAGISTRATE I	GOLOGERGEN		1,152	13,824	9.50
212	XG17	KBA	MAGISTRATE II	BALLOT		1,570	18,840	.90
214	XG16	HQA	MAGISTRATE I	ANAGICK		1,152	13,824	15.30
215	XG16	LXA	MAGISTRATE I	~~VACANT~~ Greist		1,152	13,824	
217	XG15	EWD	MAGISTRATE I	JEANS		1,121	13,452	11.20
218	XG16	KCA	MAGISTRATE I	DOUGLAS		1,152	13,824	1.10
18	XG15	CAA	MAGISTRATE VI	MCBRIDE		4,289	51,468	1.90
02	XG15	DNA	MAGISTRATE VI	NICHOLAS		4,289	51,468	23.80
03	XG15	ECF	MAGISTRATE VI	JOHNSON		4,148	49,776	3.70
304	XG20	DSA	MAGISTRATE VI	PECK		3,676	44,112	7.50
309	XG19	DAA	MAGISTRATE IV	ASHMAN		3,246	38,952	.90
107	XG18	DIA	MAGISTRATE III	HEIKER		2,193	26,316	10.50
108	XG19	DWA	MAGISTRATE IV	WENTWORTH		3,076	36,912	7.40
110	XG20	HCE	MAGISTRATE V	SPRECKER		3,916	46,992	11.90
112	XG18	CKA	MAGISTRATE III	SHANBACK		2,193	26,316	2.40
113	XG16	CEC	MAGISTRATE I	RUKUVISHNIKOFF		1,091	13,092	6.20
114	XG15	HSD	MAGISTRATE IV	HAKALA		1,091	13,092	4.30
115	XG16	CYA	MAGISTRATE I	KASHEVAROF		1,332	15,984	2.20
117	XG16	DSH	MAGISTRATE I	~~HARRIS~~ Vacant		905	11,580	
119	XG20	DBC	MAGISTRATE I	VACANT		1,091	13,092	
16	XG16	BKA	MAGISTRATE III					

CLASS	COURT	TITLE	INCUMBENT	RANGE/ STEP	MONTHLY SALARY	ANNUAL SALARY	SERVICE
XC16	HJI	MAGISTRATE IV	MACFARLANE		3,429	41,148	8.50
XC14	HEB	MAGISTRATE IV	LATHROP		3,076	36,912	9.40
XC16	KJA	MAGISTRATE III	SMYTH		2,317	27,804	3.50
XC16	HYC	MAGISTRATE III	JACKSON		2,238	26,856	.40
XC17	JJB	MAGISTRATE II	HARDING		2,518	30,216	9.00 5.00
XC17	EQB	MAGISTRATE II	MCMAHON		1,625	19,500	
XC16	JKC	MAGISTRATE I	VACANT		1,113	13,356	
XC16	EZA	MAGISTRATE I	VACANT		1,113	13,356	
XC16	DHB	MAGISTRATE I	SMITH		1,121	13,452	5.80
XC16	DJA	MAGISTRATE I	VACANT		1,083	12,996	
XC16	JKD	MAGISTRATE I	VACANT		1,113	13,356	
XC16	DHD	MAGISTRATE I	LINCOLN		1,121	13,452	1.20
XC16	JKA	MAGISTRATE I	VACANT		1,113	13,356	

*1,315,424

6.82 year average

Average age - 42 years

STATE OF ALASKA
FISCAL NOTE

Revision Date . 1983

I. REQUEST

Bill/Resolution No.: HB 279
Title: An Act Amending JRS and PERS
Sponsor: Bussell
Requestor:

II. FISCAL DETAIL

Agency Affected: Alaska Court System
Program Category Affected:
BRU, Program of Subprogram(s) Affected:

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 83	FY 84	FY 85	FY 86	FY 87	FY 88
OPERATING						
100 PERSONAL SERVICES		625.2	675.2	729.2	787.5	850.5
200 TRAVEL						
300 CONTRACTUAL						
400 COMMODITIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC						
TOTAL OPERATING		625.2	675.2	729.2	787.5	850.5
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND		625.2	675.2	729.2	787.5	850.5
FEDERAL FUNDS						
OTHER (Specify Source)						

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

III. SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

IV. ANALYSIS: Attach a separate page for any Analysis

Prepared By: J.K. Humphreys, Director Phone: 465-4460
Division: Retirement & Benefits Date: 4-8-83

Approved by Commissioner: Liss Rudd, Commissioner Date: 4-8-83
Department: Administration

Distribution:
Original to Legislative Finance
Copy to Office of Management and Budget (for Legislature introduced bills)
Copy to Department (for Governor introduced bills)
Copy to Sponsor
Copy to Requestor (if different from Sponsor)

3/8/83

THE LEGISLATURE OF THE STATE OF ALASKA
THIRTEENTH LEGISLATURE

FISCAL NOTE

I. REQUEST
Bill/Resolution No. HB 279
Title An Act Authorizing Participation by Magistrates in the Judicial Retirement System
Requested by _____ Date _____

II. FISCAL DETAIL
Agency Affected Alaska Court System
Program Category Affected _____
BRU, Program, or Subprogram(s) Affected _____
(Note: If more than one budget component is affected, separate line-item amounts and funding for each component in the analysis section.)

EXPENDITURES (Thousands of Dollars)

	FY 83	FY 84	FY 85	FY 86	FY 87	FY 88
100 PERSONAL SERVICES						
100 RETIREMENT BENEFITS		781.7	844.2	911.7	984.6	1,063.3
200 TRAVEL						
300 CONTRACTUAL						
400 COMMODITIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC.						
700 STATE TRS MATCHING						
TOTAL		781.7	844.2	911.7	984.6	1,063.3

FUNDING (Thousands of Dollars)

GENERAL FUND		781.7	844.2	911.7	984.6	1,063.3
FEDERAL FUNDS						
*OTHER FUNDS:						
PERS						
TRS						

* 4% Veterans; 12% Fish & Game; 26% Highway; 58% Airport

POSITIONS

FULL TIME						
PART TIME						
TEMPORARY						

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

1. To fund this bill, the state cost would be 65.82% of the FY 84 covered payroll for magistrates.

2. Estimate the FY 84 covered payroll of magistrates to be $1,187,720.

3. Estimate 46 magistrates with an average of 6.5 years service per member would be affected.

THE LEGISLATURE OF THE STATE OF ALASKA
THIRTEENTH LEGISLATURE

FISCAL NOTE

I. REQUEST
Bill/Resolution No. HB 279
Title An Act Authorizing Participation by Magistrates in the Judicial Retirement System
Requested by _____ Date _____

II. FISCAL DETAIL
Agency Affected Alaska Court System
Program Category Affected _____
BRU, Program, or Subprogram(s) Affected _____
(Note: If more than one budget component is affected, separate line-item amounts and funding for each component in the analysis section.)

EXPENDITURES (Thousands of Dollars)

	FY 83	FY 84	FY 85	FY 86	FY 87	FY 88
100 PERSONAL SERVICES						
100 RETIREMENT BENEFITS		(156.5)	(169.0)	(182.5)	(197.1)	(212.9)
200 TRAVEL						
300 CONTRACTUAL						
400 COMMODITIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC.						
700 STATE TRS MATCHING						
TOTAL		(156.5)	(169.0)	(182.5)	(197.1)	(212.9)

FUNDING (Thousands of Dollars)

GENERAL FUND		(156.5)	(169.0)	(182.5)	(197.1)	(212.9)
FEDERAL FUNDS						
*OTHER FUNDS:						
PERS						
TRS						

* 4% Veterans; 12% Fish & Game; 6% Highway; 58% Airport

POSITIONS

FULL TIME						
PART TIME						
TEMPORARY						

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

1. This bill would reduce the state cost to PERS by 13.18% of covered payroll for magistrates.

2. Estimate the FY 84 covered payroll of magistrates to be $1,187,720.

HB 84 TAPE 16 - SIDE 1

SENATE JUDICIARY COMMITTEE

Meeting Minutes
March 25, 1983

The meeting was called to order at 1:30 p.m. by Senator Ray, Chairman. All members were present except Senator Josephson, who was excused.

The first order of business was Senate Bill 20--An Act authorizing participation by magistrates in judicial retirement system--as to which Senator Ray acknowledged the presence of House Judiciary Committee Chairman Bussell and Representatives Liska and Malone, along with the staff of other members of the House Judiciary Committee.

Senator Ray turned the scheduled teleconference with Anchorage over to subcommittee chairman Ziegler.

By teleconference from Anchorage, Sheldon Sprecker, a magistrate in Glenallen and president of the Magistrates' Association, testified in favor of the bill and stated that about 30 magistrates and district court judges were present in Anchorage to listen to and participate in the teleconference. Mr. Sprecker also emphasized that magistrates are judges under a number of relevant criteria, including the recent Holloway decision.

By teleconference from Anchorage, Linda Hartshorn, a magistrate in Wrangell, testified in favor of the bill. Senator Ray asked Ms.Hartshorn some questions, to which she responded and discussion was had.

By teleconference from Anchorage, Steven Cline, a District Court Judge in Fairbanks, testified in favor of the bill pointing out that he has been a magistrate training judge for approximately five years and that the functions and duties of magistrates are essentially similar to those of judges and involve extreme hardships,such as having social activities restricted and being exposed to harsh, sometimes dangerous, working and living conditions. Senator Ray asked Judge Cline a question, to which the Judge responded and discussion was had, whereupon Representative Bussell asked the witness a question, to which the Judge responded and discussion was had. Judge Cline also stated that Fairbanks District Court Judge Cruchfield was present and was fully in favor of the bill.

From Juneau, Lee Paulson of the A.P.E.A., testified in opposition to the bill and stated that his organization's views were shared by a teachers' union, the N.E.A. As the main reasons for opposing it, Mr. Paulson emphasized the high cost of the bill in reference to the limited number of people benefiting therefrom; the fact that funds are desperately needed for cost of living adjustments to senior citizens' benefits; and that under existing law magistrates are not required to be attorneys or

have any other type of special training. Representative Bussell asked a question, to which Mr. Paulson responded and discussion was had, whereupon, by teleconference from Anchorage, Sheldon Sprecker responded to and pointed out several "inaccurate points" in Mr. Paulson's prior testimony. Furthermore, Magistrate Sprecker stated that he feels the fiscal note amount of approximately $650,000.00 is a reasonable figure and, as an example of the terrible hardships magistrates have to endure, Magistrate Sprecker pointed out that he recently had to handle the identification and physical carrying of the bodies of the victims of the McCarthy killings.

Senator Ray asked a question about whether or not, and how much, Magistrate Sprecker was paid for carrying out his duties in McCarthy, to which a response was made.

From Juneau, Ken Humphreys, Director of the Division of Retirement and Benefits, testified in response to questions posed by Senator Ray. Mr. Humphreys verified and explained the accuracy of the fiscal note figures, whereupon Senator Eliason asked a question about magistrates receiving a retirement credit for military service, to which Mr. Humphreys stated that as PERS employees magistrates should receive such credit and any assertion to the contrary must be in error. Senator Eliason also asked whether the same reasons for enacting generous judiciary retirement benefits apply to retirement benefits for magistrates. Mr. Humphreys responded by stating that, from the employer's standpoint, the basic rationale of retaining qualified people doesn't seem to apply to magistrates.

Representative Malone asked a question about the current PERS cost figures in the fiscal note, to which Mr. Humphreys responded and discussion was had, whereupon Senator Ray asked a question regarding the same subject, to which Mr. Humphreys also responded and discussion was also had.

Senator Eliason asked Senator Ziegler about how other states handled this type of problem, and Senator Ziegler responded, whereupon the teleconference was terminated. Chairman Bussell and the other House Judiciary Committee members and staff then left the meeting.

The second order of business was new sub-committee assignments as follows:

SB 147	Relating to safeguarding self-identity and address of motor vehicle operators involved in accidents	Josephson
SB 208	Extending the termination date of the Alcoholic Beverage Control Board	Ray

The third order of business was the following announcements:

By Senator Ray: The Committee meeting on April 4, 1983 will start at 1:00 p.m.;

By Senator Pettyjohn: leave to take up SJR 19 at the Committee hearing on April 8, 1983 was requested and granted.

There being no further business the meeting adjourned at 2:14 p.m.

HB

281

COMMITTEE REPORT

HOUSE

(7) FURTHER:

4/26/83 Date: 5/12/83

Mr. Speaker:

The Committee on JUDICIARY has had HB 281

"An Act relating to the payment of wages."

under consideration and reports it back as follows:

[ ] do pass [ ] do not pass

[ ] do pass with attached amendments(s)

[X] replace with CS for HB 281 (JUD) [ ] same title [ ] new title

and recommends _____

[ ] AND attaches a "Letter of Intent" [ ] New Fiscal Note [ ] Zero Fiscal Note Attached

[ ] reports it back without recommendation

[ ] referred to the _____ Committee

MEMBERS SIGNING DO PASS

MEMBERS HAVING OTHER RECOMMENDATIONS:

CHAIRMAN

H 60

4/26

COMMITTEE REPORT

HOUSE

FURTHER: JUDICIARY

(7)

3/18/83

Date: 4/26/83

Mr. Speaker:

The Committee on LABOR & COMMERCE has had HB 281

An Act relating to the payment of wages.

under consideration and reports it back as follows:

[ ] do pass [ ] do not pass

[ ] do pass with attached amendments(s)

[X] replace with CS for HB 281 (L+C) [ ] same title [ ] new title

and recommends

[ ] AND attaches a "Letter of Intent" [ ] New Fiscal Note

[X] ~~Zero Fiscal Note Attached~~

[ ] reports it back without recommendation

[ ] referred to the Committee

MEMBERS SIGNING DO PASS	MEMBERS HAVING OTHER RECOMMENDATIONS:
[illegible]	
John J Landry	Niko E. Koponen no rec.
John [illegible]	Rick [illegible] NO REC
	H Malone No Rec.

[illegible]

CHAIRMAN

H 60

STATE OF ALASKA
FISCAL NOTE

Revision Date: , 1983

I. REQUEST
Bill/Resolution No.: HB 281
Title: Payment of Wages
Sponsor: Rules Committee
Requestor:

II. FISCAL DETAIL
Agency Affected: Administration
Program Category Affected: Cen Admin Svcs
BRU, Program of Subprogram(s) Affected:
Labor Relations

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 83	FY 84	FY 85	FY 86	FY 87	FY 88
OPERATING						
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 COMMODITIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC						
TOTAL OPERATING	0	0	0	0	0	0
CAPITAL	0	0	0	0	0	0
REVENUE	0	0	0	0	0	0

FUNDING: (Thousands of Dollars)

GENERAL FUND	0	0	0	0	0	0
FEDERAL FUNDS						
OTHER (Specify Source)						

POSITIONS:

FULL-TIME	0	0	0	0	0	0
PART-TIME						
TEMPORARY						

III. SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

N/A

IV. ANALYSIS: Attach a separate page for any Analysis

Prepared By: Lucy Strengholm
Division: Labor Relations
Phone: 465-4404
Date: March 31, 1983

Approved by Commissioner: Lisa Rudd
Department: Administration
Date: 4/7/83

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3/8/83

7/0404-16-4/HDGSF1

POSITION PAPER
HOUSE BILL 281

If this bill is passed, employers who fail to pay employees' wages within three working days of termination may be penalized an amount up to 90 working days of the employee's wages. It would also expressly provide that where wages are in dispute, the employee will be notified of the undisputed part and paid that amount timely.

An express retention by the employee of all remedies to which the employee might otherwise be entitled under Chapters 5 and 10 of Title 23 has been added. Finally, a housekeeping section provides that terms used in AS 23.10.050 to 23.10.150 which are not defined in Title 23 shall be defined consistent with the federal Fair Labor Standards Act, as amended.

We are neutral with respect to passage of this bill. The statutes being amended do not apply to the State, as an employer, so this bill would not affect the Department of Administration.

Prepared by:

Guy Stringham
Director
Division of Labor Relations

24 March 93
Date

Approved by:

Lisa Rudd
Commissioner
Department of Administration

4/2/93
Date

7/0323-08-7/BDGSF1

STATE OF ALASKA
FISCAL NOTE

Revision Date: , 1983

I. REQUEST

Bill/Resolution No.: HB 281
Title: Act Relating to payment of wages
Sponsor: Governor
Requestor: Governor

II. FISCAL DETAIL

Agency Affected: DOA
Program Category Affected: All
BRU, Program of Subprogram(s) Affected:

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 83	FY 84	FY 85	FY 86	FY 87	FY 88
OPERATING						
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 COMMODITIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER (Specify Source)						

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

III. SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

IV. ANALYSIS: Attach a separate page for any Analysis

Prepared By: Tom Haas, Acting Director — Phone: 465-2240
Division: Finance — Date: 3/23/83

Approved by Commissioner: Lisa Rudd — Date: 4/7/83
Department: ADMINISTRATION

Distribution:
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3/8/83

2402/0324-1/

STATE OF ALASKA
FISCAL NOTE

Revision Date March 10, 1983

I. REQUEST

Bill/Resolution No.: HB 281
Title: "...payment of wages..."
Sponsor: Rules Committee
Requestor: Rules Committee

II. FISCAL DETAIL

Agency Affected: Labor
Program Category Affected: Public Protection
BRU, Program of Subprogram(s) Affected:
Labor Standards and Safety Division

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 83	FY 84	FY 85	FY 86	FY 87	FY 88
OPERATING						
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 COMMODITIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC						
TOTAL OPERATING	0	0	0	0	0	0
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND	0	0	0	0	0	0
FEDERAL FUNDS						
OTHER (Specify Source)						

POSITIONS:

FULL-TIME	0	0	0	0	0	0
PART-TIME						
TEMPORARY						

III. SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL: No fiscal impact.

IV. ANALYSIS: Attach a separate page for any Analysis

Prepared By: Judy Knight, Special Assistant — Phone: 465-2700
Division: Commissioner's Office — Date: March 10, 1983

Approved by Commissioner: Jim Robison — Date: March 10, 1983
Department: Labor
LEG:A:11

Distribution:
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Copy to Sponsor
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3/8/83

BILL SHEFFIELD
GOVERNOR

HB 211

STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

March 18, 1983

The Ho[illegible]le Joe L. Hayes
Speak[illegible]e House
Alas[illegible] Legislature
Pouc[illegible]
June[illegible]ska 99811

Dear Mr. Speaker:

Under the authority of art. III, sec. 18, of the Alaska Constitution, I am transmitting a bill relating to the payment of wages. This bill would make discretionary the imposition of the wage claim penalty under AS 23.05.140(d) against an employer who fails to pay wages to an employee within three days of the date of termination. In addition, the bill would strengthen the protection given an employee who has been offered a partial payment of a wage claim on the condition that he release the employer from paying the entire amount of wages claimed. The bill would void such a release which is given contingent on part payment of the wage claim.

The final provision of the bill would limit the application of the definitions in the federal Fair Labor Standards Act, 29 U.S.C. 203, to only those terms used in the Alaska Wage and Hour Act which are not defined by state law or regulation.

Sincerely,

Bill Sheffield
Governor

MSG 83-00009443 PRTY 1 04/18/83 11:37:32 ORIG: LA01 IN= 0007 OUT= 0039
FROM: SHIRLEE ANC LIO TO: POMS JUNEAU INFO
TARGET: LJHL SUBJ: POM

4/18/83, SHIRLEE ANC LIO, 9443

Judiciary Referral

TO: ALL MEMBERS, ALASKA LEGISLATURE

FROM: JOHN NACCARATO, P.O. BOX 4-328, ANCHORAGE 99509
(RES: 3301 EUREKA) H 561-2501 W 272-8224

I SUPPORT HOUSE BILL 281, HOUSE BILL 280, HOUSE BILL 216,
SENATE BILL 214, SENATE BILL 182. SENATE BILL 154,
SENATE BILL 104 AND SENATE BILL 78.

I OPPOSE HOUSE BILL 304, HOUSE BILL 223, HOUSE BILL 182, AND
SENATE BILL 172.

LSG 83 0010 0644 PRTY 1 04/14/83 14:36:47 ORIG: LA01 IN= 0018 OUT= 0083
FROM: SHIRLEE ANC LIO TO: POMS JUNEAU INFO
TARGET: LJHL SUBJ: POM

1. 4/83, SHIRLEE ANC LIO, 8644

TO ALL MEMBERS, ALASKA LEGISLATURE

FROM: TERRY LEE UNDERWOOD, 3025 MACK RD., FAIRBANKS 99701
H 479-6186 W 562-3282

I AM IN SUPPORT OF HB 281, HB 280, HB 216, HB 214, SB 182, SB 154, SB 104, SB 78.

I AM OPPOSED TO HB 304, HB 223, HB 182 AND SB 172.

FROM: MIKE ADDINGTON, 630 W. 47TH, NO. B, ANCHORAGE 99503
H 563-7644

I SUPPORT HB 281, HB 280, HB 216, SB 214, SB 182, SB 154, SB 104, SB 78.

I OPPOSE HB 304, HB 223, HB 182, AND SB 172.

MSG 83-00008657 PTY 1 04/14/83 14:56:48 ORIG: LA01 IN= 0020 OUT= 0089
FROM: SHIRLEE ANC LIO TO: POMS JUNEAU INFO
TARGET: LJHL SUB: POM

4/14/83, SHIRLEE ANC LIO, 8657

TO: ALL MEMBERS, ALASKA LEGISLATURE

FROM JIM SINGREE, ROUTE 1, BOX 1315-2, KENAI 9961
H 776-8835 W 562-3282

I SUPPORT HB 291, HB 296, HB 216, SB 214, SB 182, SB 154, SB 104 AND SB 78.

I OPPOSE HB 304, HB 293, HB 193 AND SB 175.

FROM: DON HERRICK, STAR ROUTE A, BOX 1506H, ANCHORAGE 99507
W 562-3282 H 345-0703

I SUPPORT HOUSE BILLS 281, 280, 214, SENATE BILLS 214, 182, 154, 104 AND 78.

I OPPOSE HOUSE BILLS 304, 223, 182 AND SENATE BILL 172.

FROM: JACKIE STARR, 1200 W. DIMOND BLVD., SP 1192, ANCH 99502
W 562-2282 H 344-1847

I SUPPORT HOUSE BILLS 281, 280, 214, SENATE BILLS 214, 182, 154, 104 AND 78.

I OPPOSE HOUSE BILLS 304, 223, 182 AND SENATE BILL 172.

MSG 03-00008738 PRTY 1 04/14/03 16:18:27 ORIG: LA01 IN= 0024 OUT= 0133
FROM: SUZILEE, ANCH LIO TO: POMS, JUNEAU INFO
TARGET: LUNL SUBJ: POM

TO: ALL MEMBERS, ALASKA LEGISLATURE

FROM: RICK HANCOCK, 1200 WEST DIMOND, SP. 1492, ANCH 99502
W 562-3282 H 344-1867

I SUPPORT HOUSE BILLS 281, 280, 216, SENATE BILLS 214, 182, 154, 104 AND 78.

I OPPOSE HOUSE BILLS 304, 223, 182 AND SENATE BILL 172.

FROM: DAN MIDDAUGH, 7814 RAYMAR CIRCLE, ANCHORAGE 99502
W 562-3282 H 349-4878

I SUPPORT HOUSE BILLS 281, 280, 216, SENATE BILLS 214, 182, 154, 104 AND 78.

I OPPOSE HOUSE BILLS 304, 223, 182 AND SENATE BILL 172.

****

FROM: LISA OPOK, BOX 157, SOLDOTNA, ALASKA 99669
W 562-3282 H 344-1867

I SUPPORT HOUSE BILLS 281, 280, 216, SENATE BILLS 214, 182, 154, 104 AND 78.

I OPPOSE HOUSE BILLS 304, 223, 182 AND SENATE BILL 172.

HB

282

COMMITTEE REPORT

HOUSE

((7)

FURTHER:

4/25/83

Date: 5-4-83

Mr. Speaker:

The Committee on JUDICIARY has had HB 282

"An Act relating to notices for occupational safety and health violations."

under consideration and reports it back as follows:

[ ] do pass [ ] do not pass

[ ] do pass with attached amendments(s)

[ ] replace with CS for _____ [ ] same title [ ] new title

and recommends _____

[ ] AND attaches a "Letter of Intent" [ ] New Fiscal Note [ ] Zero Fiscal Note Attached

[ ] reports it back without recommendation

[ ] referred to the _____ Committee

MEMBERS SIGNING
DO PASS

MEMBERS HAVING
OTHER RECOMMENDATIONS:

CHAIRMAN

H 60

4/25

COMMITTEE REPORT

HOUSE

FURTHER: JUDICIARY

(7)

3/18/83

Date: 4/22/83

Mr. Speaker:

The Committee on LABOR & COMMERCE has had HB 282

"An Act relating to notices for occcupational safety and health violations."

under consideration and reports it back as follows:

[ ] do pass [ ] do not pass

[ ] do pass with attached amendments(s)

[ ] replace with CS for _____ [ ] same title [ ] new title

and recommends _____

[ ] AND attaches a "Letter of Intent" [ ] New Fiscal Note [X] Zero Fiscal Note Attached

[ ] reports it back without recommendation

[ ] referred to the _____ Committee

MEMBERS SIGNING DO PASS	MEMBERS HAVING OTHER RECOMMENDATIONS:
[signature]	[signature]
[signature]	H Malone No Rec
Walt Furnace	[signature] " "

Walt Furnace E.
CHAIRMAN

H 60

HB 282
POSITION PAPER

This bill does not have a program impact on the Division of Risk Management. The Department of Administration supports the bill as a cost-efficient measure.

Prepared by:

John D. Haywood
Director
Division of Risk Management

March 24, 1983
Date

Approved by:

Lisa Rudd
Commissioner
Department of Administration

3/29/83
Date

7/0323-04-3/BDGSF1

EXAMPLES OF NON-SERIOUS VIOLATIONS

1. Failure to adopt and post in a conspicuous location at each jobsite office, a code of safe practices and procedures which applies to the firm's operation and embraces applicable safety and health standards.

2. Failure to provide a first aid kit readily available to employees at the worksite, and/or in every vehicle used to transport employees.

3. Failure to provide in the absence of an infirmary, clinic, hospital, or physician which is reasonably accessible in terms of time and distance to the worksite, and is available for the treatment of injured employees, a person who has a valid certificate in first-aid training from the U.S. Bureau of Mines, the American Red Cross, or equivalent training that can be verified by documentary evidence, shall be available at the worksite to render first aid.

4. Failure to conspicuously post the telephone numbers of physicians, hospitals, or ambulances.

5. Failure to assure that in indoor storage areas, oil soaked rags, paint saturated clothing, waste, excelsior and combustible refuse are deposited in noncombustible covered receptacles.

6. Failure to prohibit smoking in indoor general storage areas, except in locations prominently designated as smoking areas; and/or to post "No Smoking" signs in prohibited areas.

7. Failure to keep all places of employment in a clean, orderly and sanitary condition.

8. Failure to assure that portable fire extinguishers are not obstructed or obscured from view; or where visual obstruction cannot be completely avoided, that the location and intended use of extinguishers are conspicuously indicated.

9. Failure to assure that any receptacle used for decayable solid or liquid waste or refuse is so constructed that it does not leak and may be thoroughly cleaned and maintained in a sanitary condition.

10. Failure to provide individual hand towels or sections thereof, of cloth or paper, warm air blowers or clean individual sections of continuous cloth toweling convenient to the lavatories.

STATE OF ALASKA
FISCAL NOTE

Revision Date , 1983

I. REQUEST

Bill/Resolution No.: HB 282
Title: Notices for Occup. Safety & Health Violations
Sponsor: House Rules Committee
Requestor:

II. FISCAL DETAIL

Agency Affected: Dept. of Administration
Program Category Affected:
BRU, Program of Subprogram(s) Affected: Division of Risk Management

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 83	FY 84	FY 85	FY 86	FY 87	FY 88
OPERATING						
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 COMMODITIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC						
TOTAL OPERATING	-0-	-0-	-0-	-0-		
CAPITAL	-0-	-0-	-0-	-0-		
REVENUE	-0-	-0-	-0-	-0-		

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER (Specify Source)						

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

III. SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

N/A

IV. ANALYSIS: Attach a separate page for any Analysis

Prepared By: // John Haywood
Phone: 465-2180
Division: X Risk Management
Date: 3/24/83

Approved by Commissioner: Lisa Rudd
Date: 3/24/83
Department: Administration

Distribution:
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3/8/83

STATE OF ALASKA
FISCAL NOTE

Revision Date March 10, 1983

I. REQUEST

Bill/Resolution No.: HB 282
Title: "...citations for occupational..."
Sponsor: Rules Committee
Requestor: Rules Committee

II. FISCAL DETAIL

Agency Affected: Labor
Program Category Affected: Public Protection
BRU, Program of Subprogram(s) Affected: Occupational Safety and Health

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 83	FY 84	FY 85	FY 86	FY 87	FY 88
OPERATING						
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 COMMODITIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC						
TOTAL OPERATING	0	0	0	0	0	0
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND	0	0	0	0	0	0
FEDERAL FUNDS						
OTHER (Specify Source)						

POSITIONS:

FULL-TIME	0	0	0	0	0	0
PART-TIME						
TEMPORARY						

III. SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL: No fiscal impact.

IV. ANALYSIS: Attach a separate page for any Analysis

Prepared By: Judy Knight, Special Assistant
Phone: 465-2700
Division: Commissioner's Office
Date: March 10, 1983

Approved by Commissioner: Jim Robison
Date: March 10, 1983
Department: Labor

LEG:A:10

Distribution:
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3/3/83

BILL SHEFFIELD
GOVERNOR

STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

March 18, 1983

The Honorable Joe L. Hayes
Speaker of the House
Alaska State Legislature
Pouch V
Juneau, Alaska 99811

Dear Mr. Speaker:

Under the authority of art. III, sec. 18, of the Alaska Constitution, I am transmitting a bill relating to notices for occupational safety and health violations.

This bill would allow the Department of Labor to issue a notice, rather than a citation, to an employer for an occupational health and safety violation which is not serious, if the employer agrees to remedy the violation within a reasonable time. If the employer fails to remedy the violation, then a citation is issued in accordance with the procedures for serious violations.

The bill would accomplish several things. It would free occupational safety and health compliance officers from cumbersome administrative responsibilities which attend the issuance of citations, and thereby allow them to devote more time to inspections, while also saving clerical time. (Currently, inspectors can only inspect approximately eight percent of the state's work sites a year). The bill would also promote speedier correction of hazards, since much of the paperwork that must flow between employer and agency in the citation-issuance process would be eliminated. The department strongly urges passage of this bill, and it has the support of unions and employer organizations as well.

Sincerely,

Bill Sheffield
Governor

HB

293

COMMITTEE REPORT

HOUSE

(7)

FURTHER:

3/25/83

Date: 5/11/83

Mr. Speaker:

The Committee on JUDICIARY has had HB 293

An Act relating to the definition of the term 'agency' in the Ombudsman Act.

under consideration and reports it back as follows:

[ ] do pass [ ] do not pass

[ ] do pass with attached amendments(s)

[ ] replace with CS for _____ [ ] same title [ ] new title

and recommends _____

[ ] AND attaches a "Letter of Intent" [ ] New Fiscal Note [ ] Zero Fiscal Note Attached

[ ] reports it back without recommendation

[ ] referred to the _____ Committee

MEMBERS SIGNING DO PASS

MEMBERS HAVING OTHER RECOMMENDATIONS:

CHAIRMAN

H 60

Ombudsman
John B. Chenoweth

State of Alaska

Reply to:

☐ 840 K Street, Room 203
Anchorage, Alaska 99501
(907) 276-4011

☑ Pouch WO
Juneau, Alaska 99811
(907) 465-4970

☐ P.O. Box 74358
Fairbanks, Alaska 99707
(907) 452-4001

March 31, 1983

Representative Jerry Ward
Alaska House of Representatives
Pouch V
Juneau, Alaska 99811-3100

RE: [redacted]

Dear Representative Ward:

I am responding to your March 25 letter with reference to the above-captioned legislation.

The issue of the office's jurisdiction over the Alaska Bar Association traces back to two complaints, A79-0641 and A79-0642, filed against the association in June, 1979. The two complaints were generally directed against the association's grievance procedures and charged financial and other irregularities involving members of the board of governors and employees of the association.

The matters involved my predecessor, Frank Flavin, so I do not have direct understanding of past events to guide my response. I am advised that the bar association refused access of the ombudsman's office to certain files essential to the conduct of the investigation. The ombudsman sought enforcement of the subpoena in the superior court. Judge Moody denied the relief requested because Mr. Flavin was a member of the association and had access to the records independently of his official position. The argument whether the association was or was not subject to the ombudsman's jurisdiction was not resolved.

Some effort was made to address the issue in conjunction with a 1980 "sunset review" of the association by the Alaska Legislature. In 1980, the Legislature apparently concluded that the bar association should terminate, with a delayed date of one year (i.e. a lapse date of June 30, 1981). Because of action to terminate the association, the then-pending ombudsman's complaints were discretionarily discontinued in mid-1980.

In 1981, legislation was offered that continued the existence of the Alaska Bar Association. At least one early version of that

legislation specifically stated that the association was to be regarded as a state agency subject to the ombudsman's jurisdiction. The final version, Ch. 52, SLA 1981, omitted any mention of the matter. As regards the issue of jurisdiction, the law has not been amended to provide clearly, one way or the other, on the matter of jurisdiction.

Complaints against the bar association are not numerous. The office received nine in 1979 (all discretionarily discontinued in light of the disposition of the litigation and the then-pending sunset termination), six in 1980, three in 1981, five in 1982, and none to date in 1983. None has culminated in an investigation.

I do not understand the association to have changed its position that it is not subject to the office's jurisdiction. Staff in my offices have cautioned persons who call an ombudsman's office with complaints against the bar association that, until the issue of jurisdiction is decided, action on the merits or substance of the complaint will be delayed. With that explanation, most realize that our chances of completing an investigation or providing assistance in a matter involving the bar association lay somewhere between "slim" and "none".

Since my appointment to this office, I have not pursued clarification of this matter through Opinion of the Attorney General, litigation, or legislation.

The matter deserves clarification by legislation. Please understand that I am not committed to making the association subject to our jurisdiction. The legislature could as well conclude that the association was not subject to our jurisdiction. I have enough "business" from complainants dissatisfied with agencies, boards, commissions and other entities for which there is no jurisdictional challenge. As a management philosophy, I am inclined to assert jurisdiction in instances where a complaint is received and a question of jurisdiction raised, until I am advised or otherwise conclude that jurisdiction to examine an act or decision of the agency is lacking.

The question to be considered in this instance, to my mind, is whether there is an existing remedy by which alleged errors or misconduct by the bar association may be systematically reviewed. If the legislature identifies an alternative, the jurisdiction of this office need not include the bar association; if the legislature's inquiry discloses no such review mechanism, does the legislature wish to commit that responsibility to the office of the ombudsman as a matter of law. Your legislation initiates a dialogue on the issue.

I am reminded that Bart Rozell, a partner in the Juneau firm of Faulkner, Banfield -- a past president of the state bar association -- may have familiarity with the litigation I describe and with the previous recent efforts to resolve the matter through legislation. May I respectfully suggest that you contact him.

Thank you for the opportunity to comment.

Sincerely,

John B. Chenoweth
Ombudsman

JBC:jdt

Alaska State Legislature
House of Representatives

PO BOX 2716
ANCHORAGE, ALASKA 99510
(907) 276-4506

WHILE IN JUNEAU
POUCH V
JUNEAU, ALASKA 99811
(907) 465-4939

REPRESENTATIVE JERRY WARD
DISTRICT 13

MEMBER FINANCE COMMITTEE
CHAIRMAN OF SUBCOMMITTEE ON
COMMERCE & ECONOMIC DEVELOPMENT
CHAIRMAN OF SUBCOMMITTEE ON LABOR
MEMBER OF SUBCOMMITTEE ON STATE LOANS

March 25, 1983

Mr Jack Chenoweth, Ombudsman
Pouch WO, Mail Stop 3000
Juneau, AK 99811

Dear Mr. Chenoweth:

In the Annual Report to the Office of the Ombudsman for 1981-1982, in your review of the Court System you describe the jurisdiction of your office. On page 103 of that report it is stated, "Investigation of grievances concerning the Alaska Bar Association, whose membership comprises attorneys admitted to practice in the State's courts, remains unresolved."

Please advise me of the background of this issue. Have grievances been filed against the Association? Has any formal ruling been requested as to your jurisdiction? What would be the recommendation of your office for clarifying this area?

Yours very truly,

Jerry Ward

Jerry Ward
State Representative

Court System

The State's judicial system consists of the Alaska Supreme Court, the court of appeals, superior court, and district court. Final appellate jurisdiction is assigned by the Alaska constitution to the state supreme court. Appellate jurisdiction in specified proceedings is granted by statute to the three-judge court of appeals. The superior and district courts have a jurisdiction over a wide range of civil and criminal matters. The superior court has jurisdiction on appeals of agency decisions when appeal is provided by law. The judicial system in rural areas and in urban communities is anchored by magistrates holding office under appointment of a presiding judge of the superior court.

The ombudsman may not investigate the act or decision of a justice, judge, or magistrate, nor may he inquire into the substantive content of a judicial order, decision, or opinion. Subordinate agencies of the judicial system—the court administrative system, clerical support staff, the Judicial Council, and the Council on Judicial Qualifications—can be investigated by the ombudsman. Investigation of grievances concerning the Alaska Bar Association, whose membership comprises attorneys admitted to practice in the State's courts, remains unresolved.

Inquiries Received:	CY 81	FY 82
Information	66	71
Complaints	89	108
Complaints Closed:		
Declined	56	69
Assisted	20	30
Investigation initiated:		
Justified/partially justified	1	5
Rectified	0	3
Partially rectified	1	1
Not rectified	0	1
Not supported	3	1
Indeterminate	0	0
Discontinued	13	11
Total	93	116

Selected closed cases

COMPENSATION FOR JUROR SERVICES [J82-0082]. The complainant, a member of the jury in *State v. Hohman*, asserted that the court system had not properly computed and compensated the members of that jury for their services. Investigation disclosed that conduct of the trial generally began in the early afternoon hours and usually concluded for the day after 5:00 p.m. and, often, close to 6:00 p.m. The jurors were not advised in advance that the jury fee payable would be computed based only on one-half day's service and without reference to the portion of daily jury service that exceeded four hours. The initial determination was made with reference to court rule that recognized service based only on full- and half-day service without reference to jury service extending beyond normal hours of court. The ombudsman suggested that additional compensation was due the jurors and recommended com-

Alaska Ombudsman Statutes

Sec. 24.55.010. OFFICE OF THE OMBUDSMAN. There is created in the legislative branch of the state the office of the ombudsman.

Sec. 24.55.020. APPOINTMENT OF THE OMBUDSMAN. (a) A candidate for appointment as the ombudsman shall be nominated by the ombudsman selection committee composed of three members of the senate appointed by the president of the senate and three members of the house of representatives appointed by the speaker of the house. One member of the minority party caucus in each house shall be appointed to the selection committee.

(b) The ombudsman selection committee shall examine persons to serve as ombudsman regarding their qualifications and ability and shall place the name of the person selected in nomination. The appointment is effective if the nomination is approved by a roll call vote of two-thirds of the members of the legislature in joint session and approved by the governor. However, the governor may veto the appointment and return it, with a statement of his objections, to the legislature. Upon receipt of a veto message the legislature shall meet immediately in joint session and reconsider approval of the vetoed appointment. The vetoed appointment becomes effective by an affirmative vote of two-thirds of the membership of the legislature in joint session. The vote on the appointment and on reconsideration of a vetoed appointment shall be entered in the journals of both houses.

(c) The appointment of the ombudsman becomes effective if, while the legislature is in session, the governor neither approves nor vetoes it within 15 days, Sundays excepted, after its delivery to him. If the legislature is not in session and the governor neither approves nor vetoes the appointment within 20 days, Sundays excepted, after its delivery to him, the appointment becomes effective.

Sec. 24.55.030. QUALIFICATIONS; PROHIBITION AGAINST POLITICAL ACTIVITY. (a) No person may serve as ombudsman

(1) within one year of the last day on which he served as a member of the legislature;
(2) while he is a candidate for or holds any other national, state, or municipal office; nor may the ombudsman become a candidate for national, state or municipal office until one year has elapsed from the date he vacates the office of ombudsman;
(3) while he is engaged in any other occupation for which he receives compensation;
(4) unless he is at least 21 years of age and is a qualified voter who has been a resident of the state for at least three years.

(b) It is essential that the nonpartisan nature, integrity and impartiality of the ombudsman's functions and services be maintained. The ombudsman and members of his staff may not join, support or otherwise participate in a partisan political organization, faction or activity, including but not limited to the making of political contributions. However, this subsection does not restrict the ombudsman or members of his staff from expressing private opinion, registering as to party, or voting.

Sec. 24.55.040. TERM OF OFFICE. (a) The term of office of the ombudsman is five years. An ombudsman may be reappointed but may not serve for more than three terms.

(b) If the term of an ombudsman expires without the appointment of a successor under this chapter, the incumbent ombudsman may continue in office until a successor is appointed. If the ombudsman dies, resigns, becomes ineligible to serve, or is removed or suspended from office, the deputy ombudsman becomes acting ombudsman until a new ombudsman is appointed for a full term.

Sec. 24.55.050. REMOVAL. The legislature, by a concurrent resolution adopted by a roll call vote of two-thirds of the members in each house entered in the journal, may remove or suspend the ombudsman from office, but only for neglect of duty, misconduct, or disability.

Sec. 24.55.060. COMPENSATION. The ombudsman is entitled to receive an annual salary equal to that of a superior court judge.

Sec. 24.55.070. STAFF AND DELEGATION. (a) The ombudsman may appoint a deputy ombudsman; he shall also appoint assistants and clerical personnel necessary to carry out the provisions of this chapter.

(b) The ombudsman may delegate to his deputy or assistants any of his duties except those specified in secs. 190-200 of this chapter; however, during the ombudsman's absence from his principal business offices, the ombudsman may delegate the duties specified in secs. 190-200 of this chapter to his deputy for the duration of his absence. Those duties specified in secs. 190-200 of this chapter shall be performed by the deputy ombudsman when he is serving as acting ombudsman under sec. 40(b) of this chapter.

(c) The ombudsman and the staff appointed by him are in the exempt service under AS 39.25.110.

Sec. 24.55.080. OFFICE FACILITIES AND ADMINISTRATION. (a) The Alaska Legislative Council shall provide suitable office space and equipment for the ombudsman and his staff.

(b) The salary and benefits of the ombudsman and his permanent staff shall be paid through the same procedures used for payment of the salaries and benefits of other permanent legislative employees.

(c) The ombudsman shall submit a budget for each fiscal year to the finance committees of the legislature and shall annually submit an estimated budget to the governor for information purposes in the preparation of the executive budget.

Sec. 24.55.090. PROCEDURE. The ombudsman shall, by regulations adopted under the Administrative Procedure Act (AS 44.62), establish procedures for receiving and processing complaints, conducting investigations, and reporting his findings. However, he may not charge fees for the submission or investigation of complaints.

Sec. 24.55.100. JURISDICTION. (a) The ombudsman has jurisdiction to investigate the administrative acts of agencies.

(b) The ombudsman may exercise his powers without regard to the finality of an administrative act.

Sec. 24.55.110. INVESTIGATION OF COMPLAINTS. The ombudsman shall investigate any complaint which is an appropriate subject for investigation under sec. 150 of this chapter, unless he reasonably believes that

(1) there is presently available an adequate remedy for the grievance stated in the complaint;
(2) the complaint relates to a matter that is outside the jurisdiction of the ombudsman;
(3) the complaint relates to an administrative act of which the complainant has had knowledge for an unreasonable length of time before the complaint was submitted;
(4) the complainant does not have a sufficient personal interest in the subject matter of the complaint;
(5) the complaint is trivial or made in bad faith;
(6) the resources of the ombudsman's office are insufficient for adequate investigation.

Sec. 24.55.120. INVESTIGATION ON THE OMBUDSMAN'S MOTION. The ombudsman may investigate the administrative act of an agency on his own motion if he reasonably believes that it is an appropriate subject for investigation under sec. 150 of this chapter.

Sec. 24.55.130. NOTICE TO COMPLAINANT. (a) If the ombudsman decides not to investigate a complaint, he shall inform the complainant of that decision and shall state his reasons.

(b) If the ombudsman decides to investigate a complaint, he shall notify the complainant of his decision.

Sec. 24.55.140. NOTICE TO THE AGENCY. If the ombudsman decides to investigate a complaint, he shall notify the agency of his intention to investigate unless he believes that advance notice will unduly hinder the investigation or make it ineffectual.

Sec. 24.55.150. APPROPRIATE SUBJECTS FOR INVESTIGATION. (a) An appropriate subject for investigation by the ombudsman is an administrative act of an agency which the ombudsman has reason to believe might be

(1) contrary to law;
(2) unreasonable, unfair, oppressive, arbitrary, capricious, an abuse of discretion, or unnecessarily

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discriminatory, even though in accordance with law;
(3) based on a mistake of fact;
(4) based on improper or irrelevant grounds;
(5) unsupported by an adequate statement of reasons;
(6) performed in an inefficient or discourteous manner; or
(7) otherwise erroneous.

(b) The ombudsman may investigate to find an appropriate remedy.

Sec. 24.55.160. INVESTIGATION PROCEDURES. (a) In an investigation, the ombudsman may

(1) make inquiries and obtain information as he considers necessary;
(2) enter without notice to inspect the premises of an agency, but only when agency personnel are present; and
(3) hold private hearings.

(b) The ombudsman shall maintain confidentiality with respect to all matters and the identities of the complainants or witnesses coming before him except insofar as disclosures may be necessary to enable him to carry out his duties and to support his recommendations.

Sec. 24.55.170. POWERS. (a) Subject to the privileges which witnesses have in the courts of this state, the ombudsman may

(1) compel by subpoena, at a specified time and place, the appearance and sworn testimony of a person who the ombudsman reasonably believes may be able to give information relating to a matter under investigation; and
(2) compel a person, by subpoena, to produce documents, papers, or objects which the ombudsman reasonably believes may relate to the matter under investigation.

(b) If a person refuses to comply with a subpoena issued under (a) of this section, the superior court may, on application of the ombudsman, compel obedience by proceedings for contempt in the same manner as in the case of disobedience to the requirements of a subpoena issued by the court or refusal to testify in the court.

Sec. 24.55.180. CONSULTATION WITH AGENCY. Before giving an opinion or recommendation which is critical of an agency or person, the ombudsman shall consult with that agency or person.

Sec. 24.55.190. PROCEDURE AFTER INVESTIGATION. (a) The ombudsman shall report his opinion and recommendations to an agency if he finds, after investigation, that

(1) a matter should be further considered by the agency;
(2) an administrative act should be modified or cancelled;
(3) a statute or regulation on which an administrative act is based should be altered;
(4) reasons should be given for an administrative act;
(5) any other action should be taken by the agency;
(6) there are no grounds for action by the agency; or
(7) the agency's act was arbitrary or capricious, constituted an abuse of discretion, or was otherwise erroneous or not in accordance with the law.

(b) The ombudsman may request the agency to notify him, within a specified time, of any action taken on his recommendations.

Sec. 24.55.200. PUBLICATION OF RECOMMENDATIONS. Within a reasonable amount of time after the ombudsman reports his opinion and recommendations to an agency he may present his opinion and recommendations to the governor, the legislature, a grand jury, the public or any of these. The ombudsman shall include with his opinion any reply made by the agency.

Sec. 24.55.210. NOTICE TO THE COMPLAINANT. After a reasonable time has elapsed, the ombudsman shall notify the complainant of the actions taken by him and by the agency.

Sec. 24.55.220. MISCONDUCT BY AGENCY PERSONNEL. If the ombudsman believes there is a breach of duty or misconduct by an officer or employee of an agency in the conduct of his official duties, the ombudsman shall refer the matter to the chief executive officer of the agency or, when appropriate, to the grand jury or to another appropriate official or agency.

Sec. 24.55.230. **ANNUAL REPORT.** The ombudsman shall submit to the legislature and the public an annual report of his activities under this chapter.

Sec. 24.55.240. **JUDICIAL REVIEW.** A proceeding or decision of the ombudsman may be reviewed in superior court only to determine if it is contrary to the provisions of this chapter.

Sec. 24.55.250. **IMMUNITY OF THE OMBUDSMAN.** No civil action may be brought against the ombudsman or a member of his staff for anything done, said or omitted in performing his duties or responsibilities under this chapter.

Sec. 24.55.260. **OMBUDSMAN'S PRIVILEGE NOT TO TESTIFY.** The ombudsman and his staff may not testify in a court regarding matters coming to their attention in the exercise or purported exercise of their official duties except as may be necessary to enforce the provisions of this chapter.

Sec. 24.55.270. **LETTERS TO OR FROM OMBUDSMAN.** A letter to the ombudsman from a person held in custody by an agency shall be forwarded immediately, unopened, to the ombudsman. A letter from the ombudsman to a person held in custody by an agency shall be delivered immediately, unopened, to the person.

Sec. 24.55.275. **CONTRACT PROCEDURES.** The ombudsman shall adopt by regulation procedures consistent with AS 24.23 to be followed by the office of the ombudsman in contracting for services. However, the procedure for requests for proposals does not apply to contracts for investigations under AS 24.55.100.

Sec. 24.55.280. **TIME FOR JUDICIAL REVIEW OF AGENCY ACTION.** This chapter in no way extends the time limit in which judicial review of agency action must be sought.

Sec. 24.55.290. **PENALTY.** A person who wilfully hinders the lawful actions of the ombudsman or his staff, or who wilfully refuses to comply with their lawful demands, or who wilfully violates sec. 270 of this chapter, is guilty of a misdemeanor and upon conviction is punishable by a fine of not more than $1,000.

Sec. 24.55.300. **ADMINISTRATIVE PROCEDURE ACT.** The administrative acts of the ombudsman are not subject to the provisions of the Administrative Procedure Act (AS 44.62) except as provided in sec. 90 of this chapter.

Sec. 24.55.310. **CONFLICT OF INTEREST.** The ombudsman, the deputy ombudsman and their professional staff are subject to AS 39.50 (conflict of interest).

Sec. 24.55.320. **MUNICIPALITIES.** A municipality may by ordinance elect to become subject to the jurisdiction of the ombudsman appointed under this chapter. If a municipality so elects, it shall notify the ombudsman of that election and shall thereafter be considered an agency for the purposes of this chapter. If a municipality subjects itself to the jurisdiction of the ombudsman, the municipality shall pay its pro rata share of the cost of the operation of the office of the ombudsman based on the number of complaints or the case load emanating from that municipality, as prescribed by the ombudsman. If a municipality elects to remove itself from the jurisdiction of the ombudsman, it shall do so by ordinance, shall notify the ombudsman of that election and shall not thereafter be considered an agency for the purposes of this chapter.

Sec. 24.55.330. **DEFINITIONS.** In AS 24.55.010 - 24.55.340

(1) "administrative act" means an action, omission, decision, recommendation, practice, policy, or procedure of an agency, but does not include the preparation or presentation of legislation or the substantive content of a judicial order, decision or opinion;

(2) "agency" includes a department, office, institution, corporation, authority, organization, commission, committee, council or board of a municipality or in the executive, legislative or judicial branches of the state government, and a department, office, institution, corporation, authority, organization, commission, committee, council or board of a municipality or of the state government independent of the executive, legislative and judicial branches; it also includes an officer, employee or member of an "agency" acting or purporting to act in the exercise of his official duties, but does not include the governor, lieutenant governor, a member of the legislature, justice of the supreme court, judge of the court of appeals, a superior court judge, district court judge, magistrate, member of a city council or borough assembly, elected city or borough mayor, or a member of an elected school board;

(3) "municipality" means a home rule or general law borough or city including but not limited to a unified municipality organized under AS 29.68.010 - 29.68.580.

Sec. 24.55.340. **SHORT TITLE.** This chapter may be cited as The Ombudsman Act.

STATE OF ALASKA
FISCAL NOTE

Revision Date , 1983

I. REQUEST

Bill/Resolution No.: HB 293
Title: Ombudsman
Sponsor: Ward
Requestor: House Judiciary Committee

II. FISCAL DETAIL

Agency Affected: Alaska Court System
Program Category Affected: Justice
BRU, Program of Subprogram(s) Affected:

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 83	FY 84	FY 85	FY 86	FY 87	FY 88
OPERATING						
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 COMMODITIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC						
TOTAL OPERATING		-0-	-0-	-0-	-0-	-0-
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER (Specify Source)						

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

III. SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

IV. ANALYSIS: Attach a separate page for any Analysis

Prepared By: Richard P. Barrier, Deputy Admin. Director Phone: 264-0545
Division: Alaska Court System Date: 4/25/83

Approved by Commissioner: Date:
Department:

Distribution:
Original to Legislative Finance
Copy to Office of Management and Budget (for Legislature introduced bills)
Copy to Department (for Goverror introduced bills)
Copy to Sponsor
Copy to Requestor (if different from Sponsor)

3/8/83

STATE OF ALASKA
FISCAL NOTE

Revision Date / , 1983

I. REQUEST

Bill/Resolution No.: HB 293
Title: "...'agency' in the Ombudsman Act."
Sponsor: Repr. Ward
Requestor: House Judiciary Committee

II. FISCAL DETAIL

Agency Affected: Department of Law
Program Category Affected: General Govt.
BRU, Program of Subprogram(s) Affected:
Legal Services

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 83	FY 84	FY 85	FY 86	FY 87	FY 88
OPERATING						
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 COMMODITIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND	-0-	-0-	-0-	-0-	-0-	-0-
FEDERAL FUNDS						
OTHER (Specify Source)						

POSITIONS:

FULL-TIME	-0-	-0-	-0-	-0-	-0-	-0-
PART-TIME						
TEMPORARY						

III. SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

N/A

IV. ANALYSIS: Attach a separate page for any Analysis

Prepared By: Richard I. Pegues, Director
Phone: 465-3672
Division: Administrative Services Division
Date: April 15, 1983

Approved by Commissioner: Norman C. Gorsuch, Attorney General
Date: April 15, 1983
Department: Department of Law

Distribution:
Original to Legislative Finance
Copy to Office of Management and Budget (for Legislature introduced bills)
Copy to Department (for Governor introduced bills)
Copy to Sponsor
Copy to Requestor (if different from Sponsor)

HB 293
Fiscal Note
Analysis

This bill amends AS 24.55.330(2) by including the Alaska Bar Association in the definition of "agency" in the Ombudsman Act. The Department of Law has no direct governmental connection with the Association and therefore the bill will not have a fiscal impact on the department.

THE LEGISLATURE OF THE STATE OF ALASKA
THIRTEENTH LEGISLATURE

FISCAL NOTE

I. REQUEST
Bill/Resolution No. HOUSE BILL NO. 293
Title An Act relating to the definition of the term 'agency'
Requested by in the Ombudsman Act. Date 04-15-83
Requested by: House Judiciary Committee

II. FISCAL DETAIL
Agency Affected Office of Ombudsman
Program Category Affected General Government
BRU, Program, Or Subprogram(s) Affected Ombudsman
(Note: If more than one budget component is affected, separate line-item amounts and funding for each component in the analysis section.)

EXPENDITURES (Thousands of Dollars)

	FY 83	FY 84	FY 85	FY 86	FY 87	FY 88
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 COMMODITIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS,CLAIMS,ETC.						
TOTAL		-0-	-0-	-0-	-0-	-0-

FUNDING (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER (Specify Source)						

POSITIONS None

FULL TIME						
PART TIME						
TEMPORARY						

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

It is estimated that this bill will have no additional fiscal impact.

IV. DATE 04/15/83 PREPARED BY Wally Harrison, Dir Admin Svcs
AGENCY Legislative Affairs Agency
PHONE 465-3860

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

33-001 (Rev. 12/82)

HB

298

COMMITTEE REPORT

HOUSE

(7) FURTHER:

3/20/84 Date: 4-18-84

The Committee on JUDICIARY has had HB 298

"An Act establishing a National Petroleum Reserve, Alaska, special revenue fund; and providing for an effective date."

under consideration and recommends:

[ ] do pass [ ] do not pass

[ ] do pass with attached amendments(s)

[X] replace with CS for HB 298 (Jud) [X] same title [ ] new title

and recommends _____

[ ] AND attaches a "Letter of Intent" [ ] New Fiscal Note [ ] Zero Fiscal Note Attached

[ ] reports it back without recommendation

[ ] referred to the _____ Committee

MEMBERS SIGNING DO PASS

MEMBERS HAVING OTHER RECOMMENDATIONS:

CHAIRMAN

STATE OF ALASKA 1984 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date 3/22/84

REQUEST
Bill/Resolution No: CS HB 298 (Res)
Title: National Petroleum Reserve Special Revenue Fund
Sponsor: House Resources
Requestor: House Judiciary
Date of Request: 3-21-84

FISCAL DETAIL
Agency Affected: Revenue
Program Category Affected:
BRU, Program or Subprogram(s) Affected: Treasury

EXPENDITURES/REVENUES: (Thousands of Dollars)

		FY 84	FY 85	FY 86	FY 87	FY 88	FY 89
	OPERATING						
100	PERSONAL SERVICES	-	-	-	-	-	-
200	TRAVEL	-	-	-	-	-	-
300	CONTRACTUAL	-	-	-	-	-	-
400	SUPPLIES	-	-	-	-	-	-
500	EQUIPMENT	-	-	-	-	-	-
600	LANDS & STRUCTURES	-	-	-	-	-	-
700	GRANTS, CLAIMS	-	-	-	-	-	-
800	MISCELLANEOUS	-	-	-	-	-	-
	TOTAL OPERATING	0	0	0	0	0	0
	CAPITAL	-	-	-	-	-	-
	REVENUE	-	-	-	-	-	-

FUNDING: (Thousands of Dollars)

	GENERAL FUND	-	-	-	-	-	-
	FEDERAL FUNDS	-	-	-	-	-	-
	OTHER	-	-	-	-	-	-
	TOTAL	-	-	-	-	-	-

POSITIONS:

	FULL-TIME	-	-	-	-	-	-
	PART-TIME	-	-	-	-	-	-
	TEMPORARY	-	-	-	-	-	-

SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

ANALYSIS: Attach a separate page for analysis.

Prepared By: Milt Barker MB
Division: Treasury
Phone: 465-2350
Date: 3-21-84

Approved by Commissioner: Robert O Heratt
Agency: Revenue
Date: 3/23/84

Distribution (by Agency preparing fiscal note):
- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)

HR 2298

EXPLORATION OF NATIONAL PETROLEUM RESERVE IN ALASKA

42 USC 6506.
42 USC 6504.

For necessary expenses of carrying out the provisions of section of Public Law 94-258, and for conducting hereafter and with fu appropriated by this Act and by subsequent appropriation A notwithstanding any other provision of law and pursuant to s rules and regulations as the Secretary may prescribe, an expediti program of competitive leasing of oil and gas in the Natio Petroleum Reserve in Alaska, $107,001,000, to remain available ul expended: *Provided*, That (1) activities undertaken pursuant to t Act shall include or provide for such conditions, restrictions, a prohibitions as the Secretary deems necessary or appropriate mitigate reasonably foreseeable and significantly adverse effects the surface resources of the National Petroleum Reserve in Ala (the Reserve); (2) the provisions of section 202 and section 603 of t

43 USC 1712, 1782.

Federal Lands Policy and Management Act of 1976 (90 Stat. 27 shall not be applicable to the Reserve; (3) the first lease sale shall conducted within twenty months of the date of enactment of this A *Provided*, That the first lease sale shall be conducted only aft publication of a final environmental impact statement if such deemed necessary under the provisions of the National Environme tal Policy Act of 1969 (42 U.S.C. 4332); (4) the withdrawals establish

42 USC 6502.

by section 102 of Public Law 94-258 are rescinded for the purposes the oil and gas leasing program authorized herein; (5) bidding syste used in lease sales shall be based on bidding systems included section 205(a)(1)(A) through (H) of the Outer Continental Shelf Land

43 USC 1337.

Act Amendments of 1978 (92 Stat. 629); (6) lease tracts may encor pass identified geological structures; (7) the size of lease tracts may up to sixty thousand acres, as determined by the Secretary; (8) eac lease shall be issued for an initial period of up to ten years, and sha be extended for so long thereafter as oil or gas is produced from th lease in paying quantities, or as drilling or reworking operations approved by the Secretary, are conducted thereon; and (9) all receip from sales, rentals, bonuses, and royalties on leases issued pursuan to this Act shall be paid into the Treasury of the United State *Provided*, That 50 per centum thereof shall be paid by the Secre of the Treasury semiannually, as soon as practicable after March and September 30 each year, to the State of Alaska for (a) plannin (b) construction, maintenance, and operation of essential publi facilities, and (c) other necessary provisions of public service: *vided further*, That in the allocation of such funds, the State shal give priority to use by subdivisions of the State most directly severely impacted by development of oil and gas leased under Act.

NOTE:

Any agency of the United States and any person authorized by Secretary may conduct geological and geophysical explorations in th National Petroleum Reserve in Alaska which do not interfere with operations under any contract maintained or granted previously Any information acquired in such explorations shall be subject to th conditions of 43 U.S.C. 1352(a)(1)(A).

Judicial review. Publication in Federal Register.

Any action seeking judicial review of the adequacy of any progra or site-specific environmental impact statement under section 102 the National Environmental Policy Act of 1969 (42 U.S.C. 43 concerning oil and gas leasing in the National Petroleum Reser Alaska shall be barred unless brought in the appropriate Distri Court within 60 days after notice of the availability of such statem is published in the Federal Register. Any proceeding on such act

STATE OF ALASKA

JAY S. HAMMOND, GOVERNOR

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

POUCH K-STATE CAPITOL
JUNEAU, ALASKA 99811

April 26, 1982

Honorable Bettye Fahrenkamp
Chairwoman, Senate Resources Committee
Alaska State Senate
Twelfth Legislature
Pouch V
Juneau, Alaska 99811

Re: SB 835 (National Petroleum Reserve-Alaska Trust Fund). Our File No. 366-619-82

Dear Senator Fahrenkamp:

SB 835, which would establish a trust fund account for revenues the state receives from the federal government from federal oil and gas leasing in the National Petroleum Reserve-Alaska, presents a number of serious legal questions in its current form.

The first question is raised under Article IX, Section 7 of the Alaska Constitution, which provides in pertinent part: "The proceeds of any state tax or license shall not be dedicated to any special purpose, except as provided in Section 15 of this article or when required by the federal government for state participation in federal programs." The Department of Law and the Legislative Counsel have disagreed over the reach of this prohibition. Our department has construed the prohibition broadly to apply to all "public revenues" (e.g., taxes, license fees, revenues from the sale or disposition of natural resources, etc.); the Legislative Counsel has interpreted it narrowly as reaching only tax and license revenues. On April 23, 1982, the Alaska Supreme Court adopted the Department of Law's broader interpretation in State v. Alex, ___ P.2d ___, Op. No. 2488 (Alaska, April 23, 1982). See Slip Op. at p. 20. As a result, we believe the revenues which the bill addresses -- i.e., those that the state would receive from the federal government as the result of federal oil and gas leasing in NPR-A -- are subject to the prohibition.

However, there is an exception to the dedicated fund prohibition "when required by the federal government for state participation in federal programs." The pertinent portion of

P.L. 96-514, 94 Stat. 2964, which directs payment of the money to the state, attaches certain conditions to the state's receipt of that money: The state may use it "for (a) planning, (b) construction, maintenance, and operation of essential public facilities, and (c) other necessary provisions of public service: Provided further, That in the allocation of such funds, the State shall give priority to use by subdivisions of the State most directly or severely impacted by development of oil and gas leased under this Act." In other words, the funds received from the federal government must be dedicated to planning, construction, maintenance, and operation of essential public facilities, and other necessary provisions of public service. In addition, impacted political subdivisions must be given priority in the allocation of the funds.

We believe the establishment of a trust fund into which all the federal revenues are placed immediately upon receipt from the federal government is both permissible under Article IX, Section 7 of the Alaska Constitution and desirable in that it will ease the administrative task of demonstrating to the federal government that the funds received have been expended for the purposes and in the manner required by the federal Act. However, it also is our opinion that the explicit provisions of the law establishing the trust fund cannot impose conditions on the use of the money which exceed those "required by the federal government for state participation" in the federal program -- i.e., those in the federal Act. Since it is only the federal conditions which except the funds from the general dedicated fund prohibition, we believe the only conditions which may be attached to the funds are those required by the federal Act.

As a result, we believe the directive in Section 2(c) of SB 835 to pay a minimum of 50 percent of amounts in the fund to the North Slope Borough violates the dedicated fund prohibition because the federal Act does not require it for state participation. In addition, the directive in Section 2(d) that remaining amounts in the fund may be spent only "in conjunction with the exploration of the National Petroleum Reserve in Alaska and a program of competitive leasing of oil and gas from that reserve" also violates the prohibition, again because the federal Act does not require it. The federal Act simply does not impose these restrictions on the use of the funds received by the state.

Another question raised by SB 835 stems from Article II, Section 19 of the Alaska Constitution, which provides in pertinent part: "The legislature shall pass no local or special act if a general act can be made applicable." The problem here is that SB 835 specifically names the North Slope Borough as a recipient of amounts from the fund established. However, nothing in the federal Act requires that the North Slope be named, and it is obvious that a general act can be made applicable and satisfy the terms of the federal Act simply by "giv[ing] priority to use by subdivisions of the State most directly or severely impacted by development of oil and gas leased under this Act." That is the language of the federal Act, so using that language would satisfy that condition of the federal Act. It is language of general applicability to all subdivisions which might be impacted by NPR-A development, and therefore would be a general (not local or special) act within the meaning of the Alaska Constitution. (We also would point out that the North Slope Borough may not be the only political subdivision impacted by oil and gas leasing in NPR-A. In the reserve, Barrow is a first class city and Wainwright and Nuiqsuit are second class cities. Moreover, development in NPR-A may have an impact on other political subdivisions along the pipeline corridor or, it is conceivable, any other route chosen to transport the oil and gas produced -- i.e., Nome, etc. This potential impact on other political subdivisions demonstrates the advisability of couching the bill in terms of a general act, not a local or special act directed only to the North Slope Borough.)

Another problem stems from Article II, Section 13 of the Alaska Constitution, which provides in pertinent part: "Bills for appropriations shall be confined to appropriations." The problem in SB 835 is the Section 2(c) directive to pay money to the affected subdivisions (in the bill's current form, only the North Slope Borough). Specifically, Section 2(d) describes that directive as an appropriation. If it is an appropriation, it is an appropriation in a general act and not in a bill confined to appropriations as required by the Constitution. This conclusion is reinforced by the provision in Section 2(d) that amounts remaining in the fund after the payment to the subdivisions cannot be expended without appropriation by the legislature. To avoid this problem, the bill could be amended simply to require appropriation by the legislature prior any expenditure of funds in the trust account, giving the legislature discretion to appropriate funds to impacted subdivisions or for other purposes permitted under the federal Act.

Following my testimony on SB 835 at the Senate Resources Committee meeting on April 23, 1982, I met with Tom Smythe and Robert DuPere, representing the North Slope Borough, and Rena King of the Committee staff. We seemed to reach general agreement that some minor modifications to the bill would satisfy the constitutional concerns while remaining true to the basic thrust of the proposed bill. My notes indicate that the following changes were contemplated:

1. Page 1, lines 12-15 should be amended to read (material to be deleted is capitalized and in brackets; new material is underlined): "(1) The United States Congress, by P.L. 96-514 (94 Stat. 2964, December 12, 1980), [APPROPRIATED $107,001,000 FOR A PROGRAM OF] provided that the state shall receive 50 percent of receipts derived from competitive leasing of oil and gas in the National Petroleum Reserve in Alaska;" This change would eliminate any confusion regarding the $107,001,000 federal appropriation which is for administration of the leasing program, not an appropriation to the state. The state will only receive money under the federal Act after the program begins generating lease revenues.

2. Page 1, lines 24-26 should be amended to read: "The fund shall consist of funds [APPROPRIATED TO IT BY THE LEGISLATURE EQUAL TO THE AMOUNT OF FUNDS] received by the state from the federal government under P.L. 96-514." This would establish the constitutionally-permissible dedicated fund.

3. Subsection (c) of Section 2, which begins on page 1, line 29, and continues to page 2, line 4, should be deleted in its entirety and replaced with the following:

> (c) The commissioner of revenue shall pay to the subdivisions of the state most directly or severely impacted by development of oil and gas leased under the federal Act the amount appropriated by the legislature from the fund for that purpose. It is the intent of the legislature that the amount appropriated for payment to the subdivisions equal 50 percent of the amount received from the federal government under the federal Act, and that this percentage be reviewed every five years following passage of this Act.

This would indicate the legislative intent of sharing the revenues with impacted political subdivisions without violating the dedicated fund prohibition by imposing conditions beyond those required by the federal Act. It also avoids the local and special legislation problem, as well as the problem regarding an appropriation in a bill not confined to appropriations.

4. Page 2, lines 5-10 should be amended to read: "(d) Amounts received by the state under (a) of this section [WHICH ARE NOT APPROPRIATED IN ACCORDANCE WITH (c) OF THIS SECTION] shall be used by the state, subject to appropriation by law, for the following activities and services [IN CONJUNCTION WITH THE EXPLORATION OF THE NATIONAL PETROLEUM RESERVE IN ALASKA AND A PROGRAM OF COMPETITIVE LEASING OF OIL AND GAS FROM THAT RESERVE]:" This avoids any dedicated funds problem by eliminating those conditions which exceed those required by the federal Act.

5. Subsection (e) of Section 2, appearing on page 2, lines 15-20, should be deleted in its entirety.

6. Subsection (f), beginning on page 2, line 21, and ending on page 3, line 1, should be amended to read:

> "(f) amounts paid to [THE NORTH SLOPE BOROUGH] subdivisions under (c) of this section shall be used by the [NORTH SLOPE BOROUGH] subdivisions only for the following activities and services in conjunction with [THE EXPLORATION] development on the National Petroleum Reserve in Alaska and a program of competitive leasing of oil and gas from that reserve:
>
> "(1) planning;
>
> "(2) construction, maintenance, and operation of essential public facilities by the [NORTH SLOPE BOROUGH] subdivisions; and
>
> "(3) other necessary public services provided by the [NORTH SLOPE BOROUGH] subdivisions."

This change is necessary to avoid the local and special legislation problem.

In addition, it was suggested that a committee letter of intent be drafted to the effect that, at the present time, the North Slope Borough is the only political subdivision of the state which will be most directly or severely impacted by oil and gas leasing in NPR-A.

I believe these comments accurately reflect the concensus of our work group. However, the other individuals present may have some further suggestions for change.

Finally, I must indicate that these comments are not intended to represent the Administration's policy position on this bill. Rather, they are provided in the nature of a drafting service to overcome the constitutional and other legal problems which we believe are presented by the bill in its current form. If we can be of further assistance in this regard, please contact us at your earliest convenience.

Sincerely,

WILSON L. CONDON
ATTORNEY GENERAL

/s/

By:
G. Thomas Koester
Assistant Attorney General

GTK:dlm

cc: Honorable Don Bennett
Honorable M.E. Dankworth
Co-Chairmen, Senate Finance Committee

Tom Smythe
Robert DuPere
Keith Specking

LETTER OF INTENT
TO ACCOMPANY
CSHB 298 (Resources)

It is the intent of the Legislature that the Department of Revenue rely on the following analysis of Committee Substitute for House Bill 298 (Resources) and P.L. 96-514, Title 1, Sec. 100 when administering this Act. In particular, it is the intent of the Legislature that the Department determine if a subdivision is "most directly or severely impacted" by oil and gas development in the National Petroleum Reserve - Alaska for purposes of Sec. 2(c) of this Act in a manner consistent with the analysis of such impacted communities provided in this letter of intent.

CSHB 298 (Res) implements the revenue-sharing provisions of P.L. 96-514, Title 1, Sec. 100 (1380) dealing with the Interior Department's oil and gas leasing program in the National Petroleum Reserve - Alaska. This leasing and revenue sharing program was part of the Interior Department Appropriations Act of 1981.

CSHB 298 (Res) establishes a state program which carries out the legislative intent of the federal act, which states as follows:

> "That 50 per centum thereof (rentals, bonuses, royalties, etc.) shall be paid by the Secretary of the Treasury ... to the State of Alaska for (a) planning; (b) construction, maintenance, and operation of public facilities; and (c) other necessary provisions of public service.
> PROVIDED FURTHER, that in the allocation of such funds, the State shall give priority to use by subdivisions of the state most directly or severely impacted by development of oil and gas leased under this section." 42 U.S.C. Sec. 6508

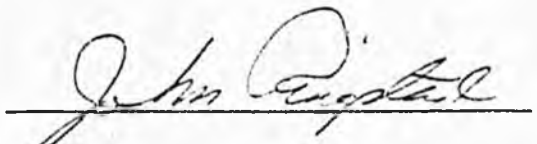
The purpose of this provision is to provide a source of funds for dealing with impacts related to the NPR-A oil and gas leasing program. The provision states that the funds are to be used for "planning," for "construction," and "operation of public facilities" and for "other necessary" public services. The purpose was also to allocate these funds to communities where the impacts are "most directly or severely" felt. The provision requires the state to give "priority" to subdivisions "most directly or severely impacted" by the NPR-A leasing program in "the allocation of such funds." This will rule out the possibility of a statewide revenue-sharing program or even one designed to ameliorate oil and gas development impacts in general. The purpose is restricted by federal law to communities suffering the effects of the NPR-A leasing program.

The federal provision does not expressly define further than this which communities could qualify for impact funds. Certainly the North Slope Borough would qualify since the program affects the Borough in the most "direct" way possible, being entirely inside of it. This is

consistent with the statutory predecessor to the federal revenue-sharing provision. P.L. 94-258 (1976), which transferred jurisdiction over the NPR-A from the Navy to the Interior Department, authorized the Secretary to assist impacted communities "located on or near the reserve as a direct result of the exploration and study activities, Sec. 107.

The language in the 1980 Act allows the State more leeway in allocating funds to local communities than the 1976 Act; nonetheless, the intention is to abide by the limitation that funds be allocated to communities "most severely or directly impacted." This bill should be implemented with the degree of flexibility necessary to cover such eventualities, but restrained by the purpose of the federal provision.

This approach would also be consistent with similar interpretations of the courts of federal law and federal programs. The U.S. Supreme court recently interpreted the Coastal Zone Management Act's "directly affecting" language in the SECRETARY OF THE INTERIOR v. CALIFORNIA. The court found that for an affect to be direct there had to be a significant, physical alteration of an area; in this case, California's coastal zone. When Congress adopted the Coastal Energy Impact Program (16 U.S.C. 1456 (a)) it limited loans and grants to coastal states and local governments actually in the coastal zone. Also, Senator Stevens' OCS revenue-sharing bill, S.800, would qualify only coastal local governments to receive OCS revenue-sharing funds. Thus, in other, similar situations, both Congress and the courts narrowly relate direct affects on a geographic basis, providing a sound, factual underpinning to federal revenue sharing for adverse affects of specific federal programs.



Representative John Ringstad,
Co-chairman, House Resources Committee

Alaska State Legislature

House of Representatives

Al Adams
Chairman
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Official Business

April 6, 1983

MEMORANDUM

TO: ✓Representative John Ringstad, Co-Chairman
Representative Dick Shultz, Co-Chairman
House Resources Committee

FROM: Representative Al Adams AA

SUBJECT: House Bill 298 - Establishing a National Petroleum Reserve, Alaska, Special Revenue Fund

HB 298 is pending in House Resources. I would appreciate the committee's consideration of the legislation at the earliest possible date.

In 1980, Congress approved Public Law 96-514 which contained language requiring that 50% of the royalties received from oil and gas leases in the National Petroleum Reserve - Alaska shall be paid to the State of Alaska. Part of that stipulation also provided that the priority use of these funds would be by the subdivisions of the state that were most directly impacted by the development of oil and gas leases in the NPR-A. I have introduced HB 298 to establish the special revenue fund into which these monies will be deposited. It is in this manner that I believe we can best assure the state's compliance with the intent of the federal Act. You may recall that last session, a comparable piece of legislation passed both houses of the Legislature but was vetoed by the Governor. I have attached a copy of the Attorney General's letter in which he advised the Legislature of necessary changes in order to comply with constitutional and statutory requirements. I believe you will find that HB 298 satisfies the concerns raised by the past Administration.

For the committee's further review, I have attached copies of letters and testimony concerning the federal legislation, as well as comments offered by the Mayor of the North Slope Borough. Should you like any additional information, please let me know.

HOUSE BILL 298

Establishing a National Petroleum Reserve, Alaska Special Revenue Fund

Section 1. FINDINGS.

(1) The U.S Congress provided by law (P.L. 96-514) that Alaska shall receive 50% of the royalties derived from competitive oil and gas leases in the NPRA:

(2) Nearly all of NPRA NPR-A lies within the boudaries of the North Slope Borough; and

(3) Because of the nature of the congressional appropriation, this bill establishes a fund to comply with the federal Act's provisions.

Section 2. NATIONAL PETROLEUM RESERVE, ALASKA, SPECIAL REVENUE FUND.

(a) Establishes the NPRA Special Revenue Fund consisting of money received from the federal government under P.L. 96-514.

(b) The fund shall be managed by the Commissioner of Revenue.

(c) The commissioner is directed to pay the funds, as appropriated by the legislature, to the subdivisions most severely impacted by oil and gas leases. It is the intent of the legislature that 50% of the revenues received from the federal government under this las shall be appropriated for this purpose. The percent of funds for this purpose shall be reviewed by the legislature every five years.

(d) The remaining 50% shall be used by the state, as appropriated by the legislature, for planning, construction, maintenance and operation of essential public facilities, and other necessary public services.

(e) The subdivisions receiving funds may only use them for purposes that are in conjunction with development of NPRA and with competitive oil and gas leasing program. These shall also include planning, construction, maintenance and operation of essential public facilities and other necessary public services.

Section 3. Immediate effective date.

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R. KEITH GUTHRIE
PETER D. DICKSON

December 20, 1979

MEMORANDUM

TO: Mayor Eben Hopson
North Slope Borough

Edward Hopson
President
Arctic Slope Regional Corporation

FROM: G. William Frick GWF

RE: Summary of NPR-A Meeting

This memorandum will summarize the meeting held with representatives of the Arctic Slope Regional Corporation, North Slope Borough and others in Anchorage on December 7, 1979. The persons who attended the meeting are on the attached list.

A. Arctic Gas Pipeline

The first item of discussion was a presentation by Jack Bachman (907-276-2900), the Alaska representative of Northwest Pipeline, who provided an update on the Salt Lake City meeting between Mayor Hopson and other Borough representatives, and John McMillian and Northwest Pipeline staff. Bachman indicated that Northwest Pipeline was pleased with the interest of the North Slope Borough to participate in some manner in the project and was interested in providing an opportunity for the local as well as state involvement if possible. He did note that state actions thus far had been disappointing. He indicated that Northwest Pipeline hoped to begin civil construction in 1981, begin laying pipe in 1982, and finish the line in the warm weather of 1985.

He pointed out that the Northwest Pipeline Company has no direct responsibility for the conditioning plant, although it is extremely interested in its construction as an essential part of the overall system. While the state has indicated it wants to do "something" on the conditioning plant, it has not yet formulated a position. Bachman did note that moving the conditioning plant to Fairbanks would prevent the pipeline from being built. Northwest Pipeline is looking at producers as "overrun insurance," who will be turned to if necessary for completion of the line; the Department of Justice has problems with producers owning the line. Larry Dinneen pointed out that ARCO has expressed interest in knowing what the North Slope Borough and ASRC plan to do regarding the conditioning plant.

Mayor Hopson expressed concern about the failure of the North Slope Borough to have been consulted on issues surrounding the conditioning plant and the pipeline that affect the North Slope Borough. He also emphasized that while NSB had proposed having some involvement, it was subject to further decisions and negotiations involving the NSB and ASRC.

Follow-up actions from the discussion with Bachman are:

1. This firm is to contact Howard Butner, Vice President for Finance of Northwest Alaska Pipeline in Washington. Butner apparently has a variety of studies and other documents regarding various financial schemes for financing the pipeline that may be of use to the NSB in reviewing its potential participation.

2. This firm is to develop a brief analysis summarizing what has transpired with the gas pipeline to date and to prepare recommendations to the Borough on what future actions to take on this issue.

B. NPRA Legislation

The next item discussed was the position of ASRC and NSB on the NPRA legislation now being drafted by the Department of the Interior. Under this legislation NPR-A would be designated a "National Conservation Area." Mayor Hopson emphasized that the North Slope Borough supported any effort, including private leasing, that would open up NPR-A for exploration and development as the North Slope Borough's contribution to the national goal of improving energy supplies. Mayor Hopson emphasized that the Borough has always supported onshore development.

There was general agreement with the basic statutory positions that DOI had indicated would be included in the legislation.

Conrad Bagne suggested that the bill include provisions allowing local access to non-commercial and commercial discoveries found near communities on the North Slope. Herb Bartel pointed out that the BLM had already developed several years of planning analysis and data on NPR-A and that this experience should not be lost in the transition to the NCA management scheme. In particular, with respect to the four areas that were to be given special attention, the governmental offices charged with responsibility for those special areas, assuming it is not BLM, should be required to utilize BLM analysis.

Jon Buchholdt noted that the four areas cited for special consideration are possibly the most promising for private leasing; the boundaries, terms, and access of those areas should be examined carefully to insure development is not precluded. Herb Bartel also observed that the protection for fishing sites should not be limited to designated sites but rather to "systems" that would allow movement within fishing areas as the fish populations, and other influences on fishing, change.

With respect to the leasing systems, it was pointed out that a "nominating" system should be used in order to give the Borough, as well as the federal government, advance notice of what areas should be studied to determine the need for environmental or other protection. There was general agreement that any leasing system should, to the maximum extent possible, utilize bids that would internalize non-economic factors such as environmental protection and local hire. In addition, local considerations and provisions encouraging participation by small companies should be included into a system. Senator Gravel apparently is looking into developing such a program independently of the Department of the Interior. It was also pointed out that the Teshekpuk Lake had already been identified as an area that should be protected for the Native community. This should be kept in mind as the provisions regulating the Teshekpuk Lake area are formulated.

Senator Stevens joined the meeting at this point and made the following comments:

1. He considers the letter of Acting Secretary Joseph, regarding the legislative program of NPR-A, to be balanced but is concerned about those areas that DOI proposes to "set aside." He also feels that any provisions relating to the Mineral Leasing Act may present problems.

2. He is concerned about the revenue sharing provisions and feels it may be hard to hold the 50% now proposed

to be allocated to the state because of the large royalty already received by the state from Prudhoe Bay. Provisions guaranteeing local share from the revenues to the state would help maintain this provision.

3. He supports the NCA being administered by the BLM but is concerned about BLM continuing to apply the approaches they have traditionally followed under the Mineral Leasing Act. Stevens indicated he was meeting with Guy Martin on the legislation on December 10.

4. He is quite committed to keeping this bill separate from D-2 and indicated that this was the view of Secretary Andrus. Senator Stevens cautioned about trying to put D-2 related Native amendments on the bill when it comes from the House.

5. Senator Stevens vigorously emphasized the need to slow the Beaufort Sea sale. He is very concerned about drilling in the Beaufort Sea and feels that the international situation will result in a compressing of the time for leasing of NPR-A.

6. He is very interested in getting small companies involved in the development of NPR-A.

7. He supports the efforts to find a new agency or agencies to fund and administer NARL. He mentioned also the possibility of turning over the gas field at Barrow to the North Slope Borough and providing authority for requiring federal facilities to pay for gas from the field.

In the afternoon we were joined by representatives of the Department of the Interior: Gerry Gilliland, Curt McVie, Irene Rowan, Jim Wicks, and Ed Eisenson.

Gerry Gilliland outlined the Department's views on the legislation. He emphasized that the legislation is to encourage oil and gas development while protecting the unique surface values and lifestyle of the native residents. BLM is to administer the area in a multiple use manner and the local residents are to assist BLM in land use planning and in its lease program. He noted also that the bill included language that would lead to transfer of the Barrow gas field to the North Slope Borough.

With respect to leasing, the Department hopes to have a minimum time schedule that would result in the first lease within twenty months of the legislation. The legislation would provide

broad leasing authority to the BLM to establish terms and conditions. He emphasized that the authority would allow stipulations to protect the environment and require access yet he noted that the proposal did not have any corridors specifically set aside. He said that the bill would provide the Secretary with discretionary authority to lease minerals but only local leasing of coal would be specifically allowed. The report from Gilliland basically coincided with the information provided in Undersecretary Joseph's letter.

Gilliland indicated that the legislation was being reviewed within the Administration but that there had been no major changes proposed. The only objections from other agencies involved issues unrelated to the direct administration of NPR-A, e.g., the Department of Justice was concerned about anti-trust language, some agency was concerned about the size of the tracts being too large and thereby inhibiting participation by local companies, and there was concern over the name of the NCA. Gilliland does not know the exact timetable for submission of the bill to Congress but expects it to happen before January. He felt it was too late for any additional input at this time from the local community although the Department remains interested in the local reaction.

With respect to the four special areas he emphasized that the bill would only have Congress stating that BLM is to give those areas special consideration; it would be left up to the BLM, after consultation with an Advisory Committee, to determine exactly what those special considerations should be. BLM proposes to use the Federal Land Policy Management Act (FLPMA) planning process to establish appropriate restrictions. He also pointed out that Section 603 of FLPMA would not apply nor would the 1876 Mineral Act. This would preclude hard rock mining and provide no protection of existing claims. It was pointed out by Charlie Edwardson that there might be some outstanding claims that existed before the formulation of NPR-A.

Gilliland agreed that the leasing approach authority in the bill would allow internalization of costs but such leasing would not be mandated by the legislation.

Mayor Hopson emphasized the importance of sharing information from prior exploration of NPR-A inasmuch as the data is a key factor affecting exploration on the Slope. Mayor Hopson expressed his desire that the legislation should turn over leasing totally to private companies so that the Federal government would not be involved in the actual exploration.

Gilliland agreed that the applicability of the North Slope Borough ordinances to activities taking place in NPR-A would be part of the planning process. This means that the BLM could decide to apply them but that they were not automatically incorporated into the plan. He also noted that there was no local hire provision in the bill, which produced substantial discussion about the need for such provision. Gilliland and Curt McVie agreed that this was a point that deserved additional examination and indicated a willingness to have the Department consider taking a position on such a provision in the letter of transmittal of the bill to Congress or in the testimony of the Administration on the bill, inasmuch as it was too late to make any change to the legislation at this point.

Follow-up activities.

1. We should draft for the Department of the Interior an analysis of the need for an affirmative action program mentioning the adverse economic as well as societal impacts of not utilizing local residents. We should also draft appropriate language for such provision.

2. We should write to the Department requesting that they include reference to such a provision in their testimony or in the letter of transmittal to Congress.

3. We should attempt to have included in the legislation a specific guarantee of a portion of the state's revenue being allocated to the North Slope Borough.

4. We should examine other National conservation areas, and BLM regulations regulating activities in those areas, to identify deficiencies in the management program that should be addressed in the legislation or in Report langaage.

cc: Conrad Bagne
Tom Smythe
Jon Buchholdt
Oliver Leavitt
Larry Dinneen
Jim Wickwire

ATTENDANCE LIST

December 7, 1979 Meeting

Anchorage, Alaska

Mayor Eben Hopson, NSB

Eugene Brower, NSB

Tom Smythe, NSB

Conrad Bagne, NSB

Herb Bartel, NSB

Jon Buchholdt, NSB

Gerry White, NSB

Ralph Anderson, NSB

Bob Dupere, NSB

Lou Dishner, Lobbyist for NSB

Larry Dinneen, ASRC

Oliver Leavitt, ASRC

Eddie Hopson, ASRC

Jim Wickwire, Seattle

Bill Van Ness, Washington, D. C.

G. William Frick, Washington, D. C.

Ken Forsen, Arctic Technical
Services

Jack Bachman, North West Pipeline

Alaska State Legislature

House of Representatives

Al Adams
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Official Business

April 6, 1983

MEMORANDUM

TO: Representative John Ringstad, Co-Chairman
Representative Dick Shultz, Co-Chairman
House Resources Committee

FROM: Representative Al Adams AA

SUBJECT: House Bill 298 - Establishing a National Petroleum Reserve, Alaska, Special Revenue Fund

HB 298 is pending in House Resources. I would appreciate the committee's consideration of the legislation at the earliest possible date.

In 1980, Congress approved Public Law 96-514 which contained language requiring that 50% of the royalties received from oil and gas leases in the National Petroleum Reserve - Alaska shall be paid to the State of Alaska. Part of that stipulation also provided that the priority use of these funds would be by the subdivisions of the state that were most directly impacted by the development of oil and gas leases in the NPR-A. I have introduced HB 298 to establish the special revenue fund into which these monies will be deposited. It is in this manner that I believe we can best assure the state's compliance with the intent of the federal Act. You may recall that last session, a comparable piece of legislation passed both houses of the Legislature but was vetoed by the Governor. I have attached a copy of the Attorney General's letter in which he advised the Legislature of necessary changes in order to comply with constitutional and statutory requirements. I believe you will find that HB 298 satisfies the concerns raised by the past Administration.

For the committee's further review, I have attached copies of letters and testimony concerning the federal legislation, as well as comments offered by the Mayor of the North Slope Borough. Should you like any additional information, please let me know.

HOUSE BILL 298

Establishing a National Petroleum Reserve, Alaska Special Revenue Fund

Section 1. FINDINGS.

(1) The U.S Congress provided by law (P.L. 96-514) that Alaska shall receive 50% of the royalties derived from competitive oil and gas leases in the NPRA:

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(a) Establishes the NPRA Special Revenue Fund consisting of money received from the federal government under P.L. 96-514.

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Section 3. Immediate effective date.

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PETER D. DICKSON

December 20, 1979

MEMORANDUM

TO: Mayor Eben Hopson
North Slope Borough

Edward Hopson
President
Arctic Slope Regional Corporation

FROM: G. William Frick GWF

RE: Summary of NPR-A Meeting

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to be allocated to the state because of the large royalty already received by the state from Prudhoe Bay. Provisions guaranteeing local share from the revenues to the state would help maintain this provision.

3. He supports the NCA being administered by the BLM but is concerned about BLM continuing to apply the approaches they have traditionally followed under the Mineral Leasing Act. Stevens indicated he was meeting with Guy Martin on the legislation on December 10.

4. He is quite committed to keeping this bill separate from D-2 and indicated that this was the view of Secretary Andrus. Senator Stevens cautioned about trying to put D-2 related Native amendments on the bill when it comes from the House.

5. Senator Stevens vigorously emphasized the need to slow the Beaufort Sea sale. He is very concerned about drilling in the Beaufort Sea and feels that the international situation will result in a compressing of the time for leasing of NPR-A.

6. He is very interested in getting small companies involved in the development of NPR-A.

7. He supports the efforts to find a new agency or agencies to fund and administer NARL. He mentioned also the possibility of turning over the gas field at Barrow to the North Slope Borough and providing authority for requiring federal facilities to pay for gas from the field.

In the afternoon we were joined by representatives of the Department of the Interior: Gerry Gilliland, Curt McVie, Irene Rowan, Jim Wicks, and Ed Eisenson.

Gerry Gilliland outlined the Department's views on the legislation. He emphasized that the legislation is to encourage oil and gas development while protecting the unique surface values and lifestyle of the native residents. BLM is to administer the area in a multiple use manner and the local residents are to assist BLM in land use planning and in its lease program. He noted also that the bill included language that would lead to transfer of the Barrow gas field to the North Slope Borough.

With respect to leasing, the Department hopes to have a minimum time schedule that would result in the first lease within twenty months of the legislation. The legislation would provide

broad leasing authority to the BLM to establish terms and conditions. He emphasized that the authority would allow stipulations to protect the environment and require access yet he noted that the proposal did not have any corridors specifically set aside. He said that the bill would provide the Secretary with discretionary authority to lease minerals but only local leasing of coal would be specifically allowed. The report from Gilliland basically coincided with the information provided in Under-secretary Joseph's letter.

Gilliland indicated that the legislation was being reviewed within the Administration but that there had been no major changes proposed. The only objections from other agencies involved issues unrelated to the direct administration of NPR-A, e.g., the Department of Justice was concerned about anti-trust language, some agency was concerned about the size of the tracts being too large and thereby inhibiting participation by local companies, and there was concern over the name of the NCA. Gilliland does not know the exact timetable for submission of the bill to Congress but expects it to happen before January. He felt it was too late for any additional input at this time from the local community although the Department remains interested in the local reaction.

With respect to the four special areas he emphasized that the bill would only have Congress stating that BLM is to give those areas special consideration; it would be left up to the BLM, after consultation with an Advisory Committee, to determine exactly what those special considerations should be. BLM proposes to use the Federal Land Policy Management Act (FLPMA) planning process to establish appropriate restrictions. He also pointed out that Section 603 of FLPMA would not apply nor would the 1876 Mineral Act. This would preclude hard rock mining and provide no protection of existing claims. It was pointed out by Charlie Edwardson that there might be some outstanding claims that existed before the formulation of NPR-A.

Gilliland agreed that the leasing approach authority in the bill would allow internalization of costs but such leasing would not be mandated by the legislation.

Mayor Hopson emphasized the importance of sharing information from prior exploration of NPR-A inasmuch as the data is a key factor affecting exploration on the Slope. Mayor Hopson expressed his desire that the legislation should turn over leasing totally to private companies so that the Federal government would not be involved in the actual exploration.

Gilliland agreed that the applicability of the North Slope Borough ordinances to activities taking place in NPR-A would be part of the planning process. This means that the BLM could decide to apply them but that they were not automatically incorporated into the plan. He also noted that there was no local hire provision in the bill, which produced substantial discussion about the need for such provision. Gilliland and Curt McVie agreed that this was a point that deserved additional examination and indicated a willingness to have the Department consider taking a position on such a provision in the letter of transmittal of the bill to Congress or in the testimony of the Administration on the bill, inasmuch as it was too late to make any change to the legislation at this point.

Follow-up activities.

1. We should draft for the Department of the Interior an analysis of the need for an affirmative action program mentioning the adverse economic as well as societal impacts of not utilizing local residents. We should also draft appropriate language for such provision.

2. We should write to the Department requesting that they include reference to such a provision in their testimony or in the letter of transmittal to Congress.

3. We should attempt to have included in the legislation a specific guarantee of a portion of the state's revenue being allocated to the North Slope Borough.

4. We should examine other National conservation areas, and BLM regulations regulating activities in those areas, to identify deficiencies in the management program that should be addressed in the legislation or in Report langaage.

cc: Conrad Bagne
Tom Smythe
Jon Buchholdt
Oliver Leavitt
Larry Dinneen
Jim Wickwire

ATTENDANCE LIST

December 7, 1979 Meeting

Anchorage, Alaska

Mayor Eben Hopson, NSB

Eugene Brower, NSB

Tom Smythe, NSB

Conrad Bagne, NSB

Herb Bartel, NSB

Jon Buchholdt, NSB

Gerry White, NSB

Ralph Anderson, NSB

Bob Dupere, NSB

Lou Dishner, Lobbyist for NSB

Larry Dinneen, ASRC

Oliver Leavitt, ASRC

Eddie Hopson, ASRC

Jim Wickwire, Seattle

Bill Van Ness, Washington, D. C.

G. William Frick, Washington, D. C.

Ken Forsen, Arctic Technical
Services

Jack Bachman, North West Pipeline

PREPARED FOR

SENATOR FRANK R. FERGUSON

BY

MAYOR EUGENE BROWER

NORTH SLOPE BOROUGH

Regarding

SENATE BILL NO. 835

on

April 20, 1982

Despite the fact that commercial petroleum prospects for NPRA have been substantially downgraded by the United States Geological Service and Department of Natural Resources as a result of past Federally sponsored drilling programs the potential impacts, in fact, may be greater. Past drilling indicates the possibility of a reasonably large number of smaller fields rather than the giants or super giants forecast in the past. If this is the case, production would probably await the development of groups of smaller fields which would collectively represent a commercial undertaking. Collectors would link these small fields to a pipeline running to TAPS. The tracts receiving bids during the January 27, 1982 NPRA lease sale and their pattern substantiate this belief. This type of development scenario necessarily would disturb a larger area as well as being more difficult to service.

In contrast to Prudhoe Bay, the impacts of NPRA development will be at the doorstep of four of the eight permanent Borough communities (Barrow, Nuiqsut, Atkasook, and Wainwright). The indirect or secondary impacts of the Prudhoe Bay development, discounting primary impacts, created drastic cultural, social and economic disruptions for the permanent Inupiat population. Impacts forced change upon the resident population, not at their own making, and required them to organize a local governmental unit to represent their interests. With the development of NPRA the

pressures will be more direct and perhaps more devastating unless mitigation measures can be taken.

Senate Bill 835 will provide a portion of the funding required to address forthcoming impacts. With Prudhoe Bay and the Kuparuk experience, future Borough approaches to industrial impacts will involve direct yet cooperative State/industry/Borough planning and provision of basic consolidated services within the fields as well as within the communities. The result of Borough involvement promoting consolidation of facilities and services will result in more efficient, less disruptive development and therefore less detrimental impact.

The Federal law, Department of Interior and Related Agencies Appropriations Act of 1980, contains the following language:

> Provided, that . . . (9) all recipients from sales, rentals, bonuses, and royalties on leases issued pursuant to this Act shall be paid into the Treasury of the United States: Provided, that 50 per centum shall be paid by the Secretary of the Treasury semiannually, as soon as practicable after March 30 and September 30 each year, to the State of Alaska for (a) planning, (b) construction, maintenance and operation of essential public facilities, and (c) other necessary provision of public service: Provided further, that in the allocation of such funds the State shall give priority to use by subdivisions of the State most directly or severely impacted by development of oil and gas leased under this Act.

was in part a result the cooperative effort of the State and

the North Slope Borough in working with the Administration and the Congress.

Since NPRA is Federal reserve lands, there was no requirement for Federal revenue sharing. In fact, there was local opposition from influential Administrative and Congressional officials to sharing with the State. The Administration considered draft language to include only the Borough since NPRA lies almost totally within the Borough. However, Governor Hammond's opposition to direct revenue sharing rather than a pass through and the Borough's belief that the Borough alone would be limited to the 25 percent precident for local revenue sharing established in worldlife range and refuge law, prompted the Borough to jointly seek revenue sharing with the State. The joint State/Borough effort resulted in the State receiving 50 percent of the net Federal receipts with a proviso that the State would pass through funds to directly or severely impacted local governmental units.

Although the Administration introduced legislation in both the House and the Senate, Senator Stevens, in a sophisticated legislative maneuver, extracted the appropriate NPRA lease sale language from the Administration bill and included it as a part of Interior Appropriations. NPRA leasing was permitted and the revenue sharing preserved. However, the remainder of the Administration bill which dealt in large part with environmental constraints and enforcement provisions is dormant and

probably will not be resurrected. This places a great burden upon the State and the Borough to ensure efficient, environmentally sound development.

In summary, the North Slope Borough urges the prompt enactment of Senate Bill 835 to provide the Borough with the means of ameliorating impacts occasioned by the development of petroleum leases in NPRA. In providing this pass through of funds, the Borough will use these funds for the planning, construction, maintenance and operations of public facilities and other necessary provisions of services resulting from NPRA lease sales.

REPORT LANGUAGE FOR HR 7724

Provisions Affecting Exploration of

National Petroleum Reserve in Alaska

The bill provides $194,251,000 to initiate and carry out the leasing of the National Petroleum Reserve in Alaska, a Federal land holding of 23 million acres which is entirely located on the North Slope of Alaska. In addition to providing funds, the House bill provides substantive requirements directing the Secretary how such leasing is to be carried out. The Committee has agreed to the House provisions, with certain changes. The Committee believes that private leasing of the NPRA is extremely important and that it should proceed as expeditiously as possible. It is important, however, that the Congress also provide guidance to the Secretary on how that leasing should take place.

The social, economic, and environmental conditions in the Arctic are extremely fragile. The sudden influx of workers and money into an area can be extremely disruptive to the local community and put a strain on governmental services. There is also great potential for harm to the environment from the equipment and other activities associated with the exploration and development. Therefore, it is extremely important that the Secretary develop and implement a leasing program that gives proper consideration to the effects on the local community and political jurisdiction whose lands involved will be most directly

affected by the economic and social impacts. Because of these concerns, the Committee has made several changes in the House bill.

First, the House bill exempted the lease program from Sections 202 and 603 of the Federal Lands Policy and Management Act of 1976. While the Committee agrees that those sections of FLPMA should not operate to delay the leasing program, the sections would also have provided authority for important interaction between the Secretary and the State and local governments. The Committee considers it very important that the Secretary consult with the State and local jurisdictions regarding the lease program and insure important State and local decisions regarding land use control, environmental protection and preservation of subsistence use by local residents are made part of any leasing program. The Committee amendment would require the Secretary to recognize and insure application of these local requirements, even though the FLPMA sections are otherwise not applicable. The Committee believes that this will not delay the lease program in any way.

Second, the Committee has added language that will lead to greater participation in the jobs and business contracts associated with the leasing program by disadvantaged Native groups. Natives have historically gained the least from the economic activity associated with oil and gas development. Efforts were made in connection with construction of the Trans-Alaska pipeline

and the proposed Alaska Natural Gas Transportation System to encourage hiring of Natives. The unemployment rate for Natives in the North Slope is perhaps the highest in the country and it is appropriate that they have a role in the development of the resources from the area in which they live. This amendment makes more explicit the Federal goal that Natives have a preference in the employment and contracts that will be generated by the leasing program of NPRA authorized by the bill.

Third, the Committee recognizes that the impacts of oil and gas development increases costs for local governmental units. In addition, the Committee considers it important that such local jurisdictions share in the financial rewards associated with the development of resources of land within their jurisdictions, even though fee ownership may still be with the Federal government. The House bill provides that 50% of the lease sale proceeds, the royalties, and other income from the NPRA be returned to the State of Alaska, with a directive that the State allocate the funds to benefit the jurisdictions most affected by the development of NPRA.

The Committee supports the concept of returning funds to local jurisdictions but is concerned that those funds be available to benefit the jurisdictions most directly affected by the development and the activities that produce the income. The State is subject, understandably, to pressures from jurisdictions throughout the state for distribution of its revenues; past

experience indicates that certain areas, particularly those less populated, may not receive distribution appropriate to their needs or to the impacts that they have suffered. Furthermore, the State has restricted the authority of local jurisdictions to raise revenues by taxing property associated with oil and gas development. This has had its most serious impact on those locations where the oil and gas exploration and development is taking place and substantial amounts of property are located. Consequently, the Committee has preserved the 50% allocation to the State and its local jurisdictions but has directed distribution within the state so that a reasonable portion goes to the North Slope Borough, the local jurisdiction most affected by development of NPRA; the NPRA is composed of lands located totally within the North Slope Borough boundaries. Given the priority set forth in the House bill that the funds go to the jurisdictions most impacted by development, the Committee considers it appropriate to make the allocation explicit in the bill.

Finally, the Committee has rejected the request by the Administration that the bill require transfer of the Barrow gas field, which at present is under the jurisdiction of the Secretary of the Interior. The gas from that field is essential to life in Barrow, our northernmost community. The gas is used for heat and electricity, and a reliable supply of gas is necessary during the severe Arctic winters. While the Committee agrees that the source and cost of long-term energy supplies for

Barrow, as well as other North Slope Borough Villages, should be examined by the Secretary and discussed with the local community, it is inappropriate for the Congress to direct that a transfer take place in advance of studies and other data that demonstrate how energy supplies can best be funded. The Committee wants to avoid hurriedly choosing an unrealistic operating situation which might endanger the continued supply of fuel for heat to the community.

The leasing of NPRA provides a good opportunity for the Secretary to study energy needs on the North Slope and determine how North Slope Villages, including Barrow, can gain access to indigenous energy supplies. While the Barrow gas field would obviously not be included in any leasing program, the Secretary should consider lease conditions on tracts which will be leased that will guarantee access to any discovered oil or gas by the villages. Following development of such information, the Congress will be better able to respond in an appropriate manner to the Administration's request for transfer of the Barrow gas fields.

HB

312

COMMITTEE REPORT

HOUSE

(7) FURTHER:

4/25/83 Date: 5-2-83

Mr. Speaker: (Returned to Judiciary 4/25/83)

The Committee on JUDICIARY has had HB 312

"An Act relating to harming a police dog."

under consideration and reports it back as follows:

[✓] do pass [ ] do not pass

[ ] do pass with attached amendments(s)

[✓] replace with CS for HB 312 (JUD) [ ] same title [X] new title

and recommends _____

[ ] AND attaches a "Letter of Intent" [ ] New Fiscal Note [X] Zero Fiscal Note Attached

[ ] reports it back without recommendation

[ ] referred to the _____ Committee

MEMBERS SIGNING DO PASS

MEMBERS HAVING OTHER RECOMMENDATIONS:

CHAIRMAN

H 60

STATE OF ALASKA
FISCAL NOTE

[illegible]ision Date , 1983

I. REQUEST

Bill/Resolution No.: HB 312
Title: "...harming a police dog."
Sponsor: Repr. Adams
Requestor: House Judiciary Committee

II. FISCAL DETAIL

Agency Affected: Department of Law
Program Category Affected: Adm. of Justic
BRU, Program of Subprogram(s) Affected:
Prosecution

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 83	FY 84	FY 85	FY 86	FY 87	FY 88
OPERATING						
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 COMMODITIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND	-0-	-0-	-0-	-0-	-0-	-0-
FEDERAL FUNDS						
OTHER (Specify Source)						

POSITIONS:

FULL-TIME	-0-	-0-	-0-	-0-	-0-	-0-
PART-TIME						
TEMPORARY						

III. SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

N/A

IV. ANALYSIS: Attach a separate page for any Analysis

Prepared By: Richard I. Pegues, Director Phone: 465-3672
Division: Administrative Services Division Date: April 18, 1983

Approved by Commissioner: Norman C. Gorsuch, Attorney General Date: April 18, 1983
Department: Department of Law

Distribution:
Original to Legislative Finance
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HB 312
Fiscal Note
Analysis

The intentional harming of a police dog is such a rare occurrence that any fiscal impact to the department will be relatively insignificant.

Kotzebue

1 dog
not subject to harassment or threats

Alaska State Troopers

3 Search & Rescur Dogs
2 Narcotics Dogs

Support the legislation. Were to call back saturday with info re: harassment

Did not call back

Ketchikan Police Department

1 Narcotics Dog - Not subject to threats or harassment

Support the legislation

Kenai Police Department

1 Street Dog - Not aware of harassment. Dispatcher could not comment on the bill

Juneau Police Department

No Dogs

Fairbanks Police Department

No Dogs

Anchorage Police Department

3 Street Dogs
2 Narcotics Dogs

Support the legislation. Their dogs (all of them) have be harassed and threatened. One dog was threatened wednesday (April 27) with a knife.

The department feels that it would be very difficult to convince the prosecutors to file charges under the Criminal Mischief Statute because it covers such a broad range of offenses. If there were specific statutes relating to harassment or injuring a police dog it would be much easier to convince the prosecution to prosecute.

The department has never attempted to file charges under the criminal mischief statute as they felt there would be no chance of prosecution.

COMMITTEE REPORT

HOUSE

FURTHER:

(7)

4/4/83

Date: 4-21-83

Mr. Speaker:

The Committee on JUDICIARY has had HB 312

An Act relating to harming a police dog.

under consideration and reports it back as follows:

[X] do pass [ ] do not pass

[ ] do pass with attached amendments(s)

[X] replace with CS for HB 312 (JUD) [ ] same title [X] new title

and recommends _____

[ ] AND attaches a "Letter of Intent" [ ] New Fiscal Note

[ ] Zero Fiscal Note Attached

[ ] reports it back without recommendation

[ ] referred to the _____ Committee

MEMBERS SIGNING
DO PASS

MEMBERS HAVING
OTHER RECOMMENDATIONS:

CHAIRMAN

H 60

POUCH V
JUNEAU, ALASKA 99811
(907) 465-4890

Alaska State Legislature
HOUSE OF REPRESENTATIVES

REPRESENTATIVE
CHARLIE BUSSELL
CHAIRMAN

Committee on Judiciary

M E M O R A N D U M

DATE: April 20, 1983

TO: File

FROM: Cynthia Nelson
Administrative Assistant

SUBJECT: Proposed CS for HB 312 (Judiciary)
"An Act relating to harming a police dog."

On April 20, 1983 I spoke with Deputy Chief Audie of the Anchorage Police Department. The Anchorage Police Department strongly supports this legislation and hopes that it will act as a deterrent to the threats which have been made towards their police dogs.

The Anchorage Police Department presently owns and maintains five (5) police dogs. Four (4) are classified as "Street Dogs" and are used for building searches and in situations where there would be a substantial danger to a police officer. In addition, "Street Dogs" are used for search and rescue situations locating lost persons.

The additional dog owned by the Anchorage Police Department is classified as a "Narcotics Dog". This particular dog was imported from Germany and is used to locate narcotics by smell. This dog in particular has been subjected to numerous threats of harm.

These dogs represent an investment of approximately $12,000 each which includes an eight week training session with it's designated police officer "handler". This figure does not include salary and per diem paid to the officer while in training at the outside school.

There is not only a substantial financial investment in these dogs but a great deal of time investment. However, the value of these dogs to the life and safety of the public and to the police officers they serve would be difficult to measure.

MEMBERS:
REP. JOHN LISKA, VICE CHAIRMAN; REP. RAMONA BARNES, EMERITUS;
REP. JOE HAYES; REP. HUGH MALONE; REP. DON CLOCKSIN; REP. RON WENDTE

STATE OF ALASKA
THE LEGISLATURE

LEGISLATIVE AFFAIRS AGENCY

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

M E M O R A N D U M April 21, 1983

SUBJECT: Harming police dogs
(CSHB 312 (Judiciary))

TO: Representative Charlie Bussell
Chairman, House Judiciary Committee

FROM: James H. Lear
Legislative Counsel JHL

You have asked our office to compare the penalties under the existing law and the penalties under CSHB 312 (Judiciary) associated with the crime of harming a police dog. Under AS 11.46.486 (Criminal mischief in the fourth degree) the prosecution would have to establish that the offender "tampered" with a police dog with reckless disregard for the risk of harm or with intent to cause substantial inconvenience to another person; or that the offender damaged a police dog in an amount less than $50 and with the intent to cause such damage. Criminal mischief in the fourth degree is a class B misdemeanor.

Comparing criminal mischief in the fourth degree with proposed Sec. 11.56.710 (Harming a police dog in the second degree), one would observe that under the proposed statute it would be unnecessary to establish damage to a police dog. It would be sufficient for the prosecution to establish that the offender tormented, kicked, struck, stoned, or tampered with a police dog, knowing the dog to be a police dog. Such conduct would be punishable as a class A misdemeanor, a greater penalty than that imposed for criminal mischief in the fourth degree.

Under AS 11.46.484 (Criminal mischief in the third degree) the prosecution would have to establish that the offender intentionally damaged a police dog in an amount of $50 or more but less than $500. If the prosecution were successful, the offender would be facing a class A misdemeanor charge. Again, comparing this with the proposed section of harming a police dog in the second degree, the prosecution

must establish damage to the police dog to prevail under the existing law, while under the new provision the offender may be punished even though he inflicts no physical injury to the police dog.

Under AS 11.46.482 (Criminal mischief in the second degree) the prosecution would have to establish that the offender intentionally damaged a police dog in an amount of $500 or more in order to impose penalties as a class C felony. Compared with Sec. 11.56.705 (Harming a police dog in the first degree), one would observe that an offender is subject to penalties for a class C felony violation if the offender intentionally kills or causes serious physical injury to a police dog. Under the existing law the prosecution would have to establish that the intentional killing or infliction of serious physical injury amounted to more than $500 in damages.

In short, a comparison of existing law with proposed CSHB 312 (Judiciary) shows that it would be easier to prosecute an offender under the proposed bill and in certain instances higher penalties could be attached upon conviction.

If you have any further questions, please feel free to contact our office.

JHL:ljb
15/026

STATE OF ALASKA
FISCAL NOTE

Revision Date , 1983

I. REQUEST

Bill/Resolution No.: HB 312
Title: "Act Relating to Harming a Police Dog"
Sponsor: Representative Adams
Requestor: House Judiciary

II. FISCAL DETAIL

Agency Affected: Public Safety
Program Category Affected: Crime ID
BRU, Program of Subprogram(s) Affected: Alaska State Troopers

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 83	FY 84	FY 85	FY 86	FY 87	FY 88
OPERATING						
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 COMMODITIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC						
TOTAL OPERATING		-0-	-0-	-0-	-0-	-0-
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER (Specify Source)						

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

III. SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

IV. ANALYSIS: Attach a separate page for any Analysis No fiscal impact anticipated

Prepared By: Paul Conger Phone: 465-4338
Division: Administrative Services Date: 4/14/83

Approved by Commissioner: [signature] Date: 4-15-83
Department: Public Safety

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3/8/83

STATE OF ALASKA

BILL ANALYSIS

Department	Sponsor (Principal)	Bill Number
Public Safety	Adams	HB 312

Department Position

Support

Division Director	Date	Commissioner's Signature	Date
Col. M. C. Kolivosky mcK	4-8-83	R. J. Sundberg	4-15-83

Comments:

☐ Position Noted	By	Date

SUMMARY

1. a) Related Bills (Similar or Conflicting	1. b) Other Agencies Affected by Bill
	All law enforcement agencies statewide.
2. a) Organizational Support for Bill	**2. b) Organizational Opposition to Bill**

3. Program Effects of Bill

Passage of this bill will help to protect these valuable assets in police work. These animals are used not only for general police work but also in narcotics enforcement.

4. Fiscal Impact: ☒ None ☐ Fiscal Note Attached

5. Amendments Proposed:

6. Comments:

CITY OF KOTZEBUE

P.O. BOX 46
KOTZEBUE, ALASKA 99752

KOTZEBUE POLICE DEPARTMENT
907-442-3351

March 23, 1983

Representative Al Adams
Pouch V
State Capital
Juneau, Alaska 99811

HB312

RE: POLICE DOG PROTECTION BILL

I was given a copy of your draft bill amending AS 11.56 to protect police dogs.

I and the Police Department, and I am sure the City Fathers, thank you for this much needed legislation.

It is definitely a measure of protection for the dog and a protection to the large investment made by the City of Kotzebue and hopefully will act as a deterent.

In reviewing the draft legislation, the two stumbling blocks I see is the phrase "knowing the dog to be a police dog" and the language following to the end of the sentence in Section 11.56.705 and Section 11.56.710.

By necessity the dog becomes a part of the Officers family and it is generally agreed that this is when the dog is most vulnerable. Police Department that have used dogs over a great period of time have found that the dogs are poisoned, shot at and injured mostly when "off duty".

All Police dogs are the property of the handlers employer and like an officer, are "on duty" 24 hours a day.

Might it be possible to revise the language to reflect these concerns.

Sincerely,

Don Buehler

DONALD E. BUEHLER
Chief of Police

cc: Representative Adams' file
City Manager
City Manager file
Sgt Jones

Bill would protect police dogs

NEWS 5-8-83

The Associated Press

JUNEAU — The House has sent to the Senate a measure to penalize anyone who killed or tried to harm a police dog.

The measure (HB312) was introduced by Rep. Al Adams, D-Kotzebue, because of a problem in his area. The police dog has been threatened several times, according to testimony in the House Judiciary Committee.

Rep. Don Clocksin, D-Anchorage, said the measure was unneccessary because penalties for killing a dog were covered by criminal mischief statutes.

Adams countered that the bill was needed, because it would specifically identify a crime.

He said the dogs provide public protection and crime detection and should be protected.

Killing a police dog would be a Class C felony, punishable by up to five years imprisonment and a fine of up to $50,000.

Harming a police dog would be a Class A misdemeanor, punishable by up to a year in jail and a fine of up to $5,000.

HB

323

COMMITTEE REPORT

HOUSE

FINANCE

FURTHER:

6/20/83

Date: 6/21/83

Mr. Speaker:

The Committee on JUDICIARY has had HB 333

"An Act relating to residency and residency requirements; and providing for an effective date."

under consideration and reports it back as follows:

[ ] do pass [ ] do not pass

[ ] do pass with attached amendments(s)

[ ] replace with CS for HB 333 (WD) [ ] same title [ ] new title

and recommends _____

[ ] AND attaches a "Letter of Intent" [ ] New Fiscal Note

[ ] Zero Fiscal Note Attached

[ ] reports it back without recommendation

[ ] referred to the _____ Committee

MEMBERS SIGNING
DO PASS

MEMBERS HAVING
OTHER RECOMMENDATIONS:

CHAIRMAN

H 60

INTERIM OFFICE:
1024 WEST SIXTH AVENUE
ANCHORAGE, ALASKA 99501
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IN SESSION:
POUCH V
JUNEAU, ALASKA 99811
(907) 465-4963

Alaska State Legislature

Representative Mitch Abood
CHAIRMAN

House Committee on State Affairs

SECTIONAL ANALYSIS OF: HB 323

"An Act relating to residency and residency requirements; and providing for an effective date."

Section 1 amends AS 01.10 by adding a new section defining bona fide residency in the State of Alaska. A person establishes residency in the State by being physically present in Alaska with the intent to remain in Alaska indefinitely and to make a home in the State. Under (b)(1) in the section, a person must maintain a principal place of abode in the state for at least 30 days or for a longer period if a longer period is required by law or regulation.

Section 2 repeals and reenacts AS 08.04.110, relating to the personal requirements of certified public accountants. The present residency requirement has been deleted to correct a constitutional problem.

Section 3 amends AS 08.08.207 (a), by removing the requirement that an individual be a resident of Alaska in order to be a law clerk.

Section 4 amends AS 08.88.171, for receiving a real estate broker's license; an associate broker's license, or a real estate salesman's license. The one-year residency requirement has been deleted to correct a constitutional problem.

Section 5 amends AS 09.55.130, deleting the one-year residency requirement for the annulment of a marriage. Under current law, if a person was not married in Alaska, that marriage could only be annuled if the plaintiff had been a resident for at least one year prior to the commencement of an action. The one-year requirement is probably unconstitutional.

Section 6 amends AS 16.05.400(b), by deleting the 30-year consecutive residency requirement to a one-year requirement for a hunting, fishing or trapping license exemption for persons 60 years of age. The 30-year requirement is clearly unconstitutional.

Section 7 amends AS 16.35.130, by deleting the one-year residency requirement in the section dealing with the non-payment of bounty on certain animals. Presently, in order for bounty to be paid, an individual was required to maintain a place of abode inside the game management unit or in part of the game management unit for one year preceeding the time the animal was taken and the bounty paid, or, no bounty would be paid to a person who had not continually maintained his legal residence in Alaska. The one-year residency requirement has been replaced by simple residence (30 days) in order to correct a constitutional problem.

Section 8 amends AS 18.56.101 (1)(B), dealing with the eligibility for the one-percent veteran's interest rates, by deleting the five-year residency requirement and substituting a one-year requirement. The present law requires a person who was not a resident of Alaska at the time of entry into the service, to be a resident of Alaska for one year at the time of the date of application for a loan and also requires the applicant to have been a resident of Alaska for five years. There were constitutional problems with those requirements.

Section 9 amends AS 21.27.090 (a)(2), dealing with the qualifications for insurance agent and broker licenses, by deleting the one-year residency requirement and substituting simple residence (30 days). Presently, an individual must reside continuously in Alaska for one year immediately prior to the issuance of an agent or broker's license. There is no change in fee differential.

Section 10 amends AS 26.15.130 (a), dealing with the eligibility for veteran's loans, by deleting the five-year residency requirement and inserting a one-year requirement. To receive a loan under current law if a veteran was not a bona fide resident of the State or Territory of Alaska at the time of entry into the service, the veteran was required to have been a resident of the State or territory for five years. There was a constitutional problem with that requirement.

Section 11 amends AS 38.08.030 (a)(2), dealing with applications for the homesite entry, by deleting the three-year residency requirement and the 20-year requirement, and substituting a one-year requirement. Under current law an individual must submit proof that he/she has been a resident of Alaska for three years immediately preceding the date of application, or, that the person has been an Alaskan resident for a total of 20 years. There were constitutional problems with those requirements.

Section 12 amends AS 44.81.210 (a)(20), dealing with limited entry permit loans (CFAB), by deleting the five-year residency requirement and substituting a two-year requirement. Under current law, a person

must be a resident of Alaska for a continuous period of five years immediately preceding the date of application for the loan and who has had a crew member or commercial fishing license under AS 16.05.480 or a permit under AS 16.43.010 - 380, for any one of the past five years. That person must also have actively participated in the fishery during that period. There are constitutional problems with these requirements.

Section 13 repeals the following laws:

AS 08.54.110(2), relating to the qualifications for obtaining a registered guide license.

Action Taken: " (2) is a resident of the state and maintains a permanent place of abode in the state," is repealed in order to correct a constitutional problem.

AS 08.54.140(2), relating to the qualifications for obtaining an assistant guide license.

Action Taken: " (2) is a resident of the state;" is repealed in order to correct a constitutional problem.

AS 08.54.142 (a)(1), relating to the qualifications for obtaining a transporter license.

Action Taken: "(1) is a resident of the state;" is repealed in in order to correct a constitutional problem.

AS 14.54.142 (a)(1), relating to the qualifications for obtaining a registered guide license.

Action Taken: The granting of loans based on accumulated points as determined by the length of residency in Alaska is repealed in order to correct a constitutional problem.

AS 18.55.470 (4), relating to low-cost housing preference.

Action Taken:

In the definitions section:"(4) 'resident' means a person who has lived in the state continuously for any one year;" is repealed. The one-year requirement is probably unconstitutional. Simple residence (30 days) will apply in this section.

AS 21.27.220 (1), relating to the qualifications for issuing an insurance solicitor license.

Action Taken:

" (1) is a bona fide resident of Alaska and has been a continuous resident for at least one year immediately before issuance of a license;" is repealed in order to correct a constitutional problem.

AS 29.63.065.(d)(1), relating to the senior citizen special assessment exemption.

Action Taken:

" (1) 'resident' means a person who for 12 consecutive months has maintained his permanent place of abode in the state;" is repealed in order to correct a constitutional problem. Simple residence (30 days) will apply in this section.

AS 38.08.040 (b), relating to the issuance of homesite entry permits.

Action Taken:

" (b) If the number of applicants qualified for homesite entry exceeds the number of available homesites offered, or if several applicants apply and qualify for the same homesite, priority in award of an entry permit shall be accorded to that applicant showing proof of the longest residency in the state." is repealed in order to correct a constitutional problem.

AS 39.25.155 (g), relating to the vocational substitution program.

Action Taken:

" (9) In this section 'resident' means a person who has been domiciled in Alaska for at least one year immediately before filing his application." is repealed. The one-year requirement is probably unconstitutional. Simple residence (30 days) will apply in this section.

AS 38.05.058, the land purchase price discount program.

Action Taken :

The land purchase price discount program, which is the discount on the purchase price of land at the rate of five per cent of the purchase price for each full year that an individual is a resident of Alaska is repealed. The residency-based program is probably unconstitutional.

AS 43.26.095, (b)(3), relating to industrial tax credits.

Action Taken:

" 'resident,' at the end of the first year of tax credit, means a person who has been domiciled in Alaska for at least one year immediately before the granting of the tax credit to the business; 'resident,' at the end of the second and third year of tax credit, means a person who has been domiciled in Alaska for at least one year either immediately before the granting of the tax credit to the business." is repealed. The residency requirement is probably unconstitutional. Simple residence (30 days) will now apply in this section.

LAW OFFICES
GROSS & BURKE
A PROFESSIONAL CORPORATION
424 NORTH FRANKLIN STREET
JUNEAU, ALASKA 99801

AVRUM M. GROSS
SUSAN A. BURKE

(907) 586-2777

March 22, 1983

MEMORANDUM

TO: Honorable Mitch Abood
Chairman, House State Affairs Committee

FROM: Susan A. Burke SAB

RE: Residency Requirements

You have asked me to review the Alaska statutes that presently impose residency requirements and to recommend to the Committee the amendment or repeal of those residency requirements that more than likely would be held unconstitutional if challenged in court. You have also asked me to draft a statute defining "bona fide" residence. That draft is attached, along with comments.

In reviewing the residency requirements imposed under current law, I was primarily concerned with two questions -- first, whether it is constitutionally permissible to impose any kind of residency requirement having the effect of excluding nonresidents, and second where the statute imposes a durational residency requirement longer than 30 days, whether the period of residency specified is within

constitutional limits.[1] The statutes which contain residency provisions fall into several broad subject matter categories. Attached is a chart prepared by the Department of Law which lists all of the statutes containing residency requirements, with the statutes organized according to subject matter. The chart also includes an assessment of the constitutional problems, if any, presented by each statute. Rather than duplicate this work, I have used this chart as the basis for my review. The review will discuss the statutes listed in each subject matter category in the chart prepared by the Department of Law.

I. Residency Requirements for Eligibility to Hold Public Office

The durational residency requirements established for public office holding range from six months in the case of magistrates (AS 22.15.160(b)) to 10 years for members of the Judicial Qualifications Commission (Alaska Const. art IV, sec. 10; AS 22.30.010). Durational residency requirements for public

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1/ In general, a person is entitled to claim residency in Alaska if the person is physically present in the state with the intent to remain here indefinitely and make a home here. With rare exceptions, a durational residency requirement will be valid only if it used as a way of testing whether the person actually has the necessary "residential" intent. For some programs, like welfare or medical care, and for fundamental rights such as voting, the state may impose only the shortest durational period necessary to make residency determinations. This period has been held to be no more than 30 days for voting and welfare. For other programs, as discussed below, a longer period of residency is permissible to require.

office holding have been challenged both in Alaska and elsewhere.[1a/] These durational residency requirements have almost universally been upheld (even fairly lengthy ones), on the theory that they are a legitimate way to measure whether a person has sufficient knowledge of local problems and concerns to be qualified for public office and to insure that the voters have had a sufficient period of time in which to become familiar with the candidate. This same rationale would apply with equal force to durational residency requirements imposed for eligibility to serve on certain boards and commissions. While some questions

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1a/ Gilbert v. State, 526 P.2d 1131 (Alaska 1974); Chimento v. Start, 414 U.S. 802 (1973).

might be raised as to the reasonableness of the length of residency required in a particular instance, it is probable that none would be struck down if challenged. I do not recommend that any amendments be made to these statutes.

II. Residency Requirements for Occupantional Licensing

With only a few exceptions, I agree with the conclusions contained in the Department of Law's survey as to the serious constitutional problems presented by the statutes which require persons to be residents in order to be licensed to engage in certain professions. The recent Alaska Supreme Court decision in Noll v. Alaska Bar Association, 649 P.2d 241 (Alaska 1982), makes it almost certain that these requirements would be struck down if challenged. Close review of the statutes, however, suggests that in some instances, the residency requirements may have been prompted by perfectly legitimate concerns -- such as the difficulty or added expense of disciplining nonresident practitioners. Further, it appears that in some instances residency requirements may have been imposed as a "quick" way of insuring that persons who practiced certain professions in the state had some degree of "local" knowledge. After Noll, it seems likely that even though these are legitimate problems, they may not be solved by simply barring nonresidents from licensure. By the same token, there may be ways of dealing with these problems that do not raise constitutional questions. For instance, in the case of disciplining nonresidents, a higher fee could be charged to nonresidents to

offset additional costs that may be associated with disciplining nonresidents. "Local knowledge" concerns could be addressed through additional testing procedures. In any event, despite the serious constitutional problems with these statutes, it may be undesirable simply to repeal the residency requirements without providing solutions to whatever problems may be posed by granting licenses to nonresidents. The Committee might want to consider repealing the residency requirements, but having a delayed effective date until perhaps June 30 of 1984. Persons who wish to recommend alternative ways of addressing the kinds of concerns I have suggested would then have time to bring their recommendations to the legislature next year before the repeal of the residency requirements took effect.

III. Public Rights and Benefits

A. General.

I agree with the Department of Law's conclusion that a one year durational residency requirement for annulment of marriage may be unconstitutional, though I would rate this as "probably" rather than "maybe" unconstitutional. The Alaska Supreme Court in 1974 struck down a one year durational requirement for obtaining a divorce. State v. Adams, 522 P.2d 1125 (Alaska 1974). The state's interests in requiring one year residence to obtain an annulment of a marriage are more than likely identical to those advanced in support of the one year requirement for divorce. The court did not find

those interests sufficiently important to justify a one year requirement for divorce. Although the Alaska Supreme Court seems to be moving toward a much less restrictive view of durational residency requirements,[2/] it is unlikely that it would overrule its earlier decision in Adams, if the annulment statute were challenged. I would recommend that this statute be amended to require that a person simply be a resident.

I also agree with the Department's assessment of the other statutes listed in the "General" category, which impose one year durational requirements, and recommend that these statutes be amended to require that a person simply be a resident.

B. Loan and Grant Programs

The statutes governing the various loan programs impose durational residency requirements ranging from one to five years. I agree that the five year requirements are almost

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2/ In State v. Adams, 522 P.2d 1125, 1131 (Alaska 1974), the Alaska Supreme Court stated:

> . . . all such [durational residency] requirements are prima facie invalid and will be countenanced only when they serve a compelling state interest.

However, in Williams v. Zobel, 619 P.2d 448 (Alaska 1980) (permanent fund dividends), the court retreated from its earlier view in Adams, and indicated that unless the requirement affected fundamental rights (such as voting) or basic necessities of life (like welfare or medical care), the court would henceforth use a "balancing" approach to durational residency statutes. The importance of the state's interests will be weighed against the importance of the benefit denied or delayed by the durational requirement.

certainly unconstitutional.[3] The question is whether a durational requirement beyond 30 days would be constitutional, and if so, what is the maximum length that could be imposed within constitutional limits. Apart from public office holding, the United States Supreme Court has upheld durational residency requirements of up to one year in two cases -- eligibility for preferential resident tuition at state universities, and as a prerequisite to filing for divorce.[4] These cases were decided under the United States Constitution, and the Alaska Supreme Court may, and has, interpreted the Alaska Constitution in similar cases as imposing stricter requirements.[5] As noted above, the Alaska Supreme Court has until recently maintained the view that any durational residency requirement will be struck down unless the state can demonstrate that the requirement is necessary to further a compelling state interest. This is an extremely difficult burden to meet, and except in very rare instances it is an impossible burden. Because it appears that the Alaska court

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3/ A different question is presented by the five year local mining experience requirement for mining loans under AS 27.09.020. This may be a permissible requirement, particularly if it is demonstrated that it does not operate as a practical matter to exclude persons who are currently residents, but who gained their Alaska mining experience as nonresidents.

4/ Vlandis v. Kline, 412 U.S. 441 (1973) (university tuition); Sosna v. Iowa, 419 U.S. 393 (1975) (divorce).

5/ For example, the Alaska court struck down a one-year residency requirement for divorce under the Alaska constitution, State v. Adams, 522 P.2d 1125 (Alaska 1974). One year later the U.S. Supreme Court upheld an identical requirement in Iowa's statute. Sosna v. Iowa, supra, note 4.

is moving toward a less restrictive approach toward durational residency, our court would probably uphold durational residency requirements of reasonable length for loan programs.

Under this less restrictive approach, the Alaska Court would balance the state's interests in imposing a durational residency requirement for a state loan against the importance of the challenger's interest in obtaining a loan before the requirement had been met. In the case of the loan programs, the state's interest is in assuring that state funds are not used to benefit nonresidents. Since resident status depends in large part on a person's state of mind, it is extremely difficult to know with certainty whether a recent arrival in fact has the requisite "residential" intent, and it is extremely difficult to disprove a false claim of residency. Further, it is costly to require the state to make individualized determinations of residency. There are in most instances alternative sources of loan funds through commercial lenders, and it is likely that our court would find that the state's interest in assuring that its benefits are not granted to persons who are not bona fide Alaska residents outweigh the slight inconvenience that a newly arrived resident might suffer by having to wait for some period of time in order to qualify for a state loan.

A more difficult question is what period of residency would be permissible. The state is currently in litigation in the Federal District Court in Alaska, defending the two

year durational residency requirement under the student loan program. The state has argued that the two year requirement is reasonable in light of the transience of student populations, the generous loan amounts under the Alaska program and the fact that there is no requirement that the loan funds be used at an Alaska institution. The plaintiff in that case has conceded that a one year requirement would be reasonable. Assuming the Alaska Supreme Court continues in its present trend in durational residency cases, a one year durational residency requirement for the loan programs would more than likely be upheld.[6/] A two year requirement might be upheld, but it carries a much higher risk of being struck down than would a one year requirement. The Committee may want to defer proposing any amendments to the two year residency requirement for student loans until the pending litigation is resolved. The Committee may also want to defer action on the other loan programs until after the Alaska Supreme Court renders its decision on the one year residency requirement for participation in the Kenai land disposal lottery (Gilman v. Martin). That decision may provide some indication as to how our court would rule on a one year residency requirement for state loans.

6/ The one loan program for which a one year residency requirement would most likely not be upheld is the AHFC program for home mortgages -- at least as long as there continues to be a requirement that the loans will be made only for owner-occupied dwellings. As has been noted earlier in this memorandum, with rare exceptions, durational residency requirements may be used only as a way of measuring whether a person has the intent to remain in the state and make his or her home there. Purchasing a dwelling under a loan program requiring owner occupancy as a condition of the loan is such a strong indication that a person's claimed residential intent actually exists, that a court would most likely find that there was no valid state purpose in imposing an additional one year residency requirement.

I would, however, recommend that the sliding scale preference for accepting student loan applications that is based on years of residency be repealed, even though it has apparently never been applied. This provision is so similar to the dividend plan struck down in Zobel v. Williams that it is virtually certain to be struck down on the same constitutional grounds. On the other hand, the provisions of AS 14.40.763(j), providing for graduated forgiveness of portions of student loans based on continued residence in Alaska after graduation seem to be based on an entirely different rationale. Those provisions are not based on past residency, but seek to affect future behavior. Providing graduated loan forgiveness seems closely tied to the purpose of encouraging students to return to or remain in Alaska after they have received their educations. I believe that that provision would most likely be upheld if it were to be challenged, and that there is no need to repeal it because of constitutional vulnerability.

C. Land Disposal Programs

As mentioned above, the Alaska Supreme Court now has under consideration a case in which the Kenai land disposal program has been challenged. (Gilman v. Martin.) The Kenai ordinances governing its program are almost identical to the state's land lottery provisions in AS 38.05.057 and AS 38.05.058. Thus, the decision in Gilman will almost

certainly answer any constitutional questions that might be raised concerning the state's program. I agree with the assessment of the constitutional problems with these statutes contained in the Department of Law's chart. I believe that a one year residency requirement to participate in either the land lottery or the homesite entry program would probably be upheld. I have serious doubts about the constitutionality of the provision under which discounts of the purchase price are granted based on years of residency in the state. The committee may, however, wish to defer proposing amendments to this provision until after the decision in Gilman is rendered, since the residency based discounts are also at issue in that case.

D. Special Old Age Programs

I also agree with the assessment made by the Department of Law as to the durational residency requirements contained in the programs providing benefits or preferences to older residents of the state. With respect to the one year residency requirement for the senior citizen special assessment exemption under AS 29.63.065(d)(1), I have doubts about whether that requirement would be upheld, for the same reasons I outlined concerning a one year residency requirement for AHFC loans in footnote 6, above. A one year requirement for the senior citizen exemption from the fishing license requirement would probably be upheld; a 30 year requirement is clearly unconstitutional.

I also agree that the residency requirements for the longevity bonus are almost certainly unconstitutional. There are arguments that could be made in defense of the Pioneers' Home residency provisions, but it is far from certain that those requirements would be upheld. (The arguments in support of the Pioneers' Home residency requirements are contained in the November 26, 1982 opinion by Wilson Condon, a copy of which is among the Committee's files.) However, any recommendation as to how the residency requirements for these two programs might be amended to meet constitutional requirements necessarily has tremendous fiscal implications. The residency questions in these two programs are so intertwined with the structure and operation of the programs, that they cannot be dealt with separately, but can be addressed only as part of a total structural and operational review of those programs. That kind of review is, as I understand it, beyond the scope of the work that the Committee has asked me to perform.

SAB:yw

Amend AS 08.04.260 to read:

If an applicant for a certificate as a certified public accountant meets all the requirements for a certificate and the applicant's application is pending or if an applicant meets all the requirements for a certificate except [THE RESIDENCE REQUIREMENT, OR] the requirement that the applicant has a place of business in the state or be an employee regularly employed in this state, the board may issue a temporary certificate as a certified public accountant. This certificate is effective until the board notifies the applicant that the applicant's application has been granted or rejected. A temporary certificate is effective for a period not exceeding six months. No fee may be charged for the issuance of a temporary certificate.

Amend AS 08.42.050(a) (4) to read:

Have completed at least one year of apprenticeship as a [RESIDENT] trainee under a licensed embalmer.

Amend AS 08.42.110(4) to read:

"[RESIDENT] trainee" means a person who has met the qualifications set out in AS 08.42.050(a)(1) and (2) and is engaged in learning the practice of embalming under the direction and control of a person properly licensed to practice embalming, or a person who has met the qualifications set out in AS 08.42.050(b)(1) and (2) and is engaged in learning the practice of funeral directing

under the direction and control of a person properly licensed to practice funeral directing.

AS 08.24.110(1) and AS 08.54.240(3) are repealed.

Amend AS 26.10.080(d)(1)(B) to read:

Who, not being a bona fide resident of the territory or the state at the time of entry into the service, had been a resident of the territory or state for at least one year at the time of death [AND HAD BEEN A RESIDENT OF THE TERRITORY OR STATE FOR AT LEAST FIVE YEARS]; and

Make Section 8 consistent with HB 302.

FISCAL NOTE | Revision Date 4/6 , 1983

I. REQUEST

Bill/Resolution No.: HB 323
Title: Act Re: Residency
Sponsor: House State Affairs Committee
Requestor: House State Affairs Committee

II. FISCAL DETAIL

Agency Affected: Education
Program Category Affected: Postsecondary Comm.
BRU, Program of Subprogram(s) Affected:
Student Loan Program

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 83	FY 84	FY 85	FY 86	FY 87	FY 88
OPERATING						
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 COMMODITIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC						
TOTAL OPERATING						
CAPITAL	N.A.	-0-	-0-	-0-	-0-	-0-
REVENUE	N.A.	-0-	-0-	-0-	-0-	-0-

FUNDING: (Thousands of Dollars)

GENERAL FUND	N.A.	-0-	-0-	-0-	-0-	-0-
FEDERAL FUNDS						
OTHER (Specify Source)						

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

III. SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

IV. ANALYSIS: Attach a separate page for any Analysis

Prepared By: Kerry D. Romesburg Phone: 465-2854
Division: Commission on Postsecondary Education Date: 4/6/83

Approved by Commissioner: Date:
Department:

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Copy to Requestor (if different from Sponsor)

3/8/83

STATE OF ALASKA
FISCAL NOTE

Revision Date , 1983

I. REQUEST

Bill/Resolution No.: HB 323
Title: Relating to Residency
Sponsor: State Affairs
Requestor: State Affairs

II. FISCAL DETAIL

Agency Affected: Revenue
Program Category Affected: Econ Devel
BRU, Program of Subprogram(s) Affected: Alaska Housing Finance Corporation

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 83	FY 84	FY 85	FY 86	FY 87	FY 88
OPERATING						
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 COMMODITIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC						
TOTAL OPERATING	-0-					
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND	-0-					
FEDERAL FUNDS						
OTHER (Specify Source)						

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

III. SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

No fiscal impact

IV. ANALYSIS: Attach a separate page for any Analysis - See Attached

Prepared By: [signature] Phone: 276-5599
Division: Alaska Housing Finance Corporation Date: April 12, 1983

Approved by Commissioner: Joseph K. Donahue Date: 4/15/83
Department: Revenue

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3/8/8

STATE OF ALASKA
FISCAL NOTE

Revision Date , 1983

I. REQUEST

Bill/Resolution No: HB 323
Title: Residency & Residency Requiremts
Sponsor: House State Affairs
Requestor: House State Affairs

II. FISCAL DETAIL

Agency Affected: Revenue
Program Category Affected: Coll. & Mgt.
BRU, Program of Subprogram(s) Affected: Administration & Support

EXPENDITURES/REVENUES: (Thousands of Dollars)

		FY 83	FY 84	FY 85	FY 86	FY 87	FY 88
	OPERATING						
100	PERSONAL SERVICES	-	-	-	-	-	-
200	TRAVEL	-	1.0	-	-	-	-
300	CONTRACTUAL	-	-	-	-	-	-
400	COMMODITIES	-	3.0	1.3	1.4	1.5	-
500	EQUIPMENT	-	2.0	-	-	-	-
600	LANDS & STRUCTURES	-	-	-	-	-	-
700	GRANTS, CLAIMS, ETC.	-	-	-	-	-	-
	TOTAL OPERATING	-0-	6.0	1.3	1.4	1.5	-
	CAPITAL	-	-	-	-	-	-
	REVENUE	-	-	-	-	-	-

FUNDING: (Thousands of Dollars)

	GENERAL FUND	-0-	6.0	1.3	1.4	1.5	-
	FEDERAL FUNDS	-	-	-	-	-	-
	OTHER (Specify Source)	-	-	-	-	-	-
	Sport Fish Fund	-0-	(18.2)	(38.5)	(40.8)	(43.4)	-
	Game Fund		(24.1)	(30.0)	(31.8)	(33.6)	

POSITIONS:

	FULL-TIME	-	-	-	-	-	-
	PART-TIME	-	-	-	-	-	-
	TEMPORARY	-	-	-	-	-	-
		-	-	-	-	-	-

III. SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

IV. ANALYSIS: Attach a separate page for any Analysis.

Prepared By: Cecilia A. Wagener
Phone: 465-2376
Division: Public Services
Date: 4/13/83

Approved by Commissioner: Robert D. Heath
Date: 4/14/83
Department: Revenue

Distribution:
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Copy to Department (for Governor introduced bills)
Copy to Sponsor
Copy to Requestor (if different from Sponsor)

Three thousand is needed to initially design and print applications and the permanent I.D. card and to order enough laminating jackets for the fiscal year. Each subsequent fiscal year, we will have the cost of additional laminating jackets. The equipment cost is for three laminating machines; one for the Public Services Counter in Anchorage, one for Fairbanks, and one for Juneau. The travel expenditure is for the Records & Licensing Supervisor to go to Anchorage and Fairbanks and instruct the counter employees.

According to data received from the Department of Labor and the Committee for Older Alaskans, the percentage rate of senior citizens in our state is fairly stable from year to year.

Using FY 82 as the base, it is estimated that there will be a six percent increase in resident sales every year. It is also estimated that three percent of the resident sales are sold to residents sixty years or older.

We are recommending that this bill be amended to include an effective date of January 1, 1984, because license changes traditionally take place at the beginning of a calendar year. If implemented in the middle of the year, some licensees who could be eligible would have already purchased their license. Middle of the year implementation would also require special printing and mailing costs. Time is also needed to properly inform the public of the new law so that all who are eligible can apply.

Assuming that the bill goes into effect 1/1/84, there will be no effect in FY 83. There will be losses to both the Sport Fish and Game Funds in each subsequent fiscal year. FY 84 has a much smaller loss because only half of the fiscal year will be effected.

STATE OF ALASKA
FISCAL NOTE

Revision Date May 2 , 1983

I. REQUEST

Bill/Resolution No.: CS HB 323
Title: "Residency & Residency Requirements"
Sponsor: State Affairs Committee
Requestor: House Judiciary Committee

II. FISCAL DETAIL

Agency Affected: FISH & GAME
Program Category Affected: Fisheries & Game
BRU, Program of Subprogram(s) Affected: Sport Fisheries and Game

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 83	FY 84	FY 85	FY 86	FY 87	FY 88
OPERATING						
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 COMMODITIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC						
TOTAL OPERATING						
CAPITAL						
REVENUE	-0-	(80.6)	(88.0)	(95.5)		

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER (Specify Source)						

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

III. SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

General Fund - in light of declining General Fund revenue, this may be very difficult.

IV. ANALYSIS: Attach a separate page for any Analysis

Prepared By: Beverly Reaume — Phone: 465-4120
Division: Administration — Date: May 2, 1983

Approved by Commissioner: Don W. Collinsworth — Date: 5-2-83
Department: FISH & GAME

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3/8/83

CS HB 323 Addendum

The 1980 Census showed 19,640 Alaskans ages 60 and over. It also showed 32,260 Alaskans aged 55 and over. Assuming the age spread is even, 2524 Alaskans will reach age 60 each year between 1980 and 1985. Population estimates adding the Alaskans reaching 60 and an overall 5% population growth would be as follows:

FY 84	28,573
FY 85	31,223
FY 86	33,873

Using a conservative estimate, assume that 15% of the population fishes and 11% hunts, we would forego the following revenue.

	Sport Fish $10. license	Game $12. license
FY 84	42.9	37.7
FY 85	46.8	41.2
FY 86	50.8	44.7

4/20

COMMITTEE REPORT

HOUSE

JUDICIARY

(7)

FURTHER: [illegible] 4/20

4/5/83

Date: 4-18-83

Mr. Speaker:

The Committee on STATE AFFAIRS has had HB 323

An Act relating to residency and residency requirements; and providing for an effective date.

under consideration and reports it back as follows:

[ ] do pass [ ] do not pass

[ ] do pass with attached amendments(s)

[✓] replace with CS for HB 323 (SA) [X] same title [ ] new title

and recommends

[ ] AND attaches a "Letter of Intent" [X] ~~New~~ Fiscal Note Sup 43

[ ] reports it back without recommendation [X] 2 Zero Fiscal Notes Attached

[X] referred to the Finance Committee

MEMBERS SIGNING DO PASS

[illegible]

John J Candeus

Walt Furnace

Ronald J. Larson

MEMBERS HAVING OTHER RECOMMENDATIONS:

[illegible] NO REC

Rep [illegible]

CHAIRMAN

H 60

HB
324

STATE OF ALASKA
FISCAL NOTE

Revision Date , 1983

I. REQUEST

Bill/Resolution No.: HB 324
Title: "Act making it unlawful to tape-record"
Sponsor: House Judiciary
Requestor: House Judiciary

II. FISCAL DETAIL

Agency Affected: Public Safety
Program Category Affected: Crime ID
BRU, Program of Subprogram(s) Affected: Alaska State Troopers

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 83	FY 84	FY 85	FY 86	FY 87	FY 88
OPERATING						
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 COMMODITIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC						
TOTAL OPERATING			-0-	-0-	-0-	
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER (Specify Source)						

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

III. SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

IV. ANALYSIS: Attach a separate page for any Analysis No fiscal impact anticipated

Prepared By: Paul A. Conger Phone: 465-4338
Division: Administrative Services Date:

Approved by Commissioner: [signature] Date: 4/25/83
Department: Public Safety

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3/8/9

STATE OF ALASKA

Judiciary Referral

BILL SHEFFIELD, GOVERNOR

DEPARTMENT OF PUBLIC SAFETY
OFFICE OF THE COMMISSIONER

POUCH N
JUNEAU, ALASKA 99811
PHONE: 465-4322

April 27, 1983



The Honorable Charlie Bussell
Chairman
House Judiciary Committee
Alaska State Legislature
Pouch V
Juneau, AK 99811

Dear Representative Bussell:

The Department of Public Safety is opposed to HB 321, as written, for the following reasons:

As proposed, House Bill 324 would eliminate the ability of any police department to record a conversation without a search warrant. This would include the 911 emergency lines which come into police departments throughout this state. To first stop a caller to advise them that they are being tape recorded is both disruptive and may cause the caller to loose their train of thought. Most of these calls are an emergency. The reason the calls are recorded is to be able to supervise the manner in which the call was handled, respond to citizens complaints when they feel the dispatchers were rude, and to re-check addresses and phone numbers in the event that they were mis-written by the dispatcher. They are also used as evidence in court for filing false reports (hoax phone calls) or an individual making threatening or terroristic comments.

It appears that if a person is contacted by phone, is threatened, bribed, or is harassed with an obscene phone call, the call cannot be recorded. Certainly, none other than the intended call recipient may listen to a phone call or radio message. The impact on a potential kidnapping or hostage situation is obvious, additionally, it would appear that under the language of AS 42.20.300(b) that even if the call is not recorded, the conversation cannot be divulged without the authorization of all parties.

12-L2LH

In section 42.20.310(1), the police are prohibited from using an eaves dropping device without the consent of all parties. This would eliminate our use of video recording for drunk drivers. It would eliminate the use of recording devices during interrogation.

The courts throughout the United States have ruled that persons that speak to Police Officers have no right to an expectation of privacy. The best evidence as to the conversation which occurred is a tape recording.

Our officers are often accused of soliciting bribes or abusing suspects. Suspects often state that they have not fully been advised of their rights. If a tape recording of this conversation was made this evidence can be presented to the jury for their determination. Without this type of evidence it's one person's word against anothers.

Recently a case was made in another jurisdiction which made the national news. In this particular case an individual had been harassed by his fiancees ex-husband. Because of this harassment he hid a tape recorder on his person when the ex-husband was coming to visit his child. The ex-husband killed the man and his fiancee. Due to the tape recorder running, the entire murder was recorded and was used against the suspect. This bill would prohibit that from occurring.

The Alaska Supreme Court has strongly suggested that all confessions be recorded. This is to provide proof beyond a doubt that the individual made the statement voluntarily after being fully advised of his rights by the police.

We feel that the best evidence should be presented before a court of law to allow jurors to make the proper decision regarding any accusations. The best evidence may well be retained on electronic memory.

We do not feel that the police abuse the use of electronic recording equipment and we feel that the present law is adequate to protect the rights of the citizens.

Sincerely,

Robert J. Sundberg
Commissioner

HB

326

Queen of N., Inc. v. LeGrue, Sup. Ct. Op. No. 1670 (File No. 3512), 582 P.2d 144 (1978).

The effect of a valid confirmation order is to insulate the sale procedure from subsequent challenge based upon a mere irregularity in the conduct of the sale, e.g. that the conduct of the sale did not comply with AS 09.35.160. Lunsford v. Kaiser Gypsum Co., Sup. Ct. Op. No. 961 (File No. 1915), 516 P.2d 151 (1973).

Failure to list liquor license in public notice of sale and failure to sell license as directed by decree of foreclosure constitute a substantial irregularity in the sale for purposes of this section. Queen of N., Inc. v. LeGrue, Sup. Ct. Op. No. 1670 (File No. 3512), 582 P.2d 144 (1978).

Burden of proving commercial reasonableness of a sale was on the secured party, especially where the creditor purchased the property. Queen of N., Inc. v. LeGrue, Sup. Ct. Op. No. 1670 (File No. 3512), 582 P.2d 144 (1978).

This section specifies no standard for appellate review of a trial court confirmation of sale. Queen of N., Inc. v. LeGrue, Sup. Ct. Op. No. 1670 (File No. 3512), 582 P.2d 144 (1978).

Chapter 38. Alaska Exemptions Act.

Section

10. Homestead exemption
15. Property exempt without limitation
20. Exemptions of personal property subject to value limitations
25. Exemption of unmatured life insurance and annuity contracts
30. Exemption of earnings and liquid assets
35. Continuing lien on wages
40. Priorities between continuing liens
45. Effective date of continuing lien
50. Increased exemption amount
55. Bankruptcy proceedings
60. Tracing exempt property
65. Claims enforceable against exempt property
70. Limitation on enforcement of certain security interests in exempt goods
75. Special procedures relating to limited value exemptions
80. Procedures applicable to a levy on property of an individual
85. Contents of notice
90. Assertion of rights by another
95. Judicial relief
100. Debtor's property owned with another
105. Waiver of exemption
110. Federal requirements
115. Adjustment of dollar amounts
120. Protection of property of residents and nonresidents
500. Definitions
510. Short title

Cross references. — For general provisions concerning execution, see AS 09.35.

Editor's notes. — Section 1, ch. 62, SLA 1982, provides: "It is the intent of the legislature to modernize the procedures for execution on a judgment and to afford to a judgment debtor adequate protection of the debtor's personal property and income necessary to provide for the debtor's own needs and the needs of the debtor's dependents while remaining independent of further public assistance."

Section 15, ch. 62, SLA 1982, provides: "All writs of execution, claims of exemption, sales, confirmations of sales, rights of redemption and priorities of redemption issued or filed under any law repealed under this Act and in full force and effect on the effective date of this Act [August 26, 1982], shall remain in full force and effect for the term issued or until revoked, vacated, or modified under the provisions of this Act."

Sec. 09.38.010. Homestead exemption. (a) An individual is entitled to an exemption as a homestead of the individual's interest in property in this state used as the principal residence of that individual or the dependents of that individual, but the value of the homestead exemption may not exceed $27,000.

(b) If property owned by the entirety or in common is used by one or more individual owners or their dependents as their principal residence, each owner is entitled to a homestead exemption of that owner's interest in the property as provided in (a) of this section. The aggregate value of multiple homestead exemptions allowable with respect to a single living unit may not exceed $27,000. If there are multiple owners of property exempt as a homestead, the value of the exemption of each individual owner may not exceed that individual owner's pro rata portion of $27,000.

(c) If property that includes a homestead is sold under an execution, the sale becomes effective upon confirmation by order of the court. The court shall enter the order of confirmation unless, within 60 days after the sale, the individual repurchases the property under this section or the court extends the time for confirmation upon the filing of a timely motion by a party in interest. The individual may repurchase property, including that individual's homestead, at a sale on execution before confirmation by paying into court the costs of the sale plus the lesser of either (1) the difference between the highest bid and the amount of the exemption in the property, or (2) the amount of the creditor's claim. If the individual does not exercise the repurchase right under this subsection, the clerk of the court shall first remit an amount determined to be exempt to the individual from the proceeds of sale and the balance less the cost of the sale to the creditor. For the purpose of collecting an amount remaining unpaid on a judgment after repurchase of property by an individual under this subsection, the creditor or the creditor's assignee may not make another levy on the property repurchased.

(d) Upon entry of the order of confirmation under (c) of this section and expiration of the time period for repurchase, the clerk may execute a deed to the property and when delivered it shall be sufficient to convey all title of the individual in the premises sold to the purchaser at the sale. (§ 2 ch 62 SLA 1982)

Cross references. — For provisions exempting homestead held by tenants by the entirety from execution on debts to the value specified under subsection (b) of this section, see AS 34.15.140(b).

NOTES TO DECISIONS

Construction of former statute, providing for rural and urban homesteads. — See Dalton v. Interior Credit Bureau, Inc., Sup. Ct. Op. No. 2158 (File No. 4265), 615 P.2d 631 (1980).

Editor's notes. — This section was redrafted by the revisor of statutes to remove personal pronouns in conformity with AS 01.05.031(c) and § 4, Chapter 58, SLA 1982.

Sec. 09.38.015. Property exempt without limitation. (a) An individual is entitled to exemption of the following property:

(1) a burial plot for the individual and the individual's family;

(2) health aids reasonably necessary to enable the individual or a dependent to work or to sustain health;

(3) benefits paid or payable for medical, surgical, or hospital care to the extent they are or will be used to pay for the care;

(4) an award under AS 18.67 (Violent Crimes Compensation Board) or a crime victim's reparations Act of another jurisdiction;

~~(5) benefits paid or payable as a longevity bonus under AS 47.45;~~

~~(6)~~ compensation or benefits paid or payable and exempt under federal law;

~~(7)~~ liquor licenses granted under AS 04;

~~(8)~~ limited entry permits granted under AS 16.43, except as provided in that chapter.

(b) The right to benefits held by the state on behalf of an individual which may become payable by reason of disability, unemployment or illness, amounts held in the teachers' or public employees' retirement system, and child support collections made by the child support enforcement agency are exempt.

(c) Property of the state, a general law or home rule municipality, the Alaska State Housing Authority, the Alaska Municipal Bond Bank Authority, or other state public corporation is exempt.

(d) Real property held by a cemetery association established under AS 10.30 for the purpose of a cemetery and not exceeding 80 acres is exempt. (§ 2 ch 62 SLA 1982)

Cross references. — As to the applicability of the exemptions from execution in income assignment orders for child support, see AS 09.65.132(g). For provisions exempting teachers' retirement salaries and certain other amounts from garnishment, execution or levy, see AS 14.25.200. For provisions exempting unemployment compensation benefits from levy to enforce collection of a debt, see AS 23.20.405(e). For provisions exempting workers' compensation benefits from levy to enforce the collection of a debt, see AS 23.30.160(b). For provisions exempting amounts held in the public employee pension fund and public employee retirement benefits from levy to enforce the collection of a debt, see AS 39.35.500(b). For provisions exempting longevity bonuses from levy to enforce collection of a debt, see AS 47.45.120(b). As to applicability of the exemptions from execution in proceedings to enforce payment of child support, see AS 47.23.250.

Editor's notes. — This section was redrafted by the revisor of statutes to remove personal pronouns in conformity with AS 01.05.031(c) and § 4, Chapter 58, SLA 1982.

NOTES

Legislative intent as to liqu licenses. — Former AS 09.35.087 [see n (a)(7) of this section] indicated an over legislative intent that one general credit of a liquor license holder should not allowed to place himself in a preferr position over other general creditors. C. Inc. v. Brown, Sup. Ct. Op. No. 1569 (Fi No. 2781), 574 P.2d 1274 (1978).

Liquor licenses not exempted fro coverage under Article 9 of th

Sec. 09.38.020. Exemptions value limitations. (a) An indiv property not to exceed an aggr individual from the following ca

(1) household goods and wear one household;

(2) if reasonably held for the dependent, books and musical in

(3) family portraits and heirloc the individual.

(b) An individual is entitled to $500 in aggregate value, if held f or a dependent.

(c) An individual is entitled to aggregate value, of implements, trade.

(d) An individual is entitled to of a value not exceeding $500.

(e) An individual is entitled to the extent of a value not exceedin vehicle does not exceed $10,000.

Editor's notes. — This section was redrafted by the revisor of statutes to remove personal pronouns in conformity

NOTES TO

Editor's notes. — Gutterman v. First Nat'l Bank, Sup. Ct. Op. No. 1876 (File No. 3996), 597 P.2d 969 (1979), was decided under former AS 09.35.080.

Liberal construction. — Exemption laws are remedial in character and should be liberally construed in favor of the debtor. Gutterman v. First Nat'l Bank, Sup. Ct. Op. No. 1876 (File No. 3996), 597 P.2d 969 (1979).

NOTES TO DECISIONS

Legislative intent as to liquor licenses. — Former AS 09.35.087 [see now (a)(7) of this section] indicated an overall legislative intent that one general creditor of a liquor license holder should not be allowed to place himself in a preferred position over other general creditors. C.Y., Inc. v. Brown, Sup. Ct. Op. No. 1569 (File No. 2781), 574 P.2d 1274 (1978).

Liquor licenses not exempted from coverage under Article 9 of the Uniform Commercial Code (AS 45.09). — See Gibson v. Alaska Alcoholic Beverage Control Bd., 377 F. Supp. 151 (D. Alas. 1974), decided under former AS 09.35.087.

As to immunity of real property of University of Alaska from lien attachment or foreclosure, see University of Alas. v. Simpson Bldg. Supply Co., Sup. Ct. Op. No. 1113 (File No. 2196), 530 P.2d 1317 (1975), decided under former AS 09.35.080.

Sec. 09.38.020. Exemptions of personal property subject to value limitations. (a) An individual is entitled to an exemption in property not to exceed an aggregate value of $1,500 chosen by the individual from the following categories of property:

(1) household goods and wearing apparel reasonably necessary for one household;

(2) if reasonably held for the personal use of the individual or a dependent, books and musical instruments; and

(3) family portraits and heirlooms of particular sentimental value to the individual.

(b) An individual is entitled to exemption of jewelry, not exceeding $500 in aggregate value, if held for the personal use of the individual or a dependent.

(c) An individual is entitled to exemption, not exceeding $1,400 in aggregate value, of implements, professional books, and tools of the trade.

(d) An individual is entitled to the exemption of pets to the extent of a value not exceeding $500.

(e) An individual is entitled to an exemption of one motor vehicle to the extent of a value not exceeding $1,500 if the full value of the motor vehicle does not exceed $10,000. (§ 2 ch 62 SLA 1982)

Editor's notes. — This section was redrafted by the revisor of statutes to remove personal pronouns in conformity with AS 01.05.031(c) and § 4, Chapter 58, SLA 1982.

NOTES TO DECISIONS

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Liberal construction. — Exemption laws are remedial in character and should be liberally construed in favor of the debtor. Gutterman v. First Nat'l Bank, Sup. Ct. Op. No. 1876 (File No. 3996), 597 P.2d 969 (1979).

Exemption statute should not be interpreted in a way which completely eliminates a debtor's exemption rights in an item of property within an exempt category because that item's value exceeds the statutory allowance. Gutterman v. First Nat'l Bank, Sup. Ct. Op. No. 1876 (File No. 3996), 597 P.2d 969 (1979).

Purpose of personal and household property exemptions. — Personal and

household property exemptions are designed to ensure that debtors will have necessary items for living in reasonable comfort and for earning a living. Gutterman v. First Nat'l Bank, Sup. Ct. Op. No. 1876 (File No. 3996), 597 P.2d 969 (1979).

The proceeds of exempt property are exempt to the debtor for a reasonable time, to enable him to invest the money in other exempt property. Gutterman v. First Nat'l Bank, Sup. Ct. Op. No. 1876 (File No 3996), 597 P.2d 969 (1979).

Sec. 09.38.025. Exemption of unmatured life insurance and annuity contracts. (a) Except as provided in this section, an individual is entitled to exemption of unmatured life insurance and annuity contracts owned by the individual. If the contracts have accured dividends and loan values available to the individual aggregating more than $5,000, a creditor may obtain a court order requiring the individual debtor to pay the creditor, and authorizing the creditor on the debtor's behalf to obtain payment of, the amount of the accrued dividends and loan values in excess of $5,000 or the amount of the creditor's claim, whichever is less.

(b) A judgment creditor or other claimant of an insurer may not levy upon any of the assets or securities held in this state as a deposit for the protection of the insurer's policyholders or policyholders and creditors. Deposits under AS 21.09.270 may be levied upon if provided in the order of the director of insurance, Department of Commerce and Economic Development, under which the deposit is made. (§ 2 ch 62 SLA 1982)

Editor's notes. — This section was redrafted by the revisor of statutes to remove personal pronouns in conformity with AS 01.05.031(c) and § 4, Chapter 58, SLA 1982.

Sec. 09.38.030. Exemption of earnings and liquid assets. (a) Except as provided in (b) and (c) of this section and AS 09.38.050, an individual debtor is entitled to an exemption of the individual debtor's weekly net earnings not to exceed $175. The weekly net earnings of an individual are determined by subtracting from the weekly gross earnings all sums required by law or court order to be withheld. The weekly net earnings of an individual paid on a monthly basis are determined by subtracting from the monthly gross earnings of the individual all sums required by law or court order to be withheld and dividing the remainder by 4.3. The weekly net earnings of an individual paid on a semi-monthly basis are determined by subtracting from the semi-monthly gross earnings all sums required by law or court order to be withheld and dividing the remainder by 2.17.

~~(b) An individual who does not receive earnings either weekly, semi-monthly or monthly is entitled to a maximum exemption for the aggregate value of cash and other liquid assets available in any month of $700, except as provided in AS 09.38.050. The term "liquid assets" includes deposits, securities, notes, drafts, accrued vacation pay, refunds, prepayments, and receivables.~~

(c) A creditor may
this section if the cr
(1) enforceable ag
or
(2) enforceable un
ter XIII of the Bank
(d) If the individua
nishment imposed u
(e) The following p
AS 09.38.015, upon r
individual, shall be t
assets under this sect
(1) benefits paid by
(2) money or proper
(3) proceeds of ins
rights accruing as a r
wrongful death or bo
individual was or is a
(4) proceeds or bene
if the individual was
(5) amounts paid un
ity, or similar plan o
illness, disability, or l

Editor's notes. — This
redrafted by the revisor o
remove personal pronouns

Sec. 09.38.035. Cor
garnishment of earning
defendant is employed
as reflected on the writ
due at the time of serv
exempt from garnishm
quent nonexempt earni
amount stated on the
subsequent earnings
relationship is termina
modified, or satisfied in
(b) A garnishee shall
defendant subject to th
Accrued interest on the
writ of attachment may
garnishment after the p
garnishment has been p

Supplement

~~(b)~~ (c) A creditor may levy upon earnings exempt under (a) and (b) of this section if the creditor's claim is

(1) enforceable against exempt property under AS 09.38.065(a)(1); or

(2) enforceable under an order of a court of bankruptcy under chapter XIII of the Bankruptcy Act (11 U.S.C., sec. 1301 et seq.).

~~(c)~~ (d) If the individual debtor is a nonresident, the limitations on garnishment imposed under 15 U.S.C. 1673 apply.

~~(d)~~ (e) The following property, unless exempt without limitation under AS 09.38.015, ~~upon receipt by and while it is in the possession of the individual~~, shall be treated as earnings, ~~income, cash, or other liquid assets under this section:~~

(1) benefits paid by reason of disability, illness, or unemployment;

(2) money or property received for alimony or separate maintenance;

(3) proceeds of insurance, a judgment, or a settlement, or other rights accruing as a result of bodily injury of the individual or of the wrongful death or bodily injury of another individual of whom the individual was or is a dependent;

(4) proceeds or benefits paid or payable on the death of an insured, if the individual was the spouse or a dependent of the insured; and

(5) amounts paid under a stock bonus, pension, profit-sharing, annuity, or similar plan or contract, providing benefits by reason of age, illness, disability, or length of service. (§ 2 ch 62 SLA 1982)

Editor's notes. — This section was redrafted by the revisor of statutes to remove personal pronouns in conformity with AS 01.05.031(c) and § 4, Chapter 58, SLA 1982.

Sec. 09.38.035. Continuing lien on wages. (a) In the case of a garnishment of earnings, when the garnishee's answer reflects that the defendant is employed by the garnishee, the judgment or balance due as reflected on the writ of garnishment shall become a lien on earnings due at the time of service of the writ to the extent that they are not exempt from garnishment, and that lien shall continue as to subsequent nonexempt earnings until the total subject to the lien equals the amount stated on the writ of garnishment, except that the lien on subsequent earnings shall terminate sooner if the employment relationship is terminated, if the underlying judgment is vacated, modified, or satisfied in full, or if the writ is dismissed.

(b) A garnishee shall pay into court all nonexempt earnings of the defendant subject to the continuing lien under (a) of this section. Accrued interest on the judgment or balance due as reflected on the writ of attachment may be garnished under a supplemental writ of garnishment after the principal amount stated on the original writ of garnishment has been paid. (§ 2 ch 62 SLA 1982)

Editor's notes. — This section was redrafted by the revisor of statutes to remove personal pronouns in conformity with AS 01.05.031(c) and § 4, Chapter 58, SLA 1982.

Sec. 09.38.040. Priorities between continuing liens. A lien obtained under AS 09.38.035 has priority over any subsequent garnishment lien or wage assignment. A writ creating a continuing lien served upon an employer while a continuing lien imposed by a previous writ is still in effect shall be answered by the employer with a statement that the employer is holding no funds and with a further statement stating when all previous liens are expected to terminate. The subsequent writ has full effect from the termination of all prior liens or until it is otherwise terminated under AS 09.38.035. However, a subsequent writ is not effective if a writ in the same cause of action is pending at the time of service of garnishment. (§ 2 ch 62 SLA 1982)

Editor's notes. — This section was redrafted by the revisor of statutes to remove personal pronouns in conformity with AS 01.05.031(c) and § 4, Chapter 58, SLA 1982.

Sec. 09.38.045. Effective date of continuing lien. The effective date of a writ creating a continuing lien is the date of service upon the garnishee. However, if there are, on that date, liens by virtue of previous writs, the effective date is the date all previous writs terminate. (§ 2 ch 62 SLA 1982)

~~**Sec. 09.38.050. Increased exemption amount.** (a) An individual debtor who is in possession of money that was obtained as payment for an injury or disability may request the court to order an increase in the exemption amounts under AS 09.38.030. The individual debtor shall submit affidavits or offer testimony in support of the request as required by the court. The court shall determine the exemption amount after consideration of the individual's responsibilities and all the present and anticipated property and income of the individual, including that which is exempt.~~

~~(b) The exemption amounts under AS 09.38.030 may be increased when the individual submits an affidavit, under penalty of perjury, stating that the individual's earnings alone support the individual's household; by so doing, the maximum part of the individual's aggregate disposable earnings for any week subject to execution may not exceed the amount by which the individual's disposable earnings for that week exceed $275, or, if the individual is claiming an exemption for cash or other liquid assets under AS 09.38.030(b), a maximum amount of $1,100 available in any month is exempt. (§ 2 ch 62 SLA 1982)~~

Editor's notes. — This section was redrafted by the revisor of statutes to remove personal pronouns in conformity with AS 01.05.031(c) and § 4, Chapter 58, SLA 1982.

Sec. 09.38.055. Bankrupt
the Bankruptcy Act (11 U.
09.38.010, 09.38.015(a), 09.38.
ch 62 SLA 1982)

Sec. 09.38.060. Tracing ex
part of it, that could have been
AS 09.38.010, a burial plot u
under AS 09.38.015(a)(2), or pe
tation under AS 09.38.020(a)(1
sold by condemnation, or has b
owner has been indemnified f
exemption of proceeds that are
ceeds are received. An individ
ceeds from the voluntary sale
09.38.010 that are traceable f
received. The exemption of pr
entitle the individual to claim a
value limitation otherwise allow

(b) Money or other property a
are traceable under this secti
first-in first-out, last-in first-o
tracing selected by the individu
SLA 1982)

Sec. 09.38.065. Claims enfo
(a) Notwithstanding other prov

(1) a creditor may make a lev
to enforce a claim for

(A) child support;

(B) unpaid earnings of up t
full-time equivalent of one mont
of an employee; or

(C) state or local taxes; and

(2) a creditor may make a lev
a claim for

(A) the purchase price of the p
purpose of enabling an individua
that purpose;

(B) labor or materials furnishe
store, or transport the property;

(C) a special assessment impos
ment benefiting the property.

(b) Except as provided in AS 0
certain security interests, this c
lien or security interest in exem

Sec. 09.38.055. Bankruptcy proceedings. In a proceeding under the Bankruptcy Act (11 U.S.C.) only the exemptions under AS 09.38.010, 09.38.015(a), 09.38.020, 09.38.025 and 09.38.030 apply. (§ 2 ch 62 SLA 1982)

Sec. 09.38.060. Tracing exempt property. (a) If property, or a part of it, that could have been claimed as an exempt homestead under AS 09.38.010, a burial plot under AS 09.38.015(a)(1), a health aid under AS 09.38.015(a)(2), or personal property subject to a value limitation under AS 09.38.020(a)(1), (2) or 09.38.020(c), has been taken or sold by condemnation, or has been lost, damaged, or destroyed and the owner has been indemnified for it, the individual is entitled to an exemption of proceeds that are traceable for ~~12~~ six months after the proceeds are received. An individual is entitled to an exemption of proceeds from the voluntary sale of an exempt homestead under AS 09.38.010 that are traceable for ~~one~~ three months after the proceeds are received. The exemption of proceeds under this subsection does not entitle the individual to claim an aggregate exemption in excess of the value limitation otherwise allowable under AS 09.38.010 or 09.38.020.

~~(b) Money or other property and proceeds exempt under this chapter are traceable under this section by application of the principle of first in, first out, last in, first out, or any other reasonable basis for tracing selected by the individual claiming the exemption. (§ 2 ch 62 SLA 1982)~~

Sec. 09.38.065. Claims enforceable against exempt property. (a) Notwithstanding other provisions of this chapter,

(1) a creditor may make a levy against exempt property of any kind to enforce a claim for

(A) child support;

(B) unpaid earnings of up to one month's compensation or the full-time equivalent of one month's compensation for personal services of an employee; or

(C) state or local taxes; and

(2) a creditor may make a levy against exempt property to enforce a claim for

(A) the purchase price of the property or a loan made for the express purpose of enabling an individual to purchase the property and used for that purpose;

(B) labor or materials furnished to make, repair, improve, preserve, store, or transport the property; and

(C) a special assessment imposed to defray costs of a public improvement benefiting the property.

(b) Except as provided in AS 09.38.070 limiting the enforcement of certain security interests, this chapter does not affect any statutory lien or security interest in exempt property.

(c) A creditor having a claim enforceable under (a) of this section against exempt property, before, at the time of, or a reasonable time after making a levy on property of an individual, shall serve on the individual a notice of the levy and of the basis for the creditor's right to make a levy on exempt property. (§ 2 ch 62 SLA 1982)

Sec. 09.38.070. Limitation on enforcement of certain security interests in exempt goods. (a) This section applies to a security interest, except a purchase-money security interest, or a security interest in a motor vehicle, in an item of goods (1) possessed by an individual, (2) being used by that individual or a dependent, and (3) exempt under AS 09.38.020(a) — (d).

(b) Unless the individual, after receiving written notice of the individual's rights under this section, voluntarily surrenders to the secured creditor possession of an item of goods to which this section applies, the creditor may not take possession of the item or otherwise enforce the security interest according to its terms without an order or process of court.

(c) The court may order or authorize process respecting any item of goods to which this section applies only after a hearing, upon notice to the individual of the hearing and of the individual's rights at it. The notice shall be as directed by the court. The order or authorization may prescribe appropriate conditions as to payments upon the debt secured or otherwise. The court may not order or authorize process respecting the item if it finds upon the hearing both that the individual lacks the means to pay all or part of the debt secured and that continued possession or use of the item is necessary to avoid undue hardship for the individual or a dependent.

(d) The court, upon application of the creditor or the individual and notice to the other and after a hearing and finding of changed circumstances, may vacate or modify an order or authorization under this section. (§ 2 ch 62 SLA 1982)

Editor's notes. — This section was redrafted by the revisor of statutes to remove personal pronouns in conformity with AS 01.05.031(c) and § 4, Chapter 62, SLA 1982.

Sec. 09.38.075. Special procedures relating to limited value exemptions. (a) Unless a creditor is seeking collection of a claim enforceable against exempt property under AS 09.38.065, the creditor may obtain a levy on an individual's property of a kind listed in AS 09.38.020 only by complying with this section. Before levy, the creditor shall file with the court out of which the process issues

(1) an affidavit stating that the creditor has reason to believe the individual has property of a kind listed in AS 09.38.020 that is not exempt, identifying the property, setting out facts constituting the basis for believing the property is not exempt; and

(2) a request for an order

(A) of the creditor's claim as nonexempt,

(B) of the individual's rigl to levy by filing with the cle the court, but not exceeding written objection to the prop for the objection and of the setting its value,

(C) of the possible consequ provided in (c) of this sectio

(D) of the information rec

(b) Notice of an order issu of this section, together with the individual. The order sh encumbering, damaging, or in AS 09.38.020 for 30 days reduces, extends, or otherw the 30-day period.

(c) If exemption of propert vidual under (b) of this sectio describe the property in th amount of any indebtedness within the time allowed by t notice served under (b) of t debtor has nonexempt prope court may order the individu location, and value of the in to appear and disclose the in vidual waives objection to th

(d) Except to the extent th AS 09.38.080(e) governs a pr in respect to a claim to exer

(e) Costs incurred in mak erty of a kind listed in AS 0 of a sale of property of that ki are insufficient to cover the under this section, the credit them from the individual, parties to the contrary.

(f) The burden of provir preponderance of the evide exemption. (§ 2 ch 62 SLA

Editor's notes. — This sectio redrafted by the revisor of statu remove personal pronouns in conf

(2) a request for an order by the court notifying the individual

(A) of the creditor's claim of a right to levy on the property identified as nonexempt,

(B) of the individual's right to contest the creditor's claim of a right to levy by filing with the clerk of the court, on or before a date fixed by the court, but not exceeding 15 days after the issuance of the order, a written objection to the proposed levy and a statement of the grounds for the objection and of the right to describe the property in lieu of setting its value,

(C) of the possible consequences of failure to respond to the notice as provided in (c) of this section, and

(D) of the information required by AS 09.38.085(a).

(b) Notice of an order issued in accordance with a request under (a) of this section, together with the creditor's affidavit, shall be served on the individual. The order shall restrain the individual from removing, encumbering, damaging, or disposing of any property of the kind listed in AS 09.38.020 for 30 days after receipt of the order, unless the court reduces, extends, or otherwise modifies the restraining order during the 30 day period.

(c) If exemption of property identified in a notice served on an individual under (b) of this section depends on its value, the individual may describe the property in the responsive statement and indicate the amount of any indebtedness chargeable against it. If the individual, within the time allowed by the order of the court, fails to respond to a notice served under (b) of this section that the creditor believes the debtor has nonexempt property of a kind listed under AS 09.38.020, the court may order the individual to appear and disclose the description, location, and value of the individual's property. If the individual fails to appear and disclose the information specified in the order, the individual waives objection to the creditor's levy on property of that kind.

(d) Except to the extent the procedure is prescribed by this section, AS 09.38.080(c) governs a proceeding for the determination of a contest in respect to a claim to exemption of property under AS 09.38.020.

(e) Costs incurred in making, or proposing to make, a levy on property of a kind listed in AS 09.38.020 shall be paid out of the proceeds of a sale of property of that kind. If the proceeds of a sale of the property are insufficient to cover the costs incurred in proceedings commenced under this section, the creditor shall pay the costs and may not recover them from the individual, notwithstanding any agreement of the parties to the contrary.

(f) The burden of proving the validity of an exemption by a preponderance of the evidence is upon the individual claiming the exemption. (§ 2 ch 62 SLA 1982)

Editor's notes. — This section was redrafted by the revisor of statutes to remove personal pronouns in conformity with AS 01.05.031(c) and § 4, Chapter 58, SLA 1982.

Sec. 09.38.080. Procedures applicable to a levy on property of an individual. (a) Except in a proceeding under AS 09.38.065, a creditor shall comply with this section in obtaining a levy on property of an individual. In a proceeding to levy on personal property of a kind listed in AS 09.38.020, a creditor shall comply with this section and AS 09.38.075.

~~(b) Before, at the time of, or within three days after levy against property of an individual, the creditor shall file with the court from which the process issued an affidavit stating that the creditor has reason to believe the individual has property that is not exempt, identifying the property, and stating facts constituting the basis for that belief.~~

~~(c)~~ (b) Before, at the time of, or within three days after levy, the creditor shall serve on the individual a notice under AS 09.38.085, ~~including a copy of the affidavit filed under (b) of this section.~~

~~(d)~~ (c) A bid for property that is less than the amount of the exempt value is not acceptable at a sale of property under a levy. If indebtedness secured by a valid lien is chargeable against the proceeds of the sale, the bid must exceed the amount of the indebtedness secured plus the amount of the exempt value. If sufficient bid is not received, the officer shall file a notation of the fact with the clerk of the court and return the property to the individual. The costs incurred during levy, offering the property for sale, and returning the property shall be assessed against the creditor and are not recoverable from the individual, notwithstanding any agreement of the parties to the contrary.

~~(e)~~ (d) If any question arises as to the rights of an individual entitled to an exemption under this chapter, an interested person may file with the clerk of the court from which the process issued a statement of the claim of exemptions and the question raised. The statement shall be referred to the court as soon as practicable thereafter. The court shall order that notice of a hearing be given. After hearing the matter, the court shall make findings and issue an appropriate order. The court may award to the prevailing party costs of a proceeding under this subsection.

~~(f)~~ (e) An objection to levy on the ground that the property seized is exempt must be filed with the clerk of the court within 15 days after the levy. The burden of proving the validity of an exemption by a preponderance of the evidence is upon the individual claiming the exemption. Failure to file a timely objection ~~may~~ shall be held to be a waiver of a claim to exemption in the property, unless for cause shown the court excuses the failure. (§ 2 ch 62 SLA 1982) Failure to file an objection prior to sale shall be an absolute waiver of exemption rights.

Editor's notes. — This section was redrafted by the revisor of statutes to remove personal pronouns in conformity with AS 01.05.031(c) and § 4, Chapter 68, SLA 1982.

Sec. 09.38.085. Contents of 09.38.075(b) and 09.38.080(c) sh

(1) the amount and date of th sale or other mode of appropria

(2) the name and address of t tions must be filed;

(3) the name and address of t ney, if any;

(4) a copy of the affidavit file

(5) a summary statement in l vided by the laws of this state;

(6) a summary statement in claiming exemptions, objectin venue, and exercising the right t a sale before its confirmation; a

(7) a statement in lay termino the indi ual as provided in A

(b) The supreme court may pr debtors and court officers under

(c) A notice substantially con even though the notice contains substantial prejudice to the rig dependents of the individual de

Editor's notes. — Subsection (c) w enacted as the second sentence of subse tion (b) but was redesignated by t revisor of statutes pursuant to A 01.05.031(b).

Sec. 09.38.090. Assertion of fails to select property entitled t a levy on the property or to asse the spouse or a dependent of the rized by law may make the cl provided by this chapter. (§ 2 c

Sec. 09.38.095. Judicial reli dependent of the individual, or entitled to injunctive relief, da other person to prevent or redr vided in the Alaska Rules of Civ and reasonable attorney fees to damages.

(b) For cause shown the court quences of failing to take time chapter. (§ 2 ch 62 SLA 1982)

Sec. 09.38.085. Contents of notice. (a) The notice required by AS 09.38.075(b) and 09.38.080(a) shall include the following information:

(1) the amount and date of the judgment to be enforced by levy and sale or other mode of appropriating the individual's property;

(2) the name and address of the clerk of the court with whom objections must be filed;

(3) the name and address of the creditor and of the creditor's attorney, if any;

~~(4) a copy of the affidavit filed under AS 09.38.080(b);~~

(4) a summary statement in lay terminology of the exemptions provided by the laws of this state;

(5) a summary statement in lay terminology of the procedures for claiming exemptions, objecting to a levy on exempt property, changing venue, and exercising the right to repurchase homestead property from a sale before its confirmation; and

(6) a statement in lay terminology of the rights of persons other than the individual as provided in AS 09.38.090.

(b) The supreme court may prescribe forms to be used by creditors, debtors and court officers under this chapter.

(c) A notice substantially complying with this section is effective even though the notice contains errors if those errors do not result in substantial prejudice to the rights of the individual debtor or of the dependents of the individual debtor. (§ 2 ch 62 SLA 1982)

Editor's notes. — Subsection (c) was enacted as the second sentence of subsection (b) but was redesignated by the revisor of statutes pursuant to AS 01.05.031(b).

This section was redrafted by the revisor of statutes to remove personal pronouns in conformity with AS 01.05.031(c) and § 4, Chapter 58, SLA 1982.

Sec. 09.38.090. Assertion of rights by another. If an individual fails to select property entitled to be claimed as exempt or to object to a levy on the property or to assert any other right under this chapter, the spouse or a dependent of the individual or any other person authorized by law may make the claim or objection or assert the rights provided by this chapter. (§ 2 ch 62 SLA 1982)

~~**Sec. 09.38.095. Judicial relief.** (a) An individual or the spouse, a dependent of the individual, or any other person authorized by law is entitled to injunctive relief, damages, or both, against a creditor or other person to prevent or redress a violation of this chapter as provided in the Alaska Rules of Civil Procedure. A court may award costs and reasonable attorney fees to a party entitled to injunctive relief or damages.~~

~~(b) For cause shown the court may relieve a person from the consequences of failing to take timely action to assert rights under this chapter. (§ 2 ch 62 SLA 1982)~~

Sec. 09.38.100. Debtor's property owned with another. (a) If an individual and another own property in this state as tenants in common or tenants by the entirety, a creditor of the individual, subject to the individual's right to claim an exemption under this chapter, may obtain a levy on and sale of the interest of the individual in the property. A creditor who has obtained a levy, or a purchaser who has purchased the individual's interest at the sale, may have the property partitioned or the individual's interest severed.

~~(b) A partner's right in specific partnership property is exempt except on a claim against the partnership. If partnership property is attached for a partnership debt, the partners or any of them or the representatives of a deceased partner may not claim an exemption for that property under this chapter. (§ 2 ch 62 SLA 1982)~~

Cross references. — For provisions making homestead held by tenants for the entirety liable for the debts of either tenant after petition of tenancy, see AS 34.15.140(b).

Sec. 09.38.105. Waiver of exemption. A waiver of exemption executed in favor of an unsecured creditor before levy on an individual's property is unenforceable, but a valid security interest may be given in exempt property. (§ 2 ch 62 SLA 1982)

Sec. 09.38.110. Federal requirements. If a federal department or agency issues a formal ruling that a section of this chapter relating to public assistance will cause a state plan for the delivery of services or benefits to be out of conformity with federal requirements, the section will not apply to the extent that it causes the program to be out of conformity with federal requirements. (§ 2 ch 62 SLA 1982)

~~**Sec. 09.38.115. Adjustment of dollar amounts.** (a) The dollar amounts in this chapter change, as provided in this section, according to and to the extent of changes in the Consumer Price Index for all Urban Consumers for the Anchorage Metropolitan Area compiled by the Bureau of Labor Statistics, United States Department of Labor (the index). The index for January of the year in which this section becomes effective is the reference base index.~~

~~(b) The dollar amounts change on July 1 of each even-numbered year if the percentage of change, calculated to the nearest whole percentage point, between the index for December of the preceding year and the reference base index, is 10 percent or more, but~~

~~(1) the portion of the percentage change in the index in excess of a multiple of 10 percent is disregarded and the dollar amounts change only in multiples of 10 percent of the amounts appearing in this chapter on the effective date of this chapter; and~~

~~(2) the dollar amounts do not change if the amounts required by this section are those currently in effect as a result of earlier application of this section.~~

(c) If the index is revised, t
the basis of the revised inde
reference base index, a revise
multiplying the reference bas
furnished by the United State
is superseded, the index ref
resented by the Bureau of L
rately changes in the purch
consumers.

(d) The Department of Lal

(1) on or before April 30 of
change, the changes in dollar
and .

(2) promptly after the char
by (c) of this section, includin
of the reference base index un
designation or title of any in

(e) The Department of La
change in exemption amount
clerks of court in each judicial

Sec. 09.38.120. Protectio
nonresidents. (a) Residents
provided under this chapter.
tions provided by the law of

(b) The term "resident"
present in the state and who
Alaska. (§ 2 ch 62 SLA 198

Editor's notes. — This sectio
redrafted by the revisor of statu
remove personal pronouns in confo

Sec. 09.38.500. Definitio
context otherwise requires,

(1) "burial plot" means a
human remains and which
cemetery purposes by the st
ipality;

(2) "debt" means a legally
ity of an individual, whether

(3) "dependent" means an
from another individual;

(4) "earnings" means mo
services and denominated as

(5) "exempt" means prot
from subjection to process or

~~(c) If the index is revised, the percentage of change is calculated on the basis of the revised index. If a revision of the index changes the reference base index, a revised reference base index is determined by multiplying the reference base index applicable by the rebasing factor furnished by the United States Bureau of Labor Statistics. If the index is superseded, the index referred to in this section is the one represented by the Bureau of Labor Statistics as reflecting most accurately changes in the purchasing power of the dollar for Alaskan consumers.~~

~~(d) The Department of Labor shall adopt a regulation announcing~~

~~(1) on or before April 30 of each year in which dollar amounts are to change, the changes in dollar amounts required by (b) of this section; and~~

~~(2) promptly after the changes occur, changes in the index required by (c) of this section, including, if applicable, the numerical equivalent of the reference base index under a revised reference base index and the designation or title of any index superseding the index.~~

~~(e) The Department of Labor shall also provide notification of a change in exemption amounts required under (c) of this section to the clerks of court in each judicial district of the state. (§ 2 ch 62 SLA 1982)~~

Sec. 09.38.120. Protection of property of residents and nonresidents. (a) Residents of this state are entitled to the exemptions provided under this chapter. Nonresidents are entitled to the exemptions provided by the law of the jurisdiction of their residence.

(b) The term "resident" means an individual who is physically present in the state and who intends to maintain a permanent home in Alaska. (§ 2 ch 62 SLA 1982)

Editor's notes. — This section was redrafted by the revisor of statutes to remove personal pronouns in conformity with AS 01.05.031(c) and § 4, Chapter 58, SLA 1982.

Sec. 09.38.500. Definitions. As used in this chapter, unless the context otherwise requires,

(1) "burial plot" means a parcel of real estate used for burial of human remains and which is located within an area designated for cemetery purposes by the state or a general law or home rule municipality;

(2) "debt" means a legally enforceable monetary obligation or liability of an individual, whether arising out of contract, tort, or otherwise;

(3) "dependent" means an individual who derives support primarily from another individual;

(4) "earnings" means money received by an individual for personal services and denominated as wages, salary, commissions, or otherwise;

(5) "exempt" means protected, and "exemption" means protection, from subjection to process or a proceeding to collect an unsecured debt;

(6) "household goods" includes those items that make a residence habitable according to modern standards;

(7) "judicial lien" means a lien on property obtained by judgment, levy, sequestration, or other legal or equitable process or proceeding instituted for the purpose of collecting an unsecured debt;

(8) "levy" means the seizure of property under a writ of attachment, garnishment, execution, or any similar legal or equitable process issued for the purpose of collecting an unsecured debt;

(9) "lien" means a security interest, or a judicial, statutory, or common-law lien, or any other interest in property securing payment of a debt or performance of an obligation;

(10) "principal residence" means the actual dwelling place of an individual or dependents of the individual and includes real and personal property;

(11) "security interest" means an interest in property created by contract to secure payment or performance of an obligation;

(12) "serve notice" means to give the person to be served a written personal notice in the same manner a summons in a civil action is served, or to mail the notice to the person's last known address by first-class mail and by using a form of mail requiring a signed receipt;

(13) "statutory lien" means a lien arising by force of a statute under specified circumstances or conditions, but does not include a security interest;

(14) "value" means fair market value of an individual's interest in property, exclusive of liens of record;

(15) "wearing apparel" means clothing and garments intended and adapted to be worn on the person to protect the person against the elements or to provide personal comfort or decency, or serving to ornament the person but does not include jewelry. (§ 2 ch 62 SLA 1982; AS 09.38.125)

Editor's notes. — This section was enacted as AS 09.38.125 but was renumbered by the revisor of statutes pursuant to AS 01.05.031(b).

This section was redrafted by the revisor of statutes to remove personal pronouns in conformity with AS 01.05.031(c) and § 4, Chapter 58, SLA 1982.

Sec. 09.38.510. Short title. This chapter may be cited as the Alaska Exemptions Act. (§ 2 ch 62 SLA 1982; AS 09.38.130)

Editor's notes. — This section was enacted as AS 09.38.130 but was renumbered by the revisor of statutes pursuant to AS 01.05.031(b).

Chapter 40

Ar

Sec. 09.40.010. Actior

N

Applied in Aleut Corp. v. A Regional Corp., 424 F. Supp. 39 1976).

Sec. 09.40.025. Appoi process.

N

Stated in Cowles v. Wolfe, S No. 2512 (File No. 5731), 645 (1982).

Sec. 09.40.030. Prope

Cross references. — For ex liquor license from attachme 09.35.087.

Sec. 09.40.040. Third

Applied in Pennington v. Liab. Assurance Corp., Sup.

Sec. 09.40.120. Arre

Applied in Aleut Corp. v. Regional Corp., 424 F. Supp. 3 1976).

STATE OF ALASKA
FISCAL NOTE

Revision Date , 1983

I. REQUEST

Bill/Resolution No.: HB 326
Title: Exemptions
Sponsor: Bussell
Requestor: House Judiciary

II. FISCAL DETAIL

Agency Affected: Alaska Court System
Program Category Affected: Justice
BRU, Program of Subprogram(s) Affected:

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 83	FY 84	FY 85	FY 86	FY 87	FY 88
OPERATING						
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 COMMODITIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER (Specify Source)						

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

III. SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

IV. ANALYSIS: Attach a separate page for any Analysis

Prepared By: Richard P. Barrier, Deputy Admin. Director Phone: 264-0545
Division: Alaska Court System Date: 4/21/83

Approved by Commissioner: Date:
Department:

Distribution:
Original to Legislative Finance
Copy to Office of Management and Budget (for Legislature introduced bills)
Copy to Department (for Governor introduced bills)
Copy to Sponsor
Copy to Requestor (if different from Sponsor)

3/8/83

FISCAL NOTE | Revision Date , 1983

I. REQUEST

Bill/Resolution No.: HB 326
Title: "...Alaska Exemption Act."
Sponsor: Repr. Bussell
Requestor: House Judiciary Committee

II. FISCAL DETAIL

Agency Affected: Department of Law
Program Category Affected: General Govt.
BRU, Program of Subprogram(s) Affected: Legal Services

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 83	FY 84	FY 85	FY 86	FY 87	FY 88
OPERATING						
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 COMMODITIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND	-0-	-0-	-0-	-0-	-0-	-0-
FEDERAL FUNDS						
OTHER (Specify Source)						

POSITIONS:

FULL-TIME	-0-	-0-	-0-	-0-	-0-	-0-
PART-TIME						
TEMPORARY						

III. SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

N/A

IV. ANALYSIS: Attach a separate page for any Analysis

Prepared By: Richard I. Pegues, Director (Richard I. Pegues) Phone: 465-3672
Division: Administrative Services Division Date: April 15, 1983

Approved by Commissioner: Norman C. Gorsuch, Attorney General (Richard I. Pegues) Date: April 15, 1983
Department: Department of Law

Distribution:
Original to Legislative Finance
Copy to Office of Management and Budget (for Legislature introduced bills)
Copy to Department (for Governor introduced bills)
Copy to Sponsor
Copy to Requestor (if different from Sponsor)

HB 326
Fiscal Note
Analysis

This bill deals with commercial transactions, which are primarily between private parties. Because the number of these matters involving the Department of Law is relatively insignificant, there will not be a fiscal impact.

HB

334

MEMO

TO: Rep. Bussell, Chmn; Rep. Liska, Vice Chmn; Reps. Barnes, Clocksin, Hayes, Malone & Wendte

FROM: Staff Counsel

TOPIC: HB 334--"An Act relating to stays during appeals of administrative orders under the Administrative Procedures Act, (AS 44.62.570." --By Labor & Commerce Committee

1--This bill would amend paragraph (g) of existing law, AS 44.62.570, Scope of Review, which reads:

> (g) No stay may be imposed or continued if the court is satisfied it is against the public interest.

2--In one form or another, the proposed language has been used or referred to in court decisions over the years, However, the most strikingly similar language is expressed in Powell v. City of Anchorage, 536 P. 2d 1228 (decided 1973). (attached)

This case is Xeroxed and in Committee files. The language referred to is on the 2nd page, in footnote 2, which I bracketed and underlined for your reference. (I did not include the dissent which is twice as long as the opinion).

(The case dealt with topless and bottomless dancers which the city ordinance prohibited. The Superior Court first enjoined enforcement of the ordinance, later dissolved the injunction--so it would be enforced--and the dancers at The Embers appealed. THe Supreme Court agreed with the Superior Court, and nude dancing in Anchorage was banned--for a while).

3--The bill simply clarifies and puts in legislation guidelines courts actually have been using in staying orders of lower tribunals.

STATE OF ALASKA
FISCAL NOTE

Revision Date , 1983

I. REQUEST

Bill/Resolution No.: HB 334
Title: "An Act relating to stays..."
Sponsor: House Labor & Commerce
Requestor: House Judiciary Committee

II. FISCAL DETAIL

Agency Affected: Department of Law
Program Category Affected: General Govt.
BRU, Program of Subprogram(s) Affected: Legal Services

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 83	FY 84	FY 85	FY 86	FY.87	FY 88
OPERATING						
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 COMMODITIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND	-0-	-0-	-0-	-0-	-0-	-0-
FEDERAL FUNDS						
OTHER (Specify Source)						

POSITIONS:

FULL-TIME	-0-	-0-	-0-	-0-	-0-	-0-
PART-TIME						
TEMPORARY						

III. SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

N/A

IV. ANALYSIS: Attach a separate page for any Analysis

Prepared By: Richard I. Pegues, Director
Phone: 465-3672
Division: Administrative Services Division
Date: May 2, 1983

Approved by Commissioner: Richard L. Pegues for Norman C. Gorsuch, Attorney General
Date: May 2, 1983
Department: Department of Law

Distribution:
Original to Legislative Finance
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Copy to Department (for Governor introduced bills)
Copy to Sponsor
Copy to Requestor (if different from Sponsor)

HB 334
Fiscal Note
Analysis

This bill clarifies the standards of review whereby the courts may grant stays during appeals of administrative orders under the Administrative Procedure Act. The Department of Law's legal staff believes that this clarification will assist the courts to make more timely and equitable rulings when stays are requested, saving both the public and regulatory agencies time and expense. This bill will not have a fiscal impact on the Department of Law.

Darlon POWELL et al., Petitioners,

v.

CITY OF ANCHORAGE, Respondent.

No. 2001.

Supreme Court of Alaska.

Decided June 27, 1973.

June 13, 1975.

Released for Publication June 13, 1975.

On appeal from an order of the Superior Court, Third Judicial District, Anchorage, Edmond W. Burke, J., dissolving a preliminary injunction against enforcement of a municipal ordinance which, in effect, prohibited nude dancing in premises licensed for sale or consumption of intoxicating liquor, appellant applied for an order staying the order of the Superior Court pending appeal. The Supreme Court, Rabinowitz, C. J., held that stay would be denied where appellants did not first present their application for a stay to the Superior Court and did not explain such failure.

Motion denied.

Connor, J., with whom Erwin, J., joined, dissented and filed opinion.

1. Appeal and Error ⇨458(1), 479(2)

Judgments in action for injunction are not stayable as of right; rather, whether a stay pending appeal of an order granting or dissolving an injunction will be granted is a question directed to the sound discretion of the court. Rules of Civil Procedure, rule 62(c); Rules of Appellate Procedure, rule 7(d)(2).

2. Appeal and Error ⇨478

In considering whether to grant a stay pending appeal, the lower court must consider criteria much the same as it would in determining whether to grant a preliminary injunction. Rules of Civil Procedure, rules 62(c), 65(d).

3. Appeal and Error ⇨478

In the unusual case when application for stay pending appeal is made in the Supreme Court without having previously been denied by the court below, there should be some explanation for failure to apply to the court below. Rules of Appellate Procedure, rules 7(d)(2), 25(b).

4. Appeal and Error ⇨477

In the usual case, the trial court should be given the first opportunity to consider an application for a stay of a judgment granting or denying an injunction, but exceptions should be made where the applicant makes a showing that relief in the superior court is unavailable, or that relief to be effective must be immediate and that it is improbable that the superior court can afford such immediate relief. Rules of Civil Procedure, rule 62(c); Rules of Appellate Procedure, rules 7(d)(2), 25(b).

5. Appeal and Error ⇨478

Stay pending appeal of order dissolving preliminary injunction against enforcement of allegedly unconstitutional city ordinance prohibiting, in effect, nude dancing in premises licensed for sale or consumption of intoxicating liquor would be denied where application for stay was not first presented to the superior court and there was no explanation for such failure, particularly where there was an almost total lack of showing on issue of irreparable injury and no contention was made before the Supreme Court in briefs and affidavits that denial of stay pending appeal would infringe First Amendment Rights. Rules of Civil Procedure, rule 62(c); Rules of Appellate Procedure, rules 7(d)(2), 25(b); U.S.C.A.Const. Amend. 1.

Stanley P. Cornelius, Cornelius, Inc., Anchorage, for petitioners.

John R. Spencer, City Atty., Anchorage, for respondent.

Before RABINOWITZ, Chief Justice, and CONNOR, ERVIN, BOOCHEVER and FITZGERALD, Justices.

ORDER *

RABINOWITZ, Chief Justice.

Petitioner Darion Powell owns an Anchorage cocktail lounge known as The Embers. The Embers, and several other local bistros, have in recent times gained a measure of notoriety by providing for their customers' viewing pleasure "topless and bottomless" dancers. Section 4-3(g) and (r) of the Code of Ordinances of the City of Anchorage prohibits a person from either appearing or authorizing another person to appear "in a licensed premises in which intoxicating liquor is offered for sale or consumed" while so "costumed or dressed so that the genitalia or pubic area is wholly or substantially exposed to view." On October 28, 1972, Powell, Powell's bartender petitioner George Goolsby, and petitioner Sheila Diane Bell were all arrested following a dance by Ms. Bell. The complaint charged, *inter alia*, that Bell had performed her dance in a licensed liquor establishment while "dressed or costumed" in a fashion prohibited by the ordinances.

The petitioners, shortly thereafter, filed a civil action against the City of Anchorage in which they asked the court to declare the ordinances unconstitutional and to permanently enjoin the City from further arrests and prosecutions under those ordinances. The superior court granted petitioners a preliminary injunction on November 27, 1972. Then on May 24, 1973, the superior court granted the City's motion for summary judgment, dismissed the petitioners' complaint with prejudice, and dissolved the preliminary injunction. Notice of appeal was filed on May 25, 1973. Petitioners have now presented this Court with an application for an order staying the May 24, 1973, order of the superior court. We deny petitioners' motion.

[1, 2] Judgments in actions for injunctions are not stayable as of right. Under Alaska Rule of Civil Procedure 62(c) the superior court is empowered to "suspend, modify, restore or grant" an injunction pending an appeal from a final judgment granting or denying an injunction. Whether a stay of an injunction pending appeal will be granted is a question directed to the sound discretion of the court.[1] In considering whether to grant such an injunction, the lower court must consider criteria much the same as it would in determining whether to grant a preliminary injunction.[2]

[3] The Supreme Court may also, in the exercise of its jurisdiction and "as part of its traditional equipment for the administration of justice," stay the enforcement of a judgment pending the outcome of an appeal.[3] Alaska Rule of Appellate Proce-

* This case was not placed in the Pacific Reporter at the time it was decided. Because various counsel have made reference to it in connection with other cases, it is now being published.

1. Shinholt v. Angle, 90 F.2d 297 (5th Cir. 1937); Kim v. China, 20 Cal.2d 12, 123 P.2d 438 (Cal.1942).

2. *See* 7 J. Moore, Federal Practice ¶ 62.05, at 62-24 (2d ed. 1972). Professor Moore suggests a four factor test:

(1) the likelihood that the petitioner will prevail on the merits of the appeal,
(2) irreparable injury to the petitioner unless the stay is granted,
(3) no substantial harm to other interested persons, and
(4) no harm to the public interest.

7 J. Moore, *supra* ¶ 62.05, at 62-25. *See also* Perry v. Perry, 88 U.S.App.D.C. 337, 190 F.2d 901 (1951); A. J. Industries, Inc. v. Alaska Public Service Commission, 470 P.2d 537 (Alaska 1970). Professor Moore observes that it may be the unusual case in which the trial judge would arrive at the conclusion that appellant is likely to prevail on appeal. But, that may occur in areas of the law where doubt clouds the correctness of the decision; and, there the court may stay an injunctive order.

Civil Rule 65(d) requires that *every* order granting an injunction shall set forth the reasons for its issuance.

3. State v. Norene, 457 P.2d 926, 927 (Alaska 1969) (quoting with approval Scripps-Howard Radio v. Federal Communications Comm'n, 316 U.S. 4, 9-10, 62 S.Ct. 875, 879, 86 L.Ed. 1229, 1234 (1942)).

dure 7(d)(2) regulates the procedure for seeking stays of judgments of the superior court pending appeal. That rule requires that an application for a stay of a judgment should first be made to the superior court and that ordinarily an original application to this court for a stay of judgment pending appeal will not be entertained unless it has previously been denied by the court below.[4] As we held in *State v. Norene*,[5]

> . . . [T]his rule does not require in all cases that applications for stay must be made to the superior court, . . . [nevertheless] departure from the rule should be accompanied by some explanation for the failure to apply to the superior court.[6]

No application was made to the superior court in this case, and the petitioners offer no explanation for their failure to do so.

[4, 5] As Professor Moore states, "[t]he stay or suspension of such judgments often involves a delicate balancing of the equities that only the court thoroughly familiar with the case is able to make."[7] We think that in the usual case the trial court should first consider an application for a stay of a judgment granting or denying an injunction. The Supreme Court, in *Cumberland Telephone and Telegraph Co. v. Public Service Commission*,[8] noted the desirability of having the trial court first pass on the application for a stay:

> [T]he court which is best and most conveniently able to exercise the nice discretion needed to determine this balance of convenience is the one which has considered the case on its merits, and therefore is familiar with the record.[9]

We think that it is a sound policy for the superior court to first consider applications for stays of judgment. Exceptions from this rule should be made where the applicant makes a showing that relief in the superior court is unavailable; or that relief to be effective must be immediate, and that it is improbable the superior court can afford such immediate relief.[10] Since the petitioners did not present their application for stay to the superior court and since they did not explain this failure, we deny their motion.

We further note the almost total lack of showing offered by petitioners going to the issue of irreparable injury. Here there is no showing that economic hardship or artistic handicaps will flow to petitioners if, pending final resolution of the merits, Bell performs her dance routine in a somewhat more modest fashion than heretofore. Nor has any contention been made before this court by petitioners in their briefs and affidavits that the operation of the injunction pending disposition of the appeal will in any manner infringe First Amendment rights.[11]

4. Appellate Rule 25(b) places the same requirement upon the party seeking a stay or an injunction of a judgment.

5. 457 P.2d 926 (Alaska 1969).

6. *Id.* at 929 (footnote omitted).

7. 9 J. Moore, Federal Practice ¶ 208.04, at 1409 (2d ed. 1973).

8. 260 U.S. 212, 43 S.Ct. 75, 67 L.Ed. 217 (1922).

9. *Id.* at 219, 43 S.Ct. at 77, 67 L.Ed. at 223. *See also* People *ex rel.* San Francisco Bay Conservation and Development Commission v. Town of Emeryville, 69 Cal.2d 533, 72 Cal. Rptr. 790, 446 P.2d 790 (Cal.1968).

10. *See* 9 J. Moore, Federal Practice ¶ 208.07, at 1423 (2d ed. 1973).

11. We note in passing that applicants fail to make the following necessary allegations in support of an application for stay of judgment granting or denying injunctive relief: they do not argue the likelihood of success on appeal, nor do they assert that the balance of hardships tips in their direction. *See supra* n. 2.

However, nothing we have said in this order precludes petitioners from moving the superior court to stay its final order. In the event that such a motion is denied, they are free again to seek review from our court.

HB

338

COMMITTEE REPORT

HOUSE

LABOR & COMMERCE

(7) FURTHER:

4/8/83

Date: 5-4-83

Mr. Speaker:

The Committee on JUDICIARY has had HB 333

An Act relating to the payment for overtime; and providing for an effective date.

under consideration and reports it back as follows:

[ ] do pass [ ] do not pass

[ ] do pass with attached amendments(s)

[ ] replace with CS for _____ [ ] same title [ ] new title

and recommends _____

[ ] AND attaches a "Letter of Intent" [ ] New Fiscal Note

[X] Zero Fiscal Note Attached

[ ] reports it back without recommendation

[ ] referred to the _____ Committee

MEMBERS SIGNING
DO PASS

MEMBERS HAVING
OTHER RECOMMENDATIONS:

CHAIRMAN

H 60

FR: LEONARD HOFFITT
P O BOX 746
PALMER 99645

QR

QUOTING FROM THE U.S. CONSTITUTION, 'BUT, WHEN THE RIGHT TO VOTE AT ANY ELECTION FOR THE CHOICE OF ELECTORS FOR PRESIDENT AND VICE PRESIDENT OF THE U.S., REPRESENTATIVES IN CONGRESS, THE EXECUTIVE AND JUDICIAL OFFICERS OF A STATE, OR THE MEMBERS OF A LEGISLAURE THEREOF, IS DENIED...' PLAINLY THAT INTENTION IN THIS SECION IS TO FORCE AN OPEN CHOICE OF ABOVE MENTIONED CANDIDATES IN ALL STATES. CAN WE AS CITIZENS OF THE U.S. IGNORE THE CONSTITUTION AND FEEL MORALLY CONTENT? PLEASE PROVIDE FOR ELECTION OF THE JUDICIAL OFFICERS. THANK YOU.

MEMO

TO: Rep. Bussell, Chmn.; Rep. Liska, Vice Chmn.; Reps. Barnes, Clocksin, Hayes, Malone & Wendte

FROM: Staff Counsel

TOPIC: HB 338--by Rep. Fritz--"An Act relating to the payment of overtime and providing for an effective date."

1--The bill would add an exemption to existing overtime payment law, (AS 23.10.060) relative to overtime...The letter from Al Gay of Seair in Committee files explains it would be intended to be used as "trade days" only, without the necessity of filing with the Dept. of Labor.

2--The Deputy Director, Monty Henninger, Div. of Labor Relations, Dept. of Administration, was to have a position paper here today (Wed., May 4) favoring the bill, but first has to check with Mrs. Rudd, Commissioner and was having hold-ups in the typing pool and paper flow.

3--The statute, 23.10.060, was amended in 1980 with subparagraphs (17) and (18)(A) and (B), but that appears to permit the 4-day, 10-hour work week only and refers to nothing else.
Note: The 1980 amendments speak of the "flexible work hour plan" not flexible work week.

(There might even be a good argument that the "flexible work hour plan" language in subparagraph (17), standing alone, could be construed, or stretched, into a flexible work week, but the likely SUpreme Court interpretation would be contra, even though the Court noted in a decision there might be conflict with 23.10.060)

4--Note letter from Seair, Al Gay, indicates the "four tens" work week doesn't seem to work.

SEAIR

The Spirit of the Sky

RECEIVED
MILO H. FRITZ, M.D.
MAR 22 1 04 PM '83

David: Can you look into this?
D

March 18, 1983

The Honorable Milo Fritz
Alaska State Legislature
Pouch "V"
Juneau, Alaska 99811

Dear Mr. ~~Fritz:~~ MILO

After talking to many employees in the airline industry, including other airlines than our own, we would like to have included in the Alaska statutes a "trade day", where employees could trade hours or days of work with another employee without falling under the overtime law now in effect (Section 23.10.060).

It is very difficult for an employee living in Alaska to go anywhere on a trip with only two days off (Saturday and Sunday), whereas if they could trade days with another employee, they could have three, four or more consecutive days off, thus allowing them more free time to travel outside or within Alaska. It is my understanding that the airlines which are presently under a separate bargaining agreement, such as a union, can do this now since they are not under the Alaska statutes. Enclosed is a copy of an employee request for substitution that is presently being used by Western Airlines.

I am told a simple paragraph can be inserted under Section 23.10.060, to read:

(19) Work performed under a trade day work plan wherein employees may agree to trade time or days worked between themselves.
(A) (The language necessary, such as the sample form, per attached.)

We have tried the ten-hour day, four-day week, and it simply does not work. The only reasonable and sensible substitute is an amendment to the Alaska statutes such as I have stated above.

Hopefully, you will sponsor a bill like this. I will give you all the support I can.

Best personal regards,

SEAIR

A. E. Gay, President

AEG:afm

Attachments

SEA AIRMOTIVE, INC.
P.O. BOX 6003 ANCHORAGE, ALASKA 99502-0003 ANCHORAGE INTERNATIONAL AIRPORT (907) 243-1115

EMPLOYEE REQUEST FOR SHIFT / HOUR SUBSTITUTION

_____ will substitute for _____

Shift # _____ FROM _____ TO _____
DAY DATE MONTH

_____ will substitute for _____

Shift # _____ FROM _____ TO _____
DAY DATE MONTH

The assigned areas are: _____ _____

_____ _____
(SIGNATURE - REQUESTING AGENT) (SIGNATURE - SUBSTITUTING AGENT)

Approved: _____ Posted: _____ Date: _____
INITIAL

SG-### REVISED 11-73 PRINTED IN USA

Al,

This is a copy of WSL trade-day form.

STATE OF ALASKA
FISCAL NOTE

Revision Date April 25, 1983

I. REQUEST

Bill/Resolution No.: House Bill 338
Title: "...payment of overtime..."
Sponsor: Representative Fritz
Requestor: House Judiciary

II. FISCAL DETAIL

Agency Affected: Labor
Program Category Affected: Worker Protection
BRU, Program of Subprogram(s) Affected: Labor Standards & Safety

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 83	FY 84	FY 85	FY 86	FY 87	FY 88
OPERATING						
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 COMMODITIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC						
TOTAL OPERATING		0	0	0	0	0
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND		0	0	0	0	0
FEDERAL FUNDS						
OTHER (Specify Source)						

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

III. SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

Not applicable.

IV. ANALYSIS: Attach a separate page for any Analysis

Prepared By: Robert J. Bacolas, Sr. Phone: 465-4870
Division: Labor Standards & Safety Date: April 25, 1983

Approved by Commissioner: Jim Robison Date: April 25, 1983
Department: Labor

LEG:A:44

Distribution:
Original to Legislative Finance
Copy to Office of Management and Budget (for Legislature introduced bills)
Copy to Department (for Governor introduced bills)
Copy to Sponsor

HB

345

COMMITTEE REPORT

HOUSE

(7) FURTHER:

4/11/83 Date: May 24, 1983

Mr. Speaker:

The Committee on JUDICIARY has had HB 345

An Act relating to a victim's rights in the sentencing and parole hearings and furlough determinations of a person convicted of a felony; and making changes in sentencing procedures.

under consideration and reports it back as follows:

[ ] do pass [ ] do not pass

[ ] do pass with attached amendments(s)

[X] replace with CS for HB 345 (JUD) [ ] same title [X] new title

and recommends _____

[ ] AND attaches a "Letter of Intent" [ ] New Fiscal Note
[ ] Zero Fiscal Note Attached

[ ] reports it back without recommendation

[ ] referred to the _____ Committee

MEMBERS SIGNING
DO PASS

MEMBERS HAVING
OTHER RECOMMENDATIONS:

Chairman

CHAIRMAN

H 60

DEPARTMENT OF LAW

Proposed Amendment: HB 345

On Page 3, line 19 add a new sentence to read:

However, a failure to provide such rights does not give rise to a separate cause of action against law enforcement agencies, or other agencies of the state, or a political subdivision of the state.

STATE OF ALASKA 1984 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date:

REQUEST
Bill/Resolution No.: CSHB 345 (JUD)
Title: "An act relating to victims rights."
Sponsor: Judiciary Committee
Requestor:
Date of Request:

FISCAL DETAIL
Agency Affected: Public Safety
Program Category Affected: Administration of Justice
BRU, Program or Subprogram(s) Affected: Alaska State Troopers

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 84	FY 85	FY 86	FY 87	FY 88	FY 89
OPERATING						
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 SUPPLIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS						
800 MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0
CAPITAL	0.0	0.0	0.0	0.0	0.0	0.0
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND	0.0	0.0	0.0	0.0	0.0	0.0
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

ANALYSIS: Attach a separate page for analysis

Prepared By: Francis C. Allan F.C.A. MCK Phone: 269-5691
Division: Alaska State Troopers Date: 01/30/84
Approved by Commissioner: Robert J. Sundberg KBS Date: 2-3-84
Agency: Public Safety

Distribution (by Agency preparing fiscal note):
Legislative Finance
Legislative Sponsor
Requestor
Office of Management and Budget
Impacted Agency(ies)

12/1/83

DEPARTMENT OF PUBLIC SAFETY

POSITION PAPER - CSHB 345 (JUD)

Neutral

January 30, 1984

CSHB 345 (JUD) - "An Act relating to victim's rights; and amending Rule 32(d)(2) of the Alaska Rules of Criminal Procedure."

AS 12.61.010 will force additional administrative efforts to assure that victims are notified of trials and dates of sentencing.

Robert J. Sundberg
Commissioner

PART VII. JUDGMENT

Rule 32. Sentence and Judgment.

(a) Sentence. Sentence shall be imposed without unreasonable delay. Pending sentence the court may commit the defendant or continue or alter bail as provided in Rule 41(a), Alaska Rules of Criminal Procedure. Before imposing sentence the court shall afford the defendant an opportunity to make a statement in his own behalf and to present any information in mitigation of punishment. If the defendant is being sentenced following a plea of guiity or nolo contendere the court shall question the defendant to ascertain that he understood the meaning of his plea, and that it was freely and voluntarily entered.

(b) **Judgment—Execution.**

(1) *Execution.* The judgment of conviction shall set forth the plea, the verdict or findings, and the adjudication and sentence. At the time of imposition of sentence, the judge or magistrate shall make a statement on the record explaining his reasons for imposition of the sentence. If the defendant is found not guilty or for any other reason is entitled to be discharged, judgment shall be entered accordingly. The judgment shall be signed by the judge or magistrate and entered by the clerk. When the judgment has been entered, the clerk shall forthwith deliver to a peace officer a certified copy of the judgment for execution. The peace officer shall note on the copy of the judgment the date of its delivery to him. When the judgment has been executed, the peace officer shall promptly return the copy to the clerk with his proceedings endorsed thereon.

(2) *Conviction of a Corporation.* If a corporation is convicted of any criminal offense the court may give judgment thereon and shall cause such judgment to be enforced in the same manner as a judgment in a civil action, or as otherwise provided by law.

(c) **Pre-Sentence Investigation.**

(1) *When Made.* The probation service shall make a pre-

sentence investigation and report before the court imposes sentence or grants probation. The report shall not be submitted to the court or its contents disclosed to any one except counsel unless the defendant has tendered a plea of guilty or nolo contendere or has been found guilty. The court may utilize the report in determining if a bargained sentence recommendation will be followed pursuant to Rule 11. In the event the attorneys for the parties request the preparation of a presentence report to aid them in plea bargaining the court may order such report to be made prior to the time stated in this rule.

(2) *Report.* The report of the pre-sentence investigation shall contain any prior criminal conviction including a finding of delinquency of the defendant and such information about his characteristics, his financial condition, and the circumstances affecting his behavior as may be helpful in imposing sentence or in granting probation or in the correctional treatment of the defendant, and such other information as may be required by the court. No record of arrest or other police contacts shall be included in the report. The report shall be made available to the state's attorney and to the defendant's attorney in all cases and to the defendant unless the court enters on the record findings of reasons why the report would prove detrimental to the rehabilitation of the defendant or safety of the public. Unless otherwise ordered, further disclosure of the report shall be limited to the reviewing court on appeal and to the agencies having charge of the defendant's rehabilitation.

(d) **Sentencing Referrals to Three-Judge Panel.**

(1) If the trial court finds that extraordinary circumstances exist under AS 12.55.165, the case shall be transferred forthwith to a three-judge sentencing panel of the superior court. All pertinent files, records and transcripts shall be transmitted to the sentencing panel by the clerk of the court within 30 days of the date of the order transferring the case.

(2) Three judges of the superior court shall be appointed by the chief justice to be the regular members of the sentencing panel. Two other judges of the superior court shall be appointed by the chief justice as first and second alternate mem-

bers of the sentencing panel. At least one of the three regular members and one of the two alternate members of the sentencing panel shall reside outside of Anchorage. The term of appointment of the regular and alternate members of the sentencing panel shall be two years, except that the first three regular members appointed shall serve staggered terms of one, two, and three years. The chief justice may appont additional alternate members of the sentencing panel to serve on a case-by-case basis in the event of the disability or disqualification of more than two judges.

(3) The chief justice shall appoint one of the three regular members to be administrative head of the sentencing panel and his or her office shall serve as the administrative repository for all papers and documents pertaining to cases submitted to the sentencing panel.

(4) Both the prosecuting attorney and the defendant may exercise in a timely fashion a challenge for cause, or a peremptory challenge if not previously exercised, to one judge or the sentencing panel in accordance with AS 22.20.022 and Rule 25(d)(1), Alaska Rules of Criminal Procedure. In the event that a judge on the sentencing panel is the same judge who made the finding under subsection (1) of this rule, that judge shall be automatically disqualified.

(5) The sentencing panel shall either sentence the defendant or remand the case to the court within 60 days from the date that the case was transmitted to the sentencing panel. The sentencing panel shall provide a written statement of its findings and conclusions in support of any order remanding a case to the trial court.

(6) If the sentencing panel elects to take testimony or sentence the defendant under AS 12.55.175(b) or (c), both the prosecution and the defendant shall have the right to be present in court during the proceedings. The defendant shall have the right to address the sentencing panel personally before sentence is imposed. The proceedings shall be held in a location best suited to the convenience of the parties and the court as determined by the sentencing panel.

(7) If the three-judge sentencing panel imposes sentence on the defendant, any further sentencing proceedings, includ-

ing proceedings relating to sentence modification, shall occur before the same three-judge panel, who shall be considered the sentencing court. If at the time further proceedings are requested any of the three judges is no longer available, one or more alternate members shall sit in the same fashion as provided for in AS 12.55.175(a).

(8) The right to bail of a convicted defendant is neither conferred nor enlarged by this rule.

(e) **Transcript of Sentencing Proceeding.** A transcript of any sentencing proceeding at which the defendant is committed to serve in excess of 6 months on one or more charges shall be prepared and furnished to the state attorney, defendant, and the Alaska Parole Board. (Amended by Supreme Court Order 157 effective February 15, 1973; by Amendment No. 5 to Supreme Court Order 157 effective July 1, 1974; by Supreme Court Order 330 effective January 1, 1979; by Supreme Court Order 418 effective August 1, 1980; and by Supreme Court Order 436 effective October 21, 1980)

(a) **CROSS REFERENCES:** AS 12.55.010; Crim. Form 38
(d) **CROSS REFERENCES:** Crim. Forms 39, 40

Rule 32.1 Appeal From Conviction of Sentence—Notification of Right to Appeal.

A person convicted of a crime after trial shall be advised by the judge or magistrate:

(a) That he has the right to appeal from the judgment of conviction within 30 days (or 15 days in appeals from the district court made under Rule 217, Alaska Rules of Appellate Procedure) from entry of the judgment of conviction by filing a notice of appeal with the clerk of court.

(b) That in accordance with Appellate Rule 215, the defendant may appeal the sentence on the ground that it is excessive, that upon such appeal the court may reduce or increase the sentence, and that by appealing the sentence, the defendant waives the right to plead that by a revision of the sentence resulting from the appeal he has twice been placed in jeopardy for the same offense.

(c) That if he wants counsel and is unable to pay for the services of an attorney, the court will appoint an attorney to represent him on the appeal. (Added by Supreme Court Order 157 effective February 15, 197.; amended by Supreme Court Order 218 effective January 15, 1976; and by Supreme Court Order 536 effective October 1, 1982)

Rule 32.2 Sentence Appeal.

(Added by Supreme Court Order 157 effective February 15, 1973. Rescinded by Supreme Court Order 218 effective January 15, 1976)

AMENDMENT #1

Offered in the Judiciary Committee By Clocksin

TO: HB 345

Page 1, line ~~27~~ 14 (inserted) - page 2, line 4-7 (replace)

Delete all material and insert "(5) in the case of a conviction for a felony offense, verified information stated in a nonargumentative style assessing the financial, social, psychological, and medical impact upon and cost to any person who was the victim of the offense committed by the defendant. The report shall also include a statement of any need of the victim for restitution and and such other information as may be required by the court."

AMENDMENT #2

Offered in the Judiciary Committee By CLocksin

TO: HB 345

Page 2, line 11 - page 3, line 6

Delete all material and insert:

Sec.3. AS 12 is amended by adding a new chapter to read:

CHAPTER 61. RIGHTS OF VICTIMS AND WITNESSES

Sec. 12.61.010. RIGHTS OF VICTIMS AND WITNESSES. (a) Victims and witnesses of crimes have the following rights:

(1) the right to be informed by the appropriate law enforcement agency or the prosecuting attorney of the final disposition of the case in which the victim or witness is involved;

(2) the right to be notified that a court proceeding to which the victim or witness has been subpoenaed will not occur as scheduled, in order to save the person an unnecessary trip to court;

(3) the right to receive protection from harm and threats of harm arising out of cooperation with law enforcement and prosecution efforts, and to be provided with information as to the level of protection available;

(4) the right to be informed of the procedure to be followed to apply for and receive any witness fees or victim compensation to which the person may be entitled;

(5) the right to have any stolen or other personal property expeditiously returned by the law enforcement agency unless it is unlawful to return the property;

(6) the right to cooperate with the criminal justice process without loss of pay and other employee benefits and without interference in any form by the employer of the victim or witness of crime; and

(7) the right to access to immediate medical assistance and not to be detained for an unreasonable length of time by a law enforcement agency before having medical assistance administered; however, an employee of the law enforcement agency may, if necessary accompany the person to a medical facility to question the person about the criminal incident if the questioning does not hinder the administration of medical assistance.

(b) Law enforcement agencies, prosecutors, and the courts shall make a reasonable effort to assure that victims and witnesses of crimes have the rights set out in (a) of this section.

(c) The family members of a homicide victim shall be afforded all of the rights established under (a)(1) - (7) of this section. For purposes of this subsection, "family members" include a spouse, child, brother, sister, parent, or legal guardian.

AMENDMENT #5

Offered in the Judiciary Committee

TO: HB 345

Page 3, lines 7-12

Delete all material and insert:

Sec. 4. AS 12.55.185 is amended by adding a new paragraph to read:

(11) "victim" means the victim of the offense or, in the case in which the victim has died, the term includes a spouse, parent, child, brother, sister or legal guardian of the victim.

Page 3, lines 15-17

Delete "the evidence presented and opinions expressed by the victim or the victim's immediate family in accordance with AS 33.15.065," and insert "comments received from the victim as defined by AS 12.55.185(11),".

all pertinent information that will enable the board to make a determination.

*Sec. 6. AS 33.15 is amended by adding a new section to read:

Sec. 33.15.065 RIGHT OF VICTIM TO COMMENT ON PAROLE OF PRISONER. upon request of the victim)

(a) Notice of a hearing to review or consider the parole eligibility or the setting of a parole date for a prisoner in a state prison who is convicted of a crime against a person as set out in AS 11.41, except custodial interference under AS 11.41.320 and AS 11.41.330, or a crime against a person in this or another jurisdiction having elements substantially identical to those of a crime against a person as set out in AS 11.41, except custodial interference under AS 11.41.320 and AS 11.41.330, shall be sent to the victim of the crime ~~to the victim's immediate family~~ as defined in AS 12.55.185(11), at least 30 days prior to the scheduled hearing, unless the victim ~~or the victim's family~~ has indicated that ~~they don't~~ he or she does not wish to be notified.

(b) It shall be the responsibility of the victim ~~the victim's immediate family~~ to keep the board apprised of ~~their~~ his or her most current mailing address. If the Board has not been kept apprised of the most current mailing address, notice required under (a) of this section shall be sent to the last known address of the victim ~~or the victim's immediate family~~. The address of the victim ~~or the victim's immediate family~~ shall in no circumstances be disclosed to the prisoner or the prisoner's attorney.

(c) The victim, ~~or the victim's immediate family~~, has a right to comment in writing on the proposed action of the board. Copies of those comments shall be provided to the ~~Copies to Atty~~ defendant's attorney.

(d) The board, in deciding whether to release the prisoner on parole shall consider the comments presented under (c) of this section.

(e) If the board decides to release a prisoner who is convicted of a crime against a person as set out in (a) of this section on parole, notification of that decision shall be sent to the victim, ~~or the victim's immediate family,~~ prior to the prisoner's release date. Notification under this subsection shall include the expected date of the prisoner's release, the geographic area in which the prisoner is required to reside, and any other pertinent information concerning the prisoner's conditions of parole that may impact the victim. The board shall make every reasonable effort to notify the victim ~~or the victim's immediate family~~ of the pending parole of the prisoner unless ~~they have~~ (the victim has) indicated that ~~they~~ he or she ~~don't~~ does not wish to be notified.

*Sec. 7. AS 33.30.250 is amended by adding a new subsection to read:

(h) In the case of a prisoner convicted of a crime against a person as set out in AS 11.41, except custodial interference under AS 11.41.320 and AS 11.41.330, or a crime against a person in this or another jurisdiction having elements substantially identical to those of a crime against a person as set out in AS 11.41, except custodial interference under AS 11.41.320 and AS 11.41.330, notice of the commissioner's

the prisoner for release under (a) of this section shall be sent (if requested) to the victim, ~~or the victim's immediate family~~ as defined in AS 12.55.185 (11). The victim, ~~or the victim's immediate family~~ may comment in writing on the intent of the commissioner to release the prisoner in work furlough status. The commissioner shall consider the comments of the victim, ~~or the victim's immediate family~~ prior to making a final decision to release a prisoner under (a) of this section. The victim, ~~or the victim's immediate family~~ shall keep the commissioner apprised of the person's current mailing address. The commissioner shall make every reasonable effort to notify the victim, ~~or the victim's immediate family~~ of an intent to consider a release of a prisoner under (a) of this section, unless the victim ~~or the victim's family~~ has indicated that ~~they don't~~ he or she does not wish to be notified. The notice shall contain the expected date of the prisoner's release and the geographic area in which the prisoner will reside.

*Sec. 8. AS 33.30.260 is amended by adding a new subsection to read:

(b) In the case of a prisoner convicted of a crime against a person as set out in AS 11.41, except custodial interference under AS 11.41.320 and AS 11.41.330, or a crime against a person in this or another jurisdiction having elements substantially identical to those of a crime against a person as set out in AS 11.41, except custodial interference under AS 11.41.320 and AS 11.41.330, notice of the commissioner's intent to consider the prisoner for release under (a) of this section shall be sent (if requested) to the victim, ~~or the victim's immediate~~

~~family~~ as defined in AS 12.55.185(11). The victim, ~~or the victim's immediate family~~ may comment in writing on the intent of the commissioner to release the prisoner in rehabilitation furlough status. The commissioner shall consider the comments of the victim, ~~or the victim's immediate family~~ prior to making a final decision to release a prisoner under (a) of this section. The victim, ~~or the victim's immediate family~~ shall keep the commissioner apprised of the person's current mailing address. The commissioner shall make every reasonable effort to notify the victim, ~~or the victim's immediate family~~ of an intent to release a prisoner under (a) of this section, unless the victim ~~or the victim's immediate family~~ has indicated that ~~they don't~~ he/she does not wish to be notified. The notice shall contain the expected date of the prisoner's release and the geographic area in which the prisoner will reside.

*Sec. 9. The effect of Section 1 of this act is to amend Rule 32(d)(2) of the Alaska Rules of Criminal Procedure by adding a requirement for a Victim Impact Statement as part of a court ordered Presentence Report.

POSITION PAPER/Department of Health & Social Services

POSITION PAPER

House Bill No. 345

"An Act relating to a victim's rights in the sentencing and parole hearings and furlough determinations of a person convicted of a felony; and making changes in sentencing procedures."

Section 1. AS 12.55.025 (a) amended to require that victim's or the immediate family of victim's evidence and opinions be included as part of the presentence report.

Section 2. AS 12.55.155 (c) is amended by adding "(27) the defendant's conduct caused substantial physical, emotional, or financial harm to the victim or, if the victim has died as a result of the defendant's conduct, to the victim's immediate family." as an aggravating circumstance under presumptive sentencing procedure.

Section 3. AS 12.55.155 (f) is amended to require the defendant to provide written notice to the victim or immediate family of the victim if the defendant seeks to establish a factor in mitigation in proceedings. This notice must be filed ten days prior to the date set for imposition of sentence. The victim or victim's immediate family may appear personally or by counsel at aggravation or mitigation proceedings and sentencing proceedings.

Section 4. AS 12.55.155 (h) adds a definition of "immediate family" which includes a spouse, child, parent, brother, sister, parent-in-law, brother-in-law, or sister-in-law.

Section 5. AS 33.15.060 (a) is amended to require the parole board to consider evidence presented and opinions expressed by the victim or the victim's immediate family in parole determinations.

Section 6. AS 33.15 is amended by adding a new section, AS 33.15.065, which requires the parole board to send notification of hearing to review or consider parole eligibility or the setting of a parole date to the victim or the victim's immediate family 30 days before the hearing. It is the responsibility of the victim or the victim's immediate family to keep the board informed of the person's current address.

Section 7. AS 33.30.250 (g) is amended by adding a new paragraph which would prohibit a prisoner from being placed on furlough status if the victim or the victim's immediate family submits a written statement outlining the objections and supporting evidence to the Commissioner.

Section 8. AS 33.30.250 (g) is amended by adding a new section which requires the commissioner to notify the victim or victim's immediate family of intention to release the prisoner on work furlough unless the Commissioner receives a written statement outlining the objections and supporting evidence, if any, advocated by the victim or

POSITION PAPER/Department of Health & Social Services

the victim's immediate family.

Section 9. AS 33.30.260 is amended by giving the victim or victim's immediate family the right to object to rehabilitation furlough under the conditions and procedures set out in AS 33.30.250 (h).

Summary

The Department supports the concept of evidence and statements of the victim being included in sentencing, parole hearings, and furlough determinations. However, the bill, as written (Sections 7, 8, and 9), give victims or immediate family of victims the authority to prohibit prisoners from being granted furlough by objecting in writing to the Commissioner. The Department opposes to this authority being placed with victims because, constitutionally, the Department is charged with the responsibility of reformation of offenders. Furlough is an intricate part of the reformation process. Because of ineligibility or lack of program space, all prisoners do not participate in furlough programs. However, those prisoners referred to in section 7, 8, an 9 would be determined furlough eligible prior to contacting the victim or the victim's immediate family. The victim or the victim's immediate family could by objecting in writing prohibit the prisoner's participation in the furlough program whether or not the objections have merit.

It should be noted that furlough determinations are based on factual information regarding the prisoner's suitability for furlough release. The Department does not oppose including opinions, evidence and facts being presented by the victim or victim's immediate family as part of the furlough determination process, but placing the authority to veto furlough participation with the victim or the victim's immediate family is not acceptable. The Department recommends the language in sections 7, 8, and 9 be changed to indicate the victim's right to provide statements and evidence to the Commissioner to be used in the consideration of furlough determination.

Recommended by: Roger C. Endell per
Roger V. Endell, Director
Division of Adult Corrections

Date: May 2, 1983

Approved by: Robert London Smith
Robert London Smith, Ph.D.
Commissioner

Date: 5/4/83

STATE OF ALASKA
FISCAL NOTE

Revision Date , 1983

I. REQUEST

Bill/Resolution No.: House Bill No. 345
Title: Act relating to a victim's rights
Sponsor: Rep. Flood
Requestor: House Judiciary Committee

II. FISCAL DETAIL

Agency Affected: Health & Social Services
Program Category Affected: Justice
BRU, Program of Subprogram(s) Affected: Adult Confinement/Probation Community-Based Programs

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 83	FY 84	FY 85	FY 86	FY 87	FY 88
OPERATING						
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 COMMODITIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC						
TOTAL OPERATING		*	*	*	*	*
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER (Specify Source)						

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

III. SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

The source of funds to offset the impact of this bill has not been identified by sponsor.

*See Analysis.

IV. ANALYSIS: Attach a separate page for any Analysis

Prepared By: Roger C. Lange Roger C. Lange Phone: 465-3376
Division: Adult Corrections Date: April 28, 1983

Approved by Commissioner: Robert London Smith, Ph.D Date: 5/4/83
Department Health & Social Services

Distribution:
Original to Legislative Finance
Copy to Office of Management and Budget (for Legislature introduced bills)
Copy to Department (for Governor introduced bills)
Copy to Sponsor
Copy to Requestor (if different from Sponsor)

3/8/83

IV. ANALYSIS

A. Assumptions

1. Sections 1, 2, and 3

These sections set up a legal process by which victims or their survivors can present testimony which will have bearing on mitigating/aggravating factors and sentencing. It is the opinion of this writer that this procedure will result in longer sentences for some persons convicted of felony offenses. It is believed that sentencing judges will be persuaded to give longer terms of incarceration as a direct result of such testimony. This opinion is subjective and there is no way to measure to ultimate impact on the State's inmate population.

2. Section 4

No effect.

3. Sections 5 and 6.

This section requires the Parole Board to consider "evidence presented and opinions expressed by the victim or the victim's immediate family . . ." The provisions of this section could result in some parole candidates not receiving parole based on the testimony presented by the victim. Again, there is no way to measure the potential impact on the inmate population.

4. Sections 7, 8, and 9.

These three sections will directly affect the number of persons who are released on either work or rehabilitation furloughs. Sections 7 and 9 will allow for a victim to automatically bar a prisoner from the work or re habilitation furlough programs by submitting a written objection. It is assumed that a significant number of victims would submit a statement of objection to furlough release for the inmate.

It is assumed that approximately 300 felons are released each year into the furlough porgrams. Based on the above, it is assumed that 25% of the eligible candidates will be prevented from entering the furlough programs due to victim objections. Thus, 75 prisoners will be required to serve out the remaining sentence period in a state correctional center. The typical furloughee has 120 days of residual incarceration at the time entering the furlough program. Therefore, there will be 75 times 120 days or 9000 person days (24.7 person years) of added jail time generated by these provisions of House Bill No. 345.

Since there is currently a waiting list of persons eligible for entering the furlough program, it would not be accurate to indicate the need for the additional 25 beds. Enactment of this bill would, however, reduce by 25 the number of community beds which could be used as an alternative to incarceration in a state correctional center.

B. Program Summary

An estimate for additional operating costs cannot be made without more quantifiable data.

C. Economic Impact

Passage of this bill should have little impact on the State's economy.

D. Impact on Local Governments

This bill should have no fiscal impact on local governments.

Alaska State Legislature

House of Representatives

April 6, 1983

Pouch V
State Capitol
Juneau, Alaska 9[illegible]1

Official Business

MEMORANDUM

TO: Representative Joe Flood

FROM: Mark K. Johnson
Staff Counsel

SUBJECT: Proposed Victim's Legislation

Attached is a draft of legislation that would establish certain basic rights for the victims of felonies at the sentencing phase of a criminal trial as well as during hearings for parole and furlough.

The legislation is modeled after provisions of Arizona law that were adopted by that state's legislature in 1982. Similar language was added to California law through the initiative process in June of 1982.

Section 1 of the legislation would provide that in sentencing individuals for felonies, the presently required pre-sentence report would also include "evidence and opinions expressed by the victim...concerning the physical, emotional, or financial harm caused the victim" as a result of the defendant's conduct.

Section 2 of the proposed legislation would establish an additional aggravating factor to be considered by the court in passing sentence upon a person convicted of a felony. This aggravating factor relates to the harm caused the victim as a result of the crime.

Section 3 would provide that the victim of a felony shall be notified at least 10 days before the sentencing of the defendant and that at this phase of the proceedings the victim would have the right to appear and participate. At that time, the victim, appearing personally or through counsel, may present evidence or opinions concerning the harm suffered by the victim or his immediate family as a result of the crime. The court would be required to consider this testimony in sentencing the offender.

Section 4 would define "immediate family", as used in the first three sections of the bill relating to sentencing.

Section 5 would require the Parole Board to consider the evidence and opinions offered by the victim at the sentencing hearing during the parole process.

Section 6 extends to the victim of the crime the right to receive notice of a parole hearing for an offender, the right to appear and present evidence and opinions at that hearing, and provides that the Parole Board shall consider

those statements in their deliberation on the decision to grant parole.

Section 7 would add the harm caused to the victim to a list of relevant considerations to be used by the Commissioner of Health & Social Services in determining whether an offender should be released on furlough.

Section 8 extends the notice and testimonial rights mentioned in sections 3 and 6 of the bill to the victim of a felony in a furlough determination to be made by the Commissioner of Health & Social Services.

Section 9 grants the victim of a felony the right to object to the granting of a furlough by the commissioner.

In each of the new provisions, if the victim has died as a result of the defendant's conduct, the victim's immediate family shall have the rights granted to the victim.

While far broader legislation on the subject of victim's rights is certainly possible, the provisions of this legislation are some strong and positive efforts to afford greater consideration to the victims of crimes. A copy of a Newsweek article on this subject is attached.



(Photos by Ron Medvescek—Arizona Daily Star)

Marietta Durkin (left), her mother on couch: A grieving family fights back

Giving Victims a Say in Court

The marriage of Tiberiu and Norma Nistor had dissolved long before Norma fired seven shots into her husband, pausing once to reload. He had come home to collect his books; Norma shot him before he could leave. Then she called a friend who remembers Norma saying, "I killed him. He deserved it." For the Tucson, Ariz., police, the murder was an open-and-shut case. But when it reached the Pima County prosecutor's office, other factors came into play—Norma's agitated emotional state and a history of domestic violence. Exercising his discretion, an assistant county attorney struck a deal with Norma's lawyers that allowed her to plead "no contest" to the homicide charge and receive a prison term of no more than seven years.

When this news reached Tiberiu's relatives in Pennsylvania, they were furious. "Our initial reaction was utter disbelief," recalls Robert Durkin, Tiberiu's brother-in-law. But the prosecutors, who now admit they made a mistake, were trapped: they could not legally disown a completed plea bargain. Durkin's remaining card was Arizona's new victims' rights law, which gives crime victims, or their families, independent standing to appear before a sentencing judge. In the first test of the law, Durkin and his wife, Marietta, Tiberiu's sister, demanded a hearing to overturn the deal. Over the objections of both Norma's lawyer and the prosecutor, Durkin's attorney argued that accepting a no-contest plea—which did not even automatically bar Norma from inheriting Tiberiu's $345,000 in life insurance—amounted to a miscarriage of justice. Four weeks later, Judge William Druke agreed; a murder trial will probably begin this spring. Says Durkin: "We feel vindicated."

Durkin's vindication may recalibrate the scales of justice. Until recently, the crime-victims' movement has concentrated on obtaining compensation for victims and encouraging private lawsuits against criminals. Now victims are lobbying legislatures to give them a voice in the criminal courts. Already, Connecticut and California have joined Arizona in granting victims the right to have their say—what lawyers call "the right of allocution." At least nine other states and Congress have directed trial judges to consider written "victim impact statements" before sentencing guilty defendants. And President Reagan's Task Force on Victims of Crime has gone further, calling for a constitutional amendment to give victims the right "to be present and be heard at all critical stages of judicial proceedings."

Competing Interests: These proposals represent a fundamental shift in the conventional courtroom calculus. Prosecutors serve the state, defense lawyers worry only about their clients and judges try to mete out justice. The victim, unless called as a witness, plays no role in the process. Until recently, the assumption was that the prosecutor represented the victim's interest. But as Yale law Prof. Abraham Goldstein points out, often that is not the case. "To the prosecutor, the victim is one among many competing interests," he says, among them unclogging court dockets. "We can't leave the victim to the prosecutor's discretion anymore," says Lois Haight Herrington, head of the Victim's Task Force and a former prosecutor.

Nistor: No deal



Giving a victim a say may also serve as good therapy. "If they don't have an opportunity to express their pent-up anger, they carry it with them for the rest of their lives," says John M. Bailey, chief prosecutor in Hartford County, Conn.

But proposals granting victims the right to speak are more controversial than they seem. Some defense lawyers fear that an emotional appeal by a flesh-and-blood victim may improperly sway a judge as well as cause further court congestion. A more practical issue is when the victim should be heard. If he waits until a sentencing hearing, it may be too late to affect the outcome: many plea bargains are really "sentence bargains" that the judge has tacitly agreed to in advance—before the victim gets his day in court.

Including victims in the system may also place extra burdens on them. "The victim may be on the spot, feeling like a failure if he doesn't get a triple-digit sentence out of the judge," says University of Chicago law Prof. Franklin Zimring. And, says Harvard law Prof. Alan Dershowitz, the proposals may only lead to more unequal justice, "returning us to the day when each victim's life was worth a different amount." He argues that judges will become more concerned with "attractive" victims, while the law should demand that all victims be treated equally. Dershowitz prefers a system that would encourage victims to bring civil suits against their assailants. That is what the parents of Ronnie Joan Garland, a Yale student murdered by her college boyfriend, did. They recently won a $30,000 judgment against Richard Herrin, who killed her.

Modest Expectations: Expanding the rights of victims in courts seems likely in the short run, if only because legislators, who are powerless to stem high crime rates, can at least do something by taking up the victims' cause. But as with other reforms in criminal justice, modest expectations are in order. Experiments indicate that few victims actually appear in court to advise judges of their views, except in homicide cases where surviving relatives often closely track a case. Philadelphia Judge Lois Forer, author of "Criminals and Victims," says that while she routinely invites victims to sentencing hearings, they seldom choose to speak; in Connecticut, court officials estimate that victims appear at no more than 3 percent of the sentencing hearings. And when they do come to court, victims are often more interested in alternative sentences that involve restitution; they seldom demand pure vengeance. That's a comforting thought, and may be the best reason for allowing victims to join the cacophony in the criminal courts.

ARIC PRESS with RON LaBRECQUE in Tucson and bureau reports

STATE OF ALASKA

BILL SHEFFIELD, GOVERNOR

DEPARTMENT OF LAW

PRETRIAL INTERVENTION PROGRAM

POUCH KT
JUNEAU, ALASKA 99811
PHONE: (907) 465-3678

April 29, 1983

The Honorable Charles Bussell
Chairman, House Judiciary Committee
Alaska State House of Representatives
Pouch V
Juneau, Alaska 99811

Dear Representative Bussell:

Attached is a proposed committee substitute for H.B. 345. After conferring with your committee's counsel, Joseph Brewer, I prepared my amendments in this form rather than as amendments. I have discussed this proposed committee substitute with Ms. Forsythe, of the Court system, with Mr. Trivette of the Parole Board, and with Ms. Amy Webb of the Division of Adult Corrections. It was my intent to strengthen the provisions of the bill while retaining the prime sponsor's original intent, clear up possible legal problems, and produce a final bill that would have a zero fiscal note. All the parties consulted agree that this has been accomplished.

You may have questions regarding this proposed substitute, as you or your fellow committee members may likewise have further questions regarding my testimony on this bill. Unfortunately, I will be out of town from April 30 through May 6. If my presence is required for further hearing on this matter, I will be available on the afternoon of May 6.

I trust this proposed committee substitute is in agreement with your committee's desire on this legislation. If I can be of further assistance, do not hesitate to contact me.

Sincerely,

NORMAN C. GORSCH
ATTORNEY GENERAL

By: Patrick W. Conheady
Patrick W. Conheady
Assistant Attorney General
Chief, Pretrial Services

Attachment

PWC/ks

STATE OF ALASKA

BILL SHEFFIELD, GOVERNOR

DEPARTMENT OF LAW

PRETRIAL INTERVENTION PROGRAM

POUCH KT
JUNEAU, ALASKA 99811
PHONE: (907) 465-3678

April 29, 1983

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Sincerely,

NORMAN C. GORUSCH
ATTORNEY GENERAL

By: Patrick W. Conheady
Patrick W. Conheady
Assistant Attorney General
Chief, Pretrial Services

Attachment

PWC/ks

REPRESENTATIVE
JOE FLOOD
3423 WEST 79TH
ANCHORAGE, ALASKA 99502
(907) 243-7511

MEMBER
FINANCE COMMITTEE

DISTRICT 9
SOUTHWEST ANCHORAGE

Alaska State Legislature



House of Representatives

WHILE IN JUNEAU
POUCH V
JUNEAU, ALASKA
99811
(907) 465-4937

STAFF COUNSEL
MARK K. JOHNSON

May 4, 1983

The Honorable Charlie Bussell
Chairman
House Judiciary Committee
Pouch V
Juneau, Alaska 99811

Dear Chairman Bussell:

I have carefully reviewed the proposed committee substitute for HB 345 that has been prepared by the Department of Law. I would appreciate it if you and the committee would consider the following comments on this proposed substitute.

First of all, I would like to indicate that I do not believe that the changes made to the legislation by the department are necessarily hostile to my original intentions in introducing this measure. In many instances the changes improve upon the provisions of the original bill and make it more workable under Alaska law. It is important to keep in mind that the provisions of the original bill were borrowed from other jurisdictions, primarily Arizona and California, and accordingly may require some changes in order to conform them to Alaska law.

Section 1 of the departments proposal would add to the presentence report the requirement that a "victim impact statement" be prepared by the probation officer. This material would then be considered by the court in making a sentencing decision. By and large, this new provision is consistent with my original intention but raises two major problems:

(a) The process set up by the department through sections 1,2, and 3 of the proposed substitute would not allow the victim, or the victim's family the right to appear personally, or through counsel, at the sentencing hearing. Thus, the sentencing hearing would continue to be a setting in which only the court the prosecutor, and the defendant would be parties to the discussions. Quite frankly, while I would prefer that the right to appear continue to be a part of the legislation, I don't know which of the procedures is a better one. I would therefore urge that the committee very carefully consider and discuss this situation before taking action.

(b) The addition of the "victim impact statement", would raise the issue of the need for a change in court rules. See section 9 of the proposed substitute. As you know, under the state constitution, a change in court rules requires a

two-thirds vote in both bodies to be effective. The problem with changes in court rules is that too often the determination of whether or not such a change will occur or is necessary is made by a legal draftsman and not the legislature. If such a determination is to be made in this case, it should be made by the committee on the basis of a careful analysis of the proposal that it has before it, and not by a draftsman. Furthermore, I believe that it is relevant to understand that I am interested in placing provisions such as those contained in the original bill in the statutes during this legislative session. To intentionally amend the measure to require that it be approved by a two-thirds majority in the legislature does not appear to contribute to this goal. Once again, I would urge the committee to carefully consider the effect of this proposed change before acting.

Section 2 of the proposed substitute deletes from section 1 of the original bill the language: "...and other factors relating to the crime, the defendant, disposition of the defendant upon sentencing,...". While I am not aware of the department's motivation in deleting this language, it would appear that the change is intended to remove terms which do not have a specific meaning under Alaska law and might render this section ambiguous. I do not oppose this change.

Section 3 of the proposed substitute conforms the new aggravating factor used in determinate sentencing to the amendments suggested above. One issue that should be considered by the committee is whether the deletion of the reference to physical harm to the victim is an appropriate change. While my first reaction is that this reference should not be dropped, the department may be able to offer some rationale for this change.

In essentially dropping section 3 of the original bill, the department also deletes the requirement that notice of the sentencing hearing be served on the victim or the victim's family. Absent a good explanation by the department for this change, I would oppose this change.

Section 4 of the proposed substitute re-defines "immediate family" to exclude in-laws and include guardians. I do not oppose this change.

The remaining sections of the proposed departmental substitute would basicly remove from the bill a victim's right to appear at and object to parole and furlough proceedings and determinations. I have discussed this proposed change with the department and am inclined to agree with them that to give a victim, or his immediate family, the right to object to these determinations may pose significant due process problems. In my view, once an individual has served a period of incarceration, circumstances have changed to an extent that the rights of the victim or the victim's family may be appropriately weighed against those of the offender. Granting to the victim, or the victim's immediate family, the right to comment on a pending release and requiring the decision-maker to consider those comments in reaching a decision seems to be an appropriate way to balance these interests. Given the possibility of due process objections, I would endorse these proposed changes.

In closing, I would like to make clear to the committee that I believe that this legislation should be given expedited consideration during this session of the legislature. While the committee should take a tough stance in those instances where the proposed departmental substitute would undermine the intentions of the legislation, it should accommodate the suggestions of the department in those instance were it does not harm the intention of the legislation. The important goal, in my mind, is to give victims of crimes and their immediate families some sort of meaningful impact on sentencing, parole and furlough decisions this year. I hope the committee will work with the department, the court system and myself in achieving this goal.

Thank you for the opportunity to comment on the proposed departmental substitute.

Sincerely,

Joe Flood

HB
352

COMMITTEE REPORT

HOUSE

(?)

FURTHER:

4/25/83

Date: 5-4-83

Mr. Speaker:

The Committee on JUDICIARY has had HB 352

"An Act relating to the definition of death; and providing for an effective date."

under consideration and reports it back as follows:

[ ] do pass [ ] do not pass

[ ] do pass with attached amendments(s)

[ ] replace with CS for HB 352 (HES) [X] same title [ ] new title

and recommends _____

[ ] AND attaches a "Letter of Intent" [ ] New Fiscal Note

[ ] Zero Fiscal Note Attached

[ ] reports it back without recommendation

[ ] referred to the _____ Committee

MEMBERS SIGNING
DO PASS

MEMBERS HAVING
OTHER RECOMMENDATIONS:

CHAIRMAN

STATE OF ALASKA
FISCAL NOTE

Revision Date , 1983

I. REQUEST

Bill/Resolution No.: HB 352
Title: Definition of death
Sponsor: Rep. Fritz by request
Requestor: House HESS

II. FISCAL DETAIL

Agency Affected: Health & Social Services
Program Category Affected: Health
BRU, Program of Subprogram(s) Affected:

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 83	FY 84	FY 85	FY 86	FY 87	FY 88
OPERATING	0	0	0	0	0	0
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 COMMODITIES						
500 EQUIPMENT						
600 LANDS & STRUCTURES						
700 GRANTS, CLAIMS, ETC.						
TOTAL OPERATING	0	0	0	0	0	0
CAPITAL	0	0	0	0	0	0
REVENUE	0	0	0	0	0	0

FUNDING: (Thousands of Dollars)

GENERAL FUND	0	0	0	0	0	0
FEDERAL FUNDS	0	0	0	0	0	0
OTHER (Specify Source)	0	0	0	0	0	0

POSITIONS:

FULL-TIME	0	0	0	0	0	0
PART-TIME	0	0	0	0	0	0
TEMPORARY	0	0	0	0	0	0

III. SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

IV. ANALYSIS: Attach a separate page for any Analysis

Prepared By: Dean Tirador Phone: 465-2113
Division: Public Health Date: 4-14-83

Approved by Commissioner: Robert Loudon Smith, Ph.D. Date: 4/18/83
Department: Health and Social Services

Distribution:
Original to Legislative Finance
Copy to Office of Management and Budget (for Legislature introduced bills)
Copy to Department (for Governor introduced bills)
Copy to Sponsor
Copy to Requestor (if different from Sponsor)

3/8/83

POSITION PAPER/Department of Health and Social Services

POSITION PAPER

HOUSE BILL NO. 352

"An Act relating to the definition of death; and providing for an effective date."

BACKGROUND

A Uniform Definition of Death has been endorsed by the National Conference of Commissioners on Uniform State Laws, the American Medical Association, the American Bar Association, the President's Commission for the Study of Ethical Problems in Medical and Biomedical and Behavioral Research as well as by the American Academy of Neurology and the American Electroencephalographic Society. The Uniform Definition is as follows:

> "An individual who has sustained either (1) irreversible cessation of circulatory and respiratory functions, or (2) irreversible cessation of all functions of the entire brain, including the brain stem, is dead. A determination of death must be made in accordance with accepted medical standards."

According to information received from the Commissioners on Uniform State Laws, 19 states have now adopted this definition, up from two states in 1981.

DISCUSSION

The definition proposed in this Bill, differs from the Uniform Definition in several respects:

1. In the Bill, "person" is substituted for "individual". The Uniform Definition purposely included the term "individual" to conform to the standard designation of a human being. The term "person" was not used because it is sometimes used by the law to include a corporation. Although that particular confusion would be unlikely to arise, the narrower term "individual" is more precise and thus avoids possibility of confusion.

2. In the Bill, the phrase "medically and legally dead" is used. The Uniform Definition prefers the phrase "is dead" since the broader provisions were considered to be misleading. The President's Commission stated, "A law setting a general standard without explicit limitations would be assumed to apply for all legal purposes; to say so in the statute, however, only raises needless questions (e.g., what does 'all legal purposes' leave out? For example, proceedings in equity?)"[1]

[1/] Defining Death. Medical, Legal and Ethical Issues in the Determination of Death. President's Commission for the Study of Ethical Problems in Medicine and Biomedical and Behavioral Research. Pg. 79. Government Printing Office, Washington, D.C., 1981.

3. The Bill sets the standard for establishing death as "ordinary standards of medical practice", while the Uniform Definition adopts "accepted medical standards". This difference is probably not important.

4. The Bill adds a provision that death may be pronounced "before artificial means of maintaining respiratory and cardiac function are terminated." The Uniform Definition avoids the necessity for such a provision by simply stating that an individual "is dead" when either "irreversible cessation of circulatory and respiratory function or irreversible cessation of all functions of the entire brain, including the brain stem" has occurred. When either of these circumstances prevails, the appropriateness of stopping medical intervention is apparent.

POSITION

While the Department considers the definition proposed in the Bill to be better than the current statutory definition, it would prefer that the Uniform Definition of Death be adopted.

Recommended by: E. S. Rabeau

E.S. Rabeau, M.D.
Director
Division of Public Health

Date: April 15, 1983

Approved by: Robert London Smith

Robert London Smith, Ph.D.
Commissioner
Department of Health and
Social Services

Date: 4/18/83

STATE OF ALASKA
FISCAL NOTE Revision Date , 1983

I. REQUEST

Bill/Resolution No.: HB 352
Title: Definition of death
Sponsor: Rep. Fritz by request
Requestor: House HESS

II. FISCAL DETAIL

Agency Affected: Health & Social Services
Program Category Affected: Health
BRU, Program of Subprogram(s) Affected:

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 83	FY 84	FY 85	FY 86	FY 87	FY 88
OPERATING	0	0	0	0	0	0
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 COMMODITIES						
500 EQUIPMENT						
600 LANDS & STRUCTURES						
700 GRANTS, CLAIMS, ETC.						
TOTAL OPERATING	0	0	0	0	0	0
CAPITAL	0	0	0	0	0	0
REVENUE	0	0	0	0	0	0

FUNDING: (Thousands of Dollars)

GENERAL FUND	0	0	0	0	0	0
FEDERAL FUNDS	0	0	0	0	0	0
OTHER (Specify Source)	0	0	0	0	0	0

POSITIONS:

FULL-TIME	0	0	0	0	0	0
PART-TIME	0	0	0	0	0	0
TEMPORARY	0	0	0	0	0	0

III. SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

IV. ANALYSIS: Attach a separate page for any Analysis

Prepared By: Dean Tirador Phone: 465-2113
Division: Public Health Date: 4-14-83

Approved by Commissioner: Robert London Smith, Ph.D. Date: 4/18/83
Department: Health and Social Services

Distribution:
Original to Legislative Finance
Copy to Office of Management and Budget (for Legislature introduced bills)
Copy to Department (for Governor introduced bills)
Copy to Sponsor
Copy to Requestor (if different from Sponsor)

3/8/83

HB
360

COMMITTEE REPORT

HOUSE

FINANCE

(7)

FURTHER:

4/15/83

Date: 5-5-83

Mr. Speaker:

The Committee on JUDICIARY has had HB 360

"An Act relating to permits issued for games of chance and contests of skill."

under consideration and reports it back as follows:

[ ] do pass [ ] do not pass

[ ] do pass with attached amendments(s)

[ ] replace with CS for [ ] same title [ ] new title

and recommends _____

[ ] AND attaches a "Letter of Intent" [ ] New Fiscal Note
[ ] Zero Fiscal Note Attached

[ ] reports it back without recommendation

[ ] referred to the _____ Committee

MEMBERS SIGNING
DO PASS

MEMBERS HAVING
OTHER RECOMMENDATIONS:

CHAIRMAN

H 60

STATE OF ALASKA
FISCAL NOTE

Revision Date , 1983

I. REQUEST

Bill/Resolution No.: HB 360
Title: "Act relating to permits issued...."
Sponsor: Rep. Flood
Requestor: House Judiciary

II. FISCAL DETAIL

Agency Affected: Public Safety
Program Category Affected: Crime & ID
BRU, Program of Subprogram(s) Affected: Alaska State Troopers

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 83	FY 84	FY 85	FY 86	FY 87	FY 88
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 COMMODITIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC						
TOTAL OPERATING		-0-	-0-	-0-	-0-	-0-
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER (Specify Source)						

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

III. SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

IV. ANALYSIS: Attach a separate page for any Analysis No fiscal impact anticipated

Prepared By: Paul A. Conger Phone: 465-4338
Division: Administrative Services Date: 5-4-83

Approved by Commissioner: [signature] Date: 5/4/83
Department: Public Safety

Distribution:
Original to Legislative Finance
Copy to Office of Management and Budget (for Legislature introduced bills)
Copy to Department (for Governor introduced bills)
Copy to Sponsor
Copy to Requestor (if different from Sponsor)

3/8/83



STATE OF ALASKA
FISCAL NOTE

Revision Date , 1983

I. REQUEST
Bill/Resolution No: HB 360
Title: Act relating to permits issued for games of chance and contests of skill
Sponsor: Judiciary & Finance
Requestor: Representative Flood

II. FISCAL DETAIL
Agency Affected: Department of Revenue

Program Category Affected: Rev. Operations
BRU, Program of Subprogram(s) Affected: Public Svcs. & Enforcement

EXPENDITURES/REVENUES: (Thousands of Dollars)

		FY 83	FY 84	FY 85	FY 86	FY 87	FY 88
	OPERATING						
100	PERSONAL SERVICES		43.0	46.0	49.0	56.0	60.0
200	TRAVEL		7.5	8.0	8.5	9.0	9.5
300	CONTRACTUAL	-	-	-	-	-	-
400	COMMODITIES		4.5	5.0	5.5	6.0	6.5
500	EQUIPMENT		-	-	-	-	-
600	LANDS & STRUCTURES	-	-	-	-	-	-
700	GRANTS, CLAIMS, ETC.	-	-	-	-	-	-
	TOTAL OPERATING		55.0	59.0	63.0	71.0	76.0
	CAPITAL	-	-	-	-	-	-
	REVENUE	-	-	-	-	-	-

FUNDING: (Thousands of Dollars)

	GENERAL FUND		55.0	59.0	63.0	71.0	76.0
	FEDERAL FUNDS	-	-	-	-	-	-
	OTHER (Specify Source)	-	-	-	-	-	-
		-	-	-	-	-	-

POSITIONS:

	FULL-TIME		1.5	1.5	1.5	1.5	1.5
	PART-TIME	-	-	-	-	-	-
	TEMPORARY	-	-	-	-	-	-
			1.5	1.5	1.5	1.5	1.5

III. SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

IV. ANALYSIS: Attach a separate page for any Analysis.

Prepared By: Ralph Kimlinger, Acting Director
Division: Public Services Division
Phone: 465-2392
Date: 4-22-83

Approved by Commissioner: Ralph O Hoffs
Department: Revenue
Date: 4/26/83

Distribution:
Original to Legislative Finance
Copy to Office of Management and Budget (for Legislature introduced bills)
Copy to Department (for Governor introduced bills)
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ANALYSIS

HB 360

1. Passage of HB 360 will require a full time, seasonal, Tax Examiner to handle a minimum of 150 applications. Each application and attendant Financial Statement requires 1.5 to 2.0 hours of processing and in addition clerical time of approximately one hour per application is required.

   To insure equitable compliance wth the law, a full time investigator will be needed and audit and investigation will require a minimum of eight field trips per year.

   Supplies and commodities include new forms, mail outs and miscellaneous clerical supplies. All instruction and forms will require immediate revision and reprint.

   New office equiptment will be required for both requested positions.

STATE OF ALASKA
FISCAL NOTE

Revision Date 5/6, 1983

I. REQUEST

Bill/Resolution No: CSHB 360(dud)
Title: Games of Chance and Skill
Sponsor: Flood
Requestor: House Judiciary

II. FISCAL DETAIL

Agency Affected: Revenue
Program Category Affected: Rev. Operations
BRU, Program of Subprogram(s) Affected: Public Svcs. & Enforcement

EXPENDITURES/REVENUES: (Thousands of Dollars)

		FY 83	FY 84	FY 85	FY 86	FY 87	FY 88
	OPERATING						
100	PERSONAL SERVICES		29.5	31.5	34.0	36.5	39.5
200	TRAVEL	-	4.5	4.8	5.0	5.5	6.0
300	CONTRACTUAL	-	-	-	-	-	-
400	COMMODITIES	-	4.5	5.0	5.5	6.0	6.5
500	EQUIPMENT	-	-	-	-	-	-
600	LANDS & STRUCTURES	-	-	-	-	-	-
700	GRANTS, CLAIMS, ETC.	-	-	-	-	-	-
	TOTAL OPERATING	-	38.5	41.3	44.5	48.0	52.0
	CAPITAL	-	-	-	-	-	-
	REVENUE	-	-	-	-	-	-

FUNDING: (Thousands of Dollars)

GENERAL FUND		-	38.5	41.3	44.5	48.0	52.0
FEDERAL FUNDS		-	-	-	-	-	-
OTHER (Specify Source)		-	-	-	-	-	-
-		-	-	-	-	-	

POSITIONS:

FULL-TIME		one	one	one	one	one	one
PART-TIME	-	-	-	-	-	-	-
TEMPORARY	-	-	-	-	-	-	-
	-	-	-	-	-	-	-

III. SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

IV. ANALYSIS: Attach a separate page for any Analysis.

Prepared By: Marcy Rehfeld
Phone: 465-2300
Division: Office of the Commissioner
Date: 5/6/83

Approved by Commissioner: Robert D. Heath
Date: 5/6/83
Department: Revenue

Distribution:
Original to Legislative Finance
Copy to Office of Management and Budget (for Legislature introduced bills)
Copy to Department (for Governor introduced bills)
Copy to Sponsor
Copy to Requestor (if different from Sponsor)

IV. ANALYSIS:

To insure equitable compliance with the law, a full-time investigator will be needed and audit and investigation will require a minimum of eight field trips per year.

Supplies and commodities include new forms, mail outs and miscellaneous clerical supplies. All instructions and forms will require immediate revision and reprint.

MSG 83-00020134 PRTY 1 05/24/83 13:33:36 ORIG: LA01 IN= 0008 OUT= 0136
FROM: SHIRLEY INC LIO TO: POMS JUNEAU INFO
TARGET: LJHL SUBJ: POM

TO: ALL MEMBERS, ALASKA LEGISLATURE

FROM: WEYMOUTH BOWLES, 2000 BUNKER STREET, ANCHORAGE 99503
H 277-1117 W 277-8615

OR

I URGE YOUR SUPPORT OF HOUSE BILL 360 (PERMITS/GAMES OF CHANCE AND CONTESTS OF SKILL) AND SENATE BILL 265 CONCERNING GAMES OF CHANCE AND SKILL AS APPLIED TO QUALIFIED ORGANIZATIONS.

THANK YOU.

****

MSG 83-00012653 PRTY 1 04/27/83 13:45:45 ORIG: LA01 IN= 0015 OUT= 0099
FROM: JUDY ANC LIO TO: POMS JUNEAU INFO
TARGET: LJHL SUBJ: POMS

Judiciary Referral

TO: SENATORS STURGULEWSKI AND RODEY
REPRESENTATIVES BUSSELL AND LINDAUER

FROM: BRUCE PATTERSON, 934 W. 77TH, ANCHORAGE 99502 H 349-4249

I SUPPORT HB 360 AND SB 265 WITH THE EXCEPTION THAT THE GRANDFATHER CLAUSE SHOULD BE DELETED.

****

MSG 83-00013564 PRTY 1 04/29/83 18:01:39 ORIG: LA02 IN= 0017 OUT= 0162
FROM: NINA, ANC LIO TO: JNU LIO
TARGET: LJHL SUBJ: POM

Judiciary Referral

TO: ALL MEMBERS OF THE LEGISLATURE

FROM: WILL ELDER 8571 PIONEER DR. ANC., AK. 99504 HM. 337-5887 WK. 264-4878

RE: HB360 & SB265

I SUPPORT THIS LEGISLATION TO MAKE CASINO NIGHTS LEGAL FOR NON-PROFITS, BUT THAT THE "GRANDFATHER CLAUSE" BE DELETED.

MSG 83-00013487 PRTY 1 04/29/83 16:32:15 ORIG: LA02 IN= 0011 OUT= 0124
FROM: NINA, ANC LIO TO: JNU LIO
TARGET: LJHL SUBJ: POM

TO: ALL LEGISLATORS

FROM: WILL HEPBURN
341 FIREGVED
ANCHORAGE 99504 274-1991 (H/W)

YOU ARE CONSIDERING A BILL TO LEGALIZE "MONTE CARLO" NIGHTS. GREAT! HOWEVER, THE GRANDFATHER RESTRICTIONS WILL PUT MANY CHARITABLE "MONTE CARLO" NIGHTS OUT OF BUSINESS. THAT'S BAD. PLEASE SUPPORT CHARITABLE "MONTE CARLO" NIGHTS, NOT JUST OLD ONES. SEE MY LETTER TO THE EDITOR IN 5/3 DAILY NEWS.

4/29/83 Times

Monte-Carlo nights

Dear Editor:

The other nigth I read about someone in Juneau deciding that the Fur Rendexvous Monte-Carlo night was illegal because cards, tables and other gambling accessories are used at them.

I worked with my Jaycee chapter (Gold Rush Jaycees) at the Iditarod Trail Committee's Monte-Carlo Night in Wasilla. Everyone had fun, the public who came to play as well as the people who helped us pull it off. Prizes, donated by local businesses, were auctioned off during that night (bought with the play money won at the tables). The real money taken in that night went to help keep the Iditarod and the Jaycees in the business of helping others.

This is all well known. What I would like to know is why Monte-Carlo nights are in question. I am sitting here watching channel 11, the show is "world of poker." On this show I saw an interview with one of the players (a prominent furrier from Anchorage), who was saying how thrilling it all was. The winner has just won $520,000 (real money).

Why is it that charities and long established fund raiser programs are illegal?

Wake up legislators and think hard about this one. Who's ganibling?

Raymond D. Hitchcock
4207 Cope St.

Important things

HB

362

5/13

COMMITTEE REPORT

HOUSE

JUDICIARY

FURTHER: FINANCE

(7)

4/15/83

Date: 5/12/83

Mr. Speaker:

The Committee on STATE AFFAIRS has had HB 362

"An Act relating to standards of conduct of legislators and legislative employees and establishing a Legislative Ethics Commission; and providing for an effective date."

under consideration and reports it back as follows:

[ ] do pass [ ] do not pass

[ ] do pass with attached amendments(s)

[X] replace with CS for HB 362 (SA) [X] same title [ ] new title

and recommends

[ ] AND attaches a "Letter of Intent" [X] ~~New~~ Fiscal Note Sep 60 [ ] Zero Fiscal Note Attached

[X] reports it back ~~without recommendation~~ as follows:

[ ] referred to the Committee

MEMBERS SIGNING DO PASS

Mr. Mr. Miller

Ronald J. Larson

Anthony Vaska

MEMBERS HAVING OTHER RECOMMENDATIONS:

Milt Abbood No Rec

Walt Furnace Do Not Pass

John J Cardinal No Rec

Rep Milt Abbood

CHAIRMAN

H 60

THE LEGISLATURE OF THE STATE OF ALASKA
THIRTEENTH LEGISLATURE

FISCAL NOTE

I. REQUEST
Bill/Resolution No. HB No. 362 (Page 1 of 2)
Title An act relating to standards of conduct of legislators and legislative employees and establishing a Legislative Ethics Commission
Requested by: House State Affairs Date: April 19, 1983

II. FISCAL DETAIL
Agency Affected Legislative Affairs Agency
Program Category Affected General Government
BRU, Program, Or Subprogram(s) Affected Legislative Affairs Agency
(Note: If more than one budget component is affected, separate line-item amounts and funding for each component in the analysis section.)

EXPENDITURES (Thousands of Dollars)

	FY 83	FY 84	FY 85	FY 86	FY 87	FY 88
100 PERSONAL SERVICES		-0-				
200 TRAVEL		44.1				
300 CONTRACTUAL		50.0				
400 COMMODITIES		-0-				
500 EQUIPMENT		-0-				
600 LAND & STRUCTURES		-0-				
700 GRANTS,CLAIMS,ETC.		-0-				
TOTAL		94.1				

FUNDING. (Thousands of Dollars)

GENERAL FUND		94.1				
FEDERAL FUNDS		-0-				
OTHER (Specify Source)		-0-				

POSITIONS None

FULL TIME						
PART TIME						
TEMPORARY						

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

SEE ATTACHMENT

IV. DATE April 20, 1983 PREPARED BY Wally Harrison, Director, Admin. Svcs.
AGENCY Legislative Affairs Agency
PHONE 465-3850

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

33-001 (Rev 12/82)

III ANALYSIS:

There are no guidelines in the bill for amount or level of staff or for amounts of travel and per diem. It is necessary, therefore, to establish a set of assumptions on which to build a fiscal note.
Using input from various legislators who worked on the bill, I have made the following assumptions:

Assumption 1: There will be no permanent staff at this time. Personal services and professional services will be contracted as needed; therefore, no office space or equipment will be needed. The commission will determine how the central files are to be kept.

Personal Services Contracts	20.0
Professional Services Contracts	20.0
Other Contractual Services	10.0
	50.0

Assumption 2: To establish a good average for travel costs, I have hypothetically assumed that the Commission is to be made up of members living in Nome, Bethel, Fairbanks, Anchorage, Kodiak, Juneau, Ketchikan, and will travel coach fare: 3 roundtrips to Juneau; 4 roundtrips to Anchorage; and 5 roundtrips to Fairbanks for meetings. There will be no more than an average of three days per month of travel and per diem for meetings. There be no more than an average of one meeting per month.

Per Diem ----------	$18,720
Travel ----------	$25,385
TOTAL Trvl/PD	$44,105

Assumption 3: Additional costs, if any, for reports or copies made by other agencies for the Commission will be absorbed in that agency's operation budget.

Assumption 4: The Legislative Affairs Agency print shop can print the semi-annual summaries of decisions and advisory opinions.

Conflict suggested with oil contracts

By HAL SPENCER
Associated Press Writer

Rep. John Cowdery, R-Anchorage, today suggested Gov. Bill Sheffield's support of a proposed long-term royalty oil contract with Tesoro Alaska Co. could be a conflict of interest.

Cowdery, in a letter to Sheffield that he also distributed to reporters, asked the governor to disclose whether he had received campaign contributions from Tesoro or Charter Oil Co., a firm with a 30 percent stake in Tesoro.

Al Parrish, head of the Sheffield-McAlpine campaign, said today that Tesoro in January gave the campaign $2,000. Parrish said he has checked and rechecked the books and found no contributions from Charter. But he did not rule out the possibility there was a contribution, saying the campaign had received from 800 to 900 contributions since January.

Cowdery, an active critic of the state's proposal to sell a total of 54,000 barrels a day of Prudhoe Bay royalty oil to Tesoro and Chevron U.S.A., said he felt the question of a conflict of interest should be discussed because the governor is pressing hard for the contracts.

"The Legislature must know whether the Sheffield-McAlpine campaign directly or indirectly benefited from Tesoro or Charter so that an evaluation can be made as to whether there is any appearance of a conflict of interest in the administration'a efforts to approve the long-term contracts," he said.

Sheffield was in a meeting and could be not be reached. But press secretary Pete Spivey said he would respond later.

Cowdery later said "I understand" that the governor raised money from Tesoro and Charter during his controversial trip outside Alaska in January.

A special prosecutor appointed by the governor, Seattle lawyer Fredrick Tausend, is investigating that trip, which involved a series of oil company- sponsored fund-raisers, to determine if it was a conflict of interest under state law.

"While I realize the investigation into your fund raising trip is on-going and certain material is not available for public scrutiny, it is necessary to know if you have received any contributions toward retiring your campaign debt from either Tesoro or Charter affiliated companies since Jan. 1, 1983.

Cowdery said reports from the Alaska Public Offices Commission show only contributions up to Dec. 31. Theda S. Pittman, director of the APOC, said Sheffield needn't file a report of contributions received since Jan. 1 until year's end.

Legislator hired son's firm for sound system at seminar

The Associated Press

JUNEAU — Fairbanks Rep. Bob Bettisworth contracted with a company owned by his son to provide the sound system for a legislative seminar April 23 in Anchorage.

The arrangement, involving less than $500, apparently violated no state laws nor legislative rules, although it may have run afoul of a new legislative ethics codes under consideration by lawmakers, according to a report in the Fairbanks Daily News-Miner.

The workshop, on the export of Alaska oil, was organized by the Legislative Budget and Audit Committee, a powerful oversight panel chaired by Bettisworth.

The Republican sponsored the seminar using state money in hopes of educating both lawmakers and Alaska businessmen to the advantages of exporting state oil.

At Bettisworth's choosing, the Anchorage firm Alaska Sound Labs provided the sound system for the seminar. The system included microphones for participants and the audience as well as a sophisticated speaker network and double tape recorders.

The firm is owned by Bettisworth's son Kenneth.

Not responsible

I would just like to say that Fairbanks has more than its share of eccentrics, proselytizers, Libertarians, kooks, criminals, radicals, reactionaries and random digits, but thank the Lord and all that is merciful we are not responsible for Ramona.

— *Scott A. Sterling*
Fairbanks

HB
368

STATE OF ALASKA
FISCAL NOTE | Revision Date , 1983

I. REQUEST
Bill/Resolution No.: HB No. 368
Title: Act Relating to Board of Parole
Sponsor: Furnace, Pestinger & Liska
Requestor: Furnace, Pestinger & Liska

II. FISCAL DETAIL
Agency Affected: Health & Social Services
Program Category Affected: Parole Board
BRU, Program of Subprogram(s) Affected: Parole Board; Corrections

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 83	FY 84	FY 85	FY 86	FY 87	FY 88
100 PERSONAL SERVICES	-0-	-0-	-0-	-0-	-0-	-0-
200 TRAVEL	-0-	55.0	57.2	59.5	61.9	64.3
300 CONTRACTUAL	-0-	-0-	-0-	-0-	-0-	-0-
400 COMMODITIES	-0-	-0-	-0-	-0-	-0-	-0-
500 EQUIPMENT	-0-	-0-	-0-	-0-	-0-	-0-
600 LAND & STRUCTURES	-0-	-0-	-0-	-0-	-0-	-0-
700 GRANTS, CLAIMS, ETC	-0-	-0-	-0-	-0-	-0-	-0-
800 COMPENSATION-MEMBERS	-0-	19.1	19.9	20.7	21.5	22.3
TOTAL OPERATING	-0-	74.1	77.1	80.2	83.4	86.6
CAPITAL	-0-	-0-	-0-	-0-	-0-	-0-
REVENUE	-0-	-0-	-0-	-0-	-0-	-0-

FUNDING: (Thousands of Dollars)

GENERAL FUND		74.1	77.1	80.2	83.4	86.6
FEDERAL FUNDS		-0-	-0-	-0-	-0-	-0-
OTHER (Specify Source)		-0-	-0-	-0-	-0-	-0-

POSITIONS:

FULL-TIME	-0-	-0-	-0-	-0-	-0-	-0-
PART-TIME	-0-	-0-	-0-	-0-	-0-	-0-
TEMPORARY	-0-	-0-	-0-	-0-	-0-	-0-

III. SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

IV. ANALYSIS: Attach a separate page for any Analysis

Prepared By: Samuel H. Trivette Phone: 465-3384
Division: Parole Board Date: April 26, 1983

Approved by Commissioner: Kolot Fowler Smith, M.D. Date: 4/28/83
Department: Health & Social Services

Distribution:
Original to Legislative Finance
Copy to Office of Management and Budget (for Legislature introduced bills)
Copy to Department (for Governor introduced bills)
Copy to Sponsor
Copy to Requestor (if different from Sponsor)

3/8/83

FISCAL NOTE
HB NO. 368
ANALYSIS

The costs outlined on the previous page covers money necessary to have the two Board members attend the regularly - scheduled parole hearings as well as the additional hearings anticipated pursuant to the out-of-court settlement in the Cleary lawsuit. Although having two more members would likely slow down the hearing process, costing additional money for more days of hearings, this figure is difficult to estimate.

Requiring a minimum of 5 votes to grant a parole will almost certainly result in fewer prisoners being paroled. This would put a major stress on the already extremely overcrowed Alaska correctional facilities, which are now under court order to reduce prison populations. If corrections is required to build any new beds, the costs are likely to escalate into the millions of dollars.

POSITION PAPER/Department of Health & Social Services

POSITION PAPER
HOUSE BILL NO.368

The Department of Health and Social Services recommends H.B. No. 368 remain in committee until the next session of the Legislature when the Legislature and Administration can work together to draft a comprehensive bill revising the Alaska parole statutes.

The issues raised in this bill were discussed extensively by various committees of the Alaska House and Alaska Senate in 1979-82 when the Parole Board was going through the "sunset review" process. Similar language was eliminated from the bill passed by both the House and Senate in 1982. These issues can be best resolved in the context of an overall revision of the parole administration act, which is contemplated in 1984.

Recommended by Samuel H. Trivette Date April 27, 1983

Samuel H. Trivette
Executive Director
Parole Board

Approved by Robert London Smith Date 4/28/83

Robert London Smith, Ph.D.
Commissioner
Department of Health
and Social Services

STATE OF ALASKA
FISCAL NOTE

Revision Date , 1983

I. REQUEST

Bill/Resolution No.: HB 368
Title: State Board of Parole
Sponsor: Representative Furnace
Requestor: House Judiciary Committee

II. FISCAL DETAIL

Agency Affected: Department of Law
Program Category Affected: Adm. of Justice
BRU, Program of Subprogram(s) Affected: Prosecution

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 83	FY 84	FY 85	FY 86	FY 87	FY 88
OPERATING						
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 COMMODITIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND	-0-	-0-	-0-	-0-	-0-	-0-
FEDERAL FUNDS						
OTHER (Specify Source)						

POSITIONS:

FULL-TIME	-0-	-0-	-0-	-0-	-0-	-0-
PART-TIME						
TEMPORARY						

III. SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

N/A

IV. ANALYSIS: Attach a separate page for any Analysis

Prepared By: Richard I. Pegues (Richard I. Pegues) Phone: 465-3672
Division: Administrative Services Division Date: April 25, 1983
Approved by Commissioner: Norman C. Gorsuch, Attorney General (Richard I. Pegues /FOR) Date: April 25, 1983
Department: Department of Law

Distribution:
Original to Legislative Finance
Copy to Office of Management and Budget (for Legislature introduced bills)
Copy to Department (for Governor introduced bills)
Copy to Sponsor
Copy to Requestor (if different from Sponsor)

3/8/

HB 368
Fiscal Note
Analysis

This bill provides for the addition of two members to the Board of Parole. Since the Board of Parole is funded separate from the Department of Law, there will be no fiscal impact to the Department of Law.

HB
374

STATE OF ALASKA
FISCAL NOTE

Revision Date , 1983

I. REQUEST

Bill/Resolution No.: SS for HB #374
Title: Act relating to estab. of max pris fac
Sponsor: Schultz
Requestor: House HESS

II. FISCAL DETAIL

Agency Affected: Health & Social Services
Program Category Affected: Adm. of Just.
BRU; Program of Subprogram(s) Affected: Adult Confinement

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 83	FY 84	FY 85	FY 86	FY 87	FY 88
OPERATING						
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 COMMODITIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-
CAPITAL	-0-	-0-	-0-	-0-	-0-	-0-
REVENUE	-0-	-0-	-0-	-0-	-0-	-0-

FUNDING: (Thousands of Dollars)

GENERAL FUND	-0-	-0-	-0-	-0-	-0-	-0-
FEDERAL FUNDS						
OTHER (Specify Source)						

POSITIONS:

FULL-TIME	-0-	-0-	-0-	-0-	-0-	-0-
PART-TIME						
TEMPORARY						

III. SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

Not applicable.

IV. ANALYSIS: Attach a separate page for any Analysis

Prepared By: Roger C. Lange Phone: 465-3376
Division: Adult Corrections Date: April 28, 1983

Approved by Commissioner: Katie Louise Smith, M.D. Date: 4/29/83
Department Health & Social Services

Distribution:
Original to Legislative Finance
Copy to Office of Management and Budget (for Legislature introduced bills)
Copy to Department (for Governor introduced bills)
Copy to Sponsor
Copy to Requestor (if different from Sponsor)

3/8/83

COMMITTEE REPORT

HOUSE

5/19

(7)

FURTHER: JUDICIARY

5/10/83

Date: 5/18/83

Mr. Speaker:

The Committee on STATE AFFAIRS has had SSHB 374

"An Act relating to the establishment ~~to~~ of maximum security prison facilities at Anderson and Palmer/Sutton."

under consideration and reports it back as follows:

[ ] do pass [ ] do not pass

[ ] do pass with attached amendments(s)

[ ] replace with CS for _____ [ ] same title [ ] new title

and recommends _____

[ ] AND attaches a "Letter of Intent" [ ] ~~New~~ Fiscal Note

[X] reports it back without recommendation [X] ~~Zero Fiscal Note~~ Attached

[ ] referred to the _____ Committee

MEMBERS SIGNING DO PASS

Walt Furnace

MEMBERS HAVING OTHER RECOMMENDATIONS:

No Rec

No Rec

No Rec.

Rep Mike Allard
CHAIRMAN

H 60

5/10

COMMITTEE REPORT

HOUSE

STATE AFFAIRS

FURTHER: JUDICIARY

(7)

(HESS and Judiciary added 4/26/83; Finance removed 4/26/83)

4/26/83 Date: 5/6/83

Mr. Speaker:

The Committee on HEALTH, EDUCATION AND SOCIAL SERVICES has had SSHB 374

"An Act relating to the establishment of maximum security prison facilities at Anderson and Palmer/Sutton."

under consideration and reports it back as follows:

[ ] do pass [ ] do not pass

[ ] do pass with attached amendments(s)

[ ] replace with CS for SSHB 374 (Hess) [X] same title [ ] new title

and recommends [illegible] recommendations.

[ ] AND attaches a "Letter of Intent" [ ] New Fiscal Note [✓] Zero Fiscal Note Attached

[ ] reports it back without recommendation

[ ] referred to the _____ Committee

MEMBERS SIGNING DO PASS	MEMBERS HAVING OTHER RECOMMENDATIONS:
~~[illegible]~~	Mae Fischer No Rec
M.W. Miller Do Pass	[illegible]
	[illegible] No Rec.
	Nick Kopman No Rec
	Peter Jaer Do not pass

CO- Mae Fischer
CHAIRMAN

CO- [illegible]

H 60

5 communities vie for new prison

3-11-83

By KIRK McALLISTER
Empire Staff Reporter

It's coming down to the wire.

Palmer and Seward are fighting for the lead, Haines and Kenai are mired with internal problems and Cordova is trailing the field as a late entry.

It's not 'Alaska Handicap,' but rather the race to see what Alaska community lands the state's proposed $45 million maximum security prison.

A decision on where to locate the prison will probably be made in the next three weeks and the five towns in the running are lobbying hard to have the facility located in their respective communities.

The 400-bed maximum security prison would provide an economic boost wherever it is located as it would require a staff of 125, with about three-quarters of that number hired locally, said Roger Endell, director of the Division of Corrections.

It's a valuable economic carrot being dangled before Alaska communities, many of which are suffering from high unemployment and economic stagnation.

"A few years ago we couldn't give away a prison," Endell said. "But now, with a depressed economy, more communities see a correctional facility as a stable base for their economy."

Endell has been traveling the state in recent weeks talking to community leaders interested in the prison and trying to gauge public opinion in each town.

Currently, he is awaiting the results of technical evaluations of each site by the Department of Transportation and Public Facilities. When the evaluations are completed, Endell will combine that information with what he learned in visiting the towns to produce a "prioritized list" to Gov. Bill Sheffield.

While he wouldn't say if there were any official frontrunners in the prison race, Endell did give a clue: "Seward and Palmer appear to have the act together and are presenting a united front."

Criteria to be used in making a decision on the prison site includes the amount of land available for the correctional facility, water and sewer service, transportation, access to court facilities, public opinion, the stance of city officials and business leaders and the economic impact on the community.

Palmer and Seward apparently have strong public support for the proposed prison while Haines and Kenai are divided on the issue. Cordova is also interested but is only in the preliminary stages of investigating a prison proposal.

Haines Mayor Jon Halliwill told the Empire despite the divided public opinion on the issue, city officials will continue to press for locating the prison in that Southeast community about 90 miles north of Juneau. A poll released in Haines this week showed the community evenly divided on the issue.

Haines has plenty of land available for the jail and could easily provide for the added population it would bring, Halliwill said. In addition, Haines has good marine

Continued on Page 2

Prison...

Continued from Page 1

and air transportation and relatively easy access to the Juneau court system, he said.

Kenai public opinion is also divided on the prison issue. The proposal in that area calls for the prison to be located at the old Wildwood Air Force Base northwest of the city. A three-story concrete building there would be remodeled to house the prison.

While the city council and chambers of commerce of Kenai favor the project, opinion was about evenly split at a public hearing on the issue March 3, said city manager Bill Brighton.

In Palmer, Gary Thurlow, manager of the Matanuska-Susitna Borough, said there was "overwhelming support" for the prison although opinion was divided in the community of Sutton, the area nearest one proposed prison site, about seven miles northeast of Palmer. A site at the old Goose Bay missile facility is also being considered.

"We're lobbying for it," Thurlow said. "A state facility like this would make a good contribution to the community and the prison should be close to the area where a majority of the criminals come from. After all, half of all Alaska prisoners come from Anchorage."

Thurlow emphasized that his community was willing to provide work programs for prisoners and that Palmer afforded easy access to court facilities in Anchorage.

"Prisons are a clean industry and a renewable resource," Thurlow quipped. "It's the type of industry we like to attract to the area."

In Seward, there is not only a great deal of support for the proposed prison but the city is willing to assist the state in locating the facility there, said city manager Ron Garzini.

"I think we're the superior site," Garzini said. "The city might be willing to help build the facility and lease it to the state — there's plenty of land."

The Alaska Vocational Technical Center is another factor favoring Seward as training and rehabilitation programs of the prison could be incorporated with the school, Garzini said.

Cordova has also expressed interest in having the prison located in their community. Perry Lovett, city manager, and leaders of the two Native corporations in Cordova were in Juneau Thursday seeking more information about the prison.

Cordova Mayor James Poor told the Empire his community is looking for more job opportunities for local young people and a year-around industry that is compatible with fishing, Cordova's main industry.

Following Endell's decision on the prison site, construction of the facility is expected to take two or three years provided funding is approved by the legislature.

HB 217
4R

Haines residents split on wanting new prison

3-11-83

By KIRK McALLISTER
Empire Staff Reporter

Just 90 miles north of Juneau in the Lynn Canal community of Haines, the prison proposal has become the most controversial issue dividing the town since the fight over the fate of the bald eagles of the Chilkat Valley.

Haines city officials have pushed for the the location of the $45-million maximum security prison to boost the town's economy. The Schnabel Lumber Co. recently closed and is up for sale and there is concern by some in the community that more jobs are needed.

The City of Haines has hired lobbyist Wally Kubley to help convince the state that Haines is the best site for the correctional facility and a task force was set up to provide local support for the project.

However, many residents remain unconvinced that locating a state prison in Haines is in the best interests of the community. Some residents worry that the prison would bring increased crime and unchecked growth and adversely effect the town.

A group called Citizens Concerned for the Future of Haines has been formed to oppose the prison.

Public meetings on the issue have been well-attended and often heated,

Continued on Page 2

Haines...

Continued from Page 1

according to the Lynn Canal News.

A recent public opinion poll conducted by radio station KHNS in Haines showed 240 residents against the prison, 234 in favor and 12 undecided. About 28 percent of the Haines area population voted.

Haines Mayor Jon Halliwill told the Empire that despite the divided public opinion, the City of Haines would continue to press for locating the prison there.

"The poll was not very representative of public opinion since it was only 28 percent of the voters," Halliwill said. "In public meetings held by the city there was overwhelming support for it. Over 400 people have signed a petition in support of the prison. Haines is a good site for the facility and we're still supporting it very enthusiastically."

Patricia Blank, a spokesman for the anti-prison group, told the Empire there was "definitely not overwhelming support" for locating the prison in Haines and that opinions were divided at the public meetings.

"The main concern of our group is that we feel the governor should show effective leadership and assess the facts presented by his task force on corrections that recommended that the maximum security prison be located in Southcentral Alaska," Blank said.

"The governor should look at the recommendation of the task force experts and follow it," said Blank. "Anything else is a waste of time and the taxpayers money."

Police

Lawyer attacks state's prison-building plan to relieve overcrowding

By TOM KIZZIA 3-6-83
Daily News reporter

A state plan to build new prisons to relieve overcrowding among inmates contains less than meets the eye, according to the lawyer whose class-action suit against jail conditions prompted the plan.

"The report was lacking in particulars and substance," said Timothy Stearns, who added he would ask Superior Court Judge Douglas Serdahely to request another plan that is "more comprehensive and more fully addesses the issues."

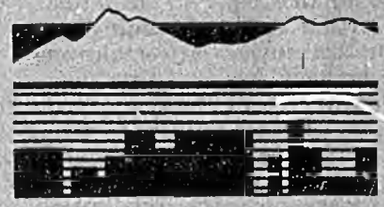
The overcrowding plan was submitted Wednesday by Director of Corrections Roger Endell as part of a settlement of the class-action suit. In it, the state said it would attempt to bring on line three new medium-security prisons by the fall of 1984.

Endell said the plan could eliminate overcrowding by January, at which point the state projects an inmate population of between 1,700 and 1,800.

Adding up the new beds proposed in the plan shows the state being at least 243 beds shy of the demand by that date, Stearns said.

Stearns also complained the plan did not adequately discuss plans to increase furlough programs, to develop community service and community placement alternatives, and to revise procedures by which inmates build up good time toward their release dates.

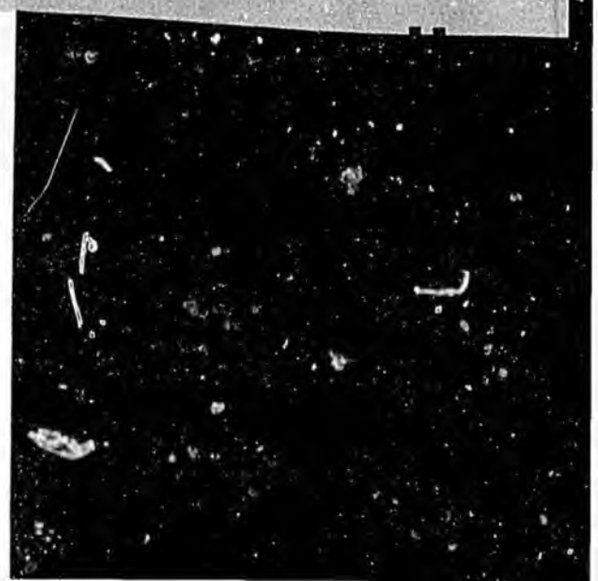
The plan promised to improve management techniques within the division, but did not say how better techniques



would address overcrowding, Stearns said.

The state has proposed to build prisons quickly at federal surplus facilities at Wildwood near Kenai, at Goose Bay on the north side of Knik Arm, and at Chiniak near Kodiak.

Longer range plans call for a 250-bed classification facility in Anchorage, probably near the municipal sewage treatment plant at Point Woronzof, and a maximum-security prison for 300 to 400 inmates, either at Palmer, Seward, Kenai or Haines.



Prison outline for Wildwood released

The "Functional Program Statement; Wildwood Correctional Center," released Thursday by the state's Division of Corrections, is preliminary and basic, and defines the possible operation of the proposed prison only in outline.

That is essentially what Roger Endell, director of corrections, Thursday told Kenai area citizens they would find when any of them read the document.

Endell presented the document, dated March 3, at the public hearing he held on that date at Kenai City Hall. About 125 people attended the hearing. Several people protested the lack of prior public access to such a report.

Endell answered that it was being worked on earlier and had only just been completed. He added that its main function was to help architects and engineers with preliminary planning, but the public was welcome to review it.

The document is 78 pages long. Endell provided copies to the Peninsula Borough Assembly and the news media. Kenai City Manager Bill Brighton, who chaired the hearing, afterward said he planned to make an extra copy to have on file at City Hall.

The first 25 pages cover the main public concerns. The second section is a short and technical fire marshal's report; the third is a long and technical listing of established correctional standards; the fourth and last is a very technical collection of graphs and charts detailing space management standards and functions.

The following specifics are reported in the first 25 pages:

- The Wildwood site, if chosen and converted for a medium-security prison, would be used for "220 custody beds" in Building 10.
- The site is 10 acres on the former Wildwood Air Force Station, and a prison might include Buildings 7 and 8, "the commissary and maintenance shops."
- Up to 50 prisoner spaces would be segregated from the prison proper and maintained for "pre-trial" inmates, persons awaiting trial.
- "The main entry point to the institution will be what is now known as the fire station." This would afford indoor space for the loading and unloading of prisoners. Visitors would not be allowed in the building while

See WILDWOOD, page 3

...Wildwood prison plan

Continued from Page 1

prisoners were being loaded.

• Medical services would be provided "on a contract basis" and prisoners would be taken outside "under staff escort" when necessary for surgery.

• "Prisoners will spend from 8 to 23 hours per day in their sleeping areas depending upon status... Because of the amounts of time that prisoners may spend in their rooms, the rooms should be as pleasant as possible, while being durable and difficul breach." There would be "two inmates per room or cell."

• Rooms would each have locks with electrical override controls.

• Suspects awaiting trial and sentenced prisoners would be absolutely segregated, and the pre-trial inmates would be more closely supervised than sentenced prisoners.

• Visitations with family and friends would be allowed twice a week without physical separation in the visiting room and with personal contact allowed under "open visual supervision." Physical contact might not be allowed in some cases.

• "Unsupervised work release programs will not operate at the Wildwood facility." Work programs within the prison are planned, however, and there is the possibility of supervised work crews being established for local government agencies for "services such as brushing trails, cleaning streams, maintaining roads, and other similar services."

The program statement makes no mention of maximum-security prisoners being housed at Wildwood, except as a reader might infer that some pre-trial inmates might rate maximum-security status.

There are a couple of references to maximum-security prisoners in the context of excerpts from a correctional task force report dealing with that report's determined need for maximum-security prisons in the "Matanuska-Susitna or Kenai Borough site, or both," but Endell said that recommendation has nothing to do with Wildwood.

The program statement also makes no reference to conjugal visits. Endell said at the hearing Thursday that the state has no provision for conjugal visits and he does not know whether it will provide for them in the future.

The program statement makes no attempt to define the terms "medium," "maximum" or "minimum" security.

There is also no reference to leasing costs or any possible "lease-purchase option" that might be negotiated with the land owner, the Kenai Natives Association.

PENINSULA CLARION
Complimentary Copy
For
MEMBERS OF THE LEGISLATURE
flown to Anchorage courtesy of
ALASKA AERONAUTICAL INDUSTRIES
flown to Juneau courtesy of
ALASKA AIRLINES

Peninsula Clarion

MONDAY, March 7, 1983 Vol. 13, Issue 113 © The Peninsula Clarion / U.S.P.S. 438-410 Kenai, Alaska 25 cents

Mixed views heard at prison meeting

By JOHN QUINLEY
Assistant Editor

Testimony by 31 Kenai area residents Thursday night about whether a medium-security prison should be put at Wildwood was roughly split between those in favor of the facility and those opposed.

In addition to oral testimony, Roger Endell, director of the state Division of Corrections, received written opinions and petitions promoting both sides of the issue.

Opponents to the prison plan said they submitted petitions with more than 350 names opposed to the project. Resolutions of support for the 220-bed facility have come from groups such as the Kenai Chamber of Commerce, the Kenai City Council and the Kenai Natives Association, which owns Wildwood.

Endell spent much of the three-hour hearing explaining what a prison at Wildwood would consist of, why the state wants the 10-acre site and its large, concrete and steel buildings, and what comes next in the decision process.

Public comments focused on security, the possiblity of increased crime and on economic benefits of the prison.

Assemblyman Dave Carey said the state's presentation was "an attempt to buy off with employment and salaries." He added, "You talk about cost. How much money will be paid to victims of crimes from escaped convicts?"

Harold Dale, a Kenai insurance salesman, took an opposite view. "I've got a lot of kids and grandkids around this place. I saw the fencing and the wire. I sure wouldn't try to escape. I think instead of pushing against prison, we should push for a properly managed one."

See PRISON, Page 8



Roger Endell, director of the division of corrections, took testimony at Kenai City Hall Thursday on a proposed medium-security prison in Wildwood. He also answered questions during a public hearing. (Photos by John Quinley)

...Prison hearing draws c

Continued from Page 1

Kenai Police Chief Rick Ross reminded people who expressed fear the area would see rapes, robberies and murders if a prison were established, that those crimes are here now.

"If we had a medium-security prison today, of the 200 prisoners, probably 150 of them would be from the peninsula," Ross said. "If the state built a 40-bed jail (there is now a 14-bed jail in downtown Kenai), it would hold people sentenced for less than 15 days. We're sending three-day sentences to Anchorage," he said.

To questions of whether maximum-security prisoners would be housed at the prison, Ross noted that recently when a four-man cell at the city jail was filled the least dangerous man was charged with assault with a deadly weapon. The other three faced murder charges.

Assemblyman Kean Stephens said the Kenai Natives Association was trying to unload "a white elephant." He said he resented the state's approach of contacting "businesses first. You didn't come and ask the people, you dangled the money first. This has been railroaded through."

Ruby Coyle recalled the 1940s when Kenai was small and crime was practically nonexistent. "I'd like to say, 'Folks, go home.' But let's stay and take care of what crime we have and not push it on Juneau or Anchorage. Do you want to start another capital move? If that's what you want, then fellas get out your pocketbooks." A prison would "take care of the needs and our responsibility," she said.

"I favor a medium-security prison," said lawyer Ken Cusack. "It's a chance to save the state some money. Now when they have court appearances in Kenai, they fly back to Anchorage. I'm more worried about security in the airport and transporting them back and forth."

The state has listed Wildwood as one of three future medium-security prison sites in its response to a court case on prison overcrowding.

Assemblyman John Douglas said he and others "got a secure feeling" in knowing that prisoners in the Kenai Jail are not "residing there for a long time. They're on their way somewhere else."

He added that "there's no assurance that the next director might not want to make Wildwood a maximum-security prison."

The first third of the meeting allowed Endell to give the audience an overview of what is planned for Wildwood if a deal can be made. The last third of the meeting had Endell fielding questions from the audience.

Responding to Stephens, Endell said his speaking trips to local chambers of commerce and other groups were at the groups' invitations, not at his request.

He noted that "very serious crimes are being committed" on the peninsula already. "With further economic development, the crime rate will go up. Also correllated with crime is the unemployment rate."

Other responses and comments made by Endell included:

• To allegations that a deal has already been made — "The state has not made up its mind. There is no piece of paper with a signature. We're not trying to cram anything down your throats."

• On public input — "It's within my power to appoint a citizens advisory board, and I intend to do so."

• On local hire — "Of the 71 employees, about half will need to be experienced correctional officers. You can't run a center with inexperienced people. About 30 to 35 people could be hired locally and trained."

• On security provisions — "There will be two 18-foot fences, 20 feet apart, topped by razor wire. There will be a facility on the roof for observation, and possibly trained dogs between the fences."

• On economic impacts — "There will be about 71 staff people with an average wage of $40,000. People who work for us must live in the area. The site will cost about $3 million to get ready for corrections. For most of the work, we'll hire private contractors."

• On the types of people housed — "You're looking at someone serving one-to-five years, primarily for property crimes and some personal crimes. The very violent criminal, is going to be a longer-term prisoner."

Endell also explained that as prisoners progress toward their release dates, they are generally moved to less secure institutions. No prisoners, except those serving the kind of short jail term now served in the Kenai jail, would be released directly from Wildwood, he said.

Medium-security prisoners, as they near their release, would move to minimum security and then community centers or halfway houses. No minimum-security or halfway house is planned for the Kenai-Soldotna area, Endell said.

"Our objective is not to warehouse people, but to change them so they don't break the law again. Statewide we have a 66 percent success ratio. You can turn that around and call it a one-third failure rate, too, I suppose, but we want to make law-abiding citizens. They come in at the bottom of the ladder, and we try to boost them up."

Endell said any final decision is still many weeks away. Comments on the prison plan may be sent to Division of Co... Pouch H03, Juneau, 99803.

cerned residents



Jim Arness, at the podium, spoke against the proposed Wildwood prison during a public hearing in Kenai City Hall last week.

U.S. sues Hawaii for prison 'brutality'

by Michael J. Smith
Associated Press

3-5-83
Times

Washington — The Reagan Administration charged in an unprecedented civil suit on Friday that two Hawaii state prisons subject inmates to cruel and unusual punishment in violation of the Constitution.

Attorney General William French Smith personally signed the suit, filed in U.S. District Court in Honolulu, and said the two prisons have "egregious or flagrant conditions" and cause inmates "to suffer grievous harm."

Named as defendants were Gov. George R. Ariyoshi, four other state officials and the state government itself.

It was the first suit ever filed by the Justice Department under the Civil Rights of Institutionalized Persons Act, passed by Congress in 1980.

Among the government's charges were that inmates were illegally segregated on the basis of race or national origin, were exposed to a "pattern and practice of brutality" by prison staff members, that they were inadequately protected from assault, rape and extortion inflicted by other inmates, that female inmates were inadequately protected "against sexual abuse by prison guards."

In Honolulu, the state said the suit was illegal because the Justice Department had not met legal requirements of the law under which it was filed.

Deputy Hawaii Attorney General James H. Dannenberg called the suit "laughable".

It was no coincidence that the suit was directed against a state controlled by Democrats, he said.

Court qualifies presumptive sentencing

The Associated Press

The state Court of Appeals has ruled Alaska's presumptive sentencing laws are constitutional, when applied with the court's interpretation of their provisions.

It held the legislature intended that all prior felony convictions be counted separately for the purposes of imposing a presumptive sentence for a subsequently committed crime.

But the court said Friday that a prior conviction is one for which a sentence had been imposed prior to the commission of a subsequent offense.

The presumptive sentencing statute sets definite prison terms for repeat felony offenders, and those terms may be altered only if aggravating or mitigating factors are present.

The ruling stemmed from a Kodiak case involving Nicholas Z. Rastopsoff, who committed three crimes during the period June 4 through Sept. 13, 1980.

Superior Court Judge Roy H. Madsen sentenced Rastopsoff for the first offense, forgery, on Oct. 27, 1980. He imposed sentences for the second and third offenses, burglary and robbery on one occasion, and assault and burglary on the other, on Feb. 24, 1981.

Madsen applied the presumptive sentencing statute in sentencing Rastopsoff for the second and third offenses, but he said he did so only reluctantly because he felt it was unfair in Rastopsoff's case.

In its ruling, the Court of Appeals said since Rastopsoff was not convicted and sentenced for any of the offenses until after all had been committed, for sentencing purposes he should be considered a first-time offender.

Opinion

Prison hearing is the main event

The main event today in the Kenai area is this evening's public hearing on the proposal to locate a state medium-security prison at Wildwood.

The hearing will take place beginning at 7:30 p.m. at Kenai City Hall.

Obviously, if many people attend, not all will be able to speak. For this reason, supporters and proponents should consider bringing printed statements or petitions to leave with the state officials tonight in lieu of oral testimony.

People who want to express support, people who want to express opposition and people whose minds are unset but who want to hear questions and answers should all be there.

Roger Endell, state director of corrections, will be there; Bill Brighton, Kenai city manager will be there. Numerous other officials will be there.

What they hear will have an immediate bearing on the Wildwood proposal and, certainly, an indirect bearing on other proposals that might be considered. Kenai, for instance, is one of a number of locations, including Seward, that might be considered for construction of a maximum-security prison.

Endell has made it clear that he favors the Wildwood site, offered by its owner, Kenai Natives Association.

He also made it clear that the support of the community or the lack of it will have a bearing on the Wildwood decision.

The Anchorage Times

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Wayward court

NEARLY 150 YEARS AGO a famous European sociologist visiting America (Alexis de Tocqueville) observed that "Americans have the strange custom of seeking to settle any political or social problem by a lawsuit." The courts have responded to this "strange custom" by effectively becoming a continuous constitutional convention.

In Anchorage there was a demonstration of this court response last week when a judicial officer effectively overrode the constitutional separation of powers in government by ordering the legislative and executive branches to change the state prison system.

A Superior Court action obligates the state to spend $45 million for a maximum-security prison and orders the officials to bring back to Alaska the prisoners now housed in federal institutions Outside.

STATE LAW authorizes the commissioner of corrections to contract for the care of prisoners in any state, territory or possession of the United States.

The legislature has the power to set the standards for the care of prisoners and if they are inadequate the legislators are the ones who should correct them. It's the commissioner's job to enforce the standards set by the legislature, not the court's.

The law specifies that he can contract with the federal government, any state government or a political subdivision — which might include even a county in another state — for the care of prisoners.

The law is not peculiar to Alaska. It is in the Western Interstate Corrections Compact to which every state of the union is a signatory. Sending prisoners to facilities outside the prisoner's home state is a common practice that has been accepted nationwide for generations.

That Alaska law has been upheld in the courts.

The state appears to have a sound basis for challenging the legality of last week's decision.

THE GOVERNOR should challenge the right of the courts to encroach on the powers of the other two branches of goverment.

The Alaska courts have virtually taken charge of the prison system. Judges have been known to decide by their edict what color prison walls must be painted, the square feet of space that must be provided each prisoner, the type of furnishings in his quarters, the availability of television programs and other frills and perks.

The executive branch has had to scratch every time a judge itched and it sometimes seems that a judge itches every time a prisoner expresses some complaint or displeasure.

The courts are constantly creating demands for additional public resources without meeting the responsibility for raising those resources and without regard to any limits on those resources.

The activism of judges is imposing significant costs upon society. Some new rights for a few are created at the expensive of the established rights of many.

Building Prisons Is Madness, Says Ex-Nixon Aide

SYRACUSE POST-STANDARD/Friday, May 7, 1982/

By EDWARD P. DUNN

Charles W. Colson, the one-time Watergate "hatchet man," came to Syracuse Thursday with good words about the Lord and bad words about the United States prison system.

"Prisons do not work. It's one of the myths of our time," said the former Nixon aide who now bids good-bye to acquaintances by saying, "God bless you."

"It's madness" to presume more prison cells will prevent crime, he said.

"You'll go bankrupt if you keep building prisons."

The answer, he maintained, is a system of "punishment that is constructive." In cases involving non-violent crimes, he favors mandatory community service work rather than punishment by incarceration.

Colson said he was glad to see New York residents voted down a $500 million prison bond issue in last year's election.

The resolution, which called for the construction of new prisons and renovation of others, was a "rip-off" that would have amounted to a "monument" to bureaucracy, Colson said.

Victims of crimes are victimized twice, Colson said: once by the crime itself, and again by the high costs of an ineffective penal system.

He said in New York State the construction costs for each new jail cell amount to $90,000, and it costs $17,000 a year to keep one person in prison.

Colson visited Syracuse Thursday to promote the non-profit Prison Fellowship, a Christian reform group he started in 1976. The fellowship has volunteer groups inside prisons and is active outside the walls in advocating changes in the penal system.

He said he'd like to start a Prison Fellowship chapter in New York.

Colson's knowledge of jail life includes firsthand experience. He spent seven months in federal penitentiaries in 1974.

He was sentenced to prison after admitting a charge of disseminating derogratory information to the press about Vietnam War opponent Daniel Ellsberg. At that time Ellsberg was awaiting trial on charges of theft and publication of classified documents in connection with release of the Pentagon Papers.

Shortly after he left prison, Colson wrote "Born Again," to describe his awakening to Christianity. His second book, "Life Sentence," chronicles his growth as a Christian and the beginning of Prison Fellowship.

"I've devoted my life to going into prisons and spreading the good news of the Lord," Colson, 50, told newsmen at a press conference Thursday.

Prisons: Radical reforms are needed

By WILLIAM F. BUCKLEY JR.
Universal Press Syndicate

CHARLES COLSON, arguably the most exuberant sinner during the whole Watergate business, may have a difficult time outliving his reputation as a man who said he would walk over his grandmother to help Richard Nixon.


Buckley

That's the trouble with a nice aphorism, particularly if it's a little iconoclastic.

The point is that Charles Colson has already done much more important things than ever he did to help to destroy the Nixon administration. He has founded something called the Prison Fellowship. It has a staff of 100 people, and it could just possibly be the agent of the most important prison reforms of the century.

SOMETIME in August of 1973, Charles Colson experienced Christianity. One is drawn to his matter-of-fact documentation of this datum, which — although he is certainly willing to expand on the impact of Christianity on him — he treats as a datum, pure and simple, as in: date of birth ... date of graduation from college ... date of marriage ... date of Christianization.

Asked whether he would be living the life he lives except that he is animated by Christianity, he will tell you, no, he would not spend his days in prisons, conducting seminars, evangelizing, agitating for reform — except that he is driven by a concern to please God. But he concedes that the specific reforms he favors can be argued for using an exclusively secular vocabulary.

Colson is much influenced by Yochelson and Samenow's masterwork, "The Criminal Personality," in which Samenow, a practicing Jew, concludes that criminals are for the most part criminals because that is their nature, and that in order to change they need to expose themselves to "deliberate conversion ... to a more responsible lifestyle." This is, as a matter of fact, best accomplished by a religious conversion; but Colson is prepared to admit that the possibility exists that criminals can change their appetite for crime by experiencing a transformation outside of any religious orthodoxy.

THAT MUCH having been disposed of, Colson explains his ministry, which is one part devoted to persuading criminals to believe in Christ, the other to persuading the American public to listen to reason. To wit:

- The prison population is expanding 15 times as fast as the national population, notwithstanding that only two out of 100 agents of crime are apprehended, convicted and put away.
- The prisons are bursting at the seams, with over 200,000 more criminals inhabiting quarters than our prisons were designed for, resulting in a gruesome intensification of the experience of prison and a resulting increase in recidivist crime.
- The annual cost of keeping someone in prison is about twice the cost of keeping a student at Harvard University.
- An interesting statistical coincidence: About 53 percent of the men behind bars are there for having committed crimes that did not involve violence or cause physical danger. Meanwhile, 53 percent of Americans report that they are afraid to walk one mile from their residences after dark. To some extent, then, it can be said that half of America is imprisoned in virtue of the impulses of half the criminal population.


Colson: A sinner turned crusader

What does this all add up to?

Not, Colson insists, more prisons; though that is the $3-billion direction federal and local governments are heading toward. We should empty the prisons by one-half, Colson says — for the sake of dangerous criminals (the horror of their living conditions is mitigated, making less likely the stimulation of their bestial instincts); for the sake of non-dangerous criminals (they are costing society $20,000 a year in upkeep and depriving society of the use of their talents); and for the sake of the public, which stands to gain by a lessened tax load and by a likelier reintegration into society of non-dangerous felons.

THE ACCENT of Charles Colson is on how usefully to deal with criminals who are non-dangerous, in the physical sense of the word. A companion in Colson's own penitentiary, for instance, had served as chairman of the board of trustees of the American Medical Association, got involved in an embezzlement and was spending three years in jail. Why not, instead, sentence that man to three years of free medical service for the needy? Why not the same for lawyers? Or carpenters? Or, indeed, anyone; giving them access at night to their families, who are innocent victims of existing patterns of penology?

It is strange that in an age when one is encouraged to think radically, so little radical thought is given to the subject of prison reform. Colson's crusade is profoundly conceived, existentially appealing, splendid in ambition. We are already in his debt for the Prison Fellowship. The whole country would be indebted to him if his reforms were effected.



Paul Harvey

Put Convicts To Public Work

What to do with our exploding prison population?

Granted, little criminals jammed in with big ones come out worse than before.

The suicide rate in prisons is 16 times what it is outside.

Rebellious cons are wrecking what prisons we have, and we have too few.

Some far-fetched experiments have been tried. California tried releasing convicted rapists and child molesters for outings in town.

From Patton State Hospital convicted rapists and child molesters were allowed to go into San Bernardino, Calif., to visit discotheques--to mingle with women—in the name of "therapy."

In one month seven escaped.

I have heard no better option for violent criminals than a lockup.

For non-violent criminals, there may be something better.

Chuck Colson's Prison Fellowship Program seeks reform for individual prisoners and for the prison system.

As a missionary behind bars he seeks to redirect misdirected lives through a Christian commitment.

At the same time, Colson has sought and got the cooperation of prison authorities in releasing non-violent criminals to do "outside work."

On his responsibility, six prisoners were recently released from Eglin Federal Prison in Florida.

For two weeks they helped two elderly people in Atlanta--one an aged blind widow—to insulate their modest home against the oncoming winter.

The six, two Hispanics, two blacks, two whites, are committed Christians in whom Colson has enough confidence so that they were not guarded while on furlough. They lived in Christian homes in the area.

Work that might have cost $21,000 was completed for a fraction of that. The men did behave themselves.

If non-violent criminals, instead of being sentenced to prison, can be sentenced to compulsory community service—or to work in jobs until they make restitution to their victims and to the state—then the punishment would fit the crime.

And they would pay taxes instead of taxpayers supporting them.

GRIT" circulation: 1,000,000

THE COLUMBUS (OHIO) DISPATCH

The Dispatch

AN INDEPENDENT NEWSPAPER FOUNDED JULY 1, 1871—EVENING AND SUNDAY

Opinion

A-4 F SAT., JUNE 13, 1981

Colson's Prison Plan Worth Study

ONE IS inclined to be skeptical when Charles W. Colson suggests a plan for reducing prison populations. First, we are not for coddling convicts. Secondily, Colson is an ex-con, having served seven months in federal prisons for Watergate-related crimes.

Colson was a senior adviser to former President Nixon. He is a "born-again Christian" and founder of Prison Fellowship, a growing organization of prison inmates, ex-offenders and their families. That speaks better of Colson but does not automatically make us want to approve his plan.

But we read it. And it does have some strong points in its favor.

The plan is outlined in a Prison Fellowship publication entitled, *Is There a Better Way? A Perspective on American Prisons.*

As background, it points out that for thousands of years prisons were used mainly to keep political offenders, hold lawbreakers until trial or execution, or detain insolvent debtors until their debts were paid.

Punishment for the convicted offender used to include public beheadings and hangings and lesser penalties such as branding, flogging, the rack and the stocks. This probably deterred some crime but did not stamp it out.

In 1790, the publication states, Pennsylvania enacted laws making imprisonment the ordinary punishment for crimes, and that system spread.

Colson would not do away with prisons. He believes prisons are necessary "for that roughly 20 percent of the prison population convicted of dangerously violent crimes . . . for the protection of the general public."

Colson contends, however, that prisons fail to rehabilitate and instead harm the offender, his family and, in the long run, society. He recommends alternative punishment for non-violent offenders.

The alternatives include placing the offender on a schedule requiring him to repay the crime victim for losses; ordering the offender to pay his debt to society by performing community services; placing him under "house arrest" except when out earning a living for himself and his family; and putting him on strict probation. Other alternatives are also suggested.

Colson also calls for some prison reforms, including weekend sentences, separating violent and non-violent offenders, and protecting inmates against brutal acts by other inmates.

He does not consider his plan a cure-all. He is more practical than that. His publication states:

"Many earlier prison reform efforts have come to nothing, or ended up leaving offenders worse off in prison and society less safe from crime. Thus it is proper to be modest and cautious in proposing a new reform campaign."

Colson points out his plan could save money, could keep offenders employed and producing, could keep them with their families and could work in thousands of cases.

With crime increasing daily, we think the plan is worth further study and consideration.

Anchorage may get new prison

By TOM KIZZIA
Daily News reporter 2-20-83

The idea of building a new prison in Anchorage was revived last week at a meeting between Director of Corrections Roger Endell and Mayor Tony Knowles.

Endell said Saturday construction of a 250-bed facility would allow the state to retire the antiquated Third Avenue and Sixth Avenue jails.

Endell said a likely location for the new jail would be a remote site near Point Woronzof that was selected by Knowles and former Gov. Jay Hammond last year. The biggest problem with the area is poor soils that would increase the cost of a facility there, Endell said.

A proposed expansion of court office space in downtown Anchorage could include some additional pretrial jail cells, saving the cost of transporting prisoners, Endell said.

The next new prison to come into service and help relieve overcrowding in the state system could be the Wildwood Center in Kenai, he said.

A public hearing has been scheduled for March 4 there on the idea of creating a medium-security prison at the former Air Force base, now owned by the Kenai Native Association.

Report backs prison jobs

2/20/82
Anch Daily News

By TOM KIZZIA
Daily News reporter

A state commission has recommended that prison inmates in Juneau take over the laundry contract for the Alaska Marine Highway System, while prisoners in Palmer should do body and fender work on state vehicles and grow their own vegetables.

But the Correctional Industries Commission decided after a public hearing Friday against a plan to have inmates do all laundry for prisons in the Anchorage Bowl. About three-quarters of the annual $206,000 laundry bill for Anchorage area prisons is now handled by two contractors, Alaska Cleaners and Quality Cleaners, and the commission decided a switch would hurt those businesses.

The new jobs for prison inmates have been proposed under 1982 legislation designed to give inmates a chance to develop employment skills and save up "gate money" for when they are released. Alaska is the last state to establish such a program, according to prison industry manager Wally Roman.

Under a wage plan now being drawn up, prisoners would be paid between 65 cents and $1.15 an hour for working on a voluntary basis. Some of the money could be withheld by the state for restitution of victims, reimbursement of the cost of prosecution or support of dependents.

The three new industry programs will need the approval of Director of Corrections Roger Endell, Commissioner of Administration Lisa Rudd, and Commissioner of Health and Social Services Robert Smith. "If the commission received good input from the public, that is probably the way we will go," Endell said Saturday.

☐ Anchorage may yet be site for new prison. Story, Page B-2.

The recommended programs could provide jobs for 34 to 52 inmates, according to staff estimates.

In coming up with ways to employ inmates, the state has been careful about competing with the private sector or taking away established contracts — at least with Alaska businesses.

The commission recommended that laundry for the ferry LeConte continue to be handled by a local Juneau laundry. However, construction of a new addition in the coming year would allow Juneau's Lemon Creek Correctional Center to take over the other 95 percent of the ferry system's dirty linen that is now washed in Prince Rupert, British Columbia, and Seattle.

At the Palmer Correctional Center, 13 acres of land are being tilled, primarily for potatoes. The commission recommended expanding that area to 20 acres this summer and producing a more varied crop of vegetables.

But the commission decided to hold off on a proposal to set up some kind of food processing, possibly a cannery, that could provide yearround food for Alaska's prisons. Further study of smallscale food processing was required, the commission said.

No body shops commented during Friday's public hearing on the proposal to do state work in Palmer, despite extensive advertising about the meeting, Roman said. Around $70,000 a year in body and fender work is now done on state-owned and stateleased vehicles in the Anchorage region.

Seven Alaska towns want new prison

By DEBBIE REINWAND ROSE
Empire Staff Reporter

Eeny, meeny, miney, moe — where will Alaska's new prison go?

While several Alaska communities have scorned a $45 million proposed maximum security prison, seven towns are now clammering for the facility — and the income it would bring to their areas.

To the north, both Haines and Skagway have expressed an interest in the facility, which would require a staff of 125, according to Roger Endell, director of the Division of Corrections.

About three-quarters of the staff could be hired locally, he added.

With the outlook dim for operation of the White Pass Railroad this summer, Skagway officials, including Mayor Rand Snure, have cast an interested eye at the possibility of locating the facility in that town.

"It's something we might need to boost employment," city council member Chris Rohlf said at a council meeting this month.

However, Skagway may not have the necessary land suitable for a maximum security prison, Endell said.

Haines also has a good reason for

Continued on Page 2

Prisons...

Continued from Page 1

seeking an employment boost as the Schnabel Lumber Mill recently announced plans to close.

Communities that have said they're interested in the facility include Seward, Kenai, Palmer, Cordova, Valdez, Skagway and Haines, according to Endell. Of those, Haines, Seward and Kenai appear at first glance to be the most suitable.

To encourage construction of the facility, Haines has offered free port facilities during construction and a cheaper industrial water rate, while Seward has anted-up 100 acres, a paved road and utilities to the prison.

Although some residents in the two Southeast towns say they'd welcome the prison, Endell has been studying locations in the Kenai area intensely, spending much of his time in the Southcentral part of the state.

Just as important as the logistic needs when considering a prison site, however, are the economic needs of the community, the prison director added.

In an effort to "work closely" with the citizens who would be impacted, Endell will make a stop in Haines Monday to talk at a town meeting.

Some Haines residents are upset at what they call a lack of communication between the public and city fathers who are anxious to get the prison for their area.

At a meeting Tuesday, several residents asked for a town vote, or poll to see whether public sentiment is favorable to the construction of the prison.

Haines city administrator Darrell Maple, who put together the town's prison proposal, defended his open-arms offer to the state, saying he had to work under the state's time frame.

"I can't contact all 1,700 people (in Haines)," he said in the Lynn Canal News. "We have to react according to the governor's and the Legislature's time schedule."

Wherever the prison ends up, it will take two or three years before construction is complete, according to Endell, providing legislative approval is granted to the facility.

A maximum security prison has been a high priority in sessions past, is backed by Gov. Bill Sheffield, and will likely be given the go-ahead.

State prisoners in Outside jails will be coming home

By GREG GADBERRY
Daily News reporter

A Superior Court judge Friday signed a long-debated court settlement that requires the state to bring home almost 200 Alaskans in federal prisons Outside and seek funds to build a new prison here to house them.

Signed by Judge Douglas Serdahely, the settlement is part of a wide-ranging court suit filed by inmates both in and out of Alaska seeking better prison conditions.

That suit is gradually being decided after two years of on-again, off-again court battles.

Still waiting to be settled are sections of the lawsuit dealing with complaints made by in-state prisoners against the state.

Judge signs agreement calling for return of state inmates now held in Outside prisons

Continued from Page A-1

The portion settled Friday had been negotiated during the Hammond administration. Assistant Attorney General Michael Stark said the Sheffield administration decided to accept it. However, Roger Endell, state corrections chief, said earlier he probably would have "chosen a different path" toward settlement with the prisoners.

Friday's 14-page agreement deals only with inmates now behind bars in more than 20 federal prisons Outside. Fedral regulations allow only 200 Alaskans to be housed in federal Bureau of Prison facilities Outside. About 188 Alaskans are now in federal prisons.

The settlement orders the state to remove Alaskan prisoners from federal facilities no later than Dec. 31, 1987 although inmates who wish to remain in Outside prisons may do so.

The mandate, however, hinges on the state's ability to build a prison in Alaska capable of housing 300 inmates. Funding for such an institution will be up to the legislature.

The settlement also lists a number of guidelines that the state must use for deciding how long inmates must wait before their return to Alaska.

Inmates whose lives are endangered or who have less than two years left on their sentences must be returned to the state within 60 days of a new Alaska prison being built.

Prisoners from rural backgrounds, who have good records in federal prison or who have a "family crisis" in Alaska, also will be given priority for return to state jails.

Also included in the settlement are provisions that give inmates Outside better access to legal materials, attorneys and to the state's Parole Board.

Stark told the court the state already is making plans to send a quorum of the Parole Board to various federal prisons to meet with Alaska inmates.

action suit involving in-state prisoners.

The state has agreed to partial settlement with in-state prisoners, but grievances concerning medical care, rehabilitation, visitation and prison staffing are still being debated.

Under earlier plans, Stark said, up to $9 million would be needed to alleviate those grievances. The Sheffield administration, however, hopes to make those changes for much less money, he said.

Stark and the inmates' attorney, Charlene Lichtmann, said that some inmates opposed the settlement.

Many of them were concerned they would lose some privileges — including recreational facilities — they now enjoy in the federal system, Lichtmann said. At the same time, those inmates want treatment afforded to prisoners now in Alaska.

However, Lichtmann said a majority of those who commented on the agreement approved it.

While the new state administration has accepted the settlement for federal prisoners, Stark said several points are still to be decided on a class

Palmer inmates complain

By ED TRUITT
Daily News correspondent

PALMER — Boredom and frustration provoked five weekend escapes from medium and minimum security units at the Palmer Correctional Center, other inmates said Monday.

"People like to paint this place as a country club," said one member of the medium security unit's inmate council. "They point to the pool table, the TVs, gym and ping pong table and say we have it easy, but you can only play so much pool a day, and there's 100 guys and one table.

"There are only about 60 jobs for a population of about 278 in both units, no rehabilitation, and not much education, few activities. It's not much to get you ready to go back Outside."

At a meeting Monday night, jail superintendent Stan Zaborac told the inmates about changes in jail supervision, including the addition of a correctional officer in every 20-man dormitory 24 hours a day. Zaborac said the changes had been requested since the new unit opened in April, 1981.

"But there's no doubt five escapes in one weekend speeded things up a bit," he said.

Additional money and staff shaken loose from the Department of Corrections on Sunday will enable some positive changes, such as the long-delayed opening of a prison craft shop now expected next week, Zaborac promised.

The inmates saw placing officers in each dorm as a positive step, offering them more access to the staff, although the move was designed to tighten security, one inmate said.

Inmates at the meeting on Monday asked not to be identified.

"What about more counselors?" another inmate asked, pointing out that there are only four counselors and one psychologist serving both prisons. In the minimum security unit, they have case-

Anchorage Daily News Tuesday, January 25, 1983 a-16

# of boredom, frustration

loads of 140 each.

Zaborac couldn't promise more trained counselors, but said three more probation officers were being hired to work in the prison.

Inmate complaints Monday night ranged from the usual grip s — poor food and a lumpy pool table — to questions of why grievances were not pursued and shortcomings in educational programs.

"Sure, there's a lot of little stuff," said another inmate. "But it piles up and piles up, and nothing is ever done about it. You file grievances, you run it through the inmate council and get the big 'okey dokey' on it from the administration, and nothing is ever done. Even the littlest things take months," explained another council member.

The new security classification system being tried by the Palmer Correctional Center in the past month was probably another frustration leading to the escapes, a friend of one of escapee said.

Instead of going before a three-member review board to decide whether a prisoner can move to minimum security or a halfway house, the new method applies a point system that rates everything from prior criminal records to psychological adjustment.

The problem, the inmate said, is that the point system arbitrarily penalizes inmates with longer sentences or juvenile records while virtually ignoring any real progress he might have made.

Zaborac agreed the point system has caused some discontent, but argued it is more objective and fair than the committee system. "They're being judged by the same criteria, but now they know what the criteria are," he said.

Administrators also have been frustrated with the lack of progress, Zaborac said. "With only enough staff to provide minimal security, we haven't been able to do things like job training that eats up staff time."

12/9/82

Lawyer leery of prison pact

by Beth Barrett
Times Writer

Some Third Avenue jail inmates are protesting a proposed state settlement with Alaska's prisoners, saying implementation may take too long, Anchorage lawyer Timothy Stearns said today.

But Stearns, who represents the state inmates in seven Alaskan institutions, said today he intends to recommend court approval of the partial agreement worked out last month with the state. He said he has received more than 40 prisoner responses to the agreement, and "most indicated approval."

Superior Judge Douglas Serdahely today at 3 p.m. is to review the state inmates' comments and may sign the proposed agreement.

According to Stearns, some of the about 100 prisoners in the Third Avenue jail argued it could take months under the settlement to upgrade the living conditions in their downtown facility. Described by Stearns as "one of the worst institutions in the state," he said the problems there range from overcrowding, to faulty heating, lighting and ventilation systems.

Stearns said he will emphasize the complaints of the Third Avenue jail inmates — primarily felons awaiting sentencing — and will urge repairs and other improvements be made there quickly.

The lawsuit against the state was filed by Stearns on behalf of the state's prison population over a year ago. It included allegations of overcrowding, poor living conditions and inadequate medical care. The court subsequently ordered the negotiation with the state of a settlement.

But only a partial settlement was worked out last month, with over $6 million in programs and staff still to be agreed upon, said a Division of Corrections official Wednesday.

Those items were left out, because state officials agreed Gov. Bill Sheffield's administration should make the new policy decisions, according to assistant attorney general Michael Stark, who represents the Division of Corrections.

One of the most controversial, unresolved issues is medical care, Stearns said.

Among the other "big money" programs yet to be resolved are psychological counseling for inmates and other rehabilitative services, Stearns said.

It's uncertain when those questions — about 15 percent of the settlement, according to Stark — will be addressed.

The partial settlement, if signed by Serdahely today, would force the state to continue its efforts to decrease overcrowding in Alaskan jails.

The Divisor of Corrections already is seeding about $119 million from the state Legislature next year to build several jail facilities.

They include a 300-bed maximum-security prison, possibly near Sutton, north of Palmer. It is to be built by 1985, with another 100-bed wing added in 1987. A 250-bed medium-security jail in an Anchorage setting. An 80-bed pre-trial detention facility in Fairbanks. A 50-bed pre-trial holding facility in Juneau. Additional jail space — up to 216 beds — in a new pre-trail institution on Post Road in Anchorage.

Jail populations also would be reduced by expanding alternatives to arrest and confinement in appropriate cases.

The settlement also calls for more rehabilitative programs, including high school and college courses, counseling programs, and employment training.

State inmates would rather stay in jail

by Jeff Berliner
Times Writer

1/12/83

About 150 state prison inmates eligible for parole haven't asked for it.

The state would like them to, because parole is one way to make room in the crowded jails, which now hold 200 more inmates than they can handle.

The state parole board, at the request of a task force that was headed by current corrections chief Roger Endell, has begun interviewing all 150 parole-eligible inmates to find prisoners who can legally be set free and relieve the overcrowding.

However, the board cannot order the early release of a prisoner who does not request parole. And parole officials are trying to discover why inmates are not seeking release on parole as soon as they become eligible, said parole board executive director Sam Trivette. Those who are eligible for parole are being encouraged to apply, he said.

Trivette said Endell's recommended evaluation now is about two-thirds complete. About 90 inmates have been interviewed and the rest will be contacted by the end of the month, he said.

What the board is finding, Trivette said, is that inmates distrust the parole board and misunderstand parole policies. Also, many inmates would rather serve their time in jail and get out unconditionally than be released early under the conditions of parole.

"I would rather 'flat my time' than go out on conditions," one inmate said, meaning that he will pass up parole — and all the rules that go with it — for a later but unconditional release.

"Supervision of parole is worse in this state," another convict said. "There is no leeway to live a normal kind of life. They can violate you on a whim and send you back to jail. I can't move, I can't change

See Parole, page A-4

Parole

However, most state jail inmates have shorter terms to serve and Trivette said an average parole-eligible inmate might be

Officers said telephone talks between Sanders and the friend, identified only as "George," began about 6:30 a.m. and was "the most promising development" since the standoff began.

Rifle-toting tactical squad officers were seen on the elementary school's roof and crouched behind trees and police cars.

Sanders was described by his wife as "a very religious person" who believed the world was coming to an end.

Police said Sanders has a history of mental problems.

Speaking incoherently on occa-

backup unit. He was struck in the head with a gun or stick, Holt said.

Schwill was reported in serious but stable conditon at a nearby hospital.

Sanders' wife, Dorothy, said her husband had been treated for a mental disorder for the past eight years and that the strain of being out of work was an added burden.

She said her husband had not left the house since late last week.

"He has been shut in since Friday," she said. "He said he was waiting for the world to come to an end."

Mrs. Sanders said

State may be bound to inmate suit pact

By TOM KIZZIA 1/7/83
Daily News reporter

The state has already signed a partial settlement of a lawsuit filed by prison inmates and may be legally bound to it, even though Roger Endell, the new Director of Corrections, wants to scrap the agreement.

Superior Court Judge Douglas Serdahely on Thursday postponed the effective date of the partial agreement until Jan. 21. It had been scheduled to go into effect today, but the state had asked for a delay in the face of mounting opposition from within the Sheffield administration.

At the Jan. 21 hearing, Serdahely will rule on the inmates' contention that the Sheffield administration can't back out of the agreement.

Attorney Timothy Stearns, who is representing the inmates, said he might be willing to agree to change some deadlines on the partial agreement, which covers such areas as prisoner exercise and access to legal materials. But he said the attorney general's office had signed the partial agreement and should stick to it.

Assistant Attorney General Mike Stark said the state may technically be bound by the agreement, but added that without support from the administration and the legislature, any agreement would be meaningless.

"It can't be dealt with in isolation as a legal question," Stark said. "It is also a human and political problem."

In October, the state backed out of a wider settlement, deciding to withhold commitment to costly items until the legislature agreed. Stark then worked with Stearns to come up with a partial agreement.

Final action on the agreement was extended 30 days in December so the Sheffield administration could review the agreement.

This week, however, a Sheffield task force on corrections headed by Endell recommended that even the partial agreement be scrapped.

Endell, who was appointed Thursday as the new director of corrections, said members of the task force were "shocked by some of the commitments in the proposed agreement." He cited as examples the need to hire law librarians for prisoners and to provide inmates in isolation with jogging or bicycling machines for exercise.

Panel advises no settlement on prisoners' suit

By TOM KIZZIA
Daily News reporter

The state should abandon efforts to settle a class-action suit over prison conditions and slug it out with inmates in court instead, a state corrections task force has recommended.

The task force also is urging Gov. Bill Sheffield to give up efforts to build a modular jail at Point Woronzof in Anchorage. Task force chairman Roger Endell said it would be cheaper and more efficient to purchase existing facilities in the Kenai Peninsula and the Matanuska-Susitna boroughs and convert them into 100-bed prisons.

The task force made no specific site recommendations, but Endell, a professor at the University of Alaska, Anchorage Criminal Justice Center, said the two proposed facilities could be opened with modular units in six months to a year.

Sites that have been considered by the Division of Corrections include the former missile site at Goose Bay north of Knik Arm, the Wildwood Center in Kenai and Ohlson Mountain in Homer.

Attorneys for prisoners and the state have worked for months on a pretrial partial settlement of the so-called Cleary suit against prison conditions, and final hearings are scheduled in Superior Court for late next week.

"There are problem areas, but they are manageable and don't require court action," Endell said. "We were shocked by some of the commitments in the proposed agreement."

Endell cited as examples the requirement to hire law librarians for prisoners and to provide prisoners in isolation with jogging or bicycling machines for exercise. "We seriously doubted if these were constitutional issues," he said.

The task force also recommended temporarily keeping several jails open that the state had been eager to close. Among the specific changes proposed:

• The new Cook Inlet Pretrial Facility on Post Road should not open until staff are fully trained. With the jails bursting, corrections had planned to open the new jail as soon as Feb. 1, housing low-risk prisoners there while staff were being trained.

• Ridgeview Correctional Center on Old Seward Highway should not be abandoned when the new jail opens. Instead, the old jail should be studied for conversion into a halfway house or a facility for low-risk short-term or pretrial prisoners.

• Mentally disturbed offenders should remain at Alaska Psychiatric Institute until a special unit can be designed either at API or within a prison. They should remain under control of the Division of Mental Health.

• The new Meadow Creek Correctional Center for women in Eagle River should be expanded with a less expensive design. The task force called the center "an example of architectural extravagance where simplicity and a more spartan environment would have sufficed."

• Plans for building new jails in Nome and Bethel should move ahead "as quickly as possible." The task force said that funds already allocated for a Bethel jail "have deteriorated in value due to mismanagement of site selection and building design delays."

• Like other existing facilities, the Third Avenue Jail in Anchorage should remain in use until more prison space is built.

• The Careage House in Anchorage, which holds drunken driving offenders, should be used instead as headquarters for the state's prison system.

Under the proposed partial settlement of the Cleary suit, the state had agreed to close the Third Avenue Jail in 18 months rather than spend up to $4.5 million to bring it up to fire code. The state offered in the meantime to assume liability for the facility, which had been condemned by the city fire marshal.

Endell said the specific fire code problems had not been addressed by the task force, but expressed optimism about keeping the 28-year-old jail open.

The task force also recommended construction of a maximum-security facility in Alaska and elevating corrections to departmental status.

Endell predicted Sheffield would take action on the report within a week.

Anchorage Daily News Wednesday, January 5, 1983 C-1

Business
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Metro Satur

Anchorage Daily News

Partial settlement of jail suit OK'd

By TOM KIZZIA
Daily News reporter

The on-again, off-again attempts to resolve a lawsuit against prison conditions in Alaska was back on Friday, as the Sheffield administration agreed to a partial settlement.

The agreement, signed by Superior Court Judge Douglas Serdahely, immediately changes disciplinary procedures for prisoners. Beginning Monday, some prisoners will be given better opportunities for recreation, telephone calls and access to legal advice.

The agreement also commits the state to bringing Serdahely a plan for relieving overcrowding in state jails, which officials said are now receiving additional prisoners at the rate of 180 a year.

But portions of the agreement that could be expensive for the state have been dropped. Sheffield administration officials indicated Friday they will either work out new agreements in these areas with the backing of the legislature or take the issues to court.

Tim Stearns, attorney for the prisoners, said the agreement would mean greater emphasis in the jails on rehabilitation and training, "so the public will be safer when the prisoner gets out than when he went in."

"I would have probably chosen a different path toward settlement had I been in charge from the start," said Roger Endell, head of Sheffield's newly created Department of Corrections. But he said a few last-minute changes made the partial settlement acceptable.

Endell also said Friday he was not interested in putting a prison at a former pipeline camp at Isabel Pass, a location he described as "one of the most remote sites we could possibly consider." Endell said support services essential to prison operation would make it necessary to keep a prison nearer to population centers.

An effort to have the state buy the Isabel Pass camp in 1981 resulted in misdemeanor conflict-of-interest charges against former state Sen. Ed Dankworth, and Thursday another appropriation bill to buy the camp was introduced in the state legislature.

Serdahely postponed until Feb. 4 a final hearing on a portion of the prisoner class-action suit that could require the

See Page B-2, PRISON

Prison suit partial settlement approved

Continued from Page B-1

state to bring 188 Alaska prisoners back from federal prisons in the Lower 48. The agreement, worked out with the administration of former Gov. Jay Hammond, would require only that the administration urge the legislature to provide funding for a maximum security prison here.

A number of prisoner requests in the class-action suit against the state corrections system remain unsettled, including development of new rehabilitation programs, longer visiting hours, and more reliable transportation to outside medical appointments.

A large area which may have to be fought out in court concerns improving medical care in the institutions. A consultant's report prepared last year concluded that Alas-



ka would have to spend $1 million more on medical care every year to meet minimum standards for prisoner care set by the American Medical Association, the American Bar Association, and the American Correctional Association.

Under Friday's partial settlement, prisoners will no longer be locked away in solitary for petty offenses, while punishment for more serious infractions may increase. "The new agreement means more discretion for officials and more fairness for prisoners," said assistant attorney general Mike Stark.

The agreement will require compliance officers in each jail whose sole responsibility, at least for a few months, will be to see that the agreement is lived up to. Attorneys said this provision was one of the few that would require extra funding from the legislature.

Endell initially recommended rejecting the proposed settlement, but concluded he had to accept it because the Hammond administration had signed off on it. Among the minor changes added this week, the right of prisoners to specific exercise equipment was made more general, and their right to a specific number of phone calls per week was changed to provide for a specific number of hours of phone access.

Prisons officials admit cover-u

Anch Times

by Jeff Berliner
Times Writer

State Department of Corrections lawyer Michael Stark and assistant director of corrections Ted Corey allegedly violated court rules last week when they sought to increase court-imposed limits on inmate populations and then concealed what they had done.

In an interview, Stark acknowledged that what he and Corey did was "improper," and stated he will have to figure out how to explain it at a Friday court hearing where a judge will be asked to find Stark in contempt of court.

In acknowledging that he may have broken the rules of civil procedure, Stark said he apologized to state Superior Court Judge Victor Carlson and then reprimanded Corey for his actions.

What happened is not in dispute:

Last Wednesday, Corey called Carlson and asked him to lift the court-ordered 100-inmate limit at the Sixth Avenue jail. Corey told Carlson it was an emergency. Carlson granted the request and issued an order lifting the ceiling to 115 inmates.

Neither Stark, an assistant attorney general, nor inmate attorney Timothy Stearns was notified.

After receiving Carlson's order, Corey told Stark what he had done. Stark told Corey he had acted "improperly" and "in a pending action he should notify me."

Carlson said he expected Stark to notify Stearns since he represents the inmates. Stark conceded that he failed to notify the other parties.

Two days after the order was issued Friday, Stark called Stearns and told him that jails were overcrowded and he wanted to raise a 65-person limit at the Third Avenue jail. Stark said corrections needed about 18 more beds beyond the court-ordered limits. Stearns agreed — not knowing what Stark knew: that corrections had already gotten the extra jail beds it needed.

Only after Stearns agreed to lift the inmate population ceiling at Third Avenue did he learn that corrections already had obtained the extra beds.

Stark received permission to raise the number of inmates housed at Third Avenue from Judge Douglas Serdahely. Carlson and Serdahely were unaware of each other's orders.

In papers filed in court Tuesday, Stearns charged that Stark used "fraudulent concealment and deceit" to get a court orde jail population at Third Av concealing the earlier orc raised prison population Sixth Avenue jail.

In the affidavit, Stearns "Mr. Stark advised me that not tell me about Judge Ca order during any of our thre phonic conversations on J Jan. 28, 1983 because he fe knew about Judge Carlson's I would not agree to increa population at the Third A correctional center. Mr. clearly and apologetically dicated that he was awa

See Cover-up, pag

Cover-up

(Continued from page A-1)

Judge Carlson's order at the time ... and conceded that he withheld this information from me."

Stearns now wants Judge Serdahely to rescind Stark's motion to increase Third Avenue jail population because Stark obtained the motion by "fraud." Stearns also asked the court to find Stark in contempt, to fine him $500 plus attorney's fees and to impose "other appropriate sanctions."

"I'm surprised Stearns wasn't informed by Stark. I probably should have notified him of my order," Carlson said, adding, "I guess Judge Serdahely will have to sort that out."

After learning what happened, Carlson said he thought Stearns and Stark "have just cause" to be angry with Corey and that Stearns has reason to be upset with Stark.

When asked why he tried to secure double the number of inmate beds and keep it a secret from the inmates' lawyer and the court, Stark replied, "That's a good question. I'm going to have to think about it."

But today, in a follow-up interview, Stark said he expected the Friday court hearing to be canceled because corrections decided to drop plans to raise the inmate population at Third Avenue. He said furnace problems at the jail prevent moving in more inmates.



Norris Kiesman of The Times

[illegible]RIM FROST

along with thousands of other Army, Air Force and National Guard troops, are undergoing cold weather training in Brim Frost '83.

Jail escapes lead to state of 'emergency'

by Jeff Berliner
and Al Campbell
Times Writers

Sutton — A state of emergency was declared Sunday at the Palmer Correctional Center after five inmates escaped in two separate incidents Saturday.

All five escapees are now back in custody and face additional charges of escape.

Following a meeting Sunday between prison superintendent Stanley Zaborac and the state's assistant director of corrections, Ted Corey, an emergency was declared and security was beefed up.

The emergency order calls for all 40 correctional officers to work mandatory overtime until new security staff can be hired. And a 24-hour guard will be placed in each of the 20-man housing units at the prison for the first time.

Zaborac said "emergency" funds are being sought to hire a dozen new guards immediately.

The 24-hour guard in each prison housing unit is something Zaborac said he has sought for some time, and Corey authorized it Sunday.

"We're getting a jump on emergency funding requests we have in the mill," Zaborac said.

Other security measures also are being considered, including a fence around the minimum security section of the prison. Construction of a second fence around the prison's medium security wing has halted because the money has run out, he said. An alarm system at the prison should be complete by April. And a new mandatory head count policy is in effect.

Zaborac said he has increased the number of people on each shift from eight to 13. He said Corey promised to lend the prison more staff from other institutions by the end of the week if necessary.

The prison — designed to hold 206 inmates — now has 242 prisoners, 142 of them in minimum security.

The beefed up security at the prison has resulted in "noticeable changes," according to inmates.

Four of the five escapees are now at the Sixth Avenue jail while the fifth, David Williams, 30, is under guard at Humana Hospital Alaska in serious condition after crashing a stolen getaway car in a high-speed chase Saturday.

Williams was serving a 390-day sentence for resisting arrest and several traffic violations, and had an April release date.

Steven Wassen, 22, and Lawrence Prokopiof, 19, escaped with Williams Saturday morning from the unfenced minimum security area. Wassen was serving seven years for criminal trespass and Prokopiof was serving six years for burglary and theft but had a July parole release set.

Later Saturday, two inmates pried a fence apart and fled from the medium security section. John Voisin, 20, and Valance Clark, 19, were captured early Sunday, apparently heading home to Fairbanks, when they were caught at Sheep Creek less than four hours after they cut their way through the fence at the Palmer Corrections Center here.

Voisin was serving two years

See Escapes, page A-4

[illegible] to limit spending

[illegible] the only tax [illegible] north of the [illegible]

[illegible]d the mayors [illegible] to control all [illegible]

treasury. The 'no tomorrow' philosophy has prevailed for too long in Alaska," he said.

"I'm moving as fast as I can to cut back on the growth of the state

manent fund dividend budget." Of that total, $140 million would be revenue sharing money for local governments.

This budget would be fueled by

Opec has investors in jitters

Delay ordered in settlement of prisoner suit

By TOM KIZZIA
Daily News reporter

The conclusion of a settlement between the state and prisoners has been delayed for a month to allow the Sheffield administration a chance to review the agreement.

The delay was ordered Thursday by Superior Court Judge Douglas Serdahely at the request of Assistant Attorney General Mike Stark. Timothy Stearns, attorney for the prisoners, said he was "real upset" by the postponement, because it meant a delay in prison reforms, including changes to existing disciplinary procedures that Stearns called unconstitutional.

Comments on the proposed settlement from the prisoners who are party to the class-action suit against the state prison system have been positive, Stearns said, except for prisoners at the Third Avenue Jail. Prisoners there were nearly 4-to-1 against approval of the settlement. They complained that the language was too vague and gave the state Division of Corrections too much latitude to skirt the agreement, according to Stearns.

The state already has backed out of a wider agreement, leaving major cost items in the suit to be decided by the new administration.

Under Thursday's decision, the state will have until Jan. 7 to review the proposed partial settlement. Serdahely may sign the agreement at a Jan. 14 hearing.

A separate portion of the suit, involving state prisoners held in federal institutions in the Lower 48, may be resolved when the judge hears comments from the prisoners on Jan. 13. Early comments from the prisoners in federal jails mostly opposed the proposed agreement, complaining that it pinned too much on hopes that the state legislature would be willing to pay for new prisons.

City ombudsman says recall petition legal

By KARIN DAVIES
Daily News reporter

A recall petition against Anchorage Assemblyman Gerry O'Connor should have gone to a vote of Eagle River residents, the municipal ombudsman said Friday.

The petition was recently invalidated by municipal clerk Ruby Smith, who said the document cited insufficient grounds for recalling the Eagle River representative.

Ombudsman Wayne Mabry said state law does not allow the municipal clerk to reject a recall petition for such reasons. He added, however, the only way for petitioner Tom Staudenmaier to reverse the clerk's decision is to challenge it in court.

See Page B-2, RECALL

Recall

Continued from Page B-1

In response to a complaint filed by Staudenmaier, Mabry urged the Alaska Legislature to revise state law to clarify the rules on recall petitions.

O'Connor said he is prepared to stand for a recall ballot. "I'm ready to have at it." He said he plans to run for re-election this fall.

Staudenmaier, chairman of the Alaska Conservative Political Action Committee, gathered 509 signatures on a petition that claimed O'Connor's support of a 34 percent increase in the municipal tax rate qualifies as proof of incompetence and failure to perform in office. Both are grounds for recall under state law.

Smith rejected the petition, saying the way an assembly member votes on a municipal budget "does not constitute incompetence or failure to perform prescribed duties."

Although he said the petition should have gone to a vote of Eagle River residents, Mabry said "the recall effort was premature if based on a municipal tax increase" because the budget does not automatically raise taxes. Mill rates are set by the assembly in the spring.

Staudenmaier could not be reached Friday for comment.

Anch. News 2/9/83

Doing time in comfort

THE NEW LAW in California calling for manadatory 48-hour jail sentences for drunk drivers has led to an overflow of prisoners. Alaska has a similar problem with its 72-hour sentence requirement.

Los Angeles is handling some of its prisoners in a unique way by allowing them to serve their time in community jails in nearby Redondo Beach and Torrance, where conditions are considered much better than in the county jail.

THERE'S A HITCH. The inmates must pay for the privilege — $75 a night — so the towns' taxpayers won't be burdened financially. Those who have served their 48 hours in the community jails say it's worth the money. Redondo is booked on weekends through May.

In the county jail prisoners have to share cells with four or five other people and associate with hard-core criminals. In the town jails they have private cells and are kept away from other inmates.

California also plans to erect some tent cities this spring to accommodate these drunk drivers, presumably the ones who either will not or cannot pay the tab for better conditions.

ALASKA corrections officials could get some ideas from California's approach to the overcrowded jails. Drunk drivers generally are not a menace to society except when they are behind the steering wheel. Doing their three days in a super-secure, $100,000 cell is just not necessary. A tent city ringed by a chain-link fence with some barbed wire on top could well be the answer here, for part of the year at least.

The state could buy or lease an old hotel and make it reasonably secure. First-conviction drunk drivers could be given the option of serving their time there if they were willing to pay a per-night charge for it. The charge would help defray the cost of upkeep.

The expensive cells should be saved for the prisoners who must be kept away from society. Elite jails could serve only a small segment of the prison population, but enough to relieve the terrible overcrowding that now exists.

Professor has 2 roles in jail study

5-21-83

By BETSY BRENNEMAN
Daily News reporter

JUNEAU — A University of Alaska professor trying to persuade the legislature that the town of Anderson is the best site for a new maximum-security prison also is being paid by the legislature to study the state prison system.

Dr. Gary Copus, assistant professor of criminal justice at the University of Alaska-Fairbanks, was awarded a $22,000 contract by Sen. Don Bennett, R-Fairbanks, to study the state prison system. The contract was awarded without competitive bidding.

The contract runs from March 1 until the end of the year, and Copus will be paid a $15,000 fee and $7,000 for expenses by the Senate Advisory Council, which does research for the Senate leadership.

Earlier this year, Copus was paid $75 an hour by the city of Anderson to study the potential of Anderson as a maximum-security prison site. He presented the study while actively pressing the case for Anderson during recent legislative hearings.

Anderson City Manager Vern McCorkle also said the city has paid for some of

See Back Page, PROFESSOR

Professor has 2 roles in study

Continued from Page A-1

Copus' expenses to help argue its case while Copus is in Juneau.

McCorkle maintains Copus is not a paid lobbyist, but merely is available to provide backup on the technical aspects of Anderson's qualifications as a prison site. Copus keeps both projects separated and hasn't talked to McCorkle about his legislative contract, McCorkle said. "He's got pretty high ideals and standards."

Anderson is about 80 miles southwest of Fairbanks.

Bennett said Copus had been hired to gather information about the workings of the state correctional system, because "we're not happy with the prison system, the way it is now."

The Fairbanks lawmaker cited overcrowding, misclassification of prisoners and the pending Cleary case settlement — a class action suit brought by inmates against the state — as problems the legislature needs to know more about.

Bennett added there is no need to solicit proposals for contracts less than $25,000 and said very few people in the state have expertise in the field of corrections.

He said he saw no problem with Copus being paid to lobby the legislature at the same time the legislature has him under contract. The legislative study is about conditions in the prisons and has nothing to do with facility sites, Bennett said.

However, state corrections director Roger Endell is concerned about Copus' dual role. The Division of Corrections is willing to cooperate with the legislature on its research project, Endell said, but he's worried about perceptions that the division might be involved in questionable interaction with Copus.

"If there is a question, it needs to be clarified right now, because I don't want any part of it," Endell said.

Copus could not be reached for comment Friday.

At least seven communities are being considered as possible sites for a new 400-bed, $45 million state facility for prisoners sentenced to serve an average of five years or longer.

A number of bills have been introduced favoring one site over another.

City council, residents want proposed prison to be built in Seward

By RONNIE CHAPPELL
Daily News correspondent

SEWARD — The Seward City Council unanimously has agreed to ask the Division of Corrections to locate the state's first maximum-security prison in this Resurrection Bay community.

Almost 100 people turned out for a special meeting Monday at which the vote was taken, said City Manager Ron Garzini.

"People were overwhelmingly positive," Garzini said. "Only two people expressed reservations about the prison, and no one said they were opposed to it."

Garzini said letters advising Gov. Bill Sheffield, Corrections Chief Roger Endell and legislators of the council vote, were mailed Tuesday.

Wally Roman, who represented the Division of Corrections at the council meeting, was surprised by the public response, Garzini said.

Garzini, too, was surprised by the degree of support. "I had expected some negative comment," he said.

Seward wants the state to build the proposed $40 million prison on city-owned land next to the Fourth of July Creek Marine Industrial Park. Electric transmission lines run to the site, which also has road access.

"We've offered to provide them that ground for as long as the state continues to operate a prison there," Garzini said.

Seward has even offered to supervise construction of the prison for the state. Under the plan, the state would still underwrite the cost of the facility, but the city would assume responsibility for getting the job done.

"To my knowledge, we're the first community in the state to go through this exercise," Garzini said. "We're optimistic. We're the best possible site for a maximum-security prison.

"It's my understanding that the Sutton site is mostly muskeg," he said.

A number of Alaska communities are competing for the proposed prison. Although opinion in Sutton is divided, other Matanuska-Susitna Valley communities would like to see the prison built there. Cordova, Haines and Kenai have also expressed interest in having the facility.

Palmer-area prison OK'd

5-11-85
Times

Associated Press

Juneau — A bill requiring that Alaska's proposed $45 million maximum-security prison be situated in the Palmer-Sutton area cleared the Senate Finance Committee today.

The committee, acting at the request of lawmakers from the Delta area, amended the measure to provide that if Alaska built a second maximum-security jail, it would be located in Anderson.

The bill is sponsored by Senate President, Jay Kerttula, D-Palmer.

Approval came amid an active lobbying campaign on the part of several Alaska communities to win the prison facility with its promise of scores of jobs.

See Panel, page A-5

Panel approves site

Continued from page A-1

Sen. Joe Josephson, D-Anchorage, defended the measure as justified by two studies that he said found the Palmer-Sutton area to be a good location.

He also criticized recent comments by Corrections Director Roger Endell that the legislature should stay out of the question of siting for the prison. Endell argued that it should not be a political decision, and said if it were to be located in the Mat-Su Valley, a better location would be at an abandoned missile site at Goose Bay.

Josephson said the decision is a political one by the Sheffield administration as much as it is by the legislature.

Democratic Sen. Pappy Moss and Republican Rep. Dick Shultz, both of Delta Junction, persuaded addition of the Anderson amendment, although it was pointed out that it wouldn't necessarily bind future legislators.

The Sheffield administration has proposed a fiscal 1984 appropriation of $3.6 million for the prison, which wouldn't be completed for several years. Alaska does not have a maximum-security prison and sends its convicted felons to federal penitentiaries.

MESSAGE #5769 JUDY/MATSU 4/5/83

Judiciary Referral

TO: ALL LEGISLATORS

FROM: JOHN BOZINOFF
P.O. BOX 414
WASILLA. 99687 PH. 376-5746

RE: LOCATION OF PENAL INSTITUTION

PUTTING A PRISON IN OR NEAR A RESIDENTIAL AREA SUCH AS SUTTON, PALMER, OR WASILLA IS TO CONDEMN THOSE RESIDENTS TO THE VIOLENCE THAT THE PRISONERS WERE CONVICTED OF. THE STATE'S ABILITY TO PROTECT ITS CITIZENS IS INDEED DISMAL.

SEWARD CHAMBER OF COMMERCE
P.O.BOX 756
SEWARD, ALASKA 99664
(907) 224-3046 or 224-3047

May 16, 1983



Charlie Bussel Representative
House of Representatives
Pouch V
Juneau, Ak. 99811

Dear Rep. Bussell

Enclosed for your information is a copy of a news story which ran on the front page of the Anchorage Times Sunday, May 15th. This story is not new! The residents of Sutton have continually voiced opposition to the location of another prison facility in their area. As the news article points out this is not just a few unhappy individuals, it is several hundred. There are only a few who seemingly are for its location there. The Valley newspapers have had a regular showing of letters to the editor from the Sutton people who do not wish any more prison facilities located in their area. The Governor's Office, Division of Corrections officials have stated equlvocally that the prison site would not be located in an area where the people did not want its being built.

Seward became interested in this matter when it was withdrawn by the past administration because of Sutton residents complete opposition to the prison. As a matter of fact, until the City of Seward contacted the Division of Corrections and the Governor's Office to say that Seward was very interested in having the facility located here, there was not one community in the State that wanted the new prison built in it. Seward has very carefully over several months, held public meetings and public hearings for our citizens to learn about what a prison being built in the community would bring to it. These hearings have produced only 3 people who spoke against it. The meetings were well attended. Reports were written and filed by Division of Corrections who were in attendance at several of the meetings (2 of which had 100 people or so at them).

Seward has a population of over 2000 and another 2000 in the outlying area adjoining it. With this kind of attitude or enthusiasm on having Seward selected as the location of the maximum security prison, we cannot understand why certain elected officials seem bent on forcing the administration to select Sutton which is adamantly opposed to its location there.

We ask that you seriously think about these points raised and allow the administration of Division of Correction officials to look objectively at the sites nominated for the prison. Politics, we feel should not be the crowning factor on a decision as important as this one is. Thank you.

Willard E. Dunham, Chairman
Seward Citizens Task Force for location of
Spring Creek Facility in Seward

JR

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BOX 1108 PALMER, ALASKA 99645 PHONE (907) 745-2144



March 18, 1983

Rep. Charlie Bussell
Pouch V.
Juneau, Alaska 99811

Dear Rep. Bussell,

We would like you to consider putting the maximum security prison in the Palmer-Sutton Area. We know the majority of people in this area are for the facility being located here.

It is by far the most cost effective, as was determined by the Division of Health and Social Services several years ago. We are near the center of the population, major court systems, medical facilities, and transportation costs taking the prisoners to and from the Courts would be a great savings. It would also make it more convenient for the families of the prisoners to visit.

The state already owns the property, so there would be no need for money to be expended for the land. The roads and utilities are already in, and most of the land is already cleared, so the buildings would be able to be built much faster. The cost of building in this area is also far less than in other areas of the State.

It would give this area a stable economy, which we really need at this time.

Please take these thoughts into your consideration when the decision as to location comes before you. Thank you for every consideration.

Sincerely,

Mary E. Combs
Mary E. Combs
Michael F. Combs
Michael F. Combs



Prison plan not popular in Sutton

by Al Campbell
for The Times

Sutton — Almost everybody, it seems, wants to build the state's proposed maximum-security prison on the grounds of the existing minimum- medium-security jail near this Glenn Highway community.

Legislators, local politicians, the business community — all support the Sutton-area location for the proposed $42 million lockup.

All, that is, except the people here, who remain almost unanimously opposed to 300 murderers, rapists, robbers and assorted other felons being housed.

See Sutton, page A-4



Sutton residents fear prison would be dangerous for town

Continued from page A-1

in their midst.

They feel that way despite overtures from two state administrations and assurances from prison officials and law enforcement officers that having 300 bad guys locked up nearby leads to a safer environment than having them running around loose.

With only a handful of exceptions, the 400-500 people who live in the unincorporated community reamin unconvinced.

Linda Olson, president of the Alpine Community Council, acknowledges that she does not speak for the town, but says she has no doubt whatsoever of the local consensus: "There are no benefits to us, and there could be a lot of problems."

The community council, the closest thing to organized government here, has recently reemphasized its opposition to the construction plans with a 6-1 vote by directors to "back the community" in opposing the maximum-security addition to the existing site.

"This is not just a few people, this is everybody against the idea," says Olson.

Generally, residents here oppose the high security prison because they fear escapes, and they feel escapees would somehow victimize local residents, perhaps by stealing their cars, their weapons or other property.

Some also fear physical harm from any individual or group that managed to break out. An incident years ago that saw a young woman molested by a walkaway from the minimum-security section has contributed to that fear.

But the opposition here goes even deeper than that. "We don't want the stigma," says Grant Olson, husband of the community council president.

At a public hearing here several months ago, protestors complained they did not want to be known as "the Leavenworth of Alaska," a reference to the notorious federal penitentiary that put that Kansas community on the map.

The same concern among the Eagle River business community prompted successful lobbying by Eagle River people to change the name of the facility there from the Eagle River State Jail to Hiland Mountain Correctional Center.

Residents here, too, object not only to the proposed in-prison population, but also to the friends and relatives of inmates who may frequent the area — and even to the corrections staff who may choose to live in the vicinity.

"Who wants a bunch of their (prisoners') buddies cruising around, waiting for visiting hours or bringing in booze and dope?" asked one resident who asked not to be named. "These are not the best people in the world, after all," she said.

The staff would have a considerable impact on the area, says Linda Olson. "This is a small, rural community with our own way of life . . . even a few more people here would alter that way of life considerably."

She and other protestors say for all the assurances from the state and Matanuska-Susitna Borough governments, no official has pledged any assistance in planning, schools or general economic impact aid to help cope with what could be a doubling of the local population.

"But basically," Olson says, "we just don't see anything to benefit us. It sounds selfish but I am sure most other people in other areas would feel the same way."

Sutton-area people are aware that the $42 million construction job would undoubtedly go to a major contractor, with union labor. There are few union tradespeople now living in Sutton.

They have been told by state officials that as corrections and support staff expanded, they may be employed at the new site. But they have also been told that local hire preference is illegal.

Meanwhile the Greater Palmer Chamber of Commerce, the borough government and the area's legislative delegation continue to press for the Sutton area as the site for the expanded prison system.

The chamber has pledged to raise up to $10,000, from private and local government sources, and has a full-time lobbyist currently working in Juneau for the Sutton site.

"We are confident we will get it," says Mike Combs, head of the chamber's prison subcommittee.

The borough government has raised $3,000 for a cost-benefit study, and concluded that the Valley site would be practical, convenient and otherwise suitable for locating the new facility.

Assemblyman John Musgrove, who represents the Sutton area, says he is aware and "sympathetic" with his constituents here who oppose the prison.

But Musgrove says the benefits, particularly the estimated millions of dollars annually in labor and material purchases, outweigh the possible drawbacks.

"We have become convinced the prison would be as safe as possible," Musgrove says. "And we absolutely need the economic benefits that would come."

Linda Olson says given that kind of argument, people here are more or less resigned to the ultimate selection of Sutton as the site.

"Most of us went to every public hearing we could, and fought against it," she said. "But now, while we will continue to be against it, we are beginning to feel it is inevitable."

She said a recent telephone survey of about 100 local people turned up not one respondent in favor of the prison here.

"We have even asked people who might favor it to come forward and explain it to us, maybe they have some knowledge we can use," she says. "But all we hear from are the business people and the politicians. It looks like that is going to be enough to put it here."

Olson and others say they will ask that the expanded jail, if built, be identified with Palmer, not Sutton.

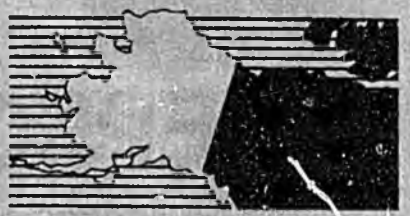
"Calling it the Palmer Correctional Center is just fine with us," she says. "We don't need the publicity."

State defends its plan to add new jails

By TOM KIZZIA 4/2/83
Daily News reporter

Saying prisoners' demands for fast relief from jail crowding reflect "a high degree of political naivete," the state this week defended its plan to add new jails over the next few years.

Prisoners' attorney Timothy Stearns had called the court-ordered plan submitted by the state inadequate, but Assistant Attorney General Michael Stark said that detailed planning was impossible until the state Division of Corrections knew how much money it was going to get this year from the legislature.



"To expect defendants to propose a plan now which will deal with all eventualities in light of the present uncertainties as to funding and pending legislation is totally unrealistic," Stark said.

The prisoners "ignore the political realities of declining revenues in the state and the fact that there are at least 15 other executive agencies, many of which provide direct services to the people of Alaska, vying for pieces of an increasingly smaller fiscal pie," Stark wrote in a court brief.

Stark said the state agreed with population goals proffered by the prisoners and was not trying to avoid problems of prison overcrowding. He said the Sheffield administration had approved an operating budget for corrections next year of $57 million — up from $41 million this year, though less than the $63.5 million requested by the division.

Stark said the legislature also is considering emergency overcrowding legislation and capital funding for new prisons. He said the legislature's delay in creating a new Department of Corrections had been an obstacle to the state's attempt to provide "improved management structure," he said.

The state proposed to provide a more detailed plan to Superior Court Judge Douglas Serdahely two weeks after the end of the legislature. However, Serdahely earlier set a trial date of June 9 for unresolved issues in the class-action suit against the state prison system.

Stearns said Friday he was "more disappointed than ever" in the state's response and would request a prompt hearing from Serdahely on the overcrowding plan.

HB

375

COMMITTEE REPORT

HOUSE

FINANCE

(7)

FURTHER:

4/21/83

Date: 5-6-83

Mr. Speaker:

The Committee on JUDICIARY has had HB 375

"An Act relating to access to certain criminal justice information."

under consideration and reports it back as follows:

[ ] do pass [ ] do not pass

[ ] do pass with attached amendments(s)

[ ] replace with CS for HB 375 (JUD) [ ] same title [ ] new title

and recommends _____

[ ] AND attaches a "Letter of Intent" [ ] New Fiscal Note

[X] Zero Fiscal Note Attached

[ ] reports it back without recommendation

[ ] referred to the _____ Committee

MEMBERS SIGNING
DO PASS

MEMBERS HAVING
OTHER RECOMMENDATIONS:

CHAIRMAN

STATE OF ALASKA

BILL SHEFFIELD, GOVERNOR

DEPARTMENT OF PUBLIC SAFETY
OFFICE OF THE COMMISSIONER

POUCH N
JUNEAU, ALASKA 99811
PHONE:

May 4, 1983 465-4322

The Honorable Charles Bussell
Chairman, House Judiciary Committee
Pouch V
Juneau, Alaska 99811

Dear Representative Bussell:

This is in response to your request for a Position Paper on HB 375. The Department of Public Safety supports passage of this legislation. Employers should be able to request records of convictions of all sex crimes or crimes dealing with contributing to the delinquency of a minor, of persons applying for positions involving supervision or disciplinary power over minors. The enactment of this Bill will help protect employers from unknowingly hiring a person with prior convictions in this area.

Sincerely,

Robert J. Sundberg
Commissioner

12-L2LH

RECEIVED APR 0 6 1983

STATE OF ALASKA
THE LEGISLATURE

POUCH Y - STATE CAPITOL
JUNEAU, ALASKA 99811
907-465-3500

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM April 6, 1983

SUBJECT: Definition of minority in Rule 1(e)

TO: Senator Rick Halford

FROM: Billy G. Berrier
Director
Division of Legal Services

You have requested wording for a suggested definition of "minority" for the purposes of Rule 1(e) essentially as we discussed.

I would suggest:

> For the purposes of this rule a minority is a group of members who have declared themselves to be a caucus not later than the day following the election of the presiding officers and who are not members of the majority. If there is more than one group who would meet these requirements, the larger group is the minority.

I believe this meets the concept you desired.

BGB:ljb
13/030

Alaska State Legislature

Speaker of the House of Representatives

Pouch V
State Capitol
Juneau, Alaska 99811
(907) 465-3720

Official Business

CSHB 7 (Judiciary)
Effect of Amendments

The proposed Judiciary committee substitute makes the following changes:

Clarifies that the provisions of this law relate to 'motor' vehicles as defined in the statutes.

Includes a certificate of self insurance as one means of proving financial responsibility. This is typically used by commercial companies to insure a fleet of vehicles. The certificate is defined by AS 28.20.400.

Clarifies that a person seeking a license must only show proof of insurance only on vehicles which are both registered in that persons name and owned by the person which must be located within the state.

Changes the propsed liability limit increases from 100/300/50 to 50/100/25. Currently the limits in law are 25/50/10.

Adopts the language suggested by the Court system relating to issuance of a citation by a peace officer.

Deletes provisions which allowed a peace officer to impound a vehicle on the spot if he had cause to believe an insurance policy was not in effect.

Changes the responsibility for notifying parties in a forfeiture incident from the "court" to the Department of Law as suggested by the Court System.

Changes the date for submission of the first annual report from February 1986 to 1988 and changes report from Dept. of Commerce and Economic Development to a JOINT report with Department of Public Safety.

Adds new effective date of January 1, 1984 for the provisions which mandate that insurance companies offer uninsured and underinsured insurance. These sections would now take effect before any other provision in the law.

Friday, April 22, 1983, The Anchorage Times

House bill seeks to reveal child molesters

Times Juneau Bureau

Juneau — House conservatives have sponsored a bill to give employers access to some criminal records of workers who deal with minors.

The Governor's Commission on the Administration of Justice would be required to disclose to employers of workers who deal with minors records of all convictions for contributing to the delinquency of a minor or for sex crimes, under the bill.

"I hope I can close one small gap in a law that often times has assisted the sexually perverted to ply their trade with children," said Rep. Ramona Barnes, R-Anchorage, main sponsor of the proposal.

Current law permits release of these criminal records only to law enforcement agencies, she said.

"This information should also be provided employers and supervisors who recruit for positions whose main responsibility is supervising or disciplining minors.

The bill would require the commission to supply fingerprints to the employer, who also could fingerprint employees or job applicants.

The commission would be required to destroy the request for information six months after it is answered.

"The confidentiality of a criminal record rates way below my concern for innocent, trusting children who fall prey to child molesters," Barnes said.

Lear
5/6/83

Original sponsors: Barnes, Hayes,
Liska, et al

IN THE HOUSE BY THE JUDICIARY COMMITTEE

CS FOR HOUSE BILL NO. 375 (Judiciary)

IN THE LEGISLATURE OF THE STATE OF ALASKA

THIRTEENTH LEGISLATURE - FIRST SESSION

A BILL

For an Act entitled: "An Act relating to access to certain criminal justice information."

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

* Section 1. AS 12.62.030(a) is amended to read:

(a) Except as provided in (b) and (c) of this section and in AS 12.62.035, access to specified classes of criminal justice information in criminal justice information systems is available only to individual law enforcement agencies according to the specific needs of the agency under regulations established by the commission under AS 12.62.010. Criminal justice information may be used only for law enforcement purposes or for those additional lawful purposes necessary to the proper enforcement or administration of other provisions of law as the commission may prescribe by regulations established under AS 12.62.010. No criminal justice information may be disseminated to an agency before the commission determines the agency's eligibility to receive that information.

* Sec. 2. AS 12.62 is amended by adding a new section to read: as defined in subsection (e)(2)

Sec. 12.62.035. ACCESS TO CERTAIN CRIME INFORMATION. (a) Notwithstanding any other provision of law, an interested person may request from the commission records of all convictions involving contributing to the delinquency of a minor and any sex crimes of a person who holds or applies for a position in which the person would have supervisory or disciplinary power over a minor. The commission shall authorize the disclosure of the information to the requesting person

and shall provide a copy of the information to the applicant.

(b) A request for records under (a) of this section may include the applicant's fingerprints and any other data specified in regulations established by the commission. The request shall be on a form approved by the commission, and the commission may charge a fee to be paid by the requesting person for the actual cost of processing the request. The commission shall destroy an application within six months after the requested information is sent to the requesting person and applicant.

(c) Negligent disclosure of information by the state under this section is not actionable in a court of law.

(d) The commission shall adopt regulations to implement the provisions of this section.

(e) As used in this section

(1) "contributing to the delinquency of a minor" means a conviction for a violation or attempted violation of AS 11.51.130(a)-(1), (3), or (5) or for a violation or attempted violation of an offense committed outside the state if the offense would have been a crime in this state under AS 11.51.130(a)(1), (3), or (5) if committed in the state;

(2) "interested person" means a corporation, company, partnership, firm, association, organization, business trust, or society, as well as a natural person that ~~solicits~~ employs or solicits the employment of a person to serve with or without compensation in a position in which the person would have supervisory or disciplinary power over a minor;

(3) "sex crime" means a conviction for a violation or attempted violation of AS 11.41.410 - 11.41.455, AS 11.51.130(a)(4), or AS 11.66.100 - 11.66.130 or for a violation or attempted violation of an offense committed outside the state if the offense would have

been a crime in this state under one of the above sections if committed in the state.

STATE OF ALASKA
FISCAL NOTE

Revision Date , 1983

I. REQUEST

Bill/Resolution No.: HB 375
Title: "Act relating to access. . ."
Sponsor: Rep. Barnes
Requestor: House Judiciary

II. FISCAL DETAIL

Agency Affected: Public Safety
Program Category Affected: Crime & ID
BRU, Program of Subprogram(s) Affected: Alaska State Troopers

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 83	FY 84	FY 85	FY 86	FY 87	FY 88
OPERATING						
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 COMMODITIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC						
TOTAL OPERATING		-0-	-0-	-0-	-0-	-0-
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER (Specify Source)						

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

III. SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

IV. ANALYSIS: Attach a separate page for any Analysis No fiscal impact anticipated

Prepared By: Jos Mapranath Phone: 465-4336
Division: Administrative Services Date: 5-4-83

Approved by Commissioner: [signature] Date: 5/4/83
Department: Public Safety

Distribution:
Original to Legislative Finance
Copy to Office of Management and Budget (for Legislature introduced bills)
Copy to Department (for Governor introduced bills)
Copy to Sponsor
Copy to Requestor (if different from Sponsor)

3/8/83

ANC TIMES 5 MAR 83

Suspects arrested in sex cases

by Jeff Berliner
and Carl Gidlund
Times Writers

A man who allegedly used state agencies to procure juveniles for sex has been jailed.

Police and prosecutors say he gave the youths alcohol and drugs then sexually molested them. The man acted under the guise of helping youths he had obtained through legitimate channels, police said.

Held on $40,000 bail is Hensley L. "Pat" Patterson, 33. He is charged on two felony counts of sexual abuse of a minor, one felony count of contributing to the delinquency of a minor and five misdemeanor charges of contributing to the delinqeuency of a minor.

Patterson reportedly got access to the youths — all boys age 14 to 17 — through his work under the authority of the state juvenile probation office and as a state-approved foster parent.

"Patterson used state agencies as a way of maintaining contact with the boys," said Paul Olson, an assistant district attorney here who specializes in prosecuting sex crimes.

Police and prosecutors said they stopped another case of an adult man sexually molesting

See Arrest, page A-5

Arrest

(Continued from page A-1)

male juveniles in a second unrelated arrest Friday.

In that c[illegible] Robert Elstad, 41, was jaile[illegible] $35,000 bail and charged with [illegible] counts of sexual abuse of a minor and lewd and lascivious acts toward children.

Both men were arraigned Friday. The cases were put together by the sex crimes units of the Anchorage Police Department and the district attorney's office.

Authorities say that in addition to using state agencies to get custody of the youths, Patterson had other ways of coming into seemingly legitimate contact with young boys.

Olson said Patterson was director of the Cook Inlet Native Association Youth Center and also worked at the Fairview Community Center. In both jobs he came into contact with boys about the age of those he is accused of molesting.

A foster parent from 1973 to 1975 and again from 1977 to 1979, Patterson was given legal custody of juveniles and was an officially approved guardian, Olson said.

Patterson was a so-called "pass partner" for youths held at McLaughlin Youth Center and for youngsters on probation, Olson said, adding that the state "juvenile probation office allowed him to be with kids on probation."

Juvenile probation officers have the power to authorize approved individuals, such as Patterson, to take the youths out of an institutional setting or out of other custodial situations and act as the guardian of the youths while they are assigned to him.

Officials at McLaughlin and in the Department of Health and Social Services could not be reached for comment Friday. However, Anchorage police Lt. George Novaky said the department's investigation began last December when a youth in custody at McLaughlin told investigators of his involvement with Patterson. The youngster provided information that led to the other boys, he said.

Although the criminal complaint against Patterson lists only five victims, Olson said it is "generally thought that more kids are involved."

The felony contributing-to-the-delinquency-of-a-minor charge alleges that Patterson induced a juvenile to commit a sex act with him. Five misdemeanor contributing-to-the-delinquency-of-a-minor charges state that Patterson supplied drugs and alcohol to the youngsters. The incidents are said to have occurred from 1979 to 1982 at Patterson's home.

In a similar case, police recently charged that the assistant director of the Boys Club of Alaska was using his job to come into contact with boys he allegedly molested sexually.

Venson Brown still faces trial on those charges. And although he has pleaded not guilty, court documents state that Brown has confessed "in substantial part" to the allegations on tape. He goes to trial next month.

Elstad, a businessman who operates a contracting firm, allegedly molested boys age 12 to 15 in incidents that occurred from 1980 through 1982. He lured the boys into his home at 6525 McGill St. without force and then sexually assaulted them, police reported.

Lt. Novaky said the department's investigation of Elstad began last October while officers were pursuing another case — not related to sexual conduct — that involved him. Investigators pursued leads that lead them to seven other alleged victims, several of whom were in McGlaughlin, he said.

Patterson and Elstad face grand jury indictments and will be returned to court next week.

A CHILD'S CRUEL DEATH SPURS HER GRANDMOTHER TO WAR AGAINST CHILD MOLESTERS



Pictured here at 2, Amy Sue fell victim to a sadistic killer. "I was never aware of child molesting," says her grandmother.

Photographs by Nancy Ellison/Sygma



Six weeks before he killed Amy, habitual molester Frank, 43, was freed by psychiatrists who believed he had "recovered."

1978 was a mild spring in the rural Southern California community of Camarillo, where [illegible]-old Amy Sue Seitz was playing in the backyard of her aunt's house. The aunt, Delfina, often looked after Amy Sue during the day while her mother, a single parent, worked as an electronics assembler. In this quiet neighborhood, Delfina felt safe leaving her niece unattended for a few minutes while she went inside to change clothes.

It was a mistake with horrible consequences. When Delfina looked outside, Amy Sue had vanished without a trace. For two days her relatives joined with neighbors and police in a futile search. Then, on the third day, a toddler's mutilated body was found in a nearby canyon. Of course, it was Amy Sue.

Ten months later police charged a man named Theodore Frank with the loathsome crime. Just the day before, he had been sentenced for the kidnapping and molestation of two preteen girls. Frank, 43, an unemployed laborer, has admitted to molesting as many as 150 children over a 23-year period. Until he was convicted of Amy Sue's murder in December 1979 and sentenced to die in San Quentin's gas chamber, he had served less than two years in prison and almost nine years in state hospitals for his sex crimes. Even as he committed Frank to Death Row, Judge Byron K. McMillan stated that he considered the sentencing an empty exercise: "I think he'll die of old age—on the streets in about 15 years. I'd bet on it."

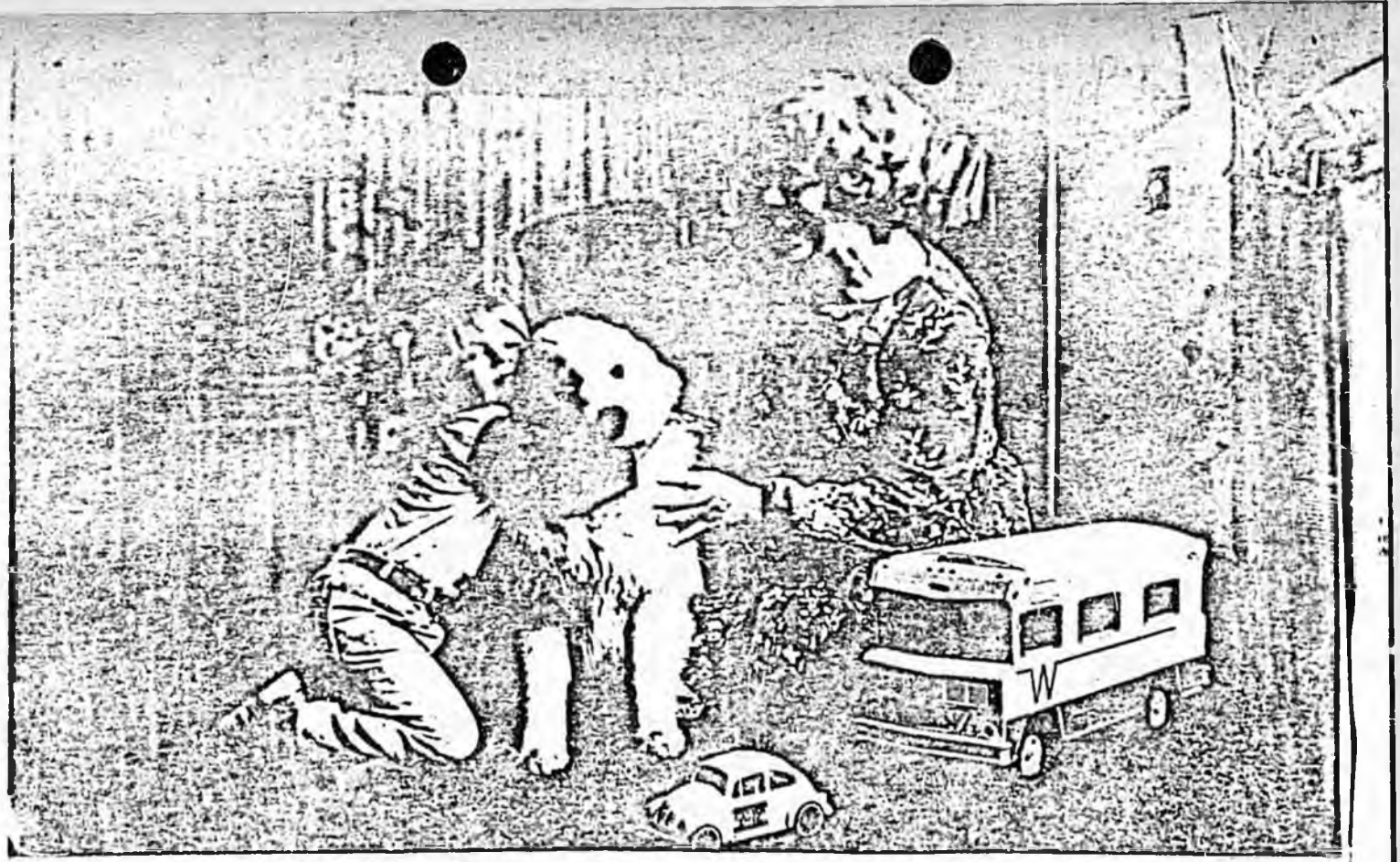
That prediction may prove true: Frank is appealing his death sentence, claiming that the crime was not premeditated and that the state used inadmissible evidence. Lawyers for both sides agree that a final resolution of the case may take years. Judge McMillan's baleful view of the judicial process produced at least one positive effect—it motivated Amy Sue's grandmother, Patti Linebaugh, to try to make sure that future Theodore Franks would not be dealt with lightly. "I couldn't believe that the judge who put him away, even in this state, even though we had capital punishment, was saying that Theodore Frank would be out on the streets in 15 years," says Linebaugh, 47. "I felt that the families of Frank's prior victims had a responsibility. If they had only fought to create some pressure on law enforcement, this man wouldn't have been free. Maybe Amy Sue would still be alive."

Along with Irv Praeger, who prosecuted the Frank case, and another friend, Linebaugh founded SLAM—Society's League Against Molestation. "What began as a murder investigation became an investigation of our system of dealing with child molesters," says

CONTINUED



"First we were victims of Theodore Frank," says Patti Linebaugh of her granddaughter's killer. "Then we were victims of the court system."



Playing with grandson Michael, 3, and family pet Nikki, Patti observes, "I look at the little ones and know I have to do something."

Praeger. Statistics show that when a molester is arrested, he has probably attacked some 19 other children. "Only about 5 percent of the attacks are reported," according to Praeger, "and, of the molesters convicted, less than 10 percent went to prison."

Shaken by her grief and those figures, Linebaugh began a petition drive that garnered 140,000 signatures and pressured California legislators into adopting tough new anti-molester laws, which took effect last January. Among the provisions: mandatory long-term prison sentences without hope of probation for virtually all serious or repeat offenders; an extension of the statute of limitations to six years in molestation cases, since victims are often unable to discuss the assault for years afterward; and minimum terms of three years for each count, plus five additional years for each previous conviction of child molestation and 20 years to life for a third offense. "Who's responsible for the death of Amy Sue—Frank?" Linebaugh asks. "Our judicial system. I came to realize that laws could be passed to prevent men like Theodore Frank from getting out on the streets again."

Indeed, Theodore Frank is an example of modern penology and jurisprudence gone gravely awry. Described by one of his former doctors as "a chronic, habitual child molester," Frank was first arrested in 1958. He subsequently served several terms in prisons and hospitals, emerging each time to commit new assaults, and treating his victims with escalating violence and cruelty. Just six weeks before he killed Amy Sue, Frank had been released from the Atascadero State Hospital, a mental hospital for criminals, after serving more than three years of a four-year sentence for kidnapping and molesting a 4-year-old Bakersfield girl. Frank, who, according to Praeger, took a correspondence course in psychology while in prison, won his release from Atascadero by masquerading as a reformed man. He hoodwinked the hospital psychiatrists so thoroughly that they petitioned Illinois authorities to drop child-molesting charges pending against him there. Frank admitted the deception before being sentenced for assaulting the two preteen girls. "When convenient," he wrote, "I have used my extensive knowledge of psychotherapy as an ongoing game of manipulation."

One of the country's leading authorities on child molestation believes that pedophiles like Frank are not treatable. "There's no percentage for the molester to give it up," explains Dr. Roland Summit, an assistant professor of clinical psychiatry at the University of California at Los Angeles. "He doesn't want to stop or come to the surface or be identified. He doesn't want to close off his option." While researchers have not found a single cause of pedophilia, says Summit, studies indicate that the childhood victim of molestation may become a molester in adult life.

Amy Sue's relatives are trying to put themselves back together. Her mother, Sherry, has married a noncommissioned officer in the U.S. Navy, a man whose strength brought her through the trauma; they now live in an Eastern city where Sherry recently gave birth to twins. Patti Linebaugh likewise perseveres. "Every time I start to back off," she says, "I realize I can't live with myself if I don't create an awareness—make other people understand what must be done."

There are now 44 chapters of SLAM in California alone, and 12 in nine other states. Linebaugh is frequently asked to address interested groups across the country. "I've never done anything like this," she says of herself. "I've just been a mom and a wife and that was it. Yet from somewhere I've had the strength to fulfill a promise to a little baby."

DORIS KLEIN BACON

HB

388

AMENDMENT

OFFERED IN THE HOUSE: BY: Judiciary

TO: _____ HOUSE BILL No. 388

SENATE BILL No. _____

PAGE: 1 LINE: 12

Line 12 Delet: immediately in accordance with AS 01.10.070 (c).

Line 12 Insert: xxxxx after "effect" with the passage of the US Congress, of legislation repealing federal estate tax.

ALASKA STATE LEGISLATURE
HOUSE OF REPRESENTATIVES
RESEARCH AGENCY

Pouch Y, State Capitol
Juneau, Alaska 99811
(907) 465-3991

May 10, 1983

MEMORANDUM

To: Representative Mae Tischer

From: Leonard Steinberg, Research Staff

Re: Estate Taxes -- Research Request 83-154

Gail Thibodeau of your office asked for the following state and federal estate tax information:

1) the justification for the taxes;

2) the amount of income received from these taxes for the last four years;

3) the percentage of total revenue represented by estate taxes;

4) the amount of estate tax revenue collected by Alaska from residents and non-residents; and

5) the hardships that may result from estate taxes.

Justification for Estate Taxes

Estate taxes originated with the Populist political movement in the United States; the goal was to reduce certain excise taxes by taxing the wealthy. The federal government has levied a tax on the transfer of wealth at death continuously since 1916.

The primary reasons Congress passed the estate tax in 1916 were:

1) redistribution of wealth by breaking up large concentrations of wealth at the time of death; and

2) raising additional revenue for the federal government.

Another justification for estate taxes is that the appreciation in value that occurs between the time property is acquired and a person's death is income which normally escapes income taxation; estate taxes recoup part of this loss.

Following its imposition, individuals avoided the new estate tax by giving away large portions of their wealth prior to their death. Consequently, Congress has imposed a gift tax since 1932. The gift tax rate was substantially less than the estate tax rate until the two were unified by the Tax Reform Act of 1976.

The justifications for state estate taxes are the same as for federal estate taxes. However, according to Mr. Joe Donohue, Deputy Commissioner of Revenue, Alaska has the additional justification that its tax brings in revenue to the State without increasing the tax liability of an estate. Mr. Donohue explained that Alaska's estate taxes are credited, dollar for dollar, against the taxes that would otherwise be paid to the federal government. Therefore, until federal estate tax law is changed, a reduction in Alaska's estate taxes will not present a savings to the estate but only increase the revenues paid to the federal government.

Estate Tax Revenues

The amount and number of State estate tax collections, their percentage of total State revenue, and the amount of State revenues are listed below in Table 1. In fiscal year 1982, 325 estates filed tax returns with the Department of Revenue; 317 (86 percent) of the filed returns received a certificate of non-tax liability while 52 (14 percent) had taxes to pay. The estate tax revenues received in 1982 are not directly related to the 1982 returns because estates have 15 months to make their payments and are frequently granted 10-15 year extensions. Estate taxes during the period 1978-1982 have always been substantially less than one-half of one percent of the State's total unrestricted revenues.

Table 1

State Estate Taxes and Unrestricted State Revenues -- FY1978-1982

	1982	1981	1980	1979	1978
# of State Estate Tax Returns*	325	369	382	407	334
# of Paying Returns* †	52	42	N/A	57	55
State Estate Taxes Collected	$334,676	$453,492	$197,592	$136,685	$244,143
State Unrestricted Revenues($millions)	$4,108.4	$3,718.2	$2,501.2	$1,133.0	$764.9
Estate Taxes as a % of State Revenues	.008%	.012%	.008%	.012%	.032%

* These figures are for calender years and are based on the number of certificates issued for tax and non-tax liability.

† Eighty to ninety percent of state estate tax returns result in the the Department of Revenue issuing certificates of non-tax liability; those returns which actually impose State estate tax liability are listed in this column.

According to Ms. Eloise Herrick of the Department of Revenue, State estate tax records do not break down the revenues collected by residency status. However, Ms. Herrick stated that in her opinion, very little revenue is collected from non-residents. A more accurate determination of how much money was collected from residents and non-residents would require corrolating the revenues received with individual returns and reviewing each individual return to determine residency status; because this would require substantial time and effort, we have not pursued this information at this time.

Table 2 below illustrates the number of federal estate tax returns and the revenues collected by the federal government from both Alaska and the nation. The table also shows the percentage of total federal revenue represented by estate taxes. For example, in federal fiscal year 1982, 159 estate tax returns were filed with the federal government from Alaska and 134,965 were filed nationally. The federal government collected approximately three million dollars in estate taxes from Alaskans and eight billion dollars nationally in 1982. Estate taxes contributed 1.3 percent of the total federal revenue received in 1982.

Table 2

Federal Estate Taxes -- Federal FY1978-1982

($ in thousands)

	1982	1981	1980	1979	1978
# of Alaska Federal Estate Tax Returns	159	152	145	156	129
Total # of Estate Tax Returns Filed	134,965	145,617	148,228	159,404	160,152
Estate Taxes Paid by Alaskans	$3,081	$2,097	$2,285	$2,689	$2,412
Total Estate Taxes Paid	$8,035,335	$6,694,641	$6,282,247	$5,344,176	$5,242,080
Estate Taxes as a % of Total Revenue	1.3%	1.1%	1.2%	1.2%	1.3%
Total Federal Revenue	$626.8* (bil.)	$599.3 (bil.)	$517.1 (bil.)	$463.3 (bil.)	$399.6 (bil.)

* Estimate

Federal gift taxes, because they were created to stop estate tax avoidance, are often evaluated in conjunction with federal estate taxes. Table 3 presents information on federal gift taxes. As Table 3 illustrates, gift taxes add relatively little to federal revenue collections.

Table 3

Federal Gift and Estate Taxes and Total Revenues -- 1978-1982

($ in thousands)

	1982	1981	1980	1979	1978
# of Alaska Gift Tax Returns	98	252	252	260	193
Total # of Gift Tax Returns Filed	99,533	198,620	215,983	201,785	195,194
Gift Taxes Paid by Alaskans	$37	$15	$66	$117	$60
Total Gift Taxes Paid	$108,038	$215,745	$216,134	$174,899	$139,419
Total Gift Taxes as a % of Total Revenue	.02%	.04%	.04%	.04%	.03%
Total Federal Revenue	$626.8* (bil.)	$599.3 (bil.)	$517.1 (bil.)	$463.3 (bil.)	$399.6 (bil.)

* Estimate

Hardship Cases

Information regarding the frequency of cases in which a family must sell everything to pay estate taxes is not readily available. Large real estate holdings, such as farms, pose the most common hardships; families have reportedly been required to sell farms to pay estate taxes. However, due to the urgency of completing this request, we have not been able to provide a substantive response to this question. Please let us know if you would like additional research performed on this issue.

Several changes to federal tax laws have attempted to reduce the hardships that may result from estate taxes. The Tax Reform Act of 1976 made the following changes:

- increased the value of estates which can escape taxation from $60,000 to $175,000;

- allowed farms and other closely held businesses to be valued at less than fair market value; and
- increased marital deductions.

The Economic Recovery Tax Act of 1981 also attempted to reduce hard ships by:

- further increasing the value of estates exempt from taxation to $600,000;
- increasing the amount by which farms and closely held businesses can be undervalued; and
- allowing for unlimited transfers of property among spouses.

Furthermore, the 1981 Act extended the payment period for certain estate taxes to 15 years, and lowered the tax rates from a maximum of 70 to 50 percent.

* * * * *

We hope this information is helpful to you. Please let us know if you would like us to do any additional research.

LS

STATE OF ALASKA
FISCAL NOTE

Revision Date , 1983

I. REQUEST
Bill/Resolution No: HB 388
Title: Repeal of state estate tax.
Sponsor: Tischer
Requestor: Judiciary Committee

II. FISCAL DETAIL
Agency Affected: Revenue
Program Category Affected:
BRU, Program of Subprogram(s) Affected:

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 83	FY 84	FY 85	FY 86	FY 87	FY 88
OPERATING						
100 PERSONAL SERVICES	-	-	-	-	-	-
200 TRAVEL	-	-	-	-	-	-
300 CONTRACTUAL	-	-	-	-	-	-
400 COMMODITIES	-	-	-	-	-	-
500 EQUIPMENT	-	-	-	-	-	-
600 LANDS & STRUCTURES	-	-	-	-	-	-
700 GRANTS, CLAIMS, ETC.	-	-	-	-	-	-
TOTAL OPERATING	-	-	-	-	-	-
CAPITAL	-	-	-	-	-	-
REVENUE	-	(300.0)	(300.0)	(300.0)	-	-

FUNDING: (Thousands of Dollars)

GENERAL FUND	-				-	-
FEDERAL FUNDS	-	-	-	-	-	-
OTHER (Specify Source)	-	-	-	-	-	-
	-	-	-	-	-	-

POSITIONS:

FULL-TIME	-	-	-	-	-	-
PART-TIME	-	-	-	-	-	-
TEMPORARY	-	-	-	-	-	-
	-	-	-	-	-	-

III. SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

The repeal of AS 43.31 would reduce general fund tax receipts by approximately $300,000 per year based on past the five-year average. However, there would be no reduction in the tax paid by the estate. The repeal would only result in the tax being paid to the Federal Government rather than the Department of Revenue.

IV. ANALYSIS: Attach a separate page for any Analysis.

Prepared By: Robert W. Elliott (Robert W. Elliott) Phone: 465-2173
Division: Revenue - Research Date: 5/12/83

Approved by Commissioner: Joseph H. Donohue Date:
Department: Revenue

Distribution:
Original to Legislative Finance
Copy to Office of Management and Budget (for Legislature introduced bills)
Copy to Department (for Governor introduced bills)
Copy to Sponsor
Copy to Requestor (if different from Sponsor)

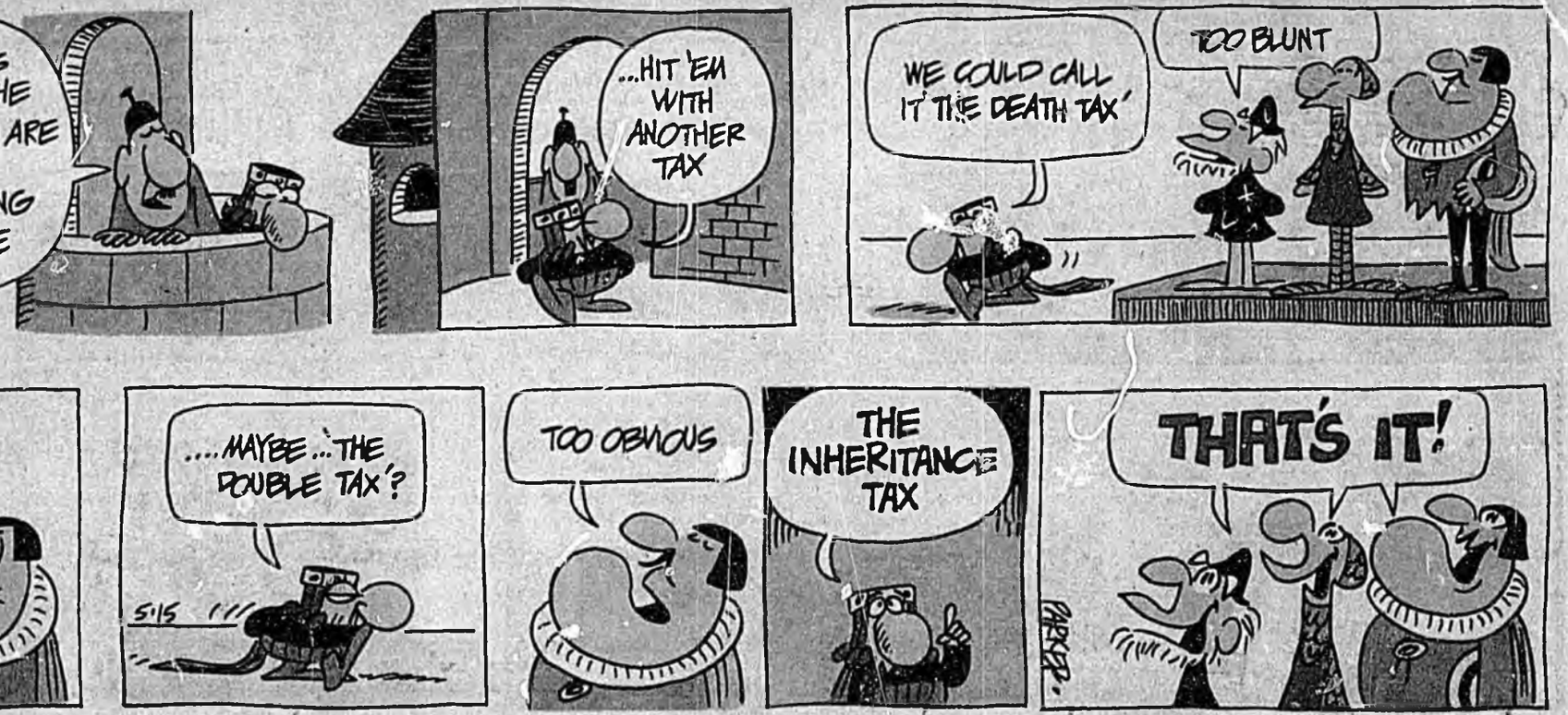
IV. Analysis

None of AS 13.16.610 should be repealed as there still is an apportionment of federal estate taxes required.

HB 388 file

WIZARD OF ID

by Brant parker and Johnny hart



HB
402

POUCH V
JUNEAU, ALASKA 99811
(907) 465-4990

Alaska State Legislature
HOUSE OF REPRESENTATIVES

REPRESENTATIVE
CHARLIE BUSSELL
CHAIRMAN

Committee on Judiciary

HB 402
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Driver's License Records

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Subject: Driving Record Reciprocity

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MEMBERS:
REP. JOHN LISKA, VICE CHAIRMAN; REP. RAMONA BARNES, EMERITUS;
REP. JOE HAYES; REP. HUGH MALONE; REP. DON CLOCKSIN; REP. RON WENDTE

STATE OF ALASKA
THE LEGISLATURE

POUCH Y STATE CAPITOL
JUNEAU, ALASKA 99811
907 465 3800

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM January 13, 1984

SUBJECT: Sectional Analysis of House Bill 402

TO: Representative Charlie Bussell
Chairman, House Judiciary Committee

FROM: Russ Josephson
Legislative Counsel

You have asked for a sectional analysis of HB 402. The analysis is as follows:

Section 1. Section 1 of the bill requires the Department of Public Safety to request from another state the records of a person previously licensed in that state and now applying for a driver's license in this state. Presently, if a driver has been licensed elsewhere previously the department may request the records, but it is not required to do so. Section 1 also clarifies that the driver's record from the other state becomes a part of the driver's record in this state. (See Section 3.)

Section 2. This section amends the existing statutory provision that a driver's license expires on the licensee's date of birth in the fifth year following the issuance of the license. With this amendment, expiration would be a year earlier, in the fourth year.

Section 3. Section 3 is a new section of law. It requires the Department of Public Safety to examine the record of a person applying for a license in this state, to make note of any offenses in other states with elements substantially similar to those of offenses in this state for which points are assigned, and to assign the person points on the person's record in this state, accordingly. Further, the department must follow the procedures it would follow for a driver who accumulated points in this state, including notifying the driver if the driver is determined to be a problem driver under AS 28.35.231(a), or declaring the applicant unqualified for a driver's license, as

appropriate. In addition, section 3 requires the department to treat offenses committed in another state by a driver licensed in this state as if the offenses had been committed in this state. This is done by assigning points to the driver's record in this state for offenses committed in another state when those offenses have elements substantially similar to the elements of offenses in this state for which points are assigned.

Section 4. This section amends an existing provision that allows the Department of Public Safety to maintain certain files. With this amendment, the department would be required to maintain a file of all accident reports, abstracts of court records of convictions of vehicle, driver, and traffic offenses, and other information which the department considers necessary to carry out the purposes of the motor vehicle statutes.

Section 5. Section 5 amends existing law that allows the Department of Public Safety to send to another state the records of a person licensed in that other state when the person has been convicted of a motor vehicle-related offense or has lost the driving privilege in this state. The amendment would require the department to send the record to the other state.

Section 6. This section increases the fees for drivers' ~~licenses~~ and permits.

RJ:lmb
L3/081

SECTIONAL ANALYSIS OF
HOUSE BILL NO. 402 BY REP. ABOOD
"AN ACT RELATING TO DRIVERS' LICENSES AND RECORDS"

It has become imperative that the State of Alaska identify the problem driver before he is a menace on the highways. This bill is designed to assure driver's license information reciprocity with all other States; that when issuing a driver's license to an individual from a previous jurisdiction, (an out-of-state individual who moves to Alaska), that the driving records of that individual are verified by the preceding jurisdictions at the request of the Department of Public Safety, State of Alaska to pinpoint possible problem drivers. This bill also changes duration of an Alaskan driver's license from 5 to four years, and shortens the "grace period" allowed to renew an expired license. Further, it clarifies the awarding of "points" for previous driving offenses to an individual from another jurisdiction requesting a license in the State of Alaska, and provides points to be awarded to the driver licensed in Alaska, when offenses are committed outside the jurisdiction of Alaska.

SECTION 1 - AS 28.15.061 (c):

When an application is received from an individual previously licensed in another jurisdiction, the department would now be required to request a copy of the applicant's driving record from the previous jurisdiction(s). (The Department should routinely send back to the issuing states all licenses received from the applicants obtaining Alaska licenses, with a request for forwarding the driving records of the applicant.)It then becomes a part of the driver's record, if the violations from the previous jurisdiction(s) have "similar elements" to those of Alaska law. (See AS 28.15.116) At the present time, the only time driving records are requested from other jurisdictions is when the individual's license has been suspended or revoked. The Department must take the person's word for his previous actions.

The DLC (Drivers License Compact) is a formal interstate agreement, requiring legislative enactment which attempts to regulate only those aspects of driver licensing law which relate to the "one license concept, the one record concept and reciprocity in sharing and acting upon information regarding interstate traffic offenders". Thirty states are now participating in this formal interstate agreement. Although Alaska is not a member of this Compact, most of the 49 other states give driver's license record information readily. In effect, this bill would enact the same legislation that would occur if Alaska entered into the DLC.

Currently, the Federal Government is in the process of updating an on-line computer system known as NDR, (National Driver Register), and it should be functional by 1986. Alaska participated in this system until last year because of funding cutbacks. Any state issuing a license can send an inquiry to this system to determine if that person's driving priviledges were withdrawn in another state. At the present time, the inquiry and response are via mail. (See Section 6 relating to "FEES".) Fiscal consideration should be given to additional staffing in the Juneau office to maintain records properly; for the driver improvement program and field office screening, staffing is also required.

SECTION 2 - AS 28.15.101 (a) - EXPIRATION OF LICENSE:

Commissioner Sundberg has recommended that an Alaska Driver's License should expire four (4) years after issuance, (versus the current 5 year expiration date), and that the one year grace period should be changed to a 90 day grace period. A majority of states now carry a 4 year expiration date on driver's licenses. Alaska is the only state carrying a 5 year expiration date.

SECTION 3 - AS 28.15.116 - EFFECTS OF VIOLATIONS IN OTHER STATES:

The Alaska Statutes become contradictory of each other when referring to AS 28.15.221 (a), (violation is counted in Alaska only if it applies to Alaska State Law), and AS 28.15.061 (c), (which states that all violations transfer to Alaska when an individual applies for an Alaska State Driver's License from another jurisdiction). Currently, the problem arises when comparing Alaska laws to the laws of other jurisdictions.

This new section requires that the Department assign points to the applicant's record for offenses committed in other states with laws similar to those of Alaska. If it is determined that the applicant is a "problem driver", (that is, has 50% of the points allowed), this section requires the applicant may be required to appear for a driver improvement interview. The Department may disqualify the applicant if the information from the other jurisdictions proves that the level of points awarded exceeds the maximum allowed. (See AS 28.15.221 (b) - 12 or more points awarded in a 12 month consecutive period, or 18 or more points awarded during any 24 month period.) If the information received from the previous jurisdiction(s) after issuance of a license is unfavorable, the Department can then cancel the license.

When an individual licensed in Alaska violates a traffic law in another jurisdiction, that violation becomes part of his Alaska driving record if the violation has "similar elements" to that of Alaska State Law.

SECTION 4 - Files:

The Department is required to maintain a file of all accident reports, etc. and all other information that the Department considers necessary to carry out the driver's license statute requirements.

SECTION 5 - AS 28.15.171 (b) - Out-of-State Drivers:

If the Department receives a record of the conviction of a person licensed in another jurisdiction, (another state), the department is required to forward the records to the motor vehicle administrator for the jurisdiction in which the person convicted has his license. This corresponds with AS 28.15.160 (b).

SECTION 6 - AS 28.15.271 (1) - FEES:

License fees are to be increased as follows:

All classes of driver's license:	from $5 to $10 (5 year to 4 year)
Motor-driven cycles:	from $2 to $10 (5 year to 4 year)
Instruction Permit:	from $1 to $3
Duplicate Driver's License	from $2 to $3
Temporary license & renewal of permit:	from $1 to $3
School bus driver's permit:	from $2 to $3

The increase in fees outlined in Section 6 of the bill will approximately double the revenue to the state for issuance of driver licenses. These increases in fees have been recommended by Commissioner Sundberg. It is felt that although the fees go directly into the General Fund, the fiscal impact of new positions to facilitate the implimentation of the above will be offset by the increase in fees. If the new fee schedule went into effect July 1, 1984, it is perceived the revenue would increase an additional $404.7 in FY85. The projected increase for FY86, FY87, and FY88 is based on an assumption of a driving population increase of 4% annually.

FY89 will be the first year any increase in revenue will be realized as a result of Section 2 of the bill, which changes license validation period from five years to four years.

This legislation will strengthen driver's licensing procedures which are of great value in keeping dangerous and unqualified drivers off Alaska Highways.

1/13/84

The Driver License Compact was made possible by the Beamer Resolution (Public Law 85-684) adopted by the United States Congress in 1958. That resolution noted the problems and the need for cooperative effort on the part of the states, and it provided advance consent to state action in the following terms:

> Resolved ... that the consent of Congress is hereby given to any two or more of the several states to enter into agreements or compacts -

> (1) for cooperative effort and mutual assistance in the establishment and carrying out of traffic safety programs ... and
> (2) for the establishment of such agencies, joint or otherwise, as they deem desirable for the establishment and carrying out of such traffic safety programs.

The first major response to the Beamer Resolution came in 1960 when The Council of State Governments started work on what would become the Driver License Compact. The work was begun following resolutions of the Western Interstate Committee on Highway Policy Problems and the Western Governors' Conference's urging that such an agreement be developed. The Council convened an interstate group which included representatives from a variety of governmental and private interests to be responsible for drafting the agreement. State motor vehicle administrators and the American Association of Motor Vehicle Administrators cooperated closely in the drafting of the compact. The Interstate Compact committee of the National Conference of Commissioners on Uniform State Laws and representatives of major national organizations active in highway safety matters assisted in the effort by commenting on successive drafts of the agreement. Legislators from a variety of states also were involved intimately in the compact drafting process. The fruit of these efforts was the Driver License Compact, which was offered to the states for legislative enactment in early 1961. It has now been adopted by thirty states.

The Compact seeks to obtain cooperation among the states in the exchange of driver offense information as a means of aiding driver enforcement programs and in reducing accidents. The agreement is directed toward the exchange of information about certain serious offenses. It also encourages procedural uniformity in state handling of license revocations and other processes involving offenses in states other than the licensing state. Specifically, the compact aims to help accomplish three major objectives:

- Implementation of the "one license concept";
- Implementation of the one record concept;
- Insure uniform and predictable treatment of drivers regardless of state of residence.

Implementation of the "One License Concept"

Nationwide Implementation of the "One License Concept"

The goal is to prevent individual drivers from obtaining multiple licenses from different states and to prevent the use of such multiple licenses to retain driving privileges despite conduct and convictions warranting revocation or suspension. Under the Compact an individual is allowed to have only one license at any particular time. That license is to be issued and controlled by the state in which the driver resides. Any driving which that driver wishes to do in another state is to be based upon his home state license. Under the Compact such a driver is not eligible to receive a license from another state until his existing license is surrendered.

Implementation of the "One Record Concept"

This second major goal of the DLC is to insure that an individual's entire driving record, including offenses in all states in which he has driven, is used to determine his driving eligibility in his home state and all other states. Ideally this complete driving record would follow the driver from state-to-state. It would be used by all states to determine his driving eligibility when he applies for a license and his continued eligibility during licensure. Under the Compact, a driver's complete driving record (including offenses in all party states) would be on file in his home state. It would accompany him if he moved to another state.

Uniformity of Treatment

The DLC also seeks to insure uniform and predictable treatment of drivers convicted of serious traffic offenses wherever the offense and conviction occurs. The philosophy behind the DLC provisions is that a driver's license should be suspended, revoked, or limited if his driving conduct in another state was such that if it had occurred in the state of his residence it would have called for suspension, revocation, or limitation. However, the Compact drafters were concerned about the varying definitions of offenses and the varying administration of traffic laws among the states. Accordingly, the mandatory language of the Compact is limited to convictions of driving conduct universally recognized to be extremely serious. Those offenses specified in the Compact are (1) manslaughter or negligent homicide, (2) driving while intoxicated, (3) conviction of a felony in which a motor vehicle was used, and (4) conviction of failure to stop and render aid in an accident resulting in death or personal injury. It is important to note that the action taken pursuant to the Compact would be taken by the driver's own home state officials. It would be based upon home state law and not on the laws and policies of the state where the offense(s) occurred. The state where an offense occurred could take unilateral action against the foreign driver's right to drive there, but action against the home state privileges would remain the responsibility of the home state.

MEMBERSHIP AND REACTION TO DLC

Figure 1 shows the geographical distribution of DLC states. It is evident that all the western states are members except Alaska. After that, with the exception of small clusters of non-compact members, there does not appear to be a strong geographical pattern.

The thirty states [1] which are currently parties to the DLC are:

Alabama (1966)	Indiana (1967)	New Mexico (1963)
Arizona (1063)	Iowa (1965)	New York (1965)
Arkansas (1969)	Kansas (1965)	Oklahoma (1967)
California (1963)	Louisiana (1968)	Oregon (1963)
Colorado (1965)	Maine (1963)	Tennessee (1965)
Delaware (1964)	Mississippi (1962)	Utah (1965)
Florida (1967)	Montana (1963)	Virginia (1963)
Hawaii (1971)	Nebraska (1963)	Washington (1963)
Idaho (1963)	Nevada (1961)	West Virginia (1971)
Illinois (1963)	New Jersey (1966)	Wyoming (1977)

Reaction to and support of the DLC since its promulgation in 1961 has been favorable. Organizations which have endorsed the Compact include the American Association of Motor Vehicle Administrators (AAMVA), The Council of State Governments and various of the regional Governors' Conferences, the Highway Users Federation, the International Association of Chiefs of Police, and the President's Committee for Traffic Safety. Criticisms of the Compact will be discussed in detail in this report. The position of the U. S. Department of Transportation in the past has been that "each state enact or comply" with the DLC, which may be termed an endorsement of the DLC goals if not an endorsement of the specific mechanism. Support for the DLC among the states is evidenced not only by the endorsements of organizations representing state officials, but also by the fact that 60 percent of the states have enacted the Compact. The party states also contain approximately 60 percent of the nation's driving population. One important conclusion of this study is that whatever opposition arose to the DLC may have been due principally to lack of information and failure of communication rather than to substantive opposition to its principles. This conclusion will be considered in detail later in this report.

[1] The year each state adopted the Compact is shown in parenthesis.

STATE OF ALASKA

BILL SHEFFIELD, GOVERNOR

DEPARTMENT OF PUBLIC SAFETY
OFFICE OF THE COMMISSIONER

POUCH N
JUNEAU, ALASKA 99811
PHONE: 465-4322

February 4, 1983

The Honorable Mitch Abood
Representative
Alaska State Legislature
Pouch V
Juneau, AK 99811

Dear Representative Abood:

In response to your comments of January 19, 1983, attached is a memorandum from Robert J. Rowan, Director of the Division of Motor Vehicles concerning reciprocal agreements.

Even though you did not make a specific request for this information at the time, you did raise my curiosity.

I hope this information is of some value to you.

Sincerely,

Robert J. Sundberg
Commissioner

Attachment: a/s

RECEIVED
FEB 8 1983

12-L2LH

MEMORANDUM

State of Alaska

DEPARTMENT OF PUBLIC
COMMISSIONER'S O
Juneau, Alaska
FEB 02 1983

TO: Robert J. Sundberg
Commissioner
Department of Public Safety

DATE: February 1, 1983

FILE NO:

TELEPHONE NO: 269-5554

FROM: Robert J. Rowan, Director
Division of Motor Vehicles
Department of Public Safety

SUBJECT: Reciprocal Agreements
Driver's License Records

This replies to your January 25, 1983 memorandum regarding Representative Abood's interest in this subject. I hope the following information answers your questions.

Alaska does not have reciprocal agreements with any other state which would require that state to send us a driving record when an individual possessing a driver's license from that state becomes licensed in Alaska, or vice-versa. Alaska Statute 28.05.021 states, in part,: "Compacts or agreements affecting state finances or driving privileges must be approved by adoption of a concurrent resolution approved by a majority vote of each house of the legislature before it becomes effective." Normally this type of agreement is a working arrangement between the state motor vehicle administrators, and there is no formal agreement.

It is generally the policy of the majority of states to automatically send a driving record to the new licensing state upon receipt of the surrendered license. Example: If a person with an Oregon license received an Alaska license, we require surrender of the Oregon license. If we returned that license to Oregon, they would send the driving record for that individual to Alaska.

We currently require the surrender of any out-of-state license, however we do not return it to the state of issue. We currently don't have the manpower to reciprocate, nor to enter any driving record returned.

Also AS 28.15.221(a), as written, prohibits point assignment for any conviction which is not in violation of an Alaska statute, regulation, or municipal ordinance. This section is in direct conflict with AS 28.15.061(c), which reflects that upon receipt of a driving record from another state it becomes a part of the driver's record in this state with the same effect as if the record originated in this state. A request to review AS 28.15.221(a), with recommended change, accompanies the bill analysis and fiscal note to HB-6 and SB-61.

If AS 23.15.221(a) were amended and we had sufficient manpower, we could return surrendered licenses to the state of issuance and enter any records received from that state. I believe the majority of

states would begin to reciprocate immediately if we agreed to send them driving records for individuals with an Alaska license who surrendered same upon becoming licensed in that state. At the present time we receive numerous Alaska licenses surrendered to other states, however we do not return a driving record due to insufficient manpower to handle this function. Whether or not Alaska had a law making it mandatory that other states send us driving records upon the return of one of their licenses, it would not increase the number of participating states.

There is one exception to reciprocity with other states. At the present time, if an individual with an Alaska license is involved in an accident in another state, and that state suspends the license, we reciprocate, and vice-versa.

At the present time, a law enforcement officer and/or DMV can send an inquiry via NLETS (National Law Enforcment Teletype System) to any state and determine an individual's license status. Most states have such inquiries computerized, therefore the response is generally within a reasonable time frame. We use this when an applicant gives us a YES answer to the question "Has your license ever been suspended, revoked, denied or cancelled?"

The Federal Government operates a system called the NDR (National Driver Register). This is a batch computer system in which several states send notices whenever any driver's license is suspended or revoked in their state. (Alaska participated in the NDR by advising them of all license actions until this fiscal year when we dicontinued doing so because of funding cutbacks.) Then any state issuing an original license can send an inquiry to the NDR to determine if that person's driving privileges were withdrawn in another state. Such an inquiry and the response is via mail. The Federal Government is in the process of updating the NDR, and plan on implementing an on-line computer system by 1986. At that time all of our terminal offices will be able to see if the applicant is suspended anywhere.

Thirty states are parties to an interstate compact known as the Drivers License Compact (DLC). The DLC is a formal interstate agreeement which attempts to regulate only those aspects of driver licensing law which relate to the one license concept, the one record concept, and reciprocity in sharing and acting upon information regarding interstate traffic offenders. The DLC does require legislative enactment. The last state to do so was Wyoming in 1977. Even though some states are not members of the DLC, they still reciprocate in regard to driving violations.

Alaska State Legislature

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HOUSE MAJORITY WHIP
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STATZ AFFAIRS
MEMBER
TRANSPORTATION
LEGISLATIVE COUNCIL

Representative Mitch Abood
HOUSE DISTRICT 11

MEMORANDUM

TO: Commissioner Robert Sundberg
Department of Public Safety

FROM: Representative Mitch Abood

RE: DRIVING RECORD RECIPROCITY

DATE: April 13, 1983

The following are some comments are based on some research that has been done on the issue referenced above. I have also enclosed a copy of the Bill Draft on Driver's Licenses. Please review the following and call me with your comments.

AS 28.15.061 (c)

"When an application is received from a person previously licensed in another jurisdiction, the department may request a copy of the applicant's driving record from the other jurisdiction. Upon receipt of that record by the department, it becomes a part of the driver's record in this state with the same effect as if the record originated in this state."

In this case, MAY should be changed to SHALL.

At the present time, when an out-of-state driver applies for an Alaska State Driver's license, the Department of Licensing simply throws away the out-of-state license, rather than returning it to the State of origination. According to Bill Brown, Chief of Driver Services, Department of Public Safety in Juneau, Alaska, it would require manpower that is not presently available because of lack of funding to automatically track all out-of-state driver's records when they apply to the State of Alaska for a driver's license.

However, every state in the nation has an NCIC (National Crime Information Center) computer system that can send driver information intrastate, and the cost for using this system remains the same whether you request 5 driver's records or 5,000 per month. Ordinarily, the State of Alaska requests driver's information by mail, but the NCIC system would speed up the process of processing all out-of-state driver information in a timely and cost-effective manner. Also, according to Robert J. Rowan, Director, Division of Motor Vehicles, Department of Public Safety, a law enforcement officer and/or DMV can send an inquiry via NLETS, (National Law Enforcement Teletype System), to any state and determine an individual's license status. Most states have such inquiries computerized, so the response time is pretty reasonable.

Alaska participated in the NDR (National Driver Register) batch computer system that sends notices to several states whenever a driver's license has been suspended, or revoked in their state. Any state issuing an original license can send a request into NDR to review that person's driving history. The inquiry and reponse are via mail. The Federal Government is planning an on-line computer system by 1986.

The DLC (Drivers License Compact) is a formal interstate agreement, not requiring legislative enactment which attempts to regulate only those aspects of driver licensing law which relate to the "one license concept, the one record concept and reciprocity in sharing and acting upon information regarding interstate traffic offerders." Thirty states are now participating in this formal interstate agreement, but a state does not necessarily need to become a member to participate. As a further note, Alaska cancelled their participation in this system last year because of funding cutbacks.

At the present time, the only time driving records are requested is when an individual's license has been suspended or revoked by another state/jurisdiction. The Department of Licensing takes the individual's word for his previous actions. Reference an individual who is charged with drunk driving, or an habitual violator of driving laws in another jurisdiction. At the present time, this particular individual can lie about his previous record, and state that he/she has lost their license. They will be required to take a written test and an actual on-the-road driving test, but neither of these tests can prove that the individual in question was a danger to the highways.

This issue of driving record reciprocity brings up a number of issues: -

In researching various drivers license figures, the State of Alaska is the only state in the nation to renew driver's licenses on a 5 year period - all the rest of the states in the US re-issue licenses on a 2 to 4 year basis. Alaska State law could be changed to require an individual to renew their license at least once every 3 to 4 years. If it is a questions of funding, the State should charge an additional $3.00 or so, (or whatever it takes) to assure adequate staffing for the Department. I am checking into this with the Department.

At the present time, if the Department of Licensing discovers that the out-of-state individual who has applied for an Alaska State license is

guilty of violations and/or has had his/her license suspended/revoked, the Department then notifies the individual who has been accused and the individual has 30 days to appeal the decision with the jurisdiction holding the driving records. (AS 28.15.031 (1) to (8)).

As an additional recommendation to amend the current Alaska Satutes, the Department of Licensing could, after requesting and receiving a copy of the out-of-state applicant's driving record, mail the new Alaska license to the licensee, rather than issuing the license immediately as the applicant applies for his license. The applicant should be issued a temporary license for a period of 30 days, (Nevada and Washington works on this method), until his driving record could be reviewed, and if violations shown are 50% of accumulated points allowed for a year's period, this person would be identified as a "problem driver", and would be required to appear for a driver improvement interview before the license would be issued (See AS 28.15.221 (b) referencing Point System).

The Alaska Statutes become contradictory of each other when referring to AS 28.15.221 (violation is counted in Alaska State only if it applies to Alaska State Law), and AS 28.15.191, and AS 28.15.061(c), which states that all the violations automatically transfer to Alaska State when an individual applies for an Alaska State driver's license from another jurisdiction. If AS 28.15.061 (c) were changed to reflect that all driving records should be forwarded to the new state of issue, then points should be "awarded automatically" from a previous jurisdiction's violations. The problem arises when comparing Alaska State laws to the laws of the jurisdiction in question - what if (for example), Mississippi has a law that says that you may not make a right hand turn on a red light after stopping? The Mississippi driver who has a violation for this offense applies for an Alaska Driver's license - Alaska laws allow for a driver to make a right hand turn on a red light after stopping. Would this person's violation continue to be on record in Alaska, even though Alaska law allows for turning right on a red after stopping? At the present time, the law is contradictory.

Ultimately, there should be instituted into Federal law a rule that all states comply to driver's record reciprocity. This issue goes hand in hand with the drunk driving issue so prominent at this time. I believe the Barnes Law will have some effect on this.

One item that has not been covered by the draft of this Bill is that of reciprocating the driver's license information to other states when another jurisdiction has notified Alaska that they are licensing an individual previously licensed in Alaska. If the NDR system were used nationwide, this would automatically be in effect.

Please give me a call when you have had a chance to review the above information.

cc: Robert J. Rowan
Deputy Commissioner
Department of Public Safety

DEPARTMENT OF PUBLIC SAFETY

POSITION PAPER - HB 402

Support

January 16, 1984

HB 402, An Act relating to drivers' licenses and records.

The department supports this piece of legislation, with the condition the fiscal note is approved to enable us to handle the increase in workload.

Basically what this bill does is bring Alaska in line with the majority of the other states in regard to the exchange and use of driving record information.

Alaska has not, for some time, used out-of-state traffic convictions in an attempt to identify drivers who have the greatest likelyhood of being in an accident so action can be taken that will hopefully cause these individuals to drive more safely. Out-of-state violations also have not been used to remove from the road, by cancellation of the drivers license, those who are ineligible, or who prove unable to improve their driving enough to assure a reasonable level of safety for others. This bill takes a large step in the direction of correcting those deficiencies, which are due partly to conflicts in the statutes, which this bill will correct, and partly due to funding shortages.

Robert J. Sundberg
Commissioner

POUCH V
JUNEAU, ALASKA 99811
(907) 465-4990

Alaska State Legislature
HOUSE OF REPRESENTATIVES

REPRESENTATIVE
CHARLIE BUSSELL
CHAIRMAN

Committee on Judiciary

HB 402
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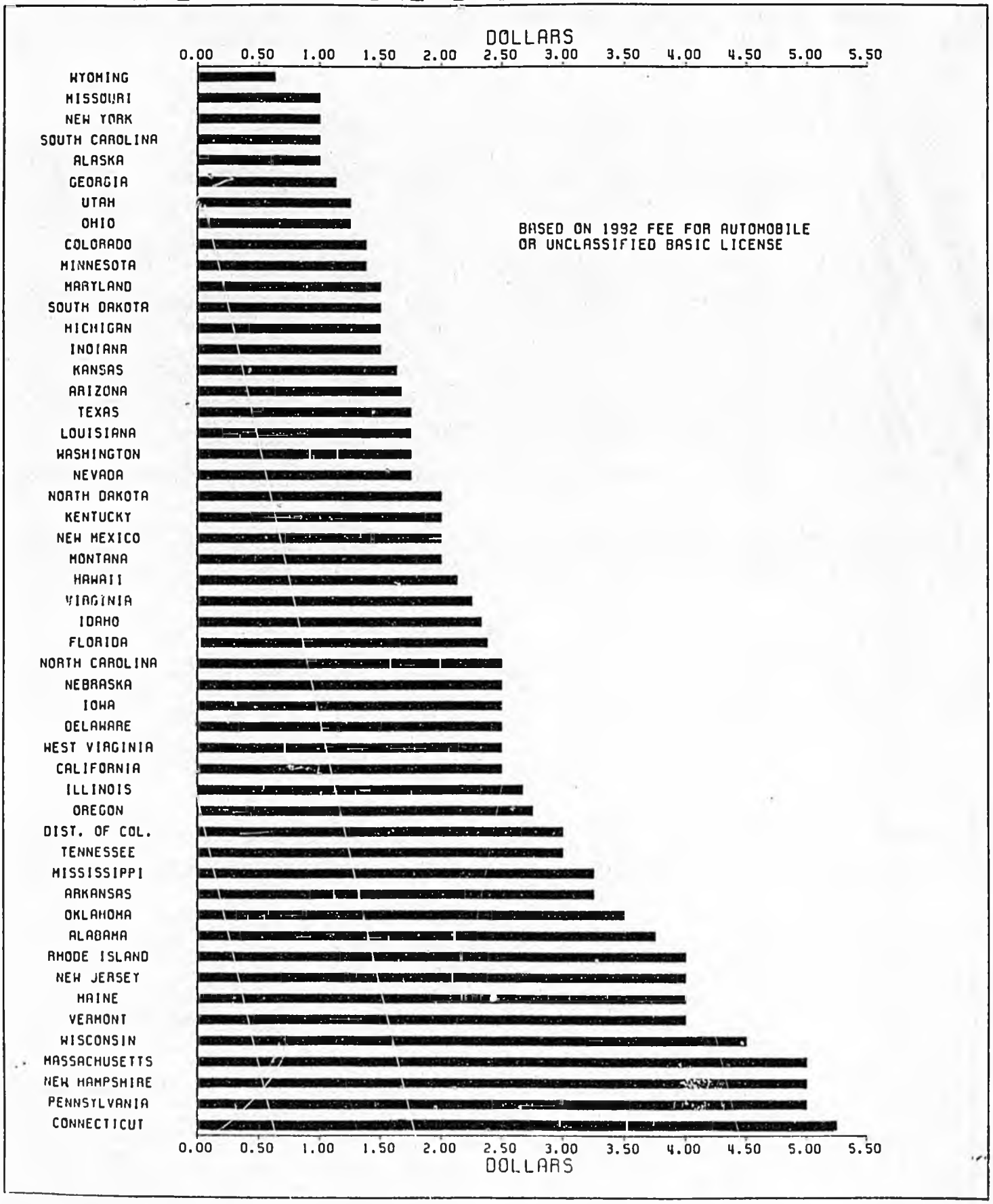
MEMBERS:
REP. JOHN LISKA, VICE CHAIRMAN; REP. RAMONA BARNES, EMERITUS;
REP. JOE HAYES; REP. HUGH MALONE; REP. DON CLOCKSIN; REP. RON WENDTE

AVERAGE ANNUAL DRIVERS LICENSE FEE



SUMMARY OF REQUIREMENTS FOR OBTAINING A DRIVER LICENSE FOR OPERATION OF A PRIVATE AUTOMOBILE

STATE	LEARNER PERMIT		DRIVER LICENSE			
	MINIMUM AGE	FEE 1/	MINIMUM AGE	FEE 1/	TERM	RENEWAL DATE
Alabama	15	$ .50	16	$15.00	4	Issuance
Alaska	14	1.00	16	5.00	5	Birthday
Arizona	15 yr. 7 mo.	2.00	16	5.00	3	Birthday
Arkansas	14	No Fee	16	13.00	4	Birth Month
California	15	10.00	16	10.00	4	Birthday
Colorado	15 1/2	5.50	16	5.50	4	Birthday
Connecticut	16	1.50	16	21.00	4	Birthday
Delaware	16	10.00	16	10.00	4	Birthday
Dist. of Col.	16	5.00	18	12.00	4	Issuance
Florida	15	9.50	16	9.50	4	Birthday
Georgia	15	1.50	16	4.50	4	Birthday
Hawaii	15	3.00	15	8.50	4	Birthday
Idaho	14	4.00	16	7.00	3	Birthday
Illinois	15	20.00	16	8.00	3	Birthday
Indiana	15	2.00	16	6.00	4	Birth Month
Iowa	14	3.00	16	10.0	4	Birthday
Kansas	14	.50	16	6.50	4	Birthday
Kentucky	16	.00	16	8.00	4	Birth Month
Louisiana	15	.00	15	7.00	4	Birthday
Maine	15	5.00	15	16.00	4	Birthday
Maryland	15 yr. 9 mo.	20.00	16	6.00	4	Birthday
Massachusetts	16	5.00	17	20.00	4	Birthday
Michigan	16	7.50	16	6.00	4	Birthday
Minnesota	15	2.50	16	5.50	4	Birthday
Mississippi	15	.50	15	13.00	4	Birth Month
Missouri	15	.25	16	3.00	3	Issuance
Montana	15	8.00	15	8.00	4	Birthday
Nebraska	14	3.00	16	10.00	4	Birthday
Nevada	15 1/2	9.00	16	7.00	4	Birthday
New Hampshire	15	No Fee	16	20.00	4	Birthday
New Jersey	16	5.00	17	8.00	2	Issuance
New Mexico	15	2.00	15	8.00	4	30 Days After Birthday
New York	16	5.00	17	4.00	4	Birthday
North Carolina	15	4.00	16	10.00	4	Birthday
North Dakota	14	8.00	16	8.00	4	Birthday
Ohio	16	3.00	16	5.00	4	Birthday
Oklahoma	15 1/2	9.00	16	7.00	2	Birth Month
Oregon	15	5.00	16	11.00	4	Birthday
Pennsylvania	16	5.00	17	20.00	4	Birth Month
Rhode Island	16	No Fee	16	8.00	2	Birthday
South Carolina	15	2.00	16	4.00	4	Birthday
South Dakota	14	6.00	16	6.00	4	Birthday
Tennessee	15	6.00	16	6.00	2	Birthday
Texas	15	2.00	16	7.00	4	Birthday
Utah	16	5.00	16	5.00	4	Birthday
Vermont	15	1.00	18	8.00	2	Birthday
Virginia	15 yr. 8 mo.	3.00	16	9.00	4	Birth Month
Washington	15	3.50	16	7.00	4	Birthday
West Virginia	16	4.00	16	10.00	4	Issuance
Wisconsin	14	10.00	16	9.00	2	Birthday
Wyoming	15	1.00	16	2.50	4	Birthday
American Samoa	16	1.00	16	7.00	3	Issuance
Guam	15	-	16	5.00	3	Birthday
Puerto Rico	16	5.00	16	5.00	4	Issuance
Virgin Islands	-	-	18	9.00	3	Birthday

1/ Examination fees not included.

STATE OF ALASKA 1984 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date: 10-25-83

I. REQUEST

Bill/Resolution No.: HB 402
Title: ... drivers' licenses and records
Sponsor: Abood
Requestor: House Judiciary
Date of Request: 1-12-84

II. FISCAL DETAIL

Agency Affected: Public Safety
Program Category Affected: Life & Prop.
BRU, Program of Subprogram(s) Affected: Driver/Vehicle Services - Driver Services

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 84	FY 85	FY 86	FY 87	FY 88	FY 89
OPERATING						
100 PERSONAL SERVICES		102.1	108.2	114.7	121.6	128.9
200 TRAVEL		-	-	-	-	-
300 CONTRACTUAL		14.3	6.7	7.1	7.5	8.0
400 COMMODITIES		.4	.4	.5	.5	.5
500 EQUIPMENT		10.8	-	-	-	.4
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC						
TOTAL OPERATING		127.6	115.3	122.3	129.6	137.8
CAPITAL						
REVENUE		404.7	420.9	437.7	455.2	823.4

FUNDING: (Thousands of Dollars)

GENERAL FUND		127.6	115.3	122.3	129.6	137.8
FEDERAL FUNDS						
OTHER (Specify Source)						
TOTAL						

POSITIONS:

FULL-TIME		4	4	4	4	4
PART-TIME						
TEMPORARY						
TOTAL		4	4	4	4	4

III. SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

Through increase in driver license fees.

IV. ANALYSIS: Attach a separate page for any Analysis

Prepared By: Bill Brown BB
Phone: 465-4335
Division: Motor Vehicles
Date: 10-25-83

Approved by Commissioner:
Date: 11/25/83
Department: Public Safety

Distribution:
Original to Legislative Finance
Copy to Office of Management and Budget (for Legislature introduced bills)
Copy to Department (for Governor introduced bills)
Copy to Sponsor
Copy to Requestor (if different from Sponsor)

9/14/83

DETAIL:

100	Personal Services (Salaries computed using 1983 salary schedule)		
	1 Document Processing Clerk II Salary = $19,176; Benefits = $7,341	26.5	
	2 Document Processing Clerk I Salary = $36.240; Benefits = $14,174	50.4	
	1 Clerk Typist II Salary = $18.120; Benefits = $7,087	25.2	102.1
300	Contractual		
	310 - Postage	3.2	
	320 - Printing	.6	
	360 - Equipment Rental (One CRT)	8.0	
	382a - DP Chargeback (Programming & Maint)	2.5	14.3
400	Commodities		
	480 - Normal office supplies	.4	.4
500	Equipment		
	550 - Four typewriters @ $1,369 each	5.5	
	Four chairs: 3 @ 206 & 1 @ 155	1.8	
	Four desks: 3 @ 568 & 1 @ 469	2.2	
	Two file cabinets: 1 @ 320 & 1 @ 259	.6	
	Six acoustical panels	1.7	10.8
		TOTAL	127.6

REVENUE:

The increase in fees outlined in Section 6 of the bill will approximately double the revenue to the state for issuance of driver licenses. The FY85 budget projects FY85 revenue for license fees to be $404.7. If the new fee schedule went into effect July 1, 1984, it is perceived the revenue would increase an additional $404.7 in FY85. The projected increase for FY86, FY87 and FY88 is based on an assumption of a driving population increase of 4% annually.

FY89 will be the first year any increase in revenue will be realized as a result of Section 2 of the bill, which changes license validation period from five years to four years.

ASSUMPTIONS:

Effective date of July 1, 1984. Cost of living caluclated at 6%.

GENERAL COMMENTS:

We have not, for some time, used out-of-state violations in an attempt to identify drivers who have the greatest likelihood of being in an accident so action could be taken that will hopefully cause these individuals to drive more safely. Out-of-state violations also have not been used to remove from the road, by cancellation of the drivers license, those who are ineligible or who prove unable to improve their driving enough to assure a reasonable level of safety for others.

This bill takes a large step in the direction of correcting those deficiencies with our present method of operation. Our present deficiencies are due partly to conflicts in the statutes, which this bill corrects, and partly due to funding shortages.

HB
404

Opinion

Governor's Bill Would Loosen Controls In Fish and Game Dept.'s Use of Poison

By JOE La ROCCA

JUNEAU — The Sheffield administration has quietly endorsed a controversial proposal to relax the use of poison to kill wild game animals, such as wolves, a proposition which has been consistently rejected by the legislature for nearly a decade.

The provision, which is buried deep within a 12-page bill introduced by the governor recently, would enable the boards of fisheries and game to promulgate regulations authorizing the use of poison to control wildlife population and predators.

Under existing law, the Dept. of Fish and Game cannot use poison to kill animals in Alaska unless it gets the written consent of either the board of fisheries or game for a specific, one-time application.

But the proposed legislation would give the department standing authority to use poison whenever and wherever it pleases, without consulting the boards.

The measure, House Bill 404, purports to be a housekeeping measure, designed merely to clarify and update the state's fish and game code.

For example, in his cover letter accompanying the bill, the governor told the legislature that the bill would "provide for the statutory clarification," and "correct some anomalies . . . by repealing outdated sections and clarifying ambiguities."

The governor added: "We have tried to eliminate all the controversial or unpopular provisions of versions of this bill introduced in earlier years."

But in fact, the bill — which the governor probably signed off on without reading — proposes a number of substantive changes in the fish and game code. The most egregious of them is the provision to relax controls on the use of poison for predator control and other purposes.

The current law, which has been on the books since 1968, was sponsored by former Gov. Jay Hammond, when he was a member of the State Senate.

Prior to that time, the department had the same freedom to use poison for predator control which HB 404 now seeks to restore.

But because of controversy stemming from the use of poison to kill wolves in Southeast Alaska in order to protect diminishing blacktail deer herds here, then-Sen. Hammond pushed through the law now on the books prohibiting the use of poison without the explicit and written consent of what was then the Board of Fish and Game.

Ironically, during Hammond's second term in office, the Dept. of Fish and Game sought a bill similar to the one now pending which also masqueraded as a housekeeping bill making purely technical changes in the fish and game code.

But in fact, it proposed a number of substantive changes, including — without Hammond's knowledge or consent — the repeal of the clamp-down on the use of poison for predator control authored by Hammond while he was in the Senate.

The cumulative effect of these proposed changes then, as now, was to increase dramatically the powers of the commissioner of fish and game, at the expense of the boards of fish and game.

The use of poison to control predatory species of fish and game is a legitimate management tool. But its use should be closely monitored by a broad range of decision makers.

Because of the powerful emotional impact its use generates, decisions to implement poison for predator control should not be left to the narrow discretion of fish and game specialists and technicians. Nor should it be used without public hearings each time its use is contemplated.

But under the bill introduced by the governor, both the broad decisional and public hearing processes would be circumvented. For these and other reasons, this unsavory provision in HB 404 should be killed, by poison or any other means at the legislature's disposal.

State Publishes 1982 Mining Report

JUNEAU — A report summarizing mining activity in Alaska during 1982 has been released for public distribution.

The total value of 1982 expenditures for exploration and development, and production statistics are reported.

Exploration expenditures, which are sensitive to general economic conditions, were predictably lower in 1982, falling

Bits From Bettye



By Sen. Bettye Fahrenkamp

Each year, as the session draws on and on, a ritualistic finger-pointing exercise ensues between the members of the

home is, another responsibility and concern of mine relates to the constant proliferation of regulations by the state govern-

STATE OF ALASKA 1984 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date: February 3, 1984

REQUEST
Bill/Resolution No.: CSSS HB 404
Title: Miscellaneous amendments regarding Fish and Game
Sponsor: House Resources Comm
Requestor: House Resources Comm
Date of Request: Feb 3, 1984

FISCAL DETAIL
Agency Affected: Fish and Game
Program Category Affected: NRMEC
BRU, Program or Subprogram(s) Affected: All

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 84	FY 85	FY 86	FY 87	FY 88	FY 89
OPERATING						
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 SUPPLIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS						
800 MISCELLANEOUS						
TOTAL OPERATING	0	0	0	0	0	0
CAPITAL	0	0	0	0	0	0
REVENUE	0	0	0	0	0	0

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

ANALYSIS: Attach a separate page for analysis

Prepared By: Beverly Reaume
Phone: 465-4120
Division: Administration
Date: February 3, 1984

Approved by Commissioner:
Date: Feb 3 1984
Agency: Department of Fish and Game

Distribution (by Agency preparing fiscal note):
Legislative Finance
Legislative Sponsor
Requestor
Office of Management and Budget
Impacted Agency(ies)

12/1/83

STATE OF ALASKA 1984 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date:

REQUEST

Bill/Resolution No.: CSSSHB404(RES)
Title: Misc. Amendments regarding Fish & Game
Sponsor: House Resources
Requestor: House Judiciary
Date of Request: 2-14-84

FISCAL DETAIL

Agency Affected: Public Safety
Program Category Affected: Fish & Wildlife Protection
BRU, Program or Subprogram(s) Affected: Fish & Wildlife Enforcement

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 84	FY 85	FY 86	FY 87	FY 88	FY 89
OPERATING						
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 SUPPLIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS						
800 MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND	0.0	0.0	0.0	0.0	0.0	0.0
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

ANALYSIS: Attach a separate page for analysis

Prepared By: Paul Conger
Phone: 465-4333
Division: Administrative Services
Date: 02/14/84

Approved by Commissioner: [signature]
Date: 2/16/84
Agency:

Distribution (by Agency preparing fiscal note):
Legislative Finance
Legislative Sponsor
Requestor
Office of Management and Budget
Impacted Agency(ies)

12/1/83

STATE OF ALASKA 1984 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date: January 11, 1984

REQUEST
Bill, Resolution No.: SSHB 404
Title: Miscellaneous amendments to AS 16: Fish and Game
Sponsor: Governor Sheffield
Requestor: House Resources Comm.
Date of Request: January 11, 1984

FISCAL DETAIL
Agency Affected: Fish and Game
Program Category Affected: NRMEC
BRU, Program or Subprogram(s) Affected: All

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 84	FY 85	FY 86	FY 87	FY 88	FY 89
OPERATING						
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 SUPPLIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS						
800 MISCELLANEOUS						
TOTAL OPERATING	0	0	0	0	0	0
CAPITAL	0	0	0	0	0	0
REVENUE	0	0	0	0	0	0

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

ANALYSIS: Attach a separate page for analysis

Prepared By: Beverly Reaume Phone: 465-4120
Division: Administration Date: January 11, 1984

Approved by Commissioner: Date: 1-11-84
Agency: Fish and Game

Distribution (by Agency preparing fiscal note):
Legislative Finance
Legislative Sponsor
Requestor
Office of Management and Budget
Impacted Agency(ies)

12/1/83

STATE OF ALASKA
THE LEGISLATURE

LEGISLATIVE AFFAIRS AGENCY

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

M E M O R A N D U M

February 3, 1984

SUBJECT: House Rescurces Committee substitute for SSHB 404

TO: Representative John Ringstad and
Representative Richard Schultz
Co-Chairmen, House Resources Committee

FROM: Edward H. Hein EH
Legislative Counsel

1. The provisions of CSSB 101 (Resources) are merged into the committee substitute at sections 1, 6, and 15. (See attached sectional analysis of CSSB 101 (Res) for details of that bill).

2. Section 5 of the CS reverts back to the mandatory language of existing law, but allows a peace officer discretion to issue a citation or a warning when, in the officer's judgment, "it is in the state's best interest".

3. In section 8 (page 6, lines 26 - 27) and section 10 (page 8, lines 22 - 23), the CS reinserts "stocking" within the scope of regulations that may be adopted by the boards of fisheries and game.

4. The CS deletes amendments to AS 16.05.870(b) that appeared in section 17 of SSHB 404.

5. Sections 9 and 11 add new language that requires the boards of fisheries and game to provide a written explanation of reasons for rejecting proposals for regulations submitted to the boards.

6. Section 16 amends AS 16.05.495 to redefine the area covered by the vessel license exemption.

7. All other changes reflected in the CS are technical changes required by the legislative drafting manual.

EHH:ojb
J3/049

STANCLIFF

STATE OF ALASKA
THE LEGISLATURE

LEGISLATIVE AFFAIRS AGENCY

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

MEMORANDUM February 3, 1984

SUBJECT: Sectional analysis of CSSB 101 (Resources)

TO: Representative John Ringstad
Representative Richard Shultz
Co-Chairmen, House Resource Committee

FROM: Edward H. Hein EH
Legislative Counsel

Section 1 adds a new section, AS 16.05.165, to the fish and game code that provides that a peace officer investigating a misdemeanor violation of the code or a regulation adopted under it may issue a citation as provided in AS 12.25.180, notwithstanding the provisions of AS 16.05.160, which requires a peace officer to arrest any person committing a code violation in the officer's presence. Note that SSHB 404 would amend AS 16.05.160 to make such arrests discretionary, but would expand the arrest authority to include violations of all of AS 16 except AS 16.51 and 16.52. Section 1 also directs the supreme court to establish a bail schedule for fish and game misdemeanor violations and provides for paying fines by mail, similar to what is done with traffic tickets.

Section 2 amends AS 16.05.410, which provides for revocation of licenses for conviction of sport fishing and hunting license violations. The amendment provides that the existing revocation provisions do not apply to violations for which a forfeitable bail amount is established under AS 16.05.165. Two convictions of such an offense, however, could result in a peace officer filing a civil action to have the person's license revoked. A non-jury court hearing is required. If the court finds that the person's actions demonstrate a disregard for the preservation of the state's fish or wildlife resources, the license may be revoked for a mandatory one-to-three year period.

Section 3 amends AS 12.25.190(c) to provide that a person receiving a citation under AS 16.05.165 is not required to

give a written promise that he or she will appear in court in response to the citation.

EHH:ojb
J3/050

BILL SHEFFIELD
GOVERNOR

STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

January 17, 1984

The Honorable Joe Hayes
Speaker of the House
Pouch V
Juneau, AK 99811

Dear Representative Hayes:

Under the authority of art. III, sec. 18, of the Alaska Constitution, I am transmitting a sponsor substitute for HB 404, providing for the statutory clarification and reform of AS 16. HB 404 was introduced on May 6, 1983 (1983 Hse. Jrnl., pg. 1211). The section-by-section analysis which accompanied the original HB 404 at the time it was introduced (1983 Hse. Jrnl., pp. 1212 -- 1217), describes the effect of the bill and the reasons why the amendments contained in it would substantially benefit effective management of the fish and game resources of the state.

The attached sponsor substitute differs from the original HB 404 in only minor ways. It changes the title to a more appropriate one, and inserts the word "means" in sec. 10. It deletes the original sec. 14 (amending AS 16.05.-340(b)), since ch. 23, SLA 1983 corrected the problem addressed there, and the original sec. 26, because the amendment to AS 16.30.012 in that section was accomplished by ch. 123, SLA 1982. The remaining sections of the bill are renumbered accordingly. AS 16.05.632, mandating an identification system for crab pots, is deleted from the repealer section; the Board of Fisheries and the Department of Public Safety have determined that the repeal would not be appropriate since the board has concluded that pot limits are biologically justified, and department personnel can enforce pot limits. AS 16.05.-940(28) (the definition of "visitor") is deleted; in sec. 12 of the original HB 404 "nonresident" is used instead of "visitor," but the repeal of the definition of "visitor" was overlooked. Finally, the sponsor substitute adjusts some discrepancies between the language of current statutes and the language of the original HB 404.

We have tried to eliminate all the controversial or unpopular provisions of versions of this bill introduced in earlier years, and the sponsor substitute is consistent with that aim. I therefore urge your passage of this bill this year.

Sincerely,

Bill Sheffield
Governor

DEPARTMENT OF PUBLIC SAFETY

POSITION PAPER - CSSSHB 404 (RES)

Support

The Department of Public Safety supports passage of CSSSHB 404 (RES). This bill authorizes the Supreme Court to establish a bail schedule for specific misdemeanor offenses.

Under existing law, peace officers have the authority to issue citations for misdemeanors instead of arrest under AS 12.25.180; however, once a citation is issued, the offender must ordinarily appear in court, even if he does not wish to contest the charge. The Bill adopts a procedure similar to that found in the motor vehicle code (AS 28.05.151) which allows the offender to post and forfeit bail if he does not wish to contest the charge.

Passage of this will benefit both law enforcement and the person cited for relatively minor offenses. The person will avoid the time and expense associated with a court appearance, while law enforcement will be able to concentrate its resources on serious resource offenses.

An added benefit will be a reduction in offenses requiring action by the Department of Law and a correspondence reduction in the court calendars.

Robert J. Sundberg
Commissioner

SPONSOR SUBSTITUTE FOR HOUSE BILL 404

AN ACT MAKING MISCELLANEOUS AMENDMENTS
REGARDING FISH AND GAME

SECTION-BY-SECTION ANALYSIS

Sections 1, 3, 4, 5, 6, 19, and 21 would change the word "chapter" to refer to the appropriate chapters of AS 16 so that the powers and duties of the boards, commissioner and department, and definitions, apply to the appropriate chapters of that title. The Legislature enacted AS 16.05 in 1959. Some other old provisions were apparently overlooked, and, when new provisions were added, the various powers or obligations established in AS 16.05 should have been, but were not, amended to cover other chapters. This oversight has left gaps in the statutes which need to be corrected.

Section 2 would expressly authorize the Commissioner of Fish and Game to conduct research and enter into cooperative agreements and contracts.

In addition to cooperative agreements, it is also appropriate for the department to enter into contracts or to make grants for specific projects. Section 2 also would require the commissioner to establish criteria governing department grants and contracts to ensure that those expenditures are a wise use of public money.

Sections 4 and 5 would authorize peace officers to enforce the provisions of AS 16 except AS 16.51 and AS 16.52, and to arrest persons violating the fish and game title. Section 6 would permit the officers to execute warrants. The word "chapter" is changed to refer to AS 16 except AS 16.51 and AS 16.52, which relate to the Alaska Seafood Marketing Institute and the Fishery Industrial Technology Center, respectively, so that uniform enforcement procedures will apply to almost all of Title 16. Also, the requirement that offenders be brought before a magistrate "immediately" is dropped. This would delete an unnecessary burden imposed on protection officers. Finally, the mandatory requirement that deputies arrest all offenders is stricken because an arrest for certain minor violations may not be appropriate and could result in unnecessary expenditures for enforcement and prosecution.

Sections 7 and 9 set out the authority of the Board of Fisheries and the Board of Game, respectively, to set quota and bag limits. No express authorizations exist for harvest levels or sex and size limitations, even though regulations of this nature are basic to resource management and have been adopted based on interpretations of other board powers. That authority is made express in sections 7 and 9, as a legal safeguard.

Sections 8 and 11 would remove the authority of the boards to adopt regulations for engaging in biological research, since biological research is a departmental function.

Section 10 would amend existing law to reflect the true function of the Board of Game. Despite the current language of AS 16.05.255(a)(6), the board does not adopt regulations regarding investigation of predators, which is an administrative function of the department. The board does, however, establish methods and means and harvest levels for the taking of predators or other competitors through regulations.

Sections 12 and 14 would eliminate the burden upon sport fishing license vendors who must distinguish between long-term nonresidents and short-term sojourners when issuing 14-day and three-day licenses. The problem arose because the definition of "visitor" included only temporary nonresidents and did not include long-term nonresidents or those awaiting residency status. Thus a person who had not yet lived here for one year was required to pay the higher nonresident license fee, even if only a few days remained in a fishing season. The proposed change is fair and will be more efficient to administer.

Section 13 would make minor technical amendments to AS 16.05.340(a)(9), to clarify the meaning of existing law.

In section 15, language in AS 16.05.685(c)(2) which describes areas no longer used in the management of king crab would be deleted.

Section 16 would clarify AS 16.05.831(a) which was enacted in 1975 to prohibit the waste of salmon. That section now contains language that could be considered ambiguous, and thus reduce the law's effectiveness. The clarification expressly provides that no salmon intended for sale, whether to a private individual or a commercial buyer, may be wasted.

Section 17 would make gramatical changes in the anadromous fish protection statute to correct an apparent deficiency. Currently, only a person or agency desiring to use, divert, obstruct, pollute or change the flow or bed of an anadromous fish stream must first notify the commissioner. In order to make AS 16.05.870 more enforceable, notification would be required before beginning any activity which may change the stream or pollute the stream.

Section 18 would restrict the criminal sanctions in AS 16.05.900 to apply only to AS 16.05.870--16.05.895, relating to anadromous fish protection. The basic penalty section

for Title 16 would be moved to a new section (AS 16.05.925, contained in section 20 of the bill) under the "general provisions" article, where it more logically belongs.

Sections 19 and 20 deal with the basic prohibition of Title 16 that it is unlawful to possess fish and game unless permitted by a statute or a board regulation. This prohibition and the accompanying penalty are AS 16.05.920(a) and 16.05.900(a), respectively. Section 20 would set out the general penalty section separately in AS 16.05.920(a). Through apparent oversight which resulted from enactment of AS 16.20 well after enactment of AS 16.05, certain prohibitions were created by regulation without an enforceable penalty. The new AS 16.05.925 would provide a uniform penalty for the violation of a regulation adopted under AS 16.05 or AS 16.20. The penalty is made a class A misdemeanor, to conform with sentencing under AS 12.55.035 and 12.55.135. Also, sec. 19 of the bill changes "made" to "adopted," with regard to regulations, for the sake of consistent terminology.

Section 21 amends AS 16.05.940 which is the basic definition section for AS 16.05--AS 16.40. Four of the definitions contained in this section would be amended as follows:

(9) the definition of "fish" would be amended to include parts of the fish; this would affect enforcement, for example, when salmon roe is sold separately from the carcass;

(13) the definition of "fur dealing" would be rewritten for clarity and to correct punctuation errors;

(14) the definition of "game" would be amended to include reptiles; this would provide regulatory authority to control the importation of undesirable snakes and other reptiles into the state; and

(28) the definition of "visitor" would be repealed, which only appears in Title 16 in conjunction with the "visitor's special sport fishing license" in AS 16.05.340(a)(6); that designation would be changed by section 12 of this bill to "nonresident special sport fishing license."

Section 22 would add a criminal sanction for wasting herring. Existing law prohibits this waste but does not clearly specify a criminal penalty.

Section 23 would amend AS 16.10.280 to allow the department's determination of a price dispute to be based on an estimate of the number of fishermen involved. During a recent Bristol Bay price dispute, the department's role in setting up mediation was hampered by the need to actually

"certify" that one-third of the registered fishermen were involved in a price dispute, as provided under existing law. Given the information available, this is not always possible.

Section 24 would correct a technical error in the land description of the Susitna Flats State Game Refuge, established by ch. 140, SLA 1976.

Section 25 would amend AS 16.35.200 to require that the use of poison to kill an animal be governed by regulations adopted by the Board of Fisheries or Board of Game as appropriate. Currently only written consent of the appropriate board is required. The requirement of regulation will provide for full public comment. The use of poison within a building, or to kill rodents at dumps or landfills, is exempt from board regulation.

Section 26 would repeal the following laws:

(a) AS 16.05.251(a)(9) and 16.05.255 (a)(8). These provisions empower the boards to adopt regulations for cooperative agreements to promote research and education and to train persons for management. These are administrative functions and do not require board regulations. The repeal of these sections will permit the separation of the rulemaking functions of the boards from the administrative functions of the commissioner of fish and game.

(b) AS 16.05.903. This section, which created the Alaska Big Game Photo Contest, was enacted in 1975. The original intent was that the revenues from entry fees and the sale of a published volume of the winning photographs would generate enough money to pay for cash prizes and operating expenses. Unfortunately, the revenues from the sale fell far short--less than 20 percent of the costs were recovered during the first year. The 1975 legislation created public criticism of the department with respect to spending priorities and proper use of taxpayer's money. The repeal will not affect the continuation of the department's annual Wildlife Photo Contest.

(c) AS 16.10.230(1). This section provides exemptions to the unlawful taking of migratory fish and shellfish in high seas areas designated by the International Pacific Salmon Fisheries Commission. That commission no longer exists and enactment of the federal Fisheries Conservation and Management Act (P.L. 94-265) makes the other exemptions set out in the statute obsolete. Therefore, this subsection should be repealed.

(d) AS 16.15.010-16.15.090. This chapter created the Alaska Fisheries Experimental Laboratory, which no longer exists.

(e) AS 16.35.010--16.35.180. These sections relate to bounties which are no longer paid. The bounties on seals are in conflict with the Marine Mammal Protection Act of 1972, which preempted these state laws. In addition, AS 16.05.255 provides that the Board of Game may establish bounties through the adoption of regulations. The remainder these sections pertain to employment of trappers and hunters for predator control, and have become obsolete.

MANUAL

OF

LEGISLATIVE DRAFTING

1984

FOR THE USE OF LEGISLATIVE STAFF

Prepared
by

LEGISLATIVE AFFAIRS AGENCY

True exceptions should be few and very specific. They should be introduced with "except that," "but," or "However," or by starting a new sentence. If the exceptions could logically be grouped in a subsection or section apart from the general rule, it is useful to the reader for the drafter to introduce the general rule with language such as "Except as provided in (c) of this section (or AS XX.XX.XXX)...."

(h) "May," "shall," "must"

Use the word "shall" only to impose a duty upon someone. Use the word "must" when describing requirements related to objects such as forms or criteria. (Use "must" sparingly, however, because most sentences using it can probably be written more clearly to impose a duty on a person, in which case "shall" would be the proper word.) Use the word "may" to grant a privilege or discretionary power. Use the words "may not" to impose a prohibition upon someone. For a further discussion, see Dickerson, The Fundamentals of Legal Drafting (1965), pp. 130 and 131. For example:

> The commissioner shall issue a license..., i.e., it is the commissioner's duty to do so.
>
> The form must specify that..., i.e., the form is required to have something in particular on it.
>
> The commissioner may inspect records..., i.e., the commissioner may if it is necessary or proper, but the commissioner is not obligated to do so.
>
> The commissioner may not issue a license..., i.e., under the defined circumstances, it is beyond the power of the commissioner to issue the license.
>
> A person may not operate a ... without a license..., i.e., under the circumstances, a person is not permitted to do the specified act without a license.

Do not use "must" or "shall not." Also, do not use the "No... may" construction; use "may not." For instance, avoid "No fish trap may be.. ," and use "A fish trap may not be...."

(i) Numerals

Numbers from one through nine are written in words only:

one, two, three, four, etc. first, second, third, etc.

Numbers over nine are written in figures only:

10, 11, 12, 13, 14, etc. 10th, 11th, 12th, 13th, etc.

When referring to money, use figures only:

HB
408

STATE OF ALASKA
FISCAL NOTE

Revision Date , 1983

I. REQUEST

Bill/Resolution No.: HB-408
Title: Reimbursement for costs and attorney
Sponsor: Bettisworth
Requestor: House Judiciary

II. FISCAL DETAIL

Agency Affected: Public Safety
Program Category Affected: Life and Propert
BRU, Program of Subprogram(s) Affected:
Driver/Vehicle Services

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 83	FY 84	FY 85	FY 86	FY 87	FY 88
100 PERSONAL SERVICES		70.7	74.9	79.4	84.2	89.3
200 TRAVEL		6.0	6.4	6.8	7.2	7.6
300 CONTRACTUAL		19.6	20.8	22.0	23.3	24.7
400 COMMODITIES		.4	.4	.4	.4	.5
500 EQUIPMENT		17.7	-0-	-0-	-0-	.5
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC						
TOTAL OPERATING		114.4	102.5	108.6	115.1	122.6
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND		114.4	102.5	108.6	115.1	122.6
FEDERAL FUNDS						
OTHER (Specify Source)						

POSITIONS:

FULL-TIME		2	2	2	2	2
PART-TIME						
TEMPORARY						

III. SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

Source of funds not identified by sponsor.

IV. ANALYSIS: Attach a separate page for any Analysis

Prepared By: Robert J. Rowan, Director
Phone: 269-5551
Division: Motor Vehicles
Date: 5/13/83

Approved by Commissioner: [signature]
Date: 6/15/83
Department: Public Safety

Distribution:
Original to Legislative Finance
Copy to Office of Management and Budget (for Legislature introduced bills)
Copy to Department (for Governor introduced bills)
Copy to Sponsor
Copy to Requestor (if different from Sponsor)

3/8/83

GENERAL COMMENTS:

Last year the Division of Motor Vehicles held approximately 230 driver's license suspension or revocation hearings, and 150 motor vehicle title revocation and determination hearings. About 25% of all these hearings were found in favor of the citizen. Due to the fact this bill authorizes the state to pay attorney fees if the decision is in favor of the private citizen, it is felt more people will demand hearings than in the past. Therefore, the two positions requested are to handle that additional workload.

Attorney time on driver's license hearings is estimated at 4 hours for each hearing, and for motor vehicle titles at 6 hours each. The reimbursement for attorney fees will be paid by the Department of Administration, so this expense should be covered in their fiscal note.

FISCAL DETAIL:

100 - PERSONAL SERVICES		
1 Hearing Officer, Range 16 (New Class)	42.5	
1 Clerk IV, Range 9	28.2	
		70.7
200 - TRAVEL		
Hearing officer to various locations to conduct hearings	6.0	6.0
300 - CONTRACTUAL		
310 Phones, tolls, postage	1.2	
320 Forms	.3	
330 Space Rental, 300 sq ft @ 2.25	8.1	
360 Equipment Rental - 1 AJIS terminal	8.0	
382 DP Chargeback - programming & maintenance	2.0	
		19.6
400 - COMMODITIES		
Normal office supplies	.4	.4
500 - EQUIPMENT		
Office Equipment, 2 employees	3.9	
WANG Word processing station	12.0	
Recording/Transcribing Equipment	1.8	
		17.7
	TOTAL	114.4

ASSUMPTIONS:

Effective date of July 1, 1983. Six percent inflation factor used for FY85 and subsequent years.

1.	POSITION TITLE: Clerk IV			RANGE/STEP: 9B	BARG. UNIT: GGU	FORM 12 PAGE/LINE	GOV.	APPROV.	DISAPP.
2.	TYPE OF POSITION: PFT	STAFF MONTHS: 12	RP NUMBER	PCN NUMBER	BRU PRIORITY	LOCATION: Anchorage	ELECTION DISTRICT: 7-15	LEG.		
3.	CONTINUATION LEVEL		ADDITION						

4.	TYPE OF EXPENDITURE		AMOUNT
	1	2	3
	PERSONAL SERVICES		
5.	Salary	20,400	
6.	Benefits	3,600	
7.	Supplemental Benefits	1,300	
8.	Fixed Benefits	2,900	
9.	TOTAL PERSONAL SERVICES 01		28,200
10.	Travel 02		
11.	Contractual 03		
12.	Commodities 04		200
13.	Equipment 05		3,000
14.	Other		
15.	TOTAL COST		31,400

	RECEIPT CODE	FUNDING SOURCE	
16.		Federal Receipts 1002	
17.		G.F. Match 1003	
18.		General Funds 1004	31,400
19.		I-A Receipts 1005	
20.		Program Receipts 1028	
21.		Other	

FOR O&M USE ONLY
4A KEY NUMBER __ __ - __ __ - __ __ - __ __ - __ __

JUSTIFICATION

This position will be required to provide clerical support for one full time hearing officer, and three department employees who hold hearings on a part-time basis. With the normal annual increase the hearing workload for FY84 is expected to exceed 800 hearings.

This position will be responsible for scheduling hearings, sending certified notice of hearing, reviewing legal documents submitted as evidence, transcribing the hearings as necessary, and maintaining complete and accurrate records. Because of the complexity of the hearings, and due to the consequences of these hearings on the private citizen, a level of Clerk IV is justified. Loss of a motor vehicle or driving privileges could be the result of these hearings, therefore, accuracy is essential.

13 REQUEST FOR NEW POSITION

AGENCY Department of Public Safety

PROGRAM Life and Property Protection

BRU Driver/Vehicle Services

COMPONENT

Page of

Revised Date

FY 84

1.	POSITION TITLE Hearing Officer			RANGE/STEP 16A	BARG. UNIT GGU	FORM 12 PAGE/LINE	GOV.	APPROV.	DISAPP.
2.	TYPE OF POSITION PFT	STAFF MONTHS 12	RP NUMBER	PCN NUMBER	BRU PRIORITY	LOCATION Anchorage	ELECTION DISTRICT 7-15	LEG.		
3.	CONTINUATION LEVEL	ADDITION							

	TYPE OF EXPENDITURE		AMOUNT
	1	2	3
	PERSONAL SERVICES		
5.	Salary	32,000	
6.	Benefits	5 600	
7.	Supplemental Benefits	2,000	
8.	Fixed Benefits	2,900	
9.	TOTAL PERSONAL SERVICES	01	42,500
10.	Travel	02	6,000
11.	Contractual	03	
12.	Commodities	04	200
13.	Equipment	05	2,700
14.	Other		
15.	TOTAL COST		51,400

	RECEIPT CODE	FUNDING SOURCE		
16.		Federal Receipts	1002	
17.		G.F. Match	1003	
18.		General Funds	1004	51,400
19.		I-A Receipts	1005	
20.		Program Receipts	1028	
21.		Other		

FOR B&M USE ONLY
4A KEY NUMBER __ __ - __ __ - __ __ - __ __ - __ __

JUSTIFICATION

With the passage of HB-408 hearings would probably number 800 in FY84, and increase by 10% a year thereafter. The hearings are now held by departmental employees whose primary duty are other than being hearing officers.

With the normal increase in regular workload, and number of hearings that can be expected with passage of this bill, it will be necessary to have a full time hearing officer. This hearing officer will travel as necessary to conduct hearings at other locations. Annual case load for this hearing officer is expected to be 450 hearings per year.

13 REQUEST FOR NEW POSITION

01-1136(7/82)-13

AGENCY Department of Public Safety

PROGRAM Life and Property Protection

BRU Driver/Vehicle Services

COMPONENT

Page of

Revised Date

FY 84

HB

409

COMMITTEE REPORT

HOUSE

(7) FURTHER:

5/9/83

Date: 5-16-83

Mr. Speaker:

The Committee on JUDICIARY has had HB 409

"An Act relating to the primary and general elections."

under consideration and reports it back as follows:

[ ] do pass [ ] do not pass

[✓] do pass with attached amendments(s)

[✓] replace with CS for HB 409 (JUD) [✓] same title [ ] new title

and recommends _____

[ ] AND attaches a "Letter of Intent" [ ] New Fiscal Note

[✓] Zero Fiscal Note Attached

[ ] reports it back without recommendation

[ ] referred to the _____ Committee

MEMBERS SIGNING
DO PASS

MEMBERS HAVING
OTHER RECOMMENDATIONS:

_____ CHAIRMAN

AMENDMENT

OFFERED IN THE HOUSE: BY: Judiciary

TO: _____ HOUSE BILL No. 409

SENATE BILL No. _____

PAGE: 4 LINE: 1

Delet: (general)

Insert: primary

AMENDMENT MEMORANDUM

CSHB 409 (Judiciary)

page 3:

Sec. 10. AS 15.60.010(20) is amended to read:

CHANGE FROM:

(20) "political party" means a group of organized voters which represents a political program and which nominated a candidate for governor who received at least five [10] percent of the total vote cast at the preceding general election for governor;.

CHANGE TO:

(20) "political party" means a group of organized voters which represents a political program and which nominated a candidate for governor who received at least five [10] percent of the total vote cast at the primary election for governor;

Libertarians hit election limit plan

Tai news 5-17-83

Legislation aimed at limiting names on the general election ballot to two parties—the top cumulative vote-getters in the primary—was blasted this morning at a press conference by Libertarian Dick Randolph.

The former state legislator and current party chairman said (HB 409) is designed to keep Libertarians off the ballot and is being pushed through the Legislature at "breakneck" speeds.

"I think it's an extreme example of the arrogance-of-power politics," Randolph said.

HB 409 passed from the House Judiciary Committee Monday and is scheduled to be considered by the full house today.

If adopted, candidates would appear on the general election ballot if their parties won the largest or second largest votes for their candidates as a group.

For example, if three Republicans, three Democrats and three Libertarians ran for a House seat, votes from all three candidates in each party would be totalled to see which parties appeared on the ballot. Under that scenario, the top vote-getter could fail to make the general election if his party was outpolled.

Randolph, a former Libertarian House member and unsuccessful candidate for governor, said HB 409 is moving faster than any other piece of legislation this session. The bill was referred to only one committee, and the full House calender was held Monday to allow it to be added, Randolph said.

"Only one hearing was held without any notice to us," Randolph said.

As evidence of Republican Party desire for its passage, Randolph quoted a letter reportedly circulated by Republican State Chairman Kenneth O. Stout:

"House Bill 409 is probably the most significant piece of legislation for Republicans that we will have in this decade," the letter said. "This legislation is desperately needed to protect the major parties from begin diluted (sic) by lesser party candidates to the point that confusion is the order of the day."

"Clearly it's an orchestration between the party and their hacks in the Legislature," Randolph said.

The three Democrats on the committee voted against referring the bill out of committee.

Randoph said Alaska election law ought to be rewritten, but not to protect major parties from competition.

News 5-21-83

House kills measure to reduce candidates

By HARRY McFARLAND
The Associated Press

JUNEAU — The House by a 23-16 vote Friday defeated a measure aimed at reducing the often-crowded general election ballot facing Alaska voters. Under the measure, the two candidates receiving the most votes would have competed in the general election.

Currently, the top vote-getters in Alaska's three recognized parties — Democratic, Republican and Libertarian — and any candidates who qualify by petition advance to the general election.

The bill, however, would have precluded candidates who qualify by petition from having their names on the general election ballot.

An amendment by House Judiciary Chairman Charlie Bussell and Rep. Mae Tischer, both R-Anchorage, would have allowed the possibility of two Democrats or two Republicans running against each other in the general election. The amendment was adopted on a 21-17 vote, then lawmakers beat down the measure.

House lawmakers argued that the bill would reduce the choices given to voters in elections and thus thwart the presentation of ideas.

Former Libertarian gubernatorial candidate and state lawmaker Dick Randolph, in a press release, called the bill (HB409) a Republican priority and said it was pushed through the legislature at "breakneck speed."

Randolph promised to challenge the measure's constitutionality in court if it passed the legislature.

Randolph's press release included a May 11 form letter from Ken Stout, chairman of the Republican Party of Alaska, to lawmakers. In the letter was the statement that "this legislation is definitely needed to protect the major parties from being deluted (sic) by lesser party candidates to the point that confusion is the order of the day. We experienced this during our last election with some rather ludicrous candidates going into the General Election and being a constant source of agitation to all concerned, not to mention the enormous expense to the state that we incurred."

Bussell had the bill held for another vote when he gave a notice of reconsideration.

Opinion

Richard Morgan / Publisher

Wayne Dunworth
General manager

John Marrs
Editor

A bill written to be unfair

House Bill 409 is a bill in dire need of amendment.

Anyone who believes in fair play should agree.

HB 409 is about taking references to gender out of the election codes, *plus* a tidy little section about primary elections.

What the plus provides is that only the leading candidates of the two parties that gather the most votes in a primary election can be on the general election ballot. The key word there is *parties*. The primary would produce no more than two winners, and they would be from the parties that accumulated the most votes. It would turn the primary into a semifinal, qualifying heat with handicaps for small parties.

A little imagination applied to the last gubernatorial race could provide a tally sheet like this one:

Republican - Tom Fink	33,000
Republican - Terry Miller	32,000
Democrat - Bill Sheffield	29,000
Democrat - Steve Cowper	28,000
Libertarian - Dick Randolph	35,000

HB 409 would return Randolph and other Libertarians into the oblivion from which they only recently emerged.

The point here is not to suppport Randolph or the Libertarian Party, or any other party, but to sound the call on behalf of equality and fair play.

The Libertarians, despite winning no public offices, finally won in the last general election more than 10 percent of the vote and legal status as a political party in the state of Alaska. That means they are eligible for the first time to enter candidates in the primary election for selection as general election candidates.

Some of the Libertarians' political foes just can't abide that possibility.

So some of the members of the House Judiciary Committee concocted HB 409. It has the committee's name as its sponsor, a fact that provides a little political camouflage.

But the committee has voted on 409. Speaker of the House Joe Hayes, Majority Leader Ramona Barnes, Judiciary Chairman Charlie Bussell and Rep. John Liska -- all Anchorage area Republicans — voted to recommend the bill to the House. Democrats Hugh Malone of Kenai, Don Clocksin of Anchorage and Ron Wendte of Ketchikan voted against it.

HB 409 got referred on to the Rules Committee, where it sits now. The Rules Committee — Hayes and Barnes are two of its nine members — ought to amend it or kill it. Whether it will, is another question.

The bill's purpose, as written, is obvious. In the scenario imagined above, the voters would wind up getting to choose only between the second and fourth votegetters and No. 1 would go begging for writeins, if anything.

Randolph says measure would 'kill' Libertarians

HB 409

by Bill White
Times Writer

HB409 5-11-83 Times

Juneau — A bill that could wipe out the Libertarian Party and other minor political parties is scheduled for action in the House of Representatives next week.

As introduced by the Judiciary Committee, the bill would let no more than two candidates run for each office in general elections.

The two political parties — not candidates — that received the greatest number of votes for an office in the primary would field their best candidate in the general election, under the bill.

The House majority has targeted the proposal for passage this year.

"I haven't read it thoroughly, but it looks like a 'kill the Libertarian bill,' " said Dick Randolph, a former state legislator from Fairbanks and now head of the Libertarian Party.

"Major parties would be in a position to shut out the minority parties," said Randolph, who ran third in last fall's gubernatorial election.

"A bill like this would kill us off," he said.

Anchorage Rep. Charlie Bussell, chairman of the Judiciary Committee, said the bill appears to have been drafted improperly.

The measure is intended, he said, to require just two names on the general election ballot so the candidate who wins can get a majority of the votes cast.

Only once since statehood has the governor been elected by a majority of the voters, he said. Last fall, Bill Sheffield won the gubernatoral office with about 45 percent of the vote.

Rep. Ramona Barnes, R-Anchorage, a member of the committee, said the last draft she saw of the bill wouldn't have shut out the Libertarian Party. She said the proposal might be changed at hearings next week.

Several amendments are awaiting the bill in the Judiciary Committee.

One amendment would give independents and write-in candidates a shot at the general election. But members of political parties still would have an advantage. The total votes for all members of a party running for an office would be counted together and matched against total votes for an independent or write-in candidate.

2-party election vote set

HB 409

5-17-83

by Bill White
Times Juneau Bureau

Juneau — The House is scheduled to vote today on a bill that, according to the state's top Libertarian, would give the Democratic and Republican parties "a stranglehold on Alaska politics."

The bill would let the names of only two candidates appear on the general election ballot for any state office.

Those candidates would be determined by a method unique to American politics. Total votes cast for candidates from a political party in a primary election would be matched against total votes for candidates of other parties and for independents and write-ins.

For example, in an six-person primary race, an independent might get 10,000 votes, a Libertarian 9,000 votes, two Democrats get 8,000 and 4,000 (for 12,000 total), and Republicans 7,000 and 5,000 (also a 12,000 total). Selected for the general election ballot would be the top Democratic vote-getter and the top Republican.

"The right to vote and to asso-

See Bill, page A-4

Bill would limit candidates

Continued from page A-1

ciate freely are fundamental to the ideal of American government. They should not be trampled upon in such a brazen fashion as contemplated by this bill," said former Fairbanks Rep. Dick Randolph, head of the Libertarian Party, in a statement presented to the Judiciary Committee Monday.

Randolph called the bill "plainly unconstitutional," an effort "to legislate these alternative viewpoints off the ballot" and "an arrogant slap in the face of Alaskan voters."

"They (voters) should have the right to decide which approach to issues best suits them. If competition is good in the marketplace, why isn't it desirable in politics?" said Randolph, whose statement was read by a local Libertarian.

The bill has been on a fast track since the Judiciary Committee introduced it eight days ago. The committee had been working for months on how to limit general election ballots to just two candidates per office.

Libertarians received no notice that the bill would be introduced, Randolph said.

The bill was scheduled for a floor vote today even before the committee approved it on a 4-3 Republican vs. Democrat vote.

Republican State Chairman Ken Stout in a May 11 letter urged his party's legislators to support the bill. Calling it "the most significant piece of legislation for Republicans that we have in this decade," Stout said it is needed to protect "major parties from being diluted by lesser party candidates."

The letter was made public by Libertarians Tuesday.

In the letter, Stout said some "rather ludicrous candidates" were a "constant source of agitation" in the last general election. This is the only piece of legislation he has lobbied for during this session, he added.

Sen. Fritz Pettyjohn, R-Anchorage, said that because more than two candidates ran in general elections, just once since 1962 has the governor been elected with a majority of the votes cast. One of the 20 senators and eight of the 40 representatives also were not picked by most of the voters, he said.

More than half the voters in Alaska belong to no political party.

STATE OF ALASKA
THE LEGISLATURE

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

LEGISLATIVE AFFAIRS AGENCY



M E M O R A N D U M

May 11, 1983

SUBJECT: Primary and general election
(CSHB 409 (Judiciary))

TO: Representative Charlie Bussell
Chairman, House Judiciary Committee

FROM: Richard A. Bradley
Legislative Counsel

You have requested a sectional analysis of the above described bill.

As a preliminary matter, I must advise you that a sectional analysis or summary of a bill should not be considered an authoritative statement of the contents of the bill; the bill itself is the best statement of its contents. If you would like an interpretation of the bill as it may apply to a particular set of circumstances, please address a specific request to this office.

Section 1 of the bill amends AS 15.15.030(5). AS 15.15.030 deals with the preparation of the official ballot. The amendment to sec. 30(5) is intended to delete the requirement of present law that "no-party" candidates have their names appear on the general election ballot. As will appear as the bill is examined, these candidates will now be voted on at the primary election.

Section 2 amends AS 15.25.010. The section provides that candidates will be nominated under the provisions of AS 15.25.010 - 15.20.200. Since a new section 201 is being added by the bill which will also regulate the nomination process, the amendment is necessary.

Section 3 adds a new Sec. 15.25.025. It changes the thrust of existing law by stating affirmatively that the director "shall place the names and political group affiliation of person who have been properly nominated under this chapter on the primary election ballot." As you recognize, under

present law, "no-party" candidates are nominated under that chapter (AS 15.25) but do not go on the primary election ballot.

For a full explanation of what it means to be nominated under this chapter, see the comments on AS 15.25.201, below.

In connection with this section, note the repeal (in section 11) of AS 15.25.190; the latter section provides:

> Sec. 15.25.190. PLACEMENT OF NAMES ON GENERAL ELECTION BALLOT. The director shall place the names and the political group affiliation of persons who have been properly nominated by petition on the general election ballot.

Section 4 amends AS 15.25.030(14). That section is a portion of the section that provides for the contents of the "Declaration of Candidacy" of candidates of political parties. Apart from the changes required by Chapter 58, SLA 1982, the changes to this section requires a candidate to state that the candidate is not a candidate for any other office to be voted on at the "primary [OR GENERAL] election". As suggested, under existing law party candidates appear on the primary election ballot; "no-party" candidates appear on the general election ballot only. The purpose of existing law is to prevent an individual from seeking two offices simultaneously. Since candidates may not appear on the general election ballot in any case under this law unless they are nominated, the bill eliminates the reference to the general election.

Section 5 amends AS 15.25.060. Existing law provides that no write-in votes may be counted at the primary election. See AS 15.25.070. This bill repeals AS 15.25.070 in sec. 11 and reverses the policy stated in this section by directing the director to provide spaces for write-in votes on the primary election ballot.

Section 6 repeals and reenacts AS 15.25.180(7). AS 15.25.180 regulates the contents of the nominating petition of no-party candidates. The existing provision provides, in context:

> Sec. 15.25.180. Requirements for Petition. The petition shall state in substance

* * *

(7) the date of the election at which the candidate seeks election,

The amendment simply makes clear the fact that "no-party candidates will have their names appear on the primary election ballot."

Section 7 amends AS 15.25.180(15). AS 15.25.180(15) is a "no-party" counterpart to the party nominee requirement discussed above at sec. 4, amending AS 15.25.030. It requires the "no-party" candidate to certify that no other office is being sought at the primary election. Since candidates may go to the general election ballot only by nomination at the primary, the reference to the possibility of being a candidate at the general election is eliminated.

Section 8 amends AS 15.25.200. The section amends law regulating withdrawal of a "no-party" candidate's name. Because the candidate will be voted on at the primary election in place of the general election, a modification of the scheme of the section was necessary. The section deals affirmatively with a subject that the law is presently silent on: the effect on the candidacy of a team of candidates for governor and lieutenant governor when only one dies or withdraws. The amendment permits the remaining member of the team to submit a replacement name.

Section 9 establishes a new AS 15.25.201. The section is the heart of the bill.

Sec. 201(a) provides that only two candidates are nominated at the primary election for each office for which there will be a vacancy. To determine who those candidates are, the director counts the votes cast for each "no-party" candidate, each write-in candidate, and each candidate of a political party. The director then cumulates the votes of all candidates of each "political party" (as defined in AS 15.60.010(20) and as amended in sec. 10 of the bill. From these totals, the director will determine "which candidate or political party received the largest and the second largest number of votes cast." Then, if "a no-party candidate or a write-in candidate received the largest or second largest count, that candidate shall appear on the general election ballot. If a political party received the largest or second largest count, the candidate of that party who

received the largest number of votes shall appear on the general election ballot."

Sec. 201(b) provides that to determine the parties that have nominated candidates for governor and lieutenant governor, the votes cast for candidates for lieutenant governor are disregarded and the votes for candidates for governor in each party are cumulated.

Section 10 amends AS 15.60.010(20). It changes the definition of "political party" to conform to the requirements of the Supreme Court decision in Vogler v. Miller. It reduces to five percent (from the former ten percent) the number of votes required for a political party candidate for governor at the previous general election for continued status as a political party.

Section 11 repeals AS 15.25.070, 15.25.100, and 15.25.190.

Those sections now provide:

> Sec. 15.25.070. SPECIAL PROVISIONS ON COUNTING BALLOTS. No voter may vote for a person whose name is not on the ballot. Votes cast for a person whose name is not on the ballot shall not be counted, but writing in a candidate's name does not invalidate the entire ballot.
>
> Sec. 15.25.100. PLACEMENT OF NOMINEES ON GENERAL ELECTION BALLOT. The director shall place the name of the candidate receiving the highest number of votes for an office by a political party on the general election ballot.
>
> Sec. 15.25.190. PLACEMENT OF NAMES ON GENERAL ELECTION BALLOT. The director shall place the names and the political group affiliation of persons who have been properly nominated by petition on the general election ballot.

If I may be of further assistance, please advise.

RAB:ljb
19/013

SUMMARY OF VOTER TOTALS, PERCENTAGES OF GOV. ELECTIONS, GENERAL

1962-1982

YEAR	TOTAL VOTES	CANDIDATE #1 / %		CAN.#2 / %		CAN.#3/ %		CAN.#4/5
1962	60,084 (56,681)*	29,627	49.3% (52.2%)	27,054	45% (47.7%)			
1966	67,361 (66,294)	33,145	49.2% (49.9%)	32,065	47.6% (48.3%)	1084	1.6% (1.6%)	
1970	82,405 (80,779)	42,309	51.3% (52.3%)	37,264	45.2% (46.1%)	1206	1.4% (1.4%)	
1974	98,557 (96,163)	45,840	46.5% (47.6%)	45,553	46.2% (47.3%)	4770	4.8% (4.9%)	
1978	129,705 (126,910,	49,580	38.2% (39.%)	33,555	25.8% (26.4%)	25,656	19.8% (20.2%)	
				CAN #4 /%		CAN.#5/%		
				15,656	12.% (13.%)	2,463	1.9% (1.94%)	
1982	199,358 (194,511)	89,918	45.1% (46.2%)	72,291	36.2% (37.1%)	29,067	14.5% (14.9%)	
				CAN. #4/%				
				3235	1.6% (1.66%)			

* NOTE: These numbers and percentages in ( )s are totals excluding votes not cast for one of the candidates listed above; all small write-in votes.

CS HJR 9 / CSHJR 8 (SC)
By the Judiciary Comm.

B

Comments by the Division of Elections

CS HJR 9 "Proposing an amendment to the Constitution of the State of Alaska relating to elections for candidates for Governor and Lieutenant Governor and for members of the legislature."

ANALYSIS : This bill would require that any candidate for state elective office (executive and legislature) receive 50% of the votes cast for the office plus one vote, in the general election. If a candidate for office does not receive this amount, a runoff election shall be held between the top two vote getters.

A review of the 1982 legislative races shows that, if this law were then in effect, one (1) Senate race and eight (8) House races would require runoff elections. It should be noted that in every one of these nine races there were strong Libertarian and Independent candidates.

	Senate #15&16	House #5 A	House #5 B	House #10 B	House #14 B
winner %	41%	45%	49%	48.2%	49%
lack #	-876	-504	-101	-145	-95

	House #16 B	House # 18	House # 19	House # 17
winner %	36%	41%	48.7%	42%
lack #	-1529	-425	-66	-363

Additionally, for point of reference, there were two (2) Senate races won with 50% plus 6 and 12 votes respectively, four (4) Senate race won between 51% and 55%, and four (4) House races won with barely more than 50% (plus 12, 34, 60 and 63 votes respectively)

As was noted previously in comments on the original HJR 9, all gubernatorial races except 1970 would have required a runoff election. Even the decisive 17,000 vote margin of the1982 race left the winner with 45% of the ballots cast for that race, again due to the strong showing of the Libertarian and Independent candidates.

***** BROWSE FILE IN BILL ORDER *****

BILL NUMBER	STATUTE	ACTION
HB 409	15.15.030	AMENDED
HB 409	15.25.025	ADDED
HB 409	15.25.030	AMENDED
HB 409	15.25.060	AMENDED
HB 409	15.25.070	REPEALED
HB 409	15.25.140	REFERENCE
HB 409	15.25.150	REFERENCE
HB 409	15.25.160	REFERENCE
HB 409	15.25.170	REFERENCE
HB 409	15.25.180	AMENDED
HB 409	15.25.180	REPL&REIN
HB 409	15.25.180	REFERENCE
HB 409	15.25.190	REPEALED
HB 409	15.25.190	REFERENCE
HB 409	15.25.200	AMENDED
HB 409	15.25.200	REFERENCE
HB 409	15.25.201	ADDED
HB 409	15.60.010	AMENDED
HB 409	15.60.010	REFERENCE

SELECT A BILL NUMBE AND HIT ENTER BILL NUMBER HB 409 STATUTE 1560010
RETURN TO MAIN MENU ?

***** BROWSE FILE IN BILL ORDER *****

BILL NUMBER	STATUTE	ACTION
HB 409	15.60.010	AMENDED
HB 409	15.60.010	REFERENCE
HB 410	16.05.340	AMENDED
HB 411	01.10.070	REFERENCE
HB 412	18.50.030	REFERENCE
HB 412	18.50.500	ADDED
HB 412	18.50.500	REFERENCE
HB 412	18.50.510	ADDED
HB 412	18.50.510	REFERENCE
HB 412	18.50.520	ADDED
HB 412	18.50.520	REFERENCE
HB 412	25.23.000	REFERENCE
HB 412	25.23.185	ADDED
HB 412	47.35.100	REFERENCE
HB 413	39.20.180	REFERENCE
HB 413	39.50.200	ADDED
HB 413	41.35.300	ADDED
HB 413	41.35.300	REFERENCE
HB 413	41.35.305	ADDED

SELECT A BILL NUMBER AND HIT ENTER BILL NUMBER HB 413 STATUTE 4135305
RETURN TO MAIN MENU ?

STATE OF ALASKA
FISCAL NOTE

[illegible]ision Date , 1983

I. REQUEST

Bill/Resolution No.: HB 409
Title: Relating to Prim & Gen Elections
Sponsor: House Judiciary Committee
Requestor: House Judiciary Committee

II. FISCAL DETAIL

Agency Affected: Office of the Governor
Program Category Affected: Exec Operations
BRU, Program of Subprogram(s) Affected: Division of Elections

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 83	FY 84	FY 85	FY 86	FY 87	FY 88
OPERATING						
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 COMMODITIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND	-0-	-0-	-0-	-0-	-0-	-0-
FEDERAL FUNDS						
OTHER (Specify Source)						

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

III. SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL: Not Provided

IV. ANALYSIS: The passage of this legislation would not have an appreciable fiscal impact on the division.

IV. ANALYSIS: Attach a separate page for any Analysis

Prepared By: Dana C. Coffman, Deputy Director Phone: 586-6181
Division: Division of Elections Date: May 10, 1983

Approved by Commissioner: [signature] Date: May 11, 1983
Department: Lieutenant Governor

Distribution:
Original to Legislative Finance
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3/8/83

SE, SOLDOTNA P.O.M. 5/18/83 18600

SENATORS: RAY, JOSEPHSON

REP.'S: BUSSELL, LISKA, BARNES, CLOCKSIN, HAYES, MALONE, WENDTE

OR

ROM: LINDA FILER
BOX 148, ANCHOR POINT, AK. 99556 (H) 235-8457

LEASE EXPLAIN HOW HB-409 IS CONSTITUTIONAL. I AM OPPOSED TO IT AND WOU D LIKE
D HEAR MORE PUBLIC HEARINGS.
B-409, PRIMARY & GENERAL ELECTIONS.
XXXX

HB

412

CL

FISCAL NOTE | Revision Date _____, 1983

I. REQUEST

Bill/Resolution No. CSHB 412 (HESS)

Title: Adoptions

Sponsor: Szymanski, Fritz, Malone, & Koponen

Requestor: _____

II. FISCAL DETAIL

Agency Affected: Health & Social Service

Program Category Affected: _____

BRU, Program or Subprogram(s) Affected: _____

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 83	FY 84	FY 85	FY 86	FY 87	FY 88
OPERATING						
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 COMMODITIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC						
TOTAL OPERATING		0	0	0	0	0
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND		0	0	0	0	0
FEDERAL FUNDS						
OTHER (Specify Source)						

POSITIONS:

FULL-TIME		0	0	0	0	0
PART-TIME						
TEMPORARY						

III. SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

The source of funding was not identified by the sponsors.

IV. ANALYSIS: Attach a separate page for any Analysis

Prepared By: Dan P. Graves [illegible] Phone: 465-3391

Division: Planning, Policy & Program Evaluation/Vital Statistics Date: 5/18/83

Approved by Commissioner: Robert Fowler Smith Date: 5/24/83

Department: Dept. of Health & Social Services

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3/87

HB

421

COMMITTEE REPORT

HOUSE

(7)

FURTHER:

5/25/83

Date: 5-3-84

Mr. Speaker:

The Committee on JUDICIARY has had HB 421

"An Act relating to open containers of alcoholic beverages in motor vehicles."

under consideration and reports it back as follows:

[✓] do pass [ ] do not pass

[ ] do pass with attached amendments(s)

[ ] replace with CS for _____ [ ] same title [ ] new title

and recommends _____

[ ] AND attaches a "Letter of Intent" [ ] New Fiscal Note [ ] Zero Fiscal Note Attached

[ ] reports it back without recommendation

[ ] referred to the _____ Committee

MEMBERS SIGNING
DO PASS

MEMBERS HAVING
OTHER RECOMMENDATIONS:

CHAIRMAN

H 60

DEPARTMENT OF PUBLIC SAFETY

POSITION PAPER - HB 421

Support

This bill will provide another law enforcement tool toward reducing the drunk drivers on the road.

Making it a violation to have an open container in the passenger compartment of a motor vehicle should reduce the tendency to drink while in the process of driving, which now is the only violation related to alcoholic beverages in a vehicle.

for Robert J. Sundberg
Commissioner

Alaska State Legislature

House of Representatives

Representative Mike Szymanski

Official Business

SR-A-Box 1304B
Anchorage, Alaska 99502
Phone (907) 349-3373

While in Session:
Pouch V
State Capitol
Juneau, Alaska 99811

April 26, 1984

TO: Representative Charlie Bussell
Chairman, House ~~Judiciary~~ Committee

FROM: Representative ~~Mike~~ Szymanski

SUBJECT: House Bill 421

At the present time, there is no open container statute on the books. Under 13AAC 02 545, drivers are prohibited from drinking while driving but there is nothing which prohibits the driver from being in a car where there is an open alcoholic beverage container.

Nineteen other states have an open container law(see attached analysis). Some of these states have had such a law on the books since the 1930's. Two that are relatively frequent (Hawaii and Utah) were contacted by House Research.

Utah enacted their law in 1981, mainly to make a statewide statement of illegality. They have counties and the counties were locally enacting their own laws about drinking and driving and it caused confusion -- you could drive from one county to another and the law would change. It was also not hgihly enforced because of the confusion.

Hawaii enacted their open container law in 1981. They have never had municipal ordinances. Their law was in response to the county police who, time and again, responded to accidents and found empty alcohol containers at the scene.

From: U.S. Department of Transportation, National Highway Traffic Safety Administration
"Alcohol-Highway Safety: A Digest of State Alcohol-Highway Safety Related Legislation 1983"

ANALYSIS BY STATES--HIGH-INTEREST LEGISLATION (Continued)

State	Dram Shop	Open Container	Community Service	Mandatory Jail-1st Offense	Mandatory Jail--2nd or Other Offense
ALABAMA	Statute				
ALASKA	Statute				
ARIZONA	No		X	X	X
ARKANSAS	No				
CALIFORNIA	No	X			X
COLORADO	Statute		X		
CONNECTICUT	Statute				X
DELAWARE	No				
DISTRICT OF COLUMBIA	Case law				
FLORIDA	Case law		X		
GEORGIA	Statute				
HAWAII	Case law	X	X		
IDAHO	Case law	X			
ILLINOIS	Statute	X			
INDIANA	Case law				X
IOWA	Statute				X
KANSAS	No	X			
KENTUCKY	Case law				X
LOUISIANA	No		X	X	X
MAINE	Statute			X	X
MARYLAND	No	X			
MASSACHUSETTS	Statute				
MICHIGAN	Statute	X	X		
MINNESOTA	Statute	X			
MISSISSIPPI	Case law				
MISSOURI	Case law				
MONTANA	No	X			X
NEBRASKA	No				X
NEVADA	No				X
NEW HAMPSHIRE	No				X
NEW JERSEY	Case law		X		
NEW MEXICO	Case law				X
NEW YORK	Statute				
NORTH CAROLINA	No	X			X
NORTH DAKOTA	Statute	X			
OHIO	Statute	X			

ANALYSIS BY STATES--HIGH-INTEREST LEGISLATION (Continued)

State	Dram Shop	Open Container	Community Service	Mandatory Jail-1st Offence	Mandatory Jail--2nd or Other Offense
OKLAHOMA	No	X			
OREGON	Statute	X			
PENNSYLANIA	Statute		X	X	X
PUERTO RICO	No				
RHODE ISLAND	Statute				
SOUTH CAROLINA	No	X			
SOUTH DAKOTA	No	X			
TENNESSEE	Case law		X	X	X
TEXAS	No				
UTAH	Statute	X	X		
VERMONT	Statute				
VIRGINIA	No				X
WASHINGTON	Case law	X		X	X
WEST VIRGINIA	No		X	X	X
WISCONSIN	No	X			
WYOMING	Statute			X	X
	Case law-12 Statute -20	19	11	8	20

STATE OF ALASKA
FISCAL NOTE

Revision Date , 1983

I. REQUEST

Bill/Resolution No.: HB 421
Title: An Act relating to open containers..."
Sponsor: Rep. Szymanski
Requestor: House State Affairs

II. FISCAL DETAIL

Agency Affected: Public Safety
Program Category Affected: Crime ID
BRU, Program or Subprogram(s) Affected: Alaska State Troopers

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 83	FY 84	FY 85	FY 86	FY 87	FY 88
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 COMMODITIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC						
TOTAL OPERATING		-0-	-0-	-0-	-0-	-0-
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER (Specify Source)						

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

III. SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

IV. ANALYSIS: Attach a separate page for any Analysis No fiscal impact anticipated

Prepared By: Paul Conger Phone: 465-4338
Division: Administrative Services Date: 5/24/83

Approved by Commissioner: [signature] Date: 5/24/83
Department: Public Safety

Distribution:
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3/8/83

HB
444

COMMITTEE REPORT

HOUSE

(7) FURTHER: FINANCE

1/12/84 Date: 1/30/84

Mr. Speaker:

The Committee on JUDICIARY has had SSHB 444

"An Act relating to unlawful restraint of a minor."

under consideration and reports it back as follows:

[X] do pass [ ] do not pass

[ ] do pass with attached amendments(s)

[X] replace with CS for SSHB 444 (Jud) [X] same title [ ] new title

and recommends _____

[ ] AND attaches a "Letter of Intent" [X] New Fiscal Note

[ ] reports it back without recommendation

[ ] referred to the _____ Committee

MEMBERS SIGNING
DO PASS

MEMBERS HAVING
OTHER RECOMMENDATIONS:

CHAIRMAN

H 60 (Rev. 3/81)

POUCH V
JUNEAU, ALASKA 99811
(907) 465-4990

Alaska State Legislature
HOUSE OF REPRESENTATIVES

REPRESENTATIVE
CHARLIE BUSSELL
CHAIRMAN

Committee on Judiciary

SSHB 444
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"An act relating to unlawful restraint of a minor."

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Keith B. Levy, Legislative Counsel.

C. Fiscal Note
Richard I. Pegues, Director, Administrative Services, Dept of Law.

D. Alaska Statutes: 11.41.300-330.

E. Pertinent News Clippings.

F. Child-Find Tabloid.

MEMBERS:
REP. JOHN LISKA, VICE CHAIRMAN; REP. RAMONA BARNES, EMERITUS;
REP. JOE HAYES; REP. HUGH MALONE; REP. DON CLOCKSIN; REP. RON WENDTE

STATE OF ALASKA
THE LEGISLATURE

LEGISLATIVE AFFAIRS AGENCY

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

M E M O R A N D U M January 13, 1984

SUBJECT: Sectional analysis of SSHB 444

TO: Representative Charlie Bussell

FROM: Keith B. Levy KBL
Legislative Counsel

You have requested a sectional analysis of HB 444, "An Act relating to unlawful restraint of a minor." Since your request was submitted, Representative Liska has introduced a sponsor substitute for HB 444, so this analysis follows the sponsor substitute rather than the original bill.

SSHB 444 creates the crime of unlawful restraint of a minor, a class A misdemeanor. The offense is committed if a person takes, entices, or restrains a child under the age of 12 with intent to conceal the child from the child's lawful custodian, under circumstances not amounting to kidnapping (AS 11.41.300) or custodial interference (AS 11.41.320 and 11.41.330). It is an affirmative defense to unlawful restraint of a minor that the defendant acted to protect the child from physical harm.

KBL:ojb
J2/026

Proposed definition of "entice" for SSHB 444, if Committee members should want to use it----Staff.

*Sec. 2. AS 11.41.370 DEFINITIONS is amended by adding a paragraph to read as follows:

(4) "entice" means to solicit, persuade, procure, allure, attract, coax or induce another person to accompany or remain with the person doing the enticing.

STATE OF ALASKA 1984 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date:

REQUEST
Bill/Resolution No.: SSHB 444
Title: "...unlawful restraint a minor."
Sponsor: Rep. Liska
Requestor: Rep. Liska
Date of Request: 1/12/84

FISCAL DETAIL
Agency Affected: Department of Law
Program Category Affected: Administration of Justice
BRU, Program or Subprogram(s) Affected: Prosecution

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 84	FY 86	FY 86	FY 87	FY 88	FY 89
OPERATING						
100 PERSONAL SERVICES		40.6	43.0	45.6	48.3	51.2
200 TRAVEL		4.8	5.1	5.4	5.7	6.0
300 CONTRACTUAL		6.0	6.4	6.8	7.2	7.6
400 SUPPLIES		4.5	3.2	3.4	3.6	3.8
500 EQUIPMENT		1.5	--	--	--	--
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS						
800 MISCELLANEOUS						
TOTAL OPERATING	-0-	57.4	57.7	61.2	64.8	68.6
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND	-0-	57.4	57.7	61.2	64.8	68.6
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS:

FULL-TIME	-0-	1	1	1	1	1
PART-TIME						
TEMPORARY						

SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

Not specified by sponsor.

ANALYSIS: Attach a separate page for analysis

Prepared By: Richard I. Pegues, Director (Richard I. Pegues) Phone: 465-3672
Division: Administrative Services Date: 1/18/84
Approved by Commissioner: Norman C. Gorsuch (Richard I. Pegues/COR) Date: 1/18/84
Agency: Department of Law

Distribution (by Agency preparing fiscal note):
Legislative Finance
Legislative Sponsor
Requestor
Office of Management and Budget
Impacted Agency(ies)

12/1/83

Fiscal Note
Analysis
SSHB 444

January 18, 1984

This bill will provide class A misdemeanor punishment of individuals who unlawfully take, entice or restrain a child under 12 years of age, without rising to the level of child molesting or sexual abuse. The Municipality of Anchorage has a similar ordinance and municipal prosecutors report that they prosecute 20 to 25 such cases each year, based upon the evidence they are able to develop. The incidence of enticement complaints, in the municipality, is much higher averaging about 35 complaints per month.

The department estimates that 40 to 50 of these offenders will be prosecuted each year if this bill is enacted. Because restraint and enticement is not yet unlawful, in most of the state, no hard data on the statewide incidence rate is available. Cases involving young victims are difficult to prove because these victims are usually the prosecution's principal witnesses. Therefore developing these cases can often take a substantial amount of attorney time. The department believes, however, that use of a paralegal trained in assisting the victims of sensitive crimes will be just as effective in developing evidence and far more efficient in terms of state resources. A paralegal assistant, at Anchorage, will be needed, if the bill is enacted.

Fiscal Analysis - SSHB 444

This analysis assumes the addition of a Paralegal Assistant II (SR16), at Anchorage, to develop the evidence needed to prosecute unlawful restraint and enticement of children under 12 years of age. The position will be available to most of Southcentral Alaska and a modest travel budget is provided for that purpose. Costs beyond FY 85 have been calculated with a 6% inflation factor.

Personal Services	40,569
Travel - Paralegal travel 200 pm = 2,400 Witness travel 200 pm = 2,400	4,800
Contractual - Staff communications/copying 250 pm = 3,000 Witness fees 25 each X 10 per mo. = 3,000	6,000
Commodities - Ongoing - expendables and library - 250 pm = 3,000	3,000
Commodities - Single time - new position 1,500	1,500
Equipment - Single time - new position 1,500	1,500
Total	57,369

1.	POSITION TITLE Paralegal Assistant II			RANGE/STEP 16A	BARG. UNIT GGU	FORM 12 PACE/LINE	COV.	APPROV.	DISAPP.
2.	TYPE OF POSITION PFT	STAFF MONTHS 12	RP NUMBER	PCN NUMBER	BRU PRIORITY	LOCATION Anchorage	ELECTION DISTRICT	LEG.		
3.	CONTINUATION LEVEL		ADDITION						

4.	TYPE OF EXPENDITURE		AMOUNT
	1	2	3
	PERSONAL SERVICES		
5.	Salary	30,876	
6.	Benefits	5,064	
7.	Supplemental Benefits	1,893	
8.	Fixed Benefits	2,736	
9.	TOTAL PERSONAL SERVICES	01	40,569
10.	Travel	02	4,800
11.	Contractual	03	6,000
12.	Commodities	04	4,500
13.	Equipment	05	1,500
14.	Other		
15.	TOTAL COST		57,369

	RECEIPT CODE	FUNDING SOURCE		
16.		Federal Receipts	1002	
17.		G.F. Match	1003	
18.		General Funds	1004	57,369
19.		I-A Receipts	1005	
20.		Program Receipts	1020	
21.		Other		

FOR O&M USE ONLY
4A KEY NUMBER __ __ - __ __ - __ __ - __ __ - __ __

JUSTIFICATION

A paralegal assistant will be required to develop evidence to prosecute the crime of unlawful restraint or enticement of children under 12 years of age, if HB 444 is enacted. These cases are difficult to prosecute because of the young age of the victims who are normally the prosecution's principal witnesses. A paralegal, trained in the special techniques necessary to interview and prepare young victims for trial, is best suited for this task.

13 REQUEST FOR NEW POSITION

AGENCY DEPARTMENT OF LAW

PROGRAM ADMINISTRATION OF JUSTICE

BRU PROSECUTION

COMPONENT THIRD JUDICIAL DISTRICT

Revised Date

FY 85

Collateral references. — 1 Am. Jur. 2d, Abduction and Kidnapping, § 1 et seq.

1 C.J.S., Abduction, § 1 et seq.; 51 C.J.S., Kidnapping, § 1 et seq.

Forcing another to transport one as constituting offense of kidnapping or of abduction, 62 ALR 200.

Fiction of loss of services as a condition of action for abduction of child, 72 ALR 847.

Kidnapping or other criminal offense by taking or removal of child by, or under authority of, parent, or one in loco parentis, 77 ALR 317.

Offense of abduction or kidnapping as affected by defendant's belief in legality of his act, 114 ALR 870.

Fraud or false pretenses, kidnapping by, 95 ALR2d 450.

What is harm within provisions of statutes increasing penalty for kidnapping where victim suffers harm, 11 ALR3d 1053.

Seizure or detention for purposes of committing rape, robbery, or similar offense as constituting separate crime of kidnapping, 43 ALR3d 699.

Necessity and sufficiency of showing, in kidnapping prosecution, that detention was with intent to "secretly" confine victim, 98 ALR3d 733.

Sec. 11.41.300. Kidnapping. (a) A person commits the crime of kidnapping if

(1) the person restrains another with intent to

(A) hold the restrained person for ransom, reward, or other payment;

(B) use the restrained person as a shield or hostage;

(C) inflict physical injury upon or sexually assault the restrained person or place the restrained person or a third person in apprehension that any person will be subjected to serious physical injury or sexual assault;

(D) interfere with the performance of a governmental or political function; or

(E) facilitate the commission of a felony or flight after commission of a felony; or

(2) the person restrains another

(A) by secreting and holding the restrained person in a place where the restrained person is not likely to be found; or

(B) under circumstances which expose the restrained person to a substantial risk of serious physical injury.

(b) In a prosecution under (a)(2)(A) of this section, it is an affirmative defense that

(1) the defendant was a relative of the victim;

(2) the victim was a child under 18 years of age or an incompetent person; and

(3) the primary intent of the defendant was to assume custody of the victim.

(c) Except as provided in (d) of this section, kidnapping is an unclassified felony and is punishable as provided in AS 12.55.

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(d) In a prosecution for kidnapping, it is an affirmative defense which reduces the crime to a class A felony that the defendant voluntarily caused the release of the victim alive in a safe place before arrest, or within 24 hours after arrest, without having caused serious physical injury to the victim and without having engaged in conduct described in AS 11.41.410(a)(1) or (2) or 11.41.420. (§ 3 ch 166 SLA 1978; am § 7 ch 102 SLA 1980)

Cross references. — For punishment, see AS 12.55.125(b).

Effect of amendments. — The 1980 amendment inserted "or sexually assault him" following "injury upon him" near the beginning of subparagraph (a)(1)(C), and added "or sexual assault" at the end of subparagraph (a)(1)(C).

Legislative history reports. — For a report on Chapter 102, SLA 1980 (HCS CSSB 511), see 1980 Senate Journal Supplement, No. 44, May 29, 1980, or 1980 House Journal Supplement, No. 79, May 28, 1980.

NOTES TO DECISIONS

Editor's notes. — Many of the cases cited in the notes below were decided under former AS 11.15.260.

The crime of kidnapping is designed to protect the general personal security of citizens both in their persons and property. Ladd v. State, Sup. Ct. Op. No. 1480 (File No. 2475), 568 P.2d 960 (1977), cert. denied, 435 U.S. 928, 98 S. Ct. 1498, 55 L. Ed. 2d 524 (1978).

Constitutionality of former statute. — See Levashakoff v. State, Sup. Ct. Op. No. 1446 (File No. 2830), 565 P.2d 504 (1977).

Scope of former statute. — See Crump v. State, Sup. Ct. Op. No. 2309 (File No. 4546), 625 P.2d 857 (1981).

For discussion of elements that were required to be proved under former AS 11.15.260, see Davis v. State, Ct. App. Op. No. 23 (File No. 5100), 635 P.2d 481 (1981).

Exemption. — The new criminal code, which states that it is an affirmative defense that defendant was a relative of the victim, provides for a broader exemption from the kidnapping statute than the absolute exemption for the abduction of a minor by his parent under former AS 11.15.260. Crump v. State, Sup. Ct. Op. No. 2309 (File No. 4546), 625 P.2d 857 (1981).

For case discussing the parental exemption contained in Alaska's former kidnapping statute, AS 11.15.260, Lythgoe v. State, Sup. Ct. Op. No. 2235 (File No. 4497), 626 P.2d 1082 (1980).

Liability of agent for person not entitled to custody of child. — Where a person, while acting as an agent for a parent not entitled to custody, takes a child from one entitled to custody, the person can be convicted of both the substantive crime of kidnapping and conspiracy to kidnap. Crump v. State, Sup. Ct. Op. No. 2309 (File No. 4546), 625 P.2d 857 (1981).

Conspiracy to kidnap. — Conspiracy to kidnap is no longer defined as an offense in Alaska under the newly revised criminal code. Lythgoe v. State, Sup. Ct. Op. No. 2235 (File No. 4497), 626 P.2d 1082 (1980).

Separate crimes. — Rape, assault with a dangerous weapon, and kidnapping were separate crimes with separate elements. Lacy v. State, Sup. Ct. Op. No. 2039 (File No. 3741), 608 P.2d 19 (1980).

Separate sentences were called for where defendant's conduct in kidnapping and raping his victim and assaulting her with a deadly weapon constituted the commission of three distinct offenses, each of which violated a different societal interest. State v. Occhipinti, Sup. Ct. Op. No. 1453 (File No. 3084), 567 P.2d 348 (1977).

Sentences upheld. — See Morrell v. State, Sup. Ct. Op. No. 1577 (File No. 2790), 575 P.2d 1200 (1978); Post v. State, Sup. Ct. Op. No. 642 (File No. 2851), 580 P.2d 304 (1978); Davis v. State, Ct. App. Op. No. 23 (File No. 5100), 635 P.2d 481 (1981); Williams v. State, Ct. App. Op. No. 139 (File No. 5676), 652 P.2d 478 (1982).

Sentence found excessive. — See Hintz v. State, Sup. Ct. Op. No. 2334 (File No. 3541), 627 P.2d 207 (1981).

Applied in Nukapigak v. State, Ct. App. Op. No. 90 (File No. 5820), 645 P.2d 215 (1982); Bidwell v. State, Ct. App. Op. No. 199 (File No. 6290), 656 P.2d 592

(1983); Baker v. State, Ct. App. Op. No. 202 (File No. 6961), 655 P.2d 1324 (1983); Reynolds v. State, Ct. App. Op. No. 262 (File No. 6890), 664 P.2d 621 (1983).

Cited in Nukapigak v. State, Sup. Ct. Op. No. 2667 (File No. 5820), P.2d (1983); Johnson v. State, Ct. App. Op. No. 267 (File No. 6662), 665 P.2d 566 (1983).

Sec. 11.41.320. Custodial interference in the first degree. (a) A person commits the crime of custodial interference in the first degree if the person violates AS 11.41.330 and causes the victim to be removed from the state.

(b) Custodial interference in the first degree is a class C felony. (§ 3 ch 166 SLA 1978)

Collateral references. — Fiction of loss of services as condition of action for abduction of child, 72 ALR 847.

Kidnapping or other criminal offense by taking or removal of child by, or under authority of, parent or one in loco parentis, 77 ALR 317.

Sec. 11.41.330. Custodial interference in the second degree. (a) A person commits the crime of custodial interference in the second degree if, being a relative of a child under 18 years of age or a relative of an incompetent person and knowing that the person has no legal right to do so, the person takes, entices, or keeps that child or incompetent person from a lawful custodian with intent to hold the child or incompetent person for a protracted period.

(b) Custodial interference in the second degree is a class A misdemeanor. (§ 3 ch 166 SLA 1978)

Sec. 11.41.370. Definitions. In AS 11.41.300 — 11.41.370, unless the context requires otherwise,

(1) "lawful custodian" means a parent, guardian, or other person responsible by authority of law for the care, custody, or control of another;

(2) "relative" means a parent, stepparent, ancestor, descendant, sibling, uncle, or aunt, including a relative of the same degree through marriage or adoption;

(3) "restrain" means to restrict a person's movements unlawfully and without consent, so as to interfere substantially with the person's liberty by moving the person from one place to another or by confining the person either in the place where the restriction commences or in a place to which the person has been moved; a restraint is "without consent" if it is accomplished

(A) by acquiescence of the restrained person, if the restrained person is under 16 years of age or is incompetent and the restrained person's lawful custodian has not acquiesced in the movement or confinement; or

(B) by force, threat, or deception. (§ 3 ch 166 SLA 1978)

Why innocent children are in danger


Mary Kenny

WHEN I [illegible] a child 30 years ago, I lived in a quiet suburb with a small road at the front and a large YMCA sports field at the back. We children played both on the road and in the field in confident safety. Cars drove slowly when children were about and everyone connected with the YMCA was considered to be trustworthy. From the age of six, I walked to school alone. I often struck up conversations with strangers. No harm ever came to me.

"You cannot bring up children wrapped in cotton wool," is an old saying, and a reasonable one. Dr Spock and the other child experts warn mothers against the dangers of over-protecting their children. Over-protection turns children into anxious and neurotic adults. Children must learn independence and self-confidence by dealing with life at large.

The recent spate of appalling child murders in the north of England—as well as the rape and assault of little girls in London parks—has served to remind parents of a chilling truth that is gradually becoming obvious in our times: The days of safe childhood seem to be over. We cannot, it seems, raise our children with the freedom of movement and social trust that prevailed in our own childhood. We are gradually realising that children today have to be accompanied to and from school until they are 11 or 12; perhaps with girls until they are 1[illegible].

Parents are coming to understand, in identifying with the suffering of the little victims' parents, that young children are no longer safe [illegible] without adult supervision, not in parks, not on [illegible] roads, not in the most [illegible] sorts of places. Even [illegible] playgrounds especially designed for children need a protective adult eye. Children cannot be sent on shopping errands with an easy mind any more.

Sanguine advice from the child experts about not being neurotically over-protective towards children is all very reasonable and balanced; but the world we are coming to inhabit seems no longer either balanced or reasonable. We may have no choice but to see our children grow up anxious and insecure from over-careful protection: the alternative is to risk their not growing up at all.

This spreading attitude of cautiousness is exemplified by a Home Office film soon to be shown in schools, called "Say No to Strangers." It replaces the more mildly named earlier film, entitled "Never Go With [illegible]ngers." The film warns [illegible] never to accept [illegible]m a stranger; never [illegible] a lift from a [illegible] to play out [illegible] to loiter on [illegible] school.

Even so, some teachers and parents consider the film too bland, since it doesn't spell out in stark detail what can happen to a child in sexual assault or murder. And psychologists point out that not all children are assaulted or killed by *strangers*, sometimes the attacker is a person they know. Can you teach children to be wary about speaking even to an apparent friend of the family without imbuing in them a wholehearted misanthropy, a complete distrust of everyone, and a destruction of the innocence that is the sweetest aspect of the child?

Obviously, children have always had to learn prudence. Many traditional fairy-tales are elliptical warnings to children about the dangers of the big wide world. The child psychologist Bruno Bettelheim thinks it is essential that girls be told "Little Red Riding Hood," because it is such an effective way of explaining, through metaphor and symbol, that there are wicked wolves around who will prey on small girls unless they take precautions. "Hansel and Gretel," "Goldilocks," and "Beauty and the Beast" all express childish fears which are very real; the fear of losing the protection of adults, the fear of being alone in an alien world, the fear of the animal aspect of the male which must be neutralised through some magic power. The child has always had to learn to come to terms with the dangers of life, but there must also be trust: there must also be safe havens, good fairies, helping hunt[illegible] woodcutters who [illegible] kindly godmothers [illegible] princes.

It is when all of life [illegible] threatening and frigh[illegible] that it becomes such [illegible] outlook for children.

Part of the reason [illegible] world has become a [illegible] place for children ste[illegible] the sex revolution [illegible] afraid. The ethic [illegible] revolution is that [illegible] should be free fr[illegible] sions; sexuality itse[illegible] be "value-free." [illegible] in itself is neither [illegible] evil . . . it simply exi[illegible] sexual activity betwe[illegible] senting individuals, [illegible] its nature, is 'unna[illegible] Thus states a recent [illegible] bearing the endorseme[illegible] several doctors, plus [illegible] Alma Birk, counsellor [illegible] Greengross and agony [illegible] Claire Rayner. When [illegible] given out with such au[illegible] that sexuality has no mo[illegible] basis, it must have a spillover effect on sick minds.

Similarly, the National Council for Civil Liberties is campaigning for a lowering of the age of consent, and for the removal of some incest taboos—such as that between brother and sister. However, well-meaning their aim, there is bound to be a response among a sizeable minority that we really have come to the point where anything goes. There are adults whose sexual fantasies revolve around children—the pornography [illegible] there to prove it, as is the Paedophile Information Exchange — and there [illegible] people whose urges lead the [illegible] to kill. Such people must [illegible] affected by a climate [illegible] opinion that denounces [illegible] repressions. When fundamental taboos are stripped awa[illegible] uncontrolled individuals mu[illegible] tend to ask themselve[illegible] "Why should not I too, [illegible] my own thing?"

The libertarian argument that the problems arising [illegible] a free society are worth [illegible] freedoms. But freedom always a matter of balan[illegible] conflicting rights and i[illegible]ests. And what many pe[illegible] feel is that we are expe[illegible]ing today, a mean[illegible] decrease in the freed[illegible] the majority to raise families with trust [illegible] and the optimism that whole human being good. Every day, [illegible] evidence against [illegible] accumulates.

8.05.160 Enticement. Anch. Municipal code

It is unlawful for any person to accost another person or persons and entice or attempt to entice such other person or persons into any automobile, building, bushes, wooded or secluded area, or any remote public or private place for any unlawful purpose. (Adapted from CAAB 18.05.010M).

Crime heats up in warm weather

by Mary Kaye Ritz
Times Writer

Indecent exposure and child enticement are a couple of the seasonal crimes that soar as the weather warms.

Certain crimes flourish under the cloak of darkness. Investigators call crimes such as burglaries and armed robberies "winter" crimes.

On the other side of the equinox, "spring" crimes include indecent exposure, child enticement and assaults on joggers and bicyclists.

In a sample two-week period in March, police were called to investigate 15 cases of sexual assault or attempted sexual assault on adults, and an additional seven involving children.

Last week, police investigated two separate cases of child enticement, the luring of children for illicit purposes.

In one case, a man near a construction site uttered obscenities and performed indecent acts in front of children, police said.

This spring, cases of child enticement already are on the rise, Officer Jim Rehmann said.

Enticement cases are most frequent during the months of March through May, said former juvenile unit officer, Maggie Borrecco.

Now that spring is here, parents are more likely to warn children about "bad men," and means of luring children into possible danger have become more creative, Lt. David L. Sherbahn said.

Sherbahn, who heads the police department's sexual assault unit, said the familiar "candy, little

See Crimes, page A-4

Crimes

Continued from page A-1

girl?" approach has given way to "help me catch my bunny rabbit in the woods." There have been cases of persons posing as religious representatives luring children as well, he said.

Children are not the only victims of spring criminals.

Anchorage police investigators Sherbahn and William Dennis work on cases of sexual assault, a crime they say is not isolated in spring, but more likely to occur in spring-like weather.

Both investigators and Alaska State Trooper investigator Sgt. Wayne Starr said the reason is simple: more women and children are outside as the weather warms up.

Joggers are also likely to be targets of attack.

Female joggers and bicyclists who wander from well-lit, open areas in the early morning and late evening are prime targets, Dennis said.

The best way to avert the danger of assaults, Dennis said, is to jog with someone else.

Boy offered ride

Anchorage police reported a case of child enticement in South Anchorage Friday involving a 10-year-old boy.

The boy said a man offered him a ride home, but he became frightened and jumped from the car. The boy hid in the woods until the suspect left.

Feb. 1

Abduction attempted

An unidentified man tried to abduct an 8-year-old girl at a bus stop Thursday afternoon.

The girl told Anchorage police that she had just gotten off a People Mover bus at 3:39 p.m. near Lake Ridge Road when the man stopped his car and motioned her over to his car.

As the man began to leave the car, the girl ran to her house and told her parents. The father then called police.

The girl said man was about 40-years-old and drove a blue Dodge pickup that was dirty and had several small dents.

2 sentenced for crimes committed while drunk

April 2, 83

By JANE PRICHARD
Daily News reporter

Two men were sentenced in unrelated cases Friday for crimes they committed during what they claimed were alcohol-induced blackouts.

In one case, Isom Chaney, 49, was sentenced to two years in jail and four years probation for arson. Chaney doused his ex-wife's trailer with 10 gallons of gasoline last July, causing an explosion and a fire.

"After this ordeal I know I want to stop drinking," Chaney told sentencing Judge J. Justin Ripley.

"Society won't tolerate simpleminded alcoholic-induced vengeance," Ripley said before imposing Chaney's sentence, which includes a $36,000 restitution payment.

In the other case, Rex Weston, 23, was sentenced to one year in jail and 18 months probation for grabbing a jogger and a child in a park last September.

According to court papers, Weston accosted a woman jogger but let her go when another runner appeared. He later snatched a 7-year-old girl and carried her upside down toward the woods.

Witnesses chased Weston and he dropped the girl.

Youngsters outside must remain alert

Knight-Ridder Newspapers

With missing-children cases receiving more publicity these days, concerned officials involved in child care are making a greater effort to alert children and parents to possible problems and how to avoid them.

Here are 12 safety tips that parents might want to share with their children.

- Walk tall, look strong and be alert to your surroundings.
- Avoid walking alone. Walk with friends when possible.
- Occasionally vary your route home, but be sure to discuss any changes with parents in advance.
- Do not wear earphones on the street. They block out street noise and make you a good target.
- Do not go into empty buildings. Do not go into any building if you think you are being followed.
- Check to see if you are being followed by looking at reflections in store windows or by crossing the street.
- Never talk about how much money you are carrying.
- Do not hesitate to give up your possessions if someone threatens you.
- Trust your instinct. If you get a funny feeling something might be wrong.
- Know where local stores are in your neighborhood. They are a good place to run to when you need help.
- Know that it's all right to say "no." Don't answer questions from strangers over the telephone.
- It's OK to run away and to scream, bite, hit or kick someone who is trying to hurt you.

Wed, Aug-31-83

22-141 50 SHEETS
22-142 100 SHEETS
22-144 200 SHEETS

ANCHORAGE TIMES 7 MAY 83

'Candyman' gets 8-year term

Robert Sauer, who earned the nickname "Candyman" for enticing young girls with candy and money, was sentenced to eight years in prison Thursday on four counts of sexual abuse of a minor.

Superior Court Judge Ralph Moody told Sauer, 63, "This is one of the most severe child molestation cases I've ever seen."

Moody said the prospects of rehabilitation were questionable for a man of Sauer's age, adding there was a clear need to remove him from the public.

"We can't tolerate crimes against children," he said.

Sauer, who was convicted by a jury Oct. 29, was sentenced to 14 years in prison, then ordered to serve eight years and placed on probation for the other six.

He was charged with engaging in sexual acts with four girls ranging in age from 7 to 11 from late 1981 until mid-1982.

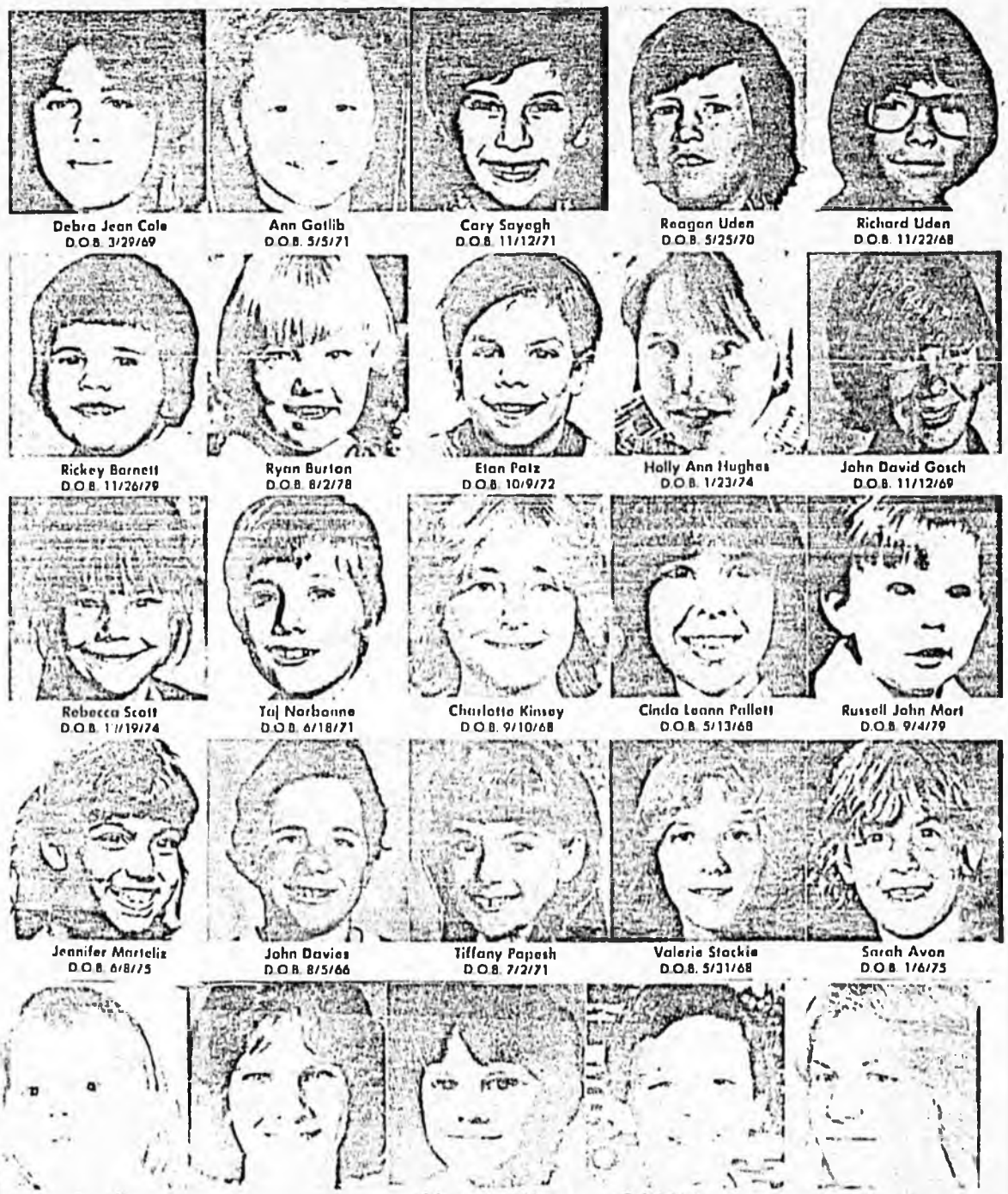
These children appeared on the role call at the conclusion of the television movie

ADAM

Broadcast on NBC, October 10, 1983 9-11 p.m. N.Y.T.

If you think you have any information on the whereabouts of any of these children, or any other missing children, please call CHILD FIND, toll free (800) 431-5005 - in New York (914) 255-1848. All calls will be kept confidential.

Special thanks to NBC and Alan Landsburg Productions for making publication of this poster possible.



Debra Jean Cole
D.O.B. 3/29/69

Ann Gotlib
D.O.B. 5/5/71

Cary Sayegh
D.O.B. 11/12/71

Reagan Uden
D.O.B. 5/25/70

Richard Uden
D.O.B. 11/22/68

Rickey Barnett
D.O.B. 11/26/79

Ryan Burton
D.O.B. 8/2/78

Etan Patz
D.O.B. 10/9/72

Holly Ann Hughes
D.O.B. 1/23/74

John David Gosch
D.O.B. 11/12/69

Rebecca Scott
D.O.B. 1/19/74

Taj Norbonne
D.O.B. 6/18/71

Charlotte Kinsey
D.O.B. 9/10/68

Cinda Leann Pollett
D.O.B. 5/13/68

Russell John Mori
D.O.B. 9/4/79

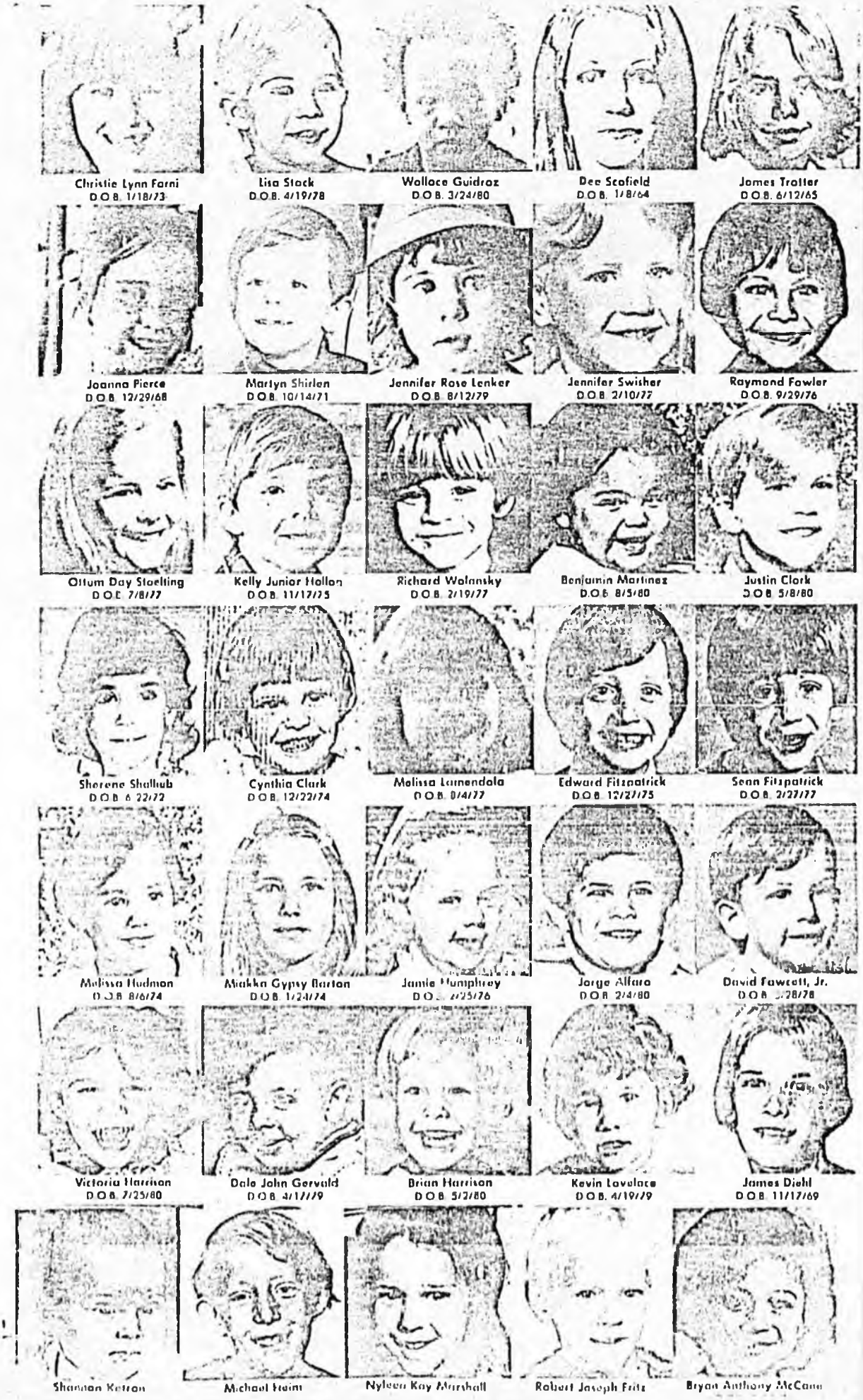
Jennifer Marteliz
D.O.B. 6/8/75

John Davies
D.O.B. 8/5/66

Tiffany Papesh
D.O.B. 7/2/71

Valerie Stackie
D.O.B. 5/31/68

Sarah Avon
D.O.B. 1/6/75


Christie Lynn Farni
D.O.B. 1/18/73
Lisa Stock
D.O.B. 4/19/78
Wallace Guidroz
D.O.B. 3/24/80
Dee Seafield
D.O.B. 1/8/64
James Trotter
D.O.B. 6/12/65
Joanna Pierce
D.O.B. 12/29/68
Martyn Shirlen
D.O.B. 10/14/71
Jennifer Rose Lenker
D.O.B. 8/12/79
Jennifer Swisher
D.O.B. 2/10/77
Raymond Fowler
D.O.B. 9/29/76
Ottum Day Stoelting
D.O.B. 7/8/77
Kelly Junior Hollon
D.O.B. 11/17/75
Richard Wolansky
D.O.B. 2/19/77
Benjamin Martinez
D.O.B. 8/5/80
Justin Clark
D.O.B. 5/8/80
Sherene Shalhub
D.O.B. 6/22/72
Cynthia Clark
D.O.B. 12/22/74
Melissa Lamendola
D.O.B. 8/4/77
Edward Fitzpatrick
D.O.B. 12/27/75
Sean Fitzpatrick
D.O.B. 2/27/77
Melissa Hudman
D.O.B. 8/6/74
Miakka Gypsy Barton
D.O.B. 1/24/74
Jamie Humphrey
D.O.B. 7/25/76
Jorge Alfaro
D.O.B. 2/4/80
David Fawcett, Jr.
D.O.B. 3/28/78
Victoria Harrison
D.O.B. 7/25/80
Dale John Gerveld
D.O.B. 4/17/79
Brian Harrison
D.O.B. 5/2/80
Kevin Lovelace
D.O.B. 4/19/79
James Diehl
D.O.B. 11/17/69
Shannon Kerron
Michael Heim
Nyleen Kay Marshall
Robert Joseph Fritz
Bryan Anthony McCann

ANC TIMES 18 MAY 83

Rodriquez lured students, witness says

by Jeff Berliner
Times Writer

Carlos "Chico" Rodriquez enticed West High School students into his web of pornography, burglary, drugs and sex, the jury in the Rodriquez trial was told Tuesday.

A former West High School student took the witness stand and declared that Rodriquez had told him, "I get a whole bunch of people from West."

The youth, now 21, said he had just had sex — at the invitation of Rodriquez — with a girl described as a West High student but a stranger to the boy, when Rodriquez made the remark.

The 1302 W. 26th Ave. home where Rodriquez lived and allegedly directed his ring of juvenile burglars, prostitutes and pornography stars is just a short distance rom West High.

Now an Anchorage college student, the witness described how he willingly engaged in sex with Rodriquez after the man picked him up in a chance encounter. The young man said he had just left work at midnight one summer night in 1978 and was walking to an all-night store when Rodriquez offered him a ride.

The youth acknowledged smoking marijuana with Rodriquez and consenting to have sex first with the girl Rodriquez had in his bedroom and then with Rodriquez himself. He said he returned later for more drugs and sex.

But it turned out that the Rodriquez house was apparently under surveillance. The young man, then 16 and enrolled in an Alaska State Trooper youth training program, was confronted by troopers about drug use and later picked out of a surveillance photo showing him entering Rodriquez' house.

However, this youth was characteristically different than the other prosecution witnesses who have testified against Rodriquez. Dressed in a three-piece suit and speaking articulately and forthrightly, the then-trooper trainee offered details about the several sexual encounters in no uncertain terms. He also described the movie studio set-up Rodriquez had to show and make pornographic films.

The student's testimony was in contrast to that of other prosecution witnesses who, down and out, said they found refuge with Rodriquez and reluctantly traded sexual services for money and drugs. Or, in some cases, they said they were raped or tried to fight off the man's sexual advances. Most were homeless and in trouble with the law.

Tuesday Superior Court Judge Ralph Moody charged Defense Lawyer Mitchel Schapira with delving too deeply into the backgrounds of the troubled youths. Schapira, in an attempt to discredit the prosecution witnesses, has gone over and over their drug-using habits and their run-ins with authorities.

Moody ordered the jury out of the courtroom Tuesday morning while he threatened Schapira with legal sanctions if he continued a line of questioning, which made it appear as if the witnesses were on trial and not his client.

Rodriquez faces 28 felonies in the case and all 12 victims named in the indictment have testified. Prosecutor Paul Olson is calling to the stand other witnesses to corroborate the stories told by the victims.

The only girl to testify became confused about which neighborhood the man she knew as "Romeo" really lived in and, although she could remember few details about the month she reportedly lived with Rodriquez, she told jurors she remembered his tattoo.

Another witness Tuesday told jurors that Rodriquez came to his aide at Chilkoot Charlie's when his car wouldn't start. He returned with Rodriquez to the older man's house to get some cables to jump-start the boy's car. But instead, the boy testified, Rodriquez jumped him. Rodriquez allegedly ripped down the boy's pants before the youth was able to knock the man down, run back to the bar and summon police. Officers found the boy hysterical and the Rodriquez home dark and deserted.

The teen told jurors that Rodriquez' house was full of drug paraphenalia and "looked like a whorehouse inside."

HB
445

STATE OF ALASKA
THE LEGISLATURE

LEGISLATIVE AFFAIRS AGENCY

POUCH Y STATE CAPITOL
JUNEAU, ALASKA 99811
907 465 3800

M E M O R A N D U M January 13, 1984

SUBJECT: Sectional analysis of HB 445

TO: Representative Charlie Bussell
Chairman, House Judiciary Committee

FROM: Keith B. Levy KBL
Legislative Counsel

You have requested a sectional analysis of HB 445, "An Act relating to attorney fees." Under present law (AS 09.60.010) the Supreme Court has the discretion to determine by rule or order what attorney fees may be ordered to the prevailing party in civil cases. Under the authority of that section, the Supreme Court enacted Civil Rule 82. Civil Rule 82 does not deal with attorney fees in public interest cases. However, in a number of cases, the Court has determined that in a genuine public interest case, it is an abuse of discretion for the trial court to award attorney fees against the plaintiff if the defendant prevails. See Gilbert v. State, 526 P.2d 1131 (Alaska 1974); Anchorage v. McCabe, 586 P.2d 986 (Alaska 1977); Thomas v. Croft, 614 P.2d 795 (Alaska 1980); and SEACC v. State, ___P.2d___, No. 2662, (Alaska 1983).

House Bill 445 provides that in a civil suit against a non-governmental party, it is not an abuse of discretion to award attorney fees, even if it is a genuine public interest case.

KBL:lmb
L3/080

POUCH V
JUNEAU, ALASKA 99811
(907) 465-4990

Alaska State Legislature
HOUSE OF REPRESENTATIVES

REPRESENTATIVE
CHARLIE BUSSELL
CHAIRMAN

Committee on Judiciary

HB 445
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F. Alaska Statutes: Chapter 60, Sec. 09.60.010.

G. Civil Rule 82.

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I. Pertinent News Clippings.

MEMBERS:
REP. JOHN LISKA, VICE CHAIRMAN; REP. RAMONA BARNES, EMERITUS;
REP. JOE HAYES; REP. HUGH MALONE; REP. DON CLOCKSIN; REP. RON WENDTE

STATE OF ALASKA
THE LEGISLATURE

LEGISLATIVE AFFAIRS AGENCY

POUCH Y - STATE CAPITOL
JUNEAU, ALASKA 99811
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House Bill 445 provides that in a civil suit against a non-governmental party, it is not an abuse of discretion to award attorney fees, even if it is a genuine public interest case.

KBL:lmb
L3/080

FISCAL NOTE

Revision Date:

REQUEST
Bill/Resolution No.: HB 445
Title: "An Act relating to attorney fees."
Sponsor: Rep. Liska
Requestor: Rep. Liska
Date of Request: 1-18-84

FISCAL DETAIL
Agency Affected: Department of Law
Program Category Affected: General Government
BRU, Program or Subprogram(s) Affected: Legal Services Operations

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 84	FY 85	FY 86	FY 87	FY 88	FY 89
OPERATING						
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 SUPPLIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS						
800 MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND	-0-	-0-	-0-	-0-	-0-	-0-
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS:

FULL-TIME	-0-	-0-	-0-	-0-	-0-	-0-
PART-TIME						
TEMPORARY						

SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

N/A

ANALYSIS: Attach a separate page for analysis

Prepared By: Richard I. Pegues, Director (Richard I. Pegues) Phone: 465-3672
Division: Administrative Services Date: 1-19-84

Approved by Commissioner: Norman C. Gorsuch (Richard I. Pegues/for) Date: 1-19-84
Agency: Department of Law

Distribution (by Agency preparing fiscal note):
- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)

12/1/83

Fiscal Note
Analysis
HB 445

January 19, 1984

This bill appears to adopt by statute the criteria established by Alaska Supreme Court decisions over the past several years. Because this criteria for awarding attorney fees in public interest lawsuits is already being followed by the courts, no additional fiscal impact is expected to result by enactment of this legislation.

STATE OF ALASKA
THE LEGISLATURE

LEGISLATIVE AFFAIRS AGENCY

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

M E M O R A N D U M June 17, 1983

SUBJECT: The public interest exception to the award of attorney's fees (Work Order No. 13-1434)

TO: Representative John J. Liska

FROM: Keith B. Levy KBL
Legislative Counsel

You have asked a number of questions in regard to the public interest exception to the award of attorney's fees in court actions. Specifically, you have asked:

1. What is the state law on attorney's fees?

2. Does CSSB 196 (Rules) am protect the non-governmental defendant from the potential financial burden of a public interest law suit when the plaintiff loses?

3. If not, how can the non-governmental defendant in this type of case be adequately protected?

I will address each of these questions separately.

1. State law on attorney's fees

AS 09.60.010 provides:

> Except as otherwise provided by statute, the supreme court shall determine by rule or order what costs, if any, including attorney fees, shall be allowed the prevailing party in any case.

Under the authority of this section, the Supreme Court has adopted Civil Rule 82. Rule 82 sets out a schedule of attorney's fees to be awarded the prevailing party, "unless the court, in its discretion, otherwise directs." Rule 82 also provides

> Should no recovery be had, attorney's fees for the prevailing party may be fixed by the court in its discretion in a reasonable amount.

The public interest exception to Rule 82 states that "it is an abuse of discretion to award attorney's fees against a losing party who has in good faith raised a question of genuine public interest before the courts." Gilbert v. State, 526 P.2d 1131, 1136 (Alaska 1974). The exception is not provided for by statute or court rule, rather, it is a matter of public policy established by the Alaska Supreme Court in a number of cases. See Gilbert v. State, 526 P.2d 1131 (Alaska 1974); Anchorage v. McCabe, 586 P.2d 986 (Alaska 1977); Thomas v. Croft, 614 P.2d 795 (Alaska 1980); and SEACC v. State, ___ P.2d ___, No. 2662, (Alaska 1983). Citing these cases, the court in SEACC, supra, stated that the policy behind the public interest exception is

> . . . to encourage plaintiffs to raise issues of public interest by removing the awesome financial burden of such a suit.
>
> * * *
>
> . . . a plaintiff who in good faith seeks to vindicate matters infused with strong public policy concerns should not be penalized by having attorney's fees taxed against it unless its suit is frivolous.

SEACC, supra, at 24. Thus, the award of attorney's fees in the state is governed by statute, court rule, and public policy as determined by the Supreme Court.

2. The effect of CSSB 196 (Rules) am

CSSB 196 (Rules) am amends AS 09.60.010 by adding a new subsection to read:

> (b) The supreme court shall by rule or order provide that the court in its discretion may compel a plaintiff in an action to post a bond or other acceptable surety with the court in an amount determined by the court to be reasonable under (a) of this section.

This section merely gives the court the discretion to require a plaintiff to post a bond or other surety to cover any costs or attorney's fees that may be awarded against the

plaintiff. Since the court may not award attorney's fees against a losing plaintiff in a genuine public interest case anyway, the new section does nothing for the winning defendant. Thus, even if CSSB 196 (Rules) am is enacted, it will have no affect on the public interest exception to the award of attorney's fees.

3. Providing adequate protection for winning non-governmental defendants in public interest cases

The court in SEACC, supra, ruled that the public interest exception applies in cases involving non-governmental defendants as well as governmental defendants. As noted above, the purpose of the public interest exception is to avoid penalizing a public interest plaintiff with heavy attorney's fees if the law suit is not frivolous. Citing Kenai Lumber Co. v. Leresche, 646 P.2d 215 (Alaska 1982), the court in SEACC, supra, pointed to the following criteria which must be met before the public interest exception can be asserted by a losing plaintiff:

> "(1) Is the case designed to effectuate strong public policies?
>
> "(2) If the plaintiff succeeds will numerous people receive benefits from the lawsuit?
>
> "(3) Can only a private party have been expected to bring the suit?
>
> "(4) Would the purported public interest litigant have sufficient economic incentive to file suit even if the action involved only narrow issues lacking general importance?"

SEACC, supra, at 25. The Supreme Court feels that these criteria are sufficient to ensure that a plaintiff may not freely harass an innocent defendant with a frivolous law suit under the cloak of the public interest exception without suffering the consequences. It would appear that the criteria successfully do just that. They effectively limit the public interest exception to situations where a private plaintiff is bringing a meritable law suit in the genuine public interest with no opportunity for financial gain to itself. It is difficult to imagine a plaintiff bringing a law suit merely for harassment under such circumstances. Accordingly, I would conclude that non-governmental

defendants in public interest law suits are already adequately protected under the law.

If your intent is to protect non-governmental defendants from frivolous law suits, an amendment to the current law is unnecessary. However, if you wish to eliminate the public interest exception as it applies to non-governmental defendants, that could be done by amending AS 09.60.010 to limit the court's discretion in awarding attorney's fees in these cases.

KBL:ljb
24/024

ALASKA STATE LEGISLATURE
HOUSE OF REPRESENTATIVES
RESEARCH AGENCY

Pouch Y, State Capitol
Juneau, Alaska 99811
(907) 465-3991

October 24, 1983

MEMORANDUM

TO: Representative John Liska

FROM: Nancy Pease
Legislative Analyst NP

RE: Public Interest Exemption Lawsuits
Research Request 83-200

Linda Edgeworth of your staff asked for information on public interest lawsuits in Alaska courts with regard to the exemption of attorney's fees. She indicated that you were specifically interested in public interest cases since 1978 in which the defense prevailed, and for such cases, the available information on the costs to the defendants and plaintiffs.

The general rule for attorney's fees in Alaska courts is that the losing party in a lawsuit may be ordered to pay, at the court's discretion, part of the prevailing party's attorney's fees as a compensatory gesture. The amount of attorney's fees charged to the losing party is determined by the court, either in accordance with a fee schedule based on the amount of the money judgement recovered in the case or, if there is no monetary recovery, "a reasonable amount" relative to the prevailing party's costs in trying the case [Alaska Rules of Court, Civil Rule 82].

The Alaska Supreme Court in Gilbert v. State, (Alaska 1974), established a "public interest" exception to this rule by holding that " it is an abuse of [the court's] discretion to award attorney's fees against a losing party who has in good faith raised a question of genuine public interest before the courts" [526 P.2d at 1136]. Thus, the exception is designed to encourage plaintiffs to bring issues of public interest to the courts.

Ed Hein of the Legislative Affairs Agency's Legal Services Division explained to me that the Alaska Supreme Court has identified four criteria for determining whether a case may be designated as public interest litigation:

1. Does the case have the potential to affect public policies?

2. Will numerous people receive benefits from the lawsuit if the plaintiff succeeds?

3. Could only a private party be expected to bring this suit?

4. Did the plaintiff have sufficient economic incentive to bring the lawsuit regardless of any issues of public interest involved?

If the court can answer "yes" to the first three questions and "no" to the fourth question, then the case will be designated a public interest lawsuit, the exception to Rule 82 will apply, and the court will not charge the losing party with the prevailing party's attorney's fees.

Many of the highly-publicized class action lawsuits that involve Alaska are brought in federal courts. The federal court either awards attorney's fees at their discretion or in accordance with Alaska Rules, according to Joanne Meyers, Clerk of the Court at the Federal District Court in Anchorage. Ms. Meyers said there was no general rule analagous to Alaska Rule 82 for award of attorney's fees in federal courts. There may be federal statutes governing award of fees in specific types of suits, for example, the Civil Rights Attorney's Fees Awards Act (42 U.S.C. § 1988). These statutes may be raised in State court, as was the above Act in the public interest case of Tobeluk v. Lind, 589 P2.d 873 (Alaska 1979).

To identify public interest exemption cases, I reviewed law journals and talked with many people in the legal system, but I was unable to obtain all of the desired information. Unfortunately, there is no practical system for identifying public interest lawsuits in Alaska that have not been appealed to the Alaska Supreme Court. At the trial court level, each judicial district in Alaska maintains its own files of cases, indexed by the parties' names but not by the issues contested in the cases. The only reference to cases which were closed in the trial courts is the recall of people involved in the legal system. To this end, I have contacted agencies that frequently initiate class actions (the Sierra Club Legal Defense Fund, the Alaska Resources Defense Council, Alaska Legal Services Corporation, Alaska Human Rights Commission, AkPIRG, etc.). However, all of the unsuccessful class actions that I found in this way were eventually appealed to the Alaska Supreme Court.

Another problem in identifying public interest lawsuits is that unless the exemption from award of fees was contested in an appeal, a lawsuit involving issues of public concern may not be widely recognized as a public interest case.

Attached is a list of lawsuits appealed to the Alaska Supreme Court since 1978 in which the losing plaintiff argued for application of the public interest exception. I have provided a short summary of the issues in the original trial, and the grounds for appeal. The first set of cases closely parallels the suit involving Schnabel Lumber Co., which Ms. Edgeworth mentioned in her correspondence. In these cases, the losing public interest plaintiffs were all exempted from paying the winning defendants' legal fees.

In the next set of cases, the court found sufficient economic incentives for the plaintiff to have brought the case regardless of any public issues involved. In these cases, the court ordered the losing plaintiffs to pay the defendants' fees, despite their service to the public in raising genuine public issues. The final two cases also involved issues of genuine public interest, but special exceptions governed the payment of legal fees.

In this same period, the Supreme Court has rejected as "private disputes" other appeals in which the plaintiff argued for the public interest exemption. These cases, which did not meet criteria #1-3, are cited briefly at the end of the list.

I have been able to report on the costs to the litigants in only a few cases. Unfortunately, parties contacted were usually unable or unwilling to report their costs to us.

I hope this information is helpful. If you have further questions on this issue, please let us know how we can assist you.

NP

Attachment

ATTACHMENT A
ALASKA SUPREME COURT CASES

ALASKA SUPREME COURT CASES
INVOLVING PUBLIC INTEREST CLAIMS

I. Cases in which the public interest exception applied:

Anderson v. State, 584 P.2d 539 (Alaska 1978)

Appellants: Oris O. Anderson and Aiko Anderson.
Appellee: State of Alaska, Department of Highways.

The Andersons sued the State for allegedly committing fraud when it did not properly notify them of the condemnation of a strip of their land for a road right-of-way.

The plaintiffs lost their case but were not required to pay part of the defendants attorney's costs because they raised issues of public importance. The legal staff of the State Attorney General's office was unable to estimate the State's legal expenses. The plantiffs funded their suit personally.

City of Yakutat v. Ryman, 654 P.2d 794 (Alaska 1980)

Appellant: City of Yakutat.
Appellee: Frank L. Ryman, Jr.

Ryman charged the city with failing to comply with the statutory requirements for levying property taxes. He sued to obtain a refund of his general property taxes for a three year period.

He was awarded the refund for two of the three years and part of his costs for that portion of the case. The city appealed, and Ryman cross-appealed.

Ultimately, the City of Yakutat paid the plaintiff's costs for the issues it lost, and was denied collection of its own costs for the issues it won because Ryman was acting in the public interest. The City's law firm would not disclose their charges in this case despite the City's permission to do so.

Thomas v. Croft, 614 P.2d 797 (Alaska 1980)

Appellants: Lowell Thomas, Jr., Lieutenant Governor of Alaska; Patty Ann Polley, Director, Division of Elections, et al.
Appellee: Chancy Croft.

In the original suit, two losing gubernatorial candidates sued the successful primary candidates, Croft and Hammond, and State election officials. They charged that improprieties in the State's conduct of the election might have been sufficient to change the outcome. The State lost and appealed. The Supreme Court reversed the decision, ruling that the misconduct and irregularities in the election were not sufficient to have changed the outcome.

Croft could not collect his legal costs from the public interest plaintiffs, but he collected $15,000 from his co-defendant, the State, since their actions and not his own had prompted the suit. The attorney general's office was unable to estimate the cost to the State of defending the election officials. .

Douglas v. Glacier State Telephone, 615 P.2d 580 (Alaska 1980)

Appellant: John H. Douglas and Jean Douglas.
Appellees: Glacier State Telephone Co. and Kenai Peninsula Borough.

The Douglases challenged a local sales tax on interstate phone calls charged to phones within the Kenai Borough. They claimed that the tax violated the Commerce Clause, and that the Borough had violated equal protection laws by not collecting the tax from customers of a certain utility.

The telephone company prevailed, but the Douglases were exempted from paying the company's attorney's fees which totalled $8,800.

Whitson v. Anchorage, 632 P.2d 233 (Alaska 1980)

Appellant: Carl Whitson, Individually and as Officer, Agent, or Employee of the Libertarian Party, and the Libertarian Party.
Appellee: Anchorage, a Municipal Corporation.

The City challenged Whitson's petition to place on the ballot an initiative allowing voters to block tax increases. The City won and was awarded attorney's fees. Whitson appealed the award of fees, claiming he deserved a public interest exemption.

The Supreme Court denied the City its attorney's fees, which totalled $5,778.

Falke v. Fairbanks North Star Borough, 648 P.2d 599 (Alaska, 1982)

Appellant: Wolfgang Falke
Appellees: Fairbanks North Star Borough and the State of Alaska.

Falke claimed that the service area provisions of a State statute violated the constitutional rights of Borough residents. Falke lost the case, but was exempted from paying the Borough's attorney's fees.

The Fairbanks Borough Attorney estimates the Borough's legal costs in this case at $10,000 for the trial and appeal. The plaintiff funded his suit against the Borough himself.

Hammond v. North Slope Borough, 645 P.2d 750 (Alaska, 1982)

Appellants: Jay Hammond, Governor of the State of Alaska; Robert E. LeResche, Commissioner of the Department of Natural Resources; Frances C. Ulmer, Director, Division of Policy Development and Planning; Amoco Production Co.; Atlantic Richfield Co.; other oil companies; et al.
Appellees: North Slope Borough, Eben Hopson, Sr., Jacob Adams; City of Barrow; Village of Nuiqsut; et al.

Several Alaska villages and individuals charged that the State's decision to lease offshore tracts for oil and gas exploration would harm the natural environment and the Inupiat Eskimos' traditions and lifestyle. The State prevailed, but the plaintiffs were not required to pay the State's attorney's fees because of the public interest issues raised by the case.

Again, the attorney general's office could not estimate the State's legal expenses. The plaintiffs were represented by the Alaska Legal Services Corporation.

SEACC v. LeResche, not yet published in the law digest, (Alaska 1983)

Appellant: Southeast Alaska Conservation Council.
Appellee: Robert E. LeResche, Commissioner of the Department of Natural Resources; other officials of the State of Alaska; and Schnabel Lumber Company.

SEACC charged the State's Department of Natural Resources with signing an illegal contract with Schnabel Lumber. SEACC, represented in court by the Sierra Club Legal Defense Fund, alleged that the contract violated the State's principals of sustained-yield timber management. SEACC lost the case and the Superior Court ordered SEACC to compensate Schnabel for $25,000 of its attorney's fees. SEACC was released from this order when they appealed.

The attorney general's office couldn't estimate the State's legal expenses. Bill Oliver of Schnabel Lumber Co. listed the direct legal costs of the case as $210,00, raised from the following sources: Schnabel Lumber Company paid $70,000; various groups and individuals across the state donated $20,000; the City of Haines paid $32,000 as amicus cureae (a friend of the court); and the Borough of Haines levied a 1% sales tax, raising $98,000. Schnabel Lumber was ordered to pay $10,000 toward the legal fees of SEACC for its appeal to the Supreme Court.*

---

* Mr. Oliver listed the following indirect costs of the suit:

Loss of bonding. Bonding companies became nervous over the suit and withdrew bonding. When Schnabel could not fulfill a $2.6 million contract with the U.S. Forest Service because of the delays of the suit, the Forest Service sued for default. The Forest Service last week agreed to settle for $200,000, but not before Schnabel had incurred additional legal expenses. Schnabel also had to default on a contract with a Chinese firm because of a stay issued in the case.

Loss of jobs. According to Mr. Oliver, fifty mill workers, 35 loggers, 40 longshoremen, and 35 office and other workers were laid off during the suit. The payroll lost to the community totalled $3 million.

Additional losses included maintenance costs to the mill during the shutdown of $30,000 per month.

II. Cases for which the court denied the public interest exemption based on the economic incentive for the lawsuit (criterion #4):

Gold Bondholders Protective Council v. Atchison, Topeka and Santa Fe Railway Co., 658 P.2d 776 (Alaska 1983)

Appellants: Gold Bondholders Protective Council; Richard L. Randolph; David Brenner; Karl L. Flaccus; and Lee R. Ellenberg.
Appellees: Atchison, Topeka & Santa Fe Railroad.

The Bondholders sued the bond issuers seeking to enforce a clause in the bonds dating back to 1895 which promised interest payments in gold coin. The bond issuers defended successfully and were awarded $15,521 in legal expenses. The Bondholders appealed the award.

Fees were charged to the losing plaintiff despite the issues of genuine public concern that the plaintiff raised.

Weaver Bros., Inc. v. Alaska Transporation Commission, 588 P.2d 819 (Alaska 1978)

Appellant: Weaver Bros., Inc.
Appellees: Alaska Transporation Commisssion; K & W Trucking Co. Inc; and O. G. Ness doing business as O. G. Ness Truck Company.

Weaver Bros. protested the Transportation Commission's approval of the transfer of a motor carrier permit between two competitive firms. The Supreme Court affirmed the Commission's decision and ordered Weaver Bros. to pay its competitors' attorneys' fees despite the issues of genuine public concern that Weaver Bros. lawsuit had raised.

Sisters of Providence v. Department of Health and Social Services, 648 P.2d 986 (Alaska 1982)

Appellant: Sisters of Providence in Washington, Inc.
Appellees: Department of Health and Social Services, State of Alaska and Lake Otis Clinic, Inc.

Providence Hospital challenged DHSS's decision concerning a competitor's certificate of need. The Superior Court ruled for the competitor and charged the competitor's fees to Providence Hospital. Providence appealed.

Because of the competetive business advantage at stake in this case, fees were charged to the losing plaintiff despite the issues of genuine concern that the plaintiff had raised.

Kenai Lumber Co. v. LeResche, 646 P.2d 215 (Alaska 1982)

Appellant: Kenai Lumber Co., Inc.
Appellees: Robert LeResche, Commissioner of the Department of Natural Resources of the State of Alaska; Geoffrey Haynes, Director of Division of Lands of the Department of Natural Rescources, et al; and South-Central Timber Development, Inc.

Kenai Lumber claimed that DNR and a competitive timber firm had illegally circumvented the State's competitive bidding process by negotiating amendments to a long term timber contract.

Because competitive business advantages may have motivated this suit, the court charged the winner's fees to the losing plaintiff despite the issues of genuine public concern that the plaintiff raised.

III. Cases in which special exceptions applied to the award of fees:

Tobeluk v. Lind, 589 P.2d 873 (Alaska 1979)

Appellants: Anna Tobeluk and Henry A. Tobeluk, minors, by their father and next friend John Tobeluk, et al.
Appellees: Marshall L. Lind, as Commissioner of Education, et al.

Alaska Native schoolchildren brought action to compel the State to build secondary schools in their villages. Following settlement of this issue, the Tobeluks' motion for costs and attorney's fees was denied by the Superior Court, and the Tobeluks appealed.

The court ruled that neither party clearly prevailed and declined to award fees.

Horowitz v. Alaska Bar Association, 609 P.2d 39 (Alaska 1980)

Appellants: Bruce Horowitz, William Parker, James Love; David Loutrel; Wilson A. Rice; John E. Duggan; Donald E. Clocksin; Thomas G. Beck; Elizabeth Ratner; Randall Simpson; Phillip R. Voland; and Jeffrey Lowenfels.
Appellee: The Alaska Bar Association.

A group of attorneys charged that a business meeting of the ABA board of governors had violated federal and State due process rights and the Alaska open meeting statute.

Fees are rarely awarded in suits involving the ABA because the ABA acts as an arm of the judiciary to uphold court rules. ABA declined to specify its expenses.

IV. Cases which did not meet criteria #1-3 to qualify as public interest cases:

F/V American Eagle v. State, 620 P.2d 657 (Alaska 1980).

Rouse v. Anchorage School District, 613 P.2d 263 (Alaska 1

Hilbers v. Municipality of Anchorage, 66 P. 2d 31 (Alaska 19

White v. Alaska Insurance Guaranty Association, 592 P.2d 367 (A a l

ioses specified in the decree.

) Except for specific constitutional and statutory age requirements oting and use of alcoholic beverages, a minor whose disabilities are oved for general purposes has the power and capacity of an adult. uding but not limited to the right to self-control, the right to be iciled where one desires, the right to receive and control one's ings, to sue or to be sued, and the capacity to contract. (§ 2 ch 233 \ 1976)

ec. 09.55.600 — 09.55.640. [Renumbered as AS 25.35.010 — 35.060.]

Chapter 60. Costs.

tion

Costs allowed prevailing party
Attorney fees in small tort actions
Liability of guardian ad litem for costs
Guardian's responsibility for allowance against infant plaintiff

Section

40. Costs where party is a representative
50. Costs awarded against state, borough, city or other public agencies
60. Security for costs where plaintiff a nonresident or foreign corporation

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Collateral references. — 20 Am. Jur. Costs, § 1 et seq.

20 C.J.S., Costs, § 1 et seq.

Allowance of costs in litigation by neficiary respecting trust, on theory st fund was created or preserved, 9 LR2d 1150.

Allowance of costs in litigation by neficiary for partition of trust property, ALR2d 1219.

Actual payment of costs as a condition to smissal under rule or statute providing r voluntary dismissal without prejudice on such terms and conditions as court ms proper, 21 ALR2d 633.

Allowance of fees for guardian ad litem ppointed for infant defendant, as costs, 30 LR2d 1148.

Costs in action for removal of trustee of oting trust, 34 ALR2d 1142.

Unsuccessful litigant's payment of costs s barring his right to appeal from judgnent on merits, 39 ALR2d 194.

Appealability of order or judgment warding or denying costs but making no ther adjudication, 54 ALR2d 927.

Depositions, costs and fees as affected by Rule 30(b) of the Federal Rules of Civil Procedure, and similar state statutes and rules, relating to preventing, limiting, or terminating the taking of, 70 ALR2d 738.

Liability of state, or its agency or board, for costs in civil action to which it is a party, 72 ALR2d 1379.

Taxation of costs and expenses in proceedings for discovery or inspection, 76 ALR2d 953.

Liability for costs in action against lessee for breach of covenant as to repairs, 80 ALR2d 1032.

Constitutionality, construction, and application of statutes, requiring bond or security for costs and expenses in taxpayers' action, 89 ALR2d 333.

Allowance as costs, of such items as maps, models, wall charts, photographs, and the like, 97 ALR2d 138.

Validity and construction of statute or rule allowing attorneys' fees to out-of-state defendant successfully defending suit brought in state, 51 ALR3d 1336.

Right of indigent to proceed in marital action without payment of costs, 52 ALR3d 844.

prevailing party [illegible] awarding costs where both parties prevail on affirmative claims, 66 ALR3d 1115.

Construction and application of state statute or rule subjecting party making untrue allegations or denials to payment of costs or attorneys' fees, 68 ALR3d 209.

Condemnor's liability for cost of condemnee's expert witnesses, 68 ALR3d 546.

Construction of provision, in compromise, prosecuting appeal in state court, 81 ALR3d 661.

Continuance of civil case as conditioned upon applicant's payment of costs or expenses incurred by other party, 9 ALR4th 1144.

Allocation of defense costs between primary and excess insurance carriers, 19 ALR4th 107.

Sec. 09.60.010. Costs allowed prevailing party. Except as otherwise provided by statute, the supreme court shall determine by rule or order what costs, if any, including attorney fees, shall be allowed the prevailing party in any case. (§ 5.14 ch 101 SLA 1962)

Cross references. — For related court rules, see Civ. R. 54, 79 and 82.

NOTES TO DECISIONS

I. General Consideration.
II. Right to Costs.
A. Generally.
B. Prevailing Party.
III. Award.
A. Generally.
B. Attorney's Fees.

I. GENERAL CONSIDERATION.

Applied in Brand v. First Fed. Sav. & Loan Ass'n, Sup. Ct. Op. No. 658 (File Nos. 1119, 1154), 478 P.2d 829 (1970).

Quoted in Albritton v. Estate of Larson, Sup. Ct. Op. Nn. 413 (File No. 793), 428 P.2d 379 (1967); Thomas v. Croft, Sup. Ct. Op. No. 2135 (File No. 4719), 614 P.2d 795 (1980).

Cited in Guin v. Hu, Sup. Ct. Op. No. 1810 (File No. 3742), 591 P.2d 1281 (1979); Stone v. Stone, Sup. Ct. Op. No. 2522 (File No. 5674), P.2d (1982).

II. RIGHT TO COSTS.

A. Generally.

The right to costs is purely statutory. Mutual Benefit Health & Accident Ass'n v. Moyer, 9 Alaska 235, 94 F.2d 906 (9th Cir.), cert. denied, 9 Alaska 292, 304 U.S. 581, 58 S. Ct. 1054, 82 L. Ed. 1543 (1938).

And no such right existed at common law. Mutual Benefit Health & Accident Ass'n v. Moyer, 9 Alaska 235, 94 F.2d 906 (9th Cir.), cert. denied, 9 Alaska 292, 304 U.S. 581, 58 S. Ct. 1054, 82 L. Ed. 1543 (1938).

The authority to make awards of attorney fees is derived from this section, which is of relatively ancient origin, dating from an Act of Congress of June 6, 1900, 31 Stat. 415-18, which was amended in 1923 by the Territorial Legislature of Alaska to expressly permit the courts to impose reasonable attorney's fees. Stepanov v. Gavrilovich, Sup. Ct. Op. No. 1823 (File No. 3236), 594 P.2d 30 (1979).

Rule 82(a), which allows for the recovery of reasonable attorney's fees, is supported

by legislation which specifies that the supreme court shall determine when attorney's fees are to be awarded. Thus, the award of attorney's fees is authorized, though not mandated, by statute. Klopfenstein v. Pargeter, 597 F.2d 150 (9th Cir. 1979).

There is no statute authorizing awards of attorney's fees in child in need of aid proceedings, nor has any rule or order authorizing such an award been promulgated. Cooper v. State, Sup. Ct. Op. No. 2453 (File Nos. 4906, 4970), 638 P.2d 174 (1981).

Civil R. 82 established pursuant to delegation of authority in section. — Civil R. 82, authorizing awards of attorney's fees to the prevailing party in civil litigation, apart from eminent domain proceedings, was established by the supreme court pursuant to a legislative delegation of authority found in this section. Crisp v. Kenai Peninsula Borough School Dist., Sup. Ct. Op. No. 1771 (File No. 3318), 587 P.2d 1168 (1978).

B. Prevailing Party.

No party is entitled to costs until he prevails in the suit, in other words, until judgment is entered. Mutual Benefit Health & Accident Ass'n v. Moyer, 9 Alaska 235, 94 F.2d 906 (9th Cir.), cert. denied, 9 Alaska 292, 304 U.S. 581, 58 S. Ct. 1054, 82 L. Ed. 1543 (1938).

The prevailing party is entitled to costs. Owen Jones & Sons v. C.R. Lewis Co., Sup. Ct. Op. No. 795 (File No. 1460), 497 P.2d 312 (1972).

The prevailing party is entitled to costs, including an award for attorney's fees. De Witt v. Liberty Leasing Co., Sup. Ct. Op. No. 818 (File No. 1638), 499 P.2d 599 (1972).

No costs allowed where both prevail. — Where both parties prevailed in part in an action under the Miller Act (40 USC 270b) no costs should be taxed to either party. United States ex rel. Miller & Bentley Equip. Co. v. Kelly, 192 F. Supp. 274 (D. Alas. 1961).

"Prevailing party". — The prevailing party to a suit is the one who successfully prosecutes the action or successfully defends against it, prevailing on the main issue, even though not to the extent of the original contention. He is the one in whose favor the decision or verdict is rendered and the judgment entered. De Witt v. Liberty Leasing Co., Sup. Ct. Op. No. 818 (File No. 1638), 499 P.2d 599 (1972); Cooper v. Carlson, Sup. Ct. Op. No. 907 (File No. 1769), 511 F.2d 1305 (1973).

A party does not have to prevail on all of the issues in the case to be a "prevailing party." Malvo v. J.C. Penney Co., Sup. Ct. Op. No. 901 (File No. 1630), 512 P.2d 575 (1973).

A litigant who is successful in defeating a claim of great potential liability may be the prevailing party even though the other side is successful in receiving an affirmative recovery. Cooper v. Carlson, Sup. Ct. Op. No. 907 (File No. 1769), 511 P.2d 1305 (1973).

Where a party prevailed on every liability issue, and was unsuccessful only in his argument that he was entitled to nominal damages on his counterclaim, he was the prevailing party. Cooper v. Carlson, Sup. Ct. Op. No. 907 (File No. 1769), 511 P.2d 1305 (1973).

As a general rule, the "prevailing party" is considered to be the party who has successfully prosecuted or defended against the action, the one who is successful on the "main issue" of the action and in whose favor the decision or verdict is rendered and the judgment entered. In re V.M.C., Sup. Ct. Op. No. 1103 (File No. 2107), 528 P.2d 788 (1974).

The determination of which party prevails in certain cases is, like the award of attorney's fees, within the discretion of the trial judge. Owen Jones & Sons v. C.R. Lewis Co., Sup. Ct. Op. No. 795 (File No. 1460), 497 P.2d 312 (1972); In re V.M.C., Sup. Ct. Op. No. 1103 (File No. 2107), 528 P.2d 788 (1974).

The determination of which party prevailed is committed to the discretion of the trial court and is reviewable on appeal only for abuse. De Witt v. Liberty Leasing Co., Sup. Ct. Op. No. 818 (File No. 1638), 499 P.2d 599 (1972); State ex rel. Palmer Supply Co. v. Walsh & Co., Sup. Ct. Op. No. 1583 (File No. 2816), 575 P.2d 1213 (1978).

Affirmative recovery not determinative. — It is not an immutable rule that the party who obtains an affirmative recovery must be considered the prevailing party. Owen Jones & Sons v. C.R. Lewis Co., Sup. Ct. Op. No. 795 (File No. 1460), 497 P.2d 312 (1972).

Prevailing party not determined by amount of recovery. — Judgment was entered for plaintiff and the defendant's counterclaim was dismissed therefore plaintiff was the prevailing party within the purview of this section, even though it did not recover the full measure of the relief it prayed for. Buza v. Columbia Lumber Co., Sup. Ct. Op. No. 254 (File No. 453), 395 P.2d 511 (1964).

An incidental recovery is not a sufficient recovery to bar a party who has defended a large claim from being considered a prevailing party. Owen Jones & Sons v. C.R. Lewis Co., Sup. Ct. Op. No. 795 (File No. 1460), 497 P.2d 312 (1972).

III. AWARD.

A. Generally.

Apportionment of costs. — If the problem involved in the litigation is one of general interest and the prevailing party is not wholly without benfit because of the instigation of the proceedings it may be proper to apportion the costs on an equitable basis and each may be made to bear his own. Kederick v. Heintzleman, 16 Alaska 333, 141 F. Supp. 633 (D. Alas. 1956).

Where part of the defendants are successful and part are unsuccessful the cost of bringing the successful defendants into court should be taxed against plaintiff and not against the unsuccessful defendants. Humphries v. Starns, 12 Alaska 535, 87 F. Supp. 374 (D. Alas. 1949).

Waiver. — Parties to an action may by stipulation waive their respective rights to costs and attorney's fees. Jones v. Fuller-Garvey Corp., Sup. Ct. Op. No. 172 (File No. 344), 386 P.2d 838 (1963).

Costs in habeas corpus proceeding. — Where a habeas corpus proceeding is found to be without merit, the courts have taxed costs, apparently on the basis of the necessity and merit of the proceedings. Application of Spracher, 17 Alaska 144, 150 F. Supp. 565 (D. Alas. 1957).

Liability of state for costs. — See Reynolds v. Wade, 16 Alaska 221, 140 F. Supp. 713 (D. Alas. 1956); Fidalgo Island Packing Co. v. Phillips, 16 Alaska 621, 147 F. Supp. 883 (D. Alas. 1957).

Allowance of witness fees. — See Humphries v. Starns, 12 Alaska 535, 87 F. Supp. 374 (D. Alas. 1949).

The award is discretionary. — See notes under same catchline under analysis line III B, "Attorney's Fees."

Amount of the award of costs and fees held not unreasonable. — See In re V.M.C., Sup. Ct. Op. No. 1103 (File No. 2107), 528 P.2d 788 (1974).

B. Attorney's Fees.

Allowance of attorneys' fees as costs. — See Baker v. Marvel Creek Mining Co., 5 Alaska 348 (1915); Forno v. Coyle, 75 F.2d 692 (9th Cir. 1935); Pilgrim v. Grant, 9 Alaska 417 (1938); Columbia Lumber Co. v. Agostino, 13 Alaska 34, 184 F.2d 731 (9th Cir. 1950); United States ex rel. Brady's Floor Covering v. Breeden, 14 Alaska 214, 110 F. Supp. 713 (D. Alas. 1953); Jonas v. Bank of Kodiak, 17 Alaska 755, 166 F. Supp. 739 (D. Alas. 1958); Varnell v. Swires, 261 F.2d 891 (9th Cir. 1958).

Statutory authorization for the allowance of attorney's fees is of relatively ancient origin. McDonough v. Lee, Sup. Ct. Op. No. 378 (File No. 674), 420 P.2d 459 (1966).

The award of attorney's fees as costs is governed by the Rules of Civil Procedure. McDonough v. Lee, Sup. Ct. Op. No. 378 (File No. 674), 420 P.2d 459 (1966).

Attorney's fees not covered by literal requirements of Civ. R. 79(b). -- While attorney's fees are costs, they are not covered by the literal requirements of Civ. R. 79(b), which specifies items allowed as costs. State v. University of Alaska, Sup. Ct. Op. No. 2303 (File No. 4579), 624 P.2d 807 (1981).

Federal law governs allowance of attorney's fees in case involving construction of federal statute. — In cases involving the construction of federal statutes the federal law rather than the law of the state in which the action is brought governs with regard to the allowance of attorney's fees. Gilliam v. A. Shyman, Inc., 205 F. Supp. 534 (D. Alas. 1962).

The allowance of attorney's fees in diversity cases is governed by state law, except that the amount thereof should be governed by the federal rules of court. Danzas, Ltd. v. National Bank, 222 F. Supp. 671 (D. Alas. 1963), modified, 226 F. Supp. 928 (D. Alas. 1964).

Full reimbursement not automatically to be awarded. — The prevailing party in each case should not automatically be awarded the full amount of the attorney fees incurred. Malvo v. J.C. Penney Co., Sup. Ct. Op. No. 901 (File No. 1630), 512 P.2d 575 (1973).

If a successful litigant were to receive full reimbursement for all expenses incurred in the case with no requirement of justification and no consideration of the "good faith" nature of the unsuccessful party's claim or defense, there would be a serious detriment to the judicial system. Malvo v. J.C. Penney Co., Sup. Ct. Op. No. 901 (File No. 1630), 512 P.2d 575 (1973).

Public interest plaintiffs. — The trial court may, in its discretion, award full attorney's fees to public interest plaintiffs. City of Anchorage v. McCabe, Sup. Ct. Op. No. 1490 (File No. 2737), 568 P.2d 986 (1977).

The basis for awards of attorney's fees to public interest plaintiffs is to encourage plaintiffs to raise issues of public interest by removing the awesome financial burden of such a suit. City of Anchorage v. McCabe, Sup. Ct. Op. No. 1490 (File No. 2737), 568 P.2d 986 (1977).

It is an abuse of discretion to award attorney's fees against a losing party who has in good faith raised a question of genuine public interest before the courts. City of Anchorage v. McCabe, Sup. Ct. Op. No. 1490 (File No. 2737), 568 P.2d 986 (1977).

Attorney's fees may be awarded against plaintiffs who litigate good-faith claims. — See Stepanov v. Gavrilovich, Sup. Ct. Op. No. 1823 (File No. 3236), 594 P.2d 30 (1979).

Reliance upon invalid zoning ordinance. — It would be unfair to impose attorney's fees on a party who had relied on a zoning ordinance which was found to be invalid. City of Anchorage v. McCabe, Sup. Ct. Op. No. 1490 (File No. 2737), 568 P.2d 986 (1977).

Use of in-house counsel. — There is no express prohibition against awarding attorney's fees when a party's active representation in litigation is by in-house counsel rather than by retained counsel. Greater Anchorage Area Borough v. Sisters of Charity of House of Providence, Sup. Ct. Op. No. 1550 (File No. 3223), 573 P.2d 862 (1978).

Where teacher's dismissal is affirmed. — Application of Civ. R. 82, relating to awards of attorney's fees, was not extended to allow an award of attorney's fees against a teacher whose dismissal is affirmed. Crisp v. Kenai Peninsula Borough School Dist., Sup. Ct. Op. No. 1771 (File No. 3318), 587 P.2d 1168 (1978).

Given a teacher's statutorily guaranteed right to contest his dismissal in the courts, it would be manifestly unreasonable to penalize the exercise of that right by allowing an award of any attorney's fees to the school district dismissing him. Crisp v. Kenai Peninsula Borough School Dist., Sup. Ct. Op. No. 1771 (File No. 3318), 587 P.2d 1168 (1978).

The award is discretionary with the trial judge and is reviewable on appeal only for abuse. Cooper v. Carlson, Sup. Ct. Op. No. 907 (File No. 1769), 511 P.2d 1305 (1973).

The matter of awarding attorney's fees is committed to the discretion of the trial court. The supreme court shall interfere with the exercise of that discretion only where it has been abused. Malvo v. J.C. Penney Co., Sup. Ct. Op. No. [illegible] (File No. 1630), 512 P.2d 575 (1973).

The award of costs and fees to the prevailing party is clearly within the broad discretion of the trial court. In re V.M.C., Sup. Ct. Op. No. 1103 (File No. 2107), 528 P.2d 788 (1974).

The supreme court has recognized that the trial judge has wide discretion in awarding attorney's fees to a prevailing party. City of Anchorage v. McCabe, Sup. Ct. Op. No. 1490 (File No. 2737), 568 P.2d 986 (1977).

Trial judge need not make formal findings of fact and conclusions of law to justify his decision denying attorney's fees. An oral explanation on the record is sufficient. Larry v. Dupree, Sup. Ct. Op. No. 1652 (File No. 3714), 580 P.2d 3[illegible] (1978).

Abuse of discretion. — An abuse of discretion is established where it appears that the trial court's determination as to attorney's fees was manifestly unreasonable. De Witt v. Liberty Leasing Co., Sup. Ct. Op. No. 818 (File No. 1635), 499 P.2d 599 (1972); Malvo v. J.C. Penney Co., Sup. Ct. Op. No. 901 (File No. 1630), 512 P.2d 575 (1973); Cooper v. Carlson, Sup. Ct. Op. No. 907 (File No. 1769), 511 P.2d 1305 (1973).

While the supreme court has made it clear that the award of attorney's fees to the prevailing party is not mandatory, it is equally clear that the denial of a motion for such fees may not be arbitrary or capricious or for some improper motive. Cooper v. Carlson, Sup. Ct. Op. No. 907 (File No. 1769), 511 P.2d 1305 (1973).

Only upon a clear abuse of discretion can the supreme court interfere with its exercise, such abuse being established only where it appears that the court's determination is manifestly unreasonable. In re V.M.C., Sup. Ct. Op. No. 1103 (File No. 2107), 528 P.2d 788 (1974).

The supreme court will interfere only where the trial court's determination as to attorney's fees appears to be "manifestly unreasonable." City of Anchorage v. McCabe, Sup. Ct. Op. No. 1490 (File No. 2737), 568 P.2d 986 (1977).

Discretion not abused. — The trial court did not abuse its discretion by permitting the request for attorneys' fees 13 days after the judgment. State v. University of Alaska, Sup. Ct. Op. No. 2303 (File No. 4579), 624 P.2d 807 (1981).

Award excessive. — An award of attorney's fees over 90 percent of what was requested, where there was no evidence that the other party's claim was frivolous, excessive. State v. University of Alaska, [illegible] P.2d 807 (1981).

Sec. 09.60.015. Attorney fees in small tort actions. (a) In any action for damages where the amount pleaded is $1,000 or less, and the plaintiff, when represented by counsel, prevails in the action, the plaintiff shall be allowed a reasonable amount to be fixed by the court as attorney fees for the prosecution of the action as a part of the costs of the action if the court finds that written demand for the payment of the claim was made on the defendant 20 days or more before the commencement of the action. However, no attorney fees shall be allowed to the plaintiff if the court finds that the defendant tendered to the plaintiff before the commencement of the action, an amount not less than the damages awarded to the plaintiff.

(b) If the defendant, when represented by counsel, pleads a counterclaim which does not exceed $1,000, and the defendant prevails in the action, the defendant shall be allowed a reasonable amount to be fixed by the court as attorney fees for the prosecution of the counterclaim as part of the costs of the action. (§ 1 ch 18 SLA 1972)

Sec. 09.60.020. Liability of guardian ad litem for costs. No person appointed guardian ad litem by a court for an infant or incompetent defendant is liable for the costs of the action. (§ 5.08 ch 101 SLA 1962)

Sec. 09.60.030. Guardian's responsibility for allowance against infant plaintiff. When costs or disbursements are adjudged against an infant plaintiff or incompetent, the guardian by whom the plaintiff appeared in the action is responsible for the payment, and payment may be enforced against the guardian as if the guardian were the actual plaintiff. (§ 5.09 ch 101 SLA 1962)

Sec. 09.60.040. Costs where party is a representative. In actions in which an executor, administrator, trustee of an express trust, or a person authorized to represent a party is a party, costs may be allowed as in other cases. However, when costs are allowed against that party, they are chargeable solely upon the estate, fund, or party represented unless the court orders the costs to be paid by that party personally for mismanagement or bad faith in the conduct of the action. (§ 5.10 ch 101 SLA 1962)

Sec. 09.60.050. Costs awarded against state, borough, city or other public agencies. When the state or a borough, city, or other public agency or entity or an officer thereof in an official capacity is a party, costs shall be awarded against it on the same basis as against any other natural person or party. However, when the action is brought upon the information of a natural person, that person shall be liable for costs awarded against the state. The costs shall not be recovered from the state until after execution has issued for the costs against that person and has been returned unsatisfied in whole or in part. (§ 5.11 ch 101 SLA 1962)

Rule 82. Attorney's Fees.

(a) Allowance to Prevailing Party.

(1) Unless the court, in its discretion, otherwise directs, the following schedule of attorney's fees will be adhered to in fixing such fees for the party recovering any money judgment therein:

ATTORNEY'S FEES IN AVERAGE CASES

	Contested	*Without Trial*	*Non-Contested*
First $2,000	25%	20%	15%
Next $3,000	20%	15%	12.5%
Next $5,000	15%	12.5%	10%
Over $10,000	10%	7.5%	5%

Should no recovery be had, attorney's fees for the prevailing party may be fixed by the court in its discretion in a reasonable amount.

(2) In actions where the money judgment is not an accurate criteria for determining the fee to be allowed to the prevailing side, the court shall award a fee commensurate with the amount and value of legal services rendered.

(3) The allowance of attorney's fees by the court in conformance with the foregoing schedule is not to be construed as fixing the fees between attorney and client.

(4) Attorney's fees upon entry of judgment by default shall be determined by the clerk. In all other matters the court shall determine attorney's fees. Awards not pursuant to the schedule set forth in subparagraph (1) of this Rule shall be made only upon motion.

(b) Allowance in Mental Cases. In proceedings under the Mental Health Act, the attorney appointed to represent the patient shall be allowed and paid a fee of $25.00, unless the judge, in his discretion, orders otherwise. A lay advisor appointed in such proceedings shall be allowed and paid a fee of $10.00, unless the judge, in his discretion, orders otherwise. (Amended by Supreme Court Order 497 effective January 18, 1982)

William Sidney GILBERT, Appellant,

v.

STATE of Alaska and H. A. Boucher, Lieutenant Governor, Appellees.

No 2290.

Supreme Court of Alaska.

Sept. 30, 1974.

Action for declaratory judgment by potential candidate for state senator, seeking declaration that requirement of three-year residency in state and one-year residency in election district for election to legislative office violated the candidate's equal protection rights. The Superior Court, Third Judicial District, Anchorage District, P. J. Kalamarides, J., denied the petition, awarded attorney's fees to the state, and candidate appealed. The Supreme Court, Erwin, J., held that the residency requirement served a compelling state interest and thus did not deny candidate equal protection; but that it was an abuse of discretion to award attorneys' fees against the candidate who had in good faith raised a question of genuine public interest before the courts.

Affirmed in part and reversed in part.

1. Constitutional Law ⇨83(1), 211
Elections ⇨21

Residency requirements for state legislative candidacy of three years in state and one year in election district serve compelling state interests, and thus neither violated potential candidate's rights to equal protection or to freedom of interstate travel, nor did they violate voters' rights to participate in elections. Const. art. 1, § 1; art. 2, § 2; AS 15.25.030; U.S.C.A.Const. Amend. 14.

2. Constitutional Law ⇨209

Where statute challenged as violative of equal protection burdens fundamental or basic right, it can be sustained only upon showing that it promotes compelling governmental interest. U.S.C.A.Const. Amend. 14.

3. Elections ⇨7

Constitutional residency requirements for legislative candidates should be viewed with strict judicial scrutiny, i. e., whether they serve compelling state interest. Const. art. 2, § 2.

4. Costs ⇨172

Award of attorney's fees to state against potential candidate for legislature who in good faith raised issue of constitutionality of residency requirements was abuse of discretion. Rules of Civil Procedure, rule 82.

5. Costs ⇨172

It is not purpose of award of attorney's fees to penalize party for litigating good-faith claim but rather partially to compensate prevailing party where such compensation is justified. Rules of Civil Procedure, rule 82.

6. Costs ⇨172

It is abuse of discretion to award attorney fees against losing party who has in good faith raised question of genuine public interest before courts. Rules of Civil Procedure, rule 82.

John W. Wood, Anchorage, for appellant.

Norman C. Gorsuch, Atty. Gen., Juneau, Timothy G. Middleton, Asst. Atty. Gen., Anchorage, for appellees.

Before RABINOWITZ, C. J., and CONNOR, ERWIN, BOOCHEVER, and FITZGERALD, JJ.

OPINION

ERWIN, Justice.

This appeal involves a challenge to the constitutionality of article II, section 2 of the Alaska Constitution and AS 15.25.030, which collectively conditions eligibility for seeking legislative office upon three years residency in the state and one year in the election district

Appellant is a citizen of the United States and has been a resident of Alaska

We see no viable alternative means of advancing these important interests alleged by the state. Appellant suggests that these interests may be met by imposing some sort of subjective test upon potential legislators. We disagree. To create a subjective test of candidates' knowledge, understanding or character would necessarily place undue power in the hands of those who would implement such a standard. We think it better that a relative few be delayed from realizing their political aspirations for a relatively brief period than that some group of persons pass upon the fitness of all candidates before they are permitted to present themselves to the voters.

Nor can these interests be protected by relying solely upon the electoral process itself. Voters are, in a sense, "consumers" of the product portrayed by the persons they elect to office. In these days of "packaged" media candidates, they often cannot know what is in the package until they have made their selection and observed the utility of the product. In adopting their constitution, the voters of Alaska chose to protect themselves from unknown deficiencies in their candidates by imposing objective standards upon those who would hold legislative office.

We conclude that while objective tests for candidacy unavoidably place a burden upon the privilege of running for political office, the burden is both temporary and slight and is necessary to promote governmental interests which are compelling.

[4] We turn to the question of whether the award of attorneys' fees to the state by the trial court was a proper exercise of discretion by the trial court pursuant to Civil Rule 82. Appellant alleges that the issues litigated here relate to a matter of public interest and contends that awarding fees in this type of controversy will deter citizens from litigating questions of general public concern for fear of incurring the expense of the other party's attorneys' fees.

[5, 6] It is not the purpose of Rule 82 to penalize a party for litigating a good faith claim but rather partially to compensate the prevailing party where such compensation is justified.[33] We have previously intimated that denial of attorneys' fees might be appropriate in a proper case where the public interest is involved.[34] As a matter of sound policy, we hold that it is an abuse of discretion to award attorneys' fees against a losing party who has in good faith raised a question of genuine public interest before the courts. Accordingly, we reverse the award of attorneys' fees to the state in this matter.

Affirmed in part and reversed in part.



ALASKA RENT-A-CAR, INC., d/b/a Avis Rent-A-Car, Appellant,

v.

The FORD MOTOR COMPANY, a corporation, Appellee.

No. 1823.

Supreme Court of Alaska.

Oct. 4, 1974.

Third-party action to recover against manufacturer of leased vehicle involved in rear-end collision. The Superior Court, First Judicial District, Juneau, Hubert A. Gilbert, J., entered summary judgment in favor of manufacturer, and lessor appealed. The Supreme Court, Connor, J., held that issue as to whether it might be inferred from evidence that defect existed in leased vehicle when it left hands of manu-

33. Malvo v. J. C. Penney Co., Inc., 512 P.2d 575, 587 (Alaska 1973).

34. Mobil Oil Corp. v. Local Boundary Comm'n, 518 P.2d 92, 101 (Alaska 1974); Jefferson v. City of Anchorage, 513 P.2d 1099, 1102 (Alaska 1973).

Outdoors

Supreme Court affirms public interest exemption

By MARK BAUMGARTNER
Empire Staff Reporter

Alaska's non profit public interest groups can breathe a little easier after the state Supreme Court overturned a Juneau court ruling that the Southeast Alaska Conservation Council must pay attorney fees in a case it lost.

SEACC in 1979 sued the state's Department of Natural Resources, charging the agency broke the law when it signed a contract with the Schnabel Lumber Co. of Haines. SEACC said the contract was illegal because it violated principles of sustained-yield timber management.

Then-Juneau Superior Court Judge Allen T. Compton ruled the contract was valid. He also did something which hadn't been done before; he ordered SEACC, a non-profit public interest group, to partially reimburse Schnabel for his 'orney fees.

SEACC appealed Compton's ruling on the grounds public interest groups are exempt from a state rule requiring losing parties to pay the prevailing party's attorney fees.

The Supreme Court on April 29 affirmed Compton's ruling on the legality of the timber contract. Justice Warren W. Matthews wrote the court's opinion approving the contract. Justice Jay A. Rabinowitz wrote a dissenting opinion, arguing the state used an incorrect definition of sustained yield when it determined an acceptable harvest level.

But the high court also found it was "an abuse of discretion" to award attorney fees against SEACC because the group in good faith raised a question of genuine public interest.

Compton has since been appointed to the Supreme Court. He did not participate in the Supreme Court's hearing of SEACC's appeal.

"We're delighted we didn't have to pay the $25,000," said SEACC executive director Jim Stratton, referring to the amount Compton had awarded Schnabel Lumber Co.

The group found a benefactor to put up a $25,000 bond, he said, payable if SEACC lost the appeal. Its status as a non-profit organization means the group relies on contributors to finance most its day-to-day operations, he said.

$25,000 represents one-third of SEACC's operating budget for this year, he said.

SEACC was represented in the May, 1982, Supreme Court appeal by Stephan Volker, an attorney with the Sierra Club Legal Defense Fund. Volker told the court that taxing a losing public interest group with attorney fees would have a "broad chilling effect on public interest litigation."

The lower court ruling "scared a lot of people, made them cautious," said Eric Smith, director of Trustees for Alaska, an Anchorage-based public interest law firm, in a recent interview.

Smith said he was unaware of a public interest group deciding not to sue because of the ruling. But the precedent makes them think twice, he said.



Justice Allen Compton: His 1979 Superior Court ruling that a non-profit organization must pay attorney fees in a case it lost has been overturned by the Alaska Supreme Court.

"If you define 'chilling effect' as having a psychological influence than I think that's the case," he said.

"Clients always want to know what they're undertaking" when they consider a lawsuit, Smith said. "They want to know if it will cost them anything."

Most of Trustees for Alaska's cases are in federal court, Smith said, and the group interprets federal law as providing a public interest exemption from an assessment of attorney fees in losing cases.

Stratton said Compton's ruling didn't deter SEACC from bringing litigation.

In his ruling, Compton found SEACC acted in good faith in sueing DNR and so he declined to tax SEACC with the state's attorney costs.

He acknowledged the public interest exemption but said Schnabel, as a private intervener in the case, received no benefit from SEACC's action.

In fact, Compton said, Schnabel was harmed by the lawsuit. He ordered SEACC to reimburse Schnabel for part of the company's attorney fees.

That ruling should stand, according to the Supreme Court opinion in the case, unless there was an "abuse of discretion."

The court ruled the award to Schnabel of attorney fees was an abuse of discretion, and therefore reversed the ruling.

In making its finding the Supreme Court reiterated the reason for the public interest exemption is "to encourage plaintiffs to raise issues of public interest by removing the awesome financial burden of such a suit."

The court affirmed its support of the policy behind the public interest exemption to Civil Rule 82 (used to fix attorney fees).

"Since the policy seeks to encourage the vindication of the public interest, we perceive no reason to distinguish between the public or private character of the defendant in a public interest lawsuit," the opinion states.

Here's the crux of the opinion — "It is the interest that the plaintiff seeks to protect and not the public or private character of the defendant that is the touchstone" of the public interest exemption to Rule 82.

The court said every Alaskan would have benefitted from the lawsuit had there been a finding timber was not being harvested according to sustained yield forestry.

Furthermore, the court said, since the timber contract was between the state and a private logger no public entity could have been expected to bring this suit. It took a private group — SEACC — to do it. It's case was neither frivolous nor in bad faith, the court found, and SEACC had no economic incentive for bringing the suit.

In other words, SEACC and other private non-profit groups meeting these tests must not be discouraged by the threat of having to pay attorney fees if it brings a losing case to court.

STATE OF ALASKA
THE LEGISLATURE

POUCH V STATE CAPITOL
JUNEAU, ALASKA 99811
907 465 3800

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM January 20, 1984

SUBJECT: Relationship between HB 445 and Civil Rule 82

TO: Representative Charlie Bussell
Chairman, House Judiciary Committee

FROM: Keith B. Levy KBL
Legislative Counsel

You have requested an opinion on the effect HB 445, "An Act relating to attorney fees," will have on the award of attorney fees in public interest cases in light of the existing Civil Rule 82. Specifically, you have asked whether, under Rule 82, an award of attorney fees will be mandatory in every public interest case in which the plaintiff prevails against a nongovernmental entity, if HB 445 is enacted. For the reasons set out below, it is my opinion that under Rule 82, if HB 445 is enacted, an award of attorney fees will not be required in every case and the trial judge will have the discretion to make this determination within certain limits.

HB 445, by repealing the "public interest exception" to the award of attorney fees, makes Rule 82 applicable in public interest cases. Rule 82(a)(1) clearly makes the award of attorney fees within the discretion of the trial judge. It sets out a schedule of suggested fees for the party recovering a money judgement, but provides that the court may in its discretion ignore the schedule. Rule 82(a)(1) further provides:

> Should no recovery be had, attorney's fees for the prevailing party may be fixed by the court in its discretion in a reasonable amount.

Thus, it is clear from the language of Rule 82(a)(1) that the award of attorney fees, whether there is a money judgement or not, is within the discretion of the trial judge. However, Rule 82(a)(2) seems to provide for certain situations in which the award of attorney fees is not discretionary, but mandatory. It provides:

> In actions where the money judgement is not an accurate criteria [sic] for determining the fee to be allowed to the prevailing side, the court shall award a fee commensurate with the amount and value of legal services rendered. (Emphasis added).

The use of the word "shall" seems to indicate that in cases in which there is no apparent relationship between the money judgement and the attorney's fee, the award of attorney fees is mandatory. A careful reading of the case law on Rule 82 leads me to the conclusion, however, that this would be an erroneous interpretation of the rule. The cases indicate that, subject only to the limitation that the award not be "manifestly unreasonable," attorney fees under rule 82 are not mandatory, but discretionary.

The Alaska Supreme Court has said in a number of cases that the denial of attorney fees altogether under Rule 82 is not necessarily an abuse of discretion. Cooper v. Carlson, 511 P.2d 1305 (Alaska 1973); Larry v. Dupree, 580 P.2d 326 (Alaska 1978). The trial judge has wide discretion in awarding attorney fees and the supreme court will overturn the trial judge's decision only of it is "manifestly unreasonable." Malvo v. J.C. Penney Co., 512 P.2d 575 (Alaska 1973).

Although it is not always clear from these cases whether the Court made its decision under Rule 82(a)(1) or (a)(2), a more recent case indicates that the determination of whether Rule 82(a)(2) comes into consideration at all is within the discretion of the trial judge. In Arctic Slope Native Association v. Paul, 609 P.2d 32 (Alaska 1980), the Supreme Court considered whether or not an award of full attorney fees was appropriate. After citing rule 82(a)(2), the Court said

> In this case the trial judge concluded that the money judgement was not an accurate criterion for establishing the appropriate fee.

Thus, the trial court made its own determination of the attorney fees. The Supreme Court agreed with this assessment by the trial judge, indicating that the determination of whether Rule 82(a)(2) comes into play at all is within the discretion of the trial judge. In other words, the award of attorney fees under Rule 82(a)(2) is not mandatory in the sense that the trial judge has discretion

to determine whether 82(a)(2) applies. Once the trial judge determines that 82(a)(2) applies, some attorney fees must be awarded. But the trial judge has the discretion to ignore 82(a)(2) as long as that decision is not manifestly unreasonable.

In conclusion, HB 445 does not make an award of attorney fees in public interest cases mandatory by making Civil Rule 82 applicable. Although Rule 82(a)(2) does seem to make an award of attorney fees mandatory, the award under Rule 82(a)(1) is discretionary, and the trial judge has the discretion to determine whether to apply Rule 82(a)(1) or (a)(2).

KBL:ojb
J2/056

cc: Representative Don Clocksin

HB

446

STATE OF ALASKA
THE LEGISLATURE

LEGISLATIVE AFFAIRS AGENCY

POUCH Y STATE CAPITOL
JUNEAU, ALASKA 99811
907 465 3800

M E M O R A N D U M January 13, 1984

SUBJECT: Sectional Analysis of House Bill 446

TO: Representative Charlie Bussell
Chairman, House Judiciary Committee

FROM: Russ Josephson
Legislative Counsel

You have asked for a sectional analysis of HB 446. This bill consists of a single section. It adds a new section of law to the motor vehicle statutes to fill a gap in the existing law. Very simply, it requires a person to stop a motor vehicle when pursued by a law enforcement vehicle that is using lights or a siren to indicate that the peace officer would like the pursued driver to stop.

RJ:lmb
L3/082

STATE OF ALASKA 1984 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date: 01/16/84

REQUEST
Bill/Resolution No.: SSHB446
Title: "...stop at the direction of a Peace Officer
Sponsor: Rep. Liska & Syzmanski
Requestor: House Judiciary
Date of Request: 1-16-84

FISCAL DETAIL
Agency Affected: Public Safety
Program Category Affected: Administration of Justice
BRU, Program or Subprogram(s) Affected: Alaska State Troopers

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 84	FY 85	FY 86	FY 87	FY 88	FY 89
OPERATING						
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 SUPPLIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS						
800 MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0
CAPITAL	0.0	0.0	0.0	0.0	0.0	0.0
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND	0.0	0.0	0.0	0.0	0.0	0.0
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

ANALYSIS: Attach a separate page for analysis

No Fiscal Impact.

Prepared By: Francis C. Allan mck F.C.A. Phone: 269-5691
Division: Alaska State Troopers Date: 01/16/84

Approved by Commissioner: Robert J. Sundberg R.J.S. Date: 1-19-84
Agency: Public Safety

Distribution (by Agency preparing fiscal note):
Legislative Finance
Legislative Sponsor
Requestor
Office of Management and Budget
Impacted Agency(ies)

12/1/83

ALASKA STATE LEGISLATURE
HOUSE OF REPRESENTATIVES
RESEARCH AGENCY

Pouch Y, State Capitol
Juneau, Alaska 99811
(907) 465-3991

September 15, 1983

MEMORANDUM

TO: Representative John Liska

FROM: Deb Pomeroy
Administrative Assistant

RE: Stopping for a Police Officer
Research Request 83-199

Linda Edgeworth, of your staff, asked whether or not there is a statute requiring a motorist to stop when flagged down by a police officer. She also asked for information regarding a case in which a defendent was charged with failure to stop for a police officer. The defendant was acquitted because no statute set out this requirement. I spoke with the Gretchen Derr in the Commissioner's Office of the Department of Public Safety, who provided the attached correspondence pertaining to this issue.

The case the defendant won occurred prior to April 28, in Soldotna. A motorist had failed to stop when the police officer turned on the flashing lights and siren, and was subsequently charged with violating 13 AAC 02.140. I spoke with the District Attorney's Office in Kenai and requested the judge's decision as well as any pertinent documents. These will be forwarded to you as soon as we receive them.

The Alaska Adminstrative Code 13 AAC 02.140 (attached) states that "upon the approach of an authorized emergency vehicle...or a police vehicle making use of either a visual or an audible signal, the driver of every vehicle...shall yield the right-of-way by slowing, stopping, changing lanes or pulling to the right-hand edge of the roadway clear of an intersection to await passage of the emergency vehicle" (emphasis added). It appears that 13 AAC 02.140 pertains mostly to emergency situations.

Judge Anderson of Anchorage, who heard the case, ruled that the State had "made a half hearted attempt" in writing the regulation when it defined what a motorist must do when approached by a police vehicle with visual lights in a non-emergency situation. He went on to state that the police officer was attempting to stop a suspected violator when there was no existing emergency, and that the violator was therefore not required to stop.

DEPARTMENT OF PUBLIC SAFETY

POSITION PAPER - SSHB446

Support with Amendment

January 16, 1984

SSHB446 - "An Act relating to the duty to stop at the direction of a peace officer.

This legislation deals with the public's responsibility to follow the directions of peace officers in emergency situations. Some confusion has existed on this subject on the part of the public due to the inconcise wording of present regulations (13.AAC.02.140). This proposed legislation clarifies the duty of the public without infringing upon their rights.

The wording in Sec. 28.35.184 requires that a person guilty of flight from a police officer is guilty of a class C felony. This is felt to be too severe a penalty and we request that it be amended to a class B misdemeanor. The original wording would result in many individuals having felony records that now only face misdemeanor violations. Additionally, the numerous violations of the section may place an unnecessarily heavy burden upon the Criminal Justice System.

Robert J. Sundberg
Commissioner



CITY OF KENAI
"Oil Capital of Alaska"
P. O. BOX 580 KENAI, ALASKA 99611
TELEPHONE 283-7535

August 25, 1982

Commissioner William R. Nix
Department of Public Safety
Pouch N
Juneau, AK. 99811

Dear Commissioner Nix,

Request your staff review 13 AAC 02140(a) for possible language changes. As the section is presently interpreted by the local court any one of several possible actions is sufficient to comply with the yield requirement.

If the intent is to require that whenever possible the motorist is to yield to an emergency vehicle by pulling over to the right and stopping, then the other language should possibly be modified or deleted.

If after your review, you determine that this appears to be a local court interpretation, and not a statewide problem or concern, please advise.

Sincerely,

Richard A. Ross
Chief of Police
Kenai Police Dept.

RAR/mp

Soldotna Police Department
P.O. Box 2499
Soldotna - Alaska 99669



Duane Udland
Chief of Police

April 28, 1983

Commissioner Robert Sundberg
Department of Public Safety
Pouch N
Juneau, AK 99811

Dear Commissioner Sundberg:

I am requesting that your staff review 13 AAC02.140 (a) for possible changes. Recently Soldotna had a case ruled on by Judge Anderson from Anchorage. The judge ruled that the State had "made a half hearted attempt" in writing the regulation when it defined what a motorist must do when approached by a police vehicle with visual lights on in a non-emergency situation.

The judge went on to say that in the case of Soldotna where the police officer was attempting to stop a suspected violator there was no existing emergency and the suspected violator was not required to stop. The judge then dismissed the citation that had been issued under the authority of 13 AAC02.140.

I am including in this letter a copy of a similar request made by Chief Ross of the Kenai Police Department. In the case of Kenai our local judge also dismissed a citation because the way the regulation is worded. It seems there is concern from more than one court about this regulation.

I have one other concern about the rules of the road contained in 13 AAC. Presently there is no regulation titled "Excessive Acceleration" or some other similar language. A problem comes up frequently when you have a motorist who spins his tires intentionally under heavy acceleration.

The only possible citation that can be issued in this situation is negligent driving. Our court has consistently ruled that absent other factors such as fishtailing, loss of control, etc. the elements of negligent driving are not satisfied.

It would seem to me that a new regulation could be written to cover this type of driving. This type of regulation would be most helpful in curtailing this sort of driving.

Thank you for your time and consideration.

Sincerely,

Duane D. Udland

Duane Udland
Chief of Police

DEPARTMENT OF PUBLIC SAFETY
COMMISSIONER'S OFFICE
Juneau, Alaska
MAY 02 1983

mb

STATE OF ALASKA

JAY S. HAMMOND, GOVERNOR

DEPARTMENT OF PUBLIC SAFETY

DIVISION OF STATE TROOPERS

P.O. BOX 6188 ANNEX
ANCHORAGE, ALASKA 99502
PHONE:

September 3, 1982

Richard A. Ross
Chief of Police
Kenai Police Department
Kenai, AK 99611

Re: 13 AAC02.140 (a)

Dear Chief Ross:

Your letter to Commissioner Nix dated August 25, 1982 has been forwarded to me for reply.

As the above cited regulation is now written, it would appear that any of the required actions now listed in the regulation would suffice to comply with it's requirement. The Uniform Vehicle Code clearly sets out that a motorist must drive to the right-hand edge or curb and stop until an emergency vehicle has passed. Though most of the basic regulation was originally taken from the Uniform Vehicle Code, for some reason 13 AAC02.140 (a) was not strictly followed and perhaps should be changed.

I will forward your suggestion to the Commissioner's committee for regulatory changes for its consideration.

Sincerely yours,

Mr. Joseph D. Balfe
Assistant Attorney General
for Law Enforcement

cc: Mr. Ken Simpson

12:113LH

MEMORANDUM State of Alaska

TO: Robert J. Sundberg
Commissioner
Department of Public Safety

DATE: May 3, 1983

FILE NO:

TELEPHONE NO: 465-4322

FROM: Inspector Frank N. Gorham
Assistant to the Commissioner
Department of Public Safety

SUBJECT: Chief Udland Letter
re: Failure to Stop

As requested, research was done on the requirements, or more, the lack of requirements for a person to stop when signaled to do so by a police officer.

I could find but one area of the State Statutes that requires a person (driver of a vehicle) to obey the signals of an officer. Even at that, it only relates to the condition of directing traffic. See attached AS 28.35.180.

The 13 AAC 2.140 does not directly require a vehicle to stop but makes it an option when an emergency vehicle of any type is approaching. Nor does the companion, 13 AAC 2.195, related to pedestrians.

Also attached is a proposed addition to either the Administrative Code or State Statutes that should serve the purpose. Not being a legal beagle, I am not sure how many holes it has in it.

Enclosures: a/s

RECEIVED
SEP 12 1983

HOUSE RESEARCH AGENCY

MEMORANDUM State of Alaska

TO: Joseph Balfe
Assistant Attorney General
Department of Public Safety

DATE: May 12, 1983

MAY 16 1983

FILE NO:

TELEPHONE NO: 465-4322

FROM: Lt. Col. James D. Vaden
Office of the Commissioner
Department of Public Safety

SUBJECT: Failure to Stop

Please draft a change in our regulations requiring an individual to stop when lawfully directed to do so by a peace officer.

Return the draft to me and I will begin the procedures necessary to change the traffic regulations.

Since this problem could involve situations not involving a vehicle, we should also propose changes in the statutes. That recommendation should be held until the Administration requests proposed changes through legislation.

Attachments: a/s

cc: Robert J. Sundberg
Commissioner
Department of Public Safety

5/13/83
Rep. John Lisko —
RE: our conversation on 5-11-83 —
We will proceed as outlined above.
Thank you.
Robert J. Sundberg
Comm

02-001A (Rev. 10/79)

STATE OF ALASKA

BILL SHEFFIELD, GOVERNOR

DEPARTMENT OF PUBLIC SAFETY

OFFICE OF THE COMMISSIONER

POUCH N
JUNEAU, ALASKA 99811
PHONE: 465-4322

November 4, 1983

Ms. Mary Whitman
Administrative Assistant
Legislative Affairs Agency
Pouch V
Juneau, AK 99811

Dear Ms. Whitman:

This is in reference to your request related to input from this department on HB 446, "An act relating to stopping a motor vehicle at the direction of a peace officer."

I have enclosed some statutes from other states, and the I.A.C.P. model "Uniform Vehicle Code" recommendation on the subject. The statutes sources were from the states of California, Oregon, and Washington. As can be seen, there are a variety of approaches, but all with the same theme.

As for this State, as reflected in a previous internal memorandum of this department, of which you have a copy, there are no requirements for a person, under any circumstances, to stop at the request of, or lawful command of a peace officer except when he is actually regulating or directing traffic (AS 28.35.280). Nor do any administrative code provisions require a person, under any circumstances, to stop as the result of a lawful order of a peace officer (13 AAC 02.140 and 13 AAC 02.195).

The department's desire, and I am sure you would find it the entire law enforcement community's desire, is to develop an all encompassing obedience statute covering a person, vehicle, boat, or aircraft. Whether this can be achieved is another matter.

House Bill 446, as it is now written, meets a portion of law enforcement needs, but may be somewhat vague and broad as it relates to "law enforcement vehicle."

If not being presumptive, and keeping in mind that the author is not trained in the legalized framing of statutes, the following is, at least, a draft revision of HB 446 for

12-L2LH

consideration that would meet the law enforcement needs. The draft is not in proper form.

Sincerely,

ROBERT J. SUNDBERG
COMMISSIONER

BY: Inspector Frank N. Gorham
Assistant to the Commissioner

cc: Emil Notti
Legislative Assistant
to the Governor

Norman Gorsuch
Attorney General
Department of Law

Col. Michael Kolivosky, Director
Division of Alaska State Troopers
Department of Public Safety

ATTEMPTING TO FLEE OR ELUDE POLICE OFFICER
1964

WHEREAS, The International Association of Chiefs of Police advocates and supports adoption of sound traffic regulations, couched in clear and effective terms so as to merit approval by the courts; and

WHEREAS, For this purpose the International Association of Chiefs of Police consistently supports efforts of the National Committee on Uniform Traffic Laws and Ordinances to develop and maintain the Uniform Vehicle Code to the highest degree of perfection as representing the best example of legislation recommended to the various states for adoption by their legislatures; and

WHEREAS, It is in the furtherance of this purpose that the various provisions of the Uniform Vehicle Code be made as legally sound as possible and be amended as and when necessary and advisable in order to correct defects therein which become apparent in practice from time to time; and

WHEREAS, Traffic officers often find themselves confronted with the problem of drivers who refuse to obey police commands to stop, and who flee from such officers, usually at high speed, sometimes extinguishing their lights at night, or otherwise seek to elude the officer; and

WHEREAS, Some states, including Colorado, Delaware, Oregon, Utah and Washington, have recently enacted legislation making such actions a misdemeanor of serious nature, some calling for mandatory revocation of the driver's license of persons convicted under such statutes; and

WHEREAS, Members of the International Association of Chiefs of Police are primarily concerned with such violations and directly affected by such driver actions and conduct, it is appropriate that the International Association of Chiefs of Police take the lead in formulating a standard or model form of law defining the offense of fleeing from or attempting to elude a police officer; and

WHEREAS, It is in the interest of promoting uniform legislation of this kind, and in the interest of more effective police patrol performance, that such legislation be recommended for adoption by all states; and

WHEREAS, The Uniform Vehicle Code is the proper

medium by which such legislation may be so recommended; now, therefore, be it

RESOLVED, That the International Association of Chiefs of Police hereby recommend to the Council of State Governments and the National Committee on Uniform Traffic Laws and Ordinances that the following new section be added to the Uniform Vehicle Code:

> "Fleeing or attempting to elude police officer. (a) Any driver of a motor vehicle who, having been given a visual or audible signal by a police officer directing said driver to bring his motor vehicle to a stop, willfully fails or refuses to obey such direction, increases his speed, extinguishes his lights, or otherwise flees or attempts to elude the officer, shall be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine not less than ($50 - $100 - $200) nor more than ($500), or by imprisonment for not less than (10 - 30 - 60) days nor more than (6) months, or both such fine and imprisonment. The signal given by the police officer may be by hand, voice, emergency light or siren. Provided, the officer giving such signal shall be in uniform, prominently displaying his badge of office and, if driving a vehicle, such vehicle shall be appropriately marked showing it to be an official police vehicle. (b) Upon receiving notice of such conviction the department may forthwith suspend the operator's or chauffeur's license of the person so convicted for a period of not more than (six) months."

whether the person is a problem drinker or drug-dependent person, as defined in ORS 482.477; and

(b) Complete a treatment program or information program designated by the court and paid at the expense of the person convicted. [1975 c.451 487, 1979 c.744 [illegible], 1981 c.[illegible] 815, 1981 c.[illegible] 831]

487.545 Use of chemical analysis to show intoxication. (1) At the trial of any civil or criminal action, suit or proceeding arising out of the acts committed by a person driving a motor vehicle while under the influence of intoxicants, if the amount of alcohol in the person's blood at the time alleged is less than .10 percent by weight of alcohol as shown by chemical analysis of the person's breath, blood or urine, it is indirect evidence that may be used with other evidence, if any, to determine whether or not the person was then under the influence of intoxicants.

(2) Not less than .10 percent by weight of alcohol in a person's blood constitutes being under the influence of intoxicating liquor.

(3) Percent by weight of alcohol in the blood shall be based upon grams of alcohol per one hundred cubic centimeters of blood. [1975 c.451 [illegible], 1977 c.[illegible] 854, 1981 c.[illegible] 841]

487.550 Reckless driving. (1) A person commits the crime of reckless driving if the person recklessly, as defined in ORS 161.085 (9), drives a vehicle upon a highway in a manner that endangers the safety of persons or property.

(2) Reckless driving is a Class A misdemeanor. [1975 c.451 [illegible], 1981 c.[illegible] 845]

487.555 Fleeing or attempting to elude a police officer. (1) A driver of a motor vehicle commits the crime of fleeing or attempting to elude a police officer if, when given visual or audible signal to bring the vehicle to a stop, he knowingly flees or attempts to elude a pursuing police officer.

(2) The signal given by the police officer may be by hand, voice, emergency light or siren.

(3) As used in this section, "police officer" means a sheriff, municipal policeman or member of the Oregon State Police in uniform, prominently displaying his badge of office or who is operating a vehicle appropriately marked showing it to be an official police vehicle.

(4) Fleeing or attempting to elude a police officer is a Class A misdemeanor. [1975 c.451 [illegible]]

487.560 Driving while suspended or revoked or beyond license restriction. (1) A person commits the crime of driving while suspended or revoked if the person drives a motor vehicle upon a highway during a period when the person's license or permit to drive a motor vehicle or the person's right to apply for a license to drive a motor vehicle in this state has been suspended or revoked by a court or by the division or if the person drives a motor vehicle outside the restrictions of a license issued under ORS 482.475 or 482.477.

(2) In a prosecution under subsection (1) of this section, it is an affirmative defense that:

(a) An injury or immediate threat of injury to human or animal life and the urgency of the circumstances made it necessary for the defendant to drive a motor vehicle at the time and place in question, or

(b) The defendant had not received notice of the defendant's suspension or revocation as required by ORS 482.570 or in the manner provided in paragraph (c) of subsection (3) of this section.

(3) The affirmative defense under paragraph (b) of subsection (2) of this section shall not be available to the defendant if:

(a) The defendant refused to sign a receipt for the certified mail containing the notice; or

(b) The notice could not be delivered to the defendant because the defendant had not notified the division of the defendant's address or a change in the defendant's residence as required by ORS 482.290 (3); or

(c) At a previous court appearance, the defendant had been informed by a trial judge that the judge was ordering a suspension or revocation of the defendant's license, permit or right to apply; or

(d) The defendant had actual knowledge of the suspension or revocation by any means prior to the time the defendant was stopped on the current charge.

(4) Any of the evidence specified in subsection (3) of this section may be offered in the prosecution's case in chief.

(5) Except as provided in subsection (6) of this section, driving while suspended or revoked is a Class A misdemeanor.

(6) Driving while suspended or revoked is a Class C felony if the suspension or revoca-

ORS 488.011 to 488.180 and 488.990. [1959 c.696 §26; 1961 c.185 §1]

488.020 Regulations establishing minimum specifications for rented boats; inspection; cancellation of certificate of boats not meeting specifications. (1) The board shall provide by regulations minimum specifications of design, construction, material and condition of boats rented or chartered to the public. The regulations shall be made in accordance with ORS 183.310 to 183.550.

(2) Designated representatives of the board may annually, each spring inspect all rental boats as to material condition and seaworthiness. Any approval sticker or decal shall be placed in clear view of the operator on all boats which equal or exceed the minimum specifications provided by the board.

(3) After a hearing upon 10 days' notice to the owner of the boat, the board may cancel or revoke the certificate of number for any boat rented or chartered to the public if it does not equal or exceed the minimum specifications provided by the board. [1959 c.696 §27; 1975 c.564 §9; 1979 c.284 §41]

488.027 Peace officers to enforce chapter. (1) The sheriff of each county and all other peace officers shall be responsible for the enforcement of this chapter and the regulations made by the board pursuant thereto. In the exercise of this responsibility, a peace officer may stop any boat and direct it to a suitable pier or anchorage for boarding.

(2) No person, while operating a boat on any waters of this state, shall knowingly flee or attempt to elude any law enforcement officer after having received a signal from a law enforcement officer to bring the boat to a stop. [1959 c.696 §28; 1965 c.581 §2; 1967 c.170 §1; 1985 c.620 §17; 1987 c.564 §10]

488.028 Contrary local laws prohibited. No political subdivision of this state may enact or enforce any law contrary to the provisions of this chapter. [1959 c.696 §41]

488.030 [1959 c.696 §29; repealed by 1977 c.867 §20]

488.031 Personal flotation devices. (1) All boats shall carry at least one United States Coast Guard approved personal flotation device in good and serviceable condition for each person on board. Each device shall be of an appropriate size for the person for whom it is intended and shall be readily accessible whenever the boat is in use. As used in this subsection, a personal flotation device is not "readily accessible" if it is stowed in a locked compartment or locker or is otherwise not immediately, physically available to persons on board the boat in case of an emergency.

(2) The board by regulation will classify types of devices and classify which types are approved for various classes of vessels. The regulations will be consistent with, but shall not exceed those regulations promulgated by the United States Coast Guard. [1967 c.467 §1; 1969 c.696 §30; 1967 c.151 §1; 1971 c.520 §1; 1975 c.564 §1; 1977 c.77 §1]

488.040 [1959 c.696 §30; repealed by 1977 c.867 §20]

488.041 Lights. (1) Except as provided by the regulations adopted by subsection (3) of this section, every boat shall carry and show the following lights when underway between sunset and sunrise:

(a) Manually propelled boats, a lantern capable of showing a white light which shall be temporarily displayed in sufficient time to prevent collision.

(b) (A) Motorboats less than 26 feet in length, a white light aft showing all around, visible for at least two miles, and a combination 20 point light in the forepart of the boat, lower than the white light aft, showing green to starboard and red to port, visible for at least one mile.

(B) Motorboats 26 feet or longer, a white light aft showing all around, visible for at least two miles, two separate 10 point sidelights visible for at least one mile and a 20 point white light in the forepart of the boat, lower than the white light aft, visible for at least two miles.

(c) Boats propelled by sail, a white 12 point light aft, visible for at least two miles and two separate 10 point sidelights visible for at least one mile.

(2) As used in this section, "visible" means visible on a dark night with clear atmosphere.

(3) On all waters of the state, every boat shall carry and exhibit the lights required by inland rules for preventing collisions, promulgated by the United States Coast Guard, May 1, 1959 (Part 80, Title 33, Code of Federal Regulations of the United States of America, as amended). [1967 c.467 §1; 1971 c.686 §§10a, 10b; 1987 c.154 §1]

488.050 [1959 c.696 §31; repealed by 1977 c.867 §20]

488.051 [1967 c.467 §3; repealed by 1971 c.686 §12]

488.020 Repealed by 1957 c.467 (20)

488.021 Application of ORS 488.011 to 488.180 and 488.600. (1) Except as provided in subsection (2) of this section, ORS 488.011 to 488.180 and 488.600 apply to all boats operated in the waters of this state, except where inconsistent with any applicable laws or regulations of an agency of the United States, in which case such laws or regulations shall prevail.

(2) ORS 488.011 to 488.180 and 488.600 do not apply to the following boats, except as otherwise provided in this section:

(a) A boat that has a valid document issued by the Bureau of Customs of the United States or any federal agency that succeeds to the duty of issuing marine documents.

(b) Foreign boats operated temporarily in the waters of this state.

(c) A boat owned and operated by the United States or by an entity of the United States.

(d) A ship's lifeboat used solely for lifesaving purposes.

(e) A boat belonging to a class of boats that has been exempted from the provisions of ORS 488.715 to 488.730 and 488.735 to 488.760 by the board as provided in ORS 488.720.

(3) Subsection (2) of this section does not exempt the following boats:

(a) Small passenger vessels of less than 100 gross tons.

(b) Commercial vessels that are not required to be inspected under federal law, or

(c) Publicly owned recreational vessels.

[illegible] 1965 c.540 (1), 1981 c.102

488.023 Operating boat in violation of chapter prohibited. No person shall operate a boat in violation of any provision of this chapter. [illegible]

488.024 Operating improperly equipped boat prohibited. No person shall operate [illegible] permission for another person to operate a boat which is not equipped as required under ORS 488.011 to 488.180 and 488.600. [illegible]

488.025 Operator of boat livery to provide properly equipped boats. No operator of a boat livery shall permit any boat he rents to depart from the livery premises unless the boat is equipped as provided under ORS 488.011 to 488.180 and 488.600. [1959 c.686 (5), 1961 c.185 (4)]

488.026 Regulations establishing minimum specifications for rented boats; inspection; cancellation of certificate of boats not meeting specifications. (1) The board shall provide by regulations minimum specifications of design, construction, material and condition of boats rented or chartered to the public. The regulations shall be made in accordance with ORS 183.310 to 183.550.

(2) Designated representatives of the board may annually, each spring inspect all rental boats as to material condition and seaworthiness. Any approval sticker or decal shall be placed in clear view of the operator on all boats which equal or exceed the minimum specifications provided by the board.

(3) After a hearing upon 10 days' notice to the owner of the boat, the board may cancel or revoke the certificate of number for any boat rented or chartered to the public if it does not equal or exceed the minimum specifications provided by the board. [1959 c.686 (5), 1975 c.584 (9), 1979 c.20 (2)]

488.027 Peace officers to enforce chapter. (1) The sheriff of each county and all other peace officers shall be responsible for the enforcement of this chapter and any regulations made by the board pursuant thereto. In the exercise of this responsibility, a peace officer may stop any boat and direct it to a suitable pier or anchorage for boarding.

(2) No person, while operating a boat on any waters of this state, shall knowingly flee or attempt to elude any law enforcement officer after having received a signal from a law enforcement officer to bring the boat to a stop. [1959 c.686 (5), 1965 c.540 (2), 1967 c.176 (2), 1967 c.620 (17), 1975 c.584 (10)]

488.028 Contrary local laws prohibited. No political subdivision of this state may enact or enforce any law contrary to the provisions of this chapter. [1959 c.686 (10)]

488.030 Repealed by 1957 c.467 (20)

488.031 Personal flotation devices. (1) All boats shall carry at least one United States Coast Guard approved personal flotation device in good and serviceable condition for each person on board. Each device shall be of an appropriate size for the person for whom it is intended and shall be readily accessible whenever the boat is in use. As used in this subsection, a personal flotation device is not

TITLE 46

MOTOR VEHICLES

CHAPTER 46.61—RULES OF THE ROAD

Abandoned junk motor vehicles: RCWA 46.52.145-46.52.160.
18 Am Jur Trials p 443 (unwitnessed automobile accident cases).
Ops Atty Gen 1972 No. 3 (application of provisions of this chapter to United States Forest Service roads).
4 ALR Fed 6 (Federal Tort Claims Act: Automobile negligence cases).

OBEDIENCE TO AND EFFECT OF TRAFFIC LAWS

46.61.005 Provisions of chapter refer to vehicles upon the highways —Exceptions

Actions of an individual in driving an unlicensed pickup rapidly in circles in a field owned by his parents while under the influence did not fall within purview of RCWA 46.61.506 prohibiting driving while intoxicated in light of fact that it would have been an unreasonable exercise of police power to extend prohibition to defendant's conduct, defendant was posing no threat to public, vehicle was unlicensed and defendant was not on or even near a public road, land on which he was driving was privately owned, and public had no right to be there nor was public expected to be on the property. State v Day (1981) 96 Wn 2d 646, 638 P2d 546.

46.61.010 Required obedience to traffic laws—Penalties

Amended by Laws 2nd Ex Sess 1975-76 ch 95 § 1, effective March 13, 1976, and repealed by Laws 1st Ex Sess 1979 ch 136 § 109, effective January 1, 1981.
Reviser's note: RCWA 46.61.010 was repealed by 1979 ex.s. c 136 § 109, effective July 1, 1980; the effective date of 1979 ex.s. c 136 was delayed until January 1, 1981, by 1980 c 128 § 9. For later enactment, see RCWA 46.63.020.

Ops Atty Gen 1976 No. 19 (traffic offenses as crimes; commitment for contempt for failure to comply with order to pay costs).
Ops Atty Gen 1979 No. 1 (although the privilege from arrest in Article II, § 16 of the Washington constitution extends beyond the term of a legislative session, it relates to the possibility of civil arrest only and is not a privilege from arrest for the commission of a crime; therefore, Article II, § 16 does not preclude the arrest of a member of the Washington state legislature for the commission of a traffic offense within the purview of RCWA 46.61.010).

Sheriff who observed defendant's automobile following another vehicle too closely, defendant's suspicious movements in the automobile after he became aware of sheriff's presence, defendant's intoxicated condition, and out-of-date temporary license possessed by defendant, was justified in arresting defendant for misdemeanor offenses relating to defendant's conduct. United State v McCambridge (1977) 551 F2d 865.

After having stopped defendant's automobile and arrested defendant for various misdemeanor offenses relating to defendant's operation of the automobile, sheriff was entitled to enter and secure the automobile, which, left by itself on the highway, would have been subject to vandalism and might have threatened public safety and convenience. United States v McCambridge (1977) 551 F2d 865.

46.61.015 Obedience to police officers, flagmen, or fire fighters

No person shall willfully fail or refuse to comply with any lawful order or direction of any duly authorized flagman or any police officer or fire fighter

invested by law with authority to direct, control, or regulate traffic. [Amended by Laws 1975 ch 62 § 17.]

Severability—1975 c 62: See note following RCW 36.75.010.

Washington Court Rules: Bail in traffic offense cases—Mandatory appearance—JCrR 2.09.

In ordinary circumstances, responsibility of police in directing traffic is to maintain due regard for safety of all who would be affected by discharge of such responsibility. Anthony v C. D. Amende Co. (1982) 31 Wn App 21, 639 P 2d 231.

In action for personal injuries arising from car accident which allegedly was caused by negligence of employees of department of transportation in directing traffic on wrong side of street around another accident, trial court erred in imposing upon state burden to exercise higher degree of care than ordinary care. Anthony v C. D. Amende Co., (1982) 31 Wn App 21, 639 P2d 231.

46.61.020 Refusal to give information to or cooperate with officer

Washington Court Rules: Bail in traffic offense cases—Mandatory appearance—JCrR 2.09.

46.61.021 Duty to obey law enforcement officer—Authority of officer

(1) Any person requested or signaled to stop by a law enforcement officer for a traffic infraction has a duty to stop.

(2) Whenever any person is stopped for a traffic infraction, the officer may detain that person for a reasonable period of time necessary to identify the person, check the status of the person's license and the vehicle's registration, and complete and issue a notice of traffic infraction.

(3) Any person requested to identify himself to a law enforcement officer pursuant to an investigation of a traffic infraction has a duty to identify himself, give his current address, and sign an acknowledgement of receipt of the notice of infraction.

[Added by Laws 1st Ex Sess 1979 ch 136 § 4, effective January 1, 1981.]

Effective date—Severability—1979 1st ex.s. c 136: See notes following RCWA 46.63.010.

CJS Arrest §§ 38, 40.

Key Number Digests: Arrest ⇨63.5(6).

46.61.022 Failure to obey officer--Penalty

Any person who wilfully fails to stop when requested or signaled to do so by a person reasonably identifiable as a law enforcement officer or to comply with RCW 46.61.021(3), is guilty of a misdemeanor.

[Added by Laws 1st Ex Sess 1979 ch 136 § 5, effective January 1, 1981.]

Effective date—Severability—1979 1st ex.s. c 136: See notes following RCWA 46.63.010.

Washington Court Rules: Bail in traffic offense cases—Mandatory appearance—JCrR 2.09.

CJS Motor Vehicles §§ 606 et seq.

Key Number Digests: Automobiles ⇨335.

46.61.024 Attempting to elude pursuing police vehicle

Any driver of a motor vehicle who wilfully fails or refuses to immediately bring his vehicle to a stop and who drives his vehicle in a manner indicating a wanton or wilful disregard for the lives or property of others while attempting to elude a pursuing police vehicle, after being given a visual or audible signal to bring the vehicle to a stop, shall be guilty of a class C felony.

The signal given by the police officer may be by hand, voice, emergency light, or siren. The officer giving such a signal shall be in uniform and his vehicle shall be appropriately marked showing it to be an official police vehicle.

[Added by Laws Ex Sess 1979 ch 75 § 1; Amended by Laws 1st Ex Sess 1982 ch 47 § 25.]

Severability—1982 1st ex.s. c 47: See note following RCWA 9.41.025.

CJS Motor Vehicles §§ 606 et seq.

Key Number Digests: Automobiles ⊂⊃335.

Offense of felony flight was decriminalized from January 1, 1981 until April 16, 1981. State v Taylor (1982) 97 Wn 2d 724, 649 P2d 633.

No crime is committed under RCWA 46.61.024 if one being pursued by a police vehicle merely fails to immediately stop his vehicle, since to violate the statute one must also engage in conduct that indicates wanton and wilful disregard for life and property of others. State v Mather (1981) 28 Wn App 700, 626 P2d 44.

Police power may lawfully extend to prohibiting flight from unlawful detention where such flight indicates wanton and wilful disregard for life and property of others. State v Mather (1981) 28 Wn App 700, 626 P2d 44.

Constitutional right to be free from unreasonable searches and seizures does not create a constitutional right to react unreasonably to illegal detention. State v Mather (1981) 28 Wn App 700, 626 P2d 44.

Although RCWA 46.61.024, proscribing attempt to elude pursuing police vehicle, is directed at unreasonable resistance to both legal and illegal detentions, it is not for such reason overbroad. State v Mather (1981) 28 Wn App 700, 626 P2d 44.

RCWA 46.61.024, proscribing attempt to elude pursuing police vehicle, provides fair notice of conduct that is prohibited and is drafted so as to avoid punishment of constitutionally protected behavior. State v Mather (1981) 28 Wn App 700, 626 P2d 44.

While defendant, charged with attempting to elude pursuing police vehicle, argued that the statute in question is vague and overbroad because it does not require knowledge that the pursuing vehicle is a police vehicle, the statute does require that defendant wilfully fail and refuse to stop his vehicle while attempting to elude a pursuing police vehicle, and wilfulness in this context is identical with knowledge. State v Mather (1981) 28 Wn App 700, 626 P2d 44.

RCWA 46.61.024, proscribing attempt to elude pursuing police vehicle, was not unconstitutionally vague or overbroad by reason of the fact that it does not require pursuing officer to have probable cause to stop vehicle. State v Mather (1981) 28 Wn App 700, 626 P2d 44.

Respondents were not denied due process on ground that they did not have proper notice of proscribed conduct because a person reading one chapter would reasonably conclude that "eluding" had been decriminalized and would not be referred to another chapter where "eluding" was listed as a felony exception to RCWA 46.63.020 decriminalizing traffic offenses. State v Dalnard (1982) 31 Wn App 828, 644 P2d 1222.

RCWA 46.61.024, governing eluding of a pursuing police vehicle, continues to be an excluded felony exception to RCWA 46.63.020, decriminalizing traffic offenses. State v Dalnard (1982) 31 Wn App 828, 644 P2d 1222.

Constitutional prohibition against being twice put in jeopardy precluded multiple punishment of defendant who was convicted of both reckless driving and reckless endangerment following high speed police chase, because the state necessarily had to prove reckless driving to prove reckless endangerment. State v Potter (1982) 31 Wn App 883, 645 P2d 60.

Trial court, in prosecution for reckless driving and reckless endangerment involving incident in which police gave chase to defendant's car, properly permitted police officer to testify that 22 months earlier defendant had been in-

§ 2543. Convictions

8 Cal Jur 3d Automobiles § 145.

§ 2544. Disciplinary Actions

8 Cal Jur 3d Automobiles § 144.

§ 2545. Surrender of License

8 Cal Jur 3d Automobiles § 147.

§ 2547. Period for Filing Accusations

8 Cal Jur 3d Automobiles § 155.

§ 2548. Revocation or Suspension of Additional License

8 Cal Jur 3d Automobiles § 148.

§ 2549. Reinstatement of License

8 Cal Jur 3d Automobiles § 149.

ARTICLE 6

Hazardous Waste Inspections

[Added by Stats 1979 ch 1097 § 6.]

§ 2560. Annual inspection fee
§ 2561. [Repealed]

§ 2560. Annual inspection fee

The commissioner may determine the fee for the annual inspection of trucks, trailers, semitrailers, vacuum tanks, cargo tanks, and containers used to transport hazardous waste. The fee, established by regulation, shall be sufficient to cover the cost to the department of conducting hazardous waste inspections but shall not exceed fifty dollars ($50).

Added Stats 1979 ch 1097 § 6; Amended Stats 1980 ch 1112 § 10.

Amendments:

1980 Amendment: Added "semitrailers," in the first sentence.

Review of Selected 1979 California Legislation, 11 Pacific LJ 527.

§ 2561. [Added by Stats 1979 ch 1097 § 6 and repealed by Stats 1981 ch 912 § 4.5, effective September 28, 1981.]

See H & S C § 25168.5.

§ 2600. Members of Reciprocity Commission

The Reciprocity Commission is composed of the Lieutenant Governor, the Director of Motor Vehicles, the Director of Transportation, the State Controller, and the Commissioner of the California Highway Patrol.

Amended Stats 1974 ch 345 § 155.

Amendments:

1974 Amendment: Substituted "Transportation" for "Public Works".

§ 2800 *and following sections—general references:*

Cal Jur 3d Schools § 330.

§ 2800. Obedience to Traffic Officers

It is unlawful to willfully fail or refuse to comply with any lawful order, signal, or direction of any peace officer, as defined in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2 of the Penal Code, when that peace officer is in uniform and is performing duties under any of the provisions of this code, or to refuse to submit to any lawful inspection under this code.

Amended Stats 1981 ch 644 § 1.

Amendments:

1981 Amendment: Substituted "peace officer, as defined in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2 of the Penal Code, when that peace officer is in uniform and is performing duties under any of the provisions of this code," for "traffic officer".

Optional appearance before a magistrate by anyone arrested for specified offenses: § 40303.

Cal Jur 3d Automobiles § 195, Criminal Law §§ 3197, 3206.

A passenger in a vehicle stopped by officers who suspected the driver to be under the influence of alcohol was guilty of violation of Veh. Code, § 2800, where he failed to remain in the vehicle as requested by the police, prevented one of the officers from "administering the walk-the-line test" to the driver, and refused to move back to the vehicle so that the investigation of the driver could continue. Within the meaning of the language in Veh. Code, § 2800 that it is unlawful to wilfully fail or refuse to comply with any lawful order, signal, or direction of any traffic officer, an order the disobedience of which is illegal under the statute includes a lawful order, wilfully disregarded or disobeyed, that is relevant to and reasonably necessary in the performance by a traffic officer of the duties imposed on him under Veh. Code, § 625, respecting the enforcement of the rules of the road. People v Ritter (1981) 115 CA3d Supp 1, 170 Cal Rptr 901.

In a prosecution of defendant, on the basis of the same misconduct, for violation of Pen. Code, § 148, specifying the offense of wilfully resisting, delaying, or obstructing a public officer in the discharge of any duty of his office, and for violation of Veh. Code, § 2800, for disobedience of a lawful order of an officer issued in aid of his performance of duties involving enforcement of the rules of the road (Veh. Code, § 625), acquittal of the charge of violation of Pen. Code, § 148, did not require a finding of not guilty on the charge of violation of Veh. Code, § 2800, where defendant had refused an officer's request to stay in a car in which he was a passenger, stopped because the police suspected the driver was intoxicated. The request had been made to enable investigation of the driver without defendant's interference. Although violation of Veh. Code, § 2800, is a lesser offense than violation of Pen. Code, § 148, a Veh. Code, § 2800, offense is not a necessarily lesser included offense within the offense defined in Pen. Code, § 148, since it is possible to violate Pen. Code, § 148, without violating Veh. Code, § 2800. As to offenses for disobedience of an officer's order, many types of offenses can occur when an officer is discharging a duty having nothing to do with a traffic offense. People v Ritter (1981) 115 CA3d Supp 1, 170 Cal Rptr 901.

§ 2800.1. Flight from peace officer

Any person who, while operating a motor vehicle and with the intent to evade, willfully flees or otherwise attempts to elude a pursuing peace officer's motor vehicle, is guilty of a misdemeanor if all of the following conditions exist:

(a) The peace officer's motor vehicle is exhibiting at least one lighted red lamp visible from the front and the person either sees or reasonably should have seen the lamp.

(b) The peace officer's motor vehicle is sounding a siren as may be reasonably necessary.

(c) The peace officer's motor vehicle is distinctively marked.

(d) The peace officer's motor vehicle is operated by a peace officer, as defined in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2 of the Penal Code, and that peace officer is wearing a distinctive uniform.

Added Stats 1982 ch 947 § 2.

Former Section: Former § 2800.1, similar to the present section, was added by Stats 1977 ch 1104 § 1, amended by Stats 1978 ch 504 § 1, Stats 1981 ch 600 § 2, and repealed by Stats 1982 ch 947 § 1.

Flight causing bodily injury or death: § 2800.2.

Review of Selected 1977 California Legislation, 9 Pacific LJ 434.

Review of Selected 1978 California Legislation, 10 Pacific LJ 439.

In an action by a policeman against a motorist for injuries incurred while plaintiff was in pursuit of defendant for speeding, defendant's alleged violation of various statutory provisions did not preclude enforcement of the fireman's rule prohibiting recovery by a policeman for injuries sustained in the course of his duty. While Veh. Code, § 2800.1, makes it a misdemeanor willfully to disregard an officer's siren and red light and to attempt to flee or attempt to elude pursuit, and Pen. Code, § 148, proscribes willful resistance, delay or obstruction of a police officer, and Pen. Code, § 834a, forbids using force or a weapon to resist arrest, none of the statutory provisions were specifically designed to protect persons in plaintiff's class. Hubbard v Boelt (1980) 28 C3d 480, 169 Cal Rptr 706, 620 P2d 156.

In a prosecution of defendant for attempt to evade a pursuing peace officer (Veh. Code, § 2800.1), the trial court correctly instructed the jury that defendant's state of intoxication was relevant in determining whether he had the specific intent necessary to convict him of an attempt to evade a pursuing peace officer. People v Finney (1980) 110 CA3d 705, 168 Cal Rptr 80.

§ 2800.2. Flight from peace officer causing death or bodily injury

Whenever willful flight or attempt to elude a pursuing peace officer in violation of Section 2800.1 proximately causes death or bodily injury to any person, the person driving the vehicle, upon conviction, shall be punished by imprisonment in the state prison, by imprisonment in the county jail for not less than 30 days nor more than six months, or by a fine of not less than one hundred seventy dollars ($170) nor more than five hundred dollars ($500), or by both that fine and imprisonment.

Added Stats 1982 ch 947 § 3.

§ 2801. Obedience to Firemen

Cal Jur 3d Automobiles § 14, Criminal Law §§ 3197, 3206.

§ 2802. Load Inspection

(a) Any traffic officer having reason to believe that a vehicle is not safely loaded or that the height, width, length, or weight of a vehicle and load is unlawful may require the driver to stop and submit to an inspection, measurement, or weighing of the vehicle. The weighing may be done either by means of portable or stationary scales and the officer may require that the vehicle be driven to the nearest scale facility, in the event the scales are within five miles.

(b) Selected inspection facilities and platform scales operated by the Department of the California Highway Patrol may, at the discretion of the commissioner, be open for extended hours, up to and

HB

447

FISCAL NOTE

Revision Date:

REQUEST

Bill/Resolution No.: HB 447

Title: "An Act repealing peremptory disqualification of a judge."

Sponsor: Repr. Fritz

Requestor: House Judiciary

Date of Request: 2/3/84

FISCAL DETAIL

Agency Affected: Department of Law

Program Category Affected: Admin. of Justice

BRU, Program or Subprogram(s) Affected: Prosecution

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 84	FY 85	FY 86	FY 87	FY 88	FY 89
OPERATING						
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 SUPPLIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS						
800 MISCELLANEOUS						
TOTAL OPERATING	Unk.	Unk.	Unk.	Unk.	Unk.	Unk.
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND	Unk.	Unk.	Unk.	Unk.	Unk.	Unk.
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS:

FULL-TIME	Unk.	Unk.	Unk.	Unk.	Unk.	Unk.
PART-TIME						
TEMPORARY						

SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

N/A

ANALYSIS: Attach a separate page for analysis

Prepared By: Richard I. Pegues, Director Phone: 465-3672

Division: Administrative Services Division Date: 2-3-84

Approved by Commissioner: Norman C. Gorsuch Date: 2-3-84

Agency: Department of Law

Distribution (by Agency preparing fiscal note):

Legislative Finance
Legislative Sponsor
Requestor
Office of Management and Budget
Impacted Agency(ies)

12/1/83

Fiscal Note
Analysis
HB 447

February 3, 1984

Although not quantifiable at this time, this bill has the potential for causing a significant fiscal impact on the Department of Law, the Public Defender and the Court System. A problem will arise as the criminal defense bar, which now disqualifies some judges 30% to 40% of the time, and some even more, begins to seek disqualification for cause. This latter form of disqualification will be the only course left to the bar, to have an action heard before a judge they believe will be more favorable for their case, if the statutory right of peremptory disqualification, granted by AS 22.20.022 is repealed. As a result, a substantial motion practice will develop that could require a significant amount of prosecutor time. Additionally, enactment of this bill will also result in numerous appeals to the State Supreme Court questioning whether or not the repeal of AS 22.20.022 requires a two-thirds majority vote of the legislature because of the bill's effect of repealing Criminal Rule 25.

Without any prior experience to guide us, the department is hesitant to speculate on the actual cost that this bill might cause. The department does believe that this bill will have the effect of hampering its overall ability to prosecute criminal offenses, by diverting already diminished resources from more critical matters currently handled such as violent crimes, sexual assault, child abuse and DWI. Any cost estimate at this time would be speculative. However, if just 5% of our available district attorney time were lost to unnecessary motion practice, at a weighted cost of $120,000 per attorney, including support costs, the cost would be about $360,000. This is a very conservative figure and the actual cost may be substantially greater.

ALASKA STATE LEGISLATURE
HOUSE OF REPRESENTATIVES
RESEARCH AGENCY

Pouch Y, State Capitol
Juneau, Alaska 99811
(907) 465-3991

February 3, 1984

MEMORANDUM

TO: Representative Ramona Barnes

FROM: Heidi Borson Paine HBP
Legislative Analyst

RE: Peremption of Judges
Research Request 84-026

Jim Wood of your staff requested information on the peremption of judges in Judicial District 3. He specifically asked for a breakdown of total peremptions by judge according to criminal and civil cases. The requested information follows:

District 3 Peremptions by Judge
Calendar Year 1983

District Court Judges

Judge	Location	Criminal Case	Civil Case
Hornaday	Homer	234	1
Bosshard	Valdez	1	0
Anderson	Anchorage	9	2
Andrews	Anchorage	11	0
Finn	Anchorage	8	1
Fuld	Anchorage	12	1
Mason	Anchorage	4	1
Tucker	Anchorage	121	5
Subtotal--District Court		400	11

Superior Court Judges

Judge	Location	Criminal Case	Civil Case
Cranston	Kenai	0	20
Madsen	Kodiak	19	9
Cutler	Palmer	0	18
Buckalew	Anchorage	3	14
Carlson	Anchorage	22	133
Johnstone	Anchorage	0	79
Moody	Anchorage	46	13
Moore	Anchorage	0	3
Hanson	Anchorage	3	44
Ripley	Anchorage	34	3
Rowland	Anchorage	0	12
Serdahley	Anchorage	0	7
Shortell	Anchorage	0	32
Soutor	Anchorage	1	27
Subtotals--Superior Court		128	289
TOTAL--District & Superior Courts*		528	300

*These figures indicate the total peremptions reported to the Administrative Director's Office of the Alaska Court System. The totals also include 16 recusals, cases in which a judge disqualifies himself or herself because of interest or prejudice.

ALASKA STATE LEGISLATURE
HOUSE OF REPRESENTATIVES
RESEARCH AGENCY

Pouch Y, State Capitol
Juneau, Alaska 99811
(907) 465-3991

January 24, 1984

MEMORANDUM

TO: Representative Milo Fritz

FROM: Heidi Borson-Paine HBP
Legislative Analyst

RE: Peremption of Judges
Research Request 84-003

To respond to your request for information concerning the incidence and cost of the peremption of judges in Alaska for 1983, we contacted the administration of the Alaska Court System. However, because we found that no central records are kept on peremption rates or costs, we contacted the presiding judges and court administrators in each of Alaska's four judicial districts. Most area court administrators in the individual judicial districts were able to provide us with accurate estimates of the total peremptions for 1983; however, District 2 did not have any records of peremptions and therefore was only able to supply an educated guess.

Review of Peremption Provisions in Alaska

Currently, there are two means by which a party may perempt a judge without proving cause in district and superior courts. First, under Alaska Statute 22.20.022, if a party or a party's attorney files an affidavit alleging under oath that a fair and impartial trial cannot be obtained under the assigned judge, the presiding district court judge, without requiring proof, must assign the case to another judge in that district. If another judge in the appropriate court is not available, then the chief justice of the supreme court will assign a judge to the case. No more than one affidavit each may be filed by the prosecution or defense.

Second, under Alaska Rules of Court, Criminal Rule 25 and Civil Rule 42, both the prosecution and defense are entitled as a matter of right to one change of judge in actions pending in the district and superior courts. This provision applies in both civil and criminal cases. A person wishing to exercise his or her right is required to file a Notice of Change of Judge; however, the party is not required to specify the grounds for changing. A Notice of Change of Judge must be filed before the commencement of the trial and within five days after

notice that the case has been assigned to a specific judge (see attachment A for copies of the statute and specific Rules of Court). The intent of House Bill 447, as you described it, is to reduce the number of peremptions without cause by repealing AS 22.20.022. The impact this legislation would have on the incidence of peremptions is difficult to predict. However, according to attorney Don Bauermeister of the Alaska Court System, people could still perempt an assigned judge without proving cause by filing a Notice of Change of Judge under Rules 25 and 42 of the Alaska Rules of Court. Consequently, to eliminate all provisions for peremption without cause, it would be necessary to repeal AS 22.20.022, as well as rescind Rules 25 and 42 of the Alaska Rules of Court. Because Alaska Rules of Court are promulgated by the Alaska Supreme Court, rescinding the court rules would require a two-thirds vote of the members in both the Senate and the House, under the State Constitution, Article IV, Section 15 (see attachment B).

Number of Peremptions

As indicated earlier in this memorandum, Alaska is divided into four judicial districts. District 1 includes judges in Ketchikan, Juneau, Sitka, Wrangell and Petersburg. District 2 includes judges in Nome, Bethel, Barrow and Kotzebue. The superior and district court judges in District 3 are located in Anchorage, Kodiak, Palmer, Kenai, Homer and Valdez. In District 4, the superior and district courts are all located in Fairbanks; however, the Fairbanks judges also cover peremptions in Bethel.

In 1983, there were a total of 1,770 peremptions in Alaska district and superior courts. This total does not include recusals which accounted for an additional 188 changes in case assignments. Recusals refer to instances in which a judge disqualifies himself or herself from hearing a lawsuit because of interest or prejudice. In District 1, 398 peremptions occurred, 331 in District Court and 67 in Superior Court. In District 2, area court administrator Mike Hall estimated that judges were perempted approximately 44 times; however, he was not able to provide a breakdown of the total for superior and district courts. Superior and district judges in District 3 accounted for a total of 937 peremptions, 407 in district court and 530 in superior court. Finally, in District 4, judges were perempted 391 times, 250 in district court and 141 in superior court. This information is also presented in Table 1.

For purposes of comparing the number of cases perempted to the number of total cases, we collected the number of nontraffic case filings from each district. We did not include the traffic filings because they are comprised mainly of traffic tickets, which rarely involve

peremptions. The total filings for fiscal year 1983 in all four judicial districts is 59,854 cases. Therefore, peremptions were involved in approximately three percent of all cases in Alaska in 1983.*

TABLE 1
PEREMPTIONS, RECUSALS & NON-TRAFFIC FILINGS--1983

	District One	District Two	District Three	District Four	Totals
PEREMPTIONS (CY 83)					
District Court	331	N/A	407	250	988*
Superior Court	67	N/A	530	141	738*
Total	398	44	937	391	1,770
RECUSALS (CY 83)					
District Court	17	N/A	4	12	33*
Superior Court	47	N/A	12	71	130*
Total	64	25	16	83	188
NON-TRAFFIC FILINGS (FY 83)					
District Court	6,658	1,638	26,419	6,775	41,490
Superior Court	2,274	776	11,732	3,582	18,364
Total	8,932	2,414	38,151	10,357	59,854

*Subtotals do not include District 2 information.
N/A = not available.

Prepared by House Research Agency, January 1984.

Peremptions are not distributed evenly among districts or among judges within each district. For example, District 1 has five superior court judges and two district court judges; however, in 1983, Judge Williams, a district court judge in Juneau, accounted for 320 of the total 398 peremptions in District 1. Furthermore, six judges accounted for 61 percent of all the peremptions statewide, or a total of 1,086 of the 1,770 peremptions in 1983. Those judges, their locations and number of peremptions are as follows:

---

*Total case filings were recorded on a fiscal year basis, whereas the number and costs of peremptions and recusals were reported on a calendar-year basis. However, we believe the information from the calendar-year roughly parallels that of the fiscal year.

District 1:	Judge Williams, Juneau	320
District 3:	Judge Hornaday, Homer	235
	Judge Carlson, Anchorage	155
	Judge Tucker, Anchorage	126
		516
District 4:	Judge Cline, Fairbanks	150
	Judge Connelly, Fairbanks	100

According to several of the judges we contacted, peremption rates may vary greatly from year to year. For example, Judge Cook of the superior court in Bethel contended that the response of an individual judge to particular kinds of cases has a lot to do with the incidence of peremptions. Consequently, it is not possible to say that the number of peremptions in 1983 will be matched again in 1984. In addition, because of the lack of available data on peremption rates, we are not able to determine if the rate for 1983 was representative of the rates in previous years.

Cost of Peremptions

Information on the cost of peremptions in 1983 was extremely difficult to find. First, little information is collected on the cost of travel and per diem for peremptions. Second, many of the costs of peremption, such as lost efficiency, calendaring and other administrative problems are difficult to quantify. In an attempt to provide you with an estimate of the costs of peremptions in 1983, we contacted the area court administrators in each district, and Mr. Robert Fisher, Fiscal Officer for the Alaska Court System.

Chris Carlisle, area court administrator for District 1, had fairly in-depth records on costs of travel and per diem for Judge Gucker in 1983. Judge Gucker is the District Court Judge in Ketchikan; however, he routinely sits in the Juneau District Court one week every month because of the high number of peremptions incurred by Judge Williams of Juneau. As indicated earlier, Judge Williams was perempted 320 times in 1983. In 1983, the costs of per diem for the days Judge Gucker presided in the Juneau District Court amounted to $6,379. This amount also included the cost of transportation while in Juneau. In addition, the court spent $2,417 on his travel to and from Juneau. In 1983, the total costs of travel and per diem for Judge Gucker to cover Judge Williams' peremptions amounted to $8,796.

Al Szal, area court administrator for District 3, estimated the costs of Judge Hornaday's peremptions in the Homer District Court as approximately $10,000 per year. This figure includes travel and per diem for both the judge who travels from Anchorage to replace Judge Hornaday, and in some instances for Judge Hornaday to travel to Anchorage

to cover his replacement's cases. Judge Horneday's peremptions usually result in a judge traveling from Anchorage one week out of each month of the year. Mr. Szal estimated that hearing a case in Homer usually involves a three to four-day stay for the substitute judge. Mr. Szal cautioned that the actual costs of peremptions for Judge Hornaday could be more or less than $10,000 depending on the distances traveled by the replacement judges as well as on their length of stay.

Peremptions are usually more costly in rural locations such as Bethel. Mac Gibson, area court administrator for District 4 which covers peremptions in Bethel, did not have a record of money spent on perempted cases in Bethel. However, he was able to estimate the costs of covering the 20 cases perempted in Bethel in 1983. According to Mr. Gibson, a round trip ticket from Fairbanks to Bethel costs $436. However, because of the flight schedule, a judge traveling to Bethel must usually overnight in Anchorage, and receives a per diem of $85 to cover that expense. While in Bethel, the judge pays $100 per night for a hotel and receives $40 a day for meals. The average length of stay in Bethel to hear a case is three days. The judge is then able to fly directly back to Fairbanks on the evening of the third day.

Given those figures, Mr. Gibson calculated that it costs approximately $841 per trip for a Fairbanks judge to preside over cases perempted in Bethel. In some instances this figure is doubled because the Fairbanks judge is required to bring an in-court clerk along. However, to calculate the total costs of covering perempted cases in Bethel for 1983, Mr. Gibson mulitiplied the cost per trip for an individual judge times the 20 cases perempted in 1983 and arrived at $16,820.

The estimated costs of travel and per diem for covering the peremptions in Homer, Bethel, and in Juneau's district court for three judges amounted to approximately $35,616. It should be noted that Judge Williams and Judge Hornaday have the two highest number of peremptions for 1983, and that the costs of peremptions in Bethel are usually the highest in the state because of the distance and cost of living there.

After obtaining the above information from individual districts, we contacted Robert Fisher, Fiscal Officer for the Alaska Court System. Mr. Fischer estimated that $25,000 was spent per year for peremptions statewide. He explained that the accounting office of the Alaska Court System arrived at that estimate after conducting a study of all travel and per diem claims filed by superior and district court judges between July 1, 1982 and December 31, 1982. The claims which involved peremptions were totalled, and then that amount was doubled to come up with a yearly cost of $25,000 for FY 83.

Mr. Fisher believes that the estimate is accurate even if it appears low. He notes that the court system avoids greater costs by calendaring

several perempted cases together in one area, so that a judge traveling to that area may hear several cases per trip. In addition, he maintained that many of the total peremptions occur in Anchorage and Fairbanks, which allows for perempted judges to swap cases at no cost to the State because of the many judges in these locations.

However, according to Judge Tunley, Presiding Judge for District 2, swapping cases is not always feasible because of the 120-day limit within which some cases must be heard. In addition, he points out that individual cases progress at different rates, and that some perempted cases involve several trips for pre-trial, sentencing and other hearings.

Mr. Fisher agreed that the $25,000 estimate does not reflect all of the costs involved in peremptions. He pointed out that down time for judges, such as the time spent on airplanes and in transit to and from airports, also costs the State money. For example, Mr. Fisher estimated that the State pays a superior court judge approximately $86.00 per hour. If that judge spends two hours on a round trip flight from Anchorage to Homer and back, plus an additional two hours of the work day preparing to leave, traveling to the airport, and waiting for a plane, the State pays the judge for four hours of foregone court work; this amounts to a total of $344.00 per trip. Judge Hornaday was perempted 235 times in 1983; however, it is not evident how many trips resulted from those peremptions. But if, for example, those 235 peremptions resulted in 20 trips, down time could have cost the State approximately $6,880 for one judge's peremptions.

The peremption of judges also results in other costs which are not easily quantified. For example, Judge Schultz, Presiding Judge for District 1, notes that the estimated total cost of peremptions in District 1 for 1983 does not reflect the administrative costs of (1) rescheduling Judge Gucker's cases in his own court when he is hearing cases perempted in Juneau, (2) the costs incurred when the magistrate in Ketchikan leaves his job to cover some of Judge Gucker's caseload while he's gone, or (3) the cost of lost efficiency. Judge Schultz contends that the normal disposition rate for a case in District 1, or the time it takes to reach a final settlement is 90 days. However, he asserted that the disposition rate in Juneau has increased to 140 days because of the high number of peremptions in the district court there, and the time each peremption involves.

We regret that we are unable to supply you with a single estimate of the costs of peremptions for 1983. The data is not available, and we are not in a position to estimate those costs with the information we have to date. If you would like us to attempt to gather additional information about the costs of peremptions, we will do so.

We hope the information we collected is useful to you. Please contact us if you have any further questions regarding this topic or any other topic of interest to you.

HBP

Attachments

Attachment A

Rule 25. Judge—Disqualification or Disability.

(a) **Before Trial.** Where a judge of the superior court is disqualified or for any other reason is unable to sit in the trial or hearing of any pending matter, the presiding judge or the chief justice of the supreme court shall designate another judge of the judicial district in which the matter is pending, or a judge temporarily assigned thereto, to hear the matter.

(b) **During Trial.** If a judge holding superior court be prevented during a trial from continuing to preside therein, the presiding judge or the chief justice of the supreme court shall designate another judge of the superior court to sit in such court to complete such trial, as if such other judge had been present and presiding from the commencement of such trial, provided, however, that from the beginning of the taking of testimony at such trial a stenographic or electronic record of such trial shall have been made so that the judge so continuing may familiarize himself with the previous proceedings at such trial.

(c) **After Verdict.** If by reason of absence from the district, death, sickness or other disability, the judge before whom the action has been tried is unable to perform the duties to be performed by the court after a verdict or finding of guilt, any other judge regularly sitting in or assigned to the court may perform those duties; but if such other judge is satisfied that he cannot perform those duties because he did not preside at the trial or for any other reason, he may in his discretion grant a new trial.

(d) Change of Judge as a Matter of Right. In all courts of the state, a judge may be peremptorily challanged as follows:

(1) *Entitlement.* In any criminal case in superior or district court, the prosecution and the defense shall each be entitled as a matter of right to one change of judge. When multiple defendants are unable to agree upon the judge to hear the case, the trial judge may, in the interest of justice, give them more than one change as a matter of right; the prosecutor shall be entitled to the same number of changes as all the defendants combined.

(2) *Procedure.* At the time required for filing the omnibus hearing form, or within five days after a judge is assigned the case for the first time, a party may exercise his right to change of judge by noting the request on the omnibus hearing form or by filing a "Notice of Change of Judge" signed by counsel, if any, stating the name of the judge to be changed. A judge may honor a timely informal request for change of judge, entering upon the record the date of the request and the name of the party requesting it.

(3) *Re-Assignment.* When a request for change of judge is timely filed under this rule, the judge shall proceed no further in the action, except to make such temporary orders as may be absolutely necessary to prevent immediate and irreparable injury before the action can be transferred to another judge. However, if the named judge is the presiding judge, he shall continue to perform the functions of the presiding judge.

(4) *Timeliness.* Failure to file a timely request precludes a change of judge under this rule as a matter of right.

(5) *Waiver.* A party loses his rights under this rule to change a judge when he agrees to the assignment of the case to a particular judge or participates before him in an omnibus hearing, any subsequent pretrial hearing, a hearing under Rule 11, or the commencement of trial. No provision of this rule shall bar a stipulation as to the judge before whom a plea of guilty or of nolo contendere shall be taken under Rule 11. (Amended by Supreme Court Order 185 effective July 1, 1974; and by Supreme Court Order 292 effective February 21, 1978)

(b) CROSS REFERENCE: Crim. Form 34

1. Simplification of the issues.

2. Possibility of obtaining admissions of fact and documents which will avoid unnecessary proof.

3. The number of expert witnesses or character witnesses or other witnesses who are to give testimony of a cumulative nature.

4. Such other matters as may aid in the disposition of the proceeding.

DATED: _____

_____
Superior Court Judge

34. Order Transferring Case to Another Judge [Cr. R. 25(b)]

The Honorable _____, Judge of the Superior Court for the _____ Judicial District, having been prevented from presiding further in the trial of this action, it is hereby

ORDERED that pursuant to Criminal Rule 25(b), the Honorable _____, Judge of the Superior Court for the _____ Judicial District be designated to complete the trial in the same manner as if he had been present and presiding from the commencement of such trial, and it is further

ORDERED that a stenographic or electronic record of such trial from the beginning of the taking of testimony at such trial shall be made available by the clerk of the court to the Honorable _____ so that he may familiarize himself with the previous proceedings at such trial.

DATED: _____

_____
[Chief Justice of the Supreme Court
or
Presiding Judge]

Rule 42. Consolidation—Separate Trials—Change of Judge.

(a) **Consolidation.** When actions involving a common question of law or fact are pending before the court, it may order a joint hearing or trial of any or all the matters in issue in the actions; it may order all the actions consolidated; and it may make such orders concerning proceedings therein as may tend to avoid unnecessary costs or delay.

(b) **Separate Trials.** The court, in furtherance of convenience or to avoid prejudice, or when separate trials will be conducive to expedition and economy, may order a separate trial of any claim, cross-claim, counterclaim, or third-party claim, or of any separate issue or of any number of claims, cross-claims, counterclaims, third-party claims, or issues, always preserving inviolate the right of trial by jury as declared by the Alaska Constitution and Statutes of Alaska.

(c) **Change of Judge as a Matter of Right.** In all courts of the state, a judge or master may be peremptorily challenged as follows:

(1) *Nature of Proceedings.* In an action pending in the Superior or District Courts, each side is entitled as a matter of right to a change of one judge and of one master. Two or more parties aligned on the same side of an action, whether or not consolidated, shall be treated as one side for purposes of the right to a change of judge, but the presiding judge may allow an additional change of judge to a party whose interests in the action are hostile or adverse to the interests of another party on the same side. A party wishing to exercise his right to change of judge shall file a pleading entitled "Notice of Change of Judge." The notice may be signed by an attorney, it shall state the name of the judge to be changed, and it shall neither specify grounds nor be accompanied by an affidavit. A judge may honor an informal request for change of judge. When he does so, he shall enter upon the record the date of the request and the name of the party or parties requesting change of judge. Such action shall constitute an exercise of the requesting party's right to change of judge.

(2) *Filing and Service.* The notice of change of judge shall

be filed and copies served on the parties, the presiding judge, and the area court administrator, if any, in accordance with Rule 5, Alaska Rules of Civil Procedure.

(3) *Timeliness.* Failure to file a timely notice precludes change of judge as a matter of right. Notice of change of judge is timely if filed before commencement of trial and within five days after notice that the case has been assigned to a specific judge. In a court location having a single resident judge of the level of court in which the case is filed, the case shall be assigned to that judge when it is at issue upon a question of fact and the clerk shall immediately notify the parties in writing of such assignment. Where a party enters an action after the case has been assigned to a specific judge, a notice of change of judge shall also be timely if filed by the party before the commencement of trial and within five days after he appears or files a pleading in the action.

(4) *Waiver.* A party waives his right to change a particular judge as a matter of right when he knowingly participates before that judge in:

(i) Any judicial proceeding which concerns the merits of the action and involves the consideration of evidence or of affidavits; or

(ii) A pretrial conference; or

(iii) The commencement of trial; or

(iv) If the parties agree upon a judge to whom the case is to be assigned. Such waiver is to apply only to the agreed-upon judge.

(5) *Assignment of Action.* After a notice of change of judge is timely filed, the presiding judge shall immediately assign the matter to a new judge within that judicial district. Should that judge be challenged, the presiding judge shall continue to assign the case to new judges within the judicial district until all parties have exercised or waived their right to change of judge or until all superior court judges, or all district court judges, within the judicial district have been challenged peremptorily or for cause. Should all such judges in the district be disqualified, the presiding judge shall immediately notify the administrative director in writing and request that he obtain from the Chief Justice an order assigning the case to

another judge.

If a judge to whom an action has been assigned later becomes unavailable because of death, illness, or other physical or legal incapacity, the parties shall be restored to their several positions and rights under this rule as they existed immediately before the assignment of the action to such judge. (Amended by Supreme Court Order 186 effective July 1, 1974; by Supreme Court Order 258 effective November 15, 1976; by Supreme Court Order 262 effective December 31, 1976; and by Supreme Court Order 465 effective June 1, 1981)

(a) CROSS REFERENCE: Civ. Form 78

torial role. Keel v. State, Sup. Ct. Op. No. 1290 (File No. 2883), 552 P.2d 155 (1976).

C. Paragraph (a)(6).

Maintenance of appearance of impartiality. — Paragraph (a)(6) of this section does not provide for disqualification where the sole concern is maintenance of the appearance of impartiality. However, in light of the importance of promoting public confidence in the integrity and impartiality of the judiciary, it would be well to permit disqualification under such circumstances. Amidon v. State, Sup. Ct. Op. No. 1999 (File No. 3664), 604 P.2d 575 (1979).

Review of decisions under paragraph (a)(6). — The supreme court rejected the argument that the disqualification standards under paragraph (a)(6) are wholly subjective and therefore not amenable to appellate review. Clearly, review is contemplated on a challenge for cause grounded in bias. The supreme court's duty to assure that judicial proceedings comply with due process mandates appellate scrutiny of allegations of bias. Coffey v. State, Sup. Ct. Op. No. 1732 (File No. 3602), 585 P.2d 514 (1978), modified on rehearing on other grounds, 596 P.2d 10 (1979).

Since the initial determination under paragraph (a)(6) of this section has been placed in the discretion of the trial judge, that judge's decision should be given substantial weight. When the judge does not recuse himself or herself, the decision should be reviewable on appeal only if it amounted to an abuse of discretion. Amidon v. State, Sup. Ct. Op. No. 1999 (File No. 3664), 604 P.2d 575 (1979).

Collateral references. — Disqualification of judge by relative's ownership of stock in corporation which is a party to action. 8 ALR 295; 110 ALR 472.

Right of party in course of litigation to challenge title or authority of judge. 114 ALR 1207.

Disqualification of judge in pending case as subject to revocation or removal. 162 ALR 641.

Relationship of judge to one who is party in an official or representative capacity as disqualification. 10 ALR2d 1307.

Mandamus as remedy to compel assertedly disqualified judge to recuse self or to certify his disqualification. 45 ALR2d 937.

Relationship to attorney as disqualifying judge. 50 ALR2d 143.

Disqualification of judge in proceedings to punish contempt against or involving himself or court of which he is a member. 64 ALR2d 600.

Prior representation or activity as attorney or counsel as disqualifying judge. 72 ALR2d 443.

Time for asserting disqualification. 73 ALR2d 1238.

Intervenor's right to disqualify judge. 92 ALR2d 1110.

Disqualification of judge for bias against counsel for litigant. 23 ALR3d 1416.

Disqualification of original trial judge to sit on retrial after reversal or mistrial. 60 ALR3d 176.

Disqualification of judge by state, in criminal case, for bias or prejudice. 68 ALR3d 509.

Membership in fraternal or social club or order affected by a case as ground for disqualification of judge. 75 ALR3d 1021.

Sec. 22.20.022. Peremptory disqualification of a superior court judge. (a) If a party or a party's attorney in a district court action or a superior court action, civil or criminal, files an affidavit alleging under oath the belief that a fair and impartial trial cannot be obtained, the presiding district court or superior court judge, respectively, shall at once, and without requiring proof, assign the action to another judge of the appropriate court in that district, or if there is none, the chief justice of the supreme court shall assign a judge for the hearing or trial of the action. The affidavit shall contain a statement that it is made in good faith and not for the purpose of delay.

(b) No judge or court may punish a person for contempt for making, filing or presenting the affidavit provided for in this section, or a motion founded on the affidavit.

(c) The affidavit shall be filed within five days after the case is at issue upon a question of fact, or within five days after the issue is assigned to a judge, whichever event occurs later, unless good cause is shown for the failure to file it within that time.

(d) A party or a party's attorney may not file more than one affidavit under this section in an action and no more than two affidavits in an action. (§ 2 ch 48 SLA 1967; am § 6 ch 143 SLA 1968; am § 1 ch 116 SLA 1971)

Cross references. — For the court rules on change of judge as a matter of right, see Civ. R. 42 (c) and Cr. R. 25 (d). Civil R. 42 (c) provides that a notice of change of judge . . . "shall neither specify grounds nor be accompanied by an affidavit."

Editor's notes. — This section was redrafted by the revisor of statutes to remove personal pronouns in conformity with AS 01.05.031(c) and § 4, Chapter 58, SLA 1982.

Legislative history reports. — For report on ch. 48, SLA 1967 (SB 66), see 1967 House Journal, p. 311.

NOTES TO DECISIONS

I. General Consideration.
II. Application of Right of Peremptory Challenge.
III. Procedure.

I. GENERAL CONSIDERATION.

Constitutionality. — A litigant is entitled to a fair hearing before a tribunal which is disinterested, impartial and unbiased, and a statute which affords that right by providing some means for showing bias or lack of impartiality does not offend the principle of separation of powers of government. Channel Flying, Inc. v. Bernhardt, Sup. Ct. Op. No. 530 (File No. 1082), 451 P.2d 570 (1969).

Where no affidavit is necessary, a judge may be disqualified for good cause, bad cause, or no cause at all. But where an affidavit is required, the assertion of bias or prejudice under oath is at least some showing or an imputation of the fact that the judge is disqualified, and this is sufficient to save the statute from successful attack on constitutional grounds. Channel Flying, Inc. v. Bernhardt, Sup. Ct. Op. No. 530 (File No. 1082), 451 P.2d 570 (1969).

This section is not constitutionally invalid as an attempt to usurp the rule-making powers of this court insofar as it provides for a peremptory disqualification of a judge. Channel Flying, Inc. v. Bernhardt, Sup. Ct. Op. No. 530 (File No. 1082), 451 P.2d 570 (1969); Gieffels v. State, Sup. Ct. Op. No. 1295 (File No. 2787), 552 P.2d 661 (1976); Wamser v. State, Sup. Ct. Op. No. 1768 (File No. 4166), 587 P.2d 232 (1978).

This section does not merely regulate procedure. With or without it the particular action in court takes the same course. The statute rather creates and defines a right — the right to have a fair trial before an unbiased and impartial judge. This is something more than merely prescribing a method of enforcing a right. The main subject matter of the statute is substantive in nature and was within the province of the legislature to deal with. Channel Flying, Inc. v. Bernhardt, Sup. Ct. Op. No. 530 (File No. 1082), 451 P.2d 570 (1969).

Legislative history. — See Peterson v. State, Sup. Ct. Op. No. 1411 (File No. 2642), 562 P.2d 1350 (1977).

This section reflects a fundamental tenet of the Alaska system of justice that every litigant shall have his rights adjudicated by a judge who is disinterested, impartial, and unbiased. In re G.K., Sup. Ct. Op. No. 796 (File Nos. 1627, 1654, 1674), 497 P.2d 914 (1972).

This section codifies a fundamental tenet of the Alaska system of justice, the right to a hearing by a fair and impartial judge. Kvasnikoff v. State, Sup. Ct. Op. No. 1153 (File No. 2363), 535 P.2d 464 (1975).

This section is designed to further the substantive right of a litigant to a fair trial before an unbiased judge. Riley v. State, Sup. Ct. Op. No. 2038 (File No. 4672), 608 P.2d 27 (1980).

Constitution of the State of Alaska

Attachment B

officers of the State.

(The amendment to this section was approved by the voters of the state August 27, 1968 and became effective October 11, 1968. The words "and the commission on judicial qualifications" were incorporated in this section.)

Restrictions

SECTION 14. Supreme court justices and superior court judges while holding office may not practice law, hold office in a political party, or hold any other office or position of profit under the United States, and the State, or its political subdivisions. Any supreme court justice or superior court judge filing for another elective public office forfeits his judicial position.

Rule-making Power

SECTION 15. The supreme court shall make and promulgate rules governing the administration of all courts. It shall make and promulgate rules governing practice and procedure in civil and criminal cases in all courts. These rules may be changed by the legislature by two-thirds vote of the members elected to each house.

Court Administration

SECTION 16. The chief justice of the supreme court shall be the administrative head of all courts. He may assign judges from one court or division thereof to another for temporary service. The chief justice shall, with the approval of the supreme court, appoint an administrative director to serve at the pleasure of the supreme court and to supervise the administrative operations of the judicial system.

(The amendment to this section was approved by the voters of the state August 25, 1970 and became effective October 10, 1970. The amendment substituted "the pleasure of the supreme court" for "his pleasure" in the last sentence.)

ARTICLE V

SUFFRAGE AND ELECTIONS

Qualified Voters

SECTION 1. Every citizen of the United States who is at least eighteen years of age, who meets registration residency requirements which may be

Christian Ministers Association of Kachemak Bay
P.O. Box 2018
Homer, Alaska 99603

December 9, 1982

Judge Mark C. Rowland
303 K Street, Courtroom D
Anchorage, AK 99501

Dear Judge Rowland,

Your office and the judicial system are held in high regard by us and our children. We value justice as one of the key ingredients in our democratic way of life. We regularly instruct our children to respect the law and to deal in a just way with their companions and fellow citizens.

In this context we cannot understand why you should order Homer District Court Judge James Hornaday transfered to Anchorage against his will and against the overwhelming wishes of our community. As we understand, there is no precedence for this.

Therefore, we ask — for justice sake — that Judge Hornaday be retained as our District Court Judge. Secondly, you should know that we wholeheartedly endorse the policies of Judge Hornaday in sentencing DWI offenders. Finally, we request that the whole peremption policy be reviewed in light of these circumstances.

A judge serves his community in an exceptional manner. His policies are supported by the people he serves. He is an outstanding example for our children. Yet, he is transfered against his will. That seems a strange reward — even stranger justice.

Speaking for the Christian Ministers Association, I am

Sincerely yours,

J Schmidt

The Rev. John D. Schmidt, President
235-7600

cc: Chief Justice Edmond Burke

December 6, 1982

Homer Chamber of Commerce

Judge Mark C. Rowland
303 K Street
Courtroom D
Anchorage, AK 99501

Dear Judge Rowland:

The community and surrounding areas of Homer is greatly dismayed to learn of your decision to transfer Judge James C. Hornaday from Homer to Anchorage. We strongly urge your reconsideration in this matter.

Judge Hornaday has been an excellent judicial representative for Homer for many years. His home and family are here. We do not want to lose Judge Hornaday to this area.

This community has steadfastly supported Judge Hornaday's courageous stand against the crime of drunken driving and we wholeheartedly support his sentencing procedures.

Please find attached petitions of support in favor of Hornaday being retained as District Judge in this area.

Sincerely,

HOMER CHAMBER OF COMMERCE

Jim Daily,
President

JD:lag
Enclosures

cc: Governor Bill Sheffield
Judge Edmond Burke
Homer City Council
Kenai Peninsula Borough Assembly
Rep. Milo Fritz
Hugh Malone
Sen. Paul Fischer
Don Gilman

Post Office Box 541 • Homer, Alaska 99603

COMMUNITY MENTAL HEALTH CENTER

Box 2274
Homer, Alaska 99603-2274
(907) 235- 7701



RESOLUTION

SOUTH PENINSULA MENTAL HEALTH ASSOCIATION, INC.

December 11, 1982

Whereas, Judge James Hornaday has proven to be an effective and competent District Court Judge serving the Homer Court, and

Whereas, Judge Hornaday was overwhelming endorsed by the residents of his jurisdiction during the recent election, and

Whereas, the right of the State Judicial system to move a Judge without public hearing or other procedural considerations is currently being questioned,

Be it hereby resolved that the South Peninsula Mental Health Association requests the retention of Judge Hornaday in the Homer District Court, and

Be it further resolved that the judicial pre-emption statutes in Alaska should be thoroughly reviewed and that the procedures for moving a Judge from one jurisdiction to another should be standardized through promulgation of appropriate regulations.

Resolution passed at the Board of Directors meeting on December 11, 1982.

Joe L Aprill

Reverend Joe Aprill, Chairperson

C. R. BALDWIN
ATTORNEY
P. O. BOX 4210
KENAI, ALASKA 99611
TELEPHONE (907) 283-7167

December 23, 1982

Milo H. Fritz
Box 158
Anchor Point, Alaska 99556

Dear Milo:

This letter is prompted by the article concerning your position on certain legal reforms you have proposed which appears in the December 20 issue of The Clarion.

You were quoted as indicating that you expected the legal profession to oppose your bill removing the right of peremptory challenges. I know of very few attorneys who have ever exercised their right to file a peremptory challenge against a judge. I, myself, have never filed one and I agree that no such right should exist. I have not made a study of other jurisdictions but would be very surprised if the right exists in very many states. Presumably, the law was originally passed by well meaning individuals who enjoy tinkering with the system. I wish you well in pushing the legislation and offer you my support.

I was surprised that you were quoted as indicating your interest in enacting legislation which would impose a limit on attorney's fees in probate matters. Although I do not do any probate work myself at the present time, it has been my experience in the past that after the passage of the Uniform Probate Act and the institution of simplified probate procedures, many attorneys are now charging fees which are lower than they were in the past. In the case of a large estate I would suggest that a fee based upon the percentage of that estate would be unconscionable. From the attorney standpoint, it generally does not cost any more to probate a large estate than to probate a small one. Prior to the passage of the Uniform Probate Act, that was not the case.

Philosophically, I am opposed, as I am sure you are,

to the State interfering in contract relationships between professionals and their clients. I would suggest that a legislature which would concern itself with fees charged by an attorney to his client would also not hesitate in interfering with the fees charged by a physician to his patient. As a practical matter, a client who is overcharged by an attorney presently has recourse to the fee arbitration panel which operates under the auspices of the Alaska Bar Association. In light of the foregoing, I would request that you rethink your position on supporting a limit on attorneys fees.

Thank you for your attention to my comments. I wish you well in Juneau this year.

Very truly yours,

Rick

C. R. BALDWIN

CRB/hs

CITY OF HOMER
P. O. BOX 335
HOMER, ALASKA 99603-0335



Box 335
Homer, Alaska 99603

CITY OF HOMER

REPLY TO:

- ☐ City Hall
  Ph. (907) 235-8121
- ☐ Port of Homer
  Ph. (907) 235-8597
- ☐ Harbor Master
  Ph. (907) 235-8959
- ☐ Public Works Dept.
  Ph. (907) 235-8120
- ☐ City Engineer
  Ph. (907) 235-6368

December 6, 1982

The Honorable Mark Rowland
Presiding Judge of the Superior Court
303 "K" Street
Anchorage, AK 99501

Dear Judge Rowland:

We, as a community, strongly oppose the transfer of Judge James Hornaday. Judge Hornaday's stance on drunk driving is looked upon as a favorable public service in the community. Perhaps the laws of pre-emption should be closely scrutinized and amended out of necessity in administering a trial court system.

Jim Hornaday is an active participant in community affairs, an impeccable family man, and contributes strong support to this rural community. The type of program he advocates serves the individual rights of our citizens to travel the streets of Homer with less probability of being harmed by drunk drivers.

As Mayor of Homer, I petition you to cancel the transfer order removing Judge Hornaday from this community as District Court Judge.

Sincerely,

Erle Cooper
Mayor

EC:lcr
CC: Governor Bill Sheffield
Judge Edmond Burke
District 5, Legislative Delegation

CITY OF HOMER
HOMER, ALASKA

RESOLUTION 82-20(S)

A RESOLUTION SUPPORTING A STIFF SENTENCING POLICY FOR DRIVING WHILE INTOXICATED (DWI).

WHEREAS, the absence of sidewalks in Homer requires pedestrians to walk along the traveled ways, subjecting themselves to potential vehicle associated accidents; and,

WHEREAS, studies which have been conducted show that the higher the blood alcohol level, the greater the likelihood of an accident; and,

WHEREAS, there has been an increase in D.W.I. cases of some seventy-seven percent (77%) between 1980 and 1981 in the Homer District Court; and,

WHEREAS, the City Council of the City of Homer wishes to have life, liberty and property protected from potential injury by person(s) who drive while under the influence of alcohol;

NOW THEREFORE, BE IT RESOLVED that the Common Council of the City of Homer, Alaska, supports a stiff sentencing policy for Driving While Intoxicated (DWI).

BE IT FURTHER RESOLVED that copies of this resolution be directed to the State legislators of Alaska.

DATED in Homer, Alaska this 14th day of June, 1982.

CITY OF HOMER

Sam Matthews

Sam Matthews, Mayor Pro tem

ATTEST:

Kathleen F. Herold

Kathleen F. Herold, City Clerk

TESTIMONY OF JUDGE JAMES D. HORNADAY, HOMER
February 2, 1983

Mr. Chairman and ladies and gentlemen of the Committee, thank you for holding this hearing and inviting me to address the Committee. I hope I am not the monster judge that everyone has been talking about. My name is James D. Hornaday and from a perspective of nearly 20 years in Alaska I am speaking to you today as a judge. The judicial cannons permit and even require that judges speak out for the improvement of the administration of justice. And with all of the comments by many of my lawyer friends I feel a little like David when he went up against Goliath. The men and women of good will can and do differ in their opinions, and it does remind a little of the old Alaska adage that if the lawyers are against something it must be worthwhile. I wish it were someone else who was on the line rather than me, frankly I would rather be playing basketball or working on a legal history project. But the question of the peremptory challenge is involved with the independence of the judiciary and the decreasing respect for the judiciary. First of all, the peremptory challenge is not a fundamental constitutional right; it does not even exist anywhere in the Federal system, and there are Federal judges in every state and territory. Apparently it does not even exist in the vast majority, about two-thirds of the states. Alaska is in the extreme minority. It did not exist in Alaska until a few years ago when some lawyers pushed it through the Legislature. The Federal system and the majority of states get along just fine without it. Now as one example, drunk driving cases are the most serious problem facing the Alaska Court System. Over half of all the jury trials in the entire Court System are drunk driving cases. Drinking was involved in over 80% of the traffic fatalities; over 200 thousand are killed or injured annually on our nation's highways. Let's make clear what the Legislature has already done; the Legislature has passed legislation providing for up to one year in jail and $5,000 fine, revocation of licenses and community work. Now the statutes specifically states that for the first offense a defendant is to receive not less than 72 consecutive hours. It is too serious a problem to leave in the hands of the attorneys and that is the none effect of the peremptory challenge without cause. Judges are concerned about the peremptory challenge; it is affecting sentences. The Chief Justice has stated publicly that the peremptory challenge moderates sentences and that a judge has to walk a fine line and if they get too far over they will be removed by the peremption. I was told by the presiding judge that I had to take peremptions into consideration when I sentence. It is the most frequent topic of conversation at the Annual Judicial Conference. The leading authority on court delay called the Alaska peremptory challenge an absolute abomination, those were his words. Representatives of the National Center of State Courts were amazed at the existence of the removal without cause. I have heard judges tell the Chief Justice they are concerned about the peremption. It is a problem state-wide, not just in Homer. You have heard the lawyer in Bethel and the problems there. You've heard the judges in Fairbanks. It exists in Kodiak, Ketchikan, Juneau and all over the state, even in multi-judge areas. Now we announced a pattern of sentencing in drunk driving cases in Homer about a year ago which was effective, but sentences were clearly within the sentences permitted by the Legislature. Fifteen days is less than 5% of the maximum penalty. Although the announced pattern is no longer in effect and was rescinded when the higher court ruled that it could not be applied. There are sentencing patterns in Alaska, attorneys keep records of the sentences of judges. So there are patterns but known only to the judges and the lawyers. The public, including the potential defenders, do not know the patterns. It is time to open up the System and bring it out from behind the closed doors of the

legal profession. Now I was a lawyer for 10 years and you are never going to satisfy the lawyers on sentencing. About 6 years ago we initiated the first work program, alternate work program, for drunk drivers in Alaska. Some lawyers supported, but other complained that work was a cruel and unusual punishment. Now the program has been reinstituted pursuant to the community work which the Legislature has made a sentencing tool. Now the lawyers are complaining that we are giving too much community work. Also the argument that the System would be flooded with time consuming challenges for cause is questionable, as several attorneys have indicated that they would not use challenges for cause. Further the presiding judge denied a challenge because against me on hearing a DWI case after the announced policy was rescinded. The hearing took all of 10 minutes. The Court System and the people of Alaska should not be held held hostage by attorneys threating to plug the System with challenges for cause. Further judges will disqualify themselves if for some reason they should not hear a case. There is already a procedure for this approach that is in effect. However, again note that a judge has to give a reason why they are disqualifying themselves. Related to the peremptory challenge is another deep concern which I have as a 20 year Alaskan and as a lawyer and a judge and a citizen, and that is the growing lack of respect for the Alaska Judiciary among the members of the public. Reportedly, concern over the Justice System trailed only the capitol move and subsistence in intensity in the recent election. Almost half of the voters in the Third District voted not to retain the trial judges last November. This negative vote is up nearly 10% in only 4 years. How many years will it be before all judges are defeated? Some of the longer serving judges remember when they received 85% approval ratings. For the first time in nearly 20 years in the legal profession, so many people told me they were voting against all of the judges that I lost count. And note that, at least to-date, that most of the people, most of the lay people, testifying to you are against the peremption, only the lawyers are testifying before you in favor of it. That should tell you something. We pride ourselves in Alaska on the merit selection appointment procedure for judges. The Judicial Council recommends, the Governor appoints and the people vote, and yet the present situation with the peremptory challenge is worse than the most partisan political election of judges, and that a very few attorneys can remove a judge a hold the System hostage. The cost to the public and the wasted expense and time is high. The selection process of which we are so proud and the public vote means absolutely nothing. Just as an example, I was required to move to Homer to take the judgeship in Homer. The Judicial Council recommended me for Homer and the Governor specifically appointed me to Homer. The family moved here and has put down deep roots; we have children in school of all ages. I received good ratings from the lawyers and the highest rating from the Alaska Peace Officers and was retained overwhelmingly by the voters in the November election in my home area by a 2 to 1 margin. And although I appreciate Mrs. Barnes' invitation to Anchorage, I would prefer frankly to remain in Homer. I did live in Anchorage for a couple years and I have, we have, a lot of friends up there, however we are pretty deeply rooted in Homer at the present time. Two weeks after the election I was asked to transfer to Anchorage because of the peremptions. I have been assured that there is no other reasons for my transfer, only the peremptions. None of my sentences have ever been reversed as excessive. Now there are checks and balances that are far more appropriate than peremptions without cause, and they are numerous. If a judge is doing something improper turn them over to the Judicial Qualifications Commission, or challenge the judge for cause, or test the judge in the retention elections, or appeal the judge's decision, or ask the judge to voluntarily disqualify himself. The message is going out loud and clear to the judges in Alaska, to the attorneys and to the public that inspite of the vote of thousands that vote means nothing, and a handful of attorneys can accomplish the transfer

of a judge, and threaten other judges through peremptions for which they do not even have to give a reason. All the attorneys have talked about before you, are the rights of their clients, and these are important rights, no one would say that they are not. But what about the rights of the victims? What about the rights of society? The Constitution clearly requires a judge to sentence to protect society and reformation. No where in the Constitution, in the statutes or in the case law is there any indication that a judge is to sentence in order to avoid peremptions. And yet the Chief Justice of the Alaska Supreme Court has stated publicly that this is happening, and any judge who will level with you will tell you the same. The tail is wagging the dog at the present time as the attorneys are in effect controlling sentencing, and are now even controlling the transfer of judges. Thank you.

TESTIMONY OF ATTORNEY HENRY CAMAROT, ANCHORAGE
February 3, 1983

Gentlemen and (unable to hear the period of 4 log numbers due to static in the teleconference) except for a short period when I left Alaska I practiced in the State of Oregon. I presently represent District Judge James Hornaday in respect to an order that was issued by the Honorable Mark Rowland, presiding Superior Court Judge for the Third Judicial District. In that order, Judge Hornaday had been directed to move from Homer, Alaska, his place of residence for some seven years, to Anchorage, Alaska to permanently fill the office of District Judge in the Anchorage area. I come in favor of repealing the perempt statute. Alternatively I wish to make several other comments and I think they can be interpreted as clear recommendations. The consideration of the perempt statute repeal perhaps can be invaluated against the framework of the true factual situation that currently exists; infact, I got the impression as I was listening to some of the witnesses testify, that this law seems to be directed all towards Judge Hornaday, when I believe the issue is far greater than Judge Hornaday.

Some eight years ago more or less Judge Hornaday gave up a successful 10 year law practice to accept an appointment as the acting district judge in Homer. The condition of his employment at thr time that he moved to Homer. He moved to Homer. The Legislature established a Homer District Judge position. He applied to the judicial council for that office in Homer. His name was forwarded to the Governor for that office and that office began in Homer. He was appointed by the Governor for that specific office. The Judicial council twice recommended him for retention and he has twice been overwhelming retained by the vote in the election of the Third District. More recently, in the election of 1982, more people turned out to testify on his behalf before the judicial council meetings held in Homer than for any other judge in the state. He also passed with the lawyers in the bar poll and received the highest rating of any judge with the Alaska Peace Officers Association.

Judge Hornaday has established deep roots in Homer. His wife, Karen, teaches violin to many children and serves as chairperson on the Homer Parks and Recreation Commission. She serves on many church and civic activities and just recently helped passed the bond issue of the building of the new high school in Homer. His daughter, Mary, is a sophomore
in college and his son, Dan, is a high school sophomore who worked his way up to the staring quarterback on the football team. He also plays on the basketball team. Dan is usually on the honor roll. Their son, Joshua, is in the third grade and is into music, Little League and Cub Scouts. Five year old Matthew has just started kindergarten. The Judge is active in Little League matters, Chamber of Commerce matters and plenty of other activities. When he left the private practice and accepted the appointment as the district judge in Homer, he made substantial financial sacrifices. He was required to sell his home and a commercial building that had been partially set aside as a retirement income. When he moved to Homer, he bought a home there. That was to be his home and that was to be his community for years to come.

We have all heard about how in early 1982, the first part of 1982, Judge Hornaday decided to do something about the drunk driving. He was deeply concerned about this continuing highway travesty, which he was aware resulted in the killing and maiming of over 200,000 Americans a year. It was frustrating to him. Apparently, drunk driving cases constitute over 50% of all the jury trials in the Alaska court system. For many reasons, and because he also serves at times as a coroner and probate judge, because of times when he has come in direct contact with auto crash results, leaving maimed bodies and grieved families or person who have suffered injuries, thereby, felt he had to do

something. He wanted to do it, not by legislative action, but what he wanted to do was in a true effort to be fair, give notice beforehand that persons convicted of a drunk driving in his court would receive a 60 day sentence with 45 suspended and 15 days actually having to be served. Now at the outstead let me point out this is not the maximum sentence, as some people have suggested. The maximum sentence under AS28.35.030 is $1000 or by imprisonment for not more than one year or by both. Now it is not the minimum sentence, which is 72 consecutive hours in the first instance. But what he was really doing, was, he was really giving fair warning beforehand to attorneys and drivers, particularly those consuming alcohol and driving under the influence, that this is what he would do. Now that resulted in an increase in Judge Hornaday being perempted. This is not to say that Judge Hornaday had not been perempted on prior occasions, but this announced policy seemed to have resulted in a definite increase in the peremptions that he experienced prior to the spring of 1982. Let me stop here and note that he was not legislating at that time. He was not attempting to. But what he was doing again just simply identifing the symptom patterns. Now when it was called to his attention that the public statement could not be followed, that he had to consider matters on a case to case basis, he acknowledged that. He publicly recinded the policy and he did sentence on a case-by-case basis. And he did not give 15 days in every insistence. He did go back to the 72 hours, frequently. But the peremptions continued. Continued to the point that Presiding Judge Mark Rowland determined, as he put it, it became administratively a nightmare and was costly to the system. And the system is one of the things I want to talk about.

Now the statistics put together by the court administrator regarding Judge Hornaday and our statistics will be at odds. Truthfully speaking, we don't think that there is comparable statistics that show that one District Judge or Superior Court Judge, particularly in areas where there is only one judge, that experience any more or less peremptions than Judge Hornaday had been experiencing. We don't know to what degree the peremptions compare. But we do know that there are problems and there are serious problems and the problems are going to continue in our opinion with the peremption statute in other areas as they have happened in the past in Wrangell, Petersburg, Ketchikan, Juneau and Kodiak. In any event, Judge Rowland believes that Judge Hornaday's peremptions in Homer were occurring to such a degree that he determined that he had to move Judge Hornaday out of Homer. I don't suggest that Judge Rowland is not acting in good faith. He was very candid when he said that it is the exercising of the peremption by counsel out of the current statute and the resulting costs of bringing in another judge from Anchorage, which is causing him to issue his order. Judge Rowland is attempting to follow obligations imposed on him as the presiding judge to properly administer the court system. And also to be concerned about the costs endowed in his responsibility.

In that regard, as I understand it from Judge Hornaday, Judge Hornaday was advised that he should consider peremtory challenges in sentencing persons before him as a particular consideration. I am sure this is done to avoid having the expense of the cost of having to send another District Judge to Homer when Judge Hornaday was perempted. Chief Justice Burke in a public hearing in Homer indicated perempts had to be considered in sentencing. So, I think we ought to recognize the issue that peremptions affect sentencing, that with the statute as it exists, the system should acccept that the consequences and cost and, threaten, the independence of the judiciary. So it's understood, are we challenging Judge Rowland's order on Judge Hornaday's behalf because I believe that there are serious constitutional and legal arguments on whether he has the authority to take the action he did. But aside from that, and if it be found that Judge Rowland does have the power and authority to remove a District Judge

from his place of residence and the office to which he is assigned, then the problem will still remain. Let's turn for a moment to the defense attorneys or primarily to the ones that are utilizing the perempt statutes.

I have talked with defense attorneys, quite a few of them, and I recognize what they are saying. They can not claim that Judge Hornaday has been more stern in his sentencing practices than other judges. They contend they are under ethical duties to advise the client that he or she has a right to perempt Judge Hornaday. I hear what those defense counselors are saying. But I also know that this constitutes and is just as clear an act as judge-shopping as any other act would be if not for the perempt statute. Even if the attorney contended that he had a ethical responsibility, it's judge shopping. In other instances in my opinion, they are using the perempt for purposes of delay in coming to trial. The delay is always an act that has to do with the defendant because anything can happen between the time of the charge and the actual time of the trial. But what is truly more troubling is, and what must be troubling to an elected official, be he legislator or otherwise, be he judge or otherwise, regarding what the justification might be claimed in respect to the perempt statute, the bottom line is not withstanding thousands of voters particularly those voters in the Homer area voting in favor of the man, Judge Hornaday. There will still be a few members of the bar who are mainly able to sufficiently prevail upon the presiding judge so as to require Judge Hornaday to be removed from one area to another. I don't say they are making personal contact, I say they are doing that through the perempt statute. In my mind as it has already been indicated, the perempt statute and peremption rule interferes with the judicial process under the Constitution and the court responsibility to perform the duties endowed upon them. It also destroys the independence of the judge and to a degree I believe it interferes with the oath of office that each judge takes that he will support the state and federal constitution and will faithfully discharge the duties of his office as a judge of the court to which he is appointed, to the best of his ability. It destroys the independence of the judge. I sincerely believe that it is very wrong to remove a judge who is regarded as judicially competent and I would like to make a note that the major incidents that I have heard in respect to Judge Hornaday has nothing to do with his ability in a civil case, nothing to do with his ability during the course of a trial, presumably it has to do with his sentencing in DUIL cases and some pretrial motions, other than that attorney after attorney have told me he is a very competent, capable judge. But the clutch of the issue comes down to this, if the peremption statutes are to stay in existance and Judge Rowland's order is to remain in effect, then every judge appointed to a district judge area is subject to be reassigned depending on how his rulings and sentencing practices are viewed by the attorneys. I suggest that the precedent being established here is extreme for the reasons already stated. It should be a matter of a state-wide concern. What happens to the next District Judge that goes to Homer. He accepts that office in the wake of Judge Hornaday's reassignment, if that occurs. He knows that the presiding judge doesn't want to have make another reassignment. He does know that he has to avoid peremptions and to avoid peremptions he obviously must not follow the practices followed by Judge Hornaday. Peremption has an effect on sentencing without a question. The matter of degree perhaps in Homer is a matter of degree anywhere. I know that there are many judges today in Alaska who are very concerned about this order. I think it is a matter for new judicial candidates to consider as part of the input as to whether or not they want to become judges. They are invited to place themselves, as now, in front of the judicial council for particular judicial office. They have to realize they maybe reassigned. Against this background I wish to make the following recommendations. I thought a lot about

the perempt statute and I believe that it has one part of it that makes me feel that it should be repealed and its the view of it being unfair.

I submit to you that whether its the filing of an affidavit or a simple notice of a change of judge of Criminal Rule 25 and Civil Rule 43, the accusation is that litigants can not receive a fair and impartial trial. If the judge has no opportunity to defend himself against that charge, although it clearly imputes his integrity. In my opinion the judge, whether it's Judge Hornaday or any other judge is denied due process, he cannot defend his integrity which is so important to a judge. I would suggest in the first inistance, therefore, that the particular AS22.20.022 be repealed.

Then I have an alternative suggestion. I have a lot of respect for my brethren. I see the attorneys here in mass. I've heard them. Accordingly, realistically speaking, that perempt statute cannot be repealed. I would like to give you perhaps a compromise. I would suggest that there would be a statute passed or present statute amended, rejecting the reassignment of any Superior Court or District Judge from the area of his residence to any other location. It is not say that a judge cannot be temporarily assigned, as the Constitution recognizes, and it takes place periodically, so long as there is a time limit on each assignment each year. I think the wholesome affect of this type of law is that if the perempt statute is to be continue as part of the Alaska Judicial processes that it be recognized as part of the overall system, including the cost of reassigning a judge to the area where the peremption right is imposed. It will also reassure other members of the judiciary or future potential members, that have to give that fact their consideration. They are weighing the pros and cons of continuing or becoming a judge.

Another alternative, the second alternative, I would suggest would be given serious consideration, would be to limit the perempt statute to those areas that have more than one judge serving a community, such as Anchorage and Fairbanks, and deny the invoking of the peremptory challenge for no cause where there are single judges, whether they be Superior or District Court Judges in other areas.

I realize that this would not be as popular and be subject to constitutional attack. However, I believe that it could withstand that constitutional attack.

I wish to thank the committee for allowing me to make this presentation. I sincerely hope that reservation in supporting this and that the recommendations maybe of some assistance to the committee. Needless to say, in the final analysis, in the case of Judge Hornaday, that any action taken by the legislature, I sincerely hope, will allow him to stay in Homer. Thank you.

HB 79---PEREMPTORY CHALLENGE OF JUDGES REPEAL--

REMARKS BY REPRESENTATIVE JOHN LISKA

THANK YOU MR. SPEAKER:

I RISE TO SPEAK IN FAVOR OF HB 79. I PARTICIPATED, AS A MEMBER OF THE JUDICIARY COMMITTEE, IN HEARING THE MANY WITNESSES TESTIFY BOTH IN FAVOR AND AGAINST THE BILL ON THE TWO DAYS THE HEARINGS WERE HELD.

I ESPECIALLY NOTED THAT JUDGES WERE ALMOST UNIVERSALLY FAVOR OF THE BILL. ONE JUDGE STATED THAT AS AN ATTORNEY SHE WOULD BE OPPOSED, BUT THAT AS A JUDGE IT CERTAINLY MADE HER ROLE MORE DIFFICULT.

NOT ALL THE ATTORNEYS WERE OPPOSED TO THE BILL EITHER. IN PARTICULAR, ONE ATTORNEY FROM BETHEL, ONE OF THE VERY FIRST WITNESSES, SPOKE QUITE STRONGLY IN FAVOR OF PASSAGE OF HB 79. IT APPEARED SIGNIFICANT TO ME THAT SO MANY ATTORNEYS WERE OPPOSED TO THE BILL, AND SO MANY JUDGES AND LAYMEN WERE IN FAVOR OF IT, THAT IT APPEARS TO ME THAT THE ATTORNEYS MUST HAVE SOME DECIDED ADVANTAGE WHICH THEY ARE JEALOUSLY GUARDING AND DON"T WANT TO BE TAKEN AWAY FROM THEM.

WE WERE ESPECIALLY APPRECIATIVE OF THE REMARKS BY MS. KAREN HUNT OF ANCHORAGE, FORMERLY PRESIDENT OF THE BAR ASSOCIATION. NEAR THE CONCLUSION OF HER TESTIMONY I ASKED HER IF THE SITUATION AT HOMER, ALASKA WAS SUCH THAT SO MANY PEOPLE ARE IN FAVOR OF THE BILL AND SHOWED SUCH SUPPORT FOR IT, COULD THE PEOPLE BE WRONG OR COULD THE LAW BE WRONG? SHE PROMPTLY REPLIED THAT THE LAW IS WRONG!!

TESTIMONY FROM WITNESSES, MR. SPEAKER, WAS ALMOST EVENLY DIVIDED, FOR AND AGAINST THE BILL. I FAVOR PASSAGE OF THIS BILL BECAUSE I FEEL A JUDGE SHOULD BE ALLOWED TO FOLLOW THE DICTATES OF HIS CONSCIENCE IN UPHOLDING THE LAW AND DISCHARGING THE DUTIES OF THE OFFICE, WITHOUT FEAR OF BEING TOSSED OFF THE BENCH BECAUSE A H+NUMBER OF ATTORNEYS WISH TO HAVE A CHANGE OF JUDGE WITHOUT HAVING TO BE RESPONSIBLE FOR GIVING THE REASONS FOR THAT CHANGE. WE HEARD TESTIMONY, MR. SPEAKER, THAT THE FACT THAT CHALLENGES TO A JUDGE ARE POSSIBLE HAS A DECIDED IMPACT ON DECISIONS THE

THE JUDGE IS, BY LAW, REQUIRED TO MAKE. IT IS ATROCIOUS TO ME, MR. SPEAKER, TO HAVE A SITUATION IN OUR STATE WHERE OUR JUDGES ARE HAMPERED BY HAVING TO CONSIDER WHETHER OR NOT THEIR SENTENCING PRACTICES WILL LEAD TO CHALLENGES OR EVEN TO REMOVAL FROM ONE LOCATION TO ANOTHER. IT IS CLEAR THAT THE CHIEF JUSTICE HAS INDICATED THAT JUDGES HAVE TO BEAR THIS IN MIND. WITH THE PASSAGE OF THIS BILL, SUCH WOULD NO LONGER BE THE CASE AND JUSTICE WOULD BE BETTER SERVED. THANK YOU, MR. SPEAKER.

TESTIMONY IN FAVOR OF PASSAGE OF HB 79

THANK YOU, MR. CHAIRMAN.

I AM REP. MILO FRITZ FROM ANCHOR POINT, NEAR HOMER ALASKA.

THE FIRST COURT OF JUSTICE IN ALASKA WAS ESTABLISHED BY THE U.S. IN 1900 UNDER JUDGE JAMES WICKERSHAM IN EAGLE ON THE YUKON RIVER. SINCE THEN, THE COURT SYSTEM HAS GROWN IN SIZE AND COMPLEXITY TO MEET THE CHANGING NEEDS OF THE TIMES AND THE INCREASE IN POPULATION.

GENERALLY SPEAKING, THE LEGAL NEEDS OF THE PEOPLE OF ALASKA, EXCEPTING THE DISSIDENTS AND ECCENTRICS PRESENT IN ANY AGE, WERE ADEQUATELY MET. UNTIL 1967, PEREMPTORY DISQUALIFICATION OF A JUDGE COULD ONLY BE INVOKED FOR CAUSE, THAT IS, FOR A GOOD, TRENCHANT REASON. AND I BELIEVE, MR. CHAIRMAN, THAT NO REASONABLE PERSON CAN OBJECT TO THAT.

IN 1967, ACCORDING TO THE SESSION LAWS OF ALASKA FOR THAT YEAR AND APPEARING IN ALASKA STATUTES, THAT IS THE LAWS OF ALASKA KNOWN AS AS 22.20.022, AN ADDITION WAS MADE, MAKING IT POSSIBLE FOR THE PETITIONER, THAT IS THE LAWYER OR THE CLIENT TO DISQUALIFY A JUDGE WITHOUT PROVIDING ANY REASON WHATSOEVER. AND IT IS THE PURPOSE OF HB 79 TO STRIKE THIS 1967 AMENDMENT TO ALASKA LAW FROM THE BOOKS MAKING PEREMPTORY CHALLENGE OF A JUDGE POSSIBLE ONLY FOR CAUSE, THAT IS, FOR A VALID REASON.

IN THE ELECTION OF NOVEMBER 2, 1982, THE VOTERS IN THE THIRD JUDICIAL DISTRICT VOTED 57,000 TO 38,000 TO RETAIN JUDGE JAMES C. HORNADAY ON THE BENCH. ON THE KENAI PENINSULA, WHERE

JUDGE HORNADAY RESIDES AND HOLDS COURT IN THE SMALL CITY OF HOMER, THE VOTE WAS 6000 TO 3000 IN FAVOR--AN IMPRESSIVE VOTE.

NOW IT HAPPENS THAT JUDGE HORNADAY HANDS OUT TOUGH SENTENCES TO THOSE CONVICTED OF DRUNK DRIVING. SO QUITE NATURALLY, THE TRANSGRESSOR AND HIS LAWYER, QUITE LOGICALLY AND WITHOUT HAVING TO GIVE A REASON, PEREMPTORILY CHALLENGED JUDGE HORNADAY ASKING THAT THE CASE BE HEARD BEFORE ANOTHER JUDGE SINCE, OF COURSE, THE SENTENCE ~~CAN'T LEGALLY BE~~ IS NOT GENERALLY MADE ANY MORE SEVERE AND MIGHT QUITE POSSIBLY BE LIGHTER. ANY GOOD LAWYER WHO DOES THIS IS QUITE WITHIN HIS RIGHTS, SINCE IT HIS DUTY TO OBTAIN FOR HIS CLIENT THE LIGHTEST POSSIBLE SENTENCE. IN OTHER WORDS, THE LAWYER IS NOT AT FAULT, THE LAW IS, AND THAT IS WHY I ASK YOU AND YOUR COMMITTEE TO REMEDY THIS DEFECT BY FAVORABLY PASSING OUT HB 79.

NOW, IN A STATEMENT AT A HEARING REGARDING JUDGE HORNADAY HELD IN HOMER ON JANUARY 5, 1983, SUP. COURT JUDGE MARK ROWLAND TESTIFIED THAT JUDGE HORNADAY WAS PEREMPTORILY CHALLENGED IN ABOUT 80% OF THE CASES COMING BEFORE HIM, ONLY A SMALL PERCENTAGE OF WHICH HAD TO DO WITH DRUNKEN DRIVING. IN OTHER WORDS, BY ACCIDENT OR DESIGN, MOST OF THE LAWYERS ON THE KENAI PENINSULA INDULGED IN A VENDETTA AGAINST JUDGE HORNADAY PEREMPTORILY DISQUALIFYING HIM. IN EFFECT, THESE LAWYERS SAID, "OKAY, SO YOU ARE GOING TO HAND OUT MAXIMUM SENTENCES AGAINST OUT DRUNK DRIVING CLIENTS. THEREFORE, WE WILL PEREMPTORILY DISQUALIFY YOU FOR ALL OUR CASES." OF COURSE, THIS LEFT JUDGE HORNADAY WITH LITTLE TO DO AND MADE IT NECESSARY FOR SUP. COURT JUDGE

MARK ROWLAND TO DISPATCH A JUDGE FROM ANCHORAGE AT NEEDLESS EXPENSE TO HOMER TO HEAR JUDGE HORNADAY'S CASES. AND SINCE HORNADAY HAS BEEN RENDERED INEFFECTIVE, ROWLAND HAS TRANSFERRED HIM TO ANCHORAGE AS OF JUNE 1, THUS QUITE LEGALLY TRANSGRESSING THE WILL OF THE PEOPLE OF THE KENAI PENINSULA. JUDGE ROWLAND IS NOT WRONG; THE LAWYERS ARE NOT WRONG; THE LAW IS WRONG AND HB 79 RECTIFIES THE SITUATION.

IN ANCHORAGE, PEREMPTORY DISQUALIFICATION OF JUDGE HORNADAY WOULD COST NOTHING SINCE THERE ARE SEVERAL JUDGES OF JUDGE HORNADAY'S RANK AVAILABLE.

THEREFORE, IT SEEMS THAT PEREMPTORY CHALLENGE OF A JUDGE WITHOUT CAUSE SHOULD BE STRICKEN FROM THE BOOKS SINCE IT SERVES LAWYERS AND TRANSGRESSORS AND NOT THE ADMINISTRATION OF JUSTICE. REM ACU TETIGISTI.

IF, MR. CHAIRMAN, THIS 13TH STATE LEGISLATURE PROMPTLY PASSES OUT HB 79 WHICH WOULD ELIMINATE PEREMPTORY DISQUALIFICATION WITHOUT CAUSE, THE PEOPLE OF THE KENAI PENINSULA WILL KEEP THE JUDGE WHOSE ACTIONS THEY APPLAUDED BY VOTING FOR HIS RETENTION 2 TO 1.

PASSAGE OF THIS MEASURE WILL ALSO PREVENT THIS FROM OCCURRING IN OTHER one-JUDGE JURISDICTIONS WHERE, FOR FRIVOLOUS REASONS OR NO REASON AT ALL, A JUDGE MAY BE PEREMPTORILY DISQUALIFIED. THE JUDGES ARE NOT WRONG, THE LAWYERS ARE NOT WRONG, THE PEOPLE ARE NOT WRONG--THE LAW IS WRONG. LET US REPEAL IT BY PASSING HB 79.

I THANK YOU, MR. CHAIRMAN.

Pre-emption of judges 'disruptive'

by J[illegible] Berliner
Times Writer

Times 2-6-83

A handful of state judges are "disrupting" the state court system because they are removed from cases so frequently, says state court administrator Art Snowden.

Court records show that one Anchorage judge and five other judges from around the state are excused from cases far more than their colleagues.

Although the current debate over pre-emptions has focused on Homer District Court Judge James Hornaday, he is not the only judge regularly excused from cases by lawyers. There are 42 trial judges in the state, (the eight appe[illegible] judges may not be pre-empted), and lawyers routinely excuse six of them.

According to court records, in addition to Hornaday, the judges being regularly bumped from

See Judges, page A-1

Judges

(Continued from page A-1)

cases are Juneau District Court Judge Gerald Williams, Fairbanks District Court Judge Stephen Cline, Anchorage Superior Court Judge Karl Johnstone, Juneau Superior Court Judge Roger Pegues, and Wrangell Superior Court Judge Henry Keene.

By law, attorneys have a right of pre-emption, called peremptory challenge, which means that each side in a case may excuse the judge assigned to that case one time. The parties involved do not have to state the reason. Lawyers have five days from the initiation of a case to file a notice for a change of judge. The legislature is now considering a bill to repeal lawyers' right to pre-empt a judge.

Court officials have called the pre-emption an "administrative nightmare" because of the problems in reassigning judges.

"It is more efficient without it," Snowden said, adding that the court system has not taken a policy on the peremptory challenge and is probably split on the issue.

Snowden called it "a disruption" that costs the state court system an average of $30,000 yearly in extra costs of reassigning cases to other judges.

The biggest expense, Snowden said, is paying travel and expense money to have judges journey to one-judge areas to fill in where the only judge in town has been legally removed from a case.

That has happened so much in Homer that Hornaday has been ordered to pack up, leave town, and don his judicial robes in Anchorage. Even if lawyers pre-empt him there, the reasoning is, there are other judges to fill in. Presiding Judge Mark Rowland ordered Hornaday to move to Anchorage by June 1 to fill a judicial vacancy here.

Hornaday has been pre-empted from about 84 percent of the criminal cases assigned to him. His lawyer, Henry Camarot, claims that Hornaday is pre-empted 8 percent of the time when all his cases are considered.

Cline, Williams and Johnstone are taken off cases up to half the time. All four of the most pre-empted judges have been retained in office by voters in recent elections.

Johnstone, the only Anchorage judge regularly excused, is also the only judge who hears civil cases almost exclusively. The others regularly hear criminal cases, too. Johnstone is pre-empted three times more than all the other Anchorage Superior Court civil judges put together, and his pre-emptions climbed to a high of 20 in December. Judges are assigned between 30 and 40 new cases monthly. Johnstone was pre-empted 153 times in 1982, up from 71 in 1981. And although Johnstone said last summer that his pre-emptions were going down, court r cords show they are on the rise.

But in Anchorage, the state biggest judicial district, Joh stone's cases are simply re signed to another Anchora judge. That can't be done Homer, where Hornaday is t only judge. His removal mea that court administrators have send in another judge to hear Ho naday's cases.

Last week the House Judicia Committee held two days of hea ings on the bill to abolish the pr emption. Lawyers argued again the bill, claiming the pre-emptic is used to excuse a judge who ma not give their client a "fair shake.

Both defense attorneys and A horage municipal prosecutor Alle Bailey argued for keeping pr emptions around so they have tool to excuse a judge they think either too lenient or too hars when it comes to sentencing.

Anchorage Daily
News
Anchorage, AK

(62)
11
74
16

Hunting charge dropped

FAIRBANKS — A felony charge alleging a man defrauded Belgian hunters by setting up illegal hunts in Alaska has been dismissed. Assistant Attorney General Tom Wickwire said the charge against Melville Morris, 58, was dropped because it would have been too expensive to fly the hunters to Alaska on three occasions to testify against him. Charges of guiding without a license and 13 other misdemeanor hunting and fishing violations still are pending against Morris. District Court Judge Jane Kauvar reduced his bail from $25,000 to $12,000 following dismissal of the felony charge.

Anchorage Daily
News
Anchorage, AK
FEB 7 1982

57

Judge gives 15 days minimum for DWI

(6

By JAN O'MEARA
Special to The Daily News

HOMER — A Homer District Court judge last week announced a new sentencing policy that will increase to 15 the minimum number of days first offenders convicted of drunken driving must serve in jail.

"The situation has become so serious in Homer that something must be done immediately," said Judge James Hornaday in revealing the new policy.

Hornaday said that in addition to the minimum jail term, persons convicted of drunken driving will be fined, be required to work 10 days in a community service program, lose their driving privileges except for limited uses, and be required to enroll in an alcoholism screening and rehabilitation program.

The previous minimum jail term required for first offenders was three days.

The judge said if a convicted drunken driver refuses to participate in the community service program or the alcohol screening program, "they'll sit in jail 60 days."

Hornaday said drunken driving cases in Homer increased 70 percent in January over the same month in 1981. "Drunk drivers kill people," he said. "This (new sentencing policy) is not a war on alcohol. It's an attempt to solve a very serious problem in Homer."

Increased jail time has been linked to an 80 percent reduction in moose poaching on the Kenai Peninsula, Hornaday said.

Hornaday said he decided to increase the minimum jail term for drunken drivers after consulting with other judges, law enforcement officers, attorneys and alcoholism counselors.

"I certainly do not like to put people in jail, but hopefully the word will get out that driving under the influence will no longer be tolerated in Homer," he said.

Judge blames lawyers for high disq

Empire 2-3-83

Lawyers counter that challenges are needed to guarantee fairness

By CHRIS JARVIS
Empire Staff Reporter

Lawyers, not judges, are to blame for the high frequency with which some judges are disqualified from cases, Juneau District Court Judge Gerald O. Williams said today.

Williams is frequently disqualified from hearing cases because, in his opinion, "Alaska is the most lawyer-whipped state in a lawyer-whipped country."

Williams and Juneau Superior Court Judge Rodger Pegues have been named as two of six Alaska trial judges most frequently disqualified from cases. Pegues is on vacation and was unavailable for comment.

Alaska Court Administrator Art Snowden said the peremptory challenges, which allow lawyers to ask for a different judge without stating a reason, are an "administrative nightmare," noting it costs the state an estimated $20,000 a year to fly judges into a jurisdiction to hear a case.

Williams, a former Alaska State Trooper and members of the bench should not b[e] blamed.

Williams said it is his responsibility t[o] make sure a person accused of a crime is brought to trial within 120 days of h[is] arrest, he said. He thinks peremptor[y] challenges are often used to prolong th[e] time before trial.

Lawyers generally disagree.

"I don't know of any attorney" who us[es] peremptory challenges o[r] to prolo[ng]

qualification rate

cases, said lawyer Richard Burnham.

According to current rules, an attorney on either side of a case can request a judge be disqualified without giving a reason.

Requiring attorneys to say why a judge should be disqualified would present problems if a judge is not disqualified and the attorney must then argue a case before him, Burnham said.

Although acknowledging it costs money to fly a judge to hear the cases of a disqualifed judge, Burnham said there are other solutions to the problem. For example, he said, a superior court judge could hear district court cases or, if that is not possible, another district judge could be hired.

"It doesn't seem to me the goal of the judicial system is to run cheaply. It's to give people their day in court," Burnham said.

Williams, however, said if a case is prolonged long enough, eventually a case

Continued on Page 2

Judge...

Continued from Page 1

could be dismissed because the time limit for trial has been passed.

Admitting he is sometimes curt when on the bench, Williams said he finds it difficult to "put someone in jail in a nice way."

He defended his record, saying he treats everyone who is convicted in his court in the same way.

"I've still got friends who are mad at me (for sentencing them to jail), but it goes with the turf," he said.

"I admit I'm old fashioned," Williams said. He seldom likes to grant delays in court proceedings because cases often end up dismissed when delayed too long, he said.

Peremptory challenges are often used by attorneys in a "tactical and strategic" manner, Williams said.

Of defense attorneys, Williams said, "it is in their interest to prolong to avoid a trial."

However, it is not always in the best interest of the defendent, Williams said. Peremptory challenges and continuances might result in an attorney's client staying in jail, if not able to make bail, he said.

It is the court's responsibility to assure efficiency in the system especially with criminal case loads in Juneau almost doubling in four years, he said.

Sometimes 30 to 60 days will have elapsed days since a person's arrest before making the first court appearance. That leaves as few as 60 days before the case may go to trial, Williams said, noting motions for continuances, if granted, could extend beyond the 120 day limit.

Although some people who see Williams on the bench for the first time might see him as "a combination of Attila the Hun and Genghis Kahn," he said it is because his experience has taught him he must be absolute when passing judgement.

"I may appear curt in court but I've learned through experience that you've got to do it," he said.

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... to the jury.
... that there is
... in this case."
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... find him guilty
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Homer News
Homer AK

Tough new drunk driving sen... raise flap; Homer judge stands firm

by Jan O'Meara
Staff Writer

Homer District Court Judge James Hornaday was disqualified from presiding over a drunk driving trial this week because of his newly adopted 15-day mandatory sentence policy.

Anchorage Judge Mark Rowland, presiding judge for the Superior Court, Third Judicial District, disqualified Judge Hornaday on Monday, based upon the motion and contention of Alan Beiswenger, attorney for defendant Stephen Seelye, that the 15-day sentence indicated a bias on the part of Judge Hornaday.

Mr Beiswenger had originally filed a motion asking Judge Hornaday to disqualify himself for bias, but the judge denied the motion.

Under Alaska law, Judge Hornaday was then required to submit the motion to the presiding superior court judge.

Court procedure gives every defendant the right to challenge a judge, once only, so long as the challenge is made within five days of the judge's assignment to the case. Mr Beiswenger made such a motion, but the five days had lapsed, Mr Beiswenger said, and Judge Hornaday denied that motion also.

Mr Beiswenger said that his challenge was based on the theory that in establishing his own mandatory sentencing policy, Judge Hornaday was focusing solely on deterrence rather than reform or any other considerations as required by state statute.

Judge Rowland declined comment Tuesday.

His law clerk, Richard Foley, speaking of the decision, said, "The legislature sets policy and has set a presumptory sentence of three days minimum. It's not up to a judge to change that policy." A judge must weigh each case on its own

Judge Hornaday said Tuesday that he intends to file a motion for reconsideration of Judge Rowland's decision within the week. If the disqualification holds, another judge will be sent to Homer to hear Mr. Seelye's case.

Even if he is disqualified on this case, Judge Hornaday said he intends to continue the policy he adopted last week. "I will stand on the procedure that's been initiated."

Alaska law contains no provision for forcing a judge to change a sentencing policy so long as it is within the range established by statute. Alaska statutes provide for a mandatory minimum sentence of three days and a maximum of one year.

If a judge is challenged, the court system must provide another, which in the case of Homer would mean bringing a judge in from Kenai or Anchorage. That has led some court system observers to speculate that Judge Rowland, as chief administrator for the judicial district, may rebel at the time, travel, scheduling and expense involved in continually supplying alternate judges to Homer for DWI cases.

Fairbanks
News Miner
Fairbanks, AK

Bill would give $750 in cash to Alaskans

JUNEAU (AP)—Every Alaskan would get about $750 in cash under a bill introduced by House Majority Leader Rick Halford and Rep. Vern Hurlbert to take effect if the U.S. Supreme Court outlaws Alaska's permanent fund dividend program.

Under the bill proposed by Halford, R-Chugiak, and Hurlbert, D-Sleetmute, every resident would be eligible for the one-time payment. A person would be considered a resident if he or she has lived in Alaska for at least 30 days as of the date the court issues a ruling.

The bill (HB743) calls for the $300 million already set aside for dividend payments to be paid out immediately if the Supreme Court

Fairbanks
News Miner
Fairbanks A...

Cold Storage d... permit upheld

ANCHORAGE—A S... judge has upheld the ... dock permit issued to A... Storage to use the Port ... unload barges carry... beverages.

Judge Brian Shortel... dismissed a lawsuit ... Independent Longshore ... the Anchorage Port C... Port Director Bill McKi...

The union maintained ... was illegal because i... secretly last october by ... the municipality's chief ... instead of the by the port ...

The city agreed that ... was unusual, but said it ... The city said it was han... because the barge was o... out of port and there wa... through normal channels.

When the barge finally ... dock, it provoked a ... longshoremen and teams ... on strike against An... Storage.

THE LEGISLATURE OF THE STATE OF ALASKA
THIRTEENTH LEGISLATURE

FISCAL NOTE

I. REQUEST
Bill/Resolution No. HB 79
Title "An Act repealing peremtory disqualification of a judge...."
Requested by House Judiciary Committee Date 1/26/83

II. FISCAL DETAIL
Agency Affected Department of Law
Program Category Affected Administration of Justice
BRU, Program, Or Subprogram(s) Affected Prosecution
(Note: If more than one budget component is affected, separate line-item amounts and funding for each component in the analysis section.)

EXPENDITURES (Thousands of Dollars)

	FY 83	FY 84	FY 85	FY 86	FY 87	FY 88
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 COMMODITIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS,CLAIMS,ETC.						
TOTAL		X	X	X		

Costs that will occur cannot be determined at this time. See analysis below.

FUNDING (Thousands of Dollars)
General Funds costs that will occur cannot be determined at this time. Please see analysis below.

GENERAL FUND		X	X	X		
FEDERAL FUNDS						
OTHER (Specify Source)						

POSITIONS

FULL TIME						
PART TIME						
TEMPORARY						

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

Although not quantifiable at this time, this bill has the potential for causing a significant fiscal impact on the Department of Law, the Public Defender and the Court System. The department rarely uses peremptory disqualification and the department's Criminal Division probably does so only 10 or 12 times each year. The problem will arise from the private criminal defense bar which disqualifies some judges 30% or 40% of the time. If the private bar continues to seek this same level disqualification, based on cause, our prosecutors will then have to devote substantial portions of their time participating in a two-tier disqualification hearing process. Without any prior experience to guide us, the department is hesitant to speculate on the actual cost that this bill might cause. The department does believe that this bill will have the effect of hampering its

IV. DATE January 28, 1983 PREPARED BY Richard L. Pegues, Dir. Adm.Svcs.
AGENCY Department of Law
PHONE 465-3672

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

33-001 (Rev. 12/82)

OMB review by Guy Bell

overall ability to prosecute criminal offenses, by diverting already diminished resources from other matters currently being addressed.

HB

456

Extracted from: Powers, Duties and Operations of State Attorneys General (1977) (Study by National Assoc. of A.G.s)

6. SELECTION, TERM AND REMOVAL

This chapter examines the important issues of how the Attorney General is selected, how long he serves, how he can be removed, and how a vacancy in the office can be filled. Some of these issues, particularly that of election or appointment, have been subject to controversy since the first state governments were established. This report discusses existing practices and presents the arguments on both sides of these issues.

Method of Selection

Table 6 shows methods of selecting the Attorney General. He is popularly elected in forty-two states. He is appointed by the Governor in six states (Alaska, Hawaii, New Hampshire, New Jersey, Pennsylvania, and Wyoming), the three territories (Guam, Samoa and the Virgin Islands), and the Commonwealth of Puerto Rico. In Maine, he is selected by the Legislature and in Tennessee, by the Supreme Court. Now elected

The Attorney General is the most prevalent elective official in state governments except for the Governor, who is elected in all jurisdictions. The Treasurer is elected in thirty-nine jurisdictions, the Secretary of State in thirty-eight, the Auditor in twenty-five, and the Superintendent of Public Instruction in nineteen, compared to forty-two states in which the Attorney General is elected.[87] The 1970s witnessed a marked acceleration of the trend toward election of the Governor and Lieutenant Governor on a single ballot and such a practice is now followed in twenty-two jurisdictions. Thus, the Attorney General is actually the most common official who is elected on a single ballot. Where very few, but more than one, state executive officials are elected, the Attorney General is usually included among these few. He is, for example, among the three executive officials elected in Virginia, among the four elected in Maryland, Michigan and New York, and among the five elected in Rhode Island, Colorado, and Utah. However, he is not one of the two elected officers in Alaska, Hawaii, Guam, and the Virgin Islands, the four in Pennsylvania, nor the five in Wyoming.

Historically, the Attorney General has been an appointive, rather than elective, official. In England, he was appointed by the Crown and only incidentally acquired elective status through a seat in Parliament. In Colonial America, Attorneys General were usually appointed by the Governor of the Colony. The Attorney General of the United States still serves at the pleasure of the President with the advice and consent of the Senate.

Most of the first state constitutions specified that the legislature would choose the Attorney General. The concept of universal suffrage had not yet taken hold, nor had the idea of direct election of many officials.

87. Council of State Governments, THE BOOK OF THE STATES, 114-115, 121-122 (1976-77).

TABLE 6: SELECTION AND TERM OF ATTORNEYS GENERAL

	Elected	Appointed by	With Co nt Of	Length of Term	May succeed Himself
Alabama	x			4	Yes
Alaska		Governor	Legislature	4	Yes
Arizona	x			4	Yes
Arkansas	x			2	Yes
California	x			4	Yes
Colorado	x			4	Yes
Connecticut	x			4	Yes
Delaware	x			4	Yes
Florida	x			4	Yes
Georgia	x			4	Yes
Guam		Governor	Legislature	Indefinite	Yes
Hawaii		Governor	Senate	4	Yes
Idaho	x			4	Yes
Illinois	x			4	Yes
Indiana	x			4	Yes
Iowa	x			4	Yes
Kansas	x			4	Yes
Kentucky	x			4	No
Louisiana	x			4	Yes
Maine		Legislature		2	Yes
Maryland	x			4	Yes
Massachusetts	x			4	Yes
Michigan	x			4	Yes
Minnesota	x			4	Yes
Mississippi	x			4	Yes
Missouri	x			4	Yes
Montana	x			4	Yes
Nebraska	x			4	Yes
Nevada	x			4	Yes
New Hampshire		Governor	Exec. Council	5	Yes
New Jersey		Governor	Senate	4	Yes
New Mexico	x			4	Yes
New York	x			4	Yes
North Carolina	x			4	Yes
North Dakota	x			4	Yes
Ohio	x			4	Yes
Oklahoma	x			4	Yes
Oregon	x			4	Yes
Pennsylvania	X	~~Governor~~	~~Senate~~	4	Yes
Puerto Rico		Governor	Senate	Indefinite	Yes
Rhode Island	x			2	Yes
Samoa		Governor		Indefinite	Yes
South Carolina	x			4	Yes
South Dakota	x			4	Yes
Tennessee		Sup. Court		8	Yes
Texas	x			4	Yes
Utah	x			4	Yes
Vermont	x			2	Yes
Virgin Islands		Governor	Senate	Indefinite	Yes
Virginia	x			4	Yes
Washington	x			4	Yes
West Virginia	x			4	Yes
Wisconsin	x			4	Yes
Wyoming		Governor	Senate	4	Yes

Andrew Jackson's administration brought a new ethic to American government. The common man was considered competent to vote and to hold office, and direct election of officials became the rule. State constitutions provided for election of numerous officials, usually including the Attorney General.

A study published in the Law Library Journal[88] showed how methods of selecting Attorneys General developed in nineteen states; of these, eight provided for legislative selection prior to 1843, but none finally retained this method. Prior to 1845, twelve states provided by constitution or legislation for the appointment of an Attorney General by the Governor, the legislature, or other authority. The trend then turned toward election. For example, North Carolina's 1776 Constitution provided for appointment by the legislature; its 1868 Constitution provided for election. Louisiana's 1812 Constitution provided for appointment by the Governor; its 1852 Constitution provided for election. Michigan's 1835 Constitution provided for appointment by the Governor; the 1850 Constitution provided for election. Virginia's 1776 Constitution provided for selection by the legislature; its 1902 Constitution provided for election. Kentucky's 1792 Constitution provided that the Governor would appoint the Attorney General, with the consent of the Senate; the 1850 Constitution made the office elective.

Wyoming, in 1899, became the first "new" state to provide for appointment of the Attorney General, thereby ending the trend toward popular election. Alaska's 1959 Constitution and Hawaii's of 1960 provided for Gubernatorial appointment, following the policy set by their territorial conventions in 1950 and 1956.

Strong arguments can be advanced for either system of selection. There is not necessarily a correlation between the selection process and the extent of the Attorney General's actual powers. For example, the Attorney General is elected in Delaware and appointed in Alaska, but in both jurisdictions he has control over all legal and prosecutorial functions. In some states, the Attorney General is independently elected, but he exercises little power at either the state or local level. Thus, a "strong" department of justice can be developed under either system of selection, but is not guaranteed by either.

Proponents of an appointive Attorney General usually base their arguments primarily on the need to strengthen the executive. As one view, the commentary on the Model State Constitution developed by the National Municipal League says that:

> All authorities on executive organization agree with the position embraced by the Model State Constitution for more than 40 years that administrative power and responsibility should be concentrated in a single popularly elected chief executive. There is growing recognition that the governor, as the representative of all the people,

88. Lewis Morse, Historical Outline and Bibliography of Attorneys General Reports and Opinions, 30 LAW LIBRARY JOURNAL 39-245 (1937).

should be equipped with the constitutional status necessary to exercise constructive leadership as the chief lawmaker and political head of his state.[89]

The Model Executive Article for state constitutions recommended by the Committee on Suggested State Legislation of the Council of State Governments limits statewide elective officials to the Governor and Lieutenant Governor, who are elected jointly. This article was developed by the Committee on Constitutional Revision of the National Governor's Conference.[90] Studies on administrative reorganization usually argue that fragmentation leads to irresponsibility, but a single chief executive can be held accountable through the electoral system and, as a consequence, can make the administration more responsive. Proponents of an appointive Attorney General argue that his function is to advise the Governor, who should be permitted to choose his advisors. They believe that the two officials are more likely to maintain the close and harmonious relationship that is necessary for effective liaison if the Attorney General is appointed.

Advocates of appointment also contend that the elective process may not assure professional competence. The pressures of politics and the time involved in campaigning limit an Attorney General's abilities to serve effectively, and many highly competent people would not be willing to undergo the election process. They also argue that the Attorney General's primary function is to interpret the law, which is a technical task and should not involve the political process.

The arguments for an elective Attorney General were cogently summarized by Attorney General Louis J. Lefkowitz in a position paper submitted to the New York Constitutional Convention in 1967. General Lefkowitz reviewed the Attorney General's duties in some detail, pointing out they were predicated upon his role as an independent official, and concluded that:

> To sum it up-- an elected Attorney General has a measure of independence and a sense of personal and direct responsibility to the public. The elected official has a natural and impelling desire to be creative and to exercise broader initiative in the service of the public. He is free of the fear of dismissal by any superior official if he should exercise contrary independent judgment. He is in the best position to render maximum service to the People and impartial advice to the Governor, the Legislature and State departments and agencies. He can appear in Court without fear or favor-- an attorney in the fullest and finest sense of the word.[91]

89. National Municipal League, MODEL STATE CONSTITUTION (6th ed.) 65-66 (1963).

90. The Council of State Governments, 1970 SUGGESTED STATE LEGISLATION, 3-4.

91. Attorney General Louis J. Lefkowitz, Position Paper of Louis J. Lefkowitz Attorney General, to Constitutional Convention, Committee on the Executive Branch, June 1, 1967, Albany, N. Y.

An equally strong position in favor of election was taken by Attorney General William J. Scott before an Illinois Constitutional Convention; he stressed that the Attorney General's roles of "government watchdog" and "attorney for the people" required independence from the Governor.[92]

The primary argument for an elective Attorney General is that he is an attorney for all the people, and should be chosen by them. He is the Governor's advisor, but not exclusively; the Governor is merely one among many clients. By making the Attorney General directly responsible to the electorate, he remains subject to the ultimate source of power and will be more responsive to public needs. As discussed elsewhere in this report, the courts increasingly recognize that the Attorney General is responsible to the people, not just to the government. It is further argued that the Attorney General has important administrative and legal functions, such as programs in consumer protection and environmental control. In executing these functions, an Attorney General is acting as an advocate for the people, not as agent of the executive branch. His duties usually include prosecution of election violations, collection of debts, and bringing of suits in the name of the people; these responsibilities are outside the scope of the Governor's duties.

Many arguments for election center around the fact that the Attorney General's duties are of the highest order and he should enjoy the same independence as a member of the judiciary. He should not be a creature of the Governor, but should render opinions solely on the basis of law. He should not be the advocate for a particular administration, but should be free to oppose policies which he considers inconsistent with the law and to investigate apparent wrongdoing.[93]

In reference to the argument that an appointed Attorney General is a non-political technician, it should be noted that appointment does not necessarily remove the office from politics. Some appointed Attorneys General have been politically active as potential candidates for other office or on behalf of the Governors they serve. At the federal level, Presidents have frequently named as Attorneys General persons who had been active in their campaigns. This has also been true in some states.

In his remarks to a legislative committee which was considering a constitutional amendment to make the office appointive, former Attorney General Meyer of Nebraska mentioned several arguments in addition to those usually advanced by proponents of election. These included the following points: the Governor can appoint men with legal training to his staff if he feels he needs lawyers of his own choosing. Much of the Attorney General's work is in areas in which the Governor has little or no interest,

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92. News from William J. Scott, Attorney General, State of Illinois, Feb. 16, 1970.

93. See summary of arguments presented to New York's constitutional conventions in Robert H. Gordon, The Relationship Between the Attorney General and Agency Counsels in New York State, (Unpublished Ph.D. Dissertation, Syracuse U.), Ch. 1 (1966).

such as advising county attorneys and handling routine criminal appeals. The Governor is only one of many state officials whom the Attorney General advises.[94]

Confirmation of Appointment

In all six states where the Governor appoints the Attorney General on a regular basis, the appointment is confirmed by either the Senate (Hawaii, New Jersey, Pennsylvania, Wyoming), both houses of the Legislature (Alaska), or by the Council (New Hampshire). Confirmation in Pennsylvania requires a two-thirds vote of all the members of the Senate.

In Puerto Rico and the Virgin Islands confirmation is also by the Senate. In Guam, appointments are made with the "advice and consent" of the legislature, but in Samoa appointment is by the Governor with no requirement for confirmation. Although all Pennsylvania Attorneys General of recent years have been in the same political party as the Governor, the requirement of approval of two-thirds of all elected members of the Senate for confirmation of the Attorney General gives the minority party considerable leverage over appointments. However, there has been no indication that this has caused problems.

The various model constitutional provisions that have been proposed differ on the need for confirmation. The Advisory Commission on Intergovernmental Relations' suggested constitutional provision for a short ballot for state officials provides for Senatorial confirmation of gubernatorial appointments. The Model State Constitution of the National Municipal League does not mention confirmation. There is no extensive literature on the precise manner in which appointments are to be confirmed.

Length of Term and Succession

Forty-four states presently provide a 4-year term for the Attorney General and four states a 2-year term. Tennessee sets the term at 8 years and New Hampshire at 5. In Guam, Puerto Rico, and the Virgin Islands, the Attorney General is appointed for an indefinite term. In Samoa the term is also of an indefinite length, although there is a minimum of 2 years for an initial appointment. Table 6 indicates the length of Attorneys General's terms and the statutory or constitutional rules on succession.

The trend is clearly toward longer terms. Most states initially limited terms of officals to 1 or 2 years, on the theory that frequent elections kept government closer to the people and prevented the accretion of power by elected officials. Many states prohibited successive terms on the grounds that official power must be limited. These arguments may have been cogent at a time when Attorneys General had relatively few duties to

94. Letter from Attorney General Clarence A. H. Meyer to Patton G. Wheeler, November 24, 1970.

perform, and those duties were relatively well-defined. Present Attorneys General, however, cannot effectively operate with a 2-year term, which does not allow time to master the duties and responsibilities of the office. Neither should they be subjected to the continuing campaign requirements imposed by an election every 2 years. For these reasons, NAAG has recommended that the Attorney General should be elected or appointed for a minimum term of 4 years and should be allowed to succeed himself.

The number of Attorneys General serving 2-year terms has declined drastically in recent decades. In 1937 there were twenty-one, but this number fell to nine by 1970, and then to four by 1976. Arizona went from 2 to 4 years in 1970, and Wisconsin and New Mexico in 1971. The 1972-73 legislative biennium saw four more states-- Iowa, Kansas, South Dakota, and Texas-- shift to a 4-year term for the Attorney General. Apparently only one jurisdiction has ever gone from a 4-year to a 2-year term; this occurred under Missouri's 1865 Constitution, which was adopted during Reconstruction; its 1875 Constitution later restored the 4-year term. Voters in Rhode Island, however, rejected a 1972 proposal which would have extended from 2 to 4 years the terms of all executive officers, including the Attorney General.

Succession to Office

There are few restrictions on Attorneys General serving successive terms. There are restrictions on Attorneys General succeeding themselves in only three states: Kentucky, New Mexico, and Alabama. Only Kentucky absolutely prohibits immediate succession by the Attorney General. Until 1968 Alabama allowed only one term, but an amendment that year permitted the limited succession. New Mexico restricts the Attorney General to two terms of 2 years each.

The Model State Constitution permits succession in the office of Governor because:

> The main argument favoring restriction in the term of the governor is fear of bossism or perpetuation through use of the powers of the office. This is always a possibility but the better argument seems against any form of restriction. Limitations of this kind restrict the right of the people to pass judgment upon the quality of the gubernatorial service performed for them and thus eliminates from the field the one candidate about whom the voters usually know the most. From a program policy point of view, a restriction on service in office affects the governor's ability to develop and implement a long-range plan.[95]

These arguments apply with equal validity to the office of Attorney General.

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95. National Municipal League, MODEL STATE CONSTITUTION (6th ed.) 66 (1963).

Removal from Office

There are several mechanisms for removing Attorneys General: impeachment, recall, or removal by the Governor, the legislature, or the courts. Information is not available on how often these methods have been used or how well they operated.

Of the fifty-four jurisdictions, thirty-six provide for impeachment. It is the only method of removal provided in twenty-one of these jurisdictions. Impeachment processes vary, but proceedings are usually instituted by the lower house and, if it votes to impeach, the charges are tried by the upper house. In New York, the judges of the court of appeals, the state's highest court, sit with the members of the Senate as a court of impeachment. In Nebraska, impeachment charges are proferred by the unicameral Legislature and tried before the state supreme court. In Missouri, impeachments are tried before the supreme court after charges are filed by the House of Representatives.

An impeachment proceeding is rare, and is used only under the most extraordinary circumstances. Apparently, the last impeachment trial of an Attorney General was in Kansas in 1934. That action resulted in an acquittal.[96] Whatever grounds are prescribed grounds for impeachment, the method is not a common means of removing officials. It can be utilized only when the legislature is in session and is quite time-consuming.

Fifteen states which provide for impeachment also provide alternative removal processes. In the ten jurisdictions where the Governor appoints the Attorney General, he may also remove him. In Hawaii, the Senate must consent to such removal. In New Jersey, the Attorney General can be removed by the Governor for cause only after an opportunity to be heard has been granted. In New Hampshire, the Governor and the Council may remove the Attorney General on address of both branches of the legislature. Five other states provide for Gubernatorial removal of the Attorney General. In Maine, the Governor and Council may remove on address of both branches of the legislature. In New York, removal is by the Governor and the Senate. The Governor of Arkansas, upon address of two-thirds of the members of each house of the legislature, may for good cause remove the Attorney General. In Michigan and West Virginia, the Governor may remove him without the consent of another authority.

The legislature stands alone as a removing authority in proceedings other than impeachment in seven states. Recall may be used to remove the Attorney General in Arizona, Colorado, Louisiana, North Dakota, Oregon, Washington, and Wisconsin; he is an elective officer in all of these states. Louisiana reports that the district court may remove the Attorney General, and Maryland indicates that removal is attendant to any conviction in a court of law.

As a result of a court decision, an Arizona Attorney General was removed from office in 1947, having been adjudged guilty of conspiring to violate the gambling laws of the state. The Governor considered the office

96. New York Times, February 7, 1942, at 17.

term in 1894. Further, it mentioned that vacancies would be filled by Gubernatorial appointment until the next general election, when an Attorney General would be chosen to fill out the term or commence a new term. The Governor appointed an Attorney General in 1891. The question of the case was whether there was to be an election to fill out the first "quasi-term" in the general election of 1892. The court ruled that there was to be such an election.

The Supreme Court of Georgia reached the opposite conclusion in a 1939 case.[99] It held that the office of Attorney General was created under the judicial article, hence the rule that provisions for elections to fill vacancies in executive positions did not apply to it. The Gubernatorial appointee to fill a vacancy created by a resignation was to serve out the full 4-year term of office without standing for election.

99. Wood v. Arnall, 189 Ga. 362, 6 S.E.2d 722 (1939).

vacant and appointed a new Attorney General. The former Attorney General, however, refused to vacate his office. Subsequent court action affirmed the validity of an act which provided that an office would be vacant if its incumbent was convicted of a felony. The court reasoned that the powers of impeachment were an added protection for the public, not the sole protection.[97]

Filling Vacancies

Vacancies in the office of Attorney General may be filled by appointment of the Governor, the legislature, or the supreme court. An overwhelming majority of the jurisdictions indicate that the Governor fills vacancies as soon as they occur. In Maine, Massachusetts, New York and Virginia, the legislature fills vacancies; however, if it is not in session, the Governor makes the appointment. In Maine, he must have the approval of the Council. Tennessee provides that the Supreme Court will fill vacancies, since it normally appoints the Attorney General. In two states, Louisiana and New Jersey, the First Assistant or Deputy Attorney General becomes Attorney General until a successor is elected or appointed.

Where the Attorney General is appointed, it would seem proper that the appointing agent also fill vacancies, as is the case in all such jurisdictions. The rationale for filling vacancies when the office is elective is less clear. All but four of the states which have an elective Attorney General permit the Governor to make appointments. Three permit the legislature to name an Attorney General, and in one the deputy is promoted. Allowing the Governor to fill vacancies in an elective office seems contrary to the chief arguments for election, those concerning independence from the executive. It is also questionable whether a Governor of one party should be allowed to fill a vacancy in an office which was held by a member of the opposite party.

An Assistant or Deputy Attorney General is often promoted to fill a vacancy, even if this is not required by law. If the Deputy Attorney General is promoted to fill a vacancy, the chances of continuity in office programs are greater; however, the Attorney General may select his chief deputy according to different criteria from those he would use in selecting his own replacement.

Vacancy appointments for elective offices usually are valid only until the next general or next biennial election. At that time, if the original term has not elapsed, a short-term Attorney General is elected. This point was litigated in Oregon.[98] The statute creating the Oregon office in 1891 provided that the Attorney General would be elected for a full 4-year

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97. State ex rel. De Concini v. Sullivan, 66 Ariz. 348, 188 P.2d 592 (1948).

98. State ex rel. Baker v. Payne, County Clerk, 22 Ore. 335, 29 Pac. 787 (1892).

POSITION PAPER

of

LOUIS J. LEFKOWITZ

ATTORNEY GENERAL

to

CONSTITUTIONAL CONVENTION,

COMMITTEE ON THE

EXECUTIVE BRANCH

in support of

PROPOSITION THAT THE PRESENT

CONSTITUTIONAL PROVISION FOR

THE ELECTION OF THE ATTORNEY

GENERAL SHOULD BE RETAINED

POSITION PAPER

Submitted to the Constitutional Convention,
Committee on the Executive Branch,
at hearing held on June 1, 1967
at the State Capitol, Albany, New York

PROPOSITION

THE PRESENT CONSTITUTIONAL PROVISION FOR THE ELECTION OF THE ATTORNEY GENERAL SHOULD BE RETAINED.

HISTORICAL BACKGROUND AND COMPARATIVE ANALYSIS

In the early years of the Colony of New York (17t' century), the Attorney General was an appointee of the Royal Governor who was, himself, an appointee of the English Crown. About 1700 the intermediary was dropped and appointment of the Attorney General was vested directly in the Crown.

In 1777 the first Constitutional Convention established the State of New York, appointed all the State officers deemed necessary in the establishment of the new state, and provided for a Council of Appointment to make future appointments. Under this system, appointment of State officers was the rule rather than the exception. The Attorney General could be removed at any time and frequently was removed. There was neither difficulty nor hesitancy in removing him when a majority of the Council was of the opposite political faith. The fact of the matter is that under this system the average tenure was less than 2-1/2 years.

At the Constitutional Convention of 1821 a proposal was made that the Attorney General be appointed by the Governor with the consent of the Senate. This was rejected by the Convention and, instead, provision was made that the Attorney General, together with other important State officials, be elected by the Legislature.

By 1846 there was an overwhelming demand for the popular election of the Attorney General. This was recognized by the Constitutional Convention of 1846 and made a part of our Constitution.

Historically, traditionally, and as a matter of basic constitutional mandate, we have continued to elect our Attorneys General in New York State for the past 121 years. This is not to say that the question has not been raised or the problem re-assessed from time to time in the light of vastly changed conditions. As a matter of fact, at every Constitutional Convention since 1846 the question was reconsidered and in each instance the Convention adhered to the elective system.

Comparatively considered, and without going into the historical background of each case, it may be noted that in forty-two of the fifty States the Attorneys General are elected by the people. Interestingly, included among the States which follow the elective system are many of the most populous states in the Union (for examples: New York, California, Illinois, Ohio, Michigan and Massachusetts).

POINTS IN SUPPORT OF AN ELECTED ATTORNEY GENERAL

1. Independence.

While the history of the office of the Attorney General of New York includes efforts to make the Attorney General an appointed officer, it is significant that for upwards of one hundred years without interruption that office has survived as one to be filled by the elective process. Thus, retaining the Attorney General as an independent constitutional officer to be elected by the People of the State not only reserves to the People their traditional right to select a candidate of their choice as the State's highest ranking legal official, but has the added advantage characteristic of a democratic government of greater assurance that the laws of the State will be construed and applied objectively and without favor.

Exactly 100 years ago, at the Constitutional Convention of 1867, when that issue was considered, the report of the discussion states in part:

"The Attorney General holds a dignified position; he has important functions and acts on his own judgment and responsibility" and further, "It was not the Governor alone, but the people who wanted an Attorney General. He was to look after the interest of the people in the State and take care of their money so far as action in the courts was concerned * * *," and again, "If he (the Attorney General) does his duty it matters little to the people whether he is

in accord with the Governor or not." "Indeed," observed a delegate, "it may be to the interest of the people that the Attorney General should not always be in accord with the Governor," and more, "that he should be a man who could not be ordered by anybody. His opinions should be above any fear of the loss of his office. His duties are of the highest order * * * as high as those of any judicial officer; and he should be as independent as any judge. The Governor should have no more power to remove the Attorney General than he has to remove the Chief Judge of the Court of Appeals. His opinions are upon great questions, affecting the great questions of the State. He ought not be a mere creature of the Governor to supervise his vetoes and obey his dictation."

This independence of action and expression is particularly significant with respect to opinions of the Attorney General concerning the construction of statutes and the validity and propriety of acts thereunder by other departments and agencies of the State.

All of the various departments and agencies of government turn to the Attorney General for legal advice and for the rendering of Official Opinions. Such opinions are acted upon daily and a great deal of the operation of the State government depends upon the nature of the advice that is so rendered. These Opinions are rendered to all departments of the State government, those under the direction

and supervision of the Governor and those under the direction of other elected officials. It is important to note that the Opinions have a direct and significant impact upon the People in their daily life. Here is a compelling reason why the Attorney General should continue to be independently elected. If the Attorney General is appointed by the Governor, then of necessity his opinions must reflect the philosophy of that Governor or the relationship would not be a compatible one.

An Attorney General does not give partisan advice; he gives legal advice. There is no such thing as "Democratic" law, "Republican" law, "Conservative" law or "Liberal" law. There is simply "law" — and the Attorney General, with the same degree of impartiality and objectivity as a Judge, calls it as he sees it.

The independent status of the Attorney General — the fact that he is the People's choice and is accountable to no one else — is implicit in the wide range of his official activities and duties which are based on the concept of his independence. Thus, he is, ex officio, a member of several boards and commissions, the other members of which are usually representatives of the administration. Thus, it is his duty to defend in Court the constitutionality of an act of the Legislature regardless of whether the current administration, as a matter of policy, supports it or not. And thus, with regard to proposed legislation, it is his duty impartially

to consider its constitutional validity and statutory interpretation and advise the Governor accordingly, regardless of the latter's policy consideration of such bills. If the Attorney General were an appointee of the Governor such functions may be rendered anomalous because the objectivity and impartiality inherent in his independence would necessarily fall with the destruction of his independence.

Furthermore, the responsibility for the effective protection of the consumer and the investor entrusted to the Attorney General (the prototype for similar authority in the Attorney General in many states in the Union) is predicated upon the existence of an independently elected Attorney General who will not be deterred (as during my tenure) in taking the initiative for affirmative action by the opposition of other governmental departments or agencies, the heads of which are appointed by the Executive. My own experience in the past ten years as Attorney General is illustrative of this fact. Thus, the creation in 1957 of the Consumer Frauds and Protection Bureau in the Department of Law was resisted on the ground that there would be duplication of some of the functions of the Banking Department. Similarly, the establishment of the Real Estate Syndication Bureau in the Department of Law was effected despite executive resistance on the ground that the Attorney General would thereby be performing a function in an area presumably

policed by the State Division of Housing. The creation of the Civil Rights Bureau in 1957 was opposed on the ground that it overlapped and duplicated existing functions of the State Commission Against Discrimination. These three bureaus were created by an elected Attorney General who acted on his own initiative in behalf of the people. The important fact is that they were created without clearance from the Executive.

The basic statutes (Executive Law § 63[12] and Business Corporations Law §§ 109 and 1101) confer authority upon the Attorney General to investigate and secure judicial disposition restraining any illegal and fraudulent acts. This power is not circumscribed or qualified by the existence of concurrent jurisdiction in a limited area by other government officials. Such authority of the Attorney General obviously bespeaks an independent Attorney General.

Similar independence is called for in the invocation and enforcement of the State's anti-trust law. The vigorous enforcement in the last ten years of this statute, aided by the expanded powers authorized by the Legislature, has been so singularly impressive as to receive national attention and commendation. The intensity of such activity should not, as is the case elsewhere, be made subject to the decision of a Governor who may be influenced by many factors alien to proper anti-trust considerations. Such enforcement must be left to an independent Attorney General responsible only to

the People for the implementation of the State's anti-trust policy.

My views are based on ten years of close affiliation with all branches of State Government — with the Governor and his Counsel, with the Legislature and its Committees, leaders and members, with the executive departments and agencies and their counsel, with the Judiciary, and with Authorities and local subdivisions and their officers and counsel. The activities of the State are so vast in magnitude, so varied and complex in character — the actions of its constituent elements being occasionally at cross-purposes — that, in the best interests of the People of the State there must necessarily be premised as greater assurance of independence, impartiality and objectivity, an Attorney General who is elected.

In West Virginia, where the Attorney General is elected, the incumbent Attorney General said:

> "I've been an elected Attorney General for two terms, and in the exercise of my duties I could not have fairly represented the agencies of government or the citizens of this State had I been subject to the whims of the executive or subject to political pressures other than the voters.
>
> "* * * In every occasion wherein one would have the authority of appointment, he also would have the 'hammer' on tough questions of policy. No Attorney General should be forced to operate under such an

> arrangement. The mere fact that it would be possible should be precluded."*

The overwhelming weight of opinion in favor of the elective process, predicated on the concept of the independence of the office, is exemplified by expressions of official views throughout the United States. Thus, at the Constitutional Convention of the State of Michigan, held as recently as 1963, in adhering to the elective process, it was said:

> "We favor election of the attorney general, the chief law enforcement officer of the state. In a representative government, appointment of the chief law enforcement officer would place him in a position of obligation which would make his duties more difficult. If the attorney general were appointed, he could be subjected to the influences of the appointing authority. Presently, he is able to make an independent legal judgment which might differ from the political decisions of other members of the executive branch. * * * [T]he governor has to make many decisions. Many of them are political decisions. I don't think that the best interests of the state can be served if the attorney general is appointed so that he must confirm the political decision of the governor. I think that the people of the state of Michigan have a right to the service of an attorney general who can say no, when the law and the interpretation of the law demands that he say no."

The Attorney General of Maine, who is appointed by the Legislature, said:

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* At my invitation the Attorneys General of virtually all of the States have stated their positions on the proposal here under discussion. Copies of their replies have been submitted to your Committee.

> "[I]f the Attorney General is appointed by the Governor, there is always the question of whether or not he becomes in the nature of a legal rubber stamp and convenient oracle of the law for the Governor's purposes."

Oregon's Attorney General states that "the elected Attorney General is the people's best guarantee of vigorous and impartial interpretation and administration of state law."

Perhaps the most forthright statement of all has come from the Attorney General of Nevada:

> "When you place the chief legal office of the state under the appointing power of the Governor you rob him of the complete independence that is his when elected by the people.
>
> "It is this very independence which results in the fearless and efficient administration of justice."

Although no elective Attorney General has favored an appointive process, it is interesting to note that two appointive Attorneys General are in favor of the elective system. Maine's Attorney General, appointed by the Legislature, has said:

> "I think I am of those who would like to see the Attorney General in Maine elected at large by the people * * *."

And the Attorney General of Alaska, who is appointed by the Governor, has said:

> "Again, from my own experience, if I were given the choice I would be inclined to favor the elective position over the appointive for the simple reason that I believe that a lawyer can function more

> effectively if he has freedom of action in his own specialized field."

It has been argued that the elective process may result in a Governor of one political party and an Attorney General of another, with possible resultant disharmony and friction in the running of the State government. Of course, as a matter of abstract theory, implicit in the concept of independence is the concept of potential disagreement. And it is always possible that incumbents who are influenced solely by political motivations are capable of disruptive tactics. But experience has shown that men who have the knowledge, experience, character and maturity to have attained the high office of Attorney General can be relied on to have a sufficient sense of responsibility and responsiveness to the public need to make such accommodations as the law will permit.

It should be noted that in those jurisdictions in which the Attorney General is appointed, because it is believed that the Governor and the Attorney General should be of the same political faith, the Attorney General is merely a part of the Executive branch of the state. An elected Attorney General, as in New York, is more than merely a part of the Executive branch.

While harmonious relations between the Governor and the Attorney General are unquestionably desirable, it seems that harmony merely for its own sake is too high a price to pay for the loss of the independence which gives greater assurance of effective government in the public interest.

It has been said that the Governor should at all times have an Attorney General with whom confidential matters can be transacted; that the Governor should not be compelled to retain his own counsel. But this is based on the erroneous concept that the Attorney General is the Governor's counsel. He is not the Governor's counsel in the normal sense of the term; he is the People's counsel. This is recognized even in States, like New Jersey, where there is Counsel to the Governor despite the fact that the Attorney General is appointed by the Governor.

The diverse functions of the Attorney General and the Governor's counsel may be succinctly summarized as follows:

(a) Attorney General

1. Litigation in all courts.

(a) Court of Claims - Representing the State and its agencies and officials in all claims based on contracts, torts and appropriations.

(b) All other Courts - Representing the State, the Governor, State Departments, Agencies and Authorities, the Judiciary, and the Legislature.

(c) Defending the validity of statutes which are attacked as unconstitutional.

(d) Habeas corpus matters - criminal and civil.

(e) Affirmative actions in all courts on behalf of the People in such matters as consumer frauds, anti-trust, civil rights, security frauds, realty investment frauds, and theatrical financing and charity frauds.

2. Renders opinions and advises the State, the Governor, the Legislature, and all State departments, agencies and officials.

3. Submits memoranda to the Governor on bills passed by the Legislature.

4. Renders advice on an informal basis to political subdivisions of the State.

5. Exercises criminal jurisdiction under the Executive Law and other statutes.

6. Supersedes District Attorneys when directed by the Governor.

7. (a) Administers registration of brokers, dealers and salesmen who deal in securities, and exercises enforcement powers.

   (b) Supervises public offerings of real estate (syndication, investment trusts condominiums, and cooperatives) and theatrical financing, and exercises enforcement powers.

   (c) Administers registration of theatre box office ticket-selling personnel, and exercises enforcement powers.

   (d) Administers registration of charitable foundations and trusts, and exercises enforcement powers.

   (e) In dealing, in court or otherwise, with estates and trusts in which the People are possible beneficiaries, he appears on behalf of the People.

(b) Counsel to the Governor

1. Advisor to the Governor.
2. Prepares annual message and special messages of the Governor.
3. Prepares Governor's legislative program.
4. Assists in the preparation of the departmental legislative programs.
5. Handles complaints against officials.
6. Extradition.
7. Clemency.

A further distinction in function between the Attorney General and Governor's counsel resides in the affirmative work of the Attorney General on behalf of the People which is constitutionally and statutorily imposed upon him. Thus, to name but a few of his functions, some of which have been mentioned, he acts affirmatively in matters of consumer protection, civil rights, anti-trust matters and charity frauds. Constitutionally, he acts under Article I § 6 of the Constitution against public officers and employees who refuse to waive immunity or testify in grand jury investigations. There are other statutory provisions, too numerous to mention, under which the Attorney General is required to take affirmative action. The most recent of those provisions, as an example, is the new Public Employees' Fair Employment Act (Laws of 1967, Chap. 392) under

which the Attorney General is now placed in the highly important field of public labor relations.

Obviously, because of the overriding primary allegiance of the Attorney General to the People, rather than to the Governor, the basis of the independence which is the hallmark of the office of the Attorney General, it is perfectly proper that the Governor have his own counsel. There is no antipathy between the two offices. Despite some unavoidable duality of operation, they complement each other.

That the existence of both positions does not create a problem of unavoidable friction is attested to by actual experience in our own State when we had a Democratic Governor with Counsel of his political persuasion and a Republican Attorney General. Dean Daniel Gutman, former Counsel to Governor Harriman, wrote to me as follows:

> "During the four years in which I served as Counsel to the Governor, I enjoyed a compatible and co-operative relationship with the Attorneys General, - first, the present Senator Javits and then yourself.
>
> "On occasions we found ourselves in disagreement. This occurred very rarely, and it served to reinforce my opinions on the more numerous occasions when we were in complete accord.
>
> * * *
>
> "In my opinion the broad scope of the Attorney General's activity, his

> great and varied responsibilities and the volume of business, particularly in a State such as ours, requires that this official be elected rather than appointed. I see nothing worthwhile that can come from a change in the present system that has been in existence here as in most other States, for so many years."

Judge Samuel I. Rosenman, who was counsel to Governor Roosevelt, observed that perhaps ten per cent of his time was devoted to legal matters. He added:

> "Neither the Counsel to the Governor nor Counsel to the President can render any official opinion. Official opinions can come only from the Attorney General; so it is not quite accurate to say that the Counsel takes the place of the Attorney General in serving the Chief Executive."

Although Judge Rosenman leaned toward the appointive method, he conceded:

> "Having said all the above, presenting the pros and cons, I don't think I am completely convinced on either side. It is as Oscar Hammerstein said in THE KING AND I a 'puzzlement.'"

Governor Poletti, who was counsel to Governor Lehman, observed:

> "I do not favor the discontinuance of the Attorney General as an elected official and his appointment by the Governor."

Pointing out that, since the Governor and the Lieutenant Governor are elected as one, the only two remaining statewide officials who are elected are the Attorney General

and the Comptroller. With perspicacity born of a lifetime of experience Governor Poletti added:

> "The people are smart enough to vote for each of these officials, and there is serious danger in reducing the scope of participation by the people in their government.
>
> * * *
>
> "* * * In all events, I believe the State greatly benefits from the independence of the Attorney General and Comptroller."

2. Separation of Powers - Checks and Balances.

As a corollary to the concept of the independence of the office is the fundamental concept of a democracy respecting the separation of powers--the system of checks and balances. "Appointment" of the Attorney General is incompatible with the doctrine of the separation of powers. There is nothing intrinsically wrong with the concept of a Governor of one political party and an Attorney General from another. They can and do often act as a "check" upon one another and if, as a result, there is occasional friction, this is a healthy phenomenon which a viable and dynamic political society can survive and, indeed, probably be the better for it. In certain situations, given a weak or ineffectual Legislature and a strong and forceful Governor, the only effective balancing and checking power may come

from an Attorney General who publicly espouses a responsible opposing point of view.

The Attorney General of Kansas expressed the point well:

> "[T]he elected attorney general is a further extension of the system of checks and balances which was incorporated into the form of government initiated by our founding fathers and which has flourished in the United States since its beginning."

To the same effect is the statement of the Attorney General of Minnesota:

> "[T]he office of Attorney General has developed in state government in a unique way. State legislatures do not have the broad investigative power that the Federal Congress has. In most states — one of the most important statewide investigative officials is the Attorney General. If an Attorney General was to be appointed by the administration he then becomes solely dependent upon it and tends to overlook problems which develop within that administration.
>
> * * *
>
> "* * * [U]ntil there is some alternative form of check and balance on state government, a broadly based elected Attorney General is preferable to one appointed by the Governor."

The Attorney General of the State of Washington, an elected official, has said:

> "The reason I would like to see the Auditor and Attorney General elected by the people is because I believe in

> government there are two necessary ingredients--money and law. These are so important that I think an official personally responsible to the electorate should be chosen by the people to provide the necessary check and balance.
>
> * * *
>
> "The law is the whole touchstone of our Democratic form of government. The man or woman who says the law is or is not being followed should be, in my belief, directly responsible to the people."

Vermont's Attorney General has stated:

> "Having an independent Attorney General, elected by the people of the state as a whole, is but another check and balance in state government that in the all important realm of legal and constitutional interpretations is essential to the sound functioning of state government, * * *."

The Ohio Attorney General believes that the elective status of the office "constitutes one of the more effective balances of the Executive Department of the State." He adds:

> "The Attorney General's office should be run as a law office, with a completely objective approach to the legal problems of an administration, and should not be relegated to a position of house counsel finding ways and means to support executive policy. By being elected the Attorney General is responsible only to the people of the state and this, to my way of thinking, is as it should be."

Maryland's Attorney General summarized the situation very succinctly:

> "From a historical point of view Maryland's system of electing both the Governor and the Attorney General appears to have effectively served the best interests of the people of this State. That system is but another example of the checks and balances so carefully written in the Constitution of Maryland. It is my opinion that to take away from our citizens the right to elect the Chief Legal Officer of the State is to lessen their direct participation in affairs of government, and I vigorously oppose any such change in our traditional practices."

Election results, both on the State level and in the City of New York, reveal that our sophisticated electorate does not always choose a straight party ticket. At the level of Governor and Attorney General, the people should have the right to split their ticket and choose the best candidates even though they are not necessarily of the same political party. Indeed, the split ballot is proof positive that the people, themselves, are not concerned with whether the Attorney General is of the same political persuasion as the Governor.

3. <u>The elected Attorney General has a direct responsibility to the People</u>.

Also as a facet of the "checks and balances" concept and a further corollary of the "independent" status of the

office is the underlying premise, which has historical, traditional and logical validity, that only the People should be in a position to command the Attorney General's undeviating allegiance and loyalty. The correlative of this concept is that the Attorney General's prime and direct responsibility is to the People.

An elected Attorney General is imbued with a deeper sense of direct responsibility to the public from whom he has received a mandate than is the appointed official whose authority springs singularly from one individual. The elected official innately senses this strong personal and direct responsibility to the People and is thereby inspired to a greater degree of creativity, a broadened initiative and an increased desire to innovate in their behalf. The reaction is almost intuitive. As a result, he is free to act without clearing a matter with the executive hierarchy or obtaining the Governor's approval. I have already detailed my experience in this regard when I established the Consumer Frauds and Protection Bureau, the Real Estate Syndication Bureau and the Civil Rights Bureau in the Department of Law. Also, in this connection, I wish to point out that the Department of Law prepared and had introduced during my tenure, without executive clearance, our own legislative program, in the public interest, to protect

the consumer, the investor and the legitimate business man, as well as bills to reinforce civil rights.

The Attorney General of Wisconsin expressed the concept well:

> "An Attorney General also performs numerous functions independently of any state agency. I refer particularly to his activity in such fields as consumer protection and anti-trust enforcement. I believe that an Attorney General who is responsive to the needs of the people can better fulfill these duties which have been entrusted to him by the people.
>
> "It is my firm opinion that a State Attorney General should be an elected official. He should represent and be responsive to all of the people of the state. I believe that the activity of the Attorney General in the field of consumer protection alone is an outstanding example of the way in which elected Attorneys General respond to the needs of their constituents. Appointed officials who are not directly responsible to the voters are not nearly as sensitive nor as responsive to their needs."

Virtually all of the Attorneys General stress "accountability" to the People, rather than to the appointing officer; that the Attorney General should be clothed with an independency of action in protecting the public interest; that, even at the expense of potential lack of harmony, he should enjoy a freedom that is unfettered by any domination whatsoever; and that as a lawyer he should not be an employee, but rather should be allowed freely to exercise his proper

functions both as an officer of the court and as an attorney, bound only by the ethics of his profession and his oath of office.

4. People's right of recall.

Because of the fact that an elected Attorney General bears the burden of direct responsibility to the electorate which give him their mandate, he is subject to the "recall" prerogatives of the electorate. If they are dissatisfied with the performance of their elected Attorney General, they can replace him at the ensuing election. An appointed Attorney General would deprive the electorate of this substantial and salutary power.

The correlative of the right to recall an incompetent incumbent is the right to retain a competent incumbent. This is lost in the case of an appointed Attorney General because, no matter how efficient, competent or successful an appointed Attorney General may be, upon a change of administration he is usually turned out of office.

CONCEPT OF A "DEPARTMENT OF JUSTICE"

I am aware of Proposition No. 49 (introduced by Mr. Hull) which provides for the appointment of the Attorney General by the Governor and for a Department of Justice to be headed by the Attorney General and which further provides that "the legislature shall pass appropriate legislation for the implementation of this department." I am also aware of Resolution No. 24 (introduced by Mr. Sand) to direct the Committee on the Executive Branch to prepare and present a proposition to establish a Department of Justice, "into which shall be consolidated all of the functions, powers, duties and responsibilities of state government in connection with or relating to law enforcement, including, but not limited to, the prevention and investigation of crime, and the detection, identification, apprehension, prosecution, custody and rehabilitation of persons accused or convicted of crime."

Proposition No. 49 is too general and, therefore, difficult for present comment because it leaves everything to legislative implementation. Resolution No. 24 seems to indicate that all police departments, local as well as State, all Sheriffs and District Attorneys, all Correctional, Reform and Prison facilities, as well as the State Division of Parole, shall be under the jurisdiction of the proposed Department of

Justice. It does not define the projected department with sufficient particularity nor reflect the magnitude or complexity of the proposal. Nothing is said of the existing broad civil jurisdiction of the Department of Law.

However, I do have some recommendations which are more appropriate for legislative action:

(1) I am in favor of the greatest coordination and cooperation in the field of law enforcement — in a program such as is conceived under the recently created Crime Control Council (Laws of 1967, Chap. 167), under which Governor Rockefeller has provided an impressive and extensive program. Ex officio, the Attorney General or his designee should be a member of the Crime Control Council.

(2) Another area of interest is the relationship of the Attorney General and the District Attorneys. I am not in favor of appointed District Attorneys under the jurisdiction of the Attorney General. I believe that the District Attorneys should continue to be elected public officials.

However, I am of the opinion that there is room for a closer relationship between the Attorney General and the District Attorneys; this would result in better enforcement of the criminal laws. The Attorney General could be authorized to provide a forum for inter-county cooperation between District Attorneys. Periodic meetings could be mandated at

which attendance by District Attorneys or their representatives would be required. The Attorney General could prepare and disseminate information of common interest and bring law enforcement to new peaks of efficiency and excellence.

(3) Some local prosecutors are ill-equipped to handle complex criminal appeals because of a limited staff. The prosecutors should be permitted to call on the Attorney General for advice, cooperation and aid in appellate matters. To this end, provision could be made for the handling of criminal appeals by the Attorney General if requested to do so by the District Attorneys.

When specific and concrete provisions defining the jurisdiction and powers of a "Department of Justice" are presented, I shall be pleased to submit another Position Paper in which I shall make comments on the proposals.

CONCLUSION

In the interest of uniformity and consistency, the Attorney General should be constitutionally designated as the sole and exclusive representative of his public clients in all courts. In this connection I strongly support Proposition No. 365 (introduced by Mr. Reidy), which provides that -

> "The attorney-general shall be required and it shall be his duty to represent and appear for the state and all branches of the state government and all state departments, agencies, bureaus, officers and authorities in all litigation in which they shall be involved in all courts, and they shall be represented in the courts by no other persons than the attorney-general or a member of his staff."

The basic duties and powers of the Attorney General should remain intact with the addition set forth in Proposition No. 365. The Attorney General's activities as the State's chief legal officer are vital to the Legislature, to the various departments and agencies of State Government and, above all, to the People of the State of New York.

All can be accomplished, however, only if the Attorney General has the independence of an elected public official. That the elective status is productive of the best results is attested to by my immediate predecessors in the office of Attorney General. Our tenure covers the period of the past thirty-five years, during which we have experienced the deepest economic recession in our history as well as the longest period of economic well-being, during which we have had global conflicts, and during which we have come into the nuclear and the space age. Attendant upon these vast and fundamental changes have come a myriad of novel problems with which the Attorneys General have had to cope and for the most part they have successfully and vigorously responded

to the challenges. During these past thirty-five years, the Attorneys General of New York State have been John J. Bennett, Nathaniel L. Goldstein, Jacob K. Javits and I. My three immediate predecessors have authorized me to state that they favor the retention of the office on an elective basis. And so do I.

To sum it up - an elected Attorney General has a measure of independence and a sense of personal and direct responsibility to the public. The elected official has a natural and impelling desire to be creative and to exercise broader initiative in the service of the public. He is free of the fear of dismissal by any superior official if he should exercise contrary independent judgment. He is in the best position to render maximum service to the People and impartial advice to the Governor, the Legislature and State departments and agencies. He can appear in Court without fear or favor - an attorney in the fullest and finest sense of the word.

Dated: Albany, New York, June 1, 1967

Respectfully submitted,

LOUIS J. LEFKOWITZ
Attorney General

ADDENDUM

Former Attorney General Nathaniel L. Goldstein, after declaring that he is for an elective Attorney General, stated:

> "During my tenure as Attorney General, I did render opinions in opposition to the wishes of the Administration when, in due conscience, I felt that my interpretation was the legal and proper one. Had I been subject to the Governor's appointive and removal powers, I might have found myself in a very difficult and awkward position."

HOUSE BILL NO. 456

COPY

Early last session Representative Uehling and Representative Ward sponsored HJR 7 which proposed amendments to the Constitution of the State of Alaska relating to the election of the Attorney General. The legislation passed the House but failed to pass the Senate.

Subsequently, [illegible] has been introduced which would authorize an advisory vo[illegible] registered voters of the State. This would allow the legislat[illegible]uge the feelings of the public and act accordingly.

Submitted by Rep. Jerry Ward's Office

STATE OF ALASKA

Bill Sheffield, Governor

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

POUCH K – STATE CAPITOL
JUNEAU, ALASKA 99811
PHONE: (907) 465-3600

January 19, 1984

The Honorable Mitchell Abood
Chairman, House State
Affairs Committee
Alaska State House of
Representatives
Pouch V
Juneau, AK 99811

Re: Elected AG
House Bill 456

Dear Representative Abood:

I do not oppose the concept of having the people express their opinion to the Legislature in an advisory vote on the issue of whether or not the attorney general should be elected. However, I would like to comment on the merits of the underlying question of whether or not we should elect the attorney general.

I have lived and practiced law in our state for most of my adult life. I am absolutely convinced that the needs of all Alaskans are best served by having an appointed attorney general. Election of one cabinet level official makes no more sense than the election of some or all other commissioners.

Historically, the Attorney General has been an appointive, rather than elective, official. In England, the Attorney General was appointed by the Crown and only incidentally acquired elective status through a seat in Parliament. In Colonial America, Attorneys General were usually appointed by the Governor of the colony. The Attorney General of the United States still serve at the pleasure of the President with the advice and consent of the Senate. 1/

1/ Our research indicates that the Attorney General is popularly elected in forty-three states. The Attorney General is appointed by the Governor in five states (New Hampshire, Alaska, Hawaii, New Jersey and Wyoming), three territories and the Commonwealth of Puerto Rico. In Maine, the Attorney General is a "constitutional officer" selected by the Legislature while Tennessee's Attorney General is selected every eight years by the Supreme Court of that state.

The governor, as the state's principal executive officer, needs to have a responsive and reliable Department of Law. I think good management requires an appointed attorney general, but more importantly common sense suggests that the attorney general selection be made by appointment. The delegates to our Constitutional Convention recognized a quarter century ago that, in our vast state with its disparate interests and citizens, the administration of state government requires a strong governor. This still holds true today. The last thing our state needs is an elected attorney general who may have a personal or political agenda which varies from the position of the governor. The friction between the two elected administrative officials can lead to a less responsive state bureaucracy and an unclear accountability of the executive branch to the electorate.

I could relate anecdotes which illustrate this from other jurisdictions having elected attorneys general. Instead, I would rather provide a quotation from the National Municipal League:

> All authorities on executive organization agree with the position embraced by the Model State Constitution for more than 40 years that administrative power and responsibility should be concentrated in a single popularly elected chief executive. There is growing recognition that the governor, as the representative of all the people, should be equipped with the constitutional status necessary to exercise constructive leadership as the chief lawmaker and political head of his state. 2/

Studies on administrative reorganization usually argue that fragmentation leads to irresponsibility, but that a single chief executive can be held accountable through the electoral system and, as a consequence, can make the administration more responsive. In my opinion, the Governor of Alaska needs the flexibility and discretion that is implied in an appointed attorney general. Anything less will inevitably drive a wedge between the Governor and the Department of Law to the detriment of the citizens of our state.

2/ National Municipal Leagues, MODEL STATE CONSTITUTION (6th ed.) 55-66 (1963).

In addition to the practical problems caused by an elected attorney general, experience in other states with an elected attorney general suggests that the Governor's office will incur substantial costs with respect to the use of separate and additional counsel for the Governor. I am of the opinion that this use (and cost) depends on the relationship between the Governor and the elected Attorney General. In a situation where an elected Attorney General and Governor are cooperative, cordial and share a similar political philosophy, the need for additional Governor's counsel will be reduced. Regrettably, this is not always the situation. A 1976 study by the National Governors' Conference explored the role of Governors' legal advisors. The study, which was based primarily on a questionnaire to these counsel, found problems in this relationship:

> In many states, the relationship between the Governor and the Attorney General is not a smooth one. In addition to whatever political differences there may be between them, there are several operational areas of potential conflict. These include conflicts over the extent to which the legal talent employed by state agencies should report to the Attorney General or to the agencies; concern that the Governor cannot easily deal with the Attorney General because the Attorney General normally provides "yes-no" answers rather than discussions of the legal risk of various options; and the possible frictions that may normally occur in an attorney-client situation. 3/

While I cannot estimate the actual use and cost of additional counsel to oversee the elected Attorney General on behalf of the Governor, I am convinced there will be some extra cost incurred by the Governor's office to hire and use legal counsel even in the best of times. I sadly regret that the citizens of our state will be required to pay for this additional layer of legal bureaucracy.

In addition, in states where the attorney general is elected, the heads of executive departments often hire their own attorneys. In jurisdictions with elected attorneys general, there is often a proliferation of house counsel on the staff of major departments. Historically, such counsel have been employed

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3/ National Governors' Conference, Center for Policy Research and Analysis, LEGAL ADVICE FOR THE GOVERNOR, 7 (November, 1976).

by executive branch agencies to give department heads a "second" opinion in controversial matters in states having an elected attorney general. Such counsel usually do not have the authority to litigate, but they do provide legal advice to department heads. Without centralized legal service and advice, each agency will rely on advice from its own lawyers. Therefore, agencies will receive differing interpretations as they raise legal issues. This in turn will make consensus among different agencies on issues more difficult to achieve. The result is that public policy decisions in the executive branch will be delayed to the detriment of the public and the legislature. In addition, these house counsel frequently submit amicus briefs in litigation affecting their department's programs. It is not unusual in states with an elected attorney general to see four or five separate briefs filed in a single matter, representing the varying viewpoints of different agencies, in addition to the attorney general's brief. If nothing else, this needless duplication insures that the courts and the public will be confused about state policy on many issues.

In my estimation, the cost for such additional counsel in Alaska could easily exceed $1.0 million annually, within a few years. This cost is simply not warranted by any rational criteria and should be further questioned in light of diminishing revenues. We have many more basic needs in Alaska which command the state government's immediate attention. Surely we do not want a needless layer of extra lawyers embedded in state agencies.

In summary, it is my opinion that electing the Attorney General will split administrative responsibility and executive authority, diffuse the political accountability of the executive branch to the public, add more attorneys to state government, contribute to more intense bureaucratic infighting among agencies, delay the resolution of executive branch policy decisions, and create a higher rate of growth in the state operating budget.

Please call upon me at your earliest convenience if I can provide additional information on this matter.

Sincerely,

Norman C. Gorsuch
Attorney General

NCG:vrb

EDITORIAL PAGE

The Anchorage Times

ROBERT B. ATWOOD
Editor and Publisher

WILLIAM J. TOBIN
Associate Editor
And General Manager

FRED DICKEY
Executive Editor

Another good reason

ONE WAY for Alaska to avoid having legislative lawyers sue administration lawyers is to elect an attorney general who is beholden to neither.

Add that to a long list of reasons to make the attorney general one of the very limited number of elected officials in the State of Alaska. As a matter of fact, there are only two — the governor and the lieutenant governor. Commissioners who head the various administrative departments are appointed by the governor.

This extremely restricted opportunity for the people to elect the public officials who presumably serve them is a unique provision of the Alaska Constitution. It was deliberately adopted, for the reason that those who were here at the time the new state was created wanted a powerful chief executive.

They wanted leadership and accountability. When it came to steering this new ship of state, those Alaskans back in the middle '50s wanted a single captain on the bridge.

IT WAS a good idea. There was need for a powerful hand at the helm of a state with little income, a small population and a million needs. The governor had marching orders to assemble a team and get the show on the road — with the concurrence, of course, of the legislative branch.

It had a fine beginning. For the most part, the executive and legislative branches worked in concert toward a common goal during years of economic struggle.

But not even the visionary constitutional delegates, and the voters who applauded their work in those dimming last days of the territory, could have perceived the day when Alaska would be rolling in money and a single field could produce a trillion dollars worth of oil.

The coming of that wealth produced a Mount St. Helens eruption in the Juneau bureaucracy. Not only did executive agencies swell in size and number, the legislature ballooned as well. It added offices and staffs and interim agencies and even went so far as to hire its own legal counsel, separate from the attorney general's office.

OVER THE YEARS, the attorney general became more the lawyer of the governor than of the state government as a whole. That produced an adversary situation with the legislators who often wanted a different legal opinion than they could expect from the Department of Law.

Their answer was to hire lawyers who would provide opinions supporting the legislature's interests. The result is that public funds are used to finance one set of state lawyers doing battle with another set.

An independent attorney general's office, headed by an elected chief not beholden either to the governor or the legislature, could provide both with unbiased and unfettered legal guidance. The people, as well as state officials, would be better served.

EDITORIAL PAGE

The Anchorage Times

ROBERT B. ATWOOD
Editor and Publisher

WILLIAM J. TOBIN
Associate Editor
And General Manager

FRED DICKEY
Executive Editor

Let the voters decide

IN FORTY of the 50 states, the attorney general is elected to his post.

It is a system that obviously works well, because the people are the ones who decide who should fill this high office. And an attorney general answerable to the people is one who is responsive and responsible.

It's strange, therefore, to see the burning vigor that marks the opposition to letting the people of Alaska choose their attorney general. Yet there are those who apparently fear the people.

For example:

"I can think of no single change that would be more damaging, more harmful, more dangerous to the character of government."

THAT'S THE astonishing view of Superior Court Judge Thomas Stewart of Juneau, who testified the other day before a legislative hearing on a proposed constitutional amendment that would require the election of Alaska's attorney general, who is now an appointee of the governor and answerable only to him.

More damaging? More harmful? More dangerous?

How can this be? What is being proposed is part and parcel of the democratic form of government in which the people have the right to elect their leaders. Are elections damaging, harmful and dangerous to the character of our government?

We confess to lacking the judicial wisdom that graces members of Alaska's Superior Court. But all along we thought the character of our government was rooted in the elective process.

There are many Alaskans — and we're among them — who believe the present system of having the attorney general appointed, rather than elected, has proved less than satisfactory.

We don't buy the argument of former Attorney General Norm Gorsuch that "legal competence and electablity are not necessarily equal." The statement is incomplete. The rest of it is that "legal competence and appointability are not necessarily equal, either."

IT'S QUITE POSSIBLE that an incompetent lawyer might be elected attorney general. But his shortcomings would be readily evident and it's a sure thing that he would serve only a single term.

It's also quite possible — in fact, very likely — that some extremely capable men and women would seek election to the office, were it up to the people to decide. An elected attorney general would be his or her own person, with his or her reputation on the line. And he or she would be no lackey to any governor, or any legislature.

There's no doubt that were the office an elected position, it would be used by many as a stepping stone to higher office — the governorship, for example, or a seat in the U.S. House or U.S. Senate. But what's wrong with that?

Rep. Fred Brown, the Fairbanks Democrat who heads the House Judiciary Committee sponsoring this constitutional change, sees this as a means of strengthening government. So do we. And we hope he prevails so that this matter can be brought to the ballot for a vote of the people.

The Anchorage Times

ROBERT B. ATWOOD
Editor and Publisher

WILLIAM J. TOBIN
Associate Editor
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FRED DICKEY
Executive Editor

The better way

IT'S TOO BAD that former Attorney General Avrum Gross doesn't think it's a good idea for Alaskans to elect their attorney general. But just because he feels that way detracts not one iota from the merit of the proposal.

It would be astonishing were Mr. Gross, who now teaches a couple of courses at Stanford University law school, to come out for an elected attorney general. His public career has been as an appointed legal spokesman for Gov. Jay Hammond.

Fortunately, there are other legal experts — whose qualifications and public service careers are are least as good as those of Mr. Gross — who feel precisely the opposite. They offered testimony contrary to that of Mr. Gross by satellite communication facilities in a hearing last week before the House Judiciary Committee.

The attorneys general of Pennsylvania and Colorado and the assistant attorney general of California told the committee that an elected attorney general is more independent of the governor and administration and thus less vulnerable to political repercussions from decisions.

FORTY of the nation's 50 states elect their attorney general. Alaska is one of only five states where the office is filled by appointment of the governor. In the other five the selection is made in a variety of ways, including legislative appointment.

Mr. Gross, however, thinks the Alaska way is best. Were it otherwise, he contended, the governor would attempt to shift blame for administration failures onto the attorney general rather than have a clear responsibility himself.

That's a pretty feeble defense of the present system.

If anything goes wrong in the administration of any program, regardless of the attorney general, any governor is going to be politically adept enough to dance out of the line of responsibility.

THE ATTORNEY general of Pennsylvania told members of the Judiciary Committee that Pennsylvanians voted overwhelmingly in favor of a constitutional amendment to make the office elective because they felt the attorney general was "not responsive to public needs" and that there was a "cozy arrangement" between the attorney general and the governor.

Colorado's attorney general said an elected attorney general carries "at least the aura of having an independent political base" and can say no to the governor "when the governor ought to be said 'no' to."

An assistant California attorney general said an elective attorney general is more efficient than an appointive one and "is not necessarily a threat to the functioning of the governor."

Those comments make sense for Alaska. And the legislature should take steps to bring this constitutional change to the ballot.

There seems little doubt that the amendment would be approved, if the legislature would only give the people a chance to vote.

EDITORIAL PAGE

The Anchorage Times

ROBERT B. ATWOOD
Editor and Publisher

WILLIAM J. TOBIN
Associate Editor
And General Manager

DREX HEIKES
Managing Editor

Page A-10 Thursday, July 2, 1981

Memo to politicians

STATE OFFICIALS who depend on votes of Alaskans for their public offices would be wise to arrange for the attorney general to be elected. A statewide poll by Dittman shows that public support is overwhelming.

In response to one simple question "Should the attorney general be elected?" 61 percent responded affirmatively and 27 percent preferred appointment.

That was the quick reaction from Alaskans scattered far and wide. The idea of electing that important official was favored by 73 percent of those in rural areas, 63 percent in Central Alaska (Fairbanks), 56 percent in Southcentral, 67 percent in Anchorage.

Only in Southeast Alaska was the response different. There it was 41 percent for appointment and 42 percent for election.

A SECOND QUESTION put to the same respondents built up still more the case in favor of the elective process.

It cited some of the powers that go with the office of attorney general. Upon hearing them, the respondents were 71 percent for and only 21 percent against.

That question put it this way: "If you knew that the attorney general of Alaska, who is appointed, also appoints all state prosecutors and district attorneys throughout the state, would you support having the attorney general remain an appointed position or would you support the attorney general becoming an elected position?"

Those favoring election gained 10 points while those for appointment lost 6 points.

TWO MESSAGES are handed to the politicians in that poll. The first is that a substantial majority of Alaskans want their attorney general elected, not appointed. The second is that the proposal gains strength when Alaskans are reminded of the power that lies in the office.

A politician can readily see the significance. He is disappointing his constituents if he ignores the proposal and he may discover his reelection in jeopardy if the day comes when a candidate campaigns against him on that issue.

In rural areas the final lineup was 8& percent for election. In Central Alaska 75 percent. In Southcentral 71 percent and in Anchorage 74 percent. Even in Southeast Alaska many voters changed their minds on the second question. The final tally there was 54 percent for election and only 34 percent for appointment.

No matter how you cut it

THE UNIVERSAL preference of the majority of Alaskans for electing the state's attorney general was pointed up in many different ways in a Dittman poll that showed 71 percent in support and only 21 percent opposed.

Dittman reported that the election proposal has overwhelming support in almost every bracket of the population, be it based on age, sex, income, educational attainment, party registration.

AMONG ALASKANS who have registered as Democrats or Republicans, 72 and 73 percent, respectively, favor election. Non-partisans were 69 percent in favor. Alaskans aged 18 to 24 are 77 percent in favor, those 56 and over, 75 percent and those in between range from 68 to 72 percent. . .

The poll showed 76 percent of the women and 66 percent of the men favor election. Homemakers are 75 percent for it. Private and public sector employees as a whole favor it 71 to 74 percent. Among state employees, however, the idea is not so popular. Yet more than half (56 percent) are for it.

Support of the election proposal declines as family incomes increase but the majority in all categories favor it. In low income groups 77 percent favor it while in higher income households 67 percent do.

Curiously, the idea of electing the attorney general is more popular among those who don't bother to register, and hence probably don't vote, than among those who do. Those not registered showed 73 percent for election while registered voters were 71 percent favorable.

THE RESULTS of that Dittman survey will be engraved on the minds of those who plan political campaigns. And Dittman's final analysis might inspire some of them to get on the bandwagon to amend the constitution so as to give the people the elective power they want.

That analysis was, "Presenting information regarding the attorney general's powers and responsibilities causes a strong shift to the elected option — especially among the 'undecided' respondents. In total, the undecided percentage declines from 12 to 7½ and more than 5 percent of those who favored the current appointed status changed their minds to support the elected provision when it was learned that the attorney general has broad appointive powers of his own."

The Anchorage Times

ROBERT B. ATWOOD
Editor and Publisher

WILLIAM J. TOBIN
Associate Editor
And General Manager

DREX HEIKES
Managing Editor

Weak arguments

RIGHT OFF THE BAT, there was a loud objection to the Anchorage Crime Commission's proposal that Alaska's attorney general and the local prosecuting attorneys should be elected. The complaints came from the appointed attorney general and one of his appointed district attorneys.

The flaws they see in the proposal are worthy of public review.

For one thing, they said, electing such officials would bring the justice system into politics. They would become subject to pressure from members of the public with axes to grind.

For another, they argue, lawyers would run for attorney general and district attorney in hopes of using the positions as stepping stones to higher political office.

BUT THOSE aren't necessarily flaws. On the contrary, it's possible to argue that those prospects would offer an enormous improvement in the way things are done in Alaska.

Take the second objection first. Under the Alaska constitution, only two state government officials are elected statewide — the governor and the lieutenant governor. Everybody else in the system, including the judges, is appointed by the governor or by department heads appointed by him.

The only other elected officials in Alaska are the city or borough mayors, elected locally; 60 members of the legislature, elected in local districts, and the three members of the state's congressional delegation, elected statewide. Not much of a stepladder on which people interested in public service can climb toward higher office.

An elected attorney general naturally would be looked upon as a potential candidate for governor or U.S. senator or congressman. What's wrong with that? It might be a powerful incentive for the one occupying that spot to do an outstanding job.

AS TO THE COMPLAINT that an elected attorney general might be subject to public pressure, again the advantages are compelling.

Why shouldn't the attorney general have to dance on a hot public griddle if the people become alarmed over deficiencies in the administration of justice?

The system as it now exists makes the attorney general the personal lawyer of the governor, his political defender and his legal arm in waging political warfare against the legislature and the public.

So long as he remains protected by the governor's skirts, the attorney general is immune from public pressure. All kinds of policies can be legitimatized, even though they might infuriate wide segments of the public and frustrate the aspirations of the people.

Legal opinions issued by the attorney general bind state agencies. They can be tools of the governor to guide, maneuver, control and stop all kinds of enterprises — economic and otherwise.

An attorney general answering to the public through the political process would have the freedom to respond to public concerns in ways that are not possible now.

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STEPHEN J. VAN GOOR, DISCIPLINARY ADMINISTRATOR AND BAR COUNSEL

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GLENDA J. STRAUBE
LEW M. WILLIAMS

February 3, 1984

The Honorable Mitch Abood
Chairperson
State Affairs Committee
Alaska House of Representatives
1024 West Sixth Avenue
Anchorage, AK 99501

RE: House Bill 456

Dear Representative Abood:

I understand that the House State Affairs Committee is holding hearings this afternoon on HB 456 which would authorize an advisory vote by the citizens of the State of Alaska concerning the wisdom of electing the State's Attorney General.

In that regard, I request that the attached letter be submitted as a part of the Committee's record of testimony on HB 456. The attached letter, sent by then Alaska Bar President Karen Hunt to Representative Barnes, details the results of an advisory poll conducted by the Bar Association of its members concerning not only the election of the Attorney General, but the election of district attorneys and judges as well.

I ask that the members of your Committee, during its deliberations, consider the findings of that poll and the many reasons given for finding that the election of the Attorney General does not serve the public interest.

Should you have any questions, please do not hesitate to contact me. I have provided you with a sufficient number of copies for each member of your Committee. Let me thank you in advance for your consideration of the attached information.

Respectfully yours,

ALASKA BAR ASSOCIATION

Randall P. Burns

Randall P. Burns
Executive Director

attachment

BOARD OF GOVERNORS

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ALASKA BAR ASSOCIATION
P.O. BOX 279
ANCHORAGE, ALASKA 99510
AREA CODE 907/272-7469

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HUGH G. WADE

March 4, 1982

Representative Ramona Barnes
Chairperson
House Judiciary Committee
Pouch V
Juneau, Alaska 99811

Re: Election of Attorney General, District Attorneys and Judges

Dear Mrs. Barnes:

The Board of Governors of the Alaska Bar Association limits its legislative activities to those issues which impact on the administration of justice and the delivery of legal services to the public. One set of such issues is whether the present system should be changed to provide for the election of the Attorney-General, District Attorneys and/or judges. Below is a very brief discussion of the results of a February poll taken of the members of the Alaska Bar Association on those issues. The Board has directed that I communicate these results to you for your information. Thirty-five percent (35%) of the attorneys responded as follows:

1)	elect Attorney General :	No 71 %, Yes 29 %
2)	elect District Attorney:	No 79 %, Yes 21 %
3)	elect Judges:	No 82½%, Yes 17½%

Each respondent was given an opportunity to comment and repeatedly the following concepts were discussed.

The judicial branch of government in Alaska was deliberately not made a representative, elected body. It is an integral part of a three-branch, checks and balance

system of government. Further, judges should not interpret the law because of a temporary, single, explosive political issue: the need for predictibility and uniformity in our laws is too vital to the welfare of Alaskans. Likewise, judges should be able to uphold "unpopular laws" which safeguard the rights of individuals or groups who are not a part of the electorate who supported the people elected.

Of equal concern to the respondents was the realization that special interest groups could unduly influence court decisions and District Attorney prosecutions because of the amount of compaign contributions they could raise or the "party machinery" they could control. Likewise, concern was expressed about the backlog and system slowdown that would occur while judges and district attorneys planned for, solicited funds for and conducted an election campaign. This could be particularly harmful in small communities which have only one judge or District Attorney. Additionally, concern was expressed about the lack of uniformity of law enforcement that would result because district attorneys would be elected on different "platforms".

The concerns expressed about election of the Attorney General included possibility (in Alaska perhaps probability) of the Attorney General and Governor being of two different parties thereby introducing non-productive dissention in the administrative branch. The Attorney General's office becoming primarily a stepping stone to running for Governor was also mentioned as a disruptive possibility.

The confirmation by the legislature was viewed by some respondents as encouraging scrutinty of the Attorney General by elected representatives thereby giving the voters final say about the Governor's selection. Likewise, the retention election of judges provides voter acceptanc or rejection of the performance of judges. This process was viewed as a good balance and check on the initial appointment process.

Of particular interest are the uniform comments from attorneys who have practiced law and lived in states where judges and/or district attorneys and/or the Attorney

General are elected. Each respondent who so indictated such experience was opposed to changing our present system. The states of California, Illinois, Florida, Idaho and Oregon were specifically mentioned.

One example was emphasized where (in Florida) a new law school graduate entered the race for a judgeship at the last minute raising substantial campaign funds by attacking the judge's decision which had upheld a statute of the state legislature. He won thereby removing a judge with much experience and a solid reputation for fairness and efficiency on the the bench. He was thereby committed to a particular interpretation of a statute regardless of the facts of the case that might come before him. This result is contrary to the genius of our Anglo-Saxon system of justice which begins with the unalterable proposition that each party before the court has an absolute right to have his case decided solely upon the facts before the court.

The most repeated concept expressed by respondents who said judges, district attorneys and the Attorney General should be elected was that governmental decision makers should be elected by the voters.

We will try to provide such additional information or further discussion you may desire to the extent that we know or can ascertain the views of our members.

Yours very truly,

Karen L. Hunt
President

KLH:et

cc: Members of House

FISCAL NOTE

Revision Date:

REQUEST
Bill/Resolution No.: HB 456
Title: "...advisory vote...election of the Attorney General
Sponsor: Rep. Ward
Requestor: House State Affairs
Date of Request:

FISCAL DETAIL
Agency Affected: Department of Law
Program Category Affected: Admin. of Justice, Public Protection
BRU, Program or Subprogram(s) Affected: Legal Services, Prosecution, Consumer Protection

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 84	FY 85	FY 86	FY 87	FY 88	FY 89
OPERATING						
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 SUPPLIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS						
800 MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND	-0-	-0-	-0-	-0-	-0-	-0-
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS:

FULL-TIME	-0-	-0-	-0-	-0-	-0-	-0-
PART-TIME						
TEMPORARY						

SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

N/A

ANALYSIS: Attach a separate page for analysis

Prepared By: Richard I. Pegues, Director (Richard I. Pegues) Phone: 465-3672
Division: Administrative Services Date: 1-18-84
Approved by Commissioner: Norman C. Gorsuch (Richard I. Pegues/for) Date: 1-18-84
Agency: Department of Law

Distribution (by Agency preparing fiscal note):
Legislative Finance
Legislative Sponsor
Requestor
Office of Management and Budget
Impacted Agency(ies)

12/1/83

Fiscal Note
Analysis
HB 456

January 18, 1984

This bill authorizes an advisory vote, at the next general or special election, whether the legislature should propose a constitutional amendment that, if approved by the qualified voters of the state, would permit the election of the attorney general. Because this bill only authorizes an advisory vote, its enactment will not have a fiscal impact on the department's operations.

HB 456

Grants Pass, Oregon
February 19, 1983

TO MY FRIENDS IN THE ALASKA LEGISLATURE:

Almost thirty years ago I proposed that the state of Alaska elect its attorney general. Although my proposal was finally rejected by the Constitutional Convention in 1956, I have never abandoned my conviction that the attorney general should be "the people's attorney," elected by and responsible to the citizens of Alaska.

For that reason, I am pleased to support House Joint Resolution 7, which proposes an amendment to the state constitution providing for the election of the attorney general. HJR 7, if approved by both houses, would allow the electorate to determine the nature of the state's highest law enforcement officer.

I urge every legislator to fully consider this important bill. If you decide that your constituents deserve a truly impartial attorney general who is ultimately responsible to the people, then I encourage you to support the passage of HJR 7.

Thank you for your attention.

Respectfully,

Frank Barr

FRANK BARR
Delegate, Alaska Constitutional
Convention (1955-56)

HB

479

STATE OF ALASKA 1984 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date: 3/6/84

REQUEST
Bill/Resolution No.: CS for HB 479
Title: Bail Schedule

Sponsor: Hayes & Liska
Requestor: 1/9/84
Date of Request:

FISCAL DETAIL
Agency Affected: Natural Resources
Program Category Affected: Div. of Parks

BRU, Program or Subprogram(s) Affected:
Park Management/Operations

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 84	FY 85	FY 86	FY 87	FY 88	FY 89
OPERATING						
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 SUPPLIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS						
800 MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-
CAPITAL	-0-	-0-	-0-	-0-	-0-	-0-
REVENUE	-0-	-0-	-0-	-0-	-0-	-0-

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL	-0-	-0-	-0-	-0-	-0-	-0-

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY	-0-	-0-	-0-	-0-	-0-	-0-

SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

ANALYSIS: Attach a separate page for analysis

Prepared By: Mike Lee
Phone: 264-2123
Division: Parks
Date: 1/26/84

Approved by Commissioner: [signature] Deputy
Date: 3/6/84
Agency: Department of Natural Resources

Distribution (by Agency preparing fiscal note):
- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)

12/1/83

STATE OF ALASKA 1984 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date: 11/[illegible]

I. REQUEST
Bill/Resolution No.: CSHB 479(Res)
Title: Bai. Schedule
Sponsor: Haye
Requestor:
Date of Request:

II. FISCAL DETAIL
Agency Affected: Natural Resources
Program Category Affected: Div. of Park
BRU, Program of Subprogram(s) Affected
Park Management/Operations

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 84	FY 85	FY 86	FY 87	FY 88	FY 89
OPERATING						
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 COMMODITIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-
CAPITAL	-0-	-0-	-0-	-0-	-0-	-0-
REVENUE	-0-	-0-	-0-	-0-	-0-	-0-

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER (Specify Source)						
TOTAL	-0-	-0-	-0-	-0-	-0-	-0-

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						
TOTAL	-0-	-0-	-0-	-0-	-0-	-0-

III. SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

IV. ANALYSIS: Attach a separate page for any Analysis

Prepared By: Mike Lee
Phone: (907) 264-2123
Division: Parks
Date: 11/23/83

Approved by Commissioner:
Date:
Department: Natural Resources

Distribution:
Original to Legislative Finance
Copy to Office of Management and Budget (for Legislature introduced bills)
Copy to Department (for Governor introduced bills)
Copy to Sponsor
Copy to Requestor (if different from Sponsor)

9/14/8

Analysis of Fiscal Note for Bail Schedule legislation

Present System - Each person cited for a violation of a park regulation must go to court. If a Park Ranger cites an Anchorage person for a minor violation in Ninilchik, approximately ten days later the Ranger and the individual must attend the court session in Kenai. Both individuals spend at least one day in the Kenai court plus the cost of meals, lodging and transportation. These expenditures and inconveniences do not include the costs of a judge, court clerks, District Attorney and the correspondence necessary to document the case, which generally run $300-400 for each arraignment.

Proposed System - A bail schedule would establish a predetermined fee for violation of regulations or statues and the person would have the option of not contesting the citation and sending in the fee or challenge the violation and ask for a court appearance. It is anticipated that most people will elect not to challenge the citation and simply send in the fee. This would save money for the individual, the District Attorney's office, the courts and parks staff. The only cost we anticipate on this matter is for the printing of citation forms at an annual cost of $1000.00 to $2000.00. This is approximately what is spent on the existing citation program, so no real new costs should occurr. Because of the savings in costs for the state, the individual, and more efficient management of our Park Rangers, the Bail Schedule will be a cost-effective program.

Alaska State Legislature
HOUSE OF REPRESENTATIVES
COMMITTEE ON RESOURCES

JOHN RINGSTAD, CO-CHAIRMAN
RICHARD SHULTZ, CO-CHAIRMAN
POUCH V
JUNEAU, ALASKA 99811
(907) 465-3715

To: Committee Members

From: Committee Staff

Date: February 10, 1984

Re: CS HB 479

Committee staff, after reviewing HB 479, has discovered several statutory problems with the bill, thus felt it necessary to draft a committee substitute that has the very same intent, but with much cleaner language.

Section 1 of CS HB 479 writes language into the criminal code (AS 12.25) which allows an acception for people who have received a citation to not have to appear in court. This gives clear acception, where the original bill did not do this.

Section 2 clearly gives the park ranger enforcement authority to issue citations. This was not present in the original bill.

Section 3, -subsection (a) allows a peace officer arresting and citing authority in a state park or recreational facility.

-subsection (b) requires the State Supreme Court to establish a bail schedule for those offences committed inside a state park. This is the same as in the original bill, but new language allows for the DNR to aid in establishing the bail schedule (citation amount).

-subsection (c) is the same as in the original bill, but clarify the problem of people who forget to sign the citation. In the original bill, if a person forgot to sign the citation, but sent in the penalty money, the court could not deposit the money.

-subsection (d) is the same as in the original bill. This says that when you pay your bail, you are then formally convicted of the misdemeanor which you committed.

-subsection (e) is the same, less the last sentence, which is addressed in new subsection (f). Subsection (e) says that if a person fails to pay the bail amount, the citation then is considered a summons.

-subsection (f) is new language that just makes sure that the penalty imposed will not exceed the bail amount. With the original bill language, there was a question as to whether a judge could impose a higher penalty if the person lost his/her case.

Alaska State Legislature
HOUSE OF REPRESENTATIVES
COMMITTEE ON RESOURCES

JOHN RINGSTAD, CO-CHAIRMAN
RICHARD SHULTZ, CO-CHAIRMAN
POUCH V
JUNEAU, ALASKA 99811
(907) 465-3715

To: Co-Chairman Ringstad

From: Committee Staff

Date: January 31, 1984

Re: HB 479

This afternoon's meeting will consider HB 479, by Representatives Hayes and Liska, which would allow a Department of Natural Resources arresting or citing officer to issue a citation when a person is arrested or cited for the commission of an offense that is a misdemeanor within a state Park.

Section 1 (a) provides arresting and citing power to an officer, if a person commits an offense that is a misdemeanor within a park.

Section 1 (b) requires the state Supreme Court to determine by rule or order what offenses that may be disposed of without a court appearance. Also the Court is to establish a schedule of bail amounts, which are not to exceed fines prescribed by law.

Section 1 (c) allows the person cited to mail or personally deliver to the clerk of the court, within 15 days of being cited, the bail amount, which the officer has written on the citation.

Section 1 (d) provides that when a cited person forfeits his/her bail, a judgement of conviction shall be entered. In other words, when you pay your bail, you are then formally convicted of the misdemeanor which you committed. This section also states that bail forfeited and forfeit of items seized from the offender is a complete satisfaction for the offense.

Section 1 (e) provides for the situation where an offender fails to pay the bail amount. If this happens, the citation issued shall be considered a summons as for a charge of a misdemeanor and the offender shall be proceeded against in the manner prescribed by law. Note however, the maximum penalty may not exceed the bail amount for that offense set out in the bail schedule, as determined by the Supreme Court.

STATE OF ALASKA

DEPARTMENT OF NATURAL RESOURCES

DIVISION OF PARKS

BILL SHEFFIELD, GOVERNOR

619 WAREHOUSE AVE., SUITE 210
ANCHORAGE, ALASKA 99501
PHONE: (907) 276-2653

November 8, 1983

The Honorable Joe L. Hayes, Speaker
Alaska House of Representatives
P. O. Box 1821
Anchorage, Alaska 99510

Dear Representative ~~Hayes~~ Joe,

I appreciated the opportunity to meet with you recently. I'm specifically excited over the possibility of your introducing legislation to authorize the State Supreme Court to establish a bail fee schedule for park violations.

Our rangers occasionally apprehend persons vandalizing recreation facilities, operating vehicles in closed areas, building fires in closed areas under dangerous circumstances--to name a few violations. Without a bail schedule, both the violator and usually the ranger must appear before a judge or magistrate. This simply uses up valuable staff time, inconveniences the minor violator, clogs our courts.

I've enclosed a question and answer sheet and draft legislation. I would sincerely appreciate your efforts to see this draft bill become law. If there is anything I can do for you, let me know.

Sincerely,

Neil C. Johannsen
Director

Attachments

Fact Sheet on Bail Legislation

The State Division of Parks is proposing legislation which would allow the Supreme Court to set a bail forfeiture schedule for violations of State Statutes and Alaska Administrative Codes which apply to State Parks.

1. Why is a bail schedule for violation of park regulations necessary?

   At the present time any citation issued for violation of State Park Regulations means a mandatory court appearance -- usually in the court nearest where the violation occurs. This means that a person -- perhaps an Anchorage resident -- who receives a citation for exploding fireworks in a Kenai Peninsula park, must return to Kenai to make the mandatory appearance.

2. What does the court system think about the problem?

   The courts are very crowded. Presently they must schedule time to see each individual regardless of how he/she intends to plead. On small violations this is an obvious waste of time to all parties.

3. Why is this legislation needed?

   Under present law a bail schedule for violations is only allowed for traffic regulations. This new legislation would allow and instruct the Supreme Court to set a bail schedule for violation of park regulations.

4. Would a bail schedule eliminate court appearances in all cases?

   No, the park ranger/peace officer issuing the citation could still summon an individual to a mandatory court appearance if the violation were of unusal significance. Any individual could still plead not guilty and request a court appearance.

5. Is this new for Alaska?

   No, the most notable example is the bail schedule for traffic violations. Traffic court would be literally overwhelmed without this help. The Fish & Wildlife Protection Division is also requesting legislation for a bail schedule on fish and game violations.

6. Does the Federal Government have a bail schedule?

   Yes, the National Park Service has a bail schedule which they revised in 1982 and will revise again in the fall of 1983. The attached schedule includes such items as: camping over the time limit - $100.00; pets not on leash - $50.00; fireworks - $50.00, etc. The U.S. Fish & Wildlife Service has a very similar schedule and they say it saves the public a great deal of money in travel costs (to and from court) alone.

7. Would a bail schedule be favored by the Department of Natural Resources/Division of Parks?

Yes, park enforcement people need to retain descretionary authority to use the bail schedule or cite into court, but they, too, would be able to spend a great deal more time in the field if they were not tied up in court appearances. Additionally, fewer court appearances would result, thus helping to alleviate the glut of work facing the Alaska Court System and unnecessary demands upon state park rangers.

DENALI NATIONAL PARK AND PRESERVE
BAIL SCHEDULE Revised 11/82

PART 2 - PUBLIC USE AND RECREATION

2.1	ABANDONED PROPERTY Superseded by 36CFR 13.22 and 36CFR 13.63(c)	
2.2	AIRCRAFT	
	(a) Superseded by 36CFR 13.13	
	(b) Air Drop	$100.00
	(c) Operate in accordance with current FAA regulations	Court
2.3	AUDIO DEVICES	
	(a) Operation of any noisy device	$ 50.00
	(b) Public address system	$ 50.00
	(c) Aerials	$ 25.00
2.4	BEGGING AND SOLICITING	
	(a) Begging	$ 50.00
	(b) Hitchhiking	$ 50.00
	(c) Commercial soliciting	$ 50.00
2.5	CAMPING	
	(a) Superseded by 36CFR 13.18(a) and 36CFR 13.63(b)	
	(b) Superseded by 36CFR 13.18(a) and 36CFR 13.63(b)	
	(c) Camping over designated time limit	$100.00
	(d) Permanent camping facilities	$100.00
	(e) Digging or leveling campsite	$100.00
	(f) Failure to clean and clear site before departure	
	--Failure to remove camping equipment	$ 50.00
	--Leaving camp refuse in exposed or unsanitary condition	$100.00
	(g) Camping within 25 ft. of water, main road, hydrant	$ 25.00
	(h) Base camp for hunting	$250.00
	(i) Quiet hours (10 PM to 6 AM)	$ 25.00
	(j) Former Mt. McKinley National Park: Wood gathering (not dead and down)	$100.00
	(j) Lands in 12/2/80 Additions: Superseded by 36CFR 13.20(b)(4)	
2.6	CLOSURES/PUBLIC USE LIMITS	
	(a)(2) Failure to observe closed areas/visiting hours	$ 50.00
	(b)(4) Entry into area without permit, registration, or reservation	$ 50.00
	(b)(5) Entry into area in violation of posted restrictions	$ 50.00

(d)	Throwing or dropping a lighted cigarette, match, or other burning material, etc.	$150.00
(e)	Smoking in areas closed to smoking	$ 50.00
(f)	Staring a fire in areas closed to fires	$ 50.00

DEPARTMENT OF PUBLIC SAFETY

POSITION PAPER - HB 479

Support

January 25, 1984

HB 479 - "An Act relating to issuance of citations ... within state parks and recreational facilities."

By allowing officers in the Department of Natural Resources to issue citations, the Alaska State Troopers and other law enforcement agencies are relieved of a responsibility that they have never been staffed to do properly.

Robert J. Sundberg
Commissioner

HB 477, (cont'd)

Introduced January 9 and referred to Health, Education & Social Services, Finance.

1983 Permanent Fund Dividends (extending application period)

HOUSE BILL NO. 478, by Reps. Adams, M. M. Miller, Duncan, Grussendorf & Uehling. Would extend up to May 15, 1984 the time period for which an Alaska resident may apply for the 1983 Permanent Fund dividend. Applicants must have met the six month residency requirement on March 31, 1983. The dividend may not be paid from money appropriated or otherwise allocated for years other than 1983. The Department of Revenue could not pay 1983 dividends to late applicants until after March 1, 1984. The Department would be responsible for adoption of regulations to implement the extended deadline. Provides Act takes effect immediately.

Introduced January 9 and referred to State Affairs, Finance.

State Parks (citations for violations)

HOUSE BILL NO. 479, by Reps. Hayes and Liska. Would require a Dept. of Natural Resources arresting or citing officer to issue a citation when a person is arrested or cited for the commission of an offense that is a misdemeanor committed within a state park or recreational facility subject to the Department's supervision.

Require the state Supreme Court to determine by rule or order those offenses that are amenable to disposition without court appearance and to establish a schedule of bail amounts, not to exceed fines prescribed by law, for each offense.

If the offense for which the citation is issued is one that may be disposed of without court appearance, the citing officer shall write on the citation the amount of bail applicable to the cited offense. Would allow the person cited to mail or personally deliver to the clerk of the court the bail amount. Provides that when bail has been forfeited, a judgment of conviction shall be entered. Bail forfeited and the forfeit of items seized is a complete satisfaction for the offense, and the offender is to be given a receipt stating that fact. If the cited person fails to pay the bail amount or appear in court as required, the citation shall be considered a summons as for a charge of a misdemeanor and the offender shall be proceeded against in the manner prescribed by law. The maximum penalty may not exceed the bail amount for that offense set out in the bail schedule, as determined by the Supreme Court.

Does not provide for an effective date (becomes law 90 days following Governor's signature).

Introduced January 9 and referred to Resources, Judiciary, Finance.

Regulations (reasons for/ expiration)

HOUSE BILL NO. 480, by Reps. Bettisworth and Liska. Would require that the notice for the proposed adoption, amendment or repeal of a regulation include ". . . the reason for the proposed regulation; (7) a general statement of anticipated impacts

02034 ANCHORAGE AK 117 02-22 935A AST

PMS REP JOHN RINGSTAD

POUCH U

JUNEAU AK

STRONGLY URGE YOUR FAVORABLE PASSAGE OF CSHB479 (HAYES LISKA, ORIGINAL SPONSORS) AND HB486 (BETTISWORTH). THE FIRST BILL ALLOWS A FINE SCHEDULE FOR MINOR PARK REGULATION VIOLATIONS AND THUS SAVES PARK RANGER TIME AND HELPS UNCLOG COURTS. THE SECOND SIMPLY ALLOWS THE DIVISION OF PARKS AND OUTDOOR RECREATION TO CHARGE FEES. AN AMENDMENT RESTRICTING THE PROGRAM TO DEVELOP CAMPGROUNDS, TOURS OF HISTORIC SITES AND FOR PUBLIC USE CABINS IS ACCEPTABLE. THIS BILL WILL ALLOW OPENING OF WICKERSHAM HOUSE, PRIVATE CONCESSION OPERATION OF CERTAIN FACILITIES AND THE GENERATION OF REVENUE INTO THE GENERAL FUND, THUS REDUCING GOVERNMENT SUBSIDY OF CERTAIN EXPENSE RECREATION FACILITIES. NO CHARGES WOULD BE ESTABLISHED FOR THE MORE COMMON ACTIVITIES IN STATE PARKS.

THANK YOU.

NEIL C JOHANNSEN, DIRECTOR

DIVISION OF PARKS AND OUTDOOR RECREATION

DEPT OF NATURAL RESOURCES

1984 FEB 22 AM 10 08

HB
487

COMMITTEE REPORT

HOUSE

(7) FURTHER: FINANCE

1/20/84 Date: 2/10/84

The Committee on JUDICIARY has had 42d SSHB 487

"An Act making appropriations for a statewide crime lab facility in Anchorage; and providing for an effective date."

under consideration and recommends:

[ ] do pass [ ] do not pass

[ ] do pass with attached amendments(s)

[ ] replace with CS for _____ [ ] same title [ ] new title

and recommends _____

[ ] AND attaches a "Letter of Intent" [ ] New Fiscal Note [ ] Zero Fiscal Note Attached

[ ] reports it back without recommendation

[ ] referred to the _____ Committee

MEMBERS SIGNING DO PASS

MEMBERS HAVING OTHER RECOMMENDATIONS:

CHAIRMAN

TE OF ALASKA 1984 LEGISLATIVE SION
FISCAL NOTE

Revision Date:

REQUEST
Bill/Resolution No.: 2d SSHB487
Title: Statewide Forensic Sciences Lab
Sponsor: Rep. Furnace
Requestor: House State Affairs
Date of Request: 1-12-84

FISCAL DETAIL
Agency Affected: Public Safety
Program Category Affected: Justice
BRU, Program or Subprogram(s) Affected: Alaska State Troopers

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 84	FY 85	FY 86	FY 87	FY 88	FY 89
100 PERSONAL SERVICES		195.4	353.0	374.2	396.7	420.5
200 TRAVEL		7.5	10.6	11.2	11.9	12.6
300 CONTRACTUAL		22.5	71.8	76.1	80.7	85.5
400 SUPPLIES		14.0	14.8	15.7	16.6	17.6
500 EQUIPMENT					150.0	150.0
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS						
800 MISCELLANEOUS						
TOTAL OPERATING						
CAPITAL		239.4	450.2	477.2	655.9	686.2
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND		239.4	450.2	477.2	655.9	686.2
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS:

FULL-TIME		7	7	7	7	7
PART-TIME						
TEMPORARY		7	7	7	7	7

SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

ANALYSIS: Attach a separate page for analysis

Prepared By: Francis C. Allain F.C.A. Phone: 269-5691
Division: Alaska State Troopers Date: 01/06/84

Approved by Commissioner: Robert J. Sundberg Date: 1/13/84
Agency: Public Safety

Distribution (by Agency preparing fiscal note):
Legislative Finance
Legislative Sponsor
Requestor
Office of Management and Budget
Impacted Agency(ies)

12/1/83

FISCAL NOTE

SECTION IV ANALYSIS

This legislation provides funds for the construction of a 17,000 square foot Statewide Crime Laboratory in Anchorage. The attached Schedule I details the Capital Cost and Schedule II details the Operating Costs. The vast majority of the Operating Costs represents a shift in direction for the Crime Lab from a limited service A.S.T. facility to becoming a full-service operation designed to meet the needs of all law enforcement agencies in the state. Personal Services costs for FY'85 reflect the hiring of the seven new staff members at various dates throughout the year. (See supporting schedules.) and other costs at 75% of a full years' cost.

FY'86 and each subsequent year reflect an anticipated 6% inflation rate and the cost of maintenance contracts on the new equipment.

By FY'88 it is anticipated that advances in technology will require replacement or new equipment to meet court evidence requirements each year.

SCHEDULE I

ANCHORAGE COMBINED FACILITY

CAPITAL COSTS

1)	Construction Costs			
	Crime Lab - 17,000 sq. ft.		$3,825.0	
	DOT/PF Overhead, Architect, Planning Contingency, etc.	$1,147.0		
	CS SS HB 33	(402.0)	745.0	
	Subtotal			$4,570.0
2)	Equipment			962.0
3)	Commodities - Initial Stock			71.0
	TOTAL			$5,603.0

SCHEDULE II

ANCHORAGE COMBINED FACILITY

FY'85 OPERATING COSTS

100 Personnel Services

See attached schedule	$195,403

200 Travel

In-state & out-of-state travel needed to attain and maintain professional expertise $10,000 per full year x 75% =	7,500

300 Contractual Services

Telephone	$ 12,500		
Electricity	9,100		
Other Utilities	3,500		
Building Repairs & Maintenance	4,900		
Subtotal	30,000	X 75%	22,500

(Note: Costs of maintenance agreements of an estimated $40,000 yearly will begin in FY'86.)

400 Commodities

Heating Fuel	$ 17,600		
Miscellaneous	1,100		
Subtotal	18,700	X 75%	14,025
TOTAL			$239,428

FISCAL YEAR 1985

100 Personal Services Increased Staff

Job Class Range	Trace Evidence Specialist Range 19	Firearms & Tool Marks Specialist Range 19	Forensic Chemist Range 19	Serologist Range 19	Fingerprint ID Specialist Range 17	Admin Ass't II Range 14	Questioned Documents Examiner Range 19	Total
Annual Salary	$38,124	$38,124	$19,062	$19,062	$16,542	$ 6,723	$ 9,531	$147,168
Overtime	-0-	-0-	-0-	-0-	-0-	1,552	-0-	1,552
Sub total	$38,124	$38,124	$19,062	$19,062	$16,542	$ 8,275	$ 9,531	$148,720
Benefits	6,833	6,833	3,416	3,416	2,965	1,483	1,708	26,654
SBS	2,337	2,337	1,169	1,169	1,014	507	584	9,117
Health Insurance	2,728	2,728	1,364	1,364	1,364	682	682	10,912
Total	$50,022	$50,022	$25,011	$25,011	$21,885	$10,947	$12,505	$195,403
Starting Date	7/1/84	7/1/84	1/1/85	1/1/85	1/1/85	4/1/85	4/1/85	

BASE YEAR

100 Personal Services Increased Staff

Job Class Range	Trace Evidence Specialist Range 19	Firearms & Tool Marks Specialist Range 19	Forensic Chemist Range 19	Serologist Range 19	Fingerprint ID Specialist Range 17	Admin Ass't II Range 14	Questioned Documents Examiner Range 19	Total
Annual Salary	$38,124	$38,124	$38,124	$38,124	$33,084	$26,892	$38,124	$250,596
Overtime	-0-	-0-	-0-	-0-	-0-	2,483	-0-	2,483
Sub total	$38,124	$38,124	$38,124	$38,124	$33,084	$29,375	$38,124	$253,079
Benefits	6,833	6,833	6,833	6,833	5,930	5,265	6,833	45,360
SBS	2,337	2,337	2,337	2,337	2,028	1,801	2,337	15,514
Health Insurance	2,728	2,728	2,728	2,728	2,728	2,728	2,728	19,096
Total	$50,022	$50,022	$50,022	$50,022	$43,770	$39,169	$50,022	$333,049

FISCAL YEAR 1986

100 Personal Services Increased Staff

Job Class Range	Trace Evidence Specialist Range 19	Firearms & Tool Marks Specialist Range 19	Forensic Chemist Range 19	Serologist Range 19	Fingerprint ID Specialist Range 17	Admin Ass't II Range 14	Questioned Documents Examiner Range 19	Total
Annual Salary	$40,411	$40,411	$40,411	$40,411	$35,069	$28,506	$40,411	$265,632
Overtime	-0-	-0-	-0-	-0-	-0-	2,632	-0-	2,632
Sub total	$40,411	$40,411	$40,411	$40,411	$35,069	$31,138	$40,411	$268,264
Benefits	7,243	7,243	7,243	7,243	6,286	5,581	7,243	48,082
SBS	2,477	2,477	2,477	2,477	2,150	1,909	2,477	16,444
Health Insurance	2,892	2,892	2,892	2,892	2,892	2,892	2,892	20,242
Total	$53,023	$53,023	$53,023	$53,023	$46,397	$41,520	$53,023	$353,032

	POSITION TITLE			RANGE/STEP	BARG. UNIT	FORM 12 PAGE/LINE	GOV.	APPROV.	DISAPP.
1.	Trace Evidence Specialist*			19/A	GGU				
2.	TYPE OF POSITION: PFT	STAFF MONTHS: 12.0	RP NUMBER	PCN NUMBER	BRU PRIORITY: 1 of 7	LOCATION: Anchorage	ELECTION DISTRICT: 99	LEG.		
3.	CONTINUATION LEVEL		ADDITION: X						

4.	TYPE OF EXPENDITURE		AMOUNT
	1	2	3
	PERSONAL SERVICES		
5.	Salary	38,124	
6.	Benefits	6,833	
7.	Supplemental Benefits	2,337	
8.	Fixed Benefits	2,728	
9.	TOTAL PERSONAL SERVICES 01		50.0
10.	Travel 02		
11.	Contractual 03		
12.	Commodities 04		
13.	Equipment 05		
14.	Other		
15.	TOTAL COST		50.0

	RECEIPT CODE	FUNDING SOURCE	
16.		Federal Receipts 1002	
17.		G.F. Match 1003	50.0
18.		General Funds 1004	
19.		I-A Receipts 1005	
20.		Program Receipts 1028	
21.		Other	

FOR B&M USE ONLY
4A KEY NUMBER __ __ - __ __ - __ __ - __ __ - __ __

JUSTIFICATION

The Trace Evidence Examiner can narrow the orgin of minute bits of evidence such as human hair and fibers, that are exchanged during fight or rape, to a group that includes (or excludes) the suspect. The paint chips and broken headlights of a hit and run fatality may be analyzed to determine if they match the paint and headlight of thesuspects car.

The position will function in the new expanded Statewide Forensic Science Laboratory and provide a new expertise capability which will expand the level of service that can be provided to law enforcement agencies in Alaska

* New classification pending.

13 REQUEST FOR NEW POSITION

AGENCY Department of Public Safety

PROGRAM Crime ID & Apprehension

BRU Alaska State Troopers/S&S

COMPONENT Laboratory Services

Revised Date

FY 85

01-1136 (7/82) - 13

1.	POSITION TITLE: Firearms & Tool Marks Specialist *			RANGE/STEP: 19	BARG. UNIT: GGU	FORM 12 PAGE/LINE	GOV.	APPROV.	DISAPP.
2.	TYPE OF POSITION: PFT	STAFF MONTHS: 12.0	RP NUMBER	PCN NUMBER	BRU PRIORITY: 2 of 7	LOCATION: Anchorage	ELECTION DISTRICT: 99	LEG.		
3.	CONTINUATION LEVEL		ADDITION: X						

	TYPE OF EXPENDITURE		AMOUNT
	1	2	3
	PERSONAL SERVICES		
5.	Salary	38,124	
6.	Benefits	6,833	
7.	Supplemental Benefits	2,337	
8.	Fixed Benefits	2,728	
9.	TOTAL PERSONAL SERVICES	01	50.0
10.	Travel	02	
11.	Contractual	03	
12.	Commodities	04	
13.	Equipment	05	
14.	Other		
15.	TOTAL COST		50.0

	RECEIPT CODE	FUNDING SOURCE		
16.		Federal Receipts	1002	
17.		G.F. Match	1003	
18.		General Funds	1004	
19.		I-A Receipts	1005	
20.		Program Receipts	1028	
21.		Other		

FOR B&M USE ONLY
4A KEY NUMBER __ __ - __ __ - __ __ - __ __ - __ __

JUSTIFICATION

The Firearms & Tool Marks Specialist can match a spent bullet to the gun that fired it by examination of the microscopic markings on the bullet caused by the irregularities on the inner surface of the gun barrel, among ot[illegible] capabilities. As a Tool Marks Specialist, he can identify the tire iron or other implement found in the suspect's car as the one that did or did not pry open the window or door of the victim's home by using a microscope to compare and match the nicks on the blade of the tire iron to the impressions left in the window sill.

The position will function in the new expanded Statewide Forensic Science Laboratory and provide a new expertise capability which will expand the level of service that can be provided to law enforcement agencies in Alaska.

* New classification pending.

13 REQUEST FOR NEW POSITION

01-1136 (7/82) - 13

AGENCY: Department of Public Safety
PROGRAM: Crime ID & Apprehension
BRU: Alaska State Troopers/S&S
COMPONENT: Laboratory Services

Revised Date

FY 85

1.	POSITION TITLE	RANGE/STEP	BARG. UNIT	FORM 12 PAGE/LINE	GOV.	APPROV.	DISAPP.
	Forensic Chemist *	19	GGU				
2.	TYPE OF POSITION / STAFF MONTHS / RP NUMBER / PCN NUMBER	BRU PRIORITY	LOCATION	ELECTION DISTRICT	LEG.		
	PFT / 6.0 / /	3 of 7	Anchorage	99			
3.	CONTINUATION LEVEL / ADDITION A						

4.	TYPE OF EXPENDITURE		AMOUNT
	1	2	3
	PERSONAL SERVICES		
5.	Salary	19,062	
6.	Benefits	3,416	
7.	Supplemental Benefits	1,169	
8.	Fixed Benefits	1,364	
.	TOTAL PERSONAL SERVICES	01	25.0
	Travel	02	
	Contractual	03	
12.	Commodities	04	
13.	Equipment	05	
14.	Other		
15.	TOTAL COST		25.0

	RECEIPT CODE	FUNDING SOURCE		
16.		Federal Receipts	1002	
17.		G.F. Match	1003	
18.		General Funds	1004	25.0
19.		I-A Receipts	1005	
20.		Program Receipts	1028	
21.		Other		

FOR B&M USE ONLY
4A KEY NUMBER __ __ - __ __ - __ __ - __ __ - __ __

JUSTIFICATION

The Forensic Chemist tests and analyzes unknown substances. By testing substances thought to be illegal drugs, he can determine the type drug, its relative purity and the substances that may be mixed with the drug. He can also identify small amounts of accelerants from a suspected arson fire by testing charred and burned materials found at the fire, as well as other tasks requiring chemical analysis.

The position will function in the new expanded Statewide Forensic Science Laboratory and provide an additional expertise capability which will expand the level of service that can be provided to law enforcement agencies in Alaska.

* New classification pending.

13 REQUEST FOR NEW POSITION

AGENCY Department of Public Safety

PROGRAM Crime ID & Apprehension

BRU Alaska State Troopers/S&S

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	POSITION TITLE				RANGE/STEP	BARG. UNIT	FORM 12 PAGE/LINE	GOV.	APPROV.	DISAPP.
1.	Serologist/Toxicologist*				19	GGU				
2.	TYPE OF POSITION: PFT	STAFF MONTHS: 6.0	RP NUMBER:	PCN NUMBER:	BRU PRIORITY: 4 of 7	LOCATION: Anchorage	ELECTION DISTRICT: 99	LEG.		
3.	CONTINUATION LEVEL:		ADDITION: X							

	TYPE OF EXPENDITURE		AMOUNT
	1	2	3
	PERSONAL SERVICES		
5.	Salary	19,062	
6.	Benefits	3,416	
7.	Supplemental Benefits	1,169	
8.	Fixed Benefits	1,364	
9.	TOTAL PERSONAL SERVICES 01		25.0
	Travel 02		
	Contractual 03		
12.	Commodities 04		
13.	Equipment 05		
14.	Other		
15.	TOTAL COST		25.0

	RECEIPT CODE	FUNDING SOURCE	
16.		Federal Receipts 1002	
17.		G.F. Match 1003	
18.		General Funds 1004	25.0
19.		I-A Receipts 1005	
20.		Program Receipts 1028	
21.		Other	

FOR B&M USE ONLY
4A KEY NUMBER — — - — — - — — - — — - — —

JUSTIFICATION

The Forensic Serologist/Toxicologist analyses of body fluids found at the crime scene, can limit the population group of the assailant to those within certain blood groups, thus elminating persons with other blood groups and characteristics as suspects in a given crime. Toxicology detects and identifies the presence of drugs or poisions in body tissues, fluids and organs. These tests are used in determining the presence and extent of alcohol that may have contributed to a death, as one example.

The position will function in the new expanded Statewide Forensic Science Laboratory and provide an additional expertise capability which will expand the level of service that can be provided to law enforcement agencies in Alaska.

* New classification pending.

13 REQUEST FOR NEW POSITION

AGENCY Department of Public Safety

PROGRAM Crime ID & Apprehension

BRU Alaska State Troopers/S&S

COMPONENT Laboratory Services

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1.	POSITION TITLE Fingerprint ID Specialist*			RANGE/STEP 17	BARG. UNIT GGU	FORM 12 PAGE/LINE	GOV.	APPROV.	DISAPP.
2.	TYPE OF POSITION PFT	STAFF MONTHS 6.0	RP NUMBER	PCN NUMBER	BRU PRIORITY 6 of 7	LOCATION Anchorage	ELECTION DISTRICT 99	LEG.		
3.	CONTINUATION LEVEL		ADDITION	X					

4.	TYPE OF EXPENDITURE		AMOUNT
	1	2	3
	PERSONAL SERVICES		
5.	Salary	16,542	
6.	Benefits	2,965	
7.	Supplemental Benefits	1,014	
8.	Fixed Benefits	1,364	
9.	TOTAL PERSONAL SERVICES 01		21.9
10.	Travel 02		
11.	Contractual 03		
12.	Commodities 04		
13.	Equipment 05		
14.	Other		
15.	TOTAL COST		21.9

	RECEIPT CODE	FUNDING SOURCE		
16.		Federal Receipts	1002	
17.		G.F. Match	1003	
18.		General Funds	1004	21.9
19.		I-A Receipts	1005	
20.		Program Receipts	1028	
21.		Other		

FOR O&M USE ONLY
4A KEY NUMBER — — - — — - — — - — — - — —

JUSTIFICATION

The Fingerprint Examiner can compare fingerprints found on a gun or some other surface to those of the suspect based upon the matching of the characteristics of the fingerprint ridges that are unique to each individual. (The Automated Fingerprint Identification System, funded during the 1982 session of the legislature is now being developed and installed).

The position will function in the new expanded Statewide Forensic Science Laboratory and provide an additional expertise capability which will expand the level of service that can be provided to law enforcement agencies in Alaska.

* Rewrite of class specification in progress.

13 REQUEST FOR NEW POSITION

AGENCY Department of Public Safety

PROGRAM Crime ID & Apprehension

BRU Alaska State Troopers/S&S

COMPONENT Laboratory Services

Revised Date

FY 85

01-1136 (7/82) - 13

1.	POSITION TITLE: Questioned Document Examiner*			RANGE/STEP: 19/A	BARG. UNIT: GGU	FORM 12 PAGE/LINE	COV.	APPROV.	DISAPP.
2.	TYPE OF POSITION: PFT	STAFF MONTHS: 3.0	RP NUMBER	PCN NUMBER	BRU PRIORITY: 6 of 7	LOCATION: Anchorage	ELECTION DISTRICT: 99	LEG.		
3.	CONTINUATION LEVEL		ADDITION: X						

	TYPE OF EXPENDITURE		AMOUNT
	1	2	3
	PERSONAL SERVICES		
5.	Salary	9,531	
6.	Benefits	1,708	
7.	Supplemental Benefits	584	
8.	Fixed Benefits	682	
	TOTAL PERSONAL SERVICES	01	12.5
	Travel	02	
	Contractual	03	
12.	Commodities	04	
13.	Equipment	05	
14.	Other		
15.	TOTAL COST		12.5

	RECEIPT CODE	FUNDING SOURCE		
16.		Federal Receipts	1002	
17.		G.F. Match	1003	
18.		General Funds	1004	12.5
19.		I-A Receipts	1005	
20.		Program Receipts	1028	
21.		Other		

FOR BMM USE ONLY
4A KEY NUMBER __ __ - __ __ - __ __ - __ __ - __ __

JUSTIFICATION

The Questioned Documents Examiner can ascertain the source or authenticity of a document through the many characteristics of an individual's handwritting, as well as through the variations in typewriter letters as a function of the use and wear to the machine's moving parts, and through the analyses of inks and different types of paper.

* New classification pending.

13 REQUEST FOR NEW POSITION

AGENCY Department of Public Safety

PROGRAM Crime ID & Apprehension

BRU Alaska State Troopers/S&S

COMPONENT Laboratory Services

Revised Date

FY 85

01-1136 (7/82) - 13

1.	POSITION TITLE: Administrative Assistant II			RANGE/STEP: 14/A	BARG. UNIT: SUPV.	FORM 12 PAGE/LINE	GOV.	APPROV.	DISAPP.
2.	TYPE OF POSITION: PFT	STAFF MONTHS: 3.0	RP NUMBER	PCN NUMBER	BRU PRIORIT: 7 of 7	LOCATION: Anchorage	ELECTION DISTRICT: 99	LEG.		
3.	CONTINUATION LEVEL		ADDITION: X						

4.	TYPE OF EXPENDITURE		AMOUNT
	1	2	3
	PERSONAL SERVICES		
5.	Salary inc O/T	8,275	
6.	Benefits	1,483	
7.	Supplemental Benefits	507	
8.	Fixed Benefits	682	
9.	TOTAL PERSONAL SERVICES 01		11.0
10.	Travel 02		
11.	Contractual 03		
12.	Commodities 04		
13.	Equipment 05		
14.	Other		
15.	TOTAL COST		11.0

	RECEIPT CODE	FUNDING SOURCE	
16.		Federal Receipts 1002	
17.		G.F. Match 1003	
18.		General Funds 1004	
19.		I-A Receipts 1005	
20.		Program Receipts 1028	
21.		Other	

FOR B&M USE ONLY
4A KEY NUMBER __ __ - __ __ - __ __ - __ __ - __ __

JUSTIFICATION

This position is needed to support the six new professional positions being requested and part of this Capital Project and the two new additional professional positions added to the Crime Lab during FY'83 and FY'84 through RP. Without this additional administrative support the professional staff will loose much of its productive capacity performing administrative tasks that could more economically be done by this position.

This position will supervise the other clerks presently employeed in the Crime Lab including those in the O/L Photo section.

13 REQUEST FOR NEW POSITION

AGENCY Department of Public Safety

PROGRAM Crime ID & Apprehension

BRU Alaska State Troopers/S&S

COMPONENT Laboratory Services

Revised Date

FY 85

01-1136 (7/82) - 13

POUCH V
JUNEAU, ALASKA 99811
(907) 465-4990

Alaska State Legislature
HOUSE OF REPRESENTATIVES

REPRESENTATIVE
CHARLIE BUSSELL
CHAIRMAN

Committee on Judiciary

2d SSHB 487
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THE DEVELOPMENT of a CRIME LABORATORY in ALASKA*

During the 1983 Legislative Session, $402,000 was authorized for the architectural and engineering aspects of a modern crime laboratory to analyze evidence found at the scene of a crime. To be located adjacent to the existing Trooper headquarters in Anchorage and managed by them, the proposed 17,000 square foot facility would provide tests and analyses of crime scene evidence to all law enforcement agencies in Alaska, at no cost to those agencies.

The contract has been signed with an Anchorage Architectural and Engineering firm. Site survey and soils testing has been completed by the Department of Transportation and Public Facilities. Progress has been so rapid that the Department of Transportation believes construction could begin in the Spring of 1984, if construction funds can be made available. Nationwide advertising for a Professional Laboratory Director has been completed and the successful applicant will be hired in early 1984. An appropriations bill (HB-487) has been prefiled by Representative Walt Furnace (D) Anchorage for introduction in the 1984 session of the Legislature for funding of the construction and first years operating cost of $5.842 million.

* * * * * * * * * * * * * * *

Within the last decade or so, a series of Supreme Court decisions relative to search and seizure, interrogation, and confessions have had the effect of limiting the scope of permissible investigative activities by law enforcement agencies nationwide. This situation has resulted in the increased analysis of physical evidence by crime laboratories and subsequent use of test results in courtroom trials, which often becomes a crucial part of judicial proceedings.

The analyses and tests performed upon crime scene evidence assists both the investigator and the prosecutor in their efforts to reconstruct and explain the crime, the crime scene and information about the possible offender. The results of crime lab tests provide facts contributing to the exoneration of the innocent and the establishment of proof of the guilty.

* This paper summarizes the more extensive report issued by the Department of Public Safety in September 1982 entitled "The Development of a Full Service Forensic Laboratory for Law Enforcement in Alaska". Copies are available upon request thru the Director, Alaska State Troopers, Anchorage.

The modern lab requires highly skilled scientists and technicians who use costly materials and sophisticated instrumentation in an expensive environment, for there can be no compromise in the quality of the work they perform.

A modern, fully equipped Crime Lab presents a wide array of expertise.

Some of these are:

* Toxicology: A Toxicologist detects and identifies the presence of drugs or poisions in body tissues, fluids and organs. These tests are used in determining the presence and extent of alcohol that may have contributed to a death, as one example.

* Firearms and Tool Marks Examination: The Examiner can match a spent bullet to the gun that fired it by examination of the microscopic markings on the bullet caused by the irregularities on the inner surface of the gun barrel, among other capabilities. As a Tool Marks Specialist, he can identify the tire iron or other implement found in the suspect's car as the one that did or did not pry open the window or door of the victim's home by using a microscope to compare and match the nicks on the blade of the tire iron to the impressions left in the window sill.

* Forensic Serology: The Forensic Serologist, through analyses of body fluids found at the crime scene, can limit the population group of the assailant to those within certain blood groups, thus eliminating persons with other blood groups and characteristics as suspects in a given crime.

* Questioned Documents Examination: The Questioned Documents Examiner can ascertain the source or authenticity of a document through the many characteristics of an individual's handwriting, as well as through the variations in typewriter letters as a function of the use and wear to the machine's moving parts, and through the analyses of inks and different types of paper.

* Forensic Chemistry: The Forensic Chemist tests and analyzes unknown substances. By testing substances thought to be illegal drugs, he can determine the type drug, its relative purity and the substances that may be mixed with the drug. He can also identify small amounts of accelerants from a suspected arson fire by testing charred and burned materials found at the fire, as well as other tasks requiring chemical analysis.

* Trace Evidence Examination: The Trace Evidence Examiner can narrow the origin of minute bits of evidence such as human hair and fibers, that are exchanged during a fight or rape, to a group that includes (or excludes) the suspect. The paint chips and broken headlights of a hit and run fatality may be analyzed to determine if they match the paint and headlight of the suspects car.

* Fingerprint Examination: The Fingerprint Examiner can compare fingerprints found on a gun or some other surface to those of the suspect based upon the matching of the characteristics of the fingerprint ridges that are unique to each individual. (The Automated Fingerprint Identification System, funded during the 1982 session of the legislature, is now being developed and installed).

It is the use of carefully gathered evidence, analyzed by the latest methodologies of the physical and natural sciences that builds both a strong case against the guilty, while eliminating other persons as suspects.

Unfortunately, state and local law enforcement agencies in Alaska do not have such a laboratory. In fact, Alaska is the only state without a crime lab. The rudimentary facilities in the Alaska State Troopers building in Anchorage are limited by space, personnel and budget to only narcotics testing, fingerprint comparisons and some crime photography.

Historically Alaska has depended upon the FBI lab to perform criminalistics tests and has done so to a greater degree than any other state. While this dependence upon the FBI has worked reasonably well in the past, the FBI has recently suffered budget cuts as part of the general decrease in federal government services. As a result, some test results may not be received for up to six months. Since the Speedy Trial Rule in Alaska requires trial within 120 days of the arrest, test results may not be available by the time of trial, nor can additional investigation occur as a result of the outcome of the tests. Thus the investigation and prosecution functions are adversely affected.

Federal budgetary restrictions and a 1980 General Accounting Office report charging the Bureau's policy of free laboratory services actually inhibits the growth of statewide crime laboratories creates doubt that the extent of FBI services of the past will continue. Charges for certain services have already been instituted, and requests for laboratory examinations are carefully scrutinized.

Recently the FBI questioned the need for tests in a State Trooper's case that involved a double Homicide. Any further curtailment of service will be even more serious since Alaska is both increasing its population and experiencing a general crime increase while crime is generally decreasing nationwide. (Alaska had the highest incidence in the United States for rape in 1979, was number two in 1980, and first again in 1981 and 1982. Alaska was also second in murder in 1982. According to a recent public opinion survey, among other findings, Alaskans believe a basic cause of crime is the failure of the justice system to punish criminals.

While Alaska has some of its forensic tests performed by private laboratories elsewhere, this is not a good alternative for several reasons. Alaskan law enforcement agencies have no control over the scheduling, priorities, or the methodologies and techniques used by these facilities, nor is there any control over the caliber of personnel performing the tests. Additionally, such tests are usually expensive, since a profit is being made and the state has to pay a fee for all tests performed plus the travel and expenses of the technicians from the "lower 48" states who testify during trial.

Perhaps the most compelling reason for a full services crime lab is the high evidentiary value of the crime scene evidence that has been analyzed and tested, for the test results provide irrefutable information about the suspect to either link him to a crime, or to eliminate him from any further investigation. Laboratory test results can thus provide a high degree of proof of guilt.

The continuing lack of a crime lab to service Alaska's law enforcement efforts is affecting the decisions and perceptions of some police officers. Knowing they cannot obtain test results and analyses in a timely and affordable manner, some officers have had to place a decreasing value upon physical evidence found at the crime scene and therefore tend to rely upon other means to develop their case. Therefore their case will lack the high evidentiary value that often results from crime lab examinations. Any future, long term lack of a statewide lab, in the face of reduced services from the FBI, will probably result in the emergence of several small efforts by local enforcement agencies to provide their own testing facilities. These will likely be of limited scope, overlapping and fragmented efforts of unknown value. The smaller police departments, unable to afford their own limited facilities, and unable to pay the high costs charged by private labs elsewhere will simply do without.

The above reasons argue forcefully for the development of a statewide crime lab to provide services for all law enforcement agencies in Alaska. The next questions are how big a facility is needed, what services need to be provided and what are the costs involved?

Based upon the existing workload and the forecasted workload within the immediate future, the following staff personnel would be hired:

1. An additional Forensic Chemist

2. Serologist

3. Trace Evidence Technician

4. Firearms and Tool Marks Examiner

5. Administrative Assistant

6. Fingerprint I D Specialist

7. Questioned Documents Examiner

Full operating costs above current expenditures for the new facility and the additional personnel will be $391,400. per year after the Lab is completed.

The lab would honor all requests by law enforcement agencies, by either performing the work in house or through contract for the less frequent tests elsewhere. Tests and related services would be provided by the lab at no cost to the requesting agencies.

The proposed lab would be constructed adjacent to the Troopers Headquarters in Anchorage, on state-owned land. Substantial assistance has been obtained from the FBI Laboratory during an intensive on-site visit to obtain their recommendations for construction requirements, space needs for scientific personnel and instrumentation, and the factors that should be used in calculating overall construction costs.

Using data recommended by the FBI to provide a Crime Lab with the staff earlier noted, plus those in the existing facility, necessary instrumentation, and the numerous support requirements, a classroom for training police officers, and space for expansion in the years ahead will require a structure of about 17,000 square feet. FBI data indicates that cost per square foot is about 180% of the cost of commercial construction due to the unique plumbing, heating, ventilation and construction aspects required by a forensic laboratory.

Estimated costs of the new lab are as follows:

Construction	$3.825 million
Indirect Costs $1.147 ($.402) =	.745
Equipment	.962
Supplies and Materials	.071
First Year's Operating Costs	.239
Total	$5.842 million - in 1984

An estimated 12% inflation factor would increase costs by a like amount if construction occurs during FY'85 rather than FY'84.

ALASKA STATE LEGISLATURE
HOUSE OF REPRESENTATIVES
RESEARCH AGENCY

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January 26, 1983

MEMORANDUM

To: Representative Walt Furnace

From: Leonard Steinberg, Research Staff

Re: Criminalistics Analysis--Additional Information On Costs
Research Request 83-11

Steve Levi of your office requested additional information on the costs of criminalistic analysis performed by both public and private institutions. Also included is an update on the FBI crime lab's involvement in court proceedings in Alaska and the specific analytical techniques used by the FBI.

Criminalistics Analysis Costs--Findings

Many different rate structures are used to establish the prices of criminalistics analysis services. Most prices are based on hourly rates, though some labs charge a flat fee for each individual service. In general, labs are reluctant to charge flat fees because there is considerable variability in the amount of time required to analyze different pieces of evidence. Apparently some tests, such as toxicology, are very routine and their costs are affected by economies of scale. Other examinations, however, such as firearm and toolmark identification, vary greatly in the amount of time required for each examination.

Hourly rates vary from twenty-three to one hundred dollars per hour with the public and non-profit facilities providing the lowest hourly rates. Most private criminalistics analysis organizations provide only limited services, primarily for defense counsel's rebuttal of a prosecutor's evidence. In fact, there are very few private laboratories; most of the private sector activity in criminalistics is from individuals formerly associated with a criminalistics lab who are experts in interpreting the laboratory data. The private laboratories which do exist are small and their costs are high, in part, due to their low volume.

Five public, one private non-profit, and three private for-profit criminalistics laboratories were sampled for the cost of their services. The results are listed below by each organization.

Contra Costa County Sheriff's Crime Lab

Like most counties in California, the Contra Costa County Sheriff's Crime Lab provides criminalistics analysis for all law enforcement agencies, municipal, county, state and federal, located in that county for no charge. The lab ocassionally contracts to provide its services to public agencies outside the county, and charges only the additional costs it incurs in making these services available. In general, its extra costs are only labor; their labor rate has been estimated at $23 per hour.

According to Gerald Mitosinko, the lab's director (415 372-2466), the Contra Costa County Crime Lab has calculated the amount of time it has spent on various criminalistics procedures during the last several years. The average amounts of time required are listed below by different types of examinations. In parentheses is a rough approximation of the costs of these examinations, calculated on the basis of the time shown multiplied by the labor cost of $23 per hour.

Amphetamines	.7 hours ($16)	Heroin	1.36 hours ($31)
Cocaine	.5 hours ($12)	Marijuana	.39 hours ($9)
Explosives	4.83 hours ($111)	Document	2.84 hours ($65)
Shoe/Tire Prints	4.17 hours ($96)	Firearms ID	11.91 hours ($274)
Fiber & Hair	5.18 hours ($119)	Toolmarks ID	7.13 hours ($164)

Dallas County -- Southwestern Institute of Forensic Sciences

The Southwestern Institute of Forensic Sciences is a Dallas County agency. According to Director Irving Stone (214 638-9980), the Institute charges a fixed rate by the type of service performed. The rates have been set on the assumption that labor rates are approximately $50 per hour. In addition, the Institute charges a flat $200 fee for testimony and travel. The Institute's fee schedule and background information is being sent in the mail, but examples of their charges are listed below.

Documents Exam	$50	Fingerprint Exam	$50
Bullet Exam	$35	Typewriter Comparison	$50
Serial Number Restoration	$50	Search for Spermatazoa	$15

Tool Mark Comparison	$50	Search for Blood or Seminal Stains	$15
Hair & Fiber Analysis	$30	Analysis of ABO/RH From Dried Stains	$40

Connecticut State Police Forensic Sciences Laboratory

Dr. Henry Lee,is the Chief of the Forensic Sciences Laboratory in the state of Connecticut (203 238-6324). Dr. Lee explained that in addition to providing criminalistic analysis services for law enforcement authorities throughout Connecticut for no charge, his lab charges law enforcement authorities in surrounding states only for the cost of materials used in criminalistic analysis and for the time required for testimony.

Dr. Lee said that his lab has twenty-six employees and an annual budget of approximately $500,000.

Washington State Police Crime Lab

George Ishi is the Director of the Washington State Police Crime Lab (206 464-7073). According to Mr. Ishi, the Washington State Police Crime Lab does provide ciminalistics analysis services to other public agencies under contract. The lab charges $60 per hour plus any unusual expenses such as for special chemicals, special instruments, or testimony. Mr. Ishi is sending an analysis of the time spent by his lab on different types of criminalistic proceedures.

Kansas City, MO, Regional Criminalistics Laboratory

According to Gary Howell of the Regional Criminalistics Laboratory in Kansas City, MO (816 234-5000), public sector laboratory that charges $30 per hour to all public agencies within a surrounding five county region and $45 per hour to other public agencies outside that five county region. Howell was careful to say that it is impossible to predict how much time any particular examination will require.

Howell said that time spent by his staff testifying is billed at the same rate as laboratory time. Howell calculated that his lab spends about 20,000 hours examining evidence each year. Howell is sending additional information in the mail.

Northern Illinois Police Crime Lab

The Northern Illinois Police Crime Lab is a private non-profit membership agency organized to provide criminalistics services to municipal

police departments throughout Northern Illinois, an area with a population of approximately 500,000. The lab's Director, Andrew Principe (312 432-8160), explained that each member municipality pays an annual assessment based on its population as illustrated in the table below.

Population of City	Annual Fee
1000	$1500
3500	$3100
20,000	$11,500
50,000	$25,800
70,000	$29,800
100,000	$35,800

The Northern Illinois Police Crime Lab also provides criminalistic analysis for non-member public organizations at a cost of $75 per hour, with a one-hour minimum charge. In addition, when the lab's staff is required to testify, the charge for that service is $200 for the first hour and $50 per hour thereafter.

According to Mr. Principe, the lab's annual budget of about $300,000, is primarily from the annual membership fees. The lab employs a staff of ten and the lab has $500-600,000 worth of equipment.

Forensic Science Associates

Forensic Science Associates is a private for-profit criminalistics laboratory located in the San Francisco area that does not provide routine types of analysis; Forensic Science Associates does not do toxicology, blood alchohol analysis, or drug identification. Peter Barnett (415 653-3530) said that his firm's fee is $70 per hour and the amount of time he spends on any one procedure varies considerably. Most of this firm's work is for private defense counsel.

Criminalistic Laboratory

Criminalistic Laboratory is also a private for-profit small volume lab in the San Francisco area. According to the lab's Chuck Morton (415 451-0767), some of their work is performed for public agencies, but most of their work is also for private defense counsel. Criminalistic Laboratory charges $75-100 per hour depending on the analysis being conducted. In addition, Criminalistic Laboratory also has some

fixed fees for standard procedures, such as paternity testing ($70-80 per sample), blood grouping ($75 per sample), saliva analysis ($50 per sample) and others.

Western Laboratories

Western Laboratories, also in the San Francisco area, is primarily a private for-profit medical laboratory. However, Western Labs does perform toxicology, forensic alchohol, and autopsy service under contract to Alameda County. Dr. Paul Herman, head of the lab, said that fixed fees are charged for these services and is sending a fee schedule by mail. Dr. Herman warned, however, that Western's fees are expected to rise by about 20% in the near future.

FBI Crime Lab Update

According to Larry Nelson, the FBI's agent in charge in Alaska, in federal FY 82, FBI examiners made fifty-one trips to Alaska to testify in court. In forty-seven cases, testimony was actually given in court and four cases were resolved prior to the FBI examiner's scheduled court appearance.

The fifty-one trips made by FBI examiners to Alaska in FY 82 were to present testimony about the following analytical proceedures.

Type of Examination	Number of Examinations
Firearm and Toolmark Identification	17
Hair and Fiber Analysis	15
Serology and Blood Type Examinations	13
Neutron Activiation Tests	3
Paint Analysis	1
Metallurgy Analysis	1
Document Examination	1

ALASKA STATE LEGISLATURE
HOUSE OF REPRESENTATIVES
RESEARCH AGENCY

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January 24, 1983

MEMORANDUM

To: Representative Walt Furnace

From: Leonard Steinberg, Research Staff L. S.

Re: FBI Examination of Legal Evidence
Research Request 83-11

Steve Levi of your office requested the following information:

1) The number of Alaska criminal cases which made use of the FBI crime lab in Washington D.C.;

2) How many legal cases went to court with FBI assistance;

3) How often the FBI's time for analysis exceeded Alaska's 120 day limitation for court appearances; and

4) What specific evidence has been sent to the FBI for analysis.

Our attempts to answer these questions involved contacting: the Federal Bureau of Investigation in Anchorage and in Washington D.C.; the State of Alaska's Chief Prosecuter and the Anchorage District Attorney; the Alaska State Troopers; and the municipal police in Anchorage and Fairbanks.

Number of Alaska Criminal Cases Involving the FBI's Crime Lab

The table below lists the number of Alaska cases and the number of different examinations of Alaska evidence that were performed by the FBI's crime lab in federal fiscal years 1980, 1981, and 1982. (The federal fiscal year runs from October 1 to September 30; FY 80, for example began began October 1, 1979 and ended September 30, 1980.) This information was obtained from Manuel Marquez, of the Federal Bureau of Investigation in Washington D.C.

The number of examinations performed is many times larger than the number of cases because each case often includes many different items and each item may undergo numerous different examinations.

Year	Number of Cases	Number of Examinations
1980	181	10,744
1981	209	13,531
1982	236	19,510

Number of Legal Cases Which Went to Court With FBI Assistance

There are no records of the number of times the FBI's crime lab analysis has actually been used in court. Though FBI crime lab examiners frequently travel to Alaska to testify in criminal proceedings, only rough estimates of the number of visits are avialable.

According to Larry Nelson, the FBI's chief agent in Alaska, not a month goes by without one of the FBI's crime lab examiners traveling to Alaska to make a court appearance. Captain Smith, of the Anchorage Police Department, said he knew of at least 6 FBI crime lab examiners that visited Alaska during the last year.

The FBI in Washington D.C. may maintain records on number of visits examiners make to testify in Alaska courts, but the FBI declined to make that information available to us. The use of FBI examiners or laboratory analysis could be reconstructed by reviewing all the criminal files of the District Attorneys in Alaska, but doing so would require a substantial amount of time.

Excessive Time Required For FBI Analysis

Law enforcement authorities in Alaska are concerned that the FBI's crime lab will not analyze and return the evidence to Alaska in time to meet the requirement, unless waived by the defendent, that criminal trials take place within 120 days of an arrest.

There is little evidence of the FBI's laboratory analysis failing to arrive in time for a trial. The State Troopers have described one case (Alaska vs. Lewis, 1981) in which the trial court suppressed use of the FBI's lab report received the morning of the trial, but that case was complicated by other factors and the suppression was overturned on appeal.[1]

No other specific cases of laboratory analysis too late for use in court have been cited. However, Fairbanks Police Chief Matthew Kiernan estimated that perhaps in one percent of his cases he was unable to use the

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[1] Department of Public Safety. The Development of a Full Service Forensic Laboratory for Law Enforcement in Alaska. September 1982. Page 11.

FBI's laboratory analysis in court because of delays. Other Alaska law enforcement authorities indicated that, to their knowledge, evidence has always arrived in time, but not without the use of personal contacts between the law enforcement authorities in Alaska and FBI examiners in Washington D.C. Estimates of amount of time normally required for an FBI analysis ranged from two to six months.[2]

Specific Evidence Sent To The FBI For Analysis

It was not possible to obtain a list of the specific legal evidence which has been sent from Alaska to the FBI for analysis in the time available to complete this research request. All law enforcement authorities were contacted but regular records of what has been submitted for analysis have not been maintained.

The FBI crime lab in Washington D.C. may maintain records of what it has analyzed for Alaska, but this information was not made available to us. A list of the specific evidence sent to the FBI for analysis could be reconstructed by going through all the criminal files of the law enforcement authorities in Alaska, but doing so would require a substantial amount of time.

The FBI's crime lab conducts all known types of criminal analysis. Examples of Alaskan criminal evidence currently analyzed by the FBI include: questioned documents, body fluids, firearms, trace metals, voice prints, hair, fibers, and fingerprints.

Additional Information

Currently, all FBI service (analysis and expert witnesses) are available free of charge. The FBI crime lab's work is well respected and the examiners make excellent witnesses. However, many of Alaska's law enforcement officials spoke of the federal government's intention to cease providing lab services for state and local police.

The FBI, while supporting the development of regional criminal analysis laboratories, denies any intention of reducing services to state and local law enforcement authorities.

* * * * *

We hope this information is useful to you. Please let us know if we can be of any further assistance.

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[2] Captain Smith of the Anchorage Police Department estimated normal FBI turnaround time at two months while Major Korhonen of the Alaska State Troopers estimated normal turnaround times of five to six months.

MEMORANDUM State of Alaska

TO: M. James Messick
Assistant to Commissioner
Director's Office
Anchorage, Alaska

DATE: January 24, 1984

FILE NO:

TELEPHONE NO: 269-5620

FROM: Lieutenant Robert E. Dent
Commander
Criminal Investigation Bureau

SUBJECT: Delays in F.B.I. Lab Exams

Reference our conversation whereby you requested specific examples of investigations we have had, which lab exams by the F.B.I. were requested and delay in obtaining same jeopardized prosecution; resulted in a request for a continuance; or hindered further investigation.

I queried all C.I.B. personnel and Fairbanks G.I.U. concerning this with the following results:

1. E82-6580 (Fairbanks) Brian Ault homicide - a continuance was granted because evidence came back from the F.B.I. Lab too late for the defense to have an examination (State vs Michael Stephens).

2. I83-65819 (Anchorage) A rape which occurred on October 1, 1983 at Anchorage International Airport - the suspect was arrested on October 1, which started the 120 day rule. Evidence processed and sent to Lab October 15 to October 25. First report from the F.B.I. Lab was on oral report on January 3, 1984. Currently, we are still awaiting results of some exams and if the defendant had not waived two months of the four month rule, prosecution would be unlikely due to time running out.

3. I83- (Anchorage) Sexual assault. Defendant arrested and evidence obtained on October 27, 1983. Still awaiting return of evidence by the F.B.I. It is anticipated that the defense will also want to have evidence examined probably resulting in a continuance. Trial has been set for February, 1984.

4. Sergeant Randy Johnston provided the following for consideration:

   Generally, laboratory examination letters communicate opinions which are much more conservative than the true opinion of the examiner, often leading the investigator to believe that the connective evidence is not as strong as he had hoped it would be. For example, a letter might say: "The hair from the victim's blouse has characteristics that are similar to those found in head hairs from the suspect.", or "could be head hairs from the suspect." If the author of the letter was right here in Anchorage where he could show and tell his findings to the investigator, the conversation might go like this: "The probability that the hair found on the victim's blouse if the suspect's head hair, is very high. Look at this. This characteristic is very rare to find. And 15 other characteristics match.", etc.

   From the letter, the investigator may feel he has one of several suspects which cannot be eliminated. From his looking at the results he may feel that more investigation of that particular suspect is in order.

And it is not practical to call the lab every time we receive a lab examination letter.

Also, obviously it would be beneficial to a case to get results of lab analysis quickly. Results of analysis of material found in a car may be all that is needed to reach P.C. for a warrant for another place. Time is always of the essence in search warrant situations.

5. Sergeant Jim McCann provided his comments as follows:

I know of no specific cases that have been continued because of F.B.I. Lab delay because I am extremely careful in getting my evidence in to the lab and I always communicate personally with the assigned examiners to insure their availability. I think all cases are in jeopardy of being lost or continued because of F.B.I. delay, but with the F.B.I. Lab's skill and professionalism and a little extra work and luck, we always seem to slide by.

I think our own full service lab will streamline the entire system. In every major crime trial, there is something that comes up that requires further, (sometimes on the spot) exams, expert testimony, etc. That most times F.B.I. examiners will not be able to perform for one reason or another. Usually the examiners are so booked up they get into town one day, meet with the D.A. and the investigator, testify the next day and leave Alaska on an evening flight. We never have them for rebuttal.

I spoke with D.A. Harry Davis and he cannot recall any recent cases where we have had any of these problems. He attributes this to the lab, and to a somewhat smaller case load. He agrees though that the jeopardy is always there. Mr. Davis concluded with his request for some sort of mobile crime scene team to consistantly process major crime scenes professionally.

In conclusion, I might add that the F.B.I. is rather eager to get us into the lab business, they do not really want us any more.

If I receive anything further that you might use, I will keep you advised.

REJ/sab

MEMORANDUM State of Alaska

TO: Mr. James Messick
Assistant to Commissioner
Anchorage, Alaska

DATE: 1/16/84

FILE NO:

TELEPHONE NO:

FROM: Sgt. Rollie A. Port, #10
G.I.U., Palmer Post
B Detachment
Alaska State Troopers

SUBJECT: F.B.I. Laboratory

Currently, the Palmer Investigation Unit has 2 cases which have had to be postponed, due to the time it has taken the F.B.I. to process evidence which is essential to the prosecution case.

1. Suspect Donald "Pete" Criner, arrested on 10/20/83 for two (2) counts of Kidnapping, I count of 1st Degree Sexual Assault, 1 count of 1st Degree Assault and 4 counts of 2nd Degree Assault. On 1/9/84m trial was set and had to be continued because the lab results were not finished.

Suspect Joseph Oswald, was arrested on Sept. 27th, 1983 on 3 counts of 1st Degree Sexual Assault, with a court date of 1/16/84. On 1/16/84, the F.B.I. Lab report was received, however, the lateness of the report had forced the defense attorney in the case to ask for a continuance today.

RAP:kf

MEMORANDUM State of Alaska

TO: Colonel T. R. Anderson
Director
Alaska State Troopers

DATE: April 14, 1982

FILE NO:

TELEPHONE NO:

FROM: Lieutenant John Lucking
Acting Commander
Criminal Investigation Bureau

SUBJECT: FBI Lab Services

As a matter of information to you, be advised of the following recent events this past week.

In our homicide case I82-3203 (double murder) evidence was sent to the FBI Lab for analysis. This included some hair and fiber tests. We received a phone call from the lab in which they discussed the necessity of our requested examinations.

In our homicide case I81-50020 (double murder) evidence was sent to the FBI Lab for analysis. This also included hairs and fibers for testing. Again we received a phone call from the lab in which they discussed the necessity of our requested examinations.

I believe these events demonstrate the pressure the FBI Lab is under in attempting to accomodate all requests.

FY82 - 50 cases - 200 items - 19000 tests -
12 blood tests or bloody shirt

51 Trips in fiscal 83 - 1 [illegible] -

02-001A(Rev.10/79)

ALASKA STATE LEGISLATURE
HOUSE OF REPRESENTATIVES
RESEARCH AGENCY

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March 15, 1983

MEMORANDUM

To: Representative Bob Bettisworth

From: Leonard Steinberg, Research Staff L.S.

Re: Organizational Location of Crime Lab
Research Request 83-101

Ralph Bennett of your office requested information on where within the governmental structure of other states criminalistics laboratories are located. He also asked us how other states protect the independence of the laboratories. Several states, national criminalistics organizations, and academic experts were contacted; our findings are summarized below.

Findings

While most states have criminalistics laboratories, there is considerable diversity in the location of these institutions within the structure of state governments. Many labs are part of state police organizations. In other states, the labs are in a seperate division but still within the same department as the state police. Labs have also commonly been located under the auspices of the Attorney General. Though more unusual, some labs have been incorporated into state health departments, and at least one state has consolidated all state laboratories in one division within their Department of General Services. In addition, at least one state has a crime lab system completely independent from any other state agency.

In our interviews three primary arguments were made for not placing a laboratory under the auspices of a state police organization. First, charges of laboratory bias and insufficient credibility appear to diminish with greater laboratory independence. Some states allow criminal defendants access to state crime labs, in part, to prove the objectivity of the labs. Second, laboratories within police organizations sometimes have failed to effectively compete for limited government funding. Third, laboratories within police organizations may fail to attract and retain high quality personnel because: a) pay and benefits are generally lower than the uniformed officers they work under; b) lab employees lack promotional opportunities as only sworn officers are usually admitted into the leadership ranks of police organizations; and c) lab employees consider themselves scientists and prefer a less structured and more academic environment than is usually found within police organizations.

The primary argument in favor of locating crime labs in a police unit is increased responsiveness to law enforcement needs. Additionally, some experts feel that there are fewer problems with the security and confidentiality of criminal evidence when crime labs are within police organizations. Last, some experts feel that being in a police department will allow better working relationships to be built between scientists and police officers

Alaska

Anchorage District Attorney Victor Krumm did not think that placing the lab within the State Trooper's organization would create a credibility problem. Mr. Krumm pointed out that many states have labs associated with their law enforcement organizations. He added that the nation's most respected lab is part of the Federal Bureau of Investigation (FBI).

American Academy of Forensic Sciences

Ken Field is the Executive Director of the American Academy of Forensic Sciences (303/596-6006), a professional organization of forensic scientists. According to Mr. Field, the credibility of criminalistics labs increases as the labs become more independent of law enforcement organizations. Field said that police labs in general have a poor reputation; too often, according to Field, non-scientists are placed in charge of police labs resulting in inappropriate management decisions and the closing off of promotional opportunities for lab employees.

Mr. Field stated that the ideal structure would be to have labs as part of the court system. At the very least, Field suggested setting up the crime lab as a division seperate from the State Troopers within the Department of Public Safety.

American Society of Crime Laboratory Directors (ASCLD)

Jerry Chisum (209/576-6215), is the current president of ASCLD, acknowledged that police labs are often accused of bias. Acording to Chisum, the desires of a police captain or lieutenant too often take precedence over the judgment of a civilian laboratory director.

In California, where Mr. Chisum is employed, there are many crime labs which are part of local county sherriff's offices. Additionally, there is a state wide system of 15 crime labs that are part of the California Department of Justice. Mr. Chisum has worked in both systems and stated a strong preference for working under the Attorney General.

He also pointed out that some states have crime labs within their health departments. This practice apparently began with the need to perform certain homicide related medical examinations. However, Mr. Chisum noted that health department labs are almost invariably run by medical doctors and are generally poorly equipped and staffed to deal with non-medical procedures.

Southwestern Institute of Forensic Sciences

The Southwestern Institute of Forensic Sciences, a criminalistics laboratory in Dallas Texas, is an independent Dallas County agency. Mr. Irving Stone, Chief of the Physical Evidence Section (214/638-9982), stated that while the Institute performs work for all city and county police in their area, it is not under the supervision of any law enforcement unit. The Institute reports directly to the elected county commissioners.

According to Mr. Stone, the benefits of being an independent agency are less competition for funds and better credibility in court. Stone suggested placing the crime lab under the authority of the Attorney General.

California State Crime Labs

Mr. Al Biasotti, (916/739-5484) a manager of the California Department of Justice's Bureau of Forensic Sciences, stated that labs attached to police organizations always have problems of bias. According to Biasotti, independent labs can attract better personnel because the "forensic scientist" strongly prefers being independent of a law enforcement agency.

The California Department of Justice has had a state crime lab since the 1930s, and in the early 1970s, the system was expanded to 15 facilities. Attached as Appendix A are standards and other information California has used to establish its state crime labs.

Illinois State Crime Labs

Mr. Bruce Van der Kolk, (217/782-4975) is Director of the Bureau of Scientific Services, Illinois Department of Law Enforcement. The Department of Law Enforcement was created through governmental reorganization in 1977. The Law Enforcement Department also includes the bureaus for the state police, state investigators, internal investigators, and administration. The crime labs in Illinois, therefore, are in the same governmental unit as the police, but are not part of the police organization.

Prior to the 1977 reorganization, Illinois' crime labs independently defended their own budget before the Illinois legislature. According to Mr. Van der Kolk, the crime labs were not successful competitors with other state organizations for budget dollars. Since the 1977 reorganization, the Department of Law Enforcement has been more successful in getting state funding for the crime labs.

Mr. Van der Kolk argued that credibility is not the primary reason for maintaining the independence of crime labs. He maintained that the real reason is that scientists and police officers have difficulty understanding each others needs. Illinois has tried to have a sworn liaison police officer attached to every lab, but Mr. Van der Kolk is not convinced that this program has been successful. Mr. Van der Kolk explained that differences between sworn police officers and civilian lab employees in pay structure, benefits, and promotional opportunities exacerbates their differences.

Wisconsin State Crime Lab

According to Crime Laboratory Bureau Director Dan Dowd (608/266-2031), about 15 years ago Wisconsin's crime lab was transferred from the University of Wisconsin to the Law Enforcement Services Division of the Wisconsin's Department of Justice. Other Law Enforcement Services Division sections include a crime information group (records and statistics) and the training and standards section.

Mr. Dowd supports the location of the crime lab within the Attorney General's office; none of the other employees there are sworn officers nor has there been competition for funds. He speculated that the crime lab has fared better as an arm of the Attorney General than it would have on its own.

According to Mr. Dowd, crime labs have more in common with academic than with police institutions. He perceives the lab more as a friend of the court than as an advocate. In fact, Wisconsin statute allows defendants access to the lab and Mr. Dowd feels this helps the lab avoid charges of bias. Dowd says the lab is well respected by defense counsel even though less than 5 percent of its work is for defendants. The Wisconsin crime lab statutes are attached as Appendix B.

Arizona Crime Lab

The state crime lab in Arizona is part of the Criminal Justice Support Bureau of the Department of Public Safety. The Department of Public Safety was created in 1969 by merging many existing agencies including the highway patrol, narcotics and investigations, and operations bureaus. Cliff Van der Ark with the Arizona crime lab(602/262-8395) stated

that his lab has not experienced credibility problems. One advantage of being part of a police organization, according to Mr. Van der Ark, is maintaining security. However, he mentioned that the same respect for the security of criminal evidence is likely to exist in an Attorney General's office.

Alabama Crime Lab

The crime lab system in Alabama (10 labs) is a completely independent state agency. Taylor Noggle (205/887-7001) stated that in 1935 the legislature created a full service crime lab that also handles all autopsy functions traditionally performed by medical examiners. The crime labs in Alabama are not connected to their state police nor their attorney general's office. The Director of the Alabama crime lab is appointed by the Attorney General, but cannot be removed except by impeachment; since 1935, the crime lab has had only three directors.

According to Mr. Noggle, the credibility of Alabama's labs can be traced to the high quality of lab staff. Mr. Noggle said that Alabama has been able to retain qualified personnel due to a relatively high pay scale and promotional opportunities.

Alabama's lab analyzes evidence for both prosecutors and defendants. However, Mr. Noggle estimated that less than 1 percent of the lab's work was performed for defendants.

Virginia Crime Lab

Warren Johnson, Director of Virginia's crime lab, stated that Virginia is the only state that has consolidated all state laboratories into a single government unit. The crime lab, together with the health, environmental, and consumer protection labs, make up the Division of Consolidated Laboratory Services within the Department of General Services. This organizational structure was created in 1972 to reduce costs (shared equipment and space) and increase effectiveness (sharing expertise).

Despite these theoretical gains, Mr. Johnson feels that the consolidation approach has been unsatisfactory. In fact, little equipment or space is shared because of the crime lab's need to insure the security of criminal evidence. Mr. Johnson said that there is only one piece of equipment that is regularly shared with other labs. Additionally, he expressed concern that the crime lab is left out of all planning for the criminal justice system because all other law enforcement agencies are in a different department. However, Mr. Johnson did acknowledge the usefullness of having easy access to the scientific experts associated with the other laboratories. In conclusion, he does not recommend the consolidated laboratory approach, but does recommend crime labs be independent from police organizations.

Academic Experts

Dr. Joe Peterson (312/996-8585), is with the Center for Research in Law and Justice at the Chicago campus of the University of Illinois. Dr. Peterson's professional research interests are in how science is used in the legal system and he is particularly knowledgeable about crime laboratories. According to Dr. Peterson, there is consensus among criminalist professionals that it is undesireable to place a crime lab within a police organization. Dr. Peterson stated that statistically, the labs located in law enforcement agencies often are unable to compete with the police organizations for money and are not as well respected by crime lab professionals as are labs independent of law enforcement agencies.

Though the issue of credibility is often raised when a lab is associated with a police unit, Dr. Peterson stated that there has never been a quantitative study of the problem. Though Dr. Peterson prefers labs that are completely independent of police organizations, at the very least, he suggests giving the lab the same status in government as other law enforcement units such as the Troopers. Dr. Peterson also suggested that the lab's credibility would be aided by allowing defendants equal access to the lab's procedures.

Dr. John Thornton (415/642-1605), University of California, Berkeley, assisted the State of California in developing its state crime lab system in the early 1970s. Dr. Thornton agreed that credibility is a serious issue and noted that charges of bias and perjury do affect the outcomes of criminal cases. For these reasons, Dr. Thornton feels it is essential that labs have an independent reputation. He said that the management of crime labs by the California Attorney General has worked out well.

Dr. Thornton feels that if a lab is placed within a police organization, it is essential that the lab director be a scientist and not a police officer. Dr. Thornton noted that scientists and police officers have different approaches to proof. Police officers generally have very different backgrounds from the lab scientists and often do not fully understand the equipment and procedures used in crime labs.

* * * * *

We hope this information is helpful to you. Many of the experts we spoke with promised to send us additional information in the mail and we will forward these materials to you as soon as we receive them. Please let us know if we can provide you with any additional assistance.

LS/sj

Attachments

ATTACHMENT A

Crime Laboratory: Standards and Goals

State of California

DEPARTMENT OF JUSTICE

PHYSICAL EVIDENCE MANUAL

– NATIONAL ADVISORY COMMITTEE ON CRIMINAL JUSTICE STANDARDS
POLICE
JAN 1973
WASH D.C.

For Notes

STANDARD 12.2

THE CRIME LABORATORY

Every State should, by 1982, establish a consolidated criminal laboratory system composed of local, regional, or State facilities capable of providing the most advanced forensic science services to police agencies.

1. Every police agency should immediately ensure that it has access to at least one laboratory facility capable of timely and efficient processing of physical evidence and should consider use of each of the following:

   a. A local laboratory that provides analysis for high volume, routine cases involving substances such as narcotics, alcohol, and urine; routine analysis and processing of most evidence within 24 hours of its delivery; immediate analysis of certain types of evidence, such as narcotics, where the detention or release of a suspect depends upon the analysis; and qualitative field tests and quantative follow-up tests of narcotics or dangerous drugs.

   b. A regional laboratory (serving an area in excess of 500,000 population where at least 5,000 Part I offenses are reported annually) that provides more sophisticated services than the local laboratory, is situated within 50 miles of any agency it routinely serves, can process or analyze evidence within 24 hours of its delivery, and is staffed with trained teams of evidence technicians to assist in complex investigations beyond the scope of local agencies.

   c. A centralized State laboratory that provides highly technical analyses which are beyond the capabilities of local or regional laboratory facilities.

2. Every crime laboratory within a police agency should be a part of the organizational entity which includes other support services, and should be directed by an individual who reports only to the agency's chief executive or to a staff authority who reports directly to the chief executive.

3. In maintaining a staff of formally qualified personnel who can provide efficient and reliable assistance in criminal investigations, every crime laboratory should provide that:

   a. Every employee responsible for the completion of scientific analyses or testing hold at least an earned baccalaureate degree in chemistry, criminalistics, or a closely related field from an accredited institution, and have a thorough working knowledge of laboratory procedures;

   b. Every employee performing supervised basic scientific tests or duties of a nonscientific nature meet the agency's requirements for the employment of regular sworn or civilian personnel;

   c. The laboratory director be familiar with management techniques necessary to satisfactorily perform his administrative functions;

   d. All laboratory personnel be adequately trained and experienced;

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For Notes

e. Civilian personnel be used regularly so that sworn personnel may be more appropriately deployed in other assignments but provide that qualified sworn personnel be used when their abilities or expertise cannot be found elsewhere.

f. The working staff be sufficient to meet the demands of the laboratory caseload;

g. Salaries be commensurate with the specialized duties and qualifications of each position so that well qualified personnel are attracted to and retained in these positions;

h. Promotional and career paths for laboratory personnel result in salaries at least equal to those of persons employed in other equivalent laboratories; and

i. A clerical pool capable of handling all of the clerical needs of the laboratory be maintained.

4. Every laboratory which employs more than 10 nonclerical personnel should also establish at least one research position for solving specific laboratory problems and developing new laboratory techniques.

5. Every police chief executive should ensure that the police laboratory function receives appropriate fiscal support and that the adequacy of its facilities is considered in structuring the agency's annual budget; every laboratory director should be able to assess and control the amount, type, and quality of evidence received by the laboratory.

6. Every police agency laboratory and every regional laboratory should receive from all agencies using its services partial annual support based upon the number of sworn personnel employed by each agency, rather than on case costs.

7. Every crime laboratory director should, by 1974, design and implement a reporting system that provides data relative to its involvement in:

a. Reported crimes;

b. Investigated crimes;

c. Suspects identified or located;

d. Suspects cleared;

e. Suspects charged;

f. Prosecutions;

g. Acquittals; and

h. Convictions.

8. Every crime laboratory should immediately establish close liaison with:

For Notes

a. All other elements of the criminal justice system to ensure that laboratory findings are consistent with law enforcement needs and are being effectively used as investigative tools;

b. The scientific and academic establishments to insure use of the latest techniques and devices available to the criminalist and the investigator.

Commentary

12.2(1) Minimum Police Laboratory Needs. The gathering of physical evidence at a crime scene will do little to improve the investigative process unless such evidence is translated into pertinent data related to the crime. Thus, no matter how sophisticated an agency's evidence collection methods, they are of limited value without a comparable system of evidence analysis. There should be available to every police agency a laboratory facility capable of providing qualitative, quantitative, and interpretive analyses of all physical evidence taken into custody by the agency.

Time is often critical in a criminal investigation, and the solution of a case may hinge upon the rapid return of information to an investigator. Therefore, the laboratory facility should be capable of immediate analysis of evidence. On the other hand, some evidence may not demand immediate handling and may be returned to the agency on a routine or scheduled basis. The important thing is that the laboratory realize the difference and set up priorities to insure the speedy return of evidence when indicated. As a general rule, the return of evidence should be timely and should depend upon the needs of the agency's investigators.

To insure the timely return of physical evidence, it is imperative that all agencies establish procedures to facilitate the movement of evidence through the investigative, analytical, and judicial processes. Too often, an item is delayed at some point in the system until its value is reduced or completely lost. While procedures should provide for the smooth flow of evidence through the system, it is of much greater importance that the continuity of the evidence be maintained during its movement. Agencies should ensure that the evidentiary chain remains intact as evidence passes from the evidence technician, through the property clerk, chemist, and investigator, to the court clerk. In order to maintain its validity in the criminal process, evidence must be accounted for at every stage of its progress. Therefore, each person handling the evidence, for whatever purpose, should be required to sign for its release and its return.

A police agency should also have easy access to a laboratory facility which can provide services consistent with the techniques most often used by that agency. In essence, the laboratory must have the staff and equipment to perform those analyses of most frequent concern to its clients. Most agencies will require laboratory services for document examinations, drug analyses, and the identification of firearms, tool marks, and trace evidence. However, an agency whose primary functions are traffic enforcement and accident investigation may have a fairly exclusive need for blood alcohol tests, urinalyses, or spectrographic examinations of paint chips. Agencies with helicopter fleets may similarly have need of specialized photographic materials and equipment. The laboratory, especially at the local level, should be prepared and equipped to meet these varying analytical needs of the agencies it serves.

12.2(1a) Local Laboratory. The President's Commission on Law Enforcement and the Administration of Justice in its 1967 *Task Force Report: The Police*, stated that a "good laboratory facility is beyond the means of almost all police departments in the United States." The Commission cited a lack of facilities and a shortage of qualified technicians as reasons for its

For Notes

conclusion. However, despite such obstacles, most police agencies were unwilling to give up their laboratories, even when they were not used effectively. The reluctance of some agencies to surrender their facilities might disappear if each were required to provide a minimum level of service at the local level. In view of these conditions, police agencies should be cautioned against attempting to create laboratory facilities when appropriate facilities are already at their disposal.

A local laboratory may be defined as a facility operated by a local police agency to provide laboratory services for that agency or other agencies in the immediate vicinity. The local laboratory should *at least* provide routine analyses of narcotics, blood, breath, and urine. These are usually high volume services, and some laboratory directors are concerned that accepting case work of this nature will totally involve the laboratory in minor analyses. An alternative to the use of local laboratories for such purposes is an expansion of the role of the field policeman. In the Los Angeles Police Department, officers conduct breathalyzer examinations on drunk driving suspects prior to booking. Such fairly simply examinations as the breathalyzer test and the narcoban test for drugs may be administered in the field or the station to ease the burden on the laboratory. Blood alcohol, urinalysis, and Naline examinations must be conducted in the laboratory

It is, of course, acknowledged that the local laboratory should provide accurate and reliable information to investigators, but the "turnaround" time for evidence submitted to the laboratory is often a controversial issue. Most items of evidence presented to the local laboratory should be processed and evaluated within 24 hours of delivery. More time for the delivery of routine services would negate the advantages of the local laboratory's convenience. As a matter of fact, there are certain instances when immediate evidence analysis should be provided.

The detention or release of a narcotics suspect often hinges upon the positive identification of the evidence as a narcotic or dangerous drug. In such cases, when a field narcoban test or similar examination is unavailable to the field officer, the laboratory should immediately analyze the evidence. As another means of preventing a backlog or congestion in the laboratory, laboratory personnel may be deployed to administer qualitative field tests in narcotics cases. Since field tests for narcotics have proved invalid in some instances, such tests should be used only when they have clearly demonstrated their reliability.

The President's Crime Commission in 1967 reported that the Chicago Police Department operates one of the best-equipped and staffed facilities in the country. In 1965, the Chicago laboratory processed materials for 140 jurisdictions, including Federal and State agencies, counties, and other municipalities. Obviously this operation fulfills much more than the minimal requirements for a local facility. The important fact is that its returns are the most advantageous in terms of proximity, timeliness, and quality for those agencies which avail themselves of its services. Thus, with no regional or State facilities readily available many agencies have chosen Chicago's laboratory as one whose scientific capability can meet the full range of their laboratory needs. The opposite situation exists in Los Angeles, where the city and county agencies each operate a local laboratory facility within three blocks of one another. While each provides quality services, the duplication of facilities is a situation which should be avoided. It wastes manpower, equipment, and operating resources.

12.2(1b) The Regional Laboratory. A 1966 study by the Department of Justice revealed that 17 States had no crime laboratory within their boundaries. The scarcity of local laboratories, properly trained laboratory personnel, and adequate space and equipment has fostered growth of the regionalization concept in police laboratory services. To avoid duplication of services and to maintain quality standards, it is generally believed that regional laboratories should be controlled

For Notes

and operated as part of a statewide system. A regional laboratory should be equipped to perform all but the most highly specialized types of analyses connected with criminal investigations. It should certainly provide a more sophisticated level of service than the local laboratory, although it may function as a local facility for agencies in its immediate area.

A 1966 report by John Jay College (New York City) recommended that a regional crime laboratory be established to serve from 500,000 to 1 million persons in an area where at least 5,000 Part I crimes are committed each year. This recommendation was made to insure the existence of a sufficient caseload to justify the operation of a full-service regional facility. The FBI's annual publication *Uniform Crime Reports 1971*, reveals that well in excess of 10,000 index crimes occur annually when the population approximates one-half million persons. Therefore, John Jay's guidelines are quite liberal as indicators of the need for a regional laboratory.

Past experience indicates that police investigators will rarely seek laboratory assistance when the facility is inconveniently located. There are areas where the technician or investigator must travel an unreasonable distance to obtain laboratory services. This situation should be remedied so that laboratory assistance is available wherever and whenever it is needed. Studies have shown that evidence submission decreases sharply as the distance of the crime scene from the laboratory increases. A 1970 report by the Midwest Research Institute projected criminalistics requirements for eight adjoining counties in Missouri and Kansas. This report recommended locating a regional laboratory at a site within a 20 mile radius of 90 percent of the subscribing agencies' sworn personnel and 96 percent of the crimes committed in the region. While probably a valid guideline for this particular region, the 20 mile radius would present problems in larger, less populated western and southern States. A more realistic criterion would dictate that a regional laboratory be normally located within 50 miles of any agency which it routinely serves.

To provide a complete range of services and timely return of results, a laboratory should provide 24-hour-a-day service to its clients when necessary. Although around-the-clock deployment is obviously desirable, it presents some complex problems which must be weighed against the benefits. Qualified laboratory staff members are aware of their scarcity and the demand for their services. Consequently most choose to work regular daytime hours and usually get their way. Those who would agree to a night or morning watch would probably rebel when they were supoenaed to court during their off-duty hours. Although a situation which has faced police officers for years, it is highly unlikely that predominantly civilian laboratory staffs will voluntarily accept such conditions. The only feasible solution to such a problem appears to lie in an increased liaison with the criminal courts to devise operational methods which will decrease wasted man-hours and increase the effectiveness of the system.

In considering the regional laboratory system, police chief executives should examine laboratory facilities already in existence. Some public safety laboratories function as police crime laboratories and process evidence connected with violations of antipollution and other noncriminal laws. The duties of some professions include the operation of full-service laboratories. In many instances, the laboratories run by medical examiners, coroners, and pathologists may be used as regional police laboratories. The laboratory of the coroner in Hamilton County, Ohio, functions as the crime laboratory for local police agencies in the Cincinnati area.

Finally, the regional laboratory may, as the need arises, provide trained evidence technicians to local agencies which lack the expertise to conduct complex crime scene investigations. In Dallas, Texas, evidence technicians, under the direction and control of the medical examiner are assigned to the criminal investigation laboratory to carry out regular crime scene investigations. The laboratory is operated independently of the police agency and the technicians work in a scientific

For Notes

atmosphere of neutrality not always present in a police facility. An expansion or modification of such a program could provide local agencies with the assistance needed.

12.2(1c) The Centralized Laboratory. Police agencies often need laboratory support which cannot be supplied at either a local or a regional level. When a criminal investigation requires a highly technical, time-consuming, or singularly unique analysis, a central laboratory should be available to provide such service. The need for such a facility is emphasized by the volume of scientific examinations performed annually by the FBI laboratory in Washington, D.C. While the FBI laboratory serves a useful purpose in providing free services to a multitude of local, State, and Federal agencies, most agencies outside of the Washington, D.C. area are too far removed to receive timely service.

If each State were to provide services comparable to those of the FBI laboratory, more agencies would be likely to submit evidence for analysis and the return of examination results would be speedier. These centralized State laboratories should be capable of performing all complex scientific evaluations necessary in police work at no charge to participating agencies. They should also train laboratory technicians.

12.2(2) Laboratory Organization. Most local laboratories and some regional facilities function as elements of police agencies. Some police administrators and criminalists feel that this is an unsound administrative arrangement, particularly when services are provided for agencies other than the parent agency. Some feel that under such circumstances the laboratory may be operated by personnel with very little knowledge of criminalistics or laboratory administration. Others cite a danger of vested political interests influencing the local or regional operation of the laboratory and a resultant imbalance in the dissemination of services. All feel that a laboratory serving more than one jurisdiction must be objective in its administrative policies. The President's Commission on Law Enforcement and the Administration of Justice, in its *Task Force Report: The Police, 1967*, suggested that local regional laboratories be placed under the direction of the State laboratory system or some independent entity, such as a university or medical examiner. The Midwest Regional Institute also recommended that regional crime laboratories be kept separate and distinct from any existing law enforcement agency.

The fact remains that many successful laboratory operations are presently under the direction of either local, county, or State police agencies. To dissolve the organizational integrity of such facilities in order to restructure them as Statewide or independent systems would create chaos precisely where the police service can least afford any interruption of service. It would appear much more realistic to adopt measures to insure that these laboratories are operated efficiently without regard to the special interests of the agency or the concerned government.

A laboratory which exists within a police agency should function as a staff element of that agency, and should not be administratively responsible to any operational unit of the agency. The laboratory should not function as a tool of any investigative or patrol unit, although it will certainly act in a supportive capacity to both functions. It should be an element of whatever organizational entity provides similar support services. As the administrator of a staff element, the laboratory director should be accountable to the agency's chief executive. In large agencies which organize their support services under a specific bureau or division, the director should report to the commanding officer of that bureau or division. That commanding officer should, in turn, report to the chief executive. Where such a bureau or division does not exist the laboratory director should report directly to the chief executive.

For Notes

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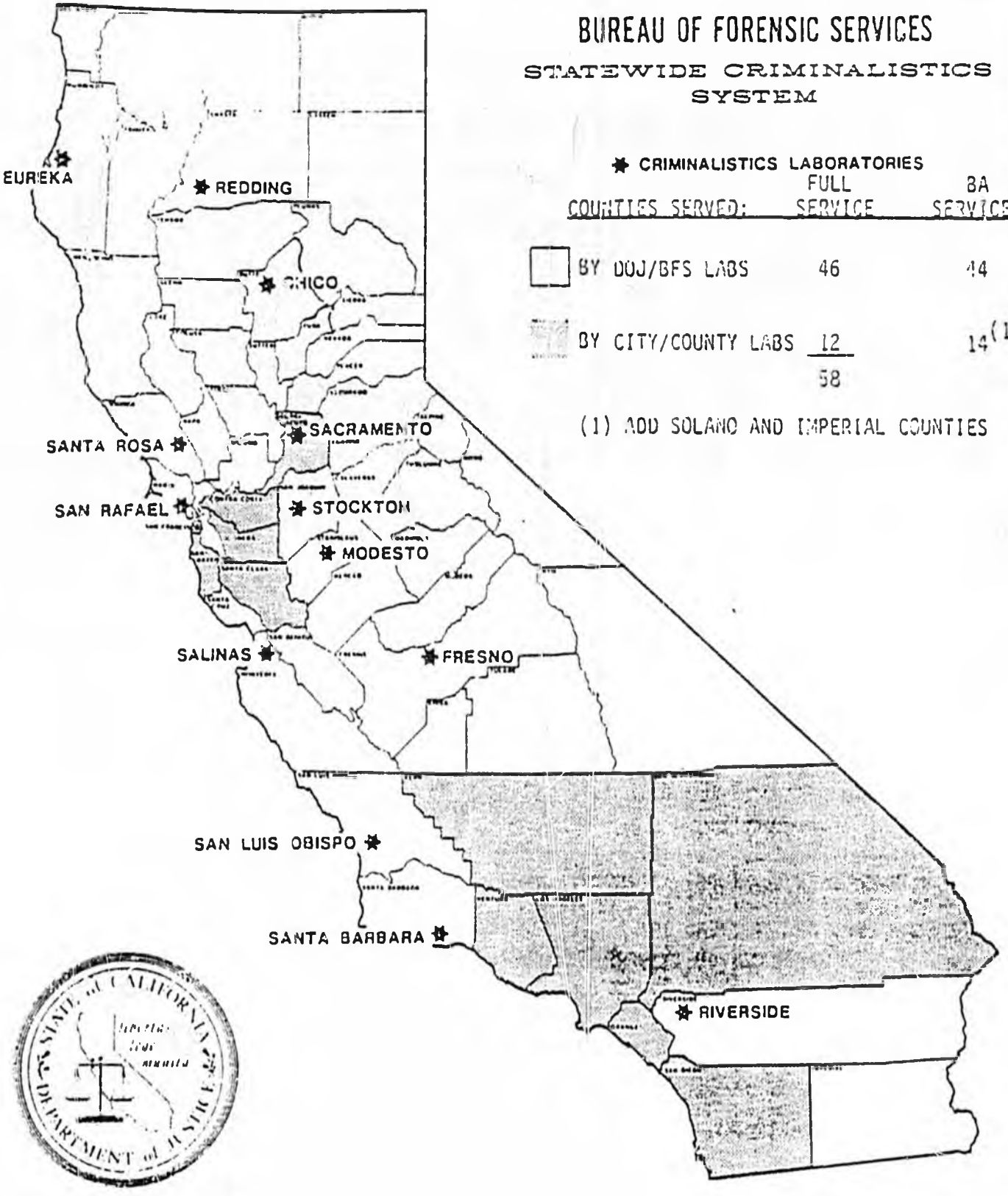
BUREAU OF FORENSIC SERVICES

STATEWIDE CRIMINALISTICS SYSTEM



★ CRIMINALISTICS LABORATORIES

COUNTIES SERVED:	FULL SERVICE	BA SERVICES
BY DOJ/BFS LABS	46	44
BY CITY/COUNTY LABS	12	14(1)
	58	

(1) ADD SOLANO AND IMPERIAL COUNTIES

STATE OF CALIFORNIA

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INVESTIGATIVE SERVICES BRANCH

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PHYSICAL EVIDENCE MANUAL

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PHYSICAL EVIDENCE MANUAL

This newly revised edition of the Department of Justice Physical Evidence Manual is now available. The manual describes the recommended procedures for the collection and preservation of all types of physical evidence. Evidence studies conducted by the State Department of Justice Criminalistics Laboratories and other services available to qualified agencies of the State's Criminal Justice System are described and illustrated.

At least one free copy of the manual has been furnished to most criminal justice agencies rely[illegible]Department's laboratory services. If additional copies are desired, t[illegible]ailable and may be purchased for $2.75, tax included from—

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BRANCH OBJECTIVE

To Provide Scientific Services for the components
of the
California Criminal Justice System

PHYSICAL EVIDENCE

The term physical evidence embrances any and all physical objects or recorded observations and measurements of events which may aid the investigator or the court in reaching an opinion or conclusion. Such evidence may assist in:

1. Establishing that a crime has been committed (corpus delicti evidence).
2. Identifying, locating and apprehending the perpetrator of a crime (investigative evidence).
3. Connecting a suspect with a crime or crime scene (corroborative evidence).

I. INTRODUCTION

This manual has been prepared by the Investigative Services Branch (ISB) of the Department of Justice of the State of California with the following objectives:

A. To inform California law enforcement concerning the services provided by ISB.

B. To outline proper methods for collecting physical evidence.

C. To indicate suitable methods for the submission of evidence to ISB.

D. To indicate the value of physical evidence and expert testimony concerning evidence studies.

E. To explain other special aid which ISB can furnish in the scientific evaluation of crime, accident, fire and other scenes and the assistance which can be rendered in the investigation and prosecution of legal cases.

So many types of physical evidence are involved in the investigation of crimes that it is not possible to describe in this manual all examinations conducted or the methods for collecting, marking or packaging every conceivable type. The suggested procedures concerning the more common types of physical evidence, however, can be applied to practically all exhibits which may be encountered. It is believed that the investigator who will use common sense and intelligence and follow the basic procedures suggested, should encounter little difficulty in properly collecting and preserving physical evidence so that its greatest value can be realized.

II. INVESTIGATIVE SERVICES BRANCH

The Investigative Services Branch is the branch of the Division of Law Enforcement that provides the scientific and technical examinations required by the Criminal Justice System. It is divided into two Bureaus, the Special Services Bureau and the Technical Services Bureau.

A. Special Services Bureau (SSB)

The SSB provides technical services in the fields of Questioned Documents, Latent Fingerprints, Forensic Photography and Polygraphy. The experts employed in these sections are all highly trained and educated in their special fields. Each is prepared and qualified to present expert testimony in court regarding his examinations.

The Special Services units are equipped with the latest proven equipment and instruments necessary to provide the highest level service attainable. The addresses and phone numbers of the Special Service Sections will be found in Appendix B.

B. Technical Services Bureau (TSB)

The TSB provides the criminalistics services for 44 of the 58 counties in the state, and assists upon request in the remaining counties. The addresses and phone numbers of the several laboratories will be found in Appendix B. The laboratories are divided by function into satellite and regional laboratories.

Satellite laboratories provide limited service, primarily blood alcohol and controlled substance analyses.

Regional laboratories provide complete criminalistics services, examining all types of physical evidence.

All levels of laboratories are staffed by professional criminalists, technical assistants, and stenographic employees. The criminalists are all college graduates holding degrees in criminalistics or related physical sciences. In addition, all have had specialized training and belong to various professional societies. All are prepared and qualified to present expert testimony before the courts in connection with the scientific studies which they undertake.

The laboratories are provided with the instrumentation and equipment necessary to provide the highest level service attainable.

The Central Resources Unit manages a number of branchwide service programs. Sections within this unit include the Applications and Training Office (coordination of method development and education), the Uniform Blood Alcohol Program (maintains professional standards for compliance to Title 17 for blood, breath, and urine), the Driving Under the Influence of Drugs Program (provides blood and urine analyses for drug related traffic violations), the Gas Chromatograph/Mass Spectrometer Program (provides analytical support for drugs in driving, solid dosage drug analyses and criminalistics) and the Instrument Repair Program (provides repair and maintenance for breath testing equipment and laboratory instrumentation within the statewide system)

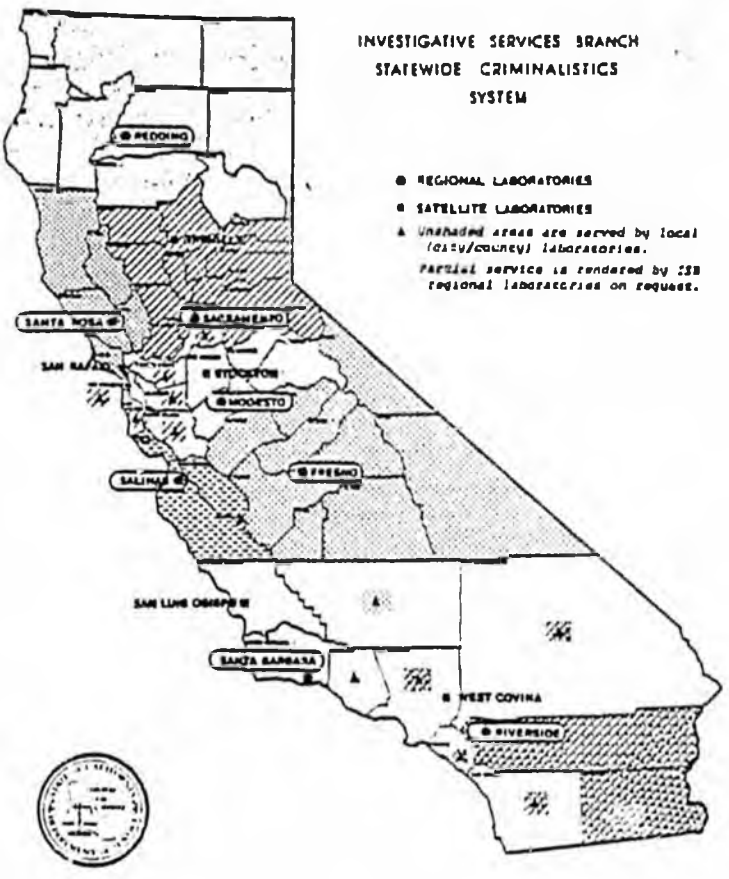


Photo 1A Location of Regional and Satellite Laboratories, Investigative Services Branch, Department of Justice, State of California.

III. BRANCH SERVICES AND FUNCTIONS

A. Availability—The services of the ISB are available to all local and state law enforcement or investigative agencies in California, and, on a contractual basis, to all public defenders offices.

B. Cases Handled—The purpose of the ISB is to render assistance in criminal investigation. While some cases handled may be found to be noncriminal in nature (such as certain accident, death or fire investigations) these must be incidences where the possibility of a criminal act is present. In the latter type of case it is essential that the investigation be part of the regular public duty of the requesting agency. No evidence studies may be conducted for private persons or corporations in either civil or criminal cases.

C. Cost of ISB Services—All forensic services are generally available without charge to public agencies. This includes field or laboratory studies, testimony presented in courts and travel expenses. Exceptions which occur are those where special high cost equipment or supplies must be purchased or where special analyses must be referred to private corporations or individuals. Whenever such special charges will be incurred, prior approval will always be obtained through consultation with the submitting agency or district attorney.

D. Functions of the Investigative Services Branch

1. Examine, identify, compare and interpret most types of physical evidence and interpret the significance of the findings.

2. Furnish expert testimony before the courts concerning examinations conducted on evidence or related matters. When criminalists or other specialists are needed as witnesses in legal actions, official requests for such appearances should be made by the appropriate attorney. This should be done by subpoena, but a letter or teletype may be equally respected. On any official investigation conducted by an ISB employee he may, of course, be called as a witness by either the prosecution or public defender.

3. Furnish field assistance in the investigation of major criminal cases. Such aid can only be furnished in connection with felonies of major importance or where special knowledge is essential to properly investigate the case. Requests for such assistance should be made only by the head of the investigative agency or by a supervising employee responsible for the conduct of the investigation. The official requesting a field investigation must inform the laboratory of the type of crime, the basic circumstances surrounding the case and the specific type of assistance required. This is necessary to permit assigning the most qualified staff member available (see Section XIII for more details).

   The ISB is not able to furnish on-the-scene assistance in routine investigations where trained officers are available to adequately recover evidence for later submission to the laboratory or section.

4. Render aid to prosecutors in connection with preparing scientific and technical phases of certain cases for trial. In some situations the ISB may also be able to furnish advice to prosecutors so that they may better understand the significance of testimony presented by other prosecution or defense experts.

5. Furnish instruction or audio-visual training aids concerning physical evidence for law enforcement training. Basic or specialized instruction will be furnished whenever possible to officers of any law enforcement agency. When such instruction is desired, a formal request should be made well in advance of the time scheduled. Requests for training school instructors should be made to the local regional laboratory or special section by the head of the law enforcement agency involved (see Appendix B for address).

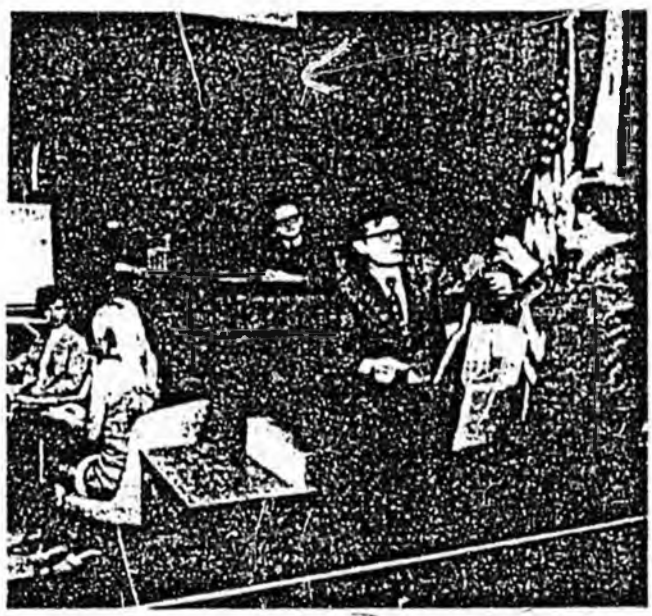


Photo 18 A Criminalist of the Investigative Services Branch presenting expert testimony to the court

IV. SUBMISSION OF PHYSICAL EVIDENCE

A. Method Selection

Various methods can be employed to submit evidentiary material to the laboratory. Generally the method selected will depend upon the type and size of the exhibits involved, the time available for completion of analyses and the complexity of the case. Whatever the method employed, care must be taken to assure that evidence will not be lost, damaged or contaminated and that the chain of possession of the exhibits can be legally established and maintained.

B. Information Required

In every case a completely filled out ISB form (ISB-4) should accompany the exhibits submitted. If this form is not available a letter may be substituted which furnishes the following information:

1. Name of suspect or defendant, if applicable.
2. Name of victim, if applicable.
3. Specific type of crime involved.
4. Agency case number.
5. Agency submitting evidence.
6. Name of officer submitting evidence.
7. Name of officer to whose attention reports should be sent and/or evidence returned.
8. Itemized list of exhibits included.
9. Purpose of examinations or type of studies desired.
10. Copy of crime investigation, accident or autopsy report as appropriate or at least a brief summary of the specific case under investigation.
11. Notations concerning any accidental or intentional changes which the investigator has made in the exhibits.
12. If previously examined by another agency a copy of any reports received concerning such examinations.
13. ISB case number if evidence is being resubmitted or is additional evidence on a case that has already been analyzed by the ISB. Such case numbers appear on all exhibits and at the top of all reports, letters or other correspondence pertaining to evidence studies conducted by the ISB.

C. Personal Delivery

1. Best Method—Personal delivery of evidence is the best method in those cases where the investigation or the evidence involved is complex. It is also best when large or perishable exhibits are involved or there are many separate items.
2. Permits Personal Consultation—Discussion of the case and evidence by the investigator and the analyst is frequently beneficial, particularly in complex cases.
3. Avoid Use of Messengers—Evidence should not be delivered by officers unfamiliar with the case under investigation who are only acting as messengers. Such persons normally do not have information about the investigation needed by the laboratory. In addition, such procedures add one more individual to the chain of possession and they will usually be needed to testify regarding such evidence possession if the case goes to trial.
4. Contact the Laboratory or Special Service Section—Telephone whenever possible prior to personally delivering evidence. This is particularly important if the case is complex. It permits the Supervisor to arrange to have the most qualified personnel available when the officer arrives.
5. Evidence Delivery Address—See Appendix B.
6. Hours—8 a.m. to 5 p.m. The ISB is closed on Saturday, Sunday and holidays.
7. Contacting Analysts During Non-Working Hours—Analysts can be contacted through the Bureau at any time but delays may occur. Therefore, if complex evidence must be delivered during non-working hours or field assistance is required, telephone first. See Appendix B for nights and weekend numbers.

D. Mail Shipment

1. Postage Class—Use registered or certified mail if evidence is of high monetary value or if it is small and of critical value. Otherwise, first or fourth class mail is satisfactory.
2. Prevent Damage—Package contents so that breakage or contamination will not occur during shipment.
3. Restrictions—Follow postal regulations. Do not mail explosives and other prohibited items.
4. Seal Package Completely—Even if fourth class mail is employed do not just tie with string but rather employ paper tape or other sealing tape.
5. Place Letter on *Outside of Package*—Use Form ISB-4 or include all information listed under Item B in letter. Place this in an envelop and attach to the *outside* of the sealed package.

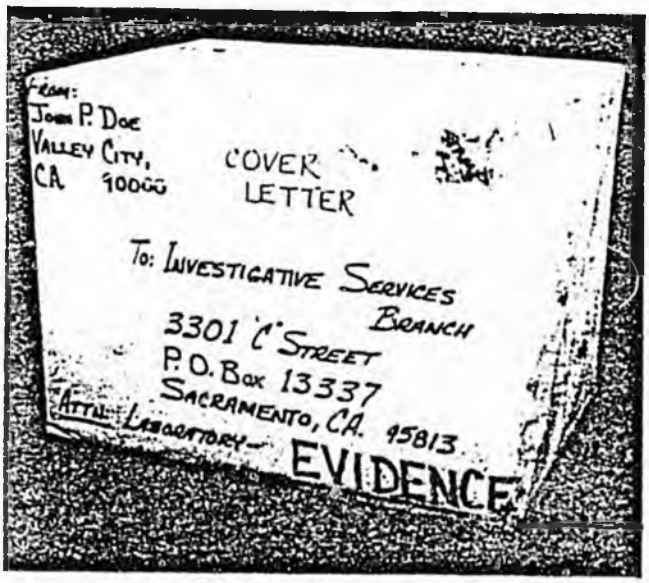


Photo 2 Proper method for packaging evidence for shipment. Always place a cover letter on the outside of the package.

This permits the laboratory to record the case and assign it to the appropriate scientist available for the specific examination necessary. Only the analyst assigned to the case will open the package. It also permits suitable storage of unopened perishable evidence when examinations must be delayed. In instances where there is need for obtaining the results rapidly it permits assigning priority to specific cases or exhibits.

6. Mail Address—See Appendix B.
7. Mark to Attention of Proper Section—In all cases mark package to the attention of the proper section as follows:

Attn: Latent Print—all latent print evidence, fingerprint cards for comparison with latents, skin or fingers of deceased persons.

Attn: Questioned Documents—all handwriting, typewriting, printed material, altered or obliterated writing, paper, ink and related evidence.

Attn: Criminalistics Laboratory—all other physical evidence submitted for processing.

E. Express Shipment

1. Commonly Used Methods—United Parcel Service, Greyhound, Air Express and related methods are equally satisfactory.
2. Package Condition—Follow the same procedures listed under "Mail shipment" under D above, making sure that package is sealed completely and a cover letter is placed on the outside of package.
3. Label Address—Since shipments other than mail will not be received in the Bureau post office box, address with full street address (See Appendix B).
4. Mark to attention of proper section—See D-7 above.

F. Evidence Requiring Special Handling

1. Explosives—do not deliver or ship to the laboratory without contacting a *Criminalist* by telephone. Suitable instructions will be given concerning procedures to be followed.
2. Other Dangerous Materials—due to shipping regulation variations, special methods must occasionally be employed. In addition, for the safety of both transporting officers and the Branch staff, it is urged that telephone contact be made prior to delivering loaded weapons, dangerous chemicals, etc.
3. Perishable Materials—deliver only during working hours. If to be shipped, contact ISB first, except in the case of blood and related specimens sent for alcohol, drug or grouping tests.

G. Physical Evidence Bulletins

A number of Physical Evidence Bulletins describing proper procedures for handling, packaging and submitting various types of evidence to the laboratories and special sections are available (see Appendix A for complete list).

These bulletins are distributed by regional laboratories and special sections in the Investigative Services Branch (See Appendix B for addresses and telephone numbers).

CALIFORNIA DEPARTMENT OF JUSTICE
DIVISION OF LAW ENFORCEMENT
INVESTIGATIVE SERVICES BRANCH

ISB CASE NO.
ISB use only
New ☐ Additional ☐
Resubmittal ☐

REQUEST FOR PHYSICAL EVIDENCE EXAMINATION

REQUESTING AGENCY: COUNTY OF: (Location)

OFFENSE: DATE OF OFFENSE: AGENCY NO.:

SUSPECT(S): (Include ID No. if any)

VICTIM(S):

BRIEF SUMMARY OF CIRCUMSTANCES:

EVIDENCE SUBMITTED: (Packages, containers, etc.)

PURPOSE OF EXAMINATION:

CHAIN OF CUSTODY			
EVIDENCE RECEIVED FROM	EVIDENCE DELIVERED TO	DATE	TIME

If further information is needed concerning this case, the following official should be contacted:
Phone No.:

ISB Report to be sent to the attention of:

Evidence should be returned to the attention of:

Officer investigating this case:

Date results needed by: For (type of court and location)

IS ABOVE LISTED EVIDENCE PROPERLY MARKED AND PACKAGED?
PLACE THIS FORM IN ENVELOPE ON OUTSIDE OF EVIDENCE PACKAGE

V. EVIDENCE EXAMINATION REPORTS

A. On completion of ISB analysis, reports are submitted to the head of the law enforcement agency requesting the examinations. These reports are normally marked to the attention of the specific officer submitting the evidence. Copies will be furnished to other agencies only at the request of the submitting agency.

B. The reports always include the charge, names of subjects involved and agency case number, if known. The date, time and name of the person from whom the exhibits were received and the method of delivery are also included followed by a complete list of all exhibits. The reports include the results of the examinations and the conclusions of the examiner, if appropriate. The method and date of return of the evidence is included at the end of the report.

C. The person signing the report is the employee responsible for the examinations and who will be able to testify concerning his findings.

D. All reports are numbered and any future reference to a specific case should refer to the case number in the heading of the report. Attempts are made by ISB to assign the same number to all work conducted on the same crime. Reference to the case number in all future communications permits rapid location of all reports and other information in the Branch pertaining to a specific case.

E. When analysis results are urgently needed the ISB will furnish preliminary reports by telephone or teletype, if requested to do so.



Photo 3A A member of a Regional Laboratory secretarial staff discussing the typing of a laboratory report.



Photo 3B The laboratory files are essential business records for the laboratory staff and the Criminal Justice System.

VI. GENERAL INSTRUCTIONS FOR THE COLLECTION AND PRESERVATION OF EVIDENCE

A. Clear Area—Clear all except essential and authorized persons from the crime scene area. This includes all officers who are not needed for specific functions. The more people present, the more chance there is for damage or loss of evidence.

B. Record Scene—By photographing, measuring and sketching. The location of all evidentiary items must be recorded prior to their movement.

C. Use Systematic Approach—Use caution when searching for evidence. Study the whole scene area first since the relationship of different exhibit positions may be important. Systematically cover crime scene area so that nonobvious or hidden evidence is not overlooked. Speed and carelessness may lead to overlooking evidence or to damage or destruction of important exhibits.

D. Limit Number of Evidence Collectors—Designate one or at most a pair of officers to collect all evidence. This places responsibility on specific individuals. It will also tend to avoid confusion at some later date by identifying the person that recovered specific items and the location in which they were found.

E. Photograph Evidence—Take photographs as necessary prior to moving or securing exhibits.

F. Use Common Sense—Use knowledge, experience and intelligence in collecting evidence. Consider what significance the exhibit may have and what examinations the laboratory may conduct. If this is done, the trained investigator will normally be able to correctly secure and preserve the exhibits.

G. Keep Records—Prepare notes or other records as items are collected. Record the item, its condition (if appropriate), its exact location relative to a fixed and permanent position; the date, time, etc.

H. Mark Exhibits—Place permanent and distinctive marks directly on objects collected if this is possible without damaging the evidence.

I. Mark Container—When unable to mark the exhibit itself, such as in the case of stains, hair, paint, etc., place in a vial or small plastic or other envelope, seal and mark the container. Even when the exhibit itself can be marked it is usually advisable to seal it in some type of container and place additional identification marks on the container.

J. Keep Markings Brief—Initials or the name of the officer collecting is essential. In marking containers other pertinent data can be included, such as date, where found, case number and description of exhibit. Do not include extraneous information or conclusions of the investigator since these might make the label inadmissible as evidence in court.

K. Containers—Various types of containers can be used for items of physical evidence. Several different packaging methods are listed here. The investigator should try to suit his containers to the sample. Due to bacterial or fungal actions it is imperative that you DO NOT PUT DAMP OR BIOLOGICAL EVIDENCE IN PLASTIC BAGS.

1. Plastic or cellophane envelopes are suitable for small dry objects.
2. Paper envelopes—are suitable for folded paper bindles containing very small or powdery material if all corners are sealed. Do not use paper envelopes for fiber evidence, a vial or pill box is preferred.
3. Vials, pill boxes, capsules and like containers are fequently suitable, depending upon the exhibit and its condition.
4. Garments and large exhibits can be placed in bags or rolled in paper.
5. Paper or plastic envelopes can be sealed around the ends of large exhibits, such as tools, with plastic tape to prevent loss of adhering evidence.
6. Loss of adhering evidence on large exhibits, such as safes, vehicle bumpers, etc., can be prevented by placing plastic or paper over the evidence and sealing it down with tape.
7. Always use clean and new containers to prevent contamination.
8. Special precautions regarding containers employed for specific types of evidence are discussed in the various other sections of the Manual.

L. Sealing Containers—Preventing loss, contamination, or access by unauthorized persons are of primary importance. Also, do not overseal and complicate opening the container in the laboratory. Avoid or limit the use of staples and never apply to plastic containers if fine particles of material are enclosed since staples rip small holes in plastic.

M. Keep Exhibits Separate—Each different item or similar items secured at different locations should be placed in separate containers. Packaging sepa-

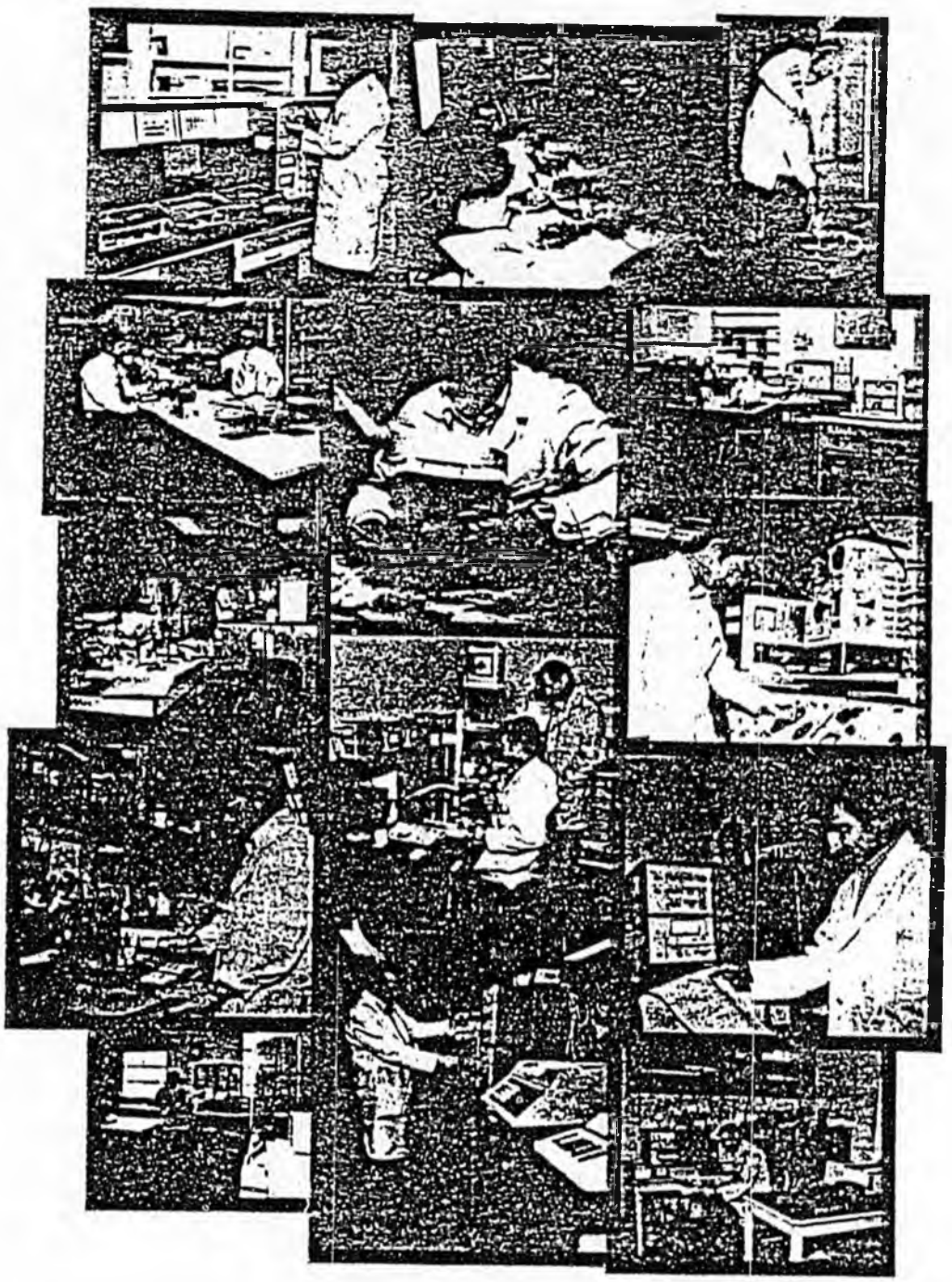
rately prevents damage through contact and cross contamination.

N. Storing Evidence—Always store in a safe, evidence vault, locker or some other location where others do not have access to it. This includes both temporary and long term storage.

O. Keep Chain of Possession Short—Each person having an exhibit in his possession, even if in a sealed container, may be required to testify as to such possession. To save the time of law enforcement personnel as well as the courts and to avoid confusion, keep the chain of possession as short as possible. In any case, each person having the exhibit in his possession should mark it or mark the container, if the exhibit is sealed in one.

VII. PHYSICAL EVIDENCE STUDIES CONDUCTED BY THE CRIMINALISTICS LABORATORY

The following sections furnish instructions, as well as general information, relative to specific types of physical evidence. It is not possible to include every conceivable type of evidence in a manual of this type, but a majority of frequently encountered types is included.



A. BLOOD STAINS

Studies of blood stains are frequently of importance in a wide variety of criminal investigations. In some cases, particularly homicide, crime scene examinations by a Criminalist may be required to establish direction of origin of blood splatters, show movements of individuals, establish sequence of deposit of stains and to develop other necessary information. The more common type of blood studies are laboratory operations involving analyses of recovered stains.

1. Fresh Moist Stains
   a. Do not heat stained material or place it in bright sunlight to dry. Hang clothing and similar articles in a room where there is rapid air movement, such as in front of a fan. Caution, a fan should not be used if foreign material has potential significance.
   b. If not *completely dried* before packaging, decomposition will occur which will prevent complete testing.
   c. When the stain is dry, label the item and roll it in paper or place it in a paper bag or box; seal and label container. DO NOT PUT STAINED OBJECTS INTO PLASTIC BAGS.



Photo 5 Air dried bloody clothing being wrapped for mailing.

2. Dried Stains
   a. On Cloth—Label article, roll in paper or place in a bag or box, seal and label container. Do not attempt to remove stain from the cloth.
   b. On Small Solid Objects—Send entire stained object to laboratory, after labeling and packaging.
   c. On Large Solid Objects—If practical to deliver whole object to the laboratory, any areas containing dry stains may be covered with paper and the edges sealed down with tape to prevent loss or contamination. If impractical to deliver the whole object to the laboratory, scrape stain onto a clean piece of paper which can be folded into a bindle and placed in an envelope. Scrape blood from object using a freshly washed and dried knife or similar instrument. Wash and dry instrument before each stain is scraped off so as not to cross contaminate samples with traces of blood on the instrument used. Seal and mark container.
   d. Do not mix separate dried stains. Place each stain in a separate container.
   e. If the stain cannot be removed in any other manner, use a piece of gauze dampened with distilled water to absorb the stain. Make a similar swab of an unstained area. Dry the gauze pads; place in separate envelopes; mark and seal.

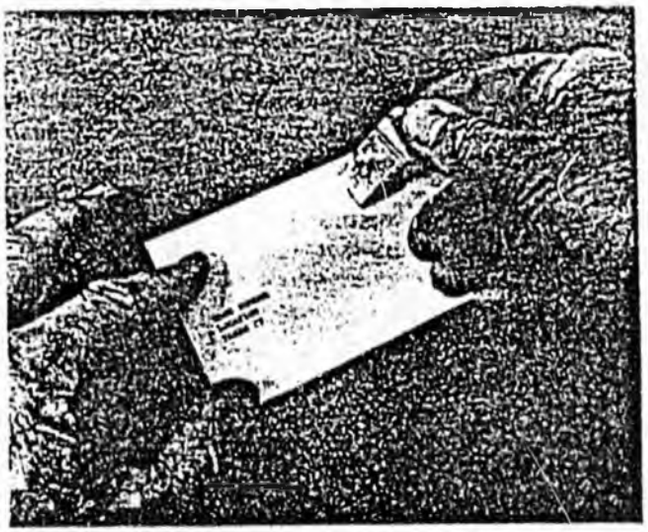


Photo 6 Band-aid pickup of blood. A method of conveniently collecting and forwarding blood from a crime scene.

3. Comparison Specimens
   a. If grouping of stains is desired, always obtain fresh known samples of all subjects involved. Grouping of dried stains seldom has any significance unless the blood groups of the subjects involved in the case are known. Information concerning the blood groups of subjects involved in an investigation may also assist the laboratory in selecting the most suitable test method or methods.
   b. It is usually possible to obtain known blood specimens from defendants if requested soon after the arrest. Often the subject will consent to the withdrawal of a specimen if he is advised

that the results may prove that the stains in question are *not* his blood and that in any event it is *not possible to prove* that such stains are his blood.

c. Submit fresh blood samples from subjects in two separate vials. One sample should be in a sterile vial containing a preservative and an anti-coagulant (gray stopper tube). The other sample should be in a sterile vial without added preservatives (blue, green, or purple stoppered). Label each vial with the name of the subject, date, name of person withdrawing specimen and officer's name or initials. Submit such specimens to the laboratory as soon as possible.

4. Types of Tests Conducted

a. Proof of presence of blood.

b. Detection of human origin of blood.

c. Detection of some types of animal bloods. Suitable *sera* are maintained in the laboratory for the detection of blood of common animals. If appropriate serum is not on hand, however, some delay will occasionally occur before special tests can be made.

d. Determination of basic ABO blood groups.

e. The laboratory is able to type some factors present in dried blood. Some of these factors deteriorate in two weeks. Others retain activity for several months. In cases where the basic blood groups cannot distinguish between individuals, other factors present in the specimens will be examined.

f. It is not presently possible to prove that a bloodstain came from a specific individual. It may be possible, however, to demonstrate that all blood groups present in the stain and in the blood of a subject are alike. When this is the case it must be realized that many other persons will also have blood of these same groups. In other cases it may be possible to demonstrate that a stain could not have come from a specific person.

g. The laboratory will conduct blood grouping whenever necessary for the investigation or prosecution of a criminal case. Such tests, however, are frequently complex, tedious and time consuming and should therefore be requested only when it appears that the results may have significance. A common example of requests for unnecessary examinations involves bloodstains on the victim's clothing. A fresh sample of blood from the victim is usually a better sample. The clothing may, of course, be submitted for stab or bullet hole examinations or other studies but performing blood grouping on evidence of this nature should not be expected.

h. Some blood group factors have been found only in certain racial groups. Occasionally one of these factors will occur among the blood groups of an individual involved in a specific crime. If such a blood group factor is found in a stain left at a crime scene by the perpetrator, information concerning his race may be of material value to the investigator in apprehending the suspect. For these reasons, the laboratory should be informed of the race of all individuals known to be involved in crimes when bloodstain evidence is present.

i. Transfusions of persons seriously injured will alter their blood chemistry and obscure their true blood groups. In these cases it is necessary to wait at least 60 days after the transfusion to obtain a valid blood sample.

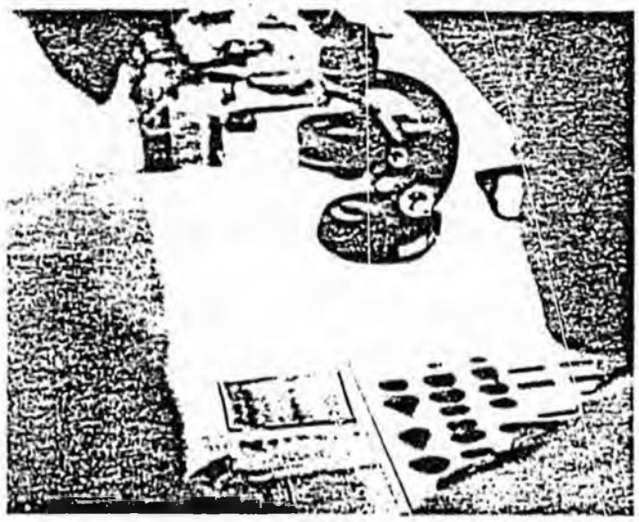


Photo 7A Genetically related enzyme variants in dried blood can now be examined in the California Department of Justice's Criminalistics Laboratories. The illustration shows starch gel and photographic representation of an enzyme system.

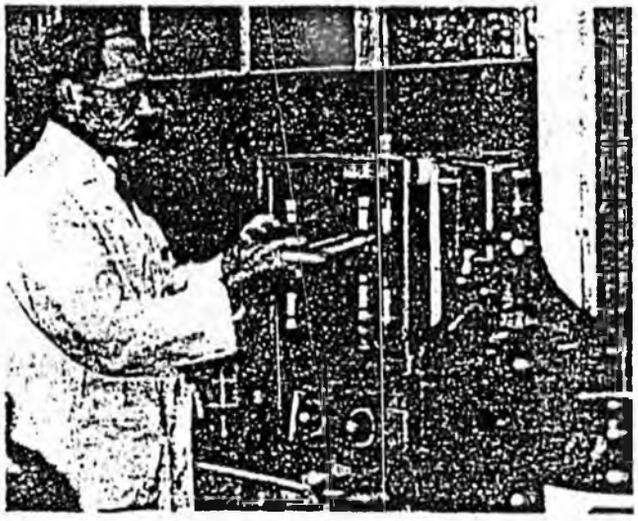


Photo 7B Necessary treatment of an enzyme starch gel electrophoresis to visualize the genetic variants.

B. SEMINAL STAINS

Semen is the male reproductive fluid. It normally contains spermatozoa, which are reproductive cells, as well as other substances. It is possible to identify dried semen by either chemical tests or the microscopic identification of characteristically shaped spermatozoa.

1. Seminal stains are often, but not always, found on clothing, blankets, sheets or other materials in rape and other sex offenses. When dry they may have a stiff, starchy feel and can often be located by the sense of touch.
2. In sex offense cases the victim should always be examined by a physician and a vaginal specimen taken. The laboratory can examine such specimens for sperm cells. Vaginal specimens can be submitted either as smears, swabs, or aspirates, although the collection of a vaginal aspirate in a clean glass vial is the preferred method. Time is of the essence in obtaining vaginal specimens as bacterial action rapidly destroys the sperm cells. The victim should be examined as soon as possible after the incident and the vaginal specimen kept refrigerated until delivery to the laboratory.
3. Submit all suspected stained materials to the laboratory. If possible, always include the panties, other underwear and clothing from the victim. All garments should be placed in separate packages. The packages containing the victim's clothing should be kept separate from those containing the suspect's clothing.
4. Label all garments or other exhibits.
5. If damp, always allow fabric to air dry completely before packaging to prevent decomposition. When stain is dry, roll garments gently in paper, place in paper bags and then seal and label container. Do *not* put such stained objects into plastic bags.
6. Handle fabrics as little as possible.
7. Under special circumstances seminal stains may be analyzed for the ABO or other blood group factors. If this type of testing is requested, contact the laboratory by telephone prior to shipping exhibits. This is essential since other biological samples are required (blood and saliva from victim and suspect).



Photo 8A Human spermatozoa from garment of victim in rape case.



Photo 8B Visualizing seminal stains from clothing.

C. FIBERS AND THREADS

Clothing, rugs, blankets, curtains and other fabrics are such common articles in modern society that their value as evidence may be overlooked. Although very common, a tremendous variety of animal, vegetable and synthetic fibers of numerous colors are used. Thus threads and individual fibers will frequently serve as useful evidence in criminal cases.

1. Fibers and threads will often be found in fabric abrasions, torn metal or in other areas on hit and run vehicles. In burglary cases such evidence may be located on a torn screen, broken glass, or metal on safes or other locations. Fibers may also be important in incidents of personal contact such as homicide, assault and rape cases where cross transfers may occur between the clothing of suspects and victims.
2. Examinations of fibers will usually establish their type and color. Such studies may also indicate the type of garments or fabric from which the recovered fibers or threads originated.
3. Fibers and threads can also be compared with clothing of subjects to determine whether or not they could have originated from such garments.

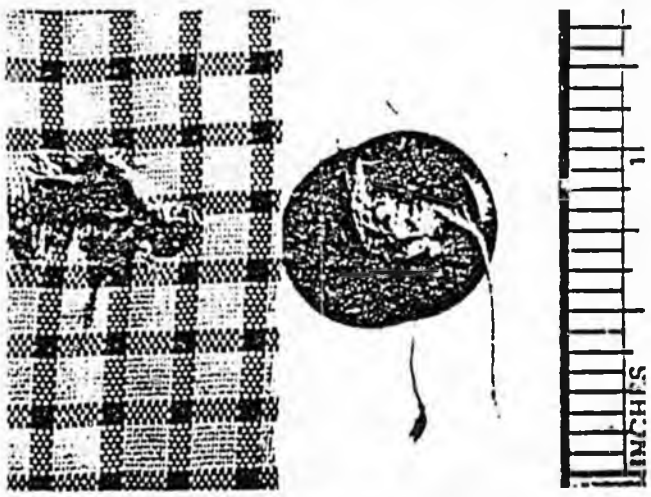


Photo 9 Shirt of murder suspect from which button was forcibly pulled out and a button found in hand of victim. This button matched others on the shirt and fibers adhering to the button threads matched the shirt fibers.

4. Complete threads or long fibers can frequently be picked up with the fingers or tweezers. When recovered they should be placed in plastic envelopes or glass or plastic vials. Never place loose fibers directly into mailing envelopes or other paper containers since they are difficult to locate and remove in the laboratory and the paper itself may contain fibers.
5. If the fibers are short, few in number or firmly adhering to an exhibit, attempt to remove the complete item containing the fibers and place it in a plastic envelope. All fibers present may more readily be located and removed from such exhibits in the laboratory.
6. *Never* attempt to pick up fibers on gummed tape unless no other method for recovery of the evidence is available. Once firmly caught in the gum on the tape it is almost impossible to remove them for study and the adhesive may interfere with laboratory tests.
7. Whenever fiber or thread evidence is recovered, submit to the laboratory for comparison purposes *all* clothing of persons from whom the evidence might have originated.
8. In sex offenses, assaults and some other investigations it may be possible to indicate or demonstrate contact between two individuals or between one individual and some other object by comparing transferred fibers. Such examinations are only of value when it is known that *no contact occurred* between the individuals or objects prior to or subsequent to the offense. Extreme care must be taken to keep all articles of clothing and other objects separated. *Each garment should be separately packaged in paper bags.* If large, garments may be laid on *clean* sheets of paper on a table and separately rolled up in the paper. Always mark each exhibit. If the clothing of either subject touches the clothing of the other or is even laid down on a table or placed on a car seat previously contacted by the clothing of the other subject, the comparisons may have no value.



Photo 10A Criminalists removing fibers alleged to be from the victim's clothing, found embedded in the windshield of the suspect hit-and-run vehicle.



Photo 108 Criminalists removing fibers alleged to be from the victim's clothing, found embedded in the windshield of the suspect hit-and-run vehicle.

9. Fabric impressions which may contain embedded fibers are frequently found in hit-run cases. If the area containing the impression cannot be conveniently submitted to the laboratory, a photograph should be taken of the area. Always mount the camera on a tripod so that the film is parallel with the impression. Include a ruler next to the impression photographed so that the size of the mark can be determined. In such cases submit all outer clothing of all victims for the comparison purposes. When the object containing the fabric impression cannot be removed but is rather photographed, a search should also be made for fibers. Any fibers located should be removed and placed in a vial or coin envelope if possible. In the event that the fibers are difficult to recover and if they are embedded in paint, scrape the paint and fibers into a coin envelope and seal the corners with tape. Usually the fibers can be separated from the paint in the laboratory.

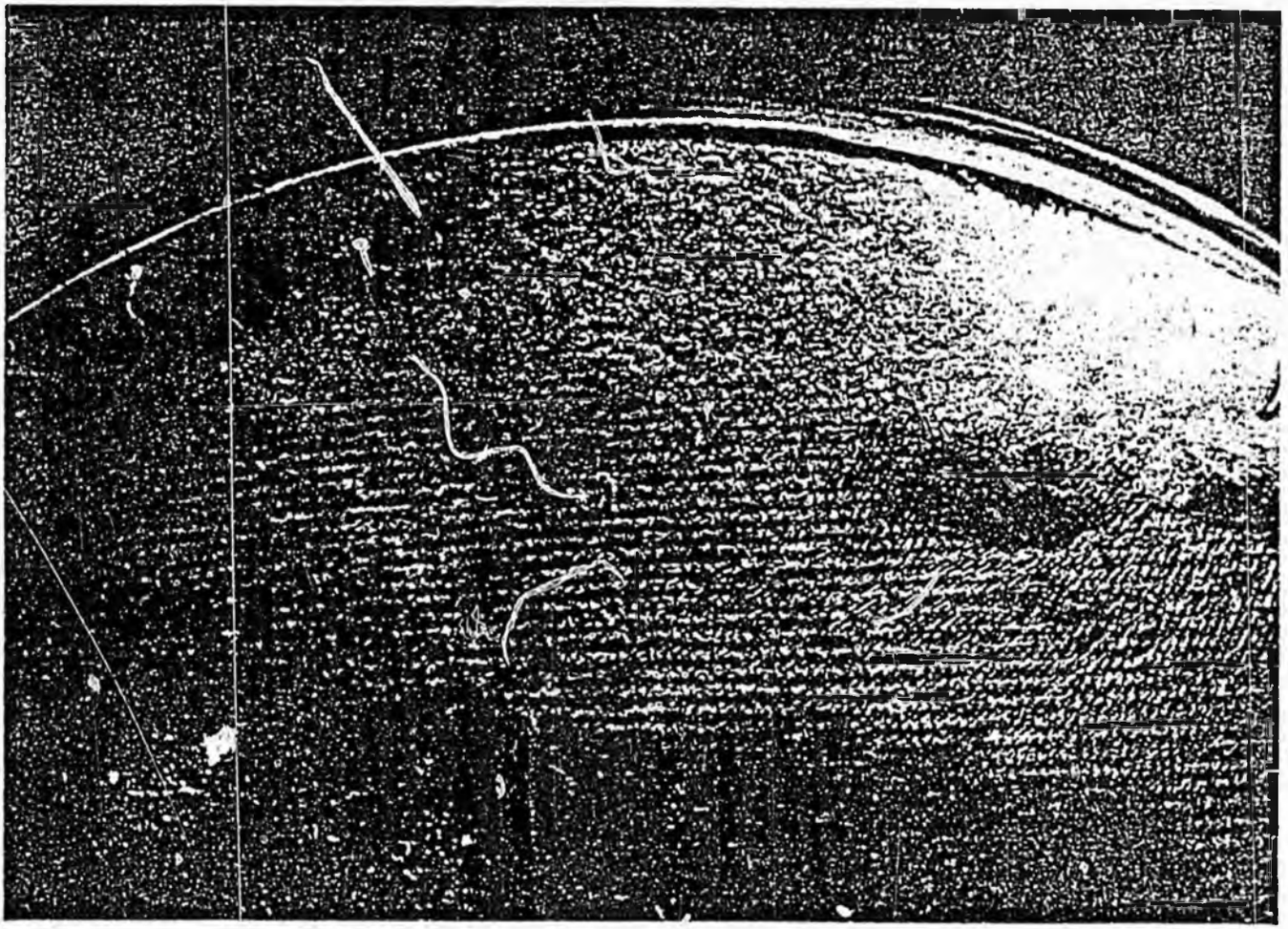


Photo 11 Impression produced in dust on headlight of hit-run car by the coat of the victim.

D. HAIR

Although hair is a frequently encountered type of evidence it has real evidentiary value in only a limited number of cases. Except for determinations as to possible source, such studies also require fairly large samples if the laboratory results are to be of real significance.

1. Human Hair

   a. Hair samples can be identified as human and some indication of the part of the body from which they originated can frequently be established.

   b. Hair color can be determined and some information developed concerning bleaching, dyeing or related treatment.

   c. The racial traits of the individual from whom head hairs originated can be suggested in some instances.

   d. Study of hairs can frequently establish whether or not they fell out naturally, or were pulled out or if they have been cut or crushed.

   e. It is presently not possible to conclusively prove that two specimens of hair came from the same individual. In the case of head hair, however, the laboratory may be able to indicate a possible common origin. The value of such studies will vary greatly depending upon the quantity of hair recovered as well as the characteristics found in the examination.

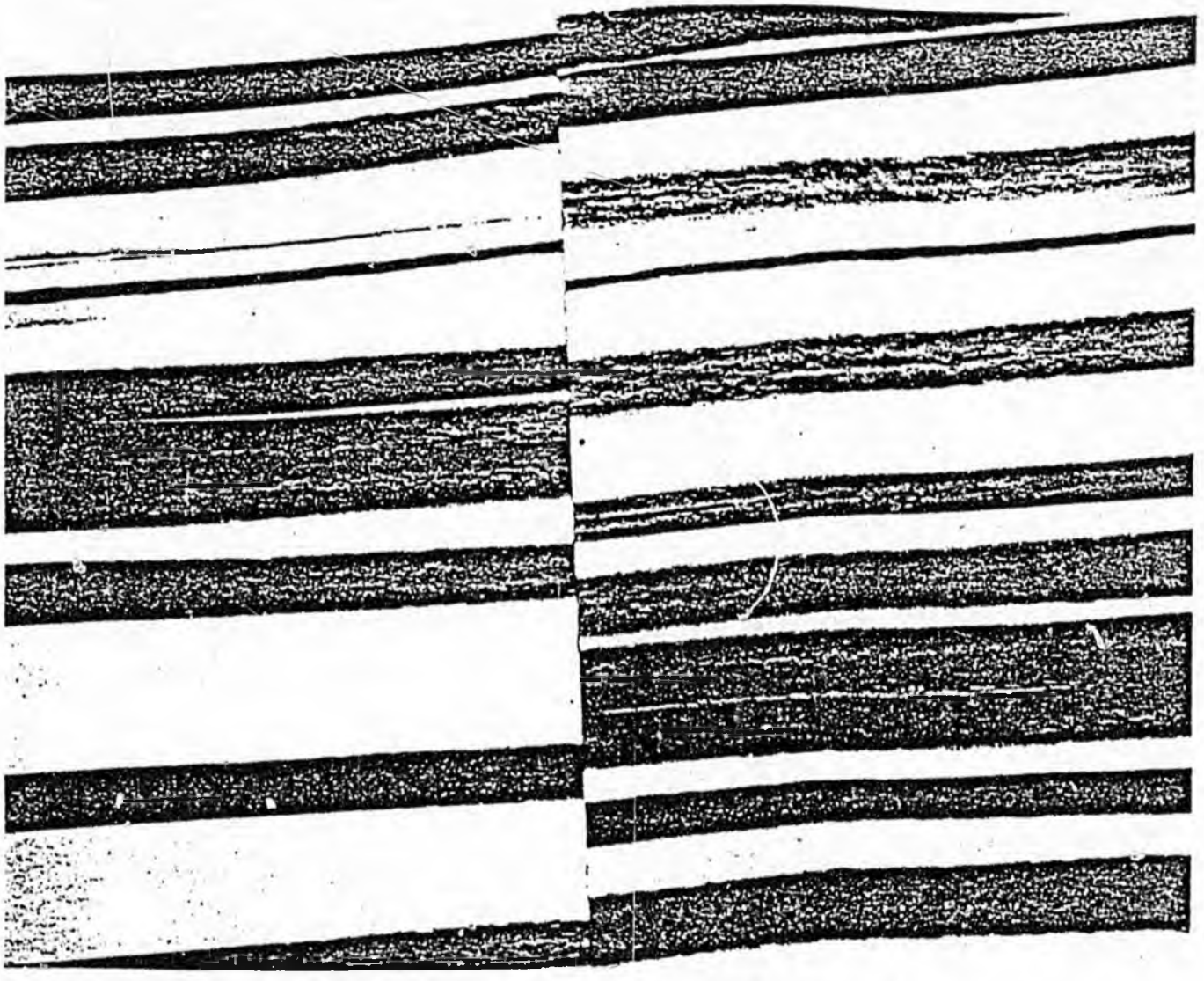


Photo 12 Even though there are similarities in hairs from the same person, there are also considerable variations as illustrated. Thus it is extremely difficult to state that hair is from a specific person.

2. Animal Hair
   a. Animal hair samples can sometimes be identified as to the genus of animal from which they originated.
   b. While animal hair can be compared with specimens from specific animals, this type of examination will only serve to establish similarities in structure and animal type. It is never possible to prove that recovered animal hairs came from a specific animal.

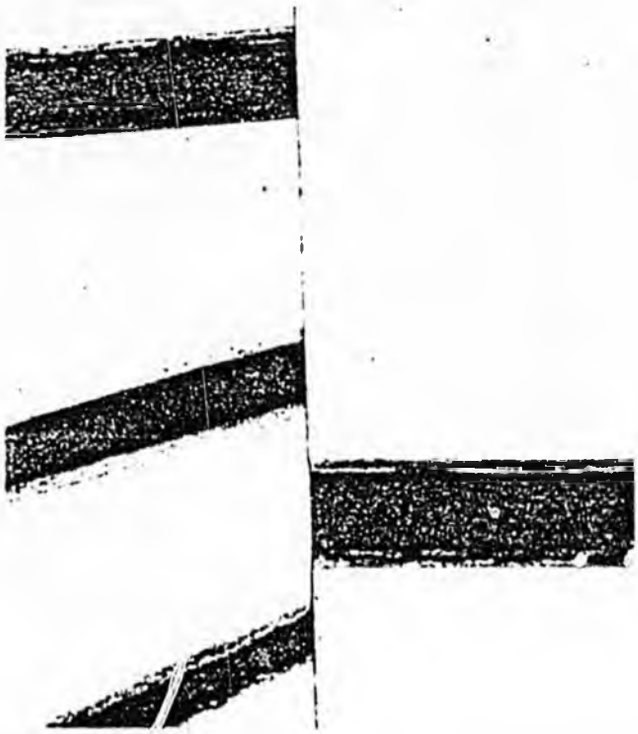


Photo 13 Comparison of hair from horse struck by hit-run vehicle (left) and hair removed from suspect vehicle (right). Horse was being ridden by young girl who was also injured.

3. Recovery of Hair Evidence
   a. If hair is firmly attached, such as in dry blood or caught in metal or a crack in glass, do not attempt to remove it, but rather leave the hair intact on the object. If the object is small, mark and seal it in an envelope with sealed corners. If the object is large, cover the area containing the hair with a protective layer of paper to prevent loss of the hairs during shipment.
   b. Recover *all* hair present. If possible, use the fingers to pick up the hair and place in a vial or paper envelope with sealed corners. Do not mix samples recovered at different locations. Label and seal the container. Never use gummed tape to pick up hairs and do not wash or clean them.

4. Standards for Comparison
   a. If injuries to a victim suggest a point of origin, secure hair specimens from as near this location as possible.
   b. When the point of origin is unknown, secure samples from various locations and keep samples separate. In the case of human head hair it is important to obtain samples from different areas on the head since variations in structure or color of head hair frequently occur on the same individual. Likewise, there is a major difference in human head, pubic, arm, beard and other hair from different parts of the body. Animal hair secured from different areas on the animal body will also vary greatly in structure.
   c. Whenever possible obtain large samples from each area. It is desirable that each of these contain at least several dozen hairs.
   d. Attempt to pull out standard samples which will be used for comparison purposes. If this is not possible, cut the hair as close to the skin as possible. Note whether the hair was cut or pulled.
   e. Always obtain samples from all individuals involved. In many investigations the laboratory is requested to determine if a sample in question originated from a specific individual when there are only a limited number of persons from whom the hair could have come. In the case of hair samples from vehicles in accidents, beds in sex offense cases and similar investigations, it is important to have standard samples from all possible occupants and not just from the individual from whom the hairs are believed to have originated.

E. PAINT

Paint is one of the most common types of physical evidence encountered. Paint evidence will be found in the majority of hit-run and burglary cases where it may prove to have material value. Paint evidence may also be involved in various other types of crimes.

1. Hit-Run Cases
   a. Paint may be transferred to the clothing of pedestrian victims. Examine all garments with particular attention being paid to areas showing pressure glaze, tears, or other contact.
   b. If found, do not remove the paint, but mark the garment and dry it completely if damp. Then carefully wrap each item separately by rolling in paper or place each garment in a separate paper bag for delivery to the laboratory.
   c. Such paint will at least show the color of part of the responsible car. It must be remembered, however, that many modern cars have more than one color and the paint transferred only represents the color of the particular *area* on the car that made contact with the victim.
   d. It is sometimes possible to indicate the manufacturer and year of vehicle from a paint transfer. Such findings may assist officers in the apprehension of the responsible vehicle. When this type of study is desired it is of considerable assistance to the laboratory to receive any information available concerning the responsible vehicle. This includes receipt of any other evidence found at the scene, such as broken plastic lenses or other vehicle parts, which may in themselves indicate the make and year of the vehicle. Statements made by witnesses which suggest one or more possible types of vehicle are also of interest and should be included in any request letter forwarded with the evidence.
   e. Sometimes whole chips of paint will be transferred to the clothing. If these flakes contain several layers and particularly if they came from a repainted car, such evidence may have great value when the responsible car is located.
   f. Chips of paint may also be found on the ground near the point of impact. In some cases it has been possible to physically match several chips found at accident scenes with paint remaining on the fender of the suspect's vehicle.
   g. Obtain samples for comparison from *all areas showing fresh damage* on suspect vehicles. This is very important since the paint may be different in type or composition in different locations even though the color is the same. If the paint can be flaked off by bending the metal slightly, remove it in this manner. If not, scrape paint off using a clean knife blade. In every case make certain that samples of *all layers* down to the metal are collected. Carefully wipe the blade of any knife or scraping tool employed before collecting each sample to prevent cross contamination. Place each sample collected from different areas in separate containers.
   h. Cross transfers of paint commonly occur in hit-run cases involving two or more vehicles. If loose paint chips are located in such cases, attempt to remove and place them in coin envelopes. If, however, the transfers are smeared on the surface, flake off chips or scrape paint from vehicle including the transferred paint as well as the top layer of paint originally on the car. Keep all transfers recovered from different areas in separate containers.
   i. When cross transfers occur, *always collect known, uncontaminated samples from each vehicle from areas immediately adjacent to each transfer collected.* This is of great importance since such specimens permit the laboratory to distinguish between the transferred paint and the paint originally present on the vehicle.

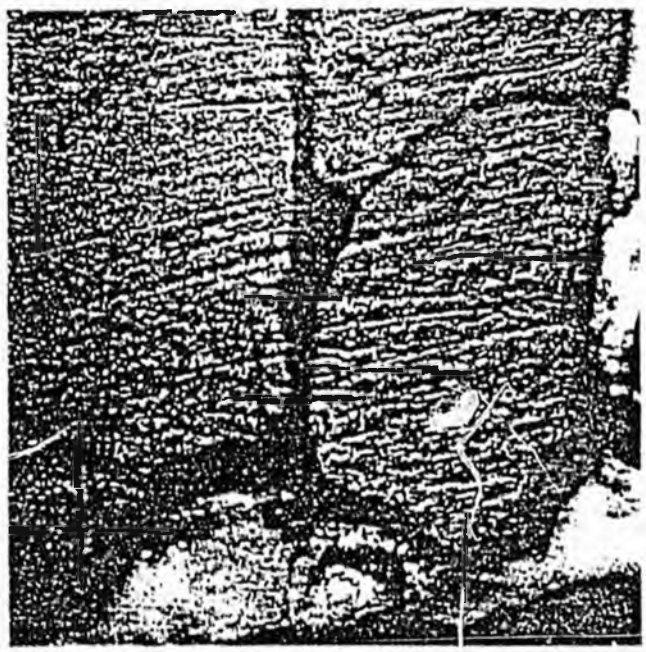


Photo 14 Paint from safe which was hauled away from burglarized store (left) and chips of paint found in vehicle of suspect (right). Corresponding abrasion markings on paint surface established that all came from the same source.

2. Burglary Cases
   a. Tools used to gain entry into buildings or safes often contain traces of paint as well as other substances such as plaster, safe insulation, etc. Care must be taken that this type of trace evidence is not lost. If such transfers may be present, wrap the end of the tool containing the material in a plastic envelope and seal with plastic tape to prevent loss. *In no case* should attempts be made to fit the tool into marks or impressions found. If this is done, transfers of paint or other material might occur and any material later found will have no significance as evidence.
   b. Collect specimens of paint from all areas which the tool may have contacted at the crime scene. These samples should include all layers present.
   c. The tool itself may contain paint or other coatings, traces of which may be left at the crime scene. Careful search should be made of each tool mark for any such evidence.

3. Recovery and Preservation of Paint Specimens
   a. Keep all samples collected in separate containers.
   b. If the sample is very small or difficult to remove and the complete exhibit itself can be sent to the laboratory, this is the best procedure and will make available all of the paint without loss.
   c. Always scrape or otherwise remove samples of all layers of paint or other material present if the complete exhibit containing the paint is not to be submitted to the laboratory.
   d. Small glass or plastic vials are excellent containers for paint.
   e. Paint may also be placed on sheets of white paper which can then be folded and sealed to prevent loss.
   f. Paper envelopes should never be employed for the submission of paint unless the specimen is very large in size. If such envelopes are used, always seal all four corners with plastic tape to prevent loss and follow the procedure as outlined in section e.
   g. A very useful method for securing paint from vehicles, walls and similar locations is to place a short strip of plastic tape on one side of the open end of a small paper envelope with the gummed flap folded back. The tape and envelope are then attached to the object containing the specimen. By holding the envelope open with one hand paint can be scraped loose and into the envelope with a clean knife blade. Once the sample is in the envelope the tape can be removed, the flap folded forward and the open end of the envelope folded several times. Then this folded area is sealed with a paper clip or a short length of tape. Such a container may then be sealed in a standard mailing envelope which may easily be marked for identification.
   h. Markings placed on labels, envelopes or other containers should include the officer's name, date and time of collection, as well as the specific source of the sample (for example: R/F fender 1970 Ford, license #ABC 123).
   i. In no case should conclusions of the officer, requests for examination or other unnecessary writing be included.

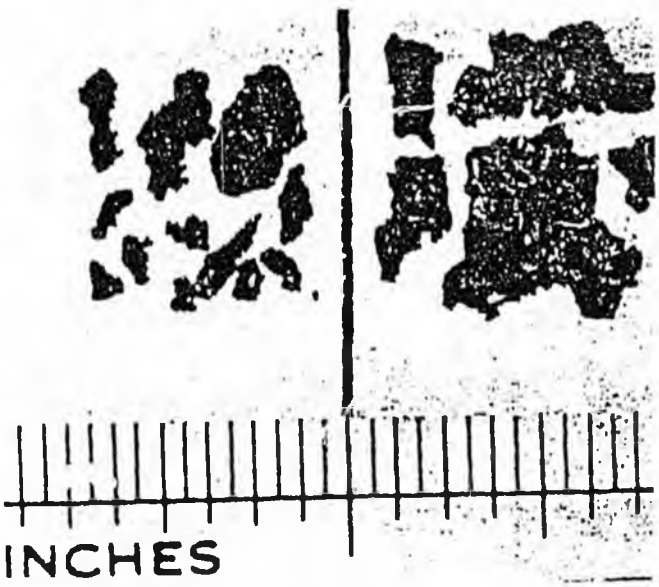


Photo 15 Chips containing three colors of paint from trunk of suspect's car (left) and from safe which was hauled away in a burglary (right).



Photo 16 A method for securing paint samples from vehicles and similar locations. Attach plastic tape to one side of open end of envelope and seal below area to be scraped.

F. GLASS

Windows are frequently broken in burglaries, headlights in hit-run cases and bottles or other objects may break with fragments being left on garments or other property of subjects involved in various types of crimes.

1. Collection and Packaging of Evidence Glass
   a. The shoes and clothing of suspects as well as other objects which may be contaminated with glass should be marked and wrapped separately to avoid cross-contamination. Even though contaminating glass is not usually immediately visible to the investigator, any visible pieces should not be removed or disturbed, but rather the entire article should be carefully wrapped to protect and preserve the contaminant as found on the article.
   b. *All* glass found at hit-run scenes should be recovered. All glass should be collected because more than one type may be present. In addition, if just a few representative samples are saved, individual pieces that could be physically matched with glass remaining in the headlight shell of the suspected vehicle may be overlooked. The search should not be limited to just the point of impact since other headlight glass may drop off at some distance away as the car leaves the crime scene. Glass from different locations should be kept in separate containers.
   c. Place small glass fragments in envelopes or pill boxes. Completely seal and mark the container.
   d. Place large glass fragments in bags or boxes but separate individual pieces with newspaper or tissue to prevent breakage and damage to edges during shipment. Large fragments can be marked with grease pencil, adhesive tape, labels or a scriber, but this is usually not necessary if all are sealed together in a single marked container. When breakage direction determinations will be needed, it will be necessary to mark each glass piece prior to its removal from the window to designate inside and outside surfaces.
   e. The headlight filaments from the broken headlight of a suspect's car may bear significant glass contamination. The absence or presence of fused glass can be determined in the laboratory and may provide evidence as to whether the headlights were illuminated at the time of headlight breakage.

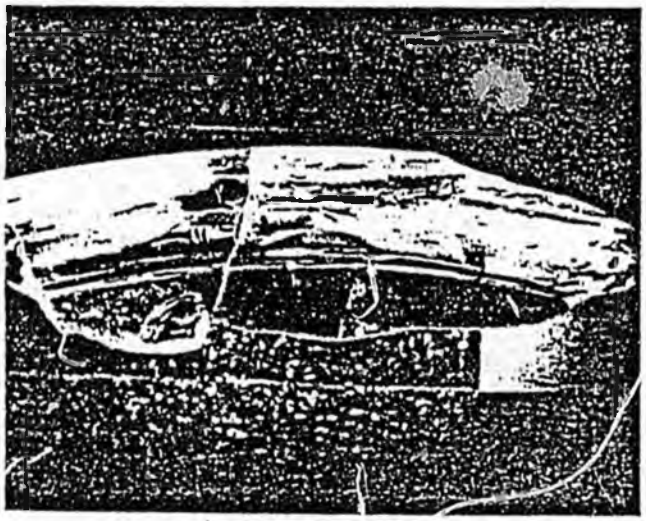


Photo 17 Comparison of headlight lens glass fragments from a hit-run scene and a suspect vehicle.

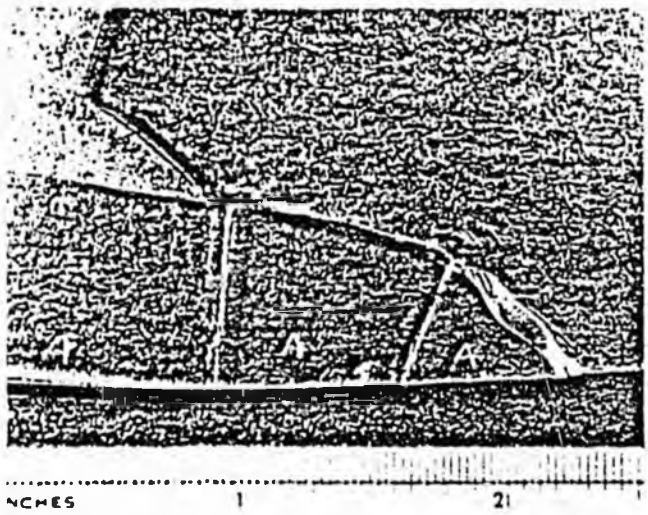


Photo 18 Three pieces of glass found in a suspect's vehicle (marked A) matched with larger pieces from broken window at a burglary scene.

2. Standards for Comparison
   a. Windows—If a broken window at a crime scene is small, submit the whole window or all glass remaining to the laboratory. If the evidence glass is large enough for physical matching of broken edges or comparing the fracture lines, hackle marks, surface abrasions, or contamination, the whole broken window is necessary. When physical matching does not appear possible and a broken window is large, the recovery of *several* samples from different areas on the window is usually satisfactory. Heat-hardened or tempered glass is commonly encountered in glass doors and automobile side and rear windows. The well-known diced breakage of this kind of glass into typically small, rectangular beads makes physical matching impractical in most cases. Several pieces should be collected

for comparison of physical properties with evidence glass.

b. Auto Headlights—*All glass remaining* in the shell must be recovered if physical matching with fragments from the scene is to be conducted. Remember to consider the potential value of glass on the lamp element as an indicator of whether the headlight was on at the time of breakage. These will be microscopic fragments, not normally visible to the unaided eye.

c. Other Glass—When bottles or other glass objects are broken, recover *all* glass remaining. Glass on shoes of suspects can be compared with broken bottles at crime scenes and glass from the skull of a murder victim can be compared with a broken bottle used as a weapon.

3. Value of Glass Comparison

Glass will have greatest value as evidence only when fragments from two sources can be physically matched together. When this is possible, a common origin can be conclusively established even when the fragments are quite small. In the case of powdered glass and minute fragments, it can be established that the material is, in fact, glass and very accurate comparisons can be conducted. However, conclusive identifications as to common origin are usually not possible. Nevertheless, the latter type of comparisons will establish similarities or differences in samples and thus may prove significant.

4. Other Glass Studies

Other studies of glass are periodically of importance. In the case of broken windows or other glass sheets, it is often possible to determine the side to which the force was applied which resulted in breakage. When multiple fractures are present in glass it also may be possible to determine the order in which the breaks occurred. It is also possible, in some instances, to prove the sequence of shots through glass when consecutive bullets penetrate glass from one or both sides. In all such instances it is essential to have available for study *all* glass remaining in a window as well as *all* fragments which break and fall to the ground. A simple diagram should be made to differentiate and identify the origin of glass samples from the window and from the ground. A copy of this diagram should be submitted with the evidence.

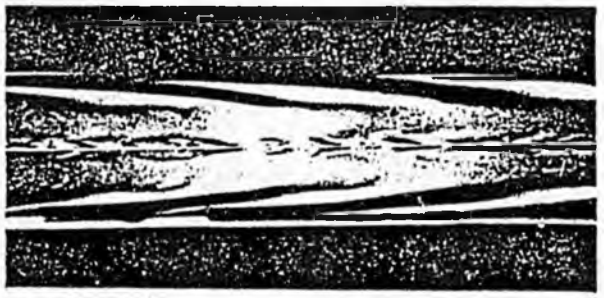


Photo 19A Hackle marks on fractured edges of window glass.

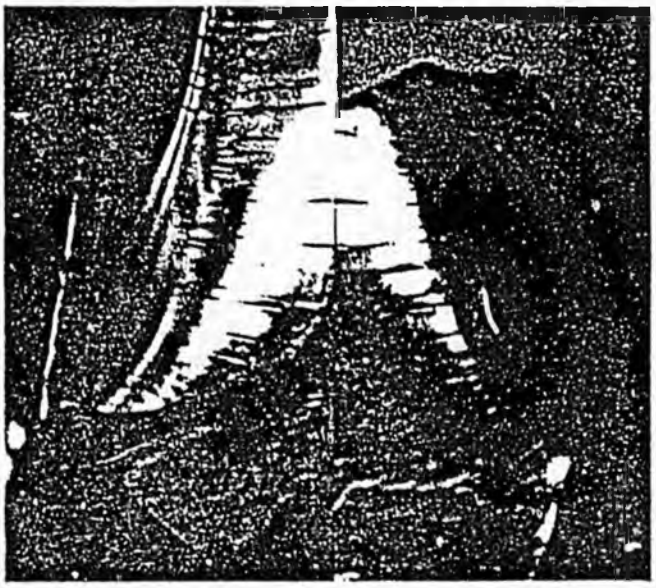


Photo 19B Comparison of hackle marks on fractured edges of small glass fragments from hit-run vehicle and accident scene.



Photo 19C Rib marks on fractured edges of two small glass fragments from hit-run vehicle and accident scene.

G. OPERATING CONDITION OF LIGHTS

As part of the investigation of vehicle accidents it is often of importance to determine whether or not a headlight, taillight, spot light, turn indicator light or other unit was illuminated at the time of the accident. Such determinations can usually be made if the lamp bulb has been cracked or broken at the time of the accident. In some instances such determinations can also be made even if the glass is not broken.

1. Recovery of ALL parts of the broken lamp is of primary importance. Carefully remove the COMPLETE lamp unit if possible. Otherwise remove ALL PARTS of the unit even if it is completely smashed. The parts recovered should include the socket, glass fragments, filament supports and the filaments. A thorough search for any portions of the coiled filaments themselves is of great importance since they are very small and fragile and may be overlooked when broken. The recovery of the filaments is of greatest value since more information can be secured from them than from examination of any other parts of the lamp unit or light bulb.

2. Separated filaments recovered should be protected from further breakage. They may be placed on cotton and sealed in a box or vial or inserted into a plastic envelope reinforced by a piece of cardboard. Always prevent any further breakage.

3. Broken lamp units and parts which have been recovered should be marked and then packaged in a manner to prevent further damage during shipment.

4. Whenever practical, if the broken unit is one of a pair, attempt to remove and submit to the laboratory the other lamp of the pair. Frequently, such unbroken units will aid in determining the age and condition of both lights prior to the time that one was broken.

5. Check the vehicle at the time the lamps are removed to determine the purpose served by each broken light. While this is normally obvious, occasions do arise in which wiring has been altered. This is particularly true in the case of some motorcycles where occasionally it has been found that tail and stop light wires have been reversed.

6. In the investigation of accidents where the operating condition of lights is of importance, always check the position of the light switches. Also question all suspects, victims and witnesses as to their observations concerning the operation condition of lights involved.

7. Advise the Laboratory if any attempt has been or may have been made to turn on a damaged or broken lamp after the accident occurred.

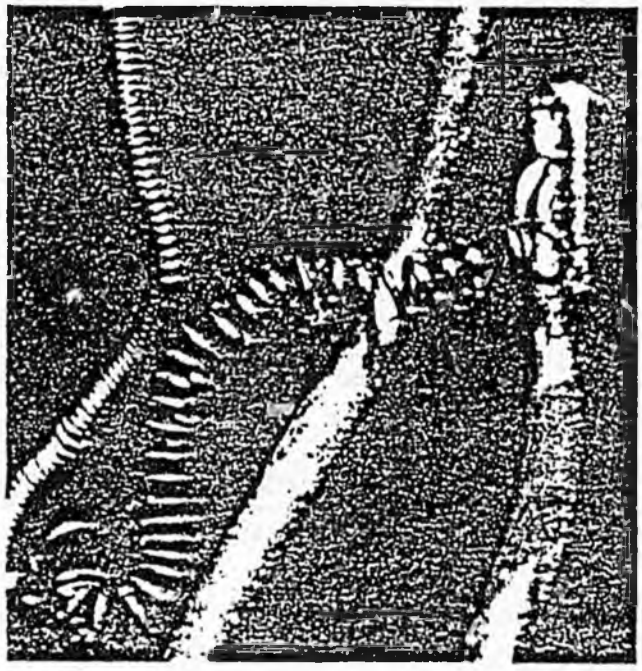


Photo 20 Tail and brake light filaments from broken unit on rear of vehicle involved in accident. Small taillight filament (left) was off. Large brake light filament (center) was on. This is shown by the small glass beads which are fused to the brake light filament.

H. PLASTIC

Different types of plastics are used in a wide variety of modern products. Periodically such articles will be broken or otherwise become involved as evidence in various criminal investigations.

1. Parking, turn indicator, guide and tail light lenses on most motor vehicles are now made of plastic. When these are broken at accident, burglary or other scenes the fragments recovered will frequently serve to indicate a specific make, model or year of vehicle. This is generally possible because different sizes, shapes, designs and color of such lenses are used by the various manufacturers on different year or models of vehicles.

2. When fragments of lens plastic of adequate size are recovered, attempts should be made to have them identified by local auto dismantlers or new vehicle parts department personnel. When such plastic cannot be identified locally, it may be forwarded to the laboratory for additional study.

3. When a suspect vehicle is apprehended, which contains broken plastic, remove all portions of the unit remaining. If physical matching of broken edges on fragments from the two sources is possible, a common origin will be conclusively established. In those cases where physical matching of fragments is not possible (usually due to loss of intervening fragments) analysis to determine the specific type of plastic can be carried out. The latter, however, usually have somewhat limited value since different manufacturers will commonly use the same type of plastic on many different lenses.

4. Various types and widths of plastic tape may be used to bind robbery victims, insulate electrical wire connections, or be employed for other purposes. When such plastic tape is recovered as evidence, it can be readily compared with either rolls or strips of tape in the possession of the suspect. In some cases it has also been possible to physically match together cut or torn ends on tape from two sources.

5. Subjects who commit various types of crimes where they are apt to remain at the scene for an extended period will occasionally open cigarette packages and leave parts of torn plastic, foil or labels at the scene or in a vehicle. When such individuals are apprehended within a short period of time and still have the cigarette package in their possession, it is possible to physically fit together the torn wrapper portions from the two sources. Such findings will establish that the subject was at the crime scene.

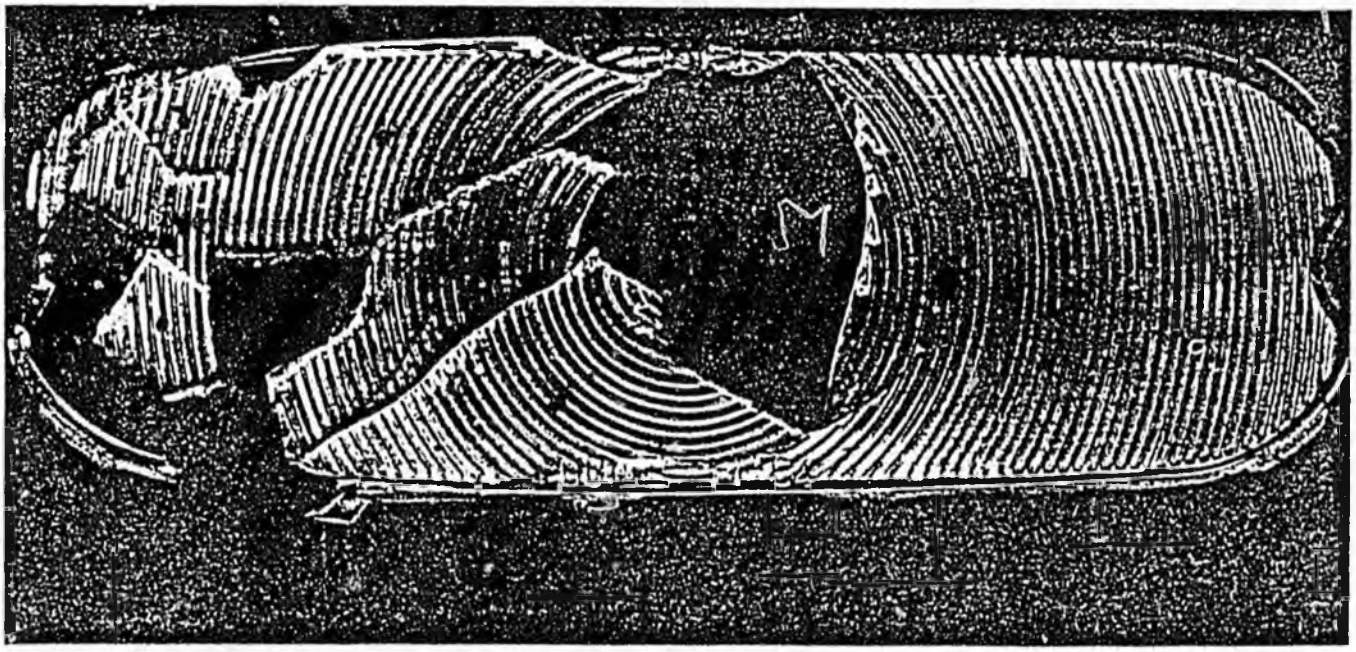


Photo 21A Physical comparison of plastic recovered at fatal hit-run scene (marked with black dots) and broken turn indicator lens on suspect car. Prior to apprehension of car the pieces from the scene indicated make and year of vehicle involved.

6. Many other plastic studies have proven to be of significance in various investigations. Additional examples of the use of such evidence are the following:

   a. A minute deposit of plastic in a scratch mark on the side of an automobile was proven to correspond with a plastic grip on the handlebar of a hit-run victim's motorcycle.

   b. A plastic purse of another accident victim was found to correspond with a trace smear of black plastic on an automobile fender.

   c. Plastic from a bomb which exploded after being shipped by mail was identified as corresponding with wire insulation on electric blasting caps made by a specific manufacturer. The suspect in this case had such blasting caps in his possession.

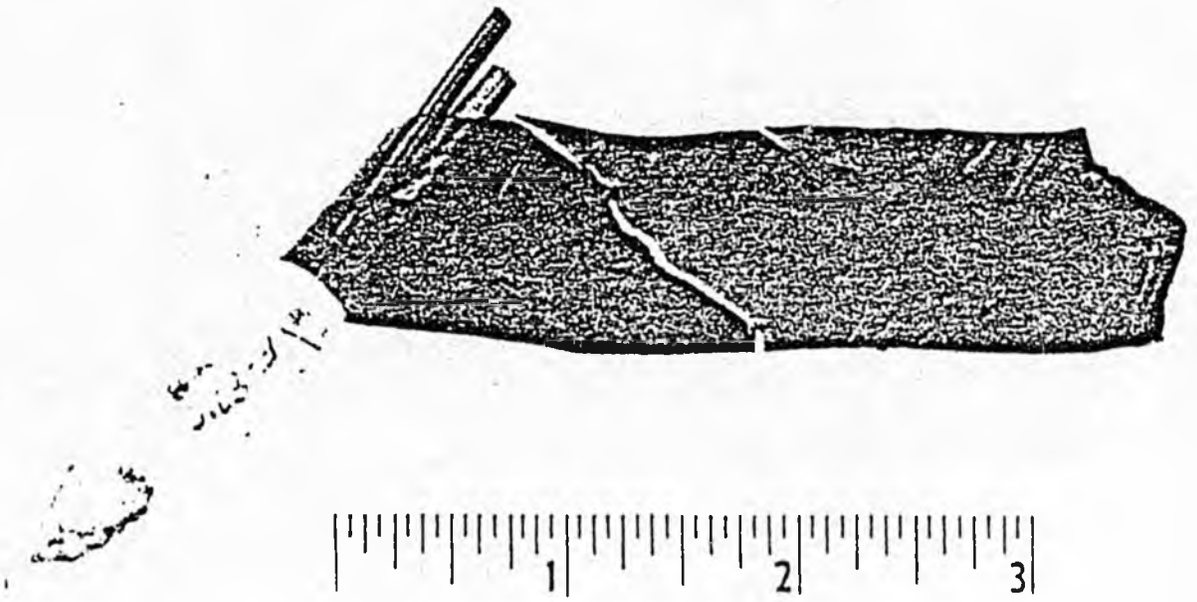


Photo 21B Comparison of plastic tape on wires remaining in victim's car and on cut wires on stolen motor in auto theft case.

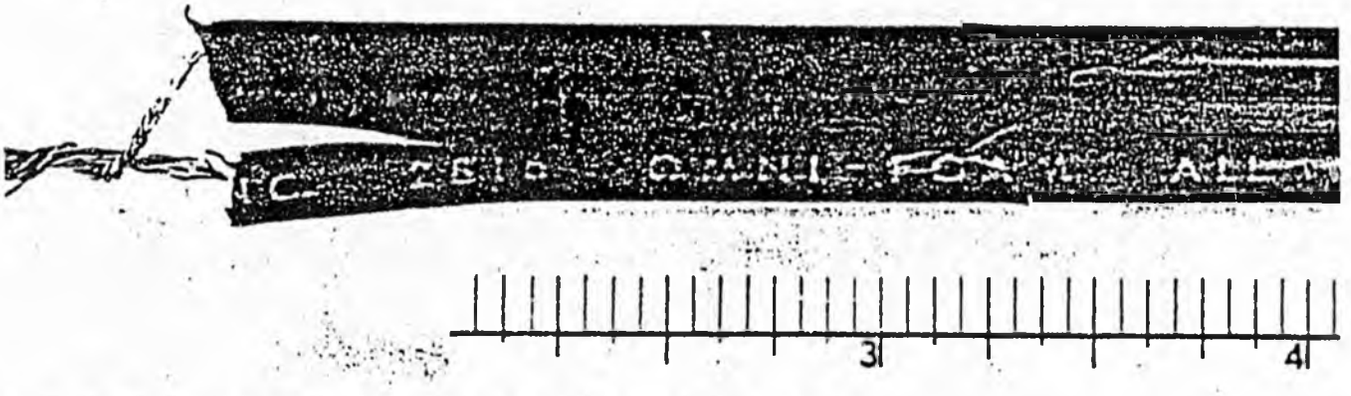


Photo 21C Comparison of cut TV antenna wire on stolen set and wire from house of victim.

I. SOIL

The comparison of soil or dried mud samples on shoes or clothing of suspects with specimens secured in and about crime scenes is frequently of value in burglaries, sex offenses, homicides and other investigations. Periodically, soil samples will also fall from under vehicle fenders at hit-run scenes and comparison with specimens recovered from suspect vehicles may aid in placing the vehicle at the scene. Comparison of samples in such investigations may prove useful but, to have real significance, usually necessitates employment of very careful evidence collection procedures and the securing of numerous samples. Naturally occurring soils consist of rock and mineral fragments, material such as clay, decomposed organic matter, living organisms, chemicals and water. Samples secured from many areas may also contain debris resulting from human habitation or industrial operations. The latter type of debris, if sufficiently varied and unique, will often be of most value in individualizing a specimen. To permit proper evaluation of laboratory findings when only naturally occurring soil is present requires the study of sufficient samples to establish the normal distribution of soil of a particular type in and about the source of the specimen.

1. Firmly Attached Soil Samples

   If the soil is firmly attached to some object, as in the case of dried mud on a shoe, do not remove it. Label the object and place it in a bag or some other appropriate container. Always *completely seal* the container so no loss of the specimen can occur. Be certain the sample is dry before packaging.

2. Loose Soil on Clothing

   If the soil is loose, for example, in a trouser cuff, shake it all out onto a clean piece of paper. Then, fold the paper several times to enclose the dried soil sample and place this in a plastic envelope or other container which can be sealed completely. Label such containers to show the source of the sample.

3. Soil on Other Objects

   In the case of loose soil or mud on the street or in a building, pick up the soil and place the dried sample in a plastic bag, box or jar and seal and mark the container. Attempt to collect the soil without other contaminating material. In the case of hit-run cases, cakes of dried mud may fall to the payment or road shoulder from under a vehicle fender. In such cases, if contamination may have occurred, attempt to pick up the upper part of specimen only, leaving the contaminated underside. Also advise the laboratory concerning the possibility of contamination.

4. Prevent Contamination

   Great care must be taken to prevent contamination or loss of samples during shipment. Always place samples in *sealed* plastic or glass containers, if possible. *Do not* use paper envelopes as they invariably leak. If boxes are used, line them with clean paper and seal the box.

5. Damp Soil

   Always dry out damp soil specimens or moist objects containing soil or mud prior to packaging. When sealed in a container while damp, mold growth will occur and organic matter in the soil may decompose. Always seal a lid on soil containers to prevent loss of sample and place suitable markings on the outside of the container.

6. Reference Specimens for Comparison

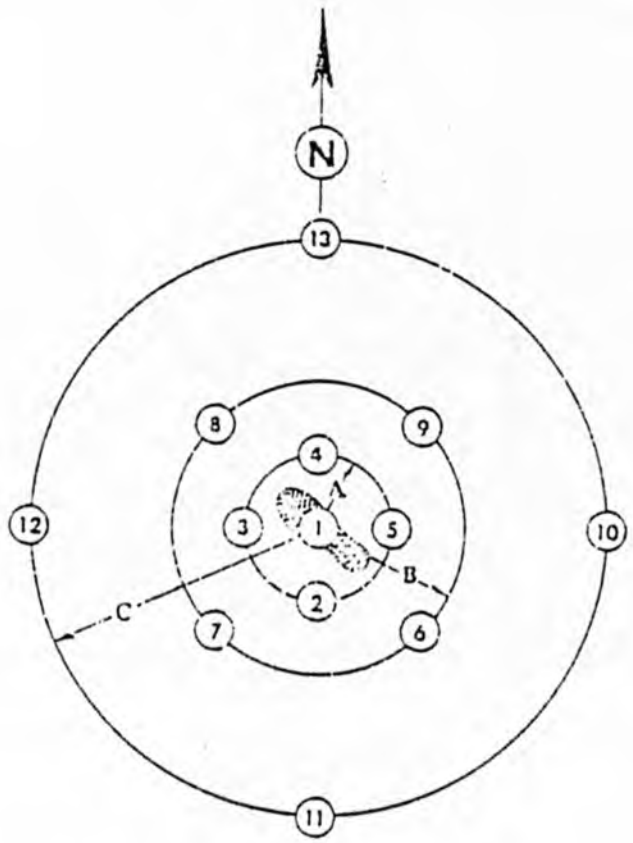
   a. Collect two to three ounce reference samples from the suspected source of the specimen in question. Also collect samples from many other locations in the vicinity of the crime scene so that the laboratory can determine how much variation there is in the soil in that area. In the case of a footprint in the ground at a residence burglary, collect reference specimens at several locations in the yard at the scene. Also obtain samples from adjoining property. In cases where comparisons of soil from rural areas are desired, collect specimens from various locations in the fields near the crime scene and also from adjoining farms or fields.

   b. An excellent method for securing useful reference specimens in open areas is to first take one or more samples from the scene, footprint, tire print or other similar location. Then additional samples may be collected at distances of approximately 10, 50, and 100 feet in all four compass directions (where soil is present) from the original location. This gives a good picture of the soil conditions and variations in the crime scene area. (See Figure 1, next page.)

   c. If dried mud is present on a suspect's shoes or clothing, qustion him as to its source. Obtain soil samples from any alibi areas he may mention.

   d. Comparison samples must be representative. If soil on shoes appears to be from the surface where footprints are found, collect surface samples. "Any subsurface-collected specimens may be quite different." If the soil may be from an excavation of some type, collect numerous specimens at different depths and mark the depth at which each was recovered.

FIGURE 1



A = 10 ft.
B = 50 ft.
C = 100 ft.

Start at point number 1 (footprint, tire impression, area of obvious scuffle, etc.) and obtain soil samples at each point, 1 through 13. Each sample should be numbered to correspond with the number on the diagram. Record a description of the physical location from where the soil sample was collected (e.g., ditch) and note any unusual conditions in the vicinity (e.g., close to petroleum tank).

e. If soil recovered at a hit-run scene may have dropped from the fender of the responsible vehicle, collect reference specimens from under each fender of the suspected vehicle. Keep each sample separate and label as to source. Normally, in such cases, only lumps of dried mud have much value. Fine silt from under the fenders of vehicles usually cannot be definitely connected with any specific automobile. In some cases, where a large lump of dried mud is found at an accident scene, it may contain a characteristic shape which can be compared either with mud remaining under a fender or irregularities in the fender of the responsible vehicle.

f. In most soil comparison cases, numerous comparison specimens are necessary. Normally the more samples that are collected, the more value will be the comparisons conducted.

g. Collect comparison samples as soon after the crime is discovered as possible. If delays occur, the soil may be altered by cultivation or contamination and thus no satisfactory comparisons can be made.

7. Value of Soil Comparisons

The laboratory conducts a variety of soil analyses to establish the similiarity or difference between the samples. If the soil is in any way unusual, the comparisons may have great value. In some cases where similar soil is present over a wide area, such as on a river levee or in the case of beach sand, the comparisons may have little value. Definite conclusions cannot be reached unless complete studies of many samples from the crime scene area are possible.



Photo 22 Soil samples being removed from boots in preparation for further examinations.

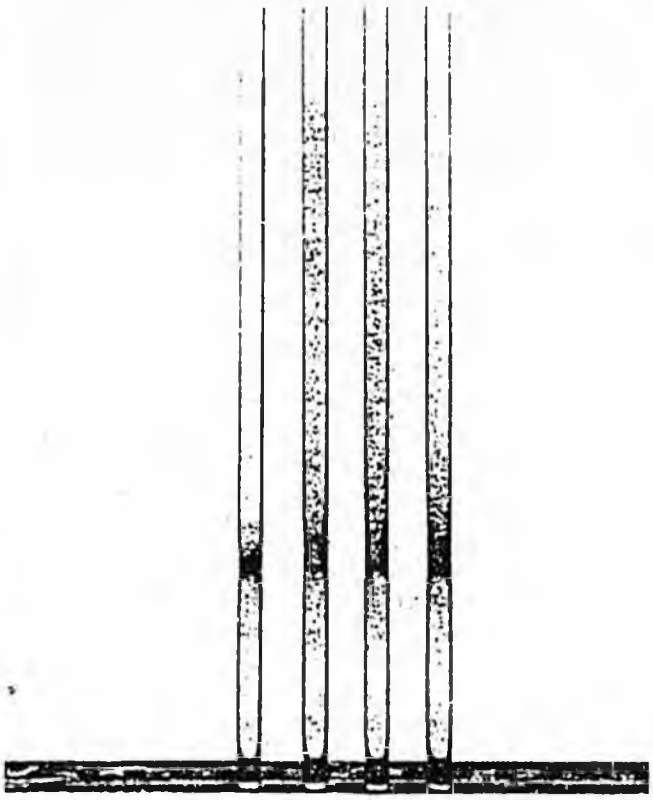


Photo 23 Soil comparison in density gradient columns. The left tubes contain specimens from two locations at a burglary scene. On the right are specimens from the suspect's shoes. Only the samples in the center tubes match.

J. TOOL MARKS

Tool marks are encountered most frequently in burglary cases but may also be found in many other types of crime. The evidence consists of abrasions or impressions left by tools on objects at the crime scene and various types of tools found in the possession of suspects. In many cases it is possible to identify the specific tool which made the questioned marks by means of laboratory comparisons of tools and marked objects. In some instances it is also possible to prove that marks on tools were produced by objects which they contacted at crime scenes. In other cases it is possible to prove, by means of physical or other comparisons, that parts of tools left at crime scenes were broken from damaged tools found in the possession of suspects.

1. Preservation and Packaging of Tools

   All areas on recovered tools which contain transferred paint, building materials or other contamination should be wrapped in plastic so that such substances will not be lost. After marking, tools should be wrapped or packaged to prevent the prying blades or cutting edges from contacting any other surface or object. Care should be taken that no tape is placed on the mark or questioned area of the tool when packaging.

2. Make No Tests With Tools

   Attempts should never be made to fit tools into questioned marks or to make test marks prior to laboratory examination. If done, the questioned mark or the tool may be altered and this may make any laboratory examination valueless. In addition, traces of transferred paint or other substances on the tool may be lost or additional material may be transferred to the tool.

3. Preservation of Tool Marks

   a. Whenever possible send the whole object containing tool marks to the laboratory instead of just removing the area containing the mark. This is important since, to make satisfactory test marks with the tool, it is necessary to determine the direction of motion and the vertical and horizontal angle at which the tool was held when the questioned mark was made. A study of all impressions and abrasions present on an object such as a door jamb or safe, will often indicate the method in which the tool was used much better than an examination of just a small section removed from the safe or other object.



Photo 24 Physical match of metal found in burglarized vending machine and broken end of one of the four tines on an ice breaker tool of a suspect.

   b. If it is impossible to submit the whole object to the laboratory, remove the tool mark itself. In such cases care should be taken to prevent any damage or alteration of the questioned mark. Always cut off sufficient surrounding material so that no damage will occur. A photograph showing the original location of the mark and its relation to its environment should accompany any removed marks.

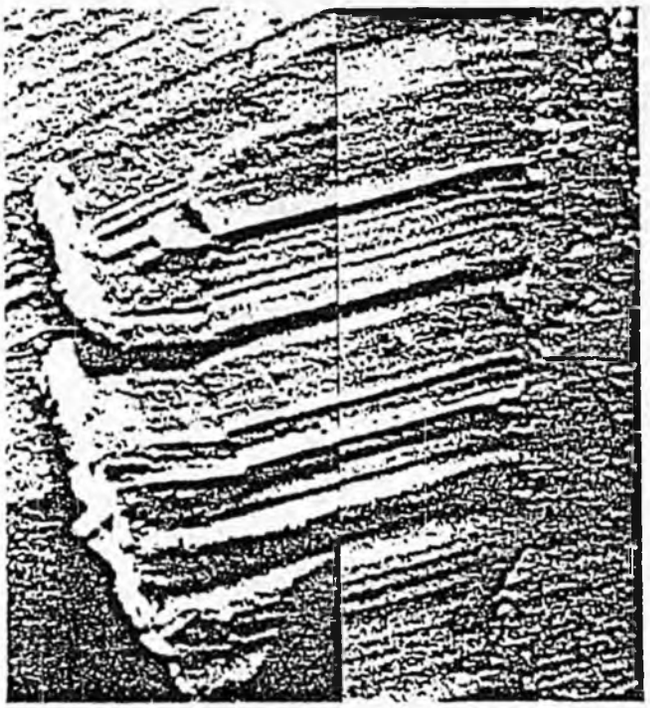


Photo 25 Comparison of tool abrasion mark on door lock (left) and test made on lead with suspect's wrench (right).

   c. While photographs of tool marks at crime scenes may have value in some investigations, they rarely have any value in identifying the particular tool used. The laboratory cannot accurately compare suspected tools with photographs of tool marks, even when the exact magnification of the photographs is known. Photographs which show the whole object as well as the tool mark, however, are of value to indicate methods by which the marks were produced or the orientation of the tool. This information may assist in producing satisfac-

tory test marks in the laboratory, therefore such photographs should be included.

d. Mark the object containing tool marks in some area where the questioned impression or abrasion will not be damaged.

e. Pack the object containing tool marks so that no alteration or damage will occur during shipment. Small objects may be placed in envelopes or boxes while important areas on larger objects can be protected with plastic, paper or cardboard. Large objects may be packed in cartons or crates if not delivered in person.

4. Wire Theft

a. Due to the value of scrap copper, thievery of copper telephone and electric lines, whether in use or abandoned, has become a very frequent occurrence. In numerous cases of this type it is possible to identify bolt cutters, wire cutter pliers, diagonal cutters, pruning shears, and other tools recovered from suspects as being the specific tools employed in cutting wire ends left at the crime scene.

b. Under the best circumstances, tool mark comparisons on small wires are difficult. This is due to the fact that only a very short section of the cutter tool blades makes contact with the wire. It is therefore difficult and seldom possible to prove that two different wires were cut with the same tool unless the tool itself is available for study. In those cases where the responsible tool is obtained test markings can be made in the laboratory which will record the structure of all portions of the blade surfaces. In routine wire theft cases the laboratory cannot compare cut wires recovered at different crime scenes just to establish that the same tool (and therefore the same suspect) was involved. A suspected tool must be recovered first.

5. Examples of Value of Such Evidence

While all applications of tool mark evidence cannot be covered, a few illustrations may indicate its value as evidence.

a. Hammers may often be identified as being the specific tools which made impressions on safes or other objects.

b. Screwdriver scrape marks on lock boxes and other objects are often identifiable as having been made by tools found in the possession of suspects. It has also been possible to identify the tool used to remove metal screws at a crime scene.

c. Pry bars and other similar tools can frequently be identified as having been used to produce marks on doors, window frames, safes and other objects.

d. Knives have been identified as having made cuts on wood.

e. Bolt cutters, pliers, tin snips and similar tools can often be identified as being the specific tools used to cut wires, lock hasps, metal bars, sheet metal, etc.

f. Pipe wrenches can sometimes be identified as having been used to disconnect pipes or twist off other objects such as door knobs.

g. Axes and hatchets can be compared with cut marks on wood. In several cases, tools have been identified as lethal weapons by comparison with marks on the skulls of victims.

K. FIREARMS EVIDENCE

Firearms are involved in an appreciable percentage of both major and minor crimes. The evidence in such cases is frequently very broad and investigations of the weapons themselves, as well as the events which occurred, may be quite varied. The laboratory is able to assist in many phases of such investigations.

1. Ballistics

The word ballistics is frequently used incorrectly when reference is made to studies of weapons and cases involving firearms. Ballistics is the science that deals with the motion and flight of projectiles. Such studies are of importance in only a limited number of criminal investigations. The laboratory is capable of furnishing scientific aid in connection with some problems related to ballistics. Examples are the establishment of the range, trajectory or penetration power of fired bullets, richochet pattern studies and the like.

2. Weapon Functioning Tests

Laboratory studies may be conducted to determine trigger pull, operation of safety devices, alteration or modification of weapons, alteration or damage which might make a weapon fire accidentally or be unsafe, general operating condition and related examinations. Whenever such studies are desired the weapon should not be test fired, disassembled or otherwise used, tested or altered prior to the time that it is submitted to the laboratory.

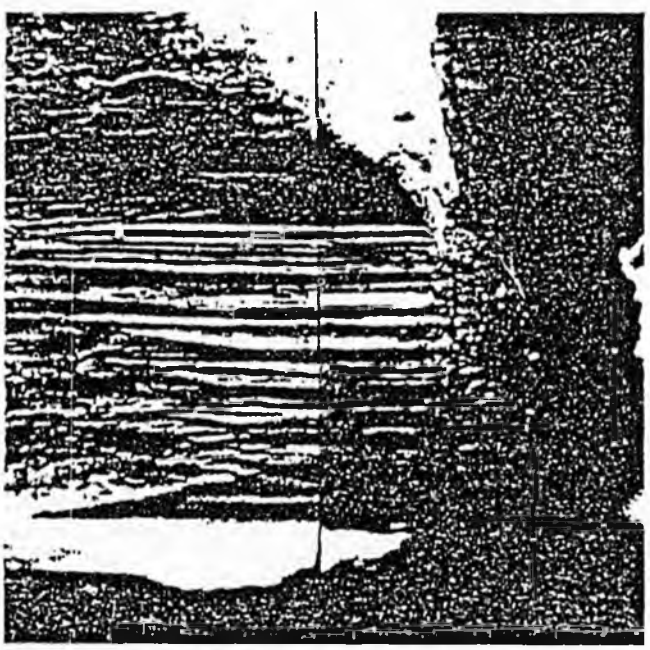


Photo 26 Photograph taken through a comparison microscope showing matching rifling markings on test and question .25 auto bullets.

3. Firearms

a. Never submit a loaded gun to the laboratory unless it is delivered in person. Unfired cartridges may be left in the magazine provided the magazine is removed from the gun. A firearm with a cartridge in the chamber should never be shipped by any method, even if the weapon is not cocked or is on safety.

b. Never clean the bore, chamber or cylinder before submitting a firearm and never attempt to fire the gun before it is examined in the laboratory.

c. Never pick up a weapon by placing a pencil or other object in the end of the barrel.

d. Record serial number, make and model of the weapon and mark it in some inconspicuous manner before sending it to the laboratory. The marking of many firearms is important since duplicate serial numbers are sometimes found on different guns of the same make and general type. Many guns can be marked on the frame by removing handgrips or butt plates.

e. Place the weapon in a strong cardboard or wooden box well packed to prevent shifting of the gun in transit.

f. Rifles or shotguns may be taken apart to make it easier to package and ship, but do not disassemble more than necessary.

g. If blood or other material of interest is present on the muzzle of the gun, place a small paper bag around the muzzle and seal it to the barrel with plastic tape to prevent loss of the sample during shipment.

4. Bullets

a. Never mark a bullet on or near the rifling markings on the bullet sides, even if they are not clearly defined. Certain examinations may not be possible if the base or nose is marked even though these are the preferred marking locations. If there is any question don't mark the bullet but seal it in a marked container.

b. Wrap recovered bullets individually in tissue paper and seal in separate pill boxes or envelopes.

c. Submit all evidence bullets recovered to the laboratory. A conclusive identification may be possible on only one of several bullets recovered, even when they all appear to be in good condition.

d. Do not attempt to clean recovered bullets before sending them to the laboratory, except in the case of bullets removed from a body. The latter may be washed off immediately in running water and dried by blotting on a soft dry towel in those cases where the study of fiber and other evidence adhering to the bullet nose

is not of importance.

e. Handle fired evidence bullets as little as possible to prevent damage to the identification characteristics in the rifling markings or loss of material adhering to the bullets. Never use forceps or other tools to handle bullets.
f. Wrap each bullet separately in tissue paper to prevent damage to the rifling markings by contact with other evidence.
g. Place wrapped bullets in envelopes or pill boxes, label and seal the container.

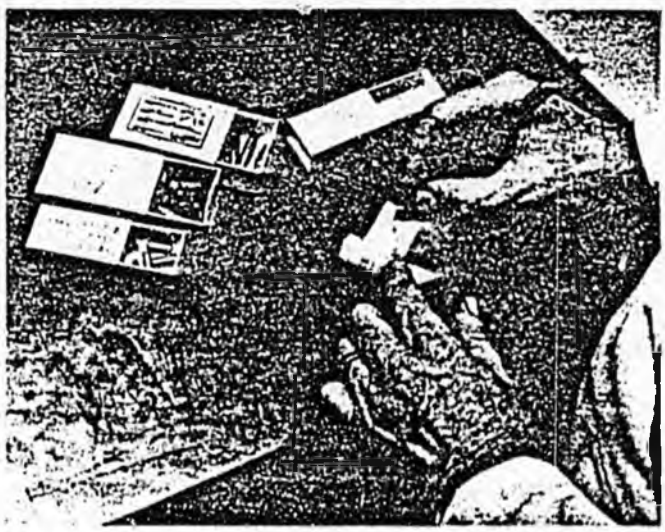


Photo 27 The proper packaging of bullets and cartridge cases includes wrapping of the item in soft tissue.

5. Cartridge Cases

a. Mark cartridge cases on the inside of the open end, if possible. Use initials or other characteristic marks which are kept as small as possible. Cases may be marked on the outside near the open end but care must be taken not to damage clip or other markings which may be present. Never mark on or near the primer end of the case. Again, if there is any question, seal the cartridge in a marked container.
b. Fired shotgun shells may be marked either on the inside or the outside of the paper or plastic portion of the shell.
c. Submit all evidence cartridge cases or shotgun shells recovered to the laboratory. Frequently some cases contain more identifying detail than do others.
d. Do not attempt to clean recovered cartridge cases before submitting them to the laboratory.
e. Wrap each cartridge case separately in tissue paper to prevent damage to breech block, firing pin or other markings by contact with other cartridge cases.
f. Place wrapped cartridge cases in envelopes or pill boxes, label and seal the container.

6. Ammunition

a. Always attempt to recover unused ammunition for comparison purposes when firearms are obtained as evidence. If not in the weapon itself, subjects often have additional ammunition in their car, clothing, house or at other locations. While the laboratory maintains an adequate supply of cartridges of all types for test purposes, some types are not always available. In addition, it may be important for test purposes to duplicate exactly the make, type and age of the ammunition used in the crime. Other ammunition in the possession of the suspect *frequently* is identical to that fired at the time of the crime.
b. Unfired ammunition may be marked on the side of the cartridge case, near the bullet end.
c. Ammunition may be compared to establish similarities in type and manufacture. It is sometimes possible to show that a particular bullet or cartridge came from cartridges manufactured within a specific time period.
d. In some instances it is possible to prove that hand loaded bullets had a common source or that the cartridges were reloaded with the same tools.

7. Powder or Shot Pattern Tests

a. Submit clothing and other material showing evidence of gunpowder residue or shot holes. If more than one item, wrap each one separately so as not to disturb or contaminate any residue. When information as to weapon distance at the time of the shooting is needed, photographs of powder patterns on clothing will not suffice since in most instances microscopic examination, chemical testing and x-ray studies must be conducted on the exhibits themselves. When bullets have passed through garments and then into a human body, it is also desirable to have clear photographs of the bullet holes in the body available for study in addition to the garments. Include a ruler in all photographs.

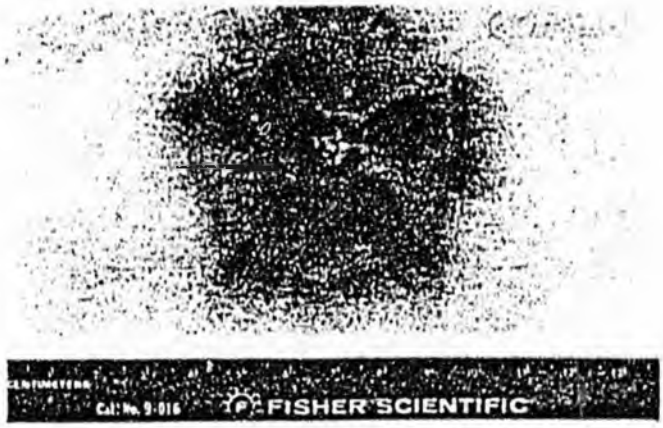


Photo 28 Illustrates the muzzle discharge residue left on a victim's outer garment as a consequence of a close range firearms discharge.

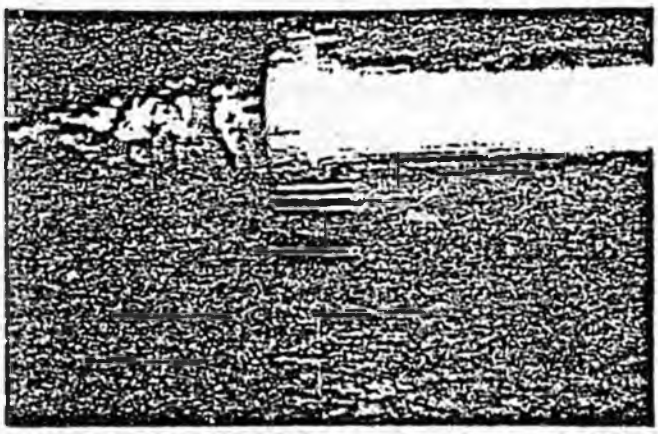


Photo 29 Comparison of reloading equipment die marks on two cartridges. Hold-up victim was shot and killed with his own revolver. Suspect stole the weapon and ammunition. The weapon was never located but cartridges were later found in the suspect's possession. These were compared, as illustrated, with other reloaded cartridges belonging to the victim.

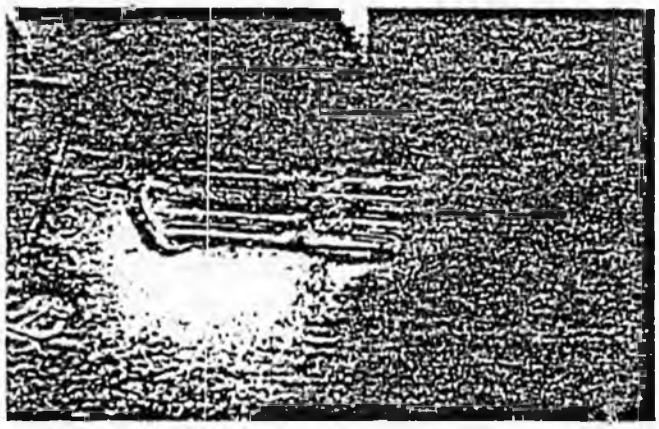


Photo 30 Comparison of firing pin marks on test and questioned .22 calibre cartridge case.

b. For gunpowder or shot pattern tests to have significance, it is essential to obtain ammunition identical in make, type and age to that used in the crime. This duplicate ammunition is necessary for test firing in the weapon in question to determine the distance of the muzzle of the weapon from the victim or other object at the time the questioned bullet was fired.

8. Dermal Nitrate Tests

Many research studies conducted by branch criminalistics laboratories, as well as other laboratories, have established that dermal nitrate and parraffin cast techniques *are worthless* to determine whether or not an individual has fired a weapon. For this reason criminalists of ISB will neither make such casts nor conduct chemical tests on casts made by others for either court or investigative purposes. This does not, however, imply that careful visual examinations or other studies of *unwashed* hands of individuals suspected of having fired weapons should be overlooked.

9. Neutron Activation Analysis (NAA)

a. Extensive NAA studies have been conducted of swabbings made on the hands of individuals who have fired various weapons, as well as on control subjects. At present, however, this analysis will not, in most instances, conclusively establish whether or not an individual has fired a gun.

b. The laboratory is equipped to assist any agency in obtaining the proper samples from the hands of a shooting suspect in cases involving firearm residue.

c. Requests for such assistance should be made directly to the laboratory for evaluation.

d. The requesting agency should exercise every precaution to protect the hands of subjects from contamination. Paper bags taped over the hands of a "suicide" victim prior to movement is one example of a suitable precaution. Rapid processing of the hands of live subjects is another.

e. For proper procedures in collecting and submitting samples for gunshot residue analysis, request Physical Evidence Bulletin 15/77, from the laboratory.

f. The laboratory will not, for scientific reasons, assist in collecting samples from subjects that have washed or if over 4 hours have elapsed from the time of shooting.

10. Trace Metal Detection

a. In some cases it is possible to demonstrate that a person has recently held a gun in his hand. This procedure requires the spraying of the hands with a chemical that reacts with the metals of the weapon. The hand is then examined and photographed in ultraviolet light.

b. The laboratory is equipped to conduct the trace metal detection procedure for an agency upon request.

c. Requests for such assistance should be made to the laboratory for evaluation.

d. The requesting agency should exercise every precaution to protect the subject's hands. The subject should not be allowed to wash or handle metallic objects.

e. For more details, request Physical Evidence Bulletin 14/77 from the laboratory.

11. Firearm Investigations

The laboratory can furnish aid in many firearms investigations other than those mentioned above. Such work may involve studies of wounds, direction of bullet paths in bodies, sequence and direction of shots fired through glass and other materials, identification of homemade cartridge components and many other related examinations.

L. SERIAL NUMBER RESTORATION

The eradication of serial number or other manufacturers' markings is frequently carried out to conceal other crimes such as theft. It is also done to prevent tracing ownership of an article. Obliterated or defaced numbers, letters or other stamped markings on metal can usually be made legible by means of various laboratory procedures.

1. Attempts should *never* be made to restore markings. If restoration attempts have previously been carried out by others, the laboratory will not make further attempts at restoration. The reason for this is that the first surface preparation normally removes metal which contains the latent impressions.

2. Weapons
   a. Attempts will be made to restore obliterated or defaced serial numbers or other manufacturers' markings on all types of firearms.
   b. If restoration procedures are successful on pistols and revolvers, the serial number will be automatically checked against the Bureau of Identification firearm registration file for outstanding want or stolen reports.
   c. If the files show no record concerning a restored number, this same number, preceded by the letters "CII", will be restamped on the weapon if this has been requested by the submitting agency. Whenever restamping of restored numbers is requested the Laboratory must be advised of the name and address of the person or agency to whom the firearm is to be registered.
   d. When number restorations are unsuccessful a new serial number, preceded by the letters "CII", can be assigned if such a request is made by the submitting agency. In such cases the name and address of the person or agency to whom the firearm is to be registered must be furnished.
   e. Serial numbers will *not* be assigned or stamped on rifles and shotguns which did not originally bear a serial number stamped by the manufacturer.

3. Merchandise
   a. Attempts will made to restore or make legible serial number, manufacturer or other distinguishing markings on merchandise having such markings.
   b. Such work is conducted only for the purpose of aiding in identification of the merchandise.
   c. The Laboratory has no authority to assign numbers or restamp numbers on merchandise.
   d. When restorations are necessary on heavy or bulky objects, such as pianos and motorcycles, the laboratory should be contacted by telephone prior to delivery of the exhibit. The submitting agency will be responsible for delivering and retrieving such items. Laboratory facilities *will not* permit storage of such items for more than 15 days. Unless special arrangements have been made, they will be returned and shipping charges collected after that period, unless special arrangements have been made.

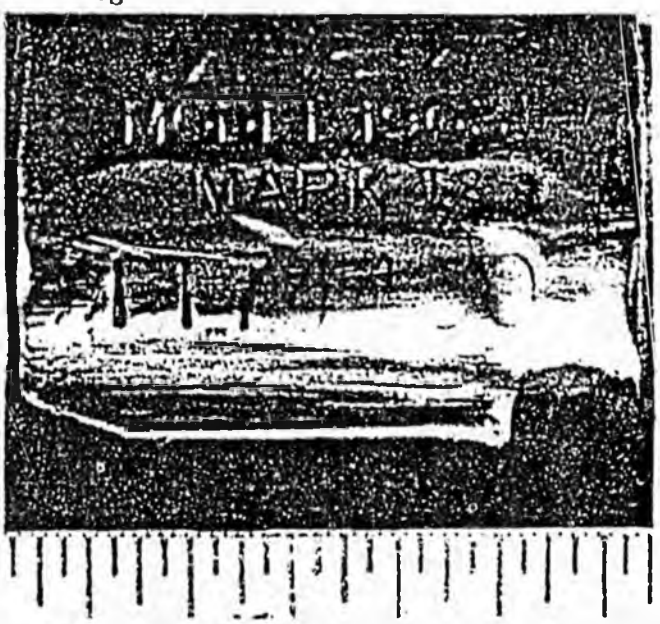


Photo 31 Restoration of the last four serial numbers which had been filed off on a 30.06 rifle. Restoration by means of acid etching.

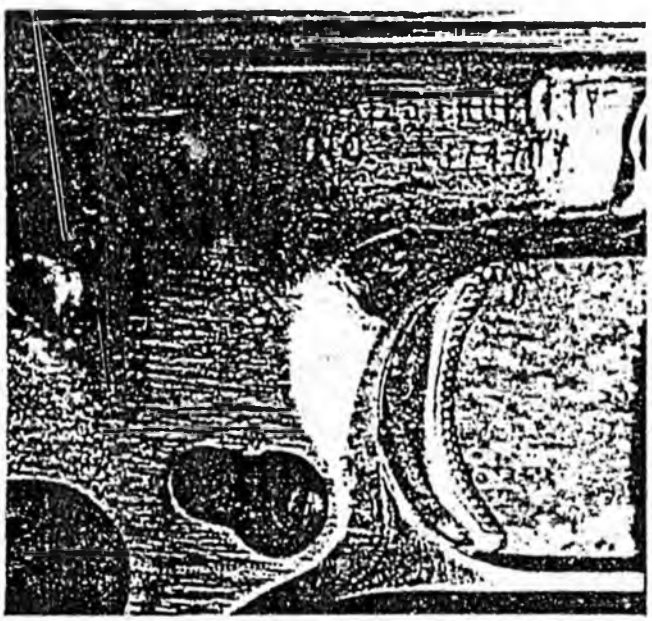


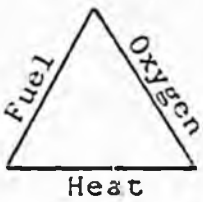
Photo 32 Restoration of an obliterated serial number on a .45 automatic pistol. Restoration by means of Magnaflux technique.

M. FIRE INVESTIGATION AND FLAMMABLE FLUIDS

The types of evidence which may be encountered in a fire investigation are potentially as broad as in any other type of criminal case. The recovery and interpretation of physical evidence in this type of case, however, is frequently complicated due to partial or complete destruction produced by the fire. In the case of large structural fires, exhibits of importance may be covered by debris and therefore be difficult to locate. Firefighting operations, including forcible entry, hose stream damage, ventilation and mop-up, also may cause evidence destruction, affect burn patterns or otherwise alter the scene.

1. Special Procedures Applicable to Fire Investigations
   a. Limit mop-up after the fire is suppressed until a search for all possible physical evidence can be conducted. This is important since normal fire department procedures employed after fire suppression may cause loss of evidence when positions of furniture and other items are altered or material is removed from the scene.
   b. Firefighters observing evidentiary material should be instructed to leave it alone until it can be examined and secured by an experienced fire investigator.
   c. As in all investigations, the search for evidence in fire cases should be conducted systematically and completely. The search should extend throughout the whole area or building involved. Fire sets, which did not ignite or which failed to continue burning, may be present in unburned areas.
   d. Attempts should always be made to reexamine scenes of large fires during daylight hours and after heat and burn odors have been allowed to dissipate. Far more can be observed under natural illumination than at night, even when excellent floodlights are available. Further, smoke and fumes may make the human nose incapable of detecting odors from small quantities of volatile fluids.
   e. As part of any fire investigation, all early arriving firefighters, as well as other persons at the fire scene, should be questioned as to any unusual observations which they might have made. This may assist in locating the point of origin of the fire, establish window and door conditions, indicate unusual flame or smoke colors and quantity, or supply other useful information.

2. The Search for Flammable Fluid at Fire Scenes
   a. Petroleum products and other flammable fluids are one of the most common types of materials employed in arson cases involving structures.
   b. Even though alcohol, gasoline, stove oil, paint thinners, solvents and other similar fluids are highly volatile and flammable, they frequently do not burn completely. Identifiable residues of such fluids can therefore be recovered in many cases even when large fires have occurred.
   c. The fire triangle illustrates the requirements which must be met if any fire is to occur. If one of the three essentials is absent or consumed by the burning, the fire will be extinguished. Thus when the flammable fluids soak into upholstery, rugs and other fabrics; plaster or wallboard; flow through floor cracks into underlying soil; seep under molding and into wood at the base of walls; or collect at other locations, there will often be insufficient oxygen present to support continued combustion. Residue of the volatile fluid employed may therefore, remain, which can be later recovered and identified.



   d. While the establishment of the point of origin of a fire is important, the most complete combustion may occur at this particular location and no flammable fluid residues remain. Once the point of origin is determined, therefore, emphasis should be placed upon a search of this general *area* for materials which are "sponge-like" (such as fabric, wall board or soil) where lack of oxygen may have prevented complete combustion of the flammable fluid.
   e. The search for flammable fluids should be conducted as soon as feasible since many highly volatile fluids will eventually be lost through evaporation. Fortunately, the use of water in fire control assists in slowing the loss of volatile fluids by cooling, covering and insulating materials into which the flammable substances have soaked.
   f. The detection of the most concentrated deposits of many volatile fluids, such as gasoline, by odor may become difficult if much of the fluid is present. This is due to the fact that the human nose loses its sensitivity to many odors if exposed to large quantities over a period of time. Trace amounts of volatile fluid odors may also be masked by other odors at fire scenes. This is particularly true in the case of those produced by burned plastic and rubber.

g. It is important to realize that many flammable fluids have little or no odor. Included are such substances as some alcohols, deodorized kerosene, charcoal lighters, etc.

h. The search for traces of flammable fluid may be facilitated by use of a highly sensitive combustible vapor detector. The laboratory has such a device and, upon request, will furnish aid in locating traces of flammable fluid at fire scenes.

3. Flammable Fluid Evidence Recovery

a. Samples of volatile fluids found in open jars or cans should be poured into clean metal or glass containers. The container employed should then be sealed completely to prevent any loss of fluid.

b. When glass or plastic containers or cans are found at fire scenes which contain just an odor or trace of fluid, seal the container immediately. Where stoppers or jar lids are not available, use aluminum foil and tape. Samples of large amounts of fluid should be removed and placed in some other container as mentioned above but this is difficult or impossible to do when only odors or traces remain. Even when containers appear empty, vapors present may be identifiable if the container has not been burned by the fire. Traces of such fluids may also remain when water from firefighting operations has entered the container.

c. New clean paint cans are the best storage containers for recovered material suspected of containing flammable fluids. They have lids which may be readily sealed, are not liable to breakage and prevent loss of volatile fluids and vapors. Such cans are available from many paint and hardware stores at low cost. Storage of empty paint cans requires only limited space since cans of pint, quart and gallon size can be nested. Paint cans of these sizes should be stored at locations where they will be readily available for use by all fire departments and fire investigators.

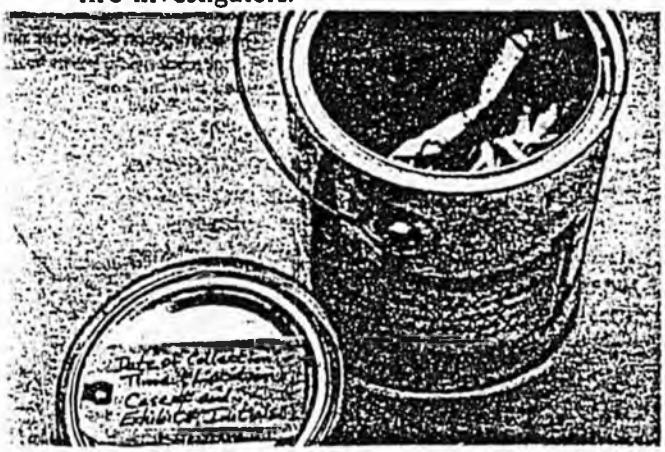


Photo 34 Unused metal paint cans are ideal containers for preserving volatile fire accelerant material.

d. Glass jars can be used for flammable fluids if they contain lids which can be tightly sealed. Such containers, however, are breakable and thus more difficult to ship. Mason or other jars which have rubber seals on the lids should be avoided since many fluids will soften or dissolve such seals and permit leakage and loss of contents.

e. Plastic wrapping when used as jar covers or as a sealant to protect large pieces of wood will not prevent the loss of volatile fluids or vapors. Exhibits suspected of containing such materials should therefore never be stored in plastic containers or plastic wrapping used as a sealant. Likewise, waxed containers are not satisfactory for such exhibits. Aluminum foil can be used in those situations where fluids or debris cannot be sealed in the recommended type paint can.

f. Attempt to match the container size to the sample size. The less air space remaining after the sample is added to the container, the better.

g. When specimens believed to contain small amounts of flammable fluid are not obviously damp with water, it is preferable to add a small amount of water to the container on top of the specimen. This tends to retard evaporation.

h. Identification of trace amounts of fluid in samples recovered frequently requires distillation procedures. This means that specimens must be cut up into relatively small pieces which will fit into glass distillation flasks. For this reason it is normally desirable that the investigator saw or chop large exhibits at the time of evidence recovery and place small pieces in containers. This usually is a superior and easier method than attempting to deliver large sections of wood, carpets and similar exhibits to the laboratory even when the latter can be done rapidly and little loss of fluids is likely to occur.

i. Mark All Containers—Include name of person recovering the exhibit, date, time and location of recovery.

j. Follow postal or other carrier regulations when shipping evidence containing flammable fluids.

k. Telephone the laboratory for instructions prior to personal delivery of large quantities of flammable fluids.

4. Flammable Fluid Analyses

a. Even when present in minute amounts or as residues from which the more volatile fractions have been lost, it is frequently possible to identify the original fluid employed.

b. Advise the laboratory of any odors noted at the fire scene or other evidence available which suggests that specific fluids were employed. This may save considerable time which might

otherwise be required if complete analyses for all types of volatile substances were necessary.

c. Comparisons are sometimes possible between residues recovered at the scene and samples of volatile fluids obtained from suspects. In some instances it is likewise possible to indicate common origin of different flammable fluid specimens recovered in gasoline theft and other investigations as well as in arson cases. This type of study may be very complex and will usually require special sample recovery procedures. For this reason the laboratory should always be contacted by telephone for special instructions when this type of study is necessary. This will insure that all necessary standard and control samples are properly secured.

5. Other Arson Evidence

a. Mechanical, electrical or other fire ignition devices may be identified as to their nature and operation even if burned in a fire. All parts of such devices should be searched for and recovered. It may also be possible to compare the recovered evidence with similar material found in the possession of a suspect.

b. Residues from fusee and other chemical igniters or fuels are usually identifiable.

c. Candle wax can be identified as to type and compared with candles or wax deposits on clothing or other objects found in the possession of suspects.

d. All other types of evidence covered in this manual may also be involved in fire investigation cases.



Photo 35 Comparison of torn end of burned match (lower right) found at arson scene and layer of paper matches from folder in suspect's pocket.



Photo 36 In an arson case sections of 16 consecutive pages of a newspaper were found between two plastic bottles of gasoline in an attic. Holes had been cut in the papers to support a candle. The photograph illustrates one of the papers found in the fire set with another small paper, which was found in a waste basket in the suspect's home, inserted into the hole.

N. EXPLOSIONS AND BOMBS

The use of explosives in criminal activities has increased materially in recent years. This has resulted in evidence such as hand-thrown explosives and fire bombs as well as unexploded bombs and related devices frequently coming to the attention of law enforcement agencies. Investigations of explosions which have already occurred are likewise periodically necessary. The latter may range from minor malicious damage to a locker or personal mail box to major damage in a large building. In all such cases it is possible that individuals may be killed, or at least lives endangered. The evidence involved in such crimes is somewhat different than in most other offenses due to the danger of unexploded devices and the limited amount of evidence remaining after many of them explode. Alcohol, Tax, Tobacco and Firearms offers extensive scene investigation and laboratory services with respect to bombings. Consequently you should consider contacting them in regards to a bombing before contacting the State Department of Justice. The Department of Justice Regional Laboratories will render assistance whenever possible in such cases but certain restrictions on handling of the evidence are necessary. IN NO CASE should unexploded bombs or explosives be either *delivered or shipped to the laboratories* since they are located in public buildings. Likewise, federal and state laws restrict the transportation of such materials. IN ALL INSTANCES telephone the laboratory for instructions prior to attempting to ship or deliver any dangerous materials.

1. Cases Where Explosions Have Occurred
   a. Explosion Scenes
      (1) Limit access to area to as few individuals as possible.
      (2) Photograph exterior and interior of all damaged areas completely.
      (3) Search for all possible bomb parts, fuses, residue deposits; photograph these prior to removal.
      (4) Request assistance of a criminalist from either ISB or a local law enforcement laboratory. While only a few criminalists are explosive experts, they frequently can furnish useful aid in investigations conducted at explosion scenes. Unless much of the explosive device employed remains after the explosion and can be recovered, the greatest information is usually obtained from the crime scene examination rather than study of residues alone.
      (5) Consult with military or civilian explosives experts if available. It must be realized, however, that many such experts have specialized knowledge concerning only specific types of explosives with which they regularly work.
   b. Evidence Recovery
      (1) Make certain that no attempt is made to remove or recover exhibits which may still be dangerous to life until they have been examined by a competent expert.
      (2) Criminalists will NOT conduct crime scene examinations of unexploded bombs and related devices.
      (3) Nondangerous bomb parts, electrical detonator, fuse and residue deposits located should always be photographed as found prior to removal. Each item recovered should also be placed in a separate container and marked as to the exact location where it was found.
      (4) Contact the laboratory by telephone if aid is desired in any phase of the evidence recovery.
   c. Laboratory Examinations
      (1) Ship evidence to the laboratory ONLY if it is KNOWN to be safe. If any doubt exists telephone the laboratory prior to shipping or delivering exhibits.
      (2) ALWAYS include a complete report of all investigative findings which relate to the explosion or residues obtained.
      (3) ALWAYS include copies of all photographs taken at the scene.
      (4) The laboratory will attempt to identify any devices or residue recovered. Many military as well as commercial explosives, however, cannot be specifically identified from the residues remaining after an explosion.

2. Unexploded Bombs and Commercial Explosives
   a. The criminalistics laboratories DO NOT conduct field examinations on unexploded bombs nor do they deactivate bombs.
   b. DO NOT ship or deliver any dangerous chemicals, powders, explosives or bombs to the laboratories.
   c. Aid in deactivation may be available through local military explosives specialists. If none are available contact the laboratories by telephone.
   d. Deactivated bombs or explosives will be examined but always contact the laboratories by telephone for instructions prior to shipping or personally delivering such materials.
   e. Bomb parts, tool marks, or other deposits thereon, chemical residues, fuses and other

materials may be identified as to source or they may be compared with related materials recovered in the possession of suspects.

3. Fire Bombs

a. A variety of fire bombs are available or can be readily made by many students, activists or other individuals. The most common type is the "Molotov cocktail". This usually contains gasoline or gasoline mixed with other materials. They may be ignited with a burning wick or contain chemical or explosive igniters.

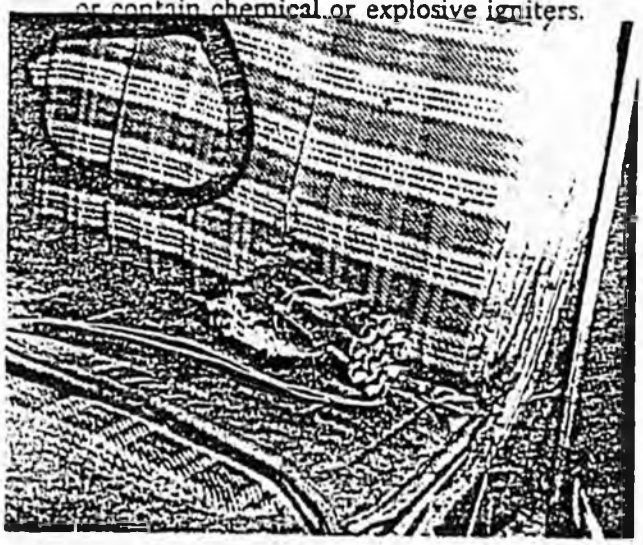


Photo 37 Dynamite charge containing electric fuse wired to light switch in automobile of intended victim. Charge originally placed under seat but was detected and removed by the victim.

b. When unused fire bombs are recovered and laboratory study is desired, contact the laboratories by telephone prior to making delivery of the evidence. In no case may such devices be shipped.

c. Residue remaining after a fire bomb has burned out may be either shipped or delivered personally to the laboratories. When this is done it is important to make certain that all flammable fluids have been removed and sealed in a metal container. When such materials are to be shipped, follow postal or other carrier requirements. Even when personally delivered, safety precautions should be taken to prevent injury to both the individual delivering the material and all other persons.

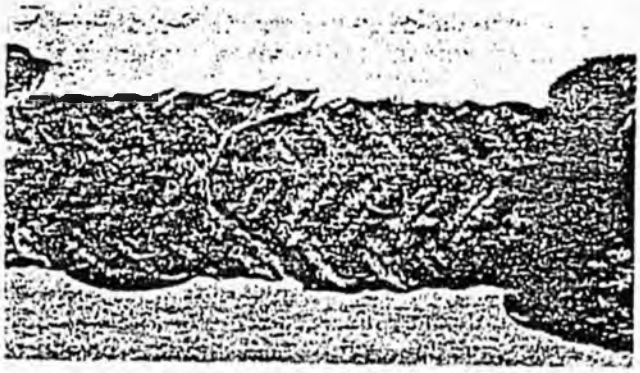


Photo 38 Electric blasting cap inserted in dynamite charge shown in Photo 37 was connected to a light switch wire in the vehicle. This illustrates the comparison of cut insulation on the switch wire from the car with another section of wire found in the possession of a suspect.

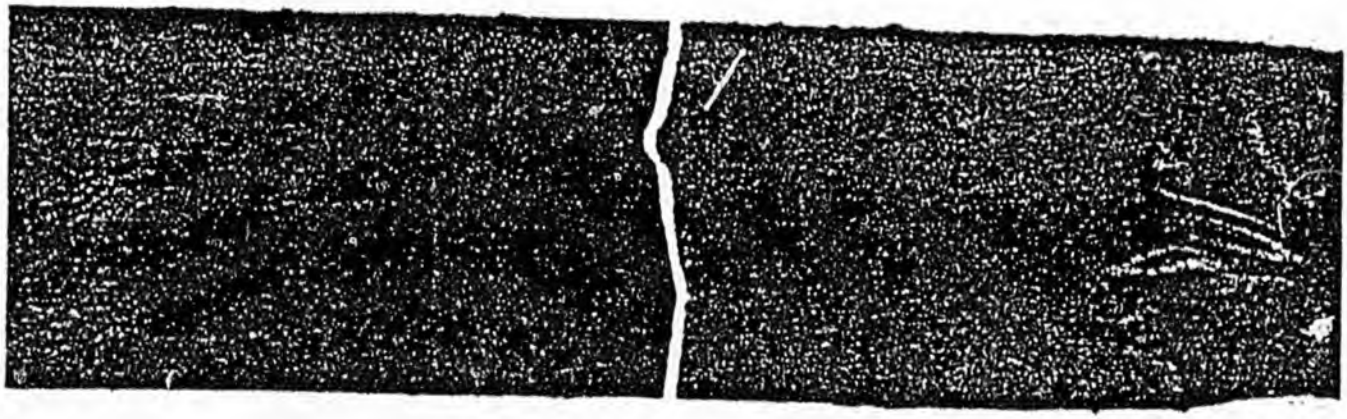


Photo 38A Electrical tape end from roll of suspect and end of tape found wrapped around detonator wires on bomb.

O. CONTROLLED SUBSTANCES

Controlled substances for the purposes of this manual are prohibited drugs and narcotics covered by the Health and Safety Code. Controlled substances analysis is offered by each Department of Justice Laboratory.

1. Sampling
   a. Only items for examination should be included in the evidence package. No money or identification should be included in the package submitted, nor should paraphernalia unless its analysis is essential to the case. Also, weapons should not be included unless an examination is desired.
   b. Drugs for examination should be randomly sampled and only the sample submitted to the laboratory i.e., 5 kilos of suspected marijuana submitted from a total seizure of several hundred. Sampling should never be below the basic packaging unit i.e., samples should not be taken from a kilo, dime bag, piece, etc., the entire basic package should be submitted.

2. Packaging
   a. Items for examination should be independently packaged and marked and the outer container for the group of items should be sealed in order to protect chain of custody.
   b. When paraphernalia is submitted for analysis care should be taken in its packaging i.e., needles should always be capped or guarded to prevent accidental injury to the criminalist.
   c. Fresh plant material should not be packaged in plastic bags in order to prevent molding.

3. Submission Forms—Contact the laboratory for instructions.
   a. The Controlled Substances Evidence Envelope (ISB-17) is available for use by the agencies. All pertinent information should be furnished.
   b. If the case is comprised of five items or less the Controlled Substances Evidence Report (ISB-18) must accompany the evidence. The form is to be attached to the outside of the container and should be completed as to all the information required.
   c. If the case is comprised of over five items the regular evidence submission form (ISB-4) should be used instead of the ISB-18. Physical Evidence Bulletin 25/77 on Controlled Substances is available from the DOJ laboratories.

4. Clandestine Laboratories

If seizure of a clandestine drug laboratory is planned, criminalists from the regional laboratories are available and should be consulted as to hazardous chemical handling, possible nature of the drug being synthesized and particular chemicals which are of evidentiary value. Physical Evidence Bulletin 26/77 on clandestine laboratories is available from the DOJ laboratories.

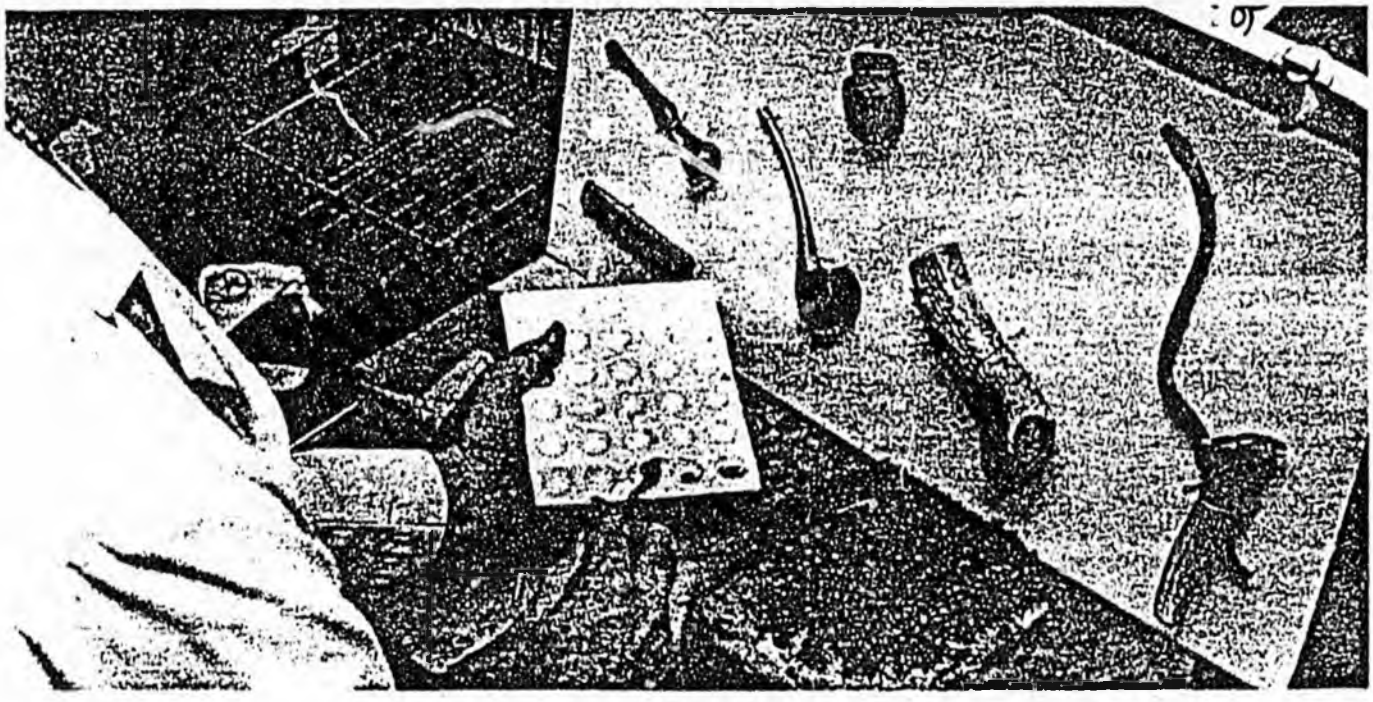


Photo 39 Samples of marijuana being taken for testing purposes

P. BLOOD ALCOHOL

The Blood Alcohol concentration of individuals is of importance to law enforcement officers. It has a direct bearing on the individual's ability to drive an automobile. When the amount of alcohol present is sufficient to impair vision, decrease reaction time and effect muscular coordination it can be concluded that the individual is under the influence of alcohol. Blood, breath, or urine samples can be collected for the determination of an individual's blood alcohol level.

1. *Legal Implications.* The collecting, handling and analysis of samples taken for the purpose of blood alcohol determination is regulated by the California Administrative Code, Title 17, Public Health.
2. *Blood Collection.* Blood samples shall be collected by venipuncture from living individuals as soon as feasible after an alleged offense and only by persons authorized by Section 13354 of the Vehicle Code. Sufficient blood shall be collected to permit duplicate determinations.
   (a) *Disinfectant.* Alcohol or other volatile organic disinfectant shall not be used to clean the skin where a specimen is to be collected. Aqueous benzalkonium chloride (zephiran), aqueous merthiolate, or other suitable aqueous disinfectant shall be used.
   (b) *Equipment for Collection of Blood Samples.*
      (1) Sterile, dry hypodermic needles and syringes shall be used. Reusable equipment, if used, shall not be cleaned or kept in alcohol or other volatile organic solvent.
      (2) The blood sample shall be deposited into a clean, dry container which is closed with an inert stopper. Alcohol or other volatile organic solvent shall not be used to clean the container. The blood shall be mixed with an anticoagulant and a preservative.
   (c) *Post-mortem Collection.* All practical precautions to insure an uncontaminated sample must be employed, such as:
      (1) Samples shall be obtained prior to the start of any embalming procedure. Blood samples shall not be collected from the circulatory system effluent during arterial injection of embalming fluid.
      (2) Care shall be taken to avoid contamination by alcohol from the gastrointestinal tract directly or by diffusion therefrom. The sample shall be taken from a major vein or heart.
3. *Urine Collection.* The only approved urine sample shall be a sample collected no sooner than twenty minutes after first voiding the bladder. The specimen shall be deposited in a clean, dry container which also contains a preservative.
4. *Breath Collection.* A breath sample shall be expired breath which is essentially alveolar in composition. The quantity of the breath sample shall be established by direct volumetric measurement. The breath sample shall be collected only after the subject has been under continuous observation for at least fifteen minutes prior to collection of the breath sample, during which time the subject must not have ingested alcoholic beverages or other fluids, vomited, eaten, or smoked.
5. *Interpretation of Blood Alcohol Levels.* For the past forty years scientists have been formally studying the correlation of blood alcohol levels to driving impairments. Literally thousands of people have been included in these studies on motor vehicle accidents, laboratory findings, driving tests, etc. This has established a firm basis for correlating blood alcohol levels to driving impairment. Criminalists in the State Laboratory System are prepared to testify regarding these correlations.

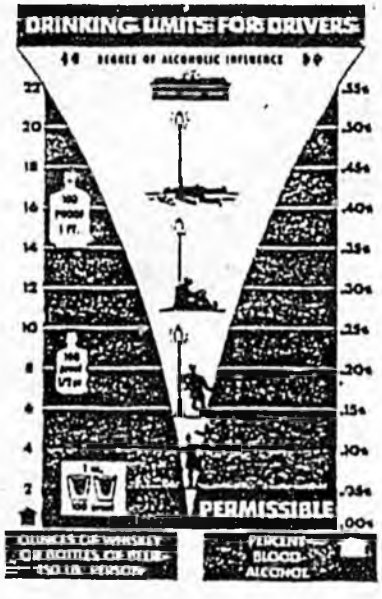


Photo 40 Blood alcohol chart illustrating degrees of impairment and blood alcohol level.

Q. DRIVING WITH DRUGS (DWD)

The California Department of Justice maintains an analytical capability for determining the occurrence of drugs in samples of blood and urine taken from impaired drivers. Samples of blood and urine submitted to this program, and especially those where a blood alcohol content is low or not present, can be analyzed for drug analysis. Samples for analysis should be selected based upon a request originating with the prosecuting agency in cases relating to impaired driving only.



Photo 41 Low levels of drugs in body fluids are isolated by chemical extraction from blood and urine.

1. Submitting Samples

When samples of blood or urine are submitted for drug analysis, any reference made to the discovery of solid dosage drugs in possession of the driver as reported in the arrest record should be cited. This will greatly simplify the analysis time as it focuses the laboratory work on a specific substance and avoids the necessity of searching through an entire class. At least ten milliliters (approximately ½ oz.) of blood and at least 20 milliliters (approximately ⅔ oz.) of urine are required for drug analysis.

2. Drugs Detected

Department of Justice Criminalists will provide drug analysis from submitting agencies statewide. While the DWD program endeavors to identify a number of drugs including common tranquilizers, not every drug in existence will lend itself to analytical procedures.

For a detailed listing of drugs that can be assayed in this program, see Physical Evidence Bulletin 8/77 available from DOJ laboratories.

3. Gas Chromatograph/Mass Spectrometer

Analysis for drugs in the blood or urine of impaired drivers can require complex laboratory procedures culminating in instrumental analysis. In such instances, the gas chromatograph/mass spectrometer can be used either to detect exceedingly low levels of drugs in human fluids or to confirm suspected drugs whose presence is indicated by other techniques.



Photo 42 The gas chromatograph/mass spectrometer system available to the DWD program and selected samples from the crime lab system.

4. Program Function and Courtroom Testimony

The DWD program is centralized in the Sacramento Regional Laboratory for the purpose of providing an efficient response and complete analysis to the variety of samples submitted. Requests for drug analysis will originate through various regional and satellite laboratories normally serving the requesting agency. Department of Justice criminalists will provide analysis for those drugs that can be determined in either blood or urine by procedures currently available. Courtroom testimony is limited to the actual analysis only and may not include an interpretation of how the detected drug, whether alone or in concert with other substances present in blood or urine, impairs the driving ability of the subject. Submitting agencies are advised that this type of testimony is best provided by local doctors or clinicians professionally established in various localities throughout the state. Questions concerning DWD analysis should be directed to the regional laboratory nearest the requesting agency.

VIII. LATENT PRINT SECTION

In many instances, an entire prosecution case will rest on a positive latent print identification. Without print identifications, many criminal cases would never reach the prosecution level. The Latent Print Section is staffed by experienced latent print analysts having substantial backgrounds in the identification field. All are qualified to appear in court and provide expert testimony in matters of latent print examinations. In addition, latent print analysts may provide field assistance in the investigation of major cases or where trained identification officers are not available to the local agency as per the guidelines in Section XIII of the manual.

A. Latent print examinations and comparisons are conducted by latent print analysts, not by criminalists. For this reason all packages containing only such evidence which are shipped to the Branch should be marked Attention: Latent Print Section.

B. Marking of Latent Print Evidence

1. All evidence should be marked in some distinctive manner, as is the case with any other type of physical evidence.
2. Lifted, developed latent imprints should also be marked or sealed in marked envelopes.
3. When photographs are taken of developed latent impressions, some type of identifying mark should be placed near the print and this mark should also be photographed so that it will show on the negative. If a 1:1 fingerprint camera is not used, a ruler or some other item should be included in the photograph to show the amount of magnification.

C. Preservation of Latent Print Evidence

1. In all cases it is of the utmost importance to prevent contamination of physical evidence by subsequent handling which can cause destruction of those prints already present.
2. Most fingerprints submitted will be on paper, glass, metal or other smooth surfaced objects. When articles which may contain latent fingerprints must be picked up, they should always be touched as little as possible, and then only in areas least likely to contain identifiable latent imprints, such as where the surface is very rough.



Photo 43 Latent Print Examiner processing the inside of an automobile for the presence of fingerprints.



Photo 44A Latent prints on paper being sprayed with ninhydrin solution.

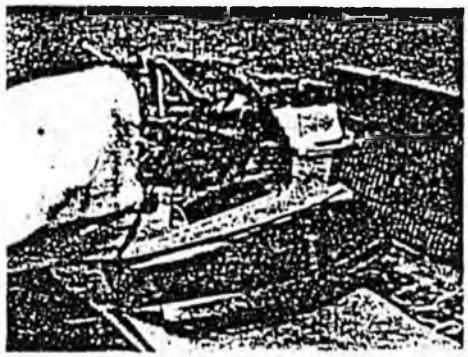


Photo 44B Latent prints being visualized on paper after being sprayed with ninhydrin.

3. While gloves or a handkerchief may be used to pick up items of evidence, any unnecessary contact should be avoided. Although this method of handling exhibits will prevent leaving additional prints on the articles, the gloves or cloth used may destroy prints originally present unless great care is exercised.
4. Large articles containing latent impressions such as glass, metal articles and firearms should be placed on wood or heavy cardboard and fastened down firmly with string or wire to prevent shifting and contact with other objects in transit. Where such evidence is to be submitted frequently, a peg board should be obtained on which wooden pegs can be moved as desired to surround exhibits and keep them from moving. Bottles and glasses can be placed vertically on a board and placed in the bottom of a box. The base of the bottle or glass can be surrounded with nails to hold it in place and the mouth can be either inserted through a hole in a piece of cardboard or held in position with a wooden board nailed to the lid of the container.
5. Papers and documents containing latent prints should be placed individually in manila envelopes or plastic containers. Such containers can be placed between two sheets of stiff cardboard and wrapped or placed in a box for mailing.
6. If the object containing the fingerprints cannot be removed or submitted to the Department, dust the prints with suitable developing powders and lift with latent print lifters. Lifted prints can be placed on black or white cards for contrast or on transparent backing material.

D. Comparison Prints

1. If any suspects are known to the investigator, submit clear rolled fingerprints and palm impressions of such individuals. If these cannot be obtained, advise the Department of the full name CII or booking number if possible and the description of the suspect. Although a file of palm impressions is not maintained in the Department, this information will permit a search of the Department files for a fingerprint record of the suspect. If his fingerprints are on file they can be used for preliminary comparisons with any latent imprints developed.
2. Submit fingerprint cards of any other individuals who may legitimately have handled the objects to be examined, either before or after the crime was committed. Include fingerprint cards of any investigators who may have accidentally touched the exhibits. This will permit the rapid elimination of any latent impressions found which were made by such individuals.
3. Advise the Department of all modus operandi information available and include a copy of the crime report. In some cases, where such data is included, a search of the Department files will reveal the names and fingerprint cards of possible suspects who have previously been involved in similar crimes and who use the same method of operation. When this is possible, the fingerprints of such persons can be immediately compared with the developed latent prints.

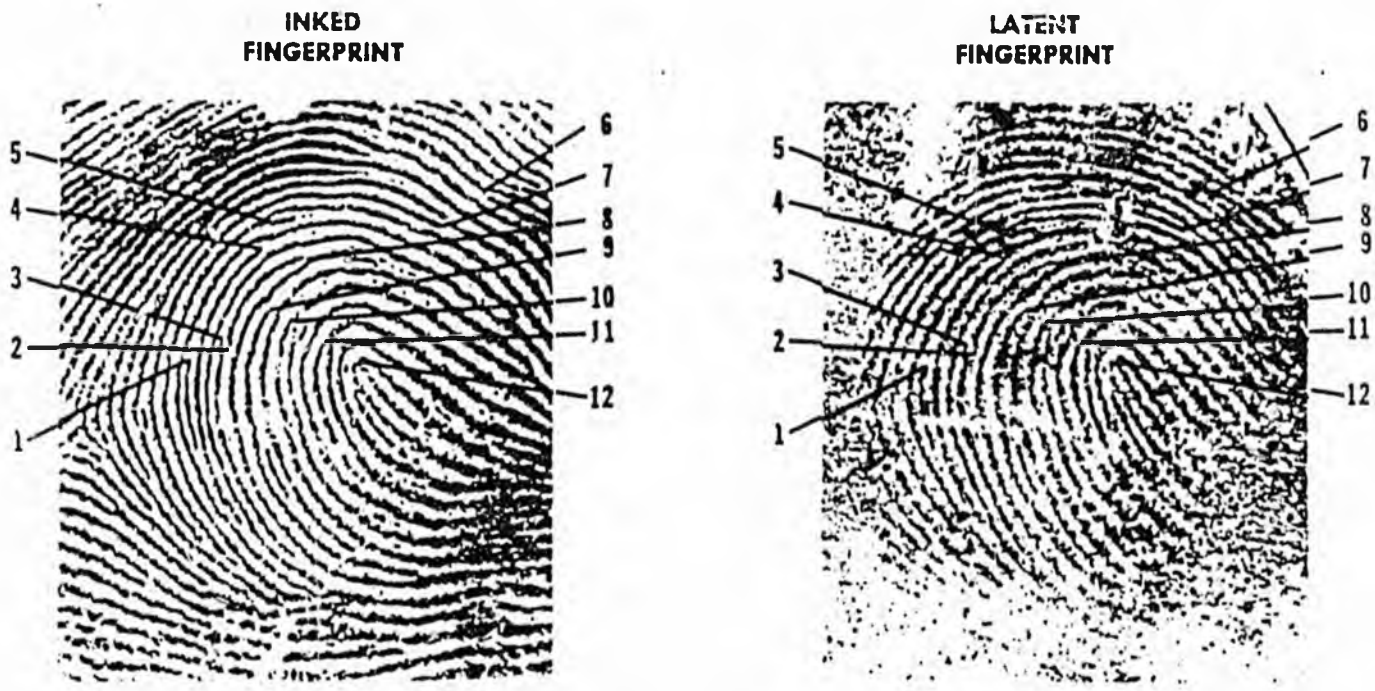


Photo 45 Some common points of comparison between a latent fingerprint and a test print from a suspect.

IX. QUESTIONED DOCUMENTS

A. Services Available

All examinations involving questioned documents submitted to the Branch are conducted by questioned document examiners. These individuals are prepared to conduct examinations concerning any question which may arise in a criminal investigation in regard to the authenticity of a document or the materials used in the preparation thereof. All such experts are fully qualified by training and experience to conduct examinations of such evidence and have qualified and testified as expert witnesses in this field on numerous occasions.

B. Questioned Material to be Submitted

All questioned documents involved in a particular investigation should be submitted for examination. This is important since questioned documents are identified by a combination of identifiable characteristics plus an absence of divergencies or dissimilarities. In order to make an identification, sufficient handwriting, typewriting or other evidence must be available upon which to base an opinion. This means that *all* questioned material is needed as well as sufficient exemplar or known specimens.

C. Originals vs Copies

If at all possible submit the original documents, questioned and known, for examination. Photographs, Xerox, carbon and other copies are usually less than adequate for this type of examination. Under some circumstances documents other than originals may be submitted for examination but usually the results will be less than a conclusive opinion. The examiner should always be given the opportunity to examine all of the originals prior to court testimony.

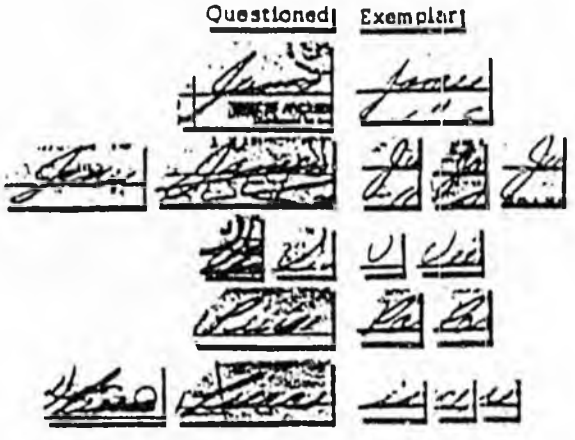


Photo 46 Comparison of signatures on questioned checks and credit card invoices.

D. It is *absolutely essential* that the document examiner have available the required amount of specimen material to afford a proper basis for an identification. The investigating officer should not expect that the document examiner can satisfactorily examine questioned material when driver's licenses, fingerprint cards, or other material containing only signatures of the subject are submitted as exemplars of known writing. An exception to this might be a case in which the only writing in question is a subject's signature. It is the best policy to collect all available writing or other material in order that the scope of natural variation may be determined.

In order that proper exemplars or standards be obtained, the investigator should always follow the suggestions given below:

1. Exercise caution in obtaining exemplars in order that all specimens collected will be admissible in court. The prosecutor or document examiner should be consulted for advice as to proper procedures to follow in this respect. Usually, any business records, such as bank, utility or municipal records and other similar forms can be utilized.
2. Obtain handwriting or handprinting exemplars when the subject is first interviewed. Most subjects will supply enough specimen writing at this time to facilitate comparisons. At a later date, suitable material may be obtained only with great difficulty.
3. Obtain exemplar writing by having the suspect write his name and address several times. After this has been done, *always* include the exact wording of the questioned material written from *dictation.* This should be repeated on *separate* sheets of paper as many times as necessary to reflect the normal writing of the suspect (15 to 20 pages).
4. Duplicate the conditions surrounding the preparation of the questioned document as nearly as possible when obtaining request exemplars. Use the same color and type of paper, supplying blank checks if checks are questioned or voided credit cards if credit card signatures are questioned, etc. If a pen was used to write the questioned material, have the suspect write the exemplars with the same color of ink and type of pen. Normally, it is possible for the investigator to distinguish between ball point, fountain pen, and nib pen writing. If a pencil was used originally, a pencil of approximately the same hardness and color should be used in obtaining the exemplars.
5. To ensure that no distortion or disguise was

made by the suspect when the above dictated samples were secured, a quantity of collected specimens of the suspect's normal writing should also be obtained. These can be almost any type of license, application, signature identification card, personal letters, canceled checks or similar writing which approximate the date of the questioned document. Care must be taken to insure that such collected specimens are genuine so that they are admissible as court exhibits. To make a proper determination in cases of suspected forgery it is suggested that both dictated and collected genuine signatures also be obtained from the person whose name was forged.

6. When securing typewriting exemplars several copies of the questioned document should be made on the suspected machine, using light, medium and heavy touches. At least one copy should be made with the ribbon removed from the machine, or the ribbon control set on "stencil" and the keys allowed to strike directly on a sheet of new carbon paper which should be inserted on top of the paper used for the specimen. This provides clear-cut exemplars of any machine's type face, showing any disfigurements in type characters. Always type the exemplars on the same type and color of paper as that used on the questioned document.
7. Typewriters generally have one of two types of ribbons. The first and most common is cloth made of cotton or nylon impregnated with ink. The less common is a plastic ribbon that is used once and discarded. It gives a clear, sharp impression. In some cases the type marks left on the ribbon can be used to identify a machine or document and can be your most important piece of evidence. This same principle may be applied to cash registers and check protectors. The numerous marking machines, rubber stamps, merchandise markers, both tape or contact should not be overlooked as a possible means of identification.

D. Preservation of Questioned Documents

1. Under no circumstances should either the questioned document or the exemplars be marred, defaced, or altered. No new fold should be made nor should marks or notes be placed on such material.
2. Personal marks for identification purposes should be made as small as possible, on the back or on other areas of the documents where no handwriting or typewriting is present.
3. Whenever possible, all documents should be protected by placing them in cellophane envelopes.

E. Charred Documents

Where the examination and decipherment of writing on charred paper is involved, great care must be taken to prevent any additional crumbling or breaking apart of the burned material. Normally, it should be placed on top of loose cotton in a box and delivered in person to the Department. No matter how it is packaged, most such material will be damaged if attempts are made to ship it by mail.

F. Other Questioned Document Evidence

In addition to handwriting and typewriting comparisons and the decipherment of charred documents, many other related examinations can be conducted by the Department. These include, but are not limited to:

1. Restoration or decipherment of altered, obliterated or erased writing.
2. Comparison of check protectors and rubber stamps with questioned printing.
3. Identification of embossed or indented writing or typing.
4. Comparison of paper and commercially printed material such as checks, coupons, receipts and others.
5. Physical matching of cut or torn paper of various types.
6. Problems relating to inks.

G. Shipment of Evidence

1. When advance arrangements are made to make certain that a questioned document examiner is present, such evidence may be delivered to the Department in person.
2. When such evidence is sent to the Department by mail, it should normally be sent by certified or registered first class mail. If the amount of material is large, it may be also sent by some other method, but in all cases the package should be sealed.



Photo 47 The infrared image converter is used to examine an endorsement which has been obliterated by a bank stamp.

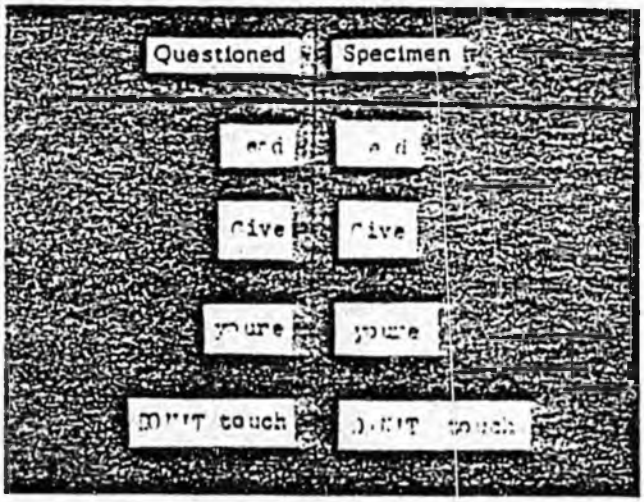


Photo 48 Comparison of a typewritten robbery demand note with the typing of typewriter found at the residence of a suspect. Notes: Light striking capital R and small a, capital G lighter at the bottom than at the top, capital O and small a striking to the left of center and above the base line and the dirty small e. These points of comparison conclusively prove that the same typewriter was used to prepare both the questioned and specimen writing.

H. Court Decisions Regarding Exemplars

There have been several California and United States Supreme Court decisions regarding the taking of handwriting exemplars by court order. Numerous California courts have held that the taking of exemplars by an investigator during the investigation of a crime and prior to obtaining a complaint does not violate the defendant's right against self-incrimination. Here briefly outlined, are a few of these court decisions.

SCHMERBER vs. California, 384 U.S. 757; 86 S. Ct. 1826 (1966) "Handwriting exemplars are merely an identifying physical characteristic outside the protection of the Fifth Amendment, like fingerprints, photographs, or requiring a defendant to speak, gesture or walk in a particular manner."

GILBERT vs. California, 388 U.S. 263; 87 S. Ct. 1951 (1967) "The taking of exemplars did not violate petitioner's Fifth Amendment privilege against self incrimination."

LEWIS vs. United States, (D.C.Cir. 1967) 382 F. 2d 816, 818, cert. den. 389 U.S. 962. Chief Justice Berger wrote, "A defendant could be compelled to furnish handwriting exemplars without violation of the Fifth Amendment since an exemplar is relevant only for the shape and direction of some lines and marks which may identify the writer as fingerprints and photographs do."

BINGER vs. United States, 364 F.2d 1083 (8th Cir. 1972). "Asking the defendant to write the words which were written on a forged instrument did not require *Miranda* warnings; it merely provided more reliable physical evidence."

United States vs. Dow, 457 F.2d 895 (2d Cir. 1972). "Handwriting and voice exemplars of a defendant can be obtained without constituting an invasion of privacy."

State vs. Ostrowski, 282 N.E.2d 359 (Ohio 1972). "A handwriting exemplar, required for comparison purposes, is outside the scope of the Fifth Amendment privilege against self-incrimination. It is not required that Miranda warnings be given prior to obtaining the exemplars. The standards may contain the same words as those contained in a questioned writing."

It is suggested that you contact the prosecuting agency in your area and follow his advice as to the collection of specimens and their admissibility as evidence.

I. Collected Exemplars

Possible sources of handwriting, handprinting or typewriter exemplars are:

Applications for employment
Bail Bond applications
Bank account, cancelled checks, signature cards
Civil Service applications and examinations
Court records
Credit applications, loan applications
Drivers license and applications
Employee records
Family members or neighbors
Insurance applications
Lease or rental agreements
Military records
Registered letter receipts
School papers
Tax exemption applications
Utility service records; gas, water, electricity, etc.
Veterans Administration
Voters registration

Some of these exemplars may not be proper for admission as court evidence but they may assist the investigator as a lead in his case.

REMEMBER: The examination results generally depend on the quality and quantity of the material submitted for examination.

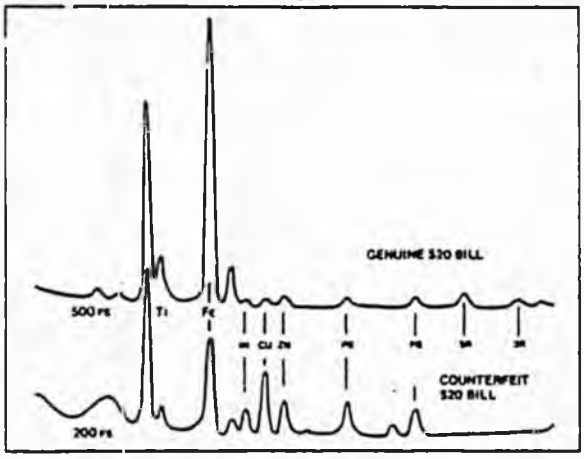
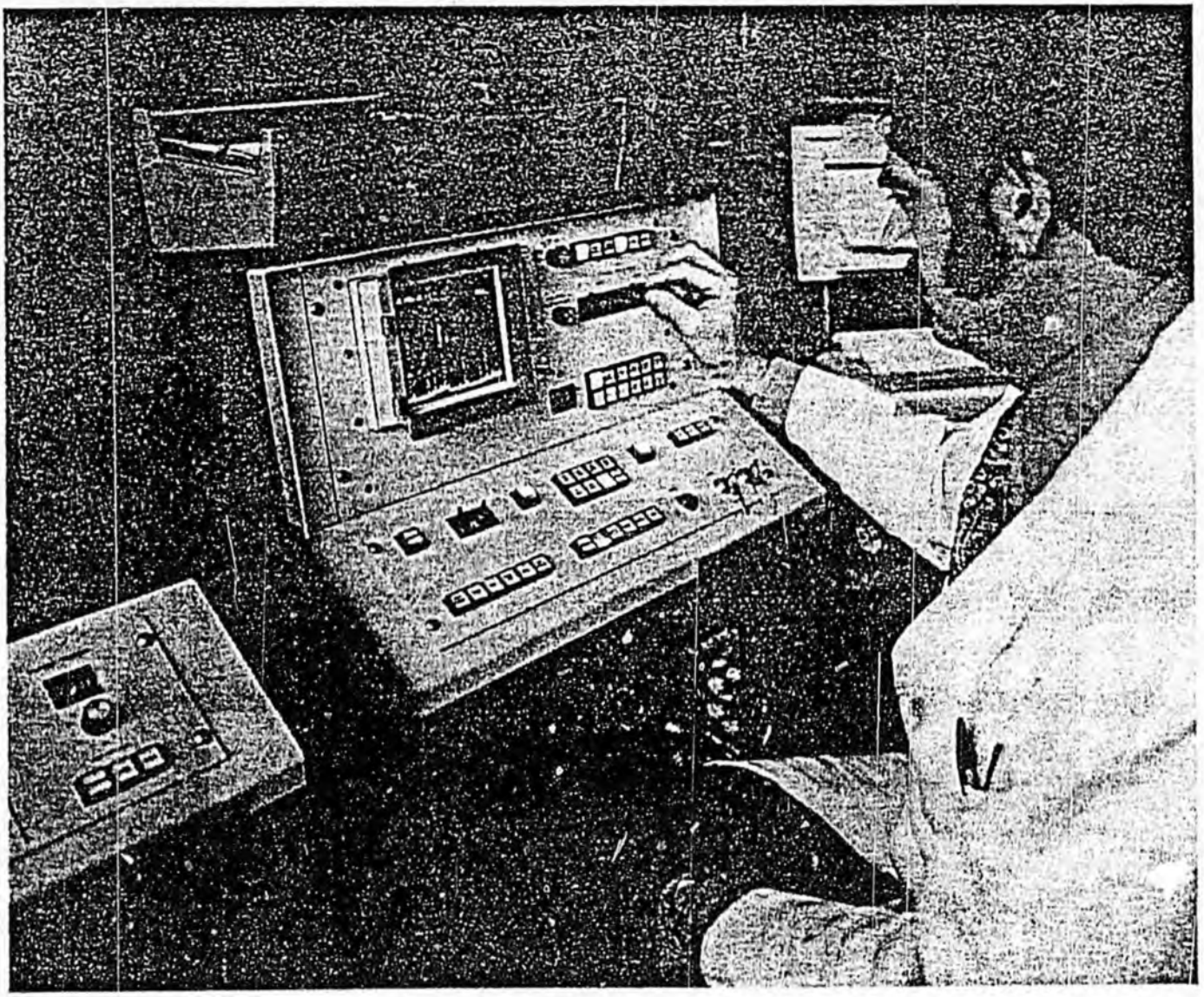


Photo 49 The Energy Dispersive X-ray (EDX) spectrometer is used to analyze inorganic compositions of many substances. While normally used on paint chips, glass, soil, bullets, one of the latest applications is questioned documents studies. Chemical differences in genuine and counterfeit notes are easily seen by nondestructive testing. EDX is located in Fresno, Riverside and Sacramento Regional Laboratories.



X. FORENSIC PHOTOGRAPHY SECTION

Forensic evidence photography, along with crime scene documentation and recording, is recognized today as indispensable to law enforcement.

Through use of forensic photography, vital information is graphically communicated daily in the courts and throughout the Criminal Justice System.

A. Services

The Forensic Photography Section provides the following services to law enforcement agencies in the state.

1. Crime scene documentation and recording.
2. Physical evidence photography.
3. Infrared, ultra-violet and infrared luminescent photographic examination.
4. Trace evidence photography.
5. Aerial photography—crime scene overviews.
6. Image enhancement techniques.
7. Specialized identification and surveillance photography.
8. Court testimony.
9. Training in crime scene photography and other forensic photographic techniques.
10. Consultation regarding forensic photographic problems.

B. Availability

Photographic assistance may be requested during normal weekday work hours by telephoning the Photography Section in Sacramento at 916-445-3526. During off hours, weekends and holidays, requests for service should be placed with the Command Center at 916-445-9240. In addition, requests may be placed through the nearest regional criminalistics laboratory (see appendix).

C. Evidence to be Photographed

When forensic photography of evidence is required in conjunction with analysis by a criminalistics laboratory, Latent Print Section or Questioned Documents Section, the items should be clearly marked for photographic service. Because normal photographic examinations including infrared and ultraviolet techniques are totally non-destructive, this procedure should be conducted prior to any other investigative services being performed.

The photographic request should also be noted on "Physical Examination" request form ISB4 submitted with the evidence.

Evidence requiring photography only, may be personally delivered to the Section at 3301 C Street, Sacramento or mailed to the Forensic Photography Section, Investigative Services Branch, P.O. Box 13337, Sacramento, Calif. 95813. Examples would be:

1. Exposed color or black and white films found in cameras at crime scenes. Exposed films sometimes contain valuable investigative leads.
2. Recovered Polaroid paper negatives from crime scenes with images still visible. By subjecting these negatives to specialized "image enhancement" techniques, the Forensic Photography Section can develop and preserve valuable investigative information.
3. Motion picture film or slides containing intelligence, suspect or investigative information.

D. Restrictions

The Photography Section does not normally develop film or prints for routine requirements of law enforcement agencies. However, if local outside or vendor processing would compromise the evidence or investigation, arrangements can be made for film processing and printing services. Other special requirements should be discussed by telephone with the Forensic Photography Section prior to sending any film to Sacramento.

XI. POLYGRAPH SECTION

POLYGRAPH EXAMINATIONS

Polygraph examinations are conducted by polygraph examiners for various activities throughout the State of California. No shipment of evidence is involved since the graphs produced during the examination are retained in the custody of the polygraph examiner and returned to this headquarters where custody is maintained. Reports containing the opinions rendered are forwarded by this office to the requesting agencies. However, no special mailing is required since no items of physical evidence (polygraphs) are forwarded with the reports.

BASIC INFORMATION REGARDING THE POLYGRAPH

A. Introduction

1. There is no mechanical or electrical device known to man that actually detects lies or truth. The instrument popularly known as "lie detector," "lie box," or, as we refer to it, the "polygraph," is a scientific diagnostic instrument on much the same order as the electrocardiograph, electroencephalograph, or the x-ray. Through the proper use of the polygraph, a competent polygraph examiner can diagnose truth or deception.
2. Stipulated Polygraph Examination
   The results of a polygraph examination are admissable as evidence in court on stipulation only. A stipulation is a written agreement signed by the District Attorney, the defendant, and the defense attorney before the defendant submits to a polygraph examination. The stipulation will state that the defendant will voluntarily submit to a polygraph examination to be administered by a particular polygraph examiner or agency. If the tests results are conclusive, the examiner's opinion as to the truth or deception, and the charts, will be admitted as evidence in court. If the results are inconclusive, no testimony by the examiner will be admitted. Even though the examiner is known as an expert in his field, he must still prove his expertise each time he testifies in court.
3. The polygraph instrument is (basically) composed of four components:
   a. The pneumograph component—records changes in respiration.
   b. The galvanograph component—records changes in the electrical resistance on the surface of the skin.
   c. The cardiosphygmograph component—records changes in blood pressure and pulse rate.
   d. The kymograph components—move the chart paper at a timed rate of speed, under the pens of the other three components.
4. The Theory of the Polygraph Examination
   a. Based on emotion of fear,
   b. Fear of detection by an untruthful subject will cause physiological changes to occur in the subject's body at point of deception,
   c. Physiological changes can be diagnosed by a trained, competent examiner.
   d. The subject must have something to gain or lose by submitting to the examination.

B. Basic Uses of the Polygraph

1. The polygraph is an excellent *aid* and a valuable tool, if properly utilized during the conduct of an investigation.



Photo 51 Subject being tested with the polygraph.

2. The polygraph, however, will *never* be able to take the place of *good, thorough* investigative methods.
3. The final results of a polygraph examination will be based, in great measure, upon the thoroughness of the investigation *prior* to having a subject take the examination.
4. In criminal investigations, examinations will be conducted upon:
   a. Suspects
   b. Victims
   c. Witnesses
   d. Informants

C. Factors That May Prohibit Polygraph Examinations:

1. A polygraph examination should *not* be conducted on *any subject who has been physically abused,* or any person that the examiner feels will be an unfit subject, nor any subject who has been questioned extensively, immediately prior to the time for testing.
2. Only those who voluntarily agree and will *sign a statement of consent* can be examined.
3. Juvenile Subjects.
   a. Juvenile subjects under the age of 14 years are very difficult subjects to examine due to a lack of maturity, both physical and mental. Many times conclusive results cannot be obtained by the use of the polygraph because of these factors.
   b. Consent forms for juveniles *must* be signed by either the parent or guardian prior to the examination.
4. Physical and/or Psychological Factors.
   a. The investigator must keep in mind that there are several other factors, especially of a physical or psychological nature, that sometimes preclude the use of the polygraph on a subject.

   Questionable subjects are:
   (1) Females during menstrual period.
   (2) Females that are more than 90 days in pregnancy.
   (3) Subjects with amputations, affecting the placement of instruments on the subject's person.
   (4) Subjects with paralysis.
   (5) Recent surgery or major injury or illness. The human body usually requires at least six months to fully recover.
   (6) Physical disabilities—skull or spine injuries, high or low blood pressure, and cardiac (heart) trouble.
   (7) Certain types of drugs and medication will preclude the use of the polygraph.
   (8) Emotional instability.
   (9) A subject who has not had sufficient nourishment.
   (10) Subject suffering from a severe cold or respiratory disorder.
   (11) Subjects with low mental ability—idiots, imbeciles, and morons. However, these should not be confused with lack of academic education.
   (12) Mental illness—either pathological or psychological.

INVESTIGATOR'S PROCEDURE FOR PREPARING A SUBJECT FOR EXAMINATION:

A. Preliminary Arrangements

1. Making appointments for polygraph examinations.
   a. A request for a polygraph examination by any law enforcement agency may be made either by phone or written request.
      PHONE: (916) 322-2138
   b. Upon request, the Polygraph Section will advise the requesting party of the first open time, and a definite appointment will be made.
2. Aid to Interrogation.
   a. The investigator should keep in mind from the very inception of the investigation that he may find it necessary to request the aid of the polygraph.
   b. The investigator should withhold *KEY INFORMATION* from the *SUBJECT AND* the *PRESS.*
      (1) Reference to the press does not mean that the press should not be informed of the circumstances of a crime, but that certain "catch phrases" or "peculiar acts," etc., on the part of the suspect could be withheld without materially affecting a press release.
   c. *NEVER USE THE POLYGRAPH EXAMINATION AS A BLUFF.* Do not ask your subject to submit merely to "bluff" him, and then when he agrees, forget it. This does not mean he is innocent at all. Do not ask him to submit unless you mean for him to take the examination.
   d. Polygraph should not be used just as a last resort.
3. Necessary case records.
   a. Records of the case should include:
      (1) Crime reports of suspected offense(s).
      (2) Investigation reports to date.
      (3) Background information of the suspect to be examined.
      (4) Brief resume of the reason for the examination.
      (5) Brief resume of statements or denials made by the subject.
4. Interrogation prior to time of examination.

a. Extensive interrogation of the subject within four hours prior to the examination should be avoided so that an accurate determination of truthfulness or untruthfulness of the subject can be accomplished.

b. The subject may be questioned *briefly* prior to the examination, but only to determine opportunity to commit the crime, and motive or desire.

c. This should *not* be misinterpreted as meaning that the investigator should not interrogate during the investigation, but *only* applies to that period of time *JUST PRIOR* to the examination. Prolonged interrogation of a person produces an exhausted or antagonistic subject who may then not be a fit subject for the examination.

d. The chances of a successful conclusion to an investigation are great when the suspect is made available for a polygraph examination before the final stage of the investigation.

5. Physical condition of subject prior to examination.

a. It is desirable that the subject have a normal amount of food and sleep during the 24-hour period preceding the polygraph appointment.

b. A person suffering from the influence of alcohol, sedatives, opiates, physical pain, severe cold or respiratory disorder is not ordinarily considered to be in a fit condition for a polygraph examination.

B. Suggested information to be withheld from the subject.

1. Method of polygraph examination

a. The subject of a polygraph examination should *NOT* be advised of the method in which the examination is to be conducted.

b. The subject should only be told that he or she will suffer no discomfort, will not be subjected to injections of any type, and that the entire process will be explained to him or her by the examiner prior to being examined.

2. Details of crime to be withheld.

a. The investigating officer, field as well as detective, should avoid disclosure of any details or facts established during the investigation to the subject or suspect.

b. Facts concerning the crime, which could only be known to the perpetrators should *never* be told the suspect, press, or the general public.

(1) If this precaution is disregarded, the probability of a conclusive polygraph examination may be nullified as a subject then has been furnished with a reason for knowing such important information.

(a) He/she could then state they were aware of certain facts because they had been told about same by friends, the detective, or had read same.

3. Examples of details which *should not, whenever possible,* be divulged are as follows:

a. Method of entry
(1) Tools used to effect entry
(2) Point of entry
(3) Extent of damage at point entry
(4) Whether or not entry was made by use of key

b. Property taken
(1) Specific amount taken
(2) Denominations of currency taken
(3) Unusual articles taken
(4) Description of articles taken

c. Weapon or force used to commit crime—specific
(1) Club
(2) Gun
(3) Knife
(4) Poison
(5) Number and location of wounds and bruises

d. Evidence left at the scene of the crime by suspects—tools, weapons, articles of clothing, etc.

e. Unusual acts of suspect before, during, or after the commission of the crime.
(1) Conversation or commands
(2) Peculiar habits, actions or characteristics of the suspects.

f. Means of exit from the scene
(1) If by vehicle, anything unusual about same, such as dents, missing portions, loud muffler, damage, etc.
(2) If on foot, direction taken from scene if noted.

g. Location from which property was taken
(1) Where safe or cash box was located in the building.
(2) Type of container from which money or articles were taken, such as green metal cash box, cigar box, laundry bag, paper sack, etc.

h. Homicide weapons used
(1) Make and type of gun such as .38 caliber, Smith and Wesson, 4" chrome plated with plastic grips, if it is found at crime scene.
(2) Weapon believed to have caused death.
(3) Detailed description of knives and other weapons.

C. Administering the Examination

1. The investigator(s) who actually participated in the investigation should be present at the time of the examination to turn the subject over to the examiner and should remain available to the examiner in order to discuss any pertinent information which may result from the testing sequences.
   a. It is necessary for the investigator(s) to be present as they are most familiar with the facts and case information.
2. The polygraph examination is a time-consuming process and the investigator(s) and subject should expect the examination to take a minimum of two hours to complete.
3. The examiner, at any stage of the examination, will advise the investigator(s) of the desire of a subject who may wish to make admissions of participation in a crime, and will then turn the subject over to the investigator(s) for further investigation.

D. Summary

1. Polygraph examinations are *NOT* a substitute for thorough preliminary investigation.
2. Polygraph examinations should be regarded only as a supplement to a thorough and complete investigation.
3. *NEVER* withhold any pertinent information on either the crime or the subject from the polygraph examiner.
4. THE EFFECTIVENESS OF THE POLYGRAPH EXAMINATION IS DEPENDENT UPON THE INVESTIGATOR(S) AND THE POLYGRAPH EXAMINER WORKING *TOGETHER*

NOTE: IF AT ANY TIME YOU HAVE ANY QUESTIONS RELATIVE TO THE POLYGRAPH, EXAMINATION PROCEDURE, SCHEDULING OF EXAMINATIONS, OR THE ADMINISTERING OF EXAMINATIONS, PLEASE FEEL FREE TO CALL. WE PRESENTLY HAVE AVAILABLE FOUR QUALIFIED EXAMINERS TO ASSIST YOU IN POLYGRAPH MATTERS.

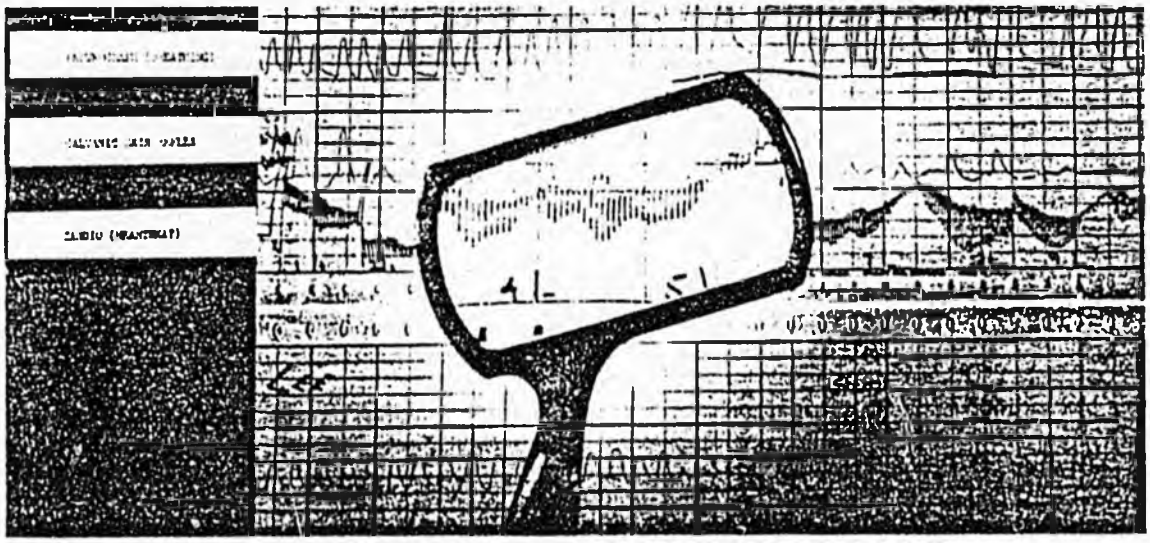


Photo 52 The three tracings of physiological responses of a subject.

XII. CRIME SCENE INVESTIGATION

Personnel of ISB regional laboratories are available to requesting agencies to provide assistance at the scene of a major crime. Generally, homicides or other serious offenses which are beyond the scope of the local agencies' trained evidence technician fall in this category. Participation of ISB personnel in a field investigation is under the general guidelines indicated under Section III, BRANCH SERVICES AND FUNCTIONS, page 7.

Participation by ISB personnel to assist in a field investigation generally encompasses three levels of activity:

1. Advisory capacity only where the investigating officer is unsure of the value of potential evidence and would like ISB personnel present to advise as the usefulness of this evidence. In this case, agency personnel actually process the scene and collects the evidence for submission to the laboratory or special sections.
2. Scene processing where the investigating agency does not have qualified personnel who can process the crime scene, and would like ISB to provide assistance in investigating and proper identification and collection of evidence. In this case, ISB personnel actually process the scene and collect the evidence.
3. Reconstruction, wherein laboratory personnel are available to aid the requesting agency in reconstructing the activities at a crime scene before and after the offense.

Agencies requesting assistance on field investigations should provide ISB personnel with background information before arrival of the processing team (e.g., Has the scene been isolated? Is the suspect in custody? Have any live victims been given hospital transfusions?). Also at the time of the request, the chief investigating officer should provide a general description of the circumstances to ISB personnel and indicate whether or not the agency will require a criminalist, an ISB photographer, latent print examiner, Bureau of Investigation Special Agent, or other services. In some circumstances, the actual crime scene team processing is not warranted and problems can sometimes be answered on the phone through consultation with the criminalist or other technical specialist.

It should be understood that the responsibility of resolving legal proprieties such as search warrants rests with the requesting agencies. Such matters should be resolved before crime scene processing. When the ISB criminalist and other technical specialist arrive at the scene, the chief investigating officer should identify himself and agree with ISB personnel as to which levels of participation (described above) will be required. At this time, the chief investigating officer and the criminalist or other scene processing members should determine how the scene is to be processed, who will do sketching, who will make distance measurements, who will enter the crime scene first (latent print examiner, photographer, etc.)



Photo 53 Criminalist recovering trace evidence from deeply buried homicide victims prior to removal of remains.

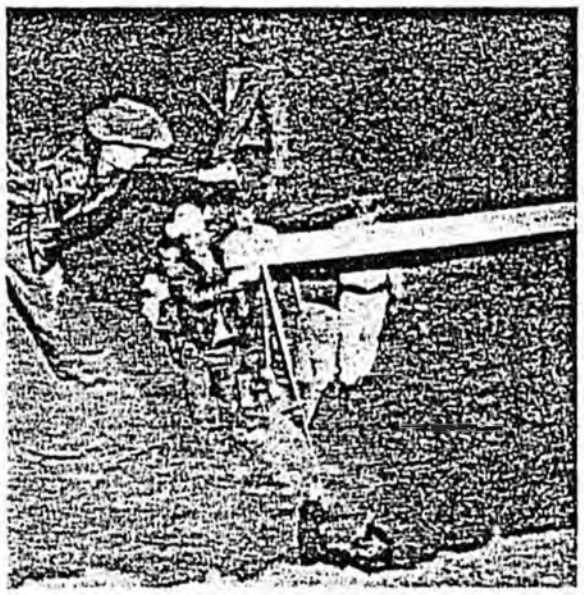


Photo 54 Criminalist and agency personnel decide on methods of measurement and use of available reference points appropriate to each crime scene.

If a post-morten examination is to be performed, the ISB criminalist generally attends for the purpose solely of collecting physical evidence associated with the deceased (blood sample, clothing, bullet extracted from wound).

In shooting cases, with either deceased or live victims, it may become desirable to process the subject's hands for microscopic evidence, gunshot residue, or metal traces from a handgun. If this becomes necessary, refer to the Physical Evidence Bulletins on either Trace Metal Detection Technique or Gunshot Residue Collection, PEB 14/77 and 15/77 respectively.

Other specialized types of evidence associated with a field investigation may require special processing. This could include footprints and tire tracks, see PEB 23/77, documentation and interpretation of blood splatters (confer with criminalist), volatile or flammable substances (see PEB 10/77) and stain or trace evidence on valuable or massive objects (confer with criminalist).

ISB personnel will not make public statements concerning physical evidence. Any statements solicited by non-law enforcement personnel, particularly the press, are to be discouraged. ISB criminalists and technical personnel are instructed not to speak to the press unless the presiding district attorney or chief law enforcement officer in charge of the crime scene asks that the ISB representative give details. At this time, the criminalist or other technicians will only specify details and will refrain from theorizing or reconstructing the events that may or may not have occurred based on the observations he makes.

XIII. INFORMATION FOR DISTRICT ATTORNEY, OTHER PROSECUTORS AND PUBLIC DEFENDERS

A. Expert Testimony

1. In addition to conducting examinations and comparisons of various types of physical evidence, criminalists and other experts of the ISB are available to present expert testimony concerning their findings before the courts. In order that the ISB be of maximum assistance, it is requested that attempts be made to follow the procedures listed below:
   a. Notify the analyst, as much in advance of the trial date as possible, so that time will be available to prepare any necessary photographic or other exhibits.
   b. Due to the number of cases being handled by each employee, conflicts in court appearance dates may frequently occur. When sufficient advance notice is given of scheduled trials many of these conflicts can be satisfactorily resolved. Considerable time is also necessary to travel to and from courts which are not close to the analyst's office. Occasionally, a single trip will permit the analyst to make more than one court appearance when sufficient advance notice is given.
   c. The individual who signs the report submitted is the analyst responsible for the evidence examinations. Notices to appear in court should be sent to this person. Other employees normally have not examined or marked the evidence submitted and therefore cannot serve as effective witnesses.
   d. Employees may be requested to appear as witnesses by having a subpoena served on them, but normally this is not necessary and will delay notification more than other methods. The receipt of a letter, or teletype message will be acknowledged and treated as an official notice to appear in the same manner as a subpoena.
   e. In all cases it is requested that, in addition to the notice to appear in court, information be furnished as to the date and approximate hour when the witness will be needed. While the prosecutor cannot always predict in advance the exact time that a specific witness will be called, it is often possible in lengthy trials to at least roughly predict the time required to obtain a jury and examine witnesses whose testimony is necessary prior to the appearance of the expert witness. The number of court appearances being made each week by the experts of the Branch makes it difficult for them to appear in all cases where they are needed, since a considerable amount of time must be spent in traveling to distant courts. Time used in waiting outside of court rooms while juries are being selected or other witnesses are being examined has sometimes amounted to many days and caused other prosecutors either to ask for continuances in their cases or to forego use of the expert witness' testimony which was of importance in their cases.
   f. The appropriate laboratory or section should also be notified immediately of any change in trial or appearance dates. On many occasions, witnesses have appeared, as requested, to testify on specific cases only to find that the defendant has changed his plea to guilty or the case was continued. While a change of plea may be made at the last minute, there have been many instances where this was known in advance, but the Branch was not advised and employees have needlessly traveled hundreds of miles.
   g. In contacting the Branch concerning a specific case, particularly when done by telephone, advise us of the case number appearing on the report, if possible. This permits the laboratory to locate the filed report or other records without unnecessary delay.
   h. Before testimony is presented, *the attorney should arrange to confer with the criminalist or other expert* concerning his qualifications and the testimony to be presented. This is essential in order to obtain maximum effectiveness from the testimony.
   i. No witness fees, travel expenses, or other charges are made for expert testimony or any other service furnished by this Branch in criminal cases within the State of California.

B. Other Special Aids for Prosecutors and Public Defenders

1. The criminalists, as well as other experts of the Branch, are available to render other special aid to prosecutors and public defenders in criminal cases. This may consist of furnishing assistance in preparing scientific phases of certain cases for trial, evaluating scientific aspects of such cases, or actually examining evidence. Services are provided for public defenders under contract as per conditions of Section 1105.5 of the Penal Code. Inquiries should be directed to the Branch by telephone or at the address cited in Appendix B.

2. Assistance is also rendered in interpreting and evaluating testimony presented by experts called by the defense.
3. Requests for such assistance, when not made in person, should always include information concerning the basic problem involved or testimony which has already been given or is expected. This is usually necessary so that any research or other studies can be made prior to the personal consultation of the expert with the attorney.

APPENDIX A

PHYSICAL EVIDENCE BULLETINS

1/77 Urine as a Sample for Alcohol Determination
2/77 Uniform Standards for Withdrawal, Handling, and Preservation of Blood Samples for Forensic Alcohol Analysis
3/77 Automobile Lights
4/77 Sample Collection of Blood for Blood Typing
5/77 Collection of Paint Fragments
6/77 Collection of Hair Samples
7/77 Guidelines for Physical Evidence in Sexual Assault Investigations
8/77 Drug Analysis in Driving Under the Influence Cases
9/77 Collection of Glass Fragments
10/77 Collection of Volatile Flammables
11/77 Collection of Fiber Evidence
12/77 Firearms Evidence Collection Procedures
13/77 Collection of Soil Samples
14/77 Trace Metal Detection Technique (TMDT)
15/77 Gunshot Residue Collection
LP 16/77 Submission of Inked Fingerprints of Identified Subjects
LP 17/77 Latent Print Section
QD 19/77 Submission of Evidence to the Questioned Documents Section
QD 20/77 Exemplars of Mechanical Reproductions, Serrations and Tears for Questioned Document Examination
QD 21/77 Court Decisions Regarding Exemplar Material for Questioned Documents
23/77 Preservation of Shoe Tracks and Tire Tracks
PL 24/77 Polygraph Examination Procedure
25/77 Controlled Substances
26/77 Clandestine Laboratories
Physical Evidence Chart—Collection and Preservation
Flyer on Purchase of Physical Evidence Manual
Map-Service Zones for Statewide Criminalistics System Laboratories

These may be requested through the laboratories and appropriate special sections of the branch. Proper addresses and telephone numbers appear in Appendix B.

APPENDIX B

DEPARTMENT OF JUSTICE, DIVISION OF LAW ENFORCEMENT

INVESTIGATION AND ENFORCEMENT BRANCH

ASSISTANT DIRECTOR
(916) 739-5674
4949 Broadway
Sacramento, CA 95820

BUREAU OF FORENSIC SERVICES
CHIEF
(916) 739-5484

SPECIAL SECTIONS

Manager (916) 739-5484

Latent Print Section
Supervisor (916) 739-5137

Polygraph Section
Supervisor (916) 739-5135

Questioned Document Section
Supervisor (916) 739-5139

Audio-Visual Section
Supervisor (916) 739-5138

CRIMINALISTICS LABORATORIES

North Area
Manager (916) 739-5484

Sacramento
Criminalistics Laboratory
4949 Broadway
Sacramento, CA 95820
(916) 739-5136
ATSS 8-497-5136

Redding
Criminalistics Laboratory
1515 No. Old Oregon Trail
Redding, CA 96001
1-241-8870
ATSS 8-442-6514

Santa Rosa
Criminalistics Laboratory
7505 Sonoma Highway
Santa Rosa, CA 95405
(707) 576-2415
ATSS 8-590-2415

San Rafael
Criminalistics Laboratory
Hall of Justice, Civic Center
San Rafael, CA 94903
(415) 472-4425

Chico
Criminalistics Laboratory
562 Manzanita Avenue, Suite 10
Chico, CA 95926
1-895-5024
ATSS 8-459-5024

Eureka
Criminalistics Laboratory
College of the Redwoods, Bldg. T-40
Eureka, CA 95501
(707) 733-5726

(REV 2/83)

Central Area
Manager (209) 294-2982

Fresno
Criminalistics Laboratory
6014 North Cedar
Fresno, CA 93710
(209) 294-2982

Salinas
Criminalistics Laboratory
745 Airport Blvd.
Salinas, CA 93901
(408) 443-3188
ATSS 8-588-3188

Modesto
Criminalistics Laboratory
2213 Blue Gum Avenue
Modesto, CA 95351
(209) 576-6215
ATSS 8-462-6215

Stockton
Criminalistics Laboratory
1001 W. Mathews Road
French Camp, CA 95231
(209) 948-7554

South Area
Manager (714) 781-4170

Riverside
Criminalistics Laboratory
P.O. Box 3679, 1500 Castellano Rd.
Riverside, CA 92509
(714) 781-4170
ATSS 8-632-4170

Santa Barbara
Criminalistics Laboratory
820 Frances Botello Rd.
Goleta, CA 93017
(805) 964-8741

San Luis Obispo
Criminalistics Laboratory
P.O. Box 1484, Kansas Avenue
San Luis Obispo, CA 93401
(805) 544-8310

Technical Support Unit
Manager (916) 739-5484
4949 Broadway
Sacramento, CA 95820

Toxicology Unit
Chief Toxicologist
(916) 739-5128

Instrument Repair Unit
Supervisor
(916) 739-5189

(REV 2/83)

ATTACHMENT B

Wisconsin Department of Justice

Statutes for Crime Laboratories

Wisconsin Department of Justice
Division of Law Enforcement Services

CRIME LABORATORY BUREAU
Daniel J. Dowd, Director

4706 University Avenue
P.O. Box 5708
Madison, Wisconsin 53705
(608) 266-2031

REGIONAL LABORATORY
15725 West Ryerson Road
New Berlin, Wisconsin 53151
(414) 786-7700

Bronson C. La Follette
Attorney General

Howard G. Bjorklund
Division Administrator

March 11, 1983

Mr. Leonard Steinberg
House of Representatives
Pouch Y
Juneau, Alaska 99811

Dear Mr. Steinberg:

Per our telephone conversation on March 11, 1983.

Sincerely,

Daniel J. Dowd
Director
Crime Laboratory Bureau

DJD:fh

Enclosure

$25 nor more than $200 for each neglect or violation.

(14) The state fire marshal, any deputy fire marshal or fire chief may require an insurer, including the state acting under ch. 619, to furnish any information in its possession relating to a fire loss involving property with respect to which a policy of insurance issued or serviced by the insurer may apply. Any insurer, including the state, may furnish to the state fire marshal, any deputy fire marshal or fire chief information in its possession relating to a fire loss to which insurance issued by it may apply. In the absence of fraud or malice, no insurer furnishing information under this subsection, state fire marshal, deputy fire marshal or fire chief, and no person acting on behalf of the insurer, state fire marshal, deputy fire marshal or fire chief, shall be liable in any civil or criminal action on account of any statement made, material furnished or action taken in regard thereto. Information furnished by an insurer under this subsection shall be held in confidence by the state fire marshal, deputy fire marshal or fire chief and all subordinates until release or publication is required pursuant to a civil or criminal proceeding. Information obtained by the state fire marshal, any deputy fire marshal or fire chief during their investigations of fires determined to be the result of arson may be available to the insurer of the property involved.

History: 1973 c. 333; 1975 c. 224; 1977 c. 260, 341; 1979 c. 133; 1981 c. 318.

State fire marshall must establish proper discretionary reasons for exercising privilege of secrecy under (8). Black v. General Electric Co. 89 W (2d) 195, 278 NW (2d) 224 (Ct. App. 1979).

See note to art. I, sec. 11, citing State v. Monosso, 103 W (2d) 368, 308 NW (2d) 891 (Ct. App. 1981).

Arson investigations under (9) and (10) are subject to search warrant requirements set forth in Michigan v. Tyler, 436 US 499 (1978). Consent to search discussed. 68 Atty. Gen. 225.

165.60 Law enforcement. The division of criminal investigation is authorized to enforce ss. 944.30, 944.31, 944.33, 944.34, 945.02 (2), 945.03 and 945.04 and shall be invested with the powers conferred by law upon sheriffs and municipal police officers in the performance of such duties. Nothing herein shall deprive or relieve sheriffs, constables and other local police officers of the power and duty to enforce said sections, and such officers shall likewise enforce said sections.

History: 1975 c. 39.

165.70 Investigation of state-wide crime. (1) The division of criminal investigation shall:

(a) Investigate crime which is state-wide in nature, importance or influence;

(b) Enforce chs. 161 and 945 and ss. 940.20 (3), 941.25 to 941.27, 943.01 (2) (c), 943.27, 943.28, 943.30, 944.30, 944.31, 944.32, 944.33, 944.34, 946.65 and 947.02 (3) and (4);

(d) Enforce and administer s. 165.55.

(e) Investigate violations of ch. 163 that are statewide in nature, importance or influence.

(2) The attorney general shall appoint, under the classified service, investigative personnel to achieve the purposes set out in sub. (1) who shall have the powers of a peace officer. As many as are deemed necessary of the investigators so appointed shall be trained in drugs and narcotics law enforcement, or shall receive such training within one year of their appointment, and they shall assist, when appropriate, local law enforcement agencies to help them meet their responsibilities in this area.

(3) It is the intention of this section to give the attorney general responsibility for devising programs to control crime state-wide in nature, importance or influence, drugs and narcotics abuse, commercial gambling, prostitution, and arson. Nothing herein shall deprive or relieve local peace officers of the power and duty to enforce those provisions enumerated in sub. (1).

(4) Local district attorneys, sheriffs and chiefs of police shall cooperate and assist the personnel of the division in the performance of their duties.

History: 1971 c. 40, 211, 307; 1973 c. 156; 1975 c. 39; 1977 c. 173 s. 168; 1977 c. 215, 260; 1977 c. 272 s. 98.

SUBCHAPTER III

DIVISION OF LAW ENFORCEMENT SERVICES

165.75 Crime laboratory. (1) Unless the context clearly requires otherwise:

(a) "Laboratory" means the crime laboratory.

(b) "Administrator" means the administrator of the division of law enforcement services.

(c) "Employe" means any person in the service of the laboratory other than the administrator.

(2) The crime laboratory shall be located in the city of Madison. The personnel of the laboratory shall consist of such employes as are authorized under s. 20.922.

(3) (a) The purpose of the laboratory is to establish, maintain and operate a crime laboratory to provide technical assistance to local law enforcement officers in the various fields of scientific investigation in the aid of law enforcement. Without limitation because of enumeration the laboratory shall maintain services and employ the necessary specialists, technical and scientific employes for the recognition and proper preservation, marking and scientific analysis of evidence material in the investigation

and prosecution of crimes in such fields as firearms identification, the comparison and identification of toolmarks, chemistry, identification of questioned documents, metallurgy, comparative microscopy, instrumental detection of deception, the identification of fingerprints, toxicology, serology and forensic photography.

(b) The administrator and employes of the division of law enforcement services are not peace officers and shall have no power of arrest or to serve or execute criminal process. They shall not be appointed as deputy sheriffs and shall not be given police powers by appointment or election to any office. Laboratory employes shall not undertake investigation of criminal conduct except upon the request of a sheriff, coroner, medical examiner, district attorney, chief of police, warden or superintendent of any state prison, attorney general or governor. The head of any state agency may request investigations but in such cases the services shall be limited to the field of health, welfare and law enforcement responsibility which has by statute been vested in the particular state agency.

(c) Upon such request the laboratory shall collaborate fully in the complete investigation of criminal conduct within its competence in the forensic sciences including field investigation at the scene of the crime and for this purpose may equip a mobile unit or units.

(d) The services of the laboratory available to such officer shall include appearances in court as expert witnesses.

(e) The administrator may decline to provide laboratory service in any case not involving a potential charge of felony.

(f) The services of the laboratory may be provided in civil cases in which the state or any department, bureau, agency or officer of the state is a party in an official capacity, when requested to do so by the attorney general.

(4) The operation of the laboratory shall conform to the rules and policies established by the attorney general.

History: 1973 c. 272; 1977 c. 260; 1981 c. 314.

An evaluation of drug testing procedures. Stein, Lacking, Indriksons, 1973 WLR 727.

165.78 Information center; training activities. (1) The division of law enforcement services shall act as a center for the clearance of information between law enforcement officers. In furtherance of this purpose it shall issue bulletins by mail or its telecommunication system. The division shall at all times collaborate and cooperate fully with the F.B.I. in exchange of information.

(2) The division shall cooperate and exchange information with other similar organizations in other states.

(3) The division may prepare and conduct informational and training activities for the benefit of law enforcement officers and professional groups.

History: 1977 c. 260.

165.79 Evidence privileged. (1) Evidence, information and analyses of evidence obtained from law enforcement officers by the laboratory is privileged and not available to persons other than law enforcement officers nor is the defendant entitled to an inspection of information and evidence submitted to the laboratory by the state or of the laboratory's findings, or to examine laboratory personnel as witnesses concerning the same, prior to trial, except to the extent that the same is used by the state at a preliminary hearing. Upon request of a defendant in a felony action, approved by the presiding judge, the laboratory shall conduct analyses of evidence upon behalf of such defendant. No prosecuting officer is entitled to an inspection of information and evidence submitted to the laboratory by the defendant, or of the laboratory's findings, or to examine laboratory personnel as witnesses concerning the same, prior to trial, except to the extent that the same is used by the accused at a preliminary hearing. Employes of the laboratory who made examinations or analyses of evidence shall attend the criminal trial as witnesses, without subpoena, upon reasonable written notice from either party requesting such attendance. Nothing in this section shall limit the right of a court to order the production of evidence or reports pursuant to s. 971.23 prior to trial.

(2) Upon the termination or cessation of the criminal proceedings, the privilege of the findings obtained by the laboratory may be waived in writing by the administrator and the prosecutor involved in the proceedings. The employes of the laboratory may then be subpoenaed in civil actions in regard to any information and analysis of evidence previously obtained in such criminal investigation, but the laboratory shall not engage in any investigation requested solely for the preparation for trial of a civil matter. Upon appearance as a witness or receipt of a subpoena or notice to prepare for trial in a civil action, or appearance either with or without subpoena, the laboratory shall be compensated by the party at whose request the appearance or preparation was made in a reasonable amount to be determined by the trial judge, which fee shall be paid into the state treasury. In fixing such compensation the court may give consideration to the time

spent in obtaining and analyzing the evidence for the purposes of criminal proceedings.

(3) (a) In this paragraph, "local health department" means a city, county, city-county or multicounty health department.

(b) At any preliminary examination, a report of the laboratory's or local health department's findings with reference to all or any part of the evidence submitted, certified as correct by the administrator, the head of the local health department or a person designated by either of them, shall, when offered by the state or the accused, be received as evidence of the facts and findings stated, if relevant. The expert who made the findings need not be called as a witness.

History: 1977 c. 260; 1979 c. 221; 1981 c. 20.

165.80 Cooperation with other state departments. For the purpose of coordinating the work of the laboratory with the research departments located in the university of Wisconsin, the attorney general and the university of Wisconsin may agree for the use of laboratories and physical facilities in the university and the exchange and utilization of personnel between the laboratory and the university. The university and crime laboratory cooperation council shall act in an advisory capacity to the attorney general.

165.81 Disposal of evidence. (1) Whenever the administrator is informed by the submitting officer or agency that physical evidence in the possession of the laboratory is no longer needed the administrator may, unless otherwise provided by law, either destroy the same, retain it in the laboratory or turn it over to the university of Wisconsin upon the request of the head of any department. Whenever the administrator received information from which it appears probable that such evidence is no longer needed, he may give written notice to the submitting agency and the appropriate district attorney, by registered mail, of his intention to dispose of the evidence and if no objection is received within 20 days after such notice was mailed he may dispose of such evidence.

(2) Any electric weapon, as defined in s. 941.295 (4), in the possession of the laboratory shall either be destroyed or turned over to an agency authorized to have electric weapons under s. 941.295 (2).

History: 1981 c. 348.

165.83 Criminal identification, records and statistics. (1) DEFINITIONS. As used in this section and s. 165.84:

(a) "Division" means the division of law enforcement services.

(b) "Law enforcement agency" means a governmental unit of one or more persons employed full time by the state or a political subdivision of the state for the purpose of preventing and detecting crime and enforcing state laws or local ordinances, employes of which unit are authorized to make arrests for crimes while acting within the scope of their authority.

(c) "Offense" means an act which is a felony, a misdemeanor or a violation of a city, county, village or town ordinance.

(2) The division shall:

(a) Obtain and file fingerprints, descriptions, photographs and any other available identifying data on persons who have been arrested or taken into custody in this state:

1. For an offense which is a felony.

2. For an offense which is a misdemeanor or a violation of an ordinance involving burglary tools, commercial gambling, dealing in gambling devices, contributing to the delinquency of a child, dealing in stolen property, controlled substances under ch. 161, firearms, dangerous weapons, explosives, pandering, prostitution, sex offenses where children are victims, or worthless checks.

3. For an offense charged as disorderly conduct but which relates to an act connected with one or more of the offenses under subd. 2.

4. As a fugitive from justice.

5. For any other offense designated by the attorney general.

(b) Accept for filing fingerprints and other identifying data, taken at the discretion of the law enforcement agency involved, on persons arrested or taken into custody for offenses other than those listed in par. (a).

(c) Obtain and file fingerprints and other available identifying data on unidentified human corpses found in this state.

(d) Obtain and file information relating to identifiable stolen or lost property.

(e) Obtain and file a copy or detailed description of each arrest warrant issued in this state for the offenses under par. (a) but not served because the whereabouts of the person named on the warrant is unknown or because that person has left the state. All available identifying data shall be obtained with the copy of the warrant, including any information indicating that the person named on the warrant may be armed, dangerous or possessed of suicidal tendencies.

(f) Collect information concerning the number and nature of offenses known to have been committed in this state, the legal action taken in connection with such offenses from the inception of the complaint to the final discharge of the defendant and such other information as may be useful in the study of crime and the administration of justice. The administrator of

DEPARTMENT OF PUBLIC SAFETY

POSITION PAPER

Support

Passage of this bill will result in an increase in the number and quality of arrests and convictions in felony cases statewide. Construction of this Capital Project will mark a major shift in direction for the State Troopers from a limited service Crime Lab to a full service professional Forensic Laboratory designated to serve all law enforcement agencies statewide. This project will consist of 17,000 square feet of space for testing and analysis, and equipment to establish a full-service Statewide Crime Laboratory.

Within the last decade a series of Supreme Court decisions relative to search and seizure, interrogation and confessions has had the effect of limiting the scope of permissible investigative activities by law enforcement agencies. This situation, in turn, has resulted in the increased attention to the use of physical evidence in criminal investigations, and the subsequent development of crime laboratories to analyze this evidence throughout the nation.

The application of the technologies and techniques of the natural and physical sciences to items of evidence found at a crime scene is an increasing part of modern investigations and courtroom trials. The expectation that these sciences are devoid of prejudice makes the results of crime laboratory tests and analyses an often critical part of judicial proceedings. It also confers upon crime laboratories the responsibility for the highest degree of professionalism in their work. The availability of physical facilities is the essential first step in making these services available to Alaska's state & local law enforcement agencies. All services performed will be at no cost to the Troopers and the 25 or so local departments throughout the state.

Beyond establishing drug identification and fingerprint comparisons within the existing limited Laboratory, Alaska has no crime laboratory with the broad capabilities needed to analyze clothing from a rape, compare shell casings to bullets found at a homicide, analyze carbon residue from a suspected arson fire for traces of accelerants, compare blood characteristics of blood on an assault victim to the blood of a suspect, compare pry marks on a window casing with a tire iron found in possession of a suspect, and the many additional tests required for modern, effective law enforcement investigations. The existing "crime lab" is located in crowded quarters in the basement of the State Troopers headquarters building in Anchorage.

Lack of additional personnel and physical limitations prevent its expansion. Alaska is the only state that does not yet have a full service lab to assist its local, as well as state, law enforcement agencies.

The greatest reason to develop a full service Crime Lab in Alaska is the increasingly longer time required to receive results of tests now routinely being sent to the FBI laboratory in Washington, D.C. The time required for laboratory tests of a routine nature from the FBI now require from four to six months. The reasons for this situation are a general budget tightening among federal agencies and an ever increasing number of requests nationwide for tests by the FBI laboratory. The problem of long turn-around sometimes conflicts with the Alaska Supreme Court Rule, which requires that the trial begin within 120 days following arrest, barring any delays by the judge as may be requested by either side. This problem is expected to increase in the future. Increasing turn-around time is also occurring with the very limited capabilities of the existing Trooper laboratory. Currently the average time required for test results is several weeks for just drug-related tests. No room for expansion within current facilities is available or practical.

During the 1983 Legislative session the legislative appropriated $402.0 to cover the design and engineering costs of this project (Chapter 28, SLA 83). This stage of the project has proceeded on schedule and current cost estimates by the architects have confirmed our original estimate of $5,603.0.

An extensive study was made during FY 82 and FY 83 concerning the needs for a Statewide Crime Laboratory by the Department of Public Safety personnel. This study is too exhaustive to be made part of this bill analysis, however, copies may be obtained by contacting Colonel Michael C. Kolivosky, Division of Alaska State Troopers, P.O. Box 6188 Annex, Anchorage, AK 99502 (269-5646), or through the Commissioner's office in Juneau.

Robert J. Sundberg
Commissioner

U.S. Department of Justice

Federal Bureau of Investigation

In Reply, Please Refer to
File No.

Post Office Box 100560,
Anchorage, Alaska 99510

January 20, 1984



The Honorable Charlie Bussell
Chairman
Committee on the Judiciary
Alaska House of Representatives
Juneau, Alaska

Dear Mr. Bussell:

I am writing today concerning House Bill 487, which provides for the construction of a State Crime Laboratory, and for first year funding.

Although I have not read the Bill, and thus cannot state that I unequivocally support each of its provisions, I can surely state that the FBI strongly supports the establishment of effective basic-service crime laboratories at state and local levels.

You might be interested in a recounting of events in what might be the most simple exchange between Alaska law enforcement/prosecutive authorities and the FBI Laboratory, upon whose forensic science services Alaska now depends.

An Alaska law enforcement agency dispatches items of clothing in a sexual assault case to the Laboratory, and requests examination of fluid stains on the items. The Laboratory conducts the requested examinations, and advises the Alaska agency of its results. The District Attorney deems these results to be vital to a successful prosecution of his case, and requests the FBI Laboratory examiner to travel to Alaska to testify in trial in an Alaska Superior Court. (This occurred 50 times in the Fiscal Year ending September 30, 1983; 51 times in Fiscal Year 1982.)

My associates in the FBI Laboratory advise me that a "testimony trip" to Alaska is generally regarded as a five day committment. One day of travel in each direction, and three days in Alaska consumed by pre-trial discussions with the prosecutor, waiting to testify, and actual time on the witness stand.

Here is a tabulation of the direct cost to the FBI attendant upon such a series of events (again in a case of minimum complexity).

Salaries: FBI Laboratory technician for two days consumed in examination, plus FBI Special Agent Examiner, one day on examination and five days on testimony trip - $1,296.

Per diem costs: Special Agent Examiner, five days in Alaska at lowest federal per diem rate in Alaska ($92) totalling $460.

Air fare: Washington, D.C. to Anchorage and return at U. S. Government contract rate of $606.

A total of these three primary cost items is:

	$1,296
	460
+	606
	$2,362.

This figure, of course, does not include incidental expenses nor, more importantly, the substantial personnel and facilities "overhead" costs attendant upon the operation of the FBI Laboratory.

One can readily see that even a relatively uncomplicated matter becomes a most expensive proposition, and that the existence of a state crime laboratory would substantially reduce salary, travel, and per diem costs in most cases. Further, I can assure you that a small percentage of our Laboratory's work results in testimony. In the vast majority of the cases, the investigation and prosecutive action is completed without the necessity of examiner travel. The latter cases still represent a most substantial expenditure of FBI salary and overhead expenses.

Due to the absence of a state crime laboratory, and based on its population, Alaska is the greatest per capita user among the states of the services of the FBI Laboratory. Even without regard to population, Alaska is among the leaders. Thus, from the FBI's standpoint, we are rendering our greatest level of service to the state most distant from our Laboratory.

From time to time an item of information appears which indicates that the FBI intends to, or may be directed to, reduce its level of service to state and local agencies and/or begin charging for Laboratory services. I would be less than candid if I did not say that the FBI has always resisted these concepts in the past, and intends to continue to resist them. I see nothing in the future to indicate that the FBI Laboratory will

not stand ready for years to come to continue to accommodate, on a cost free basis, every legitimate request from state and local agencies for forensic science examinations. We would much prefer, however, that state and local agencies operate basic-service laboratories and use the services of the FBI Laboratory only in those cases in which the examinations involve the most sophisticated, expensive, and unusual equipment needs and/or areas of examiner expertise.

I have been informed that approximately 47 of the 51 testimony trips taken to Alaska by FBI Special Agent Examiners in Fiscal Year 1982 involved basic examinations in such areas as firearms, documents, and serology examinations. I would expect that most, if not all, of those 47 examinations could have been conducted by the basic-service laboratory envisioned by the Department of Public Safety.

The FBI operates a fine, expansive training program for state and local forensic science personnel on a no-cost basis at our training academy at Quantico, Virginia. We stand ready to serve Alaska in this regard. I will personally attempt to insure that whenever possible prospective attendees from Alaska "go to the head of the line" waiting for positions in those training classes. My superiors in Washington would almost certainly regard that preferential treatment as a fair trade, in recognition of Alaska's willingness to assume a greater share of the burden which until now has been equally borne by the taxpayers throughout the nation.

I support House Bill 487, and urge its favorable consideration.

Please do not hesitate to contact my office, directly or through Commissioner Sundberg, if you require further information from the FBI.

Sincerely yours,

Lawrence J. Nelson
Special Agent in Charge

cc: Commissioner of Public Safety
Representative Walt Furnace

U.S. Department of Justice

Federal Bureau of Investigation

In Reply, Please Refer to
File No.

Post Office Box 100560
Anchorage, Alaska 99510

January 20, 1983

The Honorable Walt Furnace
Alaska House of Representatives
Juneau, Alaska

Dear Mr. Furnace:

Enclosed is a copy of a letter I sent to Mr. Charlie Bussell concerning House Bill 487, which provides for the construction of a State Crime Laboratory, and for first year funding.

Sincerely yours,

Lawrence J. Nelson
Special Agent in Charge

Enclosure

75 1908 FBI 1983

FBI/DOJ

Alaska Association Chiefs of Police



RECEIVED
JAN 9 1984

January 4, 1984

Honorable Mitch Abood
Alaska State Legislature
Pouch V (MS 3100)
Juneau, Alaska 99811

Dear Representative Abood,

The membership of the Alaska Association of Chiefs of Police has voted unanimously that establishment of a State Crime Lab is a priority for the State of Alaska.

Attached is a copy of the resolution passed in support of this project. We are requesting your assistance in the passage of a bill that would result in construction of a State Lab.

Richard A. Ross
Secretary/Treasurer

RAR/lo

ALASKA ASSOCIATION CHIEFS OF POLICE

RESOLUTION 84-1

WHEREAS, State and Federal Court decisions have required higher standards of evidence over the years, standards that require examination and testing of available physical evidence; and

WHEREAS, Alaska, the only State without its own crime laboratory, relies on the F.B.I. laboratory to process and analyze evidence; and

WHEREAS, increasing delays have been experienced in receiving results from the F.B.I. laboratory resulting in follow-up investigation and case prosecution delays; and

WHEREAS, it would be a waste of tax dollars for each law enforcement entity in the State of Alaska to attempt to provide its own laboratory resources, and would indeed be prohibitive for all but the very largest agencies to do so; and

WHEREAS, the 1983 legislature appropriated funding for the engineering and architectural designing of a State Crime Laboratory, which work is presently underway; and

WHEREAS, Representative Walt Furnace has prefiled an Appropriations Bill that would fund a full service crime laboratory that would provide for testing and analysis of crime scene evidence for all law enforcement agencies in the State of Alaska; NOW THEREFORE BE IT RESOLVED that,

The Alaska Association of Chiefs of Police requests that all legislators give their support to the passage of an appropriations bill that would provide for construction of a full-service crime laboratory to serve all law enforcement agencies in the State of Alaska.

ALASKA PEACE OFFICER'S ASSOCIATION
MAT-SU CHAPTER
P.O. BOX 1079
PALMER, ALASKA 99645

November 25, 1983

Lonnie Kular
President
Alaska Peace Officer's Association

Dear Lonnie:

As you will note from the attached resolution, the Mat-Su Chapter of A.P.O.A. is contacting all legislators representing our area to urge them to support the appropriation measure for the State Crime Lab that has been pre-filed by Representative Walt Furnace of Anchorage, for the 1984 legislative session.

It is our opinion that in view of the declining revenues in the State Treasury, the success of funding the construction of the Crime Lab rests in large measure upon the shoulders of all of us in law enforcement in Alaska who will benefit from the services the lab will provide.

With this thought in mind, our chapter would like you to contact the other A.P.O.A. Chapters, asking that they join with us in a Statewide effort to obtain funding for constructing the lab, by contacting their area legislators before the 1984 session and sending them a similar resolution, urging their support for the lab.

Also attached is a brief paper that outlines the lab project. Your assistance in this project will help all of us to obtain a Crime Lab from which we will all benefit.

Sincerely,

Rollie A. Port
President
Mat-Su Chapter, A.P.O.A.

Attachment

cc:
Senator J. Kerttula
Rep. Ron Larson
Rep. Barbara Lacher

RESOLUTION

WHEREAS Law Enforcement Agencies in the State of Alaska experience the continued pressures of increasing population and consequent increase in numbers of crimes; and

WHEREAS There is an increasing need to present a high degree of proof of guilt concerning the accused that can best be accomplished by the careful testing and analysis of evidence found at the scene of a crime; and

WHEREAS The historical dependence upon the FBI laboratory to provide analyses of evidence is increasingly causing delays in trials and preventing effective followup investigations because of Longer and longer delays in receiving test results; and

WHEREAS Alaska does not now have a Criminalistics Laboratory of the nature required to analyze the items of evidence commonly found at the scene of crimes, which analysis is crucial to effective prosecution of the accused; and

WHEREAS The Alaska Legislature during the 1983 session provided architectural and design funding, which efforts are well underway; and

WHEREAS An appropriations measure has been prefiled by Representative Walter Furnace of Anchorage in the amount of $5.603 million for the first full-service Crime Laboratory for Alaska law enforcement agencies which will analyze their evidence at no cost to them, thereby benefiting them specifically, and provides for increased safety generally for the citizens of Alaska,

NOW THEREFORE BE IT RESOLVED THAT THE Mat-Su Chapter of the Alaska Peace Officers Association duly constituted, hereby urges all area Legislators to extend full support for the passage of the appropriations bill for construction of Alaska's Crime Laboratory.

_____

President, Mat-Su Chapter, APOA

WILLIAM G KLEIN
CHIEF OF POLICE
106TH SESSION

WRANGELL POLICE DEPARTMENT

CITY OF WRANGELL, ALASKA
POST OFFICE BOX 531 • WRANGELL, ALASKA 99929
(907) 874-3304

January 30, 1984

Representative Ron Wendte
Pouch V
Juneau, Alaska 99811

Dear Representative Wendte:

In response to your letter of inquiry dated 01-26-84, regarding the proposed State Crime Lab in Anchorage, I submit the following for your consideration.

Without a doubt the most significant factor in consideration of support of the proposed State Crime Lab is a time factor. Presently this agency, as other agencies within this state, are required to forward all evidence which requires sophisticated analysis to the FBI Crime Lab in Washington, D.C. Through experience I can attest to the fact that results of such analysis by the FBI Crime Lab take eight (8) to eleven (11) weeks from time the evidence is submitted.

I'm sure you can appreciate the frustration experienced when investigating a major case and have to wait eight to eleven weeks for the results. On many cases we have had this time factor proven critical to the investigation as the suspect(s) have left the area and/or state prior to receiving the analysis results. With the realization of a State Crime Lab the important time element time factor can be greatly suppressed with results within a matter of a few days vs weeks.

I fully support this endeavor and hope that you will give this proposal favorable consideration and support.

Sincerely,

William G. Klein
Chief of Police

WGK:rn

Tanana Dept. of Public Safety
Public Safety Bldg./Box 17
Tanana, Alaska 99777
(907) 366-7158

Police Fire/Rescue Emergency Medical Services

Emergency: 7911
Business: 7158/7247

Director
Ben Maxon

Mr. James Messick
Assistant to the Commissioner
P.O. Box 6188 ANNEX
Anchorage, Alaska 99502

December 14, 1983

Dear Jim,

Thank you for your recent letter concerning the State Crime Lab and Representative Furnace's Bill. First, let me say that I fully support this measure and am willing to back your efforts. Secondly, I, too, have experienced problems with the current method of having criminalistic tests performed on evidence obtained from a crime scene. At present, all our evidence is packaged & sent directly to the FBI for analysis. Unfortunately, once you send it off, through the mail system, you have to cross your fingers and hope that it (1) reaches the FBI in a timely manner, (2) is not set aside by the FBI due to whatever reason and (3) that it is sent back to you before the trial date.

It is my belief that a great deal of time and effort is waisted by lengthy delays in receiving test results; as it limits the scope of an investigation and decreases the value of evidence itself.

Another factor in support of the State Crime Lab is COST. We are a small department with a limited budget. We do not have the funds to send our evidence off to private laboratories as such tests are usually expensive. At present, our only alternative is to send our evidence to the FBI.

Indeed, Alaska needs its own Crime Lab to assist both State & local agencies in analysing crime scene evidence. With our ever growing population and increasing crime trend, how can we continue without it. The Crime Lab is a tool, indeed an instrument, that Law Enforcement Officers must have inorder to perform their function as a FACT gathering agency. Without carefully analyzed evidence resulting in accurate and irrefutable test results, how can we present the courts with the PROOF necessary to determine GUILT or INNOCENCE!

I intend to contact our area Representative and discuss this matter at length. Would you please forward a copy of the State DPS's September 1982 report entitled "The Development of a Full Service Forensic Laboratory for Law Enforcement in Alaska.

I appreciate your efforts, Jim. One can see that you are truly dedicated to the betterment of Law Enforcement in our State as evidenced by your long relationship with the Justice System.

I don't remember whether I thanked you or not for sending me a copy of your study on the Public Safety functions on the Pribiloff Islands. If not, thank you very much. I used your concept and that of the North Slope Borough to assist me in developing our own Public Safety Operation here in Tanana.

Again, thank you for your recent letter and continued support. If I can be of any further assistance, let me know.

Sincerely,

Ben Maxon, Director
Tanana Dept. of Public Safety

Cordova Department of Public Safety
William T. Bagron, Chief

P. O. BOX 1210 : CORDOVA, ALASKA 99574

December 13, 1983

The Honorable Richard I. Eliason
P. O. Box 143
Sitka, Alaska 99835

Dear Senator:

Well, it's just about that time again for the start of another legislative session.

I am writing to remind you that "phase one" of seeing the State-wide crime laboratory become a reality is underway.

As you are aware, the 1983 Session of our Legislature appropriated $402,000 for engineering and architectural pruposes. The contract awarded to GDM Associates of Anchorage.

I understand Representative Walt Furnance prefiled an appropriations bill to fund the lavoratory construction cost.

It is imparative that this bill be passed by both houses and is signed by Governor Bill Sheffield. Also, that the bill's immediate effective date is a very important aspect, as the funds would be available at that time. If not, we are looking at July 1, 1984; the new fiscal year, 1985.

If we get the funding as set out in Mr. Furnance's bill, construction could start in the srping. If the funding is not allocated at the beginning of your new session, it would probably mean another year of delay due to weather.

We at Cordova Police Department appreciated your assistance last year in the "phase one" appropriation, and look forward to your support during this session on this important issue of mutual interest.

Best wishes for the holidays.

Sincerely,

William T. Bagron
Chief

HB
509

AMENDMENT #1

OFFERED IN THE HOUSE: BY: Rep. Bussell

To: Judiciary Committee HOUSE BILL No. 509 (L&C)

SENATE BILL No. _____

PAGE: 1 LINE: 28

(1) intentionally, recklessly, or through [GROSS] negligence,

AMENDMENT

OFFERED IN THE HOUSE: BY: Rep. Bussell

TO: Judiciary Committee HOUSE BILL No. CSHB 509 (L&C)

SENATE BILL No. _____

PAGE: 2 LINE: 3 & 4

(b) The delivery of aviation fuel by aviation fuel suppliers into drums may not be considered, by itself as a matter of law, to constitute conduct described in (a)(1) of this section.

FISCAL NOTE

Revision Date:

REQUEST

Bill/Resolution No.: CSHB 509(L&C)
Title: "An Act relating to aviation fuel refiners;..."
Sponsor: Repr. Hurlbert
Request: House Labor & Commerce
Date of Request: 3/28/84

FISCAL DETAIL

Agency Affected: Department of Law
Program Category Affected: General Government
BRU, Program or Subprogram(s) Affected: Legal Services Operations

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 84	FY 85	FY 86	87	FY 88	FY 89
OPERATING						
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 SUPPLIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS						
800 MISCELLANEOUS						
TOTAL OPERATING	0	0	0	0	0	0
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND	-0-	-0-	-0-	-0-	-0-	-0-
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS:

FULL-TIME	-0-	-0-	-0-	-0-	-0-	-0-
PART-TIME						
TEMPORARY						

SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

ANALYSIS: Attach a separate page for analysis

Prepared By: Richard I. Pegues, Director (Richard I. Pegues) Phone: 465-3672
Division: Administrative Services Division Date: 3-28-84

Approved by Commissioner: Norman C. Gorsuch (Richard I. Pegues/for) Date: 3-28-84
Agency: Department of Law

Distribution (by Agency preparing fiscal note):
- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)

12/1/83

ALASKA STATE LEGISLATURE
HOUSE OF REPRESENTATIVES
RESEARCH AGENCY

Pouch Y, State Capitol
Juneau, Alaska 99811
(907) 465-3991

January 12, 1984

TO: Representative John Cowdery
ATTN: Merrill Sikorski

FROM: Nancy Pease *Nancy Pease*
Legislative Analyst

RE: Product Liability Laws for Aviation Gasoline
Research Request 83-249

Merrill Sikorski of your office requested information regarding product liability for aviation gasoline in other states. He expressed a special interest in legislation that would limit the liability of suppliers and distributers of aviation gasoline.

I contacted Chevron USA, the Office of Air Worthiness Standards of the Federal Aviation Administration (FAA), the Aircraft Owners and Pilots Lobbying Association, and the aeronautics and consumer protection agencies in Alaska and five other states. It appears that no states have laws which limit product liability for aviation gasoline. However, several of the agencies I contacted mentioned other issues regarding the quality control of aviation fuel which may be of interest to you.

According to Thomas Horess, manager of the Propulsion Branch of the FAA's Office of Air Worthiness Standards, the FAA has seen no need to federally regulate aviation gasoline in the past. However, since August of 1982, the FAA has authorized the use of high octane automobile fuel in 12 or more models of general aviation engines and airplanes. As a result, concern has increased in several states over liability for auto fuel used in aviation. Automobile fuel normally is not subject to the strict quality controls that assure the purity of aviation gasoline. The FAA stipulates that automobile gas used in aircraft be handled according to the American Society of Testing and Materials (ASTM) standards for aviation gasoline. However, Mr. Horess said that the gasoline industry has difficulty controlling product quality at the gas station distribution level, a problem that has raised concern about product liability for the fuel suppliers.

Pat Chapman, a researcher for the Aircraft Owners and Pilots Lobbying Association, also mentioned the issue of product liability for automobile fuel used in aviation. Mr. Chapman noted that the fuel manufacturers are increasingly concerned over major settlements and awards in product liability lawsuits, but he could find no legislation addressing the issue in other states.

Jim Day of Chevron's public affairs office in Anchorage reported that he was not aware of any efforts to legislate limits to liability for aviation fuel. However, Mr. Day mentioned that Chevron had refused to supply some remote fueling sites in Alaska in instances where facilities were inadequate to assure against fuel contamination. According to Mr. Day, general aviation in Alaska involves unique fuel liability situations which are not likely to have arisen in other states.

Mr. Sikorski indicated that he thought Ohio might have a law limiting the product liability of aviation fuel, but I could find no such law in the Ohio Revised Code or through talking with numerous Ohio state agencies. I contacted aeronautics and consumer protection agencies in four other states with similar negative results.

While no states have limited the liability for fuel products, approximately 15 states have adopted ASTM quality standards for the production and handling of petroleum products, and a few states have developed fuel inspection programs.[1] Otherwise, states have little involvement in regulating fuel quality.

I am still trying to contact the Product Liability Defense Bar, an association of attorneys based in Washington D.C. If they can provide any further information on this issue, I will certainly pass it on to you. However, it appears that no states have passed legislation to limit product liability for aviation gasoline.

If we can assist you further on this or other issues, please feel free to contact us.

NP

---

[1] Brad Parker, investigator for the Alaska Consumer Protection Agency, telephone conversation, December 20, 1983.

MEMORANDUM

RE: HB 509 - Aviation Fuel Liability

The importance of aviation, both commercial and general, to Alaskan communication and commerce cannot be overstated. It is common knowledge that more air miles per resident are flown in Alaska than in any other state; indeed, aviation is the only mechanism by which modern commerce and communication can be undertaken to the vast majority of Alaskan locations.

1. Marketing Aviation Fuels in Alaska.

In order to fuel the ever growing aviation traffic in Alaska, it has become necessary to develop an enormous marketing system to distribute the relatively few gallons of aviation fuel to many geographically diverse locations across the state. However, because of the increasing exposure to liability from the sale of aviation products, many companies have removed themselves from the Alaskan market. Due to the relatively low volume, and geographically diverse, aviation fuel market in Alaska, the increased exposure to liability has resulted in a declining incentive to market aviation fuel in the state.

This is particularly true with aviation gasolines, as opposed to jet fuels. For the most part, jet fuels are used in commercial aviation where the volume sales are high, and the geographical distribution is not as great. Aviation gasoline constitutes a relatively minor portion of the total market for aviation fuels. On the other hand, because of its low volume, the relative multitude of individual sales, and the geographical diversity of the ultimate customers, aviation gasolines account for the greatest exposure to liability in the aviation fuel market.

For example, in 1981, Chevron U.S.A. Inc., the largest marketer of aviation fuels in the state of Alaska, sold a total of 375 million gallons of aviation fuel in the state. Of that total, jet fuel sales accounted for 360 million gallons. Only 15 million gallons of aviation gasoline were sold. As stated before, although aviation gasolines account for only 4% of Chevron's annual aviation fuel sales, these sales provide by far the greatest exposure to liability.

2. Aviation Fuel Refiners - Unprecedented Exposure to Liability.

Aviation fuel refiners are at an unfair disadvantage with respect to the sale of their products as opposed to the sale of other products by other companies. The exposure to liability is much greater than with almost any other product because of the serious consequences of any aviation accident.

The court's development of the strict liability theory for defective products has created a legal situation wherein the refiner is virtually guilty until he proves himself innocent.

Because most refiners are large companies, the Deep Pocket Theory invites plaintiffs' attorneys to join them in actions even were liability is unlikely. Refiners may at times find it more economical to settle a case than spend thousands in defense, even when they believe there is no liability.

Even where the refiner is successful in defending such cases, the court's award of costs and attorneys' fees rarely represents even one-half of the actual expenditures. This, of course, does not even consider the in-house costs of the refiner in investigative and administrative endeavors related to the litigation. In addition, where the court makes a cost award for attorneys' fees and costs incurred in defending such an action, collection of the award is never guaranteed and often is not possible.

Examples of the effect of this increased exposure to liability are not difficult to find in Alaska. In 1980, Texaco quietly withdrew from the aviation fuel market because of the potential liability it faced. This removal prompted a letter from Governor Hammond to Chevron U.S.A. Inc., asking that Chevron do everything possible to remain in the aviation fuel market, and inquiring as to whether there might be any assistance the State of Alaska could render in that regard.

Union Oil Company withdrew from the aviation fuel market in Southeast Alaska sometime ago for the same reason. Others may do the same thing in Southcentral Alaska as a result of the Spernak Airways incident.

In that case, a plane carrying four people crashed on take-off at Merrill Field in Anchorage. It was determined that the cause of the crash was water in the gas lines of the airplane. According to the investigator for the National Transportation Safety Board (NTSB), the source of the water which contaminated the plane's fuel lines was the storage tanks kept by Spernak Airways at Merrill Field. Spernak Airways maintained a $500,000 general liability policy, and has settled the case for the policy limits. However, in spite of the NTSB's findings that the source of the water was the Spernak storage tanks, Union Oil was sued for damages in the amount of $5,000.000.

3. The Use of Barrels in the Distribution of Aviation Fuels.

In an attempt to reduce its exposure to liability, Chevron has declined to place aviation fuel in used barrels for distribution to the popular aviation market. Chevron continues to market aviation fuels in new barrels only in Alaska, and only as an accommodation to the unique reliance this state has on general aviation in remote areas where the most practical means of supply is by barrel. In all other states, Chevron will not sell aviation fuel in a barrel.

In this regard, it should be noted that there is no such thing as a "sealed barrel." All barrels, whether new or used, are susceptible to moisture contamination particularly when they are stored outside in the widely fluctuating temperatures encountered in Alaska. During such fluctuations, when moisture is present on top of the barrel near the bung hole, moisture can be pulled right through the threads on the bung with the expansion and contraction of the barrel. There in thus no guarantee that uncontaminated, clean, dry fuel purchased in a new barrel will remain so when it is stored improperly.

Typical supply routes of aviation fuel in rural Alaska include the following:

A) Direct purchase by the consumer from a Chevron-owned bulk plant - such as the bulk plants located at Kotzebue, Nome and Bethel.

B) Purchase by a Chevron aviation fuel dealer from a Chevron-owned bulk plant and sale by the Chevron aviation fuel dealer to the consumer.

C) Purchase by anyone acting as a "middleman" from a Chevron-owned bulk plant or a Chevron aviation fuel dealer and sale by the middleman to the consumer or to another middleman - such an ultimate sale by the middleman would be of unbranded product.

Chevron has learned that some of its dealers and some "middlemen" who buy aviation fuel from Chevron have (while not be under any obligation to do so) adopted Chevron's policy of declining to deliver aviation fuel in used drums supplied by the customer.

A recent example may help to illustrate the complex supply routes and the impact on rural residents.

Representative Hurlbert lives in Sleetmute which is about 200 miles up the Kuskokwim River from Bethel. The source of petroleum products including aviation gasoline, for this river system is Chevron's bulk plant in Bethel. Avgas can be purchased from Chevron FOB Bethel in new drums or 5 gallon pails or in bulk quantities delivered to a customer's barge or tank truck. There are two barge companies currently serving the river communities.

Sometime last fall Representative Hurlbert apparently had hauled a number of used drums down the river expecting to have the barge operator fill them directly from storage tanks or the barge. The barge operator was not a Chevron aviation fuel dealer but had purchased aviation gas in bulk from Chevron at Bethel. The barge operator, as an independent businessman, apparently adopted Chevron's policy regarding used drums and refused to fill them. Representative Hurlbert had to wait until bulk product was pumped ashore into another customers' tank then move his barrels to that location for filling.

4. Alternate Marketing Options

It should also be noted that Chevron has implemented a new program in the lower 48 states concerning the sale and distribution of aviation fuels. This program could prove deleterious to the flow of Alaska commerce if implemented in this state.

In the lower 48 states, Chevron will deliver aviation fuel only in 10,000-gallon deliveries and only to its own airport dealers that meet its quality specifications. All other wholesale purchasers must take delivery of such fuels in minimum 10,000-gallon allotments at a Chevron bulk plant when Chevron has certified that the carrying vehicle is appropriate for the transport of aviation fuels.

TESTIMONY OF GEORGE DAY
OF CHEVRON U.S.A. INC. BEFORE
THE OUSE LABOR AND COMMERCE COMMITTEE
CONCERNING HOUSE BILL 509
FEBRUARY 2, 1984

Good Morning. My name is George Day, I am the Public Affairs Manager for Chevron U.S.A. Inc. in Anchorage. Chevron markets a complete line of petroleum products throughout Alaska and is the largest marketer of aviation fuels in the state. In 1983, Chevron sold a total of 160 million gallons of aviation fuel in Alaska. Jet fuel sales accounted for 147 million gallons, and only 13 million gallons of aviation gas were sold. For this reason, Chevron is vitally interested in the passage of HB 509.

Chevron has developed an extensive distribution system for supplying aviation fuels throughout the State of Alaska. Chevron recognizes that its primary responsibility is to deliver uncontaminated fuel to the next person in the distribution chain. Quality control is an ongoing process that requires constant supervision and the expenditure of much time and money. Nevertheless, inspection of the fuels for contaminants and for water is relatively easy. In order to demonstrate this, we have brought samples of jet fuel, Avgas 80, and Avgas 100.

[Demonstrate inspection process]

A description of our distribution process to the urban areas and to the bush areas of Alaska should help the committee members of understanding the liability problems faced by an aviation fuel refiner.

[Describe Anchorage process]

[Describe Bethel process]

The development of the theory of strict liability in products liability cases has greatly expanded the liability exposure of an aviation fuel refiner to fuel liability. As you may know, the plaintiff in a strict liability lawsuit need only demonstrate that he was sold a "defective product" by the defendant which caused damage to the plaintiff. The plaintiff is not required to demonstrate that the defendant's conduct in manufacturing or maintaining the product was negligent.

The essential distinction between aviation fuel and other products for which strict liability is imposed is that most other products such as automobiles or furniture or even airplanes are static in their quality once they have been manufactured. Generally speaking, barring unforeseen events, other products remain in the same form as they were immediately after their manufacture. However, the quality of aviation fuel is always subject to incremental change depending on the quality of the handling thereof.

At each stage of the distribution process, contamination is a distinct possibility that must carefully be guarded against. Fuel that is clean and dry going into a storage tank can come out wet, dirty, and/or contaminated depending on the quality of the storage and the method of handling. Once a

refiner has placed aviation fuel in the storage tanks of another person not under the refiner's control, we believe that it is unfair to hold the refiner liable for the continued quality and integrity of that fuel.

Nevertheless, because most refiners are large companies, plaintiffs' attorneys tend to join them in actions even where liability may be unlikely. Refiners may at times find it more economical to settle the case than spend thousands in defense, even when they believe there is no liability. In response to this increased exposure to liability, companies have quietly withdrawn from the aviation fuel market in Alaska. Texaco did so in 1980, and Union Oil Company has pulled out of the aviation fuel market in Southeast Alaska.

Barrels pose a particular dilemma for the refiner. Chevron continues to market aviation fuels in new barrels only in Alaska, and only as an accommodation to the unique reliance the state has on general aviation in remote areas where the most practical means of supply is by barrel. In all other states, Chevron does not sell aviation fuel in a barrel.

It is important to realize that there is no such thing as a "sealed barrel." All barrels, whether new or used, are susceptible to moisture contamination particularly when they are stored outside in the widely fluctuating temperatures encountered in Alaska. During such fluctuations, when moisture is present on

the top of the barrel near the bunghole, moisture can be pulled right through the threads on the bung with the expansion and contraction of the barrel. There is thus no guarantee that uncontaminated, clean, dry fuel purchased in a new barrel will remain so when it is stored improperly.

Obviously, used barrels pose additional problems beyond subsequent contamination. No dealer has the facilities to complete an accurate inspection of barrels prior to refilling them. For these reasons, Chevron declines to refill used barrels with aviation fuel.

These problems combine to create strong incentive to discontinue the present marketing system in the state. For example, in the lower 48 states, Chevron will deliver aviation fuel only in 10,000-gallon deliveries and only to its own airport dealers who meet its quality specifications. All other wholesale purchasers must take delivery of such fuels in minimum 10,000-gallon allotments at a Chevron bulk plant after Chevron has certified that the carrying vehicles are appropriate for the transport of aviation fuels.

It is imperative that the State of Alaska take immediate steps to provide a fair economic climate that would allow the continued distribution of aviation fuels to all areas of the state.

The sole purpose of HB 509 is to create a fair and reasonable business climate for aviation fuel refiners by removing unreasonable exposure to liability. This will go a long way toward assuring adequate supplies to remote geographical locations and to individual customers.

The means selected to achieve this objective are carefully tailored to meet the needs that have been stated. Under HB 509, refiners are still subject to liability when they place fuel directly into aircraft. This is as it should be, since the refiners have total control of the quality of the product up to final delivery.

Except for gross negligence, recklessness or intentional conduct, the refiner is not liable where the fuel is delivered other than directly into an aircraft. The important point to note here is that once title and possession have passed from a refiner, the refiner no longer has control over the integrity of the fuel and should not be held liable therefor.

Aviation fuel refiners will not dismantle quality control programs merely because of the passage of this legislation. It should be again emphasized that refiners are still fully exposed to liability where they fuel airplanes directly. Thus, the dismantling of the quality control program which results in the delivery of contaminated fuel into an aircraft by a refiner would still fully expose the refiner to liability.

Furthermore, even where the deliveries are not made directly into an aircraft, quality control programs will remain. The dismantling of a quality control program, and the use thereafter of little or no care in the manufacture of aviation fuel, may be held to be "gross negligence" under the bill. Thus, the refiners' liability would be maintained in such situations.

HB 509 re-establishes the balance that has often been lost in the development of products liability law. Each entity in the distribution chain must take responsibility for its actions in handling aviation fuel, and must be held responsible for failure to do so properly. Aviation fuel refiners must continue to ensure quality control during the manufacture and distribution of the product. Wholesalers and retailers must also take adequate steps to ensure the continued integrity of the product during their part of the distribution chain. Finally, airlines and private pilots must continue to handle fuel in a safe manner and test for quality before and after each transfer. Only by following such procedures for each fuel transfer can the integrity of the aviation fuel be assured. It is for precisely these reasons that Chevron urges the adoption of HB 509.

HB

520

FISCAL NOTE

Revision Date:

REQUEST

Bill/Resolution No.: HB 520
Title: "An Act relating to criminal use of a computer."
Sponsor: Repr. Hayes
Requestor: House Judiciary
Date of Request: 1/26/84

FISCAL DETAIL

Agency Affected: Department of Law
Program Category Affected: Admin. of Justice
BRU, Program or Subprogram(s) Affected: Prosecution

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 84	FY 85	FY 86	FY 87	FY 88	FY 89
OPERATING						
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 SUPPLIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS						
800 MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND	-0-	-0-	-0-	-0-	-0-	-0-
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS:

FULL-TIME	-0-	-0-	-0-	-0-	-0-	-0-
PART-TIME						
TEMPORARY						

SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

N/A

ANALYSIS: Attach a separate page for analysis

Prepared By: Richard I. Peques, Director (Richard I. Peques) Phone: 465-3672
Division: Administrative Services Division Date: 2-1-84

Approved by Commissioner: Norman C. Gorsuch (Richard I. Peques) Date: 2-1-84
Agency: Department of Law

Distribution (by Agency preparing fiscal note):
- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)

12/1/83

Fiscal Note
Analysis
HB 520

February 1, 1984

This bill addresses a limited area of criminal activity where a person uses a computer system or a computer network to commit a crime. Because existing statutes already cover most of the criminal acts set out in the bill, enactment of this legislation will have little, if any, fiscal impact on the Department of Law's operations. This bill's provision making it a crime to use a computer to obtain information with no legal right to do so concerning the credit information of a person clarifies and strengthens existing law.

POUCH V
JUNEAU, ALASKA 99811
(907) 465-4990

Alaska State Legislature
HOUSE OF REPRESENTATIVES

REPRESENTATIVE
CHARLIE BUSSELL
CHAIRMAN

Committee on Judiciary

HB 520
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MEMBERS:
REP. JOHN LISKA, VICE CHAIRMAN; REP. RAMONA BARNES, EMERITUS;
REP. JOE HAYES; REP. HUGH MALONE; REP. DON CLOCKSIN; REP. RON WENDTE

STATE OF ALASKA
THE LEGISLATURE

LEGISLATIVE AFFAIRS AGENCY

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

M E M O R A N D U M

January 30, 1984

SUBJECT: Sectional analysis of HB 520

TO: Representative Charlie Bussell
Chairman, House Judiciary Committee

FROM: Keith B. Levy KBL
Legislative Counsel

You have requested a sectional analysis of HB 520, "An Act relating to criminal use of a computer." HB 520 creates the offense of criminal use of a computer (AS 11.46.575), a class C felony. A person commits the offense by knowingly accessing or causing to be accessed a computer for certain purposes listed in the statute. Those purposes include fraud, obtaining property illegally, obtaining or altering credit information, and altering a computer or computer program.

KBL:ojb
J3/014

STATE OF ALASKA 1984 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date: , 1984

REQUEST
Bill/Resolution No.: HB 520
Title: An Act Relating to Criminal Use of a Computer
Sponsor: Hayes, Barnes, Liska, Furnace
Requestor:
Date of Request:

FISCAL DETAIL
Agency Affected: Dept. of Administration
Program Category Affected: General Government
BRU, Program of Subprogram(s) Affected: Information Resource Management

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 84	FY 85	FY 86	FY 87	FY 88	FY 89
OPERATING						
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 SUPPLIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC						
800 MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0
CAPITAL	0.0	0.0	0.0	0.0	0.0	0.0
REVENUE	0.0	0.0	0.0	0.0	0.0	0.0

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

POSITIONS:

FULL-TIME	0	0	0	0	0	0
PART-TIME	0	0	0	0	0	0
TEMPORARY	0	0	0	0	0	0

SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

ANALYSIS: Attach a separate page for any Analysis.

Prepared By: John Valensi JValensi JRS
Phone: 465-2200
Division: Information Resource Planning and Review
Date: January 23, 1984

Approved by Commissioner: Lisa Rudd LRudd
Date: 1/24/84
Agency: DEPARTMENT OF ADMINISTRATION

Distribution (by Agency preparing fiscal note):
Legislative Finance
Legislative Sponsor
Requestor
Office of Management and Budget
Impacted Agency(ies)

12/1/83

5/512D1/0123-03/1/

House Bill 520
Fiscal Note Analysis
Prepared by the Division of
Information Resource Planning & Review
Department of Administration

January 23, 1984

The Department of Administration concurs with the intent of this Act. The following modifications are suggested, however, in order to broaden the applicability of the Act:

Sec. 11.46.575(a) (1) be modified to read:

"(1) divising or executing a scheme with the intent to deceive or defraud another person, business, or government entity;"

Sec. 11.46.575(a) (2) be modified to read:

"(2) obtaining money, property, or services with the intent to deceive or defraud another person, business or government entity;"

Sec. 11.46.575(a) (3) be modified to read:

"(3) obtaining information with no legal right to do so concerning another person or business;"

Sec. 11.46.575(a) (4) to be modified to read:

"(4) introducing false information into a computer system or computer network with no legal right to do so and with the intent to damage or enhance the data record of a person or business;"

POSITION PAPER

HB 520

This bill defines certain elements of computer stored data as private and classifies attempts to access, use or modify that data as criminal acts.

The Department of Administration supports this bill as an aid and clarification to administering disciplinary action in the area of data security infringements.

A recent incident pointed out the necessity for clearer statutory instructions in the area of non-authorized data access. This bill represents a step toward clarifying those instructions and lays a base for future statutes if deemed necessary.

James R Shea

James R. Shea, Deputy Commissioner
Information Resource Management

1/26/84
Date

Lisa Rudd

Lisa Rudd, Commissioner
Department of Administration

1/26/84
Date

TRW Inc.

Executive Offices
One Space Park
Redondo Beach, CA 90278
213.535.2175

January 23, 1984

The Honorable Charlie Bussell
Member, Alaska State Legislature
Pouch V (MS 3100)
Juneau, Alaska 99811

Dear Representative Bussell:

We are writing to urge your support of House Bill 520, as introduced by House Speaker Joe L. Hayes.

This legislation would enact a computer crime statute for the State of Alaska and protect consumers from unauthorized access to and manipulation of sensitive computer-based information.

TRW's Information Services Division is one of the country's largest consumer credit reporting operations. We maintain credit information on more than 90 million consumers. We service these consumers through 21 offices and 80 independent credit bureaus, including Credit Data of Alaska, Inc.

We are keenly interested in this issue as it affects consumer credit history information, and we believe that this legislation is in the best interests of the consumer.

I have attached additional information on this issue and a brief description of our consumer credit reporting services.

Once again, we respectfully encourage your support of this measure. Thank you.

Sincerely,

Maureen S. Frisch

Maureen S. Frisch, Regional Manager
TRW Inc. Government Relations

Attachment: as stated.

TRW Inc.

Executive Offices
One Space Park
Redondo Beach, CA 90278
213.535.2175

November 30, 1983

The Honorable Joe L. Hayes
Member, Alaska State Legislature
Box 1821
Anchorage, Alaska 99510

Dear Representative Hayes:

Tony Phister of the Credit Bureau of Alaska, Inc., suggested I contact you regarding our desire to sponsor legislation in your state dealing with the issue of computer crime. Our hope is that you will agree to author such legislation during your 1984 legislative session.

TRW's Information Services Division is one of the country's largest consumer credit reporting operations. We maintain credit information on more than 90 million consumers and service consumers through 21 offices and 80 independent credit bureaus serviced by TRW.

Computer crime and the unauthorized access to sensitive consumer credit information have become significant concerns to many companies. Unfortunately, existing state statutes are not adequate to deal with this growing problem, and we have successfully sponsored legislation in the states of California and New York to address the issue of computer crime as it relates to consumer credit history information.

To better familiarize you with TRW, our consumer credit reporting services, federal credit reporting laws, and the need for computer crime legislation, I have attached an information packet. I have also included the text of the California Penal Code (subsection 502) on this subject. The code itself deals with the broad subject of computer crime. The law was amended to include the unauthorized access to and manipulation of a consumer's credit history.

I hope you agree that this is an important legislative and consumer issue. We are most anxious to see similar legislation enacted in your state. To further discuss this with you, I will call your office within the next two weeks.

Thank you for your consideration of this matter.

Sincerely,

Maureen S. Frisch, Regional Manager
TRW Inc. Government Relations

cc: Tony Phister
Credit Bureau of Alaska, Inc.

Leo Spiekerman
TRW Information Services Division

Attachment: as stated.

A PRESENTATION ON

COMPUTER CRIME LEGISLATION

Prepared for

MEMBERS OF THE LEGISLATURE

THE STATE OF ALASKA

December, 1983

THE NEED FOR COMPUTER CRIME LEGISLATION

INTRODUCTION

Several issues related to the information services industry have led to the need for computer crime legislation.

The computer industry has created a consumer market that has put machines in the hands of hobbyists, and controls in the data processing industry have been reduced thru time-sharing options and other productional facets. While we see individuals invading systems in the news and entertainment mediums, the point is being raised that it will not be long before true criminals are involved in other areas. Unfortunately, this has become a reality. Little publicity is given to these cases of computer crime because they are not always turned over to law enforcement agencies. This is because computer crime statutes, for the most part, are either not in place or insufficient to result in prosecution. With little chance of achieving successful prosectution, or even getting to court, it is not surprising that many companies do not report computer crime.

Because of growing problems and concerns about unauthorized access to and manipulation of computer-based information, it is necessary to enact legislation. After unsuccessful attempts at the national level, it has become necessary to have progressive state legislatures implement legislation on a state-by-state basis.

UNAUTHORIZED ACCESS TO CREDIT INFORMATION

The credit industry has evidenced criminal behavior thru unauthorized access in three basic scenarios:

1. Consumer victimization via stolen access codes.

2. File manipulation.

3. Investigation and collection agency activity using stolen access codes.

Each of these scenarios is elaborated on separately to illustrate the impact of this activity and the need for up-to-date legislation.

Consumer Victimization

Attachment A, "For Sale: Credit Ratings," describes a process of victimization. The act of a consumer obtaining a good credit rating was facilitated by stealing subscriber access codes. The individuals that were selling these packages telephoned legitimate credit grantors subscribing to the credit agency. These individuals represented themselves as calling from the credit agency, usually using the pretext of clearing up a billing problem, or being from the security department. During the conversation the access code is requested and usually provided. This access code enables access to the credit data base to facilitate the process. The buyer of the good credit history uses the good accounts and requests other credit cards. The buyer runs up bills with no intent of paying. The good consumer is left with the issue of clearing up his or her credit history once it has been discovered that someone has used the individual's history.

File Manipulation

Attachment B illustrates the issue of file manipulation. File manipulation is achieved by bribing someone to modify the information contained in files within the bureau or subscriber's premises and the submission of false credit information.

Unfortunately, not all bureaus have controls to prevent this access and many incidents of information modification occur. Once the bad credit history is deleted or modified, the individual applies for new credit accounts. (Controls exist within the TRW system to prevent and/or isolate attempts of this type.)

Even if consumer victimization and file manipulation efforts are successful, most law enforcement agencies will not pursue the case until there has been a loss to a credit grantor.

Investigation and Collection Agency Activity (Attachment C)

Private investigators, lawyers, and repossession agents may, in isolated cases, have a legitimate purpose to access a credit data base; however, most of the major credit agencies do not allow these individuals to subscribe due to the control features required to monitor permissible access. Unfortunately, there have been many cases where individuals wanting this information have either stolen access codes or derived the access code from credit profiles sent to them by other subscribers with the access code on them.

Some collection agencies have acquired access codes in a similar manner. Although collection agencies have legitimate reasons to access a credit bureau, and they are subscribers, some do not use their own access code. The stolen access code is often utilized to reduce costs and increase commissions and agency profits.

A GROWING PROBLEM

According to recent statistics (Modern Office Procedures - March 1983, "Defending Your Computer Room Against Disaster") the average bank robbery is less than $3,000. The average "white collar" embezzlement nets less than $30,000. But the average computer crime is estimated to exceed $600,000, with little chance of detection, prosecution or conviction.

Education has become a key element in the fight against this area of criminal activity, and the United States Department of Justice has opened a specialized four week computer fraud school for F.B.I. agents. The Department of Justice, Sacramento, California, operates a two week course specializing in the same subject. Other municipalities as well as private organizations are currently holding seminars to combat problem areas of detection.

The challenge is to actively prosecute computer crime suspects. A challenge in the sense that the current laws regulating computer access are extremely lacking. Following, are three examples of TRW incidents that illustrate the need for computer crime legislation:

Example #1

An organized ring of credit criminals was established in a large metropolitan area. Although this example was taken from the Western Region, there is an indication that an identical ring is operating in the Eastern Region. One member of the ring provided computer password information to another who used it to gain access to our system. The suspect then retrieved hundreds of credit reports. Through a relocation and file merge system, the suspect was able to alter negative credit information into what appeared to be a positive profile.

The fee charged for this service varied, however, it averaged about $600 per report. This particular case is being actively prosecuted at the writing of this report. The section selected for prosecution was 502 P.C. (California).

Example #2

A collection agency/private investigative firm gained access to computer password information on several Information Services Division subscribers. As such, unauthorized access was made into our system and a total of $65,000 worth of credits were applied for from various east coast subscribers. While working the investigation of this matter, several New York agencies were contacted and each declined investigative jurisdiction. Most felt that it was a civil or federal problem, in that no computer crime bill existed.

Subsequently, the F.B.I. was contacted and consented to continue the investigation. A suspect was identified and prosecution is being actively pursued.

Example #3

A coast-to-coast organized crime ring obtained several thousand blank credit cards. Later, they obtained illegal access into credit systems and retrieved thousands of credit profiles of potential victims. By viewing the reports, account number information was obtained and later embossed on the stolen cards. The total amount stolen from creditors is unknown at this time, but it is believed to exceed $1,000,000. Investigation is continuing.

Crimes by these individuals were made possible through the illegal access to computer files. In each case the criminal simply called a TRW operator and relinquished certain password information which then caused the computer to be accessed.

It is acutely apparent that much has been done in the area of detection, but legislation is now needed for active prosecution.

CALIFORNIA'S COMPUTER CRIME LEGISLATION

SB 648 (California Penal Code 502), of which a copy is attached, was introduced in the California Legislature in March of 1981. This bill modified the penal code to make it a crime to intentionally access or cause to be accessed any computer system or network for the purpose of damaging the credit rating of any person. The bill was sponsored by an individual in the San Diego District Attorney's office, Fraud Division, in response to a situation in San Diego in which an individual's credit file was sold for the purposes of obtaining credit under fraudulent circumstances. (Similar legislation has been enacted in New York.)

Legislative justification for the bill goes on to say:

> "The credit granting sector of private industry is being deluged with false and fraudulent applications for credit. It is not uncommon for individuals and organized groups to systematically apply for multiple credit cards, loans, etc. utilizing fictitious and false names, biographical information, and credit histories. These fraudulent applications are carefully created to fit within the credit grantors' criteria for issuance of credit - such policies which are well known to the applicants. Sophisticated wrinkles are added such as the use of telephone answering services, which have been provided a prepared script to read in case of inquiry by the credit granting agencies. The answering service tells the inquiring party 'that the applicant has been employed at a high salary for five years; that the applicant has successfully paid off a loan on a expensive automobile, etc.'
>
> Under existing law, the credit grantor must suffer a loss before this activity can be filed as a felony. This ridiculous posture does nothing to prevent repeated attempts to obtain credit by fraudulent means. It is likewise discouraging to the credit grantors, who having discovered these activities, bring them to the attention of law enforcement and discover that this conduct is at most a misdemeanor. (Section 532a, California Penal Code)"

ONE STEP TOWARD A SOLUTION

Because of the tremendous growth in computer-based information services and concerns about the unauthorized access to and abuse of this information, it is necessary to adopt legislation. It has become clear that a national computer crime bill has little chance of passage. Some states, though, have passed legislation in this area, and, it is hoped that similar legislation can be passed in other states to facilitate interstate criminal prosecution and standardize penalites.

TRW's Information Services Division is prepared to support your state's activities to enact needed computer crime legislation. We recommend adopting statues similar to those enacted in the States of California and New York (California's statute is attached).

11/1983

CALIFORNIA PENAL CODE - SUBSECTION 502

Definitions; computer system or network; intentional access to defraud or extort, or to obtain money, property or services with false or fraudulent intent, representations or promises; malicious access, alteration, deletion or damage; violations; penalty

(a) For purposes of this section:

(1) "Access" means to instruct, communicate with, store data in, or retrieve data from a computer system or computer network.

(2) "Computer system" means a machine or collection of machines, excluding pocket calculators which are not programmable and capable of being used in conjuction with external files, one or more of which contained computer programs and data, that performs functions, including, but not limited to, logic, arithmetic, data storage and retrieval, communication, and control.

(3) "Computer network" means an interconnection of two or more computer systems.

(4) "Computer program" means an ordered set of instructions or statements, and related data that, when automatically executed in actual or modified form in a computer system, causes it to perform specified functions.

(5) "Data" means a representation of information, knowledge, facts, concepts, or instructions, which are being prepared or have been prepared, in a formalized manner, and are intended for use in a computer system or computer network.

(6) "Financial instrument" includes, but is not limited to, any draft, warrant, money order, note, certificate of deposit, letter of credit, bill of exchange, credit or debit card, transaction authorization mechanism, marketable security, or any computer system representation thereof.

(7) "Property" includes, but is not limited to, financial instruments, data, computer programs, documents associated with computer systems and computer programs, or copies thereof, whether tangible or intangible, including both human and computer system readable data, and data while in transit.

(8) "Service" includes, but is not limited to, the use of the computer system, computer network, computer programs, or data prepared for computer use, or data contained within a computer system, or data contained within a computer network.

(b) Any person who intentionally accesses or causes to be accessed any computer system or computer network for the purpose of (1) devising or executing any scheme or artifice to defraud or extort or (2) obtaining money, property, or services with false or fraudulent intent, representations, or promises shall be guilty of a public offense.

(c) Any person who maliciously accesses or causes to be accessed any computer system or computer network for the purpose of obtaining unauthorized information concerning the credit information of another person or who introduces or causes to be introduced false information into that system or network for the purpose of wrongfully damaging or wrongfully enhancing the credit rating of any person shall be guilty of a public offense.

(d) Any person who maliciously accesses, alters, deletes, damages, or destroys any computer system, computer network, computer program, or data shall be guilty of a public offense.

*** (e) Any person who violates the provisions of subdivision (b) ***, (c), or (d) is guilty of a felony and is punishable by a fine not exceeding five thousand dollars ($5000), or by imprisonment in the state prision for 16 months, or two or three years, or by both such fine and imprisonment, or by a fine not exceeding two thousand five hundred dollars ($2,500), or by imprisonment in the county jail not exceeding one year, or by both such fine and imprisonment.

*** (f) This section shall not be construed to preclude the applicability of any other provision of the criminal law of this state which applies or may apply to any transaction.

auditors commended Sandia's corrective actions and stated that it appeared that the problems had been solved. However, it would not pay those responsible for the laboratory to become complacent. Without continual policing, the problem will return. The auditors recommended periodic random sampling of computer files to check on unauthorized use of the system. #

For Sale: Credit Ratings

While evidence is still not clear, it seems possible that a data theft gang has been operating in southern California. It appears that the ring has allowed those with poor credit ratings to use someone else's good rating as the basis for opening charge accounts and obtaining loans.

The crime apparently involved unauthorized access to a credit bureau data base to obtain financial information about individuals with a clean credit history. Good credit ratings are sold to people who have problems obtaining credit. The bad credit risk purchases information that will allow him to assume for credit purposes the identity of someone who has the same name but a better financial record. Information supplied includes such things as social security number, bank account number, and driver's license number.

This suspected crime came to light when an individual with a good credit rating became aware that his identity was being used by another. He contacted a number of different law enforcement agencies and informed them about the alleged crime. To date, investigative efforts have been hampered by the fact that, although everyone acknowledges that a crime has indeed taken place, no one has been able to figure out who has jurisdiction. Meanwhile, a number of questions remain unanswered:

- How was the data obtained from the supposedly secure files of the credit bureau?
- Who obtained the data?
- Is it an inside job?

These questions will remain unanswered until jurisdiction problems can be ironed out and further information developed. #

Student Cracks School District's Computer System

A high school senior in Tucson, Arizona was successful in breaking into the school district's computer system. However, he is beginning to have regrets about his actions. Since his successful intrusion, security measures have been tightened, and his access to the computer has been reduced.

The student, Joel Snyder, first realized that he could break the system's security code when he was accessing the computer through a remote job entry terminal at his high school. He was quoted as saying that anyone with a knowledge of assembly language could easily circumvent the system's security features. The passwords protecting student grades and other information were unimaginative.

His attempt to gain access to another user's password was successful. As a result, Snyder felt he should inform the authorities about the security risks involved. However, officials tended to doubt that Joel Snyder had actually cracked the system. They were willing to acknowledge that he had obtained access to passwords, but they were never sure how he had done it.

In his attempt to publicize the security weakness, Joel appeared at a school board meeting and brought the matter to the attention of the board. This action had some results. System security was soon tightened. Students are now allowed to access the system only from RJE stations (not by dialing up from a modem), only during certain hours, and only while a teacher is present.

While he has proven that he has more than a passing knowledge of computers and their security features, Snyder does not plan a career in data processing. His first college choice is Stanford University, where he plans to major in liberal arts.

Although Joel Snyder's reasons for breaking security were not malicious, his action shows the ease with which intelligent students can circumvent security features in today's systems. Obviously, there are basic weaknesses in most security provisions. #

D. 176,588 SUN. 210.

SEP 3 1976

U.S. Charges Six Fixed Reports On Credit-Risk Buyers For Fee, Fed False Data Into Computers

Authorities Believe Plot May Have Led To Millions Of Dollars In Unpaid Bills

LOS ANGELES (AP) —With the aid of a file clerk, six men sought out persons with poor credit records and for fees of up to $1,500 improved their credit reports in the computer banks of the country's largest consumer credit bureau, a federal indictment charges.

The credit records were kept in the computers of TRW Credit Data in Anaheim, Calif. The company maintains credit files on about 50 million Americans living in 20 cities.

The files are used by banks, credit card companies, and other businesses seeking information concerning the credit worthiness of customers.

Authorities said the alleged scheme may have produced millions of dollars in unpaid bills and caused untold legal problems for firms that rely on credit information.

The six men are charged with conspiracy in the indictment returned Thursday by a grand jury. All six also are charged with at least one count of making false loan-application statements.

A TRW Credit Data file clerk, Kathleen Bennett, was named as an unindicted coconspirator. Federal authorities said she is to be a government witness.

According to the indictment, Miss Bennett was paid $50 each time she improved the computerized credit records of people solicited by the ring.

Some Information Deleted

This allegedly was done by deleting bad payment records, information about bankruptcies, and other unfavorable material. In some cases, material indicating a good credit history was inserted, authorities said.

The indictment listed 26 persons who paid between $300 and $1,500 to have their credit records altered, but authorities said as many as 150 persons may have paid for such falsifications between August, 1974, and March, 1975.

With their improved credit records, these people obtained banks loans, credit cards, and credit at retail stores, authorities said, and many of them subsequently defaulted on payments.

FBI agents uncovered the plot and broke up the ring 18 months ago, authorities said. It took the FBI, a Justice Department Organized Crime Strike Force, and the U.S. Attorney's office nearly 1½ years to obtain the evidence needed to present the case to a grand jury.

Seven Counts In Indictment

Charged in the seven-count indictment were Philip Kostoff, 31, the alleged ringleader; his brother, Paul Kostoff, 35; Ronald C. Rossi, 41; John R. Dubbs, 41; Kenneth L. Stevenson, 39, and Sean Shanahan, 35. All live in Orange County, where Anaheim is located.

The indictment alleged that Philip Kostoff hired the other defendants to locate persons who wanted their credit ratings improved and also recruited Miss Bennett.

Authorities said TRW Data Credit, a division of Cleveland-based TRW, Inc., cooperated in the investigation and is tightening its security.

ANAHEIM, CALIF.
BULLETIN
D. 13,211

APR 6 1982

Authorities seize stolen computer reports

7125

ORANGE — Detectives, armed with search warrants, last week seized several thousand credit reports that were allegedly stolen from TRW computers in Orange.

The records were seized by police during raids at three Los Angeles area companies — H.E.L.P. Locksmiths of Van Nuys, Searchers Investigations and Searchers Security Co., Los Angeles.

Police said entry into TRW's computer bank was made via telephone and teleprinters, using that company's codes.

No charges were filed against the officers of the three companies.

The search warrants served Thursday and Friday culminated a three-month investigation into what police said is "to the best of our knowledge, the first known reported crime of this particular type in California and the country."

Gil Hamblet, TRW's vice president of industry and public affairs, said the company first noticed the illegal access to their computer records six months ago.

He said the material relates to the pay habits of Southern California residents and does not include any other personal information, except their names, addresses and previous addresses.

The Van Nuys firm is an automobile repossession company and the two Los Angeles companies are private investigators who work for attorneys and corporations.

"Such records are used to obtain credit information on individuals," Detective John Carson said. "The records are also used in skip tracing."

Carson said the material is now being inventoried, and it will probably be a week before the police and the district attorney will be ready to file charges.

Times
LOS ANGELES CAL.
D. 1,000,345 S. 1,234,115

APR 7 1982

3 Firms Probed in Theft of TRW Computer Data

7125

Two Los Angeles private detective agencies and a Van Nuys vehicle repossession firm have been accused of massive electronic theft of credit information from a computer at TRW, Orange County authorities said Tuesday.

Police said the three firms gained access to the nationwide credit reporting agency's computer by obtaining codes issued to TRW subscribers. No dollar value has been set on the alleged theft.

Investigators said Tuesday that H.E.L.P. Locksmiths, the repossession company, had been using the code for six months. Searchers and Securities and Searchers Investigations, the detective agencies, had been using them since 1972, police said.

Orange police Detective Roger Braham said no charges have been filed, but investigators are examining thousands of records—mostly computer printouts—seized from the three firms in raids last week.

Gil Hamblet, vice president of public affairs for TRW's Information Services Division in Orange, said the firm's own security surveillance system first spotted the illegal information request entries in January.

Officials of the three companies that allegedly obtained the information illegally could not be reached for comment Tuesday.

ANAHEIM, CALIF.
BULLETIN
D. 13211

APR 6 1982

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The Los Angeles Times
LOS ANGELES CAL
D. 1,000,985 S. 1,234,115

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TRW NEWS

INFORMATION SERVICES DIVISION OF TRW INC. • 505 CITY PARKWAY WEST • ORANGE, CALIFORNIA 92668

FOR RELEASE: CONTACT:

TRW Information Services Division

Credit Data

A CAPSULE DESCRIPTION

TRW Information Services operates and markets one of the nation's largest, computerized consumer credit reporting services called Credit Data. TRW has credit information on more than 86 million consumers, and serves 24,000 subscribers at 35,000 locations.

TRW collects and stores factual credit information on consumers and provides that information to credit grantors that subscribe to the service including banks, retailers and finance companies. The TRW Updated Credit Profile contains credit account information provided by subscribers including positive and negative information about retail credit card accounts, bank charge card accounts, lines of credit, secured loans and finance company accounts. The Profile also includes selected public record information limited to tax liens, judgments and bankruptcies. TRW does not collect information on checking and savings accounts, race, religion, sex, salary, personal lifestyle or criminal records.

Open current credit accounts remain on the Profile indefinitely. Closed or paid accounts are removed within seven years. Adverse credit information remains on file for a maximum of seven years, with the exception of bankruptcies, which remain for a maximum of 10 years.

HISTORY

The development of consumer credit reporting agencies was a direct result of the rapid growth in the use of credit and need for consumer credit repayment information. As more and more businesses began extending credit to consumers, there was an increasing need for information on how those consumers repaid their credit obligations with other creditors. To meet this need, individual businesses began to collect their customer repayment information and exchange it within branches of their own company or within their industry. This credit information was kept in paper files in a central location. As the volume of credit information grew, the job became too large for individual businesses.

Credit bureaus soon developed, meeting businesses' need for a central repository of credit repayment information that provided credit grantors with a more complete picture of consumers' repayment habits. The Michigan Merchants Credit Assn. in Detroit was one such bureau, which was founded in 1932 by Norman Jordan, and taken over by his son, Harry ("Bud") Jordan, in 1956. The company was incorporated in Michigan in August of 1960 as the Credit Data Corp. and used file cabinets and 3" x 5" cards to store consumer credit information. In 1965 Credit Data initiated and installed the first computerized, on-line credit reporting system. It was acquired by TRW Inc. in November 1969 and became TRW Credit Data.

HOW CREDIT GRANTORS USE CREDIT REPORTS

TRW provides credit information to bona fide credit grantors who have a legitimate business need for the information. When consumers apply for

credit, they generally authorize a credit grantor to obtain information on their credit history. Credit grantors use TRW's service when considering applications for credit, or when reviewing their current accounts. Credit grantors apply their own evaluation criteria to the information TRW supplies in determining whether to grant or deny credit. In addition to the information on a Credit Profile, credit grantors also take into consideration information not supplied by TRW, such as the consumer's employment, income, other assets and outstanding debts. TRW does not make the decision to grant or deny credit.

HOW AUTOMATED CREDIT REPORTING WORKS

TRW provides credit information to credit grantors that assist them in the credit granting decision. In turn, they provide TRW with a record of their past and present credit account information. This is usually done on a monthly basis. Since the majority of TRW subscribers have their accounting function computerized, they typically provide the information via magnetic tape, copied directly from their billing records used to notify their customers. These tapes are sent to TRW's data center in Anaheim, Calif., where they are entered into the TRW computer system. This regular receipt of credit information provides TRW with an automatic updating of the credit account information in the files. Public record information is gathered directly from court records, converted to a computerized format and entered into the computer system in the same manner as credit information from credit grantors.

THE CREDIT PROFILE

The TRW Credit Profile contains up-to-date credit information on consumers' credit accounts, items of public record, inquiries, and a consumer's identifying information. (A sample Credit Profile is included in this package.)

--Identifying Information: the consumer identifying information is limited to the consumer's full name (including generation, such as "Junior" or "Senior"), address, social security number, age or year of birth, and spouse's initial. The consumer's place of employment, as indicated by the consumer on a credit application, may also be contained in the Profile.

--Credit Account Information: includes the name of the company reporting the account, the date the information was reported, the date the account was opened, the type of account, terms, the original balance or credit limit, current account balance, amount past due and the status of the account, such as "current account" or "30 days past due."

--Inquiries: whenever a request is made for a copy of the Profile, that request, or "inquiry," is automatically recorded on the Profile and is retained for a period of one year. Inquiries include the name of the inquiring company and the month, day and year of the inquiry.

--Public Record Information: includes the name and location of the court from which the data was obtained, a description of the item, such as "judgment" or "state tax lien," the docket number and/or page number where it was located, date and the status of the item, such as "judgment

of their Credit Profile from TRW, through TRW's 21 Consumer Relations offices across the country. They should include the following information in their request:

: Full name (including generation, i.e., Jr., Sr., III, etc.)
: Addresses for 5 years
: Social Security Number
: Year of birth
: Signature

If the consumer has been denied credit within the past 30 days, there is no charge for the Profile. Consumers should indicate the company that declined them credit or include a copy of the declination letter with their request. If they have not been denied credit within the past 30 days, there is a $8 fee. ($5 in Maryland). The request should be mailed to the TRW Consumer Relations office closest to their home (See list of TRW locations). Eighty-six percent of the consumers who request their Credit Profile from TRW do so by mail.

Consumers may also make a personal visit to TRW offices during business hours to receive a copy of their Credit Profile and speak to a trained representative, who will explain its contents. To make an appointment for a personal visit, consumers should call the TRW Consumer Relations office closest to their home. Fourteen percent of the consumers who contact TRW make a personal visit to TRW's Consumer Relations offices.

TRW reinvestigates any item on a consumer's Credit Profile that the consumer disputes. This is done by contacting the source of the information to verify its accuracy. If there is any item on the Credit Profile that

--Designations: each item of credit or public record information is assigned a general designation of "positive," "negative" or "non-evaluated," depending on the status of the account or public record item. A paid satisfactory account, for example, would be designated as a positive item. These designations -- selected through the consensus of credit grantors that use TRW's service -- are provided as a service to credit grantors. TRW does not provide a general credit rating -- such as "A-1" or "Triple-A Credit" -- on an individual

--Payment Profile: is another service to credit grantors that provides them with an immediate comprehensive picture of the consumer's payment history for the last 12 months. An account that has been current for the last 12 months, for example, would be indicated in the Payment Profile as a series of "C's," representing "current." A 30-day, or one month past due, would show on the Payment Profile as a "1" in the column for that month.

--Consumer Statement: if the consumer so chooses, a consumer statement of 100 words or less regarding any item that TRW has reinvestigated and with which the consumer is still dissatisfied may also be included on his or her Profile.

(A more extensive explanation of status comments, association codes, types of accounts, and items of public record is included on the back of the sample Credit Profile).

DISCLOSURE TO CONSUMERS

Consumers may obtain a copy of their Credit Profile anytime by writing to TRW directly. Approximately 500,000 consumers a year request a copy

Billing Act, summarized below, are the three most important laws for consumers to be aware of.

FEDERAL FAIR CREDIT REPORTING ACT

Gives you the right....

...to know what credit information is held that pertains to you, without charge if you've been denied credit within 30 days

...to know who has received a report on you in the past six months

...to have information pertaining to you, which you dispute, reinvestigated and corrected or removed if inaccurate or unverifiable

...to place a statement in the credit reporting company's records if you continue to dispute the accuracy of an item after reinvestigation

...to have an updated report sent to those credit grantors who have received a report pertaining to you in the last 6 months

...not to have adverse information pertaining to you over 7 years, or 10 years for bankruptcies, kept or reported

EQUAL CREDIT OPPORTUNITY ACT

Gives you the right...

...to be judged on an equal basis with all other credit applicants

the consumer disputes, the nature of the dispute should be indicated in the column provided on the Credit Profile and returned to TRW. TRW will reinvestigate the disputed item with the source of information. If the item cannot be verified, it will be deleted from the record. TRW notifies the consumer of the result of that reinvestigation by sending the consumer an updated copy of the Credit Profile. Of the approximately 500,000 consumers a year who request copies of their Credit Profile from TRW, less than one-third dispute information on the Profile.

Consumers may add a consumer statement to their Credit Profile regarding any item which TRW has reinvestigated and with which they are still dissatisfied. This statement will tell the consumer's side of the story in his or her own words, and will be included with all inquiries to the consumer's Credit Profile. TRW will work with consumers to formulate the statement, which should be limited to 100 words or less and should not include libelous comments.

SAFEGUARDS

TRW's contract with subscribers specifies the Credit Profiles be used only in accordance with the permissible purposes outlined in the Federal Fair Credit Reporting Act. TRW has extensive security procedures, including safeguards for protecting the computer equipment, computer center, information files, systems programming and access to the TRW system.

CREDIT AND FEDERAL LAW

There are a number of federal laws that pertain to credit. The Fair Credit Reporting Act, Equal Credit Opportunity Act, and Fair Credit

...to have joint accounts reported for both spouses separately after June 1977

...to have your income considered without regard to sex or marital status

...to have child support and alimony payments regularly received counted as income, if requested

...not to be asked questions about birth control or child bearing plans

...to obtain a credit card in your own name if you are a married woman

...to know the reasons you have been denied credit

FAIR CREDIT BILLING ACT

Gives you the right...

. .to file a written complaint with the credit grantor within 60 days after the bill you question was mailed to you

...to receive an acknowledgement from that credit grantor within 30 days after that, and a settlement within 90 days

...to forestall collection of the account until the dispute is resolved and

...to prohibit that credit grantor from reporting negative information regarding the disputed amount to credit reporting agencies until the dispute process is completed

OTHER CREDIT REPORTING AGENCIES AND INDEPENDENT BUREAUS

TRW is one of the largest of five major, U.S. computerized credit reporting agencies. The others are TransUnion (Chicago); Credit Bureau Inc., a division of Equifax (Atlanta); Chilton (Dallas); and Pinger (Houston).

There are many more smaller, independently owned credit bureaus nationwide that provide an important service to their communities. TRW has contractual agreements with 28 such bureaus to provide them with the latest data handling technology and enhancements, while at the same time allowing them to retain independent control of their operations, as well as access TRW's data.

"The 1980's will be to computer bandits what the days of Prohibition were to Al Capone - wide open with little fear of apprehension or prosecution." This analogy was offered by August Bequai, a Washington attorney and nationally recognized expert on computer crime. He went on to say that the legislative and criminal justice system "is throughly unprepared to deal with the problem of computer fraud." Its safe to say that the computer felons are at least a century ahead of the criminal justice system ostensibly designed to stop them."

Several issues are apparent in the information services industry that has led to this situation and the requirement for computer legislation.

The computer industry has created a consumer market that has put machines in the hands of hobbyists as well as reduced controls in the data processing industry thru time-sharing options and other productional facets. The computer industry starting with ENIAC in 1946 was projected to grow to 500,000 computers in 1990. By 1970 there were 140,000 computers. Little did anyone realize that the microcomputer boom would be producing 1,975,000 units in 1982. One of these home computers can be as powerful as that first computer. The home hobbyist has dial-up capability to many public data bases, mail services and other computers. The Government Services Administration has developed a community bulletin board to facilitate information exchange about microcomputers.

Today more than 50% of the U.S. labor force is engaged in some aspect of the information industry. Over 90% of business related jobs involve contact with a computer.

While we see "Hackers" invading systems in the news media and entertainment media, the point is being raised that it will not be long before true criminals are involved. Unfortunately they are already here! Little publicity is given to these cases because

they are not always turned over to law enforcement because computer legislation, for the most part, is either not present or insufficient to result in prosecution. With little chance of achieving successful prosecution, or even getting to court, it is not surprising that many companies do not report computer crime except as necessary. The cost benefit analysis of doing so is lop sided to provide only a negative image in the market place.

The types of computer-related crimes fall into the following catagories:

1) Theft of Data: Involves the misuse of confidential business or personal data

2) Unauthorized Use: Use of another's computer for personal use.

3) Vandalism: Involves both the computer and programs.

4) Sabotage: Involves the destruction (partially or in total) of an EDP system.

5) Economic Crimes: The computer is used for manipulating or misappropriating company assets; embezzelment; wire fraud; securities fraud and any other dishonest financial scheme.

6) Espionage: Use of the computer to gain valuable property or data.

No one really knows how much computer abuse there is. Donn Parker of SRI is probably the most knowledgeable on the subject. He has reviewed 849 reported cases over the last 11 years. He has observed that there is no general agreement as to the meaning of the

terms computer crime or abuse. His case analysis, on the attached chart, revealed a number of unreported cases. He found that few victims were willing to disclose the incident. His findings are based on reports by the news media and, as such, contribute to the leveling off effect. In the Spring 1983, Computer Security Journal he states: "We do not need statistics of total incidence and loss to motivate us to take prudent care of assets and to implement generally accepted safeguards and security practices. Let us get back to the job of protecting business and government from computer abuse, based on the fact that it is occurring and has changed the nature of business crime, that losses can be very large, and that reasonable scenarios of potential loss demonstrate the existence of serious vulnerabilities."

His analysis of losses show that the degree of loss is significantly different. In the area of bank fraud the manual perpetration averages $19,000 whereas the computer assisted crime nets $450,000. While accurate statistics involving dollar amounts and the number of crimes are impossible to obtain most law enforcement experts say they are increasing at an alarming rate and expect these statistics to grow. This premise is apparent as automation in every sector of business and government increases. K. Lydon in "Security World," Sept. '82, stated "Computer crime losses are estimated at between $300 million to $3 billion per year. It is difficult to detect and unpopular to report. The average computer crime is $400,000 to $500,000. About 85 to 95 percent goes unreported." For this reason it is imperative that computer legislation be established. After unsuccessful attempts at the national level it has become necessary to have progressive state legislatures implement legislation on an individual basis.

The record for prosecution of computer crime cases is poor. A. Bequai at the "Compacs '83" conference in England stated that fewer than 5% of all securities-related frauds in the U.S. are referred by the police for prosecution. Law enforcement has adopted many programs to train themselves in this new technology, but have been confronted with laws that leave them ill-equipped to prepare a prosecutable case. Our criminal statutes were designed for another era dominated by paper.

The laws presently being applied in computer crime cases are:

- o Wire Fraud Statutes: These acts relate primarily to transmittals by "means of wire, radio or television" in interstate or foreign commerce. They are difficult to apply to electronic transmissions.

- o Bank Fraud Statutes: These statutes pertain only to bank "insiders" and the taking or concealment of funds. It is difficult to extend the definition to electronic formats.

- o Mail Fraud Statutes: The perpetrator must use the paper based U. S. Postal System. Most criminals use electronic access.

- o Title III of the Omnibus Crime Control Act: This Act is aimed at the interception of wire or oral communications. Data communications is probably not applicable under the Acts definition.

- o Counterfeiting & Forgery Statutes: These statutes are of limited value since a paper format is rarely made or forged.

- o Robbery Statutes: Application is to forcible attempts to steal property from Federally insured or regulated institutions.

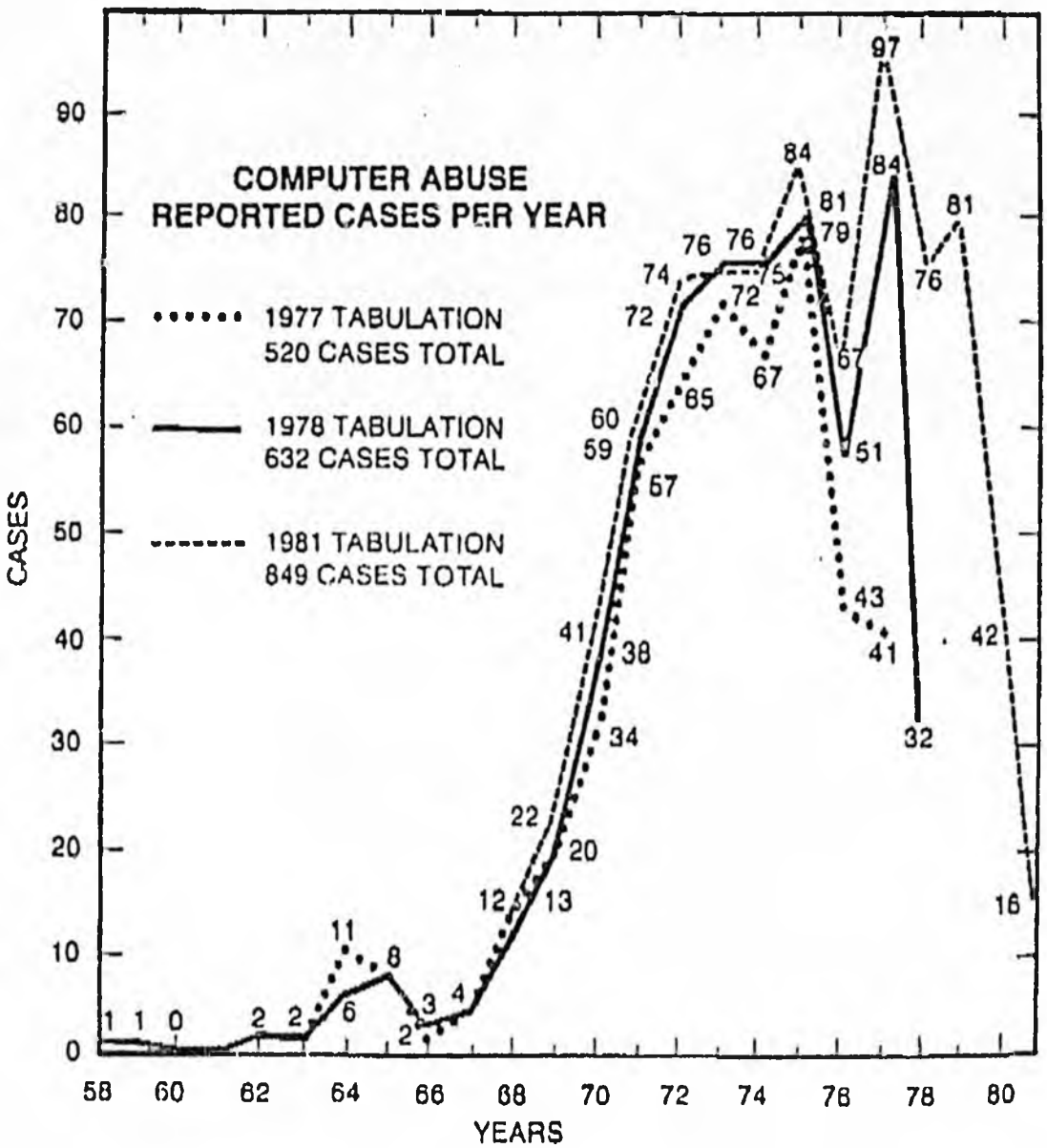
- o Extortion Statutes: These statutes can be used if force or fear is used to obtain property. It could be applied to terrorists.

Although computer criminals have been prosecuted under the statutes, more definitive law is required. Such legislation has been enacted under California PC502 and New York.

The California law has resulted in several arrests in the last law year with prosecutions pending. Law enforcement has found no difficulty in applying the law since it relates to computer technology.

In relation to my initial statement, regarding hackers in the newspaper and entertainment media, the Computer Security Institute analyzed this phenomenon in their latest conference. It was stated that"Hackers begin with the perception of information as a public asset and use it freely when and where it is available." It was pointed out that they are not deterred by raising the cost of penetration. The hacker is perfecting his skill. The CSI newsletter points out "The lesson we must learn from the hackers is that "it" can be done and is being done today." What we in the business and legislative arena must learn is that there must be updated and effective legislation to cope with the issues of a computer age.

FIGURE 1
Computer Abuse Case File History



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JAN 3 1 1984

COMPUTER CRIME FACT SHEET

1. The manipulation of and unauthorized access to sensitive computerized data has become increasingly widespread, particularly with the advent of the home computer. Multiple news articles and Congressional hearings have highlighted the problem.

2. Computer crime has grown in scope and severity to the point that many American businesses now carry related insurance protection.

3. Unauthorized access to computer data can have far-reaching effects beyond those encountered by the actual recordkeepers. Consumers, especially, may be unwitting victims in the possible manipulation of medical, bank, education and credit records.

4. Technology has moved more quickly than legislation creating laws to punish manipulators of computer data. State statutes outlining stiff penalties for manipulation of or unauthorized access to computer data are necessary to help protect business and consumers.



Associated Credit Bureaus, Inc.

1984 STATE LEGISLATIVE PROGRAM PARTICIPANTS

Computer crime, ACB Members, ATTN: TONY PFISTER

has become increasingly prevalent, especially with the growth in popularity of home computers. The U.S. Congress has already shown an interest in the subject by holding a series of hearings featuring computer "hackers" and security experts as witnesses. In addition, a great deal of publicity has appeared on the subject.

For those reasons, our 1984 State Legislative Program, in which your state association's leadership has elected to participate, takes on a new dimension. In previous years we have concentrated on explaining credit reporting and collections to your legislators. That remains an important and necessary task, but this year we're encouraging you to go a step further and assume an advocacy role in the area of computer data security. Specifically, you should promote the passage of legislation establishing strong penalties for tampering with computerized records.

The need for this type of legislation is twofold. First, in most states no options exist for prosecuting employees or others who tamper wit' credit or other computerized records. Second, by recognizing and acting on the problem we further establish our industry as one which is willing to utilize proper legislative channels to bring about change necessary to protect the millions of consumers affected by our industry. By supporting legislation to further secure all types of computerized data, you can anticipate building a strong coalition of support with other industries which depend upon safe data storage.

With or without our industry's participation you can anticipate that there will be computer crime legislation introduced in your state. We think an active, positive approach will serve your interests far more effectively than a reactive approach.

The enclosed material will be of help to you in explaining this important issue to your legislators, either by mail or in person. Please let us know about your success in this endeavor.

Best personal regards.

Very truly yours,

D. Barry Connelly
Senior Vice President

Enclosure

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Computer-Fraud Coverage Grows As Insurers Solve Policy Problems

By Joanne Lipman
Staff Reporter of The Wall Street Journal

An oil company paid millions of dollars to gather highly confidential geophysical information and then fed the data into a computer. Now it wants insurance against electronic theft of the data by competitors or damage to its storage system by teen-age computer hackers. Is such coverage available?

The answer is yes, some insurers say. But the kinds of coverage available vary widely, and most insurance companies are still at work developing their policies. A few insurers cover theft of trade secrets and such items as customer lists. Others cover only the cost of reproducing erased or damaged information. All agree there are problems to overcome: Losses are hard to calculate and potentially staggering, for example, and premiums can be very high. But everyone also agrees that once the problems are solved, business will be hot.

Computer-fraud coverage "is the most sought-after insurance in the crime area these days," says Christopher Barr, vice president of National Union Fire Insurance Co. "The computer is the fad of the 1980s—and computer insurance is the fad topic of the insurance world."

So far, only about $20 million of electronic-crime policies have been sold and most of them cover transfers of money and securities, according to Dean P. Felton, a vice president of Marsh & McLennan Cos. But he figures that amount will increase geometrically, reaching $100 million in the next three years.

Demand is already rising. Shand, Morahan & Co., a subsidiary of Alexander & Alexander Securities Inc., says inquiries about its policy have doubled in the past six months, to 75 a week. Applications for the coverage have risen 20% to 30%, says Grant R. Hubbard, a Shand Morahan vice president. St. Paul Fire & Marine Co., Fireman's Fund Insurance Cos., Chubb & Sons Inc. and others report a similar increase in interest.

A New Twist in Coverage

Insuring computer data against theft and damage is a new twist in electronic-crime coverage. One of the first computer-crime policies, introduced by Lloyd's of London in 1981 and quickly copied by several American insurers, applied only to financial institutions and covered only money and securities transferred by electronic means.

That kind of policy was inspired by the exploits of Stanley Mark Rifkin, who was charged with swindling Security Pacific Bank of Los Angeles out of $10.2 million in 1978. According to prosecutors, he posed as an international bank officer, got the computer codes required to transfer money to a Swiss bank, and then bought 19 pounds of Russian diamonds with the proceeds. Back then, the case was hailed as the ultimate electronic scam.

But a new type of computer crime is drawing attention now, and its immediate target is information rather than money. Insurers can reel off tales of computer treachery. There's a company, for example, whose client file was pilfered electronically by a competitor. In another case, a prankster gained access to computerized motor-vehicle records, wiping out penalties given poor drivers. Recently, the Federal Bureau of Investigation has arrested teen-agers who allegedly broke into computers belonging to the Defense Department, a New York City hospital and an electronic-mail service.

Crimes like these make companies very nervous. Chubb, for instance, says it has sold computer-fraud policies to an aerospace company worried about piracy of its designs and a book publisher concerned that an outsider could steal unpublished books. Shand Morahan says travel agencies, county governments, department stores and stockbrokers have shown interest in its policy.

> ***Insuring computer data against theft and damage is "a new area, and there are no hard and fast decisions on who is liable for what," says a State Farm executive.***

Computer-data coverage varies from insurer to insurer. St. Paul Fire & Marine covers the cost of reproducing erased or damaged information, including footwork or research. That means that if a client list is erased, the insurer will pay for the extra time and work required to recreate it. But "snooping" isn't covered. As a result, if a competitor steals the client list electronically without damaging the data, no payment is made.

Chubb's policy does cover snooping. If information is stolen and used by someone, the policy covers the full amount spent to develop the data. Thus, if a new automobile design is stolen from a manufacturer's computer and the new car becomes uncompetitive as a result, Chubb will cover such costs as research and promotion. If the car is still marketable but sales are hurt because the design is no longer exclusive, a smaller payment will be negotiated.

Shand Morahan may offer the most ambitious policy. It promises to cover all computer-fraud-related costs, up to $30 million for a single incident. It will even cover the cost of inventory stolen by electronic means. Such cases have occurred in the past. In the early 1970s, Jerome Schneider was convicted of procuring more than $200,000 of telephone equipment from Pacific Telephone & Telegraph Co. in Los Angeles.

But many insurers are still trying to devise formulas for insuring computerized data. "It's a new area, and there are no hard and fast decisions on who is liable for what," says Wesley Ooms, assistant vice president of State Farm Mutual Insurance Co., which doesn't offer any computer-fraud coverage.

One problem is that insurers like to stick with quantifiable losses. That makes them reluctant to cover less-concrete costs, like loss of confidentiality and confidence among customers.

There are other problems. While no claims have been made yet, they may be devastating when they come. "We don't expect them to be numerous," says Ralph W. Wheeler Jr., an executive at Aetna Casualty & Surety Co., "but we expect a catastrophe when it happens." Mr. Hubbard of Shand Morahan believes losses among his company's customers will "always be in excess of seven figures."

With the potential for losses like these, premiums can be enormous. They tend to run between $25,000 and $100,000 a year, depending on the size of the business and how secure its computer system is. But coverage can cost a large bank as much as $4 million over three years, according to Mr. Wheeler of Aetna. If the company has a backup computer or other alternate system, insurance costs are usually lower.

Giving Hackers Ideas

Most companies are reluctant to talk about their computer-crime coverage for fear of giving hackers and competitors ideas. "Nobody's going to admit carrying this coverage," says Mr. Hubbard, of Shand Morahan. "It's the same thing as kidnap coverage."

But law firms, which computerize data about cases, and airlines, which computerize everything from accounts receivable to reservations, are among the kinds of companies looking into coverage. "Anyone who uses information-systems technology is going to have to look at this type of insurance," says Don Karmazin, vice president of computer and communications services at United Airlines.

United is self insured, but it plans to study coverage carefully as it becomes more readily available. "It has been talked about in the industry," Mr. Karmazin says, "especially with all the notoriety that these teen-age computer whiz kids have been getting."

McGraw-Hill Inc. has computer-crime coverage, but it says all its risks still aren't covered. Its policy covers the cost of recreating damaged information, but if an electronic trespasser reads—but doesn't damage—an unpublished stock appraisal from McGraw-Hill's Standard & Poor's Index or an unreleased article from its BusinessWeek magazine, no payment is made.

"We hit the stumbling block," says John J. Bott, corporate risk manager. "It's a gray area. We're going round and round on this at least once a month."

For Fun or Foul, Computer Hackers Can Crack Any Code

* * *

Many Just Like the Challenge, Others Like to Show Off; The Cookie Monster Caper

By Erik Larson
Staff Reporter of The Wall Street Journal

SAN FRANCISCO—When their computer started talking dirty, the computer staff members at U.S. Leasing International Inc. knew they had a problem.

The company's typically well-behaved machine had this to say to one of the machine's operators: "The Phantom, the system cracker, strikes again. . . . Soon I will zero (delete) your disks and your backups on System A. I have already crashed your System B. Have fun trying to restore it, you (obscenity)." Some other suggestions were made about what the operator could do with various pieces of computer equipment.

The culprit turned out to be a brigh' 20-year-old man who had secretly fiddled with the company's machine by telephone fron Los Angeles to show off his computer knowledge.

That is the darker side of "hacking," as computer fiddling is known. At the Massachusetts Institute of Technology, where the term is said to have originated, hacking usually has a lighter side. Richard Stallman, a professional programmer at MIT, says a hacker originally was one who knew computers inside out, got a nonprofessional amount of fun out of them and could appreciate the irony and the beauty of a program He refers to himself as a professional hacker.

'Electronic Vandalism'

Outsiders now use the term to describe all kinds of computer yahoos who electronically invade other people's computers, usually just for the challenge. "I call it electronic vandalism or technological trespassing," says Donn B. Parker, a computer-security consultant with SRI International in Menlo Park, Calif.

For business it's a growing problem, thanks to the proliferation of home computers and computer expertise. "People don't realize the extent to which their systems are being broken into," says Clifton H. Garrott, the Los Angeles deputy district attorney for electronic crimes, who prosecuted the U.S. Leasing case.

At the lighter end of the hacking spectrum are those computer jokesters who use such hacker classics as the "Cookie Monster" program. A San Francisco programmer's version went like this: At brief intervals his program would interrupt another user's work and flash "Cookie" on his screen. The machine would then grow more frantic, sending whole lines of "Cookie" across the unsuspecting user's terminal, finally letting loose with a primal screen: "Gimme Cookie!" If the user tried to stop the program, the machine would bristle: "Don't do that, Monster not like that." The only way to stop the Monster was to feed it a cookie—that is, type the word "cookie."

The Nixon Variation

At MIT, hackers once substituted former President Richard Nixon for the Cookie Monster; the alleged Mr. Nixon demanded immunity from prosecution.

Many hackers just like to browse the electronic byways of the country, exploring a digital never-never land entered through the telephones beside their computers or terminals they aren't supposed to have access to. Recently, the University of Michigan and Ann Arbor, Mich., police captured an electronic peeping Tom, who for about a year had wandered among the files on one university computer system out of curiosity. He was a former student. "We decided to prosecute because we take this very seriously," says Aaron Finerman, the director of the university's computing center. University policy says a student can be expelled and a staff member fired for that kind of thing. The culprit pleaded guilty to a misdemeanor.

To satisfy a need to browse, Geoffrey Goodfellow, now a part-time systems analyst for SRI, once broke into a major computer time-sharing network. "I like to see how things work," he says. "In order to see things work, you have to have carte blanche to look around." Browsing, in fact, helped him get his job at SRI. While loitering once in an SRI computer, he says, he left an electronic note saying he would do some programming free if SRI would give him a computer account that would let him use the computer. SRI gave him an account, and the affiliation grew from there, he says.

Browsing hackers get help from the underground network of electronic bulletin boards suspended in computer circuits around the country. By leaving messages at these, hackers can swap passwords, identification numbers and computer phone numbers to help them get into forbidden systems. Last year, one such bulletin board carried detailed instructions for getting into a key computer system operated by Pacific Telephone & Telegraph Co. in Los Angeles.

"TAP," an underground newsletter with a mailing address on 42nd Street in New York, also offers hacking tips. Its March 1983 issue gives the telephone number and other entry details for a Princeton University computer. It also tells how to get free credits on certain arcade video games including Pac-Man, using none-too-subtle methods, such as smacking the machines. TAP got started in 1971 to help "phone phreaks" crack phone-company security. But computer hacking is "getting to be more and more" a part of the publication, says an editor who calls himself Cheshire Catalyst.

"If people have the hardware and the general expertise and they've somehow connected with this gray market, all they lack is the motivation," says Doug DeVries, the manager of computer security at Hewlett-Packard Co.'s corporate data center.

To patch into other people's computers, some hackers use such high-technology techniques as looking over the shoulder of a legitimate user to get his password, or rummaging in a company's trash barrels for computer printouts bearing valuable access codes, a tactic called "trashing." "You'd be surprised what you can find in the trash bins," says Mr. Garrott, the deputy district attorney.

Guessing the Password

Computer passwords, which let you into particular accounts, are often easy to guess. They tend to be wives' names, dogs' names, first names and birthdays. Some computers come with standard passwords, which their owners neglect to change. A common one is "SYSLIB," for system library.

"It isn't hard to get lucky," says Michael Chastain, 20, a senior at the University of California at Berkeley, studying math and computer science.

He got lucky when he was 15. A friend gave him a password to an account on a Berkeley computer. "It happened at the right time. "All I wanted to do in life was get access to one of the university's systems. Once I got it, all I wanted to do was beat the Adventure game," in which the player electronically seeks treasure in a cave. "Then all I wanted to do was beat their security." He did, illicitly gaining "super-user" status—computer privileges typically only given to a few key staff members. He didn't go any further. "I turned myself in," he says. "I didn't want to go on to bigger and better security violations and get caught doing something serious."

Die-hard hackers say there isn't any harm in any of this, provided data never get destroyed and no one gets hurt. The malicious hackers, says MIT's Mr. Stallman, may simply be rebelling against antisocial "fascist" computers that seek to keep users out. "I call him a person who has been alienated by the hostile atmosphere he perceives in most computer systems," he says "He reacts to it with anger, which is perfectly justifiable, in my opinion."

Occasionally, a hacker goes on to do obvious damage, as in the U.S. Leasing case. Profanity was sprinkled throughout its system. Important inventory files, which allowed a leasing subsidiary to keep track of its equipment, were destroyed. And the company spent thousands of dollars restoring the computer to operation.

The culprit was Lewis De Payne, who went by the code name "Roscoe." He led a kind of computer-access gang in Los Angeles that included a woman and a couple of youngsters. With the help of telephone officials, police captured Mr. De Payne, who pleaded no contest in Los Angeles municipal court to reduced charges of computer fraud and conspiracy to commit computer fraud. He spent about six months in the county jail.

To get the computer's phone number and a key password, Mr. De Payne used a terribly sophisticated technique: He asked for them. Posing as a software trouble-shooter, he called the company and said he needed to do some program maintenance over the phone. His repair was supposed to correct a problem that other computers had, in fact, been having. An unsuspecting computer operator gave Mr. De Payne what he wanted.

Although Mr. De Payne won't discuss the case, he says: "You can basically extract any information from a person if they're ignorant of what that can do." Improperly trained people, he says, "are the weakest link."

Mr. De Payne continued the ruse and made the repair. When it didn't work, U.S. Leasing called the local offices of the computer manufacturer and learned the firm had no such employee. U.S. Leasing immediately ordered its legitimate users to change their passwords. Some didn't, leaving an open window for Mr. De Payne.

Early the next morning, the computer left messages that would make a sailor blush, such as: "I just wanted to tell you to go take a flying (obscenity)."

"At that point, we knew we had a *very* serious problem," says John Whipple, the company's vice president for data-processing services.

The company quickly sealed its computers from outside access. It wasn't worried about the lost data because it had complete backup tapes. Its main fear was that somehow the intruders had devised a program that would let them back into the machine even after all the passwords had been changed. That kind of software sleight of hand is called a "trap door." U.S. Leasing spent about 24 hours of valuable computer and staff time reconstructing its files, Mr. Whipple says.

Why had Mr. De Payne done it? In the court records, a written statement by his psychiatrist says in part: "He wanted to demonstrate that he had a profound knowledge of computers and their functions." In Mr. De Payne's own statement, he says: "It gave us a sense of pride to be able to show each other that we could 'crack the security' of the computer . . . ."

Playing the Game

For some hackers, security means only challenge. "It's as if you're playing a game," says MIT's Mr. Stallman. "When they (security people) start playing that game, they shouldn't be surprised when other people play the other side."

Partly as a result, companies are about as willing to talk about the specifics of computer security as families are to discuss incest. They don't want to throw down a challenge for some wise guy. They don't want stockholders or bankers to know that some kid busted into their files. SKK Inc., of Rosemont, Ill., one of a growing number of companies selling computer-security products, plays to this fear in a brochure for its ACF2 software-protection package: "When some sharpie makes a fool out of your computer . . . whose face appears on the news?"

But no system can ever be fully secure, security experts say. SRI's Donn Parker likes to quote "Jackson's Law": "With a big enough hammer, you can break anything." Steven E. Weiland, the principal research manager for the Center for Bank Data Security in Rolling Meadows, Ill., says, "If someone really wants to get in, they get in."

Which can give you a nightmare. Consider "WarGames," an MGM/UA Entertainment Co. film to be released in June. Here's the plot: A kid likes to tap into the computers of a video-game maker so he can play the games before they hit the market. One day he unwittingly patches into a Defense Department doomsday computer and starts the world on its way to World War III, all the while thinking he is playing some neat new game.

We won't say how the movie ends.

Crime on a chip

Beware the logic bombs, data diddlers and hackers

BY MURIEL DOBBIN
© 1983, Baltimore Sun

LOS ANGELES — Logic bombs, data diddling, obscene messages and illegal access to defense secrets are just the tip of a computer crime iceberg that federal and California officials are working full time to control.

Already established in the annals of computer crime are the Phantom, who cost a San Francisco corporation $250,000 by feeding obscene messages into its machines, a teen-ager who acquired computer access to secret Defense Department information, and Cap'n Crunch, one of the original "phone phreaks" from whom today's electronic pirates are descended.

"The magnitude of the problem of computer vulnerability is only now being realized. What we are seeing is the tip of a nasty iceberg," said Clifton Garrott, an assistant district attorney who heads the electronics crime division in Los Angeles.

The U.S. Justice Department has commissioned a team of electronics experts at Stanford Research International, a California foundation, to carry out a study of computer crime in 18 states.

Rep. Ronald Wyden, D-Ore., introduced this month a computer crime prevention bill, said to be the first of its kind, as an initial step to combating the problem.

The Wyden bill would set up a task force to assess the dimensions of computer crime nationally. It also would create a clearing house to provide guidelines and aid for small businesses that are especially sensitive to computer criminals.

Charles Wood, management systems consultant at Stanford Research International, pointed to the timeliness of the movie *WarGames*, in which a teen-ager accidentally keys into a Pentagon computer and puts the world on nuclear alert.

"It is conceivable," he said. "The question is whether it is reasonably possible."

Garrott, who in three years of heading California computer crime-fighters has seen such offenses rise sharply, recalled that it was a teen-age boy who was reported recently to have used a computer at the University of Southern California to gain access to a Defense Department system. The extent of the youth's success, said Garrott, had not been established because nobody at the Pentagon would talk about it.

"What we must remember," said Garrott, "is that a computer is no more than an electronic filing system, which will do what anyone tells it to do."

A so-called intelligent computer, which could draw on its own experience when dealing with different sets of facts, is still at least seven years away, according to Garrott.

Meanwhile, he said, not only corporations but people have to learn to cope with the growing threat of computer abuse.

"Our credit ratings, our taxes, our bank accounts, our telephone bills are all to be found on computers, and there is evidence that increasing access is being gained to credit bureau machines where ratings are listed. New personalities can be built over existing ones, but it is the real person who gets the bill," he said.

He classified hackers, as computer criminals are called, as the successors of phone phreaks such as Cap'n Crunch, who used to use a device called the "blue box" to make long-distance calls without paying for them.

Hackers, he said, are "brilliant in a very limited way. They are not sociable. They flunk out of school and they can communicate only through the world of electronics," he said.

They are people like Lewis DePayne, whose computer name was "Roscoe" or "the Phantom." He led a criminal computer gang in Los Angeles that included two teen-age boys and a woman known as "Susan Thunder."

"Susan Thunder loved computers so much that she would prostitute herself to get money to buy computer equipment," said Garrott.

DePayne eventually spent five months in jail for computer fraud after he had planted obscenities in the computers of a California company.

An even darker side of computer abuse was uncovered at a hospital, where it was found that hackers had gained access to the computerized records of patients in intensive care and had doubled the dosage of their medications.

"If a nurse had not noticed the difference, we could have been dealing with a case of mass murder," Garrott said.

What worries the computer crime fighters is that such offenses often are discovered by accident.

"It's too often a fluke that it's found out at all," Garrott said.

He told of the bank employee who decided use a computer to triple the withholding for state and federal taxes o the bank staff and apply for the refund to be paid to himself. He was unsuccessful only because an auditor wondered if the withholding was too high and investigated.

There was also the case of Sarah the bank teller who programmed the bank computer to pay her unearned overtime and was successful for months until it occurred to a bank official that an enormous amount of overtime was being paid to a low-level employee.

What was significant about the case of Sarah was that after she had made restitution of the money, she was not fired. She was given a better job at a higher salary on the condition that she told nobody how she had diddled the data.

"That attitude on the part of corporations is passing," said Garrott, who explained that it originally stemmed from reluctance on the part of many firms to admit their own management inefficiency. "It does point up the need for new and tougher computer safeguards," he emphasized.

But until computer precautions are improved, he said, there will continue to be cases where data is changed or "diddled," and corporations risk financial disaster as a result of the planting of "logic bombs" which result in a computer erasing all the information in its records on a given time and date.

"The trouble is that people think computer crime is funny when it can be both disastrous and tragic," Garrott said.

Yet even the official admitted computer crime can be funny. As in the classic case of the cookie monster in the computer. That took place in San Francisco, where interference by hackers led to repeated interruption of a firm's programming with the word "cookie" appearing on the screen.

It would wind up with "gimme cookie." And it turned out that the only way to appease the electronic monster was to "feed" it by typing in the word it wanted, which was "cookie."

Criminal Use Of Computers Seen Growing

By Robert E. Taylor
Staff Reporter of The Wall Street Journal

WASHINGTON – Richard Shanklin has found another use for the versatile home computer: credit-card fraud.

From his parents' home in Fairfax, Va., the 30-year-old Mr. Shanklin used his computer to get into the files of Credit Bureau Inc. in Atlanta. Authorities say he used information about other people's credit-card accounts to order about $50,000 worth of computer and electronic gear from mail-order businesses.

A grand jury indicted Mr. Shanklin on 15 charges. After plea bargaining, the prosecutors dropped all but one charge of credit-card fraud. Mr. Shanklin pleaded guilty, and he faces a jail term.

The ease with which he gained access to the files is alarming to Assistant U.S. Attorney Loren Hershey, who prosecuted the case. He calls the home computer "the burglary tool of the electronic age." Several computer experts consider that an exaggeration, saying they haven't heard of another case like Mr. Shanklin's. But while computer pranks gain far more attention, experts expect the use of home computers in fraud and similar criminal activity to grow.

"The rip-offs are likely to be more frequent and larger," says Arthur Gillis, a computer-security specialist who is president of Computer Based Solutions Inc. of Atlanta. "The numbers are against us," he says, because people are learning about computers faster than adequate security precautions are being developed.

Danger From Insiders

The most serious threats of misuse, most experts say, come not from outsiders, but from insiders. Most computer thefts are embezzlements. In one case, a consultant, Stanley Mark Rifkin, used computer codes to transfer $10.2 million from the Security Pacific Bank of Los Angeles to his account in Switzerland. He served three years in jail.

Computer buffs have shown that they can use their wits, their terminals and their telephone lines to gain unauthorized access to private data banks. The most dramatic examples have been carried out by a group of youths in Milwaukee who call themselves the 414's, after the city's telephone area code.

They have penetrated dozens of computer systems, including a data base at the U.S. nuclear-weapons research laboratory in Los Alamos, N.M., and the radiation-therapy records at Memorial Sloan-Kettering Cancer Center in New York.

While computer intrusions are generally ascribed to sport rather than greed, the case of Mr. Shanklin shows the possibilities of financial gain.

Computers' Weak Point

Mr. Shanklin apparently broke into the computer data bank by exploiting a weak point common to most systems: human carelessness. Federal authorities believe he posed as a Credit Bureau employee to obtain from a J.C. Penney clerk the codes used to enter the computer's credit files.

Dan P. Miller, a vice president at the Credit Bureau's Maryland subsidiary, says anyone who gets inside the computer's data base can read the company's files on about 90 million people from 24 states—including their credit account numbers, credit histories and unused balances.

Authorities say Mr. Shanklin, in ordering electronic gear by telephone, used credit accounts of people who had recently died. Investigators also say he obtained credit histories of Hollywood personalities, including actress Linda Blair. The grand jury charged that Mr. Shanklin obtained credit reports on at least 80 individuals.

When federal investigators went to Mr. Shanklin's home, they say they found seven antennas on the roof. The amount of computer and electronic gear packed into his bedroom was reminiscent, Mr. Hershey says, of the movie-set bedroom of the youth in "WarGames," a movie that raises the specter of a home-computer penetration of the U.S. missile defense system.

Deliveryman Grows Suspicious

According to the government, Mr. Shanklin picked up some of the goods he ordered at a freight depot, but he had other purchases shipped to his home. A United Parcel Service deliveryman grew suspicious, according to the prosecutor, after taking packages for several individuals to the home in a few days and seeing Mr. Shanklin sign for all of them.

Thomas Maloy, the Credit Bureau's director of public relations, says the company has "taken the appropriate steps" to prevent a similar unauthorized foray into its records, but, citing security concerns, he won't explain what they are.

Mr. Gillis, the computer-security expert, says security can be provided in several ways. Software can require a user to give a series of codes before getting access to data. It also can limit the amount of computerized information that is open to each authorized user. The central computer can be linked only to private telephone lines or programmed to give access to only specific computer terminals.

The most sophisticated safeguards identify authorized users by scanning their fingerprints, voiceprints or even the blood vessels in the retinas of their eyes, says Jim Schweitzer, Xerox Corp.'s manager of system security technology.

But such safeguards may be too expensive or cumbersome for some users. A private phone line to a computer is likely to cost at least $1,000 a month. Mr. Gillis says so it isn't practical for most low-volume users.

In the absence of the more sophisticated security measures, Mr. Gillis says, "it doesn't take a genius" to break in to a data bank. All it takes, he says, is an understanding of how computers work. Computer users can beat the simpler safeguards by trying random variations of codes and passwords until they find the right ones.

But even the best security is vulnerable to human frailty. A common problem, says Mr. Schweitzer, is that authorized users don't safeguard their passwords and access codes. Theode C. Langevin, working in a New York brokerage house, used the password assigned to a former colleague at the Federal Reserve Bank to tap into the Fed's secret money-supply files. Mr. Langevin has pleaded guilty and faces a sentence of up to five years and a $1,000 fine.

Many crimes that rely on computers, though, could have been committed with old-fashioned tactics. Mr. Schweitzer contends, for instance, that Mr. Shanklin could have found enough information in a credit-bureau or department-store trash bin to charge his purchases to someone else's credit card.

Audit concludes state computers are vulnerable

By KARIN DAVIES
Daily News reporter

JUNEAU — The state computer system is poorly protected against tampering by unauthorized individuals, a recently released state audit says.

Because the computer security system is inadequate, someone who puts his mind to it could play with state records — including personnel, payroll and permanent fund dividend files, said James Shea, Department of Administration deputy commissioner of information resource management.

The Department of Administration's lack of policies, procedures and standards for computer operations "leaves the system open to errors and inefficiencies," the Legislative Audit Division said.

"In the worst case, the absence of adequate access controls over production files could expose application systems to errors, fraud and sabotage," the audit said.

Anyone with a current state computer account can change, replace or delete backup programs for the central accounting system, the report said.

The department has asked the legislature for $280,000 in the 1984-85 budget year to beef up security systems for central state computers in Juneau and Anchorage, Shea said. The money would pay for a security system and two people to maintain it.

Shea said computer tampering has become a concern nationwide as "computer literacy" increases. Recently, a state employee was disciplined for gathering the information that would have allowed him to enter files that were off limits to him.

House Speaker Joe Hayes, R-Anchorage, recently introduced legislation making it a felony to use computers to illegally obtain or alter information, steal money or to defraud or deceive someone.

A better computer security system would cut down on the number of checks and audits of records that the state would have to perform, Shea said.

The department also plans to comply with suggestions that rules for operating the state computer system be written, distributed and enforced, Shea said.

Several other procedural corrections will be made as well, according to a department response to the audit.

Computer meddling leads state to ask for more security

ADN 12/23

The Associated Press

JUNEAU — Allegations that a state employee tampered with a computer in an effort to gain access to the names of permanent fund dividend recipients has prompted officials to request a new, $240,000 computer security system, a spokeswoman said Thursday.

Frances Rose, a public information officer with the state Department of Administration, said the employee's name would not be released because he was not charged with any crime.

"He was suspended for 15 days, reduced two steps in rank and had his security clearance lifted," she said.

"If he had been successful, I presume he would have been fired straight out."

The employee is accused of trying to "get information he did not need," or the names of permanent fund dividend recipients, she said.

"I guess he thought he would solicit things from people after they got their checks," Rose said.

"This is the first time this kind of thing has happened. . . . It's straight out of 'War Games' (a film about computer tampering)."

A system of "passwords" had been used by the state to safeguard computer information, "but I guess it's not foolproof," she said.

"There's a recognized need that we have to beef up our security," she said.

"We have a proposal in the fiscal '85 budget that would fund the installation of a new computer security system.

"The one they have in mind would cost $240,000 and include creating a data security office and an officer to monitor computer use," Rose said.

Gayle Horetski, an assistant attorney general, said Thursday the case was not referred to the Department of Law so there was no criminal prosecution.

"Computer tampering is something of a gray area and we're working now on legislation that would tighten it up," she said.

TRW

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Defense Sector

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No. 28846

SYSTEMS 48 REV. 1-83

1. ORIGINAL PACKING SLIP

HB

524

STATE OF ALASKA
THE LEGISLATURE

LEGISLATIVE AFFAIRS AGENCY

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

MEMORANDUM January 30, 1984

SUBJECT: Sectional analysis of HB 524

TO: Representative Charlie Bussell
Chairman, House Judiciary Committee

FROM: Keith B. Levy KBL
Legislative Counsel

You have requested a sectional analysis of HB 524, "An Act relating to the constitutional spending limit; and providing for an effective date."

Section 1 of the the bill provides the method for adjusting the annual spending limit (AS 37.07.075), as required by art. IX, sec. 16 of the state constitution.

The $2,500,000,000 limit is to be cumulatively adjusted annually by the Office of Management and Budget as follows: The percentage of the federal consumer price index for Anchorage for the fiscal year two years before the fiscal year for which the spending limit is being figured is to be added to the percentage of the rate of change in the population of the state as determined by the previous two decennial censuses. Using the resulting percentage, the spending limit is to be adjusted for the period beginning July 1, 1981 through the last day of the fiscal year before the fiscal year for which the spending limit is being determined.

To give an example, the spending limit for fiscal year 1986 would be figured as follows:

> The percentage of the consumer price index for 1984 would be added to the percentage change in population as determined by the 1970 and 1980 censuses. For fiscal year 1986, the spending limit of $2,500,000,000 would be increased by this percentage for the period

from July 1, 1981 through the end of fiscal year 1985 (June 30, 1985).

Section 2 provides that the Act takes effect immediately.

KBL:ojb
J3/018

POUCH V
JUNEAU, ALASKA 99811
(907) 465-4990

Alaska State Legislature
HOUSE OF REPRESENTATIVES

REPRESENTATIVE
CHARLIE BUSSELL
CHAIRMAN

Committee on Judiciary

HB 524
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D. "HB 524 -- Constitutional Appropriation Limit"
P.S. Dhillon, Economist, Legislative Finance Division.

E. "Appropriation Limit"
Gordon S. Harrison, Associate Director, Office of Management and Budget.

F. "Spending Limit/HB 524"
Thomas P. Chester, Principal Analyst, Office of Management and Budget.

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Mike Greany, Director, Legislative Finance Division.

H. SS SB 326 -- Appropriations Limit

I. 2 November, 1982 General Election, Ballot Measure Number 4 Returns
State of Alaska, Official Returns by Election Precinct.

MEMBERS:
REP. JOHN LISKA, VICE CHAIRMAN; REP. RAMONA BARNES, EMERITUS;
REP. JOE HAYES; REP. HUGH MALONE; REP. DON CLOCKSIN; REP. RON WENDTE

STATE OF ALASKA 1984 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date:

REQUEST
Bill/Resolution No.: HB524
Title: An Act Relating to the Constitutional Spending Limit
Sponsor: Adams, Ward & Uehling
Requestor:
Date of Request:

FISCAL DETAIL
Agency Affected: Office of the Governor
Program Category Affected: Management & Budget
BRU, Program or Subprogram(s) Affected:

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 84	FY 85	FY 86	FY 87	FY 88	FY 89
OPERATING						
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 SUPPLIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS						
800 MISCELLANEOUS						
TOTAL OPERATING		-0-				
CAPITAL		-0-				
REVENUE		-0-				

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL		-0-				

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

This Bill will not result in increased revenues or expenditures.

ANALYSIS: Attach a separate page for analysis

Prepared By: Rep. Al Adams AAA Phone: 465-3706
Division: Date: 1/27/84

Approved by Commissioner: Date:
Agency:

Distribution (by Agency preparing fiscal note):
Legislative Finance
Legislative Sponsor
Requestor
Office of Management and Budget
Impacted Agency(ies)

12/1/83

Alaska State Legislature

House of Representatives

Al Adams
Chairman
Committee on Finance

WHILE IN SESSION
Pouch V
State Capitol
Juneau, Alaska 99811
(907) 465-3706

OUT OF SESSION
P.O. Box 333
Kotzebue, Alaska 99752
(907) 442-3320

1024 W. 6th
Anchorage, Alaska 99501
(907) 274-0615

Official Business

Januray 19, 1984

TO: Representative Charlie Bussell, Chairman
House Judiciary Committee

FROM: Representative Al Adams AAA

RE: Proposed Letter of Intent for HB 524

LETTER OF INTENT HB 524

It is the intent of the Legislature that for the purposes of calculating the spending limit in HB 524 the following equation be used:

Base x 1 + (rate of growth in population + inflation adjustment) = Limit

The base is $2,500,000 for fiscal year 1982. For each succeeding fiscal year the base shall be adjusted by the rate of change in population and the Anchorage Consumer Price Index-Urban (CPI-U).

The rate of change in population shall be calculated as the continuously compounded annual rate of change between 1970 and 1980 (April 1) estimates of population established by the U.S. Census Bureau in their decennial censuses. For example, the rate of change for the 1980's is computed as follows:

$$\text{Population}_{1980} = \text{Population}_{1970}\ e^{rt} \text{ or}$$

$$\text{Rate of change} = r = \frac{\ln(\text{population } 1980/\text{population } 1970}{t} \text{ or}$$

$$\text{Rate of change} = .0284 = \frac{\ln(401851/302583)}{10}$$

The rate of change in the Anchorage CPI-U computed as the July to July change in the index as published in the U.S. Department of Labor, Bureau of Labor Statistics.

MEMORANDUM State of Alaska

TO: John Shively, Chief of Staff
Office of the Governor

DATE: January 4, 1984

FILE NO: 84B-1

TELEPHONE NO: 465-3568

FROM: Gordon S. Harrison
Associate Director
Office of Management and Budget

SUBJECT: Appropriation Limit

This memorandum discusses the complexities of interpreting the State's constitutional limit on appropriations (Article IX, Section 16). It recommends an explicit method of calculating the limit. This method would be used to calculate the limit for fiscal year 1985 and subsequent years as well, provided legislation is not enacted which specifies a different method. Dr. Tom Chester of this office has provided much of the background information in this memo, and he has made the actual mathematical computations.

The constitutional language that creates a problem of interpretation is "appropriations . . . shall not exceed $2,500,000,000 by more than the cumulative change, derived from federal indices as prescribed by law, in population and inflation since July 1, 1981." The Legislature has not passed a law prescribing which Federal indices are to be used and how. Several major ambiguities, complications and issues stand in the way of an easy, straightforward interpretation of this language. These are discussed below, and a recommended approach to each of them is suggested.

Period of Adjustment to Base

The law states that the limit of $2.5 billion is to be adjusted for the cumulative change in population and inflation since July 1, 1981. Does this mean that $2.5 billion is the limit for fiscal year 1982 (July 1, 1981 - June 30, 1982) or that it is the base for calculating the limit for FY 82? In other words, should the adjustment for population and inflation be made to the beginning of the fiscal year to which it applies, or through the end of it? The longer the period of time for which adjustments are made, the higher the allowable appropriations will be in future years.

The intent of the limit is to permit per capita spending levels to remain constant over time. In my opinion the adjustment should include the year in which the spending is to take place, so the population growth and inflation that occurs during that year does not result in an actual decrease of government services in per capita terms. The only contrary argument I see is simply that making the adjustment through the end of the

02 001A(Rev. 10/79)

fiscal year may give the appearance to some that the Governor and Legislature are manipulating the law to give them a higher, less restrictive limit. To avoid the appearance of any trickery in this sensitive matter, I suggest that the adjustment for population and inflation be made only to the beginning of the fiscal year.

Indices

The most complex question in interpreting the appropriation limitation language is which index of the many available should be used for making adjustments to the $2.5 billion base for population and inflationary changes.

Population

Table 1 presents population information for Alaska. This information suggests three plausible measures of population growth that could be used for purposes of interpreting the spending limit: (1) the average annual population growth that occurred during the decade 1970-1980; (2) population change based on current estimates by the Alaska Department of Labor (ADOL); (3) population change based on current estimates by the U.S. Census Bureau (published by the Bureau of Economic Analysis [BEA]).

TABLE 1

Various Population Measures for Alaska

		Population Estimate	
Year	Population Census	Alaska DOL (% change)	U.S. Census Bureau (% change)
1970	308,500.0		
1980	419,700.0		
1981		435,000.0	416,000.0
1982		461,000.0 (5.98)	443,000.0 (6.49)
1983		N/A	N/A

The advantage of using the 1970-1980 annual rate of change[1] is that the numbers are based on the Federal decennial census and are not now subject to significant revision. Also, derivation of the number is simple and easy for people to understand. The disadvantage of this number, on the other hand, is that it may

not reflect actual population changes that are occurring in the 1980s. As a result, it may overstate or understate current growth.

The Alaska Department of Labor, Research and Analysis Section, makes population estimates of Alaska for purposes of Federal programs. The estimates are derived from methods approved by the U.S. Census Bureau, which certifies the State numbers. Because of this link with U.S. standards and estimating methodology, I believe the State estimates of population change could satisfy the constitutional requirement that the adjustment factors be "derived from federal indices." However, recent departmental changes have undermined the ability of the State to make timely and accurate population estimates. The professional demographer employed by the Department of Labor recently resigned, and no replacement has been hired at this time. Also, a reorganization within the Department of Health and Social Services has reduced the ability of the Department to make vital statistics available in a timely fashion to the Department of Labor. These statistics are necessary for estimating the natural increase component of population growth. As a result of this situation, and because we would need to stretch somewhat the phrase "federal indices" to use the State population estimates, I suggest that Federally-published estimates of population change be used.

Federal population estimates for 1981 and 1982 are shown in Table 1. While the Federal estimates are lower than the State estimates, and presumably less accurate, the Federal rate of change between 1981 and 1982 is somewhat higher. For purposes of calculating an appropriation limit, changes between July 1 and July 1 of each year should be used.

Inflation

Several different indices of inflation could plausibly be used for calculating the constitutional limit for a particular fiscal year. Most commonly discussed are the Federal consumer price indices. Currently the Bureau of Labor Statistics (BLS), U.S. Department of Labor, produces two basic consumer price indices: the All Urban Consumers (CPI-U) and the Urban Wage Earners and Clerical Workers (CPI-W). CPI-U is a more inclusive definition. CPE-W primarily measures changes in prices of goods typically purchased by urban workers while CPI-U measures changes in price of items typically bought by all urban dwellers irrespective of their attachment to the labor force. CPI-U covers approximately twice as many persons and in general produces an inflation rate higher than that for CPI-W.

BLS produces an Anchorage CPI-U and CPI-W. While the cost of living in Anchorage is higher than the U.S. average, the CPI

indices are higher than the national CPI indices. However, the rate of change in cost of living (inflation) is lower in Anchorage than in the U.S. because economies of scale are being realized in the transportation and distribution of goods. It is not known to what extent the Anchorage CPI indices reflect statewide changes. Inflationary change may be slower in Anchorage than the U.S. average, but that may not be so in Juneau or the bush where many government services are provided.

One serious drawback to using the consumer price indices is a change made by the BLS in measuring the shelter component of these indices.[2] This change creates an inconsistency in the series from July 1, 1981 to the present, with the result that the published inflation rate takes a significant dip in 1983. The effect of this change is especially dramatic in the Anchorage consumer price indices because of a related change made in measuring housing costs.[3]

The major problem with the CPI series for our purposes, however, is that it measures changes in the cost of a market basket of goods purchased by consumers, not of goods and services purchased by the State government.

There is a Federally-computed inflation index for the cost of services provided by state and local governments. The government purchase index is published monthly by the Bureau of Economic Analysis in a publication titled Current Business Trends. Even though this is a measure of price changes at the national level, the government purchase index seems to be the most logical for our purposes. I recommend that we adopt this index, using the annual point-to-point percentage change between July 1 and July 1 of each year.

Table 2 presents rates of change measured by the various indices. The low rates shown for the Anchorage CPI series in 1983 reflect the problem of definitional change discussed above.

TABLE 2

Various Rates of Inflation

Rate of Change	Fiscal Year 1980	1981	1982	1983
U.S.A.				
CPI-U	13.20	10.73	7.7	2.43
CPI-W	13.47	10.25	6.29	2.19
Government Purchase Index	9.77	5.70	6.81	6.34
Anchorage				
CPI-U	10.10	7.75	7.11	.83*
CPI-W	8.91	7.52	7.2	-.62

*Due to change in definition of shelter component.

Estimating in the Absence of Data

Calculation of the appropriation limit requires a value for population and inflationary change that is not available at the time it is needed. Note in Table 1 that population estimates are not yet available for 1983. We actually need an estimate of population change for 6 months in the future (to July 1, 1984) to calculate an FY 85 limit. While the publication of inflation indices does not lag as much as the publication of population figures, the problem still exists. There are several options for obtaining the missing data; among them are the purchase of an estimate from a national economic forecasting firm, and the production of an estimate in-house by OMB with an econometric model. Our recommendation, however, is to simply use for the missing number the trend since July 1, 1981. That is, the average of the annual point-to-point changes since July 1, 1981 becomes the missing value. This approach has the advantage of not being subject to manipulation. To avoid the erosion of public credibility, it is important that the Governor and Legislature use a method which is easily understood and reproducible by everyone.

Revised Indices

Federal indices of population and inflation are subject to revision by the agency that issues them. This is because the figures they release are typically based on survey data, and

additional information invariably becomes available, or new benchmarks are used, or errors are discovered, etc. For purposes of computing the spending limit, the most current published estimate available should be used, and a mid-year adjustment in the spending limit should not be made even if revised indices are issued.

FY 84 Precedent

When the Sheffield Administration took office in December, 1982, former Governor Hammond's administration had prepared an executive budget for FY 84. This executive budget contained a spending limit calculation of $2.98 billion. The only written explanation of this number is a footnote on page 3 of the Executive Budget Book that states "...according to the spending limit, the FY 84 budget ceiling could exceed the FY 82 figure of $2.5 billion by the estimated rate of inflation and population growth. For FY 83 our estimate is 10%, hence the FY 83 base is $2,750.0. The $2.98 billion limit for FY 84 is estimated to be 8.4% over the FY 83 base level." Since there is no explanation of the assumptions or method used, I do not see why this Administration is bound by whatever those may have been, nor bound to $2.98 billion as a base for calculating the FY 85 limit. It seems to me that Governor Sheffield and the Legislature may adopt a method that best comports with the intent of the law and with logic, even if the method produces a different number from that used in FY 1984.

Appropriation Limit Options

From the foregoing discussion it should be clear that there are theoretically a large number of possible limit calculations. This section presents several options that suggest the range of possible outcomes. It also includes the recommended calculation, which is Option 4. In accord with our earlier recommendation regarding the period of adjustment to the base, all of the options shown here assume that the adjustment for population and inflation are made for three years rather than four. A fourth year of adjustments would add approximately $250 million to the numbers shown. The options are:

Option 1 = ADOL Population and Alaska CPI-U
Option 2 = ADOL Population and Government Services
Option 3 = BLS Population and Alaska CPI-U
Option 4 = BLS Population and Government Services
Option 5 = Census* Population and Alaska CPI-U
Option 6 = Census* Population and Government Services

*1970-1980 compound average

The appropriation limits that result from these options are:

FY	Option 1	Option 2	Option 3	Option 4	Option 5	Option 6
84	3.041	3.199	3.062	3.220	2.871	3.020
85	3.356	3.618	3.390	3.654	3.079	3.319
86	3.704	4.092	3.753	4.147	3.301	3.648
87	4.087	4.630	4.156	4.707	3.539	4.010
88	4.509	5.238	4.602	5.343	3.795	4.406

We have analyzed these spending limits in terms of maximum allowable appropriations and available revenue, and the results of that analysis are available. However, the focus of this memo has been the methodological issues surrounding the calculation of a limit.

GSH/mm

FOOTNOTES

1. This change can be expressed, and calculated, in three ways: as one-tenth the decennial change; as the continuous annual change; and as the compound annual change. The latter (3.126%) is the best measure for the purposes at hand.

   One-tenth the decennial change: $\left(\frac{419,700}{308,500} - 1\right) / 10 = 3.6045$

   Continuous annual change: $P_{1980} = P_{1970}E^{rt} = 3.0782$

   Annual compound change: $P_{1980} = (1+r)^{t}P_{1970} = 3.1260$

2. The change involved a measure of shelter from the cost of mortgages and the selling price of homes to the cost of rental units.

3. In Anchorage, the BLS began for the first time in 1983 to measure Anchorage costs. Prior to this, they simply used the costs of housing in west coast cities of a size similar to Anchorage. In describing the effect of the new measure, the Alaska Department of Labor has written:

   > From January to July of this year the Anchorage Consumer Price Index registered increases below historical levels. During the last five months, the index's over-the-year change did not exceed 1% and, in fact, fell in May. This decline in inflation is misleading because of methodology changes causing inconsistency between 1983 and 1982 data. Because of this the BLS has recommended that in the short term, users of the CPI use either 1) a 12 month annual average, or 2) the U.S. rate; or 3) compare 1983 data only. Looking at the Anchorage CPI this way the index has risen 3.2% from January through July. If the CPI continues this same trend it will increase between 5.0% and 6.0% for the 1983 average.

   (Alaska Economic Trends, Alaska Department of Labor, November, 1983, p. 13.)

Why was the change made? The Commissioner of the U.S. Department of Labor provides the following reasons. First, the former method combined investment and consumption effects upon price. The new approach is an attempt to measure only the changing cost of consumption. Second, the old method was based upon the assumption of a fixed rate mortgage. Recently, a variety of alternatives to a fixed rate mortgage have become

available. The former method did not take them into account. Third, the appearance of seller financing distorted the measure since there is no accurate way to detect it. Finally, the Federal Government will be using the index, starting in 1985, to index tax brackets. Thus, the most accurate index possible is desired.

MEMORANDUM

State of Alaska

TO: Gordon S. Harrison
Associate Director

DATE: January 19, 1984

FILE NO: 84B-3

TELEPHONE NO: 465-3568

FROM: Thomas P. Chester TC
Principal Analyst

SUBJECT: Spending Limit/HB 524

Adoption of HB 524 will result in the following spending limits:

Fiscal Year	Limit [a]	=	Prior Limit	X	(R1 [b]	+	R2 [c])
82	$2,500						
83	2,765	=	$2,500	X	(1 + .02837	+	.07750)
84	3,040	=	2,765	X	(1 + .02837	+	.07111)
85	3,151	=	3,040	X	(1 + .02837	+	.00835)

[a] Rounded to nearest million.
[b] Rate of population change.
[c] Rate of inflation.

Estimation of rate of population change (lines 20 - 23).

.02837 = 1/10 X ln (401,851/302,583)

Estimation of rate of inflation (lines 15 - 19)

Month	Year	CPI-U	Rate of Change
July	80	228.4	-
July	81	246.1	(246.1/228.4) - 1 = .07750
July	82	263.6	(263.6/246.1) - 1 = .07111
July	83	265.8	(265.8/263.6) - 1 = .00835

mm

Attachment

cc: The Honorable Al Adams

STATE OF ALASKA

THE LEGISLATURE

BUDGET AND AUDIT COMMITTEE

AUDIT DIVISION
POUCH W — ALASKA OFFICE BUILDING

FINANCE DIVISION
POUCH WF — STATE CAPITOL

JUNEAU 99801

M E M O R A N D U M

DATE: January 17, 1984

TO: Rep. Al Adams, Chairman
House Finance Committee

FROM: Mike Creany, Director
Legislative Finance Division

SUBJ: Spending Limit

Legislative Finance Division (P.S. Dhillon) has reviewed your draft legislation for the spending limit.

This is to confirm that it produces precisely the same spending limit as SB 326 (Ferguson): $3151.4 for FY 85.*

The only difference between the two versions is that your's removes unnecessary language in Section 1(2).

---

*

	Limit ($ Millions)
FY 82	$2500.0
FY 83	$2764.7 = $2500.0 X (1 + (0.0284 + 0.0775))
FY 84	$3039.8 = $2764.7 X (1 + (0.0284 + 0.0711))
FY 85	$3151.4 = $3039.8 X (1 + (0.0284 + 0.0083))

SS SB 326 -- Appropriations Limit

	Limit ($ millions)		Population Rate of Change	Anchorage CPI-U Rate of Change
FY 82	$2500.0			
FY 83	$2764.7 = $2500.0	X (1 + (0.0284	+	0.0775))
FY 84	$3039.8 = $2764.7	X (1 + (0.0284	+	0.0711))
FY 85	$3151.4 + $3039.8	X (1 + (0.0284	+	0.0083))

Note 1. The population adjustment used above is the continuously compounded annual rate of change between the 1970 and 1980 (April 1) estimates of population established by the U.S. Census Bureau in their decennial censuses. It is computed as follows:

$$\text{Population}_{1980} = \text{Population}_{1970} \cdot e^{rt}$$

or $$\text{Rate of Change} = r = \frac{\ln(\text{population } 1980/\text{population } 1970)}{t}$$

or $$\text{Rate of Change} = .0284 = \frac{\ln(401851/302583)}{10}$$

Note 2. The rate of change in the Anchorage CPI-U is computed as the July to July change in the index as published by the U. S. Department of Labor, Bureau of Labor Statistics.

L.F.D./p.s.d.
1/17/84

GENERAL ELECTION, NOVEMBER 2, 1982
BALLOT MEASURE NUMBER 4
APPROPRIATION LIMIT

ED	TOTAL	FOR	%	AGAINST	%
1	8192	4741	57.9	3451	42.1
2	4332	2428	56.0	1904	44.0
3	4696	2740	58.3	1956	41.7
4	14766	7979	54.0	6787	46.0
5	9308	5825	62.6	3483	37.4
6	4022	2551	63.4	1471	36.6
7	4601	2960	64.3	1641	35.7
8	9417	6029	64.0	3388	36.0
9	8114	5309	65.4	2805	34.6
10	8575	5392	62.9	3183	37.1
11	8375	5277	63.0	3098	37.0
12	8604	5116	59.5	3488	40.5
13	7868	4961	63.1	2907	36.9
14	9260	5999	64.8	3261	35.2
15	9052	6018	66.5	3034	33.5
16	10706	6848	64.0	3858	36.0
17	4387	2634	60.0	1753	40.0
18	4679	2954	63.1	1725	36.9
19	5160	3168	61.4	1992	38.6
20	9240	5706	61.8	3534	38.2
21	5573	3337	59.9	2236	40.1
22	3545	2023	57.1	1522	42.9
23	3728	2096	56.2	1632	43.8
24	3964	2232	56.3	1732	43.7
25	4053	2120	52.3	1933	47.7
26	3638	2078	57.1	1560	42.9
27	3645	2148	58.9	1497	41.2
TOTAL	181,500	110,669	61.0	70,831	39.0

Source: State of Alaska, Official Returns by Election Precinct General Election, November 2, 1982.

HB

530

STATE OF ALASKA 1984 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date:

REQUEST:
Bill/Resolution No.: House Bill No. 530
Title: "An Act relating to waiver of juveniles as adults."
Sponsor: Rep. Pestinger
Requestor: House Judiciary Committee
Date of Request: January 25, 1984

FISCAL DETAIL:
Agency Affected: ADULT CORRECTIONS AGENCY
Program Category Affected: Administration of Justice
BRU, Program or Subprogram(s) Affected: Northern, Southcentral & Southeastern Regional Corrections, Admin. & Support

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY84	FY 85	FY	FY 87	FY 88	FY 89
OPERATING						
100 PERSONAL SERVICES				1,520.1	1,611.4	1.708.0
200 TRAVEL				7.1	7.5	8.0
300 CONTRACTUAL		25.0	79.5	218.8	231.9	245.8
400 COMMODITIES		38.8	123.8	223.4	236.8	251.0
500 EQUIPMENT				6.4	-0-	-0-
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC.		6.0	19.1	36.0	38.2	40.4
800 MISCELLANEOUS						
TOTAL OPERATING	-0-	69.8	222.4	2,011.8	2,125.8	2,253.2
CAPITAL	-0-	10,621.5	-0-	-0-	-0-	-0-
REVENUE	-0-	-0-	-0-	-0-	-0-	-0-

FUNDING: (Thousands of Dollars)

GENERAL FUND	-0-	10,691.3	222.4	2,011.8	2,125.8	2,253.2
FEDERAL FUNDS						
OTHER (Specify Source)						
TOTAL	-0-	10,691.3	222.4	2,011.8	2,125.8	2,253.2

POSITIONS:

FULL-TIME	-0-	-0-	-0-	29	29	29
PART-TIME						
TEMPORARY						
TOTAL	-0-	-0-	-0-	29	29	29

SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

The source of funds to offset the fiscal impact of this bill has not been identified by the bill sponsor.

ANALYSIS: Attach a separate page for any Analysis.

Prepared By: William W. Ludwig for Roger C. Lange
Division: Administrative Services
Phone: 465-3376
Date: February 21, 1984

Approved by Commissioner: [signature]
Department: ADULT CORRECTIONS AGENCY
Date: 2/21/84

Distribution:
Legislative Finance
Legislative Sponsor
Requestor
Office of Management and Budget
Impacted Agency (ies)

12/1/8

ANALYSIS

A. Assumptions:

Based on FY 1982 Juvenile arrest data and the Department of Law's estimate that 45-50 juveniles will be waived into Adult Court, it is estimated that 72.75 additional beds will be needed by the Adult Corrections Agency,. A detail of this estimate is given in Attachment 1.

B. Program Summary:

1. In FY85, funds would be required to begin planning and design for construction of medium security beds. Because of the serious nature of the offenses, however, it is assumed that a significant number of the offenders would spend some time in a maximum security setting. Capital costs for medium security beds are estimated to be $146,000 per bed.

72.75 beds @ $146,000 = $10,621,500

2. Full operating costs would not occur until FY87. It is estimated that twenty-nine (29) positions will be required to provide security and support for these beds: One (1) Correctional Officer III, twenty-six (26) Correctional Officers II and two (2) Probation Officers II. Costs for these positions will occur in FY87, the anticipated opening date for the new beds. Estimated costs are as follows:

100	Personal Services	$1,520,100
200	Travel	7,100
300	Contractual Services	218,800
400	Commodities	223,400
500	Equipment	6,400
700	Inmate Gratuities	36,000
	Total	$2,011,800

Operating cost for FY85 and FY86 are for inmate cost of food, clothing, medical, etc., for the estimated persons coming into existing facilities before the new beds can be completed.

Inflation of 6% for all expenditure object groups was assumed for subsequent fiscal years.

Attachment 1

Estimated Annual Frequency of Convictions	Presumptive Sentence	Estimated Average Sentence for 16 and 17 Year Olds Convicted as Adults	Actual Time to Serve With Credit for Good Time
*Unclassified felony (automatic waiver)			
2 murder I	20 years	15 years	11.25 x 2 = 22.5 years
1 murder II	5 years	4 years	3.0 x 1 = 3 years
1 sexual assault 1st (with firearm)	10 years	7 years	5.25 x 1 = 5.25 years
5 sexual assault 1st (without firearm)	8 years	5 years	3.75 x 3 = 11.25 2 probation
3 Class A felonies (with firearm)	7 years	6 years	4.5 x 2 = 9 years 1 probation
5 Class A felonies (without firearm)	5 years	4 years	3 x 4 = 12 years 1 probation
	Non-presumptive Range		
6 Class B felonies	0-10 years	3 years	2.25 x 4 = 9 2 probation
2 Class C felonies	0-5 years	1 year	.75 x 1 = .75 years 1 probation
			TOTAL: 72.75 person-years

STATE OF ALASKA 1984 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date:

REQUEST
Bill/Resolution No.: HB 530
Title: An Act relating to..... class A felonies, waivers
Sponsor: Pestinger
Requestor:
Date of Request: 2/6/84

FISCAL DETAIL
Agency Affected: HEALTH AND SOCIAL SERVICES
Program Category Affected: Social and Economic Assistance for the General Population
BRU, Program or Subprogram(s) Affected: Youth Correctional Services

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 84	FY 85	FY 86	FY 87	FY 88	FY 89
OPERATING						
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 SUPPLIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS						
800 MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL	-0-	-0-	-0-	-0-	-0-	-0-

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

N/A

ANALYSIS: Attach a separate page for analysis

Prepared By: Michael R. Price
Division: Family and Youth Services
Phone: 465-3170
Date: 2/6/84

Approved by Commissioner: Robert London Smith Ph.D. Date: 2/8/84
Agency: Dept of Health & Social Services

Distribution (by Agency preparing fiscal note):
Legislative Finance
Legislative Sponsor
Requestor
Office of Management and Budget
Impacted Agency(ies)

12/1/83

July 22, 1983

The Honorable Bill Sheffield
Governor
State of Alaska
Pouch A
Juneau, Alaska 99811

Re: SCS CSHB 109(HESS) am S - waiver of children's proceedings for felonies
Our file: 388-108-83

Dear Governor Sheffield:

As Emil Notti requested on your behalf, we have reviewed SCS CSHB 109(HESS) am S, which is commonly referred to as a "juvenile waiver" bill. The bill provides that a person 16 or 17 years of age who is charged with an unclassified felony must be tried as an adult. It also alters the legal standard for deciding whether a juvenile offender charged with any other felony offense should be handled in juvenile court or whether the court should "waive" its juvenile jurisdiction in favor of handling the case in adult court.

The criminal division of the Department of Law has been seeking changes in the existing juvenile waiver law for several years, and testified in favor of HB 109 throughout the committee process during this last legislative session. However, last minute Senate amendments have so seriously flawed the bill that we are compelled to advise you to veto it.

To understand the problems in the bill which require a veto, it is necessary to briefly review its legislative history. Early this legislative session, HB 109 and SB 127 were introduced to amend existing laws relating to juvenile waiver. Based on several years of first-hand experience by state prosecutors, the criminal division of the Department of Law suggested numerous changes in both bills during testimony before legislative committees. Most of the suggestions were adopted in committee substitutes for both HB 109 and SB 127.

By late April, the portions of HB 109 and SB 127 which dealt with juvenile waiver were virtually identical. Both contained provisions requiring an "automatic" waiver of juveniles

aged 16 or 17 who were charged with serious felony offenses. Both also altered the legal standard for waiver to make it easier for the prosecution to obtain a discretionary judicial waiver of offenders who were not automatically waived.

The major difference in the two bills was that CSHB 109(Jud) automatically waived juveniles charged with both unclassified 1/ and class A felonies, 2/ while CSSB 127(Jud) automatically waived only those charged with unclassified felonies. The House bill also provided that a juvenile offender tried in adult court would be sentenced as an adult, even if convicted of an offense less serious than the one originally charged. The Senate version allowed a person convicted of a class A, or less serious, offense to petition the court to return him to juvenile court for disposition rather than to be sentenced as an adult.

CSHB 109(Jud) was passed by the House on April 29, 1983. On reconsideration the next day, the bill was amended to come closer to the Senate version and provided that a juvenile offender convicted in adult court of only a lesser included offense, other than an unclassified or class A felony, must be "sentenced" (the proper term would be "disposed of") as a delinquent minor in juvenile court. H. Jour. at 1108-1110 and 1133-1135.

On June 25, one day before adjournment, the Senate Health, Education, and Social Services Committee recommended a committee substitute for CSHB 109(Jud) am which radically altered crucial portions of the bill, and which disregarded comparable provisions in CSSB 127(Jud). The Senate HESS committee substitute provided automatic waiver only for those persons aged 16 or 17 who were charged with unclassified offenses, and required a return to juvenile court for "sentencing" of an offender who was ultimately convicted of an offense less serious than an unclassified felony. The Senate HESS committee substitute also required a discretionarily waived juvenile offender who was convicted in adult court and sentenced to a period of incarceration to be confined to a juvenile facility until age 18. Other language in the bill continued to require that

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1/ Unclassified felonies include murder in the first degree, murder in the second degree, kidnapping, sexual assault in the first degree and misconduct involving controlled substances in the first degree.

2/ Class A felonies include manslaughter, assault in the first degree, robbery in the first degree, arson in the first degree, escape in the first degree, solicitation (to commit an unclassified offense), and misconduct involving controlled substances in the second degree.

juvenile offenders held in custody following either an automatic or discretionary waiver be transferred to adult facilities upon indictment.

The HESS committee substitute was the result of a thirteen minute committee meeting held on June 24, 1983. No testimony was taken during the hearing. Since the Department of Law was not notified of the meeting, no representative from the department was present. Referral of the HESS committee version of the bill to the Senate Judiciary and Finance committees was waived, and the bill was considered by the Senate on June 26, the final day of the session. Section 7 of the bill, dealing with confinement of minors, was amended on the floor to provide that juvenile offenders automatically waived to adult court must be held in juvenile facilities until convicted. The section dealing with discretionarily waived offenders was not amended. SCS CSHB 109(HESS), as amended, was then adopted. S. Jour. 1555-57, 1578-79. The House concurred in these amendments on the same day. H. Jour. at 2106-2109.

The Senate HESS committee substitute and the amendments made on the floor so altered the original intent and procedures included in the bill that its enactment into law would weaken rather than improve the laws relating to juvenile waiver. In addition, in its present form, SCS CSHB 109(HESS) am S contains insurmountable equal protection and due process problems and procedures that do not make sense.

The most serious problem in the bill is a procedural scheme which denies equal treatment under the law to persons who have been convicted of identical offenses. As previously noted, the bill automatically waives juvenile offenders charged with unclassified felonies to adult court. Under the bill, if an offender charged with an unclassified felony is convicted of a lesser included offense, such as a class A felony, he must be transferred back to juvenile court for "sentencing" (disposition). However, a juvenile charged with a class A felony who is discretionarily waived after a hearing, and is convicted in adult court of the class A felony, must be sentenced as an adult. There is no provision authorizing the court to transfer the discretionarily waived person back to juvenile court, and there is no provision allowing the adult court to retain jurisdiction over an automatically waived offender convicted of an A felony, regardless of the nature of the crime or the lack of rehabilitative potential of the offender.

What this means is, for example, that an offender who is waived into adult court because he is charged with first degree murder, but who is ultimately convicted for the lesser offense of manslaughter, a class A felony, must be treated as a juvenile. He will spend two or at most three years in a juvenile facility and then must be released. But an offender who was originally charged with manslaughter, because the facts of the killing did not justify a murder charge, and who was

waived into adult court and convicted, will be sentenced as an adult, and faces up to 20 years in prison. Thus, two offenders, both convicted of manslaughter, will receive vastly unequal treatment. One who was automatically waived because there were good reasons to believe that a more serious offense was committed, will go back to juvenile court for disposition. The other who was discretionarily waived for a less serious offense will be treated and sentenced as an adult. This result cannot be justified on any legal, logical, or public policy grounds.

A second major problem with the bill is found in section 7, which now provides that a juvenile offender who is discretionarily waived to adult court must be transferred from a juvenile facility to an adult jail at the time of the waiver until after trial, but requires that the offender then be returned to a juvenile facility upon conviction to serve his sentence until he reaches the age of 18.

The confinement of persons who have been tried, convicted, and sentenced as adults with juvenile offenders is directly contrary to one of the primary purposes of the bill, which was to remove hardened or untreatable juveniles from treatment programs designed for younger, less sophisticated, children. Older offenders convicted of murder, kidnapping or forcible rape should not be confined with youngsters who have committed minor property offenses or are having disciplinary problems.

At the recommendation of the Department of Health and Social Services, divisions of corrections and family and youth services, both bills originally provided that a juvenile offender would be held in a juvenile facility until waived and indicted for a felony offense. At that point the person would be transferred to an adult facility, where he would await trial and serve his sentence if convicted. This procedure is the one followed under present law and makes good policy sense. Shuffling a young defendant back and forth between juvenile and adult facilities makes no sense at all. Additionally, now that the division of corrections is a state agency independent of the Department of Health and Social Services, the transfer of an offender from a juvenile to an adult facility would require a transfer from the custody of one department to another, and then back again.

Another legal problem arises because the Senate changed the House version of the bill to provide that the only juveniles to be automatically waived were those convicted of unclassified felonies. The Senate did so, however, without changing the title, which describes: "An act relating to persons 16 or 17 years of age who are charged with unclassified or class A felonies; . . . ." As you know, Rule 41(b) of the Uniform Rules of the Alaska State Legislature prohibits a change in the title of a bill which originated in the other house. In

order to get around this rule, the Senate added subsection AS 12.05.020(b), which states that a person 16 or 17 years of age who is charged with a class A felony is subject to juvenile court jurisdiction. This was done so that the bill would "relate to" persons charged with class A felonies, as the title requires.

However, the addition of the language now contained in subsection AS 12.05.020(b) means that a juvenile court adjudication of delinquency for a class A felony would constitute a "prior conviction" for presumptive sentencing purposes on subsequent adult offenses. See, section AS 12.55.145. This result was probably not intended and the policy implications not considered. Juvenile court adjudications have never been treated as "prior convictions," and that treatment is probably inconsistent with the whole concept of the juvenile justice system.

Enactment of this bill into law would actually leave prosecutors less able to effectively prosecute juvenile offenders who have committed serious felony offenses. Those indicted for the most serious offenses such as murder, sexual assault in the first degree (forcible rape), or kidnapping, would be automatically returned to juvenile court for disposition if convicted of a lesser, but still serious, offense. Currently, it is difficult to obtain waiver of a juvenile offender. But once waiver is obtained under the present law, the offender stays in adult court, even if convicted of a lesser offense such as manslaughter or attempted sexual assault. Under this bill, if a prosecutor believes that a 17 year old offender has committed murder, he must choose between charging the offender with murder, and risking the person's automatic return to juvenile court if he is convicted for manslaughter, or charging him only with manslaughter so that he may be sentenced in adult court if convicted. Both of these alternatives are unacceptable.

Because the bill denies equal treatment under the law to persons convicted of identical offenses, because the provisions regulating the place of confinement of juvenile offenders are illogical, and because the bill would render prosecutors less able to effectively deal with 16 and 17 year olds charged with the most serious and violent felonies, CSC CSHB 109(HESS) am S should be vetoed. We have attached a draft veto message for your consideration.

Sincerely,

Norman C. Gorsuch
Attorney General

NCG:GAH:gb
Enclosure

BILL SHEFFIELD
GOVERNOR

STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

July 27, 1983

The Honorable Joe L. Hayes
Speaker of the House
Alaska State Legislature
Pouch V
Juneau, AK 99811

Re: SCS CSHB 109(HESS) am S -- Relating to persons 16 or 17 years of age who are charged with unclassified or class A felonies; and amending the children's proceedings waiver provisions.

Dear Mr. Speaker:

Under the authority granted by art. II, sec. 15, of the Alaska Constitution, I have vetoed Senate Committee Substitute for Committee Substitute for House Bill No. 109 (HESS) am S, commonly referred to as a "juvenile waiver" bill. I have vetoed this bill because it weakens rather than improves existing laws relating to juvenile waiver. If this bill were enacted into law it would leave prosecutors less able to effectively prosecute juvenile offenders who have committed serious felony offenses.

The bill contains insurmountable equal protection and due process problems. It denies equal treatment under the law to persons who have been convicted of identical offenses. The bill automatically waives juvenile offenders charged with unclassified felonies to adult court. If an offender charged with an unclassified felony were convicted of a lesser included offense, such as a class A felony, he would be transferred back to juvenile court for "sentencing" (disposition). However, a juvenile charged with a class A felony who was discretionarily waived after a hearing, and was convicted in adult court of the class A felony, would be sentenced as an adult.

If the bill became law, it would mean that an offender who was waived into adult court because he was charged with first degree murder, but who was ultimately convicted for the lesser offense of manslaughter, a class A felony, would be treated as a juvenile. He would "serve" two or at most three years in a juvenile facility and then must be released. But an offender who was originally charged with manslaughter, because the facts of the killing did not justify a murder charge, and who was waived into adult court and convicted, would be sentenced as an adult, and faces up to 20 years in prison. Thus, two offenders, both convicted of manslaughter, would receive vastly unequal treatment. One who was automatically waived because there were good reasons to believe that a more serious offense was committed would go back to juvenile court for disposition. The other who was discretionarily waived for a less serious offense would be treated and sentenced as an adult.

If this bill were to become law, a prosecutor who believes that a 17 year old offender has committed murder must choose between charging the offender with murder, and risking the person's automatic return to juvenile court if he is convicted for manslaughter, or charging him only with manslaughter so that he may be sentenced in adult court if convicted. A prosecutor should not have to make such a choice. The jury should be the one to decide of which crime, if any, a defendant is guilty.

The bill also provides that a juvenile offender who is discretionarily waived to adult court must be transferred from a juvenile facility to an adult jail at the time of the waiver until after trial, but requires that the offender then be returned to a juvenile facility upon conviction to serve his sentence until he reached the age of 18. This shuffling back and forth between juvenile and adult facilities makes no sense at all.

Persons who have been tried, convicted, and sentenced as adults should not be confined with juvenile offenders. Hardened or untreatable juveniles do not belong in treatment programs designed for younger, less sophisticated, children. If this bill were to become law, older offenders convicted of murder, kidnapping or forceable rape would be confined with youngsters who have committed minor property offenses or are having disciplinary problems. I cannot accept that result.

The bill presents other legal and public policy problems, but the two factors discussed above are themselves serious enough to require veto of the bill. As you are aware, my Administration worked closely with the Legislature on Senate Bill No. 127, which would have rationally strengthened existing law and would have enabled the courts to deal more effectively with juvenile offenders charged with serious, violent felonies. This bill, unfortunately, reaches an exactly opposite result, and that is why I have vetoed it.

Sincerely,

Bill Sheffield
Governor

FISCAL NOTE

Revision Date:

REQUEST
Bill/Resolution No.: HB 530
Title: "...amending children's proceedings waiver provisions."
Sponsor: Rep. Pestinger
Requestor: House Judiciary
Date of Request: 2-3-84

FISCAL DETAIL
Agency Affected: Department of Law
Program Category Affected: Administration of Justice
BRU, Program or Subprogram(s) Affected: Prosecution

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 84	FY 85	FY 86	FY 87	FY 88	FY 89
OPERATING						
100 PERSONAL SERVICES		67.5	71.6	75.9	80.4	85.2
200 TRAVEL		5.0	5.3	5.6	5.9	6.3
300 CONTRACTUAL		8.0	8.5	9.0	9.6	10.1
400 SUPPLIES		4.5	3.2	3.4	3.6	3.8
500 EQUIPMENT		1.5				
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS						
800 MISCELLANEOUS						
TOTAL OPERATING	-0-	86.5	88.6	93.9	99.5	105.4
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND	-0-	86.5	88.6	93.9	99.5	105.4
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS:

FULL-TIME	-0-	1	1	1	1	1
PART-TIME						
TEMPORARY						

SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

Not specified by sponsor.

ANALYSIS: Attach a separate page for analysis

Prepared By: Richard I. Pegues, Director (Richard I. Pegues) Phone: 465-3672
Division: Administrative Services Date: 2-6-84

Approved by Commissioner: Norman C. Gorsuch (Richard I. Pegues / FOR) Date: 2-6-84
Agency: Department of Law

Distribution (by Agency preparing fiscal note):
- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)

12/1/83

Fiscal Note
Analysis
HB 530

February 6, 1984

This bill provides that persons 16 or 17 years of age who are charged with unclassified felonies and Class A felonies will be prosecuted as adults. The bill makes the waiver of these persons from juveniles to adult court automatic; there is no need for a hearing in juvenile court prior to the waiver.

Juveniles of any age charged with felony offenses below Class A may be waived to adult court upon motion by the prosecutor and after a hearing in juvenile court.

It is estimated that approximately 45-50 persons a year will be waived into adult court under this bill. This figure includes those persons who are now waived, in the judge's discretion, under existing standards. It is estimated that 20-25 additional felony prosecutions will be required to implement this bill, necessitating the hire of one full-time prosecutor.

FISCAL ANALYSIS - HB 530

The bill will require the addition of one full-time Attorney IV prosecutor in the Third Judicial District in Anchorage. Costs beyond FY 85 include a 6% annual inflation factor.

1st Year (FY 85)

	AIV (PFT)
Personal Services	67.5
Travel	5.0
Contractual	
Communications & Copying	4.8
Witness Fees	3.2
Commodities	
Office Supplies	1.8
Library Materials	1.2
Commodities - single time	
New Position Supplies	1.5
Equipment - single time	
New Position Equipment	1.5
Total	86.5

POSITION TITLE				RANGE/STEP	BARG. UNIT	FORM 12 PAGE/LINE	GOV.	APPROV.	DISAPP.
Attorney IV				24A	X				
TYPE OF POSITION	STAFF MONTHS	RP NUMBER	PCN NUMBER	BRU PRIORITY	LOCATION	ELECTION DISTRICT	LEG.		
PFT	12				Anchorage	8			

CONTINUATION LEVEL | | ADDITION | |

	TYPE OF EXPENDITURE		AMOUNT
	1	2	3
	PERSONAL SERVICES		
4.	Salary 4,464/mo.	53,568	
5.	Benefits	8,785	
6.	Supplemental Benefits	2,550	
7.	Fixed Benefits	2,630	
9.	TOTAL PERSONAL SERVICES	01	67,533
0.	Travel	02	5,000
1.	Contractual	03	8,000
2.	Commodities	04	4,500
3.	Equipment	05	1,500
4.	Other		
5.	TOTAL COST		86,533

	RECEIPT CODE	FUNDING SOURCE		
6.		Federal Receipts	1002	
7.		G.F. Match	1003	
8.		General Funds	1004	86,533
9.		I-A Receipts	1005	
0.		Program Receipts	1023	
1.		Other		

FOR O&M USE ONLY
4A KEY NUMBER __ __ - __ __ - __ __ - __ __ - __ __

JUSTIFICATION

This full-time Attorney position will be needed to handle the estimated 20 to 25 additional felony cases that will occur as a result of the automatic hearing waivers from juvenile to adult court if HB 530 becomes law. The Attorney IV, or full working level of Attorney will be required because those cases to be tried will be either Class A or unclassified felonies, which are the most serious criminal offenses.

3 REQUEST FOR NEW POSITION

AGENCY DEPARTMENT OF LAW

PROGRAM ADMINISTRATION OF JUSTICE

BRU PROSECUTION

THIRD JUDICIAL DISTRICT

Revised Date

FY 85

STATE OF ALASKA 1984 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date:

REQUEST
Bill/Resolution No.: HB 530
Title: An Act relating to..... class A felonies, waivers
Sponsor: Pestinger
Requestor:
Date of Request: 2/6/84

FISCAL DETAIL
Agency Affected: HEALTH AND SOCIAL SERVICES
Program Category Affected: Social and Economic Assistance for the General Population
BRU, Program or Subprogram(s) Affected: Youth Correctional Services

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 84	FY 85	FY 86	FY 87	FY 88	FY 89
OPERATING						
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 SUPPLIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS						
800 MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL	-0-	-0-	-0-	-0-	-0-	-0-

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

N/A

ANALYSIS: Attach a separate page for analysis

Prepared By: Michael L. Price
Division: Family and Youth Services
Phone: 465-3170
Date: 2/6/84

Approved by Commissioner: Robert London Smith Ph.D. Date: 2/8/84
Agency: Dept of Health & Social Services

Distribution (by Agency preparing fiscal note):
Legislative Finance
Legislative Sponsor
Requestor
Office of Management and Budget
Impacted Agency(ies)

12/1/83

POSITION PAPER/Department of Health & Social Services

POSITION PAPER
HOUSE BILL 530

"An Act relating to persons 16 or 17 years of age who are charged with unclassified or class A felonies; and amending the children's proceedings waiver provisions."

This Bill would make several changes in the manner of dealing with juveniles accused of felony offenses. It would:

1) Require prosecution within the adult criminal system of 16 and 17 year old juveniles accused of unclassified or class A felonies;
2) Change the standard for judicially waiving juveniles who would not be subject to automatic exclusion from juvenile jurisdiction, and define factors which the court must consider in making waiver decisions; and
3) Define sentencing and confinement procedures relating to juveniles who are waived to adult jurisdiction.

PROBLEMS ADDRESSED BY THE BILL

Recent highly publicized and unpopular court decisions regarding specific juveniles who have committed violent crimes but were not waived to adult jurisdiction have led to a misperception on the part of some segments of the public. Many have concluded from these isolated cases that juvenile crime, particularly violent juvenile crime, is widespread and increasing and that the existing waiver mechanism and the juvenile justice system as a whole are ineffective. The further conclusion has been reached that wholesale changes are necessary. The facts, however, do not substantiate these conclusions.

Juvenile crime, as measured by arrests, decreased by 15.8% during the most recent period for which data is available, 1982. This is below even 1979 in absolute numbers and represents a significant decrease in the rate of arrest since the juvenile population has risen by nearly twenty thousand youths or 15%. There has, unfortunately, been an increase in the numbers of juveniles arrested for the most highly publicized violent crime - murder. However, these arrests comprise only slightly more than one tenth of one percent of the total number of juvenile arrests, and are not indicative of the extent and nature of juvenile crime. They nonetheless receive the most media attention and guide public opinion.

In general juvenile crime may be characterized as property crime - simple thefts account for nearly one third or 28% of juvenile arrests. Liquor law violations result in 26% of all juvenile arrests. Although arrest data is the most comprehensive data available to represent the extent of crime, limitations of these data and some general research findings about juvenile crime must be kept in mind when drawing conclusions from arrest data. First, arrest data do <u>not</u> accurately represent the number of crimes committed since more than one person may

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be arrested for a single crime. For instance, if three persons burglarize a store and are arrested, the arrest data seem to indicate that three separate burglaries occurred although only one crime was committed. Second, juveniles tend to commit crimes in groups while adults tend to commit crimes alone. Thus, juvenile arrests seem to indicate a disproportionate number of crimes when in fact they represent a smaller number of crimes but a disproportionate number of participants. Last, juveniles tend to be arrested more frequently than are adults. Juveniles are less sophisticated and are more likely to be caught committing crimes and there is a greater tendency of law enforcement personnel to arrest juveniles.

The public misperception in Alaska follows a national trend which has been reflected in legislation in a number of states to lower the age of criminal responsibility and/or enact broad waiver laws which bring large numbers of juveniles under the jurisdiction of the adult criminal system. These approaches have begun to be discredited recently as there has been an increasing understanding of the fact that those juveniles who have committed violent crimes or have repeatedly committed serious offenses are extremely small in number. National studies have concluded that the most cost effective and efficient approach is to carefully and selectively identify those juveniles and treat them differentially from the vast majority of youth.

The existing judicial waiver mechanism in Alaska has been more thoughtfully criticized, primarily by prosecutors, as one which makes waiver of juveniles to the adult system difficult to achieve. Although this criticism is not entirely justified, the existing mechanism does have a standard of proof which is inadequately defined and therefore open to broad interpretation. In addition, the court is not required to consider specifically defined factors in making waiver determinations. Thus, little guidance is given to the court on the basis for making waiver decisions. Despite the shortcomings of the existing waiver mechanism, fourteen of fifteen waivers attempted from 1979 through 1982 were granted. Waived juveniles were charged with offenses ranging from Murder (3), to Sexual Assault (3), to Burglary (5) to Criminal Mischief (1).

AUTOMATIC WAIVER

House Bill 530 would institute an automatic or legislative waiver of certain juveniles based on age and the offense alleged. Under the provisions of the Bill, the only method for dealing with juveniles 16 and 17 years of age who are accused of unclassified or class A felonies would be through criminal proceedings under the adult jurisdiction of the Superior Court. Any such youth suspected by police of having committed an unclassified or class A felony would be subject to arrest, prosecution, and pretrial confinement in precisely the same way as would an adult.

Automatic or legislative waiver mechanisms can be effective in identifying youths who cannot be adequately dealt with in the juvenile justice system. However, because such mechanisms as those proposed in HB 530 are essentially unreviewable, irreversible, and carry consequences of extreme significance to both the individual youth and society, they should be very narrowly applied.

The Department of Health and Social Services opposes the inclusion of class A felony offenses within the category requiring automatic waiver. Inclusion of these offenses makes the category of automatically waivable offenses too broad and would require the waiver of a number of juveniles who could be effectively controlled and rehabilitated within the juvenile justice system. Narrowing the category to include only unclassified felonies is preferable for several reasons: 1) it would be more economical - the fiscal impact of the bill would be reduced; 2) though serious in nature, class A felony offenses also include offenses which differ significantly from unclassified offenses in the degree of violence or harm done to victims; and 3) the strengthened judicial waiver mechanism proposed in HB 530 would allow for adequate protection of the public by selectively identifying those juveniles accused of class A felonies who should be dealt with in the adult criminal system. The strengthened judicial waiver would allow for differentiation among juveniles based on the actual seriousness of the offense and prior behavior of the youth, rather than relying solely on the classification of offenses and age of the juvenile. Those juveniles who do not present a danger to the public could be retained within the juvenile justice system.

JUDICIAL WAIVER

Change in Standard

In addition to instituting an automatic waiver, HB 530 would significantly alter the existing judicial waiver mechanism. The existing judicial waiver mechanism would be strengthened by a change in the standard necessary for making waiver determinations under the provisions of HB 530. The court would be required to find only that there is no substantial likelihood that a juvenile could be successfully rehabilitated under children's court proceedings. The standard of proof required would be a preponderance of the evidence.

Factors Establishing Likelihood of Rehabilitation

The Bill also establishes nine (9) specific factors which must be considered by the court in determining the probability of a juvenile's success or rehabilitation under juvenile court jurisdiction. Although these factors relate in large part to the specific offense alleged and the circumstances surrounding the offense, they also include factors relating to the individual juvenile including age, maturity, the outcome of previous attempts to rehabilitate the juvenile, the adequacy of time

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available to the children's court to allow for rehabilitation and the resources for treatment of a juvenile under juvenile court jurisdiction.

The Department recommends that other factors which have a significant bearing on the likelihood of a juvenile's rehabilitation be considered as well. These are:

1) the physical and mental health of the juvenile;
2) his or her intellectual capacity;
3) the alleged role of the juvenile in the offense; and
4) the attitudes exhibited and expressed by the juvenile toward authorities, society, the victim or victims if any, and him or herself.

Failure to require consideration of such factors as these would allow decisions about the likelihood of rehabilitation of juveniles to be made without consideration of some of the most important factors contributing to the success or failure of rehabilitative efforts.

SENTENCING OF WAIVED JUVENILES

Referral For Juvenile Disposition

Under the provisions of HB 530, 16 and 17 year old juveniles automatically waived to adult jurisdiction would be sentenced within the adult system unless they were convicted of a lesser included offense that was not an automatically waivable offense. In such cases the juveniles would be referred to juvenile court jurisdiction for disposition. This provision is intended to guard against error and preclude discriminatory or punitive overcharging by prosecutors in order to make certain juveniles subject to the more stringent sanctions of the adult system.

An alternative and preferable approach to providing these safeguards would be to allow a discretionary "transfer back" to juvenile court jurisdiction based on a hearing applying the same standard of "likelihood of successful rehabilitation" used in making judicial waiver decisions. In this way safeguards would be maintained while older juveniles convicted of serious, though not automatically waivable offenses would be held to the same standard for waiver to adult jurisdiction that would have been applicable had an automatically waivable offense been charged. Unless the "transfer back" provision is discretionary, older juveniles accused of automatically waivable offenses would be immune from waiver to adult jurisdiction if convicted of lesser though still serious offenses. This would give these persons special protections not afforded to other youth.

Exemption from Mandatory Sentences

Although juveniles waived to adult criminal jurisdiction would be sentenced as adult offenders and confined within the adult correctional system, under the provisions of HB 530 they would not be subject to mandatory minimum or presumptive sentences for a first felony conviction. This allows the Bill not only to achieve its purpose in holding older juvenile offenders more accountable for their offenses but also affords adequate discretion to the court in fashioning appropriate sentences for these juveniles. Judicial discretion is needed to allow for the significant differences in levels of maturity and sophistication among waived juveniles and between the juveniles and adult offenders.

Since exclusion from juvenile jurisdiction under the automatic waiver provision is based solely on the offense committed and the age of the juvenile, judicial discretion in sentencing would be appropriate. Studies show that all serious offenses are not the culmination of lengthy delinquent careers and that disparity in the sophistication and history of delinquent behavior among waived juveniles must be expected. Sentencing discretion such as is provided under the provisions of HB 530 is necessary to justly address this disparity. It would also allow for consideration of the differences in the specifics and seriousness of the offenses committed by juveniles.

CONFINEMENT OF WAIVED JUVENILES

Under this Bill, all juveniles subject to criminal jurisdiction under either the automatic or judicial waiver provisions would, if confined to custody, be confined in adult correctional facilities. These provisions are straightforward but unfortunately do not provide sufficient procedural protections. Since automatically waived juveniles would be housed in adult facilities from the time of arrest, the decision about where these juveniles should be housed would, then, essentially be made at the discretion of the arresting officer based on the crime the officer chose to allege. Youths would be subject to the unreviewed judgment of police officers and could be housed in adult facilities based on police officer error, punitive overcharging, or discrimination in alleging a more serious charge than can be proven from the facts. It is likely that errors would occur, juveniles arrested and booked into adult facilities and that upon review by the District Attorney or Court it may be found that the offense alleged by the police officer at the time of booking was not supported by the facts. Thus, a juvenile would have been unjustly and unjustifiably placed in an adult facility.

These problems could be avoided and a more equitable and certain system provided by requiring that juveniles be housed in juvenile facilities until procedural reviews had occurred. Such reviews would include a grand jury or preliminary hearing before the court from which an indictment or finding of probable cause had been found to believe that the juvenile had committed an automatically waivable offense or a

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judicial waiver. This would avoid not only inequities arising from error, but also the possibility that juveniles were charged with waivable offenses simply to allow their incarceration in an adult facility. It would also avoid a variety of difficulties in the already overburdened adult correctional system.

EFFECTS OF THE BILL

The effect of HB 530 would be to increase the number of juveniles subject to prosecution under the adult criminal statutes and increase the liability of these juveniles to sanctions more severe both in nature and duration than those to which they would have been liable under the juvenile code. With the suggested narrowing of the automatic waiver to include only those juveniles accused of unclassified felonies, the Bill would appropriately focus the liability of adult prosecution on older violent juvenile offenders and other juveniles who had committed particularly heinous crimes or who had records of repetitive delinquent behavior.

DEPARTMENT POSITION

The Department strongly supports the concepts embodied in HB 530. Though few in number, older juveniles accused of violent crimes require sanctions qualitatively and quantitatively different from those available under the jurisdiction of the juvenile court.

With the suggested changes - limitation of automatic waiver to unclassified felonies, consideration of additional factors in determining likelihood of successful rehabilitation within the juvenile justice system, confinement of juveniles in juvenile facilities until judicial procedural reviews had occurred, and discretionary rather than mandatory "transfer back" - HB 530 would adequately address the problem of dealing with older, violent or repetitive juvenile offenders by holding them accountable in the same manner as adults. This would focus directly on the highly publicized problem which is the cause of much public misperception of juvenile crime and juvenile offenders. It would also allow the juvenile justice system to focus on those youths for whom the likelihood of rehabilitation is much greater.

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The changes suggested are merely refinements which provide necessary procedural protections to guard against abuses or human error and to appropriately narrow the focus and reduce the fiscal and social impacts.

RECOMMENDED BY: Michael L. Price

Michael L. Price, Director
Division of Family and
Youth Services

DATE: Feb. 8, 1984

APPROVED BY: Robert London Smith

Robert London Smith, Ph.D.
Commissioner
Department of Health and
Social Services

DATE: 2/8/84

Alaska Youth Advocates, Incorporated

SHEILA A. GADDIS
EXECUTIVE DIRECTOR

600 Cordova, Suite 3
Anchorage, Alaska 99501
907-274-6541



February 1, 1984

Representative Charlie Bussell
Pouch V
Juneau, Alaska 99811

Re: House Bill No. 530
Waiver of Juvenile Court Jurisdiction

Dear Representative Bussell,

Alaska Youth and Parent Foundation (commonly known as Alaska Youth Advocates, Inc.) is opposed to the proposed amendments to Alaska Statutes 12.05.020, 12.55, 12.80, and 47.10.060 waiving juvenile court jurisdiction. We propose a case-by-case determination regardless of the minor's age as one viable alternative.

There is not time or space to cite the long, costly, involved and ultimately useless battle fought over juvenile waiver legislation in other jurisdictions.

Legislative enactments similar to proposed House Bill No. 530:

1) have forced taxpayers to spend an ever increasing amount of their tax dollars on maximum security prisons,
2) have allowed minors to be warehoused for many years past their majority,
3) have not solved the problem of juvenile street crimes and,
4) have not solved the problem of increased juvenile participation in serious felonies.

Waiver bills pave the way for minors of any age to be confined as adults without benefit of treatment, rehabilitation, or consideration of their special, (yes special) status and in violation of their procedural due process rights.

In formulating removal procedures as part of the overall plan for treatment of juvenile offenders/delinquents, it must be presumed that the legislature had studied and considered potential confusion inherent in this bifurcated system as well as any threats to an accused juvenile's procedural due process rights created thereby. Thus it can only be concluded that the legislative intent was to incorporate certain well-defined safeguards into the removal process so that it might jealously protect those constitutional rights readily recognized, and nothing less than strict adherence to these statutory procedures would violate the legislature's purpose and intent. These constitutional safeguards are conspicuously missing.

Sec 47.10.060 (2)(b) fails to mention other factors the juvenile judge should properly consider such as:

1) the availability of an appropriate environment,
2) the possibility of rehabilitation,
3) the family relationship and control,
4) the history of abuse (sexual and physical),
5) the persistency and seriousness of past adjudicated criminal offenses,
6) the safety of the community and,
7) the best interests of the child.

The public, and certainly the child, will be placed in greater jeopardy by warehousing these youth for a large portion of thir adult lives. We need only look to New York, Illinois, and California, to name a few, to realize violent juvenile crime is on the increase in spite of similar legislative waiver provisions. We will be placing troubled youth in a job training environment, learning to become vicious, dangerous adult members of society.

Sincerely,

[illegible]

Executive Director

FAMILY CONNECTION

A counseling agency for youth and their families

204 E. 5th Ave., Suite 215, Anchorage, Alaska 99501 (907) 279-0551

JAN 19 1983

January 17, 1983

Representative Joe L. Hayes
Pouch V
Juneau, Alaska 99811

Dear Mr. Hayes:

As staff members of Family Connection, Inc., a non-profit family counseling agency, we would like to share and articulate some serious, but correctable difficulties we have observed within the State's juvenile justice system.

Family Connection has provided Family Therapy services to a variety of youth institutionalized at McLaughlin Youth Center for the past three years. We are contracted to join the treatment team for a particular youth by either McLaughlin staff or Juvenile Probation staff. We have worked primarily with youth and their families prior to release from McLaughlin. Our goal has been to facilitate a smooth transition for the youth back into the family and community and to reduce the rate of recidivism. We specifically look at how the family functions and the interactional process that produces delinquent behavior.

We have been impressed with the expertise and professionalism of both McLaughlin staff and Juvenile Probation staff. They work with dedication to treat, rehabilitate and return youth to the community. However, present legalities place great limitations on the expertise of these professionals.

We support the Waiver of Jurisdiction Statute, Section 47.10.060 of the Alaska Statutes. The waiver allows for a procedure that determines if a minor is amenable to treatment, and if so, the minor is sent to McLaughlin Youth Center for rehabilitation, rather than to the Adult Justice System. We believe that if there are indications that a youth is amenable to treatment, society is better served by providing treatment services along with punishment. Unfortunately, our experience has shown us that the waiver statute has been abused in two ways.

First, the waiver is not used enough. Clearly, there have been youth who should have been waived to adult status for committing atrocious, violent crimes. This sentiment has been expressed by many in the past year. Why isn't the waiver being used effectively? How could this process be changed to facilitate more frequent use?

Secondly, the present statute contains serious limitations that has made the members of the juvenile justice system appear ineffective. As an example, if a youth is amenable to treatment but after an intensive course of treament the youth is still unchanged and dangerous, according to State law the youth must still be released. There is no other recourse. This has been a difficult moral and ethical dilemma for professionals within the Juvenile Justice System. How can we ethically release a youth into the community knowing the youth is a danger to society.

Another problem involves the length of institutionalization. A youth cannot be held longer than two years or until their 19th birthday. We have observed a youth who committed a violent murder receive a sentence of less than one year. In this case the youth simply refused to participate in treatment. Therefore, he is not adequately treated or punished. Again, treatment staff are put in a bind by the court as they are given an impossible task to perform with no recourse to protect either the treatment process or the community.

The State of Alaska has done well in providing rehabilitation for youth, while at the same time protecting the safety of our people. However, there are serious handicaps in Alaska's Juvenile Law that we feel need immediate attention, particularly with the present climate of overreaction. We would be greatly discouraged to see the State lose the flexibility in our laws to rehabilitate and punish by giving way to oversimplified, reactionary solutions.

We hope this letter will initiate a process of change. We are willing to devote our time to this issue and would like your feedback as to where we might direct our energies. Also, we would like to know what the role of your office will take in initiating change.

Sincerely,

Kathy Apple

Kathy Apple, RN
Family Therapist

Sincerely,

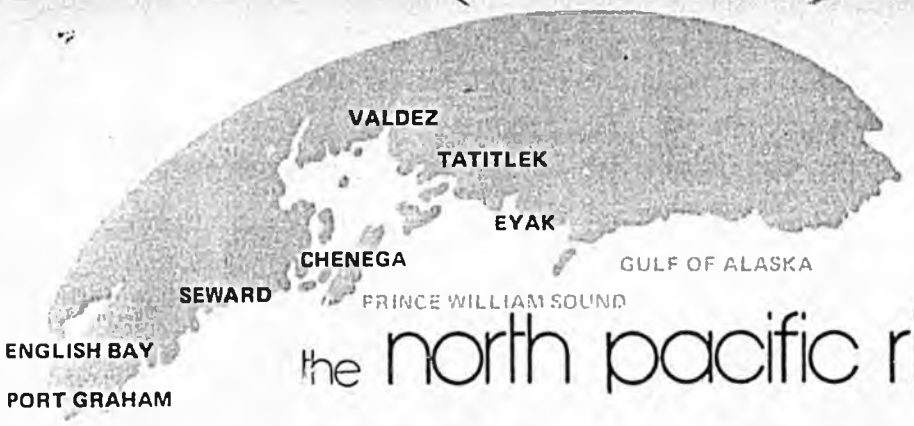
Rosemary Unterseher

Rosemary Unterseher, ACSW
Clinical Supervisor

KA/RU/MT
cc: all Judicial Members

HB109
HB103

Judiciary Referral



the north pacific rim

April 4, 1983

Representative Charlie Bussell
Alaska State Legislature
Pouch V
Juneau, AK 99811

Dear Representative Bussell:

I am writing to inform you of our opposition to certain parts of the CSHB 103 (Jud.), "An Act establishing a Department of Corrections...". We are also opposed to CSHB 109 which you will be hearing later this month. It proposes to amend the children's proceedings waiver provisions, and relates to the criminal prosecution of minors. Please consider the concerns of The North Pacific Rim (TNPR) as you deliberate and decide on these bills.

While TNPR agrees that establishing a separate Department of Corrections is a positive move, we object to the inclusion of juveniles in this bill. Juveniles who commit crimes can be better served by remaining under the jurisdiction of the Department of Health & Social Services. It is through a rehabilatative approach, such as that offered by DHSS, that juveniles can gain the needed insight, resources, and skills to lead more socially acceptable lives.

With the great demand for resources within each Department, the needs of juvenile offenders risk becoming secondary to the needs of adults. This is especially true when one considers 1) the larger adult caseload, 2) the new focus on developing a correctional industries program, and 3) the high cost of rehabilatative treatment needed by both adults and juveniles.

903 W. Northern Lights Blvd., Suite 203 / Anchorage / Alaska 99503 / Ph. (907) 276-2121

The Non-Profit Corporation Serving The People Of The Chugach Native Region

TNPR is also concerned that the inclusion of juvenile offenders under the Department of Corrections would adversely affect the quality of services they receive. In the villages and rural areas, the same Probation Officer would most likely have both adults and minors on their caseloads. The attitude that one develops after working with adult offenders would not generally serve the best interest of the minor. In working with minors, even those determined "criminal", it is important that the Probation Officer retain some faith in the human spirit and in the person's ability to change.

Finally, we are fearful that the combination of youth with adult corrections will result in less diverson for youth, as well as a decreased emphasis on youth facilities. Of the 6,128 juvenile arrests in 1981, only 648 were adjudicated delinquents, and only 95 were sentenced to a closed youth facility such as McLaughlin. This means that over 6,000 youth were diverted from closed institutions, thereby keeping costs down and preventing the less dangerous youth from entering the criminal system.

Of course, there are those minors who are "unamenable to treatment", or who commit certain types of felonies such as murder and rape. These are the youth who are dealt with in CSHB 109 (Jud.). Section 9 of CSHB 109 outlines quite adequately the circumstances under which a waiver of children's court jurisdiction should be used. We think that Section 1 of CSHB 109 (Jud.) should be deleted entirely from the bill. A decision to try a 16 year old as an adult should be made on a case by case basis. The waiver as it stands in the current law can be used in this way; and yet its use in past years has been minimal. I would like to see an investigation of the reasons for the lack of use of the waiver before it is established as a general policy for all 16 and 17 year old suspected felons.

In addition, the presumptive sentences outlined in Sections 3 and 4 are too harsh for minors. Without treatment, the youth sentenced to such long terms will have little hope of leading normal, well-adjusted lives upon release. Two to three years in McLaughlin would serve the offender, society, and the State much better. If the youth is not amendable to treatment, it is unnecessary to pass this law if the goal is to have an effective system for treating criminal youth. The waiver in the current law is quite adequate.

In sum, The North Pacific Rim strongly opposes passage of CSHB 109 (Jud.), and we oppose inclusion of juveniles in the proposed new Department of Corrections. Thank you for your time and consideration of our concerns.

Sincerely,

The North Pacific Rim
Richard A. Rolland
Director
Health & Social Services

FOR MORE INFORMATION CONTACT:
Connie Kastelnik 212-887-4060

FOR IMMEDIATE RELEASE
FEBRUARY 13, 1983
PLEASE CREDIT "ABC NEWS"

One out of five Americans has been a crime victim in the past year, according to a new ABC News poll, and 13 percent of the adult population - nearly 22 million people - have been victims of violent crime.

The results of a special ABC News crime poll on the perceptions and realities of crime will be broadcast nationally during two weeks of special ABC News programming on "Crime in America," beginning Sunday, February 13.

The poll also revealed that three out of 10 Americans living in cities were victims of crime last year, along with nearly one quarter of all suburbanites and about one in seven Americans living in small towns and rural areas.

The ABC News poll also found that:

- Blacks are two-and-one-half times more likely than whites to be confronted by violent criminals. Twenty-six percent of all Blacks say they have been violent crime victims, compared to 10 percent of all whites.

- One in 12 Americans has had a close relative murdered, and one in eight knew someone in their neighborhood who was slain. Blacks are more than three times as likely as whites to have had a relative murdered. Twenty percent of blacks have had a relative slain, compared to six percent of whites.

- Twenty-six percent of those surveyed said they worried at least a "good deal of the time" about being murdered. Forty-three percent of victims of crime worry about being murdered, compared to 23 percent of people who never have been victims of violent crime.

- Nearly half of the women polled - 46 percent - said they worry about rape either a good deal or a great amount. Three percent report that they have been raped.

MORE MORE MORE

- Fifty-eight percent of those polled said unemployment, poverty, and related problems are the factors more responsible for crime in the U.S. Eighteen percent blamed drugs and 15 percent blamed breakdowns in family, society, morals, etc.

- A majority of 56 percent feels most judges have more sympathy for criminals than for their victims. Nearly two-thirds think judges have been giving shorter sentences in the last few years, and 88 percent said that is not the way they want it.

- Seventy-six percent want the death penalty for murderers. Seventy percent approve of building more prisons so that longer sentences can be given to criminals and 88 percent of these people are willing to have their taxes raised to pay for the new prisons.

- Seventy percent felt prisons mainly should be places that "teach criminals how to be useful, law-abiding citizens when they get out" rather than places to "punish criminals."

- Most people - 65 percent - disagree that armed citizen patrols are the only way to solve the crime problem. Forty-seven percent believe the best protection against crime is a strong police department.

- More than two-thirds of the gun owners polled said they would use their firearms if a burglar broke into their home. Nearly half of the American households - 47 percent - have firearms.

- Eighty percent said there would be less crime if more parents strictly disciplined their children. Exactly half of those polled said juveniles between the ages of 14 and 18 should be punished as adults if they commit a crime, and 46 percent said they should not be punished as adults.

Some 2,500 people were interviewed for the ABC News poll between December 7 and 18. The margin of error is plus or minus three percent.

(EDITOR'S NOTE: ABC News' two-week programming effort on "Crime in America" will focus on the myths and realities of crime, law enforcement, criminal justice and the prison system in the U.S. It will begin Sunday, February 13 with a special edition of "This Week with David Brinkley," with guests William Webster, FBI Director and William French Smith, Attorney General. The two weeks of programming (February 13 to February 25) will continue on "World News This Morning," "Good Morning America," World News Tonight," "Nightline," "20/20," "The Last Word" and "Viewpoint."

# #

TIMES
11.4.83

Kids may be tried as adults

by Jeff Berliner
Times Writer

District Attorney Victor Krumm on Thursday unveiled an administration proposal to try 16- and 17-year-old accused murderers in adult court.

Other juveniles accused of violent felonies also would have their cases moved to adult court under the proposal.

Krumm said it is "intolerable that a juvenile who commits a murder is held for two or three years" in McLaughlin Youth Center in Anchorage.

He unveiled the new juvenile waiver bill at the opening of a two-day conference on the connection between child abuse and juvenile delinquency, co-sponsored by the state Division of Family and Youth Services.

Division research shows that up to 20 youths every year are accused of committing crimes serious enough to bump them up to adult court, if prosecutors petition the court to accept them. In the past several years only a fraction of these cases actually ended up in state superior court.

Krumm, the Anchorage district attorney, cited the "soaring" rate of violent crimes committed by juveniles.

Although Gov. Bill Sheffield vetoed a juvenile waiver bill passed last legislative session, this bill satisfies his concerns and has the backing of the Department of Law, said assistant attorney general Gayle Horetski, who is putting the finishing touches on the proposal.

Charges of murder, rape or kidnapping would automatically put 16-and 17-year-old youths in adult court, Horetski said.

Younger defendants and teenagers charged with other crimes also could have their cases moved to adult court after a hearing.

But, Horetski said, this bill "makes it easier" for prosecutors to prove that those under 16 or those charged with felonies other than murder, rape and kidnapping should be taken out of the juvenile justice system.

Under current law, a juvenile may be placed in adult court at a judge's discretion following a hearing.

Delinquency expert attacks proposal

Continued from page A-1

This proposal, Horetski said, for the first time establishes nine standards for taking the teens out of juvenile court. The standards include seriousness of the crime, prior offenses, previous rehabilitation efforts, the amount of time required to rehabilitate the youth, and protection of the public.

The proposal Krumm unveiled came under immediate attack by the conference's keynote speaker, New York attorney and delinquency expert Andrew Vachss.

"How many 16-year-old kidnappers did you have in Alaska last year?" he asked, noting that such a law has "political utility" but will not bring needed change to the guilty youth or society.

"I don't think we had any," Horetski said, "but we sure had a lot of (under-age) murderers."

Vachss, who ran a prison for teens in Massachusetts, said in an interview later he would neither put the violent young offenders in a "soft" setting for youths nor put them in an adult prison.

He said he opposes mixing the violent teens with runaways in McLaughlin and said placing a 16-year old murderer in a state jail would likely transform him into an involuntary homosexual and a better criminal.

The answer, Vachss said, is a prison just for these violent youngsters, even if it is part of McLaughlin.

Teen-age murderers are released from McLaughlin when they become adults and most spend no more than two or three years in state custody, Krumm said.

Most violent teen-age offenders are not brought to the district attorney's attention "unless the crime is a triple murder in front of a lot of people," Horetski said. As a result, they end up in McLaughlin for a couple of years with little or no fanfare.

Serious cases that do come to prosecutors' attention often are ignored without any attempt to move them into adult court, Horetski said, because it is so difficult to do under current law.

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He said he opposes mixing the violent teens with runaways in McLaughlin and said placing a 16-year old murderer in a state jail would likely transform him into an involuntary homosexual and a better criminal.

The answer, Vachss said, is a prison just for these violent youngsters, even if it is part of McLaughlin.

Teen-age murderers are released from McLaughlin when they become adults and most spend no more than two or three years in state custody, Krumm said.

Most violent teen-age offenders are not brought to the district attorney's attention "unless the crime is a triple murder in front of a lot of people," Horetski said. As a result, they end up in McLaughlin for a couple of years with little or no fanfare.

Serious cases that do come to prosecutors' attention often are ignored without any attempt to move them into adult court, Horetski said, because it is so difficult to do under current law.

Alaska State Legislature

SENATOR
FRITZ PETTYJOHN
SRA BOX 2385 M
ANCHORAGE, ALASKA 99510
907 345-5174



Senate

LEGISLATIVE ADDRESS
POUCH V - STATE CAPITOL
JUNEAU, ALASKA 99811
907/465-3473

2-10-83
eB

TO: Representative Barnes
Representative Bussell
Representative Hayes
Representative Liska
Representative Pestinger

FROM: Senator Fritz Pettyjohn

DATE: February 8, 1983

SUBJECT: Juvenile Justice

Attached is a copy of a Letter to the Editor of the Anchorage Daily News from staff members of Family Connection, Inc. in regards to juvenile justice.

Point 1 is addressed by HB 109. Points 2 and 3 could also be looked into?

Attachment

Anchorage Daily News 2/8/83

LETTERS FROM THE PEOPLE

Suggestions for juvenile justice

As staff members of Family Connection, Inc., a non-profit family counseling agency, we would like to share and articulate some serious, but correctable difficulties we have observed within the state's juvenile justice system.

Family Connection has provided family therapy servic- to a variety of youth institutionalized at McLaughlin Youth Center for the past three years. We are contracted to join the treatment team for a particular youth by either McLaughlin staff or juvenile probation staff. We have worked primarily with youth and their families prior to release from McLaughlin. Our goal has been to facilitate a smooth transition for the youth back into the family and community and to reduce the rate of recidivism. We specifically look at how the family functions and the interactional process that produces delinquent behavior.

We have been impressed with the expertise and professionalism of both McLaughlin staff and juvenile probation staff. They work with dedication to treat, rehabilitate and return youth to their community. However, present legalities place great limitations on the expertise of these professionals.

We support the Waiver of Jurisdiction Statute, Section 47.10.060 of the Alaska Statutes. The waiver allows for a procedure that determines if a minor is amenable to treatment, and if so, the minor is sent to McLaughline Youth Center for rehabilitation, rather than to the adult justic system. We believe that if there are indications that a youth is amenable to treatment, society is better served by providing treatment services along with punishment.

Unfortunately, our experience has shown us that the waiver statute has been abused in two ways.

First, the waiver is not used enough. Clearly, there have been youths who should have been waived to adult status for committing atrocious, violent crimes. This sentiment has been expressed by many in the past year. Why isn't the waiver being used effectively? How could this process be changed to facilitate more frequent use?

Secondly, the present statute contains serious limitations that has made the members of the juvenile justice system appear ineffective. As an example, if a youth is amenable to treatment but after an intensive course of treatment the youth is still unchanged and dangerous, according to state law the youth still must be released. There is no other recourse. This has been a difficult moral and ethical dilemma for professionals within the juvenile justice system. How can we ethically release a youth into the community knowing the youth is a danger to society?

Another problem involves the length of institutionalization. A youth cannot be held longer than two years or until their 19th birthday. We have observed a youth who committed a violent murder receive a sentence of less than one year. In this case the youth simply refused to participate in treatment. Therefore, he is not adequately treated or punished. Again, treatment staff are put in a bind by the court as they are given an impossible task to perform, with no recourse to protect either the treatment process or the community.

The State of Alaska has done well in providing rehabilitation for youth, while at the same time protecting the safety of our people. However, there are serious handicaps in Alaska's juvenile law that we feel need immediate attention, particularly with the present climate of overreaction. We would be greatly discouraged to see the state lose the flexibility in our laws to rehabilitate and punish by giving way to oversimplified, reactionary solutions.

— Kathy Apple, RN
Family Therapist
— Rosemary Unterseher, ACSW
Clinical Supervisor
Family Connection

HB

546

(e) In a prosecution under this section, it is an affirmative defense that the person

1) had a right to obstruct or hinder the hunting, fishing or trapping, or

2) reasonably believed that the person had the right to obstruct or hinder the hunting, fishing or trapping.

STATE OF ALASKA
THE LEGISLATURE

LEGISLATIVE AFFAIRS AGENCY

POUCH Y STATE CAPITOL
JUNEAU ALASKA 99811
907 465 3800

M E M O R A N D U M March 13, 1984

SUBJECT: Harassment of hunters, fishers and trappers (CSHB 546 (Resources)(draft)

TO: Representative John Ringstad
Chairman, House Resources Committee

FROM: Edward H. Hein
Legislative Counsel

Enclosed is a draft of Resource Committee Subsitute for HB 546 requested by Dave Stancliff.

I have rewritten sec. 16.05.925(a) and (b) in an effort to address the problems raised in the second paragraph of Governor Sheffield's veto letter relating to HB 163 last year.

Also, I have attached copies of the laws relating to harassment of hunters, fishers and trappers in seven other states. Note that every one of the laws uses the term "interfere" without defining it. Despite this, it is my opinion that the words "obstruct" and "hinder" are slightly more precise and therefore preferable.

Feel free to contact me at your convenience if I may be of further assistance.

EHH:ojb
J4/072
Enclosures

DEPARTMENT OF PUBLIC SAFETY

POSITION PAPER - HB 546

Support

"HB 546 - An Act relating to harassment of persons lawfully engaged in hunting, fish ng, or trapping."

The Department of Public Safety supports passage of HB 546.

This bill adequately addresses conduct that is illegally aimed at interfering with lawful hunting, fishing or trapping.

British Columbia has had severe problems between legal hunters and anti-hunting groups that have led to armed confrontations. The potential for that to occur in Alaska is evident and I think enacting a law to address this problem would be a good start toward prevention.

Robert J. Sundberg
Commissioner

STATE OF ALASKA 1984 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date:

REQUEST
Bill/Resolution No.: HB 546
Title: Act Relating to Harassment of Persons Lawfully Engaged...
Sponsor: House Resources
Requestor: House Resources
Date of Request: 2-23-84

FISCAL DETAIL
Agency Affected: Public Safety
Program Category Affected: Fish & Wildlife Protection
BRU, Program or Subprogram(s) Affected: Fish & Wildlife Protection

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 84	FY 85	FY 86	FY 87	FY 88	FY 89
OPERATING						
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 SUPPLIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS						
800 MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-
CAPITAL						
REVENUE				-		

FUNDING: (Thousands of Dollars)

GENERAL FUND	-0-	-0-	-0-	-0-	-0-	-0-
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

ANALYSIS: Attach a separate page for analysis

Prepared By: Paul Conger — Phone: 465-4333
Division: Administrative Services — Date: 2-22-84

Approved by Commissioner: [signature] — Date: 2/24/84
Agency: Public Safety

Distribution (by Agency preparing fiscal note):
Legislative Finance
Legislative Sponsor
Requestor
Office of Management and Budget
Impacted Agency(ies)

12/1/83

LOUISIANA

§ 648. Definitions

As used in this Subpart, the following definitions shall apply:

(1) "Wild animal" means any wild creature, including fish, wild birds, and wild quadrupeds, the taking of which is authorized by the provisions of this Title.

(2) "Process of taking" means any act directed at the lawful taking of a wild animal, including the acts of travel, camping, or other activity occurring in preparation for the taking which occurs on state-managed lands or waters governed by the provisions of R.S. 56:781–R.S. 56:787 or which occurs on private lands or waters with the permission of the owner or his agent.

Added by Acts 1982, No. 376, § 1.

§ 648.1. Harassment and disturbance prohibited

No person shall engage in any of the following activities on lands or waters managed by the state pursuant to R.S. 56:781–R.S. 56:787, or upon private lands or waters where a hunter, trapper, or fisherman has been given permission by the owner or his agent to take wild animals:

(1) Interfere with the lawful taking of a wild animal by a hunter, trapper, or fisherman or interfere with the process of taking, with intent to prevent the taking.

(2) Disturb a wild animal, or engage in any activity or place any object or substance that will tend to disturb or otherwise affect the behavior of a wild animal, with intent to prevent or hinder its lawful taking.

(3) Disturb any hunter, trapper, or fisherman who is engaged in the lawful taking of a wild animal or who is engaged in the process of taking, with intent to dissuade or otherwise prevent the taking, or to prevent such person's enjoyment of the outdoors.

(4) Enter or remain upon state-managed lands or waters or upon private lands or waters with intent to violate the provisions of this Section.

Added by Acts 1982, No. 376, § 1.

On authority of R.S. 24:253, subsection designations A to D as found in Acts 1982, No. 376 were changed to paragraph redesignations (1) to (4).

Library References
Game ⇨7.
C.J.S. Game § 10 et seq.

§ 648.2. Remedies, damages, and penalties

A. The secretary may seek injunctive relief to restrain and prevent violations of R.S. 56:648.1, upon request by the person affected or who reasonably may have been affected by such conduct.

B. Any person adversely affected by a violation of R.S. 56:648.1 shall be entitled to recover actual damages, including expenditures of the affected person for license and permit fees, travel, guides, special equipment and supplies, to the extent that such expenditures were rendered futile by the actions of the person violating the provisions of this Section.

C. Violation of the provisions of R.S. 56:648.1 constitutes a class two violation.

Added by Acts 1982, No. 376, § 1.

§ 648.3. Failure to obey order; violation

A. It shall be unlawful for any person to continue any conduct in violation of R.S. 56:648.1 when ordered to desist by an enforcement officer who has observed such conduct or who has reasonable grounds to believe that the person has engaged in such conduct on that day or plans or intends to engage in such conduct that day on a specific property.

B. Violation of the provisions of R.S. 56:648.3(A) shall constitute a Class three violation.

Added by Acts 1982, No. 376, § 1.

ARIZONA

§ 17-316. Interference with rights of hunters; violation; classification

A. The commission may, by rule, establish designated hunting areas on public lands if it finds that a significant interference or disruption of a hunt is likely to occur on those lands.

B. It is a class 2 misdemeanor for a person while in a designated hunting area to intentionally interfere with the lawful taking of wildlife by another or to intentionally harass, drive or disturb any game animal for the purpose of disrupting a lawful hunt.

C. It is a class 3 misdemeanor for a person to enter or remain in a designated hunting area on any state lands including state trust lands with the intent to interfere with the lawful taking of wildlife.

D. The commission or any person properly licensed to take wildlife who is directly affected by a violation of this section may bring an action to restrain conduct declared unlawful in this section and to recover damages.

E. A peace officer who reasonably believes that a person has violated this section may order the person to desist or to leave the area or arrest such person upon refusal to desist or leave.

F. The conduct declared unlawful in this section does not include any incidental interference arising from lawful activity by public land users, including ranchers, miners or recreationists.

Added by Laws 1981, Ch. 239, § 1.

MICHIGAN

312.10. Unlawful hunting

Sec. 10. (1) Unless otherwise specified, a person shall not do any of the following:

(s) Intentionally interfere in any manner with the lawful hunting, pursuing, or taking of a wild bird or a wild animal by another person.

HB 407

January 24, 1983

Representative Dick Schultz
State Capitol Building
Juneau, Alaska 99801

Dear Dick:

On January 5, 1983 the Tok Cutoff-Nabesna Road Advisory Committee met in a general meeting to discuss hunting regulations. There were several things discussed with two of them pertaining to you.

#1 We would like to see legislation written and passed that would control or rather stop harrassment of hunters, trappers, and fishermen. We would be able to carry on our life-style without harrassment from the "greenies".

#2 We would like to see legislation written and passed that would eliminate the $25 trophy tag for resident grizzly/brown bear hunters. We believe the State is rich enough without charging its residents a $25 fee.

Our committee will be meeting within a few weeks and correspondence from you would be appreciated. I would like to able to tell the folks something about these two items.

Good luck and if there is anything I or this committee can do to help, please let me know.

Sincerely,

Bill Ellis, Chairman
Tok Cutoff-Nabesna Rd. Advisory Committee
P. O. Box 350
Tok, Alaska 99780
907/883-3426

friends of animals, inc. *11 West 60th Street, New York, N.Y. 10023 • (212) 247-8120*

TIPS FOR HUNT SABOTEURS

Fourteen million Americans will be shouldering their rifles and shotguns within the next few months, marching off to their annual offensive against our wildlife. These legions, which are more numerous, and generally better equipped than the entire Nazi armies of the Second World War, will take a bloody toll before the season ends. They will kill deer and rabbits, ducks, dogs, cats, a few children, and even a few hunters.

It is time for friends of animals to start organizing a defense that will serve to at least temper the wanton destruction. There are many ways that a friend of animals can become a forest partisan on behalf of our wildlife, and we offer here a few suggestions that range in effort, depending upon a person's abilities and commitment:

1. Deny the hunter the land to hunt on. Much hunting is done on private lands. To protect these animals, encourage your neighbors, especially those who own large tracts such as farms and ranches, to post their land and forbid hunting. Try to convince them that hunters invariably cause more damage to agriculture than the wild animals do.

2. Many areas have hunting restricted to a specified number of hunters who have special permits. Commonly, these permits allow the hunter to use a particular blind or hunt less common species, such as bear. Apply for these permits yourself. The permits are usually awarded by a simple lottery selection. If you're lucky, you'll win a permit and deny a hunter his kill.

3. Get into the woods yourself the day before the hunting season. If you're familiar with the most commonly hunted areas, try to drive wildlife away. A stroll through the forest with a nice loud radio and a dog on a leash, will serve to make wildlife more wary of humans. This is particularly important for younger animals that have not yet had the traumatizing experience of being hunted.

4. Certain substances, such as rotten eggs, when rubbed into hunting blinds, make these enclosures even more uncomfortable for the hunters. Uncomfortable hunters are irritable, and are also poorer shots. Plastering the floor of a hunting blind with cow dung is another good idea.

5. If you're familiar with wildlife habits in your neighborhood, try to encourage them to break these habits shortly before hunting season. For instance, many hunters like to stalk along deer tracks which are pretty well defined to a good woodsman. Placing deer repellent (available at many feed and hardware stores) along these tracks will encourage the deer to move away and leave the hunter with a route devoid of the species. If you want to save money, just scoop up a bag of human hair from a local barber shop and hang handfuls of it in little bags about two or three feet from the ground, along the deer track. The deer will soon get the message that there are humans in the area and will drift away.

6. If there is much hunting with dogs in your area, try to get hold of a female dog in heat and lead her, on a leash, through an area that is heavily hunted. Male dogs in the hunter's pack will "get wind" of the female and lose their enthusiasm for chasing rabbits or deer.

7. Hunters frequently like to ambush their prey by setting out food and then hiding in blinds. Commonly, bushels of apples are set out a few days before hunting season to encourage deer to browse in this area. When hunting season comes, the hunter merely comes to the site, climbs into a blind, and waits for the deer to come to him. To disrupt this, there are two alternatives. First, remove all apple piles immediately on finding them during the days preceding hunting season. Second, if there are just too many apples to carry away, give them a good spraying with deer repellent and spread barber shop hair clippings all over the area.

8. Encourage your municipality to pass an ordinance that bans, in the interest of public safety, the use of all weapons within its limits. Rifles, shotguns, bows and arrows have been known to kill people too.

9. If you have a portable tape recorder, get a cassette recording of wolf howls. Play this in the woods a few times in the days before hunting season. It will make wildlife wary.

10. Try to develop strong anti-hunting sentiment in your community by writing letters to the editor of your local newspapers, meeting with neighbors, getting on talk shows. Creating public awareness of the problem is a vital point. Let your neighbors know that the law recognizes wildlife as belonging to all people, and they are not the exclusive property of hunters until after they have been murdered.

11. Work on a project to get your State to pass a law that would require all hunters to carry written permission from the landowners of the places they hunt. This further curbs the hunter's battlegrounds because many farmers are reluctant to sign permits that would allow people to hunt on their lands. Also, much land is owned by summer residents, corporations, etc. that are nearly impossible to get hold of.

12. Approach your Congressperson and Senators with demands that hunting and trapping be prohibited on national wildlife refuges and all public land.

13. If you have any old, stuffed animal toys, set these around commonly hunted areas. Hunters often don't take the time to check if an animal is real. Better to have a hole in a cotton rabbit than a real one - and the noise of the gun going off might serve to scare away other wildlife.

14. We will be trying to put together a better activist's guide for next hunting season, so if you have any ideas or procedures you've found effective, please let us know. Mail them in to Bill Clark, Friends of Animals, 11 West 60th Street, New York, NY 10023.

Use your imagination. There are plenty of ways to frustrate the hunt, depending on your own abilities and enthusiasm. The main point here is to do something. By your work, you will be helping animals in two ways. First, you will be protecting them from the hunters and second, you will be letting the hunters know that friends of animals are in the woods. This serves to anger them, and angry hunters do not stalk so quietly, their aim is not so precise. Emotions can play heavily in the success of a hunt, and the most effective killers are cool and methodical. Disrupt!

ANTI-HUNTERS VS. HUNTERS: WAR IN THE WOODS

Greenpeace fanatics are harassing hunters in the field. It's a vicious and very dangerous movement, and you could be the next victim. Here's what to expect plus some very good advice on what not *to do about it.*

By Richard Starnes, Editor-at-Large

The lush alpine valleys and rugged highlands of northeastern British Columbia have witnessed the opening skirmishes in what threatens to become all-out war between big-game hunters and anti-hunting zealots who have sought to stop them by harassment, abuse, intimidation and—it is charged—physical violence.

How much violence has occurred to date is in dispute, but there have been several angry confrontations involving hunters and anti-hunting activists, one beating has already taken place, and feeling is running so high that Canadian provincial authorities are alarmed at the prospect of more violence when the big-game season opens this fall.

"It's only a question of time before some hothead loses his composure and someone gets hurt," said one hunter who was victimized by the anti-hunters.

Arrayed against each other in the conflict are the hunters, outfitters, and game-management officials of British Columbia, and a dedicated, well-financed, implacable organization of anti-hunters who call themselves Greenpeace.

Greenpeace is no collection of saloon conspirators content to crank out mimeographed anti-hunting diatribes and picket sporting-goods stores. It is slick, professional, worldwide, and growing rapidly. Its Vancouver chapter alone budgets nearly $500,000 a year for anti-hunting activities. Its tools are $1,000-a-day helicopters, expensive sound cameras, and self-confessed expertise at manipulating the press and television. Its tactics are harassment, confrontation, and attempts physically to restrain hunters. Its leader, Dr. Patrick Moore of Vancouver, made it clear in an interview with OUTDOOR LIFE that episodes of harassment and intimidation that took place in the rich hunting grounds of British Columbia in 1979 and 1980 were only the opening salvos in the conflict.

"We'll be back this year," he said. "They can't stop us. We intend to stop trophy hunting, first in British Columbia, ultimately all over the world."

How Greenpeace seeks to frustrate hunters is perhaps best told in the words of Richard A. Mielke, a 50-year-old Pontiac, Michigan, fire fighter who last year took a 21-day hunt-of-a-lifetime in the rugged, 1.6-million acre Spatsizi Wilderness Park in British Columbia. He and his partner, Darryl Hastings, 40, a computer broker from Rochester, Michigan, encountered the Greenpeacers on the first day of the hunt.

"They barged right into our camp," Mielke said. "They stuck sound cameras right in our faces. They harangued and abused us. One of them screamed at me, 'Is there something wrong with your sex life? Is that why you're up here killing animals?' When we tried to ride out of camp they locked arms across the trail to stop us. One of them grabbed the bridle of my horse. That was dangerous. That's rough country up there. If the horse had shied and fallen I could have been badly hurt."

Eventually the hunters and their guide broke free and continued the hunt, but on nearly every day of the hunt the harassment continued. On one day Mielke took his rifle—unloaded—to a dock on tiny Bug Lake to scope a wolf that had been howling near the camp.

"One of these Greenpeace guys crowded up against me, bumped me, and yelled, 'You're not going to shoot that animal while I'm here!' He grabbed my rifle, and then he fell into the lake."

"They would taunt you in every way they could," Hastings added. "You

couldn't even go to the john without one of them sticking a camera in. It's hard to keep your cool under those circumstances, yet I couldn't give them the satisfaction of bothering me."

Although the Greenpeacers scornfully characterize hunters such as Mielke and Hastings as "jet-set headhunters," both are men of modest means.

"I scrimped and saved and worked at odd jobs for two years to get the money for that hunt," Mielke said. "By the time I'd paid air fares, outfitters' fees, and license and trophy fees it cost me around $10,000."

Hastings put the cost of his hunt at near $12,500, and noted it would be a long time, if ever, before he could afford another hunt of that magnitude.

Both hunters report that attempts to reason with the anti-hunters were futile.

"We were after Stone sheep, principally," Hastings said. "But they kept alluding to them as 'bighorns.' I told one of them, 'You're such a phony; you don't even know what species you're talking about.' "

Both men got trophy sheep as well as other trophy specimens, but the Greenpeace activitists succeeded in blighting what would otherwise have been an idyllic hunt.

"There were several days when I didn't hunt because of them," Hastings said.

Complaints to provincial wildlife authorities were to no avail. "Early in the hunt a park ranger came into our camp," Hastings said. "We asked him why he wouldn't protect our right to carry on a lawful activity. I'd paid around $1,000 for licenses and tags, and these people were trying to deprive me of my right to hunt. The ranger replied that there was nothing he could do. 'It's a public park,' he told me. 'They can go anywhere they please.' "

Later, after the anti-hunter fell (Greenpeacer Moore says he was pushed) into the lake, four Royal Canadian Mounted Police officers and two B.C. Fish and Wildlife Department officials arrived at the Mielke-Hastings camp by helicopter. Again the two hunters repeated their plea for protection, again the officials said there was nothing they could do.

"They told us they were trying to figure out how to resolve the issue," Hastings told OUTDOOR LIFE. "But all they did was to tell us, 'We want you fellows to be patient and keep the peace.' " (There are indications, however, which we will come to later, that B.C. officials are preparing to abandon their policy of noninterference when the 1981 season opens.)

Violence against them would give Greenpeace "proof" that all hunters are thugs and violence-prone killers.

Even after Mielke and Hastings quit their camp to return home, the Greenpeace contingent pursued them. After alerting press and television, the anti-hunters continued their tactics of harassment. They followed the two hunters into the airport at Vancouver, taunting them, haranguing and vilifying them, and waving professionally-made anti-hunting placards for the benefit of news and television cameras. Several wore animal costumes, including horns or antlers. The Greenpeacers drove the two hunters to take refuge in the airport lounge, where the bartender did what the Royal Canadian Mounted Police and game department officials had been unable or unwilling to do. He chased the anti-hunters out of the place.

What was possibly an even uglier incident took place during the 1979 season in Spatsizi. Gary Zechel, an engineer with the Ford Motor Company, who lives in the Detroit area, was hunting Ranger Creek with his wife Jo-Carole, who is a hunter, but wasn't hunting on this occasion. Accompanied only by an Indian guide, the Zechels were traversing one of the wildest, most primitive areas in North America.

"We were six or eight hours by horseback from our base camp, staying in a spike camp," Zechel recalled, "when these Greenpeace people showed up. There were seven men and one woman. There was lots of taunting, harassment, and intimidation. They said they would do whatever they could to stop us. They said if they couldn't persuade us to abandon our hunt they would restrain us physically. When we rode out for a day of hunting, they locked arms in front of us. When I tried to go to my wife's aid, one of them grabbed my horse's reins. Eventually our guide broke through, and my wife and I got away from them. They chased us several hundred yards up the trail, and our guide's horse fell into a bog. That was very dangerous. Even a minor injury is serious in that remote wilderness."

Like Mielke and Hastings, Zechel is an experienced hunter and outdoorsman, clearly able to take care of himself. But some insight into the psychological impact of the Greenpeace tac-

In the fall of 1980, the Gary Zechel hunting party camped in the Spatsizi wilderness in British Columbia and ran into harassment by eight Greenpeace agitators (left). When Zechel and his wife rode out of their camp for a day of hunting with their guide, the Greenpeacers locked arms across the trail to block their way and screamed abuse. A female Greenpeacer grabbed Zechel's reins to hold him back. The guide broke through the human barrier, and the Zechels pulled away and rode around them. Gary Zechel stated that his greatest fear was that one of the horses would spook and injure or kill someone. The painting is based on a photograph supplied by the Greenpeacer organization! At right, Greenpeacers in animal costumes harass Richard A. Mielke and Darryl Hastings in the Vancouver airport after their successful hunt.



Illustration by Domenick D'Andrea

tics can be won when Zechel says, "One of those guys had an ice ax he kept waving in my face. I felt more fear than I have felt in a long time."

Zechel's wife seems to have been singled out for particular attention by the Greenpeacers.

"They ran raving and yelling at her," he reported. "It was like a riot. They came within five or ten feet of her."

Exercising what can only be described as saintly restraint, the Zechels and their guide did their best to ignore the anti-hunters.

"This drove them into a frenzy," Zechel said. "They acted nearly hysterical, obviously looking to cause some action or incident." Not surprisingly, the Greenpeace tactics finally wore down Jo-Carole's emotional reserves. "She was terrified and finally broke down crying and screaming for them to leave us alone. They refused and she ran into the tent, sobbing 'They're crazy—I'm afraid of them.' She spent the final days of the hunt in her tent."

When the Zechels broke camp and returned to Smithers, he filed an assault charge against the Greenpeace anti-hunters. Although technically the charge is still pending, it has been "stayed" and provincial authorities made it clear they have no plans to prosecute it.

Ralph Aldrich, chief conservation officer of the British Columbia fish and wildlife agency, undertook to explained why.

"From an enforcement point of view we can only follow the law," he said in an interview. "There is no law against yelling. It's just like picketing. Of course, if they threaten assault and take some overt action, that may be assault."

Is it illegal to impede hunters' horses? Aldrich's reply was something less than definitive. "It depends," he said. Thereupon he passed the buck to Peter Ewart, crown counsel (prosecuting attorney) for the Spatsizi district. From Prince George, B.C., Ewart indicated that, while still open, the charges laid by Gary Zechel against the Greenpeacers would likely never be prosecuted.

"We took a look at the evidence and the probable outcome of a trial and put a 'stay' on the case," Ewart said. But then, plainly choosing his words carefully, Ewart laid out what may be provincial officials' plan to end the threat to one of British Columbia's prime industries. "I would have been much happier," he said, "if the charge had been intimidation instead of assault." British Columbia, he said, has a statute making it illegal to "impede or attempt to impede any person from carrying out a lawful activity" by threats, harassment, or coercion.

"What he says is a crock," bluntly charged Ray Collingwood, whose firm outfitted both the Zechel and Mielke-Hasting parties. "They didn't prosecute because of the expense of getting witnesses back up here to testify. I've lost all respect for the government."

Collingwood revealed what apparently is not known by provincial authorities—real violence has already broken out.

"One of these [Greenpeace] guys tried to stop one of our pilots from taking off from an airstrip we maintain in the park," he told OUTDOOR LIFE. "He grabbed a wing strut of the Beaver and tried to force our pilot to abort his take-off. The plane got off anyway and later the pilot returned, landed the aircraft, and punched the guy out. He knocked him down and slapped him around some. He just hung a little licking on him."

Despite the degree of restraint exercised by Mielke, Hastings and Zechel, provincial authorities are acutely aware of the potential for violence. Like the hunters themselves, provincial officials see the tactics of Greenpeace as calculated provocations designed to spark violent reaction. All agree that would be counterproductive and, as one put it, "would give Greenpeace 'proof' that all hunters are thugs and violence-prone killers." Chief conservation officer Aldrich pointedly noted that there will be combined Royal Canadian Mounted Police and game department patrols in Spatsizi during the 1981 season.

Greenpeace's Moore airly dismissed the prospect of being prosecuted under the intimidation statue.

"The attorney general (of British Columbia) hired a man last summer especially to research the question," he said. "He concluded there was no law that could stop us. Our activities are as legal as the hunters'. All we're doing is occupying nonconsumptive space, competing for resources with the hunters. They can't say we're interfering with their rights. Those [game] animals don't belong to anyone until they're actually taken into possession."

It is clear that Patrick Moore is the architect, principal voice, and presiding genius of Greenpeace. He conceived and created the organization while a graduate student at the University of British Columbia (he is now a doctor of ecology) five years ago. His title is Canadian director of Greenpeace International, but plainly his sway extends to the worldwide branches of the organization. He is one of 12 salaried, full-time employees of Canadian Greenpeace, and he is paid $1,200 a month. There are offices in Vancouver,

"We intend to shut down trophy hunting in Spatsizi to show that it can be done."

Victoria, Toronto, and Montreal, as well as branches in the United States, the United Kingdom, the Netherlands, France, New Zealand, and Australia. A Greenpeace "secretariat" in Washington coordinates the activities of the international branches, and it has an annual budget of $120,000.

"Our forte," Moore said in an interview, "is organizing expeditions into remote areas in order to confront in a nonviolent manner acts that we consider environmentally detrimental. Our funding is entirely private—donations from individuals that are generally less than $50. We have no foundation or government grants. Our methods are too controversial to attract money from conservative quarters."

Greenpeace's first confrontation took place when Moore and others chartered an 85-foot vessel and sailed to the Aleutian island of Amchitka in an attempt to halt the testing of nuclear bombs. "We lost that battle but we won the war," he said. "They've stopped testing now and Amchitka is a wildlife preserve."

Later Greenpeace made expeditions to the South Seas in an attempt to stop nuclear testing by France (they failed), and they have conducted offensives against whalers and seal hunters.

"But we cut our teeth on nuclear testing," Moore said. "From it we learned how to deal with the media and how to understand international politics. We're fortunate in having people who understand the media—that's how you communicate with people in the modern world, knowing what sort of images appeal to the media."

Although Canadian authorities are tippy-toeing around the Greenpeace campaign of intimidation in Spatsizi, the government ended similar tactics that were attempted against commercial hunters of harp seals in Newfoundland.

"They enacted what they called 'seal protection regulations'," Moore said, "just to keep us out. It's ironic, and very undemocratic."

Moore insists that ending all hunting is not his goal. "Hunting can be part of a harmonious relationship with nature," he said. "Indian bowhunters lived in a balanced state with nature for

10,000 years. But what we're saying is that the relationship between man and animals has changed dramatically. These hunters are an extension of the Detroit urban-industrial ecosystem. They have no place in Spatsizi. In a park set aside for protecting these animals, we must stop thinking of them as a natural resource and think of them as a national treasure."

Moore's disclaimer notwithstanding, Greenpeace's program would effectively end hunting. It would totally rule out all trophy hunting, even under the rigidly controlled conditions prevailing in Spatsizi. It would prohibit hunting by all outsiders, insisting that only food hunters "that are part of the (local) environment be permitted to hunt." It would, in short, permit only subsistence hunting, and then only if the cessation of hunting would "dramatically affect" the life-style of the hunter, and only if subsistence hunting remained in "balance" with the environment.

Moore repeatedly insisted that the hunters who were assailed by the Greenpeacers were unthinking trophy freaks who habitually left the meat of their animals to spoil after removing horns, antlers, and capes. All three hunters heatedly denied the charge, noting that they had painstakingly packed all usable meat back to camp, either for shipment home or for use by the outfitter's crew. The outfitters confirmed this. In fact, British Columbia law requires that the meat of game animals be removed and used for food, and in its exhaustive investigation of the incidents, the provincial game department found no violations of the law by the hunters.

For the record, Moore denies any of the Greenpeace activists at Spatsizi committed assault by grabbing anyone's arm. He denies that Mielke's rifle was pushed, but he insists that either Mielke or his companion shoved one of the Greenpeacers into the icy waters of Bug Lake. He concedes that they tried to block progress of the hunters' horses, but denies any member of his group seized them by the bridles. "They ran their horses at us," he insisted.

"They're crazy—I'm afraid of them," Gary Zechel's wife said. She spent the final days of the hunt in her tent.

"Our intention is to be there again this year. We intend to shut down trophy hunting in Spatsizi to show that it can be done. They say we are intefering with them. We deny that. We're competing, as is our right, and they can't stop us."

Perhaps more philosophical than many hunters would be, Richard Mielke warns future hunters of Spatsizi that the Greenpeace anti-hunters "are trying to provoke you into taking a poke at them. And that's the last thing anyone should do. It's exactly what they want."

Unfortunately, however, it isn't the last thing that's likely to happen—unless British Columbia takes a page from Newfoundland's book and contrives a way to keep the Greenpeace people away from the hunters. There are some indications B.C. officialdom, perhaps belatedly, is now working hard to find a way to end the harassment of hunters. In reply to a letter of complaint from Mielke, B.C. Minister of Environment Stephen Rogers wrote:

"I wish to extend my personal apologies for the harassment you suffered (and) I also want to congratulate you and your hunting partner for the restraint you both showed under trying circumstances. The hunters in Spatsizi by their good behavior, as opposed to the conduct of Greenpeace, gained in general public stature while Greenpeace suffered.

"We are working with the Parks Branch to see what can be done to prevent situations such as you experienced from recurring."

The Force Behind Friends of Animals

Alice Herrington Raises the Hackles of Sportsmen in Her War on Hunting



Alice Herrington

By E. J. NILSSON
Grit Staff Writer

Whether Alice Herrington is right or wrong, she is anything but a bore. As founder and president of Friends of Animals (FOA), Herrington arouses strong feelings among sportsmen and others in her crusade against hunting.

Herrington, who lives with eight cats in Little Silver, N.J., founded FOA in 1957 to try to reduce the numbers of stray dogs and cats. And that is still the major purpose of the organization, she said.

But the group's chief claim to fame is Herrington's verbal bouts with hunters and trappers.

"To call this a sport is just pure nonsense," she said about hunting. "It's a real cruelty. It can't be justified."

IN HERRINGTON'S view, the only people worse than hunters are trappers.

"Deer hunters are not nearly as bad as trappers," she said. "I can't imagine how hunters, who pride themselves on fine shooting, ally themselves with trappers, who practice sadism. Deer hunters are due a little credit for at least the speed of their kill."

Despite the fireworks that FOA ignites with its "full program of hunting and trapping disruption," Herrington wants to convince the public that there "are two cruelties."

Besides the killing of "free animals, which are called wildlife," she explained, she's concerned about man's treatment of all domesticated animals—including pets and livestock.

"It's an American syndrome to love kittens and puppies but then throw out dogs and cats," she said, adding that millions of dogs are killed "in American municipal dog pounds, but they were loved as puppies."

In 1970, Herrington organized low-cost spaying programs for 20,000 animals. By 1980, the number had risen to 60,000.

Last September in Neptune, N.J., she opened a low-cost spaying clinic, said to be "a model of its kind with room for 80 animals and two veterinarians." Across the nation, her group pays for part of the cost of spaying in cooperation with 750 participating veterinarians.

ONE OF the prime targets of Herrington and the FOA is the food business.

"Cruelty to animals is practiced on a larger scale by the food industry than by any other single sector of human activity," an FOA publication asserts.

And Herrington adds:

"If people want to support an industry that is destroying the land, then they can continue to eat these creatures. But if not they can eat vegetables."

Other institutions also are criticized by FOA, including zoos.

"Zoos must be phased out," said an FOA publication.

Herrington's concern for animals was heightened when she returned to the United States in 1954. Working as a War Department statistician, she had seen relatively few animals running loose in Europe.

In the United States, she said, "I was shocked to find stray animals everywhere."

HERRINGTON, a graduate of the University of Wisconsin in Madison, put her statistical talents to work calculating the rate of increase of dogs and cats. She said she realized that cutting the prolific birthrate was the only long-range solution.

This realization led to the founding of FOA, which worked with volunteers until 1967. Now the group has 12 full-time employes and [illegible]

Herrington was asked whether she would advise FOA members to take traps that were legally set.

"Yes! Why not? Certainly," she said.

But wouldn't the "solution" be stealing?

"You could say that it's stealing if you like," she replied, "but the Robin Hood approach to life is still a very nice way to go."

To All Commissioners.
OUT
3/25/81
CM

Humane Group To Seize Animal Leghold Traps

By STEVE GRANT

Friends of Animals Inc. said Friday it is going to trip up trappers by setting off their leghold traps when the season opens next week.

The organization said it will ask its 4,500 members in Connecticut to look for the traps, touch them off with a stick and remove them, because it believes the traps are inhumane.

"We can't as an organization advise people to remove legally set leghold traps. It wouldn't be a smart thing to do. What we're asking them to do is remove illegally set traps. Our guess is most of them are illegal," said Priscilla Feral, the organization's Connecticut director.

Game laws require all leghold traps to have the owner's name on them and they must be placed underwater or in an animal's burrow.

A spokesman for trappers questioned the new campaign, which will begin next Saturday, when the season opens.

"They're setting up a vigilante group. Vigilantes in any situation are not good. They don't know enough and they tend to break the law themselves," said Robert Crook of Madison, a member and former president of the Connecticut Trappers Association which has about 800 members.

"I wouldn't object to anybody coming out and checking my traps, as long as they had the permission of the landowner, and as long as they didn't steal them, set them off or take animals out. But I really don't think that's their responsibility," Crook added.

He said the state Department of Environmental Protection is responsible for seeing that trapping is conducted legally and that he understood the group was told by DEP not to remove illegal traps but instead to report them to a game warden.

Ms. Feral said a trapper's name legally can be placed anywhere on a trap, so members would have to trip them to check. She said members would not be advised to reset legal traps.

"DEP can read the riot act to me if it wishes. But no way will we aid the trapper. Our object is to get rid of the legnold trap," she said.

The organization has argued that the trap, which has two steel jaws that slam shut when an animal touches a piece of bait, is barbaric because some animals die slowly or are left crippled. Ms. Feral said domestic animals also have been caught in the traps. There are other traps available that are more humane, she said.

Crook estimated that there are 8,000 trappers in Connecticut, with the average trapper placing 50 or 100 traps in the wild.

The most commonly trapped animal in the state is the muskrat, which can yield a pelt that will fetch up to $8. Raccoon, fox, mink, opposum, weasel, skunk and beaver also can be trapped legally, though the season for some of those animals does not begin until later.

Friends of Animals, which is based in New York, has waged other campaigns against hunters. Some members went into the Connecticut woods recently to play recorded wolf howls to alert animals of danger when the deer hunting season opened.

[illegible] TITLE: 2D SCS CSHB 163(JUD) 14:22 2/27/84 PAGE 1 OF 5

AN ACT RELATING TO HARASSMENT OF PERSONS LAWFULLY ENGAGED
IN HUNTING, FISHING, CAMPING, OR TRAPPING

PRIME SPONSOR: SHULTZ.
CO-SPONSORS:
CURRENT STATUS: 1/16/84 EXPIRED 1ST SESSION

HB 163 HOUSE ACTION 14:22 2/27/84 PAGE 2 OF 5

DATE	SEQ	PAGE	LEGISLATIVE ACTION
02/04/83	01	0173	FIRST READING -- COMMITTEE REPORTS
03/21/83	02	0572	RES -- CS05, NR02
03/21/83	03	0572	RES F/NOTE EQUALS ZERO
04/20/83	04	0942	JUD -- DNP01, RES CS04, NR02, OTHER01
04/20/83	05	0957	NOT MOVED FROM RLS COMM BY DIV 12-25-03
04/21/83	06	0968	RLS -- CS05, NR02, OTHER02
04/22/83	07	0994	SECOND READING
04/22/83	08	0994	RLS CS ADOPTED BY UNAN CONSENT
04/22/83	09	0995	AM01 WITHDRAWN
04/22/83	10	0995	AM02 NOT ADOPTED BY DIV 15-19-06
04/22/83	11	0996	AM03 ADOPTED BY UNAN CONSENT
04/22/83	12	0996	AM04 ADOPTED BY UNAN CONSENT
04/22/83	13	0997	AM05 NOT ADOPTED BY DIV 14-18-08
04/22/83	14	0997	ADVANCED TO 3RD READING BY UNAN CONSENT
04/22/83	15	0997	THIRD READING
04/22/83	16	0997	PASSED BY DIV 24-09-07
04/22/83	17	0998	NOTICE OF RECONSIDERATION GIVEN
04/25/83	18	1029	RECONSIDERATION NOT TAKEN UP
06/26/83	39	2101	CONCURRED IN SENATE AMS BY DIV 31-09-00
07/05/83	40	2134	TRANSMITTED TO GOVERNOR

HB 163 SENATE ACTION 14:23 2/27/84 PAGE 4 OF 5

DATE	SEQ	PAGE	LEGISLATIVE ACTION
04/26/83	19	0808	FIRST READING -- COMMITTEE REPORTS
05/16/83	20	0990	RES -- DP02, NR04
05/27/83	21	1135	JUD -- CS05
06/10/83	22	1260	RLS -- JUD CS03, OTHER03
			TAKEN UP IMMEDIATELY
06/16/83	32	1334	JUD -- 2ND CS05
06/26/83	33	1529	RLS -
			TAKEN UP IMMEDIATELY
06/10/83	23	1263	SECOND READING
06/10/83	24	1263	JUD CS ADOPTED BY UNAN CONSENT
06/10/83	25	1263	ADVANCED TO 3RD READING BY UNAN CONSENT
06/13/83	30	1285	AM01 WITHDRAWN
06/13/83	31	1286	RECOMMITTED TO JUD BY UNAN CONSENT
06/26/83	34	1534	READ AGAIN SECOND TIME
06/26/83	35	1534	2ND JUD CS ADOPTED BY UNAN CONSENT
06/26/83	36	1534	ADVANCED TO 3RD READING BY UNAN CONSENT
06/10/83	26	1263	THIRD READING
06/10/83	27	1264	PASSED BY DIV 13-05-02
06/10/83	28	1264	NOTICE OF RECONSIDERATION GIVEN
06/13/83	29	1285	RETURNED TO 2ND READING BY UNAN CONSENT

HB 163 SENATE ACTION 14:23 2/27/84 PAGE 5 OF 5

DATE	SEQ	PAGE	LEGISLATIVE ACTION
06/26/83	37	1534	READ AGAIN THIRD TIME
06/26/83	38	1534	PASSED ON RECONSIDERATN BY DIV 17-03-00
****	**	**	*** *** ***

NEVADA

Section 1. Chapter 503 of NRS is hereby amended by adding thereto a new section which shall read as follows:

1. It is unlawful for a group of people, acting together, intentionally to interfere with a person who is lawfully hunting or trapping. For the purpose of this subsection, hunting or trapping is "lawful" only if permitted by the owner or person in possession of the land, other than the government, in addition to any requirement of license or permit from a public authority.

2. The provisions of subsection 1 do not apply to any incidental interference arising from lawful activity by users of the public land, including without limitation ranchers, miners or persons seeking lawful recreation.

MAINE

§7541 Harassment prohibited.

1. Interference with taking. No person may willfully interfere with the lawful hunting, fishing or trapping of a wild animal, wild bird or fish.

2. Disturbing wild animals, wild birds or fish. No person may willfully disturb or attempt to disturb a wild animal, wild bird or fish with the intent to interfere with the hunting, fishing or trapping of them.

3. Violation. A violation of this section is a civil violation for which a forfeiture of not less than $100 nor more than $500 may be adjudged.

4. Property rights otherwise provided by law. This chapter shall not be construed in any way to limit the ownership use, access or control of property rights otherwise provided by law.

§7542 Injunction; damages.

1. Injunction. The District Court or Superior Court may enjoin conduct which would be in violation of section 7541 upon notification by a person affected or who reasonably may be affected by the conduct, upon a showing that the conduct is threatened or that it has occurred on particular premises in the past and that it is not unreasonable to expect that under similar circumstances it will be repeated.

(d) enters or remains upon public lands, or upon private lands without permission of the owner or his agent, with intent to violate this Section.

[S.H.A. ch. 61, ¶303]

Section 3. Any person who knowingly performs any of the following acts is guilty of a Class B misdemeanor;

(a) fails to obey the order of a peace officer to desist from conduct in violation of Section 2 of this Act if the officer observes such conduct, or has reasonable grounds to believe that the person has engaged in such conduct that day or that the person plans or intends to engage is such conduct that day on a specific premises.

[S.H.A. ch. 61 ¶304]

Section 4. (a) Any court may enjoin conduct which would be in violation of Section 2 of this Act upon petition by a person affected or who reasonably may be affected by such conduct, upon a showing that such conduct is threatened or that it has occurred on a particular premises in the past and that it is not unreasonable to expect that under similar circumstances it will be repeated.

(b) A court may award damages to any person adversely affected by a violation of Section 2, which may include an award for punitive damages. In addition to other items of special damage, the measure of damages may include expenditures of the affected person for license and permit fees, travel, guides, special equipment and supplies, to the extent that such expenditures were rendered futile by prevention of the taking of a wild animal.

SOUTH DAKOTA

Section 1. No person may intentionally interfere with any person or group of persons lawfully engaged in the process of taking or attempting to take any game or fish. No person may engage in any activity specifically intended to harass or otherwise prevent the lawful taking of any game or fish. No person may engage in any activity to scare or disturb any game with specific intent to prevent their lawful taking. This section may not be construed to prohibit a landowner from revoking a prior grant of permission to hunt on his land. A violation of any provision of this section is a Class 2 misdemeanor.

Section 2. Any person who fails to obey the order of a peace officer to desist from conduct in violation of section 1 of this Act, if the officer observes such conduct, or has reasonable grounds to believe the person was engaged in such conduct that day or intends to engage in such conduct that day on a specific premises, is guilty of a Class 1 misdemeanor.

Section 3. The court may enjoin conduct which is in violation of section 1 of this Act upon petition by a person affected or who reasonably may be affected by such conduct, upon a showing that such conduct is threatened or that it has occurred on a particular premises in the past and may reasonably be expected to be repeated. The court may award damages to any person adversely affected by a violation of section 1 of this Act. Damages may include an award for punitive damages, license fees, travel or other expenses which were rendered futile by preventing the licensee from taking game or fish.

Signed March 12, 1983.

ILLINOIS

[S.H.A. ch. 61, ¶301]

Section 1. Definitions. As used in this Act:

a. "wild animal" means any wild creature the taking of which is authorized by the fish and game laws of the State.

b. "Taking", means the capture or killing of a wild animal and includes travel, camping, and other acts preparatory to taking which occur on lands or waters upon which the affected person has the right or privilege to take such wild animals.

[S.H.A. ch.61, ¶302]

Section 2. Any person who knowingly performs any of the following is guilty of a Class C misdemeanor;

(a) interferes with the lawful taking of a wild animal by another with intent to prevent the taking.

(b) disturbs or engages in an activity that will tend to disturb wild animals, with intent to prevent their lawful taking.

(c) disturbs another person who is engaged in the lawful taking of a wild animal or who is engaged in the process of taking, with intent to dissuade or otherwise prevent the taking.

(d) enters or remains upon public lands, or upon private lands without permission of the owner or his agent, with intent to violate this Section.

[S.H.A. ch. 61, ¶303]

Section 3. Any person who knowingly performs any of the following acts is guilty of a Class B misdemeanor;

(a) fails to obey the order of a peace officer to desist from conduct in violation of Section 2 of this Act if the officer observes such conduct, or has reasonable grounds to believe that the person has engaged in such conduct that day or that the person plans or intends to engage is such conduct that day on a specific premises.

[S.H.A. ch. 61 ¶304]

Section 4. (a) Any court may enjoin conduct which would be in violation of Section 2 of this Act upon petition by a person affected or who reasonably may be affected by such conduct, upon a showing that such conduct is threatened or that it has occurred on a particular premises in the past and that it is not unreasonable to expect that under similar circumstances it will be repeated.

(b) A court may award damages to any person adversely affected by a violation of Section 2, which may include an award for punitive damages. In addition to other items of special damage, the measure of damages may include expenditures of the affected person for license and permit fees, travel, guides, special equipment and supplies, to the extent that such expenditures were rendered futile by prevention of the taking of a wild animal.

2dSCS CSHB 163(Jud)

The following letter dated July 25, 1983, was received:

Re: 2d SCS CSHB 163 (Jud) -- Relating to harassment of persons lawfully engaged in hunting, fishing, camping, or trapping.

Dear Mr. Speaker:

Under the authority granted in art. II, sec. 15, of the Alaska Constitution, I have vetoed 2d Senate Committee Substitute for Committee Substitute for House Bill 163 (Jud) which makes it a misdemeanor to interfere with hunting, fishing, camping and trapping activity. Existing law, particularly the disorderly conduct, assault, criminal mischief, and general harassment statutes provide adequate penalties for criminal acts that interfere with these activities.

This legislation also presents a constitutional problem because it fails to define what constitutes "interference" with the protected activities. Conceivably, a person who talks too loud near a salmon stream may be subject to arrest and 30 days imprisonment under this bill for interfering with a sport fisherman's ability to catch a salmon. Criminal statutes must be sufficiently precise for the ordinary citizen to know what conduct is prohibited. Because the coverage of this statute is so vague, and since existing criminal statutes provide adequate coverage for physical interference with hunting and fishing activities, I have vetoed this bill.

Sincerely,

/s/ Bill Sheffield
Bill Sheffield
Governor

SCS CSHB 109(HESS) amS

The following letter dated July 27, 1983, was received:

Re: SCS CSHB 109(HESS) am S -- Relating to persons 16 or 17 years of age who are charged with unclassified or class A felonies; and amending the children's proceedings waiver provisions.

HB
537

BILL SHEFFIELD
GOVERNOR

STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

January 31, 1984

The Honorable Joe Hayes
Speaker of the House
Pouch V
Juneau, AK 99811

Dear Representative Hayes:

Under the authority of art. III, sec. 18, of the Alaska Constitution, I am transmitting a bill that will authorize a court to order the forfeiture to the state of a deadly weapon possessed or used by a defendant during the commission of a crime. As used in the bill, "deadly weapon" means any firearm (including a pistol, revolver, rifle, or shotgun) or anything designed for and capable of causing death or serious physical injury, including a knife, an axe, a club, metal knuckles, or an explosive.

Although current law authorizes the forfeiture of weapons used to commit fish and game offenses (AS 16.05.195) or offenses involving controlled substances (AS 17.30.110), there is no statutory provision that expressly allows a court to order, as part of a defendant's sentence, the forfeiture of a weapon used to commit crimes such as assault, robbery, or murder. AS 11.61.200 prohibits a felon, during the five years immediately following his "unconditional discharge" (i.e., release from custody or parole or probation) for a felony, from knowingly possessing "a firearm capable of being concealed on his person," and AS 12.55.080 gives a court broad powers to determine and impose reasonable probation conditions (such as no possession of firearms during the period of probation); however, neither of these statutes specifically authorizes a court to order the forfeiture of a weapon used to commit a crime.

To address this surprising omission in existing law, this bill adds a new paragraph to the general sentencing provisions in AS 12.55.015(a) to authorize a court to order the forfeiture of a weapon as part of a defendant's sentence following conviction. Forfeiture is not required in every case, but may be imposed at the court's discretion.

It is important that the elected officials in this state do as much as we can to decrease the number of violent crimes committed against innocent citizens. This bill will allow a court to remove a weapon used to commit a crime from the hands of the convicted criminal, and will prevent the convicted person from using that weapon to commit another crime in the future. I urge your prompt action on this bill.

Sincerely,

Bill Sheffield
Governor

BILL SHEFFIELD, GOVERNOR

DEPARTMENT OF PUBLIC SAFETY

POUCH N
JUNEAU, ALASKA 99811
PHONE: 465-4322

OFFICE OF THE COMMISSIONER

February 9, 1984

The Honorable Charlie Bussell, Chairman
House Judiciary Committee
Alaska State Legislature
Pouch V
Juneau, AK 99811

RE: Disposal of
Stolen Property
(Weapons)

Dear Chairman Bussell:

It has always been the policy of the Department of Public Safety that every effort will be made to return stolen property to its rightful owner.

If stolen property has been used in the commission of a crime, the weapon or property is returned to the rightful owner once the case has been adjudicated. That is, if the owner has reported the property stolen, or the Department, through its records or other means, can locate the respective owner.

Property that cannot be traced back to its rightful owner is held for a period of time until a Court order is issued disposing of same.

Customarily, the victim of theft reports the item or items to law enforcement, who in turn enters it into the computer system. This computer system is used as a tracking point in identifying stolen property and its rightful owner. It is important, of course, to be able to identify the stolen property specifically by a serial number of other specific identifier.

Sincerely,

Robert J. Sundberg
Commissioner

cc: Lisa Nelson
Assistant Attorney General
Department of Law

12-L2LH

FISCAL NOTE

[Revision Date:]

REQUEST
Bill/Resolution No.: HB 557
Title: "...forfeiture of weapons used to commit a crime..."
Sponsor: Governor
Requestor: House Judiciary
Date of Request: 2-6-84

FISCAL DETAIL
Agency Affected: Public Safety
Program Category Affected: Administration of Justice
BRU, Program or Subprogram(s) Affected: Alaska State Troopers

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 84	FY 85	FY 86	FY 87	FY 88	FY 89
OPERATING						
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 SUPPLIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS						
800 MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-
CAPITAL	-0-	-0-	-0-	-0-	-0-	-0-
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL	-0-	-0-	-0-	-0-	-0-	-0-

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

ANALYSIS: Attach a separate page for analysis No fiscal impact anticapated.

Prepared By: Francis C. Allan F.C.A. MCK Phone: 269-5691
Division: Alaska State Troopers Date: 1-4-84

Approved by Commissioner: R. J. Sundberg Date: 2-9-84
Agency: Public Safety

Distribution (by Agency preparing fiscal note):
Legislative Finance
Legislative Sponsor
Requestor
Office of Management and Budget
Impacted Agency(ies)

12/1/83

Revision Date:

DEC 27 198

DEPT OF LAW
CRIMINAL DIVISION

REQUEST
Bill/Resolution No.:
Title: "An Act relating to forfeiture of weapons used to commit a crime."
Sponsor: Rules by req. of the Gov.
Requestor: Office of the Governor
Date of Request: December 22, 1983

FISCAL DETAIL
Agency Affected: Department of Law
Program Category Affected: Administration of Justice
BRU, Program or Subprogram(s) Affected: Prosecution

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 84	FY 85	FY 86	FY 87	FY 88	FY 89
OPERATING						
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 SUPPLIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS						
800 MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND	-0-	-0-	-0-	-0-	-0-	-0-
FEDERAL FUNDS						
OTHER						
TOTAL	-0-	-0-	-0-	-0-	-0-	-0-

POSITIONS:

FULL-TIME	-0-	-0-	-0-	-0-	-0-	-0-
PART-TIME						
TEMPORARY						

SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

N/A

ANALYSIS: Attach a separate page for analysis

Prepared By: Richard I. Pegues, Director — Phone: 465-3672
Division: Administrative Services Division — Date: 12/22/83

Approved by Commissioner: Norman C. Gorsuch — Date: 12/22/83
Agency: Department of Law

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ANALYSIS

This bill amends AS 12.55.015(a) to give the court the discretionary power to order the forfeiture of a weapon as part of a defendant's sentence following conviction. Although prosecutors will have the added responsibility of advocating forfeiture, when appropriate, this advocacy duty can be accomplished without additional expense.

DEPARTMENT OF PUBLIC SAFETY

POSITION PAPER

Support

HOUSE BILL 557

This legislation adds a new paragraph to the general sentencing provisions statute which would authorize a court to order the forfeiture, as part of a defendant's sentence upon conviction, of a deadly weapon which was possessed or used by a defendant during the commission of a crime.

It is common to encounter persons who are convicted of violent crimes repeating similar offenses. By being able to hinder such individuals from obtaining the "tools" to commit such crimes an added degree of safety for the public can thus be provided.

Law enforcement agencies often spend a considerable effort returning knives, clubs, axes, etc. from evidence storage back to individuals who have committed violent crimes. Certainly this effort can be better expended if the weapons can be disposed of at the discretion of the State.

Robert J. Sundberg
Commissioner

incorporated into the criminal code as this section. Nell v. State, Ct. App. Op. No. 77 (File No. 5565), 642 P.2d 1361 (1982).

Legislative intent reflected. — The presumptive sentencing provisions contained in AS 12.55.125 and 12.55.155 reflect the legislature's intent to assure predictability and uniformity in sentencing by the use of fixed and relatively inflexible sentences, statutorily prescribed, for persons convicted of second or subsequent felony offenses. Juneby v. State, Ct. App. Op. No. 72 (File No. 5606), 641 P.2d 823 (1982), modified on other grounds and aff'd on rehearing, Ct. App. Op. No. 259 (File No. 5606), P.2d (1983).

The comprehensive and highly regimented provisions of the presumptive sentencing statute were enacted to assure that sentencing would become a predictable process and that disparity in sentencing between similarly situated offenders would be eliminated. Lacquement v. State, Ct. App. Op. No. 85 (File No. 5741), 644 P.2d 856 (1982).

Criteria enumerated in this section must be given primary significance in the sentencing of first offenders under the Alaska Revised Criminal Code. Kimbrell v. State, Ct. App. Op. No. 101 (File No. 5944), P.2d (1982).

Adjustment of presumptive sentence. — When applied to the adjustment of a presumptive sentence, the State v. Chaney, 477 P.2d 441 (Alaska (1970), analysis, as stated in AS 12.55.005, should not be broadened into a consideration of all circumstances of the offense, as if the sentence were being imposed anew, without regard for the presumptive term. Instead, consideration of the Chaney criteria should focus specifically on the aggravating and mitigating conduct in the particular case. The presumptive term should remain as the starting point of the analysis, and the Chaney criteria should be employed for the limited purpose of determining the extent to which the totality of the aggravating and mitigating factors will justify deviation from the presumptive term. Juneby v. State, Ct. App. Op. No. 72 (File No. 5606), 641 P.2d 823 (1982), aff'd, Ct. App. Op. No. 259 (File No. 5606), 665 P.2d 30 (1983).

Nature of offense is relevant factor in sentencing. — Throughout the supreme court's review of sentences, the degree of physical or psychological violence involved in the offense has been an important factor. Kelly v. State, Sup. Ct. Op. No. 2268 (File Nos. 4097, 4529), 622 P.2d 432 (1981).

In attempting to eliminate consideration of the nature of the offense from its consideration of relevant factors at sentencing, the superior court was clearly mistaken and the sentences in the case had to be reversed. Kelly v. State, Sup. Ct. Op. No. 2268 (File Nos. 4097, 4529), 622 P.2d 432 (1981).

Applied in Hartley v. State, Ct. App. Op. No. 153 (File No. 5737), P.2d (1982); Peetook v. State, Ct. App. Op. No. 178 (File No. 6630), P.2d (1982); Weston v. State, Ct. App. Op. No. 183 (File No. 5734), P.2d (1982); Tazruk v. State, Ct. App. Op. No. 195 (File No. 6954), P.2d (1982).

Quoted in Kelly v. State, Ct. App. Op. No. 251 (File No. 6311), P.2d (1983).

Stated in Erhart v. State, Ct. App. Op. No. 185 (File No. 6244), P.2d (1982); State v. Rastopsoff, Ct. App. Op. No. 228 (File No. 6295), P.2d (1983).

Cited in Nukapigak v. State, Ct. App. Op. No. 90 (File No. 5820), 645 P.2d 215 (1982); Howard v. State, Ct. App. Op. No. 260 (File Nos. 6027, 6123), P.2d (1983); Martin v. State, Ct. App. Op. No. 261 (File No. 6665), P.2d (1983).

Sec. 12.55.015. Authorized sentences. (a) Except as limited by AS 12.55.125 — 12.55.175, the court, in imposing sentence on a defendant convicted of an offense, may singly or in combination

(1) impose a fine when authorized by law and as provided in AS 12.55.035;

(2) order the defendant to be placed on probation under conditions specified by the court which may include provision for active supervision;

(3) impose a definite term of periodic imprisonment;

(4) impose a definite term of continuous imprisonment;

(5) order the defendant to make restitution as provided in AS 12.55.045;

(6) order the defendant to carry out a continuous or periodic program of community work as provided in AS 12.55.055;

(7) suspend execution of all or a portion of the sentence imposed as provided in AS 12.55.080;

(8) suspend imposition of sentence as provided in AS 12.55.085.

(b) The court, in exercising sentencing discretion as provided in this chapter, shall impose a sentence involving imprisonment when

(1) the defendant deserves to be imprisoned, considering the seriousness of his present offense and his prior criminal history, and imprisonment is equitable considering sentences imposed for other offenses and other defendants under similar circumstances;

(2) imprisonment is necessary to protect the public from further harm by the defendant; or

(3) sentences of lesser severity have been repeatedly imposed for substantially similar offenses in the past and have proven ineffective in deterring the defendant from further criminal conduct.

(c) In addition to the penalties authorized by this section, the court may invoke any authority conferred by law to order a forfeiture of property, suspend or revoke a license, remove a person from office, or impose any other civil penalty.

(d) A court, in imposing sentence on a defendant convicted of misconduct involving a controlled substance in the first, second, third, fourth, fifth, or sixth degree, may, in addition to any mandatory minimum sentence required by law, order the defendant to participate in a program for treatment of drug abusers if the court determines that the defendant is a drug abuser. Participation in such a program may be imposed as a condition of probation, a condition of suspended execution of sentence, or a condition of suspended imposition of sentence. Nothing in this subsection shall be construed to reduce any mandatory minimum sentence. (§ 12 ch 166 SLA 1978; am § 37 ch 102 SLA 1980; am § 3 ch 45 SLA 1982).

Cross references. — As to offenses relating to controlled substances, see AS 11.71.010 — 11.71.080.

Effect of amendments. — The 1982 amendment, effective January 1, 1983, added subsection (d).

Editor's notes. — For declaration of legislative purpose, see § 1, ch. 45, SLA 1982 in the 1982 Temporary and Special Acts and Resolves.

NOTES TO DECISIONS

Applied in Austin v. State, Ct. App. Op. No. 18 (File No. 5341), 627 P.2d 657 (1981).

Quoted in Leuch v. State, Sup. Ct. Op. No. 2419 (File No. 5255), 633 P.2d 1006 (1981).

Stated in Kimbrell v. State, Ct. App. Op. No. 101 (File No. 5944), P.2d (1982); Erhart v. State, Ct. App. Op. No. 185 (File No. 6244), P.2d (1982).

Cited in Whittlesey v. State, Sup. Ct. Op. No. 2231 (File No. 5155), 626 P.2d 1066 (1980); Juneby v. State, Ct. App. Op. No. 72 (File No. 5606), 641 P.2d 823 (1982); Lacquement v. State, Ct. App. Op. No. 85 (File No. 5741), 644 P.2d 856 (1982).

Sec. 12.55.025. Sentencing procedures. (a) When imposing a sentence of imprisonment exceeding 90 days or upon a conviction of a violation of AS 04, a regulation adopted under AS 04, or an ordinance adopted in conformity with AS 04.21.010, the court, shall prepare, as a part of the record, a sentencing report which includes the following:

(1) a verbatim record of the sentencing hearing and any other in-court sentencing procedures;

(2) findings on material issues of fact and on factual questions required to be determined as a prerequisite to the selection of the sentence imposed;

(3) a clear statement of the terms of the sentence imposed; and

(4) recommendations as to the place of confinement or the manner of treatment.

(b) The sentencing report required under (a) of this section shall be furnished within 30 days after imposition of sentence to the Department of Law, the defendant, the division of corrections, the state Board of Parole if the defendant will be eligible for parole, and to the Alcoholic Beverage Control Board if the defendant is to be sentenced for a conviction of a violation of AS 04, a regulation adopted under AS 04, or an ordinance adopted under AS 04.21.010.

(c) Except as provided in (d) and (e) of this section, when a defendant is sentenced to imprisonment, his term of confinement commences on the date of imposition of sentence. A defendant shall receive credit for time spent in custody pending trial, sentencing, or appeal, if the detention was in connection with the offense for which sentence was imposed. A defendant may not receive credit for more than the actual time he spent in custody pending trial, sentencing, or appeal. The time during which a defendant is voluntarily absent from official detention after he has been sentenced may not be credited toward service of his sentence.

(d) A sentence of imprisonment shall be stayed if an appeal is taken and the defendant is admitted to bail. If an appeal is taken and the defendant is not admitted to bail, the Department of Health and Social Services shall designate the facility in which the defendant shall be detained pending appeal or admission to bail.

HB
560

Western Regional Office

CIVIL LITIGATION IN ALASKA
IMPROVEMENT THROUGH SIMPLIFICATION

A Report to the
Supreme Court of Alaska
by the National Center for State Courts

Frederick G. Miller, Staff Attorney
Larry L. Sipes, Regional Director

December 1983

National Center for State Courts
720 Sacramento Street
San Francisco, California 94108

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adoptions, child in need, domestic violence if child custody is an issue, or guardianship of a minor. By accelerating steps in the appellate process, which are explained in detail in the recommendations, final decisions would be obtainable in these cases within not more than 170 days from judgment.

G. District Court Jurisdiction

The personal injury and commercial task forces concluded that the monetary jurisdiction of the District Court is unrealistically low and would appreciably reduce the number of cases in the Superior Court if increased. This in turn would presumably expedite the processing of cases in the Superior Court. The task forces therefore recommended increasing District Court jurisdiction to include actions involving up to $25,000. (or higher limit - $$$.) As both recommendations are virtually identical, the recommendation is included in this report in the personal injury recommendations only at page 33.

H. Civil Rule 41: Voluntary Dismissal

Both the personal injury and the commercial task forces have recommended changes to Civil Rule 41 to assure that cases are not voluntarily dismissed to avoid court control of caseflow. The personal injury task force recommends that a case governed by its proposed new Civil Rule 16.2 may not be dismissed without approval by the court. The commercial task force recommends additional language to Civil Rule 41 requiring certification of the reasons for dismissal.

V. PERSONAL INJURY TASK FORCE RECOMMENDATIONS

The task force recommends the following addition to existing Civil Rule 16 to provide for status conferences.

A. New Civil Rule 16.2: Status Conference

(a) A status conference shall occur in each action filed in the Third District in which any party seeks damages for injury to person or property. The Judge in whose court the action is pending shall schedule and conduct the conference not more than 30 days following the last day on which a response to the complaint could have been filed. If service of process has not been completed the parties shall notify the court and the conference shall be continued until 30 days after service is completed.

(b) Each party shall funish to the other parties the following items or information and shall do so not later than the fifth day preceding the status conference:

1) photographs
2) statements
3) diagrams
4) investigative reports
5) contracts
6) medical reports and bills
7) tax returns
8) insurance policies
9) expert witness reports

The documents to be produced are examples of those which would be subject to discovery under Civil Rule 34.

(c) Each party shall attend the status conference in person or by counsel and shall be prepared to specify the discovery planned by that party. It is the intention that this Rule and the conference held herein be held after the parties have produced as much discoverable information about the incident complained of as possible in order to permit realistic evaluation of the case for possible settlement purposes or to draft a realistic litigation schedule to bring the case to conclusion within one year.

(d) The Judge shall enter an order at the conclusion of the conference (1) setting a date not more than 180 days following the conference by which discovery shall be completed by all parties; (2) setting a date not more than 120 days following the conference for a second status conference if the Judge is persuaded for good cause that discovery cannot be completed within 180 days; (3) scheduling a pretrial conference, as provided in this Rule, not more than 30 days following the date set, if any, for completion of discovery.

33

(e) In all cases where it appears to the court that the case should be considered as a complex case, then the court shall issue an order exempting the case from the time constraints of this Rule. The request for exemption shall be by motion under Civil Rule 77.

(f) The Judge in whose court the action is pending shall order a party or counsel who fails to comply with any order issued pursuant to this Rule to pay $200 for the first, $300 for the second, and $500 for each subsequent act of noncompliance. The Judge by written order may reduce, suspend, or eliminate an otherwise required payment upon a written and verified showing of good cause filed with the Court by which a party or counsel establishes that noncompliance was excusable.

(g) All sanctions for violations of this Rule shall be considered under the provisions of Civil Rules 37 and 95.

(h) A case assigned under this rule may not be dismissed under Civil Rule 41 without approval of the Court. Any stipulations between the parties or attorneys as to anything scheduled under this rule are invalid until approved by the court and the parties may not rely on such stipulation as an excuse to fail to comply with time limits, etc. unless the court has approved the same.

B. <u>District Court Jurisdiction</u>

Jurisdiction of the District Courts should be increased to encompass actions in which the amount of monetary damages involved does not exceed $25,000. (or the jurisdictional limit).

ALASKA STATE LEGISLATURE
HOUSE OF REPRESENTATIVES
RESEARCH AGENCY

Pouch Y, State Capitol
Juneau, Alaska 99811
(907) 465-3991

February 3, 1984

MEMORANDUM

TO: Joseph Brewer
House Judiciary Committee

FROM: David Teal
Legislative Analyst

RE: Inflation Rates in Alaska

The following pages from the Alaska Department of Labor's publication entitled Alaska Planning Information describe the Anchorage Consumer Price Index (CPI). Although the reader is cautioned against use of the CPI as a measure of inflation, the index is frequently used for that purpose. The Anchorage CPI from 1969 through September of 1982 is listed on page 78. More recent figures are presented in the attached article published by the Institute of Social and Economic Research. The article also discusses some problems with the index and its use as a measure of the rate of inflation in Alaska.

* * *

If you have additional questions on this subject, we would be pleased to help. You may also wish to speak with John Boucher of the Research and Analysis Section of the Department of Labor. He can be reached at 465-4500.

Attachmenss

The new method for calculating homeownership prices is named *rental equivalency.* BLS will estimate homeownership prices on the basis of what it costs to rent similar houses. This method will solve the problem caused by the exclusion of AHFC-financed houses from the survey. During 1983 and 1984 the CPI-U and CPI-W will use differing methodologies, which will probably result in significant divergence in the 2 measures. The effect of the methodology change in slowing or speeding the rate of change in the CPI cannot be predicted with any assurance.

COMPARISON OF ANCHORAGE TO UNITED STATES

The Anchorage CPI rose less rapidly than the national CPI from October 1967 through October 1973. This trend reversed during the pipeline buildup, reflecting the inflationary impact of drastic economic expansion. Price increases slowed once the pipeline work force and related infrastructure were in place. During the peak pipeline years, 1976 and 1977, Anchorage prices increased at roughly the national rate. A new trend began after completion of the pipeline with Anchorage prices increasing less rapidly than the rest of the nation. Decreased population and consumer spending, and overbuilding during the pipeline era caused this shift.

Following the 1980 domination of residential lending by AHFC an accurate comparison of Anchorage

Table VII-3
Anchorage CPI
January 1969 to Present

		Wage and Clerical			Wage and Clerical	All Urban Consumers 1/
1969	January	103.7	1978	January	179.2	
	April	105.3		March	180.8	180.7
	July	105.6		May	184.0	184.2
	October	107.3		July	188.6	188.5
1970	January	107.9		September	192.8	193.2
	April	108.2		November	194.8	194.7
	July	109.6	1979	January	197.3	198.1
	October	111.5		March	200.5	201.0
1971	January	111.6		May	202.5	203.5
	April	111.7		July	206.4	207.4
	July	113.0		September	210.9	213.2
	October	114.4		November	211.8	213.7
1972	January	114.2	1980	January	215.9	218.2
	April	115.8		March	220.2	223.5
	July	115.9		May	223.1	226.5
	October	116.9		July	224.8	228.4
1973	January	116.4		September	226.7	230.9
	April	119.4		November	232.0	236.5
	July	120.4	1981	January	235.0	240.1
	October	123.8		March	236.2	241.1
1974	January	125.6		May	240.1	244.6
	April	129.8		July	241.7	246.1
	July	134.0		September	245.9	250.5
	October	140.0		November	249.3	252.7
1975	January	142.9	1982	January	248.6	253.0
	April	150.0		March	254.5	260.0
	July	153.8		May	256.0	263.8
	October	157.4		July	259.1	263.6
1976	January	158.8		September	258.9	263.4
	April	161.7				
	July	164.9				
	October	167.5				
1977	January	169.4				
	April	172.6				
	July	177.4				
	October	177.3				

Source: U.S. Department of Labor, Bureau of Labor Statistics

1/ Series began March 1978.

and U.S. price trends is not possible. It appears that Anchorage prices are actually increasing somewhat faster than the national rate, although it cannot be proven that this is the case. The rapid economic expansion in 1981 and 1982 could be expected to result in faster price increases than would otherwise occur.

URBAN FAMILY BUDGET

While the rate of change of the Consumer Price Index for Anchorage can be compared to the rate of change of CPI's in other areas, actual price comparisons to other areas are not possible based on CPI data. Other data available do allow interarea cost comparisons. U.S. Department of Labor, Bureau of Labor Statistics produces *Urban Family Budgets and Comparative Indexes for Selected Urban Areas* which provide a comparison of costs for Anchorage, 28 other areas outside Alaska and an urban U.S. average. It contains estimated income required to support low, medium and high budget standards of living for a hypothetical family of 4. Budgets do not represent how families actually spend their money, nor are they intended to represent a minimum level of adequate income. The budgets are only intended

Table VII-4
Yearly CPI and Percentage Change
Wage and Clerical Workers Only

		United States		Seattle		Anchorage		Fairbanks 3/	
		CPI	% Change	CPI	% Change	CPI	% Change	CPI	% Change
OCTOBER	1967	100.0	-	100.0	-	100.0	-		
	1968	105.7	5.7	106.0 1/	6.0	102.6	2.6		
	1969	111.6	5.6	110.6 1/	4.3	107.3	4.4		
	1970	118.1	5.8	114.9 1/	3.9	111.5	3.9		
	1971	122.6	3.8	117.6 1/	2.3	114.4	2.6		
	1972	126.6	3.3	121.2 1/	3.1	116.9	2.2		
	1973	136.6	7.9	131.4 1/	8.4	123.8	5.9		
	1974	153.0	12.0	147.9 1/	12.6	140.0	13.1		
	1975	164.6	7.6	159.7 1/	8.0	157.4	12.4		
	1976	173.3	5.3	167.9 1/	5.1	167.6	6.5		
	1977	184.5	6.5	182.5 1/	8.7	177.3	5.8		
NOVEMBER	1978	201.8	9.4	202.1	10.7	194.8	9.9		
	1979	227.6	12.8	221.5	9.6	211.8	8.7	107.9 2/	
	1980	256.4	12.7	259.4	17.1	232.0	9.5	119.6 2/	10.8
	1981	280.4	9.4	285.7	10.1	249.3	7.5	126.8 2/	6.0

Source: U.S. Department of Labor, Bureau of Labor Statistics

1/ CPI is for November rather than October of years listed.

2/ CPI is for December rather than November of year listed.

3/ Discontinued February 1982 due to budget constraints.

Table VII-5
Annual Total Budget for a 4-Person Family
Autumn 1981 1/

Budget Level	Urban U.S.	Anchorage	Seattle-Everett
Lower	$15,323	$22,939	$17,124
Intermediate	$25,407	$31,890	$25,861
Higher	$38,060	$45,119	$37,396

Source: U.S. Department of Labor, Bureau of Labor Statistics

1/ Source of data, methods of calculations and quantities of goods and services for each budget level are described in detail in BLS Bulletin 1570-5.

CHAPTER VII COST OF LIVING MEASURES

INTRODUCTION

This section summarizes several cost of living measures which are frequently requested. Because there are several different measures, the user of these types of data needs to carefully evaluate different available measures to determine which is most useful for a particular application. Outlined in Table VII-1 is a description of the various measures discussed in detail.

CONSUMER PRICE INDEX

The Consumer Price Index (CPI) is a commonly misunderstood economic statistic despite frequent reports in the media. Following is a brief explanation of how the CPI is used, how it is computed, what it does and does not measure, and how to use it. Changes in CPI methodology and use are also considered. The U.S. Department of Labor, Bureau of Labor Statistics (BLS) produces a CPI for the United States and for selected urban areas. There are no CPI's for an entire state. In Alaska, a CPI is currently produced bimonthly for Anchorage.

USES

The CPI has 3 major uses. It measures the change in prices over time of a constant market basket of goods. This measure is an important economic statistic, and is crucial in evaluating government policy and private investment decisions. To convert the CPI from the actual index number to a percentage, use the following procedure:

INDEX POINT CHANGE

CPI current index	263.4
Less previous index	250 5
Equals index point change	12.9

Percentage change

Index point difference	12.9
Divided by previous index	250.5
Equals change	0.0515
Multiplied by 100	0.052 x 100
Equals percentage change	5.2%

This example illustrates that market basket prices for ***all urban consumers*** in Anchorage increased 5.2% between September 1981 and 1982.

The CPI is also used as a deflator of other dollar-denominated economic indexes. Time series data in ***real***, or inflation-free dollars are produced in this manner. To adjust (discount) dollars for the effect of inflation from any given year, use the following procedure:

CPI for past time	250.5
Divided by CPI for current time	263.4
Equals	0.951
Multiplied by current dollars	x$1,000.00
Equals past dollars	$951.03

The above example illustrates that $1,000.00 dollars in Anchorage in September 1982 would be the equivalent of $951.03 in September 1981.

A third use of the CPI is to escalate income and transfer payments. Many union contracts, government entitlement programs such as social security and food stamps, and private contractual agreements such as leases and child support contain escalation clauses based on the CPI. BLS estimates that a 1% increase in the national CPI results in a $2.5 increase in government expenditure.

Although the CPI is frequently reported in the media as the *inflation rate* or *cost of living increase*, this is technically not correct. The CPI is based on a constant market basket of goods which was last revised in 1972. For this reason, it is *prices* which are measured, not the *cost of living*. To measure the actual *cost of living*, the market basket would have to be revised more frequently to account for changing consumption patterns. It would also have to take into account living costs such as income taxes, which are not a component of the CPI market basket.

METHODOLOGY

The CPI market basket includes all types of expenditures that typical consumers make, from medical

Table VII-1
Cost of Living Measures

	CONSUMER PRICE INDEX (CPI)	URBAN FAMILY BUDGET	COST OF FOOD AT HOME	FEDERAL GOVERNMENT COST OF LIVING ADJUSTMENT
Description	Measures Rate of Change in Price of a Fixed Market Basket of Goods Relative to a Base Year of 1967	Estimated Income By Expenditure Necessary to Support Assumed Standards of Living in a Hypothetical family of 4 at Low, Intermediate and High Budget Levels	Cost of Food, Wood, Fuel, Electricity for Various Family Groups for a Week	Price Survey of Cost of Living Differentials for Federal Government Workers
Responsible Agency	U.S. Dept. of Labor Bureau of Labor Statistics	U.S. Dept. of Labor Bureau of Labor Statistics	University of Alaska Cooperative Extension Service	U.S. Office of Personnel Management
Source of Data	Bureau of Census Monthly Survey of Prices	Bureau of Census Price Survey and Consumer Price Index	Price Survey	Price Survey
Time Period	Bimonthly (Anch.) Monthly (US) Annual	Autumn of Each Year (Discontinued after 1981)	Quarterly	Annual
Industry Detail	None	None	None	None
Geographic Detail	85 Areas 28 SMSA's 4 Regions (South, Northeast, Northcentral, West) for 5 Population classes. 36 Select Areas U.S. City Average	24 Major Metropolitan Areas, 4 Nonmetropolitan Areas Anchorage Urban U.S. Average	Select Alaskan Communities, Alaska and U.S.	Anchorage, Fairbanks Juneau, Balance of State and Washington, D.C.
Published in	BLS News Releases	BLS News Releases	Cooperative Extension Service Newsletter	Office of Personnel Management Newsletter

services and fuel, to food and entertainment. Each month, Bureau of Census employees check actual prices in all surveyed urban areas.

Survey results are given to BLS and the CPI is computed by assigning weights to each good, depending on the importance of the good in the average consumer's expenditures. An index is available for individual components as well as a total for all items.

There are 2 sets of weightings, one for *all urban consumers,* and the other for *wage and clerical workers* which result in 2 CPI's for each urban area. The *all urban consumer* CPI (CPI-U) approximates the buying habits of 80% of the noninstitutional civilian population. The *wage and clerical* CPI (CPI-W) approximates the buying habits of 40% of noninstitutional civilian population. The *all urban consumers* CPI was begun in 1978. Previously only the *wage and clerical* CPI was available.

The form the CPI takes is a number rounded to one decimal place comparing the current cost of the market basket to the cost in an arbitrary base year. The base year currently being used is 1967. Rebasing of the index was scheduled for 1980 but has been indefinitely postponed due to federal budget constraints.

HOMEOWNERSHIP METHODOLOGY REVISION

Beginning in January 1983 for the CPI-U and January 1985 for the CPI-W, the method for calculating the homeownership component will be changed. Currently, BLS surveys house sale prices and mortgage prices to calculate the homeownership component. In Anchorage, the housing component is about 50% of the total for both CPI's, with homeowhership constituting a large portion of housing. BLS does not include Alaska Housing Finance Corporation (AHFC)-financed houses or loans in its survey. AHFC finances almost all house sales in Anchorage. BLS, lacking sufficient sample in Anchorage, uses prices from similar-sized cities in the Western region as a substitute. While this procedure is satisfactory in many instances, in this case the result is a seriously flawed CPI, as Anchorage housing and mortgage prices have changed differently than the prices which are used as a substitute.

Table VII-2
Fairbanks CPI
February 1979 to February 1982 1/

		Wage and Clerical	All Urban Consumers
1979	February	100.0	100.0
	April	101.6	101.4
	June	103.7	103.9
	August	105.5	105.2
	October	108.1	108.2
	December	107.9	107.9
1980	February	110.4	110.2
	April	112.8	112.7
	June	113.5	113.4
	August	115.1	115.0
	October	117.6	117.4
	December	119.6	119.3
1981	February	121.8	121.5
	April	123.6	123.2
	June	124.9	124.3
	August	125.7	125.3
	October	126.2	125.8
	December	126.8	126.7
1982	February	128.0	128.1

Source: U.S. Department of Labor, Bureau of Labor Statistics.

1/ Discontinued due to budget constraints.

STATE OF ALASKA 1984 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date:

REQUEST
Bill/Resolution No.: SSHB 560
Title: "...relating to the jurisdiction of the District Court..."
Sponsor: Bussell
Requestor:
Date of Request:

FISCAL DETAIL
Agency Affected: Alaska Court System
Program Category Affected:
BRU, Program or Subprogram(s) Affected:

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 84	FY 85	FY 86	FY 87	FY 88	FY 89
OPERATING						
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 SUPPLIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS						
800 MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

ANALYSIS: Attach a separate page for analysis

Prepared By: [signature] Phone: 465-4990
Division: House Judiciary Committee Date: 7 February, 1984

Approved by Commissioner: Date:
Agency:

Distribution (by Agency preparing fiscal note):
Legislative Finance
Legislative Sponsor
Requestor
Office of Management and Budget
Impacted Agency(ies)

12/1/83

HB
561

COMMITTEE REPORT

HOUSE

(7) FURTHER: FINANCE

2/1/84 Date: 2-7-84

The Committee on JUDICIARY has had HB 561

"An Act relating to the small claims jurisdictional limitation; and providing for an effective date."

under consideration and recommends:

[X] do pass [ ] do not pass

[ ] do pass with attached amendments(s)

[ ] replace with CS for _____ [ ] same title [ ] new title

and recommends _____

[ ] AND attaches a "Letter of Intent" [ ] New Fiscal Note [ ] Zero Fiscal Note Attached

[ ] reports it back without recommendation

[ ] referred to the _____ Committee

MEMBERS SIGNING DO PASS

MEMBERS HAVING OTHER RECOMMENDATIONS:

CHAIRMAN

STATE OF ALASKA 1984 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date:

REQUEST
Bill/Resolution No.: HB 561
Title: "relating to the small claims jurisdictional limitation..."
Sponsor:
Requestor:
Date of Request:

FISCAL DETAIL
Agency Affected: Alaska Court System
Program Category Affected:
BRU, Program or Subprogram(s) Affected:

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 84	FY 85	FY 86	FY 87	FY 88	FY 89
OPERATING						
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 SUPPLIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS						
800 MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

ANALYSIS: Attach a separate page for analysis

Prepared By: [signature] Phone: 465-4990
Division: House Judiciary Committee Date: 7 February, 1984

Approved by Commissioner: Date:
Agency:

Distribution (by Agency preparing fiscal note):
Legislative Finance
Legislative Sponsor
Requestor
Office of Management and Budget
Impacted Agency(ies)

12/1/83

ALASKA STATE LEGISLATURE
HOUSE OF REPRESENTATIVES
RESEARCH AGENCY

Pouch Y, State Capitol
Juneau, Alaska 99811
(907) 465-3991

February 3, 1984

MEMORANDUM

TO: Joseph Brewer
House Judiciary Committee

FROM: David Teal
Legislative Analyst

RE: Inflation Rates in Alaska

The following pages from the Alaska Department of Labor's publication entitled Alaska Planning Information describe the Anchorage Consumer Price Index (CPI). Although the reader is cautioned against use of the CPI as a measure of inflation, the index is frequently used for that purpose. The Anchorage CPI from 1969 through September of 1982 is listed on page 78. More recent figures are presented in the attached article published by the Institute of Social and Economic Research. The article also discusses some problems with the index and its use as a measure of the rate of inflation in Alaska.

* * *

If you have additional questions on this subject, we would be pleased to help. You may also wish to speak with John Boucher of the Research and Analysis Section of the Department of Labor. He can be reached at 465-4500.

Attachmenss

The new method for calculating homeownership prices is named *rental equivalency*. BLS will estimate homeownership prices on the basis of what it costs to rent similar houses. This method will solve the problem caused by the exclusion of AHFC-financed houses from the survey. During 1983 and 1984 the CPI-U and CPI-W will use differing methodologies, which will probably result in significant divergence in the 2 measures. The effect of the methodology change in slowing or speeding the rate of change in the CPI cannot be predicted with any assurance.

COMPARISON OF ANCHORAGE TO UNITED STATES

The Anchorage CPI rose less rapidly than the national CPI from October 1967 through October 1973. This trend reversed during the pipeline buildup, reflecting the inflationary impact of drastic economic expansion. Price increases slowed once the pipeline work force and related infrastructure were in place. During the peak pipeline years, 1976 and 1977, Anchorage prices increased at roughly the national rate. A new trend began after completion of the pipeline with Anchorage prices increasing less rapidly than the rest of the nation. Decreased population and consumer spending, and overbuilding during the pipeline era caused this shift.

Following the 1980 domination of residential lending by AHFC an accurate comparison of Anchorage

Table VII-3
Anchorage CPI
January 1969 to Present

		Wage and Clerical			Wage and Clerical	All Urban Consumers 1/
1969	January	103.7	1978	January	179.2	
	April	105.3		March	180.8	180.7
	July	105.6		May	184.0	184.2
	October	107.3		July	188.6	188.5
1970	January	107.9		September	192.8	193.2
	April	108.2		November	194.8	194.7
	July	109.6	1979	January	197.3	198.1
	October	111.5		March	200.5	201.0
1971	January	111.6		May	202.5	203.5
	April	111.7		July	206.4	207.4
	July	113.0		September	210.9	213.2
	October	114.4		November	211.8	213.7
1972	January	114.2	1980	January	215.9	218.2
	April	115.8		March	220.2	223.5
	July	115.9		May	223.1	226.5
	October	116.9		July	224.8	228.4
1973	January	116.4		September	226.7	230.9
	April	119.4		November	232.0	236.5
	July	120.4	1981	January	235.0	240.1
	October	123.8		March	236.2	241.1
1974	January	125.6		May	240.1	244.6
	April	129.8		July	241.7	246.1
	July	134.0		September	245.9	250.5
	October	140.0		November	249.3	253.7
1975	January	142.9	1982	January	248.6	253.0
	April	150.0		March	254.5	260.0
	July	153.8		May	258.0	263.8
	October	157.4		July	259.1	263.6
1976	January	158.8		September	258.9	263.4
	April	161.7				
	July	164.9				
	October	167.6				
1977	January	169.4				
	April	172.6				
	July	177.4				
	October	177.3				

Source: U.S. Department of Labor, Bureau of Labor Statistics.

1/ Series began March 1978.

and U.S. price trends is not possible. It appears that Anchorage prices are actually increasing somewhat faster than the national rate, although it cannot be proven that this is the case. The rapid economic expansion in 1981 and 1982 could be expected to result in faster price increases than would otherwise occur.

URBAN FAMILY BUDGET

While the rate of change of the Consumer Price Index for Anchorage can be compared to the rate of change of CPI's in other areas, actual price comparisons to other areas are not possible based on CPI data. Other data available do allow interarea cost comparisons. U.S. Department of Labor, Bureau of Labor Statistics produces *Urban Family Budgets and Comparative Indexes for Selected Urban Areas* which provide a comparison of costs for Anchorage, 28 other areas outside Alaska and an urban U.S. average. It contains estimated income required to support low, medium and high budget standards of living for a hypothetical family of 4. Budgets do not represent how families actually spend their money, nor are they intended to represent a minimum level of adequate income. The budgets are only intended

Table VII-4
Yearly CPI and Percentage Change
Wage and Clerical Workers Only

		United States		Seattle		Anchorage		Fairbanks 3/	
		CPI	% Change	CPI	% Change	CPI	% Change	CPI	% Change
OCTOBER	1967	100.0	-	100.0	-	100.0	-		
	1968	105.7	5.7	106.0 1/	6.0	102.6	2.6		
	1969	111.6	5.6	110.6 1/	4.3	107.3	4.4		
	1970	118.1	5.8	114.9 1/	3.9	111.5	3.9		
	1971	122.6	3.8	117.6 1/	2.3	114.4	2.6		
	1972	126.6	3.3	121.2 1/	3.1	116.9	2.2		
	1973	136.6	7.9	131.4 1/	8.4	123.8	5.9		
	1974	153.0	12.0	147.9 1/	12.6	140.0	13.1		
	1975	164.6	7.6	159.7 1/	8.0	157.4	12.4		
	1976	173.3	5.3	167.9 1/	5.1	167.6	6.5		
	1977	184.5	6.5	182.5 1/	8.7	177.3	5.8		
NOVEMBER	1978	201.8	9.4	202.1	10.7	194.8	9.9		
	1979	227.6	12.8	221.5	9.6	211.8	8.7	107.9 2/	
	1980	256.4	12.7	259.4	17.1	232.0	9.5	119.6 2/	10.8
	1981	280.4	9.4	285.7	10.1	249.3	7.5	126.8 2/	6.0

Source: U.S. Department of Labor, Bureau of Labor Statistics.

1/ CPI is for November rather than October of years listed.

2/ CPI is for December rather than November of year listed.

3/ Discontinued February 1982 due to budget constraints.

Table VII-5
Annual Total Budget for a 4-Person Family
Autumn 1981 1/

Budget Level	Urban U.S.	Anchorage	Seattle-Everett
Lower	$15,323	$22,939	$17,124
Intermediate	$25,407	$31,890	$25,681
Higher	$38,060	$45,119	$37,396

Source: U.S. Department of Labor, Bureau of Labor Statistics.

1/ Source of data, methods of calculations and quantities of goods and services for each budget level are described in detail in BLS Bulletin 1570-5.

CHAPTER VII COST OF LIVING MEASURES

INTRODUCTION

This section summarizes several cost of living measures which are frequently requested. Because there are several different measures, the user of these types of data needs to carefully evaluate different available measures to determine which is most useful for a particular application. Outlined in Table VII-1 is a description of the various measures discussed in detail.

CONSUMER PRICE INDEX

The Consumer Price Index (CPI) is a commonly misunderstood economic statistic despite frequent reports in the media. Following is a brief explanation of how the CPI is used, how it is computed, what it does and does not measure, and how to use it. Changes in CPI methodology and use are also considered. The U.S. Department of Labor, Bureau of Labor Statistics (BLS) produces a CPI for the United States and for selected urban areas. There are no CPI's for an entire state. In Alaska, a CPI is currently produced bimonthly for Anchorage.

USES

The CPI has 3 major uses. It measures the change in prices over time of a constant market basket of goods. This measure is an important economic statistic, and is crucial in evaluating government policy and private investment decisions. To convert the CPI from the actual index number to a percentage, use the following procedure:

INDEX POINT CHANGE

CPI current index	263.4
Less previous index	250.5
Equals index point change	12.9

Percentage change

Index point difference	12.9
Divided by previous index	250.5
Equals change	0.0515
Multiplied by 100	0.052 x 100
Equals percentage change	5.2%

This example illustrates that market basket prices for *all urban consumers* in Anchorage increased 5.2% between September 1981 and 1982.

The CPI is also used as a deflator of other dollar-denominated economic indexes. Time series data in *real*, or inflation-free dollars are produced in this manner. To adjust (discount) dollars for the effect of inflation from any given year, use the following procedure:

CPI for past time	250.5
Divided by CPI for current time	263.4
Equals	0.951
Multiplied by current dollars	x$1,000.00
Equals past dollars	$951.03 .

The above example illustrates that $1,000.00 dollars in Anchorage in September 1982 would be the equivalent of $951.03 in September 1981.

A third use of the CPI is to escalate income and transfer payments. Many union contracts, government entitlement programs such as social security and food stamps, and private contractual agreements such as leases and child support contain escalation clauses based on the CPI. BLS estimates that a 1% increase in the national CPI results in a $2.5 increase in government expenditure.

Although the CPI is frequently reported in the media as the *inflation rate* or *cost of living increase*, this is technically not correct. The CPI is based on a constant market basket of goods which was last revised in 1972. For this reason, it is *prices* which are measured, not the *cost of living*. To measure the actual *cost of living*, the market basket would have to be revised more frequently to account for changing consumption patterns. It would also have to take into account living costs such as income taxes, which are not a component of the CPI market basket.

METHODOLOGY

The CPI market basket includes all types of expenditures that typical consumers make, from medical

Table VII-1
Cost of Living Measures

	CONSUMER PRICE INDEX (CPI)	URBAN FAMILY BUDGET	COST OF FOOD AT HOME	FEDERAL GOVERNMENT COST OF LIVING ADJUSTMENT
Description	Measures Rate of Change in Price of a Fixed Market Basket of Goods Relative to a Base Year of 1967	Estimated Income By Expenditure Necessary to Support Assumed Standards of Living in a Hypothetical family of 4 at Low, Intermediate and High Budget Levels	Cost of Food, Wood, Fuel, Electricity for Various Family Groups for a Week	Price Survey of Cost of Living Differentials for Federal Government Workers
Responsible Agency	U.S. Dept. of Labor Bureau of Labor Statistics	U.S. Dept. of Labor Bureau of Labor Statistics	University of Alaska Cooperative Extension Service	U.S. Office of Personnel Management
Source of Data	Bureau of Census Monthly Survey of Prices	Bureau of Census Price Survey and Consumer Price Index	Price Survey	Price Survey
Time Period	Bimonthly (Anch.) Monthly (US) Annual	Autumn of Each Year (Discontinued after 1981)	Quarterly	Annual
Industry Detail	None	None	None	None
Geographic Detail	85 Areas 28 SMSA's 4 Regions (South, Northeast, Northcentral, West) for 5 Population classes. 36 Select Areas U.S. City Average	24 Major Metropolitan Areas, 4 Nonmetropolitan Areas Anchorage Urban U.S. Average	Select Alaskan Communities, Alaska and U.S.	Anchorage, Fairbanks Juneau, Balance of State and Washington, D.C.
Published in	BLS News Releases	BLS News Releases	Cooperative Extension Service Newsletter	Office of Personnel Management Newsletter

services and fuel, to food and entertainment. Each month, Bureau of Census employees check actual prices in all surveyed urban areas.

Survey results are given to BLS and the CPI is computed by assigning weights to each good, depending on the importance of the good in the average consumer's expenditures. An index is available for individual components as well as a total for all items.

There are 2 sets of weightings, one for *all urban consumers,* and the other for *wage and clerical workers* which result in 2 CPI's for each urban area. The *all urban consumer* CPI (CPI-U) approximates the buying habits of 80% of the noninstitutional civilian population. The *wage and clerical* CPI (CPI-W) approximates the buying habits of 40% of noninstitutional civilian population. The *all urban consumers* CPI was begun in 1978. Previously only the *wage and clerical* CPI was available.

The form the CPI takes is a number rounded to one decimal place comparing the current cost of the market basket to the cost in an arbitrary base year. The base year currently being used is 1967. Rebasing of the index was scheduled for 1980 but has been indefinitely postponed due to federal budget constraints.

HOMEOWNERSHIP METHODOLOGY REVISION

Beginning in January 1983 for the CPI-U and January 1985 for the CPI-W, the method for calculating the homeownership component will be changed. Currently, BLS surveys house sale prices and mortgage prices to calculate the homeownership component. In Anchorage, the housing component is about 50% of the total for both CPI's, with homeowhership constituting a large portion of housing. BLS does not include Alaska Housing Finance Corporation (AHFC)-financed houses or loans in its survey. AHFC finances almost all house sales in Anchorage. BLS, lacking sufficient sample in Anchorage, uses prices from similar-sized cities in the Western region as a substitute. While this procedure is satisfactory in many instances, in this case the result is a seriously flawed CPI, as Anchorage housing and mortgage prices have changed differently than the prices which are used as a substitute.

Table VII-2
Fairbanks CPI
February 1979 to February 1982 1/

		Wage and Clerical	All Urban Consumers
1979	February	100.0	100.0
	April	101.6	101.4
	June	103.7	103.9
	August	105.5	105.2
	October	108.1	108.2
	December	107.9	107.9
1980	February	110.4	110.2
	April	112.8	112.7
	June	113.5	113.4
	August	115.1	115.0
	October	117.6	117.4
	December	119.6	119.3
1981	February	121.8	121.5
	April	123.6	123.2
	June	124.9	124.3
	August	125.7	125.3
	October	126.2	125.8
	December	126.8	126.7
1982	February	128.0	128.1

Source: U.S. Department of Labor, Bureau of Labor Statistics.

1/ Discontinued due to budget constraints.

Western Regional Office

CIVIL LITIGATION IN ALASKA
IMPROVEMENT THROUGH SIMPLIFICATION

A Report to the
Supreme Court of Alaska
by the National Center for State Courts

Frederick G. Miller, Staff Attorney
Larry L. Sipes, Regional Director

December 1983

National Center for State Courts
720 Sacramento Street
San Francisco, California 94108

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adoptions, child in need, domestic violence if child custody is an issue, or guardianship of a minor. By accelerating steps in the appellate process, which are explained in detail in the recommendations, final decisions would be obtainable in these cases within not more than 170 days from judgment.

G. District Court Jurisdiction

The personal injury and commercial task forces concluded that the monetary jurisdiction of the District Court is unrealistically low and would appreciably reduce the number of cases in the Superior Court if increased. This in turn would presumably expedite the processing of cases in the Superior Court. The task forces therefore recommended increasing District Court jurisdiction to include actions involving up to $25,000. (or higher limit - $$$.) As both recommendations are virtually identical, the recommendation is included in this report in the personal injury recommendations only at page 33.

H. Civil Rule 41: Voluntary Dismissal

Both the personal injury and the commercial task forces have recommended changes to Civil Rule 41 to assure that cases are not voluntarily dismissed to avoid court control of caseflow. The personal injury task force recommends that a case governed by its proposed new Civil Rule 16.2 may not be dismissed without approval by the court. The commercial task force recommends additional language to Civil Rule 41 requiring certification of the reasons for dismissal.

V. PERSONAL INJURY TASK FORCE RECOMMENDATIONS

The task force recommends the following addition to existing Civil Rule 16 to provide for status conferences.

A. New Civil Rule 16.2: Status Conference

(a) A status conference shall occur in each action filed in the Third District in which any party seeks damages for injury to person or property. The Judge in whose court the action is pending shall schedule and conduct the conference not more than 30 days following the last day on which a response to the complaint could have been filed. If service of process has not been completed the parties shall notify the court and the conference shall be continued until 30 days after service is completed.

(b) Each party shall furnish to the other parties the following items or information and shall do so not later than the fifth day preceding the status conference:

1) photographs
2) statements
3) diagrams
4) investigative reports
5) contracts
6) medical reports and bills
7) tax returns
8) insurance policies
9) expert witness reports

The documents to be produced are examples of those which would be subject to discovery under Civil Rule 34.

(c) Each party shall attend the status conference in person or by counsel and shall be prepared to specify the discovery planned by that party. It is the intention that this Rule and the conference held herein be held after the parties have produced as much discoverable information about the incident complained of as possible in order to permit realistic evaluation of the case for possible settlement purposes or to draft a realistic litigation schedule to bring the case to conclusion within one year.

(d) The Judge shall enter an order at the conclusion of the conference (1) setting a date not more than 180 days following the conference by which discovery shall be completed by all parties; (2) setting a date not more than 120 days following the conference for a second status conference if the Judge is persuaded for good cause that discovery cannot be completed within 180 days; (3) scheduling a pretrial conference, as provided in this Rule, not more than 30 days following the date set, if any, for completion of discovery.

(e) In all cases where it appears to the court that the case should be considered as a complex case, then the court shall issue an order exempting the case from the time constraints of this Rule. The request for exemption shall be by motion under Civil Rule 77.

(f) The Judge in whose court the action is pending shall order a party or counsel who fails to comply with any order issued pursuant to this Rule to pay $200 for the first, $300 for the second, and $500 for each subsequent act of noncompliance. The Judge by written order may reduce, suspend, or eliminate an otherwise required payment upon a written and verified showing of good cause filed with the Court by which a party or counsel establishes that noncompliance was excusable.

(g) All sanctions for violations of this Rule shall be considered under the provisions of Civil Rules 37 and 95.

(h) A case assigned under this rule may not be dismissed under Civil Rule 41 without approval of the Court. Any stipulations between the parties or attorneys as to anything scheduled under this rule are invalid until approved by the court and the parties may not rely on such stipulation as an excuse to fail to comply with time limits, etc. unless the court has approved the same.

B. District Court Jurisdiction

Jurisdiction of the District Courts should be increased to encompass actions in which the amount of monetary damages involved does not exceed $25,000. (or the jurisdictional limit).

HB
562

STATE OF ALASKA 1984 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date:

REQUEST
Bill/Resolution No.: HB 562
Title: "...domestic violence injunctions..."
Sponsor: Rep. Liska
Requestor: House Community & RA
Date of Request: 2-7-84

FISCAL DETAIL
Agency Affected: Public Safety
Program Category Affected: Administration of Justice
BRU, Program or Subprogram(s) Affected: Alaska State Troopers

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 84	FY 85	FY 86	FY 87	FY 88	FY 89
OPERATING						
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 SUPPLIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS						
800 MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-
CAPITAL	-0-	-0-	-0-	-0-	-0-	-0-
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL	-0-	-0-	-0-	-0-	-0-	-0-

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

ANALYSIS: Attach a separate page for analysis No fiscal impact anticipated.

Prepared By: Francis C. Allan F.C.A. MCK Phone: 269-5691
Division: Alaska State Troopers Date: 1-3-84

Approved by Commissioner: R. J. Sundberg Date: 1-11-84
Agency: Public Safety

Distribution (by Agency preparing fiscal note):
Legislative Finance
Legislative Sponsor
Requestor
Office of Management and Budget
Impacted Agency(ies)

12/1/83

Alaska State Legislature

POUCH V
JUNEAU, ALASKA 99811
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DISTRICT 15
STAR ROUTE BOX 421
EAGLE RIVER, ALASKA 99577
(907) 688-2526

VICE-CHAIRMAN
Judiciary
Legislative Regulations Review

MEMBER
Resources
Rules
Finance — Sub. Com. Labor

Representative John J. Liska

March 28, 1984

M E M O R A N D U M

TO: Judiciary Committee

FROM: Rep. John J. Liska

REFERENCE: HB 562, "An Act relating to service of process in cases involving domestic violence."

1. Copy of HB 562.

2. Copy of AS 22.20.110
25.35.040
25.35.010
25.35.020

3. Description of the purpose of HB 562 and what it does.

4. Department of Public Safety Position paper.

JJL/tm

the claim of a lien is

. or refer it, and upon
ses. (§ 54-6-8 ACLA

ttorney; (b) whether the
d the withdrawal; (c) the
provide security or to pay
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ther the fee is disputed,
asonable amount of any
(g) whether the amount
contingent or fixed; (h)
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ent before ordering
Miller v. Paul, Sup. Ct.
No. 5064), 615 P.2d 615

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case would the require-
ng a home be justified.
0), the Alaska legisla-
certain exceptions,
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d. Miller v. Paul, Sup.
le No. 5064), 615 P.2d

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reme court, and
duties. (§ 2 ch

Legislative history reports. — For report on ch. 71, SLA 1972 (HCSSB 383 am H), see 1972 House Journal, p. 898.

Sec. 22.20.110. Duty of the commissioner in the court of appeals, the superior court and district courts. When required by the supreme court, the commissioner shall serve and execute all process issued by the court of appeals, the superior court and the district courts, attend to and wait upon grand and petit juries, maintain order, attend the sessions of the courts, and exercise the power and perform the duties concerning all matters within the jurisdiction of the courts as may be assigned. The commissioner is the executive officer of the court of appeals, the superior court and district courts. (§ 3 ch 95 SLA 1960; am § 3 ch 24 SLA 1966; am § 17 ch 12 SLA 1980)

Effect of amendments. — The 1980 amendment inserted "the court of appeals" following "issued by" near the beginning of the section and following "executive officer of" near the end of the section.

Editor's notes. — This section was redrafted by the revisor of statutes to remove personal pronouns in conformity with AS 01.05.031(c) and § 4, Chapter 58, SLA 1982.

Sec. 22.20.120. General authority and duty of the commissioner. The authority necessary for the lawful performance of the duties of execution of service of process, seizure and detention of property, the sale of property forfeited or levied upon, and arrest of persons, in connection with civil matters, is vested in the commissioner. Any court of the state issuing any process may direct the process for execution of service to the commissioner or the designee of the commissioner. (§ 4 ch 95 SLA 1960; am § 22 ch 71 SLA 1972)

Editor's notes. — This section was redrafted by the revisor of statutes to remove personal pronouns in conformity with AS 01.05.031(c) and § 4, Chapter 58, SLA 1982.

Legislative history reports. — For report on ch. 71, SLA 1972 (HCSSB 383 am H), see 1972 House Journal, p. 898.

Sec. 22.20.130. Assistance for commissioner. (a) The commissioner shall be assisted in the execution of the authority and duty vested by AS 22.20.100 — 22.20.140 by such members of the division of state troopers or Alaska state constabulary as the commissioner designates. The commissioner is responsible on official bond for the acts of all persons so designated. The persons so designated have the same authority and duty granted to the commissioner and are subject to orders of the courts of the state in the same manner as the commissioner. They are responsible to the commissioner and to the courts, and shall be executive officers of the courts.

(b) The commissioner has the responsibility of providing sufficient personnel to effectively execute the authority and duty vested by AS 22.20.100 — 22.20.140, and shall adopt the necessary rules and regulations within his department for the efficent direction, control and

Revisor's notes. — Formerly AS 09.55.610. Renumbered in 1983.

Effect of amendments. — The 1982 amendment substituted "20 days" for "10 days" in the third sentence of subsection (c) and "three days" for "two days" near the beginning of subsection (e).

Sec. 25.35.030. Forms for filing petition. (a) The Alaska court system, in cooperation with interested persons and organizations, shall prepare forms and instructions for the use of persons seeking an order for relief under AS 25.35.010 or 25.35.020, including forms for waiving filing fees on the basis of indigency. The forms shall conform to the requirements of AS 25.35.010 and 25.35.020 and the Alaska Rules of Civil Procedure, except that information on the forms may be filled in by legible handwriting. The office of the clerk of each superior and district court shall make the forms and instructions available to the public.

(b) *[Repealed, § 16 ch 61 SLA 1982.]* (§ 1 ch 139 SLA 1980; am § 16 ch 61 SLA 1982)

Revisor's notes. — Formerly AS 09.55.620. Renumbered in 1983.

Cross references. — For related court rules on filing fees, see Admin. R. 9 (f)(1) and Admin. R. 10.

Effect of amendments. — The 1982 amendment repealed subsection (b), which read "The form for petition prepared under (a) of this section shall include a notice that a false statement made in it stating that the respondent has subjected the petitioner to domestic violence constitutes the crime of unsworn falsification under AS 11.56.210, which is punishable by a maximum term of imprisonment of one year and a $5000 fine."

Sec. 25.35.040. Service of process. Process issued under AS 25.35.010 or 25.35.020 shall be promptly served and executed. If a state peace officer is not available, a superior court, district court, or magistrate may designate any other peace officer to serve and execute process issued under AS 25.35.010 or 25.35.020. A peace officer shall use every reasonable means to serve process issued under AS 25.35.010 or 25.35.020. (§ 7 ch 61 SLA 1982)

Revisor's notes. — Formerly AS 09.55.625. Renumbered in 1983.

Sec. 25.35.050. Notification to law enforcement agencies. If a superior court, district court, or magistrate issues an order under AS 25.35.010 or 25.35.020 restraining a respondent from subjecting a petitioner to domestic violence, the superior court, district court, or magistrate shall transmit a copy of the order to the appropriate local law enforcement agency. Each law enforcement agency shall establish procedures to inform their peace officers of copies of the orders received by the law enforcement agency under this section. Peace officers shall use every reasonable means to enforce an order issued under AS 25.35.010 or 25.35.020. (§ 1 ch 139 SLA 1980)

and to be heard either in person or by attorney. If, at the hearing, the superior court finds that the petitioner has been subjected to domestic violence by the respondent, the superior court may issue any order it determines to be necessary for the protection of the health, safety or welfare of the petitioner or of a minor child in the care of the petitioner. An order under this subsection may include provisions which

(1) restrain the respondent from subjecting the petitioner to domestic violence;

(2) direct the respondent to vacate the home of the petitioner;

(3) restrain the respondent from communicating directly or indirectly with the petitioner;

(4) direct the respondent to pay support for the petitioner or for a minor child in the care of the petitioner if there is an independent legal obligation of the respondent to support the petitioner or the child;

(5) award temporary custody of a minor child to the petitioner;

(6) direct the respondent to pay medical expenses incurred by the petitioner as a result of the domestic violence;

(7) direct the respondent to engage in personal or family counseling;

(8) restrain the respondent from entering a propelled vehicle in the possession of or occupied by the petitioner.

(c) An order issued under this section remains in effect for a period of time not to exceed 90 days. However, the petitioner may petition the superior court for an extension of a provision of the order if the provision is described in (b)(1), (b)(2), (b)(3), (b)(7), or (b)(8) of this section. If the superior court, after notice to the respondent of and a hearing on the petition for the extension in accordance with the procedures described in (b) of this section, finds that an extension of the provision of the order is necessary to protect the petitioner or a minor child in the care of the petitioner from domestic violence, the superior court may extend the provision of the order for a period of time not to exceed 45 days. The court may not grant more than one extension under this subsection.

(d) Proceedings under this section do not preclude any other available civil or criminal remedies. (§ 1 ch 139 SLA 1980; am §§ 3, 4 ch 61 SLA 1982)

Revisor's notes. — Formerly AS 09.55.600. Renumbered in 1983.

Cross references. — For release before trial in cases involving domestic violence, see AS 12.30.025; for related provisions concerning criminal trespass, see AS 11.46.320 — 11.46.350; for related provisions concerning harassment, see AS 11.61.120(a)(6).

Effect of amendments. — The 1982 amendment added paragraphs (7) and (8) to subsection (b), and in subsection (c), substituted "90 days" for "45 days" at the end of the first sentence, substituted "an extension" for "extensions" and "(b)(1), (b)(2), (b)(3), (b)(7) or (b)(8) of this section" for "(b)(1), (b)(2) or (b)(3) of this section" in the second sentence, inserted "or a minor child in the care of the petitioner" in the third sentence, and added the last sentence.

THE BILL WILL TRANSFER PRIMARY RESPONSIBILITY FOR THE SERVICE OF PROCESS FOR DOMESTIC VIOLENCE INJUNCTIONS FROM THE STATE TROOPERS TO LOCAL POL CE DEPARTMENTS. CURRENT LAW PLACES PRIMARY RESPONSIBILITY FOR SERVICE OF THESE COURT ORDERS ON THE STATE TROOPERS, BUT PROVIDES THAT A COURT MAY ORDER ANY OTHER PEACE OFFICER TO SERVE THEM IF A STATE TROOPER IS NOT AVAILABLE. AS 25.35.040. THIS BILL WOULD REQUIRE LOCAL OFFICERS TO SERVE THE ORDERS IF THE PERSON TO BE SERVED IS PRESENT OR RESIDES WITHIN THE LOCAL DEPARTMENT'S JURISDICTION. IF A LOCAL OFFICER IS NOT AVAILABLE, THE COURT MAY DIRECT A STATE TROOPER TO SERVE THE COURT ORDER.

THIS CHANGE IN THE LAW IS NEEDED BECAUSE THE NUMBER OF DOMESTIC VIOLENCE ORDERS ISSUED BY COURTS EACH YEAR HAS 'NCREASED DRAMATICALLY SINCE AS 25.35.010 -- 25.35.060 (FORMERLY AS 09.55.600 -- 09.55.640) TOOK EFFECT IN SEPTEMBER OF 1980. IN ANCHORAGE ALONE, THE NUMBER OF DOMESTIC VIOLENCE ORDERS THAT MUST BE SERVED HAS CLIMBED FROM AN AVERAGE OF 15 TO AN AVERAGE OF 80 A MONTH. THE VAST MAJORITY OF THESE ORDERS (APPROXIMATELY 90 PERCENT) IS DIRECTED TO PERSONS WHO RESIDE WITHIN MUNICIPALITIES THAT HAVE LOCAL POLICE DEPARTMENTS.

IN MANY CASES, A LOCAL POLICE OFFICER WAS CALLED TO THE DOMESTIC DISTURBANCE WHICH GAVE RISE TO THE NEED TO OBTAIN A DOMESTIC VIOLENCE INJUNCTION. THE OFFICER MAY EVEN HAVE TRANSPORTED THE VICTIM OF THE ASSAULT TO THE LOCAL MAGISTRATE OR JUDGE TO OBTAIN THE ORDER. TO

REQUIRE THAT THE RESULTING COURT ORDER BE SERVED BY A STATE TROOPER WHOSE PRIMARY PATROL AREA IS OFTEN OUTSIDEOF THE CITY OR BOROUGH AND WHO HAS HAD NO PREVIOUS CONTACT WITH THE VICTIM OR THE CASE IS NOT AN EFFICIENT USE OF LAW ENFORCEMENT RESOURCES, AND MAY CAUSE A DELAY IN THE SERVICE OF THE ORDER. IN THE LARGER CITIES, SERVICE OF THESE INJUNCTIONS IS MADE BY OFFICERS IN THE JUDICIAL SERVICES SECTION OF THE STATE TROOPERS. THE NEED TO ENSURE ADEQUATE SECURITY IN COURTROOMS, TRANSPORT PRISONERS, AND SERVE CRIMINAL ARREST WARRANTS AND SUBPOENAS SEVERELY LIMITS THE AMOUNT OF TIME AND EFFORT A JUDICIAL SERVICES OFFICER MAY DEVOTE TO SERVICE OF DOMESTIC VIOLENCE INJUNCTIONS.

IN THE INTERESTS OF PROVIDING THE QUICKEST AND BEST POSSIBLE PROTECTION FOR VICTIMS OF DOMESTIC VIOLENCE, AND OF MAKING THE WISEST POSSIBLE USE OF AVAILABLE LAW ENFORCEMENT RESOURCES, I URGE YOUR PROMPT PASSAGE OF THIS BILL.

DEPARTMENT OF PUBLIC SAFETY

POSITION PAPER - HB 562

Support

During the last two years the tremendous increase in the number of domestic violence orders to be served has placed a severe drain upon the manpower of the Alaska State Troopers and has caused some delay in the services of these orders. This legislation transfers the primary responsibility for the service of these injunctions from the State Troopers to local police departments. State Troopers would continue to serve these orders when local officers are not available.

Domestic violence injunctions are served by Troopers assigned to the Judicial Services section of the Alaska State Troopers. This section is also responsible for courtroom security, prisoner transportation and the service of subpoenas and warrants. The Alaska State Troopers have never received funding to cover the costs associated with the service of domestic violence orders. Thus this increased work load falls on an already overloaded unit and the service of these orders must sometimes be subordinated to other law enforcement demands.

The majority of domestic violence orders are served within the boundaries of political subdivisions which have their own police agencies. The local police are often more familiar with the locations and individuals involved in domestic violence situations and therefore can more safely and efficiently serve orders.

Robert J. Sundberg
Commissioner

HB
571

FISCAL NOTE

Revision Date: March 8, 1984

REQUEST
Bill/Resolution No.: HB 571
Title: "...number of superior and district court judges..."
Sponsor: Repr. Abood
Requestor: OMB - Gov.'s Off.
Date of Request: 2-28-84

FISCAL DETAIL
Agency Affected: Department of Law
Program Category Affected: Administration of Justice
BRU, Program or Subprogram(s) Affected: Prosecution

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 84	FY 85	FY 86	FY 87	FY 88	FY 89
OPERATING						
100 PERSONAL SERVICES		197.0	208.8	221.3	234.6	248.7
200 TRAVEL		15.0	15.9	16.9	17.9	19.0
300 CONTRACTUAL		47.2	50.0	53.0	56.2	59.6
400 SUPPLIES		15.6	11.4	12.1	12.8	13.6
500 EQUIPMENT		18.0				
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS						
800 MISCELLANEOUS						
TOTAL OPERATING	-0-	292.8	286.1	303.3	321.5	340.9
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND	-0-	292.8	286.1	303.3	321.5	340.9
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS:

FULL-TIME	-0-	4	4	4	4	4
PART-TIME						
TEMPORARY						

SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

ANALYSIS: Attach a separate page for analysis

Prepared By: Richard J. Pegues, Director Phone: 465-3672
Division: Administrative Services Division Date: 3-8-84

Approved by Commissioner: Norman C. Gorsuch Date: 3-8-84
Agency: Department of Law

Distribution (by Agency preparing fiscal note):
Legislative Finance
Legislative Sponsor
Requestor
Office of Management and Budget
Impacted Agency(ies)

12/1/83

Fiscal Note
Analysis
HB 571

March 8, 1984

The net effect of HB 571 is to increase the number of judges in the Third Judicial District by one superior court judge and two district court judges, at Anchorage. This increase has been requested by the courts because of substantial increases in both felony and misdemeanor cases and because of a a growing backlog of both criminal and civil cases. During the last 15 months, the Anchorage area has grown by approximately 30,000 residents. This increase in itself exceeds the total population served by the criminal justice system in Juneau which is made up of 2 superior court judges, 1 district court judge and a District Attorney's Office consisting of three attorneys, one paralegal assistant and three legal secretaries. By comparison, no additional judicial or prosecution positions have been authorized to handle the increased caseload in Anchorage during this period.

Included in this population growth is a disproportionate number of young, highly transient males who tend to account for a considerable portion of the increase in serious criminal cases in the Anchorage area. Although many of the presently backlogged cases consist of minor offenses, there has also been a disturbing increase in the number of sexual assault cases involving children and in the number of complex homicide cases which require substantial additional judicial and prosecution resources in order to ensure that they are properly handled.

Historically, there has been a direct correlation between the number of judges in a particular district and the number of prosecutors required in order to meet court calendars. This correlation has in the past and should equal one prosecutor for each full-time judge. This balance is required in order to ensure that cases are effectively and efficiently processed. Over the past few years the balance between judges and prosecutors in the Third Judicial District has tipped towards the judicial side of the scales. There are currently 14 authorized superior court judges and 9 district court judges in the Third Judicial District. In addition, there are 4 full-time magistrates in the district who also have authority to serve as district judges, thus bringing the number of full-time judges to 27, as opposed to 23 prosecuting attorneys. The number of prosecutors has not kept pace with the number of judges due to legislative authorized increases in the last five to six years which have not included additional prosecuting attorney resources. To an extent, the Department of Law has been able to handle most case settings as a result of economies of scale realized over the past several years. However, we are rapidly falling behind in our ability to adequately cover present court calendars, particularly in the rural areas. This problem will become particularly severe if these additional judicial positions are added without an increase in prosecuting attorney positions.

The Criminal Division of the department will not be able to continue to handle all of the cases and court calendars, particularly with the addition of these new judges, without additional prosecution resources. This imbalance between judges and prosecutors will be particularly severe at the district court level because of the higher volume of cases, although there will also be substantial impact at the superior court level because of the need to assign the new superior court judge in Anchorage to criminal cases.

In his State of Judiciary message to the Legislature on February 28, 1984, Chief Justice Burke anticipated that the new superior court judge would be assigned to the criminal division. See Senate and House Joint Journal Supplement No. 20 at pages 7-8. The administrative office of the Court System has indicated, however, that the new superior court judge will be expected to devote half of his time to criminal cases and half to civil cases. Regardless of the actual breakdown of the duties assigned to the new judge, in order to meet the speedy trial requirements of Criminal Rule 45 in the face of the increased number and complexity of felony criminal trials, it is certain that civil division judges will continue to handle a substantial percentage of the criminal case load.

Recognizing that the three new judges will devote some proportion of their time to civil cases, we are requesting that the District Attorney's Office at Anchorage be increased by two (rather than three) attorneys, one paralegal assistant and one legal secretary. One attorney will be assigned to the superior court to handle major felony prosecutions with emphasis on sexual assault and homicide cases. The second attorney will be assigned to district court cases and handle misdemeanor cases exclusively. The Criminal Division believes that it can, for the present, adequately cover the caseload through the addition of two attorneys, rather than three, through an additional paralegal assistant at substantially lesser cost to assist in case preparation and the coordination of witnesses. A single legal secretary position will be needed to provide support services in the processing of these cases and to handle the work that will be generated by the two attorneys and the paralegal. The total costs associated with these positions is $292,800. Attached is a summary sheet which breaks this cost down by each position and relevant budgetary object code.

Fiscal Note Analysis
HB 571

FY 85
Cost Schedule

Object	Atty IV	Atty III	Paralegal Asst II	Leg. Sec I	Total
Personal Services	67.5	59.7	40.6	29.2	197.0
Travel - Witness travel subsistence, staff travel	5.0	5.0	5.0	-0-	15.0
Contractual Services					
Office commo., equip. repair	4.8	4.8	4.8	2.4	16.8
Copy - postage				1.8	1.8
WP Maintenance					
Space Rental	5.2	5.2	4.1	4.1	18.6
Expert Witness/ Witness Costs	5.0	5.0			10.0
					47.2
Commodities - ongoing					
Office consumables	1.8	1.8	1.8	1.8	7.2
Law Library	1.2	1.2	1.2	-0-	3.6
Commodities - one time					
New position materials	1.2	1.2	1.2	1.2	4.8
					15.6
Equipment - one time					
New position equip.	1.5	1.5	1.5	1.5	6.0
Word Processor				12.0	12.0
					18.0
TOTALS	93.2	85.4	60.2	54.0	292.8

Costs beyond FY 85 include a 6% annual inflation factor.

1.	POSITION TITLE ATTORNEY IV			RANGE/STEP 24A	BARG. UNIT PX	FORM 12 PAGE/LINE	GOV.	APPROV.	DISAP
2.	TYPE OF POSITION PFT	STAFF MONTHS 12	RP NUMBER	PCN NUMBER	DRU PRIORITY	LOCATION Anchorage	ELECTION DISTRICT 8	LEG.		
3.	CONTINUATION LEVEL		ADDITION		JUSTIFICATION				

4.	TYPE OF EXPENDITURE		AMOUNT
	1	2	3
	PERSONAL SERVICES		
5.	Salary 4,464	53,568	
6.	Benefits	8,785	
7.	Supplemental Benefits	2,550	
8.	Fixed Benefits	2,630	
9.	TOTAL PERSONAL SERVICES	01	67,533
10.	Travel	02	5,000
11.	Contractual	03	15,000
12.	Commodities	04	4,200
13.	Equipment	05	1,500
14.	Other		
15.	TOTAL COST		93,233

	RECEIPT CODE	FUNDING SOURCE		
16.		Federal Receipts	1002	
17.		G.F. Match	1003	
18.		General Funds	1004	93,233
19.		I-A Receipts	1005	
20.		Program Receipts	1020	
21.		Other		

FOR DAN USE ONLY
4A KEY NUMBER ___ ___ - ___ ___ - ___ ___ - ___ ___ - ___ ___

This is one of two attorney positions that are being requested to provide the additional prosecution services that will be needed to handle an expanded court calendar when the number of judgeships in Anchorage is increased. This position will handle sexual assault cases in the superior court, particularly those involving children, and the position will also handle misdemeanor cases in the district court. Allocation to the full working level of Attorney IV is recommended because of the requirement to handle sensitive crimes independently.

13 REQUEST FOR NEW POSITION

AGENCY DEPARTMENT OF LAW

PROGRAM DUE PROCESS

BRU PROSECUTION

FY 8!

1.	POSITION TITLE ATTORNEY III			RANGE/STEP 22A	BARG. UNIT PX	FORM 12 PAGE/LINE	GOV.	APPROV.	DISAP.
2.	TYPE OF POSITION PFT	STAFF MONTHS 12	RP NUMBER	PCN NUMBER	BRU PRIORITY	LOCATION Anchorage	ELECTION DISTRICT 8	LEG.		
3.	CONTINUATION LEVEL		ADDITION						

4.	TYPE OF EXPENDITURE		AMOUNT
	1	2	3
	PERSONAL SERVICES		
5.	Salary 3,900	46,800	
6.	Benefits	7,675	
7.	Supplemental Benefits	2,550	
8.	Fixed Benefits	2,630	
9.	TOTAL PERSONAL SERVICES	01	59,655
10.	Travel	02	5,000
11.	Contractual	03	15,000
12.	Commodities	04	4,200
13.	Equipment	05	1,500
14.	Other		
15.	TOTAL COST		85,355

	RECEIPT CODE	FUNDING SOURCE		
16.		Federal Receipts	1002	
17.		G.F. Match	1003	
18.		General Funds	1004	85,355
19.		I-A Receipts	1005	
20.		Program Receipts	1020	
21.		Other		

FOR D&H USE ONLY
4A KEY NUMBER __ __ - __ __ - __ __ - __ __ - __ __

JUSTIFICATION

This is the second of two attorney positions being requested to handle the expanded court calendar that will occur when three new judges are added in the Third Judicial District at Anchorage. This position will be assigned to district court matters and handle the growing backlog of misdemeanor cases that has been caused by a rapidly growing population. Allocation to the Attorney III grade is recommended because of the level of criminal violations to be prosecuted by the position.

13 REQUEST FOR NEW POSITION

AGENCY DEPARTMENT OF LAW

PROGRAM DUE PROCESS

BRU PROSECUTION

FY 8!

1.	POSITION TITLE PARALEGAL ASSISTANT II			RANGE/STEP 16A	BARG. UNIT GGU	FORM 12 PAGE/LINE	GOV.	APPROV.	DISAP
2.	TYPE OF POSITION PFT	STAFF MONTHS 12	RP NUMBER	PCN NUMBER	BRU PRIORITY	LOCATION Anchorage	ELECTION DISTRICT 8	LEG.		
3.	CONTINUATION LEVEL		ADDITION						

4.	TYPE OF EXPENDITURE		AMOUNT
	1	2	3
	PERSONAL SERVICES		
5.	Salary 2,573	30,876	
6.	Benefits	5,064	
7.	Supplemental Benefits	1,893	
8.	Fixed Benefits	2,730	
9.	TOTAL PERSONAL SERVICES	01	40,563
10.	Travel	02	5,000
11.	Contractual	03	8,900
12.	Commodities	04	4,200
13.	Equipment	05	1,500
14.	Other		
15.	TOTAL COST		60,163

	RECEIPT CODE	FUNDING SOURCE	
16.		Federal Receipts 1002	
17.		G.F. Match 1003	
18.		General Funds 1004	60,163
19.		I-A Receipts 1005	
20.		Program Receipts 1020	
21.		Other	

FOR DAN USE ONLY
4A KEY NUMBER __ __ - __ __ - __ __ - __ __ - __ __

JUSTIFICATION

This paralegal position is requested to provide victim/witness assistance services to the victims of child sexual abuse. A part of the growing case backlog that caused by the courts to seek additional judges at Anchorage has been a disturbing increase in the number of child sexual abuse cases. The victims of this abuse often have the additional ordeal of appearing in court as witnesses against the persons who have abused them. Paralegal assistants have proven invaluable in interviewing and assisting these victims in a manner that assures their well-being as witnesses.

13 REQUEST FOR NEW POSITION

AGENCY DEPARTMENT OF LAW

PROGRAM DUE PROCESS

BRU PROSECUTION

FY 85

1.	POSITION TITLE LEGAL SECRETARY I			RANGE/STEP 10B	DARG. UNIT GGU	FORM 12 PAGE/LINE	GOV	APPROV	DISAP
2.	TYPE OF POSITION PFT	STAFF MONTHS 12	RP NUMBER	PCN NUMBER	BRU PRIORITY	LOCATION Anchorage	ELECTION DISTRICT 8	LEG		
3.	CONTINUATION LEVEL		ADDITION						

	TYPE OF EXPENDITURE		AMOUNT
	1	2	3
	PERSONAL SERVICES		
5.	Salary 1,803	21,636	
6.	Benefits	3,548	
7.	Supplemental Benefits	1,326	
8.	Fixed Benefits	2,730	
9.	TOTAL PERSONAL SERVICES 01		29,240
10.	Travel 02		-0-
11.	Contractual 03		8,300
12.	Commodities 04		3,000
13.	Equipment 05		13,500
14.	Other		
15.	TOTAL COST		54,040

	RECEIPT CODE	FUNDING SOURCE		
16.		Federal Receipts	1002	
17.		G.F. Match	1003	
18.		General Funds	1004	54,040
19.		I-A Receipts	1005	
20.		Program Receipts	1020	
21.		Other		

FOR O&M USE ONLY
4A KEY NUMBER __ __ - __ __ - __ __ - __ __ - __ __

JUSTIFICATION

This position is requested to provide the clerical support required to handle the paperwork that will be generated by the two attorneys and the paralegal who are being added in response to the three judges being added at Anchorage. This position will provide communications, staff scheduling, filing and produce the court documents generated by the new legal positions. Allocation of the position to Legal Secretary I level is therefore recommended.

13 REQUEST FOR NEW POSITION

AGENCY DEPARTMENT OF LAW

PROGRAM DUE PROCESS

BRU PROSECUTION

FY 85

STATE OF ALASKA 1984 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date:

REQUEST
Bill/Resolution No.: CSHB 571
Title: Number of Superior and District Court Judges
Sponsor:
Requestor:
Date of Request:

FISCAL DETAIL
Agency Affected: Alaska Court System
Program Category Affected: Administration of Justice
BRU, Program or Subprogram(s) Affected: Trial Courts

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 84	FY 85	FY 86	FY 87	FY 88	FY 89
OPERATING						
100 PERSONAL SERVICES		1,033.4	1,446.7	1,519.0	1,595.0	1,674.8
200 TRAVEL						
300 CONTRACTUAL		308.8	432.4	454.0	476.7	500.5
400 SUPPLIES		4.4	4.6	4.8	5.0	5.3
500 EQUIPMENT		59.7				
600 LAND & STRUCTURES		200.0				
700 GRANTS, CLAIMS						
800 MISCELLANEOUS						
TOTAL OPERATING		1,606.3	1,883.7	1,977.8	2,076.7	2,180.6
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND		1,606.3	1,883.7	1,977.8	2,076.7	2,180.6
FEDERAL FUNDS						
OTHER						
TOTAL		1,606.3	1,883.7	1,977.8	2,076.7	2,180.6

POSITIONS:

FULL-TIME		22	22	22	22	22
PART-TIME						
TEMPORARY						

SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

ANALYSIS: Attach a separate page for analysis

Prepared By: _____ Phone:
Division: Alaska Court System Date: 3/28/84

Approved by Commissioner: _____ Date:
Agency: Alaska Court System 3/28/84

Distribution (by Agency preparing fiscal note):
Legislative Finance
Legislative Sponsor
Requestor
Office of Management and Budget
Impacted Agency(ies)

12/1/83

CSHB 571

(Committee Substitute for House Bill 571, establishing 2 new superior court and 4 new district court positions in Anchorage).

FISCAL NOTE ANALYSIS

FISCAL IMPACT:

Personnel

Position	Salary	Benefits	Total Cost
2 Superior Court Judges	$147,240	$174,948	$ 322,188
2 Law Clerks (Range 13A)	50,664	16,696	67,360
2 Secretaries (Range 12B)	49,032	16,328	65,360
2 In-Court Clerks (Range 12B)	49,032	16,328	65,360
4 District Court Judges	254,544	305,256	559,800
4 In-Court Clerks (Range 12B)	98,064	32,656	130,720
1 Secretary (Range 8B)	24,516	8,164	32,680
4 File Clerks (Range 8B)	77,136	27,932	105,068
1 Criminal Clerk (Range 10B)	21,744	7,538	29,282
			$1,377,818
Adjustment for First Year Hiring Period Vacancy - 3 month vacancy			(344,454)
Total First Year Personnel Costs			1,033,364
Contractual			
Word Processing Equipment		6,750	
Office Space (15,000 sf at $2.25/foot/month)		405,000	
		411,750	
Adjustment for First Year Hiring Period Vacancy - 3 month vacancy		(102,939)	
Total First Year Contractual Costs			308,811
Commodities			4,400
Equipment (one-time item)			59,704
Leasehold Improvements - remodeling (one-time item)			$ 200,000
TOTAL FY 85 COST			$1,606,279

CSHB 571

FISCAL NOTE ANALYSIS (Cont'd)

In his State of the Judiciary message, Chief Justice Burke pointed out a need for an additional two district court and two superior court judges. In the original version of HB 571, the Court System had asked for only one superior court judge and two district court judges, with the assumption that an additional superior court judge could be requested next year or at least in the near future. Since the State of the Judiciary message, the caseloads of the Anchorage Court System have continued to grow and this growth strongly supports the need for two district court and two superior court judges. If two district court and two superior court judges were authorized, the cost in fiscal year '85 would be approximately $890,000.

The Court System takes no position regarding the Committee Substitute which increases the district court level by four additional judges.

Trial Courts
State of Alaska

ALBERT H. SZAL
Area Court Administrator

THIRD JUDICIAL DISTRICT
303 K STREET
ANCHORAGE, ALASKA
99501

264-0415

March 22, 1984



Hon. Charlie Bussell, Chairman
Hon. Donald Clocksin, Member
Committee on the Judiciary
Alaska State Legislature
Pouch V
Juneau, Alaska 99811

Dear Chairman Bussell and Rep. Clocksin:

At your hearing on Saturday, March 17, 1984, regarding House Bill 571, Representative Clocksin asked if the number of cases superior court judges were taking under advisement had changed over the past two to three years.

In reviewing the data compiled by the technical operations division of the administrative director's office, it appears the number of cases taken under advisement for FY 82 compared with FY 83 were relatively constant, 125 and 114 respectively.

If you have any questions regarding the above, please feel free to contact my office.

Sincerely,

Albert H. Szal
Area Court Administrator

AHS pb

cc Judge Rowland
Goldeen Goodfellow



Superior Court
State of Alaska
THIRD JUDICIAL DISTRICT
303 K Street
Anchorage, Alaska 99501



CHAMBERS OF
DOUGLAS J. SERDAHELY

March 15, 1984

The Honorable Charlie Bussell
Chairman, House Judiciary Committee
Alaska State Legislature
State Capitol Building, Room 124
Juneau, Alaska 99811

Re: House Bill 571

Dear Chairman Bussell:

I regret that I am unable to personally attend and testify at the hearing regarding the pending legislation seeking authorization for additional District Court and Superior Court judges (House Bill 571). With this letter, I wish to summarize the comments and testimony I would have provided at the hearing in Anchorage on March 17, 1984.

By way of background, I have been serving as a Superior Court Judge in Anchorage for over three years. I am, and have been, assigned to the Civil Division of the Court during all of this time.

I earnestly support the Alaska Court System's application for at least one additional Superior Court position -- and ideally more than one -- for the Anchorage Superior Court Bench.

Since coming to the Bench three years ago, I have seen my civil case load (meaning non-domestic, non-criminal cases) increase from approximately 600 cases in April of 1981 to approximately 1100 cases at the present time.

In addition to an absolute increase in the number of cases, it is also my impression that there is an increase in the complexity, length, and expense of the civil

cases that are now being litigated. Thus, for example, I have spent the last four months trying two cases: a prisoners' class action case that lasted 7 weeks, and a securities litigation case that lasted 11-12 weeks. In the latter case alone, the parties filed 50-60 volumes of pleadings (exclusive of certain discovery documents), presented in excess of 3,000 documentary exhibits at trial, filed innumerable motions before and during trial, and took at least 15 petitions for review (interlocutory appellate review attempts) to the Alaska Supreme Court. Although this latter case may be an extreme example, it is my impression that in the last year or so, the Court System has experienced a relative increase in complex civil litigation.

Besides, the cases mentioned above, during the last year I have also tried a class action civil rights case that lasted 5-6 weeks and a wrongful death action that lasted 4-5 weeks. During the next 12-14 months, I have currently scheduled for trial 4 cases which are expected to last one month or more in duration, including a condemnation action of approximately 4 weeks; a personal injury action of approximately 4-5 weeks; a wrongful death action of approximately 5 weeks; and a commercial insurance litigation case of approximately 8 weeks.

The impact of larger case loads, as well as lengthier and more complex civil litigation on the trial calendar is obvious. The four months of trial time I spent on the two cases mentioned above consumed nearly 40% of the total available trial time on this year's calendar, thereby making it impossible for other cases to be tried during that period. Further, delays in obtaining trial setting conferences, and trial dates, are increasing at a substantial rate. Currently, a trial which would require more than 2 weeks could not be set on my trial calendar until mid-April, 1985 -- a 12-14 month delay. I am informed that most of the other civil judges' calendars are in approximately the same circumstance.

Additionally, it is my impression that more cases, including the complex cases, are proceeding to trial, rather than settling, or being disposed of by some other means. This means that the judges will tend to "overset" fewer cases per week. Several years ago, when fewer cases were proceeding to trial, I was oversetting 3-4 cases per week. Now that more cases appear to be going through trial, I am oversetting only 1-2 cases a week -- and in some instances, not oversetting at all. This, of course, means still further delays between the commencement of an action and the trial date in the action.

The increase in cases and trials also impacts adversely on the Court's time and resources available for non-trial matters which require judicial attention. Thus, for example, during a typical day, a civil judge would hold trial from 8:30 a.m. through 1:30 p.m. During the "luncheon" break (1:30 - 2:30), the judge will typically meet with his or her law clerk and review emergency matters which must be considered that day. Then, for the remainder of the afternoon, the judge typically would have scheduled settlement conferences, trial setting conferences, oral argument hearings or motions, oral argument hearings on agency appeals, evidentiary hearings on injunctions, hearings on domestic violence petitions, and other emergency matters. In view of the foregoing hearings, it is not uncommon for a judge to run well into the early evening before completing the day's activities.

In addition to trial matters, hearings and conferences scheduled during the typical day, the judge must also deal with numerous matters submitted to the Court on motions or briefs, without requests for oral argument or hearing. A rough estimate of a typical day in my chambers is that we receive, and are required to give attention to, as many as 2-3 dozen matters per day. These matters would include motions on the briefs (including discovery motions, dispositive motions, motions for sanctions, motions to amend pleadings, and the like), stipulations, emergency motions, and appeals on the briefs from administrative agencies or entities. The Court must also deal with, as a matter of priority, domestic violence petitions. Such petitions are typically being handled through hearing time in the Courtroom, although the judges are on call 24 hours a day.

Given the increase in cases, and increase in complex cases, the number of matters submitted to the Court on the briefs has also dramatically increased. And, consistently, the delays in issuing rulings on such matters have likewise increased. For example, it may take months to issue rulings on summary judgment motions or agency appeals that have been submitted to the Court on the briefs, without oral argument.

In order to perform all of the foregoing tasks, the Court has an extremely limited staff, consisting of one full-time law clerk, one secretary, and the judge. In my view, substantially additional assistance is, and will be, absolutely necessary in order to process the increased work load in a prompt and professional manner. At a minimum, it seems to me that additional Superior Court judges are immediately required. Ideally, additional support staff,

including further law clerk positions and/or externship positions would be extremely useful.

In the absence of additional judicial manpower, it seems to me quite realistic to expect that the already substantial delays in processing cases through trial will become even greater. Ultimately, I suppose, it becomes a policy question of how much delay is too much delay? I respectfully submit that for Alaska's population, and particularly for the population of the Southcentral area embodied in the Third Judicial District, delays of ½ to 2 years to get cases to and through trials are unacceptable. Longer delays are, obviously, more unacceptable.

Accordingly, the thoughtful attention of you and your Committee to the pressing need for additional judicial manpower will be greatly appreciated.

Thank you sincerely for your consideration of these remarks.

Very truly yours,

Douglas J. Serdahely
Judge of the Superior Court

DJS:lge

HB
575

POUCH V
JUNEAU, ALASKA 99811
(907) 465-4990

Alaska State Legislature
HOUSE OF REPRESENTATIVES

REPRESENTATIVE
CHARLIE BUSSELL
CHAIRMAN

Committee on Judiciary

HB 575
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MEMBERS:
REP. JOHN LISKA, VICE CHAIRMAN; REP. RAMONA BARNES, EMERITUS;
REP. JOE HAYES; REP. HUGH MALONE; REP. DON CLOCKSIN; REP. RON WENDTE

STATE OF ALASKA 84th LEGISLATIVE SESSION

FISCAL NOTE

Revision Date

REQUEST
Bill/Resolution No: HB 575
Title: An act relating to permanent fund dividends.
Sponsor: Barnes
Requestor: Judiciary
Date of Request: 02/06/84

FISCAL DETAIL
Agency Affected: Revenue
Program Category Affected: General Government
BRU, Program of Subprogram(s) Affected: Permanent Fund Dividend

EXPENDITURES/REVENUES: (Thousands of Dollars)

		FY 84	FY 85	FY 86	FY 87	FY 88	FY 89
	OPERATING						
100	PERSONAL SERVICES	-	33,600	-	-	-	-
200	TRAVEL	-	-	-	-	-	-
300	CONTRACTUAL	-	4,502	-	-	-	-
400	SUPPLIES	-	200	-	-	-	-
500	EQUIPMENT	-	3,225	-	-	-	-
600	LANDS & STRUCTURES	-	-	-	-	-	-
700	GRANTS, CLAIMS	-	-	-	-	-	-
800	MISCELLANEOUS	-	-	-	-	-	-
	TOTAL OPERATING	-	41,527	-	-	-	-
	CAPITAL	-	-0-	-	-	-	-
	REVENUE	-	-0-	-	-	-	-

FUNDING: (Thousands of Dollars)

	GENERAL FUND	-	-	-	-	-	-
	FEDERAL FUNDS	-	-	-	-	-	-
	OTHER	-	-	-	-	-	-
	TOTAL	-	-0-	-	-	-	-

POSITIONS:

	FULL-TIME	-	-1-	-	-	-	-
	PART-TIME	-	-0-	-	-	-	-
	TEMPORARY	-	-0-	-	-	-	-

SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

ANALYSIS: See attached analysis.

Prepared By: Ervin B. Jones
Division: Administrative Services
Phone: 465-2313
Date: 02/10/84

Approved by Commissioner: Bruce M. Mello
Date: 2/15/84
Agency: Revenue

Distribution (by Agency preparing fiscal note):
Legislative Finance
Legislative Sponsor
Requestor
Office of Management and Budget
Impacted Agency(ies)

Analysis:

Section 1 of the bill provides for two changes to the current law. First, it provides that convicted felons are ineligible for a permanent fund dividend for any year, when during all or part of that year as a result of their felony conviction, the individual was:

a. incarcerated
b. on probation
c. on parole
d. under a suspended imposition of sentence.

Secondly, it provides that an amount equal to the foregone dividend would be transferred to the crime victim compensation fund.

There are several major factors which make the provisions of this section, as written, difficult to administer:

1. The permanent fund dividend program is designed by statute to make payments for the same given year for which applications are filed. For example, the 1983 dividend was declared on September 1, 1983, and largely paid by December 31, 1983, based on applications received during the filing period April 1 - June 30, 1983. Assuming the Department of Revenue was able to sort out applications filed by convicted felons who met the requirements of Section 1, we would have to hold all payments until the end of the dividend year, in order to review all applications for "felon status" through the whole year including December. This would not necessarily change the filing period or the declaration date, but would mandate payments being made no sooner than January or February of the year following the dividend year. After the department makes one last massive cross examination of all applications filed, probably in January following the dividend year. The department would still attempt to make all payments by April 30 of the year following the dividend year.

2. The second problem is determining which PFD applicants are convicted felons who meet the statutory test (i.e. incarcerated, on probation, etc.). For the department to identify those persons would require a one-time matching of the PFD master file for a given year against a currently non-existent data base of all Alaskans who met the prescribed condition during the preceding dividend year. This cross match is the one described above as taking place in January following the dividend year. Creating the needed data base would involve two steps:
   a) Using the OPSIS data base recently established by the Corrections Department, Health & Social Services would need to build a file of all convicted felons who as a result of their felony conviction were, at any time during the dividend year:
      1) incarcerated (in or out of Alaska)
      2) on probation (in or out of Alaska)
      3) on parole (in or out of Alaska).

   It should be noted that Corrections has no control over, or records of, convicted felons under suspended imposition of sentence, nor does Corrections have any record of, or knowledge of, Alaska residents who

Analysis (cont.)

are convicted of felonies outside Alaska and are still outside Alaska imprisoned, on parole, on probation, or under suspended sentence. Roger Lang, Deputy Commissioner of Administration for Corrections expressed the opinion that the incidences of the latter would be negligible.

b) Literally building a tracking system of those felons under suspended sentence. Apparently, individual courts keep these records separately, in a non-computerized fashion. If it is the Legislature's final decision that such a system be created, I think a great deal of study and research, probably by a consultant, would be needed before even an estimate of cost could be arrived at. Deputy Commissioner Lang suggests that the number of convicted felons under suspended sentence in Alaska might be so low as to render the search cost-ineffective.

3. Transfering an amount equivalent to the dividend that is denied the felon applicant to the crime victim compensation fund indirectly funds the crime victim compensation fund (previously strictly a general fund appropriation) from the earnings of the Permanent Fund. Since the number of felons filing will very shortly drop off sharply (when they realize they won't be paid), a more direct appropriation to the crime victims compensation fund would appear to be more beneficial.

In summary, to the extent that a data base is available which identifies the subject felons, and to the extent that they file applications, the Department of Revenue will be able to deny their applications. The cost of doing so, with the exception of suspended sentences, will be very low. The Enforcement Division will need one full-time investigator as reflected on the attached analysis. The postponment of all payments by several months will obviously irritate the general public. For this reason, the department recommends that lines 13, 14 and 15 of the bill be changed to read " . . . permanent fund dividend for a year when, during all or part of the eligibility period for that year's dividend, [that year] as a result of the conviction the individual is incarcerated, on probation, on parole or under a suspended imposition of sentence." This would enable the department to process applications against a fixed file of subject felons and to make payments as soon as the dividend amount is declared.

Enforcement Division Analysis of HB 575
February 10, 1984

A. Assumptions

1. The PFD program is retained and there are no other substantive changes to the program.

2. It would be possible and practical to obtain information on individuals convicted of a felony. (Please see the discussion under C.)

B. Program Summary

This bill would require one full time PFD Investigator who would be assigned felons on a project basis. In addition, there would be associated contractual services, supply costs, and equipment costs.

		FY '84	
Personal Services (100)			
PFD Investigator II (R13)	12 months @ $2,800/mo.	$33,600	(1)
Contractual Services (300)			
Telephone			
Telephone purchase	1 phone @ $60	60	(2)
Installation	1 phone @ $90	90	(2)
Local Centrex	12 months @ $46/mo.	552	
Long Distance	12 months @ $150/mo.	1,800	
Computer Terminal			
Installation	1 terminal @ $2,000	2,000	(2)
Total Contractual Services (300)		4,502	
Supplies (400)			
General Office Supplies		200	
Equipment (500)			
Computer Terminal		1,600	(2)
Desk		575	(2)
Chair		175	(2)
File		275	(2)
Partitions	2 @ $300/ea.	600	(2)
Total Equipment (500)		3,225	
Total Enforcement		$41,527	

(1) In FY '85 the cost of the salary and benefits for the investigator is estimated to increase by the negotiated 3.8% salary increase. Accordingly, the FY '85 and subsequent year costs are projected to be $34,877.

(2) Several items in contractual services and all equipment items are one time and are not included in FY '85 and subsequent year cost projections.

C. Additional Comments on the Legislation

This legislation is likely to be difficult to administer. The preceding cost analysis was based on the assumption that we would be able to obtain information from several federal, state, and local law enforcement agencies, court systems, and corrections agencies which would have information on the status of felons. Because the bill declares a convicted felon ineligible if at any time during the year he/she was incarcerated, on probation, on parole, or under a suspended sentence the number of ineligibles would grow with each passing day. Since there is not one comprehensive criminal justice system within the United States, it would be a difficult task, at best, to try to obtain and keep that information updated.

Under current law PFD payments could be made in calendar year 1984 for the 1984 program. If subsequent to receiving a PFD payment an applicant became ineligible due to felony conviction, Enforcement would be faced with the task of trying to recover from the felon.

The appeals process may also be impacted as any person who applies and is denied has the right to appeal. It is conceivable that some incarcerated convicted felons, although ineligible by law, may file appeals for the lack of anything else better to do.

TCW/dlr

MEMORANDUM State of Alaska

TO: Bruce Botelho
Deputy Commissioner
Department of Revenue

DATE: February 15, 1984

FILE NO: 366-424-84

TELEPHONE NO: 465-3600

FROM: Norman C. Gorsuch
Attorney General

SUBJECT: Review of HB 575, relating to PFD payments to prisoners

By: Diane T. Colvin DTC
Assistant Attorney General
Commercial-Juneau

You asked us to review House Bill 575, relating to payment of permanent fund dividends to convicted felons, for possible legal problems. Based on our review, we conclude that the bill, if enacted, could be challenged on a number of grounds. The provisions most vulnerable to legal challenge are summarized below.

HB 575 makes a convicted felon ineligible for a permanent fund dividend. The prohibition is applied not only to a felon who is in prison, but also to one who is on probation, on parole, or under a suspended imposition of sentence (Sec. 1).

There are other state laws that impose similar disabilities on convicted felons. Art. V, § 2, Alaska Constitution, implemented by AS 15.05.030, suspends the right to vote of a person convicted of a felony of moral turpitude. The disability continues until the individual's civil rights are restored by unconditional discharge. Unconditional discharge covers conviction and sentence, including, by definition (AS 15.60.010(32), probation and parole, and, according to an opinion of this office, suspended imposition of sentence. 1980 Inf. Op. Att'y. Gen. (Nov. 7).

Statutes imposing disabilities relating to suffrage have traditionally been upheld as necessary to preserve the purity of elections. The presumption is that one rendered infamous by conviction of a felony is not fit to exercise the privilege of voting. State ex rel. Barrett v. Sartorious, 351 Mo. 1237, 175 S.W.2d 787 (1943). See, also Annot., 36 A.L.R.2d 1238 (1954).

Other statutory provisions affect prisoners' civil rights. AS 33.30.310 provides as follows:

> A judgment of imprisonment in the penitentiary for a term less than for life suspends the civil rights of the person sentenced, and forfeits all public offices and all private trusts, authority, or power during the term or duration of imprisonment.

AS 33.30.320 relates to the civil rights of a person sentenced for life.

AS 33.30.310 was found unconstitutional by the Alaska Supreme Court to the extent the statute denied a parolee the right to initiate a civil suit in court. Bush v. Reid, 516 P.2d 1215 (1973). The court held that the statute denied the parolee the right to due process and equal protection. In its equal protection analysis, the court recognized that the state may have a reasonable basis for denying convicts while imprisoned access to the civil courts. Id. 1221. But, the court found, the administration of a parole system differs substantially from the administration of a prison. The reasons that support imposition of disabilities on prisoners cannot logically support the same restrictions on parolees. Id. Thus, the court concluded that although the state has a legitimate interest in restricting some activities of parolees, prohibiting a parolee from initiating a civil action has no logical connection with that interest. Therefore, the court held parolees were denied the right to equal protection.

We believe the court would make a similar finding in regard to the right to a permanent fund dividend while on parole. There may be a legitimate state interest in precluding a person incarcerated from receiving a permanent fund dividend. 1/ It is difficult, however, to construct a logical basis for denying a dividend to a parolee. The purpose of parole, recognized by the court in Bush v. Reid, is the parolee's constructive development and restoration into normal society. Cutting a parolee off from receipt of a permanent fund dividend does not further that purpose, but rather restricts it. We believe the same argument would apply to persons given a suspended imposition of sentence and placed on probation. The broad objectives sought by

---

1/ HB 575 does not indicate what the legitimate state purpose is. It would be advisable for the legislature to make that determination, and to embody the purpose or purposes in a letter of intent to accompany the bill.

probation are education and rehabilitiation. These objectives are not furthered by restricting the right to receive a permanent fund dividend. Therefore, we believe that revising the bill to restrict receipt of a dividend only to convicted felons who are incarcerated would make the bill much less vulnerable to attack on equal protection grounds.

Another point on which the bill is vulnerable is the period of time for determination of ineligibility. Section 1 of the bill now makes a convicted felon ineligible for a dividend for a particular year if, during all or part of that year, the person is incarcerated, on probation, etc. AS 43.23.005 requires only six months of residency to qualify for a permanent fund dividend. We believe in order to be legally supportable the period of incarceration must coincide with at least some portion of the period of eligibility. 2/

Finally, section 1 of the bill provides that the money that would have been paid to persons made ineligible by the bill be transferred from the dividend fund to the crime victim compensation fund. This may raise problems under Art. IX, § 13, of the Alaska Constitution, relating to expenditures of state funds. A better approach would be for the bill to provide that the legislature may appropriate the amount that would have been paid to the crime victim's compensation fund. In order to effect the transfer, the amount that would otherwise have been paid must be set out in an appropriation bill to the crime victim's compensation fund.

We hope this information is helpful to you. If you have further questions, please contact us.

NCG:DTC:eja

cc: The Honorable Charlie Bussell
Alaska State House of Representatives

2/ 15 AAC 23.615(a) establishes for 1983 dividends an eligibility period from October 3, 1982 through March 31, 1983. This period will probably differ in 1984 and subsequent years because of changes in the statute.

Legislature '84

Barnes' bill would put stop to inmates' dividend checks

Associated Press

Juneau — Although bars do a prison make, prisoners are not barred from receiving Permanent Fund dividend checks, a situation that House Majority Leader Ramona Barnes wants to correct with a bill she will introduce Monday.

Barnes, R-Anchorage, said Thursday she has readied a measure that should put a stop to dividend money going to Alaska prison inmates.

Although she said she wasn't sure how many prisoners were receiving the checks, a number of constituents told her that "felons were getting Permanent Fund dividend checks while behind bars.

"I was told that one of them was playing the stock market with his (money)," she said. "And one inmate a year ago got a $6,000 student loan for a real estate course that no longer existed. The course only cost $225, but luckily he didn't get ahold of the check.

"The intent of the bill is not to compensate inmates while they're paying their debt in prison," Barnes said, indicating that the Department of Law believed the measure was constitutional. "We have a victim's compensation fund and that (dividend) money would be better spent on victims than criminals."

Kerry Romesburg, executive director of the Postsecondary Education Commission, confirmed the report about an inmate getting a loan approved for a real estate course.

That person was in minimum security and cleared to take classes, Romesburg said, adding that he "had signed up for a course that didn't exist.

"We will not grant a loan to a person who is incarcerated," he said. "In fact, one of the first things we do to people who process loans is make sure they know the addresses of our correctional institutions," he said. "We get a lot of them (requests) — around 10 a year."

The Alaska Permanent Fund, the state's oil wealth savings account, was established by constitutional amendment in 1976.

It requires that at least 25 percent of all mineral lease rentals, royalties, royalty sale proceeds, federal mineral revenue sharing payments and bonuses received by the state shall be placed in a permanent fund.

HB

588

COMMITTEE REPORT

HOUSE

(7) FURTHER: FINANCE

2/3/84 Date: 3-14-84

The Committee on JUDICIARY has had HB 588

"An Act providing for the award of costs and attorney fees to persons who prevail in certain state administrative proceedings, and providing for an effective date."

under consideration and recommends:

[ ] do pass [ ] do not pass

[ ] do pass with attached amendments(s)

[X] replace with CS for HB 588 (Jud) [X] same title [ ] new title

and recommends _____

[ ] AND attaches a "Letter of Intent" [X] New Fiscal Notes [ ] Zero Fiscal Note Attached

[ ] reports it back without recommendation

[ ] referred to the _____ Committee

MEMBERS SIGNING DO PASS

MEMBERS HAVING OTHER RECOMMENDATIONS:

CHAIRMAN

STATE OF ALASKA

JAY S. HAMMOND, GOVERNOR

DEPT. OF HEALTH AND SOCIAL SERVICES
DIVISION OF FAMILY AND YOUTH SERVICES

515 Willoughby Avenue
Juneau, Alaska 99801
(907) 586-1861

December 1, 1982

Bernie and Mary Holland
Box 67
Juneau, Alaska 99802

Dear Mr. and Mrs. Holland

RE: Holland Foster Home

You are hereby notified that the enclosed Accusation has been filed with the Department of Health and Social Services, Division of Family and Youth Services. The Division of Family and Youth Services will conduct a hearing, if requested, to decide the issues presented in the Accusation.

Notice of Defense and Request for a Hearing

The enclosed accusation was prepared pursuant to AS 44.62.360 and sets forth the issues that will be decided by the Department of Health and Social Services, Division of Family and Youth Services. This letter constitutes notice as required by AS 44.62.380 that you may request a hearing on the issues set forth in the Accusation.

Unless a written request for a hearing signed by you or on your behalf is delivered or mailed to the Division of Family and Youth Services within 15 days after receipt of the enclosed Accusation, the Division of Family and Youth Services pursuant to AS 44.62.530 will decide in your absence the issues presented in the Accusation. The request for a hearing may be made by delivering or mailing the enclosed Notice of Defense to the Division of Family and Youth Services in the enclosed envelope, postage prepaid. Mailing of the Notice of Defense signed by you or on your behalf and returned to the Division of Family and Youth Services within 15 days in the enclosed addressed envelope, postage prepaid, acknowledges receipt of the enclosed Accusation and constitutes a notice of defense pursuant to AS 44.62.390.

Sincerely,

Lew Reece

Lew Reece
Regional Administrator

Enclosures

Accusation
Notice of Defense
Envelope (postage prepaid)

123

LEW:JRP:PM:ksw

Bruce M. Botelho
Assistant Attorney General
Office of the Attorney General
Pouch K
Juneau, Alaska 99811
(907) 465-3603

STATE OF ALASKA

DEPARTMENT OF HEALTH AND SOCIAL SERVICES
DIVISION OF FAMILY AND YOUTH SERVICES

In the matter of Bernie and Mary Holland, a Licensed Child Foster Home,

Respondent.

Facility No. 4190

ACCUSATION
(AS 47.35.040, AS 44.62.360)

Petitioner Lew Reece, Regional Administrator, Division of Family and Youth Services, Alaska Department of Health and Social Services, alleges:

1. This is a proceeding authorized by AS 47.35.040(b) and AS 44.62.360 to condition child foster home license 4190, held by Bernie and Mary Holland, hereinafter "respondents."

2. The respondents were issued License No. 4190 on May 23, 1982 authorizing them to operate a child foster home at 707 West 10th Street, Juneau, Alaska.

3. On or about July 15, 1982 the Division of Family and Youth Services received complaints from two youths who had been placed in the respondents' home. The allegations consisted for the most part of charges that respondents had been physically or erbally abusive, had taken inappropriate disciplinary measures, had failed to exercise restraint over their own children, had provided day care services, and had adult boarders in the home without division approval.

4. The division immediately initiated an investigation. The investigation included interviews with respondents and several youths who had been in respondent's care. Respondents refused to discuss most allegations with the division, claiming that the division had harrassed them and declaring:

> "In regard to your expectations of receiving a telephone call from me. . . to discuss those "allegations;" As I expressed during our meeting on July 23, 1982, these "allegations" will not be addressed by me . . ."

5. On July 27, 1982 the division again urged respondents to reply to the allegations. No reply was received.

6. In the succeeding weeks the division, through the Department of Law, attempted to conciliate with respondents, to no avail.

7. On September 27, 1982 the division finally closed its investigation and, because of the summary failure of respondents to address the complaints, concluded that most allegations were uncontradicted. (Accordingly, the division referred the matter to the Department of Law for further action.) Lie. They recommended revocation.

8. The Department of Law again initiated steps to reconcile the differences between respondents and the division, including scheduling of a meeting with Helen Beirne, Commissioner of Health and Social Services.

9. Respondent Bernie Holland has consistently refused to formally respond to the allegations, making it difficult, if not impossible, for the development of on-going professional relationships between the division and the licensed home, a prerequisite to determinations of compliance with state law.

10. Respondents' failure to cooperate, as set forth above, is a basis for conditioning of respondents' license under AS 44.62.360.

ACCORDINGLY, Accuser requests that

1. Foster Home Care License No. 4190 be amended to include the following conditions:

a. licensees will notify the department of all non-related adults living in the home for more than 21 days;

b. licensees will seek department approval of all day care services provided in the home;

c. licensees will provide the department a written description of their behavior management and discipline techniques (including any planned use of corporal punishment or family trials) within 30 days of issuance of the license with conditions; and

d. licensees will cooperate with all department requests for information related to the operation of their child foster home, license 4190.

DATE: 12/1/82

Lew Reece

Lew Reece

STATE OF ALASKA
DEPARTMENT OF HEALTH AND SOCIAL SERVICES
DIVISION OF FAMILY AND YOUTH SERVICES

In the Matter of:

Bernie and Mary Holland
Child Foster Home

Respondent

Facility No. 4190

NOTICE OF DEFENSE

The respondent, pursuant to AS 44.62.390, hereby acknowledges service of the Accusation or Statement of Issues and gives notice of defense on the following grounds:

_____

_____

_____

_____

_____

_____

_____

_____

A hearing on the matters set forth in the Accusation or Statement of Issues is requested.

DATE: _____

_____
Respondent

Mailing Address: _____

_____

_____

NOTE: This Notice of Defense must be signed by or on behalf of respondent, must set forth respondent's mailing address and must be filed with the Division of Family and Youth Services within 15 days of receipt.

STATE OF ALASKA

JAY S. HAMMOND, GOVERNOR

DEPT. OF HEALTH AND SOCIAL SERVICES
DIVISION OF FAMILY AND YOUTH SERVICES

515 Willoughby Avenue
Juneau, Alaska 99801
Phone: (907) 586-1861

September 27, 1982

Bernie and Mary Holland
P.O. Box 67
Juneau, Alaska 99802

Dear Mr. and Mrs. Holland:

This is to inform you that the Division's investigation of complaints regarding your foster home has been concluded. You have responded to allegation #10 that foster children have been relocated from the basement to the upstairs bedroom. With that exception, no response or corrective action plan to the allegations which were delivered to you on July 23, 1982 has been received by the Division. You have continued to be unwilling to discuss the allegations, therefore the findings in this letter are based solely on the Division's investigation without any information provided by either of you.

INVESTIGATION FINDINGS

1. Allegation: Bernie and Mary Holland yell and direct vulgar and abuse language towards foster children.

   Findings: 75 percent of the foster children interviewed stated that verbal and vulgar language had been directed at them, or other foster children, in the home.

   Required: "..... in no event may any child in care be subjected to verbal abuse...." 7 AAC 50.450,(2).

   Conclusion: This allegation is found to be valid. Valid means that the evidence shows that the standard was violated.

2. Allegation: Bernie Holland frequently hits foster children with a stick, ruler, yard stick and his hands.

   Findings: 87 percent of foster children interviewed stated they had been hit by Mr. Bernie Holland with either a stick or his hand. A majority of foster children interviewed stated that they witnessed Mr. Holland hitting other foster children.

Required: ".....in no event may a child in care be disciplined by shaking or by delivering a forceful blow with hand or weapon..." 7 AAC 50.450,(5).

Conclusion: This allegation is found to be valid. Valid means that the evidence shows that the standard was violated.

3. Allegation: Mr. Bernie Holland squirted lemon juice into a resident's mouth as punishment, and in the process of the resident resisting, used force to open the resident's mouth by holding the jaw and applying pressure.

Findings: Although this allegation is an isolated incident with the alleged victim graphically describing what happened, there is no corroborating evidence to support the allegation.

Required: ".... In no event may a child in care be subjected to unusual, severe, cruel, capricious, humiliating, or unnecessary punishment;" 7 AAC 50.450,(1).

Conclusion: This allegation is found to be unsubstianted. This means that the violation could have occurred as alleged, but the evidence is not conclusive, or sufficient evidence is not available to make a determination.

4. Allegation: Mr. Bernie and Mrs. Mary Holland are providing day care in their home for 2-5 children.

Findings: 100 percent of the foster children interviewed stated that they observed day care being provided in the Holland home.

Required: Number of foster children permitted in home, ".... no more than eight children in all are permitted in any one home..." ".... no more than five children of any age who are unrelated to the foster parents are permitted." 7 AAC 50.430(b)(d).

Day care of children and commercial care for the aged, or maternity, or convalescent patients may not be combined with foster care of children without prior approval of the Division representative. 7 AAC 50.440(a).

Conclusion: This allegation is found to be valid. Valid means that the evidence shows the standard was violated.

5. Allegation: There is not sufficient space for each foster child to have specific place to keep his/her own personal possessions.

Findings: This allegation deals specifically with the female residents who lived in the basement and shared a room with an alleged boarder. All female residents interviewed stated that they did not

have enough room for their possessions due to the alleged boarder using up most of the available space.

Required: "..... there must be a sufficient space and a specific place for each child to keep his own clothing and personal possessions." 7 AAC 50.450(c).

Conclusion: This allegation is found to be valid. Valid means that the evidence shows that the standard was violated.

6. Allegation: The Holland children have played with, destroyed, broken or lost the foster children's personal possessions.

Findings: 85 percent of the foster children interviewed stated that they had either had lost, or had destroyed or had broken personal possessions due to the Holland children. They also stated that even though they complained to the Holland's about the situation, it was never corrected.

Required: ".....foster parents must show evidence of being responsible, mature individuals of reputable character who exercise sound judgement and display the capacity to provide good care for children." 7 AAC 50.410(a).

Conclusion: This allegation is found to be valid. Valid means that the evidence shows the standard was violated.

7. Allegation: The Holland children are allowed to annoy and "bug" the foster children. When a conflict arises over this issue, that the foster children are verbally abused, and the "foster children are always wrong, and the Holland children are always right."

Findings: 80 percent of the foster children interviewed stated that they felt "bugged" at times by the Holland children, and when the issue was confronted the foster children were yelled at for causing a disturbance.

Required: "..... in no event may a child in care be denied treatment equal to that of the foster parents' own children as a method of discipline;..." 7 AAC 50.450(7).

Conclusion: This allegation is found to be valid. Valid means that the evidence shows that the standard was violated.

8. Allegation: Adult boarders are living in the Holland foster home and they are sharing sleeping quarters with foster children.

Findings: That there are two additional adults living in the Holland foster home without proper knowledge of the Division.

Required: "Foster parents shall report to the Division representative any significant changes in the household....that would affect the ability to care for foster children." 7 AAC 50.420(a).

Conclusion: This allegation is found to be valid. Valid means that the evidence shows the standard was violated.

9. Allegation: Adult boarders participate in the family meetings and trials and are allowed to vote on foster children's punishment.

Findings: A majority of foster children interviewed stated they had been subject to or observed alleged boarders participating in family meetings or trials.

Required: "Foster parents must show evidence of being responsible, mature individuals of reputable character who exercise sound judgement and display the capacity to provide good care for children." 7 AAC 50.410,(a).

Conclusion: This allegation is found to be valid. Valid means that the evidence shows that the standard was violated.

10. Allegation: Three foster children and one adult boarder sleep in a bedroom with no windows.

Findings: By personal observation from myself, Carolyn Touvinen, CCS II, and personnel admission from Mr. Holland, this was found to be true.

Required: ".....each foster home must have one or more windows which are large enough for emergency exit and rescue in each sleeping room."

Conclusion: This allegation was found to be valid upon inspection. However, Mr. Holland agreed to move the foster children to another room, which was accomplished within a 24-hour period. Therefore, at this date, the allegation is found to be invalid as long as that particular room is not used for foster children, or until the room is brought up to standards.

11. Allegation: Family meetings are held late at night and often last from 11:00 p.m. to 2:00 a.m., and that foster children do not get enough sleep because of this and that one foster child fell asleep at a meeting and was punished for it.

Findings: A majority of foster children interviewed stated that family meetings and trials could and would last until all hours of the night, and also stated punishment was dealt out for falling asleep.

Required: "Foster parents must show evidence of being responsible, mature individuals of reputable character who exercise sound judgement and display the capacity to provide good care for children." 7 AAC 50.410,(a).

Conclusion: This allegation is found to be valid. Valid means that the evidence shows that the standard was violated.

12. Allegation: Bernie Holland has belittled and used cruel and derogatory remarks when describing a foster child to other foster children, and to other persons who have entered the foster home.

Findings: All foster children interviewed in regard to the allegation stated they had been subject to or witnessed another foster child be subjected to belittlement or derogatory remarks.

Required: ".....in no event may a child in care be subjected to verbal abuse, derogatory remarks about himself or members of his family...." 7 AAC 40.450,(2).

Conclusion: This allegation is found to be valid. Valid means that the evidence shows that the standard was violated.

13. Allegation: Bernie Holland patted a female resident on the bottom, grabbed a female resident around the waist and while "wrestling, grabbed her legs to get a cheap feel".

Findings: A female foster child made this complaint (patting on bottom) in writing. She stated that it happened and that she did not like it. The wrestling incident was observed by another foster child, who thought that Mr. Holland's behavior was inappropriate. This incident (wrestling) is also in a written statement.

Required: "The foster parents must show evidence of being responsible, mature individuals of reputable character who exercise sound judgement and display the capacity to provide good care for children." 7 AAC 50.410,(a).

Conclusion: This allegation is found to be valid. Valid means that the evidence shows the standard was violated.

In addition to the July 23, 1982 allegations, the Division became aware of additional non-compliance items when a standard-by-standard evaluation was conducted on your home from August 4, 1982 to August 6, 1982 for consideration of your application to operate a residential child care facility. The following areas would be in non-compliance under 7 AAC 50.310 to 7 AAC 50.620:

1. 7 AAC 50.410(1) - "An annual license may not be issued without written evidence that all members of the household 16 years of age or older are free from active tuberculosis;"

According to the standard-by-standard evaluation there was no record of written evidence that this requirement has been met. On September 21, 1982 tuberculin clearances dated September 16, 1982 were received for both of you. If there are any other adult, members of the household, additional tuberculin clearances are required.

2. 7 AAC 50.560(b) - "A 5-lb ABS dry chemical fire extinquisher or its equivalent must be charged at all times and strategically located; more than one is required for multi-level homes."

   The standard-by-standard states that there is only a 2 1/2 lb. ABC extinguisher in the basement area which has been previously used as living space for foster children. While the Division has interpreted and implemented the above requirement as meaning that there must be a 5lb. extinguisher on every level of a multi-level home, the Division concedes that your home has two acceptable extinguishers and therefore, meets the requirement for more than one for multi-level homes. Correction is advised, but not required.

3. 7 AAC 50.570(f) - "Firearms must be unloaded and stored in a place inaccessible to young children. Ammunition must be stored separately in a place inaccessible to children."

   It was reported in the standard-by-standard that one hand gun was accessible to children while loaded and that the gun was unloaded in front of the licensing worker. There is no issue with compliance at this time as the gun was unloaded. However, in the future all guns must remain unloaded and ammunition stored separately and inaccessible to children.

EVALUATION AND RECOMMENDATION

All of the above allegations are of a serious nature and all except #3 were found valid upon investigation. The three additional findings in the recent standard-by-standard evaluation are also serious. You have demonstrated a total lack of cooperation with the Division in dealing with the allegations. If corrections have occurred, you have failed to inform the Division. For example, at least six telephone calls to your attorney were necessary to obtain the tuberculin clearances.

Given the pattern of violations, and your refusal to respond or to formulate a corrective action plan, the Division is referring your case to the Department of Law for consideration of license modification, license suspension, or revocation. You will be informed of the Department of Law's recommendation to this Department.

Sincerely,

Lew Reece

Lew Reece
Regional Administrator
SERO - Juneau

Enclosure

LR:JRP:PM:pvk

1772h
Gregory F. Cook
Faulkner, Banfield, Doogan & Holmes
P.O. Box 1150
Juneau, AK 99802-1150
(907) 586-2210

STATE OF ALASKA
DEPARTMENT OF HEALTH AND SOCIAL SERVICES
DIVISION OF FAMILY AND YOUTH SERVICES

In the matter of Bernie and Mary Holland, a Licensed Child Foster Home, Respondents.	)	NO. 4190

CHRONOLOGICAL SUMMARY

1972	Mary and Bernie Holland begin accepting foster children into their home in Juneau, Alaska
1972-1981	H&SS consistently evaluates Holland foster home as one of the best in Alaska.
October 1978	H&SS/DFYS adopts regulations governing foster child care
September 16, 1981	Artie J, a foster child placed by the State at the Holland's home, sexually molests the Holland's 8 year old son. Hollands request State remove AJ from their home and obtain psychological counseling for him.
Mid-October, 1981	Rumors circulate at DFYS that BG Holland will complain to Ombudsman about State's "mishandling" of AJ case. Rumors circulate at DFYS that Bernie Holland uses drugs, beats his wife, molests female employees.
October 31, 1981	AJ, placed in Gisel foster home, rapes and sodomizes young daughter of foster parents. State had obtained no psychological counseling for AJ. H&SS' worries escalate regarding possible complaint to Ombudsman by Mr. Holland.
October 23 - November 9, 1981	Dr. Lobo investigates Holland House, finds rumors unsubstantiated. H&SS Pugh telephones BG Holland and states: "You won't get a license for your group foster home; no money in the budget this year, or next year."

FAULKNER, BANFIELD, DOOGAN & HOLMES
A PROFESSIONAL CORPORATION
601 WEST TENTH STREET - SUITE 300
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November 1, 1981	H&SS employee Danneker tells Father Lobo "If it wasn't for those goddam Hollands this would never have happened." (AJ's rape incident of 10/81 at Gisel home)
November 13, 1981	BG Holland makes formal complaint to Ombudsman re H&SS failures on AJ case.
November-December, 1981	Alaska Foster Parent Association tells BG Holland "If you file a complaint, DFYS will lay formal allegations against you. That's their standard operating procedure in Anchorage."
December, 1981	All foster children removed from BG Holland home. H&SS explains this as merely coincidental and "natural attrition."
June 4, 1982	Holland House group home provisional license signed by Kay Smith, H&SS (license # 235005)
June 4, 1982	Highly laudatory personnel evaluation for Father Lobo received.
June 8, 1982	Father Lobo attends H&SS meeting to discuss Holland group home application. Lobo speaks favorably of Hollands. All administrators opposed to granting Hollands a group home license.
June 10, 1982	H&SS, Mr. Pugh, calls meeting with BG Holland, Reece, Hansen, Monroe, & Walker to reject Holland group home application.
June, 1982	H&SS, Mrs. Borkowski hears Mr. Reece at Regional Office, call BG Holland ("that son of a bitch...".
July, 1982	H&SS, Mrs. Borkowski, hears Reece and Smith say about BG Holland "We'll shut him up and he'll never get his hearing..." (to appeal denial of group foster home license).
July 13 (or 16?), 1982	DFYS decides to suspend Father Lobo
July 14, 1982	Danny H. and Mickey H. accuse BG Holland of bad actions.
July 15, 1982	Evening meeting: H&SS Olson, BG Holland, Dr. Brandaman, Dr. Horchover, Mickey H. Mickey H.

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admits allegations against BG Holland were lies by her and Danny H; only an attempt to show anger, frustration.

July 16, 1982 — H&SS, Mr. Reece, receives written and oral reports from Probation Officers Olson and Anderson clearing BG Holland. Reece orders Danneker to investigate and "get Holland, I've got my orders."

July 16, 1982 — DFYS orders highly unusual investigative procedure: Holland file removed from "Family" side of DFYS (Father Lobo) and permanently given over to "Youth Services" side of DFYS (Danneker, Reece and AJ's Probation Officer, Mr. Wild).

July 23, 1982 — H&SS, Danneker and Tuovinen arrive unannounced at BG Holland home, make allegations against BG Holland of child molestation; call BG Holland "asshole"; threaten to remove all foster children from Hollands. Danneker and Tuovinen present a formal written document accusing the Hollands of thirteen allegations, including child molesting/sexual abuse.

July 28, 1982 — Danneker receives phone call tipping him off that BG Holland is aware of Danneker's misbehavior in Wrangell (sleeping with foster mother, smoking marijuana in ~~State~~ foster parents vehicle while on duty; being caught smoking marijuana in ~~State~~ foster parents vehicle by child he was assigned to supervise as the child's probation officer).

August 5, 1982 — Laurie Vaughn conducts Standard by Standard evaluation of Holland House. Hollands cooperate fully.

August 6, 1982 — H&SS, Mr. Reece, asks Alaska State Troopers to investigate BG Holland to see if BG Holland had access to AJIS system. AST later reports Holland has no access to AJIS.

August 11, 1982 — Alaska State Troopers respond to H&SS Monroe's request for criminal history information on Mary and BG Holland. AST later reports no criminal history exists.

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JUNEAU, ALASKA 99802-1150

August 17, 1982	Investigator Danneker makes final report directly to Mr. Pugh. Report was approved by Reece and finds all allegations uncontradicted. Recommends license revocation.
August 20, 1982	Danny H files affidavit with H&SS stating all charges made 7/15/82 against BG Holland false
September 27, 1982	DFYS officially closes its "investigation" of Hollands. DFYS concludes "most allegations were uncontradicted." Notifies Hollands of conclusions.
November 11, 1982	BG Holland requests and receives meeting with Commissioner Beirne, H&SS to seek settlement. Botelho tells Holland "Danneker bungled the investigation." Botelho tells Holland "Reece doesn't think you have been punished enough."
December 1, 1982	H&SS, Mr. Reece, files formal accusation of BG Holland incorporating by reference thirteen allegations of 7/23/82.
December 2, 1982	H&SS, Mr. Reece, receives letter from Danny H. admitting falsity of charges against Hollands; DH explains reasons for making false charges.
December 3, 1982	BG Holland requests meeting with Mr. Reece to discuss settlement.
December 15, 1982	H&SS, Mr. Reece, receives letters from Mickey H. and Kathy S. admitting falsity of charges against BG Holland.
Dec 20, 1982.	AST investigates BG Holland upon insistance of Lew Reece for interferring with an investigation and divulging confidential information to another foster parent.
JAN 19, 83	Botelho & Pugh ask Holland to meet with them.

Jan meeti

Dec. meeti

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A PROFESSIONAL CORPORATION
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JUNEAU, ALASKA 99802-1150

This paper is a "Chrono" of events that have happened since September 1981

1. In September 1981 we put in an application for a group home license for teenagers.
2. On September 23, 1981 we had a fourteen year old child removed from our home as my wife caught him trying to molest our eight year old son.
3. Mid-October 1981--- Rumors began to spread around the Regional office about our over-reacting towards having that child removed from our home that was trying to molest our son. The P.O. Bob Wild wrote a report to Dr. Tony Mander and called us over-reactors for having the child removed when we did.
4. Further rumors were spreading in the division-- I beat my wife, drink excessively, use drugs, and molest my female children.
5. Dr Alinio Lobo "informally checked" on these rumors from Oct 1981 through November 1981 and found no wrong doing, in fact just the oposite.
6. October 30, 1981---m there was a meeting in the Regional office that was called by Ms. Kay Smith. The meeting was about my proposed group home proposal. In attendance was Dr. Lobo, Ms Kay Smith, Mr. Lew Reece and Myself. During the meeting, my proposal was rejected for group home application and an improved version was asked for.
7. October 31, 1981---m The same 14 year old boy who we had removed from our home was arrested by the Alaska State Troopers for rape and sodomy on a 6 year old girl who was a member of the household the boy was placed in by his P.O. Wild.
8. November 12, 1981-- I recieved a telephone call from Mr. John Pugh the Director of Family & Youth Services while I was at work at the Alaskan Coin connection located at 723 West 10th Street. He called to tell me that no funds existed in the budjet to support my group home. I informed him that I have never asked the department for money and he stated that the department suffered a huge budjet cut and that funds would not be available for the next year for my group home. His conversation than got around to Art Johnson and the incident in our home and he said to me " We've had staff meetings concerning that incident and we've got our asses covered."
9. November 13, 1981-- I filed a written complaint with the State Ombudsman's office of Gross Negligence against the P.O. Bob Wild. I also stated in that same corresspondance that I was told about the no funds for the group home.
10. When Ms. Smith learned of my filing a complaint she stated to Helen Borkowski that " His name is shit in my book" And when Ms. Borkowski asked her who she was talking about she said "That Bernie Holland""He filed a complaint with the Ombudsman's office and now he can't be trusted, he'll probably go running to the Ombudsman every chance he gets".

6-82

→ Investigated by Lobo.

11. Between the dates of November 13, 1981 and December 15, 1981 all the children were removed from our home. Ms Smith testified under oath that this was due to "natral attrition".

12. December 11, 1981--- Mr. Lew Reece wrote a confidential memo to Mr Dave ARnold with a copy to Mr John Pugh telling him of my meeting with them on October 30, 1981 and my group home proposal.

13. January 13, 1982 --- Submitted my new group home proposal and when Ms Smith saw this she stated in from of Ms Helen Borkowski " The nerve--- he'll get his license ~~xxx~~ over my dead body.

14. In March 1982 the division began sending hard core cases to our home as they were then under investigation by the Ombudsman's office.

15. In May 1982 the Ombudsman sent a copy of his findings to Mr. John Pugh and on June 7, 1982 Mr Pugh acknowledged the Ombudsman's report with a letter dated June 7, 1982. By this acknowledgement he was aware of my group home plans.

16. June 4, 1982 Ms Kay Smith signed the license approval form and then went to Central Office and had a meeting with Ms Yvonne Walker concerning my group home license, and in fact gave her a copy of my Program Evaluation & Licensing Recommendation. A meeting was held in the C.O. and my license was denied that day. The same day as approval. Everyone denied this meeting except the secretary Ms Helen Borkowski who stated she recieved a telephone call from Ms Smith who stated she was in Walkers office.

17. June 8, 1982-- a meeting was held in Central Office with John Pugh, Yvonne Walker, Connie Hansen, Alinio Lobo and Pat Monroe. My License was discussed and denied at that meeting. Connie Hansen stated under oath that it was denied at this meeting and Dr Lobo left this meeting with the same feeling. At 11:30 am that same date I was in Dr Lobo's office when he recieved a phone call from Yvonne Walker telling him of the meeting and to bring the important documents for this case. Dr Lobo had my file at that time as it was on his desk because he copied my Standard-By-Standard Evaluation, Program Evaluation & Licensirg Recommendation as well as the CWS 80A for me. Pugh stated he read my file and program evaluation before that June 8, 1982 meeting and had questions for Dr Lobo and Connie Hansen. It's impossible because my file never left the Regional Office until the 9th of June 1982. Pat Monroe called me the afternoon of June 8th and wanted ameeting with me on the morning of the ninth to discuss my license. I set up a meeting for the 10th of June and during that meeting John Pugh denied my license three times. Pat Monroe stated she took my file ' home the night before to study it upon orders from John Pugh and found too

18. June 8, 1982-- at approx. 7:30 pm I saw Dr Lobo at the Juneau Airport and he stated to me that he thought my license was going to be denied from what went on at the meeting he was at earlier that day in C.O. He further stated my license was pulled from the clerks desk.

19. Dr Lobo testified he had possesion of my file untill 5:00 pm on June 8, 1982 because he put pertinant documents back into my file upon his return from C.O.

20. June 7, 1982 John Pugh wrote a letter to the Ombudsman acknowledging reciept of his report.

21. June 14, 1982--- I telephoned Ms. Pat Monroe in the C.O. and asked her for a written denial based upon her office's verbal denial on June 10,1982.

XXXXXXXXXXXXX-

22. Written denial done by Pat Monroe on June 15, 1982--- Signed by Ms Walker.

23. Late June 1982--- The secretary Ms Helen Borkowski overheard [illegible], talk between Mr. Lew Reece and Ms Kay Smith, once it was learned I filed for a hearing concerning this denial of licensure,---- to thwart my hearing by counteracting made up allegations that would silence me once and for all.

24. July 14, 1982-- Danny Joe Harrison was sent back to jail for violation of his probation. He was contacted by Robert Danneker and then was helped to make allegations against us. w/ Danneker

25. July 15, 1982-- Mickey Horschover made complaints against us to her P.O. marlyn Olson--- A meeting was held that evening with her father Dr. Robert Horschover, her psychologist Dr Sonya Brandaman, myself and P.O. Olson. At that meeting she stated that the only reason she was complaining was because she was tired of being punished by the state. And that "Being at Bernie & Mary Holland's house was probably the best thing that ever happened to her because she would probably be dead from drugs or something else". Mr Olson stated he would write his report reflecting we were clear from any wrong doing.

26. During that week the probation department interviewed all residents in my home and on the 16th of July 1982 Mr. Norm Anderson and Mr Marlyn Olson's report to their superior Mr Lew Reece showed no wrong doing in my household and that collusion existed between Mr Danny Harrison and Ms Mickey Horschover. Mr Reece told his P.O.'s that these reports were bullshit and that he had his orders from upstairs and he was going to get that bastard meaning me.

27. I recived a telephone call from an individual telling me even tho I was cleared of any wrong doing, Reece had his orders to get me and that allegations, and this individual told me what they were, would be laided upon me within two weeks.
28. July 23, 1982--- Mr Robert Danneker and Ms Carolyn Touvenen came to my residence and served my wife and I with thirteen allegations. For 1 ½ hours they harrassed us into trying to answer them with thrates of removing the children and at one point Danneker said to me "Just answer the allegations asshole.
29. At 10;42 p m Robert Danneker (friday night) called my house to tell me they had completed part of there investigation and that he would be serving them on me the next morning at 9:00 am . That evening at 6:00 pm two of my foster children walked down to the office at 515 willoughby ave and Danneker told them they had new homes for them.
30/ On Junly 24, 1982 I wrote a letter to Mr Danneker telling him I would not answer his allegations.
31. On July 27, 1982 Mr. Danneker wrote me a letter telling me I was impeeding his investigation and thereby violated three statutes and that I had ten days to answer him in regards to these allegations..

AUG 7 letter

32. On September 27, 1982 the Division found that all these allegations except one was true. It was referred to the Attorney General's office.
33. On September 23, 1982 the Asst A G informed me that no evidence exists confirming these allegations and that he would take no action on my license when the regional office sent it to him and he called Fred Baxter to tell him of this.
34. I attended a meeting with the Commisioner Helen Beirne with the Asst A G and all she wanted me to do was answer the allegations. She stated that Pugh had really trying to get ahold of me. I refused to sit down with him as he lied at the Oct 4-7 hearing about not knowing about my license application and reading the files, on June 8, 1982.
35. On Oct 11, 1982 I filed purjury charges against Pugh and Monroe with the D A's office with documentation against Pugh.

Ombud Findings → 36. Nov Met w/ Beirne
37. JAN 83 Settlement + comprimise Agreement
38. Apr Notice of Hearing
39.

MEMORANDUM State of Alaska

TO: Mr. Lew Reece
Regional Administrator
Southeast Region
Youth Services

DATE: July 16, 1982

FILE NO:

TELEPHONE NO:

FROM: N.L. Anderson
Probation Officer II
Youth Services
Juneau

SUBJECT: Abuse Allegations

On July 14, 1982, I received a phone call from Bernie Holland, foster parent, about Danny Harrison, one of my clients placed in the Holland home. Mr. Holland said he was about have Harrison removed. Harrison was: (1) lying; (2) failing to perform chores; (3) associating with people he had been restricted from; (4) ripping off other foster children in the house; (5) trying to "scam" Mr. Holland on an unemployment check ploy. I asked Mr. Holland to have Harrison report to me at 11:00 a.m.

Harrison called me at 9:30 a.m. to say he could not come at 11:00, that he had a State Office Skills test scheduled at that time. I instructed Harrison to report at 1:00 p.m. instead.

Upon returning to the office after lunch break, there was a note in my box that Harrison had come in at 12:25 p.m. to see me. At 1:15 p.m Mr. Holland called to ask if I had seen Harrison. I told him of the test conflict and that Harrison was a no-show for the new time. Mr. Holland said Harrison was in his room playing his guitar.

I drove to the Holland residence to take Harrison for a urine sample, per court order. One of the people he had been associating with is a rather well known (to this office) cocaine user.

On the way to the testing center, Harrison denied allegations Mr. Holland had made earlier of violating the foster home rules and/or Conditions of Release. Upon arriving at the urine testing center, Harrison would not produce a urine sample, saying the timing was bad and he could not urinate. After 15 minutes, I took him to the Johnson Center. Upon threat of being detained, Harrison produced a more than ample urine sample within 5 minutes. Returning to the Holland residence Harrison continued to deny any wrong doing on his part. I decided to have a meeting with Mr. Holland, Harrison and myself to resolve the matter.

I explained to Mr. Holland that Harrison was denying any wrong doing. Mr. Holland, in Harrison's presence, outlined the problems he was having with Harrison. Harrison then admitted to most of the charges, but tried putting the blame on other foster children in the home or saying "I'm trying to be good, you can't expect me to change overnight". He continued to deny the unemployment check "scam". Mr. Holland then called Officer McCracken, JPD, to whom Harrison had boasted of the "scam". With the three of us listening, McCracken outlined the conversation he had with Harrison:

Harrison had gone to the Unemployment Office and changed his mailing address from Hollands' to General Delivery. Harrison's plan was to put two of the anticipated checks into his restitution savings fund and hold one back, telling Mr. Holland he had not received it. He planned on blowing the money from the third check.

After this conversation, Harrison admitted it was originally his plan to run the "scam", but since hadn't received the checks yet, and therefore, hadn't pulled of the scam, he hadn't done anything wrong.

Mr. Holland I spoke at length with Harrison about the wrongness of this "scam", whether he had pulled it off or not. Harrison maintained that he had done no wrong. At this point, Mr. Holland left the room. I spoke with Harrison for about 5 minutes and then I left. During that 5 minues, Harrison had completely changed his story and, in Mr. Holland's absence, was again denying any of his wrong acts. As I left, I saw Mr. Holland and asked him to call me the next day if he decided he no longer could work with Harrison. Mr. Holland asked me to remove him immediately, that he felt he could no longer work with Harrison.

Since the Juneau Receiving Home in the past has refused to accept Harrison and he has no relatives in Juneau, I transported him to the Johnson Center for detention. The staff at Johnson was busy with adult prisoners, so Harrison and I had to wait in the lobby for 30 minutes.

During this wait, Harrison became more and more agitated about being detained. He started by saying the only reason for detention was a "personality conflict" between he and Mr. Holland. Then he said that he "was going to blow the whistle on Bernie tomorrow in Court". He explained that Mr. Holland had physically abused him saying that Mr. Holland had hit him in the arm with a stick on several occasions. In the most recent, Harrison said he shoved Mr. Holland onto the kitchen table after Mr. Holland struck him, breaking the table. Mr. Holland then jumped up and challenged him to fight. The matter diffused with no further blows. Harrison said Merick Habon, another foster child with the Hollands, could verify this.

On July 15, I conducted a low key interview with Habon. Bob Dannecker, Foster Care Coordinator, was present. Habon said he was quite happy at the Holland home, that he had not been subject to any verbal or physical abuse. (This is significant, since Habon comes from a very abusive natural home and was fearful upon placement that the foster home would function the same way). He said he had never seen Mr. Holland hit Harrison, either with a stick or a fist. He did say the two have engaged in "friendly" wrestling matches and shadow box with one another.

Habon said the kitchen table was replaced with a more sturdy picnic-type table several days ago because the other table was starting to sag towards the middle. (I was in the Holland house 10-14 days ago for a reception for Lt. Governor Miller and can verify the old table was rather wobbly).

In conjunction with allegations Twiggy Horchover made about Mrs. Holland using foul or abusive language, Habon said this had never happened. That it was his experience she was rather quiet. He did say that Mr. Holland does use foul language in the house occassionally.

Habon volunteered that Harrison had been in trouble at the house recently for failing to do chores and for being caught in the girls living area.

At 2:30 p.m. on July 15, a detention hearing was held on Harrison. Following the hearing, I asked Harrison in his attorney's presence to give me a taped statement about the physical abuse. I explained to the attorney that I had an obligation towards the other children placed there if an abusive situation existed. Harrison immediately went into private counsel with the attorney. The attorney then advised me that Harrison's only complaint was of a "personality conflict" between Harrison and Mr. Holland. He explained the "conflict" as being Mr. Holland calling Harrison a "shitbag" and "worthless" in front of the other children.

I told the attorney Harrison had alleged he had been hit with a stick and physically roughed up by Mr. Holland. The attorney again conferred with Harrison and returned to report that Harrison said he had never been hit or otherwise assaulted. Further, Harrison declined to give any taped statement about the "personality conflict".

#12

Complaint registered to: Division of Family & Youth Services
515 Willoughby Avenue
Juneau, Alaska 99801

000239

Regarding: Bernie & Mary Holland Foster Home (Name of Facility) [X] Licensed [ ] Unlicensed

Address: P.O. Box 67, Juneau, AK

Phone: 586-1724

Date complaint received: July 15, 1982

The following complaints were received by the Division of Family and Youth Services regarding the above facility:

1. Allegation that Bernie and Mary Holland yell and direct vulgar and abusive language towards foster children. [7AAC 50.450,(2)]

2. Allegation that Bernie Holland frequently hits foster children with a stick, ruler, yardstick and his hands. [7AAC.50.450,(1)(5)]

3. Allegation that Bernie Holland squirted lemon juice into a resident's mouth, as punishment, and in the process of the resident resisting, used force to open the resident's mouth by holding the jaw and applying pressure. [7AAC 50.450,(1)]

4. Allegation that Bernie and Mary Holland are providing Day Care in their home for from 2-5 children. [7AAC 50.430(b)(d)]

5. Allegation that there is not sufficient space for each foster child to have specific place to keep his/her own personal possessions. [7AAC 50.540(c)]

6. Allegation that the Holland children have played with, destroyed, broken or lost the foster childrens personal possessions. [7AAC 50.420(e)]

7. Allegation that the Holland children are allowed to annoy and "bug" the foster children. When a conflict arises over this issue, that the foster children are verbally abused, and that "the foster children are always wrong, and the Holland children are always right". [7AAC 50.450,(2)(5)]

8. Allegation that adult boarders are living in the Holland foster home and that they are sharing sleeping quarters with foster children. [7AAC 50.420]

NOTIFICATION OF COMPLAINT

Complaint registered to: Division of Family & Youth Services
515 Willoughby Avenue
Juneau, Alaska 99801

000249

Regarding: Bernie & Mary Holland Foster Home [X] Licensed
(Name of Facility)
[ ] Unlicensed

Address: P.O. Box 67, Juneau, AK

Phone: 586-1724

Date complaint received: July 15, 1982

The following complaints were received by the Division of Family and Youth Services regarding the above facility:

9. Allegation that adult boarders participate in the family meetings and trials and are allowed to vote on foster childrens punishment [7AAC 50.410(a)]

10. Allegation that three foster children and one adult boarder sleep in a bedroom with no windows. [7AAC 50.560(e)(3)]

11. Allegation that family meetings are held late at night and often last from 11:00 p.m. to 2:00 a.m., and that foster children do not get enough sleep because of this and that one foster child fell asleep at a meeting and was punished for it. [7AAC 50.410]

12. Allegation that Bernie Holland has belittled and used cruel and derogatory remarks when describing a foster child to other foster children, and to other persons who have entered the foster home. [7AAC 50.450(2)]

13. Allegation that Bernie Holland patted a female resident on the bottom, grabbed a female resident around the waist and while "wrestling, grabbed her legs to get a cheap feel." [7AAC 50.410

STATE OF ALASKA 1984 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date:

REQUEST
Bill/Resolution No.: 588
Title: An Act providing for the award of costs & attorney's fees.
Sponsor: Tischer
Requestor:
Date of Request: 2/9/84

FISCAL DETAIL
Agency Affected: Commerce & Economic Dev.
Program Category Affected: Consumer Protection
BRU, Program or Subprogram(s) Affected: Alaska Transportation Commission

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 84	FY 85	FY 86	FY 87	FY 88	FY 89
OPERATING						
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL		10.0				
400 SUPPLIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS						
800 MISCELLANEOUS						
TOTAL OPERATING		10.0				
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND		10.0				
FEDERAL FUNDS		-0-				
OTHER		-0-				
TOTAL		10.0				

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

If the Bill was amended, the State agency could collect its cost and attorney fees when it prevails thus offsetting the costs when the respondent prevails.

ANALYSIS: Attach a separate page for analysis

Prepared By: Keith H. Miller
Phone: 561-4216
Division: Alaska Transportation Commission
Date: 2/16/84

Approved by Commissioner:
Date: 3/1/84
Agency: Commerce and Economic Development

Distribution (by Agency preparing fiscal note):
Legislative Finance
Legislative Sponsor
Requestor
Office of Management and Budget
Impacted Agency(ies)

12/1/83

ANALYSIS FOR FISCAL NOTE

It is not possible to accurately predict the future fiscal impact of this bill with any certainty. The problems in predicting is that there is no certainty on the number of proceedings that will occur; there is no way of predicting the number wherein the respondent prevails; and there is no way of predicting the amount of fees that would be awarded.

A review of the 283 ATC proceedings that would appear to be covered by this legislation that were initialed in 1983 indicates that four cases might have justified the awarding of costs and attorney fees to the respondent. It should be noted that some of these proceedings are still open.

Ombudsman

John B. Chenoweth

State of Alaska

Reply to:

☐ 840 K Street, Room 203
Anchorage, Alaska 99501
(907) 276-4011

☐ Pouch WO
Juneau, Alaska 99811
(907) 465-4970

☐ P.O. Box 74358
Fairbanks, Alaska 99707
(907) 452-4001

MEMORANDUM

TO: John B. Chenoweth, Ombudsman

THRU: Duncan C. Fowler, Ombudsman Regional Representative

FROM: Bruce Aronson, Ombudsman Assistant

SUBJ: Ombudsman Complaints J82-0689, J82-0728, J82-1136, and J82-1188

DATE: January 28, 1983

Four complaints, J82-0689, J82-0728, J82-1136, and J82-1188, direct the attention of the office to investigatory and licensing practices of the Southeast Regional Office of the Division of Family and Youth Services. Due to the interrelationship of the four, they were examined at the same time by this investigator.

Throughout this memorandum, the names of minors involved in these complaints have not been used, rather initials were substituted for their names.

A summary of my investigation of each complaint is provided below:

J82-0689

Bernie and Mary Holland filed a complaint with this office on July 26, 1982, alleging that the Division of Family and Youth Services (DFYS) is failing to conduct a proper investigation of their foster home license, and is harassing them. Investigation of their complaint has focussed on whether the agency had sufficient reason to initiate an investigation, and whether the investigation was properly conducted.

The Hollands are Juneau residents with a decade of experience in foster care involving Juneau youth. Their complaints were filed with the Juneau office after they were served a NOTIFICATION OF COMPLAINT by officials of the Division's Juneau regional office. The officials advised that the notification, containing 13 allegations, was served in conjunction with information received by division personnel during the preceding 10 day period. Investigation of the allegations was a prerequisite to a decision by division officials to modify or revoke the Hollands' foster home license.

A copy of the notification is attached to this memorandum.

Background:

On July 14, 1982, Norm Anderson, Probation Officer II, transported a minor, D.H., to the Johnson Human Services Center for detention purposes. In a memorandum from Mr. Anderson to Lew Reece, Regional Administrator, DFYS, dated July 16, 1982, Mr. Anderson states:

> During this wait, D.H. became more and more agitated about being detained. He started by saying the only reason for detention was a "personality conflict" between he and Mr. Holland. Then he said that he "was going to blow the whistle on Bernie tomorrow in court". He explained that Mr. Holland had physically abused him saying that Mr. Holland had hit him in the arm with a stick on several occasions. In the most recent, D.H. said he shoved Mr. Holland onto the kitchen table after Mr. Holland struck him, breaking the table. Mr. Holland then jumped up and challenged him to fight. The matter diffused with no further blows. D.H. said M.H. (male), another foster child with the Hollands, could verify this.

Mr. Anderson also reports in this memorandum that M.H. (male) said the kitchen table was replaced with another table, since the older table was sagging. Mr. Anderson confirms that "the old table was rather wobbly." M.H. described Mary Holland as a quiet person, and that she did not use "foul or abusive language." M.H. does indicate that Bernie Holland has used foul language. No written statement from M.H. was taken by DFYS. .

In a memorandum from Candace Canfield, YCIII, Johnson Human Services Center to Marlyn Olson, Probation Officer III, dated July 14, 1982, it was reported that D.H. told both Ms. Canfield and Margaret Pugh, Program Director, Johnson Human Services Center, that Bernie Holland hit him, and that Mr. Holland uses a stick to hit people, including D.H. Also, D.H. and Bernie Holland, on more than one occasion, stayed up late arguing. D.H. closed by saying that M.H. (female) was also hit with a stick, and would confirm this information. Ms. Pugh then called Marlyn Olson and requested Mr. Olson immediately visit the Johnson Human Services Center.

Mr. Olson indicates in his file notes of July 14, 1982, that when Mr. Olson met with D.H., D.H. had already contacted his attorney. Mr. Olson reported that D.H. said his attorney advised D.H. to remain silent. Mr. Olson wrote in his notes that, "He did elude [sic] however two serious problems..." Mr. Olson also indicates that D.H. felt that M.H. (male) and M.H. (female) could corroborate his statements.

In his July 16, 1982 memorandum, Mr. Anderson states:

> On July 15, I conducted a low-key interview with M.H. (male). Bob Danneker, Foster Care Coordinator, was present. M.H. said he was quite happy at the Holland home, that he had not been subject to any

> verbal or physical abuse. (This is significant, since M.H. comes from a very abusive natural home and was fearful upon placement that the foster home would function the same way). He said he had never seen Mr. Holland hit D.H., either with a stick or a fist. He did say that the two have engaged in "friendly" wrestling matches and shadow box with one another.

The last two paragraphs of Mr. Anderson's memorandum describe a meeting with Mr. Anderson, D.H. and D.H.'s attorney. The meeting took place at 2:30 p.m. on July 15, 1982. The attorney (after conferring with D.H.) advised that D.H. had only one complaint, regarding a "personality conflict" between D.H. and Bernie Holland. Anderson also wrote that the attorney said the conflict was that Bernie Holland called D.H. a "shitbag" and "worthless" while other children were present. When the attorney was asked about D.H.'s allegation that Bernie Holland had hit D.H. with a stick, the attorney stated (after conferring with D.H.), "that D.H. said he had never been hit or otherwise assaulted. Further, D.H. declined to give any taped statement about the 'personality conflict'."

Robert Danneker's notes of July 20, 1982, describe a meeting with D.H. At that time, D.H. agreed to give a written statement to Danneker by Thursday, July 22, 1982. A statement was provided by D.H. on July 22, 1982, which said Bernie Holland and D.H. got into a scuffle, and Bernie challenged D.H. to fight. D.H. also said:

> Bernie was sitting on the couch next to M.H. (female) and I was sitting at the table when Bernie and M.H. started wrestling sort of and Bernie was grabbing M.H. around the waste [sic] and her leg's [sic] and it looked more like Bernie was trying to get a cheap feel off her he does this all the time and he has this stick that is about two and a half feet long that he smack's [sic] us with and it hurt's [sic] several times' [sic] I asked him not to smack me but he still does.

D.H.'s assertion is deserving of independent verification. A psychological evaluation (a copy of which is in the DFYS files) prepared by Carol C. Greenough, Ph.D., and dated June 23 and June 25, 1982, cautions:

> . . .
>
> D.H. admits to being very good at lying and convincing himself as well as others of his lies.
>
> . . .
>
> D.H. is very manipulative, using people and situations to create gratification for himself.
>
> . . .

D.H.'s probation officer, Norm Anderson, told this office, on January 3, 1983, that D.H. thought Bernie Holland was mad at him, thus causing D.H. to be sent to the Johnson Human Services Center for detention purposes on July 14, 1982. D.H. became very upset at the prospect of detention, and that he was going to get back at Bernie Holland. On July 15, 1982, Anderson said, he believed that D.H. was lying.

Since D.H.'s credibility is called into question, corroboration of his statements by the two foster children he named, is important. There was no written statement by M.H. (male). However, Mr. Anderson's memorandum indicates that M.H. can only verify that Bernie Holland used foul language on occasion. Notes prepared by Marlyn Olson say that on July 14, 1982, M.H. (female) a foster child at the Holland home, volunteered information to Mr. Olson. A synopsis of Mr. Olson's notes includes the following incidents, as described by M.H. (female):

- Bernie Holland told her to get out of bed, using vulgar language,

- Mary Holland has called her names,

- M.H. was preparing guacamole, and to quiet J.H., M.H. squirted lemon juice into J.H.'s mouth. Mary Holland cursed at M.H. for this,

- Mary Holland cursed at M.H. for being late when called to the main floor of the house, from the basement, and

- Bernie Holland used coarse language upon M.H.'s return to the Holland home, after having run away from the Holland home.

Mr. Olson's notes for July 15, 1982, include the following:

> We [Sonja Brandman, Counselor, and Mr.Olson] discussed M.H.'s (female) behavior over the past three weeks, the fact that it has been very difficult for her having violated curfew, run, caught in several lies, and being on restriction much of the time. Sonja and I agreed that it was difficult to tell when M.H. is being truthful or not.

Shortly thereafter, M.H. (female) provided a handwritten statement of her allegations against the Hollands. M.H.'s statement includes descriptions of the following episodes:

- When M.H. was moving to another room, Mary Holland cursed at her,

- During a family meeting, Mary Holland described M.H.'s performance as a dishwasher, in vulgar terms,

- Mary Holland cursed at M.H. during an incident involving a television,

- Mary Holland, in vulgar terms, told M.H. to be quiet, when M.H. was slow in coming to the main floor of the house from her bedroom,

- When M.H. was making guacamole, one of the Holland children was irritating M.H., so M.H. squirted lemon juice into the child's mouth, and the child started screaming. Mary Holland then cursed at M.H.,

- When M.H. was slow in getting out of bed one morning, Bernie Holland cursed at her to get up,

- Bernie Holland hits D.H. with a stick during family trials and meetings, and

- "When I have my but [sic] up in the air reaching for something and I [have] been hit for no reason twice with [a] stick once with [a] hand and last night befor [sic] he hit me with his hand I caught him first a[nd] said don't hit me what's the reason. he [sic] said boy you [are] lucky I couldn't resist."

Mr. Olson said in his notes of July 15, 1982:

. . .

> I reviewed her statement and found that several of the things she told me yesterday were not addressed and that some of the incidents she wrote about that we talked about yesterday were or so what watered down. . . .
>
> Most of what she put in writing seemed to be directed towards conflicts that she was having with Mary instances in which she says Mary directed fould [sic] language towards her, telling her to shut up, calling her asshole, etc.

Mr. Olson also reported that M.H.'s (female) mother said M.H. seemed to be using vulgar language, and that the Holland home "...was the best placement for her."

The next day (July 15, 1982) a meeting was held with Mr. Olson, M.H. (female) and her father, Bernie Holland and Ms. Brandman. During this meeting, they reviewed the allegations M.H. had made regarding the Hollands. Mr. Olson noted that M.H. lied when discussing what she did one Sunday. Mr. Olson also wrote:

. . .

> We note that the conflicts she brought up involved she [M.H.] and Mary. I think we have to recognize the fact that there could be a great deal of transference going on here, meaning that a lot of the hostility, the anger, the hurt M.H. feels in her relationship with her mother are under difficult circumstances transferred to Mary, her foster mother.

. . .

> Before we closed the meeting and while M.H. was still meeting with us we questioned her in several different ways about whether or not the problems she told us about at the Hollands were so serious that they couldn't be worked out, that perhaps this difficult time will soon pass and once again, things will level out for her. Her response was that things could probably be worked out.
>
> . . .

M.H. (female), during a deposition taken on December 30, 1982, told me that she felt that her problems with Mary and Bernie Holland were resolved during the above described meeting.

From records retained by DFYS, staff then gathered statements from the following people:

- D.H. gave a statement on July 22, 1982, and signed it on August 2. D.H. later retracted this statement, in a written statement dated December 1, 1982.

- M.H.(female) gave a statement on July 22, 1982, and signed it on July 29, 1982. An unsigned statement given on July 23, 1982, was also given by M.H.

- K.S. signed a statement on July 29, 1982, which was originally given on July 20, 1982.

- A.J. gave a statement on July 22, 1982, and signed it July, 29, 1982.

- A.M. gave a statement on July 22, 1982, which was later signed on July 29, 1982.

- M.F. gave a statement on July 23, 1982, which was not signed.

- Gil Lucero gave a signed statement on July 28, 1982.

Allegations against the Hollands:

Based upon the statements that division personnel had received as of July 23, 1982, DFYS prepared a NOTIFICATION OF COMPLAINT. The notification included a description of 13 allegations against the Hollands. Each of the 13 allegations was reviewed by me to determine if there was adequate factual basis for the allegation, and adequate basis to begin and continue investigation of the allegation.

Since an administrative hearing regarding modification of the Holland foster license is being scheduled in the near future, the truthfulness of the allegations is not a matter within the jurisdiction of this office.

Summarized, the allegations provide as follows:

1. This allegation was that the Hollands "yell and direct vulgar and abusive language towards foster children." DFYS officials cited 7 AAC50.450(2).

Information provided by some of the foster children as of July 23, 1982, indicates this allegation had an adequate factual basis and was properly the subject of investigation.

2. This allegation was "that Bernie Holland frequently hits foster children with a stick, ruler, yardstick and his hands," and was presented with a cite to 7 AAC 50.450(1) and 7 AAC 50.450(5).

Information provided by some of the foster children, as of July 23, 1982, indicates this allegation had an adequate factual basis and was properly the subject of an investigation.

3. It was alleged that "Bernie Holland squirted lemon juice into a resident's mouth, as punishment, and in the process of the resident resisting, used force to open the resident's mouth by holding the jaw and applying pressure." The notification referenced 7 AAC 50.450(1).

Information provided by one foster child, as of July 23, 1982, provided sufficient basis for the allegation, and the matter was properly the subject of an investigation.

4. "Allegation that Bernie and Mary Holland are providing Day Care in their home for from 2-5 children," accompanied by reference to 7 AAC 50.430(b) and 7 AAC 50.430(d). As of July 23, 1982, six different sources reported that day care services were being provided for as many as four children.

The two regulations cited by DFYS provide:

> 7 AAC 50.430. NUMBER OF FOSTER CHILDREN PERMITTED IN THE HOME.
>
> . . .
>
> (b) No more than eight children in all are permitted in any one home.
>
> . . .
>
> (d) No more than five children of any age who are unrelated to the foster parents are permitted.

Read together, these two regulations do not appear to have any direct relationship to the issue of day care services. Rather, the regulations seem to describe the maximum number of foster children and other unrelated children a foster home may have (five), and the total number of children, including foster and natural children that may live in a foster home (eight).

Since the allegation mentions day care as well as number of children, DFYS may have been relying on 7 AAC 50.440(a):

> (a) Day care of children and commercial care of the aged, or maternity, or convalescent patients may not be combined with foster care of children without prior approval of the division representative.

As of July 23, 1982, there was not sufficient basis for the allegation that the Hollands were providing day care services for up to and including five children. Pat Monroe, Licensing Coordinator, told me that DFYS always requires foster homes to secure a day care license, when day care services are going to be provided, in addition to divisional approval. Since it appears that a day care license is required only if day care services are provided in the home to more than four children, it does not appear that the Hollands would be required by law to secure a day care license. AS 47.35.020(2). In addition, providing day care services in a foster home, per se, does not appear to violate the foster care regulations cited by DFYS.

There is confusion concerning day care licensing obligations within a licensed foster home, and it is not at all clear that, in citing 7 AAC 50.430, the division made the point it had intended. Taking the cite provided as the basis of my review, it does not appear that the allegation has a sufficient basis. The Hollands might have admitted the truth of the allegation but it is far from certain that the admission or the finding will support revocation of the license.

5. The fifth allegation held that there was not sufficient space for foster childrens' personal possessions. As of July 23, 1982, there appeared to be sufficient basis for the allegation, and there appeared to be an adequate amount of information to warrant the investigation of the allegation.

6. Allegation 6 stated that "the Holland children have played with, destroyed, broken or lost the foster childrens[']] personal possessions." The notification in which the allegation was contained included a reference to 7 AAC 50.420(e), a provision which states:

> (e) The foster parents shall allow the child to bring personal possessions into the foster family home, and allow him to acquire possessions of his or her own, within reason with regard to space and comfort, and safety.

The above cited regulation only directs that personal possessions of foster children may be brought into the home, with certain limitations. That the regulation supports an investigation of the allegation is at best arguable.

7. It was alleged that children of Mr. and Mrs. Holland annoy the foster children, that, when a dispute arises, the foster children are always wrong and the natural children right, and that the foster children are verbally abused. The allegation referred to 7 AAC 50.450(2) and 7 AAC 50.450(5).

The "verbal abuse" portion of this allegation is identical to the one included in allegation number 1 above. The applicable regulation for it appears to be found in 7 AAC 50.450(2).

The other regulation, 7 AAC 50.450(5), states:

> 7 AAC 50.450. DISCIPLINE.
>
> (5) disciplined by shaking or by delivering a forceful blow with a hand or a weapon, however, controlled hand spankings of one to three slaps on the buttocks are allowed when appropriate;

Allegation 7 appears to be partially redundant with the first allegation. In addition, the second regulation cited, 7 AAC 50.450(5), bears no direct relationship to any part of allegation 7. Accordingly, it is not possible to conclude that the allegation is supported by any part of the regulations cited, and I question whether it ought to have been the basis for subsequent investigation and finding.

8. Citing 7 AAC 50.420, it was alleged that "adult boarders are living in the Holland foster home and that they are sharing sleeping quarters with foster children." The applicable portion of this regulation is part (a):

> 7 AAC 50.420 RESPONSIBILITIES OF FOSTER PARENTS
>
> (a) The foster parents shall report to the division representative any significant changes in the household such as employment, housing, or serious illness, that would affect the ability to care for foster children.

There was sufficient evidence from foster children that, in addition to Mary and Bernie Holland, other adults may have been living at the home. Although the allegation refers to these adults as "boarders," the regulations cited do not appear to prohibit boarders, and the use of the term is of no impact on the allegation.

The main point of the allegation is that the Hollands failed to notify the DFYS that additional adults were staying at their home. DFYS apparently believes that the addition of the residents is a significant change impairing the ability of the Hollands to properly care for foster children. As the regulation is written, it is not clear who is to determine, for purposes of reporting, what constitutes "a significant change." In this instance, DFYS should have identified the impairment resulting from the additional adults. The failure to provide this in the allegation suggests that the allegation is flawed, and should not have been investigated.

9. This allegation was that "adult boarders participate in the family meetings and trials and are allowed to vote on foster childrens [sic] punishment." 7 AAC 50.410(a) was cited.

Although there appears to be sufficient evidence for this allegation to be included and investigated, the cited regulation does not clearly indicate such activity is improper. The cited regulation, a provision that describes the qualities of a good foster parent, says:

> 7 AAC 50.410. QUALIFICATIONS OF FOSTER PARENTS AND OTHERS IN THE HOUSEHOLD.
>
> (a) The foster parents must show evidence of being responsible, mature individuals of reputable character who exercise sound judgement and display the capacity to provide good care for children.

If DFYS is concerned about discipline aspects in the Holland home, the applicable regulation seems to be 7 AAC 50.450, which describes standards for discipline.

10. It was alleged that "three foster children and one adult boarder sleep in a bedroom with no windows," citing 7 AAC 50.550(e)(3). This regulation states that each bedroom used by foster children must have a large window exit for emergency use. It does not mention boarders.

Based upon statements from two foster children, there appeared to be sufficient basis for the allegation that foster children were sleeping in a bedroom without a window large enough for emergency use. In addition, there appeared to be enough evidence to warrant investigation of this allegation. The allegation, as prepared by DFYS is poorly stated.

11. It was alleged that family meetings were conducted until late in the evening, and because of the late meetings, foster children were not able to get sufficient sleep, citing 7 AAC 50.410 as authority.

Statements from two foster children indicate there was sufficient basis for this allegation, and that it should have been investigated.

12. The next to the last allegation was that "Bernie Holland has belittled and used cruel and derogatory remarks when describing a foster child to other foster children, and to other persons who have entered the foster home." Reference followed in the notification to 7 AAC 50.450(2), which states:

> 7 AAC 50.450. DISCIPLINE.
>
> The foster parents must be able to show evidence of ability to work with children without recourse to physical punishment or psychological abuse and must be positive in their approach to discipline. Any discipline or control must be appropriate to the child's age and developmental level, but in no event may a child in care be:

> (2) subjected to verbal abuse, derogatory remarks about himself or members of his family, or threats to expel the child from the foster home;

Four foster children gave information which provided the basis for this allegation and the need to investigate it. One of these four foster children indicated the remarks by Mr. Holland were not intentional.

13. The last allegation was "that Bernie Holland patted a female resident on the bottom, grabbed a female resident around the [illegible] and while 'wrestling, grabbed her legs to get a cheap feel.'" The [illegible]ation was supported in the notification by reference to 7 AAC 50.410. (Presumably, the agency meant to cite subsection 410(a) in support of this allegation.)

The applicable portion of D.H.'s July 22 written statement, on which this allegation is based, states:

> Bernie was sitting on the couch next to M.H.(female) and I was sitting at the table when Bernie and M.H. started wrestling sort of and Bernie was grabbing M.H. around the waste [sic] and her leg's [sic] and it looked more like Bernie was trying to get a cheap feel off her he does this all the time . . .

In the course of my investigation, Robert Danneker told me the quoted portion of this allegation came from D.H. He acknowledged, however, that he had provided the phrase regarding sexual contact to D.H. On July 22, 1982,. D.H. provided a second written statement, signed on August 2, 1982, which says in part:

> Danneker: Read a quote from written statement regarding Bernie wrestling with M.H.(female)
>
> D.H.: Said that Bernie grabs her from behind under the arms. Stated that he didn't think Bernie should do this. M.H. got up to go somewhere and was bending over to pull down her pants (said she wears tight pants and had to pull them down when she got up). This was when Bernie swatted her (hit her on the bottom).
>
> Danneker: Have you seen him do this with any other girl in the house?
>
> D.H.: No.
>
> Danneker: What was M.H.'s reaction?
>
> D.H.: Walked away. It appeared to be done in fun but ...

In addition to the obvious inconsistencies in the two statements provided by D.H., the incorrect quotation provided by Mr. Danneker, and the phrase regarding sexual contact which had been provided by Mr. Danneker, there is the July 15, 1982 written statement of M.H. (female), which says in part:

> When I have my but [sic] up in the air reaching for something and I have been hit for no reason twice with [a] stick once with [a] hand and last night before he hit me with his hand I caught him first a[nd] said don't hit me what's the reason. he [sic] said boy you are lucky I couldn't resist.

Read together, the three statements do not seem to accurately describe the same or similar incidents. In addition, M.H. (female) is reported to have had the following conversation with Robert Danneker on July 23, 1982:

> Danneker. Have you ever wrestled with Bernie?
>
> M.H.: He likes to tickle us and stuff like this.
>
> Danneker: When he hugs you is it from behind or from the front?
>
> M.H.: Front. It's mostly when I'm feeling down.
>
> Danneker: Is he sexual towards you?
>
> M.H.: No. He told us he'd never do anything like that. If he wanted to bad enough he has a wife.

When asked if the incident she described in her July 15, 1982 statement included any sexual connotation, M.H. (female) told me on December 30, 1982, "not even, Bernie's not that way." Marlyn Olson, told me on January 4, 1983, that when he took the first written statement from M.H. (female) that although there appeared to be physical contact between M.H. and Bernie Holland, it was probably not of a sexual nature. Finally, Robert Danneker told me on January 10, 1983, that, "There's no sexual connotation in there. I am just saying it's inappropriate behavior." Mr. Danneker also said this allegation did not concern any illegal activities.

From the information provided by D.H., M.H. (female), Marlyn Olson, and Robert Danneker, investigation of allegation 13 should have been terminated after preliminary inquiries by DFYS.

Presentation of the allegations to the Hollands:

The NOTIFICATION OF COMPLAINT was given to the Hollands on July 23, 1982, during a home visit by Robert Danneker, and Carolyn Tuovinen, a Community Care Licensing Supervisor. Both Bernie and Mary Holland have

stated to me that Mr. Danneker and Ms. Tuovinen were pushy and rude during the meeting. As an example of this, Mary Holland recalled that "they pushed themselves through the front door." Another example given by the Hollands, was that Mr. Danneker told Bernie Holland, "hey asshole, just answer the allegations." In addition, the Hollands stated that Mr. Danneker and Ms. Tuovinen threatened to remove the foster children if the Hollands refused to answer the allegations.

Both Mr. Danneker and Ms. Tuovinen denied; that they were pushy, that Mr. Danneker used the language described above, and that they threatened to remove the children if the allegations were not answered. However, Ms. Tuovinen did admit there may have been a discussion about removing foster children, but this was not a threat.

Before leaving the Holland home, Ms. Tuovinen and Mr. Danneker examined the sleeping quarters for the foster children. He told the Hollands that children could not sleep in the basement bedroom if it did not have had an adequate fire escape. As reported in DFYS notes, Ms. Tuovinen and Mr. Danneker also told the Hollands DFYS would be in touch. Ms. Tuovinen told me that DFYS hoped to be in touch the same day as the visit (July 23, 1982).

Later that night, at approximately 10:30 p.m. a call was placed by DFYS to the Hollands to tell them that DFYS would be in touch the next day (July 24, 1982) regarding the allegations, and to inquire if the foster children sleeping in the basement bedroom had been moved to an bedroom with an adequate fire escape. Bernie Holland believes this telephone call was a form of harassment, especially considering the time the call was placed.

The following morning (July 24, 1982), Mr. Danneker visited the Holland home to deliver a letter (detailing three of the thirteen allegations, and having the NOTIFICATION OF COMPLAINT and foster care administrative regulations attached) signed by Ms. Tuovinen and Mr. Danneker and dated July 23, 1982. Mr. Holland claims that Mr. Danneker told him, "I've got my ass covered, so I'm not sweating it." Danneker admitted to me on January 10, 1983, that during this visit of July 24, 1982, he did say that to Bernie Holland.

Refusal to respond to the allegations:

In a letter dated July 24, 1982, Mr. Holland advised Mr. Danneker that the foster children formerly in the basement bedroom, had been assigned to an upstairs bedroom. Mr. Holland refused to answer the allegations, and encouraged DFYS to investigate the allegations. Mr. Danneker responded to the above correspondence by stating in a letter dated July 27, 1982:

> By not responding you have interfered with the Division's authority to supervise and enforce standards as allowed by Alaska Statutes 47.35.010, (1) (2) (3) in regard to facilities. Also, by not replying, the Division may be forced to make a

> determination of the allegations based soley [sic] on the information gathered by the Division without having your input. If this becomes necessary, it will be done.
>
> I am again requesting that a reply to the allegations be submitted. You and your wife, and/or your legal counsel, are requested to reply within ten (10) days of the date of this letter. I look forward to hearing from you.

A person violating any of the statutes or regulations regarding foster care "is guilty of a misdemeanor, and upon conviction is punishable by a fine of not more than $200". AS 47.35.070. In light of the criminal penalty, the reluctance of the Hollands to further discuss the 13 allegations appears understandable. Although DFYS presented the 13 allegations as a licensing issue, any information gathered by DFYS through discussions with foster children and or the Hollands could nevertheless provide the basis for a criminal prosecution.

I briefly reviewed the legal basis for a person suspected of violating a licensing law, to refuse to answer questions during the investigation for fear of self-incrimination. A discussion of this issue is found in State of Alaska, Department of Revenue v. Oliver, 636 P.2d 1156(1981), and several other cases. This review leads me to believe there is no clear answer to the question of when a person may invoke the right against self-incrimination during an investigation, particularly when the investigation initially appears to be non-criminal in nature. As to DFYS saying that refusing to answer allegations is interference of an investigation -- such a belief does not appear to be well founded.

Investigation of allegations completed:

On August 17, 1982, Danneker completed his report on the investigation of the 13 allegations. Danneker found that allegations 1, 2, 4, 5, 6, 7, 8, 9, 11, 12, and 13, are valid. He also found that allegation 3 was not substantiated by the evidence and allegation 10 was valid upon inspection, but had since been resolved.

The report included three problems noted during a standard-by-standard inspection of the Holland home during August, 1982. In closing his report Danneker states:

> EVALUATION AND RECOMMENDATION
>
> All of the above allegations are of a serious nature. Since they were found valid through investigation of the available information, they require immediate correction for the foster home to remain in operation. A serious matter is the Holland's refusal to respond to the allegations. Refusal to respond, either from the Hollands or their legal counsel, has not only interfered with the Division's

> authority to supervise and enforce standards for foster care allowed by statute, but also has demonstrated a lack of responsibility on the part of the Hollands and placed those children entrusted to their care at an unacceptable risk level.
>
> The Hollands have repeatedly violated the foster home regulations and have made no attempt to correct some of the violations, or if they have corrected them have failed to inform the Division. Foster parents who are seriously concerned about the welfare of children would normally be willing to cooperate with the Division to resolve any problems of [sic] misunderstandings that may arise. The Hollands have demonstrated a total lack of co-operation with the Division in dealing with the allegations.
>
> It is therefore recommended that the foster home license for Bernie and Mary Holland be revoked.

Though the report determined that "The Hollands have repeatedly violated the foster home regulations...", identification or explanation of these previous violations was not given in the report.

In a letter dated September 27, 1982, Lew Reece, Regional Administrator, DFYS, told the Hollands that the investigation of the 13 allegations had been completed, and, with the exception to allegation 10, the Hollands had failed to respond to the allegations. The letter notes allegations 1, 2, 4, 5, 6, 7, 8, 9, 11, 12, and 13 are valid. Mr. Reece also said that allegation 3 was not supported by the evidence, and that allegation 10 although true at the time of inspection(July 23, 1982), is now not valid since the foster children have been moved. Mr. Reece closes the letter by telling the Hollands:

> Given the pattern of violations, and your refusal to respond or to formulate a corrective action plan, the Division is referring your case to the Department of Law for consideration of license modification, license suspension, or revocation. You will be informed of the Department of Law's recommendation to this Department.

Related incident:

Mr. Holland also alleges that the DFYS was harassing him by asking the Troopers to investigate an incident involving him and another foster parent. Mr. Holland believes he was the focus of this investigation, and that the investigation centered on Mr. Holland's alleged obstruction of an investigation conducted by DFYS. The relevant facts on this matter are that Mr. Reece, via a memorandum dated December 10, 1982 to 1st Sgt. John Murphy, requested the Troopers investigate how information (concerning another DFYS investigation) from Reece's office was transmitted to Bernie Holland. Mr. Reece was concerned that a state employee was illegally leaking confidential information.

On December 28, 1982, the Troopers concluded that, "...investigation indicated the information regarding the investigation was passed from #6, M.H. (female), to #4, Holland, who called C. and advised him he was being investigated."

M.H. (female) was the source of the information DFYS was investigating in the other matter. Therefore, one person not a state employee (M.H.) gave the information to another person who was not a state employee (Bernie Holland). Because of this, the final report indicates there was no "leak" from the offices of DFYS. Also, the focus of the investigation was not Holland, rather, it was to determine if there was a state employee leaking confidential information. This has been confirmed by 1st Sgt. Murphy.

FINDING:

As to the allegations that the Division of Family and Youth Services failed to conduct an investigation properly, and is harassing the Hollands, the following problems are noted:

1. The referenced regulations in allegation 4 (7 AAC 50.430(b),(d)) do not appear to directly relate to the issue of providing day care services in a home licensed for foster care. Therefore this allegation lacks sufficient legal basis and should not have been investigated;

2. Allegation 6 indicates that 7 AAC 50.420 is the applicable regulation regarding destroyed, lost or broken personal possessions of foster children. However, the regulation only addresses the ability of the foster child to bring possessions into the home, not what happens to these possessions after arrival in the foster home. The allegation does not appear to have sufficient legal basis;

3. At best allegation 7 appears to restate the essence of allegation 1 and therefore is redundant, and the second regulation cited, 7 AAC 50.450(5) bears no known relationship to any portion of the allegation;

4. The Division used the word "boarders" in allegation 8, yet the cited regulation does not prevent boarders from living in a home that is licensed for foster care. Rather, the Division seems to be concerned that the Hollands failed to report "any significant changes in the household". The DFYS should have identified any impairment in the care of foster children resulting from additional adults at the Holland home. This allegation lacks sufficient specificity, and should not have been investigated;

5. Regulation 7 AAC 50.410(a), as cited in allegation 9 (that "adult boarders participate in the family meetings and trials and are allowed to vote on foster childrens [sic] punishment") is not directly related to the allegation. The regulation regarding discipline, 7 AAC

50.450, describes the applicable discipline standards, which should have been used to measure conduct against;

6. The Division used the word "boarder" in allegation 10, yet the regulation only talks about fire safety, and does not mention boarders. Therefore, one has to question the reason for using the word, and the allegation is poorly stated;

7. Based upon the information available to the Division as of July 23, 1982, investigation of allegation 13 should have been terminated after preliminary inquiries and the Hollands so notified in the letter given them on July 24, 1982;

8. Robert Danneker used vulgar language when transmitting a letter to Bernie Holland on July 24, 1982.

Of the above noted problems, numbers 1, 2, 3, 4, 5, and 7, appear to constitute harassment of the Hollands.

The secondary allegation, relating to the later investigation undertaken by the Alaska State Troopers initiated by Lew Reece is not supported.

J82-1136

Bernie Holland filed a complaint with this office on November 18, 1982, alleging that an official of the DFYS improperly ordered employees not to place children in the Holland home for foster care purposes. In a letter from Lew Reece, Regional Administrator, to Mr. Holland dated December 1, 1982, Reece said:

. . .

> On August 25, a certified letter of license non-compliance was sent to you and again you failed to contact us. On September 27, 1982, the investigation was concluded and a copy of the findings was sent to you and the Attorney General's office for further action.
>
> It was only after the investigation was concluded and you had been given approximately 2 months to respond to the Division that I instructed the Juneau District Office to suspend juvenile placements until the alleged licensing violations in your foster home had been resolved.
>
> I would be more than happy to meet with you at your convenience, with our licensing specialist, to assist you in developing a corrective action plan for your foster home. Without this meeting I cannot recind [sic] the instructions I have given the Juneau District Office not to place children in your foster home. [Emphasis added]

At the time of this letter, Holland held a valid foster care license which had not been suspended, modified, denied or revoked.

There is no known regulation which permits the state to "suspend juvenile placements" when "alleged licensing violations" in a foster home holding a valid foster license (which has not been suspended, modified, denied or revoked) have not been resolved to the satisfaction of the Division of Family and Youth Services. State law provides that a foster license may be revoked or modified "if it [the Division] determines that a facility is not in compliance with AS 47.35.010 - 47.35.080 or the regulations adopted under AS 47.35.010 - 47.35.080." AS 47.-35.040(b).

On September 27, 1982, the Hollands were told in a letter from Mr. Reece that several of the allegations were found to be true, yet their license was not modified or revoked at that time. The agency determined the Hollands failed to meet several of the regulations found in 7 AAC 50.310 - 7 AAC 50.620, and because of this the Holland license should have been revoked at that time (see 7 AAC 50.390(a)).

> 7 AAC 50.390. DENIAL OR REVOCATION.
>
> (a) If the division finds that a foster home does not comply with the provisions of 7 AAC 50.310 - 7 AAC 50.620, or the specific terms of a license which has been issued, it shall deny or revoke the license. [Emphasis added]

In addition to 7 AAC 50.390(a), a statutory provision states the following:

> AS 47.35.040. LICENSING.
>
> (e) The department shall give written notice of revocation or modification under (b) of this section 30 days before the effective date of the action. However, if the health or well-being of children or dependent adults is in jeopardy, the revocation or modification action is effective immediately upon the issuance of written notice by the department.

This complaint presents the unusual situation in which the agency has determined the Hollands do not comply with the regulations for foster homes, then their foster home license should have been revoked (per 7 AAC 50.390(a)) and they should have been given 30 days notice of the effective date of the revocation of their license (per AS 47.-35.040(e)). None of this was done. If the Holland's license had been revoked, the agency would not have been able to place children there (See AS 47.35.020).

On this subject, Mr. Reece in a letter to this office, dated January 10, 1983, notes the following regulation:

7 AAC 50.360. SCOPE OF LICENSING.

> The licensing of a foster home by the division does not create an obligation for the state or any child placement agency to support the foster home financially, nor obligate the state or any child placement agency to place or maintain any child in the home. The issuance of a license means only that the home, the family, the physical environment, and services have been evaluated and determined to meet required standards.

Mr. Reece said in the letter:

> Respondents, Bernie and Mary Holland, refused, on numerous ocassions [sic], to respond to the allegations against them, made it difficult, if not impossible, for the development of ongoing professional relationships between the Division and the licensed home, a prerequisite to determine compliance with State law.

FINDING:

Based upon the available evidence, the Division of Family and Youth Services acted without the benefit of clear legal authority when it suspended placement of foster children in the Holland home. For reasons discussed in the report of a later complaint, the agency apparently should have acted to revoke the Holland license, a procedure that would have prevented placement of foster children in the Holland home.

Still, the regulation cited above entails no obligation on the part of the Division to place foster children in an approved home. Placement is discretionary with division personnel. Though the division appears to have been in error in basing its decision on the events preceding Mr. Reece's September 27 letter, the decision to direct no further placements in the Holland home until licensing violations were corrected was one that the division could properly make.

J82-1188

A complaint was filed with this office on December 12, 1982, alleging that the Division of Family and Youth Services erred in either determining the Holland foster home was not safe, or in leaving foster children in their unsafe home. This complaint concerns the Hollands' foster home license.

Since the DFYS did not immediately revoke or modify the foster home license as provided by AS 47.35.040(e), when the health or well-being of the children is in jeopardy, division personnel apparently concluded that the violations found during its investigation were not serious. The notice to the Hollands that they were not in compliance was given on September 27, 1982. The Hollands had 14 days to correct the compliance problems (7 AAC 50.370(2)). If at the end of the period corrective

action had not been taken, any foster child would be removed from the foster home.

As of October 28, 1982, the Hollands had not corrected problems identified in the letter to them dated September 27, 1982. In the case at hand, K.S., a foster child, remained at the Holland home until October 28, 1982, which is approximately two weeks beyond the time allowed for either satisfactory corrective action(s), or removal from the home.

FINDING:

Based upon the available evidence, the Division of Family and Youth Services incorrectly left K.S. in the Holland foster home more than 14 days after the agency determined the home failed to meet the applicable standards.

J82-0728

Ombudsman Complaint J82-0728 was filed with this office on August 11, 1982. The complainant, Jan Still, alleged that DFYS wrongfully took a statement from his 14-year-old daughter concerning allegations involving the foster home where she was living. Mr. Still also alleged that his daughter was not able to have an attorney, nor her parents present, during the interview by the DFYS and that the agency refused to give a copy of the statement to him.

The child at the center of this complaint provided a statement during the later part of July, 1982, to the DFYS concerning the investigation of the Holland foster home license by the DFYS. At that time she was under the custody of the DFYS. The child admitted to this office the statement was given voluntarily to the DFYS, and that she was not coerced. She also said that at the time of the interview she did not request either her parents or an attorney be present. Since the subject of the interview was the foster home where she lived and not possible illegal activities on her part, there was no apparent reason for her to have an attorney or her parents present while being interviewed.

Based upon conversations with Linda Scoccia, Assistant Attorney General, Department of Law, and staff at the DFYS, it appears that the child was initially refused access to the written statement given to DFYS. Only after a subsequent consultation with Ms. Scoccia was the statement released. The child refused to give her parents access to the statement at the time she received it from DFYS. Ms. Scoccia also advised that the statement should not be released to Mr. Still because the statement is considered confidential in nature. When I asked Ms. Scoccia if the statement could be released at the time the parents regained full custody of the child, she said no.

The child in this complaint was considered a "child in need of aid" at the time of the request for the statement. The rights of the parents of a child in need of aid are stated under AS 47.10.084(c):

> When there has been a transfer of legal custody or appointment of a guardian and parental rights have not been terminated by court decree, the parents shall have residual rights and responsibilities. These residual rights and responsibilities of the parent include, but are not limited to, the right and responsibility of reasonable visitation, consent to adoption, consent to marriage, consent to military enlistment, consent to major medical treatment except in cases of emergency or cases falling under AS 09.65.100, and the responsibility for support, except if by court order any residual right and responsibility has been delegated to a guardian under (b) of this section.

From this statute, it seems the parents may not have had the legal right to examine statements provided by a child when the child is in state custody. I checked with Lt. Roger McCoy, Alaska State Troopers, and inquired as to their procedures in this type of case. Lt. McCoy told me that the Troopers will give a child a copy of a statement taken by the Troopers, as well as to the legal custodian of the child. Also, if the parents of a child do not have custody of the child, a copy of the statement will not be given the parents until they regain legal custody.

The anxiety of the father in not being able to examine the statement provided by his daughter is described in his letter to this office, dated October 4, 1982:

. . .

> On about August 10th (9-11) I questioned Mr. Danniker [sic] (social worker) who stated that he had obtained the statement from [Still's daughter] and that I could have a copy. I arrived at Mr. Dannikers [sic] office about 10 minutes after talking to him on the phone and was ushered into an office by Mr. Danniker [sic] and Mr. Reese [sic], his supervisor. Mr. Danniker [sic], who seemed excited, then informed me that he had signed statements from 6 children concerning mental, physical and sexual abuse and that he had told [Still's daughter] that she could move out of the Holland foster home anytime she wanted to. Mr. Danniker [sic] also mentioned an after hours meeting at H&SS with [Still's daughter]. He reported that she was visibly shaking as the result of questioning and pressure from Mr. Holland.

. . .

FINDING:

Based upon the available evidence, the Division of Family and Youth Services did not wrongfully take a statement from a child while investigating allegations of violations of foster home laws. The child in question did not request to have either an attorney or her parents present when giving the statement, and the investigation was not directed at any possible illegal activities of the child. The agency did refuse to give a copy of the statement to Jan Still, and apparently did so properly. (However, the agency could have handled the request in a more sensitive manner, and if the allegations were in fact serious, the child should have been removed from the foster home immediately, and or the license should have been revoked or modified. (See 7 AAC 50.370 and AS 47.35.040(e)). Also, based upon the procedures of the Troopers, the agency could have given a copy of the statement to Still when legal custody of the child was regained.)

RECOMMENDATIONS:

By way of immediate personal remedy to the complainants in J82-0689, I recommend:

Recommendation 1. The Division of Family and Youth Services should prepare and send a written apology to the Hollands concerning the harassment aspects to these complaints, and the foul language used by Mr. Danneker.

The following recommendations should be made to the Division of Family and Youth Services to prevent recurrence of the problems found during the investigation of these complaints:

Recommendation 2. The Division should state as clearly as possible any allegation regarding a foster home. The allegation should have sufficient basis to be stated, and be directly related to a standard established by statute and/or regulation.

Recommendation 3. The Division should refrain from demanding that a foster home secure a day care license unless and until it is clear that the law so requires.

Recommendation 4. The Division should notify the subject of an investigation, at the earliest opportunity, when investigation of an allegation has terminated because the allegation lacks sufficient legal basis or proof, or is shown to be false.

Recommendation 5. In its revision of its office manual, the Division should examine, with the Department of Law, the issue of self-incrimination by a licensee in the course of a licensing investigation, and prepare and include discussion of this issue in the policy and procedures manual.

Recommendation 6. The Division, with the assistance of the Department of Law, should revise the applicable portions of the policy manual and Alaska Administrative Code to guarantee to persons providing statements to the DFYS a copy of that statement upon request.

Recommendation 7. The Division, with the assistance of the Department of Law, ought to examine the legal basis for denying information retained in DFYS files to the parents and legal custodians of children receiving services from the DFYS. A definitive policy on this matter appears to be in order. The policy adopted ought to be included in the policy manual and Alaska Administrative Code.

Recommendation 8. Division personnel should strive to handle matters as identified in Ombudsman Complaint J82-0728 in a sensitive manner. The Division may wish to consider sending a letter of apology to Mr. Still.

Recommendation 9. The Division should review current policy regarding employee discipline and should; if warranted, consider appropriate disciplinary measures for the employee(s) involved with the harassment matters and the use of vulgar language by one employee.

BA:mm
Attachment

STATE OF ALASKA

DEPARTMENT OF HEALTH AND SOCIAL SERVICES
DIVISION OF FAMILY AND YOUTH SERVICES

In the Matter of the Application for Licensure as a Residential Child Care Facility by B.G. HOLLAND Respondent.	License No. 235005 (Denied)

RECOMMENDED DECISION

This proceeding involves the issue of whether the Department of Health and Social Services, Division of Family and Youth Services (DHSS) acted properly in denying respondent Bernie G. Holland's application for a license to operate a residential child care facility in Juneau. The proceeding was initiated by the filing of a statement of issues by DHSS on June 15, 1982. On June 25, 1982, respondent submitted his notice of defense, and on August 9, 1982, DHSS filed an amended statement of issues. The hearing briefs were filed and evidence was taken during a hearing held between October 4th and October 7, 1982. At the conclusion of the hearing, respondent presented an oral closing argument and DHSS, by its attorney, and with the approval of the hearing officer and respondent, submitted a written closing argument.

I. FACTS

While there is disagreement among the parties as to the inferences to be drawn from the facts, there appears to be little disagreement as to most of the primary facts. In September of 1981, Mr. Holland submitted an application for a license for a "foster family group home," to be known as "Holland House." Document 66. On November 19, 1981, respondent was notified by Alinio Lobo, licensing specialist at the Southeast Regional Office (SERO) in Juneau, that the office was looking forward to respondent's submission of an "improved final version of the proposal." Document 16.

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On January 12, 1982, respondent submitted to the SERO Office of DHSS at least two copies of a document entitled "Family Group Home Proposal." Document 403. That document was intended by respondent to be the expanded program description requested by SERO in the letter of November 19, 1981. For some inadequately explained reason, SERO had numerous problems handling the document. The testimony indicated that some of the recipients of the document at SERO thought it was merely a proposal for a program being considered by respondent that was unrelated to the September 30, 1981 application for a license. Consequently, at least one of the copies of the proposal was passed on to the Central Office for informational purposes only. At least one other copy of the proposal was retained in respondent's license application file at SERO. At some time between its submission on January 12, 1982 and June 8, 1982, the proposal disappeared from respondent's application file. Testimony indicated that this disappearance was merely an accident in that the document fell out of respondent's file and into the back of a drawer in a desk at SERO.

In April of 1982, Alinio Lobo, the licensing specialist responsible for reviewing respondent's license application, began a series of on-site visits to the proposed facility. These visits were in furtherance of the completion of a standard by standard evaluation of the proposed facility, the satisfactory completion of which was necessary prior to issuance of a license by DHSS.

On May 20, 1982, new regulations for residential child care facilities in Alaska became effective. This was prior to completion of the standard by standard evaluation by Mr. Lobo. On June 4, 1982, Ms. Kay Smith, supervisor of the Southeast Regional Office, reviewed the Facility Information Summary (CWS 80) presented to her by Mr. Lobo. Document 22. That CWS 80 recommended that respondent be issued a provisional license for the facility applied for, with the license to run from June 15, 1982 to December 15, 1982. On the same date that she reviewed it, Ms. Smith signed off on the document. According to the language next to her signature block, her signature confirmed that she had reviewed the study and that she concurred that "the facility meets specified requirements." According to the testimony

of Ms. Smith and Ms. Connie Hansen of the SERO Office, Ms. Smith left town that same day and instructed Ms. Hansen to sign the program evaluation and licensing recommendation for her as soon as the document was typed. On June 8, 1982, Ms. Hansen in fact did sign the typed version of the program evaluation and licensing recommendation. Document 41. In that document, Mr. Lobo recommended that the application submitted by respondent in September of 1981 be approved and a license issued. By the signature of the Acting Regional Manager, Ms. Hansen, SERO concurred with Mr. Lobo's recommended approval. However, Ms. Smith testified that she actually never read any of the back-up documents supporting the licensing recommendation. Further, Ms. Hansen testified that she also did not read any of the back-up documentation and merely signed the document recommending licensure because Ms. Smith had instructed her to do so.

According to the testimony of Mr. Pugh, the licensing for Holland House came to his attention on June 8, 1982 when Ms. Yvonne Walker informed him that she had received a monthly report from Ms. Smith which indicated, among other things, that SERO was in the process of finalizing the license. According to Mr. Pugh, because he wished to be involved in the licensing of any new facilities, he met on the afternoon of June 8th with Yvonne Walker, Pat Monroe, Alinlo Lobo and Connie Hansen to discuss licensing of Holland House. Also according to Mr. Pugh, the licensing file and proposal of Mr. Holland were brought to him prior to that meeting at his request. (There appears to be some confusion as to when Mr. Holland's file actually was brought to Central Office for Ms. Hansen testified the file was brought to Central Office on June 9th.) On that same day, at Mr. Pugh's request, Ms. Monroe and Ms. Walker searched for and located the license which was about to be issued for Holland House, and that license was thereafter held in abeyance pending a complete review of the licensing file by Central Office.

At the June 8th meeting it was discovered that the file did not contain a completed standard by standard evaluation. Mr. Pugh therefore asked Ms. Monroe to review the file and determine whether the facility complied with

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the new regulations for residential child care facilities which became effective on May 20, 1982. Ms. Monroe completed her review and reported back to Mr. Pugh on June 9th. Her conclusion, concurred in by Mr. Pugh, was that the proposed facility was not in compliance with the new regulations and that the license should not be issued until the facility was brought into compliance.

Mr. Holland was called into the Central Office for a meeting on the morning of June 10th, at which time Mr. Pugh and Ms. Monroe informed Mr. Holland that they could not issue a license for Holland House at that point because it was not in compliance with the new regulations. That same day Ms. Monroe informed him that she would be willing to work with him and assist in bringing his facility and application into compliance with the regulations. After a meeting with Ms. Monroe at which she began to explain what Mr. Holland would have to do before DHSS could issue Holland House a license, Mr. Holland indicated he would have to think about it. A few days later he called Ms. Monroe and requested that DHSS grant or deny his application. Central Office complied with that request and the license application for Holland House was denied. By letter of June 15, 1982, Mr. Holland was informed of the denial and presented with a statement of issues setting forth the reasons for the denial.

At some time after Alinio Lobo's return to Juneau on June 14, 1982, there appeared a completed standard by standard evaluation for the Holland House facility. Testimony as to when this document had been completed was contradictory. It was the testimony of Ms. Monroe and Mr. Pugh that the document was not in the file as of June 9, 1982 and that the only standard by standard evaluation in the file at that time was far from complete. They also testified that Mr. Lobo had stated on June 8th that he was still working on the standard by standard evaluation. Mr. Lobo, however, testified that he had completed the standard by standard evaluation and placed it in the file on or before June 8, 1982.

In August of 1982, Mr. Holland and Mr. Botelho met with me to discuss procedures to be followed in bringing this case to a hearing. At that time

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Mr. Botelho indicated that it was the position of DHSS that no complete standard by standard evaluation assessing the facility's compliance with the new residential child care facility regulations had been done for the facility, and that that in itself was sufficient to justify denial of the license application. It having been my view that it made little sense to go through a long and costly hearing in this case only to reach the conclusion that the license could be denied because a standard by standard evaluation had not been done, I recommended to Mr. Holland that he allow DHSS to conduct a new standard by standard evaluation of his facility. Mr. Holland agreed. At Mr. Holland's request, Ms. Laurie Vaughn of the Fairbanks Regional Office of DHSS performed the standard by standard evaluation. Her conclusion was that the facility was not in compliance with the May 20, 1982 residential child care facility regulations and that the license should not be issued. Document 183.

At some time in August, the "proposal" submitted to SERO by Mr. Holland on January 12, 1982, which, inexplicably, had not found its way to Mr. Holland's licensing file, was brought to the attention of DHSS. According to the testimony of Ms. Hansen, she had seen the document sometime prior to May of 1982, but for some unknown reason, had not considered it part of Mr. Holland's application. She became aware sometime during the summer of 1982 that the document was not in Mr. Holland's licensing file, and she ultimately obtained a copy of it by driving out to Mr. Lobo's home. Evidently, the copy so obtained was an extra copy Mr. Lobo had for his personal use for he testified that there were two other copies which he had placed in Mr. Holland's licensing file. Mr. Lobo was certain that he had placed those two copies in the file, clipping one of them into the file and placing the other one loosely in the file. According to the testimony, a couple of days after obtaining the document from Mr. Lobo at his home, another copy was found in the back of a drawer in Ms. Hansen's desk at SERO. The explanation given by Ms. Smith for this occurrence was that Ms. Hansen has a very messy desk and that the document had plastic covers and must have slipped out of the file and into the back of Ms.

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Hansen's desk drawer. According to Ms. Hansen, she had discussed this document with Ms. Smith sometime prior to May of 1982.

Upon discovery of the group home proposal of January 12, 1982, a copy of the document was sent to Ms. Vaughn for her assessment to determine whether the document changed the conclusion she had reached in her standard by standard evaluation. She then assessed the Holland House application in view of the new document. Her conclusion, however, remained that the Holland House did not satisfactorily meet the new residential child care facility regulations and that the license should be denied.

CONCLUSIONS OF LAW

Each of the parties argues that the other bears the burden of proof in this proceeding. Mr. Holland has cited no support for his assertion. The State has cited Fields v. Kodiak City Counsel, 628 P.2d 927 (Alaska 1981); Thornton v. Commissioner of Department of Labor and Industry, 621 P.2d 062 (Montana 1980), and Country Club Home, Inc. v. Harder, 620 P.2d 1140 (Kansas 1980). None of these cases is instructive on the point. In Fields, the court applied the standard rule that one seeking a variance to zoning requirements has the burden of proof, and the ordinance at issue specifically set forth what one seeking a variance was required to show to be successful. In Thornton and Country Club Home, Inc., the courts were reviewing a final order emanating from an administrative hearing, and in each case the court concluded that the order was presumed to be correct and the burden was on the one challenging the order. In the case at bar, we are not dealing with a final order of an agency following a hearing. Instead, we are trying to derive that order.

A case which Mr. Holland might have cited in support of his position is that of Alaska Alcoholic Beverage Control Board v. Malcolm, Inc., 391 P.2nd 441 (Alaska 1964). There, the court concluded that since under the Administrative Procedure Act the party filing a statement of issues is the moving party and the party seeking the issuance or re-newal of a license is the respondent, the party filing the statement of issues bears the burden of

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proof on the issues raised therein.

In my view, none of the above authorities are very helpful. It is my conclusion that in this case, DHSS has the burden of presenting a prima facie case in support of the claims set forth in the statement of issues. Once it has done so, the burden of proof falls upon Mr. Holland to prove by a proponderance of the evidence that the requested license should be issued. See Mezines, Stein & Gruff, 4 Administrative Law, § 24.02 (1982). This approach seems to me to give proper recognition to both the fact that DHSS cannot arbitrarily refuse to issue a license on the one hand, while on the other hand, given the importance of DHSS' licensing function in protecting society, a presumption of some magnitude in favor of the State's licensing decision should apply.

The arguments of Mr. Holland in support of his case appeared to be as follows. First, because of an incident at his home and his subsequent complaint to the Ombudsman, as well as a number of rumors at the SERO Office concerning occurences at Mr. Holland's facility, DHSS intended to deny Mr. Holland's application regardless of whether his proposed facility complied with applicable regulations. In support of this part of his argument, Ms. Borkowski testified that Ms. Smith had stated, upon reviewing the January 12, 1982 proposal, that Mr. Holland would be licensed over her dead body. Furthermore, Ms. Borkowski testified that Ms. Smith had indicated that she was dissatisfied because of Mr. Holland's complaint to the Ombudsman and that he was essentially a troublemaker.

With the foregoing premise established, Mr. Holland proceeded to argue that someone in DHSS had removed the completed standard by standard evaluation performed by Mr. Lobo and the January 12, 1982 Group Home Proposal from his licensing file for the purpose of assuring that the application would be denied. In response to the fact that DHSS' denial of the license was maintained even after review of those two documents, Mr. Holland argued that the deficiencies which remained in his application were rather minor, DHSS had the authority to waive adherence to those provisions with which Mr. Holland had not complied, and DHSS had exercised that

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discretion in approving the applications of certain other facilities. In Mr. Holland's view, DHSS should have issued him a provisional license for his new facility allowing him a reasonable amount of time within which to bring his facility into compliance with those portions of the new residential child care facility regulations with which he had not yet complied.

The position of DHSS was that, notwithstanding all that occurred prior to August of 1982, once all of the proper documents were in Mr. Holland's file and a standard by standard evaluation was performed, his facility was found not to be in compliance with the new residential child care facility regulations, and therefore the denial of the license application was proper. While provisional licenses have been issued in the past, DHSS' position is that given recent amendments to AS 47.35.055, a provisional license is only appropriate for on-going facilities, not for new facilities, the difference being that denial of a license to an existing facility would cause great hardship for the residents of that facility because it would require closing the facility, while any delay in starting a new facility would not have such an affect. According to DHSS, a waiver of regulation requirements could only be given in certain cases, and then only if an applicant applied in writing for a waiver. In those cases in which field workers addressing other facilities exercised discretion and did not require that certain documents called for in the regulations be submitted with a facility's application the field workers were not complying with the policies of DHSS. I find the argument of DHSS to be persuasive.

No person may operate a residential facility without first obtaining a license to do so from DHSS. AS 47.35.020; 7 AAC 50.003. To obtain a license for a new residential child care facility, an applicant must satisfy the requirements of 7 AAC 50.001 - 7 AAC 50.073. AS 47.35.040. A facility in operation at the time new regulations are passed may continue in operation despite not being in compliance with some of the new regulations if it submits an acceptable plan of correction for those items of the regulations with which it is not in compliance. A new facility may not begin operation until it has satisfied all of the applicable regulations. 7 AAC 50.05(a)(2).

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DHSS is required to issue a provisional license to a new facility "if the facility submits to the Department an acceptable plan for operation that is in conformity with" applicable statutes and regulations. AS 47.35.055(a); 7 AAC 50.013. Under that statute and regulation, a new facility which does not meet all of the regulatory requirements is not entitled to a provisional license. While under 7 AAC 50.023 DHSS possesses the authority to waive certain of the regulatory requirements under certain conditions, an applicant desiring a waiver must make application therefor to DHSS in writing.

The facility for which Mr. Holland is seeking a license is a new facility, and he is therefore required to satisfy all of the regulations applicable to residential child care facilities. He is not entitled to a provisional license while he is bringing his facility into compliance with the regulations. He is also not entitled to a waiver of any of the regulations for he did not apply to DHSS in writing for any such waivers.

A number of witnessess testified that one reason for denying Mr. Holland's license application was that DHSS did not recognize a category of provider called a foster family group home. This reason for denial, however, was not included in the amended statement of issues in support of denial of the license. Furthermore, it appears that DHSS construed the application of Mr. Holland to be for a residential child care facility and evaluated the facility using residential child care facility regulations. For these reasons, this recommended decision will not address the question of whether the absence of a category of care provider specifically matching the title set forth in Mr. Holland's application would, in itself, justify denial of his application.

Turning to the reasons for denial set forth in the first amended statement of issues, DHSS has met its burden of making a prima facie showing that the inadequacies set forth therein did in fact exist. Mr. Holland put on no evidence to the contrary. He also failed to present evidence showing that a provisional license had been provided for any other new residential child care facility in Alaska which had failed to satisfy those regulations set forth in the first amended statement of issues. Furthermore,

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he failed to put on any evidence tending to show that any other new residential child care facility in Alaska had obtained a waiver of any regulatory requirements without submitting a written waiver request. Consequently, Mr. Holland failed to prove that the denial of his license was arbitrary or capricious, or that he was treated differently than other applicants in a similar situation.

While Mr. Holland may consider some or all of the deficiencies in his application identified by DHSS to be of minor significance, I do not intend to pass judgment on either the wisdom or importance of the regulations he failed to satisfy. DHSS is clearly authorized by law to set forth by regulation standards with which care providers in this state must comply and Mr. Holland has not challenged that authority. Mr. Holland having failed to satisfy those standards, I recommend that the denial of his application be upheld. DHSS, at least as of June 10, 1982, appeared willing to assist Mr. Holland in bringing his facility into compliance with the regulations. Mr. Holland chose not to follow this route, and instead demanded that DHSS take action on his license, notwithstanding that it certainly should have been clear to Mr. Holland that the only action DHSS could take at the time was to deny his license.

Though I recommend that the license denial be upheld, something must be said of DHSS' very poor handling of Mr. Holland's application. Were the results not so costly to the State in time and money, and to Mr. Holland both in time and emotional distress, one could refer to the handling of his application as a comedy of errors. The application was submitted by Mr. Holland in September of 1981 and yet no decision was made on the license until June of 1982. Furthermore, the amended version of his group home proposal which SERO had specifically requested in November of 1981, upon receipt by SERO, was not even recognized as being related to his application, notwithstanding the fact that the document bore the exact same title and appearance as did the plan attached to his original application. SERO then evidently lost the document. When SERO finally got around to considering Mr. Holland's application, the Regional Director recommended

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that it be approved, without even reviewing any of the documentation in support of the license. The Acting Regional Director then signed the approval recommendation, also without reviewing any back-up documentation. As it turns out, the kind of facility for which Mr. Holland was applying, and for which SERO recommended licensure, did not even exist in DHSS regulations.

Mr. Holland assigns sinister purposes to all of these events and interprets them in some manner to be a conspiracy against issuance of his license. I do not agree with that conclusion. While Mr. Holland argued that SERO was dead set against issuing him a license, it was in fact SERO which recommended issuance of the license. It appears that all of the events to which Mr. Holland pointed as evidence of a sinister conspiracy were evidence of nothing more than a very poor performance by the employees at SERO. Had the license application been properly handled, it is doubtful this matter would have ever gone to a hearing, and a care provider who has provided high quality services for the State in the past would not be so disillusioned with continuing to serve the State in the future. It would seem to be most beneficial for the State to make every reasonable effort to assist quality care providers in continuing to provide services on behalf of the State. Sadly, no such effort appears to have been made in this case until it was too late.

DATED this 3rd day of December, 1982.

Richard M. Burnham
Hearing Officer

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HB

593

STATE OF ALASKA 1984 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date:

REQUEST
Bill/Resolution No.: HB 593
Title: Fines imposed in Criminal Cases
Sponsor: Liska, Barnes, Bussell
Requestor:
Date of Request:

FISCAL DETAIL
Agency Affected: Alaska Court System
Program Category Affected: Administration of Justice
BRU, Program or Subprogram(s) Affected:

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 84	FY 85	FY 86	FY 87	FY 88	FY 89
OPERATING						
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 SUPPLIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS						
800 MISCELLANEOUS						
TOTAL OPERATING		-0-	-0-	-0-	-0-	-0-
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

ANALYSIS: Attach a separate page for analysis

Prepared By: Richard Barrier
Phone: 264-0545
Division: Alaska Court System
Date: 2/21/84

Approved by Commissioner:
Date: 2/21/84
Agency: Alaska Court System

Distribution (by Agency preparing fiscal note):
Legislative Finance
Legislative Sponsor
Requestor
Office of Management and Budget
Impacted Agency(ies)

12/1/83

COMMITTEES
Vice Chairman — Judiciary
Vice Chairman — Legislative Regulations Review
Resources
Finance Sub Committee on Labor

Alaska State Legislature



House of Representatives

John J. Liska

While in Session
Pouch V
State Capitol
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Home - District 15
Star Route Box 421
Eagle River, Alaska 99577
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February 22, 1984

M E M O R A N D U M

TO: Judiciary Committee

FROM: Representative John J. Liska

REFERENCE: HB 593, "An Act relating to fines imposed in criminal cases"

A. Copy of HB 593

B. Reference Section 2 of HB 593.
We felt it essential to the bill to include this section. President has been set in many places in Alaska Statutes where there are direction or instructions as to the use of funds, even though we can not designate what the funds shall be used for. Reference is made to Sec. 16.05.130 attached.

C. Program Review of other States.
Showing -

1. Funding Source
2. Total Revenues
3. Specific Provisions
4. Experienced insufficient funds
5. Changes in Costs and Funding

D. Letter of support from Violent Crimes Compensation Board.

JJL/tm

Sec. 16.05.120. Disbursement of funds. Upon authorization of the commissioner, disbursements from the fish and game fund shall be paid by the proper state officer on presentation of vouchers signed by the commissioner or an authorized representative, and approved by the proper state officer. (§ 17 art I ch 94 SLA 1959)

Sec. 16.05.130. Diversion of funds prohibited. Funds accruing to the state from sport fishing, hunting, and trapping licenses or permit fees may not be diverted to a purpose other than the protection, propagation, investigation, and restoration of sport fish and game resources and the expenses of administering of the sport fish and game divisions of the department. (§ 18 art I ch 94 SLA 1959; am § 2 ch 41 SLA 1979)

Effect of amendments. — The 1979 amendment substituted "sport fishing, hunting, and trapping licenses" for "sport fishing and hunting licenses."

Opinions of attorney general. — The primary, if not the sole, purpose of this section is to make possible the procurement of federal matching money. A provision for nondiversion of funds is a condition precedent to obtaining federal assistance under 16 U.S.C. §§ 669, 777. 1959 Op. Att'y Gen., No. 10.

A temporary use of money in the fish and game fund under particular circumstances, wherein repayment is to be made pursuant to a contract with the federal government, is not a diversion within the meaning of this section. 1959 Op. Att'y Gen., No. 10.

Sec. 16.05.140. Assent to provisions of federal aid acts. The state assents to the Federal Aid to Wildlife Restoration Act of September 2, 1937 (16 USC, 669-669j), to the Federal Aid in Fish Restoration Act of August 9, 1950 (16 USC, 777-777k), to any amendment, revision or modification of either act, and to any other federal aid act which may be enacted to benefit the state. It is desired that the department participate in the federal aid programs on the same basis as other states. (§ 20 art I ch 94 SLA 1959)

Sec. 16.05.150. Enforcement authority. The following persons are peace officers of the state and they shall enforce this chapter:

(1) an employee of the department authorized by the commissioner;

(2) a police officer in the state;

(3) any other person authorized by the commissioner. (§ 21 art I ch 94 SLA 1959)

Opinions of attorney general. — Where the military does not assign sufficient personnel to enforce fish and game laws on military reservations, state game officials as well might enforce them, possibly by deputizing state game officials as federal marshals, since 10 U.S.C. 2671(c) makes violation of state fish and game laws a federal offense. 1964 Op. Att'y Gen., No. 2.

Since state fish and game laws operate on a federal military reservation, not only as federal law but also as state law, both the federal and state officers may enforce these laws. 1964 Op. Att'y Gen., No. 2.

State officers should have full access to military reservations in Alaska, subject to safety and military security requirements, to enforce laws and manage and harvest fish and game resources. 1964 Op. Att'y Gen., No. 2.

There is no provision in the Alaska Statutes or the Alaska Constitution which would operate to deprive the commissioner

PROGRAM REVIEWS

Funding Source	Total Revenues	Specific Provisions	Experienced Insufficient Funds	Changes in Costs & Funding
ALASKA				
•General Revenues	$ 339,300[1]	None	Yes	•Because of increasing medical costs, inflation and more claims, benefits are increasing but admin. costs are remaining stable.
CALIFORNIA				
•Penalty Assessment	17,075,379	•All felonies and most misdemeanors are assessed a $4 penalty for every $10 fine; 24.38% of these monies go to the victim compensation; the balance goes to victim witness and rape crisis centers	Yes	•This is the first year that the program received no general fund support and was funded solely from fines & penalties. •$2,620,860 worth of claims were carried over from previous year, leaving $10,149,281 for payment of claims in '81-82. Additional spending authority granted to cover $2.5 million shortfall this year.
CONNECTICUT				
•Fines	1,100,000	Fines are assessed as follows: •$15 on all motor vehicle and DUI offenses & misdemeanors •$10 on all felony convictions	No	•Bill pending to allow program to invest funds in short term interest-bearing accounts (presently remains in general fund with interest reverting to that fund).
DELAWARE				
•Fines & penalties •Forfeitures •Restitution	343,317[2]	[redacted] (including traffic violations)	Yes	•Surcharge increased from 10% in 1982.
FLORIDA				
•Fines & penalties	2,200,000[3]	$10 additional court cost and surcharge on all criminal penalties	No	•Court costs & surcharges now will be assessed on criminal traffic offenses. Program estimates that this will provide 50% more revenue.
HAWAII				
•General Revenues	598,000	None	No	•Asked legislature for a $300,000 revolving fund in 1981 but it did not pass.
ILLINOIS				
•General Revenues •Supplemental Approp.	2,300,000	None	Yes	None

These are 1981 figures or rather Program reviews —

PROGRAM REVIEWS

Funding Source	Total Revenues	Specific Provisions	Experienced Insufficient Funds	Changes in Costs & Funding	
•General Revenues •Fines & penalties	$0,000 (Administration) 900,000 (Benefits)	•$15 on class A misdemeanors & all felonies (no traffic violations) •10% of salaries of prisoners on work release	No	•Indiana has had a rollercoaster history of funding: 1978 Appropriation - $200,000 1979 " $1 1980 " $0 1981 - Changed affiliation $1 •Under new legislation, effective July 1982, the program will be self-supporting without any general appropriation. •Also under the new law, interest on the victim compensation fund will revert to that fund rather than to the general fund as in the past.	INDIANA
•General Revenues	259,452	None	No	•Bill pending to assess a penalty fee of $25 on all felonies & $10 on all misdemeanors to augment revenues from the general fund. The state made a projection as to the amount that would be collected & subtracted that much from the general appropriation so that funding remains stable.	KANSAS
•General Revenues •Fines & penalties	366,000	$10 for all offenses for which imprisonment may be imposed	Yes	Legislation establishing fines effective July 15, 1982.	KENTUCKY
•General Revenues •Court Costs	$2,004,763 (only $318,230 was collected thru court cost)	$10 on all conviction	Yes	None	MARYLAND
•General Revenues	903,987	None	Yes	•Legislation pending to allow for payment of some or all of any fine imposed on a convicted offender to the victim of that crime. •Bill also pending to allow for monies collected under Son of Sam provision to revert to the victim compensation fund if no civil action is brought by victim.	MASSACHUSETTS
•General Revenues •Supplemental Approp.	1,900,800	None	Yes	None	MICHIGAN

PROGRAM REVIEWS

Funding Source	Total Revenues	Specific Provisions	Experienced Insufficient Funds	Changes in Costs & Funding	
•General Revenues •Restitution •Refunds •Fines & Penalties	573,089	See "changes"	Yes	•Anticipate that funding will decrease due to state government cutbacks. •Legislature passed surcharge provision stipulating that 10% of a fine (or $40, whichever is greater) on every misdemeanor, gross misdemeanor & felony conviction should be collected & divided up among victim services. An additional $5 is assessed for traffic violations. These funds will, however, be used to reimburse the general fund & thus only those monies in excess of the appropriation will go directly to victim compensation. •Program would like to mandate minimum monetary penalties on offenders. •Would also like to see a % of wages earned by prisoners go to victim compensation.	MINNESOTA
•Fines & Penalties •Restitution	$ 370,814	[illegible]-of fines & bail forfeitures assessed by highway patrol on all motor vehicle violations	No	Established new penalty assessment procedure in 1981 - Prior to that date the victim comp. fund received 6% of all fines for moving traffic violations (local cities & towns).	MONTANA
•General Revenues •Supplemental Approp.	115,000	None	Yes	•Program was set up in 1979 with a 3-year test period established before appropriation would be raised, but there has been no problem in getting supplemental appropriations as needed. •However, because of state fiscal crunch governor requested 3% decrease in victim compensation budget last year and will probably affect similar decreases in the future.	NEBRASKA
•Bond Forfeitures •"Son-of-Sam" monies	70,000	•Bond forfeitures on all felony cases •Half the earnings from "Son-of-Sam" provisions	—	None	NEVADA

PROGRAM REVIEWS

Funding Source	Total Revenues	Specific Provisions	Experienced Insufficient Funds	Changes in Costs & Funding
NEW JERSEY				
•General Revenues •Fines & Penalties	$2,300,000 Approx.	•Court costs of $25 assessed on any simple assault or any crime; in cases of injury or death to a victim the judge can impose any fine up to a max. of $10,000. Money comes directly to victim comp. office & is deposited in treasury account.	Yes	•Court costs imposed effective Feb 6, 1980 but because of problems in collecting fines they did not begin to come in until 1981. Program has hired a court monitor to oversee collection of the penalties; so far in 1982, $600,000 has accumulated. •Proposal pending also to assess a fine of $10 on juvenile convictions, as well as $25 on all convictions for disorderly conduct. •Budget increased by $1 million in 1979 (appropriation).
NEW MEXICO				
•General Revenues	$1,800,000	None	—	None
NEW YORK				
•General Revenues	6,800,000[9]	None	—	•Legislation was proposed in 1982 to allow for the proceeds of sale of abandoned property held by law enforcement to be paid into victim compensation fund. •Also proposed in 1982 a more rigorous restitution statute. •Have also proposed minimum mandatory monetary penalties on persons convicted of crimes. •Also proposing that 1/2 of all monies earned by convicted arsoners be used for victim compensation.
NORTH DAKOTA				
•General Revenues	$311,068[10]	None	No	None
OHIO				
•Fines & Penalties •Supplemental Approp.[11]	5,310,189	•Additional court costs of $3 (see "Changes") are assessed on any person who is convicted of or pleads guilty to any offense other than a non-moving traffic violation.	Yes	•Legislation eff. Nov. 15, 1981 provided that court cost be raised to $10 until June 30,1983 at which time it will revert back to $3 unless action is taken to keep it at higher rate. •In 1980 the legislature specified that court costs apply also to juveniles & that defendant out on bail is required to pay.

PROGRAM REVIEWS

Funding Source	Total Revenues	Specific Provisions	Experienced Insufficient Funds	Changes in Costs & Funding	
•General Revenues (Almin) for period 10/14/81 to 6/82 •Fines & Penalties (Collected thru 2/82) •Restitution Fund	$ 50,000 44,022	•Fines & Penalties are to be assessed on pleas & convictions as follows: $5 - misdemeanors (excluding traffic) $25-non-violent felonies $25-$10,000 (judicial discretion) on violent felonies Project that these assessments will bring in $250,000/year •Restitution fund-statute provides that any monies left in the fund over 3 years will revert to victim compensation fund; expecting to receive $30,000 to $35,000/year	—	None	OKLAHOMA
•General revenues •Restitution	1,761,000 ...	•$1,480,000 benefits, 281,000 admin. •Program is running on $45,000/month less than appropriated •Unique restitution statute allows program to recoup costs from third parties, such as drinking establishments, who may be held responsible for the criminal acts of its patrons & must carry liability insurance	—	None	OREGON
Fines & penalties	$1,861,397 (collected) $1,311,000 (budget)	• $10 fine is assessed on any Title 18 criminal conviction. While this $ goes into the general fund from which the victim compensation receives an appropriation the program is really self-supporting through deposition of court costs.	No	• Anticipate that their revenues will increase because the crime rate is going up.	PENNSYLVANIA

PROGRAM REVIEWS

Funding Source	Total Revenues	Specific Provisions	Experienced Insufficient Funds	Changes in Costs & Funding	
Fines & penalties	$970,723	• Court costs are imposed on criminal convictions as follows: 1. $10 on misdemeanors with penalty of less than 1 year incarceration; 2. $30 on felonies w/ penalty up to 5 years; 3. $50 on felonies w/penalty of more than 5 years	No	None	RHODE ISLAND
Fines & penalties	$1,141,631	• Offenders on parole pay $5/month • Court costs: (1) $21 in Circuit Court; (2) $10 Sessions Court	Yes	• 1980 legislature included convictions in Sessions Court (less severe crimes) in court costs levies. • Taxing provision used to be "crimes against person or property"; now reads any criminal conviction except $500 fine and no incarceration (eff. 1981).	TENNESSEE
Fines & penalties	$1,129,520	• Court costs are assessed as follows: 1. $15 on all felony convictions & 2. $10 on all Class A & B misdemeanors (penalties of more than $200 fine or incarceration)	Yes	• Legislature does not meet again until 1983--at that time they will probably pass bill including Class C misdemeanors in levying fines.	TEXAS
General revenues	$125,000	• Benefits only	Yes	• Considering possibility of setting up special rates; no formal action yet.	VIRGIN ISLANDS
Fines & penalties	$450,673[16]	• $15 court cost assessed on individuals convicted of any felony or Class 1 & 2 misdemeanor (not including drunken driving, disorderly conduct, or traffic offenses)	Yes	• Fee raised to $15 from $10 in 1981. • Have go-ahead from legislature to propose that interest from victim comp. fund revert to that special fund rather than general fund.	VIRGINIA

PROGRAM REVIEWS

Funding Source	Total Revenues	Specific Provisions	Experienced Insufficient Funds	Changes in Costs & Funding
• General revenues • Fines & penalties	$2,500,000	• $50 felony or gross misdemeanor convictions • $25 misdemeanor • Includes juveniles • Need not be convicted of victim-involved crime	Yes	• Old legislation provided for $25 fine or 10% of other fine (whichever is greater) to be assessed on victim-involved felony or gross misdemeanor. • New legislation contains monitoring & enforcement provisions. • New legislation is predicated on proposition that program will be self-supporting.
Fines & penalties	$318,000	• $3 court cost imposed on any felony or misdemeanor conviction, including moving traffic violations. • Anticipate that they will be collecting between $30,000 & $40,000/ month.	—	None
General revenues	$1,788,000	• $1,583,000--benefits $205,000--admin.	No	• 1980 passed victim/witness bill of rights adding separate additional appropriation of $572,000 in '81 for v/w services to be administered by victim comp. program.

WASHINGTON

WEST VIRGINIA

WISCONSIN

DEPARTMENT OF PUBLIC SAFETY

VIOLENT CRIMES COMPENSATION BOARD

POSITION PAPER - HB 593

SUPPORT

February 17, 1984

This bill would impose a 20% penalty on any court fine a defendant is sentenced to pay. An amount equivalent to the 20% penalty collected would be appropriated annually to the crime victim compensation fund.

The Violent Crimes Compensation Board supports this bill. This is similar to legislation passed in other states and in effect makes offenders pay for compensation to innocent victims.

Nola Capp

(Mrs.) Nola K. Capp
Administrator

HB

595

STATE OF ALASKA
THE LEGISLATURE

LEGISLATIVE AFFAIRS AGENCY

POUCH Y STATE CAPITOL
JUNEAU, ALASKA 99811
907 465 3800

M E M O R A N D U M

February 1, 1984

SUBJECT: Retirement benefits for administrative director of courts (Work Order No. 13-1894)

TO: Representative Charlie Bussell

FROM: LHA Linn H. Asper
Legislative Counsel

I have redrafted the above-referenced work order to delete section 3 of the original draft, as you have requested. That section made the Act apply only to an administrative director employed after the effective date of the Act. I included the section for informational purposes because the result indicated in the section is the result that is dictated by the case of Hammond v. Hoffbeck, 627 P.2d 1052 (Alaska, 1981). In that case it was held that an employee's retirement benefits are guaranteed as a matter of contract and constitutional right and that the employee's retirement plan may not be changed in a way that disadvantages the employee without providing offsetting additional advantages. Thus, under the law, the benefits due an incumbent administrator of courts or an administrator who takes office before the Act becomes effective may not be changed in the way that this bill indicates, whether or not the bill contains a section similar to the one that you have requested be removed.

LHA:ojb
J3/038

STATE OF ALASKA
THE LEGISLATURE

LEGISLATIVE AFFAIRS AGENCY

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

MEMORANDUM February 1, 1984

SUBJECT: Retirement benefits for administrative director of courts (Work Order No. 13-1894)

TO: Representative Charlie Bussell

FROM: LHA Linn H. Asper
Legislative Counsel

I have redrafted the above-referenced work order to delete section 3 of the original draft, as you have requested. That section made the Act apply only to an administrative director employed after the effective date of the Act. I included the section for informational purposes because the result indicated in the section is the result that is dictated by the case of Hammond v. Hoffbeck, 627 P.2d 1052 (Alaska, 1981). In that case it was held that an employee's retirement benefits are guaranteed as a matter of contract and constitutional right and that the employee's retirement plan may not be changed in a way that disadvantages the employee without providing offsetting additional advantages. Thus, under the law, the benefits due an incumbent administrator of courts or an administrator who takes office before the Act becomes effective may not be changed in the way that this bill indicates, whether or not the bill contains a section similar to the one that you have requested be removed.

LHA:ojb
J3/038

Sec. 22.25.012. Retirement benefits of administrative director. (a) An administrative director of the Alaska court system appointed under art. IV, sec. 16 of the state constitution is entitled to retirement benefits under this chapter on the terms and conditions applicable to a superior court judge appointed after July 1, 1978, except that an administrative director may receive retirement benefits only with service as administrative director for 10 or more years.

(b) An administrative director who vacates the office of administrative director for any reason and who has not at that time accrued 10 years of credited service under this chapter is entitled to a refund of contributions to the judicial retirement system together with interest.

(c) An administrative director who withdraws from the judicial retirement system under (b) of this section is eligible for membership in the public employees' retirement system (AS 39.35) and shall receive credited service in that system for service rendered as administrative director. To be eligible for membership in the public employees' retirement system under this subsection, the administrative director must contribute to the public employees' retirement system

(1) the amount that would have been contributed if the administrative director had been a member during the period of the membership in the judicial retirement system; and

(2) any contributions for service as administrative director refunded from the public employees' retirement system at the time the administrative director became a member of the judicial retirement system. (§ 7 ch 146 SLA 1980)

Editor's notes. — This section was redrafted by the revisor of statutes to remove personal pronouns in conformity with AS 01.05.031(c) and § 4, Chapter 58, SLA 1982.

Section 50, ch. 146, SLA 1980 provides: "A person who is serving as administrative director of the Alaska court system on the effective date of AS 22.25.012 as enacted in sec. 7 of this Act [July 1, 1980] may receive prior service credit under AS 22.25 for service rendered as administrative director of the Alaska court system before the effective date of AS 22.25.012 if he withdraws from the public employees' retirement system (AS 39.35), receives a refund of his contributions made under AS 39.35, elects to receive service credit under AS 22.25 for prior service as administrative director and makes retroactive contributions for prior service as administrative director including service before July 1, 1978. Retroactive contributions made under this section are calculated at seven percent of the base annual salary of a superior court judge in effect during the period for which contributions are made."

Sec. 22.25.020. Retirement pay. A retired justice or judge eligible for retirement pay shall receive from the date of eligibility until death monthly compensation equal to five percent per year of service, to a maximum of 75 percent, of the monthly salary authorized for justices and judges, respectively, at the time each retirement payment is made. (§ 1 ch 102 SLA 1963; am § 11 ch 83 SLA 1967)

Editor's note. — The obsolete section was derived from § 4, ch. 52, SLA 1979.

Sec. 39.35.158. Administrative director of courts. An administrative director of the Alaska court system who withdraws from the judicial retirement system under AS 22.25.012 is eligible for membership in the system and shall receive credited service in the system for service rendered as administrative director. To be eligible for membership in the system under this subsection, the administrative director must contribute to the system

(1) the amount he would have contributed if he had been a member during the period of his membership in the judicial retirement system; and

(2) any contributions for services as administrative director refunded to him by the system at the time he became a member of the judicial retirement system. (§ 30 ch 146 SLA 1980)

Article 3. Contributions by Employees.

Section
160. Amount of employee contributions
170. Employment contributions mandatory
180. Voluntary contributions by employee
190. [Repealed]
200. Refund upon termination of employment for reason other than death
210. [Repealed]
220. [Repealed]
230. Refund upon death of retired employee
240. Withdrawal of voluntary contributions

Sec. 39.35.160. Amount of employee contributions. (a) While participating in the system each peace officer and each fireman shall contribute five per cent and every other employee shall contribute four and one-quarter per cent of his compensation to the public employees' retirement system.

(b) Repealed by § 6 ch 135 SLA 1980 and § 39 ch 146 SLA 1980. (§ 8a ch 143 SLA 1960; am § 2 ch 235 SLA 1968; am § 3 ch 35 SLA 1969; am § 5 ch 109 SLA 1970; am § 5 ch 159 SLA 1972; am § 2 ch 58 SLA 1979; § 6 ch 135 SLA 1980; § 39 ch 146 SLA 1980)

Effect of amendments. — The 1979 amendment substituted the language beginning "be considered to have agreed" for "pay the appropriate social security contribution" in subsection (b).

The first and second 1980 amendments, retroactive to January 1, 1980, repealed subsection (b).

Editor's note. — Section 2, ch. 123, SLA 1976, purported to amend subsection (a) of this section. Section 25, ch. 123, SLA 1976, provided: "Sections 2 and 3 of this Act become effective on July 1, 1976 if approved by a majority of the votes cast in a special election conducted by the Public Employees Retirement Board to be held among active members of the retirement system. During the conduct of this election, the division shall remain impartial and take no position on the question." The amendment was rejected by the public employees.

Section 1, ch. 58, SLA 1979, purported to amend subsection (a) of this section. Section 9 of ch. 58 provided that the amendment take effect on January 1, 1980, if approved by a majority of the votes cast in a special election conducted before

Sec. 39.35.680. Definitions. In this chapter, unless the context otherwise requires,

(1) "active member" means an employee who is employed by an employer, is receiving compensation for seasonal, permanent full-time, or permanent part-time services, and is making contributions to the system;

(2) "actuarial adjustment" means equality in value of the aggregate expected payments under two different forms of pension payments, considering expected mortality and interest earnings on the basis of tables adopted from time to time by the board;

(3) "administrator" means the person appointed by the commissioner of administration under AS 39.35.050;

(4) "average monthly compensation" means the result obtained by dividing the compensation earned by an employee during a considered period by the number of months, including fractional months, for which compensation was earned; the considered period consists of the three consecutive calendar years during the period of credited service which yields the highest average, or if the employee does not have three consecutive calendar years, his period of credited service; an employee must have at least 115 days of credited service in the last calendar year in order to be used as part of the three consecutive calendar years;

(5) "beneficiary" means a person designated by an employee to receive benefits that may be due from the system upon the employee's death;

(6) "board" means the Public Employees Retirement Board;

(7) "calendar year" means the period beginning on January 1 and ending on December 31;

(8) "compensation" means the total remuneration earned by an employee for personal services rendered, including cost-of-living differentials, but does not include retirement benefits, welfare benefits, per diem, expense allowances, or medical leave or annual leave not used by the employee;

(9) "credited service" means the number of years, including fractional years, recognized for computing benefits that may be due from the system;

(10) "deferred vested member" means an inactive member who meets the five-year credited service requirement to qualify for a retirement benefit;

(11) "dependent child" means an unmarried child of an employee, including one adopted, who is dependent upon the employee for support and who is either (A) under 19 years old or (B) under 23 years old and registered at and attending on a full-time basis an accredited educational or technical institution recognized by the Department of Education; age restrictions set out in this paragraph do not apply to a chil

(13) "early retirement" means retirement for a member who is at least 50 years old and has a minimum of five years credited service;

(14) [Effective until January 1, 1981] "elected official" means a member whose compensation results from personal services rendered as an elected representative and who elects coverage under AS 39.35.125;

[Effective January 1, 1981] "elected official" means a person whose compensation results from personal services rendered to an employer as an elected representative;

(15) "employee contribution account" means the account maintained by the system to record the mandatory contributions of each employee, including interest and adjustments to the account in accordance with AS 39.35.100;

(16) "employee savings account" means the account maintained by the system to record the voluntary contributions of each employee, including interest and adjustments to the account in accordance with AS 39.35.100;

(17) "employer" means the State of Alaska or a political subdivision or public organization of the state which participates in the system;

(18) "fiscal year" means the period beginning on July 1 and ending on June 30 of the following calendar year;

(19) "former member" means an employee who is terminated and who has received a total refund of the balance of his employee contribution account, or who has requested in writing a refund of the balance in his employee contribution account, or who is eligible for a refund under AS 39.35.200(b);

(20) "inactive member" means an employee who is terminated and who has not received a refund from the system or an employee on leave-without-pay status or layoff status;

(21) "member" or "employee"

(A) means a person eligible to participate in the system and who is covered by the system;

(B) includes

(i) active member;

(ii) inactive member;

(iii) vested member;

(iv) deferred vested member;

(v) non-vested member;

(vi) disabled member;

(vii) retired member;

(C) does not include

(i) former members;

(ii) persons compensated on a contractual or fee basis;

(iii) casual or emergency workers or nonpermanent employees as defined in AS 39.25.200;

(iv) persons covered by the Alaska Teachers' Retirement System;

(v) employees of the division of marine transportation engaged in operating the state ferry system who are covered by a union or group retirement system to which the state makes contributions; and

(vi) justices of the supreme court or judges of the court of appeals or of the superior or district courts of Alaska;

(vii) the administrative director of courts appointed under art. IV, sec. 16 of the state constitution unless he becomes a member under AS 39.35.158;

(D) may include employees of the division of marine transportation excluded under (C)(v) of this paragraph provided that

(i) the State of Alaska formally agrees to their inclusion through the process of collective bargaining; and

(ii) no collective bargaining agreement has the effect of obligating contributions made by the state under AS 39.30.150 in the event the state resumes participation in the federal social security system;"

(22) "military service" means active duty service in the armed forces of the United States;

(23) "nonoccupational disability" means a physical or mental condition which, in the judgment of the administrator, presumably permanently prevents an employee from satisfactorily performing his usual duties for his employer or the duties of another position or job which his employer makes available and for which the employee is qualified by training or education, not including a condition resulting from a cause which the board, in its regulations has excluded;

(24) "non-vested member" means an active or inactive member who does not meet the five-year credited service requirement to qualify for a retirement benefit;

(25) "normal retirement" means retirement for a member who is at least 55 years old and has a minimum of five years credited service, or who is any age and has 30 years or more of credited service, or a peace officer or fireman who is any age and has 20 years or more of credited service;

(26) "occupational disability" means a physical or mental condition which, in the judgment of the administrator, presumably permanently prevents an employee from satisfactorily performing his usual duties for his employer; however, the proximate cause of the condition must be a bodily injury sustained, or a hazard undergone, while in the performance and within the scope of the employee's duties and not the proximate result of the wilful negligence of the employee;

(27) "peace officer" [illegible]

STATE OF ALASKA 1984 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date:

REQUEST
Bill/Resolution No.: HB 595
Title: "An Act relating to JRS"

Sponsor: Bussell
Requestor:
Date of Request:

FISCAL DETAIL
Agency Affected: Ak. Court System
Program Category Affected: JRS & PERS

BRU, Program or Subprogram(s) Affected:

EXPENDITURES/REVENUES: (Thousands of Dollars)

Operating	FY 84	FY 85	FY 86	FY 87	FY 88	FY 89
100 Personal Svcs						
100 Rtmnt & Bnfts	-0-	-0-	-0-	-0-	-0-	(111.5)
200 Travel						
300 Contractual						
400 Supplies						
500 Equipment						
600 Land & Struct						
700 Grants, Claims						
700 TRS Match						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	(111.5)
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

General Fund	-0-	-0-	-0-	-0-	-0-	(111.5)
Federal Funds						
Other						
Total						

POSITIONS:

Full-Time						
Part-Time						
Temporary						

SOURCE OF FUNDS TO OFFSET IMPACT OF BILL:

ANALYSIS: Attach a separate page for analysis

Prepared By: J.K. Humphreys J.K. Humphreys Phone 465-4460
Division: Retirement & Benefits Date: 2-22-84

Approved by Commissioner: Lisa Rudd Date: 2/22/84
Agency: Department of Administration

Distribution (by Agency preparing fiscal note):
Legislative Finance
Legislative Sponsor
Requestor
Office of Management and Budget
Impacted Agency(ies)

House Bill 595
Fiscal Note Analysis
Prepared by Division of Retirement & Benefits
Department of Administration

February 22, 1984

IV Analysis: This bill will replace the administrative director of the Alaska Court System in retirement coverage under the Public Employees' Retirement System (PERS). Even though the bill will take effect immediately, the incumbent would be entitled to continued coverage under the Judicial Retirement System (JRS).

We have assumed that the incumbent would remain in his position until June 30, 1988 when he would have approximately 15 years of JRS service. We have assumed that the present annual salary of $79,600 will increase at a rate of 8% per year and that the contribution rates for the PERS and the JRS will remain constant through 1989 at the FY 85 level (13.80% PERS and 109.14% JRS).

The savings shown represent the savings to the State under the JRS less the cost to the State under the PERS.

Position Paper

HB 595

The Department of Administration supports passage of this legislation which would remove the position of Administrative Director of the Alaska Court System from the Judicial Retirement System and replace it in the Public Employees' Retirement System.

Even though it would not affect the status of the incumbent, the bill would ensure that, in future, only judges would enjoy the superior benefits of the judicial system.

J.K. Humphreys, Director, Division of Retirement & Benefits — Date 2/22/84

Lisa Rudd, Commissioner, Department of Administration — Date 2/22/84

HB
619

STATE OF ALASKA
THE LEGISLATURE

POUCH Y STATE CAPITOL
JUNEAU ALASKA 99811
907-465-3820

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM February 16, 1984

SUBJECT: Sectional Analysis of HB 619
Office of Litigation Counsel

TO: Representative Mitch Abood
Chariman, House State Affairs Committee

FROM: Billy G. Berrier
Director
Division of Legal Services

You have requested a sectional analysis of House Bill 619 establishing an office of Litigation Counsel in each house of the legislature.

Sec. 24.20.580 establishes two offices of litigation counsel, one in each houses as permanent staff agency of the legislature. Each is headed by a director appointed by the Legislative Council.

Sec. 24.20.590 provides the directors are appointed for a four year term and may be removed only for cause. It specifies the vote in the legislative council required for removal. It establishes qualification required of each director consisting of five years admission to practice of law in Alaska and admission to the United States District Court for Alaska.

Sec. 24.20.600 prescribes the duties of each office. Each shall represent the house, its members staff and agencies before courts or other tribunals as directed by the presiding officer of the house. They shall jointly represent central agencies and staff as directed by the legislative council.

Sec. 24.20.610 provides the legislative council shall establish the compensation of each director who employs and establishes the compensation of other staff of the office within limits of the budget. It also prohibits partisan political activities of the director and other staff. It

expressly provides that this prohibition does not include expressing private opinions or voting.

Sec. 24.20.620 provides that each director shall make a formal request for funds to the legislative council and the council shall include the amount it decides is needed in the budget it submits to each finance committee under AS 24.20.130.

Sec. 24.20.630 defines the term "council" as used in the bill to mean the Alaska Legislative Council.

*Sec. 2 provides for immediate effective date.

BGB:ojb
J3/108

STATE OF ALASKA 1984 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date:

REQUEST
Bill/Resolution No.: HB 619
Title: An Act establishing an Office of Litigation Counsel for each house of the legislature, e.d.
Sponsor: Rep. Mitch Abood
Requestor: House State Affairs
Date of Request: 3/8/84

FISCAL DETAIL
Agency Affected: Legislative Affairs Agency
Program Category Affected: Legislature
BRU, Program or Subprogram(s) Affected: Legal Services

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 84	FY 85	FY 86	FY 87	FY 88	FY 89
OPERATING						
100 PERSONAL SERVICES		211.0	223.7	237.1	251.3	266.4
200 TRAVEL		40.0	42.4	44.9	47.6	50.5
300 CONTRACTUAL		33.8	35.8	37.9	40.2	42.6
400 SUPPLIES		3.0	3.2	3.4	3.6	3.8
500 EQUIPMENT		12.2				
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS						
800 MISCELLANEOUS						
TOTAL OPERATING		300.0	305.1	323.3	342.7	363.3
CAPITAL		-				
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND		300.0	305.1	323.3	342.7	363.3
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS:

FULL-TIME		4	4	4	4	4
PART-TIME						
TEMPORARY						

SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

ANALYSIS: Attach a separate page for analysis

Prepared By: Lauren Smith, Manager L Smith Phone: 465-3850
Division: Division of Administrative Services Date: 3/9/84

Approved by Exec. Director: M. R. Charney Date: 3/9/84
Agency: Legislative Affairs Agency

Distribution (by Agency preparing fiscal note):
Legislative Finance
Legislative Sponsor
Requestor
Office of Management and Budget
Impacted Agency(ies)

12/1/83

HB 619: An Act establishing an Office of Litigation Counsel in each house of the legislature; and providing for an effective date

ANALYSIS:

Personal Services:	
2 attorneys - permanent full-time - Range 24	
Salary ---------- $107,136	
Benefits ---------- $ 27,806	
Subtotal ---------- $134,942	$134,942
2 legal secretaries - permanent full-time Range 15	
Salary ---------- $ 57,840	
Benefits ---------- $ 18,228	
Subtotal ---------- $ 76,068	$ 76,068
TOTAL PERSONAL SERVICES	$211,010
Travel:	
Travel between Juneau and place of filing; i.e., Anchorage and Fairbanks depending on caseload	$ 40,000
Contractual:	
Includes telephone, postage, equipment maintenance and rental, and space rental	$ 33,800
Commodities:	
Miscellaneous specialized legal supplies	$ 3,000
Equipment:	
One-time charge to set up offices with the following:	
2 secretarial desks and chairs -- $ 1,900	
2 professional desks and chairs - $ 2,100	
2 lateral file cabinets --------- $ 650	
4 guest chairs ---------- $ 1,200	
2 typewriters, calculators ------ $ 2,000	
2 phone systems ---------- $ 3,400	
2 sets statutes ---------- $ 900	
TOTAL FURNITURE & EQUIPMENT $12,150	$ 12,150
TOTAL COST FY85	$299,960

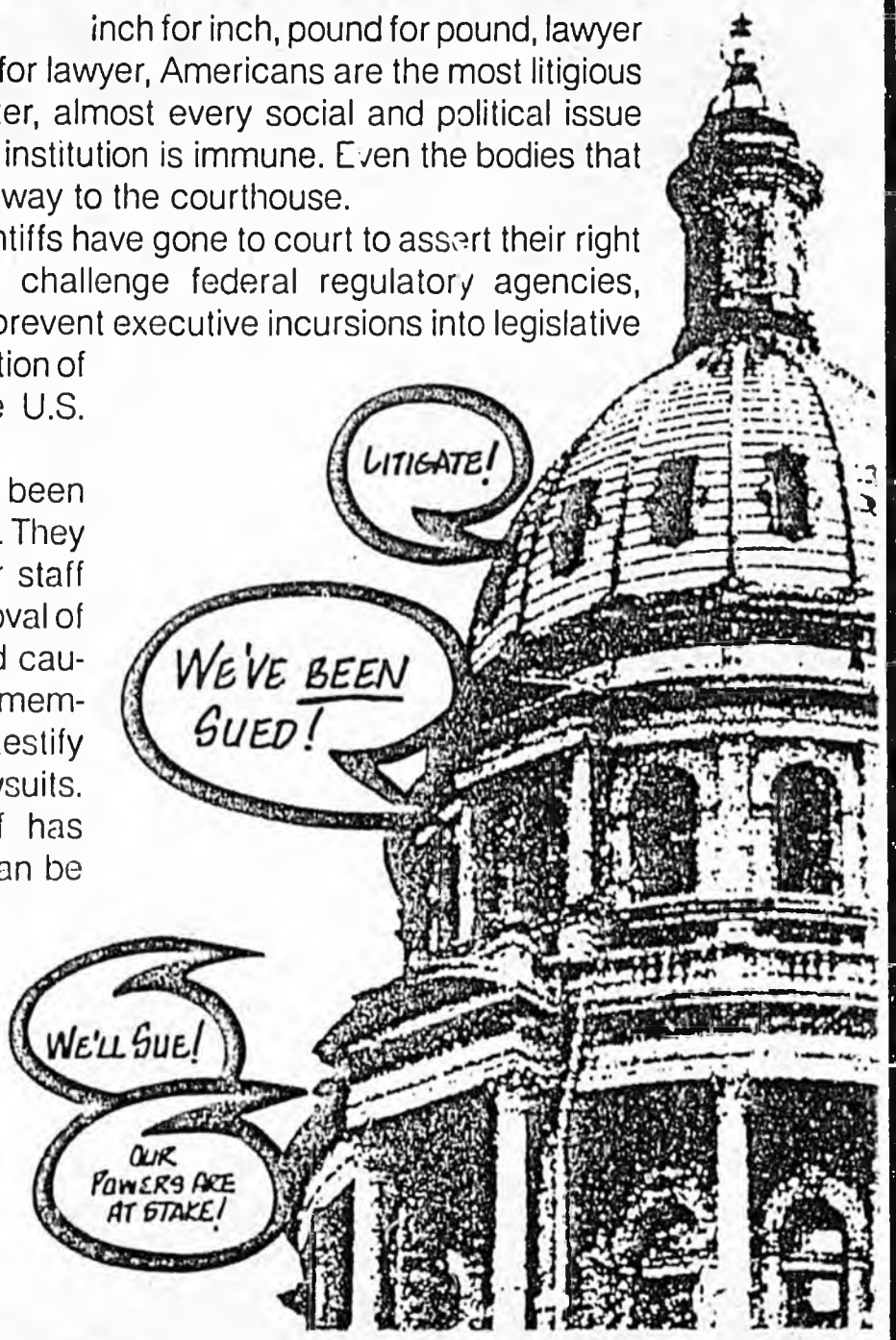
Litigation has become a part of legislative life. In the past, legislatures have relied exclusively on the state attorney general to represent them—as the law often says they must. Now, some of them are hiring their own legislative counsels. That trend is likely to grow.

The State Legislature in Court

inch for inch, pound for pound, lawyer for lawyer, Americans are the most litigious people on earth. Sooner or later, almost every social and political issue ends up in court. No person or institution is immune. Even the bodies that write the laws are finding their way to the courthouse.

State legislatures as plaintiffs have gone to court to assert their right to appropriate federal funds, challenge federal regulatory agencies, regulate the initiative process, prevent executive incursions into legislative prerogatives, and seek clarification of the process for amending the U.S. Constitution.

Legislatures have also been hauled into court as defendants. They have been told to explain their staff hiring practices and justify removal of legislators from committee and caucus positions. Legislative staff members have been subpoenaed to testify before grand juries and in lawsuits. The legislative process itself has been assaulted. No tradition can be taken for granted.



Lanny Proffer

The State Legislature

Legislators have always believed that what was said or done in the legislature could not be questioned elsewhere, and their view was supported by a tradition of immunity that can be traced back to the 17th century. Yet in 1980 the U.S. Supreme Court held that immunity did not apply when the federal government was investigating a state legislator (*U.S.* v. *Gillock* 445 U.S. 360 [1980]). Legislators also believed that their power to raise and appropriate money was absolute. Today, federal judges instruct legislatures under threat of contempt to appropriate whatever sums are necessary to implement judicial decrees.

It is clear from a reading of the state statutes governing the operation of the legislatures and the attorneys general of the states that legislatures were not considered potential litigants. This seems incongruous, since American political theory relies so heavily on the notion of carefully calculated checks and balances. From a contemporary perspective, it seems inevitable that arguments between branches of government occasionally ripen into lawsuits.

Many states have absolute prohibitions against any state agency, institution or individual representing the state or its officials. Arizona statutes designate the attorney general as the only legal counsel for the state. Outside counsel can be retained only with the attorney general's consent. The Connecticut attorney general is specifically directed to defend members of the legislature if any of their official acts are challenged.

In 1966, the Utah Legislature passed a bill that authorized the legislature to retain its own counsel. The attorney general challenged the statute, and it was declared unconstitutional by the state supreme court. Not until 1972, when the legislative article of the state constitution was amended, could the Utah Legislature hire its own attorney.

Six state legislatures have statutory authority to litigate issues of concern to them: California, Georgia, Kansas, Nevada, Oregon and Utah.

Exclusion of the legislatures as litigants may have been based on the assumption that disputes between branches of government should be resolved by the political process rather than the courts. It may also have seemed that any sort of enforcement role, even if only to enforce a legislative prerogative, was inconsistent with the legislative function. Whatever the reason, the courts still have difficulty with legislatures as litigants.

Robert Coldsnow, legislative counsel for the Kansas Legislature, argues that without its consent the legislature has no existence for purposes of litigation. Individual members may sue or be sued; the legislature may not. Certain entities within the legislature have a legal existence; the legislature does not.

This lack of a clear party in interest causes confusion in the courts. When the Colorado General Assembly entered a suit against the Environmental Protection Agency, the U.S. Court of Appeals for the Tenth Circuit ruled that the named members of the legislature could not speak for the state and they lacked the requisite interest or "standing" in the case to be heard as individuals (*Mountain States Legal Foundation* v. *Costle* 630 f. 2d 754 [1980]). To quote the court: "Even if state law permitted the petitioner legislators to press the state's constitutional claims . . . this court should not allow the legislators standing to raise claims that the state itself declines to raise and in fact opposes."

In that case, the legislature and the governor took contradictory positions. Governor Richard D. Lamm instructed Attorney General John D. MacFarlane to enter the case as his advocate. The court ruled that "the attorney general has the exclusive right to represent the state in actions to enforce its interest." It held that the legislators could not represent the interests of the state because to do so would be to pre-empt the power of the attorney general and the governor.

The court either did not understand or chose to ignore the claim that uniquely *legislative* powers were being threatened. Legislatures may not have standing to compel enforcement of the statutes they pass, but they definitely have the requisite interest in preserving legislative authority. Issues that fall into this category include confirmation of certain state officials, ratification of constitutional amendments, and the legislature's investigatory and information-gathering functions.

In *Coleman* v. *Miller* (307 U.S. 433 [1939]), the U.S. Supreme Court made it clear that state legislators challenging the procedure for ratification of constitutional amendments had sufficient interest in the outcome of the case to have their claim resolved. Similarly, U.S. Senator Edward Kennedy (D-Mass.) successfully argued before the

U.S. Court of Appeals for the District of Columbia that an allegedly improper Presidential veto sufficiently infringed the power of the Senate, and his rights as a senator, to establish his standing to sue.

Aside from its opinion in *Coleman* v. *Miller*, the Supreme Court has not ruled on the question of legislator standing. And although the *Coleman* ruling has been cited repeatedly, it has limited value as precedent, since the standing of the legislature was not directly at issue when the Supreme Court decided the case. Their comments on the legislators' right to sue were superfluous to the decision.

Traditionally, legislatures have relied on the state attorney general for legal assistance. There are only a handful of states where the attorney general is not specifically directed to give legal opinions to the legislature when asked to do so. In some states, such as Oklahoma and South Carolina, the attorney general is available as a bill drafter for the legislature. In New Hampshire, the attorney general can be asked for legal advice in addition to drafting assistance.

In some cases, however, relying on the attorney general to advocate and defend legislative priorities is unwise. Worse still, the attorney general may be confronted with a conflict of interest. In the Colorado case cited above, where members of the legislature challenged the Environmental Protection Agency, and in Pennsylvania, where the legislature challenged the power of the governor to spend federal funds without a legislative appropriation (*Shapp* v. *Sloan* 391 A.2d 602), the attorney general opposed the legislature. In both cases, the legislature retained outside counsel and was ably represented. Nevertheless, these examples show that legislatures cannot rely on the state attorney general to represent their interests in all cases.

Congress has encountered similar problems in disputes with the executive branch. A case now on appeal to the Supreme Court (*Chada* v. *Immigration and Naturalization Service* [No.-1932]) tests the validity of the legislative veto. The U.S. Department of Justice, on behalf of President Reagan, argues that the legislative veto is an unlawful intrusion by Congress into an executive function. The recently established Office of Legal Counsel in the Senate is arguing the Senate position.

From time to time, every legislature faces an issue that requires it to assert its position in court. If these occasional lawsuits were the only basis for legislative counsel, it might be economic to retain outside counsel on a case-by-case basis. But many legislatures have found that legal questions now arise almost daily.

Legislatures have become big enterprises with large budgets, broad powers and extensive responsibilities. They operate in a highly charged, contentious atmosphere. One would have to search to find any official legislative action that did not raise one or more legal questions. In similar circumstances, a private concern would have a battalion of lawyers. To be effective, the legislature must not only defend its prerogatives from all sides, but also exercise them to the fullest extent. A power not asserted is abdicated.

The legislative power to investigate, which lies at the heart of the lawmaking function, has been the subject of entire texts and innumerable court cases. The legislatures of Kentucky, Montana, Nebraska, and other states without statutory authority to litigate, *do* have express authority to go to court to enforce their subpoena power.

Not all threats to the legal authority of a legislature necessarily arise in the state or federal courts of the home state. Federal precedent applies in all cases under the federal system. A decision in a distant federal court may have profound effects beyond the parties to the litigation.

As mentioned earlier, the power of the Congress to veto certain administrative rules of federal agencies is before the U.S. Supreme Court. The same concerns that prompted Congress to provide for review of agency rules and regulations have been apparent in state legislatures, some of which have established procedures to review the administrative rules of state agencies. If the Supreme Court curtails congressional power in this area, attacks on similar state statutes are inevitable. Thus it will be important for the legislature to be heard even when it is not a party to the litigation.

The law recognizes the importance of such third parties and provides for their participation as *amicus curiae* or

In some cases, relying on the attorney general to advocate and defend legislative priorities is unwise. Worse still, the attorney general may be confronted with a conflict of interest.

"friend of the court." An institution, group or person with an interest in the outcome of a case may file a brief with the court, explaining its point of view and bringing to the court's attention the potential effects of the decision.

State attorneys general regularly join their colleagues in other states as *amici* in lawsuits when the outcomes might affect them. A recent Supreme Court case raised the question whether a local government might be subjected to punitive damages under a U.S. civil rights law (*City of Newport* v. *Fact Concerts, Inc.* 49 USLW4860 [1981]). Many states intervened in the case as *amicus curiae* and the Court ruled that punitive damages could not be imposed upon the city. Because few legislatures have offices set up to handle such tasks, their participation in such cases is limited.

In states where the legislature has no legal counsel of its own, the main difficulty is that an outside counsel, who has been retained for a limited time and purpose, may not understand the nuances of the legislative process. Legislatures with legal counsels are able to accumulate legislative

States with In-House Legislative Counsels

State	Statutory Authority	Agency Approving Litigation	Scope of Litigating Authority	Other Duties	Authority to Retain Outside Counsel
California	Annotated California Code 10200 et. seq.	Joint Rules Committee or legislature by resolution.	No specific limitation other than authorization by Joint Rules Committee.	Bill drafting; and advice and counsel to legislature, drafting and advice for governor and state judges, code revision, preparation of initiative measures; statutory indexing and codification.	Yes
Georgia	Georgia Code Annotated 46-1203	Legislative Services Committee.	"Represent the interests of the Legislative branch in matters involving litigation."	Bill drafting; assist committees, advisory opinions; statutory and code revision; research.	Yes
Kansas	Kansas Statutes Annotated 46-1224	Legislative Coordinating Council when legislature is out of session. Either house by resolution when legislature is in session.	May represent legislature in "any cause or matter." Legislative Council has same mandamus and quo warranto powers and standing as attorney general.	Advisory opinions, counsel to special committees of legislature; provide investigative assistance upon request of committee chairpersons.	Legislative Coordinating Council may provide legal, investigative and clerical assistance to legal counsel as needed.
Nevada	Nevada Revised Statutes 218.690 et. seq.	Legislative Commission.	"To protect the official interests of the legislature or one or more legislative committees."	Bill drafting; advisory opinions; code revision; digest and annotate Supreme Court opinions; service on Commission on Uniform State Laws.	May contract for necessary services.
Oregon	Oregon Revised Statutes 173.111 et. seq.	Legislative Counsel Committee.	"To protect the official interests of the legislative Assembly, one or more committees, or one or more members."	Bill drafting, research; assist in preparation of initiative measures; code revision.	Yes
Utah	Utah Revised Statutes 36-12-14	Legislative Management Committee.	"Represent the legislature, any of its committees or subcommittees, or the professional legislative staff in cases or controversies before courts, administrative agencies and tribunals.	Bill drafting; advice and counsel to legislature; code revision; bill status.	No statutory authority.

experience and knowledge to complement legal experience. This experience and knowledge can be brought to bear in litigation even if outside counsel is retained for the actual trial.

Six state legislatures have statutory authority to litigate issues of concern to them: California, Georgia, Kansas, Nevada, Oregon and Utah. In each case, the selection of the legal counsel is nonpartisan and professional. The Kansas statute describes the qualifications and the selection process in detail. The Nevada statute requires membership in the state bar and expertise in "political science, parliamentary practice, legislative procedure, and the methods of research, statute revision and bill drafting."

Before the counsel in any state can initiate an action or enter his appearance in a lawsuit, the legislature must consent. In most states, the legislative counsel is a part of the legislative service agency and the supervising committee of legislators must give its consent before any action can be brought.

The legislatures have given their counsels broad power to litigate. The Oregon statute is typical: Legal action may be brought "when deemed necessary or advisable to protect the official interests of the legislative assembly, one or more legislative committees, or one or more members of the legislative assembly." The authorizing legislation for the Georgia counsel is broad and succinct: "to represent the interests of the legislative branch in matters involving litigation." Georgia and Oregon specifically provide for outside counsel as necessary; presumably the other states would permit such counsel as well if the particular litigation called for it.

Legislatures with offices of legal counsel have managed to get a lot of mileage out of them. Their duties, as spelled out in each state's enabling legislation, include far more than litigation. All are asked to provide legal counseling to legislators and legislative committees. Most are involved with bill drafting and service to investigative committees. The Nevada legislative counsel works with the National Commission on Uniform State Laws. In Oregon and California, the counsels are involved in the initiative processes. California, Utah and Nevada specifically assign code revision duties, including the development of recommendations for improvement and reform. Other states, such as Georgia and Nevada, assign "such other authority and duties as the committee may provide."

The office of legal counsel in the legislature is essentially analogous to that of the general counsel in a large corporation. Although there may be lawyers in many divisions, the ultimate responsibility in legal matters resides in the office of the general counsel. All litigation is channeled through that office.

Some states have stopped short of creating an official legislative counsel but have assured that they have other knowledgeable counsel on legislative issues. New Jersey is an example. The New Jersey Senate and General Assembly retain majority and minority counsel who spend a substantial portion of their time representing the respective legislative bodies. During the remainder of their time they carry on the private practice of law. Their legislative responsibilities keep them current on legislative issues and the private practice gives them regular and continuous courtroom experience. These counsels do not, however, handle bill drafting and other legislative chores assigned to in-house counsels.

This kind of legal representation provides more flexibility for the leadership, according to Robert Smartt, deputy director of the New Jersey General Assembly. "Issues sometimes arise where only the majority has a substantial interest at stake," he said. "In those instances, counsel to the majority can respond quickly and effectively." Lawrence Marinari, majority counsel to the General Assembly, sees litigation as a growth industry in the state. "The more modernized and co-equal the legislature becomes," Marinari said, "the more often it is likely to be drawn into lawsuits. Representing the legislature could become a full-time job."

Perhaps the most important function of the legal counsel in a legislature is also the most subtle. Creation of the office signals to the other branches of state government and to the public at large that the legislature is prepared to defend its prerogatives and assert its powers to the fullest extent possible.

The legislature must be prepared to defend itself as an institution when it is challenged in a court of law. As a co-equal branch of government, the legislature must be prepared to use the courts as a sword as well as a shield. When necessary, legislatures must bring actions as well as defend them. They must also extend their vision beyond their own states to federal courts throughout the nation, and, as issues warrant, to let those courts know how their rulings might affect the states.

If there was ever a time when the legislature was a cloistered institution, that time has passed. In tomorrow's state legislatures, there may be fewer cries of "there oughta be a law"—and more of "I'll see you in court."

Lanny Proffer is counsel to NCSL.

A SURVEY OF STATES
LITIGATION TECHNIQUES SUMMARY

OREGON

Legislative litigation is handled by The Legislative Counsel Committee composed of 12 attorneys. None are specifically or exclusively assigned to this function or to particular factions in the legislature. The committee spends the majority of its time drafting legislation (80%) and writing advisory opinions. The committee budget for 1983-85 is $2,229,711.00 which covers all functions of the office. Only twice in the past ten years has there been occasion to act in a litigious capacity; however, in both cases the committee only did the research and outside counsel was retained to argue the case in court at a cost of $5,000.00.

UTAH

The Office of Legislative Research and General Counsel is a professional staff office that provides support to the legislative committees and individual legislators on a non-partisan basis. The staff is composed of a diversified group of both attorneys and non-attorneys including an economist, a statistician, etc. The 11 full-time attorneys in the force have as their primary purpose drafting legislation. At the time of writing the office had very infrequently been involved in actual litigation on behalf of the legislature, as there had been no demand. Outside counsel has been retained in all instances of major litigation (at a cost of $20,000.00 for the last one), despite statutory authority for the Counsel. The operating budget for the office is around $1.3 million.

GEORGIA

The Office of Legislative Counsel was created under the jurisdiction of the Legislative Services Committee in 1959 to take the place of the old bill-drafting unit of the Attorney General's office. The office is duty-bound by statute to provide bill-drafting and to advise and counsel all members of the legislative body on legislative matters with no regard to party ties. Furthermore, it is authorized to provide for Code revision, to perform research, and to provide legal services for the legislative branch and represent the interests of that branch in matters involving litigation. The provision for legislative litigation has only been exercised twice since its creation, it having been put in more as a safe-guard than anything else. Therefore, the majority of its work does not involve litigation.

SEE APPENDIX I.

KANSAS

The Legislative Counsel is composed of one attorney who performs litigation services and others duties as directed by the Legislative Coordinating Council (a bi-partisan council of the legislative leadership--President of the Senate, Speaker of the House, and Majority and Minority leaders of both Houses). The LCC supervises the Counsel in representing all factions of the legislature. When political conflicts arise, as they sometimes do, the office of Legislative Counsel is not involved. Most of the cases, however, involve the Legislature as an institution and its prerogatives as the legislative branch of the state government. (Many of the matters arise out of the legislative-executive conflicts which have occurred in great frequency in the past few years.) The annual budget is $65,000.00 and one secretary is employed on a full-time basis. No outside counsel is ever retained. Just the existence of the office has resulted in a more professional and cooperative attitude of the Office of the Attorney General. By having its own counsel, the Legislature has independence from the AG's office, thus avoiding possible adverse consequences from almost inherent conflicts.

SEE APPENDIX II.

NEVADA

The State of Nevada Legislative Counsel Bureau consists of 12 attorneys and 24 staff people. Although the bureau does work on litigation cases, only four of the present staff is experienced in the practice. None of the attorneys are specifically designated to legislative litigation cases, and never has outside counsel been retained for this purpose. At the most only the equivalent of eight days per year has been spent in dealing with the practice in question. Much more time is spent counseling legislators and committees and drafting legislation. Although the bureau works with all factions in the legislature and is required to keep inviolate the secrets of all these opposing factions, no problem has yet developed involving conflict of interest. Whether the bureau takes part in litigation is determined by the Legislative Commission, an agency composed of equal representation from both Houses, as well as almost equal representation from both parties. The recorded expenditures of the bureau from 1981-1983 is $29,316.50. No preceding period of that measure has exceeded that figure.

A SURVEY OF STATES
LITIGATION TECHNIQUES

	OREGON	UTAH	GEORGIA	KANSAS	NEVADA
1.) How many attorneys does your legislature have on staff to represent the particular legislative body in instances of litigation?	12*	11*	0	1	12*
	* denotes not exclusive to function.				
2.) How often do the attorneys go to court or specifically work with the legislators on possible litigious situations?	Twice in 10 years	None yet	Rarely	3 or 4 times yearly	2 or 3 times yearly
3.) Does the legislature retain on staff attorneys who represent the whole legislature or specific ones for each political faction? Ever conflict?	N/P	N/P	N/P	N/P	N/P
	No	Not as of yet	Ø	Yes	No
	N/P denotes Non-Partisanship.				
4.) How much back-up staff is retained for the attorneys who appear in court to represent the legislature?	None	10	None	1	24*
	* denotes not exclusive to function.				
5.) What is the approximate budget for litigation only?	0	0	0	65K	7.5K

6.) What $ volume is spent in hiring private attorneys for legislative litigation?	5K	20K	0	0	0
7.) What process does the legislature use to choose its attorneys and how successful has it been in the past?	No pattern	ß	Never been utilized	ß	Chosen by Leg. Counsel
8.) How much time is spent by the attorney's working with legislators or legislative committees on non-litigious matters?	Maj.	Maj.	Maj.	50%	Maj.

Maj. denotes Majority.

ALASKA STATE LEGISLATURE
HOUSE OF REPRESENTATIVES
RESEARCH AGENCY

Pouch Y, State Capitol
Juneau, Alaska 99811
(907) 465-3991

February 27, 1984

MEMORANDUM

TO: Representative Mitch Abood

FROM: Deb Pomeroy, Administrative Assistant

RE: Lawsuits Involving the Alaska Legislature
Research Request 84-042

Anne Williams of your staff requested information regarding the number of lawsuits the Alaska Legislature has been involved in since 1981. Specifically, she requested information on:

- the nature of the lawsuit;
- the attorneys involved;
- the current status; and
- the cost of the lawsuit.

I contacted Tamara Brandt Cook with Legislative Affairs Division of Legal Services, and Ron Lorenson, Deputy Attorney General, who provided a listing of the lawsuits of which they were aware. It is difficult to ascertain whether or not this is a complete listing. Legal Services keeps a file of the main cases involving the legislature; however, there are a variety of additional cases in which the legislature is an "amicus curiae"[1] or that involve minor housekeeping issues.[2] Ron Lorenson stated that the Attorney General's office keeps a file of only those cases in which the Department of Law has represented the State Legislature.

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[1]Amicus curiae translates literally to "friend of the court." In these cases, the legislature is not directly named in the lawsuit, but since they are indirectly involved, may suggest or state some matter of law for the assistance of the court.

[2]For example, the legislature recently ordered some computer equipment from a firm on the East coast. This firm went bankrupt before completing delivery. As a result, a claim was filed in bankruptcy court to recover payment.

The Legislature, or some part of it, has been named in eleven civil lawsuits filed from 1981 to date and has been an amicus curiae in two cases. In three of the cases, the legislature, or a portion of it, has sued the Executive Branch; six cases have involved an outside party suing the legislature, or the Legislative Council; and two cases have involved members of the legislature suing other members, or the Legislative Council. Of these eleven lawsuits, six are pending in Superior Court or are under appeal. The remaining five have either been resolved or the legislature was dropped from the case. In addition to these eleven lawsuits, there are a number of cases filed in previous years which are still pending (e.g. Sharmon Haley vs. State of Alaska). In addition, two legislators have been named in criminal proceedings in the past four years (State of Alaska vs. Hohman, and State of Alaska vs. Dankworth).

I have attached for your information a summary of the lawsuits in which the legislature has been involved. This summary includes a brief description of the case, the attorneys involved, the status of the case, and, where possible, the costs. In addition to the above cases, I have included three of the major lawsuits which were filed in 1980.

We were not able to get total costs for any of the cases. In some cases the Department of Law represents the legislature. The department does not bill the legislature for this representation. The only way to estimate the possible costs would be to request each attorney to provide an estimate of hours he spent on each case and apply a standard hourly fee. The Department of Law does not keep records of the amount of time spent.[3] Lauren Smith, Manager of the Division of Administrative Services with the Legislative Affairs Agency provided a listing of payments which have been made by the legislature to private law firms who represented the legislature. I have included this data on the attached pages. In some cases, I was not able to identify all of the attorneys involved. Where possible, the names and addresses of the attorneys are listed.

I hope this information is useful to you. If you have any questions, or would like additional information, please call us.

DP

Attachments

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[3]These costs are considered "sunk costs" as the attorneys are paid a salary and receive that salary whether they are involved in representation or not.

Alaskans for Nuclear Arms Control Political Action Committee, a nonprofit corporation

vs.

1JU-84-14 Civil

Myrton R. Charney, Executive Director of the Legislative Affairs Agency, et. al.

Year Filed: 1984

Description:

The Nuclear Arms Control Political Action Committee signed up to use the legislative teleconference network. In the application, the purpose of the meeting was described as "campaign planning." The Legislative Affairs Agency denied use of the network saying that a political action committee could not use a State system for this purpose. The committee replied that they were no longer a political action committee and that they wanted to use the network for a board meeting. This request was also denied.

This suit is over the right of the committee to use the State teleconference network.

Status

The case is currently pending in Superior Court.

Attorneys

Plaintiff -- Joseph A. Guthrie
725 Fifth Street
Juneau, Alaska 99801

Defendant -- Virginia Ragle
Department of Law

Cost: not available

Mitchell E. Abood, Jr., et. al.

vs. 3AN-83-5980 Civil

Norman C. Gorsuch, et. al.

Year Filed: 1983

Description

This suit states that the joint session of the House and Senate called for the purpose of confirming executive appointments had not been legally convened and that, therefore, the confirmations are invalid.

Status

The case is currently pending in Superior Court.

Attorneys

Plaintiff--Robinson and Devine
821 N Street, Suite 212
Anchorage, Alaska 99501

Defendant--Jim Baldwin
Department of Law

Cost*

Robinson & Devine = $169,147.67

*These costs were paid by the Legislative Affairs Agency Accounting Division and do not necessarily represent the total cost of the case.

Joe Hayes, et. al.

vs. 1JU-83-46 Civil

M.R. Charney, et. al.

Year Filed: 1983

Description

Plaintiffs asked for action to enjoin performance of a contract to televise the first session of the Thirteenth Legislature. They also requested the court to declare AS 24.20.140 (allowing Legislative Council to direct the Executive Director to transfer amounts from one appropriation to another if considered necessary to accomplish the work of the Council) unconstitutional as an improper delegation of legislative authority. They also questioned whether or not the Legislative Council had conformed to the public meeting law.

Status

The court declared the case to be non-judicable (it was not a matter appropriate for court action).

The case is currently under appeal.

Attorneys

Plaintiff --Robinson & Devine
James T. Robinson
821 N Street, Suite 212
Anchorage, Alaska 99501

State of Alaska--Jon Rubini
Department of Law

Legislative Council--Robertson, Monagle, Eastaugh & Bradley
210 Ferry Way, Second Floor
Juneau, Alaska 99801

Cost*

Robertson & Monagle	=	$ 44,816.99
Robinson & Devine	=	$ 96,772.84
		$141,589.83

*These costs were paid by the Legislative Affairs Accounting Office and do not necessarily represent the total cost of the case.

Moore

vs. 3AN-83-5405

Orsini Associates and
State of Alaska

Year Filed: 1983

Description

Moore was a subcontractor on a contract between Orsini Associates and the State of Alaska. Orsini Associates did not pay the subcontractor, who sued for payment.

Decision

The State has been dropped from the suit due to a "hold harmless" clause in the contract between the State and Orsini Associates.

Attorneys

State of Alaska--Virginia Ragle
Department of Law

Moore -- not available

Orsini Associates-- not available

Cost -- not available

Richard ("Dick") Shultz

vs. A83-303 (U.S. District Court)

Robert Sundberg, et. al.

Year Filed: 1983

Description

Plaintiff claims his civil rights were violated by being forced to attend a joint session for the confirmation hearings on executive appointments.

Status

The State filed for and received a motion for summary opinion in its favor. The case is currently under appeal.

Attorneys

Shultz - Boyko, Davis and Dennis
733 West Fourth Avenue, Suite 400
Anchorage, Alaska 99501

Senate--Birch, Horton, Bittner, Pestinger & Anderson
1127 W. 7th Avenue
Anchorage, Alaska 99501

& Gross & Burke
424 North Franklin
Juneau, Alaska 99801

State of Alaska--Jim Baldwin
Department of Law

& George Hayes
1007 W. 3rd Avenue Suite 400
Anchorage, Alaska 99501

Cost*

Birch, Horton, et al.	= $15,131.28
Gross & Burke	= $20,000.00
Boyko Davis & Dennis	= $97,792.01
George Hayes	= $44,000.00
	$176,923.29

*The cost of representation by George Hayes was provided by Jim Baldwin of the Department of Law. The remaining payments were made by the Legislative Affairs Accounting Office. This does not necessarily represent the total cost of the case.

Robert Dupere & Associates

vs.

1JU-82-115 Civil

State of Alaska, et. al.

Year Filed: 1982

Description

In 1981, there was a delay in the organization of the House of Representatives. Senator Hohman who had been the Chairman of Legislative Council for the previous legislature, entered into various contracts, stating that since the new Legislative Council was not yet formed, he still had the authority to enter into contracts.

An Attorney General opinion stated that he had no such authority. Dupere & Associates sued the Legislative Council for payment of a contract which they had entered into with Senator Hohman.

Status

The case is currently pending.

Attorneys

Plaintiff -- Loren Domke
Box 1216
Juneau, AK 99802

Defendant -- Laura Davis
Department of Law

Cost -- not available

Crow :

vs. 4BE-82-040

Kerttula

Year Filed: 1982

Description

When Senator Hohman was convicted, the Senate was going to suspend him from the Senate. Crow sued, saying that Senator Hohman had to be expelled from the Senate, and a Senator appointed to enable Senator Hohman's district to be represented.

Status

The court decided in the plaintiff's favor.

Attorneys

Kerttula -- Jim Baldwin
Department of Law

Crow -- not available

Cost -- not available

State of Alaska

vs.

1JU-82-746

Jan Erickson

Year Filed: 1982

Description

Jan Erickson had a contract with Representative Buchholdt and did not complete the work. Representative Buccholdt asked the Department of Law to file suit.

Decision

The proceedings were dismissed when Ms. Erickson completed the contract.

Attorneys

State of Alaska -- Laura Davis
Department of Law

Erickson -- not available

Cost -- not available

Denton Wright Auction Company and State of Alaska
vs.
Ben Grutney
vs.
Attorney General for State of Alaska, Wilson Condon
vs. 3AN-82-3313 Civil
Jalmar Kerttula, et. al
vs.
Joe Hayes, et. al.
vs.
Governor Jay Hammond

Year Filed: 1982

Description

A gold company was high bidder at an auction selling State surplus equipment. The company attempted to pay for this equipment with a piece of paper entitled "Legal Tender" instead of money. The State refused.

The company sued saying that the State could not refuse the paper.

Decision

The State was justified in not accepting the "Legal Tender"

Attorneys -- not available

Cost -- not available

Legislature as Amicus Curiae

Rodney Vest

vs. 1JU-82-1103 Civil

Marian Schafer and the State of Alaska

Year Filed: 1982

Description

Suit questioned the constitutionality of the Longevity Bonus Program.

Decision

The Superior Court ruled the Longevity Bonus Program was unconstitutional.

The case is currently under appeal.

Attorneys

Plaintiff -- Camarot, Sandberg and Hunter
(Mark A. Sandberg)
310 K Street, Suite 500
Anchorage, Alaska 99501

State -- Deboran Vogt
Robert Maynard
Department of Law

Amicus -- Robertson, Monagle, Eastaugh and Bradley
(William Ruddy)
210 Ferry Way, Second Floor
Juneau, Alaska 99801

Cost*

Robertson, Monagle, Eastaugh & Bradley = $6,801.05

*These costs were paid by the Legislative Affairs Accounting Office and do not necessarily represent the total cost of the case.

Malone

vs.

Meekins

Year Filed: 1981

Description

Representative Malone was seeking a declaration that former Speaker of the House, Jim Duncan, was illegally removed.

Decision

650 P_2d 351 (Alaska 1982)

The Supreme Court ruled that this was non-judicable (not appropriate for court action). They stated that under the State Constitution, each house has the exclusive power to remove its own officers and a majority vote of the members is all that is required. The Court would not declare the election of the new speaker invalid even if the representative who convened the meeting at which the election was held was without authority to do so, since such a declaration would be an unwarranted intrusion into the business of the House. There is no judicially enforced requirement of subject-matter notice with respect to a vote considering organization or reorganization of one house of the State Legislature.

Attorneys

Malone--Douglas Pope
526 Main Street
Juneau, Alaska 99801

Meekins--Jim Robinson
821 N Street, Suite 201
Anchorage, Alaska 99501

Legislative Staff--Jim Baldwin
Department of Law

Cost -- not available

Ramona Barnes

vs. 3AN-81-5935

State of Alaska

Year Filed: 1981

Description

The plaintiffs questioned whether or not ch 120, SLA 1981 (SB 162) dealing with a grain facility had been duly enacted. Later in the case, questions regarding some contracts for the Seward grain terminal were raised. The State claimed that these questions could not be raised in this lawsuit.

Decision

Court held that SB 162 became law pursuant to Senate adoption of the House version of the bill and the Governor's signing of the bill.

The lawsuit was appealed; the parties settled out of court and dropped the appeal.

Attorneys

Plaintiff -- Hartig, Rhodes, Norman, Mahoney & Edwards
(G. Kent Edwards)
717 K Street
Anchorage, Alaska 99501

Defendant -- Jon Rubini
Department of Law

Cost*

Hartig, Rhodes, et. al. = $57,443.75

*These costs were paid by the Legislative Affairs Accounting Office and do not necessarily represent the total cost of the case.

Hohman

vs. 1JU-81-141

Charney

Year Filed: 1981

Description

In 1981, there was a delay in the organization of the House of Representatives. Senator Hohman, who had been the Chairman of Legislative Council for the previous legislature, entered into various contracts, stating that since the new Legislative Council was not yet formed, he still had the authority to enter into contracts. Myrt Charney, Executive Director of Legislative Council, refused to sign off on these contracts. Senator Hohman sued to force Mr. Charney into recognizing the contracts.

Status

There has been no litigation on this matter other than the original filing.

Attorneys

Charney -- Jim Baldwin
Department of Law

Hohman -- not available

Cost -- not available

Alaska State Legislature

vs. 1JU-80-1163 Civil

Jay S. Hammond

Filed: 1980

Description

Plaintiffs claimed that Governor Hammond, before signing certain appropriation bills vetoed entire line items; reduced appropriation amounts; and deleted individual words and phrases removing recipient names, conditions or limitations to appropriations or otherwise altering the purpose of an appropriation. The Legislature contended that the latter was beyond the scope of the governor's item veto authority.

Governor Hammond, in a counter claim, challenged certain appropriations in justifying his changes.

Decision

The court found that: 1) appropriations challenged as violative of the separation of powers doctrine did not violate that doctrine; 2) appropriations challenged for failure to state a public purpose failed to state a public purpose and were invalid; 3) appropriations challenged for providing direct aid to a private educational institution did not do so and were not invalid; 4) most of the appropriations challenged for violating the confinement requirement of Act II, §13 of the State Constitution did violate that section, some didn't; and 5) the appropriation challenged as an invalid delegation of legislative powers to the executive branch was an invalid delegation.

Attorneys

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Gordon E. Evans
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State -- James L. Baldwin
Department of Law

Cost -- not available

The Alaska Legislative Council

vs. 4FA-80-1689

Jay S. Hammond, Governor of the State of Alaska

Year Filed: 1980

Description

SCSHB 207 am S passed the Senate and went to the House of Representatives. The House passed the bill, but failed the effective date before sending it on for the Governor's signature. The governor returned the bill to the House stating that it had not been duly enacted.

Decision

The Judgment entered March 19, 1981 found that the bill had been duly enacted.

Attorneys

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State -- Rodger Pegues
Department of Law

Cost -- not available

Legislative Council as Amicus Curiae

Marine View Chapter, Juneau Tenants Association, et.al.

vs. 1JU-80-1037 Civil

Alaska State Housing Authority (ASHA) and Department of Administration, State of Alaska

Year Filed: 1980

Decription

ASHA was converting floors of the Marine View apartments into commercial space. The tenants association claimed that ASHA could not evict tenants and convert floors of one of the few low income apartments in downtown. The plaintiffs also claimed that ASHA had not received legislative approval for the lease as required by AS 37.05.280 for leases over $25,000 and, therefore, could not rent the commercial space.

Decision

The court decided that AS 37.05.280 (leasing of space by Dept. of Administration) was an unconstitutional intrusion by the legislature into the sphere of the executive branch violating the principle of separation of powers.

The remainder of the case was recently dismissed at the request of the tenants association.

Attorneys

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September, 1983

OFFICE OF SENATE LEGAL COUNSEL

The Office of Senate Legal Counsel was created by Title VII of the Ethics in Government Act of 1978, 2 U.S.C. § 288 (Supp. V 1981). It was the product of several years of legislative work in the Senate, both by the Committee on Governmental Affairs and the Subcommittee on the Separation of Powers of the Committee on the Judiciary. As originally conceived, the legislation would have created an Office of Congressional Legal Counsel. The House conferees on the Ethics Act stated that the House was not prepared to agree to a joint office, but the conferees agreed to a Senate amendment to establish an Office of Senate Legal Counsel.1/

The Counsel and Deputy Counsel are appointed by the President pro tempore of the Senate upon the recommendation of the Majority and Minority Leaders. The appointments of

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1/ The interests of the House in litigation are represented by General Counsel to the Clerk of the House, and private counsel retained under the auspices of the House Committee on Administration. Senate Counsel and House Counsel cooperate in litigation pursuant to the direction of the conference report on the Ethics Act that "the Senate Legal Counsel shall, whenever appropriate, cooperate and consult with the House in litigation matters of interest to both Houses." H.R. Rep. No. 1756, 95th Cong., 2d Sess. 80 (1978).

the Counsel and Deputy Counsel are made effective by resolution of the Senate, and the term of appointment for each is two Congresses. Ethics Act, § 701(a)(3)(A); 2 U.S.C. § 288(a)(3)(A). The appointment of the Counsel and Deputy Counsel and the Counsel's appointment of Assistant Senate Legal Counsels are required to be made without regard to political affiliation. Ethics Act, §§ 701(a)(2) and (b)(1); 2 U.S.C. §§ 288(a)(2) and (b)(1).

The office is responsible to the Joint Leadership Group. Ethics Act, § 702(a); 2 U.S.C. § 288a(a). The Joint Leadership Group is comprised of the Majority and Minority Leaders, the President pro tempore, and the chairman and ranking minority members of the Committees on the Judiciary and Rules and Administration. In the 98th Congress the members of the Joint Leadership Group are Senators Baker, Byrd, Thurmond, Biden, Mathias, and Ford.

The statute provides for four major activities of the office: (1) defending the Senate, its committees, members, officers, and employees; (2) representing committees of the Senate in proceedings to aid their investigations; (3) appearing for the Senate when it intervenes or appears as amicus in a lawsuit to protect a power or responsibility of the Congress; and (4) advising committees and officers of the Senate. The Senate may adopt resolutions to assign other responsibilities to the office.

1. Defense of the Senate, its committees, members, officers, and employees.

Two kinds of defensive representation are authorized. The first is when the Senate, a committee, member or officer is named as a party defendant in a civil lawsuit which concerns the validity of a proceeding or action undertaken by them in an official or representative capacity. Ethics Act, §§ 703(a), 704(a)(1); 2 U.S.C. §§ 288b(a), 288c(a)(1). In some of these cases the plaintiffs seek to impose monetary liability on members, officers, and employees: e.g., claims by congressional employees of sex discrimination, Davis v. Passman, 442 U.S. 228 (1979), and Hanson v. Hoffmann, 628 F.2d 42 (D.C. Cir. 1980); a claim by a congressional employee that she was dismissed in violation of the First Amendment for seeking a clarification of an office maternity leave policy, Hanson v. Hoffmann, supra; a claim for damages for an alleged violation of the First, Fourth, and Fifth Amendments in the conduct of a Senate investigation, McSurely v. McClellan, 553 F.2d 1277 (D.C. Cir. 1976)(en banc), cert. dismissed, 438 U.S. 189 (1978); or a defamation action by a government assisted researcher against a member and Senate employee for statements in a news release, Hutchinson v. Proxmire, 443 U.S. 111 (1979).

In other cases plaintiffs have named Senate parties in challenges to the constitutionality of congressional practices or actions: e.g., a claim by taxpayers that the payment

of compensation to the chaplains of the Senate and House violates the Establishment Clause of the First Amendment, Murray v. Buchanan, 674 F.2d 14 (D.C. Cir. 1982), vacated and reargued by order of the Court en banc; a claim by members of the House of Representatives that the Tax Equity and Fiscal Responsibility Act of 1982 was passed in violation of Article I, Section 7, Clause 1 of the Constitution which requires that all bills for raising revenue shall originate in the House of Representatives, W. Henson Moore v. The United States House of Representatives, 533 F. Supp. 267 (D.D.C. 1982), appeal docketed, No. 83-1077 (D.C. Cir.)(the Senate is also a defendant); and a claim by a senator that he was entitled to examine witnesses on the floor of the Senate during consideration of an expulsion resolution, Williams v. Bush, No. 81-2839 (D.D.C. Feb. 3, 1982)(the senator had been accorded the right to subpoena and examine witnesses before the Select Committee on Ethics).

The second kind of defensive representation the Counsel may undertake is when the Senate, its committees, members, officers, employees are subpoenaed to produce documents or provide testimony relating to official or representative functions. While the authority to represent members, officers, and employees when they are defendants is limited to civil proceedings, the authority to represent them when they are subpoenaed as witnesses extends to criminal pro-

ceedings as well. The representation of members, officers, and employees, when their documents or testimony are subpoenaed relates to the power of the Senate over the disposition of Senate documents and the attendance of its members while the Senate is in session. The Office of Senate Legal Counsel advises members, officers, and employees when they receive subpoenas or requests for documents or testimony, and assists them in determining whether a congressional privilege should be asserted. The office also assists in preparing Senate resolutions to permit the production of documents and to authorize members, officers, and employees to testify on matters not subject to a congressional privilege.

The representation of the Senate, its committees, members, officers, or employees, whether as defendants or as subpoenaed witnesses, may be authorized by either a resolution of the Senate or a vote of two-thirds of the members of the Joint Leadership Group. The defense of a member, officer, or employee may only be undertaken with the consent of the individual involved.

2. Proceedings to aid investigations by Senate committees.

The Senate Legal Counsel may represent committees in proceedings to obtain evidence for Senate investigations. Two specific proceedings are authorized.

18 U.S.C. § 6005 provides that a committee or subcommittee of either House of Congress may request an immunity order from a United States district court when the request has been approved by the affirmative vote of two-thirds of the members of the full committee. The Senate Legal Counsel may be directed by a vote of two-thirds of the members of a full committee to represent it or a subcommittee in an application for an immunity order. Ethics Act, §§ 703(d)(2), 707; 2 U S.C. §§ 288b(d)(2), 288f. The Attorney General is entitled to ten days' notice of the intention of the committee or subcommittee to apply for the order, and on the request of the Attorney General the district court is required to defer action on the immunity application for up to twenty days. The district court must grant the application for an immunity order if it determines that these procedural requirements have been satisfied. The witness may not refuse to testify on the basis of his privilege against self-incrimination after the order is communicated to the witness by the chairman of the committee or subcommittee.

The Senate Legal Counsel may also be directed to represent a committee or subcommittee of the Senate in a civil action to enforce a subpoena. Prior to the Ethics in Government Act of 1978, subpoenas of the Senate could be enforced only through the cumbersome method of a cor mpt proceeding .

before the bar of the Senate or by a certification to the United States attorney and a prosecution for criminal contempt of Congress. The Ethics Act authorizes a third method to enforce Senate subpoenas, a civil action in the United States District Court for the District of Columbia. Ethics Act, § 705(f)(1); 28 U.S.C. § 1364. See, In the Matter of the Application of the United States Senate Permanent Subcommittee on Investigations, 655 F.2d 1232 (D.C. Cir.), cert. denied, 454 U.S. 1084 (1981). The House chose not to avail itself of this procedure and the new enforcement method applies only to Senate subpoenas.

The new civil action has important advantages both for investigating committees and witnesses. For committees, it establishes an expeditious procedure to test the objections offered by a witness and, if those objections are insufficient, to obtain by a judicial proceeding an order directing the witness to testify. A failure to comply with the order is contempt of court and may lead to the imposition of coercive sanctions. For the witness who asserts in good faith a legal objection to a congressional inquiry, the civil proceeding provides a neutral forum to determine the validity of his objection.

The statute details the procedure for directing the Senate Legal Counsel to bring a civil action to enforce a subpoena. In contrast to an application for an immunity

order, which may be authorized by a committee, only the Senate by resolution may authorize an action to enforce a subpoena. The Senate may not consider a resolution to direct the Counsel to bring an action unless a majority of the committee reports it. The statute specifies the contents of the committee report; among other matters, the committee must report on the extent to which the subpoenaed party has complied with the subpoena, the objections or privileges asserted by the witness, and the comparative effectiveness of a criminal and civil proceeding.

There is a significant limitation on the new civil enforcement remedy. The statute excludes from its coverage actions against officers or employees of the federal government acting within their official capacities. Its reach is limited to natural persons and to entities acting or purporting to act under the color of state law. However, the office has been directed to appear as amicus curiae in the name of Senate committees to support their claim to documents in the possession of an executive department.

3. Representing the interests of the Senate as intervenor or amicus.

The Senate by resolution may direct the Counsel to intervene or appear as amicus curiae in the name of the Senate, or an officer, committee, subcommittee, or chairman of a committee or subcommittee, in any federal or state pro-

ceeding in which the powers or responsibilities of the Congress are placed in issue. Ethics Act, §§ 706, 713(a); 2 U.S.C. §§ 288e, 2881(a).

This authorization permits the Senate to advocate an interest of the Congress in cases in which the Department of Justice aligns itself with the executive branch against the Congress. Utilizing this authority, the Senate appeared as amicus curiae or intervenor in the defense of statutes which have provided that one or two Houses of Congress may disapprove by resolution executive actions or agency rules. In Immigration and Naturalization Service v. Chadha, 51 U.S.L.W. 4907 (U.S. June 23, 1983), the United States Supreme Court held that such legislative vetoes are unconstitutional.

The office has also appeared for the Senate as amicus curiae in support of a statute which confers certain powers on committees of the Congress. The Federal Land Policy and Management Act of 1976 authorizes the House Committee on Interior and Insular Affairs and the Senate Committee on Energy and Natural Resources to notify the Secretary of the Interior that an emergency exists on designated federal lands. Upon receiving a committee notification the Secretary is required to withdraw the lands from development for a period of not more than three years. The United States District Court for the District of Montana upheld the statute after accepting the Senate's interpretation that the statute

conferred on the Secretary the power to determine the duration and scope of the withdrawal. Pacific Legal Foundation v. Watt, 529 F. Supp. 982 (D. Mont. 1981), and 539 F. Supp. 1194 (D. Mont. 1982).

In several cases the office has appeared as amicus curiae in the name of committees of the Senate in support of requests or subpoenas to obtain information in the possession of the Department of Justice. United States v. Dorfman, No 81 CR 269 (N.D. Ill. 1981)(appearance on behalf of Senate Select Committee on Ethics to obtain wiretap evidence relating to alleged conspiracy to bribe member of the Senate); In re Grand Jury Impaneled October 2, 1978 (79-2), 510 F. Supp. 112 (D.D.C. 1981)(appearance on behalf of Senate Committee on the Judiciary to obtain Department of Justice documents relating to Robert Vesco).

The Senate or its committees have also appeared as amicus curiae in cases in which the interests of the executive and legislative branch are in harmony but where there is still a special interest in separate Senate representation. The Senate appeared in an action to defend the congressional frank which had been challenged on the theory that it unfairly advantages incumbents over challenges. The district court dismissed the complaint. Common Cause v. Bolger, C.A. No. 1887-73 (D.D.C. Sept. 7, 1982), aff'd, 51 U.S.L.W. 3784 (U.S. May 2, 1983 (No. 82-1141). The Committee

on Governmental Affairs appeared as amicus curiae in a successful appeal concerning oversight investigations of executive departments. Peter Kiewit Sons' Co. v. U.S. Army Corps of Engineers, No. 82-1461 (D.C. Cir. August 9, 1983).

4. Advice to committees and officers of the Senate.

The Ethics Act details a number of advisory functions of the Office of Senate Legal Counsel. Principal among these are the responsibility of advising officers of the Senate with respect to subpoenas or requests for the withdrawal of Senate documents, and the responsibility of advising committees about the promulgation and revision of rules and procedures for congressional investigations. The office also provides advice about questions which arise during the course of investigations. Ethics Act, §§ 708(a)(5,6); 2 U.S.C. §§ 288h(a)(5,6).

5. Other duties as directed by the Senate.

Section 708(c) of the Ethics Act, 2 U.S.C. §288h(c), provides that the Counsel shall perform such other duties consistent with the purposes and limitations of Title VII as the Senate may direct.

When the office was changed in conference from an Office of Congressional Legal Counsel to an Office of Senate Legal Counsel, no specific provision was made for the representation of Senate interests concerning agencies which serve the entire Congress. One such entity is the Congressional

Research Service. When an administrative law judge at the Federal Trade Commission issued a subpoena to CRS, at the request of oil company respondents in an FTC antitrust proceeding, the Senate used the catchall authority of section 708(c) to direct the Office of Senate Legal Counsel to represent the CRS in order to protect the confidentiality of communications from CRS to the members and committees of Congress.

Another use of section 708(c) was in the investigation relating to Billy Carter and Libya when the Senate directed the Counsel and Deputy Counsel to work under the direction of the chairman and vice chairman of the subcommittee charged with the conduct of that investigation. The Senate turned to the Office of Senate Legal Counsel as a nonpartisan office; the office became the nucleus of the investigating staff, and continued in that role under the direction of Judge Philip Tone, when he was appointed to be Special Counsel to the subcommittee. In the Senate's investigation of Abscam and other undercover activities, the office detailed an Assistant Senate Legal Counsel to work on the committee staff.

B. Congressional Legal Counsel

1. Need for a congressional counsel

It is not widely known that Congress presently relies on the Justice Department for representation in litigation arising out of the exercise by Congress of its constitutional powers. Although Congress has been the object of litigation throughout its existence, such litigation has been more frequent and particularly threatening in recent years. Meanwhile, the reliance of the legislative branch on the Department continues despite an increasing conflict of interest in the Department providing this representation.

Although this conflict of interest has not resulted in any charges of corruption, failure by Congress to remedy this conflict may have consequences which will seriously affect the vitality and independence of Congress. In order to assure that Congress will have the capacity for vigorous and effective representation before the courts, Congress should establish its own Office of Congressional Legal Counsel to represent Congress and congressional interests in litigation. The Justice Department supports the establishment of such an office and the bill has been modified in certain respects to meet all objections raised by the Department.

The need for creating an Office of Congressional Legal Counsel is clear. It is not surprising that the exercise by Congress of its constitutional powers is frequently challenged in and affected by various court proceedings. As Alexis de Tocqueville observed during his travels in America in 1831, "Scarcely any political question arises in the United States that is not resolved, sooner or later, into a judicial question." Democracy in America, volume I—Vintage Books: page 280. Congress can no longer ignore this fact.

Unlike the executive branch of Government, Congress does not generally attempt to effectuate its will and perform its duties by initiating lawsuits in the courts. With a few notable exceptions, Congress should rely on its legislative, oversight, and impeachment powers—rather than initiate lawsuits—to fulfill its constitutional responsibilities. However, through no choice of the Congress, many matters vitally affecting Congress end up in the courts. Most of these cases arise where lawsuits have been brought against Congress to challenge an official action of the Congress, a Member or employee of Congress, or a committee or agency of Congress. In cases where Congress is not named as a party, the powers of Congress are often at issue and are interpreted by a court.

For example, Congress has not been named as a party in the Common Cause franking privilege case, but Congress has an interest in the case even more substantial than that of the Postmaster, who is the named defendant. Indeed, the House has recently intervened in this case.

In each of these types of cases, the vital interests of Congress will be affected whether or not Congress chooses to advocate its position to the court. Because our judicial system relies on adverse parties to sharpen the issues in order for the court to make the best decision, it is essential that the courts have the opportunity to evaluate congressional interests based upon the vigorous and effective presentation of

these interests to the court by an attorney representing the Congress.

At present, representation of Congress and congressional interests in these cases is provided on an ad hoc basis by the Justice Department and private legal counsel. Because no permanent office has ever been given the responsibility to monitor and defend these interests, Congressional interests are often inadequately represented or are not represented at all.

The Justice Department's practice of defending Members, officers, and committees of Congress in civil cases has developed gradually, until at present the Congress is almost wholly dependent on the Department for such representation. This practice began as far back as December 29, 1818, when the House adopted a resolution authorizing the Speaker to hire private counsel to defend the Sergeant at Arms in the landmark case of *Anderson* v. *Dunn*, the first case upholding Congress contempt power. Acting as a private citizen, the Attorney General argued the case on behalf of Congress and was paid a fee of $500. Since 1818 the Attorney General and—after its creation in 1870—the Justice Department have frequently served as defense counsel to Congress.

The only direct statutory basis for the practice is 2 U.S.C. 118, enacted in 1875, which requires that upon request the Department defend an "officer" of either House of Congress for acts performed in the "discharge of his official duty." This statute was enacted after the Speaker of the House, James Blaine, had been sued for having enforced an order of the House. See 86 Congressional Record 2016–2017 (March 1, 1875); *Representation of Congressional Interests in Court*, Hearings before the Subcommittee on Separation of Powers, 1976 (hereafter "Representation") at 38. The Department does, however, represent Members and committees of Congress as well, but there is no direct statutory basis for the practice. Of course, the Department handles congressional cases only when requested to do so.

On occasion, Congress has chosen instead to retain private counsel to defend itself; for example, in the civil action brought against Congress by former Congressman Adam Clayton Powell—see 113 Congressional Record 6040–6049 (March 9, 1967) and in connection with the subpenas issued to Members and staff in the Common Cause franking privilege case. See 120 Congressional Record H9682–H9370; (September 30, 1974); 120 Congressional Record H11497–H11498 (December 10, 1974); 120 Congressional Record H12291–H12292 (December 18, 1974); 121 Congressional Record H11377–H11373 (December 4, 1975); 122 Congressional Record H1699–H1702 (March 9, 1973). Committees sometimes defend themselves using existing staff counsel, such as did the Senate Watergate Committee when three cases were brought to restrain its probe of corruption in the executive branch and as has the General Counsel to the House Clerk in a number of recent cases involving the Clerk's supervisory functions.

In recent years, Congress has involuntarily been subjected to extensive litigation to defend its constitutional powers. Indeed, in the last 6 years the Justice Department alone has defended Members, officers and committees of Congress in at least 70 cases. Representation at 20. This total does not even include the 60 legal matters before the courts in which the Senate Watergate Committee became involved

(Senate Report 93-981), Final Report of the Senate Select Committee at 1079) nor at least ten other recent cases in which private counsel has been retained, nor numerous other legal proceedings in which subpoenas for Congressional documents have been issued. All told, Congress has been involved in no less than 200 legal proceedings in recent years.

These cases include civil actions brought to enjoin enforcement of committee subpoenas or issuance of committee reports; civil actions related to the enforcement of the campaign finance laws by officers of Congress; civil actions related to attempts to hold demonstrations on the Capitol Grounds; a civil action to invalidate the seniority system; a civil suit to recoup salaries paid to Members while absent from Congress; and a civil suit to invalidate the qualifications for membership in the Senate Press Gallery. The court papers of the Watergate Committee alone run almost 8,200 pages. Legal Documents Relating to the Select Committee Hearings, appendix to the hearings of the Senate Select Committee—June 28, 1974—two parts.

Not included in this number are actions involving allegations of criminal conduct, abuse of the franking privilege by an individual Member or contested elections, which the Department and the proposed Congressional Legal Counsel will not handle.

Not only is the number and variety of these lawsuits impressive, but many of them have been so complex that it has required years to resolve them in the courts.

However, more significantly, the importance of the precedents being established in these cases cannot be ignored. In *Powell* v. *McCormack*, 395 U.S. 486 (1969), the Supreme Court limited the right of the Congress to judge the qualifications of its Members; in *United States* v. *Gravel*, 408 U.S. 606 (1972), and in *Doe* v. *McMillan*, 412 U.S. 306 (1973), it limited the ability of Congress to inform the public; in *Buckley* v. *Valeo*, 424 U.S. 1 (January 30, 1976), it limited Congress' ability to appoint officers to the Federal Election Commission. Indeed, Senator Ervin warned that the *Gravel* decision alone poses "a clear and present threat to the continued independence of Congress as a coordinate branch of Government and constitutes a further deterioration of its power and prerogatives in relation to the executive and judicial branches." 59 *Virginia Law Review* 175 (1973).

In each case, the precedents established by the courts have an impact on Congress as an institution, not just on the specific Members, officers, or committees involved. Therefore, Congress as an institution cannot be indifferent to the legal precedents which are established in these cases, even if Congress may have no interest in their effect on individual parties involved. By representing the individual Member in a case involving his performance of official duties, in a very real sense Congress represents itself.

Court challenges to the exercise by Congress of its constitutional power will continue to occur. For example, officers of Congress have been named defendants in a suit by Ramsey Clark to invalidate the congressional veto over regulations of the Federal Election Commission. This lawsuit may determine the constitutionality of literally hundreds of such provisions in existing statutes.

Similarly, criminal defendants recently have issued various subpenas to congressional committees demanding access to documents, raising the issue of the constitutional power of Congress to control access to it papers. These types of subpenas have been and will be issued to the new Intelligence Committee in attempts to declassify information. The executive branch threatened to issue subpoenas for House travel records, until the House voluntarily turned over the materials. The nature and novelty of other challenges to Congress power cannot be predicted, but these challenges are sure to occur with regularity.

In cases of interest to Congress where Congress is not a party, the Department of Justice will not intervene or file an amicus brief on behalf of Congress. In such cases, however, congressional interests have occasionally been represented by private counsel retained on an ad hoc basis. For example, the Senate retained private counsel to represent it as amicus curiae in *Gravel* v. *United States*, where the scope of legislative immunity was at issue. See 119 Congressional Record 9902–9931 (March 28, 1973). Private counsel has also been retained to intervene on behalf of a subcommittee of the House of Representatives in *Ashland Oil* v. *FTC*, a case where the subcommittee is opposing an attempt by Ashland Oil to bar the FTC from complying with the subcommittee's subpena. See 121 Congressional Record H12918–19 (December 19, 1975); Representation at 404. Private counsel is now representing a House subcommittee in the case of *United States* v. *A.T.T.* See House Report 94–1422; 122 Congressional Record H9123–9137 (August 28, 1976). Private counsel is representing Senator Proxmire in a case involving important issues regarding Congress' function of informing the public. See 122 Cong. Rec. S12935–S12975 (August 9, 1973). Private counsel appeared on behalf of the Congress in the *Lovett* case as far back as 1943. See Representation at 330–331, 412–414.

The variety and importance of this litigation demonstrates that the interests of Congress as an institution make its present reliance on the ad hoc services of the Justice Department and private counsel wholly unsatisfactory. These institutional interests make it inappropriate as a matter of principle and of the constitutional separation of powers for the legislative branch to rely upon and entrust the defense of its vital constitutional powers to the advocate for the executive branch, the Attorney General.

Despite its long history in representing Congress in court, the Department of Justice supports the establishment of an Office of Congressional Legal Counsel. This support for Congress defending itself in litigation before the courts recognizes that Congress, as a co-equal branch of government, should represent itself in court. The Department recognizes also the legitimacy and constitutionality of vesting the functions and powers in title II with a Congressional Counsel Office.

In testimony during the 94th Congress before the Senate Government Operations Committee and the Senate Judiciary Committee's Subcommittee on the Separation of Powers, representatives of the Department of Justice have unequivocally stated the obvious: The

Department of Justice is a part of the executive branch and its first and foremost responsibility is to represent the interests of the President and the executive branch. Where the interpretation of the powers of the Congress before the courts is entrusted to the executive branch, the Congress relies on a branch of government with which Congress has, under the constitutional system of checks and balances, an adverse relationship. Without in any way questioning the good will or intentions of the Department, it is clear that the integrity and independence of Congress as a coequal branch of government requires that Congress defend itself through its own counsel.

More specifically, the Department of Justice acknowledges that it is placed in an untenable conflict of interest situation when called upon to handle certain cases on behalf of Congress. In such cases, the Department states that it will decline to provide representation and will assist in the hiring of outside private counsel. However, the Department's position as to what constitutes a conflict of interest is very limited and covers only those situations where the Department is taking a position in one case which is directly inconsistent with a position the Department simultaneously is advocating in another matter then also in litigation in the same court.

The Department also acknowledges a conflict where the substantive position of Congress in the case would in the Department's view result in an infringement of a power of the President. However, it is clear that a conflict may also exist whenever the Department of Justice is in the position of defending a congressional power which may in the future be exercised by Congress against the executive branch. Most cases presently being handled by the Department on behalf of Congress involve precisely such powers and precisely this conflict of interest.

When the Department is able in advance to perceive a conflict in representing Congress, it will, of course, not commence such representation. It is, however, sometimes difficult to determine in advance exactly when the Department will decline to handle a congressional case. Other than in thoughts expressed by the Department in correspondence with various Members and committees, there are no written or formal guidelines applied by the Department in making this determination. The determination is subjective, is made on a case-by-case basis, and requires in essence that the Department prejudge whether the congressional defendant was acting within the scope of his official duty. Because of this uncertainty, Congress already must make ad hoc provisions for retaining private counsel when the Department perceives a conflict.

Unfortunately, in three recent cases the conflict did not become apparent to the Department until after the Department had entered its appearance on behalf of Congress. In fact, in *Doe v. McMillan* and *Eastland v. United States Serviceman's Fund*, the Department withdrew its representation of congressional committees just as the litigation reached the Supreme Court, after having represented Congress in the district court and court of appeals. As a result, Congress then had to hire private counsel at this advanced and crucial stage of the litigation. See Representation at 67 and 675. In the *McMillan* case, the Supreme Court remanded the case back to the district court, at which

time the Department determined that the conflict had ceased to exist and defended the remaining defendants. Although the Department will normally withdraw when a conflict arises, in the case of *Buckley v. Valeo* the Department did not formally withdraw its appearance as counsel to the Secretary of the Senate and the Clerk of the House even when it proceeded to argue that the statute creating the Federal Election Commission—on which the Secretary and Clerk served—was unconstitutional. The Department has recently been forced to withdraw as Congressional Counsel in *Pressler v. Simon.*

Because of the wide range of responsibilities which are assumed to the Department, there are many ways in which such a conflict can suddenly arise for the Department in the midst of defending a congressional client. The conflict which arose in the *Harvishmon's Fund* case occurred when the Department of Justice voluntarily chose to appear as amicus curiae in opposition to the suit by the Senate Watergate Committee to enforce its subpoena for the White House tapes. See Representation at 874. The Department's narrow definition of what constitutes a conflict of interest did, however, enable the Department to continue representing other congressional defendants in cases pending in other courts in which speech and debate clause immunity was also a defense. But the point remains, one cannot predict when a conflict will arise which will force the Department to terminate its services.

The problem of anticipating conflicts is compounded by the fact that it is the Department's official position that even though it has undertaken to represent Congress, if an agency of the executive branch subsequently asks the Department for representation which will create a conflict of interest with the Department's representation of Congress, the Department will automatically force the congressional client to obtain other counsel. With a law firm, such conflicts are easily avoided because the firm will simply refuse to take on the new client. However, the executive branch is always the priority client of the Department. When a conflict arises in representing a congressional defendant, it is clear that the Department does not and can not continue to represent its congressional clients and, as importantly, when a conflict arises, it is in Congress' best interest to obtain other counsel.

As a result of these experiences in a number of congressional cases, committees which were or are being represented by the Department have also retained counsel to protect themselves in the event the Department suddenly feels compelled to withdraw. There is obvious waste when taxpayers must pay for Justice Department attorneys to handle a congressional case and pay as well for a private lawyer to insure that the Department vigorously defends congressional interests and to be ready to undertake the representation of Congress if the Justice Department should choose to withdraw from the case. However, faced with the policy of the Department of Justice with respect to conflicts of interest, it is prudent for Congress to retain these private attorneys.

Further compounding the inherent conflict of interest when the Department serve as the advocate for the Congress, the Department "insists on retaining control of the litigation and making the litigation decisions." Representation at 21. The Department asserts the same

degree of control over congressional cases as it asserts over its own executive branch cases. The Department's position on control of the litigation was dramatically illustrated at hearings before the Subcommittee on Separation of Powers. The following exchange occurred between the subcommittee and Irving Jaffe, Deputy of the Civil Division:

> Senator. If the Justice Department has no authority to take a congressional case unless it is requested to do so, why does it have, at that point when it is requested, complete control over the case?
>
> Mr. JAFFE. Because we do it in the interest of the United States. That interest is vested in us.
>
> Senator. Even to the distinction of the interest of the client?
>
> Mr. JAFFE. In many instances, yes.
>
> Senator ANDERSON. Then it is a matter of definition between you and the client as to what is in the interest of the United States.
>
> Mr. JAFFE. Except that we have the ultimate determination.
>
> Senator ANDERSON. Your definition overrides his. (Representation at 77.)

The result of this Department policy is that when Congress wishes to make arguments with which the Department is in disagreement, the Department will take the position that Congress must retain private counsel if it wants to make such arguments. This position can have the effect of inhibiting congressional defendants from asserting proper control over their Department attorney, except on crucial issues.

This description of the conflicts of interest for the Department of Justice when it represents congressional interests is not intended as a criticism of the Department. The Department only represents congressional interests at the request of its congressional clients. In turn, Congress makes these requests of the Department because there is no adequate alternative but for Congress to do so. Indeed, when Members or committees are faced with litigation, the Members or committees may place substantial pressures on the Department to handle the case despite possible long-term disadvantages for Congress as an institution. In its efforts to maintain cordial relations between the branches, the Department will make every effort to honor congressional requests. The conflicts of interests which inevitably arise are of an institutional nature.

Although no conflict of interest is involved, serious problems also arise with congressional reliance on the use of private counsel when Department representation is not available. First, the use of private counsel is very expensive. One reason for this expense is that few if any private counsel have experience or expertise with the unique substantive and procedural legal issues which arise in congressional cases. It can be very expensive repeatedly to subsidize private counsel for the time it takes for them to gain this expertise. Even then private counsel will lack invaluable experience.

Second, the retention of different private counsel to handle different cases provides for little if any consistency among the legal posi-

tions and approaches taken in the different cases. A private attorney will only be intimately knowledgeable about the case he is handling—and not with the full range of litigation involving Congress. One attorney might, therefore, inadvertently make an argument or concede a point in one case which has an adverse precedential impact on another case involving Congress. Similarly, individual private attorneys are likely to have little perspective or interest in how the long-range interests of Congress may be affected by any given litigation. They may have little sensitivity to any political implications of a given law suit. They will not have inclination or the ability to establish contacts with the broad spectrum of congressional views which may exist on various issues. They will have no ongoing relationships with the leadership.

Finally, when faced with a law suit, Members, officers and committees often have no time to locate, interview, and retain private counsel. This is why in such cases there is little alternative but to request Department of Justice representation, even when they may be aware that retaining private counsel would be preferable. A simple phone call from a committee chairman to the Department, for example, often suffices to arrange for the Department to handle a case. If, however, private counsel is to be employed, an attorney must be found who is willing and able to handle the case, a fee arrangement must be negotiated and arrangements must be made for payment of the fee. Furthermore, to compensate private counsel it will often be necessary for the congressional parties to request appropriations from the contingent fund, a time-consuming and unpredictable process. A committee or Member must, therefore, be willing to endure substantial additional inconvenience if they choose not to rely on the Department of Justice.

In addition to mitigating these conflicts and practical problems resulting from reliance on the Department or private counsel, there are substantial benefits which would result from the establishment of an Office of Congressional Legal Counsel which cannot otherwise be achieved. A first-class litigating office in Congress will make available to Congress advice on how to avoid or anticipate litigation and continuous monitoring of congressional interests in cases where Congress is not a party. Increasingly, the prospect of litigation must be considered whenever Congress exercises its constitutional powers. The adverse consequences of failing to consider the possibility of litigation has been most notable when criminal contempt of Congress charges are dismissed by the courts on technicalities. This occurred in the recent perjury case of then Lieutenant Governor of California Edward Reinecke—*United States* v. *Reinecke*, 524 F. 2d 435 (D.C. Cir. 1975)—because a committee had not published its rules in the Congressional Record. Neither the Department nor private counsel can, will, or should perform these advisory functions. The Department acknowledges that this function is quite properly lodged in the Congress itself.

Similarly, when a committee undertakes an investigation, there is a constant need for advice on how properly to frame and issue subpoenas and how to utilize other congressional investigative powers so that the committee's actions will, if necessary, be sustained by the courts. Again, it would not be constitutionally proper for the Justice Department or feasible for private counsel to provide such an advisory service.

Existing legislative and staff counsel readily admit that they do not have the time or training to litigate or to provide advice in anticipation of litigation. Staff of one committee might gain some litigation experience but then will be unavailable to assist the next committee in need of counsel. Other than the Clerk of the House, the Secretary of the Senate, and the Permanent Investigations Subcommittee of the Senate Governmental Affairs Committee, no one body in Congress has developed any litigation expertise.

The Congressional Legal Counsel would also continuously monitor congressional interests in cases where Congress is not a party. For example, in the litigation concerning the custody of former President Nixon's tapes and papers, the Justice Department is defending an act of Congress which denies Mr. Nixon custody of these materials even though the Justice Department, at the time of the Nixon pardon, issued a written legal opinion that Mr. Nixon had the legal right to custody of the materials. Congress has not chosen to intervene or appear amicus curiae in this law suit. However, the testimony submitted to the Government Operations Committee by Senator Nelson concerning the conduct of the case—1973 Hearings, part II, page 142—illustrates the need for an office of Congress with the ability to represent Congress in a legal action, if necessary, and to closely monitor such legal actions. Again, neither the Department nor private counsel can or should perform this role. To the extent that existing legislative or staff counsel presently monitor the course of such litigation, it would still be necessary to retain counsel if congressional interests were being adversely affected.

Finally, if the Congress adopts the jurisdictional statute, discussed in detail below, to enable Congress to enforce its subpenas by civil court actions, attorneys will be necessary to bring the actions. Neither the Justice Department nor private attorneys should be given this responsibility.

2. NEED FOR CIVIL ENFORCEMENT OF SUBPENAS

Presently, Congress can seek to enforce a subpena only by use of criminal proceedings or by the impractical procedure of conducting its own trial before the bar of the House of Representatives or the Senate. However, if the Congress or a committee is interested in compelling compliance with a subpena rather than merely punishing the subpenaed party, civil subpena enforcement will often be preferable to certifying a criminal contempt complaint. Unlike a civil enforcement action, in a criminal contempt action the defendant cannot purge himself of the contempt by finally producing the documents. In addition, with a criminal contempt action, expediting the litigation is more difficult than in a civil enforcement action, committee compliance with its procedures is more strictly reviewed, and the subpenaed party's rights are given greater weight. The Justice Department has supported a civil enforcement mechanism in 1982 and has reiterated that support this session. The Department has stated also that Congress may bring the subpena enforcement actions without infringing on any Executive Branch powers.

The reluctance of Congressional committees to enforce their subpoenas under the criminal contempt statute was graphically demonstrated by debate in the Senate Judiciary Committee in 1962.

The Subcommittee on Antitrust and Monopoly had subpoenaed cost data from the 12 largest steel companies. Four of these companies refused to produce the subpoenaed data or even to appear before the Subcommittee. The Subcommittee then voted 5 to 2 to report a criminal contempt citation to the full Judiciary Committee.

In the debate before the Subcommittee all parties agreed that the steel companies refusals were based on a good faith belief that the cost data was confidential. Senator Hart stated that what all parties were seeking was "to establish a priority among principles." The steel companies declared their unwillingness to comply "until required to do so through established Judicial procedures." One member of the committee speculated that—contrary to the law of criminal contempt—if the companies were held in contempt "the steel company executives (could) produce the records * * * (and) purge themselves from contempt."

At the request of the steel companies, the Judiciary Committee held 3 days of hearings on the events before the full committee. Steel Companies (Subpoena), Hearings before the Committee on the Judiciary, September 12, 14, and 20, 1962. It was again clear that the companies' refusal was their "instrument or * * * approach of testing which of these two principles—of Congressional power and business confidentiality—ultimately would prevail." Id. at 38 (Senator HART). Senator Keating stated his preference for a civil contempt statute (id. at 55), a preference shared by Senator Ervin. (Id. at 75). Senator Keating declared flatly that it was "wrong in cases in which there is no criminal intent to be forced to resort to a criminal prosecution in order to test the validity of a committee's questions or requests for documents." (Id. at 77.)

The dilemma facing the committee was made apparent by the subcommittee chairman, Senator Estes Kefauver, who said:

> I would like to make perfectly clear that the subcommittee has no interest in punishing individuals. What we want is the subpoenaed material. (Id. at 35).

It is apparent from the committee debate that the availability of a civil enforcement statute could have alleviated the dilemma. Ultimately no criminal contempt citation was voted.

During this same period the U.S. Court of Appeals for the District of Columbia was reviewing the conviction of Austin J. Tobin, the executive director of the Port Authority of New York, under the criminal contempt statute. *Tobin* v. *U.S.*, 303 F.2d 270 (D.C. Cir.) cert. denied 371 U.S. 903 (1963). Tobin had been cited for contempt in refusing to produce certain documents subpoenaed by the House Judiciary Committee in an investigation of the 1921-22 interstate compacts between the States of New York and New Jersey. The Port Authority argued that after having approved the compact Congress did not have the constitutional power to rescind it. The Governors of both affected States instructed Tobin not to respond to the subpoena. Tobin did not

prevail in his constitutional argument about the committee's jurisdiction but his conviction was nonetheless reversed on the grounds that the Judiciary Committee had been given no power to issue subpenas for the internal memos of the authority.

When the district court considered the case, Judge Youngdahl pleaded for Congress to provide an alternative to criminal contempt. The Court of Appeals in reversing Tobin's conviction quoted Judge Youngdahl's plea and added its own. It specifically noted that—

> A contempt of Congress prosecution is not the most practical method of inducing courts to answer broad questions broadly.

At the end of its opinion the court made an extraordinary appeal to Congress:

> Especially do we say this in view of the unusual nature of the present case, where we are asked to decide essentially civil and jurisdictional issues at the same time that we establish criminal precedent. The conflicting duality inherent in a request of this nature is not particularly conducive to the giving of any satisfactory answer, no matter what the answer should prove to be. Should this controversy be resumed, it is hoped that Congress will give sympathetic consideration to Judge Youngdahl's eloquent plea. 306 F. 2d at 275–276.

Eight years later the same court renewed this appeal in *United States* v. *Fort*, 443 F. 2d 670, 677–678 (D.C. Cir. 197), cert. denied, 403 U.S. 932 (1971).

Congress should be able to enforce its subpenas expeditiously and with due respect for the constitutional rights of a witness. The criminal contempt statute is inflexible, giving a party no incentive to comply with a subpena. Enactment of the civil subpena enforcement statute will give Congress the option of punishing recalcitrant witnesses or bringing a civil action to secure compliance with the subpena. This flexibility will reduce the reluctance of Congress to take action when a subpena is not complied with.

PAST CONGRESSIONAL CONCERN WITH OFFICE OF CONGRESSIONAL LEGAL COUNSEL AND CIVIL ENFORCEMENT OF SUBPENAS

Office of Congressional Legal Counsel

Congressional concern with the need to establish an Office of Congressional Legal Counsel has often been expressed over the last decade. In 1965 the Joint Committee on the Organization of Congress considered the litigation needs of Congress and recommended that a Joint Committee on Congressional Operations be established and given the "continuing responsibility for determining, with the approval of the leadership of both Houses, whether Congress should be appropriately represented" in cases of vital interest to Congress. The Joint Committee found that "representation of the Congress with respect to its vital interests is unsatisfactory and the effect upon Congress of court decisions should be a matter of continuous concern for which some agency of Congress should take responsibility."

Building on this proposal, on March 23, 1967, Senator Vance Hartke introduced S. 1384, a bill to establish an Office of Congressional Gen-

eral Counsel. Then on May 3, 1967, Senator Vance Hartke attempted to offer his bill, S. 1384, as an amendment to S. 355, the Legislative Reorganization Act of 1967. S. 355 already included a provision which authorized the proposed Joint Committee on Congressional Operations, with the approval of the President Pro Tempore, Speaker, and majority and minority leaders, "to provide for appropriate representation on behalf of Congress or either House thereof in any proceeding or action" which, "in the opinion of the Joint Committee, is of vital interest to Congress, or to either House of the Congress." The principal objection to Senator Hartke's bill and amendment was that it authorized the Congressional General Counsel to be the "authoritative source for interpretation of legislative intent." The Senate considered it to be unwise to establish a quasi-legal office of Congress having the power to issue binding legal opinions whether or not requested by a committee to do so. Accordingly, Senator Hartke's amendment was tabled by a vote of 66 to 16. When the Joint Committee on Congressional Operations was finally established in 1970, it was given the power only to "identify" court proceedings of vital interest to Congress.

In July of 1967 one of the subjects of the Subcommittee on Separation of Powers' first hearings under the chairmanship of Senator Sam Ervin was the Hartke proposal, S. 1384.

In 1973 the Joint Committee on Congressional Operations held 4 days of hearings on the "Constitutional Immunity of Members of Congress." In these hearings the Joint Committee explored the Justice Department's policy in representing Congress and in particular the conflict of interest faced by the Department of Justice when it defended Congress in *Doe* v. *McMillan*. The Senate's decision to file an amicus brief in *Gravel* v. *United States* was also discussed. In 1973, hearings by the Subcommittee on Separation of Powers on "Removing Politics From the Administration of Justice" again focused on the Council for Congress proposal.

The Senate Select Committee on Presidential Campaign Activities participated in over 60 different matters before the courts during the course of its Watergate investigations in 1973 and 1974. The court filings, which comprise most of the "Legal Documents Relating to the Select Committee Hearings," run to over 2,100 pages. As a result of its experience, the Select Committee recommended that the Congress give careful consideration to a bill then pending before the Senate (S. 2969) that would establish a Congressional Legal Service and thus give Congress "a litigation arm that would allow it to protect its interest in court by its own counsel." As Senator Baker, Vice Chairman of the Select Committee, stated: "There are numerous instances in which the interests of Congress and Congressional committees are divergent from those of the President and the various departments, and in which the existence of a permanent Congressional litigating staff would be both helpful and appropriate. The Select Committee on Presidential Campaign Activities certainly was engaged, albeit unsuccessfully, in extensive litigation; and a Congressional Legal Service would have been of great utility to the Committee." S. 2969 had been introduced by Senator Walter Mondale on October 11, 1973. Similar proposals to establish an Office of Congressional Legal Counsel had been introduced by Senator Jacob K. Javits, including S. 3377 on June 4, 1974.

On December 11, 1974, Senator Ervin introduced S. 4377 which was based upon the recommendations of the Watergate Committee and which contained Senator Mondale's proposal.

In the fall of 1975 and the spring of 1976, the Subcommittee on Separation of Powers held hearings on "Representation of Congressional Interests Before the Courts." The chairman of the subcommittee, Senator James Abourezk, had earlier introduced S. 2731 which refined previous proposals for an Office of Congressional Legal Counsel. The subcommittee compiled a detailed hearing record, focusing specifically on the conflict of interest which occurs when the Justice Department represents Congress and generally on the inadequacy from Congress' institutional point of view of the present ad hoc provisions for representation of Congress.

Civil enforcement of subpoenas

Historically Congress has made various provisions for enforcing its subpenas and orders. The contempt power of Congress was affirmed in the 1821 case of *Anderson* v. *Dunn*, 19 U.S. 204 (1821). During its early period Congress brought contumacious witnesses for trial before the House and Senate and confined those found in contempt in the Capitol guard house. Variations of this practice continued until 1945.

In 1857 Congress grew dissatisfied with the fact that it could imprison a person only until the end of a legislative session. In that year Congress passed a statute, still in effect in amended form as 2 U.S.C. 192, making it a criminal offense to refuse to divulge information demanded by Congress. Even after passage of the 1857 statute, Congress preferred to enforce its own punishment rather than turn a witness over to the United States attorney. However, as courts more frequently began to review Congressional contempt trials, Congress came to rely entirely on the criminal sanction. Using both procedures, Congress has held approximately 400 person in contempt since 1789, most of the contempts having occurred since 1945.

While investigating the contested election of Senator William S. Vare in 1928, a Senate committee sought to enforce a subpena for certain ballot boxes and various documents by bringing a civil suit. The Supreme Court held that the Senate did not intend or authorize the committee to bring suit. (*Reed* v. *the County Commissioners of Delaware County*, 277 U.S. 376 (1928)). The day the Supreme Court decision was rendered, the Senate enacted a standing order authorizing all Senate committees to "bring Suit . . . if the Committee is of the opinion that the suit is necessary to the adequate performance of the powers vested in it." (69 Cong. Rec. 10598 (May 29, 1928)). That Order has, however, been held not to confer jurisdiction on the courts to hear a subpena enforcement action. *Senate Select Committee* v. *Nixon*, 366 F. Supp. 51 (D.D.C. 1973)

The original proposal for enacting a jurisdiction statute for civil enforcement of Congressional subpenas was introduced on May 4, 1953, by then Congressman Kenneth Keating. Four days of hearings were held on H.R. 4675 on June 3, July 19, 26, and 31, 1954. The bill passed the House on August 4, 1954 and again the next session of Congress on March 15, 1955. The Senate took no action on either occasion.

The Congress has had recent experience in court enforcement of a committee subpena. Confronted by President Nixon's refusal to honor

its subpena for certain White House tape recordings, the Senate Watergate Committee brought a civil action for a declaratory judgment that President Nixon's claim of executive privilege was unlawful. The committee found the prospect of criminal contempt or trial before the Senate inadequate and inappropriate remedies. Judge Sirica, however, held that the court had no jurisdiction to hear the action. *Senate Select Committee* v. *Nixon*, 366 F. Supp. 51 (D.D.C. 1973). Senator Ervin then introduced and the Congress soon passed a statute (Public Law 93–190) giving district court jurisdiction over that suit and others the Watergate Committee might bring to enforce subpenas issued by it to the executive branch. The original version of this statute would have confined jurisdiction on the courts to hear suits by all congressional committees to seek subpena enforcement. This provision was deleted prior to passage of the law. Eventually the court of appeals dismissed the Committee's suit due to the pending House Impeachment inquiry.

C. Title III—Financial Disclosure

1. Reasons for public financial disclosure

Existing financial disclosure requirements vary throughout the Federal government. Under rules recently adopted by the House of Representatives and the Senate, full and complete financial disclosure is required for Members and certain officers and employees of those bodies. Executive branch regulations require confidential disclosure of the financial interests of certain high-level employees to those employees' agencies. Members of the judiciary are subject to voluntary confidential disclosure requirements which call for the disclosure of very limited financial information. Some top government officials, such as the President, Vice President, and Justices of the Supreme Court, are not required to make any financial disclosures whatsoever.

It was the opinion of the majority of witnesses who testified before the Committee on this subject that any requirements for public financial disclosure should apply uniformly across-the-board to high-level officials in the executive, judicial and legislative branches of the government.

Some of the reasons for public financial disclosure stated by witnesses who appeared before the Committee during consideration of S. 555 this year and its predecessor, S. 495, in the 94th Congress, are summarized below:

(1) Public financial disclosure will increase public confidence in the government. Numerous national polls of voter confidence in officials of the Federal government, and the low turnout of voters in recent elections, were cited for the proposition that public confidence in all three branches of the Federal government has been seriously eroded by the exposure, principally in the course of the Watergate investigation, of corruption on the part of a few high-level government officials. Public financial disclosure was seen as an important step to take to help restore public confidence in the integrity of top government officials, and, therefore, in the government as a whole.

(2) Public financial disclosure will demonstrate the high level of integrity of the vast majority of government officials. Only a very

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STATE OF OREGON
LEGISLATIVE COUNSEL COMMITTEE

Rcd 9-19-83

September 9, 1983

Representative Charlie Bussell
Pouch V
Juneau, Alaska 99811

Dear Representative Bussell:

Speaker Kerans has asked me to answer your recent letter concerning staff attorneys responsibilities for litigation involving the Legislative Assembly.

The following are responses to the questions you posed:

(1) The Legislative Counsel staff includes 12 attorneys. None are specifically or exclusively assigned to litigation.

(2) There were two instances in the past approximately 10 years. The first instance involved alleged violation of the open meeting law by a House committee. The second involved the constitutionality of a statutory provision subjecting certain appointees of the Governor to Senate confirmation. In both cases, the Legislative Counsel staff did the background research and consultation with outside counsel retained to argue the matter in court.

(3) Legislative Counsel staff attorneys represent the whole Legislative Assembly. On occasion, the various caucuses or leadership officers will hire attorneys to work in their offices to assist in issue analysis, etc, but they have not necessarily had a role in any litigation being considered.

(4) None

(5) None. The Legislative Counsel Committee general fund budget for 1983-1985 is $2,229,711.00 which covers all functions of the office, including lawyer time spent involved in litigation, if any.

(6) The Senate confirmation suit voted in (2) above was litigated by outside counsel. The total bill for services was $5,000.

(7) There is no established pattern. In the Senate confirmation case, Legislative Counsel attorneys interviewed several private attorneys and retained one of them after consultation with Senate leadship.

(8) We write over 150 advisory opinions for legislators during each biennium. We often discuss legal ramifications with legislators who request drafting service. We draft approximately 80 percent of all measures and amendments. We are precluded by statute from discussing the merits (advisability) of any issue.

I hope the above information assists you as you consider legislation similar to ORS 173.111 et seq. You might wish to discuss the Oregon situation with Dave Dierdorff, who is with Bill Barrier's office. Dave was counsel to the Senate President when the confirmation suit was brought.

Very truly yours,

THOMAS G. CLIFFORD
Legislative Counsel

TC:dfw

cc: Speaker Grattan Kerans

173.050 [Amended by 1953 c.625 §4; repealed by 1953 c.492 §16]

173.055 Contracts to provide fiscal data. The Legislative Fiscal Officer and Legislative Revenue Officer are authorized to contract with other agencies or persons to provide fiscal data necessary to carry out the provisions of ORS 173.025 to 173.055. [1977 c.414 §4]

LEGISLATIVE COUNSEL COMMITTEE

173.110 [1953 c.492 §1; repealed by 1969 c.256 §1 (173.111 enacted in lieu of 173.110)]

173.111 Legislative Counsel Committee and office of Legislative Counsel created. The Legislative Counsel Committee, referred to in ORS 173.111 to 173.240 and 171.275 to 171.315 as the committee, is established as a joint committee of the Legislative Assembly. The committee shall select a Legislative Counsel to serve as its executive officer. [1969 c.256 §2 (enacted in lieu of 173.110); 1971 c.638 §4]

173.120 Legislative Counsel to be in attendance upon legislative sessions. The Legislative Counsel shall be in attendance upon all sessions of the Legislative Assembly. [1953 c.492 §2]

173.130 Performance of legislative services; charges. (1) The Legislative Counsel shall prepare or assist in the preparation of legislative measures when requested to do so by a member of the Legislative Assembly.

(2) Upon the written request of a state agency, the Legislative Counsel may prepare or assist in the preparation of legislative measures that have been approved for preparation in writing by the Governor or the Governor's designated representative. The Legislative Counsel may also prepare or assist in the preparation of legislative measures that are requested in writing by the Secretary of State, the State Treasurer, the Attorney General, the Commissioner of the Bureau of Labor and Industries or the Superintendent of Public Instruction. In accordance with ORS 283.110, the Legislative Counsel may charge the agency or officer for the services performed.

(3) The Legislative Counsel shall give such consideration to and service concerning any measure before the Legislative Assembly as circumstances permit, and which is in any way requested by the House of Representatives or Senate, or any committee of the Legislative Assembly having the measure before it for consideration.

(4) The Legislative Counsel, pursuant to the policies and directions of the Legislative Counsel Committee and in conformity with any applicable rules of the House or Senate, shall perform or cause to be performed, as circumstances will permit, research service requested by any committee of the Legislative Assembly in connection with the performance of its functions. Research assignments made to the Legislative Counsel Committee by joint or concurrent resolution of the Legislative Assembly shall be given priority over other research requests received or initiated by the committee. The research service to be performed includes the administrative services incident to the accomplishment of the research requests or assignments. [1953 c.492 §3; 1959 c.295 §2; 1973 c.226 §1; 1979 c.237 §1]

173.135 Participation in legal proceedings to protect legislative interests. When deemed necessary or advisable to protect the official interests of the Legislative Assembly, one or more legislative committees, or one or more members of the Legislative Assembly, the committee may direct the Legislative Counsel and his staff, or may retain any member of the Oregon State Bar, to appear in, commence, prosecute or defend any action, suit, matter, cause or proceeding in any court or agency of this state or of the United States. Expenses and costs incurred pursuant to this section may be paid by the committee from any funds available to the committee. [1961 c.167 §32]

173.140 Preparation of initiative measures. The Legislative Counsel shall cooperate with the proponents of an initiative measure in its preparation when:

(1) Requested in writing so to do by 50 or more electors proposing the measure; and

(2) In the judgment of the committee there is reasonable probability that the measure will be submitted to the voters of the state under the laws relating to the submission of initiative measures. [1953 c.492 §4]

173.150 [1953 c.492 §5; 1961 c.279 §1; repealed by 1981 c.517 §10 (171.275 enacted in lieu of 173.150)]

173.152 [Formerly 171.272; amended by 1963 c.420 §1; 1965 c.372 §1; 1981 c.517 §21; renumbered 171.315]

173.155 [1959 c.295 §1; repealed by 1963 c.292 §1 (173.310 to 173.340 enacted in lieu of 173.155)]

173.160 Powers and duties of Legislative Counsel in preparing editions for publication. In preparing editions of the statutes for publication and distribution, the Legislative Counsel shall not alter the sense, meaning, effect or substance of any Act, but, within such limitations, may renumber sections and parts of sections of the Acts, change the wording of head-notes, rearrange sections, change reference numbers to agree with renumbered chapters, sections or other parts, substitute the proper subsection, section or chapter or other division numbers, strike out figures or words which are merely repetitious, change capitalization for the purpose of uniformity, and correct manifest clerical or typographical errors. [1953 c.492 §6]

173.170 [1953 c.492 §7; 1961 c.167 §28; 1981 c.517 §22, renumbered 171.285]

173.180 [1953 c.492 §8; 1981 c.517 §23; renumbered 171.295]

173.190 [1953 c.492 §9; 1961 c.167 §29; repealed by 1969 c.256 §3 (173.191 enacted in lieu of 173.190)]

173.191 Membership; term; vacancies; chairman; advisory committees. (1) The Legislative Counsel Committee shall consist of the Speaker of the House of Representatives, the President of the Senate, five members of the House appointed by the Speaker, and four members of the Senate appointed by the President. The Speaker of the House of Representatives and the President of the Senate may each designate an alternate from time to time from among the members of his house to exercise his powers as a member of the committee. The appointing authorities shall appoint members of a new committee within 30 days after the convening of the Legislative Assembly in regular session.

(2) The term of a member of the committee shall expire upon the convening of the Legislative Assembly in regular session next following the member's appointment. Vacancies occurring in the membership of the committee shall be filled by the appointing authority.

(3) The committee has a continuing existence and may meet, act and conduct its business during the sessions of the Legislative Assembly or any recess thereof, and in the interim period between sessions but the committee has no authority to affect the rules of either house.

(4) The committee shall select its own chairman who may, in addition to other acts authorized, approve disbursements for indebtedness or expenses.

(5) The committee may appoint advisory committees or subcommittees. Except as otherwise provided in this subsection, individuals other than members of the Legislative Assembly may serve on such advisory committees or subcommittees. A member of such committee or subcommittee who is not a member of the Legislative Assembly shall be compensated and reimbursed in the manner provided in ORS 292.495. An advisory committee or subcommittee appointed to assist the committee in review of state agency rules may consist only of two or more members of the Legislative Assembly. [1969 c.256 §4 (enacted in lieu of 173.190); 1971 c.638 §5; 1975 c.136 §6; 1975 c.530 §4; 1977 c.344 §5]

173.196 [1975 c.136 §8; repealed by 1977 c.344 §7]

173.200 Legislative Counsel. (1) The committee shall select the Legislative Counsel, who shall serve at the pleasure of the committee. The Legislative Counsel shall be a person authorized to practice law in the highest court of one of the states of the United States.

(2) The committee shall fix the annual salary of the Legislative Counsel. Subject to and in the manner otherwise provided by law, the Legislative Counsel shall be reimbursed for actual and necessary expenses incurred or paid by him in the performance of his duties. [1953 c.492 §10]

173.210 Employment of staff. Subject to the approval of the committee, the Legislative Counsel may employ and fix the compensation of such professional assistants and clerical and other employes as he deems necessary for the effective conduct of the work under his charge. [1953 c.492 §11; 1973 c.735 §8]

173.215 Effect of expiration of terms of committee members. (1) The expiration of the terms of members of the Legislative Counsel Committee upon the convening of the Legislative Assembly in regular session next following the commencement of their terms, as provided by ORS 173.191, does not affect the employment of any individual filling a position previously approved by the committee.

(2) After the convening of the Legislative Assembly in regular session and until such time as the newly appointed committee provides otherwise:

(a) The Legislative Counsel may employ and fix the compensation of individuals he deems necessary for the effective conduct of the work under his charge.

(b) Notwithstanding ORS 173.111 and 173.200, the President of the Senate and the Speaker of the House of Representatives, in case of a vacancy in the position of Legislative Counsel, may jointly select a Legislative Counsel having the qualifications set forth in ORS 173.200 to serve at their pleasure at a salary they jointly fix, not exceeding that last fixed by the committee. The President and Speaker may act in lieu of the committee under ORS 293.335 in designating the Legislative Counsel they select to approve voucher claims and in filing the statement of designation, and the provisions of ORS 293.335 shall apply as if the Legislative Counsel they select and so designate had been so designated by the committee.

(c) Nothing in paragraph (b) of this subsection limits the authority of the committee during its term of office over the matters described in paragraph (b) of this subsection. [1965 c.113 §1; 1967 c.5 §1; 1975 c.136 §10]

173.220 Location of Legislative Counsel's office. The permanent office of the Legislative Counsel shall be in the State Capitol, where he shall be provided with suitable and sufficient offices convenient to the chambers of the House and Senate. [1953 c.492 §12]

173.230 Confidential nature of matters handled by committee's staff. Neither the Legislative Counsel nor any employe of the committee shall reveal to any person not an employe or a member of the committee the contents or nature of any matter before him in his official capacity, if the person bringing the matter before the committee or employe designates the matter as confidential. Matters not designated as confidential may only be revealed as prescribed by the rules of the committee. [1953 c.492 §14; 1961 c.167 §30]

173.240 Committee's staff prohibited from influencing legislation. Neither the Legislative Counsel nor any employe of the committee shall oppose, urge or attempt to influence legislation. [1953 c.492 §14]

173.250 [1953 c.492 §15; 1957 c.60 §1; subsection (4) enacted as 1961 c.159 §2; 1969 c.256 §5; 1981 c.517 §24; renumbered 171.305]

173.310 [1963 c.292 §2 (173.310 to 173.340 enacted in lieu of 173.155); 1969 c.314 §10; 1971 c.638 §7; 1977 c.186 §1; repealed by 1979 c.472 §2]

LAW IMPROVEMENT COMMITTEE

173.315 Law Improvement Committee created; duties; membership; chairperson. (1) The Legislative Counsel Committee shall cause to be conducted a continuous substantive law revision program and shall establish the Law Improvement Committee to supervise the conduct of the program.

(2) The Law Improvement Committee shall consist of:

(a) The cochairpersons of the Legislative Counsel Committee;

(b) The deans of Oregon's accredited law schools, or their designees;

(c) A person designated by the Board of Governors of the Oregon State Bar;

(d) The Attorney General or the Attorney General's designee; and

(e) The chairpersons of the legislative committees having jurisdiction over judicial matters in the preceding regular session.

(3) The Law Improvement Committee shall elect its chairperson and vice-chairperson with such powers and duties as the committee shall determine. [1981 c.813 §1]

173.320 [1963 c.292 §3 (173.310 to 173.340 enacted in lieu of 173.155); repealed by 1979 c.472 §2]

173.325 Compensation and expenses of members. A member of the Law Improvement Committee who is not a member of the Legislative Assembly shall receive no compensation for services as a member but, subject to any other applicable law regulating travel and other expenses for state officers, may receive actual and necessary travel and other expenses incurred in the performance of official duties, providing funds are appropriated therefor in the budget of the Legislative Counsel Committee. Subject to the availability of funds, any member of the committee who is a member of the Legislative Assembly shall be entitled to compensation and expenses as provided in ORS 171.072 (4) or (5) for service on the committee. [1981 c.813 §2]

173.330 [1963 c.292 §4 (173.310 to 173.340 enacted in lieu of 173.155); repealed by 1979 c.472 §2]

173.335 Committee staff; duties. (1) With the approval of the Law Improvement Committee chairperson, the Legislative Counsel shall designate a staff attorney whose primary duty shall be to assist the committee to carry out its functions as provided by law.

STATE OF UTAH
OFFICE OF LEGISLATIVE RESEARCH AND GENERAL COUNSEL

JON M. MEMMOTT
Director/General Counsel

September 14, 1983

Representative Charlie Bussell
Chairman
Committee on Judiciary
Alaska State Legislature
Pouch V
Juneau, Alaska 99811

Dear Representative Bussell:

Speaker Norman H. Bangerter has referred your inquiry of August 11 to our office for response. Hopefully an outline of our office organization will address some of your questions.

The Utah legislature presently has three full-time professional staff offices: (1) The Legislative Fiscal Analyst or budget office, (2) The Legislative Auditor General which conducts performance audits on state agencies, etc., and (3) The Office of Legislative Research and General Counsel. The professional offices provide professional staff support to legislative committees and individual legislators on a non-partisan basis. The Office of legislative Research and General Counsel employs both attorneys and non-attorneys on its professional staff. The other professional staff members include economists, statisticians, and other professionals in varied areas. The objective of the office is to provide an integrated professional team for specific legislative committees and a broad professional staff for individual legislative requests. Under the office's statutory authority, the director of the office may also be the legislative general counsel. Currently, that is the situation where Jon Memmott is both director and general counsel. However, in the future a separation of those functions could occur, although the office would still function as a single entity.

We presently have 11 full-time attorneys who provide general legal assistance to the legislature. In addition to their responsibilities to provide legal advice to the legislature, a primary function of the attorneys is to draft legislation. Utah's legislature meets in limited sessions, however, so the drafting requirements tend to be highly concentrated. There are no attorneys specifically designated to represent the legislature in the event of litigation. Rather, litigation needs are examined on an as-need basis and personnel resources allocated accordingly. As for back-up staff, we have approximately ten clerical people that assist the entire office professional staff. This includes computer operators whose primary responsibility centers on bill drafting and the preparation of other session-related documentation.

Candidly, this office has infrequently been involved in actual litigation on behalf of the legislature.This is not because we have declined to represent our clients, but there simply has been very little demand. In those instances where major litigation has occurred we have retained the services of outside legal counsel. However, it is likely that more opportunities will arise in the future and our office is developing the capacity to address those litigation needs.

Your inquiries also addressed how our office deals with controversies between political interests in the legislature. Our office is strictly non-partisan which requires us to represent all political interests in the legislature. Often this means that we are providing legal advice on the same issue for different political interests. This situation does require a high degree of professionalism and a concerted effort to insulate the staff from involvement in partisan political issues. To date we have been successful in handling these situations. We have not had a situation of having to represent different political parties in the legislature in actual litigation.

The operating budget of the office is approximately $1.3 million. This figure is include salaries for both the legal and non-legal staff. No specific appropriation for litigation needs was made. The last major piece of litigation required the expenditure of $20,000 for outside counsel which came from certain carry-over funds.

I hope this general information is of some assistance to you. If you have any further questions, I would be happy to answer them for you.

Sincerely,

Roger D. Tew

Roger D. Tew
Assistant General Counsel

ROT/jp

(g) To maintain a legislative research library containing analytical, statistical, legal, and descriptive data relative to current and potential governmental and legislative subjects.

(h) To appoint and develop a professional staff within budget limitations.

(i) To prepare and submit the annual budget request for such office.

History: L. 1975, ch. 109, § 12.

36-12-13. Legislative fiscal analyst — Qualifications — Powers, functions and duties. (1) The legislative fiscal analyst shall have a master's degree in public administration, political science, economics, accounting, or the equivalent in academic and practical experience.

(2) The powers, functions, and duties of the legislative fiscal analyst shall be:

(a) To analyze in detail the executive budget before the convening of each legislative session and make recommendations to the legislature on each item or program appearing in the executive budget.

(b) To prepare cost estimates on all proposed bills which anticipate government expenditures.

(c) To prepare a review and analysis of revenue estimates for existing and proposed revenue acts.

(d) To report instances in which the administration may be failing to carry out the expressed intent of the legislature.

(e) To direct attention to each new proposed service contained in the governor's budget.

(f) To direct attention to each budget item previously denied by the legislature.

(g) To propose and analyze statutory changes for more effective operational economies or more effective administration.

(h) To prepare, after each session of the legislature, a summary showing the effect of the final legislative program on the financial condition of the state.

(i) To conduct organizational and management improvement studies.

(j) To prepare and deliver upon request of any study committee or the legislative management committee, reports on the finances of the state and on anticipated or proposed requests for appropriations.

(k) To recommend areas for research studies by the executive department or the study committees.

(l) To assist in prescribing the format for the presentation of the governor's budget to facilitate program review of state expenditures.

(m) To appoint and develop a professional staff within budget limitations.

(n) To prepare and submit the annual budget request for such office.

(3) In carrying out the duties provided for in this section, the legislative fiscal analyst shall have the authority to obtain access to all records, documents, and reports of the departments, agencies, and other units of the state government, necessary to the scope of his duties, including the power to subpoena records and agency officials, when necessary for this purpose.

History: L. 1975, ch. 109, § 13.

36-12-14. Legislative general counsel — Qualifications — Powers, functions and duties. (1) The legislative general counsel shall be a lawyer admitted to practice law in this state and shall be selected without reference to party affiliation and solely on the grounds of fitness to perform the duties of his office.

(2) The powers, functions, and duties of the legislative general counsel shall be:

(a) To exercise the constitutional authority provided in Article VI, Sec. 32, of the Constitution of Utah.

(b) To serve as legal counsel to the legislature, any of its committees or subcommittees, or the professional legislative staff and to represent the legislature, any

of its committees or subcommittees, or the professional legislative staff in cases and controversies before courts and administrative agencies and tribunals.

(c) To prepare and assist in the preparation of legislative bills, resolutions, memorials, amendments, and other documents or instruments required in the legislative process and give advice and counsel regarding them to the legislature, any of its members or members-elect, any of its committees or subcommittees, or the professional legislative staff.

(d) To keep on file records concerning all legislation and proceedings of the legislature with respect to this legislation and subject indexes of bills introduced at each session of the legislature.

(e) To formulate plans for the revision, clarification, classification, arrangement, codification, annotation, and indexing of Utah statutes, and submit to each general session of the legislature a report concerning these matters, including proposed legislation to effectuate the recommendations.

(f) To appoint and develop a professional staff within budget limitations.

(g) To prepare and submit the annual budget request for such office.

History: L. 1975, ch. 109, § 14.

36-12-15. Legislative auditor general — Qualifications — Deputy — Powers, functions and duties. (1) The legislative auditor general shall be a licensed certified public accountant or certified internal auditor with at least five years' experience in the auditing or public accounting profession, or the equivalent, prior to appointment.

(2) The legislative auditor, with concurrence of the audit subcommittee of the legislative management committee, shall appoint a deputy legislative auditor general. The legislative auditor general shall also appoint and develop a professional staff within budget limitations.

(3) The legislative auditor general shall exercise the constitutional authority provided in Article VI, Sec. 33 of the Constitution of Utah. He shall conduct comprehensive and special purpose audits and prepare and submit a written report on each audit to the legislative management committee, the audit subcommittee and to all members of the legislature within 75 days after the completion of the examination. The audit shall include any or all of the following:

(a) An examination to determine the honesty and integrity of fiscal affairs, the accuracy and reliability of financial statements and reports, and the adequacy and effectiveness of financial controls to properly record and safeguard the acquisition, custody, and use of public funds;

(b) An examination to determine whether administrators have faithfully adhered to legislative intent;

(c) An examination to determine whether the operations of the departments, agencies, and other units of the state have been conducted in an efficient and effective manner;

(d) An examination to determine whether state programs, administered by the departments, agencies, and other units of the state, have been effective in accomplishing intended objectives;

(e) An examination to determine whether management control and information systems are adequate and effective in assuring that state programs are administered faithfully, efficiently, and effectively.

(4) The legislative auditor general shall have the following additional powers, functions, and duties:

(a) To obtain access to all records, documents, and reports of the departments, agencies, and other units of the state government, necessary to the scope of his examination, including the power to subpoena records and agency officials, when necessary for this purpose;

ROBERT A. COLDSNOW

STATE OF KANSAS

(913) 296-3014

LEGISLATIVE COUNSEL
STATE CAPITOL—ROOM 449-N
TOPEKA, KANSAS 66612

August 23, 1983

Representative Charlie Bussell
Chairman, House Committee on Judiciary
Pouch V
Juneau, Alaska 99811

Dear Representative Bussell:

Your August 11 letters to Senator Doyen and Speaker Hayden have been referred to me for a response to your questions.

You indicate you have a copy of the Kansas statutes for the office of legislative counsel. Please be sure your copy of K.S.A. 46-1224 in its "History:" reflects it is the version as amended by Laws 1975, ch. 278, §1; May 3. I also enclose a copy of the Duty Assignments adopted for this office by the Legislative Coordinating Council.

My responses are numbered to correspond to your questions.

1) One attorney serves as the legislative counsel and works for both the House and the Senate in matters involving litigation, and such other duties as the Legislative Coordinating Council may direct.

2) The office of legislative counsel averages three or four instances a year with direct involvement in litigation by way of amicus curiae briefs, intervention or direct representation of individual legislators who have been named defendants or subpoenaed as witnesses, and in some instances the Legislature as a body, or the House and the Senate have been named. This office continuously monitors litigation involving agencies where there is a particular and more direct interest on the part of the Legislature in the litigation, e.g., nursing home reimbursement litigation, legislative appropriation of federal grants, legislatively-imposed restrictions on uses of appropriation items. Counsel for the involved agencies frequently in such matters

consult with this office and keep us informed in the event new legislation might be indicated as a possible way of settlement or in case aid might be requested by way of an amicus brief to reflect the Legislature's special interest in the matter.

3) The attorney represents the entire Legislature under the direction of the Legislative Coordinating Council. Yes, situations may arise where there is political conflict. Generally, then, this office is not involved in the matter. Most of the time, however, the matters are concerned with the Legislature as an institution and its prerogatives as the legislative branch of government. Many of the matters arise out of the legislative-executive conflicts which have been arising with greater frequency the last few years.

4) One secretary is employed on a full-time basis. Law clerks are hired by the office on a temporary, as-needed basis. This arrangement is practical by reason of the location of Washburn University Law School in Topeka (the Capital) and the Kansas University Law School in Lawrence (25 miles away).

5) The office has an annual budget of about $65,000. It is not practical to break down the figures into litigation and other, since almost everything is involved with litigation directly or on the fringes of litigation. As an example, this office helps staff the Joint Committee on Special Claims Against the State. This Committee serves as the screening or processing committee for what in most states would be considered private bills. These are claims for damages where governmental immunity prevents direct litigation, or requests for other relief where there is no administrative remedy, etc. The Committee in effect sits somewhat like the old chancellory courts to do equity. All claims against the state arising out of implied contract have to be processed by the committee. This office investigates the larger and more serious of these claims and all of the claims which may have questions of law and unusual fact circumstances or involve a potential for possible litigation.

6) None

7) The procedure for selection of the legislative counsel is set forth in K.S.A. 46-1222. It involves bi-partisan action by two members each of the House and Senate Judiciary

Committees and the Chief Justice of the Kansas Supreme Court, as well as the final decision of the Legislative Coordinating Council (which is a bi-partisan council of the legislative leadership--President of the Senate, Majority and Minority Leaders of the Senate, Speaker of the House, Speaker-Pro Tem of the House, Majority and Minority Leaders of the House). This procedure has been satisfactorily used three times since the office was created in 1974.

8) This is difficult to differentiate for this office because most of the work is on the fringes of litigation if not directly involved in litigation. The best estimate would be--about 50-50 for litigation and non-litigation. The office has in the past spent considerable time with four or five legislative investigation committees which were using compulsory process (see assignments for this office). These investigating committees have probably involved at least 15-20 percent of the time alone. Relatively small amount of time is spent with individual legislators, outside of the leadership, unless they are named in litigation or as a witness or a potential witness. The exception is that frequently legislators inquire as to the scope and coverage of legislative immunity. Activities of certain committees such as those involved with reapportionment or redistricting are monitored because of litigation potentials and special assistance is given, e.g., preparing a special committee report for submission to the respective house of the Legislature and inclusion in the journal as part of the legislative history and explanation. Conscious continuous effort is maintained to not get involved with advice on the advisability of any particular policy issue or matter. Each year at tax time a good deal of time is spent with individual legislators on advice as to the income tax treatment of the legislators' per diem expense allowances. I have been involved with this issue since it first arose in 1975 and cooperated with and assisted NCSL in its efforts to reach a permanent solution.

You should be aware that some will challenge the idea of a legislative litigation attorney as an affront to or unnecessary competitor with the Attorney General. I am sure, however, your Legislature has experienced situations where the Attorney General had a conflict by reason of being a part of the executive department and a primary duty and obligation to the executive department in the particular matter. Sometimes this conflict may be politically inspired, sometimes it arises from purely philosophical differences;

and, on other occasions, it is simply unavoidable. Having its own counsel authorized to represent the Legislature in court gives the legislative branch some independence from the Attorney General to avoid possible adverse consequences from these conflicts. I have had people also tell me that just the existence of this office has resulted in an overall more professional attitude on the part of the Office of the Attorney General and other agency counsel when dealing with matters which might involve the legislative branch in a more or less direct way.

I have been fairly active the last few years in the Legal Services Staff Section of NCSL. Increasingly, during the last three years, the discussion has turned to the problems and conflicts which are arising with the executive branch and the general dissatisfaction and frustration which arises because of the conflicts with the Attorney General. More and more legislative leaders from other states have been addressing the section on encouraging the states to establish some arrangement to be in a position, if desired, to be independent of any other branch when it came to independent representation in litigation.

This gets to a point which may be somewhat personal, but I hope you will consider it in the light of an effort to make a point. You will note that the Kansas statutes contemplate that the person occupying this office have at least five years practice and at least some trial or court experiences. I had twenty-four years in private practice with a fairly reasonable amount of trial and appellate court experience. I also had the fortune of having the experience of serving six years in the Kansas House of Representatives during the 1960's. This familiarity with legislative procedure, etc., has been invaluable.

The point has been made at the Legal Staff Section meetings that most legislative staff attorneys are not familiar or competent enough with trial practice to adequately represent the Legislature in court. These staff lawyers are good people and very competent in their fields of bill drafting, statute publications, general subject matter research, etc.; but, it is apparently true that by far the large percentage of them have spent most, if not all, of their professional lives in this limited professional environment.

A response made to this was that if you were not willing to fund and hire counsel in-house competent in trial work,

the Legislature should have in-house counsel authorized to represent the legislature (to avoid standing questions) and the ability to hire outside counsel for the actual trial work. The point was made that most competent trial attorneys know very little about the Legislature and the legislative process, as the competent legislative staff attorney may know little about trial work. Working together, however, they can make a very adequate presentation on behalf of the Legislature.

You may wish to contact Representative Ed Jackamonis of Wisconsin (Speaker of the House in 1982) who has had considerable experience as a legislator and was the target for considerable litigation while Speaker. Also, the Minnesota Senate Counsel's office may be of help. The Minnesota Senate Counsel was established unilaterally by Senate Resolution when (as I understand it) the Minnesota House was unwilling to participate in establishing a legislative attorney authorized to represent the Legislature in court. The U.S. Supreme Court in the early 1970's recognized the Office of Minnesota Senate Counsel as a proper entity to represent the Minnesota Senate in litigation. I understand the Minnesota Senate Counsel has handled a good volume of litigation for the Senate. Incidentally, the Kansas office of legislative counsel was passed over the Governor's veto.

I hope I have given you adequate answers to your questions and some background and thoughts of others in this area. While it appears the executive-legislative conflicts will be ongoing for some time, I would stress that the establishment of a legislative attorney authorized to have standing to represent the legislature in court does not necessarily have to heighten or sharpen the possibility of conflict. With the proper professional attitude of the respective attorneys (legislative versus executive), much cooperation and problem solving can be accomplished. Under such a situation, both branches can be better served and those issues requiring litigation can be better and more professionally presented to the courts. This, however, does seem to come about only after the Legislature takes a stand and duly establishes someone with authority to represent it in court.

Sincerely,

Robert A. Coldsnow

Robert A. Coldsnow
RAC:ja
Enclosure
cc: Speaker Hayden
President Doyen

January 10, 1975

DUTY ASSIGNMENTS FOR LEGISLATIVE COUNSEL

The Legislative Coordinating Council has established the following duties and priority of duties for the office of Legislative Counsel:

1. In the event any legislative committee, legislator, or legislative staff member is served with any summons or any court order in any court proceeding, as a result of their official duties in the discharge of legislative business, the committee chairman, or individual legislator or staff member should immediately advise Legislative Counsel and furnish him a copy of the papers. Legislative Counsel will make appropriate pleadings and appropriate appearances in court on behalf of the committee or persons so served.

2. The legislative leadership, the appropriate committee chairmen, or any of the committees' staff should notify Legislative Counsel, as soon as possible, when they think a particular study, inquiry or investigation may require the use of compulsory process. Where compulsory process is being utilized by any legislative committee, Legislative Counsel should give assistance to the committee as follows:

(a) Where a particular study, inquiry or investigation has been authorized or directed by a concurrent resolution or statute of the legislature and exercise of compulsory process is specifically authorized by said concurrent resolution or statute or by the Legislative Coordinating Council.

(b) Where any standing committee or the Legislative Coordinating Council is authorized to exercise the powers of compulsory process without further authorization.

(c) Where any standing committee by statute and authority of either the Speaker of the House or President of the Senate is authorized to exercise the powers of compulsory process.

(d) Where any study committee is authorized by the Legislative Coordinating Council to exercise the powers of compulsory process.

3. The committee chairman of any committee holding extensive hearings and desiring extensive questioning of any witnesses to be made by staff members may request Legislative Counsel to prepare and administer such questioning under supervision of the committee chairman.

4. When specifically authorized by the Legislative Coordinating Council, Legislative Counsel may render unofficial advisory opinions upon legal questions concerning pending legislative matters.

Kansas

unable to enter into a contract for the required audit services, the federal audit committee shall request the post auditor to provide another list of firms to be negotiated with by the federal audit committee and, upon receipt of such list, the federal audit committee shall proceed in accordance with the provisions of K.S.A. 46-1123 to 46-1125, inclusive.

History: L. 1980, ch. 153, § 6; April 30.

46-1126. Contracts for financial-compliance audits; professional liability insurance; responsibilities of selected firm. (a) Each contract for a financial-compliance audit of a state agency negotiated under K.S.A. 46-1123 to 46-1125, inclusive, shall be entered into between the post auditor and the firm selected to perform the financial-compliance audit. Each such contract shall require the firm selected to perform the financial-compliance audit to submit evidence which is satisfactory to the federal audit committee that the firm has general professional liability insurance or specific professional liability insurance which is adequate for such audit.

(b) In addition to the requirements in subsection (a), each such contract for financial-compliance audit services shall specify the responsibilities undertaken by the firm selected to perform such audit and that such firm shall be responsible for all material errors and omissions in the performance of such contract.

(c) Such contracts shall not be subject to the provisions of K.S.A. 1980 Supp. 75-3739 and amendments thereto.

History: L. 1980, ch. 153, § 7; April 30.

46-1127. Federal audit committee to monitor conduct of financial-compliance audit; written audit report; duty of confidentiality. (a) The federal audit committee shall monitor the performance of the firm or firms conducting a financial-compliance audit pursuant to a contract entered into under K.S.A. 46-1126 to insure that such audit is performed in accordance with the specifications developed for the conduct of such audit. The firm or firms selected to perform such audit shall submit a written audit report at the conclusion of the audit to the governor, the director of accounts and reports, the director of the budget, the secretary of administration, the state agency which is audited, the post auditor, each member of the legislative post audit committee and other persons or agencies as may be required by the specifications.

(b) In the performance of such audit, the officers and employees of the firm or firms performing the audit shall be subject to the same duty of confidentiality applicable to the post auditor and officers and employees of the division of post audit under the legislative post audit act and shall have access to all books, accounts, records, files, documents and correspondence, confidential or otherwise, of any person or state agency subject to the financial-compliance audit.

History: L. 1980, ch. 153, § 8; April 30.

Article 12.—LEGISLATIVE COORDINATING COUNCIL

Law Review and Bar Journal References:

"1971 Legislative Synopsis," Robert F. Bennett, 40 J.B.A.K. 307, 357 (1971).

46-1201. Legislative coordinating council; membership; officers; meetings; notice of meetings to members of legislature and certain legislative officials; copies of minutes. (a) There is hereby established the legislative coordinating council which shall have seven (7) members. Such members shall be the president of the senate, the speaker of the house of representatives, the speaker pro tem of the house of representatives, the majority leader of the senate, the majority leader of the house of representatives, the minority leader of the senate, and the minority leader of the house of representatives.

(b) In even-numbered years, the speaker of the house of representative shall be chairman of the legislative coordinating council, and the president of the senate shall be vice-chairman thereof. In odd-numbered years, the president of the senate shall be chairman of the legislative coordinating council, and the speaker shall be vice-chairman thereof.

(c) The legislative coordinating council shall meet at least once each month in the interim between legislative sessions. Such council shall meet on the call of its chairman or any three members of the council. The director of legislative administrative services, director of legislative research, revisor of statutes and each member of the legislature shall be given notice of each meeting of the council by its chairman, except in cases

or existing joint committee on legislative services and facilities shall become officers and employees of the office of revisor of statutes, legislative research department or of the legislature, as the case may be, and shall retain all retirement benefits which such officers or employees had before such transfer under the laws of this state, and their services shall be deemed to have been continuous.

History: L. 1971, ch. 184, § 17; May 1.

46-1218. Same; transfer and continuation of revisor of statutes; transfer not to affect rules and regulations. (a) The office of revisor of statutes established by this act shall be the successor in every way, with respect to the powers, duties and functions of the revisor of statutes in which the same were vested prior to the effective date of this act, except as otherwise provided by this act. Every act performed in the exercise of such powers, duties and functions by or under the authority of the revisor of statutes established by this act to which such powers, duties and functions are transferred by this act, shall be deemed to have the same force and effect as if performed by the revisor of statutes in whom such functions were vested prior to the effective date of this act. Whenever the revisor of statutes is referred to or designated by law, contract or other document, such reference or designation shall be deemed to apply to the revisor of statutes provided for by this act.

(b) All rules and regulations of state agencies lawfully filed with the revisor of statutes before the effective date of this act shall continue to be effective and shall be deemed to be duly filed with the revisor of statutes provided for by this act until revised, amended, repealed, or nullified pursuant to law.

(c) The office of revisor of statutes created by this act shall be a continuation of the office of revisor of statutes established under K.S.A. 77-301 and the revisor of statutes appointed in accordance with said section 77-301 shall be and continue as revisor of statutes under this act, until the legislative coordinating council exercises its appointing authority hereunder.

History: L. 1971, ch. 184, § 18; May 1.

46-1219. Same; abolition and transfers relating to Kansas legislative council. Whenever the Kansas legislative council or the secretary of the Kansas legislative council is referred to or designated by law, contract or other document, such reference or designation shall be deemed to mean and apply to the legislative coordinating council created by this act. Whenever any such statute provides for submission of recommendations or reports, such council may refer the matter submitted to appropriate committees. Whenever the research department of the Kansas legislative council is referred to or designated by law, such reference or designation shall be deemed to mean and apply to the legislative research department established by this act.

History: L. 1971, ch. 184, § 19; May 1.

46-1220. Same; transfer of records and property of Kansas legislative council. The legislative research department shall succeed to all records of the existing Kansas legislative council and shall also succeed to the file cabinets containing such records. The office of revisor of statutes shall succeed to all property and records of the existing revisor of statutes, except records held by the revisor of statutes as secretary of the Kansas legislative council. The office of revisor of statutes shall succeed to the equipment of the Kansas legislative council located in the office of revisor of statutes, except the file cabinets mentioned above. Any conflict as to the proper disposition of such property or records arising under this section, and resulting from the reorganization under this act, shall be determined by the legislative coordinating council.

History: L. 1971, ch. 184, § 20; May 1.

46-1221. Nonapplication of act in certain cases. The provisions of this act [*] shall not apply to the state finance council, the Kansas commission on interstate cooperation, the advisory committee to the Kansas commission on interstate cooperation, the motor vehicle reciprocity commission, the legislative post-audit committee or the Kansas judicial council, nor to any committee, delegate, member, officer or employee of any of the foregoing specified in this section when acting for or under authority thereof.

History: L. 1971, ch. 184, § 21; May 1.

* "This act," see, also, 45-116, 45-313, 46-150, 46-152, 46-153, 46-1001, 46-1004, 46-1005, 46-1015, 46-1201 to 46-1220, 75-2537, 75-3215, 75-3717, 75-3762 to 75-3765, 75-3769 and 75-3772.

46-1222. Office of legislative counsel;

46-1222. Office of legislative counsel; nomination, appointment, removal, qualifications, compensation and expenses of legislative counsel. There is hereby established the office of legislative counsel. The legislative counsel shall be appointed by the legislative coordinating council for a term of four (4) years, and may be removed by the legislative coordinating council for cause. The appointment and removal of the legislative counsel shall be made by a vote of five (5) members of the legislative coordinating council. The legislative counsel shall be appointed from a panel of three (3) persons selected by a nominating committee composed of the chairman of the senate standing committee on judiciary, a minority member of said senate committee having seniority thereon, to be appointed by the minority leader of the senate, the chairman of the house standing committee on judiciary, a minority member of said house committee having seniority thereon, to be appointed by the minority leader of the house, and the chief justice of the supreme court. Of the panel of three (3) persons selected by the nominating committee, not more than two (2) of such persons shall be members of the same political party. No person shall be eligible for nomination or appointment as legislative counsel unless:

(a) He has been admitted to practice law in Kansas for not less than five (5) years prior to his nomination.

(b) He is admitted to practice in the federal court.

In addition to the foregoing qualifications, in considering persons for nomination, the nominating committee shall investigate their experience in legal research, trial and appellate practice and related areas in order that nominees shall possess the experience and judgment deemed necessary to fulfill the duties and responsibilities of the office. The nominating committee shall further make such investigation of persons considered for nomination as will insure that such nominees are of high professional standing. The legislative counsel shall be in the unclassified service of the Kansas civil service act and shall receive compensation fixed by the legislative coordinating council, and such compensation shall not be subject to approval of the state finance council. The legislative counsel shall receive expenses as provided by law for non-legislator officers of the legislative branch. Such compensation and expenses shall be paid from appropriations for the legislature.

History: L. 1974, ch. 211, § 1; March 20.

46-1223. Same; legal investigative and clerical personnel; expenditures. The legislative coordinating council shall provide to the office of legislative counsel legal, investigative and clerical personnel as required to carry on the duties, functions and responsibilities of such office. Expenditures provided for in this act shall not be subject to approval of the state finance council nor to approval under any other statute, and shall be paid from appropriations for the legislature.

History: L. 1974, ch. 211, § 2; March 20.

46-1224. Same; duties of legislative counsel; powers and standing in courts; representation of legislature, when. As directed by the legislative coordinating council, the legislative counsel shall represent the legislature, or either house thereof, in any cause or matter. In cases of quo warranto and mandamus the legislative counsel shall have the same powers and standing in all courts of this state as any county attorney or district attorney has in his or her county or in the supreme court and as the attorney general has in any court. When the legislature is in session, either house thereof by its resolution, or both houses by concurrent resolution may authorize the legislative coordinating council to direct the legislative counsel to bring or participate in any cause or action by representing the legislature or either house thereof or the legislative coordinating council in any court of this state or of the United States. When the legislature is not in session, the legislative coordinating council may direct the legislative counsel to bring or participate in any cause or action by representing the legislature or either house thereof or the legislative coordinating council in any court of this state or of the United States in accordance with directions of said council. The legislative counsel shall render unofficial advisory opinions upon such legal questions as are submitted to him or her by any member or any standing or special committee of the legislature, all in accordance with policies to be established by the legislative coordinating council. Upon direction of the legislative coordinating council, the legislative counsel shall act as counsel to special committees of the legislature and shall provide investigative assistance, conduct examination of witnesses and participate in committee hearings and deliberations as deemed necessary by the committee chairpersons. The legislative counsel shall perform such other duties as are directed by the legislative coordinating council.

History: L. 1974, ch. 211, § 3; L. 1975, ch. 278, § 1; May 3.

nomination, appointment, removal, qualifications, compensation and expenses of legislative counsel. There is hereby established the office of legislative counsel. The legislative counsel shall be appointed by the legislative coordinating council for a term of four (4) years, and may be removed by the legislative coordinating council for cause. The appointment and removal of the legislative counsel shall be made by a vote of five (5) members of the legislative coordinating council. The legislative counsel shall be appointed from a panel of three (3) persons selected by a nominating committee composed of the chairman of the senate standing committee on judiciary, a minority member of said senate committee having seniority thereon, to be appointed by the minority leader of the senate, the chairman of the house standing committee on judiciary, a minority member of said house committee having seniority thereon, to be appointed by the minority leader of the house, and the chief justice of the supreme court. Of the panel of three (3) persons selected by the nominating committee, not more than two (2) of such persons shall be members of the same political party. No person shall be eligible for nomination or appointment as legislative counsel unless:

(a) He has been admitted to practice law in Kansas for not less than five (5) years prior to his nomination.

(b) He is admitted to practice in the federal court.

In addition to the foregoing qualifications, in considering persons for nomination, the nominating committee shall investigate their experience in legal research, trial and appellate practice and related areas in order that nominees shall possess the experience and judgment deemed necessary to fulfill the duties and responsibilities of the office. The nominating committee shall further make such investigation of persons considered for nomination as will insure that such nominees are of high professional standing. The legislative counsel shall be in the unclassified service of the Kansas civil service act and shall receive compensation fixed by the legislative coordinating council, and such compensation shall not be subject to approval of the state finance council. The legislative counsel shall receive expenses as provided by law for non-legislator officers of the legislative branch. Such compensation and expenses shall be paid from appropriations for the legislature.

History: L. 1974, ch. 211, § 1; March 20.

46-1223. Same; legal investigative and clerical personnel; expenditures. The legislative coordinating council shall provide to the office of legislative counsel legal, investigative and clerical personnel as required to carry on the duties, functions and responsibilities of such office. Expenditures provided for in this act shall not be subject to approval of the state finance council nor to approval under any other statute, and shall be paid from appropriations for the legislature.

History: L. 1974, ch. 211, § 2; March 20.

46-1224. Same; duties of legislative counsel; powers and standing in courts; representation of legislature, when. As directed by the legislative coordinating council, the legislative counsel shall represent the legislature, or either house thereof, in any cause or matter. In cases of quo warranto [illegible] shall have the power and standing in all courts of this state as any county attorney or district attorney of his or her county, or in the supreme court the attorney general has in any court when the legislature, or either house thereof, requests it, unless the attorney general resists the request. Either house by concurrent resolution may authorize the legislative coordinating council to direct the legislative counsel to [illegible] participate in any cause or proceeding representing the legislature or either house thereof or the legislative coordinating council in any court of this state or of the United States. If the attorney general is not in action, the legislative coordinating council may direct the legislative counsel to bring, participate in any cause or action by or representing the legislature or either house thereof or of the legislative coordinating council in any court of this state or of the United States, and with directions of said council. The legislative counsel shall render unofficial advisory opinions upon such legal questions as are submitted to him or her by any member or any standing or special committee of the legislature, all in accordance with policies to be established by the legislative coordinating council. Upon direction of the legislative coordinating council, the legislative counsel shall act as counsel to special committees of the legislature

and shall provide investigative assistance, conduct examination of witnesses and participate in committee hearings and deliberations as deemed necessary by the committee chairpersons. The legislative counsel shall perform such other duties as are directed by the legislative coordinating council.

History: L. 1974, ch. 211, § 3; L. 1975, ch. 278, § 1; May 3.

Article 13.—RETIREMENT BENEFITS

46-1301.

History: L. 1972, ch. 300, § 2; Repealed, L. 1973, ch. 329, § 9; July 1.

Revisor's Note:
New act, see 74-4991 to 74-4998.

Article 14.—LEGISLATIVE PETITION FOR SPECIAL SESSION

46-1401. Legislative petition for calling of special session by governor; form. Whenever any legislator wishes to petition the governor to call a special session of the legislature as provided in section 5 of article 1 of the constitution of the state of Kansas, he shall subscribe the form prescribed in this section, completed by insertion of the name of the governor and the date of the commencement of the special session. Such form shall be sworn to (or affirmed) before an officer authorized to administer oaths. Such form shall be substantially as follows:

State of Kansas, County of _____:

PETITION

To The Honorable _____, Governor
State Capitol, Topeka, Kansas

You are hereby petitioned to call the Legislature into Special Session, such Special Session to commence at 10:00 a.m., _____, 19____.

_____ _____
Signature Title and District Number

Subscribed and sworn to before me this _____ day of _____, 19____.

_____
Notary Public

(SEAL)
My commission expires: _____

History: L. 1974, ch. 212, § 1; July 1.

46-1402. Same; duty of governor to call special session, when. Whenever the governor receives petitions, in the form provided in K.S.A. 46-1401, properly executed by two-thirds of the members elected to each house of the legislature, petitioning him to call the legislature into special session at a particular time, and all being at the same particular time, he shall call the petitioned for special session to commence at the time so specified.

History: L. 1974, ch. 212, § 2; July 1.

46-1403. Same; convening of special session notwithstanding governor's failure to call special session upon legislative petition; session deemed properly called, when. Whenever petitions have been delivered to the governor, or to his official office in the state capitol, in accordance with K.S.A. 46-1402, and the governor fails to properly make the call required by K.S.A. 46-1402 and section 5 of article 1 of the constitution of the state of Kansas, the legislature shall convene at the time specified in such petitions. The first order of business of each house shall be to consider a concurrent resolution declaring the special session to be duly called. If two-thirds of all the members elected to each house shall approve such resolution, the special session shall be deemed to be duly called, notwithstanding the failure of the governor to properly make the required call.

History: L. 1974, ch. 212, § 3; July 1.

Article 15.—LEGISLATIVE INFORMATION SYSTEM

46-1501. Legislative information system; supervision and operation by revisor of statutes; function and scope of system. In accordance with any instructions given by the legislative coordinating council and as provided in this act, the revisor of statutes shall introduce in phases and supervise or operate, or both supervise and operate as may be appropriate, a comprehensive legislative information system. Such system shall initially be operated to accomplish computer search of existing statutes of Kansas and computer preparation of legislative bills and resolutions. In succeeding years, as may be convenient, such system shall encompass computer preparation of the following:

(a) Statutory search,

(b) search of other documents,

(c) bill and resolution preparation,

(d) printing (outside the office of revisor of statutes) of bills, resolutions and other documents within the legislative branch,

(e) preparation of such legislative documents as journals, calendars, bill locators, bill indexes and research materials,

STATE OF NEVADA
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August 22, 1983

Representative Charlie Bissell
Chairman of the Committee on Judiciary
Pouch V
Juneau, Alaska 99811

Dear Mr. Bissell:

Both Senator Ashworth and Speaker Vergiels have referred to me your letter asking about legal representation for the legislature. I shall combine some of the answers as I believe a clear explanation of our practice requires.

We have a staff of 12 lawyers, including me. None is assigned specially to litigation, but at least four of the present staff have worked on litigated cases to some extent, often in helping each other informally. There are 24 other employees in the legal division. Only my personal secretary does much work with litigation, but other typists sometimes do briefs or pleadings from a model and the lawyer's manuscript. We have never to my knowlege employed an attorney for litigation on private contract. (Questions 1, 4 and 6.)

We usually have no more than two or three matters pending, often none. At the most, I would say we spend the equivalent of eight days in court in a year, and perhaps an equal amount of time conferring with legislators on these matters. From this it is evident that the lawyers on our staff who do litigate--I do the majority of it personally--spend much more time counseling legislators and committees than litigating. Our records show no reliable division between counseling and the other aspects of drafting legislation, which is the primary task of us all. (Questions 2 and 8.)

My fellow lawyers and I represent the legislature as a whole: in litigation, in drafting legislation, and in every other respect. There are no separate lawyers for parties, houses or committees. This requires us to keep inviolate the secrets of opposing factions when, as often, we are privy to both. We have not encountered any problem of conflict of interest in litigation. As you are aware from NRS 218.697, whether we take part is determined by the legislative commission, on which both houses are equally, and both parties almost equally, represented. (Question 3.)

We do not budget in advance for litigation as a separate item, because it is by its very nature unpredictable, but we do keep account of time spent. Our records of the cost of this for the last biennium show:

1981-82	$19,210.00
1982-83	$10,106.50

None of the preceding biennia would exceed this. (Question 5.)

The legislative commission must approve the appointment of the legislative counsel. I in turn employ the other lawyers without reference to any political consideration, and retain, promote or discharge them on the basis of performance. The legislators could say better than I whether it has been successful, but I have been for just under 18 years chief deputy, special counsel for sessions, or legislative counsel (the last eight years), so either they like it or they are long suffering. (Question 7.)

Very truly yours,

Frank W. Daykin

Frank W. Daykin
Legislative Counsel

FWD:ct
cc: Speaker John Vergiels
Senator Keith Ashworth

Nevada

of any question or matter upon which he may be required to act in his official capacity, shall be punished by imprisonment in the state prison for not less than 1 year nor more than 10 years, or by a fine of not more than $10,000, or by both fine and imprisonment.

[Part 1911 C&P § 47; RL § 6312; NCL § 9996]—(NRS A 1979, 1463)

218.605 Contracts in which legislator has interest: Prohibitions; exception; penalties.

1. Except as provided in subsection 2, it is unlawful for any member of the legislature to:

(a) Become a contractor under any contract or order for supplies or any other kind of contract authorized by the legislature of which he is a member for the state or any of its departments, or the legislature or either of its houses, or to be interested, directly or indirectly, as principal, in any kind of contract so authorized.

(b) Be interested in any contract made by the legislature of which he is a member, or be a purchaser or interested in any purchase or sale made by the legislature of which he is a member.

2. Any member of the legislature may sell, or enter into a contract to sell, to the state or any of its departments any item or commodity if he is the only source of supply of that item or commodity within the state.

3. Any contract made in violation of subsection 1 may be declared void at the instance of the state or of any other person interested in the contract except the member of the legislature prohibited in subsection 1 from making or being interested in the contract.

4. Any person violating subsection 1 is guilty of a gross misdemeanor and shall forfeit his office.

(Added to NRS by 1977, 1110)

LEGISLATIVE COUNSEL BUREAU

218.610 "State departments" defined. [Effective until July 1, 1982.] As used in NRS 218.510 to 218.890, inclusive, "state departments" means all state offices, departments, boards, commissions, institutions, or agencies, and the Nevada industrial commission.

[1:205:1949; A 1953, 169]—(NRS A 1979, 67)

218.610 "State departments" defined. [Effective July 1, 1982.] As used in NRS 218.610 to 218.890, inclusive, "state departments" means all state offices, departments, boards, commissions, institutions, or agencies, and the state industrial insurance system.

[1:205:1949; A 1953, 169]—(NRS A 1979, 67; 1981, 1517, effective July 1, 1982)

218.620 Legislative counsel bureau: Creation and composition; director and deputy director; divisions and division chiefs; compensation and expenses.

1. There is hereby created the legislative counsel bureau, which

consists of a legislative commission, an interim finance committee, a director, an audit division, a fiscal analysis division, a legal division, a research division, and an administrative division.

2. The legislative auditor is chief of the audit division. The legislative counsel is chief of the legal division. The research director is chief of the research division. The director shall designate from time to time one of the fiscal analysts to be responsible for the administration of the fiscal analysis division.

3. The legislative commission shall:

(a) Appoint the director.

(b) Fix the compensation of the director, each of the other division chiefs, and each fiscal analyst.

4. The director shall appoint the fiscal analysts and the chiefs of the other divisions with the approval of the legislative commission, and may serve as the chief of any division.

5. The director may, with the consent of the legislative commission, designate one of the other division chiefs or an employee of the legislative counsel bureau as deputy director, who shall serve as deputy director without additional compensation.

6. The director, officers and employees of the legislative counsel bureau are entitled to receive, when engaged in official business for the legislative counsel bureau, travel expenses and subsistence allowances as provided by law.

[1:134:1953]—(NRS A 1963, 1014; 1967, 1371; 1969, 1014; 1973, 1352, 1659; 1975, 1395; 1977, 344; 1979, 67; 1981, 559)

218.625 Officers, employees of legislative counsel bureau not to oppose or urge legislation; restrictions upon disclosure; public inspection of records of travel expenses.

1. The director, other officers and employees of the legislative counsel bureau shall not:

(a) Oppose or urge legislation, except as the duties of the legislative auditor, the legislative counsel, the research director and the fiscal analysts require them to make recommendations to the legislature.

(b) Except as provided in this section, disclose to any person outside the legislative counsel bureau the contents or nature of any matter, unless the person entrusting the matter to the legislative counsel bureau so requests or consents.

2. Except as the legislative auditor and his staff are further restricted by this chapter, the nature or content of any work previously done by the personnel of the legislative counsel bureau may be disclosed to a legislator or public agency if or to the extent that such disclosure does not reveal the identity of the person who requested it or include any material submitted by the requester which has not been published or publicly disclosed.

3. When a bill or resolution drafted at the request of any person who is not a legislator, is delivered to a legislator, the legislative counsel shall disclose the identity of the requester to the recipient, and when the bill or resolution has been introduced he shall upon request disclose the identity of the requester to any legislator.

4. When a statute has been enacted or a resolution adopted, the legislative counsel shall upon request disclose to any person the state or other jurisdiction from whose law it appears to have been adopted.

5. The records of the travel expenses of legislators and officers and employees of the legislative counsel bureau are available for public inspection at such reasonable hours and under such other conditions as the legislative commission may prescribe.

(Added to NRS by 1977, 340; A 1979, 1[illegible])

218.635 Limitations on studies, investigations by divisions of legislative counsel bureau; work priorities.

1. The legislative commission shall, between sessions of the legislature, fix the work priority of all studies and investigations assigned to it by concurrent resolutions of the legislature within the limits of available time, money and staff. The legislative commission shall not make studies or investigations so directed by resolutions of only one house of the legislature.

2. Between sessions of the legislature no study or investigation may be initiated or continued by the fiscal analysts, the legislative auditor, the legislative counsel or the research director and their staffs except studies and investigations which have been specifically authorized by concurrent resolutions of the legislature or by an order of the legislative commission. No study or investigation may be carried over from one session of the legislature to the next without additional authorization by a concurrent resolution of the legislature, except audits in progress, whose carryover has been approved by the legislative commission.

(Added to NRS by 1963, 1027; A 1967, 839; 1969, 131; 1973, 1660; 1977, 344)

218.640 Appropriation of funds for legislative counsel bureau. Funds to carry out the functions of the legislative counsel bureau shall be provided by legislative appropriation from the general fund to the legislative fund, and shall be paid out on claims as other claims against the state are paid. All claims shall be approved by the director of the legislative counsel bureau or his designee before they are paid.

[1:134:1953] + [Part 4:205:1949; A 1953, 171]—(NRS A 1963, 1015; 1971, 222; 1973, 1117)

218.642 Petty cash account. A petty cash account of the legislative counsel bureau is hereby created in the sum of $500 for the minor expenses of the legislative counsel bureau. The account must be kept in the custody of an employee designated by the director of the legislative counsel bureau and must be replenished periodically from the legislative fund upon approval of expenditures and submission of vouchers or other documents to indicate payment.

(Added to NRS by 1979, 290)

218.644 Checking account. The legislative counsel bureau shall maintain a checking account in any qualified bank for the purposes of providing advance money to legislators for travel expenses during a regular session of the legislature, paying the salaries of persons on the payroll of the legislative branch of government, related payroll costs and any other expenses directed by the legislative commission. The account must be secured by a depository bond to the extent the account is not insured by the Federal Deposit Insurance Corporation. All checks written on this account must be signed by the chairman of the legislative commission and the director of the legislative counsel bureau or his designee, except that during a regular session of the legislature, the majority leader of the senate and the speaker of the assembly shall sign the checks.

(Added to NRS by 1979, 290; A 1981, 5, 17)

218.645 Sales of studies, reports, materials of legislative counsel bureau; fixing and disposition of fees. The legislative commission may fix reasonable fees for the sale of studies, audit reports, bulletins and miscellaneous materials of the legislative counsel bureau, and those fees must be deposited with the state treasurer for credit to the legislative fund.

(Added to NRS by 1963, 1031; A 1971, 1545; 1973, 1117; 1979, 291)

218.646 Manuals, handbooks containing selected portions of NRS: Compilation, publication and sale. With the approval of the legislative commission, the legislative counsel may compile and publish manuals or handbooks containing selected portions of Nevada Revised Statutes. Such manuals and handbooks shall be sold at a price fixed by the legislative commission and all moneys received for the sale of such publications shall be deposited in the legislative fund in the state treasury.

(Added to NRS by 1967, 841; A 1971, 1545; 1973, 1117)

218.647 Compilation, publication of legislative manual; payment of costs.

1. The legislative counsel bureau shall compile and publish a legislative manual containing information concerning the legislature and the offices, departments, institutions and agencies of the state government and other information appropriate for legislators.

2. The costs of compilation and publication shall be paid from the legislative fund.

(Added to NRS by 1965, 1461; A 1971, 1545; 1975, 1395)

218.650 Administrative services for legislature; costs; custody and inventory of legislative supplies, equipment, furniture and artwork.

1. All administrative services necessary to the operation of the legislature during and between sessions shall be provided by the legislative counsel bureau at the expense of the legislative fund.

2. The legislative counsel bureau shall be responsible for the care, custody, acquisition and inventory of legislative supplies, furniture, artwork and equipment between sessions of the legislature.

3. At the beginning of each session, the director of the legislative counsel bureau shall submit a report to the legislature detailing all supplies, furniture and equipment acquired to meet the needs of the current session and detailing all supplies, furniture and equipment on hand.

[9:134:1953]—(NRS A 1965, 1456; 1971, 1545)

218.660 Legislative commission: Creation; regular and alternate members; vacancies.

1. There is hereby created in the legislative counsel bureau a legislative commission consisting of 12 members.

2. At each regular session of the legislature held in odd-numbered years, the senate shall, by resolution, designate six senators as regular members of the legislative commission and six senators as alternates, and the assembly shall, by resolution, designate six assemblymen as regular members of the legislative commission and six assemblymen as alternates.

3. The legislature shall determine by joint rule at each regular session of the legislature in odd-numbered years:

(a) The method of determining the majority party and the minority party regular and alternate membership on the legislative commission.

(b) The method of filling vacancies on the legislative commission.

(c) The terms of office of members.

(d) The method of selecting the chairman.

(e) The term of office of the chairman.

[2:134:1953; A 1955, 68]—(NRS A 1957, 387; 1961, 457; 1963, 1029; 1969, 1412; 1975, 705)

218.670 Meetings of legislative commission; attendance of alternate members; quorum; secretary.

1. The members of the legislative commission shall meet at such times and at such places as shall be specified by a call of the chairman or a majority of the commission. The director of the legislative counsel bureau shall act as the nonvoting recording secretary. The commission shall prescribe rules and regulations for its own management and government. Seven members of the commission shall constitute a quorum, and a quorum may exercise all the power and authority conferred on the commission.

2. If any regular member of the legislative commission is unable to attend a scheduled meeting of the commission, and notifies the secretary of the commission, the secretary shall notify the proper alternate member. Such alternate member may then replace the regular member at that meeting, only with all the duties, rights and privileges of the replaced member.

[3:134:1953]—(NRS A 1961, 9, 251; 1963, 1030; 1967, 1397; 1969, 1413)

STATE LEGISLATIVE DEPARTMENT

218.680 Salaries, per diem and travel expenses of legislative commission members, alternates.

1. Except during a regular or special session of the legislature, for each day's or portion of a day's attendance at each meeting of the commission or its audit subcommittee, if a member of the subcommittee, or if engaged in the official business of the legislative counsel bureau, the members of the legislative commission are entitled to receive the compensation provided for a majority of the members of the legislature during the first 60 days of the preceding session, and the per diem allowance and travel expenses provided by law.

2. An alternate member of the legislative commission who replaces a regular member at a meeting of the commission or on official business of the legislative counsel bureau is entitled to receive the same salary and expenses as a regular member for the same service. An alternate member who attends a meeting of the commission but does not replace a regular member is entitled to the travel expenses provided by law.

[4:134:1953]—(NRS A 1961, 205; 1965, 1461; 1967, 1397; 1975, 296; 1977, 1569; 1979, 612; 1981, 1178)

218.681 General objectives, functions of legislative commission.

1. The general objectives and functions of the legislative commission are to:

(a) Assist the legislature in retaining status coordinate with the executive and judicial branches of state government.

(b) Investigate and inquire only into subjects upon which the legislature may act by the enactment or amendment of statutes.

(c) Assure that the most effective use is made of the auc , fiscal, legal and research services and facilities provided by the legislative counsel bureau to the legislature and its members.

2. In addition to the powers and duties elsewhere conferred and imposed upon the legislative commission in this chapter, in order to carry out its general objectives and functions the legislative commission:

(a) Shall receive recommendations and suggestions for legislation or investigation from:

(1) Members of the legislative commission and other members of the legislature; and

(2) Any board, commission, department or officer of the state government or any local government.

(b) May receive recommendations and suggestions for legislation or investigation from:

(1) Bar associations, chambers of commerce, labor unions and other organized associations and groups; and

(2) Individual citizens.

(c) May hold hearings on any subject or matter which is a proper subject for legislative action whenever it considers such hearings necessary or desirable in the performance of its duties.

(Added to NRS by 1965, 1463; A 1973, 1660; 1975, 1395)

218.682 Powers of legislative commission. The legislative commission may:

1. Carry forward the participation of the State of Nevada as a member of the Council of State Governments and the National Conference of State Legislatures, and may pay annual dues to such organizations out of the legislative fund. The legislative commission is designated as Nevada's commission on interstate cooperation.

2. Encourage and assist the government of this state to develop and maintain friendly contact by correspondence, by conference, and otherwise, with the other states, with the Federal Government, and with local units of government.

3. Establish such delegations and committees as official agencies of the legislative counsel bureau as may be deemed advisable to confer with similar delegations and committees from other states concerning problems of mutual interest. The membership of such delegations and committees shall be designated by the members of the legislative commission and may consist of legislators and employees of the state other than members of the commission. Members of such delegations and committees shall serve without salary, but they shall receive out of the legislative fund the per diem expense allowance and travel expenses as provided by law.

4. Endeavor to advance cooperation between this state and other units of government whenever it seems advisable to do so by formulating proposals for interstate compacts and reciprocal or uniform legislation, and by facilitating the adoption of uniform or reciprocal administrative rules and regulations, informal cooperation of governmental offices, personal cooperation among governmental officials and employees, interchange and clearance of research and information, and any other suitable process.

5. Establish such subcommittees and interim or special committees as official agencies of the legislative counsel bureau as may be deemed advisable to deal with governmental problems, important issues of public policy and questions of statewide interest. The membership of such subcommittees and interim or special committees shall be designated by the members of the legislative commission and may consist of members of the legislative commission and legislators other than members of the commission, employees of the State of Nevada or citizens of the State of Nevada. Members of such subcommittees and interim or special committees who are not legislators shall serve without salary, but they shall receive out of the legislative fund the per diem expense allowances and travel expenses as provided by law. Except during a regular or special session of the legislature, members of such subcommittees and interim or special committees who are legislators are entitled to receive out of the legislative fund the compensation provided for a majority of the members of the legislature during the first 60 days of the preceding session for each day or portion of a day of attendance, and the per diem expense allowances and travel expenses as provided by law.

6. Supervise the functions assigned to the divisions of the bureau in this chapter.

[10:134:1953]—(NRS A 1957, 386; 1961, 253; 1963, 1014; 1965, 1455; 1971, 2206; 1973, 119, 1118; 1975, 296; 1979, 612)

218.6821 Subpena power of legislative commission; witnesses' fees and mileage.

1. In the discharge of any duty imposed by this chapter, the legislative commission shall have the authority to:

(a) Administer oaths, issue subpenas, compel the attendance of witnesses and the production of any papers, books, accounts, department records, documents and testimony; and

(b) Cause the deposition of witnesses, either residing within or without the state, to be taken in the manner prescribed by rule of court for taking depositions in civil actions in the district courts.

2. In case of disobedience on the part of any person to comply with any subpena issued in behalf of the legislative commission, or on the refusal of any witness to testify to any matters regarding which he may be lawfully interrogated, the district court of any county, or the judge thereof, shall, on application of the chairman of the legislative commission, compel obedience by proceedings for contempt, as in the case of disobedience of the requirements of a subpena issued from such court or a refusal to testify therein.

3. Each witness who appears before the legislative commission by its order, other than a state officer or employee, shall receive for his attendance the fees and mileage provided for witnesses in civil cases in courts of record, which shall be audited and paid upon the presentation of proper claims sworn to by such witness and approved by the secretary and chairman of the legislative commission.

(Added to NRS by 1965, 1462)

218.6823 Audit subcommittee of legislative commission: Creation; composition; chairman, secretary; meetings; quorum.

1. There is hereby created in the legislative commission an audit subcommittee consisting of three members.

2. The subcommittee must be composed of:

(a) The chairman of the legislative commission or a member of the legislative commission appointed by him; and

(b) Two other members of the legislative commission.

3. The person serving on the subcommittee pursuant to paragraph (a) of subsection 2 shall serve as chairman and the legislative auditor or a member of his staff appointed by him shall serve as secretary of the subcommittee.

4. The subcommittee shall meet at the times and places specified by a call of the chairman. Two members of the subcommittee constitute a quorum, and a quorum may exercise any power or authority conferred on the subcommittee.

(Added to NRS by 1981, 1176)



218.6825 Interim finance committee: Creation; regular and alternate members; duties; manner of voting; compensation.

1. There is hereby created in the legislative counsel bureau an interim finance committee composed of the members of the assembly standing committee on ways and means and the senate standing committee on finance during the current or immediately preceding session of the legislature. The immediate past chairman of the senate standing committee on finance shall be the chairman of the interim finance committee for the period ending with the convening of the 56th session of the legislature. The immediate past chairman of the assembly standing committee on ways and means shall be the chairman of the interim finance committee during the next legislative interim, and the chairmanship shall continue to alternate between the houses of the legislature according to this pattern.

2. If any regular member of the committee informs the secretary that he will be unable to attend a particular meeting, the secretary shall notify the speaker of the assembly or the majority leader of the senate, as the case may be, to appoint an alternate for that meeting from the same house and political party as the absent member.

3. The interim finance committee, except as provided in subsection 4, may exercise the powers conferred upon it by law only when the legislature is not in regular or special session. The membership of any member who does not become a candidate for reelection or who is defeated for reelection continues until the next session of the legislature is convened.

4. During a regular session the interim finance committee may also perform the duties imposed on it by NRS 353.220, 353.224 and 353.335 and chapter 621, Statutes of Nevada 1979. In performing those duties, the senate standing committee on finance and the assembly standing committee on ways and means may meet separately and transmit the results of their respective votes to the chairman of the interim finance committee to determine the action of the interim finance committee as a whole.

5. The director of the legislative counsel bureau shall act as the secretary of the interim finance committee.

6. A majority of the members of the assembly standing committee on ways and means and a majority of the members of the senate standing committee on finance, jointly, may call a meeting of the interim finance committee if the chairman does not do so.

7. In all matters requiring action by the interim finance committee, the vote of the assembly and senate members must be taken separately. An action must not be taken unless it receives the affirmative vote of a majority of the assembly members and a majority of the senate members.

8. Except during a regular or special session of the legislature, each member of the interim finance committee and appointed alternate is entitled to receive the compensation provided for a majority of the members of the legislature during the first 60 days of the preceding

regular session for each day or portion of a day during which he attends a committee meeting or is otherwise engaged in committee work plus the per diem allowance and travel expenses provided by law. All such compensation must be paid from the contingency fund in the state treasury.

(Added to NRS by 1969, 1013; A 1971, 1545; 1977, 165, 1569; 1979, 613; 1981, 228, 522, 2042)—(Substituted in revision for NRS 218.6822)

218.683 Director of legislative counsel bureau: Supervision of administrative and technical activities of bureau; employment, salaries and leave of bureau employees.

1. The director of the legislative counsel bureau, as executive head of the legislative counsel bureau, shall direct and supervise all its administrative and technical activities. The fiscal analysts, legislative auditor, research director and legislative counsel shall perform the respective duties assigned to them by law under the administrative supervision of the director.

2. Except as otherwise provided in this chapter, the director of the legislative counsel bureau shall, consistent with the budget approved by the legislative commission and within the limits of legislative appropriations and other available funds, employ and fix the salaries of or contract for the services of such professional, technical, clerical and operational personnel and consultants as the execution of his duties and the operation of the legislative counsel bureau may require.

3. All of the personnel of the legislative counsel bureau are exempt from the provisions of chapter 284 of NRS. They are entitled to such leaves of absence as the legislative commission shall prescribe.

[6:134:1953]—(NRS A 1963, 485, 1016; 1965, 1456; 1971, 1546; 1973, 1352; 1977, 345, 753)

218.685 Director of legislative counsel bureau: Employment of personnel for legislative duties between sessions; payment of salaries, costs. Notwithstanding the provisions of NRS 218.150 and 218.180, between sessions of the legislature, the director of the legislative counsel bureau, with the approval of the legislative commission, may appoint such technical, clerical and operational staff as the functions and operations of the legislature may require. Salaries and the costs of any contract services shall be paid from the legislative fund.

(Added to NRS by 1963, 40; A 1963, 1009; 1971, 1546)

218.6851 Administrative division: Composition; duties.

1. The administrative division consists of the chief of the division and such staff as he may require.

2. The administrative division is responsible for:

(a) Accounting;
(b) Communication equipment;
(c) Control of inventory;
(d) Janitorial services;
(e) Maintenance of buildings, grounds and vehicles;
(f) Purchasing;

(g) Security;
(h) Shipping and receiving;
(i) Utilities; and
(j) Warehousing operations.

3. The legislative commission may assign any other appropriate function to the administrative division.

(Added to NRS by 1979, 68; A 1981, 560)

218.6853 Administrative division: Duties of chief as legislative fiscal officer.

1. The chief of the administrative division is ex officio legislative fiscal officer. As such officer, he shall keep a complete, accurate and adequate set of accounting records and reports for all legislative operations, including any records and reports required by the Federal Government for the administration of federal revenue and income tax laws.

2. The chief shall withhold from the pay of each legislator, employee of the legislature and employee of the legislative counsel bureau the amount of tax specified by the Federal Government and shall transmit the amount deducted to the Internal Revenue Service of the United States Department of the Treasury.

3. The chief may provide for the purchase of United States savings bonds or similar United States obligations by salary deduction for any legislator, legislative employee or employee of the legislative counsel bureau who submits a written request for these deductions and purchases. The chief shall provide forms authorizing deductions for and purchases of these United States obligations.

4. The chief may withhold from the pay of a legislator, employee of the legislature or employee of the legislative counsel bureau such amount as the claimant specifies in writing for payment to his credit union. Any money which is withheld must be transmitted by the chief in accordance with the claimant's written instructions. The chief may adopt regulations necessary to carry out the provisions of this subsection.

(Added to NRS by 1981, 558)

218.686 Fiscal analysis division: Composition; duties.

1. The fiscal analysis division consists of the senate fiscal analyst, the assembly fiscal analyst and such additional staff as the performance of their duties may require.

2. The fiscal analysis division shall:

(a) Thoroughly examine all departments of the state government with special regard to their activities and the duplication of efforts between departments;

(b) Recommend to the legislature any suggested changes looking toward economy and the elimination of inefficiency in government.

(c) Ascertain facts and make recommendations to the legislature concerning the state budget and the estimates of the expenditure requirements of the state departments.

(d) Make projections of future public revenues for the use of the legislature.

(e) Analyze the past history and probable future trend of the state's financial position in order that a sound fiscal policy may be developed and maintained for the State of Nevada.

(f) Analyze appropriation bills, revenue bills, and bills having a fiscal impact upon the operation of the government of the State of Nevada or its political subdivisions.

(g) Advise the legislature and the members and committees thereof regarding matters of a fiscal nature.

(h) Perform such other functions as may be assigned to the fiscal analysis division by the legislature, the legislative commission or the director of the legislative counsel bureau.

(Added to NRS by 1977, 339)

218.687 Information, records concerning public funds to be made available to fiscal analyst upon request. Upon the request of a fiscal analyst or his duly authorized representative, every elective state officer in the State of Nevada, every board or commission provided for by the laws of the State of Nevada, every head of each and every department in the State of Nevada, and every employee or agent thereof, acting by, for, or on account of any such office, board, commission or officer receiving, paying or otherwise controlling any public funds in the State of Nevada, in whole or in part, whether the same may be funds provided by the State of Nevada, funds received from the Federal Government of the United States or any branch, bureau, or agency thereof, or funds received from private or other source, shall make available to the requester all books, papers, information and records of a public nature under their control necessary or convenient to the proper discharge of the duties of the fiscal analysis division under this chapter.

[8:134:1953]—(NRS A 1963, 1030; 1977, 345)

218.690 Legislative counsel: Qualifications; duties. The legislative counsel shall:

1. Be an attorney licensed to practice law in the State of Nevada and shall be versed in some or all of the following: Political science, parliamentary practice, legislative procedure, and the methods of research, statute revision and bill drafting.

2. Perform the duties required by this chapter and chapter 220 of NRS.

[5:134:1953]—(NRS A 1963, 484, 1015; 1971, 1546; 1975, 344)

218.695 Legislative counsel: Powers and duties; opinions. The legislative counsel shall:

1. Have the powers and duties assigned to him in this chapter and chapters 219 and 220 of NRS, and such other powers and duties as may be assigned to him by the legislature and the legislative commission.

2. Upon the request of any member or committee of the legislature or the legislative commission, give his opinion in writing upon any question of law, including existing law and suggested, proposed and pending legislation which has become a matter of public record.

(Added to NRS by 1963, 1016; A 1965, 1456)

218.697 Commencement of actions, proceedings by legislative counsel; when directed by legislative commission; payment of costs; appearances.

1. When deemed necessary or advisable to protect the official interests of the legislature or one or more legislative committees, the legislative commission may direct the legislative counsel and his staff to appear in, commence, prosecute, defend or intervene in any action, suit, matter, cause or proceeding in any court or agency of this state or of the United States.

2. Expenses and costs incurred pursuant to this section may be paid by the legislative commission from the legislative fund.

(Added to NRS by 1965, 1461; A 1971, 1346)

218.698 Copyright of legislative counsel bureau publications by legislative counsel. The legislative counsel is authorized to secure copyright under the laws of the United States in all publications issued by the legislative counsel bureau, the copyright to be secured in the name of the State of Nevada.

(Added to NRS by 1971, 155)

218.731 Duties of research director. The research director shall:

1. Provide the legislature and the members and committees thereof with comprehensive and accurate research reports and background papers on subjects of legislative interest.

2. Analyze and evaluate the long-range planning activities and programs of the State of Nevada and its political subdivisions when authorized by the legislature, the legislative commission or the director of the legislative counsel bureau.

3. Analyze and evaluate the public policies of the State of Nevada and its political subdivisions and make appropriate recommendations regarding such policies when authorized by the legislature, the legislative commission or the director of the legislative counsel bureau.

4. Serve as the Nevada legislative federal-state coordinator.

5. Advise the legislature and the members and committees thereof regarding matters of a research nature.

6. Perform such other functions as may be assigned to the research division by the legislature, the legislative commission or the director of the legislative counsel bureau.

(Added to NRS by 1973, 1658; A 1977, 345)

218.740 Legislative auditor: Qualifications. The legislative auditor shall:

1. Be a certified public accountant or public accountant qualified

COMMITTEE MEMBERS:
THOMAS B. MURPHY
SPEAKER, HOUSE OF REPRESENTATIVES
CHAIRMAN
HAMILTON McWHORTER, JR.
SECRETARY OF THE SENATE
SECRETARY
ZELL MILLER
PRESIDENT OF THE SENATE

COMMITTEE MEMBERS:
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SENATOR JIMMY LESTER
SENATOR TERRELL STARR
REPRESENTATIVE MARCUS E. COLLINS
REPRESENTATIVE LAUREN McDONALD, JR.
REPRESENTATIVE WAYNE SNOW, JR.
GLENN W. ELLARD
CLERK, HOUSE OF REPRESENTATIVES

FRANK H. EDWARDS
LEGISLATIVE COUNSEL

LEGISLATIVE SERVICES COMMITTEE

OFFICE OF LEGISLATIVE COUNSEL
316 STATE CAPITOL
ATLANTA, GEORGIA 30334

September 14, 1983

Representative Charlie Bussell
Chairman, Committee on Judiciary
Alaska State Legislature
House of Representatives
Pouch V
Juneau, Alaska 99811

Dear Representative Bussell:

Both the Lieutenant Governor and the Speaker have requested me to reply to your letter of August 11, 1983, to each of them relative to the Office of Legislative Counsel with particular emphasis on representation of the legislative branch in litigation.

On November 1, 1982, the new Official Code of Georgia Annotated became effective. Consequently, the law relative to the Legislative Services Committee and the Office of Legislative Counsel has a new citation. Enclosed find a copy of Chapter 4 of Title 28 of the O.C.G.A. which takes the place of the Annotated Code of Georgia which you cite in your letter. That chapter contains Code Sections 28-4-1 through 28-4-9. Code Section 28-4-1 was amended at the 1983 session to make a change in a committee name and the enclosed section supersedes that section of the same Code number which is contained in the main volume.

You request the answers to several questions and I will answer them by number as they are listed in your letter.

(1) We have not employed attorneys for the specific purpose of representing the General Assembly in litigation.

(2) Rarely.

(3) Our office represents no particular political faction but represents and offers services to the entire General Assembly. Our office is nonpartisan and is strictly impartial and we serve all factions, all political parties, etc., equally.

(4) No back-up staff.

(5) None.

(6) None.

(7) Has never been utilized.

(8) When we draft legislation for members of the General Assembly, we advise them as to whether we think the bill being requested would be constitutional. I know of no way we can say how much time we spend on that particular matter because that is just a part of our bill drafting process. Standing committees and interim study committees are assigned to a member of our staff and this staff member is available for consultation or legal advice all through the year. Frankly, I have no idea how much time is spent on that particular function.

As you see, I have made the answers to your questions very brief and for that reason I thought I would make a few general comments. The Office of Legislative Counsel was created in 1959 and is an outgrowth of the old bill drafting unit which was in the Attorney General's office. The bill drafting unit was abolished when this office was created. As you will note, our office is authorized to perform numerous functions, but we consider our most important function the drafting of legislation for members of the Senate and the House for introduction in our legislative sessions. As mentioned previously, if we have doubts about the constitutionality of a request we so inform the legislator making the request. I will not burden you with going over the other duties because they are mostly contained in Code Section 28-4-3.

The provision in which you are particularly interested--representing the interests of the legislative branch in litigation--was added in 1976. We could see the possibility of some conflicts arising between the executive

and legislative branches and thought perhaps it would be wise to specifically authorize our office to represent the interests of the legislative branch. Upon request, the Attorney General's office is authorized to represent the legislative branch. There is, however, no requirement that he represent the legislative branch or that he be requested to do so. Our office has actually been in litigation only twice since its creation. The first time was when a suit was filed against some members of the Appropriations Committees of the Senate and the House under the "sunshine law." A conference committee had held executive sessions and it was alleged that this was a violation of the sunshine law. In that case, we were assisted by the Attorney General's office and, as a matter of information, the Georgia Supreme Court held that the sunshine law did not apply to the legislative branch of government. The second time had to do with separation of powers. Members of the General Assembly served on various executive boards, commissions, etc., and the Governor directed the Attorney General to file suit to attempt to remove the members of the General Assembly from those boards, commissions, etc. In that case the Attorney General represented the Governor's office and we represented the legislative defendants. We lost that case with the Georgia Supreme Court saying that it was a violation of the separation of powers provision of the Constitution for legislators to serve on executive boards, commissions, etc.

The legislative branch is rarely in court. As you are aware, most suits against the state are brought against some executive branch official and only in some rare instance would the legislative branch be sued. Also, the Georgia legislature to my knowledge has never sued anybody. As I indicated, that portion of our Act authorizing our office to represent the legislative branch was put in more as a safeguard than anything else. I might add, however, that there is a possibility that a trend is developing where our legislative branch might be involved in litigation much more than it has been in the past. As a matter of fact, this has taken place in a number of states including, as you stated, Alaska. My personal view is that it would be a wise idea for you to enact a statute somewhat similar to ours or similar to some of the other states. We made ours purposely rather broad and believe it would cover most any conceivable situation that might arise. The part about using outside counsel was placed in there because

our other duties keep us rather busy, particularly during the months before and during sessions, and we want to be able to carry on those duties and litigation at the same time if necessary.

I note from your letter that the news media has lambasted your legislature and, if it is any consolation, as far as the Georgia news media is concerned the legislature can do no right. I can think of no reason why your legislature should not have the right to litigate on its behalf, but of course the news media does not think the legislature has any right. I hope this rather rambling letter has given you the information you desired, but if you have any specific questions I shall be glad to try to answer them for you.

Sincerely yours,

Frank H. Edwards

Frank H. Edwards
Legislative Counsel

FHE:jp
Enclosures
cc: Honorable Zell Miller
Honorable Thomas B. Murphy

Supplement

The 1983 amendment, effective July 1, 1983, substituted "by recorded vote" for "viva voce" in the first sentence.

Cross references. — Recorded vote required in General Assembly elections, Ga. Const. 1983, Art. III, Sec. IV, Para. X.

Editor's note. — Ga. L. 1983, p. 494, § 1 provides: "It is the intent of this Act to implement certain changes required by Article III, Section IV, Paragraph X of the Constitution of the State of Georgia."

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CHAPTER 4

LEGISLATIVE SERVICES

Sec.

28-4-1. Legislative Services Committee — Creation; membership; allowances of members; meetings.

28-4-1. Legislative Services Committee — Creation; membership; allowances of members; meetings.

(a) There is created the Legislative Services Committee, hereinafter called the committee, to be composed of the Speaker of the House of Representatives, the President of the Senate, the chairman of the Appropriations Committee of the Senate, the chairman of the Appropriations Committee of the House of Representatives, the chairman of the Judiciary Committee of the Senate, the chairman of the Judiciary Committee of the House of Representatives, the chairman of the Banking and Finance Committee of the Senate, the chairman of the Ways and Means Committee of the House of Representatives, the Clerk of the House of Representatives, and the Secretary of the Senate; provided, however, that the President of the Senate shall be allowed to designate in writing that the President Pro Tempore of the Senate shall serve in place of the President of the Senate with all the rights, privileges, and duties of the President of the Senate and shall so serve until the appointment is withdrawn in writing by the President of the Senate or until the end of the term of the President of the Senate. The Speaker of the House of Representatives shall be chairman of the committee, and the Secretary of the Senate shall be secretary of the committee.

(b) The members of the committee shall receive no additional allowances for service on the committee while the General Assembly is in session; but, for each day spent in the performance of their duties under this chapter between sessions, the members shall receive the allowances authorized by law for legislative members of interim legislative committees.

(c) The committee shall meet on call of the chairman. Six members of the committee shall constitute a quorum and the affirmative vote of a majority of those members present at a meeting of the committee, provided such members present constitute a quorum, shall be necessary to transact business of the committee. The chairman shall be entitled to vote on all matters requiring a vote of the committee. (Ga. L. 1959, p. 152, § 1; Ga. L. 1961, p. 230, § 1; Ga. L. 1976, p. 176, § 1; Ga. L. 1979, p. 795, § 1; Ga. L. 1983, p. 722, § 1.)

The 1983 amendment, effective March 16, 1983, substituted "Banking and Finance Committee" for "Banking, Finance, and Insurance Committee" in the first sentence of subsection (a).

CHAPTER 5

FINANCIAL AFFAIRS

Article 3

Retirement Bills; Bills Having Significant Impact Upon Anticipated Revenue or Expenditure Levels of State Departments, Bureaus, etc., and Counties and Municipalities

Sec.

28-5-42. Time for introduction of retirement bills; time for introduction of bills having significant impact upon anticipated revenue or expenditure levels of state departments, boards, counties and municipalities, etc.; classification of bills; request for, preparation, contents, etc., of fiscal notes relating to bills generally.

28-5-43. Preparation, etc., of actuarial investigations for inclusion in fiscal notes.

Article 4

Claims Advisory Board

PART 2

CLAIMS AGAINST STATE OR DEPARTMENTS OR AGENCIES

Sec.

28-5-85. Authority of Claims Advisory Board to direct payment of claims; filing of claims; notice to affected department or agency; report and recommendation by affected department or agency; board decision; order to pay claim; claims covered by insurance; payment as full settlement; claims to which this Code section applicable; waiver of state immunity.

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28-5-42. Time for introduction tion of bills having sign nue or expenditure l counties and municip request for, preparation to bills generally.

(a) Any retirement bill must be of any session. Any bill having revenue or expenditure level of council, committee, commission. duced no later than the twentiet having a significant impact on t level of counties and municipaliti twentieth day of any session. Exc not apply to any local bill affecti be advertised in accordance with V, Paragraph IX of the Constitu

(b) In the event any bill as pro after the prescribed time limit, it in any manner by either the Sena President of the Senate shall deci the Senate falls within this categ Representatives shall decide wh House of Representatives falls wi Senate shall have the same right the Senate; and the Speaker of t the same right of decision on Representatives.

(c) The chairman of the comr shall request the director of the state auditor to furnish a fiscal n and to file a copy of such fiscal The principal administrative a boards, councils, committees, c state government and, when ap

Main Volume

CHAPTER 4

LEGISLATIVE SERVICES

Sec.

28-4-1. Legislative Services Committee — Creation; membership; allowances of members; meetings.
28-4-2. Same — Powers generally.
28-4-3. Legislative counsel — Creation of office; qualifications; powers and duties.
28-4-4. Same — Election.
28-4-5. Attorney General to serve as advisor to legislative counsel.
28-4-6. Employment, duties, etc., of legislative fiscal officer and legislative budget analyst.
28-4-7. Employment, compensation, etc., of personnel to assist legislative counsel, legislative fiscal officer, and legislative budget analyst; provision of supplies, materials, furniture, etc.
28-4-8. Merit system for and retirement for personnel; payment of contributions.
28-4-9. Source of funds for operation of chapter.

28-4-1. Legislative Services Committee — Creation; membership; allowances of members; meetings.

Superseded

(a) There is created the Legislative Services Committee, hereinafter called the committee, to be composed of the Speaker of the House of Representatives, the President of the Senate, the chairman of the Appropriations Committee of the Senate, the chairman of the Appropriations Committee of the House of Representatives, the chairman of the Judiciary Committee of the Senate, the chairman of the Judiciary Committee of the House of Representatives, the chairman of the Banking, Finance, and Insurance Committee of the Senate, the chairman of the Ways and Means Committee of the House of Representatives, the Clerk of the House of Representatives, and the Secretary of the Senate; provided, however, that the President of the Senate shall be allowed to designate in writing that the President Pro Tempore of the Senate shall serve in place of the President of the Senate with all the rights, privileges, and duties of the President of the Senate and shall so serve until the appointment is withdrawn in writing by the President of the Senate or until the end of the term of the President of the Senate. The Speaker of the House of Representatives shall be chairman of the committee, and the Secretary of the Senate shall be secretary of the committee.

(b) The members of the committee shall receive no additional allowances for service on the committee while the General Assembly is in session; but, for each day spent in the performance of their duties under this chapter between sessions, the members shall receive the allowances authorized by law for legislative members of interim legislative committees.

(c) The committee shall meet on call of the chairman. Six members of the committee shall constitute a quorum and the affirmative vote of a majority of those members present at a meeting of the committee, provided such members present constitute a quorum, shall be necessary to transact business of the committee. The chairman shall be entitled to vote on all matters requiring a vote of the committee. (Ga. L. 1959, p. 152, § 1; Ga. L. 1961, p. 230, § 1; Ga. L. 1976, p. 176, § 1; Ga. L. 1979, p. 795, § 1.)

RESEARCH REFERENCES

Am. Jur. 2d. — 72 Am. Jur. 2d, States, Territories, and Dependencies, §§ 50-53.

C.J.S. — 81A C.J.S., States, §§ 47, 55.

28-4-2. Same — Powers generally.

(a) The committee is empowered to:

(1) Study and adopt methods and procedures to operate more efficiently the General Assembly and each house thereof;

(2) Study and adopt methods and procedures to make more uniform the operations of the Senate and the House of Representatives;

(3) Exercise general supervision of the operation of the legislative branch of government and act for and enter into contracts on behalf of agencies of the legislative branch, the General Assembly, and each house thereof;

(4) Provide for services for the legislative branch of government; and

(5) Delegate such of its powers and authority as it deems advisable.

(b) The committee shall have complete control, authority, and jurisdiction over the rooms, chambers, offices, and other areas on the third and fourth floors of the state capitol building and on the mezzanine between the third and fourth floors. All assignments for the use of such rooms, chambers, offices and other areas by the General Assembly, the Senate, the House of Representatives, committees of the Senate and the House, members of the Senate and the House, and agencies, officials, and employees of the legislative branch of government shall be made by the committee or under such procedure as the committee shall provide. Any assignment shall be subject to change by the committee. Use of any such room, chamber, office, or other area, other than as provided above, shall be under such procedure as the committee shall provide.

(c) The committee is authorized to provide for maintaining, repairing, constructing, reconstructing, furnishing, and refurbishing of such rooms, chambers, offices, and other areas.

(d) The committee is authorized to provide for such procedures as it deems advisable for the purpose of carrying out this Code section. (Ga. L. 1959, p. 152, § 2; Ga. L. 1964, p. 459, § 1; Ga. L. 1976, p. 176, § 2.)

Cross references. — As to authority of Governor with regard to assignment of space in state capitol, see § 50-16-61.

RESEARCH REFERENCES

Am. Jur. 2d. — 72 Am. Jur. 2d, States, Territories, and Dependencies, §§ 49, 50-53.

C.J.S. — 81A C.J.S., States, §§ 55, 120.

28-4-3. Legislative counsel — Creation of office; qualifications; powers and duties.

(a) There is created the Office of Legislative Counsel. The legislative counsel shall be an attorney skilled and experienced in legislative matters and bill drafting.

(b) It shall be the duty of the legislative counsel to:

(1) Provide bill-drafting services which shall be equally available to every member of the General Assembly; and

(2) Advise and counsel members of the General Assembly on legislative matters.

(c) The legislative counsel is authorized to:

(1) Provide for statutory and Code revision, render opinions, assist standing and interim committees, and perform similar legislative functions;

(2) Perform research, issue reports, and make recommendations as a result thereof;

(3) Exchange information, data, and material with similar agencies in other states;

(4) Provide legal services for the legislative branch of government and, with the approval of the committee or the chairman, to represent the interests of the legislative branch in matters involving litigation; and

(5) With the approval of the committee, provide for advisory committees relative to statutory and Code revision. He is authorized to seek the advice and assistance of the State Bar of Georgia, law schools, and individuals and organizations knowledgeable in this field.

(d) Any other provisions of law to the contrary notwithstanding, he is authorized to engage the services of others, including private counsel, by contract or otherwise, to assist him in the performance of his duties and is authorized to provide for the payment of fees, compensation, and expenses therefor from legislative funds.

(e) The legislative counsel shall have such other authority and duties as the committee may provide. (Ga. L. 1959, p. 152, § 3; Ga. L. 1965, p. 270, § 1; Ga. L. 1966, p. 586, § 1; Ga. L. 1969, p. 635, § 1; Ga. L. 1976, p. 176, §§ 3, 5.)

Cross references. — As to duties of legislative counsel with regard to summary of general amendments to Constitution of Georgia, see § 21-1-2.

JUDICIAL DECISIONS

This section neither authorizes nor prohibits representation of legislators by a Deputy Assistant Attorney General. Coggin v. Davey, 233 Ga. 407, 211 S.E.2d 708 (1975).

RESEARCH REFERENCES

Am. Jur. 2d. — 63 Am. Jur. 2d, Public Officers and Employees, §§ 273, 274. 72 Am. Jur. 2d, States, Territories, and Dependencies, §§ 50-53.

C.J.S. — 81A C.J.S., States, §§ 55, 61, 120.

28-4-4. Same — Election.

The committee shall elect the legislative counsel subject to the approval of the Senate and the House of Representatives meeting in joint session, except that the present legislative counsel shall serve until such time as a new legislative counsel is elected by the committee and approved by both branches of the General Assembly as provided for in this Code section. (Ga. L. 1959, p. 152, § 4; Ga. L. 1965, p. 270, § 2.)

RESEARCH REFERENCES

Am. Jur. 2d. — 63 Am. Jur. 2d, Public Officers and Employees, §§ 364-367. 72 Am. Jur. 2d, States, Territories, and Dependencies, § 56.

C.J.S. — 67 C.J.S., Officers and Public Employees, § 226. 81A C.J.S., States, §§ 47, 61, 105-107, 109.

28-4-5. Attorney General to serve as advisor to legislative counsel.

The Attorney General shall serve as an advisor to the legislative counsel. (Ga. L. 1959, p. 152, § 10.)

28-4-6. Employment, duties, etc., of legislative fiscal officer and legislative budget analyst.

(a) The Legislative Services Committee is authorized to employ a legislative fiscal officer for the legislative branch of government, and the fiscal officer and personnel to assist him shall be a part of the Office of Legislative Counsel. The fiscal officer shall act as the bookkeeper-comptroller for the legislative branch of government and shall maintain an account of legislative expenditures and commitments. He shall maintain an inventory of the equipment, furnishings, and nonexpendable items belonging to the legislative branch. He shall prepare and sign vouchers pertaining to the expenditure of legislative funds. He shall prepare and sign all warrants for the expenditure of funds appropriated to and available to the legislative branch of government. Such warrants shall be paid by the fiscal officer, and it shall not be necessary that they be countersigned by the Comptroller General. All payments from funds appropriated to the legislative branch of government shall be made by the fiscal officer, and reference in any other law to any other official or person in connection with any duties pertaining to such payments shall be deemed to refer to the fiscal officer; all duties of any such other official or person in connection therewith are transferred to the fiscal officer. The fiscal officer shall be under such bond as the Legislative Services Committee shall prescribe, and the premium thereon shall be paid from funds appropriated to the legislative branch of government. The fiscal officer shall have such other duties as shall be prescribed by the committee.

(b) The Legislative Services Committee is authorized to employ a legislative budget analyst to assist the General Assembly and its committees in connection with appropriations and budgetary matters. The legislative budget analyst shall render assistance and give advice to the appropriations committees of the Senate and the House of Representatives. He is authorized to request information and material from all state departments, boards, bureaus, commissions, committees, authorities, and agencies in connection with his duties; and all such departments, boards, bureaus, commissions, committees, authorities, and agencies are directed to furnish such information and material as he shall request. The legislative budget analyst shall perform such other duties as the General Assembly, the Legislative Services Committee, and the appropriations committees shall prescribe. (Ga. L. 1959, p. 152, § 5; Ga. L. 1961, p. 230, § 1; Ga. L. 1969, p. 232, § 1; Ga. L. 1971, p. 67, § 1; Ga. L. 1976, p. 176, § 4.)

RESEARCH REFERENCES

Am. Jur. 2d. — 63 Am. Jur. 2d, Public Officers and Employees, §§ 364-367. 72 Am. Jur. 2d, States, Territories, and Dependencies, §§ 50-53.

C.J.S. — 67 C.J.S., Officers and Public Employees, § 226. 81A C.J.S., States, §§ 55, 61, 105-107, 109, 120.

28-4-7. Employment, compensation, etc., of personnel to assist legislative counsel, legislative fiscal officer, and legislative budget analyst; provision of supplies, materials, furniture, etc.

(a) Personnel to assist the legislative counsel, the legislative fiscal officer, and the legislative budget analyst shall be employed under such procedure as the committee shall provide. Such personnel shall be subject to the supervision of the respective three officials with reference to the duties of their employment.

(b) The legislative counsel, the legislative fiscal officer, the legislative budget analyst, and such personnel shall be compensated under such procedure as the committee shall provide.

(c) The committee shall provide office space for such officials and personnel; and they shall be furnished with supplies, materials, furniture, furnishings, books, equipment, and services. (Ga. L. 1959, p. 152, § 5; Ga. L. 1976, p. 176, § 4.)

RESEARCH REFERENCES

Am. Jur. 2d. — 63 Am. Jur. 2d, Public Officers and Employees, §§ 364-367. 72 Am. Jur. 2d, States, Territories, and Dependencies, §§ 50-53.

C.J.S. — 67 C.J.S., Officers and Public Employees, § 226. 81A C.J.S., States, §§ 55, 61, 105-107, 109, 120.

28-4-8. Merit system for and retirement for personnel; payment of contributions.

(a) The committee is authorized to promulgate a merit system of employment under which personnel shall be selected on a basis of merit.

(b) All personnel and the legislative counsel are authorized to be members of the Employees' Retirement System of Georgia, as established in Chapter 2 of Title 47. All rights, credits, and funds in said retirement system which are possessed by any personnel of the Office of Legislative Counsel, including the legislative counsel, at the time of employment in said office are continued.

(c) It is the intention of the General Assembly that any such personnel and the legislative counsel shall not lose any rights, credits, or funds to which they were entitled prior to being employed in the Office of Legislative Counsel. There shall be paid from the funds appropriated for the operation of the legislative branch of the government all contributions required by Chapter 2 of Title 47, and all such payments shall be in addition to the regular compensation authorized to the legislative counsel and other personnel in said office. (Ga. L. 1959, p. 152, § 6.)

RESEARCH REFERENCES

Am. Jur. 2d. — 72 Am. Jur. 2d, States, Territories, and Dependencies, §§ 50-53.
C.J.S. — 67 C.J.S., Officers and Public Employees, § 49. 81A C.J.S., States. §§ 55, 61, 86b.

28-4-9. Source of funds for operation of chapter.

The funds necessary to carry out this chapter shall be paid from the funds provided for the legislative branch of government. (Ga. L. 1959, p. 152, § 8; Ga. L. 1976, p. 176, § 6.)

...operation of governmental officials and employees with
r, individually,
nterchange and clearance of research and information, and
ther suitable process.
rt, to do all such acts as will, in the opinion of this commission,
State to do its part—or more than its part, in forming a more
n among the various Governments in the United States and in
the Council of State Governments for that purpose.
7, pp. 708, 710.)

Delegations and committees; advisory boards
mission shall establish such delegations and committees as it
able in order that they may confer and formulate proposals
effective means to secure inter-governmental harmony, and may
er functions for the commission in obedience to its decisions.
e approval of the commission, the member or members of each
tion or committee shall be appointed by the chairman of the
State officials or employees who are not members of the
on Interstate Cooperation may be appointed as members of any
ion or committee, but private citizens holding no governmental
is State shall not be eligible. The commission may provide such
s it considers appropriate concerning the membership and the
of any such delegation or committee. The commission may
advisory boards for itself and for its various delegations and
and may authorize private citizens to serve on such boards.
, pp. 708, 711.)

eports to Governor and legislature; no compensation for delegations
ssion shall report to the Governor and to the legislature within
the convening of each regular legislative session, and at such
s it deems appropriate. Its members and the members of all
and committees which it establishes shall serve without
for such service.
pp. 708, 711.)

signation of committees and commission
ttees and the commission established by this Chapter shall be
own, respectively, as the Senate Cooperation Committee, the
ation Committee, the Governor's Cooperation Committee and
Cooperation Commission.
pp. 708, 711.)

uncil of State Governments; communication to other request to cooperate
l of State Governments is hereby declared to be a joint
agency of this State and of the other States which cooperate

ry of State shall forthwith communicate the text of this
Governor, to the Senate, and to the House of Representatives,
other States of the Union, and shall advise each legislature
already done so that it is hereby memorialized to enact a law
measure, thus establishing a similar commission, and thus
competition and conflict.
(Acts 1937, pp. 708, 712.)

GEORGIA

CHAPTER 47-12. LEGISLATIVE SERVICES COMMITTEE

Sec.
47-1201 Committee created; membership; officers; compensation; quorum
47-1202 Powers and authority of committee
47-1203 Legislative Counsel; office created; qualifications; duties and authority
47-1204 Same; election; term of office; compensation
47-1205 Employment of personnel; compensation; office quarters; supplies, books, materials and furniture
47-1206 Merit system and retirement for employees; payment of contributions
47-1207 Funds for operation of Chapter
47-1208 Attorney General as advisor to Legislative Counsel; compensation
47-1209 Authority of Legislative Counsel relative to statutory and Code revision

Editorial Note
Acts 1959, p. 152, which forms the basis for this Chapter, provides at Section 7 thereof: "An Act creating the Bill Drafting Unit as a part of the State Law Department approved February 20, 1951 (Ga. L. 1951, p. 351), is hereby repealed in its entirety. If, in any other Act or Resolution, reference is made to the Deputy Director of said Unit it shall be construed to mean and is hereby declared to refer to the Legislative Counsel." Acts 1951, p. 351, was formerly codified as §§ 40-1621 through 40-1628.

47-1201 Committee created; membership; officers; compensation; quorum

There is hereby created the "Legislative Services Committee," hereinafter called the committee, to be composed of the Speaker of the House of Representatives, the President of the Senate, the chairman of the Appropriations Committee of the Senate, the chairman of the Appropriations Committee of the House of Representatives, the chairman of the Judiciary Committee of the Senate, the chairman of the Judiciary Committee of the House of Representatives, the chairman of the Banking, Finance and Insurance Committee of the Senate, the chairman of the Ways and Means Committee of the House of Representatives, the clerk of the House of Representatives, and the secretary of the Senate. The Speaker of the House of Representatives shall be Chairman of the committee and the secretary of the Senate shall be secretary of the committee. The members of the committee shall receive no additional allowances for service on the committee while the General Assembly is in session but for each day spent in the performance of their duties hereunder between sessions, the members shall receive the allowances authorized by law for legislative members of interim legislative committees. The committee shall meet on call of the chairman. Six members of the committee shall constitute a quorum and the affirmative vote of a majority of those members present at a meeting of the committee, provided such members present constitute a quorum, shall be necessary to transact business of the committee. The chairman shall be entitled to vote on all matters requiring a vote of the committee.
(Acts 1959, p. 152; 1961, p. 230; 1976, pp. 176, 177, eff. Feb. 3, 1976.)

Editorial Note
Acts 1961, p. 230, changed the name of the committee from "Joint Committee on the Operations of the General Assembly" to "Legislative Services Committee."
Acts 1976, pp. 176, 177, entirely superseded the former section.

47-1202 Powers and authority of committee

The committee is hereby empowered to study and adopt methods and procedures to operate more efficiently the General Assembly and each House thereof. It is empowered to study and adopt methods and procedures to make more uniform the operations of the Senate and the House of Representatives. It shall have general supervision over the operation of the Legislative Branch of Government and is empowered to act for and to enter into contracts on behalf of agencies of the Legislative Branch, the General Assembly and each House thereof. It is empowered to provide for services for the Legislative Branch of Government. It is empowered to delegate such of its powers and authority as it deems advisable.

The committee shall have complete control, authority and jurisdiction over the rooms, chambers, offices and other areas on the third and fourth floors of the State capitol building and on the Mezzanine between such third and fourth floors. All assignments for the use of such rooms, chambers, offices and other areas by the General Assembly, the Senate, the House of Representatives, Committees of the Senate and the House, members of the Senate and House, and agencies, officials and employees of the Legislative Branch of Government shall be made by the committee or under such procedure as the committee shall provide. Any such assignment shall be subject to change by the committee. Use of any such room, chamber, office or other area, other than as provided above, shall be under such procedure as the committee shall provide. The committee is authorized to provide for the maintenance, repairing, construction, reconstruction, furnishing and refurnishing of such rooms, chambers, offices and other areas. The committee is authorized to provide for such procedures as it deems advisable for the purpose of carrying out the provisions of this section.

(Acts 1959, pp. 152, 153; 1964, p. 459; 1976, pp. 176, 178, eff. Feb. 3, 1976.)

Editorial Note
The Act of 1964 entirely superseded the former section.
Acts 1976, pp. 176, 178, again entirely superseded the former section.

47-1203 [illegible] qualifications; duties and [illegible]

There is hereby created the Office of Legislative Counsel. The Legislative Counsel shall be an attorney skilled and experienced in legislative matters and bill drafting. It shall be the duty of the Legislative Counsel to provide bill drafting services equally available to every member of the General Assembly. He shall advise and counsel with members of the General Assembly on legislative matters. He is authorized to provide for statutory and Code revision, render opinions, assist standing and interim committees and perform similar legislative functions. He is authorized to perform research and to issue reports and make recommendations as a result thereof. He is authorized to exchange information, data and material with similar agencies in other States [illegible] provide legal services for the Legislative [illegible] and with the approval of the committee on the [illegible] Legislative Branch in matters [illegible] litigation. [illegible] notwithstanding, he is authorized to engage the services of others, including private counsel [illegible] or otherwise, to assist him in the performance of his duties, and is authorized to provide for the payment of fees, [illegible] and expenses therefor from legislative funds. The Legislative Counsel shall have such other authority and duties as the committee may provide.

(Acts 1959, pp. 152, 153; 1965, pp. 270, 271; 1976, pp. 176, 179, eff. Feb. 3, 1976.)

Editorial Note
Acts 1965, p. 270, entirely superseded the former section.
Acts 1976, pp. 176, 179, again entirely superseded the former section.

ANNOTATIONS

Representation by Attorney General
Statute neither authorizes nor prohibits representation of legislators by Deputy Assistant Attorney General. 233/407 (211 S. E. 2d 709).

47-1204 Same; election; term of office; compensation

The committee shall elect the Legislative Counsel subject to the approval of the Senate and the House of Representatives meeting in joint session, except that the present Legislative Counsel shall serve until time as a new Legislative Counsel is elected by the committee and approved by both branches of the General Assembly as hereinbefore provided. The committee shall fix the compensation of the Legislative Counsel.

(Acts 1959, pp. 152, 154; 1965, pp. 270, 271.)

Editorial Note
Acts 1965, p. 270, entirely superseded the former section.

47-1205 Employment of personnel; compensation; office quarters; supplies, books, materials and furniture

Personnel to assist the Legislative Counsel, the Legislative Fiscal Officer and the Legislative Budget Analyst shall be employed under such procedure as the committee shall provide. The Legislative Counsel, the Legislative Fiscal Officer, the Legislative Budget Analyst and such personnel shall be compensated under such procedure as the committee shall provide. Such personnel shall be subject to the supervision of the respective three officials with reference to the duties of their employment. The committee shall provide office space for such officials and personnel and they shall be furnished with supplies, materials, furniture, furnishings, books, equipment and services.

The Legislative Services Committee is hereby authorized to employ a legislative fiscal officer for the Legislative Branch of Government, and the fiscal officer and personnel to assist him shall be a part of the Office of Legislative Counsel. The fiscal officer shall act as the bookkeeper-comptroller for the Legislative Branch of Government, and shall maintain an account of legislative expenditures and commitments. He shall maintain an inventory of the equipment, furnishings and nonexpendable items belonging to the Legislative Branch. He shall prepare and sign vouchers pertaining to the expenditure of legislative funds. He shall prepare and sign all warrants for the expenditure of funds appropriated to and available to the Legislative Branch of Government. Such warrants shall be paid by the fiscal officer, and it shall not be necessary that they be countersigned by the Comptroller General. All payments from funds appropriated to the Legislative Branch of Government shall be made by the fiscal officer and reference in any other law to any other official or person in connection with any duties pertaining to such payments shall be deemed to refer to the fiscal officer and all duties of any such other official or person in connection therewith are hereby transferred to the fiscal officer. The fiscal officer shall be under such bond as the Legislative Services Committee shall prescribe, and the premium thereon shall be paid from funds appropriated to the Legislative Branch of

Government. The fiscal officer shall have such other duties as shall be prescribed by the committee.

The Legislative Services Committee is hereby authorized to employ a legislative budget analyst to assist the General Assembly and its committees in connection with the appropriations and budgetary matters. The legislative budget analyst shall render assistance and give advice to the Appropriations Committees of the Senate and the House of Representatives. He is hereby authorized to request information and material from all State departments, boards, bureaus, commissions, committees, authorities and agencies in connection with his duties, and all such departments, boards, bureaus, commissions, committees, Authorities and agencies are hereby directed to furnish such information and material as he shall request. The legislative budget analyst shall perform such other duties as the General Assembly, the Legislative Services Committee and the Appropriations Committees shall prescribe.

(Acts 1959, pp. 152, 155; 1961, p. 230; 1969, p. 323; 1971, pp. 67, 68; 1976, pp. 176, 179, eff. Feb. 13, 1976.)

Editorial Note

Acts 1971, pp. 67, 68, struck a former second paragraph relating to the employment of a fiscal officer, and added the present second and third paragraphs relating to the employment of a legislative fiscal officer and a legislative budget analyst.

Acts 1976, pp. 176, 179, rewrote the first paragraph of this section.

47-1206 Merit system and retirement for employees; payment of contributions

The committee is hereby authorized to promulgate a merit system of employment under which personnel shall be selected on a basis of merit. All personnel and the Legislative Counsel are hereby authorized to be members of the Employees Retirement System of Georgia, as established by Chapter 40-25. All rights, credits and funds in said retirement system which are possessed by any personnel of the office of Legislative Counsel, including the Legislative Counsel, at the time of employment in said office are hereby continued, and it is the intention of the General Assembly that any such personnel and the Legislative Counsel shall not lose any rights, credits or funds to which they were entitled prior to being employed in the office of Legislative Counsel. There shall be paid from the funds appropriated for the operation of the legislative branch of the Government all contributions required by the Retirement Act (Chapter 40-25) and all such payments shall be in addition to the regular compensation authorized to the Legislative Counsel and other personnel in said office.

(Acts 1959, pp. 152, 155.)

Cross References

Merit system for departments, see Chapter 40-22.

47-1207 Funds for operation of Chapter

The funds necessary to carry out the provisions of this Chapter shall be paid from the funds provided for the Legislative Branch of Government.

(Acts 1959, pp. 152, 156; 1976, pp. 176, 180, eff. Feb. 3, 1976.)

Editorial Note

Acts 1976, pp. 176, 180, entirely superseded the former section.

47-1208 Attorney General as advisor to Legislative Counsel; compensation

The Attorney General, having served as the Director of the Bill Drafting Unit since its creation, shall serve as an advisor to the Legislative Counsel and for such service shall be compensated in the same amount, from the same appropriation, he received for his services as Director of the Bill Drafting Unit.

(Acts 1959, pp. 152, 156.)

Cross References

Bill Drafting Unit, see Editorial Note at beginning of this Chapter.

Editorial Note

According to Acts 1951, p. 351 (former § 40-1521), the Attorney General received $200 per month for his service as Director of the Bill Drafting Unit. But see § 89-723.

47-1209 Authority of Legislative Counsel relative to statutory and Code revision

The Legislative Counsel, with the approval of the committee, is hereby authorized to provide for advisory committees relative to statutory and Code revision. He is authorized to seek the advice and assistance of the State Bar of Georgia, law schools and individuals and organization knowledgeable in this field.

(Acts 1966, p. 686; 1969, p. 635; 1976, pp. 176, 180, eff. Feb. 3, 1976.)

Editorial Note

Acts 1976, pp. 176, 180, entirely superseded the former section.

CHAPTER 47-13. BILLS RELATIVE TO RETIREMENT, PENSION, OR EMERITUS SYSTEMS, AND EXPENDITURE OF STATE FUNDS

Sec.

47-1301 Georgia Fiscal Note Act, short title
47-1302 Same; "retirement bill" defined
47-1303 Same; time of introduction of retirement bills and bills having significant impact on anticipated revenues or expenditures; fiscal notes
47-1304 Same; actuarial investigations with regard to retirement bills
47-1304.1 Same; distribution of fiscal notes
47-1304.2 Same; personnel
47-1305 Bills changing compensation of State officials to be introduced during first 10 days of session
47-1306 Fiscal notes to be prepared and furnished for bills changing compensation of State officials

47-1301 Georgia Fiscal Note Act; short title

This law [§§ 47-1301 through 47-1304.2] shall be known and may be cited as the "Georgia Fiscal Note Act."

(Acts 1976, p. 1668.)

Editorial Note

Acts 1976, p. 1668, which enacted §§ 47-1301 through 47-1304.2, repealed former §§ 47-1301, 47-1302, 47-1302.1, 47-1303, and 47-1304, which were based upon Acts 1966, p. 573, 1967, p. 711; 1969, pp. 670, 671; 1974, p. 1414.

47-1302 Same; "retirement bill" defined

As used in this law [§§ 47-1301 through 47-1304.2], "retirement bill" means any bill relative to any retirement, pension or emeritus system or any other similar system by whatever name called, whether such system provides for membership therein for State, county, municipal or any other political subdivision officials or employees or any other persons.

(Acts 1976, p. 1668.)

HB

626

Alaska State Legislature

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VICE-CHAIRMAN
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Resources
Rules
Finance — Sub. Com. Labor

Representative John J. Liska

March 28, 1984

M E M O R A N D U M

TO: Judiciary Committee

FROM: Rep. John J. Liska

REFERENCE: The purpose of HB 626, "An Act relating to the crime of conspiracy".

The purpose is to make easier the arrest of individuals who are involved in the planning and organization of criminal activities. Such as drug dealers and pornographers.

The following material is attached:

A. Alaska Statute 11, Chapter 31-attempt and solicitation.

B. Department of Public Safety position paper.

C. Fiscal Note.

D. Articles on organized crime.

1. From Bital Speeches of the Day - "Combatting Organized Crime".

2. Newsweek - "How the Mob Really Works", January 5, 1981.

3. Newsweek - "A Squealers Secrets", January 5, 1981.
"And Now the Israeli Mafia"

4. Newsweek - "Rico the Enforcer", August 20, 1979.

5. Business Week - "Investment", January 10, 1983.

6. Newsweek - "Life in Hiding", January 5, 1981.

7. Nations Business - "Bad News for Labor Racketeers", Oct. 1982.

8. Business Week - "A New Ploy to Fight Takeovers", May 24, 1982.

Secs. 11.20.140 — 11.20.270. [Repealed, § 21 ch 166 SLA 1978. For current provisions on theft, see AS 11.46.100 — 11.46.290.]

Secs. 11.20.280 — 11.20.340. Embezzlement. [Repealed, § 21 ch 166 SLA 1978. For theft by failure to make required disposition of funds received or held, see AS 11.46.210.]

Sec. 11.20.345. Extortion. [Repealed, § 21 ch 166 SLA 1978. For current law, see AS 11.41.520.]

Sec. 11.20.350. Receiving Stolen Goods. [Repealed, § 21 ch 166 SLA 1978. For current law, see AS 11.46.190 and 11.46.210.]

Secs. 11.20.360 — 11.20.510. False Pretenses and Frauds. [Repealed, § 21 ch 166 SLA 1978. For theft by deception, see AS 11.46.180; for business and commercial offenses, see AS 11.46.600 — 11.46.730.]

Secs. 11.20.515 — 11.20.650. Malicious Mischief and Trespass. [Repealed, § 21 ch 166 SLA 1978. For criminal trespass, see AS 11.46.320 — 11.46.350; for criminal mischief, see AS 11.46.480 — 11.46.486.]

Sec. 11.20.660. [Renumbered as AS 11.76.120.]

Secs. 11.20.670 — 11.20.690. Misuse, Damage, or Destruction. [Repealed, § 21 ch 166 SLA 1978. For criminal mischief, see AS 11.46.480 — 11.46.486.]

Chapter 22. Alaska Credit Card Crimes Act.

[Repealed, § 21 ch 166 SLA 1978. For current law, see AS 11.46.285 — 11.46.290.]

Chapter 30. Offenses Against Public Justice.

[Repealed, § 21 ch 166 SLA 1978. For current law, see AS 11.56.]

Chapter 31. Attempt and Solicitation.

Section
100. Attempt
110. Solicitation
140. Multiple convictions barred
150. Substantive crimes involving attempt or solicitation

Collateral references. — 21 Am. Jur. 2d, Criminal Law, §§ 158 — 162.

22 C.J.S., Criminal Law, §§ 73 — 78.

What amounts to attempt to manufacture intoxicating liquor within criminal law, 22 ALR 225.

Solicitation to crime as substantive common-law offense, 35 ALR 961.

What constitutes attempt to commit robbery, 55 ALR 714.

What conduct amounts to an overt act or act done toward commission of murder so as to sustain charge of attempt to murder, 98 ALR 918.

Criminal offense of obtaining money under false pretenses, or attempting to do so, predicated upon receipt or claim of benefits under insurance policy, 135 ALR 1157.

Attempt to commit crime as to driving, being in control of, or operating a motor vehicle while intoxicated, 47 ALR2d 590.

Entrapment to commit or attempt abortion, 53 ALR2d 1156.

What justifies escape or attempt to escape, or assistance in that regard, 70 ALR2d 1430.

Attempt to commit assault as criminal offense, 79 ALR2d 597.

Fact that gun was unloaded as affecting criminal responsibility for attempt to commit murder, 79 ALR2d 1432.

Attempts to receive stolen property, 85 ALR2d 259.

Attempt to escape or commit prison breach as affected by means employed, 96 ALR2d 520.

Attempts to commit offenses of larceny by trick, confidence game, false pretenses, and the like, 6 ALR3d 241.

Impotency as defense to charge of rape, attempt to rape, or assault with intent to commit rape, 23 ALR3d 1351.

Woman upon whom abortion is committed or attempted as accomplice for purposes of rule requiring corroboration of accomplice testimony, 34 ALR3d 858.

Comment note on impossibility of consummation of substantive crime as defense in criminal prosecution for conspiracy or attempt to commit crime, 37 ALR3d 375.

What constitutes attempted murder, 54 ALR3d 612.

Temporary unauthorized absence of prisoner as escape or attempted escape, 76 ALR3d 695.

What conduct amounts to an overt act or acts done toward commission of larceny so as to sustain charge of attempt to commit larceny, 76 ALR3d 342.

Robbery, attempted robbery, or assault to commit robbery, as affected by intent to collect or secure debt or claim, 88 ALR3d 1309.

property or in attempting to escape, rather than in taking property, as element of robbery, 93 ALR3d 643.

What constitutes attempted bank robbery under 18 USCS §§ 2113(a), making it offense to take or attempt to

any property, money, or other [illegible] value from bank, 37 ALR Fed. 255.

Criminal responsibility under 18 USCS § 2(b) of one who lacks capacity to commit an offense but who causes another to do so, 52 ALR Fed. 769.

Sec. 11.31.100. Attempt. (a) A person is guilty of an attempt to commit a crime if, with intent to commit a crime, the person engages in conduct which constitutes a substantial step toward the commission of that crime.

(b) In a prosecution under this section, it is not a defense that it was factually or legally impossible to commit the crime which was the object of the attempt if the conduct engaged in by the defendant would be a crime had the circumstances been as the defendant believed them to be.

(c) In a prosecution under this section, it is an affirmative defense that the defendant, under circumstances manifesting a voluntary and complete renunciation of the defendant's criminal intent, prevented the commission of the attempted crime.

(d) An attempt is a

(1) class A felony if the crime attempted is an unclassified felony;

(2) class B felony if the crime attempted is a class A felony;

(3) class C felony if the crime attempted is a class B felony;

(4) class A misdemeanor if the crime attempted is a class C felony;

(5) class B misdemeanor if the crime attempted is a class A or class B misdemeanor.

(e) If the crime attempted is an unclassified crime described in a state law which is not part of this title and no provision for punishment of an attempt to commit the crime is specified, the punishment for the attempt is imprisonment for a term of not more than half the maximum period prescribed as punishment for the unclassified crime, or a fine of not more than half the amount of the maximum fine prescribed as punishment for the unclassified crime, or both. If the crime attempted is punishable by an indeterminate or life term, the attempt is a class A felony. (§ 2 ch 166 SLA 1978; am § 1 ch 102 SLA 1980; am § 10 ch 45 SLA 1982)

Cross references. — For legislative purpose of ch. 45, SLA 1982, see § 1, ch. 45, SLA 1982 in the Temporary and Special Acts.

Effect of amendments. — The 1980 amendment added subsection (e).

The 1982 amendment, substituted "an unclassified felony" for "murder in any degree or kidnapping" in subsection (d)(1).

Legislative history reports. — For a report on Chapter 102, SLA 1980 (HCS CSSB 511), see 1980 Senate Journal Supplement, No. 44, May 29, 1980, or 1980 House Journal Supplement, No. 79, May 28, 1980.

Editor's notes. — Many of the cases [illegible] in the note below were decided under former AS 11.05.020.

The word "attempt," generally means [illegible] or physical effort to do a particular thing. Wooldridge v. United States, [illegible] F. 775 (9th Cir. 1916).

Where attempt complete under former law. — See Lemke v. United States, 14 Alaska 587, 211 F.2d 73 (9th Cir. 1954); Wooldridge v. United States, [illegible] F. 775 (9th Cir. 1916).

In the area of attempt, criminality was present under former AS [illegible] where there was the formation of criminal attempt, a preparation to commit the crime, and a direct unequivocal act toward its perpetration. Braham v. State, Sup. Ct. Op. No. 1522 (File No. [illegible]), 571 P.2d 631 (1977), cert. denied, [illegible] 910, 98 S. Ct. 2246, 56 L. Ed. 2d [illegible].

Mere preparation to commit a crime, not followed by an overt act done toward its commission, did not constitute an attempt under former AS 11.05.020. There were borderline cases where it was sometimes difficult to determine whether preparation to commit a crime has come near enough to the accomplishment of the act as that an attempt had been committed. Gargan v. State, Sup. Ct. Op. [illegible] (File No. 773), 436 P.2d 968 [illegible].

Mere preparation to commit a crime, not followed by an overt act done toward its commission, did not constitute an attempt. Lemke v. United States, 14 Alaska 587, [illegible] F.2d 73 (9th Cir. 1954).

When acts were of such a preliminary nature so as to constitute mere preparation for the contemplated crime, there was no crime of attempt. Braham v. State, Sup. Ct. Op. No. 1522 (File No. 2558), 571 [illegible] (1977), cert. denied, 436 U.S. 910, [illegible] 2246, 56 L. Ed. 2d 410 (1978).

Question of degree. — Whether acts went so far in contemplation of the commission of a crime were merely preparatory and did not constitute attempt, or whether they were sufficiently close to the consummation of the crime to amount to attempt, was a question of degree and depended upon the facts and circumstances of a particular case. Braham v. State, Sup. Ct. Op. No. 1522 (File No. [illegible]), 571 P.2d 631 (1977), cert. denied, [illegible] 910, 98 S. Ct. 2246, 56 L. Ed. 2d [illegible].

Inadequacy of former statute. — Former AS 11.05.020 was apparently inadequate to codify effectively as a crime the situation involving the single act of contracting for another to perform a criminal act. Braham v. State, Sup. Ct. Op. No. 1522 (File No. 2558), 571 P.2d 631 (1977), cert. denied, 436 U.S. 910, 98 S. Ct. 2246, 56 L. Ed. 2d 410 (1978).

Where defendant contracted with someone to kill another, when he instructed the killer to visit the victim, his intention being that there would be fostered a relationship of trust and confidence between the killer and the victim, thus placing the killer in a position where he would be closer to the victim and could more readily kill him, the killer's visit with the victim, at defendant's direction, was the doing of a direct, unequivocal act toward the commission of the crime of murder, which followed the formation of a criminal intent and a preparation to commit this crime. Braham v. State, Sup. Ct. Op. No. 1522 (File No. 2558), 571 P.2d 631 (1977), cert. denied, 436 U.S. 910, 98 S. Ct. 2246, 56 L. Ed. 2d 410 (1978).

Factual impossibility not apparent to actor. — A factual impossibility which was not apparent to the actor at the time should not, as a matter of policy, insulate him from conviction for attempting the commission of the offense. Gargan v. State, Sup. Ct. Op. No. 452 (File No. 773), 436 P.2d 968 (1968).

"Empty pocket doctrine". — See Gargan v. State, Sup. Ct. Op. No. 452 (File No. 773), 436 P.2d 968 (1968).

Attempt statute applied to attempted violation of narcotic drug statute. — Persons attempting to commit the crime defined by AS 17.10.010 of the Alaska Uniform Narcotic Drug Act (now repealed) were not exempted or excepted from the provisions of the attempt statute. Simpson v. United States, 13 Alaska 635, 195 F.2d 721 (9th Cir. 1952).

An attempt was necessarily included in an indictment for statutory rape. Sekinoff v. United States, 283 F. 38 (9th Cir. 1922).

Indictment need not specify intent to be proved for attempted rape. — There is authority for the proposition that a specific intent must be proved for the crime of attempted rape. But there is no authority supporting the proposition that the indictment must specify that intent. State v. Thomas, Sup. Ct. Op. No. 1077 (File No. 2234), 525 P.2d 1092 (1974).

THE NEW MAFIA

JUSTICE

How the Mob Really Works

They are the criminals Americans have loved to fear. For 60 years, the barons of organized crime have lived off the nation's thirst for vice: first liquor, then women, gambling, drugs and usurious cash. At the same time, they have become legends in their own land, hyperbolized in the press and pop culture as figures of Evil and Honor, concepts that mean little to the hoodlum on the street. Today, in its middle age, the mob finds itself in a difficult period of transition. Its top leadership is aging. Its young bloods chafe at traditional hierarchies. Its forays into the straight economy are increasingly risky. Most worrisome of all, it faces unprecedented efforts by law-enforcement agencies, which have finally found ways to disrupt, if not destroy, criminal networks. Still, the mob is hardly a declining industry. Its principal commodities—lust, greed and blood—remain very much in fashion.

1980 was not a good year for the underworld. About 600 mobsters were convicted in Federal courts. They include bosses Frank Tieri of New York, Nicholas Civella of Kansas City and the entire top echelon of the Los Angeles crime family, who were convicted of racketeering, and former New York boss Joseph Bonanno, who was convicted of conspiracy to obstruct justice. (All of the bosses are appealing.) Tieri and members of southern California's "Mickey Mouse Mafia" were fingered by the most important informer in two decades, Jimmy (The Weasel) Fratianno, who now wields his memory the way he once used a garrote (page 36). "These prosecutions illustrate that organized crime is penetrable," says Attorney General Benjamin Civiletti. "It is not, as we sometimes hear, an organization which has such a strong oath of silence that it is immune from Federal investigation."

The FBI has learned the value of going undercover to beat the mob on its own turf. In the Brilab case, two FBI agents and an informant masqueraded for a year as crooked insurance agents to record conversations with Carlos Marcello, the reputed boss of the New Orleans crime family. The 70-year-old Marcello was indicted last June for racketeering, fraud and conspiracy. He was accused of agreeing to help the agents bribe Louisiana officials, they were to get state contracts and he was to receive a piece of their action. In courtrooms along the Gulf and East coasts, evidence gathered during a five-year investigation into dock corruption has brought the convictions of more than a hundred union officials and shippers on bribery and extortion charges. Despite all this, lawmen say they are only containing the mob. "Organized crime is powerful," says Francis M. Mullen, executive assistant FBI director of investigations. "We do not really hope to eliminate it. We hope to diminish its influence."

Within their traditional markets the mob's influence—and profits—keep climb-

Lawmen are making things tougher, but organized crime is finding new ways to make crime pay.



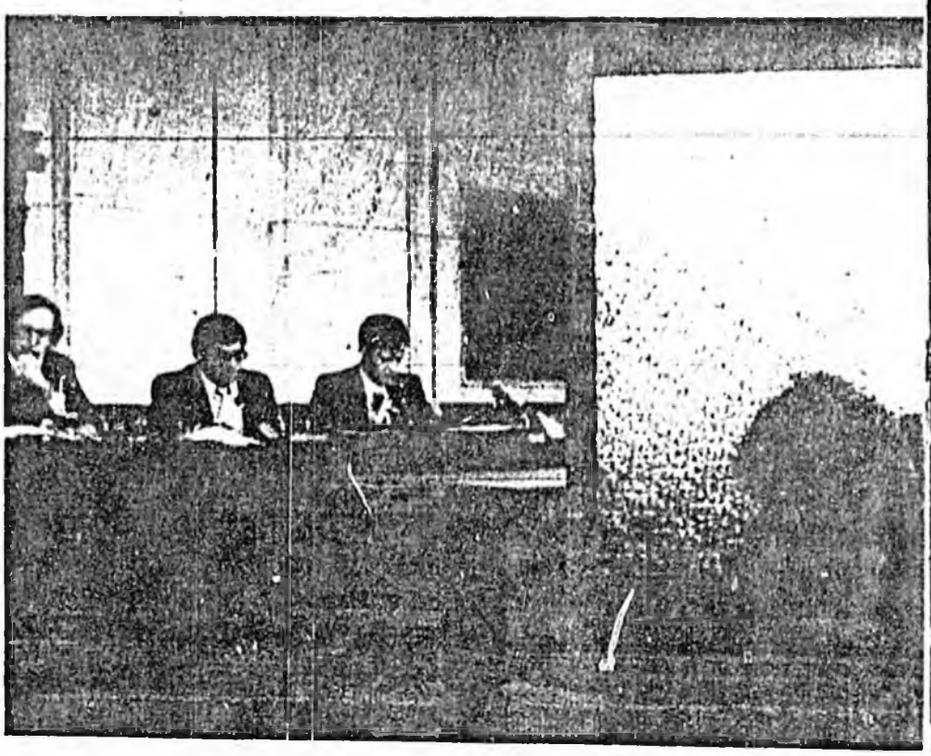
Michael Rizzitello
Los Angeles



Frank Tieri
New York



Dominick Brooklier
Los Angeles



Mafia informants concealed at Senate hearing: "[Mobsters] are like cockroaches. You step on them one place and they turn up somewhere else."

ing. Heroin smuggling is again a growth industry. Agents from the Federal Drug Enforcement Administration seized 488 pounds of heroin in the first eleven months of 1980, up one third from all of 1979. The police are not suddenly better; they're just skimming the foam off a flood tide. Professional fences can barely keep up with the loads of hijacked goods they wash clean through burgeoning flea markets and street peddlers. And, says Dominic Amorosa, chief of the Organized Crime Strike Force in Manhattan, "the amount of loan-sharking on the street has never been higher." Inflation has driven hordes of businessmen and bill payers to loan sharks for money borrowed at up to 200 to 800 percent annual interest, using their firms—and their bodies—as collateral.

The mob has also moved into new enterprises. "These people are like cockroaches," says one veteran investigator. "You step on them one place and they turn up somewhere else." Record and tape pirates working with underworld backing now sell enough counterfeit albums to shake rock stars weep. Not only legitimate chemical companies dump toxic wastes illegally now the mob does too. Last April an allegedly Mafia-connected chemical waste warehouse in New Jersey exploded; the lethal mess still hasn't been completely disposed of. Gangsters were also quick to observe that coal mining seems profitable again. They are not only stealing expensive heavy equipment from the sites, but they sell shares in nonexistent or nonproductive mines. The gangs have become so successful that seven states have joined investigative resources to fight the crime.

The Reagan Justice Department is expected to maintain the new pressure. Attorney General-designate William French Smith inherits a national group of tough, aggressive prosecutors and a reformed but still controversial Witness Security Program (page 42).

Pizza. Why should the ordinary citizen care about any of this? Because like it or not, the mob has become a fact of everyday life. If you buy clothes, eat at restaurants with linen napkins, shop in stores that use private garbage services, gamble in casinos, invest in high-flying stocks, have a yen for dirty books, can't start the day without a fresh bagel or finish it without a pizza pie, the mob is there to help. And if you are afraid to venture out at night lest some junkie-mugger will be lurking, it's the mob that feeds his habit. "Organized crime is draining millions of dollars—tax-free dollars—from our nation's economy," says FBI director William H. Webster. "Its impact is felt throughout our society."

At the same time, it's important to understand what the mob isn't. The Mafia is not the principal source of economic crimes—price-fixing or shaving work- and product-safety standards. Those are the provinces of conniving businessmen. The kickbacks or other favors that some corporations give politicians often rival anything the mob provides. "Organized crime is a serious problem, but one which is sometimes exaggerated and sometimes minimized for political purposes," says Deputy Assistant Attorney General Irvin Nathan.

Harvard sociologist Daniel Bell once wrote that the underworld serves as one of America's "queer ladders of social mobility." Some criminals climb and get off, others can't wait to get on, and some never leave. The Italian syndicate, called La Cosa Nostra by some gangs and by the FBI, and the Mafia by everyone else, fits the last category. So much has been written about this group that it's difficult to separate myth from fact. This at least seems true: the Mafia is a loose confederation of gangs spread around the country. They work together on projects such as Las Vegas gambling, and operate independently on local affairs such as protection rackets or labor racketeering (chart, page 38).

Shakedown: Organized crime, however, is by no means an Italian monopoly. Jewish and Irish hoodlums have long cooperated with the Mafia. "Guys that hate each other will sit down for money," says a New York police detective. But now new groups have begun to climb Bell's curious ladder. Black outfits in Philadelphia and New York run—in concert with the Mafia—much of the gambling and narcotics action. Chinese gangs shake down San Francisco merchants, the self-proclaimed Israeli Mafia (page 40) extorts money in Los Angeles. Colombian and Cuban drug rings have flooded Florida with their products—and



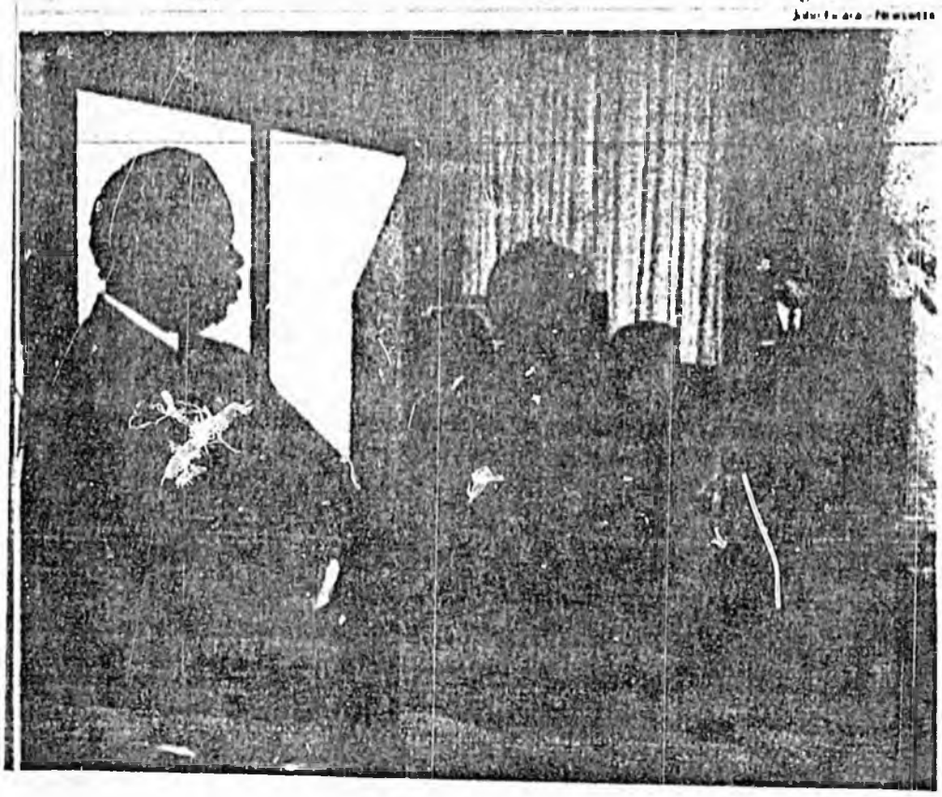
Joe Bonanno
Tucson



Carlos Marcello
New Orleans



Louis Tom Dragna
Los Angeles



Even though there is no question that the crime of attempt requires a specific intent, it seems equally beyond dispute that a charge of attempt to commit a specific crime clearly advises the defendant of the offense with which he is charged. State v. Thomas, Sup. Ct. Op. No. 1077 (File No. 2234), 525 P.2d 1092 (1974).

Indictment charging attempted rape and citing only the rape statute held sufficient. — See State v. Thomas, Sup. Ct. Op. No. 1077 (File No. 2234), 525 P.2d 1092 (1974).

Defendant may be found guilty though attempt not expressly charged. — Jury could find defendant guilty of the attempt to commit the crime of possessing narcotic drugs despite the fact that the attempt was not expressly charged. Simpson v. United States, 13 Alaska 635, 195 F.2d 721 (9th Cir. 1952).

Substantial evidence of attempt. — In a prosecution for possession of narcotic drugs, although there was no substantial evidence that defendant committed the crime charged in the information, there was substantial evidence that she attempted to commit the crime charged. Simpson v. United States, 13 Alaska 635, 195 F.2d 721 (9th Cir. 1952).

Same offense for sentencing purposes. — Assault with intent to rob and attempted robbery constituted the "same offense" for sentencing purposes. Brookins v. State, Sup. Ct. Op. No. 1336 (File No. 3972), 600 P.2d 12 (1979).

Sentence upheld. — See Bowie v. State, Sup. Ct. Op. No. 769 (File No. 1[illegible] 494 P.2d 800 (1972); Spearman v. State, Sup. Ct. Op. No. 1210 (File No. 2529), 542 P.2d 202 (1975); Braham v. State, Sup. Ct. Op. No. 1522 (File No. 2558), 571 P.2d [illegible] (1977), cert. denied, 436 U.S. 910, 98 S. Ct. 2246, 56 L. Ed. 2d 410 (1978); Johnson v. State, Sup. Ct. Op. No. 1656 (File No. 3424), 580 P.2d 700 (1978); Ferguson v. State, Sup. Ct. Op. No. 1791 (File No. 3890), 590 P.2d 43 (1979); Morris v. State, Sup. Ct. Op. No. 1830 (File No. 4132), 592 P.2d 1244 (1979); Ramil v. State, Sup. Ct. Op. No. 2217 (File No. 4944), 619 P.2d 722 (1980).

Sentence held excessive. — See Hansen v. State, Ct. App. Op. No. 218 (File No. 6965), 657 P.2d 862 (1983).

Applied in Nicholson v. State, Ct. App. Op. No. 193 (File No. 6192), 656 P.2d 1209 (1982).

Stated in State v. Silas, Sup. Ct. Op. No. 1851 (File No. 4237), 595 P.2d 651 (1979); Coleman v. State, Sup. Ct. Op. No. 2190 (File No. 4416), 621 P.2d 869 (1980); Ramil v. State, Sup. Ct. Op. No. 2217 (File No. 4944), 619 P.2d 722 (1980); Clark v. State, Ct. App. Op. No. 96 (File No. 5658), 645 P.2d 1236 (1982); Tazruk v. State, Ct. App. Op. No. 195 (File No. 6954), 655 P.2d 788 (1982).

Cited in Handley v. State, Sup. Ct. Op. No. 2155 (File Nos. 3946, 4935), 615 P.2d 627 (1980); Walker v. State, Ct. App. Op. No. 234 (File No. 6304), 662 P.2d 948 (1983).

Sec. 11.31.110. Solicitation. (a) A person commits the crime of solicitation if, with intent to cause another to engage in conduct constituting a crime, the person solicits the other to engage in that conduct.

(b) In a prosecution under this section,

(1) it is not a defense

(A) that the defendant belongs to a class of persons who by definition are legally incapable in an individual capacity of committing the crime that is the object of the solicitation; or

(B) that a person whom the defendant solicits could not be guilty of the crime that is the object of the solicitation;

(2) it is an affirmative defense that the defendant, under circumstances manifesting a voluntary and complete renunciation of the defendant's criminal intent, after soliciting another person to engage in conduct constituting a crime, prevented the commission of the crime.

(c) Solicitation is a

(1) class A felony if the crime solicited is an unclassified felony;

(2) class B felony if the crime solicited is a class A felony;

(3) class C felony if the crime solicited is a class B felony;

(4) class A misdemeanor if the crime solicited is a class C felony;

(5) class B misdemeanor if the crime solicited is a class A or class B misdemeanor.

(d) If the crime solicited is an unclassified crime described in a state law which is not part of this title and no provision for punishment of a solicitation to commit the crime is specified, the punishment for the solicitation is imprisonment for a term of not more than half the maximum period prescribed as punishment for the unclassified crime, or a fine of not more than half the maximum fine prescribed as punishment for the unclassified crime, or both. If the crime solicited is punishable by an indeterminate or life term, the solicitation is a class A felony. (§ 2 ch 166 SLA 1978; am § 2 ch 102 SLA 1980; am § 11 ch 45 SLA 1982)

Cross references. — For legislative purpose of ch. 45, SLA 1982, see § 1, ch. 45, SLA 1982, in the Temporary and Special Acts; for legal accountability based on the conduct of another and complicity, see AS 11.16.110.

Effect of amendments. — The 1980 amendment added subsection (d).

The 1982 amendment, substituted "an unclassified felony" for "murder in any degree or kidnapping" in subsection (c)(1).

Legislative history reports. — For a report on Chapter 102, SLA 1980 (HCS CSSB 511), see 1980 Senate Journal Supplement, No. 44, May 29, 1980, or 1980 House Journal Supplement, No. 79, May 28, 1980.

NOTES TO DECISIONS

Former law construed. — See McConkey v. State, Sup. Ct. Op. No. 855 (File No. 1464), 504 P.2d 823 (1972); Cassell v. State, Ct. App. Op. No. 91 (File No. 5138), 645 P.2d 219 (1982), decided under former AS 11.10.070.

One contracting with another to kill a third person was guilty of attempted first-degree murder, not solicitation. — See Braham v. State, Sup. Ct. Op. No. 1522 (File No. 2558), 571 P.2d 631 (1977), cert. denied, 436 U.S. 910, 98 S. Ct. 2246, 56 L. Ed. 2d 410 (1978), decided under former AS 11.10.070 and 11.15.010.

Cited in Hoover v. State, Ct. App. Op. No. 73 (File No. 6223), 641 P.2d 1263 (1982); P.S. v. State, Ct. App. Op. No. 194 (File No. 6870), 655 P.2d 1319 (1982).

Sec. 11.31.140. Multiple convictions barred. (a) It is not a defense to a prosecution under AS 11.31.100 or AS 11.31.110 that the crime that is the object of the attempt or solicitation was actually committed pursuant to the attempt or solicitation.

(b) A person may not be convicted of more than one crime defined by AS 11.31.100 or AS 11.31.110 for conduct designed to commit or culminate in commission of the same crime.

(c) A person may not be convicted on the basis of the same course of conduct of both (1) a crime defined by AS 11.31.100 or AS 11.31.110; and (2) the crime that is the object of the attempt or solicitation.

(d) This section does not bar inclusion of multiple counts in a single indictment or information charging commission of a crime defined by AS 11.31.100 or AS 11.31.110 and commission of the crime that is the object of the attempt or solicitation. (§ 2 ch 166 SLA 1978)

NOTES TO DECISIONS

Conspiracy is separate offense. — The crime of conspiracy is generally regarded as a separate offense from the substantive crime that is the object of the conspiracy. Unlike the other preliminary offenses of attempt and solicitation, conspiracy does not merge into a conviction for the substantive crime. Lythgoe v. State, Sup. Ct. Op. No. 2235 (File No. 4497), 626 P.2d 1082 (1980).

The no-merger rule means that a defendant can be convicted of both conspiracy and the object of the conspiracy. One reason advanced for this special treatment of conspiracy as a separately punishable offense is that conspiracy has been regarded as a serious crime in itself. Lythgoe v. State, Sup. Ct. Op. No. 2235 (File No. 4497), 626 P.2d 1082 (1980).

Sec. 11.31.150. Substantive crimes involving attempt or solicitation. Notwithstanding AS 11.31.140(d),

(1) a person may not be charged under AS 11.31.100 if the crime allegedly attempted by the defendant is defined in such a way that an attempt to engage in the proscribed conduct constitutes commission of the crime itself;

(2) a person may not be charged under AS 11.31.110 if the solicitation in question is defined as a specific crime under other provisions of law. (§ 2 ch 166 SLA 1978)

Chapter 35. Abandonment and Nonsupport.

[Repealed, § 1 ch 39 SLA 1970 and § 21 ch 166 SLA 1978. For current law on desertion and nonsupport of a minor, see AS 11.51.100 — 11.51.120.]

Chapter 36. Failure to Permit Visitation with Minor Child.

[Repealed, § 21 ch 166 SLA 1978. For current law, see AS 11.51.125.]

Chapter 40. Crimes Against Morality and Decency.

[Repealed, § 21 ch 166 SLA 1978. For current law, see AS 11.51.130, 11.51.140, 11.61.110, 11.61.130, 11.61.140 and 11.66.100 — 11.66.150.]

Chapter 41. Offenses Against The Person.

Article
1. Homicide (§§ 11.41.100 — 11.41.140)
2. Assault and Reckless Endangerment (§§ 11.41.200 — 11.41.250)
3. Kidnapping and Custodial Interference (§§ 11.41.300 — 11.41.370)
4. Sexual Offenses (§§ 11.41.410 — 11.41.470)
5. Robbery, Extortion, and Coercion (§§ 11.41.500 — 11.41.530)

Cross references. — For provisions authorizing arrest without warrant in certain cases where the police officer has reasonable cause to believe that the person has committed a crime under this chapter, see AS 12.25.030(b).

NOTES TO DECISIONS

Cited in Leuch v. State, Sup. Ct. Op. No. 2419 (File No. 5255), 633 P.2d 1006 (1981).

Article 1. Homicide.

Section
100. Murder in the first degree
110. Murder in the second degree
115. Defenses to murder
120. Manslaughter
130. Criminally negligent homicide
135. Multiple deaths
140. Definition

Collateral references. — 41 Am. Jur. 2d, Homicide, § 1 et seq.

40 C.J.S., Homicide, § 1 et seq.

Homicide by wanton or reckless use of firearm without express intent to inflict injury, 5 ALR 603; 23 ALR 1554.

Homicide or assault in attempting to prevent elopement, 8 ALR 660.

Wife's confession of adultery as affecting degree of homicide in killing her paramour, 10 ALR 470.

What amounts to participation in homicide on part of one not the actual perpetrator, who was present without preconcert or conspiracy, 12 ALR 275.

Intoxication as reducing homicide from murder to manslaughter, 12 ALR 888; 79 ALR 897.

Responsibility of persons participating in jail delivery for homicide committed by one of their number, 15 ALR 456.

Recommendation for mercy, 17 ALR 117; 55 ALR 639.

Homicide by unlawful act aimed at another, 18 ALR 917.

Criminal responsibility of peace officers for killing or wounding one whom they wished to investigate or identify, 18 ALR 1368; 61 ALR 321.

Homicide as affected by time elapsing between wound and death, 20 ALR 1006; 93 ALR 1470.

Humanitarian motives, homicide as affected by, 25 ALR 1007.

Discharge of firearm without intent to inflict injury as proximate cause of homicide resulting therefrom, 55 ALR 921.

DEPARTMENT OF PUBLIC SAFETY

POSITION PAPER

Support

March 3, 1984

HB 626 - "An act relating to the crime of [illegible]."

This legislation would facilitate the arrest and prosecution of those individuals who historically are positioned in the upper levels of criminal organizations but who never enter the areas of "hands on" physical criminal activity and therefore avoid being charged, despite their clear responsibility. The most important impact of passage of this legislation would be in prosecutions of those criminal elements involved in narcotics trafficking in Alaska.

We can see a potential for conflict between 11.31.140 (c) and (e). The former prohibits conviction for both conspiracy and the crime which is the object of the conspiracy. 11.31.140 (e) indicates that if multiple crimes are the object of a conspiracy only one count of conspiracy is charged. If two people conspire to commit four similar crimes, under (e) this is one conspiracy count. If, in fact, three crimes are committed, the fourth to occur at a later date and arrests are made before the fourth crime is attempted, under (c) conspiracy could not be charged for the fourth crime because (e) defines one conspiracy count for all four planned crimes and (c) prohibits conviction for both conspiracy and the criminal act itself.

Robert J. Sundberg
Commissioner

STATE OF ALASKA 1984 LEGISLATIVE SE
FISCAL NOTE

Revision Date:

REQUEST
Bill/Resolution No.: HB 626
Title: "An act relating to the crime of conspiracy."
Sponsor: Representative Liska
Requestor: House Judiciary
Date of Request: 3-6-84

FISCAL DETAIL
Agency Affected: Public Safety
Program Category Affected: Administration of Justice
BRU, Program or Subprogram(s) Affected: Alaska State Troopers

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 84	FY 85	FY 86	FY 87	FY 88	FY 89
OPERATING						
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 SUPPLIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS						
800 MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0
CAPITAL	0.0	0.0	0.0	0.0	0.0	0.0
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND	0.0	0.0	0.0	0.0	0.0	0.0
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

ANALYSIS: Attach a separate page for analysis

Prepared By: Francis C. Allan F.C.A. Phone: 269-5691
Division: Alaska State Troopers Date: 03/02/84

Approved by Commissioner: Robert J. Sundberg Date: 3/6/84
Agency: Public Safety

Distribution (by Agency preparing fiscal note):
Legislative Finance
Legislative Sponsor
Requestor
Office of Management and Budget
Impacted Agency(ies)

12/1/83

those differences can be resolved."

Well, those differences are differences in Government structure and philosophy. The common interests have to do with the things of everyday life for people everywhere.

Just suppose with me for a moment that an Ivan and an Anya could find themselves, oh, say, in a waiting room or sharing a shelter from the rain or a storm with a Jim and Sally. And there was no language barrier to keep them from getting acquainted.

Would they believe the differences between their respective Governments? Or would they find themselves comparing notes about their children and what each other did for a living? Before they parted company, they would probably have touched on ambitions and hobbies and what they wanted for the children and problems of making ends meet.

And as they went their separate ways, maybe Anya would be saying to Ivan: "Wasn't she nice. She also teaches music." And Jim would be telling Sally what Ivan did or didn't like about his boss. They might even have decided they were going to get together for dinner some evening soon.

Above all they would have proven that people don't make wars. People want to raise their children in a world without fear and without war. They want to have some of the good things over and above bare subsistence that make life worth living. They want to work at some craft, trade or profession that gives them satisfaction and a sense of worth. Their common interests cross all borders.

If the Soviet Government wants peace, then there will be peace. Together we can strengthen peace, reduce the level of arms and know in doing so that we have helped fulfill the hopes and dreams of those we represent and, indeed, of people everywhere.

Let us begin now.

Combating Organized Crime

PUBLIC AWARENESS AND SUPPORT

By WILLIAM FRENCH SMITH, *Attorney General of the United States*

Delivered at the Town Hall of California, Los Angeles, California, December 19, 1983

I WOULD like to discuss a subject that affects all of us every day, even though it stays generally hidden from public view. It causes our taxes to go up. It adds to the cost of what we buy. And, worst of all, it threatens our personal safety and that of our families — indeed our very freedom. Its trafficking causes untold damage to human lives and human health, yet its revenues are estimated to exceed the net profit of all the Fortune 500 corporations combined. I am speaking of organized crime.

Although combating organized crime is a difficult undertaking, it is not impossible. Indeed, as I will later explain, many successes are now being achieved in that battle. Unfortunately, the public is little aware of the problem or of what the government is doing to combat it. With greater public awareness of the nature and the threat of organized crime, and with greater citizen participation, we could make substantially more headway.

First, in order to provide the context for our efforts today, some history is in order. During the first years of this century, organized crime was a local enterprise. A gang worked a city, often just a neighborhood. The local police were alone in trying to stop organized crime, and the task proved beyond their powers. There was no federal government involvement. And with the ratification of the Eighteenth Amendment, organized crime began a significant expansion in power and influence.

During Prohibition, organized crime groups vied for shares of a market attracting more and more bootleggers, and frequently fought each other as they tried to expand beyond their once limited turfs. Nonetheless, ethnic animosities and gang rivalries gradually abated during Prohibition as cooperation became necessary in the effort to control larger and larger markets. At a 1929 meeting, leading organized crime figures from major cities recognized the need for a national body to mediate differences among groups and formulate a national policy.

The year 1929 is also notable for the federal government's first substantial appearance in the history of organized crime. It was an inauspicious entry. Disturbed by the lawlessness of Prohibition, President Hoover established that year the National Commission on Law Observance and Enforcement. Named after its chairman, George Wickersham, the Commission urged an "immediate, comprehensive, and scientific nationwide inquiry into organized crime" in order to "make possible the development of an intelligent plan for its control."

No such inquiry took place, however, and no intelligent plan for the control of organized crime was developed. The FBI did what it could against the gangsters, arresting a few such as Al Capone, who served time for income tax evasion. But the FBI lacked statutory authority to investigate most of the activities of the crime syndicates. During the Thirties and Forties, despite laudable law enforcement efforts by some local and state authorities, organized crime prospered as the federal government generally failed to make a response.

Alcohol provided the major source of income for criminal groups from 1920 until the end of Prohibition in 1933. But organized crime had by then already learned how to diversify. The syndicates easily renewed and increased previous involvements in gambling, prostitution, and narcotics. They began investing in legitimate businesses, and also infiltrated labor unions. Organized crime extended its reach nationwide — establishing operations on the West Coast, including Los Angeles.

Not until 1950 did the federal government finally begin to make a systematic inquiry into organized crime. A special Senate committee directed by Estes Kefauver investigated gambling and racketeering activities in interstate commerce. The committee uncovered a national pattern of bribery and protection payments to law enforcement officials and payoffs to local and state political figures to ensure protection from prosecution. The committee determined that a national criminal organization which it referred to as "The Mafia" did exist, and recommended the creation of a rackets squad within the Justice Department.

The Kefauver hearings stimulated local investigations in cities where the committee had exposed organized crime oper-

ations and public corruption. But even with the knowledge obtained from the hearings, the federal government itself still did not take sustained action. The Department of Justice initiated a drive against the leading racket figures identified in the Senate hearings, but while some convictions and deportations resulted, no permanent investigative or prosecuterial units were established until 1954. Even then, only three lawyers in the department were assigned to the Organized Crime and Racketeering Section, which consequently enjoyed only limited success. Again, the federal government failed to see the immediate and growing threat presented by organized crime — a national threat requiring a national response.

The lack of an effective government response was costly. During the Fifties the syndicates continued to grow and consolidate. Organized crime became more deeply involved in white collar crime and in politics. Mobsters more frequently appeared in respectable places and with respectable people.

Not until the early Sixties did the federal government begin to make a substantial enforcement effort against organized crime. Under Attorney General Robert Kennedy, the FBI began monitoring the activities of 400 of the nation's leading organized crime figures. The number of attorneys in the Organized Crime Section jumped to 17 in 1961, and 68 in 1962. Gradually, too, the number of convictions per year began to increase — from 45 in 1960, to 546 in 1964.

Several years later a commission created by President Johnson made numerous recommendations for changes in the criminal law — each of them designed to challenge organized crime. The Omnibus Crime Control and Safe Streets Act of 1968 and the Organized Crime Control Act of 1970 incorporated all eight of the commission's recommendations regarding proof of criminal violations. The 1968 Act was the first federal law to define the term "organized crime" and included a provision for electronic surveillance under a carefully detailed warrant procedure and strict court supervision. The 1970 Act strengthened the government's legal tools in the evidence-gathering process. One provision — the Racketeer Influenced and Corrupt Organizations Act, or RICO — is arguably the most powerful statute available to federal law enforcement officials, because among other things it allows government to seize the illicit profits of organized crime.

Another important initiative at this time was the creation of the first Organized Crime Strike Force. In 1966, the Department of Justice placed a five-man team of attorneys and supervisory personnel from federal investigative agencies in Buffalo, N.Y. Within a short time, the group, dubbed the "Strike Force," convicted the mob underboss and several syndicate figures. In 1969, the Department of Justice began an expansion of the Strike Force program.

In retrospect, the federal law enforcement and legislative initiatives of the Sixties mark a turning point in the history of the government's response to organized crime. To be sure, during the past 20 years there have been periods when the government has not been as effective as it could have been. At times the effort has been confused and misdirected. Even so, it is in the past two decades that the federal government finally has organized a serious law enforcement response and devised mechanisms such as the Strike Forces that have proved so valuable in combatting organized crime.

In the past three years, the Strike Force program has been augmented in order to better lead the fight against traditional organized crime. Specialized cadres of experienced trial attorneys coordinate the activities of criminal investigators from all the major federal law enforcement agencies, as well as the local police.

The strike forces have indicted and convicted many of the principal leaders of the traditional crime families in many of our major cities. They have successfully brought major cases in New York, Boston, Cleveland, Chicago, Denver, Kansas City, Miami, Detroit, Philadelphia, San Francisco, Milwaukee, New Orleans — and Los Angeles. During the past three years, in large part because of the efforts of the Strike Forces, the Department of Justice has indicted, tried, and convicted more than 2,600 members and associates of organized crime.

The use of important enforcement mechanisms developed in the Sixties and Seventies have proved immensely helpful. Electronic surveillance under a carefully detailed warrant procedure and strict court supervision has enabled us to gather information on the very secretive crime families. So has the Witness Security Program, which provides protection for informants willing to testify against former underworld associates. In addition, federal officials have successfully gone undercover, posing as members of organized crime, and also set up undercover operations designed to ferret out members of organized crime.

One of our most successful undercover operations occurred here in Los Angeles. The FBI knew that members of the Mafia regularly extorted pornographers and bookmakers, but no extortion victim was willing to testify. So, the FBI set up its own pornography enterprise, named Forex. Forex was located in Van Nuys and ostensibly sold pornography to South America and Mexico.

Forex waited to be extorted, but organized crime kept its distance, apparently suspicious of the legitimacy of the new business. So after three months, the FBI used an informant to spread the word on the street that the government was looking into Forex. That helped establish the company's bona fides with organized crime. Still, however, there was no extortion attempt. Next an undercover agent with the new name of Vince Lombard put the word out that the company was being extorted.

That tactic worked. The mobsters moved in. They told Lombard never to extort a pornography business again and to leave the country. They gave Forex the choice of making payments to them or never again doing business anywhere in the United States. At this point we moved in. As a result of our effort which was called "Pornex," the entire ruling heirarchy of the Los Angeles organized crime family was convicted of RICO charges.

With the help of operations such as Pornex, the Organized Crime Strike Forces have destroyed the myth that the leadership of organized crime is "untouchable." One reason the syndicates gained such a foothold in American society is just this myth, which made it easier for them to recruit new members and enforce loyalty. Now that we have more knowledge of how organized crime works, we have been able to decimate the top ranks in many areas.

Although the Strike Force program is an important part of the effort against organized crime, other new approaches have been undertaken in the past three years. Today, organized crime is heavily involved in drug trafficking. Indeed, the drug trade is now our nation's number one crime problem — especially when one considers the criminal activities spawned by drug trafficking. For example, a recent study done of the Baltimore area found that 243 addicts committed a total of almost a half million crimes over an 11-year period — or an average of 2,000

each — one every other day.

The Posse Comitatus law, passed after the civil war, prevents the armed forces from engaging in law enforcement activities. We have sought and obtained an amendment to this law which now permits us to utilize the resources and intelligence gathering capability of the military — for the first time. This has already been enormously valuable in the fight against drug trafficking.

And for the first time, too, we have brought the FBI into the drug enforcement effort by consolidating the Drug Enforcement Administration with the FBI. The FBI has a sophisticated understanding of the organizational and financial aspects of the organized crime cartels. It has unique knowledge of, and ability to follow, the flow of money. This expertise is essential to combatting the highly sophisticated activities of modern organized crime, and it is now being put to work in the fight against drug trafficking. Our departmental reorganization has been highly successful, resulting currently in 765 FBI cases and almost 600 joint DEA/FBI cases.

South Florida has long been the hot spot for drug trafficking. In response, the South Florida Task Force was established in 1982. For the first time, all of the agencies of the federal government dealing with this problem were brought together within a single entity.

The success of this Task Force guided us in formulating the major eight-point initiative against organized crime and drug trafficking announced by President Reagan last year. The centerpiece of the program was the creation of 12 new task forces patterned on the South Florida model and deployed throughout the country. These Task Forces are now fully operational. Already more than 100 indictments against more than 1,000 defendants have been brought. And more than 200 individuals have been convicted.

Of the 4,75 cases now under investigation by the Drug Task Forces, only a small number involve traditional organized crime. Most involve new or emerging groups attracted to the lucrative profits of drug trafficking. Some names you will recognize but most you will not. They include the Hell's Angels, the Outlaws, the Pagans, the Bandidos, La Nuestra Familia, the Mexican Mafia, the Aryan Brotherhood, the Black Guerrilla Family, the Japanese Yakuza, the Chinese Triad Societies, the Israeli Mafia, and the Cocaine Cowboys.

These modern cartels are involved in the importation and distribution of drugs, the financing of drug trafficking, and money laundering schemes. As is also true of traditional organized crime, they are also engaged in continuing criminal enterprise, abuse of the bank secrecy laws, narcotics conspiracy, and public corruption. Employing the law enforcement weapons developed to fight traditional organized crime, we are making an assault on these organizations even as they are developing.

Today, as organized crime is developing new and different forms, it is also experiencing another evolution — from national in focus to international, a change mostly related to drug trafficking. Of the three drugs that most trouble us from a law enforcement perspective, two — heroin and cocaine — come exclusively from abroad, and one, marijuana, comes predominantly from abroad. Because of the drug trade, the relationships between organized crime families in New York and Palermo are strikingly similar to those historically existing between organized criminals in New York and Chicago.

It is essential that we develop close working relationships at the highest levels with the governments of countries that are the source of illegal drugs or through which drugs travel. It is equally important that we understand the problems faced by those countries and that they understand our concerns. Cooperation on procedural matters is an essential step. To this end, we have negotiated, and are continuing to negotiate, mutual assistance law enforcement and extradition treaties with the various countries involved.

Already we have been successful in crop control and eradication programs — notably in Turkey and Mexico. And we are working — however slow the results — with other countries to control the supply and processing of opium and coca plants and their derivatives.

As we proceed with enforcement programs at home and cooperative efforts abroad, we must also keep our knowledge of organized crime up to date. In the past we did not recognize organized crime for the problem that it was. High government officials and some academies often treated the threat of organized crime, and even its existence, with skepticism. For decades organized crime grew because it was not stopped from growing. We — all of us — have paid for the fact that for many years there was no organized response to organized crime. History counsels the wisdom of learning as much as we can about the new and emerging crime cartels so that we can attack them before they become as entrenched as the Mafia did.

At the end of November the President's Commission on Organized Crime, held its first meeting in Washington. As part of the President's eight-point program against organized crime and drug trafficking, the Commission will study organized crime as it exists today, giving special attention to the emerging drug cartels. The Commission will focus public attention on and further define the nature of the evil that affects us all.

Another part of the President's program calls for strengthening the federal criminal laws that touch organized crime. These include sentencing, bail, forfeiture, and numerous other reforms that would measurably improve our law enforcement ability.

I cannot underestimate the importance of congressional action on the crime bill. Instances abound of cases where current law simply fails to serve the interests of justice. For example, federal sentencing law permits so much judicial discretion that a convicted organized crime figure — facing up to 40 years in prison — was instead sentenced — if you can call it that — to a year in a local community treatment center followed by five years of probation. This criminal must spend only his nights at the treatment center — by day he will be free to do as he pleases. This is the astonishing result, after thousands of hours of effort by investigators, prosecutors, and other law enforcement officials.

In the last Congress, the Senate passed a crime bill containing sentencing and other reforms by a vote of 95 to 1. We hope that both the Senate and the House of Representatives will similarly act before the end of the current session in 1984.

Organized crime is a force *Americans* will have to contend against. The Department of Justice — the federal government — cannot do the job alone. Public knowledge about organized crime and support of the government's law enforcement efforts are key to future success.

With greater public awareness of organized crime, and greater public support of the federal law enforcement effort, we can achieve a future different from our past — a future in which the cancer of organized crime is finally brought under our control.

THE NEW MAFIA

A Squealer's Secrets

Federal investigators call Jimmy (The Weasel) Fratianno the most informative and reliable witness they have ever dealt with. Over the past three months Newsweek's *Ron Laliberte spent hours with Fratianno, following him coast to coast, listening to his testimony in court and his bluster in private. Laliberte's report:*

Jimmy Fratianno remembers the pleasant evening in 1948 that he drove his new Cadillac to a Los Angeles winery. In a dingy, vat lined workroom, 10 men awaited him around a long wooden table on which a gun and a dagger lay crossed. The men joined hands and one of them recited the rules of the group in a Sicilian dialect that Fratianno did not know. Fratianno did understand *omerta*, the code of silence which dictates that a man leaves the organization only when he is dead—at the hands of his colleagues if he reveals their secrets. Fratianno's finger was pricked with the dagger. Then, after kissing each of his new brothers on the cheek, he became a "man of respect," a "made" member of La Cosa Nostra.

For the next three decades Fratianno engaged in a series of criminal schemes—including murders on contract—that alternately landed him in prison or boosted him in the Mafia hierarchy. But in 1977 the guns seemed about to turn on him. The Los Angeles family believed incorrectly he was ready to launch a rival faction. Acting as always out of self-interest, he sold himself to the government for protection. Now, with the same passionless conscience that made him a successful murderer, he regales investigators with a richly detailed expose of Mafia life, from petty jealousy killings to high-council business transactions. Fratianno's testimony has helped convict a Teamsters official in San Francisco and Mafia bosses in Los Angeles and New York, and his out-of-court reminiscences have prompted invaluable intelligence on the mob.

Fratianno began to learn the ropes in Cleveland, where he earned the nickname "Weasel" after he threw a rotten tomato at a cop who couldn't catch him. The son of immigrant parents, he attended Catholic schools until he learned as a teen-ager to shave dice and started operating profitable crap games in the neighborhood on Sunday mornings. "I was a good hustler. I always had money, so I just went on to organized crime," Fratianno says. "You grow into it because of your environment."

Charmer: Fratianno first went to jail after he and his partners beat up a bookmaker who didn't pay off on a 1937 Indians-Red Sox game. But eight years in Ohio prisons only hardened his survival skills. "I ain't out a week and I gotta get even right away," he says. "I'm looking to rob somebody. There's no thought at all about going back to jail." The target was a West Virginia gambling hall. His share was $20,000. He parlayed postwar black-market sales into $80,000 in just a few months, then, looking for bigger prey, took his wife and daughter to Los Angeles. Soon he met Johnny Rosselli, a dapper charmer with show-business friends and a hidden foothold in Las Vegas. Rosselli liked Fratianno and sponsored him for membership in the L.A. family.

One of his first assignments as a made mobster was the assassination of Mickey Cohen, a splashy gambler who headed a rival syndicate. Fratianno planted a bomb beneath Cohen's bedroom and lit the fuse—but it fizzled out. A few months later Fratianno helped make another attempt on Cohen's life. With his wife and daughter, Jimmy dropped by the mobster's Hollywood clothing store, then signaled to gun-toting colleagues that Cohen was inside and vulnerable. The setup ended in failure when the target fortuitously went to the bathroom. But Fratianno eventually made his first hit—on a friend. Frank Nicoli was a Cohen hit man, a loyalist who scorned the pleas of the Italians to defect. Not knowing that Fratianno and his friends were the ones trying to kill his boss, Nicoli visited Fratianno's home one night. "We just took a rope around him and choked him," Jimmy remembers. "It took three minutes, you know, didn't take long."

'Juice': Fratianno also helped dispatch Los Angeles family member Frank Borgia. "They just told me to do this, and that's it," he says. "A lot of guys get killed for nothing. If I get into an argument with a guy and I have more juice with the boss, then he gets killed. If he has more juice, then I get killed." It took Fratianno more than a year to track down Louis (Russian Louie) Strauss on a contract from a Las Vegas casino owner. Finally Fratianno lured Strauss to a Palm Springs house where he was efficiently strangled. Fra-



Fratianno: A life inside the mob

Jimmy the Weasel (second from right) with Frank Sinatra, and with Dean Martin: A man with friends in high and low places





RICO THE ENFORCER

NEWSWEEK

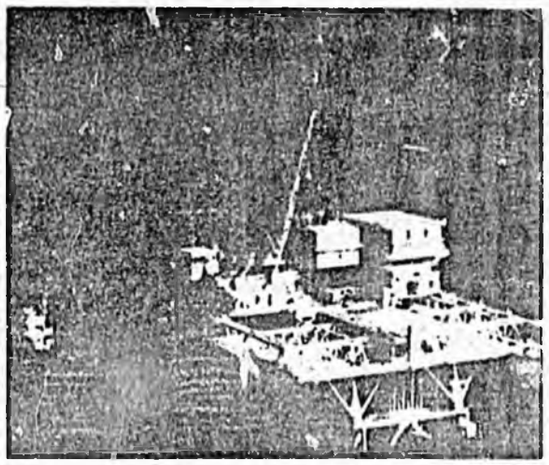
JUSTICE

J. Ray McDermott & Co., a major builder of oil platforms, paid $508,615 in bribes to the vice chairman of Tenneco Oil Co. to undertake lucrative construction projects in the Gulf of Mexico. But the cost of doing business jumped unexpectedly last year after the firm pleaded guilty on seven criminal counts. A Federal judge in New Orleans not only fined McDermott $103,000, but confiscated its $897,000 in illegal profits from the Tenneco deals.

While serving as mayor of Lansing, Ill., for sixteen years, Jack O. McNary shook down real-estate developers and invested his booty in two private businesses. Convicted last year of extortion, McNary was sentenced to three years in prison. He will also have to ransom his businesses, which the government now effectively controls.



Charles Pugh—Atlanta Journal Constitution





Bob Sherman—Camera 5

A new spoils system: The government could not seize a private mansion, but it could take profits from an oil rig, and possibly a used-car lot

These cases share a dubious distinction. The Justice Department prosecuted them—and other button-down crimes—with a law designed specifically to convict Mafia capos. Known as RICO (Racketeer Influenced and Corrupt Organizations), the nine-year-old law allows the government to seize legitimate businesses if they have been used for illegal schemes or as investments for dirty money. Says Chicago attorney Sherman Magidson, "RICO can reach out and castrate people."

The RICO law frightens many lawyers and judges. They worry about language so loosely drawn that it lets the government sweep even small-time white-collar defendants and public officials into the same pit as underworld hit men. While Justice officials concede the law must be applied cautiously, they see no need to sheath their weapon. "This is a valuable tool," says Attorney General-designate Benjamin Civiletti. "We will not shy away from using it to pursue corrupt enterprises which do not fit the layman's view of organized crime." With about 200 RICO cases already filed, and the government increasing its use of the statute, the American Bar Association has scheduled a special seminar on how to deal with RICO at its convention this week.

RICO is one of the broadest criminal statutes Congress has ever passed. The law first enumerates 24 Federal and eight state crimes such as murder, extortion or mail fraud; then it states that anyone found to have participated in two of them within a ten-year period has undertaken a pattern of racketeering. If prosecutors can link such patterns to an interstate "enterprise"—loosely defined as virtually any personal association or business—the defendants become subject to imprisonment for up to twenty years, fines of $25,000 per count and forfeiture. "Taking away businesses from these guys is like taking away tools from a burglar," says New Jersey Federal prosecutor George Wilson.

RICO is an extremely potent weapon for prosecutors. In plea bargaining, when most cases are settled, the potential RICO penalties often lead defendants to make a deal with the government rather than take their chances with a jury. In Chicago, for instance, the fear of forfeiting their businesses led seven nursing-home owners and three pharmacists to plead guilty and pay fines of $1 million.

The law also gives prosecutors extraordinary latitude to trace crime back to the otherwise insulated kingpin. "The statute allows a prosecutor to paint a broader picture than could be normally seen by a jury," says Jeremiah T. O'Sullivan, chief of the Organized Crime Strike Force in Boston. For instance, John Christopher was tried in Tampa, Fla., in 1975 for masterminding a ring that kidnapped women and forced them into prostitution. Normally, the scope of the evidence would have been limited to the specific kidnapping; at the RICO trial, however, the judge permitted 50 witnesses to describe Christopher's criminal behavior over thirteen years.

The government has used RICO in several important prosecutions against reputed mobsters. In Chicago, two alleged organized-crime hit men were sent to prison for 30 years after RICO convictions. And in Boston, after convicting four extortionists, the government seized the contents of five massage parlors—including 5 gallons of massage lotion and a Christmas tree.

VICTORY: Much of the controversy about RICO has focused on white-collar and government corruption cases. Federal officials won an important victory last month when the U.S. appeals court in New York upheld a guilty verdict in a complicated RICO hospital-fraud prosecution. Prosecutors established that Karl R. Huber, a Phi Beta Kappa Princeton graduate and Harvard law-school-trained attorney, had

helped rescue his father's failing business empire by overcharging hospitals for equipment. Convicted last year on 30 criminal counts, Huber now faces four years in jail and a fine of $108,000. He does have one choice: he can pay a fine of an additional $100,000 or forfeit his corporate holding company to the government.

RICO charges against public officials have a particularly odd twist: the "enterprise" usually involved is the government. A jury convicted five Macon, Ga., police detectives who took money and "carnal" bribes to overlook prostitution and other illegal activities. The criminal enterprise with which they were connected was the vice squad. Florida state judge Samuel Smith was tried for selling acquittals; his judicial district was named as the enterprise.

FORFEIT: Some judges are uncomfortable with this creative use of RICO. In May, U.S. Judge Ross Sterling in Texas dismissed Federal indictment of five Texans accused of an oil swindle. "RICO was designed to keep racketeers out of business, not to make racketeers out of businessmen," Sterling said. Last week, Atlanta Federal Judge Harold Murphy dismissed part of a RICO indictment against porn king Michael Thevis. It would have forced Thevis to forfeit $1 million in cash and jewelry and his $4 million mansion if convicted. The law does not extend to what a criminal might have bought with illicit profits, Murphy ruled.

RICO appears flawed in several ways. One is its broad language, which allows the government to collect a batch of minor crimes and call it general racketeering. "We have a joke that if you have a job and send out two letters, the government is going to confiscate your property," says prominent Washington defense lawyer William Hundley. The forfeiture provision—not often used—also causes trouble. The statute does not state precisely what happens when profits from racketeering are mixed with legitimate funds to operate a business.

CHIEFTAINS: Nor is it clear how closely tied property need be to the criminal enterprise before it can be confiscated. In Miami, two alleged chieftains of the "Black Tuna" gang—accused of smuggling 500 tons of marijuana into the U.S.—are arguing that the government has no right to seize a used-car business, three houses or a houseboat listed in the indictment.

Whatever its weaknesses, RICO gives government an effective threat against sophisticated crime. Justice officials, who must approve RICO prosecutions, insist they study every case carefully before proceeding. But they find white-collar criminals especially elusive. "The psychology of these business types is that they're not going to get caught, and if they are, they'll find a way around it," says New York lawyer Jerrey Ullman. At the least, for white-collar criminals as well as gangsters, RICO appears to be evening up the odds.

PC PRESS with ELAINE SHANNON in Washington, AMELIA ELLIS SIMONS in Chicago and bureau reports

MACHINE CANDIDATE

IDEAS

NEWSWEEK

"First of all," intones the speaker, "let me say that the United States is not a failure. I recognize that it's foolhardy to unilaterally disarm, but ..." So begins an upbeat, let's-look-at-the-record foreign-policy speech that could well be the kickoff of the 1980 primaries. The speaker, however, is not Jimmy Carter, Ted Kennedy or even Howard Baker, but a fresh political voice from the Midwest. The name? IBM-370.

The slick-tongued computer-orator is the brainchild of two communications professors who believe that getting elected to public office is becoming more a matter of manipulating campaign symbols than dealing with substance. To prove their thesis, they set out to program the IBM-370 to write the "perfect" foreign-policy speech—one guaranteed, that is, to appeal to the most and offend the fewest in any given audience. "We figured that if we did the proper market-type research and programed the computer to write a speech reflecting the findings, the speech would end up sounding pretty much like the genuine article churned out by a pack of poll-watching speechwriters," says John Cragan of Illinois State University.

DRAMA: To begin with, Cragan, 35, and partner Donald Shields, 34, of the University of Missouri-St. Louis, theorized that all a politician need do to get elected is recognize that voters generally subscribe to one of three "dramatic" views of the world, then play to the most widespread of the views. Set in a foreign-policy context, these three attitudes translated into cold-war, neo-isolationist and power-politics mind-sets. On the Panama Canal, for instance, the cold-war view held that the U.S. ought not to surrender the Canal Zone, the neo-isolationist view dictated that the U.S. get out of Panama and the power-politics view supported the negotiation of a new treaty to protect U.S. interests in the zone.

The professors picked twenty such issues to be covered by the speech. They culled newspapers and magazines for months, jotting down quotes that reflected all three positions on all twenty issues, then transferred the quotes onto 60 index cards. Finally, they went to—where else?—Peoria, Ill., to see how the opinions played. Sixty Peorians were asked to sort the cards in order of preference, from those most reflective of their views to those least reflective. Then the subjects rearranged the cards to show how important each issue was to them.



Jeff Lowenthal—Newsweek

Cragan and computer: 'My fellow Americans . . .'

1984-ISH: Cragan and Shields fed the results into the computer and instructed it to write a speech based on the most prevalent opinions, complete with adverbs and adjectives. They pushed a button and out came the hypothetical candidate's carefully considered opinion on how best to handle U.S. foreign policy—for Peorians. "The point," says Cragan, "is that you can take any idiot, parade him around the country for twelve months, and get him elected."

But the ultimate purpose behind this slightly 1984-ish project, say the two professors, is to force politicians out of the business of manipulating symbols and back into the business of governing. To that end, their IBM-370 is about to churn out perfect speeches on energy, foreign policy and domestic policy. "When we publish these speeches in 1980," says Cragan, "we hope it will spark enough controversy for someone to ask the candidates why their speeches sound so much like our computer's. Maybe that will get them to say what they really think for a change."

So far, that message hasn't got through. Instead of coming clean, six political aspirants, including a candidate in a gubernatorial primary and a mayoral contender, have already called on Cragan and Shields for a little help from their computer. All were turned down—and lost their races.

DIANE K. SHAH with RICHARD MANNING in Chicago



Flocks of holiday travelers won't be enough to get the major airlines on an uptrend.

AVIATION

A bleak new year for airline profits

A 2-ft. snowfall grounded planes in Denver on Christmas Eve, but elsewhere most airlines reported holiday traffic heavy enough to bring a moment of cheer to even the gloomiest executives. "I don't take much solace out of that," says Randall Malin, senior vice-president for marketing at USAir Inc. "It just means people who are working have a little more money and are still doing the traditional things. I see no change in the basic underlying problems."

Despite lower fuel bills, lower interest rates, and a slowing in labor-cost increases, 1982 is likely to be the third straight year of record losses for the 11 largest airlines, which lost $447 million on operations in 1981. What is more, total revenues are expected to drop for the first time in the industry's history.

'An insane probability.' The outlook for 1983 is not encouraging. "As empty as we're flying," says one airline president, "there's an insane probability of sharply increased capacity." Spurred by lower fuel prices, the increased availability of landing slots at large airports, and the major airlines' determination to hold market share against aggressive smaller competitors, carriers are expected to increase flights by nearly 10% in 1983. By adding more seats to planes, industry capacity, in available seat miles, could be up by 15% or more. Northwest Airlines, Frontier Airlines, United Airlines, and Delta Air Lines will be showing some of the heftiest increases.

Although Trans World Airlines Inc. says it is trying to exercise "capacity restraint," the restructuring of its route system is adding capacity at its St. Louis hub. Other airlines have been making similar moves to strengthen their operations, thus increasing the likelihood of an all-out war as carriers slash fares to bring connecting traffic to their hubs. Dallas' will become an especially bloody battleground next spring if PSA Inc. launches a proposed new venture in that city with 30 planes leased from failed Braniff International Corp. Industry sources also fear that the death throes of weak carriers could spark a repeat of the havoc caused when Braniff slashed fares systemwide in its final days.

Permanent discounts? With the economy recovering only in fits and starts, at best, overcapacity is already chronic. All those empty seats, as well as the cash squeeze at weaker airlines, have led to never-ending fare wars. More than 80% of tickets were sold at discounts averaging 53% in October, the latest month for which figures are available. Revenue per passenger mile was 5.7% lower than in October, 1981. "There'll be this kind of pricing so long as any carrier feels the need to look at things on a short-term basis because of its own situation," says Eva Davis Holman, vice-president at Donaldson, Lufkin & Jenrette Inc.

This year's traffic growth—4.7% in the first 11 months for the major carriers—came almost totally from deeply discounted prices. Travelers are becoming so accustomed to rock-bottom fares," says Julius Maldutis, a vice-president at Salomon Bros., that "we could find the industry establishing itself in a permanent discount structure."

Managements cling to the hope that prices will rise when demand revives, but even the staunchest believers are wavering. Says Morton Ehrlich, senior vice-president for planning at Eastern Air Lines Inc.: "There's something very compelling about very large red bracketed numbers quarter after quarter. I hope I turn out to be right in terms of a little bit of sanity coming back into the business. Unfortunately, logic isn't what brought us to this state." ■

INVESTMENTS

Can a racketeering law be applied to brokers?

Six investors in California, Nevada, and Virginia bought large amounts of Levitz Furniture Corp. stock on margin in 1981, allegedly on the recommendation of a Smith Barney, Harris Upham & Co. account executive who claimed he knew the furniture warehouse chain was a takeover target. But no takeover occurred, Levitz stock dropped precipitously, and the investors lost $2.6 million. Now the investors are about to file a joint complaint in Manhattan federal court against Smith Barney. Their stockholder suit will probably be the largest yet to attempt to wield a relatively old legal weapon—the Racketeering Influenced & Corrupt Organizations Act of 1970 (RICO)—in a new way. Under RICO's treble-damages allowance, the investor group will seek amounts totaling $65.8 million.

"Investing is not like playing blackjack," says Arthur M. Schwartzstein, a Washington lawyer representing four of the six plaintiffs. "If you feel you've been wronged, you don't have to swallow it. There may be avenues of recourse," including RICO.

Aimed at crime. Courts and lawyers remain divided over RICO, which outlaws the use of income received from a "pattern of racketeering" and was aimed at eradicating organized crime. But, says Peter H. Morrison, former chief of the fraud section of the U. S. attorney's office in Manhattan, the law's "reach extends considerably beyond that." Thus, while violations of securities laws are not usually viewed as racketeering, Congress defined the term to include "any offense involving . . . fraud in the sale of securities." And a pattern is defined as two violations of a number of laws, including securities laws, over 10 years.

To date, no court has upheld a claim against a broker under RICO. Future use of the racketeering statute may depend on the Smith Barney case, which is likely to wend its way to the Supreme Court. Smith Barney refused to comment until a complaint is filed.

Schwartzstein and other lawyers who believe RICO applies in securities fraud were heartened by a recent federal court ruling. It dismissed a claim by Shearson/American Express that Congress never intended the law to overlap with the antifraud provisions of the federal securities acts. Says Schwartzstein: "RICO gives David a little negotiating power with Goliath." ■

Life in Hiding

Frank Calimano came home from the Korean War to find his brother a heroin addict and vowed to get revenge from the mobsters who peddled dope. By the mid-'70s he was a successful heating and air-conditioning contractor in New York, where hoods as common as hammers in the construction trade. Calimano volunteered to feed information to local authorities. Eventually, he penetrated the Mafia's highest circles and became pals with the late gangland chief Carlo Gambino. In 1978 Calimano told his story to a Federal grand jury investigating labor racketeering. Then, to protect him and his family, the government placed the Calimanos in its Witness Security Program and sent them off to Houston with fresh identities.

Almost immediately, Calimano ran into trouble. Because he had no credit record, Calimano had difficulty starting a new business. Old friends recognized him on the street. And Federal prosecutors back in New York did not offer any further help. Calimano fell into a depression; last June he was found hanged in a hospital room, an apparent suicide. Says his widow, Vivian: "I don't want anyone to go into this program the way it is now. You can get better protection from the Mafia."



New York Post

Cantalupo with a friend: A new start for his kids

Born-Again Lives: Calimano was a victim of what had seemed a good idea. The government believed that it owed something to witnesses who provided information about organized crime but feared retaliation from mobsters. It started its assistance in 1970 with "safe houses." When they proved inadequate, Federal authorities agreed in 1975 to do much more: they would move informants and their families to different communities and help them begin completely new lives. But the execution of the plan has always been flawed. At U.S. Senate hearings this month, a string of "protected witnesses," hidden behind a screen and guarded by Federal marshals, confirmed that their born-again lives have been filled with poorly delivered promises, erratic assistance and, sometimes, tragedy.

The program is unusual enough that other government agencies seem unable to cope with it. One thing a protected witness needs at once is a new social-security card so that he can get a job, but the Social Security Administration has been painfully slow in issuing new numbers or transferring old accounts. Fourteen states refuse to provide new birth certificates; some state officials contend that if a witness committed a fraud after they had given him the new identification, they might be held liable.

The U.S. marshals assigned to help the witnesses are often not properly trained for the job and their efforts can be sadly comic. One marshal booked a witness on an airplane under the name "T. Kennedy" and another gave a witness the alias "John Philip Sousa"—ploys guaranteed to attract unwanted and possibly deadly attention. Marshals have given away the new locations of their charges during casual courtroom conversations or in idle barroom chatter. In one Catch-22 incident, the marshal service refused to give a witness a copy of his own agreement with the government because it included his old name; another marshal told a veterinarian treating the man's dog that the animal was part of the Federal witness-protection program.

Most of the informants in the program are not innocent bystanders. They tend to be either former hoods who fell out of favor with their gangs or convicted felons who decided to trade information for better treatment. The reward that the authorities offer is a chance at a fresh start, at least for the informants' families. "I did not want my children to grow up in that environment, because they would have become a part of organized crime," says Joe Cantalupo, who has testified against his former mob colleagues in Brooklyn. But many of these crooks do not know how to live anywhere except in the underworld; they have few skills to sell in straight society.

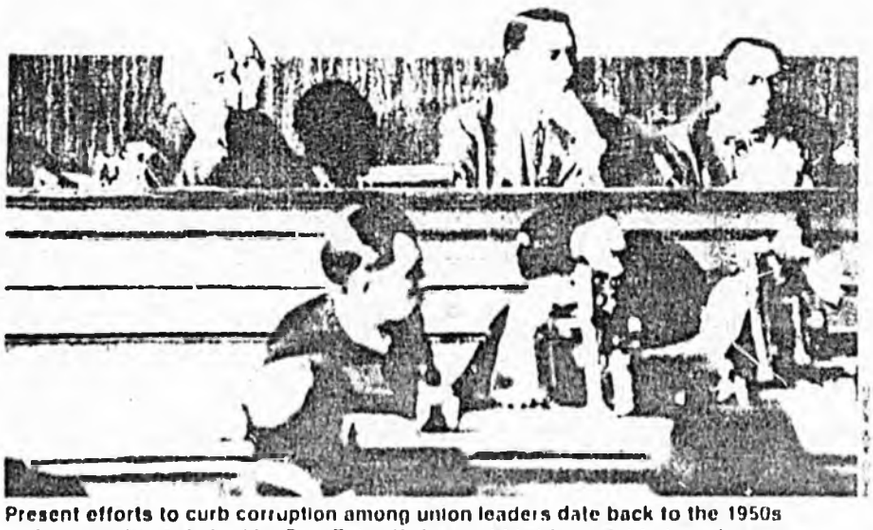
Informants still in prison can pose special problems. Security in many Federal jails is poor, and protected witnesses suspect that other inmates often can get access to supposedly secret records disclosing their true identities. Fearful that some other prisoner may have a contract to kill them, they fight to stay in isolation. Several witnesses have sued the government to prevent their transfers into the general prison population. These prisoners are effectively cut off from their families as well: even these visits are considered a security risk and are usually limited.

Not Easy: The worst problems, however, occur when the government tries to help law-abiding citizens such as Calimano who have agreed to help the police. Only about 5 per cent of the witnesses fall into this category, but they have the most to lose. It is not easy for a business executive or an accountant to erase his history and start from scratch. Usually, the witness must sacrifice his career, his friends and, for a while at least, a comfortable standard of living. Vivian Calimano's problems continue. Her oldest son cannot establish a line of credit, and she has not received any social-security benefits because her husband's old account has not been transferred to his new number.

Yet no one wants to eliminate the program. "An efficient and effective Federal witness-security program is a vital tool in the fight against organized crime," says Sen. Sam Nunn, whose investigating committee conducted the recent hearings. Some steps have been taken to make the program more efficient. Witnesses now sign a 21-page memorandum of understanding that spells out what they can expect. Prosecutors must brief marshals before handing witnesses into their custody. One hundred and thirty marshals have been trained as "security specialists," and the remainder of the marshal corps is receiving instruction in how to cope with the witnesses' needs. More than 150 major companies now participate in a job pool for protected witnesses. The revamped program seems to be working for some. Still, says Howard Safir, chief of the marshals' protection operation: "Witnesses should only enter when there is no other alternative."

ARIC PRESS with ELAINE SHANNON in Washington

Bad News for Labor Racketeers . . .



Present efforts to curb corruption among union leaders date back to the 1950s and a committee chaired by Sen. Estes Kefauver (third from right at rear).

THE CHARACTERS change, but it is the same old story, and a disturbingly frequent one. It was recited again a few months ago. A Labor Department official told a Senate committee about the activities of a labor union official, this one a Floridian.

As president of one local, manager of another, president of a district labor council and trustee of a workers' benefit plan, he had access to union workers' funds and embezzled from six labor organizations. Although convicted, he remained in office pending appeals and siphoned off another $1 million.

Congress now seems determined to close off such opportunities. The vehicle is the Labor-Management Racketeering Act. Already passed unanimously by the Senate, it will be taken up this fall by the House Education and Labor Committee. The bill's sponsor, Sen. Sam Nunn (D-Ga.), says it is a signal to "organized crime and corrupt union leaders that Americans will no longer tolerate" criminal influence and activity in organized labor.

In effect, the bill would amend three existing acts—the Labor Management Reporting and Disclosure Act, the Labor-Management Relations Act and the Employment Retirement Income Security Act.

A key provision would provide stronger incentives for unions to purge criminal elements from their ranks. For example, it would be a felony instead of a misdemeanor for employers and unions to engage in payoffs or kickbacks and for a union or workers' benefit fund to hire or employ a convicted criminal.

In addition, the bill doubles to 10 years the period during which a criminal is disqualified from employment with such organizations after conviction or imprisonment.

The bill extends the disqualification to all positions with a union or benefit fund by eliminating the current exemption for "clerical" or "custodial" employes. Thus unions could no longer employ otherwise disqualified criminals as highly paid "clerks" or "custodians."

To prevent convicted criminals from continuing to work for unions or trust funds during lengthy appeals, the bill provides that disqualification for conviction begins on "the date of the judgment of the trial court," regardless of whether the judgment is appealed.

The bill would, however, protect the interests of an individual whose conviction is overturned. His salary would be placed in escrow upon his conviction. If the verdict is reversed, the individual is paid the accrued salary; if the verdict is upheld, the funds are restored to the union.

LABOR DEPARTMENT attitudes would be important to the success of such legislation. The department's role in investigating organized crime within unions in years past—specifically, its reluctance in some instances to initiate probes—has been criticized.

The bill therefore amends previous acts by assigning not merely the authority to investigate but also the responsibility.

"That provision," says Nunn, "is directly responsive to the many witnesses who, during our hearings, testified that the Department of Labor [in the past] had failed to act against labor racketeering.

"And we heard from both federal prosecutors and the FBI that the Department of Labor had taken no role in the [government's] fight against criminal corruption on the New York/New Jersey waterfront."

That fight with the International Longshoremen's Association, dating back to the 1950s, was the genesis of the present bill. At the time the nation was shocked by revelations of massive kickbacks and payoffs to Longshoremen's union leaders uncovered by the Senate crime committee chaired by the late Sen. Estes Kefauver (D-Tenn.). The late Sen. John L. McClellan (D-Ark.) later made a stir as chairman of the Senate Permanent Subcommittee on Investigations when it exposed criminal activities by Teamsters union officials.

ACCORDING TO Sen. Don Nickles (R-Okla.), one of the cosponsors of the bill, the fact that corruption has existed within labor's ranks for so many years is due in part "to the enactment of laws that seem to encourage crime." The fact that a convicted union official has been able to remain in office until appeals are exhausted is one example.

"It is time that we change the course of this country's labor laws—time that the laws reflect the high standards Americans expect of us," Nickles says.

In a letter to Nickles, the Justice Department put its weight behind the bill. It wrote:

"Recent convictions involving labor-management corruption on the waterfront and in other industries have demonstrated the continuing need for strong federal legislation to deter the use of extortion, bribery and payments involving conflicts of interest among the parties to collective bargaining."

According to Sen. Warren B. Rudman (R-N.H.), a former attorney general in his state, "Larceny, sabotage and labor disruption have become so prevalent in some union areas that they are included as part of the cost of doing business."

Labor Secretary Raymond J. Donovan has assured the Senate Labor and



Sen. Sam Nunn (D-Ga.) believes that unions need the help of Congress to rid themselves of corruption.

. . . and good news for union members is a Senate-passed bill that awaits action in the House.



The Senate antiracketeering bill, says Sen. Don Nickles (R-Okla.), is a long-awaited change in the course of this country's labor laws.

Human Resources Committee that his department would do what was expected of it.

"Our department has an unwavering commitment to protect workers and benefit plan participants. We will use every tool presently available to us to safeguard the integrity of labor organizations and benefit plans . . . and we would welcome the additional tools that would be given by the proposed legislation."

The bill would require Donovan's department to investigate abuses of a criminal, not merely a civil, nature. This section of the bill has been opposed on the ground that it encroaches on the crime-fighting authority of other federal investigative and prosecuting agencies. To allay concerns, the bill says that nothing in it should be construed as precluding other agencies from conducting their own probes into both civil and criminal violations.

One aspect of the bill that is due for scrutiny by the House is the proposed immediate disqualification of union officers on conviction. Considering that punishment would be meted out before appeals have run their course, the proviso raises "troubling civil liberties issues," says AFL-CIO President Lane Kirkland.

Two other portions of the bill also concern Kirkland. One is a section referring to employer contributions to union-managed trust funds. Kirkland explains that a union official can make an honest error "that has nothing to do with under-the-table employer payment" and that he fears the section's misapplication.

Kirkland also contends that the 10-year disqualification from office could be too severe. "I can't persuade myself that all cases are alike," he says. He has suggested that trial judges be authorized instead to impose disqualification periods of not more than 10 years at the time of conviction.

DESPITE THESE reservations about the bill, Kirkland has endorsed it. His endorsement, he says, stems from organized labor's recognition that it "simply does not have the resources—the trained manpower, the subpoena, the grand jury, the authority to uncover and punish perjury, the due process trial procedures . . . and the effective sanctions to punish the guilty."

Understandably, Kirkland feels the bill puts the spotlight too harshly on union officials. "Unlike bankers, businessmen and politicians, union officers are judged according to their worst examples," he told the senators.

Nunn believes that the bill does not harass organized labor but provides the extra assistance needed for unions "to finally rid themselves" of corrupt officials. "The unions have labored to rid themselves of these people," the senator says, "but in many cases they have been unable to do so alone. I believe the unions need the help of Congress."

—Del Marto



Organized labor does not have "effective sanctions to punish the guilty" on its own, says AFL-CIO President Lane Kirkland

...pulling hard on one end of the rope. What the hell, what can I tell you," he calls. "The guys I killed were killers themselves."

In prison for extortion from 1954 to 1961, he came out finding little honor in his blood brothers. The family refused to turn the money he had left behind from his sharking and gambling operations, restricted by parole from living in Los Angeles, Frattianno moved to northern California. Combining the construction skills learned from his father, Teamsters contacts and a questionable San Francisco bank loan, he built a million-dollar trucking business in Sacramento. But by 1970 his money was gone, spent to pay debts, partner and fines levied by a state administration intent on separating bookmakers from state contracts.

Bosses: Frattianno, who had transferred his official allegiance to the Chicago family, was asked in the mid '70s by his L.A. colleagues to come back and help run their operations. The following years are the most important to government prosecutors. Frattianno mingled in the often impenetrable realm of crime bosses. He was friendly with Sam Giancana of Chicago. He met Santos Trafficante in Florida. He sat with Genovese family boss Frank Tieri in a back-room session at which the old man pointed thumbs down while saying "hit," giving the order to kill a family debtor. And he helped the Los Angeles family set up Frank Bompensiero, who was discovered to be an FBI informer.

What the family did not know was that by then Frattianno himself had begun selling information to the Feds, who tempted him with cash when he ended still another prison term in 1973. To the ever-hustling Weasel, the information seemed insignificant—another way of making some money. But the contact turned out to be life-saving. Some members of the Los Angeles family thought Frattianno was using his position as an acting boss to aggrandize himself—perhaps to lift his northern California operation into competition with the L.A. mob. Before long he discovered that a contract was out on his life. Since he was facing several new indictments for gambling and racketeering, it was not a difficult choice for him to graduate from part-time tipster to star informant.

Scalping: He testified first at the trial of ten men accused of fraudulently bankrupting the Westchester Premier Theater in Tarrytown, N.Y. As legitimate investors were losing money in the operation, Mafia members and associates were skimming the profits and scalping their own tickets for extra unrecorded income. One of the theater's stars was Frank Sinatra, who performed several concerts there and is now the subject of a New York Federal grand jury investigation for allegedly receiving $50,000 of the skimmed profits.

Now 67 and silver haired, Frattianno talks to exhaustion about his past. He cannot risk losing his security. In all his now regular court appearances, his credibility is attacked by defense attorneys who point to a well-documented history of lying under oath. Jimmy's response is that in the past he lied because he had to; now only the truth keeps him alive. There is profit in it, too: a book recounting his adventures will be published next month.* "Why should I get paid for writing about the things I've done?" he muses. "I see the point. But I don't want to make a million. I just want something in the bank, to leave something for my wife and kids. I think



AP

Long arrest: From shaved dice to murder

it's a service to the country, what I did."

The government agrees, up to a point, but that may no longer be good enough. Soon the testimony will be over, his official protection will end and Frattianno will live by his hit man's wits. In a Salt Lake City hotel room this fall, watched over by two Federal marshals, he bellowed over the telephone to a Justice Department official in Washington: "I wanta be someplace where there's no mad guys. Where you're taking me, there's a hundred." Then he hung up the phone and chewed stoically on a long Mexican cigar. "Nothin' bothers me. What do I give a damn? If it comes, it comes. I ain't gonna age myself on account of it."

* "The Last Mafioso: The Treacherous World of Jimmy Fratianno," By Ovid Demaris. Times Books.

its banks with their profits. La Nuestra Familia grew out of local Hispanics with a flair for organization thrown together in a California prison; now about 1,000 members work the West Coast. As sociologists Dwight C. Smith Jr. and Richard D. Alba have written, organized crime must be "recognized as a part of American society, nurtured and shaped by American circumstances, not simply as an alien, parasitic force."

After decades of books and movies, the gangster is more than a creature of the mean streets; he is a fixture in the American imagination. But his role and symbolic value keep changing, and with it the nation's perception of the underworld. In the 1931 movie "Little Caesar," Edward G. Robinson portrayed the paradigmatic mobster, Rico Bandello, an unredeemed hood who deserved killing. By 1954, the focus had shifted to the victim, exemplified by Marlon Brando's Terry Malloy, a broken-down pug left to work on the waterfront after his gangland brother forced him to throw a fight. "I coulda been a contenda," was Terry's complaint, if only the mob hadn't intervened. His recourse to strike back, first with testimony against a corrupt union boss, then with his fists in a triumphant climax where good whips evil on the docks. Only in the movies. Finally, there is the latter-day Brando as The Godfather, Vito Corleone, the gangster as hero, who makes people offers that they cannot refuse.

Warnings: The real-life mob hasn't forgotten how to persuade people. When Peter Salerno, a former Mafia thug who now testifies for the FBI, began his enforcement career, his principal job was simply to stand menacingly, with his broad shoulders and bulging biceps, while his superiors issued warnings to welshing numbers runners or other shaky operatives. Once, he says, during the construction of New York's World Trade Center, he saw a mobster threaten to shove a union foreman down an elevator shaft because the foreman was complaining about phony time cards being punched for nonworking mob members—a modest scam that netted the family $100,000 in one year.

Sometimes Salerno got more involved. "I've burned big warehouses so people can collect insurance," he says. "We shot up people's houses. I beat up a lot of people. I picked up money from restaurants and businesses that had to pay protection." But always Salerno managed to rationalize his activities—by reminding himself that his victims were bad guys, after all, and by insisting that his heart wasn't in it. "I did it because it was a job, but I got no enjoyment out of it," he claims. "I know one guy, he'd get great enjoyment. I've seen him hit a guy with a bat and put his arm on the curb and break it, then put his leg up and break that too."

To their surprise, however, police have

controlled a pile of union funds that he was willing to deposit, even in low interest accounts. All he wanted in return were personal, and usually unsecured, loans for himself, for relatives and for friends who couldn't pass a credit check that wasn't lined. Some bankers readily took the bait. Robert Prudan, who was then president of the Bank of Bloomfield, N.J., later testified that he would not have made the loans had it not been for the union deposits. Predictably, the loans soon turned sour. According to the Organized Crime Strike Force in Newark, the Bloomfield bank was out $389,000 in loans made through Palmeri when it collapsed; he was convicted of racketeering and is appealing. Two other New Jersey banks, the State Bank of Chatham and the Springfield State Bank, also folded, in part because of similar Teamster deals.

Bankers aren't the only people who prove that business schools grant degrees and not halos. In the case of the Magic Marker stock manipulation, for example, the president of the New Jersey pen company, the chief executive of a Philadelphia brokerage house, Delphi Capital Corp., and a stock promoter named Jack Silberger conspired to artificially pump up the company's stock. Yiddy Bloom, a longtime associate of Meyer Lansky, provided Silberger with more than $100,000 and helped arrange a bank loan for him; with this seed money, Silberger set up a command post in his Miami Beach apartment, with a bank of telephones and a WATS line, and began to make purchases in Magic Marker through different accounts at different brokerages in a dozen cities.

Bubble: Silberger quickly drove the price from $6.50 to $31 a share. He used a variety of techniques, bribing a stock-exchange professional for inside information, paying a $1 bonus to brokers for each share they bought for their clients, and giving $20,000 to a New York analyst to write a favorable article on the company. When the bubble finally burst, brokers tried to shore up the stock's price by making spot purchases, sometimes without notifying their clients. By then, of course, Bloom had sold out. Lawyers for the Organized Crime Strike Force in Philadelphia say that he pocketed a $50,000 profit. Scores of innocent investors lost perhaps as much as $30 million.

The mob also loves to operate, or at least get a piece of, a "bust-out," which is a scheme to defraud creditors. In the early '70s, Kenneth Weiner and some associates opened discount stores along the South Shore of Massachusetts that sold everything from clothing to calculators. The owners stocked the stores with merchandise



Joel Cowen—Camera 5

New York's Galante, hit in a cafe: The old must give way

[illegible] quickly [illegible] the [illegible] declared bankruptcy. Although the stores lasted eight months, neither the suppliers nor the cops caught on. But Raymond Patriarca Jr., son of the Patriarca crime family, did. He told Weiner that the family controlled stolen goods in New England and that fences would stop handling Weiner's trade unless he paid the family 10 per cent of the gross. Weiner agreed, crossing the murky line between rogue retailer and mobster partner. Then, fearing for his life, Weiner told his story to the FBI. Fourteen people were convicted of participating in the scam.

Waste: Some analysts see organized crime as a group of entrepreneurs taking advantage of opportunities as they arise. Nowhere does that seem more evident than in the toxic-waste industry. For decades, the mob has controlled private garbage hauling in many urban areas. And what is chemical waste but fancy trash?

When William Carracino ran the Chemical Control Corp. of Elizabeth, N.J., he held down costs by occasionally disposing of his lethal wares in a nearby dump. Although Chemical Control was in bankruptcy, Carracino claims that he refused help from the mob. But one day, Carracino recently told a New York crime committee, a reputed Tieri family member named John Albert came to his office and ordered him out. In the parking lot, Albert pushed Carracino against his car, pulled a gun and asked, "Do you want it now or later?" Carracino never went back to his office, and Albert took effective control of the company. Last April 60,000 55-gallon drums, stockpiled in Chemical Control's Elizabeth warehouse, exploded; it took firemen ten hours to control the blaze and only favorable winds kept the enormous clouds of toxic smoke from floating over New York City. In November a Federal grand jury indicted Albert and others for fraudulently assuring chemical firms that they would dispose of their wastes.

Philadelphia's Bruno, killed outside his home: Revenge was quick

Gerard C. Benone—Philadelphia Inquirer



The mob also makes money from cleaner, small-time crime. At the moment, police say, these are the favored new schemes:

- Minting phony credit cards, then running up false bills with a cooperating merchant who



JUSTICE

subsequently gets reimbursed by a bank.

- Selling packages complete with faked driver's licenses and matching checks waiting to be forged.
- Running custom auto repair shops that install stereo equipment and burglar alarms. While the car is being adorned, copies of the keys are made and then passed to thieves who later steal the cars.

While authorities may have some ideas about what the mob does, underworld income remains a mystery. Official guesses usually begin at $120 billion—about double General Motors' annual sales—with narcotics accounting for about one-third of the revenue. These figures are dubious at best: gangsters don't keep careful ledgers and cops have been known to pyramid the figures. The FBI's Webster admits he doesn't know how much money the underworld takes in. "I do know," he says drily, "it's a large amount."

'Head Start': The money began to flow freely during Prohibition, when criminals organized to develop complex distribution networks for illegal whisky and to buy the required political and police protection. Ever since, law enforcement has always lagged behind the mob. "They've been in business almost since the turn of the century," says Ed Best, special agent in charge of the FBI's Los Angeles field office. "We didn't address the problem until the early '60s. They've got a big head start."

Some of the problem can be blamed on the government. For decades, FBI director J. Edgar Hoover denied that organized crime existed. Federal statutes did not adequately address the special complexities of underworld crime. Law enforcement agencies jealously guarded their turf, refusing to share information—a condition that still occasionally prevails. Finally, in the '50s, Sen. Estes Kefauver turned his investigating committee's spotlight on the national gambling syndicate. Six years later, Robert Kennedy, chief counsel to Sen. John L. McClellan's labor-racketeering investiga-

And Now, the 'Israeli Mafia'

Not long ago some men dropped by a store owned by a Jewish merchant on Fairfax Avenue in Los Angeles and strongly hinted that the businessman should pay them for protection. If he didn't, they suggested, his store and his merchandise might be damaged—or some harm might come to his family. The shopkeeper declined, and within 48 hours he received word that a grenade had exploded at his father's house. No one was hurt, but the merchant was convinced that the thugs meant business; his father lived in Tel Aviv.

It was a typical ploy of a group calling itself the "Israeli Mafia." A gang of ex-cons and former commandos who began as black marketeers in the Israeli seaside city of Bat Yam, they have migrated to America—some by lying on their immigration forms, others simply by entering as tourists and staying illegally—and have established a sophisticated crime ring that trades in extortion, insurance fraud, narcotics and murder. They have neither the breadth nor depth of the Cosa Nostra, they lack its hierarchical structure and the protection it gains from political corruption. But, says one investigator, "they've managed in five years what the Italians took 40 years to do."

From its start in shaking down Jewish merchants in Los Angeles, the Israeli Mafia quickly built its first big-money base: insurance fraud. Members are said to maintain a network of businesses in the Southwest. In a variation of what is known as a "bust-out," they establish a good credit rating for one of the businesses, report a mysterious fire or burglary and collect on insurance claims. Then the supposedly lost merchandise reappears in another store owned by another gang member. Though the scam has yielded millions to the gang, few insurance companies have challenged the claims because of the cost involved and the difficulty in proving fraud.

'Code of Silence': In the past year, the Israeli Mafia has channeled its energies into the even more profitable field of narcotics trafficking. "They supply half the cocaine in L.A.," one lawman says. Some gang members have contacts with known dealers in Israel and West Germany, and a series of murders has led authorities to tie the group to drug deals in Mexico City and Miami. The most recent killing was discovered in October 1979, when a drifter named Dan Van Meter, rummaging through trash bins outside a liquor store in Van Nuys, Calif., came across a plastic bag containing a woman's leg. Police soon found more parts of a young woman identified as Esther Ruven and of her husband, Eliahu. Charged with their murder are three men, Joseph Zakaria, Jehuda Avital and Eliahu Komerchero, whom police link to the Israeli Mafia. Officials speculate that the Ruvens were cocaine dealers who fell into a dispute over a $70,000 payment; they were apparently lured to a meeting at the Bonaventure Hotel in Los Angeles, where they were hacked to bits with meat cleavers and knives and stuffed into bags and suitcases.

The savagery, savvy and cross-continental reach of the Israeli Mafia makes the gang increasingly worrisome to law-enforcement officials, who have had little success penetrating it. "Their code of silence is more rigidly enforced than the Italians'," complains one investigator. The government has deported some members, but no one believes those efforts are sufficient to shut down the gang. A Federal grand jury looking into narcotics trafficking is expected to begin hearing testimony soon on the Israeli Mafia—a step toward the kind of painstaking investigation that will surely be needed to keep the gang from becoming even more like its namesake.

DENNIS A. WILLIAMS with RON LaBRECQUE in Los Angeles





Van Meter, police with the remains of Mrs. Ruven: 'Managing in five years what the Italians took 40 years to do'

Photos by Ralph Samuels—Valley News

how, exposed the rampant corruption in the Teamsters union. Then, as his brother's Attorney General, Kennedy stepped up the assault on organized crime.*

The Justice Department has now made organized crime a top priority. Federal laws have also strengthened its hand both in prosecuting individual mobsters and chasing down their assets. Special strike forces in 26 cities concentrate specifically on organized crime. They combine the resources of Justice lawyers, the FBI, the Drug Enforcement Administration, the Bureau of Alcohol, Tobacco and Firearms, the Department of Labor, and the Internal Revenue, the Customs and Postal services so that the bad guys do not manage to slip between the law-enforcement cracks.

Dirty-Movie Dealers: FBI director Webster has committed more than one-fifth of the bureau's money and manpower to fighting organized crime. The bureau now relies heavily on underworld informants such as Fratianno and undercover "sting" operations run by its own agents. Agents Pat Livingston and Bruce Ellavsky, for instance, spent two years and $400,000 posing as dirty-movie dealers. They traveled the country, having a drink in Las Vegas, buying films in Miami, attending movie conventions in Los Angeles, making contacts with the mob. "It puts law enforcement face to face with the criminals," says one top FBI agent. "They are so well insulated and so sophisticated that there is no other way to do it." The Livingston-Ellavsky sting led to the indictment of 47 alleged members of a national pornography network, many with strong links to mobsters.

The biggest haul by far came from an operation called Unirac, for union racketeering. Started in 1975, after a Miami shipper named Joseph Teitelbaum tired of paying off International Longshoremen's Association leaders and complained to the cops, the daring investigation turned up corruption on docks from New Orleans to New England. By 1980, 150 government agents had infiltrated the waterfront, developed informants and planted three dozen electronic bugs. So far, Unirac has produced 128 indictments and 110 convictions of union and waterfront-company officials. Among those found guilty of racketeering (their cases are now on appeal): Michael Clemente and Tino Fiumara, top members of New York's Genovese crime family who had effectively controlled crime in the port of New York; snazzy Anthony Scotto, president of ILA Local 1814 in Brooklyn, and a power in New York politics, who took his bribes in posh restaurants, and George Barone, president of Miami Local 1922, who investigators believe also served as a bagman for New York gangsters.

Unirac was unusual because it relied not just on undercover agents but on electronic surveillance devices. The bugging evidence often was sensational: one bug planted in Scotto's bleached bull desk recorded him complaining that the payoffs weren't coming in on schedule. Then, on tape, Scotto conceded his error. "I figured it wrong. I must have gotten screwed up when you did a double one at Christmas." As dramatic as such testimony may prove in court, the government no longer relies heavily on recording devices, simply because it is difficult to obtain a warrant to use them. Under a 1968 Federal law, an investigator must convince a judge in advance that a particular phone or room is being used for criminal purposes, and that there is no other way to obtain evidence. That's a simple standard to meet when pursuing bookmakers, but more difficult in complicated economic crimes. One compromise has been for agents to wear recording devices to meetings. This doesn't require a warrant, but if they are caught, they may be killed.



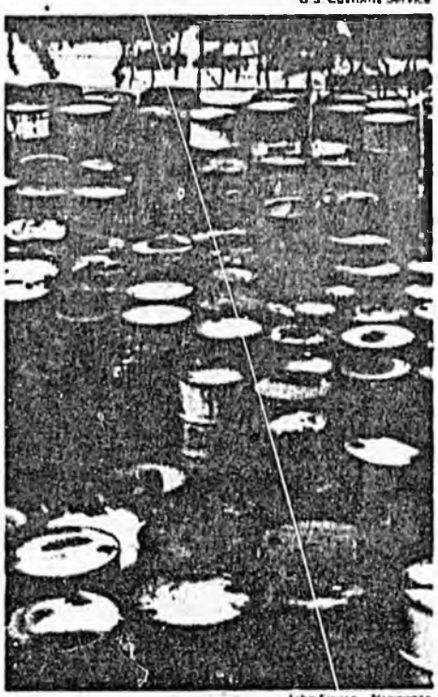
Ken Regan—Camera 5

Pornography: The mob's hard-core profits



U.S. Customs Service

Cocaine (above) and toxic wastes: Two growth industries for the underworld



John Ficara—Newsweek

Seized Assets: Frustrated lawmen know that putting big-time mobsters in jail will not break up the underworld; when a gang's head is cut off, it merely grows a new one. To fight the entire apparatus, Congress passed in 1970 the Racketeer Influenced and Corrupt Organizations Act (called RICO, an apt echo of the character in "Little Caesar"). This law allows prosecutors to charge gangsters with the crime of running criminal enterprises and to seize assets illegally used or gained. Before RICO, "we had put a lot of people in jail, and some big people, but that's all we did," says Ed Sharp, FBI agent in charge of the Brooklyn-Queens field office. "Now, instead of going after individuals, we're attacking organizations. We've got to take

*At the same time, according to recent reports, the CIA was negotiating with Mafia hit men to arrange the assassination of Fidel Castro.

he assets . . . and get rid of the incentive."

Unfortunately RICO has promised more than the government has delivered. It has been a marvelous tool to obtain convictions—prosecutors can enthrall jurors with criminal histories and gangland ties—but getting the assets has proven far more difficult. For instance, in the ten years since RICO and a similar narcotics-forfeiture law were passed, only $675,000 has been forfeited in narcotics cases. "The Justice Department's record in attacking the financial foundations of organized crime has been very nearly nonexistent," says Sen. Joseph R. Biden Jr. of Delaware. "Indeed, I believe it is a major reason [that] illicit drug trafficking continues to flourish in this country." Other parts of the 1970 statutes also lie fallow. Federal prosecutors have seldom sought civil penalties under RICO or the long prison terms they may ask for under the companion Dangerous Special Offenders Act. "Ultimately this record is a failure of imagination and will," says Prof. G. Robert Blakey of the Notre Dame Law School, an authority on organized crime. "The law is there, but they haven't used it."

Turning Point: The government has, however, used RICO in a novel way this year in two significant cases against top mafiosi. It has contended that Mafia families themselves are "illegal enterprises." In one case, a jury convicted Frank Tieri, head of New York's Genovese crime family, of extortion and fraud—and of being a Mafia boss. In the other trial, Dominick Brooklier, Louis Tom Dragna, Samuel Sciortino, Jack Locicero and Michael Rizzitello of the Los Angeles gang were convicted on racketeering and conspiracy charges. The government has not moved to seize assets in either case—and if it did, it might never find any.

Well-placed Federal sources say that they are preparing another round of important cases. Grand-jury investigations aimed at mobsters are under way in Chicago, Detroit, Milwaukee, Kansas City, Philadelphia, Miami and Las Vegas. Significant labor-racketeering cases against officials of the Laborers' International Union in Florida, New England and Illinois are also expected to surface soon. And FBI agents are buzzing that another hot undercover sting is afoot.

The first big mob test for the Reagan Administration may not come in a courtroom at all, but in negotiations between the Internal Revenue Service and the Teamsters Union's Central States Pension Fund. The pension fund—with assets of $2.2 billion—has long been known as "the mob's bank," providing funds for casinos and speculative real-estate deals. In 1977, after the IRS threatened to lift the fund's tax exemption, the trustees resigned and outside managers were hired for five years. No one believes that all the mobsters have lost their influence—especially not under the lackluster Carter Labor Department—and what happens when the managers' contract expires in 1982 is unclear. But the Teamsters union hopes to have positioned itself to block new restrictions; it was one of two major unions to support Reagan.



Don Carl Steffen



John Ficara—Newsweek

FBI's Webster, Justice's Margolis: First get the gangsters, then their profits



Agents Ellavsky, Livingston in Las Vegas: Living face to face with the criminals

Handicap: Lawmen have few illusions about what their year of success means; they are in no danger of jailing all the mobsters and having to find other work. Some of the new strategies are obviously promising. Retiring Attorney General Civiletti, for example, favors industry-wide investigations, rather than the piecemeal headhunting of the past. But the government always starts with a handicap. "For all our talks about goals and strategies, law enforcement in a free society is primarily reactive," says David Margolis, chief of Justice's Organized Crime section. "No matter how effective we are, one kind of crime or another is not going to be stamped out."

Margolis is right; there is no quick fix for any sort of crime. The government could make a small dent, perhaps, by legalizing such "victimless crimes" as pornography or gambling. But there are obviously limits beyond which the statutory line cannot be nudged.

It has become conventional wisdom, in some circles, to look on the Mafia as something of a service industry: loan sharks serve people the banks won't touch; corrupt labor leaders serve "legitimate" bosses who don't want to negotiate with an honest union. Certainly there would be less business for the mob if there were fewer people in desperate want or more who could control their greed. But the new Mafia, like the old, is not about to be stamped out by a few social improvements, or anything else short of unforeseeable changes in the human animal. At this point, the criminals Americans love to fear have become the criminals they often do business with, the mobsters who won't disappear when the lights go up.

ARIC PRESS with ELAINE SHANNON, RON LaBRECQUE and bureau reports

A new ploy to fight takeovers

During the nine trading days between last Jan. 30 and Feb. 1, New York investor Carl C. Icahn and companies he controls purchased some 1 million shares of Marshall Field & Co. common stock. Together with stock of the Chicago retailer that it already owned, the sudden transactions boosted the Icahn group's holdings to 4.5 million shares, about 15% of total Field stock outstanding.

The company's reaction was predictable. It hired a law firm to fight the threat that Icahn would seek control and possibly liquidate the company to sell off its large real estate holdings.

But the legal claim was novel. Skadden, Arps, Slate, Meagher & Flom, the New York law firm well known for its corporate takeover department, charged Icahn and his group on Field's behalf with "racketeering," although there has never been any suggestion that Icahn or his companies are in any way affiliated with organized crime, the usual target of the racketeering laws.

The racketeering charge could deter investors from making hostile tender offers

Cynical judges. The legal claim was based on an interpretation of the federal Racketeering Influenced & Corrupt Organizations Act of 1970 (RICO) that has caused considerable comment within corporate legal circles in the past year. Some lawyers believe that the racketeering charge, which causes legitimate businesses considerable embarrassment and may work to deter professional investors from making hostile tender offers, could become more common in the coming months.

RICO outlaws the use of income received from a "pattern of racketeering" to acquire a business. A pattern of racketeering is defined, in turn, as any two violations of a number of different laws, including the securities laws, during a 10-year period.

Citing a consent decree that Icahn had just signed with the Securities & Exchange Commission in connection with his acquisition of Hammermill Paper Co. shares, as well as other Icahn activities that had been drawn into question by federal and state agencies, Field insisted that the allegations, if proved, amounted to a pattern of racketeering.

Although RICO has been the law for 12 years, it has surfaced in civil suits only during the past year or so. The reasons given by securities lawyers who refuse to be quoted by name, are twofold. One is that federal judges, especially those on the U. S. District Court in Manhattan that hears a large percentage of the nation's takeover cases, are becoming increasingly cynical about the usual claims made by a target company's lawyers. The judges view many cases as legally unjustified attempts by entrenched management to fight off an acquisition justifiable on business or financial grounds.

The second reason is that in 1977 the Supreme Court threw doubt on the right of a target company to sue for fraud under the securities laws. By law, whoever acquires more than 5% of a company's stock must submit to the SEC in a Schedule 13D a statement of his intentions. Defense lawyers have traditionally alleged that the 13D filing is false or misleading because the acquirer did not disclose his true purposes. But now "the courts are divided over whether a target company has standing to sue," says Martin Lipton, a New York takeover lawyer not connected to the Field case. Under RICO, however, a target company has the explicit right to sue.

In his Schedule 13D, Icahn denied that he and his group had formed any plans to liquidate Field, sell off its assets, merge it with another company, or make any other major change in its corporate structure. The claim was greeted with some skepticism. Since 1975, Icahn had purchased large positions in a number of companies and gained a reputation of seeking control, merger, and sale of assets. Often he ultimately sold the shares back to the companies at a considerable profit.

Severe sanctions. On Feb. 8, Field sued Icahn in Manhattan federal court, charging that he had failed to disclose a plan to acquire 35% of the stock, seize control, and engage in "extraordinary corporate transactions." At the same time, Field laid the groundwork for its racketeering charge.

Beyond the publicity value, a racketeering charge can be worrisome because of the severe sanctions open to judges to impose. RICO allows treble damages, attorneys' fees, and an injunction that theoretically could prevent an investor from attempting future takeovers for a period as long as 10 years.

In the Field case, Skadden Arps attorneys persuaded District Judge Pierre N. Leval to issue a temporary restraining order while Icahn made fuller disclosure of his plans, giving Field 10 days to set up a "white knight" to counter Icahn's acquisition bid. Icahn cured the defects. Judge Leval lifted the restraining order, and Icahn continued to buy, ultimately acquiring some 30% of Field shares. Within three weeks, however, Field arranged through Goldman, Sachs & Co. a merger with BATUS Inc. at $60 per share. It is expected to be completed this summer.

Vulnerability. Litigation between Icahn and Field was dropped on Mar. 30, before Judge Leval could rule on the racketeering charges. Had the suit continued, however, Field's lawyers would likely have pressed for documents from Icahn that might have proved their racketeering claims. Under RICO, it is unnecessary to show a conviction, only that the alleged violations of law actually occurred. Most of what was discovered during the two months of litigation was sealed by agreement of the parties, who will not comment publicly on the case.



Lawyers may paint investors as racketeers

Some corporate lawyers privately condemn the use of RICO in takeover suits as "sewer tactics," "just a diversionary tactic," and "silly." But many agree that the fear of being labeled a racketeer could influence future takeover strategy. And, says one, "those especially vulnerable are professional investors, like Icahn, with a track record."

Whether RICO charges will catch on remains to be seen, but a few attorneys think that their use in the Field case was an important psychological turning point. Says one well-regarded takeover lawyer: "I don't think the racketeering charge is of any moment, but don't quote me because I may have to use it in a case tomorrow." ■

HB

631

Revision Date:

REQUEST
Bill/Resolution No. HB 631
Title: Relating to runaway children

Sponsor: Liska
Requestor:
Date of Request: 2/23/84

FISCAL DETAIL
Agency Affected: Dept. of Health & Social Services
Program Category Affected: Social and Economic Assistance for the General Population
BRU, Program or Subprogram(s) Affected: Youth Services BRU/McLaughlin Youth Center

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 84	FY 85	FY 86	FY 87	FY 88	FY 89
OPERATING						
100 PERSONAL SERVICES				907.5	952.9	1,000.5
200 TRAVEL				25.2	26.5	27.8
300 CONTRACTUAL				122.6	128.7	135.1
400 SUPPLIES				113.8	119.5	125.5
500 EQUIPMENT				23.3	24.5	25.8
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS				98.2	103.1	108.3
800 MISCELLANEOUS						
TOTAL OPERATING			-0-	1,290.6	1,355.2	1,423.0
CAPITAL			5,442.0			
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND			5,442.0	1,290.6	1,355.2	1,423.0
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS:

FULL-TIME				16.0	16.0	16.0
PART-TIME						
TEMPORARY						

SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

ANALYSIS: Attach a separate page for analysis

Prepared By: Michael Price, Director JCC Phone: 465-3170
Division: Family and Youth Services Date:

Approved by Commissioner: Robert Loeb Date: 3/6/84
Agency: Department of Health and Social Services

Distribution (by Agency preparing fiscal note):
Legislative Finance
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12/1/83

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House of Representatives

John J. Liska

May 11, 1984

M E M O R A N D U M

TO: Rep. Bussell, Chairman - House Judiciary Committee

FROM: Rep. John J. Liska

SUBJECT: HB 631, "An Act relating to runaway children."

The purpose of this bill is three fold.

a. Section 1 - is an attempt to require by law a minor to be accountable to either parents at home or a guardian at a foster home or be placed in an appropriate institution.

Presently, if a minor runs away from home, and he is not breaking any laws, he is free to do as he wishes. The intention behind our bill is - The child does not have the maturity to exist in todays society without becoming a subject of prey for a variety of undesirable types of people. If you will refer to item D, Article number 1 - in your packet, it clearly describes what happens to these run away children.

While it is not the intention to violate the rights of any child, we feel it is the responsibility of either the parents or the State to be in control of the minor because at this stage in their life they are not mature enough to be able to function in society on their own.

And the last section of the bill states that a peace officer shall make a reasonable effort to locate a minor who is evading his guardian. Presently the police can, if they want to but they don't have to, try to locate a run away child.

Additionally, it is essential in my opinion that these children not be allowed to remain on the streets, even for a couple of days or long enough to decide at a court hearing whether or not they are to be picked up.

I refer to item D, Article number 2, the longer they are on the streets the more likely they will become involved in situations that will have a life long effect on them. We feel they are incapable of protecting themselves from this involvement and therefor it is the states responsibility to protect them.

In your packet you will find the following for your information:

A. Copy of HB 631 and committee substitute.

B. Memorandum from Jos Mapranath, Director-Division of Administrative Services, Department of Public Safety.

C. Article regarding runaway children.

1. From USA Today March 1979, Life in America, "The Adolescent Runaway: A national Problem"

2. Newsweek Oct. 18, 1982, Life/Style, "A Nation of Runaway Kids"

3. "A second look at the National Program for Runaway and Homeless Youth." By Caroline Croft and Mary Jolly.

JJL/tm

MEMORANDUM State of Alaska

JAN 11 1984

TO: Jay Hogan, Associate Director
Division of Budget Review
Office of Management and Budget
Office of the Governor

DATE: January 6, 1984

FILE NO:

TELEPHONE NO: 465-4322

FROM: Jos Mapranath, Director
Division of Administrative Services
Department of Public Safety

SUBJECT: Criminally Exploited Children

We have reviewed the materials submitted on criminally exploited children in Alaska and wish to express our support for the formation of a special law enforcement unit in Anchorage to deal with this serious problem. The unit would be a joint State and local cooperative effort similar to the successful Anchorage Metro Drug Unit. The cost is estimated at $375.0 for FY 85 and would include one Anchorage P.D. Sergeant, one Anchorage Police Officer, one Anchorage clerical position, and one State Trooper Sergeant.

While we recognize the seriousness of criminal exploitation of children and that this is a growing problem, it is not feasible at this time for either the Anchorage Police Department or the Division of Alaska State Troopers to divert limited existing resources to form the proposed special unit. We would, however, be pleased to participate in such an effort if funding is provided. Therefore, I urge your support of an appropriation in the amount of $375.0 to fund a special investigative unit on criminally exploited children.

Further details are available upon request. Your consideration of the requested appropriation to deal with this problem is appreciated.

cc: Commissioner Robert J. Sundberg
Commissioner Roger Endell
Peter B. McDowell, OMB
Brian Porter, Chief, APD
Colonel Michael C. Kolivosky, AST
Marroyce Hall, AK Juvenile Crime Commission
Sandra Borbridge, Spec. Assistant to the Governor
Allen Blume, Spec. Staff Assistant to the Governor

TO: Mrs Hall

FROM: LAW ENFORCEMENT OFFICER KNOWLEDGABLE IN THE FIELD OF CHILD EXPLOITATION. OFFICERS NAME DELETED AS A POLICY OF THE ANCHORAGE POLICE DEPARTMENT

DATE: October 20, 1981

SUBJECT: Criminal Activities of Juveniles in Anchorage

The purpose of this brief letter is to state my opinion of the status of current criminal activity involving juveniles in the Anchorage area. As you know I have been a police officer for the past five plus years in the Anchorage area and have worked for two different periods as a counselor at McLaughlin Youth Center. What I am stating here is strictly my opinion and does not represent in any way the viewpoint of my employer, the Anchorage Police Department.

During recent years Anchorage, as well as other communities within the State of Alaska, has experienced a tremendous increase in the level and depth of juvenile criminal activity. I believe that this is in part due to the tremendous growth that this community and this State have experienced in recent years and also because of the ineffectiveness of the criminal justice system to deal with the problem. My opinion of the current status of this activity has developed because of my involvement with juveniles in the community and as a result of my involvement in numerous investigations dealing with some of these problems.

What has developed in this community, as is characteristic of other communities in other States, is a network of criminal activity of which juveniles play a substantial part. This has developed to the extent that many of our young persons so exposed actually are a part of a sub-culture existing in the same space but at different times within the mainstream of our society. This subculture has a set of values and morals that are substantially different than those of the mainbody of our society and paramount within this set of values is the belief that youth equates to victimization. When a young person in our community is, for a variety and combination of reasons, forced out of the home environment and onto the "streets" (so to speak), he is subjected to an elaborate system of victimization on the part of adults within the community who, in essence, use youth to their advantage in the perpetuation of their criminal activities and personal desires.

A young person finding himself/herself within this position is necessarily forced to first, survive. In order to do this, the youth must engage in activities which an adult can support. These activities extend from theft to drug usage/sales and prostitution. Adults involved in these activities will promote the involvement of juveniles to the advantage of the adult while at the same time providing for the juvenile, as a minimum, the basic needs of food, clothing and shelter needed by the juvenile to survive. Juveniles within this community are extensively involved in theft, drugs and prostitution and these activities are promoted and supported by adults within the community. The extent of the

problem is largely unseen, even by many persons within the criminal justice system who deal with these juveniles daily as a part of their jobs, because the juvenile does not often talk about depth of involvement to anyone, other than his/her peer group and in some cases, not even to them. The system tends to look at each individual act by itself, failing to realize that there is a much greater problem, individually and collectively, lurking below the surface of the individual act.

As an example of what I have previously stated, I would estimate that about 50% of all the boys admitted to McLaughlin Youth Center have had some contact with adults of a homosexual nature. I would further estimate that in excess of 25% of these have had what could be termed deep involvement with more than one adult. Often, this kind of activity, develops in relation to other types of activity including the adult using the juvenile for drug sales and to provide merchandise for fencing operations of small and large scale. It is not surprising then, that when the juvenile so involved is picked up for a property crime or drug related offense, the depth of his involvement is never revealed to those professionals within the system that later deal with him.

Any juvenile who, for whatever reasons, spends more than a short amount of time living away from a home and on the "streets" will become involved to a greater or lesser degree in the kind of activity I have just described. Since the adult(s) involved use the juvenile for their purposes, the normal role of adult guidance in the maturing process is severely distorted which in turn perpetuates the problem as the juvenile grows older and changes from being the victim to the user. Over a period of time of involvement in these kinds of activities the youth gradually begins to believe that the only thing that will change his being used to another's advantage is age and that when that age is attained the role can be reversed.

It is virtually impossible for a young person to survive away from home without becoming involved in these kinds of activities because of the inability of a young person to legitimately obtain the basic necessities of food, clothing and shelter necessary for survival. It is further, virtually impossible, for that young person to steal enough through burglary, robbery or theft to attain these necessities. As such, the young person in that position, must turn to other more profitable activities. These activities involve drugs and prostitution. The problem is further compounded, in most cases, because of th emotional problems that the youth is experiencing as the result of his necessity to leave the home or to replace the home needs with persons met outside the home and his resultant turn towards drug useage. Drugs are expensive and not within the reach of the average young person through legitimate earnings. Adults desiring use of juveniles for sexual purposes are well aware of the juvenile's problems and will frequently provide, either the basic needs of survival, or drugs or both in return for sexual favors. In many cases, the juvenile can provide sexual favors for a much higher than could be obtained through other types of criminal activity. Adults desiring these kind of favors are very perceptive in being able to identify those juveniles that are in a position to which they would be susceptable to such propositions.

All this exists on a large scale in the Anchorage area. The extent of this existence increases steadily because of the inability of the Criminal Justice System and the community to control it. I would estimate that the extent of the

problem in Anchorage is proportionately greater than it is in other comparable communities in the United States, again for a variety of reasons. It is common knowledge that large scale fencing operations exist within the Anchorage area as is evidenced by the very small percentage of stolen property that is recovered and the relatively high frequency of recovery of stolen property from Alaska in other states. The extent of drug sales operations and drug useage amongst juveniles in the Anchorage area, again, is particularly high to the extent that it is virtually impossible for any young person not to be exposed to drugs, and not just marijuana, beginning in junior high school. The extent of juvenile prostitution activities, particularly as it involves males, is also extremely high in the Anchorage area to the degree that virtually all juveniles living out of the home are exposed and many still living at home are exposed.

There exists, in Anchorage, houses where juveniles on the run can find temporary shelter. These houses are provided either directly or indirectly by an adult. Unfortunately, there are strings attached to the use of the house by the juvenile. There have been commercial pornography operations involving sexual involvement of juveniles in the most perverted kinds of sexual activity operating in the Anchorage area. These operations have been directed by organizations from without the State of Alaska. There have been commercial prostitution operations within the Anchorage area in which juveniles were the merchandise and in which the fees paid were extremely high. There have been large scale drug operations in which juveniles, many of them going to school and living at home, were involved as the primary pushers. There have been large scale fencing operations in the Anchorage area in which merchandise stolen by juveniles was fenced by adults to create huge profits.

The depth of this whole problem is really seen when one realizes what becomes of the juvenile that is involved in these kinds of activities. All young persons growing up need adult guidance and emotional support in order that a moral and value system can develop. If the child receives, for this need, guidance and "emotional support" from persons that only wish to use him, it is understandable how we are developing a subculture of increasing size within the mainstream of our primary culture, in which the value system is as foreign as one would be from a far Eastern country. The use of youth for personal gain is as foreign to the basis of our culture as is the crime of murder and yet we are allowing this to exist, and to in fact grow, within the Anchorage area to a massive degree. Much of this problem is a criminal problem and must be solved through enforcement means. To this end we are sorely lacking.

ARTICLE NUMBER ONE

LIFE IN AMERICA

The Adolescent Runaway:

A NATIONAL PROBLEM

"No one seems willing to accept clear responsibility for the thousands of children over 15 who stand outside the jurisdiction of family courts, criminal courts, and, in large part, the child welfare system."

by Bruce Ritter, O.F.M.

OVER a decade ago, I became involved, almost against my will, with one of the major problems of any large metropolitan area when 10 runaway children, from the ages of 14-17, sought my help, asking to sleep on the floor of my apartment in the East Village of New York City. I was exercising at that time a ministry of service to the poor. These particular 10 children had been sexually abused by some junkies in the neighborhood, had been burned out of the abandoned building in which they were living, and before that had been forced to make a pornographic movie in order to pay for their room and board.

Because I could not find any place for them in the child welfare system, I kept them — they simply moved into my apartment. So many hundreds of homeless young people began knocking on my door that I and my friends were forced to begin a new child care agency. Since that time, over 10 years ago, Covenant House has sheltered many thousands of runaway and self-emancipated kids, returning many to their homes and keeping many for long-term care. Hundreds upon hundreds were victims of child abuse.

Many people are unaware of the enormous dimensions of the problem of runaways and homeless children in our society — or what can happen to them. Over 1,000,000 juveniles run away every year in this country. According to a New York City Police estimate, there are at least 20,000 runaways under 16 in New York City at any one time. If you add to that number the many thousands of *self-emancipated* youngsters between the ages of 16-18 and even the greater number between 19 and 21, the numbers of children on the streets are staggering.

These numbers are not just pulled out of a rhetorical hat. In the first year after the Covenant House crisis center, Under Twenty One, was opened (April 1, 1977), well over 4,000 children have sought our help, over 500 of them were 15 and under, another 900 were between 16 and 17, and over 1,500 between 18 and 20. Covenant House expects to serve about 3,000 walk-in children under 18 at its Eighth Avenue center this year who should not be on the streets, but for whom no effective programs exist. As a result, these children are frequently subjected to the grossest kind of abuse. About 7,000 children under the age of 21 had come to Under Twenty One for help during 1978.

A question of responsibility

The very complex issues raised by these thousands of homeless young people cross a dozen different jurisdictions — states' rights, parents' rights, children's rights, family and criminal court questions, the nature of the child care system, etc. The thinking and practice regarding the rights of juveniles has been evolving so quickly over the past 10 years that legislators have had great difficulty keeping up with the changing status of juveniles in our country. The ambiguity and confusion and differences in statutes between one state and another and within the same state make it almost impossible on occasion to resolve the legal status of a runaway or homeless child. Until recently, the problem of runaways was always considered essentially a police matter. The juveniles were to be found and returned home. Yet, an overburdened New York City police force can no, begin to cope with the huge numbers (there is a seven man unit assigned for that purpose) and the police do not have any jurisdiction over children 16 and older.

Father Bruce Ritter is the Executive Director of Covenant House and Under Twenty One, a child care agency in New York City that specializes in caring for runaway and homeless children and urban minors.

...problem is especially acute for ...16 and over since the law simultaneously permits a child of 16 to ...separate himself and then effectively ...disenfranchises that child. For the most ...a child can not get the medical ...he or she needs, can not easily ...ply for public assistance, can not ...into contracts, and can not find a ...eat job. Children are free to wander ...streets, panhandling, exploiting, ...being exploited. No one seems ...ing, either, to accept clear respon...ities for the thousands of children ...15 who stand outside the jurisdic...n of family courts, criminal courts, ...in large part, the child welfare sys...Neither Special Services for Chil...the Division for Youth, or the ...partment of Social Services will ...ept immediate jurisdiction and re...nsibility for a 16 year-old boy or girl ...ndering up and down 42nd Street ...ce it is manifestly not in the best ...erest of the child or the general pub...

To permit this to happen, *some* ...diction must take the clear responsi...ility. We operate on a principle, ...mingly, of *caveat puer*: let the child ...ware. Covenant House can document ...almost endless series of children ...er 18 for whom it can find no one to ...ept responsibility — no court, no ...ncy, no part of the child welfare sys...m. The tangle of conflicting jurisdic...ons, of vague and ambiguous laws, a ...ere fiscal crisis, and the fact that ...ost of these kids are black and ...panish make it easy to let them fall ...rough the cracks. Many thousands of ...em become willing or unwilling vic...ms of the $1,500,000,000 sex industry ...at feeds on children in the Times ...quare area. They have few options ...old, hungry, homeless, desperate for ...lection, they fall easy prey to the sex ...erchants who know all too well how ...exploit them. These children find it ...almost impossible to get help. Until ...Covenant House, with the help of the ...Roman Catholic Archdiocese, opened ...s Under Twenty One crisis center on ...April 1, 1977, there were absolutely no ...ervices for these thousands of chil...dren in the Times Square area. Cove...nant House is always understaffed, un...derfinanced,* and overwhelmed by the ...numbers of children coming to us at all ...hours of the day and night.

During the first year that Under ...Twenty One was open, over 4,000 chil...dren came to us for help and over 60% ...of these had some contact, major or ...minor, with prostitution and pornog...raphy. The list of horror stories ...reads:

...[illegible] ...[illegible] ...[illegible]

LIFE/STYLE

A Nation of Runaway Kids

Louis L.'s homelife has long been no better than many a street bounced among a drug addict mother, an indifferent father and a savage stepmother who repeatedly bit the 15-year-old boy and tried to choke him to death. Nevertheless, Louis is a most reluctant runaway. His macho mask crumples as he sits in a cheerful Houston shelter—somewhat incongruously called Family Connection—and speaks softly of those he still loves. "I didn't want to leave her, but she said to get out and don't come back," he quavers, near tears whenever he mentions the mother who finally pushed him aside. Then, as other teen-agers return within earshot, Louis recoups his cool. "I learned the hard way," he says. "Ain't nobody going to do nothing for me but myself."

A new generation of American youngsters is on the run—often at a desperate pace. They resemble less their romantic predecessors, from Huck Finn to the flower children, than refugees fleeing the wreckage of their families. Many are more truly castaways than runaways, forced from their homes by neglect, abuse or abandonment. "These kids are running *from* something, not *to* something," says Russell Frank, director of The Runaway Place, a Boston shelter. As many as 50 percent may be fleeing physical abuse, including sexual assaults. A growing number are economic refugees, evicted by jobless parents who can no longer support them. "This is one of the first times we've seen people voluntarily bringing their kids in," says Carol Frank of the Child Welfare League. "It's a dust-bowl kind of thing."

Others, without being told to leave home, may be driven out by violent arguments, drinking bouts, and other recession-related strains in the family. "A 14-year-old can't understand fully that his father may be depressed over losing his job," says Washington social worker Robbie Callaway. "As economic conditions get tougher, more and more kids are going to be out on the street."

'Meat Rack': The thoroughfares they travel include the likes of the infamous Minnesota strip located near Times Square—so named for the many blond nymphets from out of town who sell themselves there—and the "meat rack" on Hollywood's Santa Monica Boulevard where boy hookers are on display. Too young to work legally, a significant number support themselves by stealing, drug dealing or peddling sex. Like apprentice derelicts they huddle in abandoned buildings, on park benches or in the warm breeze from subway gratings. Many runaway kids display a pathetic ingenuity, fearful of pimps and muggers as well as policemen; one Philadelphia youth burned himself to his chin every night in a playground sandbox. But for most of the young nomads, there may be no place to hide: some 500,000 runaways simply disappeared last year.

There's no telling where they went, since the United States does not keep computerized track of missing children as it does missing cars. By the most conservative estimates, however, each year more than 1 million kids between 10 and 17 leave home. Until 1974 the government's main helping hand was an arrest for juvenile delinquency. Then Congress—disturbed by reports of deaths and maltreatment in jails, reform schools and other institutions—passed the Runaway and Homeless Youth Act, to establish federally funded telephone hot lines and temporary teen-age shelters. But the 166 shelters—with their hopeful names like Halcyon House or Stepping Stone—serve only 45,000 kids in a year, roughly 5 percent of the runaway population, for a maximum stay of between two weeks and 30 days—and proposed Federal budget cutbacks threaten to cramp the space still more.



Way station: Seeking aid at New York bus terminal

Fortunately for their survival, odds are most runaways are relatively found. According to juvenile welfare experts, most flee no further than a relative or friend, and 90 percent return home within 48 hours. The remainder, however, seem singularly ill-equipped for even a temporary life on the loose. A recent report from the U.S. Department of Health and Human Services, based on shelter admissions, indicates the average runaway is 15. That's a dramatic one-year drop from the 1976 average—and kids as young as nine are now turning up with alarming regularity. Most of the kids are white (70 percent) and female (56.7 percent, although the gap is closing). Forty percent are school dropouts, many of whom can barely read and have minimal self-esteem. They are scarcely a cadre of hardened criminals. HHS estimates that 68 percent have never been in any kind of trouble with the authorities before they run.

'Flirters': Left to their own devices, kids develop a distinctive subculture. Turf is scrupulously observed around Boston's male prostitute area—spots like the bus terminal, while females work the notorious Combat Zone. Hard-core street kids are supposed to congregate on Boston Common, where the leader-of-the-pack trophy is "Burt's" initials hanging out in Harvard Square. Some runaways try to preserve the communality of the bus-station pad, where one kid's score is split among many, with food and money for a communal meal. Others, hoping to avoid splitting the windfall on wine, dope and food. In one northeast suburb of Philadelphia, teen transients even built their own haven in the woods with lumber stolen from construction sites, complete with escape tunnels. Survival lessons are willingly shared, to score a free restaurant meal with a minimum of fuss (a gambit sometimes known as "chew and screw"): leave the waitress a tip before you walk out without paying the check.

Time seems to be the greatest divider, determining which runaways can be salvaged. "If a kid has lived in the street for a month or so, it becomes very hard to reach him," says Father Bruce Ritter, founder of New York City's Covenant House for runaway youths. "If it's been six months, we've almost lost him, and if it's a year, he's gone. The poison works very, very quickly." In many cases, it takes only two days; beyond the 48-hour mark, one in 10 teen-agers is likely to become a prostitute. Incoming naifs are quickly spotted at such entry points as New York's Port Authority Bus Terminal by pimps or their scouts, sometimes called catchers. Blue-jeaned Marcia R., 13, remembers that she was barely off the bus from Ohio before a "man in one of those hats" approached her. He was headed off by a man and woman, two self-professed "good Samari-

Do you know someone with ALS? (Lou Gehrig's disease)

If you do, then you know how devastating ALS can be. But, you may not know that throughout the country, friends and relatives of ALS patients are doing something about ALS by setting up Local Chapters of the National ALS Foundation.

Local Chapters are resource centers—places where ALS patients and their families can find out what services are available. They can get together for rap sessions, to share and ease the burden of ALS, and to find out that they are not alone.

Local Chapters can generate public awareness—raise money for the all important research—and bring us one step closer to finding a cure for ALS.

To learn how you can help set up a Local Chapter and to be part of a growing, nationwide organization that's doing something about ALS, contact the National ALS Foundation, 185 Madison Avenue, New York, NY 10016, or call (212) 679-4016.



Back home: Darcy Reeves (front) with mother and sister

tans" who offered to take her to their house. The Port Authority police were also converging on her and won the contest: she was soon on a plane headed home. "You soon find out that all those 'good people' who want to 'help you' want something in return," says a Philadelphia 16-year-old who was not so lucky—and is now pregnant by her newfound "friend."

Pimps: Hustlers operate in a netherworld all their own. In Hollywood, for instance, there's a wage scale of sorts. Attractive new arrivals can earn top dollar ($250 or so, on up) from the homosexual "chicken hawks" who cruise Santa Monica Boulevard in search of young boys. "Everyone knows the regulars, so when they see a new face, they have to try you," explains one young denizen. "After they get to know you, though, you have to do more and more to earn your money." Times can be even tougher for girls, who usually have pimps to support, and staying straight is often well-nigh impossible. L.A. police detective Larry Broadhurst still shudders over one young victim from two years ago. "She was a real good-looking blond girl," he recalls. "A pimp approached her to work for him, and she refused. Told him she didn't want to have anything to do with his business." The pimp didn't give up; he followed her and pounded on her motel door. "When she opened it, this guy just stuck a knife right through her head."

Authorities are trying to provide more effective refuge. In Boston, the vans from Bridge Over Troubled Waters roll right up to the kids on the streets, offering dentists, doctors and drug therapy. At many shelters the rules are stricter than those at the homes the kids have left: at Houston's Family Connection, residents must rise at 8:30 a.m., cook all their own meals, clean their rooms and request permission to stay out after 5:30. Generally, the shelters' goal is to identify family problems, begin counseling and return the runaways—except to parents who abuse them. The success rate runs anywhere from 50 to 70 percent. "We desperately need more places like this," says Sandra Reeves of Houston, whose 15-year-old daughter, Darcy, has run away three times, only to be reunited through family counseling. "Please tell mothers and fathers that their children *can* come home."

To help those children who resolutely won't—or can't—go home again, states and municipalities have also been changing their juvenile laws. At least 40 states now allow courts to "emancipate" minors, so that they may hold jobs and apartments on their own; in Connecticut, a 16-year-old can effectively "divorce" abusive parents and be treated as an adult. Some law-enforcement officials are less than enthusiastic about the liberalization trend, claiming they're now unable to step in and aid troubled runaways. But some frustrated parents are saying "good riddance" to incorrigible adolescents. Toughlove, the Pennsylvania-based parents organization, suggests families lock the doors behind difficult runaways until they promise to change—while providing them with a list of other Toughlovers who will act as caretakers. In several states, wits-end parents can also ask the courts to designate perennial troublemakers "persons in need of supervision"; they can then be picked up for running away, and a judge can impose psychiatric care or other treatment.

Rebels: To be sure, not every vagabond child can be classified as either innocent or incorrigible. Some classic rebels without cause still take off from pure pique or boredom. Beth, 16, showed up at a shelter in Prince Georges County, Md., claiming she had been maltreated by her mother, the "abuse" turned out to be a failure to provide designer jeans. But many experts say such cases represent a declining minority. "There *is* the child who is just 'too big' for his britches," concedes Alice O'Shea, chief of the child-advocate unit in Philadelphia's Office of the Public Defender. "But they are the minority." Experts say only 10 percent of runaways qualify as "spoiled brats."

Authorities worry that strained juvenile

Sherwood Anderson
John Ashbery
Saul Bellow
Elizabeth Bishop
Hart Crane
T. S. Eliot
Ralph Waldo Emerson
William Faulkner
Ford Madox Ford
William Gass
Ernest Hemingway
H.D.
Erica Jong
James Joyce
Jack Kerouac
Maxine Hong Kingston
Maxine Kumin
D. H. Lawrence
Marianne Moore
Anaïs Nin
Joyce Carol Oates
Frank O'Hara
Katherine Ann Porter
Ezra Pound
Gertrude Stein
Wallace Stevens
Dylan Thomas
William Carlos Williams
Richard Wright

The literary magazines that first published these great writers are going out of business.

Unless you help

facilities won't be able to handle an influx of teen agers who jump, or are pushed out on their own. Financing for shelters is precarious, although Congress authorized more than $20 million, the administration proposed only $6.6 million in the current budget. Several senators managed to boost the figure to $18 million. Even that amount would provide less than $18 per runaway — and the budget battle must be fought again when the current funding expires Dec. 15. "The private sector cannot and will not pick this program up," says Rep. Pat Williams of Montana. "This is a bedpan program, the kind that no one wants to get involved in, and that is why the Feds got into it in the first place."

Ultimate Rejection: Yet even if sufficient money could be found to put counselors on every street corner, more fundamental questions would remain. One's own home is, after all, supposed to be the place where they have to take you in, no matter what, being forced to leave it can be the ultimate rejection. Sister Dolores Gartanutti of New York's Noah's Ark shelter deplores "the Kleenex mentality" that brings most young charges to her door. "We live in a society where we use things and just throw them away," she says. "I swear, a lot of people have this attitude toward kids." And so the throwaway children pile up, from New York to California, to be exploited and brutalized. Sooner or later, those who cast them off must realize that children are not so neatly disposable. The longer they remain on the streets, the less chance they can ever be reclaimed — and the more they will cost everyone.

LYNN LANGWAY with RENEE MICHAEL in New York, MARY FORD in Washington, DIANNE H. M. DONALD in Philadelphia, BARBARA BURGOWER in Houston and RICK RUBIN in Los Angeles

Lookout: Father Ritter in Times Square



A Second Look at the National Program for Runaway and Homeless Youth

By Caroline J. Croft and Mary K. Jolly

Introduction

Before legislative action by Congress and the President in 1974, it had been estimated that more than a million youth a year left their homes without parental permission — a finding later corroborated by *The National Statistical Survey of Runaway Youth*, completed in 1976 by the Department of Health, Education and Welfare (HEW) under a Congressional mandate.[1] The 1976 study revealed that as many as 1.3 million juveniles ran from their own or foster homes each year, with 773,000 of these juveniles remaining at large overnight. This was creating a substantial law enforcement problem for the inundated communities and significantly endangering the runaway youth on the streets who were exposed to criminal, physical, sexual and drug abuse and exploitation. The tragedy in Houston which cost the lives of 28 children, all reported missing from home, aggravated the problem and heightened the concern of federal, state and local government leaders as well as private sector youth advocacy agencies.

In response to the growth and pervasiveness of the runaway problem, the Runaway Youth Act was signed into law by President Gerald R. Ford. Also known as Title III of the larger Juvenile Justice and Delinquency Prevention Act of 1974, the Runaway Youth Act enabled HEW to establish a national program for the care of runaway youth. That law authorized the HEW secretary to award grants-in-aid to eligible agencies seeking to establish or to continue operating shelters for runaway youth.

This article details the salient aspects of the National Runaway Youth Program from its inception to the present. In addition to identifying the prominent features of the program from an historical perspective, it reports on an evaluation of the program performed by an independent contractor, a demographic profile of runaway and homeless youth and the future directions for the program. In addition, a new publication, entitled *The Legal Status of Adolescents*, is summarized at the end of this article.

Runaway Youth Program: Historical Notes

Congress, in passing the initial Runaway Youth Act, placed the responsibility for locating, detaining and returning runaway youth outside overburdened police and juvenile justice agencies. Congress also defined the problem as one of an interstate nature and concluded that federal intervention was needed as well as a more reliable reporting system for runaway (not until 1977) youth and a more effective temporary shelter care system outside the law enforcement structure.

In addition to the funding of shelter facilities for runaway youth, the Runaway Youth Act provided funds for counseling and aftercare services, for the provision of technical assistance to grantees, for the conduct of a National Statistical Survey of Runaway Youth in the nation and for the yearly submission of an annual report to Congress by the secretary of HEW on the status and accomplishments of the shelters (funded under the provisions of Section 315 of the Act). Other provisions included the setting of a maximum authorization level of $10 million per year for the 1974, 1975 and 1976 fiscal years.[2]

In providing grants, Congress stipulated that priority consideration be given those applicants which could demonstrate each of the following factors: grant requests of less than $100,000, documentation of a successful experience in serving runaway youth and applicants with program budgets smaller than $150,000.

Congress delineated four goals in the initial law which remain unchanged and upon which the Department of Health and Human Services (HHS) has based its administration of the national program. These Congressional objectives for funded runaway programs, Section 315 of the Act, are set forth as follows:

(1) their effectiveness in alleviating the problems of runaway youth;
(2) their ability to reunite children with their families and to encourage the resolution of intrafamily problems through counseling and other services;
(3) their effectiveness in strengthening family relationships and encouraging stable living conditions for children; and
(4) their effectiveness in helping youth decide upon a future course of action.

In October 1977 the 95th Congress reauthorized the Runaway Youth Act, adding states and coordinated networks of runaway service providers to the list of eligible agencies. The 1977 legislation also expanded the service population for funded programs to homeless youth and provided for support of short-term training to Title III grantees. Congress raised the authorization level for each of the three years of the extended life of the Act from $10 million to $25 million.

In November 1980 the 96th Congress enacted P.L. 96-509, the Juvenile Justice Amendments of 1980, which President Carter signed into law on Dec. 8, 1980.[3] Title III of this legislation retitled the Runaway and Homeless Youth Act, reauthorized the runaway and homeless youth program administered by HHS for an additional four years, retained the annual authorization level at $25 million and mandated that HHS alter its formula for distribution of appropriated funds for the support of programs for runaway and homeless youth on the statutory basis of the number of youth under 18 years of age in each state jurisdiction.

The program received $11 million for each fiscal year 1981 and 1982. The Administration has allocated only $6.6 million for fiscal year 1983, which begins Oct. 1, 1982. However, it is likely that Congress will not approve the budget by that date, and that the program will operate with $11 million under a Continuing Resolution.

The 1980 Amendments, along with a revised formula for allocation of funds and new approaches with regard to the consolidation of social services administered by HHS, will impact the future nature and development of the National Program for Runaway and Homeless Youth. In its reauthorization decision in November 1980, the Congress expressed unanimous bipartisan support for continuation of the program until 1984. Major problems, issues and needs remain, however, which are identified and discussed below. A more detailed review and analysis of these issues is available in HHS' Annual Report to the Congress for Fiscal Year 1980.[4]

Program Evaluation — Major Findings

In August 1979, HHS undertook the task of evaluating the National Program and published results of this assessment by an outside contractor.[5] The evaluation has provided the basis for requesting the President and Congress for reauthorization of the program in the spring of 1979 and, as already reported, Congress and the President then extended HHS' authority for continuation of the pro-

gram, with several amendments, in the fall of 1980.

In the official report to HHS the *National Evaluation of the Runaway Youth Program* contained the major findings below:

- The National Runaway Youth Program has successfully operationalized the goals of the Runaway Youth Act cited above;
- In addition to addressing the legislative goals, the projects funded under the RYA have developed a number of additional goals;
- The projects funded under the RYA are extremely diverse both in terms of their structures and their client populations;
- A growing "professionalism" was found among the projects funded under the RYA;
- The most serious service limitations with the National Runaway Youth Program are the provisions of follow-up or aftercare services mandated in the Act;
- The National Runaway Youth Program is serving a widely diversified client population;
- The National Runaway Youth Program is achieving substantial positive client impact levels;
- In general projects funded under the RYA achieve similar success with a wide variety of clients;
- The National Evaluation found that a positive relationship exists between goals operationalization and positive client impact;
- The projects funded under the RYA are expanding their fiscal capabilities by generating new funding sources and developing volunteer programs;
- A variety of service, client and fiscal concerns are giving way to emerging new service models within the area of runaway youth services.

The evaluation was most encouraging to HHS, the National Council of Juvenile and Family Court Judges, Congress and many other organizations which support the National Program. However, a great disservice would be done if readers of this article conclude that this major social problem has been reduced in scope and an acceptable solution found. Another section of this article identifies major needs, concerns and issues which must be understood and addressed if a full decade of federal intervention with regard to runaway and homeless youth is to achieve success. Not all funded programs have succeeded. Some have closed because of financial, management or program shortcomings. Since several areas of the nation are underserved, the 96th Congress included in the reauthorized legislation a provision for distribution of appropriated funds on the basis of a state's youth population under the age of 18. This will generate a definite impact on the funding process. Unless larger appropriations are forthcoming, some programs will receive less than $10,000 in grant funds from HHS for a year's program support.

Extent to Which National Program for Runaway and Homeless Youth has Reduced Involvement of Youth in Law Enforcement and Juvenile Court Systems

While the reduction of the involvement of runaway youth in police-juvenile court processes are not a primary objective of the Runaway Youth Act, HHS found that one of the positive byproducts reported by many of the HHS-funded Title III programs has been a pronounced reduction in the number of runaway youth involved directly in community law enforcement and court processes. Not only has the number of youth handled by the police been substantially reduced in some communities, but the number of these youth who appear in court and undergo adjudication has decreased. The most successful programs are those in which police, court and runaway staff work together in a cooperative and coordinated way. Rather than taking a boy or girl into a detention facility they are taken instead to a runaway shelter by the local police. If the runaway programs did not exist the traditional pattern would be followed which would involve the issuance of a warrant and appearance in court for a series of jurisdictional, adjudicatory and dispositional procedures. An increasing number of runaway and homeless youth are being referred by the police and court officials to the runaway centers. In a few cases the centers have not won the confidence of police and court agencies, and have had difficulty devel-

oping the type of program and services which merit community support and respect. HHS is most sensitive to allegations that federally funded shelter-type programs are below standard. In its monitoring of the programs HHS stressed sanitation and other regulations which apply at either state or federal levels. A few programs have been closed and federal support withdrawn as a result of failure to operate on the basis of acceptable fiscal, licensing and regulatory practices.

Program Growth and Development Since 1974

Since the first 66 runaway houses were funded by HEW in 1975, the program has grown to 160 programs funded in 48 states, the District of Columbia, Guam and Puerto Rico. A National Switchboard, located in Chicago, has proved to be a vital element in the National Program. Congress recognized this importance by amending the legislation in 1980 to specifically authorize funding of a National Toll-Free Communications System. The number of youth served in HHS-funded programs approximated 43,000 a year as of 1980. In addition more than 200,000 calls were made to the National Switchboard in 1980 by runaway and homeless youth, parents and relatives.[6]

A new, four-year funding cycle was conducted in 1981 under the reauthorized legislation and HHS expected the demand for grant funds to be higher than the previous appropriation of $11 million. Many worthy programs cannot be funded by HHS because of the severe limit on funds. Some geographic areas are underserved, thus creating concern at a time when federal grant funds are dwindling. One of the most encouraging developments since the passage of the Act in 1974 has been the success enjoyed by many of the Title III programs in securing financial support from local public and private sources. Modest successes have been achieved with the organization in some of the states of coordinated networks of runaway service providers, authorized by the 96th Congress in its 1977 amendments to the Runaway Youth Act. These networks or coalitions have improved the intra and interstate need for speedy communications regarding the immediate care of runaway and homeless youth. They have led in some cases to more effective coordination of effort and expansion of services without additional expense, as agencies have pooled their limited resources.

Programs have actively sought non-federal financial support from a variety of sources. Their success in diversifying their funding base while reducing dependence on federal funds has had a stabilizing and strengthening effect.

A National Profile of Runaway Youth

A summary profile of runaway youth derived from the client forms submitted to the Youth Development Bureau by the programs funded under the Runaway Youth Act revealed that the types of youth who received services were diversified as to age, sex, ethnicity, school status, family-type problem and related case characteristics.[7] One major finding since the passage of the initial Runaway Youth Act in 1974 which the profile presents is that 45.2 percent of the youth in the national distribution were runaways in the legal-administrative definition of the term, 19.3 percent were youth involved in non-runaway crises, 15.5 percent were cases where youth and parents had mutually agreed to separate and the remaining cases were in the potential runaway or other categories. Females made up 59.7 percent of the population served, 40.6 percent were boys. The age range was from 4 to 20 years of age with the critical range 10-18 years. Eighty percent of the youth served were in this 10-18 age range with model age being 16 years. As to racial-ethnic distributions, 74 percent of the youth served were white, 15.5 percent were black, not of Hispanic origin; 6 percent were Hispanic; with the remainder American Indian, Asian or unknown. Youth living with the parents or legal guardian before the runaway episode made up 82.4 percent of the population served; 4.1 percent were living in foster homes; the remainder with relatives, friends or unknown. In terms of school status before the runaway episode, 60.1 percent were attending school; 17.3 percent were drop outs; 10.5 percent were listed as truant; while the

remainder were shown as expelled, suspended or graduated. A final but important segment of the profile disclosed the reasons for seeking services by runaway youth. Eighteen percent of the runaway youth reported that their parents were too strict; 9.6 percent reported that truancy was the cause for seeking services; 9.8 percent felt that their parents had neglected them emotionally; 7.9 percent stated that they had been pushed out of their homes by the parent; 7.7 percent felt that the runaway was preceded by an inability to communicate with the parents. Among the remaining causes were peer problems, parental conflicts, bad school grades and youth emotional problems.

Future Directions for National Program

With the change in administrations in Washington, a number of scenarios developed with regard to youth services administered by federal executive branch agencies. No definitive reorganization of these services has been announced but the various transition teams created by President Reagan have reviewed a wide range of human service programs. In his budget message to Congress, the secretary of HHS proposed the consolidation into one block grant of 12 social service programs, including runaway and homeless youth. The secretary also supported continued support for the National Program for Runaway and Homeless Youth Act at the $10 million level for fiscal year 1982.

In its future planning for the National Program the Youth Development Bureau has established the following goals:

1. consolidation of the gains made to date by the runaway and homeless youth centers in further improving their services. This includes creating more effective systems of case and class advocacy for runaway and homeless youth; and the development of networks and coalitions for maximum coordination of effort at federal, state and local-private sector levels.
2. administration of the reauthorized Runaway and Homeless Youth Act until 1984 on the basis of Congressional and HHS goals. Regional and state jurisdiction will play a more prominent role in the process of administering the program.
3. development of a national policy for youth development. In this connection the Bureau is playing an active role in the planning of national, state-local and private sector conferences, seminars and workshops which deal with runaway and homeless youth.
4. the bureau will concentrate in the years ahead on the further diversification of services provided by the centers for runaway and homeless youth. Emphasis on family factors and processes, and the development of a more effective national system of aftercare services for runaway and homeless youth, will be integral parts of this endeavor.
5. the Bureau will continue to actively support the Federal Coordinating Council on Juvenile Justice and Delinquency Prevention under the chairmanship of the attorney general. It will intensify its efforts to achieve more effective interagency and intragency collaboration at the federal level in areas such as substance abuse, youth employment, adolescent abuse and teen pregnancy. It will seek more active working relationships with federal agencies such as the departments of Justice, Labor and Education in the efforts being made to maximize federal resources available for youth programs.
6. within the funds available the Bureau will continue to fund service demonstration projects in the areas of adolescent health, family dysfunction, pregnancy, youth employment and substance abuse. It will continue to conduct studies of youth needs within HHS and will endeavor to develop a more comprehensive approach to the delivery of services to vulnerable youth and their families.
7. in its technical assistance and training initiatives for Title III grantees the Bureau will stress the development, at the program level, of maximum capability for service delivery, the accessing of non-federal funding sources and the further managerial improvements in the operation of these centers. An annual Youth Service Institute was planned in 1981 for selected Title III and federal agency staff with the

emphasis on skills building and problem-solving training.

8. the Bureau will continue to fund a National Toll-Free Communication System to serve runaway and homeless youth and their families. Some expansion of this system is planned with one objective being a more efficient operation and wider geographic coverage of the nation.
9. a primary objective for the 1980s is the continuation of the effort to further develop positive roles for youth at all levels of the program. A specific publication titled *Youth as a Resource* was made available in the summer of 1981.

The Legal Status of Adolescents[8]

In late 1980 HHS published a 500-page compendium and discussion of the laws and court decisions affecting minors titled *The Legal Status of Adolescents.* It is an updated and expansion of a 1975 publication *The Legal Status of Runaway Youth,* which members of the National Council of Juvenile Court Judges and a wide range of juvenile justice and youth-serving agencies and officials found extremely useful.

This document contains summary tables of laws affecting minors in each state with regard to emancipation, employment, hitchhiking, medical consent, truancy and other legal considerations which are important to juvenile and family courts, attorneys, youth agency officials, parents and guardians as well as the runaway and homeless youth themselves. *The Legal Status of Adolescents* was prepared for HHS under a contract with the Scientific Analysis Corp. of San Francisco and the Regional Institute of Social Welfare, Athens, Ga. This report clearly shows that the legal rights of juveniles are defined differently in different states and that the recognized capabilities of youth to make important legal decisions also varies considerably from state to state.

Until recently, the report notes, the law treated childhood as "an homogenous state," making no distinction between the capacities of younger and older children. According to the report, progress with respect to the rights of young people has frequently come through the courts. The authors point to a series of court decisions in the past 10 years that have affirmed the Constitutional rights of children and carved out areas in which they can make decisions on their own. Among the Supreme Court cases cited are *In re Gault, Carey v. Population Services Int'l* and *Bellotti v. Baird* which concern, respectively, due process protection for juveniles in court proceedings, availability of contraceptives to minors and the right of a minor to have an abortion without her parents' consent.

In expanding children's rights, the report says state legislatures have often responded to court decisions or to mandates in federal legislation, such as the requirement in the child abuse and neglect law that an abused or neglected child be assigned a *guardian ad litem* to represent his interests in court.

Legislatures, the report says, have been slow in some areas to initiate changes to reflect "the progressively developing capacity of minors." In some states, changes have occurred largely in areas of high public health concern — venereal disease, pregnancy, drug abuse — areas in which the report says "the community benefits from having the child free to seek help on his own.

"As a society, we pay lip service to the idea that children are growing up faster than ever," the report says, but state legislatures and the federal government "have been reluctant to match that observation with statutory changes.

"A more worthwhile world for adolescents," the report concludes, "means more equity for them as a group vis a vis other age groups and at the same time more special recognition of their needs as a group facing the challenge of leaving childhood and becoming adults."

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Mary K. Jolly
National Rifle Association
(Former Counsel, Senate Committee of the Judiciary, subcommittee on the Constitution)

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Notes

[1]Opinion Research Corp., *Comprehensive National Statistical Survey* (Washington, D.C.: U.S. Department of Health, Education and Welfare, 1976).

[2]*The Runaway Youth Act*, Title III, P.L. 93-415 (Washington, D.C.: U.S. Department of Health, Education and Welfare).

[3]*Juvenile Justice Amendments of 1980*, Title III-Runaway and Homeless Youth Act, P.L. 96-509 (Washington, D.C.: U.S. Department of Health and Human Services).

[4]*Fiscal Year 1980-Annual Report to Congress-Runaway Youth* (Washington, D.C.: U.S. Department of Health and Human Services).

[5]*Executive Summary*, National Evaluation of the Runaway Youth Act (Washington, D.C.: U.S. Department of Health and Human Services, 1979).

[6]*Annual Report to Congress.*

[7]Ibid.

[8]*The Legal Status of Adolescents* (Washington, D.C.: Office of the Secretary, U.S. Department of Health and Human Services, 1979).

STATE OF ALASKA 1984 LEGISLATIVE SESSION
FISCAL NOTE

MAR 22 1984

Revision Date:

REQUEST
Bill/Resolution No.: HB 631
Title: "An act relating to runaway children."
Sponsor: Representative Liska
Requestor: House HESS
Date of Request: 3/19/84

FISCAL DETAIL
Agency Affected: Public Safety
Program Category Affected: Administration of Justice
BRU, Program or Subprogram(s) Affected: Alaska State Troopers

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 84	FY 85	FY 86	FY 87	FY 88	FY 89
OPERATING						
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 SUPPLIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS						
800 MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0
CAPITAL	0.0	0.0	0.0	0.0	0.0	0.0
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND	0.0	0.0	0.0	0.0	0.0	0.0
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

ANALYSIS: Attach a separate page for analysis

Prepared By: Francis C. Allan F.C.A. Phone: 269-5691
Division: Alaska State Troopers mck Date: 03/12/84

Approved by Commissioner: Robert J. Sundberg Date: 3/20/84
Agency: Public Safety

Distribution (by Agency preparing fiscal note):
Legislative Finance
Legislative Sponsor
Requestor
Office of Management and Budget
Impacted Agency(ies)

12/1/83

HB

647

Alaska State Legislature

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Representative John J. Liska

April 11, 1984

M E M O R A N D U M

FROM: Rep. John J. Liska

REFERENCE: HB 647, "An act relating to the possession of concealed weapons."

The purpose of HB 647 is to give the citizens of Alaska a method to apply for a permit to carry a concealed weapon.

Presently, Alaska Statutes permit only Police Officers to carry concealed weapons. There may be instances when a citizen would be justified in carrying a concealed weapon.

I feel this is an issue which needs to be addressed and HB 647 is a vehicle for that discussion.

Anchorage has the highest rape rate of any city - Nation wide. More criminals are incarcerated in Alaska per population than any other state. The fact that the police do not have to protect the individual, as shown in Warren vs. District of Columbia.

The above are just some of the facts that should be considered while discussing this bill.

Enclosured is the following:

A. Alaska Statutes 11.61.200 and 18.67.162

B. Model Concealed Weapons legislation.

C. Warren vs Dist. of Columbia. Police not required to protect individual citizen.

D. Oregon Statute 166.240 carrying of Concealed Weapons

E. Utah - carrying Concealed Weapons

F. Washing ton - 9.41.050 carrying pistol

G. House Research Information - 33 states allow citizens to carry concealed weapons in some circumstances.

H. Letter from office of District Attorney Las Vegas, Nevada.
Population 463,087/Permits issued 639
.0013% of their population received permits

I. Letters regarding body guard from Commissioner Sundberg and Mr. Berrier.

J. Letters of support in Rep. Liska's File.

JJL/tm

Effect of amendments. — The 1983 amendment, in subsection (a), added the paragraph (1) and (2) designations, added paragraph (3), and made minor word changes. In subsection (b), the amendment repealed paragraphs (1) and (2) and inserted "by the offender while intoxicated or" in paragraph (4). In subsection (c), the amendment deleted the former last sentence and made a minor word change.

Sec. 18.67.162. Crime victim compensation fund. There is created a crime victim compensation fund which shall be administered by the Violent Crimes Compensation Board. The fund consists of money appropriated to it by the legislature. The fund shall be administered in accordance with the provisions of this chapter. Money distributed from the fund shall be in addition to other sources of compensation provided in this chapter. (§ 7 ch 96 SLA 1983)

New Section 18.67.010

Chapter 80. State Commission for Human Rights.

Article
1. Creation and Organization of Commission (§ 18.80.060)

NOTES TO DECISIONS

Alaska's civil rights statute should be broadly construed to further the goal of eradication of discrimination. Alaska USA Fed. Credit Union v. Fridriksson, Sup. Ct. Op. No. 2478 (File No. 5230), 642 P.2d 804 (1982).

Article 1. Creation and Organization of Commission.

Section
60. Powers and duties of the commission

Sec. 18.80.010. Creation.

NOTES TO DECISIONS

Cited in McDaniel v. Cory, Sup. Ct. Op. No. 2383 (File Nos. 4793, 4794), 631 P.2d 82 (1981).

Sec. 18.80.050. Regulations.

NOTES TO DECISIONS

Quoted in Perkowski v. State, Sup. Ct. Op. No. 2658 (File No. 6541), P.2d (1984).

(b) It is an affirmative defense to a prosecution under (a)(1) of this section that

(1) the defendant took reasonable steps to remove the [illegible] from the highway; and

(2) no person suffered physical injury as a result of the presence of the substance on the highway.

(c) Obstruction of highways is a class B misdemeanor. (§ 7 [illegible] SLA 1978)

Collateral references. — 39 Am. Jur. 2d, Highways, Streets and Bridges, §§ 281-310.
29A C.J.S., Highways, §§ 217-231.

Article 2. Weapons and Explosives.

Section	Section
200. Misconduct involving weapons in the first degree	230. Possession of burglary tools
210. Misconduct involving weapons in the second degree	240. Criminal possession of explosives
220. Misconduct involving weapons in the third degree	250. Unlawful furnishing of explosives

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Collateral references. — Validity and construction of gun control laws, 28 ALR3d 845.

Sec. 11.61.200. Misconduct involving weapons in the first degree. (a) A person commits the crime of misconduct involving weapons in the first degree if the person

(1) knowingly possesses a firearm capable of being concealed on one's person after having been convicted of a felony by a court of this state, a court of the United States, or a court of another state or territory;

(2) knowingly sells or transfers a firearm capable of being concealed on one's person to a person who has been convicted of a felony by a court of this state, a court of the United States, or a court of another state or territory;

(3) manufactures, possesses, transports, sells, or transfers a prohibited weapon;

(4) knowingly sells or transfers a firearm to another whose physical or mental condition is substantially impaired as a result of the introduction of an intoxicating liquor or drug into that other person's body;

(5) removes, covers, alters, or destroys the manufacturer's serial number on a firearm with intent to render the firearm untraceable; or

(6) possesses a firearm on which the manufacturer's serial number has been removed, covered, altered, or destroyed, knowing that the serial number has been removed, covered, altered, or destroyed with the intent of rendering the firearm untraceable.

(b) It is an affirmative defense to a prosecution under (a)(1) or (2) of this section that

(1) the person convicted of the prior offense on which the action is based received a pardon for that conviction;

(2) the underlying conviction upon which the action is based has been set aside under AS 12.55.085 or as a result of post-conviction proceedings; or

(3) a period of five years or more has elapsed between the date of the person's unconditional discharge on the prior offense and the date of the possession, sale, or transfer of the firearm.

(c) It is an affirmative defense to a prosecution under (a)(3) of this section that the manufacture, possession, transportation, sale, or transfer of the prohibited weapon was in accordance with registration under 26 U.S.C. 5801-5872 (National Firearms Act).

(d) The provisions of (a)(3) of this section do not apply to a peace officer acting within the scope and authority of the officer's employment.

(e) As used in this section,

(1) "prohibited weapon" means any

(A) explosive, incendiary, or noxious gas

(i) mine or device that is designed, made, or adapted for the purpose of inflicting serious physical injury or death;

(ii) rocket, other than an emergency flare, having a propellant charge of more than four ounces;

(iii) bomb;

(iv) grenade;

(B) device designed, made, or adapted to muffle the report of a firearm;

(C) metal knuckles;

(D) switchblade or gravity knife;

(E) firearm that is capable of shooting more than one shot automatically, without manual reloading, by a single function of the trigger; or

(F) rifle with a barrel length of less than 16 inches, shotgun with a barrel length of less than 18 inches, or firearm made from a rifle or shotgun which, as modified, has an overall length of less than 26 inches;

(2) "unconditional discharge" has the meaning ascribed to it in AS 12.55.185.

(f) Misconduct involving weapons in the first degree is a class C felony. (§ 7 ch 166 SLA 1978)

Editor's notes. — The cases cited in the notes below were decided under former AS 11.55.080 and 11.55.040.

Constitutionality of former statute prohibiting possession by a convict. — See United States v. Farwell, 11 Alaska 507, 76 F. Supp. 35 (D. Alaska 1948).

Legislative intent. — The purpose of the felon in possession statute was to prevent the concealment and use of firearms in violent crime. Davis v. State, Sup. Ct. Op. No. 816 (File Nos. 1428, 1436), 499 P.2d 1025 (1972), cert. granted, 410 U.S. 925, 93 S. Ct. 1392, 35 L. Ed. 2d 586 (1973), rev'd on other grounds, 415 U.S. 308, 94 S. Ct. 1105, 39 L. Ed. 2d 347 (1974).

Former section included crime committed in another state. — See United States v. Farwell, 11 Alaska 507, 76 F. Supp. 35 (D. Alaska 1948).

The term "concealed" means that the weapon is not discernible through ordinary observation by persons coming into proximity with the person carrying it, as persons do in the ordinary and usual associations of life. McKee v. State, Sup. Ct. Op. No. 721 (File No. 1273), 488 P.2d 1039 (1971).

A weapon is concealed if it is hidden from ordinary observation. It need not be absolutely invisible to other persons. McKee v. State, Sup. Ct. Op. No. 721 (File No. 1273), 488 P.2d 1039 (1971).

Actual possession was not required under former statute. — See Davis v. State, Sup. Ct. Op. No. 816 (File Nos. 1428, 1436), 499 P.2d 1025 (1972), cert. granted, 410 U.S. 925, 93 S. Ct. 1392, 35 L. Ed. 2d 586 (1973), rev'd on other grounds, 415 U.S. 308, 94 S. Ct. 1105, 39 L. Ed. 2d 347 (1974); Gordon v. State, Sup. Ct. Op. No. 1126 (File No. 2204), 533 P.2d 25 (1975).

A revolver need not be fully assembled or immediately capable of firing in order to qualify as a weapon. Davis v. State, Sup. Ct. Op. No. 816 (File Nos. 1428, 1436), 499 P.2d 1025 (1972), cert. granted, 410 U.S. 925, 93 S. Ct. 1392, 35 L. Ed. 2d 586 (1973), rev'd on other grounds, 415 U.S. 308, 94 S. Ct. 1105, 39 L. Ed. 2d 347 (1974).

And it is [illegible] whether the gun is loaded and ready for immediate use. — See Davis v. State, Sup. Ct. Op. No. 816 (File Nos. 1428, 1436), 499 P.2d 1025 (1972), cert. granted, 410 U.S. 925, 93 S. Ct. 1392, 35 L. Ed. 2d 586 (1973), rev'd on other grounds, 415 U.S. 308, 94 S. Ct. 1105, 39 L. Ed. 2d 347 (1974).

Furnishing ammunition included under former statute. — See In re Robson, Sup. Ct. Op. No. 1573 (File No. 3448), 575 P.2d 771 (1978).

It was necessary to show a prior conviction in order to prove one essential element of the crime of possession of a firearm by a person previously convicted of a felony. Mead v. State, Sup. Ct. Op. No. 502 (File No. 804), 445 P.2d 229 (1968), cert. denied, 396 U.S. 855, 90 S. Ct. 117, 24 L. Ed. 2d 104 (1969).

Conviction may be based on circumstantial evidence. — Conviction of "felon in possession" may be based on circumstantial evidence of possession. Davis v. State, Sup. Ct. Op. No. 816 (File Nos. 1428, 1436), 499 P.2d 1025 (1972), cert. granted, 410 U.S. 925, 93 S. Ct. 1392, 35 L. Ed. 2d 586 (1973), rev'd on other grounds, 415 U.S. 308, 94 S. Ct. 1105, 39 L. Ed. 2d 347 (1974).

It was error to refuse to give an instruction defining the term "concealed." McKee v. State, Sup. Ct. Op. No. 721 (File No. 1273), 488 P.2d 1039 (1971).

Sentence for possession by convict upheld. — See Deveroux v. State, Sup. Ct. Op. No. 1259 (File No. 2636), 548 P.2d 1296 (1976); Ozenna v. State, Sup. Ct. Op. No. 2269 (File No. 4748), 619 P.2d 477 (1980).

Applied in McManners v. State, Ct. App. Op. No. 123 (File No. 6065), 650 P.2d 414 (1982); Fry v. State, Ct. App. Op. No. 197 (File No. 6810), 655 P.2d 789 (1983).

Cited in Kampe v. State, Sup. Ct. Op. No. 2242 (File No. 4993), 620 P.2d 678 (1980); Bell v. State, Ct. App. Op. No. 216 (File No. 6707), 657 P.2d 787 (1983).

Collateral references. — 79 Am. Jur. 2d, Weapons and Firearms, §§ 7-34.

94 C.J.S., Weapons, §§ 3-23.

Sec. 11.61.210. Misconduct involving weapons in the second degree. (a) A person commits the crime of misconduct involving weapons in the second degree if the person

(1) possesses on the person a firearm while under the influence of an intoxicating liquor or drug;

(2) discharges a firearm from, on, or across a highway; or

(3) discharges a firearm with reckless disregard for a risk of damage to property or a risk of physical injury to a person.

(b) For purposes of (a)(1) of this section, a person is under the influence of an intoxicating liquor or drug when, as a result of the introduction of an intoxicating liquor or drug into the person's body, physical or mental abilities are impaired so that the person no longer has the ability to possess a firearm with the caution characteristic of a sober person of ordinary prudence under the same or similar circumstances.

(c) Misconduct involving weapons in the second degree is a class A misdemeanor. (§ 7 ch 166 SLA 1978; am §§ 21, 22 ch 102 SLA 1980)

Revisor's notes. — Subsection (b) of this section was adopted in ch. 102, SLA 1980, as subsection (c). However, the subsections have been rearranged to conform with the format of AS 11 as revised in 1978.

Effect of amendments. — The 1980 amendment rewrote paragraph (1) of subsection (a), and added present subsection (b).

Legislative history reports. — For a report on Chapter 102, SLA 1980 (HCS CSSB 511), see 1980 Senate Journal Supplement, No. 44, May 29, 1980, or 1980 House Journal Supplement, No. 79, May 29, 1980.

NOTES TO DECISIONS

Separate punishment where defendant fired at cabin and truck. — Separate punishment upon conviction of two counts of misconduct involving weapons in the second degree, and two counts of criminal mischief in the third degree, where the evidence established that defendant had fired a rifle at a cabin and a pickup truck did not violate the double jeopardy provisions of this section since there were different and significant differences between the intent in the two firings. [illegible] v. State, Ct. App. Op. No. 168 (File No. 5959), P.2d (1982).

For cases construing former statute prohibiting careless use of firearms, see Giles v. United States, 10 Alaska 455, 144 F.2d 860 (9th Cir. 1944); Burke v. United States, 282 F.2d 763 (9th Cir. 1960).

For case construing former statute prohibiting flourishing, pointing or discharging firearm in a public place, see Wacek v. State, Sup. Ct. Op. No. 1108 (File No. 2166), 530 P.2d 751 (1975).

Quoted in Zinn v. State, Ct. App. Op. No. 189 (File No. 6230), 656 P.2d 1206 (1982).

Cited in Dyer v. State, Ct. App. Op. No. 268 (File No. 6133), P.2d (1983).

Collateral references. — Use of the [illegible] without intent to inflict injury, 5 [illegible]; 23 ALR 1554.

Death from discharge of firearms, 55 ALR 921.

Sec. 11.61.220. Misconduct involving weapons in the third degree. (a) A person commits the crime of misconduct involving weapons in the third degree if the person

(1) knowingly possesses a deadly weapon, other than an ordinary pocket knife, that is concealed on the person;

(2) knowingly possesses a loaded firearm on the person in any place where intoxicating liquor is sold for consumption on the premises;

(3) being an unemancipated minor under 16 years of age, possesses a firearm without the consent of a parent or guardian of the minor.

(b) In a prosecution under (a)(1) of this section, it is an affirmative defense that the defendant, at the time of possession, was

(1) in the defendant's dwelling or on land owned or leased by the defendant appurtenant to the dwelling; or

(2) actually engaged in lawful hunting, fishing, trapping, or other lawful outdoor activity that necessarily involves the carrying of a weapon for personal protection.

(c) The provisions of (a)(1) and (2) of this section do not apply to a peace officer acting within the scope and authority of the officer's employment.

(d) In a prosecution under (a)(2) of this section, it is a defense that the defendant, at the time of possession, was

(1) on business premises owned by or leased by the defendant; or

(2) on business premises in the course of the defendant's employment for the owner or lessee of those premises.

(e) For purposes of this section, a deadly weapon on a person is concealed if it is covered or enclosed in any manner so that an observer cannot determine that it is a weapon without removing it from that which covers or encloses it or without opening, lifting, or removing that which covers or encloses it.

(f) For purposes of (a)(2) of this section, a firearm is loaded if the firing chamber, magazine, clip, or cylinder of the firearm contains a cartridge.

(g) Misconduct involving weapons in the third degree is a class B misdemeanor. (§ 7 ch 166 SLA 1978; am § 23 ch 102 SLA 1980)

Effect of amendments. — The 1980 amendment substituted "land owned or leased by him" for "property" preceding "appurtenant to" near the middle of paragraph (1) of subsection (b).

Legislative history reports. — For revision of 1978 legislative committee report on AS 11.61.220, see 1979 House Journal, pp. 632 — 633. For a report on Chapter 102, SLA 1980 (HCS CSSB 511), see 1980 Senate Journal Supplement, No. 44, May 29, 1980, or 1980 House Journal Supplement, No. 79, May 29, 1980.

Opinions of attorney general. — Because AS 11.55.020 (now this section) excepts only "peace officers" from the general prohibition against carrying concealed weapons, other persons, including state employees charged with limited law enforcement duties unless a peace officer within the meaning of AS 01.10.060(6), may not carry concealed weapons. December 22, 1977, Op. Att'y Gen.

A comparison of the language of AS 18.65.010(b), which describes the general powers and duties of a specially commissioned officer, with that of AS 18.65.030, which describes the powers and duties of commissioned officers of the Department of Public Safety with particular reference to "member" of the state troopers, supports the conclusion that a specially commissioned officer is a "peace officer" for purposes of both AS 01.10.060(6) and AS 11.55.020 (now this section) when performing law enforcement duties within the limitations set forth on the face of a special commission and fur-

thermore, may carry concealed weapons without violating AS 11.55.010 (now this section) while performing these duties to the extent permitted by the commission itself. December 22, 1977, Op. Att'y Gen.

NOTES TO DECISIONS

Ordinance prohibiting concealment of weapons in automobiles not prohibited. — This section does not imply a legislative intent to create a privilege to conceal a weapon in an automobile, nor does it implicitly require statewide uniformity of weapons regulations; thus, municipal ordinances interpreted as forbidding concealing of weapons in automobiles was not prohibited by this section. City of Anchorage v. Richards, Ct. App. Op. No. 173 (File Nos. 6387, 6459, 6504, 6540), 654 P.2d 797 (1982).

Sentence for carrying a concealed weapon upheld. — See Ozenna v. State, Sup. Ct. Op. No. 2209 (File No. 4745), 619 P.2d 477 (1980) (decided under former AS 11.55.010).

Collateral references. — Offense of carrying weapon on person as affected by place where defendant was at the time, 73 ALR 539.

Offense of carrying concealed weapon as affected by manner of carrying or place of concealment, 43 ALR2d 492.

Scope and effect of exception, in statute forbidding carrying of weapons, as to person on his own premises or at his place of business, 57 ALR3d 948.

Sec. 11.61.220. Possession of burglary tools. (a) A person commits the crime of possession of burglary tools if the person possesses a burglary tool with intent to use or permit use of the tool in the commission of

(1) burglary in any degree;

(2) a crime referred to in AS 11.46.130(a)(3); or

(3) theft of services.

(b) As used in this section, "burglary tools" means

(1) nitroglycerine, dynamite, or any other tool, instrument, or device adapted or designed for use in committing a crime referred to in (a)(1)-(3) of this section; or

(2) any acetylene torch, electric arc, burning bar, thermal lance, oxygen lance, or other similar device capable of burning through steel, concrete, or other solid material.

(c) Possession of burglary tools is a class A misdemeanor. (§ 7 ch 166 SLA 1978)

Collateral references. — 13 Am. Jur. 2d, Burglary, §§ 74-77.

12 C.J.S., Burglary, §§ 43-45.

Validity, construction and application of statutes relating to burglars' tools, 33 ALR3d 708.

Sec. 11.61.230. Criminal possession of explosives. (a) A person commits the crime of criminal possession of explosives if the person possesses or manufactures an explosive substance or device and intends to use that substance or device to commit a crime.

(STATE CARRYING FIREARM PERMIT STATUTE)

STATE OF MONTANA

MAR 2 7 1984

101.01 (a) Upon the filing of an application pursuant to Section 101.01 (b), a permit to carry a concealed weapon shall be issued by the chief law enforcement officer of the applicant's place of residence unless the applicant:

1. has had a judgement of conviction entered, by a court of Montana, another state or of the United States, against him for: murder, non-negligent manslaughter, forcible rape or sodomy, mayhem, kidnapping, robbery, burglary, aggravated assault, arson, or attempt to conspiracy to commit such a crime; and the applicant has not been pardoned for such con iction or had his civil rights restored or such conviction has not been expunged or set aside;
2. is a fugitive from justice;
3. has been adjudicated, by a court of Montana, another state or the United States, an alcoholic, unless such adjudication has been withdrawn or reversed;
4. is an unlawful user of narcotics;
5. has been adjudicated, by a court of Montana, another state or the United States, a mental defective, unless such adjudication has been withdrawn or reversed;
6. is committed to any mental institution;
7. has renounced his United States citizenship and his United States citizenship has not been restored;
8. is an alien illegally in the United States;
9. is under 21 years of age;
10. has, within the past three years, been convicted of a violation of Section 101.04 or 101.05; or

11. is otherwise prohibited by law from transporting, receiving, or possessing such a weapon.

101.01 (b) An application shall be made in writing on a form provided by the chief law enforcement officer. Such form shall include only the applicant's name, address, height, weight, race, color of hair, color of eyes, date of birth, and a certification, signed by the applicant, that he is not disabled from receiving a permit pursuant to Section 101.01(a).

101.01 (c) Permits shall be issued or denied in writing within 45 days of the date the application is received by the chief law enforcement officer. If the chief law enforcement officer fails to issue or deny the permit within 45 days, the applicant may file a petition for a writ of mandamus in the (trial court) of the (county or city) in which he resides to compel the chief law enforcement officer to issue the permit. If the court mandates the chief law enforcement officer to issue the permit, it shall award attorney's fees and costs to the applicant. If the permit is denied, the chief law enforcement officer shall state, in writing, the specific reason(s) for the denial.

101.02 In the event of a denial or revocation, the applicant may, within 60 days of the date of denial or revocation is received by the applicant, file a petition for judicial review in the (trial court) which shall make a de novo determination whether the applicant is disabled, pursuant to section 101.01(a), from being issued a permit, and may consider evidence presented by either party whether to not considered by the chief law enforcement officer. If the court mandates the chief law enforcement officer to issue the permit, it shall award attorney's fees and costs to the applicant.

101.03 A permit shall be valid throughout the state and shall be valid until revoked pursuant to Section 101.04.

101.04 If, subsequent to the issuance of the permit, a permit holder should become disabled from being issued a permit pursuant to the provisions of Section 101.01(a), the chief law enforcement officer shall, after notifying the permit holder in writing of such disability, revoke the permit. The permit holder may seek judicial review of such a revocation pursuant to the provisions of Section 101.02.

101.05 Carrying a faked, altered, or revoked permit, or a permit belonging to another, shall be punishable as a misdemeanor.

106.06 Knowingly and willfully providing false information on an application filed pursuant to Section 101.01(b) shall be punishable as a misdemeanor. Upon conviction, if a decision on the application is pending, the application shall be denied; if the permit has been issued, it shall immediately be revoked.

NATIONAL RIFLE ASSOCIATION OF AMERICA
INSTITUTE FOR LEGISLATIVE ACTION
1600 RHODE ISLAND AVENUE, N.W.
WASHINGTON, D.C. 20036

OFFICE OF THE
GENERAL COUNSEL

MEMORANDUM

TO: Louis Brune

FROM: Bob Dowlut

DATE: March 12, 1984

RE: Alaska House Bill 557

The bill would allow a court to "order the forfeiture to the state of any deadly weapon possessed or used by the defendant during the commission of the offense."

The use of the term "or" means that a weapon may be forfeited under two separate sets of circumstances:

1. The deadly weapon was used by the defendant during the commission of the offense.

2. The deadly weapon was possessed by the defendant during the commission of the offense.

The conduct sought to be proscribed in the first set of circumstances is typically proscribed in forfeiture statutes. It focuses on the misuse of a firearm.

The conduct targeted in the second set of circumstances need not involve the misuse of a firearm. For example, a firearm could be forfeited if it was possessed by the defendant during the commission of a traffic offense. To remedy this potential problem, I recommend the following language:

> (9) order the forfeiture to the state of any deadly weapon (A)used by the defendant during

the commission of the offense or (B)any deadly possessed by the defendant during the commission of arson, burglary, robbery, manslaughter, murder, kidnapping, rape, attempted rape, assault with intent to commit a felony, riot, jail break, or unlawful delivery or sale of a controlled substance; as used in this paragraph, "deadly weapon" means a deadly weapon as defined in AS 11. 81. 900.

law existing at the time of the commission of the offense in the same manner as if this Act had not become law."

Sec. 12.55.005. Declaration of purpose. The purpose of this chapter is to provide the means for determining the appropriate sentence to be imposed upon conviction of an offense. The legislature finds that the elimination of unjustified disparity in sentences and the attainment of reasonable uniformity in sentences can best be achieved through a sentencing framework fixed by statute as provided in this chapter. In imposing sentence, the court shall consider

(1) the seriousness of the defendant's present offense in relation to other offenses;

(2) the prior criminal history of the defendant and the likelihood of his rehabilitation;

(3) the need to confine the defendant to prevent further harm to the public;

(4) the circumstances of the offense and the extent to which the offense harmed the victim or endangered the public safety or order;

(5) the effect of the sentence to be imposed in deterring the defendant or other members of society from future criminal conduct; and

(6) the effect of the sentence to be imposed as a community condemnation of the criminal act and as a reaffirmation of societal norms. (§ 12 ch 166 SLA 1978)

Cross reference. — For discussion of sentencing goals, see note to AS 12.55.120.

Legislative history report. — For report on ch. 166, SLA 1978 (HB 661), see 1978 Senate Journal Supplement No. 47 (June 12, 1978).

Sec. 12.55.010. Imprisonment on judgment for payment of fine.

Repealed by § 21 ch 166 SLA 1978.

Cross references. — As to fines, see AS 12.55.035. As to enforcement of fines, see AS 12.55.051.

Editor's note. — The repealed section derived from § 8.01, ch. 34, SLA 1962.

Sec. 12.55.015. Authorized sentences. (a) Except as limited by AS 12.55.125 — 12.55.175, the court, in imposing sentence on a defendant convicted of an offense, may singly or in combination

(1) impose a fine when authorized by law and as provided in AS 12.55.035;

(2) order the defendant to be placed on probation under conditions specified by the court which may include provision for active supervision;

(3) impose a definite term of periodic imprisonment;

(4) impose a definite term of continuous imprisonment;

(5) order the defendant to make restitution as provided in AS 12.55.045;

(6) order the defendant to carry out a continuous or periodic program of community work as provided in AS 12.55.055;

(7) suspend execution of all or a portion of the sentence imposed as provided in AS 12.55.080;

(8) suspend imposition of sentence as provided in AS 12.55.085.

(b) The court, in exercising sentencing discretion as provided in this chapter, shall impose a sentence involving imprisonment when

(1) the defendant deserves to be imprisoned, considering the seriousness of his present offense and his prior criminal history, and imprisonment is equitable considering sentences imposed for other offenses and other defendants under similar circumstances;

(2) imprisonment is necessary to protect the public from further harm by the defendant; or

(3) sentences of lesser severity have been repeatedly imposed for substantially similar offenses in the past and have proven ineffective in deterring the defendant from further criminal conduct.

(c) In addition to the penalties authorized by this section, the court may invoke any authority conferred by law to order a forfeiture of property, suspend or revoke a license, remove a person from office, or impose any other civil penalty. (§ 12 ch 166 SLA 1978; am § 37 ch 102 SLA 1980)

already in state law!

Effect of amendment. — The 1980 amendment rewrote paragraph (3) of subsection (b).

Editor's note. — The cases cited in the note below were decided under former AS 11.05.140.

Legislative history report. — For report on ch. 102, SLA 1980 (HCS CSSB 511), see 1980 Senate Journal Supplement, No. 44, (May 29, 1980) or 1980 House Journal Supplement, No. 79, (May 29, 1980).

There is no authority which would sanction the expansion of the superior court's jurisdiction to pass sentence into a realm of review and modification which is statutorily vested in either the supreme court or the executive branch of government. Therefore, the superior court lacks jurisdiction to review its own sentence, after it has entered a judgment on the matter, more than 60 days after it has imposed sentence. Davenport v. State, Sup. Ct. Op. No. 1218 (File No. 2202), 543 P.2d 1204 (1975); Szeratics v. State, Sup. Ct. Op. No. 1525 (File No. 3390), 572 P.2d 63 (1977).

Test to be used in determining whether multiple offenses can be punished separately. — See State v. Occhipinti, Sup. Ct. Op. No. 1405 (File No. 3084), 562 P.2d 348 (1977).

Separate sentences were called for where defendant's conduct in kidnapping and raping his victim and assaulting her with a deadly weapon constituted the commission of three distinct offenses, each of which violated a different societal interest. State v. Occhipinti, Sup. Ct. Op. No. 1405 (File No. 3084), 562 P.2d 348 (1977).

Sec. 12.55.020. Enforcing judgment to pay money.

Repealed by § 21 ch 166 SLA 1978.

(10) "culpable mental state" means "intentionally", "knowingly", "recklessly", or with "criminal negligence", as those terms are defined in (a) of this section;

(11) "dangerous instrument" means any deadly weapon or anything which, under the circumstances in which it is used, attempted to be used, or threatened to be used, is capable of causing death or serious physical injury;

(12) "deadly force" means force which the person uses with the intent of causing, or uses under circumstances which he knows create a substantial risk of causing, death or serious physical injury; "deadly force" includes intentionally discharging or pointing a firearm in the direction of another person or in the direction in which another person is believed to be and intentionally placing another person in fear of imminent serious physical injury by means of a dangerous instrument;

(13) "deadly weapon" means any firearm, or anything designed for and capable of causing death or serious physical injury, including a knife, an axe, a club, metal knuckles, or an explosive;

(14) "deception" means to knowingly

(A) create or confirm another's false impression which the defendant does not believe to be true, including false impressions as to law or value and false impressions as to intention or other state of mind;

(B) fail to correct another's false impression which the defendant previously has created or confirmed;

(C) prevent another from acquiring information pertinent to the disposition of the property or service involved;

(D) sell or otherwise transfer or encumber property and fail to disclose a lien, adverse claim, or other legal impediment to the enjoyment of the property, whether or not that impediment is a matter of official record; or

(E) promise performance which the defendant does not intend to perform or knows will not be performed;

(15) "defense", other than an affirmative defense, means that

(A) some evidence must be admitted which places in issue the defense; and

(B) the state then has the burden of disproving the existence of the defense beyond a reasonable doubt;

(16) "drug" has the meaning ascribed to it in AS 11.71.900(9);

(17) "dwelling" means a building that is designed for use or is used as a person's permanent or temporary home or place of lodging;

(18) "explosive" means a chemical compound, mixture, or device that is commonly used or intended for the purpose of producing a chemical reaction resulting in a substantially instantaneous release of gas and heat, including dynamite, blasting powder, nitroglycerin, blasting caps, and nitrojelly, but excluding salable fireworks as defined in AS 18.72.050, black powder, smokeless powder, small arms ammunition, and small arms ammunition primers;

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Alaska State Legislature

House of Representatives

Representative Mike Szymanski

Official Business

SR-A-Box 1304B
Anchorage, Alaska 99502
Phone (907) 349-3373

While in Session:
Pouch V
State Capitol
Juneau, Alaska 99811

February 23, 1984

Lou Brune
NRA-ILA
1600 Rhode Island Avenue, NW
Washington, D.C. 20036

Dear Lou:

Attached is a copy of HB 557, a bill relating to forfeiture of weapons used to commit a crime. Statutes that would be affected by this bill are also attached.

The House Judiciary Committee has no immediate plans for hearing this bill.

I will be sure to let Mike know that you called.

Best Regards,

Jane Press
for Mike Szymanski

P.S. Perhaps you can help me too? A while back Mike had asked me to get the names and addresses of the NRA representatives in Alaska. Could you please provide us with this information?

Thanks.

Carolyn WARREN, et al., Appellants,

v.

DISTRICT OF COLUMBIA, et al., Appellees.

Wilfred NICHOL, Appellant,

v.

DISTRICT OF COLUMBIA METROPOLITAN POLICE DEPARTMENT, et al., Appellees.

Nos. 79-6, 79-394.

District of Columbia Court of Appeals.

Argued En Banc April 13, 1981.

Decided Dec. 21, 1981.

Suits against District of Columbia and individual members of metropolitan police department for negligent failure to provide adequate police services were dismissed by the Superior Court, Joseph M. Hannon and William C. Pryor, JJ., and plaintiffs appealed. The Court of Appeals, Nebeker, J., held that: (1) fact that police answered call and arrived outside premises which were scene of burglary and assaults did not give rise to special duty on part of police toward victims therein, and police officers were not answerable in damages for failing to ascertain that assaults were continuing upon victims therein, or for leaving premises without so ascertaining, and (2) where unknown occupants in vehicle which rear-ended another proceeded to beat operator of foremost vehicle, duty of officer arriving on scene was directly related to his official and general duty to investigate offenses, and his directing companion of assault victim to cease efforts to identify assailants, and thus to break off violent confrontation, related solely to his duty to public generally and possessed no additional element necessary to create overriding special relationship and duty to particular persons, and gave rise to no liability.

Affirmed.

Kelly, J., filed opinion concurring in part and dissenting in part in which Mack, J., joined.

Newman, C. J., filed statement concurring in part and dissenting in part.

1. District of Columbia ⇐7

Government and its agents are under no general duty to provide public services, such as police protection, to any particular individual citizen, but, rather, duty to provide public services is owed to public at large, and, absent special relationship between police and individual, no specific legal duty exists.

2. District of Columbia ⇐7

That police answered call and arrived outside premises which were scene of burglary and assaults did not give rise to special duty on part of police toward victims therein, and police officers were not answerable in damages for failing to ascertain that assaults were continuing upon victims therein, or for leaving premises without so ascertaining.

3. District of Columbia ⇐7

Where unknown occupants in vehicle which rear-ended another proceeded to beat operator of foremost vehicle, duty of officer arriving on scene was directly related to his official and general duty to investigate offenses, and his directing companion of assault victim to cease efforts to identify assailants, and thus to break off violent confrontation, related solely to his duty to public generally and possessed no additional element necessary to create overriding special relationship and duty to particular persons, and gave rise to no liability.

Stephen A. Friedman, Washington, D. C., for appellants.

Charles L. Reischel, Deputy Corp. Counsel, with whom Judith W. Rogers, Corp. Counsel, and David P. Sutton, Asst. Corp. Counsel, Washington, D. C., were on the petition, for appellees.

Before NEWMAN, Chief Judge, and KELLY, KERN, NEBEKER, HARRIS, MACK and FERREN, Associate Judges.

OREGON

POSSESSION AND USE OF FIREARMS

166.180 Negligently wounding another. Any person who, as a result of his failure to use ordinary care under the circumstances, wounds any other person with a bullet or shot from any firearm, or with an arrow from any bow, shall be punished by imprisonment in the county jail for a period not to exceed six months, or by a fine not to exceed $500, or both. In addition, any person so convicted shall forfeit any license to hunt, obtained under the laws of this state, and shall be ineligible to obtain a license to hunt for a period of 10 years following the date of his conviction. [Formerly 163.310]

Note: 166.180 to 166.340 were enacted into law by the Legislative Assembly but were not added to or made a part of the Oregon Criminal Code of 1971 by legislative action. See Preface to Oregon Revised Statutes for further explanation.

166.190 Pointing firearm at another; courts having jurisdiction over offense. Any person over the age of 12 years who, with or without malice, purposely points or aims any loaded or empty pistol, gun, revolver or other firearm, at or toward any other person within range of the firearm, except in self-defense, shall be fined upon conviction in any sum not less than $10 nor more than $500, or be imprisoned in the county jail not less than 10 days nor more than six months, or both. Justices of the peace and district courts have jurisdiction concurrent with the circuit court of the trial of violations of this section. When any person is charged before a justice of the peace with violation of this section, the court shall, upon motion of the district attorney, at any time before trial, act as a committing magistrate, and if probable cause be established, hold such person to the grand jury. [Formerly 163.320]

Note: See note under 166.180.

166.210 Definitions for ORS 166.250 to 166.470. As used in ORS 166.250 to 166.270, 166.280, 166.290 and 166.410 to 166.470:

(1) "Firearm" means a weapon, by whatever name known, which is designed to expel a projectile by the action of black powder or smokeless powder and which is readily capable of use as a weapon.

(2) "Pistol," "revolver" and "firearms capable of being concealed upon the person," apply to and include all firearms having a barrel less than 12 inches in length.

(3) "Machine gun" means a weapon of any description by whatever name known, loaded or unloaded, from which two or more shots may be fired by a single pressure on the trigger device. [Amended by 1977 c.769 §1; 1979 c.779 §3]

Note: See note under 166.180.

166.220 Attempting to use dangerous weapon; carrying dangerous weapon with intent to use it. (1) Any person who attempts to use, or who with intent to use the same unlawfully against another, carries or possesses a dagger, dirk, dangerous knife, razor, stiletto, or any loaded pistol, revolver or other firearm, or any instrument or weapon of the kind commonly known as a blackjack, slung shot, billy, sandclub, sandbag, metal knuckles, nunchaku sticks, bomb or bombshell, or any other dangerous or deadly weapon or instrument, commits a Class C felony.

(2) The carrying or possession of any of the weapons specified in subsection (1) of this section by any person while committing, or attempting or threatening to commit a felony or a breach of the peace or any act of violence against the person or property of another is presumptive evidence of carrying such weapon with intent to use the same in violation of subsection (1) of this section.

(3) For the purpose of subsection (1) of this section, any knife with a blade longer than three and one-half inches when carried concealed upon the person, is a dangerous weapon. [Amended by 1975 c.700 §1]

Note: See note under 166.180.

166.230 [Repealed by 1979 c.779 §7]

166.240 Carrying of concealed weapons. (1) Except as provided in ORS 166.260, 166.290 and subsection (2) of this section, any person who carries concealed about his person in any manner, any revolver, pistol, or other firearm, any knife, other than an ordinary pocketknife, or any dirk, dagger, slung shot, metal knuckles, or any instrument by the use of which injury could be inflicted upon the person or property of any other person, shall be punished upon conviction by a fine of not less than $10 nor more than $200, or by imprisonment in the county jail not less than five days nor more than 100 days, or both.

(2) Nothing in subsection (1) of this section applies to any sheriff, constable, police or other peace officer, whose duty it is to serve process or make arrests. Justices of the peace have concurrent jurisdiction to try any person charged with violating any of the provisions of subsection (1) of this section. [Amended by 1977 c.464 §1]

Note: See note under 166.180.

166.250 Unlawful possession of weapons. (1) Except as otherwise provided in this section, ORS 166.260, 166.270, 166.280, 166.290 or 166.410 to 166.470, any person who possesses or has in his possession any machine gun, or carries concealed upon his person or within any vehicle which is under his control or direction any pistol, revolver or other firearm capable of being concealed upon the person, without having a license to carry such firearm as provided in ORS 166.290, is guilty of a misdemeanor, unless he has been convicted previously of any felony or of any crime made punishable by this section, ORS 166.260, 166.270, 166.280, 166.290 or 166.410 to 166.470, in which case he is guilty of a felony.

(2) This section does not prohibit any citizen of the United States over the age of 18 years who resides in or is temporarily sojourning within this state, and who is not within the excepted classes prescribed by ORS 166.270, from owning, possessing or keeping within his place of residence or place of business any pistol, revolver or other firearm capable of being concealed upon the person, and no permit or license to purchase, own, possess or keep any such firearm at his place of residence or place of business is required of any such citizen.

(3) Firearms carried openly in belt holsters are not concealed within the meaning of this section. [Amended by 1979 c.779 §4]

Note: See note under 166.180.

166.260 Persons not affected by ORS 166.250. ORS 166.250 does not apply to or affect:

(1) Sheriffs, constables, marshals, policemen, whether active or honorably retired, or other duly appointed peace officers.

(2) Any person summoned by any such officer to assist in making arrests or preserving the peace, while said person so summoned is actually engaged in assisting the officer.

(3) The possession or transportation by any merchant of unloaded firearms as merchandise.

(4) Members of the Army, Navy or Marine Corps of the United States, or of the National Guard, when on duty.

(5) Organizations which are by law authorized to purchase or receive weapons described in ORS 166.250 from the United States, or from this state.

(6) Duly authorized military or civil organizations while parading, or the members thereof when going to and from the places of meeting of their organization.

(7) Members of any club or organization, for the purpose of practicing shooting at targets upon the established target ranges, whether public or private, while such members are using any of the firearms referred to in ORS 166.250 upon such target ranges, or while going to and from such ranges.

(8) Licensed hunters or fishermen while engaged in hunting or fishing, or while going to or returning from a hunting or fishing expedition.

(9) A corrections officer while transporting or accompanying an individual convicted of or arrested for an offense and confined in a place of incarceration or detention while outside the confines of the place of incarceration or detention. [Amended by 1977 c.207 §1]

Note: See note under 166.180.

166.270 Certain exconvicts forbidden to possess arms. (1) Any person who has been convicted of a felony under the law of this state or any other state, or who has been convicted of a felony under the laws of the Government of the United States, who owns, or has in his possession or under his custody or control any pistol, revolver, or other firearms capable of being concealed upon the person, or machine gun, commits the crime of exconvict in possession of a firearm.

(2) For the purposes of this section, a person "has been convicted of a felony" if, at the time of his conviction for an offense, that offense was a felony under the law of the jurisdiction in which it was committed. Provided, however, that such conviction shall not be deemed a conviction of a felony if:

(a) At the time of conviction, and pursuant to the law of the jurisdiction in which the offense occurred, the offense was made a misdemeanor by the type or manner of sentence actually imposed; or

(b) The offense was for possession of marijuana.

(3) Subsection (1) of this section shall not apply to any person who has been convicted of only one felony under the law of this state or any other state, or who has been convicted of only one felony under the laws of the United States, which felony did not involve the possession or use of a firearm, and who has been discharged from imprisonment, parole or probation for said offense for a period of 15 years prior to the date of alleged violation of subsection (1) of this section.

(4) Exconvict in possession of a firearm is a Class C felony. [Amended by 1975 c.702 §1]

Note: See note under 166.180.

166.275 Possession of weapons by inmates of penal institutions. Any person committed to any penal institution who, while under the jurisdiction of any penal institution or while being conveyed to or from any penal institution, possesses or carries upon his person, or has under his custody or control any dangerous instrument, or any weapon including but not limited to any blackjack, slingshot, billy, sand club, metal knuckles, explosive substance, dirk, dagger, sharp instrument, pistol, revolver or other firearm without lawful authority, is guilty of a felony and upon conviction thereof shall be punished by imprisonment in the penitentiary for a term not more than 20 years. [1953 c.533 §1]

Note: See note under 166.180.

166.280 Seizure of concealed weapons; destruction; exception; sale by auction. (1) The unlawful concealed carrying upon the person or within the vehicle of the carrier of any machine gun, pistol, revolver or other firearm capable of being concealed upon the person, or any firearm used during the commission of any felony or misdemeanor is a nuisance. Any such weapons taken from the person or vehicle of any person unlawfully carrying the same are nuisances, and shall be surrendered to the magistrate before whom the person is taken, except that in any city, county, town or other municipal corporation the weapons shall be surrendered to the head of the police force or police department.

(2) The officers to whom the weapons are surrendered, except as provided under subsection (4) of this section or upon the certificate of a judge of a court of record or of the district attorney of the county that their preservation is necessary or proper to the ends of justice, shall have authority and be responsible, subject to applicable laws, for selling such weapons or shall destroy the weapons to such extent that they are wholly and entirely ineffective and useless for the purpose for which they were manufactured.

(3) Upon the certificate of a judge or of the district attorney that the ends of justice will be subserved thereby, such weapon shall be preserved until the necessity for its use ceases, at which time, except as provided under subsection (4) of this section, the court shall order that the weapons be delivered to the officials having responsibility under applicable laws and subsection (2) of this section for selling such weapons, or destroying the weapons to such extent that they are wholly and entirely ineffective and useless for the purpose for which they were manufactured.

(4) In the event any such weapon has been stolen and is thereafter recovered from the thief or the thief's transferee, it shall not be destroyed but shall be restored to its lawful owner as soon as its use as evidence has been served, upon identification of the weapon and proof of ownership.

(5) The sale of any weapons under this section shall be by public auction. The agency holding the weapons shall conduct the auction annually. The agency shall publish notice of the time and place of the auction in the principal local newspaper no less than 20 nor more than 30 days before the date of the auction. Written or printed notice of the auction shall also be posted in three public places of the county where the sale is to take place, not less than 10 days successively. The agency shall permit public inspection of the weapons to be auctioned. Items shall be sold individually unless there is no interested bidder, in which case they may be sold in lots. [Amended by 1981 c.767 §1]

Note: See note under 166.180.

166.290 Issuance of license to carry weapon concealed; fees; liability. (1) The sheriff of a county, upon proof before him, that the person applying therefor is of good moral character, and that good cause exists for the issuance thereof, may issue to such person a license to carry concealed a pistol, revolver or other firearm for a period of one year from the date of the license, upon payment of the fee established under subsection (3) of this section. The fees shall be turned over to the treasurer of such county and credited to the general fund thereof.

(2) All applications for licenses shall be filed in writing, signed by the applicant, and shall state the name, occupation, residence and business address of the applicant; his date of birth, height, weight, color of eyes and hair, and reason for desiring a license to carry the weapon. The sheriff shall require that the applicant submit to fingerprinting at the time of applying for issuance or renewal of a license under this section. Any license issued upon the application shall set forth the foregoing data and shall, in addition, contain a description of the weapon authorized to be carried, giving the name of the manufacturer, the serial number and the caliber thereof. The record of each license issued or renewed under this section shall be kept in the office of the county clerk. The applications and licenses shall be uniform throughout the state, upon forms to be prescribed by the Attorney General.

(3) Fees for the issuance and renewal of licenses under this section shall be set by the governing body of each county at an amount estimated to provide for the administration of this section, but the fees shall not exceed:

(a) $10 for the issuance of a license.

(b) $2.50 for the renewal of a license.

(4) Neither a sheriff nor any authorized representative of a sheriff who is engaged in the receipt and review of any application for or in the issuing or denial of any license under this section shall incur any civil or criminal liability as the result of the lawful performance of his duties under this section. [Amended by 1973 c.391 §1]

Note: See note under 166.180.

166.300 Killing another as cause for loss of right to bear arms. (1) Any person who has committed, with firearms of any kind or description, murder in any degree, or manslaughter, either voluntary or involuntary, or who in a careless or reckless manner, kills or injures another with firearms, and who, at any time after committing murder or manslaughter or after said careless or reckless killing or injury of another, carries or bears firearms of any kind or description within this state, shall be punished upon conviction by a fine of not more than $500, or by imprisonment in the county jail not to exceed one year, or both.

(2) Subsection (1) of this section does not deprive the people of this state of the right to bear arms for the defense of themselves and the state, and does not apply to any peace officer in the discharge of his official duties or to a member of any regularly constituted military organization while on duty with such military organization.

(3) Justices of the peace, district courts, county courts and all other courts having jurisdiction as justices of the peace, shall have concurrent jurisdiction with the circuit courts of all prosecutions under subsection (1) of this section.

Note: See note under 166.180.

166.310 Concealed weapon found on arrested person; information to be filed. Whenever any person is arrested and it is discovered that he possesses or carries or has possessed or carried upon his person any loaded pistol, revolver or other firearm, or any weapon named or enumerated in ORS 166.220, in violation of ORS 166.220, 166.510 or 166.520, the person making the arrest shall forthwith lay an information for a violation of the section against the person arrested, before the nearest or most accessible magistrate having jurisdiction of the offense, and the magistrate must entertain and examine the information and act thereon in the manner prescribed by law.

Note: See note under 166.180.

166.320 Setting springgun or setgun. (1) Any person who places or sets any loaded springgun, setgun, or any gun, firearm or other device of any kind designed for containing or firing explosives, in any place where it may be fired, exploded or discharged by the contact of any person or animal with any string, wire, rod, stick, spring or other contrivance affixed to or connected with it, or with its trigger, shall be punished upon conviction by a fine of not less than $100 nor more than $500, or by imprisonment in the county jail for not less than 30 days nor more than six months, or both.

(2) Subsection (1) of this section does not apply to any loaded springgun, setgun, firearm or other device placed for the purpose of destroying gophers, moles or other burrowing rodents, and does not prevent the use of a coyote getter by employes of county, state or federal governments engaged in cooperative predatory animal control work.

Note: See note under 166.180.

166.330 Use of firearms with other than incombustible gun wadding. Any person who uses in any firearms discharged on lands within this state, not his own, anything other than incombustible gun wadding, shall be punished upon conviction by a fine of not less than $5 nor more than $100, or by imprisonment in the county jail for not less than two days nor more than 60 days.

Note: See note under 166.180.

166.340 [1965 c.20 §§2, 3; 1969 c.351 §1; repealed by 1981 c.41 §3]

POSSESSION OF DESTRUCTIVE DEVICE OR FIREARM IN PUBLIC BUILDING

166.360 Definitions for ORS 166.360 to 166.380. As used in ORS 166.360 to 166.380, unless the context requires otherwise:

(1) "Capitol building" means the Capitol, the Supreme Court Building, the State Office Building, the State Library Building, the Labor and Industries Building, the State Highway Building, the Agriculture Building or the Public Service Building and includes any new buildings which may be constructed on the same grounds

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PART 3

EXPLOSIVES

76-10-301. Unlawful handling of explosives in city or town.

Cross-References.

Bus Passenger Safety Act, bombing buses or terminals, carrying explosives into terminal or aboard bus, 76-10-1505, 76-10-1507.

PART 5

WEAPONS

Section
76-10-504. Carrying concealed dangerous weapon.
76-10-513. License to carry concealed weapon — Requirements for issuance.
76-10-514. License — Application form.
76-10-515. License — Fingerprints transmitted to bureau of criminal investigation — Report from bureau.

76-10-501. Definitions.

Cross-References.

Bus Passenger Safety Act, offenses related to dangerous weapons or firearms, 76-10-1504, 76-10-1505, 76-10-1507.

76-10-503. Possession of dangerous weapon — Persons, etc.

Constitutionality.

Conviction of an alien under this section for possession of a firearm was not unconstitutional. State v. Vlacil (1982) 645 P 2d 677 (two justices concurring, one justice concurring with separate opinion, and two justices concurring in the result).

Aliens.

State regulation of the possession of firearms by aliens has not been preempted by federal law. State v. Vlacil (1982) 645 P 2d 677 (two justices concurring, one justice concurring with separate opinion, and two justices concurring in the result).

Parolees.

Testimony by a Colorado parole officer that defendant was under his supervision did not permit inference that the parole was from a felony conviction since parole officer had no personal knowledge of the conviction; copies of Colorado court records certified by a notary public who had no custody of the documents were not properly authenticated and could not be received in evidence as proof that defendant had been convicted of a felony. State v. Lamorie (1980) 610 P 2d 342.

76-10-504. Carrying concealed dangerous weapon. (1) Any person, except those persons described in section 76-10-503 and those persons exempted under section 76-10-510, carrying a concealed dangerous weapon, as defined in this part 5, is guilty of a class B misdemeanor, except that a firearm that contains no ammunition and is enclosed in a case, gun box, or securely-tied package shall not be considered a concealed weapon, but:

(a) If the dangerous weapon is a firearm and contains no ammunition, he shall be guilty of a class B misdemeanor;

(b) If the dangerous weapon is a firearm and contains ammunition, he shall be guilty of a class A misdemeanor; or

(c) If the dangerous weapon is a sawed-off shotgun, or if the dangerous weapon is a firearm and is used to commit a crime of violence, he shall be guilty of a felony of the third degree.

(2) Nothing in this part 5 shall prevent any person, except persons described in section 76-10-503, from keeping within his place of residence, place of business, or any vehicle under his control any firearm, except that it shall be a class B misdemeanor to carry a loaded firearm in a vehicle.

History:C. 1953, 76-10-504, enacted by L. 1982, ch. 17, § 1.

Compiler's Notes.

Laws 1982, ch. 17, § 1 repealed old section 76-10-504 (C. 1953, 76-10-504, enacted by L. 1973, ch. 196, § 76-10-504), relating to carrying concealed dangerous weapons, and enacted new section 76-10-504.

Title of Act.

An act relating to concealed weapons; providing for a cross reference to relevant statutes; allowing an exemption from the statute when a firearm contains no ammunition and is enclosed in a case, gun box or securely-tied package; exempting from the statute firearms kept in a home, place of business, or vehicle; prohibiting a loaded firearm from being kept in a vehicle; and providing an effective date.

This act repeals and reenacts section 76-10-504, Utah Code Annotated 1953, as enacted by chapter 196, Laws of Utah 1973. — Laws 1982, ch. 17.

Effective Date.

Section 2 of Laws 1982, ch. 17 provided that the act should take effect upon approval. Approved February 19, 1982.

"Carrying."

A person will be deemed to be "carrying" a concealed weapon where such weapon is shown to be under the person's control and within his immediate, easy or ready access; it is not required that the weapon be upon one's person to constitute "carrying" within the meaning of this section. State v. Williams (1981) 636 P 2d 1092.

Lesser included offenses.

The offense of carrying a loaded firearm in a vehicle, 76-10-505, is not a necessarily included offense of carrying a concealed dangerous weapon. State v. Williams (1981) 636 P 2d 1092.

76-10-505. Carrying loaded firearm in vehicle or on street.

Cross-References.

Registered private security officer exempt during performance of duties, 58-45-20.

Lesser included offense.

The offense of carrying a loaded firearm in a vehicle is not a necessarily included offense of carrying a concealed dangerous weapon, 76-10-504. State v. Williams (1981) 636 P 2d 1092.

76-10-506. Threatening with or using dangerous weapon, etc.

Aggravated assault.

Aggravated assault, 76-5-103, committed by use of a deadly weapon is not the same crime proscribed by this section, and a person convicted of aggravated assault is not entitled to receive the misdemeanor penalty provided by this section, but is to be sentenced under 76-5-103. State v. Verdin (1979) 595 P 2d 862.

76-10-513. License to carry concealed weapon — Requirements for issuance. (1) The sheriff of a county, commissioner of public safety, chief of police, city marshal, town marshal, or other head of the police department of any city or county, upon proof that the person applying is of good character, and upon a showing that good cause exists for the issuance, may issue to such person a license to carry a concealed weapon within their jurisdiction for any period of time not to exceed one year from the issuance date of the license.

(2) A license may include reasonable restrictions which the issuing authority deems warranted including, but not limited to, time, place, or circumstances under which the applicant may carry the weapon.

History: C. 1953, 76-10-513, enacted by L. 1973, ch. 196, § 76-10-513; L. 1979, ch. 76, § 1.

Compiler's Notes.

The 1979 amendment designated the former section as subsec. (1); substituted

WASHINGTON

9.40.120 Incendiary devices——Penalty. Every person who possesses, manufactures, or disposes of an incendiary device knowing it to be such is guilty of a felony, and upon conviction, shall be punished by imprisonment in a state prison for a term of not more than twenty-five years. [1971 ex.s. c 302 § 4; 1969 ex.s. c 79 § 3.]

Severability——1971 ex.s. c 302: See note following RCW 9.41.010.

9.40.130 Incendiary devices——Exceptions. RCW 9.40.120, as now or hereafter amended, shall not prohibit the authorized use or possession of any material, substance, or device described therein by a member of the armed forces of the United States or by firemen, or peace officers, nor shall these sections prohibit the use or possession of any material, substance, or device described therein when used solely for scientific research or educational purposes or for any lawful purpose. RCW 9.40.120, as now or hereafter amended, shall not prohibit the manufacture or disposal of an incendiary device for the parties or purposes described in this section. [1971 ex.s. c 302 § 5; 1969 ex.s. c 79 § 4.]

Severability——1971 ex.s. c 302: See note following RCW 9.41.010.

Chapter 9.41
FIREARMS AND DANGEROUS WEAPONS

Sections

9.41.010 Terms defined.
9.41.025 Committing crime when armed——Penalties——"Inherently dangerous" defined——Resisting arrest.
9.41.030 Being armed prima facie evidence of intent.
9.41.040 Unlawful possession of a short firearm or pistol——Certain persons not precluded from ownership of firearms.
9.41.050 Carrying pistol.
9.41.060 Exception to restriction on carrying pistol.
9.41.070 Issue of licenses to carry——Fee——Revocation——Renewal.
9.41.080 Delivery to minors and others forbidden.
9.41.090 Commercial sales regulated——Requirements for delivery——Hold on delivery.
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9.41.100 Dealers to be licensed.
9.41.110 Dealer's licenses, by whom granted and conditions thereof——Wholesale sales excepted——Permits prohibited.
9.41.120 Certain transfers forbidden.
9.41.130 False information forbidden.
9.41.140 Alteration of identifying marks——Exceptions.
9.41.150 Exemptions.
9.41.160 General penalties.
9.41.170 Alien's license to carry firearms——Exception.
9.41.180 Setting spring gun.
9.41.185 Coyote getters.
9.41.190 Machine guns prohibited——Exception.
9.41.200 Machine gun defined.
9.41.210 Penalty.
9.41.220 Machine guns and parts contraband.
9.41.230 Aiming or discharging firearms.
9.41.240 Use of firearms by minor.
9.41.250 Dangerous weapons——Evidence.
9.41.260 Dangerous exhibitions.
9.41.270 Weapons apparently capable of producing bodily harm, carrying, exhibiting, displaying, or drawing unlawful——Penalty——Exceptions.
9.41.280 Students carrying dangerous weapons on school premises——Penalty——Exceptions.
9.41.290 Consistency of local laws.

Carrying loaded shotgun or rifle in vehicle: RCW 77.16.250.

Explosives: Chapter 70.74 RCW.

Rifles and shotguns, purchasing out-of-state and by nonresidents: Chapter 19.70 RCW.

Shooting firearm from, across, or along public highway: RCW 77.16.260.

9.41.010 Terms defined. (1) "Short firearm" or "pistol" as used in this chapter means any firearm with a barrel less than twelve inches in length.

(2) "Crime of violence" as used in this chapter means:

(a) Any of the following felonies, as now existing or hereafter amended: Any felony defined under any law as a class A felony or an attempt to commit a class A felony, criminal solicitation of or criminal conspiracy to commit a class A felony, manslaughter in the first degree, manslaughter in the second degree, indecent liberties if committed by forcible compulsion, rape in the second degree, kidnapping in the second degree, arson in the second degree, assault in the second degree, extortion in the first degree, burglary in the second degree, and robbery in the second degree;

(b) Any conviction for a felony offense in effect at any time prior to July 1, 1976, which is comparable to a felony classified as a crime of violence in subsection (2) (a) of this section; and

(c) Any federal or out-of-state conviction for an offense comparable to a felony classified as a crime of violence under subsection (2) (a) or (b) of this section.

(3) "Firearm" as used in this chapter means a weapon or device from which a projectile may be fired by an explosive such as gunpowder.

(4) "Commercial seller" as used in this chapter means a person who has a federal firearms license. [1983 c 232 § 1; 1971 ex.s. c 302 § 1; 1961 c 124 § 1; 1935 c 172 § 1; RRS § 2516-1.]

Severability——1983 c 232: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1983 c 232 § 14.]

Severability——1971 ex.s. c 302: "If any provision of this act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected." [1971 ex.s. c 302 § 35.]

Severability——1961 c 124: "If any part of this act is for any reason declared void, such invalidity shall not affect the validity of the remaining portions of this act." [1961 c 124 § 13.]

Preemption and general repealer——1961 c 124: "All laws or parts of laws of the state of Washington, its subdivisions and municipalities inconsistent herewith are hereby preempted and repealed." [1961 c 124 § 14.]

Short title——1935 c 172: "This act may be cited as the 'Uniform Firearms Act.'" [1935 c 172 § 18.]

Severability——1935 c 172: "If any part of this act is for any reason declared void, such invalidity shall not affect the validity of the remaining portions of this act." [1935 c 172 § 17.]

Construction——1935 c 172: "This act shall be so interpreted and construed as to effectuate its general purpose to make uniform the law of those states which enact it." [1935 c 172 § 19.]

9.41.025 Committing crime when armed——Penalties——"Inherently dangerous" defined——Resisting arrest. (Effective until July 1, 1984.) Any person who shall commit or attempt to commit any felony, including but not limited to assault in the first degree, rape in the first degree, burglary in the first degree, robbery in the first degree, riot, or any other felony which includes as an element of the crime the fact that the accused was armed with a firearm, or any misdemeanor or gross misdemeanor categorized herein as inherently dangerous, while armed with, or in the possession of any firearm, shall upon conviction, in addition to the penalty provided by statute for the crime committed without use or possession of a firearm, be imprisoned as herein provided:

(1) For the first offense the court shall impose a sentence of not less than five years, which sentence shall not be suspended or deferred;

(2) For a second offense, or if, in the case of a first conviction of violation of any provision of this section, the offender shall previously have been convicted of violation of the laws of the United States or of any other state, territory, or district relating to the use or possession of a firearm while committing or attempting to commit a crime, the offender shall be imprisoned for not less than seven and one-half years, which sentence shall not be suspended or deferred;

(3) For a third or subsequent offense, or if the offender shall previously have been convicted two or more times in the aggregate of any violation of the law of the United States or of any other state, territory, or district relating to the use or possession of a firearm while committing or attempting to commit a crime, the offender shall be imprisoned for not less than fifteen years, which sentence shall not be suspended or deferred;

(4) Misdemeanors or gross misdemeanors categorized as "inherently dangerous" as the term is used in this statute means any of the following crimes or an attempt to commit any of the same: Simple assault, coercion, vehicle prowling, escape in the third degree, obstructing a public servant, theft in the third degree, resisting arrest, and communication with a minor for immoral purposes.

(5) If any person shall resist apprehension or arrest by firing upon a law enforcement officer, such person shall in addition to the penalty provided by statute for resisting arrest, be guilty of a felony and punished by imprisonment for not less than ten years, which sentence shall not be suspended or deferred. [1982 1st ex.s. c 47 § 1; 1981 c 258 § 1; 1969 ex.s. c 175 § 1.]

Severability——1982 1st ex.s. c 47: See note following RCW 9.41.190.

9.41.030 Being armed prima facie evidence of intent. In the trial of a person for committing or attempting to commit a crime of violence, the fact that he was armed with a pistol and had no license to carry the same shall be prima facie evidence of his intention to commit said crime of violence. [1935 c 172 § 3; RRS § 2516-3.]

9.41.040 Unlawful possession of a short firearm or pistol——Certain persons not precluded from ownership of firearms. (1) A person is guilty of the crime of unlawful possession of a short firearm or pistol, if, having previously been convicted in this state or elsewhere of a crime of violence or of a felony in which a firearm was used or displayed, the person owns or has in his possession any short firearm or pistol.

(2) Unlawful possession of a short firearm or pistol shall be punished as a class C felony under chapter 9A-.20 RCW.

(3) As used in this section, a person has been "convicted" at such time as a plea of guilty has been accepted or a verdict of guilty has been filed, notwithstanding the pendency of any future proceedings including but not limited to sentencing, post-trial motions, and appeals. A person shall not be precluded from possession if the conviction has been the subject of a pardon, annulment, certificate of rehabilitation, or other equivalent procedure based on a finding of the rehabilitation of the person convicted or the conviction has been the subject of a pardon, annulment, or other equivalent procedure based on a finding of innocence.

(4) Except as provided in subsection (5) of this section, a person is guilty of the crime of unlawful possession of a short firearm or pistol if, after having been convicted of any felony violation of the uniform controlled substances act, chapter 69.50 RCW, or equivalent statutes of another jurisdiction, or after any period of confinement under RCW 71.05.320 or an equivalent statute of another jurisdiction, or following a record of commitment pursuant to chapter 10.77 RCW or equivalent statutes of another jurisdiction, he owns or has in his possession or under his control any short firearm or pistol.

(5) Notwithstanding subsection (1) of this section, a person convicted of an offense other than murder, manslaughter, robbery, rape, indecent liberties, arson, assault, kidnapping, extortion, burglary, or violations with respect to controlled substances under RCW 69.50.401(a) and 69.50.410, who received a probationary sentence under RCW 9.95.200, and who received a dismissal of the charge under RCW 9.95.240, shall not be precluded from ownership, possession, or control of a firearm as a result of the conviction. [1983 c 232 § 2; 1961 c 124 § 3; 1935 c 172 § 4; RRS § 2516-4.]

Severability——1983 c 232: See note following RCW 9.41.010.

9.41.050 Carrying pistol. (1) Except in the person's place of abode or fixed place of business, a person shall not carry a pistol concealed on his or her person without a license to carry a concealed weapon.

(2) A person who is in possession of an unloaded pistol shall not leave the unloaded pistol in a vehicle unless the unloaded pistol is locked within the vehicle and concealed from view from outside the vehicle.

(3) A person shall not carry or place a loaded pistol in any vehicle unless the person has a license to carry a concealed weapon and: (a) The pistol is on the licensee's person, (b) the licensee is within the vehicle at all times that the pistol is there, or (c) the licensee is away from the vehicle and the pistol is locked within the vehicle and concealed from view from outside the vehicle. [1982 1st

ex.s. c 47 § 3; 1961 c 124 § 4; 1935 c 172 § 5; RRS § 2516-5.]

Severability——1982 1st ex.s. c 47: See note following RCW 9.41.190.

9.41.060 Exception to restriction on carrying pistol. The provisions of RCW 9.41.050 shall not apply to marshals, sheriffs, prison or jail wardens or their deputies, policemen or other law enforcement officers, or to members of the army, navy or marine corps of the United States or of the national guard or organized reserves when on duty, or to regularly enrolled members of any organization duly authorized to purchase or receive such weapons from the United States or from this state, or to regularly enrolled members of clubs organized for the purpose of target shooting or modern and antique firearm collecting or to individual hunters: *Provided*, Such members are at, or are going to or from their places of target practice, or their collector's gun shows and exhibits, or are on a hunting, camping or fishing trip, or to officers or employees of the United States duly authorized to carry a concealed pistol, or to any person engaged in the business of manufacturing, repairing, or dealing in firearms or the agent or representative of any such person having in his possession, using, or carrying a pistol in the usual or ordinary course of such business, or to any person while carrying a pistol unloaded and in a secure wrapper from the place of purchase to his home or place of business or to a place of repair or back to his home or place of business or in moving from one place of abode or business to another. [1961 c 124 § 5; 1935 c 172 § 6; RRS § 2516-6.]

9.41.070 Issue of licenses to carry——Fee——Revocation——Renewal. (1) The judge of a court of record, the chief of police of a municipality, or the sheriff of a county, shall within thirty days after the filing of an application of any person issue a license to such person to carry a pistol concealed on his person within this state for four years from date of issue, for the purposes of protection or while engaged in business, sport or while traveling. However, if the applicant does not have a valid permanent Washington driver's license or Washington state identification card or has not been a resident of the state for the previous consecutive ninety days, the issuing authority shall have up to sixty days after the filing of the application to issue a license. Such citizen's constitutional right to bear arms shall not be denied to him, unless he:

(a) Is ineligible to own a pistol under the provisions of RCW 9.41.040; or

(b) Is under twenty-one years of age; or

(c) Is subject to a court order or injunction regarding firearms pursuant to RCW 10.99.040, 10.99.045, or 26.09.060; or

(d) Is free on bond or personal recognizance pending trial, appeal, or sentencing for a crime of violence; or

(e) Has an outstanding warrant for his or her arrest from any court of competent jurisdiction for a felony or misdemeanor.

The license shall be revoked immediately upon conviction of a crime which makes such a person ineligible to own a pistol or upon the third conviction for a violation of this chapter within five calendar years. The license shall be in triplicate, in form to be prescribed by the department of licensing, and shall bear the name, address, and description, fingerprints and signature of the licensee, and the licensee's driver's license number or state identification card number if used for identification in applying for the license. The original thereof shall be delivered to the licensee, the duplicate shall within seven days be sent by registered mail to the director of licensing and the triplicate shall be preserved for six years, by the authority issuing said license.

(2) The fee for the original issuance of a four-year license shall be twenty dollars: *Provided*, That no other additional charges by any branch or unit of government shall be borne by the applicant for the issuance of the license: *Provided further*, That the fee shall be distributed as follows:

(a) Four dollars shall be paid to the state general fund;

(b) Four dollars shall be paid to the agency taking the fingerprints of the person licensed; and

(c) Twelve dollars shall be paid to the issuing authority for the purpose of enforcing this chapter.

(3) The fee for the renewal of such license shall be twelve dollars: *Provided*, That no other additional charges by any branch or unit of government shall be borne by the applicant for the renewal of the license: *Provided further*, That the fee shall be distributed as follows:

(a) Four dollars shall be paid to the state general fund; and

(b) Eight dollars shall be paid to the issuing authority for the purpose of enforcing this chapter.

(4) A licensee may renew a license if the licensee applies for renewal within ninety days before or after the expiration date of the license. A license so renewed shall take effect on the expiration date of the prior license. A licensee renewing after the expiration date of the license must pay a late renewal penalty of ten dollars in addition to the renewal fee specified in subsection (3) of this section.

(5) Notwithstanding the requirements of subsections (1) through (4) of this section, the chief of police of the municipality or the sheriff of the county of the applicant's residence may issue a temporary emergency license for good cause pending review under subsection (1) of this section.

(6) A political subdivision of the state shall not modify the requirements of this section. A civil suit may be brought to enjoin a wrongful refusal to issue a license. The prevailing party is entitled to reasonable costs, including attorneys' fees. [1983 c 232 § 3; 1979 c 158 § 1; 1971 ex.s. c 302 § 2; 1961 c 124 § 6; 1935 c 172 § 7; RRS § 2516-7.]

Severability——1983 c 232: See note following RCW 9.41.010.

Severability——1971 ex.s. c 302: See note following RCW 9.41.010.

ALASKA STATE LEGISLATURE
HOUSE OF REPRESENTATIVES
RESEARCH AGENCY

Pouch Y, State Capitol
Juneau, Alaska 99811
(907) 465-3991

October 28, 1983

MEMORANDUM

TO: Representative John Liska

FROM: Heidi Borson HHB
Legislative Analyst

RE: Concealed Weapons
Research Request 83-217

Mary Witman of your staff requested that we provide information on concealed weapons laws and handgun training programs in Alaska and other states. Specifically, she asked us to research the following topics:

- Can Alaska residents obtain permits to carry concealed weapons?
- Which states allow citizens to carry concealed weapons? What are the consequences, i.e., how is the crime rate affected?
- What handgun training programs exist in other states, especially for women? How have these programs affected the crime rate?

In collecting data to respond to this request, I contacted law enforcement and public safety officials in several states, and the National Rifle Association headquarters in Washington, D.C.; I also used information on concealed weapons compiled by our agency for a previously released research request.

CONCEALED WEAPONS LAWS IN ALASKA AND OTHER STATES

Alaska law provides that citizens may purchase and possess firearms; however, under AS 11.61.220, carrying a concealed weapon constitutes a class B misdemeanor. Furthermore, no statutory provision exists for obtaining a permit to carry a concealed weapon under any circumstances.

Fifteen other states and the District of Columbia also prohibit carrying concealed weapons. Those states are listed below:

Arizona	Kentucky	Ohio
Arkansas	Missouri	Oklahoma
Hawaii	Nebraska	Tennessee
Illinois	New Mexico	Texas
Kansas	North Carolina	Wisconsin

The remaining 33 states permit citizens to carry concealed weapons in some circumstances. Each of those states, except Vermont, requires citizens to obtain permits to carry concealed weapons; however, permit policies vary greatly. Some states, like Washington, issue permits upon demand, while other states, like Deleware and West Virginia, have such stringent permit policies that permits are seldom issued. A list of states which allow citizens to carry concealed weapons and a description of their concealed weapons laws follow:

- Alabama allows its county sheriffs to issue permits for carrying concealed weapons. The penalty for carrying a concealed weapon without a permit varies according to county.

- In California, permits to carry concealed weapons are issued by local sheriffs or police departments. Illegal possession of a concealed weapon is a misdemeanor.

- State law in Connecticut authorizes first selectmen, chiefs of police, and state police to issue permits for the possession of handguns. No distinction is made between concealed and unconcealed weapons. Violation of the statute is a felony with a maximum penalty of a $1,000 fine and/or five years in prison.

- Deleware has a system of permits for carrying concealed weapons; however, few permits are actually issued. To obtain a permit, the applicant must show cause such as a demonstrated threat to his or her life or a job which involves transporting large sums of money. Permits are issued by state courts and the Attorney General's office. Carrying a concealed weapon without a permit is a felony.

- County commissions in Florida may issue permits for the possession of firearms, concealed or unconcealed. Carrying a concealed weapon without a permit is a felony, while carrying an unconcealed weapon without a permit is a misdemeanor. Counties set their own criteria for the issuance of permits.

Population of Las Vegas 463,087

Office of the District Attorney

CLARK COUNTY COURTHOUSE
LAS VEGAS, NEVADA 89101
(702) 386-4703

ROBERT J. MILLER
DISTRICT ATTORNEY

REX BELL
ASSISTANT DISTRICT ATTORNEY

MAR 27 1984

March 23, 1984

Representative John Liska
Pouch V
Juneau, Alaska 99801

Re: Carrying Concealed Weapon permits

Dear Representative Liska:

District Attorney Robert J. Miller has asked me, as his Assistant, to send you copies of our Carrying Concealed Weapon laws which I am hereby enclosing. The main law that could be of interest is 202.350 which covers more of the area that you are concerned with. The other statutes we have enclosed are simply for your information.

The Sheriff of our County has issued 639 Concealed Weapon permits to date. During this year he has pulled three (3) of these. The three were pulled generally on the basis that the individuals abused their privilege by flashing the weapon but not pulling it on anybody. In my experience, it is very unusual for us to pull any permits. Before a Concealed Weapon permit is issued, the persons are very carefully screened and we are very selective as to who gets a permit.

I hope that this information will be of help to you and if there is anything further that we can do for you, please contact me.

Sincerely,

Rex A Bell

REX A. BELL
ASSISTANT DISTRICT ATTORNEY

RAB:bkw

enclosures

cc: Robert J. Miller,
District Attorney

MAR 20 1984
MAR 26 1984

STATE OF ALASKA
THE LEGISLATURE

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

LEGISLATIVE AFFAIRS AGENCY

M E M O R A N D U M March 26, 1984

SUBJECT: Permit for armed bodyguard

TO: Representative John Liska

FROM: Billy G. Berrier
Director
Division of Legal Services

You have asked whether in our opinion AS 18.65.500 gives the Commissioner of Public Safety the authority to issue permits for armed bodyguards.

In my opinion it does not.

The section provides:

> Sec. 18.65.500
>
> USE OF ARMED BODYGUARDS.
> A person who, in this state, hires another person to guard a person in this state with arms or deadly weapons, or a person who comes into this state armed with deadly weapons for the purpose of guarding a person, without a written permit from the commissioner of public safety, is guilty of a misdemeanor and upon conviction is punishable by imprisonment for not more than 60 days, or by a fine of not more than $1,000, or by both.

It could be argued that the commissioner by implication is granted the power to issue permits because of the term "without a written permit from the Commissioner of Public Safety".

The more plausible argument is that the language is for the purpose of recognizing the possibility that other law may give the commissioner authority to issue permits and therefore this language prevents inconsistency.

This is strengthend by the context in which the section was adopted. It was part of Chapter 59 Session Laws of Alaska 1976. The title was "Relating to the licensing of security guards and security guard agencies and providing for an effective date". The security guard provisions are Article 4 of AS 18.65 (Sec. 18.65.400-490) and the section involved is Article 5 of that chapter.

The context of the Act makes it clear the question of licensing was before the legislature so it appears the intent to restrict the use of armed bodyguards was controlling and the choice not to give power here to issue permits was intentional.

BGB:ojb
J5/008

STATE OF ALASKA

BILL SHEFFIELD, GOVERNOR

DEPARTMENT OF PUBLIC SAFETY

OFFICE OF THE COMMISSIONER

POUCH N
JUNEAU, ALASKA 99811
PHONE: 465-4322

April 2, 1984

The Honorable John J. Liska
Representative
Alaska State Legislature
Pouch V
Juneau, AK 99811

Dear Representative Liska:

This is in response to your inquiries about the relationship of issuing concealed weapon licenses by the Department as it relates to AS 18.65.500 "Use of Bodyguards."

This Department does not issue concealed weapon licenses under any circumstances. There is no provisions for doing so and the Department wishes it to remain that way.

Since the enactment of AS 18.65.500, there has been no known request for "a written permission," nor has anyone been arrested for violation of the statute. The statute makes reference to any arms or deadly weapon, but does not mention concealed.

Sincerely,

Robert J. Sundberg
Commissioner

12-L2LH

STATE OF ALASKA 1984 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date:

REQUEST
Bill/Resolution No.: HB 647
Title: "... possession of concealed weapons."
Sponsor: Representative Liska
Requestor: House Judiciary
Date of Request: 3/23/84

FISCAL DETAIL
Agency Affected: Public Safety
Program Category Affected: Administration of Justice
BRU, Program or Subprogram(s) Affected: Alaska State Troopers

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 84	FY 85	FY 86	FY 87	FY 88	FY 89
OPERATING						
100 PERSONAL SERVICES		173.3	163.5	173.3	183.7	194.7
200 TRAVEL		2.0	2.1	2.2	2.3	2.4
300 CONTRACTUAL		156.6	166.0	176.0	186.6	197.8
400 SUPPLIES		13.0	13.8	14.6	15.5	16.4
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS						
800 MISCELLANEOUS						
TOTAL OPERATING		364.3	345.4	366.1	388.1	411.3
CAPITAL						
REVENUE		560.0	420.0	420.0	420.0	420.0

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER (Program Receipts)		364.3	345.4	366.1	388.1	411.3
TOTAL		364.3	345.4	366.1	388.1	411.3

POSITIONS:

FULL-TIME		4	4	4	4	4
PART-TIME						
TEMPORARY		2				

SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

Not indicated by sponsor of bill.

ANALYSIS: Attach a separate page for analysis

Prepared By: Francis C. Allan
Phone: 269-5691
Division: Alaska State Troopers
Date: 03/23/84

Approved by Commissioner: Robert J. Sundberg
Date: 3/27/84
Agency: Public Safety

Distribution (by Agency preparing fiscal note):
- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)

12/1/83

HB 647

Fiscal Note Analysis

This fiscal note is based upon the Alaska State Troopers experience with Security Guard Licensing and upon the Seattle Police Department's licensing experience for concealed weapons permits.

Processing of a security guard license requires approximately 45 minutes to 1 hour by an experienced clerk. Concealed weapons permit application processing should require at least this amount of time. The Seattle Police Department issues concealed weapons permits to approximately 1.6% of the city's population. These permits cover a two-year time period. Because of the more independent nature of Alaska's population, we estimate that approximately 2% of our state's population will request permits in the first year and 1.5% each year thereafter. A figure of 560,000 is used for our current population. Thus, it is estimated that approximately 11,200 permits will be processed during the first year and 8,400 in each succeeding year. Since it will require one hour to process each of the 11,200 permit requests received in the first year and there are 1,950 working hours in each State employee straight-time year, it will require 5.7 employees to implement the program. It is felt that four full-time employees and two six-month project employees can efficiently implement the program.

The costs in future years reflect the reduced work load and the project employees will not be required after the first year nor will any equipment be needed after the first year.

Other assumptions used in these calculations include a 6% cost increase in each year after FY 85, a $50 permit cost to the applicant, that office space can be provided in Alaska State Troopers headquarters at no cost (dependent upon construction of the new Crime Lab and the resulting space availability), a two year permit period, that the legislation is enacted immediately thus allowing for the positions to be established effective 7/1/84 and a steady population count of approximately 560,000.

HB 647
Concealed Weapon Permit

100 - Personal Services

	SGT/PFT	CLERK V	CT II/PFT	CT II/PFT	CT II/NP	CT II/NP
Salary	$ 47,434	$ 25,404	$ 20,096	$ 20,096	$ 8,826	$ 8,826
Benefits	12,016	4,553	3,602	3,602	724	724
SBS	2,550	1,557	1,232	1,232		
Ins.	2,612	2,728	2,728	2,728		
Total	$ 64,612	$ 34,242	$ 27,658	$ 27,658	$ 9,550	$ 9,550

Subtotal $ 173,270

200 - Travel

Only minimal travel is anticipated for investigations and training. 2,000

300 - Contractual

Fingerprint processing - FBI - $12.50 per card X 11,200 =	140,000	
Lease costs for ASPIN (AJIS) terminal lines $292 X 12 =	3,504	
Lease costs for one economy size vehicle $369 X 12 =	4,428	
Telephone/Postage estimated	7,000	
PSEA Cleaning Allowance for Sgt.	540	
PSEA Physical Exam	300	
Maintenance Agreements on Typewriters and ASPIN	825	
Subtotal		156,597

400 - Supplies and Materials

Forms	10,000	
Miscellaneous office supplies (eg - typewriter ribbons, desk top commodities, etc.)	3,000	
Subtotal		13,000

500 - Equipment

Desk, DP, 60" X 30"	469	
Chair, Executive	235	
ASPIN Terminal	8,194	
Dictating machine	100	
Bookcase	136	
2 X Side Chairs	216	
3 X Desk, with typing arms	1,718	
3 X Chairs, secretarial	816	
Typewriter, IBM 85	1,800	
2 X Typewriter, IBM Correcting Selectric	1,650	
8 X 4 Drawer, Letter size file cabinets	2,844	
3 X Side chairs	324	
Transcriber	900	
Subtotal		19,402

Total $ 364,269

1.	POSITION TITLE: Sergeant P.S.			RANGE/STEP: 78/A	BARG. UNIT: PSEA	FORM 12 PAGE/LINE	COV.	APPROV.	DISAPP.
2.	TYPE OF POSITION: PFT	STAFF MONTHS: 13.1	RP NUMBER	PCN NUMBER	BRU PRIORITY: 1	LOCATION: EBA	ELECTION DISTRICT	LEG.		
3.	CONTINUATION LEVEL		ADDITION						

4.	TYPE OF EXPENDITURE		AMOUNT
	1	2	3
	PERSONAL SERVICES		
5.	Salary	47,434	
6.	Benefits	12,016	
7.	Supplementa Benefits	2,550	
8.	Fixed Benefits	2,612	
9.	TOTAL PERSONAL SERVICES	01	64,612
10.	Travel	02	
11.	Contractual	03	
12.	Commodities	04	
13.	Equipment	05	
14.	Other		
15.	TOTAL COST		64,612

	RECEIPT CODE	FUNDING SOURCE		
16.		Federal Receipts	1002	
17.		G.F. Match	1003	
18.		General Funds	1004	64,612
19.		I-A Receipts	1005	
20.		Program Receipts	1028	
21.		Other		

FOR B&M USE ONLY
4A KEY NUMBER __ __ - __ __ - __ __ - __ __ - __ __

JUSTIFICATION

The State Trooper Sergeant is needed to head this small unit because of the expertise an individual in the job class has in background investigations, weapons familiarity and the legal aspects of weapons use. This individual will be responsible for developing, implementing and maintaining the concealed weapons permit program including developing regulations.

13 REQUEST FOR NEW POSITION

AGENCY: Department of Public Safety
PROGRAM: Crime ID & Apprehension
BRU: Alaska State Troopers
COMPONENT: Director's Office

Revised Date

FY 85

01-1136 (7/82) - 1

1.	POSITION TITLE: Clerk V			RANGE/STEP: 11/A	BARG. UNIT: APEA/GGU	FORM 12 PAGE/LINE	COV.	APPRDV.	DISAPP.
2.	TYPE OF POSITION: PFT	STAFF MONTHS: 13.1	RP NUMBER	PCN NUMBER	BRU PRIORITY: 2	LOCATION: EBA	ELECTION DISTRICT	LEG.		

3. CONTINUATION LEVEL | ADDITION

4. TYPE OF EXPENDITURE		AMOUNT
1	2	3
PERSONAL SERVICES		
5. Salary	25,404	
6. Benefits	4,553	
7. Supplemental Benefits	1,557	
8. Fixed Benefits	2,728	
9. TOTAL PERSONAL SERVICES	01	34,242
10. Travel	02	
11. Contractual	03	
12. Commodities	04	
13. Equipment	05	
14. Other		
15. TOTAL COST		34,242

	RECEIPT CODE	FUNDING SOURCE		
16.		Federal Receipts	1002	
17.		G.F. Match	1003	
18.		General Funds	1004	34,242
19.		I-A Receipts	1005	
20.		Program Receipts	1028	
21.		Other		

FOR B&M USE ONLY
4A KEY NUMBER __ __ - __ __ - __ __ - __ __ - __ __

JUSTIFICATION

Under the direction of the Sergeant in charge of the Concealed Weapons Permit Program this position will administer and supervise the full time and project employees working in the program.
This position would also be responsible for developing a comprehensive knowledge of the program, to include fingerprinting in addition to general administrative duties. These duties would consist of organizing the the unit and providing control over permit files, their classification and cross referencing.
This position would be responsible for procurement of of office supplies and materials necessary for the unit. This position would establish uniform correspondence based upon the individuals technical knowledge. Reconcile revenue received.

13 REQUEST FOR NEW POSITION

AGENCY: Department of Public Safety
PROGRAM: Crime ID & Apprehension
BRU: Alaska State Troopers
COMPONENT: Director's Office

Revised Date

FY 85

01-1136 (7/82) - 13

1.	POSITION TITLE: Clerk Typist II			RANGE/STEP: 7/A	BARG. UNIT: APEA/GGU	FORM 12 PAGE/LINE	COV.	APPRDV.	DISAPP.
2.	TYPE OF POSITION: PFT	STAFF MONTHS: 13.1	RP NUMBER	PCN NUMBER	BRU PRIORITY: 3	LOCATION: EBA	ELECTION DISTRICT	LEG.		
3.	CONTINUATION LEVEL		ADDITION		JUSTIFICATION				

	TYPE OF EXPENDITURE		AMOUNT
	1	2	3
	PERSONAL SERVICES		
5.	Salary	20,096	
6.	Benefits	3,602	
7.	Supplemental Benefits	1,232	
8.	Fixed Benefits	2,728	
9.	TOTAL PERSONAL SERVICES	01	27,658
10.	Travel	02	
11.	Contractual	03	
12.	Commodities	04	
13.	Equipment	05	
14.	Other		
15.	TOTAL COST		27,658

	RECEIPT CODE	FUNDING SOURCE		
16.		Federal Receipts	1002	
17.		G.F. Match	1003	
18.		General Funds	1004	27,658
19.		I-A Receipts	1005	
20.		Program Receipts	1028	
21.		Other		

FOR B&M USE ONLY
4A KEY NUMBER __ __ - __ __ - __ __ - __ __ - __ __

This position will be needed to process concealed weapons permits and perform, under close supervision, record checks. This position will utilize the ASPIN (AJIS) terminal to check for a criminal record. It will sort and process permit applications, records and reports. It will perform counter work requiring interpretation of available guidelines and requirements concerning permit applications. This position will will secure, prepare and copy data, check figures, collect fees and tabulate necessary data.

13 REQUEST FOR NEW POSITION

01-1136 (7/82) - 13

AGENCY: Department of Public Safety
PROGRAM: Crime ID & Apprehension
BRU: Alaska State Troopers
COMPONENT: Director's Office

Revised Date

FY 85

	POSITION TITLE				RANGE/STEP	BARG. UNIT	FORM: 12 PAGE/LINE	GOV.	APPROV.	DISAPP.
1.	Clerk Typist II				7/A	APEA/GGU				
2.	TYPE OF POSITION	STAFF MONTHS	RP NUMBER	PCN NUMBER	BRU PRIORITY	LOCATION	ELECTION DISTRICT	LEG.		
	PFT	13.1			4	EBA				
3.	CONTINUATION LEVEL		ADDITION							

4.	TYPE OF EXPENDITURE		AMOUNT
	1	2	3
	PERSONAL SERVICES		
5.	Salary	20,096	
6.	Benefits	3,602	
7.	Supplemental Benefits	1,232	
8.	Fixed Benefits	2,728	
9.	TOTAL PERSONAL SERVICES 01		27,658
10.	Travel 02		
11.	Contractual 03		
12.	Commodities 04		
13.	Equipment 05		
14.	Other		
15.	TOTAL COST		27,658

	RECEIPT CODE	FUNDING SOURCE	
16.		Federal Receipts 1002	
17.		G.F. Match 1003	
18.		General Funds 1004	27,658
19.		I-A Receipts 1005	
20.		Program Receipts 1028	
21.		Other	

FOR B&M USE ONLY
4A KEY NUMBER __ __ - __ __ - __ __ - __ __ - __ __

JUSTIFICATION

This position will be needed to process concealed weapons permits and perform, under close supervision, record checks. This position will utilize the ASPIN (AJIS) terminal to check for a criminal record. It will sort and process permit applications, records and reports. It will perform counter work requiring interpretation of available guidelines and requirements concerning permit applications. This position will will secure, prepare and copy data, check figures, collect fees and tabulate necessary data.

13 REQUEST FOR NEW POSITION

01-1136 (7/82) - 13

AGENCY Department of Public Safety

PROGRAM Crime ID & Apprehension

BRU Alaska State Troopers

COMPONENT Director's Office

Revised Date

FY 85

1.	POSITION TITLE: Clerk Typist II			RANGE/STEP: 7/A	BARG. UNIT: APEA/GGU	FORM 12 PAGE/LINE	GOV.	APPROV.	DISAPP.
2.	TYPE OF POSITION: NP	STAFF MONTHS: 6.0	RP NUMBER	PCN NUMBER	BRU PRIORITY: 5	LOCATION: EBA	ELECTION DISTRICT	LEG.		

3.	CONTINUATION LEVEL		ADDITION
4.	TYPE OF EXPENDITURE		AMOUNT
	1	2	3
	PERSONAL SERVICES		
5.	Salary	8,826	
6.	Benefits	724	
7.	Supplemental Benefits		
8.	Fixed Benefits		
9.	TOTAL PERSONAL SERVICES	01	9,550
10.	Travel	02	
11.	Contractual	03	
12.	Commodities	04	
13.	Equipment	05	
14.	Other		
15.	TOTAL COST		9,550

	RECEIPT CODE	FUNDING SOURCE		
16.		Federal Receipts	1002	
17.		G.F. Match	1003	
18.		General Funds	1004	9,550
19.		I-A Receipts	1005	
20.		Program Receipts	1028	
21.		Other		

FOR B&M USE ONLY
4A KEY NUMBER __ __ - __ __ - __ __ - __ __ - __ __

JUSTIFICATION

This position will be needed to process concealed weapons permits and perform, under close supervision, record checks. This position will utilize the ASPIN (AJIS) terminal to check for a criminal record. It will sort and process permit applications, records and reports. It will perform counter work requiring interpretation of available guidelines and requirements concerning permit applications. This position will will secure, prepare and copy data, check figures, collect fees and tabulate necessary data.

This six-month non-permanent position is needed during the initial phase of the program for the anticipated higher-than-normal workload. The cost will not be recurring.

13 REQUEST FOR NEW POSITION

AGENCY: Department of Public Safety
PROGRAM: Crime ID & Apprehension
BRU: Alaska State Troopers
COMPONENT: Director's Office

Revised Date

FY 85

01-1136 (7/82) - 13

1.	POSITION TITLE				RANGE/STEP	BARG. UNIT	FORM 12 PAGE/LINE	COV.	APPROV.	DISAPP.
	Clerk Typist II				7/A	APEA/GGU				
2.	TYPE OF POSITION	STAFF MONTHS	RP NUMBER	PCN NUMBER	BRU PRIORITY	LOCATION	ELECTION DISTRICT	LEG.		
	NP	6.0			6	EBA				
3.	CONTINUATION LEVEL		ADDITION							

4.	TYPE OF EXPENDITURE		AMOUNT
	1	2	3
	PERSONAL SERVICES		
5.	Salary	8,826	
6.	Benefits	724	
7.	Supplemental Benefits		
8.	Fixed Benefits		
9.	TOTAL PERSONAL SERVICES 01		9,550
10.	Travel 02		
11.	Contractual 03		
12.	Commodities 04		
13.	Equipment 05		
14.	Other		
15.	TOTAL COST		9,550

	RECEIPT CODE	FUNDING SOURCE		
16.		Federal Receipts	1002	
17.		G.F. Match	1003	
18.		General Funds	1004	9,550
19.		I-A Receipts	1005	
20.		Program Receipts	1028	
21.		Other		

FOR B&M USE ONLY
4A KEY NUMBER __ __ - __ __ - __ __ - __ __ - __ __

JUSTIFICATION

This position will be needed to process concealed weapons permits and perform, under close supervision, record checks. This position will utilize the ASPIN (AJIS) terminal to check for a criminal record. It will sort and process permit applications, records and reports. It will perform counter work requiring interpretation of available guidelines and requirements concerning permit applications. This position will will secure, prepare and copy data, check figures, collect fees and tabulate necessary data.

This six-month non-permanent position is needed during the initial phase of the program for the anticipated higher-than-normal workload. The cost will not be recurring.

13 REQUEST FOR NEW POSITION

01-1135 (7/82) - 13

AGENCY Department of Public Safety

PROGRAM Crime ID & Apprehension

BRU Alaska State Troopers

COMPONENT Director's Office

Revised Date

FY 85

STATE OF ALASKA

BILL SHEFFIELD, GOVERNOR

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

REPLY TO:

☐ *1031 W 4th AVENUE*
SUITE 200
ANCHORAGE, ALASKA 99501
PHONE: (907) 276-3550

☐ *1st NATIONAL CENTER*
100 CUSHMAN ST.
SUITE 400
FAIRBANKS, ALASKA 99701
PHONE: (907) 452-1568

☐ *POUCH K - STATE CAPITOL*
JUNEAU, ALASKA 99811
PHONE: (907) 465-3600

April 11, 1984

The Honorable John J. Liska
Alaska State House of Representatives
Pouch V
Juneau, AK 99811

Re: Opinion on Article I, Section 19, Alaska Constitution

Dear Representative Liska:

The Attorney General has requested that I respond to your March 23, 1984, letter making inquiry about constitutional provisions addressing the right to bear arms. Specifically, you requested our opinion comparing the Alaska language pertaining to the right to bear arms with constitutional language found in the Washington State Constitution. Additionally, you wondered whether the provision in the United States Constitution protecting the right to bear arms conveys identical rights to the people as the provision in the Alaska Constitution.

The relevant provisions found in each constitution are as follows:

> A well-regulated militia being necessary to the security of a free state, the right of the people to keep and bear arms shall not be infringed.

Alaska Const. art. I, § 19.

> The right of the individual citizen to bear arms in defense of himself, or the state, shall not be impaired, but nothing in this section shall be construed as authorizing individuals or corporations to organize, maintain or employ an armed body of men.

Wash. Const. Art. I, § 24.

> A well-regulated militia, being necessary to the security of a free state, the right of the people to keep and bear arms, shall not be infringed.

U.S. Const. amend. II.

The language embodied in Alaska's constitution pertaining to arms is virtually identical, save for two changes in punctuation, to language found in amendment II to the U.S. Constitution. Amendment II to the U.S. Constitution was proposed by the congress on September 25, 1789, and became the law of the United States on December 15, 1791. The Washington constitutional provision was adopted in 1889 and the Alaska provision became operative with the formal proclamation of statehood on January 3, 1959.

During the intervening years since adoption of the United States, Washington, and Alaska constitutional arms provisions, numerous court cases have interpreted the constitutional language which establishes the right to bear arms. The Alaska Supreme Court has not had occasion to pass judgment on the exact nature of the rights contained in the Alaska Constitution, however the Washington Supreme Court has opined that the "constitutional guarantee of certain rights to certain individual citizens does not place such rights entirely beyond the police power of the state." State v. Gohl, 90 P. 259 (Wash. 1907). More specifically, the Washington Supreme Court found that the provision pertaining to the right to bear arms was "subject to reasonable regulation by the state under its police power." State v. Krantz, 164 P.2d 453 (Wash. 1945).

The contemporary judicial view in many jurisdictions does not regard amendment II to the United States Constitution as prohibiting or limiting the legislature's power to regulate the ownership or control of firearms. Whatever the scope of any common law or constitutional right to bear arms, it is not absolute and does not guarantee to individuals the right to carry weapons abroad at all times and in all circumstances. Application of Atkinson, 291 N.W. 2d 396 (Minn. 1980).

Because of the lack of case law in Alaska, we are unable to ascertain with any great certainty how the Alaska Supreme Court would construe article I, section 19, of the Alaska Constitution. It is possible that the Alaska courts would follow case law from other jurisdictions, which has held that the right to bear arms is subject to reasonable regulation under the state's police power.

Please contact us at your earliest convenience if we can answer additional questions.

Sincerely,

NORMAN C. GORSUCH
ATTORNEY GENERAL

By:
Joseph W. Geldhof
Assistant Attorney General

JWG:eer

HB

653

STATE OF ALASKA 1984 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date: , 1984

REQUEST
Bill/Resolution No.: HB 653
Title: An Act relating to Court Facilities

Sponsor: Hayes, Barnes, et al.
Requestor:
Date of Request:

FISCAL DETAIL
Agency Affected: Administration
Program Category Affected: General Services & Supply

BRU, Program of Subprogram(s) Affected:
Leasing & Facilities

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 84	FY 85	FY 86	FY 87	FY 88	FY 89
OPERATING						
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL	0	3,900.0	3,816.0	4,045.0	4,287.7	4,545.
400 SUPPLIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC						
800 MISCELLANEOUS						
TOTAL OPERATING	0	3,900.0	3,816.0	4,045.0	4,287.7	4,545.
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND		3,900.0	3,816.0	4,045.0	4,287.7	4,545.
FEDERAL FUNDS						
OTHER						
TOTAL		3,900.0	3,816.0	4,045.0	4,287.7	4,545.

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

NONE

ANALYSIS: Attach a separate page for any Analysis.

Prepared By: Robert Link
Division: General Services & Supply
Phone: 465-2253
Date: February 23, 1984

Approved by Commissioner: Lisa Rudd
Agency: DEPARTMENT OF ADMINISTRATION
Date: 3/8/84

Distribution (by Agency preparing fiscal note):
Legislative Finance
Legislative Sponsor
Requestor
Office of Management and Budget
Impacted Agency(ies)

HB 653
Fiscal Note Analysis
Prepared by Division of General Services & Supply
Department of Administration
February 23, 1984

Currently, affected combined facilities in twelve (12) communities (see attached) are under A.S.H.A. Lease Agreements with the Department of Administration. Costs and Occupancy ratios as follows:

Costs under A.S.H.A. (per year) = $2,963,100.94

Percentage of Costs:

Court System 70% = $2,072,219.80.
Other Agencies 30% = $890,881.14

Occupancy Status: (net 342,151 square feet)

Court System 71.7% = 245,365 square feet
Other Agencies 28.3% = 96,786 square feet

Passage of this bill will probably result in a need to replace approximately 100,000 square feet of Office space. At an estimated replacement cost of $3.00 per square foot this represents an initial increase in lease costs (budget) of $3,600,000 per annum, with an estimated $300,000 as a one time cost to cover moving expenses.

[100,000 square ft. x 3.00 x 12] + 300,000 = $3,900,000.00

A six percent (6%) adjustment factor was used for estimating subsequent fiscal year costs.

As many of the affected facilities are in Bush areas, other space may not be readily available, resulting in loss of service to the public, or requiring construction of additional facilities. Cost estimates for construction are not known.

The Court System's past actions indicate the probability that they will expand into space now occupied by other agencies, i.e.:

1. ASHA #755 - Fairbanks Court and Facility
   Court System occupancy over a five (5) year period:

   1970 = 49.40% - 1975 = 84.57%, indicating:

   a. an increased use of 35.07% of total space available
   b. a growth of 70.85% in area required.

   Currently, the Court System is attempting to evict the State Recorder's Office which occupies 2,237 square feet.

3/BDGSF3/0223-02/2

Position Paper

HB 653

This bill will effectively give the Supreme Court control over all Court facilities in combined Court and office buildings. Historically the Court has evicted Executive branch agencies from Court-controlled facilites.

This department has a neutral position on this bill as long as the legislature realizes that when the Court evicts Executive branch agencies funds must be provided to procure alternate space. We expect the Court to begin to expel Executive branch agencies beginning with the Recorder's Office in Fairbanks as soon as the bill is passed. In order to allow sufficient time to budget for the procurement of alternate space the following amendment is suggested:

> Add Section 1, AS 22.05.025(b): The Supreme Court must provide a one (1) year notice prior to requiring an Executive branch agency to vacate a Court facility.

A

Robert J. Link, Director
Division of General Services & Supply

2-24-84
Date

Commissioner Lisa Rudd
Department of Administration

3/7/84
Date

5/11D1/0223-04/2

2. ASHA #765 - Anchorage Court and Office Building (old)
Court System occupies 62.69% of total space available.

In 1980 the Court System ousted both:

a. The State Recorder's office (3,752 square feet)
b. The Public Defender office (5,900 square feet)

Currently, the Court System requires additional space in Anchorage, Ketchikan, Kodiak, Kotzebue, Fairbanks and Nome.

BUILDING	COMMUNITY	TOTAL SQ. FT.	TOTAL COST/YR.	ACS SQ. FT.	ACS COST/YR.
ASHA 719	Delta Junction	1,760	$ 7,831.22	1,447	$ 6,437.61
ASHA 755	Fairbanks	57,582	197,386.30	48,692	166,980.86
ASHA	Ft. Yukon	2,468	40,291.00	859	14,027.00
ASHA 754	Glennallen	3,476	12,605.20	850	3,083.30
ASHA 734	Juneau	55,156	715,142.04	30,489	394,493.34
ASHA 705	Kenai	15,580	213,518.86	10,595	150,382.62
ASHA 712	Ketchikan	29,487	356,419.72	13,962	168,917.77
ASHA 713	Sitka	20,277	154,290.53	7,906	102,930.70
ASHA 640	Valdez	10,651	147,966.19	4,197	58,279.17
ASHA 717	Kodiak	9,563	40,815.00	6,868	29,157.30
ASHA 765	Anchorage	39,244	159,163.70	28,352	115,030.24
ASHA 794	Anchorage	96,907	917,670.28	91,148	862,499.89
	TOTALS	342,151	$ 2,963,100.94	245,365	$ 2,072,219.80

Court Occupied Space: 245,365
Other Agencies Space: 96,786

Total ASHA Combined
Facility Office Space: 342,151

STATE OF ALASKA 1984 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date:

REQUEST
Bill/Resolution No.: HB 653
Title: "An Act relating to Court Facilities."
Sponsor: Hayes, Barnes, et al.
Requestor:
Date of Request:

FISCAL DETAIL
Agency Affected: Administration
Program Category Affected:
BRU, Program or Subprogram(s) Affected:

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 84	FY 85	FY 86	FY 87	FY 88	FY 89
OPERATING						
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL	-0-	-0-	-0-	-0-	-0-	-0-
400 SUPPLIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS						
800 MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND	-0-	-0-	-0-	-0-	-0-	-0-
FEDERAL FUNDS						
OTHER						
TOTAL	-0-	-0-	-0-	-0-	-0-	-0-

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

ANALYSIS: Attach a separate page for analysis

Prepared By: House Judiciary
Division:
Phone: 465-4990
Date: 3 14 84

Approved by Commissioner: Walter Russell
Agency:
Date:

Distribution (by agency preparing fiscal note):
Legislative Finance
Legislative Sponsor
Requestor
Office of Management and Budget
Impacted Agency(ies)

12/1/83

FACT SHEET - ANCHORAGE COURTHOUSE EXPANSION

I. Why Expansion is Needed.

A. Present facility is overcrowded:

- The court offices and related justice agencies listed below have been forced to relocate outside of the existing Court complex. These offices and agencies will be relocated into the expanded Anchorage Courthouse.

Office/Agency	Square Feet Occupied	Annual Rental Cost
Administrative Office	7,440	$ 125,280
Technical Operations	2,045	50,304
Storage in Old PIP Bldg.	4,000	-0-
Attorney General/District Attorney	31,345	789,894
Public Defender	7,035	171,372
Judicial Council	1,340	35,376
Adult Corrections - Presentence Unit	1,710	46,170
Youth Corrections	4,200	65,520
	59,115	$1,283,916

- Existing Court facility has only 1 courtroom/chambers available, which is currently being used by pro tem and visiting judges. Remodeling of this building has been completed and no additional courtroom or chambers can be built.

- Clerk's Office is crowded to the point of inefficiency; other ancillary offices, jury assembly room, and other spaces have reached their maximum utilization.

- The existing situation in which agencies and offices are separated from the Court facility are inefficient in terms of communication and access. This creates additional operating costs to these offices.

B. Projections for Future Growth and Space Demands:

- The population in Anchorage has grown from 178,000 in 1975 to 230,000 in 1983, an increase of 30%.

- From 1975 to FY 83, superior court filings increased from 6,646 to 9,960, a 50% increase.

- From 1975 to FY 83 district court filings (non-traffic) increased from 12,726 to 16,464, a 30% increase and total filings increased from 45,590 to 65,272, a 43% increase.

- The Institute of Social and Economic Research projects Anchorage population increasing from 230,000 in 1983 to 362,000 by the year 2005, an increase of 57%.

- It is anticipated that superior and district court caseloads will increase approximately, if not more than, this amount over that time period.

- In addition to increases in population, the Court system caseloads are impacted by new legislation such as domestic violence, increased penalties for drugs or DWI's, etc.

II. Development of Anchorage Court Complex.

- 1964 to 1973: the Court System occupied the old court building, approximately 64,000 square feet.

- November 1973 to present: the Court System occupied the old building and the Boney Memorial Court Building, which added 158,000 square feet for a total of 222,000 square feet in the Court Complex.

- In 1982 the Court System received an appropriation of $9,969,000 for planning and design, land acquisition, and remodeling of existing space.

- In the following year the Court System purchased the land across "I" Street from the Court complex, selected an architect to design the new building, and completed the programming for the new building.

- This programming determined that the space requirements for the year 2005 would amount to approximately an additional 270,000 square feet.

- By 1988 (earliest year that building could be built and occupied) the Court System will need approximately 170,000 to 180,000 additional square feet, leaving approximately 100,000 square feet for other State uses.

- The projected growth from 1988 to the year 2005 will require the expansion of the Court into the full capacity of the building.

III. Costs:

- The cost estimates for construction of the Courthouse expansion were provided by John McCool, Project Architect.

- Construction cost of the Court offices, courtroom, and related spaces will be approximately $185 per square foot. For 270,000 square feet this cost equals approximately $49,495,000.

- Approximately 117,500 square feet of parking area will be built at an estimated cost of $85 per square foot for an additional $9,987,000.

- The total estimated construction cost is approximately $59,482,000.

- Architectural and other administrative costs are already budgeted in the 1982 appropriation.

* * *

HB

667

BILL SHEFFIELD
GOVERNOR

5667

STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

February 13, 1984

The Honorable Joe Hayes
Alaska House of Representatives
Pouch V
Juneau, AK 99811

Dear Representative Hayes:

Under the authority of art. III, sec. 18, of the Alaska Constitution, I am transmitting a bill relating to child support enforcement. As described in sec. 1, this bill is intended to improve the efforts of and increase the remedies available to those persons who seek to enforce the obligations of noncustodial parents to support their children through the payment of court-ordered child support.

Sections 2 and 10 amend AS 09.65.132(g) and AS 47.23.-250(i), respectively, to bring those statutes into conformance with the federal guidelines concerning restrictions on garnishments (15 U.S.C. sec. 1673). This revision is done by making a percentage of an employee's "disposable earnings," rather than "gross wages," subject to attachment. Because of the amendments in secs. 2 and 10, it will be simpler for employers and their bookkeepers to comply with a garnishment order; they will not have to do any further computation or research in determining the amount of money to withhold. The primary function of the amendments is to reduce the burden on employers and thereby increase their cooperation.

Under 15 U.S.C. sec. 1673, the child support enforcement agency (organized as a division in the Department of Revenue) could, under certain circumstances, garnish as much as 60 percent of an obligor's disposable earnings. The agency would, however, have to devote much investigatory time to determining whether those circumstances apply to an obligor before ordering the maximum garnishment. The agency has determined that it would be more productive to establish a set percentage for all garnishments. Although in a small percentage of cases the child support enforcement agency will be collecting less than previously permitted under state law, an advantage is gained through the

amendments in that the obligor will have an increased incentive to continue working and thereby continue paying the child support owed. Under existing statutory language, the agency is allowed to garnish 50 percent of the gross wages which, after mandatory deductions, leaves the obligor with little disposable income and little incentive to work.

Section 3 of the bill amends AS 25.20.050(a), regarding the legitimation of children. In almost all states, the process of legally establishing parentage has been greatly enhanced by scientific progress in blood testing, tissue typing, cell makeup testing, and protein comparisons. Alaska and many other states routinely use the results of these scientific procedures as legal evidence to exclude a person as a possible parent or to prove that a given person is the parent of a child to a degree of certainty well in excess of 90 percent. The use of these methods increases the reliability of parentage determinations and greatly reduces the cost to individuals and the public by shortening and eliminating litigation of parentage disputes. The amendment to AS 25.20.050(a) acknowledges the current use of and requires the admission of the results of modern scientific methods for determining the parentage of children; it also aligns Alaska statutes with current judicial determinations throughout the states. The amendment also creates a presumption of parentage when the blood testing results indicates a 95 percent or higher probability of parentage.

Sections 5 and 7, which amend AS 25.25.250 and AS 47.23.-080(c), respectively, make clear that custody, visitation, and property rights are not to be adjudicated in support enforcement proceedings when the child support enforcement agency is representing the obligee.

Section 6 of the bill, adding new AS 47.23.065, is a clarification of what constitutes an effective waiver of child support by the child's custodial parent. The issue has been addressed by the supreme court of this state in a recent decision, Malekos v. Yin, 655 P.2d 728 (Alaska 1982), in which the court recognized the right of parents to waive child support. In conjunction with this right, it must be stressed that there is an obligation to ensure that the children are supported by the parents themselves and that they do not allow the obligation of support to fall upon the public.

Court recognition of the right to waive past-due child support has been used by some noncustodial parents to complicate the issue; these parents claim the existence of a waiver agreement not known to the court or the agency. The process of disproving these claims results in extensive delays in judicial enforcement and waste of judicial time. New AS 47.23.065 recognizes the right of parties to make agreements without the necessity of court intervention, but also gives some assurance that the waivers embody the current intent of the parties by requiring the agreement to be in writing and to be signed by both parties at the time it is made. The bill also requires that in a divorce or dissolution the court may not accept a waiver without proof that the custodial parent can adequately support the child.

To prevent abuse of this system of waivers, the amendment includes language that will allow the state to recover an amount equal to any public assistance such as AFDC (aid to families with dependent children) payments from the noncustodial parent notwithstanding any waiver agreement that has been recognized by the agency and is made before an assignment of the support obligation to a governmental agency.

Section 8 adds AS 47.23.085 which will allow the child support enforcement agency, with the concurrence of the commissioner of revenue, to issue subpoenas to gather information regarding a parent's financial assets.

Section 9 of this bill adds AS 47.23.225 as another clarification of the effects of court orders of support. This section is based on an Alaska supreme court decision, Young v. Williams, 583 P.2d 207 (Alaska 1978), which suggested that unpaid and accrued installments of child support become judgments in favor of the custodial parent. The amendment would allow the custodial parent or the child support enforcement agency to collect those judgments with reduced court intervention; however, it would protect the noncustodial parent's right to contest the matter before the court. The procedure set out in the amendment should reduce judicial time spent in hearing routine matters by limiting the hearing to contested cases and by focusing the proceeding on narrow issues. This procedure would allow for prompt and more efficient enforcement of child support orders in a way similar to the income assignment order provision passed by the Twelfth Legislature in 1981 (AS 09.65.132).

The new AS 47.23.265, in sec. 11 of the bill, is an implementation of Civil Rule 67(b) and Civil Rule 5(b). Civil Rule 67(b)(2) requires that orders to pay child support through the child support enforcement agency contain a provision that the parties inform the agency, in writing, of any change of address. Civil Rule 5(b) allows for service by mail; service is effective upon mailing. New AS 47.23.265 makes it clear that the burden of notification of change of address is upon the person who is ordered to pay child support and thereby relieves the department of extraordinary efforts to attempt to locate the obligor when any subsequent papers must be served.

The enforcement of child support obligations is often very difficult, and I believe that the amendments in this bill will substantially improve the situation. Therefore, I urge your favorable action on it.

Sincerely,

Bill Sheffield
Governor

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Press Release No. 84-7

PRESS RELEASE

FOR IMMEDIATE RELEASE
MARCH 23, 1984

UNITED STATES SENATE
COMMITTEE ON FINANCE
SD-219 Dirksen Senate
Office Building

FINANCE COMMITTEE REPORTS CHILD SUPPORT ENFORCEMENT AMENDMENTS

The Honorable Robert J. Dole (R., Kans.), Chairman of the Committee on Finance, announced that the Committee today unanimously reported amendments in the nature of a substitute to H.R. 4325, "The Child Support Enforcement Amendments of 1983." The amendments agreed to by the Committee during it's Executive Session on March 22, 1984, are described below.

1. Statement of Purpose

The Committee agreed to a proposal which amends the "Statement of Purpose" in present law by adding language to ensure that child support enforcement assistance is available to all children whether or not they are eligible for benefits under the Aid to Families with Dependent Children (AFDC) program.

Effective date.--On enactment

2. Federal Matching of Administrative Costs

Under current law, the Federal Government pays 70 percent of State and local administrative costs for services to both AFDC and non-AFDC families, on an open-end entitlement basis.

The Committee agreed to an amendment which would reduce the Federal match as follows: For fiscal year 1987 to 69 percent; for fiscal year 1988 to 68 percent, for fiscal year 1989 to 67 percent, for fiscal year 1990 to 66 percent, and for fiscal year 1991 and years thereafter, to 65 percent.

Effective date.--October 1, 1986

3. Federal Incentive Payments

The Committee agreed to an amendment which repeals the present law 12-percent incentive payment based on AFDC collections. New incentives would be established based on collections made on behalf of both AFDC and non-AFDC families. The Secretary of the Department of Health and Human Services would be required to make incentive payments as follows: Each State will receive incentive payments equal to 6 percent of its

AFDC collections and 6 percent of its non-AFDC collections, as a guaranteed minimum payment. Additionally, for fiscal year 1986 and fiscal year 1987, a State would be eligible to receive the higher of the amount due them under the new incentive and match provisions or 80 percent of what they would have received under the existing 12-percent incentive formula and 70-percent match.

To the extent AFDC or non-AFDC collections exceed combined administrative costs for both AFDC and non-AFDC, higher incentives will be paid on a sliding scale up to 10 percent of AFDC and 10 percent of non-AFDC collections, according to the following cost/collection ratios:

AFDC INCENTIVE

Ratio of AFDC collections to combined AFDC/non-AFDC administrative costs	Incentive equal to this percent of AFDC collections
1.4:1	6.5%
1.6:1	7.0%
1.8:1	7.5%
2.0:1	8.0%
2.2:1	8.5%
2.4:1	9.0%
2.6:1	9.5%
2.8:1	10.0%

NON-AFDC INCENTIVE

Ratio of non-AFDC collections to combined AFDC/non-AFDC administrative costs	Incentive equal to this percent of non-AFDC collections
1.4:1	6.5%
1.6:1	7.0%
1.8:1	7.5%
2.0:1	8.0%
2.2:1	8.5%
2.4:1	9.0%
2.6:1	9.5%
2.8:1	10.0%

Incentive cap.--The total dollar amount of incentives paid for non-AFDC collections will be capped at an amount equal to the State's incentive payment for AFDC collections.

Paternity costs.--At State option, the laboratory costs of determining paternity may be deducted from combined administrative costs for purposes of computing incentive payments.

Pass-through to localities.--Under a pass-through requirement, States must assure that localities which participate in the costs of collecting support will receive their appropriate share of any incentive payments.

Annual projections.--Incentive funds must be estimated and projected on an annual basis so that States will know in advance what their payments will be, subject to later adjustment.

Interstate collections.--Amounts collected in interstate cases will be credited, for purposes of computing the incentive payments, to both the initiating and responding States.

Effective date.--October 1, 1985

4. Matching for Computerization Costs

The Committee agreed to an amendment which expands and clarifies current law regarding the 90-percent Federal match for State costs of establishing automatic data processing and information retrieval systems. The amendment specifies that if a State meets the requirements in present law, matching funds may be used for the development and improvement of the income withholding and other procedures required in the legislation (described below) through the monitoring of child support payments, the maintenance of accurate records regarding the payment of child support, and the provision of prompt notification to appropriate officials with respect to any arrearages that occur. The amendment also specifies that the 90-percent matching rate is available to pay for the acquisition of computer hardware.

Effective date.--October 1, 1984

5. Required State Procedures

The current Federal child support statute generally does not specify the types of procedures States must use in operating their programs. The States are required to comply with such requirements and standards as the Secretary determines to be necessary to the establishment of an effective program.

The Committee agreed to several amendments that require the States to enact laws establishing the following procedures with respect to their IV-D cases:

(1) Mandatory wage withholding.--In the case of each absent parent against whom a support order is or has been established or

modified by the State, the State must provide for withholding wages, in accordance with the following conditions:

(a) Withholding must occur without amendment of the order.

(b) The amount withheld must be the amount of current and past-due support that is owed. The total amount withheld must be subject to sec. 303(b) of the Consumer Credit Protection Act which establishes limits in cases of garnishment for child support.

(c) Withholding procedures must begin the earlier of (a) when the arrearage reaches an amount equal to one month's support payment, or (b) when an absent parent requests withholding. States retain the discretion which they have under current law to begin withholding at any earlier time.

(d) Withholding must be administered by an entity designated by the State and provision must be made for expeditious distribution of amounts withheld.

(e) An individual must be given advance notice of withholding and the procedures to be followed in contesting the action.

(f) The State must give the employer notice of the amount to be withheld and any amount to be retained by the employer as a fee.

(g) The State must fine an employer who discharges, refuses to hire, or disciplines an individual because of withholding.

(h) States must establish methods to simplify the withholding process for employers to the extent possible, including permitting the employer to combine all withholding amounts into a single payment to the State.

(i) The employer must be held liable for the amount he fails to withhold, following the receipt of proper notice.

(j) Provision must be made for withholding in interstate cases.

(k) Provisions must be made for the priority of support collections under this procedure over any other legal process under State law against the same wages.

(l) States must make provisions for terminating withholding.

(m) The State may make income other than wages subject to withholding.

(2) Liens.--States will be required to have procedures for imposing liens against real and personal property for amounts of past-due support owed by a State resident or an individual who owns property in the State. However, States are given discretion to apply this procedure only in certain cases.

(3) Federal and State Income Tax Refund Offsets.--The current law Federal income tax refund offset for AFDC cases is extended to non-AFDC cases. Additionally, States that have State income taxes must provide for the withholding of any State tax refunds payable to a noncustodial parent who owes past-due child support payments. These tax refund withholding procedures must be applicable to AFDC cases and to non-AFDC cases. The withholding procedure must be used for interstate as well as intrastate cases.

(4) Fees for Services.--States will be required to charge an application fee for non-AFDC cases not to exceed $25. This fee may be adjusted periodically by the Secretary to reflect changes in administrative costs. The State may charge fees of varying amounts to reflect ability to pay.

Additionally, a State must have in effect a law under which a late payment fee is charged to the noncustodial parents of AFDC and non-AFDC families on support that is past due. The fee will be an uniform amount established by the State equal to 3 to 10 percent of the past due support owed for months beginning the month following the enactment of this bill. The State may not take any action which would have the effect, directly or indirectly, of reducing the support paid to the child and will collect the fee only after the full amount of the past-due support has been paid to the child. The current law provision for optional State recovery of costs for services to non-AFDC families will remain unchanged.

(5) Providing Information to Credit Agencies.--States must make available to consumer credit agencies, at the request of such agencies, information regarding child support arrearages. The State must make available information on arrearages in excess of $1,000 and may make available information on smaller arrearages. The State may charge a fee to the credit agencies who request and receive this information which cannot exceed the cost to the State of providing the information.

(6) Security or Bond in Certain Cases.--States will be required to have in place procedures to require in appropriate cases that an individual give security, post a bond, or give some other type of guarantee to secure support obligations of noncustodial parents who have a pattern of past-due support.

(7) Expedited Processes.--States will be required to have in effect expedited processes within the State judicial system for establishing paternity and obtaining and enforcing support

orders. Decisions or recommendations resulting from the expedited process must be reviewed (i.e., ratified or overturned) by judges of the court. In addition, appellate review of child support decisions or actions resulting from the expedited processes would be conducted by the regular court system at the request of either party.

The Secretary's authority to waive required State practices would apply to political subdivisions of States due to variations within States in the effectiveness and timeliness of current processes. States that currently use administrative processes would qualify for a waiver on the same basis as States or political subdivisions using regular court processes.

(8) Notification to AFDC Recipient of Child Support Collected.--States would be required to notify AFDC recipients, at least once each year, of the amount of child support collected on behalf of that recipient.

(9) Exemption Authority.--The Secretary may grant an exemption to a State from the required procedures, subject to later review, if the State can demonstrate that such procedures will not improve the efficiency and effectiveness of the State IV-D program.

Effective date.--October 1, 1984.

If a State agency administering a plan approved under part D of Title IV of the Social Security Act demonstrates, to the satisfaction of the Secretary of Health and Human Services, that it cannot, by reason of State law, comply with the requirements of a provision mentioned above, the Secretary may prescribe that the provision will become effective beginning with the fourth month beginning after the close of the first session of such State's legislature ending on or after October 1, 1984.

6. Periodic Review of State Programs; Modification of Penalty

The Committee agreed to an amendment which retains the general present law requirement for Federal oversight of State child support enforcement programs through standards of performance and audits by the Office of Child Support to assure compliance with those standards. The amendment does, however, provide a more flexible penalty structure for instances where States are not in compliance, and it permits triennial rather than annual audits for States which have been found to meet Federal standards. Under the amendment, the present law penalty of a 5-percent loss of AFDC funds for nonconformity would be changed to a variable 2, 3, or 5 percent (for the first, second, or subsequent years of noncompliance). In addition, the Federal agency would not be required to impose the penalty in cases where noncompliance was not substantial and thus did not significantly impair the effectiveness of the State program. Moreover, the

Committee amendment would allow the penalty to be waived even in cases of substantial noncompliance if the Secretary finds that the State is actively pursuing a corrective action plan which will remedy the noncompliance.

Effective date.--October 1, 1984

7. Special Project Grants

Under current law, there is no special provision for funding of interstate activities. The Committee agreed to an amendment to provide special project grants on interstate enforcement projects. In fiscal year 1985, $5 million will be authorized to be appropriated to the Secretary to fund special projects developed by the States with the objective of using innovative techniques or procedures for, and otherwise improving, child support collections in interstate cases. In fiscal year 1986, the amount will be $10 million. In fiscal year 1987 and thereafter, the special projects fund will be authorized at $15 million.

Effective date.--October 1, 1985

8. Extension of Sec. 1115 Demonstration Authority

The Committee agreed to an amendment which modifies the provision in current law which authorizes the Secretary to grant waivers to States conducting experimental, pilot, or demonstration projects.

Under the amendment, the demonstration authority would be expanded to include the child support enforcement program under the following conditions: (a) the intent of the requested waiver must be to test modifications that will improve the financial well-being of children, or otherwise improve the operation of the program; (b) a waiver will not be allowed for any modification that would disadvantage children in need of support; and (c) the requested waiver will not result in an increase in Federal AFDC costs.

Effective date.--October 1, 1984

9. Modification in Content of Annual Report by the Secretary

Under current law, within three months after the end of each fiscal year, the Secretary must submit an annual report to Congress on child support program activities. The statute specifies certain data which must be included in the report.

The Committee agreed to a proposal modifying the content of the annual CSE report to include the following information:

(1) The total number of cases in which a support obligation has been established in the past year and the total amount of such obligations for these cases;

(2) the total number of cases in which a support obligation has been established and the total amount of such obligations for these cases;

(3) those cases described in (1) in which support was collected during such fiscal year and the total amount of such collections; and

(4) those cases described in (2) in which support was collected during such fiscal year and the total amount of such collections.

The information is to be separately stated for current and for past AFDC cases and for non-AFDC cases. Additionally, the annual report shall include information on the child support cases filed and the collections made in each State on behalf of children residing in another State or cases against parents residing in another State.

Finally, the annual report shall detail how much in administrative costs are spent in all functional categories (including paternity) of expenditures.

Effective date.--October 1, 1985

10. Child Support Enforcement for Children in Foster Care

There is no specific authority in the law for collection of child support on behalf of children who are placed in foster care under title IV-E of the Social Security Act. This authority was deleted when the foster care program was transferred from title IV-A to title IV-E.

The Committee agreed to an amendment which would require the State child support agencies to undertake child support collections on behalf of children receiving foster care maintenance payments under title IV-E, if an assignment of rights to support to the State has been secured by the foster care agency.

The States would be required to take steps, where appropriate, to secure an assignment to the State of any rights to support on behalf of each child receiving foster care maintenance payments under the title IV-E foster care program. The child support collections would be credited to the State as AFDC collections.

Effective date.--On enactment

11. Continue Child Support Services For Families Losing AFDC Eligibility

Under current law, there is no special provision requiring States to continue support collection activities automatically on behalf of families when they lose eligibility for AFDC.

The Committee agreed to an amendment which would require States to provide that AFDC recipients whose eligibility for AFDC is terminated due to the receipt of (or an increase in) child support payments will be automatically transferred from AFDC to non-AFDC status under the State IV-D program, without requiring reapplication.

Effective date.--October 1, 1984

12. Increased Availability of Federal Parent Locator Services to State Agencies

Federal law requires operation by the Federal Government of a Parent Locator Service (PLS) to assist States in locating absent parents. Under current law, States may use the Federal PLS only after there has been a determination that the absent parent cannot be located through procedures under the control of the State child support agency.

The Committee agreed to an amendment which would repeal the requirement that the States exhaust all State child support locator resources before they request the assistance of the Federal PLS to assist States in locating absent parents.

Effective date.--On enactment

13. Availability of Social Security Numbers for Child Support Enforcement Purposes

Through the Parent Locator Service, the Secretary of HHS is authorized to furnish the most recent address and place of employment of absent parents whose whereabouts are unknown. The Internal Revenue Service is also authorized to release certain information to Federal, State and local child support enforcement agencies concerning absent parents to aid in the establishment and enforcement of support obligations.

The Committee agreed to an amendment which would add the absent parent's social security number (SSN) to the items of information which the Secretary can disclose through the PLS and which the IRS can disclose to child support enforcement agencies.

Effective date.--On enactment

14. Limitation on Discharge in Bankruptcy of Child Support Obligations

In general, support obligations that have been assigned are discharged in bankruptcy. An exception is made for support due to a family receiving AFDC when that support has been assigned to the State. However, even when this exception applies, it does so only where there is a "separation agreement, divorce decree, or property settlement agreement." Support derived from a paternity determination is usually not protected because the above conditions do not apply.

The Committee agreed to an amendment which would broaden the class of cases for which bankruptcy does not discharge the support obligations to include all child support obligations collected through the IV-D agency. Also, it would provide the same protection against discharge to cases for which support is established on the basis of a paternity determination.

Effective date.--On enactment

15. Waiver Authority for Wisconsin Child Support Project

The Committee agreed to an amendment which would require the Department of Health and Human Services to approve requests from the State of Wisconsin for waivers of Federal IV-D CSE and IV-A (AFDC) requirements. The waivers will allow the State to continue to receive Federal CSE and AFDC matching funds while testing modifications in both programs contained in the State's "Child Support Initiative", if the requested waivers meet certain conditions defined in the amendment.

Effective date.--On enactment

16. State Study of Child Support, Child Custody, and Visitation Rights

The Committee agreed to an amendment which adds "sense of the Congress" language expressing the view that State and local governments must focus on the vital issues of child support, child custody, visitation rights, and other related domestic issues that are properly within the jurisdictions of such governments.

Effective date.--On enactment

17. Guidelines for Child Support Awards

The Committee agreed to an amendment which would require each State to develop a set of guidelines to be considered by judges in the State in determining support orders. The exact nature of the guidelines would be determined by each State and could be established by law or by a judicial conference or other mechanism

as may be appropriate in that State. The Federal Office of Child Support Enforcement would be directed to maintain information about State guidelines and to provide a source of technical assistance and information exchange among States on this topic.

Effective date.--October 1, 1986

Press Release #84-7

POUCH V
JUNEAU, ALASKA 99811
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Alaska State Legislature
HOUSE OF REPRESENTATIVES

REPRESENTATIVE
CHARLIE BUSSELL
CHAIRMAN

Committee on Judiciary

M E M O R A N D U M

TO: Representative Bussell

FROM: Craig Lovell
Committee Staff

RE: H.R. 4325

DATE: 22 March, 1984

At your request, I contacted various individuals concerning the content, focus, and impact of H.R. 4325, the federal legislation now pending passage in Washington, D.C.

As to the impact to Alaska -- to current policies of state child support enforcement agencies and to the state legislation subject to the committee's review (HB 667 and HB 668) -- I spoke with Mr. Dan Copeland, Director of the Division of Child Support Enforcement of the Department of Revenue. Fortunately, Mr. Copeland was a wealth of information since, as former President of the National Association of State Administrators, he was instrumental in the drafting of the proposal that was the original version of the bill. Also, in light of his position, he contributed significantly to the state legislation as well.

Mr. Copeland revealed that the federal legislation had little bearing on Alaska policies, as Alaska was already in compliance with the regulations set out in the bill. H.R. 4325, it appears, is geared at inconsistent and uncooperative policies in states that are lax in enforcing interstate and intrastate judgments.

Mr. Copeland forwarded to the Committee a copy of his Memorandum to Deputy Commissioner Bruce Botelho, which in part addresses the effects and progress of the legislation and the concerns of the state enforcement agency.

Attachment

MEMBERS:
REP. JOHN LISKA, VICE CHAIRMAN; REP. RAMONA BARNES, EMERITUS;
REP. JOE HAYES; REP. HUGH MALONE; REP. DON CLOCKSIN; REP. RON WENDTE

MEMORANDUM State of Alaska

TO: Bruce Botelho
Deputy Commissioner
Department of Revenue

DATE: February 1, 1984

FILE NO:

TELEPHONE NO: 276-3441

FROM: Dan R Copeland
Director, CSED
Dept. of Revenue

SUBJECT: Performance Report
a) FY83: 7-1-82 to 6-30-83
b) First Half FY84:
7-1-83 to 12-31-83

The Child Support Enforcement Division is charged with the enforcement responsibility of collecting payments from the parents who are separated from their children. When the obligation to support the children has not been established, the Division is responsible for establishing an obligation. This will include establishing paternity as needed. To obtain Division services, an application from the custodial parent is required by federal and state statute. State statute expands upon the availability of service and allows the noncustodial parent to apply for service.

The collections are transmitted to either (a) the parent having custody of the children, or (b) to the state and federal government if the custodial parent is receiving welfare in the form of Aid to Families with Dependent Children (AFDC). This creates two groups of cases for which the Division will provide services. The non-AFDC cases are the group for which the Division will collect the money and send it to the custodial parent. The AFDC cases are the group for which the Division will collect the money and send it to the state and federal government. This partially reimburses the state and federal government for the original and ongoing funding of the AFDC program.

One of the most significant factors in maintaining an overall successful child support program is a positive attitude towards child support by both the community and the separated parents. This attitude takes several years to develop, and the ultimate goal of the Child Support Enforcement Division is to have the community at large enforce an ongoing ethic in which all responsible parents provide the needed support to their minor children without any governmental intrusion. All child support collections made by the Division or paid through a voluntary process, relieve or minimize the need for public assistance. This reduces the taxpayer's burden through direct recovery for the custodial parent or repayment of AFDC to the state and federal government.

One of the most encouraging notes about the program came in this month's State of the State speech. Governor Sheffield made it clear that he supported the program and would be asking the legislature for tougher enforcement power in this area. A copy of excerpts from the speech is attached.

OPERATIONS

General Organization:

During FY83 the Division was located in Anchorage, Fairbanks and Juneau with 76 employees. They are organized into five enforcement teams, three establishment teams, an intake unit, a locate specialist, and an accounting unit with two sections to handle cash control and AFDC processing.

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All casework is completed within the assigned team, and the section supervisor's involvement is limited to the procedural or policy areas. A current organization chart and several from previous years are attached.

Team Concept:

The team concept was introduced in March 1979 with minimal staff. By 1981 the entire Division had reorganized to take full advantage of the team approach. Each collection team has approximately 1,200 cases to control. These cases are distributed among the teams based upon the first two letters of an obligor's last name. With this type of distribution, there is no case transfer when an obligor moves, and each team has a similar mix of tough and easy collection cases. With sufficient staff to monitor all correspondence and actions both coming and going on all cases, the officer can assign routine collections work to one section of the team. The paraprofessional can then handle the next level of difficult cases. The officer in charge is able to handle the more difficult cases while supervising the team as a whole. The officer is close enough to both the caseload and the work performance of the team members on a daily basis to plan and direct the team's resources.

The officer works toward making the routine collection work the major part of the team's workload. This would mean that all cases are paying regularly and only need a reminder on an occasional missed payment. Unfortunately, some cases have a tendency to lean towards nonpayment even after reminders. This requires the officer to apply an appropriate collection action which could be an attachment of wages or assets, liens upon property, or referral to the Department of Law for legal action. In all cases the officer is responsible to see that the action is done correctly and that the end results are steady payments.

The establishment teams follow a similar pattern where responsibility for all actions on a case are assigned to one team. The case does not leave the team until an order has been established or the officer has determined that the case should be closed.

The team approach has greatly improved the agency's ability to manage the caseload and the related activity. As a direct result of the team concept, collections have risen significantly. Additional positions are being requested in this budget to establish a new collection team in response to the need of women and children to further increase the collection rate and reliability of their child support payments.

Prior to using the team concept in organizing the work effort, a function to function approach was in place. This did not provide for any accountability, and in most cases the functions were done without regard to collections. Often case files were lost, and it was impossible to tell who was responsible. On a similar note, it was difficult to determine who was responsible when something good happened to a case. When the team concept was brought on board, the people wanted accountability with regard to the Division's primary objectives made it clear that this concept was excellent.

Not everyone liked the concept, and numerous complaints have been presented to a variety of people in Juneau. The accusations have not changed and are presented in an indirect manner to people other than the management staff within the Division. While each of the questions have been fully answered and explained several times, the same items of complaint are repeated. To respond to this the Federal Office of Child Support Enforcement (OCSE) did an independent review of the caseload and the team concept. Their conclusion was that the approach was well organized and designed for positive results. A copy of their report is attached.

As the Division Director, I plan to continue with the team concept.

Computer Support:

The Division has been implementing and consistently improving an on-line data base computer system. The on-line system provides a good accounting network that has greatly enhanced the amount of work and the number of cases upon which the Division can do active collection work. It is the major case management tool, providing an automatic case by case suspense and tracking mechanism with full automated correspondence capacities. The system will streamline the clerical burdens while providing near instant notice and appropriate correspondence upon delinquency to help keep greater portions of the caseload current with less effort. Thus more time is made available for the more difficult collection cases.

During the development of the on-line system, new technological advances have been made in the computer industry. Some are improvements for ongoing production while others provide for faster development. The development tools are now referred to as "fourth generation" languages. One of the companies that is working in this area is Sperry/UNIVAC, Inc.. Through contacts with a consultant firm, Sperry and the previous Director of the Washington State Child Support Agency came to Anchorage to look at the Alaska data processing system. They experimented with Sperry's development programs and provided a third party review of the Alaska Child Support data processing development. With regard to the present status of the development, the report stated the following:

> "The development plan of providing a data base backend to an existing batch process along with related extraction, inquiry, update and form generation functions is classic design, a good use of resources and provides a sound migration path.
>
> The development has been thoughtful and professional in that all required functions are allowed for and demonstrated where feasible.
>
> The quantity and quality of work produced by the two person development team is a compliment to their energy, creativity and dedication, and the state has every right to take pride in the fruits of their labor. The system, however, at its present stage of evolution does not provide full benefits to the user. The limited number of terminals now available further inhibits the utility of the present system.

The real benefits of the system will be increased revenue via intercept programs, locate interfaces to IV-A, Employment Security and licensing and case prioritization and management functions as well as reduced costs associated with case record automation, automated case accounting, case processing and forms generation."

Three recommendations were made, and each was already in process at the time of the report. A copy of the report from the consultant company, Miller and Associates, is attached.

IRS Refunds Intercept:

From a national perspective one of the most effective arrearage collection tools has been the IRS refund intercept process. In some cases the intercept will lead to ongoing payment, but the target is an arrearage collection. Another aspect of the IRS intercept is that it is one of the few collection tools that is effective for interstate cases. Unfortunately, federal law requires each state Child Support Agency to go through this process for AFDC cases and does not allow any state to provide this service for the non-AFDC caseload. In spite of this inequity, the following significant results have been noted at the state and national level.

NATIONAL

Fiscal Year	Cases Submitted	Arrearages Submitted	Number of Collections	Dollars Collected	Average per Case
82	561,000	$2,163,679,400	273,090	$168,915,280	618
83	872,320	$3,053,150,000	323,130*	$169,353,500*	524

ALASKA

Fiscal Year	Cases Submitted	Arrearages Submitted	Number of Collections	Dollars Collected	Average
82	227	$1,582,500	99	$85,000	858
83	927	$6,092,500	211*	$186,000*	881
84	1,148	$6,741,500	-	-	-

*Collections through 8-31-83.

The success of the project has attracted considerable national, state and local attention. There are many people who support making this process available for the non-AFDC area while the Reagan Administration and IRS have provided serious opposition to this change. Here in Alaska the Senate Advisory Council has expressed interest in this area and has prepared Joint Resolution 30 urging Congress to adopt this change. A letter providing information about the process, various federal bills which include the process, and a brief discussion of the other factors involved was sent to the Council. A copy of that letter is attached.

Permanent Fund Dividend (PFD) Intercept:

Much like the IRS refund intercept process, the PFD project starts with arrearages as the primary target. The major difference between the two projects is that the PFD intercept effort applies to both AFDC and non-AFDC cases. While the results from the effort have been significant, the ongoing collection work has continued. For example, during FY83 the PFD collection total accounted for $1,454,645 but this was only 12.4% of the $11,700,000 total. The project for the two PFD programs have produced the following results.

Year	PFD Amount	Collection Period	Number of Checks	Total Collections
1982	$1,000	Jul 82 to Dec 83	1,763	$1,639,060
1983	$386.15	Oct 83 to Dec 83	932	$ 348,390

The ongoing collection totals are increasing. For example, a comparison of December collection total in 1982 and 1983 reveals the following:

	1982	1983	Increase	
Total December	$909,656.54	$1,257,160.03	$347,503.49	38.2%
Less: PFDs				
1982 payments	41,818.53	41,684.16	--	
1983 payments	-0-	243,103.80	--	
Total w/o PFD	$867,828.01	$972,372.07	$104,544.06	12.1%

Public Service Announcements (PSAs):

As activity at the national level started to ease up, the Division started developing a PSA effort via the radio media. The name, address, and contact person for each of the 50 radio stations in the state were identified. The PSA message will be sent to each one monthly and will be about 30 seconds in length. Two general themes have been identified at this point. A general advertisement of the services available and the consequences of nonpayment will be the topics. The initial messages began just prior to the Christmas holidays and have been running consistently since that time. Response in some areas has been good while in others there has been no reaction. The radio stations are being surveyed to get a better understanding of the varied results.

Jail Sentences for Non-Support:

The use of jailing as a deterrent measure in the child support area is an item that creates considerable controversy. In many respects it is an excellent tool to encourage people to pay their support. Others argue that freedom from jailing for nonpayment of debt is one of the founding principles in the establishment of the United States as a country. While recognizing the sensitive nature of the issue, the Division also sees the positive potential in expanding the pursuit of jail sentences for nonsupport.

A major factor in this area is the day to day handling of child support's routine legal matters by the Attorney General's (AGs) office. For a considerable period of time much of their work was backlogged due to a lack of sufficient staff. The legal work they provided was excellent, but their attorneys were spread so thin that looking at casework for jailing was nearly impossible. Contracts with private legal firms were arranged, and additional staff within the AG's office have been able to change this. In early 1984 a special RSA was set up to establish an additional attorney within the Human Services Section to handle child support work. One part of this new attorney's function will be to relieve the work of each of the other attorneys. This will allow each attorney to review their caseloads for potential jailing type situations. The new attorney will then handle each of these cases. Once this project is well underway, it is anticipated that both routine legal matters and special prosecutions will be handled quicker.

Male and Female Payers:

One of the questions that is asked frequently deals with the number of women that are required to pay child support. The Division's records do not specifically identify the payer as a man or woman so the collection teams did a quick manual count. At the time the count was taken, the Division had 210 payers that were women and 6,943 men as payers.

FEDERAL ISSUES

Program Direction:

For the past several years the emphasis from the Federal Government through the Office of Child Support Enforcement (OCSE) has been to redirect the program to the AFDC or governmental reimbursement area. The non-AFDC casework would have been eliminated and cooperation among states for interstate work would have been discouraged. The legislation necessary to make this change was rejected by Congress in 1982. The National Council of State Child Support Enforcement Administrators had opposed the change. To help explain that position, the Council prepared the attached Status Report on the program. It was distributed to every U.S. Senator, Representative, each state's governor and the news media.

In spite of the significant flaws, the proposal was introduced again in 1983. After considerable pressure from a multitude of places, the Secretary of Health and Human Services, Margaret Heckler, withdrew the proposal at a Ways and Means subcommittee hearing on July 14, 1983. The replacement was vague and lacking in detail in every aspect except for the major reduction in the basic funding structure.

Several Congressional leaders collected ideas and concepts from various practitioners. These ideas were worked back and forth with the staff in the Ways and Means Public Assistance and Unemployment Compensation Subcommittee. After considerable debate the proposal was reduced to bill language. The bill, HR 4325, moved through the House quickly and in November was passed on a voice vote 422 to 0. On January 24/26, 1934 the Senate held hearings on the bill with a mark-up session scheduled for January 31, 1984. The bill does provide for a number of

enforcement improvements, but one of the most significant aspects about the bill is that it encourages states to improve collections for non-AFDC cases as well as AFDC cases. Senator Dole as the chair of the Finance Committee is quoted in a Press Release #83-205 as saying, "This is one of the most important features of the various reform bills." A copy of the bill summary and Press Release is attached.

The following is a brief listing of the items addressed by HR 4325:

Purpose Statement:	Make it clear that services are available to all children.
Income Withholding:	Requires the state to provide for income withholding after delinquency occurs.
Procedure to improve upon the establishment and enforcement of orders:	Original concept was to mandate administrative procedures.
State Income Tax Refunds Intercept:	Requires the intercept process for AFDC cases and allows it for non-AFDC cases.
Liens Against Property:	Requires states to provide for liens for real and personal property.
Paternity Statute of Limitations:	Requires states to permit paternity establishment until a child's 18th birthday.
Imposition of Security or Bond:	Requires states to provide imposition of security or bonds to secure payment.
Reporting to Credit Bureau:	Requires states to make delinquency information available to credit bureaus.
Tracking and Monitoring System:	Requires the states to provide a tracking and monitoring system to the absent parent for $25.00 per year
Continuation of Service After AFDC Termination:	Eliminates the requirement for non-AFDC applications after the termination of Public Assistance AFDC grants.
Enforcement of Child and Spousal Support:	Where child and spousal support are included in the same order, both must be pursued by the state.
Publicizing the Services:	Requires states to publicize the services available.
Incentive Payments:	Provides for incentive payments to the states for both AFDC and non-AFDC cases in interstate and domestic work. Currently incentives are paid only on AFDC domestic cases.

Creation of a Special Fund to Improve Interstate Work:	Provides the Secretary with $15 million to fund state projects in the interstate area.
Administrative Match Held at 70%:	The states would continue to receive a match rate of 70% of their operating costs.
Audit Penalties Changed to a Graduated Percentage and Placed on a Three Year Cycle:	This provides for a corrective action period and eliminates the required annual audit.
Medical Support Requirements:	Requires states to petition for medical support with each order.
Medicaid Extension:	Provides for four months of Medicaid after AFDC termination.
Federal Parent Locate Service (FPLS):	Eliminates requirement to exhaust all other remedies prior to checking with FPLS.
Contents of Annual Report to Congress:	Requires the Secretary's report to Congress to include the following: a. Number of cases with obligations. b. Dollar amount of the obligations. c. Number of cases with collections. d. Dollar amount collected on the obligation. e. Number of cases 33/66% delinquent. f. Data regarding interstate collections.
Foster Care Collections:	Provides for the assignment of the support rights for children under Title IV E.
Expands Certain Waiver Rights of the Secretary:	Provides for waivers to allow some experiments in various pilot programs.
Required Waiver for the State of Wisconsin:	Wisconsin is experimenting with combining the Child Support and AFDC program into a straight child grant arrangement.
State Commissions:	Requires each state Governor to appoint a Child Support Commission to consider all aspects of the system to include but not be limited to: a. Visitation. b. Support Standards. c. Interstate Work. d. Additional state or federal legislation.

Other Federal Legislation:

In early January 1983, Congressman Long of Maryland introduced HR 216 to provide for intercepting IRS refunds for non-AFDC cases. Since that time a number of bills have been introduced with regard to child support. Most people are of the opinion that none of these bills will see any further movement until HR 4325 is finalized. Some of the significant differences in these bills and HR 4325 are as follows:

HR 2090 - Pat Schroeder HR 2374 - Barbara Kennely S 888 - David Durenburger	These bills are the Economic Equity Act. They include provisions for non-AFDC IRS intercept.
HR 3546 - Administration Bill	a. No change in the purpose statement. b. Reduces federal match to 60%. c. Repeals incentive payment, no details on replacement funding. d. Requires non-AFDC fees to both parents.
HR 3354 - Marge Roukema	Requires wage withholding prior to delinquency in every case where an individual is obligated to pay support.
HR 3545 - C. Campbell S 1708 - C. Grassley HR 926 - F. Stark	Requires all states to submit quarterly wage reports to their unemployment compensation agencies and the Child Support Program.
S 1398 - M. Wallop	Creates the Child Support Tax Act for benefit payments to children.
HR 1014 - M. Biaggi	Establishes a National Bipartisan Commission to study factors causing the high rate of nonpayment on support orders.

Federal Compliance Audit:

Each year federal requirements mandate a Code of Federal Regulations (CFR) compliance audit. The audits take up a considerable amount of time and generally do not indicate whether or not an agency is running efficiently. This is one point upon which the State Directors Council and OCSE agree. While the two organizations have continuously disagreed on funding issues, the audit process has been an area that each side has worked to change. Numerous joint work sessions have taken place with tentative agreement on a set of standards of effectiveness. Unfortunately, the attention required by the funding issues has temporarily stopped progress in this area.

A listing of all of the audits and their conclusion is attached.

STATE ISSUES

Program Direction:

For the past several years the emphasis from the State of Alaska has been to oppose the federal attempt to redirect the program to the AFDC or governmental reimbursement area. This effort was coordinated through the Offices of the Governor, the Commissioner of Revenue, and included the State Director taking an active role in the National State Director's Council. This began in November, 1981 when the federal proposal was first discussed. The State Director, at that time, was the vice president of the Council and on October 1, 1982 started a one year term as President. Activity during this period included numerous trips to Washington, D.C. to testify before various Congressional committees. Copies of the written testimony are attached. Congressional members and staff aides frequently called upon members of the Council to answer questions about the impact of legislation. Towards the end of 1983, the federal proposal was scrapped; President Reagan signed a proclamation declaring August as National Child Support Month, and legislation recognizing non-AFDC work is now the only legislation that is moving in Congress.

A personal high point for Dan Copeland, the State Director and the Council President, was the invitation from the White House to attend President Reagan's signing of the August Child Support Proclamation. Governor Sheffield joined the President and declared August as Alaska's Child Support Month.

Budget Items:

With strong support from the Governor and the Commissioner, the Division has been able to consistently expand the program with budget increases. Since FY 80, the annual budgets have increased each year to include additional staff. Total collections have increased at about twice that level of staff increases. The following is a presentation of the annual increases in staff and collections:

Fiscal Year	Staff	Percent Increase	Collections	Percent Increase
80	55	-	$5,600,000	-
81	62	12.7%	$6,800,000	21.4%
82	67	8.0%	$8,700,000	27.9%
83	76	13.4%	$11,700,000	34.5%
84	83	9.2%	$13,400,000*	14.5%

*Projected

FY 85 Budget:

The FY 85 budget proposal continues with the same projected increases in staff, authorized expenditure and collections. The most significant and indicative statement about the FY 85 budget proposal is that it is a continuation and expansion of the team concept approach to running the Division. An additional collection team is part of the increase in staff, and for the first time in six

years additional staff to support the enforcement unit are included in the request. The projected collection increase of $1,300,000 is a conservative 10% estimate.

New Legislation:

Early during the 1984 Legislative session, the Governor will ask for tougher enforcement powers for the Child Support Program. The legislation will be aimed at expediting the enforcement process and expanding the negative consequences of nonpayment. Particular emphasis shall be directed to the more difficult cases. A detailed report on the legislation will be prepared when the Governor introduces the bills.

Service Level Measures:

One of the biggest problems in judging the effectiveness of the Child Support Program is that while the Division provides service to an entire caseload, the individual involved only sees what happens in their particular case. In additiion to this, there are a multitude of ways to count cases, collections, delinquencies, actions or lack of action. Another area that is difficult is in determining how big the problem is or what percentage of the state's child support work the Division handles. The following statistical data provides a general picture of what the Division has accomplished.

Total Child Support Cases in the State:

One of the more difficult questions to answer is what part of the state's child support caseload does the Division handle. To begin with the Division generally handles only those cases where the two parents are having a rpoblem. Many people take care of their support obligations on a voluntary basis, and the Division frequently does not get involved in these cases.

Using information from the 1980 Alaska Planning Information book as prepared by the Department of Labor, the Division estimates that their caseload represents 50% of the child support work in the state. This percentage was developed using two computations based upon information in Tables IX 13 and 15 on page 105 of this book and a Division caseload of 6500 cases. A copy of the tables from this document are attached.

According to Table IX-13 there are 30,050 separated or divorced adults in the state. Assuming two separated or divorced adults for each of the 6500 court ordered cases and 1000 cases in the establishment process less 2300 (1800 men and 500 women) adults for the reciprocal cases where only one parent is in Alaska, the Division is working with 12,700 adults. Using this computation, 12,700 or 42% of the state's 30,050 separated or divorced adults are in the Division caseload.

According to Table IX-15 there are 8540 female households with no husband present and with one or more persons under 18 years of age. Assuming the Division's caseload of 6500 cases, less the 1800 men in the reciprocal type case, the Division is working with 4700 single parent women. Using this computation, 4700 or 55% of the state's single female parent families are in the Division caseload.

Annual Collection Comparison

Fiscal Year	Collections	Staff	Collections per Employee	Population Census	Caseload
79	$ 5,100,000	54	$ 94,444	413,700	5,947
80	5,600,000	55	101,818	419,700	6,774
81	6,800,000	62	109,677	435,200	6,511
82	8,700,000	67	129,850	460,800	6,266
83	11,700,000	76	153,947	unpublished	6,887

(See attached for the monthly collection and caseload statistics.)

Interstate Work:

One of the main problems in doing interstate child support work is the imbalance of absent and custodial parents in the various states. The theory is that the collection work done between the states will balance out. In many states the domestic work (both absent and custodial parents in the state) contains the largest group of cases. The other two categories, initiating URESAs (custodial parent instate with the absent parent out of state) and the Responding URESAs (custodial parent out of state and absent parent instate) are substantially different in each state. The problem is complicated further by the federal reporting process. The federal quarterly reports do not acknowledge 34% of Alaska's AFDC collections and 15.5% of the non-AFDC work.

The state of Alaska does substantially more collection work for other states than is returned. The following chart shows a comparison for FY 83 for the three categories in both AFDC and the non-AFDC area.

	AFDC	Non-AFDC	Total
Domestic (made by AK for AK)	$1,650,439	$7,002,157	$8,652,596
Initiating (made by other states for AK)	249,731	476,066	725,797
Totals by Federal Definition	$1,900,170	$7,478,223	$9,378,393
Responding (made by AK for other states)	972,278	1,367,682	2,339,960
Total Activity	$2,872,448	$8,845,905	$11,718,353

Comparison of the State and Federal Revenues and Expenditures:

One of the factors that drives many other state child support programs is the potential to create a profit for the state. During FY 83 Alaska did receive a net profit of $585,800 via $1,564.600 in expenditure reimbursements and AFDC collections while being required to provide $978,800 to support the program. The federal government paid out a net total of $2,245,400 via $868,000 in AFDC collections while providing for $3,113,400 to support the Alaska program. The following chart displays these computations.

Child Support Enforcement Division
Revenue/Expenditure Report FY 83

	Federal Funds	State Funds	Total
Expenditures for FY 83	$2,376.0	$978.8	$3,354.8
Incentives Paid to Alaska	239.4	(239.4)	-0-
FY 83 Estimated Expenditure Cost	$2,615.4	$739.4	$3,354.8
Other Funds:			
Personal Service Allowance (29.3%)	468.7	(468.7)	-0-
AFDC Recoupment	(850.5)	(349.0)	(1,699.5)
Incentives to Other States for Alaska	29.3	-0-	29.3
Interest Income	(17.5)	(7.5)	(25.0)
Total Cost of the Child Support Program	(1) $2,245.4	(2) $(585.8)	$1,659.6

(1) FEDERAL EXPENDITURES -

This represents the total expenditures required on a federal level to fund Alaska's Child Support Enforcement Program.

(2) STATE NET PROFIT -

This represents the direct cash recieved over the costs to run the program.

CHILD SUPPORT ENFORCEMENT DIVISION

Monthly Collection and Caseload Statistics

	Obligation Payments						Arrearages Payments				Other Payments		
Month	Cases	Amt. Due	Total Amt. Collected	% Obligors Obligation	Paying	% Paying	Total Amt	Total Amt. Collected	# Obligors Paying	% Paying	Monthly Collections On C Cases	Direct Payments	Total Mo. Collection
12/30/83	7,255	$1,210,515	$703,210	58.09%	3,130	43.14%	23,145,813	379,633	1,557	21.46	116,690	57,627	1,257,160
6/28/83	6,887	1,128,855	591,555	52.40%	2,890	41.96%	21,280,026	335,170	1,312	19.05%	90,505	61,487	1,078,717
12/31/82	6,594	1,064,980	599,085	56.25%	2,820	42.76%	20,657,107	263,519	1,270	19.25%	21,812	74,534	958,950
6/29/82	6,266	1,010,576	492,667	48.69%	2,518	40.18%	20,246,954	185,186	1,054	16.82%	23,969	57,732	758,954
12/29/81	6,206	982,041	476,314	48.50%	2,471	39.82%	20,646,225	161,822	902	14.53%	16,884	100,201	755,221
6/30/81	6,511	1,030,939	439,626	42.64%	2,315	35.55%	23,023,003	148,6 5	812	12.47%	21,854	41,025	651,120
12/30/80	7,017	1,074,984	413,471	38.46%	2,251	37.08%	25,514,366	122,772	715	10.19%	16,887	32,623	585,753
6/27/80	6,774	1,041,438	356,587	34.23%	2,005	29.60%	23,292,824	104,889	578	8.53%	15,433	25,049	501,958
12/31/79	6,549	1,005,313	351,490	34.96%	1,978	30.20%	20,811,999	79,676	511	7.80%	16,242	26,935	474,343

Support Documents

1. Excerpts from Governor Sheffield's State of the State Message.

2. Organizational Charts - Current and Previous Years.

3. Caseload Review by Federal Office of Child Support Enforcement

4. Computer System, Third Party Review, Miller & Associates

5. Intercept of IRS Refunds, Non-AFDC Child Support

6. A Status Report of the Child Support Enforcement Program

7. Press Release #83-205, Senate Hearings on Child Support

8. Summary of HR 4325, Bill Improving the Enforcement of Child Support

9. Audit History by Federal, Legislative, Governor's Office and Outside Consultants

10. Written Testimony as Provided to:
    a. House Appropriations Committee, May 10, 1983
    b. Senate Finance Committee, June 15 & 16, 1983
    c. Senate Finance Committee, June 20 & 21, 1983
    d. Ways & Means Committee, July 14, 1983
    e. Committee on Finance, Subcommittee on Oversight of the IRS, September 16, 1983

11. Alaska Planning Information, Tables IX 13 & 15

National Council of State Child
Support Enforcement Administrators



A Status Report
of the
Child Support Enforcement Program

February 1983

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THE CHILD SUPPORT ENFORCEMENT PROGRAM
A STATUS REPORT - FEBRUARY, 1983

EXECUTIVE SUMMARY

The National Council of State Child Support Enforcement Administrators has prepared this report to present its views regarding the support enforcement problem that exists for the many children affected by divorce, separation, or the lack of established paternity. A brief history has been included to aid the reader in understanding the scope of the problem and the program accomplishments. Recommendations for the future of the program must include the establishment of a national ethic that children have a right to be supported by both parents. The need is basic . . . children need their child support!

It is important for the reader to understand that practitioners in the field of support enforcement believe that the wrong approach has been used in the attempt to address the issue of poverty among children. Although well meaning, the vast network of social legislation addresses the symptom of the problem rather than the cause. The system provided welfare first, and later as an afterthought . . . child support enforcement. This course of action was taken in spite of the fact that at least 80% of the reasons for eligibility for Aid to Families with Dependent Children (AFDC) has been insufficient child support from the absent parent.

It is obvious to practitioners that if the national effort to try to fix the AFDC and other related welfare programs had instead been invested in curing the disease (lack of support), the nation would not be paying an estimated $30 billion annually for public entitlements. The primary reason for the 30 billion dollar problem was and still is caused by the lack of child support. The problem is not isolated to children receiving public assistance. Regardless of the income level, millions of America's children are being economically deprived and cannot achieve true potential if financial support is withheld by one or both parents.

In 1975, when Congress established the Child Support Program (Title IV-D of the Social Security Act), the establishment of a comprehensive support enforcement system was envisioned. In mandating states to provide AFDC and non-AFDC related services, it appeared the purpose of the program was to provide an opportunity for all children to receive support from their parents through more effective enforcement of state and federal child support laws. While the primary objective was to directly reduce the increasing burden on the taxpayer of maintaining the AFDC program, the law also required states to provide child support enforcement services for all applicants that were not in the AFDC program.

Child support practitioners are of the opinion that the program's focus from the federal perspective has changed. Instead of encouraging states to collect child support for children, AFDC collections for governmental reimbursements are now emphasized. The law created two

programs to address the one issue of non-payment of child support. However, the federal government began to concentrate more than ever on the public assistance aspect of the Child Support Program by consistently recognizing only the AFDC related accomplishments. Faced with this situation, states are placed in a position of either following the letter of the law while ignoring the operational directives of the federal government, or deemphasizing regulatory requirements to adhere to the federal directives.

Actual collection history indicates that states vary considerably in their approach to the two services. Some states concentrate on AFDC collections while others focus on non-AFDC services. In FY 81, the program collected $1,628,894,466 at a cost of $512,517,943. This 3.18 to 1.00 ratio is obviously successful. A total of $958,256,541 was collected in the non-AFDC portion of the program and $670,637,925 in the AFDC portion.

Several studies done by individual states indicate that the non-AFDC child support program is responsible for saving millions of dollars each year in welfare costs avoided. The non-AFDC portion of the program encourages independent child support payments. This reduces the need for governmental dependency while helping to curtail financial deprivation in general. Federal law allows states, at their option, to charge a fee for these services. However, fees are not universally charged and experience has shown that when they are, they do not cover the cost of the non-AFDC portion of the program.

Decision makers need to realize that both portions of the program are cost effective and vitally important. Sufficient funding must be retained to adequately address both AFDC and non-AFDC child support cases. The establishment of paternity, interstate collections, and the many facets of the total problem of child support enforcement are common to both caseloads. In the final analysis, there is no substantial difference; it is a matter of children and their right to be supported by their parents. Decision makers need to redirect their priorities to address this vital root cause of poverty among children. Both parents, not governmental aid programs, need to be responsible for their children. The current Child Support Program is in the infant stage of returning this responsibility of all children to the parents.

HISTORICAL PERSPECTIVE

The first question to be answered was, "Whose obligation is it to support children?". Common law has historically failed to impose on absent parents a civil obligation to support their children. Although custody of children has traditionally been given to the mother, and the absent parent was the father, common law had not expanded much past that point. As late as 1953, the Supreme Court of New Jersey had difficulty finding a legally enforceable support obligation which bound the father to his children. The need was so basic -- but the remedy only referenced "natural law."

Viewed as a state and local problem for many years, federal attention was attracted as costs in the Aid to Families with Dependent Children (AFDC) program continued to escalate. Inadequate laws and a lack of funding were producing low child support collections while over 80% of those receiving AFDC were eligible due to the non-payment or insufficient payment of child support obligations. Contributing to the problem was the prevailing attitude that government, rather than the absent parent, should support abandoned children by means of the AFDC program. Unfortunately, this gave more credence to the concept that it was the custodial parent's responsibility (usually the mother's) to support the children. Due to the social acceptance of this trend, thousands of single parent families (even those not reliant on AFDC benefits) were left without a viable means of support.

To address this problem, Senator Russell Long, then Chairman of the Senate Finance Committee, and Representative Martha Griffith, then Chairwoman of the Subcommittee on Fiscal Policy of the Joint Economic Committee, developed and published an analysis of the welfare system. Both were dedicated to improvement of child support enforcement laws and practices. Changing social mores and the complexity of the problem helped to convince Congress to relieve the plight of the single parent by creating a federal office with oversight responsibility; the Office of Child Support Enforcement, (OCSE) was created effective August 1, 1975. The Title IV-D amendments to the Social Security Act created a funding mechanism to address this chronic national problem.

In their deliberations on the creation of the Federal Child Support Enforcement Program, the Senate Finance Committee stated:

> "The Committee believes that all children have the right to receive support from their fathers. The Committee bill, like the identical provision (H.R. 3153) is designed to help children attain this right, including the right to have their fathers identified so that support can be obtained. The immediate result will be a lower welfare cost to the taxpayer but, more importantly, as an effective support collection system is established fathers will be deterred from deserting their families to welfare and children will be spared the effects of family breakup." (Emphasis added).

Federal Involvement Was Necessary

Since the late 1950's, the number of single parent families has increased dramatically. That growth is directly attributable to the escalating numbers of divorce, marital separation and out-of-wedlock births. Then as well as now, the custodial parent, usually the mother, faced with a financial crisis often seeks financial assistance through governmental outlets. Since most heads of single parent households enter the work force at an inadequate wage level, they find their incomes insufficient to meet ordinary household expenses, day care, clothing and the transportation expenses related to working. The combination of the burdens of daily work, which provides an inadequate income, and the complete responsibility for rearing the children, often overwhelms the custodial parent. These factors, coupled with the lack of financial support from the absent parent, often place the custodial parent in a position of financial dependency upon governmental programs.

Current national estimates indicate one out of every three marriages in the United States ends in divorce. There is an obvious correlation between the increasing divorce rate and the increase in the number of welfare families with single parents heading the household. Seventy-eight percent of all welfare households consist of a single parent, usually a woman, who is providing the basic needs for her family through an assistance grant because the father withdrew or never provided financial support. When absent parents default and avoid their financial responsibilities, the chance of their children being supported by a governmental aid program is much higher. A study presented to the Senate Finance Committee by M. Winston and T. Forsher, "Non-Support of Legitimate Children by Affluent Fathers as a Cause of Poverty and Welfare Dependence", stated that non-support of legitimate children by affluent fathers was often a cause of poverty and welfare dependence. Another conclusion in the study was that many attorneys and public officials found child support issues boring and in some instances were even hostile to the concept of fathers being responsible for their children.

The Scope of the Non-support Problem

How serious is this problem of non-support of families by absent parents? Over seven million children are presently receiving public assistance in the United States through the various federal and state welfare programs. Of greater concern is the possibility that the very existence of the welfare program has caused some of the absent parents to conclude that if they have marital difficulties, they need not worry about the consequences of financially abandoning their families. From their perspective, the government will provide assistance for their children while they establish new lifestyles and often become parents of more children.

The number of children in single parent households is growing at a rapid rate. The 1970 census figures showed 8,265,500 children living with only one parent. By 1980, the number had grown to 12,163,600, nearly a 50% increase! The problem from a financial perspective is that nationally less than half of these custodial parents received the money due to them.

In the early stages of the welfare program, little was done to recoup the welfare dollars expended. As a result of this lack of action, many absent parents who may have been capable of paying became remiss in their obligation to support their children. For a considerable period of time, they were not made to bear the costs of supporting their children. Society simply "picked up the tab." The cost of the tab, however, has become incredible. In 1956, the total cash benefits expended in assistance to children was just over $617 million. By 1982, that figure increased to an astounding $12 billion annually -- a 2000% increase in 22 years. As staggering as that figure may be, it is not all inclusive. Additional billions were spent on food stamps, medicaid benefits, foster care, juvenile institutions, and other related programs.

THE CHILD SUPPORT ENFORCEMENT (IV-D) PROGRAM

Because of the immensity of the problem, in 1975 Congress enacted Public Law 93-647. Maintaining a child support program became an individual state eligibility requirement to receive federal match funding in Aid to Families with Dependent Children (AFDC). The Federal Office of Child Support Enforcement (OCSE) promulgated regulations covering the maintenance of case records, the establishment of paternity, the locating of absent parents, the enforcement of support, and the use of cooperative agreements among the states. The administration of the program was left to the state child support units, which are required to function within the parameters of federal regulations, local and state laws, county, and/or judicial prerogatives.

Originally, federal financial participation provided for 75% of the administrative costs of operating a child support program. The remaining 25% was provided by the state and or local government. With the 1982 changes in federal law, effective 10/1/82 financial participation is now a 70% - 30% split.

To encourage cooperation between states, local governments, other political jurisdictions, and to increase AFDC collections, the federal government also provided for a 15% incentive payment on AFDC collections. This 15% payment is deducted from the federal share of the AFDC distribution. However, the 1982 legislation provides that as of October 1, 1983, the 15% payment rate will be reduced to 12%. Lowering the incentive percentage rate will actually provide a disincentive to state programs.

A financial commitment is necessary to begin reversing the trend toward lack of cooperation between states that has developed. Continued and expanded support at the national level will result in future growth and success in the program. At the same time, the individual families will move toward less dependence upon the federal and state government for financial support.

There are two categories of cases; AFDC and non-AFDC. For children receiving AFDC, collections are distributed back to the state and federal governments. These collections are distributed between the two based upon the matching grant rate which the federal government provides to each state for their medicaid and AFDC programs. For families who are not receiving AFDC, collections are sent directly to the custodial parent. Neither the state nor the federal government receives any portion of non-AFDC collections (except fees), but both directly benefit because the collections do significantly reduce the potential for AFDC eligibility.

In FY 81, 1.6 billion dollars in child support payments were recovered from absent parents. This recovery effort represents a step in the right direction, but many barriers still exist which inhibit effective and efficient child support collections. The major barriers have been the lack of enforceable laws and resources to handle the immense nature of the problem. The difficulty is compounded by the large number of absent parents who cross state lines in an attempt to avoid payment of support. Nationally, only 11.3% of the absent parents whose children are on welfare are actually paying child support. Reliable data now exists which indicates that this figure can be greatly increased. A number of states are already receiving payments on over 20% of their cases.

The most current information available to the states demonstrates continuous progress in program effectiveness. The data below has been extracted from the 6th Annual Report to Congress, published by the Department of Health and Human Services, Office of Child Support Enforcement.

TABLE I

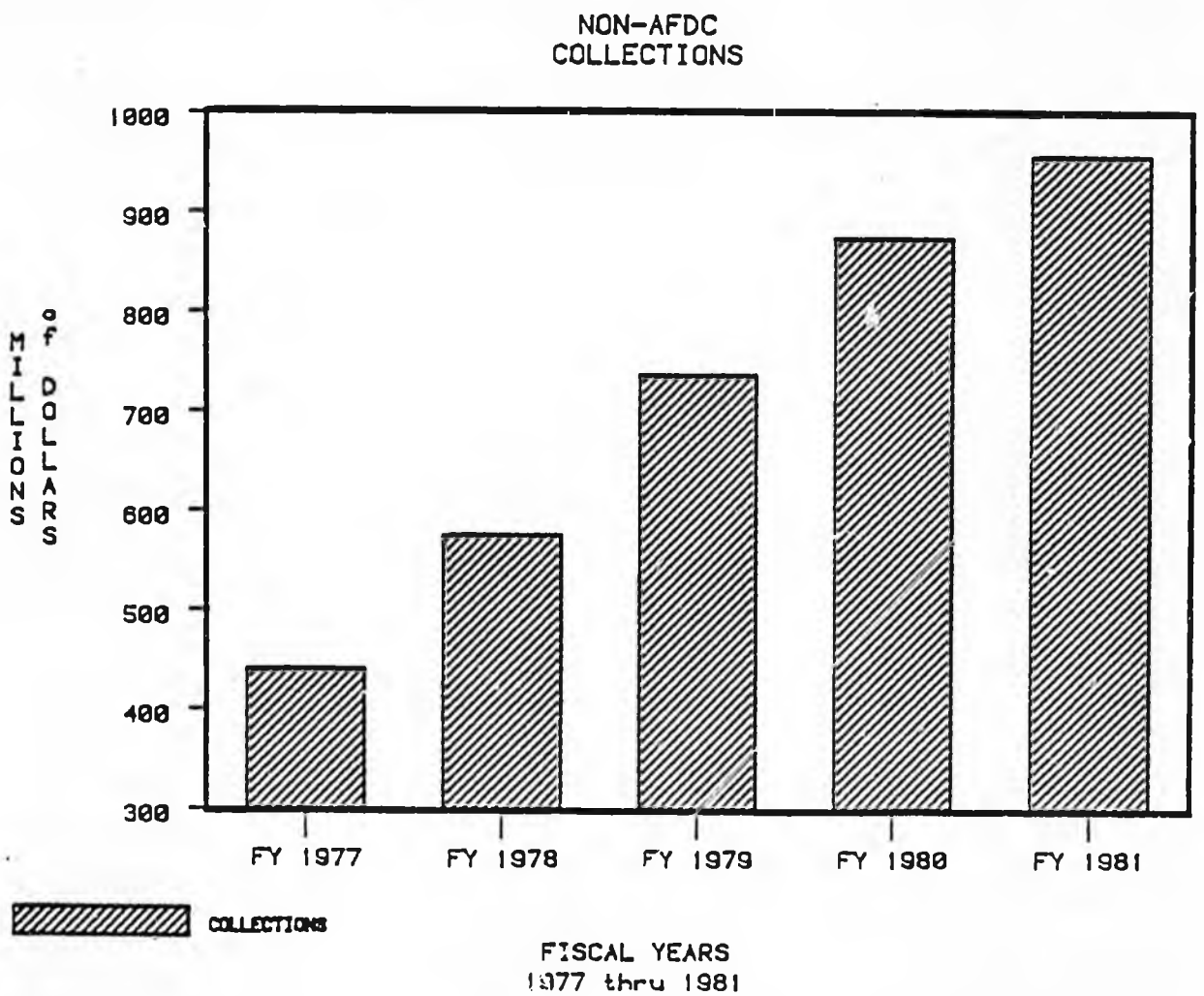
	1976	1977	1978	1979	1980	1981
Total Child Support	$512 mil.	$864 mil.	$1,048 mil.	$1,333 mil.	$1,478 mil	$1,629 mil
AFDC Collections	204 mil.	423 mil.	472 mil.	597 mil.	603 mil.	671 mil
Non-AFDC Collections	308 mil.	441 mil.	576 mil.	736 mil.	875 mil.	958 mil
Paternities Estab.	14,706	68,263	110,714	117,402	144,467	163,554

Non-AFDC Collections

It is worthwhile to note, in reference to the figures on the graph below, that the funds collected in the non-AFDC category are distributed directly to families not on public assistance. Several independent state studies have estimated that 15% to 25% of these families would be on public assistance if the child support collection service were not in place. This translates into substantial savings in AFDC, food stamp, and medical assistance expenditures.

Table II depicts annual collection totals for the non-AFDC portion of the program. Collections increased nearly 117% during the five year reporting span and the effect from this collection effort is a reduction in individuals receiving AFDC assistance. While termed "cost avoidance", the AFDC reduction reflects a substantial savings in all welfare program expenditures. There would be a significant increase in the number of AFDC applicants if the non-AFDC collection program were allowed to diminish.

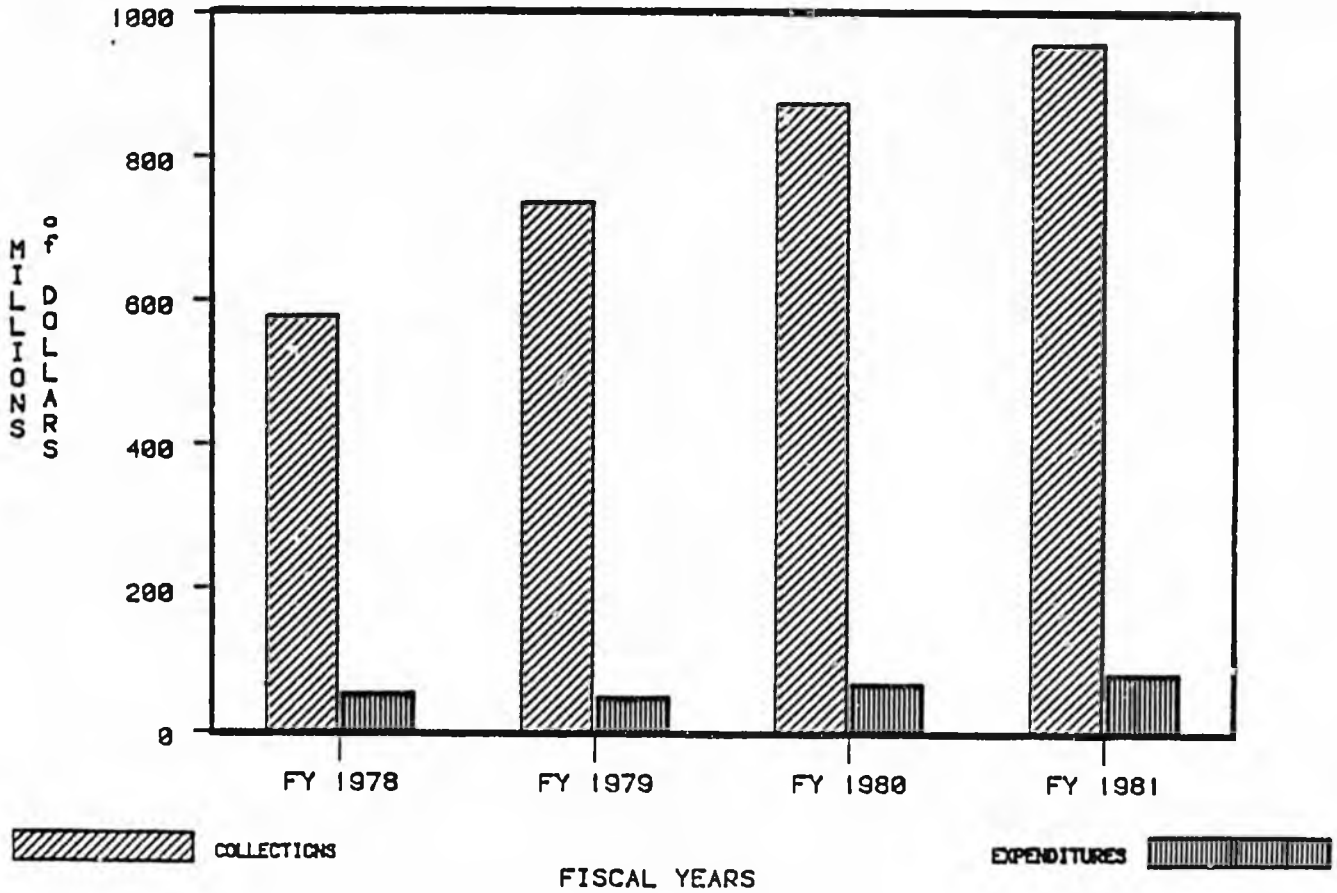
TABLE II



Non-AFDC collections indirectly offset the costs of the public assistance program. Table III shows the costs compared to collections in the non-AFDC program. It is significant to note that while the non-AFDC collection total is now one billion dollars annualy, this collection figure has not been used in the evaluation of the program's achievement. On the other hand, the cost of operations has been used as an integral part of the program evaluation. Practitioners are concerned about this and puzzled by the lack of compliance with congressional intent.

TABLE III

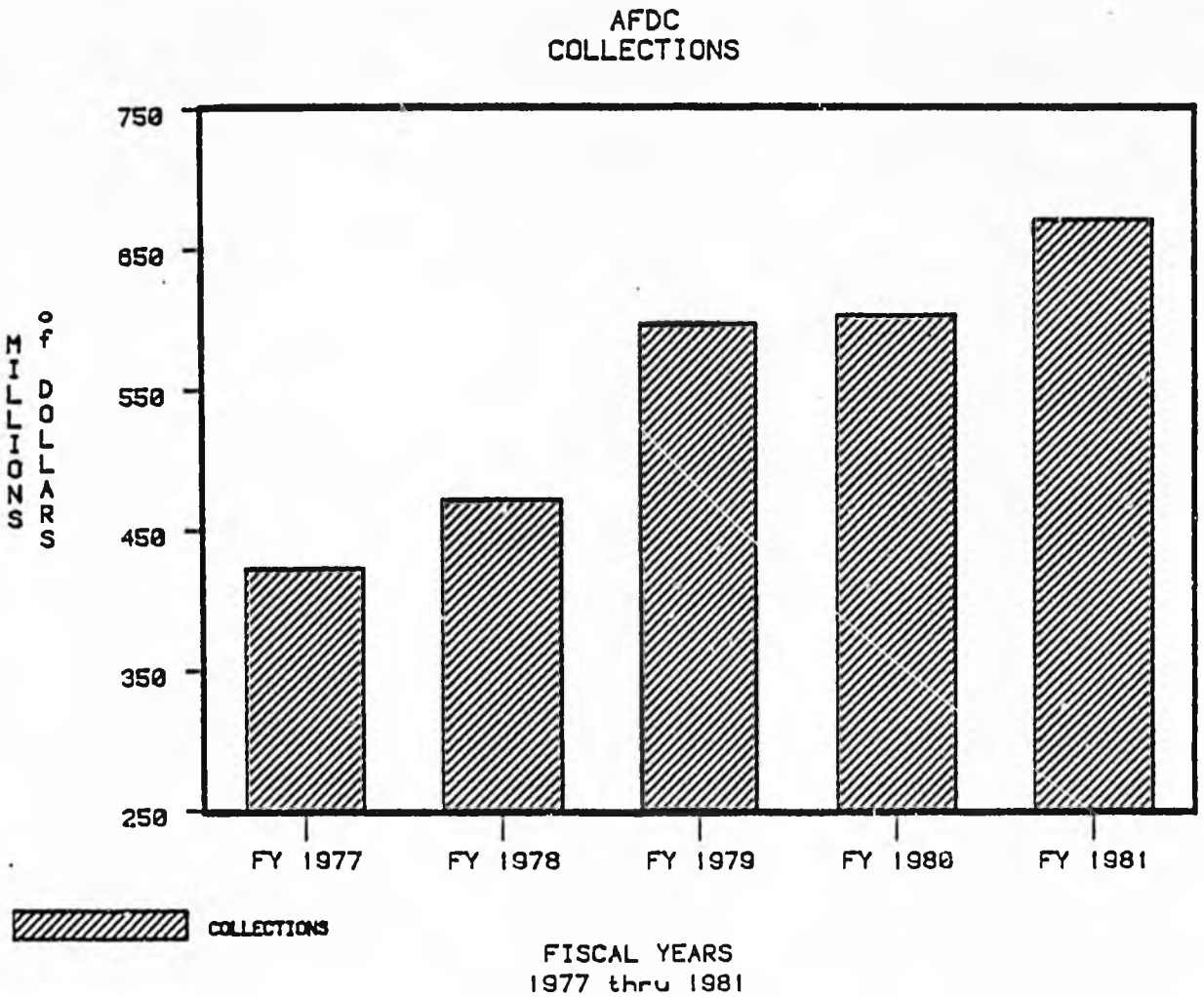
NON-AFDC CHILD SUPPORT
COLLECTIONS COMPARED TO EXPENDITURES



AFDC Collections

AFDC collections directly offset the costs of the public assistance programs. Table IV reflects significant annual AFDC collection increases during the periods FY 77 to FY 81. The program has experienced a 59% increase in funds recovered. Favorable legislative action or improved enforcement techniques at the federal, state, and local level, are directly attributable to this trend.

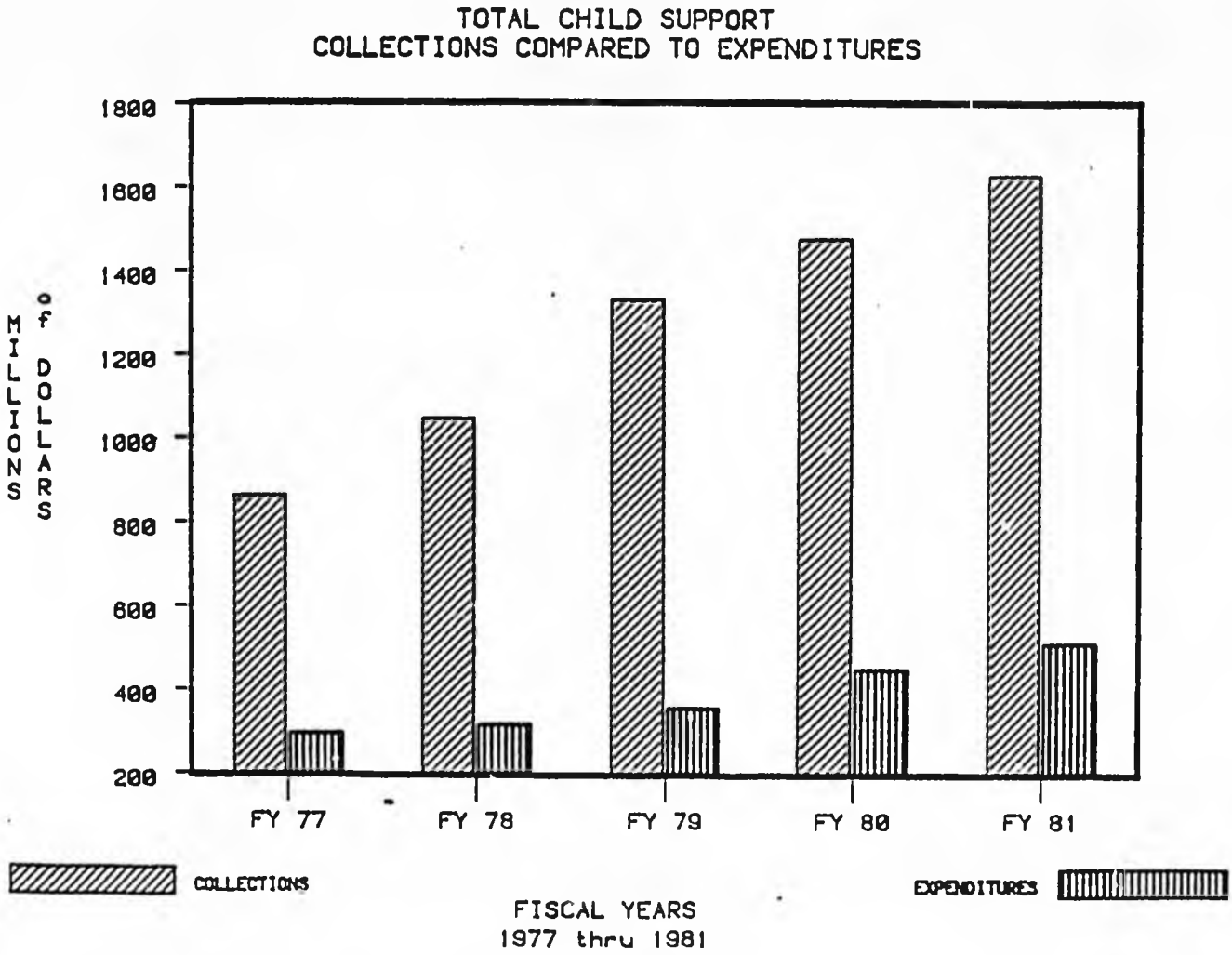
TABLE IV



AFDC and Non-AFDC Collections

A combined chart (Table V) showing the effectiveness of the AFDC and non-AFDC initiatives provides dramatic illustration of the program's success. This shows the difference between collections and expenses. Clearly, collections are running ahead of expenses by a 3 to 1 ratio. From FY 77 to FY 81, annual collections have increased by more than 750 million dollars, while the corresponding figure for expenses shows an increase of about 200 million.

TABLE V



Interstate Collection Difficulties

Due to the Nation's transient population, some states are experiencing a large influx of absent parents. These states are collecting an increasing amount of child support which is sent to another state where the custodial parent and children are living. In many cases there is a considerable difference in the amount that is sent out of state as opposed to what is returned. The local jurisdictions within the states are experiencing similar problems.

The state and local jurisdictions that actively pursue collection work on behalf of others, must deal with a distorted and often negative collection to expenditure ratio. This problem is complicated even further by the lack of uniform laws and legal requirements. It is imperative for the absent parent population to recognize that moving to another state does not eliminate their child support obligation.

Currently OCSE has initiated a contract to the National Institute of Child Support Enforcement (NICSE) to survey and study the interstate collection problem. This will include contact with approximately 10,000 jurisdictions and/or organizations which perform child support services nationwide. Work on this contract will start in early 1983.

Establishing Paternity

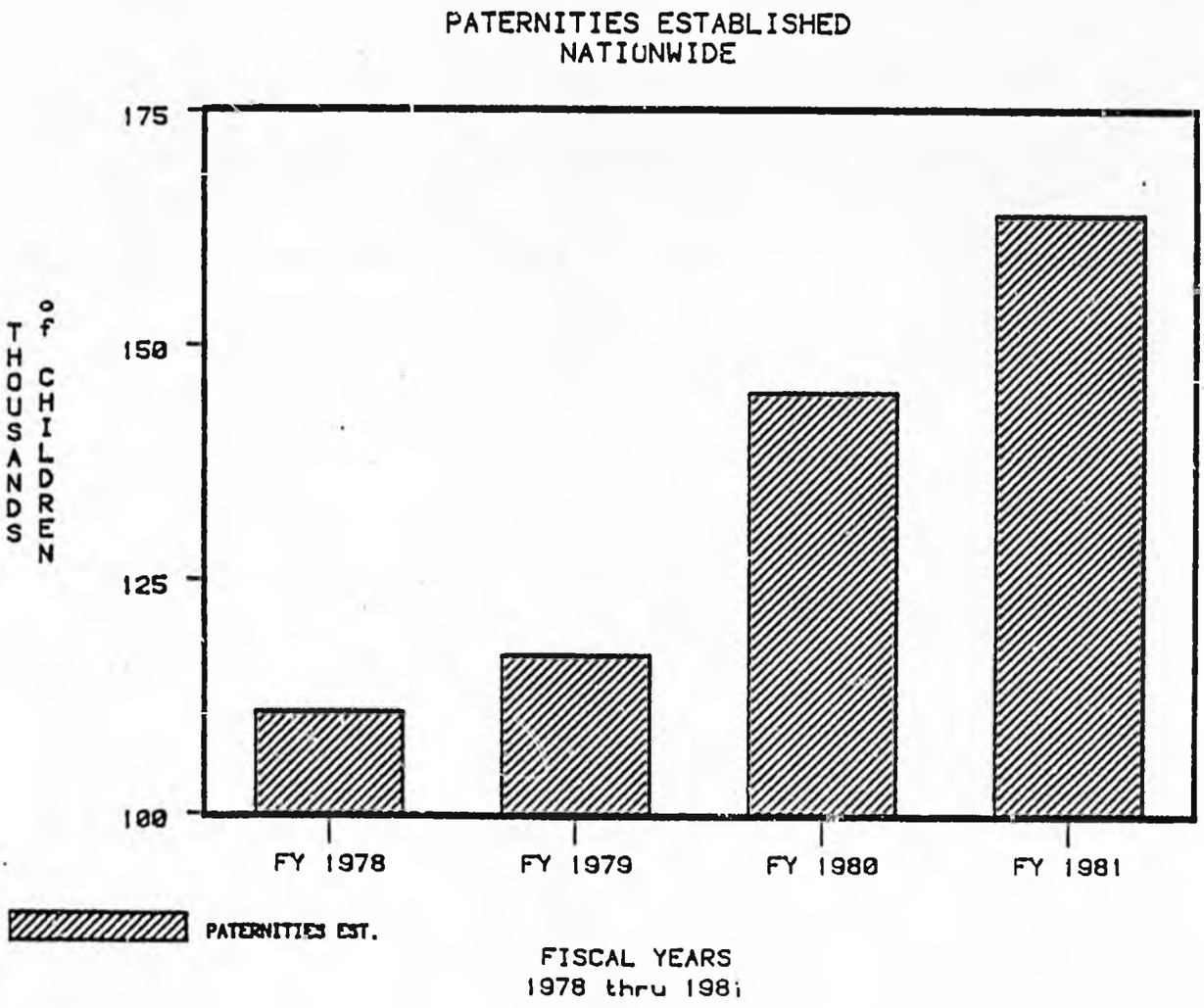
A significant factor which has contributed to the increased growth of the welfare program (AFDC) is the number of children born out-of-wedlock. According to statistics maintained by the National Health Center in 1979, there were an estimated 597,800 out-of-wedlock babies born in America. This was approximately 17% of all births, but is even more striking when compared to statistics of a decade ago. In 1970, unwed mothers had 399,000 babies, or 10.7% of all births for that year. OCSE reports that the large increase in the non-marital birth rate has brought a corresponding increase in the cost of AFDC funding.

The "inherent right" of the child starts with paternity establishment. Legally identifying the father establishes potential Social Security, veteran's assistance benefits, insurance benefits, and potential inheritance rights. It is the first step in shifting the burden of support from a government program back to both parents.

Currently, OCSE has initiated two contracts to study the cost effective aspects of doing paternity establishment. Work on these contracts will start in early 1983.

Table VI indicates a 68% increase in paternity determinations during the four year period ending 1981. This demand for paternity establishment should be paramount in every child support unit, however, the task is extremely expensive. These costs are immediate while the benefits are of a long term nature.

TABLE VI

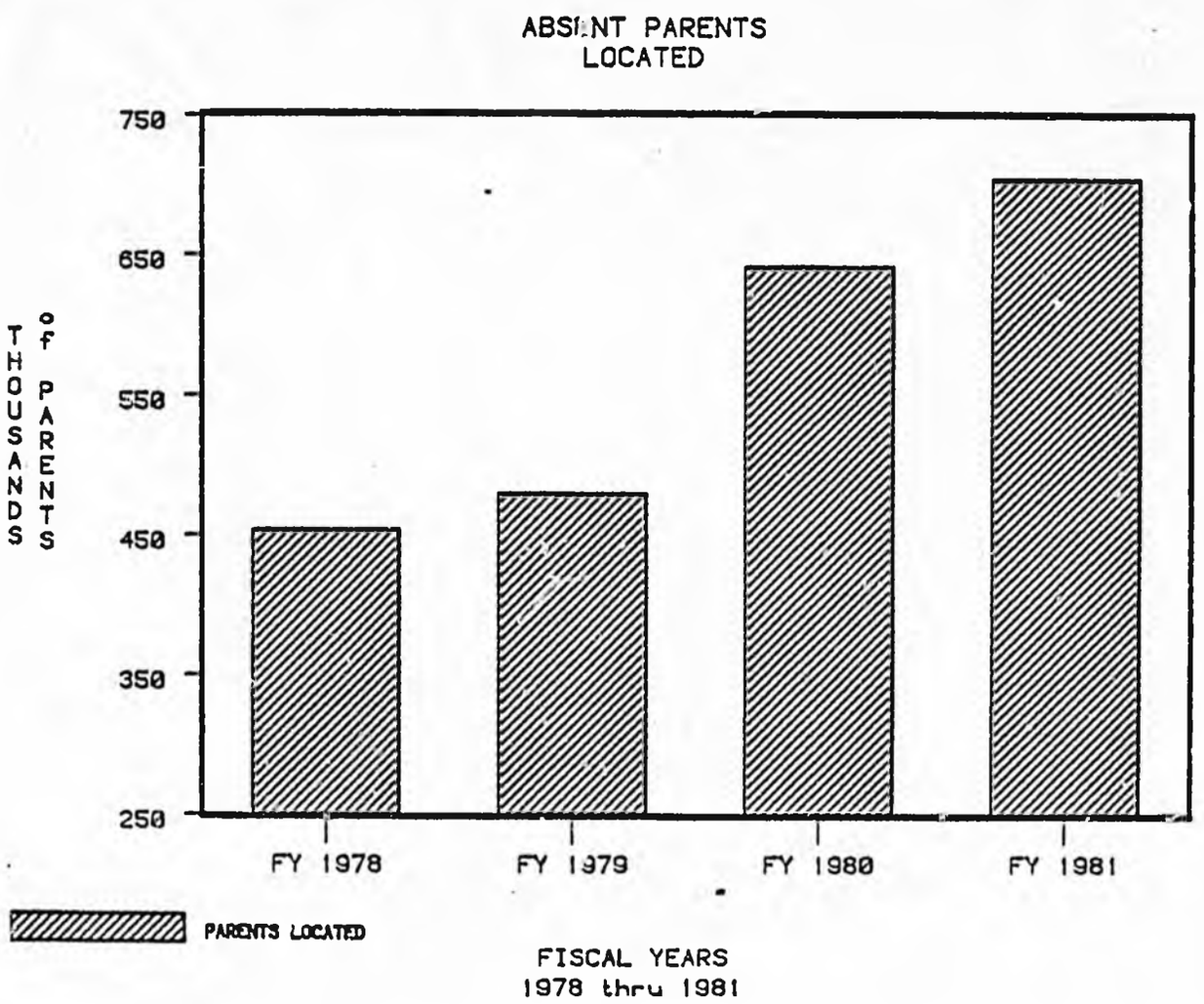


Locating Absent Parents and Establishing Support Obligations

In order to increase collections during the short history of the program, states have had to work on locating absent parents and establishing support orders.

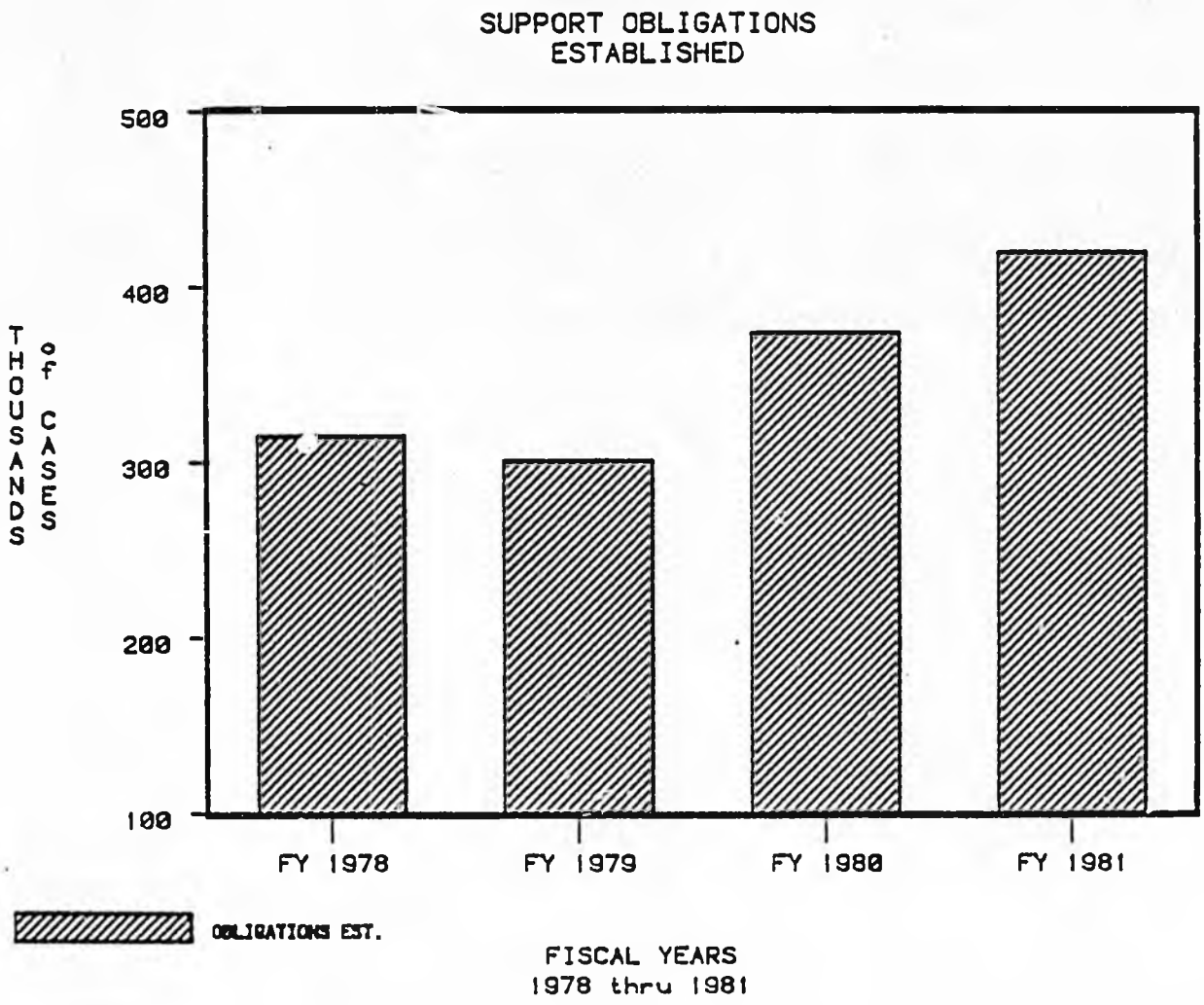
Before a case can be established as an enforceable order, the absent parent must be located. Table VII indicates the number of absent parents located for the establishment or enforcement of a child support obligation.

TABLE VII



Once the absent parent is located, a legally binding child support obligation must be established. Table VIII indicates the number of obligations that have been established.

TABLE VIII



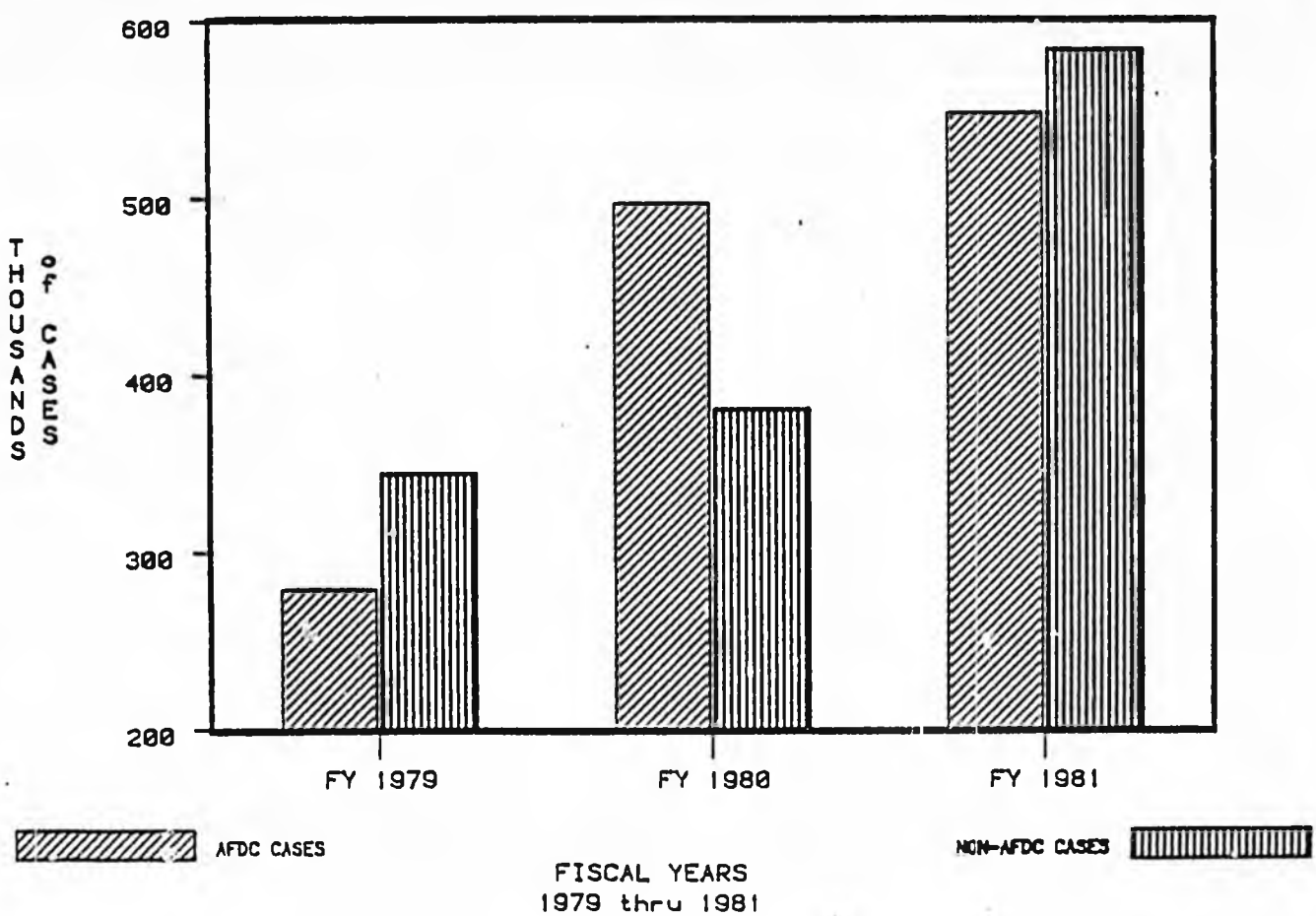
Increase In Cases Paying

The combined factors of locating the absent parent and establishing an obligation to pay has lead to a significant increase in the number of cases paying each month. Table IX illustrates this trend for both AFDC and non-AFDC cases over a three year period.

This chart points out the number of AFDC and non-AFDC cases paying and should be compared with amounts of money collected as indicated in Tables II and IV.

TABLE IX

AVERAGE NUMBER OF CASES
PAYING EACH MONTH



RESTRUCTURING

In 1982, operating under the premise that the program could be made more effective, "financial restructuring" was sought by OCSE within the Reagan Administration. There was, however, a considerable difference of opinion with regard to "Restructuring" between OCSE and the practitioners involved in the work. OCSE believed that "Restructuring" provided an incentive requirement that would force states to improve their child support programs. The practitioners in this field were convinced that "Restructuring" had major operational deficiencies that would hurt the program and set it back to pre-1975 levels. Although the dramatic restructuring sought by OCSE was not implemented, it is mentioned here since a modified version is currently before Congress.

Federal funding for the Child Support Program should be provided to ensure services for all needy children. The costs of establishing paternity cases should be recognized for their immediate nature as compared to their long range benefits. The AFDC cost avoidance aspect and other services provided in doing non-AFDC work as well as the transient or interstate nature of the absent parent should be considered as major factors in operating the child support network.

Instead of restructuring, the federal funding participation was reduced from 75% to 70% effective October 1, 1982. Effective October 1, 1983, "incentive payments" will be reduced from 15% to 12%. The concern of practitioners in the field is that these reductions will cause program atrophy. The program may dwindle because state and county budgets are, in many instances, not able to carry the load. This reduction in the federal portion conveys a message to all absent parents that non-payment of debts, like child support, is acceptable. Rather than crippling the program by changing the financial structure, emphasis should be placed on enhancing program efficiency through improved program direction. Better laws for the rights of the child, stronger recognition of exisiting laws by the judicial branch, and improved enforcement will bring the savings needed to continue a very effective program.

THE DILEMMA OF NON-AFDC PROGRAM DIRECTION

A major problem facing all states at this time is how vigorously to pursue the non-AFDC program. The regulations which provide for federal financial participation require the states to provide child support service to both the AFDC and non-AFDC families. However, emphasis is on AFDC collection. Caseload comparisons indicate that the states vary considerably in their approach to working both caseloads. Some states concentrate their main effort in the AFDC area, while others focus on the non-AFDC caseload. Reasons for this vary widely; some states react to state statutes which provide their guidance, while others operate from administrative direction. The paradox each state must face is whether to follow the letter of the law or the direction from the Office of Child Support Enforcement.

The wide variance in the state programs is illustrated by the fact that in one state only 0.9 percentage of their cases are non-AFDC. At the opposite extreme, another state has 81.3 percentage of its cases in the non-AFDC category. The dilemma is highlighted by the fact that both states are apparently meeting federal compliance requirements.

It appears that the reason AFDC has been emphasized over the non-AFDC work has been the difficulty in measuring the cost avoiding aspects of the non-AFDC program. It is noteworthy that a federal contractor, Maximus Corporation, in their first year study of the Child Support Program, concluded that approximately $323 million a year in costs of AFDC assistance were avoided through the states' pursuit of non-AFDC collections. Conversely, in their second year study as published in February 1982, they denied the existence of this cost avoiding aspect and indicated that any savings obtained were essentially lost through increased participation by marginal income households in food stamps and medicaid benefits. Based on the contradictory nature of their reports from year-to-year, it must be concluded that their data at this point is certainly inconclusive.

Currently, OCSE is preparing a contract to determine the cost avoiding aspects of the non-AFDC program. Work on this contract is scheduled to start during the summer of 1983.

One of the primary groups affected by the non-AFDC program are former AFDC recipients who are working in marginal income jobs. Obviously, if child support can be collected for these individuals, then very frequently even minimum wage jobs will preclude their need for assistance. Therefore, the need for strong non-AFDC collection efforts has never been greater or more beneficial.

While both programs are funded at the 70% FFP rate, many states are unsure as to how vigorously to pursue the non-AFDC effort given the current federal philosophy of emphasizing AFDC. Practitioners believe that some direction should be initiated by the U.S. Congress in this area.

Several options are available:

- Increase federal funding for expansion of non-AFDC and interstate services. Required with this is a clear statement that this is the direction to be pursued and that non-AFDC services are important and necessary.

- Continue federal funding at the current level for non-AFDC and interstate services with optional state fees for recovery of costs. Required with this is a clear statement that this is the direction to be pursued and that non-AFDC services are important and necessary.

- Limit program participation to some prescribed level of income. Required with this is a clear statement that service is limited to low income individuals.

- Mandate recovery of costs by some uniform deduction from collections. Required with this is a clear statement that the custodial parent is to bear part of the costs in operating the program.

- Separate federal funding for the AFDC program from the non-AFDC and interstate portion of the program. Each segment should stand alone.

Problems Within the Present System

The present child support enforcement system lacks reliability and is very slow to react to children's needs. It takes months after a family has separated to procure a child support order and in over 50% of the cases the court order produces little or no results for the child. In comparison, when someone applies for AFDC, rules and regulations ensure that within a 45-day processing period, the eligible applicant will receive money. The AFDC grant is reliable; it comes in monthly and generally the amount is consistent. Thus, the child's subsistence is assured. On the other hand, the custodial parent will often find that the child support order and the enforcement efforts may not produce a payment in time to do any good. Private legal representation is available but most custodial parents find it difficult to meet their basic needs, much less afford legal services.

At first both the child support and AFDC systems appear complicated and intimidating. However, the AFDC system is easier to learn while allowing the client to function independently. This system also provides food stamps and medical care. On the other hand, a lay person has difficulty functioning within the child support system and often has to depend upon legal representation with no guarantee of payment where their children are concerned. It is hard for the custodial parent to understand the delays involved in enforcement and due process for the absent parent. Thus, the child's immediate needs often supercede allowing the child support system a chance to work.

The Child Support Program does offer some relief from these complications for the custodial parent. All the deficiencies and delays are still there but the program does assist the custodial parent with the enforcement process. The practitioners recognize that a child support system that speaks to these problems must be developed so the AFDC Program does not appear to be so attractive.

Strengths and Accomplishments Within the Present System

More children than ever before receive child support and a larger number of paternity establishments are occurring. Simply stated, the program has created substantial results. States are recognizing the positive influences and are trying to enhance their programs by passing more effective legislation. Wage assignments, chemical analysis to establish paternity, enforcement of support orders through administrative processes and intercepting state/federal tax refunds are improving the efficiency of the system as a whole. Steps have been taken in the area of paternity to reduce blood testing costs and legal fees. Performance measures are being initiated to focus on collection goals.

POLICY DECISIONS

Considerable progress has been made in the seven year history of the program. Still, challenges remain and basic questions need to be addressed.

- Should the Child Support Program be viewed as a service or revenue generation oriented program?
- Should child support, coupled with an employment readiness and placement program, become the safety net for custodial parents and children who experience financial deprivation when the absent parent leaves the home, or should they depend on AFDC?
- Should a complete system reform occur?

For purposes of discussion, when giving consideration to any type of system reform, it is important to recognize two factors. State administration, resources and environmental factors will vary to such extremes that development will vary within each state. At this point in time, the Title IV-D Child Support Enforcement Program does not represent all children. When reviewing the system as a whole, the variances in each state should be recognized and all children must be considered.

RECOMMENDATIONS

- A congressional oversight committee should be established to study the ongoing needs of children deprived of child support.

- Initiation of congressional hearings to provide an opportunity for an analysis of the nation's child support network and recommendation for program enhancement.

- The system must obtain initial support payments for the child in less than 45 days.

- National guidelines should be established to determine the child's support needs and allowance.

- A stronger interstate system needs to be developed.

- Legislation must be passed requiring states to have mandatory wage assignments for child support payments.

- Legislation must be passed requiring states to provide for an administrative or quasi-judicial system.

- Legislation must be passed requiring states to provide for offset of state income tax refunds.

- There must be a move from a passive to an active system.

- The emphasis needs to be on collections.

- All employers must be required to provide locate and employment information.

SUMMARY

In the past, federal, state and local governments have not placed enough emphasis on child support enforcement programs. It cannot be overlooked that this lack of emphasis was attributable to the fact that recoupment programs were not compatible with the existing social philosophy. As those times have changed, it may be helpful to refer back to a quote that is well over 100 years old and is still true today.

> "If we first knew where we are and whither we are attending, we would better know what to do and how to do it."
>
> -Abraham Lincoln

It should be the policy of this Administration and Congress that the federal government be actively involved in working with the states to develop more effective and efficient programs. With increased national emphasis, the Child Support Program will get the additional support and recognition so greatly needed at the state and local levels.

Over 13 million children need a system they can depend on. The vast nature of the problem requires attention at the national level. Absent parents cannot be allowed to ignore the most basic obligation -- that of supporting and caring for their children.

NATIONAL COUNCIL OF STATE CHILD SUPPORT ENFORCEMENT ADMINISTRATORS

Purpose

The Council was formed to promote the development of legislation and/or policies which would have a positive effect upon the state and national Child Support Enforcement program. The Council provides a forum for the State Child Support Enforcement Administrators to discuss common problems and solutions associated with program administration. It also provides a structured medium for continuous communication with the Federal agencies as to the views, consensus and professional opinions of state practitioners.

Membership

Membership in this Council is open to each state's Child Support Enforcement Administrator.

Information

For additional information about the Child Support Program in a particular state, please contact that state's program administrator.

For more information about this report, contact one of the Council Officers listed below or the State Administrators within your region as listed on the next page.

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STATE OF ALASKA 1984 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date

REQUEST
Bill/Resolution No: HB 667
Title: An act relating to child support enforcement
Sponsor: Rules Committee
Requestor: Governor
Date of Request:

FISCAL DETAIL
Agency Affected: Revenue
Program Category Affected: Revenue Collection and Management
BRU, Program of Subprogram(s) Affected: Child Support Enforcement Division

EXPENDITURES/REVENUES: (Thousands of Dollars)

		FY 84	FY 85	FY 86	FY 87	FY 88	FY 89
	OPERATING						
100	PERSONAL SERVICES	-	-	-	-	-	-
200	TRAVEL	-	-	-	-	-	-
300	CONTRACTUAL	-	-	-	-	-	-
400	SUPPLIES	-	-	-	-	-	-
500	EQUIPMENT	-	-	-	-	-	-
600	LANDS & STRUCTURES	-	-	-	-	-	-
700	GRANTS, CLAIMS	-	-	-	-	-	-
800	MISCELLANEOUS	-	-	-	-	-	-
	TOTAL OPERATING	-	-	-	-	-	-
	CAPITAL	-	-	-	-	-	-
	REVENUE	-	-	-	-	-	-

FUNDING: (Thousands of Dollars)

	GENERAL FUND	-	-	-	-	-	-
	FEDERAL FUNDS	-	-	-	-	-	-
	OTHER	-	-	-	-	-	-
	TOTAL	-	-	-	-	-	-

POSITIONS:

	FULL-TIME	-	-	-	-	-	-
	PART-TIME	-	-	-	-	-	-
	TEMPORARY	-	-	-	-	-	-

SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

ANALYSIS: See attached.

Prepared By: Dan R Copeland
Division: Child Support Enforcement
Phone: 276-3441
Date: 2/3/84

Approved by Commissioner:
Agency: Revenue
Date: 2/9/84

Distribution (by Agency preparing fiscal note):
Legislative Finance
Legislative Sponsor
Requestor
Office of Management and Budget
Impacted Agency(ies)

Analysis:

This bill will enhance the ability of all interested parties to enforce the duty of support upon all non-custodial parents by expanding current collection statutes while also adding new amendments. The changes will expedite some of the enforcement procedures and eliminate parts of the potential delay from unnecessary litigation.

Substantial delays often take place when the non-custodial parent claims that payment has been waived verbally or counter claims dealing with custody, visitation or property rights are presented in delinquency court hearings. This bill will create a situation such that when the Child Support Division makes an appearance in the superior courts, counter claims for custody, visitation or property rights may not be adjudicated, and any waivers of support would be required in writing. In these waiver situations, the court would be required to satisfy itself that the custodial parent could adequately support the needs of the child.

The scientific parentage testing procedures are now developed to a point that they are reliable past any reasonable doubt. This bill would require the courts to accept test results of this nature when proof of parentage was in excess of 95 percent. This presumption of parentage could be rebutted only by clear and convincing evidence.

In many instances the Child Support Division must operate without complete information about the non-custodial parent or face significant delays in obtaining the information. This bill would provide subpoena powers to the Division under strict control through the Commissioner of Revenue. Use of the subpoena powers would require a 45 day delinquency on an existing child support order.

The current statute exemption standards for wage or earning attachments deal with a percentage of gross income or $100 a week. This causes frequent delays from the employer's payroll department. The bill would change the exemption to 50% of net wages as defined by statute, and this would reduce the time it takes to get the wage collection.

The current Civil Rules of Court require the parties in a child support order to inform the Child Support Division in writing of any change of address and provides for service of process by U.S. mail. This bill simply reduces this to statute language.

The Supreme Court decision Young vs. Williams suggested that unpaid child support installments would become judgments in favor of the custodial parent upon delinquency. This bill would provide for this by statute language and allow for collecting these judgments with reduced court intervention. The non-custodial parent's rights to contest in court would be maintained.

This bill would greatly enhance the collection possibilities while reducing certain time and processing requirements. In addition to this improvement, a number of payors will choose to pay rather than fight the issue in court. The combination of this impact would be a more efficient process for handling delinquent support for all of Alaska's children

BILL SHEFFIELD
GOVERNOR

PHONE
(907) 561-4227

STATE OF ALASKA

OFFICE OF THE GOVERNOR

ALASKA WOMEN'S COMMISSION
3601 C STREET - SUITE 742
ANCHORAGE, ALASKA 99503



March 23, 1984

Legislator Charlie Bussell
Chair, Judiciary Committee
State Capitol
Pouch V
Juneau, AK 99811

Dear Representative Bussell:

The Alaska Women's Commission strongly supports HB 667 and 668 which deal with Child Support Enforcement. As the legislation points out "the harmful effects of unpaid child support touch not only the poor but reach far beyond to diminish the overall quality of life for all Alaskans." We urge you to take action on these two bills as soon as possible.

Sincerely,

Kathy Marshall

Kathy Marshall
Executive Director

KM:msf

HB

668

STATE OF ALASKA 1984 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date

REQUEST
Bill/Resolution No: HB 668
Title: An act relating to child support enforcement & providing effective date
Sponsor: Rules Committee
Requestor: Governor
Date of Request:

FISCAL DETAIL
Agency Affected: Revenue
Program Category Affected: Revenue Collection and Management
BRU, Program of Subprogram(s) Affected: Child Support Enforcement Division

EXPENDITURES/REVENUES: (Thousands of Dollars)

		FY 84	FY 85	FY 86	FY 87	FY 88	FY 89
	OPERATING						
100	PERSONAL SERVICES	-	-	-	-	-	-
200	TRAVEL	-	-	-	-	-	-
300	CONTRACTUAL	-	-	-	-	-	-
400	SUPPLIES	-	-	-	-	-	-
500	EQUIPMENT	-	-	-	-	-	-
600	LANDS & STRUCTURES	-	-	-	-	-	-
700	GRANTS, CLAIMS	-	-	-	-	-	-
800	MISCELLANEOUS	-	-	-	-	-	-
	TOTAL OPERATING	-	-	-	-	-	-
	CAPITAL	-	-	-	-	-	-
	REVENUE	-	-	-	-	-	-

FUNDING: (Thousands of Dollars)

	GENERAL FUND	-	-	-	-	-	-
	FEDERAL FUNDS	-	-	-	-	-	-
	OTHER	-	-	-	-	-	-
	TOTAL	-	-	-	-	-	-

POSITIONS:

	FULL-TIME	-	-	-	-	-	-
	PART-TIME	-	-	-	-	-	-
	TEMPORARY	-	-	-	-	-	-

SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

ANALYSIS: See attached.

Prepared By: Dan R Copeland
Division: Child Support Enforcement
Phone: 276-3441
Date: 2/3/84

Approved by Commissioner:
Agency: Revenue
Date: 2/10/84

Distribution (by Agency preparing fiscal note):
- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)

Analysis:

One of the most difficult type of child support delinquency problems involves the self-employed. There are many legal enforcement techniques that may be used in this type of case, but the nature of the self-employed individual makes each of them expensive and subject to frequent delays. This bill provides payment information on delinquent payors to the credit bureaus and various lending institutions. This will create one of the most effective ways to deal with a particularly difficult part of the delinquent child support payor group.

BILL SHEFFIELD
GOVERNOR

PHONE
(907) 561-4227

STATE OF ALASKA
OFFICE OF THE GOVERNOR

ALASKA WOMEN'S COMMISSION
3601 C STREET - SUITE 742
ANCHORAGE, ALASKA 99503



March 23, 1984

Legislator Charlie Bussell
Chair, Judiciary Committee
State Capitol
Pouch V
Juneau, AK 99811

Dear Representative Bussell:

The Alaska Women's Commission strongly supports HB 667 and 668 which deal with Child Support Enforcement. As the legislation points out "the harmful effects of unpaid child support touch not only the poor but reach far beyond to diminish the overall quality of life for all Alaskans." We urge you to take action on these two bills as soon as possible.

Sincerely,

Kathy Marshall

Kathy Marshall
Executive Director

KM:msf

BILL SHEFFIELD
GOVERNOR

HB 668

STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

February 13, 1984

The Honorable Joe Hayes
Alaska House of Representatives
Pouch V
Juneau, AK 99811

Dear Representative Hayes:

Under the authority of art. III, sec. 18, of the Alaska Constitution, I am transmitting a bill relating to child support enforcement. This bill authorizes the Department of Revenue's child support enforcement agency, organized as a division within the department, to release to credit bureaus or lending institutions payment history information concerning persons who are delinquent in their court-ordered child support payments.

Existing statutes provide the authority to order an employer to withhold and deliver part of a delinquent employee's earnings. This tool is obviously not effective against a self-employed parent who owes child support. The new tool provided in sec. 2 of the bill is both a deterrent and a collection tool against those who are self-employed. The knowledge that delinquency in paying child support could be reflected in a person's credit history should serve as a deterrent to becoming delinquent and as a powerful incentive to those who are delinquent to bring their child support payments current.

The language of new AS 47.23.273(a) will ensure that the information provided by the division to credit bureaus and lending institutions will be only payment history information, without any reference to the personal characteristics or the reputation of the obligor. New AS 47.23.273(b) provides for immediate notification to credit bureaus and lending institutions when an obligor ceases to be delinquent in his payments.

As proposed, new AS 47.23.273 is in compliance with the Fair Credit Reporting Act, 15 U.S.C. sec. 1681. Under that Act, specific information regarding transactions or experiences between the division and an individual may be released without requiring that the division be considered a "consumer reporting agency."

Sincerely,

Bill Sheffield
Governor

HB

671

STATE OF ALASKA
THE LEGISLATURE

LEGISLATIVE AFFAIRS AGENCY

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

MEMORANDUM February 27, 1984

SUBJECT: Sectional Analysis of HB 671 (Crimes committed against a dependent person)

TO: Representative Charlie Bussell
Chairman, House Judiciary Committee

FROM: Russ Josephson
Legislative Counsel



You have asked for a sectional analysis of HB 671. The analysis and related comments follow.

AS 12.55.155(c) is a listing of 26 factors that may be considered in aggravating a presumptive sentence under AS 12.55.125. This bill consists of a single section that amends AS 12.55.155(c) by adding a new paragraph containing a new aggravating factor: the victim of the crime is a dependent person, as described in the bill.

It is my understanding that you may want to change the penalties for a number of theft offenses, including embezzlement, if the victim of the crime is a dependent person. If you wish to do this, another approach may be taken. Each provision in the statutes that describes a theft offense and sets out the penalties for its commission would be amended. In order to give you a "vehicle" for that approach just before the personal bill introduction deadline, and not knowing what penalties you would like for each of the several theft offenses, I drafted the general provision described above.

I would note, too, that at this time there are several aggravating factors in AS 12.55.155(c) that might accomplish the purposes behind your request. The possible penalties that had been proposed with your request, incidentally, were actually less harsh than those existing in this state now for the theft offenses involved. Accordingly, being unable to reach you to consult further about your wishes under those circumstances, I used my best judgment. If I know

what penalties you would propose for the various theft offenses, I can draft a sponsor substitute. Or, you may decide that the present penalties and available aggravating factors are sufficient.

If I may be of further service please do not hesitate to call.

RJ:lmb
L3/063

STATE OF ALASKA 1984 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date:

REQUEST
Bill/Resolution No.: HB 671
Title: An Act relating to crimes against a dependant person
Sponsor: Cowdery
Requestor:
Date of Request: 2/13/84

FISCAL DETAIL
Agency Affected: Department of Health and Social Services
Program Category Affected: Division of Mental Heal and Developmental Disabilities
~~BRU, Program or Subprogram(s) Affected:~~

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 84	FY 85	FY 86	FY 87	FY 88	FY 89
OPERATING						
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 SUPPLIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS						
800 MISCELLANEOUS						
TOTAL OPERATING		0	0	0	0	0
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL		0	0	0	0	0

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

ANALYSIS: Attach a separate page for analysis

Prepared By: James L. Scoles
Phone: 465-3370
Division: Mental Health and Developmental Disabilities
Date: 2/16/84
Approved by Commissioner:
Date:
Agency:

Distribution (by Agency preparing fiscal note):
Legislative Finance
Legislative Sponsor
Requestor
Office of Management and Budget
Impacted Agency(ies)

12/1/83

POSITION PAPER/Department of Health & Social Services

POSITION PAPER

House Bill No. 671

"An Act relating to crimes against a dependent person."

This bill would include crimes committed against mentally disabled persons (disabled by reason of birth defect, physical disorder, or advanced age) as an aggravating factor for purposes of sentencing criminal defendants under A.S. 12.55.125 (c) (1), (c) (2), (c) (3), (d) (1), (d) (2), (e) (1), or (e) (2).

The purpose of this bill is to authorize the imposition of additional criminal sanctions for defendants who prey upon persons who are disabled as defined above. We believe this to be an appropriate additional safeguard for our disabled citizens, many of whom are unable to protect themselves and their property.

We do, however, recommend that all substantially developmentally disabled persons as well as chronically mentally ill persons be included under this proposed amendment. The following language is offered for possible inclusion in the bill in order to further protect these equally disabled or equally helpless individuals:

> Beginning on line 13 add the following underlined language, "...a mental or physical disability attributable to a chronic emotional disorder, developmental disability, a birth defect, physical disorder, or advanced age,..."

In our opinion, the addition of this language will more adequately define those individuals that should be guarded against exploitation by criminals under this section of the Alaska Statutes.

The purpose of expanding the definition of "mentally disabled" under House Bill 671 is to offer additional protection for the substantially developmentally disabled and chronically mentally ill that are able and willing to reside in the community rather than in our institutions. As our policy has been to develop programs offering community alternatives to institutionalization for these handicapped citizens, this bill, with our proposed amendments, will further that endeavor by adding more criminal sanctions and increased protection for those who perpetrate crimes against these handicapped citizens.

The Division of Mental Health and Developmental Disabilities, in the Department of Health and Social Services, supports the passage of House Bill 671 with the addition of the language proposed above.

Recommended by: _____

Philip Shapiro, M.D., Director
Division of Mental Health and
Developmental Disabilities

Date: _____

Approved by: _____

Robert London Smith, Ph.D.
Commissioner

Date: 2/24/81

HB
678

Alaska State Legislature

POUCH V
JUNEAU, ALASKA 99811
(907) 465-3733

DISTRICT 15
STAR ROUTE BOX 421
EAGLE RIVER, ALASKA 99577
(907) 688-2526

VICE-CHAIRMAN
Judiciary
Legislative Regulations Review

MEMBER
Resources
Rules
Finance — Sub. Com. Labor

Representative John J. Liska

April 11, 1984

M E M O R A N D U M

FROM: Rep. John J. Liska

REFERENCE: HB 678, "An act prohibiting removal of WW II artifacts from State land."

The purpose of this bill is to insure World War II artifacts are included in the State Statutes under the Alaska Historic Preservation Act.

Presently, we have a major problem in the State of Alaska with the removal of World War II artifacts. These historical items are being removed either in tact, for museums in the lower 48, or disassembled to supply a very lucrative demand for spare parts for these vintage planes.

Your packet contains:

A. Pages 30, 31 and 32 from a publication entitled "The Historical "Battle of Alaska" remains." These pages refer to various types of aircraft that crashed in Alaska and where they have been removed to:

1. Douglas - O - 38F - removed to Air Force Base Museum in Dayton Ohio in 1968.

2. Stinson - A Trimotor - to Wisconsin in 1972 by J.D. Berry.

3. P - 51H and P - 40 - Steve Myers, Washington.

4. U.S. Navy Vough OS 2U King Fisher - removed to the Smithsonian Institute.

5. P - 39 Airacobras, on display in Seattle.

Additionally, page 73 shows Japanese artifacts from World War II.

In addition in your packets, but not nearly as interesting, are letters from CAVPAC supporting HJR 66 and HB 678 and a copy of a letter from General Talley who was involved in the Alutian Campaign.

Another piece of back up material has been submitted by the North Star Chapter Pearl Harbor Survivors Association. I have made copies of the first three pages - which may or may not be the same artifacts as previously submitted in your packet.

JJL/tm

Besides the public museums such as the Smithsonian Institute and the Anchorage Historical and Fine Arts Museums, there are many small or private collections which display items of Alaskan history. Unfortunately, in many cases, Alaskans have no say in how the collections are handled.

History is repeating itself in the area of aviation history. It is seen in many examples of aircraft downed during World War II which are leaving the state.

A Douglas 0-38F had engine problems and crashed in 1941. It was removed to the Air Force Museum in Dayton, Ohio in 1968.

In 1972 a Stinson 'A' Trimotor which crashed in 1947 was removed to Wisconsin by J.D. Berry. Berry wrote to Wien Air Alaska and followed it up with a phone call to try and get the airline to purchase the plane for the cost of its removal, but there was no interest, so it was sent Outside in order to pay the costs for its removal.

Two P-51H's were pulled out near Stevens Village. Two more were found near Kotzebue, and three were removed from across Cook Inlet. One P-40 was removed from Amchitka Island in the Aleutians. All of these aircraft were removed by Steve Myers of Washington.

Another P-40 was removed from a site near Fairbanks in 1977 and was sold to a buyer at an unknown Lower 48 destination.

A United States Navy Vough OS2U Kingfisher which crashed during WW II on one of the small islands near Kodiak, was removed in the early summer months of 1979 for removal to the Smithsonian.

There have been numerous other cases. An ad in Flying Magazine's June '80 issue states that sale of "P-39 Airacobras. Recently recovered from a fresh water lake in the Alaskan Peninsula. Russian armament, 117 hour totals hours each. Make offer, would like aviation museum or same to purchase...Yakima, Washington..." A call from the United States Historical Aircraft Preservation Museum in Anchorage brought no response.

Three B-25 Mitchell bombers have left the state in the past two years, in flyable condition, headed for the Outside.

The United States Historical Aircraft Preservation Museum has been trying for several years to open a museum facility located at Merrill Field, but has been blocked from doing so because it has no planes to put into the facility. At the same time, the Planes of Fame Museum from Chino, California has been soliciting donations of Alaska aircraft on a a promise of opening an alaskan branch museum at some undetermined later date.

It has successfully acquired an A-26 from Dr. Donald Rogers, an H-21 helicopter from Bill Swift to help in removing aircraft downed in Alaska, a B-25 from Fairbanks. A wing insignia was donated to the Air Force Museum by Ted Spencer - the insignia coming from the wing on an

aircraft downed at Nome which was to have been used in reconstructing a P-63 Airacobra.

The Committee contends that Planes of Fame has an established reputation for flying, crashing and destroying one-of-a-kind aircraft, and of selling aircraft and aircraft parts in the Lower 48 and abroad in order to keep itself solvent.

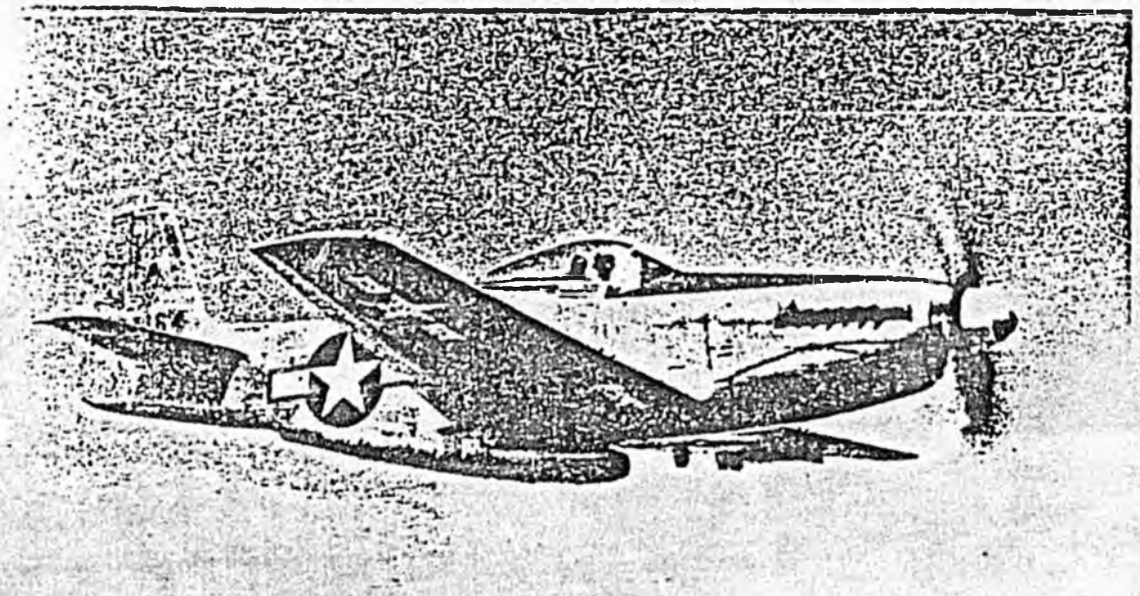
Flying in races and demonstrations for trophies and prize money has taken its toll on the vintage military aircraft.

The Committee feels that if it can adhere to those goals, Alaska will have one of the finest aviation museums in the U.S., preserving that part of Alaskan history.

The United States Historical Aircraft Preservation Museum is currently conducting negotiations for several planes of significant historical value, as well as parts and planes to be retrieved from bush areas.

Access to battlefields in the Aleutians is difficult because of the expense and weather conditions involved, but the area promises to be a fertile area to search.

If the museum has had a difficult time collecting actual aircraft for its displays, there has been no shortage of donations of other treasures. Photographs, blue prints from the Bell Factory which

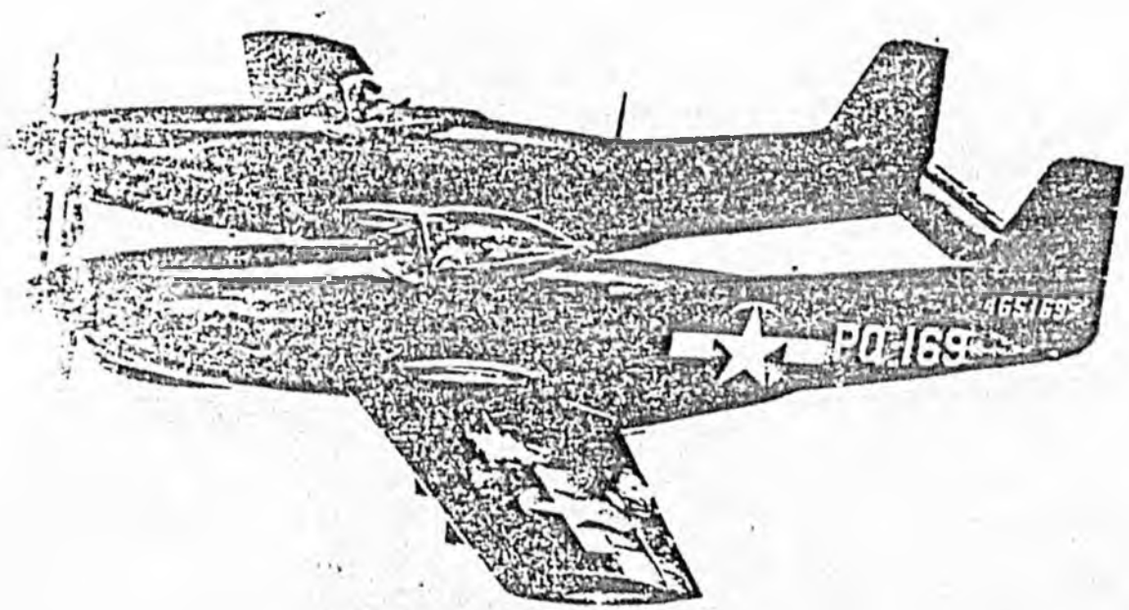


These fighters, P-51's Mustang, were used toward the end of WW II in Alaska. They did not see combat in the Aleutian Campaign. Three downed P-51's were located.

AAHS

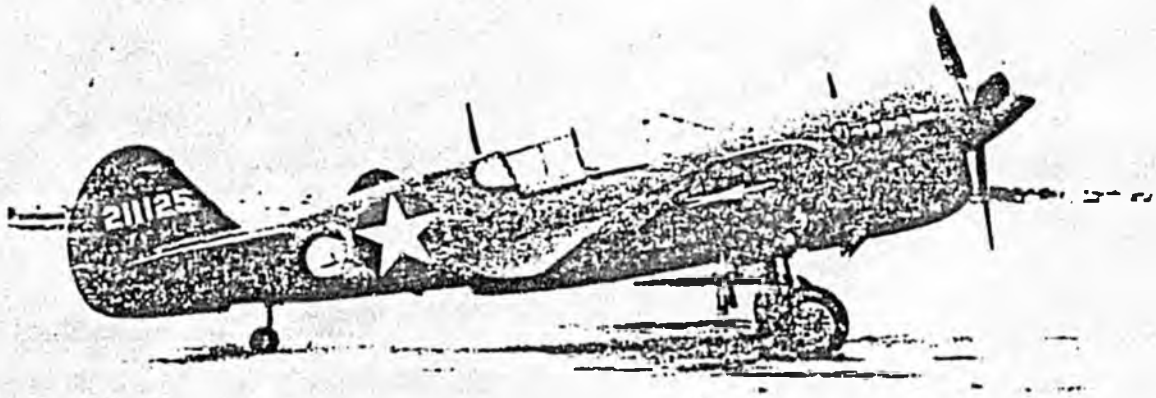
The P-82 Twin Mustang was based in Alaska after WW II. One was located that bellied in and is intact in the Interior.

USAF



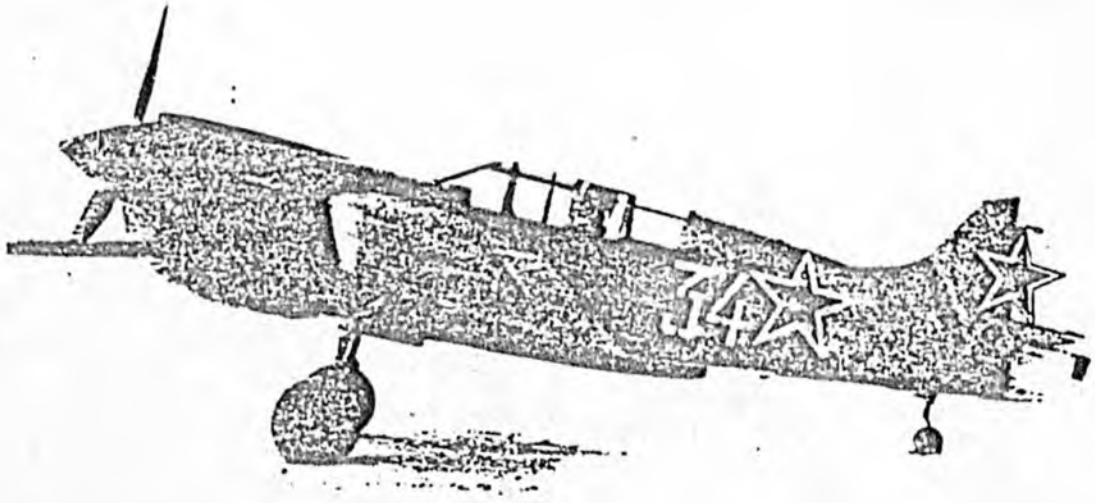
Curtiss P-40 was used by the USAF during the Aleutian Campaign. Eight P-40's were located: Five of them were abandoned, two were downed, and one is in the bottom of a fresh water lake. Also several brand new P-40's were buried in crates in the Aleutians.

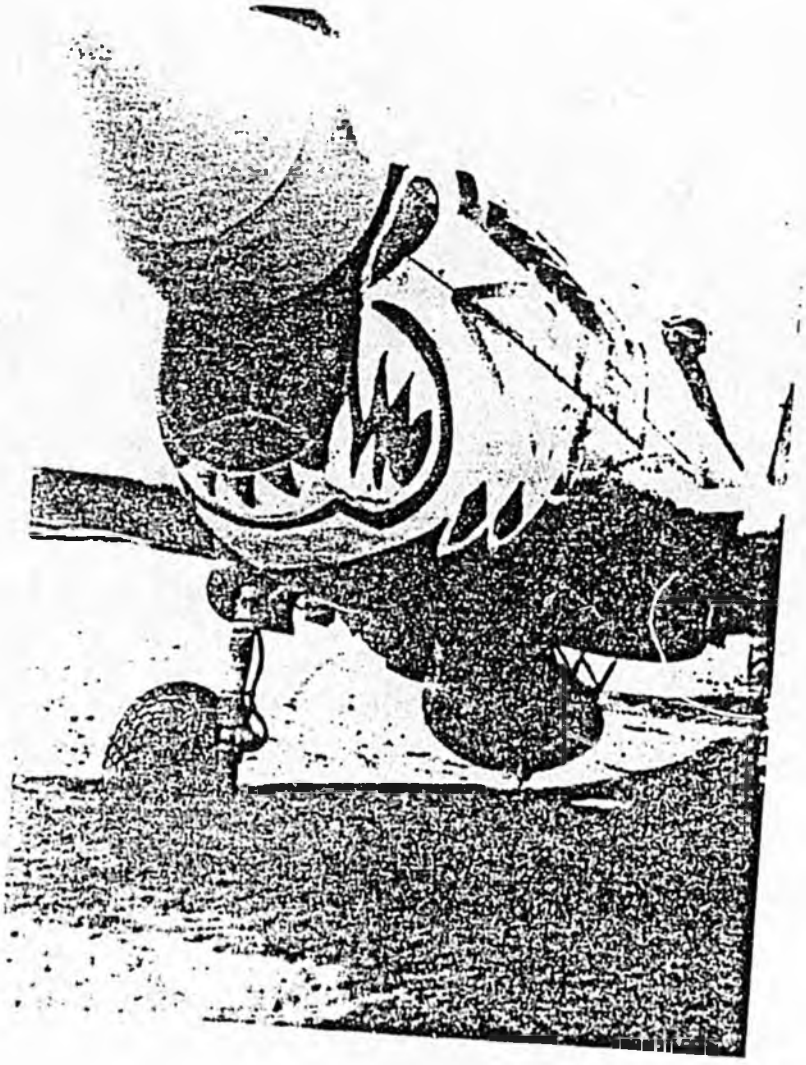
RWT



Approximately 48 Lend Lease P-40's came through Alaska on their way to Siberia. At present Moscow is the only place in the world that has one of the Lend Lease P-40's. Two more were located in the Interior.

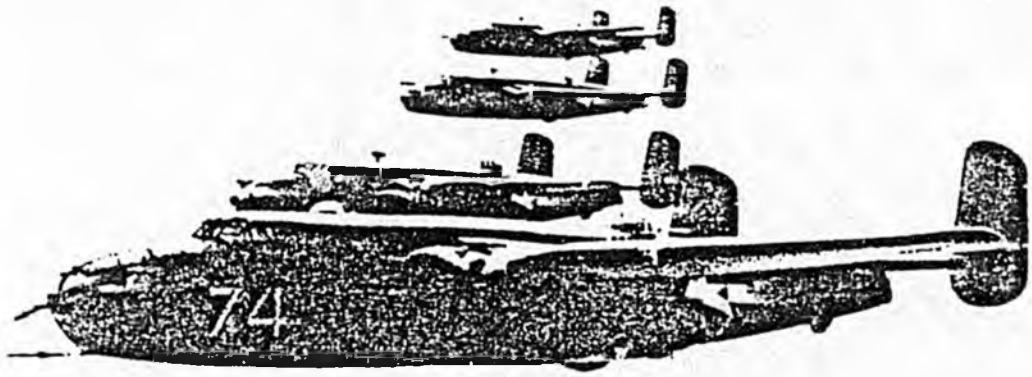
GFP





This is a Curtiss P-40 called the "Aleutian Tiger." It was used in combat by the United States during the Aleutian Campaign. Four of them were located.

USAF

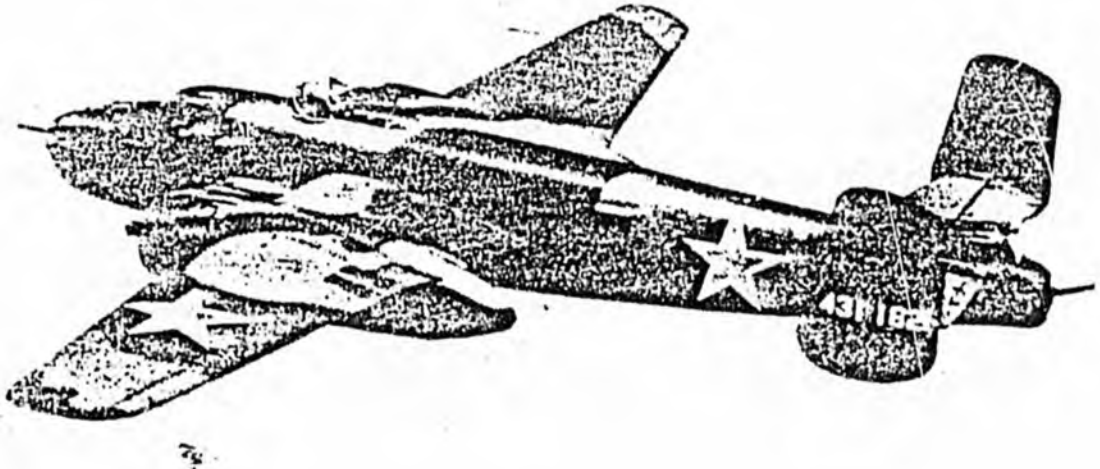


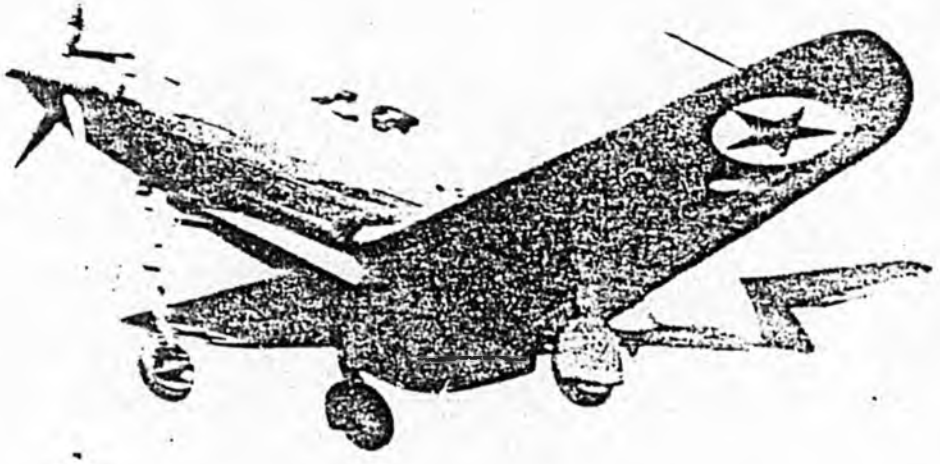
Two of these B-25 Medium Bombers went down in the Aleutians during the Aleutian Campaign.

USAF

Approximately 732 of these Lend Lease B-25 Mitchell Bombers were ferried from Great Falls, Montana, Whitehorse to Fairbanks to Siberia, Russia to be used against the Germans during WW II. Three of these aircraft went down in the Interior Alaska.

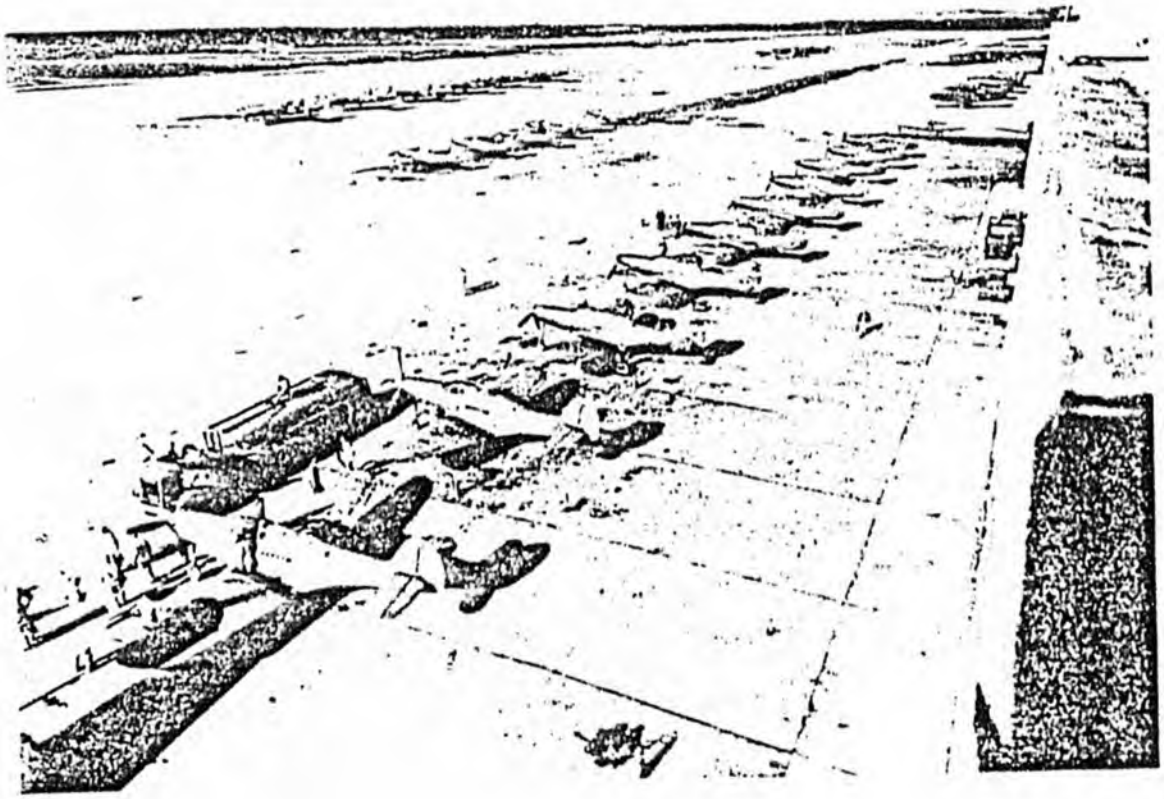
NAA

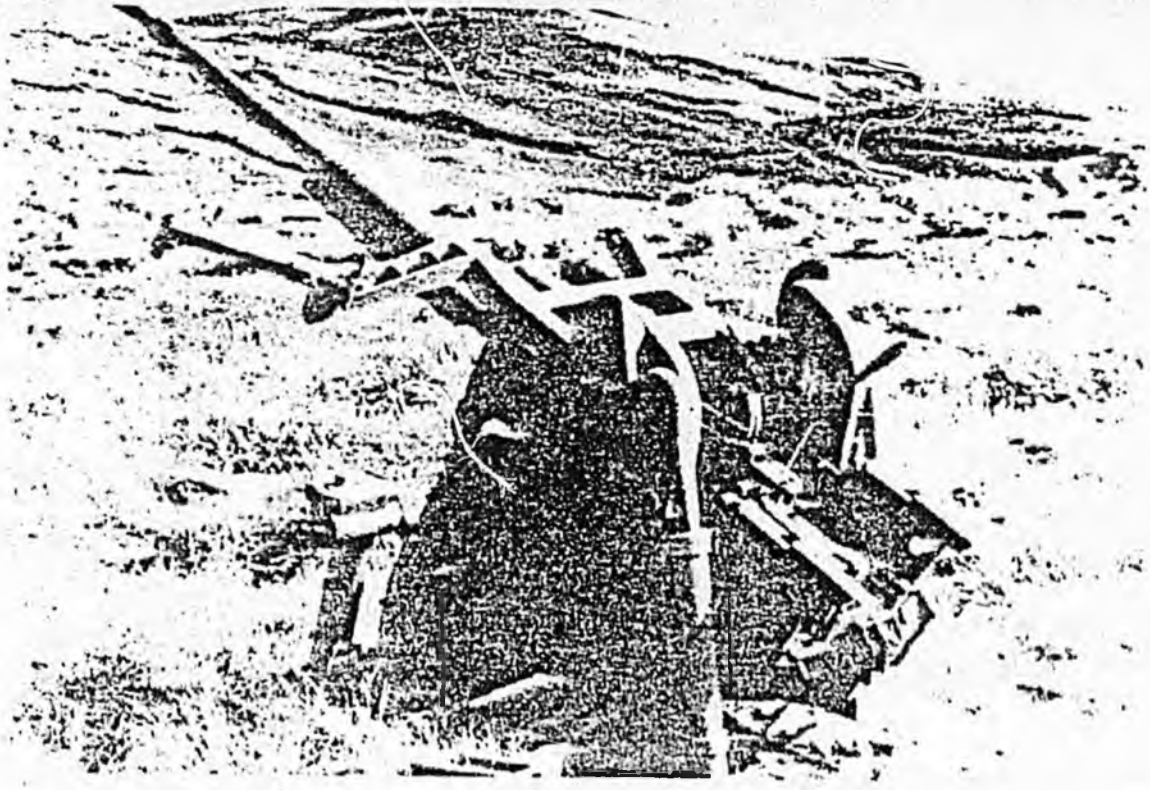




Approximately 2,618 P-39 Airacobra came through Alaska on their way to Siberia under the Lend Lease Program. Eleven of the P-39's went down in the Interior, and six of these are in fresh water lakes.

USAF



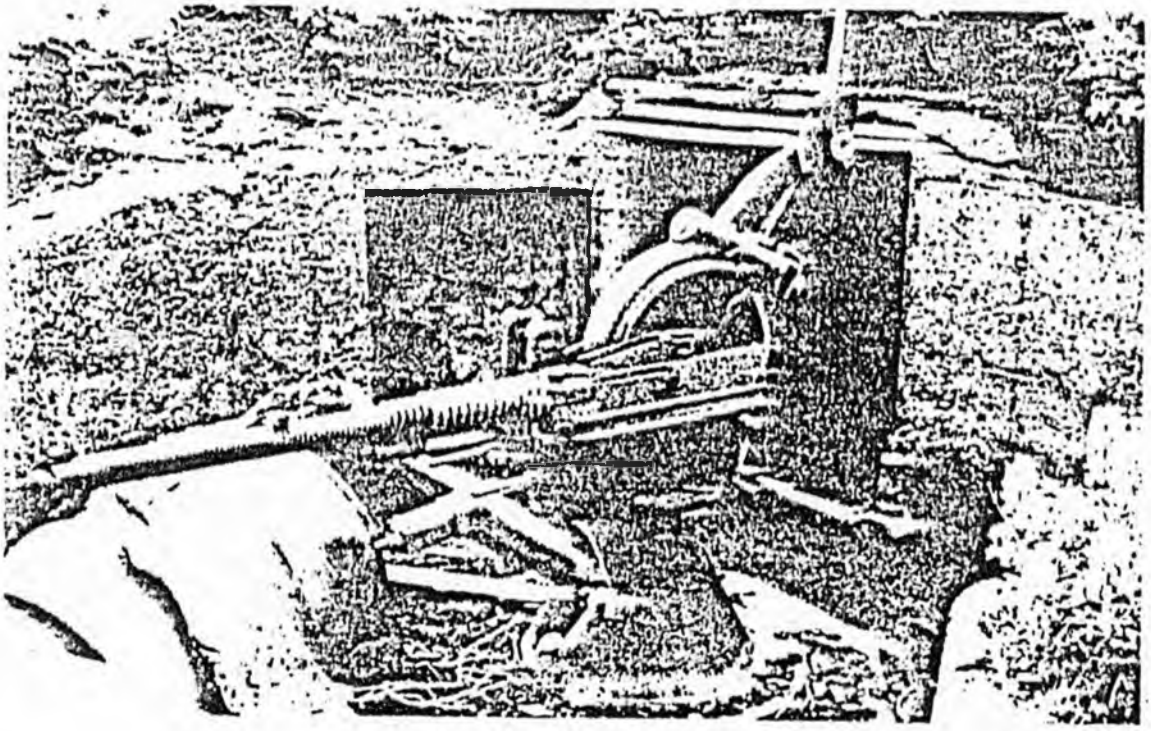


Japanese Model 96 (1936), Type 2, 25 mm Anti-aircraft Gun and Mount. This gun is very rare and was not extensively used by the Japanese.

COE

Japanese Model 93 Heavy Machine Gun, 13.3 mm on an Anti-Aircraft Mount.

USFWS



CAVPAC, P.O. Box 8-901

Anchorage, Alaska 99508

POLITICAL ACTION COMMITTEE

HJR66 and HB678 BACKUP INFORMATION

The Alaska Historical and Transportation Museum and other interested non-government organizations are focusing on long range planning, development, and preservation of pioneer, transportation and military history throughout the State and especially on the Aleutian Island Chain.

The projects of the organizing committees are to: (1) Survey and inventory significant relics, artifacts, and related historical material pertaining to transportation (surface, maritime, and with major emphasis on aviation); (2) Develop plans for the historic preservation and interpretation of these artifacts; (3) Recommend an appropriate museum site(s); (4) Coordinate with other public and private sector museums to insure that all groups interested in aircraft recovery can participate in recovery and restoration of aircraft, and that the restored aircraft will remain in Alaska; and (5) Prepare a presentation for submittal to the Governor and the Legislature in 1985 on a statewide program of cultural and historical preservation, including programs on pioneer, transportation, military, and the historically related areas, which are either not currently included in existing museum services or are inadequate in scope.

These projects and assessments will supplement the existing Statewide Museum Plan and will include recommendations for future museum development in the State of Alaska.

There has been no comprehensive statewide assessment or inventory of Alaska's historical artifacts that are constantly being removed from the State. Although many agencies have worked with each other on various aspects of preservation, an overall coordinated appraisal of the most critical needs in this area has never been possible.

Alaska's military history covers a wide range of topics: the Alaska Purchase to World War II era, aviation, maritime, World War II Aleutian campaign, DEW Line, and post-WW II history, etc. A number of agencies have shown an interest and have done limited statewide planning to locate historical Alaskan artifacts, but have discovered that big money in the lower 48 is stealing many of our WW II aircraft from federal and state land without any interference and are selling them to museums and making a fortune. It's big business. Many of these U.S. and Japanese aircraft have been salvaged almost intact.

It is hoped that HJR66 and HB678 will assist, when implemented, to retain valuable artifacts in Alaska and in 1985 some funds can be made available to improve our historical museums. The Army, Air Force, and National Guard have already assisted in salvaging and restoring some of these artifacts.

CAV Needs You And You Need CAV
for
VETERAN POWER

Army Navy Air Force Marines Coast Guard National Guard Reserves

Paid for by CAVPAC, P.O. Box 8-901, Anchorage, Alaska 99508

The historically significant relics, artifacts and other materials are part of Alaska's history and should be preserved before it is too late. Many WWII aircraft, both friendly and enemy, have been literally stolen from the Aleutian Chain and are now in museums in the States of Ohio, Tennessee, Washington and California that we know of. They are a part of Alaska's wartime history and should remain here. They will also be of tourist interest.

Draft prepared by B. B. Talley
with contribution by
Col. Evan J. Griffith, USAF

BACKGROUND MATERIAL IN SUPPORT OF HB _____
APPROPRIATING FUNDS FOR A COMPREHENSIVE DOCUMENTARY FILM
OF WWII IN ALASKA

There exist several books and papers, some official, which purport to document the history of WWII in Alaska. In addition, the military services have extensive motion pictures of their operations in Alaska. In recent years there has been a rebirth of interest on the part of individuals and organizations, particularly veterans organizations, in this part of Alaska's history. These individuals and groups have many important visual records which can be obtained for a comprehensive documentary film of WWII in Alaska.

In 1980, on the 40th anniversary of its arrival in Alaska, the veterans of the 11th US AF held a reunion in Alaska. It included a visit to the Aleutians as far out as Shemya. Weather prohibited their going to Attu. Extensive motion pictures and video tapes were made of this celebration, including interviews and oral history from many of the veterans present.

In 1982 extensive motion pictures and video tapes were made by individuals, organizations and by TV stations of the ceremony in dedication of a memorial on Unalaska Island to all those who lost their lives in the Aleutians during WWII. This included the Armed Forces of the United States and Canada, the Aleuts, and the Japanese Armed Forces. The two Japanese officers, now retired, who led the first and second waves of bombers in the attack on Dutch Harbor on 4 June 1942 participated in this dedication. The dedication was preceded by a flight from Unalaska Island to the Umnak Air Base, and to the position of the Japanese carrier from which the attack was launched, thence following the course of the planes to the rendezvous point and returning to Dutch Harbor. The plane was piloted by the Japanese officer who led the attack, flying

in reverse the course flown in the attack. From the rendezvous point, the plane flew the course at the same altitude flown in the actual attack. In the plane were Admiral James S. Russell, USN-Ret. who commanded the US Navy Catalinas in Alaska during WWII, BG B. B. Talley, Corps of Engineers, retired, who was responsible for building the secret air base on Umnak Island from which the US AF P-40s broke up the Japanese aerial attack on Dutch Harbor, and Admiral Hiroichi Samejima, JMSDF (Ret.) who led the first wave of Japanese bombers, and Colonel Zenji Abe, JMSDF (Ret.) who led the second wave which consisted of dive bombers. (Then Lieutenant Commander Abe later transferred to the army, as the reconstituted Naval defense force did not have dive bombers.) Also in the plane were Mr. Ted Spencer who arranged the dedication ceremony and the aerial flight here described. There was also a motion picture camera crew aboard who recorded the flight on film.

In view of the advancing age of the still living participants in WWII in Alaska, delay in the production of this visual history might preclude their participation in this important chapter in Alaska's history.

Inasmuch as the State of Alaska would be the primary beneficiary, the State should be the primary sponsor of the project. Such a project is within the purview of the Alaska Historical Commission of the Department of Education.

The project would include, but not necessarily be limited to, bringing together into a single compilation the best of the existing film, editing it into a single comprehensive historical document. There should be included in this compilation such additional footage as may be appropriate, with commentary by selected veterans who took part in the action.

Upon being instructed to carry out this project and being provided with the necessary funds for its accomplishment, the Alaska Historical Commission formed by AS Title 44, Article 3,

would have power to prepare or to authorize and coordinate the preparation and production by others of a documentary film covering this important portion of Alaska's history. Such a history should include but not be limited to the stills and motion pictures already in existance, but should include additional visual components as may be appropriate. Such a project should be completed by June 30, 1986.

A conceptual organizatic structure for executing this project is shown in Figure 1.

C O N T E N T S

Part I. Facts of Aircraft and Aircraft Parts, Flyable and Non-Flyable, that Left the State of Alaska.

Page 1. Douglas C-33F Aircraft that left the state of Alaska in 1968.

Page 2. Flying Magazine add in June 1980 regarding the removal of two P-39 Airacobras from Alaska. Six years ago two P-39 Airacobras were located at Minchumina Lake. In 1982 approximately $10,000 were spent by a company to retrieve these aircraft. The group found out these were no longer there. We suspected that the aircraft mentioned in the Flying Magazine add are the same ones that were in Minchumina Lake.

Page 3. A letter to Mr. Aldrich in California who sells vintage airplane parts. He sent to the USHAPM the original letter of Mr. Steve Matthews of Fairbanks who illegally removed airplane parts from state land and was attempting to sell them. The present whereabouts of the parts are unknown.

Page 4. Photographs of two P-39 Airacobras on state land near Fairbanks. For the past four years illegal salvagings had been done to these.

Page 5. Alaska Magazine Jan. 1981 two articles about a Stinson aircraft that was removed from the dump at Merrill Field, Anchorage and which is now on display at Seattle. The man who removed the aircraft, J. Berry, also removed in the early 1970's a P-40 aircraft from the Alaskan bush which was later transported to the Lower 48.

Page 6 and 7. An article from a vintage/WW II aircraft book regarding the removal of a P-40 from the Aleutians.

Page 8 thru 12. A Flying Magazine article regarding the removal of one P-40, four P-51 Mustangs, and three other P-50 Mustangs that were just removed for parts out of the state of Alaska.

Page 13. Photographs of the P-40 that was removed from the Aleutians.

Page 14. Oct. 1978 Alaska Magazine article on donation of a P-39 Airacobra's wing portion to the Lower 48.

Page 15. Air Classics Magazine 1979 article with photographs of mutilation of a Lend Lease Russian aircraft's wing which is now in Ohio.

Page 16. A letter from Dept. of Interior regarding the unlawful removal of aircraft parts from Amchitka Island. The two individuals who were involved in this unlawful act were fined $500 each.

Page 17 and 18. A letter from the Smithsonian Institution about the removal of a Navy OS2U Kingfisher from Afognak Island. The aircraft is now on loan from Smithsonian to Bradley Museum in Connecticut.

C O N T E N T S

Part I. Continued

Page 19. A Douglas SBD-5 Dauntless wing which was in the Aleutian but is now in California.

Page 20. Four photographs of helicopter parts and aircraft parts being shipped by Sealand from Anchorage to California.

Page 21. B-25 aircraft engines that were donated to an aviation group in Alaska and are now in California.

Page 22. A letter to Paul Caulkett regarding two B-25 aircraft that were to be used as static display within the state of Alaska.

Page 23 and 24. A letter from the Alaska Department of Transportation in Fairbanks showing that one of the B-25 aircraft (paragraph 4) was sold to Mr. John C. Morgan by one of the aviation societies in Anchorage.

Page 25. Two photographs of the B-25 that one of them was sold to Calif.

Page 26. Alaska Magazine Dec. 1980 article on a Stearman that was in Alaska and is now in the Lower 48. (If interested, a copy of the article can be provided.)

Page 27. Three photographs of P-38 Lightning which was removed from Alaska and is now in California.

Page 28. A letter from State of Alaska, Dept. of Natural Resources regarding the attempts of Castle AFB in California to remove the remains of a P-38 from the Aleutians

Page 29. Air Classics Magazine April 1981 article on A-26 Invader that was given to California as a donation.

Page 30. Two photos of the A-26 flyable aircraft that was donated to Calif.

Page 31. Top - photo of the three B-25's which two of them left the state of Alaska. Destination unknown. Bottom - another photo of the A-26 that was donated to California.

Page 32. Picture of a B-25 flyable aircraft that is now in California.

Page 33. A Lockheed Constellation that was donated to City of Kenai, later was sold for $30,000 and is now in Florida.

Part II. Aircraft and artifacts that had left the state of Alaska which cannot be stated as illegally been salvaged. Records at the Air Force Rescue Coordination Center at Elmendorf AFB show these WW II aircraft are no longer in their crash sites, there are no indication of their present whereabouts, or who retrieved them. Reports from bush pilots, who spotted the aircraft earlier, show that the same aircraft are no longer in their crash sites.

C O N T E N T S

Part II. Continued

1. Buldir Island in the Aleutians: The crashed P-38 Lightning's complete booms (two) and vertical stabilizer were removed two years ago. Can be verified thru Dept. of Fish and Wildlife.

2. A Lend Lease P-40, which crashed in 1944 in Nome area, was found in 1978. The aircraft was no longer there in 1982. Verified through bush pilots.

3. A Canadian P-40 that was located in 1968 was not there in 1976. The aircraft was completely removed. Only a few remaining parts are there. Verified through bush pilots.

4. P-51 Mustang, which crashed in 1944 at Broad Pass, was removed in early 1970's by an Anchorage resident couple and was shipped to the Lower 48. Also the husband removed P-40 parts of four aircraft that are on Unalaska in the Aleutians. This can be verified through U.S. Hist. Aircraft Preservation Museum.

5. WW II aircraft parts from Nome, Fairbanks and Northway that were removed three years ago and are now in Lower 48. Can be verified through USHAPM.

6. A vintage aircraft that crashed in Ketchikan: Its parts were removed for souvenier and are still in Alaska. Can be verified through USHAPM.

7. There are numerous stories told by state agencies, the local military, bush pilots and individuals that know, had seen, and have been involved in the removal of WW II aircraft, aircraft parts, and artifacts out of the state of Alaska.

   If at the present time there were laws protecting the WW II aircraft and artifacts, these individuals and groups of people in the state of Alaska can be checked out and their residences be searched to prove the statements. The USHAPM knows several of these people.

   It is difficult to prove that there is illegal salvaging of WW II aircraft, aircraft parts, and artifacts because the individuals who are involved are never caught. The only way we can prove that such a thing is happening is when these aircraft and aircraft parts come to surface in private hands and/or in the Lower 48 when the serial numbers and tail numbers can be verified that they came out of the state of Alaska. This takes time of hours and years. Alaska is slowly being stripped of its WW II aircraft, aircraft parts and materials that the average persons do not realize it till they are actually involved in the research of the WW II artifacts and materials in the state and in the Aleutians.

STATE OF ALASKA 1984 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date:

FILE COPY

REQUEST
Bill/Resolution No.: HB 678
Title: "An act relating to World War II artifacts
Sponsor: Representative Liska
Requestor: House State Affairs
Date of Request: March 3, 1984

FISCAL DETAIL
Agency Affected: Public Safety
Program Category Affected: Administration of Justice
BRU, Program or Subprogram(s) Affected: Alaska State Troopers

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 84	FY 85	FY 86	FY 87	FY 88	FY 89
OPERATING						
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 SUPPLIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS						
800 MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0
CAPITAL	0.0	0.0	0.0	0.0	0.0	0.0
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND	0.0	0.0	0.0	0.0	0.0	0.0
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

ANALYSIS: Attach a separate page for analysis

Prepared By: Francis C. Allan FCA Phone: 269-5691
Division: Alaska State Troopers Date: 03/02/84

Approved by Commissioner: Robert J. Sundberg Date: 3/6/84
Agency: Public Safety

Distribution (by Agency preparing fiscal note):
Legislative Finance
Legislative Sponsor
Requestor
Office of Management and Budget
Impacted Agency(ies)

12/1/83

MEMORANDUM State of Alaska

TO: Honorable Esther Wunnicke
Commissioner
Department of Natural Resources

DATE: April 3, 1984

FILE NO: 366-544-83

TELEPHONE NO: 465-3600

FROM: Norman C. Gorsuch
Attorney General

By: Joseph W. Geldhof
Assistant Attorney General

SUBJECT: Ownership of abandoned airplanes located on state land

You have requested our counsel with respect to the disposal of property located on state land. This inquiry arose because of competing ownership claims to a Consolidated PBY/OA-10 "Catalina" flying boat (PBY) of World War II vintage abandoned at Dago Lake approximately 30 flying minutes south of King Salmon, Alaska. The PBY has remained at Dago Lake since 1947. During the intermittent years the PBY has been stripped of the engines, certain components and slightly vandalized. The plane is located on land which belongs to the State of Alaska. Several organizations claim title to the aircraft and seek removal of the aircraft from state property. The aircraft is listed on the Alaska Heritage Resource Survey (#UGA-037).

The essential question in this situation is who owns the aircraft. A secondary question is answered involving the means by which the state may dispose of the aircraft assuming the state owns the aircraft and elects to pursue a disposal of the plane.

We believe the State of Alaska, through the Department of Natural Resources, has a colorable claim of ownership to the PBY located on state property near Dago Lake. The source of this ownership claim is found at AS 41.35.020(a) which states in relevant part that:

> The state reserves to itself title to all historic, prehistoric and archaeological resources situated on land owned or controlled by the state ....

While the PBY is neither a prehistoric nor an archaeological resource, the aircraft is probably a historic resource according to AS 41.35.230(4) which defines "historic resources" as including:

> deposits, structures, ruins, sites, buildings, graves, artifacts, fossils or other objects of antiquity which provide information pertaining to

> the historical or prehistorical culture of people in the state as well as to the natural history of the state.

(Emphasis added.) The PBY is probably a historic resource because it is an artifact or ruin located on state property which provides information pertaining to the historical culture of the people in the state. The plane is a type used during the Second World War during the Aleutian campaign, a campaign which saw the only land battles fought on North American soil during that war and which made extensive use of PBY's.

In the alternative, the aircraft is probably a historic resource because it is an object of antiquity which provides information pertaining to the historical culture of the people in the state. There can be no specific definite time limit as to when an object becomes an "antiquity." United States v. Diaz, 368 F. Supp. 856, 858 (D.C. Ariz. 1973). The Diaz case is instructive for the antiquity analysis. In that case, a Magistrate made a finding pursuant to a prosecution for appropriation of Indian artifacts on government land. The Magistrate ruled that artifacts less than five years old were objects of "antiquity." In light of testimony as to the significance and the importance of the artifacts to the Indian culture and heritage, as well as the uniqueness of such artifacts, and the fact that the case was one of first impression, the court held that the findings of the Magistrate were not clearly erroneous. Id. at 857.

Our inquiry on the question of ownership does not rest with the determination that the state has a legitimate claim to the aircraft in question. Because the state was not the original owner of the PBY, the possibility exists that a superior claim may be asserted with respect to the aircraft.

While in possession of the aircraft, the state has certain rights, including the right to continue possession against everyone except those who have a better right; the right to recover the plane if it is wrongly taken; and the right to recover for damages to the aircraft. See generally, C. Smith & R. Boyer, Survey of the Law of Property (2d ed. 1971). In addition, the state may elect to bring criminal charges against an individual that removes, destroys or injures the PBY or other historic, prehistoric or archaeological resources in the state's possession based on AS 41.35.200.

At common law, property for which an owner was not known, was classified in the following ways:

a) lost property; b) treasure trove; c) mislaid goods.

The characterization of lost property, treasure trove or mislaid property is dependent on the situation or location of the property in question. Lost property is property unintentionally lost by the true owner. Treasure trove consist of coin, money or other precious commodities concealed in the earth or other private place. A finder of lost property acquires title to the found property against all but the true owner. Generally, in the United States treasure trove is treated as lost property and belong to the finder in the absence a superior claim by the true owner. Misplaced goods are those which were intentionally placed by the owner where they were found, and then forgotten or left there. The finder of misplaced or mislaid goods does not obtain title to right to possession of the property. The owner of the property on which misplaced goods are found is deemed to hold the goods for the true owner. See generally, id. at 456-457; see also, 1 Am.Jur.2d Abandoned, Lost, Etc., Property §§ 18-26 (1962). In Alaska, unclaimed property is governed by AS 34.45.010, et seq., a statutory provision which is not particularly helpful for our analysis.

The PBY in question does not have any of the characteristics of lost property or misplaced goods. The PBY is certainly not treasure trove within the classic definition, although some of the competing aviation groups seeking possession of the plane treat the plane as a "treasure."

Because one of the organizations seeking possession of the aircraft has a certificate of title filed with the United States Government which gives them a claim against the PBY, we have reviewed the doctrine of abandonment in order to ascertain whether that organizations claim of title to the aircraft is still valid. Abandonment divests a former owner of title to property, as if the owner never had any right or interest in the property. The burden of proof is upon one alleging abandonment and the evidence in support of a charge of abandonment must be clear and convincing. Burr v. House, 3 Alaska 641 (Alaska 1909). Abandonment is a matter of intention. Harkrader v. Carroll, 76 F. 474 (D.C. Alaska 1896). Accord Loeser v. Gardiner, 1 Alaska 641 (Alaska 1902), and Whites Guardian v. Martin, 2 Alaska 495 (Alaska 1905). But cf. Gurgel v. Nichol, 429 P.2d 47, 48 (Utah 1967), for the proposition that nonuse and lapse of time are proper considerations for determining abandonment.

In the current situation, the actual act of relinquishment accompanied by an intention to abandon the PBY by the true owner has not been shown. Absent intention to abandon and given the difficulty of convincing a jury that the planes circumstantial neglect constituted abandonment, the interest asserted by the individual with the certificate of title is probably superior to the state's general claim based on legislation found at AS 41.35.020. This of course assumes the deed of title to the PBY is valid. A claim supported by a valid title is also superior to a general claim of ownership based on a previous owners letter of disinterest in the property or a quit claim to the property in question exercised subsequent to a valid conveyance.

Once the determination of who has a superior ownership claim to the PBY is sorted out, the state may be faced with a question of how the Department of Natural Resources might dispose of aircraft or other personal property located on state lands. 1/

Under article IX, section 6, of the Alaska Constitution, public property can only be transferred to promote a public purpose. 2/ Consequently, the Department of Natural Resources may not make a gift of state property to any entity absent showing that it would promote a public purpose. See 1983 Op. Att'y Gen. (Nov. 2). Accord 1980 Op. Att'y Gen. (May 28).

Assuming there is a legitimate public purpose for disposing of historic, prehistoric or archaeological resources, statutory authority must exist for a particular department to dispose of property. See generally 1969 Op. Att'y Gen. (Mar. 27). As it happens, the Department of Natural Resources, Division of Lands has such authority in AS 38.05.035(14) which provides in relevant part that the director of the Division of Lands may:

1/ In passing we note that if the state ever locates or attempts to dispose of historic, prehistoric or archaeological resources on state land, caution should be exercised to comply with provisions of AS 41.35.020 which protect aboriginal Alaskan interests in historic, prehistoric and archaeological resources.

2/ Alaska Constitution article 9, section 6, provides that "[n]o tax shall be levied or appropriation of public money made or public property transferred, nor shall the public credit be used except for a public purpose."

> with the consent of the commissioner, approve contracts for the sale, lease, or other disposal of available lands, resources, property or interest in them, and in addition to the condition and limitations imposed by law, [the director] may impose additional conditions or limitations in the contracts ... [which] will best serve the interest of the state ....

(Emphasis added.)

There is no constitutional requirement for a competitive sale in a situation like this. Such requirements as exist are to be found in the statute. Cf. Libby v. City of Dillingham, 612 P.2d 33, 40-41 (Alaska 1980).

In this situation, it is the best interest of the state which must be served. If the Department of Natural Resources finds that it owns a resource like the PBY and finds that disposal to an entity would best serve the public, we would recommend that the department make a formal written finding and commence work on a transfer agreement in conjunction with the Department of Law and the individual or the entity which seeks possession of the resource. Transfer of an aircraft or other valuable cultural resources owned by the state should be conditioned upon completion of an agreement which adequately protects the state and public interest. At a minimum this agreement should contain a provision for display and access to the resource for the citizens of the state. In addition, any agreement transferring property like an airplane should allocate responsibility for damages to persons or property associated with the movement, storage or display of the aircraft.

In conclusion, we believe the state has a legitimate ownership claim to the aircraft now resting near Dago Lake. This ownership claim is not absolute however, and is probably inferior to the assertion of ownership claimed by the Alaskan Historical Aircraft Society (AHAS). If, after inspection of the title documents presented by the AHAS, it appears that AHAS has an unbroken chain of title following the original conveyance from the United States Government to the first private citizen owner via a surplus sale in 1948, then we would recommend that you accede to the request of the AHAS and allow that organization access to the PBY for purposes of removal. If you are at all concerned about the AHAS's chain of title, a title search by any firm conducting such reviews may be warranted. The Department of Law is available to inspect or otherwise assist your agency in a

review of any title documents pertaining to the various ownership claims.

Please call if we can be of additional assistance on this matter.

JWG:eer

cc: Ty L. Dilliplane
Chief, Office of History and
Archaeology
Alaska State Parks

HB

692

STATE OF ALASKA 1984 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date:

REQUEST
Bill/Resolution No.: HB 692
Title: "An Act relating to attorney fees."
Sponsor: House Judiciary
Requestor:
Date of Request: 3.02.84

FISCAL DETAIL
Agency Affected: Department of Law
Program Category Affected: General Government
BRU, Program or Subprogram(s) Affected: Legal Services Operations

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 84	FY 85	FY 86	FY 87	FY 88	FY 89
OPERATING						
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 SUPPLIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS						
800 MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND	-0-	-0-	-0-	-0-	-0-	-0-
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS:

FULL-TIME	-0-	-0-	-0-	-0-	-0-	-0-
PART-TIME						
TEMPORARY						

SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

ANALYSIS: Attach a separate page for analysis

Prepared By: House Judiciary
Division:
Phone: 465-4990
Date: 3.02.84

Approved by Commissioner:
Date:
Agency:

Distribution (by Agency preparing fiscal note):
Legislative Finance
Legislative Sponsor
Requestor
Office of Management and Budget
Impacted Agency(ies)

12/1/83

Dick Pegues, Director of Administrative Services, Department of Law, confirmed the zero fiscal impact of this bill.

HB

693

Law Offices of
Kemppel, Huffman & Ginder
255 E. Fireweed Lane, Suite 200
Anchorage, Alaska 99503

Roger R. Kemppel
Richard R. Huffman
Peter C. Ginder
Ronald L. Baird
Darrel J. Gardner

March 27, 1984



Telephone
(907) 277-1604
(907) 276-1605

The Honorable Charlie Bussell
Pouch V
Juneau, AK 99811

Dear Mr. Bussell:

I write to solicit your support for the passage of the following pieces of legislation:

		House	Senate
1.	Renunciation of Rights in Decedent's Estates	HB 695	SB 513
2.	Administration of Decedent's Estates	HB 694	SB 512
3.	Uniform Disposition of Community Property Rights at Death	HB 697	SB 515
4.	Married Person's Rights in the Family Home	HB 696	SB 514
5.	Uniform Principal and Income Act	HB 693	SB 511

I am an attorney practicing in Anchorage, Alaska. My practice is largely devoted to estate planning, estate and gift tax analysis, and probate and trust administration. I am therefore quite familiar with the contents of each of the proposed measures. None of the proposed bills have the glamour associated with larger issues dealt with by your Committee. Nonetheless, I would encourage you to give active consideration to passing each of these measures. The enactment into law of each of these measures will result in a far higher degree of certainty in various areas covered by the proposed legislation than is now the case. It is also my opinion that any lingering uncertainty in these areas can only result in additional expense to our clients.

Thank you very much for your consideration. Please do not hesitate to call or write if you have any questions.

Very truly yours,

KEMPPER, HUFFMAN & GINDER

Peter C. Ginder

PCG:pls

cc: John Liska
Ramona Barnes
Don Clocksin
Joe Hayes
Hugh Malone
Ron Wendte

FISCAL NOTE

Revision Date:

REQUEST

Bill/Resolution No.: HB 693

Title: "...relating to principal and income of trusts..."

Sponsor: House Rules/Code Rev. Comm.

Requestor: House Judiciary

Date of Request: 3/13/84

FISCAL DETAIL

Agency Affected: Department of Law

Program Category Affected: General Government

RRU, Program or Subprogram(s) Affected: Legal Services Operations

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 84	FY 85	FY 86	FY 87	FY 88	FY 89
OPERATING						
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 SUPPLIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS						
800 MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND	-0-	-0-	-0-	-0-	-0-	-0-
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS:

FULL-TIME	-0-	-0-	-0-	-0-	-0-	-0-
PART-TIME						
TEMPORARY						

SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

ANALYSIS: Attach a separate page for analysis

Prepared By: Richard I. Pegues. Director Phone: 465-3672

Division: Administrative Services Division Date: 3-13-84

Approved by Commissioner: Richard I. Pegues (for) Norman C. Gorsuch Date: 3-13-84

Agency: Department of Law

Distribution (by Agency preparing fiscal note):

Legislative Finance
Legislative Sponsor
Requestor
Office of Management and Budget
Impacted Agency(ies)

12/1/83

Fiscal Note
Analysis
HB 693

March 13, 1984

This bill was requested by the Code Revision Commission so that the state may adopt the Uniform Principal and Income Act. The act has been adopted by 37 other states, making it one of the more widely accepted uniform acts. The proposed act codifies rules a trustee shall follow when the document that established the trust does not provide instructions to cover all circumstances, which frequently is the case. It directs how the trustee shall credit a receipt or charge an expenditure in a variety of fact situations. Because this bill only deals with private sector financial transactions, it will not have a fiscal impact on state government operations.

HOUSE AND SENATE JOINT
JOURNAL SUPPLEMENT

March 1, 1984 No. 21

ALASKA CODE REVISION COMMISSION

COMMISSIONERS
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ALASKA STATE LEGISLATURE
POUCH Y - STATE CAPITOL
JUNEAU, ALASKA 99811
(907) 465-4676

EXECUTIVE SECRETARY
BILLY G. BERRIER

March 1, 1984

Senator Bill Ray, Chairman
Alaska Legislative Council
Pouch V, State Capitol
Juneau, Alaska 99811

RE: (1) a bill relating to principal and income of trusts; (HB 693/SB 511)
(2) a bill relating to administration of decedents' estates; (HB 694/SB 512)
(3) a bill relating to renunciation of of rights in decedents' estates; (HB 695/SB 513)
(4) a bill relating to married persons' rights in a family home; and (HB 696/SB 514)
(5) a bill relating to the uniform disposition of certain property rights at death (HB 697/SB 515)

Dear Senator Ray:

Pursuant to AS 24.20, the Alaska Code Revision Commission has prepared the enclosed bills and respectfully asks that they be introduced in the legislature.

They are technical bills the commission has been working on with the probate committee of the Alaska Bar Association. They relate generally to rights at death and to property arrangements that usually have their inception in death.

At its last meeting, the Legislative Council agreed to introduce the bills.

One of the bills, the bill on disposition of certain property rights at death, was previously in the legislature but received little notice. It is revived at the request of the probate committee of the Alaska Bar Association, and that

committee has advised the commission that it will actively support the bill.

A commentary on each bill is enclosed.

Very truly yours,

John W. Abbott

John W. Abbott, Chairman
Alaska Code Revision Commission

JWA:chw

Enclosures

cc: Hon. Bill Sheffield
Hon. Edmond W. Burke, Chief Justice
Myrton R. Charney, Executive Director
Legislative Affairs Agency

-- COVERS IDENTICAL BILLS: HB 693 & SB 511 --

ALASKA CODE REVISION COMMISSION
COMMENTARY TO ACCOMPANY BILL TO ADOPT
THE UNIFORM PRINCIPAL AND INCOME ACT

Many private trusts now are being established in Alaska, both by living persons and pursuant to the last will and testaments of deceased Alaskans.

The Uniform Principal and Income Act codifies rules a trustee shall follow when the document that established the trust does not provide instructions to cover all circumstances, which frequently is the case. It directs how the trustee shall credit a receipt or charge an expenditure in a variety of fact situations.

Thirty-seven states have adopted either the 1931 or 1962 version of the Uniform Principal and Income Act. Therefore, what is proposed for adoption is one of the more widely accepted uniform acts.

A trustee may be a sophisticated trust department of a bank or a wholly unsophisticated family member or friend. There are many trustees in each of these categories and others. They all have a need for the guidance this Act provides.

Customarily, a trustee has duties to someone who receives income from the trust and corresponding duties to someone else who will receive the principal assets of the trust (the principal) at some future time, often at a time far in the future. From day to day the trust has expenses and receipts. The trust document seldom if ever tries to answer all the questions the trustee must decide about how to allocate between principal and income.

The Act sets the rules that apply <u>in the absence</u> of rules in the trust instrument. The Act does not supersede directions to the trustee that are set out in the trust instrument. The intent of the person who established the trust is to control when that intent can be determined. The Act will fill in only when the trust instrument is silent.

Nor does the Act supersede a provision in a trust instrument that gives a trustee absolute discretion in how to allocate. Even in that case, however, the Act is a ready source of guidance to a trustee on the choices that must be made.

<u>The Act follows the so-called "Massachusetts Rule" of awarding cash dividends on corporate stock to income and stock</u>

dividends to principal, thereby rejecting the Pennsylvania Rule or some variation of it requiring apportionment between the two funds. Provision is made for corporate distributions pursuant to a court decree such as a divestiture order in an antitrust suit. Provision is also made for treatment of the distributions of a regulated investment company or real estate investment trust. In recent years, the discount type of bond such as the Series E bond of the United States government and the zero coupon bond have become common. Provision has been made in the Act for allocating the increment in value between principal and income.

Because of the difficulty of apportioning receipts from extraction of natural resources among the income and principal beneficiaries it is provided in the Act that an arbitrary allocation should occur, that is, 27-1/2% of the gross receipts shall be added to principal as a "depletion reserve," and the balance is payable to the income beneficiary. Attempts to apportion the receipts on the relation of the amount of minerals extracted to the amount of minerals remaining in the ground have proved difficult of calculation and this method of allocation was accordingly rejected in favor of simplicity.

The Act contains a "catch-all" providing for disposition of receipts where there is no specific section in the Act dealing with the allocation. A form of "prudent man" rule has been adopted to handle this situation. Receipts from cutting of timber are covered only by this "prudent man" rule since the effect cutting of timber has on the value of land varies too much to apply the general rule on "depletion reserve."

The form of the Act is straightforward. The initial section, AS 13.38.010, establishes the relationship between the trust instrument and rules in the Act: As noted above, the trust instrument (that is, the creator's intent as expressed in the trust instrument) always prevails if it conflicts with the rules in the Act.

The second section, AS 13.38.020, defines the terms "principal" and "income" and contains cross references to the sections where the definitions are refined in the balance of the Act.

In a practical sense, the entire bill is a refinement of the definitions of principal and income set out in proposed AS 13.38.020.

The first two sections, therefore, are the key to the Act. The remainder of the Act is accounting principles applied to the listed kinds of property, kinds of receipts and expenditures and times of receipts and expenditures, as set out in the section headings of the Act:

AS 13.38.010.	Duty of Trustee as to Receipts and Expenditures.
AS 13.38.020.	Income and Principal Defined.
AS 13.38.030.	When Right to Income Arises; Apportionment of Income.
AS 13.38.040.	Income Earned During Administration of a Decedent's Estate.
AS 13.38.050.	Corporate Distributions.
AS 13.38.060.	Bond Premium and Discount.
AS 13.38.070.	Business and Farming Operations.
AS 13.38.080.	Disposition of Natural Resources.
AS 13.38.090.	Timber.
AS 13.38.100.	Other Property Subject to Depletion.
AS 13.38.110.	Underproductive Property.
AS 13.38.120.	Charges Against Income and Principal.
AS 13.38.130.	General Definitions.
AS 13.38.140.	Application of Chapter.

Various small substantive departures from the uniform act were considered by the code revision commission in the drafting process. However, after review with the Alaska Bar Association's Probate and Trust Committee and after unofficial but careful review by the leadership of the Alaska Association of Certified Public Accountants, the bill is almost verbatim the uniform act.

The only substantive changes from the Uniform Principal and Income Act are two relatively minor changes in section AS 13.38.110 on Underproductive Property.

The main aim of the Act is simplicity and convenience of administration of the estate. A second aim, of course, is fairness to all beneficiaries both present and future. Because simplicity and convenience are a primary aim of the Act, the Act is made applicable to all trusts and estates whether in existence at the time the Act becomes law or not.

Because the rules in the Act dictate choices that are standard in accounting practice, there is little reason to believe the rules in the Act will differ, in significant ways, from the present practices of most trustees. Therefore, no problems of transition are anticipated.

In brief, the Act, therefore, sets forth simple and workable rules of administration which are believed to be consistent with the wishes of creators of trusts upon the subject treated unless the creator specifically provides for a different treatment in the trust instrument.

HB

694

FISCAL NOTE

Revision Date:

REQUEST

Bill/Resolution No.: HB 694

Title: "...relating to administration of decedents' estates..."

Sponsor: House Rules/Code Rev. Comm.

Requestor: House Judiciary

Date of Request: 3/13/84

FISCAL DETAIL

Agency Affected: Department of Law

Program Category Affected: General Government

Program or Subprogram(s) Affected: Legal Services Operations

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 84	FY 85	FY 86	FY 87	FY 88	FY 89
OPERATING						
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 SUPPLIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS						
800 MISCELLANEOUS						
TOTAL OPERATING	-0-	0	0	0	0	0
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND	-0-	-0-	-0-	-0-	-0-	-0-
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS:

FULL-TIME	-0-	-0-	-0-	-0-	-0-	-0-
PART-TIME						
TEMPORARY						

SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

ANALYSIS: Attach a separate page for analysis

Prepared By: Richard L. Pegues — Richard L. Pegues, Director — Phone: 465-3672

Division: Administrative Services Division — Date: 3-13-84

Approved by Commissioner: Norman C. Gorsuch — Richard L. Pegues for — Date: 3-13-84

Agency: Department of Law

Distribution (by Agency preparing fiscal note):

Legislative Finance
Legislative Sponsor
Requestor
Office of Management and Budget
Impacted Agency(ies)

12/1/83

Fiscal Note
Analysis
HB 694

March 13, 1984

This bill was requested by the Code Revision Commission to adjust for inflation the dollar amounts in certain neglected sections of the Uniform Probate Code. This is the first such adjustment since the Code was adopted in 1972. It is estimated that the CPI will have risen 146% from 1972 until the bill would take effect in January 1, 1985. Because this bill only deals with private financial transactions, it will not have a fiscal impact on state government operations.

HOUSE AND SENATE JOINT
JOURNAL SUPPLEMENT

March 1, 1984 No. 21

ALASKA CODE REVISION COMMISSION

COMMISSIONERS
JOHN W. ABBOTT - CHAIRMAN
JAMES L. BALDWIN - VICE CHAIRMAN
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L. E. KURTZ, JR.
JUDGE (Ret.) THOMAS B. STEWART
FREDERIC E. BROWN

ALASKA STATE LEGISLATURE
POUCH Y - STATE CAPITOL
JUNEAU, ALASKA 99811
(907) 465-4870

EXECUTIVE SECRETARY
BILLY G. BERRIER

March 1, 1984

Senator Bill Ray, Chairman
Alaska Legislative Council
Pouch V, State Capitol
Juneau, Alaska 99811

RE: (1) a bill relating to principal and income of trusts; (HB 693/SB 511)
(2) a bill relating to administration of decedents' estates; (HB 694/SB 512)
(3) a bill relating to renunciation of of rights in decedents' estates; (HB 695/SB 513)
(4) a bill relating to married persons' rights in a family home; and (HB 696/SB 514)
(5) a bill relating to the uniform disposition of certain property rights at death (HB 697/SB 515)

Dear Senator Ray:

Pursuant to AS 24.20, the Alaska Code Revision Commission has prepared the enclosed bills and respectfully asks that they be introduced in the legislature.

They are technical bills the commission has been working on with the probate committee of the Alaska Bar Association. They relate generally to rights at death and to property arrangements that usually have their inception in death.

At its last meeting, the Legislative Council agreed to introduce the bills.

One of the bills, the bill on disposition of certain property rights at death, was previously in the legislature but received little notice. It is revived at the request of the probate committee of the Alaska Bar Association, and that

committee has advised the commission that it will actively support the bill.

A commentary on each bill is enclosed.

Very truly yours,

John W. Abbott

John W. Abbott, Chairman
Alaska Code Revision Commission

JWA:chw

Enclosures

cc: Hon. Bill Sheffield
Hon. Edmond W. Burke, Chief Justice
Myrton R. Charney, Executive Director
Legislative Affairs Agency

-- COVERS IDENTICAL BILLS: HB 694 & SB 512 --

ALASKA CODE REVISION COMMISSION COMMENTARY TO ACCOMPANY BILL ON ADMINISTRATION OF DECEDENTS' ESTATES

This bill has a single purpose--to adjust for inflation the dollar amounts in certain neglected sections of the Uniform Probate Code.

The code was enacted in Alaska in 1972. From July, 1972 to November, 1983 the "Consumer Price Index for All Urban Consumers for the Anchorage Metropolitan Area" moved from 1.159 to 2.704. The CPI has been erratic the past several months. However, a reasonable guess is that the CPI on January 1, 1985, the effective date set in the bill, will be 2.856, an increase of 146% over 1972. The dollar figures in the bill are adjusted roughly consistent with that percentage. Broadly rounded figures are used.

In the first section of the bill, the figures used for the homestead allowance are those of the homestead exemption in the Alaska Exemptions Act, AS 09.38. That is a recent Act, ch. 62, SLA 1982. It is desirable, but not necessary, that the homestead allowance in the Probate Code and the homestead exemption in the Exemptions Act be the same.

The other changed figures in the bill are tied to nothing but changes in the cost of living that have already occurred.

An alternative to setting fixed figures would be indexing figures to the consumer price index, such as is provided in section 09.38.115 of the Alaska Exemptions Act. If that approach were taken, the Revisor of Statutes could be required to change figures under the formula adopted. The formula could be adjusted so a figure would be determined a year in advance of its effective date, and the change would appear in the supplement to Alaska Statutes. The indexing alternative could readily be adopted for this bill. It is not adopted, however, since it may be advisable to let the indexing provisions in the Exemptions Act be tested before they are adopted elsewhere.

6

HB
695

FISCAL NOTE

Revision Date:

REQUEST

Bill/Resolution No.: HB 695
Title: "...renunciation of rights in decedents' estates."
Sponsor: House Rules/Code Rev. Comm.
Requestor: House Judiciary
Date of Request: 3/13/84

FISCAL DETAIL

Agency Affected: Department of Law
Program Category Affected: General Government
Program or Subprogram(s) Affected: Legal Services

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 84	FY 85	FY 86	FY 87	FY 88	FY 89
OPERATING						
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 SUPPLIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS						
800 MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND	-0-	-0-	-0-	-0-	-0-	-0-
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS:

FULL-TIME	-0-	-0-	-0-	-0-	-0-	-0-
PART-TIME						
TEMPORARY						

SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

ANALYSIS: Attach a separate page for analysis

Prepared By: Richard I. Pegues, Director (Richard I. Pegues) Phone: 465-3672
Division: Administrative Services Division Date: 3-13-84

Approved by Commissioner: Norman C. Gorsuch (Richard I. Pegues for) Date: 3-13-84
Agency: Department of Law

Distribution (by Agency preparing fiscal note):
- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)

12/1/83

Fiscal Note
Analysis
HB 695

March 13, 1984

This bill was requested by the Code Revision Commission to amend the Uniform Probate Code to provide that:

(1) the right to renounce would survive the death of the person having it;

(2) the permissible disclaimer period would be extended from six to nine months after a death; and

(3) accepting one interest in property would not prevent renouncing another interest in the same property.

Renunciation of rights in decedents' estates is a valuable option for estate planning to avoid the taxable transfer of estates. Because this measure deals only with an individual's right to renounce an estate interest, it will not have a fiscal impact on state government operations.

HOUSE AND SENATE JOINT
JOURNAL SUPPLEMENT

March 1, 1984 No. 21

ALASKA CODE REVISION COMMISSION

COMMISSIONERS
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FREDERIC E. BROWN

ALASKA STATE LEGISLATURE
POUCH Y - STATE CAPITOL
JUNEAU, ALASKA 99811
(907) 465-4878

EXECUTIVE SECRETARY
BILLY G. BERRIER

March 1, 1984

Senator Bill Ray, Chairman
Alaska Legislative Council
Pouch V, State Capitol
Juneau, Alaska 99811

RE: (1) a bill relating to principal and income of trusts; (HB 693/SB 511)
(2) a bill relating to administration of decedents' estates; (HB 694/SB 512)
(3) a bill relating to renunciation of of rights in decedents' estates; (HB 695/SB 513)
(4) a bill relating to married persons' rights in a family home; and (HB 696/SB 514)
(5) a bill relating to the uniform disposition of certain property rights at death (HB 697/SB 515)

Dear Senator Ray:

Pursuant to AS 24.20, the Alaska Code Revision Commission has prepared the enclosed bills and respectfully asks that they be introduced in the legislature.

They are technical bills the commission has been working on with the probate committee of the Alaska Bar Association. They relate generally to rights at death and to property arrangements that usually have their inception in death.

At its last meeting, the Legislative Council agreed to introduce the bills.

One of the bills, the bill on disposition of certain property rights at death, was previously in the legislature but received little notice. It is revived at the request of the probate committee of the Alaska Bar Association, and that

committee has advised the commission that it will actively support the bill.

A commentary on each bill is enclosed.

Very truly yours,

John W. Abbott

John W. Abbott, Chairman
Alaska Code Revision Commission

JWA:chw

Enclosures

cc: Hon. Bill Sheffield
Hon. Edmond W. Burke, Chief Justice
Myrton R. Charney, Executive Director
Legislative Affairs Agency

-- COVERS IDENTICAL BILLS: HB 695 & SB 513 --

ALASKA CODE REVISION COMMISSION COMMENTARY TO ACCOMPANY BILL ON RENUNCIATION OF RIGHTS IN DECEDENTS' ESTATES

This bill deals with refusal to accept property or an interest in property from a decedent's estate. Referred to as "renunciation" or "disclaimer", it is a valuable option for estate planning to avoid a taxable transfer.

The right to renounce is provided for in AS 13.11.295 (Section 2-801 of the Uniform Probate Code). This bill would make three changes to facilitate estate planning:

(1) The right to renounce would survive the death of the person having it;

(2) The permissible disclaimer period would be extended from six to nine months after a death; and

(3) Accepting one interest in property would not prevent renouncing another interest in the same property.

The concept of the changes proposed by this bill is in the Uniform Disclaimer of Transfers by Will, Intestacy or Appointment Act (1978). Because Alaska has already adopted the Uniform Probate Code contained in AS 13, minimal changes to AS 13.11.295 will give Alaska the main benefits of the uniform disclaimer statute. The bill does not extend beyond disclaimer of transfers resulting from death. Disclaimer of other kinds of transfers could be the subject of another bill.

The changes in (b) extend the time for renunciation to the nine months period in which renunciation is permitted under the Internal Revenue Code, 26 U.S.C., Sec. 2518. The current version of the Uniform Probate Code recommends that states conform their laws to the nine month period. Failure to do so may deny to Alaskans the full period the federal law permits for taking advantage of a tax planning tool.

Sometimes an heir with a right to disclaim will die within this nine month period. For example, an elderly husband and wife may not outlive each other by nine months. In that situation, a disclaimer would avoid an extra taxable transfer before property is inherited by their children. The changes in (a) would allow a personal representative (executor of the estate

of the second to die) to exercise the right of disclaimer. However, the period for disclaimer would not be extended: the personal representative of the second to die would have ot act within nine months of the first death.

The changes in (d) would permit disclaiming one interest in property without forfeiting the right to accept another interest in the same property. Under federal Internal Revenue law, it is possible for a beneficiary to refuse to accept an income interest in property while accepting transfer of the principal asset, or to refuse a transfer of a principal asset while accepting an income interest in the asset. The change in (d) would delete language that infers that the acceptance of any interest in property would totally bar a renunciation of any other interest in the same property.

AS 13.11.295(f) is deleted as obsolete law. A similar section is not needed as temporary law in this bill because the changes in AS 13.11.295 liberalize renunciation, do not restrict it.

HB

696

FISCAL NOTE

Revision Date:

REQUEST
Bill/Resolution No.: HB 696
Title: "...married persons' rights in a family home."
Sponsor: House Rules/Code Rev. Comm.
Requestor: House Judiciary
Date of Request: 3/13/84

FISCAL DETAIL
Agency Affected: Department of Law
Program Category Affected: General Government
Fund, Program or Subprogram(s) Affected: Legal Services Operations

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 84	FY 85	FY 86	FY 87	FY 88	FY 89
OPERATING						
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 SUPPLIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS						
800 MISCELLANEOUS						
TOTAL OPERATING	0	0	0	0	0	0
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND	-0-	-0-	-0-	-0-	-0-	-0-
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS:

FULL-TIME	-0-	-0-	-0-	-0-	-0-	-0-
PART-TIME						
TEMPORARY						

SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

ANALYSIS: Attach a separate page for analysis

Prepared By: Richard L. Pegues Richard I. Pegues, Director Phone: 465-3672
Division: Administrative Services Division Date: 3-13-84

Approved by Commissioner: Richard L. Pegues/for Norman C. Gorsuch Date: 3-13-84
Agency: Department of Law

Distribution (by Agency preparing fiscal note):
- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)

12/1/83

Fiscal Note
Analysis
HB 696

March 13, 1984

This bill was requested by the Code Revision Commission to remove certain anachronisms and would repeal certain statutory provisions that cause uncertainty in titles to Alaska real property. The protections afforded a widow by the right of dower are now afforded by various options under the Uniform Probate Code, as are the protections afforded a widower under the related "curtesy" right. This bill would repeal some of the protections once afforded a married person under common law dower and curtesy. Because the bill only deals with private property rights, it will not have a fiscal impact on state government operations.

HOUSE AND SENATE JOINT
JOURNAL SUPPLEMENT

March 1, 1984 No. 21

ALASKA CODE REVISION COMMISSION

COMMISSIONERS
JOHN W. ABBOTT - CHAIRMAN
JAMES L. BALDWIN - VICE CHAIRMAN
PATRICK M. RODEY
CHARLIE BUSSELL
L. S. KURTZ, JR.
JUDGE (Ret.) THOMAS B. STEWART
FREDERIC E. BROWN

ALASKA STATE LEGISLATURE
POUCH Y - STATE CAPITOL
JUNEAU, ALASKA 99811
(907) 465-4676

EXECUTIVE SECRETARY
BILLY G. BERRIER

March 1, 1984

Senator Bill Ray, Chairman
Alaska Legislative Council
Pouch V, State Capitol
Juneau, Alaska 99811

RE: (1) a bill relating to principal and income of trusts; (HB 693/SB 511)
(2) a bill relating to administration of decedents' estates; (HB 694/SB 512)
(3) a bill relating to renunciation of of rights in decedents' estates; (HB 695/SB 513)
(4) a bill relating to married persons' rights in a family home; and (HB 696/SB 514)
(5) a bill relating to the uniform disposition of certain property rights at death (HB 697/SB 515)

Dear Senator Ray:

Pursuant to AS 24.20, the Alaska Code Revision Commission has prepared the enclosed bills and respectfully asks that they be introduced in the legislature.

They are technical bills the commission has been working on with the probate committee of the Alaska Bar Association. They relate generally to rights at death and to property arrangements that usually have their inception in death.

At its last meeting, the Legislative Council agreed to introduce the bills.

One of the bills, the bill on disposition of certain property rights at death, was previously in the legislature but received little notice. It is revived at the request of the probate committee of the Alaska Bar Association, and that

committee has advised the commission that it will actively support the bill.

A commentary on each bill is enclosed.

Very truly yours,

John W. Abbott

John W. Abbott, Chairman
Alaska Code Revision Commission

JWA:chw

Enclosures

cc: Hon. Bill Sheffield
Hon. Edmond W. Burke, Chief Justice
Myrton R. Charney, Executive Director
Legislative Affairs Agency

-- COVERS IDENTICAL BILLS: HB 696 & SB 514 --

ALASKA CODE REVISION COMMISSION
COMMENTARY TO ACCOMPANY BILL RELATING TO
MARRIED PERSONS' RIGHTS IN A FAMILY HOME

This bill would remove certain anachronisms and would repeal certain statutory provisions that cause uncertainty in titles to Alaska real property. The principal provisions to be repealed are AS 34.15.010(b), (c) and (d), subsections that deal with conveyances of "the family home or homestead".

The other two sections to be repealed by the bill deal with dower, a common law concept that has not been recognized in Alaska in its pure form since 1900 (Bechtol v. Bechtol, 2 Alaska 397 (1905)). Its altered, statutory form was removed from Alaska law in 1963 (sec. 30, ch. 38, SLA 1963). The protections once afforded a widow by the right of dower are now afforded by various options under the Uniform Probate Code adopted in Alaska in 1972, as are the protections afforded a widower under the related "curtesy" right. The official comment to the Uniform Probate Code includes:

> "The provisions of this Code replace the common law concepts of dower and curtesy and their statutory counterparts."

The main subjects of this bill, AS 34.15.010(b), (c) and (d), are subsections enacted over a period of time, apparently in a patchwork effort to approach some of the protections once afforded a married person under common law dower and curtesy.

Common law dower was a life estate given a widow in one-third of the lands her husband owned at any time during the marriage. Her husband could not transfer away her right. But Alaska's statutory dower only applied to real property owned by the husband at the husband's death. Common law curtesy was similar to dower but was a right given a husband in lands of his wife. In its statutory form (sec. 482, Compiled Laws of Alaska 1913, since repealed) it applied only to lands owned by the wife at the wife's death.

To compensate for the lesser protection afforded in the statutory forms of dower and curtesy, the legislature required the signature of both spouses on every deed to "a family home or homestead" (ch. 107, SLA 1933; now AS 34.15.010(b)).

Unless both spouses' names appear on the title

documents, a purchaser down the chain of title usually will have no way of knowing whether a precedessor was married and usually will have no way of knowing whether real property was a married couple's "home or homestead". Therefore, the 1953 legislature (ch. 145, SLA 1953) engrafted further provisions on the statute in an effort to clear titles clouded by what now is AS 34.15.010(b).

The confused and contradictory state of these subsections of AS 34.15.010 can best be shown by setting them out in full:

> (b) In a deed or conveyance of the family home or homestead by a married man or a married woman, the husband and wife shall join in the deed or conveyance.
>
> (c) The requirement that a spouse of a married person join in a deed or conveyance of the family home or homestead does not create a proprietary right, title or interest in the spouse not otherwise vested in the spouse.
>
> (d) Failure of the spouse to join in the deed or conveyance does not affect the validity of the deed or conveyance, unless the spouse appears on the title. The deed or conveyance is sufficient in law to convey the legal title to the premises described in it from the grantor to the grantee when the deed or conveyance is otherwise sufficient, and (1) no suit is filed in a court of record in the judicial district in which the land is located within one year from the date of recording of the deed or conveyance by the spouse who failed to join in the deed or conveyance to have the deed or conveyance set aside, altered, changed, or reformed, or (2) the spouse whose interest in the property is affected does not file, within one year in the office of the recorder for the recording district where the property is situated, a notice of his interest in the property.

Inconsistencies in the subsections make them extremely difficult to interpret. All that is clear is that there are title problems whenever only one person is record owner of real property, and that person conveys an interest in the property by a document that does not show whether he or she is a single person. At best, the title is clouded during the year of limbo provided under AS 34.15.010(c) and (d).

By proposing this bill, the code revision commission is suggesting (1) that any worthwhile purpose there may be in retaining AS 34.15.010(b), (c) and (d) in the law is far outweighed by the uncertainty in land titles the subsections cause, and (2) that the options afforded a married person under the Uniform Probate Code provide adequate protection.

AS 09.45.480(a)(1) relates to determining value of an "estate in dower". AS 09.45.720 relates to "actions to recover possession by a tenant in dower". The sections should be repealed because the dower right no longer exists in Alaska, as noted above.

HB

697

FISCAL NOTE

Revision Date:

REQUEST

Bill/Resolution No.: HB 697

Title: "...disposition of certa property rights at death."

Sponsor: House Rules/Code Rev. Com.

Requestor: House Judiciary

Date of Request: 3/13/84

FISCAL DETAIL

Agency Affected: Department of Law

Program Category Affected: General Government

Bill, Program or Subprogram(s) Affected: Legal Services Operations

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 84	FY 85	FY 86	FY 87	FY 88	FY 89
OPERATING						
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 SUPPLIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS						
800 MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	0	0	0	0
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND	-0-	-0-	-0-	-0-	-0-	-0-
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS:

FULL-TIME	-0-	-0-	-0-	-0-	-0-	-0-
PART-TIME						
TEMPORARY						

SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

ANALYSIS: Attach a separate page for analysis

Prepared By: Richard L. Pegues, Director Phone: 465-3672

Division: Administrative Services Division Date: 3-13-84

Approved by Commissioner: Richard L. Pegues (for) Norman C. Gorsuch Date: 3-13-84

Agency: Department of Law

Distribution (by Agency preparing fiscal note):

- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)

12/1/83

Fiscal Note
Analysis
HB 697

March 13, 1984

This bill was requested to prescribe the rights, at death, of a married person who has community property acquired prior to a change in domicile to Alaska, or which is traceable to community property, where the spouses have not indicated an intention that their community rights be severed.

The Act codifies what the Code Revision Commission believes is now common law in Alaska. The Act should help eliminate the necessity of stating that common law through litigation, thus saving private parties some litigation expense and reducing court costs. Because the bill deals only with private estate interests, it will not have a fiscal impact on state government operations, other than slightly reducing crowded court calendars.

HOUSE AND SENATE JOINT
JOURNAL SUPPLEMENT

March 1, 1984 No. 21

ALASKA CODE REVISION COMMISSION

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ALASKA STATE LEGISLATURE
POUCH Y - STATE CAPITOL
JUNEAU, ALASKA 99811
(907) 465-4876

EXECUTIVE SECRETARY
BILLY G. BERRIER

March 1, 1984

Senator Bill Ray, Chairman
Alaska Legislative Council
Pouch V, State Capitol
Juneau, Alaska 99811

RE: (1) a bill relating to principal and income of trusts; (HB 693/SB 511)
(2) a bill relating to administration of decedents' estates; (HB 694/SB 512)
(3) a bill relating to renunciation of of rights in decedents' estates; (HB 695/SB 513)
(4) a bill relating to married persons' rights in a family home; and (HB 696/SB 514)
(5) a bill relating to the uniform disposition of certain property rights at death (HB 697/SB 515)

Dear Senator Ray:

Pursuant to AS 24.20, the Alaska Code Revision Commission has prepared the enclosed bills and respectfully asks that they be introduced in the legislature.

They are technical bills the commission has been working on with the probate committee of the Alaska Bar Association. They relate generally to rights at death and to property arrangements that usually have their inception in death.

At its last meeting, the Legislative Council agreed to introduce the bills.

One of the bills, the bill on disposition of certain property rights at death, was previously in the legislature but received little notice. It is revived at the request of the probate committee of the Alaska Bar Association, and that

committee has advised the commission that it will actively support the bill.

A commentary on each bill is enclosed.

Very truly yours,

John W. Abbott

John W. Abbott, Chairman
Alaska Code Revision Commission

JWA:chw

Enclosures

cc: Hon. Bill Sheffield
Hon. Edmond W. Burke, Chief Justice
Myrton R. Charney, Executive Director
Legislative Affairs Agency

-- COVERS IDENTICAL BILLS: HB 697 & SB 515 --

ALASKA CODE REVISION COMMISSION
COMMENTARY TO ACCOMPANY BILL ON
UNIFORM DISPOSITION OF CERTAIN PROPERTY RIGHTS AT DEATH ACT

The Act is intended to prescribe the rights, at death, of a married person who has community property acquired prior to a change in domicile to Alaska, or which is traceable to community property, where the spouses have not indicated an intention that their community rights be severed.

The Act codifies what the code revision commission believes is now the common law in Alaska. The Act is intended to eliminate the necessity of stating that common law through litigation.

AS 13.41.005 defines the property which is subject to disposition under chapter 41. Subsection (1) covers all personal property acquired by the spouses while domiciled in a community property state to the extent that property would have been treated as community property at the time of acquisition under the laws of that state and in which the spouses have expressed no intent to sever their community rights. Also included would be property which the spouses have agreed to treat as community property. Subsection (2) covers real property in the state (real property located in other states would be treated under the laws of those states) to the extent that it can be traced to a community source (e.g., was purchased with the proceeds of community property).

AS 13.41.010 establishes rebuttable presumptions intended to assist a court in applying the definitions of sec. 5. The presumptions are that (1) property acquired by a married person while domiciled in a community property state is and remains community property, and (2) property acquired by a married person while domiciled in a common law state, title to which included a right of survivorship, is not community property.

AS 13.41.015 requires that one-half of a deceased married person's property to which the chapter applies, i.e., community property or property traceable to it, becomes the property of the surviving spouse and is not subject to testamentary or intestate disposition. The other half is subject to the applicable manner of disposition. The one-half of the property to which the chapter applies is made not subject to the surviving spouse's elective share.

//

AS 13.41.020 provides a method for the perfection, by means of a court order, of the title to property passing to the surviving spouse under the provisions of this chapter. It is intended to protect the personal representative from liability for failing to search the decedent's estate for property to which the chapter applies. The personal representative's duty may be reinstated by written demand of the surviving spouse or that spouse's successor in interest.

AS 13.41.025 provides a method whereby the personal representative, heir, or devisee may institute an action to perfect the surviving spouse's title to property to which the chapter applies. It is a corollary to sec. 20.

AS 13.41.030 protects purchasers and lenders taking a security interest, who acquire such interest for value, after the spouse's death, from liability to a person who appears to have title to property to which the chapter applies. It is intended to permit reliance upon apparent title and to facilitate both ascertainment of title and disposition of assets where adequate consideration is paid.

AS 13.41.035 merely states that the rights of creditors in property to which the chapter applies is not affected.

AS 13.41.040 makes clear that the rights of spouses to sever their community property interests or to create a form of ownership not subject to this chapter are in no way limited by the chapter.

AS 13.41.045 provides that the chapter does not authorize the testamentary disposition of property which is otherwise prevented from such disposition.

AS 13.41.050 and 13.41.055 provide for uniform construction and application and for citation for short title, respectively.

Nine states have adopted the 1971 uniform Act.

HB
698

COMMITTEES OF CORRESPONDENCE INC. Wine Makes Might

Connie & Otto Moulton
P.O. Box 232
Topsfield, MA 01983
(617) 774-2641

Drug Abuse Newsletter

Issue No. 15
January 1984

LOOK-ALIKE DRUGS

A NEW PROBLEM

Historically, abusers of illicit substances have been faced with the possibility that what they bought may contain various kinds and quantities of adulterants, contaminants, and substitutes. For example, quinine and other substances have traditionally been used to "cut" or adulterate heroin and cocaine. Oregano and catnip have been used to dilute street-level quantities of marijuana.

In recent years, however, new products (the legality of which is still to be determined) have entered the market. Their easy availability as well as their potential health dangers pose a unique and significant problem to health and enforcement agencies as well as to the users and their parents.

WHAT ARE LOOK-ALIKE DRUGS?

Look-alike drugs are pills (tablets and capsules) and powders containing non-controlled, over-the-counter ingredients whose physical appearance mimics various prescription drug products which contain popular substances of abuse and are regulated under the provisions of the Controlled Substances Act.

Look-alike drugs are available in a variety of forms: powders, various colored or speckled capsules, as well as various forms of tablets. Their users and street-level sellers give these drugs the same street names as their controlled counterparts. Look-alikes usually contain varying mixtures of caffeine (the equivalent of about two cups of coffee per pill), and two other non-prescription chemicals: ephedrine sulphate (a nasal decongestant), and phenylpropanolamine hydrochloride (an appetite suppressant). It has also been noted that on occasion the contents of a given kind of capsule has varied, indicating that some manufacturers may use whatever ingredients are available at the time of production.

There are a number of different white granular substances similar to cocaine being sold as a substitute for cocaine. Some dealers will tell the buyer that it is a substitute. However, in the case of naive buyers the substance is pawned off as the real thing and is sold at very high prices. This deception can be the cause of many problems for the users.

WHAT ARE ACT-ALIKE DRUGS?

Act-alike drugs are those not manufactured to closely resemble controlled substances, but which are promoted in the same way and contain the same ingredients as look-alike drugs.

INFORMATION FROM THE FOOD AND DRUG ADMINISTRATION (FDA)

The principle ingredients commonly found in look-alike drugs are caffeine, ephedrine sulfate and phenylpropanolamine hydrochloride. These chemicals are found in many legitimate drug preparations and are safe when used in accordance with approved labeling. In August of 1982, FDA decided that while the individual ingredients were approved for over-the-counter marketing, triple combinations of the three ingredients were not. Such combinations were then made subject to the FDA approval process, subjecting manufacturers of such combinations to much greater FDA regulation and monitoring than that to which most over-the-counter manufacturers are subjected. This enabled FDA to take various actions against violative manufacturers and their products. In November 1983, FDA took the same action with respect to double combinations. This latest action will even affect such legitimate over-the-counter products as "Dietac." It will, of course, also cut off the escape route taken by the shady manufacturers who changed their formulations from three ingredients to two in response to the earlier FDA action.

People having information on continued violations of the FDA Act and regulations should bring such information to the attention of:

The Associate Commissioner for Regulatory Affairs
Food & Drug Administration
5600 Fishers Lane
Rockville, Maryland 20857

LOOK-ALIKE DRUGS AS A MEDICAL AND SOCIAL HEALTH PROBLEM

Although the ingredients used in look-alike drugs are legitimately used as decongestants, analgesics, cold, allergy, or asthma relief medications and as appetite suppressants, these same ingredients may also produce mild stimulant or depressant side effects. When taken for their intended, legitimate medical purpose (in recommended doses and in accordance with FDA labeling), these look-alike ingredients are generally safe and produce only minor side effects. However, through deceptive advertising or because the substance is represented as a controlled substance, the user of look-alikes may be deceived into believing that the pills he or she has purchased will produce effects equal to those of the controlled substance that they imitate.

Equally serious adverse physiological reactions are possible and have occurred when look-alike drugs have been taken in large quantities. This generally occurs when the user wants a high or wants to come down from one and takes several dosage units. These reactions may range from episodes of acute nervousness and irritability, periods of sleep disorder, general drowsiness, temporary hypertensive episode, cerebral hemorrhage, stroke and even death.

A related but perhaps greater health hazard is the extreme danger that those who have become accustomed to ingesting look-alikes may one day knowingly or unknowingly ingest an apparently equal quantity of an actual controlled substance. The risk of adverse physical reactions increases greatly, especially when depressant substances are involved. An overdose can result in death.

The FDA has received reports of twelve deaths associated with injecting or sniffing these substitute white powders, many of which contain local anesthetics

such as lidocaine, procaine and tetracaine. The main dangers of these substitutes, according to the FDA, are that they can collapse blood vessels, depress heart muscle strength and cause low blood pressure.

The FDA has advised that the diversion and misuse of these cocaine substitutes is an emerging public health problem with deadly consequences. The FDA has asked "all manufacturers and distributors to help stop this diversion to these relatives of cocaine."

We are advising all parents and others involved in our battle against drug abuse to become informed about these look-alikes and to be on the lookout for their use among our teenagers. Tell everyone about the existence and dangers of these look-alike drugs.

Note: Portions of this paper are copies from a document that is a joint publication of the Air Force Office of Special Investigations (AFOSI) and the Air Force Office of Drug and Alcohol Abuse Control (AF/MPXHD).

WHAT IS BEING DONE

The Subcommittee on Alcoholism and Drug Abuse (Senator Gordon Humphrey (R-NH), Chairman) held a hearing on July 14, 1983, to hear testimony on look-alike drugs regarding Federal, state and local efforts to ban them through regulation, legislation, community programs and school policies. Witnesses described the way in which the problem is changing to include "act-alike" drugs and discussed the need for Federal legislation.

Senator Humphrey has introduced two bills in the 98th Congress:

S-503 - Bans the manufacture, distribution and advertisement of look-alike drugs and act-alike drugs.

S-497 - Amends the Postal Statute to make drug abuse-oriented advertisements and shipments in response to these ads non-mailable.

WHAT YOU CAN DO

Write your legislators.

Ask them to support Look-Alike Legislation Bills S-503 and S-497.

RESOURCE REFERENCES FOR ADDITIONAL INFORMATION

Publication Department
Senate Labor & Human Resources
Hart Senate Office Building
Washington, D.C. 20510

Hearing - Look-Alike Drugs July 14, 1983

Publication Department
Select Committee on
Narcotics Abuse & Control
H2-234 H.O.B. Annex 2
Washington, D.C. 20515

Hearing - Look-Alike Drugs #97-1-8 (1981)

Hearing - Further Investigation of Look-Alike Drugs #97-2-4 (1982)

MISCELLANEOUS INFORMATION

The Committees is still operating on a yearly subscription basis, renewals due in January. The National Federation of Parents for Drug-Free Youth (NFP) Newsletter, Vol. 2, #3, erroneously stated that we were not going to be a subscription operation. We will plan to do four newsletters per year on specific drug-abuse subjects and then provide additional mailings on current issues that need letter-writing action.

Cindy Cleary has joined our staff as Administrative Assistant. Office hours are Monday through Friday, 9 a.m. to 3 p.m. The answering machine is on at other times. In order to keep bookkeeping and typing at a minimum, we request that all orders for material be PREPAID. Emergency situations are different.

A new King Features syndicated column called STRIKING BACK, written by Sue Rusche, on the subject of drug and alcohol abuse and featured twice a week will begin on February 1, 1984.

Write a letter to the Managing Editor of your local newspaper stating that you would like to read this column in your newspaper and would they subscribe to have it. If you need further support or information, contact:

Jim Head, Executive Editor
King Features
235 East 45th Street
New York, NY 10017
212/682-5600

Sue Rusche
Families in Action
3845 N. Druid Hills Rd., #300
Decatur, GA 30033
404/325-5799

NEWS UPDATE ON MODEL DRUG PARAPHERNALIA LAW

The United States Supreme Court has clearly indicated that the Model Law is constitutional. The Court issued guidelines favorable to all drug paraphernalia laws. The Model Law can be enforced. It has been enforced.

Many headshop owners have been arrested and convicted, and many headshops have been seized. The first, and one of the best handled prosecutions, occurred in Webster Groves, Missouri. The prosecutor, Thomas Newmark, has agreed to provide advice to any prosecutor who has never handled a Model Act Case.

Thomas Newmark
Railway Exchange Building, Suite 1400
611 Olive Street
St. Louis, Missouri 63101
314/231-5833

The Drug Enforcement Administration is ready to help in any way that it can. If you know of any drug paraphernalia being sold in your state, send the name and location of the shop to Harry Myers and he will pass on this information to the right officials for action.

Harry Myers
Associate Chief Counsel
Drug Enforcement Administration
1405 I Street, N.W.
Washington, D.C. 20537
202/633-1340

Drug Abuse Issue of the Month

Vol. 1 No. 3

DRUG PARAPHERNALIA

Concerned parents all over the country are banding together to put a stop to the sale of drug paraphernalia -- the toys, gadgets, tools, and devices sold to enhance the use of illicit drugs. Paraphernalia is most often sold in head shops, described as "little learning centers for drug abusers" by the director of the nation's largest residential drug treatment center, Dr. Mitchell Rosenthal.

Since 1975, the number of high school seniors who smoke marijuana daily has doubled. Today, 1 in 10 seniors smokes an average of 3½ marijuana cigarettes a day; and 13% of these smoke more than 7 joints a day. Moreover, nearly one-third (31 percent) of the nation's 12 to 17 year old children have now tried pot -- up from 14 percent in 1972, the year the drug paraphernalia industry first emerged on a national scale.

During the same period of time, cocaine use among youngsters nearly quadrupled and the number of kids who tried inhalants and hallucinogens -- two additional kinds of drugs "pushed" by paraphernalia products and publications -- also increased dramatically. At paraphernalia hearings conducted by the U. S. Select Committee on Narcotics Abuse and Control last fall, Dr. Rosenthal said: "There is no question in my mind that the great increase in adolescent drug abuse can be blamed on the proliferation of head shops. And so can the nature of that abuse, the sophistication kids have about how and what to smoke or sniff or swallow."

At the same hearing Sue Rusche, President of Families in Action, (a Georgia-based parents' group whose community education efforts resulted in the nation's first statewide drug paraphernalia laws), added: "What we are seeing is the emergence of an industry that glamorizes and promotes the use of illicit drugs, an industry that, in the time-honored tradition of American free enterprise, is developing a new market of drug users -- our 12 to 17 year old children."

With products like "Star Wars" space guns and pirated "frisbee" pot pipes, "Candy Quaaludes," cocaine comic books, and "Practice Grass" kits for fifth graders, it is little wonder that children exposed to such materials come away thinking that drugs are normal. In the words of one youngster, "Marijuana isn't a drug; it's just around--like blue jeans." And children's exposure to drug paraphernalia is now virtually unavoidable in most communities. Head shops have now spread from adults-only zones to far more lucrative locations in suburban shopping malls, in record stores, and, as some community surveys show, in clusters around high schools, middle schools and even elementary schools.!

HISTORY OF THE PARAPHERNALIA INDUSTRY

The growth of the drug paraphernalia industry parallels the growth of drug use among college students of the 1960's.

As the use of drugs spread from the "counterculture" to the "mainstream" of university students and American G.I.'s in Vietnam, a sizeable market of drug users emerged. The economic power of this market steadily increased as the students of the 60's became the wage earners of the 70's.

The first paraphernalia product evolved from cigarette rolling papers. The U.S. Tobacco Company's Zig Zag Papers, for example, is one of many brands which had been sold for years in drug stores and tobacco shops. By the mid-1960's, however, rolling papers found their way into "hippie" boutiques which offered counterculture clothing, wood-carved pipes, and cigarette papers for "rolling your own" marijuana. In 1972 Burt Rubin of Robert Burton Associates, capitalized on h bservation that pot smokers often stuck two papers tog er to accomodate enough marijuana to make a good-sized joint. He developed double-wide paper ("E-Z Wider") which revolutionized the rolling paper industry. Rubin's company parlayed an initial investment of $6,000 into a $9,000,000 conglomerate with an annual advertising budget of half a million dollars in just six years. Other paper manufacturers followed suit, developing variations of the double-wide concept and enjoying corresponding sales increases. Not only has the number of brands mushroomed, but also the distribution of rolling papers designed specifically for marijuana has expanded out of boutiques and into 24-hour convenience stores, most major drug store chains, supermarkets, and even cigarette vending machines. When confronted with attempts to regulate rolling papers, manufacturers insist the papers are for tobacco. Advertisements they place in drug magazines, however, make clear that the reverse is true. "Careful not to offend any constituency, Rubin calls his wrappers cigarette papers' to the business establishment while winking at potheads who turn them into joints."
(Circus Weekly, 12/19/78).

The phenomenal success of rolling papers adapted for marijuana led both new and established companies like Rubin's to diversify, inventing other products to enhance drug use. One such diversification centered around a "bong," a verticle bamboo device brought back from Vietnam by U.S. veterans. A hole in the bong enables cold air to be drawn in on top of hot smoke, pressing a volume of concentrated marijuana smoke into the lungs and producing a quicker, more intense high. A variety of bongs soon

Continued from page 1

entered the market, as well as other products to facilitate marijuana use. As cocaine became available in this country and as its use became more frequent, the paraphernalia industry developed and sold cocaine accessories as well -- from measuring scales and cocaine testing kits to "cute" cocaine spoons, earrings and necklaces displayed in many posh boutiques and department stores.

By 1974, organized distribution of paraphernalia remained a problem for manufacturers -- and this fact had a great deal to do with the birth of **High Times**, the first of the drug magazines. **High Times**, according to Andrew Kowal, the magazine's original publisher, came about because, as he pointed out, although a lot of people were smoking and getting high, and rolling papers and pipes were being sold, -- there was still no way for this paraphernalia industry to **market** its products to the public.(emphasis added) **(Hustler, 12/77. High Times** did not have an easy start. Many printers refused to print it and no distributor would touch it, forcing **High Times** to develop it own distribution network. This began, according to Kowal, by offering the first issue "to marijuana dealers who bought hundreds and distributed it to clients. **(The Journal,** Addiction Research Foundation of Ontario, 2/1/77). **High Times** currently claims 4,000,000 readers. Like the paraphernalia industry, **High Times** has also diversified and presently publishes a line of drug pamphlets, the **High Times Encyclopedia Recreational Drugs**, a magazine index, and the "High Times Newsflash," a monthly summary of the magazine's contents which is distributed as a "wire service" to college newspapers and AM/FM radio stations throughout the nation.

Soon after the publication of **High Times** in 1974, other drug magazines appeared on the market including **Head, Flash,** and **Rush.** In 1977, the publishers of **High Times** brought out a second magazine oriented to the trade called **Dealer** and in January, 1979, two more mass audience drug magazines appeared: **Hi Life** and **Stone Age.** By connecting paraphernalia manufacturers, distributors, and retailers with consumers, these magazines have greatly stimulated the industry. This can be seen in the proliferation of head shops in major cities over the past few years (estimates range as high as 30,000), their shift in location from urban commercial districts to suburban shopping centers, and the sale of paraphernalia in other retail outlets such as record stores, supermarkets, 24-hour convenience stores, book stores and gift shops. Furthermore, the success of the drug magazines has stimulated the publication of a number of drug books and pamphlets. **The Whole Drug Manufacturers Catalogue, The Anarchist Cookbook,** and **The Cocaine Consumer's Handbook** are a few examples.

INDUSTRY TRENDS

1. MORE DRUGS

Several disturoing trends in the drug paraphernalia industry can be identified. First is the expansion of the concept of "recreational drugs." Initially, the industry focused on marijuana and cocaine. As paraphernalia sales escalated, however, so did the number of drugs the industry deemed acceptable enough to design products around and to promote in the drug magazines. These fall into general categories such as "legal" drugs (isobutyl nitrite, nitrous oxide, psilocybin mushroom spores, and others); prescription drugs (Valium, Quaaludes); and "kiddie practice drugs" such as lettuce opium; practice grass (alphalfa, etc.); "Candy Quaaludes" and "Hash" Oil, a fake product sold to kids as the real thing.

2. FALSE INFORMATION

A second trend is to falsely "debunk" medical research that indicates harmful effects from drug use. **High Times,** for example, replied to a letter from a reader worried about pot damaging his lungs that "seriously, you don't have to worry about tars in grass. top doctors at the National Institute on Drug Abuse and the American Cancer Society have **privately** assured us." (Emphasis added.) The directors of both agencies sent letters to the editor strenously objecting to such false statements and the blatant misuse of their agencies' names, but **High Times** ignored their letters.

3. PRODUCTS FOR KIDS

A third trend is the sale of products specifically designed for children. These include bongs "for Tots who Toke", "Baby Toker T-Shirts" in infant and toddler sizes, and fake I.D. Cards, all advertised in **High Times.** There are also Christmas stockings decribed by their designer, Jeff Kaplan of Adams Apple, as containing a "pipe, **Everything You Always Wanted to Know About Marijuana,** a rolling machine, papers, clips, incense, screens, and Zots candy, so you know, if somebody's parents should see it, they'll say, 'Oh, it's a candy-filled stocking'". **(Rolling Stones, 1/27/77)**

4. GLAMORIZING DRUG DEALING AND SMUGGLING

A fourth trend is the industry's attempt to equate the "right" to use drugs with constitutionally guaranteed rights and its insistence that the government therefore has no right to regulate or control the use of **any** drug. This leads, logically enough, to a tendency to ridicule drug laws and law enforcement efforts. Illustrations of this trend range from **High Times'** full page feature **Trans-High Market Quotations,** (monthly listings of the current cost of illicit drugs from nations around the world) to advertisements for "Night Vision Goggles, ideal for driving vehicles, piloting airplanes helicopters and boats without lights." Ad carried in both **High Times** and **Hi-Life Magazines.**





One of the many magazines and books published for drug users, dealers and promoters. Every type of ad can be found including the above source for fake I.D.s. More examples of ads and features can be found on page 7.





Above left: A small sampling of the hundreds of paraphernalia products available. Clockwise: Power Hitter which glows in the dark; Fan Can containing a motorized fan; Razor Gun, all of these items are used to force more smoke into the lung. Also shown, a child's toy as a smoking device and a mask to intensify the high associated with pot-smoking.

Above right: A tee shirt popular with pot smokers (also made in childrens and infant sizes) and a Christmas stocking filled with an assortment of paraphernalia.

THE PARAPHERNALIA LAWS

Georgia parents were among the first to recognize the motivational impact of drug paraphernalia upon children and the first to insist that something be done to put a stop to such nonsense. The Georgia paraphernalia laws were passed in early 1977 and were initially upheld (they are currently under appeal) by Federal courts in response to constitutional challenges brought by the paraphernalia industry. Because Georgia's laws resulted in the closing of some 30 head shops in metropolitan Atlanta, they became the model for similar legislation in communities across the country.

As other communities and states adapted Georgia's laws to suit their own needs, a body of legislation accumulated which resulted in a decision by the U.S. Department of Justice, prompted by the White House, to draft a uniform drug paraphernalia act. The task to research and draft such a law fell to the U. S. Drug Enforcement Administration (D.E.A.) which created the Model Drug Paraphernalia Law. D.E.A.'s Model Law has since been passed by hundreds of towns and cities as well as several states. **By November, 1980 eight Federal District Courts had upheld the Model Law as constitutional.** Moreover, five additional District Courts have struck down other paraphernalia laws, and four of these have recommended the Model Law as more appropriate -- and constitutional -- legislation. In at least one important case, the paraphernalia industry appealed a District Court decision which found the Model Law constitutional -- but has since **withdrawn** its appeal, presumably because they felt they did not have a good enough case to win an appeal.

The drug paraphernalia industry's response to the Model Law includes offering its own "model law" which, in a thinly-veiled effort to keep doing business, prohibits sales of its own products to children. Even if such a law could be enforced, the message still remains: Legal drug paraphernalia implies that drugs themselves must be O.K.; moreover, paraphernalia would still be available to kids through mail order ads in drug magazines, or through head shop purchases made by older friends.

Publicly, the paraphernalia industry insists its products have many other uses and therefore cannot be banned from sale. Privately, industry representatives caution manufacturers to avoid **labeling** their products as "drug paraphernalia". The proposed technique.

As Andy Kowl advised in **Accessories Digest (1/80)**, a paraphernalia trade publication, "Anybody who is smart will not be affected by laws banning drug paraphernalia -- just don't sell it, (Meaning anything labeled paraphernalia). You can still sell bongs and clips and all sorts of other novelties and accessories, of course, just no drug paraphernalia". His advice to head shop owners continues, "Pull back now; lay low; and we will weather the storm. It may be peaking now, or soon, and when it blows over, be proud that you did your part to protect the guaranteed rights of Americans."

The industry's legal counsel Michael Pritzker, writing in **Accessories Digest (6/79)** strongly advises paraphernalia manufacturers to disassociate any **mention** of illicit drug use in connection with their products. Such an approach attempts to absolve the paraphernalia industry of any responsibilities for its product.

In spite of the well-financed defense being mounted by the multimillion dollar drug paraphernalia industry, it is encouraging to note that ordinary moms and dads, pooling "grocery money", have already had a sizeable impact in curtailing paraphernalia sales in their communities. It is generally felt that the D.E.A. Model Law is the best one to pass because it is most likely to withstand constitutional challenges. It is a law which has been and is being passed in local communities as well as cities and states throughout the nation. And it is a law which has been "sponsored" by parents.

WHAT YOU CAN DO

A step by step procedure which has been used successfully by individuals and groups throughout the country:

1. Visit a head shop in your community. Ask questions. Buy some samples, particulary "Kiddie Paraphernalia". Educate yourself about drug paraphernalia. Read a copy of **High Times Magazine.**

2. Organize your community. Educate other parents and concerned adults. (See below for publications list to help you get started.)

3. Take your "Bong Show" (your paraphernalia items), plus the **High Times** paraphernalia ads, **plus** the Model Paraphernalia Law to a sympathetic **State Legislator.** Ask him or her to sponsor this law in your state.

Note: This can be just as easy and far more effective, than trying to get the law through at the local level. The community-level law can prove to be wasted energy if, with the same energy and effort, the Model Paraphernalia Law can be passed to cover all communities in your state.

Also send a request to your governor to ask him for his backing for this Model Law. This may be easier than you think. For example, in January 1980 a reporter who regularly covers the Maryland State Legislature said, "In all my 20 years of covering the legislature, I have never seen such enthusiastic support for any bill." (The Maryland State Senate passed this Model Law 47-0. It was signed into law in May 1980.)

Also, it has been proven that the State Senator who introduced this bill received very positive attention in the Press and from the public for doing so. The Senator who introduced the bill in Maryland, for example, said, "I received so much positive attention from sponsoring this bill that if I'd done this when I was a younger, struggling politician, I wouldn't have needed a campaign committee for re-election. This bill received the most enthusiastic public response I've ever had." You can get help from the Drug Enforcement Administration, including a free packet of supplemental materials (briefs prepared to defend the Model Law and various Federal court opinions handed down to date). Be sure to give copies **at once** to the attorney who will be defending the law case. Write or call:

William Lenck, Chief Counsel (202-633-1276) or
Harry Myers, Attorney (202-633-1404)
Drug Enforcement Administration
1405 Eye Street NW
Washington DC 20537

4. In addition, write for materials. Several parent groups have published what they did to fight drug paraphernalia sales in their town, cities and states. These include:

A. How to Form A Families In Action Group In Your Community. 164 page manual tells how to organize your community to do something about paraphernalia, kids, and drugs. Includes copies of Georgia's laws. $10 single copies, $9 each for 2 to 5 copies, $8 each for 6 or more copies. Send check or money order to Families in Action, P.O. Box 15053, Atlanta, GA 30333. Also available at the same address: Quarterly Newsletter, $3 for four issues.

B. Stop the Drug Epidemic In Your Community with Effective Practical Action.
Pamphlet tells how to organize to fight paraphernalia. $3 each. Send check or money order to Interstate Movement Against Dangerous Drugs, P.O. Box 6272, Silver Spring, MD 20906

C. Paraphernalia Information Packet. $1.00
Send check or money order to Millburn Conference of Parents and Teachers, 23 Audubon Court, Short Hills, NJ 07078

D. Anne Arundel Drug & Alcohol Program
Brochure & Newsletter Free. Write to Ann Arundel Drug & Alcohol Program, 4112 Arundel Center, Annapolis, MD 21401.

The National Federation of Parents for Drug-Free Youth (N.F.P.), a coalition of some 600 parents groups throughout the nation, was formed last Spring. Additional information about children and drugs, and what **you** can do to reduce drug use by children, can be found in N.F.P.'s publication list.

You might also want to contact Gerri Silverman, N.F.P.'s Drug Paraphernalia Committee Chairman, and N.F.P.'s attorney, Jill Gerstenfield, for additional information and a copy of an Amicus Curiae brief filed in behalf of the Federation in a Federal Court test of Maryland's drug paraphernalia law. Write to the National Federation of Parents, P.O. Box 57217, Pennsylvania Ave., Washington, D.C. 20037

5. At least two United States Congressional Committees have held hearings on drug paraphernalia. These are:

The U.S. Select Committee on Narcotics Abuse and Control
(November 1979)
Room 3287
House Office Building Annex 2
Washington DC 20515
Write for a free copy of the transcript.

The U.S. Senate Criminal Justice Subcommittee
Committee on the Judiciary
Washington DC 20510
Write to Senator Charles Mathias, Chairman of the Committee, for a free copy of the transcript.

6. By November 1980 nine states passed the Model Law: Connecticut, Delaware, Indiana, Louisiana, Maryland, Nebraska, New Jersey, New York, Florida. **Note:** If your state has passed the Model Law, this does not mean that drug paraphernalia is not being sold in your community. Because paraphernalia is such a profitable business, the paraphernalia merchants have a large legal fund, and all anti-drug paraphernalia laws are routinely challenged in Federal Court to delay their implementation. Thus far, only Delaware has completed it's court proceedings under the Model Law. (Georgia is also closing down head shops under a law which predates the Model Law.)

If you are in one of the remaining eight states where the law has passed both houses and has been signed by the Governor: (a) Phone the State Attorney General's office and find out the "progression" of the law suit. Frequent calls and numerous letters will encourage the State Attorney General to aggressively defend the legislation in court. For example,

Continued on last page

MODEL DRUG PARAPHERNALIA LAW

The Uniform Controlled Substances Act, drafted by the National Conference of Commissioners on Uniform State Laws, has been enacted by all but a handful of states. The Uniform Act does not control the manufacture, advertisement, sale or use of so-called "drug paraphernalia." Other state laws aimed at controlling drug paraphernalia are often too vaguely worded and too limited in coverage to withstand constitutional attack or to be very effective. As a result, the availability of drug paraphernalia has reached epidemic levels. An entire industry has developed which promotes, even glamorizes, the illegal use of drugs by adults and children alike. Sales of drug paraphernalia are reported to be more than a billion dollars a year. What was a small phenomenon at the time the Uniform Act was drafted has now mushroomed into an industry so well entrenched that it has its own trade magazines and associations.

This Model Act was drafted, at the request of state authorities, to enable states and local jurisdictions to cope with the paraphernalia problem. The act takes the form of suggested amendments to the Uniform Controlled Substances Act. The Uniform Act is extremely well organized. It contains a definitional section, an offenses and penalties section, a civil forfeiture section, as well as miscellaneous sections on administration and enforcement. Instead of creating separate, independent paraphernalia laws, it seems desirable to control drug paraphernalia by amending existing sections of the Uniform Controlled Substances Act.

Article I provides a comprehensive definition of the term "drug paraphernalia" and includes particular descriptions of the most common forms of paraphernalia. Article I also outlines the more relevant factors a court or other authority should consider in determining whether an object comes within the definition.

Article II sets out four criminal offenses intended to prohibit the manufacture, advertisement, delivery or use of drug paraphernalia. The delivery of paraphernalia to a minor is made a special offense. Article II clearly defines what conduct is prohibited, and it specifies what criminal state of mind must accompany such conduct.

(TEAR OFF AT PERFORATION)

Article I

(Definitions)

SECTION (insert designation of definitional section) of the Controlled Substances Act of this State is amended by adding the following after paragraph (insert designation of last definition in section):

"( ) The term 'drug paraphernalia' means all equipment, products and materials of any kind which are used, intended for use, or designed for use, in planting, propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging, repackaging, storing, containing, concealing, injecting, ingesting, inhaling, or otherwise introducing into the human body a controlled substance in violation of this Act (meaning the Controlled Substances Act of this State). It includes, but is not limited to:

(1) Kits used, intended for use, or designed for use in planting, propagating, cultivating, growing or harvesting of any species of plant which is a controlled substance or from which a controlled substance can be derived;

(2) Kits used, intended for use, or designed for use in manufacturing, compounding, converting, producing, processing, or preparing controlled substances;

(3) Isomerization devices used, intended for use, or designed for use in increasing the potency of any species of plant which is a controlled substance;

(4) Testing equipment used, intended for use, or designed for use in identifying or in analyzing the strength, effectiveness or purity of controlled substances;

(5) Scales and balances used, intended for use, or designed for use in weighing or measuring controlled substances;

(6) Diluents and adulterants, such as quinine hydrochloride, mannitol, mannite, dextrose and lactose, used, intended for use, or designed for use in cutting controlled substances;

(7) Separation gins and sifters used, intended for use, or designed for use in removing twigs and seeds from, or in otherwise cleaning or refining marijuana

(8) Blenders, bowls, containers, spoons and mixing devices used, intended for use, or designed for use in compounding controlled substances;

(9) Capsules, balloons, envelopes and other containers used, intended for use, or designed for use in packaging small quantities of controlled substances;

(10) Containers and other objects used, intended for use, or designed for use in storing or concealing controlled substances;

(11) Hypodermic syringes, needles and other objects used, intended for use, or designed for use in parenterally injected controlled substances into the human body;

(12) Objects used, intended for use, or designed for use in ingesting, inhaling, or otherwise introducing marijuana, cocaine, hashish, or hashish oil into the human body, such as:

(a) Metal, wooden, acrylic, glass, stone, plastic, or ceramic pipes with or without screens, permanent screens, hashish heads, or punctured metal bowls;
(b) Water pipes;
(c) Carburetion tubes and devices;
(d) Smoking and carburetion masks;
(e) Roach clips: meaning objects used to hold burning material, such as a marijuana cigarette, that has become too small or too short to be held in the hand;
(f) Miniature cocaine spoons and cocaine vials;
(g) Chamber pipes;
(h) Carburetor pipes;
(i) Electric pipes;
(j) Air-driven pipes;
(k) Chillums;
(l) Bongs;
(m) Ice pipes or chillers;

In determining whether an object is drug paraphernalia, a court or other authority should consider, in addition to all other logically relevant factors, the following:

(1) Statements by an owner or by anyone in control of the object concerning its use;
(2) Prior convictions, if any, of an owner, or of anyone in control of the object, under any State or Federal law relating to any controlled substance;

Continued from page 5

(3) The proximity of the object, in time and space, to a direct violation of this Act;
(4) The proximity of the object to controlled substances;
(5) The existence of any residue of controlled substances on the object;
(6) Direct or circumstantial evidence of the intent of an owner, or of anyone in control of the object, to deliver it to persons who he knows, or should reasonably know, intend to use the object to facilitate a violation of this Act; the innocence of an owner, or of anyone in control of the object, as to a direct violation of this Act should not prevent a finding that the object is intended for use, or designed for use as drug paraphernalia;
(7) Instructions, oral or written, provided with the object concerning its use;
(8) Descriptive materials accompanying the object which explain or depict its use;
(9) National and local advertising concerning its use;
(10) The manner in which the object is displayed for sale;
(11) Whether the owner, or anyone in control of the object, is a legitimate supplier of like or related items to the community, such as a licensed distributor or dealer of tobacco products;
(12) Direct or circumstantial evidence of the ratio of sales of the object(s) to the total sales of the business enterprise;
(13) The existence and scope of legitimate uses for the object in the community;
(14) Expert testimony concerning its use."

Article II
(Offenses and Penalties)

SECTION (designation of offenses and penalties section) of the Controlled Substances Act of this State is amended by adding the following after (designation of last substantive offense):

"SECTION (A) (Possession of Drug Paraphernalia)

It is unlawful for any person to use, or to possess with intent to use, drug paraphernalia to plant, propagate, cultivate, grow, harvest, manufacture, compound, convert, produce, process, prepare, test, analyze, pack, repack, store, contain conceal, inject, ingest, inhale or otherwise introduce into the human body a controlled substance in violation of this Act. Any person who violates this section is guilty of a crime and upon conviction may be imprisoned for not more than ( ), fined not more than ( ), or both."

"SECTION (B) (Manufacture or Delivery of Drug Paraphernalia)

It is unlawful for any person to deliver, possess with intent to deliver, or manufacture with intent to deliver, drug paraphernalia, knowing, or under circumstances where one reasonably should know, that it will be used to plant, propagate, cultivate, grow, harvest, manufacture, compound, convert, produce, process, prepare, test, analyze, pack, repack, store, contain, conceal, inject, ingest, inhale, or otherwise introduce into the human body a controlled substance in violation of this Act. Any person who violates this section is guilty of a crime and upon conviction may be imprisoned for not more than ( ), fined not more than ( ), or both."

"SECTION (C) (Delivery of Drug Paraphernalia to a Minor)

Any person 18 years of age or over who violates Section (B) by delivering drug paraphernalia to a person under 18 years of age who is at least 3 years his junior is guilty of a special offense and upon conviction may be imprisoned for not more than ( ), fined not more than ( ), or both."

"SECTION (D) (Advertisement of Drug Paraphernalia)

It is unlawful for any person to place in any newspaper, magazine, handbill, or other publication any advertisement, knowing, or under circumstances where one reasonably should know, that the purpose of the advertisment, in whole or in part, is to promote the sale of objects designed or intended for use as drug paraphernalia. Any person who violates this section is guilty of a crime and upon conviction may be imprisoned for not more than ( ), fined not more than ( ), or both."

Article III
(Civil Forfeiture)

SECTION (insert designation of civil forfeiture section) of the Controlled Substances Act of this State is amended to provide for the civil seizure and forfeiture of drug paraphernalia by adding the following after paragraph (insert designation of last category of forfeitable property):

"( ) all drug paraphernalia as defined by Section ( ) of this Act."

Article IV
(Severability)

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

This reprint of **The Model Drug Paraphernalia Law** has been sponsored by The Committees of Correspondence which is a national group of citizens concerned about drug abuse.

COMMITTEES OF CORRESPONDENCE
P.O. Box 1590
Cathedral Station
New York, N.Y. 10025

In the days of our nation's youth, the Committees of Correspondence was formed to exchange information and ideas and to build Colonial unity. Today, the health and strength of our nation's youth are being threatened by the pervasive drug abuse pandemic. And the Committees of Correspondence has been revived to help effect a turnaround.

Growth of Drug Paraphernalia Industry And Growth of Illicit Drug Use

LIFETIME PREVALENCE -- THOSE WHO HAVE EVER USED:	YOUTH ‡ Age 12 to 17		HIGH SCHOOL SENIORS ‡ Age 17 and 18		YOUNG ADULTS ‡ Age 18 to 25	
	1972	1979	1975*	1979	1972	1979
MARIJUANA	14%	30.9%	47.3%	60.4%	47.9%	68.2%
COCAINE	1.5%	5.4%	9%	15.4%	9.1%	27.5%
INHALANTS	6.4%	9.8%	-	18.7%	-	16.5%
HALLUCINOGENS	4.8%	7.1%	16.3%	18.6%	-	25.1%
TRANQUILIZERS	3%	4.1%	17%	16.3%	7%	15.8%
SEDATIVES	3%	3.2%	18.2%	14.6%	10%	17%
STIMULANTS	4%	3.4%	22.3%	24.2%	12%	18.2%
HEROIN	6%	.5%	2.2%	1.1%	4.6%	3.5%

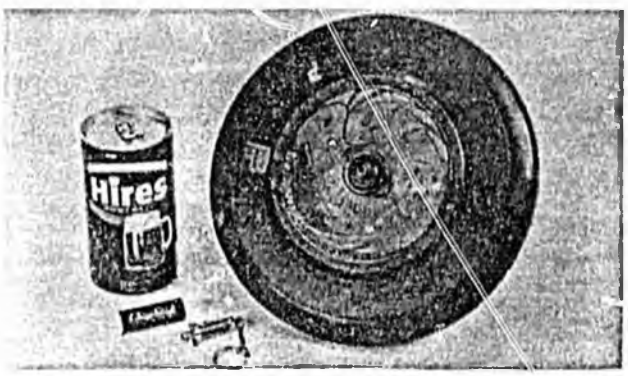
Categories of drugs are listed in descending order **in relationship to the number of paraphernalia products designed for specific drugs.** For example, the largest number of drug paraphernalia products are designed to augment marijuana use, the second largest number of products for cocaine use, etc. At the other end of the spectrum, devices to assist heroin use are infrequent among industry products.

The beginning of the drug paraphernalia industry can be traced to the invention of "E-Z Wider" Rolling Papers, the first rolling paper to be specifically designed for marijuana. A $6,000 investment by "E-Z Wider's" inventor in 1972 grew to a $9,000,000 conglomerate in just six years. Two years later, **High Times Magazine** began publication and advertised paraphernalia products to a mass audience of consumers.

‡ From **A Drug Retrospective: 1962 to 1980** and **Drugs and the Nation's High School Students, 1979 Highlights,** both published by the National Institute on Drug Abuse, (U.S. Department of Health and Human Services), 5600 Fishers Lane, Rockville, MD 20857

- Not tabulated

• First year high school senior survey began



Above Pictured are some ordinary products that could be found anywhere. None of which would arouse the least suspicion.

Right Those same products, modified, show how they are used to conceal illicit drugs.



Clockwise from top left: a soft drink can with a removable top, a product to look like a "Frisbee" called a Buzz Bee used as a smoking device, a roach clip concealed in a knife case, a tube of lip balm with a removable cap to conceal a glass vial.



MORE ADS continued from page 2









Top: Regular monthly feature Trans High and, left, a feature article on the use of short-wave radio to avoid detection by Law Enforcement Authorities.

Subscription Form

The Committees of Correspondence is a national organization of citizens concerned about drug abuse. For a one-year (10 issues) subscription to the Drug Abuse Issue of the Month, send $5.00 (cash, check or money order) to: Committees of Correspondence, P.O. Box 1590, Cathedral Station, New York, N.Y. 10025

Name _____
(please print)

Address _____
(please print)

City _____ State _____ Zip _____

Continued from page 4

in Maryland, the Attorney General assigned three top lawyers to the case; one a specialist in research and writing; one a specialist in gathering evidence and organizing the litigation; the third an experienced "trial lawyer". A few other Attorney Generals have given the litigation "less than their best possible support". **Your expression of interest can make the difference.**

When you learn the status of the bill in your state, take this memo to your local newspaper. Ask them to do an editorial or story. (Some papers seem to have a pro-paraphernalia viewpoint. If yours falls into this category and the reporting is slanted or incorrect, write to the newspaper, encouraging them to print the facts from this newsletter in order to set the record straight. The more letters which come in, the more likely it is that one of them will be printed.)

COMMITTEES
OF
CORRESPONDENCE
P.O. Box 1590
Cathedral Station
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There's been a lot of confusion about marijuana. Many years ago, exaggerated stories of the drug's bizarre effects, including tales of violence, amnesia, and sexual frenzy, began to circulate widely. When scientists found no evidence to confirm these rumors, many people began to reject reports of any bad effects of marijuana —and what was considered the "devil's weed" gained a reputation for being a "safe" drug.

This section examines the myths and facts about marijuana. Some of the information may surprise both you and your children. We still do not know everything we would like to know about this controversial drug. But as you will see, our present evidence clearly indicates that it is not a "safe" substance.



Marijuana: What It Is and What It Does

What Exactly Is Marijuana?

Marijuana (also called pot, grass, reefer, or weed) comes from a plant, with the botanical name of *Cannabis sativa*, that grows wild and is cultivated in many parts of the world. Containing over 400 chemicals, this plant has the ability to intoxicate its users, primarily because of the psychoactive or mind-altering ingredient called delta-9-tetrahydrocannabinol, or THC. It is the THC content, found at various concentrations in different parts of the plant, which determines the potency. And the THC content is controlled by plant strain, climate, soil conditions, and harvesting.

Typically, the marijuana used in cigarettes (joints) is made from dried particles of the whole plant except the main stem and roots. In 1975, the average confiscated sample of marijuana contained 0.4 percent THC; in 1979, the average THC content was about 4 percent—a tenfold increase. Sinsemilla, a cultivated form of marijuana which is becoming more frequently available in this country, may contain as much as 7 percent THC.

Hashish (hash) is a green, dark brown, or black resin extracted from the *Cannabis sativa* plant and smoked to produce a high. In the past, hashish, which averages about 2 percent THC, contained more THC than marijuana. However, with the increased potency of marijuana on the streets, it now frequently is stronger than hashish.

Hash oil is an extract of the *Cannabis sativa* plant. It may contain up to 30 percent THC, many times the amount found in marijuana. Hash oil is a tarlike substance usually smoked in small amounts on tobacco or marijuana cigarettes or in small glass pipes.

How Do People Feel When They Smoke Marijuana?

Feelings of euphoria and relaxation are commonly reported as the result of smoking moderate amounts of marijuana. Physically, users experience an increase in heart and pulse rate, a reddening of the eyes, a dryness in the mouth and throat, a mild decrease in body temperature, and, on occasion, a sudden appetite. High doses may result in image distortions and hallucinations.

Many users claim that marijuana enhances their hearing, vision, and skin sensitivity, but these reports have not been confirmed by researchers. Studies of marijuana's mental effects have shown that the drug temporarily impairs short-term memory, alters the sense of time, and reduces the ability to perform tasks requiring concentration, swift reactions, and coordination.

Do People Ever React Badly to Marijuana?

Yes. The most common adverse reaction to marijuana is a state of anxiety, sometimes accompanied by paranoid thoughts; these can range from general suspicion to a fear of losing control and going crazy. Acute anxiety reactions are usually experienced by novice users, and the symptoms generally disappear in a few hours as the drug's effects wear off. While anxiety reactions can usually be quieted by simple reassurance, some marijuana users may need professional help. Over 11,000 emergency room visits relating to marijuana use were reported in 1979.



Can Marijuana Cause Mental or Psychological Problems?

Marijuana does not directly cause mental problems, but like many other drugs, it appears to bring to the surface emotional problems and can even trigger more severe disorders, particularly schizophrenia. People suffering from depression or other emotional disturbances who use marijuana to treat their symptoms often cause a worsening of the problem. An estimated 5,000 people seek professional treatment every month for problems related to marijuana.

How Can Marijuana Affect Your Child?

In addition to the physical effects described later, a very real danger in marijuana use is its possible interference with growing up. As research shows, the effects of marijuana can interfere with learning by impairing thinking, reading comprehension, and verbal and arithmetic skills.

Scientists also believe that the drug may interfere with the development of adequate social skills and may encourage a kind of psychological escapism. Young people need to learn how to make decisions, to handle success, to cope with failure, and to form their own beliefs and values. By providing an escape from "growing pains," drugs can prevent young people from learning to become mature, independent, and responsible.

How Much Is Heavy Marijuana Use?

For the purposes of this booklet, heavy use is defined as smoking at least once a day. However, many young

people when asked to define heavy use say that it means smoking three or more times a day.

What Is Marijuana "Burn Out"?

"Burn out" is a term first used by marijuana smokers themselves to describe the effect of prolonged use. Young people who smoke marijuana heavily over long periods of time can become dull, slow moving, and inattentive. These burned-out users, also referred to as "vegged out" or "space cadets," are sometimes so unaware of their surroundings that they do not respond when friends speak to them. Such youngsters, however, do not consider themselves to be burned out. Scientists believe that burn out may be a sign of drug-related mental impairment that may not be completely reversible, or is reversible only after months of abstinence.

Can Marijuana Cause Addiction?

While increasing numbers of people are reporting problems associated with their marijuana use, and many are having problems stopping after heavy or long-term use, there is little evidence that the drug is physically addicting. Animal studies have shown, however, that a tolerance to THC can develop. This means more and more marijuana must be used over time to achieve the high once experienced by using smaller amounts.



Does Marijuana Lead to the Use of Other Drugs?

There is nothing in marijuana itself that causes people to use other drugs. While studies have shown that the use of tobacco and alcohol often precedes marijuana use, the overwhelming majority of marijuana smokers do not go on to use other drugs. But some do; surveys show that the earlier marijuana use begins, the more likely it is that the use will be heavy. Early use also increases the likelihood of subsequent experimentation with other drugs such as hashish, hallucinogens, cocaine, amphetamines, and occasionally barbiturates and heroin.

How Are People Introduced to Marijuana?

Most people are introduced to marijuana by their peers—that is, by people their own age, usually acquaintances or friends. Pushers are rarely involved when a person first smokes marijuana.

How Many People Smoke Marijuana?

Over 50 million Americans have tried marijuana at least once. Approximately 22 million were considered current users at the time of the last national survey in 1979—"current" because they reported smoking marijuana during the month preceding the survey.

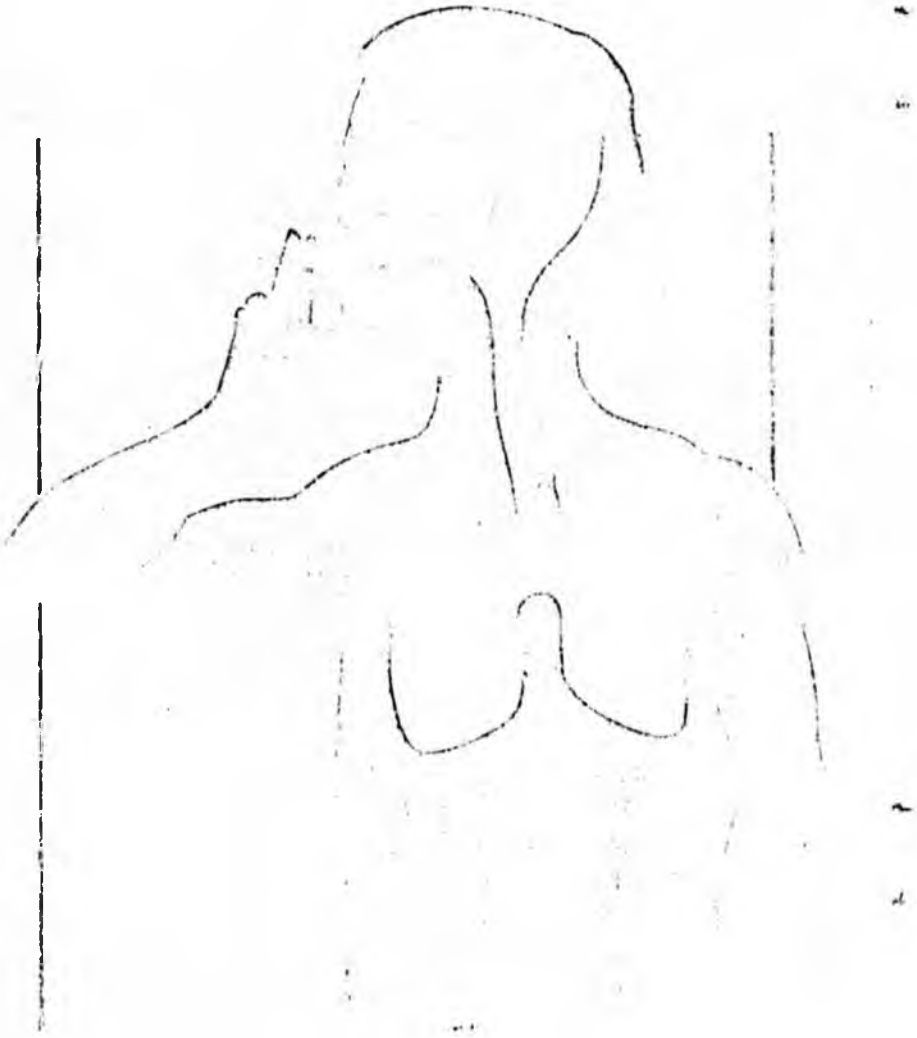
A breakdown of teenage marijuana use shows that—

60 percent of high school seniors had tried it, and one out of nine was a daily user;

8 percent of the 12- to 13-year-olds reported that they had smoked marijuana at least once, and half of this group were current users; and

32 percent of the 14- to 15-year-olds had tried it, and 17 percent were still using it.

While children under the age of 12 were not surveyed, many in the 12-to-17 age group report that they first tried marijuana, and even started smoking it regularly, while they were still in grade school—and probably before their parents even suspected they knew about the drug.

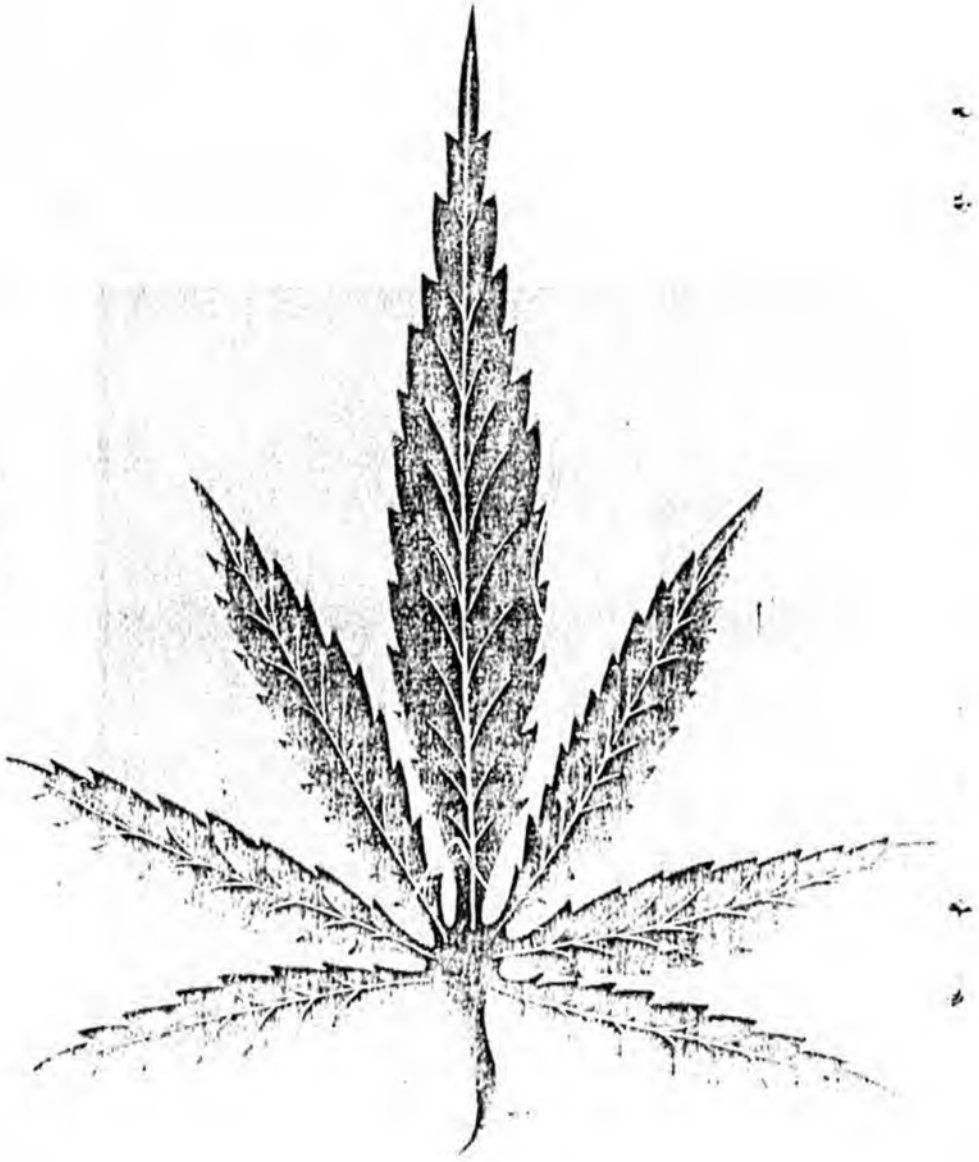


What Happens if You Drive After Smoking Marijuana?

Marijuana delays a person's response to sights and sounds—so that it takes a driver longer to react to a dangerous situation. The ability to perform sequential tasks can also be affected by smoking marijuana. As a result, a marijuana smoker's biggest driving problems occur when faced with unexpected events, such as a car approaching from a side street or a child running out from between parked cars. The greater the demands of a driving situation, the less able the marijuana user will be to cope. The driver who doesn't feel high may still be under the influence of marijuana since its effects may last for several hours after the high has passed.

The combined use of marijuana and alcohol is more hazardous than the use of either alone. But combined use is becoming widespread; one researcher reported that nearly half of regular marijuana users combine

alcohol with marijuana use. Surveys have indicated that from 60 to 80 percent of marijuana users sometimes drive while high.



Marijuana's Effects on the Body

Most of the information on marijuana's effects on the body has been established through studies on both humans and animals, some only by research on animals. Stringent U.S. drug-testing laws require that most research be conducted on men over 18; very few studies have involved women, and none have used adolescents.

Marijuana research is relatively new by scientific standards. Many more years and additional studies will be needed before the long-term effects of marijuana use are fully known.

How Long Does Marijuana Stay in the Body After It Is Smoked?

When marijuana is smoked, THC, its active ingredient, is absorbed by many tissues and organs in the body. The body, in its attempt to rid itself of the foreign chemical, chemically transforms the THC into metabolites. Human tests on blood and urine can detect THC metabolites up to a week after marijuana is smoked. Tests involving radioactively labeled THC have traced these metabolites in animals for up to a month.

Can Marijuana Cause Brain Damage?

To date, no definitive neurological study of humans has turned up evidence of marijuana-related permanent brain damage. However, in a recent study of rhesus monkeys, the animals were trained to smoke a marijuana cigarette 5 days a week for 6 months. The researcher reported that persistent changes in the structure of the monkeys' brain cells followed.

This and other studies have led researchers to conclude that the possibility of subtle and lasting changes in brain function from heavy and continuous marijuana use cannot be ruled out.

How Does Marijuana Affect the Heart?

Marijuana use increases the heart rate as much as 50 percent and can bring on chest pain in people already experiencing a poor blood supply to the heart. For this reason, doctors believe that people with heart conditions, or those who are at high risk for heart ailments, should not use marijuana.

How Does Marijuana Affect the Lungs?

Scientists believe that marijuana can be particularly harmful to the lungs because some users inhale the unfiltered smoke deeply and hold it in their lungs as long as possible, thereby keeping the smoke in contact with lung tissue for prolonged periods. Repeated inhalation of smoke, whether marijuana or tobacco, inflames the lungs and affects pulmonary functions. In one study on humans, it was found that smoking five joints a week over time is more irritating to the air passages and impairs the lungs' ability to exhale air than smoking almost six packs of cigarettes a week. Another study on animals using THC levels similar to daily human use found that extensive lung inflammation developed after 3 months to a year of use.

Can Marijuana Cause Cancer?

While marijuana smoke has been found to contain more cancer-causing agents than tobacco smoke, there is no direct evidence so far that marijuana can cause cancer in humans. However, biopsies of human lung tissue

chronically exposed to marijuana smoke in a laboratory showed cellular changes called metaplasia that are considered precancerous. In laboratory tests, the tars from marijuana smoke have produced tumors when applied to animal skin.

Does Marijuana Affect the Body's Ability To Fight Infection?

This question remains unresolved. Some reports suggest that white cell formation central to the body's immune response is affected by heavy marijuana smoking. Some laboratory animal studies have found that the immune response is significantly suppressed in mice and rats subjected to high doses of marijuana. Other studies have not confirmed these findings. Because the immune response is so important to good health, long-term studies are essential to determine if marijuana users become more susceptible to disease.



How Does Marijuana Affect the Hormonal and Reproductive Systems?

MEN

A few studies of adult males have found that chronic marijuana users had lower levels of testosterone (the principal male sex hormone) than nonusers, and that abstention from marijuana after heavy use produced a reversal of this condition. Other research has shown that the sperm count in young adult males diminishes as marijuana use increases. Still other studies have shown that some of the sperm of chronic marijuana users are defective and nonfunctional. On the basis of these findings, scientists feel that those with marginal fertility or endocrine functioning should avoid marijuana. In addition, marijuana has been shown to affect the growth hormone from the pituitary. These findings indicate that marijuana may be particularly harmful during adolescence, a period of rapid physical and sexual development.

WOMEN

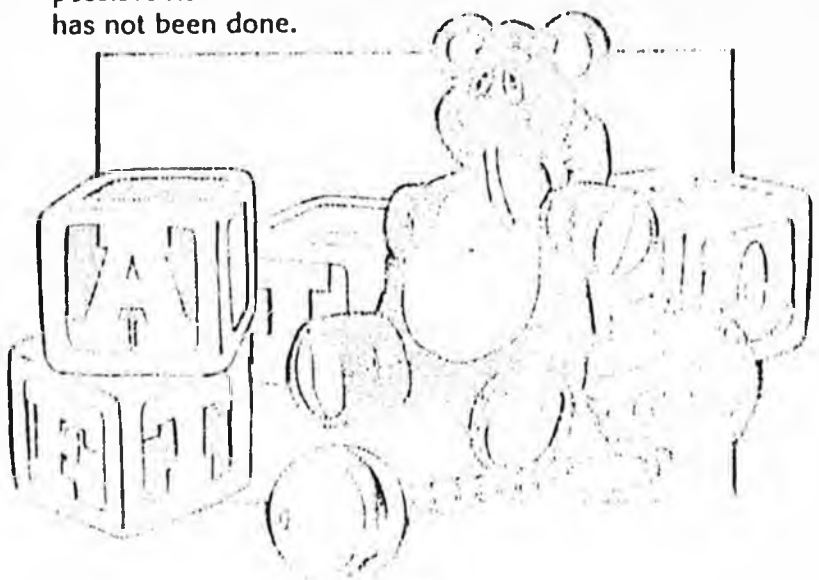
Information about the reproductive effects of marijuana on women is scarce; marijuana research on women of childbearing age is not permitted because of possible reproductive risks. But one recent study of marijuana use and human female endocrine functioning with 26 women using street marijuana for 6 months or more found they had defective menstrual cycles three times more frequently than a similar group of nonusers. These defective cycles involved either a failure to ovulate or a shortened period of fertility—findings which suggest that regular marijuana use may reduce fertility in women. Many female animal studies have been completed and show that marijuana influences levels of estrogen, the principal female sex hormone, and progesterone, another reproductive hormone, as well as the growth hormone from the pituitary. These studies suggest that heavy use should be avoided by the physically and sexually developing adolescent girl.

Is It OK To Smoke Marijuana if You Are Pregnant?

Definitely not. As stated earlier, research on women is limited because of possible risks to the unborn child. Laboratory animal tests, however, have shown that THC-treated female monkeys were four times more likely than untreated monkeys to abort or have stillborn infants. And males born of the THC-treated monkeys were lighter than usual in birth weight. Scientists believe that marijuana, which crosses the placental barrier in the pregnant mother's womb, may have a toxic effect on embryos and fetuses. Use of marijuana or any other drug during pregnancy is an unnecessary risk.

What About Breast Feeding?

Animal studies have shown that THC from marijuana can be transmitted to a baby through the mother's milk and that traces of THC have been found in the baby's urine and feces after nursing. Scientists have no doubt that THC is also transmitted in human milk, but because of possible risks to the mother and child, human research has not been done.



Possible Medical Uses of the Chemicals in Marijuana

Research on marijuana has led to findings which indicate that some of the plant's chemicals, particularly THC, may have medical value. The following summarizes those areas currently being investigated.

Open-Angle Glaucoma

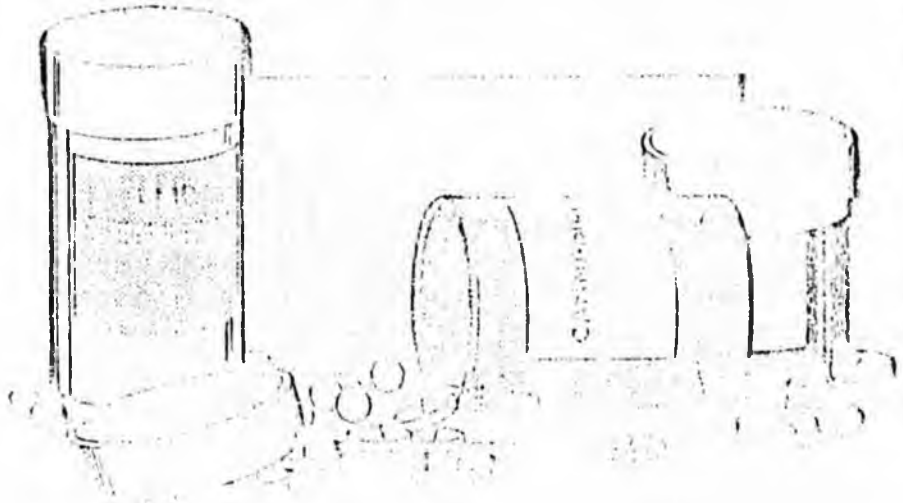
One of the first potential medical uses of marijuana to be explored was the treatment of open-angle glaucoma. This disease, which often leads to blindness, is caused by pressure within the eye. Marijuana cigarettes, often in combination with standard eye medication, have sometimes reduced this pressure. Synthetically made THC eye drops are also being tested on patients. However, mounting evidence suggests that tolerance (the need to increase amounts to achieve the effects produced by initial doses) develops and that ultimately little or no effect may be realized from the drug.

Use of marijuana does not prevent glaucoma or any other eye disorder, or improve vision.

Nausea

One of the more promising uses of THC is as a means of controlling the overwhelming nausea and vomiting which cancer patients experience during chemotherapy. These side effects sometimes force patients to discontinue necessary treatment. Because the available substances that control these symptoms are not effective for all patients, several research projects are now being sponsored by the Federal Government and a number of States and independent researchers to further investigate THC's anti-nausea effects.

But marijuana does not prevent cancer. As discussed earlier, marijuana smoke contains more cancer-causing agents than tobacco smoke.



Multiple Sclerosis

Some small studies are being conducted to test whether THC has any effect on reducing spasticity or involuntary muscle contractions in patients with multiple sclerosis. While the results are not conclusive, some patients have shown lowered spasticity after taking the drug. Whether this reduction will make any difference in the patients' ability to function is not yet known.

Epilepsy

A number of human and animal studies have been done to determine if marijuana or any of its ingredients has an effect on epileptic seizures. Some research on THC has shown that it may actually trigger convulsions in epileptics. Scientists hypothesize that this occurs when the drug stimulates high voltage brain waves, and that the likelihood of its happening is determined by the amount of THC in marijuana and the amount inhaled.

Another marijuana ingredient, cannabidiol, has been shown in limited studies to reduce or control seizures. It should be pointed out, however, that cannabidiol is dominant in only one strain of marijuana and that this particular "fiber" strain contains little of the mind-altering THC. This means that the marijuana available for sale on the street contains only trace amounts of cannabidiol. Cannabidiol has been synthesized and is administered orally or by injection to patients involved in studies.



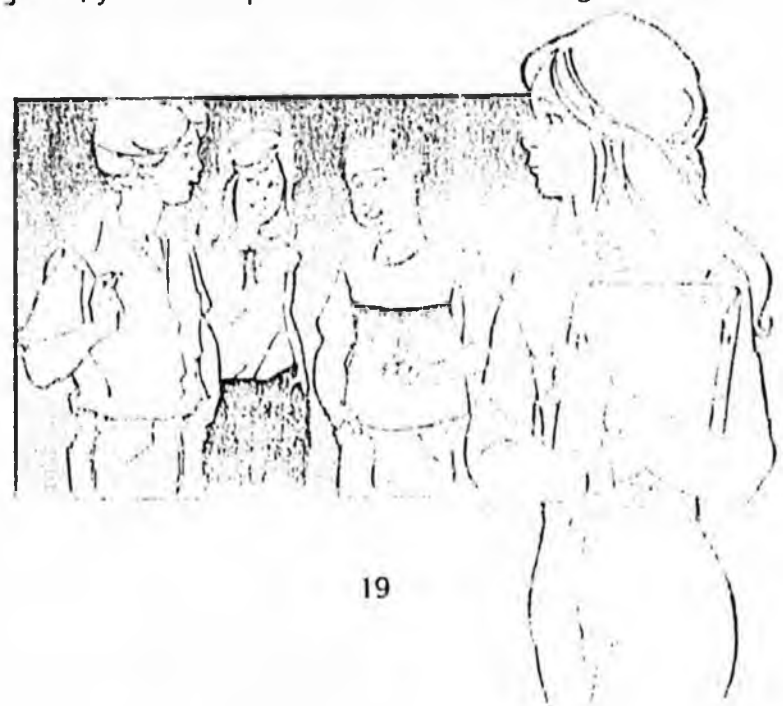
What's a Parent To Do?

Sooner or later, nearly all youngsters find themselves in situations in which they must decide whether or not to take drugs. These decisions are especially hard to make in the midst of conflicting information, peer pressure, curiosity, and the many other influences that are part of adolescence.

If your child has not tried marijuana, consider yourself fortunate, but do not discount the possibility that it could happen sometime in the future. Learn the facts and be prepared to answer questions or deal with the situation if it should occur.

If you think your child has tried marijuana and may even be smoking it regularly, remain calm. Outbursts of anger and emotion are not going to help. They will only interfere with the dialog that is now essential. If you find yourself unable to control your feelings, consider bringing in a third party whose advice and counsel will be respected by both you and your child.

If your child was the one who told you about using marijuana, you should praise him or her for being honest.



and be proud that you created the atmosphere that encouraged your child to confide in you. As you discuss marijuana with your son or daughter, try to find out why s/he smokes and how often. The reasons most often cited are, "Because everybody else does" or "It makes me feel good." A closer look may reveal that your child smokes marijuana to avoid rejection by the other kids, to overcome shyness, or to cope with boredom or feelings of failure.

If you suspect your child may be smoking marijuana to get your attention, take a look at your relationship. Perhaps spending more time with your child is called for. Consider planning activities together away from home, school, and business pressures. Try listening and becoming sensitive to your child's feelings and problems, no matter how trivial they seem.

If your child smokes heavily, you might point out the dangers of heavy use and consider seeking help from a doctor or other health professional even if you have to do this without the youngster's consent.

Saying "No"

A recent study with adolescents has shown that teaching them how to say "no" may actually be more important than giving them the reasons for saying it. Since peer pressure is so important in drug use, you might consider teaching your child how to handle the time when s/he will be faced with making a decision about marijuana or other drugs.

Guilt Doesn't Help

Don't feel guilty or ashamed about your child's marijuana use. Even children of loving parents who have set a good example and taught moderation can become caught up in drug use. Peer group pressure is often strong enough to override the best parental influences.

As you try to cope with the "hows" and "whys" of marijuana, it is important to remember that children are not the only ones who have peers. Your own friends, your neighbors, and the parents of your child's friends are facing the same problems and asking the same questions.

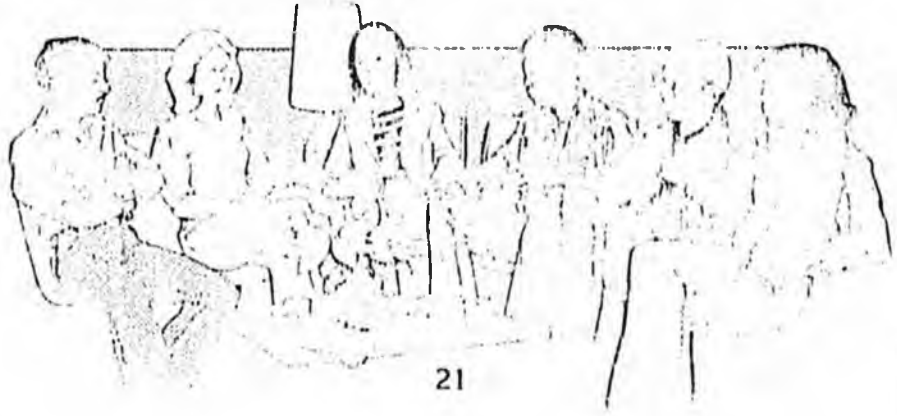
In fact, parents all over the country—of every race, ethnic background, and social class, in cities and suburbs and small towns—are waking up to the dangers of marijuana and other drugs.

Talk About Drugs With Other Parents

If you know your child's friends are smoking marijuana and you would like to do something to stop it, start by inviting their parents to your home one evening. Tell them of your concerns and share all the information you have. Some will probably report similar experiences and may be relieved to find someone who shares their troubles and will work with them to look for solutions.

Some parents may become defensive and insist that marijuana use is not a problem in their families. This is a natural reaction for people who are frightened and confused. For many, a stigma is still attached to marijuana use. They believe that drugs are used only by "bad" children of "unfit" parents.

At any parent meeting try to avoid accusations and blame—"your child does this," "well, *your* child does that." Remember that the purpose of a parent group is cooperation and sharing.



Establish Uniform Rules for the Peer Group

An approach some parents have tried is establishing uniform rules to make access to drugs harder. If you and the parents of your child's friends can agree on appropriate curfews, limits on spending money and use of the family car, and other guidelines, the young people in your community will not be able to justify or excuse their behavior by saying, "But all the other kids are allowed to!" This will also help develop a sense of an extended family in the community where the parents cooperate and the young people are treated alike.

Parent groups that have tried this approach report that:

> Their children seem more active and attentive, and their grades improve.
>
> Their youngsters are now voluntarily following rules that they used to think were unreasonable.
>
> The parent-child relationship is better than ever.
>
> Younger children are not falling into the same drug-oriented culture which influenced their older brothers and sisters.

Develop Alternatives to Drug Use

There are any number of healthy activities which can show your child how to have a good time without being high on a drug. Whenever possible, do them together. Here are some examples:

Remember, what is most important is not the activity but that you are taking a personal interest and that your child is developing a focus on things other than drugs.

Marijuana Jargon

Parents today are trying to cope not only with marijuana but also with the drug's vocabulary. While drug terms are continually changing and are often different in various parts of the country, this list may help you decipher the most popular marijuana jargon.

Acapulco Gold—a potent strain of marijuana with gold or yellow highlights.

Bong—a cylindrical water pipe used to smoke marijuana.

Burn out—a slang term for a state of apathy and deadened perceptions which can result from habitual use of marijuana.

Buzz—slang term for a high or a drug-induced euphoria.

Colombian—a potent strain of marijuana.

Decriminalization—process of reducing penalties for personal use of marijuana from prison sentences to civil fines.

Dime—a quantity of drugs which sells on the streets for $10.

Dope—slang term for marijuana and other drugs.

Duster—cigarette made of tobacco, mint leaves, marijuana, or parsley sprinkled with phencyclidine (PCP), also known as Angel Dust.

Ganja—a potent form of *Cannabis* obtained from the flowering tops and leaves of the plant. It may also be used to refer to marijuana in general.

Grass—slang term for marijuana.

Hashish—a form of *Cannabis* made either from the *Cannabis sativa* plant or its resin.

Hash oil—a form of *Cannabis* which is extracted or distilled from the *Cannabis sativa* plant.

Head shops—stores which specialize in the sale of drug paraphernalia and drug-related items.

High—a widely used slang term for euphoria and intoxication.

Hit—a single drag or inhalation of marijuana smoke.

Joint—a hand-rolled marijuana cigarette.

Killer weed—slang term for PCP-treated parsley or marijuana.

Loaded—slang term for state of being high or intoxicated.

Nickel—a quantity of marijuana which sells on the street for $5.

Ounce—a standard unit of measurement for marijuana.

Paraphernalia—drug equipment or gadgets usually sold in head shops.

Pot—slang term for marijuana.

Reefer—slang term for marijuana.

Roach—the small end of a marijuana joint which remains after most of the cigarette is smoked.

Roach clip—a device used to hold the roach or the tail end of a marijuana joint.

Rolling papers—cigarette papers used to make a marijuana joint.

Scales—paraphernalia used to weigh drug quantities for selling purposes.

Smoking stones—paraphernalia used to hold marijuana joints while smoking.

Space cadet—slang term for a habitual marijuana user whose senses have become dulled.

Spaced out—slang term for a drug-induced state of being lost or out of touch with surroundings.

Stash—Any container or place used to store marijuana or other drugs.

Stoned—slang term for being high or intoxicated from marijuana.

Supergrass—slang term for marijuana treated with phencyclidine (PCP or Angel Dust).

Toke—slang term for an inhalation of marijuana or hashish smoke.

Water pipe—paraphernalia used to smoke marijuana or hashish which filters the smoke through water.

Weed—slang term for marijuana.

Common Drugs of Abuse

CATEGORY	Drugs	Sample trade or other names	Medical uses	Dependence: Physical	Dependence: Psychological	Effects in hours	Possible effects	Effects of overdose	Withdrawal symptoms
CANNABIS	Marijuana	Pot, grass, reefer, sinsemilla	Under investigation	Unknown	Moderate	2-4	Euphoria, relaxed inhibitions, increase in heart and pulse rate, reddening of the eyes, increased appetite, disoriented behavior	Anxiety, paranoia, loss of concentration, slower movements, time distortion	Insomnia, hyperactivity, and decreased appetite occasionally reported
	Tetrahydrocannabinol	THC							
	Hashish	Hash	None						
	Hash oil	Hash oil							
DEPRESSANTS	Alcohol	Liquor, beer, wine	None	High	High	1-12	Slurred speech, disorientation, drunken behavior	Shallow respiration, cold and clammy skin, dilated pupils, weak and rapid pulse, coma, possible death	Anxiety, insomnia, tremors, delirium, convulsions, possible death
	Barbiturates	Secobarbital, Amobarbital, Butisol, Tuinal	Anesthetic, anti-convulsant, sedative, hypnotic	High-moderate	High-moderate	1-16			
	Methaqualone	Quaalude, Sopor, Parest	Sedative, hypnotic	High	High	4-8			
	Tranquilizers	Valium, Librium, Equanil, Miltown	Anti-anxiety, anti-convulsant, sedative	Moderate to low	Moderate				
STIMULANTS	Cocaine	Coke, flake, snow	Local anesthetic	Possible	High	½-2	Increased alertness, excitation, euphoria, increase in pulse rate and blood pressure, insomnia, loss of appetite	Agitation, increase in body temperature, hallucinations, convulsions, possible death, tremors	Apathy, long periods of sleep, irritability, depression
	Amphetamines	Biphetamine, Dexedrine	Hyperactivity, narcolepsy						
	Nicotine	Tobacco, cigars, cigarettes	None	High	High	2-4		Agitation, increase in pulse rate and blood pressure, loss of appetite, insomnia	
	Caffeine	Coffee, tea, cola drinks, No-Doz		Low	Low				
HALLUCINOGENS	LSD	Acid	None	None	Degree unknown	8-12	Illusions and hallucinations, poor perception of time and distance	Drug effects becoming longer and more intense, psychosis	Withdrawal symptoms not reported
	Mescaline and peyote	Button, Cactus							
	Phencyclidine	PCP, angel dust	Veterinary anesthetic	Unknown	High	Variable			
	Psilocybin · psilocin	Mushrooms	None	None	Degree unknown	6			
INHALANTS	Nitrous oxide	Whippets, laughing gas	Anesthetic	Possible	Moderate	Up to ½ hr	Excitement, euphoria, giddiness, loss of inhibitions, aggressiveness, delusions, depression, drowsiness, headache, nausea	Loss of memory, confusion, unsteady gait, erratic heart beat and pulse, possible death	Insomnia, decreased appetite, depression, irritability, headache
	Butyl nitrite	Locker room, rush	None						
	Amyl nitrite	Poppers, snappers	Heart stimulant						
	Chlorohydrocarbons	Aerosol paint, cleaning fluid	None						
	Hydrocarbons	Aerosol propellants gasoline, glue, paint thinner	None						
NARCOTICS	Opium	Paregoric	Antidiarrheal, pain relief	High	High	3-6	Euphoria, drowsiness, respiratory depression, constricted pupils, nausea	Slow and shallow breathing, clammy skin, convulsions, coma, possible death	Watery eyes, runny nose, yawning, loss of appetite, irritability, tremors, panic, chills and sweating, cramps, nausea
	Morphine	Morphine, Pectoral Syrup							
	Codeine	Codeine, Empirin Compound with Codeine, Robitussin A-C	Pain relief, cough medicine	Moderate	Moderate				
	Heroin	Horse, smack	Under investigation	High	High	12-24			
	Methadone	Dolophine, Methadose	Heroin substitute, pain relief						

MARIJUANA UPDATE

Reprinted from Reader's Digest

The first two articles in this booklet, combined under the title "Marijuana Alert" made reprint history for the Reader's Digest. In the 44 years the Digest has offered reprints, no other article has sold so many copies in so short a time. Within 11 months, over three million reprints were sold to schools, colleges, churches, courts, scout groups, the military, PTAs, businesses, clinics and to hundreds of thousands of individuals, young and old. Especially touching have been the letters from young people who said they wished to share this information with their peers.

In this edition of Marijuana Update we are adding Peggy Mann's latest article from the December 1981 Reader's Digest: "Marijuana Alert III: The Devastation of Personality."

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Marijuana Alert

I. BRAIN AND SEX DAMAGE

All during this decade, evidence has been accumulating that smoking marijuana may be seriously injurious to health. In the past few years, striking new studies have further darkened the picture, demonstrating measurable harm to diverse body organs—above all, to the brain and reproductive functions. Today the specter of a damaged human stock haunts scientific researchers and clinicians alike.

This two-part report brings, first, an account of the new research and, second, one doctor's cry of anguish about the hundreds of pot-damaged teen-agers with whom he has worked.

By Peggy Mann

SCIENTISTS from around the world are sending warning signals to the millions who smoke marijuana: mounting evidence indicates that pot smokers may be unwittingly damaging their brains, and decreasing their chances of conceiving and producing completely healthy offspring.

These warnings have emerged from recent gatherings of scientists reporting on their latest research. In July 1978, at the International Symposium on Marijuana held in Reims, France, some 50 researchers from 14 countries presented new studies about marijuana's injurious effects on reproduction, lungs, cellular metabolism and the brain. In March 1979, at a conference in Virginia sponsored by the National Institute on Drug Abuse, investigators revealed more evidence of marijuana's harmful effects on the reproductive system. Three months later, at a conference at New York University Medical School, scientists and psychiatrists added to the growing list of dangers caused by chronic smoking of marijuana.

Responding to the startling evidence, the House of Representatives Select Committee on Narcotics Abuse and Control began hearings on the health hazards of marijuana in July. Rep. Lester Wolff (D., N.Y.),

chairman of the committee, said: "The United States is the most pervasive drug-abusing nation in history. And our most pervasive illegal drug of abuse is marijuana." Citing the latest (1978) national drug-abuse survey, Wolff noted that one in nine high-school seniors was smoking pot on a daily or near-daily basis, an almost 80-percent increase in three years' time; that pot smoking is now common among junior-high students; that evidence indicates pot smoking among 8- to 12-year-olds is increasing.

How to Get Out. Of all the effects of marijuana, its impairment of the brain and its harm to the reproductive system pose the greatest threats. Pot has an *affinity* for the brain and the sex organs. Marijuana's 61 cannabinoids, substances found exclusively in the cannabis plant, are soluble in fat. They are attracted to the body's fatty organs, where they remain, only gradually clearing from the body. As one researcher put it, "When the high is gone, the pot is not."

The principal psychoactive, or mind-altering, cannabinoid is delta-9-THC. It has been traced radioactively, and it takes five to eight days for just half the THC in a single marijuana cigarette to clear from the body.

One organ that contains a large amount of fat is the human brain. The testes and ovaries also have high fat contents. What does marijuana buildup in these organs do?

One psychiatrist researching this area is Dr. Robert C. Gilkeson of Cleveland, Ohio. In 1976, a tall, handsome teen-ager came into his office. Formerly a good student, Steven complained of poor grades and difficulties in concentration and memory. "Everything I used to like has become a drag. Even chicks. I feel bummed out all the time."

Dr. Gilkeson discovered reversed d's and b's in the young man's handwriting—a classic finding in learning disabilities. He suggested an electroencephalogram (EEG), a brain-wave test. The report came back: "Abnormal EEG. Diffuse encephalopathic process [brain impairment]. Markedly immature for age." His brain-wave readings were typical of those of a 6- to 8-year-old.

Steven had admitted being a chronic (usually defined as daily or near-daily) pot smoker. The psychiatrist advised him to give up pot for two months. Steven was so shaken that he agreed.

In eight weeks his EEG was notably better, though not yet normal. "But," said Dr. Gilkeson, "there was real improvement in Steven's grades, in his mood, memory, humor and speech patterns." Encouraged, Steven agreed to go for another two potless months—after which the EEG report read: "Within normal limits for age."

Because of his work with Steven, Dr. Gilkeson embarked on a study that is still in progress. He has thus far given EEGs to 43 "typical" teen-

agers, who had been high at least twice a week for the previous four months, but who had not smoked pot for 48 hours preceding the test. The results: all 43 EEGs, like Steven's, were "markedly immature" and indicated diffuse brain impairment.

Brain Damage. Dr. Robert Heath, chairman of the department of neurology and psychiatry at Tulane Medical School, showed the Reims symposium slides of magnified brain cells from the limbic area of Rhesus monkeys. (The limbic area—directly involved in control of sex drives, appetites, emotions—is very similar in man and Rhesus monkeys.) These monkeys had been exposed to the smoke of two to three "monkey-sized" marijuana cigarettes (one-fourth of an average human joint) a day at three-percent THC. ("Good pot" sold on the street today has three- to six-percent THC.) Said Dr. Heath, "The smoke of one monkey-sized joint produces the same blood level of THC in the monkey as a human gets in his blood after smoking a 'human-sized' joint of the same THC strength. By checking blood levels, researchers can ascertain so-called 'human equivalency doses' for monkeys and for all other animals."

Result: the monkeys' brain cells showed striking structural changes, including abnormal deposits of opaque material in—and a widening of—the synaptic cleft between neurons. "This," said Dr. Heath, "may cause a slowing down or interruption in the movement of brain messages." There was also an abnormal clumping of the small sacs in the endings of nerve cells that contain the chemical activators of the brain, plus a significant increase of foreign matter in the nerve-cell nuclei. All of these conditions are associated with brain impairment.

At an earlier conference, Dr. Heath noted the rapidity of these changes: "Clinical observation indicates that people might drink for years before serious brain damage occurs. But it would seem from the monkey studies that you have to use marijuana for only a relatively short time in moderate to heavy use before evidence of brain damage begins to develop."

One of the symptoms reported by chronic pot smokers is impairment of short-term memory. Neurologist William H. Stuart of Atlanta, Ga., reports the case of a 28-year-old building subcontractor who smoked pot daily (but took no other drugs and drank only beer). After five years, he would look at a blueprint, walk over to his workmen and forget what to tell them. "He stopped smoking pot two years ago," says Dr. Stuart. "But his short-term memory has not improved at all. He has lost his business. And now he's working for another subcontractor—hammering nails."

Clinicians who see human results like this are as concerned as the researchers. Dr. Mitchell Rosenthal, president of Phoenix House Foundation (which runs a residential-treat-

ment program for drug abusers), represents the findings of many drug therapists when he says: "Most of the time, when kids stop smoking pot, they will regain what short-term memory they have lost. But I've also seen cases of kids who were chronic users, or who combined pot with another drug, where there was no subsequent improvement."

Effects on Sex. Perhaps the most important structure in the limbic area is a small lump of tissue in the center of the brain: the hypothalamus. Hanging from this is a still smaller lump: the pituitary. As little as a billionth of a gram of THC affects the hypothalamus, which, in turn, affects the pituitary, which regulates endocrine function and the hormones controlling sex and reproduction.

In November 1978, Drs. Joan Bauman and Robert Kolodny of the Masters & Johnson Institute in St. Louis reported on their study of 26 women, ages 18 to 36, who smoked pot three times a week or daily for at least six months prior to the study. Thirty-one percent of the menstrual cycles of the pot-smoking women showed a shortened luteal phase, compared with 9.7 percent of the cycles of the non-pot-smoking women. A shortened luteal phase could mean that a growing embryo might not be properly nourished. The women also had decreased prolactin, a hormone important in milk production.

Another survey by Dr. Kolodny, of 500 men, ages 18 to 30, who had smoked pot for six or seven years, showed statistically significant lower rates of sexual activity and fewer orgasms. Dr. John Hall, chairman of the department of medicine at Kingston Hospital in Jamaica, reports that 20 percent of his male patients who have smoked for five or more years complain of impotence.

Research studies on animals seem to indicate that cannabinoids result in lowered sperm count and in a greater number of abnormally shaped sperm. These findings were replicated in humans using high marijuana dosages by Dr. Wylie Hembree of Columbia University College of Physicians and Surgeons. Dr. Hembree also found a statistically significant decrease in sperm mobility.

Genetic Roulette. Since men constantly produce millions of sperm, the formation of sperm probably returns to normal when pot smoking is stopped. But the effect on women could be lasting. Dr. Akira Morishima of Columbia University says: "A human female is born with about 400,000 eggs. If *they* are injured, there's no way to repair that damage. And it has been proven, by radioactively tagging the THC, that it accumulates in the ovaries, as well as in other organs."

Dr. Morishima gave 150 "teenaged" mice very high doses of THC daily. "All the mice were mated, and were sacrificed when the fertilized egg had multiplied into four cells. In the control group, very few of the fertilized eggs were abnormal. But in the THC group, about half the eggs were dying or had died. Of those that had lived, 20 to 30 percent looked unhealthy."

At the California Primate Research Center of the University of California at Davis, Rhesus monkeys, whose reproductive systems closely resemble those of human females, were given raisin cookies spiked with milligram amounts of THC—the monkey equivalent of a human smoking one to two joints. The monkeys received this dose every day for three years. Result: 44 percent of the pregnant "THC mothers" produced dead or dying offspring, compared to 12 percent, a normal birth loss, in the control group. Although all of the dead babies of the THC-drugged monkeys *looked* normal, a pathologist did microscopic evaluations of tissues and organs from each. He found subtle developmental abnormalities in various tissues and organ systems of the THC-exposed offspring, which were not present in the dead offspring of the undrugged mothers.

Says Dr. Ethel Sassenrath, who conducted the study: "The THC-exposed babies that survived acted differently from the others. They didn't seem to have normal 'brakes' on behavior. They showed deficits in attention. This kind of subtle behavioral difference is characteristic of marginal brain damage in early development."

An agent capable of affecting sex function, sex cells (sperm and egg) and fetus must be regarded as a source of possible congenital damage in those offspring that do survive. In 1974, Dr. Gabriel Nahas of Columbia University College of Physicians and Surgeons, a pioneer in marijuana research, discovered that THC exposure diminished the capacity of individual cells to orchestrate life according to the genetic plan built into cellular molecules. THC inhibits formation of DNA (the genetic material essential for proper cell functioning and division) in cells, resulting in cellular death and abnormality. Dr. Nahas's finding has since been replicated by other scientists from 12 research groups here and abroad. Dr. Nahas warns: "Today's pot smoker may not only be damaging his own mind and body, but may be playing genetic roulette and casting a shadow across children and grandchildren yet unborn."

Warning Signals. Some pot smokers discount findings about marijuana's possible genetic effects with the comment: "Pot smokers have perfectly healthy babies." However, as pointed out by Dr. Robert Peterson of the National Institute on Drug Abuse: "Despite thousands of years of alcohol consumption, not until recently did doctors discover that not very large quantities of alcohol can cause the fetal alcohol syndrome which results in abnormal babies. Therefore, pregnant marijuana smokers would be wise to heed the present warning signals before all the definitive findings are in."

Dr. Robert DuPont, former direc-

tor of the National Institute on Drug Abuse, puts it this way: "In all of history, no young people have ever before used marijuana regularly on a mass scale. Therefore, our youngsters are, in effect, making themselves guinea pigs in a tragic national experiment. Thus far, our research clearly suggests that we will see horrendous results."

II. ENEMY OF YOUTH

By Walter X. Lehmann, M.D.

ANYONE who says "pot" is harmless will get an argument from me. It hasn't been harmless for any of the nearly 3000 young people I've worked with as a specialist in adolescent medicine. Virtually all who became addicted to hard drugs started with marijuana, which distorted their judgment and put them into the drug scene. But I've learned that marijuana by itself is bad enough—its effects too often subtle and insidious, with long-range damage difficult to calculate.

One morning the police referred to me a 15-year-old youth who, after smoking marijuana, had used the family car to tear up some neighborhood lawns. The boy was brought in by his serious, well-groomed older brother, an outstanding student and athlete. It turned out that the younger boy had never used pot before, and had been so frightened by his experience that he never wanted to use it again; he was no problem.

The problem was his older brother, though it would not be apparent for some time. Dynamic, self-possessed, he confided to me that he himself had been smoking pot, cautiously but regularly two to five times a week, enjoyed getting moderately high and had suffered no untoward effects. He felt fine, his grades remained well above average, he was captain of the soccer team and had been accepted at an Ivy League college.

How often we hear of such overachieving easy riders among our middle-class friends nowadays. I tried to warn him about the gradual, long-term changes I had seen in other outstanding young people, but nothing would dissuade him from continuing his "moderate" marijuana use. I saw him again late that summer, just before he left for college. He was slovenly, unkempt, apathetic, slow. He admitted that he had been smoking pot heavily during summer vacation. I pleaded with him to get off it, but he ignored my advice.

He was home by December, having been asked to leave college. By then, he was a typical heavy user. He

didn't care about anything except getting high every day. His parents brought him to me. Eventually he began to perceive what marijuana had done to him and decided he had to kick the habit.

It wasn't easy—it rarely is. I used to think that marijuana created only a psychological dependence, without physical addiction. But now I am persuaded otherwise. I have seen too many youngsters suffer the terrible anxiety, the sleeplessness, the sweating, the lack of appetite, the nausea and the general malaise of withdrawal. Fortunately, my patient had enough fortitude left in him to do it.

He's back in college now, doing okay. His academic performance is acceptable, if mediocre—it's the best he can do, but it isn't close to the promise he once showed. He has not regained that sharp edge, that quality of drive, spirit and capability that once made him a standout. I am not optimistic that he will ever regain it. From what I have seen, there is no question that marijuana wreaks a havoc in the body, brain and psyche that can't be entirely undone.

I know a lot of young people who have broken the pot habit and seem to be doing well, but who are not likely ever to realize the rich potential that once was theirs. For example, another outstanding student-athlete became my patient after marijuana had all but ruined his relationship with his parents and caused him to be dropped from sports participation. He graduated from high school only by the skin of his teeth. He felt terrible, physically and emotionally, but was determined to recover. He got off the stuff and began doing a really good job of pulling his life together.

He then decided, however, that he could handle marijuana. He would smoke it only at parties and on special occasions; it would never get out of hand again. His attitude was not untypical; recovering youngsters often develop this sense of confidence and it's hard to convince them that they haven't a chance against this stuff. I argued and pleaded to no avail. He stopped coming in. Then, in the fall, he came back. He was smoking pot regularly again, and feeling bad. He agreed that he couldn't control it, wanted to get straight again. We're working on it.

Right now, millions of our young people are marijuana users who are performing well and are very sure that they are in firm control of themselves. But as they continue using pot, a gradual deterioration will set in for many of them—in *all* phases of their lives. Grades will slip, athletic prowess will diminish and there will be trouble at home, all of this compounded by an increasing, witless apathy.

For each young pot user who goes straight, there will be many who won't. They won't know where or how to find help, and most won't want help. They will drop out, from school and life. They will simply lose themselves in that frightful marijuana-induced lethargy.

The most unfortunate ones will

become victims of cannabis psychosis, serious mental illness resulting from heavy marijuana use. I have seen young people in the grip of it. Many of the victims land in psychiatric hospitals, are discharged, but never fully recover.

Take the case of one ninth-grader I knew, a good student and baseball player, a gifted artist, a really dynamic youngster who had a substantial contribution to make to the world. Some friends got him to try marijuana. He enjoyed the high it produced. Soon, he was a heavy user. He lost interest in everything else, literally stopped functioning to the extent that in the middle of his tenth-grade year he was expelled from school. He didn't care; all he wanted to do was smoke pot all the time.

When his parents objected, he left and just wandered, for months. His father finally found him and placed him in a psychiatric institution in the hope he could be straightened out. But he didn't improve. After six months, the hospital discharged him. That was ten years ago. He's still wandering. He has no contribution to make now, and nothing to look forward to.

I have seen too many kids wander away like that, never to recover from the damage they have inflicted on themselves. It is heartbreaking.

With 16 million Americans currently using marijuana, imagine the enormity of the destruction that is taking place in this generation. Yet today no fewer than 11 states have already decriminalized marijuana and there is a drive to make the ruinous junk legal.

Of course, most people who use pot are not criminals, any more than those millions of us who violate traffic laws are criminals. But even those of us who violate traffic laws understand that we must have such laws, that to abolish them would be to descend into chaos.

We need equitable laws dealing with marijuana, not a legal market for the stuff. For if we legalize marijuana, the human suffering that will ensue will surely lead us one day to repeal such a law. And, by that time, there won't be much we can do to help the victims of our folly.

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Marijuana Alert II: More of the Grim Story

By Peggy Mann

In the midst of a virtual marijuana epidemic among young people, Americans are discovering just how injurious this drug can be. Research shows that pot permeates body tissues and fluids, and can damage almost every human organ and system tested. Last December, The Reader's Digest published a report describing how marijuana can harm the brain and reproductive system. More than three million reprints have already been ordered by readers. This follow-up continues the devastating story, documenting how pot can damage the lungs, heart and immune system.

Fourteen-year-old Teddy waited nervously for Dr. Ingrid Lantner's diagnosis. Unexpectedly, the doctor asked, "How much pot do you smoke a day?"

Teddy stared. How did *she* know?

"I've had a number of teen-age patients with this type of chest pain," Dr. Lantner told him. "My prescription is: cut out pot. The pain should disappear in 4 to 12 weeks." Teddy followed the doctor's orders and his pain went away without medication.

Dr. Lantner of Cleveland, Ohio, is just one of many pediatricians concerned about the swelling caseload of pot-smoking* youngsters. "We never used to see teen-agers with chest pain," she says. "In fact, we hardly used to *see* teen-agers; they're over the childhood diseases and usually in the prime of health. But now young pot smokers show up with a variety of symptoms, some of which—like severe chest pain, certain respiratory conditions and short-term memory loss—are normally associated with middle and old age. Many pediatricians, and I am one of them, are convinced marijuana is the single most dangerous health hazard facing American youth today."

According to Dr. Robert DuPont, founding director of the National Institute on Drug Abuse (NIDA), those pediatricians may be right. Over the past two decades, asserts DuPont, American teen-agers suffered deteriorating health, the only age group in the United States to do so. The time segment exactly coincides with the epidemic of marijuana use among young people.

Psychiatrist Dr. Carlton Turner, director of a NIDA marijuana research project at the University of Mississippi, says there is no other drug used or abused by man "that has the staying power and broad cellular actions on the body that cannabinoids do." (Cannabinoids are chemicals found only in the can-

*"Pot" comes from the Mexican *potaguaya*, or hemp plant.

nabis plant, from which marijuana and hashish are prepared.)

Only a handful of the 61 cannabinoids identified so far in pot have been studied. Each is metabolized, or broken down, into many other chemicals. Some are psychoactive; some are not. But all are biologically active. "In human studies, the chief psychoactive cannabinoid, delta-9-THC, and its by-products showed up in all body fluids tested," Turner adds. "The cannabinoids are fat-soluble and accumulate in the fatty sections of the cells and in the fatty organs. We know from animal studies that only five percent of the THC [for tetrahydrocannibinol, a group of compounds found exclusively in the cannabis plant] gets across the blood-brain barrier, which we assume creates the 'high' in humans. That five percent causes problems enough. But what concerns me even more is what the other unknown 95 percent of this and the other cannabinoids are doing to the body."

Some of the non-psychoactive cannabinoids have been shown to be more harmful to certain organs than the psychoactive ones. And cannabinoids make up only a fraction of the 421 known chemicals in the cannabis plant; new ones are constantly being identified. (In contrast to marijuana, most other drugs of abuse—LSD, cocaine, alcohol, etc.—are single chemicals.)

Recent research documents that marijuana smoking is harmful to the entire pulmonary tree, ranging from the sinus cavities to the deepest recesses of the lungs. Marijuana may be even more injurious to lungs than tobacco smoke, and its symptoms may strike faster. Dr. Forest S. Tennant, Jr., former director of a U.S. Army drug-abuse program in West Germany, studied more than 1000 U.S. soldiers stationed there and found that heavy cannabis smoking produced sinusitis, pharyngitis, bronchitis, asthma and other respiratory disorders in a year or less. In number and severity, the pulmonary symptoms far outranked those of older soldiers who had averaged 1½ packs of cigarettes a day for 11 years or more. "I saw chronic bronchitis and emphysema—generally found only in 45- or 50-year-olds—in hashish-smoking soldiers who were only 18 years old," says Dr. Tennant.

Cancer Risk. Pot smokers without symptoms can also have hidden lung disease. Dr. Donald Tashkin, director of the Lung Function Laboratory of U.C.L.A. Hospital in Los Angeles, uses highly sophisticated equipment to look for subclinical damage that otherwise cannot be detected. In one study of 28 seemingly healthy young men who averaged five "joints" a day for 47 to 59 days, Tashkin found highly significant dose-related impairments of lung function. These impairments are similar to those seen by other researchers studying moderate to heavy tobacco use over many years. In a more recent study, Tashkin and co-worker Barry Calvarese showed that marijuana smokers who averaged 2.2 joints a day for five years had 25-percent more airway resistance than a matched group of tobacco smokers who averaged 16 cigarettes a day for the same period.

"Airway resistance," explains Dr. Gary Huber, head of the University of Kentucky's Tobacco and Health Research Institute, "determines in part how well we can get oxygen into our bodies and how well we can get out the toxic carbon dioxide that can poison the cell." Working with rats, Huber has found that marijuana enhances—by some 200 percent—enzymes that potentially contribute to the "eating" or digesting of the lung itself.

Can pot cause lung cancer? A 1971–74 study compared a typical unfiltered U.S. tobacco cigarette with a marijuana joint. (Note: in the early '70s the THC potency of street pot was much lower than it is today.) Both smokes contained roughly equal amounts of such irritants and gaseous toxic agents as carbon monoxide, ammonia, acetone and benzene. But the carcinogens benzanthracene and benzopyrene were present in marijuana smoke in amounts 50 to 70 percent greater than in the smoke of cigarettes. When these researchers applied marijuana- and tobacco-smoke condensates to the backs of mice, both produced cancerous tumors.

Dr. Rudolph Leuchtenberger and his wife, Cecile, of the Swiss Institute for Experimental Cancer Research at Lausanne, studied more than 5000 animal and human lung-cell cultures exposed to puffs of smoke from a marijuana cigarette and from a tobacco cigarette. Their conclusion: Fresh smoke from marijuana cigarettes is harmful to lung cells in that it contributes to the development of pre-malignant and malignant lesions. The smoke from the tobacco cigarette had much less effect.

Lung-Tissue Damage. In February 1980, Dr. Tennant published the result of actual lung biopsies taken from 30 soldiers (average age 20), who had smoked hashish heavily for eight months to a year. Ninety-one percent of those soldiers who had smoked both hashish and cigarettes showed squamous-metaplasia cells, a step removed from "wild" or cancerous cells. Those who had smoked either hashish or cigarettes alone had a substantially lower incidence of these pre-cancerous cells. "However," Tennant noted, "the hashish-smoking soldiers were also more likely to be cigarette smokers too." He summed up: "We know that if the condition that caused the squamous-metaplasia cells doesn't stop, then cancer will likely ensue." The soldiers had smoked hash with a THC content comparable with that in pot smoked by millions of U.S. schoolchildren today.

Nor was there much difference in amounts smoked. The latest (1979) National High School Senior Survey shows that not only does one out of ten 12th-graders smoke pot daily, but these daily users now average 3½ joints a day, and 13 percent of them smoke more than seven joints daily. Of the 51 percent who smoked pot at

A Pot-Detection Test

In March 1980, after several years of research, an inexpensive, reliable, easy-to-use method was finally perfected for detecting cannabinoids in urine. Says Dr. Robert Willette, chief of the National Institute on Drug Abuse's Research Technology Branch: "The cannabinoid test is a real breakthrough. It can determine in 60 seconds, with 95-percent accuracy, the presence of cannabinoids in the urine for up to 48 hours after a joint has been smoked."

Many hospitals and private clinical laboratories now have the facilities for running the test, and many physicians are already finding it useful. For example, Dr. Donald Ian Macdonald, president-elect of the Florida Pediatric Society, plans to encourage every pediatrician in Florida to routinely use the new test when examining students from the sixth grade up. "It serves an invaluable function in alerting the physician," says Macdonald, "by eliminating 'the games of denial' many pot smokers play. It can save time and money needlessly spent on batteries of tests when, in fact, pot proves to be the sole cause of the problem."

all during their senior year, 43 percent said they usually stay high three to six hours or more.

Thus far, clinical evidence shows that all obvious symptoms, such as cough, chest pain and rales (abnormal sounds in the lungs or air passageways), disappear in time, if pot smoking is stopped. But what about the damage that shows up only in microscopic examination? The findings of Harris Rosenkrantz of EG&G Mason Research Institute are far from reassuring.

In three separate studies, rats were exposed to several puffs of pot smoke each day, the "human-equivalency dose" of an adult smoking one to six joints a day. Exposure from 3 to 12 months resulted in extensive dose-related lung damage, and the condition remained even after the smoking had been stopped for a month—which is roughly equivalent to two years for humans.

Another condition that remained 30 days after the pot puffs stopped involved the lungs' immune system. "In the healthy lung," says Rosenkrantz, "there are very few clumps of macrophages, scavenger cells that absorb and devour foreign matter. Rats were given the 'human equivalent' of one to six joints a day. After 180 days the macrophage clumps increased some 300 percent, clogging the air sacs. Some were so heavily blocked that they could not function."

A Weak Attack Force. Sue Powers was a beautiful girl of 16. But, as she frequently declared, "I'm *sick* of being sick!" She had a chronic cough, recurrent fever, sore throats. She'd recover from one illness and promptly come down with another. Her parents then learned she had been a daily pot smoker for two years. One day Mrs. Powers gave Sue a scientific report about marijuana's effect on the body's defense system, and suggested, "Why don't you cut out the pot and see what happens?" Sue did so. Within six months all her symptoms had disappeared. Coincidence? Perhaps. However, other parents and pediatricians have reported similar stories.

The scientific paper Mrs. Powers showed her daughter was done by Dr. Gabriel Nahas of Columbia University College of Physicians and Surgeons. The study centered on T-lymphocytes, white blood cells that play a key role in the body's defense system. T-cells constitute 70 percent of the lymphocytes in the bloodstream, and they respond by "charging up" (dividing rapidly) to increase their attack forces when they sense invasion by a virus, bacterium or other foreign body.

Nahas's study involved 51 young, chronic pot smokers—average age 22, who had averaged four joints a week for an average of four years—and 81 non-pot-smoking controls average age 44. Nahas found that the biochemically measured rate of division of the T-lymphocyte cells was a startling 41 percent lower in the young cannabis smokers than in the middle-aged controls.

Nahas then took his study a step further. He tested 24 kidney-transplant patients being given regular doses of special medication to *suppress* the immune system so that fighter cells would not reject the "foreign body"—the newly transplanted kidney. As an extra comparison, he also tested 60 cancer patients, who are known to have depressed immune systems. The results: the specially medicated transplant patients showed the highest impairment of T-lymphocyte response—53 percent. However, pot smokers ran neck and neck (41 percent) with the cancer patients (40 percent) in the suppression of their T-lymphocyte fighter cells.

Perhaps the most dramatic examples of defense-system impairment are the photo-micrographs taken by Dr. Marietta Issidorides of the University of Athens, Greece. Neutrophils (bacteria-fighter cells) from subjects who had never used cannabis showed up on slides as round, "plump," with a distinct "skin," or cell membrane. However, neutrophils from long-term (20-year) hash users were smaller and crumpled-looking, with dramatic alterations in the cell membrane. They were described as deformed cells, which probably could not function when challenged to do their assigned task of cleaning the blood.

All animal studies and most human studies show that marijuana not only inhibits immune cells' ability to recognize the encroachment of disease or a "foreign invader"; it also suppresses the ability to take any action once encroachment is recognized. Says immunologist Robert McDonough, "That's like having a feeble, half-blind night watchman, taking his gun away from him—and *then* expecting him to function."

Other Serious Hazards. All existing research clearly shows that marijuana should never be used by anyone with heart trouble. In one study,

Dr. Wilbert S. Aronow, professor of medicine and chief of cardiovascular research at the University of California at Irvine, gave a relatively weak joint to ten patients with angina pectoris (chest pain caused when insufficient oxygen is supplied to the heart muscle because of narrowing of the coronary arteries). Their average heart rate was 70 beats a minute. Ten puffs of pot jumped it to 100 beats a minute. Blood pressure also increased significantly. "By increasing either the heart rate or blood pressure, you increase the amount of oxygen needed by the heart muscle," says Aronow. "With ten puffs of pot you increase both simultaneously. But that's not all. Marijuana increases the amount of carbon monoxide in the blood as well—thereby reducing the amount of oxygen delivered to the heart muscle."

In other studies, Aronow showed that the amount of time one can exercise before chest pain occurs was reduced almost 50 percent after ten puffs of pot whereas ten puffs of a high-nicotine tobacco cigarette reduced exercise time only 23 percent. He also showed that marijuana significantly weakened the heart muscle's pumping action.

"Not only could marijuana precipitate a heart attack or cause sudden death in patients with known coronary disease," concludes Aronow, "but people who might have subclinical heart disease—without symptoms—could also be taking a risk. Remember that nearly 25 percent of persons dying suddenly from coronary heart disease have had no prior recognized symptoms of heart disease."

What about the cardiovascular systems of the hundreds of thousands of youngsters who are stoned more than three hours every day? Drs. Louis Vashon and Adam Sulkowski studied more than 100 young pot smokers (ages 18 to 25) and found that during all the hours of the "high," their heart rate was significantly elevated, in many cases rising from the normal 60 to 70 beats per minute to 130 to 150. The more THC absorbed, the faster the heart rate. "Such over-stimulation of the heart muscle," says Sulkowski, "could be the cause of the chest pains so commonly felt by young, chronic pot smokers."

Chest pain, emphysema, chronic bronchitis—these are conditions not normally seen in young people. Yet, at a time when four million of them, ages 12 to 17, are pot users, research and clinical evidence strongly suggest marijuana as a cause of these and other early symptoms and diseases of middle and old age. We already know that tobacco smoking is the largest preventable cause of death in America. There are many reasons to believe that marijuana smoking may be even more harmful.

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Marijuana Alert III: The Devastation of Personality

By Peggy Mann

Reader's Digest has published two previous Marijuana Alert reports. The first, in December 1979, described marijuana-caused impairment to the brain and the reproductive system. The second, in November 1980, emphasized the harm pot does to the lungs, the heart and the immune system. This third report examines the drug's dramatically impairing effects on cells and how this can damage man's most precious possessions: the mind, the personality, the spirit.

In 1978, Dr. Marietta Issidorides of Athens, Greece, one of Europe's most respected biologists, conducted electron-microscope studies on the white blood cells of 40 long-term hashish smokers. "We learned," she reported, "that long-term use of cannabis (the plant from which marijuana and hashish come) deformed a significantly high proportion of the cells. Impaired white blood cells are unable to function properly and protect the individual from infections."

Two years earlier, Dr. Akira Morishima of Columbia University looked at the white blood cells of 25 apparently healthy young males who had smoked marijuana at least twice a week for four years. He

found that one-third of their cells contained only 5 to 30 of the normal human complement of 46 chromosomes. These are the particles in every cell's nucleus that pass on genetic instructions to the next generation. "In my twenty years of research on human cells," said Morishima, "I have never found any other drug that came close to the DNA damage done by marijuana."

A study completed earlier this year showed a relationship between marijuana use and cancer. Dr. Josel Szepsenwol of the department of biological sciences of Florida International University injected 216 mice with very small amounts of THC or cannabinol (2 of the 61 cannabinoids, chemicals found only in the cannabis plant) dissolved in sesame-seed oil, once a week. *Over 50 percent developed cancer.* Only 4 percent of the control mice (injected with oil only) developed cancer, a normal percentage for this strain of mice.

Erosion of Life. These research findings are just a few examples of marijuana damage to basic life processes. Since 1975 some 300 studies of cannabis's harmful effects on animal and human cells have appeared in scientific journals. These effects include: botched division, slowed growth and abnormal-sized nuclei in cells, disturbed production of protein, and also damage to sperm cells and ova, nerve and connective-tissue cells.

Pioneer marijuana researcher Dr. Gabriel Nahas sums up the central role of marijuana's effects on human cells: "The many findings of cell damage caused by cannabis explain all the other damaging effects of the drug—on the lungs, sex organs, brain, immune system. I call the slow cell damage done by regular pot smoking over the years *a slow erosion of life.*"

Psychological signs of pot impairment are often not slow to appear and, generally, the younger the user the more rapid the onset of the impairment. Last year marijuana use was second only to heroin addiction as reason for admission to federally funded drug-treatment facilities, and half of those admitted had begun smoking pot at age 14 or younger.

Marijuana use is now so endemic in every stratum of society that there is no longer such an identifiable entity as a pot-*prone* personality. Only one characteristic remains as a "prone" factor: youth. According to the latest (1979) U.S. National Survey on Drug Abuse, one out of six youngsters in the 12-to-17 age group was a current (within the past month) pot smoker. In the 18-to-25 age group, *one out of three Americans was a current pot smoker.* However, after young people *become* heavy pot smokers, these widely diverse users tend to gel into a startling sameness, with a distinct pot-induced profile.

The Pot Personality. "Not all kids have all the symptoms," says Dr. Dean Parmelee, director of adolescent in-patient services at Charles River Hospital, a teaching affiliate of Boston University School of Medicine. "In fact, some bright youngsters with outgoing personalities seem to be able to maintain their grades and activities for a few years. But gradually all users—youngsters and adults—compromise their potential, their activities and their life-style. And heavy *young* users eventually develop most, if not all, of the 'pot personality' symptoms."

Dr. Harold Voth of the Menninger Foundation's School of Psychiatry, and chief of staff of the Topeka VA Medical Center, has studied the psychopathology of marijuana in depth for the past eight years. He defines the pot personality: "The most obvious impairments caused by chronic marijuana use are in the area of Organic Brain Syndrome (OBS). These include impaired short-term memory, emotional flatness, and the amotivational—or dropout—syndrome. This can progress from dropping out of sports, to dropping out of school, to dropping out of the family."

Voth lists other typical symptoms of pot-induced OBS: "diminished will power, concentration, attention span, ability to deal with abstract or complex problems, and tolerance for frustration; increased confusion in thinking, impaired judgment, hostility toward authority.

"Another pernicious symptom," says Voth, "is the element of denial—refusal to believe the hard medical evidence that marijuana is physically and psychologically harmful." He also points out that it takes years of heavy drinking to reach the same point of psychological impairment that marijuana can induce in a matter of months, particularly in the case of the very young user.

Personality Changes. Unlike the heavy drinker who generally "becomes himself again" when sober, the underlying personality structure of the chronic pot smoker seems to change. Dr. John Meeks, medical director of the Psychiatric Institute of Montgomery County, Maryland, says, "If someone smokes twice a week or more, sobering up—in any total sense—never occurs. Even when not 'high,' he or she remains in a state of subacute intoxication; in most cases, without even recognizing this 'holdover' effect."

While alcohol is water soluble and washes out of the body in a matter of hours, cannabinoids are fat soluble and accumulate in fatty sections of the cells and in fatty organs (the brain is one-third fat). Only very slowly do the cannabinoids seep back into the bloodstream so they can be metabolized and eliminated. Thus they act like time-release capsules, constantly emitting subtle intoxication.

Rhesus-monkey studies done by psychiatrist-neurologist Robert Heath give further insights into cellular causes of psychological symptoms. The monkeys were exposed to the smoke of two to three "monkey-sized" marijuana ciga-

rettes (one-quarter the size of a human "joint") five days a week, for six months. In each monkey, several thousand brain cells from 42 different areas of the brain were examined under the electron microscope. Although there were some structural cell changes in all the brain sites, striking impairment was found in the sites specifically related to the typical pot symptoms of apathy and flatness. Dramatic cell impairment was also found in sites correlated with irritability and fear—prominent symptoms of pot-induced paranoia.

"I don't know of any other drug, including alcohol," says Heath, "that causes such a wide spectrum of brain changes as we saw in those cells. And today tens of thousands of U.S. teen-agers are inhaling proportionally far more pot smoke every day than we gave those monkeys."

Senile Symptoms. In March 1980 Dr. Adam Sulkowski, a geriatric psychiatrist, published the first scientific paper to set forth the many similarities between the psychological symptoms seen in marijuana intoxication and senility. In July 1981 Dr. Stephen Williams, professor of psychology at Houston Baptist University, and psychiatrist Jason Baron, director of Deer Park Hospital in Houston, also found a number of "senility symptoms" in a study of 60 teen-agers in a drug-treatment program who were daily pot smokers but used no other drugs. At the beginning of the study, they were given a battery of psychological tests, which were then repeated after six pot-free weeks in the hospital.

Williams reported: "In many very elderly people, we see an unreasonable preoccupation with how one's body feels, obsessive-compulsive tendencies and inflexibility. All these symptoms were strikingly evident in our study of teen-age pot smokers, and all these symptoms decreased markedly once the drug was out of their systems.

"Depression," says Williams, "is perhaps the most common psychological symptom among old people. It is usually associated with feelings of loss, such as loss of loved ones, of health, etc. The chief cause of depression among our teen-age subjects was also loss: a tremendous loss of self-esteem. One good-looking, well-dressed 16-year-old put it this way: 'I'm like an empty shell. There is nothing left that I like about myself. And pot did it.' "

Another finding is regressive immaturity. Says psychiatrist Mitchell Rosenthal, the director of Phoenix House in New York City, the nation's largest residential drug-treatment facility, "Just when our youngsters need most to grow psychologically, they are pushed back toward infantilism by self-absorption and the desire for instant gratification. When they need most to learn how to cope with the emotional storms and squalls of the troubled teen-age period, they are instead copping out, blowing

their problems away with pot."

Rosenthal predicts: "A sizeable number of our young people will not mature as they should. Instead, we can look forward to a growing population of immature, underqualified adults, many of whom will be unable to live without economic, social or clinical support."

Risk of Relapse. In August 1981 Dr. Mark Gold completed a study of 100 teen-age and adult "marijuanaholics"—chronic users of pot, who are psychologically, physiologically and socially disabled. Gold, a recipient of the American Psychiatric Association's 1981 Foundation Prize for Research in Psychiatry, is director of research at Fair Oaks Hospital in Summit, N.J., one of the few psychiatric hospitals in the country that specializes in treatment of the marijuanaholic.

"Our study," says Gold, "shows that in the case of youngsters who abstain completely for an average of six months, there is return of concentration, attention and memory to expected levels.

"This is not true for older marijuanaholics. In respect to short-term memory loss, in some cases, they do not appear to come back all the way. Furthermore, because older users are usually long-term users, they have made subtle changes in their lives that are hard to undo. For example, they slide into less-demanding jobs."

Gold also found that, like alcoholics, marijuanaholics are always at high risk of relapse. "Even if off the drug for a year," he says, "one or two joints can send them on a pot binge, and they relapse quickly into their former use patterns. And although it may have taken two years to reach their prior seriously disabled state, it may take only two weeks of renewed pot smoking to revert to that same level."

According to Dr. Carlton Turner, now Senior Policy Adviser on Drug Policy for the White House and former director of the National Institute on Drug Abuse Marijuana Research Program at the University of Mississippi, most Americans do not realize the pandemic proportions of marijuana use among our youngsters. Turner warns: "The inescapable fact is that unless our current pot-smoking habits are reversed sharply, marijuana will have drastic long-term physical and psychological health effects on our young people and, therefore, on the future of our families and our nation."

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MARIJUANA AND DRIVING: The Sobering Truth

A growing number of stoned motorists is endangering lives on our highways. Here's what must be done

By Peggy Mann

RECENT STUDIES blow the warning whistle on a little-publicized but nonetheless frightening new menace to motorists: the pot smoker driving "high" on the highways. Persuasive evidence is mounting that such drivers often have a distorted sense of space and time, altered peripheral and central vision, and impaired manipulative and coördination skills.

Surveys reported by the National Institute on Drug Abuse (NIDA) reveal that 60 to 80 percent of the marijuana users questioned sometimes drive while "intoxicated" on pot. Every day, increasing numbers of stoned drivers are endangering lives—as pot use escalates into what NIDA calls "a national epidemic among young people." (The latest countrywide survey shows that one out of every nine high-school seniors smokes pot *daily,* almost twice the 1975 figure.)

Our nation is both unaware of the marijuana highway crisis and unprepared for it. Many states have inexpensive and legally recognized tests for establishing alcoholic intoxication. However, we have no workable roadside test for marijuana intoxication. (NIDA is funding research on such a test, but it is probably three or four years away from being ready.)

In 39 states, possession of marijuana is still a crime, but enforcement is generally lax—and pot smokers know it. Of the 11 states that have decriminalized marijuana, only Alaska and Minnesota have thus far enacted a special increased penalty for possession of pot in a vehicle. In all 11 states, many pot-smoking drivers mistakenly believe that decriminalization implies governmental sanction to smoke marijuana—anywhere.

The politicization of pot has helped to obscure the picture. But when emotions and polemics are cleared away, both pro- and anti-decriminalization forces agree that it is dangerous to drive stoned. Even the National Organization for the Reform of Marijuana Laws (NORML), which supports removal of all legal penalties for possession of pot for personal use, "strongly discourages driving while under the influence of marijuana or any other drug, and recognizes the legitimate public interest in prohibiting such conduct."

The "legitimate public interest," however, is *not* being protected. Highway officials nationwide express profound concern. Richard L. Burton, former commissioner of Alaska's Department of Public Safety, is among the most apprehensive, saying, "The alcohol problem on the highways will soon be only half as serious as marijuana—and that's not because the alcohol problem is going to get any better!" And Lee Dogoloff, White House adviser on federal drug policy, states: "It is essential that Americans understand the very real hazards of driving while marijuana-intoxicated."

How much does marijuana

Research findings have been remarkably consistent. In 1975, the Boston University Traffic Accident Research Team surveyed 267 drivers deemed "most responsible" for a fatal accident. Sixteen percent of the 267 drivers had been smoking marijuana prior to the fatal accident. Statistically, "marijuana smokers were over-represented in fatal highway accidents," the study concluded. Other traffic-fatality studies in Albuquerque, N.M., Baltimore, and in Oklahoma City yielded a similar incidence of marijuana involvement.

California's Department of Justice has made the first large-scale study directly relating marijuana to traffic arrests. The study, completed last year, covered 46 of the state's 58 counties and examined 1792 blood samples (randomly selected from 19,000 turned in by the California Highway Patrol) from drivers arrested for traffic accidents or for driving under the influence of drugs. The tests were made with an expensive radioimmunoassay laboratory technique that can analyze blood samples for molecules of THC (tetrahydrocannabinol), the chief mind-altering ingredient of marijuana. Sixteen percent of the 1792 arrested drivers had sufficient THC in their blood to constitute marijuana intoxication.

Victor Reeve, supervisor of the California study, pointed out: "This must be regarded as a conservative figure because, of the drivers arrested, fewer than half agreed to give a blood sample. How many of the remaining drivers were under the influence of marijuana we will never know."

More than 50 studies have been made in the United States since 1970, when standardized grades of so-called "NIDA marijuana" were made available to researchers. Says Herbert Moskowitz, a University of California research psychologist who has probably done the most work on marijuana with simulated driving studies: "The preponderance of evidence indicates that marijuana impairs skills performance and perceptual processes, including vision, attention, and tracking behavior—all important components of driving performance."

Such impairments as tracking performance are significant after two "street joints." Drivers may imagine they are doing a fine job of keeping the car in the correct lane, when in fact they are weaving.

In addition, marijuana can cause: impaired night-driving abilities, impaired short-term memory function, impaired concentration, impaired ocular motor control and impaired vigilance.

These results are generally obtained in driving-simulator tests—and most people drive *better* under simulated conditions than they drive normally.

However, one test was carried out in *actual* driving conditions by Dr. Harry Klonoff, professor of psychiatry at the University of British Columbia. He chose 64 psychologically stable subjects who had used marijuana before. One third were given a low dosage of one street joint, one third received a high dosage of two joints, the other third received placebos. With dual controls and an observer in each car, all 64 volunteers drove through a closed course with no other traffic. Low-dose subjects showed a 33-percent significant decline in driving skills, while high-dose subjects showed a 55-percent significant decline.

Thirty-eight drivers also covered a 16-mile route from the university campus to the traffic-heavy downtown area, and back again. These 38 were rated by the system used to examine drivers for licensing. Final figures for the road test showed that those on the low dose had a *42-percent decline* in driving skills, while the high-dosage subjects had a *63-percent decline.* Unusual driving behavior, Klonoff reported, included missing traffic lights or stop signs, poor handling of the vehicle in traffic, unawareness of pedestrians and stationary vehicles.

Of 11 behavioral components tested, the three of greatest vulnerability were judgment, caution and concentration—despite the fact that some of the subjects paid special attention to their driving to prove that pot had no impairing effects.

Studies in 1972 showed a definite decrease in skills performance 5 to 6 hours after intake of a strong social dose of marijuana. Another worrisome factor, reported in 1976 by NIDA, is that a person may attempt to drive without realizing that his functioning is still impaired—even though he

or she no longer feels "high."

A 1972 study of driving behavior in a safety-controlled area showed a "marked" decline in driving abilities was still present 5 to 6 hours after intake, a "definite" effect 8 to 10 hours after intake, and a lingering effect as long as 24 hours later. Another factor: Many chronic pot smokers reported that only a few puffs of "good pot" (with a high THC content) can result in a sudden intense high (if this happens on the highway it can be frightening and dangerous).

Chronic pot smokers tend to view their driving impairments through rose-colored glasses. Among more than 1000 people arrested for marijuana possession in Minnesota, 25 percent thought pot had no effect on their driving. More than 25 percent thought pot actually improved their coördination. Some enthusiasts *prefer* driving stoned, saying that it becomes less boring. "I get more into my driving" goes the refrain.

Dr. Joseph Davis, the medical examiner in Dade County, Fla., with Arnold W. Klein and Dr. Brian D. Blackbourne surveyed 571 local college and post-graduate students on pot and driving. In every driving category former and infrequent users sharply downgraded their ability to perform while stoned, while chronic pot smokers gave themselves quite good grades. Despite their cheery assessments, 53 percent of the chronic users had been stopped by police for driving under the influence of drugs; 22 percent had three or more violations, compared with 2.3 percent of non-users. Eight percent had had their license revoked, compared to one percent of the non-users.

The alcohol-drunk driver usually finds it hard to hide his condition, if stopped by the police. But the pot-high driver often believes he can "come down" and carry on a seemingly normal conversation with a police officer. This apparent ability to "hide their high" gives many pot smokers confidence that they can drive stoned.

One such self-assured driver, a 30-year-old medical sociologist—a heavy drug user and daily pot smoker for about five years before he swore off drugs—reported smoking a few joints at a friend's house. Then he borrowed his friend's car, certain that he could handle whatever might turn up on the road—including the police. "But," he recalls, "as I drove down one of the busiest streets in the city, the dream-like pleasure I usually felt when driving stoned suddenly burst into a total psychedelic experience. All I could see was a myriad of tiny dancing lights. I was so totally spaced out that I had no awareness of even being *in* a car, much less driving one."

When a traffic light turned red, he didn't notice it, and crashed into a small car. He got out, danced a little jig, walked away and wandered around the city for hours. "I knew something had happened. But I didn't know what."

Around 4 a.m. he remembered, and turned himself in to the police. He learned that he had wrecked his friend's car, and had totally demolished the small car in front of him—which had, in turn, crashed into the sedan in front of it. Remarkably, no one had been seriously injured.

What can be done—now? We need not wait helplessly until scientists come up with a roadside kit for testing THC levels, and states enact laws to deal with marijuana-intoxicated drivers. There are two avenues we can take right away.

First, state legislatures should immediately pass laws imposing a high fine and/or other stiff penalty for possession of marijuana *in a vehicle*—including taxis, buses, trucks, trains and planes.

Second, we must inaugurate educational programs by governmental agencies, insurance companies, foundations, private groups and, especially, high-school and private-driving instructors. (A friend of mine taking a driving course was offered a joint by an instructor, "to relax.") Coördination of effort will increase the impact of the message: *it's dangerous to drive stoned.*

Brochures should be distributed at toll booths, gas stations, garages. Car users are a captive audience, and "spot warnings" can be tailored to a range of radio programs. The American Automobile Association and National Safety Council could begin a nationwide information campaign.

Unless we move in these directions, warns NIDA's Robert Willette, who is responsible for developing THC test kits, more and more pot users will be driving high. "We can only hope that growing awareness of the problem," he says, "will prevent a national disaster."

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Municipality of Anchorage

POUCH 6-650
ANCHORAGE, ALASKA 99502-0650
(907) 264-4111

TONY KNOWLES, MAYOR

DEPARTMENT OF HEALTH AND ENVIRONMENTAL PROTECTION

FEB 1984
RECEIVED

February 13, 1984

The Honorable Charlie Bussell
The House of Representatives
Pouch V
Juneau, Alaska 99811

Dear Representative Bussell:

Enclosed please find a concise outline of needs regarding drug abuse, alcoholism and mental health services in Anchorage. Following the statistics identifying the scope of the problem (section one) is the requested amount of state dollars (section two) needed to sufficiently fund treatment services. It is with concern the Department asks that you review the attached in an effort to responsibly fund Anchorage behavioral health treatment and prevention services.

As noted in the enclosed, the amount of money lost yearly to the potential market productivity of substance abusing youth in Anchorage alone is over 11 million dollars and the money lost to Alaskan industry yearly is greater still.

If you have any questions do not hesitate to contact the Behavioral Health Division.

Respectfully,

James C. Parsons, Division Manager
Susan Johnson, Program Coordinator
Frances Purdy, Program Coordinator

JCP.L2/dl/s

LEGISLATIVE PACKET
DEPARTMENT OF HEALTH AND ENVIRONMENTAL PROTECTION
DIVISION OF BEHAVIORAL HEALTH
825 "L" Street
Anchorage, Alaska 99501

Contact Persons: James C. Parsons, Division Manager
Susan Johnson
Frances S. Purdy
264-4775

DRUG ABUSE AND ALCOHOLISM SERVICES

THE PROBLEM: SECTION ONE

PREVALENCE OF DRUG TAKING BEHAVIOR BY YOUTH:

Prevalence is defined by the Center for Alcohol and Addiction Studies (1983) as the incidence of drug-taking as represented by the percent of respondents who ever tried a drug, (i.e., has used the drug one or more times in a lifetime). Prevalence is particularly important as an indicator of potential drug abuse and as a descriptor of high risk populations. Hence, its greatest relevance is in relationship to the development of prevention programs. Although the Anchorage School District recently conducted a survey in which prevalence rates have dropped (approximately 5%) rates still exceed the national average.

COMPARISON OF PREVALENCE WITH PSYCHOACTIVE DRUGS IN ANCHORAGE AND NATIONWIDE
(Students: Grades 7 - 12)

°ANCHORAGE STUDENTS HAVE TRIED:

- ° STIMULANTS 4.4 times the national average
- ° COCAINE 3.6 times the national average
- ° TRANQUILIZERS 3.6 times the national average
- ° DEPRESSANTS 3.4 times the national average
- ° MARIJUANA 1.9 times the national average
- ° HALLUCINOGENS 1.8 times the national average
- ° CIGARETTE smoking in youth is one strong predictor of future drug abuse: 50% of the Anchorage student population has tried tobacco
- ° ALCOHOL use by Anchorage youth is only slightly higher than the national average yet an alarming 82% of the student population has tried alcohol

(Center for Alcohol and Addiction Studies, 1983)

- ° 77 MILLION DOLLARS IS LOST TO ALASKAN INDUSTRY YEARLY DUE TO ALCOHOLISM ALONE.
- ° 11.3 MILLION DOLLARS IS LOST YEARLY TO THE POTENTIAL MARKET PRODUCTIVITY OF ALCOHOL MISUSE BY YOUTH (GRADES 9-12) IN ANCHORAGE ALONE.
- ° NATIONALLY, 23% OF THE POPULATION WHO HAD "EVER TRIED" COCAINE BECAME REGULAR USERS AND 20-25% OF THAT GROUP BECAME DEPENDENT ON COCAIN .
- ° PREVALENCE OF DRUG USE IN ADULTS (26+ YEARS) IS TWICE THE NATIONAL AVERAGE FOR EVERY DRUG BUT ALCOHOL AND TOBACCO.

- PREVALENCE OF DRUG USE IN YOUNG ADULTS (18-25 YEARS) FOR MARIJUANA, COCAINE AND STIMULANTS IS ONE AND ONE-HALF TO TWO AND ONE-HALF TIMES THE NATIONAL AVERAGE.

- ONLY 15% OF THOSE PEOPLE NEEDING HELP FOR DRUG AND ALCOHOL PROBLEMS RECEIVE IT.

- THE MUNICIPALITY OF ANCHORAGE SERVED 30% OF THE STATEWIDE DRUG AND ALCOHOL ABUSING POPULATION TREATED WITH STATE OFFICE OF ALCOHOL AND DRUG ABUSE (SOADA) MONIES IN FY-83.

- THE MUNICIPALITY OF ANCHORAGE SERVED 22% OF THE STATEWIDE ALASKA NATIVE SUBSTANCE ABUSING POPULATION TREATED WITH SOADA MONIES.

- THE MUNICIPALITY OF ANCHORAGE SERVED 74% OF THE SUBSTANCE ABUSING POPULATION 17 YEARS OF AGE AND YOUNGER TREATED WITH SOADA MONIES.

WHO IN ANCHORAGE RECEIVES DRUG AND ALCOHOL TREATMENT AND AT WHAT COST

- 3400 PEOPLE RECEIVED DRUG AND ALCOHOL SERVICES IN FY83;

- DEPENDING ON THE PROGRAM FROM 10% TO 35% OF THE CLIENTELE SERVED WERE ALASKANS FROM OUTSIDE THE ANCHORAGE AREA;

- DRUG ABUSE PROGRAMS RECEIVE 46% OF THEIR FUNDS FROM ALCOHOL MONIES;

- COST PER UNIT OF SERVICE PER DAY:

SOURCE	AVERAGE COST
ANCHORAGE JAILS	76.00*
ADULT RESIDENTIAL	46.00
DRUG AND ALCOHOL OUTPATIENT	55.00
YOUTH RESIDENTIAL	107.00**

ESTIMATED COST TO MAINTAIN NARCOTIC DRUG HABIT "ON THE STREET" IS $400.00 A DAY.

* THIS DOES NOT INCLUDE CENTRAL ADMINISTRATION, OVERTIME FOR EMPLOYEES IN A 24 HR. INSTITUTION OR MAJOR CAPITOL EXPENDITURES: WE SUSPECT THIS FIGURE TO BE SIGNIFICANTLY LOWER THAN ACTUAL COST

** THIS REPRESENTS ONLY 61.4% OF THE COST OF COMPARABLE SERVICES, WHICH DOES NOT INCLUDE TRANSPORTATION OR FAMILY COUNSELING

DO THESE PROGRAMS WORK?

- RESEARCH CONDUCTED NATIONALLY (1982) CONCLUDED THAT ONE YEAR AFTER TREATMENT THERE WAS;

NO CRIMINALITY AND NO DRUG USE IN:

38% OF THE THERAPEUTIC COMMUNITY GRADUATES
34% OF THE DRUG FREE OUTPATIENT GRADUATES
32% OF THE METHADONE MAINTENANCE GRADUATES

AND

NO DAILY OPIOD USE IN:

71% OF THE THERAPEUTIC COMMUNITY GRADUATES
70% OF THE DRUG FREE OUTPATIENT GRADUATES
67% OF THE METHADONE MAINTENANCE GRADUATES

MENTAL HEALTH SERVICES

THE PROBLEM

- MORE INDIVIDUALS FROM API ARE DISCHARGED TO ANCHORAGE THAN ARE ADMITTED FROM ANCHORAGE EACH YEAR.

- 53% OF OUTPATIENT SERVICES ARE PROVIDED BY PUBLICALLY FUNDED ANCHORAGE PROGRAMS.
  OVER 50% OF THE API DISCHARGES ARE MADE TO ANCHORAGE.
  ONLY 25% OF THE STATE FUNDS COME TO ANCHORAGE ($806,000 IN 1983).

- EVEN WITH THE HELP OF THE PRIVATE SECTOR MENTAL HEALTH SERVICES, ONLY 32% OF INDIVIDUALS NEEDING HELP ARE SERVED.

- ANCHORAGE SERVES AS A REGIONAL CENTER WITH SPECIALIZED MENTAL HEALTH AND NECESSARY ANCILLARY SERVICES.

- OVER 450 ATTEMPTED SUICIDES OCCURRED IN ANCHORAGE IN 1982.

- OVER 4,800 CRISIS CALLS CAME FROM DEAF INDIVIDUALS.

- BETWEEN 400-450 CHRONICALLY MENTALLY INDIVIDUALS RESIDE IN ANCHORAGE.

- THE DIVORCE RATE IS ALMOST TWICE THE NATIONAL AVERAGE.

- OVER 1000 NEW CASES OF CHILD ABUSE AND NEGLECT WERE REPORTED IN ANCHORAGE IN 1982 OVER 1981.

DO THESE PROGRAMS WORK

IN 1982:

39 SUICIDES IN PROGRESS PREVENTED BY CRISIS INTERVENTION

506 VICTIMS OF RAPE RECEIVED ASSISTANCE

353 INDIVIDUALS WERE MAINTAINED OUTSIDE API

68% OF FAMILIES SEEKING HELP SUCCESSFULLY SOLVED THEIR PROBLEMS.

COST OF TREATMENT

IN 1982:

3,511 INDIVIDUALS RECEIVED MENTAL HEALTH COUNSELING
12,432 CRISIS TELEPHONE CALLS WERE ANSWERED

AVERAGE COST OF CRISIS TELEPHONE CALL	$ 10.89
AVERAGE COST OF INDIVIDUAL THERAPY SESSION	$ 63.39

COST PER DAY FOR CARE OF THE CHRONICALLY MENTALLY ILL:

IN THE COMMUNITY	$ 82.68
IN A.P.I.	$275.00

INDIVIDUALS WITH ACUTE OR CHRONIC MENTAL ILLNESS HAVE A BETTER THAN 20% CHANCE OF AVOIDING HOSPITALIZATION IF INITIAL CRISIS INTERVENTION IS PROVIDED IN THE COMMUNITY. IF THEY MUST BE HOSPITALIZED, THEY WILL SPEND 50% LESS TIME IN THE HOSPITAL.

BUDGET REQUEST: SECTION TWO:

FY-85 BUDGET REQUEST BY
DIVISION OF BEHAVIORAL HEALTH
DEPARTMENT OF HEALTH AND ENVIRONMENTAL PROTECTION
DRUG, ALCOHOL, MENTAL HEALTH TREATMENT

	STATE			
	Alcohol	Drug	Mental Health	Local
Primary Prevention (Education, Information, Alternatives)	-0-	-0-	1,500	202,200
Early Intervention: Consultation/Education (Anchorage Community Mental Health Center) (Alaska Council on Prevention of Alcohol and Drug Abuse)	36,430	-0-	67,500	47,280
Youth Residential Services (Volunteers of America - ARCH)	231,390	214,300	-0-	102,500
Youth Outpatient Services (Akeela House)	24,530	32,960	-0-	14,590
Women's Residential Services (Salvation Army - Reflections)	255,770	-0-	-0-	27,150
Women's Outpatient Services (Akeela House)	33,210	36,540	-0-	16,820
Women's Long Term Care Services (Alaska Women's Resource Center)	29,570	-0-	-0-	64,930
Native Residential Services (Cook Inlet Native Association - Amouak)	306,450	-0-	-0-	32,520
Native Outpatient Services (Cook Inlet Native Association)	138,120	-0-	-0-	14,660
Methadone Maintenance/Drug Free Outpatient (Narcotic Drug Treatment Center)	-0-	239,570	-0-	87,130
Suicide Prevention/Emergency Treatment (Suicide Prevention and Crisis Center)	-0-	-0-	270,020	89,980
Community Service Patrol (Salvation Army Clitheroe Center)	277,000	-0-	-0-	29,400
Interface Domestic Violence-Substance Abuse	27,000	-0-	-0-	3,000
Halfway House (Salvation Army Clitheroe Center)	40,240	-0-	-0-	9,580
Detoxification Services (Salvation Army Clitheroe Center)	598,930	-0-	-0-	63,560
Residential Treatment				
(Akeela House - Drug Therapeutic Community,	215,830	183,220	-0-	89,550
Salvation Army Clitheroe Ctr. - Alcohol)	867,020	-0-	-0-	92,010
Outpatient Services				
Family (in-home) (Family Connection)	-0-	-0-	91,552	30,510
Family (Akeela/Suicide Prevention and Crisis Center/ Anchorage Community Mental Health Center)	300,390	68,800	70,971	80,540
Chronically Mentally Ill (Anchorage Community Mental Health Center)	-0-	-0-	387,346	89,980
Adult (Anchorage Community Mental Health Center)	-0-	-0-	130,660	43,540
Elderly (Anchorage Community Mental Health Center)	-0-	-0-	112,321	37,430
Evaluation & Intake (Akeela)	34,880	29,610	-0-	14,470

* It is important to note that the Division continues to support the provision of prevention efforts, which have been sanctioned by the Municipal Health Commission. However, there has never been any significant funding allocated to prevention. The Division would like to respectfully request that you rigorously consider the importance of funding prevention in FY-85.

POUCH V
JUNEAU, ALASKA 99811
(907) 465-4990

Alaska State Legislature
HOUSE OF REPRESENTATIVES

REPRESENTATIVE
CHARLIE BUSSELL
CHAIRMAN

Committee on Judiciary

GUEST SPEAKERS

2:00 P.M.
Dr. Reese T. Jones
Professor of Psychiatry
Langley Porter Psychiatric Institute
University of California - San Francisco

Dr. Jones is a clinical psychiatrist at the University of California at San Francisco and served as a member of the distinguished commission of scholars sponsored by the Institute of Medicine to study the physiological and psychological effects of marijuana. The report, entitled "Marijuana and Health," is recognized by the medical community as one of the preeminent academic works on the subject.

2:30 P.M.
Gabriel G. Nahas O.B.E, M.D., Ph.D.
Professor of Anesthesiology
Columbia University
College of Physicians and Surgeons

Dr. Nahas is a professor at Columbia University in New York City and is reknowned as a pioneer in the research of the biological effects of marijuana. Considered by many as the foremost authority on the subject, Dr. Nahas has authored two books Keep off the Grass and Marijuana: Biological Effects.

MEMBERS:
REP. JOHN LISKA, VICE CHAIRMAN; REP. RAMONA BARNES, EMERITUS;
REP. JOE HAYES; REP. HUGH MALONE; REP. DON CLOCKSIN; REP. RON WENDTE

ANCHORAGE DAILY NEWS
9 MARCH, 1984
3.9.84

Bussell: 'Close door on marijuana use'

By K.C. MOON
Daily News reporter

House Judiciary Chairman Charlie Bussell, R-Anchorage, has drafted a bill that would "close the door on marijuana use" in the state by making illegal the possession of any amount of the drug.

The bill was introduced by the committee earlier this week.

Current statutes, barely a year old, permit possession of up to a quarter pound of marijuana for personal use in one's own home.

Rep. Don Clocksin, a minority member of the committee, said the bill is "a waste of time" for legislators because they decided the marijuana issue just two years ago.

Law enforcement officials say the proposed law would not have a substantial effect on current enforcement patterns. Busting drug dealers, not users, would continue to be the focus of police and courts.

Bussell said he drafted the bill because Alaska's current law is "out of step with other states' laws and federal guidelines regarding marijuana."

Alaska, Hawaii and Oregon are the only states that permit any use of marijuana. Federal laws prohibit marijauna possession.

He said the bill reflects a conservative wave that he said is sweeping the country. "As a rough guess, I would say that the public would support (recriminalizing marijuana) about 60-40."

But Clocksin, D-Anchorage, said he doubts Bussell's reasons for introducing the bill. "There's no justification for it.

"The law we passed in 1982 was a delicate and fair compromise," he said. "We should stick with it. This new bill is a waste of the legislature's time."

The Alaska Legislature voted to allow private use of marijuana and decriminalize public use in 1975, the same year the state Supreme Court ruled that possession of marijuana in a person's home for personal use was constitutionally protected.

The court ruled that alleged health hazards associated with marijuana use were not substantial enough to justify the state's intrusion into citizens' constitutional right to privacy.

Revised drug laws passed in 1982 made public marijuana-smoking a criminal offense but allowed possession of less than four ounces in one's home.

The latest proposal would make possession of smaller amounts of the drug a misdemeanor offense with a maximum punishment of $1,000 fine and 90 days in jail.

Bussell said medical evidence published since the 1975 court decision gives the state reason enough to ban marijuana-smoking completely.

He cited no specific health studies, saying such research would be brought out when hearings on the bill begin.

Dan Hickey, chief prosecutor for the state, said the state's policy on prosecuting drug users would not change if lawmakers pass a blanket ban on marijuana.

"Our emphasis is not in the prosecution of drug abusers," he said. "Our focus is on major distributers and traffickers."

"Our opinion on that would not change if this (bill) becomes law."

Anchorage Police Chief Brian Porter said he supports banning all marijuana use but does not see the department shifting its sights to individual users. "We might make a few arrests initially to get the message out," he said. "I don't see the department putting out 25 more officers" to bust private users.

Porter said such a law would rid the state of hypocrisy in the current statutes, which ban the sale of marijuana while permitting its use.

"There's a hole in the current law," said Lt. George Novaky, who heads the Anchorage Police Department's Metro Drug Unit. "We're creating a market for the use of marijuana — turning people into purchasers — while the sale of pot is still illegal.

"Obviously the majority of users don't grow their own," he said. "If they are, I want to know who's buying all the stuff that's being smuggled into the state."

Clocksin said he has heard nothing about health studies that would justify prohibiting private use of marijuana. "What (Bussell) is trying to do is to break into people's homes and tell them what to do," he said.

He called Bussell a "conservative extremist who doesn't represent the mainstream" of public sentiment.

STATE OF ALASKA 1984 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date:

REQUEST
Bill/Resolution No.: HB 698
Title: An Act Relating to Marijuana
Sponsor:
Requestor:
Date of Request:

FISCAL DETAIL
Agency Affected: Alaska Court System
Program Category Affected:
BRU, Program or Subprogram(s) Affected:

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 84	FY 85	FY 86	FY 87	FY 88	FY 89
OPERATING						
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 SUPPLIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS						
800 MISCELLANEOUS						
TOTAL OPERATING		-0-	-0-	-0-	-0-	-0-
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

This zero fiscal note is based on the assumption that additional resources will not be added to State troopers, local police, or prosecuting attorney offices as a result of this legislation.

ANALYSIS: Attach a separate page for analysis

Prepared By: Richard Barrier
Phone: 264-0545
Division:
Date: March 14, 1984

Approved by Commissioner:
Date:
Agency:

Distribution (by Agency preparing fiscal note):
Legislative Finance
Legislative Sponsor
Requestor
Office of Management and Budget
Impacted Agency(ies)

12/1/83

We are very concerned about the health hazards of marihuana use. These hazards are described in the Seventh Annual Marihuana Report to the Congress from the Secretary of Health, Education, and Welfare (HEW), which was released on April 18, 1979. This report summarized recent research on the medical and social effects of marihuana use and pointed out the dramatic increase in marihuana smoking among teen-agers and adolescents.

A need remained, however, for a comprehensive review of marihuana research efforts that would identify the most urgently needed and promising lines of inquiry upon which future decisionmaking in this area could be based. Therefore, Secretary Califano announced that the Department of HEW will undertake a comprehensive review of the existing scientific evidence on marihuana. This review will encompass research into the physiological effects of chronic marihuana use as well as behavioral research on use-related problems, such as intervention strategies to help adolescents resist peer pressure, evaluate evidence, and assess risks.

Responsibility for seeing that this review is conducted has been assigned to the National Institutes of Health (NIH). An independent scientific group will implement this review and is expected to produce a report within 12 months.

Since 1967 the Federal Government has spent approximately $35 million on marinuana research to support over a thousand research projects. This research effort continues. For example, this fiscal year, FY 1979, the National Institute on Drug Abuse (NIDA) will support approximately a hundred research studies totaling $3.8 million. NIDA-supported research includes investigations into the effects of marihuana on the heart and lungs, on psychological, social, and physical development, and on pregnancy, as well as research into possible medical use, including the treatment of glaucoma.

Mr. Chairman, presently available evidence clearly indicates that marihuana is not a "safe" substance. While I will not attempt this morning to review all of the scientific findings described in the Marihuana and Health Report, I would like to briefly indicate to the Committee what the hazards of marihuana use are for adolescents and to various organs and systems of the human body.

Acute Intoxication Impairs Learning, Memory and Intellectual Performance

Virtually all of the many studies which have been done of performance while "high" converge toward the conclusion that marihuana interferes with immediate memory and intellectual performance in ways that impair thinking, reading comprehension, and verbal and arithmetic problem solving. Less familiar, more difficult tasks are interfered with more than well-learned performance, and the effect depends on the amount used and the tolerance for the effect.

Marihuana Intoxication Impairs Driving and Other Skilled Performance

Evidence strongly suggests that being "high" interferes with driving, flying, and other complex psychomotor performance at usual levels of social usage.

Despite their commonly expressed belief that their driving skills are impaired by cannabis intoxication, there is reason for believing that more marihuana users drive today while "high" than was true in the past. As use becomes increasingly

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Health Consequences of Marihuana Use

William Pollin, M.D.
Director
National Institute on Drug Abuse

common and socially acceptable, and as the risk of arrest for simple possession decreases, still more people are likely to risk driving while "high." In limited surveys, from 60 percent to 80 percent of marihuana users questioned indicated that they sometimes drive while high. Marihuana use in combination with alcohol is also quite common, and the risk of the two drugs used in combination may well be greater than that posed by either alone.

A study reported in 1976 of drivers involved in fatal accidents in the greater Boston area was conducted by the Boston University Accident Team. They found that marihuana smokers were overrepresented in fatal highway accidents as compared to a control group of nonsmokers of similar age and sex.

While there have been no recent studies, research thus far indicates that even experienced pilots undergo marked deterioration in performance under flight simulator test conditions while "high." Thus, flying an aircraft while marihuana-intoxicated should be considered dangerous.

A continuing danger common to both driving and flying is that some of the perceptual or other performance decrements resulting from marihuana use may persist for some time, possibly several hours, beyond the period of subjective intoxication. Under such circumstances, the individual may attempt to fly or drive without realizing that his or her ability to do so is still impaired although he or she no longer feels "high."

Effects on the Heart

Acute effects of marihuana use on heart function in healthy young male volunteers have been viewed as benign. However, the increased heart rate produced and evidence that chest pain associated with poor circulation to the heart muscle occurs more rapidly with marihuana use than with cigarette smoking have led to a consensus that those with heart conditions, or at high risk, should not use marihuana.

Effects on Lung Functioning

Since, like tobacco, marihuana is usually smoked and typically deeply inhaled, adverse pulmonary effects may be expected. Based on both clinical observation and laboratory measurement, marihuana shows evidence of interfering with lung function and producing bronchial irritation in habitual users. One study has found that smoking four or more "joints" per week decreases vital capacity—the amount of air the lungs can move following a deep breath—as much as smoking nearly a pack of cigarettes a day. This comparison, while widely quoted, needs confirmation by independent studies. As yet there is no direct clinical evidence that marihuana smoking causes lung cancer. It has been reported that marihuana smoke contains more carcinogens than tobacco, that in animal testing the smoke residuals produce skin tumors, and there is laboratory evidence that human lung tissue exposed in the test tube to marihuana smoke shows more cellular changes than when exposed to similar amounts of standard tobacco smoke. Very heavy marihuana smoking by healthy young male subjects under controlled experimental conditions has been demonstrated to cause mild but statistically significant airway obstruction. Under conditions of ready availability, there is also evidence that the number of marihuana cigarettes consumed (up to ten "joints" daily) may approach that of tobacco cigarettes.

From the total body of clinical and experimental evidence accumulated to date, it appears highly likely that daily use of marihuana may lead to lung damage similar to that resulting from heavy cigarette smoking. Since marihuana smokers often smoke both tobacco and marihuana, the effects of the combination require additional study.

Effects on the Immune System

Research findings are divided as to whether marihuana use adversely affects the body's natural defenses against infection and disease. Of the studies reviewed, the majority have shown that such an alteration occurs. Whether or not such changes, when they are found, have practical implications for users is not known at this time.

Brain Damage Research

A British research report, which originally appeared in 1971, attributed brain atrophy to cannabis use in a group of young male users. It continues to be widely cited, particularly in the mass media. In the original study, 10 patients, with histories of from 3 to 11 years of marihuana use, were examined by a neurological technique (air encephalography) used to detect gross brain changes. The authors concluded that their findings suggested that regular use of cannabis may produce brain atrophy. This research was faulted on several

grounds. All the patients had used other drugs, making the causal connection with marihuana use questionable; and the appropriateness of the comparison group and diagnostic technique was questionable.

Two studies were subsequently conducted in Missouri and Massachusetts. They examined two samples of young men with histories of heavy cannabis smoking using computerized transaxial tomography (CTT), a brain scanning technique for visualizing the anatomy of the brain. In both studies, the resulting brain scans were read by experienced neuroradiologists, indepedent of the drug histories. In neither was there any evidence of cerebral atrophy. Several additional points should, however, be stressed. Neither study rules out the possibility that more subtle and lasting changes of brain function may occur as a result of heavy and continued marihuana smoking. It is entirely possible to have impairment of brain function from toxic or other causes that is not apparent on gross examination of the brain in the living organism. One researcher has used electrodes implanted deep within the brains of monkeys instead of more conventional scalp recording techniques to record brain electrical activity changes related to marihuana use. He has found persistent changes related to chronic use. This same investigator has reported that rhesus monkeys trained to smoke a joint of marihuana five days per week for six months show persistent microscopic changes in brain cellular structure following this treatment. While both these experiments demonstrate the possibility that more subtle changes in brain functioning or structure may occur as a result of marihuana smoking, at least in animals, the implications of these changes for subsequent human or animal behavior are at present unknown. Other studies, using more conventional EEG techniques to measure brain electrical activity, have found changes temporarily associated with acute use but no evidence of persistently abnormal EEG findings related to chronic cannabis use.

As I indicated earlier, many clinicians feel that regular marihuana use may seriously interfere with psychological functioning and personality development, especially in childhood and adolescence. There is increasing clinical concern that at least some percentage of regular heavy daily users do develop a psychological dependence on marihuana to the extent that it interferes with functioning in a way analogous to heavy alcohol use.

Overall, of the studies reviewed, the majority have suggested enduring impairment occurs. The quality of studies in this area, in particular, is highly variable,leaving the issue in significant doubt.

Effects on the Endocrine System

There is evidence that marihuana can affect the network of glands and hormones which are involved in such functions as growth, energy levels and reproduction. Levels of the male hormone testosterone have been found to be reduced (though still within normal range) in some, but not all, studies. There is animal and human preliminary evidence that relatively heavy use, ranging from several times a week to daily use, may reduce fertility in women. Of eleven studies dealing with these areas, seven have reported endocrine changes, with four reporting no such change. The long-term significance of these results remains to be determined. Concern over possible effects on adolescent development and possible interference with sexual differentiation of the male fetus whose mother smokes marihuana during pregnancy has been expressed.

Reproductive Effects of Marihuana

There are a variety of both animal and human studies suggesting that marihuana used daily and in substantial amounts similar to those of a regular heavy tobacco smoker may adversely impair aspects of the reproductive function. One study of 16 male, healthy, chronic marihuana users, smoking from eight to twenty standard marihuana cigarettes per day for four weeks in a hospital environment, found a significant decline in sperm concentration and total sperm count. Evidence was also found of a decrease in the motility of the sperm. In this and another study, abnormalities of structure in the sperm of heavy users were detected.

Three studies in animals of the effects of marihuana on testicular functioning, including the production of sperm, have also found adverse effects. While the clinical implications of such findings are not yet known, and the effects noted may be reversible when marihuana use is stopped, they do indicate a basis for concern. Reduced levels of testosterone in male users, though still within the normal range, have been reported by some but not all the investigators.

Animal and human research on female reproductive function has detected changes that may have serious implications for human reproductive capacity. Because of the restrictions on experimental administration of marihuana to women, little is known about the effects of the drug on

human female endocrine and sexual functioning. One recently completed study of 26 females who used "street" marihuana three times a week or more for six months or more found that these women had three times as many defective monthly cycles (38.3 percent defective vs. 12.5 percent of the cycles of nonusers) as nonusing women. By "defective" was meant a failure to produce a ripened egg during the cycle or a possibly shortened period of fertility. Unfortunately, since the marihuana-using women also used more alcohol, it cannot be assumed that the effects observed were necessarily the result of marihuana use.

Research directly concerning effects on human reproduction is, however, very limited. We know of no clinical reports directly linking marihuana use and birth abnormality.

Chromosome Abnormalities

There is no new evidence to report in this area. While there were earlier reports of increases in chromosomal breaks and abnormalities in human cell cultures, more recent results have been inconclusive.

A team investigating the effect of marihuana smoke on human lung cells in laboratory culture has found an increase in the number of cells containing an abnormal number of chromosomes. Another investigator, who previously reported a high proportion of cells in marihuana smokers with reduced numbers of chromosomes, has more recently reported that the addition of delta-9-THC (the principal psychoactive ingredient of marihuana) to human white blood cell cultures also resulted in an increased frequency of cells with abnormally low chromosome numbers. The implications of these findings continue to be uncertain.

Overall, there continues to be no convincing evidence that marihuana use causes clinically significant chromosome damage. However, it should be emphasized that the limitations of the research to date preclude definitive conclusions.

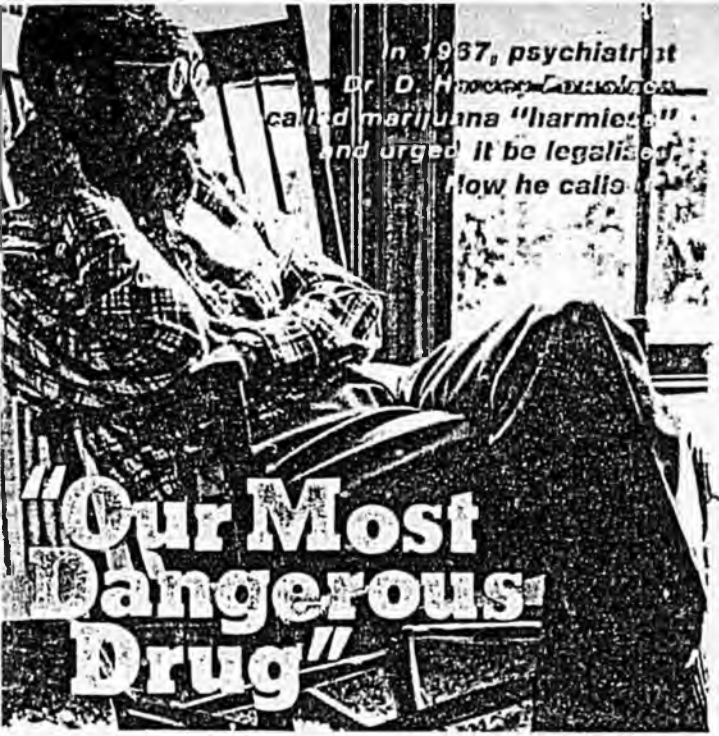
I believe we can state that there is no controversy with respect to the hazards of use by children and young people. Studies by Dr. Gene Smith, which involve nearly 12,000 junior and senior high school students in the Boston area, indicate that the earlier marihuana use begins, the more likely is use to become heavy use and to include other illicit drugs. In addition, although there is still much to be learned about the impact of heavier use on the physical functioning of the child or adolescent, studies indicate that use may cause alterations in endocrine functioning which are more serious than endocrine involvements in older mature users.

Unfortunately, the hesitancy of the scientific community in not drawing unwarranted definitive conclusions from what are preliminary research findings has led many to conclude that marihuana is without serious medical hazard, even for the very young. In reality, the situation is more like that following the popularization of cigarette smoking at the time of World War I. It required fifty years of research for the truly serious implications of cigarette smoking to become apparent.

In view of the rapidly increasing numbers of high school students who use marihuana on a daily basis during the course of the school day, these findings are especially worrisome. For example, figures derived from an ongoing study of successive yearly nationwide samples of high school seniors indicate that as of 1978 one in nine smoked marihuana daily—nearly twice as many as in 1957. In two states, Maryland and Maine, still more recent figures indicate nearly one in six high school students use marihuana daily or nearly daily.

Our most recent national household survey, conducted in 1977, indicates that there was a significant increase of 25 percent over the 1976 level in the number of persons between the ages of 12 and 17 who had ever used marihuana. More importantly, there was a nearly 30 percent increase in the number currently using, i.e., those who had used in the preceding month. Moreover, as the figures from our annual survey of high school seniors indicate, there has been a significant trend toward beginning use at increasingly younger ages. While 16.9 percent of the class of 1975 had used marihuana by the end of the ninth grade, 25.2 percent of the class of 1978 did so.

While much remains to be learned about the health implications of marihuana, I would like to emphasize that our present evidence clearly indicates that it is not a "safe" substance. As a psychiatrist, I would also like to stress that virtually all clinicians working with children and adolescents agree that regular use of marihuana by youngsters is highly undesirable. Although experimental evidence concerning the implications of use in this group is not easily obtained, there is little serious question that regular use of an intoxicant that blurs reality and encourages a kind of psychological escapism makes growing up more difficult. While there is controversy over the implications of present research concerning adult use, few would argue that every effort should be made to actively discourage use by children and adolescents.



Interviewed by Ted Torkelson and Leon Cornforth

DR. POWELSON, you were once quoted in the "Daily Californian" (April 12, 1967) as saying, "Marijuana is harmless. There is no evidence that it does anything except make people feel good. It has never made anyone into a criminal or a narcotics addict. It should be legalized." But now you are widely quoted as the psychiatrist who has reversed his opinion on legalization of marijuana. Why did you change your mind?

Well, I was at the University of California when I made that statement. As director of the student health service I was seeing a lot of patients and supervising people who were seeing many more. In the course of the next two years, either directly or indirectly, I saw literally thousands of students.

One patient whom I knew quite well and worked with for a long time, took up marijuana and hashish, which is a more concentrated form of marijuana, during the time I was seeing him. It became clear to me and to my wife, who also saw him, that there was something changing about his ability to think, to remember, to judge, to understand.

Dr. D. Harvey Powelson was formerly chief of the psychiatry department of Cowell Memorial Hospital at the University of California at Berkeley. Currently he is in private psychiatric practice in Berkeley and also serves as Mental Health Program Chief of Calaveras County, California.

The things happening to his brain were things we would expect from somebody who was having brain damage from alcohol or a tumor or organic brain damage. But he was a young healthy man. Then we discovered that the sessions that were particularly bad occurred when he said he'd used hashish within the previous two or three days. We both began to notice this connection.

Then I began to see the same connection in other patients. Since then, a lot of recent scientific evidence has supported and explained these observations.

How do the effects of using marijuana compare with the effects of other drugs?

I think marijuana is the most dangerous drug we have to contend with, for a number of reasons.

First, unlike any other drug except DDT, marijuana stays in the body for a very long period of time. It stays in the brain, and it keeps operating long after people are high. This time element is anywhere from six weeks to six months. Biochemically, using tracers has proved that only half of the marijuana leaves your body in a week.

Marijuana is soluble in oil and fat, and totally insoluble in water. The ratio is 600 to 1, so that once it gets inside the cell, it can't get back into the bloodstream the way other drugs do. If you drink alcohol, it's soluble in water and also in the bloodstream. As fast as you drink it, it goes into the bloodstream and continues to circulate, and then it is burned and leaves the body.

Marijuana just stays there. When marijuana users get high—it usually takes them two or three times, because they have to build up a certain amount in their brain. Once they get high, they take another joint and get a little higher, then the high drops off and they think they are sober again. But the marijuana is still active. Then three days later they take another joint and they get high again. But they are suffering the effects of marijuana all that time.

Is this what is called the cumulative effect?

It could be called a cumulative effect, but what I'm really talking about is the fact that marijuana stays active in the brain long after the user feels high. It's very deceptive. Since it doesn't lead to staggering or leave a smell on your breath, nobody else can tell that you're high and you don't know that you're high or whether you're stoned. You're not high in the sense of feeling good, but you're stoned. Your brain isn't functioning right. And this can be proved. You can give a person mental tests before he takes a joint, and then you can show that he can't do the same test as well for as long as 72 hours after the equivalent of one to three joints. It depends on the concentration.

What is marijuana's effect on the function of the brain?

If you ask somebody to take 100 minus 7 back to 0, he has to do two things at once. He has to remember what he is doing, and he has to keep track of the last number. It's not very complicated, but it's the kind of memory function that marijuana interferes with. Marijuana users tell that it focuses their attention. What that means is that they can't



do two things at once. This particular memory test make them do two things at once. If you time them on that test, takes about 1½ minutes. Then they smoke three joints. day later it will still take them longer than 1½ minutes t do the same test.

In real life it's much more complicated. One of my pa tients was an airplane mechanic who worked on airplane going from Alaska to Japan. He was staying stoned all th time. His supervisor didn't know it; nobody on the jo knew it. He didn't care whether the instruments checke out or not. All he was interested in was staying stoned o the job. He wasn't thinking about anything but how goo he felt. Yet pilots and passengers were depending on tha man.

Right now some pilots in the Midwest are trying to ge the Federal Aviation Agency interested in the fact tha there are pilots and navigators and instrument testers wh are stoned. Many people in this country—literall millions—are using marijuana and are stoned. And the may be people you and I are depending on to fly a airplane or drive a bus or perform our surgery, or drive o the highway.

What do you think about the comparison tha marijuana is no worse than alcohol?

I think there is no comparison. It's hard to compare th two because there are some things about alcohol that ar worse than marijuana. Alcohol is bad for the liver. And a far as I know, marijuana probably doesn't affect the liver But overall, marijuana affects the mind much more tha alcohol, much sooner, and in a much more profound way.

How can a person, particularly kids in schools, sort ou fact from propaganda about marijuana?

There are liars and prostitutes in every field—in science in medicine, in law, and in the newspapers.

The marijuana thing is particularly difficult because th stakes are so high. That's one way of putting it, I guess Different people are putting out propaganda all the time.

Consumers' Union report (March 1975) is a beautiful example. The man who wrote it knows nothing scientifically. He selected the data and the research. It's pure

propaganda, but all the kids quote it. It has no scientific standing at all.

On the other hand, it's next to impossible to train kids to make scientific judgments of the kind that are necessary to sort out the scientific literature. I think an intelligent person can read scientific literature. There are no reputable scientific journals now that say marijuana is harmless.

The Jamaica study was noted in the "New York Times" early this year. It says, "Several recent studies of chronic marijuana users, conducted independently in half a dozen countries, one of them being Jamaica and another Greece, indicate that the drug has no apparent significant adverse effect on the human body or brain or on their functions."

To begin with, the Jamaica study was never published in reputable scientific journals. It was leaked to the newspapers in various pieces. I and my colleague Dr. Jones, who is also very involved in this, tried for months to get a copy of it. I think it was finally published in book form in Holland.

Marijuana effects have been demonstrated in reputable centers in this country, such as the University of Utah Medical Center. The head of genetics research there demonstrated the effects of marijuana on chromosomes in very difficult laboratory procedures. The people who reported that there was no chromosome damage in Jamaica have no credentials for doing that kind of study. In fact, they did it so poorly that something like half of their study had to be discarded because it was inadequate technically, which really cancels out the whole study in any reputable scientific laboratory.



The Jamaica study also says marijuana doesn't affect function. But the study was of very marginal laborers hoeing in cane fields, and we know that the main effect of marijuana is on the brain. It would be very hard to measure its effect on hoeing. However, literally hundreds of studies of all kinds of intellectual functions have been done not only in this country but all over the world, and these all show that marijuana has an adverse effect on people's ability to function.

I think that the best counter to the confusion in kids' minds is not more scientific evidence, because they're really not capable of making those judgments. There's always going to be another scientist who sells his stuff to the highest bidder. By now there are enough marijuana users in every community that people are beginning to know that he's a head, he's stoned all the time, and you can't trust him. You can't trust what he's thinking, you can't trust his judgment.

Often I ask marijuana users, Would you like your surgery done by somebody who is high? They all say, Are you crazy? They know that they're not trustworthy. And other people are beginning to know this.

It seems that the majority of our population are for the use of pot. Why is supporting marijuana use more popular than speaking out against the harm that people are doing to themselves?

I think it's so dangerous because it's so tempting. It makes you feel good. It's an easy, cheap way to feel good. You can easily be deceived into thinking it's not doing you any harm because you don't feel it. By the time it is doing visible harm, your own judgment about it is itself impaired.

Other people then become a mirror. You see healthy people who say you shouldn't do that, and your urge is to destroy them. This is just human nature. When people are doing something they want to do, they want to get rid of the person who says you shouldn't do that.

We have the same problem with alcohol, really with anything else. In the process of growing up, you have to say, Just because it makes me feel good isn't necessarily the only reason or the only thing to judge by. Ask, Is it good for my mind? Is it good for my society, for my family, the people I live with?

We hear quite a bit about the fact that smoking pot interferes with motivation, what is called amotivational syndrome. Do you believe this is a valid strike against the use of marijuana?

Yes, I think there's no question that people who use marijuana regularly over a significant period of time are clearly in a state of not being interested in anything but feeling good. There are physiological explanations for that.

Marijuana contains a chemical which affects the pleasure center. You get the illusion of feeling good. Then this illusion becomes more important than really feeling good. At the same time the effect of the drug is wearing off as you become tolerant to it. So you use more of it. And as that goes on, you either have to use stronger drugs or get another high. But this time the high is going to be a chemical or other false illusion, because you have lost the capacity to feel good in natural ways.

At that stage, in the amotivational syndrome, people lose interest in everything else but the drug. And there are literally thousands of people who are only interested in getting high. They may have shifted from marijuana to heroin. A lot of them are shifting to alcohol, and this whole false question about marijuana or alcohol is going down the drain because we're seeing younger and younger alcoholics. First they begin combining the two, then they find out they can get drunker with alcohol than they can with marijuana.

Egypt had such a terrible problem with marijuana that Nasser—even though they are a very poor country—spent a lot of money for one of the best research studies that has ever been done on marijuana. It was done by an American-trained scientist, published in 10 volumes in Arabic. It shows in a very scientific way without question that marijuana affects people's ability to function. It also showed over a long period of time a very high percentage of people shifting from marijuana to heroin.

Egypt is one of the countries that is concerned about what's happening in this country. We're a part of the Geneva Convention which says that we're going to try to control marijuana. We're decontrolling it when other countries who have had the problem for centuries, like Egypt, are trying to control it. If we decontrol it, they are going to lose what little control they have. The last convention having to do with marijuana came out very strongly with a resolution urging the United States not to decontrol marijuana.



In 1972 the National Commission on Marijuana and Drug Abuse decided unanimously to recommend that all criminal penalties be eliminated for private use and possession of marijuana. Other voices spoke out in favor of decriminalization of marijuana, but against legalization. What is your opinion about this dichotomy?

In this state [California] they said we just want to decriminalize it; we're not talking about legalizing it. I testified against it, and I said that this is just a step toward legalization. They publicly said, No, all we are asking for is decriminalization. A month later the same man was saying, Now what we have to do is legalize it, it doesn't make any sense to decriminalize something and at the same time have it illegal to grow it. Well, that's obviously a crazy law. And now they're saying, Look at how inconsistent this law is. But they're not saying, Let's go back to the old law. They're saying, Let's make it legal to grow it. That was simply a ploy, and I think everybody knew it at the time.

I think marijuana should be illegal, but it would be very hard to do that now. I think we're going to be faced with some very difficult decisions about the whole drug problem very soon. We will wake up to the fact that we're in the middle of an epidemic, that drugs spread from one drug user to the next, and that the consequences are devastating to society, to the people, to our country.

The legal procedure, which we're going to have to think about, is something like public health procedures—isolate a person for his good and for the good of society. You say to somebody, You can't use marijuana or heroin or cocaine anymore. And then it's his choice. He stops. Or if he doesn't stop, you help him stop by certain sanctions, or education, or medical or therapeutic help.

In 1971 you stated that pot use was leveling off. How does it look to you now?

Did I say that in 1971? In Berkeley the number of people using it is leveling off because we've reached the saturation point. In the university, around 80 to 90 percent use marijuana. There's another 10 percent who will never use it, such as Mormons, Orthodox Jews, etc., who won't use pot, but they won't use any other drug either.

What's happening is that the people who are using it are using more and more of it. The number of people using it may be leveling off because you have reached the available population in a particular area, but the next step is that those same people use more. Statistics show that the country as a whole is using more marijuana all the time.

What effect does marijuana have on driving?

It affects judgment, the ability to keep more than one thing in your mind at the same time, to take into account all the factors at once which have to do with driving instead of just where you are going. Particularly bad is the fact that it is often combined with alcohol. When you combine the lack of judgment, on the one hand, with poor reflexes, it's more than twice as bad.

Dr. Jones, your colleague here, is quoted as saying that by far the most significant and shocking result of the current studies on marijuana use has been the discovery of its effect on genes and chromosomes. Could you explain this?

It has been demonstrated in humans and in animals that marijuana, in socially used doses, affects chromosomes. Chromosomes are what determine our inheritance. They are also the determiners of the function of every cell. The two most striking effects of marijuana on chromosomes affect the DNA and RNA metabolism. It affects the immune cells in such a way that immunity drops way down through the social use of marijuana. And that's true, presumably, of its effect on chromosomes.

The other effects are on the germ cells, that is, the parent cells of the next generation. We know they are damaged, but it is a very hard thing to demonstrate in humans, since we don't know yet what it's going to do to the next generation. It's a fifty-year study.

I may tell high school students that marijuana damages chromosomes. As a physician I think that is a very dangerous thing to be messing with. Then someone else comes along and says, "Well, Powelson says that it damages chromosomes. That may be true, but he hasn't proved that it damages the next generation." That statement is also true. But those two statements are not equal.

Does the user develop hostility against anyone who speaks to him against using it?

Yes, that is universal. When I first began talking about it at the university, people physically threatened me and shouted at me. The situation was sometimes riotous. If you take heroin away from heroin users, or cocaine away from cocaine users, or alcohol away from people who drink alcohol, they will use any means they can to get it back.

What would you say to high school kids if you had the opportunity?

I would say that there is no evidence whatsoever that marijuana in any way is good for you. There's very strong evidence, which you can see for yourselves if you look around, that it damages the brain, that it damages your ability to think, it damages your chromosomes, it damages your immunity system—all of this at a rate of something in the neighborhood of 20 times as rapidly as alcohol.

You owe it to yourselves, to your parents, to your society, to be healthy and intelligent, and to use all your strength in the best way you possibly can. ◇

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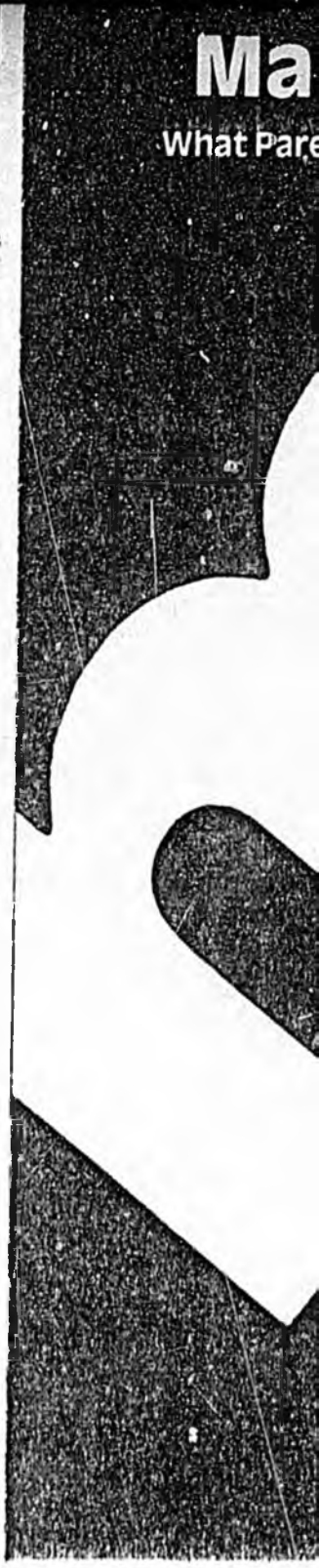
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WHY DO CHILDREN USE MARIJUANA?

What are some possible reasons that children might experiment or continue to use marijuana or other drugs?

- Boredom
- To boost self-esteem
- Peer pressure
- Experimentation or curiosity
- A need to reject parents' values
- To relax
- Pop culture promotes drug use
- Lack of positive role models
- To create a new image
- For immediate gratification
- Imitation of parents' drinking and/or smoking behavior
- For independence
- Availability of drugs
- To escape from daily stress
- To have fun

First experimenting with most drugs occurs during the final three years of high school. However, for marijuana, alcohol and cigarettes, most initial experiences take place before high school. Analysis of six-year trend data collected by the National Institute on Drug Abuse indicates that age of first use of marijuana has consistently decreased; such that, the majority of users are introduced to marijuana between the ages of 12 and 14.

WHAT IS MARIJUANA?

Marijuana is the common name for the hemp plant **cannabis sativa.** The plant may grow wild in most temperate climates or can be intentionally cultivated for legal or illegal purposes. There are more than 420 chemicals, including 61 cannabinoids, currently identified in the cannabis plant. The major mood altering chemical of these is delta-9-tetrahydrocannabilol (THC).

Marijuana varies in its strength of THC. In much of the marijuana available today there is a much higher THC potency than there was five years ago. Psychoactive effects of marijuana depend not only on the amount of THC but on the body size and weight of the user. That is, a younger, smaller person will experience more of an effect than a larger adult using the same quantity of the drug.

Marijuana is most commonly smoked; however, some users prefer to combine it with food. The psychoactive effect of marijuana when smoked occurs within minutes. When eaten, the mood-altering effect might not begin until up to an hour and a half after ingestion.

WHAT ARE THE OUTWARD SIGNS OF USE?

Outward signs of the recent use of marijuana may include:

- Redness of the eyes
- Increased appetite
- Talkativeness or withdrawal

Outward signs of chronic use may include:

- Gradual drop in the quality of school work
- Unusual or increased money requests
- Often over-reaction to criticism
- Personality changes
- Secretiveness
- Physical evidence such as cigarette papers, ashes, odor

One or more of the above signs is not enough for identification of use; most are typical of adolescent behavior. Immediate signs are not always obvious. Talking with your child on a regular basis will help you understand his/her behavior.

WHAT DOES MARIJUANA DO TO THE BODY?

The health consequences of marijuana use have been the subject of scientific and public debate for almost 20 years. Based on scientific evidence published to date, the Surgeon General of the U.S. Public Health Service concludes that marijuana has a broad range of psychological and biological effects, many of which are dangerous and harmful to health. Unfortunately, the available information does not tell us how serious this risk may be.

During March 1982, *Marijuana and Health*-1982, (the ninth in a series), was given to the U.S. Congress by the Secretary of Health and Human Services. The report reviews the health consequences of marijuana use:

- Acute intoxication with marijuana interferes with mental functioning; learning and thinking are impaired. It is a marked impediment to classroom performance.
- Marijuana produces serious acute effects on perception and skilled performance which impairs such everyday tasks as driving and other complex tasks involving judgment or fine motor skills.
- A combination of marijuana and alcohol is particularly dangerous, causing temporary changes in depth perception, concentration, time perception and reaction time.

Among the known or suspected **chronic** effects of marijuana use are:

- By-products of marijuana remain in body fat for several weeks with unknown consequences. The storage of these by-products increases the possibilities for chronic effects as well as residual effects on performance even after the acute reaction to the drug has worn off.
- Impaired immune response
- Decreased sperm count and sperm motility
- Interference with ovulation and prenatal development
- Possible adverse effects on heart function
- Impaired lung function similar to that found in cigarette smokers (indications are that more serious effects may ensue following extended use)
- Impaired short-term memory and slowed learning
- The "amotivational syndrome" has been attributed by some to prolonged use of marijuana by youth. The syndrome is characterized by a pattern of loss of energy, diminished school performance, harmed parental relationships, and other behavioral disruptions.

HINTS ON PREVENTING YOUR CHILD'S DRUG USE

There are some specific steps you can take to lessen the chance of your child using drugs. Prevention consists of:

- Setting a good example in your use of alcohol, tobacco, prescription and over-the-counter drugs;
- Demonstrating positive behavior of the many alternatives life has to offer at work, at play, in nature, through art, music, and other creative endeavors;
- Involving your children in setting family guidelines that encourage positive behavior, with fair and consistent discipline;
- Learning more about drugs so that you have accurate information to share with your children.

WHAT TO DO IF YOUR CHILD IS USING

If you suspect that one of your children may be using marijuana, discuss the issue with him/her in a calm, non-arguventative manner. Keeping communications open is of the utmost importance.

If your child is using, do not condemn the child, their peers, or deny the problem. Children need to hear clearly stated values and standards from the family. Remember, when a child is independent and self-supporting s/he can make their own decisions; however, up to age 18, your child's health is your responsibility.

Your child may not respond positively to your best efforts to prevent their marijuana use and association with drug using peers. If that is true, consider professional help or a peer-support group. You are not alone.

Being a good parent is a difficult task. But, there are community resources to assist you. Community agencies may offer: course in parenting skills and drug education; family and individual counseling; drug treatment; and referral to parent peer-support groups. Contact your local alcohol, drug or health agency. Or, contact the Alaska Council on Prevention of Alcohol and Drug Abuse, 7521 Old Seward Highway, Suite A, Anchorage, Alaska 99502.

Note: A portion of the material contained in this pamphlet was taken from *Marijuana and Health: Ninth Report to the U.S. Congress 1982.*

Related Readings

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ALASKA COUNCIL ON PREVENTION
OF ALCOHOL AND DRUG ABUSE, INC.

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MARIJUANA

MARIJUANA

Marijuana comes from the Indian hemp plant, usually cannabis sativa. The plant can grow wild or it can be intentionally cultivated for legal or illegal purposes. Marijuana is usually seen on the street as a mixture of chopped leaves, stems, flowers and seeds. It can come in a number of different colors including brown, green, gray and red. Hashish, or hash, is a resinous extract of the topmost leaves and flowering parts of the marijuana plant.



Marijuana and Hashish

HOW USED:

Individuals who use marijuana to get high usually smoke it. Marijuana can be smoked as a cigarette (joint, reefer) or in a pipe. Some marijuana smokers also use such marijuana paraphernalia as "bongs," "smoking stones" and a wide selection of pipes specifically intended for use with marijuana.

COMMON NAMES:

There are many slang names for marijuana. Ten of the most common are: Dope, grass, herb, joint, pot, reefer, roach, smoke, stuff, and weed.

HISTORY:

Marijuana has been used as both a medical and a non-medical drug for more than three thousand years. In the United States marijuana has been used off and on as a medicine since the 1850s. Recreational use of marijuana was not widespread in this country until the early part of the twentieth century.

PHYSICAL EFFECTS:

Marijuana was not generally considered to cause physical addiction. A study carried out at UCLA, however, challenged that assumption. The study involved healthy male smokers in their early to mid-twenties. After the subjects smoked large doses of marijuana for several weeks it took more marijuana to get them to report being as high as they had been previously with less marijuana. When the subjects stopped using marijuana many of them felt nauseous and irritable and they didn't sleep well. Administering marijuana would remove these feelings. The subjects smoked an average of five and one-half two gram 2% THC joints per day for more than six weeks during the study.

There seems to be agreement on the following physical effects of marijuana: Marijuana (1) dries the eyes and the mouth, (2) increases the appetite, (3) causes a reddening of the eyes, (4) impairs one's driving ability, (5) impairs one's short-term memory while one is under the influence of the drug, (6) impacts the way stress does on the heart and circulation system, (7) raises the heart rate, (8) frequently raises the user's blood pressure, (9) produces inflammation and neoplastic changes in the airways of heavy smokers, (10) may well lead to cancer of the respiratory tract among prolonged, heavy marijuana smokers, (11) causes modest reversible suppresive effects on sperm production in men, (12) can cause tremors and startle response withdrawal symptoms in the newborn children of women who smoke five or more marijuana cigarettes per week while they are pregnant, (13) may effect chromosome segregation during cell division (although these results are a concern, their clinical significance is unknown), (14) is a fat soluble molecule, parts of which can be stored in the body for up to thirty days or more, and (15) when smoked reduces the lungs' ability to absorb oxygen.

In addition, an association has been identified between maternal use of marijuana during pregnancy and diminished birth weight in the child and the development of characteristics associated with the fetal alcohol syndrome.



Marijuana Paraphernalia

PSYCHOLOGICAL EFFECTS:

Marijuana, when taken in mild to moderate doses, tends to cause an altering of perception that includes sight, sound, touch, sense of time and taste. It can produce feelings of euphoria and intimacy. It has been reported to develop new insights in some individuals who experience its effects.

Some individuals who use marijuana become psychologically dependent on the effects of the drug. This means that the effects of marijuana have become so psychologically essential to the individual that he/she may experience emotional discomfort in the absence of the drug.

Some believe that heavy long term use of marijuana results in a loss of motivation in the user. Others disagree.

MEDICAL USES:

Marijuana had many medical uses in the U.S. in the nineteenth century. By 1937, when the first federal laws were passed to control the use and possession of marijuana, it had more or less been dropped from medical use. In the past several years more than twenty states (including North Carolina) have legalized the experimental use of marijuana to treat glaucoma and the nausea that frequently accompanies cancer chemotherapy. Efforts are now underway to develop satisfactory synthetic THC-type drugs that might be administered in place of natural marijuana.

crises situations concerning marijuana, when they occur, tend to take the form of an anxiety reaction to the marijuana high. A calming and reassuring approach has proven effective in dissipating the anxiety.

TREATMENT OF LONG TERM INVOLVEMENT:
Individuals who have developed a psychological dependence upon marijuana may need to have individual counseling, or some kind of group therapy, to develop skills to live their lives happily without dependence upon this or any other drug.

LETHAL DOSAGE:
There is no record of a human death attributable to an overdose of marijuana. The literature does contain a report concerning a dog that died of an overdose after being given approximately 40,000 times the normal dose of marijuana.

RESOURCES:
Individuals wishing to get treatment should contact their single state agency for drug abuse services or the National Institute on Drug Abuse, 5600 Fishers Lane, Rockville, Maryland 20857. (In Charlotte, N.C., treatment services are available from Open House Counseling Service, Inc., 145 Remount Road.)

LEGAL CONTROL:
The Federal government classifies marijuana as a drug with a high potential for abuse and no approved medical use. Individual states, however, have their own laws controlling the use and possession of marijuana within their own jurisdictions. (Unauthorized possession of any amount of marijuana is illegal in North Carolina. The penalty for the first conviction of illegally possessing one ounce or less of marijuana in North Carolina is a fine of not more than $100. The penalty for illegally selling marijuana in North Carolina includes a prison sentence of no more than five years and/or a fine of no more than $5,000.)

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NOTE:
There are many differences of opinion about marijuana (i.e., marijuana use is really very dangerous; marijuana use should be decriminalized; marijuana should be legally available as a medicine, etc.). Because of these differences of opinion, marijuana issues are often emotionally charged. As a result, scientific studies can be used in efforts to influence public attitudes and social policy without, at times, apparent concern for the quality of a particular study or the applicability of its findings.

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MARIJUANA: THE MYTH OF HARMLESSNESS GOES UP IN SMOKE

by Peggy Mann

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MARIJUANA: THE MYTH OF HARMLESSNESS GOES UP IN SMOKE

New medical research puts a match to the myth that smoking marijuana is not harmful. The real dope is that the daily habit is damaging to the body as well as the mind.

by Peggy Mann

Is marijuana just the "innocent high" some have made it out to be? New medical research into the effects of this widespread drug points to heretofore unknown risks, as this exclusive two-part Post *series will show.*

"It's unreal," the school guidance counselor told me. "The kid looks you straight in the eye and says—full of conviction—'Well, pot doesn't hurt *me*!' His grades have slid from As and Bs to Cs and Ds. He's been put off the basketball team because of poor performance. He's irritable, hostile, always tired, feels depressed. He cares less about everything. He has a cough, chest pains. He's really going down the tubes. But blowing grass every day, he insists, has no relation to any of this.

"To my mind, the scariest thing about marijuana is that the user can't see what the drug is doing to him. Or, if he does admit to a symptom, he shrugs it off. Yesterday a seventh grader told me, 'I know pot's done bad things to my memory. But I don't really need my memory because I decided I'm not going to college.' "

The guidance counselor is Rick Gibson from Goddard, a small town in Kansas. I met him at lunch in another small Kansas town, Wellington. We were both attending a two-day "Grass Roots Conference on Grass." Wellington's population is 8,500. The school auditorium has 1,000 seats. And both days there was standing room only. Physicians, teachers, school administrators, guidance counselors, psychologists and parents came from all over Kansas and from nearby states to attend.

The Wellington conference was part of a burgeoning new movement throughout America. Schools and parents' groups are waking up to the fact that: (1) marijuana abuse has reached pandemic proportions among our youth; (2) something must be done about it; and (3) they are the ones who must do it. They realize that a vital first step is to educate themselves about the rising tide of medical evidence showing that pot can have serious psychological and physical effects. It can cause cellular damage and impair lung function, the reproductive system and the brain. Furthermore, the younger the user, the more deleterious the effects.

The roster of speakers at Wellington was an impressive one. The first speaker after lunch was Dr. Harold Voth, senior psychiatrist and psychoanalyst at the famed Menninger Foundation in Topeka, Kansas. He has studied the psychopathology of marijuana in depth for the past eight years. Coincidentally, his first point carried on from the one the guidance counselor had just made to me.

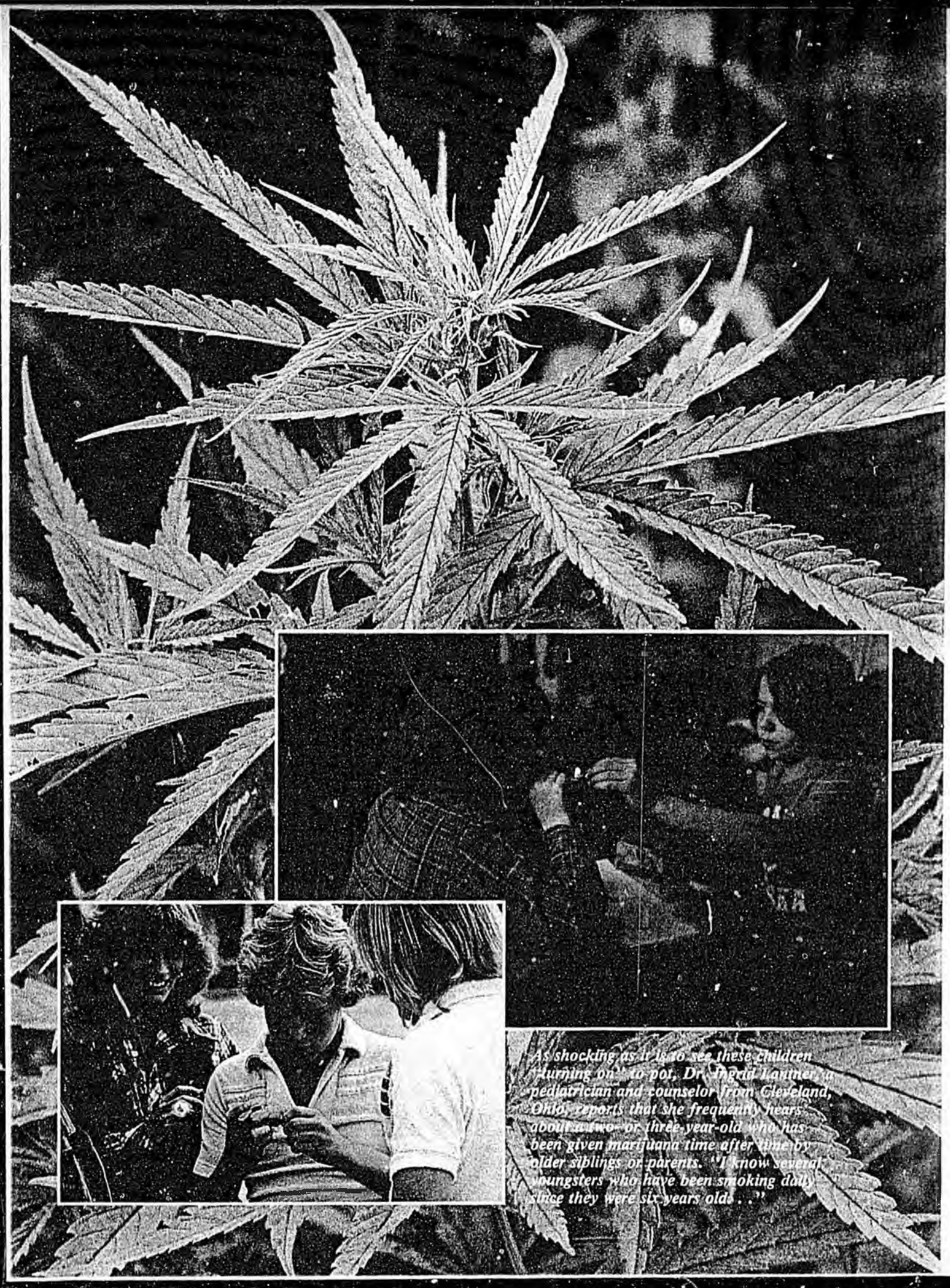
"Marijuana produces a wide spectrum of symptoms," said Dr. Voth. "Some affect some people; some affect others. And there are those who seem to 'get away with it' reasonably well, for a while. But there is one truly pernicious symptom—specifically related to marijuana—which seems to be evident in *every* chronic pot user, youngster or adult. This is the extraordinary refusal to accept the hard scientific evidence about the harmful effects of marijuana. The user will scoff at the evidence, twist it, pervert it, call it 'reefer madness'—anything except look it straight in the face.

"This may be one reason much of the media have, until recently, done shockingly little to relay the medical findings about the harmful effects of marijuana to the American public.

"In my opinion, marijuana use in the United States today constitutes a national crisis, and all-out efforts from all segments of our society are essential in view of the enormous harm being done to millions of Americans, particularly our youth."

Statistics on youth drug abuse clearly show why Dr. Voth's prescription for "all-out efforts" must be heeded on a national scale. For example:

- According to a report published by the House of Representatives Select Committee on Narcotics Abuse and Control, "The United States is the most pervasive drug-abusing nation in history and marijuana is our most pervasive illegal drug of abuse." Says Congressman Lester Wolff (D-NY), chairman of that committee: "Our young people are the first in all history to have used marijuana on a mass scale. Neither this nation—nor any other nation—has ever before faced a problem that is so insidious and so dangerous."
- Last year, according to the federal government's drug abuse network, marijuana accounted for the second largest number of admissions to our federally funded drug treatment facilities, and 33 percent of these had started their pot use before age 14.
- According to a recent national



As shocking as it is to see these children "turning on" to pot, Dr. Ingrid Lantner, a pediatrician and counselor from Cleveland, Ohio, reports that she frequently hears about a two- or three-year-old who has been given marijuana time after time by older siblings or parents. "I know several youngsters who have been smoking daily since they were six years olds . ."

drug abuse survey covering ages 12 and up (1976-1977), use of marijuana is twice as high for youngsters as for adults, and use by youngsters ages 12 to 17 increased by nearly a third in one year. (A new national survey has just been carried out by the National Institute on Drug Abuse and, according to Dr. Robert Peterson, assistant director of research, "We would be very surprised if this did not show an increase in use, especially among young users.")

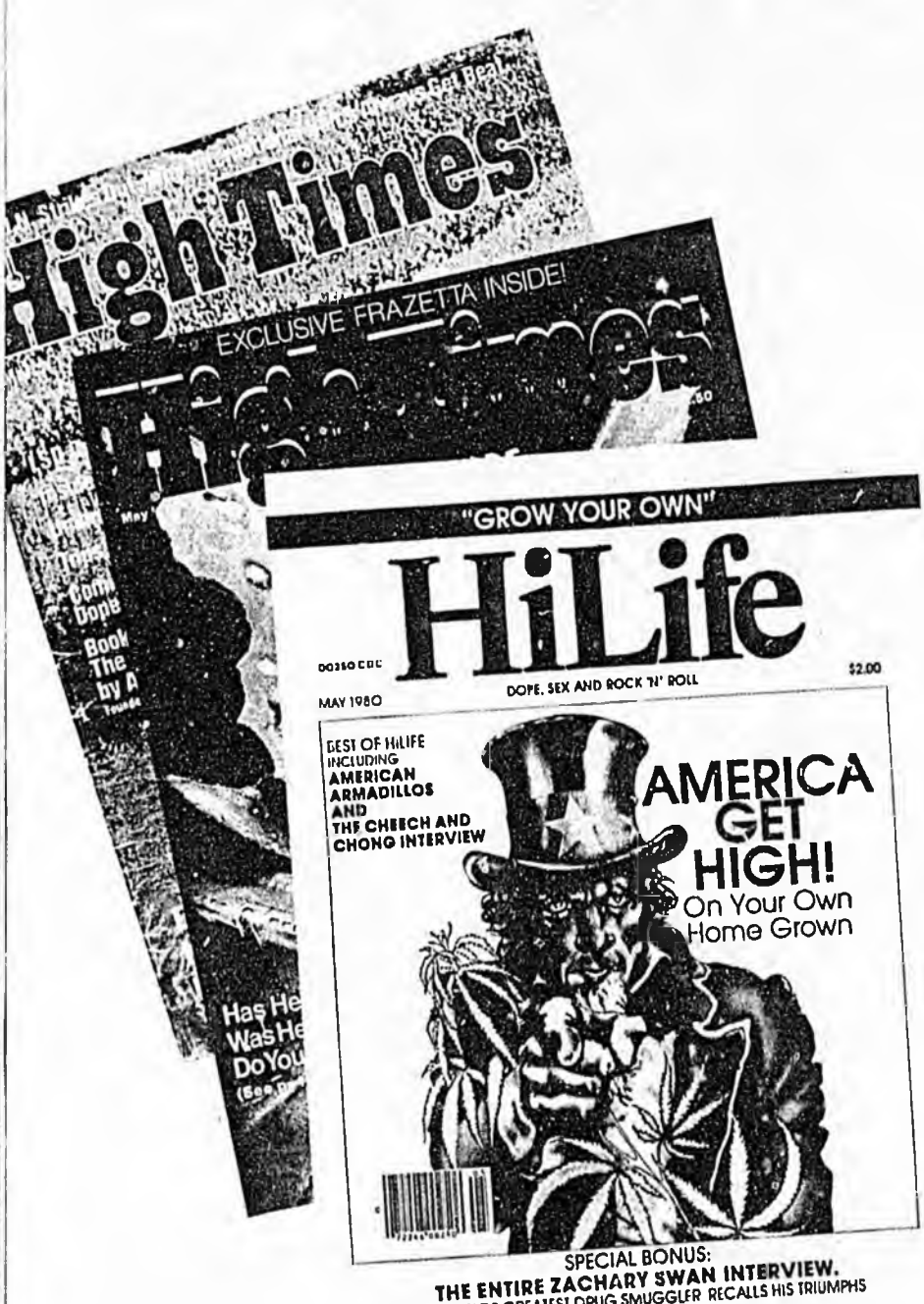
● According to the High School Senior Survey, the only national drug abuse survey taken every year since 1975 (representing every state except Alaska and Hawaii):

• In 1979, one out of ten high school seniors smoked pot daily, or almost daily—an 80 percent increase since 1975. Of these, daily users averaged 3½ joints (marijuana cigarettes) a day; 13 percent smoked more than seven joints daily.

• Of the 50 percent of seniors who smoked pot at all during 1979, 37 percent said they "usually stay high three-to-six hours." (Add to this the fact that marijuana is up to ten times more potent than that smoked a decade ago.)

• Forty-nine percent of all seniors who used pot "during the past 12 months" also used one or more additional illegal drugs during that period.

Popular drug-culture magazines teach how to grow your own, how to smuggle dope into the U.S., how to dress for pot parties, how to get around the law. Their advertisers reach a market of young people with money to spend, and the drug paraphernalia in their pages is available by mail—portable head shops, accessible to young residents of even the smallest, most remote communities. (Paraphernalia shops have been outlawed in Indiana.)



It is worth noting that this study surveys only those students who have made it to the end of their senior year. Drug use among dropouts is notably higher than among those who finish high school. (In some areas, for example, grocery store delivery boys no longer take coffee breaks, but "pot breaks.") Also not included are those who were not in school the day the survey was taken. Truancy is another "symptom" of regular pot use.

All recent state, city, suburban and rural surveys show that pot use has increased rapidly among youngsters of all income levels and all grade levels, with the highest increase at junior high school age. Throughout the country, surveys show that junior and senior high school kids are getting stoned on the way to school, during school, after school and at home—where they often "smoke out the window" or burn incense to cover the smell. One local newspaper series on the subject started: "For many middle school students, marijuana has replaced Wheaties as the morning 'meal.'"

In some areas, pot use starts as early as the fourth and fifth grade. If the saying is true, "as Maine goes, so goes the nation," it is worth noting that a 1979 two-county survey in rural Maine showed that in the fourth grade, 6 percent had tried marijuana at least once and one percent had used it "many times." ("And," says Mel Tremper of Maine's Office of Alcohol and Drug Abuse Prevention, "as drug use goes, we in Maine are kind of behind the times.")

California is a state "ahead of



"The target for drug paraphernalia in the 1980s is ages 6 to 16," the operator of one of Florida's largest head shop chains recently admitted, claiming it was "an industry decision." Organized campaigns of this sort, added to tremendous peer pressure, are misleading young people into believing that pot smoking is a normal part of growing up.

the times" in this area. Dr. Richard Blum, one of the country's foremost authorities on drug abuse, studied 3,200 school children in California and found that some started pot use in third grade. Said Dr. Blum: "The phenomena that appear in California generally appear in the rest of the country several years later." Dr. Blum's survey was conducted in 1976.

For the past two years, pediatrician Dr. Ingrid Lantner has been speaking on the subject of marijuana at schools in the suburbs of Cleveland, Ohio. She speaks two or three times a week, often to fifth and sixth graders. She always asks them: "How old is the youngest child you know who has smoked marijuana?"

Dr. Lantner told me: "I have never asked this question without hearing about a two- or three-year-old who has been given marijuana by older siblings or parents—and not only once. I know several youngsters who have been smoking daily since they were six years old. In all these cases, the parents are users. I have never known of a grown-up who would give a child that age a tobacco cigarette or any other drug."

Dr. Lantner also asks for written questions from her young audiences. Every time she speaks she receives one or two questions which indicate that parents give pot to their young children. Two typical questions:

"I am ten. My parents let me smoke pot since I was six. Will my eggs be damaged?"

"My brother smoked M.J. since age seven but not every day. Will he have his growth affected? He is now 11. He gets the M.J. from my mother."

Another question Dr. Lantner often receives from fifth and sixth graders is: "What shall I do if someone physically forces me to





Rhesus monkeys exposed to the human equivalency dose of one to two joints per day for three years exhibited a loss of drive, motivation and interest in the care of their offspring. A picture of a control, or non-drugged, rhesus shows a rhesus mother nicely nursing her baby. But the THC-treated mother (right) has been exposed to the human equivalency dose of one to three joints a day. Typically, these mothers didn't nurse their babies, groom them, retrieve them or cuddle them as the control mothers did. Dr. Ethel Sassenrath at the Primate Research Center of the University of California, who conducted the experiments, also noted that the THC-exposed babies showed deficits in attention and over-concentration on different stimuli in the environment—the types of deficits of behavior which indicate that the central nervous system had been affected in early development.

smoke pot?"

"School principals tell me," says Dr. Lantner, "that after a ball game, a group of potheads—older students—often come around to sell drugs, and they're very aggressive with the little ones, insisting they buy and smoke on the spot. This happens in a nice, upper-middle-class area in the suburbs of Cleveland."

Nor are the suburbs of Cleveland Ohio, the only area in the country where parents are giving pot to very young children. Take Missouri, for example. Ed Moses, drug information officer of the state of Missouri, works full time lecturing and teaching about drug abuse. "Every year drug abuse is affecting younger age groups," he told me. "They commonly start feeling the pressure to turn on as early as the fifth and sixth grades. Also, every year the marijuana is getting stronger and more easily available in larger quantities.

"I think the most disturbing thing I've found is many parents' attitude that marijuana is so harmless that it's okay to reward their three- and four-year-old child with getting high.

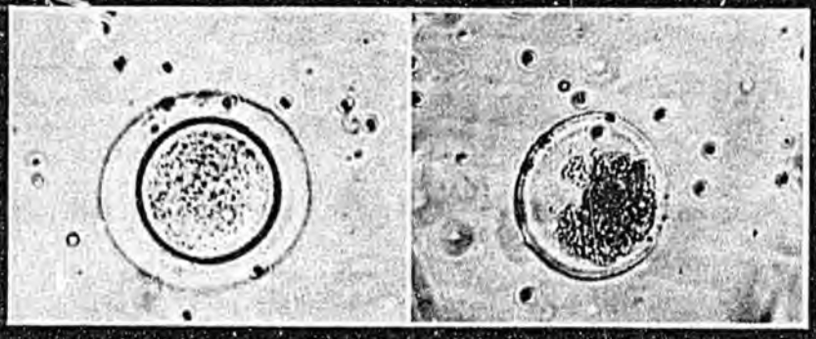
"For example, at parties, the parent will let the three- to five-year-old child carry the joint around to the toking [pot-smoking] guests. And, as a reward, the child is allowed 'to take a hit' and get stoned. This is becoming more and more common among young parents who are heavy users.

"The youngest I have seen in a home was with a couple in their early 20s who got their nine-month-old baby high by 'shotgunning' the child [turning the cigarette backwards with the lit part in the mouth so that a concentrated rush of smoke can be blown into someone else's mouth or face]. The father told me, 'We like to get Annie high so she won't be afraid to walk.' I pointed out that she was so stoned she couldn't even crawl. The father said, 'Well, that's cool. At least she's not afraid to try.' 'She boogies around when she gets high,' the mother said, laughing. This meant that the baby bounced around a little while. Then she sat—spaced out."

A kindergarten teacher in a South Texas town told me, "My

THC-Injected Mice. Produce Abnormal Eggs

Current research indicates that THC (the active agent in marijuana) may induce genetic mutation. One recent experiment involved mouse ova (female reproduction cells, commonly called "eggs"). Two groups of 26-day-old female mice were used in the experiment. The control group was allowed to proceed with a normal routine while the test group was injected with daily doses of THC. The animals were then allowed to mate with non-treated young adult mice. Forty-eight hours after mating, the animals were sacrificed and the fertilized eggs were recovered from the oviducts. Abnormal cells occurred in 37.5 percent of ova recovered from the THC-treated mice, compared with 10 percent in those obtained from the controls.



A normal ovum (left) shows the chromatin (that part of the cell nucleus that is composed of DNA and is the carrier of the genes) to be finely granular and evenly dispersed throughout and responsive to fertilization and normal cell division.

In stark contrast is the abnormal ovum (above), taken from the THC-treated mice, where the chromatin has clumped together. The fact that it has coagulated is an indication that it is damaged and probably is a nonviable chronosomal substance, in which case there would be no pregnancy at all.



A normal fertilized ovum demonstrates predictable cell division.

Irregular shapes and sizes of fertilized cells appear in the mice ova in the THC-treated group 48 hours after mating.

It was the conclusion of this research that THC does act as a mitotic (dividing cell) poison and therefore is considered a chromosomal mutagen. It is also important to note that unlike male sperm, which is replenished during the entire life of the male, the number of female eggs is determined at birth and, once they are damaged or destroyed, they can never be replaced—the damage is permanent.

children don't smoke pot. But the first grade teachers tell me that some of *their* children come in stoned—always the ones with older brothers and sisters."

Maryland is so "typical" that it is often referred to as "America in miniature." Certainly the 1978 Maryland statewide survey reflects what is being found in local surveys throughout the country: "Students began using one or more illegal drugs at about one year earlier than the same grade level use in the last Maryland survey (1975)." And the "one" drug is invariably marijuana. Most local surveys show that, each year, initial marijuana use drops one year lower.

Older siblings are the chief source of supply for very young users. Because the myth of marijuana's "harmlessness" has so permeated our society, youngsters often feel they are doing their smaller brothers and sisters a favor by getting them high. There is also another motive. If the younger child gets involved, he or she won't "narc" (tell Mom and Dad).

It is quite possible for Mom and Dad to be unaware of the fact that their children are stoned. With marijuana use it's easy to "hide the high" or to "come down" by dinner time. The clearest tell-tale symptom—red eyes—is handled by kids via eye drops. (The eye drop industry reports a boom in sales.) Youngsters who use a local swimming pool have an easy excuse—"chlorine in the water"—even though the closest they may have been to the water was hanging out in the locker room blowing grass.

There are, of course, discernable symptoms of the youngster who is a heavy pot user. Unfortunately, most of them are so much like the "blow up" symptoms of normal adolescence that many parents tend to disregard such as merely something their child will "grow out of." But this is not likely to happen unless the child gets some firm, supportive help from parents and from the school.

Parents should realize that even the "straight" kids (non-drug users)—who represent about 50 percent of most surveys of junior high and high school classes—are under constant peer pressure to "Try it: It's great." And this pressure to start pot use comes not only from peers. All kids are affected by aspects of adult industries which make drug use in general—and pot use in particular—seem like a normal part of growing up in America today.

For example, a recent survey in Atlanta, Georgia, showed that while one third of non-drug-using kids listen to rock music on the radio three hours or more a day, virtually *all* drug-using youngsters listen three or more hours a day. Some reported: "I listen all the time when I'm home." In addition, they have favorite records and cassettes that they put on when they're high and "float with them."

The same Atlanta researcher, Dr. Fred Crawford, studied the contents of rock lyrics to determine what messages they contained suggesting or supporting drug use. He found that more than half of the current rock songs had messages condoning or suggesting the use of drugs, and that many students start listening to rock music at about the time of first use.

And what do they hear when they listen? There are countless songs with "do drug" messages such as this from Eric Clapton:

Cocaine, cocaine
She's all right.

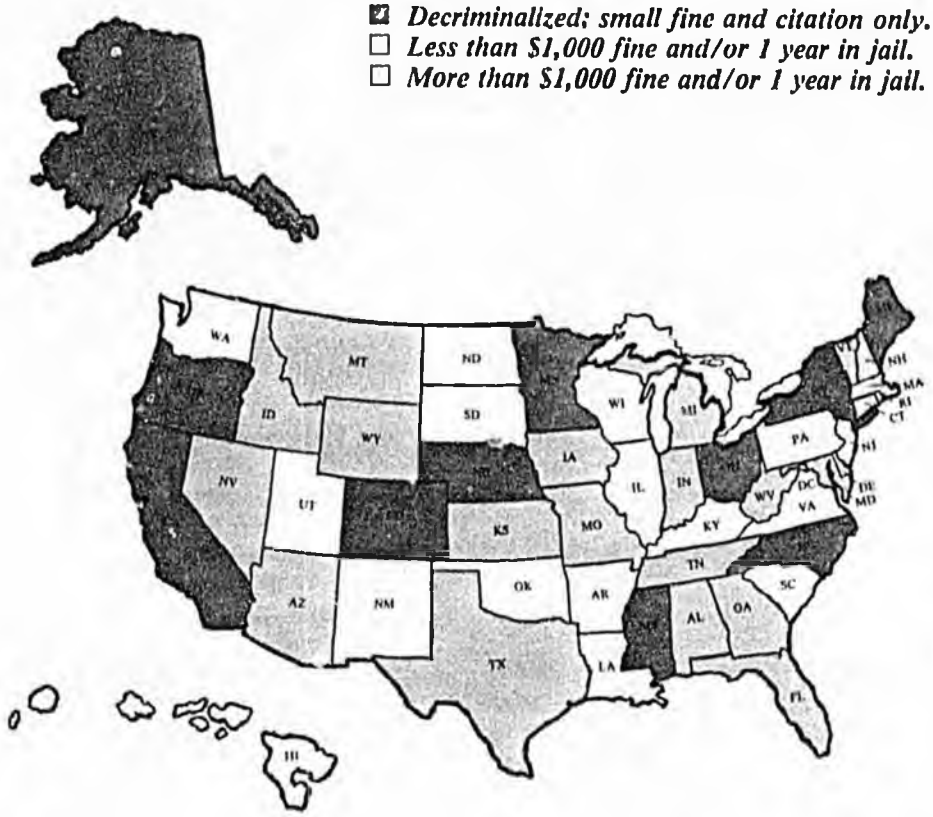
And this from Dr. Hook's Medicine Show, the *Sloppy Seconds* album ("killer weed" is marijuana):

Some men need some killer weed
And some men need cocaine
And some men need some cactus juice
To purify their brains.
Blow your whistle,
Bang your gong,
Roll up something to take along
Feels so good it must be wrong
Freebin' at the freakers' ball.

Another example of the "mes-

First-time marijuana-possession penalities for 1 ounce or less:

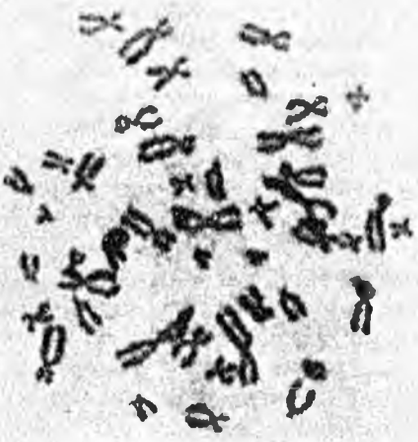
- ☑ *Decriminalized: small fine and citation only.*
- ☐ *Less than $1,000 fine and/or 1 year in jail.*
- ☐ *More than $1,000 fine and/or 1 year in jail.*



In most areas, laws for possession of an ounce or less of marijuana (30 to 60 joints) for personal use are not enforced. Some say this is reason to relax the laws (decriminalization) or to eliminate them (legalization). However, in states which have decriminalized pot, law enforcement officials point out that marijuana use among youths has escalated greatly, and traffic accidents and drug-related crimes have increased dramatically.

sages" youngsters receive from the adult community comes from the drug paraphernalia industry—now a $3 billion business. A highly profitable line is the "kiddie" drug paraphernalia, which includes such items as baby bottles and "Catch-a-Buzz" flying discs which double as pot-smoking devices, skateboards and kiddie belt buckles for "hiding your stash" (your supply of pot), comic books which show how to cut and snort cocaine and *McGrassey's Reader*, an easy-to-read, 20-page primer which includes clear directions on how to roll a joint, a pot vocabulary, advice on what to wear to your first pot party, plus a packet of alfalfa "practice grass." For more advanced readers there is *The Whole Drug Manufacturers' Catalog*, one-third of which is devoted to "Kitchen Chemistry and Bathtub Dope: How to Produce Drugs from Non-Prescription Items and Household Chemicals in Your Kitchen Without Prior Chemical Knowledge."

In most states such items are legal and can be found in various varieties of stores, including posh gift shops, boutiques, record stores, flower shops and stores which specialize in magic, Oriental gifts, leather goods, smoking goods, etc., as well as in the "head shops." And some head shops advertise openly in school newspapers as "novelty shops." The kids know what they are, but (presumably) the teachers don't. One of the biggest head shop chain operators in Florida recently told Florida state legislator Mary Ellen Hawkins: "The target for drug paraphenalia in the 1980s is ages 6 to 16." He said this was an industry decision.



A. Non-marijuana smokers have more white cells with 46 chromosomes.



B. Marijuana smokers have an increased percentage of cells with fewer chromosomes.

While a normal cell has the typical complement of 46 chromosomes within its nucleus (left), recent experiments indicate that heavy-marijuana smokers have marked increases in the number of cells with micronuclei (nuclei with less than 46 chromosomes, as pictured right). The experiments were performed to determine the effects of marijuana on human lymphocytes (white blood cells, which are a major part of our bodies' defense systems). Five volunteers with histories of chronic marijuana smoking were used. They ranged in age from 22 to 32 and had histories of smoking at least ten marijuana cigarettes per week for six years or more. Seven healthy students who had no history of smoking marijuana served as the control group. After repeated periods of smoking followed by deprivation, blood samples were obtained from all subjects in the test group. Similar samples were obtained from control subjects on the same day. The cells from the non-marijuana smokers showed a 15 percent incidence of micronuclei, while the cells from the marijuana smokers showed a 36 percent incidence of micronuclei. Dr. Akira Miroshima of Columbia University noted that the marijuana smoker might run a greater risk of disease, since THC lowers our resistance to infection.

What does all this mean in terms of our youngsters' health? And what can parents look for as possible signs or symptoms of chronic pot use among youngsters?

The psychological symptoms are often the first to manifest themselves. These include decreasing school performance; increased irritability ("stop *hassling* me" flared out for no justifiable reason); a general apathy; depression; drastic, inexplicable mood changes; feelings of isolation; a cutting off of communication between parent and child and a general loss of interest in everything except pot smoking and the accompanying "kiddie drug culture."

There are two very common physical symptoms: a chronic cough—a bothersome, constant hacking—and chest pains. Says Dr. Ingrid Lantner, "I have yet to see a teen-age tobacco smoker complain of chest pains, but it's quite common among pot smokers. School nurses tell me this, too."

However, it is the nonvisible physical symptoms which may be the most damaging. And this is the information which is finally crossing the chasm between the scientific community on one shore, which has been putting forth these findings at ever-increasing rates, and the general public on the other shore. For years this chasm has not remained empty. It has been industriously filled with misinformation, distortion and perversion of the facts and, at times, even outright lies emanating from pro-pot organizations and individuals whose purpose seems to be to discredit the findings which prove that pot is harmful and to make it seem an essential and harmless ingredient of the "now" way of life.

Because of this constant surge of misinformation, which is still heard loud and clear throughout the land, pot smokers often have pat answers when confronted with the warning signals now coming loudly and clearly from the scientific community.

One common "turnoff" of these findings is the shoulder-shrug comment, "For every study showing that pot is harmful, there's another showing it's harmless."

This is simply not true.

One of the world's most knowl-

edgeable experts in the field of marijuana is Dr. Carlton Turner, director of the Federal Marijuana Project funded by the National Institute on Drug Abuse (NIDA). Dr. Turner and his associate, Dr. Coy Waller, have just completed a hefty two-volume work: *Marijuana: An Annotated Bibliography*. The first volume has already been published by Macmillan; the second will be published this summer. In preparing these works, Dr. Turner abstracted more than 5,000 scientific publications on cannabis (the plant from which marijuana, hashish and hash oil are prepared). He says: "As a scientist, I have to be objective. I am not a crusader for or against any drug. I am for evaluating any drug on its merit, which I base on all scientific publications about that drug. There is not a single paper on the crude drug marijuana which gives it a clean bill of health, not a single paper to support it as an innocuous drug.

"A widely quoted study of 30 Jamaican cane workers was never published by a scientific journal. It could not stand the scientific review process.

"There *are* some reports on *individual* cannabinoids indicating possible therapeutic use." (Cannabis contains 61 known cannabinoids—substances unique in nature, found only in the cannabis plant.) "However, it must be remembered that any drug has some side effects, and with the broad biological action of the cannabinoids at the cellular level, the side effects may outweigh the benefits in long-term use. This is the reason that marijuana has no place in modern medicine. Using marijuana would be like giving people molded bread to eat to get penicillin.

"Media, with some exceptions, have not taken the time to understand the nature of the crude drug marijuana. If you attend a conference and there are 15 scientific papers cautioning against the use of marijuana, and *one* saying that a single extracted cannabinoid might be useful in a therapeutic area, the media headline this by saying that *marijuana* has been found to be useful. The findings are reported in such a way that the public is led to believe joints of street pot are being smoked by people with glaucoma or by cancer patients to control nausea after chemotherapy treatments, when the research is actually being done with a synthesized THC capsule. And by the time this 'news' sifts down to the school yard, you have kids saying that pot cures cancer, pot cures nearsightedness and pot cleans out your lungs after you smoke tobacco cigarettes." (The latter comes from early findings which indicated that marijuana might be helpful in cases of asthma. Further research clearly showed just the opposite is true.)

"Incidentally, why the media have generally been so 'up' about publicizing the possible medical benefits of marijuana and so 'down' on relaying the consistently emerging evidence concerning the harmful effects of marijuana is a matter to be comtemplated."

Another common argument of pot-smoking youngsters is this: "You have your martini, so why can't I have my pot?"

Dr. Nicholas Pace has a solid answer for this question, and he is well qualified to give it. Dr. Pace is the co-founder and past president of the New York City Affiliate of the National Council on Alcoholism. He is also one of the founding directors of the American Council on Marijuana and Other Psychoactive Drugs.

Dr. Pace points out: "There are two important differences between alcohol and marijuana. First, alcohol has a single chemical, and it is water soluble. One ounce is metabolized and is completely excreted from the body within 12 hours.

"What about pot? Youngsters like to consider it a 'natural weed.' Some even believe it to have health-giving properties. In reality, however, cannabis is an extremely complex crude drug containing 421 known chemicals. When you smoke a joint you are combusting these chemicals into hundreds of other different compounds. And we don't know how they are affecting the body.

"We do know, however, that among the 420 basic chemicals are



The only long-term (20-year) study of the effects of THC on the male reproductive cell (sperm) was conducted in the small laboring village of Piraeus, Greece, by Dr. Marietta Issidorides and Dr. Costas Stefanis of the University of Athens, Greece. Spermatozoa from nonsmokers and from chronic hashish smokers (hashish has a high concentration of THC) were photomicrographed. Normal spermatozoa from a non-hashish-smoking male show a proper density, indicating that it is rich in protein and other essential chemical substances. In the center and right panels, sperm taken from a hashish-smoking male shows a definite breakdown of protein substances and a clumping together of chromosomal material. The research team also noted changes in the ultrastructure of the spermatozoa of chronic hashish-smoking males which could result in genetic disturbances or prevent fertilization.

61 known cannabinoids (new ones are being discovered all the time), and so far scientists have studied only a few of them. We know that at least four of the cannabinoids are psychoactive, or mind-altering. But a few of the nonpsychoactive cannabinoids which have been studied thus far appear to be even more harmful to certain organ systems than the psychoactive ones.

"Therefore," says Dr. Pace, "the first important point to be kept in mind is that even the so-called 'NIDA marijuana' used by scientists is, in fact, a Pandora's box of unknowns."

"NIDA marijuana" is grown on a well-guarded five-acre "pot farm" on the outskirts of the University of Mississippi. This project, funded by the National Institute on Drug Abuse and directed by Dr. Carlton Turner, supplies to researchers marijuana which has a relatively stable Delta-9-THC content of about 2 percent. (This is the chief psychoactive cannabinoid in marijuana.)

Dr. Pace points out that so-called "good street pot" has a four, five or even six percent THC content. Therefore, sobering as the research findings are, they gain an even greater impact when we realize that they represent work with THC half as potent as that which many of our youngsters are smoking regularly today.

"The second important point regarding marijuana," says Dr. Pace, "is the fact that it is fat soluble, like DDT. And we have, of course, banned the use of DDT because it accumulates in body cells and organs.

"The cannabinoids are not only fat soluble. They are, in fact, lipophilic—fat loving. The fatty sections of cells and membranes and the fatty organs of the body act like magnets attracting the cannabinoids. The cell membrane—the coating surrounding the cell—is at least 60 percent fat. When the fat-soluble cannabinoids dissolve in the cell membrane, they make it difficult for the most important constituents of the cell, the proteins, to enter. And cannabinoid clogging of the cell has additional deleterious effects.

"What about the fatty *organs*? It should be remembered that the chief fatty organs of the body are the gonads (sex glands) and the brain. Indeed, the three-pound human brain is composed chiefly of fat. As one prominent researcher once noted: 'We're all fatheads, from that point of view.' "

Dr. Pace and every other marijuana researcher I have interviewed agree that the fat solubility of marijuana is the most important—and ominous—single factor about this drug.

Why? Dr. Pace puts it this way: "The most studied cannabinoid, the popular 'Delta-9,' has been traced radioactively in the body in human and animal studies. All the studies show that it takes three days to a week for the body to rid itself of *half* the THC in a single joint and much longer (some studies show up to 30 days) to get rid of all of it. This means that even if a youngster smokes only one joint a weekend, about half the THC and other cannabinoids *remain* in the body. Half the cannabinoids in next Saturday night's joint are added to the first. And so on, for a smoke-filled series of Saturday nights."

Dr. Robert C. Gilkeson, who has spent 15 years in neurophysiologic research, puts it this way: "No drug or chemical improves the normal cell. Marijuana is a known intoxicant. Toxic means poison. Anyone who smokes or ingests more than the equivalent of one marijuana cigarette every 30 days will accumulate an acute neurotoxic substance in his or her body."

What are the results of "cannabinoid accumulation?"

A single article can only touch the iceberg's tip. This becomes clear when picking up a 777-page volume, *Marijuana: Biological Effects*, published by Pergamon Press. This contains 50 scientific papers given at the two-day Reims Conference held in France in July 1978. The conference was limited to marijuana's effects on four areas: the lungs, the reproductive system, the brain and the cells.

The September issue of the *Post* will discuss these four areas in depth, as well as give some useful pointers for parents and other interested adults who wish to combat this "grass fire" of marijuana use among our young people. ✖

PUTTING A MATCH TO THE MARIJUANA MYTH

Most kids are fully convinced that the use of marijuana is not harmful. But new medical research proves them dead wrong.

by Peggy Mann

We have found that students in the lower grades will look their counselors straight in the eye and say—with full conviction—"Pot doesn't hurt me!" But the latest medical research has determined that marijuana can cause cellular damage and impair lung function, the reproductive system and the brain. In the conclusion of this article, we take a closer look at these four areas of abuse--and offer suggestions to parents and other adults interested in combating this "grass fire" now raging through our schools.



Although one in every ten high school seniors admits smoking pot daily, and in some areas pot usage now starts as early as the 4th and 5th grades, the highest usage of all is in the 18- to 25-year age group.

Marijuana and Cellular Damage

Many scientists, including pioneer "pot researcher" Dr. Gabriel Nahas, consider the reports on marijuana's impairing effects on body cells to be the most alarming because, as Dr. Nahas says, "they are the underlying cause of all the other deleterious effects that have been reported."

Not only do cannabinoids clog the cells, inhibiting their functions to some degree, but many studies have shown that heavy pot smokers have an abnormally large number of abnormal cells.

Dr. Akira Morishima, of the Columbia University College of Physicians and Surgeons, has done studies on the increased incidence of cells in marijuana smokers which have less than the normal number of chromosomes and which tend to revert back to the normal level after the individual has stopped smoking pot. In more recent studies, published in June 1980, Dr. Morishima found that THC disturbs the *movement* of chromosomes which, he says, "probably accounts for the production of cells with an abnormal number of chromosomes." A similar finding has just been published by Dr. Arthur Zimmerman in Canada, using an entirely different methodological technique.

Pot advocates are swift to "discredit" chromosome studies by saying that "aspirin and coffee also cause chromosome breaks." Dr. Morishima points out that his studies did not relate to chromosome *breaks*. Furthermore, in the 1980 studies he used the same technique to test the effects of aspirin, caffeine and alcohol on chromosome movement. He also used "comparable doses," except that in the case of alcohol, "we went up to 100 times the equivalency dose." The result? Neither aspirin, caffeine nor alcohol produced abnormal movement of the chromosomes.

As early as 1973, Dr. Nahas found that THC lowered the rate of cell division by diminishing the cell's ability to make DNA, RNA and essential proteins. DNA is the all-important genetic material of the cell. RNA controls gene "expression." These findings have since been replicated by scientists in 12 important research centers in the U.S. and abroad.

Said Dr. Nahas: "These findings indicate that the pot smoker may not only be damaging his own mind and body, but may be playing genetic roulette with his or her unborn children."

Marijuana, Sex and Reproduction

There are other ways in which pot smokers may be damaging their unborn children.

As noted, cannabinoids collect in the fatty gonads *and* in the brain. In the brain, THC seems to affect the hypothalamus which, in turn, affects the pituitary, a pea-like structure at the base of the brain which is a control center for sex and reproductive hormones.

It is not surprising that this double-barreled influence on the reproductive system should result in some dysfunction and abnormalities.

A sexual performance study of 500 pot-smoking men was made by Dr. Robert Kolodny of the Reproductive Biology Research Foundation in St. Louis. He summed up: "The general trend was that with increasing use,

there were lower rates of sexual activity and a lower frequency of orgasm." A study of 1,238 male users in India showed similar results.

Other researchers have shown that marijuana smoked in moderate to heavy doses results in an abnormally large number of abnormal sperm. And this is dose-related. The more joints smoked, the more abnormal sperm there are.

Dr. Carol Grace Smith did a recent study on male rhesus monkeys. Both males and females of this breed have a reproductive system close to humans. "In fact," says Dr. Smith, "under the microscope, rhesus sperm are almost indistinguishable from human sperm." She gave male monkeys the "rhesus THC equivalent" of one to two joints a day. She summed up: "THC profoundly inhibits testosterone and hormones which stimulate the sex organs, bringing them down to the level of a castrated animal. One dose 'shuts down production' for as long as 24 hours."

Testosterone is the all-important male sex hormone. A number of other human and animal studies have also shown that THC lowers the testosterone level in males.

There has been only one study made on long-term (20-year) human male cannabis smokers. The researcher, Dr. Mariette Issidorides, of Greece, summed up: "Cannabis interfered with protein substances essential for the normal development of the sperm, and it altered the metabolism of the sperm cell, thus possibly affecting expression of the genetic material."

Since males produce so many millions of sperm, all indications are that, if the pot smoker ceases and desists, sperm return to normal. Females, however, may be another matter. An infant girl is born with her lifetime supply of eggs. If these are damaged, there's no replacement. And cannabinoids collect in the ovaries, a fact proved by radioactively tagged THC. What effect might this have on the eggs? Thus far, the only researcher to have delved into this question is Dr. Akira Morishima. He worked with "teen-aged" female mice. He gave them miniscule mouse-size doses of THC. Scientists figure in "human equivalency doses," which can be "checked out" by testing THC in blood levels. If a mouse has a percent of THC in its blood which is equal to the percent of THC a human adult has in his or her blood after smoking—for example, one joint at 2 percent THC—then this is the "human equivalency dose." According to human equivalency charts just published by another "pioneer pot researcher," Dr. Harris Rosenkrantz, Dr. Morishima's female mice received the THC "equivalent" of an adult woman smoking two joints a day. In his report, published in July 1979, he revealed that in the control group, very few of the mice had abnormal eggs. But in the THC-exposed group, about half the eggs were dying or had died. "And," said Dr. Morishima, "of those that lived, 20



Magazines extolling the joys of drug taking are found on newsstands throughout the U.S. As some fold, others are born. The slick **High Times** *boasts 4 million readers. Such publications make illicit drugs seem as "normal" as popcorn and apple pie.*

or 30 percent looked unhealthy."

Dr. Ethel Sassenrath at the Primate Research Center of the University of California has done other types of investigation into pot's effects on the female reproductive system. She works with female rhesus monkeys, whose reproductive system is very close to the human female's, including a 28-day menstrual cycle. Every day for three years—she even came in on Christmas—Dr. Sassenrath fed her monkeys the THC human equivalency dose of one to two joints. (She gave THC on raisin cookies.)

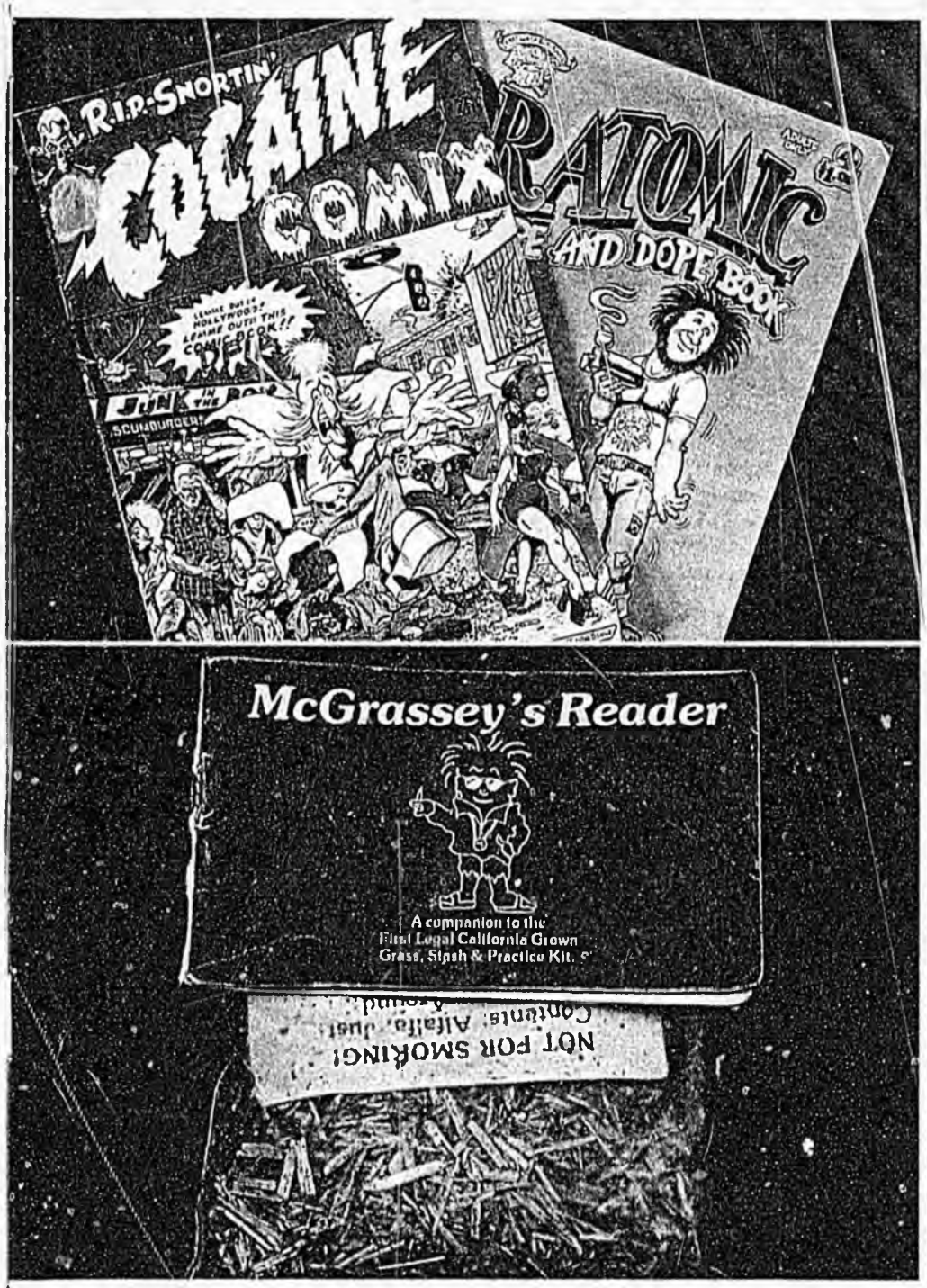
Result: Forty-four percent of the pregnancies of the THC-treated mothers did not result in living offspring. The losses occurred as abortions, reabsorptions, *in utero* death, stillbirth or death just after birth. The control mothers had a 12 percent birth loss—which is normal for a monkey colony.

Of even greater concern were the results obtained when the pathologist did microscopic evaluations of tissues and organs from the dead fetuses and infants. This was a double blind study. He did not know whether tissues came from the THC-exposed offspring or the offspring of undrugged mothers. Result: Although the dead THC-exposed offspring appeared to be normal, in each case he found subtle developmental abnormalities in various organ systems and tissues which were not found in the offspring of the undrugged mothers.

"Furthermore," said Dr. Sassenrath, "the THC-exposed babies that survived acted differently than the others. They over-responded. They didn't seem to have normal 'brakes' on such behavior as active playing without stopping or clasping cagemates who struggled to get away. They all showed deficits in attention and over-concentration on different stimuli in the environment. They had the type of deficits in behavior which indicate that the central nervous system has been affected. This kind of subtle behavioral difference can be characteristic of marginal brain damage in early development."

It has been well established that THC easily passes through the placenta. But how does it affect the placenta itself? In March 1979, Dr. Paige Besch of Baylor College of Medicine in Houston, Texas, completed a four-year study on the subject. He found that the more THC was added to the human placenta, the less estrogen was produced. Says Dr. Besch: "Decreased estrogen results in decreased blood flow to the placenta, which means decreased nutrition to the developing baby."

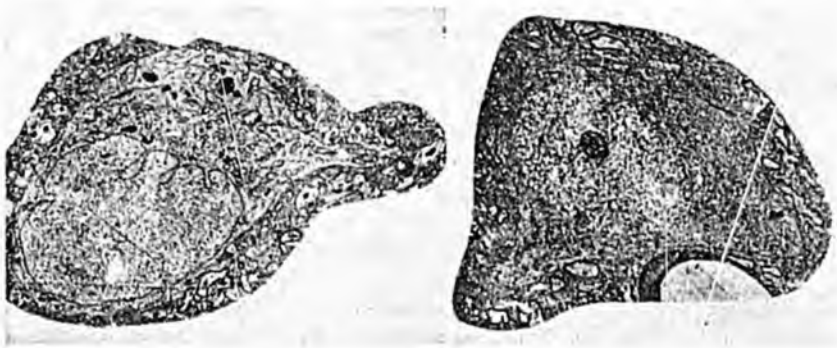
Other scientists working with rhesus monkeys and with human females have found that THC appears to interfere with the hormonal system and with the menstrual cycle. For example, Dr. Joan Bauman and Dr. Robert Kolodny found that 38.8 percent of pot smokers they studied had defective



A profitable branch of the drug publications industry is aimed at children. Comic books show how to "smoke dope," how to cut and snort cocaine. McGrassey's Reader, *an easy-to-read primer, explains how to roll a joint and comes with "practice grass" (alfalfa), rolling papers and a "roach clip."*

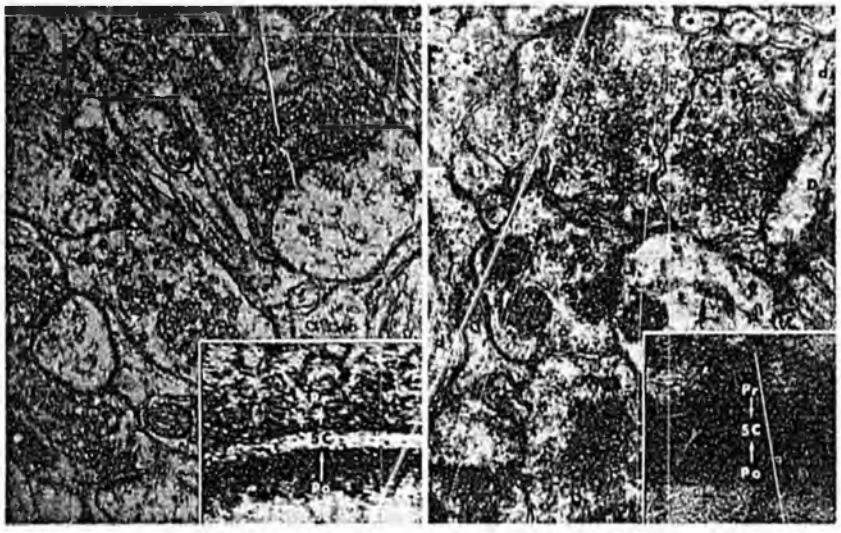
Marijuana and Brain Damage

To determine the effects of marijuana on the brain, Dr. Robert Heath of Tulane University gave rhesus monkeys 2 to 3 "monkey-sized" joints per day (inducing blood levels equal to those of human subjects smoking 3 joints per day) for six months. A control group was given an equal number of marijuana cigarettes with the active ingredient THC removed. Heath reported significant damage.



Normal Brain Cell *Damaged Brain Cell*

While no changes were noted in cells taken from the "control" group, cells from the THC-exposed brains show a marked increase in the number of inclusion bodies that appear in the nuclei, and the rough endoplasmic reticulum is disrupted. These changes in the cell structure may be interpreted as a sign of injury in most cells, including brain cells. These injured cells have a reduced capacity for normal function.



Normal Synapse *Damaged Synapse*

Vital to survival, the synaptic membrane serves as the body's communications network, transmitting messages to the brain. While a normal synapse (left) allows for free flow of messages, the THC-exposed synapse (with widening of the synaptic cleft, electron opaque materials in the cleft and some clumping in the synaptic vesicle) will not properly transmit these necessary messages.

In the light of recent experiments, little doubt can remain as to the gradual, yet significant, consequences of smoking marijuana. Perception, motor activity, sensation, emotional response, motivation, memory and states of awareness can all be affected.

menstrual cycles, compared to 12 percent of the non-pot smokers. Sex hormones were also affected.

Dr. Bauman pointed out: "Researchers are forbidden by FDA regulations to administer marijuana to teen-agers in the course of controlled experiments. But we are particularly worried about what the drug may be doing to pre-teen and teen-aged girls. Any of the effects we found could be even stronger before the body's endocrine-regulated systems have matured."

It should also be remembered that in our country, for the first time in the history of any country, pre-teen and teen-aged girls are smoking cannabis on a mass scale. Our pot-smoking teen-aged girls, therefore, are unwittingly turning themselves into guinea pigs.

Many animal experiments have shown that the mother's THC exposure affects the "next generation," to whom no additional THC has been given. One particularly strange result was found by Dr. Susan Dalterio of the University of Texas Medical School at San Antonio. She gave nursing mice mothers a tiny drop of sesame oil containing THC—the human equivalent of two joints a day. Aside from one equally small dose the day before they gave birth, none of the mother mice had ever before received any THC. The offspring were fed no THC at all. Yet when the males reached young adulthood, they all became very fat and half were "grossly overweight": 50 grams. (The normal male mice of their breed weigh 10 grams.) These fat fellows were also sexually inept, "showing," said Dr. Dalterio primly, "deficient copulatory behavior." When autopsies were performed, there were globs of fat throughout the bodies of all the male mice—whose only exposure to the drug had been as infants, through their mothers' milk.

Other researchers working with mice, rats, dogs, rabbits and rhesus monkeys have shown that the mother's exposure to THC—or to other cannabinoids—causes smaller-than-normal litters and smaller-than-normal babies.

Research on animals has proven that marijuana is not teratogenic

[producing deformed babies]. It is, however, embryocidal [having a fetus-killing effect].

Marijuana and the Brain

Pot is smoked to get a "high"—to "alter" the mind. But no smoker wants his brain cells affected, structurally changed. Yet this may be what is happening.

Dr. Robert Heath, chairman of the department of neurology and psychiatry of Tulane University, has pioneered in the study of the limbic area of the brain, working with humans and with rhesus monkeys. This particular brain area is very similar in both species. This so-called "old mammalian brain" is the site of such specifics as time sense, sexual activity, appetite and emotions—both pleasurable and painful.

In July 1978, Heath showed some startling slides to more than 100 marijuana researchers at the Reims Conference. These were magnified pictures of brain cells from rhesus monkeys that had been exposed to the smoke of two to three "monkey-sized" joints a day (one-fourth the size of an average human joint) at 3 percent THC for six months. The monkeys had received *no* THC for the following six months (equivalent to a much longer time in human terms). Then they were sacrificed and the pictures taken.

Dr. Heath, a distinguished-looking, white-haired man, stood by the large screen. Using a pointer, he illustrated what were, perhaps, the most sobering slides shown during the entire two-day conference. He identified the following structural brain cell changes which were glaringly evident when the cells of the THC-exposed monkeys were compared to the cells taken from the same brain area of the control monkeys.

"Here," said Dr. Heath, "we see an accumulation of granular material in—and a definite widening of—the synaptic cleft between nerve cells [where the flow of messages jumps from one cell to the next]. This," he said, "causes a slowing down in the movement of the messages and may impair some brain processes."

The pointer moved on to another spot. "Here we see a clumping of the synaptic vesicles [small sacs in the endings of nerve cells, containing the essential nerve transmitters: chemical activators of the brain]. We find the identical conditions in cases of early brain damage in humans.

"And here," said Dr. Heath, "note the significant increase in inclusion bodies. These foreign substances are seen in degenerating brain cells of very old animals and humans, but not to the degree that we see them here in very young pot-exposed rhesus monkeys."

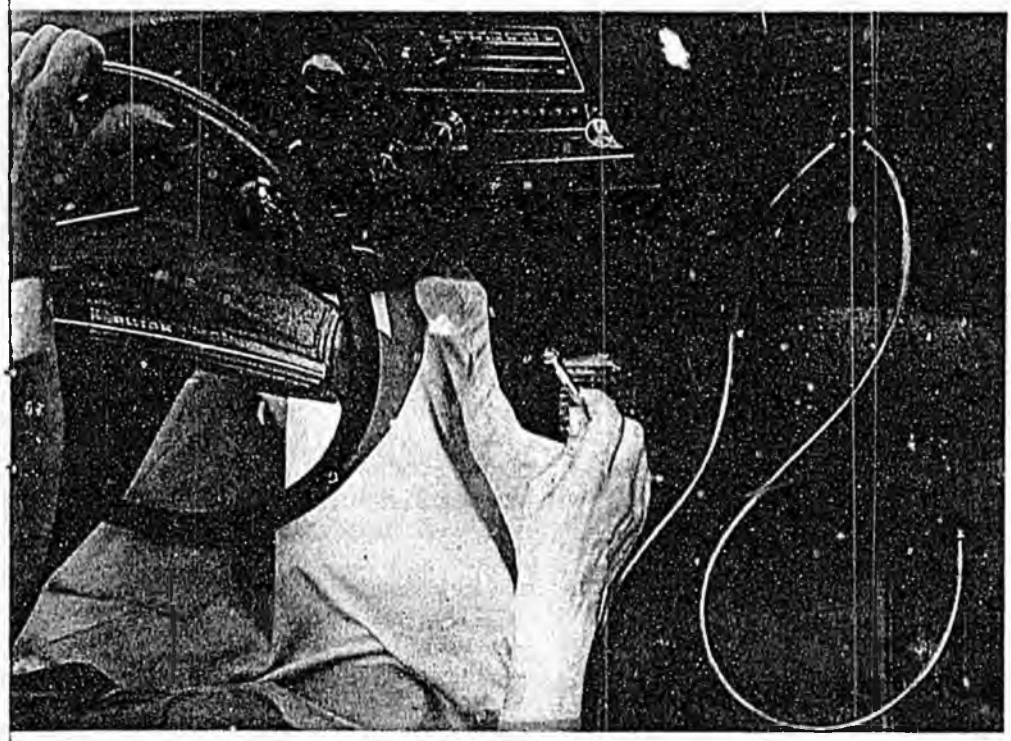
Dr. Heath summed up: "Since the monkeys had received no pot smoke for six months prior to being sacrificed, it is clear that, at least in the limbic area, structural brain changes caused by marijuana are not readily reversible."

Dr. Robert Gilkeson of Cleveland, Ohio, is completing a study of pot-smoking teen-agers which concentrates on EEG readings of the highly developed, cognitive cerebral cortex, or "new brain." Gilkeson specializes in neurophysiologic research and electroencephalography in learning disabilities. In addition to the standard hour-long EEGs, he developed another half-hour of techniques to pinpoint learning disabilities. In a unique on-going study, he has applied this technique to more than 50 youngsters, ages 13 to 18. All come from the affluent suburbs of Cleveland. All said they did not "do" other drugs. All had met the "criteria" of being high on pot at least two or three times a week for the four months preceding the EEG. But all were forbidden to smoke pot for at least 24 hours prior to the test.

Results: *All* EEGs were "markedly immature for age." They also had an abnormal amount of slow theta rhythms, "sufficient," said Gilkeson, "to be diagnostic of diffuse brain impairment. In the EEG section of academic tasks, none of these youngsters could speed up when challenged. Their brain waves failed to respond to these stimuli in the usual way, according to the standardized norms."

Reading the encephalographer's report shocked many youngsters into "getting off the pot." Those who stayed off for three months had normal EEGs when they took the test again. "Of even greater significance," said Gilkeson, "are those who progressed from abnormal to normal with abstinence—and a return to abnormal again when the youngster returned to chronic pot use."

Gilkeson's findings are con-



Dashboard pot pipes enable the smoker to "drive high." More than 50 research studies show that one or two joints seriously impair driving performance, even after the high has gone. Despite this, surveys reveal "60 to 80 percent of users say they sometimes drive while "intoxicated on marijuana."

firmed by a number of other scientists. Dr. Turin Itel, one of the foremost investigators of the effects of drugs on human EEGs, sums up: "Acute or chronic use of marijuana produces an EEG shift toward slow. This is definitely associated with impairment of cognitive functions."

Marijuana and the Lungs

Since pot smoke enters the body through the lungs, it obviously reaches its highest concentration in these organs. A 1975 study compared the compounds in a "weak" marijuana cigarette (.8 percent THC) with a high-tar standard tobacco cigarette. Aside from the fact that tobacco smoke contains nicotine and pot smoke contains cannabinoids, the two types of "smokes" have roughly the same compounds, including lung irritants and carcinogens (cancer-producing agents), co-carcinogens and carcinogen activators. Furthermore, a number of these are present in pot smoke in amounts 50 to 100 percent greater than in tobacco smoke—for example, the carcinogens benzanthracene and benzopyrene, with the latter also being a strong cancer initiator.

In addition to the carcinogens, there are elements in both types of cigarettes which irritate and inflame the lungs. Here, too, marijuana smoke comes out with an even "darker" picture than tobacco smoke. And, whereas tobacco smokers avail themselves of filters, low-tar cigarettes, etc., pot smokers consider "good pot" to be the strongest they can get. In addition, an entire "line" of the drug paraphernalia industry—the "power hitter"—blasts the smoke deep into the lungs. Some power hitters are produced in such kiddie-appealing shapes as red plastic space guns and miniature footballs. Many pot smokers use "bongs" in the belief that drawing the smoke through water or ice lessens the harshness of the smoke by cooling it down. The bong, however, concentrates all the smoke inside a chamber so that none is diffused into the air. As one manufacturer advertises: "The only thing wasted is you."

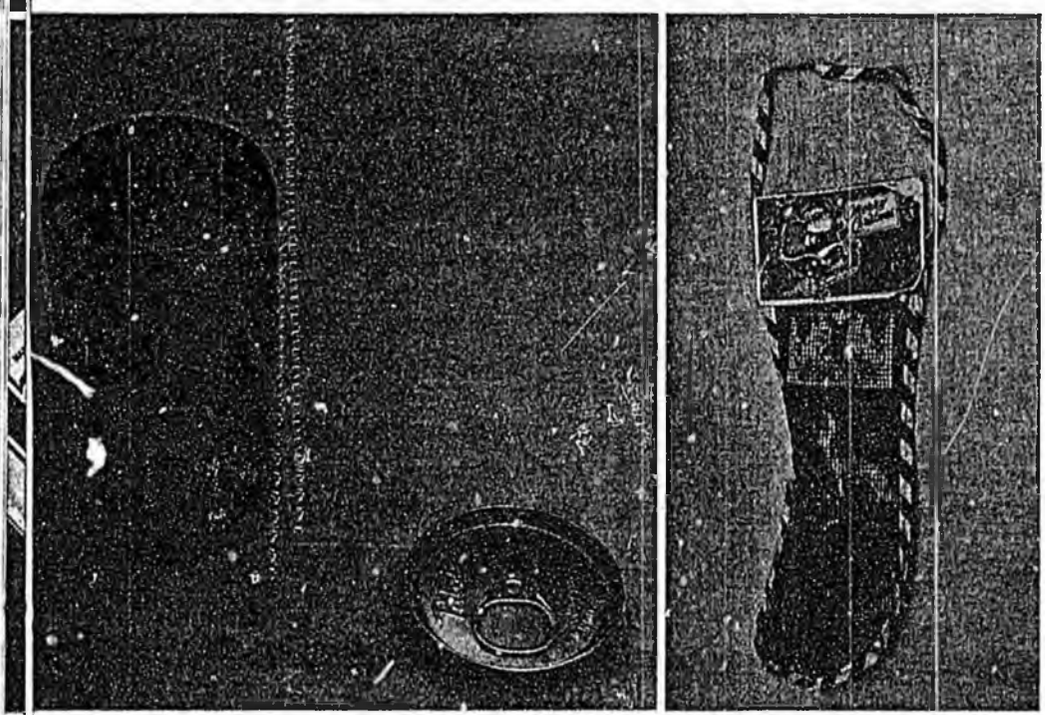
Pot advocates claim that comparisons between marijuana and tobacco do not hold up, since the tobacco smoker generally puffs on a pack a day or more, whereas the chronic pot smoker may use only one or two joints a day, or less. The noted researcher Dr. Sidney Cohen, who has done one of the three major human studies with marijuana, points out: "There are two factors which equalize the risks involved. First: People—especially young people—are, in fact, smoking more joints per day than ever before [this despite the ever-increasing potency of marijuana available on the streets today]. And it is the younger age groups who seem to be smoking the most.

"Second: Typical tobacco cigarette smokers either do not inhale the smoke into the bronchial passages or, if they do, it is for short periods of time. In contrast, the usual method of smoking marijuana is to inhale the material as deeply as possible, keep it in the lower airways for as long as possible and exhale only when another breath must be taken. At times the inhalation is so complete that no smoke is detectable in the exhaled air.

"This means that not only are the irritants and carcinogens in contact with the actual lung tissue for a longer time, but more of the toxic elements may be absorbed into the bloodstream than is the case with cigarettes. These elements are then delivered to other tissues. New studies show that heavy tobacco smokers are more prone than nonsmokers to cancer of the bladder, the esophagus and other nonpulmonary organs. Presumably, therefore, the carcinogens in both tobacco and marijuana smoke do 'carry.' "

Pot advocates like to point out that "there are no dead bodies from marijuana." With the notable exception of highway accidents caused by stoned drivers, this is true. "However," says Dr. Cohen, "we should not forget that it takes 20 to 30 years of consistent heavy use of tobacco to produce a lung cancer. We have been smoking marijuana heavily in the U.S. for a decade or less. Also, with all our medical sophistication, it was not until the 1950s that we noted any relationship between cigarette smoking and lung cancer.

"In those countries where cannabis has been smoked by adult males for centuries, there have been no long-term longitudinal studies regarding cancer and can-



Stash cans for pot come in many guises—and disguises. A popular item: Christmas stockings with candy-flavored rolling papers and pot pipes. Drug paraphernalia has been banned in ten states so far, and the Drug Enforcement Administration's new "model" anti-paraphernalia law is available to all states.

nabis. Studies have been done, however, which show a high incidence of bronchitis, pharyngitis, etc., among cannabis smokers, especially those who used the stronger varieties."

(In this context, it is interesting to note that in the oft-quoted "Ganja in Jamaica" study of 30 cane workers, lung cells were not analyzed. Furthermore, only healthy people were accepted for the study, thereby excluding those with chronic lung disease. In the words of Dr. John Hall, chairman of the department of medicine in Kingston, "Omitted were all cannabis smokers who showed pathological symptoms such as we see in our clinic." Among other "pathological symptoms" evidenced by long-term "ganja" smokers, Dr. Hall listed emphysema, an irreversible lung disease.)

The 1979 surgeon general's report on tobacco cigarette smoking contained some 30,000 research papers all bearing out the slogan: "The surgeon general warns that cigarette smoking is dangerous to your health." And, based on past statistics, the surgeon general said that "this year alone, cigarettes will kill 346,000 Americans."

Research on marijuana and the lungs is in its infancy compared to that on tobacco and the lungs. But, thus far, the findings are hardly reassuring. For example: Dr. Donald Tashkin, a specialist in pulmonary medicine at UCLA, found a 25 percent increased airflow resistance among pot smokers compared to non-pot smokers. (Airflow determines how well we can get oxygen into our bodies and how well we can get carbon dioxide out.) This was an abnormality which did *not* occur in heavy tobacco smokers.

In studies published in February 1980, Dr. Gary Huber, director of the Smoking and Health Research Program of Harvard University, showed that marijuana activates—by some 200 percent—enzymes which contribute to the "eating" or digesting of the lung itself.

In animal studies where marijuana and tobacco smoke condensates are painted on mouse skin, both produce cancers.

A further gloomy point is that many pot smokers also smoke tobacco cigarettes, and the harmful effects may be additive. Dr. Cohen sums up: "There is real reason for concern that marijuana alone, or marijuana smoked with tobacco, will bring forth a new wave of lung cancer in another 10 to 20 years."

Many people who once believed marijuana to be harmless have now concluded that it may be the most dangerous drug in America today, for many reasons. One such person is Dr. Robert DuPont, chairman of the Drug Dependence Section of the World Psychiatric Association and former federal director of the National Institute on Drug Abuse.

Dr. DuPont says: "I believe it to be our most dangerous drug because of widespread frequent use, especially by our youth, and because the psychological as well as the physical effects are insidious and ultimately devastating. Furthermore, for millions of our youth, marijuana is the gateway to the use of many other illegal drugs, including angel dust, LSD and heroin.

"One of the most disturbing aspects of marijuana use is that the user's judgment about the effects of the drug is clouded by his or her own use of marijuana. If an enemy nation were to plan to undermine America's future, they could not think of a more effective strategy than poisoning our youth. Marijuana is such a poison. The tragedy is more painful because the poison is not being administered by an enemy, but by ourselves. Not only the marijuana-using youth, but all of us as well, must share the responsibility for this tragedy, and we must all participate in combating and overcoming this marijuana plague.

"The one hopeful sign on the horizon is the mobilization of concerned parents. They are distraught—sometimes terrified—by the effects of marijuana on their children. And they are angry at the "professionals" who make them feel that *they* are the problem, rather than the drug. These parents throughout the country are discovering one another and are forming action groups which are beginning to have a positive impact on their own children as well as on our local and national leadership. But parents can't do the job alone. Government, business, educators, media—all segments of our society—must join in a massive endeavor to stop our kids from going to pot."

What Parents Can Do

Three national organizations have spearheaded the movement for "combating" the marijuana plague. The pioneer group in this effort is the American Council on Marijuana, founded in 1977 by the Myrin Institute. On its board were the leading scientists in the field at that time. They developed the first accurate resource materials: scientific information on marijuana for the lay public. Their publication, *Marijuana Today*, by Dr. George Russell, was the first such compilation of medical findings and is now in its fourth updated edition, having sold more than 100,000 copies.

In addition, ACM has held three major conferences at New York University Medical Center and at Columbia University. The second of these, which focused on "Marijuana: Biological Effects and Social Implications," a two-day conference, was the largest gathering of scientists, drug-abuse specialists and educators ever to be held in this country. It was also the first lecture series on marijuana to be accredited by the AMA.

The second organization, also founded in 1977, was PRIDE—Parent Resources and Information on Drug Education—which now has active parent groups in more than 19 states. PRIDE has two main functions: One is to disseminate reliable medical information on the health hazards of marijuana (a "PRIDE Packet" is available to individuals and organizations); the second is to stimulate the organization of new parent groups, using a concept originated by PRIDE—that of developing parent peer pressure groups comprised of the parents of the children's friends (not the parents' friends—these parents may not even know one another) in order to combat teen peer pressure and the "do drug" messages of the "kiddie-youth drug culture." In addition, PRIDE sponsors drug education and prevention conferences for schools, educators and parents to encour-

age them to work together to establish ongoing programs.

The third national organization, Citizens for Informed Choices on Marijuana (CICOM), whose staff helped plan Wellington's "Grass Roots Conference on Grass," has organized similar conferences from Connecticut to Washington.

Lee Dogoloff, White House drug policy advisor, supports the efforts of these groups, saying:

"I truly believe that our brightest hope for the future of hundreds of thousands of young people in the U.S. today is the burgeoning movement of parent/citizen groups now organizing in virtually every state of the nation. There are at this time thousands of adults all working toward the same goal—to see that our children grow up drug-free." ★

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Marijuana Reprints

Extra copies of the two marijuana articles which have appeared in *The SatEvePost* may be ordered by enclosing a check or money order as follows:

1 to 9	$1.50 each set of two articles
10 to 99	85¢ each set
100 to 999	65¢ each set
1000 to 1500	40¢ each set

For special bulk purchases, call Susan Hanley at 317-636-8881 for price quotes (any more than 1500).

For reprints, write to: MERF, Dept. M-Reprint, P.O. Box 2166, Indianapolis, IN 46206.

Make your check or money order payable to: MEDICAL EDUCATION AND RESEARCH FOUNDATION.

Check or money order *must* accompany order. Remit in US funds *only*.
Postage is included in the above prices. Special shipping will require additional charges.

Additional References:

American Council on Marijuana (ACM), 6193 Executive Boulevard, Rockville, MD 20852. *Marijuana Today*, by George Russell, Ph.D. Medical findings for the layman. $3.00. *Keep Off the Grass*, by Gabriel Nahas, M.D., Ph.D. The marijuana story from 1969 to 1980. $9.50. *Twelve Is Too Old*, by Peggy Mann. The first novel on the pot scene for teens and pre-teens. $7.95.

Citizens for Informed Choices on Marijuana (CICOM), 300 Broad St., Stamford, CT 06901. A one-year membership, including series of four booklets, "How to Help Your Child Resist the Marijuana Culture," plus bimonthly newsletter. $10.00.

Committees of Correspondence, P.O. Box 1590, Cathedral Station, New York, NY 10025. Information on one important drug abuse issue each month, plus suggestions on how correspondents can most effectively communicate their concerns on each issue and thus influence the outcome. $5.00 per year.

Essex County Grand Jury Presentment, Prosecutors' Office, New Courts Building, Newark, NJ 07102. Startling 60-page report on drug abuse in schools, plus Grand Jury's 31 practical mandates (to schools, courts, PTAs, etc.) which can be adopted or adapted by any community. $5.00.

Families in Action, 1436 Cornell Rd. NE, Atlanta, GA 30306. 164-page manual on how to organize your community to combat the "kiddie drug culture," including drug paraphernalia. $10.00. Plus quarterly newsletter which includes latest information on the drug scene at state, national and international levels. $3.00.

Drug Enforcement Administration: Preventive Programs, Washington, D.C. 20537. (Or GPO, Washington, D.C. 20402.) Excellent 44-page magazine with articles and pictures on health hazards and articles on drug paraphernalia. Single copies free.

Mini-Courses, 4290 Raintree Lane NW, Atlanta, GA 30327. Six-unit teaching manual, "Drug Abuse and the Growing Child," for third through eighth grades (for schools, homes and agencies). $10.00. Cassette with narration, plus 80 color slides showing youth drug subculture, plus prevention methods. $46.75.

National Drug Abuse Foundation, 6500 Randall Place, Falls Church, VA 22044. Information on commonly abused drugs, plus recommended resources and reading. $2.00.

National Institute on Drug Abuse, P.O. Box 2105, Rockville, MD 20852. *Parents, Peers and Pot*. Experiences of parents who successfully dealt with the pot problem. *For Parents Only: What You Need to Know About Marijuana*. (Single copies of both books free.) *For Parents Only: What Kids Think About Marijuana*, a 30-minute 16mm film available on free loan to parent groups and adult community organizations (specify needed date). Modern Talking Picture Service, 5000 Park St. North, St. Petersburg, FL 33709.

Narcotics Education, Inc., 6830 Laurel St. NW, Washington, D.C. 20012. Six Q & A booklets on marijuana and P.C.P. $2.00. *Listen* (magazine for teens) issue on marijuana. $1.00.

Phoenix House, 164 West 74th St., New York, NY 10023. Free information on drugs, plus advice on school programs.

Prevention Materials Institute, P.O. Box 152, Lafayette, CA 94549. *Communicating About Drugs*, for parents and teachers. $1.75.

PRIDE (Parent Resources and Information on Drug Education, University Plaza, Georgia State University, Atlanta, GA 30303. Information on drugs, including action plan for parents and their school/community. $10.00. Quarterly newsletter. $4.00.

STOP (Society to Oppose Pot), P.O. Box 6772, Silver Spring, MD 20906. Booklet and briefing by lawyers on how to muster local political pressure to influence elected officials in reference to antidrug legislation. $3.00.

Executive Information Resources, Box 611, Wellington, Kansas 67152. Unedited cassette tapes of the general sessions of the "Grass Roots Conference on Grass" held in Washington. Tapes are priced at $6.40 each or $35.00 for a complete set of seven tapes. Prices include shipping.

These organizations cannot process C.O.D. orders.

Drug Abuse Issue of the Month

Vol. 1 No. 1 May 1980

Why Decriminalization of Marijuana Must Be Opposed At Once

The issue of decriminalization of marijuana is currently under consideration by the House and the Senate and could be voted on very soon.

Experts who are fighting "the drug battle" feel that the battle would be irrevocably **lost** if decriminalization becomes Federal law -- since Federal law historically serves as a model for State law.

Dr. Robert DuPont, former Director of the Federal Agency, the National Institute on Drug Abuse -- who used to favor "decrim" -- is just one of a number of leading experts who have completely changed their minds about this issue. Dr. DuPont now says: "I have learned that it is impossible to be pro-decrim and anti-pot, **because no matter how you try to explain it to them, young people interpret decrim as meaning that pot must be okay because the government has legally sanctioned it.**"

Decriminalization is not synonymous with legalization. However, in the 12 states which have already decriminalized simple possession of marijuana (without intent to sell), it is "read" as legalization of marijuana -- which gives further impetus to the idea that decriminalization and legalization are one and the same.

The Federal Law now being proposed in the Senate, and soon to be taken up in the House of Representatives, would decriminalize simple possession of 30 grams of marijuana for personal use. How much **is** 30 grams of pot? A little over an ounce -- and enough to make 30 to 60 joints, depending on how it is rolled.

At first glance the idea of "decrim" may sound sensible to some. However, a look below the surface clearly shows that there are many important reasons to oppose decrim, and virtually no valid reasons to support it.

Pro-pot forces have muddled the issues by their constant repetition of the statistic: 450,000 marijuana arrests were made last year. They follow this up by saying that "the trauma of an arrest and a child being thrown into jail is far more harmful than the drug itself." Some of the pro-pot forces go further, claiming this is "the only really harmful thing about the drug."

The Facts Are These

1. So far as "being thrown into jail" is concerned:

> The President of the International Association of the Chiefs of Police, Chief Edward Davis, testified at the House of Representatives sub-Committee hearings on decriminalization, and summed it up like this:
>
> "Let me say in closing, that this foolish statement that we are putting our children in prison is pure poppycock. I don't think there has been one child **or** adult put in prison for simple possession of marijuana in the last five years."
>
> -House Select Committee on Narcotics Abuse and Control hearings, March 1977

This statement is, in effect, "proved out" by NORML and by other pro-pot organizations. They obviously pick the best case they can find to make their point. The Jerry Mitchell case is their "prize"; used as a powerful fund-raising platform for NORML.

Note first that the Jerry Mitchell case does not even **concern** "simple possession" (without intent to sell). Mitchell was arrested for **selling** marijuana. And NORML officially claims to be concerned only about possession, not sale. However, if this important point is overlooked, the case -- as reported by NORML -- does appear to be a miscarriage of justice where the punishment does not fit the crime. Mitchell was, says NORML, arrested in 1975 and given seven years (of which he served 15 months) for selling $5.00 worth of pot (to an undercover agent of the Missouri State Highway Patrol Narcotics Division).

What NORML does **not** mention -- though the facts are well known to them -- is the following: DURING THE PRE-SENTENCING INVESTIGATION, **MITCHELL HAD PLED GUILTY TO SELLING:**

- One pound of marijuana (the equivalent of some 500 to 900 joints, or marijuana cigarettes) which he sold for $125.00;
- one hundred tablets of what he thought was amphetamines, which he sold for $25.00.
- He also offered to sell the agent an ounce of cocaine for $800.00

Continued on page 2

The Facts (continued from page 1)

• Furthermore, he had been under prior probation -- under the same judge -- for possession of marijuana. Mitchell had just finished the probation period. This means that since the judge knew it to be a second offense, when sentencing he took into account the other drug involvements to which Mitchell had admitted.

Obviously, if they had a solid "possession" case, NORML would use it.

So much for "being thrown into jail" for simple possession of an ounce or less of marijuana.

2. So far as marijuana possession **arrests** are concerned:

• Law enforcement officials throughout the nation point out that for the past 5 or 6 years or more, most of those charged with "simple possession" of an ounce or less of marijuana, have really been arrested for some other violation of the law. Then, because marijuana was found on them, they were also charged with possession of marijuana.

• Furthermore, law enforcement agencies in some states no longer enforce any marijuana laws -- including arrest. (For example, according to **Time** magazine, March 13, 1978: "Federal prosecutors in Miami are so swamped they rarely bother with pot cases of less than one ton.") If the courts aren't going to do anything, why should the police bother to make arrests?

• Drug Enforcement Administrator, Peter Bensinger, wrote in **International Drug Report**, "Judges are not dealing with users, or small time user-dealers, but with organizations dealing in tonnage quantities of marijuana."

• A police chief in Maine wrote: "Since the decriminalization of marijuana in Maine, I have noticed a substantial increase in marijuana cases. Also, the chemists who analyze police-confiscated samples say they are finding more marijuana sprayed with PCP. This enables the dealer to charge more for what the customer is told is a better grade marijuana. Apparently, there is now so little risk that the dealer is willing to take more chances. He has an attitude of: "It will only cost some money if I get caught."

The fact is: In the states which already have decriminalization, marijuana use has increased. In the other states, we have far too much "de facto decriminalization" as it is. We certainly don't need the Federal Government offering the states a "pilot project" for more!

COMMITTEES OF CORRESPONDENCE
Wise Makes Right

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A Few Q's and Their A's

Q: Why have a law that isn't obeyed?

• As a noted Washington, D.C. attorney put it: "As any prosecuter knows, there are thousands of laws on the books that are enforced only sparingly; prosecutorial discretion is built into our criminal justice system."

• Another Washington attorney says: "The marijuana possession law, as it stands, states our national attitude and policy toward marijuana: we, as a nation, do not sanction its use."

• As a highway patrol officer put it: "The 55-mile-an-hour speed limit is a heavily violated law. But in the first four years after the law was enacted, highway deaths were reduced by 36,000. The fact that the law is heavily violated does not mean it should be eliminated."

Q: Why take police time worrying about marijuana possession when they could better be doing something else?

• As pointed out, the police generally do not worry about simple possession. Furthermore, marijuana use has increased in states which have decriminalized, and traffic accidents and other drug-related crimes have increased, requiring more police time than before "decrim". In California, for example, in the first six months following decriminalization of marijuana in 1976, arrests for driving under the influence of drugs increased 46.2% in the case of adults, and 71.4% in the case of juveniles!

• During prohibition of alcohol the statement was made that it should be legalized so that the officers didn't have to waste their time enforcing those laws. Today, according to the National Council on Alcoholism, at least 50% of police time is spent on some alcohol-related problem.

It is obvious, therefore, why police throughout the country are generally vehemently opposed to decrim, which -- they say -- would, in the short and long run, make their jobs much more difficult.

Q: I have heard that in the 12 states which have, thus far, decriminalized marijuana, pot usage did not increase.

• This is not true. For example, NORML publicizes the figure that in Oregon, the second state to decriminalize marijuana, "current pot use" increased only 1%. However, what they neglect to mention is that this figure was arrived at by computing pot usage of everyone in Oregon, ages 18 to 100! Since usage is generally negligible in the over-35 age group, the age span of the computation evened out the increase in usage figures. However, the same study showed that **in the 18 to 29 age group, usage increased 16% after decrim.** And the study did not even consider usage under 18.

A police chief in Oregon reported: "Local use of marijuana has expanded greatly in the five years since adoption of the decriminalization law in this state -- **particularly in the lower high school and upper grammar school.**"

Here Are Three Bottom Line Reasons For Opposing Decriminalization

1. The fact that marijuana is understood by young people and their parents as being illegal, is, in many cases, an important deterrant to marijuana use.

2. **Youngsters "read" decrim as a green light to smoke pot.** Jeff Hamilton, son of Joe and stepson of Carol Burnett Hamilton, put it this way when testifying before the Senate Sub-Committee Hearings on Health Hazards of Marijuana: "The worst thing about decrim is the unmistakable message of 'okayness' it gives to kids. Not only that it's okay to smoke grass, but also that pot must be harmless, since the government would obviously not decriminalize a harmful drug. I have searched, and honestly can find no sound reason to feel that decriminalization would have any other effect than a negative and slow deterioration of the minds of the people of this nation."

3. **Decriminalization would be a step toward legalization.** It is important to realize that, for 10 years, NORML officially claimed they were only for decrim and not for legalization. **Then,** having achieved a climate of acceptance for "decrim", they officially adopted the policy of legalization of marijuana.

In their January 1979 "Official Policy" adopted by the Board of Directors, Executive Committee, Advisory Board and Regional and State Co-ordinators, NORML first redefined its concept of decriminalization. This included: "The removal of all criminal **and civil** penalties for the private possession of marijuana for personal use." (Emphasis added -- civil penalties include such regulatory measures as tickets and fines for traffic violations.)

Other clauses from the NORML policy statement: "The right of possession should include other acts incidental to such possession, **including cultivation, and transportation** for personal use, and the casual, non-profit transfers of small amounts of marijuana." "... It must be recognized that where personal use and possession of marijuana are no longer serious crimes. It is both inconsistent and irrational to **provide lengthy prison terms for those who distribute marijuana for profit.**" (Emphasis added.)

The statement concludes: **"Specifically, NORML supports the eventual legalization of marijuana."**

At NORML's annual convention where this policy was presented and adopted, then-Executive Director Keith Stroup said to the Conference: "We finally took the honest step to declare to the world we want legal marijuana." (As quoted in **The Atlanta Journal**, Dec. 29, 1978.)

At a seminar for lawyers sponsored by NORML on December 16, 1978, Keith Stroup was asked why the Seminar dealt not only with marijuana, but with cocaine and other drugs. Stroup answered: "NORML will always focus on marijuana, but I'd hate like hell to think decriminalization (of marijuana) would stop there." (As quoted in **The Atlanta Journal and Constitution**, Dec. 3, 1978.

In a debate on decriminalization with Sue Rusche at Emory University in February, 1979, Stroup told the students: "The next thing NORML's going to work on is decriminalizing drug dealers and drug smugglers because, after all, they're not criminals either."

Remember

Because of the well-orchestrated and well-financed pro-pot letter writing campaigns, elected representatives have become convinced over the past decade that the public wants decriminalization of marijuana. (Stroup has testified before Congress that NORML speaks for 15,000,000 marijuana users in this country.) A White House aide said at a meeting of Federation of Parents for Drug-Free Youth: "You must realize that the loudest voices -- indeed, almost the only voices -- we hear from are pro-potters." We must let our voices be heard. It is **essential** that you take ten minutes to write to your Congressman, to both your Senators, and to President Carter. (In case you do not know the name of your elected representatives, call your local library, or Board of Elections, or newspaper.)

You can phone the White House 202-456-1414 and ask for the Comments Office. Give your views on decriminalization. A report of all calls is given to the President every week.

Here are some sample letters and telegrams. **But we urge you to write your own for greater effectiveness.**

Be sure to ask your elected representatives to advise you of their position on decriminalization of marijuana. Only by asking a question of this sort can you be sure that your letter will actually be shown to him (or her). Otherwise, your letter may be answered by an aide. Please send a copy of your letter to Box 6272 Silver Spring, MD 20906, so our representatives in Washington will have a record of the number of Committees of Correspondence people responding.

Sample Letters

Dear Senator:

Please vote against any relaxation of marijuana laws. Decriminalization is not the answer to this country's marijuana pandemic. Would you please join Senator Mathias of Maryland as a co-sponsor of his amendment to remove Section 1813 of Senate Bill 1722, and return to current law. Please advise me of your position on this issue.

Dear Congressman:

Please vote against decriminalization of marijuana. Current medical and scientific evidence has proven marijuana to be a much more dangerous drug than many once believe it to be. Decriminalization will only make marijuana more available to our youth, and the epidemic will increase to even more dangerous levels. Please advise me as to your position on this issue.

Dear President Carter:

I am strongly opposed to relaxation of the marijuana possession penalties. Decriminalization is certainly not the answer to this country's massive marijuana epidemic. Indeed, as shown by the states which have decriminalized, it only makes the problem worse. Please advise me as to your present position on this issue.

Continued on page 4

HHS NEWS

U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES

EMBARGOED FOR A.M. PAPERS
Thursday, August 12, 1982

Shirley Barth - (202) 472-5663

Statement by
C. Everett Koop, M.D.
Surgeon General of the U.S. Public Health Service

As surgeon general, I urge other physicians and professionals to advise parents and patients about the harmful effects of using marijuana and to urge discontinuation of its use.

The health consequences of marijuana use have been the subject of scientific and public debate for almost 20 years. Based on scientific evidence published to date, the Public Health Service has concluded that marijuana has a broad range of psychological and biological effects, many of which are dangerous and harmful to health.

Marijuana use is a major public health problem in the United States. In the past 20 years, there has been a 30-fold increase in the drug's use among youth. More than a quarter of the American population has used the drug. The age at which people first use marijuana has been getting consistently lower and is now most often in the junior high school years. In 1978, nearly 11 percent of high school seniors used the drug daily; and although this figure declined to 7 percent in 1981, daily use of marijuana is still greater than that of alcohol among this age group. More high school seniors smoke marijuana than smoke cigarettes The current use (during previous 30 days) of marijuana is 32 percent; 29 percent smoke tobacco.

On March 24, Secretary Schweiker transmitted to the U.S. Congress a report reviewing the health consequences of marijuana use.

(More)

Marijuana and Health: 1982, the ninth in a series, is primarily based on two recently-conducted comprehensive scientific reviews on the subject: one by the Institute of Medicine of the National Academy of Sciences and the other by the Canadian Addiction Research Foundation for the World Health Organization. Both independent reviews corroborate the Public Health Service prior findings of health hazards associated with marijuana use: Acute intoxication with marijuana interferes with many aspects of mental functioning and has serious acute effects on perception and skilled performance, such as driving and other complex tasks involving judgment or fine motor skills.

Among the known or suspected chronic effects of marijuana use are:

- Marijuana impairs short term memory and slows learning;
- impaired lung function similar to that found in cigarette smokers. Indications are that more serious effects may ensue following extended use;
- decreased sperm count and sperm motility;
- interference with ovulation and prenatal development;
- impaired immune response;
- possible adverse effects on heart function; and
- by-products of marijuana remaining in body fat for several weeks with unknown consequences. The storage of these by-products increases the possibilities for chronic effects as well as residual effects on performance even after the acute reaction to the drug has worn off.

I am especially concerned about the long-term developmental effects of marijuana use on children and adolescents, who are particularly vulnerable to the drug's behavioral and physiological effects. The "amotivational syndrome" has been attributed by some to prolonged use of marijuana by youth. The syndrome is characterized by a pattern of

(More)

loss of energy, diminished school performance, harmed parental relationships and other behavioral disruptions. Though more research is required to clarify the course and extent, in recent national surveys up to 40 percent of heavy users report that they observe some or all of these symptoms in themselves.

The Public Health Service review of the health consequences of marijuana supports the major conclusion of the National Academy of Sciences' Institute of Medicine:

> What little we know for certain about the effects of marijuana on human health--and all that we have reason to suspect--justifies serious national concern.

# # #



Marijuana: more harmful than you think

Committees of Correspondence, Inc.

P.O. Box 232, Topsfield, MA 01983
(617) 774-2641

MARIJUANA FACTS

WHY DO CHILDREN ABUSE DRUGS?

- Peer pressure
- It is fun.
- They think it is harmless
- To escape from daily stress
- To create a new image.
- "Pop Culture" promotes it.
- Lack of positive models.
- Experimenting & curiosity.
- To relax.
- High-risk behavior.
- Imitation of parent's drinking and smoking habits.
- Their short-term thinking precluded consideration of long-term consequences.
- For independence.
- Because they feel a need to reject parent's values.
- To boost their self-esteem.
- Drugs are available.

WHAT IS MARIJUANA?

It is a drug made from the dried leaves and flowering tops of the hemp plant (cannibus sativa) containing more than 421 known chemicals.

THC (delta-9 tetra-hydrocannabinol) is the major mind-altering chemical. There are also other active agents in marijuana.

Marijuana varies in its strength of THC. Today it is up to 10 times more potent than prior to 1970.

When combined with other mind-altering drugs such as alcohol, the THC becomes significantly more potent. THC is fat soluable and it *builds up* and is stored in fatty tissues, especially in the brain and in the reproductive organs.

Half of the THC ingested stays in the body for three to five days. It takes up to 30 days for a single dose of THC to be completely eliminated.

Whereas alcohol is water soluable and fully metabolized in 12 hours, marijuana lingers in fatty tissues and causes cumulative effects.

A combination of marijuana and alcohol is particularly dangerous, causing changes in *depth perception, night blindness, concentration and reaction time.*

According to Carlton Turner, one of the world's most knowledgeable experts on marijuana research: *"There is no other drug used or abused by man that has the staying power and broad cellular actions on the body."*

WHAT DOES MARIJUANA DO TO THE BODY?

EFFECTS ON THE BRAIN

- It widens the gap between brain cells, thus slowing down the nerve impulses.
- Short-term memory is impaired.
- It impairs the ability to evaluate situations and sequencing ability.
- It impairs psycho-motor performance.
- It impairs sense of time and depth perception.
- There is decreased dream activity.
- A tendency towards insomnia.
- It produces apathy and lethargic behavior.

EFFECTS ON THE LUNGS

- Marijuana smoke is more irritating and harmful than cigarette smoke.
- Studies show that smoking one joint is more impairing to the lungs than smoking a pack of cigarettes.
- It can cause pre-cancerous lesions in 2 to 3 years (as compared to 20 years for heavy cigarette smokers).
- It makes lungs more susceptible to emphysema and bronchitis.

EFFECTS ON REPRODUCTIVE ORGANS

- There is a decrease in sperm count and mobility.
- Decreased testosterone level.
- It can cause chromosome change, thus slowing down cell renewal (an ongoing process essential for the maintenance of life).
- Prevents synthesis of DNA.
- Marijuana crosses the placental membrane - passing from the mothers' blood to the unborn child.

EFFECT ON BLOOD CELLS

- There is a decrease in white cell production, therefore it interferes with the body's ability to fight off infection and disease.

EFFECT ON PERSONALITY

- Users develop the "amotivational syndrome" which is characterized by apathy, vagueness, withdrawal and lack of motivation.
- There is a tendency toward paranoia (unfounded fear and suspicions).
- Users experience illusions of accomplishments, with unrealistic evaluation.

WHAT ARE THE OUTWARD SIGNS OF MARIJUANA USE?

- Personality changes may occur.
- Lack of agressiveness in males.
- There is a gradual drop in the quality of school work.
- Often over-reaction to criticism.
- Weight loss may occur.
- Unusual money requests.
- Physical evidence: cigarette papers, ashes, odor, roach holders, etc.

- Secretiveness.
- Red eyes.
- Slowing of speech.
- One of these signs is not enough for identification. Most are typical of adolescent behavior. Immediate signs are not always obvious.

HOW MUCH DOES MARIJUANA COST?

- $2.00 for one joint.
- $5.00 for 3 joints.
- $60 to $80 per ounce (dealer price).

HOW TO DEAL WITH THE PROBLEM OF YOUR OWN CHILDREN USING MARIJUANA.

- Be informed and up-date your facts.
- Do not deny the problem.
- Do not condemn the child.
- Keep cool and calm; do not lecture.
- Keep communications open.
- Refer to resources.
- Children need to hear clearly stated values and standards from their family.
- When a child is independent and self-supporting, they can make their own decisions. Up to then, their health is *your* responsibility.

HOW TO HELP PREVENT YOUR CHILD FROM USING DRUGS

- Hold family discussions about drugs and encourage open family discussion.
- Be an active listener.
- Provide alternative activities: sports, outings, etc.
- Form parental support groups.
- Discuss with family member that stress is normal. Explain how you cope with stress.

- Discuss how we can all cope with stress other than anestetizing ourselves.
- Encourage a good self-image.
- Promote individual interests - not always following what everyone else is doing.

POINTS OF CONSIDERATION

- Any form of drug use has more serious consequences with vulnerable individuals such as children and adolescents.
- The effects of drugs on those in the early stages of mental and physical development can be more pronounced and persistent than on mature adults.
- Learning to cope with stress is a normal and necessary developmental process.
- Marijuana use provides escape from stress and robs the child of developing skills needed to cope with stress.

Animal studies prove that marijuana use causes reproductive and fetal disorders.

- Of all fatal automobile accidents, 16% are marijuana related.
- Marijuana is addictive. The more you use, the more you need.
- Marijuana is more prevalent, more potent and more frequently used today than five years ago.
- Users are getting younger.
- The contents of cigarettes and alcohol are government regulated. However, since there is no regulation of marijuana, each joint is a surprise package.

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The Heritage Foundation Backgrounder

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A-7

May 4, 1981

THE MARIJUANA EPIDEMIC

> I get a sick feeling in the pit of my stomach when I hear talk of marijuana being safe. Marijuana is a very powerful agent which is affecting the body in many ways. What the full range of these consequences is going to be, we can only guess at this point. But from what we already know, I have no doubt that they are going to be horrendous.[1]
>
> Dr. Robert DuPont
> Former Director of the
> National Institute on Drug
> Abuse.

INTRODUCTION

Marijuana smoking has reached epidemic proportions in the United States. Some sixteen million Americans are now regular users; and among high school seniors, about one in ten are daily smokers -- averaging 3½ joints a day.

The extent of current marijuana consumption raises many important concerns. While use of the drug is widespread throughout the world, for instance, only in the United States is it so prevalent among young people of all classes that an entire generation is affected. In other countries, the smoking of marijuana is not usually found throughout the entire society -- generally use is confined to certain religious groups or classes. Only in this country does it involve the whole culture.

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1 Washington Post, July 30, 1978.

Note: Nothing written here is to be construed as necessarily reflecting the views of The Heritage Foundation or as an attempt to aid or hinder the passage of any bill before Congress.

The most frightening aspect of the widespread use of the drug is that the overwhelming majority of smokers have no knowledge of the demonstrated medical effects of marijuana. Most regard it as completely harmless, or at least as no worse than alcohol or tobacco. During the 1960s, when the drug became common in America, reliable scientific evidence was sparse. Marijuana seemed harmless enough to most people, and the very expression of doubt by experts was all too often discounted as deriving from opposition to the political and social attitudes of the users.

This absence of hard evidence regarding the consequences of the drug caused many scientists and legislators to take a liberal view of marijuana usage -- how could one condone alcohol and tobacco and then condemn marijuana? But in the last ten years, the climate has changed. Many detailed studies have been published on the medical aspects of the drug, and a body of scientific literature has been assembled which was unavailable only ten years ago. The National Institute on Drug Abuse (NIDA), a division of the Department of Health and Human Services, has taken the lead in sponsoring over a thousand tests, employing sophisticated procedures to control dosage, strength, etc., consistant with patterns of social usage. Other organizations have funded similar research projects.

It took sixty years of studies to establish a strong correlation between tobacco smoking and a number of serious diseases. Yet the results of experiments carried out in the last decade already suggest a strong relationship between the use of drugs and several medical disorders. Marijuana appears to impair memory, learning performance, motivation and may permanently damage brain tissue. It would also seem to have damaging effects on the lung, reproductive organs and the immunity system.

The powerful evidence now available has caused many experts to revise their position from one of indifference to one of great concern. Dr. Robert DuPont, quoted above, is a case in point. In various senior governmental positions, he did much to soften attitudes towards the use of marijuana -- indeed he was often cited in the literature of the decriminalization lobby. But now, as president of the American Council on Marijuana, he is in the forefront of a campaign to end the consensus that marijuana is no worse than many other drugs taken for pleasure. That belief, he says, "is a disaster and I feel very badly to have contributed to [it]."[2] Like so many of those who have changed their minds in light of the evidence, Dr. DuPont is particularly anxious about the long-term consequences of marijuana smoking on the current school population.

- "Reading, Writing and Reefer," ABC News Report, broadcast December 10, 1978.

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This Backgrounder will review the scientific evidence which has led to the dramatic change of heart by so many people. It will then examine the policy options available to deal with the situation.

THE GROWING USE OF MARIJUANA

What is Marijuana?

Marijuana (also known as pot or grass) comes from the plant Cannabis Sativa (Indian hemp or hashish), which has been cultivated for hundreds of years as a source of rope. The principal psychoactive, or mind-altering, ingredient of marijuana is a substance know scientifically as delta-9-tetrahydrocannabinol (or THC), although several hundred other chemicals with various effects are also present.

An intake of between five and ten milligrams of THC into the bloodstream is usually sufficient to induce intoxication -- a "high." In the 1960s, when the drug was becoming fashionable, most of the marijuana smoked in this country was of domestic origin. At that time, most American marijuana had a rather low THC content (0.2 percent to 1 percent), and so a 1 gram joint might contain in the region of 2-10 milligrams of THC. By 1970, however, Mexican marijuana with an average THC of between 1.5 percent and 2 percent, had begun to dominate the market. By the end of the 1970s, Jamaican and Colombian varieties, with concentrations of 3 percent to 4 percent THC began to enter the country in increasing quantities. In addition, liquid hashish, with a concentration of 30 percent to 90 percent THC, began to appear. At a potency rate of 50 percent THC, an ounce of this oil is sufficient to intoxicate one thousand people. In 1974 alone, 369 pounds were seized by federal agents.[3]

The rise in potency of marijuana available in the United States is central to any discussion of the medical impact of the drug. The early, inconclusive studies carried out in this country were based on the low-potency marijuana then being consumed. But now we are dealing with far stronger varieties, and the studies using these strains of marijuana are far from inconclusive.

Usage of Marijuana

Twenty years ago, marijuana was hardly used in this country. Only in the late 1960s did the drug become widely used, and not until the mid-1970s did it become commonplace. The increase in use has been dramatic by any measure. The most recent major study on usage was conducted by the National Institute on Drug

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3 J. M. Jenson, Testimony before the Senate Subcommittee on Internal Security, May 1975, ref. 51, pp. 491-505.

Abuse, using a national sample carefully broken down by age and other characteristics.[4] As Table I indicates, this study found that 68 percent of young adults in 1979 had tried marijuana, compared with only 4 percent in 1962. Among 12- to 17-year-olds, the proportion had grown over the same period from just 1 percent to 31 percent. Even among 12- to 13-year-olds in 1979, the study showed 8 percent had been introduced to the drug. When NIDA examined current users (those who had used the drug within the last month), the pattern illustrated by Table II emerged. As the figures indicate, widespread use now occurs among children of high school age and 40 percent of the college-aged population are current users.

Among those who reported current use of the drug, the NIDA study found that about two-thirds of young adults and one-half of older adults and youths have used marijuana once or more times in the last month. Of our high school seniors, some 10 percent were found to be daily users, consuming an average of 3½ marijuana joints every day. Not only has the proportion of daily users doubled among high school seniors since 1975, but it now exceeds the number who use alcohol on a daily basis (stable at about 6 percent since 1975).

When one remembers that the potency of the average marijuana joint has increased many fold in the last ten years, it becomes clear that we are dealing with a staggering increase in the consumption of THC, particularly among the student population. In the 1960s, the medical implications of marijuana use were of direct concern only to a small number of people, and the dangers of heavy chronic use to an even smaller group. But today, the drug is so widespread that the medical evidence is important for the entire population.

The volume and market value of the marijuana trade now makes it a major industry. According to the Wall Street Journal even domestically produced marijuana rivals some leading farm crops. In California, the value of production may soon pass the $1 billion grape industry -- the state's number one farm commodity. In Hawaii, the level of marijuana production and sales may exceed the islands' largest business, the $300 million sugar industry.[5] The Federal Drug Enforcement Administration (DEA) estimates that domestically produced marijuana now accounts for up to 20 percent of the value of the entire trade. The American growers have specialized in recent years on developing very high grade varieties, by selective breeding. The most potent California strains

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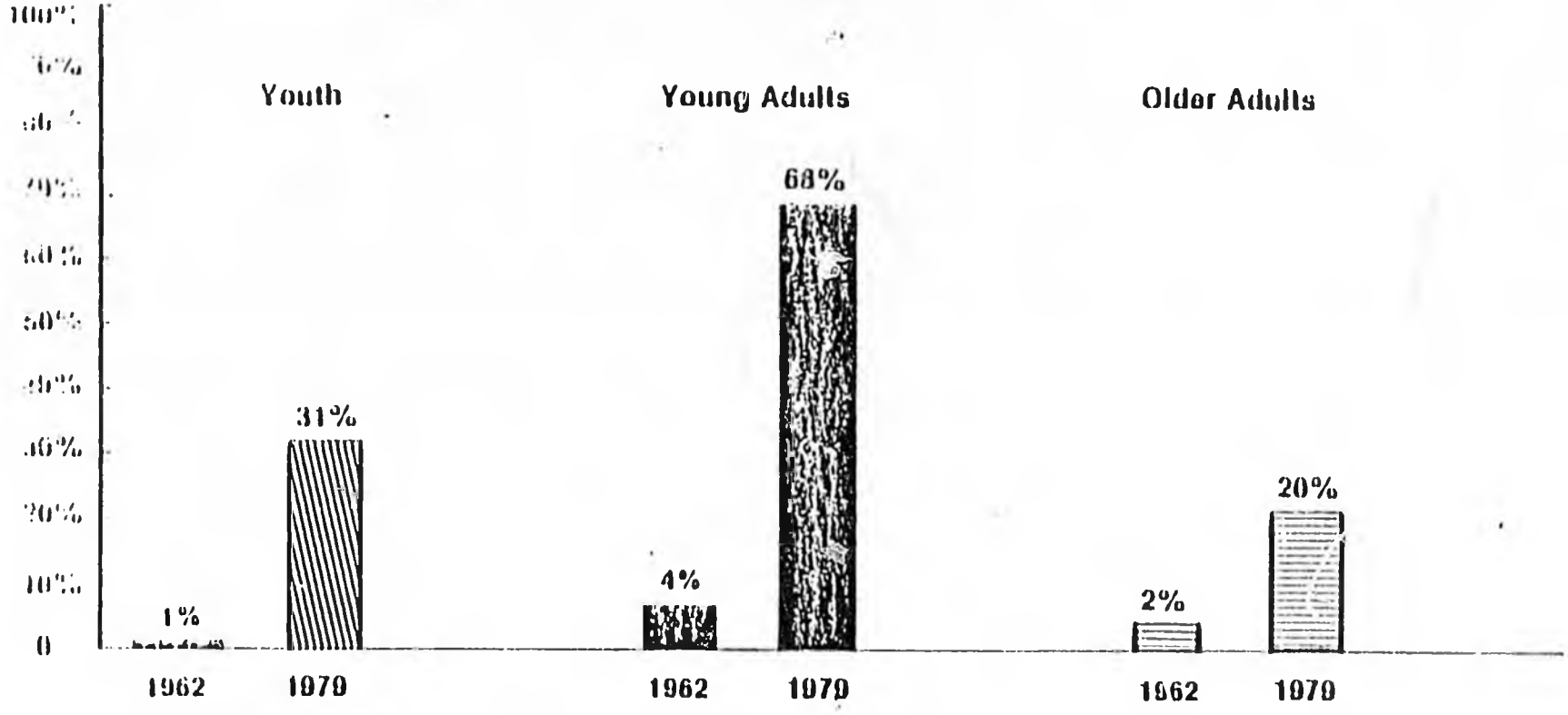
4 National Institute for Drug Abuse, National Survey on Drug Abuse: Main Findings 1979 (Rockville, Maryland: NIDA, 1980).

5 Wall Street Journal, August 4, 1980.

TABLE I

Marijuana Lifetime Prevalence

(i.e., have tried marijuana)



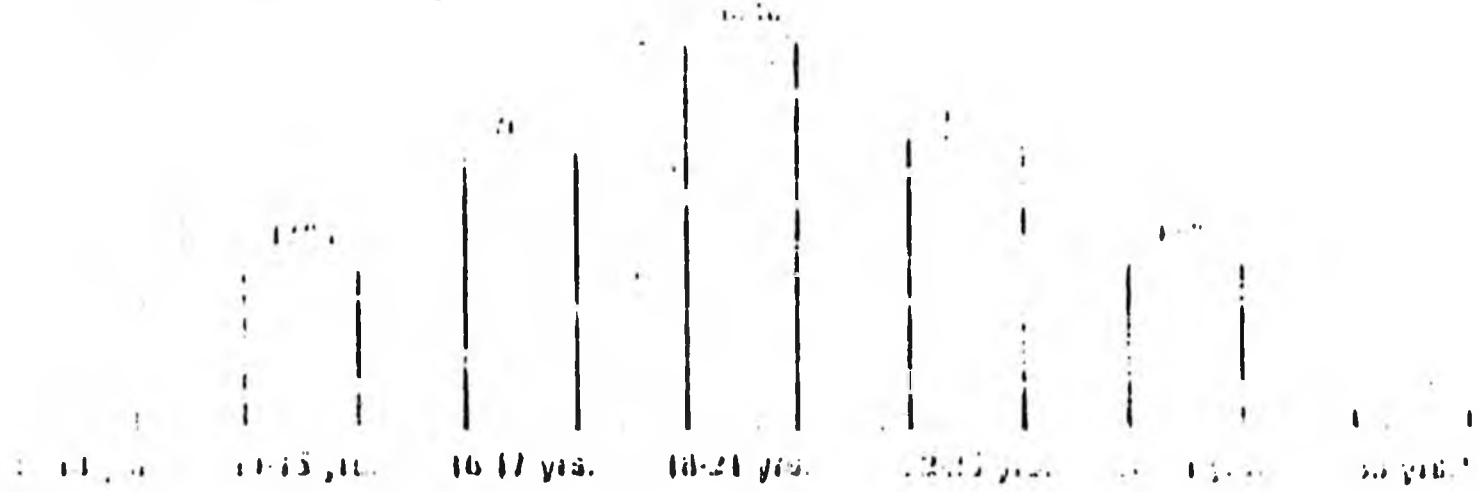
Source: A Drug Retrospective (NIDA, 1988).

Note: Youth: persons 12-17 years old
Young Adults: persons 18-25 years old
Older Adults: persons 26 years and older

40% of young adults who had tried the drug reported that they had done so at least 100 times.

TABLE II

Marijuana 1979
Ages of Current Users
(i.e., have taken drug
within last month)



Source: A Drug Retrospective.

can contain as much as 6 percent pure THC. A single plant, on a three-foot diameter plot, can yield $1,000 -- a moderate-sized garden will produce $100,000 worth of the drug.[6] The size of the total American trade, including imports, can only be determined roughly, but it has been estimated that the amount of marijuana coming into this country every year is between ten and twenty thousand tons, with a street value in the region of $20 billion.[7]

The 1970s also saw the rapid growth of what has now become a multi-million dollar industry providing drug-related paraphenalia, magazines and books. Publications such as High Times (which boasts a readership of four million), carry in-depth articles on the use of drugs and legal issues, and are full of glossy advertisements for drug equipment. High Times even provides full listings of the prevailing market prices for many drugs, much as the Wall Street Journal carries the latest stock market quotations.

While the commercial return available on marijuana has been a major contributor to its ready availability, there are other important factors behind the growth in usage. In the late 1960s and early 1970s, the drug was an integral part of the non-conformist lifestyle in universities and elsewhere. The attempt by "authority" to stamp out marijuana consumption, or even discourage it, was seen as an attack on the alternative lifestyle, and the illegality of the drug was quite probably a significant stimulus to its consumption. This mood of resistance was only encouraged by exaggerated claims (on the basis of then available evidence) regarding the health dangers connected with marijuana.

In all probability the most important cause of the explosion in use has been simple ignorance. If, as most people believe, the drug is fairly harmless, then why not use it if it is pleasant? As we shall see in this study, nothing could be further from the truth, but survey after survey shows that while the dangers of alcohol and tobacco are widely appreciated, those associated with marijuana are not.[8]

THE SCIENTIFIC EVIDENCE

General Considerations

Before we examine the evidence regarding the effects of marijuana on the body, it is important to put this evidence in its historical perspective. The early American studies on marijuana, such as they were, were unsatisfactory for several reasons.

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6 Washington Post, February 15, 1981.

7 20,000 tons would be sufficient to make approximately 12 billion joints.

8 See, for instance, L. D. Johnston, J. G. Bachman, and P. M. O'Malley, Drug Use Among High School Students, 1975-1977 (Rockville, Maryland: NIDA, 1977).

The strength of THC in test samples was often not known with precision, and so it was debatable in many instances what was actually being measured. In addition, as has been explained, the THC strength of the average joint has increased dramatically in recent years. We are dealing with a totally different level of consumption than was the case in the 1960s. Using typical test results from the 1950s and 1960s as a guide to the effects of present-day use patterns is rather like trying to determine the consequences of a bottle of gin a day on the average person by testing the effects of a single daily martini!

Given the shortcomings of early tests, it is not surprising that many were inconclusive, and this gave powerful ammunition to the pro-legalization lobby. Even among the scientific establishment, a comparatively sanguine attitude seemed justified.

The first determined challenge to this consensus came from clinical psychiatrists -- particularly from those associated with educational institutions where the drug was in heavy use. Clinicians have often been the first people to warn the world of the unforeseen effects of a drug -- thalidomide being perhaps the most well known case -- and the importance of their front-line role cannot be understated. Typical of such clinicians was Dr. Harvey Powelson, head of the Psychiatric Division of the Student Health Service at Berkeley between 1964 and 1972. Powelson's eight years of extensive exposure to Berkeley students during the period in which marijuana use accelerated greatly make him probably the most experienced campus psychiatrist in the country. Like so many of his associates in the 1960s, Powelson took a tolerant attitude to marijuana in his early days at the University of California; but as he watched individual users over an extended period of time his attitude changed completely, to the point where he came to believe that it is the most dangerous drug with which the nation must contend.[9]

It was the conclusions of observers such as Powelson that created the pressure for the very thorough testing which began in the early 1970s. This series of tests have been far superior to the research of the 1950s and 1960s: more carefully controlled THC doses have been used, for instance, and strength levels in both human and animal tests reflect current usage. It should be noted, however, that there are still some unavoidable obstacles to testing. Marijuana <u>is</u> an illegal substance, and so it is not always easy to obtain statistically perfect volunteer groups. In addition, early studies showed that THC is highly toxic, and that it may pose significant dangers to certain individuals and to the fetus. So there are strong moral and legal impediments to certain important types of study, necessitating the use of animals rather

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9. H. Powelson, Testimony before the Senate Subcommittee on Internal Security, May [illegible], ref. 30, pp. 18-21 and "Marijuana: More Dangerous Than You Think," Reader's Digest, December [illegible].

than humans for test purposes. But in these cases, the animals possess medical characteristics that parallel human functions, and dosages given to the subjects have been equivalent to those taken by humans. Furthermore, the results with appropriate animals correspond closely with clinical observations of human users.[10]

THC and the Body

Unlike water soluable drugs such as alcohol, which is metabolized and "washed out" of the system within twelve hours, THC is fat soluble and remains in the body for a considerable time. The THC in marijuana has a half-life of about three days; that is, it takes three days for half the THC in a joint to leave the body. It may take over three weeks for all the THC to be broken down. According to one expert, observations suggest that the younger the age of first use, the greater may be the long-term effects resulting from the THC in the body.[11]

This pattern of retention in the body means that even the occasional marijuana smoker may never be free of THC. Furthermore, there is strong evidence from animal tests that the toxicity is cumulative -- small amounts of THC administered over a period seem to be far more harmful than the same total quantity in one dose.[12]

The fat solubility of THC, which is exceeded only by substances such as DDT, affects the way in which the substance is distributed within the system. Intravenous injections of radioactive THC confirm that it concentrates in the fatty tissue, and also that it lodges in the liver, lungs, reproductive organs and the brain. It was not until the early 1970s, with the work of Julius Axelrod and others, that the pattern of THC absorption by the body, or the period for which it was retained, was known with any real certainty.[13] Until then, it was assumed that THC was broken down and removed from the body as quickly as alcohol.

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10 For excellent reviews of the scientific studies concerning marijuana, see George K. Russell, Marijuana Today (New York: Myrin Institute, 1980 -- published in cooperation with the American Council on Marijuana); Gabriel G. Nahas, Keep Off the Grass (New York: Pergamon Press, 1979); "Twelve Things You Should Know About Marijuana," Consumers Research Magazine, April 1980; I. Lantner, J. O'Brian and H. Voth "Answering Questions About Marijuana Use," Patient Care, May 30, 1980.

11 Carlton Turner, Associate Director, Research Institute of Pharmaceutical Sciences, University of Mississippi, Address to Seminar sponsored by the J.M. Foundation, New York, September 9, 1980, (unpublished transcript).

12 W. D. Patton, Testimony before the Senate Subcommittee on Internal Security, May 1974, ref. 30, pp. 70-79.

13 Ibid.; Also D. S. Freud and J. Axelrod, "Delta-9-Tetrahydrocannabinol: Localization in Body Fat," Science, 179 (1973).

This discovery that THC is retained for a considerable time in certain organs of the body is crucial to a proper understanding of its effects. It means that the drug is quite unlike alcohol, with which it is often incorrectly compared. And the moderate user is running far greater risks than the moderate user of alcohol and many other drugs.

Tolerance and Addiction

A discussion of the cumulative effects of a drug leads to the issue of tolerance. One of the popular misconceptions regarding marijuana is that the user develops a "reverse tolerance" -- he needs gradually less and less THC to produce the same "high." It is possible that this belief developed from an examination of the effects of the low dosages commonly used in the 1960s. There may also be a "learning effect" that develops with low doses that leads to a greater appreciation of the high by the user. In addition, it is possible that low doses of THC may cause the release of quantities of the drug stored in the body's organs.

But it has now been firmly established through careful studies with doses typical of current use that a profound tolerance develops -- that is, steadily larger doses are necessary to produce the same effect.[14] Tolerance means that the heavy chronic smoker must increase his THC intake to obtain the same psychoactive results; which in turn means that he must increase the concentration of THC in his brain, lungs and other organs. Tolerance effects also encourage the user to try more potent drugs, such as LSD, and to combine marijuana with alcohol or other available drugs.

One reason why marijuana is considered as relatively safe by so many people is the belief that it is non-addictive. But a misconception regarding the nature of addiction lies at the heart of this impression. If the sole criterion is physical addiction, meaning a physical dependence on the drug followed by severe physical withdrawal symptoms, then the evidence would indeed suggest that marijuana is only mildly addictive, even at high doses.[15] Of much greater concern, however, is the degree of psychological dependence that is associated with marijuana. Many users dismiss the notion of psychological dependence as synonymous with "liking marijuana" in the sense that one might like chocolate ice-cream or tennis. But the term implies a more subtle and dangerous effect on the user. As Gabriel Nahas of Columbia University has explained:

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14 Marijuana and Health: Eighth Annual Report to the U.S. Congress (Rockville, Maryland: NIDA, 1980), p. 26; Marijuana Today, p. 79.

15 R. T. Jones and D. Benowitz, "Clinical Studies of Cannabis Tolerance and Dependence," Annals of the New York Academy of Science, 282:221 (1976). Because of the slow elimination of THC from the body, withdrawal effects are not severe.

> The desire for instant gratification is a profound psychological reinforcer....Addiction to a drug is not a function of the drug to produce withdrawal symptoms. Drug dependence results basically from the reproducible interaction between an individual and a pleasure-inducing biologically active molecule. The common denominator of all drug dependence is the psychological reinforcement resulting from reward associated with past (use) and the subsequent increasing desire for repeated performance.[16]

It is this psychological dependence that makes the marijuana habit difficult to break. It is clear from clinical evidence that it is very common for heavy users to continue smoking even when they concede that it severely impairs their health and motivation, and that professional help is regularly needed to enable a user to give up the drug. The plain fact is that in the case of marijuana, the distinction between physical and psychological addiction is semantic, not real.

Marijuana and Other Drugs

Little could be further from the truth than the idea that a daily joint is merely the equivalent of a lunch-time martini. There are crucial differences. In the first place, as has been pointed out, alcohol leaves the system far more rapidly than marijuana. Even when taken to excess, the effect of alcohol is short-lived. It takes very heavy drinking over a long period to cause irreversible damage to the liver, or to the proper functioning of the brain (and then it is due primarily to a protein deficiency resulting from liver deterioration). The effects of THC, on the other had, occur with only moderate dosage, and it appears to cause damage to more organs in a much shorter space of time.

There is also little evidence to suggest that alcohol and marijuana are in fact considered as alternatives by users. The usage of alcohol among school students, for example, has not fallen during the period in which marijuana smoking has rapidly increased. If anything, there appears to be a small positive correlation between marijuana use and the taking of other drugs, due in large part to the fact that a combination of THC with many other drugs leads to a greater effect than that achieved with either drug alone.[17] Alcohol in combination with marijuana, for example, enhances the sedative result obtained with just the same dosage of alcohol. This is also the case with Valium, Librium, antihistamines, barbiturates, and narcotics such as opium, heroin,

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16 G. G. Nahas, Marijuana - Deceptive Weed (New York: Raven Press, 1973).

17 A. J. Siemans, "Effects of Cannabis in Combination with Ethanol and other Drugs," in R. Peterson (ed.), Marijuana Research Findings, 1980 (Washington, D.C.: U.S. Government Printing Office, 1980).

morphine and codeine. With other drugs, the combination with marijuana increases the stimulant effect, followed by a heavier depression. Such drugs would include cocaine, Benzadrine and Dexadrine.

The reason for this enhancing effect may be that the cells of the liver perform as identifiers and disposers of foreign chemicals in the body through the action of enzymes. When the THC is taken, however, the efficiency of this liver function is impaired and detoxification is reduced. Consequently, the power of the other drug to affect the body is increased.[18]

With some therapeutic drugs, the combination with THC may have the opposite result, leading to a reduction in the effectiveness of the prescribed drug. Taken with anticonvulsants such as Dilantin and Pegamone, for instance, THC antagonizes the drug and lowers the seizure threshold. Similarly, THC can inhibit the results of beta-blockers, used to treat hypertension and some heart conditions. And when taken by a diabetic, marijuana can alter the amount of insulin necessary to maintain balance.[19]

The incidence of marijuana use in combination with other drugs is increasing. Not only is the enhanced effect sought of itself by the user, but it is also a means of obtaining better "value for money" from more expensive drugs. The availability of low-cost marijuana may therefore increase the use of harder drugs.

Psychological Effects

Summary:

There is now a considerable body of scientific data regarding the behavioral effects nad intellectual impairment resulting from marijuana use. Roy Hart and Gabriel Nahas have surveyed the extensive foreign literature. As Hart points out, impairment of memory, judgment, intellectual functions, orientation and motivation have been accepted as consequences of marijuana use for many years.[20] The evidence from this country leads to the same conclusion. Dr. Powelson has summarized the clinical evidence as follows:

> Its early use is beguiling. It gives the illusion of feeling good. The user is not aware of the beginning loss of mental functioning. I have never seen an exception to the observation that marijuana impairs the

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18 Nahas, Keep Off the Grass, p. [illegible].

19 Lanther, "Answering Questions About Marijuana," p. [illegible].

20 R. Hart, "A Psychiatric Classification of Cannabis Intoxicati[illegible]," Journal of the American Academy of Psychiatric Neurology, [illegible], pp. [illegible]; Nahas, Marijuana, and Keep Off the Grass.

> user's ability to judge the loss of his own mental functioning.
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> After one to three years of continuous use the ability to think has become so impaired that pathological forms of thinking begin to take over the entire thought process.
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> Chronic heavy use leads to paranoid thinking.
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> Chronic heavy use leads to deterioration in body and mental functioning which is difficult and perhaps impossible to reverse.
>
> Its use leads to a delusional system of thinking which has inherent in it the strong need to seduce and proselytize others. I have rarely seen a regular marijuana user who wasn't "pushing." As these people move into government, the professions, and the media, it is not surprising that they continue as "pushers," thus adding to the confusion that (the scientific community) is obliged to ameliorate.[21]

Behavioral Effects:

Broadly, light marijuana smoking results in enhanced sensitivity to sensory stimuli. Heavy smoking tends to result in apathy and withdrawal. Research conducted on moderate and heavy smokers shows that a distortion of reality is common, together with confusion, memory loss, diminished concentration, reduced motivation, and hostility towards discipline and authority. Among relatively inexperienced users, acute anxiety can develop as the smoker grows aware that reality is becoming distorted. The same anxiety can also occur when a joint of higher potency is smoked.[22] Heavy usage of marijuana accentuates these effects. Marked memory impairment and confusion is common among such users, and there is evidence that heavy smoking can exacerbate mild and latent paranoia and schizophrenia.[23]

The consequences these effects have on adolescents may be very damaging. At precisely the time that difficult arrangements need to be made, marijuana may distort both the reality that must be faced and the judgment needed to deal with it. The maturing process is inhibited, and a concern with the moment overshadows any assessment of the future. Dr. Mitchell Rosenthal, president of Phoenix House in New York, has summarized the consequences of marijuana use among adolescents as follows:

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21 Roselson, Testimony before the Senate, May 1974, quoted in Russell, Marijuana Today, p. 22.

22 Marijuana and Health, p. 21.

23 Ibid., pp. 21-22.

> To grow, to develop, to achieve adulthood, adolescents must cope with the emotional storms and squalls of the troubled teenage period. They turn to marijuana or to alcohol to self-medicate and to relieve the anxieties of the moment. They do not cope and they do not know how to cope. They blow away their troubles in clouds of smoke and they blow away their chance of becoming mature and responsible adults.[24]

Social Behavior:

Marijuana use does appear to foster alientation, towards both the family and society in general. In school and college settings, the tendency of users to form subcultures hostile to prevailing social customs and attitudes is well known. A large-scale study of Boston schoolchildren, for example, showed that early use of the drug was closely correlated with truancy, alienation from authority, poor academic achievement and the early use of alcohol and tobacco.[25]

It remains to be seen what sort of society will emerge as a generation so heavily associated with marijuana attains the position of leadership.

Intellectual Functions

Motivation:

It is all too common to hear of a marijuana user who appears to have lost all will to succeed. The decline in motivation among heavy and moderate smokers -- and even some occasional users -- is probably the effect noticed most often by a user's friends. Chronic heavy use can lead to almost total withdrawal (often rationalized in such terms as "getting out of the rat race"). Clinicians dealing with high schools and colleges report constantly of gifted students who are marijuana users and who lack the drive necessary to reach their full potential.[26] The user is often quite unaware of just how great a decline in motivation he is experiencing, and increasingly, as Dr. Franz Winkler

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24 M. Rosenthal, "Marijuana and Effects on Adolescents," given at "Marijuana: Biomedical Effects and Social Implications," Second Annual Conference on Marijuana, New York University Post-Graduate Medical School and the American Council on Marijuana, New York, June 28-29, 1979 (unpublished transcript).

25 G. Smith and C. Fogg, "Psychological Predicators of Early Use, Late Use, and Non-Use of Marijuana among Teenage Students," in D. Kandell (ed.), Longitudinal Research on Drug Use (New York: Halstead Press, 1978).

26 See, for example, H. Kolansky and W. T. Moore, "Effects of Marijuana on Adolescents and Young Adults," Journal of the American Medical Association, [illegible] and "Toxic Effects of Chronic Marijuana Use," Journal of the American Medical Association, [illegible] pp. [illegible].

has pointed out, the smoker loses all interest in normal student activities:

> The lasting effects of moderate amounts of marijuana are minimal in contrast to the harmful effects of even a couple of reefers a week....An early effect of marijuana and hashish use is a progressive loss of willpower, already noticeable to the trained observer after about six weeks of moderate use....Soon all ability for real joy disappears, to be replaced by the noisy pretense of fun. While healthy teenagers will eagerly participate in all kinds of activities, such as sports, hiking, artistic endeavors, etc., a marijuana user will show an increasing tendency to talk aimlessly of great goals, while doing nothing about them.[27]

A particularly disturbing aspect of this reduction in motivation is that in some cases it may be permanent. It will be shown later that THC appears to have long-term physical effects on the brain, and clinicians such as Powelson have cited several instances of patients who gave up marijuana and yet are still unable to regain their normal level of motivation and concentration after a year or more of abstinence.[28]

Learning and Skills:

The decline in motivation common among marijuana users is closely related to a general reduction in intellectual performance. Chronic use of the drug can seriously inhibit powers of comprehension, judgment and learning -- and this effect is not confined to the period of intoxication. The most distinctive influence is on short-term memory. THC appears to interfere with the transfer of learned information from the short-term memory, leading to difficulty in recalling material learned when intoxicated.[29] Given the widespread daily use of marijuana among school children, this effect has most serious educational implications.

The use of marijuana has also been shown to have detrimental effects on the smoker's ability to operate certain machinery, such as an automobile or airplane. Several studies have demonstrated a distinct impairment of driving skills, and that users are overrepresented in accidents compared with non-users.[30] It must be emphasized that this impairment does not only occur during a "high"; it continues for many hours after the subjective intoxication. Since judgment itself is affected, a driver may be totally unaware that his skills have diminished and that his

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27 F. E. Winkler, About Marijuana (New York: Myrin Institute, 1970), quoted in Russell, Marijuana Today, p. 40.

28 Powelson, "Marijuana," pp. 95-99.

29 Marijuana and Health, p. 10.

30 Several of these studies are summarized in Marijuana and Health, p. 11.

reactions are slower. And since the influence of marijuana, unlike that of alcohol, is not easily detected by others, passengers travelling with the user may be unaware of their own danger.

There are certain aspects of the effect of THC on skills and intellectual functioning which need to be understood to appreciate the full impact of marijuana use, and the shortcomings of some studies. In the first place, THC has a much greater influence on the performance of less familiar tasks than on well learned activities. The impact on the student, in other words, is likely to be much greater than on the assembly line worker. Furthermore, the effects are dose related -- the heavy smoker experiences markedly greater impairment than the occasional user (although frequent but light smoking does have a cumulative effect). Thus, studies based on the relatively low doses generally used in the 1960s do not provide an accurate guide to the influence of high-potency marijuana currently used.

Another key feature of the drug is that its effect on skills and performance appears to be correlated strongly with the intelligence level of the user. Thus, the impairment seen among students and professionals is usually greater than that among people of average or low intelligence. More generally, the impact of the drug on middle class smokers tends to be more significant than in the case of manual or working class users. This is particularly important when examining evidence from abroad, since in countries such as Egypt, Morocco or the West Indies, the use of marijuana is a habit usually confined to the poorer, less educated classes. Only in the United States is marijuana widely used by better educated segments of society -- the very groups most prone to its damaging effects.

By appreciating these distinctions in the influence of the drug one can appreciate the deficiencies of tests such as the "Jamaica Study," which is widely cited by the pro-legalization lobby as a demonstration of the benign effects of the drug.[31] In this study, the researchers selected a group of thirty ganja (i.e., marijuana) smokers and a control group of thirty non-smokers. The groups were given a battery of psychological and other tests, and their brain wave patterns were examined. No significant differences between the groups were detected.

This study has been faulted on several grounds, some of them technical,[32] and the findings ran strongly against the clinical evidence available in Jamaica.[33] But, more importantly, the

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[31] V. Rubin and L. Comitas, Ganja in Jamaica: A Medical Anthropological Study of Chronic Marijuana Use. The Hague, The Netherlands: Mouton Press, 1975.

[32] See Russell, Marijuana Today, pp. 28-30; Nahas, Keep Off the Grass, pp. 101-102.

[33] Russell, Marijuana Today, p. 28.

study ignored both the relationship between intellectual capacity and impairment, and the difference in the influence of THC or skilled as opposed to simple and familiar tasks.

Brain Damage

The personality and learning impairment associated with marijuana use leads naturally to the question, "Does marijuana actually cause physical damage to the brain?" There is now a strong body of evidence to suggest that it does -- in ways consistent with clinical observations.

The most important work in this field has been conducted by Dr. Robert Heath of Tulane University Medical School. In the most significant test undertaken by Heath, groups of rhesus monkeys were used to examine the physical effects on the brain resulting from marijuana use. This species of monkeys has a central nervous system very close to that of man, and is widely used as an indicator of the consequences of therapeutic and other drug use on humans. By using monkeys, Heath was able to remove many problems associated with human volunteers -- such as legal issues and the difficulty of keeping a tight control on the level of drug use. He was also able to sacrifice the monkeys and conduct a close examination of the brain tissue of each animal. In the test THC was administered both by smoke inhalation and by injection -- the intake being equivalent to that normally found among human users. The monkeys were exposed to the drug for six months and studied for a further eight months after the drug was withdrawn, using deep and surface electroencephalograms (EEG), after which they were sacrificed and examined.

Heath found distinct changes in the brain wave pattern in the "deep brain sites" of the limbic region -- the area associated with smell, taste, emotion, pleasure, and the control of drives. This change was noticeable after two to three month's use by monkeys subjected to the equivalent of heavy or moderate intake by humans. There was no such effect in the control group. The alteration in the deep brain pattern resembled that associated with conditions such as schizophrenia, and with the reduction of awareness. Heath continued to monitor the deep brain throughout an eight-month period after THC intake was ceased, during which time the change in pattern continued -- suggesting long-term and possibly permanent brain damage.

After the eight-month period the monkeys were sacrificed and their brain tissue carefully studied. Electron microscope analysis revealed distinct damage, particularly at the synaptic junction, where one nerve cell connects with the next -- regions that are crucial to the operation of the central nervous system. This damage included a widening of the synaptic cleft (i.e., the gap between the cells) by an average of 25 percent; which is a condition seen in brain poisoning associated with substances such as carbon tetrachloride and in cases of severe vitamin B deficiency leading to psychosis. Heath also noted that dense material was

deposited in the clefts, and, among other effects, there were changes within the cells active in memory function.[34]

The changes in the brain observed by Heath correspond with the behavioral and learning function alterations described earlier. His studies show clearly that THC has a detectable physical effect on the brain, even though the implications of the effect are not known. Most disturbing of all, his experiments suggest that the changes in the brain tissue may be permanent, even among moderate marijuana smokers.

While Heath's experiments have provoked considerable controversy, both regarding the methodology and the meaning of the results, there is supporting evidence. A 1971 study, for instance, used air encephalography to examine the brains of a group of young smokers, each of whom had used marijuana consistently for many years and were experiencing severe personality changes. The study, conducted at the Royal United Hospital in Bristol, England, concluded that there was evidence of as much brain atrophy among the group as would be expected in very elderly people. None of the test group displayed clear evidence of any condition prior to smoking the drug that might have produced such a level of degeneration.[35]

More recent research, using CAT scanners to examine the brains of chronic users, has failed to confirm the Bristol results, however, and so further testing is clearly necessary before any firm conclusions can be reached on the question of brain damage.[36] Nevertheless, the weight of existing evidence does suggest that there is good reason to believe that potentially serious physical effects on the brain do result from chronic marijuana use.

Disease and Cell Division

Recent research has shown that THC seems not only to have very damaging effects on the cells of the brain, but also that it may have an impact on cells related to the immunity system. Work by Gabriel Nahas, for example, showed that the cell division rate

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34 R. G. Heath, "Marijuana: Effects on Deep and Surface Electroencephalograms of Rhesus Monkeys," Neuropharm, 12 (1973), pp. 1-4; Heath and W. Myers, "Cannabis Sativa: Ultrastructural Changes in Organelles of Neurons in Brain Septal Region of Monkeys," Journal of Neuroscience Research, 4 (1979), pp. 9-17.

35 A. Campbell, M. Evans, G. Thompson, and M. Williams, "Cerebral Atrophy in Young Cannabis Smokers," Lancet, 2 (1971), pp. 1219-1224.

36 R. Co, D. Goodwin, M. Gado, M. Mikhael, and S. Hill, "Absence of Cerebral Atrophy in Chronic Cannabis Users," Journal of the American Medical Association, 237 (1977), pp. 1231-1232; J. Kuehnle, J. Mendelson, K. Davis, and P. New, "Computed Tomographic Examination of Heavy Marijuana Smokers," Journal of the American Medical Association, 237 (1977), pp. 1229-1230.

for the lymphocytes of a group of human users was over 40 percent lower than for a control group (lymphocytes are white blood cells that divide rapidly and attack viruses and foreign tissue). This result would mean a drastic reduction in the ability of users to fight diseases -- a reduction comparable with that found in cancer patients and kidney transplant patients receiving immuno-suppressive drugs to prevent rejection (these patients are highly prone to illness).[37]

The influence of THC on cell division seems to extend even further than the immunity system. Research findings presented by twelve different medical groups at a 1978 international conference on marijuana indicated that use of the drug causes strong interference with the synthesis of proteins, DNA and RNA (the basic "building blocks" of cells) in a wide range of cell types. The substance was also shown to impair the rate of tissue growth, to lead to unnatural cell division, and to the production of cells with an abnormal number of chromosomes.[38] Further work is needed in this area, but it should be noted that chromosome damage in certain cells does lead to leukemia and other conditions; and similar damage to gonadal tissue could affect the physical and mental characteristics of children conceived from the sperm or egg cells of a marijuana user.

Reproduction

Several studies have been conducted recently to determine the effect of THC on the male reproductive system. Research by Dr. Robert Kolodny, using a group of young males who were heavy users (averaging 9.4 joints per week), found that the principal male hormone, testosterone, was reduced by 44 percent within the group (although this was still within the normal range for the population).[39] The hormone plays an important role in sexual change during adolescence, and in sperm production. Whether this reduction has a significant effect, or if it is permanent with chronic use, is not yet known.

Two other studies of smokers indicate that chronic heavy use does result in abnormalties in the sperm count, and that it affects the mobility and physical characteristics of sperm.[40]

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37 G. Nahas, N. Suciu-Foca, J. Armand, and A. Marishima, "Inhibition of Cell-Mediated Immunity in Marijuana Smokers," Science, 183 (1974), pp. 419-420; Nahas, Keep Off the Grass, pp. 116-122.

38 G. Nahas, W. Paton and J. Indanpaan-Heikkila (edit.), Marijuana: Chemistry, Biochemisty and Cellular Effects (New York: Springer Verlag, 1976).

39 R. Kolodny, W. Masters and others, "Depression of Plasma Testosterone Levels in Chronic Intensive Marijuana Use," New England Journal of Medicine, 290 (1974), pp. 872-874.

40 W. Hembree, G. Nahas and H. Huang, "Changes in Human Spermatozoa Associated with High Dose Marijuana Smoking," in G. Nahas and W. Paton, Marijuana: Biological Effects (New York: Pergamon Press, 1979); M. Issidorides, "Observations in Chronic Hashish Users: Nuclear Aberrations in Blood and Sperm and Abnormal Acrosomes in Spermatozoa," in Nahas and Paton, Marijuana: Biological Effects.

Reports from Jamaica, Morocco, India, and this country also indicate a high level of impotence among long-term users.[41] As yet, there are no published reports of a correlation between marijuana use and abnormal offspring.

Testing the effects of THC on women -- especially pregnant women -- poses ethical and legal problems. Rhesus monkeys have therefore been used for certain of these tests, both to overcome such problems and to enable dosage to be tightly controlled. But there is also a good deal of clinical human evidence available.

Research by Dr. Carol Smith on monkeys has shown that exposure to THC for just a few days during the menstrual cycle can lead to the suppression of ovulation and the disruption of the cycle, due apparently to an interruption in the production of necessary hormones.[42] The menstrual cycle returns to normal two to three months after use of the drug ceases. Dr. Joan Bauman of the Masters and Johnson Clinic in St. Louis, studied the menstrual cycles of young volunteers who were frequent users of marijuana (an average of 4 joints per week), and had been so for at least six months. The group was then compared with a control. Dr. Bauman found that 38 percent of the marijuana users experienced problems with their cycles, compared with 12.5 percent of the control group, and a substantial number of them failed to ovulate. The users were also prone to other irregularities, such as hormone imbalance.[43] Although it is not possible to monitor precisely the drug habits of such volunteers, the human results compared sufficiently closely with more exact animal tests for the conclusion to be reached that marijuana use results in definite irregularities in the cycle.

More serious than the evidence on the menstrual cycle, however, are the strong indications that THC may be very damaging to the unborn. Tests by Dr. Ethel Sassenrath of the University of California Primate Research Center, in which rhesus monkeys were exposed to moderately heavy doses of marijuana (the equivalent of between one and two joints per day), resulted in a 42 percent loss of offspring by the monkeys through spontaneous abortion, fetal death, stillbirths or death in early infancy -- four times the rate in the control group. Post mortem examinations of the offspring, moreover, revealed a number of abnormalties, such as fluid in the brain, together with vascular, liver and kidney

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41 J. Hall, Testimony before the Senate Subcommittee on Internal Security, May 1974, ref. 80, pp. 147-154; H. B. Jones and H. C. Jones, Sensual Drugs: Deprivation and Rehabilitation of the Mind (New York: Cambridge University Press, 1977).

42 C. Smith, M. Smith, M. Beach, R. Smith and R. Asch, "Effect of Delta-9-THC on Female Reproductive Function," in Nahas and Paton, Marihuana: Biological Effects.

43 J. Bauman, "Effect of Chronic Marihuana Use on Endocrine Function of the Human Female," in Nahas and Paton, Marihuana: Biological Effects.

disorders.[44] Experiments using radioactive THC (allowing its progress through the body to be traced) have shown that the drug appears in the milk of the mother and passes into the bodies of the infants being nursed. Furthermore, there is evidence that THC passes through the placental barrier, and lodges in the fatty tissue and various organs of the fetus, including the brain.[45]

These results are very alarming. The consequences of marijuana use by pregnant women and mothers has yet to be fully determined, but the evidence so far indicates that use of the drug may be extremely dangerous or even fatal to the unborn child.

The Heart and Lungs

Marijuana use tends to increase the heart rate, leading to a reduced capacity for exercise -- although this effect does diminish as tolerance to the drug builds up. For young, healthy users this presents no particular danger, but in the case of smokers with pre-existing heart conditions, marijuana can accelerate the development of chest pains and heart irregularities.[46]

Results of test examining the effect of marijuana smoking on the lungs are more disturbing, indicating not only that the drug is connected with lung damage, but also that this damage may be more severe than that associated with tobacco. The U.S. Army's drug program in Europe, between 1968 and 1972, for example, revealed a high incidence of serious respiratory ailments among soldiers with access to the very potent strains of marijuana then available in Europe. Bronchitis and emphysema were seen even among young smokers. Emphysema, in particular, is a disease usually associated with later life, and to find it among young soldiers was most unusual. As Dr. Forrest Tennent, who headed the study, testified to the Senate:

> Even though a person can get bronchitis and emphysema from cigarette smoking, one must usually smoke cigarettes for 10-20 years to get these complications. We became alarmed about this because we began seeing these conditions in 18-, 19-, and 20-year-old men.[47]

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44 E. Sassenrath, L. Chapman and G. Goo, "Reproduction in Rhesus Monkeys Chronically Exposed to Delta-9-Tetrahydrocannabinol," in Nahas and Paton, Marijuana: Biological Effects.

45 R. Vardis, D. Weisz, A. Fazel and A. Rawitch, "Chronic Administration of Delta-9-Tetrahydrocannabinol to Pregnant Rats," Pharmcology, Biochemistry and Behavior, 4 (1976), pp. 249-254.

46 R. Prakash and W. Aranow, "Effect of Marijuana on Coronary Disease," Clinical Pharmacology and Therapeutics, 19, iv (1976), pp. 94-99.

47 F. Tennant, Jr., Testimony before the Senate Subcommittee on Internal Security, May 1974, ref. 30, pp. 288-314.

An examination by Dr. Harris Rosenkrantz of the Mason Research Institute in Massachusetts, found that the exposure of laboratory rats to only moderate amounts of marijuana smoke led to a distinct alteration in lung tissue. These effects included intense inflammation, a breakdown of the air sacs, and the formation of deposits in the lung tissue. The air capacity of the lung was also reduced by 15-20 percent. Control experiments showed clearly that far more damage occurred than with the same degree of exposure to tobacco smoke.[48]

Test conducted with humans have reached similar conclusions. A University of California study, for example, matched a group of healthy users with a control group and found a 25 percent higher airway resistance in the lungs of the marijuana smokers after just two months of heavy use.[49] This level of resistance rarely occurs among tobacco smokers before fifteen or twenty years of use.

Therapeutic Uses for Marijuana

Like many drugs that exhibit damaging effects with chronic usage, THC does seem to have some useful properties for patients with certain conditions. It appears to be effective, for example, in providing relief for certain glaucoma sufferers -- although non-psychoactive drugs can achieve the same results in many cases.

Of much greater importance is the possibility of using THC as a treatment for severe nausea often associated with chemotherapy. The National Cancer Institute recently embarked on a $1 million program to distribute THC capsules to a large number of cancer patients undergoing chemotherapy. By using THC in capsule form, rather than cigarettes, the possibility of lung damage is avoided. Some critics of the program do, however, maintain that capsules are inferior to smoking the drug, and there is some evidence available to support such a claim in the case of certain patients. Further testing is necessary to determine the cases where inhalation might be an appropriate method of administering the drug until an effective synthetic version becomes available.

The use of THC for therapeutic purposes is not without its problems. Patients run the risk of the damaging results of marijuana discussed earlier, but these risks are much lower in medical programs. Most of the damaging effects associated with the drug appear to result from moderate to heavy use for a longer period than is usual in medical purposes. And the drug can be

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48 H. Rosenkrantz and S. Fleischman, "Effects of Cannabis on Lungs," in Nahas and Paton, Marijuana: Biochemistry, Etc.

49 D. Tashkin, R. Shapiro and others, "Subacute Effects of Heavy Marijuana Smoking on Pulmonary Function in Healthy Men," New England Journal of Medicine, [illegible]

avoided in the case of high-risk patients. But if THC was widely distributed, even under prescription, it would be difficult to ensure such control. Another problem with the drug is that its psychoactive effects can be very disturbing to some patients, particularly older ones. Again, carefully controlled use allows these side-effects to be detected at an early point. Certain drugs that are chemically similar to THC (such as levo-nantradol) are currently being tested to see if they may be superior in certain instances.[50]

Consideration of THC as a therapeutic drug is not in any way inconsistent with the position that it is very harmful in general. Some highly dangerous drugs are very beneficial in certain circumstances, but this does not imply that they should be made freely available. Occasional use of THC capsules by some carefully chosen patients is not the same as chronic heavy smoking of marijuana.

PUBLIC POLICY CONSIDERATIONS

Marijuana Use and the Law

The inescapable conclusion from the scientific evidence now available is that marijuana is a dangerous substance. The increase in potency in recent years means that we are now dealing with a very different problem than the one faced in the 1960s. The evidence also shows that THC is quite different from alcohol in the way that it lodges in certain organs and causes damage to them in a short period of time.

Yet the question remains, "What, if anything, should be done?" There are many things that we do which are dangerous. Is the use of marijuana any different than these?

There are really four aspects to this question, and each raises important philosophical and practical issues:

1. To what extent should society interfere with the individual's decision to pursue a dangerous activity?

2. Is there harm, or a cost, to non-users?

3. Does society have the right to enforce some collective lifestyle on the individual to preserve some notion of "culture" or "way of life"?

4. Is an effective law possible, given a resolution of the other issues?

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50 Washington Post, November 11, 1980.

Taking each of these questions in turn:

a) Marijuana and Individual Freedom

It has always been a tenet of the idea of liberty that the individual has the right to pursue a dangerous activity, or to knowingly damage his own health. If it were otherwise, we should ban everything from hang-gliding to eating candy.

On the other hand, it has usually been conceded that there may be another justifiable position in the case of certain segments of society. When a person does not realize the consequences of an action, it is reasonable to warn him, and perhaps to physically prevent him from undertaking it. Most smokers of marijuana have very little understanding of the likely consequences of taking the drug. It would seem quite appropriate to embark on a program of education, particularly in schools, to reduce this ignorance. In addition, a policy aimed at making the drug less available, by presenting obstacles to supply, would reduce the liklihood of casual access by the ill-informed -- while the determined user would still be able to obtain supplies.

Drugs do, of course, involve a complication when considering the ability of the user to judge the consequences of his actions. We recognize that children should be protected from many things because inexperience and poor judgment can lead to unforeseen results. But some drugs actually cause reduction in the power of reasoning, or the ability to cease using the substance. This is one reason why we ban heroin but not hang-gliding. Whether there is a sufficient observable effect on the processes of the brain for us to class marijuana with heroin rather than hang-gliding is open to serious question. Yet there is probably sufficient evidence available to suggest that THC does affect motivation and the will to resist higher doses, and other drugs, to justify a policy of active discouragement.

b) Harm and Cost to Others

When a drunk decides to drive his automobile, he poses a physical threat to others, and so it is reasonable for society to impose heavy penalties on such actions for the protection of innocent parties. There is plenty of evidence for us to conclude that the use of marijuana interferes with the reactions and skills of people who drive or fly, and that this is hazardous to other people. In addition, the effects of marijuana usually last longer than those due to alcohol. It is quite reasonable, therefore, for society to punish marijuana users who drive or fly under the influence of the drug. Sophisticated laboratory techniques are now available to enable the level of THC in the body to be known with reasonable accuracy, and routine detection equipment should soon be operational. So it will be possible to provide clear guidelines, and penalties, to deal with the smoker-driver.

The idea of cost is not so simple. If the brilliant scholar becomes a heavy smoker, quits college, and goes on welfare, he is taking from society rather than contributing to it. Yet only a small minority of users could be said to impose costs such as this. Active discouragement would seem to be the most practical way of dealing with the situation.

c) The Imposition of Society's Standards

This is in many respects the most difficult issue of all, and marks a clear difference of opinion between the libertarian and the conservative. If one believes that "society" is simply a collection of individuals, it is difficult to argue that the spreading use of a drug is detrimental to society in any sense, assuming individuals other than the users are not harmed. On the other hand, if one feels that the strength of a society, and the benefits that it can provide to its members, depends on the broad acceptance of certain obligations and customs -- and that the individual is hurt when these customs are eroded -- then it could be legitimate to discourage certain activities.

It is at least arguable that the widespread use of marijuana, leading to a decline in motivation, educational achievement and health, may reduce the benefits of society for us all. If this is so, then it would provide an additional reason for active discouragement.

d) Just and Effective Law

(i) Legislation:

It has been argued by many that we are in a form of "prohibition era" with respect to marijuana. The drug is illegal, but the law is openly and widely flouted, just as it was when alcohol was made illegal. The law is held in disrespect and the punishment of marijuana users is deeply resented. According to this argument, otherwise law-abiding people find themselves dealing with criminals, and only complete legalization will restore faith in the law and get the business of marijuana out of the hands of criminals.

While this argument does have a surface plausibility to it, it is fraught with dangerous implications. In the first place, the almost universal public ignorance of the harmful consequences of marijuana use lies at the heart of the discontent with the law. If the drug were to be legalized, making it available at the corner drugstore, it would confirm the general belief that marijuana was fairly harmless. If the drug were freely available, with the consent of government, it would be virtually impossible to persuade users that they face real dangers. How could one justify a situation where marijuana was made legal when every attempt had been made to ban saccharine?

Illegality may not stop the use of marijuana, but it may serve to hold the line while people are educated as to its dangers. To remove the legal restrictions on its use could also remove any chance of reversing the trend.

(ii) Decriminalization:

There is, of course, a distinction between the issues of legalization and decriminalization. In the one case we are considering making the distribution and consumption of a drug a legal activity; while on the other we are talking about reducing the penalties for taking the drug.

It is a little difficult to justify putting someone in jail when they are probably ignorant of the consequences of taking marijuana. Even if they are fully aware of the possible damage, it does seem unreasonable to apply harsh criminal penalties when no other person is affected. While full legalization would undoubtedly lead to an explosion of use, non-criminal penalities for the possession or use of small quantities of marijuana, together with criminal sanctions for the possession of large quantities or supplying marijuana to children, would be a more just and acceptable position.

There are, however, many experts who feel that even decriminalization would be a grievous error. This view has been put forward very cogently by Dr. Robert DuPont, the former NIDA director:

> For many years, while I was in government, I supported decriminalization of marijuana and was actively publicized by the marijuana lobbying organizations as one of their chief advocates or supporters. I was never this, but I did for some years favor decriminalization of marijuana. I have changed my mind completely on that point and I now strongly oppose decriminalization. I am persuaded that we, as a nation, are dealing with a massive epidemic with grave consequences for our society, and that decriminalization is a signal in this political debate that, however much one might feel that it is not a good idea to put people in prison for possession of small amounts of marijuana, support for decriminalization is seen as support for marijuana. We all need to recognize that the battle lines are drawn and that decriminalization is the major line that is drawn across the political landscape right now.[51]

The argument surrounding the decriminalization issue is thus not so much one of principle as one of practical politics. If removing criminal penalties for the possession of small quantities

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[51] Address to seminar sponsored by the [illegible] Foundation, see note 10.

of marijuana (while maintaining criminal sanctions for distribution) would not lead to a significant increase in use, or to overwhelming pressure for legalization, then decriminalization would have the support of many people who nevertheless consider the drug as very damaging.

ACCESS AND SUPPLY

A policy of active discouragement and education may be pursued in several ways. A number of states, for instance, have banned so-called headshops, where drug-related equipment is sold. The determined user can still find ways of obtaining paraphernalia, but open encouragement to the non-user is reduced by such a measure.

A much more effective form of discouragement, however, would be to actually reduce the level of supplies reaching this country. Enormous quantities of marijuana reach the United States from the Caribbean and South America. It is a multi-billion dollar traffic that involves radio warning planes, large cargo ships, high-speed pickup boats, secret landing strips, and large payoffs to local police. It is not uncommon for seizures of ships to reveal loads of marijuana worth up to $40 million at street prices.

The Coast Guard has been overwhelmed by the volume of the trade, and the tenacity and equipment of the smugglers. Seizures now account for probably less than 15 percent of the total -- making but a small dent in massive profits.[52] If anything is to be done to contain the staggering increase in the quantity of marijuana reaching this country, there must be a significant boost in the resources made available to the Coast Guard, the Drug Enforcement Administration, and other services involved with drug interception. Only by driving up the risks faced by smugglers do we stand much chance of reducing the drug flow.

Some argue that reducing the availability of marijuana in this country might actually be counterproductive. If you deny people marijuana, they claim, they will merely turn to something more dangerous. This is a spurious argument. For the heavy user with psychiatric problems, marijuana is generally only a stepping stone to hard drugs, or a means of enhancing the effect of other substances. If these people are denied marijuana it would make little difference to the damage they will inflict on themselves. Far more important is the person who tries marijuana because it is inexpensive and freely available, and who then becomes a chronic user or moves on to hard drugs. A reduction in the supply of marijuana would lessen the chances of a casual introduction to the drug. Even among existing users, a switch to alcohol or tobacco is far more probable than to hard drugs.

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52 For an account of a typical Coast Guard encounter see the Washington Post, December 20, 1980.

Of course, the marijuana reaching this country has to come from somewhere, and that can present sensitive policy issues. In certain countries, the cultivation of marijuana for export to the United States has become a significant part of the domestic economy, and a major source of foreign exchange. There have been cases of the United States supporting the actions of foreign governments seeking to reduce cultivation, such as Mexico, but this kind of cooperation is rare and not very effective.

Jamaica is a good example of the kind of problem faced by the United States. The country is a major supplier of marijuana to America. The trade is worth well over $1 billion a year, equal to Jamaica's entire foreign debt, and greater than all other exports combined. Jamaica is also unstable and bankrupt, and is a target of Cuban penetration.

When the Jamaican government changed hands in 1980, the United States found itself in a very delicate situation regarding the drug business. The new Prime Minister, Edward Seaga, is a friend of the West, and so the United States is understandably hesitant to undermine what is left of the island's economy. But marijuana is crucial to the economy. As Seaga pointed out recently, "The ganja (i.e., marijuana) trade in the last several months was virtually what was keeping the economy alive."[53] According to him, the trade is "here to stay," and the question is not whether it should be wiped out but whether it should be completely legalized:

> so as to bring the flow of several hundred million dollars in this parallel market through the official channels, and therefore have it count as part of our foreign exchange -- which would mean an extremely big boost to our foreign exchange....

Mr. Seaga's tidy, businesslike approach to the drug trade is complemented by a convenient interpretation of the scientific evidence. Medical reports, he states with authority, "seem to suggest there's no conclusive evidence that ganja is harmful...."[54] Mr. Seaga would be well advised to talk to some of Jamaica's leading psychiatrists at Kingston Hospital, who seem to have reached somewhat different conclusions regarding the effects of marijuana.[55]

While the situation in Jamaica may be outrageous, dealing with it presents many problems. It would be easy to drift into the feeling that really nothing can be done without damaging the

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53 Washington Post, November 10, 1980.

54 Ibid.

55 See, for example, the report by Dr. John Hall, Chairman of the Department of Medicine at Kingston Hospital, Jamaica, quoted in Russell, Marijuana Today, p. 28.

fabric of the country. But if the government of Jamaica (or any other country) condones the cultivation and exportation of a drug that is harmful to the people of the United States, it has only itself to blame for the consequences. It is an absurd form of foreign aid for the U.S. government to stand idly by while a country encourages the supply of a dangerous drug to America, simply because that country needs foreign exchange!

In the interests of its own citizens, the U.S. government should state clearly that marijuana is dangerous and a threat to the American population; that it is an unfriendly act for any government to condone it and that policies will be adopted to dissuade such tacit support. The idea that Jamaica can only survive if marijuana cultivation is allowed continue is ridiculous. The reason that the industry is now so important to Jamaica is that it is highly profitable. If the incentives were altered, other industries would develop. It should therefore be the goal of U.S. policy to apply penalties against Jamaica and similar countries if they continue to allow the trade to flourish, while offering American assistance to develop other industries. Tolerating the present state of affairs is an abrogration of responsibility by Washington. How can we justify putting our citizens in jail for using marijuana when we refuse to deal effectively with the chief suppliers of the drug?

EDUCATION

While effective action must be taken to deal with the flow of marijuana into this country, the other weapon in the battle to control the marijuana epidemic is education. People simply do not know the damage that the drug may do to them, and this misunderstanding of its consequences is at the root of the growing disrespect for the law dealing with it. We spend enormous sums of money teaching children how to use birth control devices but very little educating them about the effects of a drug which large numbers of them use during the school break. The scale of the problem is so great that a major drug education program in the schools should be a priority.

But education should not be confined to the schoolroom. Most adult users know little of the drug's effects, and parents usually have no idea how to recognize the symptoms of use -- or how to deal with the situation if they do recognize them. There are a number of organizations that do seek to educate parents, such as the Citizens for Informed Choices on Marijuana, based in Stamford, Connecticut. The work of groups such as this is crucial and should be encouraged. In addition, groups such as the American Council on Marijuana, in New York City, have taken the lead in providing succinct, readable scientific information for the layman. But a great deal more needs to be done, and both private and public resources should be made available.

CONCLUSIONS

1. Marijuana is a dangerous drug. It is quite unlike alcohol and tobacco in the way in which it remains in the system and the lasting damage it can cause with only moderate use.

2. While it may seem unjust to impose penalties on users, legalization -- and possibly decriminalization -- would be taken as an official declaration that the drug was safe. This could lead to the acceleration of an already rapid growth in use.

3. The thrust of public policy should be a combination of active discouragement and restriction of supply, rather than increasing penalties for use.

4. The public should be made aware of the effect of marijuana on the ability to drive. Firmer penalties for driving under the influence of the drug should be enacted at the state level, and drivers should be made aware of the dangers and the penalties involved -- as they are regarding alcohol.

5. For medical purposes, marijuana should be treated like any other drug that appears to have some benefits for certain patients. Research should not be discouraged because the drug is used illegally for non-therapeutic purposes.

6. The government and private institutions should take the lead in discouraging use of the drug, through a greatly expanded program of education in the schools, and among the general population.

7. Measures should be taken to interrupt the flow of marijuana into the country. Resources should be made available to enable the seizure rate to be increased substantially. In addition, tougher steps should be taken to interrupt domestic production.

8. Sanctions or other pressures should be adopted against countries which allow the cultivation of marijuana for the American market. Damaging the health of U.S. citizens should no longer be considered acceptable as a means of relieving the economic plight of other nations.

Stuart M. Butler, Ph.D.
Policy Analyst

Report

OF AN ARF/WHO SCIENTIFIC MEETING ON ADVERSE HEALTH AND BEHAVIORAL CONSEQUENCES OF Cannabis Use

Toronto, Ontario
30 March - 3 April, 1981

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REPORT OF AN ARF/WHO SCIENTIFIC MEETING ON ADVERSE HEALTH AND BEHAVIORAL CONSEQUENCES OF CANNABIS USE

TORONTO, CANADA, 30 MARCH - 3 APRIL, 1981

1. INTRODUCTION

1.1. Background and Objectives

The report of a WHO Scientific Group on the Use of Cannabis,[1] which was published in 1971, brought together all the available information on the behavioral effects of cannabis use and other useful material. However, despite the existence of a substantial number of clinical case reports, not much accurate quantitative knowledge was available concerning the possible adverse effects of heavy use of cannabis on the health of users. Since that time, the extent of cannabis use in many countries has increased greatly, and a large body of experimental and clinical observations is now available. At the same time, a number of countries are reexamining their legal policies with respect to cannabis control, and require accurate knowledge on cannabis-related health hazards, as one element in their policy discussions.

In 1980-81, a joint study was undertaken by the Addiction Research Foundation (WHO Collaborating Center) and the World Health Organization on "Adverse Health and Behavioral Consequences of Cannabis Use." A meeting of experts on various aspects of cannabis and health was convened in Toronto, Canada, from 30 March to 3 April, 1981,[2] under the joint auspices of the Addiction Research Foundation (ARF) of Ontario (Canada) and the World Health Organization, to undertake a critical assessment of current knowledge concerning the possible health hazards related to the use of this drug. The mandate extended to the participants was to consider only the scientific, clinical, and epidemiological information concerning potential and actual hazards to health resulting from the non-medical use of cannabis and its various psychoactive constituents. The objectives were to review the evidence, assess its completeness and validity, identify significant points of disagreement or gaps in knowledge, and make recommendations with respect to research policy and specific matters requiring further research.

[1] In this report, the term "cannabis" refers to all preparations derived from the leaves, bracts, flowers, or resin of the plant *Cannabis sativa* L.

[2] See Appendix A for the list of the participants
See Appendix B for the list of the members of the planning committee

The present report is to be submitted jointly by the Addiction Research Foundation and WHO to the United Nations and other international bodies and agencies, national bodies, professional and educational groups, and others interested in the prevention and treatment of health problems related to the use of cannabis and other psychoactive drugs. It is anticipated that this information will constitute an important element in the deliberations of national bodies responsible for decisions on social and political policy with respect to drug use. However, such policy decisions are based on many other considerations — legal, political, social, ethical, and others — in addition to health concerns. Therefore, in the interests of effective and objective scientific discussion, the subject of control policies and policy recommendations was specifically excluded from the scope of this meeting.

In addition, it was decided not to consider the therapeutic uses or other beneficial effects of cannabis. This decision is in no way due to a rejection of the possibility of any beneficial or therapeutic effects, but arises from simple recognition of the fact that the evaluation of these effects is not directly related to the evaluation of the health hazards. Inclusion of the former would have enlarged the scope of the meeting beyond the limits of feasibility for the available time and the number of participants. An independent review, now being conducted by the National Academy of Sciences, Institute of Medicine, Washington, DC, USA (1981), draws attention to the question of therapeutic uses and of other matters outside the scope of the present report.

Also in the interests of feasibility, this report does not deal with many basic scientific aspects of the mechanisms of action of cannabis. Such matters as the details of biotransformation, effects on cell membranes, neurotransmitter biosynthesis and turnover, electrophysiological processes, and experimental analysis of behavior are covered only to a very limited extent. The emphasis is on those basic processes and functional alterations which, on the basis of present knowledge, can be related directly to significant malfunction or disease in experimental animals or humans.

1.2. Definitions

Certain terms in this report have been used in the past in various ways. For the present purposes, the following explanatory comments are given.

1.2.1. *"Adverse Effect"*

An adverse effect of cannabis use may be considered to occur when such use produces impairment of an individual's biological, behavioral, or social function. Some effects (such as severe respiratory complications) would certainly be considered adverse in or by all users. However, it is

clear that others (such as alterations of time sense), may be regarded as pleasurable or unpleasant, or as wanted or unwanted, according to circumstances and factors such as age, expectations, setting, or the perceptions and value systems of subjects or observers. Mental effects that are enjoyed by a young user at a party might be considered adverse by a middle-aged patient receiving a cannabis preparation in combination with cancer chemotherapy. A state which a student may describe as "agreeable relaxation" might be considered by the teacher as "impaired concentration." Reduction of blood pressure has been regarded both as a desirable therapeutic goal and as potentially dangerous. From this it is obvious that often no sharp classifications can be made, and the implications of such a phrase as "adverse effect" must be drawn from the context of its use.

1.2.2. *"Intoxication" versus "Toxicity"*

A similar situation applies to the judgment of toxicity. One person's "intoxication" is another person's "toxic reaction." There is a continuous spectrum, which exists also with alcohol and other drugs, and to draw any sharp line is necessarily arbitrary. The decision as to when to draw such a line is shaped by the user's own perceptions as well as by the observer's concern.

1.2.3. *"Acute" versus "Chronic"*

"Acute" is used to refer to single doses and their effects, or to reactions or responses on single occasions of brief duration. At the other extreme, "chronic" assumes various meanings. One of these refers to that duration of exposure beyond which further use reveals no new phenomena. Another meaning refers to a period of time that is a substantial fraction of the lifetime of a human or animal. It is worth noting that the pattern of dosage is important, and "chronic" effects may be evoked earlier with high than with low dose rates. Even when amount and pattern of alcohol consumption are allowed for, the latency of onset of Laennec's cirrhosis may range from 5 to 20 years (Lelbach, 1974). Lung cancer from cigarette smoking, and carcinoma of the vagina following *in utero* exposure to diethylstilbestrol, also show long and variable latencies of onset. Therefore the production — and also the recognition — of some adverse effects of cannabis may require similarly long and variable periods of exposure.

1.2.4. *Rates of Use*

Words describing rates of use are particularly difficult to define. For example, the word "heavy" has been employed to describe use ranging from 1 gram of marihuana (or its equivalent) per week to more than 10 marihuana cigarettes (approximately 2-10 grams) a day. Heavy use in one society may be perceived as light in another. The only satisfactory solution is to specify the use rates quantitatively, highlighting patterns of consump-

tion, route of administration, and the potency of the material, as well as total amount used in unit time. Description of use as more or less "frequent" may sometimes be more appropriate than "heavy" or "light." Significant, too, may be particular details of self-administration; for instance, just as morning drinking of alcohol, or smoking immediately on rising in the morning, are signs of heavy consumption of alcohol and tobacco, so use of cannabis early in the day may be indicative of heavy consumption.

2. GENERAL TOXICITY

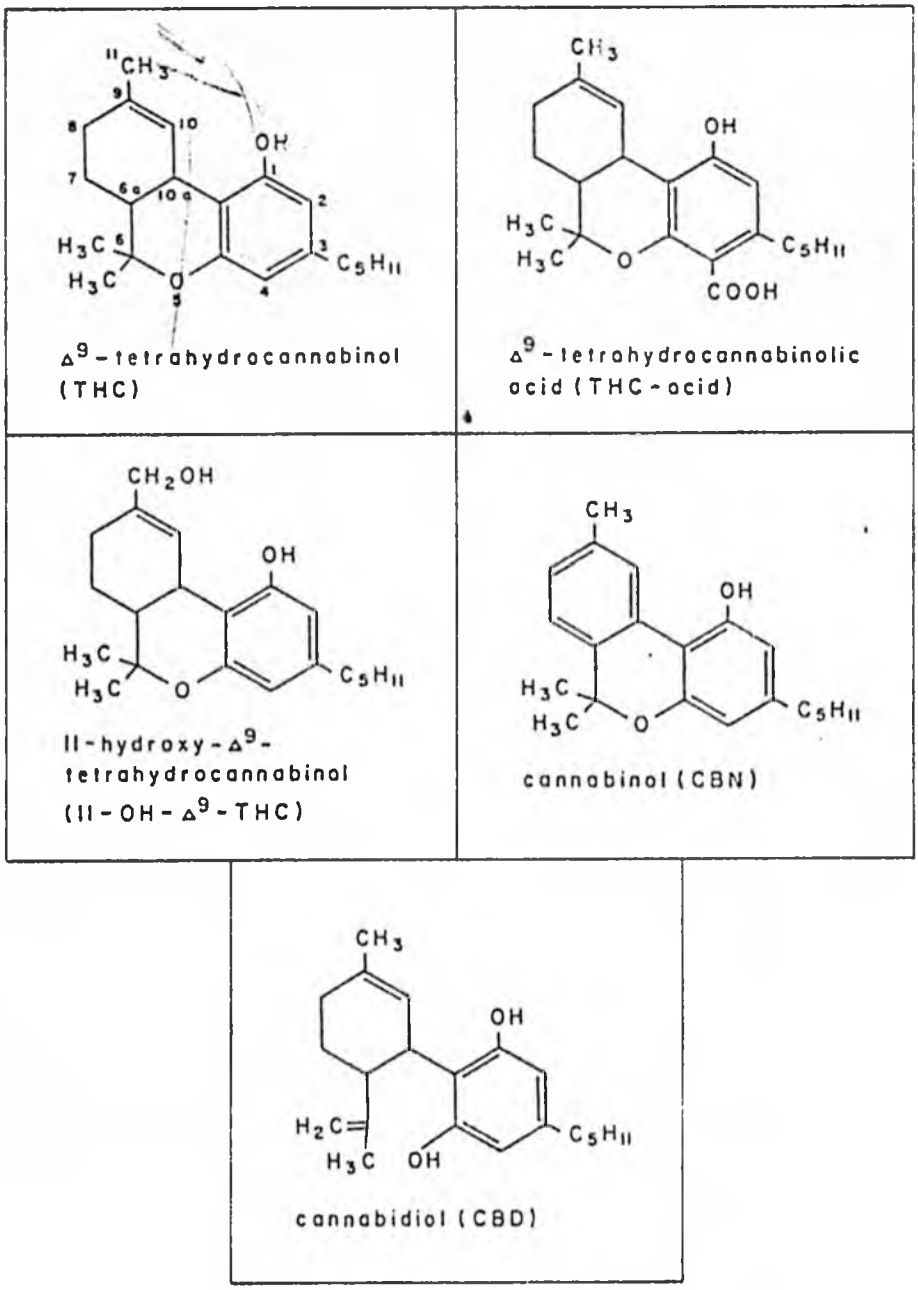
2.1. Cannabis Preparations

Among the 421 compounds thus far identified in the cannabis plant are approximately 61 with the cannabinoid structure (Turner *et al.*, 1980). Of the latter, (-) -Δ^9 -tetrahydrocannabinol (THC) (Figure 1) is of greatest interest in the context of this report, since only structures closely related to THC elicit, at low doses, the characteristic mental effects that constitute the main reason for use of cannabis by humans (Mechoulam *et al.*, 1980). Several other cannabinoids including cannabidiol (CBD) and cannabinol (CBN) (Figure 1), as well as various non-cannabinoid constituents of unpyrolyzed cannabis, may also have biological activities of other types. Dependent on the geographical origin of the plant, the relative and absolute contents of individual cannabinoids vary widely (Turner *et al.*, 1980).

Various preparations derived from the cannabis plant have a wide range of potencies. *Marihuana* or *bhang* consists mainly of dried leaves and stems and can range in content from less than 1% to greater than 8% THC. The content of THC steadily decreases at a rate of approximately 5% per year in refrigerated plant material (Turner *et al.*, 1973). Other preparations *(hashish, ganja, charas)* made from the resin and flowering tops of the plant can contain up to 15% THC. Recently, solvent extracts of leaf material, flowers, or resin have appeared on the illicit markets. The potency of this so-called "hashish oil," "honey oil," or "weed oil" is extremely variable; the THC content can range up to 60%. The toxicity of these preparations appears to be related to their THC content, although other cannabinoids or non-cannabinoids may contribute significantly. The biological effects of the remaining chemical constituents of these extracts are largely unknown at present. The existence of these high potency preparations facilitates the self-administration of large doses of THC.

The pyrolysis of cannabis products produces hundreds of compounds that make up the vapor and particulate phases of the smoke. The vapor phase consists of nitrogen oxides, carbon monoxide, hydrogen cyanide,

FIGURE 1
Structures of Major Cannabinoids



and nitrosamines, together with other known toxic chemicals (Leuchtenberger. 1982). Along with the cannabinoids, the particulate phase contains many known carcinogens including phenols, cresols, and polynuclear aromatic hydrocarbons (Lee *et al.*, 1976). During pyrolysis at usual burning temperatures, tetrahydrocannabinolic acid (Figure 1) is activated by conversion to THC, but there appear to be few other significant cannabinoid interconversions. CBD can be converted to THC, especially when cannabis is pyrolyzed together with tobacco. About 50% of the total available THC is delivered in the mainstream smoke from a marihuana cigarette during the burning procedure (Rosenkrantz, 1982).

2.2. Lethality

2.2.1. *Acute Studies in Experimental Animals*

In acute studies, pure THC appears to be the most toxic cannabinoid of cannabis smoke. The LD_{50} values by inhalation and by i.v. administration are similar in rodents, and the LD_{50} for THC is smaller than those for CBD, cannabichromene, or crude marihuana extract. Intravenous LD_{50} values for THC range from about 40 mg/kg in the rat to 128 mg/kg in the monkey. In mammals, an interesting finding is that the potency of THC in lethality tests decreases as one ascends the phylogenetic tree. For most other effects, the potency is inversely related to the body size of the species, rats and mice being much more resistant than the Rhesus monkey or man (Rosenkrantz, 1982).

Species differences in pharmacokinetics must exist, since the ratio of the intravenous to the oral acute lethal dosages ranges from about 1:30 to 1:40 for rodents but is closer to 1:100 for monkeys and probably dogs (Rosenkrantz, 1982).

In experimental animals, death usually results from cardiac arrest or respiratory failure. Since, at acute lethal doses, artificial respiration is only temporarily effective in preventing death, it appears that cardiac dysfunction rather than the profound hypopnea is the major cause of death (Rosenkrantz, 1982).

2.2.2. *Chronic Studies in Experimental Animals*

Chronic animal studies have indicated a significant degree of unexplained *delayed lethality.* In one experiment, approximately 12% of rats, mainly males, survived the initial dose but died suddenly after 2-3 weeks of continued treatment (Rosenkrantz and Fleischman, 1979). Though the mechanism is not yet clear, it is possible that this delayed lethality may be related to accumulation of THC or its metabolites in the body during prolonged administration (see Section 9.1.1.2.).

2.2.3. *Humans*

No LD_{50} values can be reliably estimated for humans, since only a very small number of fatalities have been reported, and the role of cannabis in these cases is questionable (Rosenkrantz, 1982).

2.3. Clinical and Experimental Toxicity

The past decade has witnessed the clinical documentation of many toxic effects that were previously described anecdotally or superficially. Systematic evaluations of clinical populations, closed-ward drug administration studies, controlled field studies, and accumulated self-reports by users have all been remarkably consistent in their findings. The more prominent effects are summarized below by organ system.

2.3.1. *Respiratory Toxicity*

2.3.1.1. Experimental animals. Single doses of cannabis or THC in animals affect respiration mainly by depression of respiratory rate. This effect is synergistic with that of general anesthetics and other central depressants. Though compliance (elasticity of lung and bronchioles) may be diminished, lung tissue damage has not been observed histologically in acute studies. However, prolonged and repeated exposure to cannabis smoke results in bronchiolar inflammation and morphologic alteration of the lung in rats and dogs (Rosenkrantz, 1982).

2.3.1.2. Humans. Given acutely, THC or cannabis smoke produces a small transient respiratory depression (Bellville *et al.*, 1975) and bronchodilatation (Tashkin *et al.*, 1973).

Respiratory and pulmonary toxicity have emerged as major clinical complications of chronic cannabis smoking. Cannabis smoke appears to be more injurious to the lung than cigarette smoke, as judged by the use of sophisticated pulmonary function testing in well-controlled studies (Rosenkrantz, 1982). Possibly because of its high combustion temperature, hashish appears to yield a particularly irritating smoke. In addition to the ability of cannabis to produce bronchitis, and obstructive pulmonary disease, it might after sufficient exposure produce cancer (see Section 3.2.). In the light of increased frequency of cannabis use, knowledge of the natural course of pulmonary disease suggests that the next three decades may demonstrate an increased prevalence of severe pulmonary disease and possibly of lung cancer. This risk is probably greater in those users (now a majority) who smoke cannabis and tobacco concurrently (Tennant, 1982). In present-day clinical settings the most commonly encountered toxic effects will be the respiratory problems of rhinitis, sinusitis, pharyngitis, and bronchitis (Tennant, 1982).

2.3.2. *Cardiovascular Toxicity*

2.3.2.1. Experimental animals. The major cardiovascular effects of a single dose of THC in most animal species are bradycardia, decreased cardiac reflexes, and hypotension. As a result, cardiac output and cerebral blood flow are usually decreased. Chronic administration may lead to some degree of tolerance to these effects (Rosenkrantz, 1982).

2.3.2.2. Humans. In humans, in contrast, the major effect of a single dose is tachycardia; the heart rate may reach 160 beats per minute or more (Hardman and Hosko, 1976). Acute effects on blood pressure, organ blood flow, and the electrocardiogram are variable and transient (Rosenkrantz, 1982; Tennant, 1982) and are probably due to varying degrees of effect on vasomotor tone (degree of constriction of blood vessels) and vasomotor reflexes (automatic responses to changes in body position, blood volume, etc.). In general, effects on supine blood pressure are relatively slight but postural hypotension has been repeatedly reported. There is little evidence of direct toxic effect on the heart muscle. Chronic use has not resulted in any detectable permanent alterations of cardiovascular function (Tennant, 1982). However, patients with preexisting heart disease due to a relative decrease in coronary blood flow may experience greater risk of angina pectoris and possible infarction because of the extra demand placed on the compromised heart by the drug-induced tachycardia (Tennant, 1982). Cannabis and tobacco smoke contain similar amounts of carbon monoxide. Therefore, the formation of carboxyhemoglobin, which would also contribute to impaired oxygenation of the myocardium, also needs to be considered in cannabis smokers.

2.3.3. *Growth and Body Weight*

2.3.3.1. Experimental animals. Many studies have indicated that either single or repeated exposures to cannabis cause loss, or reduced rate of gain, of body weight (Rosenkrantz, 1982). This is probably due to both decreased food intake and altered endocrine function (see Sections 5 and 6). The long-term health consequences of growth impairment by these factors are unknown but may be most important in relation to the development of the fetus, neonate, or adolescent (see Section 6).

2.3.3.2. Humans. No data on body weight and growth rates before and during periods of cannabis use, comparable to those from controlled animal studies, are available for humans. Numerous clinical case reports from India and North Africa describe regular heavy cannabis smokers as emaciated or malnourished (Bouquet, 1951), and the observations of some modern field studies have suggested that regular users are lighter in weight than non-users (Rubin and Comitas, 1975; Coggins *et al.*, 1980). Social factors such as marital status or other differences in lifestyle may have contributed to this finding (Coggins *et al.*, 1980). In short-term

laboratory studies, a weight increase attributable to increases in body water and caloric intake has been observed (Jones and Benowitz, 1976; Greenberg *et al.*, 1976). There is little or no information on possible long-term effects of cannabis on growth, development, and maturation of humans.

2.3.4. *Gastrointestinal*

2.3.4.1. Experimental animals. In dogs and monkeys exposed to high oral doses of cannabis acutely, vomiting and diarrhea may occur (Thompson *et al.*, 1973). Chronic administration does not appear to be associated with significant gastrointestinal toxicity in animals (Rosenkrantz *et al.*, 1975), but may decrease gut motility.

2.3.4.2. Humans. In humans, acute or sub-acute use may produce vomiting, diarrhea, and abdominal distress (Halikas *et al.*, 1971; Tennant, 1974). Chronic cannabis use may decrease gastric acid secretion and possibly make the intestine more susceptible to *Vibrio cholerae* and *Escherichia coli* infections (Nalin *et al.*, 1978), which may pose a particular threat to travelers. Liver toxicity has been observed occasionally in cannabis users (Tennant, 1982). Concurrent alcohol abuse appears to be a factor in these cases. The mechanism by which cannabis could enhance alcohol-induced hepatotoxicity is unknown. The observation of abnormal liver function tests in users who had developed antibodies to marihuana (Shapiro *et al.*, 1976) suggests a possible antigenic response. Lysosomal damage, observed in animals treated chronically with THC (Mellors, 1976), may also play a role.. The sharing of cannabis products or paraphernalia with other smokers has led to the spread of hepatitis in some groups (Drachler, 1975). Possible decreased immunity to viral infections is discussed in Section 4.3.

2.3.5. *Miscellaneous Toxic Manifestations*

Individual case reports have also described a variety of apparent toxic reactions to cannabis in humans, of relative rarity and possibly dependent on unusual individual sensitivity (Tennant, 1982). For example, cannabis products often contain pathogenic fungi such as aspergillus, and aspergillosis has been reported to occur in cannabis-using persons who had preexisting pulmonary disease or asthma (Kagen, 1981). Other allergic phenomena are often aggravated by cannabis use and one case of anaphylatic shock has occurred in an allergic person after cannabis use (Liskow *et al.*, 1971). Some clinical reports suggest that cannabis possibly aggravates some dermatologic conditions (Tennant, 1982).

2.3.6. *Toxicity Related to Unusual Methods of Cannabis Exposure*

Unusual exposure to cannabis includes intravenous injection of plant

extracts, oral ingestion of large amounts of the raw or cooked plant, swallowing of cannabis-filled balloons to escape police detection, and use of high-potency butter-paste preparations. The use of cannabis by the above routes has led to highly toxic reactions (Tennant, 1982). These reactions are either consequences of gross overdose (e.g., from intra-intestinal rupture of a balloon filled with "hash oil"), or complications produced by the physical rather than the pharmacological properties of the material (e.g., microembolism due to intravenous injection of a particulate suspension).

3. CELLULAR TOXICITY

Cytotoxic effects of cannabinoids have been studied by a number of different techniques, reflecting different research interests. The principal questions addressed include the possibility of cannabis mutagenicity, carcinogenicity, and impairment of biosynthesis of nucleic acids and proteins. These have involved both *in vivo* and *in vitro* approaches.

3.1. Chromosomal Aberrations and Mutagenicity

During the past 11 years, about two dozen publications on the possible cytogenetic effects of cannabinoids have appeared (Bloch, 1982). Two-thirds have dealt with examination of human chromosomes, and the remainder with rodent chromosomes.

Cytogenetic analyses of lymphocyte cultures from chronic marihuana smokers have yielded contradictory results (Bloch, 1982). Four controlled prospective studies (Nichols *et al.*, 1974; Matsuyama *et al.*, 1976; 1977; Morishima *et al.*, 1979) involving experimental administration of 1 to 15 marihuana cigarettes a day for 5 to 13 days, gave no evidence of increased chromosomal breaks or gaps, though heavy doses gave rise to a higher proportion of hypoploid cells (i.e., cells containing a smaller than normal number of chromosomes) (Morishima *et al.*, 1979). This anomaly disappeared after cessation of smoking.

Rodent and human lung cells in tissue culture exposed to marihuana smoke *in vitro* also tended to show reduced chromosome complements, but not increased incidence of chromosome breaks or gaps (Leuchtenberger, 1982). Diverse studies with rodent cells also indicate little interference with chromosomal replication by cannabinoids (Bloch, 1982).

However, in contrast to purified cannabinoids, marihuana smoke has been reported to produce chromosomal aberrations (Leuchtenberger, 1982), hypoploidy (Leuchtenberger, 1982), mutagenicity in bacteria as demonstrated by the Ames test (Busch *et al.*, 1979; Wehner *et al.*, 1980),

and impaired development in the F_2 generation (the second generation of offspring) of treated animals (Fried and Charlebois, 1979). Studies to date have not shown cytogenetic abnormalities or mutagenic effects which are definitely attributable to cannabinoids, or unambiguously identifiable in the human population.

3.2. Carcinogenicity

Analysis of cannabis smoke, animal studies, and one clinical report suggest that cannabis may have significant carcinogenic potential. Cannabis smoke condensate ("tar") is a mutagen (Section 3.1.) and when painted on animal skin has resulted in alterations of cell development (metaplasia) in the sebaceous glands (Magus and Harris, 1971) and tumor formation (Hoffmann *et al.*, 1975). Certain naphthalenes, particularly benzopyrene, are known to be as much as 70% more abundant in cannabis "tar" than in tobacco "tar" (Novotny *et al.*, 1976). Rodents made to inhale cannabis smoke for several months show changes in bronchial epithelium that are compatible with precancerous alteration (Rosenkrantz and Fleischman, 1979).

One study of bronchial biopsies in young men who were heavy users showed histopathological changes similar to those observed in much older smokers of tobacco cigarettes who may develop lung cancer (Tennant, 1980). The combination of tobacco plus hashish smoking may have enhanced the development of precancerous lesions.

One team of investigators has studied the effects of chronic exposure to fresh whole cannabis smoke and to its gas vapor phase on human lung tissue cultures (Leuchtenberger, 1982). Cellular abnormalities developed in essentially the same sequence which occurs with tobacco smoke, and appeared to be related to component(s) of the gas vapor phase of the fresh cannabis smoke. Abnormalities in mitosis, DNA complement and chromosomal number, as well as cellular proliferation, were observed. All these changes were more severe after exposure to cannabis smoke than to tobacco smoke. In hamster lung cultures, both cannabis and tobacco smoke led to malignant transformation; both types of smoke appeared to promote rather than to initiate malignant transformation. When the malignant cells were injected into immunoresistant nude mice, fibrosarcomas developed. It has been reported that ascorbic acid protects human and hamster lung cell cultures from malignant transformation induced by cannabis smoke, but may enhance cancerous cell growth and dedifferentiation (conversion to more primitive cell forms) in human breast cancer cultures exposed to cannabis smoke. The significance of these findings is not yet clear.

At this time there is no confirmed evidence that cannabis has produced cancer in humans. Available information, however, indicates that can-

nabis has carcinogenic potential, and human users should be carefully surveyed and monitored for evidence of cancer development.

3.3. Impairment of Macromolecule Synthesis

Marihuana smoke (whole smoke) evoked a decrease in DNA content in spermatids (immature sperm) of cultured animal testis (Leuchtenberger, 1982). This alteration was not found in spermatids after exposure to the gas vapor phase of marihuana smoke, or after exposure to tobacco smoke (whole smoke or the gas vapor phase). Therefore the cannabinoids of marihuana smoke were probably mainly responsible for the alterations in DNA synthesis. Similar inhibition of DNA synthesis (decreased incorporation of ^{3}H-thymidine) has also been reported in cultured lymphocytes from human users of cannabis and from THC-treated monkeys, rats, guinea pigs, and mice, as well as in various unicellular organisms and cultured malignant cells exposed to THC *in vitro* (Munson and Fehr, 1982). Inhibition of RNA synthesis (decreased incorporation of ^{3}H-uridine) and of protein synthesis has also been reported in a similar range of preparations (Munson and Fehr, 1982).

In most of these studies, the concentration of THC added *in vitro* was 10^{-4} - 10^{-6} mol/1 which is probably well above the range of THC concentrations found in the plasma or tissue fluids of human users of cannabis. But there is some difficulty in specifying concentration of THC since its maximum solubility in water is of the order of 10^{-6} mol/1 or less (Banerjee *et al.*, 1975), so that one must suppose the "free" concentration cannot rise much above this. In plasma, THC and its first metabolite, (11-hydroxy-THC) are strongly bound (up to 99%) *in vivo* to lipoprotein or albumen. *In vitro*, the nominal concentration will be reduced by adsorption to glass and by uptake into the tissue or test material, and some of it may be bound either by protein in the culture medium, or by protein released by the tissue into the medium. The nominal concentration in such experiments must therefore be regarded as representing not "free" concentration, but the amount of THC available to be taken up by the test system. In the few studies in which tissue/medium ratios have been reported, the latter have been in the order of 100-600. The correlation of *in vitro* with *in vivo* work would be greatly aided by further study of these factors.

3.4. Possible Biochemical Mechanisms

Interference with macromolecule synthesis might result from various mechanisms; examples are failure of cellular uptake of the precursor substances, inhibition of the synthesizing enzymes, perturbation of the

cellular membranes in which the enzymes are located, blockade of receptors for hormones which modulate the syntheses, and so forth. The evidence on these points is not reviewed here for reasons outlined in Section 1.1.

Only one hypothesis is mentioned here in some detail, because it is recent and imaginative, and because it proposes a single explanation both for the deficiency in nuclear histone synthesis and for the ultrastructural alterations encountered in the leukocytes and spermatozoa of chronic human users of hashish (Issidorides, 1982). These cells are characterized by a depletion of the amino acid arginine and by abnormal chromatin condensation. According to this hypothesis, the biological effects observed in chronic cannabis users may be explained by arginine depletion which, in itself, can cause chromosomal aberrations, decreased sperm maturity and motility, defective ovulation, growth retardation, immunosuppression and the reactivation of latent viral infections, and CNS effects such as anorexia, motor incoordination, and lethargy. Furthermore, the enzymes reported to be affected by cannabis possess essential arginine residues at their active sites, which would permit a THC/arginine interaction.

4. IMMUNE SYSTEM

The immune system in humans and other higher animals plays a major role in protecting the body against bacterial, viral, and other infections against the growth and spread of body cells which have undergone transformation to a cancerous state, and against foreign proteins and many other substances. A considerable number of scientific reports deal with the effects of cannabinoids on the various main components of the immune system in humans and experimental animals. These principal components are the T-lymphocytes, the B-lymphocytes (which form antibodies or immunoglobulins), and the macrophages.

4.1. Experimental Animals

In contrast to the conflicting findings so far available in humans, there is consistent evidence that THC and marihuana administered parenterally or by inhalation induce immunological defects in mice and rats, and that rats are more sensitive than mice (Munson and Fe! r, 1982). The immunological responses that have been shown to be perturbed include:

a) humoral immune suppression in mice and rats, as measured by decreased antibody responses to T-dependent and T-independent antigens, and decreased lymphocyte response to a B-cell mitogen;

b) cell-mediated immune suppression in mice as measured by a reduction of the delayed hypersensitivity response to *corynebacterium parvum*, sheep red blood cells, oxazolone and skin allografts, and decreased lymphocyte response to the T-cell mitogen, phytohemagglutinin (PHA). The depression of PHA-induced lymphocyte response was also seen in rats and monkeys.

These effects were obtained with doses of THC which produced very little behavioral effect in the mice. However, the molecular structural requirements for immunosuppressant action are different from those for psychoactivity (Smith *et al.*, 1978), so that cannabinoids other than THC may contribute to the suppressant effect of cannabis.

The evidence that marihuana or THC can perturb monocyte or macrophage function is mixed (Munson and Fehr, 1982). Overall there appears to be a reduction in the staphylococcus-killing ability of cells obtained by bronchopulmonary lavage from animals exposed to cannabis smoke, along with a reduction in the release of lysosomal enzymes, in superoxide formation and in oxygen consumption. Decreased phagocytic activity has also been observed after exposure of lung macrophages to cannabinoids or cannabis smoke *in vitro*.

The degree of immunosuppression produced by THC is a function of the temporal relationship between the administration of the cannabinoid and the antigen. The effects are more pronounced if the cannabinoids are administered during the early phase of antibody formation (Luthra *et al.*, 1980) and are more evident in young animals (Pruess and Lefkowitz, 1978). The degree of tolerance that can develop to these effects is not yet clear.

The role of adrenal steroids in the immunosuppressive action of the cannabinoids is not clear. One study (Smith and Munson, 1976) suggests that a cannabinoid-induced increase in corticosteroid release may mediate certain aspects of the immune suppression (e.g., splenic atrophy), but not others (e.g., the inhibition of antibody formation).

4.2. Humans

At present, there is only suggestive but not conclusive evidence that consumption of cannabis or THC may produce immune dysfunction in humans as measured by the following immunological indicators (Munson and Fehr, 1982):

a) the numbers of T-lymphocytes, B-lymphocytes or macrophages
b) the functioning of T-lymphocytes, B-lymphocytes or macrophages
c) serum immunoglobulin levels.

The numerous studies in which these indicators have been used have yielded roughly similar numbers of reports of increased, decreased, or unaltered immune responses in cells from cannabis users compared to non-users.

There is suggestive evidence that T-lymphocyte function may be impaired, as measured by a reduced responsiveness to mixed lymphocyte cultures or to PHA, and reduction in the number that can form rosettes with sheep red blood cells.

There is one report that the phagocytic ability of polymorphonuclear leukocytes is impaired in subjects smoking marihuana (Petersen *et al.*, 1975). There is also one report of biochemical and ultrastructural changes in the leukocytes of chronic hashish smokers (Section 3.4.) (Stefanis and Issidorides, 1976; Issidorides, 1979).

4.3. Biological Significance

If the effects of cannabis on the immune system, as examined *in vitro*, are of biological importance, it should be possible to demonstrate that they reduce the resistance of the living organism to infection or to cancer although the latter effects might be altered by an inhibitory effect of THC on the cancer cells directly. Decreased resistance to infection by *Listeria monocytogenes* and to herpes simplex virus has been found in cannabis-treated mice (Morahan *et al.*, 1979). Since other drugs which suppress immune responses in mice also do so in humans, the apparent differences between the findings with cannabis in humans and rodents may depend merely on relative doses used. In humans, it has been reported that dormant genital herpes infections have been reactivated shortly after the smoking of cannabis (Juel-Jensen, 1972).

It can be expected that the immunosuppressant efficacy of cannabis, like that of any other immunosuppressant drug, will vary along a continuum, ranging from little or no effect against immunity to common viral infections such as influenza, up to marked suppression of resistance to unusual infections such as Listeria pneumonia in the mouse. Since immunological function is normally less effective in older persons than in younger ones (Hallgren *et al.*, 1973; Burnet, 1976), it is also possible (though not yet studied) that the immunosuppressant effect of cannabis would be appreciably greater in the elderly. The magnitude of public health consequences of such a drug effect is therefore difficult to assess. One of the problems of interpretation of these findings is the relative crudeness and high variability of the tests of immune function *in vivo* compared to those *in vitro*. It is necessary to have a high degree of immunosuppression *in vitro* before a statistically significant *in vivo* effect can be demonstrated in a small number of experimental animals. Therefore some immunologists consider the *in vitro* effects of cannabis to be without functional significance for health.

However, epidemiological observations on large populations of users should permit a clearer assessment of the biological significance of small degrees of impairment of immune function. A minor degree of im-

munosuppression in a substantial number of cannabis users might result not in any sudden and dramatic increase in incidence of unusual infections, but rather in a slight increase in incidence, severity, and duration of common ones. Cumulatively, this could have considerable significance for public health and health care delivery systems.

4.4. Cannabis As an Allergen

Cannabinoids have some allergic potential. From the few data available, it appears that allergic reactions in humans are uncommon, although cannabis use has been reported to worsen allergic symptoms in atopic persons (Tennant *et al.*, 1971). Skin tests in cannabis smokers have usually shown little or no reaction to cannabis or its constituents (Tennant *et al.*, 1971; Lewis and Slavin, 1975), although some cannabis users have demonstrated serum antibody responses to THC and other cannabinoids, suggesting that these compounds can act as haptens (Liskow *et al.*, 1971; Shapiro *et al.*, 1976). Antibodies have also been made against THC in experimental animals (e.g., Lecorsier *et al.*, 1977).

5. EFFECTS ON ENDOCRINE FUNCTION

As with the work on the immune system, fairly impressive and consistent effects of cannabis have been observed in endocrine functions in experimental animals, while only weak and inconsistent effects have been reported in humans (Bloch, 1982). It is not clear whether this represents a species difference or a consequence of differences in dosage and pattern of administration, or of clinical variation. The endocrine responses of experimental animals to most other drugs are at least qualitatively similar to those of humans, although there are exceptions to this statement. Therefore, when a particular endpoint or system reacts uniformly to cannabinoid exposure in several species of several classes, including monkeys, a qualitatively similar response in humans may be anticipated.

5.1. Methodological Considerations

A number of the hormones studied, such as testosterone and luteinizing hormone (LH), show very large, short-lived, and quite irregular variations in blood levels, independent of any regular diurnal rhythms (De Lacerda *et al.*, 1973). Therefore occasional measurements at single points in time show very wide scatter and large standard deviations in small

groups of normal subjects. In order to demonstrate reliable though small differences between groups submitted to different treatments, it is necessary to use either:

a) very large numbers of subjects, so that the standard error of the mean for the group is decreased in correspondence with the sample size, or
b) frequent or continuous sampling (e.g., by indwelling venous cannula), to estimate the true mean for each subject.

In human studies, (a) is probably not feasible for financial reasons, but (b) has been employed in the best recent investigations (e.g., Mendelson *et al.*, 1978).

In animal studies, published work has been deficient in a variety of important ways:

a) often only single doses of cannabinoids have been used, rather than full log-dose/response curves, so that the biological significance of the findings is difficult to determine;
b) *in vitro* drug concentrations may often be too high to be relevant to *in vivo* levels of cannabinoids (see Section 3.3.);
c) the duration of cannabis treatment is often variable and arbitrary;
d) the time between drug administration and hormone measurement is variable and often not stated;
e) animal strains are occasionally not specified;
f) data variance within the same study often differ widely;
g) in most experiments, cannabis-treated animals are compared with vehicle-treated controls, but for explanation of mechanisms there should also be comparisons with analogs, homologs, and derivatives of THC.

Despite these shortcomings, a good measure of agreement has been found in relation to the effects of cannabinoids on male and female gonadal and adrenal hormone production and on hypothalamic-pituitary regulation. Much less is known about the effects on other hormones.

5.2. Male Reproductive Hormones

5.2.1. *Experimental Animals*

In rats and mice, cannabinoids disrupt normal *male reproductive* physiology (Bloch, 1982). Testicular metabolic activity and *in vitro* testosterone synthesis are decreased; plasma levels of both testosterone and LH fall, and, upon chronic intake, androgenic target tissues show varying degrees of functional and morphological involution. Prolonged cannabinoid intake leads to diminished spermatogenesis. The effects of marihuana and cannabinoids on male reproductive endocrinology and on spermatogenesis are apparently reversible, since no permanent changes have been described following cessation of cannabinoid intake. These effects have

been studied mainly in immature and pubertal rats. There is a need for corresponding studies in mature male rats.

5.2.2. *Humans*

Only a few studies have been carried out with modern methods of hormone measurement. These have involved young healthy users of cannabis, either with or without controlled experimental administration of cannabis as part of the study design. A few groups of investigators have reported reduced plasma levels of LH and/or testosterone and reduced sperm counts in the users, while other groups have found no changes (Bloch, 1982). To date the difference has not been satisfactorily explained, but in view of the findings in the animal studies, it is possible that the cannabis doses in the humans have been just at or below the lower margin of the effective range.

5.3. Female Reproductive Hormones

5.3.1. *Experimental Animals*

As in the male, the acute or single administration of THC to *non-pregnant female rats* transiently inhibits functioning of the hypothalamic-pituitary-gonadal axis (Bloch, 1982). Plasma LH and prolactin levels are decreased; the pre-ovulatory LH surge is suppressed, and estrus is delayed. Chronic THC or crude marihuana extract intake seems to impair reproductive function reversibly. The uteri and the vagina show signs of morphological and functional involution, and ovarian function may be affected. Estrous cycles are inconsistently interrupted or abolished.

The few studies on monkey and other non-human primates tend to confirm a suppressive effect of cannabinoids on pituitary gonadotropin release, and the blocking of ovulation (Bloch, 1982). Too few studies evaluating other parameters have been carried out to permit even tentative inferences.

In experimental animals, THC exerts few effects unique to pregnancy (Bloch, 1982). High doses suppress or diminish the matenal weight gain normally occurring during pregnancy. THC also decreases prolactin levels, which may explain the reduced and inadequate lactation seen in the post-partum, cannabinoid-ingesting rat.

5.3.2. *Humans*

There is one preliminary report of an increased proportion of menstrual cycles that were either anovulatory or marked by an inadequate luteal phase in marihuana smoking women as compared with a group of non-users (Bauman *et al.*, 1980). Otherwise, this subject has been virtually unexplored in human females.

5.4. Adrenal Cortex

5.4.1. *Experimental Animals*

Pure cannabinoids and crude marihuana extract stimulate adrenal cortical function in rats (Bloch, 1982). Acute administration results in increased plasma corticosterone concentrations; long-term and short-term exposure lead to adrenal weight increase and thymus weight decrease.

5.4.2. *Humans*

Several studies in humans, however, have failed to show changes in adrenocortical function as a result of cannabis use or experimental administration (Bloch, 1982). Only one group (Benowitz *et al.*, 1976) has reported a decreased plasma cortisol response to insulin-induced hypoglycemia in THC-treated males. Again, the difference between the results in humans and animals may reflect differences in relative doses of cannabinoids. In the animal studies, adrenal activation was observed only after rather large doses of THC, and not proportionately at all doses. Therefore, it may reflect a non-specific stress response, above a certain threshold dose, as has been reported with alcohol (Stokes, 1971; Kakihana and Butte, 1979). In the human studies, the doses used may not have been high enough to produce this.

5.5. Other Hormones

Very little information exists on the effects of cannabis on other endocrine secretions. Several animal studies have shown reduction of circulating thyroxine or triiodothyronine levels after acute or chronic administration of THC, but this has not been confirmed in humans (Bloch, 1982). Plasma growth hormone levels have shown variable responses to THC, according to the age of the rat and route of administration (Bloch, 1982). There is one report of decreased growth hormone response to insulin injection in humans taking THC by mouth (Benowitz *et al.*, 1976).

5.6. Locus and Mechanisms of Action

Experimental animal studies have revealed the primary locus of cannabinoid action in the brain, probably in the hypothalamus (Bloch, 1982). Cannabinoid stimulation of the adrenal cortex can be abolished by agents and procedures which block pituitary ACTH production, while LH-releasing hormone will stimulate pituitary LH release in the THC-blocked rat.

Crude marihuana extract and THC probably also exert a direct inhibi-

tory effect on gonadal and adrenal cortical function. This is especially true for the testes, where *in vivo* and *in vitro* experiments have demonstrated an inhibition of testosterone synthesis, perhaps via reduced cholesterol esterase activity. Another possible mechanism is inhibition of testicular synthesis of prostaglandin E which is involved in mediating trophic hormone effects. Diminished metabolic activity and decreased macromolecule synthesis in testes following exposure to cannabinoids may explain the reduced spermatogenesis observed after cannabis intake.

Repeated administration of cannabinoids may result in a direct effect on the uterus, and possibly also on prostate and mammary gland tissue (Bloch, 1982). Interpretation of the data is made difficult by the fact that some investigators have used cannabis extracts while others have used THC. These preparations differ with respect to their respective dose-response relations for each effect. If direct effects exist, they occur at larger doses than are needed to produce indirect effects (e.g., via actions on the hypothalamus and the pituitary), and may reflect a more general toxicity.

The molecular mechanism of cannabinoid action remains to be elucidated. It must also be remembered that marihuana contains other components which may have activity with quite different loci of action.

6. REPRODUCTION AND DEVELOPMENT

The effects of cannabinoids have been investigated to a very limited extent on aspects of reproduction and development other than the endocrine aspects mentioned in Section 5.

6.1. Sexual Behavior

Although there are descriptive references to decreased potency, sexual activity, and fertility of males in India, North Africa, and other regions of the world (e.g., Chopra and Chopra, 1939; Bouquet, 1951), attributed to heavy use of cannabis, these observations are not accompanied by any investigation adequate to support a causal link. In more recent field studies, both the users and their spouses indicated that sexual behavior was normal, but the users stated that they often smoked cannabis in order to prolong or be able to enjoy coitus (Page and Carter, 1980). A few experimental studies have reported decreased sexual reflexes and increased latency to mount in male rats (e.g., Corcoran *et al.*, 1974).

Clearly, the effects of cannabis on sexual behavior require considerably more systematic research.

6.2. Fertility

In animals, fertility in males and females has not been significantly altered by sub-chronic or chronic treatment with THC or cannabis extracts (Grilly *et al.*, 1974; Wright *et al.*, 1976).

In one study in humans, it was claimed that sterility was twice as common among chronic cannibis users as among the general population (Chopra and Chopra, 1939). However, there is no consistent evidence of decreased fertility, as indicated by the number of offspring of males who are chronic cannabis users (True *et al.*, 1980). Fertility has hardly been studied in female users of cannabis. If, as preliminary studies suggest, ovulation is suppressed by THC treatment, fertility would be adversely affected.

6.3. Teratogenesis

Any drug could potentially affect fetal development in two ways. First, exposure to a mutagenic agent prior to conception could alter the germ cells of the male or the female and thus influence the expression of the genes in the offspring. Cytogenetic effects of cannabis have been reviewed in Section 3.1. As noted there, it seems doubtful that crude cannabis extracts or THC are mutagenic in humans, although pyrolysis products present in cannabis smoke may have mutagenic activity.

Secondly, if exposure occurs during pregnancy, drugs can produce direct toxic effects on the fetus. THC administered to pregnant rodents results in a concentration gradient of mother > placenta > fetus (Bloch, 1982). The placenta takes up THC more avidly than the fetal tissues do, but releases it only slowly. This makes the placenta potentially a barrier against, but also a reservoir for, THC transfer into the fetus. A THC-induced disruption of placental development or function as suggested by preliminary observations of Sassenrath *et al.* (1979) may be significant, and could contribute to abnormalities in the fetus.

Cannabinoid administration during the first two-thirds of gestation is associated with increased frequency of fetal resorption and decreased birth weights in mice, rats, rabbits, and hamsters (Bloch, 1982).

There are three reports that the administration of large doses of THC to mice during the critical periods of palate and brain development correlates with increased frequency of cleft palate and exencephaly respectively (Mantilla-Plata *et al.*, 1975; Joneja, 1976; Bloch *et al.*, 1979). Cannabinoid-exposed hamsters also had an increased incidence of malformations (Geber and Schramm, 1969). Other reports of cannabinoid-induced malformations cannot be considered as definitive, and the majority of studies in these species have demonstrated no significant teratogenicity. Cannabis extracts may contain constituents other than THC which are teratogenic. The few reports of teratogenicity in rodents

and rabbits (Bloch, 1982) indicate cannabinoids to be, at most, weakly teratogenic in these species, and the activity, if any, may reside in cannabinoids other than THC, or in non-cannabinoid constituents of cannabis or cannabis smoke.

The teratogenic potential, however, has never been accurately assessed in humans. A major prospective study (Zuckerman *et al.*, 1981) now in progress, should provide valuable information in this area.

6.4. Post-Natal Development

Drug effects on post-natal development may be exerted through alterations in ability of the lactating mother to feed the young adequately, through alterations in other maternal behavior towards the young both during lactation and after weaning, and through tissue alterations in the offspring themselves as a result of drug exposure *in utero* and/or via the milk. In animals, and presumably in humans, cannabinoids can cross the placenta, and are also secreted in the milk (Chao *et al.*, 1976).

There has been very little systematic study of cannabis effects on general maternal behavior toward the offspring. However, animal studies have shown repeatedly that cannabis can impair lactation, probably by central actions leading to reduced prolactin output. This results in neonatal malnourishment, unless cross-fostering procedures (i.e., allowing untreated mothers to rear drug-exposed offspring) are used; consequently there is retardation of weight gain and skeletal growth, and increased neonatal mortality. A clear-cut maldevelopment of any other type such as delayed eye opening or incisor eruption is less often reported (Bloch, 1982). Follow-up observations, now in progress, of babies born of mothers who have smoked cannabis during pregnancy will be informative in this regard (Fried, 1980).

A major concern is the possibility of retardation of later juvenile maturation and development as a result of either *in utero* exposure or early commencement of cannabis use by children and adolescents. This has been until now an almost totally neglected research field and requires specific attention.

7. EFFECTS ON NERVOUS SYSTEM FUNCTION

7.1. Effects of Cannabis on Behavior

7.1.1. *Acute Effects on Intellectual Functions*

The effects of any drug on behavior are markedly influenced by a wide variety of factors, both within the individual user and derived from the

environment at the time of testing. This is just as true of cannabis as of any other psychoactive drug. Consequently the picture of effects seen in any given instance depends on the relative contributions of the drug-specific effects (which are relatively predictable and reproducible) and of the individual and environmental influences (which are much more variable and less predictable). As a result, the behavioral effects of low doses of cannabis are relatively non-specific and can show extensive overlap with those of amphetamines, opiates, hypnosedatives, and alcohol. In contrast, at high doses the cannabis effects are much more characteristic and identifiable. This is true not only for behavioral effects, but also for neurotoxicity and psychiatric effects, which are discussed in the following sections of this report.

In studies with rodents, dogs, and monkeys, behavioral profiles reveal a biphasic dose-effect and time-effect relation of cannabis and of THC. At low doses, hyperactivity and hypersensitivity (particularly to auditory and tactile stimuli) are evident, and there is synergism (mutual enhancement) with the corresponding effects of amphetamines and of low doses of opiates. At higher doses, ataxia, hypomotility, stupor, or coma are encountered, and the corresponding effects of other central depressant drugs are enhanced (Rosenkrantz, 1982). Biphasic patterns of changes in spontaneous activity related to both time and dose have also been described repeatedly in humans (Jones, 1980).

These changes do not, in themselves, constitute adverse effects; rather, they are the characteristic features of intoxication with cannabis. They are adverse effects only when they compromise the health or safety of the user or of others, by impairing the user's ability to carry out necessary cognitive-perceptual or psychomotor functions. The main conclusions concerning the effects of cannabis on these functions can be summarized as follows (Klonoff, 1982):

a) A host of studies have demonstrated impaired functioning on a variety of cognitive and performance tasks during marihuana intoxication;
b) impaired memory, altered time sense, and decrements in performance on a number of tasks — such as those involving reaction time, concept formation, learning, perception, motor coordination, attention and signal detection — are commonly described in the literature;
c) in most laboratory studies, the duration of measurable memory alterations is a few hours after a smoked marihuana cigarette. However, for some marihuana smokers, there may be more lasting problems with transfer of new information into long-term memory storage;
d) greater appreciation has developed for the need to study a range of doses on a variety of cognitive tasks before trying to describe the effects of marihuana. For the most part, impairments are dose-related but there are apt to be multiple marihuana effects depending on the exact demands of the task; for example, performance on some cognitive tasks might even improve when low doses are used;

e) high motivation to perform well can be enhanced by incentives (e.g., more money for correct responses) and this enhancement can decrease some marihuana effects.

7.1.2. *Acute Effects on Driving Skills and Driving Performance*

Retrospective sources of information concerning the effects of cannabis on driving include:

a) self-reported experiences and perceptions of users
b) anecdotal reports by investigators
c) data collected after accidents or traffic violations.

On the basis of such accounts, there appears to be a consensus that marihuana can, and often does, impair driving ability and actual driving performance (Klonoff, 1982). There has been growing evidence that marihuana, used alone or in combination with alcohol and other drugs, is implicated in traffic accidents and fatalities (Woodhouse, 1974; Sterling-Smith, 1974; Cimbura *et al.*, 1980). The nature of this implication, however, is less than clear. Toxicological data, including measurement of cannabinoid metabolites in the urine, may mean only that the person has used cannabis at some relatively recent time (hours to days) before the time of sampling (Rubenstein, 1979). Such information obviously provides no causal link between the drug use and occurrence of an accident. Much greater attention must therefore be given to prospective studies of cannabis effects.

Prospective methods of investigation include:

a) psychomotor tasks that are presumed or known to be related to driving skills
b) driving simulators
c) traffic-free driving test courses
d) road tests under actual traffic conditions.

Psychomotor tasks can test only specific subsets of the complex behavioral demands for driving. While many such studies have reported dose-related impairment of driving skills by cannabis, there is a real question about generalizability to actual driving situations.

Driving simulators have the advantage of permitting control of many variables, but are nevertheless subject to experimental artifacts. The studies to date have operationally defined variables such as speed errors, accelerator errors, brake errors, risk-taking in terms of passing, passing-time judgments, and visual signal detection (Klonoff, 1982). Dose-related effects of cannabis on most of the measures employed have been reported, but again there is a question about generalizing to real-life driving since most of the emotional and motivational factors in real-life driving performance are missing from the simulator tests. Three published studies (LeDain, 1972; Smiley *et al.*, 1974; Hansteen *et al.*, 1976) have reported cannabis dose-related impairment of driving performance. Skilled drivers,

on traffic-free test courses, have reiterated errors similar to those observed in driving simulators.

The most sophisticated study (Klonoff, 1974), and probably the most relevant, is an investigation of actual driving in downtown rush-hour traffic, in cars with dual controls to permit the observer to make the corrections required for safety. Experienced drivers were tested under placebo, small and moderate doses of marihuana, in a double-blind crossover design. Composite driving performance was improved in some cases, unchanged in others, and worse in the majority, compared to the pre-dose control period. However, the number of those who improved or remained unchanged under marihuana was smaller than under placebo, while the number who deteriorated under marihuana was larger than under placebo, and the shift was significantly greater with the higher dose of marihuana.

These findings provide a striking demonstration of the ability of even small doses of marihuana to impair driving ability. Whether or not this is translatable into the production of automobile or airplane accidents will obviously depend upon the degree of impairment relative to the margin of safety between the situational demands and the operator's remaining skills under the drug. There is a need for independent replication of this work, preferably with inclusion of higher test doses, and combinations of cannabis with alcohol and other drugs. Night driving studies should be included, if possible. It is also not known to what extent the degree of impairment observed in these studies might be modified by cannabis tolerance, and by the age and experience of the driver.

7.1.3. *Chronic Effects on Behavior*

7.1.3.1. Experimental animals. Animal studies have indicated that chronic exposure to cannabis can modify the acute behavioral effects not only by the development of tolerance (see Section 9.2.2.) (Jones, 1982), but also by the sudden appearance of new manifestations of behavioral change after several months of administration (Rosenkrantz, 1982). Prominent among these in rats and monkeys are irritability on handling, and increased aggressiveness between animals of the same or other species. Not all investigators have observed these changes, and in some species (e.g., dog) weakness and lethargy have predominated. Therefore it might be questioned whether the aggressiveness is a specific effect of cannabis inhalation or a non-specific result of repeated exposure to noxious stimuli. The relative lack of aggressiveness in control rats exposed to the noxious stimulus of smoke from cannabinoid-free marihuana tends to support the view that there is a specific drug effect (Luthra *et al.*, 1976).

7.1.3.2. Humans. In humans, a number of studies have indicated cannabis-induced impairment of short-term memory by interference with the acquisition and storage phases rather than with initiation and recall (Ferraro, 1980; Klonoff, 1982; Mendelson, 1982). This appears to involve

lack of concentration on the task, and may be modified by specific motivational factors. These effects on memory appear to persist undiminished through a three-week period of daily smoking of marihuana under experimental closed-ward conditions (Rossi *et al.*, 1977). Speech and interpersonal behavior have shown only slight and subtle changes under marihuana (Mendelson, 1982), but the observations have been made only during single sessions or relatively short-term repeated observations. The field studies of long-term heavy users so far conducted have shown no major changes in social behavior (Rubin and Comitas, 1975; Fink, 1977; True *et al.*, 1980), but there are deficiencies of design in these studies, as described in Section 9.3.3.

7.2. Neurotoxicity

It is difficult to avoid arbitrariness in distinctions between behavioral effects of a drug, and drug-induced neurotoxicity. For the purposes of this report, "neurotoxicity" is used to refer to functional aberrations that appear to be qualitatively distinct from those which are characteristic of the usual pattern of reversible acute and chronic effects, and that might be caused by identified or identifiable neuronal damage.

7.2.1. *Experimental Animals*

7.2.1.1. Chronic exposure. In animal studies, two alterations of behavior have been noted to appear during the course of prolonged periods of cannabis treatment (Rosenkrantz, 1982). Sixty percent of rats exposed repeatedly to cannabis smoke for five weeks or longer develop a pattern of sudden vertical jumping which has been labelled the "popcorn reaction" (Luthra *et al.*, 1976). This is also seen in young animals exposed chronically to cannabis *in utero*, and then challenged with a single small dose of THC at 30 days of age (Rosenkrantz, 1979). Electrical and motor seizure activity have also been noted in several studies (Rosenkrantz, 1982), but the definition of abnormal spike-like wave forms reported in the EEG of the cannabis-treated animals have not been defined according to rigorous criteria, and the frequency has not been assessed quantitatively. Nevertheless, the claims of neurotoxicity during chronic cannabis exposure raise the possibility that long-lasting residual changes might be found.

7.2.1.2. Residual changes. Animal studies have shown no effect of chronic cannabis administration on brain weight or histology as evident under the light microscope (Fehr and Kalant, 1982). There has been one claim (Heath *et al.*, 1980) of residual alteration of synapses in the septum, hippocampus, and amygdala, as revealed by electron microscopy, but technical objections have been raised to this work (National Academy of Sciences, 1981) and the reported alterations are not easily quantifiable in statistical

terms. EEG observations in animal studies have shown the possible occurrence of withdrawal effects (Fehr and Kalant, 1982), and three reports suggest the occurrence of long-term residual abnormalities in EEG tracings from the cortex and hippocampus of cats (Barratt and Adams, 1972), rats (Fehr *et al.*, 1976; 1979), and monkeys (Heath, 1976) exposed to long-term treatment. However, these also lack critical quantitative analysis. There is only one group reporting diverse residual neurochemical changes after long-term cannabis treatment (Luthra *et al.*, 1975a; 1975b; 1976) and the functional significance of the findings is not at all clear.

Most studies of post-drug behavioral changes in chronically treated rats have been carried out too soon after the last drug administration to prove whether any residual effects are long-term ones or merely the slow disappearance of intoxication. However, two laboratories have reported decreased learning ability months after the end of long-term treatment (Radouco-Thomas *et al.*, 1976; Fehr *et al.*, 1976; 1979; Stiglick and Kalant, 1982a; 1982b).The alterations found raise the possibility of changes in the hippocampus, since the tests used include conventional and radial maze learning, operant behavior involving time discriminations (DRL schedules or differential reinforcement of low rates of responding), open-field exploration, and two-way shuttle box avoidance learning; correct performance of these tests is dependent on spatial orientation or on response inhibition, both of which are believed to depend heavily on intact hippocampal functions.

7.2.1.3. Prenatal exposure. Several studies of prenatal exposure have indicated that the offspring of cannabis-treated animals show small delays in various stages of post-natal development, such as eye-opening, reflexes of several types, and open-field exploration (Fehr and Kalant, 1982). However, the development appears to be back to normal by several weeks or months after birth. This could mean either that no residual damage was present, that remaining damage was too slight to be detected by available measures, or that plasticity of nervous system organization in the newborn permitted adequate compensation for the loss of function of any damaged cells. Charlebois and Fried (1980) reported that the retarded development did not occur in groups of cannabis-exposed rats that were fed an enriched protein diet during pregnancy. This suggests that prenatal nutrition (possibly mediated by cannabis-induced anorexia) is a factor in the development of post-natal deficits.

7.2.2. *Humans*

7.2.2.1. Amotivational syndrome. Numerous clinical reports from several countries have described heavy, chronic cannabis users who exhibit behaviors that some observers have labelled "amotivational syndrome"

(Fehr and Kalant, 1982). Included in the various descriptions of this syndrome are the following characteristics: apathy; reduced drive and ambition; impaired ability to carry out complex tasks; failure to pursue long-term plans; reduced tolerance to frustration; diminished communication skills; neglect of personal appearance; and sluggish mental responses. The syndrome takes several weeks to clear after the termination of drug administration. This fact suggests that the symptoms are related to CNS changes rather than to the continued presence of THC. Since no estimations of plasma or tissue THC levels in chronic users are available, the actual mechanism cannot be resolved. A variety of clinical studies and reports in the past decade clearly reveal, however, that the "amotivational syndrome" is neither diagnostic of, nor specific to, chronic cannabis use. The signs and symptoms of the "amotivational syndrome" are essentially those found with chronic intoxication with a number of psychoactive drugs, particularly those that are sedative-hypnotic in nature. It may, therefore, be more appropriate to refer to "chronic cannabis intoxication" and discard the non-specific term "amotivational syndrome."

At this time the dosage of cannabis or the frequency and duration of cannabis exposure required to produce chronic intoxication are not precisely known. Well-controlled clinical studies and close clinical observations (Mendelson, 1982), however, indicate that this picture is not particularly common. In addition, personality and concomitant drug-use factors make it difficult to diagnose this state, or to specify that cannabis, per se, may produce alterations in motivation.

7.2.2.2. Residual brain damage. Human studies after the end of a period of chronic intoxication with cannabis have generally yielded no evidence of residual brain damage. There has been one report of cerebral atrophy, as indicated by air encephalography, in young cannabis users complaining of a variety of neurological symptoms, including memory and cognitive dysfunction (Campbell *et al.*, 1971). However, no atrophy was found in later studies in which computer-assisted tomographic (CAT) scans were performed in young cannabis users who were not also regular users of other drugs, and who were totally asymptomatic (Kuehnle *et al.*, 1977; Co *et al.*, 1977). CAT scans also failed to demonstrate cortical atrophy in monkeys treated chronically with cannabis extract by mouth (Rumbaugh *et al.*, 1980).

Most studies which have compared the performances of chronic users and controls in neuro-psychological tests have failed to elicit significant differences. Significant cognitive deficit is not a commonly demonstrated effect of chronic use of cannabis in clinically healthy subjects. However, to provide an appropriate comparison, most daily users of alcohol are healthy and do not show cognitive deficits, even though such abnormalities are common in clinically diagnosed alcoholics (Parsons and Farr, 1981; Wilkinson and Carlen, 1981). Therefore, it is clear that studies on

relatively small samples, such as are at the moment available for cannabis, cannot be expected to rule them out.

The overall conclusions from a review of this literature are hampered by a general inadequacy of reported data, especially in the clinical studies, which have often been characterized in the past by poor sample size and selection; poor or no differentiation between intoxication, withdrawal, and residual change; and an absence of before-and-after longitudinal studies of regular users. The animal studies which revealed long-lasting impairment of learning ability after a period of chronic cannabis treatment raise the clear possibility that residual long-lasting damage can be caused by cannabis, but a decision as to whether or not it does occur in humans will probably have to await the performance of adequate confirmatory studies on brains from long-term users

7.2.2.3. Prenatal exposure. In a follow-up study of a small number of babies exposed daily or less frequently to marihuana *in utero*, Fried (1980) observed dose-related abnormalities in responses to visual stimuli and an increased prevalence of irritability, tremor, and startles as compared to a group of non-exposed controls. Since the babies were observed only at two or three days post-partum, the described symptoms may have been the manifestation of a neonatal abstinence syndrome of the type described for a variety of CNS depressant drugs (Finnegan and Fehr, 1980). Ongoing assessments of these, and additional children, should yield information on the persistence and significance of these symptoms.

7.3. Psychiatric Effects of Cannabis Use

7.3.1. *Acute Consequences*

Acute panic and paranoid states are the most commonly observed short-term adverse psychological effects of cannabis use (Negrete, 1982). The validity of these conditions is no longer questioned, as they have been seen both in clinical settings and in laboratory experiments. The marked difference in frequency with which such problems are reported in different countries, and the diminishing frequency of clinical reports on this type of reaction in Europe and North America, tend to support early contentions that they may be due mainly to adverse social conditions and the user's lack of experience. Alternatively, the decreased frequency of such reports might be due to loss of novelty, and therefore decreased incentive for physicians to describe additional cases in the clinical literature. Nevertheless, it has now been satisfactorily demonstrated that setting alone does not explain their occurrence. Additional work is needed to identify the intervening pharmacological, neuro-physiological, and psychopathological factors.

Other acute reactions of increasing clinical relevance are severe

dysphoric states which have been observed in the course of THC therapy (e.g., Shiling *et al.*, 1980). Such reactions were described frequently in the clinical literature at the turn of the century when therapeutic use of cannabis extract was common. A concerted effort must be made to develop specific treatment procedures with a view to preventing or minimizing these untoward psychiatric side-effects, especially in older subjects.

7.3.2. *Problems Related to Chronic Use*

These are seen mainly in younger users, principally males. This may be more a reflection of the criteria for defining "problems" or "cases" than of real differences in fr uency of occurrence in different groups of users. The problem of "amotivational syndrome" has been covered in Section 7.2.3. The most important other chronic psychiatric complication is that of cannabis-related psychosis.

The only cannabis-induced psychosis picture which is supported by sufficient evidence to this moment is a short-lasting condition — from a few days to four weeks — with symptoms of mental confusion, memory impairment, regressive and impulsive behavior, delusional formations, and sensory-perceptive distortions (Negrete, 1982). The frequency of occurrence in Western societies is quite low, and it seems to affect mainly very heavy users. A commonly found predisposing factor is a high degree of premorbid personality disturbance. This condition can be expected to show a rising incidence as the numbers of daily and heavier users in the population increase. More research is needed to identify risk factors other than excessive use.

A highly relevant area of research where current data are clearly too limited, is the problem of cannabis influence on independently occurring psychiatric illness. The evidence already available, however, is sufficient to warrant large-scale prospective studies on the effects of cannabis on the phenomenology of some of the most prevalent psychiatric disorders, in terms of both symptomatology and evolution (Negrete, 1982). Also, specific research is urgently needed on the interaction between cannabis and chemical agents commonly used in psychiatric pharmacotherapy, including its possible influence on therapeutic response.

7.3.3. *Flashback*

Most of the evidence available on the recurrence of drug-related symptoms during abstinence (flashbacks) originates from self-report answers to rather imprecise questionnaire surveys, and from subjective descriptions given by individuals who believe they have experienced flashbacks (Negrete, 1982). The systematic phenomenological analysis of this clinical condition has been largely neglected, and controlled studies of the intervening etiopathogenic factors do not appear to have been carried out up to the present.

7.3.4 *Cultural Influences on Cannabis Use and Its Consequences*

7.3.4.1. Social role of cannabis and social control of its use. The most prevalent purpose of cannabis use in most cultures appears to be the recreational one, both in societies where it has been practised in a traditional manner and in those which have only recently adopted it. Medicinal and ceremonial/ritual patterns of use have also been observed, but clearly more in non-industrial than in industrialized societies (Mohan, 1982).

There appear to be major cross-cultural differences in the type of population involved in cannabis use at this time. Poorer, older, and more predominantly male sectors are typical in non-industrialized societies (Mohan, 1982). In industrial countries sex differences are relatively minor and the use tends to be confined to adolescents and young adults (Smart, 1982).

However, as is the case with other drugs of abuse, there seems to be an incipient trend towards universalization and homogenization of cannabis use patterns. Patterns in other countries are tending toward the North American picture, particularly in larger urban populations around the world (Mohan, 1982).

There are cross-cultural differences in setting of use, type of cannabis preparations preferred, route of intake, dose levels, and the concomitant use of other psychoactive agents. Oral ingestion, for instance, is more prevalent in societies in which cannabis use is traditional. Such societies appear to attribute great importance to the variations in the psychoactive potency of the different cannabis preparations in use. Social reaction towards use may vary in accordance with the type of product involved. In India, for example, there is considerably more social lenience towards the use of cannabis leaf material than to that of resin. In the past, social control mechanisms have varied cross-culturally in accordance with local social perception of use. To the extent that legal controls come to be determined by national and international perceptions and agreements, such variations tend to disappear. It is conceivable that the repeated use of cannabis would be perceived as a greater threat in the more industrialized societies, where individuals are under higher pressure in regard to productivity and mental performance.

These differences in patterns of use and level of social acceptance probably infuence the levels of use and the expectations of drug effect. Therefore they may also be expected to affect the types and incidence of various behavioral and health consequences of cannabis use.

7.3.4.2. Behavioral effects. The available literature includes reports of cultural variations in the behavior of individuals under the effects of cannabis (Rubin, 1975). Attitudes varying from aggression, psychomotor agitation, and delinquent tendencies, to passivity and easier conviviality have been recorded as typical of cannabis effects in different parts of the world. Most such differences are likely to be determined by factors other

than the pharmacological action of the drug and should be scientifically re-examined. Another item that requires exploration is the possibility of ethnic variation in drug response, which has not yet been studied systematically with respect to cannabis.

7.3.4.3. Psychiatric consequences. It is quite possible that there is less cross-cultural variation in the psychiatric consequences of cannabis use than was previously believed. The higher frequency of "cannabis psychosis" observed in North Africa and India, for example, may soon disappear as the validity of this diagnosis is being questioned and the use of this term is being abandoned in that region. However, the difference in prevalence of dose-related acute reactions is likely to remain as long as there are major cross-cultural differences in the potency of cannabis preparations used.

7.3.4.4. Neuropsychological testing. At present, there is no satisfactory evidence that culture in itself may explain variations in neuropsychological test performance, provided that the tests have been properly validated in each population where they have been used.

8. EPIDEMIOLOGY

8.1. Sources of Information

A large number of studies mainly in developed countries have produced a variety of data about cannabis use. Among the most common epidemiologic sources are those listed below:

Self-report surveys of users
Observations of users
Official registration and notification records
Studies of special populations of high risk groups
Hospital, clinic, and emergency service admissions
Arrest and conviction records
Social and welfare agency records
Production and seizure records.

All of these sources of information are potentially able to give relevant and good information, although each has certain clear limitations with respect to the specific groups studied, which do not always allow generalized interpretations.

Various methodological defects impair the accuracy and uniformity of data collection, especially from self-report studies and from routine statistics of health care delivery systems. Clinical patients represent a self-selected population. Where cannabis use is illegal, it may not be reported

by the user with a health problem for fear of self-incrimination, unless confidentiality of medical records is guaranteed. In emergency treatment services, the need for prompt treatment often interferes with thorough collection and recording of information on drug use, especially when the ratio of treatment staff to case load is low. High turn-over of staff may create major difficulties for systematic data collection, unless there is continuous training of new personnel and use of specific incentives for accurate recording of histories. Nevertheless, information from such sources may give useful indices of the relative magnitudes of problems related to different drugs. More detailed discussion of these questions, and specific recommendations for steps to solve them, are contained in a recent report of the WHO Expert Committee on Implementation of the Convention on Psychotropic Substances, 1971 (1981).

Despite the shortcomings in the accuracy and uniformity of data collection, and the low quantity and quality of data in some countries, much is known about incidence and prevalence of cannabis use (Smart, 1982). However, there is less epidemiological knowledge about the adverse health consequences of cannabis use. This is not surprising, since the effects described in Sections 2 to 7 of this report are not specific to cannabis in the sense that Laennec's cirrhosis is fairly specific to alcohol (Schmidt, 1977). Therefore the diagnostic entities themselves cannot be used retrospectively as indicators of hazardous levels of cannabis use in a large population.

For this reason, assessment of the contribution of cannabis to the production of public health problems will require (a) long-term prospective studies of sufficiently large groups of users and non-users to measure the comparative incidence and prevalence of various adverse effects, and (b) large-scale retrospective correlational studies, similar to those on tobacco cigarette use, when details of cannabis use have been recorded accurately in hospital case records for long enough to provide a suitable body of statistical data. Until such studies are carried out, we can have only rough impressions, at best, concerning the real magnitude of cannabis-related health problems.

The value of individual case reports (which are sometimes dismissed as "anecdotal" evidence) should not be overlooked. With cannabis as with any other drug, relatively uncommon but potentially serious untoward effects are usually identified first by astute clinicians and published as case reports. When attention has thus been drawn to a possible problem, it may then be possible to devise experimental studies of causal mechanisms, and large-scale statistical analyses.

8.2. Epidemiological Findings

8.2.1. *Studies on Distribution of Cannabis Use*

In general, recent epidemiological studies in developed countries

(Smart, 1982) indicate that:

a) In most countries that have been surveyed, cannabis has been used by about 17-19% of the general population. Among the student populations, rates of "ever used" vary from less than 1% (Belgium) to more than 50% (USA), with most countries falling in the range of 23-32%. In both student and general populations, the proportion of daily users ranges from less than 1% to more than 11%, with the student groups tending toward the upper end of the range. The apparent average for the countries surveyed was 3-4%.

b) In most countries with good trend studies (Canada, USA, Australia) cannabis use has increased greatly since the late 1960s, i.e., the proportion of users has increased by a factor of 3 to 5. There are some recent signs of stabilization in use over the past few years in Mexico, the USA, and Norway.

In developing countries (Mohan, 1982) the picture is much less clear. Use of cannabis is widespread in Africa, the Middle East, southern and southeastern Asia, Hong Kong, and the Philippines, both among lower socio-economic groups (agricultural and urban laborers, taxi and lorry drivers) and in affluent upper-class groups (adults as well as students). However, there is a scarcity of sound epidemiological studies of general populations, hospital/clinic patients, and selected population groups.

The main reasons for the scarcity of studies appear to be lack of finances and trained people to carry out the surveys, and the relatively low priority allotted to cannabis in the health sector, both nationally and internationally. Nationally, more urgent health problems, such as communicable diseases, nutrition, and sanitation, make stronger demands on scarce resources. Internationally, the Geneva Single Convention laid greatest emphasis on control and movement of opiates across national boundaries rather than of drugs such as cannabis.

One important aspect of use in some developing countries is the difference between socially sanctioned limited use of cannabis for ceremonial purposes, and socially unsanctioned regular use. In India, for example, the great majority of the Hindu population participates in ceremonial use, as in the festival of Shiva (Hasan, 1975), but regular self-administration is carried on by only a small fraction of the population (Mohan, 1982). If the unimodal distribution-of-consumption curve holds for cannabis in the same way as for alcohol, India would be expected to have a very low modal *per capita* mean daily consumption and a very low percentage of users employing large amounts, despite the availability of potent preparations. In contrast, in North America and Europe the absence of a prescribed social role for cannabis, and of traditional social controls of use, might pose a much greater risk of hazardous consumption as potent preparations become more widely accessible.

8.2.2. *Epidemiology of Adverse Effects of Cannabis*

Knowledge about the frequency of various adverse reactions to cannabis is difficult to assemble. The epidemiologist would like to know how often adverse reactions occur, in what types of users, and to identify the explanatory variables such as cannabis dose, previous drug use, and psycho-social characteristics (Smart, 1982). The epidemiologist would also like to know if there is a "safe" (non-harmful) dose of cannabis, and whether some users are *not* at risk for adverse consequences. Answers (such as they are) to these questions typically come from studies not ideally designed to answer them. Nevertheless we might be able to accept the following tentative conclusions about adverse reactions (Smart, 1982):

a) No studies of general populations have determined the rate of adverse reactions serious enough to require treatment or hospitalization. So far, no studies have been made of adverse reactions, whether of a serious or non-serious nature, in general *adult* populations of cannabis users.
b) Usually, studies of cannabis effects on biochemical and neurological functions give very little information on the frequency of adverse reactions to be expected in large populations of users (and, of course, were not designed specifically to do so). Typically, such studies use a selected and narrow range of the cannabis-using population as subjects, mainly young males experienced with cannabis. The sample sizes are usually small (less than 100), and hence the chances to detect uncommon forms of adverse consequences could be quite small.
c) The total number of patients with psychological adverse reactions reported from treatment facilities is not great for a drug used as extensively as cannabis. Unfortunately, this information does not permit calculation of a rate of incidence of such reactions. However, the low number reported suggests either that *serious* psychological disturbances from cannabis use are not common among users in general, without telling us just how uncommon, or that a large proportion of such cases is not reported in the literature.
d) Most of the reported adverse cases come from the USA; cases from outside the USA represent only about 42% of the total. That cases from the USA are over-represented should be expected, because rates of cannabis use and heavy use are higher there than in other Western countries.
e) More cannabis-related psychological problems have been reported for males than females, and for persons under than over 21. The ratio is about 3 males for 1 female, even when the survey studies with all-male military samples are deleted. The ratio of overall and daily use for males and females in the USA, at least among young persons (from which most clinical cases of adverse reactions come), is about 1.5:1. There is a clear suggestion that female users and older persons are at lower risk than young male users for serious psychological conse-

9.1. Dose-Response Relationships

9.1.1. *Pharmacokinetics of THC*

When inhaled in smoke, THC is absorbed rapidly from the lungs. Peak blood levels are reached within minutes of the beginning of smoking, and decline very rapidly to about 5-10% of their initial level within one hour, even though the subjective symptoms of intoxication may persist for 2-3 hours and the objective signs, even longer (Jones, 1980). After oral administration, an equivalent dose of THC is absorbed more slowly, producing a less intense intoxication with a longer latency of onset and a longer duration than after smoking. The decline of blood levels of THC is due to rapid conversion of THC (mainly in the liver) to the psychoactive metabolite 11-hydroxy-THC and numerous other metabolic products of little or unknown biological activity (Gudzinowicz *et al.*, 1980). THC and its metabolites are also rapidly sequestered by the fatty tissues. These compounds are then released back into the bloodstream over a period of several days; this phenomenon slows the elimination of cannabinoids from the body. In experienced users, the terminal half-life of THC (a measure of the rate of biotransformation and elimination) is 19 hours, and of its metabolites about 50 hours (Hunt and Jones, 1980). In the human, elimination of the metabolites occurs mainly through the feces, although detectable amounts are also present in urine.

9.1.1.1. Correlation of cannabis-induced effects with blood levels of THC. Because of the rapid sequestration of cannabinoids into fatty tissues, the tissue:blood ratio of these compounds is not constant. Unlike the situation with alcohol, one cannot expect the blood levels of THC to be a good predictor of biological effects (Jones, 1980). In the absence of tolerance, brain levels of psychoactive cannabinoids in the appropriate but as yet unknown subcellular fraction would provide the only estimate that could be expected to correlate with behavior. Measures of blood levels of THC may have some value, however. If, for example, the relevance of different routes of administration, or patterns of use, to peak or average blood levels can be established, blood level determinations may be more reliable than estimates of administered dose for the cross-cultural comparison of adverse effects in heavy users (Petersen, 1979).

9.1.1.2. Relevance of tissue sequestration to toxicity. Because of the sequestration of cannabinoids, THC or its biologically active metabolites could theoretically accumulate in fatty tissues during chronic or intermittent administration (Jones, 1980). This accumulation would not be measurable by determinations of blood levels of cannabinoids, and has not, as yet, been demonstrated in human tissue samples.

Although a slowly cleared drug is not necessarily more toxic than one rapidly eliminated, the slow clearance will have the effect of prolonging

drug exposure, thus enhancing any toxicity that the drug may inherently possess. The irregular dose and administration schedules employed by most cannabis users make accurate determination of actual drug exposure almost impossible.

In humans, cumulative behavioral or physiological effects have not been demonstrated under conditions of controlled administration of up to three months duration, although the simultaneous development of tolerance may have masked this phenomenon (Jones, 1980). In animals, cumulative toxicity, as manifested by delayed lethality and the sudden appearance of neurotoxicity after several weeks of treatment (Luthra *et al.*, 1976), has been observed at doses relevant to those consumed by chronic human users. The possible occurrence of cumulative toxicity in humans, therefore, is a question that should be examined.

9.1.2. *Structure-Activity Relationships*

There has been considerable research into the biological activity of naturally occurring cannabinoids and their synthetic analogs (Mechoulam *et al.*, 1980). Many studies were designed to assess the potential therapeutic efficacy of these substances (Cohen, 1980). Of the major cannabinoids, only THC has significant psychoactivity. Several other cannabinoids, however, demonstrate immunosuppressant activity in the mouse (Munson and Fehr, 1982), cause endocrinological and testicular disturbances in the rat (Bloch, 1982), and inhibit the synthesis of macromolecules *in vitro* (Munson and Fehr, 1982). Thus it appears that the mechanism of the psychoactive effect of THC can be separated from those of some of its other pharmacological effects. Also, if the other major cannabinoids are present in high concentrations in plant material with a low THC content, they may contribute significantly to the spectrum of cannabis-induced immunological and endocrinological toxicity.

9.1.3. *Drug Interactions*

A third major consideration in the relationship of dose to effects is that of drug interactions. The latter, like tolerance, can be explained by dispositional mechanisms (i.e., related to the metabolic fate of the drug in the body) or by functional mechanisms (i.e., related to the manner in which drugs produce their effects), or by a combination of both.

Interactions between cannabis and other drugs and chemicals in the environment should be expected, but their magnitude and health consequences cannot, in most cases, be specified now. Our understanding of the pharmacology of cannabis is only sufficient to say that interactions with a wide variety of licit, illicit, and therapeutic drugs, and probably with almost all chemicals, can occur in principle, and often do occur in fact.

We know that it is unusual for someone to use cannabis regularly without using other drugs concurrently. For example, in North America,

cannabis is commonly combined with tobacco and alcohol, and less frequently with cocaine, phencyclidine, and many other drugs (Smart, 1982). In some other parts of the world opium is often used concurrently with cannabis (Mohan, 1982). The drugs which are combined, and their doses, vary with age, culture, country, socio-economic status, availability, and many other factors not well characterized in controlled surveys.

We know from a small number of studies that cannabis alters the effects of a number of other drugs (for example, alcohol, barbiturates, nicotine, amphetamines, cocaine, phencyclidine, and opiates) (Siemens, 1980). Similarly, the other drugs can alter cannabis effects. However, the precise nature of the alterations is difficult to predict. This is probably because of the complexity of the interactions. Cannabis is a mixture of many chemicals with varied pharmacology (Turner *et al.*, 1980). THC administered orally probably has different effects on the metabolism of other drugs than does smoked cannabis. This is because a cannabis smoker would be exposed to chemicals (i.e., enzyme inducers in smoke) capable of interacting with other drugs different from those that an oral user would be exposed to. CBD has more marked effects on metabolism of certain other drugs than does THC (Siemens, 1980). Simultaneous exposure to unrecognized environmental chemicals can confound the situation even further. Since cannabis, THC, or CBD can alter the bioavailability, metabolism, clearance, and distribution of other drugs or chemicals (Benowitz and Jones, 1977), interactions could occur by means of various mechanisms. Other drugs may similarly modify the fate of cannabinoids in the body.

Cross-tolerance and cross-dependence between cannabis and other drugs can theoretically also occur by functional (non-dispositional) mechanisms. This might lead, for example, to a situation in which, because of metabolic interactions, blood barbiturate levels are elevated in a cannabis user; yet, despite this elevation, the effects of the barbiturate might be lessened because of cross-tolerance probably determined by functional interactions. Hence the prediction of behavioral consequences would be difficult.

In addition to producing drug interactions by altering shared hepatic enzyme systems important in metabolism, THC could potentially interact with other drugs because of competition for available binding sites on plasma and tissue proteins. The quantitative significance of such an interaction, if it occurs, is unknown.

In summary, one can only conclude that cannabis is likely to interact with many drugs so as to enhance, diminish, prolong, or shorten the effects of both cannabis and the other drugs. Thus the complexity of cannabis pharmacology and the paucity of adequate research studies in animals or humans makes precise predictions of health significance of drug interactions impossible. Some interactions may be mainly of interest to scientists trying to understand mechanisms of drug action; others (e.g.,

the delayed absorption of alcohol or slowed metabolism of anticonvulsants observed in cannabis users) (Benowitz and Jones, 1977) will without question have health significance. The well documented cross-tolerance and the possible occurrence of cross-dependence with many licit and illicit drugs make the prediction of health consequences even less precise.

Marked and serious drug interactions are often not recognized or appreciated by clinicians until a number of patients have been harmed. Although clinical data are hard to obtain from cannabis users, we know enough already to predict that such interactions *could* occur. Both laboratory experiments (human and animal) and adequate epidemiological and field studies are needed to define properly the nature and consequences of these interactions.

9.1.4. *Tolerance*

A final factor in the discussion of dose-response relationships is tolerance. The occurrence of this phenomenon, characterized by a loss of sensitivity to the effects of a drug, must be considered whenever a drug is given more than once, and thus is relevant to any study of chronic toxicity. Tolerance to most THC effects has been demonstrated repeatedly, both in animals and in humans (Jones, 1982). It will occur after administration by any route, but the rate of its development is increased if an attempt is made to maintain the blood level relatively constant (as by giving the drug orally or in frequent parenteral doses). The differential development of tolerance to various effects, together with the available pharmacokinetic data, suggest that the mechanism is more functional than dispositional (Jones, 1982).

Tolerance to some effects develops rapidly after administration of doses that many would consider surprisingly small. For many effects, tolerance disappears equally rapidly (Jones, 1982). There is a little more uncertainty as to the precise rate of disappearance of tolerance in different organ systems and in different species, since systematic studies on tolerance loss have rarely been done. The degree of tolerance that can develop is similar to that produced by some opiates. Many characteristics of tolerance to THC are similar to those of tolerance to opiates, nicotine, and alcohol (Jones, 1982).

The so-called "reverse tolerance" (an apparent increase in drug sensitivity after a few exposures to low potency cannabis), if it occurs at all, is likely due to conditioned responses linked to familiar cues, such as those related to smoking or to other environmental factors, which facilitate the production of drug effects as the user gains experience with the drug (Jones, 1982).

The significance of tolerance as a potential adverse effect is unknown. However, various dramatic and fundamental neurochemical and physiological changes occur along with the development of tolerance. Many of

these can possibly be assumed to have implications for long-term health (Jones, 1982).

9.2. Some Parameters Affecting Self-Administration

9.2.1. *Titration*

There is some evidence that adverse reactions to cannabis are fairly infrequent in experienced users, in part because these individuals have learned to "titrate" their dose (Negrete, 1982). This means that they adjust their rate of smoking according to their subjective feeling of the degree of intoxication. This phenomenon is by no means unique to cannabis; it is common practice among users of alcohol, tobacco, cocaine, and other psychoactive drugs. Titration is not fully effective in preventing dysphoria, however, since even experienced users can suffer adverse effects after smoking cannabis, particularly when it is unexpectedly more potent than usual or differently constituted. Adverse reactions also appear to be more common after oral ingestion of cannabis than after smoking (Weil, 1970). This observation probably results from the user's inability to titrate an oral dose because of the long latency of onset of effects.

9.2.2. *Tolerance and Physical Dependence: Their Relationship to Drug-Seeking Behavior*

Dependence, both physical and psychological, can develop rapidly in animals and in humans who are exposed to cannabis at doses and frequencies that produce sustained THC blood levels for a significant period of time (Jones, 1982). Some components of the withdrawal syndrome are similar to those produced by opiates, and by alcohol and other sedatives, when they have been given for relatively short periods of time. Controlled clinical studies (Jones and Benowitz, 1976; Nowlan and Cohen, 1977; Georgotas and Zeidenberg, 1979) have shown a picture that includes disturbed sleep, anorexia, restlessness, irritability, sweating, chills, slight hyperthermia, nausea, muscle spasms, tremor, diarrhea, and intestinal cramps. In controlled experiments, subjects first experienced symptoms about four hours after their last oral drug administration. The reactions peaked at about eight hours and had largely dissipated by the third post-drug day. The onset of symptoms corresponded closely to the period when THC blood levels were dropping rapidly.

Other studies (Miles *et al.*, 1974; Rossi *et al.*, 1974) using different designs have failed to confirm all of these findings although some post-drug irritability was reported. The prevalence of these symptoms among populations of cannabis users is unknown. Although some symptoms of cannabis withdrawal resemble those associated with withdrawal from

other central depressants, no conclusions can be made with respect to common mechanisms at this point.

On theoretical grounds, tolerance and dependence could increase drug-seeking behavior in several ways:

a) Selective tolerance to the aversive effects of a drug might unmask the rewarding effects and thus increase the probability of use;
b) tolerance, by leading to more frequent use and larger doses, might strengthen the cycle of reward and repetition;
c) the progressive narrowing of interests and activities in dependent users (particularly in urban industrial societies) might make the drug occupy a steadily more significant role in everyday life, and give rise to secondary and conditioned mechanisms that would have the effect of increasing drug use (reinforcement);
d) abstinence symptoms, occurring during drug withdrawal, could generate a new reinforcement for use to alleviate the discomfort.

For the first three ways there is no information available specifically on cannabis, though the general principles derived from the study of other drugs (Cappell and LeBlanc, 1979) would be expected to apply equally to it. With respect to the fourth point, the observations cited above suggest strongly that mild to moderate withdrawal reactions can and do occur in some regular users, especially frequent users of high doses.

9.3. Principles of Experimental Design

9.3.1. *Relevance of Animal Models for Predicting Toxicity in Man*

Although some pharmacological effects can be measured directly in humans, it is evident that experimental assessment of all risk potential of cannabis use cannot be performed safely in humans. Therefore, animal models must be utilized. The resulting problems of extrapolating from animals to humans should be minimized by selecting those *in vivo* paradigms that are relevant to human physiological and pharmacological responses. It is also important that administration of cannabis products extend over a sufficiently long fraction of the animal's life-span to simulate use of cannabis for a period of years by humans. On the other hand, some animal life-spans (e.g., dog and monkey, 15-25 years) are long enough that the investigator who wishes to use these species must have high motivation and longevity, and reliable long-term funding. If possible, the experimental designs should be comparable to current human practices such as the smoking of high potency cannabis preparations mixed with tobacco, or the combination with other drugs, and the use of oral and other routes of administration.

Advantages and disadvantages are inherent in each potential animal model. For example, several rodents can be exposed simultaneously to the

smoke of the same marihuana cigarette(s). Larger animals must be exposed to the smoke of individual samples of a batch of cigarettes that may differ considerably from each other in physicochemical properties. Physiological disposition of drugs also varies among species but sufficient basic data exist on these differences to permit appropriate interpretation of differences in time of appearance, intensity, and duration of responses in laboratory animal species and in humans. It must be noted, however, that the results from some animal models (such as immunosuppression in the mouse) may be extrapolated to humans more reliably than from others (such as placental transfer of drugs in rodents).

In cannabis research, the strongest evidence supporting the relevance of animal models is the consistent dose range over which similar pharmacological events, including certain behavioral changes, can be observed and measured in rodents and non-human primates after administration of the drug by several different routes (see, for example, Rosenkrantz and Braude, 1976). These drug-related aberrations observed in animals have been produced by inhalation or oral doses that are relevant to those used by man. Indeed, circulating blood levels of THC associated with these effects have been similar in animal models and humans. Even such a phenomenon as the characteristic biphasic response to cannabinoids (CNS-stimulation/inhibition) has been observed in both animals and man (Rosenkrantz, 1982).

9.3.2. *Optimal Design of Toxicological Studies*

Apparent contradictions in the experimental literature are often difficult to interpret because of differences in experimental design. For this reason, it seems desirable to specify some basic requirements for soundness of toxicological studies. This section is not intended to be comprehensive or definitive, but identifies a few areas of special concern.

The design of toxicology studies should be such as to permit clear identification of the organs which undergo dose-dependent morphological, physiological, or biochemical disturbances. For this purpose, the ideal study would evaluate the drug effects on *all* organ systems at several dose levels. Subchronic and chronic toxicological studies should be performed in both sexes of several species of experimental animals including rodents and non-human primates. The subchronic study should be long enough to identify appropriate dose ranges and to point to specific target organs or systems that would be investigated in greater detail in the chronic study. The chronic study must be of reasonable length as discussed in Section 9.3.1., especially to provide sufficient time to determine the potential for carcinogenicity. Both inhalation and oral routes of administration should be used. Inhalation studies should use a standardized smoking system to assure direct inhalation of smoke. For inhalation studies, the cannabis preparation should be derived from standard marihuana cigarettes with

sufficiently high concentration of cannabinoids to deliver the desired dose of active substance with a minimum amount of carbon monoxide. Control cigarettes should consist of the same marihuana extracted in a manner designed to maximize the difference in cannabinoid content while minimizing the loss of other constituents. A group of animals receiving the smoke from an appropriately standardized tobacco should be included so as to facilitate comparisons between the results from different laboratories.

Oral administration should be accomplished by feeding unless the drug preparation reduces food intake, in which case gavage should be used. The cannabis preparation used for oral administration should simulate as closely as possible those which are in widest use throughout the world. Adequate dose/response data must be provided, over a range extending up to the estimated maximum tolerated dose.

The toxicological study should not only assess the standard parameters such as growth rate, food and water consumption, hematology, clinical chemistry, urinalysis, and histopathology but should make every attempt to evaluate the functional aspects of the major organs and body systems. The pulmonary system should be evaluated at regular intervals in the larger animals by measuring respiratory parameters such as rate, volume, and blood gases. Behavioral effects should be monitored at regular intervals by accepted operant and non-operant methods. The cardiovascular system should be monitored regularly, primarily by electrocardiograms. Liver and kidney function tests should be followed at regular intervals. In the larger animals, simple immunological assays should be carried out during the study but detailed humoral and cell-mediated immune responses need to be tested only at the end of the sub-chronic (90 day) study. Evaluation of the endocrine system should be carried out at regular intervals and should include measurement of plasma levels of appropriate hormones.

Animals should be set aside for use in three-generation reproductive and teratogenicity studies.

Carcinogenicity should be determined by appropriate histopathological studies of tumors and tissues at time of necropsy.

9.3.3 *Selection of Subjects and Designs for Clinical Experiments*

Most individuals who have participated as subjects in cannabis-related research in North America and Western Europe have been healthy young adult males who generally have used cannabis for five years or less. Most were students from middle to upper-class socio-economic backgrounds. Therefore some data obtained in these studies may have limited generalizability to females and to individuals who use cannabis in other social, economic, and cultural environments. Cross-cultural generalization of the findings appears to be very limited, since studies of cannabis use and effects in countries such as Egypt, Jamaica, India, and Greece in-

volved subjects who were older, less affluent, and who used higher dosages and for longer periods of time than research subjects in North America. Since patterns of dosage (both amount of drug and frequency of administration) are, in part, culturally dependent, comparisons between cultures are especially difficult (see Section 9.1.).

Many problems in design of cannabis studies are similar to those encountered in research with other psychoactive drugs. Many studies of experimental administration of cannabis have not employed placebo controls, although it should be emphasized that effective placebo control in chronic studies with highly discriminable psychoactive compounds such as cannabis, especially with experienced users, is difficult. Interpretation of results has often been rendered difficult by factors such as variable and unstated expectations or biases of subjects and experimenters, variations in criteria for defining chronicity and dosage, and variables associated with set and setting. Important controls for basic variables (e.g., drug use other than, or in addition to, cannabis) have been difficult to achieve in research on humans, except in experimental studies in monitored research ward environments. Only a few studies have provided subjects with specific incentives for cooperation, or special compensation for achieving best performance during the assessment of cannabis effects on behavior (see, for example, Cappell and Pliner, 1973). In some studies, subjects (all cannabis users) were apparently self-motivated to perform well, in order to establish the absence of cannabis-related adverse effects (Kalant, 1969). Since virtually all studies have employed volunteer subjects, there remains some question as to whether these healthy individuals are truly representative of the general population of cannabis users.

9.3.4 *Sex Differences*

There have been very few controlled administration studies in human females, or examinations of sex differences in response to cannabis in animals. Male animals demonstrated a different pattern of behavioral toxicity, and were more susceptible to delayed lethality than the females (Luthra *et al.*, 1976). Otherwise the results have revealed no overall pattern. In the past, for reasons related to U.S. Food and Drug Administration policy, or equivalent policies in other countries, there have been practically no studies of the effects of cannabis administered experimentally to human females, and none involving chronic administration.

9.4. Discussion of the Nature of Proof Required to Establish a Drug Effect

The question often arises as to the rigor of evidence or standard of proof required to substantiate statements about the effects of cannabis use. Under more readily controlled circumstances, namely, *in vitro* and in

animal *in vivo* experiments, a cause-effect relationship in the action of a cannabis constituent on some biological endpoint (metabolic, molecular, physiological, etc.), may be considered established if the following three requirements are met:

a) molecular or structural specificity of the constituent causing the effect;
b) an appropriate dose-response relationship, both with respect to range and slope; and
c) absence or inhibition of effect by neutralization or removal of the constituent.

In addition, in *in vitro* experiments the relevance of effect would need to be established by comparing the required drug concentration *in vitro* to that found *in vivo*.

The assessment of clinical evidence, however, has posed many more problems. Historically, the most common sequence of development of knowledge about a new clinical problem has included the following steps: recognition of individual cases; study of series of cases in comparison with clinical control groups; epidemiological study of incidence and prevalence in defined populations; inferential identification, from the foregoing data, of possible etiological factors; and experimental demonstration of probable mechanisms. The value of the initial steps, despite the obvious limitations of the information they provide, has not been questioned in relation to other clinical problems. In contrast, very high standards of proof are sometimes demanded from evidence concerning cannabis (see, for example, Grinspoon, 1977). It is instructive to make comparisons with the study of effects of other drugs, such as tobacco or alcohol. With these drugs, "risk-factors" have been freely identified, although full causality has not yet been established. Nevertheless, such risk-factors deserve and receive serious attention with respect to the latter drugs. It is puzzling that the same reasoning is often not applied to cannabis.

In some cannabis research on humans there are numerous constraints which are difficult to overcome directly. For example, in many of the epidemiological, laboratory, or clinical quasi-experimental studies, it seems that researchers can demonstrate relationships only by establishing statistical association. Whether in the area of cannabis research, investigations of other drugs or in other less complicated areas, the research worker more often than not is faced with a variety of possible interpretations of the findings, due to the multiplicity of variables that arise particularly from dealing with human beings. Moreover, in field studies comparing matched groups of users and non-users, it must be remembered that it is, by definition, impossible to determine a drug effect on the variable with respect to which the groups are matched. For example, if the users and controls are matched with respect to socio-economic status, any possible effect of drug use on socio-economic performance is automatically excluded.

Therefore, the researcher can only proceed towards formulating new

hypotheses about possible mechanisms or processes involved, and progress by what is usually labeled the method of successive approximations, i.e., gradually narrowing the range of possible interpretations. This method is followed in all endeavors in science, cannabis research included. To provide rigid proof of causality in such investigations is logically and theoretically impossible, and to demand it is unreasonable.

10. SUMMARY

The acute use of moderate doses of cannabis produces a state of intoxication. This is associated with a dose-related impairment of the ability to drive a car or operate complex machinery. In some situations, the user may not feel the desired euphoric state but rather may experience a short-lived dysphoric reaction which can range in intensity and character from mild anxiety to an acute psychosis. Other acute physiological effects are also transient and do not appear to be of major significance in individuals with no pre-existing disease.

Intermittent use of low-potency cannabis is not generally associated with obvious symptoms of toxicity. Daily or more frequent use, especially of the highly potent preparations, can produce a chronic intoxication which may take several weeks to clear after drug use is discontinued. The seeming inconsistency of this observation throughout the world may reflect differing exposures to THC because of the large variation of potencies and smoking techniques, as well as different cultural preferences for the route of administration.

Respiratory toxicity is observed in heavy users and is probably related to smoke components other than THC. Therefore its severity may depend more on the smoking techniques employed by the user and the combustion properties of the material, than on the THC content. Cannabis effects on the hormonal, reproductive, and immunological status of these users is, as yet, unclear.

Chronic administration of cannabis results in the development of tolerance to a wide variety of the acute drug effects in both humans and experimental animals. Though scientific opinion is more divided on the question of dependence on cannabis, there is now substantial evidence that at least mild degrees of dependence, both psychological and physical, can occur.

Some individuals may be particularly susceptible to the effects of cannabis for a variety of reasons. Adolescents who are undergoing rapid developmental change and elderly populations with decreased rates of drug metabolism, increased prevalence of disease and a more conservative and less flexible mental set may be more sensitive to the effects of cannabis and other drugs. The symptoms of patients with a variety of diseases in-

cluding various forms of mental illness, diabetes, cardiovascular disease or epilepsy may be exacerbated by cannabis use. Interactions with a variety of substances including tobacco and alcohol may also potentiate the observed effects.

The epidemiological studies necessary to assess the frequency of adverse effects and to relate their occurrence to factors such as potency and amount of cannabis used, length of exposure, set and setting have not, as yet, been conducted. The low prevalence of adverse effects observed in field studies of small numbers of heavy users suggests that the adverse effects described in many of the clinical reports occur relatively infrequently in these carefully selected populations. Given that millions of individuals are now using the drug, even relatively infrequent but serious adverse consequences could be of public health significance.

The results of experimental studies in animals have consistently demonstrated toxicity at doses comparable to those consumed by the human who smokes cannabis several times per day. Respiratory toxicity, CNS dysfunction, endocrinological disturbances, reproductive deficits, and immunosuppression have all been observed after treatment with THC or cannabinoids in experimental animals. Most, but not all, of these effects disappear when treatment is discontinued. *In vitro* studies have also been used to demonstrate cannabis-induced cytotoxicity. The results of these experiments are, for the most part, qualitatively consistent with the *in vivo* observations, and may provide valuable information about the mechanisms of action of the cannabinoids and other plant components or products of pyrolysis.

11. RECOMMENDATIONS FOR FUTURE RESEARCH

Based on a discussion of the available information on cannabis toxicity and the lack of relevant data in certain key areas, several recommendations for future study were reached. A comprehensive understanding of any biological phenomenon almost always demands the synthesis of information derived from a variety of experimental designs. Therefore, it is important that no single "best" scientific design be recommended. On the contrary, it is recognized that a broad, integrated approach employing different techniques is most likely to provide the information needed for valid conclusions regarding the adverse effects of cannabis on health and behavior.

1. As outlined in Section 1, there is a lack of consensus on what constitutes the criteria for "social" or "problem" use. Standardization of terminology with respect to patterns of use would greatly facilitate the comparison of clinical reports. There should be a search for "biochemical

markers" to indentify heavy users (such as the changes in transferrin or abnormal hemoglobin A used to identify recent heavy users of alcohol) that could be used as an objective measure of hazardous use.

2. Many general considerations were raised. There is an obvious need to relate biological responses not only to the doses given but also to blood and relevant organ levels of THC and its major active metabolites and to the duration of exposure to such levels. For this reason, further studies of the pharmacokinetics (both acute and chronic) of THC and other cannabinoids are indicated. It is important to explore the contribution of THC to biological effects, as compared to the possible role of other cannabinoids and of other substances contained in the cannabis preparations.

3. Wherever possible, the effects of cannabis should be compared with those of equieffective doses of other drugs with respect to some common action, so that cannabis toxicity can be considered within the context of toxicity of psychoactive drugs in general. This will indicate which effects are specific to cannabis and which are common to many drugs.

4. It must also be emphasized that, with the exception of a few case reports and limited experimental studies, almost all information so far obtained has emerged from observations of healthy mature males. This limits the extrapolation of results to other segments of the population. For example, there is virtually no information on the effects of cannabis in women. Because of the increasing prevalence of use by women and the evidence of sex differences in the biological response to many other drugs, studies in this area are vitally necessary.

5. Other groups may, for various reasons, be particularly at risk for the appearance of adverse consequences. The effects of cannabis on children and adolescents, a group undergoing rapid physical and psychological maturation, should be intensively studied since, in some countries, cannabis use is already very high and increasing rapidly. Effects on academic achievement, and on endocrinological profiles during puberty, are areas particularly deserving of study.

Based on evidence from animal studies, it is also recommended that children exposed *in utero* to cannabis should be examined post-natally for signs of impaired growth and delayed maturation, and for long-term health and behavioral problems.

It is possible that cannabis is producing serious but as yet unrecognized toxic effects on persons with underlying psychiatric, pulmonary, cardiovascular, gastrointestinal, allergic, and dermatologic disease, or with pathological or therapeutically produced immunosuppression. Greater attention should be directed to the problem of cannabis-induced precipitation or exacerbation of these disorders.

Because of animal experiments suggesting that nutritional status may to some extent influence the magnitude and nature of the drug-induced effects, the relationship between poor nutrition and various cannabis-related effects should be studied.

Conversely, efforts must be made to identify special risk factors in those experiencing adverse effects, so that additional groups at risk may be identified.

6. There were also suggestions aimed at improving the quality and reliability of the data available from clinical and experimental studies. Case reports are still necessary to identify rare drug-induced effects, and to confirm the existence of other previously reported signs of toxicity. More complete and consistent descriptions of clinical observations, including the extent and pattern of drug use (cannabis and other drugs) accompanied if possible by objective testing, would add to the value of these reports. There is also a need to identify, in the community, those individuals who may not be seeking medical attention for adverse effects. These "outreach" studies would provide a more accurate estimation of the prevalence of the relevant symptoms than can be provided by case reports alone. More systematic enquiring and reporting with respect to drug use by clinic and hospital patients would also assist in the assessment of the prevalence of adverse effects.

The data from carefully designed retrospective studies should not be underestimated. By means of controlled retrospective studies, the apparent over-representation of certain characteristics (such as age, sex, and pre-existing psychopathology) among patients presenting complaints related to drug use can be assessed. Since adverse drug effects are more likely to be found in individuals who are identified as "patients," i.e., who present with complaints, than in healthy users without complaints, it would be informative to apply objective measures such as various physiological and psychological test batteries to groups of patients with complaints rather than only to groups of healthy drug-using volunteers.

In the past, a large number of cross-sectional studies of cannabis users matched with non-user controls have provided information on the drug's possible toxicity. In view of the difficulties in designing a prospective study, a thorough reassessment of previously studied subjects presents certain advantages, despite the difficulties of tracing some of the individuals involved. The subjects would be older and would have had longer cannabis exposure. Thus they would be more likely to show cannabis-related symptoms. Previously made measurements could be repeated, and recently developed techniques could be employed to provide additional data.

Obviously an ideal approach is that of the controlled study of experimental administration. In this manner, confounding variables such as diet and concomitant use of other drugs can be eliminated. In such settings the subjects can also be treated with dignity and safety. From the animal studies, however, it is apparent that long-term exposure is needed for the production of adverse chronic effects. Experimental administration studies in humans should not be used to determine long-term toxicity. Optimally, methods should be developed for performing both cross-sectional and experimental administration studies without the need for hospitalization.

7. Several types of epidemiological studies are suggested to (a) determine the prevalence and trends of cannabis use in general and special populations throughout the world, and (b) to determine the frequency of adverse reactions, especially those requiring medical treatment among groups of cannabis users. The prevalence-of-use data should include information on the dose (in terms of THC content, route of administration, and frequency of use). This would include world-wide assays of potencies of various illicit cannabis preparations. The surveys of frequency of adverse effects should help to separate the influence of various factors such as frequency of use, experience with other drugs, and pre-existing psychopathology. There is also a special need for studies of the frequency of respiratory, hormonal, cardiovascular, and other non-psychological adverse consequences of cannabis use. Because of the experimentally observed carcinogenic and mutagenic potential of cannabis smoke, possible signs of increased incidence of cancer must be monitored carefully in groups of heavy users. Analysis of ongoing epidemiological data such as hospital and emergency service visits, treatment referrals, etc., is very important and should be continued.

8. Encouragement should be given for prospective studies of potential user groups, including observations of baseline (pre-drug) health status and the occurrence of cannabis-related toxicity during and after periods of heavy use. On a large scale they are difficult to design and expensive to conduct. However, this approach remains the best technique for establishing, in humans, directness of connection between drug use and an observed effect, and for determining the relationship between recorded levels of use and the prevalence of adverse effects. Thus attempts should be made to conduct such studies. Less optimally, efforts could be made to extract pertinent data from prospective studies being conducted for other reasons.

9. The optimal designs of experimental studies of toxicology have been outlined in Section 9. It is recommended that adequate investigations using a variety of species, doses, routes of administration, and lengths of exposure (including full-life studies) be performed to evaluate cannabis effects on all organ systems and to assess potential teratogenicity, mutagenicity, and carcinogenicity. Research on endocrine and reproductive functions should also include serial measurements of trans-placental cannabinoid transfer throughout gestation, and estimations of cannabinoid concentrations in breast milk and nursing pups. Further experiments should be encouraged to elucidate the cellular and molecular mechanisms of action of cannabinoids and to analyze cannabis smoke action in a variety of *in vitro* systems.

10. On the behavioral level, several recommendations have been made. Suggested psychosocial studies include examinations of the influence of legal controls on patterns of cannabis use and on the drug-induced behavioral response of the user. For example, observations of the

user's social interactions, such as peer relationships or family structures and attitudes, may provide data related to reasons for the initiation and maintenance of cannabis self-administration, and may provide independent assessment of the user's behavior while in the intoxicated or non-intoxicated state.

Behavioral studies should include measures of psychomotor and perceptual functions that would be expected to affect one's ability to drive a motor vehicle or otherwise perform safely in the work place. A replication of the reported research on driving on city streets is necessary to confirm earlier results. The hazards of operating complex machinery while intoxicated should be assessed, especially in those countries with newly introduced mechanized farming where rural cannabis use is traditional. Wherever possible, cannabis-induced effects on night driving should be examined, as well as interaction with alcohol and other drugs, and the potential development of tolerance to cannabis-induced driving impairment.

Residual CNS toxicity as a result of long-term cannabis administration must be examined in greater detail. In animal models, the possible contribution of other individual or environmental factors, such as innate intelligence or environmental stimulation, to cannabis-induced learning impairment, EEG changes and histopathology could be assessed. In humans, a careful longitudinal study with verified drug-free periods before testing would help to determine whether or not residual toxicity occurs. The question of an absence or redirection of motivation in heavy users must be examined in greater detail. In addition, an exchange should be set up for autopsy brain bank samples and case-history information relevant to chronic heavy users, to provide material for post-hoc analyses of brain in correlation with recorded levels of use.

11. Additional observations are needed to identify the intervening pharmacological, neurophysiological, and psychopathological factors underlying acute panic and paranoid states and other cannabis-related psychiatric disorders. A comparison between cannabis-related psychiatric disorders and those produced by other drugs, as well as functional disorders, would also be profitable. A controlled study of the intervening etiopathogenic factors underlying spontaneous recurrence reactions ("flashbacks") could be of assistance in the elucidation of the mechanism(s) related to these symptoms.

Specific treatment procedures should be developed to minimize the potentially severe dysphoric states that can occur as a result of the therapeutic use of THC and synthetic cannabinoids. Such studies might not only be of value to patient care, but also shed light on the mechanisms of drug action.

12. Immunological studies should include epidemiological investigations of the prevalence, severity, and duration of selected infectious diseases in populations from which data are readily available and in which use is known to be high (e.g., students, military personnel). For example,

the question of a possible cannabis-related decrease in the immune response to herpes simplex should be studied in a group of cannabis users known to be infected with herpes.

13. Because of the multiple drug intake of many cannabis users, better and broader drug interaction studies (especially regarding behavioral impairment, pulmonary and liver toxicity) are necessary. These should be conducted with both licit and illicit drugs such as caffeine, nicotine, psychotherapeutic agents, and antihistamines. Data from pharmacokinetic experiments will be helpful in the interpretation of drug-interaction phenomena.

14. The development of tolerance to, and dependence on, drug effects, whether they be therapeutic or adverse, is a phenomenon that must be considered in the evaluation of any chronic psychoactive drug effect. More sensitive measures are needed for the identification of dependence, the delineation of time course of acquisition and particularly of the disappearance of tolerance, and its implications with respect to function. The relationship of tolerance, physical dependence and drug-seeking behavior must be established, both for cannabis and for other concurrently used drugs.

Since increasing numbers of cannabis users are now presenting signs of dependence, research must be conducted on methods for treating this problem.

15. Finally, adverse health effects are better prevented than treated. The development of educational programs designed to discourage hazardous cannabis use should be encouraged, and the results of such programs evaluated.

In brief, the obvious need for further cannabis research has been demonstrated. Because of the cannabis-related problems throughout the world, there is an urgent and imperative need for agencies such as the WHO to alert the national governments and other international agencies to the need for research in this field. The benefits of cooperation between developed and developing countries in this area are mutual.

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The Marijuana Health Hazard

By Nicholas A. Pace, M.D.

During the last seven years, a very active organization called NORML (National Organization for the Reform of Marijuana Laws) has been vigorously campaigning state by state for the decriminalization of marijuana. This organization has campaigned nationally to make marijuana appear harmless. They are dedicated to fostering the idea that marijuana should be decriminalized since so many people are using it.

Recently, it has been learned that high on the list of President Carter's priorities in the field of public health is the decriminalization of marijuana. In order for you as law officers to understand the health aspect of this complex issue, we would like to give you the following information.

It is the contention of this author that the public has not been properly informed concerning the harmful medical effects of this drug. If anything, the media tends to portray marijuana as no more harmful than tobacco or alcohol. This comparison is absurd.

As For Tobacco—Tobacco is not a hallucinogenic drug. Smoking tobacco produces no hallucinogenic effects. Smoking marijuana has in reality a hallucinogenic effect on the brain with distortion of time, space and sound. It takes 20 years of heavy tobacco smoking to produce the same type of severe sinusitis, pharyngitis, bronchitis, and/or emphysema that less than one year of daily marijuana smoking produces, proving that marijuana smoke is far more irritating to the respiratory tract than tobacco.

Scientific studies have shown that marijuana smoke mixed with tobacco smoke is far more damaging to lung tissue than tobacco smoke alone.

Even the *Consumer's Report* of March, 1975 acknowledged the lung damage in chronic marijuana users, although one could hardly endorse their suggestion that alternate forms of marijuana consumption such as "drinking marijuana tea" could protect the lung tissues. Medical literature is replete with reports similar to that of Dr. John A. S. Hall's report showing the emphysema-bronchitis syndrome in black male Jamaicans who were regular marijuana users.

Unfortunately, it will take another 20 to 30 years for us to have autopsy reports to show the effects of long term chronic marijuana smoke on not only the lungs but other tissues as well.

Of interest is the fact that lungs of animals exposed to marijuana smoke have shown cellular changes that are similar to those seen in patients who develop lung cancer. Tar from marijuana, painted on the backs of animals, has produced cancers.

As Far As Alcohol Is Concerned—The concept that marijuana is safer than alcohol is definitely erroneous. A person can have one or two drinks a day for 20–30 years and never suffer ill effects from it. Alcohol is water soluble. One ounce is completely metabolized and broken down into water and carbon dioxide within 12 hours. Marijuana, on the other hand, is not water soluble—it is fat soluble, and the active psychotropic (mind altering) ingredient, delta-9 Tetrahydrocannibinol (THC), accumulates (in the

same manner as DDT) in the tissues of the body which are fat laden, including the brain and the sex organs. In animal experiments with radioactive tagged Delta THC, the THC was still detected in the brain, liver, lungs and reproductive organs two weeks after a single injection.

Although alcoholism is a serious drug problem, one does not hallucinate from one or two drinks. In order to hallucinate an alcoholic would have to develop far advanced disease, with brain damage and/or the withdrawal syndrome. On the other hand, the psychotropic effect of marijuana causes hallucinations in small doses, and in some cases, every time the drug is used. The distortion of time, space and sound are examples of the mild hallucinations that occur on a mild marijuana "high" is experienced. Think of what this effect will be on our driving population should marijuana become as popular as cigarette smoking. There are several studies which show that marijuana causes marked distortion of time and space on professional automobile drivers and airline pilots. Dr. H. Klonoff, Professor of the Department of Psychiatry at the University of British Columbia, Canada, in a study, showed the neuro-psychological effects of marijuana on driving.

Marijuana Effects On The Brain—The active psychotropic ingredient has a cumulative effect on the brain which is responsible for the irreversible brain damage that Dr. Robert Heath, Chairman of the Department of Psychiatry and Neurology at Tulane University School of Medicine has shown in his rhesus monkey experiments. The actual irreversible brain atrophy or damage in the rhesus monkeys was produced after three months with the equivalent of one marijuana cigarette (2% THC) a day. The Columbian marijuana currently available in New York City is 3+% THC. Therefore, four to five marijuana joints per week would be at the same dosage that caused brain damage in the rhesus monkey experiment. Dr. Heath has not tried does less than this; therefore, this may not be the minimal level.

It is unfortunate that Dr. Heath's findings have not been properly publicized, especially since it is thought that there are at least two million daily marijuana smokers in this country at the present time.

Loss Of Motivation—In 1972, Dr. Louis J. West described the term amotivational syndrome (loss of motivation). This syndrome is well known to numerous physicians and practicing psychiatrists in this country and elsewhere. Marijuana smokers suffer personality changes that occur gradually over a period of time. These personality changes include diminished drive, lessened ambition, decreased motivation, apathy, shortened attention span, poor judgment, diminished capacity to carry out complex plans or prepare realistically for the future, and a variety of other deleterious changes.

Dr. West suggests that this syndrome is caused by actual organic changes in the tissues of the brain. Dr. William Moore and Dr. Harold Kolansky of the University of Pennsylvania Medical School showed in an excellent study the same distortion of personality among chronic marijuana users. They describe hundreds of patients who have suffered from psychiatric and nuerological symptoms such as impaired judgment, diminished attention and concentration span, a slowing in time sense, and a loss of thought continuity as a result of chronic marijuana use.

Dr. Andrew Malcolm, a Canadian psychiatrist, Dr. D. Harvey Powelson, formerly Chief of the Health Clinic at the University of California at Berkeley, and Dr. Roy Hart, a New York psychiatrist and Editor of the *Journal of the American Academy of Psychiatry and Neurology*, as well as many others, have independently confirmed and extended Dr. West's observations. In a paper that Dr. Hart presented, entitled "A Psychiatric Classification of Cannabis Intoxication," he showed that there were 75 independent studies which revealed the serious effects of marijuana on the mind. Evidence from all over the world has supported the presence of the amotivational syndrome. Dr. John A. S. Hall, a leading psychiatrist in Jamaica, and Dr. Boris Segal, a prominent Soviet psychiatrist—just to name two others—have also reported on this syndrome.

Brain Atrophy (Shrinkage)—The important findings of the English neurologist, the late Dr. A. M. G. Campbell, in his study using air contrast x-rays of the brain on long term marijuana users (all of whom presented severe personality disorders) cannot be refuted. In all ten subjects, there was definite evidence of brain shrinkage as compared to ten control subjects. Dr. Robert Heath, of the Tulane University School of Medicine, studied the brain wave patterns in rhesus monkeys who were exposed to marijuana smoke twice a week and demonstrated that animals exposed this way had irreversible alterations in brain function for about three months after onset of the experiment. These brain wave abnormalities were shown to persist for eight months after the monkeys were no longer exposed to the marijuana smoke.

The regions of the brain where Dr. Heath measured the most pronounced and persistent changes in brain function by the brain wave examination were the same regions where Dr. Campbell noted atrophy or shrinkage in the ten human subjects.

Loss Of Learning Ability—Dr. Harold Kalant of the Department of Pharmacology at the University of Toronto has shown that rats exposed to marijuana smoke for five months suffered an irreversible loss of learning ability as measured by standard psychological tests.

Of special interest are the Soviet studies on dogs who were exposed to marijuana. These dogs showed signs of organic brain damage of the central nervous system including disturbances of various reflexes, impaired motor coordination and muscle movements, and states of depression followed by periods of excitement, aggressive behavior and fears. Autopsies on the brains of these dogs showed large areas of destruction in the cortex (thinking and learning centers) of the brain as well as in the cerebellum (balance section of the brain). These are the same regions of the brain that Dr. Heath reported on in his monkey experiments.

The Seven Day Half-Life—Of interest is the fact that marijuana produces a half-life of seven days. This

means that after one week only 50% of the substance is eliminated. Therefore, anyone who uses marijuana more than once a week cannot be truly drug-free and has a build-up of the drug in his tissues. One might remember the recent headlines of the commuter train crash in Chicago. Although the engineer involved had not used marijuana for the previous 24 hours, the substance was still detected in his system.

Prevention Of Cellular Growth—When marijuana is exposed to cell cultures, there is biochemical interruption of cellular metabolism, with the prevention of the proper formation of the building blocks essential for cell growth. Scientists agree that marijuana interferes with the synthesis of proteins and causes a decrease in the rate of cell division.

Dr. Peter Freed of Ottawa, Canada showed that young rats subjected to marijuana smoke not only suffered from generally reduced body weights, but also had significantly smaller hearts and brains as a percentage of their total body weight. He also got the same results in young suckling rats whose mothers were exposed to marijuana, bringing up the strong possibility that this effect is transmitted through mother's milk.

Reduced Sperm Production—Dr. H. Morishima and Dr. Zeidenberg, at the Columbia College of Physicians and Surgeons, illustrated in a carefully controlled study on 16 marijuana smokers, ages 18 to 23, over a two-year period, a significant and sustained decrease in the sperm concentration occurring after only two weeks of marijuana smoking. The decrease in the sperm concentration was sustained for at least two weeks after marijuana was discontinued. During the experiment, the subjects smoked an average of five to fifteen marijuana cigarettes a day.

Abnormal Sperm Cells—Not only was there a decrease in the sperm count, but there was also a decrease in the motility of the sperm (movement of the sperm). The most potentially damaging effect of marijuana on the sperm was the marked increase in abnormal forms of the sperm cell. This brings forth the genetic possibility of transmitting abnormally viable sperm with decreased genetic information to a fertilized egg.

Genetic Effects—Marijuana not only interferes with cell division but also interferes with the synthesis of the important genetic material of the cells. There is interference with the immune system of the body, too. Studies have shown that marijuana use causes a reduction in the number of chromosomes in the white blood cells, plus abnormal white blood cells. Abnormal embryos have developed in the animals exposed to marijuana and birth defects have been produced in young rhesus monkeys whose parents were exposed to marijuana smoke.

Space does not permit a review in detail of the many other negative health effects that marijuana produces.

I have personally cared for two young people who became psychotic after using marijuana. In one case, psychosis developed after smoking only one joint and in the other case, after smoking five joints a week for a period of six months.

As a student and observer of the drug scene, I sincerely believe that while alcoholism is presently our most dangerous drug problem, marijuana has the potential of becoming an even greater problem since it is being used by an uninformed public. One has to be aware that decriminalization is tantamount to legalization, particularly when so many people are ignorant of the extremely serious risks involved in marijuana usage. No one wants to see young people thrown in jail, but there are other effective alternatives to decriminalization. For example, there is the Sacramento Citation Diversion Program where youths arrested for possession of marijuana are given a chance to take a drug information study course which exposes them to the information that we have written about here. Upon completion of the course, the youth's arrest record is wiped clean.

When someone asks how one can tell if marijuana has had any ill effects on someone, I suggest trying to recall what the individual was like six months prior to the regular use of marijuana and comparing him with what he is like today. If there are marked changes in personality, social attitudes, emotions, etc., coupled with apathy, the chances are that marijuana is having an ill effect on his brain.

With the help of publications like *The Law Officer*, perhaps we can inform the youth of our country of the hazardous medical effects of marijuana.

Listed below are the names of books and publications containing further information on this subject:

SUGGESTED READING MARIJUANA

Russell, George, Marijuana Today, The Myrin Institute Inc., 521 Park Ave., New York; Nahas, G., Keep Off The Grass, Reader's Digest Press, Thomas Y. Corwell Co., 666 Fifth Ave., NY, NY 10019; Berjerot, N., Addiction & Society, Charles C. Thomas; Bloomquist, E., Marijuana, Glencoe Press Beverly Hills, Calif.; Goode, E., The Marijuana Smokers, New York Basic Books; Moreau, J. J., Hashish & Mental Illness, Raven Press, New York; Nahas, G., Marijuana: The Deceptive Weed, Raven Press, New York; Jones, H. B., Sensual Drugs: Deprivation & Rehabilitation Of The Mind, Cambridge University Press, New York; Powelson, D., Marijuana: More Dangerous Than You Know, Readers Digest 12/74 pp 95-99; Drug Information: National Clearing House for Drug Abuse Information, P.O. Box 1635, Rockville, Maryland 20850; American Council on Marijuana, 521 Park Avenue, New York, N.Y. 10002.

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NIPPING MARIJUANA IN THE BUD

A Comparison of Paraquat—the Herbicide with Cannabis—Nature's Toxic Plant

By Mary Kohler, Hampshire Informed Parents, Inc.
Amherst, Massachusetts

What is Marijuana?

Cannabis sativa is a broad-leaf plant of which there are two main types. The fiber type, hemp, was used for making rope and homespun, while the drug type is illegally grown for its drug (psychoactive) properties. Strictly speaking, *Cannabis sativa L.* is the botanical name for the plant itself, while "marijuana" is the term applied to a crude drug derivative.

Naive *non*-drug users must understand that chronic pot smokers and the drug culture like to foster the belief that the cannabis plant is no different from other agricultural plants. Slang names for marijuana clearly illustrate this: "grass," "weed," "tea," "Vermont-Manhattan Crossbreed," "Wacky-Tobacey," "Oklahoma Baby Buds," to name a few. Scientific research in the last few years has proven how dangerous and misleading this can be.

To date, 421 different chemicals have been identified in cannabis; of these chemicals, 61 are called cannabinoids and are found in no other plant in nature. Thus, marijuana is not a pure drug but a complex mixture. (In contrast, ethyl alcohol is only 1 chemical.) The most studied cannabinoid is delta-9-tetrahydrocannabinol, or THC. This is the chemical chiefly responsible for the "high."

In order to fully comprehend the health hazards of marijuana use, one must keep in mind this basic fact: THC is *intensely* fat soluble—it is attracted to the fatty tissues of the body and the fatty organs (including the brain and sex glands) and finds its way into mother's milk. It is stored in the same manner as DDT. THC is very slow to leave the body: 25-30% of the THC and its products of metabolism reside in the body for one week—traces of THC can be found up to 30 days after one has smoked a single joint. (In contrast, alcohol is water soluble and leaves the body within a matter of hours.) Thus, any regular use of marijuana leads to a steady accumulation of THC—and other cannabinoids. And, although not all of the cannabinoids are psychoactive (mind-altering), all are biologically active.

Since each cell membrane has fatty sections, the cannabinoids dissolve into these cell membranes. This slows the entrance of necessary building blocks into the cell and interferes with biological processes. Clearly, marijuana is very far from a "harmless weed;" it is a very biochemically active and persistent mind (brain) -altering drug. Further, the THC content of today's high-potency marijuana is as much as 10 times stronger than the street marijuana of a decade ago. The National Academy of Science's Institute of Medicine reported in February, 1982, that marijuana use in our nation today "justifies serious national concern."

THE FOLLOWING ARE JUST A FEW OF THE HEALTH HAZARDS CONNECTED WITH MARIJUANA USE (Some symptoms appear in some users with light to moderate use; other symptoms appear only after heavy use. Heavy use is defined as smoking 4 or 5 marijuana cigarettes per week.)

Interference with Psychological Functioning. Symptoms are lack of goals and motivation, impairment of short-term memory and learning, and retardation of emotional growth. This is affirmed by an increasing body of clinical reports from pediatricians and psychiatrists. Each year, marijuana accounts for the second largest number of admissions into federally-funded drug abuse treatment facilities. Tragically, the chronic user is rarely able to perceive the change that has taken place in himself or herself. A carefully designed study matched marijuana smoking in rhesus monkeys to moderate and heavy smoking by humans over a six-month period. For these monkeys, a pattern of abnormal brain waves appeared within two to three months' exposure, and was found to persist even after three months' exposure, and was found to persist even after eight months of abstinence. Upon autopsy, the limbic area brain cells of these monkeys showed distinct damage. The brain cells of the control monkeys (exposed to the same amount of pot smoke with THC removed) were perfectly normal.

Impairment of Normal Sex and Reproductive Processes. In man, marijuana reduces sperm count and motility and increases the number of abnormal forms of sperm. Disruption of ovulation and disruption of menstrual cycles have been observed in humans and in rhesus monkey studies. Since THC collects in and passes through the placenta, the developing fetus will be at risk if the mother uses marijuana.

Serious Impairment of Driving and Flying Performance. Studies have shown that marijuana is just as driver-impairing as alcohol. Moreover, marijuana *adds* to the driver-impairing effects of alcohol. (Note: alcohol can lead to nausea and vomiting; however, marijuana suppresses the vomiting response setting the stage for a dangerous state of intoxication.)

Impairment of Lung Function. This ranges from subclinical effects (which do not yet "show") to the same serious lung conditions caused by cigarette smoking; but pot smoking brings on these conditions far sooner and with fewer "smokes;" for example, one marijuana cigarette may cause more air flow resistance than 16 tobacco cigarettes. (Air flow determines in large measure how well we get oxygen into the lungs and how well we get carbon dioxide out.)

High Risk Groups: The younger the user, the more deleterious the effects. Because experimentation is too often the first step to personal and social loss and eventual dependence, any use by teens or preteens must be strongly discouraged. Other special high risk groups are pregnant women; those with cardiac problems; diabetics; epileptics; and persons with underlying or present mental disorders.

Although one chemical in marijuana—THC—is being used for suppression of nausea and vomiting in various patients suffering these effects from cancer chemotherapy treatment, this does *not* mean that "pot must be safe"—as many youngsters have been led to believe. The 421 chemicals in the crude drug marijuana are combusted into over 2,000 chemicals when smoked. It is thus a Pandora's Box of unknowns. But what we *do* know about it is bad news.

What is the extent of marijuana use in the U.S.?

"Young people are often at the leading edge of social change; and this has been particularly true in the case of drug use. The surge in illicit drug use during the last decade has proven to be primarily a youth phenomenon, with onset of use most likely to occur during adolescence."

The above quote is from Dr. Lloyd D. Johnston, et al., Highlights from Student Drug Use in America 1975-1981, National Institute on Drug Abuse (NIDA). This document presents findings from a national research and reporting program, *Monitoring the Future: A Continuing Study of the Lifestyles and Values of Youth*, conducted annually since 1975 by the University of Michigan's Institute for Social Research. The data give some important indication of drug use among high school seniors, with some information about starting use in earlier grades. In interpreting the data, one must take into account one fact: the research does *not* include those in the target population who dropped out of high school before the 12th grade—15-20% of each age group. At hearings concerning international narcotics control policy, which were held before the Committee on Foreign Affairs, House of Representatives, April, 1982, Dr. Mel J. Riddile of Fairfax County, Virginia, and representing the National Association of Secondary School Principals testified:

"I would like to say that as we find younger and younger children using illicit drugs, particularly marijuana, we find that they don't make it to their senior year and they don't appear in the NIDA surveys.

One study that we conducted in a local school found that 29 percent of the marijuana users dropped out of school in 1 year. They would not have made it to their senior year for that survey. So I think we have to consider that." (U.S. Congress, Committee on Foreign Affairs, "International Narcotics Control", April, 1982)

According to *Highlights*, among high school seniors of the class of 1981, "marijuana is by far the most widely used illicit drug;" 46% used marijuana during the year; 32% used in the past month; 7% used daily (one in every 14 seniors). Daily use was on a slightly downward trend, which, said the researchers, was apparently due to concern about health consequences and peer disapproval. As for grade of initial use by the class of 1981, *34% first used marijuana prior to high school* and 25% during high school. (The remainder had never used.) See 1982 data, end of article.

As for overall use of marijuana, Dr. William Pollin, Director, National Institute on Drug Abuse stated that at least 22 million Americans use marijuana (previous hearings, U.S. Congress, Committee on Foreign Affairs, *International Narcotics Control*, April, 1982). The 1979 National (Household) Survey on Drug Abuse, ages 12 on up, shows that *one out of every three Americans ages 18 to 25 was a current pot smoker* (defined as using the drug within the past month).

To Sum Up: Since 1964, over 6,000 scientific papers have been published on cannabis, the plant from which marijuana, hashish, and hash oil are "processed." According to Dr. Carlton Turner, the White House Drug Abuse Policy Director, who has read and annotated all these papers for the

two-volume work he co-authored, *Marijuana, An Annotated Bibliography*[1], "*Not one* of those papers gives cannabis a clean bill of health."

Indeed, he says, "*The inescapable fact is that unless our current pot-smoking habits are reversed sharply, marijuana will have drastic long-term biological and psychological health effects on our young people, and, therefore on the future of our families and our nation.*" (Peggy Mann, *Pot Safari*, 1982)

Eradication of Marijuana: Use of Paraquat

The use of marijuana is clearly a public health problem of major proportions; the economic and social costs are enormous. Eradicating cannabis, the plant from which marijuana is derived, is one important way to begin to attack this problem. Although various articles we come across in magazines and newspapers might lead some to believe that domestically grown cannabis accounts for a considerable proportion of marijuana in the U.S., actually "domestic commerical cultivation has consistently represented about 7 percent of the total marijuana consumed in the United States." (Attorney General William French Smith, "Drug Traffic Today," *Drug Enforcement*,[2] Summer, 1982, p.5). Increased efforts to eradicate cannabis would certainly lessen the public health problem created by use of the drug. We need to keep in mind that the U.S. is already obligated to participate in ways to control cannabis. According to a recent U.S. State Department document, *Cannabis Eradication in Foreign Western Hemisphere Nations*, November, 1982, the State Department intends

> *"to initiate a cannabis eradication program in foreign Western Hemisphere nations. The proposed action is to support efforts of host governments to eradicate cannabis by aerially applying the herbicide paraquat where appropriate."*

Describing the proposed federal action and evaluating it in terms of domentic environmental impacts, the document also explains that

> *"The U.S. Department of State's Bureau for International Narcotics Matters is mandated by Section 481 of the Foreign Assistance Act of 1961 to establish an international program aimed at reducing the flow of illicit narcotics and dangerous drugs of foreign origin into the United States. In 1978 an Amendment to the Foreign Assistance Act placed restrictions on U.S. support to foreign governments for the eradication of marijuana using paraquat. In December of 1981, these constraints were repealed. With the advent of this development, it is now the intent of the U.S. Department of State to initiate a cannabis eradication program in foreign Western Hemisphere nations."*

Such an action as described in the above State Department document would help to reduce the supply of marijuana coming into the U.S. from abroad. However, it becomes clear that *such a program must ultimately be coordinated with efforts to reduce the domestic production of marijuana in the U.S.* Furthermore, the U.S. is obligated by international commitment to try to reduce this supply: According to the above State Department publication,

> *"The United States is a party to the 1961 Single Convention on Narcotic Drugs, as well as numerous bilateral and multilateral treaties and agreements on the control of dangerous drugs. The United States and other parties assumed the obligation under the treaty to control and prevent trafficking in narcotics, including heroin, cocaine, and marijuana. Any attempt by the United States to abrogate, amend, or withdraw from the Single Convention would have serious repercussions with respect to controls on all other narcotics and dangerous drugs..."*

It has become abundantly clear that marijuana can be controlled most effectively at the initial point of production: this requires eradication of cannabis at its source, for once the illicit crop has been cut and sent on its way to some distant point, the problem of discovering and intercepting it is manifold, and much of it remains undetected. The use of paraquat would be one way to eradicate cannabis before it is harvested and shipped.

What is Paraquat?

According to the 1980 report of the Select Committee on Narcotics Abuse and Control, *The Use of Paraquat to Eradicate Illicit Marijuana Crops and the Health Implications of Paraquat-Contaminated Marijuana on the U.S. Market*, (Congressional committee report, pp. 11-12),

> "The chemical 'paraquat' (1,1'-dimethyl-4,4'-bipyridinium dichloride) is a general contact herbicide manufactured in the United States by Imperial Chemical Indistries, Americas, and distributed by the Chevron Chemical Corporation, under license from the British-based Imperial Chemical Industries, Limited (ICI). The compound was first used as a plant growth regulator beginning in 1959, and *since 1966, paraquat has been registered for a broad spectrum of uses* (Emphasis added):
>
> 1) as a pre-planting herbicide for the control of weeds prior to the establishment of grass seed fields, and in preparation for no-tillage or [minimum] tillage production of crops such as corn and soy-beans;
>
> 2) as a directed spray for the control of weeds in orchards, vineyards, ornamental plantings, and nonerop plant areas;
>
> 3) as a desiccant and defoliant in harvesting such crops as soybeans, sugarcane and sunflowers;
>
> 4) as an aid in pasture renovation.
>
> When paraquat is applied in commercial agricultural settings, precautions are taken to avoid contact with edible portions of the crop undergoing treatment...
>
> *Paraquat is certified by the regulatory agencies of the U.S. Government as a safe and effective chemical when used in accordance with label directions." [Emphasis added.]*

Also, Federal agencies monitor for residues. Testimony quoted in the above report assures us that studies "show no evidence of paraquat residues in our food supply." (Dr. Warren C. Shaw, Staff Scientist, U.S. Department of Agriculture)

Why Use Paraquat?

Studies and experience show use of paraquat to be a viable method of eradicating cannabis.

[1]See Reference List for further information about this work.

[2]A copy of this publication may be obtained from Drug Enforcement Administration, U.S. Department of Justice, 1405 Eye Street, N.W., Washington, D.C. 20537

In July, 1979, a United Nations Narcotics Laboratory (UNNL) Study Group composed of experts from around the world convened in Geneva to consider methods for the eradication of illicit narcotic crops. Following are a few statements from its report, which is reprinted in the above congressional committee report. *The Use of Paraquat to Eradicate Illicit Marijuana Crops and the Health Implications of Paraquat-Contaminated Marijuana on the U.S. Market:*

"Opium poppy, cannabis, and coca bush are the narcotic plants of global concern, being the sources of such principal drugs as heroin, marijuana, and cocaine, respectively...

There are positive ways to control illicit narcotic crops. These include persuading illicit growers to produce other income-generating crops. Unfortunately, this alternative is not always realistic... chemical attack at the present time offers the best overall opportunities to successfully destroy narcotic crops. Mechanical means are, however, also quite viable and fire is feasible.

The variety offered by these three readily available, proven techniques, both individually and in combinations with one another, led the group to conclude that the initial costs to develop the apparently promising approaches of biological controls and genetic alteration would not be cost-effective in the effort to eradicate illicit narcotic crops."

Ultimately, the UN Study Group report states that

"From the approximately 60 herbicidal chemicals that have been evaluated for their effectiveness in controlling cannabis and poppy, the group selected five, as having sufficient merit to receive primary consideration for use in the control of cannabis and poppy."

Of these five, one was paraquat. This chemical was given high marks in terms of effectiveness in cannabis control:

Paraquat

"provides effective control of cannabis and poppy... The effects of paraquat are soon noticeable. It produces the most rapid response of any of the chemicals that have been tested..."

As for environmental impact,

"Drift of paraquat to nearby vegetation may cause visible necrotic spots, but under ordinary circumstances damage would be minimal. Paraquat persists in the soil for long periods, but it is not biologically available because it is tightly absorbed on [bound to the surface of] soil particles. Free paraquat is degraded by soil micro-organisms."

And Chevron Chemical Company, Ortho Division, states in "The Impact of Paraquat on the Environment"[3] that Paraquat

"is rendered inert once it contacts the soil and is not biologically persistent... There is no possibility of residues of paraquat being accumulated in living systems. Thus paraquat soil residues are biologically unavailable to living organisms in the environment... if water did become accidentally contaminated with paraquat, residues in the water would quickly disappear largely due to adsorbtion onto soil particles suspended in the water and in the bottom mud."

[3]Chevron Chemical Company, Ortho Division, Research and Development Department, Richmond, California, "The Impact of Paraquat on the Environment" (summary), March, 1971.

And from the White House Drug Abuse Policy Office *Fact Sheet* (July 19, 1982): "Paraquat is a fast-acting herbicide which is biodegradable, photodegradeable and decomposes upon storage and heating." In other words, paraquat is broken down by soil micro-organisms, sunlight, storage, heating. Toxicity of the break-down products is nominal.

In the application of paraquat, the availability of water is required, for water is the normal carrier.

Are there health hazards for pot smokers?

The UN Report cited above states that—although handling of the concentrate requires care by those applying the chemical, "residues of sprayed formulations on cannabis would not be sufficient to cause toxic effects to the marijuana user." In the White House *Fact Sheet* cited above, we read,

"In 1977, it was confirmed that marijuana containing Paraquat was available on the street in the United States. Analysis by the Center for Disease Control [CDC, Public Health Service, Department of Health and Human Services] in 1978 found that 3.6 percent of their samples of confiscated marijuana contained Paraquat. ***Not a single case of lung damage due to smoking marijuana containing Paraquat was found by CDC despite a follow-up on all reported cases during the 'Paraquat Scare' in 1978."*** *[Emphasis added.]*

Just what was that "paraquat scare?" First, one must understand the climate of the times. Only very recently did the general public begin to learn something about the health hazards of marijuana use; but in the mid-70's, except for scientists and a few others, the general public knew relatively little about these hazards. During that time, Mexico had begun to spray cannabis with paraquat—of course, this would reduce the supply of marijuana into the U.S. Pro-drug forces and various media elements pushed to end spraying programs, implying that paraquat was causing lung damage among marijuana users. And, significantly, research findings describing *marijuana's* effects on lungs were given almost no publicity. Eventually, the U.S. Congress passed an amendment to the Foreign Assistance Act of 1961; this amendment "...placed restrictions on U.S. support to foreign governments for the eradication of marijuana using paraquat." *(Cannabis Eradication in Foreign Western Hemisphere Nations*, State Department, November, 1982) But, when Congress realized the deception in the "paraquat scare," it *repealed* these constraints in December of 1981.

The Public Health Service, Department of Health and Human Services, is supportive of eradicatoin of cannabis using paraquat. A letter published in the State Department publication cited above *(Cannabis Eradicaton in Foreign Western Hemispere Nations*, November, 1982) reads:

"The Public Health Service (PHS) strongly supports a program for eradication of cannabis in the Foreign Westrn Hemisphere Nations... We feel that the proposed cannabis eradication activity can be properly performed by using the herbicide paraquat in accordance with Environmental Protection Agency label instructions and its application requirements and by following sound procedures to monitor the activity."

Success of the Mexican Paraquat Program. Mexico has demonstrated success in its cannabis eradication program. According to the previously mentioned Congressional

report, *The Use of Paraquat to Eradicate Illicit Marijuana Crops and the Health Implications of Paraquat-Contaminated Marijuana on the U.S. Market.*

"In 1975, the Government of Mexico, in a bilateral program agreement with the United States Government, began using chemical eradication agents to destroy opium poppy crops...

The potential of the program impressed the Mexican Government to the extent that it decided to expand the efforts of the aerial poppy eradicatoin program to include what it considers to be its own number one domestic drug abuse problem: Marijuana. The environmentally safe, commercially available herbicide 'paraquat' was chosen by the Mexican Government from a list provided by the U.S. Department of Agriculture of herbicides licenses and evaluated as safe for domestic commercial use as an acceptable agent for the marijuana eradication program. Paraquat's safety record when used in accordance with label directions is excellent."

Some additional statements from the White House Drug Abuse Policy Office *Fact Sheet* (July 19, 1982):

- *"Paraquat has been on the market as a herbicide since 1962 and is one of the most widely used herbicides in the world."*
- *"Paraquat is a legal herbicide for use anywhere in the U.S. as long as the label instructions are followed."*
- *"Paraquat is used to control broad-leaf weeds and cannabis is a broad-leaf weed."*
- *"Approximately 4 million pounds of Paraquat [are] sprayed on over 10.7 million acres in the U.S. each year." (This is for uses such as weed control in orchards and as a harvest aid for such crops as cotton and soybeans).*
- *"The Administration supports the eradication of the cannabis plant as a legitimate activity to reduce the availability and use of marijuana."*

Paraquat Use in the U.S.

In August of 1982, paraquat was used to spray a large cannabis field in Red Bay, Florida. Stringent controls were followed, which prevented the sprayed cannabis from reaching the consumer market; no adverse environmental impacts were noted; stringent controls were followed to protect the health and safety of personnel conducting the spraying. Safety clothing (rubber suits, goggles, respirators, etc.) was worn to protect the personnel involved; there were no problems. A tank-truck was used as far as it could go, and the rest of the spraying was accomplished in the tight places by back-pack sprayers. The paraquat was used as a desiccant, which dried the foliage and allowed the field of cannabis to be burned within 48 hours "at minimal cost to the state." (This information was obtained following a Committees of Correspondence inquiry to the Department of Law Enforcement, State of Florida.)

In using paraquat, one must remember that, like many chemicals in use, including many under the kitchen sink, it is a poison, and like any poison, it must be used with care. Label instructions must be followed and applicable state and federal regulations must be observed. Paraquat should be used only when appropriate and with stringent controls to ensure the health and safety of personnel involved; it is a restricted use herbicide and may be used only by Certified Applicators or persons under their direct supervision."

In conclusion, because the public health hazards involved in *marijuana* use are so great, the use of paraquat as a means to eradicate cannabis is warranted.

What You Can Do

1. Domestic commercial cultivation of cannabis is presently concentrated in seven primary states: California, Hawaii, Oregon, Kentucky, Missouri, Arkansas, Florida. But other states are also involved. Is your state one of these? You can find out from your District Attorney or state Attorney General. At the first national conference of the National Federation of Parents for Drug-Free Youth in Washington, D.C., Dr. Carlton Turner was asked on October 12, 1982:

"Dr. Turner, [we in the midwest have heard] that a growing number of farmers are growing marijuana... What would be your suggestion as to what parent groups might do with the enforcement people in the eradication of cannabis?"

Dr. Turner:

"Talk to the local law enforcement people, who will have contact with the Drug Enforcement Administration, which is giving technical assistance. With these two groups working together, we now have 26 states which are involved in eradication."

2. Parent groups and individuals, write to your elected officials: let them know that you want cannabis to be eradicated—that use of cannabis presents major health hazards. Continue to encourage and support all those who are in a position to take steps to eradicate cannabis, from local law enforcement personnel to your state legislators. Write letters to newspapers expressing this support.

3. If you become aware of a particular place where cannabis is being grown, contact your local law enforcement personnel. (This can be done anonymously.) Also, if you would like more information about Florida's successful use of paraquat on marijuana, you may write to the State of Florida, Department of Law Enforcement, P.O. Box 1489, Tallahassee, Florida 32302.

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The following is a copy of an article that appeared in the Philadelphia *Daily News* on December 9, 1982 by Stuart D. Bykofsky:

Bob Hope recently disclosed that NBC axed a couple of jokes about drug use from one of his routines during a special. One of the Hope's gags said that for selling cocaine "you can get 20 years in prison or two years in Congress."

Hope is far from one of the drug generation's favorite comics. You'd have to guess you wouldn't find any white powder on the old man's nose.

NBC ran a week-long, anti-drug campaign last year and later ordered *no* drug jokes on its air. That comes right from Grant Tinker at the top.

We have a drug epidemic in America, that's for sure.

But is a flat ban the most effective remedy? Would an anti-drug joke, in which the user is portrayed in less than flattering terms be considered a "drug joke?" Even if that's not the case, should the networks be issuing flat bans on material?

This represents a conflict between a socially desirable end (fighting drug use) and a questionable means (network censorship). Freedom of expression is not an absolute—not in society and not on television—but I have trouble with edicts that wipe out an entire area of commentary.

How do you feel? Should the networks ban *all* drug humor, allow *only* anti-drug jokes, or keep its hands off the material entirely? Let me know by writing to me, care of the Daily News, P.O. Box 7788, 400 N. Broad St., Philadelphia, Pa. 19101.

We encourage people to write Grant Tinker to let him know we appreciate his effort and active participation in getting the anti-drug message to the general public via television and radio programming at N.B.C.

We have already had an encouraging reply to our letter to him. You may state that you are a member of the Committees of Correspondence. Please direct your correspondence to:

Mr. Grant Tinker *Chairman of the Board*
National Broadcasting Company
30 Rockefeller Plaza
New York, N. Y. 10112

COMMITTEES OF CORRESPONDENCE INC.
Wine Makes Might

Drug Abuse Newsletter

February, 1983 Issue No. 10

NIPPING MARIJUANA IN THE BUD

A Comparison of Paraquat—the Herbicide with Cannabis—Nature's Toxic Plant

IMPORTANT UPDATE

1. STATE DEPARTMENT DECISION: According to a December 21, 1982 public notice, Bureau for International Narcotics Matters, Dept. of State.

   "The Department of State has decided to support the efforts of foreign Western Hemisphere nations to eradicate cannabis by aerially applying the herbicide paraquat. In emplementing this decision, the Department now intends to engage in formal discussions with cannabis-producing Western Hemisphere nations."

2. The latest national high school senior survey conducted by the University of Michigan's Institute for Social Research indicates that in 1982, daily marijuana use was down to 6 percent (about one in every 16 seniors). However, this news gives us NO reason whatsoever to become complacent.

COMMITTEES OF CORRESPONDENCE INC.
Write Makes Might

Connie & Otto Moulton
P.O. Box 232
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Drug Abuse Newsletter

Issue No. 8
January 82

An Important New Way to Finance Drug Enforcement and Prevention Programs for Your State:

Civil Forfeiture of Illicit Drug Profits

The Drug Enforcement Administration has a powerful new model law which can be adopted by any state. This law, if enacted, would allow state law enforcement officials to trace and seize the assets and profits of illegal drug activity. This includes everything from the drugs themselves to the person's home, car, boat, bank account, etc. Once seized, these illegal drug profits could be diverted into state treasuries. Federal drug enforcement agents are already making such seizures under a similar statute, and monies and property from the federal agents' seizures are going into the federal government's treasury. If a state adopts this model law and makes the seizures, the assets so seized and found, by a court of law, to be assets or profits of illegal drug activity, will then belong to the state. Therefore, the proposed Model State Forfeiture Act, in conjunction with existing state laws, will provide important needed support for state drug enforcement efforts.

This Model Forfeiture Act was written by Harry L. Myers, Assistant Chief Counsel of the Drug Enforcement Administration. Mr. Myers is the same attorney who wrote the Model Paraphernalia Act which has now been adopted by so many of the states.

Every year billions of dollars are reaped by organized crime. Much of this money comes from illegal drug activity. The illegal drug industry is estimated to be the third largest industry in the United States, after Exxon and General Motors. The relatively new Federal Forfeiture Statute gives federal law enforcement officers a powerful new weapon with which to fight organized crime in the drug area. This new law allows the government to attach the very motive for illegal drug activities--the criminal's desire for great wealth. It subjects his money, bank accounts, and property to forfeiture if it can be shown that these items were earned from illegal drug trafficking. (Forfeiture is the taking by the government of property illegally used or acquired, without compensating the owner.) The federal statute, Title 21 of the United States Code, Section 881 (a)(6) provides that all monies and other assets acquired from the illegal drug trade shall be subjected to civil forfeiture. This means that law enforcement officers can go beyond merely arresting traffickers and seizing any drug involved. Now, illegally accumulated assets (bank accounts, cars, airplanes and even real estate) are all subject to civil forfeiture.

In order to understand civil forfeiture it is necessary to understand what civil law is. The legal system is broadly divided into two separate areas--civil and criminal. Both areas can be used to punish wrongdoers but only the criminal law--which is used exclusively by the city, county, state or federal government--can involve a jail sentence. Civil law on the other hand is most often used when one person sues another. The legal rules of evidence, as well as the standard of proof, are different in these two areas. For example, in order to find a defendant guilty of drug trafficking it must be shown "beyond a reasonable doubt" that he did, in fact, illegally distribute drugs. Under civil law it is enough to show that it is "more likely than not" that the defendant acquired his property from drug trafficking. The second standard is, of course, a much easier one to meet.

Forfeiture is an ancient concept, traceable to the Old Testament of the Bible (Exodus 21:28) as well as Greek and Roman Law. Today, forfeiture is most often used to protect the public from harmful objects (adulterated foods, sawed-off shot guns) and as a deterent to crime.

The new Federal Forfeiture of Drug Profits Act provides that the civil law with its less strenuous standard of guilt is to be combined with the concept of forfeiture to become Civil Forfeiture. This is important because it means that no criminal conviction is required.

Under this new Civil Forfeiture Law the federal government can now seize the ill-gotten gains of a drug importer if it can be proved in court that it was more likely than not that they were bought with drug profits. Notice that the criminal conviction of the drug dealer is not required.

For example: Mr. X is a drug trafficker. He has money in the bank, a lovely home, jewellery for himself and his wife, and a very expensive car. The money in various bank accounts allows him to continue to initiate and pay for further underground illegal drug activities. If it can be proved in a court of law that all the items listed above were the result of drug trafficking, they will be forfeited even if Mr. X manages, by skillful legal manuevering, to remain free. The reason is that the forfeiture case is separate from the criminal one. They are two different legal actions. Even if the District Attorney does not prosecute the criminal action against Mr. X, he can still file an action against his property as long as he can show the likelihood that the property was acquired from the illegal drug trade. It costs money to traffic in illegal drugs and moreover a business that is subject to such governmental seizures may become a poor business risk with a poor return for the investment dollar.

Before this new law the federal government could seize and subject to forfeiture certain items. These included:

1) illegal drugs,
2) any equipment and materials used to make, deliver or import illegal drugs,
3) containers for illegal drugs,
4) cars, planes and boats for transporting illegal drugs, and
5) books and records connected with drug trafficking.

However, nothing in the federal law dealt with the profits of illegal drug trafficking until Title 21 of the United States Code, Section 881 (a)(6) was enacted. Undercover drug agents have often stated that among the drug traff...ing elements of society, bragging about just what items were bought with drug money is commonplace. Under federal law and in states that enact the model act such profits would be put at high risk of seizure and forfeiture.

How Would This Law Provide the States With Much Needed Revenues?

Drug enforcement costs are enormous. It is estimated that federal enforcement costs at the present time is about $150,000,000 a year. This includes the costs of the Drug Enforcement Administration, the anti-drug activities of the Customs Service, and the anti-drug activities of the Coast Guard. This figures does not include prosecutorial costs (twenty-five percent of all federal cases deal with illegal drugs), prison costs for convicted felons, or drug treatment centers. It also does not include the millions of dollars spent by the states in these areas.

The proposed legislation offers the states substantial potential for recovering significant amounts of money now being spent to combat drug offenses. The Federal Drug Enforcement Administration serves as a good example. During 1979-1980 DEA seized assets totaling nearly one-half of its annual budget. Since many states are looking at less money because of budget cuts, eroding tax structure and growing inflation, such a statute, properly enforced, could help to provide needed revenues, just as the federal law has done.

What Exactly Does the Model Forfeiture Law Provide?

The prefatory note to the model forfeiture of drug profits act states:

> Widespread drug abuse, particularly amoung children, teenagers and young adults, poses a serious threat to the well-being of our society. Drug trafficking organizations which cater to this abuse are composed of three elements: (1) contraband drugs, (2) people, and (3) money and other assets. As long as the assets remain untouched, seized drugs and arrested people can always be quickly replaced. Capital is at the heart of all businesses, both legal and illegal. Depriving drug traffickers of their assets, including their operating tools and their illegally accumulated profits, is an essential step in crippling these organizations.
>
> The intent of the Model Forfeiture of Drug Profits Act is to amend existing state laws to permit all states to seize, civilly forfeit and deposit in their treasuries: (1) all moneys and other assets used to buy contraband drugs, (2) all moneys used to facilitate any drug law violation, and (3) all assets acquired from drug trafficking, regardless of their form. The Model Act consists of amendments to the civil forfeiture section of the Uniform Controlled Substances Act, which has been enacted by forty-seven (47) states.

The Model Forfeiture of Drug Profits Act subjects to civil forfeiture:

> " ( ) Everything of value furnished, or intended to be furnished, in exchange for a controlled substance in violation of this Act (meaning the Controlled Substances Act of this State), all proceeds traceable to such an exchange, and all moneys, negotiable instruments, and securities used, or intended to be used, to facilitate any violation of this act; except that no property shall be forfeited under this paragraph, to the extent of the interest of an owner, by reason of any act or omission established by him to have been committed or omitted without his knowledge or consent.
>
> **Rebuttable Presumption:** All moneys, coin, and currency found in close proximity to forfeitable controlled substances, to forfeitable drug manufacturing of distributing paraphernalia, or to forfeitable records of the importation, manufacturing or distributing of controlled substances, are presumed to be forfeitable under this paragraph. The burden of proof is upon claimants of the property to rebut this presumption.

It can be seen that the Model Forfeiture of Drug Profits Act targets four discreet areas.

1) **Exchange** -all things of value furnished or intended in exchange for drugs. A small number of states already have this provision. Note that this section is not only limited to money or negotiable instruments and securities but includes "anything" of value exchanged (i.e. a diamond ring). Two examples of an exchange:

> 1) Suppose Mr X is observed giving Mr Y $2000 for an ounce of cocaine; that money is forfeitable.
> 2) Suppose Mr. X admits going to Mexico with $10,000 to buy drugs but only manages to buy $3000 worth. The drugs as well as the $7000 are forfeitable because all the money was intended for exchange for illegal drugs.

2) **Proceeds** - all proceeds traceable to such an exchange. The term "proceeds" is that which is received when an object is sold, exchanged or otherwise disposed of. As with the Exchange Section, this need not be money but any item received for the illegal drugs. This is part of the model law because profits from the cash-and-carry trade are eventually hidden by changing their form. It is, after all, the proceeds that allow the drug traffickers to live the good life. They are converted into homes, yachts, planes, cars, stocks bonds, business bank accounts and other property. The power to seize and forfeit cash exchanged for drugs strikes at the operational funds of illicit business. However, the power to seize and forfeit drug "proceeds" poses a much greater threat to the accumulated profits of traffickers. For example:

> 1) Suppose Mr X sells drugs for $10,000. The entire $10,000 is forfeitable because it is the proceed from an exchange
> 2) Suppose Mr. X takes the $10,000 and puts the money in a bank. It is still a proceed and it is still forfeitable.
> 3) Suppose Mr. X buys a car with the $10,000. It is forfeitable under the model law because the money and all that it buys is tainted by a drug exchange.

3) **Facilitation money** - all money used or intended to be used to facilitate any drug violation. This section is limited only to money, negotiable instruments and securities. Examples of money used in these manners would include:

> a) money used to run an illegal PCP laboratory,
> b) money used to pay rental fees for cars, boats or planes to smuggle marijuana
> c) money to pay a drug carrier, or even
> d) Money used by a drug carrier for expenses.

4) **Innocent owner** - This section protects the innocent owner whose property might have been used in a way so as to violate the law. For example:

> Mr. A leases his beachfront property to Mr. X. Mr. X uses this property as a dock for small fishing boats bringing in bales of marijuana from the mother ship at night. Mr. A has no reason to suspect these activities. Therefore, Mr. A's property is not forfeitable.

If enacted in your state, this law would have two major beneficial impacts:

1) The law, in itself, would be a powerful deterrent to drug trafficking.
2) The law would provide much-needed revenues to help support drug enforcement, as well as drug rehabilitation, and drug education and prevention programs throughout your state.

WHAT YOU CAN DO

All of the states should adopt this powerful Model Forfeiture Law as part of their law enforcement arsenal. By using effective political action this proposed legislation can become law in your state. Here's how:

1) Write to:

> Superintendent of Documents
> United States Government Printing Office
> Washington D.C. 20402

to order a guide for the model act called:

> **Drug Agents' Guide to Forfeiture of Assets**
> Stock number 027-004-00031-2

Enclose $8.50 per copy ordered. This price includes postage and handling. Please order two (2) copies--one for yourself and one to give to your sponsoring state legislator. (Or, you may wish to photocopy important sections from a single copy).

2) Choose a state representative who has the ability to get the Model Forfeiture Law enacted. This involves using a legislative sponsor who has an excellent reputation in both state houses, if possible. This person need not necessarily have a strong knowledge of drugs, but should be well respected. Give your chosen representative a copy of the above mentioned guide, as well as a copy of this Drug Abuse Issue.

3) Notify all parent groups, PTA's church and synagogue groups, etc., in your state. Ask them to contact their local state representatives and express their support for the bill.

4) Keep in close contact with your sponsoring legislator so as to be ready to act by gathering more local support should the bill be in trouble.

©Jill Gerstenfield, January 1, 1982

POSSE COMITATUS

Here's some good news for you to share with your group and community.

Posse Comitatus, a limited exception to the doctrine of military non involvement in civilian law enforcement was signed into law December 2, 1981 by President Reagan. This legislation, a positive step forward in the battle against illegal drug trafficking, will permit meaningful cooperation between the military and civilian law enforcement officials. Now public law No. 97-86, Posse Comitatus will allow for the greater loan of equipment, training assistance, and sharing of information on movement of air and sea traffic outside the land areas of the United States. At last, the up to date equipment and expertise of our military will be used against the sophisticated measures taken by illegal traffickers. Already Drug Enforcement Administration officials are working with the Navy in the Carribean to detect smugglers.

Posse Comitatus took a full two years to become a reality and its support and passage can be credited largely to the parents of America. Their message of "NO DRUGS" is being heard everywhere and Congress is responding by initiating tougher laws. Posse Comitatus is certainly a step in the right direction.

How Much Do You Really Know About Marijuana?



by Peggy Mann

Peggy Mann has written more articles on the health hazards of marijuana and on marijuana p ue alcohol and driving, for major newspapers and magazines than any other writer in the world.

Q. What Exactly IS Marijuana?

A. Marijuana, hashish, and hash oil are prepared from a plant called cannabis sativa. Because cannabis grows, pot smokers often refer to "their drug" as a simple, natural weed — the implication being that it's harmless. However, it's far from simple and very far from harmless. Marijuana is the most complex of all the illegal drugs. It contains 421 known chemicals and, when it is smoked or burned, these break down into over 2000 chemicals entering the body. Sixty-one of these chemicals are unique — found only in one place in the world — in the cannabis plant. And they are called cannabinoids.

Q. What is THC?

A. It's short for delta-9-tetrahydrocannabinol — one of the cannabinoids; one most responsible for the "high." THC is impairing to brain cells, lungs, the reproductive organs; indeed, to all body cells. And other cannabinoids are even more impairing than THC to certain organs and organ systems. Thus far, scientists have studied only six of the 61 cannabinoids. All are biologically harmful. As one nationally known expert[1] puts it: "There is no other drug used or abused by man that has the staying power and broad cellular actions on the body that cannabinoids do."

Q. How long does marijuana stay in the body?

A. The most important single — and most dangerous — factor about marijuana is this: the cannabinoids are lipophilic (fat-loving). They seek out and seep into fatty sections of all body cells, and the fatty organs (the brain is one-third fat). Only very slowly do they leak back out into the blood stream to be eliminated. It takes about a month for all the chemicals in a single joint to clear from the body. If one smokes more than that, the cannabinoids accumulate in the cells, and the body is never drug-free. As one researcher put it: "Though the high is gone, the pot is not." When the chronic user stops smoking pot it takes about three months for the accumulation of cannabinoids to clear from the body.

Q. Can marijuana cause dependence?

A. The body cells of the regular pot smoker act like microscopic time-release capsules continually emitting cannabinoids into the bloodstream. Consequently, there are no severe physical withdrawal symptoms. (There may be mild symptoms such as sleeplessness, irritability, upset stomach, etc.). However, chronic users become strongly **psychologically** addicted. As one noted psychiatrist[2] puts it: "If marijuana **doesn't** cause dependence, why is it that it's so difficult for the chronic pot smoker to stop?" The difficulty in stopping is reflected in these statistics: according to the Federal Government's drug abuse patient data system, for the past five years, marijuana has accounted for the second-largest number of admissions into our Federally funded drug-treatment facilities. Furthermore, the percentage of these patients almost doubled between 1976 and 1981. During these years, about one-third of the patients started their pot use **prior to age 14.**

Q. How does pot affect personality?

A. The typical "pot portrait" of the heavy, young pot smoker is defined in countless clinical reports as well as in over 350 studies published in scientific journals since 1975. It includes the following: impaired short-term memory, emotional flatness, and the "dropout syndrome." (This can progress from dropping out of sports to dropping out of school to dropping out of the family.) Also: **diminished** will power, concentration, attention span, ability to deal with abstract or complex problems, and tolerance for frustration. **Increased** confused thinking, impaired judgement, hostility toward authority, self-centeredness. Also, unwarranted suspiciousness (paranoia); caring less about everything and everyone; depression, which often leads to suicidal thoughts. And the denial syndrome: refusal to believe that marijuana is affecting you adversely, and **refusal to believe the hard medical evidence that marijuana is physically and psychologically harmful. This symptom is typical of virtually all chronic pot smokers, youngsters and adults.**

Q. What about driving a car?

A. Over 50 driving studies clearly show that **marijuana is just as impairing to driving as is alcohol.** Furthermore, the driver-impairing effect of a one-ounce shot of whiskey or a 12-ounce can of beer or a glass of wine last one hour. But the driver-impairing effects of one "joint" (marijuana cigarette) last 5 to 6 hours. Marijuana impairs all important components of driving performance, including skills performance, perceptual processes, vision, attention, and tracking behavior. Because pot also impairs perception, many drivers actually believe they "drive better stoned." Studies also show that driving under the influence of marijuana **plus** alcohol means double trouble. And the latest closed course driving study showed the impairing effects of pot and alcohol to be synergistic (1 plus 1 equals 4 or 5).

Q. What does marijuana do to the lungs?

A. Pot smoking is harmful to the entire "pulmonary tree," from the sinus cavities to the tiny air-sacs deep within the lungs. Studies also show that it is even more impairing to the lungs than tobacco smoke, and its symptoms strike faster. There is also subclinical damage (which does not "show"). For example, one study[3] of healthy, adult pot smokers — who averaged 2.2 joints a day for five years — found they had 25 percent more airway resistance than a matched group of tobacco smokers who averaged 16 cigarettes a day for five years. (Airway resistance determines how well we get oxygen into the body and how well we get toxic carbon dioxide out.) Most cannabis smokers (pot and/or hashish) also smoke tobacco cigarettes. A lung biopsy study[4] of young U.S. soldiers showed that 91 per cent of those who'd smoked both had pre-cancerous cells. Those who'd smoked one or the other had a far lower incidence of pre-cancerous cells. Those who used neither had no pre-cancerous cells in their lungs.

Q. Can pot cause cancer?

A. It takes 30 to 40 years for lung cancer to grow. Thus far, in the U.S. people have been smoking pot heavily for only a decade or so. Tobacco is now called the single greatest cause of lung cancer, but marijuana and tobacco contain roughly equal amounts of such irritants and gaseous toxic agents as carbon monoxide, acetone, ammonia, and benzene. And the cancer-causing chemicals benzanthracene and benzopyrene are present in pot smoke in amounts 50 to 70 percent greater than in tobacco smoke. Researchers at the Swiss Institute for Experimental Cancer Research[5] exposed more than 5000 animal and human lung cell cultures to puffs of pot and tobacco smoke. The pot smoke caused cancerous lesions more rapidly than the tobacco smoke.

Q. What about sex and reproduction?

A. In males, human and animal studies have shown that pot reduces sperm numbers and mobility and increases numbers of abnormal sperm. Both conditions probably return to normal when smoking is stopped. In females, animal research has shown that eggs are affected by THC, which accumulates in the ovaries.[7] Rhesus monkey and human research shows that THC interferes with the menstrual cycle and impacts on fertility. In the only reproduction studies ever done on long-term exposure to THC[8], rhesus monkeys (with a 28-day menstrual cycle) were given the monkey THC equivalent of a human smoking one joint a day for 3 to 5 years. Result: 44 percent of the "THC mothers" produced dead or dying offspring, compared to 12 percent (a normal birth loss) among control mothers who received no THC. Although the THC fetuses and dead babies looked normal, microscopic evaluations showed a wide range of subtle developmental abnormalities in each of the THC babies, and in none of the control babies. The THC babies which survived had subtle behavioral abnormalities. Studies of human babies whose mothers smoked pot during pregnancy showed the same type of "dose-related" behavioral abnormalities. The more pot the pregnant mothers had smoked the more symptoms the infants showed. One noted marijuana researcher[9] put it this way: "These—as well as numerous human and animal cell studies—show that pot smokers may be playing genetic roulette with the physical and mental health of the children they may have one day."

Q. Does marijuana lead to other drugs?

A. Not necessarily. However, since chronic pot smokers develop a tolerace to the pot high, they often go on to other drugs to induce the high they once got from marijuana. Also, "pushers" (drug dealers) generally handle a variety of drugs and, like any salesperson, try to interest buyers in additional products. The annual National High School Senior Surveys[10] continue to show that about half the high school seniors who are pot smokers also use one or more additional illegal drugs, whereas virtually none of the non-pot smokers are regular users of any other illegal drugs. Teenage pot users tend to stop short of heroin. However, in the latest study published in 1981 of a national sample of 2510 males ages 20 to 30, it was shown that of the 1382 pot-users, approximately one out of ten also used heroine.[11] But of the 1128 non-pot users only one person had used herion. Furthermore, the large majority of those who used heroin frequently were heavy pot users.

The greater the extent of marijuana use, the greater the chance that one will use other drugs. For example, among these same 1382 pot smokers, 73 percent of those who had used marijuana more than 1000 times graduated to cocaine, and 33 percent went all the way to heroin.[12]

The researchers concluded, "The denial of the 'stepping stone theory' is merely the expression of a political rather than a scientific viewpoint."

[1] Dr. Carlton Turner, former director of the National Institute on Drug Abuse Marijuana Research Project at the University of Mississippi; co-author of the two-volume work, *Marijuana: an Annotated Bibliography*; and currently White House Senior Policy Advisor on Drug Policy.

[2] Dr. Mark Gold, recipient of the American Psychiatric Association's Prize for Research in Psychiatry, and Research Director of Fair Oaks Hospital in Summit, New Jersey—one of the few psychiatric hospitals in the U.S. specializing in the treatment of the marijuanaholic.

[3] Subclinical lung study done by Dr. Donald Tashkin, director of the Lung Function Laboratory of U.C.L.A. Hospital in Los Angeles.

[4] Study done by Dr. Forest S. Tennant, Jr., former director of U.S. drug army program in West Germany; currently director of Community Health Projects, Inc., Los Angeles, CA.

[5] Study done by Drs. Cecile and Rudolph Leuchtenberger.

[6] Study done by Dr. Robert Heath, Chairman of the Department of Neurology and Psychiatry at Tulane University Medical School.

[7] Study done by Dr. Akira Morishima of Columbia University.

[8] Study done by Dr. Ethel Sassenrath, of the California Primate Research Center of the University of California at Davis.

[9] Dr. Gabriel Nahas of Columbia University, pioneer marijuana researcher and author of *Keep Off the Grass* and *Marijuana: Deceptive Weed*.

[10] Surveys done by Dr. Lloyd Johnston, Dr. Jerald Bachman, and Dr. Patrick O'Malley, Institute for Social Research, University of Michigan.

[11] "The Stepping Stone Hypothesis – Marijuana, Heroin, and Causality," by Dr. John A. O'Donnell and Dr. Richard R. Clayton, published in 1981.

[12] Paper presented in 1982 to the National Institute on Drug Abuse National Advisory Council by Dr. Richard Clayton and Dr. Harwin Voss on use of marijuana and other illicit drugs.

About the author...

Peggy Mann has published over 30 books; has written fiction and articles for most of the major U.S. magazines and is a staff writer on *Reader's Digest*.

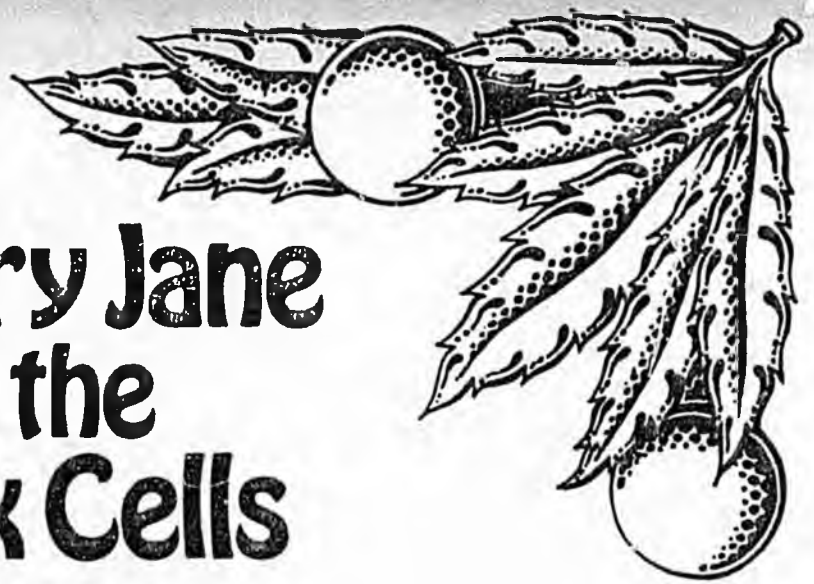
Q. What's the effect on brain cells?

A. No carefully controlled cannabis studies can be done on humans, for if damage was found in brain cells of heavy pot smokers, no one could be certain whether it had been caused by cannabis or alcohol or other drugs or disease. Therefore, in the most important brain cell study done thus far, rhesus monkeys were used. The limbic area was studied. This so-called "old-brain" is so similar in man and the rhesus monkey that, under the microscope, their brain cells look identical. Some monkeys were exposed to THC in the smoke of 2 to 3 monkey-sized joints a day (1/4 the size of a "human joint"). Others (the controls) were exposed to the same amount of pot smoke — with the THC removed. After six months (two years in human terms) there were slight structural brain cell changes in monkeys who'd been exposed to pot smoke with THC two days a week ("weekend smokers"). There were five different and dramatic types of brain cell changes in virtualy all of the brain cells examined in the monkeys exposed to THC 5 days a week. These same types of cell changes are seen in humans with early brain damage. The brain cells of monkeys exposed to the same amounts of pot smoke — but with the THC removed — were perfectly normal.

Q. Does marijuana affect the heart?

A. During "the high" the normal heartbeat increases 50 to 100 percent. Also, blood pressure is increased. Both conditions increase the amount of oxygen needed by the heart. But marijuana also increases the amount of toxic carbon monoxide in the blood, thereby reducing the amount of oxygen which reaches the heart. All research shows that pot should not be used by anyone with heart trouble. It can result in heart attack or death. One problem is that 25 percent of people who die of coronary heart disease never knew they had heart trouble. Their first symptom was — death.

What of the chronic smoker who complains of chest pains? No research has been done in this area. However, in most reported cases when they take no medication — merely cut out pot smoking completely — the chest pains disappear completely within days or weeks.



Mary Jane and the Sex Cells

by Gabriel G. Nahas, M.D., Ph.D.

Seldom in the course of centuries has a plant ever created a controversy as great as has **Cannabis sativa,** better known under the name of marihuana, Indian hemp, or hashish.

Eight centuries ago Moslem scholars from Cairo and Bagdad debated the pros and cons of this magic herb which allows man to dream while still awake. Their discussions had the same alacrity as those of today's American intellectuals. It appears now that this controversy, at least from a medical standpoint, has been partially answered.

One of the greatest uncertainties concerning marihuana, was the lack of evidence of cellular damage related to its use. It was known long ago that marihuana produced marked changes in thinking and behavior. This was brilliantly described by the French physician Moreau, 130 years ago, in his book "Hashish and Mental Illness." He observed that heavy long-term users of marihuana displayed a slowly progressive mental and physical deterioration, but these symptoms were non-specific, vague and had never been directly associated with cellular damage.

Cellular damage from marihuana has now been observed. Long-term marihuana users display an impairment of their cellular controlled immunity. This immunity is a function of T-lymphocytes (white blood cells) which specialize in fighting virus infections and destroying substances foreign to the body, such as cancer cells or tissue transplants.

My colleagues, Dr. J. P. Armand, Dr. N. Suciu-Foca and Dr. A Morishima, of the College of Physicians and Surgeons of Columbia University, and I studied 51 marihuana smokers, 16 to 35 years of age who had smoked an average of 3 joints of marihuana a week for 4 years. (Science Vol. 183, 419-420, 1974) These subjects had used no other drugs, except tobacco and alcoholic beverages.

We sampled blood from the veins of these volunteers and isolated their lymphocytes. The cells were tested with special substances which normally cause them to divide and grow.

Gabriel G. Nahas, M.D., Ph.D., who was decorated by the French and British governments for his work in the French underground during World War II, is now Professor of Anesthesiology at Columbia University College of Physicians and Surgeons in New York City.

The fact that marihuana products are stored in the sex organs, raises the possibility that marihuana might adversely affect the sex cells of men and women.

Such a test, the blast transformation test, measures the strength, or response, of the immunity system of the body.

We compared the immunity response of marihuana smokers with that of control subjects who did not use the weed, but smoked tobacco and drank alcoholic beverages. The immunity response of the marihuana smokers was 40% less than that of the nonsmokers. Furthermore, their immunological response was similar to that of patients with cancer, or kidney transplants (treated with immunosuppressant medicines).

The mechanism of this decrease in the division of lymphocytes was determined in another series of experiments. We were able to show that these lymphocytes from marihuana smokers could not increase the DNA production required for their proper division. DNA (desoxyribonucleic acid) is the basic chemical contained in the core of all cells. It carries the genetic code for heredity.

Similar observations were made on lymphocytes taken from subjects who did not smoke marihuana, but which were exposed in the laboratory to the drug. These cells were incubated in a test tube with very minute amounts of THC (THC is the active ingredient responsible for the effects of marihuana). They presented the same impairment in division and DNA production as those taken from marihuana smokers.

Our results confirmed those of Dr. Stehchver, from the University of Utah Medical School, who observed an increase in chromosome breakage in the lymphocytes of marihuana smokers.

Other scientists have made similar observations on other cells. Dr. Leuchtenberger, from the University of Lausanne, showed that lung cell cultures exposed to marihuana smoke did not grow properly and presented an abnormal DNA production. Dr. Zimmerman, at the University of Toronto, reported that the growth of tetrahymena, a microorganism, was diminished by miniscule amounts of THC which interfered with DNA synthesis.

How is it that the weekly consumption of only 3 to 4 marihuana cigarettes containing 15 to 20 mg. of THC may induce such cellular damage? The answer may lie in the fact that the active ingredients of marihuana, THC, are insoluble in water and are stored in fat tissue. The excretion from the human body of a single dose of marihuana requires more than one week's time. People who smoke marihuana more than once a week will store its by-products in the liver, lungs, brain, spleen, lymphoid tissues and sex organs (testes and ovaries).

The fact that marihuana products are stored in the sex organs, together with the known cellular alterations related to marihuana, raises the possibility that marihuana might adversely affect the sex cells of men and women.

It is most urgent that we learn to what extent frequent use of marihuana will impair the genetic equilibrium of a person's sex cells. The hereditary fate of future generations may rest upon this research.

DID YOU KNOW? Since men constantly produce millions of sperm, the formation of sperm probably returns to normal when pot smoking is stopped, but the effect on women could be lasting. A female is born with about 400,000 eggs. If they are injured, there is no way to repair the damage. It has been proven that THC accumulates in the ovaries as well as other organs.

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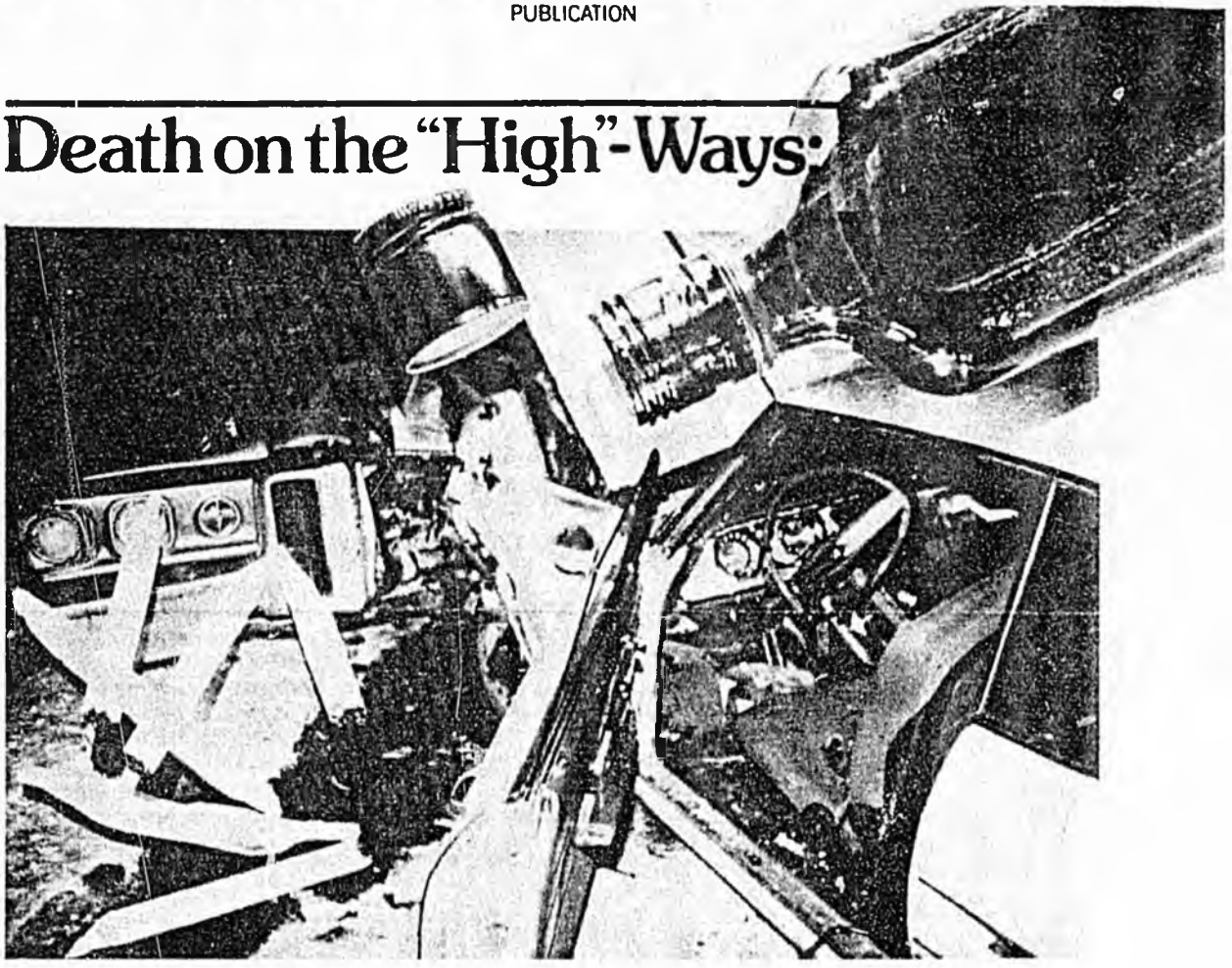
Death on the "High"-Ways:



Driving on Drink and Pot

When you mix liquor and marijuana—and then take the wheel—you compound a lethal peril

Condensed from
THE SATURDAY EVENING POST
PEGGY MANN

THE EVIDENCE is clear that alcohol and driving do not mix. Every year, more than 50,000 people are killed on the nation's roads, and almost two million are seriously injured. According to the National Highway Traffic Safety Administration, "About half of the traffic deaths are related to alcohol abuse."

Eighty percent of fatal accidents are first accidents. This figure underscores one of the most tragic parts of today's grim picture: those at greatest risk are the youth of our nation.

In 1980, the U.S. Surgeon General revealed that although the overall death rate for every other age group dropped in the period between 1960 and 1978, the death rate for 15- to 24-year-olds rose. And the Insurance Institute for Highway Safety reports that nearly half of all teen-age deaths are due to motor-vehicle accidents.

The most common explanation offered by researchers for the consistently high accident involvement of young drivers is the inexperience of this group with driving, and with

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drinking and driving. But it is now clear that death on the road has received a considerable transfusion of tragedy via a wave of marijuana users.

America's young people form a generation in which large numbers smoke marijuana. The magnitude of the involvement is shown by the fact that in 1962 only four percent of Americans ages 18 to 25 had ever used marijuana, while by 1979, 35 percent reported "current use" (within the past month). Furthermore, the marijuana available today is stronger than it was ten years ago, when the average Delta-9 THC potency was only about one-half percent. (THC is the chief mind-altering chemical in the drug.) Today, the THC potency of "street pot" is 4.5 percent.

Surveys reveal that "60 to 80 percent of the marijuana users questioned indicated that they sometimes drive while cannabis-intoxicated." (Cannabis is the plant from which marijuana, hashish and the extremely potent hash oil are prepared.)

Highway officials, drug treatment professionals, research scientists and police officers from Maine to California all express profound concern about marijuana's mounting impact on our national highway-death problem. They also worry about the fact that many pot smokers say they often drive high because they *enjoy* doing so.

Hugh Alcott, a California State Department of Corrections probation agent assigned to the special narcotics section, points out a particularly dangerous phenomenon: "A lot of people who've had too much to drink and know their driving skill will be affected smoke a joint 'so they can drive better.' They actually believe that marijuana acts as an antidote to the effects of alcohol. All the pot does, of course, is to make them *feel* that they're driving better. In fact, their driving is far more impaired than if they'd used alcohol alone."

How Does Marijuana Affect Driving?

HERBERT MOSKOWITZ, a research psychologist at the University of California, has done more work than any other U.S. researcher on marijuana and simulated driving studies. In summing up his findings, he said, "The preponderance of evidence indicates that marijuana impairs skills performance, perceptual processes, attention and tracking behavior. All important components of driving are thus clearly affected."

Some of these components are impaired after only a low dose of marijuana—for example, impairment of "search and recognition abilities." After one joint, some drivers may become totally involved with a single facet of driving or with music from the car radio or even with a private reverie. Therefore, they might simply "not notice" a car exiting from a crossroad or a pedestrian who has just stepped into the street.

Other effects of marijuana intoxication on driving skills:

- Impairment of traffic-signal detection.
- Impairment of reaction time. Inability to brake quickly in rush-hour traffic or to move over quickly if another driver cuts in ahead.
- Impairment of short-term memory function and information storage. The driver may forget where to get off the highway or which crossroad to take—on a route he or she knows well.
- Impairment of coordination skills. Difficulty in backing up and turning around.

One test done by Harry Klonoff, professor of psychology at the University of British Columbia, involved 64 psychologically stable students, male and female. All had used marijuana before. Roughly a third of the students received a low-dosage marijuana joint. One-third were given a high-dosage joint. The third group received a placebo (a joint with the THC removed).

All 64 students drove through a closed course with no other traffic, and 38 of the students also drove a 16-mile route from the university campus to the traffic-heavy downtown area and back again. They were rated, before and after, according to the system used by British Columbia's Department of Motor Vehicles in examining drivers for licensing.

Final figures for the street-traffic test showed that those who had received the low-dose joint had a 42-percent decline in driving skills. Those who received the high-dose joint had a 63-percent decline in driving skills.

Even the "careful" pot smoker who "comes down" from his high before driving may well be a menace to himself and others on the highway. One and a half ounces of alcohol (the equivalent of a shot of whiskey) is excreted from the body in several hours. Marijuana, on the other hand, has 61 known cannabinoids (including THC) that appear to be fat soluble. It is speculated that they collect in body tissue—including the brain.

Legal Limbo

THE DRUNK DRIVER usually finds it hard to hide his condition if stopped by the police. But the pot-high driver often has the ability to "hide the high"—to collect himself, "come down" and carry on a normal conversation with a police officer and thus escape detection, making enforcement all the more difficult.

Also, with alcohol, we have the roadside "breath test" as a deterrent. Every state has specific laws so that the drunk driver can be defined and, if warranted, prosecuted. For marijuana intoxication, however, we have no roadside test.

In March 1980, an inexpensive, reliable method was finally perfected for detecting cannabinoids in urine. According to the National Institute on Drug Abuse's Research Technology Branch, "The cannabinoid test can determine in 60 seconds, with 95-percent accuracy, the presence of cannabinoids in the urine for up to 48 hours after a joint has been smoked."

This is a step in the right direction. Many hospitals and private clinical laboratories have the facilities for running the test, and now at least physicians and parents can be alerted about pot problems with youngsters. But until a roadside test is available to highway police, we are in a legal limbo in which no driver can be prosecuted for being marijuana intoxicated.

One mechanism the body uses to rid itself of these cannabinoids is to allow those in fatty tissue to leak slowly back into the bloodstream to be metabolized and excreted. It takes about 2½ days for *half* the cannabinoids in a single joint to leave the body; it takes about two weeks to get rid of all the cannabinoids in a single joint. As one marijuana researcher put it, "Though the high is gone, the pot is not."

Deadly Duo

THE National High School Senior Survey, conducted by the Institute for Social Research at the University of Michigan, is the only national drug-abuse survey conducted annually. The 1980 survey showed that one out of every 11 seniors smoked pot daily, averaging 3½ joints a day. More than half of the 49 percent who had smoked marijuana "usually stayed high" for up to two hours each time they smoked, and 20 percent of those who smoked pot said that they usually drank at the same time.

How much of a driving impairment does such a mix of pot and alcohol really present?

In a study published in June 1980, Moskowitz and Marcelline Burns, a research scientist at the Southern California Research Institute, tested 12 healthy men (average age 26½) who used pot no more than twice a week and who did not take other drugs. The subjects performed a series of laboratory tasks, each related to a specific driving component (tracking, information processing, and so on). Each subject was tested at different times, under four different conditions. (No one knew what he was getting at any one time.) The conditions ranged from low alcohol and placebo marijuana to placebo alcohol (orange juice with a few drops of vodka floating on top) plus one marijuana cigarette.

Following this study, Moskowitz and research scientist Alison Smiley did a related one, but this time the subjects sat in a driving simulator, where they "drove" for 21 miles.

The results of both studies were virtually the same. The "alcohol only" subjects showed the well-recognized alcohol-caused driving impairments in reaction time, coordination, visual perception, attention and information processing. The "pot onlys" had all the same impairments.

But the results of dual use of alcohol and pot were, explained Moskowitz, "essentially additive." (One plus one equals two.) "Driving," he explained, "is obviously a multitask process. You must be able to do two or more things simultaneously. Alcohol impairs this ability in one way, and marijuana impairs it in another way. The alcohol-impaired driver tends to concentrate on one driving element to the exclusion of everything else. By sticking close to the center line for reference, the driver can keep the car from weaving but may be totally unable to attend to any unexpected highway happening. The marijuana-impaired driver, on the other hand, appears to have brief total 'dropouts' in his driving attention. Thus, taken together, alcohol and marijuana undermine the ability of the driver to process the roadway information necessary to control the vehicle safely."

Moskowitz summed up both the studies by saying, "Drivers under the combined influence of alcohol and marijuana have a greatly increased likelihood of initiating an accident."

In August 1980, Lawrence Sutton, executive director of Pittsburgh's Institute for Driver Research and Substance Abuse, tested the effects of marijuana and alcohol in a "closed" driving course. Sutton selected nine students from the University of Pittsburgh. All were experienced drivers, pot smokers and drinkers. Each drove on four successive afternoons, under four different "conditions":

1. pot (one joint) plus alcohol;
2. placebo alcohol plus one joint;
3. placebo joint plus alcohol;
4. placebo alcohol plus placebo joint.

During the 36 driving trials, patrolman Donald Dolfi followed the subjects in his own car, noting their performance, which included executing common procedures for a driver's license examination in Pennsylvania. He "pulled over" those drivers he would have suspected of "DUI" (driving under the influence)—if they had been on the road.

When the test was completed Dolfi said to Sutton, "I guess I spoiled your study. I only pulled over drivers 15 times."

But when the "double blind" code was revealed and Sutton looked at the figures, a chill went through him. Of the 15 incidents in which Dolfi "pulled over" drivers, three students were under the "marijuana only" condition, two were under the "alcohol only" condition, and one bad driver was under the double placebo. But all nine of the rest—100 percent—were under the alcohol plus marijuana condition.

The results of Sutton's study are striking indeed. They show that the impairments caused by pot plus alcohol are *more* than additive. They are synergistic. One drug potentiates ("fires up") the other. One plus one equals three or four on the impairment scale.

A further sobering fact is that *if* they had been on the highway, none of these drivers could have been prosecuted for DUI since they had such a low blood-alcohol-concentration level and since there is, as yet, no viable roadside test for the pot-high driver. All 15 "pulled over" for DUI by Dolfi would, therefore, have been "home free"—unless, of course, they had injured or killed themselves or others.

What Can Be Done?

IN ADDITION to horrendous personal costs in wrecked and lost lives, what are the dollar costs of the ever-mounting highway mayhem?

According to a study published in April 1981, "Only cancer outranks motor-vehicle crash deaths and injuries in dollar costs to the nation. The killing and injuring of people on the highways can be conservatively estimated as costing the United States some $20 *billion* annually in wasteful, unproductive expenditures, including $6.7 billion in medical, rehabilitation and other direct outlay."

William Haddon, Jr., M.D., president of the Insurance Institute for Highway Safety, which sponsored the 420-page report, points out, "With the appearance of this study, public policy makers must face the immensity of this tragedy in terms of its burden on the national economy—and, it is hoped, do

something about it."

At this time, most public policy makers have done very little about it. A few, however, are taking steps, at least along the alcohol/driving route.

Rep. Michael Barnes (D., Md.) and 50 other members of the House of Representatives have introduced a bill (HR 2488) calling for a mandatory sentence of at least ten days' community service, plus fines, participation in alcohol-treatment or traffic-safety programs, and mandatory license suspension for up to one year for first-time drunk-driving offenders—and for repeat offenders, the same, plus mandatory sentencing of at least ten days' imprisonment and suspension of driver's license for at least one year. An identical bill (S 671) has been introduced in the Senate by Sen. Claiborne Pell (D., R.I.).

Candy Lightner of Fair Oaks, Calif., has formed a national organization called MADD—Mothers Against Drunk Drivers. "As it stands now," says Lightner, "drunk-driving manslaughter is a socially acceptable form of homicide. That is why we are MADD!"

The organization has some 32 chapters in seven states. They work to alert the public to the serious consequences of drinking and driving, as well as to educate victims of drunk drivers and other concerned citizens as to what they can do to help resolve the problem in their state and community.

One state that has taken a giant step forward on the marijuana/driving front is Minnesota. In many states an open liquor bottle in the car of a DUI is considered *prima facie* evidence of a crime. In Minnesota, there is also an "open baggie" law. Anyone with any marijuana in the car—whether smoking it or not—is considered to have committed a crime. If involved in an accident or driving recklessly "in a serious way," he or she is treated within the criminal-justice framework. First offenders who have not endangered anyone must attend a mandatory "pot course" on the hazards of marijuana with emphasis on pot-impaired driving.

A second-possession offense usually means a fine of up to $500 and incarceration for a series of weekends in a county jail or work farm. But of the 9000 first-offenders who have gone through the four- to six-hour course, only 22 have been arrested a second time.

For more information on this award-winning "mandatory pot course," write Bruce Bomier, Director, Minnesota Institute, 2829 Verndale Ave., Anoka, Minn. 55303.

THINK OF THIS: each man, woman and child in the United States can expect to be in a car crash once every ten years. Since any of us can be imperiled at any time by the most deadly drug-related disease of all—Death on the "High"-ways—it behooves us to do what we can to halt this menace. ii:

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For release Jan 12, 1983 and thereafter

The Gallup Youth Survey

Marijuana Support Fading Among Youths

By GEORGE GALLUP

PRINCETON, N.J. — Although some teen-agers continue to experiment with marijuana, the drug is apparently fading as a symbol of the teen generation, according to the results of the latest Gallup Youth Survey.

The poll also indicates that teen opposition to legalizing marijuana or decriminalizing its possession in even small amounts is solidifying.

For the second year in a row, the survey shows that 74 percent of the country's youth oppose legalizing pot. Youth opposition to decriminalizing marijuana possession rose from 57 percent in 1981 to 60 percent in 1982.

Still, about one teen-ager in three (37 percent) reports having tried marijuana at least once. Marijuana was used by 8 percent of those polled during the week previous to the interview, 5 percent during the previous month, 16 percent between one month and one year ago, and 8 percent over one year ago.

Several key signs in the surveys indicate that marijuana use soon may no longer be the "in" thing to do. Use is declining, while opposition to legal reform favoring its use is growing among students of above average academic standing. Previous high levels of use, and approval from teen-agers on the liberal, trend-setting East and West Coasts are leveling off. Most importantly, long-term trends in use, and approval by those ages 13 through 15 are steadily declining.



Gone is the past rhetoric of youths that urged the nation to "turn off, light up, turn on." In its place are comments opposing marijuana on legal, social, and health grounds.

Teen-agers took surprisingly tough stands on the decriminalization issue, arguing that the amount involved does not matter. The judgment of a 17-year-old boy from Hydro, Okla., was typical: "It doesn't matter whether it's an ounce or a ton -- it's breaking the law."

The flower children of the 1960s would have been shocked had they known that a young woman in Chicago in 1982 probably summarizes the views of many of her generation when she says: "Marijuana is harmful to the human body. It increases the crime rate because an addicted person may often have to steal to support the habit. We should strive to produce healthy and honest citizens, and marijuana is not conducive to that goal. There is no middle ground between right and wrong."

By the time they are 16 through 18, half of the nation's youth (52 pe[illegible]nt) may have tried marijuana. Their opposition to legalization and decriminalization is not as strong as that of younger teens, but those favoring tempering the laws often qualify their remarks by suggesting legalization for medical purposes, or demonstrate concern about conviction of one-time experimenters. More typical, perhaps, are the remarks of two 17-year-olds:

"Legalizing marijuana will make it as available as tobacco, and then we will have even more stoned seventh-grader in school restrooms." (Fairport, N.Y.)

"I enjoy life to the fullest and I am very happy without the help of marijuana or any other drug." (Ayden, N.C.)

Following are the questions asked:

"Have you ever tried marijuana?"

"Do you think the use of marijuana should be made legal?"

"Do you think the possession of small amounts of marijuana should be treated as a criminal offense?"

The findings reported today are based on telephone interviews with a representative national cross section of 1,013 youths, ages 13 through 18 conducted in June 1982.

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LEGALIZATION, DECRIMINALIZATION OF MARIJUANA

	Oppose Legalization		Oppose Decriminalization	
	1982	1981	1982	1981
NATIONAL	74%	74%	60%	57%
Boys	72	69	60	51
Girls	75	79	59	62
Both sexes:				
13 to 15 years old	81	81	69	63
16 to 18 years old	66	68	51	50
East	72	69	53	47
Midwest	76	80	63	60
South	74	78	66	63
West	75	67	53	56
Metro areas	66	69	52	49
Suburbs	73	71	58	52
Non-metro areas	79	80	67	65
Have tried marijuana	58	54	37	30
Have not tried marijuana	83	86	73	72

The Gallup Youth Survey

Teens' Views on Marijuana Show Dramatic Change

For release Feb. 8, 1984 and thereafter

By GEORGE GALLUP

PRINCETON, N.J. — Marijuana is apparently becoming passe among America's teens.

In 1978, when the Gallup Youth Survey first began polling teens on their views about marijuana, 27 percent of the respondents admitted to having used the substance during the previous month. This figure declined steadily during subsequent surveys, and in the 1983 poll, only 8 percent made such an admission.

Similar declines were shown in other aspects of teen views on marijuana. For example, in 1978, nearly four teens in 10 admitted that they had tried marijuana at least once. Five years later, the figure has been cut in half.

Teens have been taking an increasingly harder stand against marijuana when the law is concerned. In 1978, over half — 54 percent — believed that marijuana possession should not be treated as a criminal offense. By contrast, the latest survey finds 70 percent of teens calling for criminal penalties for marijuana possession.

Even in 1978, the majority of teens (62 percent) opposed legalization of marijuana. The latest survey, however, reveals that an even greater number of teens — eight in 10 — now share this view.

Over the years it has been the younger teen-agers — 13 to 15 years old — who have been in the vanguard of opposing legalization and avoiding use of marijuana.

In the late 1970s over half of the older teens reported having tried marijuana, as compared to only about 26 percent of the younger teens. Of these younger teens, who are now the 16 to 18 year olds, only 28 percent said in 1983 that they have ever tried marijuana. If this trend continues, even further reductions in use of marijuana may be anticipated, as only 10 percent of today's young teen-agers report having ever tried it.

Only 13 percent of those residing in small towns and rural areas say they have tried marijuana, and 20 percent of



suburban teens give similar reports. Use is highest in central cities at 30 percent. There is no evidence to suggest, however, that higher use in the cities is racially oriented, since white teens are slightly more likely than non-whites to report having tried marijuana, by a margin of 20 percent to 17 percent.

Regionally, after a temporary rise in use in the traditionally conservative South and Midwest, use has dropped to 14 percent in the Midwest and to 18 percent in the South.

Highest levels of use are found in the eastern (22 percent) and western (29 percent) regions of the country.

Although far fewer teenagers appear to approve of or use marijuana themselves, their concern about the substance is unabated. As the survey recently reported, teens continue to name drug abuse as the biggest problem facing their generation. In 1983, 35 percent named it as the leading problem for people their age, compared to 27 percent who named drug abuse in 1977.

These are the questions:

"Have you ever tried marijuana?"

"About how long ago did you last try marijuana?"

"Do you think the use of marijuana should be made legal, or not?"

"Do you think the possession of small amounts of marijuana should or should not be treated as a criminal offense?"

The findings reported today are based on telephone interviews with a representative national cross section of 542 teen-agers, 13 through 18, conducted from July through September 1983.

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TRENDS IN ACCEPTANCE AND USE OF MARIJUANA

	1983	1982	1981	1980	1979	1978
Ever used marijuana	19%	37%	37%	40%	41%	39%
Used in past month	8	13	13	20	27	27
Oppose legalization	80	74	74	68	65	62
Oppose decriminalization	70	60	57	54	44	40

HAVE EVER USED MARIJUANA?

	Yes	No
NATIONAL	19%	80%
Male	21	78
Female	18	82
Ages 13 to 15	10	90
Ages 16 to 18	28	71
White	20	80
Non-white	17	83
Above-average students	16	84
Averge or below	23	77
White-collar background	23	77
Blue-collar background	17	82
East	22	76
Midwest	14	86
South	18	82
West	29	71
Central cities	30	70
Suburbs	20	80
Non-metropolitan areas	13	86

(Not sure (1 percent, nationally) omitted.)

SHOULD POSSESSION OF SMALL AMOUNTS BE TREATED AS CRIMINAL OFFENSE?

	Yes	No	Not sure
NATIONAL	70%	27%	3%
Male	73	25	2
Female	67	30	3
Ages 13 to 15	77	21	2
Ages 16 to 18	62	34	4
White	72	26	2
Non-white	64	33	3
Above-average students	72	24	4
Average or below	67	31	2
White-collar background	68	29	3
Blue-collar backgrounbd	71	27	2
East	63	34	3
Midwest	73	22	5
South	73	26	1
West	66	33	1
Central cities	63	35	2
Suburbs	68	28	4
Non-metropolitan areas	75	23	2

For release September 21, 1983 and thereafter.

The Gallup Youth Survey

Drug Abuse Named as Biggest Problem Facing Teen-Agers

By GEORGE GALLUP

PRINCETON, N.J. — Teen-agers, according to the latest Gallup Youth Survey, say drug abuse is the biggest problem facing their generation. Concern about the impact of drugs has risen from 27 percent in 1977, when teen-agers also named it as the biggest problem facing their generation, to 35 percent in 1983.

Since 1977, however, the nature of the problem may have changed. Gallup Youth Surveys have shown a steady decline over the years in teen-age acceptance of proposals to legalize marijuana or to decriminalize its possession in small amounts.

In 1977 teen-agers saw drugs as a part of the generation gap and a symbol of their generation's uncertainty in coping with the world around them.

In the current survey teen-agers name other kinds of problems as being important to their generation. Younger teen-agers, 13 to 15 years old, are particularly concerned about drug abuse, with 42 percent naming it as the biggest problem, in comparison to 28 percent of the older teen-agers. Young women show somewhat greater concern than young men about drug abuse by a margin of 38 percent to 31 percent.

Unemployment, named by 16 percent of the teen-agers, ranks as the No. 2 problem facing the current generation. In 1977, only 6 percent said that poor job prospects were a problem. Those who will soon be entering the job market are particularly concerned about unemployment with 22 percent of the teen-agers, 16 to 18, naming it as the leading problem.



Alcohol abuse is the third leading area of concern and is named by one teen-ager in ten (10 percent). Alcohol abuse also ranked third in 1977 when it was named by seven percent. Peer pressures (8 percent) rank fourth — and often consist of pressures felt by teen-agers from their friends to break the rules and to experiment with drugs or alcohol.

The good news about today's generation may be that teen-agers no longer feel the pressure of alienation from their parents. Only five percent now cite lack of communication or getting along with their parents as their biggest problem.

By contrast, in 1977 one teen-ager in five (20 percent) said a breakdown in parental communications and relations was the major problem facing their generation.

Today's teen-agers still face many problems, but at least now they may not have to deal with parental alienation at the same time. By the same token, citation of problems in growing up or finding one's purpose in life have declined from six percent in 1977 to only one percent in 1983.

Problems in school are cited by only one teen-ager in 20 (five percent) and an additional one percent express concern about school drop-outs.

Fear of war is named by four percent. This fear was cited by less than one percent in 1977.

Economic problems such as inflation were named by only two percent, and one percent cite the specific economic problem of financing their college education.

In 1977 smoking and job boredom were each cited by three percent of the teen-agers, but in 1983 each was mentioned by fewer than one percent of the nation's teen-agers as their generation's leading problem.

The question was asked as follows:

"What do you feel is the biggest problem facing people your age?"

The results reported are based on telephone interviews with a representative national cross-section of 508 teen-agers conducted from April to June 1983.

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BIGGEST PROBLEM FACING TEEN-AGERS

	1983	1977
Drug abuse	35%	27%
Unemployment	16	6
Alcohol abuse	10	7
Peer pressures	8	5
Getting along with parents	5	20
School problems	5	3
Fear of war	4	-
Career doubts and uncertainty	3	3
Economic problems	2	3
Financing college	1	-
Problems in growing up/ Finding purpose in life	1	6
School drop-outs	1	-
Miscellaneous	4	12
Don't know	18	14
	113*	110*

* More than 100% due to multiple responses.

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Senate

SENATE DRUG HEARINGS

Mr. GURNEY. Mr. President, on May 9, the Senate Subcommittee on Internal Security embarked on a series of hearings on the marihuana-hashish epidemic and its impact on U.S. security. It was my privilege to preside over the two lengthy hearings on May 17 and 18, at which most of the medical, scientific, and psychiatric testimony was presented.

For the purpose of these hearings, the subcommittee brought together more than a score of top-ranking medical researchers and scientists from six countries. Several of the participants in our hearings, themselves scientists of international eminence, told me afterwards that our witness list constituted the most distinguished panel of experts on marihuana and hashish—cannabis as it is known scientifically—ever assembled at a single gathering.

I am not exaggerating when I say that I consider these hearings to be among the most important ever conducted by a committee of Congress.

They provide a terrifying answer to the question: how harmful is marihuana? In my remarks today, I plan to summarize the basic scientific findings presented to the subcommittee.

The many articles that have been written about the hearings have brought a flood of letters to my office from law enforcement officers, Government officials, educators, clergymen, writers, editors, students, and anxious parents. Already, the hearings are having a measurable impact. It is my conviction that this impact will be enhanced many times over when the printed record of these hearings becomes available sometime next month.

In his opening statement, Senator EASTLAND clearly established the jurisdiction of the Internal Security Subcommittee by pointing out that the cannabis epidemic had created a new complex of security problems for our Military Establishment and that the widespread use of marihuana and hashish had been encouraged by a militant promarihuana propaganda campaign which began at the time of the Berkeley uprising and continues to this day. As pointed out by Prof. Hardin Jones, assistant director of the Donner Laboratory for Medical Research at the University of California in Berkeley, in his testimony of May 20 before the subcommittee, this prodrug propaganda campaign was initiated by members of the radical left movement whose purpose is the revolutionary overtem. In the words of Timothy Leary, guru of the leftist drug cultists:

Drugs are the most efficient way to revolution.

Or, quoting Jerry Rubin:

Pot is central to the revolution. It weakens social conditioning and helps create a whole new state of mind. The slogans of the revolution are going to be pot, freedom, license. The Bolsheviks of the revolution will be long-haired pot smokers.

There is a tendency to dismiss people like Leary and Rubin as eccentrics or kooks—but one must remember that the underground press which featured them was read by a host of young people every week.

The damage done by this leftist promarihuana propaganda was compounded by the many academicians who were disposed to be tolerant about marihuana, because it seemed to be an integral part of the student revolt against the establishment. It was further compounded by a small number of scientists and a somewhat larger number of literary psychiatrists who repeatedly gave marihuana a clean bill of health based on limited short-term observations—without waiting for the findings on the long-term consequences of marihuana. Most of these long-term findings have only started coming in within the last few years—and that is what our recent hearings were all about.

I recall that when the controversy about cigarette smoking and cancer was raging during the late 1950's, there were medical scientists of some eminence who came to the defense of cigarettes. For example, Dr. Ian McDonald, one of California's foremost cancer specialists, and chairman of the Cancer Commission of the California Medical Association, made the sweeping statement before a congressional committee, that not only did cigarette smoking bear no relationship to lung cancer, but that he would venture the assertion that "a pack of cigarettes a day will keep lung cancer away."

Dr. McDonald's assertion was completely demolished within several years by the mounting mass of scientific evidence that there is a relationship between cigarette smoking and lung cancer.

The sweeping defenses of marihuana that are to be found in a number of books written several years ago by men of some reputation, have, in the same manner, been completely outdated by the mass of recent reports from top-ranking cannabis scientists in various parts of the world.

In amplifying the purpose of our recent hearings, Senator EASTLAND said the following at the hearing of May 9:

When a conflict of opinion exists within the scientific community on a question as important as marihuana, the Congress and the American people are entitled to a fair presentation of both sides to this controversy. In fact, however, there has been widespread publicity for writings and research advocating a more tolerant attitude towards marihuana—while there has been little or no publicity for writings or research which point to serious adverse consequences. The writings are there, the research papers by eminent scientists are there, the books are there—but very few people know about them. One witness who will appear before the subcommittee will testify that in campus bookstores in the United States, Canada and England, virtually all of the literature he found on marihuana—and he found a lot of it—took a tolerant attitude towards it or even advocated legalization.

It is because of this strange imbalance in dealing with the question of marihuana that most intelligent people are under the impression that the bulk of the scientific community looks upon marihuana as a relatively innocuous drug. Part of the purpose of the forthcoming hearings will be to inquire into, and document, the extent of this imbalance. In doing this, we shall, in effect, be presenting the "other side," so that the Senate—and the American people—will have a better understanding of the problem.

The first point that has to be made is that our country is now caught up in what is probably the worst cannabis epidemic in history—even worse than the classic epidemics that had so debilitating an effect on the Egyptian people and other Mediterranean peoples. The fact that the Federal law enforcement authorities last year seized 780,000 pounds of marihuana and 54,000 pounds of hashish means that perhaps 10 times as much cannabis—or even more—got into the country and was consumed. These are fantastic quantities when you consider that a pound of marihuana can intoxicate almost 200 people, while a pound of hashish can intoxicate eight times as many.

All strata of our population are involved in the epidemic—our college students, our high school and junior high school students, grade school students, ghetto youth, blue collar workers, and even staid conservative members of the business and professional community. On this last point, I note that the subcommittee has received a letter from an investment counsel in Chicago urging a more tolerant attitude toward marihuana because, he said, the significant majority of his business and professional freinds smoke it.

The amount of marihuana and hashish being seized in this country is enormous. A few months ago there was a single seizure involving 10,000 pounds of hashish; while on June 26, United States and Mexican agents seized 42 tons—84,000 pounds—of marihuana in the vicinity of the Mexican border. Commenting on the tremendous increase in cannabis imports into the United States, Mr. Andrew C. Tartaglino, Acting Deputy Administrator of the Drug Enforcement Administration, told Senator EASTLAND in the opening hearing on May 9 that—

The traffic in, and abuse of, marihuana products has taken a more serious turn in the last two or three years than either the courts, the news media, or the public is aware. The shift is clearly toward the abuse of stronger, more dangerous forms of the drug which renders much of what has been said in the 1960's about the harmlessness of its use obsolete.

As I have pointed out, the epidemic spread of marihuana and hashish use has been made possible, and even encouraged, by widespread publicity given the statements of scientists and lay spokesmen advocting a more tolerant attitude toward marihuana, and by the near blackout—at least until very recently—on scientific writings pointing to serious adverse consequences.

For instance, books like Lester Grinspoon's "Marihuana Reconsidered" and the Consumer Union's "Licit and Illicit Drugs"—both of which took the stand that marihuana was not seriously dangerous and should be legalized—received rave reviews in the New York Times and the Washington Post and other papers, and the authors were invited to appear on numerous talk shows. But when Dr. Gabriel Nahas, a distinguished Columbia University scientist with more than 400 scientific papers to his credit, a year and a half ago published a book entitled "Marihuana—Deceptive Weed," there was no review in the Times or the Washington Post and no invitation to appear on talk shows. When half a dozen Columbia University scientists wrote individually to the New York Times to suggest that Nahas' book had merit and should be reviewed, their letters were ignored. And when 16 professors and scientists at Columbia's College of Physicians and Surgeons signed a joint letter in January of this year to the editor of the Times book review section urging that Nahas' book be reviewed, this letter was also ignored.

This one-sided publicity has succeeded in fostering the almost universal impression that marihuana is a relatively innocuous drug, and that it is so regarded by the scientific community. So widespread is this impression that just over a year ago, in March of 1973, District of Columbia Mayor Walter Washington's Advisory Committee on Narcotics Addiction, a committee consisting of some 40 prominent citizens, filed a report urging the complete legalization of marihuana on the grounds that—

No demonstrable medical evidence is available to support the assertion that marihuana use is hazardous or detrimental to the physical or mental health of the user.

Only a few weeks ago, the Subcommittee on Internal Security received a phone call from a mother in San Diego who had just been compelled to pull her son out of his senior year in high school, because he was constantly intoxicated on marihuana and hashish. She told the subcommittee that when she had taken her problem to one of the local drug counseling programs, the drug counselor told her that marihuana was really nothing to worry about "I smoke pot every day myself," she quoted the counselor as saying.

There have been warnings from some eminent scientists in the past but—perhaps because they spoke individually—their warnings were ignored. In September of 1972, for example, I presided over a hearing of the Senate Subcommittee on Internal Security at which we took the testimony of Dr. Olav J. Braenden, for many years director of the United Nations Narcotics Laboratory in Geneva. Dr. Braenden testified that, among the scientists working in the field, there was a general consensus that marihuana is dangerous. He said:

As progressively more scientific facts are discovered about cannabis, the more one becomes aware of its potential dangers.

He underscoredthe need for more research and, pointing to the example of thalidomide, he told the subcommittee that when it comes to medicine and drug policy it is better to be careful than to be careless.

But the media generally paid shamefully little attention to the testimony given by this eminent European scientist—testimony based not only on his own experience but on the experience of some 26 cooperating laboratories in various parts of the world.

The recent hearings, I am happy to report, have finally succeeded in breaking through the virtual blackout which characterized previous media attention to the adverse scientific evidence on marihuana. There were too many scientists of distinction involved for anyone to be able to dismiss their testimony as the work of scientific mavericks or crackpots. The credibility of their collective testimony was reinforced by the fact that quite a few of them, earlier in time when embarking on their research, leaned toward the tolerant attitude on marihuana that was then prevalent. Adding further reinforcement was the additional fact that this mass of independently conducted scientific investigations came up with results that frequently overlapped and mutually supported one another.

On the basis of the attention our hearings have already received, I believe that these hearings have succeeded in completely shattering the widespread belief that the scientific community looks upon marihuana as a relatively harmless drug.

All of the scientists who testified said that they considered marihuana a very dangerous drug. They further stated that this was the consensus at several recent international conferences of cannabis researchers. Several of the witnesses said that they considered cannabis the most dangerous drug on the market today.

Collectively, their testimony pointed to the following findings: First, that marihuana reduces DNA synthesis thus impeding the process of cellular reproduction; second, that, smoked even in small amounts, it results in broken and malformed chromosomes, thus opening up the possibility of abnormal births or genetic mutations; third, that chronic marihuana smoking results in a severe reduction in male hormone levels and sperm count; fourth, that marihuana alone, or combined with cigarette smoke, damages lung tissues far more rapidly than cigarette smoke alone; fifth, that there is evidence of irreversible brain damage after several years of chronic exposure; and sixth, that even single exposures to large dosages can lead to psychotic episodes, while chronic use leads to paranoid symptoms and serious and persistent deterioration in mental functioning.

I have made the point that this testimony cannot be lightly dismissed, because there are too many internationally distinguished scientists involved. The witnesses included such eminent names as: Prof. W. D. M. Paton of Oxford University, who heads up the British drug research program and who is without question one of the world's leading pharmacologists; Prof. Nils Bejerot of Sweden, perhaps the ranking international expert on the epidemiology of drug abuse; Prof. M. I. Soueif of Egypt, author of the classic study on the consequences of hashish addiction in his country; Prof. Robert Heath, chairman

Neurology at Tulane University Medical School; Prof. Morton Stenchever, chairman of the Department of Obstetrics and Gynecology at the University of Utah Medical School; Dr. Julius Axelrod, Nobel Prize winning researcher of the National Institute of Mental Health; and, at a previous hearing, Dr. Henry Brill, senior psychiatric member of the Shafer Commission and president of the American Psychopathological Association.

Let me recapitulate some of the major findings that were presented to the subcommittee by the scientists who testified.

1. TOXICITY AND ACCUMULATION IN THE BRAIN

Marihuana is a complex toxic substance, whose principal psychoactive component is THC—tetrahydrocannabinol. This substance is intensely soluble in fat, which gives it the ability to penetrate into all parts of the body, including the brain, the ovary, the testes, and the fetus. This characteristic means that it tends to persist in the human body for long periods of time after exposure, and to accumulate with repeated exposures.

One of the principal areas of accumulation is the human brain. This has been established with radioactively tagged THC.

Experiments with animals have demonstrated that the toxicity also tends to be cumulative; thus, it requires one-tenth as much marihuana to kill a mouse if given in repeated daily doses as if given in a single dose.

2. EVIDENCE OF IRREVERSIBLE BRAIN DAMAGE

Related to its toxicity and its tendency to accumulate in the brain, is a growing body of evidence that regular marihuana use for a year or 2 may result in irreversible brain damage. This also ties in with the evidence developed by a number of researchers that marihuana use reduces DNA synthesis and, in so doing, reduces the mitotic index, or the rate at which the body produces new cells to replace the cells that are constantly dying off.

Several of the psychiatrists who testified before the subcommittee said that a hypothesis of irreversible brain damage tied in with their own clinical observations that brilliant young people who went on prolonged marihuana binges were simply not able to recapture the same level of mental competence they had displayed before becoming chronic marihuana users, even after abstaining from marihuana for several years.

Dr. Robert Heath of Tulane University, working with brain wave patterns in rhesus monkeys, demonstrated that after posure there was a persisting abnormality in the brain wave patterns of the monkeys, even when the marihuana was removed.

Professor Paton referred to animal experiments which demonstrated that rats exposed to marihuana smoke had significantly smaller brains and hearts than rats not so exposed. In the light of the cumulative evidence, he felt that serious attention had to be paid to the research of Dr. Campbell and his colleagues at the Royal Bristol Hospital, demonstrating that chronic young marihuana smokers aged 18 to 26 had suffered as much brain atrophy as is normally encountered in people aged 70, 80 and 90.

3. DAMAGE TO THE CELLULAR SYSTEM

New scientific research pointing to radically new findings, is traditionally not accepted by the scientific community unless there is confirming or converging evidence from other independent researchers. What was truly remarkable about the body of evidence presented to the subcommittee was the fact that the main reports on new marihuana research converged from four or five or six directions on several central conclusions.

There was, for example, converging evidence from a substantial number of the scientists whose research pointed to damage to the cellular system, primarily through reduced DNA and RNA synthesis.

Dr. Akira Morishima of Columbia University, told the subcommittee that—

When the specimens of three marihuana smokers were compared with those of age and sex matched non-smokers, the mitotic index, or the proportion of those cells in process of cell division, was noted to be only 2.3 percent in marihuana users, compared with 5.9 percent for the controls.

Dr. Morishima also found that a large proportion of the cell nuclei in marihuana smokers contained a significantly decreased number of chromosomes—from 33 to 8—instead of the 46 chromosomes found in normal cells.

Dr. Gabriel Nahas and a team of three other Columbia University scientists found that in 51 marihuana smokers who had averaged three marihuana cigarettes a week for 4 years, the production of the immune cells—the T-lymphocytes—in the blood was 41 percent less than in nonsmokers. He made the point that the immunity response of the smokers "was similar to that of patients with cancer, or kidney grafts—treated with immunosuppressants—who were tested and who presented documented evidence of an impairment of their immunity system."

Professor Cecile Leuchtenberger, head of the Department of Cytochemistry at the Swiss Institute for Experimental Cancer Research, also found evidence of serious damage to the cellular process, involving the possibility of lung cancer and genetic damage. This is what she told the subcommittee:

Smoke of marihuana cigarettes has harmful effects on the tissues and cells of animals and of humans. The observations that marihuana cigarette smoke stimulates irregular growth in the respiratory system, that it interferes with DNA stability of cells and chromosomes, that is it disturbs the genetic equilibrium, strongly suggests that marihuana cigarette smoke is a health hazard which may not only be implicated in lung carcinogenesis, but may also have mutagenic potentialities.

Prof. Arthur M. Zimmerman, of the University of Toronto, in a statement subsequently submitted to the subcommittee, reported on recent research dealing with the effects of marihuana on a culture of unicellular organisms.

His studies, he said:

Clearly demonstrate that THC at a modest dosage reduces the growth and delays cell division of a uni-cellular protozoan, tetrahymena. These effects on cell growth are related to a depression of cell metabolism, i.e., a reduction of DNA, RNA and protein synthesis. The effects of THC are reflected in a reduction in the cell's ability to synthesize and assemble RNA, which is an essential components of the protein synthesis system. The reduced cell synthesis, in the presence of THC, may be attributable to the reduction of DNA synthesis which is known to direct cell metabolism.

Professor Paton, who has monitored some 800 cannabis research papers in connection with his duties as director of the British drug research program, told the subcommittee that there were many more papers dealing with other aspects of the damage done by marihuana to both cell metabolism and cell division. Said Professor Paton:

Numerous such effects have now been described, including actions on microsomes, on mitochondria, on neurones, fibroblasts, white blood cells, and on dividing cells, affecting metabolism, energy utilization, synthesis of cellular constituents, and immunological responses.

Professor Paton and several of the other scientists who testified expressed grave concern that grade school children exposed to marihuana—an increasing phenomenon over the past 2 or 3 years—might damage themselves in a manner which would make impossible the physical and mental maturation. The years on either side of the advent of puberty normally constitute a period of explosive physical development, when new cells are being produced more rapidly than at any other period in the lifespan. A serious impairment in DNA synthesis and cell division during this period could conceivably have catastrophic effects. To paraphrase what Professor Paton told the subcommittee, we might, a number of years hence, find ourselves saddled with a partial generation of teenagers who have begun to grow old before they have even matured.

4. DAMAGE TO THE REPRODUCTIVE SYSTEM

The subcommittee also heard impressive evidence dealing with the damage—or potential damage—of marihuana to the reproductive system. Dr. Robert C. Kolodny, who heads up the Endocrine Research Section at the Masters and Johnson Research Foundation, reported that in a group of 20 males aged 18 to 28 who had used marihuana at least 4 days a week for a minimum of 6 months, the principal male sex hormone, testosterone, was found to be approximately 44 percent lower than for the control group of men who had never used this drug. He said that the reduction in testosterone level appeared to be related to the amount of marihuana used, so that men who averaged 10 or more joints per week had significantly lower levels than men who used fewer than 10 marihuana cigarettes weekly. He also found subnormal sperm counts in six of the men tested. In a few cases involving very heavy use, the sperm count was so low that the men had to be considered clinically sterile. Finally, he reported on several instances where intermittent impotence, apparently associated with marihuana use, disappeared after the use of marihuana was discontinued.

Although making the point that the Masters and Johnson results will have to be confirmed by further research, Dr. Kolodny warned against the possible dangers in these terms:

Since at least some of the active constituents of marihuana have been shown to cross the placenta, there may be a significant risk of depressed testosterone levels within the developing fetus when this drug is used by a pregnant woman. Since normal sexual differentiation of the male depends on adequate testosterone stimulation during critical stages of development, it is possible that such development might be disrupted. Theoretically, there is also the possibility that marihuana use by the prepubertal male may delay the onset or completion of puberty or may interfere with bone growth, if a suppression of pituitary or hypothalamic function occurs. Neither of these possibilities have been investigated.

Although Dr. Kolodny said that he was not aware of any confirmatory research that had yet been conducted on the spe-

togenesis, Dr. Cecile Leuchtenberger told the committee that she has found a marked disturbance in spermatogenesis in male mice which had inhaled marihuana smoke for several months. Not only were there fewer mature sperm cells than in the controls, but many of the spermatids—the precursors of the sperm cells—carried a faulty and reduced amount of DNA. This, she said, would indicate that marihuana smoke interferes with male fertility.

Dr. Morton Stenchever, of the University of Utah, reported on research which he and two other University of Utah scientists had conducted over 1971 and 1972 on chromosome damage in chronic marihuana users. They found that the chronic users displayed roughly three times as many broken chromosomes as nonusers, and that smoking was also accompanied in some cases by abnormal chromosone formations. The much higher rate of broken chromosones held true for light users who had averaged only one marihuana joint per week.

In summarizing his studies, Dr. Stenchever said:

The study did not shed any light on the question of whether or not this chromosome breaking agent or any other chromosome breaking agent is capable of causing abnormalities of unborn children, an increased mutation rate, or an increased incidence of cancer. However, all of these possibilities are potentially there and only further studies of a more detailed nature will be able to answer these questions.

Dr. Paton, in his testimony, reported on a number of experiments with animals that pointed to a series of adverse effects from marihuana on the birth process. Said Dr. Paton:

Administration of cannabis during the vulnerable period of pregnancy has been found to cause fetal death and fetal abnormalities in three species of animals. The deformity includes lack of limbs (reduction-deformity). The factor responsible has not been identified, but does not appear to be THC, although new work is showing that THC kills a majority of fetuses and in the remainder produces an increased incidence of still births and stunting. The effect is dose-related, an important thing to establish if cause and effect are considered.

One must notice that general anesthetics as a class can also produce fetal abnormality. A provisional hypothesis for teratogenicity, therefore, is that this action of cannabis reflects its fat-solubility and relation to anesthetics, and constitutes a sort of anesthesia, for instance, of limb buds developing in the fetus at critical periods—hence the reduction-deformity. It must be stressed that all I have said refers simply to the development of the fetus. There is also the question whether the genetic material, perhaps as a result of interference with cell-division, is altered—giving life to heritable defects.

In one of the animal experiments to which Professor Paton referred, the teratogenic effects carried over for another two generations without further exposure to marihuana.

In the light of all of this converging research, I do not think it premature to warn the public that the use of marihuana during pregnancy, or its chronic use prior to pregnancy, may result in birth defects or even in genetic mutation. Although his research would have to be duplicated by other scientists before it could be considered definitive, Dr. Kolodny made the point that the evidence already on hand was strong enough to warrant a public warning. Professor Paton went one step further. In response to a question, he stated flatly that those indulging in chronic abuse ran a serious risk of giving birth to abnormal or defective offspring.

CANNABIS AND CANCER

There is a growing body of evidence that marihuana smoke has a far greater potential for bringing about cancerous alterations in tissues than does tobacco smoke. Dr. Cecile Leuchtenberger reported that her experiments have demonstrated that addition of marihuana to tobacco cigarettes produced a smoke which was much more harmful to mouse lung cultures than was the smoke from tobacco cigarettes without marihuana.

Drs. Kolansky and Moore, two Philadelphia psychiatrists, told the committee that emphysema and other disorders of the respiratory track were the general rule among chronic marihuana smokers.

Dr. Forest S. Tennant, Jr. ,who headed up the U.S. Army drug program in Europe from 1968 until 1972, told the committee that among chronic hashish smokers in the Armed Forces, bronchitis and sinusitis were very commonplace and that he had been surprised to find in young men of 20 the kind of acute bronchitis ordinarily found in cigarette smokers who had smoked heavily for many years. He said that—

The abnormalities found in the bronchial biopsies were the same that are associated with heavy cigarette smoking and cancer on the lung.

What makes these findings all the more alarming is that, because of the time limitations of an Army tour of duty, the young men examined by Dr. Tennant had been chronic cannabis abusers for very brief periods of time—several months to a year at the most.

Dr. Paton pointed out that one of the major differences between cigarette smoking and marihuana is that the inhalation and retention of the smoke is much deeper and more efficient with marihuana than it is with cigarettes. Calling for medical studies on a wide scale to determine the effects, Professor Paton said that emphysema which is normally a disease of later life is now cropping up with increasing frequency in young people, opening up the prospect "of a new crop of respiratory cripples" early in life.

It will take some years before scientists can report in an epidemiological manner the precise impact of marihuana on cancer. Hopefully, now that we are alerted, it should not take us long to get this information as it took us to find out about the relationship between cigarette smoking and cancer.

THE PSYCHIATRIC EFFECTS OF MARIHUANA

There was also a remarkable convergence of findings between the psychiatrists who testified before the subcommittee on the spectrum of major damage resulting from chronic marihuana usage. The psychiatrists included Dr. Harvey Powelson, for 8 years—1964-72—the head of the psychiatric division of the student health service at Berkeley; Dr. Henry Brill, senior psychiatric member of the Shafer Commission and the president of the American Psychopathological Association; Dr. N. I. Soueif, of the university of Cairo, recognized as the foremost expert on hashish addiction in Egypt; Dr. Philip Zeidenberg, senior research psychiatrist at the New York Psychiatric Institute; Dr. Andrew I. Malcolm of Toronto, until recently staff psychiatrist with the Addiction Research Center of Ontario; Prof. Nils Bejerot of Stockolm, an internationally recognized expert on drug epidemiology; Dr. Conrad Schwartz of Vancouver, chairman of the drug habituation committee of the British Columbia Medical Association; and Drs. Harold Kolansky and William T. Moore, two Philadelphia psychiatrists with wide experience in marihuana-related cases.

Drs. Kolansky and Moore told the subcommittee:

Marihuana and hashish have a chemical effect that produces a brain syndrome marked by distortion of preceptions and reality. This leads to an early impairment of judgment, a diminished attention and concentration span, a slowing of time sense, difficulty with verbalization, and a loss of thought continuity characterized by a flow of speech punctuated with non sequitura which leaves the listener puzzled. In time, the chronic smoker develops a detached look as decompensation of his ego occurs.

Dr. Harvey Powelson, whose extensive exposure at Berkeley over 8 years probably made him the most experienced campus psychiatrist in the country, told the subcommittee that in 1965 and 1966, when the marihuana epidemic first broke, he had had a tolerant attitude toward it, based on the then almost universal assumption that marihuana was not seriously harmful. As a result of his experience, he said, his attitude toward marihuana was changed to the point where he now considers it the most dangerous drug we must contend with. He gave the following reasons for his change in attitude toward marihuana:

1. Its early use is beguiling. It gives the illusion of feeling good. The user is not aware of the beginning loss of mental functioning. I have never seen an exception to the observation that marihuana impairs the user's ability to judge the loss of his own mental functioning.

2. After one to three years of continuous use the ability to think has become so impaired that pathological forms of thinking begin to take over the entire thought process.

3. Chronic heavy use leads to paranoid thinking.

4. Chronic heavy use leads to deterioration in body and mental functioning which is difficult and perhaps impossible to reverse.

5. For reasons which I can't elucidate here, its use leads to a delusional system of thinking which has inherent in it the strong need to seduce and proselytise others. I have rarely seen a regular marihuana user who wasn't "pushing". As these people move into Government, the professions, and the media, it is not surprising that they continue as "pushers," thus continuously adding to the confusion that this committee is committed to ameliorate.

Dr. Philip Zeidenberg, a biologist as well as a psychiatrist, told the subcommittee that—

There is no doubt that a single dose of tetrahydrocannabinol can cause an acute psychotic reaction in mentally healthy individuals, and that marihuana use is also associated with longer-lasting and even chronic psychoses.

All the psychiatrists who testified agreed on the point that chronic marihuana abuse results in a serious loss of motivation—the so-called "amotivational syndrome." Commenting on this point, Dr. Nils Bejerot told the subcommittee that the syndrome is characterized by "a massive and chronic passivity brought about by prolonged and intensive abuse of cannabis. In these cases there is a basically altered sense of reality, and a tendency to magical thinking. Intellectual deterioration, which may be irreversible, and vagabondism commonly develop." Dr. Bejerot expressed the belief that marihuana is an addictive drug and that a strict concept of addiction does not necessarily involve the kind of agonizing withdrawal symptoms that

that—

If cannabis were legalized in the United States this would probably be an irreversible process, not only for this country and this generation, but perhaps for the whole of western civilization. As far as I can see, another result would be a breakdown of the international control system regarding narcotics and dangerous drugs.

THE DANGER OF EPIDEMIOLOGICAL SPREAD

The spreading use of marihuana throughout our society has been made possible in part by the tolerant attitude of the media and the academic community. But another major factor that accounts for the dramatic escalation of marihuana use is the ease with which it can be transported and concealed and used and the relative cheapness of the drug.

As dangerous as alcohol can be when chronically used, the bulky nature of alcohol places certain limits on its use—and these limits are further reinforced by the familiar drunken stagger and by the unmistakable smell of alcohol on an inebriate's breath.

None of these considerations apply to marihuana.

A high school student or a grade school child or a blue-collar worker or an office worker would have difficulty smuggling a bottle of alcohol into his school or his place of work without being discovered. And if he was able to conceal the bottle, he is likely to give himself away by his drunken stagger or his alcoholic breath. With marihuana, however, the concealment of several joints presents no problem ever to the unsophisticated grade schooler—nor is there any drunken stagger or telltale odor.

Cost is another factor contributing to marihuana's tremendous danger of epidemiological spread. Even though the sale of marihuana is illegal, students are able to purchase it—the rate will vary from time to time and from place to place—at approximately $1 per joint. And a joint of good marihuana is quite enough to produce intoxication. If marihuana were ever legalized, an entire pack of joints could theoretically be sold for the same price as a pack of cigarettes or less.

Because of these factors, the marihuana-hashish epidemic, which began in 1965, rapidly spread down into the high schools and junior high schools and then into the grade schools, and more recently into the ranks of the blue-collar workers and businessmen. Beyond its demonstrated ability to involve a very large number of people in a very short time, marihuana use in moderate amounts accelerates rapidly to use in large amounts and more potent forms.

up the Army drug program in Europe, found that young soldiers arriving in Germany could escalate from a few marihuana joints a week prior to arrival, to anywhere from 50 to 600 grams of hashish a month only 1 month later. I want to point out here that it takes only a quarter of a gram of hashish to produce intoxication in the average person.

Dr. Tennant also found that, because of the easy availability of hashish in West Germany, 10 percent of our servicemen rapidly reached the hashaholic stage, while a total of 10 percent consumed hashish in excess of three time a week.

These are facts we have to keep in mind when people talk about the legalization of marihuana in the United States.

Several of the scientists who testified stated that they considered marihuana far more dangerous than alcohol, in terms of its potential for damage to the individual and to society. Summarizing the important differences between alcohol and marihuana, Professor Paton said the following:

Alcohol is taken, often diluted with food, and often for taste or to quench thirst rather than for psychic effect; it is eliminated in a few hours; there is little or no evidence for carcinogenicity or teratogenicity, particularly if nutritional defect and correlation with smoking are allowed for; psychotic phenomena only occur after heavy and prolonged dosage; it occurs naturally in the body of animals, and probably also in man; it has valid medical uses for nutrition and as a vasodilator; it "escalates" only to itself; the price paid for overuse is paid in later life.

Cannabis is taken specifically, and usually by itself (sometimes with other drugs), for its psychic action; it is cumulative and persistent; its tar is carcinogenic and failure to inhale reduces its effect considerably; experimentally it is teratogenic; psychotic phenomena may occur with a single dose; it is not a natural constituent; prolonged trials in medicine from the 1840's led to its abandonment from pharmacopoeias; it can predispose to the use of other drugs; the price for its overuse is paid in adolescence.

One could say that cannabis shares the disadvantages of alcohol and tobacco, together with its own psychotogenic and biochemical actions, its chronic effects being accentuated by its cumulative tendency, giving it much earlier adverse action.

To what Professor Paton said, one has to add the much greater potential of marihuana for epidemic spread, about which I have already spoken.

MARIHUANA AND THE LAW

What I have said about the physical and psychological effects of marihuana should not be construed as meaning that I favor tougher penalties for those who smoke it occasionally and who are caught in the possession of small quantities.

In his opening statement, Senator EASTLAND made it clear that the subcommittee was opposed to sending young people to prison for the possession of small quantities of marihuana for personal use. I strongly support this position. The fact is that at the present time very few young people are sent to prison for simple possession, either under Federal law or under State law. But the State laws are uneven on this point, and Federal law still leaves much to be desired.

We have come a long way in recent years. Up until 1970, under the Marihuana Tax Act and the Harrison Act, simple possession of marihuana called for a mandatory minimum sentence of 2 years in prison and a maximum of 10 years; and it is appalling to think that many young people actually did receive sentences of this magnitude. Both of these acts were removed from the books by Public Law 93-513, which was passed in October 1970. The provisions of this law, which are now incorporated in the United States Code—title 21, sections 841-844—converted simple possession of marihuana from a felony to a misdemeanor. While there is no mandatory minimum penalty, the law does permit a maximum penalty of 1 year and/or $5,000 for first offenders. Second offenders are still considered felons, and for them the maximum penalty is 2 years in prison and/or $10,000. First offenders convicted under this law can have their convictions set aside and records cleared if probation is successfully completed.

My personal opinion is that it would make more sense to rewrite this portion of the law to make simple possession, on a first offense, a misdemeanor punishable by a fine of up to $100. Having laws which permit penalties of 1 year in prison and a $5,000 fine for a first offender caught in possession of an ounce of marihuana is actually counterproductive because by far the majority of our judges recoil from such excessive penalties—and, in the act of recoiling, they frequently are disposed to impose no penalty at all.

The same situation applies, but in an even more dramatic manner, to the laws governing the smuggling of marihuana. Smuggling of any quantity of a drug is a felony. In the case of marihuana, any person caught in the act of smuggling even 1 ounce could, theoretically, be imprisoned for 5 years. In practice, as a customs officer stationed on the Mexican border recently informed the subcommittee, hundreds of young people are caught every week trying to smuggle in small quantities of marihuana. Those caught smuggling bottles of whisky frequently have administrative fines of $5 or $10 slapped on them—in addition to suffering the pain of watching their whisky flushed down the toilet. But in the case of minor marihuana smugglers—anything under an ounce and a half or 2 ounces—our customs officers simply flush the pot down the drain and there is no penalty of any kind.

Laws that are never enforced are worse than no laws at all. In the case of the laws governing the smuggling of marihuana, I really do think that the present penalties for first offenders should be replaced by a mandatory fine similar to what I have recommended for simple possession; perhaps the second offense for both possession and smuggling should constitute a felony punishable by fine and imprisonment.

There are those who recommend the abolition of all penalties for possession of marihuana. This was the position of the Shafer Commission, and it is also the position of NORML, the most prominent of the national promarihuana lobbies. All of the scientists who testified on this point were inclined to favor some kind of penalty for simple possession. As one psychiatrist pointed out, by penalizing traffickers but letting users go scot free, we would, in effect, be sending contradictory signals to our young people—which would make it more difficult to get across the basic message that marihuana is a very dangerous drug against which society has to protect itself. Dr. Brill, who had served as senior psychiatrist on the Shafer Commission, told the subcommittee that although he had originally supported the proposal that there be no penalty of any kind for simple possession, he now felt that this position had to be reconsidered.

If those portions of our law which govern simple possession are still too stringent, the statutes covering the big smugglers and the big pushers are far too lenient—and, even worse, they are far too leniently enforced. Over and over and over again, traffickers caught with hundreds or even several thousand pounds of marihuana go scot-free, with a 6-month or 1-year suspended sentence. This portion of our law, in my opinion, has to be amended and amended promptly. The large traffickers and the pushers must not be permitted to get off so lightly. For them, I would like to see mandatory minimum sentences of several years in prison.

I have instructed my staff to study the existing legislation and ways of improv-

ing it, and after these hearings have been made public, I may want to submit some concrete proposals for the revision of existing laws.

THE NEED FOR A NATIONAL EDUCATIONAL PROGRAM

I believe that, with the evidence we have brought together at these recent hearings, we can now mount a national educational program on marihuana and hashish that will be effective in persuading young people to abstain from the drug.

No young person wants to run the danger of permanent brain damage.

No young male wants his male hormone level reduced by almost 50 percent or his sperm count reduced to zero.

No young person wants to damage their cellular processes and chromosomes, thus opening the way to abnormal offspring or genetic mutations.

Up until recently, those scientists who mistakenly believed that marihuana was a relatively benign drug have had the ear of our press and of our networks. I have the impression that we are now witnessing the beginning of a change in attitude. It is my conviction that we can reverse the massive marihuana-hashish epidemic which engulfs our country—just as we have already succeeded in reversing the relentless upward trend of the heroin epidemic and the LSD epidemic which preceded it—if our various Government agencies and our media and our schools embark on a united educational effort.

It is my hope that our recent hearings will serve to encourage and facilitate the launching of such a nationwide program.

Mr. President, I ask unanimous consent to print in the RECORD at this point the text of the testimony given to the Subcommittee on Internal Security by Prof. W. D. M. Paton of Oxford University, and the text of the testimony of Dr. Harvey Powelson, formerly of the University of California at Berkeley.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

STATEMENT BY W. D. M. PATON

I am Professor of Pharmacology in the University of Oxford. My interest in cannabis was aroused by a conference on adolescent drug-dependence in 1968. Since it subsequently appeared that there was little known about it in modern terms, and that little but sociological or psychological work was being initiated, I began pharmacological studies in 1969. Some of my earlier work has been relevant; on anaesthetics (dating back to 1944 in connection with narcosis in diving and submarine escape), and on opiates (from 1949). The statement that follows rests partly on this work, partly on my own informal contacts with drug users, and partly on a review of the recent research on the effects in animals and man (written together with Dr. R. G. Pertwee and Dr. Elisabeth Tylden) which forms three chapters in "Marihuana" ed. R. Mechoulam, Academic Press, recently published. Of this work (400-500 papers), usually only a small fraction is referred to in official reports and other writings; something like 100 further scientific papers have appeared since our final manuscript was sent in. I will try to bring out what appear to me the salient points of all this work, interpreted from my pharmacological experience, and taking for the most part the point of view of preventive medicine.

I shall use the term cannabis rather than marihuana, since the use of the latter word may suggest a sharper distinction from hashish than in fact exists (both are mixtures of cannabis resin with other material from the plant), and perhaps also begs the question whether or not it would be possible to legislate differently for them.

It is sometimes said that cigarettes and alcohol are as bad as, or worse than cannabis, yet they are "legal"—why should not cannabis be too? I shall try to compare these three later; but it is necessary to review the actions of cannabis first, particularly because very little publicity indeed has hitherto been given to many of its actions.

The first point to stress is that cannabis is a complex mixture of chemicals, of which *at least* the following are known to have a biological action: tetrahydrocannabinol (THC), propyl-THC, cannabidiol, cannabinol, and a group of water soluble materials giving alkaloidal reactions. This affects, inter alia, the suggestion that one might permit a preparation containing up to 1 or 2% THC to be marketed: this would only be feasible if THC were the only active principle. It also means that pharmacological or other studies which are limited to THC have only a restricted relevance to problems of human usage of cannabis.

FAT-SOLUBILITY

Second, and possibly the most important single fact about cannabis, apart from the fact of its psychic action, is that THC, the main psychically active principle, is intensely soluble in fat, as we pointed out in 1970. It has an octanol/water partition coefficient of about 6000 to one, over 10,000 times that of alcohol. Corresponding to this is a low solubility in water. Its fat solubility is greater than that of industrial solvents, and is exceeded only by substances like DDT. The other cannabinoids share these properties. This solubility gives it an affinity for, and ability to transverse, the fatty material in cell-membranes.

From this physical property follows: (a) the activity of cannabis by all routes of administration; (b) its cumulative effect, and the persistence of effect when drug is withdrawn; (c) its passage into all parts of the body, including brain, adrenal gland, ovary, testis, and foetus; (d) the diffuseness of its effects because it is able to reach every cell in the body; (e) the overlap in its effects with those of one important group of fat-soluble materials, the general anaesthetics such as chloroform.

Perhaps I should say a special word about the brain, where perhaps the most important fatty material in our bodies is located, though in much smaller percentage than (say) in adipose tissue. Here, too, cumulation of THC and its first two metabolites has been found.

TOXICITY

(a) Fat affinity and cumulation in the body in themselves are not necessarily harmful, even if cumulation is undesirable in principle. The fundamental test is a biological one, whether *toxicity* is cumulative. This has been found to be the case; for a mouse, it require one-tenth as much cannabis to kill if given in repeated daily doses as if given in a single dose. Similar cumulative toxicity has been found for THC an din other animals. Inferences must not be drawn, therefore, from responses to single exposures to the likely effect of repeated doses.

(b) We have found that toxicity, as judged by loss of weight and lethality, is associated with the fat-soluble fraction of cannabis; THC appears to be the main, but not the only substance responsible. It appears impracticable, therefore, to dissociate the psychic and the toxic effects.

(c) The question of lethality in man is important. Since few practitioners would know how to diagnose a death caused, or contributed to, by cannabis, and since it could not at present be proved by forensic analysis, only scanty information can be expected in any case. The case reported by Heyndrickx et al, in the light of this, is rather convincing.

Possibly more important is to point to three ways in which cannabis could indeed cause or facilitate death. (a) It produces a considerable tachycardia, and this may be associated with electrocardiographic changes and ventricular extra-systoles. It is not at all impossible that this, in unfavorable circumstance in a chronic user, could progress to ventricular fibrillation and death. (b) It causes a dilatation of peripheral blood vessels, corresponding to the hypotensive action in animals. This probably underlies the "fainting attacks" reported, causing postural hypotension. As with other hypotensive drugs, if the subject could not become horizontal, either deliberately or by falling (e.g., because he was in a chair), blood supply to the brain might fail. (c) Cannabis, chiefly because of its cannabidiol content, can potentiate and prolong the action of barbiturates (as well as other drugs used in medical treatment). This could mean that a non-lethal dose of barbiturate became lethal.

Regarding decisions about the law, one wishes that all cannabis users were aware of these possibilities.

TERATOGENICITY

Administration of cannabis during the vulnerable period of pregnancy has been found to cause fetal death and fetal abnormality in three species of animals. The deformity includes lack of limbs (reduction-deformity). The factor responsible has not been identified but does not appear to be THC although new work is showing that THC kills a majority of foetuses and in the remainder produces an increased incidence of stillbirth and stunting. The effect is dose-related, an important thing to establish if cause and effect are considered.

These results are sometimes dismissed on the grounds that any drug in sufficient dose will be teratogenic. While this is not quite accurate, there is evidence that serious disturbance of the mother can have such an effect. This gives an added importance to the criterion suggested by Robson & Sullivan which I would adopt; that a result should be taken as significant when the teratogenic dose is a small fraction of the dose lethal to the mother. This is the case with cannabis, and is in contrast to other drugs, including nicotine and aspirin.

A very important question is whether cannabis directly affects the genetic material, i.e., nucleic acid. Early reports of interference with cell-division indicated this. These have been confirmed. Dr. Nqhas' report here has clinched the issue. One must notice that general anaesthetics as a class can also produce fetal abnormality. A provisional hypothesis for teratogenicity, therefore, is that this action of cannabis reflects its fat solubility and relation to anaesthetics, and constitutes a sort of anaesthesia, for instance, of limbbuds developing in the fetus at critical periods—hence the reduction-deformity. It must be stressed that all I have said refers simply to the development of the fetus. There is also the question whether the genetic material, perhaps as a result of interference with cell-division is *altered*—giving life to heritable defect.

CARCINOGENICITY AND LUNG PATHOLOGY

Like the tar from cigarettes, reefer tar is carcinogenic when painted on mouse skin. Cannabis smoke produces changes in cultures of lung tissue, including loss of contact-inhibition between cells. THC in low concentration resembles the carcinogen methyl-cholanthrene in generating malignancy in rat embryo cells incubated with a murine leucemia virus, but is slower in action. The irritant effect of the smoke on the respiratory tract is well-known to users, and is associated with bronchial pathology.

These effects are becoming very important. Originally, one was uncertain about their significance, and what the balance would be between the facts that more cigarettes than reefers will normally be smoked in any one day, whereas inhalation and retention of the smoke is much deeper and more efficient with the reefer. But now lung damage, in the form of emphysema, is being repeatedly recorded. Emphysema is normally a disease of much later life; but now the quite unexpected (to me, at least) prospect of a new crop of respiratory cripples early in life, is opening up. Originally, I thought the cancer risk was the main problem; cannabis has never been used extensively in a society with an expectation of life long enough to show a carcinogenic effect in man, until recent years. In effect, a new experiment in cancer epidemiology started 5-10 years ago. To this I would now add respiratory pathology generally; and because, just as with bronchitis and cigarette-smoking, it shows itself early, I believe medical studies on this, on a wide scale, are now urgent.

CELLULAR EFFECTS OF CANNABIS AND THC

Numerous such effects have now been described, including actions on microsomes,

on mitochondria, on neurones, fibroblasts, white blood cells, and on dividing cells, affecting metabolism, energy utilization, synthesis of cellular constituents, and immunological responses. To this we must add the recent observation that chronic administration of THC to young rats leads to a reduction in brain and heart weight. Such effects are to be expected, rather than a matter of surprise, from a drug with a high affinity for lipid in a cell-membrance. It should be noted that the local concentrations of THC or its metabolite in the cell-membranes will be far higher than those in the blood; theoretically, one would expect a concentration factor of several hundred; experimentally, concentrations of 600-fold with brain and 380 with red cell membranes.

An important aspect of these effects is what they imply for *maturation* of an individual; we are concerned not only with the effect of a drug on a mature adult, but also what it does to school-children, still developing in many ways. The interference by cannabis with both cell-metabolism and cell-division is very worrying.

THE RELEVANCE OF ANIMAL WORK

It may be argued that actions in animals are of little relevance to man. However, the pharmaceutical industry, and the bodies which supervise it, do not operate on this principle. Difficulties chiefly arise when an inordinately high safety factor has been stipulated. But there is also misunderstanding over rates of dosage. It is to be expected that small animals will require proportionately larger doses (per unit body weight) than man, just as they need proportionately more food, because of their faster metabolic rate. One can estimate a mouse dose on this basis as ten times that of man, taking this together with the rates of human use reported in WHO Special Report No. 478 (up to or exceeding 10 mg/Kg THC per day) it appears that almost all the experimental work reported in animals is relevant to man. The conclusion is reinforced by the NIMH-sponsored toxicity studies on monkeys. A daily dose of 50 mg/Kg orally of THC killed 1 of 6 monkeys; damage to the pancreas, ulcerative colitis, and myeloid hyperplasia were noted. This result, at doses only 10 times some rates of human consumption makes no allowance for contribution by other toxic materials in cannabis.

TOLERANCE

I mentioned high rates of human use. People have expressed incredulity at this, yet it is well-established. I would like to deposit a table of consumption in a group of English students (subject to the approval of the authors)—perhaps the best evidence yet, since the composition of the actual reefers being used was measured; uses ranged up to 109 mg THC per day, around 20 times the ordinary dose for a "high." By itself it shows the degree of tolerance that is achieved, with the resulting need to take high doses for an effect. By the same token, toxicity and accumulation *at these levels* must be considered.

DIFFICULTIES IN THE EXTENSION OF ANALYTIC WORK TO MAN

Although there are a number of human studies on the effects of single small doses, there is still no systematic modern study of the bodily effects of continued cannabis administration. One reason is that while limited dosage is acceptable for volunteers, dosage over a prolonged period at the higher rates of use is not. It would be possible to study users themselves, if a method of urine and blood analysis existed capable of verifying their actual consumption. This, however, is at present not practicable; as a result only the subject's testimony as to his rate of consumption of a substance of unknown composition is available, and this is hardly sufficient. Once methods of analysis of body fluids are adequate, the position should improve considerably.

PSYCHOLOGICAL EFFECTS IN MAN

It may be useful to bring a number of findings together:

(a) The neurophysiological observations, in man and animals, of hypersynchronous discharges from the deeper parts of the brain (not the cortex) as a result of giving cannabis or THC. These discharges have been termed "epileptiform."

(b) The observation by Campbell and his colleagues of an apparent loss of brain substance in the deeper regions, in a group of young chronic cannabis users. This needs further exploration, and it is likely that it is now possible with new non-invasive radiographic techniques.

(c) The cumulative property of THC, and its affinity for fat and hence for cell-membranes.

(d) The numerous psychiatric reports of gradual psychological change, which becomes less and less readily reversible, the longer the cannabis exposure. (This delayed recovery may well have been known in the Moslem community in medieval times; see Schwarz, J. Amer. Med. Ass. 223, p. 105, 1973.)

(e) The fact that most of the elements of this psychological change (paranoid feelings; change in mood, cognitive impairment, loss of memory, loss of concentration, a motivational state, introspective preoccupation with internal imagery, hallucination) can be reversibly produced by single doses of THC or cannabis in normal volunteers.

(f) The ability of cannabis to affect cellular metabolism and cell division.

These findings converge to a remarkable extent in supporting a prima facie view that repeated cannabis use acts on the deeper parts of the brain (where sensory information is processed and mood controlled); that this is at first reversible, but becomes more persistent as cumulation occurs, and that later irreversible changes occur with loss of brain substance, due either to interference with the capacity of brain cells to synthesise their requirements or to interference with cell division.

It is quite likely that all this would be accepted and acted upon, by the cannabis user, were it not for the visual imagery, and (here cannabis is very like nitrous oxide) the euphoria and the conviction of insight and cosmic significance.

COMPARISON WITH ALCOHOL AND TOBACCO

One may summarize this as follows: (1) alcohol is taken, often diluted with food, and often for taste or to quench thirst rather than for psychic effect; it is eliminated in a few hours; there is little or no evidence for carcinogenicity or teratogenicity particularly if nutritional defect and correlation with smoking are allowed for; psychotic phenomena only occur after heavy and prolonged dosage; it occurs naturally in the body of animals, and probably also in man; it has valid medical uses for nutrition and as a vasodilator; it "escalates" only to itself; the price paid for overuse is paid in later life.

(2) tobacco is taken partly for relaxation, partly to assist work, and there is some evidence of an improvement in mental function; the nicotine in it is rapidly metabolised and non-cumulative; the evidence suggests that it is the tar that is carcinogenic, and the risk can be reduced if inhalation is avoided, nicotine being absorbed through the mouth; it is not teratogenic; no psychotic phenomena occur; it is not a natural constituent; it has no medical use; it does not "escalate"; the price paid for overuse is paid in later life—reducing life expectancy from about 75 years to 70 years.

(3) cannabis is taken specifically, and usually by itself (sometimes with other drugs), for its psychic action; it is cumulative and persistent; its tar is carcinogenic and failure to inhale reduces its effect considerably; experimentally it is teratogenic; psychotic phenomena may occur with a single dose; it is not a natural constituent; prolonged trial in medicine from the 1840's led to its abandonment from pharmacopoeias; it can predispose to the use of other drugs; the price for its overuse is paid in adolescence.

One could say that cannabis shares the disadvantages of alcohol and tobacco, together with its own psychotogenic and biochemical actions, its chronic effects being accentuated by its cumulative tendency, giving it much earlier adverse action.

THE QUESTION OF LEGALIZATION

(a) Viewing cannabis as if it were a new pharmaceutical product, I could not agree to approval being given to the introduction, for general and repeated consumption, of a substance shown experimentally to be carcinogenic, teratogenic, and cumulative, and able to interfere with a variety of cellular processes, until it had been shown, quite unequivocally, that, for some reason, humans were exempt from the actions concerned.

(b) There is no rational dividing line between cannabis and other drugs such as LSD or some opiates. A high dose of cannabis overlaps with a low dose of LSD (in its hallucinatory and psychotomimetic action) and with the less active opiates (in respect of analgesia, euphoria, and "day-dreaming" state). In fact, since cannabis is unique among these drugs for its cumulative action, I would put it lower in the list for legalization than some others. One needs to ask, what other drugs can produce prolonged cognitive impairment in a young person?

(c) In a similar way, it does not seem feasible to me to propose legalization of cannabis of limited potency. There is in fact an analogy with alcohol here: we have marihuana (1–2% THC), and weak beers (3% alcohol); hashish (say 8% THC) wines (8–15% alcohol); red oil, on the illicit market (up to 30–40% THC), hard liquor (35–60% alcohol). To suggest one could legislate for 1 or 2% THC is like suggesting one could legislate for weak beer. It would remove none of the present objections to cannabis legislation, while yet allowing the drug to be used.

(d) The significance of progression from cannabis to other drugs has been much discussed, and my own (1968) paper severely, but fallaciously, criticised. (The fallacy was exposed, inter alia, by R. C. Pillard in the New England Journal of Medicine (197) 285, 416–7). The final report of the Le Dain Commission concluded as regards LSD that "the use of cannabis definitely facilitates the use of LSD or predisposes a certain number of individuals to experiment with it." The argument they give (including the relationship between the nature of the two drugs and the finding that over 95% of those who had used LSD had used cannabis) were the same as those I had advanced in respect of heroin and cannabis. My argument also cited the remarkable temporal coincidence between cannabis convictions and heroin addiction in the U.K.; evidence of this sort has not been provided in respect of LSD.

Today, with the further evolution of drug use, it seems clear that, depending on availability of drug, various patterns of progression are possible, in which one would include cannabis to opiates, cannabis to LSD, and cannabis (low potency) to cannabis (high potency). Simple reasons can now be seen; that cannabis increases suggestibility and impairs memory; and that it overlaps in pharmacological actions with opiates (euphoria, analgesia, daydreaming state) and with LSD (visual imagery). It is therefore well-suited to providing a halfway house, converting one major step directly to use of opiates, LSD or hashish, into two smaller and more easily accepted steps.

The growth of poly-drug use may now have made it impossible to define patterns of progression accurately. But one may hazard the opinion that no programme to get rid of opiate addiction or LSD use will really succeed until cannabis use declines. Cannabis can serve as well to cause relapse, as to initiate drug use.

(d) The last point concerns the age of those involved. If someone dies of alcoholism or lung cancer at the age of 50 onwards, that is a loss; but the individual has had 30 years of adult life, and the chance to make his own contribution. But the adolescent, dead or socially inactivated by 20 years old, has never even had a start on mature life; the loss, both for him or her, and for society, is incalculably greater.

THE DIFFICULTY OF FRAMING A POLICY

My own opinion is that it would be disastrous to make it legal even to possess cannabis. If one talks, not to lawyers or sociologists but to schoolchildren and students, at least in the U.K., it is not at all clear that a majority would even wish for this to happen. But nevertheless, there would be for the foreseeable future a large number of people breaking the law, just as they do over speed limits, customs-regulations, and income-tax

return. It seems that one would have to treat a cannabis-possession similarly, accepting that the majority of offences would not be recognized, yet maintaining the legal position about it. Viewing it in this way might, indeed, help to deglamourize it.

But something more is needed. It would be quite right for the debate to sharpen our criticism of alcohol and tobacco. Further, for a significant number of youngsters, who have found consolation in cannabis, there is the question, "If not pot, what?" It is for the framing of an answer to this question that new creative thinking is urgently needed.

STATEMENT BY DAVID HARVEY POWELSON, M.D.

In 1965, I was chief of the Department of Psychiatry in the Student Health Service at the University of California in Berkeley. It was the first year of the student riots. It was also the first year that hallucinogens were becoming widely used and I, as the person responsible for mental health on that campus, was vigorously involved in the debate about psilocibin, LSD and mescaline.[1]

In the spring of that year a reporter for the Daily Californian, the student newspaper, asked for my opinion on marihuana. At that time I lacked any direct experience as a physician with marihuana users. The medical literature was sparse, but in general seemed to be saying that there was no proof of long term harmful effects from marihuana. I summarized this for the reporter and said there was no proof of harm and that it probably should be legalized and controlled. In general, this view met with approval from most of the students and most of my professional colleagues.

In 1965, the use of marihuana spread throughout the Berkeley Campus. Simultaneously its use was spreading to all the colleges and universities across the country. From the campus communities it spread at an accelerating rate through the surrounding communities. By now its use is subject to no age, social or geographic barriers.

My place of observation was unique. I was there at the beginning and in my work I was actively involved with students not only as a psychiatrist but as a teacher, and as a participant in a four year research project studying maturation and growth, in college students. In addition, I was routinely meeting with deans and administrators who were dealing with the drug problem and the students who were in academic and/or disciplinary difficulties as a consequence of the use of marihuana and its derivatives.

Most importantly, I was in daily contact with the constant flow of students through the student health service and the psychiatric clinic and hospital.

During the period I am speaking of (from 1966-72) the clinic saw approximately 2000-3000 students a year as outpatients and about 150-200 students a year who were mentally ill enough to be hospitalized. Naturally, I didn't see all these students but the people who ministered to them were all under my supervision. I personally interviewed about 200 students a year; many were seen for a single hour, others were seen as intensively as 2-3 times a week for varying lengths of time up to and including 5 years. A legitimate question which is often raised is that of sampling: i.e., "how typical are these patients when compared with the general population of U. C. students?"

(I am convinced that aside from the obvious fact that they have come to the clinic, they vary in no significant way from the population of the University of California, Berkeley, as a whole. For a systematic study of this point, c. f., Katz, Joseph, Ph. D., *Growth and Constraint in College Students*, Institute for the Study of Human Problems, Stanford University, Stanford, California, 1967, pp. 510-68. This study was done at Berkeley on the same group of students I am discussing. Comparisons were made on all sorts of variables: psychological; psychiatric; and so on. No significant difference between the clinic and general population were found.)

During this time (from 1965–72) an increasing number of patients were using marihuana. My best guess, based on surveys and impressions, is that more than 90% used it at one time or another in college. More than 50% used it "socially" (approx. 1-2 times per week) and about 10% were heavy users (at least 1 time daily).

My first important shift in thinking occurred as a result of observations made during psychotherapy with a young man, S., who was bright enough to be getting his law degree and Ph. D. simultaneously and competent enough to be learning to fly and deal in real estate at the same time. As we proceeded in our work together, I came to know S.'s way of thinking; i.e., *how* he thought. Most of us do this without thinking about it. All of us come to know to some degree the way our friends and colleagues think. In therapy, the opportunity to hear someone think out loud about a problem important to him maximizes the opportunity to come to know how he uses or manipulates logic, remember clearly or not at all, thinks or does not exercise good judgment about his own thinking, and whether or not he is able to know his own feelings. We had made enough headway so that S. had begun to be able to observe and understand his own thinking. Periodically, we had hours (I was seeing him twice weekly) when his thinking became mushy. If I tried to follow him, my head began to spin. When I protested that he'd become impossible to listen to, he'd argue that his own experience was that he was thinking more clearly, more insightfully, than ever. On one such occasion, he mentioned that he'd been to a party two nights before where he'd had particularly good "grass." In Berkeley, 1968, that was not a particularly memorable remark, but we thought there might be some connection with his thinking. This same series of events recurred often enough so that I finally was able at times to post dict that S. had had some "mind-expanding drug," usually marihuana.

S., because he was a good observer, helped show me another aspect of the thinking disorder I'm describing. Central to his difficulties was a paranoid stance toward the world. By this, I mean a style of thinking characterized by a constant suspicion that one is being controlled; e.g., by the establishment, the system, etc.; and simultaneously a constant unwitting search for people and situations which will do just that; e.g., drugs, demagogues. If this manner of thinking is carried further, it blends into the condition usually called paranoia. Here the subject is controlled by voices, God, or whatever, and at the same time, he is very often "against his will" being controlled by a state hospital or jail. S. was forever talking about his search for something or someone he could trust.

When he had used marihuana, his thinking became more paranoid, i.e., he became more mistrustful of me, for instance, and at the same time, he became more wily so that he talked glibly, using cliches, theories, and "insights," all to avoid noticing concretely and immediately whatever he was really doing and feeling in his relationship with me, as well as his relationships outside. In short, the pathological part of his thinking was exaggerated in two ways: (1) he was more suspicious, etc. and (2) he was more adept at fooling himself about what he was up to, while simultaneously maintaining how "aware," "in touch," and "loving" he was.

S. continued in therapy but also continued to use marihuana and hashish. (Hashish is merely another more concentrated source of the active principals contained in marihuana). Toward the end of his therapy, I had decided that so long as he muddled his thinking in this way, there was no use continuing. He, however, suffered a fatal accident (as a result of an error in judgment) before his therapy actually terminated.

As I was becoming familiar with these effects of marihuana on S., I gradually learned to pick up signs when they were more subtle. I came to observe the same changes in others, i.e., that marihuana exacerbated the pathological aspects of their thinking.

These observations were made before controlled studies began to give clues as to the nature of the mental changes taking place which could explain these phenomena. The committee has undoubtedly heard or will hear of the studies by the Hollister[2] group at Stanford on what they call "temporal disintegration" which seem to be changes secondary to the loss of immediate memory and the loss of an accurate time sense. There are also corroborating studies from Utah[3], clinical studies by Kolansky and Moore[4], x-ray studies by Campbell in England[5], and a study on students by Schwarz[6] at the Uni- Judgment, memory and logic are necessary.

As this happens, he depends more and more on pathological patterns of thinking. Ultimately all heavy users (i.e., daily users) develop a paranoid way of thinking.

versity of British Columbia to cite a few of the most relevant studies made on subjects comparable to the ones I'm describing.

Following the above described observations, I saw the same picture more and more frequently. The essence of the pattern is that with small amounts of marihuana (approximately three joints of street grade), memory and time sense are interfered with. With regular usage the active principals cause more and more distorted thinking. The user's field of interest gets narrower and narrower as he focuses his attention on immediate sensation. At the same time his dependence and tolerance is growing. As he uses more of the drug, his ability to think sequentially diminishes. Without his awareness, he becomes less and less adequate in areas where

After I had become aware of the generality of this sequence another reporter from the *Daily Californian* interviewed me to see if my opinions had changed in the interim. In the course of that interview, I realized in a concrete and explicit way that they had. The headline read, "Psychiatrist says pot smokers can't think straight." This time the response of the community and colleagues was not so approving. It is an interesting fact that questioning the claims or marihuana users leads to much more anger, vilification, and character assassination than does the opposite stance.

In subsequent years in Berkeley, both at the clinic and in my private practice, I have observed the long term effects of cannabis. Originally, my observation was that students who had "dropped out" into the "drug scene" and were attempting to return, were finding it difficult if not impossible. A frequent story is that the young person has become aware that the life he's been leading is unsatisfactory and unproductive. He then stops drugs for six months or so and reenters the university. When he returns to school, however, he finds that he can't think clearly and that, in ways he finds difficult to describe, he can't use his mind in the way he did before. Such people also seem to be aware that they've lost their will someplace, that to do something, to do anything, requires a gigantic effort—in short, they have become will-less—what we call anomic. An irony here is that they have now achieved the freedom they sought. They need an external director. They are ripe for a demagogue.

The changes in the capacity to think in some subjects are long lasting if not permanent. One of my original (1967) subjects was a member of the junior faculty. He "dropped out" and used hashish exclusively for 18 months in daily doses. When he realized that it was interfering with his physical coordination he stopped all drugs. Two years subsequent to this he returned to the University. He found that he could not do mathematics at a level which he had found possible before. Three and one-half years later, his conviction was that the change was permanent. My own observations of him and other such gifted people

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[1] M. Friedman and D. H. Powelson, "Drugs on Campus," *The Nation*, January 31, 1966.

[2] Hollister, T. F., *Science*, 2 Apr. 71.

Clark, J., Hughes, R., and Nakashima, E., *Arch. Gen. Psychiat.*, Vol. 23, 1970.

[4] Kolansky, H. and Moore, W. T., *JAMA*, Apr. 19, 1971.

[5] Campbell, H. H. G., Evans, M. Thomson, J. L. G., *et al.*, *Lancet*, 2:1219-1224, 1971.

[6] Schwarz, Conrad J., *Consul Psychiat. Ass. Jour.*, Vol. 14, 1969.

have led me to the same conclusion, i.e., that the damage may be permanent.

My stance toward marihuana has shifted to the extent that I now think it is the most dangerous drug we must contend with for the following reasons:

1. Its early use is beguiling. It gives the illusion of feeling good. The user is not aware of the beginning loss of mental functioning. I have never seen an exception to the observation that marihuana impairs the user's ability to judge the loss of his own mental functioning.

2. After one to three years of continuous use the ability to think has become so impaired that pathological forms of thinking begin to take over the entire thought processes.

3. Chronic heavy use leads to paranoid thinking.

4. Chronic heavy use leads to deterioration in body and mental functioning which is difficult and perhaps impossible to reverse.

5. For reasons which I can't elucidate here, its use leads to a delusional system of thinking which has inherent in it the strong need to seduce and proselytize others. I have rarely seen a regular marihuana user who wasn't actively "pushing."

As these people move into government, the professions, and the media, it is not surprising that they continue as "pushers," thus continuously adding to the confusion that this committee is committed to ameliorate.

Mr. GURNEY. Mr. President, I also ask unanimous consent to print in the RECORD a number of editorials that have resulted from our hearings; an article that appeared in U.S. News & World Report; a column by syndicated Columnist John Chamberlain; and a major article which appeared in the Washington Post. Although this last article did not mention our hearings, the author systematically interviewd many of the scientists who testified before the subcommittee, and there is no doubt that the inspiration for the article was provided by our hearings.

There being no objection, the material was ordered to be printed in the RECORD as follows:

SO, YOU THINK POT IS HARMLESS

(By John Chamberlain)

John Stacks, the news editor of Time's Washington Bureau and the co-ordinator of its Watergate coverage, remarks, in an article in the Overseas Press Club of America's "Dateline 1974," that "the success of the Watergate investigators in ferreting out hard facts from reluctant sources was a tonic to Washington journalism."

What Stacks says is true about one type of Washington journalism, the "get the guy" type. I applaud "getting the guy" if he is really a crook or a liar, but when the press corps of a great capital is encouraged to think of journalism primarily as an adventure in the cultivation of stool pigeons it is not a tonic generally. The trouble with Washington journalism at the moment is that whole areas of government activity get very little coverage. All the hounds are on one scent.

Information that might have a great effect on a nation's life is left to smoulder. For example, how many stories have you seen devoted to the remarkable marijuana investigation conducted by the US Senate Subcommittee on Internal Security?

The glib cliche about marijuana, endorsed, by the way, by some conservatives as well as by the liberals, is that marijuana, or pot, when smoked in moderation, is really no worse than a few glasses of beer. This view has been periodically challenged, mainly in Europe, but there has been little published on the subject that has had a cumulative impact.

The Senate Subcommittee on Internal Security, the Eastland Committee, has really dug into the question of marijuana toxicity, rolling up a vast body of testimony that should be the subject of debate on campuses from Berkeley, Calif., to Cambridge, Mass. Since I am not a doctor, and my paraphrases of medical testimony might not be trusted by the marijuana cultists, let me quote a few authorities directly.

Item, from a statement by Drs. Harold Kolansky and William T. Moore on the results of a clinical study: "In the last nine years we have seen hundreds of patients who have suffered psychiatric and neurological symptoms . . . and have described the findings in almost 60 of these patients. . . . Many of those we examined . . . appeared older than their chronological age. . . . The incapability of completing thoughts during verbal communication that resulted in confused responses seemed to imply some form of organicity either of an acute biochemical nature . . . or, one might hypothesize, structural encephalopathy." (I looked up "encephalopathy" in the dictionary: It means sickness or derangement of the brain.)

Item, from Dr. W. D. Paton, professor of pharmacology at Oxford: "Administration of cannabis during the vulnerable period of pregnancy has been found to cause fetal death and fetal abnormality in three species of animals. The deformity includes lack of limbs (reduction-deformity) . . . a very important question is whether cannabis directly affects the genetic material, i.e., nucleic acid . . . Dr. Nahas' report here has clinched the issue . . . lung damage, in the form of emphysema, is being repeatedly recorded. Emphysema is normally a disease of later life; but now the quite unexpected (to me, at least) prospect of a new crop of respiratory cripples early in life is opening up . . ."

(So you can give birth to congenital cripples and die in your 40s or 50s of wrecked lungs. Go right ahead.)

Item, from Dr. Robert G. Heath's description of his studies of the effect of cannabis on rhesus monkeys: When the monkeys were regularly exposed to these drugs . . . persistent — perhaps irreversible — alterations developed in brain function at specific deep sites where recording activity has been correlated with emotional responsivity, alerting and sensory perception.

(Warning: you may be more like a rhesus monkey than you think.)

Item, from Dr. Robert C. Kolodny, endocrine research director, Reproductive Biology Research Foundation, St. Louis, Missouri: "Cannabis resin . . . injected into pregnant rats . . . had a variety of effects. These effects included syndactyly (webbing between the digits) . . . encephalocele (hernia of the brain). . . . Phycomelia (abnormal development of the limbs, with the 'seal-flipper' appearance also encountered with thalidomide . . . complete absence of limbs . . .").

(Well, they're only rats. The trouble is that rats react to drugs in a very human way.)

I could go on quoting from other medicos. If you want more evidence, write to the Eastland subcommittee, care of the U.S. Senate.

RESEARCH REPORT—THE PERILS OF "POT" START SHOWING UP

At a time when demands are growing for reduced penalties on use of marijuana and hashish, new evidence is coming out linking the drugs to both mental and physical disorders.

As described in official testimony, research by U.S. and foreign experts indicates that marijuana and hashish may cause birth defects, psychological addiction, and sexual and other troubles.

The experts presented their findings before the Senate Internal Security Subcommittee investigating what it terms a "cannabis epidemic" in the U.S.

Cannabis is the dried parts of the hemp plant from which marijuana—called "pot"—and hashish—or "hash"—are derived. Hashish is more potent than marijuana, but is used less.

THE RISK FACTOR

The researchers emphasized that much more work is needed to substantiate their findings, but they agreed that the claim that cannabis is an innocuous drug is ill-founded.

Over and over in the testimony, the scientists made clear their studies suggest that marijuana and hashish users run considerable risks. For example:

Marijuana and hashish use among children may result in a generation of young "old people," according to Prof. W. D. M. Paton, professor of pharmacology at Oxford. He said cannabis interferes with cell division and cell metabolism and may affect adolescent development.

Professor Paton reported that studies done in England found a shrinkage, due to reduced cell production, of the brains of cannabis users. This shrinkage, he said, is comparable to that found in people late in life.

HARDER TO GET "HIGH"

Regular users of cannabis develop a tolerance for the drug, thus requiring greater levels of its use to get a "high," Professor Paton said. "This increased intake may be a serious factor," he added, since preliminary tests on animals indicate that as the drug is used regularly, less of it is needed to produce a dangerous toxic effect.

Dr. Gabriel Nahas, physiologist and pharmacologist at Columbia University, said his

body's immunity system.

Results showed that marijuana smokers had a 40 per cent lower production of white blood cells than nonsmokers of marijuana. He said he suspects that this lowered response lessens the body's ability to combat disease.

Findings by another researcher raise suspicions that cancer, genetic mutation and birth defects may result.

According to Dr. Akira Morishima, of the department of pediatrics, Columbia University, such problems may occur in marijuana smokers because of a substantial decrease in the number of chromosomes—specks of matter that carry hereditary characteristics—in each cell. This shortage often leaves the "pot" smoker with less than the normal complement of 46 chromosomes.

STERILITY PERIL

The potential danger of sterility in men was also raised.

Testosterone, the principal male sex hormone, has been found to be at a significantly lower level of production in marijuana smokers than in those who do not use marijuana, Dr. Robert C. Kolodny, research director at the Reproductive Biology Research Foundation in St. Louis, testified further: "It is apparent that there is a potential risk in cannabis use during pregnancy."

Dr. Kolodny indicated that birth defects and miscarriages were possible side effects of usage.

Despite what many believe, long-time users of the drugs can get "hooked" by developing "psychic dependence" on them, one authority testified.

Dr. M. I. Soueif, of the department of psychology at Cairo University in Egypt, said withdrawal after long-term use results in the individual's becoming "quarrelsome, anxious, impulsive, easily upset and difficult to please."

Although the findings unveiled in the hearings are relatively new, they are already being reviewed by drug-study organizations. E. M. Steindler, secretary of the Committee on Drug Abuse of the American Medical Association, told "U.S. News & World Report":

"It [cannabis] is definitely not an innocuous drug. We have looked at those reports on marijuana and hashish. . . . These are interesting studies, and we feel that more needs to be done along those lines."

Dr. Robert L. DuPont, director of the National Institute on Drug Abuse, takes an even stronger position on the findings.

"These are valid concerns, and all of these problems are being investigated further," he said. "I have no doubt that we will find problems with the use of marijuana and hashish.

"Some of the pressing concerns that I have with cannabis usage have to do with possible chromosome breakage, respiratory-system damage, reduction of testosterone levels and the hampering of the body's immunity system. . . . It's going to take some time to confirm these things and to build a firm base around these findings."

A SENSE OF URGENCY

Exactly what to do about the medical problems remains a matter of debate. Subcommittee officials contend that increased

use of "pot" and "hash," as indicated in the chart at left, adds urgency to this issue.

One thing that seems certain: How to handle this increased usage in the light of recent medical findings is going to present the nation with big problems for years to come.

All told: An estimated 835,366 pounds of marijuana and hashish—a more potent form of marijuana—were seized last year.

Officials say that roughly 8 pounds of drugs reach users for every 1 pound seized. Thus, close to 7 million pounds of marijuana and hashish were consumed in the U.S. last year—enough "pot" and "hash" to make more than 2 billion cigarettes.

Source: Senate Internal Security Subcommittee; U.S. Drug Enforcement Administration.

[From the Indianapolis (Ind.) News, June 10, 1974]

Pot Perils

Advocates of legalizing marijuana have long contended that it's non-addictive and no more harmful to one's health than cigarettes or liquor.

They've got away with this because, until quite recently, no one had done any research on how marijuana affects the body and the mind.

The spreading use of marijuana has caused scientists to look into the question, and the results are now coming in.

Dr. David H. Powelson, former director of the student health services psychiatry department at the University of California at Berkeley, who once called marijuana harmless and urged its legalization, recently told a Senate Internal Security subcommittee that seven years of research have convinced him that he was completely wrong.

He has found evidence, he said, that chronic use of marijuana permanently impairs the ability to "think clearly."

Appearing before the same Senate subcommittee, Dr. Nils Bejerot, acting professor in social medicine at the Karolinska Institute in Stockholm, reported on the work of a team of German scientists.

"A serious complication of cannabis (marijuana) abuse is chronic psychosis," he said. He added that acute marijuana intoxication can cause an altered sense of reality and "a tendency to magical thinking."

At the same time, Dr. William T. Moore declared that he and a colleague, Dr. Harold Kolansky, had conducted studies which showed that "marijuana smoking carries enormous risks of physical and mental damage."

In the current New England Journal of Medicine, a group of researchers at the Reproductive Biology Research Foundation in St. Louis tell of a study they made on the relation between marijuana and sexuality.

Pot, they found, may cause temporary sterility—possibly even impotence—in males. In a prepubescent boy, it may severely disturb the normal course of puberty.

A pregnant woman carrying a male fetus might seriously inhibit his sexual development by smoking grass.

... recent survey by the Phoenix Newspapers, Inc., showed that 57 per cent of students in one Phoenix high school believe that marijuana usage by teen agers is increasing.

If the students are right—and they should know—it's about time the schools told them of these recent findings.

[From the Memphis (Tenn.) Commercial Appeal, May 10, 1974]

The Most Dangerous Drug

For several years, a movement to legalize marijuana has been gaining ground in the United States. Both the Consumers Union and the National Commission on Marijuana and Drug Abuse have urged softer laws. But Congress has reacted cautiously—and with good reason. Research reports on the long-term effects of marijuana use have not been conclusive. The possibility of the drug's becoming a more dangerous and pervasive problem than alcohol has been a strong barrier to its legal acceptance.

Now a new and most persuasive opponent has come forth. In 1965, Dr. David H. Powelson, a California psychiatrist, publicly endorsed the open sale of marijuana. He has changed his mind, he told the Senate Internal Security subcommittee recently. After seven years of research with students at University of California at Berkeley, where he was director of the student health service psychiatry department, Powelson said he is convinced marijuana is "the most dangerous drug" sold illegally in this country.

His studies indicate that chronic use for from one to three years permanently impairs the ability to think clearly. He described this pattern of deterioration: Loss of ability to think sequentially, partial loss of memory, inability to reason and, finally, a paranoid mental state in which the user thinks he's being persecuted.

Marijuana supporters, of course, will cite other studies that don't reach the same conclusion. Authorities can be quoted that pot smoking is relatively harmless fun. People who like marijuana, it is often argued, should have as much right to indulge their habit as those who like alcohol.

But what is "harmless" about the cases like Powelson documents. They exist. Even if some people are more severely affected than others, there is apparently no way to determine who is likely to be mentally and physically impaired and who isn't. Why should the government, through legalization, encourage anyone to take such a chance? And just because alcohol [illegible] doesn't mean that society should approve the abuse of another drug. To the contrary, the alcohol problem should make society determined that additional abuses must be prevented as much as possible. Making marijuana easier to get and smoke would be a major cop-out.

Powelson's change of heart and mind underlines the danger.

[From the Boston Evening Globe, May 16, 1974]

Press, TV Accused of Pro-Pot Bias

Washington.—The United States is in the midst of a marijuana and hashish epidemic, but the media have reacted by blacking out news of evidence that might be adverse to legalizing the drugs, Sen. Edward J. Gurney said today.

In a statement prepared for delivery to a Senate Panel's headings on the dangers of marijuana, the Florida Republican said that based in the amount of seizures, it is estimated that Americans consumed 7.82 million pounds of marijuane and 265,000 pounds of hashish last year.

"These are truly staggering figures—figures which suggest that the United States may today be caught up in the worst cannabis epidemic in history," Gurney said.

Gurney said he is convinced from evidence he has seen that "our media have observed a near total blackout on news or scientific evidence that might be considered inimical to the cause of legalizing marijuana."

In testimony last Thursday before the Senate internal security subcommittee Dr. Henry Brill, one of the senior psychiatric members of the President's Commission on Marijuana and Drug Abuse, said the media seized on passages in the report which suggested a tolerant attitude—"and ignored a number of strongly worded passages warning against the dangers of marijuana," Gurney said.

He added that many television talk programs and news panel shows "have run literally scores of discussions on marijuana, featuring pro-marijuana authors . . ." But he said letters which accompanied a book critical of marijuana and written by "a highly distinguished scientist" were not acknowledged by the television stations.

The senator added that "The New York Times book review section had favorably reviewed some half-dozen books on marijuana . . . the same book was ignored. When six or seven Columbia University scientists who thought the book had merit wrote individually to The New York Times urging that the book be reviewed; their letters were not accorded the courtesy of a routine acknowledgement."

[From the St. Paul (Minn.) Pioneer Press, May 21, 1974]

Result of Smoking Grass Compared to Radiation

Washington.—Marijuana smoking can have the same result as radiation poisoning and some of the blame for leading people to think it's harmless lies with the federal government, a Senate panel was told Monday.

Appearing before the Senate Internal Security subcommittee, Dr. Hardin Jones, a professor of medical physics and physiology at the University of California, said the United States is in a marijuana epidemic caused by a propaganda campaign "involving a small but influential number of academic propagandists, the media, the entertainment industry and the new left."

Jones said efforts to use marijuana at a moderate level or to legalize it "have prevented sensible acts to reduce use of this drug . . . we find no 'safe' level of the use of cannabis."

Smoking marijuana affects the body the same way radiation does, Jones said.

"As an expert in human radiation effect . . . chromosome damage . . . even in thos who use cannabis 'moderately,' is roughl the same type and degree of damage as i persons surviving atom bombing with a heavy level of radiation exposure (approxi mately 150 roentgens). The implications ar the same," he said.

As for misformation about marijuana Jones said the federal government, throug its agencies, "has been one of the worst offenders in spreading the impression that cannabis is a harmless drug.

"Reports of the Department of Health, Education and Welfare are inadequate scientifically, do not touch accurately on the principal matters needing clarification and, in many instances, are likely to lead the public to believe that science has proven marijuana harmless," Jones said.

Jones also said the networks have given so much time to people like LSD advocate Timothy Leary that if the equal time principle were invoked, "some hundreds of hours, at least, to scientists" who have found marijuana harmful would be required for broadcast.

"In placing their facilities at the disposal of this one-sided propaganda campaign, they may have succeeded in brainwashing themselves, in addition to the brainwashing of a substantial portion of the American public.

"At least one cannot escape the impression that many people in the media now seem to have convinced themselves that marijuana is perfectly safe and that the public interest demands its legalization," Jones told the panel.

[From the Jacksonville (Fla.) Times-Union, May 23, 1974]

Marijuana and the Atom Bomb

The horrors of possible genetic mutations resulting from atomic fallout have been widely accepted and rightly so.

At the same time, marijuana has been pushed in many quarters as a pleasant relaxant that should be legalized.

What do the two things have in common?

Plenty, if the testimony of Dr. Hardin B. Jones, a professor of medical physics and physiology at the University of California, is to be believed.

Dr. Jones told the Internal Security subcommittee of the United States Senate:

"As an expert in human radiation effects . . . chromosome damage . . . even in those who use cannabis (marijuana) 'moderately,' is roughly the same type and degree of damage as in persons surviving atom bombing with a heavy level of radiation exposure—approximately 150 roentgens. The implications are the same."

We don't know whether Dr. Jones is a conservative or a liberal in his political views and it should not matter. Scientific research, not ideologies, should be the determinant as to whether marijuana is harmless or dangerous.

Unfortunately, much of the debate so far has been ideological rather than scientific.

That is a ridiculous situation but ridiculous situations are commonplace these days.

The push to make marijuana socially and legally acceptable has come from some very high places and some of these voices have told many people, mostly young people, exactly what they want to hear.

This is true to the extent that evidence indicates that enough marijuana or hashish for five billion "joints" entered the United States last year.

What kind of responsibility do the marijuana "pushers"—both those who sell and those who advocate its use—bear if Dr. Jones or Dr. Olav Braenden, director of the United Nations Narcotic Laboratory in Geneva, Switzerland, are right?

Dr. Braenden's report indicates from research that "cannabis accumulates in the brains and gonads in the manner of DDT, that it produces fetal deformities in animals, in addition to abortions and stillbirths in a manner that resembles the damage done by thalidomide. . . .

"That it results in breakage and serious damage to human chromosomes, and that it seriously reduces the body's ability to produce DNA, a critical component of all cells, including reproductive cells. . . ."

If this is true, what will be the effect of marijuana on a generation yet unborn? How can it be justified on any moral, social or ethical basis?

Public outcry, based on much thinner evidence than is piling up against marijuana has relegated several substances or products into a virtual leper colony status.

Unless the scientific testimony can be refuted by believable scientific research, the case against marijuana calls for a verdict of guilty and a change in the climate of thought that regards it as merely a pleasant relaxant.

Such a change in attitude is needed to counter what Dr. Jones describes as efforts to use marijuana at a moderate level or legalize it. These efforts, he says, "have prevented sensible acts to reduce use of this drug . . . we find no 'safe' level use of cannabis."

His testimony won't make a popular man on campus and it is more believable for this reason. He is risking the treatment accorded others who have debunked some of the modern myths that have become dogma in some academic circles.

What a frightening prospect to have all the radiation monitoring equipment and worldwide efforts to curb atomic fallout only to have the same effects from the already epidemic use of marijuana.

[From the Florida Times-Union, Jan. 9, 1974]

"Pot" Accumulates—Like DDT

A striking reminder that the public fight against drug abuse is a continuous battle comes in a report recently released by the U.S. Senate Internal Security subcommittee.

In the words of Chairman James Eastland, D-Miss., "We have been concentrating on the heroin epidemic for the past two years, and there seems to be some solid evidence of progress. . . .

"But it is impossible to escape the conclusion that, while our attention was focused on heroin, there has been a runaway escalation of the use of other drugs, primarily marijuana and hashish (milder and stronger forms, respectively, of cannabis). . . ."

For perspective, it should first be recognized that throwing the nation's major attention against heroin, instead of milder drugs, was no oversight, but a soundly reasoned decision. Heroin kills; heroin destroys lives; the need of heroin addicts to support a $150 or so a day "habit" has driven many—daily—into the streets to steal and rob and kill.

It would, indeed, have been a distorted sense of priorities which did not attack the greatest evil first.

And there is evidence that the massive effort is paying off: as early as a year ago Dr. Robert Dupont, chief of the Washington Narcotics Treatment Administration, termed heroin addiction "more than cut in half" in the nation's capital; Dr. Jerome Jaffe, head of the Federal Special Action Office for Drug Abuse Prevention, told a congressional subcommittee that heroin addiction was "leveling off;" and John Ingersoll, director of the U.S. Bureau of Narcotics and Dangerous Drugs stated that a "turning point" seemed to have been reached in the battle against "H."

But, without any thought to diminishing the efforts which have curtailed the greater drug abuse, there indeed seems urgency to turn to the lesser, though still pronounced, evil.

Evidence indicates that more than five billion marijuana and hashish "joints" (or 20 for every man, woman and child in the country) entered the U.S. last year.

"The pandemic use of marijuana and hashish has been brought about, in part," Eastland said, "by a militant pro-marijuana propaganda campaign conducted by many New Left organizations and by the entire underground press . . .

"And it has been stimulated perhaps in major degree, by a number of highly publicized reports, written by persons (many entirely well meaning) who did not have available to them, at the time, most of the highly significant scientific research conducted over the past few years that puts a danger sign on cannabis use. . . ."

Among the most recent reports cited by Sen. Eastland was one by Dr. Olav Braenden, director of the United Nations Narcotics Laboratory in Geneva, which "points strongly to the conclusion that marijuana may be even more dangerous than had previously been believed. . . .

"(Researchers have found that) cannabis accumulates in the brains and gonads in the manner of DDT, that it produces fetal deformities in animals, in addition to abortions and stillbirths, in a manner that resembles the damage done by thalidomide . . .

"That it results in breakage and serious damage to human chromosomes, and that it seriously reduces the body's ability to produce DNA, a critical component of all cells including the reproductive cells. . . ."

The subcommittee's report should receive priority attention from the full Congress, and, even more important, from the public, when the new session begins Jan. 21.

The prevalent impression that "pot" is harmless—"people smoke it every day and it doesn't bother them"—is increasingly being contradicted by many studies (of which the UN report is only the latest) which show persuasive evidence of serious, long-range effects. It is a matter too important to remain clouded, confused.

[From the Washington Post, June 24, 1974]

New Findings Show Harm—Views on Marijuana Shifting

(By Robert Joffee)

Los Angeles.—Marijuana may turn out to be more harmful than many scientists had previously thought.

Only a year ago most researchers studying the drug thought it probably was relatively harmless—at least when compared with alcohol and other commonly abused drugs.

Since then, however, new findings have raised the possibility that long-term use of "grass" might be linked to damaged chromosomes, lower production of sex hormones, and greater vulnerability to diseases.

The new findings are preliminary and as yet unsubstantiated, but they have appeared in prestigious scientific and medical journals—publications which previously paid scant attention to the perils of "pot."

The findings are significant politically as well. At a time when respectable voices are calling for laws making personal possession and use of the drug a misdemeanor or no crime at all instead of a felony, the findings already have provided ammunition for those who oppose such moves.

Last week the Illinois Bar Association passed a resolution urging repeal of all laws banning personal possession and use. IBA President William P. Sutter explained, "We aren't endorsing its use; we are recognizing that the majority of medical opinion is that casual use is not harmful . . ." Critics can now argue that medical opinion may be changing, though many researchers still favor removal of criminal penalties for marijuana use despite the new findings.

About $4 million in federal grants and contracts insure that the research will continue during the coming fiscal year.

"I couldn't give a hoot about social policy," says Dr. Morton A. Stenchever, an obstetrician at the University of Utah Medical Center in Salt Lake City, "but I'll have to say there are quite a few problems with marijuana."

He compared chromosome damage in a group of 49 marijuana users to that in a control group of nonusers. His findings, published last January in the Journal of Obstetrics and Gynecology, were that users averaged 3.4 chromosome breaks per 100 white blood cells while non-users averaged only 1.2 breaks.

Dr. Stenchever explained that increased chromosome breaks might raise the likelihood of eventually getting cancer or becoming the parent of a child with birth defects.

Dr. Akira Morishima of the Department of Pediatrics, Columbia University, N.Y., has reported findings similar to Stenchever's.

The Stenchever and Morishima findings led the National Institute on Drug Abuse (NIDA)—the federal agency which bankrolls much of the nation's marijuana research—to fund several projects in which other researchers will attempt to reproduce the Stenchever and Morishima research processes to determine whether similar findings can be obtained.

Controversy over the findings persists. "Genetic damage is an extremely nebulous field," said Dr. Lissy Jarvik, a pediatrician-psychiatrist doing genetic research at the University of California Medical Center in Los Angeles.

"I don't see how Stenchever's work can be replicated," she said. "He's had some 50 students on a number of drugs, and marijuana was simply the only drug they had in common." She contended that Dr. Morishima's work would be easier to recreate.

Dr. Jarvik pointed out that "the body has repair mechanisms. Depending on the type of break, chromosome damage may have no effect. Also, cells in which breaks have occurred may die; and then again, there's no harm."

The danger, she said, is that cells with abnormal chromosomes might multiply and produce identical, also damaged, cells. "Then, in 10 or 15 years, such cells might be responsible for causing cancer."

"Whenever I present data I'm immediately attacked by the other side," Dr. Stenchever retorts. "Maybe she didn't read my article." He insists the increase in breakage alone is enough to cause serious concern, and he notes that half the drug users he studied took no other drugs except alcohol.

The Utah researcher noted that, when it comes to chromosome breaks, other widely used drugs are probably as dangerous as marijuana. "I think the same rate of breakage probably occurred in Valium," he said. Valium, a tranquilizer, is one of the most common prescription drugs in the country.

Few researchers are more cautious about the implications of their findings than Dr. Robert C. Kolodny, director of the infertility program at the Reproductive Biology Research Foundation in St. Louis. He has been checking levels of testosterone, the principal male sex hormone, in marijuana.

Dr. Kolodny, 30, has been working with Dr. William Masters, famed for his pioneer research in human sexual response, and Drs. Robert Kolodner and Gelson Toro.

In a recent article in the New England Journal of Medicine, Dr. Kolodny told how his group compared 20 men who used marijuana four days a week for a minimum of 6 months with 20 men who were non-users; testosterone levels in the users averaged a striking 40 per cent lower than in non-users.

Dr. Kolodny speculated—and he stresses the word "speculate"—that "there may be a decrease in fertility as a result of chronic, intensive marijuana use"; that heavy users may encounter potency problems; that pregnant female users "may disrupt sexual differentiation in male fetuses" during the second, third and fourth month of pregnancy; and that preteenage boys who smoke marijuana "may somehow disrupt completion of puberty," impairing normal sexual development.

He noted that his study has not yet been replicated. "So what you're dealing with is speculation based on preliminary findings."

Other researchers praised Dr. Kolodny's objectivity; and some said they believe his work is more important—and more frightening—than even he thinks it is.

Others noted that the exact function of testosterone is not completely understood, and thus the effect of the shortage is unpredictable.

Dr. Kolodny is beginning to receive testosterone samples from other laboratories throughout the country.

Even fellow researchers who respect his work call Dr. Gabriel Nahas a "crusader" against decriminalization. Others call him "a fanatic." Almost all agree, however, that efforts to duplicate the Columbia University pharmacologist's research should be made as soon as possible.

Dr. Nahas, who announced his findings at a highly publicized press conference two weeks before they appeared in Science magazine last February, studied white blood cell production in 51 marijuana users. All the subjects reported having smoked at least three times a week for four or more years.

He found that cell production in users averaged 40 per cent less than in a control group of nonusers.

Since white blood cell production is considered vital to the body's ability to fight disease, he speculates that marijuana use impairs the immunity system.

The Nahas findings are viewed as significant because they show exactly the same low level of production in white cells taken from users that he found in cells taken from nonusers and subsequently exposed to a marijuana agent in the test tube.

"We'd all be surprised if Nahas' findings are replicated," said UCLA's Dr. Jarvik. "I've spoken with a number of people in immunology and they're all extremely skeptical."

Sources at NIDA, which is funding attempts to replicate the immunity-system research, said two papers prepared for publication this summer confirm the Nahas findings while a third, using different techniques fails to do so.

Drs. Stenchever, Morishima, Kolodny and Nahas all learned about the drug-use background of their test subjects through interviews with them. Critics argue, with some justification, that interview data are not sufficiently reliable.

Ideally, say the critics, a test subject should be confined to"a closely supervised hospital ward where researchers can make certain that he is under the influence only of the drug being tested—and feeling only the effect of a prescribed dose.

Until recently, prescribed doses of marijuana were unavailable—and street doses varied enormously from cigarette to cigarette.

But now, because pharmacologists have isolated tetrahydrocannabinol (THC), the main intoxicating agent in marijuana, researchers can choose from a pot smoker's pipe dream of doses. The government provides low-, medium-, and high-dose cigarettes—and even cigarettes with no dose at all. In addition, researchers can obtain THC pills, so that marijuana can be administered orally.

Long-term controlled-dosage research is expensive, because hospital beds and supervising nurses are expensive. But such research is said to be especially rewarding for detailed study of the psychological aspects of the drug.

A bearded young man named Craig sat smoking a "joint" in a dimly lit room filled with stereophonic rock and roll. A nurse sat beside him to make sure he smoked the whole cigarette.

The smoking room was on the third floor of UCLA's Neuro-Psychiatric Institute (NPI)—and except for occasional supervised excursions to movie theaters and restaurants, Craig had been on that floor for almost 90 days, receiving $25 a day for his work.

That work involves submitting to, and participating in, a daily battery of tests: being wired to brain-wave machines, pressing buttons when images appear on a screen, answering questions in almost incessant interviews, and taking written tests not unlike school admission exams.

Would Craig continue smoking after his release? "Yeah, probably," he said, "but if anyone tries to take my pulse or ask how high I am, I'll kick 'em."

Dr. Sidney Cohen, a psychiatrist, and Phyllis Lessin, an anthropologist, supervise the NPI study.

"We've pretty well disproved the old notion that marijuana produces a 'reverse tolerance,'" Lessin said. Reverse tolerance is a technical term for the old pot smoker's notion that it takes less and less marijuana for an experienced user to get high. Dr. Cohen said NPI researches have found that the drug produces real tolerance, that one becomes inured to the effects of the same dosage if it is received day after day.

Lessin said NPI researchers also had disproved other myths about the drug. "We're learning that in many ways, it's a drug just like other drugs," she said.

Dr. Cohen provided two examples: "A lot of cops believe grass dilates the pupils of the eye; when, in fact, if a suspect's pupils are dilated, it's probably because of anxiety. As for the notion that pot excites sexual desire, well, we found that—like alcohol—it's sexually debilitating."

NPI researchers were not seeking the therapeutic applications for marijuana, Dr. Cohen said, but two therapeutic possibilities were discovered there because specialists from the enormous UCLA medical center next door also ran tests on NPI subjects.

For example, eye specialists discovered that marijuana reduces pressure within the eyeball, and thus might prove to be effective in treating glaucoma—a condition of excess pressure inside the eye which often afflicts older people. "The standard drugs for treating glaucoma don't help some people, but maybe THC will," Dr. Cohen explained.

Lessin said she occasionally goes over to the Jules Stein Eye Institute to help administer tests to middleaged glaucoma victims. "In other words, I have to teach them how to smoke pot," she said.

And while marijuana fails to dilate pupils, it does dilate bronchial tubes. "Asthma victims suffer from constricted bronchials," Dr. Cohen said. "It's possible THC will prove to be a useful supplemental drug for them, too." He said doctors at the medical center already are working to develop an experimental THC aerosol can.

Of course, the problem with THC as a therapeutic drug is its side effect—the high. Dr. Cohen said pharmacologists are hoping to isolate other cannabinoids which are not intoxicating because they may prove to have the same therapeutic effect.

At the Langley-Porter Institute (LPI) in San Francisco, another University of California facility, one strong joint a day is considered an extremely low dose. Test subjects there receive the equivalent of a pack of such cigarettes each day.

"Of course we administer it orally," said Dr. Reese Jones, a psychiatrist who has conducted marijuana research at LPI for more than five years. "Our subjects would be hoarse if they had to take that dose in smoke."

Dr. Jones' subjects—like their counterparts in Los Angeles—are confined to a psychiatric ward where they undergo constant testing. "We've been learning that little doses do one thing and big doses another," Dr. Jones said, stressing that big doses have much stronger physical effects.

"Our subjects are pretty sedated when they first get started on the high dose," he said. "Then, after six or seven days, what looks like a tolerance develops, and they become more alert and active, both psychologically and physically. You could say they return to normal.

"After two or three weeks, we substitute a placebo (a pill with no TCH); and suddenly the subjects become irritable and restless, and have trouble sleeping. They are probably suffering the symptoms of withdrawal from a physical dependence."

At such high doses, not presently available to ordinary users in this country, Dr. Jones is convinced THC closely resembles "sedatives—hypnotic-type drugs like alcohol and phenobarbital."

The "good news," he said, is that test subjects tolerate high doses "extremely well." But the "bad news" is the similarity between THC and "drugs that cause serious problems for some people in our society who use them."

Unless U.S. customs agents can prevent increasing importation of hashish and hashish oil (concentrated marijuana derivatives), Dr. Jones said he fears this country may face an epidemic of heavy-dosage use not unlike that in his laboratory.

About 40 miles south of San Francisco, at the Veterans Administration Research Hospital in Palo Alto, Dr. Leo Hollister, a pharmacologist, began some of the first U.S. government-sponsored marijuana research on human test subjects almost seven years ago.

Today he and psychiatrist Jared Tinklenberg are comparing the effects of single, normal doses of marijuana with similar doses of other drugs.

"The social aspects of this drug have been described ad nauseum," Dr. Hollister remarked. "When it comes to short-term effects, I don't think we've learned anything really significant in the last couple years.

"Now the issue that remains to be settled is how the drug achieves its effects."

The two men observed that marijuana seems to disrupt the transfer of information in the brain from short-term to long-term memory so that information acquired while under its influence is forgotten more easily than if it were acquired sober.

"It's possible that marijuana allows the brain to be flooded with irrelevant information," Dr. Tinkleberg speculates. "The subject then fails to distinguish between important and unimportant facts.

"Now we're trying to see if marijuana shares this quality with alcohol."

Feb.6,1984

Editor
Ketchikan Daily News
501 Dock Street
Ketchikan, Alaska 99901

Dear Sir,

It was with great interest and agreement that I read the editorial from the Anchorage Times printed in your Feb.3rd edition entitled "An embarrasment". His conclusion bears repeating: "Elimination of hallucinatory drugs in the world is a commendable goal for mankind. Americans everywhere, including Alaska, can be proud of the role of their government in that effort. The revelation that this state is undermining the program is shameful and should shock its people."

It is Alaska's liberal marijuana laws that are responsible for his editorial and I couldn't agree more. Having grown up on the East Coast in an affluent community in New Jersey I had lots going for me materially. My experience with drug abuse started with occasional sips of someone's drink or sneaking a beer out of our fridge to drink in the woods behind our house. This started at about age 10 but by age 12 it wasn't occasional anymore and I found that I liked the feeling alcohol induced better than anything else.

My abuse of alcohol brought me into conflict with my family and the law. I spent 5 years, from 13 to 18 years of age, on probation and my junior and senior year of high school spending an hour per week at a court appointed psychiatrist's office. After graduation I was drafted into the Army the same year, and in 1966 that meant going to Viet Nam. My problem with alcohol was so bad by that time that I never even completed basic training and 11 months after my induction I was back on the streets with an Undesirable Discharge and a criminal record as an adult.

1968 was the year I remember for my introduction to drugs. When I returned home, the whole atmosphere of partying had shifted from alcohol to marijuana, hash, LSD, various other prescription medicines for ups or downs, and in a few cases herion. I tried most of these and marijuana became a regular part of my life at that time. I am fully aware of the effect that drugs had on my life and also of that these were all considered illegal there and then. There is no way that anyone can say that marijuana should be thought of as being in the same category as alcohol.

In the early seventies marijuana research was in its infancy and testing was limited to low-grade pot under short-term exposure. Many of my friends served in Viet Nam and quite a few came back with drug habits which led them to self-destructive experiments in their search for greater highs. Today there are strains of marijuana that contain more than 10 times the stupifying agent delta-9-THC than that used in those first tests. If that is what the kids today are starting with it's sure to be that much more damaging for those who fall victim to dependence on it. Just because there are some who seem to be able to handle occasional "recreational" use, don't kid yourself about the fact that there are inescapable physical and psychological effects.

Research has shown marijuana to be a complex substance with definite harmful effects, especially for adolescents. It's time that the people and their representatives take a close look at the facts and then get in step with the rest of the world.

Sincerely Yours,

Bob Konet

Bob Konet, P.O. Box 1021, Ward Cove, Alaska 99928

KETCHIKAN DAILY NEWS FEB 1, 1984 KETCHIKAN ALASKA 99901

From Other Editors

An embarrassment

The effect of Alaska's liberal marijuana laws is reverberating outside the state's borders and, indeed, around the world, according to a U.S. State Department specialist in international narcotics traffic.

During a visit here, the assistant secretary of state said the permissive attitude in Alaska is impeding federal programs in foreign countries. Other nations ask whether the United States seeks to protect its own growers from foreign competition.

It is understandable that American diplomats squirm when it is asked. Perhaps Alaskans should squirm, too.

Nine years ago, marijuana made headlines in Alaska. A group of young, liberal legislators in 1975 pushed through a bill to decriminalize marijuana because, they said, it reflected the times, it was the "thing to do." The only controls left were civil penalties that had the force of a feather in a windstorm.

The Supreme Court went even further when it ruled that possession of marijuana in a person's home for personal use was legal.

The court said, "The state cannot impose its own notions of morality, propriety or fashion on individuals when the public has no legitimate interest in the affairs of those individuals."

We said then—and we haven't changed our mind—that the state does, indeed, have an interest in what goes on in the privacy of a home, such as child abuse and health standards and anything else that has an effect upon society at large.

Last week's visitor said the Alaska tolerance of marijunana is undermining worldwide efforts to stop illicit drug production in other countries. The Alaska law allows an individual to raise up to four ounces for personal use. The U.S. is trying to convince growers in other nations to spray their fields with chemicals to kill the plant.

Elimination of hallucinatory drugs in the world is a commendable goal for mankind. Americans everywhere, including Alaska, can be proud of the role of their government in that effort.

The revelation that this state is undermining the program is shameful and should shock its people.

—Anchorage Times

FISCAL NOTE

Revision Date: April 19, 1984

REQUEST
Bill/Resolution No.: HB 698
Title: "An Act relating to marijuana..."
Sponsor: House Judiciary
Requestor:
Date of Request:

FISCAL DETAIL
Agency Affected: Department of Law
Program Category Affected: Administration of Justice
BRU, Program or Subprogram(s) Affected: Prosecution

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 84	FY 85	FY 86	FY 87	FY 88	FY 89
OPERATING						
100 PERSONAL SERVICES		142.9	151.5	160.6	170.2	180.4
200 TRAVEL		6.5	6.9	7.3	7.7	8.2
300 CONTRACTUAL		61.5	63.8	41.2	43.7	46.3
400 SUPPLIES		17.4	12.1	12.8	13.6	14.4
500 EQUIPMENT		7.5				
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS						
800 MISCELLANEOUS						
TOTAL OPERATING		235.8	234.3	221.9	235.2	249.3
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND		235.8	234.3	221.9	235.2	249.3
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS:

FULL-TIME		1	1	1	1	1
PART-TIME		4	4	4	4	4
TEMPORARY						

SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:



ANALYSIS: Attach a separate page for analysis

Prepared By: Richard I. Pegues/Director — Phone: 465-3672
Division: Administrative Services — Date: 4/19/84

Approved by Commissioner: Richard L. Pegues for Norman C. Gorsuch — Date: 4/19/84
Agency: Department of Law

Distribution (by Agency preparing fiscal note):
- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)

12/1/83

Fiscal Note
Analysis
HB 698

April 19, 1984

HB 698 is a blanket provision which would make possession or use of less than one-half pound of marijuana by anyone a class B misdemeanor. Some of the conduct which this bill would cover (such as use or display of any amount in a public place, possession of any amount while operating a motor vehicle, or possession of more than four ounces of marijuana anywhere) is a class B misdemeanor under existing law. See AS 11.71.060. Some of the conduct which this bill would make a crime (such as delivery of less than one-half ounce or possession of less than one ounce in public) is classified under current law as a "violation", punishable by a fine. See AS 11.71.070. The penalties under current law for other conduct such as delivery of one-half ounce or more, delivery to a minor, or possession of any amount on school grounds would not be altered. Penalties under existing law for these offenses range from A misdemeanor to B felony level. See AS 11.71.030, .040, and .050.

The passage of HB 698 would have fiscal impact on the Department of Law in three general areas: (1) the cost of defending the new law against constitutional challenge; (2) the cost of processing the resulting additional criminal cases; and (3) the cost of educating the public about the new law. These three areas are discussed separately below.

1. Defending the New Law

In 1975 the Alaska Supreme Court in the case of Ravin v. State, 537 P.2d 497 (Alaska 1975), ruled that under Art. I, Sec. 22 of the Alaska Constitution the state could not prohibit possession of marijuana by adults in their own homes for personal use. The court held that the state had not demonstrated the existence of a legitimate state interest which was strong enough to justify the regulation of this conduct.

Since passage of HB 698 would make it a crime for an adult to possess any amount of marijuana anywhere, including in his or her own home, the constitutionality of the new law is certain to be challenged. An appellate court will have to decide whether the state has proved that there is a "compelling state interest" in the prohibition of the use of marijuana which is sufficient to outweigh an individual's right to privacy under the state constitution. It is extremely important, therefore, that the legislature's consideration of this bill include extensive public hearings, debate on the social policy merits of the proposal, and the collection of the results of the most recent scientific, medical, and pharmacological studies regarding the physical, emotional, and social effects of marijuana usage.

In addition to the necessary legislative hearings, evidentiary hearings at the trial court level can be expected when a challenge to the new law is filed. Challenges to the new law will most likely arise in the context of a defendant's pretrial motion to dismiss a criminal prosecution. When responding to such a defense motion, the prosecutor would, in essence, have to convince a court to reverse the ruling in the Ravin case. In order to demonstrate that the result in Ravin is no longer correct, the prosecutor would have to present convincing, scientifically accurate, evidence that the effects of marijuana usage are so injurious to a person's mental and physical health as to justify the legislative decision to totally prohibit use of marijuana by anyone at any time (as opposed to use by minors or use by a person who is operating a motor vehicle--both of which are already prohibited under current law).

The presentation of this convincing evidence will require the prosecution to present expert testimony from authorities who have conducted recent research in this area. Out-of-state witnesses in medical and scientific fields charge a fee for their services. These fees will vary from individual to indivudal, but are expected to average at least $100 per hour. This would include services for consultation, witness preparation and actual testimony. Costs will be incurred for expert witness

transportation, food and lodging, and other incidental expenses. Additionally, there will be some costs for preparation of exhibits and written reports. To the extent possible, the Department of Law would attempt to present written testimony in situations where it is not feasible to fly a person to Alaska to testify in person. We estimate that a minimum of six expert witnesses will be required to attempt to successfully defend the new law at the trial court level.

Hearings at the trial court level can reasonably be expected to take several days. A substantial commitment of attorney time will be required for scientific and legal research in preparation for the hearings, actual court time, legal briefing, and the preparation of proposed findings of fact. Since prosecutions under the new law will occur statewide, defense challenges may be raised at the same time in different parts of the state. The extensive hearings described above may have to be held in more than one judicial district in the state.

Regardless of which side prevails at the trial court level, the lower court ruling would almost certainly be followed by an appeal. At a minimum, such an appeal (or appeals) would required additional legal research, a thorough review of the record, the drafting of briefs, and oral argument before the

appellate court. Although these appeals would present an increased workload for the criminal division attorneys assigned to appellate work, no additional funding is requested for this aspect of HB 698's fiscal impact.

2. New Criminal Cases

Although some of the conduct included within the scope of HB 698 is already against the law, much behavior which is now classified as a "violation" or which is not now an offense of any sort will become a misdemeanor crime. It is difficult to accurately predict in advance the impact which the passage of HB 698 will have on the criminal justice system.

Some law enforcement officers who work primarily in the drug enforcement area believe that the new law could potentially result in "thousands" of new misdemeanor cases a year. They believe that the bill would cause an increased enforcement effort both in the areas not now covered by existing law and against persons who commit minor offenses which are already against the law. A great number of the new cases would arise from situations where law enforcement officers now commonly discover small amounts of marijuana (as when an officer responds to a domestic disturbance call and sees some marijuana plants in a person's

home, or when a person is arrested for a minor offense and a routine search for weapons reveals some marijuana cigarettes in the person's pocket, for example). Incidents of this sort occur frequently now, but do not generally result in any criminal prosecution for the marijuana possession. Many of these cases are likely to be referred for criminal prosecution if HB 698 becomes law.

Prosecutors generally predict a lesser number of new potential criminal cases under HB 698 than do police. Once the public becomes aware of the new law, people are likely to be more careful about not allowing marijuana or smoking paraphernalia to be exposed in plain view in their homes, for example. Judging from the number of minor marijuana offenses prosecuted prior to the Ravin decision in 1975 prosecutors expect a "few hundred" new criminal cases a year.

Cases which are accepted for prosecution will require attorney time both at trial and in preparation for trial (i.e., preparation of search warrants, response to defense motions, evaluation of results of laboratory analysis, pretrial witness preparation, etc.). To handle screening of the expected case referrals, and to prosecute the additional cases, the criminal division will require the addition of at least one Attorney III

position. It is anticipated that this additional position will be used to add one half-time attorney in both the Anchorage and Fairbanks District Attorney's offices.

It is anticipated that a large percentage (perhaps 50-75%) of the defendants in the new cases will be first time offenders who will be eligible for pretrial diversion. Given the light sentences which these persons are likely to receive if convicted, pretrial diversion (including required community work service) appears to be a well justified use of criminal justice system resources. Even if a case is diverted however, attorney time is required to screen the case and make the diversion arrangements. New pretrial diversion personnel will be needed to supervise the new cases. Existing pretrial diversion offices are now working at full capacity. The addition of hundreds of new cases to an already full caseload will require, at a minimum, the addition of two new full-time positions. This fiscal note therefore includes funding for a paralegal II position for the Anchorage office. (This person would also be responsible for new cases in Palmer.) Funding of one additional community counselor is also required. This position will be divided into two half-time positions, one assigned to the Northern region (Fairbanks), and one in the Southeast region.

3. Public Education

In order to inform the public of the changes in the law, the Departmen. of Law will develop and disseminate public notices explaining the new law. These notices will include newspaper ads and brochures, and will be modeled upon the public education not.ces which were distributed statewide in connection with the new drug law in 1982 and the new DWI and drinking age laws in 1983. Based upon experience with these earlier notices, approximately $15,000 will be needed to cover the costs of writing, layout, typesetting, publication, and distribution.

In addition to the costs explained above, it is anticipated that the passage of this bill will result in increased costs to other components of the criminal justice system, including law enforcement, the courts, the public defender agency, and corrections.

4/19/84

Fiscal Analysis
HB 698

1. Defending the New Law

Admin. & Support Component/Prosc. - BRU

Object	Total
Contractual Services - Professional fees scientific experts 120 hrs. X $100 = $12,000	$12,000
Experts' staff support, preparation of exhibits, written testimony 50 hrs. X $40 = $2,000	2,000
Experts' travel to attend hearings and offer testimony 6 trips X 4 days X $80 = $1,920 subsistence	1,920
6 trips X $1,500 = $9,000 travel	9,000
	$24,920

This amount will be required for both FY 85 and FY 86, to cover both trials and appeals.

2. New Criminal Cases

Third Judicial District - Anchorage

	Atty. III (PPT)	Total
Personal Services	30.0	30.0
Travel - Witness travel subsistence, atty. travel	1.5	1.5
Contractual Services		
office commo. equip. repairs	2.4	2.4
copy - postage	1.2	1.2
		3.6
Commodities - Ongoing		
office consumables	1.8	1.8
Law library	1.2	1.2
Commodities - one time		
New position materials	1.2	1.2
		4.2
Equipment - one time		
New position equipment	1.5	1.5
		40.8

Fourth Judicial District - Fairbanks

	Atty. III (PPT)	Total
Personal Services	34.1	34.1
Travel - Witness travel subsistence, Atty. travel	1.5	1.5
Contractual Services		
office commo., equip. repair	2.4	2.4
copy - postage	1.2	1.2
		3.6
Commodities - Ongoing		
office consumables	1.8	1.8
Law library	1.2	1.2
Commodities - one time		
New position materials	1.2	1.2
		4.2
Equipment - one time		
New position equipment	1.5	1.5
		44.9

Pretrial Diversion

	Paralegal Asst. ANC-PFT	Comm. Couns. FAI-PPT	Comm. Couns. JNU-PPT	Total
Personal Services	40.6	20.3	17.9	78.8
Travel - Staff travel/subsistence to outlying areas	1.5	1.0	1.0	3.5
Contractual Services				
Office commo./equip repair	4.8	2.4	2.4	9.6
copy - postage	2.4	1.2	1.2	4.8
				14.4
Commodities - Ongoing office consumables	1.8	1.8	1.8	5.4
Commodities - one time				
New position materials	1.2	1.2	1.2	3.6
				9.0
Equipment - one time	1.5	1.5	1.5	4.5
	53.8	29.4	27.0	110.2

3. Public Education

Admin. & Support Component/Prosc. BRU

Object		Total
Contractual Services - one time writing, layout, typesetting, publication and distribution of public notices and information brochures describing the changes in the law.	15.0	15.0
		15.0

Summary of Expenses

	Defending the new law	New Criminal Cases	Public Education	Total
Personal Services		142.9		142.9
Travel		6.5		6.5
Contractual	24.9	21.6	15.0	61.5
Commodities		17.4		17.4
Equipment		7.5		7.5
	24.9	195.9	15.0	235.8

Costs beyond FY 85 include a 6% inflation factor, less one-time items. The costs for defending the new law will occur in both FY 85 and FY 86 and they will be eliminated thereafter.

1.	POSITION TITLE ATTORNEY III				RANGE/STEP 22A	ORG. UNIT PX	FORM 12 PAGE/LINE	GOV.	APPROV.	DISA
2.	TYPE OF POSITION PPT	STAFF MONTHS 12	RP NUMBER	PCN NUMBER	BRU PRIORITY	LOCATION Anchorage	ELECTION DISTRICT 8	LEG.		
3.	CONTINUATION LEVEL		ADDITION							

	4. TYPE OF EXPENDITURE		AMOUNT
	1	2	3
	PERSONAL SERVICES		
5.	Salary 1,950 X 12	23,400	
6.	Benefits	3,838	
7.	Supplemental Benefits	1,434	
8.	Fixed Benefits	1,320	
9.	TOTAL PERSONAL SERVICES	01	29,992
0.	Travel	02	1,500
1.	Contractual	03	3,600
2.	Commodities	04	4,200
3.	Equipment	05	1,500
4.	Other		
15.	TOTAL COST		40,792

	RECEIPT CODE	FUNDING SOURCE		
16.		Federal Receipts	1002	
17.		G.F. Match	1003	
18.		General Funds	1004	40,792
19.		I-A Receipts	1005	
20.		Program Receipts	1020	
21.		Other		

FOR OMB USE ONLY
OMB KEY NUMBER __ __ - __ __ - __ __ - __ __ - __ __

JUSTIFICATION

This permanent part-time position is required to handle the influx of new cases that will result when marijuana violations, or any use of marijuana, which is not now a violation, become misdemeanor offenses. Prosecutors expect that at least a few hundred such offenses will occur each year as a result of the enactment of HB 698. This position will be responsible for prosecuting those new cases that are brought in the Third Judicial District. Because these new cases will be classed as misdemeanor offenses, allocation of the position to the Attorney III level is appropriate.

3 REQUEST FOR NEW POSITION

AGENCY DEPARTMENT OF LAW

PROGRAM DUE PROCESS

BRU PROSECUTION

THIRD JUDICIAL DISTRICT

FY.8

1.	POSITION TITLE ATTORNEY III				RANGE/STEP 22A	BARG. UNIT PX	FORM 12 PAGE/LINE	GOV.	APPROV.	DISAPP
2.	TYPE OF POSITION PPT	STAFF MONTHS 12	RP NUMBER	PCN NUMBER	BRU PRIORITY	LOCATION Fairbanks	ELECTION DISTRICT 16	LEG.		
3.	CONTINUATION LEVEL		ADDITION							

	TYPE OF EXPENDITURE		AMOUNT
	1	2	3
	PERSONAL SERVICES		
5.	Salary 2,232 X 12	26,784	
6.	Benefits	4,393	
7.	Supplemental Benefits	1,642	
8.	Fixed Benefits	1,320	
9.	TOTAL PERSONAL SERVICES	01	34,139
10.	Travel	02	1,500
11.	Contractual	03	3,600
12.	Commodities	04	4,200
13.	Equipment	05	1,500
14.	Other		
15.	TOTAL COST		44,939

	RECEIPT CODE	FUNDING SOURCE		
16.		Federal Receipts	1002	
17.		G.F. Match	1003	
18.		General Funds	1004	44,939
19.		I-A Receipts	1005	
20.		Program Receipts	1020	
21.		Other		

FOR D&H USE ONLY
4A KEY NUMBER __ __ - __ __ - __ __ - __ __ - __ __

JUSTIFICATION

This permanent part-time position is required to handle the influx of new cases that will result when marijuana violations, or any use of marijuana, which is not now a violation, become misdemeanor offenses. Prosecutors expect that at least a few hundred offenses will occur each year as a result of the enactment of HB 698. This position will be responsible for prosecuting those new cases that are brought in the Fourth Judicial District. Because these new cases will be classed as misdemeanor offenses, allocation of the position to the Attorney III level is appropriate.

13 REQUEST FOR NEW POSITION

AGENCY DEPARTMENT OF LAW

PROGRAM DUE PROCESS

BRU PROSECUTION

FOURTH JUDICIAL DISTRICT

Revised Date

FY 85

1.	POSITION TITLE: PARALEGAL ASSISTANT II				RANGE/STEP: 16A	BARG. UNIT: GGU	FORM 12 PAGE/LINE	GOV.	APPROV.	DISA
2.	TYPE OF POSITION: PFT	STAFF MONTHS: 12	RP NUMBER	PCN NUMBER	BRU PRIORITY	LOCATION: Anchorage	ELECTION DISTRICT: 8	LEG.		
3.	CONTINUATION LEVEL		ADDITION		JUSTIFICATION					

4.	TYPE OF EXPENDITURE		AMOUNT
	1	2	3
	PERSONAL SERVICES		
5.	Salary 2,573 X 12	30,876	
6.	Benefits	5,064	
7.	Supplemental Benefits	1,893	
8.	Fixed Benefits	2,736	
9.	TOTAL PERSONAL SERVICES	01	40,569
0.	Travel	02	1,500
1.	Contractual	03	7,200
2.	Commodities	04	3,000
3.	Equipment	05	1,500
4.	Other		
5.	TOTAL COST		53,769

	RECEIPT CODE	FUNDING SOURCE		
6.		Federal Receipts	1002	
7.		G.F. Match	1003	
8.		General Funds	1004	53,769
9.		I-A Receipts	1005	
0.		Program Receipts	1020	
1.		Other		

FOR OMB USE ONLY
4A KEY NUMBER ___ - ___ - ___ - ___ - ___

This full-time position is required to oversee community work service assignments for those misdemeanant offenders who are screened into the state's Pretrial Diversion Program. Because a large percentage of defendants in the new cases that will result from enactment of HB 698 will be first-time offenders, as many as 50% of these defendants may be eligible for pretrial diversion. This position will be responsible for providing pretrial diversion services in the Anchorage and Palmer area.

3 REQUEST FOR NEW POSITION

AGENCY DEPARTMENT OF LAW

PROGRAM DUE PROCESS

BRU PROSECUTION

PRETRIAL DIVERSION

Revised Date

FY 85

1.	POSITION TITLE COMMUNITY COUNSELOR			RANGE/STEP 14A	BARG. UNIT GGU	FORM 12 PAGE/LINE	GOV.	APPROV.	DISAP
2.	TYPE OF POSITION PPT	STAFF MONTHS 12	RP NUMBER	PCN NUMBER	BRU PRIORITY	LOCATION Juneau	ELECTION DISTRICT 4	LEG.		
3.	CONTINUATION LEVEL		ADDITION						

	TYPE OF EXPENDITURE		AMOUNT
	1	2	3
	PERSONAL SERVICES		
5.	Salary 1,121 X 12	13,452	
6.	Benefits	2,206	
7.	Supplemental Benefits	825	
8.	Fixed Benefits	1,368	
9.	TOTAL PERSONAL SERVICES	01	17,851
0.	Travel	02	1,000
1.	Contractual	03	3,600
2.	Commodities	04	3,000
3.	Equipment	05	1,500
4.	Other		
5.	TOTAL COST		26,951

	RECEIPT CODE	FUNDING SOURCE	
6.		Federal Receipts 1002	
7.		G.F. Match 1003	
8.		General Funds 1004	26,951
9.		I-A Receipts 1005	
0.		Program Receipts 1020	
1.		Other	

FOR O&M USE ONLY
4A KEY NUMBER __ __ - __ __ - __ __ - __ __ - __ __

JUSTIFICATION

This permanent part-time position is required to oversee community work service assignments for those misdemeanant offenders who are screened into the state's Pretrial Diversion Program. Because a large percentage of defendants in the new cases that will result from enactment of HB 698 will be first-time offenders, as many as 50% of these defendants may be eligible for pretrial diversion. This position will be responsible for providing pretrial diversion services in the Southeast Region, centered at Juneau.

3 REQUEST FOR NEW POSITION

AGENCY DEPARTMENT OF LAW

PROGRAM DUE PROCESS

BRU PROSECUTION

PRETRIAL DIVERSION

Revised Date

FY.85

1.	POSITION TITLE COMMUNITY COUNSELOR			RANGE/STEP 14A	DARG. UNIT GGU	FORM 12 PAGE/LINE	GOV.	APPROV.	DISA
2.	TYPE OF POSITION PPT	STAFF MONTHS 12	RP NUMBER	PCN NUMBER	ORU PRIORITY	LOCATION Fairbanks	ELECTION DISTRICT 16	LEG.		
3.	CONTINUATION LEVEL		ADDITION						

	TYPE OF EXPENDITURE		AMOUNT
	1	2	3
	PERSONAL SERVICES		
5.	Salary 1,287 X 12	15,444	
6.	Benefits	2,533	
7.	Supplemental Benefits	947	
8.	Fixed Benefits	1,368	
9.	TOTAL PERSONAL SERVICES 01		20,292
0.	Travel 02		1,000
1.	Contractual 03		3,600
2.	Commodities 04		3,000
3.	Equipment 05		1,500
4.	Other		
5.	TOTAL COST		29,392

	RECEIPT CODE	FUNDING SOURCE	
6.		Federal Receipts 1002	
7.		G.F. Match 1003	
8.		General Funds 1004	29,392
9.		I-A Receipts 1005	
0.		Program Receipts 1020	
1.		Other	

FOR D&N USE ONLY
4A KEY NUMBER __ __ - __ __ - __ __ - __ __ - __ __

JUSTIFICATION

This permanent part-time position is required to oversee community work service assignments for those misdemeanant offenders who are screened into the state's Pretrial Diversion Program. Because a large percentage of defendants in the new cases that will result from enactment of HB 698 will be first-time offenders, as many as 50% of these defendants may be eligible for pretrial diversion. This position will be responsible for providing pretrial diversion services in the Northern Region, centered at Fairbanks.

3 REQUEST FOR NEW POSITION

AGENCY DEPARTMENT OF LAW

PROGRAM DUE PROCESS

ORU PROSECUTION

PRETRIAL DIVERSION

Revised Date

FY.8

Other than hearing considerable testimony from witnesses including that of Dr. Reese T. Jones, Professor of Psychiatry, University of California, San Francisco and that of Dr. Gabriel G. Nahas, M.D., Ph. D., Professor of Anesthesiology, Columbia University, New York City,

the Committee also considered the report, "Marijuana and Health," by the Institute of Medicine, U. of California;

the books/or excerpts from them, "Keep Off the Grass" and "Marijuana: Biological Effects," both authored by Dr. Nahas;

"Health Consequences of Marijuana Use," by William Pollin, M.D., Director, National Institute of Drug Abuse (written 1980);

a printed interview with Dr. D. Harvey Powelson, of the mental health program of Calaveras County, California, who once termed marijuana "harmless" but who now calls it "Our Most Dangerous Drug," the title of the printed interview;

a pamphlet called "Marijuana - What Parents Need to Know" from the Alaska Council on Prevention of Alcohol and Drug Abuse;

a pamphlet, "Marijuana" by Charlotte Drug Education Center, Inc., Charlotte, North Carolina;

pamphlet, "Marijuana Update," a Readers' Digest reprint of May, 1980;

article, "Marijuana: The Myth of Harmlessness Goes Up in Smoke," by Peggy Mann, a Saturday Evening Post feature, 1980;

article, "The Marijuana Epidemic," by Stuart M. Butler, analyst, The Heritage Foundation, Washinton, D.C.;

booklet, "Report on Adverse Health and Behavioral Consequences of Cannabis Use," World Health Organization, 1981;

an assortment of Drug Abuse Newsletters of 1982, 1983;

article printed in the Congressional Record entitled "Marijuana and Health," the ninth report to the U.S. Congress, by the Secretary, Health and Human Services, (1982);

booklet, "Marijuana Today" by George K. Russell, (1983), and article, "Marijuana Smoking and Its Effects on the Lungs," by Donald P. Tashkin, M.D. and Sidney Cohen, M.D., of the Departments of Medicine and Psychiatry, U.C.L.A. School of Medicine, Los Angeles, California.

HB

718

No. 83-

IN THE

Supreme Court of the United States

OCTOBER TERM, 1983

ALASKA LAND TITLE ASSOCIATION, SECURITY TITLE AND TRUST COMPANY OF ALASKA, ALASKA TITLE GUARANTY COMPANY, BROKERS TITLE COMPANY, LAWYERS TITLE INSURANCE AGENCY, INC., SAFECO TITLE AGENCY, INC., FAIRBANKS TITLE AGENCY, VALLEY TITLE AND ESCROW COMPANY, FIRST AMERICAN TITLE INSURANCE COMPANY, TRANSAMERICA TITLE INSURANCE COMPANY, RICHARD L. BOYSEN and JACK WHITE COMPANY,

Petitioners,

v.

STATE OF ALASKA, THEODORE M. PEASE, JR. and CLAIRE V. PEASE,

Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF ALASKA

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Counsel for Petitioners

Of Counsel:

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QUESTIONS PRESENTED

The most fundamental principle of real property law in the United States is found in the Fifth Amendment to the United States Constitution:

> "No person . . . shall be deprived of . . . property, without due process of law; nor shall private property be taken for public use, without just compensation."

In this case, Petitioners or their predecessors' received patent to lands in Alaska which were either silent as to road reservations or, for lands entered after 1947, contained only reservations for roads as authorized by the "act of July 24, 1947 (61 Stat. 418, 48 U.S.C. §321d)."

The court below however found there existed other reservations not reserved in the patents which permit the State Highway Department to take without compensation strips of land as wide as 600 feet.[2]

The Alaska Supreme Court held by interpretation of 48 U.S.C. §321, that such taking was not barred by either the United States Constitution, nor a federal or state statute[3] prohibiting further taking under 48 U.S.C. §321d, by finding a separate easement under 48 U.S.C. §321a.

The properties affected by this decision by the State's own calculation are valued at One Billion Eight Hundred Million Dollars. ($1,800,000,000.00).

Under the circumstances, it is this conflict between federal

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[1] A number of the Petitioners are title insurance companies who, as subrogee on claims, joined this action.

[2] Assuming sixteen-foot lanes, this could result in a highway thirty lanes wide. The minimum right-of-way was one hundred feet wide.

[3] Federal-Aid Highway Act of 1970 §138(b) Pub. L. No. 91-605, 84 Stat. 1713 (1970) and Right-of-Way Act of 1966 ch 2, 92 S.L.A. 1966. Petitioners note that this Court has found the Fifth Amendment to the United States Constitution applicable to the State through the Fourteenth Amendment.

guarantees and the lower court's ruling which raises the following questions:[4]

1. Did Congress intend to create two separate authorities for easements under the Act of June 30, 1932, Pub. L. No. 218 §§1 and 2, (47 Stat. 446), as amended July 24, 1947, Pub. L. No. 229 §5, 61 Stat. 418 (codified as amended at 48 U.S.C. §§321a-321d), so that State and Congressional acts expressly designed to prohibit further taking of property without compensation were inapplicable?

2. Whether the statute of limitation provision of 43 U.S.C. §1166 is applicable to bar the State of Alaska from taking easements or reservations beyond those provided in the actual patents?

3. Whether Congress intended the limitation unless otherwise "insufficient in law" contained in the Federal Register Act, 44 U.S.C. §1507 to apply to preclude documents published in the Federal Register from being constructive notice to real property transactions absent appropriate recording under the state recording statute?

[4] In the Alaska Supreme Court the case included an additional Plaintiff, Hansen Associates, an Alaska limited partnership. Hansen Associates is not appealing the decision of the Court below.

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No. 83-

IN THE

Supreme Court of the United States

OCTOBER TERM, 1983

ALASKA LAND TITLE ASSOCIATION, SECURITY TITLE AND TRUST COMPANY OF ALASKA, ALASKA TITLE GUARANTY COMPANY, BROKERS TITLE COMPANY, LAWYERS TITLE INSURANCE AGENCY, INC., SAFECO TITLE AGENCY, INC., FAIRBANKS TITLE AGENCY, VALLEY TITLE AND ESCROW COMPANY, FIRST AMERICAN TITLE INSURANCE COMPANY, TRANSAMERICA TITLE INSURANCE COMPANY, RICHARD L. BOYSEN and JACK WHITE COMPANY,

Petitioners,

v.

STATE OF ALASKA, THEODORE M. PEASE, JR. and CLAIRE V. PEASE,

Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF ALASKA

Petitioners respectfully pray that a Writ of Certiorari issue to review the judgment and opinion of the Supreme Court of the State of Alaska entered in this proceeding.

OPINIONS BELOW

The Memorandum of Decision of the State trial court, entered on May 7, 1980 and the judgment entered on May 27,

1980, are unreported. The opinion of the Alaska Supreme Court (and dissent), affirming in part and reversing in part, is published at 667 P.2d 714 (Alaska 1983). Petitions for rehearing were filed by both the Petitioners and Respondents. The Alaska Supreme Court denied the Petition of the Petitioners and granted the petition of the Respondent State of Alaska in an order issued July 8, 1983. The order of the court issued in response to the Petition for Rehearing has not yet been published in the official report. All of the unreported opinions and orders are reproduced in the Appendix A-1 to A-3.

JURISDICTION

The opinion of the Alaska Supreme Court was entered on May 27, 1983. Timely Petitions for Rehearing were filed by both parties. The Alaska Supreme Court denied the petitioners' Petition for Rehearing and granted Respondent's Petition for Rehearing and an Order issued on July 8, 1983 modified its opinion. This Court's jurisdiction is invoked under 28 U.S.C. §1257(3).

CONSTITUTIONAL, STATUTORY AND REGULATORY PROVISIONS INVOLVED

A. Federal Constitutional Provisions

U.S. Const. amend. V

U.S. Const. amend. XIV §1

B. Federal Statutory Provisions

43 U.S.C. §932 repealed by Pub. L. No. 94-579, Title VII §706(a), 90 Stat. 2793 (1976)

43 U.S.C. §1166 (1976)

44 U.S.C. §1507 (1976)

The Act of January 27, 1905, Pub. L. No. 26 §2, 33 Stat. 616 (codified at 48 U.S.C. §322), repealed by Pub. L. No. 86-70 §21(d) (6), 73 Stat. 146 (1959).

The Act of June 30, 1932, Pub. L. No. 218 §§1 &

2, 47 Stat. 446, as amended July 24, 1947, Pub. L. No. 229 §5, 61 Stat. 418 (codified as amended at 48 U.S.C. §§321a-321d) repealed by Pub. L. No. 86-70 §21(d) (7), 73 Stat. 146 (1959)

Federal-Aid Highway Act of 1970 §138(b), Pub. L. No. 91-605, 84 Stat. 1713 (1970)

C. Federal Regulations and Administrative Orders

43 C.F.R. §101.3 (1949)

PLO 601, 14 Fed. Reg. 5048 (1949)

PLO 757, 16 Fed. Reg. 10,749 (1951)

PLO 1613, 23 Fed. Reg. 2376 (1958)

DO 2665, 16 Fed. Reg. 10,752 (1951)

D. State Acts

Right-of-Way Act of 1966, ch. 2, 92 S.L.A. 1966

The full text of these constitutional, statutory and regulatory provisions are included in Appendix B.

STATEMENT

This case presents fundamental issues concerning conflicting claims to property between the State of Alaska and the Petitioners to land conveyed by the United States to the Petitioners or Petitioners' predecessors. Immediately following World War II, numerous individuals, particularly World War II veterans, came to Alaska to avail themselves of the offer by the federal government to establish fee simple ownership in public land. Patents were subsequently issued by the federal government to those individual entrymen who qualified. In the patents the federal government set forth exceptions and reservations to the entrymens' interest, including in most instances, reservations for highways. It is other alleged reservations not set forth in the patents which are the subject of this appeal.

Upon Alaska's entry into the Union in 1959, the federal government executed a quitclaim deed to the State of Alaska conveying all of its interest, if any, in highways and roads contained within the State. For unknown reasons, ten years passed before the quitclaim deed was recorded in 1969. In conjunc-

tion with the development boom in Alaska during the 1970s, the State of Alaska began increasingly to take private property without compensation for expansion of numerous highways throughout the State. The State's claim to take property without compensation was based upon certain land orders and a departmental order issued by the Department of Interior prior to Statehood. In particular, the State relied on Public Land Orders (PLO) 601, 757, 1613 and Departmental Order (DO) 2665[4] published between 1949 and 1958.

Patents issued prior to 1947 were silent as to any reference to withdrawals or easements. Patents after 1947 contained only the general reservation for highways as authorized by "the act of July 24, 1947 (61 Stat. 418, 48 U.S.C. §321d)," but did not identify any width for such reservations. Such were to be established at a later date by the Department of Interior. Petitioners assert the Secretary did this in 1951 by DO 2665.

When the State of Alaska began accelerating its claim in the 1970s based on these withdrawals and easements, numerous land owners found themselves deprived of significant portions of their property without compensation. These property rights which will continue to be taken without compensation are valued by the State of Alaska to be in excess of one billion eight hundred million dollars. Additionally, title insurance companies who had insured some, though not all, of the land sales found themselves burdened with claims which could jeopardize their continued solvency. It is in this context this Petition is filed.

The difficulty with the land order withdrawals and easements is that they were not noted on the patents. Thus, property owners never knew that their land might be subject

[4] Promulgated August, 1949 to withdraw land from any form of homestead entry, PLO 601 established corridors for future highways. These withdrawals extended from six hundred feet for the Alaska Highway to one hundred feet for all "local" roads. In October, 1951, PLO 757 removed the withdrawal for "local" roads, but there was simultaneously established "easements" of the same width under DO 2665. Special legislation was passed in 1956 to authorize PLO 1613 which conceded the remaining withdrawals were unnecessarily wide and created a repurchase program for adjoining landowners, subject to the easements identified in DO 2665.

to a highway easement significantly in excess of that noted in their patents or the official government surveys. Further, the PLO easements and withdrawals were never recorded, surveyed or posted to plats. In fact, it is not even possible to find a list of all "local" roads for which a PLO withdrawal or easement may be claimed. The State itself does not prepare a map showing the location of the withdrawals or easements until it has first decided to expand or improve that particular highway.

For years the State, and the federal government before it, has known that the failure to record, survey, map or note on plats these rights-of-way created serious title problems.[6] However, despite this knowledge, the State has acquiesced in the successive sale and improvement of properties which the State now claims to be subject to the highway reservations.

The decision of the Court below clouds the title to the vast majority of properties adjacent to every road (excluding subdivision roads) within the State of Alaska. The Alaska Supreme Court has taken the position that 48 U.S.C. §321a is a separate grant of authority by Congress to the Secretary of Interior to create an easement independent of the express authority granted under 48 U.S.C. §321d. By this erroneous interpretation of federal law finding an independent easement in 48 U.S.C. §321a, the court below precluded the protection afforded by both federal and State statutes designed to prevent the further exercise of highway reservations without compensation.[7] The ruling of the Court below is unquestionably contrary to the legislative history and language contained within U.S.C. §321a-321d.

Additionally, the Alaska Supreme Court failed to follow numerous decisions of the U.S. Supreme Court that the United States (in this case Alaska since it is the successor to the United States' interest) may not bring a suit to challenge a patent

[6] The State of Alaska has taken the position that despite its failure to record its quitclaim deed for ten years and despite the fact none of the land orders are recorded in the state recording districts pursuant to the State's recording statutes, it may seize the land.

[7] See footnote 3, *supra*.

more than six years after the patent has been issued and is thus barred from making a collateral attack upon the patent.

PROCEEDINGS BELOW, PARTIES AND JURISDICTIONAL MATTERS

This action was commenced in the Anchorage Superior Court in February of 1979, when the Petitioners filed a complaint for declaratory relief. Named as defendants were the State of Alaska, Theodore M. Pease and Claire V. Pease. Petitioners in their complaint identified eight claims for relief. On June 4, 1979, Petitioners filed an amended complaint for declaratory judgment which added an additional claim for relief. The Petitioners' amended complaint sets forth several state and federal claims.

Motions for summary judgment were brought by both the Petitioners and Respondent in the trial court. The court denied the Respondent State of Alaska's motion for summary judgment and granted Petitioners' motion as to its second, third and eighth claims for relief. The trial court denied the first claim for relief which reflected petitioner Transamerica's claim that it was not liable under its title insurance policy to Theodore and Claire Pease as to the additional right-of-way taken by the State. The trial court found that the prior Alaska Supreme Court case, *Hahn v. Alaska Title Guaranty Co.*, 557 P.2d 143 (Alaska 1976) was controlling. However, the trial court in its decision found that Petitioner Transamerica's argument was persuasive and asked the Alaska Supreme Court to review the *Hahn* decision.

The decision of the trial court rested predominantly on its determination that a State statute, the Alaska Right-of-Way Act of 1966, was applicable to prevent any further taking without compensation. The trial court determined that, unless the State had occupied or staked a highway in excess of the width set forth in the patents prior to April 14, 1966, then it would only be entitled to the roadway actually occupied or that set forth in the patent, whichever was greater. Any additional land needed by the State could be taken only by paying just compensation.

The State filed its points on appeal on June 24, 1980. The Petitioners filed their notice of cross-appeal on June 30, 1980. Upon appeal, the judgment was affirmed only as to one plaintiff and reversed as to all other Petitioners. One Justice filed a dissent from the three-person majority opinion.

FEDERAL QUESTIONS RAISED AND DECIDED BELOW

The decision of the Alaska Supreme Court is based on the determination of a number of controlling questions of federal law. The first question is whether there existed under 48 U.S.C. §321a power to create an easement in the Secretary of Interior over public lands in Alaska separate from that set forth in 48 U.S.C. §321d. The Alaska Supreme Court's misinterpretation of the power of the federal government under 48 U.S.C. §321a results in a taking of private property without compensation. Further, the Alaska State Legislature has attempted to insure that the State not avail itself of rights-of-way under 48 U.S.C. §321a-321d, when it passed the Right-of-Way Act of 1966. The court below determined that the Right-of-Way Act and the protections thereunder were not applicable since that act applied only to easements under 48 U.S.C. §321d and the easements asserted by the State were created under 48 U.S.C. §321a and DO 2665. The court below ignored the intent of a similar federal act to bar such takings. Federal-Aid Highway Act of 1970, §138(b) Pub. L. 91-605, 84 Stat. 1713 (1970). This interpretation of federal law, if allowed to stand, will permit the State to seize private property belonging to Petitioners without compensation.

The assertion that the Right-of-Way Act of 1966 and section 138(b) of the Federal-Aid Highway Act of 1970 were applicable to protect the Petitioners in these circumstances was raised at the trial court during summary judgment proceedings and again during the appeal to the Alaska Supreme Court. The question was specifically addressed by the Alaska Supreme Court in its decision.

Second, the Alaska Supreme Court rejected Petitioners' contention that the easements claimed by the State of Alaska

were not set forth in the patents and therefore eliminated by failure to annul the patents within the six-year statute of limitation period of 43 U.S.C. §1166. This is clearly a federal question. The Alaska Supreme Court, in addressing this issue on appeal, interpreted federal law in a manner such as to preclude the application of the statute to protect Petitioners' rights in this case. Petitioners raised these claims of a federal right in their complaint at the trial court and maintained their position throughout the appeal.

Third, Alaska Supreme Court misinterpreted 44 U.S.C. §1507 in requiring that public land orders and the departmental order, upon publication in the Federal Register, be considered constructive notice for real property transactions independent of compliance with State or territorial recording statutes. By interpreting the Federal Register Act as constituting constructive notice for purposes of determining ownership of land, Petitioners were precluded from availing themselves of the protection offered by the State recording statutes. Petitioners raised these claims in their memorandum in support of motion for summary judgment in the trial court and maintained their position throughout the appeal.

REASONS FOR GRANTING THE WRIT

(a) Impact of the Decision Below.

The decision of the Alaska Supreme Court below has a devastating impact on landholders within the State of Alaska. During the late 1940s when Alaska was still a territory, the federal government held open to individuals the opportunity to settle in the territory and obtain fee simple ownership of land therein. After properly complying with the applicable statutes and regulations concerning homesteads, these individuals were issued patents reflecting their ownership rights. These patents set forth the reservations and exceptions which the federal government stated it was maintaining.

In the approximately thirty years that have passed since this initial transfer of property from the federal government to individuals following World War II, the individual owners and their successors in interest have subdivided and developed

the property pursuant to the natural growth of the State. Thus this lawsuit greatly affects the current property rights of thousands of landowners within the State of Alaska, many of whom have developed valuable improvements within the claimed easements unaware the State claims the right to take their property.

The decision of the court below results in confusion to titles to thousands of parcels held within the State of Alaska. The State admits that the potential value of the land which it can seize without compensation to be valued in excess of $1.8 billion dollars. Already several other cases have been initiated involving issues related to this decision.

Therefore, the Petitioners believe that their Petition for Writ of Certiorari should be accepted by the Court to review the tremendous impact of the decision of the court below upon title to thousands of parcels of land within the State as well as the combined total economic loss to individuals residing in the State.

(b) Important and Novel Questions of Federal Law.

The decision below also involves important questions of federal law never interpreted by this or any other federal court. The Alaska Supreme Court in reaching its decision interpreted several federal statutes and orders regarding public lands within Alaska. In particular, the court below interpreted 48 U.S.C. §321a as creating in the Secretary of Interior a right to establish an easement on public lands separate from that of 48 U.S.C. §321d. By interpreting the federal statute in this manner, the court below voided the specific protection offered to private landholders by the Alaska Legislature by the Right-of-Way Act of 1966 and Congress by section 138(b) of the Federal-Aid Highway Act of 1970.[8]

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[8] The intent of the Alaska Legislature is clear. The Act states in part:

Section 1. Purpose. This Act is intended to alleviate the economic hardship and physical and mental distress occasioned by the taking of land, by the State of Alaska, for which no compensation is paid to the persons holding title to the land. This practice has resulted in financial difficulties and the deprivation of peace of mind regarding the security of one's possessions to many citizens of the

A second question of first impression was raised by the Alaska Supreme Court in its decision regarding the Federal Register Act, 44 U.S.C. §1507. No previous court has addressed the precise question here. In this case the question rests on whether the Federal Register is constructive notice as to landholders in Alaska or whether such notice is "insufficient in law" within the meaning of 44 U.S.C. §1507. Congress did not clearly identify under what circumstances notice under the Federal Register would be "insufficient in law." However, the interpretation of the court below that the Federal Register must be notice under State land laws has not been addressed. Therefore, this presents an important question of federal law which has applicability beyond the State of Alaska. Other states, particularly in the western United States, have large tracts of federal public land which is subject to thousands of federal public land orders and department orders of the Department of Interior and other federal agencies. Thus, applicability of a decision which indicates that Congress intended the federal register to be constructive notice under State land laws has tremendous impact upon title in other states as well as Alaska. Therefore, the Court should accept Petitioners' Writ for Certiorari to address this issue.

(Footnote Continued)

State of Alaska, and which, if not curtailed by law, will continue to adversely affect the citizens of this state. Those persons who hold title to land under a deed or patent which contains a reservation to the state by virtue of the Act of June 30, 1932, ch. 320, sec. 5, as added July 24, 1947, ch. 313, 61 Stat. 418, are subject to the hazard of having the State of Alaska take their property without compensation because all patents or deeds containing the reservation required by that federal Act reserve to the United States, or the state created out of the Territory of Alaska, a right-of-way for roads, roadways, tramways, trails, bridges, and appurtenant structures either constructed or to be constructed. Except for this reservation the State of Alaska, under the Alaska Constitution and the Constitution of the United States, would be required to pay just compensation for any land taken for a right-of-way. It is declared to be the purpose of this Act to place persons with land so encumbered on a basis of equality with all other property holders in the State of Alaska, thereby preventing the taking of property without payment of just compensation as provided by law, and in the manner provided by law.

(c) The Decision of the Court Below Conflicts with Prior Decisions of the Court

The Alaska Supreme Court determined that the six-year statute of limitations applicable to suits by the United States to vacate and annul a patent under 44 U.S.C. §1166 did not apply to prevent the State Highway Department from seizing private property in which the patents from the federal government did not reserve any of the easements or withdrawals sought to be taken by the State. The court found that despite the failure of the federal government to set forth in the patent any limitations arising under the public land orders and the departmental order identified in this case,[9] it would permit a collateral attack on the patent by reducing the amount of land transferred to the patentee by the federal government and by imposing on that patent restrictions not contained herein. This Court has long held that once the six-year statute of limitations has run the United States may not attack the validity of a patent. *United States v. Chandler–Dunbar Water Power Co.*, 209 U.S. 447 (1908); *Brooks v. So. Pac. R. Co.*, 234 U.S. 669 (1914); *U.S. v. Oregon Lumber Co.*, 260 U.S. 290 (1922). Although the statute on its face is applicable to the United States it is equally binding on the State. The State has claimed to possess the interest of the United States under the respective statutes and orders pursuant to the quitclaim deed issued upon statehood in 1959. Therefore, unlike cases cited to by the majority opinion in the court below, the State of Alaska has no more than what the United States possessed in 1959. A failure to assert that interest within six years of the issuance of patent precludes the United States (and the State of Alaska, its successor in interest) from attacking the patents. Therefore, the court below has rendered a decision in conflict with prior holdings of this Court.[10]

I. NO SEPARATE AUTHORITY EXISTS TO ESTABLISH AN EASEMENT UNDER 48 U.S.C. §321a.

[9] PLO 601, PLO 757, PLO 1613, and DO 2665.

[10] A succinct discussion of this misinterpretation of 43 U.S.C §1166 appears in the dissenting opinion by Justice Rabinowitz in the court below.

A review of the legislative history of 48 U.S.C. §§321a-321d reveals, contrary to the decision of the court below, no authority for the Secretary of Interior to establish easements under 48 U.S.C. §321a. Originally, under the Act of January 27, 1905, 33 Stat. 616, Congress established a Board of Road Commissioners for Alaska. This Commission was given the power to "locate, layout, construct, and maintain wagon trails and pack trails . . ." within Alaska. Sec. 2 Act of June 27, 1905, 33 Stat. 616. In 1932, Congress transferred the power of the Commission to the Department of Interior. Sec. 1 and 2 Act of June 30, 1932, 47 Stat. 446.

However, neither of these two statutes granted the power to the Secretary of Interior or the Commission to grant easements across the land but rather only the power to construct roads. In fact, the language contained in sec. 2 Act of June 30, 1932, 47 Stat. 446, codified as 48 U.S.C. §321a, was recognized by the Department of Interior as only granting authority to the Secretary to fix the width of *public domain* roads which were "located, laid out, constructed and maintained" pursuant to sec. 2 Act of June 27, 1905, codified as 48 U.S.C. §322.

Because of the Department of Interior's concern over the pending patenting of public lands in Alaska where a 43 U.S.C. §932 easement did not apply, the Department requested in 1947 that Congress amend the Act of June 30, 1932. H.R. Rep. No. 673, 80th Cong. 1st Sess., *reprinted in* 1947 U.S. Cong. & Ad. News 1352, 1353. In the Department's letter requesting legislation, the Secretary of Interior indicated that his Department was seeking authority for the reservation of easements for the first time. Since 48 U.S.C. §321a already existed at the time that the Department of Interior made this request to amend the Act of 1932, it is evident that the Department of Interior recognized that no easement authority existed under §321a. To hold otherwise negates the 1947 Amendment."

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[11] The Language of 48 U.S.C. §321d provides for only one easement. It states that "(i)n all patents for lands hereafter taken up, entered or located in the Territory of Alaska . . . there shall be expressed that there is reserved, from the lands . . . in such patent . . . *a right-of-way.*" (Emphasis added.)

This position is further supported by a Department of Interior memo on October 10, 1950, which in discussing PLO 601 noted that the Department of Interior discussed changing the withdrawals to easements so that rights-of-way under the Act of July 1947 would still be valid.[12] This once again indicates the Department of Interior looked to sec. 321d (the 1947 act) for its authority, not some strained interpretation of sec. 321a.

48 U.S.C. §321d requires that all lands entered after the date of the Act (June 23, 1947) have reserved in the patents an easement. The Department of Interior pursuant to this Congressional mandate began issung patents which clearly stated that an easement was being reserved pursuant to 48 U.S.C. §321d. It is clear that the Department of Interior did not consider §321a to be authority to impose an easement, or it could have just as easily put this reservation in the patents too.

The court below held that sec. 321a easements exist not from statutory language or legislative intent, but solely from the fact that paragraph 1 of DO 2665 states that the authority for the Secretary to promulgate DO 2665 is 48 U.S.C. §321a. Petitioners do not dispute that section 321a grants the Secretary of Interior the authority over Alaska roads and thus authority to issue the departmental order."[13] Petitioners

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(Footnote Continued)
The statute goes on to state that "(w)hen a right-of-way easement under this Act . . ." once again indicating that a single authority for creating a right-of-way existed under 48 U.S.C. §321. The Act of 1947 was an amendment to the Act of June 30, 1932 (47 Stat. 448) and therefore the language "this Act" must refer to the Act of 1932.

[12] The Department of Interior in October of 1950 revealed concern that the PLO withdrawals were insufficient to protect the rights-of-way desired by the federal government. It was proposed by Department of Interior memo that the withdrawals be changed to easements under the 1947 Act (48 U.S.C. §321d) to set forth the width of the proposed easements. This concern resulted in the publication of DO 2665 in October of 1951 establishing easements under 48 U.S.C. §321d. See Department of Interior memo October 10, 1950 at Appendix C.

[13] The Alaska Supreme Court previously authorized the taking of property without compensation based on this erroneous interpretation in *State, Department of Highways v. Green*, 586 P.2d 595 (Alaska 1978)

however assert that such authority to issue the order does not equate with a separate authority to create an easement. The unmistakable intent of the 1947 amendment, codified at 48 U.S.C. §321d, was to create, for the first time, easements."

The court below in its misinterpretation that 48 U.S.C. §321a is a separate authority for the Department of Interior to establish easements nullifies the attempt by the State of Alaska in the Right-of-Way Act of 1966 to protect private landowners from State exercise of such easements. The Right-of-Way Act of 1966 has been interpreted by the Alaska Supreme Court as applying only to easements established under 48 U.S.C. §321d. Under the terms of the Act, the State is barred from taking without compensation any additional land pursuant to a sec. 321d easement if it has not done so prior to the date of the Act. Further, by its interpretation of federal law, the court below has deprived Petitioners' rights afforded by sec. 138(b) of the Federal-Aid Highway Act of 1970.

II. THE STATUTE OF LIMITATIONS OF 43 U.S.C. §1166 BARS THE RESPONDENT FROM CHALLENGING PATENTS AFTER SIX YEARS.

The United States issued patents to Petitioners and Petitioners' predecessors in interest which contained a description of the reservations and exceptions which the United States intended to retain. The State of Alaska maintains that the various PLOs and the Departmental Order grant it a right-of-way even though not identified in the patents. Had the property at the time of patent still been encumbered by the withdrawals or easements, but patent nevertheless issued, the government would have only six years to annul the patent. *United States v. Chandler—Dunbar Water Power Co.*, 209 U.S.

" The trial court agreed with petitioners and stated that:

It should be noted that DO 2665 is issued under authority of 48 U.S.C. §321a; however, sec. 321a is only the general grant of authority by Congress to the Secretary of Interior to administer the road. In Alaska sec. 321d is the specific authority for the Secretary to reserve easements for roads and therefore, DO 2665 by implication is based on authority of sec. 321d, Pub. L. 229 ch. 313 approved July 24, 1947.

447 (1908). The withdrawals or easements could not have been deemed to have been an implied exception to the patent. *Leo Sheep Co. v. United States*, 440 U.S. 668 (1979); *Hardin v. Jordan*, 140 U.S. 371 (1891); *Stewart v. Lamm*, 132 Colo. 484, 289 P. 2d 916 (Colo. 1955).

The quitclaim deed could not, as the State asserts, pass greater rights than that the United States had to transfer. It is well established that a patent is in the nature of a quitclaim deed. *Wilson Cyprus Co. v. Del Pozo y Marcos*, 236 U.S. 635 (1915); *Sampeyreac v. United States*, 7 Pet. (U.S.) 222 (1833). Consequently, the United States passed by patent its estate *except* that which was actually reserved in the patent, i.e. the 1947 highway reservations, 48 U.S.C. §321d.

Additionally, it is clear that once a patent is issued, even if it contains a mistake, the Executive Department lacks power to set the transfer aside. The annulment must be done judicially. *West v. Standard Oil Co.*, 278 U.S. 200 (1929); *Stone v. United States*, 69 U.S. 525 (1875). In the case at bar, the United States has never sought to set aside the patents issued without the alleged reservation for the easements cited by the Respondent (48 U.S.C. §321a) and therefore those patents would still be binding on the United States. Under the 1959 quitclaim deed, the State recieved no greater right to the land than the United States had and since the patents were conclusive against the United States then they are likewise conclusive against the State of Alaska.

This court in *United States v. Whited & Wheless, Ltd.*, 246 U.S. 552 (1918) noted that the purpose of the statute of limitations contained in 43 U.S.C. §1166 was to restore, in the public, confidence in the integrity and value of patent title to public lands which had been challenged under numerous suits seeking to cancel such patents. The statute itself presupposes that the government will make an error. *United States v. Chandler—Dunbar Water Power Co., supra* at 450. Indeed, the protection afforded patents under 43 U.S.C. §1166 has been strong enough that this Court has determined that even in the cases of fraud, the patent itself may not be set aside. *United States v. Diamond Coal and Coke Co.*, 255 U.S. 323 (1921). In

United States. v. Whited & Wheless, Ltd., supra, this court has also determined that even in the cases of fraud, if the title to the property has passed to a bonafide purchaser, the government may not challenge the patent. *Wright-Blodgett Co. v. United States,* 236 U.S. 397 (1915); *United States v. California & The Oregon Land Co.,* 148 U.S. 31 (1893).

Courts have also noted that in determining what land is conveyed under a patent, the number of acres specified in the patent is very important. *Ritter v. Morton,* 513 F.2d 942 (9th Cir. 1975). Other courts have also made it clear that the boundaries of land cited in a patent, even if incorrect, would be binding on the United States and its successors. *Grainger v. United States,* 197 Ct. Cl. 1018 (1972). Even though the State claims the withdrawals from homestead entry of PLO 601 and 757 still apply, none of the patents contained any commensurate reduction in total acreage. The United States under 43 C.F.R. §101.3 (1949) was required to put on notice all persons making an entry on public land which could be affected by a right-of-way."[15] The failure to include such an easement on the entry papers or on the final patent is conclusive against the United States.

Therefore, Respondent's claim was barred by the statute of limitations contained in 43 U.S.C. §1166. The Respondent has no greater interest in the land than that held by the United States. The United States was barred from challenging the patents after six years for failure of the patents to contain easements set forth in the PLOs and the departmental orders. Assuming *arguendo* that the State's position has merit, any interest which the United States had was extinguished by the

[15] The provisions of 43 C.F.R. §101.3 (1949) set forth the notations which were required to be made on entry papers and notices of allowance in 1949.

> In order that all persons making entry of public lands which are affected by rights-of-way may have actual notice thereof, the Register is directed to note upon the original entry papers and upon the notice of allowance of the application . . . issued to the entrymen, a reference to such rights-of-way . . . he will place the same notation as to right-of-way upon the final entry papers so that the reservation of the right-of-way will be made in the patent when issued.

running of the statute of limitations in 43 U.S.C. §1166. The United States did, pursuant to 48 U.S.C. §321d, maintain road reservations which were subsequently relinquished by State and federal acts.

III. THE FEDERAL REGISTER ACT IS NOT CONSTRUCTIVE NOTICE AS TO PRIVATE LANDOWNERS IN THE STATE OF ALASKA

Provisions of 44 U.S.C. §1507 provide that persons will be charged with notice of documents filed for publication in the Federal Register "except in cases where notice by publication is insufficient in law." The question in this case is whether, absent actual notice, does publication in the Federal Register constitute notice insufficient in law for real property transactions. A review of the legislative history does not reveal a clear answer as to whether Congress intended the Federal Register to be constructive notice as a matter of law or whether such notice would be insufficient in law as applied to state land titles. The federal case law cited to by the majority of the court below does not contain a case in which the court addressed the question of what was "insufficient in law." There is no reason to believe that Congress intended to displace established conveyancing and recording laws in every state of the Union with a chaotic system in which landowners must be charged with constructive notice of pre-patent federal orders not noted as reservations in the patents."[16]

Therefore, the court below erred in interpreting federal cases cited for the proposition as to what constitutes constructive notice where that determination is being made as to title under state law. Acts of Congress which affect conveyancing and recording statutes of the fifty states should be considered "insufficient in law" to be constructive notice.

[16] This position was adopted by the Dissenting Opinion in the lower court.

CONCLUSION

For all of the foregoing reasons, a Writ of Certiorari should issue to review the judgment and opinion of the Alaska Supreme Court.

Respectfully submitted,

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APPENDIX

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APPENDIX A-1

IN THE SUPERIOR COURT
FOR THE STATE OF ALASKA

THIRD JUDICIAL DISTRICT

ALASKA LAND TITLE ASSOCIATION, SECURITY TITLE AND TRUST COMPANY OF ALASKA, ALASKA TITLE GUARANTY COMPANY, BROKERS TITLE COMPANY, LAWYERS TITLE INSURANCE AGENCY, INC., SAFECO TITLE AGENCY, INC., FAIRBANKS TITLE AGENCY, VALLEY TITLE AND ESCROW COMPANY, FIRST AMERICAN TITLE INSURANCE COMPANY, TRANSAMERICA TITLE INSURANCE COMPANY, RICHARD L. BOYSEN and JACK WHITE COMPANY,

Plaintiffs,

vs.

STATE OF ALASKA, Department of Transportation and Public Facilities, THEODORE M. PEASE, JR., and CLAIRE V. PEASE, and MUNICIPALITY OF ANCHORAGE,

Defendants.

No. 3AN 79-951 Civil

MEMORANDUM OF DECISION

This case is a suit for declaratory relief and the plaintiffs, the State of Alaska and the Peases have moved for summary judgment. The facts are that in 1978 the State of Alaska widened Rabbit Creek Road, a local road off the Seward Highway approximately nine miles south of Anchorage, from a road having a bed of less than 66 feet to a road having a bed of 100 feet in width. Mr. and Mrs. Pease are adjoining landowners to Rabbit Creek Road and own the underlying fee to the centerline. They seek compensation from the State of Alaska or the title insurance company which insured their title for the taking of a strip 17 feet in width from their property for the widening of Rabbit Creek Road.

The Peases acquired by warranty deed Lot 191, Section 33, T 12N, R3W, Seward Meridian, Anchorage Recording District on August 18, 1960 which parcel was separated from the public domain on October 4, 1955 by patent number 115 1722 which provides a "reservation of a right-of-way for roads . . . constructed or to be constructed by or under the authority of the United States or by any State created out of the Territory of Alaska, in accordance with the act of July 21, 1947 (61 Stat. 418, 48 U.S.C. sec. 321d)" and "This patent is subject to a right-of-way not exceeding 33 feet in width, for roadway and public utilities purposes, to be located along the south and east boundaries of said land."

There are no facts in dispute. The other parties, Mr. Boysen, Hansen Associates and Jack White Company own property which may be affected by easements for through and feeder roads. In this memorandum of decision the case concerning the Peases will be considered first, a decision reached on the ownership of the 17 foot wide strip along Rabbit Creek Road and will be used for illustrative purposes in deciding questions relating to other parcels.

The relevant history of statutes, public land orders (P.L.O.) and department orders (D.O.) affecting rights-of-way for roads like Rabbit Creek includes:

1. P.L.O. 601 dated August 10, 1949 under the authority of *Executive Order No. 9337* (43 U.S.C. §141) withdrew from entry certain lands and reserved those lands for highway rights-of-way as follows:

a. the public lands lying within 300 feet on each side of the center line of the Alaska Highway, 150 feet on each side of the center line of all other through roads, 100 feet on each side of the center line of all feeder roads, and 50 feet on each side of the center line of all local roads.

b. through roads are the Alaska Highway, Richardson Highway, Glenn Highway, Haines Highway, and Tok Cut-off.

c. feeder roads are Steese Highway, Elliott Highway, McKinley Park Road, Anchorage-Potter-

Indian Road, Edgerton Cut-off, Tok-Eagle Road, Ruby-Long-Poorman Road, Nome-Solomon Road, Kenai Lake-Homer Road, Fairbanks-College Road, Anchorage-Lake Spenard Road, Circle Hot Spring Road.

d. local roads are all roads not classified as through or feeder roads established or maintained under the jurisdiction of the Secretary of the Interior.

e. Paragraph 6 reads:

Subject to valid existing rights and to existing surveys and withdrawals for other than highway purposes, the public lands in Alaska lying within 300 feet on each side of the center line of the Alaska Highway, 150 feet on each side of the center line of all other through roads, 100 feet on each side of the center line of all feeder roads, and 50 feet on each side of the center line of all local roads, in accordance with the following classifications, are hereby withdrawn from all forms of appropriation under the public land laws, including the mining and mineral-leasing laws and reserved for highway purposes.

2. P.L.O. 757 dated October 16, 1951 provides:

The sixth paragraph of Public Land Order No. 601 of August 10, 1949, reserving public lands for highway purposes, commencing with the words "Subject to valid existing rights", is hereby amended to read as follows:

Subject to valid existing rights and to existing surveys and withdrawals for other than highway purposes, the public lands in Alaska lying within 300 feet on each side of the Alaska Highway and within 150 feet on each side of the center line of the Richardson Highway, Glenn Highway, Haines Highway, the Seward-Anchorage Highway (exclusive of that part thereof within the boundaries of the Chugach National Forest), the Anchorage-Lake Spenard Highway, and the Fairbanks-College Highway are hereby withdrawn from all forms of appropriation under the public land laws, including

the mining and mineral-leasing laws, and reserved for highway purposes.

Easements having been established on the lands released by this order, such lands are not open to appropriation under the public land laws except as a part of a legal subdivision, if surveyed, or an adjacent area, if unsurveyed, and subject to the pertinent easement.

3. D.O. 2665 dated October 16, 1951 under the authority of section 2 of the act of June 30, 1932 (47 Stat. 446, 48 U.S.C. 321a) established the width of the public highways in Alaska established or maintained under the jurisdiction of the Secretary of Interior as follows:

a. through roads: The Alaska Highway shall extend 300 feet on each side of the center line thereof. The Richardson Highway, Glenn Highway, Haines Highway, Seward-Anchorage Highway, Anchorage-Lake Spenard Highway and Fairbanks-College Highway shall extend 150 feet on each side of the center line thereof.

b. feeder roads (with an extensive listing) shall extend 100 feet on each side of the center line thereof.

c. local roads not classified as through roads or feeder roads shall extend 50 feet on each side of the center line thereof.

d. the order provided specifically:

Sec. 3. Establishment of rights-of-way or easements. (a) A reservation for highway purposes covering the lands embraced in the through roads mentioned in section 2 of this order was made by Public Land Order No. 601 of August 10, 1949, as amended by Public Land Order No. 757 of October 16, 1951. That order operates as a complete segregation of the land from all forms of appropriation under the public land laws, including the mining and mineral laws.

(b) A right-of-way or easement for highway purposes covering the lands embraced in the feeder roads and the local roads equal in extent to the width of such roads

as established in section 2 of this order, is hereby established for such roads and across the public lands.

(c) The reservation mentioned in paragraph (a) and the rights-of-way or easements mentioned in paragraph (b) will attach as to all new construction involving public roads in Alaska when the survey stakes have been set on the ground and notices have been posted at appropriate points along the route of the new construction specifying the type and width of the roads.

Sec. 4. Road maps to be filed in proper Land Office. Maps of all public roads in Alaska heretofore or hereafter constructed showing the location of the roads, together with appropriate plans and specifications, will be filed by the Alaska Road Commission in the proper Land Office at the earliest possible date for the information of the public.

It should be noted that D.O. 2665 is issued under the authority of 48 U.S.C. 321a; however, section 321a is only the general grant of authority by Congress to the Secretary for the Interior to administer the roads in Alaska. Section 321d is the specific authority for the Secretary to reserve easements for roads and, therefore, D.O. 2665 by implication is based upon the authority of 321d, Public Law 229, ch. 313 approved July 24, 1947.

4. The effect of P.L.O. 757 and D.O. 2665 was to return to the public domain and make available for entry all land within 100 feet of the center line of feeder roads and 50 feet of the center line of local roads reserving an easement for feeder and local roads of 100 feet and 50 feet on each side of the center line respectively.

5. P.L.O. 1613 dated April 7, 1958 revoked P.L.O. 601 as amended by P.L.O. 757. Therefore, the withdrawal for through roads was no longer in effect; however, an easement for through roads was created extending 150 feet on each side of the center line for through roads designated in P.L.O. 757 and section one of P.L.O. 1613.

6. On June 30, 1959 the United States conveyed by quitclaim deed its interest in highways to the State of Alaska

which deed was recorded October 2, 1969.

7. Sec. 2, Ch. 92, SLA 1966, Right-of-Way Act of 1966 provides:

> Taking of Property Under Reservation Void. After the effective date of this Act [April 14,1968], no agency of the state may take privately-owned property by the election or exercise of a reservation to the state acquired under the Act of June 30, 1932, ch. 320, sec. 5, as added July 24, 1947, ch. 313, 61 Stat. 418, and taking of property after the effective date of this Act by the election or exercise of a reservation to the state under the federal Act is void.

8. Public Law 229, ch. 313, approved July 24, 1947 provides:

> The act entitled "An Act providing for the transfer of the duties authorized and authority conferred by law upon the board of road commissioners in the Territory of Alaska to the Department of the Interior, and for other purposes, approved June 30, 1932 (47 Stat. 446) [footnote: 5 U.S.C.A §§123, 485; 48 U.S.C.A. §§321a-321e, 322-327] is hereby amended by adding at the end thereof the following new section:
>
> "Sec. 5. In all patents for lands hereafter taken up, entered, or located in the Territory of Alaska, and in all deeds by the United States hereafter conveying any lands to which it may have reacquired title in said Territory not included within the limits of any organized municipality, there shall be expressed that there is reserved, from the lands described in said patent or deed, a right-of-way thereon for roads, roadways, highways, tramways, trails, bridges, appurtenant structures constructed or to be constructed by or under the authority of the United States or any State created out of the Territory of Alaska. When a right-of-way reserved under the provisions of this Act is utilized by the United States or under its authority, the head of the agency in charge of such utilization is authorized to determine and make payment for the value of the crops

> thereon if not harvested by the owner, and for the value of any improvements, or for the cost of removing them to another site, if less than their value."

The Alaska Supreme Court cases which directly relate to the questions in this case are: *Hahn v. Alaska Title Guaranty Co.* 557 P.2d 143 (Alaska 1976) which holds that the federal register is a public record within the meaning of the language of a title insurance policy; and *State, Dept. of Highways v. Green,* 586 P.2d 595 (Alaska 1978) which gives an exhaustive history of the subject before the court without mentioning the Alaska Right-of-Way Act of 1966.

The Peases have moved for summary judgment on their cross-claim against the State of Alaska and on their counterclaim against Transamerica Title Insurance Company. The Peases are entitled to summary judgment against Transamerica Title Insurance Company under the authority of *Hahn v. Alaska Title Guaranty Co.*, 557 P.2d 143 (Alaska 1976) and they are granted such summary judgment establishing the liability of their insurer subject to the provision that if the State must pay for the strip, then the Peases shall collect from the State and not their title insurer.

The plaintiffs have moved for summary judgment against the State of Alaska on the grounds that the State is without authority to exercise jurisdiction over easements allegedly reserved to the State by P.L.O. 601 as amended by P.L.O. 757 and P.L.O. 1613 and D.O. 2665. The title insurance companies and the other plaintiffs have standing to bring this case and are real parties in interest; there is a justiciable controversy and the plaintiffs' pecuniary interest is affected. See *Jefferson v. Asplund,* 458 P.2d 995 (Alaska 1969).

There is no statute of limitations problem; the land is not taken until staked. D.O. 2665(c).

The State asserts that the withdrawals and easements established by the various P.L.O.'s and D.O.'s are dedications of property to the public which cannot be transferred to private ownership until abandoned. There is no evidence of fact or law to support the State's contention. The withdrawals and

easements will be treated as designations by a land owner setting aside certain portions of its property.

It is necessary to view this case in its historical perspective. Pursuant to P.L.O. 601 land was withdrawn for through, feeder, and local roads in strips ranging from 300 feet to 50 feet on each side of the center line. These strips were never surveyed, the Bureau of Land Management did not know what land was withdrawn and patents were issued conveying land which allegedly had been withdrawn. The record is replete with letters explaining the problems created and the hardships which resulted.

In response to the problems created by withdrawals, the Secretary of the Interior revoked P.L.O. 601 in stages: first, P.L.O. 757 in 1951, and then P.L.O. 1613 in 1958 and substituted easements. D.O. 2665 and P.L.O. 1613. The establishment of easements did not solve all of the problems; however, entrymen and the government could determine the boundaries of parcels by measuring from the center line of the existing roads even though the roads were not surveyed.

The predecessor in interest to Mr. and Mrs. Pease was granted a two and one-half acre parcel subject to a 33-foot easement for Rabbit Creek Road and a blanket reservation for easements created pursuant to 61 Stat. 418, 48 U.S.C. sec. 321d, the authority for D.O. 2665. The Right-of-Way Act of 1966 precludes the State from taking without compensation any land pursuant to the Act of June 30, 1932, ch. 320, sec. 5, as added July 24, 1947, ch. 313, 61 Stat. 418.

The State argues that it already had the easement reserved by 61 Stat. 418, 48 U.S.C. sec. 321d before the effective date of the Right-of-Way Act of 1966 and, therefore, the Act does not apply. The State is wrong; it did not secure the easement until the right-of-way was staked by the terms of D.O. 2665.

It is realized that *State, Dept. of Highways v. Green*, 586 P.2d 595 (Alaska 1978) does not discuss the Right-of-Way Act of 1966; nevertheless, the Act does apply to the case at bar and would apparently be applicable in the *Green* case; the State should have brought it to the court's attention even if the appellees failed to do so.

Therefore, the plaintiffs and Mr. and Mrs. Pease are entitled to summary judgment establishing the fact that the State or anyone claiming through the State, including the Municipality of Anchorage, may not occupy land reserved for highway or other purposes pursuant to 61 Stat. 418, 48 U.S.C. sec. 321d without compensation which the State was not occupying on April 14, 1966.

This ruling means that unless the easement was specifically reserved in the patent or was occupied by the State or Municipality or staked by the State before April 14, 1966, the underlying fee holder is entitled to just compensation when the State or Municipality asserts its right to utilize the strip between the previously occupied, staked, or specifically designated in the patent distance from the center line and 50, 100 or 150 feet from the center line depending upon the type of road. The State's argument that the plaintiffs by this lawsuit are seeking to divest the State of its interest in all the roads of the state is not understood and is clearly not the fact.

The plaintiff Hansen Associates is not correct in asserting that its property is free from the easement designated in D.O. 2665 because its predecessor in interest entered the property before D.O. 2665 was issued. The Hansen property had not been patented as of October 16, 1951 and between a mere entryman and the government, the entryman may not be heard to complain when the government reserves an easement. *Shiver v. United States*, 159 U.S. 491, 16 S.Ct. 54 (1895); *Wilber v. United States*, 53 F.2d 717 (C.A.D.C. 1931).

It is unnecessary to decide the effect of the quitclaim deed, its later recordation and the status of land whose owners recorded their deeds or patents earlier than the recordation of the quitclaim deed in light of the above determinations. In addition, it is unnecessary to deal with the doctrine of estoppel as it may apply in this case.

And in order to fully adjudicate the issues presented in this case, it is necessary to comment on the plaintiffs' contentions that *Hahn v. Alaska Title Guaranty Co.*, 557 P.2d 143 (Alaska 1976) was incorrectly decided. The authorities and argument cited by the plaintiffs are persuasive and the Alaska

Supreme Court is requested to review its decision.

The attorneys for the plaintiffs shall prepare, serve and submit a judgment consistent with this decision.

DATED at Anchorage, Alaska, this 7th day of May, 1980.

VICTOR D. CARLSON
Superior Court Judge

This is to certify that on the 8th day of May, 1980, a copy of the above Memorandum of Decision was mailed to:

Michael W. Price, Esq.
David A. Devine, Esq.
Groh, Eggers, Robinson, Price & Johnson
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Theodore M. Pease, Jr., Esq.
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Juneau, Alaska 99811

Municipality of Anchorage
Office of Municipal Attorney
Pouch 6-650
Anchorage, Alaska

Secretary to Judge Carlson

APPENDIX A-2

IN THE SUPERIOR COURT
FOR THE STATE OF ALASKA

THIRD JUDICIAL DISTRICT

ALASKA LAND TITLE ASSOCIATION, SECURITY TITLE AND TRUST COMPANY OF ALASKA, ALASKA TITLE GUARANTY COMPANY, BROKERS TITLE COMPANY, LAWYERS TITLE INSURANCE AGENCY, INC., SAFECO TITLE AGENCY, INC., FAIRBANKS TITLE AGENCY, KACHEMAK BAY TITLE AGENCY, VALLEY TITLE AND ESCROW COMPANY, FIRST AMERICAN TITLE INSURANCE COMPANY, TRANSAMERICA TITLE INSURANCE CO., HANSEN ASSOCIATES, an Alaska Limited Partnership, RICHARD L. BOYSEN and JACK WHITE COMPANY,

Plaintiffs,

vs.

STATE OF ALASKA, Department of Transportation and Public Facilities, THEODORE M. PEASE, JR., and CLAIRE V. PEASE, and MUNICIPALITY OF ANCHORAGE,

Defendants.

No. 3AN-79-951 CIV.

JUDGMENT

For the reasons set forth in the Memorandum of Decision prepared and executed by this court on the 7th day of May, 1980, the court hereby awards summary judgment declaring the rights and liabilities of the parties to this lawsuit as follows:

1. The State of Alaska and the Municipality of Anchorage are claiming highway easements for local, feeder, and through roads in excess of easement widths specified in patents issued to Alaska property owners. Said easements are claimed by the State or the Municipality pursuant to authority derived from

Public Land Orders 601, 757, 1613 and Department Order 2665. For the reasons set forth in the Memorandum of Decision dated May 7, 1980, the court hereby awards Plaintiffs a summary judgment against the State of Alaska and the Municipality of Anchorage declaring that the State and the Municipality may not take or utilize property for local, feeder, or through roads in excess of the widths set forth in the patents to the affected properties without just compensation to the owners of the affected properties unless such local, feeder, or through roads were occupied and staked by the State of Alaska or the Municipality of Anchorage prior to April 14, 1966 or were specifically designated in the patents to the affected real properties.

2. The Plaintiffs Hanson Associates and Richard L. Boysen are hereby awarded a summary judgment against the State of Alaska and the Municipality of Anchorage declaring that neither the State nor the Municipality can take any portion of their properties for the through road presently known as the Old Seward Highway which is in excess of the easement widths specified in their respective patents without just compensation.

3. The Defendants Pease are hereby awarded a summary judgment on their cross-claim against the State of Alaska declaring that the State may not take or utilize any portion of the Peases' land for the local road presently known as Rabbit Creek Road which is in excess of the 33-foot easement width specified in the patent to the Peases' property without just compensation. The Peases' property is described as Lot 191, Section 33, Township 12 North, Range 3 West, Seward Meridian, Anchorage Recording District, Third Judicial District, State of Alaska.

4. The Defendants Pease are hereby awarded a summary judgment on their counterclaim against Transamerica Title Insurance Company declaring that Transamerica is liable under its title insurance policy issued to the Peases for the taking by the State of Alaska of a 17-foot strip of land for the local road known as Rabbit Creek Road, which 17-foot strip of land was in excess of 33-foot easement specified in the Peases' patent. However, since the State of Alaska must compensate the Peases for the taking or utilization of said additional 17-foot easement, the Peases shall collect just compensation from the State of Alaska, and upon receipt of said just compensation the Peases shall not be entitled to recover damages from Transamerica Title Insurance Company for said taking of the additional 17-foot strip of property.

5. Plaintiffs are hereby awarded the sum of $_____ for costs and $_____ for a reasonable attorney's fee, for a total judgment of $_____ against the State of Alaska and the Municipality of Anchorage, jointly and severally.

6. The Defendants Pease are hereby awarded the sum of $_____ for costs and $_____ for a reasonable attorney's fee for a total judgment of $_____ against the State of Alaska and the Municipality of Anchorage, jointly and severally.

DONE, at Anchorage, Alaska this 27th day of May, 1980.

_____
VICTOR D. CARLSON
Judge of the Superior Court

I hereby certify that on the 19th day of May, 1980, true and accurate copies of the foregoing were mailed to the following attorneys of record for the above-captioned cause:

Municipality of Anchorage
Office of the Municipal Attorney
Pouch 6-650
437 "E" Street
Anchorage, Alaska

Theodore M. Pease, Jr.
Burr, Pease & Kurtz, Inc.
810 "N" Street
Anchorage, Alaska 99501

Avrum M. Gross, Attorney General
State Capitol, Pouch K
Juneau, Alaska 99811
Attention: Jack McGee
Assistant Attorney General
Department of Law
Transportation Section

Michael W. Price

APPENDIX A-3

IN THE SUPREME COURT OF THE STATE OF ALASKA

STATE OF ALASKA

Appellant and Cross-Appellee,

vs.

ALASKA LAND TITLE ASSOCIATION, et al.,

Appellees and Cross-Appellants.

Supreme Court Numbers 5407/5408

O R D E R

Superior Court No. 3AN 79-951 Civil

Before: Burke, Chief Justice, Rabinowitz, Matthews and Compton, Justices.

On consideration of the petition for rehearing filed June 6, 1983 by the Alaska Land Title Association, et al., and the [second] petition for rehearing by the State, lodged June 14, 1983 and filed June 23, 1983,

IT IS ORDERED.

1. The petition for rehearing filed by the Alaska Land Title Association is denied.

2. The petition for rehearing filed by the State is granted, and Opinion No. 2681 filed on May 27, 1983, is amended by adding a new footnote 15, referenced to the word "purposes" on page 27, line 19. The new footnote shall read as follows:

> The State and the plaintiffs have agreed that PLO 601 is based on Executive Order 9337 which, "in turn, rests on" 43 U.S.C. §141. We thus have no occasion to consider whether Executive Order 9337 delegated authority to make withdrawals in addition to those authorized by 43 U.S.C. §141.

Succeeding footnotes shall be renumbered.

Entered by direction of the court at Anchorage, Alaska on July 8, 1983.

CLERK OF THE SUPREME COURT

Robert D. Bacon

ccs: Justices
Counsel
The Honorable Victor D. Carlson
West Publishing Company
Mead Data Central

APPENDIX B

CONSTITUTIONAL, STATUTORY AND REGULATORY PROVISIONS INVOLVED

U.S. Const. amend. V.

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

U.S. Const. amend. XIV, §1

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

43 U.S.C. §932

The right of way for the construction of highways over public lands, not reserved for public uses, is hereby granted. R.S. §2477.

43 U.S.C. §1166

Suits by the United States to vacate and annul any patent shall only be brought within six years after the date of the issuance of such patents. Mar. 3, 1891, c. 559, §1, 26 Stat. 1093; Mar. 3, 1891, c. 561, §8, 26 Stat. 1099.

44 U.S.C. §1507

A document required by section 1505(a) of this title to be published in the Federal Register is not valid as against a per-

son who has not had actual knowledge of it until the duplicate originals or certified copies of the document have been filed with the Office of the Federal Register and a copy made available for public inspection as provided by section 1503 of the title. Unless otherwise specifically provided by statute, filing of a document, required or authorized to be published by section 1505 of this title, except in cases where notice by publication is insufficent in law, is sufficient to give notice of the contents of the document to a person subject to or affected by it. the publication in the Federal Register of a document creates a rebuttable presumption—

(1) that it was duly issued, prescribed, or promulgated;

(2) that it was filed with the Office of the Federal Register and made available for public inspection at the day and hour stated in the printed notation;

(3) that the copy contained in the Federal Register is a true copy of the original; and

(4) that all requirements of this chapter and the regulations prescribed under it relative to the document have been complied with.

The contents of the Federal Register shall be judicially noticed and without prejudice to any other mode of citation, may be cited by volume and page number.

Pub. L. 90-620, Oct. 22, 1968, 82 Stat. 1276.

The Act of January 27, 1905, Pub. L. No. 26 §2, 33 Stat. 616

Sec. 2. That there shall be a board of road commissioners in said district, to be composed of an engineer officer of the United States Army to be detailed and appointed by the Secretary of War, and two other officers of that part of the Army stationed in said district and to be designated by the Secretary of War. The said engineer officer shall, during the term of his said detail and appointment, abide in said district. The said board shall have the power, and it shall be their duty, upon their own motion or upon petition, to locate, layout, construct, and maintain wagon roads and pack trails from any point on the navigable waters of said district to any town, mining or other industrial camp or settlement, or between any

such town, camps, or settlements therein, if in their judgment such roads or trails are needed and will be of permanent value for the development of the district; but no such road or trail shall be constructed to any town, camp, or settlement which is wholly transitory or of no substantial value or importance for mining trade, agricultural, or manufacturing purposes. The said board shall prepare maps, plans, and specifications of every road or trail they may locate and lay out, and whenever more than five thousand dollars in the aggregate shall have to be expended on the construction of any road or trail, contract for the work shall be let by them to the lowest responsible bidder, upon sealed bids, after due notice, under rules and regulations to be prescribed by the Secretary of War. The board may reject any bid if they deem the same unreasonably high or if they find that there is a combination among bidders. In case no responsible and reasonable bid can be secured, then the work may be carried on with material and men procured and hired by the board. The engineer officer of the board shall in all cases supervise the work of construction and see that the same is properly performed. As soon as any road or trail laid out by the board has been constructed and completed they shall examine the same and make a full and detailed report of the work done on the same to the Secretary of War, and in such report they shall state whether the road or trail has been completed conformable to the maps, plans, and specifications of the same. It shall be the duty of said board, as far as practicable, to keep in proper repair all roads and trails constructed under their supervision, and the same rules as to the manner in which the work of repair shall be done, whether by contract or otherwise, shall govern as in the case of the original construction of the road or trail. The cost and expenses of laying out, constructing, and repairing such roads and trails shall be paid by the Secretary of the Treasury out of the road and trail portion of said "Alaska fund" upon vouchers approved and certified by said board. The Secretary of the Treasury shall, at the end of each month, send by mail to each of the members of said board a statement of the amount available of said "Alaska fund" for the construction and repair of roads, and trails, and no greater liability for construction or repair shall

at any time be incurred by said board than the money available therefor at that time in said fund. The members of said board shall, in addition to their salaries, be entitled to receive their actual traveling expenses paid or incurred by them in the performance of their duties as members of the board.

48 U.S.C. §322 (1958)

The Secretary of the Interior, or such officer, or officers as may be designated by him, shall upon his own motion or upon petition, locate, lay out, construct, and maintain roads, trails and bridges from any point on the navigable waters of Alaska to and through any town, mining or other industrial camp or settlement, or between and through any such town, camps, or settlements therein, if in his judgment such roads, trails, or bridges are needed and will be of permanent value for the development of Alaska: *Provided,* That within incorporated towns only roads and bridges which are designated by the Secretary of the Interior as part of the through highway system of the Territory of Alaska may be constructed under this section; *Provided further,* That no roads or bridges within incorporated towns shall be maintained under this section. (Jan. 27, 1905, ch. 277, §2, 33 Stat. 616; May 14, 1906, ch. 2458, §2, 34 Stat. 192; June 30, 1932, ch. 320, §1, 47 Stat. 446; July 14, 1955, ch. 359, 69 Stat. 321.)

The Act of June 30, 1932. Pub. L. No. 218 §§1 & 2, 47 Stat. 446

Providing for the transfer of the duties authorized and authority conferred by law upon the board of road commissioners in the Territory of Alaska to the Department of the Interior, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That from and after the passage of this Act the duties authorized and authority conferred by law upon the board of road commissioners in the Territory of Alska, and upon the Secretary of War, as provided for in the Act of January 27, 1905 (ch. 277, sec. 2, 33 Stat. 616), as amended by the Act of May 14, 1906 (ch. 2458, sec. 2, 34 Stat. 192), and Acts supplemental thereto, and amendatory thereof, are hereby transferred to

the Department of the Interior, and shall hereafter be administered by the Secretary of the Interior, or under his direction by such officer, or officers, as may be designated by him.

Sec. 2. The Secretary of the Interior shall execute or cause to be executed all laws pertaining to the construction and maintenance of roads and trails and other works in Alaska, heretofore administered by said board of road commissioners under the direction of the Secretary of War; and all appropriations heretofore made, and now available, or that hereafter may be made, for expenditure by said board for meeting the cost of such work in the Territory of Alaska, are hereby transferred to the Secretary of the Interior, to be thereafter administered in accordance with the provisions of this Act; and the said board is directed to turn over to the Secretary of the Interior all equipment, materials, supplies, papers, maps, and documents, or other property utilized in the exercise of such powers, for the use of the said Secretary in the administration of the construction and maintenance of roads, tramways, ferries, bridges, and trails, and other works in the Territory of Alaska heretofore administered by said board.

The Act of July 24, 1947, Pub. L. No. 229 §5 61 Stat. 418 (amending the Act of June 30, 1932, Publ. L. No. 218, 47 Stat. 446)

To amend the Act entitled "An Act providing for the transfer of the duties authorized and authority conferred by law upon the board of road commissioners in the Territory of Alaska to the Department of the Interior, and for other purposes", approved June 30, 1932.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the act entitled "An Act providing for the transfer of the duties authorized and authority conferred by law upon the board of road commissioners in the Territory of Alaska to the Department of the Interior, and for other purposes", approved June 30, 1932 (47 Stat. 446), is hereby amended by adding at the end thereof the following new section:

"Sec. 5. In all patents for lands hereafter taken up, entered, or located in the Territory of Alaska, and in all deeds

by the United States herefter conveying any lands to which it may have reacquired title in said Territory not included within the limits of any organized municipality, there shall be expressed that there is reserved, from the lands described in said patent or deed, a right-of-way thereon for roads, roadways, highways, tramways, trails, bridges, and appurtenant structures constructed or to be constructed by or under the authority of the United States or any State created out of the Territory of Alaska. When a right-of-way reserved under the provisions of this Act is utilized by the United States or under its authority, the head of the agency in charge of such utilization is authorized to determine and make payment for the value of the crops thereon if not harvested by the owner, and for the value of any improvements, or for the cost of removing them to another site, if less than their value."

Approved July 24, 1947.

48 U.S.C. §321a (1958)

The Secretary of the Interior shall execute or cause to be executed all laws pertaining to the construction and maintenance of roads and trails and other works in Alaska, heretofore administered by said board of road commissioners under the direction of the Secretary of War; and all appropriations heretofore made, and now available, or that hereafter may be made, for expenditure by said board for meeting the cost of such work in the Territory of Alaska, are transferred to the Secretary of Interior, to be thereafter administered in accordance with the provisions of sections 321a-321d of this title; and the said board is directed to turn over to the Secretary of the Interior all equipment, materials, supplies, papers, maps, and documents, or other property utilized in the exercise of such powers, for the use of the said Secretary in the administration of the construction and maintenance of roads, tramways, ferries, bridges, and trails, and other works in the Territory of Alaska, heretofore administered by said board. (June 30, 1932, ch. 320, §2, 47 Stat. 446)

48 U.S.C. §321d (1958)

In all patents for lands hereafter taken up, entered, or located in the Territory of Alaska, and in all deeds by the United States hereafter conveying any lands to which it may

have reacquired title in said Territory not included within the limits of any organized municipality, there shall be expressed that there is reserved, from the lands described in said patent or deed, a right-of-way thereon for roads, roadways, highways, tramways, trails, bridges, and appurtenant structures constructed or to be constructed by or under the authority of the United States or of any State created out of the Territory of Alaska. When a right-of-way reserved under the provisions of sections 321a-321d of this title is utilized by the United States or under its authority, the head of the agency in charge of such utilization is authorized to determine and make payment for the value of the crops thereon if not harvested by the owner, and for the value of any improvements, or for the costs of removing them to another site, if less than their value. (June 30, 1932, ch. 320, §5, as added July 24, 1947, ch. 313, 61 Stat. 418.)

Federal-Aid Highway Act of 1970 §138(b) Pub. L. No. 91-605, 64 Stat. 1713 (1970)

(b) Any right-of-way for roads, roadways, highways, tramways, trails, bridges, and appurtenant structures reserved by section 321(d) of title 48, United States Code (61 Stat. 418, 1947), not utilized by the United States or by the State or Territory of Alaska prior to the date of enactment hereof, shall be and hereby is vacated and relinquished by the United States to the end and intent that such reservations shall merge with the fee and be forever extinguished.

43 C.F.R. §101.3 (1949)

Notation of Rights-of-Way

§101.3 *Notations to be made on entry papers and notice of allowance.* (a) In order that all persons making entry of public lands which are affected by rights-of-way may have actual notice thereof, the manager is directed to note upon the original entry papers and upon the notice of allowance of the application (Form 4-279) issued to the entryman, a reference to such right-of-way.

(b) He will make no such notation upon the final entry papers unless the right-of-way has been granted under an act of Congress which does not in terms protect the grantee

against subsequent adverse rights, in which case he will place the same notation as to right-of-way upon the final entry papers, so that the reservation of the right-of-way will be made in the patent, when issued (23 L.D. 67).

[Reg. Nov. 3, 1909, as amended by Reg. Jan 19, 1910]

Public Land Order 601

By virtue of the authority vested in the President and pursuant to Executive Order No. 9337 of April 24, 1943, it is ordered as follows:

Executive Order No. 9145 of April 23, 1942, reserving public lands for the use of the Alaska Road Commission in connection with the construction, operation, and maintenance of the Palmer-Richardson Highway (now known as the Glenn Highway), is hereby revoked.

Public Land Order No. 386 of July 31, 1947, is hereby revoked so far as it relates to the withdrawal, for highway purposes, of the following-described lands:

(a) A strip of land 600 feet wide, 300 feet on each side of the centerline of the Alaska Highway (formerly the Canadian Alaskan Military Highway) as constructed from the Alaska-Yukon Territory boundary to its junction with the Richardson Highway near Big Delta, Alaska.

(b) A strip of land 600 feet wide, 300 feet on each side of the center line of the Gulkana-Slana-Tok Road as constructed from Tok Junction at about Mile 1319 on the Alaska Highway to the junction with the Richardson Highway near Gulkana, Alaska.

Subject to valid existing rights and to existing surveys and withdrawals for other than highway purposes, the public lands in Alaska lying within 300 feet on each side of the center line of all other through roads, 100 feet on each side of the center line on all feeder roads, and 50 feet on each side of the center line of all local roads, in accordance with the following classifications, are hereby withdrawn from all forms of appropriation under the public land laws, including the mining and mineral-leasing laws, and reserved for highway purposes:

Through Roads

Alaska Highway, Richardson Highway, Glenn Highway, Haines Highway, Tok Cut-Off.

Feeder Roads

Steese Highway, Elliott Highway, McKinley Park Road, Anchorage-Potter-Indian Road, Edgerton Cut-Off, Tok Eagle Road, Ruby-Long-Poorman Road, Nome-Solomon Road, Kenai Lake-Homer Road, Fairbanks-College Road, Anchorage-Lake Spenard Road, Circle Hot Springs Road.

Local Roads

All roads not classified above as Through Roads or Feeder Roads, established or maintained under the jurisdiction of the Secretary of the Interior.

With respect to the lands released by the revocations made by this order and not rewithdrawn by it, this order shall become effective at 10:00 a.m. on the 35th day after the date hereof. At that time, such released lands, all of which are unsurveyed, shall, subject to valid existing rights, be opened to settlement under the homestead laws and the homesite act of May 26, 1934, 48 Stat. 809 (48 U.S.C. 461), only, and to that form of appropriation only by qualified veterans of World War II and other qualified persons entitled to preference under the act of September 27, 1944, 58 Stat. 747, as amended (43 U.S.C. 279-284). Commencing at 10:00 a.m. on the 126th day after the date of this order, any of such lands not settled upon by veterans shall become subject to settlement and other forms of appropriations by the public generally in accordance with appropriate laws and regulations.

Public Land Order 757

Amendment of Public Land Order No. 601 of August 10, 1949, reserving public lands for highway purposes.

By virtue of the authority vested in the President and pursuant to Executive Order 9337 of April 24, 1943, it is ordered as follows:

The sixth paragraph of Public Land Order No. 601 of August 10, 1949, reserving public lands for highway purposes,

commencing with the words, "Subject to valid existing rights", is hereby amended to read as follows:

Subject to valid existing rights and to existing surveys and withdrawals for other than highway purposes, the public lands in Alaska lying within 300 feet on each side of the center line of the Alaska Highway and within 150 feet on each side of the center line of the Richardson Highway, Glenn Highway, Haines Highway, the Seward-Anchorage Highway (exclusive of that part thereof within the boundaries of the Chugach National Forest), the Anchorage-Lake Spenard Highway, and the Fairbanks-College Highway are hereby withdrawn from all forms of appropriation under the public land laws, including the mining and mineral-leasing laws, and reserved for highway purposes.

Easements having been established on the lands released by this order, such lands are not open to appropriation under the public land laws except as a part of a legal subdivision, if surveyed, or an adjacent area, if unsurveyed, and subject to the pertinent easement.

Public Land Order 1613

Revoking Public Land Order No. 601 of August 10, 1949 which reserved public lands for highway purposes, and partially revoking Public Land Order No. 386 of July 31, 1947.

By virtue of the authority vested in the President and pursuant to Executive Order No. 10355 of May 26, 1952, and the act of August 1, 1956 (70 Stat. 898) it is ordered as follows:

1. Public Land Order No. 601 of August 10, 1949, as modified by Public Land Order No. 757 of October 16, 1951, reserving for highway purposes the public lands in Alaska lying within 300 feet on each side of the center line of the Alaska Highway and within 150 feet on each side of the center line of the Richardson Highway, Glenn Highway, Haines Highway, the Seward-Anchorage Highway (exclusive of that part thereof, within the boundaries of the Chugach National Forest), the Anchorage-Lake Spenard Highway, and the Fairbanks-College Highway, is hereby revoked.

2. Public Land Order No. 386 of July 31, 1947, so far as it withdrew the following-described lands, [illegible] items

(a) and (b) in said order, under the jurisdiction of the Secretary of War for right-of-way purposes for a telephone line and an oil pipeline with appurtenances, is hereby revoked:

(a) A strip of land 50 feet wide, 25 feet on each side of a telephone line as located and constructed generally parallel to the Alaska Highway from the Alaska-Yukon Territory boundary to the junction of the Alaska Highway with the Richardson highway near Big Delta, Alaska.

(b) A strip of land 20 feet wide, 10 feet on each side of a pipeline as located and constructed generally parallel to the Alaska Highway from the Alaska-Yukon Territory boundary to the junction of the Alaska Highway with the Richardson Highway near Big Delta, Alaska.

3. An easement for highway purposes, including appurtenant protective, scenic, and service areas, over and across the lands described in paragraph 1 of this order, extending 150 feet on each side of the center line of the highways mentioned therein, is hereby established.

4. An easement for telephone line purposes in, over, and across the lands described in paragraph 2(a) of this order, extending 25 feet on each side of the telephone line referred to in that paragraph, and an easement for pipeline purposes in, under, over, and across the lands described in paragraph 2(b) of this order, extending 10 feet on each side of the pipeline referred to in that paragraph, are hereby established, together with the right of ingress and egress to all sections of the above easements on and across the lands hereby released from withdrawal.

5. The easements established under paragraphs 3 and 4 of this order shall extend across both surveyed and unsurveyed public lands described in paragraphs 1 and 2 of this order for the specified distance on each side of the center line of the highways, telephone line and pipeline, as those center lines are definitely located as of the date of this order.

6. The lands within the easements established by paragraphs 3 and 4 of this order shall not be occupied or used for other than the highways, telegraph line and pipeline referred to in paragraphs 1 and 2 of this order except with the

permission of the Secretary of the Interior or his delegate as provided by section 3 of the act of August 1, 1956 (70 Stat. 898), provided: that if the lands crossed by such easements are under the jurisdiction of a Federal department or agency, other than the Department of the Interior, or of a Territory, State or other Government subdivision or agency, such permission may be granted only with the consent of such department, agency, or other governmental unit.

7. The lands released from withdrawal by paragraphs 1 and 2 of this order, which at the date of this order, adjoin lands in private ownership, shall be offered for sale at not less than their appraised value, as determined by the authorized officer of the Bureau of Land Management, and pursuant to section 2 of the act of August 1, 1956, supra. Owners of such private lands shall have a preference right to purchase at the appraised value so much of the released lands adjoining their private property as the authorized officer of the Bureau of Land Management deems equitable, provided, that ordinarily, owners of private lands adjoining the lands described in paragraph 1 of this order will have a preference right to purchase released lands adjoining their property, only up to the center line of the highways located therein. Preference right claimants may make application for purchase of released lands at any time after the date of this order by giving notice to the appropriate land office of the Bureau of Land Management. Lands described in this paragraph not claimed by and sold to preference claimants may be sold at public auction at not less than their appraised value by an authorized officer of the Bureau of Land Management, provided that preference claimants are first given notice of their privilege to exercise their preference rights by a notice addressed to their last address of record in the office in the Territory in which their title to their private lands is recorded. Such notice shall give the preference claimant at least 60 days in which to make application to exercise his preference right; and if the application is not filed within the time specified, the preference right will be lost. Preference right claimants will also lose their preference rights if they fail to pay for the lands within the time period specified by

the authorized officer of the Bureau of Land Management, which time period shall not be less than 60 days.

8. The lands released from withdrawal by paragraphs 1 and 2 of this order, which at the date of this order, adjoin lands in valid unperfected entries, locations, or settlement claims, shall be subject to inclusion in such entries, locations and claims, notwithstanding any statutory limitations upon the area which may be included therein. For the purposes of this paragraph, entries, locations, and claims include, but are not limited to, certificates of purchase under the Alaska Public Sales Act (63 Stat. 679; 48 U.S.C. 364a-e) and leases with option to purchase under the Small Tract Act (52 Stat. 609; 43 U.S.C. 682a) as amended. Holders of such entries, locations and claims to the lands, if they have not gone to patent, shall have a preference right to amend them to include so much of the released lands adjoining their property as the authorized officer deems equitable, provided, that ordinarily such holders of property adjoining the lands described in paragraph 1 of this order will have the right to include released lands adjoining such property only up to the center line of the highways located therein. Allowances of such amendments will be conditional upon the payment of such fees and commissions as may be provided for in the regulations governing such entries, locations, and claims together with the payment of any purchase price and cost of survey of the land which may be established by the law or regulations governing such entries, locations and claims, or which may be consistent with the terms of the sale under which the adjoining land is held. Preference right claimants may make application to amend their entries, locations, and claims at any time after the date of this order by giving notice to the appropriate land office of the Bureau of Land Management. Lands described in this paragraph, not claimed by and awarded to preference claimants, may be sold at public auction at not less than their appraised value by the authorized officer of the Bureau of Land Management, provided that preference claimants are first given notice of their privilege to exercise their preference rights by a notice addressed to their last address of record in the appropriate land office, or if the land is patented, in the Territory in which ti-

tle to their private land is recorded. Such notice shall give the claimant at least 60 days in which to make application to exercise his preference right, and if the application is not filed within the time specified the preference right will be lost. Preference right claimants will also lose their preference rights if they fail to make any required payments within the time period specified by the authorized officer of the Bureau of Land Management, which time period shall not be less than 60 days.

9(a) Any tract released by Paragraph 1 or 2 of this order from the withdrawals made by Public Land Orders Nos. 601, as modified, and 386, which remains unsold after being offered for sale under Paragraph 7 or 8 of this order, shall remain open to offers to purchase under Section 2 of the act of August 1, 1956, supra, at the appraised value, but it shall be within the discretion of the Secretary of the Interior or his delegate as to whether such an offer shall be accepted.

(b) Any tract released by Paragraph 1 and 2 of this order from the withdrawals made by Public Land Orders Nos. 601, as modified, and 386, which on the date hereof does not adjoin privately-owned land or land covered by an unpatented claim or entry is hereby opened, subject to the provisions of Paragraph 6 hereof, if the tract is not otherwise withdrawn, to settlement claim, application, selection or location under any applicable public land law. Such a tract shall not be disposed of as a tract or unit separate and distinct from adjoining public lands outside of the area released by this order, but for disposal purposes, and without losing its identity, if it is already surveyed, it shall be treated as having merged into the mass of adjoining public lands, subject, however, to the easement so far as it applies to such lands.

(c) Because the act of August 1, 1956 (70 Stat. 896; 48 U.S.C. 420-420c) is an act of special application, which authorizes the Secretary of the Interior to make disposals of lands included in revocations such as made by this order, under such laws as may be specified by him, the preference-right provisions of the Veterans Preference Act of 1944 (58 Stat. 747; 43 U.S.C. 279-284) as amended, and of the Alaska Mental

Health Enabling Act of July 28, 1956 (70 Stat. 709; 48 U.S.C. 46-3b) will not apply to this order.

10. All disposals of lands included in the revocations made by this order which are under the jurisdiction of a Federal department or agency other than the Department of the Interior may be made only with the consent of such department or agency. All lands disposed of under the provisions of this order shall be subject to the easements established by this order.

11. The boundaries of all withdrawals and restorations which on the date of this order adjoin the highway easements created by this order are hereby extended to the center line of the highway easements which they adjoin. The withdrawal made by this paragraph shall include, but not be limited to the withdrawals made for Air Navigation Site No. 7 of July 13, 1964, and by Public Land Orders No. 386 of July 31, 1947, No. 622 of December 15, 1949, No. 803 of February 27, 1952, No. 975 of June 18, 1954, No. 1037 of December 16, 1954, No. 1059 of January 21, 1955, No. 1129 of April 15, 1955, No. 1179 of June 29, 1955, and No. 1181 of June 20, 1955.

Department Order 2665

Rights-of-Way for Highways in Alaska

Section 1. Purpose. (a) The purpose of this order is to (1) fix the width of all public highways in Alaska established or maintained under the jurisdiction of the Secretary of the Interior and (2) prescribe a uniform procedure for the establishment of rights-of-way or easements over or across the public lands for such highways. Authority for these actions is contained in section 2 of the act of June 30, 1932 (47 Stat. 446, 48 U.S.C. 321a).

Section 2. Width of public highways. (a) The width of the public highways in Alaska shall be as follows:

(1) For through roads: The Alaska Highway shall extend 300 feet on each side of the center line thereof. The Richardson Highway, Glenn Highway, Haines Highway, Seward-Anchorage Highway, Anchorage-Lake Spenard Highway and

Fairbanks-College Highway shall extend 150 feet on each side of the center line thereof.

(2) For feeder roads: Abbert Road (Kodiak Island), Edgerton Cutoff, Elliott Highway, Seward Peninsula Tram Road, Steese Highway, Sterling Highway, Taylor Highway, Northway Junction to Airport Road, Palmer to Matanuska to Wasilla Junction Road, Palmer to Finger Lake to Wasilla Road, Glenn Highway Junction to Fishhook Junction to Wasilla to Knik Road, Slana to Nebesna Road, Kenai Junction to Kenai Road, University to Ester Road, Central to Circle Hot Springs to Portage Creek Road, Manley Hot Springs to Eureka Road, North Park Boundary to Kantishna Road, Paxson to McKinley Park Road, Sterling Landing to Ophir Road, Iditarod to Flat Road, Dillingham to Wood River Road, Ruby to Long to Poorman Road, Nome to Council Road and Nome to Bessie Road shall each extend 100 feet on each side of the center line thereof.

(3) For local roads: All public roads not classified as through roads or feeder roads shall extend 50 feet on each side of the center line thereof.

Section 3. Establishment of rights-of-way or easements. (a) A reservation for highway purposes covering the lands embraced in the through roads mentioned in section 2 of this order was made by Public Land Order No. 601, of August 10, 1949, as amended by Public Land Order No. 757 of October 16, 1951. That order operates as a complete segregation of the land from all forms of appropriation under the public land laws, including the mining and the mineral leasing laws.

(b) A right-of-way or easement for highway purposes covering the lands embraced in the feeder roads and the local roads equal in extent to the width of such roads as established in section 2 of this order, is hereby established for such roads over and across the public lands.

(c) The reservation mentioned in paragraph (a) and the rights-of-way or easements mentioned in paragraph (b) will attach as to all new construction involving public roads in Alaska when the survey stakes have been set on the ground and notices have been posted at appropriate points along the

route of the new construction specifying the type and width of the roads.

Section 4. Road maps to be filed in proper Land Office. Maps of all public roads in Alaska heretofore or hereafter constructed showing the location of the roads, together with appropriate plans and specifications, will be filed by the Alaska Road Commission in the proper Land Office at the earliest possible date for the information of the public.

Right-of-Way Act of 1966

Section 1. Purpose. This Act is intended to alleviate the economic hardship and physical and mental distress occasioned by the taking of land, by the State of Alaska, for which no compensation is paid to the persons holding title to the land. This practice has resulted in financial difficulties and the deprivation of peace of mind regarding the security of one's possessions to many citizens of the State of Alaska, and which, if not curtailed by law, will continue to adversely affect citizens of this state. Those persons who hold title to land under a deed or patent which contains a reservation to the state by virtue of the Act of June 30, 1932, ch. 320, sec. 5, as added July 24, 1947, ch. 313, 61 Stat. 418, are subject to the hazard of having the State of Alaska take their property without compensation because all patents or deeds containing the reservation required by that federal Act reserve to the United States, or the state created out of the Territory of Alaska, a right-of-way for roads, roadways, tramways, trails, bridges, and appurtenant structures either constructed or to be constructed. Except for this reservation the State of Alaska, under the Alaska constitution and the constitution of the United States, would be required to pay just compensation for any land taken for a right-of-way. It is declared to be the purpose of this Act to place persons with land so encumbered on a basis of equality with all other property holders in the State of Alaska, thereby preventing the taking of property without payment of just compensation as provided by law, and in the manner provided by law.

Section 2. Taking of Property Under Reservation Void. After the effective date of this Act, no agency of the state may

take privately-owned property by the election or exercise of a reservation to the state acquired under the Act of June 30, 1932, ch. 320 sec. 5, as added July 24, 1947, ch. 313, 61 Stat. 418, and taking of property after the effective date of this Act by an election or exercise of a reservation to the state under that federal Act is void.

Section 3. Prospective Application. This Act shall not be construed to divest the state of, or to require compensation by the state for, any right-of-way or other interest in real property which was taken by the state, before the effective date of this Act, by the election or exercise of its right to take property through a reservation acquired under the Act of June 30, 1932, ch. 320, sec. 5, as added July 24, 1947, ch. 313 61 Stat. 418.

Section 4. Short Title. This Act may be cited as the Right-of-Way Act of 1966.

Section 5. Effective Date. This Act takes effect on the day after its passage and approval or on the day it becomes law without such approval.

APPENDIX C

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT
Anchorage, Alaska

October 10, 1950

Executive Order 601, August 10, 1949

Executive Order 601 of August 10, 1949, established rights of way along highways in the Territory of Alaska by means of withdrawing from all forms of entry strips a specified width on each side of each road.

The width of the right of way along the Alaska Highway is 600 feet. On all other through roads in Alaska it is 300 feet, on feeder roads 200 feet, and on local roads 100 feet.

Although Region VII, Bureau of Land Management, had attempted to have easements created rather than withdrawals, before the actual withdrawal order was issued, we had not even then begun to comprehend to what extent the Executive Order would complicate the functions of the Bureau of Land Management. The Bureau of Land Management gradually had begun to pick up momentum in the processing of various types of applications following the delegation of authority to the field. Depending upon our not being completely hamstrung by lack of funds, we could foresee the time when we could become reasonably current. And then it happened. Executive Order 601 was promulgated.

First, let me point out to you, there are no withdrawals along the railroad track of the Alaska Railroad. That is to say that the right-of-way itself is an easement rather than a strip of withdrawn land. Patents are issued to homesteaders which do not interfere with the operations of the Alaska Railroad but yet include the land upon which the tracks are built. If, in the future, a portion of the track is abandoned or the railroad decides to adopt another course, the land upon which the track was first located automatically becomes the property of the individual in whose patent or deed it was described. There are

no complications about a strip of land running up through the country owned by nobody.

Because of the existence of the withdrawal along roads, it has ben ruled that no entry filed or initiated after August 10, 1949, may go across the road, unless it is in the category of a local road with a right-of-way 100 feet wide. It has not been possible for the Alaska Road Commission to officially survey all of their roads and tie them in exactly with the existing corners of the rectangular net of surveys. Until these roads are surveyed, it will not be possible in some cases to determine whether or not the road crosses a given homestead entry.

Before any patent or final certificate can be issued to homesteaders who are restricted to only one side of the road, it will be necessary to survey many roads and all of the homesteads affected by roads running through surveyed land. This adds a tremendous job and workload to our Division of Engineering. In addition, it adds a tremendous expense to the taxpayers.

There is accumulating in the Land Offices files of applications by veterans who have complied with the regulations and who now want to obtain patent. These veterans are required to live on the land seven months and are not required to cultivate. Therefore, they may make application to obtain patent or, technically, to make final proof at the end of their seven months residence period. But these papers cannot be processed because withdrawal strips run through the land. The veteran must await a survey, which may be forthcoming this field season and may be forthcoming next field season.

After the survey has been made on the ground, it is necessary for the field notes to be processed, the plats to be produced from the drafting boards, the completed plat to be sent to Washington, the plat to be approved in the Washington office, and then returned to the proper Land Office for official filing. It is optimistic to assume that the plat will be finally filed in the proper Land Office within one year of the survey on the ground. During all of this time, the veteran has been unable to publish his final proof because his land cannot be

adequately described in the notice of publication.

The Sterling Highway, going down through the Kenai Peninsula gives us a specific project to discuss. The exact location of that road was not known to the Anchorage Land Office and therefore many entries were allowed which subsequently proved to straddle the road. In the meantime the entrymen have cultivated land on one side of the road, and have built their improvements on the other side of the road. Under the present rules and regulations, each entryman must elect which side of the road he is to take, and must relinquish or give up the land on the other side of the road. We have specific cases in which the road has cut across, leaving five, six or ten acres on one side of the road, and it is here that the entryman has built his house. He has cultivated and placed his fields on the other side of the road. As the saying goes, he is between the devil and the deep blue sea, and we can be of no assistance.

Then assuming that the entryman selects the portion of his entry which includes only ten acres or less. Under the provision of an act of 1947, the Alaska Road Commission still has the right to build a road through any homestead entry and therefore, technically, the Commission could put a road through the small acreage that has been left to the entryman.

Here are some specific cases:

Anchorage 014800, Richard Teller. There are 54 acres in the whole application, which comprises two lots, one north of the other. The Sterling Highway goes through the two lots, from north to south, but not through the middle, rather toward the eastern edge, about two-thirds of the way across. Teller has built a small road and has planned to build his house on the side of the road which would force him to choose the narrow strip. Originally his entry extended to Cook Inlet, and therefore he had water frontage. Under the new regulations he must relinquish either the area where he planned to build his house, and construct a small road, and give up the portion fronting the water, or he must select the portion fronting the water and give up the area where he planned to build his house and which evidently has the best house site.

There is nothing in the regulations which require us to investigate every homestead. We have an example of a case where the homesteader had appeared to be complying with the regulations in good order. He was a veteran, and therefore was not required to cultivate. His name is Clarence E. Herman, Anchorage 014574. There is nothing in the records to indicate we should make an investigation of his homestead, therefore we went through the procedures which is called "clear listing." That is, the Division of Land Planning indicated to the Land Office that a final certificate could be issued without further investigation or negotiating of any type. However, during a recent trip to that vicinity, a field examiner was making routine investigations of other homesteads, and was incidentally checking the location of the road as he went along. He discovered that the road goes through the homestead entry of Clarence E. Herman, therefore, we must backtrack in about everything that we have done. The Notice of Allowance of Herman must be vacated. Then we will have to have the road surveyed, and then await preparation of a supplemental plat. When the supplemental plat has been processed and finally filed in the Land Office, we must require this homesteader to publish again, as he already has published at the time he submitted his final proof. This homesteader had also bumped up against the regulation which affected Department of Interior employees as he was an employee of the Alaska Road Commission, but happily that restriction has now been removed through action of the Secretary of Interior.

You will recall that the homestead regulations state that each qualified individual may obtain land under the homestead laws up to a total of 160 acres. He may take that in one entry or several entries. If he homesteads in one part of Alaska and goes to another part of Alaska, he may homestead again, so long as he has not taken up an area exceeding 160 acres. If a homesteader has less than 160 acres and some available land becomes public domain adjacent to his original holdings, under the regulations he can acquire this additional land if it does not run his total over 160 acres. He is not required to live on the additional land if it is contiguous to his original entry. As a withdrawal along a highway causes a piece of land on one

side of the road to be not contiguous to a piece of land on the other side of the road, an entryman who had 40 acres would have to make proof and complete his requirements on one side of the road, then go across the road and build a house on that side, or move his house across in order to take land only 200 feet away from his original entry. As the regulations do not prevent a person from taking lands on both sides of the road under two entries, it merely complicates the matter by providing additional filings that must be placed on record by an entryman in order to get across the road if the land is still available.

The regulations provide that an entryman may obtain 160 acres, so if the land is available, the entryman may stretch his entry far along one side of the road until he has obtained 160 acres. There is a serious question as to whether it is more undesirable to have one entry straddle the road than it is to have one entry string along one side of the road for a mile and a half or two miles.

Then another complication enters into a different phase of the work. It appears that the withdrawals are in effect through the Matanuska Valley as they are elsewhere. We have on file several applications to purchase land. Two of them, Anchorage 016216 and 016304, filed by Gerald Brunner and Floyd Rock respectively, cover only five acres each. We are assuming that in this case the proposed sale may go on both sides of the road, but in order to know exactly how many acres are in the tract after the right of way has been deducted, it is necessary to survey the road to know just where it enters and leaves each tract, and then compute the acreage. In the meantime, the sales are not consummated.

We have many thousands of acres of unsurveyed lands through which roads are now built or will be built. There are claims which were staked out and are legally filed in the U.S. Commissioners' offices before August 10, 1949, the date on which 601 was promulgated. These settlement claims, therefore, have precedence over the order. However, our surveying crews are not investigators, and as they survey down through the country, they are not aware of which claims

antedate Executive Order 601 and which do not. Therefore, to be on the safe side, they must prepare their plats with two rights of way, that which was in effect before Executive Order 601 and that which was in effect after Executive Order 601 was promulgated. It may be that there was a legal claim on the land before August 10, 1949, but the claimant decides to go back to the states and give it up. The next person who settles there must stay on one side or the other of the road, and the wider right of way becomes effective. Let us assume that the claimant who was there before August 10, 1949, decides voluntarily that he wants to be on only one side of the road, and extend his claim further back to obtain other desirable lands. In effect, therefore, he gives up his claim to the other side of the road, and immediately the wide right of way becomes effective on that side, but the narrow right of way stays in effect on the side which the claimant retains. In no one given spot will anybody be able to determine what width the right of way is without referring to official plans in the Land Offices.

Let us assume another situation. A claimant was situated within 50 feet of the center line of a through road before Executive Order 601 was promulgated. For some reason he built his house within 50 feet of the road. Then he decides that he will have to go back to the states, and sells his house and gives up his claim to another individual. This sale we will assume was made after August 10, 1949. Immediately the house is in trespass, as it is located within the right of way, and the second claimant must move it back in order to get it on his homestead claim, which starts 100 feet from the center line of the road, if the road is a feeder road, and 150 feet from the center line of the road if it is a through highway. If this situation should develop along the Alaska Highway, of course, the man would have to move the house back 300 feet from the center line of the road.

Of course the Road Commission will straighten out many of the kinks in its highway system. Whenever it does that, it leaves strips of no man's land, which are withdrawn from entry. If these strips are restored to entry, the adjoining land owner does not have preference, but veterans of World War

II have preference to obtain these strips of land. We have been advised that the withdrawal becomes effective when the Road Commission sets its survey stakes through the public domain. In some cases I would imagine that the Alaska Road Commission officials change their minds and locate the road elsewhere than where it was first surveyed. Then we may have a very real difference of opinion as to where withdrawals actually do exist.

Previously in this memorandum, I mentioned that additional expense results from the requirement that we survey the roads. Each session it would be necessary to hire two draftsmen to keep up with the work of a field crew and to do a little extra work otherwise. It would take this one survey crew working indefinitely as we do not know how many roads are located within the rectangular surveys at present, or do we know how many roads are to be built by the Alaska Road Commission in the future. We are unable to estimate how many survey crews it actually would take to keep current with this work, but it is conservatively estimated that it would cost at least $31,000 per crew each season.

If the road rights of way were easements instead of withdrawals, it would not be necessary for us to delay processing of the applications for final proof by veterans or others. It would not again cause us to build up a backlog which will extend for 2, 3 and sometime 5 years before the surveys are all completed. The Alaska Road Commission could change their rights of way under the act of July 1947, without there being any question as to the ownership of the land. The entryman would still own the land, and the Alaska Road Commission would have an easement across it. There would not be additional expense to the taxpayers of hiring additional survey crews, and there would not be the delay in the survey program that will result in our putting experienced men on the road survey work instead of on other work that requires attention.

The situation is very grave. The results of the promulgation of Executive Order 601 were not foreseen, but now that we are operating with it in effect, we can see it's failing, and we should act accordingly.

STATE OF ALASKA
THE LEGISLATURE

POUCH Y STATE CAPITOL
JUNEAU, ALASKA 99811
907 465 3800

LEGISLATIVE AFFAIRS AGENCY

M E M O R A N D U M April 26, 1984

SUBJECT: Release of claims of the state
(Work Order No. 13-2222)

TO: Representative Charlie Bussell
Chairman, House Judiciary Committee

FROM: Richard A. Bradley
Legislative Counsel

The above described bill was provided to you earlier today at Joe Brewer's request. At that time I advised Mr. Brewer that I would be providing the committee with comments on the bill.

(1) In my memorandum of April 17, I noted that not only the state but also certain municipalities of the state may avail themselves of the benefits of the Acts of Congress and public land orders in question. I stated that the rights of the municipalities were not extinguished by the bill. I think that I was wrong in part but I believe that if the typical phrase "by the state" is deleted (for example, in the title and at line 28, page 1 of the bill), this possible ambiguity is removed. I believe that it is also desireable to acknowledge that neither the state nor municipalities may avail themselves of the benefits of the easements and subsections (c) and (d) should be conformed to that effect.

(2) The committee asked that the phrase "the subservient estate" be deleted from subsection (b) and that it be replaced with "the adjoining property owners on the effective date of this Act". I have included the phrase as requested.

But I note that it is possible that the substituted phrase has a different substantive meaning from that suggested by "the subservient estate".

If I am correct that the bill is a response to State v. Alaska Land Title Ass'n., 667 P.2d 714 (Alaska 1983), cert.

den., 52 U.S.L.W. 3509 (January 9, 1984), the bill addresses the exercise by the state and municipalities of the state of rights determined by the Alaska Supreme Court to have been created by easements established under certain Acts of Congress and certain public land orders of the U.S. Department of the Interior.

In an easement, two estates (separate ownership interests) in the same land are created. In an easement, a right of use is created in the property of another. As Black's Law Dictionary indicates, a "servient estate" (or a "subservient estate") is one that is burdened with a servitude (benefit) in favor of someone else. And the dominant estate is the right to a particular use that results from the easement.

In the situations described in the bill, the state or the municipality of the state is the owner of the dominant estate in the easement; the owner of the land adjoining the easement who also owns the land under and subject to the easement is the owner of the servient (subservient) estate.

It is the person who owns the servient estate who should receive the released and relinquished easement; that person will usually be the person whose property "adjoins" the land subject to the dominant easement but the bill confuses this distinction because there will frequently, perhaps typically be two property owners whose land "adjoins" the easement.

If I may be of further assistance, please advise.

RAB:ojb
J6/077

STATE OF ALASKA
THE LEGISLATURE

LEGISLATIVE AFFAIRS AGENCY

POUCH Y STATE CAPITOL
JUNEAU, ALASKA 99811
907 465 3800

M E M O R A N D U M April 17, 1984

SUBJECT: An Act releasing claims of the state within certain rights-of-way (Work Order No. 13-2222)

TO: Representative Charlie Bussell
Chairman
House Judiciary Committee

FROM: Richard A. Bradley
Legislative Counsel

You have requested the enclosed bill in final; because the draft does not address certain aspects that seem naturally raised by the bill, I have prepared the bill in draft for your consideration.

The bill seems to be a response to State v. Alaska Land Title Ass'n. 667 P.2d 714 (Alaska 1983), cert. den. 52 U.S.L.W. 3509 (January 9, 1984). While I have reviewed the case briefly preparatory to putting the bill into form for your introduction, I confess I have not sought to become altogether familiar with the law of that case.

But certain observations may be made regarding the bill.

(1) The bill deals exclusively with the use by the state of the benefits of the cited Acts of Congress and orders of the Department of the Interior.

However, as the Alaska Supreme Court's opinion indicates in passing, municipalities of the state may avail themselves of the benefits of the Acts and orders. I have not sought to extinguish the ability of these municipalities to use the Acts and orders.

(2) The rights-of-way are presently used by the state (or municipalities) to straighten the right-of-way or to widen or improve the roadbed. Those benefits will cease if the bill passes.

But the rights-of-way are also used by utilities (of both a public and private nature) for sewer and water lines, natural gas lines, electric power lines, and so forth. The bill does not indicate whether these rights continue though it seems clear that they are put in some jeopardy by the extinguishment of the estate on which they rely. Do you wish to deal with these issues? See, for example, AS 19.25.010 which provides:

> Sec. 19.25.010. USE OF RIGHTS-OF-WAY FOR UTILITIES. A utility facility may be constructed, placed, or maintained across, along, over, under or within a state right-of-way only in accordance with regulations prescribed by the department and if authorized by a written permit issued by the department.

(3) While I do not have an answer to suggest, I think it is patently clear that the outer edge of the ditching, if any, along the roadway is not clean demarcation on which to base title to land; whether the existing property line reflects good public policy, or not, at least the line is clearly established. I make this point only because the provisions of the Acts of Congress, orders of the Interior Department, and the efforts of the highway department have already been a goldmine for lawyers and a source of anxiety to property owners, title insurance companies and a newly added uncertainty seems undesireable. In this connection, you may wish to consider the concepts implied in AS 19.25.070.

(4) Finally, note that I have followed the draft provided to us in drafting this bill. But subsecs. (b) - (e) are altogether contained within (a) of the bill and are unnecessary.

If I may be of further assistance, please advise.

RAB:ojb
J6/054 Enclosure

1. Prospective vs. retroactive application.
2. State vs. private interests
3. Description of extent of easement
4. 1966 act - same provisions
5. Effect of SupCt case on 1966 act

SupCt interpreted 66 act to apply only to 1947 Fed act — PLO orders apply to the 1932 Act.

→ add provisions of Proposed Bill would be sure that these included.

Validity of quitclaim deed — being challenged in remand of case.

State law cannot affect if not a valid.

AG may hold 1966 act as unconstitutional.

Utility easements in r-of-way.

MEMORANDUM RE HOUSE BILL

TO RELINQUISH RIGHTS-OF-WAY

Alaska achieved statehood twenty-five years ago. Before statehood the Department of Interior, through certain Pulic Land Orders, took rights-of-way for roads from landowners without compensating the landowners. Since statehood the Department of Transportation and Public Facilities (DOTPF), acting for the State of Alaska, is still taking private property without compensating the landowners.

In 1966, the Alaska State Legislature enacted Ch. 92 (HB 415 am) which prohibited such takings by the State. The purpose of the law was to "alleviate economic hardship and physical and mental distress occasioned by the taking of land by the State of Alaska [for] which no compensation is paid to the person holding title to the land." The Legislature prohibited any further utilization of rights-of-way pursuant to various Public Land Orders and federal acts.

At the time of Statehood the State received a quit claim deed from the federal government conveying to the State certain roads built by the United States. DOTPF claims that the quit claim deed also conveyed certain easements or rights-of-way that were not described therein but included in Public Land Orders that were not even recorded in the various Recorders Offices throughout the state. DOTPF presently claims a right to highway rights-of-way varying in width from 100 to 300 feet surrounding

every major highway in the state and a smaller easement for most of the local roads throughout the state. When DOTPF determines that it needs to expand or modify an existing roadway where it claims a right-of-way exists by virtue of the federal government, it does so without paying compensation to the landowner for the value of the property taken.

The reservations for rights-of-way and easements were made by the federal government between 1947 and 1956. They were set forth in a series of Public Land Orders (namely PLO 601, 757, and 1613) and a Department of Interior Order (DO 2665) which were not recorded in District Recorders Offices in Alaska but were published in the Federal Register, which was a publication utilized by federal agencies.

The rights-of-way and reservations were not specifically included in the patents issued to homesteaders in Alaska. Homesteaders in Alaska were not informed of the existence of the easements and rights-of-way at the time they were issued patents and did not know the federal government was claiming a portion of their property for highway purposes. Now DOTPF is claiming right-of-way easements in the same way by virtue of the quit claim deed mentioned above.

No landowner or member of the public can know where DOTPF claims a right-of-way easement because those easements are not recorded and are not shown on plats available in the Recorder's Offices.

The Supreme Court of Alaska, in State v. A.L.T.A., has held that the easements are valid. The decision is wrong and must be reversed through the enactment of a law that will relinquish these easements and require DOTPF to pay just compensation for lands taken by them.

STATE of Alaska,
Appellant/Cross-Appellee,

v.

ALASKA LAND TITLE ASSOCIATION; Security Title and Trust Company of Alaska; Alaska Title Guaranty Company; Brokers Title Company; Lawyers Title Insurance Agency, Inc.; Safeco Title Agency, Inc.; Fairbanks Title Agency; Valley Title and Escrow Company; First American Title Insurance Company; Transamerica Title Insurance Company; Hansen Associates, an Alaska Limited Partnership; Richard L. Boysen; and Jack White Company, Appellees/Cross-Appellants,

and

Theodore M. Pease, Jr., and Claire V. Pease, Appellees.

TRANSAMERICA TITLE INSURANCE COMPANY, Appellant,

v.

Theodore M. PEASE, Jr., and Claire V. Pease, Appellees.

Nos. 5407, 5408.

Supreme Court of Alaska.

May 27, 1983.

Appellees and Cross-Appellants Petition for Rehearing Denied July 8, 1983.

Appellants and Cross-Appellees Petition for Rehearing Granted July 8, 1983.

As Amended July 8, 1983.

Action was brought for declaratory judgment by association representing various title insurance companies, individual title insurance companies, and several landowners against State, municipality, and others. The Superior Court, Third Judicial District, Anchorage, Victor D. Carlson, J., entered judgment against State and title insurance company, and appeal was taken. The Supreme Court, Matthews, J., held that: (1) trial court erred in declaring that State could not take or utilize any portion of property owner's land for local road which was in excess of 33 foot easement; (2) trial court erred in declaring that neither State nor municipality could take any portion of landowner's property for through road which was in excess of easement widths specified in their respective patents without just compensation; and (3) publication in Federal Register imparted constructive notice and served to preclude subsequent innocent purchaser status.

Affirmed in part, reversed in part, and remanded.

Rabinowitz, C.J., dissented in part and filed opinion.

1. Public Lands ⇐135(1)

Right-of-Way Act of 1966, which precludes State from taking privately owned property by election or exercise of reservation to State and that Act shall not be construed to divest State of any right-of-way or other interest in real property which was taken by State, before effective date of Act, by election or exercise of its right to take property through a reservation, was not applicable to State's claim of 50 foot road easement along south boundary of landowner's property, in that easement in question was established by departmental order under authority of statute to which Right-Of-Way Act was inapplicable. 48 U.S.C. (1958 Ed.) §§ 321a, 321d.

2. Public Lands ⇐135(1)

Staking requirement of subsection of department of interior order providing that reservation and rights of way or easements will attach as to all new construction involving public roads in Alaska when survey stakes have been set on ground and notices have been posted at appropriate points along route of new construction specifying type and width of roads was not applicable to road affecting landowner's property, in that road was an existing road when order was promulgated, while subsection by its express terms only applies to new construction.

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3. Public Lands ⇐64

Before highway may be created, there must be either some positive act on part of appropriate public authorities of state, clearly manifesting an intention to accept a grant, or there must be public user for such a period of time and under such conditions as to prove that the grant has been accepted.

4. Public Lands ⇐135(1)

Staking requirement of department of interior order was inapplicable to certain highway, in that highway was in existence by time of homestead entry of landowners' predecessor. 48 U.S.C. (1958 Ed.) § 321d.

5. Public Lands ⇐135(1)

Trial court erred in declaring that neither State nor municipality could take any portion of landowner's property for through road which was in excess of easement which was specified in their respective patents without just compensation.

6. Public Lands ⇐135(1)

Trial court properly determined that certain landowners were entitled to declaration against State and municipality that neither State nor municipality could take any portion of their properties for through road which was in excess of easement which was specified in their respective patents without just compensation, where landowner's property was entered in 1945, so that it was not hereafter entered for purposes of statute under which mandatory reservation was limited to patents for land hereafter taken up, or located in territory of Alaska. Pickett Act, §§ 1, 2, 43 U.S.C. (1970 Ed.) §§ 141, 142; 48 U.S.C. (1958 Ed.) § 321d.

7. Insurance ⇐426.1

Title insurance company was liable to property owners under policy for value of 17 foot strip taken pursuant to interior department order, in that publication of public land order in Federal Register imparted constructive notice of order as to land it affected.

8. Public Lands ⇐138

Public land orders, which appeared in Federal Register, imparted constructive notice of conflicting deed or encumbrance, thereby preventing property owner from claiming innocent purchaser status.

9. Estoppel ⇐62.2(2)

Because publication of land orders in Federal Register imparted constructive notice of easements which they created, that notice made reliance unreasonable, and thus State was not estopped from claiming any easements under orders here involved.

10. Public Lands ⇐135(1)

By operation of law, land conveyed by the United States is taken subject to previously established rights of way where instruments of conveyance are silent as to the existence of such rights of way.

11. Public Lands ⇐135(1)

No suit to vacate or annul a patent in order to establish a previously existing right-of-way is necessary because patent contains an implied bylaw condition that it is subject to such a right-of-way, and thus statute of limitations expressed by statute providing that suits by the United States to vacate and annul any patent shall only be brought within six years after the date of the issuance of such patents did not apply. 43 U.S.C.A. § 1166.

Jack McGee, Asst. Atty. Gen., Wilson Condon, Atty. Gen., Juneau, for appellant/cross-appellee.

David A. Devine and Michael W. Price, Groh, Eggers, Robinson, Price & Johnson, Anchorage, for appellees/cross-appellants.

Before RABINOWITZ, C.J., and BURKE, MATTHEWS and COMPTON, JJ.

OPINION

MATTHEWS, Justice.

This is an action for a declaratory judgment brought by an association representing various title insurance companies, individual title insurance companies, and several landowners against the State of Alaska, the Municipality of Anchorage, and Theo-

dore and Clair Pease. Nine claims for relief were presented.

The first claim sought a determination that a title insurance policy issued by Transamerica Title Insurance Company to the Peases excluded from coverage any rights-of-way created pursuant to certain Interior Department Orders, namely, Public Land Orders 601, 757, 1613, and Departmental Order 2665.

The second claim for relief sought a declaration that claimed easements for "local roads" as defined in DO 2665 could not be used by the State or municipal governments because of the Alaska Right of Way Act of 1966.

The third related to "feeder roads" as defined in PLO 601 and DO 2665, seeking a declaration that rights-of-way for such roads could not be utilized because of the Alaska Right of Way Act of 1966.

The fourth claim for relief concerned property owned by plaintiff Hansen Associates along the Seward Highway. It alleged that the original patentee had made a homestead entry prior to the effective date of the first order involved, PLO 601, and sought a declaration that no through road easement under PLO 601 or any of its successors could be claimed.

The fifth claim for relief referred to a quitclaim deed given on or about April 7, 1959, conveying the United States' interests in the highways in Alaska to the State. The deed was recorded October 2, 1969. This claim sought a declaration that the quitclaim deed would have no effect on bona fide purchasers for value who purchased and recorded prior to the State's recording of the quitclaim deed.

The sixth claim for relief alleged that the failure of the United States or the State to record PLOs 601, 757, and 1613 and DO 2665 in a State recording office rendered any easements that might otherwise have been created by those orders void as against subsequent innocent purchasers for value who first duly recorded their interests.

The seventh claim alleged a theory of estoppel against the State and Municipality, claiming that for twenty years they had allowed property owners to develop property on which they now claim an easement pursuant to PLOs 601, 757, and 1613 and DO 2665, that no notice of such claims had been given, and that individual property owners would be prejudiced if the State and the Municipality were now permitted to utilize such easements.

The eighth claim sought a declaration that no easement could be taken by the State or the Municipality for a local, feeder, or through road under the authority of PLOs 601, 757, and 1613 or DO 2665 because of the Right of Way Act of 1966.

The ninth claim alleged that prior to the quit-claim deed from the United States to the State of April 7, 1959, the United States had patented to private landowners property which included rights-of-way now claimed by the State. A declaration was sought that these patents were conclusive as against the State and that the patents could not be vacated or annulled because of the six year statute of limitations set forth in 43 U.S.C. § 1166.

The Peases cross-claimed against the State, alleging that the State unlawfully claimed a 50 foot road easement along the south boundary of their property whereas only a 33 foot easement was described in the patent from the United States to their predecessor-in-interest. They sought just compensation for the 17 foot difference in the approximate sum of $3,000.00 plus interest from the date of taking. The Peases also counterclaimed against Transamerica, alleging that if the State was entitled to a full 50 foot right-of-way Transamerica would be obliged under the title policy to compensate them for the value of the 17 foot strip.

Before answering, the State filed a motion for a more definite statement requesting legal descriptions of property across which the complaint alleged that the State was claiming rights-of-way. In response, the plaintiffs described the property owned by Hansen Associates along the Seward Highway, with respect to the fourth claim for relief, and property owned by plaintiff

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Richard L. Boysen which also lay along the Seward Highway, with respect to the seventh claim. The State then answered the complaint, placing in controversy all the legal theories of the plaintiffs.

The State, all plaintiffs, and the Peases moved for summary judgment as to all claims. The court denied the State's motion, granted the plaintiffs' motion as to the second, third, and eighth claims, and granted the Peases' motion as to their cross-claim and counterclaim. Following entry of a memorandum of decision reflecting these actions the court entered a declaratory judgment containing four numbered paragraphs, which proceed from the abstract to the particular. They are:

1. The State of Alaska and the Municipality of Anchorage are claiming highway easements for local, feeder, and through roads in excess of easement widths specified in patents issued to Alaska property owners. Said easements are claimed by the State or the Municipality pursuant to authority derived from Public Land Orders 601, 757, 1613 and Department Order 2665. For the reasons set forth in the Memorandum of Decision dated May 7, 1980, the court hereby awards Plaintiffs a summary judgment against the State of Alaska and the Municipality of Anchorage declaring that the State and the Municipality may not take or utilize property for local, feeder, or through roads in excess of the widths set forth in the patents to the affected properties without just compensation to the owners of the affected properties unless such local, feeder, or through roads were occupied and staked by the State of Alaska or the Municipality of Anchorage prior to April 14, 1966, or were specifically designated in the patents to the affected real properties.

2. The Plaintiffs Hanson [sic] Associates and Richard L. Boysen are hereby awarded a summary judgment against the State of Alaska and the Municipality of Anchorage declaring that neither the State nor the Municipality can take any portion of their properties for the through road presently known as the Old Seward Highway which is in excess of the easement widths specified in their respective patents without just compensation.

3. The Defendants Pease are hereby awarded a summary judgment on their cross-claim against the State of Alaska declaring that the State may not take or utilize any portion of the Peases' land for the local road presently known as Rabbit Creek Road which is in excess of the 33-foot easement width specified in the patent to the Peases' property without just compensation. The Peases' property is described as Lot 191, Section 33, Township 12 North, Range 3 West, Seward Meridian, Anchorage Recording District, Third Judicial District, State of Alaska.

4. The Defendants Pease are hereby awarded a summary judgment on their counterclaim against Transamerica Title Insurance Company declaring that Transamerica is liable under its title insurance policy issued to the Peases for the taking by the State of Alaska of a 17-foot strip of land for the local road known as Rabbit Creek Road, which 17-foot strip of land was in excess of a 33-foot easement specified in the Peases' patent. However, since the State of Alaska must compensate the Peases for the taking or utilization of said additional 17-foot easement, the Peases shall collect just compensation from the State of Alaska, and upon receipt of said just compensation the Peases shall not be entitled to recover damages from Transamerica Title Insurance Company for said taking of the additional 17-foot strip of property.

The State has appealed from this judgment. The plaintiffs have cross-appealed, claiming that the superior court should have granted them judgment on their fourth, fifth, sixth, seventh, and ninth claims for relief. In addition, Transamerica Title has appealed from the judgment against it in favor of the Peases.

I

THE STATE'S APPEAL AS TO THE PEASES' PROPERTY

We turn first to the appeal of the State as it relates to the Peases' property.

The patent to the 2.5 acre Pease parcel was issued on October 4, 1955, pursuant to the Small Tract Act of 1938, 43 U.S.C. §§ 682a–682e (1938), *repealed by* Pub.L. No. 94–579, Title VII, § 702 (1976). The lot was leased to the Peases' predecessor-in-interest on May 1, 1953. The patent contains two relevant reservations. One is a blanket reservation for roads "constructed or to be constructed by or under authority of the United States or by any State created out of the Territory of Alaska, ..." This reservation was made pursuant to 48 U.S.C. § 321d, ch. 313, 61 Stat. 418 (1947), *repealed by* Pub.L. No. 86–70, § 21(d)(7), 73 Stat. 146 (1959), which provides in part:

> In all patents for lands hereafter taken up, entered, or located in the Territory of Alaska, and in all deeds by the United States hereafter conveying any lands to which it may have reacquired title in said Territory not included within the limits of any organized municipality, there shall be expressed that there is reserved, from the lands described in said patent or deed, a right-of-way thereon for roads, roadways, highways, tramways, trails, bridges, and appurtenant structures constructed or to be constructed by or under the authority of the United States or of any State created out of the Territory of Alaska....

The other relevant reservation in the patent reserves a 33 foot right-of-way for roadway purposes along the south and east boundaries of the tract. Rabbit Creek Road lies on the south boundary of the Peases' property. As this case has been presented all parties have assumed that Rabbit Creek Road was in existence as a local road at all times relevant to the various orders hereafter discussed. We make the same assumption.

In 1978 the State widened Rabbit Creek Road from 66 feet to 100 feet. The road occupied a 33 foot strip on the Peases' property before widening and a 50 foot strip after widening. The State claimed a 50 foot easement on each side of the center line of Rabbit Creek Road, citing PLOs 601 [1] and 757,[2] and DO 2665 [3] as authority for widening the road without compensating the Peases for taking the extra 17 feet.

PLO 601, effective August 10, 1949, withdrew "the public lands in Alaska lying within ... 150 feet on each side of the center line of all ... through roads, 100 feet on each side of the center line of all feeder roads, and 50 feet on each side of the center line of all local roads, ... from all forms of appropriation under the public land laws, ..." and reserved them "for highway purposes." [4]

The Secretary of the Interior promulgated PLO 757 and DO 2665 on October 19, 1951. 16 Fed.Reg. 10,749, 10,752 (1951). DO 2665 was filed first. *Id.* at 10,752. It established, among other things, easements, rather than withdrawals, of 50 feet on each

1. 14 Fed.Reg. 5048 (1949).

2. 16 Fed.Reg. 10,749 (1951).

3. 16 Fed.Reg. 10,752 (1951).

4. 14 Fed.Reg. 5048 (1949). The quoted language is from the sixth paragraph of PLO 601. The sixth paragraph in full states:

> Subject to valid existing rights and to existing surveys and withdrawals for other than highway purposes, the public lands in Alaska lying within 300 feet on each side of the center line of the Alaska Highway, 150 feet on each side of the center line of all other through roads, 100 feet on each side of the center line of all feeder roads, and 50 feet on each side of the center line of all local roads, in accordance with the following classifications, are hereby withdrawn from all forms of appropriation under the public land laws, including the mining and mineral-leasing laws, and reserved for highway purposes:
>
> Through Roads
>
> Alaska Highway, Richardson Highway, Glenn Highway, Haines Highway, Tok Cut-Off.
>
> Feeder Roads
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> Steese Highway, Elliott Highway, McKinley Park Road, Anchorage-Potter-Indian Road, Edgerton Cut-Off, Tok Eagle Road, Ruby-Long-Poorman Road, Nome-Solomon Road, Kenai Lake-Homer Road, Fairbanks-College Road, Anchorage-Lake Spenard Road, Circle Hot Springs Road.
>
> Local Roads
>
> All roads not classified above as Through Roads or Feeder Roads, established or maintained under the jurisdiction of the Secretary of the Interior.

Id. at 5048–49 (1949).

side of the center line of each local road and of 100 feet as to each feeder road.[5] PLO 757 amended the sixth paragraph of PLO 601, *see* note 4 *supra*, increasing the withdrawal for the Seward Highway [the Anchorage-Potter-Indian Road in PLO 601] from 100 feet to 150 feet on each side of the center line. 16 Fed.Reg. 10,749, 10,750 (1951). PLO 757 repealed the general withdrawal for local and feeder roads contained in the sixth paragraph of PLO 601, thus effecting a revocation of the 601 withdrawals as to them. However, PLO 757 acknowledged that DO 2665 had already established easements as to feeder and local roads and did not purport to revoke them. The final paragraph of PLO 757 states:

> Easements having been established on the lands released by this order, such lands are not open to appropriation under the public land laws....[6]

5. 16 Fed.Reg. 10,752 (1951). DO 2665 provides:

> Rights-of-Way for Highways in Alaska
>
> Section 1. *Purpose.* (a) The purpose of this order is to (1) fix the width of all public highways in Alaska established or maintained under the jurisdiction of the Secretary of the Interior and (2) prescribe a uniform procedure for the establishment of rights-of-way or easements over or across the public lands for such highways. Authority for these actions is contained in section 2 of the act of June 30, 1932 (47 Stat. 446, 48 U.S.C. 321a).
>
> Section 2. *Width of public highways.* (a) The width of the public highways in Alaska shall be as follows:
>
> (1) For through roads: The Alaska Highway shall extend 300 feet on each side of the center line thereof. The Richardson Highway, Glenn Highway, Haines Highway, Seward-Anchorage Highway, Anchorage-Lake Spenard Highway and Fairbanks-College Highway shall extend 150 feet on each side of the center line thereof.
>
> (2) For feeder roads: Abbott Road (Kodiak Island), Edgerton Cutoff, Elliott Highway, Seward Peninsula Tram road, Steese Highway, Sterling Highway, Taylor Highway, Northway Junction to Airport Road, Palmer to Matanuska to Wasilla Junction Road, Palmer to Finger Lake to Wasilla Road, Glenn Highway Junction to Fishhook Junction to Wasilla to Knik Road, Slana to Nabesna Road, Kenai Junction to Kenai Road, University to Ester Road, Central to Circle Hot Springs to Portage Creek Road, Manley Hot Springs to Eureka Road, North Park Boundary to Kantishna Road, Paxson to McKinley Park Road, Sterling Landing to Ophir Road, Iditarod to Flat Road, Dillingham to Wood River Road, Ruby to Long to Poorman Road, Nome to Council Road and Nome to Bessie Road shall each extend 100 feet on each side of the center line thereof.
>
> (3) For local roads: All public roads not classified as through roads or feeder roads shall extend 50 feet on each side of the center line thereof.
>
> Section 3. *Establishment of rights-of-way or easements.* (a) A reservation for highway purposes covering the lands embraced in the through roads mentioned in section 2 of this order was made by Public Land Order No. 601 of August 10, 1949, as amended by Public Land Order No. 757 of October 16, 1951. That order operates as a complete segregation of the land from all forms of appropriation under the public-land laws, including the mining and the mineral leasing laws.
>
> (b) A right-of-way or easement for highway purposes covering the lands embraced in the feeder roads and the local roads equal in extent to the width of such roads as established in section 2 of this order, is hereby established for such roads over and across the public lands.
>
> (c) The reservation mentioned in paragraph (a) and the rights-of-way or easements mentioned in paragraph (b) will attach as to all new construction involving public roads in Alaska when the survey stakes have been set on the ground and notices have been posted at appropriate points along the route of the new construction specifying the type and width of the roads.
>
> Section 4. *Road maps to be filed in proper Land Office.* Maps of all public roads in Alaska heretofore or hereafter constructed showing the location of the roads, together with appropriate plans and specifications, will be filed by the Alaska Road Commission in the proper Land Office at the earliest possible date for the information of the public. *Id.*

6. 16 Fed.Reg. 10,749, 10,750 (1951). The text of PLO 757 so far as it is relevant here states:

> The sixth paragraph of Public Land Order No. 601 of August 10, 1949, reserving public lands for highway purposes, commencing with the words "Subject to valid existing rights", is hereby amended to read as follows:
>
> Subject to valid existing rights and to existing surveys and withdrawals for other than highway purposes and public lands in Alaska lying within ... 150 feet on each side of the center line of the ... Seward-Anchorage Highway ... are hereby withdrawn from all forms of appropriation under the public-land laws including the mining and mineral-leasing laws, and reserved for highway purposes.
>
> Easements having been established on the lands released by this order, such lands are

Thus one effect of PLO 757 and DO 2665 was to substitute easements for the withdrawals made in PLO 601 as to local and feeder roads.

The State's claim to the full 50 feet, from the center line, of Rabbit Creek Road is in all relevant respects identical to the claim that it successfully asserted in *State, Department of Highways v. Green*, 586 P.2d 595 (Alaska 1978). In *Green*, as in the Peases' claim, the patents were issued by the United States under the Small Tract Act and contained blanket roadway easements under 48 U.S.C. § 321d as well as specific 33 foot easements. The local road in question in both cases was built before DO 2665 was promulgated, and the lease as well as the patent was issued after promulgation of DO 2665. We held in *Green* that DO 2665 was issued pursuant to 48 U.S.C. § 321a, as distinct from 48 U.S.C. § 321d; that DO 2665 was applicable to patents issued under the Small Tract Act; and that the 50 foot right-of-way established by DO 2665 was effective even though only a 33 foot right-of-way was expressed in the patent. 586 P.2d at 600–03.

The superior court reasoned that *Green* was not controlling because of the provisions of the Right-of-Way Act of 1966, ch. 92 S.L.A. 1966.[7] Sections 2 and 3 contain the operative provisions of the Right-of-Way Act of 1966. Section 2 precludes the State from taking "privately owned property by the election or exercise of a reservation to the state acquired under [48 U.S.C. § 321d]," and section 3 provides that the Act shall not be construed to divest the State of "any right-of-way or other interest in real property which was taken by the state, before the effective date of this Act, by the election or exercise of its right to take property through a reservation acquired under [48 U.S.C. § 321d]." The effective date of the Right-of-Way Act of 1966 was April 14, 1966.

not open to appropriation under the public-land laws except as a part of a legal subdivision, if surveyed, or an adjacent area, if unsurveyed, and subject to the pertinent easement.

Id. at 10,749–50.

7. The Right-of-Way Act of 1966 states:

Section 1. PURPOSE. This Act is intended to alleviate the economic hardship and physical and mental distress occasioned by the taking of land, by the State of Alaska, for which no compensation is paid to the persons holding title to the land. This practice has resulted in financial difficulties and the deprivation of peace of mind regarding the security of one's possessions to many citizens of the State of Alaska, and which, if not curtailed by law, will continue to adversely affect citizens of this state. Those persons who hold title to land under a deed or patent which contains a reservation to the state by virtue of the Act of June 30, 1932, ch. 320, sec. 5, as added July 24, 1947, ch. 313, 61 Stat. 418, are subject to the hazard of having the State of Alaska take their property without compensation because all patents or deeds containing the reservation required by that federal Act reserve to the United States, or the state created out of the Territory of Alaska, a right-of-way for roads, roadways, tramways, trails, bridges, and appurtenant structures either constructed or to be constructed. Except for this reservation the State of Alaska, under the Alaska constitution and the constitution of the United States, would be required to pay just compensation for any land taken for a right-of-way. It is declared to be the purpose of this Act to place persons with land so encumbered on a basis of equality with all other property holders in the State of Alaska, thereby preventing the taking of property without payment of just compensation as provided by law, and in the manner provided by law.

Section 2. TAKING OF PROPERTY UNDER RESERVATION VOID. After the effective date of this Act, no agency of the state may take privately-owned property by the election or exercise of a reservation to the state acquired under the Act of June 30, 1932, ch. 320, sec. 5, as added July 24, 1947, ch. 313, 61 Stat. 418, and taking of property after the effective date of this Act by the election or exercise of a reservation to the state under that federal Act is void.

Section 3. PROSPECTIVE APPLICATION. This Act shall not be construed to divest the state of, or to require compensation by the state for, any right-of-way or other interest in real property which was taken by the state, before the effective date of this Act, by the election or exercise of its right to take property through a reservation acquired under the Act of June 30, 1932, ch. 320, sec. 5, as added July 24, 1947, ch. 313, 61 Stat. 418.

Section 4. SHORT TITLE. This Act may be cited as the Right-Of-Way Act of 1966.

Section 5. EFFECTIVE DATE. This Act takes effect on the day after its passage and approval or on the day it becomes law without such approval.

[1] The court erred in applying the Right-of-Way Act of 196[illegible] to the Pease case. It is applicable only to interests taken by the State under a blanket reservation created pursuant to 48 U.S.C. § 321d. We held in *Green* that easements established by DO 2665 were established under the authority of section 321a, not section 321d.[8] *Green*, 586 P.2d at 600 n. 17. Further, we held in *State, Department of Highways v. Crosby*, 410 P.2d 724 (Alaska 1966) that § 321d did not apply at all to patents issued under the Small Tract Act. *Id.* at 728.

[2] The superior court also concluded in its Memorandum of Decision that the easement which otherwise would have been created under DO 2665 on Rabbit Creek Road did not come into being "until the right-of-way was staked by the terms of DO 2665." This statement refers to subsection 3(c) of DO 2665, which provides:

> The reservation mentioned in paragraph (a) and the rights-of-way or easements mentioned in paragraph (b) will attach as to all new construction involving public roads in Alaska when the survey stakes have been set on the ground and notices have been posted at appropriate points along the route of the new construction specifying the type and width of the roads.[9]

The superior court's conclusion that the staking requirement of section 3(c) was applicable to Rabbit Creek Road is erroneous. Section 3(c) by its express terms only applies to new construction. Rabbit Creek Road was an existing road when the order was promulgated. As to existing roads, subsection 3(b) of the order establishes a 50 foot easement in the present, rather than the future, tense and contains no call for additional action in order to fix the easement. It states:

> A right-of-way or easement for highway purposes covering the lands embraced in the . . . local roads equal in extent to the width of such roads as established in section 2 of th[illegible] order, *is hereby established* for such roads over and across the public lands.

16 Fed.Reg. 10,752 (1951) (emphasis added). Subsection (3) of section 2 of DO 2665 set the width of local roads at 50 feet on each side of the center line. Thus, these two sections of DO 2665 established a 50 foot easement for Rabbit Creek Road.

8. A memorandum from the Chief Counsel of the Bureau of Land Management to the Director of the Bureau, dated February 7, 1951, explains well the extent of the authority granted to the Secretary of the Interior under § 321a. The memorandum states in part:

> Prior to the issuance of Public Land Order No. 601 . . ., nearly all public roads in Alaska were protected only by easements. Right-of-way easements were acquired under section 2477 of the Revised Statutes (43 U.S.C. sec. 932) by the construction of roads. This section granted a right-of-way for the construction of highways over public lands not reserved for public uses.
>
> Section 2 of the Act of January 27, 1905 (33 Stat. 616), incorporated with amendments into 48 U.S.C. secs. 321–323, established a Board of Road Commissioners in the then Territory of Alaska to function under the jurisdiction of the Secretary of War. This section provided:
>
> "Sec. 2. * * * The said board shall have the power, and it shall be their duty, upon their own motion or upon petition, to locate, lay out, construct, and maintain wagon roads and pack trails * * *. The said board shall prepare maps, plans, and specifications of every road or trail they may locate and lay out, * * *."
>
> Section 3 of the Act of August 24, 1912 (37 Stat. 512, 48 U.S.C. secs. 23 and 24), under which Alaska was organized as a Territory, provided that the authority of the legislature of the Territory should not extend to certain statutes of the United States including the Act of January 27, 1905, *supra*, and the several acts amendatory thereof.
>
> Section 2 of the Act of June 30, 1932 (47 Stat. 446, 48 U.S.C. sec. 321a), provides:
>
> "Sec. 2. The Secretary of the Interior shall execute or cause to be executed all laws pertaining to the construction and maintenance of roads and trails and other works in Alaska heretofore administered by said board of road commissioners under the direction of the Secretary of War; * * *."
>
> The authority of the Secretary of the Interior conferred by the above-cited acts to "locate, lay out, construct and maintain" public roads in Alaska clearly implies the right to fix the width of the roads. This width is not fixed by any statute.

9. 16 Fed.Reg. 10,752 (1951). For the full text of DO 2665, *see* note 5 *supra*.

[3] The history of the promulgation of DO 2665 also demonstrates that the staking requirement applies only to new construction, not existing roads. In territorial days road easements were created across public land under 43 U.S.C. § 932, *repealed by* Pub.L. No. 94-579, Title VII, § 706(a) (1976), a statute remarkable for its brevity, which provided:

> The right-of-way for the construction of highways over public lands, not reserved for public uses, is hereby granted.

This blanket grant had to be accepted. A common method of acceptance was the building of a road by a public authority.[10] But other methods of acceptance were also recognized. As we stated in *Hamerly v. Denton*, 359 P.2d 121 (Alaska 1961) with respect to 43 U.S.C. § 932:

> [B]efore a highway may be created, there must be either some positive act on the part of the appropriate public authorities of the state, clearly manifesting an intention to accept a grant, or there must be public user for such a period of time and under such conditions as to prove that the grant has been accepted.

Id. at 123 (footnote omitted). In *Girves v. Kenai Peninsula Borough*, 536 P.2d 1221 (Alaska 1975), we held that enactment by the territorial legislature of a law dedicating a four rod strip along all section lines for roadway purposes was a positive act of acceptance of the section 932 grant. *Id.* at 1225-26.

When acceptance of the section 932 grant occurred by construction of a road by an appropriate public authority, a question remained regarding the width of the right-of-way thereby created. It was held that the width was not confined necessarily to the traveled portion of the roadway, but that "local laws, customs and usages" would control. *City of Butte v. Mikosowitz*, 39 Mont. 350, 102 P. 593, 595-96 (1909); *see also Ball v. Stephens*, 68 Cal.App.2d 843, 158 P.2d 207, 209 (1945).

One purpose of DO 2665 was to define as a matter of local law or usage the width of roadway easements which had been created by the construction of roads and which would be created in the future by the construction of new roads. The memorandum of February 7, 1951, from the chief counsel of the Bureau of Land Management to the Bureau's director[11] makes this clear:

> Notwithstanding that section 2477 of the Revised Statutes (43 U.S.C. § 932) does not fix the width of the rights-of-way granted by it, the width when fixed by a positive act of the proper State or Territorial authorities has been held valid. *Costain v. Turner* (1949) [72 S.D. 427], 36 N.W.2d 382; *Butte v. Mikosowitz* (1909) [39 Mont. 350], 102 P. 593. In both cases, the width fixed included an area in excess of the beaten path or track. The reasons which sustain the conclusion reached in those cases support the conclusion that in the case of public highways in Alaska constructed or maintained under the jurisdiction of the Secretary of the Interior, the width of the highways may be fixed by that official.

The memo goes on to suggest the publication of an order, which was to become DO 2665, in terms which make it clear that the staking requirement only applies to new construction and not to existing roads:

> The following procedure is suggested for the establishment of highway easements of prescribed widths in Alaska:
>
> (1) The issuance of an order by the Secretary of the Interior to be published in the Federal Register fixing the width for existing roads and the width for new construction, including changes in the location of existing roads, and extensions of such roads. *In the case of new construction, the order can only be effective when the survey stakes have been set on the ground.*

(Emphasis added).

Further, the Superior Court's conclusion that the staking requirement applies to ex-

10. *See Clark v. Taylor*, 9 Alaska 298, 303 (D.Alaska 1938); *Ball v. Stephens*, 68 Cal. App.2d 843, 158 P.2d 207, 209 (1945); *Moulton v. Irish*, 67 Mont. 504, 218 P. 1053, 1054 (1923).

11. An excerpt from this memorandum is quoted at note 8 *supra*.

isting roads as well as to roads to be constructed in the future is in conflict with our holding in *Green, supra*. The local road in question there was constructed before the promulgation of DO 2665. As to the Green parcel, we held that the 50 foot right-of-way was fixed as of the promulgation of the order. *Green*, 586 P.2d at 604.

For these reasons we conclude that the State's appeal with respect to the adverse judgment on the cross-claim of the Peases is well-founded. The third paragraph of the declaratory judgment is therefore reversed. Since the first paragraph of the judgment includes the situation presented in the Pease case, it too must be reversed.

II

THE STATE'S APPEAL AS TO BOYSEN'S PROPERTY

The discussion in this section concerns the plaintiff's eighth claim for relief, which is reflected in the second and third paragraphs of the judgment. This discussion is also relevant to the second claim for relief relating to feeder roads. Because specific facts concerning the Hansen parcel require that it be treated differently, we exclude it from this discussion and focus instead on the Boysen property.

This aspect of the case involves an additional public land order that was not involved in the discussion of the Pease case. This order, PLO 1613, was promulgated April 7, 1958. 23 Fed.Reg. 2376, 2378 (1958). PLO 1613 revoked PLO 601 which, as modified by PLO 757, had withdrawn and reserved for highway purposes 150 feet on each side of the Seward Highway. *Id.* at 2376. PLO 1613 converted the 150 foot Seward Highway right-of-way to an easement of the same width.[12]

The Boysen parcel consists of some 80 acres joining the Seward Highway. The patent was issued to Boysen's predecessor on May 15, 1952, under the Homestead Act. The homestead entry was made January 2, 1951. The patent contains a blanket reservation for road rights-of-way as required by 48 U.S.C. § 321d. *See* page 718 *supra*.

Setting aside the possible effect of the section 321d reservation, the homestead entry of Boysen's predecessor in January 1951 fixes the date from which the property rights of the owners of the parcel are to be measured.[13] As of that date, PLO 601 had withdrawn 100 feet of land from each side of the center line of the Seward Highway. 14 Fed.Reg. 5048 (1949).

The superior court was apparently of the view that unless the State had fully occupied or staked this 100 feet before the effective date of the Right-of-Way Act of 1966, that act eliminated the withdrawal. We disagree.

[4] The Seward Highway was in existence by the time of the homestead entry. The superior court apparently imposed the staking requirement because of section 3 of DO 2665.[14] For the reasons we have expressed with respect to the Peases' property, the superior court's conclusion concerning the applicability of the staking require-

12. 23 Fed.Reg. 2376, 2377 (1958). PLO 1613 provides in pertinent part:

> 1. Public Land Order No. 601 of August 10, 1949, as modified by Public Land Order 757 of October 16, 1951, reserving for highway purposes the public lands of Alaska lying ... within 150 feet on each side of the center line of the ... Seward-Anchorage Highway ... is hereby revoked.
>
> ....
>
> 3. An easement for highway purposes, including appurtenant protective, scenic and service areas, over and across the lands described in paragraph 1 of this order, extending 150 feet on each side of the center line of the highways mentioned therein, is hereby established.
>
> ....
>
> 5. The easements established under paragraphs 3 and 4 of this order shall extend across both surveyed and unsurveyed public lands described in paragraphs 1 and 2 of this order for the specified distance on each side of the center line of the highways ... as those center lines are definitely located as of the date of this order.

Id. at 2376-77.

13. *See* part III *infra*.

14. Subsection (a)(1) of section 1 of DO 2665 recognizes expressly the 150 foot withdrawal for the Seward Highway expressed in PLO 757. *See* note 5 *supra*.

ment to the Seward Highway is erroneous. The Seward Highway was not new construction in 1949, when PLO 601 was promulgated, or in 1951, when DO 2665 was promulgated. It had a fixed location and the boundaries of its right-of-way were ascertainable by referring to the applicable PLO and measuring from its center line.

In addition, the 100 foot right-of-way first created by PLO 601 does not depend for its existence on the reservation placed in the patent under section 321d. PLO 601 was issued pursuant to Executive Order 9337, 8 Fed.Reg. 5516 (1943), under which the President of the United States delegated his authority to the Secretary of the Interior under 43 U.S.C. § 141, ch. 421, § 1, 36 Stat. 847 (1910), *repealed by* Pub.L. No. 94–579, Title VII, § 704(a) (1976), authorizing withdrawal of public lands in Alaska for specified public purposes.[15] As previously noted, the Right-of-Way Act of 1966 applies only to rights-of-way acquired under section 321d reservations.

[5] For the above reasons the second paragraph of the judgment as it relates to the Boysen property must be reversed. The preceding discussion also requires, as did our discussion in part I concerning the Peases' property, reversal of the first paragraph of the judgment. We do not reach the question whether a full 150 foot easement became fixed across the Boysen property by operation of the section 321d patent reservation and promulgation of PLO 757, and thus may be unaffected by the Right-of-Way Act of 1966. This question was not specifically addressed by the superior court nor is it presented in the briefs before us.

III

THE CROSS–APPEAL AS TO THE HANSEN PROPERTY

The patent for the Hansen parcel was issued to Hansen's predecessor-in-interest on June 1, 1950, under the Homestead Act. The homestead entry was made on January 23, 1945, before the promulgation of any of the land orders previously discussed, and before passage of 48 U.S.C. § 321d. The patent to the Hansen property does not contain a section 321d reservation.

The PLO 601 withdrawal was expressly subject to "valid existing rights." 14 Fed. Reg. 5048 (1949). Homestead entries have been held to give rise to valid existing rights,[16] although these rights may not in all cases take priority over intervening government acts.[17] Here, however, there is no doubt of the intention to except prior homestead entries from PLO 601. As we have noted, PLO 601 was promulgated pursuant to 43 U.S.C. § 141. 43 U.S.C. § 142 states that "there shall be excepted from the force and effect of any withdrawal made under the provisions of ... section 141 ... all lands which are, on the date of such withdrawal, embraced in any lawful homestead ... entry ...." Since entry was in 1945, and the first withdrawal occurred in 1949, Hansen's predecessor-in-interest, as an entryman, had rights superior to the withdrawals.

[6] Section 321d has no effect on the Hansen property. The mandatory reservation required by this statute was limited to "patents for lands *hereafter* taken up, entered, or located in the Territory of Alaska, ..." (emphasis added). Since the Hansen land was entered in 1945, it was not "hereafter" entered and thus was excluded from the operation of that statute. This is consistent with the absence of the section 321d reservation in the Hansen patent, and also consistent with its presence in the patents to the other two parcels of land involved in this appeal where entry occurred after July

15. The State and the plaintiffs have agreed that PLO 601 is based on Executive Order 9337 which, "in turn, rests on" 43 U.S.C. § 141. We thus have no occasion to consider whether Executive Order 9337 delegated authority to make withdrawals in addition to those authorized by 43 U.S.C. § 141.

16. *Stockley v. United States*, 260 U.S. 532, 540, 43 S.Ct. 186, 188, 67 L.Ed. 390, 394 (1923). *Korf v. Itten*, 64 Colo. 3, 169 P. 148, 150-51 (1917).

17. *Wilbur v. United States ex rel. Stuart*, 53 F.2d 717, 720 (D.C.Cir.1931).

24, 1947, the date on which section 321d was adopted.

Thus, for reasons different from those articulated by the superior court, the second paragraph of the declaratory judgment is affirmed as to the Hansen parcel.

IV

TRANSAMERICA'S LIABILITY

[7] In count I of the complaint, Transamerica sought a declaration absolving it of liability to the Peases under its title insurance policy. The superior court, following *Hahn v. Alaska Title Guaranty Co.*, 557 P.2d 143 (Alaska 1976), found Transamerica conditionally liable to the Peases for the value of the 17 foot strip arising from DO 2665. In *Hahn* we held that the publication of a public land order, there PLO 601, in the Federal Register imparted constructive notice of the order as to the land it effected. Under the terms of the title policy there involved, the title insurance company was found to be liable. *Id.* at 146. We agree that *Hahn* is squarely controlling.

Transamerica, however, contends that *Hahn* should be overruled. We have considered Transamerica's arguments in support of this position and we are not persuaded that *Hahn* is unsound in any respect. We therefore decline to overrule it. Thus, Transamerica is liable under its policy to the Peases. Paragraph 4 of the declaratory judgment so far as it relates to Transamerica's liability to the Peases is affirmed.

V

CROSS-APPEAL AS TO FIFTH, SIXTH, SEVENTH AND NINTH CLAIMS FOR RELIEF

The plaintiffs claim that the superior court should have granted summary judgment in their favor on their fifth, sixth, seventh and ninth claims for relief. The court made no ruling as to these claims. We review them in accordance with the principle that any ground may be urged on appeal to support a judgment even if it was not accepted by the court in rendering judgment. *Moore v. State*, 553 P.2d 8, 21 (Alaska 1976); *Ransom v. Haner*, 362 P.2d 282, 285 (Alaska 1961).

The fifth and sixth claims are similar because to prevail, a property owner [18] must establish status as a "subsequent innocent purchaser ... in good faith for a valuable consideration" as that term is used in AS 34.15.290. An innocent purchaser must lack "actual or constructive knowledge" of the conflicting deed or encumbrance that the purchaser seeks to avoid. *Sabo v. Horvath*, 559 P.2d 1038, 1043 (Alaska 1976). *Sabo* held that as between two grantees, a prepatent grantee's deed that was recorded before the patent was issued is a "wild deed" and does not give constructive notice to a post-patent grantee who duly records. *Id.* at 1044.

The question here is whether public land orders, which appear in the Federal Register, impart constructive notice, thus preventing the property owner from claiming innocent purchaser status. We have in part IV of this opinion re-affirmed the holding of *Hahn v. Alaska Title Guarantee Co.*, 557 P.2d 143 (Alaska 1976) that publication of a land order in the Federal Register is constructive notice of the order as that term is used in a title insurance policy. That holding is controlling here.

[8] The distinction between *Sabo* and this appeal is that *Sabo* concerns private deeds and this appeal involves a conflict between a government regulation and a patent. Regulations published in the Federal Register take on the character of law. *Farmer v. Philadelphia Electric Co.*, 329 F.2d 3, 7 (3d Cir.1964); *United States v. Messer Oil Corp.*, 391 F.Supp. 557, 561-62 (W.D.Pa.1975). All persons are presumed to know the contents of the law. *See Ferrell v. Baxter*, 484 P.2d 250, 265 (Alaska 1971). In *United States v. Messer Oil Corp.*, the district court indicated that regu-

18. In this somewhat abstract context the term "property owner" should be considered to be a property owner situated as is the plaintiff Boysen, for Hansen has prevailed on other grounds.

lations published in the Federal Register were sufficient notice to allow conviction of a criminal violation. 391 F.Supp. at 562. If Federal Register notice is sufficient for this purpose, it is sufficient notice to a landowner regarding easements that the federal government has reserved across his land. Thus, the publication of the land orders in the Federal Register imparted constructive notice and served to preclude subsequent innocent purchaser status.

In the seventh claim, plaintiffs contend that the State is estopped from claiming any easements under the orders here involved. The State responds that constructive notice defeats the estoppel claim.

[9] Estoppel requires "the assertion of a position by conduct or word, reasonable reliance thereon by another party, and resulting prejudice." *Jamison v. Consolidated Utilities, Inc.*, 576 P.2d 97, 102 (Alaska 1978) (footnote omitted). Plaintiffs claim that the State has asserted by conduct that it claims no easements by allowing the owners to develop their property inconsistently with the easements, and by not recording the land orders. They assert that reasonable reliance on that assertion has taken place. Because we have already found that publication of the land orders imparts constructive notice of the easements which they create, that notice makes plaintiffs' reliance unreasonable. Thus, the estoppel claim lacks merit.

The ninth claim of plaintiffs is based on the fact that the property owners' patents involved here did not expressly refer to any land order easements. Because of this the plaintiffs contend that the property conveyed was conveyed free from such easements. They argue further that as a result suit was required to be brought against the property owners to vacate the patents, and that the time for such a suit is, in all cases now before us, barred by the six year statute of limitations contained in 43 U.S.C. § 1166.[19]

The premise of this argument is that a patent which does not say that it is issued subject to a public easement operates to transfer the property free from the easement. We rejected this premise in *Green*. We held there that an unexpressed DO 2665 easement was effective. *Green*, 586 P.2d at 603.

Similarly, in *Girves v. Kenai Peninsula Borough*, 536 P.2d 1221 (Alaska 1975), we affirmed a trial court ruling that a right-of-way not expressed in a patent was effective:

> At the outset Girves notes that neither her "Notice of Allowance", nor her patent contained any express reservation of rights-of-way in favor of any public body. However, the absence of an express reservation of easement does not preclude the borough from showing that a right-of-way was established prior to the issuance of these documents.

Id. at 1224 (footnote omitted). We cited as authority for that statement *State v. Crawford*, 7 Ariz.App. 551, 441 P.2d 586 (1968). That case aptly states:

> [I]t is also clear from cases decided under 43 U.S.C. § 932 that a subsequent patentee takes subject to previous right-of-ways [sic] established under the grant contained in that federal statute [Citations omitted.] No contrary authority has come to our attention.... The silence of the patents does not preclude the State from showing the full extent of its right-of-way established prior to the time when the patents were issued to plaintiff's predecessors.

Id. at 590.

[10, 11] The above and other authorities[20] establish that, by operation of law,

19. 43 U.S.C. § 1166 provides:
> Suits by the United States to vacate and annul any patent shall only be brought within six years after the date of the issuance of such patents.

20. *Bird Bear v. McLean County*, 513 F.2d 190, 192–93 (8th Cir.1975); *Ball v. Stephens*, 68 Cal.App.2d 843, 158 P.2d 207, 210 (1945); *Nicolas v. Grassle*, 83 Colo. 536, 267 P. 196, 197 (1928); *Flint & P.M. Ry. v. Gordon*, 41 Mich. 420, 2 N.W. 648, 655 (1879); *Lovelace v. Hightower*, 50 N.M. 50, 168 P.2d 864, 874 (1946); *Verdier v. Port Royal R.R.*, 15 S.C. 476, 481 (1881); *Costain v. Turner County*, 72 S.D. 427,

land conveyed by the United States is taken subject to previously established rights-of-way where the instrument of conveyance is silent as to the existence of such rights-of-way. No suit to vacate or annul a patent in order to establish a previously existing right-of-way is necessary because the patent contains an implied-by-law condition that it is subject to such a right-of-way.[21] Thus the statute of limitations expressed by 43 U.S.C. § 1166 does not apply.

VI

CONCLUSION

The first paragraph of the judgment is REVERSED. The second paragraph of the judgment is AFFIRMED as to Hansen and REVERSED as to Boysen. The third paragraph of the judgment is REVERSED. The fourth paragraph of the judgment is AFFIRMED as to the Peases' claim against Transamerica. The case is REMANDED for further proceedings consistent with the foregoing.

RABINOWITZ, Chief Justice, dissenting in part.

I find that I am unable to agree with the court's conclusion that the State of Alaska or the Municipality of Anchorage is entitled to claim highway easements in excess of those reserved when the parcels in question were conveyed by patent from the federal government. Before discussing the grounds for my disagreement with the court's ruling, however, I believe that it will be useful to set forth what I consider to be the significant facts.

The principal question in this appeal is whether the state[1] must compensate three landowners for portions of their parcels taken to widen existing roads. The landowners—Theodore and Claire Pease, Richard Boysen, and a limited partnership called Hansen Associates—are the successors in interest to persons who originally acquired the parcels by patent from the federal government. The federal government expressly reserved highway easements or rights-of-way in the Pease and Boysen patents; there were no easements or rights-of-way reserved in the Hansen patent. In each case the state claims a highway easement greater than that reserved in the patent, resting its claims on various now-repealed federal directives which provided arguably that the easements claimed by the state should have been expressly reserved when the parcels were conveyed by patent.[2]

36 N.W.2d 382, 383 (1949); *Wells v. Pennington County*, 2 S.D. 1, 48 N.W. 305, 308 (1891); *Sullivan v. Condas*, 76 Utah 585, 290 P. 954, 957 (1930).

21. Indeed, when the Secretary of the Interior declared these rights-of-way, they vested in the public and there is authority that thereafter the Secretary could not revoke them. In *Walcott Township v. Skauge*, 6 N.D. 382, 71 N.W. 544 (1897), the court, in discussing 43 U.S.C. § 932, stated:

> Highways once established over the public domain under and by virtue of this act, the public at once became vested with an absolute right to the use thereof, *which could not be revoked by the general government*, and whoever thereafter took the title from the general government took it burdened with the highway so established.

Id. at 546 (emphasis added); *accord Bird Bear v. McLean County*, 513 F.2d 190, 192 (8th Cir. 1975); *Wenberg v. Gibbs Township*, 31 N.D. 46, 153 N.W. 440, 441 (1915); *Gustafson v. Gem Township*, 58 S.D. 308, 235 N.W. 712, 713 (1913). *Cf. City of Butte v. Mikosowitz*, 39 Mont. 350, 102 P. 593, 596 (1909) (grant of a roadway under 43 U.S.C. § 932 is to the public, and governmental entities have "supervision and control thereof as trustee for the public, . . ."). That the rights-of-way were established by administrative action rather than public user does not put them on a different footing. *See United States v. Rogge*, 10 Alaska 130, 152-53 (D.Alaska 1941), *aff'd* 128 F.2d 800 (9th Cir.1942).

1. Although the right of the Municipality of Anchorage to claim undisclosed easements is also at issue, I will refer only to the state's rights, for convenience's sake, as the legal issues are the same as to both the state and the municipality.

2. The Pease patent reserved a right-of-way of unspecified location and width under the authority of 48 U.S.C. § 321d, and also reserved a separate 33-foot right-of-way along the south and east boundaries of the parcel. The Peases concede that the state is entitled to the 33-foot right-of-way, and the Alaska Right-of-Way Act of 1966, ch. 92, 1966 Temporary and Special Acts and Resolutions, requires the state to

In my view, the state's reliance upon undisclosed easements, decades after the lands were patented,[3] is foreclosed by both federal and state statutes of limitations governing suits to set aside patents.[4] In addition, I think the landowners are entitled to the protection of Alaska's recording act.[5] Thus, I do not agree with the court's ruling that the state need not compensate the landowners for taking easements which were not expressly reserved in the patents.[6]

In my view, the dispositive legal issue in this appeal should be framed as follows: if the federal government mistakenly issues a patent which purports to convey clear title to lands which should have been withheld for highway easements, is there a time after which the patent may not be challenged notwithstanding the mistake? Because Congress has supplied the answer to this dispositive question in the form of a statute of limitations applicable to suits challenging the validity of patents, I think it is unnecessary to address the array of statutes, Public Land Orders, and Departmental Orders marshalled by the state in defense of the easements that it claims.

Forty-three U.S.C. § 1166 provides that "[s]uits by the United States to vacate and annul any patent shall only be brought within six years after the date of the issuance of such patents."[7] This statute of

compensate the Peases if it uses a section 321d right-of-way notwithstanding the fact that the right-of-way was expressly reserved in the patent. In addition, section 138(b) of the Federal Aid Highway Act of 1970 provides an independent basis for concluding that the state may not claim a section 321d easement. That provision states:

> Any right-of-way for roads, roadways, highways, tramways, trails, bridges, and appurtenant structures reserved by section 321(d) [sic] of title 48, United States Code (61 Stat. 418, 1947), not utilized by the United States or by the State or territory of Alaska prior to the date of enactment hereof, shall be and hereby is vacated and relinquished by the United States to the end and intent that such reservation shall merge with the fee and be forever extinguished.

Pub.L. No. 91-605, § 138(b), 1970 U.S.Code Cong. & Ad.News 2001, 2029 (uncodified). The state, however, claims yet another easement of fifty feet on the Pease parcel, which is seventeen feet greater than the easement to which the Peases agree the state is entitled. The state claims this fifty-foot easement pursuant to Public Land Orders 601 and 757 and Department Order 2665.

The Boysen patent reserved only a section 321d right-of-way; once again, the state must compensate Boysen if it uses a section 321d right-of-way. The state, however, claims a separate 150-foot easement on the Boysen parcel under the authority of Public Land Order 1613 and Department Order 2665.

As to the Hansen parcel, which is subject to no reserved highway easements or rights-of-way, the state also claims a 150-foot easement under the authority of Public Land Order 1613 and Department Order 2665.

3. The Hansen patent was issued on June 1, 1950; the Boysen patent, on May 15, 1952; the Pease patent, on October 4, 1955. The state did not claim the easements that it now seeks until the mid to late 1970's.

4. 43 U.S.C. § 1166; AS 09.10.230. I do not find it necessary to distinguish or consider the many Alaska cases dealing with the effect of various federal directives, because none of those cases have addressed the statutes of limitations issues.

5. AS 34.15.290.

6. The only federal directive upon which the state relies which was in effect when the Hansen parcel was patented is Public Land Order 601; the remaining directives were not promulgated until after the Hansen patent was issued and cannot, in my view, be applied to alter vested property interests without abridging rights secured by the federal and state constitutions. The withdrawals made by Public Land Order 601 were, however, subject to "valid existing rights," and an entryman's claim is a "valid existing right" which could not be adversely affected by Public Land Order 601. Since the Hansen parcel was entered prior to the promulgation of Public Land Order 601, that parcel is not subject to the withdrawal made by that directive.

7. Admittedly the United States is not a party to this litigation, but this observation does not answer the question of the applicability of the federal statute of limitations. The state, which acquired its interests in federally-created highway easements from the federal government by quitclaim deed, could not have acquired greater rights than its grantor had; the state's rights are merely derivative. A claim that would have been time-barred as to the United States was not revived, nor did the federal statute of limitations cease to run as to viable claims, when the United States transferred its rights to

limitations was enacted because of "the insecurity and loss of confidence of the public in the integrity and value of patent title to public lands, which had been occasioned by conflicting claims ... which had resulted in many suits being commenced to cancel patents." *United States v. Whited & Wheless, Ltd.*, 246 U.S. 552, 562, 38 S.Ct. 367, 368, 62 L.Ed. 879, 882 (1918). The statute presupposes that the federal government might err and issue a patent to previously reserved lands. As the Supreme Court has explained, "[i]f the act were confined to valid patents it would be almost or quite without use." *United States v. Chandler-Dunbar Water Power Co.*, 209 U.S. 447, 450, 28 S.Ct. 579, 580, 52 L.Ed. 881, 887 (1908). The well-settled rule is that the running of the statute of limitations "makes the title of the patentee good as against the grantor, the United States." *United States v. Eaton Shale Co.*, 433 F.Supp. 1256, 1269 (D.Colo. 1977). If the landowners' patent titles are good as against the original grantor, the United States, then their titles are good as against the state, which acquired its interests, if any, in the patented lands in 1959 by quitclaim deed from the federal government. In my view the effect of the six-year statute of limitations is to validate a mistakenly issued patent after the limitations period has expired.[8] Thus, I would

the state. Stated differently, a time-barred claim is not revived by assigning it to someone to whom the relevant statute of limitations is not applicable. *See, e.g., Stanczyk v. Keefe*, 384 F.2d 707, 708 (7th Cir.1967) (parents could not revive time-barred claim by assigning it to minor child, against whom statute of limitations did not run); *Smith v. Copiah County*, 232 Miss. 838, 100 So.2d 614, 616 (1958) (assignee's claim is barred if assignor's rights are barred).

Inherent in my conclusion that 43 U.S.C. § 1166 is applicable is the view that a judicial ruling which declares that a portion of the landowners' patented parcels must be conveyed without compensation to the state, in derogation of the patents themselves, is the functional equivalent of a ruling that portions of the patents be "vacated" or "annulled."

8. *See United States v. Winona & St. Peter R.R. Co.*, 165 U.S. 463, 17 S.Ct. 368, 41 L.Ed. 789 (1897); *United States v. Chandler-Dunbar Water Power Co.*, 209 U.S. 447, 28 S.Ct. 579, 52 L.Ed. 881 (1908). In *Winona* the Court explained:

> Congress evidently recognized the fact that notwithstanding any error in certification or patent there might be rights which equitably deserved protection, and that it would not be fitting for the government to insist upon the letter of the law in disregard of such equitable rights. In the first place, it has distinctly recognized the fact that when there are no adverse individual rights, and only the claims of the government and of the present holder of the title to be considered, it is fitting that a time should come when no mere errors or irregularities on the part of the officers of the land department should be open for consideration. In other words, it has recognized that, as against itself in respect to these land transactions, it is right that there should be a statute of limitations; that when its proper officers, acting in the ordinary course of their duties, have conveyed away lands which belonged to the government, *such conveyances should, after the lapse of a prescribed time, be conclusive against the government, and this notwithstanding any errors, irregularities, or improper action of its officers therein.*

165 U.S. at 475–76, 17 S.Ct. at 370–71, 41 L.Ed. at 795 (emphasis added).

Indeed, so strong is the federal policy of ensuring that federal patents convey unassailable title that the validity of even fraudulently-procured patents may not be challenged after the six-year statute of limitations has run. *See, e.g., United States v. Whited & Wheless, Ltd.*, 246 U.S. 552, 38 S.Ct. 367, 62 L.Ed. 879 (1918). A patentee who procures a patent by fraud has good title after the six-year period has expired, although the statute of limitations does not begin to run until the fraud is discovered. *Exploration Co. v. United States*, 247 U.S. 435, 38 S.Ct. 571, 62 L.Ed. 1200 (1918).

In addition, the federal bona fide purchaser doctrine provides that the validity of an erroneously granted patent may not be challenged once the original patentee conveys the parcel to a bona fide purchaser. *See, e.g., United States v. California & Oregon Land Co.*, 148 U.S. 31, 40–41, 13 S.Ct. 458, 461–462, 37 L.Ed. 354, 359-60 (1893); *Colorado Coal & Iron Co. v. United States*, 123 U.S. 307, 313, 8 S.Ct. 131, 133, 31 L.Ed. 182, 185 (1887). Bona fide purchase from a patentee is a perfect defense to a suit to set aside a patent. *See, e.g., Wright-Blodgett Co. v. United States*, 236 U.S. 397, 35 S.Ct. 339, 59 L.Ed. 637 (1915), which involved a patent obtained by fraud:

> [T]he respect due a patent, the presumption that all the preceding steps required by the law had been observed before its issue, and the immense importance of stability of titles dependent upon these instruments, demand that suit to cancel them should be sustained only by proof which produces conviction.... And, *despite satisfactory proof of fraud in*

hold that the federal statute of limitations, 43 U.S.C. § 1166, bars the state's claim to undisclosed easements.[9]

As an independent basis for ruling that the landowners' parcels are free of the easements claimed by the state, I would hold further that the state's claims are barred by AS 09.10.230, which provides in pertinent part:

> No person may bring an action to set aside, cancel, annul, or otherwise affect a patent to lands issued by this state or the United States, or to compel a person claiming or holding under a patent to convey the lands described in the patent or a portion of them to the plaintiff in the action, or to hold the lands in trust for or to the use and benefit of the plaintiff, or on account of any matter, thing, or transaction which was had, done, suffered, or transpired before the date of the patent unless commenced within 10 years from the date of the patent.[10]

This statute, which clearly evinces the legislature's intent that patents be considered conclusive evidence of the title they purport to convey after ten years from the date of issuance, has been the law of the territory and State of Alaska for the better part of a century. In my view it is appropriate to give effect to this long-standing state policy of promoting public confidence in the stability and marketability of patent titles.[11]

obtaining the patent, as the legal title has passed, bona fide purchase for value is a perfect defense.

Id. at 403, 35 S.Ct. at 341, 59 L.Ed. at 640 (citations omitted) (emphasis added).

9. I find the authorities relied upon by the court, *see ante* n. 19, inapposite for two reasons. First, those authorities simply do not address the statute of limitations issue.

Second, many of those authorities involve situations in which, at the time the patent in question was issued, the patented lands had previously been conveyed to or reserved for some third party, such as a railroad or a state. In such situations courts have sometimes concluded that the prepatent interests prevailed over the patentees' claims. In the case at hand, however, the state is not claiming, and cannot claim, that it acquired the easements or rights-of-way prior to the issuance of the patents in question and that the patents were therefore issued in derogation of the state's rights. The claim is not that the federal government had conveyed away parts of the patented parcels to anyone prior to issuing the patents; rather, the gist of the claim is that the federal government mistakenly conveyed by patent, lands that it intended to keep for itself.

In *Cramer v. United States*, 261 U.S. 219, 67 L.Ed. 622, 43 S.Ct. 342, (1923), the Court made precisely this distinction. *Cramer* involved a suit brought by the United States to set aside a patent granted to a railroad covering lands occupied by Indians. The Court distinguished between suits brought by the government to cancel patents and revest title in itself and suits brought so that the parcels could be vested in third parties whose rights had accrued prior to patent. The Court noted that the six-year statute of limitations applies to the former kind of case, but not to the latter:

> The suit is not barred by [now 43 U.S.C. § 1166], limiting the time within which suits may be brought by the United States to annul patents.
>
> The object of that statute is to extinguish any right the *government* may have in the land which is the subject of the patent, not to foreclose claims of third parties. Here the purpose of the annulment was not to establish the right of the United States to the lands, but to remove a cloud upon the possessory rights of its wards. As stated by this court in *United States v. Winona & St. Peter R.R. Co.*, 165 U.S. 463, 475 [17 S.Ct. 368, 370], 41 L.Ed. 789, 795, ... the statute was passed in recognition of "the fact that when there are no adverse individual rights, and only the claims of the government and of the present holder of the title to be considered, it is fitting that a time should come when no mere errors or irregularities on the part of the officers of the Land Department should be open for consideration." After the lapse of the statutory period, the patent becomes conclusive against the government, but not as against claims and rights of others

Id. at 233–34, 43 S.Ct. at 340, 67 L.Ed. at 628 (emphasis in original). *See also United States v. Krause*, 92 F.Supp. 756, 766 (W.D.La.1950); *Capron v. Van Horn*, 258 P. 77 (Cal.1927).

10. *See Monroe v. California Yearly Meeting of Friends Church*, 564 F.2d 304, 306 n. 2 (9th Cir.1977).

11. Although the question of the applicability of AS 09.10.230 was not raised below, we have repeatedly stated that "[u]pon appeal, a correct decision of the superior court will be affirmed regardless of whether we agree with the reasons advanced." *Fireman's Fund Am. Ins. Cos. v. Gomes*, 544 P.2d 1013, 1017 n. 12 (Alaska 1978); *Carlson v. State*, 598 P.2d 969, 973 (Alaska 1979); *A & G Constr. Co. v. Reid Bros. Logging Co.*, 547 P.2d 1207, 1211 n. 1 (Alaska 1976).

Finally, I do not agree with the court's holding that Boysen and the Peases are charged with constructive notice of federal directives published in the Federal Register and thus are unable to claim bona fide purchaser status under Alaska's recording act, AS 34.15.290.

Forty-four U.S.C. § 1507 provides that persons are charged with notice of documents filed for publication in the Federal Register "except in cases where notice by publication is insufficient in law." Thus, the pertinent question is whether published notice of federal directives such as Public Land Orders is "insufficient in law" to bind Boysen and the Peases, who did not have actual knowledge of the published directives when they purchased their parcels.[12]

The answer to this question is supplied by federal law,[13] and, as the court notes, there are a number of situations in which notice in the Federal Register is sufficient to bind persons who did not know of the publication. In my view, however, this appeal involves a situation in which notice by publication is "insufficient in law" within the meaning of 44 U.S.C. § 1507.

Our task is to determine whether Congress intended that the sufficiency of published notice of federal directives affecting Alaska real property is to be tested by looking to state law[14] or by applying an independent body of federal common law designed to supplant the state's conveyancing rules.[15] Congress did not address this question when enacting the predecessor to 44 U.S.C. § 1507, but, in my view, had it done so it would not have concluded that lands whose private title began with a patent from the federal government should be subject to different conveyancing standards than neighboring parcels whose title originated elsewhere. I find it difficult to believe that that Congress could have intended to displace established conveyancing law in every state in the union and create a chaotic system in which each state is required to apply different standards to patented parcels than to parcels whose chain of title did not begin with a federal patent. In short, I think that the sufficiency of notice for purposes of 44 U.S.C. § 1507 should be determined by applying state law standards. Since the law of this state does not charge a grantee with notice of prepatent transactions and documents[16] or of instruments not recorded in the chain of title,[17] I would conclude that Boysen and the Peases did not have constructive notice of the easements claimed by the state and thus are protected by AS 34.15.290.



12. Under AS 34.15.290 Boysen and the Peases must prevail as bona fide purchasers unless they are charged with constructive notice of the existence of easements which were not recorded in their chains of title.

Our ruling in *Hahn v. Alaska Title Guaranty Co.*, 557 P.2d 143 (Alaska 1976) does not dispose of this issue because the parties in *Hahn* did not argue, and we did not consider, whether a notice published in the Federal Register might be "insufficient in law."

13. *See, e.g., Ritter v. Morton*, 513 F.2d 942, 946 (9th Cir.1975) (per curiam), *cert. denied*, 423 U.S. 947, 96 S.Ct. 362, 46 L.Ed.2d 281 (1975); *United States v. Boyd*, 458 F.2d 1252, 1254 (6th Cir.1972).

14. *See, e.g., Reconstruction Finance Corp. v. Beaver County*, 328 U.S. 204, 66 S.Ct. 992, 90 L.Ed. 1172 (1946). Congress is, of course, free to adopt state rules as federal law. *See generally* P. Bator, P. Mishkin, D. Shapiro, & H. Wechsler, Hart and Wechsler's The Federal Courts and the Federal System 470–71, 491–94 (2d ed. 1973). The classic example of such an incorporation of states' legal doctrine into federal law is the Federal Tort Claims Act, under which the liability of the United States—a federal question—is determined by applying state substantive law. *See* 28 U.S.C. § 2674; *see also, e.g., Otteson v. United States*, 622 F.2d 516 (10th Cir.1980).

15. *See, e.g., Clearfield Trust Co. v. United States*, 318 U.S. 363, 63 S.Ct. 573, 87 L.Ed. 838 (1943).

16. *See File v. State*, 593 P.2d 268, 270 (Alaska 1979) ("patent is the highest evidence of title").

17. *See Sabo v. Horvath*, 559 P.2d 1038 (Alaska 1976).

13-2222
Bradley
4/17/84

IN THE HOUSE BY THE JUDICIARY COMMITTEE

HOUSE BILL NO.

IN THE LEGISLATURE OF THE STATE OF ALASKA

THIRTEENTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act releasing claims of the state to land within certain rights-of-way; and providing for an effective date."

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

* Section 1. LEGISLATIVE PURPOSE AND FINDING. (a) The purpose of sec. 2 of this Act is to release and relinquish certain rights-of-way claimed by the Alaska Department of Transportation and Public Facilities.

(b) The legislature finds that sec. 2 of this Act is needed to alleviate economic hardship and physical and mental distress caused by the taking of land by the state without just compensation.

* Sec. 2. AS 19.25 is amended by adding a new section to read:

Sec. 19.25.260. RELINQUISHMENT OF RIGHT-OF-WAY. (a) The right-of-way for a road, roadway, highway, tramway, trail, bridge, or appurtenant structure created, withdrawn, or reserved under the Act of January 27, 1905, 33 Stat. 616, the Act of June 30, 1932, 47 Stat. 446, the Act of July 24, 1947, 61 Stat. 418, Public Land Orders 601, 757, and 1613, and Department of the Interior Order 2665, as amended, that is not on the effective date of this Act physically occupied by the roadway, shoulder, or ditching of a road, roadway, highway, tramway, trail, bridge, or appurtenant structure is vacated and relinquished and the vacated and relinquished right-of-way may not be taken, claimed, asserted, or used by the state without the payment of just compensation.

(b) The provisions of (a) of this section relinquish and release

to the ~~subservient estate~~ that portion of the right-of-way claimed, asserted, or used by the state that is not physically occupied by the roadway, shoulder, or ditching of the roadway before the effective date of this Act.

(c) The provisions of (a) of this section do not divest the state of title to land or require compensation by the state for land physically occupied on the effective date of this Act by the roadway, shoulder, or ditching of a road, roadway, highway, tramway, trail, bridge, or appurtenant structure then constructed within the right-of-way created, withdrawn, or reserved under the Acts of Congress and the orders described in (a) of this section.

(d) Any expansion beyond the existing roadway, shoulders, or ditching of a road, roadway, highway, tramway, trail, bridge, or appurtenant structure requires the payment of just compensation to the owner of the land and no other acts or actions by the state constitute a physical occupation by a roadway, shoulder, or ditching within the meaning of this section. The state has the burden of proof to show by clear and convincing evidence that the physical occupation by a roadway, shoulders, or ditching occurred before the effective date of this Act.

(e) As used in this section, "physically occupied by the roadway, shoulder, or ditching" means the construction of the actual roadway, shoulders, or ditching before the effective date of this Act.

* Sec. 3. This Act takes effect immediately in accordance with AS 01.-10.070(c).

IN THE HOUSE BY THE JUDICIARY COMMITTEE

HOUSE BILL NO. _____ (Judiciary)

IN THE LEGISLATURE OF THE STATE OF ALASKA

THIRTEENTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act relating to defects in the title of the state to land; and providing for an effective date."

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

*Section 1. LEGISLATIVE PURPOSE AND FINDINGS. (a) The purpose of this Act is to release and relinquish certain highway rights-of-way claimed by the State of Alaska, Department of Transportation and Public Facilities.

(b) The legislature finds this bill is needed to alleviate economic hardship and physical and mental distress occasioned by the taking of land by the State of Alaska without compensation being paid to the person holding title to the land.

*Sec. 2. AS 19.25 is amended by adding a new section to article 4 to read:

Sec. 19.25.260 RELINQUISHMENT OF RIGHTS-OF-WAY. (a) Any right-of way for roads, roadways, highways, tramways, trails, bridges and appurtenant structures created, withdrawn, or reserved by the federal government under the Act of January 27, 1905, 33 Stat. 616, the Act of June 30, 1932, 47 Stat. 446, the Act of July 24, 1947, 61 Stat. 418, Public Land Orders 601, 757 and 1613, and Department of Interior

Order 2665, as amended, which the State of Alaska may now or in the future claim, assert or utilize and which is not asserted or utilized by occupation with physical improvements by the construction of a roadway, shoulders and ditching (if applicable) shall be and hereby are vacated and relinquished and shall not be taken, claimed, asserted or utilized by the State of Alaska or its successors in interest without payment of just compensation.

(b) This section shall not be construed to divest the state or to require compensation by the state for any roadway, shoulder, or ditching, (if applicable) already constructed within the right-of-way created, withdrawn, or reserved under the federal statutes and orders set forth in subsection (a). This section hereby relinquishes and releases to the subservient estate the balance of the right-of-way claimed, asserted or utilized by the State of Alaska which is not physically occupied by roadway, shoulder or ditching (if applicable) constructed prior to the effective date of this section.

(c) For the purposes of determining whether the State of Alaska has occupied with physical improvements any right-of-way under subsection (a) "occupation with physical improvements" shall mean the construction of the actual roadway, shoulders and ditching (if applicable) prior to the effective date of this section or any expansion of existing roadway, shoulders and ditching (if applicable) which requires

additional property to construct shall require the payment of just compensation to the landowner. No other acts or actions by the State of Alaska shall constitute an occupation with physical improvements within the meaning of this section. The State of Alaska shall have the burden of proof to show by clear and convincing evidence that the occupation by physical improvements by the construction of roadway, shoulders and ditching (if applicable) occurred prior to the effective date of this section.

*Sec. 3. This Act takes effect immediately in accordance with AS 01.10.070(c).

TELEGRAM

ALASCOM, INC.
PHONE: 586-5806
JUNEAU, AK 99801

1984 APR 30 AM 11 19

02015 ANCHORAGE AK 74 04-30 1042 ADT

PMS REP CHARLIE BUSSELL

CHAIRMAN JUDICIARY COMMITTEE **2528**

JUNEAU AK

URGE THAT YOU TABLE HB718, AN ACT RELEASING CLAIMS OF THE STATES TO LANDS WITHIN CERTAIN RIGHTS OF WAY. LAW SUITS ARE PENDING ON WHICH THIS BILL WOULD HAVE A SIGNIFICANT BEARING. HB718 ALSO WOULD HAVE SERIOUS ADVERSE FISCAL IMPACTS ON NUMEROUS STATE/LOCAL ROAD PROJECTS. IF ENACTED ANCHORAGE AND OTHER AREAS OF THE STATE MAY LOSE MUCH NEEDED ROAD IMPROVEMENTS. A BILL OF THIS NATURE NEEDS EXTENSIVE PUBLIC HEARING.

SIG STRANDBERG 276-4555

HAPTER = 29.33
ECTION = 29.33.240
ITLE = 29
ADINGS TITLE 29.
MUNICIPAL GOVERNMENT.
CHAPTER 33.
AREAWIDE BOROUGH POWERS AND DUTIES.
ARTICLE 4.
PLANNING, PLATTING AND ZONING.
ATION SEC. 29.33.240.
TCH LINE
TITLE TO VACATED AREA.
XT (A) THE TITLE TO THE STREET OR OTHER PUBLIC AREA VACATED ON A PLAT ATTACHES TO THE LOT OR LANDS BORDERING ON THE AREA IN EQUAL PROPORTIONS, EXCEPT THAT IF THE AREA WAS ORIGINALLY DEDICATED BY DIFFERENT PERSONS, ORIGINAL BOUNDARY LINES SHALL BE ADHERED TO SO THAT THE STREET AREA WHICH LIES ON ONE SIDE OF THE BOUNDARY LINE SHALL ATTACH TO THE ABUTTING PROPERTY ON THAT SIDE, AND THE STREET AREA WHICH LIES ON THE OTHER SIDE OF THE BOUNDARY LINE SHALL ATTACH TO THE PROPERTY ON THAT SIDE. THE PORTION OF A

VACATED STREET WHICH LIES WITHIN THE LIMITS OF A PLATTED ADDITION ATTACHES TO THE LOTS OF THE PLATTED ADDITION BORDERING ON THE AREA. IF A PUBLIC SQUARE IS VACATED, THE TITLE TO IT VESTS IN THE CITY IF IT LIES WITHIN THE CITY AND TO THE BOROUGH IF IT LIES WITHIN THE BOROUGH OUTSIDE A CITY. IF THE PROPERTY VACATED IS A LOT OR TRACT, TITLE VESTS IN THE RIGHTFUL OWNER.

(B) IF THE BOROUGH OR CITY ACQUIRED THE STREET OR OTHER PUBLIC AREA VACATED FOR LEGAL CONSIDERATION OR BY EXPRESS DEDICATION TO AND ACCEPTANCE BY THE BOROUGH OR CITY FOR REQUIRED SUBDIVISION PLATTING, BEFORE THE FINAL ACT OF VACATION THE FAIR MARKET VALUE OF THE STREET OR PUBLIC AREA SHALL BE DEPOSITED WITH THE PLATTING AUTHORITY TO BE PAID OVER TO THE BOROUGH OR CITY ON FINAL VACATION.

(C) PROVISIONS OF (A) OF THIS SECTION NOTWITHSTANDING, THE COUNCIL OF A SECOND CLASS CITY LOCATED OUTSIDE AN ORGANIZED BOROUGH MAY VACATE THOSE STREETS, ALLEYS, CROSSINGS, SIDEWALKS OR OTHER PUBLIC WAYS THAT MAY HAVE BEEN PREVIOUSLY DEDICATED OR ESTABLISHED WHEN THE COUNCIL, IN ITS DISCRETION, FINDS THAT THE STREETS, ALLEYS, CROSSINGS, SIDEWALKS OR OTHER PUBLIC WAYS ARE NO LONGER NECESSARY FOR THE PUBLIC WELFARE, OR WHEN THE PUBLIC

WELFARE WILL BE ENHANCED BY THE VACATION. IF THE COUNCIL DETERMINES THAT ALL OR A PORTION OF THE AREA VACATED UNDER THIS SUBSECTION SHOULD BE DEVOTED TO ANOTHER PUBLIC PURPOSE, TITLE TO THE AREA VACATED AND HELD FOR ANOTHER PUBLIC PURPOSE DOES NOT VEST AS PROVIDED IN (A) OF THIS SECTION BUT REMAINS IN THE CITY.
STORY (SEC. 2 CH 118 SLA 1972, AM SEC. 5 CH 118 SLA 1972)
END OF DOCUMENT

HAPTER = 19.05
ECTION = 19.05.070
ITLE = 19
ADINGS TITLE 19.
HIGHWAYS AND FERRIES.
CHAPTER 05.
ADMINISTRATION.
ARTICLE 1.
DEPARTMENT OF TRANSPORTATION AND PUBLIC FACILITIES.
TATION SEC. 19.05.070.
TCH LINE
VACATING AND DISPOSING OF LAND AND RIGHTS IN LAND.
XT (A) THE DEPARTMENT MAY VACATE LAND, OR PART OF IT, OR RIGHTS IN LAND ACQUIRED FOR HIGHWAY PURPOSES, BY EXECUTING AND FILING A DEED IN THE APPROPRIATE RECORDING DISTRICT. UPON FILING, TITLE TO THE VACATED LAND OR INTEREST IN LAND INURES TO THE OWNERS OF THE ADJACENT REAL PROPERTY IN THE MANNER AND PROPORTION CONSIDERED EQUITABLE BY THE COMMISSIONER AND SET OUT BY HIM IN THE DEED.

(B) IF THE DEPARTMENT DETERMINES THAT LAND OR RIGHTS IN LAND

ACQUIRED BY THE DEPARTMENT ARE NO LONGER NECESSARY FOR HIGHWAY PURPOSES THE DEPARTMENT MAY:

(1) TRANSFER THE LAND OR RIGHTS IN LAND TO THE DEPARTMENT OF NATURAL RESOURCES FOR DISPOSAL, OR

(2) SELL, CONTRACT TO SELL, LEASE, OR EXCHANGE LAND OR RIGHTS IN LAND ACCORDING TO TERMS, STANDARDS AND CONDITIONS ESTABLISHED BY THE COMMISSIONER.

(C) PROCEEDS RECEIVED FROM DISPOSAL OF LAND OR RIGHTS IN LAND AS AUTHORIZED BY THIS SECTION SHALL BE CREDITED TO THE FUNDS FROM WHICH THE PURCHASE OF THE LAND WAS MADE ORIGINALLY.

STORY (SEC. 4 ART IV TITLE IV CH 152 SLA 1957, AM SEC. 4 CH 57 SLA 1971)

END OF DOCUMENT

TELEGRAM

ALASCOM, INC.
PHONE: 586-5006
JUNEAU, AK 99802

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PHS REPRESENTATIVE CHARLIE BUSSELL

POUCH U 0022

JUNEAU AK 99811

AGAIN URGE YOU TO TABLE HOUSE BILL 718 UNTIL COMMITTEE CAN BE BRIEFED ON LEGAL QUESTIONS CONCERNING STATES CLAIM TO ROADS AND HIGHWAYS. IMPERATIVE THAT LEGISLATURE AVOID DOING ANYTHING WHICH COULD IMPAIR STATES ABILITY TO ASSERT OWNERSHIP OF IMPORTANT ROAD AND HIGHWAY RIGHTS-OF-WAY IN BOTH URBAN AND RURAL AREAS. COMMITTEE SHOULD HEAR FROM STATE TITLE DEFENSE SECTION OF DEPARTMENT OF NATURAL RESOURCES CONCERNING FOREGOING. TITLE COMPANY PROBLEMS WITH RESPECT TO ROAD AND HIGHWAY RIGHTS-OF-WAY WIDTHS CAN BE ADDRESSED THROUGH LEGISLATION REQUIRING STATE TO DEAL EQUITABLY WITH PROBLEMS ON CASE BY CASE BASIS. LEGISLATURE NEEDS TO TAKE AN INDEPTH LOOK AT THIS COMPLEX PROBLEM.

SIG STRANDBERG 276-4555

HB

221

A PERFORMANCE REVIEW OF THE ALASKA COMMERCIAL FISHING AND AGRICULTURE BANK

May 22, 1981

Audit Control Number
04-101-1035-S

Board of Directors of the:
ALASKA COMMERCIAL FISHING AND AGRICULTURE BANK

Chairperson	Roseleen Moore
Vice Chairperson	Paul Huppert
Secretary/Treasurer	Bob Waldrop
Member	Dale Pihlman
Member	Harvey Samuelsen
Member	William Sutton
Member	Frank Homan

STATE OF ALASKA

THE LEGISLATURE

BUDGET AND AUDIT COMMITTEE

AUDIT DIVISION
POUCH W—ALASKA OFFICE BUILDING

JUNEAU, ALASKA 99811

May 22, 1981

Members of the
Legislative Budget and Audit Committee:

In accordance with the provisions of Title 24 of the Alaska Statutes, the attached report is submitted for your review.

A PERFORMANCE REVIEW
OF THE
ALASKA COMMERCIAL FISHING
AND AGRICULTURE BANK

May 22, 1981

Gerald L. Wilkerson, CPA
Legislative Auditor
Division of Legislative Audit

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PURPOSE AND SCOPE OF THE REVIEW

The purpose of our review was to determine if the performance of the Alaska Commercial Fishing and Agriculture Bank (CFAB) is efficient, effective, and economical. Our scope included a review of the Board of Directors' proceedings, operating expenditures, and the loan portfolio. CFAB's financial statements for the year ended December 31, 1980 were audited by a certified public accounting firm.

ORGANIZATION AND FUNCTION

The Alaska Commercial Fishing and Agriculture Bank (CFAB) was created by Chapter 159, SLA 1978 (AS 44.81.010) as a public corporation and government instrumentality of the State, but with a legal existence independent of and separate from the State. Its purpose is to provide financing for the commercial fishing and agricultural industries in Alaska.

In Fiscal Year 1979, the Commissioner of the Department of Revenue purchased $2,000,000 (200 shares) of special preferred class C stock in accordance with AS 44.81.010(c). Then in March 1980, the Department of Revenue loaned CFAB $30,000,000 at 9 1/2% per annum. In July 1980, the loan agreements were cancelled through the issuance of an additional 3,000 shares of class C stock to the State and the payment of interest from March 1980, totalling $480,205. The class C stock receives no voting or dividend rights. CFAB must repurchase the class C stock from the State within 20 years.

CFAB made 136 loans from April 2, 1980 through March 13, 1981. As of March 13, 1981, there were 130 outstanding loans, totalling $24,287,687 (see Appendix A).

FINDINGS AND RECOMMENDATIONS

Recommendation No. 1

CFAB should require that inventories used as collateral be insured, naming CFAB as the loss payee.

CFAB has developed procedural manuals for the processing and accounting of loans and for collateral control. These manuals are well written and are useful management tools.

We reviewed 67 (49%) of the 136 loans made from April 1980 through March 13, 1981. The loan files, in general, were well organized and contained required information. However, we did note an area of weakness in collateral control that needs to be addressed.

Our test included eight loans for which CFAB has a secured interest in the inventories as collateral for the loan advances. Five of these loans did not have insurance on the inventories, naming CFAB as the loss payee.

CFAB could lose its security on the loan advances through spoilage, accident, fire, etc. Therefore, CFAB should require that insurance be obtained by the borrower, naming it as the loss payee, on inventories in transit and inventories not held in bonded warehouses.

Recommendation No. 2

CFAB should compensate members of the Board of Directors for travel expenses in compliance with Alaska Statutes.

CFAB reimburses members of the Board for actual travel expenses rather than a fixed per diem rate established by the Commissioner of Administration. During Fiscal Year 1980, Board members were reimbursed for $33,807 in actual travel expenses.

AS 44.81.110 states the Board members are to receive compensation at a rate determined by the Board for each day the Board meets if they attend the meeting. In addition, they are entitled to per diem and travel allowances as provided by law for members of State boards and commissions. AS 39.20.180(2) states the members of boards and commissions are entitled, for expenses other than transportation, to a per diem allowance prescribed by the Commissioner of Administration.

Recommendation No. 3

CFAB should give public notice of its Board and membership meetings in accordance with Alaska Statutes.

CFAB has not given public notice of the dates and places of its Board and membership meetings.

A memorandum dated May 13, 1981 from the office of the Attorney General states the Open Meetings Act (AS 44.62.310 - 44.62.312) is applicable to CFAB. AS 44.62.310(e) requires reasonable public notice be given for all meetings required to be open under the Act. Since action taken at meetings held contrary to the Act may be void, it would be prudent of CFAB to comply with the public notice requirement for future meetings.

Other Information

This section of the report addresses the results of our review of CFAB expenditures from inception through April 30, 1981. We have included this information because a significant number of the expenditures may be inappropriate for an entity subsidized by public funds.

Throughout the audit CFAB management has maintained it is a private cooperative entity. They believe they are responsible only to their members, each of whom has purchased a single share of class A common stock for $100, and class B common stock in an amount equal to ten percent of the member's loans (the amount necessary to purchase the B stock is added to the loan amount requested, deducted from loan proceeds by CFAB at closing, and capitalized.)

CFAB is primarily capitalized through a purchase of nonvoting class C stock by the State of Alaska. Paid-in capital at April 30, 1981 is shown as follows on CFAB financial statements:

Class A Common Stock	$ 1,770
Class B Common Stock	2,534,900
Class C Common Stock	32,000,000
Capital in Excess of Par Value	15,300
Total Paid-In Capital	$34,551,970

Each Alaskan has an interest in the manner in which public funds are spent. CFAB has been given a specific mission by the Legislature; that of enhancing commercial fishing and agricultural activities in Alaska. They have been provided with the authority and the wherewithal to accomplish this mission.

As an entity that receives a large State subsidy, we believe it is incumbent upon CFAB management to exercise a higher degree of prudence with their spending habits than if they were completely privately funded.

The following items represent a sampling of CFAB expenditures from inception through April 30, 1981, some of which are questionable:

A. Furniture, Fixtures, and Leasehold Improvements

The balance of CFAB's furniture and fixtures account as of December 31, 1980, CFAB's fiscal year end, totalled $313,966. Of this amount, $246,835 was for expenditures for the Anchorage office. The total expended for leasehold improvements as of the same date was $65,850, which was for purchases of carpet, wallpaper, etc. The following is an example of the type of furnishings purchased for the Anchorage office.

1. President's Office

Sofa	$ 3,631
Five swivel upholstered chairs	7,717
Teak bookcase/cabinet units with refrigerator and liquor cabinet	4,232

2. Executive Assistant's Office

Natural oak desk	$ 2,302
Natural oak credenza	3,150

3. Senior Vice-Presidents' Offices

Two teak executive desks	$ 2,903
Two teak coffee tables	1,812
Two teak bookcase/cabinet units	5,453

4. Executive Conference Room

Rosewood conference table	$16,225
Conference chairs (14)	10,470
Soapstone carving of a land otter with a crab	2,000

In addition, CFAB maintains an apartment in Juneau for which $4,218 in furnishings were purchased, such as two beds, dresser, color television, dinette set, desk, etc. Leasehold improvements were made totalling approximately $2,254, including new carpet and wallpaper.

B. Art Work

As of December 31, 1980, the balance of the non-depreciable assets account totalled $13,353. This represents purchases of prints and paintings for the Anchorage office. A sample of the paintings are:

Custom ordered original paintings by Charlen Jeffery

1.	"Brown Bear" watercolor	$ 3,400
2.	"Musk Ox" watercolor	1,750
3.	"Cows" watercolor	1,850
4.	Six additional watercolors on rice paper, subject matters are fishing and agriculture	2,150
5.	"Alaska Fisherman and Farmer"	800
6.	"Toast of Alaskan Holiday"	800
7.	"Alaskan Logger"	950

C. Automobiles

1.	1980 Chevrolet Citation for a branch office	$ 7,918
2.	1981 Chevrolet Malibu for a branch office	8,874
3.	1980 Subaru 4x4 Station Wagon for the Anchorage office	7,842
4.	1981 Subaru 4x4 Station Wagon for the Senior Vice-President/ Administration	9,350
	Total	$33,984

In addition to the bank owned vehicles, CFAB pays the $168 per month lease charge for the President's vehicle. Maintenance and repair costs for the leased and bank owned vehicles totalled $4,543 during Fiscal Years 1980 and 1981, through April 30. Gasoline expense is paid for the leased vehicle, the bank owned vehicles, and the personal vehicle of the Senior Vice-President/Credit, including gasoline consumed for personal use. The staff employees are reimbursed for the business use of their personal vehicles at a rate of 25 cents per mile.

D. Salaries and Benefits

1. Salaries, Bonuses, and State Benefits

Salary and benefit expenditures totalled $996,692 for Fiscal Year 1980. Included in this amount was $108,192 for year-end bonuses. In addition, two CFAB employees received a total of $1,565 in cash bonuses during the year and $2,390 was paid directly to a travel agency for a bonus trip to Hong Kong for the Senior Vice-President/ Administration and his spouse.

CFAB is presently accruing $22,000 to $24,000 per month for bonus expense. The Fiscal Year 1981 total budgeted bonus accrual is $282,356.

CFAB officers and employees are in the exempt service of the State personnel system. They are covered by the State insurance and retirement programs. They are also exempted from the Social Security Act, as are other State employees, and instead participate in the State Supplemental Benefit Program. Employer contributions for these benefits are paid from CFAB's operating funds. Officers receive four weeks annual leave and employees receive three weeks. In addition, both officers and employees accrue sick leave at a rate of one day per month.

2. Other Benefits, Fiscal Year 1980

Staff room costs (coffee, hot chocolate, tea, sugar, dish soap, etc.)		$2,943
Season tickets to the Alaska Repertory Theatre		$ 376
Staff Christmas party at the Anchorage Westward Hilton:		
Food	$2,353	
Liquor	2,197	
Entertainment	600	
Floral centerpieces	211	
		$5,361
Turkeys for CFAB officers and employees		$ 415
Banquet for a staff meeting at the Sheraton Hotel		$ 773
The President, Senior Vice-President/ Administration, a prospective employee and their spouses had dinner at the Captain Cook Hotel in Anchorage.		$ 245
A branch manager and his spouse had two dinners with two CFAB employees at the Mecca Lounge in Kodiak.		$ 320

The total charged to the other employee benefit and the other personnel expense accounts in Fiscal Year 1980 was $6,076 and $13,810, respectively.

E. Office Space

The Anchorage office is approximately 7,000 square feet which includes two kitchens each equipped with oak cabinets, microwave oven, dishwasher, and refrigerator. Also, one kitchen has a built-in stove top. CFAB purchased a dinette set for $1,108 and a natural oak conference table and upholstered chairs for $4,360 for kitchen/staff room furnishings. In addition, the President's office includes a bathroom with a shower stall.

F. Directors' Fees

In Fiscal Year 1980, $32,479 was paid to members of CFAB's Board of Directors. Originally in March 1979 the Board set its rate of compensation at $100 per day during Board meetings in addition to per diem and travel expenses set forth by State law. In April 1979 the Board voted to increase the compensation rate to $250 per day for the Chairperson and $200 per day for the members. Again, in February 1980 the rate of compensation was increased to $500 and $400 per day for the Chairperson and members, respectively. In addition, CFAB has reimbursed Board members for actual expenses rather than paying a per diem rate, see Recommendation No. 2.

In May 1980 the Board voted to compensate members for work concerning CFAB, other than attendance at meetings, at a rate of $62 per hour for the Chairperson and $50 per hour for the members. During the period November 1979 through April 1981, a Board member has been paid $12,438 for organization and consultation services.

G. Travel, Lodging, and Meals

During a review of Board and staff members' monthly expense reports for the period October 1979 through March 1981, we noted the following:

1. President's Foreign Travel

   a. A European tour, from October 24 through November 17, 1980, to Denmark, England, Rome, and Paris: the purpose of the trip was to tour the Danish fishing industry, visit the British banks and the White Fish Authority, examine the British dairy industry, attend the International Fisheries Conference, and the Fisheries Products Exposition. (Cost includes airfare, totalling $1,881, for the President's spouse, as well as an undetermined amount for her meals and lodging expense.) $8,805

b. An agriculture tour from January 28 through February 12, 1981, to Denmark, Norway, Sweden, and Finland: (Cost includes International Fisheries Conference fees for the President's spouse and the spouse of the Chairperson of the Board, totalling $376.) $6,088

c. At the November 25, 1980 Board meeting, the President apprised the Board of his tentatively scheduled trips for 1981:

January - Denmark
(Same as b. above)
Spring or Summer - Japan
October - Munich

2. Senior Vice President/Administration - Foreign Travel

a. A trip to London, England in January, 1981 $2,681

3. Dinners

a. The following dinners were reported on the expense reports of the President and Senior Vice-President/Administration:

1) A dinner at the Corsair in Anchorage attended by four CFAB employees and their spouses. $256

2) Three CFAB officers and their spouses had dinner at Simon & Seafort's Saloon & Grill in Anchorage. $191

3) The President and Senior Vice-President/Administration and spouses had dinner with a local businessman and spouse at the Corsair in Anchorage. $210

4) The President, Senior Vice-President/Administration, and a prospective employee had dinner. $164

5) Two legislators, CFAB's attorney, and a consultant had dinner in Juneau with the President, Senior Vice-President/Administration and a secretary. $213

6) A dinner at Yancey Derringer's in Juneau with four Board members and the Senior Vice-President/ Administration. $343

7) Five members of the Board, the three senior executive officers, the Vice-President/Branch Management, and CFAB's attorney had dinner at Josephine's Restaurant in Anchorage. $281

8) Three dinners at Josephine's Restaurant for the five members of the Board and the Senior Vice-President/Administration. $534
400
449

9) The Senior Vice-President/ Administration and the Chairman of the Board had dinner at the Captain Cook Hotel in Anchorage. $125

10) The two Senior Vice-Presidents had dinner at Josephine's Restaurant in Anchorage. $157

All told, there were 48 dinners on the expense reports of the President and Senior Vice-President/Administration each costing in excess of $100 during the period October 1979 through March 1981.

b. Cost of dinners or lunches noted on other persons monthly expense reports:

1) Branch Manager took Branch Assistant to lunch on five occasions. $137

2) The two Seattle branch office employees and six employees from offices in Alaska dined in Seattle. $127

3) The two Seattle branch office employees and seven employees from the offices in Alaska dined in Seattle. $448

4) Staff lunch at Clinkerdagger, Bickerstaff & Petts Public House in Anchorage. $172

c. Banquets held in March 1981 at the Sheraton Hotel in Anchorage. Costs include $398 for liquor. $1,331

4. Miscellaneous Expenditures

a. Alaska Airlines Board Room, United Airlines Red Carpet and University Club (San Francisco) membership dues on the expense reports of the President or Senior Vice-President/Administration. $400

b. Tuxedo rental. $40

c. Liquor and mixes for the bar in the President's office. $243

d. Glassware and cutlery purchased at Design Craft Ltd. in Anchorage. $159

e. Towels and accessories for the executive bathroom purchased at Nordstrom in Anchorage. $100

f. Two gift certificates for dinner at Josephine's Restaurant in Anchorage. $200

g. Gift certificate at Stephan Fine Arts gallery. $100

H. Promotional Costs

1. Anchorage Pre-opening Party at the Sheraton Hotel

64 dinners	$1,325	
19 bottles Chenin Blanc	186	
18 bottles Pinot Noir	124	
Hosted bar - 283 drink tickets	814	
Flowers	180	
		$2,629

Meals and lodging for: three members of the Board, two CFAB employees, three business associates, and five spouses. 1,153

Total Anchorage Costs 3,782

2. Pre-opening Parties at Branch Offices

a. Kodiak:

Party room rental and permit	$ 160	
Food	450	
Bar	621	
Gratuity	130	
Total food and bar cost	1,361	
Air charter for CFAB employees	2,711	
Total Kodiak Costs		4,072

b. Cordova:

Elks Club		7,610

c. Homer:

Finger food for 200 persons	$ 900	
Bar	934	
Tax	18	
Total Homer Costs		1,852

d. Air charter for CFAB employees to Cordova and Homer pre-opening parties. 2,541

e. Seattle (costs are based on an estimate prepared by the Branch Manager):

Invitations	$ 89	
Seafood:		
Crab legs	160	
Prawns	90	
Caterer	1,100	
Liquor and mix	600	
Total estimated Seattle Costs		2,039
Total Cost of Pre-opening Parties		$21,896

3. Legislative Cocktail Party at the Baranof Hotel in Juneau (100 guests)

Food	$1,770
Liquor	982
	$2,752

4. Sixty-six Eddie Bauer Gortex mountain parkas with CFAB logo purchased for employees and members of the Board. $5,064

5. Gift packs of Blake's Fancy Smoked Salmon for customers. $555

6. 5,750 Dot's Tide Table books printed with CFAB logo for customers. $4,573

7. Cookbooks. $1,984

8. 1,000 1980 Annual Reports (cost includes color setups, slides, printing, design work, etc.) $27,466

APPENDIXES

APPENDIX A

ALASKA COMMERCIAL FISHING AND AGRICULTURE BANK
SUMMARY SCHEDULE OF LOANS
For the period 04/02/80 - 03/13/81

Purpose of Loan	Total Number of Loans Made	Total Original Amounts (See Notes 1 & 2)	Total Outstanding Balance as of 3/13/81 (See Note 3)
Entry Permit Purchase	4	$ 184,800	$ 176,600
Entry Permit Refinance	7	217,200	217,200
Used Vessel Purchase	34	3,587,155	3,492,258
New Vessel Purchase	20	3,918,596	1,968,703
Vessel Refinance	35	8,708,721	8,427,605
Vessel Repair	2	40,900	40,900
Gear Purchase	8	443,300	408,339
New or Used Vessel Equipment Purchase	8	327,820	311,615
Miscellaneous Debt Refinance	6	409,877	409,859
Fisherman Working Capital	2	10,750	10,750
Fish Processor Working Capital	10	37,757,000	8,823,857
Totals	136	$55,606,119	$24,287,686

See Accompanying Notes to the Summary Schedule of Loans

APPENDIX B

ALASKA COMMERCIAL FISHING AND AGRICULTURE BANK
NOTES TO THE SUMMARY SCHEDULE OF LOANS
For the period 04/02/80 - 03/13/81

Note 1

Borrowers are required to purchase CFAB class B stock in an amount equal to 10% of the loan proceeds. The original loan amount listed includes the amount loaned for the purchase of the class B stock.

Note 2

Certain portions of the Fish Processor Working Capital loans are guaranteed by the State of Alaska under the authority of SLA 1980, Chapter 32.

Note 3

On May 14, 1980, CFAB signed a loan agreement with the Spokane Bank for Cooperatives (SBC) which established a line of credit to finance CFAB's current lending activity. As amended on June 18, 1980, CFAB may borrow up to $30,000,000. The agreement is for a one-year term from June 1, 1980, bearing interest at a floating rate prescribed by SBC. Interest is payable the last day of each quarter. The loan is secured by all CFAB notes evidencing loans to members. The loan agreement is to be renegotiated annually. The outstanding loan balance at March 13, 1981 totalled $1,000,000.

Further, CFAB is required, in accordance with the Farm Credit Act to purchase SBC class C stock in an amount equal to 15% or a lessor amount prescribed by SBC of the quarterly interest payable. The amount of CFAB's investment in SBC class C stock at March 13, 1981 totalled $47,784.

APPENDIX C

ALASKA COMMERCIAL FISHING AND AGRICULTURE BANK
SCHEDULE OF LOANS BY BRANCH OFFICE (See Note 1)
for the Period 04/02/80 - 03/13/81
(UNAUDITED)

	Anchorage			Cordova			Kodiak			Homer		
Purpose of Loan	Number of Loans Made	Original Loan Amount	Outstanding Balance as of 03/13/81	Number of Loans Made	Original Loan Amount	Outstanding Balance as of 03/13/81	Number of Loans Made	Original Loan Amount	Outstanding Balance as of 03/13/81	Number of Loans Made	Original Loan Amount	Outstanding Balance as of 03/13/81
Entry Permit Purchase	-0-	$ -0-	$ -0-	-0-	$ -0-	$ -0-	1	$ 39,600	$ 39,600	3	$ 145,200	$ 137,000
Entry Permit Refinance	2	49,500	49,500	3	74,200	74,200	-0-	-0-	-0-	2	93,500	93,500
Used Vessel Purchase	13	1,974,792	1,890,982	9	461,530	450,446	6	397,330	397,330	6	753,500	753,500
New Vessel Purchase	10	1,756,488	1,279,453	5	399,600	231,844	3	1,592,008	286,906	2	170,500	170,500
Vessel Refinance	15	5,686,750	5,516,936	7	346,510	310,426	4	1,519,450	1,444,306	9	1,156,011	1,155,937
Vessel Repair	1	5,000	5,000	-0-	-0-	-0-	-0-	-0-	-0-	1	35,900	35,900
Gear Purchase	4	277,200	260,506	1	33,000	33,000	-0-	-0-	-0-	3	133,100	114,833
New or Used Vessel Equipment Purchase	2	65,070	64,485	3	89,450	73,368	1	24,200	24,200	2	149,100	149,562
Miscellaneous Debt Refinance	2	165,000	165,000	2	192,237	192,209	-0-	-0-	-0-	2	52,650	52,650
Fisherman Working Capital	1	7,950	7,950	1	2,300	2,800	-0-	-0-	-0-	-0-	-0-	-0-
Fish Processor Working Capital	10	37,757,000	8,823,857	-0-	-0-	-0-	-0-	-0-	-0-	-0-	-0-	-0-
Totals	60	$47,744,753	$18,063,669	31	$1,599,317	$1,368,293	15	$3,572,588	$2,192,342	30	$2,689,461	$2,663,382

See Accompanying Notes to the Schedule of Loans by Branch Office.

STATE OF ALASKA
DIVISION OF LEGISLATIVE AUDIT

APPENDIX D

ALASKA COMMERCIAL FISHING AND AGRICULTURE BANK
NOTES TO THE SCHEDULE OF LOANS BY BRANCH OFFICE
For the period 04/02/80 - 03/13/81

Note 1

CFAB has two additional branch offices; one in Seattle and another located in Ketchikan. The Seattle office does not process loans. The Ketchikan office opened in November 1980 and as of March 13, 1981 had not made any loans.

2550 Denali Street, Suite 1201
P.O. Box 4-2070
Anchorage, Alaska 99509
(907) 276-2007

SRA 90-B
Homer, Alaska 99603
(907) 235-8234

Roseleen "Snooks" Moore
Chairman

RECEIVED
AUG 31 1981
LEGISLATIVE
AUDIT

August 27, 1981

Mr. Paul V. Harris, CPA
Anchorage Office Manager
State of Alaska
Division of Legislative Audit
P.O. Box 1231
Anchorage, Alaska 99510

Dear Mr. Harris:

The report entitled, A Performance Review of the Commercial Fishing and Agriculture Bank dated May 22, 1981, to which you have requested our reply, is essentially the same as that submitted to us by the auditors themselves. We are, therefore, submitting our reply to that original submission. It remains applicable with the following modifications.

1. The reference to open board meetings is new to this report, and

2. The auditors have removed references to actions taken by the board of directors.

Since the completion of the audit, legislation has been passed clarifying CFAB's status and its relationship to the State. That legislation causes the majority of points covered in the audit, and indeed, the focus of the audit itself, to be currently moot.

The Board of Directors and the Management of CFAB look forward to working with the Committee in the future.

Sincerely,

Roseleen "Snooks" Moore

sd

2550 Denali Street, Suite 1201
P.O. Box 4-2070
Anchorage, Alaska 99509
(907) 276-2007

June 12, 1981

Mr. Paul V. Harris, CPA
Anchorage Office Manager
State of Alaska
Division of Legislative Audit
P. O. Box 1231
Anchorage, Alaska 99510

Dear Mr. Harris:

It is apparent from your letter that the audit has failed to grasp the mandate given to CFAB by the Legislature. It has also been unable to properly evaluate the complexities and intricacies of operation demanded of a private company operating in the private market. These standards are imposed upon CFAB in order to fulfill the mission spelled out in the enabling legislation.

The fundamental concept of the Alaska Commercial Fishing and Agriculture Bank (CFAB) is that it is a private, cooperatively owned and managed financial institution. This design was mandated by the Legislature for the purpose of linking with the national cooperative banking system to bring outside capital to Alaskan fishermen and farmers. The designers of CFAB recognized that it must be a private corporation in order to qualify for participation in the national system. The Banks for Cooperatives are prohibited by law from affiliating with or lending money to a government organization. If CFAB had not been organized to operate as a private organization, it would not have been able to lend, in 16 short months of operation, over $30,000,000 to its over 225 member stockholders who are Alaska fishermen and farmers, and over $50,000,000 to its member stockholders who are processors, as required by the Legislature. Nor could we have provided employment opportunities to Alaskan workers who crew the vessels, till the land, or process Alaska's fish and farm products.

Even in CFAB's short history, it has fulfilled the intent of bringing in outside capital to finance our fishermen, farmers and processors. Today, the commitment of the Banks for Cooperatives far exceeds that of the original State commitment. Additionally, we have increased the net worth of the Cooperative by more than $4 million during that same short period. We have in excess of $40 million in pending loan applications and fully expect to exceed $300 million in loans to fishermen, farmers and processors by the year 1985.

In testimony before the State Legislature on several occasions, the Spokane Bank for Cooperatives has testified that they have an excellent relationship with CFAB and hold its management and operations in high regard. They have remarked that the progress made by the Cooperative during its brief period of operation has exceeded their expectations for us at the end of five years. In that testimony, they plainly stated that they would not be able to lend to CFAB if we were not a private cooperative. If CFAB were not a private cooperative, it would cease to be part of the national cooperative banking system and hundreds of millions of dollars would be lost to Alaskan fishermen and farmers. In their place, the Legislature would have to fund the operations of CFAB in the annual budget document and allocate those millions for the same loans, thus reducing the funds available to the people of the state for other purposes and costing them millions of dollars in subsidies.

Our basic instructions from the Governor, the Legislature, and the consultants at the time of CFAB's creation were to form a private, cooperative financial institution. If that is not the case, as you suggest by your comments and the standards apparently used in formulating your audit, then the intent of the legislation cannot be carried out, outside funds cannot be brought in to benefit farmers and fishermen through CFAB, and the Legislature will be forced to appropriate necessary funds from the General Fund. This will, of course, place the State directly back into the loan business against the wishes of the Legislature and the financial community.

The Legislature also intended that CFAB be audited and required in the original legislation that the board of directors have an annual audit performed by outside, independent auditors, and that the audit report be made available to the Governor, members of the Legislature, and the general public. CFAB has employed the national firm of Price Waterhouse & Co. for that purpose. They have completed audits for the years 1979 and 1980. A copy of the 1980 report is attached. This audit clearly shows CFAB to be following proper practices and procedures.

In determining performance, one must look at achievements toward a stated goal. In its brief history, CFAB's achievements are many. Among them are:

1. Establishment of a well organized, systematically run business which is managed according to generally accepted management practices, including:
   a. Stated mission, goals, objectives, and action plans;
   b. Complete and accurate accounting systems;
   c. Detailed, written policies and procedures covering the whole of our operation;
   d. Complete budgeting and financial reporting system;
   e. Employee policies, pay scales, job descriptions, and evaluation systems;

f. Printed documentation for loans bearing the approval of both general and specialized legal counsels of the Cooperative.

2. Active involvement of the members of the Board of Directors in the policy development and control of the organization, plus a high level of attendance by those members at meetings.

3. Development of a full and professional cadre of accounting, legal, insurance, tax, and management advisors of national stature.

4. Completion of a procedural audit by a national firm of CPAs using both their auditors and management advisory groups to insure the continuity of our procedural and control systems. This form of audit is scheduled to be performed on an annual basis.

5. Development of 32 specialists in various aspects of fisheries finance. These add to an extremely limited, if not almost non-existent, field of expertise.

6. Opening five branch offices, offering the full services of the Cooperative, in key areas throughout the state. Branches are now located in Kodiak, Homer, Cordova, Ketchikan, and Seattle.

7. Maintenance of an active calling program to areas outside of the loactions of our established offices.

8. Attracting and financing nearly 250 member shareholders from geographically dispersed areas within the state.

9. Development of a full range of loan programs to serve the fishing and agriculture industries, adding appreciably to those previously available.

10. Development of credit lines necessary to meet CFAB's financial needs and its commitments to members.

11. Achievement of more rapid turnaround of loan applications.

12. Achievement of profits in each of its accounting periods despite expensing all opening and operating costs. Profits for the first quarter of this fiscal year are $800,000.

13. Return of patronage dividends equal to $9\frac{1}{2}$ percent of the interest paid by members during 1980.

14. The first installment in the return of the State's initial capital investment was made.

15. Support of agriculture and fisheries development through:

    a. support of 4-H and FFA;

    b. creation of the Young Alaska Farmers Financing Cooperative to provide financing for youth agricultural projects;

    c. development of financial planning manuals for use by fishermen and farmers;

    d. support and initiation of research projects;

    e. participation in policy development.

16. Enhancing other financial agencies' abilities and opportunities to finance both fisheries and agriculture. CFAB is currently financing the customers of the Agriculture Revolving Loan fund during a period in which it is out of funds, enabling farmers to plant crops and advance projects in the critical summer months.

    We have also provided the necessary additional funds and controls of credit to allow other Alaska banks to safely become involved with or continue their involvement with Alaska processors.

17. Adding a point of financial professionalism to the Alaska fishing and agriculture industries to which foreign and "Lower 48" financial institutions can relate and on which they can rely.

In the formulation of your letter, you have failed to relate to specific key points about CFAB's operation. It is owned and operated by private shareholders who bear the full risk of its operation and whose investments are subordinated to those of the State. It is these shareholders who, by law, have the management and control of the Cooperative. Moneys expended by the Cooperative in the achievement of its business purposes are not those of the State. Unlike a State or other public body, CFAB's expenditures do not represent an irrevocable loss of those funds to the people of the state. Expenses are paid by the income of the Cooperative derived from its operations which, by definition and federal tax law, are the property of the member stockholders. CFAB is governed not only by the specific statute creating it, but also the cooperative laws of the state and the federal tax law specifically dealing with lending cooperatives. CFAB pays full federal taxes, unlike a State agency or department.

We appreciate that performance of an audit of CFAB has posed a difficult problem for you. While somewhat unique to Alaska, organizations such as CFAB are widespread in the lower states. They are certainly the business of the Bank for Cooperatives and are among the clients of our CPA firm, Price Waterhouse & Co. In fact, Price Waterhouse is considered to be among the

best in the practice of cooperative accounting, management and tax practice. It lists among its clients some of larger cooperatives in the United States. Using their experience, and with a number of comparisons to draw from, they have audited CFAB and found everything to be in order and within the context of proper operation.

Being a CPA yourself, you are well aware of the Generally Accepted Auditing Standards imposed upon members of your profession. Among these are the matters of relevence, materiality, and context. It appears that items reported in your letter have been taken out of context and included without review and full understanding of the circumstances surrounding them. There is no stated standard of comparison used in the determination of significance.

Development of your report on the basis of inadequate understanding of CFAB, its purposes, and the requirements of operation imposed upon it causes the Board of Directors of CFAB tremendous concern. Presented in the fashion of your letter, without standards of acceptable comparison, provides the public reader no basis upon which to draw judgment. This may unjustly tarnish the reputation of Management and of the members of the Board, as well as diminish the willingness of some borrowers to do business with the Cooperative. In turn, the private stockholders of CFAB will be injured.

We will comment on each of the items raised in your letter.

Recommendation No. 1 is a good point and one previously raised by our CPA's in the course of completing their procedural audit. That point has been corrected both by requirement of borrower-provided insurance and by CFAB obtaining a blanket policy.

Recommendation No. 2 regards the compensation of Board members for per diem expenses. There is an alternate to fixed per diem provided for in the regulations pursuant to which CFAB has established its policies for board reimbursement. We have asked our attorneys to review that section in the case we have misinterpreted the details of application. If we find that we have, we will, naturally, correct procedures in the future.

In the evaluation of expenses, one must relate them to the mission, goals, objectives, and the business framework in which CFAB operates. While CFAB has initial investment funds from the State, it receives no other support and must repay the State within a specified period of time. Viewed as a benefit on the one side, it is a large financial obligation on the other. CFAB must develop an operation capable of attracting the hundreds of millions of dollars from outside lenders necessary to fulfill its mission and purpose. While the mission of providing loans to fishing and agriculture may appear the same as those given to a State loan program, or to AIDA, the road to their accomplishment is much more complex given the lack of State funding or State guarantees.

In addressing the mission imposed by the Legislature and in creating the organization to meet that mission, the Board of Directors has established policies, philosophies, and procedures which insure the long term viability of the organization. This same organization is established to meet the standards and the expectations of the national and international financial communities upon which we must rely now and into the future. It should be noted that CFAB now has correspondent relationships with Denmark, Danish banks, and Norwegian financial institutions, and is opening negotiations with Japanese and Canadian banks, as well as large commercial banks in the "Lower 48."

To establish its standards of operation, the board has closely examined the standards of other similar institutions. We have determined that CFAB's standards are in all cases within comparable standards, as are its expenses. All expenses are deemed necessary to CFAB's business purpose and are according to budgets established in conjunction with Management.

With regard to the items specified in your letter:

A. Furniture, Fixtures and Leasehold Improvements

The expenses of furnishing the executive offices of the Cooperative are in line with similar expenses at the Spokane Bank for Cooperatives and other financial institutions. Neither the cost nor the decor is inconsistent with the standards of other institutions in Anchorage of comparable size.

They are intended to establish the proper decorum and to relate to the type of visitor frequenting the offices. These include trade missions, ambassadors, presidents of large corporations, and executives from among the international financial community. While Steel Case desks may well serve the necessary business environment of a public agency, they do not serve the demands of this Cooperative. Decor of that nature would only serve to reinforce a "poor country cousin" image. In creating the office environment, CFAB took great care in its design and decoration to meet the needs of its many catagories of users. It is designed to be a comfortable place to work for those who spend the majority of their days here; a relaxing, warm place to visit for the borrower who is normally intimidated by banks and bankers; and a tasteful, professional environment for the executive businessman.

A careful watch was made of expenses, and a great deal was achieved by the use of highly qualified decorators with experience in office decor.

The conference area you have mistakenly inferred to be restricted to executive personnel is a general conference area decorated to fit the general office decor and serve the purposes previously described, while accommodating the larger meetings regularly held at the office.

The Juneau apartment is widely used by the Board and staff of the Bank. It was originally rented during the formation stages of the Cooperative during which time the Board and the staff were spending large amount of time on a continuing basis in Juneau. It provided a meeting place and proved cost beneficial against the use of hotels. Retention of the apartment has been reviewed periodically and will be again in the future. Having decided to open our Southeastern office in Ketchikan, but having need to conduct business in Juneau on a regular basis, it has been determined that CFAB requires some form of permanent location from which to operate and hold meetings while in that town. The combination of apartment and office showed clearly to be the most economical alternative versus renting an office on a per square foot basis and using hotels. The wallpaper itself was hung by staff and various items of sparce decoration have been contributed by the Board and the staff.

B. Artwork

It should be noted that you have listed all, not a sample, of the artwork purchased by CFAB. The use of the word "Sample" is editorially misleading.

The artwork in the Anchorage office was purchased or commissioned from local artists to fit both the decor and the operation of the office. The expenses of the works are consistent with the art and are under the value of the pieces in the present market. The cost of the individual works does not come close to the cost of the works contained in the State collection, some of which adorn the walls of legislative offices, nor in the collections of other private businesses in Alaska. All pieces in our offices depict agriculture or fishing, with Alaska overtones.

C. Automobiles

Transportation is a necessary part of our business, as it is with most. Not being a State agency, CFAB does not have access to State pool vehicles, nor was such access intended.

It will be noted that the cars purchased by the Cooperative are small, economy vehicles which meet the demands of Alaska conditions.

Provision of automobiles to members of the executive staff, both for business and personal use, is a normal business practice and one necessary to CFAB if it is to attract the personnel needed. You will note that the car provided to the President is not the high priced, luxury vehicle customary to presidents of other Anchorage financial institutions, but rather a Chevrolet with a monthly lease payment far below comparable costs. The automobile provided for the use of the Senior Vice President-Administration is also available for general Bank use and is assigned to him in lieu of other compensation. The gasoline provided to the Senior Vice

President-Credit only partially offsets the luxury vehicle provided by his previous employer, another Anchorage bank.

The decision to purchase automobiles was made after considering the life cycle costs and discounted cash outflows of purchased vehicles over locally available leases or reimbursement for personally provided automobiles.

D. Salary and Benefits

The attraction and retention of the best people is deemed to be of vital importance to the business of the Cooperative. It is a highly accepted business principal that people capital is more important than dollar capital. To attract and retain these people requires that the Cooperative provide competitive salaries, benefits, working conditions, and opportunities. In establishing these benefits, the Board annually reviews the market, both in Alaska and in the "Lower 48", to determine levels and trends.

It should be noted that CFAB pays the full cost of the PERS coverage, including an allocation for administration. No cost is borne by the State. CFAB's involvement with PERS and other State benefit programs will be deleted with passage of current legislation supported by the Board.

The bonus program has been widely covered and explained in detail, not only to the Budget and Audit Committee of the Legislature, but also to all Senators and House members. It has proven to be an effective tool resulting in rapid accomplishment of goals and objectives. Bonuses are paid for productivity, not for the mere occupation of space. In widely read coverage of CFAB pay and bonus programs, the Anchorage Times reported that CFAB's remuneration to employees, including bonuses, was not out of line with industry standards.

Staff room expenses for coffee, tea, etc. are common for business and a common courtesy extended to visitors and staff of most businesses and even some State offices. The figures quoted include stocking of cups, plates, and other necessary kitchen items.

Tickets to the Repertory Theatre were erroneously listed under benefits and should have been posted to entertainment. While listed under one employee name, they are used by other members of the staff to entertain customers, consultants, and other vendors, as well as support the theatre. If you will check the list of donors and ticket holders to the Rep and other performing arts, you will find a large portion of patronage comes from businesses.

A Christmas party is also a normal event in the private sector. CFAB also uses the occasion to thank particular vendors, consultants, and suppliers, as well as the spouses of employees

whom we feel contribute to the organization. Facilities available to accommodate groups of any size are limited in Anchorage and never inexpensive. The cost of these Christmas parties is part of the overall employee relations program which has provided the Cooperative with measurable and high levels of achievement. Comparison with other financial institutions would reveal that neither the function nor the per person cost is out of line.

In the last paragraph of this section, you have listed other staff benefits of $6,076 and other personnel expenses of $15,810. In the former figure, you have double counted an accrual of $4,551 for the previously listed Christmas dinner and $345 for tickets to the Repertory Theatre, also previously mentioned. Of the latter, the majority does not represent dinners with interviewees and staff, but rather the expenses of bringing people to Anchorage for interviews; including hotel, meals, car rentals, etc. Naturally, some of the names appearing in those postings will now appear as employees. Also included are a few dinners including employees and primarily involve our branch staffs while in Anchorage for loan presentations, training, etc. If you would have the opportunity to examine the expenses of other businesses, you would find that it is common to carry on business over lunch if it involves something better discussed away from the office or the press of the day's schedule allows only that time.

E. Rent

Here, too, you have failed completely to draw comparisons or to consider the full costs of an office. In commenting upon the cost of the office space (also mentioned in our annual report) you have not mentioned the cost of comparable space in Anchorage or within the same building. In making that comparison, one must also consider a number of factors. First is the cost of making necessary tenant improvements such as walls and wiring. Second are the inducements offered by the landlord to obtain the lease. Third is the extra cost of occupancy such as escalator clauses, utilities, and services. And of equal importance is the availability of expansion space during the course of the lease.

After looking at a number of buildings in Anchorage and receiving bids from several, the actual cost of our present location was not only cheaper than the alternatives, but also offered many side benefits, such as central location to staff; adequate, free parking for staff and members; close proximity to our CPAs, attorneys, and insurance brokers who are contacted on a frequent basis; and ease of finding the location for our members and other visitors. Even some State agencies, such as Fish and Game, pay much higher rent. The forecasted cost of a State office building is considerably higher than the figure quoted. One should caution that the disclosure of this rent figure is a violation of our agreement with the landlord, as rents in the building are not the same for all tenants.

In describing the quarters and appointments, particularly in our kitchenettes, you have forgotten to ask questions that would have put many points into perspective. For example, we have doubled the office space since opening and, in so doing, took over the office space previously occupied next to us. That tenant had a kitchenette also, which we have converted into a much needed second conference area. The cost to remove the previously installed appliances exceeded the cost of retaining them. Due to the cost benefit and the convenience of the facility to the staff and clients on that side of the building, they were left. Additionally, the table in that conference room is not natural oak, but rather formica in an oak pattern, as are all of the desks in the area.

If you had surveyed the building, you would have found the kitchenettes to be common in the building and equipped similarly to ours. As can be seen from the one taken over and now used as a conference room, many are larger than the one mistakenly listed as the executive kitchen. Furthermore, if you had observed other floors of the building during the last three and one half months, it would have been noticed, even casually, that oak is the standard material used in all trim, elevators, cabinetry, and other wood surfaces in the building. It is a standard established architectually.

The kitchenette is used often for preparation of lunches for luncheon meetings, saving not only the expense of eating out, but also time during busy days.

F. Directors Fees

Directors fees are, by law, left to the discretion of the Board of Directors. CFAB's Board compared compensation paid for other private boards and even some State boards, such as the Permanent Fund. Also, in the consideration was the amount of time necessary to complete the Board function (two days each month for regular meetings) and the lost travel time of one day each way for the majority of members. You should have also found that the Board spends considerable time outside the regular board meetings on behalf of the Cooperative. Rates for this time were compared to consultant time rates and the daily meeting rate. Closer questioning would have revealed that individual Board members bill only a fraction of the time they spend.

You have listed as significant the fact that one member received $12,438 in consulting and organization fees during an 18 month period. You are referring to the previous Chairman of the Board. During the early organization period of the Cooperative, the Bank had limited staff and those it did have were unfamiliar with much of the workings of the Alaska business system. This individual, at the request of the Board, devoted countless hours to the organizational efforts and brought to the task knowledge and experience not elsewhere available in the organization. His regular business is that of a consultant, together with other

partners, and his income dependent upon hourly billings. He could not afford to devote the time required without proper billing nor would his business partners have allowed it. The time billed was substantially below that applied and the rates below those charged by other consultants and professionals employed by the organization.

G. Travel, Lodging and Meals

Foreign travel is a necessary part of CFAB's business. We deal with internationally traded commodities, both in fisheries and agriculture. Likewise, our members have internationally related financial transactions. Markets and practices in other parts of the world have direct impact upon the financial well being of our stockholders.

CFAB has correspondent relationships in Scandanavia, has purchased equipment to aid Alaska's farming community from Denmark, and is beginning negotiations with other foreign banks. These relationships are used not only to provide necessary credit information on receivables financed, but are expected to result in lines of credit enhancing our lending abilities. Provision of knowledgeable and complete lending services to Alaskan fishermen and farmers cannot be accomplished without development of a wide range of international contacts.

You will find that others on the trips listed included representatives of State government and private enterprise. You should also note that the agriculture trip to Denmark was at Denmark's invitation and most were expenses for their account. Further examination of other private and government departments will reveal a wide range of foreign travel. The significance of international markets to Alaska is evidenced, in part, by the fact that the State itself keeps two fully staffed offices overseas, and is considering a third.

It is the policy of the Cooperative to allow travel expenses for spouses if the functions attended normally include spouses as a part of the activities. You will find this to be a similar practice among most Anchorage banks, other businesses, and the Bank for Cooperatives.

You have mistakenly listed a minor amount of $376 as an expense of a former trip. It is a prepayment of the Munich International Fisheries Conference to be held this October. That conference will be attended by various of our processing members, as well as the Alaska Seafood Marketing Institute. You might also be interested to know that the Alaskans attending the previous conference were highly appreciative of our attendance and remarked that CFAB was the first Alaska financial institution to show sufficient interest in becoming fully involved in learning the industry.

The Senior Vice President-Administration made only one trip to England. He was accompanied by the Vice President of Branch

Administration who is also a vessel surveyor. They were in London to visit the various departments of Lloyds of London, which is the major insurer of vessels in Alaska. In addition to learning about the intricacies of vessel insurance, they also investigated possible criteria for certifying vessel surveyors, as well as ways in which the risk of Alaska fisheries as perceived by Lloyds might be diminished. This would result in substantial savings to our fisheries members. Competence in both insurance and vessel valuation is a vital part of our business.

Dinners

In listing 48 dinners over $100, you have not considered the number of people involved, the purposes of the dinners, or the relationship of those entertained to the business. You also seem to miss the prices charged by the average dinner house in Anchorage that is conducive to a business discussion. In fact, it is one of the items that ranks among the more substantial cost of living differences between Anchorage and elsewhere.

All dinners you have listed were in the normal course of business and involved a defined business purpose. Most of the ten dinners you have listed should be self explanatory given the people attending. Without more detailed reference to dates, it is impossible to describe each one. However, since such dinners are not that common an occurrence, I can clarify specific occasions to help you further understand our business. I will refer to them by the number you have ascribed.

1. This was a dinner that involved the Vice President-Branch Administration who had been offered the job in Anchorage, but had not yet accepted. He was in Anchorage to look over the area with his spouse and look for available housing. Raised in Cordova, both he and his wife were unsure of the move and wanted to become more comfortable with the business climate of the Anchorage office. The dinner was to allow his spouse to become acquainted with other spouses and gain assurances of help and availability of necessary family services. It is common for businesses to have such dinners. They are a selling function necessary to have the right people in the right positions.

6. This bill also included cocktails and dessert for an assortment of legislators, UFA representatives, and CFAB consultants.

8. These dinners also included other members of the staff and possibly their spouses. They were held in conjunction with the normal board meetings. It has been the practice of the Board to continue business through the dinner hours and to use this time to obtain more general and informal information about the operation. They often invite staff members and their wives to learn

about particular jobs within the Cooperative and to give the staff members wider exposure to the business.

10. This dinner included the Senior Vice President-Administration and the prospective Senior Vice President-Credit and their wives. The occasion gave these two people, who are key officers of the Cooperative and who must interface directly on almost every matter, a chance to become better acquainted and form the grounds for needed communication. Again, this is a necessary part of a business operation and normal to private business.

Members of the Board and the Executive staff are professionals in upper income brackets and educational backgrounds. The level of entertainment done is consistent with industry standards.

You have further listed four occasions of other staff dinners. We fail to understand their inclusion. Of the first, you mention several lunches totaling $137. It is difficult to draw any conclusions from that statement since the context, purpose, and applicability elements are missing from your statement.

The dinners listed for the staff in Seattle were most likely for our participation in the Fish Exposition in Seattle during which we had several employees in Seattle to man our booth. The dinners and their prices are normal.

The lunch costing $172 was a going away luncheon for one of the staff and quite insignificant when compared to the contribution to the Cooperative of the departing member.

The items included in the $1,331 listed as "Banquets" include the annual meeting of shareholders, a board meeting, the Agriculture Symposium, and a trade delegation.

Miscellaneous expenses listed are for stocking of the office facilities in most cases. Tuxedo rental was for an affair requiring both attendance of the employee and formal wear.

The use of the Alaska Airline Board room is also a necessary part of the business and is used for meetings at the airport with clients and others passing through. It provides private accommodations for such meetings at insignificant annual cost.

H. Promotional Costs

Opening parties are a normal part of business and provide a significant show of interest in both the community and the members of the markets served. The opening Anchorage party was attended by close to 100 people, not all of whom had dinner. Both the cost of the affair and the attendance was reasonable by Anchorage business standards. Reference should be made to the recent opening of the Anchorage office of Alaska Pacific Bank, as well as several professional firms entering the Anchorage market. That comparison will show the cost of CFAB's opening dinner to be normal and the affairs to be equally frequent among those

companies.

Similar receptions were deemed essential to each branch office loaction listed and were structured to fit the norm for such affairs in each area. It is difficult to envision an opening reception in an area to introduce a new company and new services without representatives of the company present. It would be particularly insulting to CFAB members and potential members for the members of the Board and senior officers not to be present. Additionally, the occasions provide opportunity to the Board and Management to become quickly familiar with the people in the communities they will be serving. Use of charter aircraft when transporting a larger number of people offers a large cost benefit.

As a private company with legislative needs, good governmental relations is a normal and necessary function. The legislative reception, which was well attended, provided the staff and the Board the opportunity to discuss CFAB's needs and operation with legislators who would be unavailable in another form. Such receptions and dinners are also normal to the legislative process and Juneau experiences them on a regular basis.

Gortex jackets were given to the staff as both a traveling uniform providing quick and easy identification and as a functional garment for the conditions in which they travel. Provision of garments is not at all uncommon in the fishing industry. The price you have quoted included 1000 patches costing $1,200 to be used on hats and other promotions. Your attention is drawn to a feature story in a recent edition of the Fishermens Journal specifying the importance of these hats and logos within the fishing and agriculture industries, both in Alaska and the "Lower 48."

Tide books are an essential item to all fishermen and are used by all our members and potential member stockholders. Constantly referred to by the fishermen, they are an extremely effective media through which to provide facts about CFAB and its available services.

The cookbooks are a part of a visual program on the use of the microwave in cooking fish. It is part of a national promotional campaign produced by the National Fisheries Institute of which CFAB is a member. The campaign has been participated in by numerous processors and marketers. CFAB makes its slide presentation and cookbooks available to home economics groups, businessmen selling microwaves, and cooking classes. it was recently prominantly used by the Alaska Seafood Marketing Institute in a show promoting Alaska fisheries products in the Mid-West and will be used again by the same group in Germany. Development of these types of programs falls clearly within the legislative mandate.

The annual reports ordered by the Cooperative were 1000, not 500. The cost of producing that report was above that planned

because of a number of reasons, including the original photographer leaving the state with the pictures, requiring them to be reshot by another photographer; special, quick turnaround time by the printer and separator due to the time constraint of legislatively imposed March membership meeting which left only two weeks between completion of the audit and the meeting. These unusual costs associated with our first annual report should not occur again with future reports. However, the expense of an annual report is an absolutely necessary expense of our business. It is the primary publication supplied by us to our members, legislators, the Governor, the public, as well as our creditors and vendors, and is considered by members of the financial community as an essential communications tool. Put together as CFAB's was, the vehicle provides not only the opportunity to present a company's financial picture, but the entire framework of the business.

1. Review of Board Minutes

Your remarks in this section are truly out of context and without precedent. We can find no reason or justification for their inclusion in your report. Even given the consideration of the inappropriate standards used in your audit of CFAB, it is particularly unique to include two items on which the Board of Directors has taken negative action.

The items presented include no reference to the decision making process involved, the cost to benefit relationships derived, or the purpose of the discussions. Foreign travel for education in the fisheries -- the predominant market we serve -- is a viable item to review. The availability of an extremely low airfare opened an otherwise costly opportunity for discussion. An aircraft in a state dependent upon air travel and for an organization traveling to all parts of the state is also an item one would expect a board to discuss.

Are you suggesting that there are items forbidden to the Board for discussion and review in the interest of the corporation they are responsible for? Are you further implying that a board should stand in criticism for reviewing all the alternatives open to their business? Or are you suggesting that the board minutes reflect only those items which you, a staff employee of the State, consider to be proper, palatable and in keeping with your particular personal standards? I am sure you are aware that foreign travel is extensive among Alaskans and is a subject reflected in the minutes of many boards. Additionally, the State of Alaska itself has considered purchase or lease of a State plane on several occasions.

Mr. Harris, we appreciate the efforts that you and your staff put into the audit. Danna worked hard and fit in well with the office staff. We are sorry that your understanding was not more complete, enabling your audit to be of a more meaningful nature. Your report only proves that a private business operating

under the standards required by the private market cannot be audited against standards commonly used by the Legislative Auditor.

Sincerely,

Paul A. Huppert
Vice Chairman

sd

Alaska State Legislature

SENATOR
ARLISS STURGULEWSKI

COMMITTEES
CHAIRMAN
Legislative Budget & Audit

Community & Regional Affairs
Finance
Resources

511 W. FOURTH AVE. SUITE 1
ANCHORAGE, ALASKA 99501
(907) 274-1627/1628

While in Juneau
POUCH V
JUNEAU, ALASKA 99811
(907) 465-3818

Senate RECEIVED
SEP - 8 1981
LEGISLATIVE AUDIT

M E M O R A N D U M

02 September 1981

TO: Glen Svendsen
Special Assistant

FROM: Senator Arliss Sturgulewski
Chairman, Legislative Budget & Audit Committee

RE: Commercial Fishing & Agriculture Bank

Enclosed please find the letter sent by Roseleen Moore in response to my earlier question regarding issues raised by individual Legislative Budget & Audit Committee members. Will you have Betty send out a copy of my original letter plus this response to all committee members?

I am sending a copy of Roseleen Moore's response as well as a copy of this memo to Jerry Wilkerson.

2550 Denali Street, Suite 1201
P.O. Box 4-2070
Anchorage, Alaska 99509
(907) 276-2007

SRA 90-B
Homer, Alaska 99603
(907) 235-8234

Roseleen "Snooks" Moore
Chairman

August 27, 1981

The Honorable Arliss Sturgulewski
2957 Sheldon Jackson Street
Anchorage, Alaska 99504

Dear Senator Sturgulewski:

We appreciate the findings on management expenditures and the Board has taken steps to reevaluate and correct our current budget and will definitely take these findings into account in the budget preparation for the coming year.

As you can well appreciate, the repayment of the State is a multi-faceted problem that must be approached carefully. The impact upon CFAB and its ability to meet its mission, its goals, and the expectations of the communities it serves will be significantly affected by the course taken. There should be no doubt in the minds of the legislators that CFAB takes the responsibility of meeting its obligation seriously. Repayment of the State is of paramount importance to the Board and Management of CFAB and is of significance in established policies, budgets, and plans.

We are in the process of examining all the alternative means to accomplish the legislative imperative that the Class C stock be repaid by the end of 20 years. Our decision will be reached as part of the planning process at the December board meeting. You can be assured that our direction will be based upon our judgment and will best serve the two industries we serve as well as the original intent of the legislation.

Sincerely,

Roseleen Moore

Roseleen "Snooks" Moore

sd

STATE OF ALASKA

THE LEGISLATURE
BUDGET AND AUDIT COMMITTEE

ROOM 508
CAPITOL BUILDING
POUCH V
JUNEAU, ALASKA 99811

907-465-3818
907-465-3810

17 July 1981

Ms. Roseleen Moore
Chairperson, Alaska Commercial
Fishing & Agriculture Bank
SRA Box 90-B
Homer, Alaska 99603

Dear Ms. Moore:

As you know, an audit of the Alaska Commercial Fishing and Agriculture Bank is being conducted by the Legislative Audit Division. At the July 15, 1981 meeting of the Legislative Budget and Audit Committee, the preliminary findings of that audit were presented for Committee review. That preliminary audit has been forwarded to you for response under separate cover.

The Committee has directed that two issues which arose in executive session regarding those preliminary findings be presented for your response. First, the Committee expressed strong concern over questionable management expenditures noted in the preliminary audit. The Committee encourages CFAB to thoroughly address those findings and recommendations in its formal response to this audit.

The Committee also requests that CFAB indicate how it intends to approach repayment of State funds provided for CFAB's capitalization. During this past legislative session, a number of approaches to repayment or amortization of the State's investment were discussed. Approaches ranged from a strict amortization schedule to the possibly politically unacceptable idea of establishing a sinking fund within CFAB that would make a single repayment at the end of the maximum twenty year period. The Committee found that a definite plan for repayment of these funds is of fiscal concern to the Legislature, especially as these funds were provided at no interest to CFAB. In short, the Committee looks forward to a proposal from CFAB on its plans for repayment of the State's funds.

Your timely response to these two requests will be appreciated by the Committee. Any questions or clarification of these requests can be directed to me.

Sincerely,

Arliss Sturgulewski

Senator Arliss Sturgulewski
Chairman, Legislative Budget &
Audit Committee

cc: All members - Legislative
Budget & Audit Committee

State of Alaska

Department of Commerce and Economic Development

Certificate

The undersigned, as Commissioner of Commerce and Economic Development, of the State of Alaska, hereby certifies that duplicate originals of the Articles of Incorporation of Alaska Commercial Fishing and Agriculture Bank

duly signed and verified pursuant to the provisions of the Alaska Cooperative Corporation Act, have been received in this office and are found to conform to law.

ACCORDINGLY the undersigned, as such Commissioner of Commerce and Economic Development, and by virtue of the authority vested in him by law hereby issues this Certificate of Incorporation of

Alaska Commercial Fishing and Agricultural Bank

and attaches hereto a duplicate original of the Articles of Incorporation.

IN TESTIMONY WHEREOF, I have hereunto set my hand and caused my official seal to be affixed at Juneau, the Capital this [illegible] day of May [illegible]

CHARLES [illegible]
COMMISSIONER OF COMMERCE
AND ECONOMIC DEVELOPMENT

FILED FOR RECORD
STATE OF ALASKA

MAY 4 1979

DEPARTMENT OF COMMERCE
& ECONOMIC DEVELOPMENT

ARTICLES OF INCORPORATION

OF

ALASKA COMMERCIAL FISHING AND AGRICULTURE BANK

The undersigned natural persons of the age of 19 years, or more, acting as incorporators of a cooperative corporation (hereinafter referred to as the "Bank") under the provisions of the Alaska Cooperative Corporation Act (hereinafter referred to as the "Act") and Alaska Statutes 44.54, as amended, adopt the following Articles of Incorporation.

ARTICLE I

Name

The name of the Bank is Alaska Commercial Fishing and Agriculture Bank.

ARTICLE II

Duration

The period of duration of the Bank is perpetual.

ARTICLE III

Purpose and Powers

Section 1. The purposes of the Bank are to:

(1) provide sources of credit for Alaskan agriculture and fishing business;

(2) encourage utilization of the fisheries off the coast of Alaska that have been underutilized in the past by local fishermen;

(3) encourage harvesting, processing and marketing of underutilized fish species;

(4) encourage technological development in the harvesting and processing of underutilized fish species;

(5) promote the more rapid development of agriculture.

Section 2. In order to accomplish its purposes the Bank shall have the power to:

(1) make variable rate or fixed rate loans to individuals who are residents and who are engaged in commercial agriculture or fishing, including harvesters, processors and marketers, or to corporations, partnerships or joint ventures primarily engaged in commercial agriculture or fishing, the majority interest of which is beneficially owned by residents of the State of Alaska and a majority of the owners of which are residents of the State of Alaska, if the recipient of the loan is a shareholder of the Bank; however, the Bank may make a loan under this paragraph to a corporation, partnership, or joint venture for the purchase of a new or existing fishing vessel or for the repair or renovation of an existing fishing vessel, the primary purpose of which is to commercially harvest fishery resources, only if the corporation, partnership, or joint venture is wholly owned and controlled by residents of the State of Alaska and if the recipient of the loan is a shareholder of the Bank;

(2) make and alter By-Laws necessary or desirable to carry out its corporate functions;

(3) establish amortization plans for repayment of loans, which may include extensions for poor fishing or farming seasons;

(4) enter into agreements with regional institutions of the federal farm credit system, private lending institutions, and other State of Alaska agencies or agencies of the federal government, to carry out the purposes of Alaska Statutes 44.54, as amended;

(5) adopt, alter, and use a corporate seal;

(6) sue and be sued in the name of the Bank;

(7) issue bonds to carry out any of its corporate purposes and powers;

(8) sell, lease as lessor or lessee, exchange, donate, convey or encumber in any manner by mortgage or by creation of any other security interest, real or personal property owned by it, or in which it has an interest, when, in the judgment of the Board of Directors, the action is in furtherance of its corporate purposes;

(9) incur secondary liability by guaranty or endorsement of the obligations of another corporation or legal entity when, in the judgment of the Board of Directors, the action is in furtherance of its corporate purposes;

(10) make loans as provided in (1) of this section in participation with financial institutions, and establish and regulate the terms of the loans;

(11) make contracts and execute instruments necessary or convenient in the exercise of its corporate powers;

(12) acquire by purchase, lease, bequest, devise, gift, the satisfaction of debts, or the foreclosure of mortgages, and hold, maintain, use, operate, and convey real or personal property;

(13) borrow money and issue secured and unsecured evidence of indebtedness for a corporate purpose or to fund, refund, pay, or discharge outstanding obligations, and enter agreements and contracts concerning these obligations;

(14) secure the payment of its obligations by pledge or mortgage or other lien on its contracts, revenues, income, or property;

(15) appoint officers, employees, trustees for certificate holders, and agents, and prescribe their powers and duties;

(16) provide technical services to shareholders; for the purposes of this paragraph, "technical services" includes services that will enhance the ability of the shareholder to obtain financial assistance from the Bank;

(17) make loans, as provided in (1) of this section, secured by liens subordinate to valid first liens and security agreements granted to private lending institutions, including institutions of the federal farm credit system;

(18) participate with State of Alaska departments and agencies in formulating policy and in planning for the development of commercial fishing and agriculture in Alaska;

(19) do what is necessary or desirable to carry out the corporate purposes and powers expressed or implied in Alaska Statutes 44.54, as amended;

(20) make loans for limited entry permits to individual commercial fishermen who have been residents of the State of Alaska for a continuous period of five years immediately preceding the date of application for a loan, who have had a crewmember or commercial fishing license under AS 16.05.480 or a permit under AS 16.43 for any one of the past five years, and who have actively participated in the fishery during that period, provided that any such loans are subject to the provisions of AS 44.54.230.

(21) exercise all those powers of a cooperative set out in AS 10.15.010.

Section 3. To have and exercise all powers, privileges and rights conferred on cooperatives by the laws of Alaska, and all powers and rights conducive to carrying out the purposes for which the Bank is formed, except such as are inconsistent with the express provisions of the legislation under which the Bank is incorporated.

ARTICLE IV

Capitalization, Membership and Ownership Restrictions

Section 1. The amount of the authorized stock of the Bank shall be Eighty Million, One Hundred Thousand Dollars ($80,100,000) which shall consist of Ten Thousand (10,000) shares of Membership Stock (Class A) of the par value of Ten Dollars ($10.00) each; Four Hundred Thousand (400,000) shares of Preferred Stock (Class B) of the par value of One Hundred Dollars ($100.00) each; and Four Thousand (4,000) shares of Special Preferred Stock (Class C) of the par value of Ten Thousand Dollars ($10,000.00) each.

Section 2. Membership in the Bank is limited to those engaged in the commercial fishing and agriculture industries and is conditioned on ownership of a share of Membership Stock (Class A) in the Bank. Only such individuals who are residents of Alaska or corporations, partnerships or joint ventures primarily engaged in commercial agriculture or fishing, the majority interest of which is beneficially owned by residents of Alaska and a majority of the owners of which are residents of Alaska, shall be eligible to purchase and/or own the Class A Stock of the Bank. No member may own more than one share of Class A Stock and each member is entitled to one vote in the affairs of the Bank, provided that only members who have been patrons of and borrowers from the Bank within two years from the commencement of voting on any matter requiring a vote of the members shall be entitled to vote thereon. No dividends shall be paid on Class A Stock.

Section 3. Preferred Stock (Class B) may be issued to, and may only be held by, members of the Bank, but Class B Stock shall not have any voting powers or rights nor participate in the management of the affairs of the Bank, except to the extent specifically so provided by the Act. Such vote shall be in addition to any vote to which a holder of Class B Stock may be entitled as a member. The Board of Directors of the Bank may declare dividends payable in stock or cash upon Class B Stock, but the value of any such dividends paid annually to any shareholder shall not exceed an amount equal to 10% of the par value of the Class B Stock owned by that shareholder.

Section 4. Special Preferred Stock (Class C) may be issued to the State of Alaska upon payment therefor pursuant to the provisions of AS 44.54.010. Class C Stock shall in no event have voting rights, nor may the Board of Directors pay a dividend upon Class C Stock.

Section 5. The stock of the Bank may be transferred only with the prior consent of the Board of Directors and then only to persons eligible to hold the same. No purported assignment or transfer of stock made without the consent of the Board of Directors or made to any person not eligible to hold the same shall pass any rights or privileges on account of such stock or vote or voice in the management or affairs of the Bank.

Section 6. The outstanding Class B and Class C Stock of the Bank may be retired in whole or in part by the Bank at any time by order of the Board of Directors upon paying to its holders the par value of their shares plus accrued and unpaid dividends, if any, upon the Class B Stock. Upon the surrender of the certificate evidencing such a share the Board of Directors may recall Class A Stock upon termination of membership. The consideration paid for Class A Stock recalled shall be the par value of the share.

ARTICLE V

Fiscal Policy and Internal Affairs

Matters pertaining to fiscal policy, nature and type of equities and credits, if any, other than stock, and the rights and priorities thereof, and like matters relating to the patrons of the Bank and to the internal affairs of the Bank shall be determined and fixed in the By-Laws. The power to alter, amend or repeal the By-Laws is vested in the Board of Directors.

ARTICLE VI

Dissolution

Section 1. Upon dissolution the assets of the Bank shall be distributed as follows:

(1) To pay the cost of dissolution.
(2) To pay any liabilities.
(3) To pay the par value of the outstanding Special Preferred Stock (Class C).
(4) To pay the par value of the outstanding Preferred Stock (Class B) and any other form of equity certificate outstanding.
(5) To pay the par value of the outstanding Membership Stock (Class A).
(6) To pay the Reserve Fund book entry holders, if and to the extent a Reserve Fund is established pursuant to the By-Laws, in full or pro-rata without priority the face amount of their book entry as shown on the books of the Bank.
(7) The balance of all Bank assets shall then be distributed, without priority, to the holders of Retained Patronage Earnings, as this term may be defined in the By-Laws, in proportion to their respective credits thereof as shown on the books of the Bank.

Section 2. In the case of a vote on a resolution which would dissolve the Bank, a holder of Class B Stock may cast one vote, in addition to any vote to which he may be entitled as a member, regardless of the dollar amount of Class B Stock held by him. Passage of such a resolution for dissolution requires a majority of the authorized Class B shareholder votes cast, as well as the affirmative vote of two-thirds of the member votes cast. Dissolution may also occur in any event pursuant to the provisions of AS 44.[illegible],

ARTICLE VII

Address of Initial Registered Office and Name of Initial Registered Agent

The initial registered office of the Bank will be the Alaska Department of Commerce And Economic Development, 9th Floor, New State Office Building, 333 Willoughby Avenue, Juneau, Alaska; the mailing address of which is Pouch D, Juneau, Alaska 99811. The initial registered agent of the Bank will be Frank M. Homan, at the above address.

ARTICLE VIII

Board of Directors

Section 1. The management of the Bank shall be vested in a board of seven (7) directors, at least one of whom shall be an Alaska farmer with at least ten (10) years of Alaskan farm experiance, who shall initially be appointed by the Governor of Alaska pursuant to AS 44.54.020 and AS 44.54.090.

Initial terms of the first five members appointed to the Board of Directors shall be two members serving until the first annual membership meeting of the Bank, two members serving until the second annual membership meeting of the Bank, and one member serving until the third annual membership meeting of the Bank. Thereafter these directors, who must be members qualified to vote and at least one of whom shall be an Alaska farmer with at least ten (10) years of Alaskan farm experience, shall be elected by the members at the annual meeting as provided in the By-Laws and shall hold office for three (3) years and until a successor shall have been elected and qualified.

At the time of the first annual membership meeting of the Bank two additional directors shall be appointed by the Governor of Alaska and shall serve initial terms expiring at the time of the second and third annual membership meetings of the Bank, respectively. Thereafter the Governor of Alaska shall continue to appoint or reappoint two directors to serve terms of three (3) years until such time as the Bank has repurchased all of the Class C Stock from the State of Alaska. After repurchase is completed, all directors shall be elected by the members commencing upon the expiration of the term of each appointed director then serving.

Section 2. The names and addresses of the individuals constituting the initial Board of Directors of the Bank are:

Name	Address
Frank M. Homan	Mendenhall Building 326 Fourth St. #1104 Juneau, Alaska 99801
Paul Huppert	Box 858 Palmer, Alaska 99645
Byron Mallott	Box 422 Yakutat, Alaska 99689

Dale R. Pihiman	Box 7814 Ketchikan, Alaska 99901
Robert M. Thorstenson	4241 21st Ave. W., Seattle, Washington 98199

ARTICLE IX

Data Respecting Incorporators

The names and addresses of the incorporators of the Bank are as follows:

Name	Address
Frank M. Homan	Mendenhall Building 326 Fourth St #1104 Juneau, Alaska 99801
Paul Huppert	Box 858 Palmer, Alaska 99645
Byron Mallott	Box 322 Yakutat, Alaska 99689
Dale R. Pihiman	Box 7814 Ketchikan, Alaska 99901
Robert M. Thorstenson	4241 21st Ave. W., Seattle, Washington 98199

ARTICLE X

Amendments

The Bank may amend these Articles from time to time pursuant to the Act. Provided, however, that in the case of a vote on an amendment which would affect a holder of Class B Stock, a Class B stockholder shall be entitled to cast one vote, in addition to any vote to which he may be entitled as a member, regardless of the dollar amount of Class B Stock held by him. Provided, further, that in the case of an amendment which would affect holders of Class B Stock, the proposed amendment is adopted only if it receives a majority of the Class B shareholder votes cast, as well as the affirmative vote of a majority of member votes cast.

IN WITNESS WHEREOF, the undersigned, being all of the incorporators, as entered in Article IX, execute these

Articles and certify to the truth of the facts therein stated, this 4th day of May, 1979.

STATE OF ALASKA)
) ss.
FIRST DISTRICT)

I, the undersigned, a Notary Public, duly commissioned to take acknowledgements and administer oaths in the State of Alaska, certify that FRANK M. HOMAN, PAUL HUPPERT, BYRON MALLOT, DALE R. PIHLMAN, and ROBERT M. THORSTENSON, being all of the incorporators referred to in the foregoing Articles of Incorporation, personally appeared before me and swore to the truth of the facts therein stated.

WITNESS my hand and official seal this 4th day of May, 1979.

Notary Public in and for Alaska
My Commission Expires: _____

LAW OFFICES
WOHLFORTH & FLINT
A PROFESSIONAL CORPORATION
643 G STREET
ANCHORAGE, ALASKA 99501

ERIC E. WOHLFORTH
ROBERT B. FLINT
TIMOTHY G. MIDDLETON
PETER ANGSTINGER
SARAH FORBES

TELEPHONE
AREA CODE 907
276-6401

May 4, 1979

FILED FOR RECORD
STATE OF ALASKA

MAY 4 1979

DEPARTMENT OF COMMERCE
& ECONOMIC DEVELOPMENT

Honorable Charles R. Webber, Commissioner
Department of Commerce and Economic
Development
Pouch D
Juneau, Alaska 99811

Re: Alaska Commercial Fishing and Agriculture Bank/Articles of Incorporation

Dear Commissioner Webber:

Enclosed with this letter are two copies of the Articles of Incorporation of the Alaska Commercial Fishing and Agriculture Bank which have been signed and verified by the incorporators and which, on behalf of the Bank, we hereby deliver to you for filing under AS 10.15.335.

The Alaska Commercial Fishing and Agriculture Bank has been formed, as you know, as a result of the Alaska Legislature's passage of an enabling act, Chapter 159, SLA 1978, as amended by SCS SSRB 30 am S of the Eleventh Legislature, First Session. I believe you will find that the Articles of Incorporation tendered to you today for filing conform with the above legislation (codified as AS 44.54), as well as with the provisions of the Alaska Cooperative Corporation Act.

No filing fees are enclosed as any applicable fees have been waived pursuant to AS 44.54.030. However, your advice is solicited at some time prior to August 15, 1979 as to whether the Legislature intended by this waiver of filing fees to include the annual license fee, for fiscal year 1980 and subsequent years, required by AS 10.15.530.

Your assistance, and that of Dick Eakins and the other members of your Department, during the formation of the Alaska Commercial Fishing and Agriculture Bank has been

invaluable and we look forward to a continuation of that close working relationship.

Very truly yours,

WOHLFORTH & FLINT

By _____
Pete Argetsinger

PA/lh
Encl: Articles of Incorporation in duplicate
cc: Board of Directors, Alaska Commercial Fishing and Agriculture Bank
Richard H. Eakins, Director, Division of Economic Enterprise, Department of Commerce & Economic Development
Frank Orth, Financial Consultant to Alaska Commercial Fishing and Agriculture Bank

4004-D

State of Alaska

Department of Commerce and Economic Development

Certificate

The undersigned, as Commissioner of Commerce and Economic Development of the State of Alaska, hereby certifies that duplicate originals of Articles of Amendment to the Articles of Incorporation of

[illegible]

duly signed and verified pursuant to the provisions of the Alaska Cooperative Corporation Act, have been received in this office and are found to conform to law.

ACCORDINGLY the undersigned, as Commissioner of Commerce and Economic Development, and by virtue of the authority vested in him by law, hereby issues this Certificate of Amendment to the Articles of Incorporation of

[illegible]

and attaches hereto a duplicate original of the Articles of Amendment.

[illegible]

[illegible]
COMMISSIONER
DEPARTMENT OF COMMERCE
AND ECONOMIC DEVELOPMENT

20024-D

FILED FOR RECORD
STATE OF ALASKA

2/ 1980

DEPARTMENT OF COMMERCE
& ECONOMIC DEVELOPMENT

ARTICLES OF AMENDMENT

TO

ARTICLES OF INCORPORATION

OF

ALASKA COMMERCIAL FISHING & AGRICULTURE BANK

1. At a special meeting of the members of the Alaska Commercial Fishing and Agriculture Bank, duly called and held on January 25, 1980, at which a quorum was in attendance and voting throughout, an amendment was adopted by a vote of three ayes, zero nays, changing Section 2 of Article IV of the original Articles of Incorporation to read in full as follows:

> Section 2. Membership in the Bank is limited to those engaged in the commercial fishing and agriculture industries and is conditioned on ownership of a share of Membership Stock (Class A) in the Bank. Only such individuals who are residents of Alaska or corporations, partnerships or joint ventures primarily engaged in commercial agriculture or fishing, the majority interest of which is beneficially owned by residents of Alaska and a majority of the owners of which are residents of Alaska, shall be eligible to purchase and/or own the Class A Stock of the Bank. No member may own more than one share of Class A Stock and each member is entitled to one vote in the affairs of the Bank, provided that only members who have been patrons of and borrowers from the Bank within two years from the commencement of voting on any matter requiring a vote of the members shall be entitled to vote thereon, except that any patron of the Bank with Retained Patronage Earnings of $2,500 or more standing to his credit will, in any event, be allowed to vote. No dividends shall be paid on Class A Stock.

20024-D

2: At a special meeting of the members of the Alaska Commercial Fishing and Agriculture Bank, duly called and held on January 25, 1980, at which a quorum was in attendance and voting throughout, an amendment was adopted by a vote of three ayes, zero nays, changing Section 4 of Article IV of the original Articles of Incorporation to read in full as follows:

> Section 4. Special Preferred Stock (Class C) may be issued to the State of Alaska upon payment therefor pursuant to the provisions of AS 44.54.010. Class C Stock shall in no event have voting rights.

ALASKA COMMERCIAL FISHING &
AGRICULTURE BANK

By _____
Frank M. Homan
President of the Board

By _____
Galen Schmidt
Assistant Secretary

STATE OF ALASKA)
)ss
THIRD JUDICIAL DISTRICT)

I, GALEN SCHMIDT, being first duly sworn, upon oath, depose and say: I am the Assistant Secretary of THE ALASKA COMMERCIAL FISHING & AGRICULTURE BANK, an Alaska Cooperative. In my capacity as Assistant Secretary I have reviewed the foregoing Articles of Amendment of the Alaska Commercial Fishing and Agriculture Bank and hereby certify that they correctly set forth the text of the Amendments to the Articles of Incorporation of said Alaska Commercial Fishing and Agriculture Bank as adopted by the members on January 25, 1980.

_____
GALEN SCHMIDT

20024-D

SUBSCRIBED AND SWORN to before me this 21st day of February, 1980, at Anchorage, Alaska.

NOTARY PUBLIC in and for Alaska
My Commission Expires: _____

STATE OF ALASKA
DEPARTMENT OF REVENUE
TREASURY DIVISION
Pouch SB
Juneau, Alaska 99811
(907) 465-2350

GENERAL AND SEGREGATED STATE PROGRAM FUNDS

MONTHLY INVESTMENT REPORT

February 29, 1984

CONTENTS

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General and Segregated State Program Funds

COMPOSITION OF INVESTMENT HOLDINGS - Continued

Asset Type	Current Month % of Total Cost Value	Current Month Cost	Current Month Yield
SEPARATELY INVESTED FUNDS - Continued			
International Airport Fund			
Savings Deposits	0.1	$ 83,388.61	5.65%
Demand Deposits	0.0	0.0	
Purchased Interest Receivable	0.0	0.0	NA
Repurchase Agreements	0.0	0.0	
Certificates of Deposit	0.0	0.0	
Federal Agency Securities	0.0	0.0	
U.S. Treasury Bills	30.0	41,935,810.99	9.47
U.S. Treasury Money Market	0.0	0.0	
U.S. Treasury Notes	7.1	9,902,215.63	10.72
TOTAL	37.2	51,921,415.23	9.70
TOTAL	100.0%	$ 139,730,190.87	10.59
ALASKA DEBT CERTIFICATES*	100.0%	$ 45,179,000.00	8.79
COMMERCIAL FISHING & AGRICULTURE BANK	100.0%	$ 31,800,000.00	NA
FINANCIAL FUTURES DEPOSITS			
Demand Deposit	2.0%	$ 1,841.17	NA
U. S. Treasury Bills	98.0	109,044.00	10.08
TOTAL	100.0%	$ 110,885.17	10.08
SUMMARY OF COMPOSITION			
Operating Account	0.3%	$ 7,639,299.45	NA
Fixed Income Securities at Bank of America	80.6	1,963,044,102.82	10.16
Loan and Mortgage Investments	10.2	249,238,484.45	7.64
Separately Invested Funds	5.7	139,730,190.87	10.59
Debt Certificates	1.9	45,179,000.00	8.79
Financial Futures Deposits		110,885.17	10.08
Commercial Fishing & Agriculture Bank	1.3	31,800,000.00	NA
TOTAL INVESTMENT HOLDINGS	100.0%	$2,436,741,962.76	9.74%

29 Feb 1984 Statement

HB

722

STATE OF ALASKA 1984 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date:

REQUEST
Bill/Resolution No.: HB 722
Title: Advisory vote on the establishment of a major projects fund.
Sponsor: House Judiciary
Requestor:
Date of Request:

FISCAL DETAIL
Agency Affected: Elections
Program Category Affected:
BRU, Program or Subprogram(s) Affected:

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 84	FY 85	FY 86	FY 87	FY 88	FY 89
OPERATING						
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 SUPPLIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS						
800 MISCELLANEOUS						
TOTAL OPERATING	- 0 -					
CAPITAL	- 0 -					
REVENUE	- 0 -					

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

ANALYSIS: Attach a separate page for analysis

Prepared By: House Judiciary
Division:
Phone: 465-4990
Date:

Approved by Commissioner: REP. CHARLIE BUSSELL
Agency:
Date: MAY 23, 1984

Distribution (by Agency preparing fiscal note):
Legislative Finance
Legislative Sponsor
Requestor
Office of Management and Budget
Impacted Agency(ies)

12/1/83

MAJOR PROJECTS FUND

DISCUSSION POINTS

Both legislative bodies are proceeding with legislation to provide for a constitutional amendment dedicating state money to a Major Projects Fund that would specifically fund the proposed Susitna dam. While the details are still under discussion, the basic issues have been largely unaddressed. The following paper outlines some of these issues.

Consititutional dedications

The principal issue is, or at least should be, whether it is wise to constitutionally dedicate state funds for a particular purpose. The debate so far has centered on the same petty regional politics that surround the annual division of the capital budget rather than on this major constitutional issue. It would be wise for the legislature and the public alike to remember why the Alaska Constitution includes a prohibition against dedicated funds.

Gordon Harrison explains the prohibition in his A Citizen's Guide to the Constitution of the State of Alaska: "This restriction is intended to prevent the legislature from voluntarily reducing its own freedom and flexibility in financial affairs... The consequence of dedicating tax revenue is that the legislature loses its ability to match expenditures with public needs as these change from year to year. Convention delegates believed that public needs should openly compete for state funds on a regular basis."

The Finance Committee of the Constitutional Convention explained it this way: "Even those persons or interests who seek the dedication of revenues for their own projects will admit that the earmarking of taxes or fees for other interests is a fiscal evil. But if allocation is permitted for one interest, the denial of it to another is difficult, and the more special funds are set up the more difficult it becomes to deny other requests until the point is reached where neither the governor nor the legislature has any real control over the finances of the state."

The one constitutional amendment that Alaskans have approved to allow a dedicated fund is, of course, for the Permanent Fund, a savings account vastly different in concept than the spending plan embodied in the Major Projects Fund.

A constitutionally-dedicated Major Projects Fund is an even more serious affair than the statutorily-earmarked funds that the framers of the Constitution objected to, because this fund would be set in the Constitution and could only be removed by another constitutional amendment.

Alaska's Constitution, we should remember, is the framework for our government. It speaks only to the broad principles of governmental organization and operation. It is a model of simplicity; with its lack of statutory-language clutter, it has seen little need for amendment. It was certainly never intended by its framers to be an appropriations measure.

The problem

The problem that the Major Projects Fund attempts to respond to is that of appropriating enough money for large capital projects. The argument is that the legislature is unable to fund large projects both because legislators don't know far enough in advance what specific projects to appropriate for (to build up a construction account), and because the nature of the appropriation process encourages the funding of district-sized projects rather than regional ones.

To argue that we must have a dedicated fund to build large projects is to say that the legislature is incapable of making sound spending decisions for today or the future. This may well be true of the present legislature. It is not necessarily true of a future legislature that is willing to break from the porkbarrel appropriation process of the recent-past and take responsibility for meeting the present and future needs of Alaskans.

The real intent of the Major Projects Fund seems to be to tie the hands of future legislatures to openly compete for state dollars to serve Alaska's needs by "constitutionalizing" additional pork-barreling for today's favorite large projects.

Given a more fiscally-responsible legislature, there are numerous unexplored ways of financing large capital projects. Appropriations for any purposes can be made now, with a simple majority vote, and special accounts can be set up to save for approved projects. There are, additionally, many creative ways of financing major projects using various kinds of tax-exempt financing, debt restructuring, and leveraged leasing involving private enterprise and federal tax credits. None of these have been explored because of an assumption that the state has an open checkbook from which to write unlimited checks.

Effect on state finances

The Governor's MPF provides for a dedication of 10% of all oil revenues through 1990. Using OMB projections and assuming 50th percentile petroleum revenue forecasts, the fund would accrue $2.2 billion plus interest by 1990.

However, again using OMB calculations, if you assume the more conservative 30th percentile revenues and a yearly capital budget (for traditional capital items) of $700 million, the total "surplus" revenues available between now and 1990 are only $320 million. This translates into less than 2% of oil revenues. Therefore, under this scenario, more than 8% of that dedicated to major projects would not be coming from surplus monies but from the "regular" capital budget (and possibly a shrinking operating budget).

Under any scenario, any amount dedicated after 1990 would seriously impact funds available for any other capital or operating items.

It should be noted that the 10% proposed for the MPF is from total petroleum revenue and equates in dollars to approximately the 25% of oil royalties that are dedicated to the Permanent Fund. The stated reason for choosing 10% was, according to OMB, because 10% "is a concept that is easily grasped, approximates the proportion that is currently dedicated to the Permanent Fund, and the amount should not seem overwhelming" and because "this appears to be enough to consider the possibility of financing Susitna sometime in the future."

Susitna

The MPF has been embraced by the legislature primarily as a means by which to assure the construction of the proposed Susitan Hydroelectric Project.

The Susitna project is still under study by the Alaska Power Authority and no final determination of its economic feasibility has yet been made. The APA expects to have both an update on the project's economics and a proposed financing plan completed later this month.

With a total projected cost for Susitna of $12-15 billion (nominal dollars), and without a financing plan, the possibility of committing $2-3 billion to a project that still could not be financed or to partially building a project that could not be completed, is a very serious one. Some legislators have assumed that supplemental federal REA financing will be available, despite the most-current information that it is highly unlikely to be.

By specifying Susitna (or Watana), or even simply hydroelectric projects, in the Constitution, no leeway is allowed for the possibility that full financing may not be obtained, or that other projects, including gas generation from the North Slope, might prove more feasible. (A technological breakthrough in transmitting gas-fired electricity from the North Slope to Fairbanks is entirely possible in the near-future, and would, incidentally, do much more for those tax bases and local employment than Susitna). Any flexibility in responding to public needs, for electricity or anything else, would be lost by enshrining specific projects or types of projects in the Constitution.

Equity

Given that the MPF would be earmarked for major capital projects most likely to be located in the Railbelt, and that Susitna alone could require more than the entire fund, there is concern for establishing some regional equity.

The Governor addressed the equity issue by requiring that projects funded would have to receive a two-thirds vote of each house. This, he believed, would require gaining the support of rural legislators by providing for their areas in the annual budget.

Recent drafts of the MPF assign a per centage of the fund to the power cost assistance program, to subsize electric rates statewide to the mean rate in the three largest cities (postage stamp concept). This approach removes the general trade-off that would have resulted as all sides maneuvered to reach some reasonable distribution of total funds to a direct horsetrade-- Susitna for PCAP. This again leaves no flexibility for meeting future needs.

Energy issues

What was initially conceived as a way of providing for major projects of all kinds has now been narrowed to providing electricity.

Providing for power supplies is a real issue, primarily because past attempts have been disasters. There still is no statewide energy planning, the Railbelt's needs have not been addressed in a logical manner, and there's no plan for improving the rural situation except for continuing direct subsidies.

However, there is no reason to assume that a reasonable solution to Alaska's energy needs can not be developed in a logical manner without porkbarreling through the Constitution. Again, the open checkbook and the desire for job-creating capital projects at the expense of planning,

meeting needs, and seeking cost-effective long-term solutions has caused the problem; the solution should clearly not be another open checkbook, projects built for jobs instead of meeting needs, and institutionalizing greater subsidies rather than seeking long-term solutions.

the administration The legislature failed in 1981 to separate the issues of power needs from those of creating jobs through capital projects and sharing the oil wealth. Is it necessary to not only repeat that mistake but to incorporate it into the Constitution?

The Four Dam Pool

Railbelt legislators believe that those areas of the state that received state funding for dams now owe a debt to the Railbelt for a project of its own. They believe that the Susitna clause in the Energy Program for Alaska assures that the debt will be paid, and that they "hold a hammer" over the Four Dam Pool to guarantee Susitna.

In fact, the Railbelt has no such hammer. The Susitna clause, if left in law, will prevent any utilities from signing power sales contracts for any projects in the Energy Program for Alaska, including Susitna. Moreover, it is more to the advantage of the Railbelt to repeal the clause than to the Four Dam Pool communities. The $200 million in short-term notes must be paid off (the only alternative is default, an obviously unacceptable one.) There are two ways that it can be paid off. The first is a cash appropriation. The second is by replacing the notes with long-term revenue bonds. This can only be done if power sales contracts are signed, guaranteeing revenues, and contracts will only be signed if the Susitna clause is removed from law. The Four Dam Pool communities know the notes will be paid, one way or the other. The incentive to allow the bond sale, only possible through removal of the clause, lies with the Railbelt, because the entire state will bear the cost if bonds can not be sold. (There are in fact two costs-- the direct $200 million one and a cost in the bond market, which will look unfavorably upon the failure to bond and will likely charge higher rates in the future as a result.)

Details

The draft CS HJR 57 (Resources), as of March 5, in addition to all of the major issues above, includes a number of questionable details.

The dedication is forever, or until the constitutional amendment is repealed by another constitutional amendment. Projected revenues indicate that after 1990 there simply would not be surplus money available, and that operating and capital budgets would have to be reduced drastically. The result of this provision would be that as the state headed for financial disaster, voters would have to chose between amending the Constitution to end the Permanent Fund, the MPF, or both.

The first appropriation made from the MPF must be for Watana, unless a two-thirds vote of each house disapproves the project. Given the financial requirements for Watana, it is unlikely that any other projects would ever receive funding. It is also very possible that, without federal assistance or the sale of tax-exempt bonds, enough money for the project would ever be deposited in the fund, even while causing major restrictions in funding other state capital and operating needs.

The fund revolves, that is, any revenues repaid from appropriations made from it go back to the fund and can only be used for more major

projects. The money is never available to meet any other needs the state may have.

Projects must be owned by the state. This puts the state in direct competition with private enterprise for construction of capital projects, and would prohibit the financing of projects that weren't clearly under state ownership (such as the railroad), that involved any kind of joint ownership, or that involved some private financing such as leveraged leasing.

STATE OF ALASKA 1984 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date:

REQUEST CS
Bill/Resolution No.: HJR 57 (Res)
Title: proposing amendment to Constitution re capital projects
Sponsor: Rules
Requestor: Governor
Date of Request: March 5,1984

FISCAL DETAIL
Agency Affected: Elections
Program Category Affected:
BRU, Program or Subprogram(s) Affected:

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 84	FY 85	FY 86	FY 87	FY 88	FY 89
OPERATING						
100 PERSONAL SERVICES		-0-				
200 TRAVEL		-0-				
300 CONTRACTUAL		1.0				
400 SUPPLIES		-0-				
500 EQUIPMENT		-0-				
600 LAND & STRUCTURES		-0-				
700 GRANTS, CLAIMS		-0-				
800 MISCELLANEOUS		-0-				
TOTAL OPERATING		1.0				
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

the cost of one page in the Election Pamphlet is 1.0

ANALYSIS: Attach a separate page for analysis

Prepared By: T.P.Thoma. Information Officer Phone: 4611
Division: Elections Date:

Approved by Commissioner: Sally R. Hanson for Date: 3/5/84
Agency: Lt. Bernard Stephen Mc Alpine

Distribution (by Agency preparing fiscal note):
- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)

12/1/83

BILL SHEFFIELD, GOVERNOR

OFFICE OF THE GOVERNOR

POUCH AD
JUNEAU, ALASKA 99811
PHONE: (907) 465-3568

OFFICE OF MANAGEMENT AND BUDGET

DIVISION OF STRATEGIC PLANNING

March 7, 1984

The Honorable Charlie Bussell
Alaska State House
Pouch V
Juneau, AK 99811

Dear Representative Bussell:

Attached to this letter are projections of State revenue and contributions to the Major Projects Fund as proposed in CSHJR 57. Contribution estimates are based on the assumption that ten percent of oil revenues, excluding corporate income tax on oil and gas producers and property tax on oil and gas production property, would be set aside in the Fund beginning in FY 1986.

These projections incorporate current royalty and severance tax revenue estimates published by the Department of Revenue. Other petroleum and non-petroleum revenue projections are those of OMB, but they are similar to the estimates used by the Department of Revenue internally.

We have analyzed the cash flow of the Major Projects Fund (CSHJR 57) with both 30th and 50th percentile estimates of severance tax and royalty income. Note that our estimates of unrestricted revenue are based on current law, and are not adjusted for deposits into the Fund.

Sincerely,

Gordon S. Harrison

Gordon S. Harrison
Associate Director

mm/84I-57

01 A34LH

50TH PERCENTILE
ROYALTIES, SEVERANCE TAXES,
AND FEDERAL MINERAL REVENUE SHARING PAYMENTS *
($ Million; Nominal)

	DOR 50%	DOR 50%	OMB Estimate	
FY	Gross Royalties	Severance Taxes	Federal Mineral Revenue Sharing	Total
1986	1,480	1,450	18	2,948
1987	1,670	1,630	18	3,318
1988	1,820	1,520	18	3,358
1989	2,080	1,730	18	3,828
1990	2,140	1,770	18	3,928
1991	1,950	1,540	18	3,508
1992	1,940	1,460	18	3,418
1993	1,940	1,430	18	3,388
1994	1,900	1,370	18	3,288
1995	1,770	1,270	18	3,058
1996	1,650	1,100	18	2,768
1997	1,700	1,140	18	2,858
1998	1,750	1,150	18	2,918

* The Major Projects Fund proposal for which this was prepared also specifies that ten percent of "mineral lease rentals" and "royalty sale proceeds" be set aside in the Fund. Estimates of royalty sale proceeds are included in the "Gross Royalties" reported above. Mineral lease rentals are a relatively minor source of income (less than Federal mineral revenue sharing payments) and long-range forecasts are not readily available.

OMB

3-7-84

30TH PERCENTILE
ROYALTIES, SEVERANCE TAXES,
AND FEDERAL MINERAL REVENUE SHARING PAYMENTS *
($ Million; Nominal)

FY	DOR 30% Gross Royalties	DOR 30% Severance Taxes	OMB Estimate Federal Mineral Revenue Sharing	Total
1986	1,320	1,300	18	2,638
1987	1,470	1,440	18	2,928
1988	1,590	1,310	18	2,918
1989	1,770	1,460	18	3,248
1990	1,680	1,350	18	3,048
1991	1,560	1,150	18	2,728
1992	1,540	1,090	18	2,648
1993	1,470	990	18	2,478
1994	1,390	920	18	2,328
1995	1,300	880	18	2,198
1996	1,230	760	18	2,008
1997	1,260	770	18	2,048
1998	1,270	790	18	2,078

* The Major Projects Fund proposal for which this was prepared also specifies that ten percent of "mineral lease rentals" and "royalty sale proceeds" be set aside in the Fund. Estimates of royalty sale proceeds are included in the "Gross Royalties" reported above. Mineral lease rentals are a relatively minor source of income (less than Federal mineral revenue sharing payments) and long-range forecasts are not readily available.

OMB

3-7-84

CONTRIBUTIONS TO MPF
($ Million; Nominal)

	At 50th Percentile		At 30th Percentile	
FY	Total Royalties, Severance Taxes, and FMRS *	10% to MPF	Total Royalties, Severance Taxes, and FMRS *	10% to MPF
1986	2,948	295	2,638	264
1987	3,318	332	2,928	293
1988	3,358	336	2,918	292
1989	3,828	383	3,248	325
1990	3,928	393	3,048	305
1991	3,508	351	2,728	273
1992	3,418	342	2,648	265
1993	3,388	339	2,478	248
1994	3,288	329	2,328	233
1995	3,058	306	2,198	220
1996	2,768	277	2,008	201
1997	2,858	286	2,048	205
1998	2,918	292	2,078	208
TOTAL		4,261		3,332

* FMRS = Federal mineral revenue sharing payments.

OMB

3-7-84

CONTRIBUTIONS TO PERMANENT FUND
($ Million; Nominal)

	At 50th Percentile			At 30th Percentile		
FY	Non-Tax. Pet. Rev. (Excl. Bonuses)	Perm. Fund Contribution Rate	Perm. Fund Contributions	Non-Tax. Pet. Rev. (Excl. Bonuses)	Perm. Fund Contribution Rate	Perm. Fund Contributions
1986	1,498	.25	375	1,338	.25	335
1987	1,688	.25	422	1,488	.25	372
1988	1,838	.25	460	1,608	.25	402
1989	2,098	.25	525	1,788	.25	447
1990	2,158	.25	540	1,698	.25	425
1991	1,968	.25	492	1,578	.25	395
1992	1,958	.27	529	1,558	.27	421
1993	1,958	.27	529	1,488	.27	402
1994	1,918	.28	537	1,408	.28	394
1995	1,788	.28	501	1,318	.28	369
1996	1,668	.29	484	1,248	.29	362
1997	1,718	.30	515	1,278	.30	383
1998	1,768	.30	530	1,288	.30	386

OMB

3-7-84

UNRESTRICTED GENERAL FUND REVENUE: 50TH PERCENTILE
($ Million)

FY	50th Percentile Pet. Rev. Minus P.F. Contr. *	OMB Estimate Investment Income	OMB Estimate Other (Non-Pet.) Revenue	Unrestricted Gen. Fund Revenue	Unrestricted Gen. Fund Revenue (1985 dollars)
1986	3,124	250	272	3.646	3,440
1987	3,505	250	287	4,042	3,609
1988	3,518	250	303	4,071	3,421
1989	3,964	250	320	4,534	3,598
1990	4,042	250	337	4,629	3,454
1991	3,662	250	356	4,268	3,006
1992	3,557	250	376	4,183	2,789
1993	3,546	250	397	4,193	2,637
1994	3,444	250	420	4,114	2,434
1995	3,252	250	443	3,945	2,204
1996	2,945	250	469	3,664	1,928
1997	3,056	250	495	3,801	1,891
1998	3,120	250	524	3,894	1,928

* Includes corporate income tax on oil and gas producers and oil and gas production property tax, in addition to royalties, severance taxes, and federal mineral revenue sharing payments.

OMB

3-7-84

UNRESTRICTED GENERAL FUND REVENUE: 30TH PERCENTILE

($ Million)

FY	30th Percentile Pet. Rev. * Minus P.F. Contr.	OMB Estimate Investment Income	OMB Estimate Other (Non-Pet.) Revenue	Unrestricted Gen. Fund Revenue	Unrestricted Gen. Fund Revenue (1985 dollars)
1986	2,854	250	272	3,376	3,185
1987	3,165	250	287	3,702	3,305
1988	3,136	250	303	3,689	3,100
1989	3,462	250	320	4,032	3,200
1990	3,277	250	337	3,864	2,884
1991	2,979	250	356	3,585	2,525
1992	2,895	250	376	3,521	2,347
1993	2,763	250	397	3,410	2,145
1994	2,627	250	420	3,297	1,951
1995	2,524	250	443	3,217	1,797
1996	2,307	250	469	3,026	1,593
1997	2,378	250	495	3,123	1,554
1998	2,424	250	524	3,198	1,501

* Includes corporate income tax on oil and gas producers and oil and gas production property tax, in addition to royalties, severance taxes, and federal mineral revenue sharing payments.

OMB

3-7-84

MPF CUMULATIVE BALANCE: 50TH PERCENTILE
($ Million)

Deposit Date	Deposit Amount	9% Interest	Balance	Balance Date	Balance in $ 1985 (6% inflation)
1-1-86	295	27	322	12-31-86	304
1-1-87	332	59	713	12-31-87	637
1-1-88	336	94	1,143	12-31-88	961
1-1-89	383	137	1,163	12-31-89	1,320
1-1-90	393	185	2,241	12-31-90	1,672
1-1-91	351	233	2,825	12-31-91	1,989
1-1-92	342	285	3,452	12-31-92	2,301
1-1-93	339	341	4,132	12-31-93	2,599
1-1-94	329	401	4,862	12-31-94	2,877
1-1-95	306	465	5,633	12-31-95	3,147
1-1-96	277	532	6,442	12-31-96	3,391
1-1-97	286	606	7,334	12-31-97	3,649
1-1-98	292	686	8,312	12-31-98	3,902

Assumptions: 1) No expenditures from the fund.

2) MPF lump sum deposit in the middle of the fiscal year.

OMB

3-7-84

MPF CUMULATIVE BALANCE: 30TH PERCENTILE

($ Million)

Deposit Date	Deposit Amount	9% Interest	Balance	Balance Date	Balance in $ 1985 (6% inflation)
1-1-86	264	24	288	12-31-86	272
1-1-87	293	52	633	12-31-87	565
1-1-88	292	83	1,008	12-31-88	847
1-1-89	325	120	1,453	12-31-89	1,153
1-1-90	305	158	1,916	12-31-90	1,430
1-1-91	273	197	2,386	12-31-91	1,680
1-1-92	265	239	2,890	12-31-92	1,927
1-1-93	248	282	3,420	12-31-93	2,151
1-1-94	233	329	3,982	12-31-94	2,356
1-1-95	220	378	4,580	12-31-95	2,559
1-1-96	201	430	5,211	12-31-96	2,743
1-1-97	205	487	5,903	12-31-97	2,937
1-1-98	208	550	6,661	12-31-98	3,127

OMB

3-7-84

BILL SHEFFIELD
GOVERNOR

HB 1257

STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

January 23, 1984

The Honorable Joe Hayes
Speaker of the House
Pouch V
Juneau, AK 99811

Dear Representative Hayes:

Under the authority of art. III, sec. 18, of the Alaska Constitution, I am transmitting a joint resolution which proposes an amendment to the Alaska Constitution creating a major projects fund.

As you know, the state treasury will continue to receive substantial petroleum revenues for many years to come. However, our best current estimates indicate that large annual cash surpluses above operating budget requirements will cease to be available by the early 1990's. There is still time to set aside enough for one or more major capital projects that can serve as foundations for Alaska's future economy, but the opportunity to do so will probably be gone within the next six or seven years. Examples of major projects are the Susitna hydroelectric project; road and port infrastructure projects in rural Alaska for support of mining, fishing, and other economic development activities; the Knik Arm Crossing; the Bradley Lake hydroelectric project; Eklutna water supply; and renovation and extension of the Alaska Railroad.

The major projects fund is needed to accumulate the revenue for these large projects. There are two reasons for this. First, for many of these large projects and especially for Susitna, there still is not enough clear information to warrant unequivocal commitment. Actual construction might not begin for a number of years because of the length of time necessary for engineering, environmental study, obtaining permits, and demonstration of economic feasibility.

Ten percent of total petroleum revenue approximates the proportion that is currently dedicated to the permanent fund. For fiscal year 1985, this would require a deposit to the major projects fund of approximately $300 million, which allows an operating budget of $2.1 billion, a regular capital budget of $700 million, loan appropriations of $260 million, and enough remaining money for debt service and other likely obligations.

There are several other significant features of the amendment.

(1) Deposits to the fund begin in fiscal year 1985 and continue through fiscal year 1990, in keeping with current expectations of future revenue availability.

(2) Disbursements from the fund for a project cannot be made until all sources of the money necessary to complete the project (or a stand-alone phase of a larger project) has been identified and the money committed.

(3) A cost threshold of $100 million is set for projects to qualify for financing from the fund. This minimum allows reasonable flexibility for covering such projects as the Susitna and Bradley Lake dams, the Knik Crossing, and extension of the Alaska Railroad, without opening the fund to capital projects that can be effectively addressed in the regular capital budget process.

(4) Appropriation bills to spend from the fund must have a two-thirds majority vote in order to pass the legislature. The purpose of this requirement is to assure that projects have state-wide support at the time disbursements are made.

(5) Expenditures from the fund must be recovered and returned to the fund over the operational life of the project. The intent is to recover the principal of the fund from fees generated by the project.

(6) Neither deposits to the fund nor appropriations from the fund would be subject to the appropriation limit.

Alaska MUNICIPAL League

TELEPHONES
(907) 586-1325
(907) 586-6526

105 MUNICIPAL WAY, SUITE 301
JUNEAU, ALASKA 99801

AML RESOLUTION SUPPORTING MAJOR PROJECTS FUND

WHEREAS Governor Sheffield has proposed a major projects fund to accumulate revenues for large capital projects in Alaska; and

WHEREAS Alaskan municipalities and their residents may benefit from the construction of major projects in their areas; and

WHEREAS it is difficult through conventional capital budgeting procedures to secure large direct appropriations for major projects; and

WHEREAS the Governor has indicated that sufficient revenues can be dedicated to this fund without reducing the amount available for other important current state programs; and

WHEREAS such a fund will help prepare the state for the day when annual cash surpluses above operating budget requirements decline substantially;

NOW THEREFORE BE IT RESOLVED by the Board of Directors of the Alaska Municipal League that the Board extends its conceptual support to a major projects fund, as long as the fund does not negatively impact other state programs which support Alaskan municipalities.

Adopted by the AML Board of Directors, January 31, 1984 in Juneau, Alaska.

ALASKA MUNICIPAL LEAGUE

Betty J. Glick

Betty J. Glick
President

ATTEST:

Scott A. Burgess
Executive Director

HCR

11

STATE OF ALASKA
PRELIMINARY STATEMENT OF FISCAL IMPACT

Bill No: HCR 11 Date on Bill:
Title: "Relating to use by petit jurors of headphones"
Sponsor:
Requestor:

1. Estimated fiscal impacts on:

a. Expenditures:

(Thousands of Dollars)

			FY 83	FY 84	FY 85	FY 86		
Capital								
Operating								
Total	0		0	0	0	0		

b. Revenues:

Revenue								

2. Source of funds to offset fiscal impact of bill:

3. Assumptions:

4. Disclaimer:
-- This statement has not been reviewed by the OMB in the Office of the Governor. It do not represent the policy of the Sheffield Administration or the final estimate of fi impact.

Prepared By: Arthur H Snowden II Phone:
Division: Alaska Court System, Fiscal Operations Date: 2/15/83

Approved by Commissioner: Date:
Department:

5. Distribution:
Original to Legislative Finance
Copy to OMB
Copy to Sponsor
Copy to Requestor

2/8/83

HCR

33

Introduced: 4/25/83
Referred: Judiciary

BY THE RULES COMMITTEE
BY REQUEST OF THE
SPECIAL COMMITTEE ON
LEGISLATIVE REFORM

IN THE HOUSE

HOUSE CONCURRENT RESOLUTION NO. 33

IN THE LEGISLATURE OF THE STATE OF ALASKA

THIRTEENTH LEGISLATURE - FIRST SESSION

Proposing the addition of a preamble relating to ethics to the Uniform Rules of the Alaska State Legislature.

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

* Section 1. The Uniform Rules of the Alaska State Legislature are amended by adding a preamble to read:

P R E A M B L E

Part 1. CONDUCT OF A LEGISLATOR. (a) A member of the legislature [shall] at all times engage in conduct that reflects creditably on the legislature.

(b) A member of the legislature shall adhere to the spirit and the letter of these rules and to other rules and law that govern legislative or official conduct.

Part 2. GENERAL PRECEPTS OF ETHICAL CONDUCT. A person in the legislative branch should

(1) put loyalty to the highest moral principles and to country above loyalty to persons or party;

(2) uphold the constitution and laws of the United States and of the State of Alaska and never be a party to their evasion;

(3) seek to find and employ more efficient and economical ways of getting tasks accomplished;

(4) not discriminate unfairly by the dispensation of special favors or privileges to anyone, whether or not for remuneration;

(5) never accept, either personally or for a family member, favors or benefits under circumstances that might be construed by

reasonable persons as influencing the performance of official or assigned duties;

(6) make no private promises of a kind binding on the duties of office, since a public officer or employee has no private word that can override public duty;

(7) engage in no business with the state, either directly or indirectly, that is inconsistent with the conscientious performance of official or assigned duties;

(8) use no information coming to the public officer or employee in the performance of government duties as a means for making a rivate profit;

(9) expose corruption wherever discovered;

(10) uphold these principles, ever conscious that public office is a public trust.

Part 3. READING PREAMBLE. When a temporary presiding officer has assumed the chair under Rule 1(b) the temporary presiding officer shall have this preamble read to the members before calling for nomination of the permanent presiding officer.

I. REQUEST

Bill/Resolution No. HCR 33

Title Proposing the addition of a preamble relating to ethics to the Uniform Rules.

Requested by House Judiciary Date April 29, 1983

II. FISCAL DETAIL

Agency Affected Legislative Affairs Agency

Program Category Affected General Government

BRU, Program, Or Subprogram(s) Affected Session

(Note: If more than one budget component is affected, separate line-item amounts and funding for each component in the analysis section.)

EXPENDITURES (Thousands of Dollars)

	FY 83	FY 84	FY 85	FY 86	FY 87	FY 88
100 PERSONAL SERVICES		0				
200 TRAVEL		0				
300 CONTRACTUAL		0				
400 COMMODITIES		0				
500 EQUIPMENT		0				
600 LAND & STRUCTURES		0				
700 GRANTS,CLAIMS,ETC.		0				
		0				
TOTAL		0				

FUNDING (Thousands of Dollars)

GENERAL FUND		0				
FEDERAL FUNDS						
OTHER (Specify Source)						
		0				

POSITIONS None

FULL TIME						
PART TIME						
TEMPORARY						

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

It is estimated that this bill will not create additional fiscal impact.

IV. DATE April 29, 1983 PREPARED BY Wally Harrison, Director Admin. Services

AGENCY Legislative Affairs Agency

PHONE 465-3890

Original: Legislative Finance

cc: Budget and Management

Prime Sponsor (First Legislator Named)

33-001 (Rev. 12/82)

HCR

34

M E M O R A N D U M

May 6, 1983

TO: House Judiciary Committee Members

FROM: Staff

SUBJECT: House Concurrent Resolution 34

Section 1

Authorizes the presiding officer to compel the attendance of individual absent members whether there is a quorum or not.

Section 2

Adds a requirement that any resolution establishing a special or joint committee shall specify what the expected budget will be and the source of funds.

Section 3

Amends "Rule 23", Committee Meetings. The substance of this section was similar to CSHCR 32 which has already failed in the House. Committee Members may want to delete this section or ask the "sponsor" for a substantive comparison between this section and CSHCR 32, at the time of his testimony.

Section 4

Amends "Rule 37" by adding a new subsection. Same recommendation as above [for Section 3].

Section 5

Adds clarifying language.

Section 6

Removes language requiring the adoption of a concurrent resolution for adjournment or recess.

Section 7

Changes "point of order" relating to violation of uniform rules by either house. By this change questions of order may be raised in the other house for violation of uniform rules other than a rule concerning matters relating to the organization or operation of a house.

FISCAL NOTE

I. REQUEST
Bill/Resolution No. HCR 34
Title Proposing certain amendments to the Uniform Rules
Requested by House Judiciary Date April 29, 1983

II. FISCAL DETAIL
Agency Affected Legislative Affairs Agency
Program Category Affected General Government
BRU, Program, Or Subprogram(s) Affected Session
(Note: If more than one budget component is affected, separate line-item amounts and funding for each component in the analysis section.)

EXPENDITURES (Thousands of Dollars)

	FY 83	FY 84	FY 85	FY 86	FY 87	FY 88
100 PERSONAL SERVICES		0				
200 TRAVEL		0				
300 CONTRACTUAL		0				
400 COMMODITIES		0				
500 EQUIPMENT		0				
600 LAND & STRUCTURES		0				
700 GRANTS,CLAIMS,ETC.		0				
		0				
TOTAL		0				

FUNDING (Thousands of Dollars)

GENERAL FUND		0				
FEDERAL FUNDS						
OTHER (Specify Source)						
		0				

POSITIONS None

FULL TIME						
PART TIME						
TEMPORARY						

III. ANALYSIS (See Fiscal Note Preparation Instruction, Section III)
It is estimated that this bill will not create additional fiscal impact.

IV. DATE April 29, 1983 PREPARED BY Wally Harrison, Director Admin. Services
AGENCY Legislative Affairs Agency
PHONE 465-3850

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

33-001 (Rev. 12/82)



NOTIFICATION OF BILL HEARING

WEEK OF: 1-24

BILL #	BILL TITLE	DEPARTMENT	DATE	SPONSOR	DATE
#HJR 1		F.N. required	1/20	✓	
	· Carl Phillips	for back up - 1/21			
#HJR 2	Postponed - till	FN rec. for this date	1/20 1/26		

THE LEGISLATURE OF THE STATE OF ALASKA
THIRTEENTH LEGISLATURE

Rec'd 1/24/83

FISCAL NOTE

I. REQUEST
Bill/Resolution No. HOUSE JOINT RESOLUTION NO. 1
Title Proposing an amendment to the Constitution of the State of Alaska providing that a legislator who is convicted of a felony forfeits legislative office. Date 01-20-83

II. FISCAL DETAIL Requested by: Rep. Charlie Bussell
Agency Affected Legislative Affairs Agency
Program Category Affected General Government
BRU, Program, Or Subprogram(s) Affected Session
(Note: If more than one budget component is affected, separate line-item amounts and funding for each component in the analysis section.)

EXPENDITURES (Thousands of Dollars)

	FY 83	FY 84	FY 85	FY 86	FY 87	FY 88
100 PERSONAL SERVICES						
200 TRAVEL	-0-					
300 CONTRACTUAL						
400 COMMODITIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS,CLAIMS,ETC.						
TOTAL	-0-					

FUNDING (Thousands of Dollars)

GENERAL FUND	-0-					
FEDERAL FUNDS						
OTHER (Specify Source)						

POSITIONS -0-

FULL TIME						
PART TIME						
TEMPORARY						

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

There might be approximately $5,500 of transportation and moving costs if a legislator should, at sometime, be convicted of a felony for moral turpitude and has to forfeit the office. Without assuming, however, that someone will lose office for this reason in some given fiscal year, we have to assume there is no fiscal impact.

IV. DATE 01-20-83 PREPARED BY Wally Harrison, Director
AGENCY Legislative Affairs Agency
PHONE 465-3850

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

33-001 (Rev. 12/82)

THE LEGISLATURE OF THE STATE OF ALASKA
THIRTEENTH LEGISLATURE

FISCAL NOTE

I. REQUEST
Bill/Resolution No. House Joint Resolution No. 1
Title "Proposing an amendment to the Constitution of the State of Alaska providing that a legislator who is convicted of a felony forfeits legislative office.
Requested by House Judiciary Date 1/20/83

II. FISCAL DETAIL
Agency Affected Office of the Governor
Program Category Affected Division of Elections
BRU, Program, Or Subprogram(s) Affected Division of Elections
(Note: If more than one budget component is affected, separate line-item amounts and funding for each component in the analysis section.)

EXPENDITURES (Thousands of Dollars)

	FY 83	FY 84	FY 85	FY 86	FY 87	FY 88
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 COMMODITIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS,CLAIMS,ETC.						
TOTAL	-0-	-0-	-0-	-0-	-0-	-0-

FUNDING (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER (Specify Source)						

POSITIONS

NONE

FULL TIME						
PART TIME						
TEMPORARY						

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

No additional fiscal impact is anticipated with House Joint Resolution No. 1.

Danith D. Arnoldt

IV. DATE 1/20/83 PREPARED BY Danith D. Arnoldt, Deputy Director
AGENCY Office of the Governor, Division of Elections
PHONE 586-6181

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

33-001 (Rev. 12/82)

HJR No. 1 --Amendment to Constitution for Legislator to Forfeit--PHILLIPS, LISKA,
Office if Convicted of a Felony. SZYMANSKI, TISCHER

1. This would add a new section (No. 22) to Article II, Legislature, of Constitution, that a Legislator forfeits office upon conviction of a felony involving moral turpitude.

   Vacancy occurs on date of conviction.

   Vacancy to be filled "as provided by law" (i.e., see Art. II, Sec. 4 of Constitution and AS 40.320-470).

2. If adopted by people, would take effect in regular fashion (i.e. 30 days following election certifications), so no need for further provisions along those lines.

3. IMPACT:

   (no need for provisions re: reinstatement, cleansing record, or any such thing, as convicted felons have no rights anyway. If conviction is overturned on appeal, it wipes out conviction).

WITNESSES:

CHANGES (?)

FISCAL NOTE(?)

HJR

2

. ****COPY****

1155

ALASKA HOUSE OF REPRESENTATIVES

" CSHJR 12 JUD AM 3RD

2ND SESSION 12TH LEG

3/ 3/82 10:14 PM

24 YEAS 13 NAYS 2 EXC 1 ABS

Y	ABOOD	Y	CHUCKWUK	Y	HAUGEN	Y	PHILLIPS
Y	ADAMS	(N)	—CLOCKSIN	Y	HAYES	Y	RANDOLPH
Y	ANDERSON	(N)	—COTTEN	Y	HURLBERT	N	ROGERS
Y	BARNES	Y	CUDDY	N	MALONE	A	SMITH
Y	BEIRNE	N	DUNCAN	Y	MARTIN	Y	SUTCLIFFE
Y	BETTISWORTH	E	FANNING	(N)	—MEKINS	N	VASKA
N	BROWN	N	FREEMAN	Y	METCALFE	N	ZHAROFF
E	BUCHHOLDT	Y	FULLER	N	MILLER		
Y	BYLSMA	N	GARDINER	Y	MONTGOMERY		
Y	CARNEY	Y	GRUSSENDORF	N	MOSS		
Y	CATO	Y	HALFORD	Y	O'CONNELL		

+ VOTED FOR

* CHANGED VOTE

March 3, 1982

1. Re-wrote bill.

2. Did not use Article II, Sections 9 and 10, "SPECIAL SESSIONS" and "ADJOURNMENT."

3. Used instead, Section 8 "REGULAR SESSIONS."

4. No change on Special Sessions.

5. No change on Governor settling adjournment disputes between House.

6. 120 - day adjournment still in the bill but resolution simplified by limiting constitutional amendment to Section 8 "Regular Sessions."

7. Limited to one the number of 10-day extensions. Original bill said increments.

HJR12 - CSHJR12

What was Judiciary amendment?

Places change in Article II, Sec. 10, ADJOURNMENT, instead of Article II, Sec. 8, REGULAR SESSIONS. No substantive change, but now makes clear that the extension vote (2/3's of each house) applies only to regular, not special sessions. Allows only one 10-day extension of the 120 - day regular session, where original allowed unlimited extension "increments."

Governor can still agree with one house and adjourn the legislature if disagreement certified by house, before 120 days, per Sec. 10. No change there.

COMMON SENSE FOR ALASKA

P.O. Box 4-1104 Anchorage, Alaska 99509

BACK-UP INFORMATION TO 2/25 PRESS RELEASE

(Not to be attached to release, but for answering any questions that may arise concerning the release - copy to Shelby.)

1. Information gained from: Legislative Rules of each state; Constitutions & Statutes; CCH Legislative Information Chart.

2. States with limits imposed listed below, with additional information:

9(1)	ALABAMA	30	days
14	ARKANSAS -	60	
7	CONNECTICUT -	80	(5 months first year, 3 months 2nd yr. average 80 days)
5	DELAWARE -	120	(Session ends June 30, average 120 days)
9	FLORIDA -	60	
10	GEORGIA -	40	
11	HAWAII -	60	
12	IDAHO -	60	
14	INDIANA -	61	
16	KANSAS -	90	
17	KENTUCKY -	60	
18	LOUISIANA -	60	
19	MAINE -	100	
20	MARYLAND -	90	
23	MINNESOTA -	60	(Limited to 120 days for two-year terms)
24	MISSISSIPPI -	90	
25	MISSOURI -	120	(Session ends June 30, average 120 days)
26	MONTANA -	90	
27	NEBRASKA -	90	
28	NEVADA -	60	
31	NEW MEXICO -	60	
34	NORTH DAKOTA -	80	
36	OKLAHOMA -	90	
37	RHODE ISLAND -	60	
40	SOUTH CAROLINA -	40	
41	SOUTH DAKOTA -	35/40	(Odd years, 40 days, even years, 35 days)
42	TENNESSEE -	90	
	TEXAS -	140	
44	UTAH -	60	
45	VIRGINIA -	60	
47	WASHINGTON -	105	
48	WEST VIRGINIA -	60	
50	WYOMING -	20/40	(Limited to 60 days for a two-year period, 40 legislative days in odd years, 20 in even years.)

COMMON SENSE FOR ALASKA

P.O. Box 4-1104 Anchorage, Alaska 99509

February 28, 1981
For Immediate Release:

For further information please contact Jean Peterson, 276-7648

"SESSION LIMITATION IMPOSED IN 33 STATES"

ANCHORAGE, AK.---Thirty-three states have imposed a limit on the length of their legislative session, according to a study released today by Common Sense for Alaska. In a nation wide study of the fifty states' legislative rules undertaken by the Common Sense for Alaska Research Committee, it was found that the session length allowed ranged from 140 days to 20 days with an average of 76 days per session.

In addition to determining what states have limitations on their session length, the committee is also reviewing the legislative rules to determine what states allow conference and free conference committees. Additional items under review by the committee include the states' rules on the following: Bill Content; Definition of "Germane"; Public Notice of Committee Meetings; Recommendations Used to Pass Bills Out of Committees; Interim Committees - Authorization if Interim Committees are Allowed; Code of Ethics & Discipline; Contracting

Procedures; Lobbying Laws; Rules Review and Enforcement; Time Limit for Committees to Process Bills; Rule Waiver Procedures; Legislative Oversight.

The Research Committee began its study in January by obtaining copies of the fifty states' legislative rules manuals. "There is no comprehensive study like this anywhere in the U.S.", noted Common Sense President, J. Shelby Stastny. "An estimated 500 hours of research will have been spent by committee members in compiling this information. Although the majority of information was gained from the different legislative rules, the committee also had to research state constitutions, statutes and other sources of information."

The Common Sense Research Committee is composed of the following members: Jan Faiks, Committee Chair; Ron Brown; Jan Bomhoff; Helen Butcher; Dr. Art Hippler; Darlene Holt; James Johnson, CPA; Karen Jordan; Carol Maser; Paul Robison, Attorney; J. Shelby Stastny, CPA; Kneeland Taylor, Attorney.

The Legislative Rules Study is estimated to be completed in March, 1981 at which time the results will be made available to the public.

- 30 -

RICHARD B. LAUBER

Joe:

I came across this and found it interesting that most of our legislatures are able to get the job done in much less time than Alaska.

You had the right idea - I think there are too many people in our legislature with nothing else to do! See you Son—

Rick

Neil - for the File and use For backup in drafting session length legislation JW

STATE

1982

STATES	CONVENES	ADJOURNED	STATES	CONVENES	ADJOURNED
Alabama	1-12-82	4-26-82	Montana	NOT IN SESSION	
*Alaska	1-11-82	6- 3-82	*Nebraska	1- 6-82	4-16-82
Arizona	1-11-82	4-24-82	Nevada	NOT IN SESSION	
Arkansas	NOT IN SESSION		New Hampshire	NOT IN SESSION	
*California	1- 4-82		New Jersey	1-12-82	
Colorado	1- 6-82	5-24-82	New Mexico	1-19-82	2-18-82
Connecticut	2- 3-82	5- 5-82	*New York	1- 6-82	
*Delaware	1-12-82		*North Carolina	6- 2-82	
Florida	1-18-82	3-25-82	North Dakota	NOT IN SESSION	
*Georgia	1-11-82	3-26-82	*Ohio	1- 5-82	
*Hawaii	1-20-82	4-23-82	*Oklahoma	1- 5-82	
Idaho	1-11-82	3-24-82	Oregon	NOT IN SESSION	
*Illinois	1-13-82		*Pennsylvania	1- 5-82	
Indiana	1- 5-82	2-20-82	*Rhode Island	1- 5-82	5-18-82
*Iowa	1-11-82	4-24-82	*South Carolina	1-12-82	
*Kansas	1-11-82	5-14-82	South Dakota	1- 5-82	2-27-82
Kentucky	1- 5-82	4-15-82	*Tennessee	1-18-82	5- 6-82
Louisiana	4-19-82		Texas	NOT IN SESSION	
Maine	1- 6-82	4-13-82	Utah	1-11-82	1-30-82
Maryland	1-13-82	4-12-82	*Vermont	1- 5-82	4-22-82
Massachusetts	1- 6-82		Virginia	1-13-82	3-13-82
*Michigan	1-13-82		*Washington	1-11-82	3-11-82
*Minnesota	1-12-82	3-19-82	West Virginia	1-13-82	3-13-82
Mississippi	1- 5-82	4- 4-82	*Wisconsin	1-27-82	4- 2-82
Missouri	1- 6-82	5-15-82	Wyoming	2- 9-82	3- 1-82

*Bills carried over from 1981 legislative session.

NOTIFICATION OF BILL HEARING

~~WEEK~~ OF: 1/24

BILL #	BILL TITLE	DEPARTMENT	DATE	SPONSOR	DATE
HSR 2		F.N. rec.	1/20	✓	
	✓ neal in Hayes office CALL / Mert Chary Leg Aff. - FN?				

(See also HJR 3--Same topic--PHILLIPS, FRITZ)

HJR 2 --Proposes amendment to Constitution limiting length of regular sessions of Legislature. -- HAYES, BARNES, FLOOD, PHILLIPS, FURNACE, ABOOD LISKA, COWDERY, SZYMANSKI TISCHER and FRITZ

1. This would change Article II, Section 8, Constitution of Alaska, REGULAR SESSIONS, to limit of 120 days.

2/ This contains nothing regarding special sessions, or extensions of the 120 day limit. (See some of the wording of bills introduced in 12th Session.

3. If this is placed before voters at next general election, it would automatically take effect 30 days after certification of election, if adopted by the voting public (See Art. XIII, Sec. 1, Amendments).

   Thus, no need for effective date to be included.

4. Provision for extension were included in some earlier versions (12th Legislature).

IMPACT:

WITNESSES:

FISCAL NOTE (?)

CHANGES:

THE LEGISLATURE OF THE STATE OF ALASKA
THIRTEENTH LEGISLATURE

FISCAL NOTE

I. REQUEST
Bill/Resolution No. HOUSE JOINT RESOLUTION NO. 2
Title Proposing an amendment to the Constitution of the State of Alaska limiting the length of regular sessions Date 1/20/83
of the legislature. Requested by: Representative Charlie Bussell

II. FISCAL DETAIL
Agency Affected Legislative Affairs Agency
Program Category Affected General Government
BRU, Program, Or Subprogram(s) Affected Session
(Note: If more than one budget component is affected, separate line-item amounts and funding for each component in the analysis section.)

EXPENDITURES (Thousands of Dollars)

	FY 83	FY 84	FY 85	FY 86	FY 87	FY 88
100 PERSONAL SERVICES	-0-					
200 TRAVEL	-0-					
300 CONTRACTUAL	-0-					
400 COMMODITIES	-0-					
500 EQUIPMENT	-0-					
600 LAND & STRUCTURES						
700 GRANTS,CLAIMS,ETC.						
TOTAL	-0-					

FUNDING (Thousands of Dollars)

GENERAL FUND	-0-					
FEDERAL FUNDS						
OTHER (Specify Source)						

POSITIONS None

FULL TIME						
PART TIME						
TEMPORARY						

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

There is no additional cost for the Division of Elections to place an issue before the voters as that is the Division's function.

IV. DATE 01-21-83 PREPARED BY Wally Harrison, Director, Admin. Svcs.
AGENCY Legislative Affairs Agency
PHONE 465-3850

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

33-001 (Rev. 12/82)

irst Senate committee endorses session limit

White
ıreau Bureau

ıeau — A Senate committee proved a new version of a pro- constitutional amendment to he lengths of legislative ses-

er dickering with three ver- of the limit, the Senate Tran- tion Committee approved a over the jesting protests of its nan, Juneau Democrat Bill

e latest proposal, put forth by Ed Dankworth, R-Anchorage, limit sessions to 120 days. That could be extended once for 15 days if a majority of each house agreed.

Dankworth said he first wanted a 10-day extension, but he compromised with Senate President Jay Kerttula, D-Palmer, who wanted a 20-day extension.

The Dankworth version replaces three other proposals:

— One that would limit sessions to 120 days with no extensions. This passed the House.

— One that called for a vote by lawmakers on the 110th day on whether they want to adjourn by the 120th day. This passed the Transportation Committee last week. But Ray retrieved it to offer a bill that would be more acceptable to the House and to senators who want a strict limit on session lengths.

— A new committee proposal, which would call for a vote on the 110th day on whether the session should extend beyond 120 days.

The issue comes on the heels of a record 165-day session last year and in the midst of an effort by House leaders to adjourn as promised by the 105th day — April 25 — this year. The main sponsor of the resolution is House Speaker Joe Hayes, R-Anchorage.

Slightly more than half the states in the nation have session limits, ranging in length from 20 days for the second-year session in Utah to 125 days for the second session in Mississippi and 140 days for Texas' biennial session.

In addition to regular sessions, special sessions may be called by all governors and by 23 legislatures (including Alaska), according to the National Conference of State Legislatures.

Ray made several joking attempts Tuesday to quash the resolution quietly. He said he adamantly opposes a limit because it constrains one branch of government to the benefit of the executive and judicial branches.

But Ray clearly was outnumbered by fellow committee members Dankworth, Kerttula and Kenai Republican Don Gilman, all supporters of a limit.

Ray took a voice vote on the new version. "All those in favor of (the resolution), drop dead," he said jokingly. Then he said his lone "no" vote carried.

Kerttula also has urged that the Legislature be careful in muddling with one branch of government without checking how that action affects the other branches.

The Senate president noted that the Legislature generally doesn't meet on weekends, and the House is meeting only three days a week this year.

Dankworth said a more effective limit would be to restrict legislators to no more than a specific number of terms in office.

Ray argued that constituents expect miracles from legislators, "and now they expect to put a time limit on when the miracles are going to happen. . . .

"I don't think you could have done a competent job in 120 days in the last five years," he said.

My Turn

Empire 4/12

Session Limits

By SUZANNE JANSON

I favor a no-nonsense, straight-forward limitation on the length of our Legislative sessions. Parkinson's Law states "work expands to fill the time allowed." Applied to the Legislature, the Executive Branch or private enterprise, it is not only appropriate but virtually a truism! Any organization to be efficient and thereby effective, must plan and establish standards of operation and goals.

Each year one of the major work products of our legislature is the state budget. It amounts to a dollars and cents plan of operation for the coming year and is based on the individual goals for the many governmental functions which make up our state government. It also imposes limitations on government functions in the sense that they cannot do what they are not funded to do! In a very literal sense we can say that what funding is made available limits what time is available—because time is money and visa versa.

Can you imagine awarding a contract to construct a building without limiting how long it would take or how much it would cost? As taxpayers that's exactly what we are doing each year with our legislature. We are awarding a contract to construct our state with no limitation on how long it will take! Like Parkinson's Law we can say, "the Legislaure expands to fill the time allowed"—or—"the Legislature expends what funds are available." Remember—time is money and visa versa.

Let's review a few facts which to me are very relevant to the question of limiting the length of our legislative sessions. Thirty-three other states limit their sessions with the average being 76 days. Limits range from 20 to 140 days, with the vast majority being between 60 and 90 days. Here, in Alaska, no session exceeded 95 days until 1970, when we endured 147 days. Since that time there have been two sessions less than 100 days—in 1973 and 1974—when the House was led by a Republican under coalition—as is now the case. In 1972 and 1978 the sessions lasted 161 days, and in 1980 it was 145 days. But last year was the topper! Last year our legislature spent 165 days in session under the "leadership" of a House Speaker who is a present member of our local delegation! A new and regretable record, which was made even worse when you consider that it took the leadership 22 days just to organize the House!

Please bear in mind that each and every day of the sessions cost YOU and I about $40,000.00—just to run the Legislature! Finally, it has been shown that millions of dollars are added to the state budget each day that the Legislature remains in free-conference. Interestingly, last year's record length session produced our state's largest ever budget!

When I consider the issue of limiting the length of the legislative session, I can't help but remember the fact that we Alaskans are just slightly over 400,000 strong—small in population when compared to our sister states to the South. Here are some more facts to consider. The 33 states that limit their length of sessions have an average population of 3,105,230 compared to our 407,500. Again, their average limited session is 76 days, whereas our average session length has been 135 days, and the curve continues to climb upward! Consider Texas—oil and natural resource rich, a widely diversified large state with many of the like cultural variances that Alaska has, but with over 13 million people with all of the attendant social problems and issues relevant to 13 million people, and Texas has been able to limit their legislature to 140 days in session!

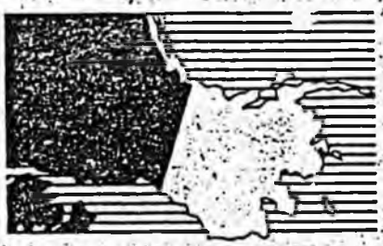
I find no sensible reason not to limit our Legislative sessions. You and I—the people—should decide this issue—not the Legislature! We must insist on a "Can-Do" spirit from our legislators—one which is very simply a working partnership between them and us!

News 3/14

Metro/state

Hearing promised on session limit

By JON MATTHEWS
Daily News reporter



JUNEAU — House Speaker Joe Hayes, R-Anchorage, said Monday he hopes public opinion will steer the Senate into acting on a House-passed proposal to limit the length of legislative sessions.

And Senate Transportation Chairman Bill Ray, D-Juneau, said Monday he is planning to hold a hearing on the measure at an unspecified future date.

Senate President Jay Kerttula, D-Palmer, last week upset House leaders when he referred the proposed 120-day session limit to Ray's Transportation Committee. The referral to the unrelated panel was seen as an early, Senate-backed death for the constitutional ballot question, one of the conservative House coalition's priorities for the 1982 legislature.

"I tend not to let myself get too angry," said Hayes. "But I think it's fairly obvious that the referral of a constitutional issue to Transportation is clearly outside the scope of the subject matter of the committee."

Ray said on the Senate floor that he believes his transportation panel can and will take a balanced look at the session limit issue, with some members in favor of limiting sessions and others, including Kerttula, still undecided.

Ray said a hearing will be held possibly within the next 10 days but that his committee must first deal with such issues as the proposed state takeover of the Alaska Railroad.

"I'll make some public comments like this," said Hayes, asked how he would react to the Transportation Committee referral. "But I think it's going to be fairly obvious to the public that several members of the Senate are soft on limiting session length.

"I think there is a lot of public support for the issue."

bill may die in Senate

The Associated Press

JUNEAU — A House-passed resolution calling for a constitutional amendment to limit the length of legislative sessions may be doomed to a slow death in the Senate.

Senate President Jalmar Kerttula, D-Palmer, Friday referred the measure to the Judiciary and Transportation committees for hearings.

The House resolution is expected to bog down in the Transportation Committee.

Asked when the resolution might get a hearing, Transportation Chairman Bill Ray, D-Juneau, said "this afternoon" and chuckled. Ray joked that he may hold public hearings on the proposed constitutional amendment in Anaktuvuk Pass and Unalakleet.

The Senate Judiciary Committee has twice voted down a Senate resolution that would limit the length of legislative sessions to 120 days with a possible seven-day extension.

The House version of the legislation would limit regular sessions to 120 days with no extension allowed.

Judiciary Chairman Pat Rodey, D-Anchorage, said a majority of the committee doesn't favor the resolution, "so, I could not move it" to a vote of the full House.

Rodey said he supports the resolution.

He said his committee may consider the Senate version of the legislation for a third time.

If approved by the legislature, the session-limiting plan would need to be ratified by voters.

News 3/13

Limit

(Continued from page A-1)

who's pushing the proposal in the Senate, said last week he is one vote short of the 14 needed to put the limit on the ballot. One observer said today that the seven "no" votes are just as adamant against the limit as the 13 'yes' votes are for it.

Senate President Jay Kerttula, D-Palmer, said today he sent the resolution to Ray's panel for two reasons: that committee isn't too busy now and some of the Senate's top leaders, including himself, sit on the five-member panel.

Ray said the complaints about the measure going to him are a slap in the face. "What are people trying to say, that I'm not competent to conduct a fair hearing?" Ray asked. "You can rest assured it will get a fair hearing."

He added that he's never supported a limit. "The courts are asking for more judges because they have more work.

"The administration, they're busier all the time. We give them 300 to 500 new employees every year. And yet you want to cut down on the Legislature." It's a separation of powers issue, he said.

"I think we have so many complicated problems. When the critics say we're not working, God, we're working all the time,' he said.

The Alaska Legislature, unlike most state legislatures, has no revenues that are committed for specific programs, he said. All money goes into the state's general fund, and the Legislature must sort through competing interests in allocating that money, he said.

"You're talking about hundreds of millions of dollars. They want us to just come in and make snap judgments?"

Also, the governor frequently drops major bills on the Legislature late in the session, Ray said, referring to Gov. Jay Hammond's proposal for a permanent fund dividend backup plan introduced last week. The Legislature needs time if it's to handle these bills properly, he said.

Other members of Ray's committee are split on the proposed limit.

Sen. John Sackett, R-Ruby, said a session limit "just limits ourselves."

Sens. Ed Dankworth, R-Anchorage, and Don Gilman, R-Kenai, both said they support the limit. Dankworth said he thinks 120 days is too long. Gilman said he might make a motion to move the bill from committee. But he said he must be careful not to cross any of his powerful colleagues who oppose the limit. "I don't want to get my head pinched off," he said.

Kerttula said he favors a limit. But any proposal must contain a provision to extend the limit. The resolution contains no such wording as it came from the House.

Panel waters down session-limit

By The Associated Press

A watered-down version of a House resolution calling for a statewide vote on a constitutional amendment limiting the length of legislative sessions emerged from the Senate Transportation Committee on Tuesday.

It is "better than nothing, but not much," said House Speaker Joe Hayes, R-Anchorage.

The committee's resolution calls for the House and Senate to vote on or before the 120th day of regular legislative sessions on whether to adjourn.

The resolution passed by the House would mandate adjournment on the 120th day.

Proposed amendments to the Alaska Constitution must be approved by a two-thirds vote in each house and ratified by voters.

Transportation Chairman Bill Ray, D-Juneau, said his committee's proposal gives voters what they want, the opportunity to see their representatives held publicly accountable for the length of a session.

At the same time, he said, it gives the Legislature the flexibility to remain in session as long as necessary to finish important business.

Sen. Bob Ziegler, D-Ketchikan, told the Transportation Committee the House plan is too restrictive.

"The idea, as great as it might sound, is neither wise nor responsible," Ziegler said. "Hasty decisions are invariably bad decisions."

Sen. Ed Dankworth, R-Anchorage, comparing the Legislature to the board of directors of a major land and oil company, wondered whether legislative business could be done in 120 days each year.

"I really believe we could get our work done in 90 days," Hayes told the committee. "You need to put some time constraints on whatever project you undertake.

"Psychologically and otherwise," Hayes said, "there are certainly some merits to it."

Dankworth said he favors a limit on the length of legislative sessions, but noted that in his six years as a lawmaker the time needed to complete the Legislature's business has varied.

The Alaska Legislature does "more than any other state would dream of doing," he said, pointing to last year's deliberations on how to appropriate $6 billion.

"That takes a lot of time and a lot of debate," Dankworth said.

Kneely Taylor of Common Sense for Alaska, however, said shorter sessions mean better government.

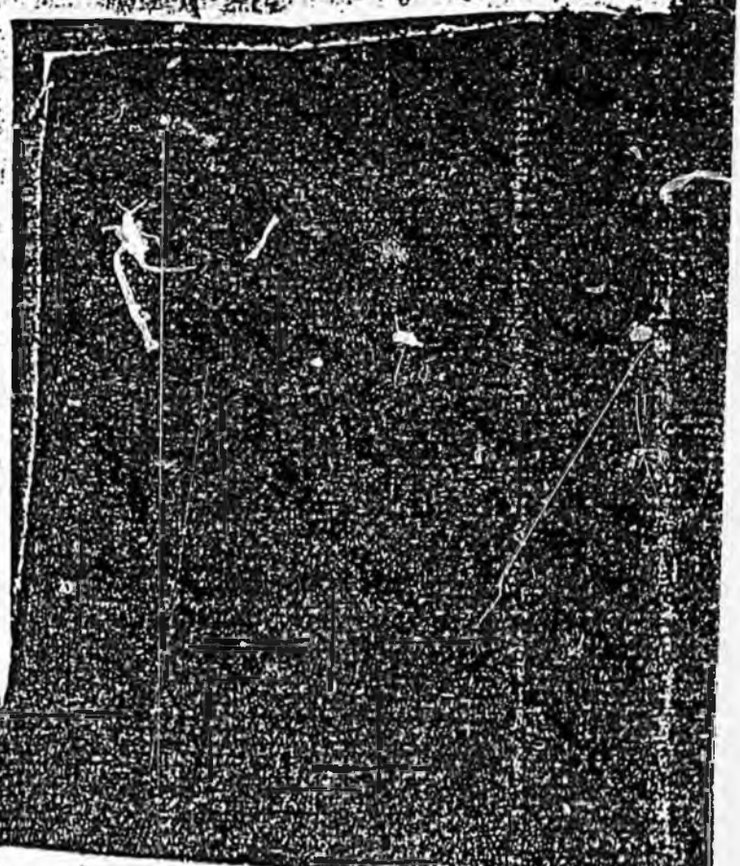
Common Sense is concerned about what it sees as "the trend toward a full-time professional Legislature," he said.

George Kruse, the president of the Alaska State Chamber of Commerce, echoed the concern.

"The concept of a citizen's Legislature is one to which our members subscribe," he said.

Paula Ziegler, president of the League of Women Voters of Alaska, said the organization "favors the idea of stopping somewhere along the line and voting on the matter," but she said the league faced the same predicament as the Transporation Committee in trying to decide when that vote should be taken.

The resolution (SCSCSHJR12 Transportation) moves to the Senate Judiciary Committee where a resolution limiting legislative sessions to 120 days, plus a possible seven-day extension, has twice died.



House's session limit bill changed

The Associated Press

JUNEAU — A watered-down version of a House resolution calling for a statewide vote on a constitutional amendment limiting the length of legislative sessions emerged from the Senate Transportation Committee Tuesday.

The committee's resolution calls for the House and Senate to vote on or before the 120th day of regular legislative sessions on whether to adjourn. The resolution passed by the House would mandate adjournment on the 120th day.

Proposed amendments to the Alaska Constitution must be approved by a two-thirds vote in each house and ratified by voters.

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Sen. Ed Dankworth, R-Anchorage, said he wonders whether legislative business could be done in 120 days each year.

"I really believe we could get our work done in 90 days," said House Speaker Joe Hayes, R-Anchorage. "You need to put some time constraints on whatever project you undertake.

Kneely Taylor of Common Sense for Alaska said shorter sessions mean better government. Common Sense is concerned about what it sees as "the trend toward a full-time professional legislature."

Paula Ziegler, president of the League of Women Voters of Alaska, said the organization "favors the idea of stopping somewhere along the line and voting on the matter," but she said they faced the same predicament as the Transportation Committee in trying to decide when that vote should be taken.

The resolution moves to the Senate Judiciary Committee where a resolution limiting legislative sessions to 120 days, plus a possible seven-day extension, has twice died.



90-day session limit termed unrealist

by Ralph Nichols
Times Writer

Times 2/23

Members of the Anchorage Chamber of Commerce were told Monday that it isn't realistic to get a proposed constitutional amendment limiting legislative sessions to 90 days through the Legislature.

Rep. Richard Halford, R-Chugiak, said it "is a case where you cannot allow the perfect (a 90-day limit) to get in the way of the better (a 120-day limit)." And, he said, getting a proposed amendment limiting legislative sessions to 120 days on the November ballot "is within the realm of possibility."

Sen. Tim Kelly, R-Anchorage, agreed. He said "somthing is better than nothing," adding that his resolution to limit legislative sessions to 120 days with a provision for one seven-day extension probably will be supported by every senator from Anchorage.

Kelly said most of the opposition to limiting legislative sessions is coming from lawmakers from the Southeast and the Bush.

The comments came during a chamber luncheon program intended to update the Anchorage business community on various legislative activities. Members of the audience spoke with their representatives via a live television hookup.

Rep. Joe Montgomery, R-Anchorage, said the Legislature supports education statewide, and that any budget cuts in appropriations for either public schools or the University of Alaska "will be made very, very cautiously."

Taking a look at overall budget-cutting efforts, Rep. Sam Cotton, D-Eagle River, said he doesn't disagree with the general philosophy of reducing the state's general operating budget for the 1983 fiscal year. But, he continued, "there is not enough thought into the consequences of reducing the budg

Cotton singled out consum
tection, day care services, a
nicipal assistance as just thre
where he thinks the impact o
cutbacks hasn't been conside
equately.

Sen. Pat Rodey, D-Anc
said the state urgently needs
anism to administer capital
ments, and Rep. David Cuddy
chorage, said he favors co
tighter controls on capital
ment with a limitation o
spending.

Referring to a proposal
capital investments admini
an independent board, much
investment fund, Rodey sa
Legislature does not really
give up its power over (capi
propriations."

Rep. Ramona Barnes, R-
age, lobbied for a bill crackin
on driving while intoxicated,
"there should never be an exc
a drunk driver to get beh
wheel of a vehicle." An
Charles Anderson, R-Anc
called a new drug bill "a va

Session limit plan assured of fair hearing

Bill White
Times Juneau Bureau

Times 3/15

Juneau — Senate leaders today denied accusations by House Speaker Joe Hayes, R-Anchorage, that they are trying to kill a proposal to limit legislative sessions to 120 days.

Sen. Bill Ray said he will give a proposal to limit legislative sessions to 120 days a fair hearing next week, even though he personally opposes such a limit.

The Juneau Democrat chairs the Transportation Committee, to which the proposed constitutional amendment was referred in an unusual action. Normally the proposal would go to the State Affairs Committee, and observers were saying over the weekend that the measure was given to Ray to kill it.

Hayes said that giving the bill to Ray's committee "is an effort to kill it. The Senate used to send bills to Labor and Commerce (Committee) when they wanted to kill them. Apparently the committee of no return this year is Transportation. I look at it as someone being soft on the bill."

The House passed the measure last week, a year after the Legislature met for a record 165-day session.

Sen. Tim Kelly, R-Anchorage,

(See LIMIT, page A-4)

THE LEGISLATURE OF THE STATE OF ALASKA
THIRTEENTH LEGISLATURE

FISCAL NOTE

I. REQUEST
Bill/Resolution No. House Joint Resolution No. 2
Title "Proposing an amendment to the Constitution of the State of Alaska limiting the length of regular sessions of the legislature."
Requested by House Judiciary Date 1/20/83

II. FISCAL DETAIL
Agency Affected Office of the Governor
Program Category Affected Division of Elections
BRU, Program, Or Subprogram(s) Affected Division of Elections
(Note: If more than one budget component is affected, separate line-item amounts and funding for each component in the analysis section.)

EXPENDITURES (Thousands of Dollars)

	FY 83	FY 84	FY 85	FY 86	FY 87	FY 88
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 COMMODITIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS,CLAIMS,ETC.						
TOTAL	-0-	-0-	-0-	-0-	-0-	-0-

FUNDING (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER (Specify Source)						

POSITIONS

NONE

FULL TIME						
PART TIME						
TEMPORARY						

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

No additional fiscal impact is anticipated with House Joint Resolution No. 2.

Danith D. Arnoldt

IV. DATE 1/20/83 PREPARED BY Danith D. Arnoldt, Deputy Director
AGENCY Office of the Governor, Division of Elections
PHONE 586-6181

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

33-001 (Rev. 12/82)

HJR

5

COMMITTEE REPORT

HOUSE

FURTHER:

(7)
1/17/83

Date: 4-13-83

Mr. Speaker:

The Committee on JUDICIARY has had HJR 5

proposing an amendment to the Constitution of the State of Alaska relating to amendment of regulations by the legislature.

under consideration and reports it back as follows:

[X] do pass [ ] do not pass

[ ] do pass with attached amendments(s)

[ ] replace with CS for _____ [ ] same title [ ] new title

and recommends _____

[ ] AND attaches a "Letter of Intent" [ ] New Fiscal Note [X] Zero Fiscal Note Attached

[ ] reports it back without recommendation

[ ] referred to the _____ Committee

MEMBERS SIGNING
DO PASS

_____

_____

_____

_____

_____

_____

_____

_____

_____

MEMBERS HAVING
OTHER RECOMMENDATIONS:

_____

_____

_____

_____

_____

_____

_____

CHAIRMAN

H 60

STATE OF ALASKA

Bill Sheffield, Governor

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

POUCH K – STATE CAPITOL
JUNEAU, ALASKA 99811
PHONE: (907) 465-3600

April 13, 1983

The Hon. Charlie Bussell
Chairman
House Judiciary Committee
Alaska State Legislature
Pouch V
Juneau, AK 99811

Re: HJR 5 (constitutional amendment on annulment of regulations)

Dear Representative Bussell:

I understand that House Joint Resolution No. 5 is on your committee's agenda for today. This letter is to briefly express the Department of Law's opposition to that resolution.

The amendment proposed by HJR 5 is virtually identical to the Eleventh Legislature's CS HJR 82 am. (The only difference between the two amendments is that HJR 5 provides for the annulment to take effect 30 days after approval of the resolution, whereas the earlier version provided that it would take effect on the date the current resolution is approved.) That amendment was rejected by the voters on November 4, 1980 by a vote of 82,010 to 58,808. That is a substantial margin, and we should assume that the voters knew what they were doing. They should not be repeatedly subjected to the same ballot issue.

As you know, these proposals for constitutional amendments are intended to reverse the effect of the Alaska Supreme Court's decision in State of Alaska v. A.L.I.V.E Voluntary, 606 P.2d 769 (1980). The essence of that court decision, which held invalid the statute (AS 44.62.320(a)) that provided for legislative annulment of administrative regulations by concurrent resolution, is that (1) procedurally and substantively valid regulations have the force of law, (2) an "annulment" of a regulation has the effect of changing the law, and (3) when the legislature changes the law, it must do so by following the constitutional procedures for law-making. Since AS 44.62.320(a)'s concurrent resolutions do not follow the procedures for law-making, the court held that that statute was invalid.

As the court pointed out in Plumley v. Hale, 594 P.2d 497, 500 (Alaska 1979), the various constitutional provisions specifying the mechanics of legislation are "designed to engender

a responsible legislative process worthy of the public trust." Those provisions are "to ensure deliberation prior to passage, to ensure that the requisite majority of each house affirmatively votes to enact a bill into law, and to provide a public record of the vote cast by each legislator." Id. Those procedures include, for example, the single subject rule of art. II, sec. 13; the requirement of separate readings on separate days, under art. II, sec. 14; the requirement that the ayes and nays on final passage be recorded in the legislative journal, under art. II, sec. 14; and, of course, the provisions on gubernatorial veto, under art. II, secs. 15 and 16.

Those provisions provide for public accountability, public notice, and an opportunity for the public to prepare for the application of new law. Regulations adopted under the Alaska Administrative Procedure Act require public notice, opportunity for public comment, legal review by the Department of Law, and a deferred effective date. The current version of this proposed constitutional amendment has improved upon some earlier versions by the provision for a thirty-day deferral of the effective date, but neither the other constitutional protections nor the corresponding Administrative Procedure Act protections would be applicable to the annulment of an administrative regulation.

The proposed constitutional amendment before you is not a "mere adjustment" or technical correction of the constitution. It proposes a substantial realignment of the constitutionally specified powers. Although the adoption of administrative regulations by an administrative agency is considered a "quasi-legislative function," it is an essential part of the executive branch's execution or implementation of a statute. The proposed amendment, by providing for legislative annulment, by means a concurrent resolution, provides for the legislature to make what could be considered executive-branch decisions -- executing a program created by statute. This concentration of power in the legislative branch -- both enacting the program statute and then participating in executing it -- does not reflect a sound policy in the face of the separation-of-powers doctrine as expressed in the Federalist Papers and other writings. That doctrine, of course, involves a blending or sharing of powers. The purpose is to avoid an inappropriate concentration of power.

In addition, when the legislature makes a simple negative statement by merely annulling a regulation, it interferes with the executive-branch's execution of the statute and offers nothing in its place. For example, the regulation involved in the A.L.I.V.E. Voluntary case was a Department of Revenue regulation dealing with permits for such things as lotteries. It contained several elements: a dollar limitation, a time limitation, and a provision for the cumulative effect of the value of individual prizes in reaching the dollar limitation. When the legislature annuls a provision such as that, is the agency to

interpret that annulment as meaning that the dollar limitation is not appropriate, or that the time period is not appropriate, or that the cumulative effect is not appropriate? If the agency concluded that the legislature must have been primarily concerned about the dollar limitation, and adopted a new regulation specifying a different dollar amount, would it be guessing right?

I do not believe that anyone questions the legislature's right to review the executive-branch's execution of the statute. Nor does anyone question the legislature's right to enact statutes setting guidelines and imposing limitations or prohibitions. We may disagree as to the merit of a particular guideline or prohibition, but not as to the right of the legislature to enact it (subject, in some circumstances, to the applicability of other constitutional provisions).

The Alaska Administrative Procedure Act (AS 44.62) provides a carefully structured system with many opportunities for legislator-involvement in the adoption of administrative regulations. If one of those opportunities was missed, or proved otherwise unavailing in some circumstance, further legislation might be appropriate. Such legislation would, of course, supersede the offending regulation.

Chadha v. Immigration and Naturalization Service, 634 F.2d 408 (9th Cir. 1980), is currently on appeal to the United States Supreme Court. That case presents to the court the question of the validity of what has become known as the "legislative veto." A decision is expected by June of this year. Your committee might also find helpful the discussion in the official commentary to the 1981 Revised Model State Administrative Procedure Act, promulgated by the National Conference of Commissioners on Uniform State Laws; see, especially, the art. III introductory comments which discuss the legislative/executive/public interrelationship regarding administrative regulations.

Thank you for this opportunity to comment. I would be happy to discuss the matter further with you at your convenience.

Yours truly,

Norman C. Gorsuch
Attorney General

By: Arthur H. Peterson
Arthur H. Peterson
Assistant Attorney General

AHP/jb

cc: Emil Notti
Legislative Assistant
Governor's Office

STATEMENT IN FAVOR OF BALLOT PROPOSITION NO. 1

The legislature, when it writes a law, cannot foresee all of the possible details involved in carrying it out. The appropriate administrative agency is therefore allowed to write regulations which spell out who does what, when, where, and how. If the agency does no more than this no problem is created.

Unfortunately agency regulations are not always consistent with the intent the legislature had in passing the law. Sometimes an agency will get carried away and put out regulations that cause an unnecessary burden for the citizens. The First State Legislature realized this and provided a simple solution. The legislature could, by a concurrent resolution passed by a majority of each house, annul an administrative regulation. Such a resolution is not subject to the governor's veto.

The Alaska Supreme Court recently held, in a 3-2 decision, that the legislature must use a bill rather than a resolution to annul administrative regulations. But a bill is subject to the governor's veto. The governor can hardly be expected to approve a bill overruling his subordinates, who put out the regulation in the first place. The present governor has already vetoed one such bill.

The court ruling gives agency regulations equal standing with laws, *even though no single person elected by the voters has approved them.*

Our government is wisely based on dividing power among the three branches: legislative, executive and judicial. The current situation gives entirely too much power to the executive branch. Your approval of this constitutional amendment will restore the better balance under which the state operated from 1961 to 1980.

— Chair[illegible] H. Parr
Chairman, House Judiciary Committee
Alaska State Legislature

STATEMENT AGAINST BALLOT PROPOSITION NO. 1

This is still another proposal by the legislature to free itself from the checks and balances of our constitution. Under the constitution, the legislature has all the power it needs to make laws and annul administrative regulations. This proposal does not aid the public in any way. What it does is allow the legislature to exercise its power to annul regulations in disregard of the constitutional requirements that each bill have a single subject, that each bill have three readings in each house, and that there be a recorded vote of the ayes and nays on final passage. It would also free the legislature from the executive veto and it would allow it to ignore the prohibition against special and local legislation.

The Alaska Supreme Court has recently ruled that the legislature must abide by the constitution's checks and balances on its power whenever it exercises that power, including when it acts to annul regulations. This amendment is intended to overrule the court's decision and erode the constitution's safeguards. It aids legislators, not the public, and it should be rejected.

— Katherine D. Nordale
Delegate to the Alaska
Constitutional Convention,
1955-1956

Arguments printed on this page are the opinions of the authors and have not been checked for accuracy by any official agency.

BALLOT PROPOSITION NO. 1

LEGISLATIVE ANNULMENT OF REGULATIONS

Constitutional Amendment

(Committee Substitute for House Joint Resolution No. 82 Amended)

SUMMARY

(As it will appear on the November 4, 1980 General Election Ballot)

This proposal would permit the legislature to annul, by adopting a resolution, regulations adopted by state agencies. Annulment of regulations by resolution was authorized by the First State Legislature in 1959; however, in 1980 the Alaska Supreme Court held that the constitution permits the legislature to annul a regulation only by passing a bill, which requires three readings of the bill and a roll call vote which is recorded. The procedures for adopting resolutions are governed by legislative rules and require only the approval of the resolution by voice vote of a majority of both houses. A bill passed by the legislature annulling a regulation could be vetoed by the governor or repealed by referendum. A resolution annulling a regulation could not.

BALLOT FORM:

A vote "FOR" adopts the amendment.
A vote "AGAINST" rejects the amendment.

FOR ☐
AGAINST ☐

VOTE CAST BY MEMBERS OF 11TH STATE LEGISLATURE ON FINAL PASSAGE

Senate	(20 members):	Yeas 18	Nays 0	Absent or Not Voting 2
House	(40 members):	Yeas 36	Nays 0	Absent or Not Voting 4

LEGISLATIVE AFFAIRS AGENCY SUMMARY

(As required by law)

This proposal would add a new section, section 22, to Article II of the state constitution. If adopted, the proposal would authorize the legislature to annul or set aside a regulation which has been adopted by a state department or agency. In order to annul a regulation, the legislature could adopt a concurrent resolution by approval of the resolution by majority vote of the membership of each house of the legislature. The resolution specifies the date on which the annulment of a regulation would take effect.

FULL TEXT OF PROPOSED CONSTITUTIONAL AMENDMENT

SECTION 22. ANNULMENT OF REGULATIONS. The legislature by a concurrent resolution approved by a majority vote of the membership of each house may annul a regulation adopted by a state department or agency. The annulment of the regulation is effective on the date the concurrent resolution is approved by both houses unless the concurrent resolution specifies a different date.

Alaska State Legislature

House of Representatives

Representative Mike Szymanski

SR-A-Box 1304B
Anchorage, Alaska 99502
Phone (907) 349-3373

While in Session:
Pouch V
State Capitol
Juneau, Alaska 99811

Official Business

MAR 1983
RECEIVED

MEMORANDUM

DATE: March 26, 1983

TO: HOUSE JUDICIARY COMMITTEE

Rep. Charlie Bussell
Rep. Ramona Barnes
Rep. Don Clocksin
Rep. Joe Hayes
Rep. John Liska
Rep. Ron Wendte

FROM: Rep. Mike Szymanski

SUBJECT: Proposed HJR Amendment

Attached is additional information which should be included in the packet previously forwarded to you regarding the proposed HJR amendment relating to Annulment of Regulations.

Attachment

ALASKA STATE LEGISLATURE
HOUSE OF REPRESENTATIVES
RESEARCH AGENCY

Pouch Y, State Capitol
Juneau, Alaska 99811
(907) 465-3991

March 24, 1983

MEMORANDUM

TO: Representative Mik Szymanski

FROM: Susan Brody, Director SEB

RE: Regulation Review by the Legislature
Research Request 83-87 (additional information)

As a follow-up to our memorandum of February 25, we have compiled additional information on the attempts by the legislature to annul executive branch regulations by concurrent resolution.

The attached chart lists concurrent resolutions pertaining to regulations which were introduced in both the House and Senate prior to the 1980 Alaska Supreme Court A.L.I.V.E. decision. As shown, we have identified 22 legislative attempts to annul regulations during the period from 1959 to 1980. Of these 22 attempts, only four passed both the House and Senate and were read by the governor.

The two most recent successful attempts to annul regulations by concurrent resolution were made during the Tenth Alaska Legislature (1977-78); copies of these two resolutions are attached (SCR 12 and SCR 32).

I hope the information provided here and in our earlier memorandum is of use to you. Please let us know if you would like us to perform additional research on this topic.

SB/dp

Attachments

LEGISLATIVE ATTEMPTS TO ANNUL REGULATIONS
BY CONCURRENT RESOLUTION

Legislature	Res. #	Subject	Status
1959-1960	SCR 18	Annulling certain Dept. of Fish & Game regs.	read
	HCR 26	Annulling certain Dept. of Fish & Game regs.	expired
1965-1966	SCR 1	Annulling certain Dept. of Revenue regs.	expired
	HCR 53	Annulling certain Dept. of Fish & Game regs.	expired
1969-1970	SCR 27	Annulling certain Dept. of Public Safety regs.	expired
1971-1972	SCR 8	Annulling certain Dept. of Revenue regs.	expired
	HCR 3	Annulling certain Dept. of Revenue regs.	expired
	HCR 48	Annulling certain Dept. of Public Safety regs.	expired
1973-1974	HCR 54	Annulling certain Dept. of Env. Conservation regs.	read
	HCR 30	Annulling certain Dept. of Env. Conservation regs.	expired
	SCR 19	Annulling certain Dept. of Public Safety regs.	expired
	HCR 15	Annulling certain Dept. of Env. Conservation regs.	expired
1975-1976	HCR 47	Annulling certain Dept. of Natural Res. regs.	expired
	HCR 133	Annulling certain DHSS regs.	expired
1977-1978	HCR 136	Annulling certain DHSS regs.	expired
	SCR 8	Annulling certain DCED regs.	expired
	SCR 12	Annulling certain DCRA regs.	read
	SCR 32	Annulling certain Postsecondary Education Comm. regs.	read
	SCR 70	Annulling Guide Licencing & Contal Board regs.	expired
1979-1980	HCR 24	Annulling certain DNR regs.	expired
	HCR 31	Annulling Certain DF&G regs.	expired
	SCR 31	Annulling certain DNR regs.	expired

Source: House Research Agency, March 1983.

STATE OF ALASKA
FISCAL NOTE

Revision Date , 1983

I. REQUEST

Bill/Resolution No.: HJR 5
Title: "...annulment of regulations..."
Sponsor: Repr. Szymanski
Requestor: House Judiciary Committee

II. FISCAL DETAIL

Agency Affected: Department of Law
Program Category Affected: General Gov
BRU, Program of Subprogram(s) Affected
Legal Services

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 83	FY 84	FY 85	FY 86	FY 87	FY 88
OPERATING						
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 COMMODITIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND	-0-	-0-	-0-	-0-	-0-	-0-
FEDERAL FUNDS						
OTHER (Specify Source)						

POSITIONS:

FULL-TIME	-0-	-0-	-0-	-0-	-0-	-0-
PART-TIME						
TEMPORARY						

III. SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

N/A

IV. ANALYSIS: Attach a separate page for any Analysis

Prepared By: Richard I. Pegues Director
Division: Administrative Services Division
Phone: 465-3672
Date: April 13, 1983

Approved by Commissioner: Richard L. Pegues / FOR Norman C. Gorsuch, Attorney General
Department: Department of Law
Date: April 13, 1983

Distribution:
Original to Legislative Finance
Copy to Office of Management and Budget (for Legislature introduced bills)
Copy to Department (for Governor introduced bills)
Copy to Sponsor
Copy to Requestor (if different from Sponsor)

HJR 5
Fiscal Note
Analysis

While the Department of Law opposes this resolution, we will limit our comments here to fiscal matters. This proposed amendment to the state's constitution, if adopted in the 1984 general election, will probably not have a direct fiscal impact on the department's operations. The department is statutorily responsible for reviewing all regulations for legality and form to insure consistency with the appropriate enabling legislation. The department also drafts regulations on behalf of other departments and assists other departments in drafting regulations that deal with highly complex matters requiring the attention of an attorney. Obviously, some of the time spent in these efforts will have been lost whenever a regulation has been annulled. Larger departments, which have the responsibility for carrying out major state programs, and who routinely draft numerous program operating regulations inhouse, will probably experience an even greater loss of staff time. The absence of statutorily mandated regulations, which would occur after annulment, could result in litigation from an adversely impacted industry or public interest group. The impact of such litigation cannot, in this case, be estimated in advance and therefore no cost impact can be shown.

THE LEGISLATURE OF THE STATE OF ALASKA
THIRTEENTH LEGISLATURE

FISCAL NOTE

I. REQUEST

Bill/Resolution No. House Joint Resolution No. 5

Title Proposing an amendment to the Constitution of the State of Alaska relating to annulment of regulations by the legislature.

Requested by: House Judiciary Committee Date 4/13/83

II. FISCAL DETAIL

Agency Affected General Government

Program Category Affected Legislative Affairs Agency

BRU, Program, Or Subprogram(s) Affected Session

(Note: If more than one budget component is affected, separate line-item amounts and funding for each component in the analysis section.)

EXPENDITURES (Thousands of Dollars)

	FY 83	FY 84	FY 85	FY 86	FY 87	FY 88
100 PERSONAL SERVICES	-0-	-0-				
200 TRAVEL	-0-	-0-				
300 CONTRACTUAL	-0-	-0-				
400 COMMODITIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS,CLAIMS,ETC.						
TOTAL	-0-	-0-				

FUNDING (Thousands of Dollars)

GENERAL FUND	-0-	-0-				
FEDERAL FUNDS						
OTHER (Specify Source)						

POSITIONS None

FULL TIME						
PART TIME						
TEMPORARY						

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

Assuming that no special session is called for the express purpose of annulling regulations, it is estimated that this resolution will have no additional fiscal impact.

There is no additional cost to the Division of Elections to place an issue before the voters as that is the division's function.

IV. DATE 04-13-83 PREPARED BY Wally Harrison, Dir. of Admin. Svcs

AGENCY Legislative Affairs Agency

PHONE 465-3850

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

33-001 (Rev. 12/82)

LLIB 800 1450 (3 DOC) — admin reg review comm (McConkey & Arso = Vers)

CM13 HJR adj 5 (4 DOC) — House Judiciary - 13 April 83 — 1:40 (12pp)
Senate " 29 April 83 — 1:34 (11pp)
Senate " 13 May 83 — 1:36 (10pp)
Senate Rules 31 May 83 — 12:30 (43pp)

Judiciary Referral

March 23, 1983

Mr. Harry D. Treager - Director
State of Alaska
Division of Occupational Licensing
Pouch "D" - LIC
Juneau, Alaska 99811

Re: Board of Veterinary Examiners

Dear Mr. Treager:

At the request of our Board Chairman, Dr. Valerie Shepard, I am enclosing a copy of the exact wording, as previously voted upon by our Board, for the proposed Good Samaritan Statute. As you are aware, our Board has attempted to have this legislation introduced for over two years. As indicated in your recent telephone conversation with our Board Chairman, we very much appreciate your willingness to move this matter along by carrying the legislation directly to the Governor's Office.

Also, in regard to Darrell Miller's January 24, 1983 letter to the Board relative to new 1983 Legislation, the Board took the following action at our March 14, 1983 meeting:

1. Re: Senate Bill 25 concerning the Decompression Chamber for animal euthanasia, Our Board did not take a stand on this matter but will be willing to do so with a specific request for same. Kindly advise if this is the case.
2. Re: House Joint Resolution No. 5 concerning the annulment of regulations, our Board voted not to support this matter.
3. Re: House Bill 20 relating to public officials. The Board took no official stand though agrees in principle.
4. Re: House Bill 54 relating to regulations adopted under the Administrative Procedure Act. Our Board voted not to support this matter.

In regard to your February 22, 1983 Memo to our Board pertaining to the reduction of residency requirements on the Board of Veterinary Examiners (Sec. 08.98.010), our Board voted not to support this matter and feels that the State is best served by the current five-year requirement.

We appreciate having the above matters brought to our attention.

Sincerely,

Dody Froehlich

Dody Froehlich
Member - Board of Veterinary Examiners

enc:

cc: Dr. Valerie Shepard

Wording for "Good Samaritan Statute" as voted unanimously upon by the Board of Veterinary Examiners at the December 8, 1980 Meeting:

"A Veterinarian who, on his own initiative or other than at the request of the owner, gives emergency treatment for an injured animal either at the scene of an accident or when such animal is brought to him, shall not be liable in damages to the owner of such animal in the absence of gross negligence."

Alaska State Legislature

House of Representatives

Representative Mike Szymanski

SR-A-Box 1304B
Anchorage, Alaska 99502
Phone (907) 349-3373

While in Session:
Pouch V
State Capitol
Juneau, Alaska 99811

Official Business



April 22, 1983

M E M O R A N D U M

FROM: Representative Szymanski

SUBJECT: HJR 5

It is my understanding that HJR 5, relating to the annulment of regulations by the legislature, will be on the House floor on Monday, April 25, 1983.

I would appreciate your continued support of this legislation.

SELECT - QUERY
00002 1 SECTION EQ 24.30.035

AS24.30.035 DOCUMENT= 1 OF 1
CITATION Sec. 24.30.035.
CATCH LINE
FISCAL NOTES ON BILLS.

TEXT Before a bill is reported from the committee of first referral, there shall be attached to the bill a fiscal note containing an estimate of the amount of the appropriation increase or decrease which would result from enactment of the bill for the ensuing fiscal year and at least two succeeding fiscal years or, if the bill has no fiscal impact, a statement to that effect shall be attached. The fiscal note or statement shall be prepared by the department or departments affected. If the bill is presented by the governor for introduction in accordance with AS 24.30.060(b) and the uniform rules of the legislature, the fiscal note or statement shall be attached to the bill before the bill is introduced. An amendment or a substitute bill proposed by a committee of referral that changes the fiscal impact of a bill shall be explained in a revised fiscal note or statement attached to the bill.

R0601 * END OF DOCUMENTS IN LIST - ENTER RETURN OR ANOTHER COMMAND.

D.O. Referral

Charlie,

Concerning our conversation yesterday at Council. I thought the revised fiscal note language was there.

Bill Bunis

HJR

6



2-18-83

2-22-83
EB

Dear Rep. Bussell:

As a resident in Alaska for forty-two years, I strongly urge you to vote that Alaska approve E.R.A.

It is ridiculous to think that Alaska, where men and women almost always work together, would not be a state working for E.R.A. Thank you.

Ruth W. Sandvik

Ruth W. Sandvik
Box 526
Petersburg, Alaska 99833

MSG 83-00010078 PRTY 1 02/22/83 12:43:25 ORIG: LA01 IN= 0007 OUT= 0049
FROM: SHIRLEE, ANC LIO TO POMS, JUNEAU INFO
TARGET: LJHL JUNJ POM

2/22/83, SHIRLEE ANC LIO, 10090

HJR6

TO ALL MEMBERS, ALASKA LEGISLATURE

FROM LEILA WISE
123 WEST TWELFTH
ANCHORAGE, AK 99501 (H) 277-2345 (W) 265-4401

I ENCOURAGE YOUR SUPPORT OF THE RESOLUTION SUPPORTING THE FEDERAL EQUAL RIGHTS AMENDMENT.

xxxx

2/17/83, SHIRLEE ANC LIO, 0245

TO: ALL MEMBERS, ALASKA LEGISLATURE

FROM: PATRICIA BAIRD
1720 EAST 27TH
ANCHORAGE, AK [illegible] (W) [illegible]-2507

I URGE YOU TO SUPPORT SJR 1, ERA.

****

2/16/83, SHIRLEE AND LIO, 0963

TO: ALL MEMBERS, ALASKA LEGISLATURE

FROM: JANE BIERING
9641 BLACKBERRY STREET, #12
ANCHORAGE, AK 99502 (H) 243-8799 (W) 277-4564

I URGE YOU TO LEND YOUR STRONGEST ENDORSEMENT TO THE ERA
AND TO SUPPORT HJR 6.

A VOTE AGAINST THIS BILL IS AN ANACHRONISTIC REJECTION OF
THE FULL CITIZENSHIP OF WOMEN.

****



MSG 03-000080221 PDTY 1 02/16/03 11:44:30 ORIG: L000 IN: 0003 OUT:
FROM: KODIAK TO: JUNEAU
TARGET: LJNL SUBJ: PUBLIC OPINION MESSAGE

TO: ALL LEGISLATORS: HOUSE AND SENATE

FROM: BILL HERMAN
P.O. BOX 2225
KODIAK, AK 99615

RE: SJR 1, HJR 6

I WOULD LIKE TO EXPRESS MY SUPPORT FOR THE RESOLUTIONS INTRODUCED IN THE HOUSE AND THE SENATE FOR SUPPORT OF "ERA" AMENDMENT TO THE CONSTITUTION. THE TIME HAS COME FOR A CONSTITUTIONAL SUPPORT FOR THE WOMEN OF AMERICA AND THEIR EFFORTS TO ATTAIN EQUALITY.

TO: ALL MEMBERS OF THE LEGISLATURE

FROM: HURTIE SCHREGENTGST, [illegible] LATTA CIRCLE,
SRA BOX [illegible], ANCHORAGE [illegible]
344 [illegible]

PLEASE DO NOT SUPPORT ERA OR THE NATIONAL ORGANIZATION FOR WOMEN.
WHAT HAS HAPPENED TO [illegible] MORAL CHARACTER?

[illegible]

TO: ALL MEMBERS, ALASKA LEGISLATURE

FROM: NANCY GRAVES
1235 INLET PLACE
ANCHORAGE, AK 99501

ENTHUSIASTICALLY SUPPORTIVE OF SJR 1. WILL
BE WATCHING.



TARGET: LJHL SUBJ FOR

TO: ALL MEMBERS, ALASKA LEGISLATURE

FROM: TOM STEARNS
7700 COLLEGE
ANCHORAGE, AK 99504 (H) 337-6007 (W) 333-4535

PLEASE RECONSIDER THE APPOINTMENT OF MR. HAROLD REYNOLDS TO BE COMMISSIONER OF EDUCATION. IN HIS LAST POST IN MAINE, HE OPPRESSED THE PRIVATE SCHOOLS SO BADLY THAT THEY HAVE FILED A LAWSUIT, WHICH CAME TO COURT IN FEBRUARY 1983. ALASKANS DESERVE BETTER.

FROM: ROBIN TAYLOR
SRA BOX 21-R
ANCHORAGE, AK 99507
HOME: 349-2375
(NO WORK PHONE)

TO: ALL MEMBERS OF THE LEGISLATURE

MESSAGE: PLEASE SUPPORT SJR 1, IN SUPPORT OF REINSTITUTING A NATIONAL EQUAL RIGHTS AMENDMENT.

TO: ALL LEGISLATORS

FROM: DANIS GARMAN
3160 TONGASS
JUNEAU, AK. 99201
789-[illegible]

I SUPPORT ERA. WHILE WE HAVE MADE GREAT STRIDES IN ALASKA AND DO NOT HAVE AS EVIDENT A DISCRIMINATION AS IN OTHER PARTS OF THE COUNTRY WE STILL NEED TO PROTECT ALL WOMEN. THIS IS A LEGAL ISSUE NOT A MORAL ONE WHICH NEEDS YOUR CONCERN. I'VE EXPERIENCED BOTH DISCRIMINATION IN HOUSING AND EMPLOYMENT. PLEASE GIVE THIS MATTER YOUR DEEPEST CONCERN.

EOM**********

MSG 83-00009227 PRTY 1 02/17/83 11:16:37 ORIG [illegible] IN= 2004 OUT= 0007
FROM: SHIRLEE, AND LIG TO: FOMS, JUNEAU INFO
TARGET: LJNL SUBJ POM

2/17/83, SHIRLEE AND LIG, 0007

TO: ALL MEMBERS, ALASKA LEGISLATURE

FROM: SUZANNE MILLER
3117 EAST 8TH
ANCHORAGE, AK 99507 (H) 347-[illegible] (W) 247-2190

URGE YOU TO SUPPORT SJR 1. ALL ALASKAN WOMEN WILL BE WATCHING.

****

MSG 83-00008572 PRTY 1 02/15/83 14:45 [illegible] CRIL: LA02 IN= 0016 OUT= 00[illegible]
FROM: SHIRLEE ANC LIO TO POMS, JUNEAU INFO
TARGET: LJHL SUBJ POM

2/15/83, SHIRLEE ANC LIO, 8572



TO: SENATORS PETTYJOHN, FAIKS, STURGULEWSKI, RODEY, JOSEPHSON, V. FISCHER, HALFORD AND KELLY
REPRESENTATIVES CATO, COWDERY, PESTINGER, HAYES, FLOOD, BUSSELL, LINDAUER, ABOOD, TISCHER, UEHLING, CLOCKSIN, WARD, MARTIN, BARNES, FURNACE, LISKA, AND PHILLIPS

FEB 1983 RECEIVED

FROM: MARSHA S. HOLLOMAN
1110 WEST SIXTH
ANCHORAGE, AK 99501 (H) 274-5188 (W) 562-2062

I STRONGLY URGE YOUR SUPPORT OF SENATE JOINT RESOLUTION NO. 1, URGING CONGRESS TO PASS THE EQUAL RIGHTS AMENDMENT AND SEND IT OUT TO THE STATES FOR RATIFICATION.

****

MSG 83 00008603 PRTY 1 02/15/83 [illegible] ORIG: LA02 IN= 0017 OUT= 0017
FROM: SHIRLEE, ANC LIO TO: POMS, BUREAU INFO
TARGET: LJHL SUBJ: POM

2/15/83, SHIRLEE ANC LIO, 8603

TO: ALL MEMBERS, ALASKA LEGISLATURE

FROM: MARY CUNNINGHAM
2116 FAIRBANKS STREET, AP. 5
ANCHORAGE, AK 99503 (H) 276-3998

SJR 1

FEB 1983
RECEIVED



STRONGLY OPPOSE ERA. SUPPORT CAPITAL PUNISHMENT BILL, HB 140. WANT STRONG LAWS AGAINST CHILD ABUSE AND CHILD PORNOGRAPHY.

CONSIDER VICTIM FUND BILL SUCH AS WASHINGTON'S. CONVICTED FELONS ARE CHARGED MONEY WHICH GOES TO CRIME VICTIMS AND FAMILIES.
****

2/15/83, SHIRLEE ANC LIO, 8603

TO: ALL MEMBERS, ALASKA SENATE

SJR 1

FROM: EFFIE I. GRAHAM
2033 JAMESTOWN CIRCLE
ANCHORAGE, AK 99507 (H) 344-7556 (W) 786-1246

PLEASE SUPPORT SENATE RESOLUTION NO. 4, PRO ERA.

****

FROM: JOHN SHAW, DISTRICT 16, DEMOCRATIC CHAIRMAN
P.O. BOX V
PALMER, 99645 PH. 745-3329

DISTRICT 16 DEMOCRATS RECOMMEND CONTINUATION OF THE GOVERNOR'S COMMISION ON THE STATUS OF WOMEN.

FROM: ALISON SMITH, 3406 OREGON DRIVE, ANC 99503
272-0149 H 279-5516

THIS GREAT STATE DEPENDS UPON AN EDUCATED POPULACE. DECLINING OIL REVENUES SHOULD NOT MEAN A DECREASE IN THE QUALITY OF EDUCATION FOR OUR STUDENTS. THIS WOULD RESULT FROM CUTS IN THE ALASKA STUDENT LOAN PROGRAM. PLEASE CONTINUE THIS WORTHWHILE PROGRAM.

FROM: ALISON SMITH, 3406 OREGON DRIVE, ANC 99503
272-0149 H 279-5516

PLEASE SUPPORT HJR 6/SJR 1. THE ERA IS FOR HUMAN RIGHTS NOT JUST WOMEN'S RIGHTS.

SDM

MSG 8[illegible]6853 PRTY 1 02/08/83 12:04:22 ORIG: LA02 IN= 0006 OUT= 0041
FROM: SHIRLEE ANC LIO TO: POMS, JUNEAU INFO
TARGET LJHL SUBJ: POM

2/8/83, SHIRLEE ANC LIO, MSG 6853

TO: ALL MEMBERS, ALASKA LEGISLATURE

FROM: SHIRLEY HOGAN
5534 CHILKOOT
ANCHORAGE, AK 99504 (H) 333-0018



WE ARE VEHEMENTLY OPPOSED TO SENATE JOINT RESOLUTION NO. 1.

FEB 1983 RECEIVED

61

[illegible] DRIG LA05 IN= [illegible] OUT= [illegible]
[illegible] INFO TO POH, JUNEAU INFO
[illegible]

[illegible] POH, [illegible], ANS INFO MSG 7929

TO ALL MEMBERS OF THE LEGISLATURE

FROM MARY JANE KRAJNAK, 1401 EAST 10TH #3, ANCHORAGE 99501
277-6776 H 349-4629 W

PLEASE PASS SJR 1.

EOM

MSG 83-00006444 PRTY 1 02/04/83 17:41:01 ORIG: LA05 IN= OUT= 0068
FROM: MARCIE, ANC INFO TO: POM, JUNEAU INFO.
TARGET: LJHL SUBJ: P O M

2/4 POM, MARCIE, ANC INFO MSG 6444

TO: ALL MEMBERS OF THE LEGISLATURE

FROM: HOLLY PLOOG, 1300 WEST SEVENTH, ANCHORAGE 99501
H 278-3715 W 276-3644

PLEASE SUPPORT EQUAL RIGHTS FOR WOMEN AND VOTE YES ON SJR 1.

****

MSG.83-00006606 PRTY 1 02/07/83 13:09:36 ORIG: L001 IN= 0001 OUT= 0059
FROM: KODIAK TO: JUNEAU
TARGET: LJHL SUBJ: PUBLIC OPINION MESSAGE

TO: ALL LEGISLATORS HOUSE AND SENATE

FROM: MARY ELIZABETH RIDEN
GENERAL DELIVERY
KODIAK, ALASKA 99615 MESSAGE PHONE 486-6171

RE: EQUAL RIGHTS AMMENDMENT

I SUPPORT THE EQUAL RIGHTS AMMENDMENT AND I HOPE THAT YOU WILL TOO.

EOM/

Received
2/4/83

TO: REPRESENTATIVE RUSSELL

FROM: ELIZABETH HICKERSON
746 WEST 18TH
ANCHORAGE, AK 99503 (H) 272-7170 (W) 274-1426

AS A CONSTITUENT, I STRONGLY URGE YOUR SUPPORT FOR HJR 6. IT IS INCOMPREHENSIBLE THAT IN THIS DAY AND TIME INTELLIGENT INDIVIDUALS WOULD FAIL TO RECOGNIZE THAT EQUALITY FOR ALL IS MANDATORY IN A DEMOCRATIC SOCIETY. DON'T BE MISLED THAT THE ERA LEADS TO UNI-SEX BATHROOMS, REQUIRED ABORTIONS, OR A BRALESS SOCIETY RUN BY HOMOSEXUALS. IT IS TIME THAT ALL AMERICANS ENJOY THE BENEFITS OF AN EQUAL SOCIETY AS WE DO IN ALASKA.

Received 2/3/83

MSG 83-00005814 PRTY 1 02/02/83 17:47:06 ORIG: 4024 IN= 0006 OUT= 0
FROM: MARY JO/KODIAK TO: JUNEAU
TARGET: LJHL SUBJ: POM

TO: ALL LEGISLATORS

FROM: STACIE PETERSON
P.O. BOX 1221
KODIAK, AK. 99615 PH:486-5422

I SUPPORT SJR 7 AND HJR 10.

TO: ALL LEGISLATORS

FROM: CAROLYN COVINGTON
ST RT D BOX 9340
PALMER 99645 PH. 745-3365

PLEASE SUPPORT THE INTRODUCTION OF E.R.A. TO THE CONGRESS. ALASKA MUST NOT TURN AWAY FROM ITS HISTORY OF CONCERN FOR EQUAL RIGHTS FOR ALL AMERICANS. WE HAVE LED THE FIGHT, LET US CONTINUE TO DO SO.

MSG 03-00002056 PRTY 1 02/03/93 14:01:35 ORIG: LJ04 IN= 0022 OUT= 0065
FROM: PATRICIA/JUNEAU TO:
TARGET: LJHL SUBJ: P O M

TO: ALL LEGISLATORS

FROM: MARY J. PRUSSING PHONE: 586-2754
104 1/2 TROY AVENUE
JUNEAU, ALASKA 99801

I AM IN FAVOR OF SJR 1, THE ERA BILL.

MSG 83-00005689 PRTY 1 02/02/83 13:48:35 ORIG: LA05 IN= 0003 OUT= 0066
FROM: MARCIE, ANC INFO TO: POM, JUNEAU INFO
TARGET: LJHL SUBJ: P O M

POM, MARCIE, ANC INFO 2/2 MSG 5689

TO: ALL MEMBERS OF THE LEGISLATURE

FROM: GARY POWELL, 9340 NICKELL CIRCLE, ANCHORAGE 99507
344-3932 H 276-4912 W

1
0

I WISH TO REGISTER MY OPPOSITION TO SJR 1. THE PEOPLE HAVE SPOKEN ONCE LETTING THE AMENDMENT FAIL. LET THE PEOPLES VOICE AND DECISION STAND. DO NOT SUPPORT A NEW ERA AMENDMENT.

EOM



SL 02-000006908 PETY 1 02/08/85 14:25:30 ORIG: LA01 IN= 0061 OUT= 0069
FROM: MARCIE, ANC INFO TO: POM, JUNEAU INFO
TARGET: LJHL SUBJ: P O M

/8 POM, MARCIE, ANC INFOMSG 6908

TO REPRESENTATIVES RUSSELL & LINDAUER

SENATORS FAIKS, PETTYJOHN AND KELLY

FROM KATHRYN ROBINETT, 7411 MARGARET CIRCLE, ANC 99502
344-7214 H 264-4800 W

I SUPPORT EQUALITY. VOTE YES FOR EQUAL RIGHTS.

****

TO: ALL LEGISLATORS

FROM: MARY MONROE
P.O. BOX 1729
KODIAK, AK. 99615 HM 486-5717 WK 486-6171



RE: ERA - SJR #1

I URGE YOU TO VOTE IN FAVOR OF SJR#1 OR HJR#6 TO SHOW THE U.S. CONGRESS THAT ALASKA CONTINUES TO SUPPORT EQUAL RIGHTS FOR WOMEN.

MSG 83-00006958 PRTY 1 02/08/83 15:28:14 ORIG: LS00 IN= 0013 OUT= 0075
FROM: SITKA TO: JUNEAU
TARGET: LJHL SUBJ: POM

MSG 83-00007217 PRTY 1 02/09/83 11:50:58 ORIG: LA01 IN= 0002 OUT= 0041
FROM: JUNE, ANCHORAGE LIO TO: POM, JUNEAU INFO
TARGET: LJHL SUBJ: POM

2/9/83 JUNE, ANCHORAGE LIO, MESSAGE #7217

TO: ALL REPRESENTATIVES

FROM: VICKI LESTER (H) 344-7239 (W) 277-4023
911 W. 74TH
ANCHORAGE, AK 99502

I AM IN FAVOR OF THE ERA AND I HOPE IT PASSES SUCCESSFULLY.

MSG 83-00006985 PRTY:1 02/08/83 16:13:41 ORIG: LA02 IN= 0016 OUT= 0005
FROM: SHIPLEE, ANC LTO TO POMS, JUNEAU INFO
TARGET: LJM SUE POM

2/8/83, SHIPLEE ANC LTO, MSG 6985

TO ALL MEMBERS
ALASKA HOUSE OF REPRESENTATIVES

FROM: BECKY ATCHISON
2454 COLONY LOOP
ANCHORAGE, AK 99507 (H) 349-4984



I AM MOST CONCERNED THAT WE IN ALASKA SET A PRIME EXAMPLE TO THE WHOLE COUNTRY BY PASSING HJR 6. THIS RESOLUTION IS OF THE UTMOST IMPORTANT TO ALL OUR LIVES AND TO AN EQUAL FUTURE FOR GENERATIONS TO COME. PLEASE VOTE IN FAVOR OF THIS RESOLUTION.

FEB 1983
RECEIVED

****

MSG 83-00007171 PRTY 1 02/09/83 11:04:39 ORIG: LA02 IN= 0002 OUT= 0026
FROM: SHIRLEE, ANC LIO TO: POMS, JUNEAU INFO
TARGET: LJHL SUBJ: POM

2/9/83, SHIRLEE ANC LIO, MSG 7171

TO: ALL MEMBERS, ALASKA LEGISLATURE

FROM: MRS. JEANETTE GONZALES
4105 CHESS
ANCHORAGE, AK 99504 (H) 338-0496 (W) 277-4023

WE LOOK TO YOU IN LEADERSHIP IN RATIFYING THE ERA BILL IN THIS SESSION AND HELP PUT ALASKA FIRST TO RATIFY THIS BILL. THANK YOU FOR JOINING IN THE FIGHT TO RATIFY THE ERA.

MSG 83-00007195 PRTY 1 02/09/83 11:28:05 ORIG: LA02 IN= 0003 OUT= 0034
FROM: SHIRLEE, ANC L10 TO: PORS, JUNEAU INFO
TARGET: LJNL JUNJ PORS

2/9/83, SHIRLEE ANC L10, 7195

TO: ALL MEMBERS, ALASKA LEGISLATURE

FROM: PATRICIA YELDER
541 IRWIN ST, APT. 3
ANCHORAGE, AK 99508 (H) 276-1076 (W) 552-4231

I FEEL THAT AN ERA RESOLUTION SHOULD BE PASSED THIS LEGISLATIVE SESSION.

***

MSG 83-00007252 PRTY 1 02/09/83 13:29:31 ORIG: LA02 IN# 0009 OC # 0055
FROM: SHIRLEE, ANC LIO TO: POMS, JUNEAU INFO
TARGET: LJHL SUBJ: POM

2/9/83, SHIRLEE ANC LIO, 7252

TO: ALL MEMBERS, ALASKA LEGISLATURE

FROM: AUDREY TAVANIS
4110 DEBARR ROAD
P. O. BOX 6343
ANCHORAGE, AK 99502 (W) 277-5851



VIC FISCHER INTRODUCED THE ERA BILL. WE LOOK TO YOU IN LEADERSHIP IN RATIFYING THE ERA AND HELP PUT ALASKA FIRST IN RATIFYING THE ERA BILL. THANK YOU FOR JOINING IN THE FIGHT TO RATIFY THE ERA.

FEB 1983 RECEIVED

FROM: TOM "BEAR" REHARD
BOX 1550
WASILLA 99687

HALLEAH CROSSING GOT ANOTHER ONE LAST NIGHT. SAM PROVOST CAME DOWN LUCILLE RD. THE ROAD WAS SLICK, HE COULDN'T SEE THE TRAIN STOPPED ON THE CROSSING. HE COULDN'T STOP WHEN HE SAW THERE WAS A TRAIN THERE. HIS TRUCK WENT UNDER THE TRAIN. IT TOOK THE TOP RIGHT OFF THAT TRUCK AND HE IS IN THE HOSPITAL IN SERIOUS CONDITION.

WE MUST HAVE BLINKER LIGHTS AT THAT CROSSING.

FROM: JOHN F. SCHILICTING PHONE: 789-2816
P.O. BOX 983
AUKE BAY, ALASKA 99821

I SUPPORT ERA.

****

TO: ALL LEGISLATORS

FROM: THEDA MASON-SMITH PHONE: [illegible]
WARREN ELLIS
2729 JOHN STREET
JUNEAU, ALASKA 99801

I SUPPORT ERA.

****

TO: ALL LEGISLATORS PHONE: [illegible]

FROM: LORNA SHELL
236 3RD, APT. [illegible]
JUNEAU, ALASKA 99801

...EOM I Support ERA.

[illegible] 83-00007264 PRTY 1 02/09/83 13:32:08 ORIG: LA02 IN= 00[illegible] OUT= 0056
FROM: SHIRLEE, ANC LIO TO: POMS, JUNEAU INFO
TARGET: LJHL SUBJ: POM

2/9/83, SHIRLEE ANC LIO, 7264

TO: ALL MEMBERS, ALASKA LEGISLATURE

FROM: TAMMY TOWNSEND
4107 HAMPTON
P. O. BOX 102511
ANCHORAGE, AK 99510 (H) 337-5665

I AM IN SUPPORT OF THE PASSAGE OF SJR 1 AND HJR 6, SUPPORTING REINTRODUCTION OF THE EQUAL RIGHTS AMENDMENT.

MSG 83-00006875 PRTY 1 02/08/83 13:13.41 ORIG: L001 IN= 0002 OUT= 0055
FROM: KODIAK TO: JUNEAU
TARGET: LJHL SUBJ: PUBLIC OPINION MESSAGE

TO: ALL LEGISLATORS HOUSE AND SENATE

FROM: THIA FALCONE
P.O. BOX 3373
KODIAK, ALASKA 99615 PHONE 486-6435

RE: HJR 6

PLEASE SUPPORT EEQUAL RIGHTS FOR WOMEN. SUPPORT HJR 6.

EOM/



FEB 1983
RECEIVED



MSG 83-00007732 PRTY 1 02/10/83 17:50:36 OPIG LO00 IN= 0004 OUT=
FROM KODIAK TO JUNEAU
TARGET LJHL SUBJ: POM

TO: SENATORS: RAY, JOSEPHSON, ELIASON, ZIEGLER, PETTYJOHN, MULCAHY

REPRESENTATIVES: BUSSELL, LISKA, HAYES, BARNES, MALONE, CLOCKSIN, WENDTZ, ZHAROFF

FROM: FRAN RHINES DIXON
P.O. BOX 2275
KODIAK, ALASKA 99615
486-6316(HM.) 486-3227 (WK.)

RE: SJR 1 - HJR 6

I WOULD LIKE TO GO ON RECORD AS SUPPORTING EQUAL RIGHTS RESOLUTIONS.

FROM KODIAK

TARGET LJNL SUBJ PUBLIC OPINION

TO ALL LEGISLATORS, HOUSE AND SENATE



FROM: JOAN CONNERS
P.O. BOX 2122
KODIAK, ALASKA 99615 PHONE 486-4239

RE SB51, HJR6, SJR1, HB128 AND HB87

I STRONGLY SUPPORT HJR 6 AND SJR 1. I ALSO SUPPORT SB 51 AND HB128.
I DO NOT SUPPORT HB 87.

MSG 83-00010685 PRTY 1 04/21/83 09:14:22 ORIG: LJ04 IN= 0003 OUT= 0011
FROM: PATRICIA/JUNEAU TO:
TARGET: LJHL SUBJ: P O M

FROM: JUDY AND DAVID LEWIS PHONE: 789-9936
8845 GAIL AVENUE, JUNEAU, ALASKA 99801

Judiciary Referral

TO: ALL REPRESENTATIVES

RE: HJR 6

WE ARE AGAINST HJR 6. ANY VOTE FOR ERA RESOLUTION WOULD BE A VOTE AGAINST THE TRADITIONAL FAMILY.

****

TO ALL REPRESENTATIVES:

RE: HB 270

WE ARE FOR HB 270. WE DO NOT FEEL CHILDREN SHOULD BE USED FOR SEXUAL EXPLOITATION.

HJR

7

MR. CHAIRMAN, MEMBERS OF THE COMMITTEE, FOR THE RECORD I AM RAMONA BARNES, STATE HOUSE OF REPRESENTATIVES, ANCHORAGE, DISTRICT 10.

AS YOU KNOW THIS RESOLUTION, ~~HJR 22,~~ IS NOT A NEW IDEA. SIMILAR LEGISLATION, ~~HJR 6~~, WAS INTRODUCED LAST YEAR ~~BY REPRESENTATIVE TERRY MARTIN, AND CO-SPONSORED BY MYSELF AND OTHER MEMBERS.~~ IT HAS ALSO BEEN INTRODUCED IN THE OTHER HOUSE QUITE SOME YEARS AGO.

I BELIEVE THE REASONS FOR CHANGING THE PROCESS OF SELECTING THE ATTORNEY GENERAL ARE JUST AS VALID TODAY AS THEY WERE A YEAR OR TEN YEARS AGO. PERHAPS SOME ARE SATISFIED WITH THE GOVERNOR'S CHOICE FOR THAT OFFICE, BUT I THINK WE CAN AGREE THAT IF WE WERE NOT AND HAD GOOD CAUSE TO RECOMMEND HIS REMOVAL, IT WOULD RESULT IN A POWER STRUGGLE WITH THE ADMINISTRATION. THE RESULTS OF SUCH A STRUGGLE, NO MATTER WHAT THE OUTCOME, WOULD HAVE A NEGATIVE IMPACT ON OUR LABORS HERE IN THIS BODY.

I BELIEVE THAT THE ATTORNEY GENERAL SHOULD SERVE AS AN UNBIASED INTERPRETER OF THE LAW FOR THE CITIZENS OF THIS STATE, THEIR REPRESENTATIVES, AND OUR GOVERNOR. IT IS POSSIBLE, BUT HIGHLY IMPROBABLE, THAT THROUGH OUR PRESENT SYSTEM WE HAVE AN ATTORNEY GENERAL WHO ISN'T IN AGREEMENT

WITH THE POLITICAL PHILOSOPHIES OF THE PERSON WHO APPOINTED HIM. AND SINCE HE SERVES AT THE PLEASURE OF THAT PERSON, THERE IS FURTHER INCENTIVE FOR "POLITICAL LEANINGS" TOWARD ADMINISTRATIVE POLICY AND PHILOSOPHY.

THIS IS NOT A TIME FOR POLITICS. I SINCERELY BELIEVE THAT WE, AS REPRESENTATIVES OF THE PEOPLE, HAVE TO ASK OURSELVES IF THEIR BEST INTERESTS ARE BEING SERVED BY THE PROCESS OF SELECTING OUR ATTORNEY GENERAL.

WHEN OUR CONSTITUTIONAL CONVENTION WAS IN PROGRESS AND THIS ISSUE WAS BEING ADDRESSED, THERE WERE THIRTY-EIGHT (38) STATES WHICH ELECTED ATTORNEY GENERALS. FOR THE RECORD, THERE ARE FORTY-FOUR (44) STATES THAT NOW USE THAT PROCESS. I USE THESE FIGURES TO DEMONSTRATE NOT A "TREND", BUT TO ALLEVIATE ANY DOUBT CONCERNING CITIZEN PREFERENCES OVER A GIVEN PERIOD OF TIME IN OTHER STATES.

LET ME SAY IN SUMMARY THAT I FEEL THAT THE ATTORNEY GENERAL SHOULD BE MOST ACCOUNTABLE TO THE PEOPLE OF THE STATE WHEN INTERPRETING THE LAW. WHILE HE IS NOT A JUDGE, HE DOES INTERPRET THE LAW WHICH GOVERNS PEOPLE, AND THAT CARRIES WITH IT A GREAT RESPONSIBILITY TO THE PEOPLE. SINCE WE ARE REPRESENTATIVES OF THOSE PEOPLE, OUR OBJECTIVE SHOULD BE TO ENSURE THAT THOSE LAWS ARE INTERPRETED BY SOMEONE OF THEIR CHOOSING.

STATEMENT BY REPRESENTATIVE RICK UEHLING ON BEHALF OF
HOUSE JOINT RESOLUTION SEVEN

I thank you, Mr. Chairman and members of the committee, for this opportunity to voice my reasons for introducing House Joint Resolution Seven, proposing amendments to the Constitution of the State of Alaska relating to the election of the attorney general.

The idea behind HJR 7, that of electing Alaska's attorney general, is not an original concept. For years, many Alaskans have supported the principle of electing our state's highest law enforcement officer. The past five years have seen similar legislation introduced by Senator Brad Bradley, Representative Terry Martin, and Majority Leader Ramona Barnes. As early as the Constitutional Convention in 1956, when Frank Barr of Fairbanks introduced an amendment to require the election of the AG, many citizens have recognized the need for a truly impartial and independent attorney general. Many believe, as Mr. Barr expressed the ideal, "the attorney general should be 'the people's attorney,' elected by and responsible to the citizens of Alaska."

Since our Constitutional Convention rejected Barr's suggestion, many of the states have provided for the election of attorneys general. In fact, today all but five of the fifty states elect their AG, a dramatic reversal from 1956 when only a dozen states elected attorneys general. Even the most avid opponent of electing the attorney general would have to admit that the last fifteen years have clearly indicated overwhelming national sympathy for the idea.

Today, my arguments in favor of HJR Seven will concentrate on three main points: 1. election provides for greater autonomy for the AG's office; 2. election provides for freedom from political manipulation; and 3. election provides for greater personal responsibility by the attorney general.

Today the attorney general is defined in AS 44.23.020 as "the legal advisor of the governor and other state officers." By very definition, the actions of the AG are subject to the whims of the governor. Providing for the election of future attorneys general will free the state's legal arm to exercise more autonomous control over prosecutorial and other activities. As an elected official, the AG would respond directly to the public. To quote former New York Attorney General Louis J.

Lefkowitz in his classic defense of elected attorneys general:

> The elected attorney general has a natural and impelling desire to be creative and to exercise broader initiative in the service of the public. He is free of the fear of dismissal by any superior official if he should exercise contrary independent judgement. He is in the best position to render maximum service to the people and impartial advice to the Governor, the Legislature, and State departments and agencies.

My second argument in favor of HJR Seven is to the effect that, if elective, the office of attorney general will be free from political manipulation by the governor's office. As our system is arranged now, the attorney general is just another cabinet officer, directly responsible to the governor. Although I will certainly not argue that any of the fine men who have served in the office of attorney general have been politically manipulated, I will eagerly point out that the potential does exist. As our law is written today, the attorney general is the servant of the governor: he makes prosecutions as the governor sees fit and he generally interprets the law as the governor directs. This arrangement is obviously dangerous. Requiring the election of the attorney general would help eliminate this danger. Former Illinois Attorney General William J. Scott made this point clearly when he argued, "the Attorney General's roles of 'government watchdog' and 'attorney for the people' require independence from the governor." Former Attorney General Lefkowitz argued the same point when he said that electing the state's AG provides that "he can appear in Court without fear or favor--an attorney in the fullest and finest sense of the word."

My third observation is that election would provide a sense of personal responsibility for the attorney general. As an official directly responsible to the electorate, an elected attorney general would naturally feel a personal responsibility for the activities of the department. Perhaps more than any other reason, this argument hits the real point of electing Alaska's attorney general. That is in fact the main purpose in electing almost any official, be it our governor, our judges, or our mayors. When the direct authority and responsibility inherent to a particular position become so unusually varied and important, it is prudent to make that official directly answerable to the people he serves. Going again to General Lefkowitz: "To sum it up--an elected

attorney general has a measure of independence and a sense of personal and direct responsibility to the public."

Ladies and gentlemen, I will not tell you that there are no problems with the election of Alaska's attorney general or of any state official, for that matter: elections cost money; politics is inevitably involved, even in a non-partisan election as in this bill; personal greed and ambition are simply impossible to eliminate; and effective governments do require strong executives. However, I am willing to tell you that the potential benefits of an elected attorney general are far more numerous and important than any costs, real or imagined. The arguments I have made today hopefully demonstrate that point.

In my opinion, the argument is simply this: does the attorney general represent the governor of Alaska or the thousands of men and women who make up this great state? If you believe like I do that the attorney general should represent all of Alaska's citizens, then I encourage you to support this resolution to make that official directly responsible to the people represented. I encourage you to vote "Do Pass" on this important issue.

Thank you.

Alaska State Legislature

REPRESENTATIVE
TERRY MARTIN
[redacted]



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DURING LEGISLATURE
POUCH V
STATE CAPITOL
JUNEAU, AK 99811
PHONE 465-3784

MEMORANDUM

February 23, 1983

TO: Representative Charlie Bussell
Representative John Liska
Representative Joe Hayes
Representative Ramona Barnes
Representative Hugh Malone
Representative Don Clocksin
Representative Ron Wendte

FROM: Representative Terry Martin TM.

SUBJECT: SPONSOR SUBSTITUTE HOUSE JOINT RESOLUTION 7
Providing for Election Attorney General

I strongly recommend that as a member of the House Judiciary Committee you vote SSHJR 7 out of committee with a "do pass" recommendation.

In 1979 I introduced HJR 6, Providing for Election of Attorney General (copy attached) in the House of Representatives.

I believe passage of SSHJR 7 would eliminate conflicts arising from a Governor having control of a State Attorney General. The majority of Alaskans believe the Attorney General is to protect the public interest -- not only that of the Executive Branch of Government.

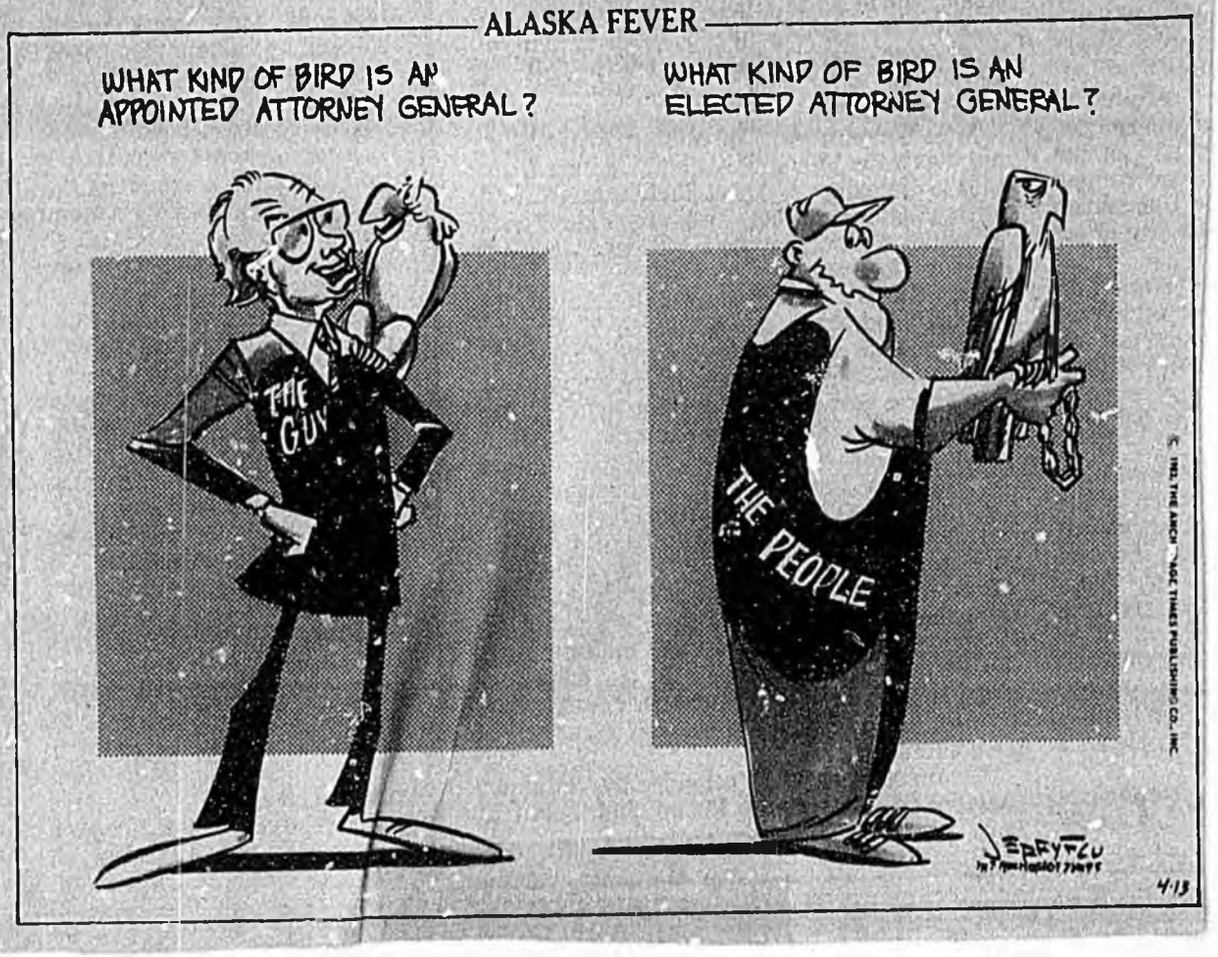
Attachment

Robert B. Atwood
Editor-in-Chief
and Publisher

Lana Johnson
Managing Editor

4/13/83

ALASKA FEVER



JR

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CHAIRMAN
HOUSE JUDICIARY COMMITTEE
MEMBER
HOUSE RESOURCES COMMITTEE

Representative Charlie Bussell

ALASKA STATE LEGISLATURE
HOUSE OF REPRESENTATIVES

March 24, 1983

Mr. Robert E. Sharp, Jr.
2926 Madison Way
Anchorage, Alaska 99504

Dear Mr. Sharp:

I thank you very much for your letter of March 16, 1983 regarding the legislation relating to the election of the attorney general and to procedures governing the election and term for state offices to be elected under the constitution.

I have enclosed a House Journal for March 23, 1983, which indicates how the voting went on the House Floor.

Thank you for your comments regarding the confirmation hearings on Norman Gorsuch. It is refreshing to hear good news.

Again, thank you for your letter and for becoming a part of the legislative process.

Very truly yours,

Representative Charlie Bussell
Chairman, Committee on Judiciary

CB:lyn

enclosure

AJR 7 JR

March 16, 1983

Dear Representative Bussell,

I applaud your progress towards getting an elected attorney general who will be a check on the powers of the executive branch, and who will be directly accountable to the vote of the Alaskan people.

I also applaud your investigation of the Sheffield-Gorsuch-Wunnicke "fund raiser." Enclosed is my letter to the Editor of the Anchorage Daily News. I imagine a number of people are thinking along the same line I am. I believe now is the time for new campaign finance laws, while the Sheffield trip is still alive in the memories of legislators and constituents.

Thanks for your time, and

Good Luck,

Bob Sharp Jr

Robert E Sharp, Jr.
2726 Madison Way
Anchorage, AK 99504



Change campaign laws

Regarding the controversial campaign fund-raising trip by Gov. Shefrield, Attorney General Gorsuch and Commissioner of Natural Resources Wunnicke, perhaps now is the time for two new campaign laws:

The first would limit fund-raising to the election year, from Jan. 1 to election eve. The second would prohibit any campaign fund raising after election eve and would require all candidates to pay outstanding post-election day debts out of their own pockets. In addition it may be wise to prohibit any state employees, excluding elected officials, from participating in fund-raising.

These laws would: remove "tne appearance of a conflict of interest" from elected officials' campaign fund-raising; limit the election campaign to a set period; and enforce a fiscal discipline on the candidates.

— *Bob Sharp Jr.*

HB 456

Grants Pass, Oregon
February 19, 1983

TO MY FRIENDS IN THE ALASKA LEGISLATURE:

Almost thirty years ago I proposed that the state of Alaska elect its attorney general. Although my proposal was finally rejected by the Constitutional Convention in 1956, I have never abandoned my conviction that the attorney general should be "the people's attorney," elected by and responsible to the citizens of Alaska.

For that reason, I am pleased to support House Joint Resolution 7, which proposes an amendment to the state constitution providing for the election of the attorney general. HJR 7, if approved by both houses, would allow the electorate to determine the nature of the state's highest law enforcement officer.

I urge every legislator to fully consider this important bill. If you decide that your constituents deserve a truly impartial attorney general who is ultimately responsible to the people, then I encourage you to support the passage of HJR 7.

Thank you for your attention

Respectfully,

Frank Barr

FRANK BARR
Delegate, Alaska Constitutional
Convention (1955-56)

Extracted from: Powers, Duties and Operations of State Attorneys General (1977) (Study by National Assoc. of A.G.s)

6. SELECTION, TERM AND REMOVAL

This chapter examines the important issues of how the Attorney General is selected, how long he serves, how he can be removed, and how a vacancy in the office can be filled. Some of these issues, particularly that of election or appointment, have been subject to controversy since the first state governments were established. This report discusses existing practices and presents the arguments on both sides of these issues.

Method of Selection

Table 6 shows methods of selecting the Attorney General. He is popularly elected in forty-two states. He is appointed by the Governor in six states (Alaska, Hawaii, New Hampshire, New Jersey, Pennsylvania, and Wyoming), the three territories (Guam, Samoa and the Virgin Islands), and the Commonwealth of Puerto Rico. In Maine, he is selected by the Legislature and in Tennessee, by the Supreme Court. Now elected

The Attorney General is the most prevalent elective official in state governments except for the Governor, who is elected in all jurisdictions. The Treasurer is elected in thirty-nine jurisdictions, the Secretary of State in thirty-eight, the Auditor in twenty-five, and the Superintendent of Public Instruction in nineteen, compared to forty-two states in which the Attorney General is elected.[87] The 1970s witnessed a marked acceleration of the trend toward election of the Governor and Lieutenant Governor on a single ballot and such a practice is now followed in twenty-two jurisdictions. Thus, the Attorney General is actually the most common official who is elected on a single ballot. Where very few, but more than one, state executive officials are elected, the Attorney General is usually included among these few. He is, for example, among the three executive officials elected in Virginia, among the four elected in Maryland, Michigan and New York, and among the five elected in Rhode Island, Colorado, and Utah. However, he is not one of the two elected officers in Alaska, Hawaii, Guam, and the Virgin Islands, the four in Pennsylvania, nor the five in Wyoming.

Historically, the Attorney General has been an appointive, rather than elective, official. In England, he was appointed by the Crown and only incidentally acquired elective status through a seat in Parliament. In Colonial America, Attorneys General were usually appointed by the Governor of the Colony. The Attorney General of the United States still serves at the pleasure of the President with the advice and consent of the Senate.

Most of the first state constitutions specified that the legislature would choose the Attorney General. The concept of universal suffrage had not yet taken hold, nor had the idea of direct election of many officials.

87. Council of State Governments, THE BOOK OF THE STATES, 114-115, 121-122 (1976-77).

TABLE 6: SELECTION AND TERM OF ATTORNEYS GENERAL

	Elected	Appointed by	With Co nt Of	Length of Term	May succeed Himself
Alabama	x			4	Yes
Alaska		Governor	Legislature	4	Yes
Arizona	x			4	Yes
Arkansas	x			2	Yes
California	x			4	Yes
Colorado	x			4	Yes
Connecticut	x			4	Yes
Delaware	x			4	Yes
Florida	x			4	Yes
Georgia	x			4	Yes
Guam		Governor	Legislature	Indefinite	Yes
Hawaii		Governor	Senate	4	Yes
Idaho	x			4	Yes
Illinois	x			4	Yes
Indiana	x			4	Yes
Iowa	x			4	Yes
Kansas	x			4	Yes
Kentucky	x			4	No
Louisiana	x			4	Yes
Maine		Legislature		2	Yes
Maryland	x			4	Yes
Massachusetts	x			4	Yes
Michigan	x			4	Yes
Minnesota	x			4	Yes
Mississippi	x			4	Yes
Missouri	x			4	Yes
Montana	x			4	Yes
Nebraska	x			4	Yes
Nevada	x			4	Yes
New Hampshire		Governor	Exec. Council	5	Yes
New Jersey		Governor	Senate	4	Yes
New Mexico	x			4	Yes
New York	x			4	Yes
North Carolina	x			4	Yes
North Dakota	x			4	Yes
Ohio	x			4	Yes
Oklahoma	x			4	Yes
Oregon	x			4	Yes
Pennsylvania	X	~~Governor~~	~~Senate~~	4	Yes
Puerto Rico		Governor	Senate	Indefinite	Yes
Rhode Island	x			2	Yes
Samoa		Governor		Indefinite	Yes
South Carolina	x			4	Yes
South Dakota	x			4	Yes
Tennessee		Sup. Court		8	Yes
Texas	x			4	Yes
Utah	x			4	Yes
Vermont	x			2	Yes
Virgin Islands		Governor	Senate	Indefinite	Yes
Virginia	x			4	Yes
Washington	x			4	Yes
West Virginia	x			4	Yes
Wisconsin	x			4	Yes
Wyoming		Governor	Senate	4	Yes

Andrew Jackson's administration brought a new ethic to American government. The common man was considered competent to vote and to hold office, and direct election of officials became the rule. State constitutions provided for election of numerous officials, usually including the Attorney General.

A study published in the Law Library Journal[88] showed how methods of selecting Attorneys General developed in nineteen states; of these, eight provided for legislative selection prior to 1843, but none finally retained this method. Prior to 1845, twelve states provided by constitution or legislation for the appointment of an Attorney General by the Governor, the legislature, or other authority. The trend then turned toward election. For example, North Carolina's 1776 Constitution provided for appointment by the legislature; its 1868 Constitution provided for election. Louisiana's 1812 Constitution provided for appointment by the Governor; its 1852 Constitution provided for election. Michigan's 1835 Constitution provided for appointment by the Governor; the 1850 Constitution provided for election. Virginia's 1776 Constitution provided for selection by the legislature; its 1902 Constitution provided for election. Kentucky's 1792 Constitution provided that the Governor would appoint the Attorney General, with the consent of the Senate; the 1850 Constitution made the office elective.

Wyoming, in 1899, became the first "new" state to provide for appointment of the Attorney General, thereby ending the trend toward popular election. Alaska's 1959 Constitution and Hawaii's of 1960 provided for Gubernatorial appointment, following the policy set by their territorial conventions in 1950 and 1956.

Strong arguments can be advanced for either system of selection. There is not necessarily a correlation between the selection process and the extent of the Attorney General's actual powers. For example, the Attorney General is elected in Delaware and appointed in Alaska, but in both jurisdictions he has control over all legal and prosecutorial functions. In some states, the Attorney General is independently elected, but he exercises little power at either the state or local level. Thus, a "strong" department of justice can be developed under either system of selection, but is not guaranteed by either.

Proponents of an appointive Attorney General usually base their arguments primarily on the need to strengthen the executive. As one view, the commentary on the Model State Constitution developed by the National Municipal League says that:

> All authorities on executive organization agree with the position embraced by the Model State Constitution for more than 40 years that administrative power and responsibility should be concentrated in a single popularly elected chief executive. There is growing recognition that the governor, as the representative of all the people,

88. Lewis Morse, Historical Outline and Bibliography of Attorneys General Reports and Opinions, 30 LAW LIBRARY JOURNAL 39-245 (1937).

should be equipped with the constitutional status necessary to exercise constructive leadership as the chief lawmaker and political head of his state.[89]

The Model Executive Article for state constitutions recommended by the Committee on Suggested State Legislation of the Council of State Governments limits statewide elective officials to the Governor and Lieutenant Governor, who are elected jointly. This article was developed by the Committee on Constitutional Revision of the National Governor's Conference.[90] Studies on administrative reorganization usually argue that fragmentation leads to irresponsibility, but a single chief executive can be held accountable through the electoral system and, as a consequence, can make the administration more responsive. Proponents of an appointive Attorney General argue that his function is to advise the Governor, who should be permitted to choose his advisors. They believe that the two officials are more likely to maintain the close and harmonious relationship that is necessary for effective liaison if the Attorney General is appointed.

Advocates of appointment also contend that the elective process may not assure professional competence. The pressures of politics and the time involved in campaigning limit an Attorney General's abilities to serve effectively, and many highly competent people would not be willing to undergo the election process. They also argue that the Attorney General's primary function is to interpret the law, which is a technical task and should not involve the political process.

The arguments for an elective Attorney General were cogently summarized by Attorney General Louis J. Lefkowitz in a position paper submitted to the New York Constitutional Convention in 1967. General Lefkowitz reviewed the Attorney General's duties in some detail, pointing out they were predicated upon his role as an independent official, and concluded that:

> To sum it up-- an elected Attorney General has a measure of independence and a sense of personal and direct responsibility to the public. The elected official has a natural and impelling desire to be creative and to exercise broader initiative in the service of the public. He is free of the fear of dismissal by any superior official if he should exercise contrary independent judgment. He is in the best position to render maximum service to the People and impartial advice to the Governor, the Legislature and State departments and agencies. He can appear in Court without fear or favor-- an attorney in the fullest and finest sense of the word.[91]

89. National Municipal League, MODEL STATE CONSTITUTION (6th ed.) 65-66 (1963).

90. The Council of State Governments, 1970 SUGGESTED STATE LEGISLATION, 3-4.

91. Attorney General Louis J. Lefkowitz, Position Paper of Louis J. Lefkowitz Attorney General, to Constitutional Convention, Committee on the Executive Branch, June 1, 1967, Albany, N. Y.

An equally strong position in favor of election was taken by Attorney General William J. Scott before an Illinois Constitutional Convention; he stressed that the Attorney General's roles of "government watchdog" and "attorney for the people" required independence from the Governor.[92]

The primary argument for an elective Attorney General is that he is an attorney for all the people, and should be chosen by them. He is the Governor's advisor, but not exclusively; the Governor is merely one among many clients. By making the Attorney General directly responsible to the electorate, he remains subject to the ultimate source of power and will be more responsive to public needs. As discussed elsewhere in this report, the courts increasingly recognize that the Attorney General is responsible to the people, not just to the government. It is further argued that the Attorney General has important administrative and legal functions, such as programs in consumer protection and environmental control. In executing these functions, an Attorney General is acting as an advocate for the people, not as agent of the executive branch. His duties usually include prosecution of election violations, collection of debts, and bringing of suits in the name of the people; these responsibilities are outside the scope of the Governor's duties.

Many arguments for election center around the fact that the Attorney General's duties are of the highest order and he should enjoy the same independence as a member of the judiciary. He should not be a creature of the Governor, but should render opinions solely on the basis of law. He should not be the advocate for a particular administration, but should be free to oppose policies which he considers inconsistent with the law and to investigate apparent wrongdoing.[93]

In reference to the argument that an appointed Attorney General is a non-political technician, it should be noted that appointment does not necessarily remove the office from politics. Some appointed Attorneys General have been politically active as potential candidates for other office or on behalf of the Governors they serve. At the federal level, Presidents have frequently named as Attorneys General persons who had been active in their campaigns. This has also been true in some states.

In his remarks to a legislative committee which was considering a constitutional amendment to make the office appointive, former Attorney General Meyer of Nebraska mentioned several arguments in addition to those usually advanced by proponents of election. These included the following points: the Governor can appoint men with legal training to his staff if he feels he needs lawyers of his own choosing. Much of the Attorney General's work is in areas in which the Governor has little or no interest,

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92. News from William J. Scott, Attorney General, State of Illinois, Feb. 16, 1970.

93. See summary of arguments presented to New York's constitutional conventions in Robert H. Gordon, The Relationship Between the Attorney General and Agency Counsels in New York State, (Unpublished Ph.D. Dissertation, Syracuse U.), Ch. 1 (1966).

such as advising county attorneys and handling routine criminal appeals. The Governor is only one of many state officials whom the Attorney General advises.[94]

Confirmation of Appointment

In all six states where the Governor appoints the Attorney General on a regular basis, the appointment is confirmed by either the Senate (Hawaii, New Jersey, Pennsylvania, Wyoming), both houses of the Legislature (Alaska), or by the Council (New Hampshire). Confirmation in Pennsylvania requires a two-thirds vote of all the members of the Senate.

In Puerto Rico and the Virgin Islands confirmation is also by the Senate. In Guam, appointments are made with the "advice and consent" of the legislature, but in Samoa appointment is by the Governor with no requirement for confirmation. Although all Pennsylvania Attorneys General of recent years have been in the same political party as the Governor, the requirement of approval of two-thirds of all elected members of the Senate for confirmation of the Attorney General gives the minority party considerable leverage over appointments. However, there has been no indication that this has caused problems.

The various model constitutional provisions that have been proposed differ on the need for confirmation. The Advisory Commission on Intergovernmental Relations' suggested provision for a short ballot for state officials provides for Senate confirmation of gubernatorial appointments. The Model State Constitution of the National Municipal League does not mention confirmation. There is no extensive literature on the precise manner in which appointments are to be confirmed.

Length of Term and Succession

Forty-four states presently provide a 4-year term for the Attorney General and four states a 2-year term. Tennessee sets the term at 8 years and New Hampshire at 5. In Guam, Puerto Rico, and the Virgin Islands, the Attorney General is appointed for an indefinite term. In Samoa the term is also of an indefinite length, although there is a minimum of 2 years for an initial appointment. Table 6 indicates the length of Attorneys General's terms and the statutory or constitutional rules on succession.

The trend is clearly toward longer terms. Most states initially limited terms of officals to 1 or 2 years, on the theory that frequent elections kept government closer to the people and prevented the accretion of power by elected officials. Many states prohibited successive terms on the grounds that official power must be limited. These arguments may have been cogent at a time when Attorneys General had relatively few duties to

94. Letter from Attorney General Clarence A. H. Meyer to Patton G. Wheeler, November 24, 1970.

perform, and those duties were relatively well-defined. Present Attorneys General, however, cannot effectively operate with a 2-year term, which does not allow time to master the duties and responsibilities of the office. Neither should they be subjected to the continuing campaign requirements imposed by an election every 2 years. For these reasons, NAAG has recommended that the Attorney General should be elected or appointed for a minimum term of 4 years and should be allowed to succeed himself.

The number of Attorneys General serving 2-year terms has declined drastically in recent decades. In 1937 there were twenty-one, but this number fell to nine by 1970, and then to four by 1976. Arizona went from 2 to 4 years in 1970, and Wisconsin and New Mexico in 1971. The 1972-73 legislative biennium saw four more states-- Iowa, Kansas, South Dakota, and Texas-- shift to a 4-year term for the Attorney General. Apparently only one jurisdiction has ever gone from a 4-year to a 2-year term; this occurred under Missouri's 1865 Constitution, which was adopted during Reconstruction; its 1875 Constitution later restored the 4-year term. Voters in Rhode Island, however, rejected a 1972 proposal which would have extended from 2 to 4 years the terms of all executive officers, including the Attorney General.

Succession to Office

There are few restrictions on Attorneys General serving successive terms. There are restrictions on Attorneys General succeeding themselves in only three states: Kentucky, New Mexico, and Alabama. Only Kentucky absolutely prohibits immediate succession by the Attorney General. Until 1968 Alabama allowed only one term, but an amendment that year permitted the limited succession. New Mexico restricts the Attorney General to two terms of 2 years each.

The Model State Constitution permits succession in the office of Governor because:

> The main argument favoring restriction in the term of the governor is fear of bossism or perpetuation through use of the powers of the office. This is always a possibility but the better argument seems against any form of restriction. Limitations of this kind restrict the right of the people to pass judgment upon the quality of the gubernatorial service performed for them and thus eliminates from the field the one candidate about whom the voters usually know the most. From a program policy point of view, a restriction on service in office affects the governor's ability to develop and implement a long-range plan.[95]

These arguments apply with equal validity to the office of Attorney General.

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95. National Municipal League, MODEL STATE CONSTITUTION (6th ed.) 66 (1963).

Removal from Office

There are several mechanisms for removing Attorneys General: impeachment, recall, or removal by the Governor, the legislature, or the courts. Information is not available on how often these methods have been used or how well they operated.

Of the fifty-four jurisdictions, thirty-six provide for impeachment. It is the only method of removal provided in twenty-one of these jurisdictions. Impeachment processes vary, but proceedings are usually instituted by the lower house and, if it votes to impeach, the charges are tried by the upper house. In New York, the judges of the court of appeals, the state's highest court, sit with the members of the Senate as a court of impeachment. In Nebraska, impeachment charges are proferred by the unicameral Legislature and tried before the state supreme court. In Missouri, impeachments are tried before the supreme court after charges are filed by the House of Representatives.

An impeachment proceeding is rare, and is used only under the most extraordinary circumstances. Apparently, the last impeachment trial of an Attorney General was in Kansas in 1934. That action resulted in an acquittal.[96] Whatever grounds are prescribed grounds for impeachment, the method is not a common means of removing officials. It can be utilized only when the legislature is in session and is quite time-consuming.

Fifteen states which provide for impeachment also provide alternative removal processes. In the ten jurisdictions where the Governor appoints the Attorney General, he may also remove him. In Hawaii, the Senate must consent to such removal. In New Jersey, the Attorney General can be removed by the Governor for cause only after an opportunity to be heard has been granted. In New Hampshire, the Governor and the Council may remove the Attorney General on address of both branches of the legislature. Five other states provide for Gubernatorial removal of the Attorney General. In Maine, the Governor and Council may remove on address of both branches of the legislature. In New York, removal is by the Governor and the Senate. The Governor of Arkansas, upon address of two-thirds of the members of each house of the legislature, may for good cause remove the Attorney General. In Michigan and West Virginia, the Governor may remove him without the consent of another authority.

The legislature stands alone as a removing authority in proceedings other than impeachment in seven states. Recall may be used to remove the Attorney General in Arizona, Colorado, Louisiana, North Dakota, Oregon, Washington, and Wisconsin; he is an elective officer in all of these states. Louisiana reports that the district court may remove the Attorney General, and Maryland indicates that removal is attendant to any conviction in a court of law.

As a result of a court decision, an Arizona Attorney General was removed from office in 1947, having been adjudged guilty of conspiring to violate the gambling laws of the state. The Governor considered the office

96. New York Times, February 7, 1942, at 17.

vacant and appointed a new Attorney General. The former Attorney General, however, refused to vacate his office. Subsequent court action affirmed the validity of an act which provided that an office would be vacant if its incumbent was convicted of a felony. The court reasoned that the powers of impeachment were an added protection for the public, not the sole protection.[97]

Filling Vacancies

Vacancies in the office of Attorney General may be filled by appointment of the Governor, the legislature, or the supreme court. An overwhelming majority of the jurisdictions indicate that the Governor fills vacancies as soon as they occur. In Maine, Massachusetts, New York and Virginia, the legislature fills vacancies; however, if it is not in session, the Governor makes the appointment. In Maine, he must have the approval of the Council. Tennessee provides that the Supreme Court will fill vacancies, since it normally appoints the Attorney General. In two states, Louisiana and New Jersey, the First Assistant or Deputy Attorney General becomes Attorney General until a successor is elected or appointed.

Where the Attorney General is appointed, it would seem proper that the appointing agent also fill vacancies, as is the case in all such jurisdictions. The rationale for filling vacancies when the office is elective is less clear. All but four of the states which have an elective Attorney General permit the Governor to make appointments. Three permit the legislature to name an Attorney General, and in one the deputy is promoted. Allowing the Governor to fill vacancies in an elective office seems contrary to the chief arguments for election, those concerning independence from the executive. It is also questionable whether a Governor of one party should be allowed to fill a vacancy in an office which was held by a member of the opposite party.

An Assistant or Deputy Attorney General is often promoted to fill a vacancy, even if this is not required by law. If the Deputy Attorney General is promoted to fill a vacancy, the chances of continuity in office programs are greater; however, the Attorney General may select his chief deputy according to different criteria from those he would use in selecting his own replacement.

Vacancy appointments for elective offices usually are valid only until the next general or next biennial election. At that time, if the original term has not elapsed, a short-term Attorney General is elected. This point was litigated in Oregon.[98] The statute creating the Oregon office in 1891 provided that the Attorney General would be elected for a full 4-year

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97. State ex rel. De Concini v. Sullivan, 66 Ariz. 348, 188 P.2d 592 (1948).

98. State ex rel. Baker v. Payne, County Clerk, 22 Ore. 335, 29 Pac. 787 (1892).

term in 1894. Further, it mentioned that vacancies would be filled by Gubernatorial appointment until the next general election, when an Attorney General would be chosen to fill out the term or commence a new term. The Governor appointed an Attorney General in 1891. The question of the case was whether there was to be an election to fill out the first "quasi-term" in the general election of 1892. The court ruled that there was to be such an election.

The Supreme Court of Georgia reached the opposite conclusion in a 1939 case.[99] It held that the office of Attorney General was created under the judicial article, hence the rule that provisions for elections to fill vacancies in executive positions did not apply to it. The Gubernatorial appointee to fill a vacancy created by a resignation was to serve out the full 4-year term of office without standing for election.

99. Wood v. Arnall, 189 Ga. 362, 6 S.E.2d 722 (1939).

POSITION PAPER

of

LOUIS J. LEFKOWITZ

ATTORNEY GENERAL

to

CONSTITUTIONAL CONVENTION,

COMMITTEE ON THE

EXECUTIVE BRANCH

in support of

PROPOSITION THAT THE PRESENT

CONSTITUTIONAL PROVISION FOR

THE ELECTION OF THE ATTORNEY

GENERAL SHOULD BE RETAINED

POSITION PAPER

Submitted to the Constitutional Convention,
Committee on the Executive Branch,
at hearing held on June 1, 1967
at the State Capitol, Albany, New York

PROPOSITION

THE PRESENT CONSTITUTIONAL PROVISION FOR THE ELECTION OF THE ATTORNEY GENERAL SHOULD BE RETAINED.

HISTORICAL BACKGROUND AND COMPARATIVE ANALYSIS

In the early years of the Colony of New York (17th century), the Attorney General was an appointee of the Royal Governor who was, himself, an appointee of the English Crown. About 1700 the intermediary was dropped and appointment of the Attorney General was vested directly in the Crown.

In 1777 the first Constitutional Convention established the State of New York, appointed all the State officers deemed necessary in the establishment of the new state, and provided for a Council of Appointment to make future appointments. Under this system, appointment of State officers was the rule rather than the exception. The Attorney General could be removed at any time and frequently was removed. There was neither difficulty nor hesitancy in removing him when a majority of the Council was of the opposite political faith. The fact of the matter is that under this system the average tenure was less than 2-1/2 years.

At the Constitutional Convention of 1821 a proposal was made that the Attorney General be appointed by the Governor with the consent of the Senate. This was rejected by the Convention and, instead, provision was made that the Attorney General, together with other important State officials, be elected by the Legislature.

By 1846 there was an overwhelming demand for the popular election of the Attorney General. This was recognized by the Constitutional Convention of 1846 and made a part of our Constitution.

Historically, traditionally, and as a matter of basic constitutional mandate, we have continued to elect our Attorneys General in New York State for the past 131 years. This is not to say that the question has not been raised or the problem re-assessed from time to time in the light of vastly changed conditions. As a matter of fact, at every Constitutional Convention since 1846 the question was reconsidered and in each instance the Convention adhered to the elective system.

Comparatively considered, and without going into the historical background of each case, it may be noted that in forty-two of the fifty States the Attorneys General are elected by the people. Interestingly, included among the States which follow the elective system are many of the most populous states in the Union (for examples: New York, California, Illinois, Ohio, Michigan and Massachusetts).

POINTS IN SUPPORT OF AN ELECTED ATTORNEY GENERAL

1. Independence.

While the history of the office of the Attorney General of New York includes efforts to make the Attorney General an appointed officer, it is significant that for upwards of one hundred years without interruption that office has survived as one to be filled by the elective process. Thus, retaining the Attorney General as an independent constitutional officer to be elected by the People of the State not only reserves to the People their traditional right to select a candidate of their choice as the State's highest ranking legal official, but has the added advantage characteristic of a democratic government of greater assurance that the laws of the State will be construed and applied objectively and without favor.

Exactly 100 years ago, at the Constitutional Convention of 1867, when that issue was considered, the report of the discussion states in part:

"The Attorney General holds a dignified position; he has important functions and acts on his own judgment and responsibility" and further, "It was not the Governor alone, but the people who wanted an Attorney General. He was to look after the interest of the people in the State and take care of their money so far as action in the courts was concerned * * *," and again, "If he (the Attorney General) does his duty it matters little to the people whether he is

in accord with the Governor or not." "Indeed," observed a delegate, "it may be to the interest of the people that the Attorney General should not always be in accord with the Governor," and more, "that he should be a man who could not be ordered by anybody. His opinions should be above any fear of the loss of his office. His duties are of the highest order * * * as high as those of any judicial officer; and he should be as independent as any judge. The Governor should have no more power to remove the Attorney General than he has to remove the Chief Judge of the Court of Appeals. His opinions are upon great questions, affecting the great questions of the State. He ought not be a mere creature of the Governor to supervise his vetoes and obey his dictation."

This independence of action and expression is particularly significant with respect to opinions of the Attorney General concerning the construction of statutes and the validity and propriety of acts thereunder by other departments and agencies of the State.

All of the various departments and agencies of government turn to the Attorney General for legal advice and for the rendering of Official Opinions. Such opinions are acted upon daily and a great deal of the operation of the State government depends upon the nature of the advice that is so rendered. These Opinions are rendered to all departments of the State government, those under the direction

and supervision of the Governor and those under the direction of other elected officials. It is important to note that the Opinions have a direct and significant impact upon the People in their daily life. Here is a compelling reason why the Attorney General should continue to be independently elected. If the Attorney General is appointed by the Governor, then of necessity his opinions must reflect the philosophy of that Governor or the relationship would not be a compatible one.

An Attorney General does not give partisan advice; he gives legal advice. There is no such thing as "Democratic" law, "Republican" law, "Conservative" law or "Liberal" law. There is simply "law" — and the Attorney General, with the same degree of impartiality and objectivity as a Judge, calls it as he sees it.

The independent status of the Attorney General — the fact that he is the People's choice and is accountable to no one else — is implicit in the wide range of his official activities and duties which are based on the concept of his independence. Thus, he is, ex officio, a member of several boards and commissions, the other members of which are usually representatives of the administration. Thus, it is his duty to defend in Court the constitutionality of an act of the Legislature regardless of whether the current administration, as a matter of policy, supports it or not. And thus, with regard to proposed legislation, it is his duty impartially

to consider its constitutional validity and statutory interpretation and advise the Governor accordingly, regardless of the latter's policy consideration of such bills. If the Attorney General were an appointee of the Governor such functions may be rendered anomalous because the objectivity and impartiality inherent in his independence would necessarily fall with the destruction of his independence.

Furthermore, the responsibility for the effective protection of the consumer and the investor entrusted to the Attorney General (the prototype for similar authority in the Attorney General in many states in the Union) is predicated upon the existence of an independently elected Attorney General who will not be deterred (as during my tenure) in taking the initiative for affirmative action by the opposition of other governmental departments or agencies, the heads of which are appointed by the Executive. My own experience in the past ten years as Attorney General is illustrative of this fact. Thus, the creation in 1957 of the Consumer Frauds and Protection Bureau in the Department of Law was resisted on the ground that there would be duplication of some of the functions of the Banking Department. Similarly, the establishment of the Real Estate Syndication Bureau in the Department of Law was effected despite executive resistance on the ground that the Attorney General would thereby be performing a function in an area presumably

policed by the State Division of Housing. The creation of the Civil Rights Bureau in 1957 was opposed on the ground that it overlapped and duplicated existing functions of the State Commission Against Discrimination. These three bureaus were created by an elected Attorney General who acted on his own initiative in behalf of the people. The important fact is that they were created without clearance from the Executive.

The basic statutes (Executive Law § 63[12] and Business Corporations Law §§ 109 and 1101) confer authority upon the Attorney General to investigate and secure judicial disposition restraining any illegal and fraudulent acts. This power is not circumscribed or qualified by the existence of concurrent jurisdiction in a limited area by other government officials. Such authority of the Attorney General obviously bespeaks an independent Attorney General.

Similar independence is called for in the invocation and enforcement of the State's anti-trust law. The vigorous enforcement in the last ten years of this statute, aided by the expanded powers authorized by the Legislature, has been so singularly impressive as to receive national attention and commendation. The intensity of such activity should not, as is the case elsewhere, be made subject to the decision of a Governor who may be influenced by many factors alien to proper anti-trust considerations. Such enforcement must be left to an independent Attorney General responsible only to

the People for the implementation of the State's anti-trust policy.

My views are based on ten years of close affiliation with all branches of State Government — with the Governor and his Counsel, with the Legislature and its Committees, leaders and members, with the executive departments and agencies and their counsel, with the Judiciary, and with Authorities and local subdivisions and their officers and counsel. The activities of the State are so vast in magnitude, so varied and complex in character — the actions of its constituent elements being occasionally at cross-purposes — that, in the best interests of the People of the State there must necessarily be premised as greater assurance of independence, impartiality and objectivity, an Attorney General who is elected.

In West Virginia, where the Attorney General is elected, the incumbent Attorney General said:

> "I've been an elected Attorney General for two terms, and in the exercise of my duties I could not have fairly represented the agencies of government or the citizens of this State had I been subject to the whims of the executive or subject to political pressures other than the voters.
>
> "* * * In every occasion wherein one would have the authority of appointment, he also would have the 'hammer' on tough questions of policy. No Attorney General should be forced to operate under such an

> arrangement. The mere fact that it would be possible should be precluded."*

The overwhelming weight of opinion in favor of the elective process, predicated on the concept of the independence of the office, is exemplified by expressions of official views throughout the United States. Thus, at the Constitutional Convention of the State of Michigan, held as recently as 1963, in adhering to the elective process, it was said:

> "We favor election of the attorney general, the chief law enforcement officer of the state. In a representative government, appointment of the chief law enforcement officer would place him in a position of obligation which would make his duties more difficult. If the attorney general were appointed, he could be subjected to the influences of the appointing authority. Presently, he is able to make an independent legal judgment which might differ from the political decisions of other members of the executive branch. * * * [T]he governor has to make many decisions. Many of them are political decisions. I don't think that the best interests of the state can be served if the attorney general is appointed so that he must confirm the political decision of the governor. I think that the people of the state of Michigan have a right to the service of an attorney general who can say no, when the law and the interpretation of the law demands that he say no."

The Attorney General of Maine, who is appointed by the Legislature, said:

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* At my invitation the Attorneys General of virtually all of the States have stated their positions on the proposal here under discussion. Copies of their replies have been submitted to your Committee.

> "[I]f the Attorney General is appointed by the Governor, there is always the question of whether or not he becomes in the nature of a legal rubber stamp and convenient oracle of the law for the Governor's purposes."

Oregon's Attorney General states that "the elected Attorney General is the people's best guarantee of vigorous and impartial interpretation and administration of state law."

Perhaps the most forthright statement of all has come from the Attorney General of Nevada:

> "When you place the chief legal office of the state under the appointing power of the Governor you rob him of the complete independence that is his when elected by the people.
>
> "It is this very independence which results in the fearless and efficient administration of justice."

Although no elective Attorney General has favored an appointive process, it is interesting to note that two appointive Attorneys General are in favor of the elective system. Maine's Attorney General, appointed by the Legislature, has said:

> "I think I am of those who would like to see the Attorney General in Maine elected at large by the people * * *."

And the Attorney General of Alaska, who is appointed by the Governor, has said:

> "Again, from my own experience, if I were given the choice I would be inclined to favor the elective position over the appointive for the simple reason that I believe that a lawyer can function more

> effectively if he has freedom of action in his own specialized field."

It has been argued that the elective process may result in a Governor of one political party and an Attorney General of another, with possible resultant disharmony and friction in the running of the State government. Of course, as a matter of abstract theory, implicit in the concept of independence is the concept of potential disagreement. And it is always possible that incumbents who are influenced solely by political motivations are capable of disruptive tactics. But experience has shown that men who have the knowledge, experience, character and maturity to have attained the high office of Attorney General can be relied on to have a sufficient sense of responsibility and responsiveness to the public need to make such accommodations as the law will permit.

It should be noted that in those jurisdictions in which the Attorney General is appointed, because it is believed that the Governor and the Attorney General should be of the same political faith, the Attorney General is merely a part of the Executive branch of the state. An elected Attorney General, as in New York, is more than merely a part of the Executive branch.

While harmonious relations between the Governor and the Attorney General are unquestionably desirable, it seems that harmony merely for its own sake is too high a price to pay for the loss of the independence which gives greater assurance of effective government in the public interest.

It has been said that the Governor should at all times have an Attorney General with whom confidential matters can be transacted; that the Governor should not be compelled to retain his own counsel. But this is based on the erroneous concept that the Attorney General is the Governor's counsel. He is not the Governor's counsel in the normal sense of the term; he is the People's counsel. This is recognized even in States, like New Jersey, where there is Counsel to the Governor despite the fact that the Attorney General is appointed by the Governor.

The diverse functions of the Attorney General and the Governor's counsel may be succinctly summarized as follows:

(a) Attorney General

1. Litigation in all courts.

(a) Court of Claims - Representing the State and its agencies and officials in all claims based on contracts, torts and appropriations.

(b) All other Courts - Representing the State, the Governor, State Departments, Agencies and Authorities, the Judiciary, and the Legislature.

(c) Defending the validity of statutes which are attacked as unconstitutional.

(d) Habeas corpus matters - criminal and civil.

(e) Affirmative actions in all courts on behalf of the People in such matters as consumer frauds, anti-trust, civil rights, security frauds, realty investment frauds, and theatrical financing and charity frauds.

2. Renders opinions and advises the State, the Governor, the Legislature, and all State departments, agencies and officials.

3. Submits memoranda to the Governor on bills passed by the Legislature.

4. Renders advice on an informal basis to political subdivisions of the State.

5. Exercises criminal jurisdiction under the Executive Law and other statutes.

6. Supersedes District Attorneys when directed by the Governor.

7. (a) Administers registration of brokers, dealers and salesmen who deal in securities, and exercises enforcement powers.

   (b) Supervises public offerings of real estate (syndication, investment trusts condominiums, and cooperatives) and theatrical financing, and exercises enforcement powers.

   (c) Administers registration of theatre box office ticket-selling personnel, and exercises enforcement powers.

   (d) Administers registration of charitable foundations and trusts, and exercises enforcement powers.

   (e) In dealing, in court or otherwise, with estates and trusts in which the People are possible beneficiaries, he appears on behalf of the People.

(b) Counsel to the Governor

1. Advisor to the Governor.
2. Prepares annual message and special messages of the Governor.
3. Prepares Governor's legislative program.
4. Assists in the preparation of the departmental legislative programs.
5. Handles complaints against officials.
6. Extradition.
7. Clemency.

A further distinction in function between the Attorney General and Governor's counsel resides in the affirmative work of the Attorney General on behalf of the People which is constitutionally and statutorily imposed upon him. Thus, to name but a few of his functions, some of which have been mentioned, he acts affirmatively in matters of consumer protection, civil rights, anti-trust matters and charity frauds. Constitutionally, he acts under Article I § 6 of the Constitution against public officers and employees who refuse to waive immunity or testify in grand jury investigations. There are other statutory provisions, too numerous to mention, under which the Attorney General is required to take affirmative action. The most recent of those provisions, as an example, is the new Public Employees' Fair Employment Act (Laws of 1967, Chap. 392) under

which the Attorney General is now placed in the highly important field of public labor relations.

Obviously, because of the overriding primary allegiance of the Attorney General to the People, rather than to the Governor, the basis of the independence which is the hallmark of the office of the Attorney General, it is perfectly proper that the Governor have his own counsel. There is no antipathy between the two offices. Despite some unavoidable duality of operation, they complement each other.

That the existence of both positions does not create a problem of unavoidable friction is attested to by actual experience in our own State when we had a Democratic Governor with Counsel of his political persuasion and a Republican Attorney General. Dean Daniel Gutman, former Counsel to Governor Harriman, wrote to me as follows:

> "During the four years in which I served as Counsel to the Governor, I enjoyed a compatible and co-operative relationship with the Attorneys General, - first, the present Senator Javits and then yourself.
>
> "On occasions we found ourselves in disagreement. This occurred very rarely, and it served to reinforce my opinions on the more numerous occasions when we were in complete accord.
>
> * * *
>
> "In my opinion the broad scope of the Attorney General's activity, his

> great and varied responsibilities and the volume of business, particularly in a State such as ours, requires that this official be elected rather than appointed. I see nothing worthwhile that can come from a change in the present system that has been in existence here as in most other States, for so many years."

Judge Samuel I. Rosenman, who was counsel to Governor Roosevelt, observed that perhaps ten per cent of his time was devoted to legal matters. He added:

> "Neither the Counsel to the Governor nor Counsel to the President can render any official opinion. Official opinions can come only from the Attorney General; so it is not quite accurate to say that the Counsel takes the place of the Attorney General in serving the Chief Executive."

Although Judge Rosenman leaned toward the appointive method, he conceded:

> "Having said all the above, presenting the pros and cons, I don't think I am completely convinced on either side. It is as Oscar Hammerstein said in THE KING AND I a 'puzzlement.'"

Governor Poletti, who was counsel to Governor Lehman, observed:

> "I do not favor the discontinuance of the Attorney General as an elected official and his appointment by the Governor."

Pointing out that, since the Governor and the Lieutenant Governor are elected as one, the only two remaining statewide officials who are elected are the Attorney General

and the Comptroller. With perspicacity born of a lifetime of experience Governor Poletti added:

> "The people are smart enough to vote for each of these officials, and there is serious danger in reducing the scope of participation by the people in their government.
>
> * * *
>
> "* * * In all events, I believe the State greatly benefits from the independence of the Attorney General and Comptroller."

2. Separation of Powers - Checks and Balances.

As a corollary to the concept of the independence of the office is the fundamental concept of a democracy respecting the separation of powers--the system of checks and balances. "Appointment" of the Attorney General is incompatible with the doctrine of the separation of powers. There is nothing intrinsically wrong with the concept of a Governor of one political party and an Attorney General from another. They can and do often act as a "check" upon one another and if, as a result, there is occasional friction, this is a healthy phenomenon which a viable and dynamic political society can survive and, indeed, probably be the better for it. In certain situations, given a weak or ineffectual Legislature and a strong and forceful Governor, the only effective balancing and checking power may come

from an Attorney General who publicly espouses a responsible opposing point of view.

The Attorney General of Kansas expressed the point well:

> "[T]he elected attorney general is a further extension of the system of checks and balances which was incorporated into the form of government initiated by our founding fathers and which has flourished in the United States since its beginning."

To the same effect is the statement of the Attorney General of Minnesota:

> "[T]he office of Attorney General has developed in state government in a unique way. State legislatures do not have the broad investigative power that the Federal Congress has. In most states -- one of the most important statewide investigative officials is the Attorney General. If an Attorney General was to be appointed by the administration he then becomes solely dependent upon it and tends to overlook problems which develop within that administration.
>
> * * *
>
> "* * * [U]ntil there is some alternative form of check and balance on state government, a broadly based elected Attorney General is preferable to one appointed by the Governor."

The Attorney General of the State of Washington, an elected official, has said:

> "The reason I would like to see the Auditor and Attorney General elected by the people is because I believe in

> government there are two necessary ingredients--money and law. These are so important that I think an official personally responsible to the electorate should be chosen by the people to provide the necessary check and balance.
>
> * * *
>
> "The law is the whole touchstone of our Democratic form of government. The man or woman who says the law is or is not being followed should be, in my belief, directly responsible to the people."

Vermont's Attorney General has stated:

> "Having an independent Attorney General, elected by the people of the state as a whole, is but another check and balance in state government that in the all important realm of legal and constitutional interpretations is essential to the sound functioning of state government, * * *."

The Ohio Attorney General believes that the elective status of the office "constitutes one of the more effective balances of the Executive Department of the State." He adds:

> "The Attorney General's office should be run as a law office, with a completely objective approach to the legal problems of an administration, and should not be relegated to a position of house counsel finding ways and means to support executive policy. By being elected the Attorney General is responsible only to the people of the state and this, to my way of thinking, is as it should be."

Maryland's Attorney General summarized the situation very succinctly:

> "From a historical point of view Maryland's system of electing both the Governor and the Attorney General appears to have effectively served the best interests of the people of this State. That system is but another example of the checks and balances so carefully written in the Constitution of Maryland. It is my opinion that to take away from our citizens the right to elect the Chief Legal Officer of the State is to lessen their direct participation in affairs of government, and I vigorously oppose any such change in our traditional practices."

Election results, both on the State level and in the City of New York, reveal that our sophisticated electorate does not always choose a straight party ticket. At the level of Governor and Attorney General, the people should have the right to split their ticket and choose the best candidates even though they are not necessarily of the same political party. Indeed, the split ballot is proof positive that the people, themselves, are not concerned with whether the Attorney General is of the same political persuasion as the Governor.

3. <u>The elected Attorney General has a direct responsibility to the People</u>.

Also as a facet of the "checks and balances" concept and a further corollary of the "independent" status of the

office is the underlying premise, which has historical, traditional and logical validity, that only the People should be in a position to command the Attorney General's undeviating allegiance and loyalty. The correlative of this concept is that the Attorney General's prime and direct responsibility is to the People.

An elected Attorney General is imbued with a deeper sense of direct responsibility to the public from whom he has received a mandate than is the appointed official whose authority springs singularly from one individual. The elected official innately senses this strong personal and direct responsibility to the People and is thereby inspired to a greater degree of creativity, a broadened initiative and an increased desire to innovate in their behalf. The reaction is almost intuitive. As a result, he is free to act without clearing a matter with the executive hierarchy or obtaining the Governor's approval. I have already detailed my experience in this regard when I established the Consumer Frauds and Protection Bureau, the Real Estate Syndication Bureau and the Civil Rights Bureau in the Department of Law. Also, in this connection, I wish to point out that the Department of Law prepared and had introduced during my tenure, without executive clearance, our own legislative program, in the public interest, to protect

the consumer, the investor and the legitimate business man, as well as bills to reinforce civil rights.

The Attorney General of Wisconsin expressed the concept well:

> "An Attorney General also performs numerous functions independently of any state agency. I refer particularly to his activity in such fields as consumer protection and anti-trust enforcement. I believe that an Attorney General who is responsive to the needs of the people can better fulfill these duties which have been entrusted to him by the people.
>
> "It is my firm opinion that a State Attorney General should be an elected official. He should represent and be responsive to all of the people of the state. I believe that the activity of the Attorney General in the field of consumer protection alone is an outstanding example of the way in which elected Attorneys General respond to the needs of their constituents. Appointed officials who are not directly responsible to the voters are not nearly as sensitive nor as responsive to their needs."

Virtually all of the Attorneys General stress "accountability" to the People, rather than to the appointing officer; that the Attorney General should be clothed with an independency of action in protecting the public interest; that, even at the expense of potential lack of harmony, he should enjoy a freedom that is unfettered by any domination whatsoever; and that as a lawyer he should not be an employee, but rather should be allowed freely to exercise his proper

functions both as an officer of the court and as an attorney, bound only by the ethics of his profession and his oath of office.

4. People's right of recall.

Because of the fact that an elected Attorney General bears the burden of direct responsibility to the electorate which give him their mandate, he is subject to the "recall" prerogatives of the electorate. If they are dissatisfied with the performance of their elected Attorney General, they can replace him at the ensuing election. An appointed Attorney General would deprive the electorate of this substantial and salutary power.

The correlative of the right to recall an incompetent incumbent is the right to retain a competent incumbent. This is lost in the case of an appointed Attorney General because, no matter how efficient, competent or successful an appointed Attorney General may be, upon a change of administration he is usually turned out of office.

CONCEPT OF A "DEPARTMENT OF JUSTICE"

I am aware of Proposition No. 49 (introduced by Mr. Hull) which provides for the appointment of the Attorney General by the Governor and for a Department of Justice to be headed by the Attorney General and which further provides that "the legislature shall pass appropriate legislation for the implementation of this department." I am also aware of Resolution No. 24 (introduced by Mr. Sand) to direct the Committee on the Executive Branch to prepare and present a proposition to establish a Department of Justice, "into which shall be consolidated all of the functions, powers, duties and responsibilities of state government in connection with or relating to law enforcement, including, but not limited to, the prevention and investigation of crime, and the detection, identification, apprehension, prosecution, custody and rehabilitation of persons accused or convicted of crime."

Proposition No. 49 is too general and, therefore, difficult for present comment because it leaves everything to legislative implementation. Resolution No. 24 seems to indicate that all police departments, local as well as State, all Sheriffs and District Attorneys, all Correctional, Reform and Prison facilities, as well as the State Division of Parole, shall be under the jurisdiction of the proposed Department of

Justice. It does not define the projected department with sufficient particularity nor reflect the magnitude or complexity of the proposal. Nothing is said of the existing broad civil jurisdiction of the Department of Law.

However, I do have some recommendations which are more appropriate for legislative action:

(1) I am in favor of the greatest coordination and cooperation in the field of law enforcement — in a program such as is conceived under the recently created Crime Control Council (Laws of 1967, Chap. 167), under which Governor Rockefeller has provided an impressive and extensive program. Ex officio, the Attorney General or his designee should be a member of the Crime Control Council.

(2) Another area of interest is the relationship of the Attorney General and the District Attorneys. I am not in favor of appointed District Attorneys under the jurisdiction of the Attorney General. I believe that the District Attorneys should continue to be elected public officials.

However, I am of the opinion that there is room for a closer relationship between the Attorney General and the District Attorneys; this would result in better enforcement of the criminal laws. The Attorney General could be authorized to provide a forum for inter-county cooperation between District Attorneys. Periodic meetings could be mandated at

which attendance by District Attorneys or their representatives would be required. The Attorney General could prepare and disseminate information of common interest and bring law enforcement to new peaks of efficiency and excellence.

(3) Some local prosecutors are ill-equipped to handle complex criminal appeals because of a limited staff. The prosecutors should be permitted to call on the Attorney General for advice, cooperation and aid in appellate matters. To this end, provision could be made for the handling of criminal appeals by the Attorney General if requested to do so by the District Attorneys.

When specific and concrete provisions defining the jurisdiction and powers of a "Department of Justice" are presented, I shall be pleased to submit another Position Paper in which I shall make comments on the proposals.

CONCLUSION

In the interest of uniformity and consistency, the Attorney General should be constitutionally designated as the sole and exclusive representative of his public clients in all courts. In this connection I strongly support Proposition No. 365 (introduced by Mr. Reidy), which provides that -

> "The attorney-general shall be required and it shall be his duty to represent and appear for the state and all branches of the state government and all state departments, agencies, bureaus, officers and authorities in all litigation in which they shall be involved in all courts, and they shall be represented in the courts by no other persons than the attorney-general or a member of his staff."

The basic duties and powers of the Attorney General should remain intact with the addition set forth in Proposition No. 365. The Attorney General's activities as the State's chief legal officer are vital to the Legislature, to the various departments and agencies of State Government and, above all, to the People of the State of New York.

All can be accomplished, however, only if the Attorney General has the independence of an elected public official. That the elective status is productive of the best results is attested to by my immediate predecessors in the office of Attorney General. Our tenure covers the period of the past thirty-five years, during which we have experienced the deepest economic recession in our history as well as the longest period of economic well-being, during which we have had global conflicts, and during which we have come into the nuclear and the space age. Attendant upon these vast and fundamental changes have come a myriad of novel problems with which the Attorneys General have had to cope and for the most part they have successfully and vigorously responded

to the challenges. During these past thirty-five years, the Attorneys General of New York State have been John J. Bennett, Nathaniel L. Goldstein, Jacob K. Javits and I. My three immediate predecessors have authorized me to state that they favor the retention of the office on an elective basis. And so do I.

To sum it up - an elected Attorney General has a measure of independence and a sense of personal and direct responsibility to the public. The elected official has a natural and impelling desire to be creative and to exercise broader initiative in the service of the public. He is free of the fear of dismissal by any superior official if he should exercise contrary independent judgment. He is in the best position to render maximum service to the People and impartial advice to the Governor, the Legislature and State departments and agencies. He can appear in Court without fear or favor - an attorney in the fullest and finest sense of the word.

Dated: Albany, New York, June 1, 1967

Respectfully submitted,

LOUIS J. LEFKOWITZ
Attorney General

ADDENDUM

Former Attorney General Nathaniel L. Goldstein, after declaring that he is for an elective Attorney General, stated:

> "During my tenure as Attorney General, I did render opinions in opposition to the wishes of the Administration when, in due conscience, I felt that my interpretation was the legal and proper one. Had I been subject to the Governor's appointive and removal powers, I might have found myself in a very difficult and awkward position."

EDITORIAL PAGE

The Anchorage Times

ROBERT B. ATWOOD
Editor and Publisher

WILLIAM J. TOBIN
Associate Editor
And General Manager

FRED DICKEY
Executive Editor

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Another good reason

ONE WAY for Alaska to avoid having legislative lawyers sue administration lawyers is to elect an attorney general who is beholden to neither..

Add that to a long list of reasons to make the attorney general one of the very limited number of elected officials in the State of Alaska. As a matter of fact, there are only two — the governor and the lieutenant governor. Commissioners who head the various administrative departments are appointed by the governor.

This extremely restricted opportunity for the people to elect the public officials who presumably serve them is a unique provision of the Alaska Constitution. It was deliberately adopted, for the reason that those who were here at the time the new state was created wanted a powerful chief executive.

They wanted leadership and accountability. When it came to steering this new ship of state, those Alaskans back in the middle '50s wanted a single captain on the bridge.

IT WAS a good idea. There was need for a powerful hand at the helm of a state with little income, a small population and a million needs. The governor had marching orders to assemble a team and get the show on the road — with the concurrence, of course, of the legislative branch.

It had a fine beginning. For the most part, the executive and legislative branches worked in concert toward a common goal during years of economic struggle.

But not even the visionary constitutional delegates, and the voters who applauded their work in those dimming last days of the territory, could have perceived the day when Alaska would be rolling in money and a single field could produce a trillion dollars worth of oil.

The coming of that wealth produced a Mount St. Helens eruption in the Juneau bureaucracy. Not only did executive agencies swell in size and number, the legislature ballooned as well. It added offices and staffs and interim agencies and even went so far as to hire its own legal counsel, separate from the attorney general's office.

OVER THE YEARS, the attorney general became more the lawyer of the governor than of the state government as a whole. That produced an adversary situation with the legislators who often wanted a different legal opinion than they could expect from the Department of Law.

Their answer was to hire lawyers who would provide opinions supporting the legislature's interests. The result is that public funds are used to finance one set of state lawyers doing battle with another set.

An independent attorney general's office, headed by an elected chief not beholden either to the governor or the legislature, could provide both with unbiased and unfettered legal guidance. The people, as well as state officials, would be better served.

EDITORIAL PAGE

The Anchorage Times

ROBERT B. ATWOOD
Editor and Publisher

WILLIAM J. TOBIN
Associate Editor
And General Manager

FRED DICKEY
Executive Editor

ge A-10 Sunday, March 29, 1981

Let the voters decide

IN FORTY of the 50 states, the attorney general is elected to his post.

It is a system that obviously works well, because the people are the ones who decide who should fill this high office. And an attorney general answerable to the people is one who is responsive and responsible.

It's strange, therefore, to see the burning vigor that marks the opposition to letting the people of Alaska choose their attorney general. Yet there are those who apparently fear the people.

For example:

"I can think of no single change that would be more damaging, more harmful, more dangerous to the character of government."

THAT'S THE astonishing view of Superior Court Judge Thomas Stewart of Juneau, who testified the other day before a legislative hearing on a proposed constitutional amendment that would require the election of Alaska's attorney general, who is now an appointee of the governor and answerable only to him.

More damaging? More harmful? More dangerous?

How can this be? What is being proposed is part and parcel of the democratic form of government in which the people have the right to elect their leaders. Are elections damaging, harmful and dangerous to the character of our government?

We confess to lacking the judicial wisdom that graces members of Alaska's Superior Court. But all along we thought the character of our government was rooted in the elective process.

There are many Alaskans — and we're among them — who believe the present system of having the attorney general appointed, rather than elected, has proved less than satisfactory.

We don't buy the argument of former Attorney General Norm Gorsuch that "legal competence and electablity are not necessarily equal." The statement is incomplete. The rest of it is that "legal competence and appointability are not necessarily equal, either."

IT'S QUITE POSSIBLE that an incompetent lawyer might be elected attorney general. But his shortcomings would be readily evident and it's a sure thing that he would serve only a single term.

It's also quite possible — in fact, very likely — that some extremely capable men and women would seek election to the office, were it up to the people to decide. An elected attorney general would be his or her own person, with his or her reputation on the line. And he or she would be no lackey to any governor, or any legislature.

There's no doubt that were the office an elected position, it would be used by many as a stepping stone to higher office — the governorship, for example, or a seat in the U.S. House or U.S. Senate. But what's wrong with that?

Rep. Fred Brown, the Fairbanks Democrat who heads the House Judiciary Committee sponsoring this constitutional change, sees this as a means of strengthening government. So do we. And we hope he prevails so that this matter can be brought to the ballot for a vote of the people.

The Anchorage Times

ROBERT B. ATWOOD
Editor and Publisher

VILLIAM J. TOBIN
Associate Editor
nd General Manager

FRED DICKEY
Executive Editor

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The better way

IT'S TOO BAD that former Attorney General Avrum Gross doesn't think it's a good idea for Alaskans to elect their attorney general. But just because he feels that way detracts not one iota from the merit of the proposal.

It would be astonishing were Mr. Gross, who now teaches a couple of courses at Stanford University law school, to come out for an elected attorney general. His public career has been as an appointed legal spokesman for Gov. Jay Hammond.

Fortunately, there are other legal experts — whose qualifications and public service careers are are least as good as those of Mr. Gross — who feel precisely the opposite. They offered testimony contrary to that of Mr. Gross by satellite communication facilities in a hearing last week before the House Judiciary Committee.

The attorneys general of Pennsylvania and Colorado and the assistant attorney general of California told the committee that an elected attorney general is more independent of the governor and administration and thus less vulnerable to political repercussions from decisions.

FORTY of the nation's 50 states elect their attorney general. Alaska is one of only five states where the office is filled by appointment of the governor. In the other five the selection is made in a variety of ways, including legislative appointment.

Mr. Gross, however, thinks the Alaska way is best. Were it otherwise, he contended, the governor would attempt to shift blame for administration failures onto the attorney general rather than have a clear responsibility himself.

That's a pretty feeble defense of the present system.

If anything goes wrong in the administration of any program, regardless of the attorney general, any governor is going to be politically adept enough to dance out of the line of responsibility.

THE ATTORNEY general of Pennsylvania told members of the Judiciary Committee that Pennsylvanians voted overwhelmingly in favor of a constitutional amendment to make the office elective because they felt the attorney general was "not responsive to public needs" and that there was a "cozy arrangement" between the attorney general and the governor.

Colorado's attorney general said an elected attorney general carries "at least the aura of having an independent political base" and can say no to the governor "when the governor ought to be said 'no' to."

An assistant California attorney general said an elective attorney general is more efficient than an appointive one and "is not necessarily a threat to the functioning of the governor."

Those comments make sense for Alaska. And the legislature should take steps to bring this constitutional change to the ballot.

There seems little doubt that the amendment would be approved, if the legislature would only give the people a chance to vote.

EDITORIAL PAGE

The Anchorage Times

ROBERT B. ATWOOD
Editor and Publisher

WILLIAM J. TOBIN
Associate Editor
And General Manager

DREX HEIKES
Managing Editor

Page A-10 Thursday, July 2, 1981

Memo to politicians

STATE OFFICIALS who depend on votes of Alaskans for their public offices would be wise to arrange for the attorney general to be elected. A statewide poll by Dittman shows that public support is overwhelming.

In response to the simple question "Should the attorney general be elected?" 61 percent responded affirmatively and 27 percent preferred appointment.

That was the quick reaction from Alaskans scattered far and wide. The idea of electing that important official was favored by 73 percent of those in rural areas, 63 percent in Central Alaska (Fairbanks), 56 percent in Southcentral, 67 percent in Anchorage.

Only in Southeast Alaska was the response different. There it was 41 percent for appointment and 42 percent for election.

A SECOND QUESTION put to the same respondents built up still more the case in favor of the elective process.

It cited some of the powers that go with the office of attorney general. Upon hearing them, the respondents were 71 percent for and only 21 percent against.

That question put it this way: "If you knew that the attorney general of Alaska, who is appointed, also appoints all state prosecutors and district attorneys throughout the state, would you support having the attorney general remain an appointed position or would you support the attorney general becoming an elected position?"

Those favoring election gained 10 points while those for appointment lost 6 points.

TWO MESSAGES are handed to the politicians in that poll. The first is that a substantial majority of Alaskans want their attorney general elected, not appointed. The second is that the proposal gains strength when Alaskans are reminded of the power that lies in the office.

A politician can readily see the significance. He is disappointing his constituents if he ignores the proposal and he may discover his reelection in jeopardy if the day comes when a candidate campaigns against him on that issue.

In rural areas the final lineup was 85 percent for election. In Central Alaska 75 percent. In Southcentral 71 percent and in Anchorage 74 percent. Even in Southeast Alaska many voters changed their minds on the second question. The final tally there was 54 percent for election and only 34 percent for appointment.

No matter how you cut it

THE UNIVERSAL preference of the majority of Alaskans for electing the state's attorney general was pointed up in many different ways in a Dittman poll that showed 71 percent in support and only 21 percent opposed.

Dittman reported that the election proposal has overwhelming support in almost every bracket of the population, be it based on age, sex, income, educational attainment, party registration.

AMONG ALASKANS who have registered as Democrats or Republicans, 72 and 73 percent, respectively, favor election. Non-partisans were 69 percent in favor. Alaskans aged 18 to 24 are 77 percent in favor, those 56 and over, 75 percent and those in between range from 68 to 72 percent.

The poll showed 76 percent of the women and 66 percent of the men favor election. Homemakers are 75 percent for it. Private and public sector employees as a whole favor it 71 to 74 percent. Among state employees, however, the idea is not so popular. Yet more than half (56 percent) are for it.

Support of the election proposal declines as family incomes increase but the majority in all categories favor it. In low income groups 77 percent favor it while in higher income households 67 percent do.

Curiously, the idea of electing the attorney general is more popular among those who don't bother to register, and hence probably don't vote, than among those who do. Those not registered showed 73 percent for election while registered voters were 71 percent favorable.

THE RESULTS of that Dittman survey will be engraved on the minds of those who plan political campaigns. And Dittman's final analysis might inspire some of them to get on the bandwagon to amend the constitution so as to give the people the elective power they want.

That analysis was, "Presenting information regarding the attorney general's powers and responsibilities causes a strong shift to the elected option — especially among the 'undecided' respondents. In total, the undecided percentage declines from 12 to 7½ and more than 5 percent of those who favored the current appointed status changed their minds to support the elected provision when it was learned that the attorney general has broad appointive powers of his own."

The Anchorage Times

ROBERT B. ATWOOD
Editor and Publisher

WILLIAM J. TOBIN
Associate Editor
And General Manager

DREX HEIKES
Managing Editor

Weak arguments

RIGHT OFF THE BAT, there was a loud objection to the Anchorage Crime Commission's proposal that Alaska's attorney general and the local prosecuting attorneys should be elected. The complaints came from the appointed attorney general and one of his appointed district attorneys.

The flaws they see in the proposal are worthy of public review.

For one thing, they said, electing such officials would bring the justice system into politics. They would become subject to pressure from members of the public with axes to grind.

For another, they argue, lawyers would run for attorney general and district attorney in hopes of using the positions as stepping stones to higher political office.

BUT THOSE aren't necessarily flaws. On the contrary, it's possible to argue that those prospects would offer an enormous improvement in the way things are done in Alaska.

Take the second objection first. Under the Alaska constitution, only two state government officials are elected statewide — the governor and the lieutenant governor. Everybody else in the system, including the judges, is appointed by the governor or by department heads appointed by him.

The only other elected officials in Alaska are the city or borough mayors, elected locally; 60 members of the legislature, elected in local districts, and the three members of the state's congressional delegation, elected statewide. Not much of a stepladder on which people interested in public service can climb toward higher office.

An elected attorney general naturally would be looked upon as a potential candidate for governor or U.S. senator or congressman. What's wrong with that? It might be a powerful incentive for the one occupying that spot to do an outstanding job.

AS TO THE COMPLAINT that an elected attorney general might be subject to public pressure, again the advantages are compelling.

Why shouldn't the attorney general have to dance on a hot public griddle if the people become alarmed over deficiencies in the administration of justice?

The system as it now exists makes the attorney general the personal lawyer of the governor, his political defender and his legal arm in waging political warfare against the legislature and the public.

So long as he remains protected by the governor's skirts, the attorney general is immune from public pressure. All kinds of policies can be legitimatized, even though they might infuriate wide segments of the public and frustrate the aspirations of the people.

Legal opinions issued by the attorney general bind state agencies. They can be tools of the governor to guide, maneuver, control and stop all kinds of enterprises — economic and otherwise.

An attorney general answering to the public through the political process would have the freedom to respond to public concerns in ways that are not possible now.

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CHAIRMAN
HOUSE JUDICIARY COMMITTEE
MEMBER
HOUSE RESOURCES COMMITTEE

Representative Charlie Bussell

ALASKA STATE LEGISLATURE
HOUSE OF REPRESENTATIVES

March 29,1983

Peggy Mentele
207 West 22nd
Anchorage, Alaska 99503

Dear Ms. Mentele:

Thank you for taking the time to write expressing your concern about HJR-7, the election of the Attorney General.

I, too, used to oppose the election of the Attorney General. However, after the Committee's review of our past several office holders and what is and has been done by other states (45 have elected Attorney Generals), I began to change my stand on the issue.

Having just watched the present Governor and Attorney General pull out a stop and use every trick they had to interfere with HJR-7's passage, I voted for the election with a clear mind.

Thank you again for vour Public Opinion Message and for becoming involved in the legislative process.

Sincerely,

Representative Charlie Bussell
Chairman, Committee on Judiciary

CB:cmz

Table 11

ATTORNEYS GENERAL: DUTIES TO ADMINISTRATIVE AGENCIES AND MISCELLANEOUS DUTIES

State or other jurisdiction	Serves as counsel for state	Appears for state in criminal appeals	Duties to administrative agencies: Issues official advice	Interprets statutes or regulations	Conducts litigation: In behalf of agency	Conducts litigation: Against agency	Prepares or reviews legal documents	Represents the public before the agency	Involved in rule-making	Reviews rules for legality
Alabama	A, B, C	★(a)	★	★	★	★	★	★(b)	...	★
Alaska	A, B, C	★	★	★	★	★	★	...	★	★
Arizona	A, B, C	★(c,d)	★	★	★	★	★	...	★	★
Arkansas	A, B, C	★(a)	★	★	...	★	★	★	★	★
California	A, B, C	★(a)	★	★	★	★	★	...	...	...
Colorado	A, B, C	★(a)	★	★	★	★	★	...	★	★
Connecticut	A, B, C	...	★	★	★	...	★	...	★	★
Delaware	A, B, C	★(a)	★	★	★	★	★	★	★	★
Florida	A, B, C	★(a)	★	★	★	...	★	★	★	★
Georgia	A, B, C	★(b,c)	★	★	★	★	★	...	★	★
Hawaii	A, B	★(b,c)	★	★	★	★	★	★	★	★
Idaho	A, B, C	★(a)	★	★	★	★	★	...	★	★
Illinois	A, B*, C	★(b,c,e)	★	★	★	★	★	★	...	...
Indiana	A, B, C	★(a)	★	★	★	...	★	...	★	★
Iowa	A, B, C	★(a)	★	★	★	★	★	...	...	★
Kansas	A, B, C	★(a)	★	★	★	★	★	...	...	★
Kentucky	A, B*, C	★	★	★	★	★	★	...	★	★
Louisiana	A, B, C	★(c)	★	★	★	★	★	...	★	★
Maine	A, B, C	★(b,d)	★	★	★	...	★	...	★	★
Maryland	A, B, C	★	★	★	★	★(b)	★	★	★	★
Massachusetts	A, B, C	★(b,c,d)	★	★	★	★	★	★	★	★
Michigan	A, B, C	★(b,c,d)	★	★	★	...	★	★	★	★
Minnesota	A, B, C	★(c)	★	★	★	★	★	★	...	★
Mississippi	A, B, C	★	★	★	★	...	★	...	★	★
Missouri	A, B, C	★	★	★	★	...	★	...	★	★
Montana	A, B, C	★	★	★	★	...	★	...	★	★
Nebraska	A, B, C	★	★	★	★	★	★	...	...	★
Nevada	A, B, C	★(d)	★	★	★	...	★	★	★	★
New Hampshire	A, B, C	★(a)	★	★	★	★	★	★	★	★
New Jersey	A, B, C	★(d)	★	★	★	★	★	...	★	★
New Mexico	A, B, C	★(a)	★	★	★	★	★	★	★	★
New York	A, B, C	★(b)	★	★	★	★	...	★	...	...
North Carolina	A, B, C	★	★	★	★	★	★	★(b)	★	★
North Dakota	A, B, C	★(b)	★	★	★	...	★	...	★	★
Ohio	A, B, C	...	★	★	★	★	★	★	★	...
Oklahoma	A, B, C	★(b)	★	★	★	★	★	★	★	★
Oregon	A, B, C	★	★	★	★	...	★	...	★	★
Pennsylvania	A, B, C	★(c)	★	★	★	★	★	...	★	★
Rhode Island	A, B, C	★(a)	★	★	★	...	★	★	★	★
South Carolina	A, B, C	★(d)	★	★	★	...	★	...	★	★
South Dakota	A, B, C	★(a)	★	★	★	...	★	...	★	★
Tennessee	A, B, C	★(a)	★	★	★	...	★	★(b)	★	★
Texas	A, B, C	★(c)	★	★	★	★	★	...	★	★
Utah	A, B, C	★(a)	★	★	★	★	★	★	★	★
Vermont	A, B, C	★(b)	★	★	★	★	★	★(b)	...	★
Virginia	A, B, C	★(a)	★	★	★	★	★	★	★	★
Washington	A, B, C	★(c,f)	★	★	★	★	★	★	★	★
West Virginia	A, B, C	★(a)	★	★	★	★(f)	★	★	★	...
Wisconsin	A, B, C	★(b)	★	★	★	★	★	★(b)	★	...
Wyoming	A, B, C	★(a)	★	★	★	...	★	...	★	★
American Samoa	A, B, C	★(a)	★	★	★	...	★	...	★	★
Northern Mariana Is.	A, B, C	★(g)	★	★	★	...	★	...	★	★
Puerto Rico	A, B, C	★	★	★	★	...	★	...	★	★
Virgin Islands	A, B, C(h)	★	★	★	★	...	★	...	★	★

★ A. Defend state law when challenged on federal constitutional grounds.
B. Conduct litigation on behalf of state in federal and other states' courts.
C. Prosecute actions against another state in U.S. Supreme Court.
* Sues in federal courts.
** Attorney general has exclusive jurisdiction.

(a) In certain cases only.
(b) In certain cases only.
(c) When assisting the local prosecutor in the appeal.
(d) Can appear on own discretion.
(e) In certain courts only.
(f) If authorized by the governor.
(g) Because there are no local prosecutors.
(h) Except in cases in which the U.S. Attorney is representing the Government of the Virgin Islands.

Quoted in Alaska State Hous. Auth. v. Dixon, Sup. Ct. Op. No. 793 (File No. 1529), 496 P.2d 649 (1972); Warren v. Boucher, Sup. Ct. Op. No. 1205 (File No. 2316), 543 P.2d 731 (1975).

Section 23. Reorganization. The governor may make changes in the organization of the executive branch or in the assignment of functions among its units which he considers necessary for efficient administration. Where these changes require the force of law, they shall be set forth in executive orders. The legislature shall have sixty days of a regular session, or a full session if of shorter duration, to disapprove these executive orders. Unless disapproved by resolution concurred in by a majority of the members in joint session, these orders become effective at a date thereafter to be designated by the governor.

The constitution vests no power in the judiciary to define the specific functions of the principal departments in the state government or the units of the executive branch, and in the absence of express authorization or an overriding constitutional imperative, the judiciary may not bequeath such a power to itself. Granato v. Occhipinti, Sup. Ct. Op. No. 1962 (File No. 3756), 602 P.2d 442 (1979).

Thus, superior court cannot order home study by department of health and social services. — The superior court does not have the authority to order the Alaska department of health and social services, division of social services, against its will, to conduct a home-study in a private custody dispute. Granato v. Occhipinti, Sup. Ct. Op. No. 1962 (File No. 3756), 602 P.2d 442 (1979).

The legislative veto power granted in this section and Alaska Const., art. X, § 12, is the power to change statutes, not rule-making power, which is the power to interpret and implement statutes. State v. A.L.I.V.E. Voluntary, Sup. Ct. Op. No. 2022 (File No. 3670), 606 P.2d 769 (1980).

The creation of the Alaska Mortgage Adjustment Agency was not a change in the organization of the executive branch of government requiring the force of law. Suber v. Alaska State Bond Comm., Sup. Ct. Op. No. 344 (File No. 651), 414 P.2d 546 (1966).

Section 24. Supervision. Each principal department shall be under the supervision of the governor.

Section 25. Department Heads. The head of each principal department shall be a single executive unless otherwise provided by law. He shall be appointed by the governor, subject to confirmation by a majority of the members of the legislature in joint session, and shall serve at the pleasure of the governor, except as otherwise provided in this article with respect to the secretary of state. The heads of all principal departments shall be citizens of the United States.

Revisor's note. — Senate Joint Resolution No. 2, "changing the name of the secretary of state to lieutenant governor" in 16 sections of the Alaska Constitution, approved by the voters August 25, 1970, inadvertently omitted express amendment of this section.

The provisions of this section and § 26 of this article are clear and unambiguous. Bradner v. Hammond, Sup. Ct. Op. No. 1297 (File No. 2802), 553 P.2d 1 (1976).

This section explicitly empowers the governor to appoint and dismiss the head of each principal department. Bradner v. Hammond, Sup. Ct. Op. No. 1297 (File No. 2802), 553 P.2d 1 (1976).

It subjects these executive appointments to confirmation by a majority of the members of the legislature

in joint session. Bradner v. Hammond, Sup. Ct. Op. No. 1297 (File No. 2802), 553 P.2d 1 (1976).

Confirmation is part of executive power of appointment. — Confirmation is not a distinct legislative power, but rather a part of the executive power of appointment which has in turn been delegated in some specific instances by constitution to the legislative branch of government. Bradner v. Hammond, Sup. Ct. Op. No. 1297 (File No. 2802), 553 P.2d 1 (1976).

This section and § 26 of this article limit legislative checks on governor's power to appoint. — The lack of ambiguity in this section and § 26 of this article mandate that this court interpret these express provisions as embodying not only the maximum parameters of the delegation of the executive appointive authority through the legislative confirmation function but, further, that they delineate the full extent of the constitution's express grant to the legislative branch of checks on the governor's power to appoint subordinate executive officers. Bradner v. Hammond, Sup. Ct. Op. No. 1297 (File No. 2802), 553 P.2d 1 (1976).

This section and § 26 of this article mark the full reach of the delegated, or shared, appointive function to Alaska's legislative branch of government. Bradner v. Hammond, Sup. Ct. Op. No. 1297 (File No. 2802), 553 P.2d 1 (1976).

Section 1, ch. 82, SLA 1975, is unconstitutional. — Section 1, ch. 82, SLA 1975, which amends AS 39.05.020 and purports to authorize legislative "meddling" in the exercise of an executive power, i.e., the appointment of executive officials, is unconstitutional because it is violative of separation of powers requirements. Bradner v. Hammond, Sup. Ct. Op. No. 1297 (File No. 2802), 553 P.2d 1 (1976).

Submission of names for confirmation. — Neither custom nor law requires the governor to submit the names of the heads of principal departments to the legislature for confirmation when they carry over in office following a gubernatorial election. January 25, 1979, Op. Att'y Gen.

Applied in Larson v. State, Sup. Ct. Op. No. 1430 (File No. 2433), 564 P.2d 365 (1977); Buckalew v. Holloway, Sup. Ct. Op. No. 1988 (File No. 4058), 604 P.2d 240 (1979).

Section 26. Boards and Commissions. When a board or commission is at the head of a principal department or a regulatory or quasi-judicial agency, its members shall be appointed by the governor, subject to confirmation by a majority of the members of the legislature in joint session, and may be removed as provided by law. They shall be citizens of the United States. The board or commission may appoint a principal executive officer when authorized by law, but the appointment shall be subject to the approval of the governor.

(Proposed Amendment)

Confirmation and term of office. Unless otherwise provided by law, the governor shall appoint the members of all state boards and commissions, and the members may be removed as provided by law. Unless confirmation is otherwise provided for in this article, the legislature shall determine which state board and commission members are subject to confirmation by the legislature. Confirmation of board and commission members subject to confirmation under this section shall be by a majority of the members of the legislature in joint session.

ALASKA STATE LEGISLATURE
HOUSE OF REPRESENTATIVES
RESEARCH AGENCY

Pouch Y, State Capitol
Juneau, Alaska 99811
(907) 465-3991

March 27, 1981

MEMORANDUM

TO: Representative Fred Brown, Chairman
House Judiciary Committee

ATTN: Pete Froehlich

FROM: Deb Pomeroy

RE: Election or Appointment of Attorneys General in Other States
Research Request 81-91

You asked that we provide a breakdown of the 50 states showing which states elected their attorneys general, and which states appointed them.

According to the 1980-81 edition of Book of States (see attached table), 40 states have a constitutional provision requiring the public election of the attorney general. These states are listed below:

Alabama	Illinois	Missouri	Pennsylvania
Arizona	Iowa	Montana	Rhode Island
Arkansas	Kansas	Nebraska	South Carolina
California	Kentucky	Nevada	South Dakota
Colorado	Louisianna	New Mexico	Texas
Connecticut	Maryland	New York	Utah
Delaware	Massachusetts	North Carolina	Virginia
Florida	Michigan	North Dakota	Washington
Georgia	Minnesota	Ohio	West Virginia
Idaho	Mississippi	Oklahoma	Wisconsin

Three states, Indiana, Oregon and Vermont, have a statutory requirement that the attorney general be elected by the public.

Of the states that have appointed attorneys general, Hawaii, Wyoming and New Jersey require Senate approval of the Governor's appointment; New Hampshire requires Council approval; and Alaska requires approval by both the House of Representatives and Senate.

Table 19
STATE ADMINISTRATIVE OFFICIALS: METHODS OF SELECTION

State or other jurisdiction	Governor	Lt. governor	Secretary of state	Attorney general	Treasurer	Adjutant general	Administration	Agriculture	Banking	Budget	Civil rights	Commerce	Community affairs	Comptroller	Consumer affairs	Corrections	Data processing
Alabama	CE	CE	CE	CE	CE	G	...	CE	G	CS	...	G	G	AG	(a-1)	G	CS
Alaska	CE	CE	(a-4)	GB	(a-5)	G	A	A	A	A	G	GB	GB	GB	A	A	A
Arizona	CE	...	CE	CE	CE	G	GS	B	GS	L	A	G	...	AG	(a-1)	GS	AG
Arkansas	CE	CE	CE	CE	CE	G	(a-10)	(a-11)	AG	AG	...	(a-12)	G	(a-10)	(a-1)	GS	GS
California	CE	CE	CE	CE	CE	GS	(b)	GS	GS	GS	G	GS	GS	CE	GS	GS	G
Colorado	CE	CE	CE	CE	CE	G	GS	GS	A	GS	A	A	A	A	(a-1)	GS	(a-8)
Connecticut	CE	CE	CE	CE	CE	G	GE	GE	GE	A	B	GE	A	CE	GE	GE	A
Delaware	CE	CE	GS	CE	CE	GS	GS	GS	GS	GS	GS	GS	AG	AG	A	AG	GS	AG
Florida	CE	CE	CE	CE	CE	GS	GS	CE	CE	A	A	GS	GS	CE	A	GS	A
Georgia	CE	CE	CE	CE	A	G	GS	CE	GS	G	...	B	G	CE	G	B	A
Hawaii	CE	CE	(a-4)	GS	...	GS	...	GS	(a-25)	GS	...	(a-7)	...	GS	(a-25)	(a-3)	(a-22)
Idaho	CE	CE	CE	CE	CE	G	GS	GS	GS	G	BGS	G	(a-11)	CE	(a-1)	BGS	(a-5)
Illinois	CE	CE	CE	CE	CE	G	GS	GS	GS	G	GS	GS	GS	CE	(a-1)	GS	A
Indiana	CE	CE	CE	SE	CE	G	G	(a-4)	G	G	G	(a-4)	A	...	AT	G	A
Iowa	CE	CE	CE	CE	CE	GS	...	SE	GS	(a-5)	GS	GS	A	GS	(a-1)	(a-3)	CS
Kansas	CE	CE	CE	CE	SE	GS	GS	B	GS	CS	B	GS	A	A	A	GS	A
Kentucky	CE	CE	CE	CE	CE	G	G	CE	G	AG	B	G	G	(a-10)	A	AG	AG
Louisiana	CE	CE	CE	CE	CE	GS	G	CE	GS	GS	...	GS	GS	(a-8)	GS	GS	A
Maine	CE	...	CL	CL	CL	G	GLS	GLS	GLS	AG	B	(a-27)	G	AG	GLS	AG	CS
Maryland	CE	CE	GS	CE	CL	GS	...	GS	AGS	GS	GS	A	AG	CE	A	AGS	(a-5)
Massachusetts	CE	CE	CE	CE	CE	G	G	G	G	AG	AT	G	G	G	G	G	A
Michigan	CE	CE	CE	CE	GS	GS	GS	B	GS	(a-8)	B	GS	...	...	(a-1)	B	(a-8)
Minnesota	CE	CE	CE	CE	CE	G	GS	GS	BS	GS	GS	(g)	(a-11)	A	GS	GS	A
Mississippi	CE	CE	CE	CE	CE	GS	...	SE	GS	B	...	(a-29)	B	(a-30)	A	B	B
Missouri	CE	CE	CE	CE	CE	GS	GS	GS	AS	A	B	A	(a-11)	A	GS	GS	A
Montana	CE	CE	CE	CE	A	G	GS	GS	(a-11)	G	G	G	(a-11)	A	G	A	A
Nebraska	CE	CE	CE	CE	CE	G	GS	GS	GS	A	B	GS	(a-11)	A	(a-1)	GS	A
Nevada	CE	CE	CE	CE	CE	G	G	BG	A	(a-8)	G	G	G	CE	A	G	A
New Hampshire	CE	...	CL	GC	CL	GC	(a-5)	GC	GC	A	B	GOC	GOC	GOC	(a-1)	GOC	B
New Jersey	CE	...	GS	GS	GS	GS	...	BG	GS	GS	A	GS	GS	GS	GS	GS	A
New Mexico	CE	CE	CE	CE	CE	GS	GS	(b)	GS	G	G	G	GS	AG	G	(a-1)	A	A
New York	CE	CE	GS	CE	A	G	...	GS	G	G	G	GS	GS	CE	GS	GS	(a-6)
North Carolina	CE	CE	CE	CE	CE	G	G	CE	GS	AG	(a-8)	G	A	(a-22)	A	G	AG
North Dakota	CE	CE	CE	CE	CE	G	A	CE	GS	A	...	G	...	A	A	GS	A
Ohio	CE	CE	CE	CE	CE	G	GS	GS	A	GS	GS	GS	(a-11)	(a-21)	(a-1)	GS	A
Oklahoma	CE	CE	GS	CE	CE	GS	...	GS	GS	G	B	G	G	AG	B	B	...
Oregon	CE	...	CE	SE	CE	G	GS	GS	AG	A	CS	GS	A	A	A	AG	A
Pennsylvania	CE	CE	GS	CE	CE	GS	G	GS	GS	G	GS	GS	GS	AG	A	AG	AG
Rhode Island	CE	CE	CE	CE	CE	G	GS	(a-12)	G	CS	B	GS	GS	A	BS	GS	A
South Carolina	CE	CE	CE	CE	CE	CE	(a-22)	SE	B	B	B	(a-27)	A	CE	B	B	(a-22)
South Dakota	CE	CE	CE	CE	CE	GS	G	GS	A	G	GS	GS	(a-27)	CE	(a-1)	AG	A
Tennessee	CE	(i)	CL	SC	CL	G	(a-10)	G	G	A	B	G	(a-11)	CL	A	G	A
Texas	CE	CE	GS	CE	CE	GS	...	SE	BS	G	...	(a-27)	GS	CE	A	B	B
Utah	CE	CE	...	CE	CE	G	GS	GS	GS	G	...	GS	GS	CE	AG	BA	AG
Vermont	CE	CE	CE	SE	CE	SL	GS	GS	GS	GS	(a-1)	A	GS	(a-10)	(a-1)	GS	CS
Virginia	CE	CE	GB	CE	GB	GB	GB	GB	B	GB	...	GB	A	GB	(a-29)	GB	GB
Washington	CE	CE	CE	CE	CE	GS	(a-6)	GS	A	GS	B	GS	(a-11)	(a-22)	(a-1)	GS	B
West Virginia	CE	...	CE	CE	CE	GS	(a-10)	CE	GS	A	GS	GS	A	(a-10)	(a-1)	GS	A
Wisconsin	CE	CE	CE	CE	CE	G	GS	B	GS	(a-8)	A	GS	(a-11)	(a-8)	(a-1)	A	(a-8)
Wyoming	CE	...	CE	GS	CE	G	G	B	G	G	...	(a-27)	(a-27)	G	(a-1)	BG	A
Guam	CE	CE	...	GS	A	...	GS	GS	(a-38)	GS	...	GS	G	(a-8)	A	GS	A
Puerto Rico	CE	...	GB	GS	GS	GS	...	GS	(a-21)	G	G	G	A	O	GS	GS	...
Virgin Islands	CE	CE	...	GS	...	...	(b)	GS	(a-4)	G	GS	GS	(b)	...	GS	GS	(b)

Note: Salary figures for these officials may be found in Table 18.

Key:

CE —Constitutional, elected
CL —Constitutional, elected by legislature
SE —Statutory, elected
SL —Statutory, elected by legislature
L —Selected by legislature or one of its organs
SC —Statutory, elected by state supreme court

Appointed by:	*Approved by:*
G —Governor	...
GS —Governor	Senate
GB —Governor	Both houses
GE —Governor	Either house
GC —Governor	Council
GD —Governor	Departmental board
GLS —Governor	Appropriate legislative committee & senate
GLG —Governor & Lt. governor	...
GOC —Governor & council or cabinet	...
LG —Lieutenant governor	...

Appointed by:	*Approved by:*
AT —Attorney general	...
A —Agency head	...
AB —Agency head	Board
AG —Agency head	Governor
AGC —Agency head	Governor & council
AS —Agency head	Senate
ALS —Agency head	Appropriate legislative committee & senate
AGS —Agency head	Governor & senate
ASH —Agency head	Senate president & house speaker
B —Board or commission	...
BG —Board	Governor
BGC —Board	Governor & council
BGS —Board	Governor & senate
BS —Board or commission	Senate
BA —Board or commission	Agency head
CS —Civil Service	...
ACB —Nominated by audit committee	Both houses

STATE OF ALASKA
PRELIMINARY STATEMENT OF FISCAL IMPACT

Bill No: SS HJR 7 Date on Bill: 2/11/83
Title: "proposing amendments to the Constitution..relating to the election of the attorney general"
Sponsor: Uehling, Ward et al
Requestor: House Judiciary Committee

1. Estimated fiscal impacts on: Office of the Governor, Division of Elections

a. Expenditures:

(Thousands of Dollars)

			FY 83	FY 84	FY 85	FY 86		
Capital								
Operating				-0-	-0-			
Total								

b. Revenues:

Revenue								

2. Source of funds to offset fiscal impact of bill:

3. Assumptions: Implementation of this resolution would result in a Constitutional amendment question to be asked in the 1984 general election. As a single question on the ballot it would not incur a fiscal impact.

4. Disclaimer:
This statement has not been reviewed by the OMB in the Office of the Governor. It doe not represent the policy of the Sheffield Administration or the final estimate of fisc impact.

Prepared By: TPThoma, Information Officer Phone: 4611
Division: Elections Date: 2/23/83

Approved by Commissioner: Date:
Department:

5. Distribution:
Original to Legislative Finance
Copy to OMB
Copy to Sponsor

2/8/83

STATE OF ALASKA
FISCAL NOTE

Revision Date , 1983

I. REQUEST

Bill/Resolution No.: CSSSHJR No. 7(Judiciary)
Title: "...election of the Attorney General."
Sponsor: House Judiciary (Orig.-Uehling)
Requestor: Senate State Affairs

II. FISCAL DETAIL

Agency Affected: Department of Law
Program Category Affected: General Govt.
BRU, Program of Subprogram(s) Affected: Legal Services, Administrative Services

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 83	FY 84	FY 85	FY 86	FY 87	FY 88
OPERATING						
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 COMMODITIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC						
TOTAL OPERATING			*	*	*	*
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND			*	*	*	*
FEDERAL FUNDS						
OTHER (Specify Source)						

POSITIONS:

FULL-TIME			*	*	*	*
PART-TIME						
TEMPORARY						

III. SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

* Because expenditures would not begin until the latter part of FY 85, actual costs cannot be determined at this time. Please see Analysis.

IV. ANALYSIS: Attach a separate page for any Analysis

Prepared By: Richard I. Pegues, Director (Richard I. Pegues) Phone: 465-3672
Division: Administrative Services Division Date: May 26, 1983

Approved by Commissioner: Norman C. Gorsuch, Attorney General (Richard I. Pegues/for) Date: May 26, 1983
Department: Department of Law

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3/8/83

CSSSHJR No. 7 (Judiciary)
Analysis

This resolution provides for a ballot proposition that would, if approved by the voters, amend the state's constitution by changing the position of attorney general from an appointed office to an elected office. The proposed amendments would also remove the governor's organizational and supervisory controls over any function or unit of government headed by the attorney general.

These controls are normally maintained through executive branch procedural requirements imposed on other executive branch agencies by the Department of Administration and the Office of Management and Budget. The controls are exercised by requiring that other departments obtain OMB's and Administration's approval for: purchasing, leasing and supply; professional services contracting; duplicating services; personnel administration and labor relations; equal employment opportunity programs; data processing, information management and telecommunications services; records management; preaudit accounting services; and budget preparation and budget management.

It will be very expensive for an elected attorney general to provide all or most of these services in-house. Although an attorney general may decide to use some of the centrally provided services, key areas such as: personnel; professional services contracting; purchasing, supply and leasing; data processing; and budget preparation and management, would have to be provided in-house if the attorney general's functions are to be at least reasonably free of the governor's supervision. In addition, it is more than likely that attorney timekeeping would be required throughout the Civil Division because most client agencies would not share the same priorities and program goals of an elected attorney general and they would undoubtedly insist that all interagency-funded legal services provided on their behalf be accurately documented and fully substantiated.

Additional costs, expressed in FY 83 dollars, that will provide for complete independence from the organizational and supervisory control of the governor are shown below. Even if the attorney general were to forego a part of this independence, the savings would only amount to 20 or 30% of the total cost because of the necessity to retain in-house control over the essential support services that determine a department's freedom of action.

Function	Positions	Salary/ Benefits	Other Position Costs		Total
Director's Office					
	(1) Budget Analyst R19		Travel	2,500	
	(1) Admin. Officer R17		Contractual	24,100	
	(1) Clk. Typist R8		Commod.-ongoing	5,400	
			Commod.-one-time	4,500	
			Equip.-one-time	18,100	
	(3)	113,805		54,600	168,405
Personnel					
	(1) Personnel Mgr. R21		Travel	2,500	
	(2) Personnel Analysts R16		Contractual	54,200	
	(1) Training Officer R18		Commod.-ongoing	14,400	
	(2) Personnel Tech.'s R12		Commod.-one-time	12,000	
	(1) Payroll Clerk R10		Equip.-one-time	24,100	
	(1) Clk. Typist R8				
	(8)	255,307		107,200	362,507
Property/Supply					
	(1) Materials Mgr. R21		Travel	2,500	
	(1) Purchasing Agent R18		Contractual	19,600	
	(1) Supply Officer R16		Commod.-ongoing	7,200	
	(1) Clk. Typist R8		Commod.-one-time	6,000	
			Equip.-one-time	19,300	
	(4)	161,843		54,600	216,443
Finance/Accounting					
	(1) Finance Officer R21		Travel	2,500	
	(1) Acct. Supervisor R16		Contractual	19,900	
	(1) Acct. Clerk R10		Commod.-ongoing	5,400	
			Commod.-one-time	4,500	
			Equip.-one-time	3,600	
	(3)	120,427		35,900	156,327

Attorney Timekeeping					
	(1) Accountant R18		Travel	1,800	
	(3) DP Clerks R11/R9		Contractual	33,000	
			Commod.-ongoing	7,200	
			Commod.-one-time	6,000	
			Equip.-one-time	16,000	
	(4)	111,023		64,000	175,023
Records Management					
	(1) Records Analyst R18		Travel	1,800	
	(1) Records Supervisor R15		Contractual	81,200	
	(1) Records Handler R12		Commod.-ongoing	9,000	
	(2) Microfilm Operators R10/R14		Commod.-one-time	7,500	
			Equip.-one-time	81,000	
	(5)	180,432		180,500	360,932
Data Processing/Communications					
	(1) DP Mgr. R21		Travel	2,500	
	(1) Programmer Analyst R18		Contractual	319,900	
	(1) DP/Comm. Sys. Supvr. R18		Commod.-ongoing	5,400	
			Commod.-one-time	4,500	
			Equip.-one-time	41,600	
	(3)	142,116		373,900	516,016
Duplication Svcs.					
	(1) Duplication Mgr. R19		Travel	1,000	
	(1) Printing Tech. R17		Contractual	74,500	
	(2) Machine Operators R12		Commod.-ongoing	57,200	
			Commod.-one-time	6,000	
			Equip.-one-time	154,800	
	(4)	163,768		293,500	457,268
TOTAL	(34)	1,248,721		1,164,200	2,412,921

Non-salary costs include anticipated space rental of 6,000 sq. ft. for the additional staff of 34, at $2.00 per sq. ft., per month, plus 2,000 sq. ft. each, for records management and duplication services. Also costed in is $200 per month per employee for contractual services to cover telephone, copying and postage. Ongoing commodities are estimated at $150 per month, per employee. New position costs include $1,500 per employee for one-time commodities (furniture and equipment costing less than $500 per item), and $1,200 per employee for new position equipment costing more than $500 per item. Special items include $15,000 for employee recruitment advertising for non-attorney job applicants, $5,000 for personnel system printing, and $20,000 for a data processing program to maintain EEO statistics. Word processors will cost $14,500 each for a total cost of $48,000. Records management equipment include storage devices and microfilm/graphics equipment totalling $75,000. Duplication equipment will cost approximately $150,000. DP terminals for both the DP section and the timekeeping section will cost $50,000. Data processing computer-time should be at $150,000 per year and an additional $150,000 is included to maintain and enhance the department's work management, timekeeping, opinion indexing, Westlaw and PROMIS systems.

The total additional cost of $2,412,921 is an enormous increase over the department's current administrative overhead of $449,800 projected for FY 84. It is, however, part of the price that must be paid if the proposal to have an elected attorney general is adopted by the electorate during the 1984 general election.

Another major cost area that will eventually occur as a result of changing from an appointed to an elected attorney general, will be a proliferation of special counsel on the staff of major departments. Historically, such counsel have been employed by executive branch agencies to give department heads a "second" opinion in controversial matters in states having an elected attorney general. Such counsel usually do not have the authority to litigate, but they do provide legal advice to department heads and submit amicus briefs in litigation affecting their department's programs. It is not unusual in these states to see four or five separate briefs filed in a single matter, in addition to the attorney general's brief, representing the varying viewpoints of different agencies. Costs for just a single special counsel, including secretarial assistance, total about $150,000 per year in 1983 dollars. Although it is impossible, at this time, to accurately say how extensive the use of in-house counsel will be if there is an elected attorney general, the additional cost for such counsel could easily exceed $1.0 million annually, within just a few years.

MSG 83-00003864 PRTY 1 03/25/83 17:09:38 ORIG: LA01 IN= 0016 OUT= 0097
FROM: MARCIE, ANC INFO TO: POM, JUNEAU INFO
TARGET: LJHL SUBJ: P O M

TO: REPRESENTATIVES BUSSELL, LINDAUER
SENATORS STURGULEWSKI, RODEY, V. FISCHER, RAY, KELLY, JOSEPHSON, P. FISCHER, HALFORD AND MOSS

FROM: PEGGY MENTELE, 207 WEST 22ND, ANCHORAGE 99503- 277-5846 H 276-5121 W

I OPPOSE ELECTION OF ATTORNEY GENERAL WHILE LEGISLATORS PROPER FUNCTION IS TO STRIVE TO SATISFY THEIR PARTICULAR CONSTITUENCY AN ATTORNEY GENERAL MUST SERVE AS AN INDEPENDENT AND IMPARTIAL ATTORNEY GENERAL FOR THE STATE. THE NEED TO MAINTAIN PUBLIC POPULARITY MIGHT ADVERSELY EFFECT THE QUALITY OF AN ATTORNEY GENERALS OPINION.

EOM

Thank ~~you~~ "Usual"

Concern in HJR-7 election of A.G.

I too used to oppose the election of the Attorney General, However, ~~[illegible]~~ After Committee review of our past several office holders and what is and has been done by other states (45 have elected Attorney Generals) I began to change my ~~[illegible]~~ stand on the issue

~~[illegible]~~ having just watched the present Governor and Attorney General pull out all stop and use every trick they had to interfere with HJR-7's passage I voted for the election with a clear mind

Thank you

"Usual"

FROM: WILLIAM TYREE
6090 N. DOUGLAS
JUNEAU, ALASKA 99801
586-2948

Judiciary Referral

I'M THE MAN WHO SUED NICKEL AND BOYKO. I BELIEVE WE SHOULD HAVE AN ELECTED ATTORNEY GENERAL WHO WOULD NOT BE BEHOLDEN TO ANYONE BUT THE VOTERS.

EOM

(COPIES TO ALL LEGISLATORS)

FROM: LEONARD MOFFITT
PO BOX 748
PALMER 99645

HJR17

BY BEING INVOLVED IN THE TEXAS 'COOKY JAR' IT SEEMS THE ATTORNEY GENERAL HAS FIGURATIVELY REMOVED HIMSELF AS ATTORNEY FOR THE PEOPLE TO BE ON THE GOVERNOR MUTUAL DEFENSE TEAM.

AN ELECTED ATTORNEY GENERAL COULD HELP THE GOVERNOR WITH SOUND ADVICE RATHER THAN PLAY 'FOLLOW THE LEADER.' LET'S SHOW PRIDE IN OUR AMERICAN SYSTEM AND ELECT JUDICIAL OFFICERS.

HJR

8

POUCH V
JUNEAU, ALASKA 99811
(907) 465-4990

Alaska State Legislature
HOUSE OF REPRESENTATIVES

REPRESENTATIVE
CHARLIE BUSSELL
CHAIRMAN

Committee on Judiciary

M E M O R A N D U M

April 21, 1983

TO: Committee Members, House Judiciary Committee

FROM: Steve Cramer, Legislative Aide

SUBJECT: [redacted]

In anticipation and preparation of today's meeting I am forwarding an advance copy of material relative to your decision making. I had hoped to put before each of you a substantive "committee substitute" for the resolution, but as you will see from the accompanying memo from Dick Bradley in Legal Services an additional preliminary decision has yet to be made by each of you.

The majority vote provision is a complex issue in our State, not so much from a substantive "policy" standpoint as from a procedural one.

I would respectfully ask each of you to review the materials attached before coming to today's meeting. The next step will be to decide on a "runoff" provision either on the primary election or on the general election.

MEMBERS: REP. LISKA, VICE CHAIRMAN, REP. HAYES, REP. BARNS, REP. MALONE, REP. CLOCKSIN, REP. WENDTE

STATE OF ALASKA
THE LEGISLATURE

LEGISLATIVE AFFAIRS AGENCY

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

MEMORANDUM April 20, 1983

SUBJECT: Runoffs
(HJR 8)

TO: Representative Charlie Bussell
Chairman, House Judiciary Committee

FROM: Richard A. Bradley
Legislative Counsel

Steve Cramer has discussed with me the response of the Division of Elections to the proposal for a runoff election for the office of governor/lieutenant governor. He reports that the division believes that it could not put together a runoff election until the end of the first week in January.

The premise of that response has to be that no existing mechanisms for the conduct of the general election are changed. It is possible to tighten up the process with the result that the election results are certified in a briefer period than exists under present law. While I did not review the memorandum from the division to you in any detail, I am enclosing an analysis I prepared several years ago for Senator V. Fischer. His focus was different from the goals of HJR 8 but it is useful in its analysis of the election procedures and the identification of mechanisms and procedures that would need to be changed or are available for change if the period between elections is to be shortened.

Steve also discussed a proposal apparently put forward by the division of elections to have a runoff after the primary election but before the general election. Whatever goals this might achieve, it would not seem to guarantee that a candidate in the general election would receive 50 percent of the vote plus one vote. It could not have this result if there are more than two parties competing. If the results of the "primary" include party nominees, it is likely that three or four (or more) candidates may be on the ballot as a result of the recent Vogler decisions. If only the top two

vote getters appear on the ballot, the result may be a party run-off: if the recent Chicago election were given that treatment, Mr. Epton would not have made it to the runoff: the election would have been between Congressman Washington and Mayor Byrne.

But as Steve and I talked, a proposal evolved that might achieve the goal of a majority vote for candidates at a general election.

The primary election would not look like a "primary;" each candidate nominated on June 1st would be on the ballot: both candidates nominated by a declaration of candidacy [AS 15.25.030] and candidates nominated by petition [AS 15.25.130]. Write-in votes would be counted [AS 15.-25.070 would be repealed]. No party nominations as such would result. Since all candidates will have been put before the voters at that election, it would be possible to provide that a candidate receiving 50 percent of the votes cast plus one vote is elected. If no candidate receives 50 percent of the votes cast plus one vote, the top two candidates would be voted on at the "general election." It seems that a write-in candidate there would not likely be successful and thus probably a candidate will receive the required majority.

I consider this proposal only a concept; I have not, moreover, sought to assess its pluses or its minuses.

If I may be of further assistance, please advise.

RAB:ljb

Enclosure
15/023

M E M O R A N D U M January 23, 1981

SUBJECT: Shortening the election period
(Work Order No. 12-0184)

TO: Senator Vic Fischer

FROM: Richard A. Bradley
Legislative Counsel

I have advised you that the director of elections believes that there would be substantial problems with a change in the election code which required that the filing period for candidates for state office occur six weeks before the primary and that the general election occur six weeks after the primary.

I have also promised to provide you with an analysis of the problems that will be incurred in a change to your proposal. This memorandum responds to that promise.

In general terms, Patty Ann Polley believes that the present time frame between the primary and the general election is about as tight as it could be made. Under the law, the primary occurs on the "fourth Tuesday in August" in even numbered years. AS 15.25.020. The general election is held on the "Tuesday after the first Monday in November" in even numbered years. AS 15.15.020. Thus it seems that there are some ten weeks between the primary and the general election.

The filing date for candidates is June 1st. AS 15.25.040, 15.25.150. It seems, therefore, that there are some thirteen weeks between the filing date and the date of the primary. Patty Ann tells me that she thinks that the filing date could be moved back to July 1 with no particular loss; the result would be a shortening of the election by some four weeks, to nine weeks.

If you approach were adopted, the last date on which declarations of candidacy could be filed would have been

August 12, 1980; the primary election would have been held on September 23, 1980. By way of comparison, a number of states come close to those dates (the information is for 1978, the most recent year apparently available). Vermont had its filing deadline on August 2nd, Washington on August 4th, Hawaii on August 8th, and Connecticut on August 11th. An even larger number of states have their primary in September: Alabama on September 5th; Delaware on September 9th; Arizona, Colorado, Connecticut, Florida, Maryland, Minnesota, Nevada, New Hampshire, New York, Rhode Island, Utah, Vermont and Wisconsin on September 12th; Louisiana on September 16th and Massachusetts and Washington on September 19th.

And lest I appear to misstate her comments, I hasten to add that the director is not suggesting that the dates cannot be further compressed: only that if there is compression, some existing mechanisms may need to be altered or, perhaps, eliminated.

Accordingly, I have reviewed AS 15 to determine those sections which have statutorily established time frames within which events must occur. The following analysis reflects this research. The statutory events are cast in terms of the 1980 election; in a different year, slight variations in the time frames might occur.

1.	April 15, 1980	AS 15.10.150	Appointment of nominees for judges and clerks by the political parties (statutory date)
2.	June 1, 1980	AS 15.25.040	Last date for filing nomination by declaration of candidacy (statutory date)
3.	June 1, 1980	AS 15.25.150	Last date for filing nomination by petition (statutory date)
4.	June 16, 1980	AS 15.25.040	Date by which nomination must be complete (statutory date)

5.	June 16, 1980	AS 15.25.150	Date by which nomination must be complete (statutory date)
6.	July 12, 1980	AS 15.25.055	Last date for nomination by party petition where unopposed incumbent candidate for reelection dies, is disqualified, or is incapacitated (45 days before primary)
7.	July 15, 1980		Six weeks before primary election under present law
8.	July 17, 1980	AS 15.07.140	List of registered voters to be displayed in the precinct by director (40 days before election)
9.	July 17, 1980	AS 15.10.080	Last date for designating precinct boundary in primary (40 days before election)
10.	July 17, 1980	AS 15.25.055	Last date for candidate to remove his name from the primary ballot (40 days before primary)
11.	July 27, 1980	AS 15.07.070	Voter registration ends for the primary election (30 days before election)
12.	July 27, 1980	AS 15.07.125	Director of elections prepares official registration list (30 days before election)
13.	July 27, 1980	AS 15.10.180	Party representatives appointed for state ballot review (30 days before election)

14.	July 27, 1980	AS 15.20.190	District absentee ballot counting boards and district questioned ballot counting boards appointed (30 days before election)
15.	August 1, 1980	AS 15.15.050	Director of elections to have election materials in supervisors' offices (25 days before election)
16.	August 2, 1980	AS 15.30.025	Last date for qualification of limited political party (presidential years: 90 days before general election)
17.	August 11, 1980	AS 15.20.048	Director of elections to have ballots for absentee voting in supervisors' office (15 days before election)
18.	August 11, 1980	AS 15.20.061	Absentee voting in person starts (15 days before election)
19.	August 11, 1980	AS 15.20.071	Absentee voting by personal representative starts (15 days before election)
20.	August 12, 1980		Twelve weeks before the general election; proposed last date on which to file declarations and petitions of candidacy
21.	August 17, 1980	AS 15.58.030	Candidates' material for voter pamphlet must be in (75 days before general election)

22.	August 17, 1980	AS 15.58.040	Parties' material for voter pamphlet must be in (75 days before general election)
23.	August 17, 1980	AS 15.58.050	Judicial officer material for voter pamphlet must be in (75 days before general election)
24.	August 19, 1980	AS 15.20.620	Computers tested (7 days before election)
25.	August 19, 1980	AS 15.20.081	Last date to apply for absentee ballot by mail (7 days before election)
26.	August 19, 1980	AS 15.20.201	Review of district absentee ballots starts (7 days before election)
27.	August 26, 1980	AS 15.25.020	Date of primary election (4th Tuesday in August)
28.	August 29, 1980	AS 15.20.205	Review of district questioned ballots starts (3 days after election)
29.	September 1, 1980	AS 15.25.200	Last date name of a candidate not nominated in a primary may be removed from the general election ballot (statutory date)
30.	September 3, 1980	AS 15.20.205	Review and counting of district questioned ballots is completed (8 days after election)

31.	September 4, 1980	AS 15.20.203	Certification of district absentee ballot counting (within 9 days after election)
32.	September 4, 1980	AS 15.20.207	Certification of district questioned ballot counting (within 9 days after election)
33.	September 5, 1980	AS 15.15.440	State ballot counting review begins (8 days after election and is completed no later than 15 days after election)
34.	September 10, 1980	AS 15.20.430	Recount requested (5 days after state review is completed; to be completed itself within 10 days)
35.	September 23, 1980		Six weeks before the general election under present law; date of proposed primary
36.	September 26, 1980	AS 15.07.140	Director of election to display list of registered voters in precinct (40 days before election)
37.	September 26, 1980	AS 15.10.080	Last date to make precinct boundary changes for general election (40 days before election)
38.	September 26, 1980	AS 15.25.110	Last date for party petition to fill vacancies created by disqualification, incapacity, or death of party nominee (40 days before election)

39.	October 5, 1980	AS 15.07.070	Voter registration closes for general election (30 days before election)
40.	October 5, 1980	AS 15.07.125	Director prepares official list of registered voters (30 days before election)
41.	October 5, 1980	AS 15.10.180	Appointment of part representatives for state canvass [review] (30 days before election)
42.	October 5, 1980	AS 15.20.190	District absentee ballot counting boards appointed (30 days before election)
43.	October 5, 1980	AS 15.58.080	Distribution of voter pamphlet (30 days before election)
44.	October 10, 1980	AS 15.15.050	Director of election to have election materials in supervisors' offices (25 days before election)
45.	October 20, 1980	AS 15.20.048	Absentee balloting starts in election supervisors' offices (15 days before election)
46.	October 20, 1980	AS 15.20.061	Absentee voting in person starts (15 days before election)
47.	October 20, 1980	AS 15.20.071	Absentee voting by personal representation starts (15 days before election)

48.	October 29, 1980	AS 15.20.620	Computer testing starts (7 days before election)
49.	October 29, 1980	AS 15.20.201	Review of district absentee ballots starts (7 days before election)
50.	October 29, 1980	AS 15.20.081	Last date to apply for absentee ballot by mail (7 days before election)

It had been my initial goal to identify sections creating problems and then to solve those problems. Because that might have put me ahead of you on this proposal, it seems adequate to identify those sections of the law which unarguably will need amendment because they fall essentially outside the framework of your proposal.

Under present law [Items 4,5], a candidate may file a partial declaration of candidacy by telegram and then complete it within 15 days. It seems that the director may need to know earlier who is going to be on the primary ballot and I suggest that this grace period be eliminated.

Under present law [Item 6], when an unopposed incumbent candidate for renomination dies, is disqualified, etc., 45 or more days before the primary, the party may replace his name on the ballot. Since the 45-day period is outside of the deadline for filing declarations of candidacy [only 42 days occur between the last date for the declarations and the date of the primary], it will be necessary either to eliminate the option or to shorten the time within which the name must be submitted. The director will need to consider what the minimum time for the printing and distribution of the ballots is; this becomes the deadline for such a party petition.

Similarly, under present law [Item 10], a candidate may remove his name from the ballot up to 40 days before the primary; this period becomes meaningless when the declarations are due 42 days before the primary. The privilege can be eliminated or the period shortened.

Under present law [Items 15, 44], the director is required to have the election materials, including ballots, in the election supervisors' offices 25 days before the particular election. Absentee balloting starts no later than 15 days before the particular election. [Items 17, 18, 19, 45, 46, 47]. Thus, it seems that there is a ten-day grace period which under the 1980 amendments becomes available for absentee voting. See, AS 15.20.048(b). Readjustments in this area may become necessary.

And finally, Item 38 permits a party to fill a vacancy created by the death, disqualification, or incapacity of a party nominee no later than 40 days before the general election. This prerogative needs to be foreshortened or eliminated.

It is altogether possible that the director will have additional suggestions for amendments; those identified here seem unarguable.

I regret the delay in the preparation of the analysis. I suggest that you may wish to raise these issues with Patty Ann Polley before I proceed to draft a bill; in any case, I am available to discuss this matter at your convenience.

I am also enclosing an analysis of the state elections held in 1978.

RAB:jdn

Enclosure

BILL ANALYSIS

CS HJR 9 (HJR P) " Proposing an amendment to the Constitution of the State of Alaska relating to elections for candidates for Governor and Lieutenant Governor and for members of the legislature."

COMMENTS: From research of materials published by the National Clearinghouse of Election Administration, published in August, 1978 and entitled BALLOT ACCESS.

The determination of elected officials by a majority vote (50% + 1) of the votes cast in an election, is practiced in only one state, Louisiana. Like Alaska and Washington, Louisiana is a blanket primary state, allowing any qualified voter to vote on any public office in either the primary or general elections without regard to voter or candidate party affiliation.

Only if a candidate receives a majority vote in the Louisiana primary, running without regard to party affiliation, is that candidate elected to office as a result of the primary vote totals.

If no candidate receives a majority vote, the two candidates receiving the most votes are entered on the general election ballot, and the candidate receiving the majority wins the elective office. Importantly, no minor or new political parties may nominate candidates solely for the general election, as in Alaska and Washington states.

Most importantly, no state has a majority-vote runoff election provision for the general election, that is, after the November election date. Rather, the process of nomination by majority vote is accomplished by subsequent runoff primaries in only 9 states. These runoff primary elections are held within 30 days after the initial party preferential primary. (See attached calendar) These runoff primaries are also along party lines, and can include or exclude major and minor party ballots, according to the state party rules.

For example: Major parties (20% of the entire vote cast) in Alabama may decline to run in the primary election, while in Arkansas, major parties must conduct a primary to place on the general election ballot. The conclusion is that this method of selection has a long history to attribute to this envolvement of closed party primaries.

The other states with primary runoff elections based on majority vote are Florida, Georgia, Mississippi, North Carolina, Oklahoma, South Carolina, and Texas. These states all have preferential party and runoff primaries that follow.

CONCLUSION: If Alaska is to remain a blanket primary state, based on the premise that 54% of our registered voters are designated, (by choice) as non-partisan voters, then closed party preferential primaries as held in the South would be inappropriate to adopt as a method of implementing majority voting.

The Louisiana example could apply here however, if all Alaska candidates run together in the primary without regard to party affiliation, but simply list their party preference after their name. This could allow the election of officials, should any candidate win a majority vote, after the sole primary; or selection of the top two vote getters to run in the general election should a majority vote not be achieved.

OPTION 2

Since no other state has a majority voting provision in the general election, with the exception of Louisiana by consequence of not achieving this in the primary, it is difficult to gauge the values or conflicts of such a proposed system.

An obvicus conflict is the time schedule for taking office in Alaska; any election held subsequent to the first week on November runs into the gamut of holidays, the defined term of the Governor and Lieutenant Governor and the Start of the Legislature.

By the same token, a runoff primary after late August will interfere with the municipal and RFAA school board elections in early October.

Another avenue is to set Alaska's initial primary for early July with all the candidates running for their party nominations as now. If a majority vote was received by any candidate, declare him the party nominee: otherwise have a runoff primary between the top two vote getters of each recognized political party. These winners, along with any that file the proper petition of voters, would appear on the general election in November, with the plurality voting method as the determinate.

This suggested scenario would approach Alaska's:

1) current blanket primary voting patterns;

2) time schedule for holding office after November, paper ballot delays;

3) desire for open, blanket voting among some party description in the primary;

4) desire to consider all candidates and party description in the primary;

5) the conflict with REAA elections and municipal elections in October should the runoff be held after the late August primary.

MAJORITY VOTE DETERMINATIONS FOR CANDIDATES FOR STATE OFFICE

EXAMPLE 1 : PRIMARY AUGUST 28, 1984 GENERAL November 6, 1984

all candidates for each office run on same ballot without regard to party affiliation, just reference

any candidate that receives 50% + 1 is declared winner

otherwise, top two votegetters run in November general, allowing a majority vote winner in each race.

EXAMPLE 2 : NOMINATING PRIMARY JULY 10, 1984 RUNOFF August 28

all candidates for party nomination file, run and are voted for as occurs now in Alaska's primary.

any candidate that receives 50% + 1 of that party's votes proceeds directly to general election as nominee.

otherwise, top two votegetters of each party race run in statewide runoff primary on August 28, 1984. The party winners are the general election candidates.

Since more than one party will be on general ballot, general election is decided by plurality vote.

EXAMPLE 3 : PRIMARY August 28 GENERAL Nov. 6 RUNOFF Jan. 8, 1985

all candidates file, run and are nominated as now occurs in Alaska's primary election system.

candidates for general election are joined by others who gain ballot access by petition, write-in . Those who receive majority vote are declared winners.

all other races where no majority is achieved, a runoff election is scheduled after recounts, contests, and receipt of all ballots between top two votegetters of each race yet undecided.

* statute governing term of governor, lt. gov conflicts.

VOTING INFORMATION—1982

APPENDIX B (PRIMARY ELECTIONS)



This chart lists primary election dates scheduled by States, Territories, and the District of Columbia; primary runoff dates to be held (if required); and Federal and State officials to be nominated in the primaries who will run in the general election November 2, 1982. NOTE: This election information is subject to change. Voting officers and counselors should be contacted to determine whether changes have been made after date of publication. Not all officials to be nominated will necessarily appear on each state's primary ballot.

STATE	PRIMARY DATE	RUNOFF PRIMARY	OFFICIALS TO BE NOMINATED FOR THE GENERAL ELECTION				STATE
			FEDERAL		STATE (SEE KEY)*		
			U.S. Senator	U.S. Representatives	Governor	Other	
Alabama	Sept. 7, 1982	Sept. 28, 1982	—	7	Yes	JCCA-SIN SR SREA-AG-AG SS-T-PSC-SSC-CJ-CCA-AU-CA	Alabama
Alaska	August 24, 1982	—	—	1	Yes	LG-SEN-SR	Alaska
Arizona	Sept. 7, 1982	—	Yes	6	Yes	SCJ SS-CRC-JAC-AG-T-SPI SIN SR	Arizona
Arkansas	May 25, 1982	June 8, 1982	—	4	Yes	LG SS-AG-SCJ-T-AU-LC-SEN-SR	Arkansas
California	June 8, 1982	—	Yes	45	Yes	LG SS-AG-SC-T-SPI-SEN SAS	California
Colorado	Sept. 14, 1982	—	—	6	Yes	LG-T-SS-AG-RUC-SRE-SEN-SR	Colorado
Connecticut	Sept. 7, 1982	—	Yes	6	Yes	LG SS-T-COMP-AG-SEN-SR	Connecticut
Delaware	Sept. 11, 1982	—	Yes	1	—	AU-AG-T-SEN-SR-CO	Delaware
District of Columbia	Sept. 14, 1982	—	—	1	—	MAYOR-CHAIRMAN CITY COUNCIL-CITY COUNCIL MEMBERS	District of Columbia
Florida	Sept. 7, 1982	Oct. 26, 1982	Yes	19	Yes	SS-AG-CA-CJ-COMP-T-SEN-SR	Florida
Georgia	August 10, 1982	August 31, 1982	—	10	Yes	LG SS-AG-CA-COMP-SSS SIN-SR-SCJ-DCA-JSC-DA-CJ-PSC	Georgia
Guam	Sept. 4, 1982	—	—	1	Yes	LG-JSC-LEGISLATIVE DIST. SEATS-SCHOOL BOARD DIST. SEATS	Guam
Hawaii	Sept. 18, 1982	—	Yes	2	Yes	LG-SEN-SR	Hawaii
Idaho	May 25, 1982	—	—	2	Yes	LG-SS-AG-AU-T-SPI-SCJ	Idaho
Illinois	March 16, 1982	—	—	22	Yes	LG-SS-COMP-T-SIN-AU-SCJ-JAC-JCC-LO-GA	Illinois
Indiana	May 4, 1982	—	Yes	10	—	SIN-SS-T-AU-GO-SR	Indiana
Iowa	June 8, 1982	—	—	6	Yes	LG SS-AU-T-AG-SI SAG	Iowa
Kansas	August 3, 1982	—	—	5	Yes	LG SP T-CO SR	Kansas
Kentucky	May 25, 1982	—	—	7	—	NO STATEWIDE ELECTIONS FOR STATE OFFICIALS	Kentucky
Louisiana	Sept. 11, 1982	—	—	8	—	DISTRICT SEATS 1-8	Louisiana
Maine	June 8, 1982	—	Yes	2	Yes	SR-SEN-CO	Maine
Maryland	Sept. 14, 1982	—	Yes	8	Yes	LG-COMP-AG-SIN-DCA-JCC-CO-HD	Maryland
Massachusetts	Sept. 14, 1982	—	Yes	11	Yes	LG SS-AG-T-AU SEN SR	Massachusetts
Michigan	August 3, 1982	—	Yes	18	Yes	LG SS-AG-SIN-SRE-RUA-TMSU-GWSC-SR-SSC	Michigan
Minnesota	Sept. 14, 1982	—	Yes	8	Yes	LG SS-AU-T-AG-SEN SR-CJ-SSC-DC-CDC	Minnesota
Minnesota	Sept. 14, 1982	—	Yes	8	Yes	LG SS-AU-T-AG-SIN SR-CJ-SSC-DC-CDC	Minnesota
Mississippi	June 1, 1982	June 22, 1982	Yes	5	—	NO STATEWIDE ELECTIONS FOR STATE OFFICIALS	Mississippi
Missouri	August 3, 1982	—	Yes	9	—	AU	Missouri
Montana	June 8, 1982	—	Yes	2	—	PSC-JS-GO-DC-SIN-SR	Montana
Nebraska	May 11, 1982	—	Yes	3	Yes	LG-AG-SS-AU-T-PSC-SEE-AR	Nebraska
Nevada	Sept. 14, 1982	—	Yes	2	Yes	LG SS-AG-COMP-T-SIN-SCJ-SAB	Nevada
New Hampshire	Sept. 14, 1982	—	—	2	Yes	SIN-SR-CO-GO	New Hampshire
New Jersey	June 8, 1982	—	Yes	14	—	NO STATEWIDE ELECTIONS FOR STATE OFFICIALS	New Jersey
New Mexico	June 1, 1982	—	Yes	3	Yes	LG SS-AU-T-AG-LPL-CRC	New Mexico
New York	Sept. 14, 1982	—	Yes	34	Yes	LG-COMP-AG-SIN-SCJ-SAB	New York
North Carolina	May 4, 1982	June 1, 1982	—	11	—	JSC-SCJ-DCA-DJ-DA-CO-SR-SEN	North Carolina
North Dakota	June 8, 1982	—	Yes	1	—	CJ-PSC-SCJ	North Dakota
Ohio	June 8, 1982	—	Yes	21	Yes	LG SS-AG-AU-T-SSC	Ohio
Oklahoma	August 24, 1982	Sept. 21, 1982	—	6	Yes	LG-T-CRC-AG-AU-SSS-CJ-SR-SIN-DCA	Oklahoma
Oregon	May 18, 1982	—	—	5	Yes	CJ-SPI-SCJ-DCA-DC-JCC-DA-SEN-SR	Oregon
Pennsylvania	May 18, 1982	—	Yes	23	Yes	LG SEN SR	Pennsylvania
Puerto Rico	None	—	—	—	—	NO COMMONWEALTHWIDE ELECTIONS IN 1982	Puerto Rico
Rhode Island	Sept. 14, 1982	—	Yes	2	Yes	LG SS-AG-T-SEN SR	Rhode Island
South Carolina	June 8, 1982	June 29, 1982	—	6	Yes	SR STATE LEGISLATURE	South Carolina
South Dakota	June 7, 1982	—	—	1	Yes	LG SS-AG-AU-T-CE-CPL-PUC-SIN-SR	South Dakota
Tennessee	August 5, 1982	—	Yes	9	Yes	SR-SIN-DAG-CO-JS	Tennessee
Texas	May 1, 1982	June 5, 1982	Yes	27	Yes	LG SIN SR-GO-CO	Texas
Utah	Sept. 14, 1982	—	Yes	3	—	NO STATEWIDE ELECTIONS FOR STATE OFFICIALS	Utah
Vermont	Sept. 14, 1982	—	Yes	1	Yes	LG SS-T-AC-AG-JP-SA-SIN SR-PSC-CO-GO	Vermont
Virginia	June 8, 1982	—	Yes	10	—	HD	Virginia
Virgin Islands	Sept. 14, 1982	—	—	1	Yes	SE-BIL-SIN	Virgin Islands
Washington	Sept. 14, 1982	—	Yes	9	—	SR-SIN-SCJ	Washington
West Virginia	June 1, 1982	—	Yes	4	—	SEN-HD	West Virginia
Wisconsin	Sept. 14, 1982	—	Yes	9	—	SIN-SAS-JCCA	Wisconsin
Wyoming	Sept. 14, 1982	—	Yes	1	Yes	SS-AU-T-SPI-SR-SIN-SCJ-DC	Wyoming

*Key to Identification of "Other Officials"

AC	Auditor of Accounts	DCA	Judges, District Courts of Appeal	PUC	Public Utilities Commissioner
AG	Attorney General	DJ	Judicial District Judges	PUC	Regents, University of Colorado
AU	Auditor	GA	Representatives, General Assembly	PUM	Regents, University of Michigan
BE	Members, Board of Education	GO	General Officers	SA	State Attorneys
BRE	Members, Board of Elections	GWSC	Governors, Western State University	SAG	Secretary of Agriculture
CA	Commissioner of Agriculture	HD	House of Delegates	SAS	State Assembly
CE	Commissioner of Education	JAC	Justices of Judicial Appellate Courts	SBE	Members, State Board of Education
CI	Commissioner of Insurance	JCC	Judges of Circuit Court	SCJ	Supreme Court Justice
CJ	Chief Justice	JCCA	Judges, Court of Civil Appeals	SPI	State Senators
CL	Commissioner of Labor	JP	Justice of the Peace	SPI	Superintendent of Public Instruction
CO	County Officials	JS	Justices	SR	State Representatives
COC	Judges, County Courts	JSC	Judges of Supreme Court	SS	Secretary of State
CPM	Comptroller	LC	Land Commissioner	SSC	Associate Justices or Judges of State Supreme Court
CPL	Commissioner of Public Lands	LG	Lieutenant Governor	SSS	State Superintendent of Schools
CRC	Corporation Commissioner	LO	Local Officials	T	State Treasurer
DA	District Attorneys	ML	Members of Legislature	TMSU	Trustees, Michigan State University
DAG	District Attorney General	P	Probate Judges		
DC	Judges, District Courts	PSC	Public Service Commissioner		

SEE YOUR VOTING COUNSELOR OR OFFICER

(NAME)

(LOCATION)

PHONE NO. _____

STATE OF ALASKA
FISCAL NOTE

Revision Date , 1983

I. REQUEST

Bill/Resolution No.: CSHJR 8
Title: Proposing an amendment...
Sponsor: Judiciary Committee
Requestor: House Judiciary

II. FISCAL DETAIL

Agency Affected: Office of the Governor
Program Category Affected: Div.of Electio
BRU, Program of Subprogram(s) Affected:
Division of Elections

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 83	FY 84	FY 85	FY 86	FY 87	FY 88
OPERATING						
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 COMMODITIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND	-0-	-0-	-0-	-0-	-0-	-0-
FEDERAL FUNDS						
OTHER (Specify Source)						

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

III. SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

IV. ANALYSIS: Attach a separate page for any Analysis

Prepared By: Dana C. Coffman - Deputy Director Phone: 586-6181
Division: Division of Elections Date: April 4,1983

Approved by Commissioner: _____ Date: _____
Department: _____

Distribution:
Original to Legislative Finance
Copy to Office of Management and Budget (for Legislature introduced bills)
Copy to Department (for Governor introduced bills)
Copy to Sponsor
Copy to Requestor (if different from Sponsor)

3/8/83

FISCAL ANALYSIS FOR CSHJR 8

"Proposing an amendment to the Constitution of the State of Alaska relating to elections for candidates for governor and lieutenant governor and for members of the legislature."

The amendments proposed by this resolution would appear on the 1984 general election ballot. Because the Division of Elections plans for the inclusion of constitutional amendments this resolution does not have a fiscal impact.

CS HJR 9 /CSHJR 8 (S)
By the Judiciary Comm.

Comments by the Division of Elections

CS HJR 9 "Proposing an amendment to the Constitution of the State of Alaska relating to elections for candidates for Governor and Lieutenant Governor and for members of the legislature."

ANALYSIS : This bill would require that any candidate for state elective office (executive and legislature) receive 50% of the votes cast for the office plus one vote, in the general election. If a candidate for office does not receive this amount, a runoff election shall be held between the top two vote getters.

A review of the 1982 legislative races shows that, if this law were then in effect, one (1) Senate race and eight (8) House races would require runoff elections. It should be noted that in every one of these nine races there were strong Libertarian and Independent candidates.

	Senate #15&16	House #5 A	House #5 B	House #10 B	House #14 B
winner %	41%	45%	49%	48.2%	49%
lack #	-876	-504	-101	-145	-95

	House #16 B	House # 18	House # 19	House # 17
winner %	36%	41%	48.7%	42%
lack #	-1529	-425	-66	-363

Additionally, for point of reference, there were two (2) Senate races won with 50% plus 6 and 12 votes respectively, four (4) Senate race won between 51% and 55%, and four (4) House races won with barely more than 50% (plus 12, 34, 60 and 63 votes respectively)

As was noted previously in comments on the original HJR 9, all gubernatorial races except 1970 would have required a runoff election. Even the decisive 17,000 vote margin of the1982 race left the winner with 45% of the ballots cast for that race, again due to the strong showing of the Libertarian and Independent candidates.

Scheduling of Runoff Elections per CS HJR 9 1984

Analysis : Present state election law, Title 15, does not contain provisions for runoff elections. However, AS 15.15 and AS 15.20 address absentee ballot counts, questioned ballot counts, the State Ballot Counting Review process, certification of elections and 10 day notice of election.

The following schedule sets out the election calendar for 1984:

November 6, 1984	GENERAL ELECTION	AS 15.50.020
November 14, 1984	District Absentee & Questioned Ballots are counted	AS 15.20.201 AS 15.20.205
November 14, 1984	State Ballot Counting Review begins	AS 15.15.440
November 21, 1984	Last day to receive all ballots and certificates	AS 15.15.440
November 26, 1984	Certify General Election	AS 15.15.450
December 1, 1984	Last day to request recount(s) for any race, precinct, question	AS 15.20.430
December 6, 1984	Last day to set date of recount(s)	AS 15.20.460
December 11, 1984	Last day to hold recount of General Election	AS 15.20.480
December 21, 1984	Last day to complete recount	AS 15.20.480
December 30, 1984	Last day to give notice and issue order for runoff election	AS 15.15.070
	Preparation of ballots, printing and distribution of absentee ballots	
January 8, 1985	Runoff Elections (Tuesday, not a holiday)	

Source: Division of Elections

SUMMARY OF VOTER TOTALS, PERCENTAGES OF GOV. ELECTIONS, GENERAL

1962-1982

YEAR	TOTAL VOTES	CANDIDATE #1 / %		CAN.#2 / %		CAN.#3/ %		CAN.#4/%	
1962	60,084 (56,681)*	29,627	49.3% (52.2%)	27,054	45% (47.7%)				
1966	67,361 (66,294)	33,145	49.2% (49.9%)	32,065	47.6% (48.3%)	1084	1.6% (1.6%)		
1970	82,405 (80,779)	42,309	51.3% (52.3%)	37,264	45.2% (46.1%)	1206	1.4% (1.4%)		
1974	98,557 (96,163)	45,840	46.5% (47.6%)	45,553	46.2% (47.3%)	4770	4.8% (4.9%)		
1978	129,705 (126,910)	49,580	38.2% (39.%)	33,555	25.8% (26.4%)	25,656	19.8% (20.2%)		
				CAN #4 /%		CAN.#5/%			
				15,656	12.% (13.%)	2,463	1.9% (1.94%)		
1982	199,358 (194,511)	89,918	45.1% (46.2%)	72,291	36.2% (37.1%)	29,067	14.5% (14.9%)		
				CAN. #4/%					
				3235	1.6% (1.66%)				

* NOTE: These numbers and percentages in ( )s are totals excluding votes not cast for one of the candidates listed above; all small write-in votes.

COMMENTS REGARDING HJR 9 "..relating to the elections of candidates for the offices of Governor and Lt. Governor"

TUESDAY 2/8 House Judiciary Committee

HJR 9 proposes an amendment to the Alaska Constitution which, if approved by the voters, would require that elections of the Gov. and Lt. Gov. be decided by receipt of 50% of the votes plus one in the general election.

If no candidate were to receive 50% plus one vote, then a runoff election would be scheduled at least two weeks after certification, but before the last Tuesday of November.

* NOTE: If this were law, all gubernatorial races except 1970 would have required a runoff election. Even the decisive 17,000 margin of the '82 race left the winner with 45%.

The Division of Elections has the position that the time limits set on the certification and runoff would be difficult to meet.

As the Governor's term of office is defined in Article III Sec. 4, it " shall begin at noon on the first Monday in December following the general election". The Division sees this requirement as the end limit under which an HJR 9 scenario could occur, unless this section is amended or repealed.

One month is not enough time to hold and certify two elections.

Additionally, as weather rapidly deteriorates in Alaska in November, weather may prevent another vote taking place, ballots distributed properly to all areas of the state or a proper count conducted.

Finally, the Division of Elections, after reviewing the margins of victory and percentages of the last 6 Governor races, contends that to achieve a 50% margin in the General Election that no more than two candidates should be on the ballot. Only in this way could runoff elections be avoided. But the Division does not advocate this position, as it would deny access to the ballot by third party and write-in candidates.

STATE OF ALASKA
FISCAL NOTE

Revision Date , 1983

I. REQUEST

Bill/Resolution No.: CSHJR 8
Title: Proposing an amendment...
Sponsor: Judiciary Committee
Requestor: House Judiciary

II. FISCAL DETAIL

Agency Affected: Office of the Governor
Program Category Affected: Div.of Electio
BRU, Program of Subprogram(s) Affected: Division of Elections

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 83	FY 84	FY 85	FY 86	FY 87	FY 88
OPERATING						
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 COMMODITIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND	-0-	-0-	-0-	-0-	-0-	-0-
FEDERAL FUNDS						
OTHER (Specify Source)						

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

III. SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

IV. ANALYSIS: Attach a separate page for any Analysis

Prepared By: Dana C. Coffman - Deputy Director Phone: 586-6181
Division: Division of Elections Date: April 4,1983

Approved by Commissioner: _____ Date: _____
Department: _____

Distribution:
Original to Legislative Finance
Copy to Office of Management and Budget (for Legislature introduced bills)
Copy to Department (for Governor introduced bills)
Copy to Sponsor
Copy to Requestor (if different from Sponsor)

3/8/83

FISCAL ANALYSIS FOR CSHJR 8

"Proposing an amendment to the Constitution of the State of Alaska relating to elections for candidates for governor and lieutenant governor and for members of the legislature."

The amendments proposed by this resolution would appear on the 1984 general election ballot. Because the Division of Elections plans for the inclusion of constitutional amendments this resolution does not have a fiscal impact.

HJR

9

CONGRESSIONAL QUARTERLY'S

GUIDE TO U.S. ELECTIONS

terms for an interim of at least one term. Two exceptions to that general rule—Delaware and Missouri—impose an absolute two term limit. That is, a governor may serve only two terms, however spaced, in his lifetime. The remaining 23 states impose no limits on the number of consecutive terms a governor may serve *(box this page)*.

Majority Vote Requirement

A peculiarity of gubernatorial voting which has almost disappeared from the American political scene is the requirement that the winning gubernatorial candidate receive a majority of the popular vote. Otherwise, the choice devolves upon the state legislature or, in one case, necessitates a runoff between the two highest candidates. Centered in New England, this practice was used mainly in the 19th century. All six New England states, plus Georgia, had such a provision in their state constitutions at one time. New Hampshire, Vermont, Massachusetts, and Connecticut already had the provision when they entered the Union from 1789 to 1791.

Rhode Island required a majority election, but did not adopt a provision for legislative election until 1842. *(See p. 364)* Maine adopted the provision when it split off from Massachusetts to form a separate state in 1820; Georgia put the provision in its constitution when it switched from legislative to popular election of governors in 1825.

The purpose of the majority provision appears to have been to safeguard against a candidate in a multiple field winning with a small fraction of the popular vote. In most of New England, the provision was part of the early state constitutions, formed largely in the 1780s, before the development of the two party system.

The prospect of multiple-candidate fields diminished with the coming of the two party system. Nevertheless, each of these states had occasion to use the provision at least once. Sometimes, in an extremely close election, minor party candidates received enough of a vote to keep the winner from getting a majority of the total vote. And at other times, strong third party movements or disintegration of the old party structure resulted in the election being thrown into the state legislatures.

Vermont still maintains the majority vote provision, although the legislature has not elected a governor since 1912. Georgia maintains the requirement for a majority vote for governor, but instead of legislative election, provides for a runoff between the top two contenders three weeks after the general election.[1]

Following are the states which had the majority vote provision for governor, the years in which the choice devolved on the legislature because of it, and the year in which the requirement was repealed or changed:

Connecticut

No gubernatorial candidate received a majority of the popular vote, thus throwing the election into the legislature in the following years subsequent to 1824: 1833, 1834, 1842, 1844, 1846, 1849, 1850, 1851, 1854, 1855, 1856, 1878, 1884, 1886, 1888, and 1890. Following the election of 1890, the legislature was unable to choose a new governor, so the outgoing governor, Morgan G. Bulkeley (R) continued to serve through the entire new term (1891-93). The provision was repealed in 1901. The years prior to 1824 in which the provision was used, if any, were unavailable from the Connecticut secretary of state's office.

1. *Mississippi has a majority vote provision under the 1890 state constitution, but the provision has not been used because the Democratic Party nominee has always received a majority.*

Limitations on Governor Terms

(As of 1975)

State	Maximum number of consecutive terms
Alabama	2
Alaska	2
Arizona	No limit
Arkansas	No limit
California	No limit
Colorado	No limit
Connecticut	No limit
Delaware	2*
Florida	2
Georgia	None
Hawaii	No limit
Idaho	No limit
Illinois	No limit
Indiana	2
Iowa	No limit
Kansas	2
Kentucky	None
Louisiana	2
Maine	2
Maryland	2
Massachusetts	No limit
Michigan	No limit
Minnesota	No limit
Mississippi	None
Missouri	2*
Montana	No limit
Nebraska	2
Nevada	2
New Hampshire	No limit
New Jersey	2
New Mexico	None
New York	No limit
North Carolina	None
North Dakota	No limit
Ohio	2
Oklahoma	2
Oregon	2
Pennsylvania	2
Rhode Island	No limit
South Carolina	None
South Dakota	2
Tennessee	None
Texas	No limit
Utah	No limit
Vermont	No limit
Virginia	None
Washington	No limit
West Virginia	2
Wisconsin	No limit
Wyoming	No limit

** Indicates an absolute two term limit. That is, no person may serve more than two gubernatorial terms in his lifetime. In other states with limitations, a governor may serve as many terms as he may be elected to, provided he retires after one, or two, terms, depending on the constitutional provisions of his state, and stays out of office at least one term before running again.*

None indicates the governor must retire at the end of his first term. After a one term interim, he may serve again.

2 indicates the governor must retire after two consecutive terms. After a one term interim, he may serve again.

SOURCE: *The Book of the States, 1974-75*, Vol. XX, The Council of State Governments, Lexington, Ky., 1974.

Georgia

Although the majority vote requirement was contained in the constitution as early as 1825, it was not used until the 20th century. In 1966, with an emerging Republican Party, a controversial Democratic nominee, and an independent Democrat all in the gubernatorial race, no candidate received a majority. The legislature chose Democrat Lester Maddox. It was the controversy surrounding this experience which led to the change from legislative choice to a runoff among the top two contenders. Earlier, in 1946, the Georgia legislature also attempted to choose the governor, under unusual circumstances not covered by the majority vote requirement. The governor-elect, Eugene Talmadge (D) died before taking office. The legislature, when it met, chose Talmadge's son, Herman E. Talmadge, as the new governor. Talmadge was eligible for consideration on the basis that he received enough write-in votes in the general election to make him the second-place candidate. But the state supreme court voided the legislature's choice and declared that the lieutenant governor-elect, Melvin E. Thompson (D) should be governor.

Maine

Maine entered statehood in 1820 with a majority vote provision for governor and kept it until repeal in 1880. During this 60 year span, the legislature was called on to choose the governor nine times, as follows: 1840, 1846, 1848, 1852, 1853, 1854, 1855, 1878 and 1879.

Massachusetts

Like the other New England states, Massachusetts originally had a requirement for majority voting in gubernatorial elections. However, after six straight elections from 1848 to 1853 when the legislature was forced to choose the governor, Massachusetts repealed the provision in 1855. The years in which it was used were as follows: 1785, 1833, 1842, 1843, 1845, 1848, 1849, 1850, 1851, 1852, 1853.

New Hampshire

New Hampshire's mandated majority vote for governor was in force from 1784 through 1912, when it was repealed. The outcome of the following gubernatorial elections was determined by the legislature: 1785, 1787, 1789, 1790, 1812, 1824, 1846, 1851, 1856, 1863, 1871, 1874, 1875, 1886, 1888, 1890, 1906, and 1912.

Rhode Island

Under the constitution of 1842, Rhode Island required a majority to win the gubernatorial election. Under this mandate, the legislature chose the governor in the years 1846, 1875, 1876, 1880, 1883, 1890, and 1891. Owing to a disagreement between the two houses of the state legislature, the ballots for governor were not counted in 1893, and Gov. D. Russell Brown (R) continued in office for another term of one year. The provision for majority voting was then repealed.

Before 1842, there was also a requirement for a popular majority, but the legislature was not allowed to choose a new governor if no candidate achieved a majority. Three times—in 1806, 1832 and 1839—there was a lack of a majority in a gubernatorial election, with a different outcome each time. In 1806, the lieutenant governor-elect served as acting governor for the term. In 1832, the legislature mandated a new election, but still no majority choice was reached; three more elections were held, all without a majority being achieved, so the same state officers were continued until the next regular election. And in 1839, when neither the gubernatorial nor lieutenant governor's race yielded a winner by majority, the senior state senator acted as governor for the term.

Vermont

Vermont's provision for majority gubernatorial election resulted in the legislature picking the governor 19 times: 1789, 1797, 1813, 1814, 1830, 1831, 1832, 1834, 1841, 1843, 1845, 1846, 1847, 1848, 1849, 1852, 1853, 1902, and 1912. On a twentieth occasion, 1835, the legislature failed to choose a new governor because of a deadlock and the lieutenant governor-elect served as governor for the term. The Vermont provision remains in force.

—By Warden Moxley

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Solomon, Samuel R., United States Governors, 1940-1950," *National Municipal Review*, April, 1952, pp. 190-97.

Term of office

Time in excess of four-year term which Governor may be required to serve "until his successor shall be chosen and qualified" is part of his constitutional term; provision rendering Governor ineligible to succeed himself has no bearing whatever upon duration of his term. 201/867, 895 (41 S. E. 2d 383).

2-2702 (Art. V, Sec. I) Paragraph II. Election for Governor

The first election for Governor, under this Constitution, shall be held on Tuesday after the first Monday in November of 1978, and the Governor-Elect shall be installed in office at the next session of the General Assembly. An election shall take place quadrennially thereafter, on said date, until another date be fixed by the General Assembly. Said election shall be held at the places of holding general elections in the several counties of this State, in the manner prescribed for the election of members of the General Assembly, and the electors shall be the same.

Editorial Note

This section was Const. 1945, § 2-3002. The first election for Governor under the 1976 Constitution was changed to 1978 as the proper date.

Library References

See 5 E. G. L. Constitutional Law, § 84. Op. Att'y Gen. 1960-61 pp. 204, 213; 1962, p. 227.

ANNOTATIONS

Stated. 223/7, 11 (152 S. E. 2d 847).

2-2703 (Art. V, Sec. I) Paragraph III. Transmission, canvassing and publishing election returns

The returns of each election district in a gubernatorial election shall be sealed up by the superintendent thereof separately from other returns and shall be transmitted to the Secretary of State. On the Tuesday next following the general election, unless the date therefor shall be changed by law, the Secretary of State shall transmit said returns to a Constitutional Officers Election Board which shall be composed of the Speaker and Clerk of the House of Representatives, the President Pro Tempore and the Secretary of the Senate, and the chairman of each standing committee of the General Assembly. Such Board shall open and publish the returns, and the person having the majority of the whole number of votes shall be declared duly elected Governor of this State. Each candidate for Governor shall be entitled to designate one person to be present at the opening of the returns.

Editorial Note

This section was Const. 1945 § 2-3003. In the 1976 Constitution language was changed for proper agreement between noun and pronoun.

Library References

See 5 E. G. L. Constitutional Law, § 84. Op. Att'y. Gen. 1948-49, pp. 155, 162.

Notes of Decisions Under the Constitution of 1945 (prior to 1968 Amendment)

Stated. 223/7, 11 (152 S. E. 2d 847).

2-2704 (Art. V, Sec. I) Paragraph IV. Run-off election

In the event no gubernatorial candidate receives a majority of the whole number of votes cast in the general election, the Constitutional Officers Election Board shall continue the gubernatorial election by immediately calling a run-off election and designate as candidates therein the two persons who received the highest number of votes, who continue in life and have not declined to continue as a gubernatorial candidate. This run-off election shall be held on the third Tuesday immediately following the general election unless the date thereof shall be changed by the General Assembly. The run-off election shall be a continuation of the general election and only the electors who were entitled to vote in the general election shall be entitled to vote therein; and only those votes cast for the two persons designated shall be counted in the tabulation and canvass of the votes cast. The provisions relating to the transmission of the returns in the general election, the opening of the returns, their tabulation, canvassing and publication shall apply to the run-off election. On the Tuesday next following the run-off election, the Constitutional Officers Election Board shall convene, open, canvass, tabulate and publish the returns of the run-off election. The person having the highest number of votes entitled to be counted in the run-off election shall be declared the duly elected Governor of this State.

Editorial Note

This section was Const. 1945, § 2-3004.

Library References

See 5 E. G. L. Constitutional Law, § 84. Op. Att'y Gen. 1948-49, p. 155; 1954-56, p. 375.

Notes of Decisions Under the Constitution of 1945 (prior to 1968 Amendment)

Canvass of returns

General Assembly, as canvassers of election returns, have no discretionary power except to determine if returns are in proper form and executed by proper officials and to pronounce mathematical result; they can neither receive nor consider any extraneous information or evidence, but must look only to contents of election returns. 201/867, 877 (41 S. E. 2d 883).

Condition precedent

Condition precedent to election of Governor by General Assembly is a failure of the people to cast a majority of their votes for any person, in which event the General Assembly is given power to elect one of the two persons having the highest number of votes who are in life and willing to accept election at the time appointed for the General Assembly to elect. 201/867 (2) (41 S. E. 2d 883).

Constitutionality

Georgia Assembly is not disqualified to elect Governor as required by Article V of State Constitution of 1945. Neither is it disqualified by fact that its Democratic members had obligated themselves to support Democratic nominee in general election on November 8, 1966. That election is over, and with it, terminated any promises by Democratic legislators to support Democratic nominee. 385 U. S. 231 (87 Sup. Ct. Rep. 719, 17 L. Ed. 2d 330).

Article V of Georgia Constitution of 1945 provides method for selecting Governor which is as old as Nation itself. Georgia does not violate equal protection clause of Federal Constitution by following this Article as it was written. Id.

Construction

The word "person," as used in the second and third clauses of this section, refers to a living person as of the time of the election by the people, and his subsequent death is immaterial, so far as any power of election by the General Assembly is concerned. 201/867, 881 (41 S. E. 2d 883).

The clause "the person having majority of the whole number of votes, shall be declared duly elected Governor," means that the General Assembly shall declare such persons to have been duly elected Governor; it means this under any and all circumstances, for it refers always to a past fact. Id. 884.

In construing this section, Supreme Court is authorized, if indeed not required, to give consideration to the history of elections for Governor over a period of approximately half a century before the drafting and submission of the present Constitution and its ratification by the voters in 1945. Id. 884.

Acts 1871, p. 27, providing that if at special election for Governor no person be found to have received a majority of the whole number of votes cast, then from the two persons having the highest number of votes, who shall be in life, the legislature shall elect a Governor, and Acts 1878-79, p. 173 (now § 40-102 of Code), providing for election to fill vacancy in office, are legislative interpretation of language of this section prior to its incorporation in Constitution of 1877, and when lifted from that Constitution and inserted in the Constitution of 1945, presumably was intended to have the same meaning. Id. 886.

See also General Note at end of Title 2.

Death

Death of person receiving majority of votes cast for Governor after election by the people and before publication of returns by the General Assembly did not change duty of that body to declare his election nor authorize the General Assembly to declare by resolution that because of his death no person had a majority of the votes and to elect a Governor; such an election was a void act, which did not confer any right or title to the office of Governor. 201/867, 868 (2-a) (41 S. E. 2d 883).

Duty of General Assembly

In publishing returns and declaring results the members of the General Assembly perform a strict and precise duty identical in character with that which rests upon any and all persons who are merely authorized to canvass; they are not, while performing that duty, exercising or authorized to exercise any discretion, but simply perform the ministerial act of disclosing to the public the official election returns that have been prepared by the election managers. 201/867, 876 (41 S. E. 2d 883).

The canvassing of returns and declaration of the result are constitutional directives to the General Assembly, and its failure to observe them ought not to defeat the right of the person elected or the franchise of the voters who elected him. Id. 877.

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STATE OF ALASKA
PRELIMINARY STATEMENT OF FISCAL IMPACT

Bill No: House Joint Resolution No. 9 Date on Bill: 1/18/83
Title: "Proposing an amendment to the Constitution of the State of Alaska relating
Sponsor: to elections....Governor and Lieutenant Governor" Bussell, Fischer, Hayes
Requestor: House Judiciary

1. Estimated fiscal impacts on:

a. Expenditures:

(Thousands of Dollars)

			FY 83	FY 84	FY 85	FY 86		
Capital								
Operating								
Total			-0-	-0-	-0-			

b. Revenues:

Revenue								

2. Source of funds to offset fiscal impact of bill:

Sponsor was unable to provide funding information.

3. Assumptions:

1. HJR has no fiscal impact as the Division of Elections plans for the inclusion of constitutional amendments on the general election ballot.

2. If passed and approved by the electorate, the division would not be impacted until FY 87 - the next gubernatorial election year.

4. Disclaimer:
This statement has not been reviewed by the OMB in the Office of the Governor. It does not represent the policy of the Sheffield Administration or the final estimate of fiscal impact.

Prepared By: Dana Coffman, Deputy Director Phone: 586-6181
Division: Division of Elections Date: 2-14-83

Approved by Commissioner: Date:
Department:

5. Distribution:
Original to Legislative Finance
Copy to OMB
Copy to Sponsor
Copy to Requestor Copy to Mike Nizich 2/8/83

HJR9

SUMMARY OF VOTER TOTALS, PERCENTAGES OF GOV. ELECTIONS, GENERAL 1962-1982

YEAR	TOTAL VOTES	CANDIDATE #1	/ %	CAN.#2	/ %	CAN.#3	/ %	CAN #4	/ %	CAN.#5	/ %
1962	60,084 (56,681)*	29,627	49.3% (52.2%)	27,054	45% (47.7%)						
1966	67,361 (66,294)	33,145	49.2% (49.9%)	32,065	47.6% (48.3%)	1084	1.6% (1.6%)				
1970	82,405 (80,779)	42,309	51.3% (52.3%)	37,264	45.2% (46.1%)	1206	1.4% (1.4%)				
1974	98,557 (96,163)	45,840	46.5% (47.6%)	45,553	46.2% (47.3%)	4770	4.8% (4.9%)				
1978	129,705 (126,910)	49,580	38.2% (39.%)	33,555	25.8% (26.4%)	25,656	19.8% (20.2%)	15,656	12.% (13.%)	2,463	1.9% (1.94%)
1982	199,358 (194,511)	89,918	45.1% (46.2%)	72,291	36.2% (37.1%)	29,067	14.5% (14.9%)	3235	1.6% (1.66%)		

* NOTE: These numbers and percentages in ( )s are totals excluding votes not cast for one of the candidates listed above; all small write-in votes.

HJR

12

POUCH V
JUNEAU, ALASKA 99811
465-4990

P.O. BOX 4-1325
ANCHORAGE, ALASKA 99509
248-1515

CHAIRMAN
HOUSE JUDICIARY COMMITTEE
MEMBER
HOUSE RESOURCES COMMITTEE

Representative Charlie Bussell
ALASKA STATE LEGISLATURE
HOUSE OF REPRESENTATIVES

February 28, 1983

FREE
P. O. Box No. 42955
Anchorage, Alaska 99509

ATTENTION: Ms. Cheri Jacobus, Chairman, Legislative Study

RE: HJR 12

Dear Ms. Jacobus:

Thank you, and through you, the FREE Committee for your written comments pertaining to the House Judiciary Committee considerations of HJR 12.

During the hearing held on February 22, 1983, much discussion was directed to the bill's lack of clearly defining the "set out" and "method" of going from one thing to the other, etc. As a result the Committee has produced three separate work bill copies which will be further debated, at a scheduled rehearing of HJR 12, March 1st. At this hearing one of the enclosed committee substitutes will likely be reported out.

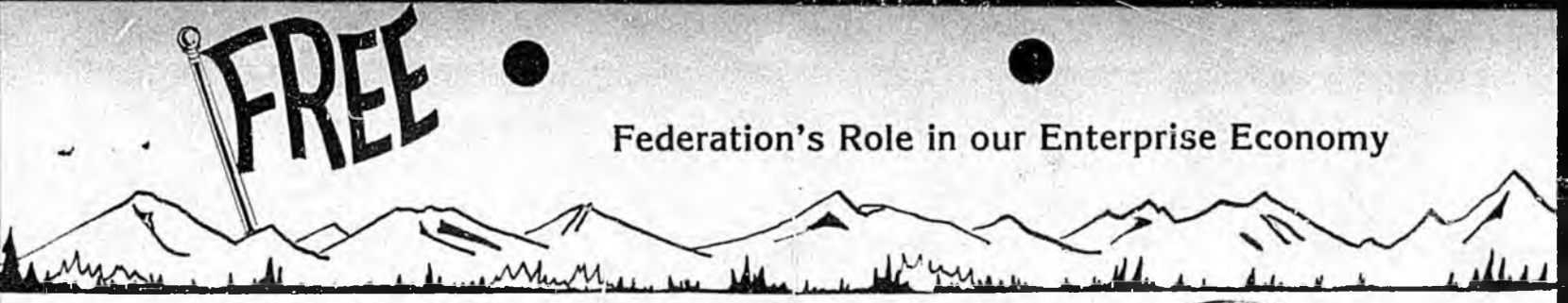
Again, thank you for your comments and if I or the Committee staff can be of assistance, please do not hesitate to call.

With best regards,

Representative Charlie Bussell
Chairman, Committee on Judiciary

CB:lyn

enclosures



FREE

Federation's Role in our Enterprise Economy

February 11, 1983

FEB 1983 RECEIVED



Representative Charlie Bussell
Chairman House Judiciary Committee
Pouch V
Juneau, Alaska 99811

Re: HJR 12 -- Limiting Legislator Terms

Dear Representative Bussell:

In January 1981, the Legislative Study Committee sponsored by the General Federation of Women's Clubs, Anchorage FREE Committee, completed a comprehensive study on legislative reform. One of the recommendations made in that report was that legislator terms be limited.

The Legislative Information Office reported that HJR 12 which addresses legislator terms was currently being considered by the House Judiciary Committee. This particular resolution proposes an amendment to the Alaska Constitution limiting representatives to serving not more than four consecutive full two year terms and senators to serving not more than two consecutive full four year terms. We endorse this resolution.

This resolution is particularly good, because it neither grandfathers in current legislators nor applies to them retroactively. If this resolution was approved by the voters, current legislators would still be elgible for two more consecutive terms as senators or four more as representatives. This is fair. We recommend that no changes to the resolution be made.

In particular, the resolution should not be changed to allow current legislators to be exempt from its application. This would create two problems. First, creating two distinct classes of legislators, those subject to the term limitation and those who could run for unlimited terms, may violate United States constitutional equal protection guarantees. Second, we believe that areas such as Anchorage which have greater changes in representation would be hurt, because these legislators would always be junior to those grandfathered in.

Thank you for the opportunity to comment on this resolution. Please support its passage without any changes.

Sincerely,

Cheri C. Jacobus

Cheri C. Jacobus
Chairman Legislative Study

P.O. Box 4-2955 • Anchorage, Alaska 99509
A committee of the GFWC Anchorage Woman's Club

Alaska State Legislature

SENATOR
TERRY STIMSON
POUCH V
JUNEAU, ALASKA 99811

WHILE IN ANCHORAGE
1610 E STREET
ANCHORAGE, ALASKA 9150[illegible]

Senate

August 27, 1982

Dear Candidate:

During the past legislative session, two resolutions were introduced in the State Senate calling for an amendment to the State Constitution limiting the number of terms a legislator could serve in each house. SCR No. 9 was introduced during the 1981 session by Senator Dankworth and myself. If it had been adopted by the Legislature and approved by the voters in a general election, it would have limited State Senators to two consecutive terms and State Representatives to four consecutive terms. A similar resolution, introduced by Senator Colletta, placed the same restriction on service, but would have allowed a legislator who had served eight years to run for election to a different house or, if four years had elapsed, to run for election to the same house.

Debate on the measure was lively in the State Affairs Committee, with violent opposition voiced by some legislators and support from others, such as myself, who favor a citizens' legislature. Two reports were circulated at the meeting: a report from the General Federation of Women's Clubs supporting the "concept of a citizen legislature versus professional lawmakers;" and a poll conducted by the Dittman Research Corporation for the Anchorage Women's Club showing 62 percent of Alaskans interviewed favored limiting terms served by legislators.

No legislation on this subject was adopted by the Twelfth Legislature, and I do not believe a similar measure would fare much better in the Thirteenth. Based on the evident popular support for the concept, however, it is my feeling that the Constitution of the State of Alaska could be amended to limit the number of terms served by legislators through the initiative process.

If you are in favor of limiting legislative terms and perhaps would like to include the issue in your campaign, my office would be happy to provide you with pertinent testimony and reports for your use. Please call my secretary at 338-6000 for this assistance.

Sincerely,

Terry

Terry Stimson

TS/sc

SENATOR
M. "ED" DANKWORTH

REPRESENTING
SENATE DISTRICT 12-J

COMMITTEES
VICE-CHAIRMAN
JUDICIARY
RESOURCES

FINANCE
REGULATORY REVIEW

Senate

HOME ADDRESS
2425 HIALEAH DRIVE
ANCHORAGE, ALASKA 99503
HOME PHONE: (907) 277-0683

IN SESSION
POUCH V
JUNEAU, ALASKA 99811
PHONE: (907) 465-3749

February 27, 1980

I Ke L Harvey

Honorable Thomas B. Stewart
Juneau Court & Office Bldg.
Juneau, Alaska 99811

Dear Tom,

I have attached a copy of SJR 42 which I recently introduced in the Senate. This resolution would amend our state constitution to limit the number of consecutive years that a legislator may serve to; eight years in the House and eight years in the Senate.

My personal philosophy is one that would generally oppose any law which would restrict the right of the public to choose a candidate. I do believe, that when there is a substantial change in the function of one of the branches of government, that a review of the checks and balance of power is in order.

I suppose that my chief concern has been that the legislature has developed into a year-round operation. The legislature now, more than perhaps was invisioned in the beginning, manages and developes one of the richest natural resource deposits in the world. Because of the Legislature's internal wealth and liberal rules of operation, an incumbent legislator has a unpresidented advantage over the average citizen seeking to compete with him for office. On the federal level, It has been suggested that an incumbent candidate has roughly $400,000. to $500,000. advantage over a challenger. Through the seniority system, and this added political advantage, a political dynasty is built and an unjustifiable concentration of power is shared by a few individuals.

It appears to me, that we may have reached that time when, in order to safeguard and keep intact the principal of a citizen's legislature; we ought to consider some of the

limits this bill would provide. I have set out a few of my thoughts and those which compelled me to introduce this legislation. Because of your experience, particularly in the writing of the state constitution, and your valued judgment; I would like to impose upon you a request that you give me your views, pro or con, concerning this legislation.

Thank you in advance.

Sincerely,

M. "Ed" Dankworth
State Senator

MED/mc

Enclosure



Superior Court

State of Alaska

FIRST JUDICIAL DISTRICT
COURT AND OFFICE BUILDING
POUCH U
JUNEAU, ALASKA
99811

CHAMBERS OF
THOMAS B. STEWART, JUDGE, PRESIDING

April 1, 1980

The Honorable M. "Ed" Dankworth
Alaska State Senator
Pouch V
Juneau, Alaska 99811

Dear ~~Senator~~ Dankworth:

This is in response to your letter of February 27, 1980, asking my views on SJR 42, which would amend the constitution to limit the number of consecutive years a legislator may serve.

While I can well understand and sympathize with your concern about the concentration of power in too few hands in the legislative body, I am frankly doubtful that the approach of limiting terms provides the best solution to that problem. Perhaps I am too strong an advocate of your expressed personal philosophy that would generally oppose any law restricting the right of the public to choose a candidate. It seems to me that the problem of too concentrated a power structure in the legislative body can and definitely should be addressed, but through a different mechanism.

It is not my intent to elaborate on thoughts in this regard at the present time, though I would be pleased to discuss them with you sometime in the future if you should desire it. At the moment I would simply reiterate my concern that restricting the public's choice in its selection of candidates in my view is not an appropriate answer.

With personal regards I am

Very truly yours,

Thomas B. Stewart
Presiding Judge

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JUNEAU, ALASKA 99801
907 586-6994, 586-6997

May 2, 1980

Senator M. "Ed" Dankworth
Alaska State Legislature
Pouch V
Juneau, Alaska 99811

Dear Ed:

Belatedly I am acknowledging your letter of March 21 and the enclosure. I have mixed feelings about SJR 42. As you acknowledged, there is some value in experience, continuity and professionalism in the legislative branch.

On the other hand, the advantages of an incumbent are enormous, as you say. The remoteness of the state capital, the relatively small size of the legislature, and the advantages of name familiarity, and other factors, can help maintain an "old boy" network. I think that in legislative work, like any other field, a worker can get calloused and stale over time.

I reached the point after eight years in the legislature where I was beginning to foresee a lack of freshness of ideas on my part. I felt it important to go back into the private sector and regenerate. There is a tendency to stay in the legislature when one has really creative matters on his or her agenda. To stay under those circumstances is a limitation on a person's own growth. It is as refreshing to leave after a time as it is to obtain office.

Also, I think there is something attractive in the notion of citizen-statesman. I like the idea that legislative service in a place like Alaska is a civic duty which concerned citizens share. Sometimes, when one is in office too long, he grows to feel that he owns the office; the sense of being a public servant is obscured.

It is a very difficult matter to generalize about because, of course, some people serve for decades with undiminished distinction. Senator Butrovich comes to mind. Others become complacent or lazy.

The argument can be made that the complacent and lazy should be removed by the people, and that the public's freedom of choice should not be diminished.

On balance, I would resolve my doubts in favor of something like SJR 42, except that I think I would favor four successive terms for house members, and three successive terms for senators as a limitation, and I would only require a senator to sit out for two years instead of "one full term."

I think the effect would be to bring new blood and fresh perspectives to the legislature from time to time to a greater degree than now is the case, and I think it would help bring the legislature closer to the people.

Thanks for seeking my views, and I hope this answers your inquiry.

Best regards,

Joe P. Josephson

JPJ/cw

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DAVID A. BENNETT
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JOHN E. HAVELOCK * *

JAMES P. WETER (1877-1969)
F. M. ROBERTS (1880-1973)
JAMES C. HARPER (RETIRED)

March 31, 1980

The Honorable M. "Ed" Dankworth
Alaska State Senator
Pouch "V"
Juneau, AK 99811

Dear Ed:

While I have spent most of my legal career in occasional engagement with constitutional questions, I make no claim to having written the Alaska Constitution. Thanks for the compliment.

In general, I agree that something is seriously amiss with the Alaskan system of legislative representation. I would agree with you (perhaps as a partial consequence of the decay of the two party system) that we seem to be moving towards a system of constituencies based on personal fiefdoms supported by the power of incumbency. This style of government is not altogether new in America, being, in some regions of the South prior to the revival of the two party system, typical.

A limitation on number of terms served would have some effect in limiting such a system. In the absence of anyone supporting a better approach to the problem, I would support SJR 42 (assuming you have the technical bugs worked out).

As I think you certainly sense, we are moving into a period of extraordinary times in government. Government for the next decade will not be subject to the normal constraints of taxpayer resistance. We are moving from a form of government which is regulatory and lawmaking and which provides essential services to a government built around the function of disbursement of public wealth. I wonder whether the whole system doesn't need some examination under this style of government or, alternatively, we need to get the government out of this line of business.

Returning to your proposal, it is certainly a step in the right direction. Whether it will cure the disease or not, unaccompanied by other remedies, is another question.

Sincerely,

John E. Havelock

JEH:dw

STEVE McCUTCHEON
ALASKA PICTORIAL SERVICE
DRAWER 6144
ANCHORAGE, ALASKA 99502
(907) 344-1370

TO Dear Ed

DATE 6 Mar 80

SUBJECT SJR42.

I am attaching some comments to your bill as requested.

It is in rough form and I must apologize- but, I've had notice a few minutes ago to catch a plane in theearly A. M.. thought I'd better send it, since 'll be gone for a spell.

Best regards, and best of luck

Steve

MLS-N73 The Drawing Board, Inc., Box 505, Dallas, Texas

Dear Ed: 6MAR 80

Prior to the constitutional convention, I would have opposed legislation similar to your SJR 42. But in that convention I gave a lot of thought to just such a limitation since we were going to limit the governor, and in a sense put a limitation upon State judges.

After convention hours, Dayton Keene, who was the legislative branch comm advisor, Weldon Cooper, Emil Sady, and Ernest Bartley often met in my apt to discuss just the subject of your bill. Frankly I was looking for support from the consultants.

My presentation to them, was that historically we had many poor Governors- (of which we could do nothing) and that since the legislature had been established in 1913 we had had some pretty poor legislators. In those days the mining industry and fishing interests pretty well controlled those small legislatures of 24 people. But as state hood effort really came to life with the advent of Ernest Grueing as governor the full pressure of industry was felt. We had a number of pro mining and pro fish legislators who really controlled the legislature--much of it by seniority. ~~I sought to put a restrain on the legislature.~~

Dayton Keene who had been a legislator for some years felt my arguements were valid and that this might now be the time to put in a limitation- so was Bartley inclined. The others were of the opinion there probably was a necessity for such action, in this state as well as some other states. We all agreed that unicameralism would in no way better the situation. But then there was arguement presented that the people might feel and "infringement on voters rights.

As I look back now, I think the people would have accepted that limitation without a ~~xxxx~~ complaint, because I heard very few questioning the limitation on the Governor tenure.

I beleive we discuss the subject in our committee meeting on several occassions. I discussed the matter extensively with my friend Senator Vic Rivers who was chairman of the Executive branch committee. He was inclined to agree in principal as he was including the limitation on the governor in his articl Rivers quietly polled a number of convention delegates reporting back to me that though they agreed on the gubernatorial limitation there was no favorabl concensus relative to legislators. So, I let the matter go as we already had some novel ideas in our article.

It is my feeling, in the light of the action of the state legislature over the last 8 or 10 sessions, the people might now be ready to accept a limit on terms of legislators, particularly since they have seen the benefits of a limitation on the governor.

I doubt if your SJR 42 will pass in the legislature--too many have a "good thing" going for themselves. But, if someone had the time and energy to see it through via referendum, I'm certain it would pass.

Certainly the time has come to put some brakes on the legislature. This maybe a start.

I am agreed with your bill, I hope it passes.

S M Steve McG. Jr.

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TRAINING COURSES

TT---Terminal & Keyboard Instruction
WT---Learning to use WESTLAW
ST---How to use Shepard's

FEDERAL DATABASES

IDENTIFIER TITLE

USC----United States Code----------p7
SCT----Supreme Court Rptr.---------p7
FED----Federal Rptr. 2d------------p7
FS-----Federal Supplement----------p7
MJR----Military Justice Rptr.------p9
CFR----Code of Federal Regulations-p7

SPECIAL DATABASES

WCH----WESTLAW Case Highlights
WTH----WESTLAW Tax Highlights
SH-----Shepard's Citations--------p11
FSD----Forensic Services Directory-p9

REGIONAL AND STATE DATABASES

IDENTIFIER TITLE

ATL------Atlantic Rptr. 2d----------p8
NJ-TCT---New Jersey Tax Court Rptr.---p8
DE-CORP--Delaware Corp. Law----------p9
NE-------North Eastern Rptr. 2d-------p8
NYS------New York Supplement 2d-------p8
NW-------North Western Rptr. 2d-------p9
PAC------Pacific Rptr. 2d------------p11
CRP------California Rptr. ----------p11
SE-------South Eastern Rptr. 2d------p10
SO-------Southern Rptr. 2d----------p10
SW-------South Western Rptr. 2d------p10
CA-E-----California Education cases--p21
CA-FL----California Family Law cases-p21
CA-IN----California Insurance cases--p21
NY-E-----New York Education cases----p21
NY-FL----New York Family Law cases---p21
NY-IN----New York Insurance cases----p21

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FTX-PL---Public Laws ----------p12
FTX-CS---Federal cases (Ex. Tax Ct.)-p12
FTX-SCT--Supreme Ct. cases ----------p12
FTX-CTA--Ct.App., Ct.Cl. cases ------p12
FTX-DCT--District Ct. cases ---------p12
FTX-TCT--Tax Court cases ------------p12
FTX-CFR--Tax Regulations ------------p12
FTX-ADM--Tax Administrative Material-p12
FTX-WD---IRS Written Determinations -p13
FTX-NR---IRS News Releases ----------p13

FEDERAL PATENTS DATABASES

FP-USC---U.S. Code ----------p13
FP-CS----Federal cases ----------p13
FP-SCT---Supreme Ct. cases ----------p13
FP-CTA---Ct.App., Ct.Cl. cases ------p13
FP-DCT---District Ct. cases ---------p13

FEDERAL LABOR DATABASES

IDENTIFIER TITLE

FLB-USC--U.S. Code ----------p15
FLB-CS---Federal cases ----------p15
FLB-SCT--Supreme Ct. cases ------p15
FLB-CTA--Ct.App., Ct.Cl. cases --p15
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FLB-NLRB-NLRB Decisions ---------p15

FEDERAL SECURITIES DATABASES

FSEC-USC--U.S. Code ----------p14
FSEC-CFR--Regulations ----------p14
FSEC-CS---Federal cases ---------p14
FSEC-SCT--Supreme Ct. cases -----p14
FSEC-CTA--Ct.App., Ct.Cl. cases -p14
FSEC-DCT--District Ct. cases ----p14
FSEC-DEC--SEC Decisions ---------p14
FSEC-NAL--SEC No-Action Letters -p14
FSEC-IR---SEC Interpretive Rel. -p14

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FABR-CFR--Regulations ----------p18
FABR-CS---Federal cases ----------p18
FABR-SCT--Supreme Ct. cases -------p18
FABR-CTA--Ct.App., Ct.Cl. cases ---p18
FABR-DCT--District Court cases ----p18
FABR-FTC--FTC Decisions ----------p18

FEDERAL BANKRUPTCY DATABASES

IDENTIFIER TITLE

FBKR-USC--U.S. Code ----------p17
FBKR-CS---Federal cases ----------p17
FBKR-SCT--Supreme Ct. cases -------p17
FBKR-CTA--Ct.App., Ct.Cl. cases ---p17
FBKR-DCT--District Ct. cases ------p17
FBKR-SEC--Reorganization Reports --p17

FEDERAL ADMIRALTY DATABASES

FADM-CS---Federal cases----------p20

FADM-CTA--Ct.App., Ct.Cl. cases----p20
FADM-DCT--District Ct. cases-------p20
FADM-USC--U.S. Code----------p20

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FCP-SCT--Supreme Ct. cases --------p16
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FCP-DCT--District Ct. cases -------p16

FEDERAL COMMUNICATIONS DATABASE

FCOM-USC U.S. Code ----------p19
FCOM-CS--Federal cases ----------p19
FCOM-SCT-Supreme Ct. cases --------p19
FCOM-CTA-Ct.App., Ct.Cl. cases ----p19
FCOM-DCT-District Ct. cases -------p19

STATE ATTORNEY GENERAL OPINIONS

IDENTIFIER TITLE

AG ---All states listed below --p20
CA-AG------California ----------p20
IL-AG------Illinois ----------p20
MN-AG------Minnesota ----------p20
NY-AG------New York ----------p20
OH-AG------Ohio ----------p20
PA-AG------Pennsylvania -------p20
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FGC-CS ------Federal cases ----------p22
FGC-SCT -----Supreme Court cases ----p22
FGC-CTA -----Ct.App., Ct.Cl. cases --p22
FGC-DCT -----District Ct. cases -----p22
FGC-BCA -----Bd. of Cont. App. Dec. -p22
FGC-AGBCA ---Agriculture BCA --------p22
FGC-ASBCA ---Armed Services BCA -----p22
FGC-EBCA ----Energy BCA ----------p22
FGC-ENGBCA --Corps of Engineers BCA -p22
FGC-GSBCA ---General Services BCA ---p22
FGC-HUDBCA --Housing and Urban Dev. -p22
FGC-IBCA ----Interior BCA ----------p22
FGC-LBCA ----Labor BCA ----------p23
FGC-NASABCA -Natl. Aero. and Space --p23
FGC-PSBCA ---Postal Service BCA -----p23
FGC-DOTCAB --Dept. of Transportation-p23
FGC-VABCA ---Veterans Admin. BCA ----p23

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USC U.S.Code: Titles 1-25,27-50 through P.L.97-259, enacted 9/13/82.
Title 26 through P.L.97-172, enacted 4/16/82.

SCT Supreme Court Reporter. Full text plus headnotes beginning 46 S.Ct.(1925) Includes cases received but not yet published.

FED Federal Reporter 2d. U.S. Courts of Appeals, U.S. Court of Customs and Patent Appeals: full text plus headnotes beginning 146 F.2d (1945). U.S. Court of Claims: full text plus headnotes beginning 276 F.2d (1960). Includes cases received but not yet published.

FS Federal Supplement. U.S. District Courts: full text plus headnotes beginning 84 F.Supp. (1950). Also headnotes for cases in Federal Rules Decisions beginning 27 F.R.D. (1961); full text plus headnotes beginning 73 F.R.D. (1977). U.S. Court of Claims: full text plus headnotes beginning 115 F.Supp. (1954) through 181 F.Supp (1960) (See FED for later cases). Includes cases received but not yet published.

CFR Code of Federal Regulations
Title 26 only (as of 11/1/82)
Other files temporarily unavailable pending file maintenance.

SCT, FED and FS databases are current through most recent advance sheets.
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IDENTIFIER TITLE AND SCOPE OF COVERAGE

ATL Atlantic Reporter, 2d
N.J.: full text and headnotes beginning 61 A.2d (1948).
Conn., Del., Me., Md., N.H., Pa., R.I., Vermont and Dist. of Columbia: headnotes beginning (except Delaware) 121 A.2d 729 (1956) through 217 A.2d (1965); full text plus headnotes for all states beginning 218 A.2d (1966).

NE North Eastern Reporter, 2d
Ill., Ind., Mass., Ohio: headnotes beginning 133 N.E.2d 257 (1956); full text plus headnotes beginning 215 N.E.2d (1966), except in Ohio where full text plus headnotes begins at 201 N.E.2d (1965).
New York Ct. of App.: headnotes beginning 215 N.E.2d 482 (1966) through 363 N.E.2d (1977); full text plus headnotes beginning 364 N.E.2d (1977).
Ill. Supreme Ct.; full text plus headnotes beginning 58 N.E.2d (1945).
For expanded coverage of Court of Appeals decisions, see NYS.

NYS New York Supplement, 2d
Court of Appeals: full text plus headnotes beginning 281 N.Y. 1, 21 N.E.2d 891 (1940). Supreme Court: App. Div., Supreme Court, misc. courts of record: headnotes beginning 149 N.Y.S.2d (1956) through 267 N.Y.S.2d (1965); full text plus headnotes beginning 268 N.Y.S.2d (1966).

NJ-TCT New Jersey Tax Court Reporter - full text plus begins 1 N.J.Tax (1980).

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DE-CORP Delaware Corporation Law
Cases relating to corporation law and to securities law decided in Delaware. Includes unreported cases from the Del. Journal of Corporate Law beginning Vol. 1 (1975) and reported cases beginning 218 A.2d (1966).

NW North Western Reporter, 2d
Minnesota: full text plus headnotes beginning 16 N.W.2d (1945).
Iowa, Mich., Nebraska, North Dakota and South Dakota: headnotes beginning 75 N.W.2d 841 (1956) through 129 N.W.2d (1964); full text plus headnotes beginning 130 N.W.2d (1965). Wisconsin: headnotes beginning 128 N.W.2d (1965); full text plus headnotes beginning 130 N.W.2d (1965).
Michigan Supreme Ct.: full text plus headnotes beginning 66 N.W.2d (1955)

MJR Military Justice Reporter

FSD 1983 Forensic Services Directory. Names of scientific, medical and technical experts available to serve as consultants to attorneys and as expert trial witnesses. Also translators, testing laboratories, investigators, and other specialists providing trial support services. COPYRIGHT 1982 by the National Forensic Center. A hardcover edition is available from the NFC for $69.50 (N.J. residents add 5% tax). Inquries respecting Directory entries should be addressed to: The National Forensic Center, P.O. Box 305, Fair Lawn, NJ 07410
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SO Southern Reporter,2d
La.: full text plus headnotes beginning 90 So.2d (1956).
Fla.: full text plus headnotes beginning 74 So.2d (1955).
Ala., Miss.: headnotes beginning 86 So.2d 369 (1956) through 183 So.2d (1967); full text plus headnotes beginning 184 So.2d (1967).

SE South Eastern Reporter, 2d
Georgia, No. Carolina, So. Carolina, Virginia, W. Virginia: headnotes beginning 92 S.E.2d 89 (1956) through 146 S.E.2d (1967); full text plus headnotes beginning 147 S.E.2d (1967).

SW South Western Reporter, 2d
Arkansas, Kentucky, Missouri, Tennessee, and Texas: headnotes beginning 288 S.W.2d 321 (1956) through 399 S.W.2d (1967); full text plus headnotes beginning 400 S.W.2d (1967).
Texas Supreme Court: full text plus headnotes beginning 216 S.W. (1920).

SO, SE, SW databases are current through most recent advance sheets.
To access a database, enter the Identifier. To see Database Listing, enter DB .

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IDENTIFIER TITLE AND SCOPE OF COVERAGE

PAC Pacific Reporter, 2d
Washington: headnotes beginning 295 P.2d 401 (1956) through 396 P.2d 138 (1964); full text plus headnotes beginning 396 P.2d 139 (1964).
Alaska, Arizona, Colorado, Hawaii, Idaho, Kansas, Montana, Nevada, New Mexico, Oklahoma, Oregon, Utah, Wyoming: headnotes beginning (except Nevada, Utah and Wyoming) 295 P.2d 401 (1956) through 411 P.2d (1967); full text plus headnotes for all states beginning 412 P.2d (1967).
Cal. Supreme Ct. only: headnotes beginning 407 P.2d (1965) through 564 P.2d (1977); full text plus headnotes beginning 565 P.2d (1977).
For coverage of all reported California decisions use CRP.

CRP California Reporter
Cal. Supreme Court: full text plus headnotes beginning 152 P.2d (1945).
Other reported decisions: headnotes beginning 1 Cal.Rptr. (1960) through 49 Cal.Rptr. (1966); full text plus headnotes beginning 50 Cal.Rptr.(1966)

SH Shepard's Citations - Citing case coverage beginning with Vol. 1 for each WESTLAW database with the following exceptions: 62 S.Ct (1941), 303 N.Y.S.2d (1969), 227 F.2d (1955), 281 F.Supp. (1968), QFED not included. Additional coverage information may be found on page 26 of the Shepard's Training Course.

PAC and CRP databases are current through the most recent advance sheets.
To access a database, enter the Identifier. To see Database Listing, enter DB .

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IDENTIFIER TITLE AND SCOPE OF COVERAGE

FEDERAL TAX. Documents relating to federal tax law and procedure.

analysis. Coverage begins with the issue of 1/5/81 and is current through the most recent issue. Tax Notes is copyrighted by Tax Analysts, 6830 N. Fairfax Dr., Arlington, VA 22213. The full text of documents referenced in Tax Notes may be obtained through Tax Analysts' Complete Access Service; for details, call (800)336-0439.

FIX-USC U.S. Code. Selected provisions, includes Internal Revenue Code.
FIX-PL Public Laws. The Tax Equity and Fiscal Responsibility Act of 1982.
FIX-CS Cases. Consolidates FIX-SCT, FIX-CTA, FIX-DCT (Tax Court not included).
FIX-SCT U.S. Supreme Court cases beginning 1925.
FIX-CTA U.S. Court of Appeals cases beginning 1945. U.S. Court of Claims cases beginning 1960.
FIX-DCT U.S. District Court cases beginning 1950. U.S. Court of Claims cases from 1954 through 1960.
FIX-TCT U.S. Tax Court Reported and Memorandum decisions beginning 1954.
FIX-CFR Tax Regulations. Treasury regulations codified at 26 CFR as of 11/1/82.
FIX-ADM Administrative Material. Includes: Revenue Rulings, Revenue Procedures, Delegation Orders, Executive and Treasury Dept. Orders. Beginning 1954.

Topical case law databases are current through most recent advance sheets; for status of topical USC or CFR databases, see descriptions of general databases. To access a database, enter the Identifier. To see Database Listing, enter DB .

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FEDERAL TAX (cont.)

FIX-WD IRS Written Determinations. Includes letter rulings and National Office Technical Advice Memoranda beginning 1954, with the exception of certain illegible documents.
Caution: These rulings are directed only to the taxpayers who request them. 26 U.S.C.A. s 6110(j)(3) prohibits their use as precedent.
FIX-NR IRS news releases, announcing policy determinations and other matters, beginning January 1, 1981.

FEDERAL PATENTS. Documents relating to federal patent laws.

FP-USC U.S. Code. Selected U.S. Code provisions.
FP-CS Cases. Consolidates cases from FP-SCT, FP-CTA and FP-DCT.
FP-SCT U.S. Supreme Ct. cases beginning 1925.
FP-CTA U.S. Courts of Appeals cases beginning 1945. Court of Claims cases beginning 1960. Includes U.S. Court of Customs and Patent Appeals.
FP-DCT U.S. District Court cases beginning 1950. U.S. Court of Claims cases from 1954 through 1960.

Topical case law databases are current through most recent advance sheets; for status of topical USC or CFR databases, see descriptions of general databases. To access a Database, enter its Identifier. To see Database Listing, enter DB .

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FEDERAL SECURITIES. Documents relating to federal securities and commodity futures regulation.

FSEC-USC U.S. Code. Includes acts administered by the SEC.
FSEC-CFR Regulations temporarily unavailable pending file maintenance.
FSEC-CS Cases. Consolidates cases from FSEC-SCT, FSEC-CTA, and FSEC-DCT.
FSEC-SCT U.S. Supreme Court cases beginning 1925.
FSEC-CTA U.S. Courts of Appeals cases beginning 1945. U.S. Court of Claims cases beginning 1960.
FSEC-DCT U.S. District Court cases beginning 1950. U.S. Court of Claims cases from 1954 through 1960.
FSEC-DEC Decisions of the SEC published in SEC Decisions and Reports, beginning with 1 S.E.C. (1933).
FSEC-NAL Private requests for no-action and interpretive letters and responses thereto by the SEC. All letters available from the SEC public files,

FSEC-IR SEC Interpretive Releases relating to the acts administered by the SEC, to the general rules and regulations issued under those acts, and to accounting matters. Coverage beginning 1935.

Topical case law databases are current through most recent advance sheets; for status of topical USC or CFR databases, see descriptions of general databases. To access a Database, enter its Identifier. To see Database Listing, enter DB .

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IDENTIFIER TITLE AND SCOPE OF COVERAGE

FEDERAL LABOR. Documents relating to labor issues.

FLB-USC U.S. Code. Selected U.S. Code provisions.

FLB-CS Cases. Consolidates cases from FLB-SCT, FLB-CTA, and FLB-DCT.

FLB-SCT U.S. Supreme Court decisions beginning 1925.

FLB-CTA U.S. Courts of Appeals cases beginning 1945. U.S. Court of Claims cases beginning 1960.

FLB-DCT U.S. District Court cases beginning 1950. U.S. Court of Claims cases from 1954 through 1960.

FLB-OSRC Decisions of the Occupational Safety and Health Review Commission. Cases are represented by full text beginning with 1 OSAHRC (1971).

FLB-NLRB National Labor Relations Board Decisions. Cases are represented by full text beginning 221 NLRB

Topical case law databases are current through most recent advance sheets; for status of topical USC or CFR databases, see descriptions of general databases. To access a Database, enter its Identifier. To see Database Listing, enter DB .

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IDENTIFIER TITLE AND SCOPE OF COVERAGE

FEDERAL COPYRIGHT. Documents pertaining to federal copyright law.

FCP-USC U.S. Code. Selected U.S. Code provisions.

FCP-CS Cases. Consolidates cases from FCP-SCT, FCP-CTA, and FCP-DCT.

FCP-SCT U.S. Supreme Court cases beginning 1925.

FCP-CTA U.S. Court of Appeals cases beginning 1945. U.S. Court of Claims cases beginning 1960.

FCP-DCT U.S. District Court cases beginning 1950. U.S. Court of Claims from 1954 through 1960.

Topical case law databases are current through most recent advance sheets; for status of topical USC or CFR databases, see descriptions of general databases. To access a database, enter its Identifier. To see Database Listing, enter DB .

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IDENTIFIER TITLE AND SCOPE OF COVERAGE

FEDERAL BANKRUPTCY. Documents relating to the bankruptcy laws.

FBKR-USC U.S. Code. Selected provisions, including 11 U.S. Code.

Includes U.S. Bankruptcy Court.
FBKR-SCT U.S. Supreme Court cases beginning 1925.
FBKR-CTA U.S. Courts of Appeals cases beginning 1945. U.S. Court of Claims cases beginning 1960.
FBKR-DCT U.S. District Court cases beginning 1950. U.S. Court of Claims cases from 1954 through 1960. U.S. Bankruptcy Court beginning 1979.
FBKR-SEC SEC Reports respecting corporate reorganizations under Chapter X of the former Bankruptcy Act, and Chapter 11 of the current Bankruptcy Code, beginning 1 S.E.C. (1934).

Topical case law databases are current through most recent advance sheets; for status of topical USC or CFR databases, see descriptions of general databases. To access a database, enter its Identifier. To see Database Listing, enter DB .

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IDENTIFIER TITLE AND SCOPE OF COVERAGE

FEDERAL ANTITRUST AND BUSINESS REGULATION. Documents relating to antitrust, business regulation, and consumer protection.
FABR-USC U.S. Code. Selected U.S. Code provisions. See also other topical databases including Federal Securities, Patents and Labor databases.
FABR-CFR Regulations temporarily unavailable pending file maintenance.
FABR-CS Cases. Consolidates cases from FABR-SCT, FABR-CTA and FABR-DCT.
FABR-SCT U.S. Supreme Court cases beginning 1925.
FABR-CTA U.S. Courts of Appeals cases beginning 1945. U.S. Court of Claims cases beginning 1960.
FABR-DCT U.S. District Court cases beginning 1950. U.S. Court of Claims cases from 1954 through 1960.
FABR-FTC Decisions of the FTC published in FTC Decisions and Reports beginning with 56 F.T.C. (1959).

Topical case law databases are current through most recent advance sheets; for status of topical USC or CFR databases, see descriptions of general databases. To access a database, enter its Identifier. To see Database Listing, enter DB .

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IDENTIFIER TITLE AND SCOPE OF COVERAGE

FEDERAL COMMUNICATIONS AND MASS MEDIA. Documents relating to federal regulation of the commercial broadcast, cable and print media. Also includes documents relating to censorship and prior restraint as it relates to the media, the conflict between a free press and a fair trial, the rights of journalists to protect their sources, pornography, and defamation as it relates to the media. This database does not include documents dealing with copyrights, FOIA, advertising practices or government communications (i.e. Federal Government civilian and military communications).

FCOM-USC U.S. Code. Selected U.S. Code provisions.
FCOM-CS Cases. Consolidates cases from FCOM-SCT, FCOM-CTA, and FCOM-DCT.
FCOM-SCT U.S. Supreme Court cases beginning 1925.
FCOM-CTA U.S. Court of Appeals cases beginning 1945. U.S. Court of Claims cases beginning 1960.
FCOM-DCT U.S. District Court cases beginning 1950. U.S. Court of Claims

Topical case law databases are current through most recent advance sheets; for status of topical USC or CFR databases, see descriptions of general databases. To access a database, enter its Identifier. To see Database Listing, enter DB .

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IDENTIFIER TITLE AND SCOPE OF COVERAGE

FEDERAL ADMIRALTY. Documents relating to federal admiralty and maritime law and practice, including shipping, collision of vessels, maritime liens, maritime employment (including injuries to seamen and longshoremen), wharf and dock operations, and regulation of navigation and navigable waters (including pollution control).

FADM-USC U.S. Code. Selected U.S. Code provisions.

FADM-CS Cases. Consolidates cases from FADM-SCT, FADM-CTA, and FADM-DCT.

FADM-SCT U.S. Supreme Court cases beginning 1925.

FADM-CTA U.S. Court of Appeals cases beginning 1945. U.S. Court of Claims cases beginning 1960.

FADM-DCT U.S. District Court cases beginning 1950. U.S. Court of Claims cases from 1954 through 1960.

STATE ATTORNEY GENERAL OPINIONS.

Opinions of the the Attorneys General for the following states beginning 1977. Identifiers appear in parentheses. By using the identifier (AG) , all the following states can be searched at once.

California (CA-AG) Illinois (IL-AG) Minnesota (MN-AG) Ohio (OH-AG)
Pennsylvania (PA-AG) Texas (TX-AG) Tennessee (TN-AG) New York (NY-AG)

Topical case law databases are current through most recent advance sheets; for status of topical USC or CFR databases, see descriptions of general databases. To access a database, enter its Identifier. To see Database Listing, enter DB .

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IDENTIFIER TITLE AND SCOPE OF COVERAGE

CA-E Education. Cases involving education issues including contracts, management of educational institutions, and rights and liabilities of teachers, administrators and boards. For coverage, see CRP on p. 11.

CA-FL Family Law. Cases relating to marriage, divorce, adoption, custody, intra-familial property rights and other relationships, mental health, and juvenile law decided in California. For coverage see CRP on p. 11.

CA-IN Insurance. Decisions in the state of California involving insurance issues. Does not extend to decisions involving bonds and suretyship, insurance on bank deposits, social security coverage, unemployment compensation or workers' compensation. For coverage, see CRP on p. 11.

NY-E Education. Cases involving education issues including contracts, management of educational institutions, and rights and liabilities of teachers, administrators and boards. For coverage, see NYS on p. 8.

NY-FL Family Law. Cases relating to marriage, divorce, adoption, custody, intra-familial property rights and other relationships, mental health, and juvenile law decided in New York. For coverage see NYS on p. 8.

NY-IN Insurance. Decisions in the state of New York involving insurance issues. Does not extend to decisions involving bonds and suretyship, insurance on bank deposits, social security coverage, unemployment compensation or workers' compensation. For coverage, see NYS on p. 8.

To access a database, enter its Identifier. To see Database Listing, enter DB .

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IDENTIFIER TITLE AND SCOPE OF COVERAGE

FEDERAL GOVERNMENT CONTRACTS. Documents relating to procurement and other federal government contracts questions.

FGC-USC U.S. Code. Selected U.S. Code provisions.

FGC-CS Cases. Consolidates cases from FGC-SCT, FGC-CTA and FGC-DCT.

FGC-SCT U.S. Supreme Court cases beginning 1925.

FGC-CTA U.S. Courts of Appeals cases beginning 1945. U.S. Court of Claims cases beginning 1960.

cases from 1954 through 1960.

FGC-BCA	Board of Contract Appeals decisions from all of the following agencies (beginning coverage appears in parentheses):
FGC-AGBCA	Agriculture Board of Contract Appeals (1975).
FGC-ASBCA	Armed Services Board of Contract Appeals (1981).
FGC-EBCA	Energy Board of Contract Appeals (1980).
FGC-ENGBCA	Corps of Engineers Board of Contract Appeals (1981).
FGC-GSBCA	General Services Board of Contract Appeals (1962).
FGC-HUDBCA	Housing and Urban Development Board of Contract Appeals (1980).
FGC-IBCA	Interior Board of Contract Appeals (1955).

Topical case law databases are current through most recent advance sheets; for status of topical USC or CFR databases, see description of general database.
To access a database, enter its Identifier. To see Database Listing, enter DB .

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FEDERAL GOVERNMENT CONTRACTS (cont.)

FGC-LBCA	Labor Board of Contract Appeals (1981).
FGC-NASABCA	National Aeronautics and Space Administration Board of Contract Appeals (1960).
FGC-PSBCA	Postal Service Board of Contract Appeals (1968).
FGC-DOTCAB	Department of Transportation Contracts Appeals Board (1967).
FGC-VABCA	Veterans Administration Board of Contract Appeals (1981).

To access a database, enter its Identifier. To see Database Listing, enter DB .

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TRAINING COURSES

TT---Terminal & Keyboard Instruction
WT---Learning to use WESTLAW
ST---How to use Shepard's

FEDERAL DATABASES

IDENTIFIER TITLE

USC----United States Code----------p7
SCT----Supreme Court Rptr.---------p7
FED----Federal Rptr. 2d------------p7
FS-----Federal Supplement----------p7
MJR----Military Justice Rptr.------p9
CFR----Code of Federal Regulations-p7

SPECIAL DATABASES

WCH----WESTLAW Case Highlights
WTH----WESTLAW Tax Highlights
SH-----Shepard's Citations--------p11
FSD----Forensic Services Directory-p9

REGIONAL AND STATE DATABASES

IDENTIFIER TITLE

ATL------Atlantic Rptr. 2d------------p8
NJ-TCT---New Jersey Tax Court Rptr.---p8
DE-CORP--Delaware Corp. Law----------p9
NE-------North Eastern Rptr. 2d-------p8
NYS------New York Supplement 2d-------p8
NW-------North Western Rptr. 2d-------p9
PAC------Pacific Rptr. 2d------------p11
CRP------California Rptr. -----------p11
SE-------South Eastern Rptr. 2d------p10
SO-------Southern Rptr. 2d-----------p10
SW-------South Western Rptr. 2d------p10
CA-E-----California Education cases--p21
CA-FL----California Family Law cases-p21
CA-IN----California Insurance cases--p21
NY-E-----New York Education cases----p21
NY-FL----New York Family Law cases---p21
NY-IN----New York Insurance cases----p21

Press enter for additional database listings (on pages 3, 4, 5 and 6).
To access a database, enter the database Identifier (e.g. FED).
For more information about a database, enter P followed by the page number.

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FEDERAL TAX DATABASES

IDENTIFIER TITLE

FTX-TN---Tax Notes ----------p12
FTX-USC--Internal Revenue Code ------p12
FTX-PL---Public Laws ----------p12
FTX-CS---Federal cases (Ex. Tax Ct.)-p12
FTX-SCT--Supreme Ct. cases ----------p12
FTX-CTA--Ct.App., Ct.Cl. cases ------p12
FTX-DCT--District Ct. cases ---------p12
FTX-TCT--Tax Court cases ------------p12
FTX-CFR--Tax Regulations ------------p12
FTX-ADM--Tax Administrative Material-p12
FTX-WD---IRS Written Determinations -p13
FTX-NR---IRS News Releases ----------p13

FEDERAL PATENTS DATABASES

FP-USC---U.S. Code ----------p13
FP-CS----Federal cases ----------p13
FP-SCT---Supreme Ct. cases ----------p13
FP-CTA---Ct.App., Ct.Cl. cases ------p13
FP-DCT---District Ct. cases ---------p13

FEDERAL LABOR DATABASES

IDENTIFIER TITLE

FLB-USC--U.S. Code ----------p15
FLB-CS---Federal cases ----------p15
FLB-SCT--Supreme Ct. cases ------p15
FLB-CTA--Ct.App., Ct.Cl. cases --p15
FLB-DCT--District Ct. cases -----p15
FLB-OSRC-OSHA Review Comm. Dec.--p15
FLB-NLRB-NLRB Decisions ---------p15

FEDERAL SECURITIES DATABASES

FSEC-USC--U.S. Code ----------p14
FSEC-CFR--Regulations ----------p14
FSEC-CS---Federal cases ---------p14
FSEC-SCT--Supreme Ct. cases -----p14
FSEC-CTA--Ct.App., Ct.Cl. cases -p14
FSEC-DCT--District Ct. cases ----p14
FSEC-DEC--SEC Decisions ---------p14
FSEC-NAL--SEC No-Action Letters -p14
FSEC-IR---SEC Interpretive Rel. -p14

Press enter for additional database listings (pages 4, 5 and 6).
To access a database, enter its Identifier.
For more information about a database, enter P followed by the page number.

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FEDERAL ANTITRUST AND BUSINESS REGULATION DATABASES

IDENTIFIER TITLE

FABR-USC--U.S. Code ----------p18
FABR-CFR--Regulations ----------p18
FABR-CS---Federal cases ----------p18
FABR-SCT--Supreme Ct. cases -------p18
FABR-CTA--Ct.App., Ct.Cl. cases ---p18
FABR-DCT--District Court cases ----p18
FABR-FTC--FTC Decisions ----------p18

FEDERAL BANKRUPTCY DATABASES

IDENTIFIER TITLE

FBKR-USC--U.S. Code ----------p17
FBKR-CS---Federal cases ----------p17
FBKR-SCT--Supreme Ct. cases -------p17
FBKR-CTA--Ct.App., Ct.Cl. cases ---p17
FBKR-DCT--District Ct. cases ------p17
FBKR-SEC--Reorganization Reports --p17

FEDERAL ADMIRALTY DATABASES

FADM-CS---Federal cases----------p20

FADM-SCT--Supreme Ct. cases--------p20
FADM-CTA--Ct.App., Ct.Cl. cases----p20
FADM-DCT--District Ct. cases-------p20
FADM-USC--U.S. Code----------------p20

Press enter for additional database listings (pages 5 and 6).
To access a database, enter its Identifier.
For more information about a database, enter P followed by the page number.

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FEDERAL COPYRIGHT DATABASE

IDENTIFIER TITLE

FCP-USC--U.S. Code ----------------p16
FCP-CS---Federal cases ------------p16
FCP-SCT--Supreme Ct. cases --------p16
FCP-CTA--Ct.App., Ct.Cl. cases-----p16
FCP-DCT--District Ct. cases -------p16

FEDERAL COMMUNICATIONS DATABASE

FCOM-USC U.S. Code ----------------p19
FCOM-CS--Federal cases ------------p19
FCOM-SCT-Supreme Ct. cases --------p19
FCOM-CTA-Ct.App., Ct.Cl. cases ----p19
FCOM-DCT-District Ct. cases -------p19

STATE ATTORNEY GENERAL OPINIONS

IDENTIFIER TITLE

AG ---All states listed below --p20
CA-AG------California ----------p20
IL-AG------Illinois ------------p20
MN-AG------Minnesota -----------p20
NY-AG------New York ------------p20
OH-AG------Ohio ----------------p20
PA-AG------Pennsylvania --------p20
TN-AG------Tennessee -----------p20
TX-AG------Texas ---------------p20

Press enter for additional database listings (page 6).
To access a database, enter its Identifier.
For more information about a database, enter P followed by the page number.

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FEDERAL GOVERNMENT CONTRACTS DATABASES

IDENTIFIER TITLE

FGC-USC -----U.S. Code -------------p22
FGC-CS ------Federal cases ----------p22
FGC-SCT -----Supreme Court cases ----p22
FGC-CTA -----Ct.App., Ct.Cl. cases --p22
FGC-DCT -----District Ct. cases -----p22
FGC-BCA -----Bd. of Cont. App. Dec. -p22
FGC-AGBCA ---Agriculture BCA --------p22
FGC-ASBCA ---Armed Services BCA -----p22
FGC-EBCA ----Energy BCA ------------p22
FGC-ENGBCA --Corps of Engineers BCA -p22
FGC-GSBCA ---General Services BCA ---p22
FGC-HUDBCA --Housing and Urban Dev. -p22
FGC-IBCA ----Interior BCA ----------p22
FGC-LBCA ----Labor BCA -------------p23
FGC-NASABCA -Natl. Aero. and Space --p23
FGC-PSBCA ---Postal Service BCA -----p23
FGC-DOTCAB --Dept. of Transportation-p23
FGC-VABCA ---Veterans Admin. BCA ----p23

To access a database, enter its Identifier.
For more information about a database, enter P followed by the page number.

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IDENTIFIER	TITLE AND SCOPE OF COVERAGE	p7
USC	U.S.Code: Titles 1-25,27-50 through P.L.97-259, enacted 9/13/82. Title 26 through P.L.97-172, enacted 4/16/82.	
SCT	Supreme Court Reporter. Full text plus headnotes beginning 46 S.Ct.(1925) Includes cases received but not yet published.	
FED	Federal Reporter 2d. U.S. Courts of Appeals, U.S. Court of Customs and Patent Appeals: full text plus headnotes beginning 146 F.2d (1945). U.S. Court of Claims: full text plus headnotes beginning 276 F.2d (1960). Includes cases received but not yet published.	
FS	Federal Supplement. U.S. District Courts: full text plus headnotes beginning 84 F.Supp. (1950). Also headnotes for cases in Federal Rules Decisions beginning 27 F.R.D. (1961); full text plus headnotes beginning 73 F.R.D. (1977). U.S. Court of Claims: full text plus headnotes beginning 115 F.Supp. (1954) through 181 F.Supp (1960) (See FED for later cases). Includes cases received but not yet published.	
CFR	Code of Federal Regulations Title 26 only (as of 11/1/82) Other files temporarily unavailable pending file maintenance.	

SCT, FED and FS databases are current through most recent advance sheets.
To access a database, enter its Identifier. To see Database Listing, enter DB .

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IDENTIFIER	TITLE AND SCOPE OF COVERAGE	p8
ATL	Atlantic Reporter, 2d N.J.: full text and headnotes beginning 61 A.2d (1948). Conn., Del., Me., Md., N.H., Pa., R.I., Vermont and Dist. of Columbia: headnotes beginning (except Delaware) 121 A.2d 729 (1956) through 217 A.2d (1965); full text plus headnotes for all states beginning 218 A.2d (1966).	
NE	North Eastern Reporter, 2d Ill., Ind., Mass., Ohio: headnotes beginning 133 N.E.2d 257 (1956); full text plus headnotes beginning 215 N.E.2d (1966), except in Ohio where full text plus headnotes begins at 201 N.E.2d (1965). New York Ct. of App.: headnotes beginning 215 N.E.2d 482 (1966) through 363 N.E.2d (1977); full text plus headnotes beginning 364 N.E.2d (1977). Ill. Supreme Ct.; full text plus headnotes beginning 58 N.E.2d (1945). For expanded coverage of Court of Appeals decisions, see NYS.	
NYS	New York Supplement, 2d Court of Appeals: full text plus headnotes beginning 281 N.Y. 1, 21 N.E.2d 891 (1940). Supreme Court App. Div., Supreme Court, misc. courts of record: headnotes beginning 149 N.Y.S.2d (1956) through 267 N.Y.S.2d (1965); full text plus headnotes beginning 268 N.Y.S.2d (1966).	
NJ-TCT	New Jersey Tax Court Reporter - full text plus begins 1 N.J.Tax (1980).	

ATL, NE, NYS and NJ-TCT are current through the most recent advance sheets.
To access a database, enter its Identifier. To see Database Listing, enter DB .

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IDENTIFIER	TITLE AND SCOPE OF COVERAGE	p9
DE-CORP	Delaware Corporation Law Cases relating to corporation law and to securities law decided in Delaware. Includes unreported cases from the Del. Journal of Corporate Law beginning Vol. 1 (1975) and reported cases beginning 218 A.2d (1966).	
NW	North Western Reporter, 2d Minnesota: full text plus headnotes beginning 16 N.W.2d (1945). Iowa, Mich., Nebraska, North Dakota and South Dakota: headnotes beginning 75 N.W.2d 841 (1956) through 129 N.W.2d (1964); full text plus headnotes beginning 130 N.W.2d (1965). Wisconsin: headnotes beginning 128 N.W.2d (1965); full text plus headnotes beginning 130 N.W.2d (1965).	

Michigan Supreme Ct.: full text plus headnotes beginning 66 N.W.2d (1955)

MJR Military Justice Reporter
Full text plus headnotes beginning 1 M.J. (1977)

FSD 1983 Forensic Services Directory. Names of scientific, medical and technical experts available to serve as consultants to attorneys and as expert trial witnesses. Also translators, testing laboratories, investigators, and other specialists providing trial support services. COPYRIGHT 1982 by the National Forensic Center. A hardcover edition is available from the NFC for $69.50 (N.J. residents add 5% tax). Inquries respecting Directory entries should be addressed to: The National Forensic Center, P.O. Box 305, Fair Lawn, NJ 07410

DE-CORP, NW and MJR databases are current through most recent advance sheets.
To access a database, enter the Identifier. To see Database Listing, enter DB .

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IDENTIFIER TITLE AND SCOPE OF COVERAGE

SO Southern Reporter,2d
La.: full text plus headnotes beginning 90 So.2d (1956).
Fla.: full text plus headnotes beginning 74 So.2d (1955).
Ala., Miss.: headnotes beginning 86 So.2d 369 (1956) through 183 So.2d (1967); full text plus headnotes beginning 184 So.2d (1967).

SE South Eastern Reporter, 2d
Georgia, No. Carolina, So. Carolina, Virginia, W. Virginia: headnotes beginning 92 S.E.2d 89 (1956) through 146 S.E.2d (1967); full text plus headnotes beginning 147 S.E.2d (1967).

SW South Western Reporter, 2d
Arkansas, Kentucky, Missouri, Tennessee, and Texas: headnotes beginning 288 S.W.2d 321 (1956) through 399 S.W.2d (1967); full text plus headnotes beginning 400 S.W.2d (1967).
Texas Supreme Court: full text plus headnotes beginning 216 S.W. (1920).

SO, SE, SW databases are current through most recent advance sheets.
To access a database, enter the Identifier. To see Database Listing, enter DB .

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IDENTIFIER TITLE AND SCOPE OF COVERAGE

PAC Pacific Reporter, 2d
Washington: headnotes beginning 295 P.2d 401 (1956) through 396 P.2d 138 (1964); full text plus headnotes beginning 396 P.2d 139 (1964).
Alaska, Arizona, Colorado, Hawaii, Idaho, Kansas, Montana, Nevada, New Mexico, Oklahoma, Oregon, Utah, Wyoming: headnotes beginning (except Nevada, Utah and Wyoming) 295 P.2d 401 (1956) through 411 P.2d (1967); full text plus headnotes for all states beginning 412 P.2d (1967).
Cal. Supreme Ct. only: headnotes beginning 407 P.2d (1965) through 564 P.2d (1977); full text plus headnotes beginning 565 P.2d (1977).
For coverage of all reported California decisions use CRP.

CRP California Reporter
Cal. Supreme Court: full text plus headnotes beginning 152 P.2d (1945).
Other reported decisions: headnotes beginning 1 Cal.Rptr. (1960) through 49 Cal.Rptr. (1966); full text plus headnotes beginning 50 Cal.Rptr.(1966)

SH Shepard's Citations - Citing case coverage beginning with Vol. 1 for each WESTLAW database with the following exceptions: 62 S.Ct (1941), 303 N.Y.S.2d (1969), 227 F.2d (1955), 281 F.Supp. (1968), QFED not included. Additional coverage information may be found on page 26 of the Shepard's Training Course.

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FEDERAL TAX. Documents relating to federal tax law and procedure.

FTX-TN Tax Notes. This weekly publication provides current tax news and analysis. Coverage begins with the issue of 1/5/81 and is current through the most recent issue. Tax Notes is copyrighted by Tax Analysts, 6830 N. Fairfax Dr., Arlington, VA 22213. The full text of documents referenced in Tax Notes may be obtained through Tax Analysts' Complete Access Service; for details, call (800)336-0439.

FTX-USC U.S. Code. Selected provisions, includes Internal Revenue Code.

FTX-PL Public Laws. The Tax Equity and Fiscal Responsibility Act of 1982.

FTX-CS Cases. Consolidates FTX-SCT, FTX-CTA, FTX-DCT (Tax Court not included).

FTX-SCT U.S. Supreme Court cases beginning 1925.

FTX-CTA U.S. Court of Appeals cases beginning 1945. U.S. Court of Claims cases beginning 1960.

FTX-DCT U.S. District Court cases beginning 1950. U.S. Court of Claims cases from 1954 through 1960.

FTX-TCT U.S. Tax Court Reported and Memorandum decisions beginning 1954.

FTX-CFR Tax Regulations. Treasury regulations codified at 26 CFR as of 11/1/82.

FTX-ADM Administrative Material. Includes: Revenue Rulings, Revenue Procedures, Delegation Orders, Executive and Treasury Dept. Orders. Beginning 1954.

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FEDERAL TAX (cont.)

FTX-WD IRS Written Determinations. Includes letter rulings and National Office Technical Advice Memoranda beginning 1954, with the exception of certain illegible documents.
Caution: These rulings are directed only to the taxpayers who request them. 26 U.S.C.A. s 6110(j)(3) prohibits their use as precedent.

FTX-NR IRS news releases, announcing policy determinations and other matters, beginning January 1, 1981.

FEDERAL PATENTS. Documents relating to federal patent laws.

FP-USC U.S. Code. Selected U.S. Code provisions.

FP-CS Cases. Consolidates cases from FP-SCT, FP-CTA and FP-DCT.

FP-SCT U.S. Supreme Ct. cases beginning 1925.

FP-CTA U.S. Courts of Appeals cases beginning 1945. Court of Claims cases beginning 1960. Includes U.S. Court of Customs and Patent Appeals.

FP-DCT U.S. District Court cases beginning 1950. U.S. Court of Claims cases from 1954 through 1960.

Topical case law databases are current through most recent advance sheets; for status of topical USC or CFR databases, see descriptions of general databases. To access a Database, enter its Identifier. To see Database Listing, enter DB .

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FEDERAL SECURITIES. Documents relating to federal securities and commodity futures regulation.

FSEC-USC U.S. Code. Includes acts administered by the SEC.

FSEC-CFR Regulations temporarily unavailable pending file maintenance.

FSEC-CS Cases. Consolidates cases from FSEC-SCT, FSEC-CTA, and FSEC-DCT.

FSEC-SCT U.S. Supreme Court cases beginning 1925.

FSEC-CTA U.S. Courts of Appeals cases beginning 1945. U.S. Court of Claims cases beginning 1960.

FSEC-DCT U.S. District Court cases beginning 1950. U.S. Court of Claims cases from 1954 through 1960.

FSEC-DEC	Decisions of the SEC published in SEC Decisions and Reports, beginning with 1 S.E.C. (1933).
FSEC-NAL	Private requests for no-action and interpretive letters and responses thereto by the SEC. All letters available from the SEC public files, with the exception of certain illegible documents, beginning 1970.
FSEC-IR	SEC Interpretive Releases relating to the acts administered by the SEC, to the general rules and regulations issued under those acts, and to accounting matters. Coverage beginning 1935.

Topical case law databases are current through most recent advance sheets; for status of topical USC or CFR databases, see descriptions of general databases. To access a Database, enter its Identifier. To see Database Listing, enter DB .

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IDENTIFIER	TITLE AND SCOPE OF COVERAGE
	FEDERAL LABOR. Documents relating to labor issues.
FLB-USC	U.S. Code. Selected U.S. Code provisions.
FLB-CS	Cases. Consolidates cases from FLB-SCT, FLB-CTA, and FLB-DCT.
FLB-SCT	U.S. Supreme Court decisions beginning 1925.
FLB-CTA	U.S. Courts of Appeals cases beginning 1945. U.S. Court of Claims cases beginning 1960.
FLB-DCT	U.S. District Court cases beginning 1950. U.S. Court of Claims cases from 1954 through 1960.
FLB-OSRC	Decisions of the Occupational Safety and Health Review Commission. Cases are represented by full text beginning with 1 OSAHRC (1971).
FLB-NLRB	National Labor Relations Board Decisions. Cases are represented by full text beginning 221 NLRB.

Topical case law databases are current through most recent advance sheets; for status of topical USC or CFR databases, see descriptions of general databases. To access a Database, enter its Identifier. To see Database Listing, enter DB .

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IDENTIFIER	TITLE AND SCOPE OF COVERAGE
	FEDERAL COPYRIGHT. Documents pertaining to federal copyright law.
FCP-USC	U.S. Code. Selected U.S. Code provisions.
FCP-CS	Cases. Consolidates cases from FCP-SCT, FCP-CTA, and FCP-DCT.
FCP-SCT	U.S. Supreme Court cases beginning 1925.
FCP-CTA	U.S. Court of Appeals cases beginning 1945. U.S. Court of Claims cases beginning 1960.
FCP-DCT	U.S. District Court cases beginning 1950. U.S. Court of Claims from 1954 through 1960.

Topical case law databases are current through most recent advance sheets; for status of topical UCS or CFR databases, see descriptions of general databases. To access a database, enter its Identifier. To see Database Listing, enter DB .

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IDENTIFIER TITLE AND SCOPE OF COVERAGE

FEDERAL BANKRUPTCY. Documents relating to the bankruptcy laws.

FBKR-USC U.S. Code. Selected provisions, including 11 U.S. Code.

FBKR-CS Cases. Consolidates cases from FBKR-SCT, FBKR-CTA and FBKR-DCT. Includes U.S. Bankruptcy Court.

FBKR-SCT U.S. Supreme Court cases beginning 1925.

FBKR-CTA U.S. Courts of Appeals cases beginning 1945. U.S. Court of Claims cases beginning 1960.

FBKR-DCT U.S. District Court cases beginning 1950. U.S. Court of Claims cases from 1954 through 1960. U.S. Bankruptcy Court beginning 1979.

FBKR-SEC SEC Reports respecting corporate reorganizations under Chapter X of the former Bankruptcy Act, and Chapter 11 of the current Bankruptcy Code, beginning 1 S.E.C. (1934).

Topical case law databases are current through most recent advance sheets; for status of topical USC or CFR databases, see descriptions of general databases. To access a database, enter its Identifier. To see Database Listing, enter DB .

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IDENTIFIER TITLE AND SCOPE OF COVERAGE

FEDERAL ANTITRUST AND BUSINESS REGULATION. Documents relating to antitrust, business regulation, and consumer protection.

FABR-USC U.S. Code. Selected U.S. Code provisions. See also other topical databases including Federal Securities, Patents and Labor databases.

FABR-CFR Regulations temporarily unavailable pending file maintenance.

FABR-CS Cases. Consolidates cases from FABR-SCT, FABR-CTA and FABR-DCT.

FABR-SCT U.S. Supreme Court cases beginning 1925.

FABR-CTA U.S. Courts of Appeals cases beginning 1945. U.S. Court of Claims cases beginning 1960.

FABR-DCT U.S. District Court cases beginning 1950. U.S. Court of Claims cases from 1954 through 1960.

FABR-FTC Decisions of the FTC published in FTC Decisions and Reports beginning with 56 F.T.C. (1959).

Topical case law databases are current through most recent advance sheets; for status of topical USC or CFR databases, see descriptions of general databases. To access a database, enter its Identifier. To see Database Listing, enter DB .

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IDENTIFIER TITLE AND SCOPE OF COVERAGE

FEDERAL COMMUNICATIONS AND MASS MEDIA. Documents relating to federal regulation of the commercial broadcast, cable and print media. Also includes documents relating to censorship and prior restraint as it relates to the media, the conflict between a free press and a fair trial, the rights of journalists to protect their sources, pornography, and defamation as it relates to the media. This database does not include documents dealing with copyrights, FOIA, advertising practices or government communications (i.e. Federal Government civilian and military communications).

FCOM-USC U.S. Code. Selected U.S. Code provisions.
FCOM-CS Cases. Consolidates cases from FCOM-SCT, FCOM-CTA, and FCOM-DCT.
FCOM-SCT U.S. Supreme Court cases beginning 1925.
FCOM-CTA U.S. Court of Appeals cases beginning 1945. U.S. Court of Claims cases beginning 1960.
FCOM-DCT U.S. District Court cases beginning 1950. U.S. Court of Claims from 1954 through 1960.

Topical case law databases are current through most recent advance sheets; for status of topical USC or CFR databases, see descriptions of general databases.
To access a database, enter its Identifier. To see Database Listing, enter DB .

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IDENTIFIER TITLE AND SCOPE OF COVERAGE

FEDERAL ADMIRALTY. Documents relating to federal admiralty and maritime law and practice, including shipping, collision of vessels, maritime liens, maritime employment (including injuries to seamen and longshoremen), wharf and dock operations, and regulation of navigation and navigable waters (including pollution control).

FADM-USC U.S. Code. Selected U.S. Code provisions.
FADM-CS Cases. Consolidates cases from FADM-SCT, FADM-CTA, and FADM-DCT.
FADM-SCT U.S. Supreme Court cases beginning 1925.
FADM-CTA U.S. Court of Appeals cases beginning 1945. U.S. Court of Claims cases beginning 1960.
FADM-DCT U.S. District Court cases beginning 1950. U.S. Court of Claims cases from 1954 through 1960.

STATE ATTORNEY GENERAL OPINIONS.

Opinions of the the Attorneys General for the following states beginning 1977. Identifiers appear in parentheses. By using the identifier (AG) , all the following states can be searched at once.

California (CA-AG)	Illinois (IL-AG)	Minnesota (MN-AG)	Ohio (OH-AG)
Pennsylvania (PA-AG)	Texas (TX-AG)	Tennessee (TN-AG)	New York (NY-AG)

Topical case law databases are current through most recent advance sheets; for status of topical USC or CFR databases, see descriptions of general databases.
To access a database, enter its Identifier. To see Database Listing, enter DB .

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IDENTIFIER TITLE AND SCOPE OF COVERAGE

CA-E Education. Cases involving education issues including contracts, management of educational institutions, and rights and liabilities of teachers, administrators and boards. For coverage, see CRP on p. 11.
CA-FL Family Law. Cases relating to marriage, divorce, adoption, custody, intra-familial property rights and other relationships, mental health, and juvenile law decided in California. For coverage see CRP on p. 11.
CA-IN Insurance. Decisions in the state of California involving insurance issues. Does not extend to decisions involving bonds and suretyship, insurance on bank deposits, social security coverage, unemployment compensation or workers' compensation. For coverage, see CRP on p. 11.
NY-E Education. Cases involving education issues including contracts, management of educational institutions, and rights and liabilities of teachers, administrators and boards. For coverage, see NYS on p. 8.
NY-FL Family Law. Cases relating to marriage, divorce, adoption, custody, intra-familial property rights and other relationships, mental health, and juvenile law decided in New York. For coverage see NYS on p. 8.
NY-IN Insurance. Decisions in the state of New York involving insurance issues. Does not extend to decisions involving bonds and suretyship, insurance on bank deposits, social security coverage, unemployment compensation or workers' compensation. For coverage, see NYS on p. 8.

To access a database, enter its Identifier. To see Database Listing, enter DB .

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FEDERAL GOVERNMENT CONTRACTS. Documents relating to procurement and other federal government contracts questions.

FGC-USC	U.S. Code. Selected U.S. Code provisions.
FGC-CS	Cases. Consolidates cases from FGC-SCT, FGC-CTA and FGC-DCT.
FGC-SCT	U.S. Supreme Court cases beginning 1925.
FGC-CTA	U.S. Courts of Appeals cases beginning 1945. U.S. Court of Claims cases beginning 1960.
FGC-DCT	U.S. District Court cases beginning 1950. U.S. Court of Claims cases from 1954 through 1960.
FGC-BCA	Board of Contract Appeals decisions from all of the following agencies (beginning coverage appears in parentheses):
FGC-AGBCA	Agriculture Board of Contract Appeals (1975).
FGC-ASBCA	Armed Services Board of Contract Appeals (1981).
FGC-EBCA	Energy Board of Contract Appeals (1980).
FGC-ENGBCA	Corps of Engineers Board of Contract Appeals (1981).
FGC-GSBCA	General Services Board of Contract Appeals (1962).
FGC-HUDBCA	Housing and Urban Development Board of Contract Appeals (1980).
FGC-IBCA	Interior Board of Contract Appeals (1955).

Topical case law databases are current through most recent advance sheets; for status of topical USC or CFR databases, see description of general database.
To access a database, enter its Identifier. To see Database Listing, enter DB .

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FEDERAL GOVERNMENT CONTRACTS (cont.)

FGC-LBCA	Labor Board of Contract Appeals (1981).
FGC-NASABCA	National Aeronautics and Space Administration Board of Contract Appeals (1960).
FGC-PSBCA	Postal Service Board of Contract Appeals (1968).
FGC-DOTCAB	Department of Transportation Contracts Appeals Board (1967).
FGC-VABCA	Veterans Administration Board of Contract Appeals (1981).

To access a database, enter its Identifier. To see Database Listing, enter DB .

I

THE STATE CONSTITUTION WITHIN THE AMERICAN POLITICAL SYSTEM

A staff paper prepared by the Public Administration Service for the Delegates to the Alaska Constitutional Convention

November, 1955

which, though unwritten, are really a part of the "constitution" in the broad sense. Constitutional practice does not always follow the ideas which the formulators had in mind. One of the best known examples, on the national level, is found in the practice by which presidential electors have been mere rubber stamps; only on two occasions since the election of John Adams have presidential electors exercised their constitutional right to use their independent judgment in casting a ballot for the President of the United States.[40] Delegates to the Alaskan Constitutional Convention will recognize that their handiwork may not receive the precise interpretations in subsequent years that they had intended when writing the document at College.

Certainly, however, the Delegates at College will write into the Alaskan Constitution the great principles of government which have become so much a part of the genius and tradition of the American people and, in some cases, of democratic countries throughout the world. The machinery for implementing these principles may be the subject of argument but universal agreement on the principles themselves may be assumed.

The Principle of Popular Sovereignty.

Basic to the conception of democratic government wherever found is the idea that the people govern. Government is not

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[40] One elector did so at the time of the election of Munroe. One Tennessee elector cast his ballot for J. Strom Thurmond in 1948, even though Tennessee had been carried by Mr. Truman.

something imposed <u>on</u> the people; it is an institution which comes <u>from</u> the people and over which they have control. A legal statement of the principle is found in the preamble to the national Constitution:

> We, the people of the United States, in order to form a more perfect union, establish justice, insure domestic tranquillity, provide for the common defense, promote the general welfare, and secure the blessings of liberty to ourselves and our posterity, do ordain and establish this Constitution for the United States of America.

With less verbiage the Declaration of Rights of the North Carolina Constitution of 1776 stated simply: "All political power is vested in and derived from the people only." The principle found expression in the bloody years of the Civil War when Lincoln coined his immortal "Government of the people, by the people, and for the people."

The principle of popular sovereignty is not a platitude. "We the people" govern. We elect our lawmakers, and having elected them, we may also choose new ones more responsive to our will. We may err in our choice, and we may elect rascals instead of statesmen, but the choice is ours--freely made and freely revocable at fixed periods. And government officials, of high and low estate, are always the servants and not the masters of the people. On no other principle can democratic government function and be maintained.

Legislative Reference Library
Legislative Affairs Agency
Pouch Y State Capitol
Juneau, Alaska 99811

C O N S T I T U T I O N A L S T U D I E S

Prepared on behalf of the

ALASKA STATEHOOD COMMITTEE

for the

ALASKA
CONSTITUTIONAL CONVENTION

Convened
November 8, 1955

P U B L I C A D M I N I S T R A T I O N S E R V I C E

Volume 2 of 3

2933 11

No. of States	Age Qualifications for Upper House Membership
18	21
1	24
21	25
1	26
1	27
6	30

Citizenship and Residence Requirements. The citizenship requirement is present in all states and constitutions either specify that a person must be a citizen or a qualified elector in order to be a member of the legislature. Some constitutions further stipulate the period of citizenship which go as high as five years in the case of Maine. State citizenship for a certain period of time is occasionally specified.[12] Residence requirements in both the state and county for membership in the legislature exist in most constitutions, either expressly or by direct implication. These range from one to five years.

Election and Terms of Members

In all states legislative terms are either for two or four years. Short terms are the rule for members of lower houses: in 43 of the 47 states with two houses, House members serve for two years.[13] Longer terms are generally provided for state senators: in 32 states they serve for four years; in 16 states

---

[12] Alabama and California have state citizenship requirements of three years; Georgia and New Jersey of four years for the upper house and two years for the lower house.

[13] Only in Alabama, Louisiana, Maryland, and Mississippi do they have four-year terms.

(including Nebraska) they serve for two. Legislatures in a quarter of the states in 1952-53 considered measures to lengthen legislative terms so as to increase the amount of time the legislator might devote to public business, to reduce the time consumed in running for re-election, and to retain experienced legislators longer. The proposed changes would have increased House terms from two to four years and Senate terms correspondingly, except in California, Illinois, Kentucky, and South Carolina, where Senate terms would have been increased from four to six years.

In setting the length of term for legislators a satisfactory balance should be sought between providing for legislative responsiveness to the ever-changing will of the people and a deliberative, experienced body of lawmakers. It would seem desirable to have the term long enough to permit a legislator to participate in two or more sessions, so that provisions governing sessions should be considered in determining the length of terms. There is really no important basis for the use of different terms for the two houses. This is largely due to the federal pattern and a device to attain some stability and to assure some experience in the legislative process. The objectives of stability and responsiveness might both be served by longer legislative terms and the election of a portion of each body biennially.

Alaska State Legislature

Senate
SENATOR MIKE COLLETTA

February 25, 1982

The Honorable Victor Fischer
Chairman
State Affairs Committee
Pouch V
Juneau, Ak 99811

Dear Senator Fischer:

Enclosed is a copy of a poll conducted by Dave Dittman for the Free Committee showing conclusively that Alaskans favor limiting the terms of legislators.

Based on the overwhelming statistics contained in the poll, I urge you to schedule hearings as soon as possible on Senate Joint Resolution 55, which I introduced earlier this session.

The resolution, which must pass this session to gain a spot on the 1982 general election ballot, would limit the number of terms a legislator may serve to four consecutive terms in the House and two consecutive terms in the Senate.

Nothing in the resolution prevents an incumbent from running for office in the opposite house after serving the maximum time in one body, or to sit out a term and seek election to his former seat.

I just feel it is good business practice to rotate people, before old habits set in. And apparently Alaskans hold the same opinion. Of the 455 persons interviewed in 51 communities across the state, 62 percent favored limiting the terms of legislators. The trend was consistent among Alaskans of all ages, background and areas of the state.

Again, I request that you take up SJR 55 as soon as possible, in order to allow the public ample time to testify on this matter.

Sincerely,

Mike Colletta

Mike Colletta

cc: all legislators

FILE MULTI9 (CREATION DATE = 81/03/10.)

** CROSSTABULATION OF INCOME BY LEGTERMS **

INCOME	COUNT / ROW PCT	LEGTERMS 0 IN-R	1 FAVOR	2 OPPOSE	ROW TOTAL
0 DECLINED		3	20	10	33
		9.1	60.6	30.3	7.3
1 0-20000		10	69	37	116
		8.6	59.5	31.9	25.5
2 20-45000		13	107	61	181
		7.2	59.1	33.7	39.8
3 45-60000		2	60	17	79
		2.5	75.9	21.5	17.4
4 60000+		5	28	13	46
		10.9	60.9	28.3	10.1
COLUMN TOTAL		33	284	138	455
		7.3	62.4	30.3	100.0

FILE MULTI3 (CREATION DATE = 81/03/10.)

** CROSSTABULATION OF VOTER BY LEGTERMS **

LEGTERMS

VOTER	COUNT / ROW PCT	IN-R	FAVOR	OPPOSE	ROW TOTAL
		0	1	2	
0		0	3	0	3
N-R		0	100.0	0	.7
1		25	235	124	384
YES		6.5	61.2	32.3	84.4
2		8	46	14	68
NO		11.8	67.6	20.6	14.9
COLUMN TOTAL		33	284	138	455
		7.3	62.4	30.3	100.0

FILE MULTI9 (CREATION DATE = 81/03/13.)

** CROSSTABULATION OF PARTY BY LEGTERMS **

PARTY	LEGTERMS: 0 IN-R	1 FAVOR	2 OPPOSE	ROW TOTAL
0 N-R	7	53	17	77
	9.1	68.8	22.1	16.9
1 DEMOCRAT	5	61	34	100
	5.0	61.0	34.0	22.0
2 REPBLICN	3	57	24	84
	3.6	67.9	28.6	18.5
3 NONPARTN	18	113	63	194
	9.3	58.2	32.5	42.6
COLUMN TOTAL	33	284	138	455
	7.3	62.4	30.3	100.0

FILE MULTIS (CREATION DATE = 81/03/10.)

* CROSSTABULATION OF *
WORKDO BY LEGTERMS

WORKDO	COUNT / ROW PCT	IN-R	FAVOR	OPPOSE	ROW TOTAL
		0	1	2	
N-R	0	0	3	0	3
		0	100.0	0	.7
DEGREE	2	2	42	20	64
		3.1	65.6	31.3	14.1
NONDEGREE	3	6	74	35	115
		5.2	64.3	30.4	25.3
SKILLED	4	10	47	19	76
		13.2	61.8	25.0	16.7
NONSKILL	5	3	35	23	61
		4.9	57.4	37.7	13.4
NOTWORKF	6	5	21	4	30
		16.7	70.0	13.3	6.6
HOMEMAKE	7	7	62	37	106
		6.6	58.5	34.9	23.3
	COLUMN TOTAL	33	284	138	455
		7.3	62.4	30.3	100.0

MULTI-QUEST

VOLUME IX

MARCH 1981

PREPARED FOR

ANCHORAGE WOMEN'S CLUB
FREE COMMITTEE

DITTMAN RESEARCH CORPORATION
ALASKA BANK OF COMMERCE BUILDING
3230 "C" STREET
ANCHORAGE, ALASKA

Alaska Analysis for Human Resources

SURVEY ACCURACY

The Dittman Research Corporation, recognized in 1978 as one of the nation's most accurate political survey research organizations following a nation-wide comparison of published pre-election survey results, further enhanced the reputation following the 1980 General Elections in Alaska. The final pre-election state-wide survey published in The Anchorage Times reported that Frank Murkowski would defeat Clark Gruening by 8% and become Alaska's new U.S Senator. After all challenged and absentee ballots we e counted, the certified results revealed Murkowski had defeated Gruening by 8.002%.

METHODOLOGY

During the period February 27 - March 5, 1981, residents of the sample locations listed on the following pages were personally contacted by telephone by professional interviewing employees of the Dittman Research Corporation. The views and opinions of the Alaska residents were recorded on a number of topics on a strictly confidential basis.

Research design- A random sample design was featured which provided that all residents of those communities included in the survey had essentially the same chance of being interviewed. The sample was apportioned based on the population of the included communities.

Sample selection- The Anchorage sample was selected through a computer-generated random digit dialing program. This is particularly important in Anchorage due to a 40% rate of unpublished and unlisted numbers.

The sample in the other communities state-wide was randomly selected from current telephone subscribers listed in the most recent telephone directory for each community. In these communities the percentage of non-listed numbers does not exceed 10%.

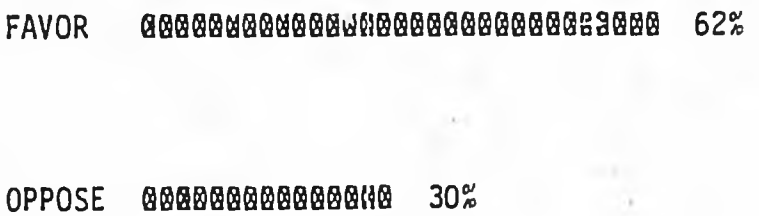
PROCESSING THE DATA-

Dittman Research Employees completed the coding and editing, while all key-punching, verification, and data processing was completed by Boeing Computer Services Company through the Statistical Package for the Social Sciences (SPSS) programs. The SPSS package is one of the most sophisticated research-oriented data processing and analytical systems available, and is designed specifically for the processing and analysis of survey research data.

QUESTION:

Would you favor or oppose limiting the number of terms a legislator may serve to a maximum of four consecutive terms -- 8 years -- in the House; and two consecutive terms -- also 8 years -- in the Senate?

ANSWER:



Dittman Research Corporation/March 1981

SAMPLE LOCATIONS

Sample points are assigned geographically throughout Alaska in such a manner that all citizens over 18 have essentially the same opportunity for involvement. Samples are drawn from 51 Alaskan communities.

FILE MULTI9 (CREATION DATE = 81/03/10.)

** CROSSTABULATION OF ** LOCATION BY LEGTERMS

LEGTERMS

LOCATION	COUNT / ROW PCT	IN-R	FAVOR	OPPOSE	ROW TOTAL
		0	1	2	
1 RURAL	1	4	17	13	34
		11.8	50.0	38.2	7.5
2 CENTRAL	2	8	41	23	72
		10.3	52.6	37.2	17.1
3 SCENTRL	3	4	38	15	57
		7.0	66.7	26.3	12.5
4 ANCH	4	11	137	52	200
		5.5	68.5	26.0	44.0
5 SOUTHEST	5	6	51	29	86
		7.0	59.3	33.7	18.9
COLUMN TOTAL		33	284	138	455
		7.3	62.4	30.3	100.0

new # actual # of hrs.

total sample

FILE MULTI9 (CREATION DATE = 81/03/11.)

* CROSSTABULATION OF * *
TIMEINAK BY LEGTERMS
* * * * * * * * * * * * * * * * * * * *

FILE MULTIS (CREATION DATE = 81/03/10.)

* CROSSTABULATION OF * *
AGE BY LEGTERMS
* *

LEGTERMS

AGE	COUNT / ROW PCT	IN-R	FAVOR	OPPOSE	ROW TOTAL
		0	1	2	
0		0	1	0	1
N-R		0	100.0	0	.2
1		5	46	27	78
18-24		6.4	59.0	34.6	17.1
2		13	133	68	214
25-40		6.1	62.1	31.8	47.0
3		8	69	35	112
41-55		7.1	61.6	31.3	24.6
4		7	35	8	50
56+		14.0	70.0	16.0	11.0
COLUMN TOTAL		33	284	138	455
		7.3	62.4	30.3	100.0

FILE MULTI9 (CREATION DATE = 81/03/10.)

* CROSSTABULATION OF * *
SEX BY LEGTERMS
* *

SEX	LEGTERMS			
COUNT / ROW PCT	IN-R (0)	FAVOR (1)	OPPOSE (2)	ROW TOTAL
1 MALE	15	130	57	202
	7.4	64.4	28.2	44.4
2 FEMALE	18	154	81	253
	7.1	60.9	32.0	55.6
COLUMN TOTAL	33	284	138	455
	7.3	62.4	30.3	100.0

FILE MULTI9 (CREATION DATE = 81/03/10.)

** CROSSTABULATION OF ** WORKFOR BY LEGTERMS

WORKFOR	COUNT / ROW PCT	LEGTERMS IN-R (0)	FAVOR (1)	OPPOSE (2)	ROW TOTAL
1 FEDERAL		2	26	10	38
		5.3	68.4	26.3	8.4
2 STATE		2	32	14	48
		4.2	66.7	29.2	10.5
3 LOCAL		1	28	14	43
		2.3	65.1	32.6	9.5
4 PRIVATE		16	118	59	193
		8.3	61.1	30.6	42.4
5 NETWORK		12	80	41	133
		9.0	60.2	30.8	29.2
COLUMN TOTAL		33	284	138	455
		7.3	62.4	30.3	100.0

LEGISLATIVE STUDY COMMITTEE REPORT

PART I

Sponsored by

General Federation of Women's Clubs

Anchorage FREE Committee

Prepared by

Jan Bomhoff and Jan Faiks

January, 1981

VIII.

LIMIT TERMS OF OFFICE

The FREE Committee strongly believes in the concept of a citizen legislature versus professional lawmakers. For this reason, and others, FREE feels that there should be a limitation on the number of terms a Representative and Senator may serve. Surprisingly, a good portion of the responding legislators favored this concept.

FREE feels that a limitation would serve as an incentive for more citizens to seek elective office - the perception being that incumbents are generally pretty difficult to unseat. New faces bring fresh approaches to programs and issues, needed at all times, but especially now in Alaska with its vast natural resource wealth.

When legislators remain in one house for a long period of time, excessive power over colleagues and staff seems to develop, as do legislative cliches. By dispersing the concentration of power, it will be more difficult for a handful of "long time" legislators to control legislation contrary to the wishes of the majority.

One legislator commented during the discussions that it was difficult for even the "good guy' legislators to remain free of obligations to their colleagues. In the lawmaking process there is always give and take, and legislators who have been on the job for a long time will inevitably build up a certain amount of "favors due" and

"favors owed", so that it becomes increasingly difficult to judge matters under consideration solely on their merit.

FREE recommends the following limitations on the terms of office:

1. Senate - two 4-year consecutive terms.
2. House - four 2-year consecutive terms.
3. Present incumbents would begin counting their terms with the effective date of the law.

Using FREE's formula, legislators popular with their constituents could remain in the legislature, but would have to change Houses every eight years. Thereby, the right of the citizen to choose his lawmakers remains intact.

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FREE Legislative Study Committee Members

Jan Faiks, Chairman

Jan Bomhoff, Vice-Chairman

Darlene Holt, Project Coordinator

Esther Brautigan

Teddy Cartwright

Connie Chambers

Betty Cuddy

Beth Henderson

Annie Laurie Howard

Pauline Martens

Priscilla Thorsness

Bobbye Young

Invited Participants

Bob Fleming - Resource Development Council

Cliff Groh - Former Legislator

Dave Harbour - Registered Lobbyist

Jean Peterson - Common Sense for Alaska

Contributing Legislators

Senator W. E. "Brad" Bradley

Senator Mike Colletta

Senator M. E. Dankworth

Senator Bettye Fahrenkamp

Senator Frank Ferguson

Senator Tim Kelly

Senator Patrick Rodey

Senator Terry Stimson

Senator Arliss Sturgulewski

Representative C. V. "Chat" Chatterton

Representative Samuel Cotten

Representative Richard Halford

Representative Joe L. Hayes

Representative Terry Martin

Representative Russ Meekins, Jr.

Representative Joe D. Montgomery

Representative Joyce Munson

Representative Randy Phillips

Representative Richard L. Randolph

Senator-elect Vic Fischer

Senator-elect Don Gilman

Representative-elect Mitch Abood

Representative-elect Charles Anderson

Representative-elect David Cuddy

Common Sense Surveys Legislative Candidates

The following questions and answers were obtained from a survey Common Sense sent to all state legislature candidates in July. Answers to four of those questions are listed below according to districts and additional responses will appear in upcoming newsletters:

1. *DO YOU SUPPORT A CONSTITUTIONAL PROVISION LIMITING THE LENGTH OF THE LEGISLATIVE SESSION?*
2. *IF YOU DO SUPPORT A SESSION LIMIT, HOW MANY DAYS SHOULD BE ALLOWED?*
3. *DO YOU SUPPORT THE CONCEPT OF A LIMIT OF 90 DAYS ON LEGISLATORS' PER DIEM ALLOWANCE?*
4. *DO YOU SUPPORT A LIMIT ON THE NUMBER OF CONSECUTIVE TERMS A LEGISLATOR CAN SERVE?*

STATE SENATE CANDIDATES

Question Number	1	2	3	4
DISTRICT A (Ketchikan/Wrangell/Petersburg)				
FADER, CAROL G.		No Response		
WHITAKER, RICHARD		No Response		
ZIEGLER, ROBERT H. SR.	No	—	No	No
DISTRICT C (Juneau)				
MANLY, JOHN; RAY, BILL		No Response		
DISTRICT D (Kenai/ Soldotna/South Anchorage)				
BALDWIN, RICK	Yes	90	No*	Yes
FISCHER, PAI		No Response		
SHADURA, ALEX		No Response		
SMITH, PHILIP J.		Declined with Comment*		
GILMAN, DON		No Response		
SHAFFER, SUSAN	Yes	90*	Yes	Yes
DISTRICT E (Anchorage: Sand Lake/Hillside)				
McLEAN, JACK N.		No Response		
PETTYJOHN, FRITZ	Yes	90	Yes	Yes
TACKETT, STEVE L.		No Response		
FAIKS, JAN	Yes	90	Yes	Yes
METCALFE, RAY		No Response		
DISTRICT F (Anchorage: West Side/Mid-Town)				
STURGULEWSKI, ARLISS	Yes	120	No	Yes
GAY, ROBERT E.	Yes	120	No*	Yes
RODEY, PATRICK	Yes	120	No*	—
DISTRICT G (Anchorage: Downtown/Mt. View/University)				
JOSEPHSON, JOE P.	No*	120*	No*	?*
RATCLIFF, WILLIE	No	—	No	No
SCHMEDLEN, DOUG	Yes	90	Yes	Yes
ADAMS, THOMAS S.	Yes	120	Yes	Yes
DAVIC, MILES M.		No Response		
FISCHER, VIC		No Response		

Question Number	1	2	3	4
DISTRICT H (Anchorage: Muldoon/Chuglak/Eagle River/Bases)				
HALFORD, RICK	Yes	120*	No	Yes
KELLY, TIM		No Response		
SUTER, JOHN P.	Yes	120	Yes	No
DISTRICT J (Interior Highways/S.E. Fairbanks/North Star Borough)				
BENSHOOF, GERALDINE	Yes	80	Yes	No
BUSBEE, CHARLES		No Response		
GODDARD, JACK	Yes	120	Yes	Yes*
McCRACKEN, DAVID		No Response		
MOSS, H. PAPPY	Yes	120	No	No
WILLIAMS, ORIE G.		No Response		
DISTRICT K (Ft. Wainwright/ Fairbanks/W. Fairbanks)				
BENNETT, DON		No Response		
STACIOKAS, LINDEN		No Response		
STINSON, GERNALD E.	No	—	No	No
FAHRENKAMP, BETTYE		No Response		
FALKE, WOLFGANG	Yes	75	Yes*	
ROWE, AL		No Response		
DISTRICT L (North Slope/ Kotzebue/Norton Sound)				
FERGUSON, FRANK R.		No Response		
DISTRICT M (Norton Sound/Interior Rivers)				
HOFFMAN, LYMAN F.; SACKETT, JOHN C.		No Response		
DISTICT N (Bristol Bay/ Aleutians/E. Alaska Peninsula)				
BALTZO, STAN; LEDOUX, KURT M.; MULCAHY, BOB; SNIDER, MERLE G.		No Response		

STATE HOUSE CANDIDATES

Question Number	1	2	3	4
DISTRICT 1 (Ketchikan/Wrangell/Petersburg)				
TAGGART, TOM		No Response		
BAKER, LAWRENCE S.	No	—	Yes	Yes
GARDINER, TERRY		No Response		
PRIVETT, SAMUEL R.	Yes	90	Yes	Yes
WENDTE, RON		No Response		
ELKINS, JAMES B.	Yes	120*	No*	No
McBRIDE, JACK		No Response		
DISTRICT 2 (Inside Passage/Cordova)				
FRISBY, PERCY; GOLL, PETER; HALLIWILL, JON D.; HARRINGTON, GEORGE S., JR.; KOOKESH, ALBERT M.		No Response		
DISTRICT 3 (Baranof/Chichagof)				
CRUSSENDORF, BEN		No Response		

Question Number	1	2	3	4
DISTRICT 4 (Juneau)				
BARNES, ALLAN W.	Yes	130-140	No	No
GOODMAN, SAMUAL PARKER		No Response		
MILLER, MIKE		No Response		
DUNCAN, JIM		No Response		
JANSON, M. SUZANNE	Yes*	120*	No*	Yes*
SWANSON, LESLIE		No Response		
DISTRICT 5 (Kenai/Cook Inlet)				
CARSON, TED	Yes	75	Yes	Yes
MALONE, HUGH		No Response		
SIKORSKI, MERRILL	Yes	90	Yes	Yes
FRITZ, MILO H.	Yes	100	Yes	No
MARROU, ANDREW V.		No Response		
MARTIN, CHRIS	Yes	120	No	Yes
O'CONNELL, PATRICK M.		No Response		
SCHRADER, GLENN D.	Yes	90	Yes	Yes

STATE HOUSE CANDIDATES (Con't)

Question Number	1	2	3	4
DISTRICT 6 (N. Kenai/South Coast)				
BRANDON, STEWART E.		No Response		
CATO, BETTE	No*	—	No*	?*
LEARY, ROBERT A.		No Response		
DISTICT 7 (S. Anchorage)				
BYLSMA, BERNIE	Yes	105	No	Yes
HOLLOWAY, MIKE		No Response		
SZYMANSKI, MIKE		No Response		
DISTRICT 8 (Hillside)				
AYERS, JAMES R.	Yes	120*	Yes*	Yes
COWDERY, JOHN	Yes	90	Yes	Yes
CARRIGUES, JAMES M.	No*	110-120	No	No*
PESTINGER, SAM	Yes	90	Yes	Yes
DISTRICT 9 (Sand Lake)				
HAYES, JOE L.	Yes	90	No*	Yes
SIEGFRIED, MIKE	No	—	Yes*	No
EVERSON, NORRIS		No Response		
FLOOD, JOE	Yes	120	No	Yes
McDONALD, KELLY		No Response		
McHENRY, MIKE		No Response		
DISTRICT 10 (Mid-Town)				
BUSSELL, CHARLIE	Yes	90	Yes	Yes
NOWBRAY, JOHN		No Response		
MUNSON, JOYCE	Yes*	120	No	Yes
BEIRNE, MIKE	Yes	90	Yes	Yes
COLLINS, M. VIRGINIA	Yes	90	Yes	Yes
LINDAUER, JOHN	Yes	90	Yes*	Yes
DISTRICT 11 (West Side)				
ABOOD, MITCH	Yes	120	No	Yes
CORBETT, PATRICIA	No	—	No	No
DONLEY, DAVID ARTHUR	Yes	90*	Yes	Yes
RADUEGE, FLOYD ALLEN		No Response		
BUCHHOLDT, THELMA	Yes	120	No	No*
KUBITZ, JIM	Yes	120	No	Yes
MATHIS, JOE	Yes	90	Yes	Yes
TISCHER, MAE	Yes	90	Yes	Yes
DISTRICT 12 (Downtown)				
BELTZ, MARK ALBERT	No	—	No	No
DAL PIAZ, VIRGINIA	Yes	120*	No	Yes
UEHLING, RICK	Yes	120	No*	Yes*
ANDERSON, JOHN M.	Yes	90	Yes	Yes
CASSITY, KRIS		No Response		
CLOCKSIN, DON		No Response		
DISTRICT 13 (Mt. View/University)				
CAMPBELL, BERT	No*	—	No*	No
EDGAR, PAUL	Yes	90	Yes	Yes
GARNER, MARVIN		No Response		
WARD, JERRY	Yes	90	Yes	Yes
CARPENTER, MARILYN		No Response		
MARTIN, TERRY	Yes	120	No*	No
PLUNKETT, GEORGE REX		No Response		
DISTRICT 14 (Muldoon)				
BARNES, RAMONA L.	Yes	120*	No*	Yes*
O'CONNELL, CHARLES L.	No	—	No	No
COLLIER, GARNETT (SAM)		No Response		
FURNACE, WALT		No Response		
JOHNSON, RUDY L.	Yes	90	Yes	Yes
STEWART, RALPH W.	Yes	90	Yes	Yes
DISTRICT 15 (Chugiak/Eagle River/Bases)				
COTTEN, SAM		No Response		
LISKA, JOHN J.	Yes	105	Yes	Yes
COOK, KEN H.		No Response		
PHILLIPS, RANDY	Yes	120	No	No
WILLIS, CHARLIE	Yes	120	No	Yes*
DISTRICT 16 (Matanuska/Susitna)				
CARNEY, PAT		No Response		
LACHER, BARBARA		No Response		
OLSON, A. MAX	Yes	100*	yes	No
DORTLAND, RICHARD	Yes	90	Yes*	Yes*
LARSON, RONALD L.		No Response		
SANDVICK, ELDEN	Yes	110	No	No
WELSH, DARREL R		No Response		
WOODS, NOEL W		Declined with Comment*		

Question Number	1	2	3	4
DISTRICT 17 (Interior Highways)				
BLACK, H. D.		No Response		
BREAN, ROBERT L.		No Response		
BRINKMAN, RONALD H.		No Response		
COLRUD, JERRY	No	—	No	Yes
CRAIG, TOM		No Response		
GERRUE, ED		No Response		
LENG, ELIZABETH A.		No Response		
MURPHY, GARY D.		No Response		
PROBERT, BRUCE		No Response		
PROPERTY, GEORGE L.		No Response		
RYERSE, ALBERT H.		No Response		
RIVERA, A. J. TONY		No Response		
SHULTZ, DICK		No Response		
STOUT, LAURENE		No Response		
WIER, PAUL	Yes	90	Yes*	No
DISTRICT 18 (S.E. Fairbanks/ North Star Borough				
ALEXANDER, WALTER E.		No Response		
BERGH, RONALD	Yes	120	No	No
CHASE, FRED E.		No Response		
LEWIS, BILL		No Response		
MILLER, MIKE		No Response		
DISTRICT 19 (Ft. Wainwright/ Outer Fairbanks)				
CLARK, LYNETTE M.	Yes	90*	Yes	Yes
DAVIS MIKE		No Response		
HARTLE, JOHN		No Response		
KARELLA, ANDY	No*	—	Yes	No
LEVENGOOD, LYNN E.	No	100	Yes*	No
DISTRICT 20 (Fairbanks)				
ALLEE, RITA T.	No	—	Yes	No
BETTISWORTH, ROBERT H.		No Response		
SHUROS, WALTER O.		No Response		
BROWN, FRED		No Response		
GILLAM, HAROLD		No Response		
RAHOI, URGAN E.		No Response		
RINGSTAD, JOHN	Yes	120	Yes	No
RYDER, B. J. (HAP)		No Response		
DISTRICT 21 (West Fairbanks)				
CAIN, TRUDY M.	No	—	No	Yes
FANNING, KENNETH J.	Yes	90	Yes	Yes
KOPONEN, NIILO E.	No	—	?*	?*
DISTRICT 22 (North Slope/Kotzebue)				
ADAMS, AL; NELSON, JUNE		No Response		
DISTRICT 23 (Norton Sound)				
FONDELL, DANIEL RALPH	Yes	90	Yes	No
FOTTE, ROBERT R.		No Response		
FULLER, JOHN G.		No Response		
HEMNES, DIANE TWEET		No Response		
DISTRICT 24 (Interior Rivers)				
ALBERTSON, LAMONT E.; HURLBERT, VERN; JUETTNER, BOB; PETERSEN, LARRY; TITUS, JOHN; WILLIS, F. KAY		No Response		
DISTRICT 25 (Lower Kuskokwim)				
HAWK, JOHNNY T.		No Response		
PETER, JOHN GEORGE		No Response		
VASKA, TONY	No	—	No	Yes
DISTRICT 26 (Bristol Bay/Aleutians)				
CRANDALL, THOMAS L.		No Response		
HERRMANN, ADELHEID		No Response		
SUTCLIFFE, ERIC		No Response		
DISTRICT 27 (Kodiak/ E. Alaska Peninsula)				
ZHAROFF, FRED F.		No Response		

*The candidate's specific response to this question was too lengthy to print in full. For further information, please call the Common Sense Office at 276-7648.
?The candidate indicated he she was undecided on this question.

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P.O. BOX 4-1325
ANCHORAGE, ALASKA 99509
248-1515

CHAIRMAN
HOUSE JUDICIARY COMMITTEE
MEMBER
HOUSE RESOURCES COMMITTEE

Representative Charlie Bussell

ALASKA STATE LEGISLATURE
HOUSE OF REPRESENTATIVES

February 21, 1983

Ms. Denise Knapp
P. O. Box No. 4787
Anchorage, Alaska 99509

Dear Ms. Knapp:

Thank you for your telegram of February 15, 1983, supporting HJR 12, limiting legislators' terms.

This bill was heard in the House Judiciary Committee today and there were some modifications. Enclosed is a copy of the substitute bill for your convenience in pursuing these changes.

Again, thank you for your time.

Very truly yours,

Representative Charlie Bussell
Chairman, Committee on Judiciary

CB:lyn

Dankworth urges limited terms for state lawmakers

Our Juneau bureau

JUNEAU — If Sen. Ed Dankworth had his way, nearly half the state's 60 legislators would be disqualifed from holding office.

A constitutional amendment proposed by the Anchorage Republican would limit state senators to two consecutive terms in office and representatives three terms.

As it stands, 17 members of the House and 10 members of the Senate now are at or beyond Dankworth's proposed limits. One of them, Sen. Robert Ziegler, D-Ketchikan, is chairman of the Senate Judiciary Committee, which was assigned the task of studying Dankworth's bill.

For that reason, among others, most observers here weren't giving the bill much chance of passage.

However, Dankworth, serving his first term in the Senate, attempted to meet his more senior colleagues half way by including a "grandfather" clause in the bill.

So, if it should win a two-thirds majority of both houses, qualify for the 1980 election ballot and pass, the limitation would apply only to those terms of office to follow.

2/16/85 Times

A limit on service

ALASKA HAS HAD, over the years, a number of men and women who have served well for long periods of time as members of the legislature. That has been a plus for the territory and the state. But there are some offsetting minuses connected with long tenure in the legislature. And there is mounting evidence that the negative is beginning to far outweigh the positive.

Recognizing that legislative seniority also can lead to legislative abuses, one member of the Alaska Senate has proposed to put a lid on the number of consecutive terms a person could serve. The proposal has merit and deserves thoughtful consideration.

Sen. Ed Dankworth, the Anchorage Republican who two weeks ago was kicked off the Senate Finance Committee when he refused to play ball with some senior members of the club, proposed this the other day in a resolution calling for a constitutional amendment.

IF APPROVED by the legislature — and that's a big "if" — the resolution would go on the ballot for action by the voters of the state. It calls for the imposition of a constitutional limit restricting a person to two consecutive terms in the Senate or three consecutive terms in the House.

The net effect would be to allow a person six years of continuous House service or eight straight years of service in the Senate.

To make the proposal more palatable and to give it at least a chance of passage by the current crop of legislators, Sen. Dankworth included a grandfather clause. Under its provisions, the counting of terms would begin with approval of the constitutional amendment. Incumbent senators and representatives with long tenure — including such luminaries as Sens. Bill Ray of Juneau, Bob Ziegler of Ketchikan, George Hohman of Bethel, John Sackett of Galena and Clem Tillion of Halibut Cove — would not be immediately affected.

THE RESOLUTION has drawn some initial support. Signing on as co-sponsors were Republicans Arliss Sturgulewski and W.E. Bradley and Democrats Pat Rodey and Terry Stimson, all of Anchorage.

That's a good start. But clearly it is not enough. To succeed, the proposal must have widespread support, even from districts that have long placed their legislative affairs in the hands of one or two individuals.

A constitutional amendment limiting tenure would bring two significant changes. It would guarantee that a fresh flow of ideas, personalities and backgrounds would be injected into the legislative process. And it would be a barrier to the creation of legislative dynasties and would prevent any single legislator from assuming, on the basis of seniority, a seat of power that could impair good government for all the people of Alaska.

STR 47

Tillion cracks down on Senate travel

JUNEAU (AP)—An angry Senate president has announced that senators traveling out of Juneau during the week will be on their own tab and not the state's, unless the travel is absolutely necessary.

Senate President Clem Tillion made the statement today after the Senate was one short of the necessary 11 members for a quorum.

The House took the day off, and for the last two weeks members of the Senate have received permission to be formally excused. But Tillion refused to give the entire body the day off.

The Senate had no business on its calendar and there were no committee meetings scheduled in Juneau. But Tillion said he wanted some committee reports, such as recommendations for "sunset" legislation to be officially received.

Ten members showed up when Tillion convened the Senate shortly after 10 a.m. Eight members had been officially excused previously, and two who were absent—Pat Rodey and Ed Dankworth—did not appear.

Tillion has long been an opponent of three-day weekends for the Legislature. When the House took Feb. 15 off, he refused to allow the Senate to take a holiday, saying if members knew they did not have to be in Juneau that Friday, they wouldn't have any committee work on Thursday.

After failing to get a quorum, Tillion expressed his anger a some members of the Senate who were holding a hearing in Anchorage on the Alaska Renewable Resources Corp.

"This is the capital of Alaska and this is where people should come to be heard by the Legislature," he said. Then he announced he was cutting off the travel expense reimbursements for senators who leave Juneau during the week.

"I'm not going to sign any more travel requests during the week," he said. "From now on, they are on their own money. There's no reason to go trucking off somewhere. They've had their fun and games."

Tillion said the Senate has two weeks of work left to do this year, and that the members were trying to extend that over another two months.

He said that perhaps it was time for the voters to force the Legislature into a time limit on its sessions.

"This is absolutely uncalled for," he said.

Limit proposed

Associated Press

Juneau — State senators would be limited to two terms and representatives to three under a constitutional amendment proposed in the Alaska Senate.

Sen. Ed Dankworth, R-Anchorage, filed the measure.

The amendment would disqualify nearly half the state's 60 legislators from office. At present, 17 members of the House and 10 members of the Senate are beyond Dankworth's proposed limits.

Wildlife board stipend rises

Associated Press

Juneau — Members of the state Board of Fisheries and Board of Game would receive $150 per day in per diem for attendance at board meetings under a bill approved by the Senate today.

The bill (SB358) was passed 19-1, and now goes to the House.



DANKWORTH

Currently board members receive travel expenses plus $100 for each day going to and from board meetings and for each day of meetings. The bill would increase the per diem to $150 per day.

Sen. Ed Dankworth, R-Anchorage, cast the lone "no" vote.

Tillion apologizes to two senators

JUNEAU (AP)—Senate President Clem Tillion today apologized to two senators who were absent without formal excuses Friday.

The absence of Sens. Pat Rodey and Ed Dankworth left the Senate without a quorum, meaning it could not convene and conduct business.

The House took Friday off and eight members of the Senate got formally excused from the session that Tillion planned to hold on Friday, despite the lack of a calendar of business.

Tillion, angered when he was one member short of the 11 needed for a quorum, announced that he would no longer sign expense forms for senators week unless the trips were absolutely necessary.

Many of the senators who were absent had gone to Anchorage for a hearing, which Tillion said should have been held in Juneau or on the weekend.

Rodey and Dankworth criticized Tillion on the Senate floor, saying he apparently wanted the Senate in session while the House was off "for appearances."

Rodey added that he did not call the hearing in Anchorage, which he attended. "The leadership did," he said.

Dankworth also ticked off the list of Senate leaders who had been excused and asked why those not in key committee posts should have not been excused.

Further, both senators told Tillion that they had informed him they would be gone and Rodey said Tillion had even signed his travel request form.

"You were aware I wasn't going to be here," Dankworth said.

"I feel sandbagged," added Rodey, who said Tillion signed his travel request a week ago, but asked him not to formally request to be excused.

Tillion apologized to the two, "My anger was partly my own fault," he conceded. "It probably was an ill-temperate thing."

But he refused to back down from his warning that he will not approve any more committee hearings outside Juneau during the week unless they are

Sept 42

Anchorage Times
10/19/80

Safety valve

GOV. JAY HAMMOND has proposed several times that Alaska's governor should serve only a single, six-year term. He hasn't detonated much of a public explosion in support of the concept.

But there appears to be growing support, even among legislators, for a constitutional limit to the number of consecutive terms that can be served by members of the state's House and Senate.

Sen. Ed Dankworth, an Anchorage Republican, is a leader in this movement and he vows to press hard in the next session to win converts to his cause.

His idea is to avoid the buildup of legislative power in the hands of a few senators or representatives who now — by virtue of long years in office — pretty much rule the roost when it comes to influencing activities in Juneau.

ONE PROPOSAL is that members of the House serve no more than three consecutive two-year terms and members of the Senate be limited to no more than two consecutive four-year terms.

Such a limitation would help insure a turnover in office and guarantee that, periodically, new faces, new ideas and new personalities would flavor the legislative pot.

Under normal circumstances, there might be no attraction to the concept of limiting legislative service. But these are not normal times in Alaska.

THE STATE IS facing many years when enormous sums of money will be available for appropriation. It can be handed out wisely and used well. Or it can become a treasure to be plundered.

The fear is that the temptation to misuse this wealth might increase with the length of time a person serves in the legislature and thus assumes more and more power.

Signs already are blowing in the wind, indicating the danger is real. Sen. Dankworth's ideas on the subject merit serious consideration in the 1981 legislative session.

2/12/15 Times

A limit on service

ALASKA HAS HAD, over the years, a number of men and women who have served well for long periods of time as members of the legislature. That has been a plus for the territory and the state. But there are some offsetting minuses connected with long tenure in the legislature. And there is mounting evidence that the negative is beginning to far outweigh the positive.

Recognizing that legislative seniority also can lead to legislative abuses, one member of the Alaska Senate has proposed to put a lid on the number of consecutive terms a person could serve. The proposal has merit and deserves thoughtful consideration.

Sen. Ed Dankworth, the Anchorage Republican who two weeks ago was kicked off the Senate Finance Committee when he refused to play ball with some senior members of the club, proposed this the other day in a resolution calling for a constitutional amendment.

IF APPROVED by the legislature — and that's a big "if" — the resolution would go on the ballot for action by the voters of the state. It calls for the imposition of a constitutional limit restricting a person to two consecutive terms in the Senate or three consecutive terms in the House.

The net effect would be to allow a person six years of continuous House service or eight straight years of service in the Senate.

To make the proposal more palatable and to give it at least a chance of passage by the current crop of legislators, Sen. Dankworth included a grandfather clause. Under its provisions, the counting of terms would begin with approval of the constitutional amendment. Incumbent senators and representatives with long tenure — including such luminaries as Sens. Bill Ray of Juneau, Bob Ziegler of Ketchikan, George Hollman of Bethel, John Sackett of Galena and Clem Tillion of Halibut Cove — would not be immediately affected.

THE RESOLUTION has drawn some initial support. Signing on as co-sponsors were Republicans Arliss Sturgulewski and W.E. Bradley and Democrats Pat Rodey and Terry Stimson, all of Anchorage.

That's a good start. But clearly it is not enough. To succeed, the proposal must have widespread support, even from districts that have long placed their legislative affairs in the hands of one or two individuals.

A constitutional amendment limiting tenure would bring two significant changes. It would guarantee that a fresh flow of ideas, personalities and backgrounds would be injected into the legislative process. And it would be a barrier to the creation of legislative dynasties and would prevent any single legislator from assuming, on the basis of seniority, a seat of power that could impair good government for all the people of Alaska.

STR 42

ROBERT B. ATWOOD
Editor and Publisher

WILLIAM J. TOBIN
Associate Editor
And General Manager

FRED DICKEY
Executive Editor

Legislative terms

WITH THE growing interest in setting a constitutional or statutory limit on the amount of money Alaska's state government can spend on operating expenses, the time might also be ripe to consider another limitation.

What about putting a lid on how many terms a person can serve in the legislature?

Alaska's governor is restricted to two consecutive terms. If such a limit makes good sense for the state's chief executive, it might make equally good sense to bar people from building up legislative empires.

The two-term limit on the office of governor is to prevent the prospect of having a Huey Long seize control of the most powerful gubernatorial office in all America. When Alaska's constitution was drafted back in 1956-57, such a prospect was very much in the mind of the constitutional delegates.

HOWEVER, they saw no similar danger in the legislative branch. That's understandable. No one could have envisioned the immense power Alaska's lawmakers have today.

The subject did arise, says Steve McCutcheon, the delegate whose subcommittee dealt with the matter of legislative terms. It was discarded, he says, after only cursory consideration — but, in retrospect, it appears such a limit would have been wise.

Insofar as we have been able to determine, no other state imposes a constitutional limit on consecutive years of service in the legislature.

But several states do achieve something of the same result by requiring, either through custom or rule, that a legislator bow out after serving in a major leadership

A man who has been speaker of the House, for example, would not seek re-election after serving in that position. Another might cap his or her career as president of the Senate. The same limitation could apply to those who enjoy special authority as majority or minority leaders or as chairmen of principal legislative committees, such as Finance or Rules.

The reasons for such limitation are obvious.

For one thing, mandatory transfer of legislative power — by upward movement through the chairs, as it were — would avoid the possibility that one legislator, or group of legislators, could carve out a fiefdom within the legislative structure.

For another, it would guarantee an infusion of fresh blood, fresh energy and fresh ideas into the legislative process. Certain House and Senate seats have become virtually the personal possession of legislators who run time after time with no opposition or only a token show by a challenger.

THE POSSIBILITY of legislative abuse of power, never before a worry in Alaska, has become more and more alarming as the state's income and wealth soars. In recent months, examples have begun to become evident.

A legislator armed with a seat that is awarded to him election after election can hardly resist the temptation to become arrogant. And there are other temptations, far worse, that come with excessive legislative power.

For the benefit of all concerned, including legislators, consideration should be given to limiting terms of office — as well as government spending.

3/24 Daily

Juneau's rites of spring: What about re-election?



john greely

JUNEAU — With the coming of spring, most people's thoughts turn to such down-to-earth things as vegetable gardens and love. But for the politicians in our midst, spring invariably sprouts a different kind of basic question — what to do about re-election.

Leo Schaeffer, Ed Dankworth and Hugh Malone are approaching this biennial rite of spring in different ways.

Last week, Rep. Schaeffer, D-Kotzebue, looked ahead to the June 1 deadline for filing for office and decided he'd had enough of the legislature. So Schaeffer became the first of several legislators likely to call it quits.

By all accounts, Schaeffer would have won re-election to a third term this fall. The former city manager of Kotzebue is popular, hard-working and effective. He also comes from a respected family that wields a lot of power in Northwest Alaska.

But, Schaeffer also has a wife and four kids. When asked why he wasn't running again, he mentioned his kids first. Then he said, "I guess I'm just tired of the legislature."

Schaeffer's choice, between his kids and his political career, is one that confronts all citizen-legislators. And, despite what might be prevailing myth these days, there are still quite a few citizen-legislators (in that order) serving Alaska.

But, for Sen. Dankworth, R-Anchorage, there aren't enough. Midway through his first term in the Senate, Dankworth — though as popular in his district as Schaeffer is in his — isn't particularly hardworking or effective. This is because he's on the outs with the veteran power-brokers in the Senate.

Due to this feud, plus the fact he's retired and his children are grown, Dankworth doesn't have much else to do these days except to upset the establishment here. One part of this effort is a bill he's sponsored to limit senators to two terms in office and representatives to three.

This bill has no chance of passing, but it has a good point — Alaska does not need politicians who are concerned chiefly with homesteading their office instead of their land. And the longer they stay in office, Dankworth reasons, the more likely politicians are to lose touch with reality, their family, or both.

There are some notable exceptions to Dankworth's theory. The best is former Sen. John Butrovich, R-Fairbanks, who served here for 30 years with integrity, honesty and his family intact.

A more current exception to Dankworth's theory is Rep. Malone, D-Kenai, now in his eighth year of legislative service and hoping for more, possibly as a senator.

A land surveyor and father of three children, Malone went home a few weeks ago to do a very unpopular thing — appear before his local Chamber of Commerce and explain why he thinks it's a bad idea to repeal state income taxes.

Still, Malone is a popular, if sometimes controversial, man in his district. This is because he's honest and hardworking. This past weekend, for example, he and a handful of other legislators could have gone out and played in the warmth of a fine spring day here. Instead, they spent six or seven hours laboring over a bill on the Alaska Permanent Fund.

Malone did take a short break for lunch. And with literally billions of dollars at stake, he might have forgotten to leave a note for the legislature's cook, but he didn't.

"Tony," the note read, "please bill me for the extra sandwich and coke. Thanks, Hugh Malone."

STATE OF ALASKA
THE LEGISLATURE

LEGISLATIVE AFFAIRS AGENCY

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

M E M O R A N D U M February 21, 1983

SUBJECT: Terms of Legislators
(CSHJR 12(Judiciary))

TO: Representative Charlie Bussell
Chairman, House Judiciary Committee

FROM: Richard A. Bradley
Legislative Counsel

Enclosed are three alternative resolutions for your consideration. I believe that the draft of the Judiciary Committee Substitute provided to you earlier would have created some problems and therefore it is also replaced.

As drafted, the earlier committee substitute provided that

> A legislator not eligible for reelection under this section may be . . . elected to the same house after one full term has elapsed.

The problem with the language was that it created a result that I assume was not intended: it provided that election "after one full term" was possible. But by tying the reelection possibility to the elapse of a term, the reestablishment of qualification to serve was delayed until a period having no relation to the time set for the elections. That is, a member not qualified until after "one full term has elapsed" would gain the right to run for office in the January either two or four years later, or some six months or more after the June 1st deadline for party nominations and nonparty petitions. See, AS 15.25.030, 15.25.150.

The result was that a candidate was disqualified for the "full term" plus two years.

The solution is to separate the disqualification from eligibility for election and tie it rather to eligibility to serve. A person may therefore seek office at a time when the

person is disqualified from service; the disqualification from service will expire before for the candidate is able to take office, if elected.

The second committee substitute requested the concept of restored eligibility after two years.

The third committee substitute requested the concept of restored eligibility after four years.

I believe that the concepts have been achieved.

RAB:ljb

Enclosures

Alaska State Legislature

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WHILE IN JUNEAU
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House of Representatives

To: Representative Jack Fuller, Rules Chairman
From: Representative Barbara Lacher
Date: March 10, 1983
Subject: CS HJR 12

It has come to my attention that some clarification of intent is needed in the Judiciary Committee Substitute for House Joint Resolution 12.

On line 20, the word, "and", should be changed to "or".

The intent of the resolution is that a legislator, when he reaches ineligibility as defined in the resolution, may either run for a seat in the other house, or must wait two years before running for the house in which he reaches ineligibility. For example, a House member who serves four full consecutive terms can immediately run for a Senate seat. He must, however, wait two years before running again for a House seat.

A legislator has expressed concern that the word "and" implies that one must wait two years before running for either house, once ineligibility has been reached.

I believe that the insertion of the word, "or", in place of the word, "and" should clarify the intent of the resolution to everyone's satisfaction. I have attached a copy of the resolution indicating exactly where the change should be made.

Thank you for your consideration of this request.

Representative Barbara Lacher

I concur with Rep. Lacher's request, and with her summary of the intent of the Judiciary committee substitute.

Representative Charlie Bussell
Chairman, Judiciary Committee

February 21, 1983

TO: Representative Charlie Bussell
Chairman, House Judiciary Committee
FROM: Steve Cramer
SUBJECT: HJR 12; Background Information on suspense action required

1. Attached please find three (3) "WORK DRAFT" copies of a proposed committee substitute per request of the committee on February 16, 1983. You will note that the significant language change for discussion appears in sentence seven (7) of SECTION 3. The proposed choices for the substitute language would limit the ineligibility period for legislators to either a "full term" "four years" or "two years".

2. A survey of available resources was conducted by this researcher pursuant to the request of the House Judiciary Committee to ascertain any similar constitutional legislation or mandates in other states. The main resource used was:

> "Constitutions of the United States", October 1982,
> Oceana Publications, Inc., Dobbs Ferry, N.Y.

After reviewing all State constitutions it can be reported that not a single case reports the limiting of legislative terms of office to any "consecutive term" language nor do any States require legislators to participate in an "ineligibility" period because of tenure within their state government legislative structure.

3. With reference to the inquiry posed by Representative Clocksin as to the "philosophy and intent" of delegates to the Constitutional Convention relative to this issue the following is submitted, In order for me to best put before this committee the research in this area I will begin by quoting Vic Fisher, author of "Alaska's Constitutional Convention"

> "Keeping a record of committee deliberations and decisions proved a major administrative problem . . . while in a number of occasions the staff consultants emphasized the critical importance of adequately recording committee deliberations, most minutes simply consisted of a record of the committee having met and of other nonsubstantive information . . . the lack of adequate committee minutes has made difficult subsequent judicial, executive, and legislative attempts to interpret constitutional intent" [1]

In reviewing the Constitutional Convention "Journal" and "Daily Proceedings" and subsequently through the tracking of the "Delegate Proposals", "Committee Proposals of the Legislative Branch", it can be reported that the Convention did not deem it appropriate to limit "government of the people" by limiting representation to our legislative branch of government for any tenure reason.

---

[1] Fischer, Victor, "Alaska's Constitutional Convention", 1975, Institute of Social, Economic and Government Research, University of Alaska Press

I have further enclosed two (2) staff position papers submitted at the Constitutional Convention relative to this issue. Although not representative of either the full committee on legislative affairs or all convention delegates, the language and intent can be interesting to you as you prepare for this issue further within your present House Judiciary Committee.

Respectfully submitted,

Stephen E. Cramer, Legislative Aide

THE LEGISLATURE OF THE STATE OF ALASKA
THIRTEENTH LEGISLATURE

FISCAL NOTE

I. REQUEST
Bill/Resolution No. House Joint Resolution No. 12
Title Proposing an amendment to the Constitution of the State of Alaska relating to the terms of legislators. Date 2/8/83
Requested by House Judiciary Committee

II. FISCAL DETAIL
Agency Affected Legislative Affairs Agency
Program Category Affected General Government
BRU, Program, Or Subprogram(s) Affected
(Note: If more than one budget component is affected, separate line-item amounts and funding for each component in the analysis section.)

EXPENDITURES (Thousands of Dollars)

	FY 83	FY 84	FY 85	FY 86	FY 87	FY 88
100 PERSONAL SERVICES			-0-			
200 TRAVEL			-0-			
300 CONTRACTUAL			-0-			
400 COMMODITIES			-0-			
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS,CLAIMS,ETC.						
TOTAL			-0-			

FUNDING (Thousands of Dollars) -0-

GENERAL FUND			-0-			
FEDERAL FUNDS			-0-			
OTHER (Specify Source)						

POSITIONS None

FULL TIME						
PART TIME						
TEMPORARY						

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

It is estimated that this bill will have no additional fiscal impact. There is no additional cost for the Division of Elections to place an issue before the voters as that is the Division's function.

RECEIVED
FEB 9 1983
LEGISLATIVE FINANCE

IV. DATE 2/9/83 PREPARED BY Wally Harrison, Director, Admin. Svcs.
AGENCY Legislative Affairs Agency
PHONE 465-3850

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

33-001 (P.. 12/82)

Alaska State Legislature

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WHILE IN JUNEAU
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(907) 465-4894

House of Representatives

To: House Judiciary Committee
From: Representative Barbara Lacher
Date: February 16, 1983
Subject: HJR 12

The House recently passed a resolution which would allow Alaskans to decide whether session length should be limited. HJR 12 would let our voters decide whether to limit legislators' terms of office: representatives to four consecutive full terms, and senators to two consecutive full terms.

In light of the apparently substantial public support for this measure, I believe we owe our constituents the opportunity to vote on a resolution restricting terms of office. This is a decision which should be made by all Alaskan voters, the people who elect us and whom we represent.

In the packet you have received, several very good points are made in favor of limiting terms. First and most important, there seems to be a great deal of public support for such a measure. David Dittman did a poll in March of 1981 which showed that 62% of the people contacted support limiting terms of legislators. As you can see, regardless of how the results were broken down--whether by age, sex, income, length of residency, or education--the public supports this measure.

In addition, 49 of 76 legislative candidates responding to a survey done by Common Sense said they favor limiting the number of consecutive terms a legislator can serve.

Finally, a study done by the Anchorage FREE Committee in 1981 makes some very good points in favor of limiting terms:

1) Limiting terms could encourage more citizens to run for office by allowing opportunities to run for a seat without opposing an incumbent (incumbents being commonly perceived as much more difficult to defeat).

2) It would be more difficult for a few long-time legislators to develop excessive control. As the FREE report points out, the longer a legislator is in office, the more favors are owed by him and due to him. Limiting terms would interrupt this power process.

I firmly believe that, to eliminate power blocs and to ensure a citizen legislature, Alaskan voters must be allowed to decide whether to amend our Constitution to limit terms of office. I urge your support for HJR 12.

COMMITTE = SSA
DATE = 031182
TIME = 1340

HEADING

SENATE STATE AFFAIRS
STANDING COMMITTEE
MARCH 11, 1982
1:40 P.M.

MEMBERS PRESENT: SENATOR VIC FISCHER
SENATOR MIKE COLLETTA
SENATOR BRAD BRADLEY
SENATOR TERRY STIMSON

MEMBERS ABSENT: SENATOR DICK ELIASON

COMMITT CALANDER

SJR 9 PROPOSING AN AMENDMENT TO THE CONSTITUTION OF THE STATE OF ALASKA RELATING TO THE TERMS AND ELECTIONS OF LEGISLATORS.

SJR 24 PROPOSING AN AMENDMENT TO THE CONSTITUTION OF THE STATE OF ALASKA RELATING TO THE TERMS AND ELECTIONS OF LEGISLATORS.

SJR 55 PROPOSING AN AMENDMENT TO THE CONSTITUTION

WITNESS REGISTER

WITNESS:
SENATOR ED DANKWORTH
POUCH V, JUNEAU, ALASKA 99811
PRIME SPONSOR OF SJR 9.
POSITION STATEMENT: SPOKE IN SUPPORT OF SJR 9.

WITNESS:
SENATOR BOB ZIEGLER
POUCH V, JUNEAU, ALASKA 99811
POSITION STATEMENT: SPOKE IN OPPOSITION TO SJR 9, SJR 24 AND SJR 55.

WITNESS:

SSA 0311821 DOCUMENT= 6 OF 9 PAGE = 3 OF 20

SENATOR FRANK FERGUSON
POUCH V, JUNEAU, ALASKA 99811
PRIME SPONSOR OF SJR 24.
POSITION STATEMENT: SPOKE IN FAVOR OF SJR 24.

ACTION NARRATIVE

TAPE #001
RECORDING
NUMBER 000

SENATOR FISCHER CALLED THE MEETING TO ORDER AT 1:40 P.M. WITH MEMBERS SENATORS: COLLETTA, BRADLEY, AND STIMSON PRESENT. SENATOR FISCHER OPENED TESTIMONY ON THE THREE PROPOSED CONSTITUTIONAL AMENDMENTS

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CONCERNING TERMS OF LEGISLATORS; SJR 9, SJR 24, AND SJR 55.
SENATOR ED DANKWORTH, PRIME SPONSOR OF SJR 9, STATED HIS OBJECTION TO RESTRAINING THE PUBLIC'S CHOICE IN ANY MANNER. HE ASSERTED THAT THERE WERE CERTAIN POWERS IN PLACE AT THE TIME THE ALASKA CONSTITUTION WAS WRITTEN, AND THAT THE BALANCE OF THESE POWERS HAD SHIFTED. ALASKA'S ECONOMIC AND NATURAL RESOURCE WEALTH HAS PLACED MORE POWER WITH THE LEGISLATURE.
SENATOR DANKWORTH WENT ON TO EXPLAIN THAT PRESENTLY, LEGISLATORS HAVE THE POTENTIAL TO STAY IN OFFICE FOREVER "AS LONG AS YOU KEEP YOUR HAND OUR OF THE COOKIE JAR, YOU MIGHT SAY". IT COULD, AND ALMOST HAS, BECOME A YEAR-ROUND JOB. THIS IS UNFAIR TO THOSE WHO WOULD SEEK TO REPLACE MEMBERS OF THE LEGISLATURE.
SENATOR DANKWORTH POINTED OUT THAT ALASKA

HAS WORKED SUCCESSFULLY WITH A CITIZEN LEGISLATURE, AND NOW HAS BEEN TRANSFORMED INTO A BUREAUCRACY. ALASKA, AND TO AN EXTENT THE LEGISLATURE ITSELF, IS THE BIGGEST LAND COMPANY, AND THE MANAGER OF THE "BIGGEST NATURAL RESOURCE." IF ALASKA WANTS TO CONTINUE THE CITIZENS' LEGISLATURE, THIS SORT OF ISSUE MUST BE EXAMINED--IF YOU CAN'T MAKE A WORTHY CONTRIBUTION IN EIGHT YEARS, YOU'RE NOT GOING TO MAKE IT.

NUMBER 0098

AN ARGUMENT CAN BE MADE FOR THE VALUE OF EXPERIENCE, SENATOR DANKWORTH CONTINUED, BUT THAT DOESN'T NECESSARILY MAKE ONE MORE QUALIFIED.

SENATOR ZIEGLER (STANDING IN THE COMMITTEE ROOM) SAID "OBJECT." SENATOR DANKWORTH CONTINUED, "PERHAPS WITH THE EXCEPTION OF SENATOR ZIEGLER."

SENATOR DANKWORTH ADVOCATED LETTING OTHERS RUN FOR THE LEGISLATURE ON "AN EQUAL FOOTING

AGAINST US", NOTING THE LARGE ADVANTAGE A LEGISLATOR HAS IN AN ELECTION DUE TO CONNECTIONS WITH MEDIA AND MONEY. IF THIS "LIMITS THE PEOPLE'S CHOICE," THAT SEEMS A FRAIL ARGUMENT THE ARGUMENT IN FAVOR OF A CITIZEN'S LEGISLATURE.

NUMBER 0145

SENATOR FISCHER STATED THAT HE WAS COMING AT THE ISSUE WITHOUT HIS MIND MADE UP. HE SAID THAT SENATOR DANKWORTH HAD ASKED THAT THE STATE AFFAIRS COMMITTEE HOLD A HEARING, BUT DOES NOT KNOW WHAT HIS RECOMMENDATION WILL BE. "WITH RESPECT TO SENATOR ZIEGLER...WE BOTH SERVED IN THE LEGISLATURE TWENTY-FIVE YEARS AGO...WE'VE COME A LONG WAY."

NUMBER 0155

SENATOR BRADLEY EXPRESSED CONCERN THAT THE MEASURE MIGHT CAUSE "LAME DUCK" REPRESENTATIVES (THOSE INELIGIBLE FOR RE-ELECTION) TO "SLOUGH OFF." HE ASKED IF, UNDER THE PROVISIONS OF SJR 9, A MEMBER WHO HAD COMPLETED HIS MAXIMUM 8 YEAR TERM COULD

RUN FOR ELECTION TO THE OTHER BODY OF THE LEGISLATURE.

SENATOR DANKWORTH AFFIRMED THAT IT WOULD BE POSSIBLE FOR A MEMBER TO RUN FOR THE OTHER BODY, ONE JUST COULDN'T KEEP THE SAME SEAT MORE THAN TWICE.

NUMBER 0180

SENATOR BRADLEY STATED A PREFERENCE FOR A PROVISION FOR KEEPING ENTIRELY OUT OF THE LEGISLATURE FOR 2 TO 4 YEARS.

SENATOR DANKWORTH EXPLAINED THAT POWER STRUCTURES DEVELOP OVER THE YEARS WHICH AREN'T NECESSARILY HEALTHY. A LEGISLATURE WHO REPRESENTS 12,000 PEOPLE MAY BE UNABLE TO DO MUCH FOR CONSTITUENTS EXCEPT BY BELONGING TO SOME SORT OF POWER STRUCTURE. THIS MEASURE "BREAKS THE DYNASTIES...I SEE THIS MORE ON A FEDERAL LEVEL THAN THE STATE LEVEL." SENATOR DANKWORTH EXPLAINED THAT THE AMOUNTS OF MONEY INVOLVED FRIGHTENS HIM.

SENATOR FISCHER ASKED SENATOR ZIEGLER IF HE

WOULD JOIN COMMITTEE MEMBERS AT THE TABLE. HE DID SO.

NUMBER 0260 SENATOR FISCHER COMMENTED THAT THIS SORT OF MEASURE ONCE MORE LIMITS THE ABILITY OF THE LEGISLATIVE BRANCH TO HOLD ITS OWN AGAINST THE EXECUTIVE.

SENATOR DANKWORTH RESPONDED, SAYING HE SUPPOSED YOU COULD SAY THE EXECUTIVE AND JUDICIAL BRANCHES HAVE GROWN IN POWER SOMEWHAT, BUT HE STILL SEES A NEED TO BALANCE THINGS IN A LIGHT OF A VERY POWERFUL LEGISLATURE. HE ALMOST PUT IN A BILL FOR ONE TERM FOR THE GOVERNOR (6 YEAR TERM). IN FURTHER SUPPORT OF SJR 9 SENATOR DANKWORTH STATED, "SOME OF THE DECISIONS I MAKE IN AN ELECTION YEAR I MAKE MORE WITH AN EYE TO MY OWN BEST INTEREST..."

NUMBER 0237 SENATOR FISCHER ASKED IF SENATOR ZIEGLER WOULD SPEAK ON THE OTHER SIDE OF THE ISSUE.

NUMBER 0245 SENATOR ZIEGLER ASKED IF SENATOR DANKWORTH

SSA 0311821 DOCUMENT= 6 OF 9 PAGE = 10 OF 20

KNEW WHAT OTHER STATES, IF ANY, HAVE SIMILAR RESTRICTIONS.

SENATOR ZIEGLER STATED THAT HE DIDN'T KNOW WHETHER TO CHARACTERIZE THIS BILL AS A CATASTROPHE OR AN ABOMINATION, AND FIGURED IT WAS SOMEWHERE INBETWEEN A NATURAL DISASTER AND A NATURAL CATASTROPHE. THE TITLE, HE SAID, SHOULD BE AMENDED TO READ "LEGISLATORS COMPULSORY RETIREMENT"; THE MEASURE IS A WASTE OF TIME. HE DISCUSSED PROVISIONS OF THE CURRENT LEGISLATIVE RETIREMENT PLAN, INCLUDING THE YEARS REQUIRED TO VEST, AND INDICATED HOW THIS MEASURE WOULD AFFECT LEGISLATIVE RETIREMENT. WHEN IT WAS SUGGESTED THAT THE LEGISLATOR WHO HAD SERVED TWO TERMS MIGHT RUN FOR THE OTHER BODY, SENATOR ZIEGLER ASKED, "WHO WOULD WANT TO GO TO THE OTHER BODY UNDER ANY CIRCUMSTANCES?"

SENATOR ZIEGLER WENT ON TO SAY THAT ONE

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DOESN'T "ACCOMPLISH IT ALL IN EIGHT YEARS". HE REFERRED TO PAST LEGISLATORS, INCLUDING JOHN BUTROVICH (WHO SERVED 30 YEARS) AND FRANK PERATROVICH, WHO SERVED FOR EIGHTEEN (?) YEARS. HE IS VIOLENTLY OPPOSED TO THIS OR ANY OTHER RESOLUTION WHICH WOULD IMPOSE THIS KIND OF RESTRICTION, AND SAID HE KNEW OF NO OTHER STATE WITH THIS TYPE OF RESTRICTION. THE LEGISLATION, HE CONCLUDED, IS NOT WELL THOUGHT OUT.

NUMBER 0340 SENATOR DANKWORTH RESPONDED THAT HE DIDN'T KNOW HOW LONG THE MEASURE HAD TO BE IN THE LEGISLATURE BEFORE IT BECAME "WELL THOUGHT OUT" AS IT HAS BEEN CONSIDERED FOR A NUMBER OF YEARS. HE RESTATED HIS POINT ON THE WAY IN WHICH LEGISLATORS BECOME INVESTED IN THE SYSTEM, LOCKED, LIKE ANYONE ELSE, INTO THE BUREAUCRACY. HE SAID IT WAS NOT HIS INTENTION TO SLIGHT SENATOR ZIEGLER, OR JOHN BUTROVICH, OR ANYONE ELSE, NOR TO IMPLY THAT

THEIR EXPERIENCE WAS NOT VALUABLE. THE STAGGERED TERMS, HE SAID, WOULD ALLOW FOR VETERAN LEGISLATORS TO HELP OUT NEW LEGISLATORS. HE WOULD LIKE TO GET INSURANCE INTO THE ALASKA CONSTITUTION THAT THE STATE WILL STICK TO A CITIZEN LEGILATURE.

NUMBER 0374

SENATOR ZIEGLER DISCUSSED ELECTABILITY, AND HOW IT DETERMINES THE VALUE OF ONE'S SERVICE. PEOPLE WHO KNOW A LOT ABOUT THE PROCESS ARE VALUABLE.

SENATOR BRADLEY POINTED OUT THAT IT WOULD NOT AFFECT HIM AT ALL, AND THAT SOME MEMBERS NEED TO GET OUT TO MAKE THE MONEY NECESSARY TO COME BACK TO SERVE. THERE SHOULD BE ROOM FOR EXCEPTIONS HE STATED. SENATOR ZIEGLER, FOR EXAMPLE, HAD NOT ABUSED THE POWER WHICH HAS OCCURED TO HIM OVER THE YEARS IN THE LEGISLATURE.

SENATOR BRADLEY SAID THE PEOPLE HAVE A RIGHT TO ELECT WHO THEY WANT. NO ONE HAS BEEN

ABLE TO TALK HIS CONSTITUENTS OUT OF IT--THEY WANT A RESOLUTION SUCH AS SJR 9--THEY WANT SOME "NEW BLOOD". PERSONALLY, HE IS "50-50 SPLIT" ON THE ISSUE. BUT WILL SUPPORT IT FOR HIS CONSTITUENTS.

NUMBER 0429

SENATOR FERGUSON ARRIVED, AND SENATOR FISCHER BRIEFED HIM ON WHAT HAD TAKEN PLACE. SENATOR COLLETTA, PRIME SPONSOR OF SJR 55; SENATOR DANKWORTH, PRIME SPONSOR OF SJR 9; AND SENATOR FERGUSON, PRIME SPONSOR OF SJR 24, ALL WERE GATHERED AT THE TABLE.

SENATOR COLLETTA EXPRESSED HIS REGRET THAT SENATOR ZIEGLER HAD TO LEAVE AS HE HAS "HEARD THOSE ARGUMENTS FOR TEN YEARS" AND DID NOT HAVE AN OPPORTUNITY FOR A REBUTTAL. THE POINT WHICH HAS TO BE KEPT IN MIND IS THE VALUE OF A CITIZENS' LEGISLATURE.

SENATOR COLLETTA STATED THAT HIS MEASURE, SJR 55, DOES NOT DIFFER GREATLY FROM SENATOR DANKWORTH'S. HE PROVIDED COPIES OF THE

RESULTS OF A POLL HE HAD ADMINISTERED IN ALL REGIONS OF THE STATE. IN EVERY REGION IN THE STATE, IT CAME THROUGH WITH CLARITY: PEOPLE SUPPORTED LIMITING TERMS OF LEGISLATORS. IT IS THE PEOPLE'S RIGHT TO DETERMINE WHETHER OR NOT THEY WANT TO LIMIT THE LEGISLATORS. MOST SENIOR MEMBERS IN THE LEGISLATURE RUN UNOPPOSED; SO GREAT IS THEIR ADVANTAGE AS INCUMBENTS IT DISCOURAGES OTHERS FROM CHALLENGING THEM.

NUMBER 0476

SENATOR FERGUSON, PRIME SPONSOR OF SJR 24, TESTIFIED IN SUPPORT OF THAT MEASURE. HE FELT THERE SHOULDN'T BE A DIFFERENCE IN THE NUMBER OF YEARS SERVED IN THE HOUSE AND THE SENATE RESPECTIVELY, AND HIS MEASURE PROVIDES FOR THREE YEAR TERMS, AND A MAXIMUM OF TWO CONSECUTIVE TERMS. ANOTHER LINE OF THOUGHT ALONG THIS LINE IS TO HAVE THE GOVERNOR RUN FOR ONE SIX YEAR TERM. (THIS PROVISION NOT INCLUDED IN SJR 24.)

SENATOR FISCHER REFERRED TO THE CONSTITUTIONAL CONVENTION, WHERE IT WAS DETERMINED THAT THE SENATE, BY HAVING OVERLAPPING FOUR YEAR TERMS, WOULD PROVIDE MORE CONTINUITY, AND THE HOUSE WOULD RESPOND TO MAJOR CHANGES IN PUBLIC OPINION.
SENATOR DANKWORTH STATED THAT ONE HAS TO TAKE INTO CONSIDERATION WHAT HAPPENS ON THE CAMPAIGN TRAIL AND THE COST OF IT. HE REFERRED TO THE INCUMBENT'S GREAT ADVANTAGE AND THE NEED TO HAVE MONEY. THE FACT THAT "WE ARE DOWN HERE DEALING WITH BILLIONS OF DOLLARS MAKES IT WASIER TO RAISE MONEY--WE HAVE MORE STATUS THAN THE NEW GUYS ON THE BLOCK."

NUMBER 0537

SENATOR COLLETTA STATED THAT HE HAD TO LEAVE, AND, IN CLOSING, SAID THAT THE METHOD OF IMPLEMENTATION WAS NOT IMPORTANT TO HIM. HE SUGGESTED THAT THE COMMITTEE MIGHT MOVE ONE OF THE MEASURES OUT AND SEND COPIES OF

ALL OF THEM ALONG TO THE JUDICIARY COMMITTEE. SENATOR FERGUSON SUGGESTED THAT ALL OF THE MEASURES BE PASSED ON TO JUDICIARY.
SENATOR FISCHER SAID HE HAD NEVER DONE THAT--THAT IT WOULD BE LIKE WAIVING A BILL.
SENATOR STIMSON STATED THAT HE WAS IN FAVOR OF MOVING IT.
SENATOR FISCHER ASKED IF HE MEANT TO MOVE ALL THE MEASURES TO JUDICIARY, AND SENATOR STIMSON RESPONDED IN THE AFFIRMATIVE.
SJR 24, SJR 55 AND SJR 9 WERE ALL PASSED OUT WITH INDIVIDUAL RECOMMENDATIONS.
SENATOR FISCHER WAS THE ONLY MEMBER OF THE COMMITTEE REMAINING UNTIL THE END.


FEB 1983
RECEIVED

TO: [redacted]

FROM: DANIEL LANIE
2720 LEXINGTON CIRCLE
ANCHORAGE, AK 99502 (H) 248-2512 (W) 349-1531

RE: HJR 12 - LIMITING TERMS OF LEGISLATORS

AS A MEMBER OF THE FREE COMMITTEE, I SUPPORT LEGISLATION LIMITING THE NUMBER OF TERMS A LEGISLATOR CAN SERVE. I AM PLEASED TO SEE THAT YOU ARE PROCEEDING WITH THIS IMPORTANT LEGISLATION.



MSG 83-00000735 PRTY 1 [illegible]/15/83 17:45:00 ORIG: [illegible] IN= 0021 OUT= 0132
FROM: SHIRLEE, ANC LIO TO [illegible], JUDICIAL INFO
TARGET: [illegible] SUBJ ROM

[illegible] SHIRLEE ANC LIO, [illegible]

TO: REPRESENTATIVE [redacted], CHAIRMAN, H JUDICIARY
REPRESENTATIVES LISKA, HAYES, BARNES, MALONE
CLOCKSIN, AND WENDTE

FROM: DENISE KNAPP
P. O. BOX [illegible] (DISTRICT 11)
ANCHORAGE, AK 99509 (H) 253-7170

RE: HJR 12, LIMITING LEGISLATORS' TERMS

I ENDORSE THIS BILL AND URGE ITS PASSAGE WITHOUT CHANGE. PARTICULARLY I AGREE NO CURRENT LEGISLATORS SHOULD BE EXEMPT. THIS GIVES AN OPPORTUNITY FOR OTHER QUALIFIED PEOPLE TO ALSO SERVE THEIR STATE.

****

FEB 1983 RECEIVED

HJR

13

MSG 83-00015159 PRTY 1 05/05/83 13:11:19 ORIG! LA01 IN= 0017 OUT= 0095
FROM: SHIRLEE ANC LIO TO: POMS JUNEAU INFO
TARGET: LJHL SUBJ: POM

TO: ALL MEMBERS, ALASKA LEGISLATURE

FROM: DAVE JOHANSON, 1509 NUNAKA DRIVE, ANCHORAGE 99504
H 338-5431

LARRY HAYDOCK, 3605 ARCTIC, ANCHORAGE 99503

JAMES DOBRATZ, 8420 CORBIN DRIVE, ANCHORAGE 99507
H 344-3243

GARY BURLISON, 5400 WEST DIMOND, ANCHORAGE 99502
H 248-0561

JOHN ANDERSON, 2844 WEST 42ND PLACE, ANCHORAGE 99502
H 243-6322 W 248-4455

PLEASE VOTE NO ON SSSB 172.

PLEASE VOTE YES ON HJR 13.

****

TO: ALL MEMBERS, ALASKA LEGISLATURE

FROM: RONALD S. NISBY, 149 MICHAEL COURT, NO 2, ANCHORAGE 99504
H 337-7788 W 659-5370

THE PASSAGE OF HJR 13 WOULD STOP VIOLATIONS BY OUR GOVERNMENT OF ARTICLE 1, SEC. 10, TO-WIT: NO STATE SHALL MAKE ANYTHING OTHER THAN GOLD AND SILVER COIN A TENDER IN PAYMENT OF DEBTS. CITIZENS ARE FORCED AT THE POINT OF LOSING THEIR PROPERTY TO PAY TAXES WITH FIAT CURRENCY.

****

3/15/83, SHIRLEE ANC LIO, 526

TO: ALL MEMBERS, ALASKA LEGISLATURE

FROM: RONALD S. NISBY, 149 MICHAEL COURT, NO 2, ANCHORAGE 99504
H 337-7788 W 659-5378

HJR 13 WOULD HASTEN THE ABOLISHMENT OF THE FEDERAL RESERVE SYSTEM WHICH IS UNCONSTITUTIONAL, UNDER INVESTIGATION AND INDICTMENT BY THE GRAND JURY OF SALT LAKE CITY. IT WOULD RETURN THE RESPECT AND SOVEREIGNTY OF AMERICA, THE NATION FOUNDED ON PRINCIPLES OF MORAL ETHICS.

FROM: RONALD S. NISBY, 149 MICHAEL COURT, NO 2, ANCHORAGE 99504
H 337-7788 W 659-5378

IN THE CONSTITUTION OF THE STATE OF ALASKA, ARTICLE 1, SECTION 2, TO-WIT ALL POLITICAL POWER IS INHERENT IN THE PEOPLE. ALL GOVERNMENT ORIGINATES WITH THE PEOPLE, IS FOUNDED UPON THEIR WILL ONLY, AND IS INSTITUTED SOLELY FOR THE GOOD OF THE PEOPLE AS A WHOLE. PLEASE PASS HJR 13.

MSG 83-00014469 PRTY 1 03/10/83 14:20:01 ORIG: LA01 IN= 0020 OUT= 0087
FROM: JUNE, ANC LIO TO: POM, JNU INFO -
TARGET: LJHL SUBJ: RESEND MSG 14458 FROM FREER

3/10/83, JUNE, ANC LIO MSG 14469 - RESENDING MSG 14459 FROM FREER

TO: REPRESENTATIVES CLOCKSIN, WENDTE, BETTISWORTH, LISKA, PHILLIPS, BUSSELL, HAYES, MALONE, AND TISCHER

FROM: ROBERT L. FREER
P. O. BOX 481
EAGLE RIVER, ALASKA 99577 (H) 694-4963 (W) SAME

I STRONGLY RECOMMEND THE PASSAGE OF HJR 13. WE NEED TO ONCE AGAIN HONOR THE U.S. CONSTITUTION AS THE SUPREME LAW. ALL STATE AND MUNICIPAL OFFICES AND COURTS ARE CURRENTLY IN VIOLATION OF ART. I SEC. 10 U.S. COONSTITUTION, COINAGE ACT OF 1792, AND 31 U.S.C. 371

&&&

3/10/83, JUNE, ANC LIO, MSG 14459

TO: REPRESENTATIVES CLOCKSIN, WENDTE, BETTISWORTH, LISKA, PHILLIPS, RUSSELL HAYES, AND MALONE

FROM ROBERT L. FREER
P. O. BOX 481
EAGLE RIVER, AK 99577 (H) 694-4963 (W) SAME

I STRONGLY RECOMMEND PASSAGE OF HJR 13. WE NEED TO ONCE AGAIN HONOR THE U. S. CONSTITUTION AS THE SUPREME LAW. ALL STATE AND MUNICIPAL OFFICES AND COURTS ARE CURRENTLY IN VIOLATION OF ARTICLE I SEC. 10 U. S. CONSTITUTION, COINAGE ACT OF 1792, AND 31 U. S. C. 371

&&&&&&&&&&&&&&&&&&&&&&&&&&&&&&&&&&&&&&&&&&&&&&&&&&&&&&&&&&&&&&&&&&&&&&&&&&&&

TO: ALL MEMBERS, ALASKA LEGISLATURE

OR

FROM: FRANK MCGUIRE, 4116 WEST 88TH, ANCHORAGE 99502
H 243-0701

VOTE NO ON SSSB 172 BECAUSE THE STANDARD OF WAGES IS HARDLY SUFFICIENT NOW WITHOUT BEING DRASTICALLY REDUCED.

VOTE YES ON HJR 13.

****

FROM: RONALD S. NISBY, 149 MICHAEL COURT, #2, ANCHORAGE 99504
H 337-7788 W 659-5378

I URGE IMMEDIATE PASSAGE OF HJR 13, THE LIBERTY AMENDMENT BY TISCHER AND BETTISWORTH. THE FEDERAL AND STATE GOVERNMENTS FOR TO LONG HAVE CONDONED, PERPETUATED AND ENCOURAGED THE VIOLATION OF OUR MOST PRECIOUS GUARANTY OF LIFE, LIBERTY AND HAPPINESS, THE U.S. CONSTITUTION.

FROM: DEE JONES, 837 WEST 14TH AVE., ANCHORAGE 99501
H 278-2472

I URGE YOU TO NOT VOTE FOR ANY CHANGES IN THE LITTLE DAVIS BACON ACT BECAUSE I BELIEVE IT WILL LOWER OUR STANDARD OF LIVING. I DO NOT SEE WHY WE SHOULD GO BACKWARDS INSTEAD OF FORWARD.

PLEASE VOTE YES ON HJR 13.

HJR

29

STATE OF ALASKA
PRELIMINARY STATEMENT OF FISCAL IMPACT

Bill No: HJR 29 Date on Bill: 2-11-83
Title: Proposing an amendment...to limit...exclusionary rule
Sponsor: Pestinger
Requestor:

1. Estimated fiscal impacts on:

a. Expenditures:

(Thousands of Dollars)

			FY 83	FY 84	FY 85	FY 86		
Capital								
Operating								
Total			-0-	-0-	-0-	-0-		

b. Revenues:

Revenue								

2. Source of funds to offset fiscal impact of bill:

3. Assumptions:

No Fiscal Impact

4. Disclaimer:
This statement has not been reviewed by the OMB in the Office of the Governor. It therefore does not represent the final estimate of fiscal impact.

Prepared By: Francis C. Allan Phone: 269-5691
Division: Alaska State Troopers Date: 2-16-83

Approved by Commissioner: [signature] Date: 2/25/83
Department: Public Safety

5. Distribution:
Original to Legislative Finance
Copy to OMB
Copy to Sponsor
Copy to Requestor

2/15/83

MEMORANDUM

March 10, 1983

TO: Joe ("Judge") Brewer
FROM: Steve Cramer
SUBJECT: HJR 29 (Exclusionary Ruling); Constitutional Research of the States

1. All State's Constitutions were researched to ascertain if under the Search and Seizure rights they contained any provision for non-suppressing of evidence obtained under that particular section.

2. I delimited the search and seizure language into three (3) sub-headings:

   [a] people to be secure in persons,houses,papers and effects from unreasonable searches and seizures

   [b[warrants not to issue to search any place or to seize any person or thing without probable cause supported by oath or affirmation

   [c] particularly describing the place to be searched and the person or thing to be seized

   Fourty eight (48) of the states contained language similar to all three (3) sub-headings.

   Alabama did not cover item [c] above.

   Washington did not cover items [b] nor [c] above.

   Michigan added an additional statement:

   > ". . . the provisions of this section shall not be construed to bar from evidence in any criminal proceeding any narcotic drug,firearm,bomb,explosive or any other dangerous weapon seized by a peace officer outside the curtilage of any dwelling house in this state."

Definition of "Exclusionary Rule:

Evidence obtained in violation of the Fourth Amendment is inadmissible in a criminal prosecution.

"Fourth Amendment" refers to the federal constitution, as well as article 1, section 14 of the Alaska Constitution.

Evidence can also be exluded for violations of other federal and state constitutional rights:

1. 5th am. privilege vs. self incrimination; e.g.s., Mirande & forced confessions.

2. 6th am. right to counsel.

3. Due process - right to not be convicted on unreliable identification.

4. Rights created by federal statutes.

5. Rights created by state constitution and statutes which go beyond federal constitutional protections.

(c) Motion for Return of Property and to Suppress Evidence.

A person aggrieved by an unlawful search and seizure may move the court in the judicial district in which the property was seized or the court in which the property may be used for the return of the property and to suppress for use as evidence anything so obtained on the ground that the property was illegally seized.

EVIDENCE RULES

Rule 412. Evidence Illegally Obtained.

Evidence illegally obtained shall not be used over proper objection by the defendant in a criminal prosecution for any purpose except:

(1) a statement illegally obtained in violation of the right to warnings under *Miranda v. Arizona*, 384 U.S. 436 (1966), may be used in a prosecution for perjury if the statement is relevant to the issue of guilt or innocence and if the prosecution shows that the statement was otherwise voluntary and not coerced; and

(2) other evidence illegally obtained may be admitted in a prosecution for perjury if it is relevant to issue of guilt or innocence and if the prosecution shows that the evidence was not obtained in substantial violation of rights. (Added by Supreme Court Order 364 effective August 1, 1979)

ISSUE: Is 2/3 majority vote of legislature required to enact legislation limiting or amending the "exclusionary rule"?

Rule of Evidence - 412 is the actual "exclusionary rule".

Rule of Criminal Procedure - 37 (c) (copy attached) sets forth the procedure whereby the exclusionary rule can be invoked by motion to suppress.

Alaska Constitution, Article IV, Section 15, provides that court rules may only be changed by the legislature by a 2/3 vote

TEST: Is proposed limitation or amendment substantive or procedural?

HOUSE JUDICIARY SUBCOMMITTEE WEIGHS PROPOSED CHANGES TO EXCLUSIONARY RULE

Witnesses give Reagan Adminstration's "good-faith" exception little encouragement.
▸350.03 ▸100.05

In early September Congress received President Reagan's draft of proposed changes in the field of criminal law. The proposals, embodied in S 2903 and HR 7117, are entitled the "Criminal Justice Reform Act of 1982" and, among other things, call for a change in the exclusionary rule. The Adminstration would like to amend chapter 223 of title 18 USC to establish a "good-faith exception" to the rule, allowing for the admission of evidence resulting from a search or seizure "undertaken in a reasonable, good faith belief that it was in comformity with the fourth amendment." 31 CrL 2540.

Additionally, just last week the Supreme Court called for reargument in Illinois v. Gates (No. 81-430, argued 10/13/82, 32 CrL 4069) and requested the parties to address the question of "whether the rule requiring the exclusion at a criminal trial of evidence obtained in violation of the Fourth Amendment, * * * should to any extent be modified, so as, for example, not to require the exclusion of evidence obtained in the reasonable belief that the search and seizure at issue was consistent with the Fourth Amendment." 32 CrL 4105.

Against this backdrop, on December 2 the House of Representantives' Judiciary Subcommittee on Criminal Justice continued its oversight hearings on the operation of the exlusionary rule. Subcommittee Chairman John Conyers, Jr. (D-Mich) characterized the issue before the subcommittee as whether or not forces were now moving against the Fourth Amendment itself. The first witness called was Silas Wasserstrom, Associate Professor of Law, Georgetown University Law Center, and former Chief of the Appellate Division of the Public Defender Service for the District of Columbia. He referred extensively to a recent article "The Good Faith Exception to the Exclusionary Rule: Deregulating the Police and Derailing the Law," 70 Geo L.J. 365 (1981), of which he was co-author.

FOURTH AMENDMENT STIFLED

Wasserstrom first addressed the potential outcome of the Gates v. Illinois reargument. He told the subcommittee that if the Supreme Court decides to adopt a good-faith exception to the exclusionary rule it would render any proposed legislation superfluous and any constitutional challenges moot. He predicted that it would not be unlikely for a limited version of this exception to be adopted in Gates. However, Wasserstrom continued, even this would be a "substantial inroad" on the exclusionary rule.

In an attempt to deter police misconduct, the Court may limit the exception to cases wherein police are acting pursuant to a warrant, Wasserstrom opined. But he quickly noted that then the question of judicial misconduct in issuing the warrant would arise. The result of any inquiry would be "odd" because the language of the Fourth Amendment makes clear that warrants shouldn't issue except on probable cause. Thus, if the Court decides to allow searches pursuant to illegal warrants, it would be circumventing the Amendment's very purpose, Wasserstrom declared.

He cautioned that if Congress attempts to promulgate its own exception to the rule, aimed at upholding the admission of any evidence seized in reasonable good faith, it might not only go beyond the future "Gates rule" but could make any search conducted pursuant to warrants "per se good faith."

Wasserstrom strongly objected to Conyers' observation that the issue really is "real world" law enforcement versus "whether an arcane constitutional provision is minutely enforced." The Fourth Amendment protects us from a police state, Wasserstrom declared, noting that criticism directed at the exclusionary rule may really be aimed at the Fourth Amendment itself. This prompted him to suggested that the subcommittee might want to consider repealing the Fourth Amendment. The exclusionary rule does not hamstring police, the Amendment does.

To what extent are police inhibited by the Fourth Amendment? Conyers asked. Only in the sense that the Amendment tells them what they can and cannot do, Wasserstrom replied. A civil remedy directed at an individual police officer would be a far more drastic deterrent to police misconduct than the exclusionary rule, he added. However, a tort remedy would be an inadequate substitute for the rule, Wasserstrom stressed. The reason for this brought him to the gist of his argument against adopting the good-faith exception - the exclusionary rule's importance in the development of Fourth Amendment law.

If the exclusionary rule is eliminated or even if the exception is adopted, Fourth Amendment doctrine will petrify, Wasserstrom explained. Courts will never reach the question of whether an officer violates the Fourth Amendment because they will stop at the good-faith issue. Once this is determined the case is over.

At this point subcommittee member Bill McCollum (R-Fla) interrupted. You have made an underlying assumption that good faith will always be found; this concludes that justice will always fall on the side of the police, McCollum pointed out.

If the good-faith exception is adopted, Wasserstrom answered, the law freezes. The defendant will be asking for a change in existing law while the prosecution will be claiming a good-faith reliance on that law; courts won't give into change. Therefore defendants will have no incentive to pursue novel Fourth Amendment claims and courts will, in effect, be choking off the development of Fourth Amendment law. The courts will actually be amending Fourth Amendment law because they will no longer be required to look for probable cause, Wasserstrom maintained.

At this juncture Wasserstrom turned his attention to the Fifth Circuit's holding in U.S. v. Williams, 622 F2d 830, 27 CrL 3293 (en banc 1980), that "reason [as well as authority] plainly demand[d] explicit recognition of a good faith exception" to the exclusionary rule. He took this decision to task, arguing that reasonableness and good faith are already built into existing Fourth Amendment law. In reality the exception changes and stifles existing law, he contended. The exclusionary rule should be supplemented, not changed or excepted to, Wasserstrom concluded; that is the only way it will grow.

BLAME POLICE ADMINISTRATORS

The next witness before the subcommittee was Sue Marie Johnson, Deputy Director of the Police Executive Research Forum, an organization of police executives from the nation's larger jurisdictions. She opened her testimony by stressing the organization's belief that the exclusionary rule, by itself, is not a sufficient deterrent on unconstitutional police actions. Like Wasserstrom Johnson rejected the good-faith exception to the rule, but she then proposed an an alternative — place the responsibility for police misconduct on police administrators and not on individual officers. This not only serves the rule's purpose, it also broadly influences the improvement of policing, she explained. The change in focus of the judicial sanction, from individual officers to their departments, will provide police agencies with the incentive to develop programs for effective deterrence of police misconduct. Additionally, police officers will be more willing to perform their duties in a constitutional fashion if they know that the regulations are internal.

This is a "risk free" proposal, Johnson claimed. It is limited only by the potential of police administrators to protect individuals' constitutional rights; if they fail then the exclusionary rule can be used. However, she added, the rule would not be applied if it is apparent that the police department in question had taken its responsibility to adhere to the Fourth Amendment seriously. Departments could show proof of such good faith by meeting three requirements: "1) publishing departmental rules and regulations that guide police on proper constitutional procedures; 2) instituting effective programs to train officers according to these rules and regulations; and 3) maintaining a history of disciplinary actions taken against officers, it having been demonstrated that the officers had committed violations of departmental rules."

The judge would then rule on whether or not the officer had committed a constitutional violation, Johnson continued. If the answer is yes then the prosecutor would ask the judge to review the three foregoing requirements. The prosecution would have the burden of proving that the requirements were met in a manner sufficient to ensure one of the following: that the failure to provide a rule was reasonable and that proper regulations would be forthcoming; or if the department already had a rule covering the circumstance involved, the officer would be disciplined for violating the rule unless he was acting reasonably and in good faith; or if the rule was found unconstitutional, it was promulgated in good faith, appeared reasonable at the time, and would be reissued in

proper form. Only if the prosecution's proof failed would the evidence would be excluded, Johnson said.

Johnson admitted that this proposal would lead to eventual replacement or ossification of the exclusionary rule. However, she noted, it also does away with all the problems the rule has engendered. She closed by stating that if the proposal was implemented on the federal level then states would soon follow suit, thus developing uniform guidelines and requirements.

NO CHANGE NEEDED

The final witness was the only member of the private criminal bar to address the Subcommittee thus far in its hearings. Alan Ellis, representing the Philadelphia Bar Association, appeared to voice that body's disagreement to any substantive change in the exclusionary rule. He contended that proposed legislation — HR 4259 (replacing the rule with a tort remedy), HR 4606, HR 5971, HR 6049, HR 4422 (all creating good faith exceptions) and S 101 (weighing intentional constitutional violations) — are not only of questionable constitutionality but also "would wreak havoc on the administration of criminal justice."

Focusing in particular on the proposed good-faith exception, Ellis said that "at a time when we are trying to reduce court costs and delays, introduction of a new * * * test will trigger years of litigation, as courts are forced to throw out well developed case law." Any change would also effect police department training programs and could eventually undercut the present extensive, high quality programs in constitutional rights that did not exist prior to Mapp v. Ohio, 367 U.S. 634 (1961), he added.

There is no need to change the rule, Ellis urged. Studies show that the rule actually has only an extremely minimal impact on criminal prosecutions, with eventual admission of most challenged evidence. Any change would just be an "unabated waste of criminal resources," he maintained. Already overworked judges and defense attorneys would have to delve into the subjective intent of police officers and perhaps even consider a department's entire training program. Lengthy litigation would revolve around the 'sole' issue of "good faith." Additional public defenders and judges would be needed. Also, it would impossible to develop a consistent, workable body of law because decisions would be made on a case-by-case basis.

In additional to this list of hazards, Ellis stressed the symbolic weakening or abandonment of the exclusionary rule. Police would conclude that the Fourth Amendment was not a serious matter. The present law already considers an officer's objectively reasonable factual mistakes, Ellis noted. Thus instead of adding to the law any change may just weaken it.

Ellis also argued that when the Supreme Court held in Mapp v. Ohio that the exclusionary rule was an essential part of the Fourth and Fourteenth Amendments, it constitutionally proscribed the Congress from revoking or rescinding the rule. Accordingly, Ellis emphasized, the subcommittee's ability to act is limited. Only the Supreme Court has the authority to reduce or remove the application of the exclusionary rule, he declared.

Testimony of

Sue Marie Johnson
Deputy Director
Police Executive Research Forum

before the

Subcommittee on Criminal Justice
Committee on the Judiciary
United States House of Representatives

Concerning

The Operation of the Exclusionary Rule

June 9, 1982

Mr. Chairman, thank you for providing to the members of the Police Executive Research Forum this opportunity to express our views on the exclusionary rule and certain proposed alternatives to it. The Forum is an organization of police chief executives from the nation's larger jurisdictions. Our goal is to improve the delivery of police services by promoting and bringing about the further professionalization of police executives and officers. We conduct research, engage in experimentation and provide a forum for debate on a wide range of criminal justice issues. It is our belief that, from these efforts, substantial improvement in the quality of law enforcement services will result.

Recently, several alternatives to the exclusionary rule have been proposed in response to dissatisfaction with the effects of the exclusionary rule. We in local law enforcement confront the effects of the exclusionary rule continually; how the rule now operates in criminal proceedings disillusions us. Still, we do not think that the alternatives suggested by critics of the exclusionary rule offer the best means of remedying the ill-effects of the rule, or of achieving the rule's primary objective: to deter unconstitutional police conduct.

What we would like to recommend is a substitute process, one that will not only serve the purposes of the rule but will also broadly influence the improvement of policing. We envision a process by which the responsibility for deterring police violations of citizens' constitutional rights is given to police administrators; they can carry

such responsibility most effectively; the judiciary can deter police violations only indirectly. The change in focus of the judicial sanction, from individual officers to their departments, will provide to police agencies the necessary incentive to institute programs for effectively deterring constitutional violations by their officers; that is because, if such programs are not implemented, the exclusionary rule will continue to be applied. If police administrators show that they can carry this responsibility, that they can execute it diligently, then the need to apply the exclusionary rule in individual cases will disappear, constitutional rights will be protected, reliable and relevant evidence will be used in trials, and the effectiveness of our criminal justice system will be enhanced.

Adopting our proposal to redirect responsibility for deterring police violations of constitutional rights from the judiciary to the police is risk free. In respect of those who believe that, to ensure true justice in criminal proceedings, the exclusionary rule must be eliminated or curtailed, our proposal provides satisfaction; it is limited only by the potential of police administrators to protect individuals' constitutional rights. Regarding those who believe that the elimination or curtailment of the exclusionary rule means more police violations of individuals' constitutional rights, our proposal guarantees that the exclusionary rule will be applied whenever the judiciary determines that police departments are not ensuring that individuals' constitutional rights will not be violated. Our proposal

guarantees that both agendas in the exclusionary rule debate will be accomplished. Each of the other proposed alternatives to the exclusionary rule forces an either-or choice: you are either for the exclusionary rule, or you are against it. Our proposal is better than the other alternatives, not only because it supports, at once, the interests expressed in both of these positions, but also because it more realistically provides for achievement of the judiciary's objectives in applying the exclusionary rule.

Objectives of the Exclusionary Rule and Problems Related to Its Application

The exclusionary rule was first enunciated in the 1914 Supreme Court decision, Weeks v. United States, 232 U.S. 383 (1914). The rule was devised as a remedy for violations of citizens' constitutional rights secured by the Fourth Amendment.

Initially, the Court held that this remedy applied only in federal prosecutions. Wolf v. Colorado, 338 U.S. 25 (1949). The Court left the states free to experiment with alternative sanctions for constitutional violations by law enforcement officers. Unfortunately, state and local officials, including those in law enforcement, did not heed the Court's warnings and failed to develop remedies that would secure compliance with the Fourth Amendment's provisions. The consequence of their inaction was the Supreme Court's 1961 decision in Mapp

v. Ohio, 367 U.S. 643 (1961), to extend the exclusionary-rule remedy to state courts.

The Rule's Objectives

The essence of the exclusionary rule is that evidence obtained in violation of Fourth Amendment requirements cannot be used against defendants in criminal proceedings. In Weeks and subsequent opinions, the Supreme Court offered a number of rationales for applying the rule, the major ones being, first, to maintain judicial integrity by removing the judiciary from the taint of partnership in unlawful behavior of law enforcement officers and, second, to deter future violations by prohibiting law enforcement officers from profiting by their lawless behavior. See, Weeks at 392 and Mapp at 648, 652, and 659-60.

Throughout the history of the exclusionary rule, the Court extended the rule's application beyond Fourth Amendment search and seizure violations to violations of the Fifth Amendment [United States v. Ade, 388 U.S. 218 (1967)], the Sixth Amendment [Miranda v. Arizona, 384 U.S. 436 (1966)] and the Fourteenth Amendment [Irvine v. California, 347 U.S. 128 (1954)]. While the sanction was being extended, however, the judicial integrity argument lost its force as an independent justification. Today, the deterrence rationale is the predominant consideration in courts' decisions regarding suppression motions; judicial integrity is a consideration that is secondary to

courts' assessments of whether or not the sanction will deter future violations. See, Stone v. Powell, 428 U.S. 465, 486 (1976); United States v. Calandra, 414 U.S. 338, 348 (1974); United States v. Janis, 428 U.S. 423, 458-59 n.35 (1976); Dunaway v. New York, 442 U.S. 200, 218 (1979).

We believe that the deterrence rationale no longer provides a reasonable justification for the rule as the rule is currently applied. Though deterrence of unconstitutional police conduct is a goal we all seek to achieve, the exclusionary rule, by itself, does not constitute an appropriate means of achieving this goal.

By our criticism we are not suggesting that the rule has failed to assist in improving our system of justice. Two major benefits of the rule's application can be identified. The first benefit is that the rule has provided to defendants an incentive to challenge the propriety of conduct of law enforcement personnel; this has led to the judiciary's focusing on the requirements of constitutional behavior as these affect police. The second benefit is constituted by the indirect, long-range effects that these judicial rulings have had on police behavior; the educational aspect of decisions that have identified certain actions as improper have led police administrators to pay more particular attention to the requirements for constitutional procedure and, as a consequence, training of police officers has improved. Whether or not these two major benefits could have been realized without the rule, or under a different sanction, will never be

known. Notwithstanding the benefits, the current level of dissatisfaction with the rule and the problems it presents require us to heed now the Court's warnings and find new ways to serve the purpose of the rule.

Ascertaining a means of measuring the deterrent effect of the rule as the rule is currently applied has proven elusive; this condition has intensified debate about the point at which a balance, if any, can be struck between the benefits of the deterrent effect and the costs to the criminal justice system and society. See Oaks, Studying the Exclusionary Rule in Search and Seizure, 27 University of Chicago Law Review 665 (1970); Spiotto, Search and Seizure: An Empirical Study of the Exclusionary Rule and Its Alternatives, 2 Journal of Legal Studies 243 (1973), Canon, Is the Exclusionary Rule Failing Health? Some New Data and a Plea Against a Precipitous Conclusion, 62 Kentucky Law Journal 681 (1974); Comptroller General of the United States, Impact of the Exclusionary Rule in Federal Criminal Prosecution, Report Number GGD-79-45 (19 April 1979). Instead of further debating such issues, we want here to share our expertise as law enforcement administrators in the process of developing a suitable alternative to the rule. Abolishing the rule without substituting an effective mechanism for it amounts to a mere experiment, one in which we are not willing to engage. It is clear, however, that something must be done; the courts cannot do it themselves. We believe it is incumbent upon

the law enforcement community to work with the judiciary and the legislatures to devise a suitable alternative.

Disadvantages of the Rule

Apart from doubts about whether or not the rule has achieved its objective of deterrence, use of the rule has led to several problems, some of which are more burdensome than those that the rule was originally intended to remedy. From the many problems discussed by commentators, we have deducted seven major arguments.

In a first line of argument it is posited that the exclusionary rule interferes with justice by distorting truth. Reliable, relevant evidence that would be admitted if obtained legally is excluded from the fact-finding process when obtained in violation of constitutional commands.

A second line of argument stresses that endlessly litigating the validity of searches, seizures and other law enforcement procedures causes delays in the trial process and diverts attention from questions of guilt and innocence; focus shifts from alleged wrongdoings of defendants to allegations about police, vitiating attempts to provide swift and certain punishment for criminal activity.

A third contention is grounded in the following perception: respect that law enforcement personnel and citizens have for the law and our criminal justice system is destroyed by the rule. Instead of

operating as a deterrent, the rule encourages some police officers to twist facts and stretch the truth about searches; there is the spectacle, too, of the guilty going free because of technical errors.

A fourth line of argument is based on assertions that the rule protects only those who face criminal prosecution, and that the rule cannot deter violations of constitutionally guaranteed rights when the police have either no interest in prosecuting or are willing to forego successful prosecution in the interest of pursuing other goals.

In a fifth line of argument it is charged that the rule fails to discriminate degrees of misconduct by police officers and degrees of harm done to victims of such conduct; regarding punishments, no rational distinctions are made between minor offenses and serious crimes or between honest mistakes and deliberate, flagrant violations.

A sixth argument is that the rule discourages internal rule-making and inhibits disciplining of errant police officers because there is fear that the very fact of punishments' being administered because of rule violations can itself be used as evidence to bolster defendants' cases for suppressing evidence obtained by illegal methods.

In a seventh line of argument it is submitted that the exclusionary rule adds to the confusion about Fourth Amendment standards for

reasonable searches and seizures. Trial court judges often tortuously construe the definitions of the Fourth Amendment so they can find that searches and seizures were reasonable and avoid the harsh requirement of excluding evidence. This gives rise to minute and often bizarre gradations in legal and illegal conduct, eliminating incentives to improve police procedures: incentives that could be provided by pointing out errors and penalizing officers.

The Forum's Alternative to the Exclusionary Rule

If an alternative to the exclusionary rule is to be acceptable, it must meet two objectives. First, it must operate as a deterrent to police misbehavior by providing a clear and understandable guide to proper conduct under the Constitution and by further providing incentive to take immediate disciplinary actions in response to violations. Second, it must remove those obstacles created by the exclusionary rule, which obstacles now prevent the guilty from being convicted, so that evidence of guilt can be used in trials.

Though deterrence of unconstitutional police conduct is the main rationale for the exclusionary rule, the effectiveness of the rule, as it currently operates, in achieving the goal of deterrence is in serious question. The apparent lack of deterrence results, in plain terms, from a lack of communication: the courts, in their rulings on motions to suppress, fail to communicate to police

departments the specific requirements of the Fourth Amendment, and the police fail to educate the courts to the realities of law enforcement practices. Much of this owes to the fact that the exclusionary rule sanction is directed against individual officers.

Effective communication between the courts and the police is vital to making most productive our efforts to preserve constitutional rights. Abolition of the rule, a good faith exception to it, will not solve the problem of poor communication. A process must be devised to ensure that police awareness of constitutional restrictions and of the necessity of operating within those restrictions is increased. We believe that directing the judicial sanction of exclusion away from individual police officers to police administrators will accomplish that objective.

As law enforcement executives, we know best how to deter our officers from improper conduct. In areas of officer misconduct other than constitutional violations--one such area being the unauthorized use of deadly force--experience tells us that improper behavior can be curbed by putting to use three tools in combination: rule-making, training, and discipline. For example: in his study of shootings by officers from the New York City Police Department, Professor James Fyfe found that significant reductions in the amount of police use of deadly force were associated with the combined implementation of clear rules which guide officers in the use of force and of procedures to strictly enforce the rules. [See, Fyfe, Administrative Interventions on Police

Shooting Discretion: An Empirical Examination, 7 Journal of Criminal Justice, 309 (1979).] Currently, however, some police administrators fail to develop precise rules regarding Fourth Amendment procedures and fail to discipline officers for constitutional violations because they fear that such actions will be used against them in suppression hearings: the exclusionary rule as it is currently applied creates for police administrators a disincentive to accept responsibility for deterring constitutional violations.

What is needed is a process that eliminates disincentive and, simultaneously, provides to police administrators incentive to accept responsibility for deterring misconduct regarding Fourth Amendment procedures.

The process by which we propose to meet these needs, especially the need to provide incentive, is one in which application of the exclusionary rule would be dependent upon the performance of police departments themselves. The concept is that the exclusionary rule would not be applied if the police department in question had taken seriously its responsibility to adhere to Fourth Amendment procedures. Departments could demonstrate proof of such good faith by meeting the following three requirements:

1. Publishing departmental rules and regulations that guide police on proper constitutional procedures;

2. Instituting effective programs to train officers according to these rules and regulations; and

3. Maintaining a history of disciplinary actions taken against officers, it having been demonstrated that the officers had committed violations of departmental rules.

The procedure by which this alternative would be implemented is as follows:

1. The judge would rule on whether or not the officer had committed a constitutional violation.

2. If the judge rules, yes, the prosecutor could then undertake to have the evidence admitted according the following procedure: the prosecutor would ask the judge to review the police department's regulations, training programs and disciplinary history.

3. The prosecutor would have the burden of proving that the police met the three requirements (mentioned above) in a manner sufficient to ensure--

   -- that the failure to provide a rule was reasonable, and that regulations specifying, and training in, the proper methods for proceeding in the particular circumstances under review would be immediately forthcoming; or

   -- that, if the department already had a rule covering the circumstance, the officer would be disciplined for violating the rule unless the officer was acting reasonably and in good faith; or

   -- that, if the departmental rule was found to be unconstitutional, it was promulgated in good faith, appeared reasonable before it was applied to the particular facts under review, and would be reissued in proper form.

Should the prosecutor fail in an attempt to prove that the department met the above conditions, the judge would exclude the

evidence. [See, Kaplan, The Limits of the Exclusionary Rule, 26 Stanford Law Review, 1027, 1050-52 (1974) for a similar proposal.]

We believe that rule-making, training and discipline constitute the most appropriate means for deterring Fourth Amendment violations, and that the emphasis we place on such means is well founded. To justify to you our reliance, I would like to spend a few moments discussing the effectiveness of each of these three components.

Rules and Regulations

The exclusionary rule, insofar as it was justified as a deterrent to police misconduct, was designed to ensure police conformance with constitutional requirements. In some agencies, however, the officer rarely learns of or understands the reasons for the exclusion of evidence, so the sanction fails in such instances to fulfill its objective. It can even be said that the rule has inhibited proffering of effective guidance to police officers: judicial reliance on and belief in the efficacy of the rule have led to the development of intricate, little understood rules of constitutional procedure and, regarding responsibility for officer direction, have diverted attention from police management to the judiciary, though the judiciary does not have a clear understanding of the daily operations of police agencies.

Administrative rule-making, from which would flow policies, procedures, and rules and regulations for structuring and controlling police conduct, has been advocated by numerous prestigious organizations and prominent spokespersons, some of which include the following: the American Bar Association [ABA Project on Standards for Criminal Justice, Standards Relating to the Urban Police Function §6.2 (1976)]; The National Advisory Commission on Criminal Justice Standards and Goals [Report of the Task Force on Police, §1.3, Commentary (1973)]; The National Advisory Commission on Civil Disorders [Report, 310-11, 314 (1968)]; Chief Justice Warren Burger [Who Will Watch the Watchmen, 14 American University Law Review 1 (1976)]; Kenneth Culp Davis [Discretionary Justice-A Preliminary Inquiry (1971); Frank Remington, Herman Goldstein [Policing In a Free Society (1977)]; and Anthony Amsterdam [Perspectives on the Fourth Amendment, 58 Minnesota Law Review 349 (1974)]. In addition, the courts have frequently suggested the need for such rules. See, e.g., Delaware v. Prouse, 440 U.S. 648 (1979); Brown v. Texas, 443 U.S. 47 (1979); Dunaway v. New York, 442 U.S. 200 (1979); and South Dakota v. Opperman, 428 U.S. 364 (1976). Some police departments have attempted to develop and implement such rules, among which departments are the following: Boston, Massachusetts; Madison, Wisconsin; and Washington, D.C. The rules provide clear, affirmative guidance to officers as to how they may proceed in a wide variety of complex situations; such rules contrast court decisions that restrict discussions to what an officer cannot do and are rendered in a manner not usually understood by police

officers. These rules address such procedures as execution of search warrants, searches incident to arrest, motor vehicle searches, stop and frisk, and eyewitness identification.

The incorporation of administrative rule-making into our alternative procedure provides several advantages over the exclusionary rule, given the rule's current application. Courts would first focus on the procedures required by the rules and, second, on the past conduct of individual officers. This would redirect judicially-imposed responsibility for constitutional violations from officers to police administrators. Police officers, as with employees of any organization, are more likely to adhere to rules established by their agencies than to rules imposed from without by the courts. Developing clear, precise directives that are free of the legal terminology contained in many court opinions and that are written in language more easily understood by police officers could make the rules easier to understand and more likely to be followed.

Administrative rule-making would exert a broader influence on police operations than the exclusionary rule; its use within constitutional restraints would help in an array of law enforcement operations because police expertise would be utilized systematically and continuously. Judges, who lack law enforcement expertise, promulgate rules through an adversary process whose sole focus is on particular facts unique to individual cases. By contrast, police administrators, who understand the realities of police behavior, are able to fully grasp

the implications of promulgated rules for all law enforcement needs. In developing rules, administrators would be able to utilize procedures best suited to the realities of law enforcement, while remaining within the confines of constitutional requirements. In addition, because many police activities are currently unregulated by the courts, i.e., activities not directed toward gathering evidence or leading toward prosecution, rule-making can lead to full definitions of rights of criminal suspects and other persons coming in contact with police. Finally, the visibility of the rule-making process would compel police administrators to make conscious assessments of law enforcement practices insofar as the practices relate to constitutional and other legal requirements and would make administrators more accountable for decisions that should be based on such assessments.

The development of administrative rules regarding police procedure would have tremendous impact in helping to control police misconduct and in preserving constitutional values. Departmental rules governing activities of officers would be applauded by street officers; the rules would free officers from the vague and clouded language of court opinions; officers could look to police guidelines that set specific bounds of conduct. The courts could find either that officers were in violation of their departments' procedures or, in some instances, that the procedures at issue were unconstitutional, thereafter requesting that departments revise such procedures so that they meet constitutional requirements.

Police Training

Development of extensive rules guiding constitutional behavior will have little value if officers are not apprised of them. Publication of the rules, though an important first step in communication, is not sufficient. Officers must be taught how, and the circumstances under which, they may invoke police procedures. Training programs should be devised in such a manner that officers acquire not only the substantive information contained in departmental rules but also insight into ways in which they may, within constitutional limits, proceed with their tasks. The need for training is not limited only to police recruits. Continual revision of regulations, reflecting refinements in constitutional requirements, will necessitate that police officials develop in-service programs to re-train their officers in accordance with changes that are made. Finally, remedial training programs should be designed to reinforce proper procedures for those officers who have violated rules in the past.

Strict Police Discipline

Deterring unconstitutional violations requires that officers be made aware that illegal behavior will not be tolerated; to make this known, an effective system of discipline must be instituted. Though precise rules and regulations are essential to defining kinds of behavior that will be subject to discipline, rules alone are insufficient. If rules are not properly enforced, their objective to conform

police behavior to the provisions of the Constitution will not be achieved. A comprehensive system of internal police discipline, administered fairly and effectively, will promote observance of the rules.

Regarding deterrence, punishing officers for improper conduct has several advantages over the current exclusionary rule sanction. First, because of the relative immediacy and personal nature of disciplinary actions, officers would generally be aware that their conduct was in violation of constitutional requirements; given how the exclusionary rule is applied today (and depending on the agency), officers might not learn of or understand a court's rationale for excluding evidence; in any event, they would not be affected personally. Second, the publication of clearly defined rules, of penalties for violating them, and of the ramification of the disciplinary process would make it clear to the entire police force, as well as to the community, that certain behavior will not be tolerated. Third, police officer aversion to disciplinary action would cause officers to conduct themselves according to proper procedures. Fourth, a system of discipline could introduce the concept of gradations of improper behavior. The exclusionary rule operates uniformly and imposes an inflexible penalty for all violations, minor or major. An effective disciplinary system could apply a variety of penalties tailored according to the seriousness of misconduct. Finally, sanctions that result from enforcement of rules

and regulations could be applied with much greater frequency than the exclusionary rule sanction; only a small percentage of investigations, searches, arrests and interrogations now reach the trial stage.

Why the Alternative Process Proposed by the Forum Is the Most Effective Method to Deter Fourth Amendment Violations

The alternative the Forum proposes is a complete package that must be viewed as a whole: the components are interweaved; each one complements the others; implementation of one component alone will provide neither an adequate substitute for the exclusionary rule nor relief from the problems currently surrounding the rule's use.

The key to the Forum's alternative is placing with police administrators responsibility for ensuring police officer compliance with constitutional requirements. Internal regulation is the most effective means by which police misconduct can be deterred. Police managers, as opposed to persons outside the agency, have greater understanding of police officer behavior and of the culture of the law enforcement community and are, therefore, more effective in causing officers to understand and comply with constitutional procedures.

If police departments realize that their efforts are to be rewarded by the admission during trials of evidence that might previously have been excluded, they will be strongly motivated to formulate rules and to institute training and discipline. Departments that

develop rules and regulations in compliance with the Constitution will not be restrained by the straitjacket of suppression motions. An objective test for determining whether or not departments have developed internal regulatory mechanisms to deter police violations will be applied by the courts. Judges will simply look to departments' good faith efforts to establish effective rules and to institute training and disciplinary systems, allowing evidence into courtrooms if departments pass the objective test. In effect, the court will be turning over to police departments the responsibility for disciplining police officer misconduct, while holding departments responsible for their policies on constitutional rights.

The procedure for determining whether or not the exclusionary rule would be applied in an individual case involves the following steps:

1. If a department has a rule governing the practice under court scrutiny, which rule is found to be constitutional, and if an officer complied with the rule, the evidence obtained as a result of the procedure would be admitted in the case.

2. If an officer fails to comply with a department's constitutional rule, and if the department has a history of disciplining its officers for violations, the evidence would likewise be admitted. Under such circumstances, the officer would be disciplined directly by the department rather than indirectly by the court.

3. If a rule is found to be unconstitutional, the court would look at whether or not the rule was promulgated in good faith and in the reasonable belief that it complied with constitutional requirements. Furthermore, if a department has a history of training and

disciplining its officers for violations, that department would merely be required to re-promulgate its rule according to proper procedures, deterring future violations while providing the benefit of use of the evidence in the immediate trial. If a department failed to meet these tests, the evidence would be excluded from the trial.

To provide an example of how this process would operate in an actual case, I will use the facts of the case United States v. Adams, 621 F.2d 41 (1st Cir, 1980). In that case, FBI agents had information regarding the possibility that an escaped murderer was living in the house of a former cellmate. This information was corroborated on a Wednesday by a social worker who had visited the residence. On Thursday at 8:30 a.m. the agents again questioned the social worker to see if the escaped convict was still there and found out she was. At 9:50 a.m., seven FBI agents went to the house and, after searching the premises, arrested the fugitive without having obtained either an arrest or a search warrant.

In the trial of the former cellmate for harboring a fugitive, the court excluded the evidence that the fugitive was there. The court found that there were no exigent circumstances to justify a warrantless arrest or search, stating there was ample time to obtain a warrant.

As in the case of an officer's entry into the home of a suspect to make an arrest, the court found that, absent exigent circumstances or without consent, the Fourth Amendment requires that a

police officer must obtain a search warrant before entering the home of a third party to execute an arrest warrant. Thus, under the exclusionary rule as it currently operates, the evidence was excluded from the trial because of the FBI agents' failure to abide by the Fourth Amendment requirements.

Assuming for the moment that the Forum's proposed process were in place, the evidence in this case would not necessarily be excluded. The court would first find out whether or not the FBI had promulgated a rule covering an arrest in the home of a third person, i.e., whether or not a search warrant should first have been obtained. If the court found that the FBI had no rule, the evidence would be excluded. The Bureau, having failed to carry its responsibility for deterring constitutional violations by promulgating a rule, would be responsible for the possible lost prosecution were the evidence to be excluded.

If, however, the court found that the FBI had a rule calling for a search warrant in these circumstances and that the agents violated it, the court would ask the following two questions:

1. Does the FBI conduct a program to train its agents to follow the appropriate procedures for searches and seizures as outlined in its periodically updated rules?

2. In the past, has the FBI disciplined those officers who were found to have violated its search and seizure rules?

If the answers to these questions were, yes, the court would admit the evidence into the trial, stating for the record its reasons for doing so; the FBI would be found to have carried its responsibility for deterring agent misconduct; FBI-imposed discipline would have supplanted the utility of the exclusionary rule as the rule is currently applied.

Advantages of Internal Regulation Required in the Process Proposed by the Forum

In our alternative, the focus of attention shifts from individual officers to police departments. If departments make good faith efforts to define and enforce constitutional behavior, evidence resulting from investigations should not be suppressed. Use of evidence gathered in criminal proceedings will restore the confidence of the police and the public in the criminal justice system. A balance between rights of criminal suspects to be protected from intrusive police behavior and rights of citizens to be protected from criminal acts will be restored.

Once implemented, our comprehensive approach to handling constitutional violations by police officers should prove to be the most appropriate substitute for the exclusionary rule. Placing responsibility for constitutional violations on police administrators is the most logical method for deterring police misbehavior: rules and regulations will provide effective guidance to officers, while strict internal

disciplinary procedures will ensure that discipline is more frequently applied than is now possible under the exclusionary rule. With clear departmental rules there will be less question as to when officers are in the wrong so that administrators will feel more comfortable in applying discipline. Regarding punishment, our system will allow for distinguishing gradations of violations. The development of explicit, comprehensive rules and regulations by police departments will provide a way of clearly spelling out the meaning of constitutional requirements, taking into account the realities of law enforcement practices. The introduction during trials of evidence that might previously have been excluded will increase chances that criminals will be brought to justice. The focus of the trial will shift back to alleged wrongdoings of defendants, increasing the likelihood of swift and certain punishment for criminal activity. The police and the public's respect for the law and the criminal justice system will increase; and what is most important, citizens will be protected, before the fact, from illegal police conduct in all areas of law enforcement activities--even those areas not involving evidentiary matters--because of the deterrent effect of this approach.

Gradual Replacement of the Exclusionary Rule

Incorporating the three components of rule-making, training and discipline into a single, comprehensive alternative can lead to

eventual replacement of the exclusionary rule, eliminating the problems the rule has engendered. Immediate implementation of our alternative will provide partial relief from the exclusionary rule's disadvantages and, eventually, could completely supplant dependence on the rule as a means of deterring unconstitutional police behavior; use of the exclusionary rule, however, will continue until our alternative has proved itself worthy. Determining when to apply the rule will, nevertheless, become easier; using an objective test for determining departments' good faith efforts will simplify the rule's use. Only after our alternative has been proven to be an effective substitute for the rule will the rule be discontinued. In effect, the exclusionary rule simply will atrophy.

The exclusionary rule is an integral part of the Forum's alternative. The prospect of its elimination is an incentive for police departments to develop effective controls over unconstitutional behavior of officers. Use of the exclusionary rule as an incentive to develop internal regulation of unconstitutional behavior is similar to use of the bail-out provision in the Voting Rights Act extension. Under the bail-out provision, if a jurisdiction remains free from discriminatory violations for ten years, it will no longer be subjected to pre-clearance by the Department of Justice for its changes in election procedures. Similarly, under our proposed procedure, if a police department demonstrates a pattern of good faith efforts to deter

unconstitutional behavior, it will be freed from the constraints of the exclusionary rule.

As experienced law enforcement executives, we firmly believe that internal regulation of law enforcement practices is the best possible approach to deterring unconstitutional violations. We are not, however, unrealistic: our belief must not lead to overconfidence. Though the measure of professionalism in law enforcement has increased remarkably over the years since the Mapp decision, many more improvements must be made. The process of improvement will necessarily be gradual. At first, most police departments could not fully meet changed standards without making extensive changes. Developing rules and regulations for conforming police conduct to constitutional safeguards will be a monumental task. Some departments will have to restructure their disciplinary systems extensively.

Nontheless, police departments will gradually adopt extensive and comprehensive rules regarding constitutional procedures and will begin to take appropriate disciplinary action against officers who violate these rules. Some departments will initiate these modifications on their own; others will do so under pressure from prosecutors, the media and the public to lift the burden of the exclusionary rule.

Disadvantages of other Proposed Alternatives to the Exclusionary Rule

Though the underlying philosophy of current proposals to modify or abolish the exclusionary rule is that something must be

done about the current operation of the rule, we believe that none of these proposed alternatives will provide an effective solution to the problem. Before commenting on these proposed alternatives, however, one cautionary note should be raised: the ill effects of the rule should not be confused with the restrictions imposed by the Constitution. It is often argued that the rule handcuffs police in enforcing the law. It is not the rule but, rather, the Constitution itself that quite properly creates obstacles for overzealous police officers. The increased judicial scrutiny that followed the rule's introduction has created for some, the illusion that, if the exclusionary rule were abolished, many of the constitutional restrictions imposed on police would also be abolished. This is a gross misconception: abolishing the current rule would not do away with the constitutional provisions prohibiting illegal search and seizure. The fundamental principles of the Constitution must, of course, be preserved. An alternative's only function is to change the remedy used when violations occur, while providing a mechanism that promotes police adherence to constitutional requirements.

Provision of Civil Remedies

The primary goal of this alternative is to deter constitutional violations by providing for use of a civil damage action against

both the police officer and the government. Though well-intentioned, we believe this alternative will fail in practice. Like current civil remedies, we believe such a damage remedy will be mainly illusory. There are several reasons for this. First, few suits, especially in comparison to the number of violations, will likely be brought: bringing and maintaining a civil action is expensive, burdensome, and time consuming. Currently, overcrowding of court dockets delays the hearing of federal court cases by an average of 13 months and the hearing of state court cases by up to seven years. Victims of illegal practices, who are not themselves involved in criminal behavior, would consequently have less incentive to challenge the police than criminal defendants. Bringing suit would consume a vast amount of a plaintiff's time and could lead many to believe it would not be worth the effort. The infrequent bringing of such suits would result in less judicial review of police practices and, what is more, less guidance for police.

Second, often the only witnesses to an event are the plaintiff and the defendant officer; in such instances the issue becomes one of credibility. Because juries tend to be sympathetic toward police officers confronted with liability, awards against the police might be infrequent. Third, for those plaintiffs who do prevail, compensation will likely be pathetically meager. Because the measure of damages will be the extent of physical injury to the plaintiff or to property, the careful officer could avoid all but nominal damages. Fourth, the damage remedy provides little direct incentive for police to develop

internal rules. The deterrent effect would amount to little more than what is already provided by the rule applied today.

Though a new damage remedy might serve better to compensate victims of constitutional violations than current civil remedies, it would not satisfactorily replace the exclusionary rule. Because such civil actions would be infrequently brought, they would not serve to systematically highlight police misconduct. More importantly, the remedy comes after the fact of the violation; it does not provide adequate incentives for establishing means of deterring misconduct before it occurs.

Elimination of "Good Faith" Efforts from the Exclusionary Rule Sanction

The thrust of this alternative is to limit the application of the exclusionary rule to those instances in which it is believed that individual police officers will be deterred by its application. A similar purpose is found in the recommendation of the Attorney General's Task Force on Violent Crime to exclude "good faith" efforts from the rule. The rationale behind this proposed alternative is that, when a police officers make reasonable, good faith efforts to comply with the law but unintentionally fail to do so because of minor technical violations, it is difficult to find any deterrent effect in suppressing the evidence that was wrongfully obtained; under such circumstances, excluding the evidence from trial has little effect on

officers' future behavior; it merely allows defendants to benefit and undermines public confidence in the criminal justice process. This alternative, though sound in theory, will be cumbersome in practice; its effect will likely be to undermine the deterrent purpose behind the rule, possibly leading to an increase in constitutional violations.

This alternative suggests limiting application of the exclusionary rule to those cases in which it is shown that the officer knowingly intended to violate someone's constitutional rights or when the violation was substantial. "Good faith efforts" by the police officer and "honest mistakes" on the part of the officer would not be subject to exclusionary rule application. The essential component of this alternative is that the exclusionary rule would be applied only when the accused police officer has a specific intent to take away a right which has been established either by the express terms of the Constitution or by decisions interpreting them. Thus, when the officers have known or should have known their conduct was in violation of the Constitution, only then would the exclusionary rule be applied.

Determining how to apply the rule will require an extremely involved fact finding process, irrespective of whether the standard operates on intent, substance or good faith. Judges will be given the difficult task of examining the inner thought processes of officers to determine their true intent. Far from reducing the amount of

fact-twisting that is alleged now to take place during suppression motions, this alternative would promote officer dishonesty regarding what were their true motives for acting. Dependence on discerning the subjective intent of officers would lead to departmental toleration of officer ignorance and would inhibit development of procedures to guide officers regarding proper behavior.

In an attempt to provide an objective measure for determinating the application of the rule under this alternative, its proponents have suggested an added requirement that the officer's good faith belief be reasonable. We believe that such an objective measure is necessary to ensure law enforcement agencies' attention to constitutional requirements. The difficulty lies in the standards by which this reasonableness requirement is to be measured.

Some who advocate this good faith modification have stated that, to meet the reasonable requirement, an officer's police department must have promulgated rules and regulations outlining Fourth Amendment procedures, implemented programs to train the officers in those rules and regulations, and maintain a system for disciplining officers who violate their rules. These statements give us only moderate assurance, however; we are not confident that the judiciary will hold that these same standards are part of the reasonableness requirement. What is needed, instead, is explicit reference in the legislation itself that the test to determine whether an officer's good faith belief is reasonable depends upon whether the officer's

department has a program consisting of the three elements: rules, training and discipline. If these three elements are defined in the legislation as the test of reasonableness, then the Forum's objective of placing responsibility for deterring consitutitional violations upon police administrators will be met. Without such detail, we fear the nebulous standard of "reasonable" will be subject to ambiguous interpretation by judiciary. The result may lead to use of a subjective standard alone as the test of good faith. In that event, the focus of the exclusionary rule will remain upon the individual officer; the opportunity to increase law enforcement agencies' attention to proper Fourth Amendment procedures will be lost.

None of the alternatives to the exclusionary rule addresses what we believe is the most important consideration in devising a remedy for Fourth Amendment violations: law enforcement executives' assuming the responsibility for their officers' violations. This is the only way to ensure with certainty that constitutional violations are minimized. What is needed is a means of testing the good faith efforts of department administrators; such efforts are susceptible of objective measurement. Basing a test on individual officers' subjective intent in paticular cases is not likely to prove productive. The Forum-developed alternative includes the necessary means of testing police administrators' good faith efforts. Our substitute process provides for an objective test by which departmental efforts to eliminate unconstitutional behavior can be gauged. Once departments have passed muster under this objective test, the exclusionary rule will not be applied.

Conclusion

As law enforcement executives who are responsible for the actions of our officers, accountable to the public, and answerable to the law, we believe that our alternative will deter constitutional violations by police officers and enhance the effectiveness of the criminal justice system. Under the process we propose, replacement of the exclusionary rule would come gradually; as the effectiveness of our process was proved, its use would gradually increase. Critics would no longer be able to complain of an artificial rule handcuffing the police in their efforts to fight crime. The key to removing the handcuffs would be placed in the hands of the police themselves. The task of establishing this alternative means of controlling police misconduct would be a time-consuming and arduous one. Judicial hearings on departmental rules, training and discipline systems would be extensive, especially in the beginning. Once the internal control systems were in place in police departments and their effectiveness in deterring unconstitutional behavior by the police was demonstrated, we believe the rewards would prove to have been well worth the effort. The alternative we have devised will best satisfy the primary purposes of the exclusionary rule and most effectively counter problems stemming from the rule's current use. These effects will promote the ends of justice and help to preserve our Constitutional liberties.

HOUSE JUDICIARY COMMITTEE OBSERVER/WITNESS SIGN-UP SHEET

DATE: 3/10 SPONSOR:

SUBJECT(S):

NAME	REPRESENTING	ADDRESS	PHONE	OBSERVER	WITNESS	FOR	AGAINST
Tom Wagner	self	510 Kenedy	6-1786				X

HB 75

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HJR 29
Judiciary Referral

April 14, 1983



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Pouch V
Juneau, Alaska 99811

RE: Senate Bill 49

Dear Senator Fischer,

Pursuant to your request, below is a list of cases where the Alaska Supreme Court or the Alaska Court of Appeals has invoked the Exlusionary Rule in order to suppress evidence which led to either the conviction of the defendant being reversed or evidence being considered inadmissable for purposes of trial. Time restraints prevent me from giving you a complete list of every case in Alaska where the Exclusionary Rule resulted in suppression of evidence. However, these cases are glaring enough to point up the need for revision of the "court adopted" rule of excluding evidence to prevent law enforcement "abuse."

Anderson v. State, 555 P.2d 251 (Alaska 1976)

Police officers entered defendant's apartment and conducted a search pursuant to a search warrant authorizing search for marijuana and related paraphernalia. While conducting a search, officers discovered on shelves in defendant's apartment, photographic negatives which had been mounted as slides, which depicted nude, male children. In order to discover what was on the slides, the officers had to hold them to the light. It was because of this latter act, "holding to the light," the Alaska Supreme Court reversed defendant's conviction for lewd and lascivious acts toward a child and suppressed the evidence. The Court held defendant had an expectation of privacy and the photos, since they had to be held to the light in order to veiw what was depicted on them, were not in plain view.

Zehrung v. State, 569 P.2d 189 (Alaska 1977)

Defendant was stopped by a State Trooper for excessive smoke. During the course of the stop, the trooper discovered two misdemeanor warrants existed for defendant. The trooper arrested the defendant

and transported him to the city jail. The booking procedure at the time, required complete processing of an arrestee, including inventory of his property, even if the arrestee is able to post bail at the time he arrives at jail. With Zehrung, jail personnel discovered two credit cards in his wallet during inventory search which did not belong to him. This evidence led to discovery that the credit cards were taken during a rape and robbery, which led to defendant's indictment and conviction. The Supreme Court reversed the conviction, holding there was an illegal search and seizure. The Court held that defendant should have been allowed to post bail rather than go through the regular booking procedure. Without evidence of the credit cards, the State was unable to prosecute Zehrung for the rape charge. One final note on Mr. Zehrung, he had been convicted of rape in 1972 and 1975. He subsequently was convicted of assault and battery and possession of narcotic drugs after he was released and prosecution dropped in the rape charge.

State v. Glass, 583 P.2d 872 (Alaska 1978)

This case involves the warrantless electronic surveillance of a narcotics transaction. The conversation of the transaction was electronically recorded by police officers stationed outside the home. The Court suppressed the conversation, which was in effect a new rule of law. It also applied a stricter construction of the Constitution of the United States Supreme Court. The Court held that a search warrant must be obtained before electronic monitoring of conversations should be allowed. Applying the Exclusionary Rule, all evidence of the tape recording was inadmissable in prosecution for possession and sale of a narcotic drug.

Anchorage v. Geber, et al., 592 P.2d 1187 (Alaska 1979)

Defendant, along with a number of other individuals, had been arrested for DWI and refused a breathalyzer. Defendant was transported to a local hospital where he submitted to a blood test, against his will. The Alaska Supreme Court, declining to follow the U. S. Supreme Court in Schmerver v. California and reversing itself in Layland v. State, 535 P.2d 1043 (Alaska 1975); held that once an individual refuses the breathalyzer, no additional chemical tests can be conducted. In their interpretation of A.S. 28.35.032(a) the Court held that the police were precluded from obtaining evidence even after obtaining a search warrant. Evidence of defendant's blood alcohol test was suppressed.

Lauderdale v. State, 548 P.2d 376 (Alaska 1976)

Defendant, along with many others, was arrested for driving while intoxicated. As part of their standard operating procedure, police officers, after administering a breathalyzer test, destroyed the test ampule. The Court held that there was plausible evidence that could

be derived from later testing of test ampule which could bear on the validity of the breathalyzer. The Court upheld the lower court's suppression of the breathalyzer. (Note: Testimony by experts from around the country on the Borkenstein breathalyzer, in proceedings in District Court on unrelated matters, have clearly shown that later testing of the test ampule is worthless.)

Anchorage v. Serrano, 649 P.2d 256 (Alaska Appellate 1982)

Defendant, along with many others, was arrested for driving while intoxicated. Law enforcement officers following procedures established by the Legislature and the Alaska Administrative Code, conducted breathalyzer tests in accordance with those procedures. The police officers, however, did not save a separate sample of defendant's breath for later independent testing. The Alaska Court of Appeals upheld the lower court's suppression of the breathalyzer, based on a finding that it was a violation of defendant's due process of rights of cross examination by not saving a separate sample of breath. Basically, the Court found that since it was inexpensive and reasonable to save a separate sample of breath, and it could easily verify the results of the breathalyzer, law enforcement officers should have done so.

Copelin v. State, Opinion No. 2617, February 18, 1983

The Alaska Court of Appeals in Copelin v. State, 635 P.2d 492 interpreting A.S. 12.25.150(b) and based on a prior Alaska Supreme Court decision held that an individual was not entitled to an attorney prior to taking a breathalyzer test or being placed on video to perform field sobriety tests. The date of the decision was 1981. Almost two years later, the Alaska Supreme Court reversed that decision, holding that A.S. 12.25.150(b) did require law enforcement to provide a defendant with access to an attorney, if defendant asks for one, prior to taking a breathalyzer or field sobriety tests on video. For two years, law enforcement officers, following the dictates of the Court of Appeals and the Alaska Supreme Court, denied drunk drivers the right to contact an attorney prior to taking the breathalyzer. If the decision is applied retroactively, which the Supreme Court did not reach, evidence in hundreds of drunk driving cases may be suppressed as a result of this decision. It should be noted that the application of the Exclusionary Rule resulted in a split decision in the Alaska Supreme Court itself.

Note: The last four cases led to evidence of the breathalyzer being suppressed in approximately 1,000 drunk driving cases. In many of these cases, without evidence of the breathalyzer, charges were dismissed or reduced.

Taylor v. State, 642 P.2d 1378 (Alaska Appellate 1982)

In January, 1979, defendant was wanted in connection with an armed robbery that had taken place the day before. Police thought they could locate defendant at a particular address. The reason they thought he might be there is that a month earlier defendant and another person were arrested for armed robbery; the other person had been arrested at that address, and papers and identification of the defendant had been found at that residence. One officer went to obtain an arrest warrant for defendant while the other officers went to the address.

When officers arrived there, another man answered the door. The description of this man did not match the description of the defendant (whom one of the officers knew) or the other suspect. Officers identified themselves, and asked the man for identification. He said he would have to go get it, and one of the officers followed him to a back bedroom ("protected search"). On the way to the bedroom, the officer saw defendant trying to hide under a bed. Defendant was arrested, and two important pieces of evidence which tied him to the robbery were found in the bedroom. Officers later obtained a search warrant and found even more evidence linking defendant to the robbery.

Holdings: (1) Testimony made it unclear whether the man who answered the door actually consented to let the officers in, or whether the statement that they "had a warrant for Ernie" influenced the man to allow them in. Since the burden of proof was on the State, and the evidence was 50-50, the State did not meet its burden. Unless, the entry into the home was illegal.

(2) The "protective search" conducted into the home and into the back bedroom, for the protection of the officers, cannot be justified without "compelling circumstances." Additionally, the Court found that the facts known to the police were not sufficient to justify the police intrusion into the home. (3) In order for the police to enter a home to make an arrest, the police need: (a) probable cause to believe the person committed a crime (i.e., an arrest warrant, if possible), and (b) probable cuase to believe that the suspect is at that particular residence. (4) Since the Court held the arrest was the result of the illegal entry into the home and the illegal act of following the other man to the bedroom, any evidence obtained by police as a result of the arrest should be suppressed.

Conviction reversed; searches and entry held illegal.

For your information, there is an excellent law review article on the good faith exception to the Exclusionary Rule. The article is dated in 1982 and can be found in 73 Journal of Criminal Law and Criminology 916.

Again, these are only a few cases in which the appellate courts have invoked the Exclusionary Rule to suppress evidence. The impact those decisions have on the trial courts can be devastating. For example, in Copelin and Serrano hundreds of suppression motions have been filed.

As you may be aware, the general provisions of Senate Bill 49 are supported by the Chief Justice of the U. S. Supreme Court. The rationale for excluding improperly obtained evidence can be found in U. S. vs. Calandra, 414 U.S. 338 (1974), where six members of the U. S. Supreme Court agreed that "the rule is a judicially created remedy designed to safeguard Fourth Amendment rights generally through its deterrent effect . . ."

It would seem to follow that a law enforcement officer could not be deterred from making a good faith inadvertent error in the field by this remedy.

It should be noted that Senate Bill 49 does not expand police discretion and would not reduce the training and emphasis placed on the application of reasonable searches. It would provide the Courts with the ability to allow relevant evidence to be presented at trial if in its judgment any alleged error made by a police officer while obtaining the evidence was only technical in nature and made in good faith.

At least some of the above cited cases, in my opinion, would not have resulted in the dismissal were Senate Bill 49 in effect. It would appear to me that justice would have been better served.

Needless to say, we support the passage of Senate Bill 49 and urge your support.

Thank you for the opportunity of providing our thoughts.

Sincerely,

Brian S. Porter
Chief of Police

BSP:dl

cc: Anchorage Delegation

HJR

34

STATE OF ALASKA
FISCAL NOTE

Revision Date , 1983

I. REQUEST

Bill/Resolution No.: HJR 34
Title: "...election of prosecuting attorneys."
Sponsor: Repr. Liska
Requestor: House Judiciary Committee

II. FISCAL DETAIL

Agency Affected: Prosecuting Attorneys (4
Program Category Affected: Admin. of Just
BRU, Program of Subprogram(s) Affected:
Prosecution

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 83	FY 84	FY 85	FY 86	FY 87	FY 88
OPERATING						
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 COMMODITIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC						
TOTAL OPERATING			*	*	*	*
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND			*	*	*	*
FEDERAL FUNDS						
OTHER (Specify Source)						

POSITIONS:

FULL-TIME			*	*	*	*
PART-TIME						
TEMPORARY						

III. SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

Not specified by sponsor.

* Actual costs cannot be determined at this time. Please see the analysis.

IV. ANALYSIS: Attach a separate page for any Analysis

Prepared By: Richard I. Pegues, Director
Phone: 465-3672
Division: Administrative Services Division
Date: April 29, 1983

Approved by Commissioner: Norman C. Gorsuch, Attorney General
Date: April 29, 1983
Department: Department of Law

Distribution:
Original to Legislative Finance
Copy to Office of Management and Budget (for Legislature introduced bills)
Copy to Department (for Governor introduced bills)
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HJR 34
Fiscal Note
Analysis

This resolution would place before the voters changes to the state's constitution that would establish an elected office of prosecuting attorney in each of the state's four judicial districts. The proposal would establish each of the four offices as departments and remove the offices from both the organizational control and the supervision of the governor. In order to insure that the governor's oversight that normally controls and supervises executive branch departments does not interfere with the actions of the office of each prosecuting attorney, it will probably be necessary for these offices to duplicate many of the executive branch administrative controls and services administered by the Department of Administration and the Office of the Governor. Otherwise, the approval processes normally required of executive branch agencies, such as: position authorization and classification; recruiting; purchasing; and budgeting, would continue to shape and direct the activities of the prosecuting attorney offices.

Consequently, many of the administrative procedures required of government agencies to comply with the state's statutes that govern public finance, personnel, budgeting and contracting would have to be handled in-house at each of the four prosecuting attorney offices. Obviously, a substantial price would have to be paid to achieve the degree of freedom from the governor's supervision called for by the proposal. Under the provisions of the proposal, the first election of prosecuting attorneys would occur at the first general election held after the office was established under the constitution, or 1986 at the earliest. Because of this lengthy time frame it is nearly impossible to accurately forecast the costs that will eventually be incurred. It can be anticipated, however, that establishing four separate and virtually autonomous departments will result in at least three to four times the expense that the Department of Law currently pays for its administrative services support for the entire department. Those current costs in FY 83 dollars, after taking out special programs that would not be used by prosecuting attorneys, amount to $345,900. Before accounting for any inflation that might occur in the next three years, the costs for providing necessary administrative services support will probably be between $1,000,000 and $1,400,000. These funds would be required to pay for the approximately 18 to 25 personnel, accounting, payroll, supply, purchasing and budgeting positions that would, in total, be needed to perform the administrative tasks that it would take to operate all four of the independent departments.

Providing for elected prosecuting attorneys will also cause a change in the existing balance of power and that change,

which is bound to encourage single-issue politics, will result in new and wholly independent constituencies with their own demands for a share of the state's resources. Although it is unquantifiable at this time, the long term effects of this change on the state's basic political structure will most certainly have a dramatic fiscal impact.

Lastly, the proposal may be in direct conflict with the letter and the spirit of Article III, Section 22 of the state's constitution. This section reads, in part, as follows: "Executive Branch. All executive and administrative offices, departments, and agencies of the state government and their respective functions, powers, and duties shall be allocated by law among and within not more than twenty principal departments, so as to group them as far as practicable according to major purposes. Establishing four prosecuting departments, in addition to the one that already exists, for the identical purpose of prosecuting violations of state law seems to lead to the very sort of bureaucratic growth, overlapping responsibilities, and governmental inefficiency that the constitutional framers intended to prevent.

ALASKA STATE LEGISLATURE
HOUSE OF REPRESENTATIVES
RESEARCH AGENCY

Pouch Y, State Capitol
Juneau, Alaska 99811
(907) 465-3991

January 28, 1982

MEMORANDUM

TO: Representative Barnes

FROM: Leslie Longenbaugh
Research Staff

RE: Relationship of Elected and Appointed Attorneys General in Other States to Prosecuting Attorneys
Research Request Number 82-9

Bill Cook of your staff asked that we report on the relationship between state attorneys general and state prosecuting attorneys. Specifically, Mr. Cook asked that we survey other states in regard to their election or appointment of attorneys general and prosecutors, and the degree to which prosecutors are independent of the attorneys general.

In most states, both the attorney general and the prosecuting attorneys are elected. Most attorneys general head their states' justice or law departments but have few or no statutory responsibilities concerning the prosecution of either criminal or civil cases. When they do have prosecutorial responsibilities, attorneys general in most states prosecute only appealed criminal cases. The attorney general is charged by statute (AS 44.23.020) with, among other duties, prosecuting violations of State law. The attorney general appoints regional district attorneys to fulfill these prosecutorial duties, and he may remove these appointees from office.

Ruth Blau of the National Association of Attorneys General[1] informed us that most attorneys general are elected; Alaska is among the six states that appoint, rather than elect, their attorneys general. In Maine, the legislature appoints the attorney general; in New Hampshire, the governor appoints with the aid of the Executive Council, made up of county representatives who are not in the state legislature; in Tennessee, the state Supreme Court makes the appointment; and in Wyoming and New Jersey the governor appoints the attorney general.

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[2]Ruth Blau, Publications Director, National Association of Attorneys General, Washington, D.C.; telephone: (202) 624-5454.

According to Ms. Blau, states that elect their attorneys general usually require that the candidates be lawyers and United States citizens; some require two to ten years' residency in their states, and some two-thirds of all states require that attorneys general be of a minimum age. In thirty-seven states, candidates for attorney general must have passed the state bar examination.

The method used in New Jersey in selecting attorneys general and district attorneys is closest to that used in Alaska. As in this state, both attorneys general and district attorneys are appointed rather than elected; the major difference in New Jersey is that the district attorneys are appointed by the governor, rather than by the attorney general, and are subject to approval by the state senate.

Voters in Pennsylvania recently amended their state constitution to allow election, rather than appointment, of their attorneys general. After the constitutional change, a committee of interested attorneys, legislators and other citizens was appointed to decide how best to make the change smoothly. The elected attorney general may serve two consecutive terms of four years each; the election is held in the middle of the gubernatorial term.[2] The constitutional change in Pennsylvania broadened the attorney general's prosecutorial powers. Also, Ray Zimmerman, the state's first elected attorney general, was a district attorney before his election as attorney general. The new attorney general has made a commitment to cooperating with locally-elected district attorneys in investigations and prosecutions. Like his counterparts in several other states, Mr. Zimmerman has established a special office that helps local prosecutors with their investigations.

In the eastern states of Delaware and Rhode Island, attorneys general are solely responsible for prosecution of all criminal and civil cases, just as is the Alaska attorney general. The National Association of Attorneys General presumes that the two states do not have separate local district attorneys because the states are so small.

The attorney general in Ohio has no prosecutorial duties at all, even in instances of appealed criminal convictions. The attorney general in Ohio thus has little contact with the district attorneys, who are elected locally.

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[2]Robert Gentzel, Assistant Press Secretary, Office of the Attorney General, Harrisburg, Pennsylvania; telephone: (717) 787-3391.

We also spoke with Tom Hinton of the National District Attorneys' Association[3], who informed us that prosecuting attorneys in most states are elected from within the county, election district, or other area they serve. According to Mr. Hinton, only in Alaska, Connecticut, and New Jersey are district attorneys appointed rather than elected.

Several states make a distinction in jurisdiction between criminal and civil prosecutions. In Texas, for example, the elected "district attorneys" prosecute only criminal cases, while the also elected "county attorneys" may handle both civil and criminal prosecutions.

Some of the minimum qualifications for elected prosecuting attorneys vary widely from one state to the next, although almost all states require that candidates be trained attorneys.

Mr. Hinton stated his belief that a change to an elected attorney general could compromise the integrity of the district attorneys in Alaska, if the attorney general remained charged with their appointment. An example of such a conflict is the possibility that district attorneys' prosecutions sometimes would become entangled with the attorney general's desire to win reelection. He suggested the following methods of selection, both of which he feels would maintain the prosecutors' integrity:

- gubernatorial appointment with approval by one or both houses of the state legislature, a method which would maintain control of prosecutors at the state level; and

- popular election within the regions they serve, a method which would offer the local citizenry more direct control over its prosecuting attorneys.

Mr. Hinton stated his conviction that California has the "most efficient" criminal justice system. The popularly-elected attorney general heads the state department of justice, which performs criminal justice planning and renders legal advice to state government agencies and officials. The attorney general usually has only incidental relations with the locally-elected county district attorneys, who prosecute all civil and criminal cases during their four-year terms of office. The California attorney general and district attorneys may be impeached and removed from office by the state legislature.

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[3]Tom Hinton, National District Attorneys' Association, Virginia; telephone: (703) 549-9222.

Mr. Hinton has sent us a copy of his organization's 1979 review of all states' methods of selecting district attorneys. When these materials arrive we will forward them to your office.

Please call on us if we can be of further assistance.

LL:dlp

national prosecution standards

First Edition — 1977

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foreword

The prosecutor is the chief law enforcement official in his jurisdiction, and therefore occupies a critical position in the Criminal Justice System. His office combines legal, administrative, and judicial functions which require experience, professional personnel, and a rational and efficient organizational structure.

The NDAA standards for prosecutors cannot provide adequate salaries for prosecutors, needed manpower for understaffed offices, or new laws. However, they can provide the best tools to achieve those needs; plus the format for an efficient and effective administrative structure, standards for operations, and goals for both long and short range planning objectives.

It is felt that the Criminal Justice System should be able to swiftly determine the guilt or innocence of an accused individual, provide sentences with potential rehabilitation and deterrence from future crime, and protect the rights of society and the offender. The NDAA, through its members, developed standards and goals to achieve those ends. In doing so, the standards will reflect the overall priorities of attaining speed and efficiency in the pro-trial and trial proceedings and prompt finality in appellate proceedings; upgrading the basic and ancillary functions of prosecution, and insuring the high quality of justice reflective of the values of the citizenry of this country.

By giving the nation's prosecutors the tools to increase their efficiency, it is expected that the effectiveness of the prosecutorial process will be enhanced. Furthermore, it is felt that by attaining speed and efficiency in the pre-trial and trial proceedings, rendering prompt finality in appellate proceedings, upgrading the function of prosecution itself, and insuring a high quality of justice, the system will be able to demonstrate an increase in crime deterrence, quicker and more positive alternatives to incarceration and rehabilitation, lower recidivism rates, better screening/diversion/intake of incoming cases, and a general upgrading of the total judicial system.

The term "standards and goals" has become cliche in the Criminal Justice System. It is by no means a new concept, nor is it a revolutionary idea. Standards, as normally defined, are entities established by authority, common usage, or public consent as an example or model; as a reference point for the comparison of value, quantity or quality; a means of arriving at a determination of what a thing should or ought to be.

Previous "standards" have been developed. The American Bar Association Project on Standards for Criminal Justice; the National Advisory Commission on Criminal Justice Standards and Goals; and The American Law Institute's Code of Criminal Procedure and Model Penal Code are well known in the criminal justice system. NDAA's Standards complement these works in their effort to establish a high level of efficiency and expedition in the reduction of crime.

The National District Attorneys Association, being the national service organization for all prosecutors throughout the country, did not become involved in the standards and goals efforts because everyone else was working on that concept, but rather because NDAA feels that prosecutors were often ignored and not given adequate consideration for their important position within the "judicial systems" portion of the Criminal Justice System. Instead of covering all areas of the Criminal Justice System, NDAA developed Standards specifically for prosecutorial services and only addressed other areas of the Criminal Justice System if those areas interrelate directly with the prosecutorial function. Throughout the development of the Standards, the concept "standards and goals" was utilized as a vehicle for planning and initiating change where needed.

It is expected that these Standards have the potential of becoming the most far reaching project NDAA has ever undertaken. The Standards at times will ask for sweeping reform and other times for simple changes and mere transpositions. They may not be accomplished for years, or they may be achieved tomorrow. But overall they are something to strive for, goals felt necessary for the efficient and effective operation of the prosecutorial portion of the total judicial system.

The National District Attorneys Association's Standards and Commentaries are not, however, exhaustive of past or present ideology and thought on their respective topics. Nor are they a conclusive review and reflection of the literature available on any given subject. Rather, they are the reactions and collective intelligence of the nation's prosecutors as represented by the individual Task Force members and NDAA Board members, supplemented and supported by research where applicable.

When developing the Standards, the Task Force members were not constrained or coerced by existing law and rules, but had the foresight to look at "what should be, what ought to exist." The task forces did not operate in a vacuum with their prosecutorial experience as their only reference, however, but considered the rationale behind existing laws and rules, and only advocated statutory and rule alteration when current application was inadequate or impractical.

Because of this merging of existing laws and alterations, there will be a broad variation in the extent to which current laws and rules will need to be modified in order to implement these Standards. Also, some states and local jurisdiction have already equaled or surpassed these Standards, both in intent and application. Many have not, however, thus pointing up how the need to alter current laws, rules, and practices will vary from state to state and jurisdiction to jurisdiction.

In all cases, each state and local jurisdiction is encouraged to evaluate, compare, consider, and deliberate existing operations and policies, laws, court and administrative rules, and adjudication practices in relation to these Standards.

The Standards must be viewed as flexible. It is anticipated that some Standards will not be applicable in various jurisdictions, and it is expected that many Standards will be modified to suit local needs. Individual prosecutors are encouraged to take the opportunity to implement the Standards wherever possible; each office may, however, wish to expand, modify, or alter them in order to make the Standards reflective of community needs and in practical harmony with jurisdictional realities.

It is hoped that the reader of these Standards will thoroughly review the Introduction of this document before perusing the Standards themselves, and that the reader will give the Commentaries their respective review and consideration.

The Task Force Members, who served unselfishly throughout the project have earned the highest regard and appreciation. Equally sincere gratitude is given to the Prosecutor/Evaluators and Independent Evaluator of the program. And, as in all projects, the Staff are accorded the highest praise — without them it would never have been done. Particular thanks goes to Jim Manak, Project Director, Jeff Thurmond, Deputy Project Director and Director of Research, and Will Hornsby, Prosecutor Analyst.

Patrick F. Healy,
Executive Director

chapter 1.
the prosecutor

This chapter is the heart of the prosecutorial service; the prosecutor himself. It deals with the most pressing and common concerns of the position, and seeks to equate a balance of the various alternatives for individuals occupying the position, and the creation and maintenance of the position itself.

Nowhere in the criminal justice system is the power of authority and discretion more balanced or more powerful. No matter how many arrests the police make, how prolific the courts are at gavel pounding and sentencing, or how many rehabilitated criminals corrections personnel process; if the prosecution doesn't act, the system stops. Being quasi-judicial, the prosecutor acts in an executive position executing legislative directives, affects legislative action through his inherent discretion of charging and screening, and functions in a judicial capacity by the very nature of his position.

Taking all of this into account, this set of Standards deals with such critical issues as how the prosecutor attains office, the qualifications required for the position, the responsibilities the prosecutor must be both held accountable for and function within, what constitutes reasonable compensation for the prosecutorial service performed, and what safeguards and sanctions need to be established and how to apply them to check the balance of prosecutorial power.

Experienced and professional personnel are required to carry out the legal, judicial, and administrative functions of the prosecutor's office. The problem of crime is unlikely to be reduced or solved if prosecutors continue to be underpaid, understaffed, and inefficiently administrated. There are several thousand prosecutors in the nation, the majority of whom work in offices having part time positions. Although salary levels have been rising, prosecutors still receive far less than lawyers of similar experience in private practice. This leads to high turnover in the position, inexperienced personnel in office, too few qualified individuals seeking office, too high of a political orientation to the position, chance of abuse of power due to political pressure and/or lack of understanding of the position's responsibility, and poor administration. These Standards were designed to help reduce those impediments.

standard 1.1 selection*

A. The prosecutor shall be a locally-elected official.

B. The term of the office of prosecutor shall be at least four years.

C. The office of prosecutor shall be approached as a career position.

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* *Task Force II feels that because of small jurisdictional size, the election should be non-partisan, with incumbent designation. The term of office should be at least six years, and the position should be approached by candidates, the public and current office holders as a career position.*

standard 1.2 qualifications*

A. The prosecutor must, at time of filing for election and for the duration of his term of office, be a member of the bar in good standing, be a resident of the jurisdiction, and be otherwise qualified to run for and hold office under state statutes.

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* *Because of various degrees of available candidates in different jurisdictions, Task Force I advocates that candidates be residents of the state for at least six months; Task Force V states that candidates be in good standing with the bar for at least two years prior to election for office; and Task Force VI feels that candidates should be practitioners of law for at least five years prior to filing for election for the office of prosecutor.*

standard 1.3 responsibilities

A. The office of the prosecutor shall be a full-time profession. The prosecutor shall neither maintain nor profit from a private legal practice. In those jurisdictions unable to justify the employment of a full-time prosecutor, the prosecutor may serve part-time until the state determines that the merger of jurisdictions or growth of caseload necessitates a full-time prosecutor.

The prosecutor shall devote primary effort to his office, and shall have no outside financial interests which could conflict with that duty.

B. The prosecutor shall represent the case of the people as to both civil and criminal jurisdiction. The criminal representation shall be the primary responsibility. In jurisdictions where civil and criminal responsibilities are vested in the prosecuting attorney, provision for alternative representation in the case of conflicts should be made.

C. The duties of the prosecutor's office shall be conducted in a professional and non-partisan manner.

D. The prosecutor should consider all available models of control of human behavior from the standpoint of the ultimate benefit to society. The prosecutor should at all times be zealous in the desire to protect the rights of individuals, but must place the rights of society in a paramount position in exercising prosecutorial discretion in individual cases and in the approach to the larger issues of improving the law and making the law conform to the needs of society.

Task Force I & II:

The prosecutor should be willing to represent the consensus in the community even if it differs from personal points of view.

Task Force IV:

It is the duty of the prosecutor to enforce the laws as written by the legislature and upheld by the courts, within the legal, discretionary powers of screening and diversion. Until such time as specific laws are changed by legislative or judicial action, the prosecutor shall enforce such laws, whether the prosecutor personally agrees with them or not.

standard 1.4 compensation

A. Mechanisms should be established for provision of

compensation commensurate with the responsibility and importance of the office of prosecutor.

B. Determination of an appropriate level of salary for the prosecutor should include reference to and consideration of:
   1. Salary levels of positions with analogous responsibilities in private firms and industry;
   2. Salary levels of United States attorneys and chief trial judges of the jurisdictions; and
   3. Population of the jurisdiction of the prosecutor, including seasonal fluctuations, correctional population, and other relevant considerations.

C. The salary of the full-time prosecutor should be at least that of the salary of the chief judge of general trial jurisdiction of the district of the prosecutor. The salary of the part-time prosecutor shall be set by a professional compensation board at the state level.

D. A mechanism should be established for in-term review of the prosecutor's salary in reference to changing economic conditions. Review should take place more than once per term.

E. A program of benefits, including health and pension provisions, should be established to complement the salary of the prosecutor and be at least equal to that provided to members of the state judiciary.

standard 1.5

disciplinary sanctions

A mechanism should be established to enable the legislature or court of highest appellate jurisdiction to suspend, remove, or supersede a local prosecutor upon a demonstration, after reasonable notice and hearing, that the prosecutor is incapable of carrying out the duties of his office.

A. Disciplinary Initiation:
   Such suspension, removal or superseder should be initiated by the appropriate professional body, in a proceeding designed to safeguard the rights of the prosecutor.*

B. Disciplinary Rationale:
   Such proceedings should be initiated only for just and serious cause, including:
   1. Disbarment
   2. Conviction of a felony, or a crime involving public corruption
   3. Mental incompetency and/or physical disability which would prevent performance of the duties of prosecution
   4. Willful neglect of duty

* *Task Force V feels that the appropriate body would include either the Governor or the Attorney General in initiating proceedings.*

commentary

SELECTION

Popular election is the most common method of selection of prosecutors: "The historical traditions of the demand for decentralized administration of criminal justice had led to the almost universal practice of electing local prosecutors. . . .".[1] "In choosing a method of selecting a prosecutor, most jurisdictions have determined that the advantages of popular election of chief prosecuting attorneys outweigh any disadvantages."[2] Local election of prosecutors

> . . . increases the likelihood that the prosecutor will be responsive to the dominant law enforcement views and demands of the community. Since he is not dependent on another official for reappointment, the prosecutor possesses a degree of political independence that is desirable in an officer charged with the investigation and the prosecution of charges of bribery and corruption . . . The election of local prosecutors is engrained in our political traditions. Moreover, experience in several large cities has shown that the elective process can produce dedicated career prosecutors who are highly professional and competent.[3]

Prosecutors are elected officials in 45 states.[4] This elective status is determined by constitutional provision in 36 states and by statute in 9 others.[5] Delaware[6] and Rhode Island[7] have no local prosecutors; the Attorney General handles criminal prosecutions for the State. In Connecticut the county state's attorneys are appointed by judges of the superior courts,[8] and the prosecuting attorneys are appointed by the judges of the courts of common pleas.[9] In Alaska, local prosecutors are appointed by the Attorney General.[10] In New Jersey county prosecutors are appointed by the Governor with the advice and consent of the Senate.[11]

Appointment of the prosecutor has sometimes been recommended as a potential method of removing the prosecutor from partisan considerations.[12] Appointment of the prosecutor, however, is not a desirable alternative. An appointed prosecutor does not have direct authority from, and responsibility to, the voters of his district. In addition, selection by appointment has other disadvantages. Appointment by the Governor or Attorney General results in the selection of the prosecutor by a central authority, and not by those (the voters) who can best appreciate what characteristics are suited to their particular jurisdiction. While appointment might be acceptable in smaller states, in larger states such appointment would be "too removed from the county or district served to be preferable to local elections".[13]

Appointment by local courts also is disadvantageous. Johnson notes:

> The appointment of a prosecutor by superior court judges, as in Connecticut, is a possible alternative; but the primary function of judges does not involve a responsiveness to popular will, so that the same two fears of prosecutorial unresponsiveness and even abuse of discretion might still be aroused by this alternative.[14]

Norman notes in his examination of the Connecticut

system that "the influence of politics has in no sense been eliminated, only camouflaged".[15] He also suggests that such appointment makes the prosecutor subservient to the judicial function, since "personnel whose re-appointment depends upon the judges they appear before cannot be expected to press their respective cases to the limit of the law".[16] An analogous problem would presumably exist under any appointive system.

Non-partisan elections are sometimes recommended because they keep the prosecutor responsive to the people, but not subservient to political parties, and not "subject to the pressures and demands of partisan politics".[17] Johnson's study found that "those offices that select their chief prosecutor in non-partisan elections have as little political influence as do appointive jurisdictions in the selection of deputies".[18] Non-partisan selection systems are in common use as applied to judicial selection, usually through some variation of the 'Missouri Plan'.[19]

Non-partisan elections for prosecutor are currently used in Oregon and California. The Oregon statute provides, in part, that:

> At all primary elections at which candidates for district attorney are to be nominated . . . the county clerk shall prepare and furnish a ballot entitled "District Attorney Ballot" upon which the names of candidates for the office shall be placed without any party designation. Following the name of each candidate shall be a statement, not exceeding 10 words of his qualifications and experience . . .[20]

A similar procedure is used in the general election.

Some question exists as to the need for non-partisan election of district attorneys in all jurisdictions. Jacob's study of Wisconsin district attorneys indicated that despite the use of a partisan ballot most elections for prosecutor in that state were characterized by a lack of partisanship because many candidates ran unopposed.[21] "From 1944 to 1962, between 31 per cent and 59 per cent of the elections for prosecutor went uncontested in both the primary and general elections".[22] The result is that elections for district attorney were as non-political as non-partisan judicial elections in Wisconsin.[23] And since district attorneys generally had less previous linkage to political parties than did the more politically-experienced judges, Jacob notes: "Although elected on a partisan ballot, district attorneys are perhaps more apolitical than judges".[24] If the Wisconsin situation may be assumed to exist throughout the country in those areas which have a minimum of competition for the position of district attorney, then elections for prosecutor may now be operating on a *de facto* non-partisan basis in many areas.

A final question in the election of prosecutors is whether the election ballot should carry a designation of the incumbent. Such a designation is designed to increase professionalism by providing clear identification of the more experienced candidates. One method of accomplishing this is illustrated on the previously cited Oregon ballot, which allows for a brief description of qualifications. Incumbency designation is now followed in some judicial elections.[25]

TERM OF OFFICE

The most common length of term of prosecutors is four years. Other term-length distribution is indicated in the following table:[26]

TERM OF OFFICE IN YEARS	NUMBER OF STATES
2	11
4	32
5	1
6	2
8	1
no set term	3

Source: NDAA Prosecutors Surveys — 1976 data

Two-year terms are served by prosecutors in eleven states: Arkansas, Hawaii, Idaho, Kansas, Maine, Missouri, New Hampshire, North Dakota, South Dakota, Vermont, and Wisconsin. Three-year and four-year terms are served by prosecutors in New York. In New Jersey, county prosecutors serve five years. The district attorney in Louisiana and the commonwealth attorney in Kentucky have six-year terms. In Tennessee the district attorney general is elected to an eight-year term.[27] The remainder of offices and jurisdictions have four-year terms. Recommendation is made for at least a four-year term because it is considered short enough to maintain responsiveness to the electorate, but long enough for the prosecutor to be able to carry out his programs and responsibilities. Longer terms might be considered in areas wishing to provide increased incentive for candidates for the office of prosecutor. The longer term would serve to enhance the professionalism of the office of prosecutor by increasing the experience of the incumbent. Terms longer than four years have been accorded other criminal justice officers — the median term length for major trial court judges in those states which limit judges' terms is six years.[28]

CAREER ORIENTATION

The office of prosecutor should be approached as a career position:

> The advantages of career prosecutors are fairly obvious. Longevity should breed commitment to the tasks of a prosecuting career. Experience should develop the expertise necessary to avoid trial error and appeals, which are costly to the district attorney's office in time, money, and efficiency.[29]

Increased experience in prosecution should result in a greater number of convictions and greater efficiency in criminal justice administration.[30]

Turnover of district attorneys has commonly been high. The study of prosecutors by the NAAG reports that:

> Nearly 50 percent of all respondents to COAG's 1973 questionnaire are currently serving their first term in office. Prosecutors in general are fairly young, since the median year in which all 1973 respondents were admitted to the Bar was 1958. Almost 30 per cent had been admitted since 1967.[31]

Jacob notes, in his study of Wisconsin prosecutors, that:

> Most district attorneys (65.1 per cent according to election records) left the office voluntarily rather than because of an electoral defeat. Almost half (44.6 per cent) of those no longer incumbent said they left the office because they had become too

busy with their private practice, or because they felt it had impeded the growth of their private practice and income. Consequently, despite the infrequent defeat of incumbents, there is a high turnover in the office. The mean tenure of Wisconsin prosecutors between 1942 and 1963 was four and one-half years. . . .[32]

Ori's study of Indiana county prosecutors discovered that only 3 per cent of those prosecutors examined intended to make a career of prosecution.[33] Engstrom's study of Kentucky prosecutors indicated that 44.7 per cent of those questioned were interested in seeking other political or governmental positions,[34] utilizing the office of prosecutor as a "stepping-stone" to higher office.

Lack of interest in prosecution as a career is pervasive in the prosecutor's office, not merely limited to the chief prosecutor. Felkene's study of prosecution offices in Alabama and California concludes:

> There seems to be a definite lack of career orientation within the district attorney's office, despite the fact that almost all respondents reported job satisfaction in their present situations. This may be due, in part, to the failure of the district attorney to carry out any extensive recruiting program in the law schools. The responses of the deputies indicated that they gave very little, if any, consideration to prosecution work while in law school, probably due to a lack of information concerning the job and its availability. Presumably, most attorneys form set goals while they are still in law school, and the fact that district attorneys do not recruit on campuses to any great extent may well preclude any consideration of this type of law practice as a career. If an attorney later accepts a position as a prosecutor, incentive probably will be to gain experience which will facilitate the accomplishment of his previously determined goals, preventing him from viewing the district attorney's office as a potential career.[35]

The position of prosecutor should be approached as a career position. Candidates for the office of prosecutor should not seek election to that office unless they reasonably believe that they are willing to devote to the office of prosecutor that dedication and commitment commensurate with making it a successful and lasting career. The office of the prosecutor should not be viewed simply as a stepping-stone to other political positions.

QUALIFICATIONS

Given the importance and grave responsibilities of the office of prosecutor, some minimum requirements are deemed necessary to insure that holders of the office meet minimum standards of competence. "The prosecutor has the responsibility of presenting the government's case in court, and his skill as a trial lawyer can be a crucial determinant of whether an offender is convicted."[36] Most states require by statute or constitutional provision that a prosecutor be a licensed attorney, and it has been held that even in the absence of such requirement there exists an inherent implication that he should be so.[37] New Jersey requires that appointees to the office of county prosecutor have practiced law for at least 5 years.[38] Pennsylvania also has a minimum practice requirement for certain metropolitan areas.[39] Other states have similar requirements.[40] Whether a specific jurisdiction will wish to establish such requirements depends on its particular circumstances. Smaller jurisdictions might elect not to adopt such requirements in order to facilitate applications for the post of prosecutor.

The responsibility of the prosecutor for representation of the state in criminal matters makes it desirable that the prosecutor have experience in the practice of criminal law, through prior experience in the prosecutor's office, if possible. This ideal will not be possible in all jurisdictions. Some jurisdictions may want to explore the possibility of certification procedures for prosecutors.[41]

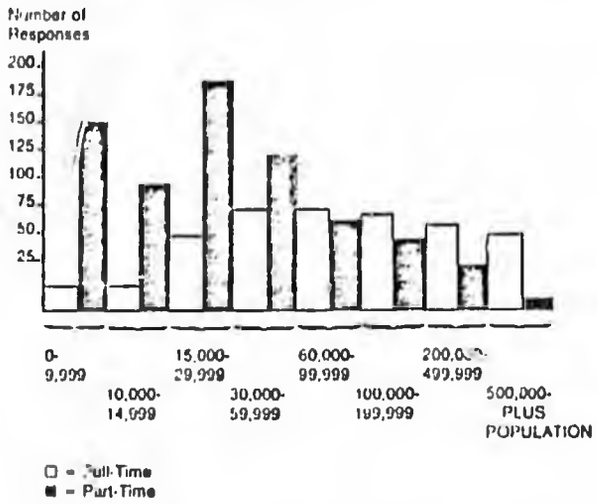
The prosecutor should also be a resident of the jurisdiction which he represents. This will not only enable the prosecutor to attain increased familiarity with the people and conditions of this area, but will also enhance the confidence of the area's population in the commitment of the prosecutor to his jurisdiction.

DUTIES: FULL-TIME

The nature and responsibilities of the office of the prosecutor demand continued and concentrated effort by the holder of that position. For this reason, it would be desirable if all prosecutors served full-time, and devoted no effort to private practice:

> The complexity of today's criminal law practice requires that all prosecutors devote their full efforts to their roles as prosecuting attorneys. Part-time law practice is inconsistent with the type of commitment the community has a right to expect of its prosecutor.[42]

Part-time service is common within the present criminal justice system:[43]



In smaller jurisdictions the majority of prosecutors serve part-time, either for financial reasons, or because of lack of need for a full-time prosecutor in a small district, or simply because the prosecutor in that area has always served only part-time. This practice of part-time prosecutorial service may face the problem of conflicts of interest:

> While direct conflicts of interest between the prosecutor's public office and his private practice are clearly unlawful and, we may assume, rare, there are many indirect conflicts that almost invariably arise. The attorneys he deals with as a public officer are the same ones with whom he is ex-

pected to maintain a less formal and more accommodating relationship as counsel to private clients. Similar problems may arise in the prosecutor's dealings with his private clients whose activities may come to his official attention. It is undesirable to place a prosecutor in a position in which he must always be conscious of this potential for conflict and be careful to avoid improprieties or the appearance of conflict.[44]

Even where no conflict of interest arises a potential for difficulty exists:

> . . . there is a great risk that the part-time prosecutor will not give sufficient energy and attention to his official duties. Since his salary is a fixed amount, and his total earnings depend on what he can derive from his private practice, there is continuing temptation to give priority to private clients.[45]

Argument can be made that many areas of the country lack the need for a full-time prosecutor. While this may be true presently, it will not be true in the future:

> The part-time system originated in the days when most county seats had only one attorney. Even now in many counties the part-time system is still probably workable, but as population centers grow the work load of the state's attorney will increase to the point that a part-time prosecutor will not be able to handle it.[46]

The office of prosecutor should be a full-time occupation. The holder of the office should neither engage in nor profit from a private legal practice. The full-time requirement should not be construed to prohibit an incumbent prosecutor from participating in either legal education programs or in commission or consultant work connected with criminal justice concerns, since both of these efforts are considered unlikely to produce conflicts of interest, and each is likely to produce benefits of its own to the criminal justice system.

Practical realities dictate that some jurisdictions will be unable to justify the employment of a full-time prosecutor at the present time. Each state should consider merger of jurisdictions which would allow for employment of a full-time prosecutor, or such states should require full-time prosecution when growth of caseload necessitates such a position in those jurisdictions.

JURISDICTION

The prosecutor shall represent the case of the people as to both civil and criminal jurisdiction. This is currently the case in most jurisdictions today:

> Most local prosecutors have both civil and criminal justice responsibilities. Only 12 [now 13 — Editor's Note] states assign the prosecutor solely criminal duties. In at least four others — California, Hawaii, Kansas, and Michigan — prosecutors in urban areas are divested of civil responsibilities which become the province of county or city corporation counsel.[47]

A state-by-state analysis of jurisdictional responsibilities is provided in Appendix 1 — I.

In those areas where the prosecutor is assigned civil jurisdiction the majority of the prosecutor's time is spent on criminal concerns:

> Prosecutors devote most of their time to criminal matters: 78 per cent reported they spend over one-half of their time on criminal work. The median percentage of time on criminal matters is 75 per cent. In contrast, only 2 per cent spend over one-half of their time on civil matters.[48]

Despite this, in many areas the civil duties of the prosecutor may be many, varied, and complex. This is especially true in areas where the prosecutor acts not only as criminal district attorney, but also as general city or county counsel. Many small areas simply lack the availability of attorneys to provide for both a full-time criminal district attorney and a full-time county counsel.

In some areas of prosecutorial duties civil lawsuits can be of significant importance. Civil lawsuits have some advantages over criminal actions:

> . . . civil lawsuits give the prosecutor certain major advantages. The advantages are such that civil suits may be the only practical remedy. The potential damages are greater. Due to the lack of stigma, civil suits may lead to faster correction of the problem and resolution of the lawsuit. The prosecutor is not limited by the dictates of the Fifth Amendment so his right to discovery is more effective and meaningful and the lawsuit is more easily won.[49]

In some areas, civil lawsuits are particularly advantageous:

> The great advantage of the consumer fraud prosecution in such instances is that it is not criminal, but civil in nature. Therefore all methods of civil discovery, including depositions, interrogatories, admissions, and inspection and copying of business records are available to the People. In fact, because the civil penalties sought in such an action are so similar to punitive damages, the People may also discover the financial status of the defendants.
>
> In addition, because these consumer fraud actions are not criminal certain constitutional rights peculiar to criminal actions are not available to the defendants. The defendant does not have a right to a jury trial, there is no requirement that the evidence be established beyond a reasonable doubt, but rather only by a preponderance of the evidence, nor does the defendant have the Sixth Amendment right to be confronted by the witnesses against him. Of equal importance, a criminal acquittal does not bar the civil action on the basis of double jeopardy.[50] (footnotes omitted).

Other advantages in consumer fraud prosecution include a more effective case if the defendant is a corporation, possibility of greater damages than are available by criminal fine, fewer "Sheppard" restrictions on comments or publicity, and possible avoidance of extradition problems.[51]

Civil suits can also be useful to the prosecutor in areas such as child support enforcement,[52] environmental law,[53] and others.[54]

The full-time prosecutor can serve both criminal and civil functions, and should have the responsibility for both civil and criminal jurisdiction.

PROFESSIONALISM AND NON-PARTISANSHIP

The duties of the prosecutor's office must be conducted in a completely professional and non-partisan fashion. The authority of the office of prosecutor can only be ex-

ercised in the interest of the People and not for private concerns:

> The powers of a district attorney under our laws are very extensive. They affect to a high degree the liberty of the individual, the good order of society, and the safety of the community . . . Powers so great impose responsibilities correspondingly grave. They demand character incorruptible, reputation unsullied, a high standard of professional ethics and sound judgment of no mean order . . . A district attorney cannot treat that office as his selfish affair. It is a public trust. The office is not a private property, but is to be held and administered wholly in the interests of the people at large and with an eye single to their welfare.[55]

Unprofessional use of the authority of the prosecutor's office for private concerns demeans the office of the prosecutor and violates the public trust and confidence in the criminal justice system. Loss of public confidence only makes the prosecutor's job more difficult and less rewarding. Partisanship may also affect the prosecutor's staff:

> Highly qualified practicing lawyers and recent law school graduates may be prevented from entering the prosecutor's office because they are unable or unwilling to acquire political sponsorship. Lawyers who are considering a career in the prosecutor's office may be daunted, even if they have the required political support, by the likelihood of discharge if their party does not retain control of the office at the next election. Furthermore, the obligations usually attached to a patronage position, such as purchasing or selling tickets to fund-raising dinners, campaigning, or systematically contributing to the party, may be distasteful to many lawyers.[56]

Partisanship can also adversely affect the general conduct of the prosecution function:

> Political considerations make some prosecutors overly sensitive to what is safe, expedient, and in conformity with law enforcement views that are popular rather than enlightened. Political ambition does not encourage a prosecutor to take the risks that frequently inhere in reasoned judgments.[57]

The prosecutor must strive to conduct his office and his duties in a completely professional and non-partisan way, exercising the powers and authority of his position for the interest of the People and not for any private or personal concern. To do otherwise is a violation of his responsibility and his electoral mandate.

COMPENSATION

Provision of an adequate salary is an absolute necessity if the office of prosecutor is to function at maximum efficiency. An adequate salary is essential for attracting capable candidates to the position of prosecutor:

> High quality attorneys who should be encouraged to seek the position will do so only if it offers reasonable economic rewards. Full-time devotion to duty cannot be demanded unless the pay is raised and salary scales are based on the assumption that the prosecutor will not have a second income from outside law practice.[58]

"If public service careers are pursued in an austere setting on depressed salaries, few talented people will be attracted to local prosecutorial service and experienced attorneys will seek other employment."[59] Failure to provide adequate salaries has resulted in a lack of prosecutorial candidates, as illustrated by the example of Oklahoma:

> In that state, as in some others, archaic legal limitations prevented payment of compensation which would attract competent lawyers, and the administration of criminal justice suffered. This reached crisis proportions when, in 1964, no attorneys sought election as County Attorney in 55 of the state's 77 counties.[60]

Subsequent to this, Oklahoma reorganized its prosecutorial system. Other states have faced similar problems. In Kansas, in January 1975, in 29 out of 101 counties the candidate for prosecutor chose not to seek re-election. In 89 counties the candidate for prosecutor ran unopposed.[61] Many jurisdictions face difficulties enough in attracting candidates for prosecutor without having to contend with low salaries. Jacob notes that in Wisconsin "the pool of potential candidates is quite small: eighteen

	Reason For Leaving				Nature of New Employment							
Jurisdiction	Discharged (%)	Retirement (%)	Death (%)	Sickness	More Money (%)	Other (%)	Indiv. Practice (%)	Estab. Law Firm (%)	New Law Firm (%)	Corp. (%)	Gov. (%)	Other (%)
Los Angeles	1.3	5.2	2.6		63.6 -	22.1	50	16				34
Detroit	5	50			45		30	30	20		10	10
Brooklyn	1	32	4		63		65	17	11	2	5	
Cleveland			22		33	45		66			34	
Houston	2		2		96		20	50	20		10	
Bronx		11.5			88.5		24.5	8.5	5.5	2.5	59.0	
Miami	5	5			80	10	50	50				
Buffalo					70	30	40	30	20	20	10	
St. Louis	10		5		70	15	15	60	10		15	
Phoenix					100				90		10	
Cincinnati					100							
Baltimore					90	10	5	90	5			
Sacramento					10	90		50			50	
Atlanta		50			50		25			25	50	
Crown Point		10	10		80		75	10	5		10	
Portland	6				34			59	10			
Denver					15	30	20	44		12	24	
St. Paul					100			40	40		20	

counties in 1965 had fewer than 10 active attorneys".[62] Provision of an adequate salary is thus crucial to guaranteeing the existence of sufficient qualified prosecutors.

Provision for an adequate salary level is also essential to reduce the rapid turnover of local prosecutors:[63]

> Turnover among prosecutors is one of the major problems which limits the development of prosecutorial expertise. The major reason cited for leaving the job is failure of salaries to meet the level which attorneys can reach in private practice.[64]

"Turnover in prosecutor's offices far exceeds that in any other government office dealing with the administration of criminal justice."[65] Turnover in prosecutor's offices across the country may be as high as 33 per cent annually.[66] The primary reason for this high turnover is inadequate financial compensation, as the previous table indicates.[67]

Provision of adequate salaries will also act to reduce the likelihood of prosecutorial misconduct, since "adequately paid, full-time district attorneys and their staffs will be less susceptible to temptations of outside employment and to offers of money or favors in return for accommodating individuals whose cases come before them".[68]

The source of the prosecutor's salary varies among jurisdictions, as the following table indicates:[69]

SOURCE OF PROSECUTOR'S SALARY

Source	Number of Responses	Percent of Total (636)
State	83	13
State (County may Supplement)	40	6
State and County	86	14
County	425	67
Information not available	2	—
TOTAL	636	100

Examination should be made of the feasibility of state or federal supplementation in those local areas which are unable to adequately provide a salary for the prosecutor.

LEVEL OF SALARY

Salary levels for prosecutors vary considerably across the country. The following table gives the result of a nationwide survey of prosecutors' salaries:[70]

ANNUAL SALARY OF PROSECUTORS

Annual Salary	Number of Responses	Percent of Total Responses
$Under 10,000	352	37.4
10,000-11,999	104	11.0
12,000-15,999	176	18.7
16,000-19,999	112	11.9
20,000-24,999	136	14.6
25,000-49,999	59	6.4
TOTAL	939	100.0

"The median income of all prosecutors in 1973 was $ 2,500 per year. The total salary range reported was from $1,120 to $44,028. These figures include part-time prosecutors. Full-time prosecutors received a median of $22,042 per year . . . When a median hourly salary is computed for full-time prosecutors, the figure derived is $11.74. For part-time prosecutors, the hourly median salary is between $6.50 and $7.50."[71] Additional material on various prosecutors' salaries, along with a comparison of trial judge salaries, is provided in Appendix 1 — III. Figures on increases in salaries by years of service for metropolitan prosecution offices are shown in the table below.[72]

The salary provided the prosecutor should be at least that of the salary of the judge of general trial jurisdiction of the district of the prosecutor:

> For purposes of salary, the prosecutor should be considered to be on the same level as the chief judge of the highest trial court of the local criminal justice system. Both positions require the exercise of broad professional discretion in the discharge of the duties of the offices. It is therefore reasonable that the compensation for the holders of these offices have the same base.[73]

Those jurisdictions which still have a part-time prosecutor should have salaries set by a professional compensation board at the state level.

SALARIES BY YEARS OF SERVICE

Jurisdiction	Aver. Beginning Salary Low	Aver. Beginning Salary High	Aver. Salary 2 yrs. Low	Aver. Salary 2 yrs. High	Aver. Salary 5 yrs. Low	Aver. Salary 5 yrs. High	Aver. Salary 10 yrs. Low	Aver. Salary 10 yrs. High	Sick Leave	Vacation	Vacation Low—High
Los Angeles	$889	$1,107	$1,203	$1,499	$1,499	$1,867	$1,673	$2,084	Yes	Yes	2 wk. - 4 wk.
Detroit	750	1,043	1,082	1,331	1,353	1,610	1,618	1,882	Yes	Yes	12 da.
Brooklyn	—	—	—	—	—	—	—	—	Yes	Yes	
Cleveland	833	1,000	1,000	1,167	1,167	1,333	1,333	1,500	Yes	Yes	2 wk. - 4 wk.
Houston	730	960	960	1,210	1,210	1,405	1,405	1,675	Yes	Yes	1 wk. - 4 wk.
Bronx	833	958	1,000	1,083	1,165	1,375	1,450	1,916	Yes	Yes	15 da.
Miami	625	792	792	958	958	1,125	1,125	1,333	Yes	Yes	1 wk. - 4 wk.
Buffalo	665	850	948	1,191	1,067	1,340	1,243	1,496	Yes	Yes	4 wk.
St. Louis	679	956	867	1,107	1,004	1,282	1,282	1,635	Yes	Yes	2 wk. - 4 wk.
Phoenix	591	650	650	795	795	1,013	1,013	1,294	Yes	Yes	15 da.
Cincinnati	416	538	538	750	750	1,083	1,083	1,417	Yes	Yes	2 wk. - 4 wk.
Baltimore	811	851	780	986	939	1,198	1,141	1,457	No	Yes	30 da.
Sacramento	905	1,000	1,274	1,404	1,475	1,626	1,626	1,792	Yes	Yes	1 yr. 2 wk. - 2 yr. 4 wk.
Atlanta	666	833	833	1,000	1,000	1,166	1,166	1,333	Yes	Yes	2 wk. - 3 wk.
Crown Point	708	790	790	875	875	1,000	1,000	1,166	No	Yes	2 wk. - 2 wk.
Portland	857	1,006	985	1,156	1,135	1,332	1,315	1,544	Yes	Yes	2 wk - 4 wk.
Denver	700	833	1,000	1,166	1,166	1,166	1,166	1,166	Yes	Yes	12 da.
St. Paul	875	1,107	1,023	1,295	1,197	1,515	1,347	1,705	Yes	Yes	2 wk. - 4 wk.
New York	—	3,083	Increase based on salary increases of judiciary-chief trial court of jurisdiction						Yes	Yes	1 wk - 4 wk.

REVIEW OF SALARY

A review mechanism should be established to periodically examine and evaluate the salary of the prosecutor in light of changing economic conditions. Current practice in many jurisdictions is to provide review and alteration of the prosecutor's salary only at the beginning of each term. This could result in a net decrease in the prosecutor's salary, as Trimble notes:

> A Constitutional prohibition against a salary increase during a term of office in Oklahoma means that the DA receives no salary increases or cost of living adjustment for 4 years. This is crazy. He is making 24% less when he ends the term than when he starts it.[74]

Unless statutory provision is made for periodic in-term increases in salary, a board or mechanism should be established with authority to review and revise prosecutors' salaries in light of changing economic conditions.

BENEFITS

A program of benefits should be established to complement the salary of the prosecutor and his staff. These benefits should include both health insurance coverage and provisions for accumulation of retirement benefits. Since it is comparatively rare for a prosecutor to serve exclusively as a prosecutor throughout his career, a method should be established whereby a prosecutor may be provided retirement coverage commensurate with the length of his service in office. Connecticut provides that the prosecutor on retiring "shall receive annually as retirement salary, for each year he has served in any such office, one-tenth of two-thirds the salary of the office which he held at the time of his retirement, as such salary may be changed from time to time; but in no event more than two-thirds of such salary".[75]

SUSPENSION

A means should be instituted whereby the prosecutor may be suspended from office. Suspension should be instituted as a punishment for actions of minor misconduct which do not warrant removal of the prosecutor. Suspension might also be instituted as a prelude to the institution of removal proceedings against the prosecutor. Suspension mechanisms should provide for hearing procedures at which the rights of the prosecutor are protected.

REMOVAL

Provision should be established for expeditious removal of the prosecutor when it has been fairly determined that he is no longer fit to hold office.

Various removal mechanisms are employed by different states. Impeachment is the most usual method of removal.[76] Removal by the Governor is another common method. Other methods of removal include removal by a court,[77] removal on recommendation of the Attorney General,[78] impeachment by the legislature,[79] or recall provisions.[80]

Grounds for removal also vary among the different states. Grounds for removal include such causes as "malfeasance, misfeasance, nonfeasance, or nonadministration in office",[81] "incompetency, neglect of duty or misuse of office when such incompetency, neglect of duty or misuse of office has a material adverse effect upon the conduct of such office",[83] and "incompetency, corruption, malfeasance or delinquency in office, or other sufficient cause".[84] Disbarment and conviction of a serious crime are other common grounds for removal. Removal proceedings, however, are seldom utilized: "The district attorney need fear ouster only for criminal activity, and even where evidence of such conduct exists, ouster proceedings are seldom employed."[85]

The method adopted for removal of the prosecutor should provide a clear statement and interpretation of all possible grounds for removal, and a speedy means of accomplishing the removal hearing. Protection of the rights of the prosecutor must be guaranteed by any system of removal.

footnotes

1. Advisory Commission on Intergovernmental Relations, *Report: State-Local Relations in the Criminal Justice System* 112 (1971) [hereinafter cited as *ACIR*].
2. National Advisory Commission on Criminal Justice Standards and Goals, *Courts* 230 (1973) [hereinafter cited as NAC *Courts*].
3. President's Commission on Law Enforcement and the Administration of Justice, *Task Force Report: the Courts* 73-74 (1967) [hereinafter cited as *Task Force Report: The Courts*].
4. See Appendix 1 — I *infra*.
5. *ACIR* 112.
6. *Del. Code Ann.* tit. 29 §2502, (1975).
7. *R.I. Gen. Laws Ann.* §42-9-1 (1970).
8. *Conn. Gen. Stat.* §51-278 (1960).
9. *Id.*, §51-282.
10. *Alaska Stat.* §44.23.050 (1962).
11. *N.J. Stat. Ann.* §2A: 158-1 (1971).
12. See "Prosecutor Indiscretion: A Result of Political Influence", 34 *Ind. L.J.* 477 (1959).
13. Johnson, "The Influence of Politics Upon the Office of the American Prosecutor", 2 *Am. J. Crim. L.* 187, 193 (1973).
14. *Id.* at 193.
15. Newman, "Prosecutor and Defender Reform: Reorganization to Increase Effectiveness", 44 *Connecticut B.J.* 567, 569 (1973).
16. *Id.* at 569.
17. A.B.A. *Project on Standards for Criminal Justice, Prosecution Function 61* (Approved Draft, 1970) [hereinafter cited as ABA *Prosecution Function.*]
18. Johnson, *supra* note 13, at 204.
19. *See* "Application of the Missouri Court Plan to Judicial Selection and Tenure in America Today", 15 *Buffalo L. Rev.* 378 (1965); "Judicial Selection and Tenure — the Missouri Plan", 58 *Illinois B.J.* 510 (1970); "Merit Selection and Merit Election of Judges", 4 *G. St. B. J.* 169 (1967).
20. *Ore. Rev. Stat.* §252-640(1) (1953).
21. Jacob, "Judicial Insulation — Elections, Direct Participation, and Public Attention to the Courts in Wisconsin", 1966 *Wisconsin L. Rev.* 801.
22. *Id.* at 809.
23. *Id.* at 812.
24. *Id.* at 811.
25. *See*, e.g., *Minn. Stat.* §487.03 (1961).
26. NDAA Prosecutors Surveys, 1976 data compilation. For additional data, the following may be used: NAAG, *The Survey of Local Prosecutors*, which is one of a series of invaluable reports on the Attorney General and on local prosecutors prepared by the Committee on the Office of the Attorney General of the National Association of Attorney Generals. Others in the continuing examination include *The Office of the Attorney General* (1971) *Survey of Local Prosecutors: Data Concerning 1000 Local Prosecutors* (1973), and *The Prosecution Function: Prosecutors and the Attorney General* (1974).

27. *See* Appendix 1 — I *infra.*
28. Jacob, *supra,* note 21, at 809.
29. Johnson, *supra,* note 13, at 194.
30. *See* Kuh, "Careers in Prosecution Offices", 14 *J. Legal Ed.* 175, 178 (1961).
31. NAAG, *The Prosecution Function: Prosecutors and The Attorney General* NDAA (1974) [hereinafter cited as NAAG *Prosecutor Function*].
32. Jacob, *supra* note 21, at 810.
33. Ori, "The Politicized Nature of the County Prosecutor's Office, Fact or Fancy? —The Case in Indiana", 40 *Notre Dame Lawyer* 292 (1965).
34. Engstrom, "Political Ambitions and the Prosecutorial Office", 33 *J. Politics* 190, 192 (1971). This figure may be deceptively low in estaimating prosecutors who do not intend to make a career of prosecution, since it only applies to those interested in leaving office for political reasons, not to seek a position in private practice.
35. Felkenes, "The Prosecutor: A Look at Reality", 7 *Sw. U. L. Rev.* 106 (1975).
36. *Task Force Report: The Courts* 72.
37. *See People ex rel Elliott v. Beneliel,* 405 Ill. 500, 91 N.E. 2d 427 (1950); Application of *Sposato,* 43 N.Y.S.2d 785, 180 Misc. 940 (1943).
38. *N.J. Stat. Ann.* §2A: 158-1 (1971).
39. *Pa. Stat. Ann.* tit. 16, §1401 (1956).
40. For an interesting interpretation of "practicing law" see *Riddle v. Roy,* 126 So. 2d 448 (1960), which concerns a Louisiana constitutional requirement of three years practice as eligibility for the office of district attorney. The court held that an attorney was "practicing law" as long as he was ready, willing, and able to practice law, even if he had no clients or conducted no legal business. Most states now use "admission to the practice of law" rather than "practicing law".
41. *See* NDAA Standards 4.1 — 4.3 re Certification, Training, and Education *infra.*
42. NAC *Courts* 229.
43. NAAG *Prosecution Function* 9.
44. *Task Force Report: The Courts* 73.
45. ABA *Prosecution Function* 60.
46. Taylor, "The State's Attorney's Dilemma", 16 *S.D. L. Rev.* 222, 226 (1971).
47. ACIR 113.
48. Morgan & Alexander, "A Survey of Local Prosecutors", 47 *State Gov't.* 42, 43 (1974)
49. California District Attorneys Association, *Uniform Crime Charging Standards* 54 (1974).
50. Bowley, "Law Enforcement Role in Consumer Protection", 14 *Santa Clara Lawyer* 555, 564 (1974). *See also,* "Consumer Protection: An Expanded Role for the Local Prosecutor", 44 *U. Cin. L. Rev.* 81 (1975).
51. Bowley, *supra* note 50, at 565-567.
52. *See* Busch, "Role of the District Attorney in Civil and Criminal Child Support Enforcement", 47 *LAB Bull.* 56 (1971).
53. *See* Wagoner, "Environmental Protection in California: Court Action Powers of State and Local Government Attorneys", 14 *Santa Clara Lawyer* 296 (1974).
54. *See* Stulberg, "Civil Alternatives to Criminal Prosecution", 39 *Albany L. Rev.* 359 (1975).
55. *Attorney General v. Tufts,* 239 Mass. 458, 489 132 N.E. 322, (1921).
56. *Task Force Report: The Courts* 73.
57. *Id.* at 73.
58. *Id.* at 74.
59. NAC, *Community Crime Prevention* 271 (1973).
60. ABA *Prosecution Function* 52.
61. Zody, "Kansas County Attorneys: A Survey Analysis", 2 *Kan. Prosecutor* 13 (Winter 1975).
62. Judicial Insulation, *supra* note 21, at 810.
63. *See also* the Commentary and Standards on Career Orientation *infra.*
64. NAAG *Prosecution Function* 11.
65. Gelber, "Who Defends the Prosecutor?", 14 *Crime & Delinquency* 315, 316 (1968).
66. *Id.* at 316.
67. NDAA, *Report on Proceedings, NDAA Metropolitan Prosecutor's Conference* 44 (1971). The information for Denver seems to be either inaccurate or incomplete, since the stated figures do not represent a 100% sample.
68. NAC, *Community Crime Prevention* 271 (1973).
69. NAAG, *Survey of Local Prosecutors* (1972).
70. NAAG *Prosecution Function.*
71. *Id.* at 11.
72. NDAA, *Report: Proceedings, NDAA Metropolitan Prosecutor's Conference* (1971); NDAA Prosecutors Surveys — 1976 data.
73. NAC *Courts* 230.
74. Trimble, "Here Comes the DA", 7 *Prosecutor* 476, 478 (1971).
75. *Conn. Gen. Stat. Rev.* §51-287 (1960).
76. *See* Appendix 1 — I *infra.*
77. In Connecticut, New Hampshire, and Texas.
78. *See Md. Const.* art. V, §7.
79. *See Md. Const.* art. V, §7; *Wash. Const.* art. 4, §9.
80. As in Oregon.
81. *Hawaii Rev. Stat.* §62-13 (1968).
82. *Md. Const.* art. V §7.
83. *Va. Code Ann.* §24.1-79.5 (1975 Supp.).
84. *Wash. Const.* art. 4, §9
85. "Private Prosecution: A Remedy for District Attorney's Unwarranted Inaction", 65 *Yale L.J.* 209, 212 (1955).

appendix 1 — I

NATURE OF THE PROSECUTOR

STATE	TITLE	JURISDICTION	AREA	SELECTION	TERM	REMOVAL
Alabama	District Attorney	Criminal-Civil	Judic. Dist	Elected	4 years	Impeachment
Alaska	District Attorney	Criminal-Civil	Judic. Dist	Appointed		Governor
Arizona	County Attorney	Criminal-Civil	County	Elected	4 years	
Arkansas	Dist. Pros. Att.	Criminal	Judic. Dist.	Elected	2 years	Impeachment
California	District Attorney	Criminal-Civil	County	Elected	4 years	Impeachment
Colorado	District Attorney	Criminal	Judic. Dist.	Elected	4 years	Impeachment
Connecticut	Prosecuting Att.	Criminal	County	Appointed	4 years	Court of Common Pleas
	State's Attorney	Criminal	County	Appointed	4 years	Superior Court

STATE	TITLE	JURISDICTION	AREA	ELECTION	TERM	REMOVAL
Delaware	No local prosecutor					
Florida	State's Attorney	Criminal-Civil	Judic. Circuit	Elected	4 years	
Georgia	District Attorney	Crim.-Civil App.	Judic. Dist.	Elected	4 years	Impeachment
Hawaii	City or County Att.	Criminal-Appeals	County	Elected	2 years	Impeachment
Idaho	Prosecuting Att.	Criminal-Civil	County	Elected	2 years	
Illinois	State's Attorney	Crim.-Civil App.	County	Elected	4 years	
Indiana	Prosecuting Att.	Criminal	Judic. Dist.	Elected	4 years	Impeachment Supreme Court
Iowa	County Attorney	Criminal-Civil	County	Elected	4 years	Recall, Impeachment
Kansas	County Attorney	Crim.-Civil-App.	County	Elected	2 years	
Kentucky	County Attorney	Misdemeanors-	County	Elected	4 years	
	Commonwealth Attorney	Felonies-St. Civil	District	Elected	6 years	Impeachment
Louisiana	District Attorney	Crim.-St. Civil	Judic. Dist.	Elected	6 years	
Maine	District Attorney	Criminal-Civil	Prosecutorial District (8)	Elected	2 years	Supreme Judicial Court
Maryland	State's Attorney	Criminal-Civil	Co. or City	Elected	4 years	Impeachment, AG
Massachusetts	District Attorney	Crim.-St. Civil-App.	Judic. Dist.	Elected	4 years	Impeachment, AG
Michigan	Prosecuting Att.	Crim.-Civil-App.	County	Elected	4 years	Governor
Minnesota	County Attorney	Crim.-Civil-App.	County	Elected	4 years	Governor
Mississippi	District Attorney	Felonies	Judic. Dist.	Elected	4 years	
	County Pros. Att.	Misdemeanors	County	Elected	4 years	
Missouri	Prosecuting Att.	Criminal	County	Elected	2 years	Suit
	County Attorney	Misdemeanor	County	Elected	2 years	Suit
Montana	County Attorney	Criminal-Civil	County	Elected	4 years	
Nebraska	County Attorney	Criminal-Civil	County	Elected	4 years	Governor
Nevada	District Attorney	Criminal-Civil	County	Elected	4 years	Suit by Accusation, Complaint
New Hampshire	County Attorney	Criminal-Civil	County	Elected	2 years	Superior Court
New Jersey	County Prosecutor	Criminal	County	Governor with consent of Sen.	5 years	
New Mexico	District Attorney	Criminal	Judic. Dist.	Elected	4 years	
					4 years	
New York	District Attorney	Crim.-App.	County	Elected	3 years	Governor
North Carolina	District Attorney	Criminal	District	Elected	4 years	
North Dakota	State's Attorney	Crim.-App.	County	Elected	2 years	Governor
Ohio	Prosecuting Att.	Crim.-Civil-App.	County	Elected	4 years	
Oklahoma	District Attorney	Criminal-Civil	District	Elected	4 years	Impeachment, Suit
Oregon	District Attorney	Crim.-Civil-App.	County	Elected	4 years	Recall, Suit
Pennsylvania	District Attorney	Civil-Crim.-App.	County	Elected	4 years	Impeachment
Rhode Island	No local prosecutor					
South Carolina	Solicitor	Criminal-St. Civil	Judic. Dist.	Elected	4 years	
South Dakota	State's Attorney	Criminal-Civil	County	Elected	2 years	Governor
Tennessee	District A.G.	Criminal	Judic. Dist.	Elected	8 years	Impeachment
Texas	County Attorney	Criminal-Civil	County	Elected	4 years	District Court
	District Attorney	Criminal	District	Elected	4 years	District Court
	Criminal D.A.	Criminal	County	Elected	2 years	
Utah	County Attorney	Crim.-Civil-Felonies	County	Elected	4 years	Court Trial, Referendum, Impeachment
Vermont	State's Attorney	Crim.-Civil-App.	County	Elected	2 years	Impeachment
Virginia	Commonwealth Attorney	Criminal-Civil	County or City	Elected	4 years	Circuit Court
Washington	Prosecuting Att.	Crim.-Civil-App.	County	Elected	4 years	Legislative Resolution
West Virginia	Prosecuting Att.	Criminal-Civil	County	Elected	4 years	Impeachment

STATE	TITLE	JURISDICTION	AREA	SELECTION	TERM	REMOVAL
Wisconsin	District Attorney	Criminal-Civil	County	Elected	2 years	Governor
Wyoming	County and Prosecuting Att.	Criminal-Civil	County	Elected	4 years	Governor

Source: The following chart is a composite developed by NDAA of material gathered from various sources, including

*1. NAAG, COAG, *Survey of Local Prosecutors* (June 1972)

2. NAAG, COAG, *The Prosecution Function* (1974)

*3. ACIR, "State-Local Relations in the Criminal Justice System" (Aug. 1971)

4. NDAA, "The Prosecuting Attorneys of the U.S. — 1965 (1966)

5. Statute research by Standards and Goals Staff. (NDAA)

[illegible]e states status updated to 1975-76 by National District Attorneys Association.

[illegible]ix 1 — II

PROSECUTOR SALARY AND BUDGET COMPARISON SURVEY 1975 - 1976

JURISDICTION	POPULATION	CURRENT BUDGET	NO. OF ASSTS.	ASST. SALARIES MIN.	ASST. SALARIES MAX.	CHIEF PROS. SALARY
Orange County (Calif.)	1,646,300	$ 5,45[illegible] 696	94	$14,412	$42,408	$45,360
Baltimore City (MD.)	900,000	2,653,918	96	13,5[illegible]	24,700	37,000
San Diego County (Calif.)	638,000	6,077,671	102	13,680	39,168	42,996
Cook County (Chicago, Ill.)	5,493,529	11,465,986	341	14,400	39,660	42,200
Sacramento County (Calif.)	700,000	4,739,113	69	13,238	34,723	38,377
Alameda County (Oakland, Calif.)	1,100,000	4,043,635	105	13,632	36,180	40,056
Bronx County (NY.)	1,478,000	6,032,230	151	13,000	40,000	40,800
Nassau County (NY.)	1,500,000	4,053,500	96	15,000	39,500	45,000
Dade County (Miami, Fla.)	1,389,400	3,638,422	80	12,000	38,000	46,000
Harris County (Houston, Texas)	2,000,000	4,191,426	109	14,136	33,168	43,120
Los Angeles County (Calif.)	7,100,000	28,014,818	605	15,516	44,000	44,028
Oakland, CA (Alameda County)	1,100,000	4,044,000	105	13,632	36,180	40,056
Phoenix, AZ (Maricopa County)	1,119,000	2,567,060	80	12,000	30,000	23,500
San Jose, CA (Santa Clara County)	1,665,000	4,537,589	69	14,424	38,463	46,128
Minneapolis, MN (Hennipin County)	981,000	1,600,000	54	13,000	28,500	32,000
St. Louis, MO	957,100	1,240,000	37	11,000	22,000	22,500
Hackensack, NJ (Bergen County)	911,480	1,800,000	23 (72 Inv.)	14,500	34,000	40,000
Buffalo, NY (Erie County)	1,127,000	1,838,601	62	10,680	32,716	48,998
Seattle, Washington (King County)	1,144,000	2,300,000	60	13,240	27,156	30,300
Milwaukee, WI	1,060,000	2,028,000	53	16,000	33,300	37,301
St. Paul, Minn. (Ramsey County)	483,309	1,100,000	31	14,676	34,104	33,500
Salt Lake City, Utah (Salt Lake County)	506,000	1,200,000	33	12,000	25,000	25,250

Source: NDAA Prosecutor Surveys conducted in 1976.

appendix 1 — III

JUDICIAL SALARIES IN APPELLATE AND TRIAL COURTS

State	Supreme Court	Intermediate Appellate Court	General Trial Court	Date of Last Salary Change
Alabama	$ 33,500	$ 33,000	$ 25,000	12/ 1/75
Alaska	52,992		48,576	6/ 1/75
Arizona	37,000	35,000	33,000	1/ 6/75
Arkansas	29,563		27,500	7/ 1/75
California	57,985	54,361	45,299	9/ 1/75
Colorado	35,000	32,000	28,000	7/ 1/73
Connecticut	36,000		34,500	1/ 3/73
Delaware	42,000		39,000	7/ 1/75
Florida	40,000	38,000	36,000	1/ 1/75
Georgia	40,000	39,500	32,500	7/ 1/75
Hawaii	45,000		42,500	1/ 1/76
Idaho	31,500		28,500	7/ 1/76
Illinois	50,000	45,000	37,000	7/ 1/75
Indiana	38,100	38,100	26,500-31,500	6/ 1/75
Iowa	36,000		31,500	7/ 1/75
Kansas	32,500		27,500	7/ 1/75
Kentucky	39,000	37,000	35,000	7/ 1/76
Louisiana	50,000	47,500	42,500	8/ 1/75
Maine	26,000		25,500	4/ 1/74
Maryland	44,100	41,400	39,200	7/ 1/75
Massachusetts	40,788	37,771	36,263	1/ 1/74
Michigan	43,500	41,961	26,500	1/ 1/76
Minnesota	36,500		32,000	7/ 1/73
Mississippi	34,000		30,000	7/ 1/74
Missouri	36,500	34,000	31,000	7/ 1/75
Montana	27,000		25,000	7/ 1/75
Nebraska	35,500		32,500	1/ 1/75
Nevada	35,000		30,000	1/ 1/75
New Hampshire	34,060		33,952	7/20/75
New Jersey	48,000	45,000	40,000	6/28/74
New Mexico	33,500	32,000	31,000	7/ 1/76
New York	60,575	51,627	46,998	7/ 1/74
N. Carolina	38,000	35,500	30,500	7/ 1/73
North Dakota	32,000		30,000	7/ 1/75
Ohio	40,000	37,000	34,000	1972
Oklahoma	30,000	26,000	25,000	7/ 1/75
Oregon	38,700	37,500	35,000	7/ 1/76
Pennsylvania	50,000	48,000	40,000	12/ 1/72
Rhode Island	33,000		31,000	5/26/74
South Carolina	37,762		37,762	7/ 1/75
South Dakota	28,000		26,000	4/ 1/75
Tennessee	39,330	36,052	32,775	9/ 1/74
Texas	47,400	41,800	32,800	9/ 1/76
Utah	30,000		27,500	7/ 1/75
Vermont	29,900		25,800	7/ 1/74
Virginia	$ 44,000	$ 41,000	$ 36,900	7/ 1/76
Washington	39,412	36,325	34,250	7/ 1/75
West Virginia	35,000		31,500	7/ 1/76
Wisconsin	42,462		28,788	7/ 1/75
Wyoming	32,500		30,000	7/ 1/75
National Average	38,152a	39,070b	32,527a	NA
District of Columbia	40,140		37,800	10/ 1/75
Federal System	63,000	44,600	42,000	10/ 1/75
Commonwealth of Puerto Rico	32,000		26,000	7/31/74

Source: National Center for State Courts, *Survey of Judicial Salaries in State Court Systems*, April, 1976.

a Arithmetic average figured for the 50 states.

b Arithmetic average figured for the 26 states that have intermediate appellate courts.

NOTE; Salaries including supplements are shown in parentheses immediately beneath the figures for state-paid salaries.

appendix 1 — IV

Floating Salary Statutes

California, Massachusetts and Tennessee provide for judicial salary increases based on a consumer price index. California utilizes the California consumer price index while Massachusetts and Tennessee use the U.S. consumer price index. Maryland provides automatic salary increases for the judiciary based on general salary increases awarded to all state employees. Rhode Island provides for longevity increases as shown in this section. The statutory authority for these automatic salary increases follow.

California: The California Government Code 68203 provides:

> "In addition to the increase provided under this section on September 1, 1968, on the effective date of the 1969 amendments to this section and on September 1 of each year thereafter, the salary of each justice and judge named in Sections 68200 to 68202, inclusive, shall be increased by that amount which is produced by multiplying the then current salary of each justice or judge by the percentage by which the figure representing the California Department of Industrial Relations has increased in the previous calendar year."

The judges named in 68200 to 68202 include the Chief Justice of California, associate justices of the Supreme Court, justices of courts of appeal, superior court judges and municipal court judges.

Maryland: Maryland Code I-703 Pay Plan; Automatic Salary Increases, provides:

> "(a) Pay plan. — Section 27, Article 64A of the Code applies to judicial salaries, except for its provisions authorizing emergency salary increases with approval of the Board of Public Works.
>
> "(b) Automatic salary increases. — Whenever a general salary increase is awarded to state employees, each judge shall receive the same percentage increase in his salary as awarded to the lowest step of the highest salary grade for classified employees in the state salary plan."

Massachusetts: Massachusetts General Laws Annotated Chapter 30 §46 provides:

> "The director of personnel and standardization shall annually determine the percentum difference between the average cost of living for the next preceding calendar year and the average cost of living for the calendar year during which the weekly rates prescribed in the above salary schedule were last revised, both as shown by the United States Consumer Price Index for such years, and shall prepare and submit to the general court a report of such determination within a reasonable time after said index for the next preceding calendar year has become available. Whenever such determination indicates a percentum increase or decrease of at least three percentum, such report shall be accompanied by a recommendation for legislation to provide a corresponding percentum increase or decrease in the salaries of all employees in the service of the commonwealth and paid from the treasury thereof. . . . Whenever such determination indicates a percentum increase of at least three percentum, as hereinbefore described, such report shall be accompanied by a recommendation of legislation to provide a corresponding percentum increase in the salaries of the chief justice and associate justices of the supreme judicial court, the appeals court, the superior court and the municipal court of the city of Boston, the judges and associate judges of the land court, the chief judge and the judges of probate and insolvency, the chief justice and the justices of the district courts other than the municipal court of the city of Boston, the justices and special justices of the Boston Juvenile Court, the justices of the Worcester, Bristol County and Springfield juvenile courts, and special justices of the district courts, including the municipal court of the city of Boston, such increase to take effect as of the beginning of the first payroll period of the year in which such report is submitted."

Rhode Island: General Laws of Rhode Island 36-4-16.5 provides:

> Judges as well as all other court personnel are entitled to longevity increments. Longevity after seven years 5%, after

eleven years 10%, after fifteen years 15%, after twenty-five years 20%.

Tennessee: T.C.A. §82303 provides:

> Beginning September 1, 1974, the compensation of judges and chancellors shall be the base salaries fixed in this law adjusted to reflect the percentage of change in the Consumer Price Index as reported by the U.S. Department of Labor. The adjustments shall occur on September 1, 1974 and on September 1 of every year thereafter for the ensuing year commencing September 1.

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Virginia Code Annotated §24.1-79.5 (Supplement, 1975).

Washington Constitution article 4, §9.

related standards

ABA, *The Prosecution Function:* 1.1, 2.1, 2.2, 2.3

NAC, *Community Crime Prevention:* 12.9, 14.1
Courts: 12.1

NDAA: 1.1 relates to: 1.2, 25.2
1.2 relates to: 1.1, 1.3, 1.4, 4.1, 25.2
1.3 relates to: 1.2, 1.4, 1.5, 2.1, 2.2, 2.3, 4.1, 4.2, 4.3, 25.1, 25.2
1.4 relates to: 1.2, 1.3, 25.1, 25.2
1.5 relates to: 1.3, 25.1

STATE OF ALASKA
FISCAL NOTE

Revision Date 1983

I. REQUEST

Bill/Resolution No.: HJR 34
Title: Election of Prosecuting Attorneys
Sponsor: Representative Liska
Requestor: House Judiciary

II. FISCAL DETAIL

Agency Affected: Office of the Governor
Program Category Affected: Exec. Operation
BRU, Program or Subprogram(s) Affected: Division of Elections

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 83	FY 84	FY 85	FY 86	FY 87	FY 88
OPERATING						
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 COMMODITIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND	-0-	-0-	-0-	-0-	-0-	-0-
FEDERAL FUNDS						
OTHER (Specify Source)						

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

III. SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL: Not provided

IV. ANALYSIS: HJR 34 has no fiscal impact as the Division of Elections plans for the inclusion of constitutional amendments on the general election ballot.

IV. ANALYSIS: Attach a separate page for any Analysis

Prepared By: Dana C. Coffman, Deputy Director Phone: 586-6181
Division: Division of Elections Date: April 27, 1983

Approved by Commissioner: [signature] Date: 4/28/83
Department: Lieutenant Governor

Distribution:
Original to Legislative Finance
Copy to Office of Management and Budget (for Legislature introduced bills)
Copy to Department (for Governor introduced bills)
Copy to Sponsor
Copy to Requestor (if different from Sponsor)

3/8/83

HJR

36

POUCH V
JUNEAU, ALASKA 99811
465-4990

P.O. BOX 4-1325
ANCHORAGE, ALASKA 99509
248-1515

JR

CHAIRMAN
HOUSE JUDICIARY COMMITTEE
MEMBER
HOUSE RESOURCES COMMITTEE

Representative Charlie Bussell

ALASKA STATE LEGISLATURE
HOUSE OF REPRESENTATIVES

April 7, 1983

Mr. Arthur H. Snowden, II
Administrative Director
Alaska Court System
303 "K" Street
Anchorage, Alaska 99501

Dear Mr. Snowden:

Thank you for your recent correspondence of mobilized informational endeavors relative to HJR 36, "Relating to the confirmation of justices and judges by the Legislature.

As you are aware, the maximum ethical validity of the measure was discussed with consummate procedural proficiency on Wednesday, March 30th, and passed out of Committee. I am certain that on the House floor it will be subject to studies of perceptive logistical structure and strategic philosophical rationale. Certainly qualitative relevant approximations may be forthcoming in order to reduce any perceived corrective anticipatory disparity in the orchestrated hierarchical integrity of the system.

Your fears of lengthy delays, as a functional administrative tactician, would not be of significant import, I would hope, through progressive humanistic accommodation and adapted management performance. It would be expected that accredited responsive studies would imply that tabulated definitive placement would render little harm to that tabulated definitive placement would render little harm to proficient concurrent stabilization now apparent in the system.

The resolution's sponsor seemed to believe that our courts' systematized multilateral uniqueness seems to fail in comprehensive informational responsiveness to the electorate. In particular, he expressed the idea that the qualified deliberative selectivity process indulged in by Judicial Council members is negatively responsive to the public, since they avoid the elective mode, in their positions.

As to your lack of opportunity for input, your staff--namely Ms. Karla Forsythe or Mr. Rick Barrier--have established a standing, weekly telephone call to the Committee staff in order to ascertain the topics regularly scheduled for the ensuing week. I have no knowledge as to how or why you were not informed.

Thank you for involving yourself in the legislative process.

Yours very truly,

Representative Charlie Russell
Chairman, Committee on Judiciary

CB:cmz

cc: Representatives John Liska, Vice Chairman
Joe Hayes
Ramona Barnes
Hugh Malone
Don Clocksin
Ron Wendte

Alaska State Legislature
House of Representatives

P.O. BOX 2716
ANCHORAGE, ALASKA 99510
(907) 276-4506

WHILE IN JUNEAU
POUCH V
JUNEAU, ALASKA 99811
(907) 465-4939

REPRESENTATIVE JERRY WARD
DISTRICT 13

MEMBER FINANCE COMMITTEE
CHAIRMAN OF SUBCOMMITTEE ON
COMMERCE & ECONOMIC DEVELOPMENT
CHAIRMAN OF SUBCOMMITTEE ON LABOR
MEMBER OF SUBCOMMITTEE ON STATE LOANS

MAR 1983
RECEIVED

MEMORANDUM

DATE: March 30, 1983

TO: Representative Charles Bussell, Chairman
House Judiciary Committee

FROM: Representative Jerry Ward

SUBJ: House Joint Resolution No. 36

Under our present system, the Governor appoints supreme court justices and superior court judges from lists prepared by the Alaska Bar Association and the Judicial Council. Since neither the Alaska Bar Association nor the Judicial Council are elected by the general public, there is a danger that this will be perceived as a self-serving process. By extending the function of legislative confirmation to these positions, this resolution brings the general public back into the process, allowing for public hearings and the expression of public will.

THIRTEENTH LEGISLATURE

FISCAL NOTE

I. REQUEST

Bill/Resolution No. HOUSE JOINT RESOLUTION NO. 36

Title Relating to the confirmation of justices and judges by the legislature.

Requested by House Judiciary Committee Date 3/25/83

II. FISCAL DETAIL

Agency Affected Legislative Affairs Agency

Program Category Affected General Government

BRU, Program, Or Subprogram(s) Affected Session

(Note: If more than one budget component is affected, separate line-item amounts and funding for each component in the analysis section.)

EXPENDITURES (Thousands of Dollars)

	FY 83	FY 84	FY 85	FY 86	FY 87	FY 88
100 PERSONAL SERVICES		-0-				
200 TRAVEL		-0-				
300 CONTRACTUAL		-0-				
400 COMMODITIES		-0-				
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS,CLAIMS,ETC.						
TOTAL		-0-				

FUNDING (Thousands of Dollars)

GENERAL FUND		-0-				
FEDERAL FUNDS						
OTHER (Specify Source)						

POSITIONS None

FULL TIME						
PART TIME						
TEMPORARY						

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

It is estimated that no additional fiscal impact will result from this resolution.

IV. DATE 03-25-83 PREPARED BY Wally Harrison, Director, Admin. Svcs.

AGENCY Legislative Affairs Agency

PHONE 465-3850

Original: Legislative Finance

cc: Budget and Management

Prime Sponsor (First Legislator Named)

HJR

45

JR 45

98TH CONGRESS
1ST SESSION

H. J. RES. 23

Proposing an amendment to the Constitution of the United States relative to abolishing personal income, estate, and gift taxes and prohibiting the United States Government from engaging in business in competition with its citizens.

IN THE HOUSE OF REPRESENTATIVES

JANUARY 3, 1983

Mr. PAUL (for himself and Mr. MCDONALD) introduced the following joint resolution; which was referred to the Committee on the Judiciary

---

JOINT RESOLUTION

Proposing an amendment to the Constitution of the United States relative to abolishing personal income, estate, and gift taxes and prohibiting the United States Government from engaging in business in competition with its citizens.

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled (two-thirds of each House concurring therein), That the following article is proposed as an amendment to the Constitution of the United States, which shall be valid to all intents and purposes as part of the Constitution when ratified by the legislatures of three-fourths of the several States:

"ARTICLE —

"SECTION 1. The Government of the United States shall not engage in any business, professional, commercial, financial, or industrial enterprise except as specified in the Constitution.

"SECTION 2. The constitution or laws of any State, or the laws of the United States, shall not be subject to the terms of any foreign or domestic agreement which would abrogate this amendment.

"SECTION 3. The activities of the United States Government which violate the intent and purposes of this amendment shall, within a period of three years from the date of the ratification of this amendment, be liquidated and the properties and facilities affected shall be sold.

"SECTION 4. Three years after the ratification of this amendment the sixteenth article of amendments to the Constitution of the United States shall stand repealed and thereafter Congress shall not levy taxes on personal incomes, estates, and/or gifts.".

○

HJR 45

I

98TH CONGRESS
1ST SESSION

H. R. 538

To amend the Internal Revenue Code of 1954 to repeal the estate and gift taxes and the tax on generation-skipping transfers.

IN THE HOUSE OF REPRESENTATIVES

JANUARY 6, 1983

Mr. PHILIP M. CRANE introduced the following bill; which was referred to the Committee on Ways and Means

---

A BILL

To amend the Internal Revenue Code of 1954 to repeal the estate and gift taxes and the tax on generation-skipping transfers.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) chapter 11 of the Internal Revenue Code of 1954 (relating to estate tax) is hereby repealed.

(b) Chapter 12 of such Code (relating to gift tax) is hereby repealed.

(c) Chapter 13 of such Code (relating to tax on generation-skipping transfers) is hereby repealed.

(d)(1) The repeal made by subsection (a) shall apply to the estates of decedents dying after the date of the enactment of this Act.

(2) The repeals made by subsections (b) and (c) shall apply with respect to transfers made after the date of the enactment of this Act.

O

FARM JOURNAL
AUGUST 1979

FARM Family Living®

They sued the IRS —and won

Victories by two widows in federal estate tax cases may help other farm women who feel they have been denied justice

This is the first of two articles about farm women who have won court battles in estate tax cases.

By LAURA LANE

Her name may appear in countless law books, but Bessie Craig remains an unassuming woman. She has a head for business and in preparation for testimony in her case against the U.S. she was able to produce bank checks written 30 years earlier. Now that sons operate the farm, Mrs. Craig lives in a small town, enjoying family and friends.

A farm-reared South Dakota attorney, Kenneth L. Gosch knows firsthand about "the value of a woman in the family business."



Photos: Richter's House of Portraits



Probably you have never heard of Bessie Craig or Lura Otte, but these unassuming farm women are true heroines. Both are widows, courageous in a special way.

They pioneered in a setting unfamiliar to them—the federal courts. Both hired competent attorneys to help them press for justice in estate tax cases. Each won—not just for herself but for other farm wives who have worked along with their husbands, managed and sometimes scrimped to have a good life and, in the process, build a farm estate to pass along to their children. Here are their stories:

Bessie Craig vs. The United States of America

FACTS: Bessie married Clarence Craig in 1925, and they started farming from scratch on rental land in Brown County, S.D. From day one of their 43 years of married life, Bessie was the bookkeeper—she had studied bookkeeping and typing in high school, and she developed her own form of enterprise accounting.

The Craigs were good farmers and good managers. They bought their first farm during the Depression (1930), and from time to time borrowed money to add other parcels to their holdings. They raised wheat, corn, oats, barley and flax, and they had stock, too—a cow-calf operation, hogs, sometimes sheep and a sideline Shetland pony business.

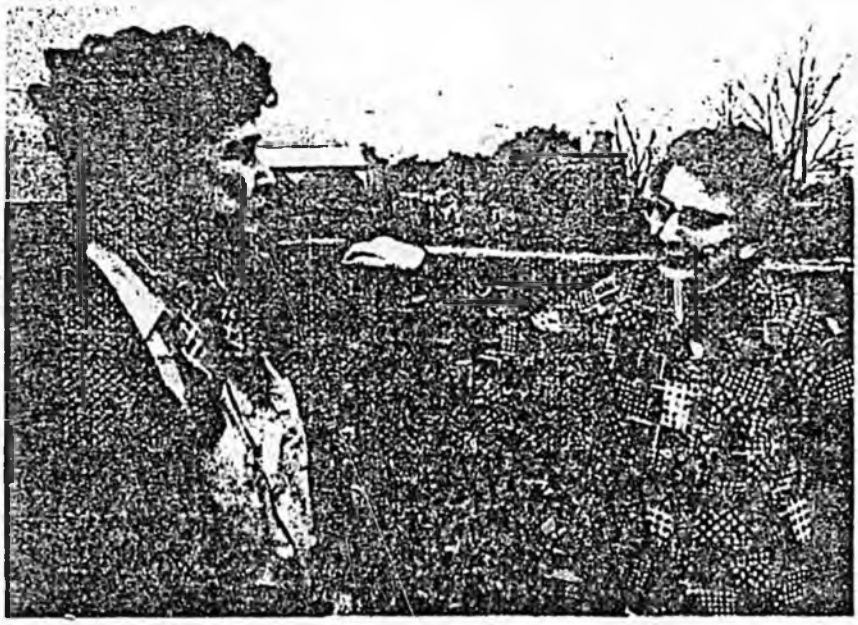
Early in their marriage Bessie worked in the fields, and she was always available to haul grain or stock. Once she trucked a load of horses from Missouri to South Dakota. Somehow she found time to raise a big garden and do a great deal of canning—vegetables, fruit, meat.

The Craigs' five children helped as they grew old enough, but that wasn't sufficient. Clarence and Bessie together hired farm laborers who "lived in." Bessie cooked for them, did their laundry, mended all their clothing, cleaned their quarters.

She had one enterprise of her own—a butter and egg route in town. She churned by hand and molded the butter; and the chickens were her special responsibility. "I'd get up in the middle of the night to see after my baby chicks," she reminisced to me not long ago in her comfortable living room. The money from this and all farm sales went into a single bank account in both names.

When Clarence and Bessie went on cattle-buying trips, she usually wrote the checks. And she was the one who hired truckers to deliver the stock to the farm. A favorite meal of truckers was hamburgers and homemade cherry pie, she says.

The Craigs were fortunate to have an astute attorney, Douglas Bantz of Aberdeen, who persuaded them as early as 1958 to "equalize" their holdings for estate tax purposes. When Clarence died following a car accident in 1968, he held title to 5½ quarter sections of land, Bessie to 7½, and they owned one parcel of pastureland in joint tenancy. In his will Clarence set up a trust, through which his hold-



Lura Otte, right, keeps up with changes in estate tax laws and alters her estate plan accordingly. "These days a widow needs all the help she can get," she tells the author, Laura Lane, left. Mrs. Otte especially values the continuing support of two sons and three daughters, all in farming. The youngest son, unmarried, lives in the family home with her. Mrs. Otte remains a record-keeper and keen analyst of commodity market trends.



Photos: John Starkey, Black Star

Elmer E. Lyon was the first attorney to sell the Tax Court on the idea that farming can be a team operation, involving both husband and wife

ings went to the children. Bessie inherited only household goods and the family car, since she already owned half of the farm (966.5 acres). Neither the South Dakota Department of Revenue nor IRS contested her ownership of real property.

THE ISSUE: At stake was personal property valued at $265,405.09—machinery worth $53,938.50; livestock, including 620 head of cattle, valued at $167,864.56; and miscellaneous assets (stored grain, interest in several co-ops, etc.) worth $43,602.03.

Attorneys for the U.S., strictly interpreting the Tax Code, claimed Bessie owned none of this personal property and said she therefore owed IRS an additional $42,318.79 in tax. (A tax she describes as "a whopper" already had been paid by the estate.) Bessie forked over the tax deficiency, but reserved the right, as executrix, to sue to get the money back.

Bessie's attorneys, Kennith L. Gosch and Harry N. Sandstrom (then partners of Mr. Bantz), chose to fight the case on their own home ground—that is, in District Court in Aberdeen. They preferred this to the Tax Court, which they feel often favors IRS.

By the time the case began on a blizzardy day in November, 1977, Bessie had done her homework. In one instance that meant digging up a check she had written in 1946—more than 30 years earlier.

It was easier to find records than to keep her cool when a U.S. tax attorney accused her of "a self-serving assertion not in accordance with the objective facts." She could not deny that on federal income tax returns (which Bessie always prepared for review by a CPA) that "Mr. Craig is listed as a farmer while Mrs. Craig is not listed as having an occupation." Nor had Bessie and Clarence ever filed a partnership income tax return, the government's attorneys pointed out.

Bessie had a chance to testify in her own behalf ("I wasn't scared," she told me), and so did three of the Craig children and the family banker. The Justice Department attorneys from Washington, D.C., were polite to Bessie, but out of her hearing they often chided her counsel on the futility of her case. Nevertheless, attorneys Gosch and Sandstrom kept hammering away at the idea that if it had not been for Bessie's help, Clarence would have had to employ another hired man. And they never let anyone forget that Bessie had been a joint decision-maker with her husband.

"The best point in Bessie's favor was that she and Clarence really did operate as farm partners," attorney Gosch told me.

He explained to me why he and his partner had delayed filing suit against the U.S. for several years. "We felt there was a changing mood in the country. The longer we waited, the more people would realize the value of a woman in a family business."

THE VERDICT: Judge Fred J. Nichol wrote the Court's decision announced on June 14, 1978. Some of his statements were music to a farm wife's ears: "All in all, the efforts of Bessie Craig, in the operation of the family farm, as well as her capital contributions in income derived from her land, can properly be characterized as those of a partner, in the fullest business sense of the word . . .

"The Court will not ignore this farm wife's contribution to the success of the business as the Internal Revenue seeks to do . . . (T)he plaintiff is entitled to the refund sought."

In time, Bessie got back her $42,318.79 plus interest. She had to pay attorneys' fees, of course, but it is a great satisfaction "to get justice," she says with a proud smile.

Now Bessie's place in history is assured—in future law books, later generations will study "Craig vs. The United States of America."

Lura Otte vs. Commissioner of Internal Revenue

FACTS: Everett and Lura Otte farmed in Jackson County, Ind., fol-

lowing their marriage in July 1932. Like the Craigs, they acquired land by the "borrow-then-pay-for" method, using farm income to buy several tracts to add to their 103-acre "homeplace" Everett bought before their marriage. They held title jointly, or as Indiana law puts it, "as tenants by the entireties."

Under Indiana law, income from such joint property belongs to spouses in equal shares, and "each spouse is considered to have paid from his or her separate funds one half of the cost of any property acquired through payment of the income from such property."

In 1947 Everett inherited from his father one-quarter interest in 20 acres. He and Lura then bought out the three other heirs—one brother and two sisters. Lura also received an inheritance—$2,170 from the estate of her mother in 1951. She used most of it to buy an Oliver 66 tractor and the remainder to install running water and a bath in a farm house the Ottes owned.

The Ottes began farming with horses (as the Craigs had done), and Lura would drive a team to harrow, disk, plant or haul hay. Later she learned to drive a truck and made trips to town for feed. When Everett was "working at another place," Lura helped care for the stock and did the milking. She kept chickens, too; premiums for an endowment life insurance policy on Everett were paid with her hen-and-egg money.

One enterprise of the Ottes was raising certified seed. Lura took responsibility for picking out odd kernels, and she also handled most orders and deliveries. She set out cabbages and tomatoes; helped harvest both.

Somehow she managed to keep track of markets to determine "the best day to sell hogs." She was in charge of many financial affairs, including the bookkeeping.

Everett and Lura Otte reared five children—two sons now farm land that Lura owns.

In 1966 Everett had an opportunity to go to Russia as part of a farmer exchange program. Beforehand he decided to get his affairs in order, and that included some estate planning, which he had learned about at Farm Bureau meetings. On the advice of his attorney, Everett transferred approximately 260 acres to Lura separately, of the 636 acres jointly owned. He did this for several reasons: to cut estate taxes in the event of his death, to compensate Lura for her hard work and give her more experience in managing real estate, and to lessen his own responsibilities, even though at age 61 he was in excellent health and had never had any serious illnesses.

About a year after the trip to Russia (Oct. 10, 1967) Everett Otte died of a cerebral hemorrhage.

THE ISSUES: The IRS and Lura Otte had several bones of contention on federal estate taxes due, but the principal one was IRS's contention that none of the real and personal property reported on the estate tax return originally had belonged to Lura, with the exception of the inheritance from her mother. In other words, her contribution had not been of "money or money's worth." IRS billed Lura for an additional $7,943.44. This was "widow's tax," because if Lura had died first, Everett would have been recognized as the owner and not billed for a deliquency.

Lura contended IRS had not given her proper credit and said she was due a refund of federal estate tax amounting to $1,870.29.

"I just felt I had made a considerable contribution to buying, upkeep and farm expenses, but in the eyes of IRS a woman's work counts as nothing," she told me in reviewing her battle in the federal Tax Court in Indianapolis.

Was she frightened? "No, I felt secure with my figures. I had to supply complete records for every year we had farmed, and it was those farm records that convinced the judge."

Her principal attorney, Elmer E. Lyon of Indianapolis, adds: "Mrs. Otte's openness and honesty couldn't be ignored. She had never considered herself as a partner of her husband—women didn't in an earlier era, even if they were outstanding performers like Mrs. Otte. But we were able to sell the court on the idea that Everett and Lura were a husband-and-wife team."

THE VERDICT: The concept of a husband-wife team was recognized by Judge Graydon G. Withey in his memorandum decision of March 28, 1972. He noted that the home farm had been in Everett's name only until 1958, but added: "We believe the enhanced value of the homeplace resulting from (Everett and Lura) working as a team constitutes jointly acquired property subject to equal division for estate tax purposes . . .

"Lura's efforts, industry and skills were not limited to those of an ordinary housewife and contributed to the success and growth of the overall farming operation."

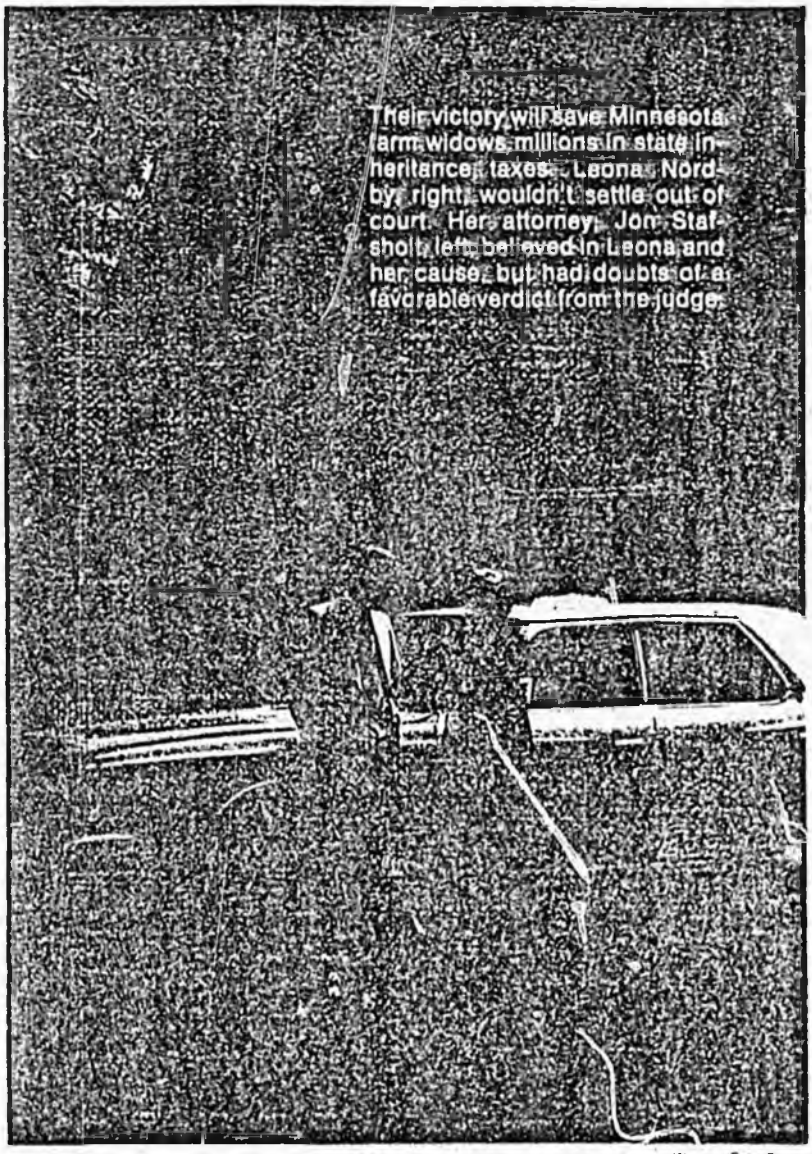
The money involved was not an enormous sum by today's inflated standards, but Lura Otte was satisfied in the knowledge that a woman's contribution was officially recognized, despite strenuous objection by IRS. She keeps up with federal estate tax law and believes it should be changed to give justice to "women up and down the road who are milking cows, driving tractors." When told that her case had helped other women she had never heard of, she said: "Really? Well, I'm happy that is the case."

The 1978 change in the federal tax law that allows a widow or widower to "earn" and exclude from estate tax 2% a year of jointly held property often is referred to as "the Otte Amendment," attorney Lyon says. That's an unexpected reward for Lura Otte.

Many other widows have contributed to farm estate building and conserving, letters to FARM JOURNAL tell us, but whether they could win in the courts depends on individual circumstances. What a woman needs is a sense of her own worth, records to back her up, some money for legal fees, a determination to see justice done—and the courage of a Bessie Craig or a Lura Otte.

More on Estate Planning

Laura Lane's detailed report, "How the Revenue Act of 1978 Affects Your Estate Plan," a companion piece for *FARM JOURNAL's Estate Planning Idea Book*, is just off the press. To order, send $1 plus 40¢ delivery charge to: Revenue Act, Farm Journal, Box 1927, Philadelphia, Pa. 19105. Or get the report free with your order of the *Estate Planning Idea Book*, available from the same address for $14.95 plus 70¢ delivery charge. Both items are tax-deductible. ◁



Their victory will save Minnesota farm widows millions in state inheritance taxes. Leona Nordby right, wouldn't settle out of court. Her attorney, Jon Stafsholt, left, believed in Leona and her cause, but had doubts of a favorable verdict from the judge.

Photo: Felix Farrar

Two states recognize a farm wife's worth

Landmark court victories in Minnesota and Wisconsin may help more women win estate tax cases

By LAURA LANE

Late in the Twentieth Century we still have pioneers, and I am fortunate to know one. Her name is Leona Nordby, and she is a soft-spoken, well-groomed, fiftyish farm widow who lives in Grant County, Minn. Leona did something no Minnesota farm woman had ever done before: She won a fight with the state's Commissioner of Revenue in an inheritance tax case.

You can even put a price tag on what her victory means to other farm women—$2,500,000 is the amount of revenue the state will not collect this biennium because of the decision in

This is the second of two articles about farm widows who have won court battles in estate tax cases.

Leona's favor. That's money which in the past has been paid by farm widows who had held farm property in joint tenancy with their husbands. Add another $1.7 million usually forked over by widows who have been deeply involved in other kinds of family businesses.

Money (about $4,000 in taxes) was important, but it wasn't the prime consideration in the case of *Leona Nordby vs. Commissioner of Revenue*. Her fight was for justice for herself and others.

The principal issue was whether the full value of the joint property was subject to inheritance tax at the death of Leona's husband, Lewis M. Nordby. Leona had contributed equal effort to earning income that enabled the couple to buy the property in the first place, so Leona contended she owed inheritance tax on only half—her husband's half. FARM JOURNAL readers have known for years about this legalized discrimination that puts no financial value on a woman's farm work in field, barn or office. It isn't recognized as "money or money's worth" in common-law states (42 of the 50).

When Leona filed her state inheritance tax return following her husband's death, she based her payment on half-ownership plus a widow's exemption, with full knowledge that she was asking for trouble. As her attorney, Jon Stafsholt of Elbow Lake, had ▷

foreseen, the Commission of Revenue rejected Leona's claim. The next step was to appeal to the state Tax Court.

Stafsholt felt the Minnesota statute discriminated against women in practice if not in language and was eager to challenge the interpretation.

Several factors favorable to Leona's case were listed for me by attorney Stafsholt:

- The case could be heard on home ground—in the courthouse at Elbow Lake, thanks to new Minnesota Tax Court procedure.
- The presiding judge had been a country lawyer earlier in his career, so he knew something about farm women's work habits.
- The Minnesota Legislature was considering an Equal Rights Amendment at the time.
- A few months before, a Wisconsin widow, Doris Kersten, had won a similar action against the Department of Revenue in her neighboring state (more about this case later). Attorney Stafsholt says: "Actually, the Kersten case has almost no bearing on Minnesota law, but knowledge of a decision like that puts the judges in tune with the trends."

The gloomy factor was that no one had ever successfully challenged Minnesota's Inheritance Tax Department on "the widow's tax."

Revenue Department officials tried to settle out of court with Leona before the case came to trial. First they offered to exclude 20% of the estate from Minnesota inheritance tax, then 25%, then 30% and finally 35%. That posed a real dilemma. Stafsholt explained to me:

"I told Mrs. Nordby it was probably in her own interest to accept that offer—the dollar amount wasn't significantly less and it was a sure thing. Taking the appeal to court was risky, as I had warned her.

"She thought about the offer for a week and then asked again: 'If I settle out of court, will this help other farm women?' I told her, no it wouldn't. That settled the matter. She said, 'Let's go to court then.' It was a courageous decision."

Testifying in Leona's behalf were people who knew her well: two farmers—a neighbor and her husband's brother; her own brother and Leona herself. . . "an excellent, soft-spoken witness," Stafsholt describes her. She followed his two bits of advice: "Think before you reply to a question. Tell the truth."



Stafsholt considers *Leona Nordby vs. Commissioner of Revenue* the most important case of his career thus far. His client, Nordby, now rents out the farm and works as a nurse's aide in an Elbow Lake Hospital. She says the case has changed her life and views in several respects.

What the testimony revealed: Shortly after Leona and Lewis married, both were employed by an elderly bachelor farmer—Lewis as a hired man and Leona as a housekeeper. That was in 1936. They rented a place in 1939 and borrowed to buy their own 160 acres in 1947, after a lot of worry and pencil pushing. Sometimes they had dairy cows, sometimes sheep and beef cattle, usually hogs, chickens and turkeys, often ducks and geese.

The work and worries of farming—as well as the rewards—were always shared. Leona milked and helped care for animals and poultry, prepared meals for hired help, treated seed, loaded fertilizer, cleaned and repaired buildings and equipment, operated farm machinery, helped with bookkeeping and tax returns. She and Lewis borrowed money together and they shared a bank account.

When Lewis was incapacitated, Leona became the farm operator—for about a year at a time. Once was when Lewis had an operation for a slipped disc and again later when he was injured in an accident with a tractor-pulled spray rig. Later she took over when Lewis became too ill to work. He died of cancer in 1976.

A key point that attorney Stafsholt made in the court proceedings: If Leona had divorced Lewis instead of nursing him and carrying on the farm operation, she would have been entitled to half of his assets under Minnesota law. Why should she be financially penalized for 40 years as a working partner in a good marriage? "The legislature certainly did not mean to reward divorcees and penalize widows," Stafsholt says.

Judge John Knapp, who wrote the unanimous opinion of the Tax Court, picked up this point: "If the rights of ownership in jointly owned property are recognized in divorce proceedings, there is no reason in logic or equity to ignore these same rights in inheritance tax cases.

"The work and contributions made by each spouse in operating a family farm should be recognized as being adequate consideration in money or money's worth in considering a claim of ownership in at least a portion of the property which passes to the surviving spouse upon death. In the instant case, we have found that the contributions of each spouse were substantially equal."

That was on Feb. 17, 1978. In April, then Governor Rudy Perpich announced that the state would not appeal the ruling, and that the Department of Revenue would "extend the principle to women who participate in any family business."

A landmark case has repercussions for client and attorney.

Leona Nordby's victory saved her

some inheritance tax money, and she gladly used part of it to pay attorney's fees. She remains an unassuming woman though she has been much photographed and interviewed by the Minnesota press. What changed?

1. Estate and inheritance taxes and laws that discriminate against women have become a consuming interest. She values the praise of those who recognize the magnitude of her contribution, and accepts philosophically the criticism of "some people who don't approve of what I did."

Leona's decision to engage in a legal struggle was prompted in part by the experiences of a widowed cousin in another state who, because of lack of documentation, had been obliged to pay inheritance tax on her own property as well as on property jointly owned. The cousin never fought her case. Leona considered for several months whether to go to court.

"I kept thinking, 'Boy, how I had worked.' To say that the results of 40 years' labor belong only to one is an insult to both members of a marriage. I felt it was the right thing to do [to go to court] and the right time to do it, and I proved to be right."

2. Leona lost her prejudice against lawyers. She credits a daughter-in-law, Marlyce Nordby, a paralegal aide in Minneapolis, with her change in ideas, and says, "An attorney can be as eager as a client to get justice and to help you in the process."

Jon Stafsholt considers the Nordby case the most significant in his career thus far, because of its widespread social impact: "It's the beginning of the end of farm wife discrimination." He was asked to write about it for a Minnesota legal journal, and he has conducted three seminars for the Minnesota Bar Association. He also has received appreciative letters from farm wives and from attorneys.

More farm women should use the courts to get their just due, Stafsholt believes. He says: "Legislative bodies and the executive branch of our government are sensitive to the pressure of majorities, but our courts still are sensitive to the rights of minorities." That's what farm and ranch women are—a minority.

A favorable decision helps other cases—in fact, there's a slow-but-sure domino effect.

Numbers of Wisconsin women have profited from Doris Kersten's victory in the state's Supreme Court, March 2, 1976 (In re Estate of Kersten, 71 Wis. 2d 757).

Records of the court proceedings give these facts:

"Lester and Doris Kersten devoted all their working efforts during marriage to operating the farm. Almost all that was owned by the couple at the death of Lester Kersten had been acquired by them during marriage. Neither inherited anything. Lester and Doris Kersten made substantial capital improvements to the farm, all of which were paid for from farm profits. . . expansion of milking facilities, remodeling of the house, and addition of several structures, including a silo, machine sheds, milk house, heifer barn and garage.

"In addition to maintaining the household (the couple raised four children), Doris helped keep the farm books, cared for and trained the calves, helped with the milking, operated the tractor during [hay] baling, and generally assisted her husband in the farm work.

"Additionally, Doris Kersten ran the farm alone for two periods of time during which her husband was ill. However, she testified that neither would have successfully operated the farm without the continuing assistance of the other.

"On cross-examination, Doris Kersten testified that there was never a written partnership or joint venture agreement between herself and her husband.

"Doris Kersten never reported personal income for either federal or state income tax purposes. The milk check, the primary source of farm income, was made out to Lester Kersten. Farm income was reported by Lester Kersten as his income for Social Security purposes."

The trial court (Marathon County Court) had determined that, with two exceptions (property Lester already owned when he married Doris and one certificate of deposit), the balance of the jointly owned property should be taxed on a "50/50 basis." It ordered the Commissioner of Revenue to refund $2,911.01 of inheritance tax to Doris, the personal representative (executrix) of Lester's estate. That's when the Department of Revenue appealed the case.

In his decision favoring Doris, Wisconsin Supreme Court Judge Robert W. Hansen said: "So the issue in this case narrows to whether Doris Kersten's personal services on the family-operated farm constituted 'consideration in money or money's worth' in return for her interest in the property jointly held by her and her husband. . .

"We agree with the trial court and affirm its holding that Doris Kersten was entitled to credit for inheritance tax purposes for such contribution on her part to the jointly held property . . ." Victory for Doris!

Elsewhere in his decision Judge Hansen quoted extensively from the federal Tax Court case *Estate of Everett Otte vs. Commissioner of Internal Revenue* (see "They sued the IRS and won," FARM JOURNAL, Aug., 1979). This case established that the contribution by Lura Otte of personal service as a wife "who kept the farm records and took an active part in the day-to-day operation of the farm, fairly justifies a division of the property acquired during her marriage."

To sum up, Lura Otte helped Doris Kersten.

Both Lura Otte and Doris Kersten helped Leona Nordby.

And Leona Nordby's case was cited in the successful suit of *Bessie Craig vs. The United States of America* (District Court, South Dakota, 1978).

None of these four women knows the other. None was aware she was helping anyone but herself. But the collective heroism of these four may benefit every wife who is a working partner with her husband . . . for all time to come. ◁

MORE ON ESTATE PLANNING

Laura Lane's detailed report, "How the Revenue Act of 1978 Affects Your Estate Plan," is just off the press.

To order, send $1 plus 40¢ delivery charge to: Revenue Act, FARM JOURNAL, Box 1927, Philadelphia, Pa. 19105. Or get the report free with your order of *FARM JOURNAL's Estate Planning Idea Book* by Laura Lane, available from the same address for $14.95 plus 70¢ delivery charge. Both items are tax-deductible.

Why you should work to rewrite tax law



LAURA LANE

Farm and ranch people are in estate tax trouble again because of increased values of land, equipment and livestock. These examples show why it has become harder to save the family farm business and why estate tax laws need updating:

- *"We have just been through the long three-year settlement of my mother-in-law's estate . . . On the 320-acre farm where my husband and I live, over $1 million dollars has been paid in estate taxes in less than 100 years."*—Betty Brand in April 1981 newsletter of Illinois Women for Agriculture.
- *"My husband's family and mine have been farmers for generations. The inheritance tax has broken up farms belonging to both families. We are victims, and if our income doesn't improve, my husband and I won't own a farm to pass along.*

"My grandfather died just 10 months before my father, so the estate had to pass through the courts twice before anyone could benefit. The land in my grandfather's estate had to be sold to pay the tax.

"When my father-in-law died, my mother-in-law had to mortgage the farm to pay the estate tax. She was in her 60s, alone, without income or job skills.

"In each of these instances, if the women had died first, the surviving husbands would have paid no estate tax. It is my firm belief that property should pass untaxed from husband to wife, as it does from wife to husband."—Peggy Arensman, Kansas Women Involved in Farm Economics (WIFE).

Key points made at recent hearings on estate and gift taxation:

The revenue issue: "The quote most often heard from members of Congress who favor continuation of the estate tax is, 'We cannot lose the revenue.' In 1980, the revenues from estate taxes amounted to about $6 billion of the total federal collection of $466 billion (about 1.4%). Those who emphasize revenue usually quote the gross amount received. The cost of administration (by IRS) is never subtracted. Is the government netting revenue or just exchanging dollars?"—Doris Royal, Nebraska, co-chairman, taxation committee, American Agri-Women.

Effects of inflation: "Most farmers never thought their modest holdings would be affected by federal estate tax law. We are just beginning to realize what inflation of land values has done to us, resulting in bracket leap of estate taxes when an owner dies. That's why Washington Women for the Survival of Agriculture are for the greatest simplification of the estate tax system, tax-free transfers between spouses, and eventually total repeal."—Janet Allison, chairman of government relations.

Endangered: "Today family businesses are an endangered species. We have spent billions to preserve endangered plants, animals, fish and birds. If individuals really are important, this is one of the best chances Congress will ever have to prove it."—Ben Wallis Jr., Texas attorney and rancher.

Proposal to Congress: "With a fixed estate and gift tax credit such as we have now, Congress has to tinker constantly with tax laws and rates just as you have done in 1976, 1978 and 1980. This is an expensive way to govern people's financial affairs, and it puts a costly burden on tax-paying citizens who in good faith revise their wills, break up joint tenancies, incorporate, create trusts and then have to do it over again because Congress changes the rules. The simplest solution would be to set an ample unified credit and peg it to the rate of inflation. That would save the family farm for now and for the future."—Laura Lane, contributing editor, FARM JOURNAL.

Recent history proves you can influence Congress if you speak up emphatically.

- The collection of 236,248 signatures of farm people on petitions to Congress was a big factor in passage of the Tax Reform Act of 1976. These petitions were printed in FARM JOURNAL and delivered to Washington. The kickoff to this big campaign was the article "Let's Get Rid of the Widow's Tax," Sept. 1975.
- More pressure by farm people helped kill the carry-over-basis provision ("Let's Get Carry-over Basis Repealed," Mid-February 1979). Congress repealed it in the Windfall Profits Tax Act.

In the past six years, FARM JOURNAL has published 61 separate articles on estate taxation and estate planning. The magazine can supply the ammunition, but vocal, persistent farm and ranch voters are the ones who get the job done in Washington. ◁

We make it easy for you to urge Congress!

To make your voice heard where it counts, all you need to do is tear out the card insert to the right of this page, fill it out, put a stamp on it and put it in the mail. ☐ But do this today so FARM JOURNAL can compile totals fast and pass along the results of our poll to Congress and to President Reagan. ☐ This card can help save your family business.

FORBES JUNE 22, 1981

Taxing Matters

Edited By Richard Greene

Everybody knows you can't take it with you—but if you own your own business, you might not be able to leave it behind either.

The death tax

By Jon Schriber



When Wilbur Doyle got out of the service in 1947 and founded Doyle Lumber in Martinsville, Va., he didn't know he would someday wind up paying, on average, 20% of his earnings on a life insurance policy—with Uncle Sam the ultimate beneficiary. Doyle's little business has prospered—with $6 million in annual sales, it's now the fifth-largest lumber company in Virginia and is worth about $3 million. Yet to insure that his sons won't have to sell it to pay estate taxes, Doyle keeps paying those premiums. This year—an off year for the business—Doyle predicts they'll amount to more than the company's total earnings.

In Mars, Penna., Harry G. Austin, 65, and his brother John, 55, the only stockholders in $8 million (sales) James Austin Co., a soap manufacturer, pay around $20,000 each in premiums so their 92-year-old company can be passed down to the fourth generation. "Sometimes I think we're really working for the insurance company," says Harry.

Wilbur Doyle and the Austin brothers aren't alone in worrying about the future of their businesses when they're gone. A survey by the National Federation of Independent Business found that among its 539,000 members, death taxes are a close second to concerns about changes in individual income taxes. Says Mike McKevitt, a lobbyist at the federation: "At any small business group, if you want to see them come right up out of their chairs, start talking about death taxes." No wonder. In many cases—perhaps most—if the founder can't afford the premiums Wilbur Doyle pays, his heirs will not be able to keep the company when he dies.

Small businessmen and their supporters *have* already gotten to their feet and are taking their case to Washington. Senator Steve Symms (R–Idaho) has introduced a bill to repeal current estate and gift tax laws. The Reagan Administration originally came out in favor of repeal but recently backed off, citing budgetary restraints. Still, it's a safe bet that the Administration will have some recommendations next fall.

Moreover, this month the House Ways & Means Committee may consider a bill to increase individual estate tax exemptions to $600,000 and to cut the taxable value of qualified businesses by 50%. The measure also would broaden the definition of what qualifies as a closely held business. Former Ways & Means Chairman Al Ullman, who helped organize a lobbying group for the bill after he left Congress this year, thinks "the chances are excellent" the measure will pass.

About $6 billion a year goes into the U.S. Treasury from estate and gift taxes. Ullman and other champions of death-tax reform argue that the breakup of family businesses, the loss of jobs and other dislocations, can cause an ultimate tax loss that could offset this revenue. David Raboy, director of research at the Institute for Research on the Economics of Taxation, contends the tax forces people into "uneconomic decision making." Says he: "It discourages people from investing in the things that are productive."

As an example he mentions a small foundry: that may be a very good productive investment, but an entrepreneur will be reluctant to make the necessary capital commitment. "He knows that if he dies they're going to have to sell off part of it to settle the estate. Clearly that's going to discourage you."

Besides the negative impact on the economy, Raboy points out, the taxes are not fulfilling their original purpose. That purpose, of course, was to prevent great concentrations of wealth, like the Rockefellers' or du Ponts', from being passed on from generation to generation. But the great fortunes remain, while the impact of the tax, at least initially, is falling right on the middle class. Inflation puts it there, of course.

But, while waiting for reform, what are folks like Wilbur Doyle going to do? There are some solutions. For example, each year you can give up to $3,000 away to anyone you want, and to as many recipients as you want,

Wilbur Doyle thinks it's necessary to go on paying those crushing life insurance premiums. "During my years in business I've seen some 25 good companies become nonviable when the principal died. They just didn't have the cash flow to pay their bills."

without paying gift taxes—a married couple can give $6,000 a year. Over and above that, there's a lifetime maximum of $175,000 for an individual or $350,000 per couple. So theoretically, a couple can give $6,000 a year to their heirs for 40 years, with each child winding up with a quarter of a million dollars and the estate with an additional exemption of $350,000. The problem with this—apart from whether a young couple can afford to give away $6,000, $12,000 or $18,000 a year, is that many people are reluctant to give. "They get cold feet," says Warren Shine, a tax principal at the accounting firm of Ernst & Whinney. "They say, 'maybe next year.' "

So what if this $350,000 allowance is not used and the husband dies? Assuming the business is in his name, the estate is allowed to take a marital deduction of $250,000 or 50% of the adjusted gross estate, whichever is more. Take an estate valued at $1 million. First the administration and funeral expenses as well as claims against the estate can be deducted—in this instance, say $100,000. Half the remaining $900,000 adjusted gross estate is subtracted, leaving $450,000. After deducting a unified tax credit of $47,000, the tax due is $91,800.

But all this—plus deferred payment provisions which may help stretch out the taxes—frequently leaves the business with a severe drain on cash flow. One solution is recapitalization, in which the founder or owner issues preferred stock to himself in return for his common shares. It works like this: The owner gets the company appraised for market value, let's say $1 million. Assume he has 75% of the common, and through gifts over the years, his son has 25%. The father exchanges his $750,000 worth of common for a like amount of preferred, which pays a dividend, say 15% of par, cumulative.

The father's share in the company is now locked in at three-quarters of a million dollars. If he dies ten years later estate taxes will be due on only that amount. All the *growth* in the company has become the property of the son, so that even if the company quadruples in value the father's estate is still only $750,000.

There are some pitfalls to this. The IRS may disagree with the original valuation, and the father may have to pay some gift taxes (if the father did not take out enough value in his preferred stock, in effect he gave his son a gift). Some people can have second thoughts, too. Charles Bogen of Ernst & Whinney tells of a client for whom he did a recapitalization 12 years ago. The business, valued at $1 million then, is now worth about $12 million. Says Bogen: "The old man said, 'Look what you did to me. You took all my money.' I told him, 'Yes, but we also took it away from Uncle Sam, and we took more away from him than we took from you.' He's still mad at me. But the sons love it."

All this may help, but for many small businessmen, perhaps not enough. Wilbur Doyle, for example, thinks it's necessary to go on paying those crushing life insurance premiums even though he has recapitalized his business. "During my years in business I've seen some 25 good companies become nonviable when the principal died," he says. "They just didn't have the cash flow to pay their bills."

The Austin brothers haven't recapitalized their soap company at all. "My brother and I each have children working in the business," Harry says. "How do you know 20 years from now which one is going to be in and which one is going to be out?"

In the meantime, the Austins continue to pay those hefty insurance premiums, adamant that the firm remain a family business. But the real truth is that with the Austins—as with so many others—the family is not really the most injured party if the taxes force the firm to be sold out or closed. Elder brother Harry says that if the worst were to happen and the firm had to be put on the block, the heirs would be all right, they would still have enough to live on.

It would be the town of Mars (pop. 1,400), where Austin's soap company is the single largest employer, that would suffer the most. Why? "Certainly if a national firm, any of the big soap companies, bought the company to get the label franchise, why, I doubt they would operate here," Austin explains. "The little town would economically go down the tube." There have been offers already from large corporations for Austin's company, which serves a 500-mile radius of Pittsburgh. Indeed, you could hardly expect a conglomerate like Gulf & Western or Litton to have any kind of emotional attachment or loyalty to Mars. Small family businesses aren't just moneymakers for families—they are an integral part of the economies of small towns from coast to coast.

Wilbur Doyle knows that. But sometimes he wearies of the whole mess. "Once in a while," he says, "I think, why shouldn't I just blow the money and have a good time?" ■

ALASKA STATE LEGISLATURE
HOUSE OF REPRESENTATIVES
RESEARCH AGENCY

Pouch Y, State Capitol
Juneau, Alaska 99811
(907) 465-3991

May 10, 1983

MEMORANDUM

To: Representative Mae Tischer

From: Leonard Steinberg, Research Staff

Re: Estate Taxes -- Research Request 83-154

Gail Thibodeau of your office asked for the following state and federal estate tax information:

1) the justification for the taxes;

2) the amount of income received from these taxes for the last four years;

3) the percentage of total revenue represented by estate taxes;

4) the amount of estate tax revenue collected by Alaska from residents and non-residents; and

5) the hardships that may result from estate taxes.

Justification for Estate Taxes

Estate taxes originated with the Populist political movement in the United States; the goal was to reduce certain excise taxes by taxing the wealthy. The federal government has levied a tax on the transfer of wealth at death continuously since 1916.

The primary reasons Congress passed the estate tax in 1916 were:

1) redistribution of wealth by breaking up large concentrations of wealth at the time of death; and

2) raising additional revenue for the federal government.

Another justification for estate taxes is that the appreciation in value that occurs between the time property is acquired and a person's death is income which normally escapes income taxation; estate taxes recoup part of this loss.

Following its imposition, individuals avoided the new estate tax by giving away large portions of their wealth prior to their death. Consequently, Congress has imposed a gift tax since 1932. The gift tax rate was substantially less than the estate tax rate until the two were unified by the Tax Reform Act of 1976.

The justifications for state estate taxes are the same as for federal estate taxes. However, according to Mr. Joe Donohue, Deputy Commissioner of Revenue, Alaska has the additional justification that its tax brings in revenue to the State without increasing the tax liability of an estate. Mr. Donohue explained that Alaska's estate taxes are credited, dollar for dollar, against the taxes that would otherwise be paid to the federal government. Therefore, until federal estate tax law is changed, a reduction in Alaska's estate taxes will not present a savings to the estate but only increase the revenues paid to the federal government.

Estate Tax Revenues

The amount and number of State estate tax collections, their percentage of total State revenue, and the amount of State revenues are listed below in Table 1. In fiscal year 1982, 325 estates filed tax returns with the Department of Revenue; 317 (86 percent) of the filed returns received a certificate of non-tax liability while 52 (14 percent) had taxes to pay. The estate tax revenues received in 1982 are not directly related to the 1982 returns because estates have 15 months to make their payments and are frequently granted 10-15 year extensions. Estate taxes during the period 1978-1982 have always been substantially less than one-half of one percent of the State's total unrestricted revenues.

Table 1

State Estate Taxes and Unrestricted State Revenues -- FY1978-1982

	1982	1981	1980	1979	1978
# of State Estate Tax Returns*	325	369	382	407	334
# of Paying Returns* †	52	42	N/A	57	55
State Estate Taxes Collected	$334,676	$453,492	$197,592	$136,685	$244,143
State Unrestricted Revenues($millions)	$4,108.4	$3,718.2	$2,501.2	$1,133.0	$764.9
Estate Taxes as a % of State Revenues	.008%	.012%	.008%	.012%	.032%

* These figures are for calender years and are based on the number of certificates issued for tax and non-tax liability.

† Eighty to ninety percent of state estate tax returns result in the the Department of Revenue issuing certificates of non-tax liability; those returns which actually impose State estate tax liability are listed in this column.

According to Ms. Eloise Herrick of the Department of Revenue, State estate tax records do not break down the revenues collected by residency status. However, Ms. Herrick stated that in her opinion, very little revenue is collected from non-residents. A more accurate determination of how much money was collected from residents and non-residents would require corrolating the revenues received with individual returns and reviewing each individual return to determine residency status; because this would require substantial time and effort, we have not pursued this information at this time.

Table 2 below illustrates the number of federal estate tax returns and the revenues collected by the federal government from both Alaska and the nation. The table also shows the percentage of total federal revenue represented by estate taxes. For example, in federal fiscal year 1982, 159 estate tax returns were filed with the federal government from Alaska and 134,965 were filed nationally. The federal government collected approximately three million dollars in estate taxes from Alaskans and eight billion dollars nationally in 1982. Estate taxes contributed 1.3 percent of the total federal revenue received in 1982.

Table 2

Federal Estate Taxes -- Federal FY1978-1982

($ in thousands)

	1982	1981	1980	1979	1978
# of Alaska Federal Estate Tax Returns	159	152	145	156	129
Total # of Estate Tax Returns Filed	134,965	145,617	148,228	159,404	160,152
Estate Taxes Paid by Alaskans	$3,081	$2,097	$2,285	$2,689	$2,412
Total Estate Taxes Paid	$8,035,335	$6,694,641	$6,282,247	$5,344,176	$5,242,080
Estate Taxes as a % of Total Revenue	1.3%	1.1%	1.2%	1.2%	1.3%
Total Federal Revenue	$626.8* (bil.)	$599.3 (bil.)	$517.1 (bil.)	$463.3 (bil.)	$399.6 (bil.)

* Estimate

Federal gift taxes, because they were created to stop estate tax avoidance, are often evaluated in conjunction with federal estate taxes. Table 3 presents information on federal gift taxes. As Table 3 illustrates, gift taxes add relatively little to federal revenue collections.

Table 3

Federal Gift and Estate Taxes and Total Revenues -- 1978-1982

($ in thousands)

	1982	1981	1980	1979	1978
# of Alaska Gift Tax Returns	98	252	252	260	193
Total # of Gift Tax Returns Filed	99,533	198,620	215,983	201,785	195,194
Gift Taxes Paid by Alaskans	$37	$15	$66	$117	$60
Total Gift Taxes Paid	$108,038	$215,745	$216,134	$174,899	$139,419
Total Gift Taxes as a % of Total Revenue	.02%	.04%	.04%	.04%	.03%
Total Federal Revenue	$626.8* (bil.)	$599.3 (bil.)	$517.1 (bil.)	$463.3 (bil.)	$399.6 (bil.)

* Estimate

Hardship Cases

Information regarding the frequency of cases in which a family must sell everything to pay estate taxes is not readily available. Large real estate holdings, such as farms, pose the most common hardships; families have reportedly been required to sell farms to pay estate taxes. However, due to the urgency of completing this request, we have not been able to provide a substantive response to this question. Please let us know if you would like additional research performed on this issue.

Several changes to federal tax laws have attempted to reduce the hardships that may result from estate taxes. The Tax Reform Act of 1976 made the following changes:

- increased the value of estates which can escape taxation from $60,000 to $175,000;

- allowed farms and other closely held businesses to be valued at less than fair market value; and

- increased marital deductions.

The Economic Recovery Tax Act of 1981 also attempted to reduce hard ships by:

- further increasing the value of estates exempt from taxation to $600,000;

- increasing the amount by which farms and closely held businesses can be undervalued; and

- allowing for unlimited transfers of property among spouses.

Furthermore, the 1981 Act extended the payment period for certain estate taxes to 15 years, and lowered the tax rates from a maximum of 70 to 50 percent.

* * * * *

We hope this information is helpful to you. Please let us know if you would like us to do any additional research.

LS

HJR

52

Alaska State Legislature

REPRESENTATIVE
ROBERT H. "BOB" BETTISWORTH

POUCH V
JUNEAU, ALASKA 99811

211 CUSHMAN STREET
FAIRBANKS, ALASKA 99701

April 30, 1984

M E M O R A N D U M

To: Representative Bussell, Chairman, House Judiciary Committee

From: Representative Bettisworth RHB

Subject: HJR 52, Proposing an amendment to the Constitution of the State of Alaska to provide for a biennial budget.

Over the past several years the time required to generate annual budgets, both operating and capital, has been increasing every budget cycle. The experiences of other states that have adopted the biennial budget format seem to indicate that significant improvements in planning and cost reductions are likely. The following specific improvements are attainable:

1.) Operating budget preparation costs would be reduced in most instances in the following ways:

   a. reduced professional and clerical staff cost,
   b. reduced staff support costs for budget preparation,
   c. reduced departmental workload conflicts during the peak months of activity (budget preparation by key staff often occurs at the same time program management load is at its peak).

2.) A biennial budget would afford improved legislative program review since only major changes in fiscal requirements or an emergency situation would require substantive legislative action by agencies or the legislative branch in off budget years.

3.) Savings realized from implementation of a biennial budget cycle could be used for other purposes; ie., delivery of services and support of other priorities.

4.) The capital project planning process would be enhanced by implementation of a biennial budget cycle.

AMENDED TITLE:
PROPOSING AN AMENDMENT TO THE CONSTITUTION OF THE STATE OF ALASKA TO PROVIDE FOR A BIENNIAL STATE BUDGET.

PRIME SPONSOR: BETTISWORTH.
CO-SPONSORS: PESTINGER.
CURRENT STATUS: 3/08/84 IN (H) JUDICIARY REFERRAL: FINANCE

DATE	SEQ	PAGE	LEGISLATIVE ACTION
01/09/84	01	2202	FIRST READING -- COMMITTEE REPORTS
03/08/84	02	2854	S.A. -- DP05, NR02
			JUDICIARY
			FINANCE
			RULES
****	**	**	*** *** ***

HJR 52

ALASKA STATE LEGISLATURE
HOUSE OF REPRESENTATIVES
RESEARCH AGENCY

Pouch Y, State Capitol
Juneau, Alaska 99811
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February 17, 1984

MEMORANDUM

Representative Bob Bettisworth
Attention: Ralph Bennett

FROM: O. Alexander Hoke
Legislative Analyst

RE: Impact of Biennial Budgeting on Cash-Based Budgeting
Research Request 84-040

As you requested, this memorandum addresses the impact of legislation which initiates biennial budgeting (HJR 52 and HB 485) on the proposal to institute cash-based budgeting in the state (CS HJR 39).

Multiple Interpretations of Biennial Budgeting

The implications of having both biennial budgeting and cash-based budgeting approved by the voters in the upcoming general election depends substantially on the ultimate legislative interpretation of these budgeting concepts. As discussed in David Teal's November 25, 1983 memorandum to you, biennial budgeting has different meanings in the states in which it is practiced. Nine states have both biennial sessions with biennial budgets and special provisions for amending the budget on an annual basis. Twelve states have annual sessions with biennial budget cycles, and provide for full legislative review of the budget each year. Of the 21 states with a biennial budget, all but four make separate appropriations for each year of the biennium. Biennial budgeting practices among the states range from systems almost indistinguishable from annual budgeting to true two-year budgets with allowances for only minor (or emergency) amendments.

Biennial budgeting under HJR 52 and HB 485 seems to qualify as a true two-year budget and appropriation cycle. Biennial budgeting in HJR 52 calls upon the governor to submit "a budget for the next two fiscal years setting forth all proposed expenditures and anticipated income ...with a general appropriation bill to authorize the proposed expenditures..." The companion bill (HB 485) states that "the biennial budget shall contain appropriations for the succeeding two fiscal years and state agencies shall prepare their budgets on this basis."

The Intent of Cash-Based Budgeting

The intent of cash-based budgeting (as defined by HJR 39) is to eliminate "revenue uncertainty" by restricting appropriations for a given fiscal year to the level of total General Fund unrestricted revenues for the preceding calendar year. HJR 39 provides for a cash reserve equal to 1.5 times the appropriations of the fiscal year preceding the start of cash-based budgeting. With this cash reserve, the legislature can be certain that funds are available to cover expenditures through the balance of the current fiscal year (6 months) and the coming fiscal year (12 months).[1]

Revenue Certainty Under A Biennial Budget

An 18-month revenue reserve is needed when cash-based budgeting applies to a 12-month budgeting period. If the State adopted a two-year (24-month) budget period through biennial budgeting, cash-based budgeting would require a 30-month cash reserve in order to provide full certainty that available funds are sufficient to offset expenditures over the budget period. With a 30-month reserve, the legislature would know at the beginning of the session that funds were available to cover expenditures through the remainder of the current budget period (6 months) as well as the coming budget period (24 months).

Table 1 shows the fiscal impact of combining the concepts of biennial budgeting and cash-based budgeting (as defined by HJR 39) for a 30th percentile revenue projection. The fiscal impact of these two proposals is the requirement of annual contributions (column 7) of general funds of between $267 and $358 million for a 12-year period, totaling $3.686 billion. The underlying assumption of this calculation is that the legislature intends to prepare a two-year budget and wants to be certain that funds will be available to cover the total appropriation for the two-year budget.

In comparison with a two-year budget cycle, the cost of cash-based budgeting as defined in CS HJR 39 is $2.866 billion (sum of contributions shown in Table 2), or $820 million less than the cost of cash-based budgeting under a true biennial budget cycle.

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[1] See House Research Agency report 83-A; Cash-Based Budgeting: A Response to Revenue Uncertainty.

Table 1

THE GENERAL FUND AS A REVENUE SOURCE FOR CASH-BASED BUDGETING
Based on a 30th Percentile Revenue Projection
(millions of dollars)

Fiscal Year	DOR Revenue Forecast	Revenue Under CBB	Potential Expenditure Level	General Fund Earnings	General Fund Balance	....Cash-Based Budgeting Reserve Fund.... Contributions	Earnings	Balance
1981	3,769		3,769	201	2,010			
1982	4,174		4,174	254	2,540			
1983	3,624		3,624	266	2,660			
1984	3,233		3,233	300	3,000			
1985	3,219		3,219	250	2,500			
1986	3,365	3,069	3,069	259	2,590	296.1	14	310
1987	3,729	3,401	3,401	288	2,880	328.2	48	686
1988	3,711	3,384	3,384	288	2,880	326.6	87	1,100
1989	4,068	3,710	3,710	318	3,180	358.0	132	1,590
1990	3,880	3,539	3,539	301	3,010	341.4	183	2,114
1991	3,582	3,267	3,267	275	2,750	315.2	236	2,665
1992	3,536	3,225	3,225	270	2,700	311.2	294	3,270
1993	3,405	3,105	3,105	258	2,580	299.6	357	3,927
1994	3,290	3,000	3,000	247	2,470	289.5	425	4,641
1995	3,195	2,914	2,914	236	2,360	281.2	499	5,421
1996	3,033	2,766	2,766	222	2,220	266.9	580	6,269
1997	3,092	2,820	2,820	225	2,250	272.1	669	7,210
1998	3,159	3,890	3,063	960	10,327			
1999	3,213	3,989	3,491	1,007	10,845			
2000	3,245	4,029	3,939	1,016	10,945			
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)

col.

2 Department of Revenue January, 1984 revenue projection.

3 Revenues after effects of cash-based budgeting program. During the CBB reserve contribution period, revenues (column 3) are equal to DOR projections minus annual CBB contributions. Starting with the first cash-based budgeting year, revenues (column 3) are equal to DOR projections plus additional earnings which accrue to the general fund as a result of transferring the CBB reserve fund balance to the general fund.

4 Expenditure levels are presently limited to projected revenues (ignoring the Constitutional appropriation limit). Beginning with the first cash-based budgeting year, expenditures will be limited to the revenues collected in the previous calendar year.

5 General fund earnings are DOR projections up to the start of cash-based budgeting, at which point the general fund earnings will be augmented due to the increased earnings capacity of the general fund from that point on into the future.

6 Beginning with the first cash-based budgeting year, the general fund balance is substantially increased by the transfer of the CBB reserve fund.

8 Reserve fund earnings are calculated at a 10 percent annual interest rate compounded monthly.

9 The earnings rate of the CBB reserve fund is compounded monthly using a 10% annual interest rate.

This projection is based on a general fund unrestricted revenue contribution of 8.0 percent.

Table 2

THE GENERAL FUND AS A REVENUE SOURCE FOR CASH-BASED BUDGETING
Based on a 30th Percentile Revenue Projection
(millions of dollars)

Fiscal Year	DOR Revenue Forecast	Revenue Under CBB	Potential Expenditure Level	General Fund Earnings	General Fund Balance	....Cash-Based Budgeting Reserve Fund.... Contributions	Earnings	Balance
1981	3,769		3,769	201	2,010			
1982	4,174		4,174	254	2,540			
1983	3,624		3,624	266	2,660			
1984	3,233		3,233	300	3,000			
1985	3,219		3,219	250	2,500			
1986	3,365	3,069	3,069	239	2,590	296.1	14	310
1987	3,729	3,401	3,401	288	2,880	328.2	48	686
1988	3,711	3,384	3,384	288	2,880	326.6	87	1,100
1989	4,068	3,710	3,710	318	3,180	358.0	132	1,590
1990	3,880	3,539	3,539	301	3,010	341.4	183	2,114
1991	3,582	3,267	3,267	275	2,750	315.2	236	2,665
1992	3,536	3,225	3,225	270	2,700	311.2	294	3,270
1993	3,405	3,105	3,105	258	2,580	299.6	357	3,927
1994	3,290	3,000	3,000	247	2,470	289.5	425	4,641
1995	3,195	3,644	3,348	685	7,297			
1996	3,033	3,493	3,467	672	7,174			
1997	3,092	3,548	3,564	673	7,180			
1998	3,159	3,617	3,512	687	7,325			
1999	3,213	3,680	3,578	698	7,447			
2000	3,245	3,718	3,648	705	7,527			
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)

col.

2 Department of Revenue January, 1984 revenue projection.

3 Revenues after effects of cash-based budgeting program. During the CBB reserve contribution period, revenues (column 3) are equal to DOR projections minus annual CBB contributions. Starting with the first cash-based budgeting year, revenues (column 3) are equal to DOR projections plus additional earnings which accrue to the general fund as a result of transferring the CBB reserve fund balance to the general fund.

4 Expenditure levels are presently limited to projected revenues (ignoring the Constitutional appropriation limit). Beginning with the first cash-based budgeting year, expenditures will be limited to the revenues collected in the previous calendar year.

5 General fund earnings are DOR projections up to the start of cash-based budgeting, at which point the general fund earnings will be augmented due to the increased earnings capacity of the general fund from that point on into the future.

6 Beginning with the first cash-based budgeting year, the general fund balance is substantially increased by the transfer of the CBB reserve fund.

8 Reserve fund earnings are calculated at a 10 percent annual interest rate compounded monthly.

9 The earnings rate of the CBB reserve fund is compounded monthly using a 10% annual interest rate.

This projection is based on a general fund unrestricted revenue contribution of 8.8 percent.

Biennial Budgeting With Annual Review

If the State of Alaska budgeted biennially but with full legislative review annually, the effect would be little different from annual budgeting. Consequently, the impact of this type of biennial budgeting on cash-based budgeting would be negligible.

We hope that this information is helpful in your deliberations on biennial budgeting. If you have further questions regarding the relationship of biennial budgeting to cash-based budgeting, please give the agency a call.

OAH

Alaska State Legislature

REPRESENTATIVE
ROBERT H. "BOB" BETTISWORTH

POUCH V
JUNEAU, ALASKA 99811

211 CUSHMAN STREET
FAIRBANKS, ALASKA 99701

February 16, 1984

M E M O R A N D U M

To: Representative Mitch Abood, Chairman, House State Affairs Committee

From: Representative Bob Bettisworth RHB

Subject: HJR52--Proposing an amendment to the Constitution of the State of Alaska to provide for a biennial budget.

It has become increasingly apparent to me since becoming a legislator, that the time consumed each session for budget related activities seems to be expanding each year. The experiences of other states that have adopted biennial budget cycles seem to indicate that the administrative agency budget preparation workload is reduced, program evaluation is enhanced by the increased time frames available for reviews, and long range planning opportunities are improved as well. Most observors of the budget process seem to agree, regardless of perspective, that improved planning mechanisms are essential and this is especially so in Alaska.

Some states now utilizing biennial budget cycles have found that legislative control over spending may be diminished. I don't think this problem is inherent in the system chosen but rather constitutes a lack of clear direction to the executive branch. Another criticism that jurisdictions have for biennial budget systems centers on the inaccuracy of revenue forecasts but this problem is already a major factor in Alaska and would not appear to be exacerbated by moving to a two year budget cycle.

Research indicates that the length of the budget cycle does not appear to have much effect on the level of state spending.

Variations on biennial budget systems are extensive among the states and it is likely that annual budget revisions--especially in operating budgets regardless of format--are a virtual certainty. Major time savings are likely to result by avoiding the current practice of complete annual budget preparation and legislative review. This is especially true for the operating budget and some savings would accrue in the capital budget area as well. Under most biennial budget scenarios, the comprehensive and time consuming operating budget review process could be significantly curtailed in off years and only essential program funding changes would have to be addressed.

HJR 52

STATE OF ALASKA
THE LEGISLATURE

LEGISLATIVE AFFAIRS AGENCY

POUCH V STATE CAPITOL
JUNEAU ALASKA 99811
907 465 3800

RECEIVED 8-17-83

MEMORANDUM August 15, 1983

SUBJECT: Biennial state budget
(Work Order No. 13-1508)

TO: Representative Robert H. Bettisworth

FROM: Keith B. Levy KBL
Legislative Counsel

In drafting your bill request establishing a biennial state budget, I neglected to point out to you that Article IX, Section 12 of the Constitution of the State of Alaska requires an annual budget:

> The governor shall submit to the legislature, at a time fixed by law, a budget for the next fiscal year setting forth all proposed expenditures and anticipated income of all departments, offices, and agencies of the State. The governor, at the same time, shall submit a general appropriation bill to authorize the proposed expenditures, and a bill or bills covering recommendations in the budget for new or additional revenues.

Thus, your bill is technically in violation of this constitutional provision since it requires the governor to submit a budget every two years rather than annually.

This problem can be resolved in one of two ways. The first would be to amend Article IX, Section 12 of the constitution to provide for a biennial budget rather than an annual one. A more simple solution would be to redraft your bill to provide for a biennial budget, but require the governor to submit an amended budget every other year covering the second fiscal year of the biennial budget. In that way, the constitutional requirement would be met since the governor would be submitting a budget annually, but the bulk of the budget process would be completed biennially.

If you have any questions or if you would like a redraft of your bill, please feel free to contact me.

KBL:lmb
L2/049

ALASKA STATE LEGISLATURE
HOUSE OF REPRESENTATIVES
RESEARCH AGENCY

Pouch Y, State Capitol
Juneau, Alaska 99811
(907) 465-3991

November 25, 1983

MEMORANDUM

TO: Representative Bob Bettisworth

FROM: David Teal
Legislative Analyst

RE: Biennial Budgeting
Research Request 83-239

This memorandum responds to your request for information on states that have a budget cycle longer than one year. The Council of State Governments (CSG) and the National Conference of State Legislatures (NCSL) provided much of the information required to fulfill your request. Because the information received from these sources is concise and limited to the question at hand, only the highlights are reviewed in this memorandum. Material provided by the CSG and NCSL are attached.

In the early 1940s, only four states had annual legislative sessions. There are now only nine states with legislatures that do not convene annually. The budget process is the primary reason that many states have converted to annual sessions.

Attachment A classifies states according to the length of their budget cycle and the time between legislative sessions. As noted above, nine states have biennial sessions and operate under a two-year budget cycle. Of the 41 states with annual legislative sessions, 29 have a one-year budget cycle. The remaining 12 states are on a two-year budget cycle. No state has a budget cycle longer than two years. The 12 states that have annual sessions and biennial budgets have the potential for full legislative review of the budget each year. All of the nine states with biennial sessions have some procedure for amending the budget during the biennium. Procedures for amending the budget include special legislative action, delegation of authority to a legislative committee or emergency board, and executive branch transfers between agencies or programs.

The Council of State Governments and the Public Affairs Research Council of Louisiana surveyed states to obtain their views on annual versus biennial budgeting. Highlights from those surveys are listed below and the published survey results are attached to this memorandum.

- Biennial budgeting reduces the budgetary workload (particularly for the executive branch), increases the time available for program evaluation, and may encourage long-range planning.

- Biennial budgeting may reduce legislative control over spending, provide less flexibility to meet requirements for receipt of federal funds or other purposes, and cause legislators to work with less accurate forecasts of revenue.

- Most states are satisfied with the system currently used in their own state.

- Most respondents felt that the length of a budget cycle had no significant effect on the level of state spending.

The conclusion of the Louisiana survey was that the success of a budget cycle seems to depend on the commitment of state officials to good implementation rather than on the method of budgeting. The Louisiana report also stated that the arguments used to support the systems are unproven; neither an annual nor biennial cycle is clearly superior to the other.

Budget Amendments Under Biennial Budgeting

Ken Kirkland, program director of the fiscal affairs section of NCSL, said that most states on a two-year budget cycle are unable to avoid substantial annual revision of their biennial budget. He added that some states on a biennial budget cycle avoid annual budget amendments by "overfunding" operating costs and relying on the executive branch to act in a fiscally conservative manner.

In those states where the budget process includes an annual review of a biennial budget, the budget process in the "review year" is often streamlined. State agencies are generally required to submit budget documents only for changes from the approved amounts instead of preparing a complete justification package. Maine, Iowa and other states that use this process claim that it combines the best features of both the annual and biennial budget cycles.

The analysis of budget cycles is not as straightforward as one might expect. Biennial budgets do not necessarily mean that appropriations are made for a two-year period. The 1982-83 Book of the States (Attachment D) shows that 17 of the 21 states on a biennial budget cycle make separate appropriations for each year of the biennium (see footnote a of Attachment D). In addition, extensive annual budget review and revision can make biennial budgeting virtually indistinguishable from annual budgeting.

Another factor complicating the analysis is that one cannot simply look at the constitution or statutes of the states to determine what actually occurs. For example, the Minnesota constitution specifies biennial legislative sessions and a biennial budget cycle. In practice, the Minnesota legislature meets annually and only a few appropriations are made for the biennium. In Vermont, an annual or biennial budget cycle is at the discretion of the governor. These complicating factors and the resultant difficulty in classifying certain states accounts for the inconsistent presentation of data in Attachments A, B and D.

I have attached applicable statutes from Florida, Montana, North Dakota and Oregon. According to the Book of the States, these are the four states with a biennial budget cycle that do not make separate appropriations for each year of the biennium.[1] The statutes specify information required by the legislature. Sections 291.322-336 of the Oregon statutes discuss that state's method of amending the budget during the biennium.

* * *

I hope you find this information useful and informative. If you would like additional information on a particular state or particular system of budgeting, please contact the agency.

DT

Atachments
A) Biennial and Annual Budgeting (NCSL)
B) Results of PAR survey on Annual vs. Biennial State
C) Annual or Biennial Budgets? (CSG)
D) 1982-83 Book of the States (pages 276-279)
E) State Statutes
Florida: Chapter 216, 1982 Supplement
Montana: Chapter 666, 1983 Session Laws
North Dakota: Chapter 54-44
Oregon: Chapter 291.208-385

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[1]Texas is classified by the NCSL (in Attachment A) as making appropriations for the biennium. Texas statutes on the budget process are lengthy and are not attached to this memorandum.

ATTACHMENT A

BIENNIAL AND ANNUAL BUDGETING

Prepared by Fiscal Affairs Program
NATIONAL CONFERENCE OF STATE LEGISLATURES
1125 17TH Street Suite 1500 Denver, CO 80202
303/292-6600

Since 1969, ten states have changed their budgeting cycle. Hawaii, Vermont and, most recently, Florida, have all changed from annual to biennial budgets. In that same time, Connecticut, Idaho, Illinois, Missouri and Nebraska have all gone from biennial to annual budgets. Indiana experimented with annual operating budgets in fiscal years 1975-76 and 1976-77, but operated with a biennial capital and highway budget. It returned to full biennial budgeting in 1977.

Currently, 29 states have annual budgets and, of course, annual legislative sessions. Another nine states have biennial budgets with biennial sessions, and thus lack any opportunity for annual changes or revisions. (The exception is Oregon, whose joint Ways and Means committees meet during the interim as the Emergency Board, a constitutional board with authority over supplemental appropriations, federal funds, and transfers.) The remaining twelve states have biennial budgets, but meet annually. This last group has some review of the budget annually, but it varies from full reviews to occasional amendments. Only North Carolina, North Dakota, Oregon, Texas, Washington and Wyoming actually make appropriations for the full biennium rather than by fiscal year, and North Carolina, Washington and Wyoming review the budget for possible changes annually.

ANNUAL LEGISLATIVE SESSIONS AND ANNUAL BUDGETS

Alabama	Delaware	Maryland	New Jersey	South Carolina
Alaska	Georgia	Massachusetts	New Mexico	South Dakota
Arizona	Idaho	Michigan	New York	Tennessee[1]
California	Illinois	Mississippi	Oklahoma	Utah
Colorado	Kansas	Missouri	Pennsylvania	West Virginia
Connecticut	Louisiana	Nebraska	Rhode Island	

BIENNIAL LEGISLATIVE SESSIONS AND BIENNIAL BUDGETS

Arkansas	Nevada	North Dakota[3]
Kentucky	New Hampshire	Oregon[3]
Montana	North Carolina[2]	Texas[3]

ANNUAL LEGISLATIVE SESSIONS AND BIENNIAL BUDGETS

Florida	Maine	Virginia
Hawaii	Minnesota[1]	Washington[2]
Indiana	Ohio	Wisconsin
Iowa	Vermont[1]	Wyoming[2]

All state fiscal years begin on July 1 except for Alabama (October 1), Michigan (October 1), New York (April 1) and Texas (September 1).

Footnotes

[1]Technically a biennial session, but in practice meets annually.

[2]Appropriations are made for the biennium, but reviewed annually.

[3]Appropriations are made for the biennium.

NOTE: Unless otherwise noted, biennial budget states make appropriations for each

ATTACHMENT B

PUBLIC AFFAIRS RESEARCH COUNCIL OF LOUISIANA, INC.

300 Louisiana Avenue • P O Box 3118 • Baton Rouge, Louisiana 70821 • Phone (504) 343-9204

April 22, 1982

MEMO TO: Respondents of PAR Survey

FROM: Brian Davie, Research Analyst

RE: Results of PAR Survey on Annual vs. Biennial State Budgeting

Research Council of Louisiana, Inc. (PAR) is a nonpartisan, nonprofit organization which conducts research on state and local government issues in Louisiana. PAR surveyed all states (excluding Louisiana) in early 1982 to obtain the most current information available on the experience and views concerning the issue of annual vs. biennial state budgets. This paper is a tabulation of the results of that survey.

Louisiana Policy

Louisiana's state government has annual legislative sessions (limited to 60 legislative days during an 85 calendar day period) and an annual budget. New or increased tax levies are not permitted during regular legislative sessions in odd-numbered years. The state has not changed its annual budget cycle and is not considering a change at this time.

Response Rate from Other 49 States

PAR sent the enclosed questionnaire to state budget officers and legislative chairmen of the budget committees in each house. One followup letter was sent and at least one response was received from all 49 states. The maximum number of responses (3) was received from 23 states (47%), two responses were received from 18 states (37%), and one response was received from 8 states (16%). Budget officers or their representatives responded from 45 states (92%) and legislative chairmen responded from 44 states (90%). The overall response rate was 77%. Following are results of the survey.

Budget Cycles

Table 1 shows the number of states which use the types of legislative sessions and budgets indicated.

TABLE 1. State Legislative Sessions and Budget Cycles[a]

Type Legislative Session	Budget Cycle	Number of States
Annual, unlimited	Annual	25[b]
Annual, unlimited	Biennial	3
Annual, unlimited	Biennial but amended annually	5
Annual, with fiscal session in off-year	Annual	5
Annual, with fiscal session in off-year	Biennial but amended annually	4
Biennial	Biennial	8

[a]Includes Louisiana.

[b]One state has annual sessions and budgets by current practice, although the constitution specifies biennial sessions.

Recent Changes

Most states (36) have not changed their budget cycle since 1970. Of the 13 states that changed, eight went from a biennial to an annual budget cycle while two changed from annual to biennial budgets. The remaining three states changed twice — two states experimented with annual budgets and reverted back to biennial while one state did the opposite.

Only four states reported they are considering seriously a change between annual and biennial budgets. Three of those states now have annual budgets (two changed recently) and the other state has a biennial budget. A budget officer or legislative chairman in 14 states mentioned some change is being considered but those responses were evenly divided between states with annual or biennial budgets.

Time to Plan & Evaluate

Most respondents from both annual and biennial budget states indicated satisfaction with the time available for planning and evaluating state programs, but many added comments to qualify or explain their response. Among respondents from annual budget states, 80% thought an annual cycle allowed adequate time. From the biennial budget states, 98% of the respondents thought the cycle allowed adequate time. Every state with a biennial budget has some procedure for changing budgeted amounts during the biennium; the methods vary from limited authority of the governor or a special interim committee to annual review and/or special sessions of the legislature.

States That Have Changed

The remaining survey questions concerned only the 13 states that changed their budget cycles since 1970; results were inconclusive. For the states that changed twice since 1970, the primary reason appeared to be political -- depending on which party controlled the legislature or which cycle the governor strongly advocated and enforced.

PAR classified responses on effects of the change (Question #8) according to whether the comments were positive, negative or indicated no difference. Respondents from the eight states that changed to annual budgets were almost equally divided between the positive and negative effects of the change and several stated there was no difference. The positive effects most often cited for changing to annual budgets were increased evaluation, legislative scrutiny and more accurate revenue estimates; however, an almost equal number of respondents cited the same factors as having a negative effect, mainly because of the compressed time schedule for reviewing an annual budget.

Respondents from the two states that changed to biennial budgets cited no negative effects, but two of the six respondents in those states said there was no difference. The positive effects mentioned included opportunities for increased planning, evaluation and legislative scrutiny.

It is difficult, if not impossible, to determine what effect a change in budget cycles has on increased state spending (Question #9) since so many other factors intervene such as inflation and major policy changes in state programs. Most respondents acknowledged this and qualified their response. The change had no effect on the rate of increased state spending according to 55% of the respondents. The remaining responses were equally divided between those who thought the change did increase state spending and those who did not know.

Similarly, respondents were almost evenly divided about whether the change affected the accuracy of revenue estimates and accumulation of surplus funds (Question #10).

Which Type Favored by Respondents?

The final survey question provided an opportunity for respondents to comment in general on the issue of annual vs. biennial budgets. Table 2 shows the results of classifying the comments according to which type budget the respondent appeared to favor; again responses were almost equally divided.

TABLE 2. Preferences of Respondents

Preference	Budget Officers	Legislative Leaders	Total
Favor annual budget	5	5	10
Favor biennial budget	6	5	11
Neutral	2	7	9

Conclusion

The Council of State Governments published a detailed state survey analysis on the issue of annual vs. biennial budgets in 1972. PAR's questionnaire was an attempt to update that survey, but it appears little has changed. While more states changed to annual budgeting during the 1970s than in the 1960s, the arguments used to justify and refute both annual and biennial budgets remain essentially unchanged — and unproven. The inconclusive and generally split results on controversial survey questions indicate that both budgeting methods and modifications of them may work effectively in different situations. The success of a budget cycle seems to depend on the commitment of state officials to good implementation rather than the method itself.

Thank you for your interest and participation in PAR's questionnaire. If you would like any further information on the results, please do not hesitate to call or write.

ATTACHMENT C

Annual

Or

Biennial

Budgets?

The Council of State Governments

ANNUAL OR BIENNIAL BUDGETS?

August 1972
RM-491
Price: $2.00

The Council of State Governments
Iron Works Pike
Lexington, Kentucky 40505

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FOREWORD

Recent changes in budget procedures in some States have brought renewed attention to the question of whether the process should be an annual or biennial one. The Research Committee of the National Association of State Budget Officers, therefore requested the Council of State Governments to ascertain the reaction of state officials to these changes.

The survey was conducted by means of a questionnaire to ten key executive and legislative officials in each of eleven States. The Council is most grateful to the responding officials for their cooperation and assistance. The report was prepared by Paul Hibberd, Research Associate, under the direction of George A. Bell, Director of Research.

Brevard Crihfield
Executive Director
The Council of State Governments
Iron Works Pike
Lexington, Kentucky 40505

Introduction

The increasing complexity and mounting problems of state government have triggered many changes in state operations, among these being the shift of legislative sessions to an annual basis rather than biennial. There are now (1972) 33 annual session states plus 3 more whose unlimited biennial sessions extend into the second year, compared with 18 States ten years ago, 10 States twenty years ago, and only 4 States in the early 1940's.

One reason advanced in support of annual sessions has been that state financial and budgetary policies must be reviewed more often than once every two years. This was a predominant factor leading toward annual sessions, as shown by the fact that 9 of the 13 States having annual sessions in 1962 restricted one session every two years primarily to fiscal matters. However, there has been a reversal in this trend, and now a much lower proportion of States - 5 of 33 annual session States, place such limits on sessions.

The felt need for making fiscal decisions annually is still strongly apparent, since most States which have adopted annual sessions have also shifted to annual budgets. However, a few States with annual sessions have not shifted to annual budgets. A further surprising development in view of the trend was the action of Hawaii, which in 1971 shifted to a biennial budget while retaining annual sessions, after having had annual budgets throughout its statehood.

The Hawaii move is one event that has triggered interest among state officials everywhere concerning the advantages and disadvantages of annual versus biennial budgeting, leading to this survey of States which have

made recent shifts. The following questions were asked:

1. What effect has changing from a biennial to an annual budget in your State had on the following:
   (a) Workload of the budget agency:
      1. Has there been a change in the duties or type of work performed by budget staff?
      2. Has there been a commensurate change in size of budget staff?
   (b) Workload of other executive agencies (operating agencies; Governor's Office, etc.)
   (c) Workload of the legislative staff:
      1. Has there been a change in the duties or type of work performed by legislative staff?
      2. Has there been a commensurate change in size of legislative staff?
   (d) Ability or willingness to undertake planning beyond the budget period:
   (e) Accuracy of revenue estimates:
   (f) Ability to meet matching requirements for federal grants in aid:
   (g) Ability to fully finance programs to carry out the program level the appropriation was designed to meet?
   (h) On the rate of annual increase in state expenditures

2. When you were on a biennial budget, what procedures (such as use of transfers, emergency appropriation, allotment adjustments, etc.) existed for taking care of changing financial requirements for programs or agencies?

3. What are you able to do under annual budgeting in providing for year to year changes that you could not do under biennial budgets?

4. If the opportunity arose to switch back to biennial budgets, would you favor doing so? Please state reasons.

5. If the switch to biennial budgeting were to be made, what recommendations would you make to assure that legislative and executive controls over program plans and expenditure are not weakened?

The survey covers most States which have recently switched from biennial to annual budgets and have had at least one full biennium under the annual budget system - Florida, Idaho, Illinois, Missouri, Oklahoma, Tennessee, Utah and Vermont. Other States moving to annual budgets such as Connecticut, Nebraska [illegible] had not experienced the annual cycle at the time the questionnaire was mailed (fall, 1971.)

Iowa and Georgia have instituted annual legislative sessions while retaining a type of biennial budget and were also surveyed. Indiana's similar shift has occurred too recently for coverage. Hawaii was surveyed

for its shift from annual to biennial budgets. Wisconsin was subsequently added; that State now has annual sessions, and in 1972 completed its first formal off-year budget review process in lieu of an annual budget.

In each of the eight States surveyed which switched from a biennial to an annual budget (above), a questionnaire was sent to ten officials - the Governor, President of the Senate, Speaker of the House, administration/finance officials, budget officers, legislative research directors, legislative fiscal review officers, planning officials, and the chairmen of the appropriations committees. There was, therefore, a possibility for 80 responses. The number of actual responses received was 35, with at least two from each State: two from Tennessee, two from Utah, five from Illinois, six from Idaho, three from Florida, five from Missouri, six from Vermont, and six from Oklahoma. In terms of responding officials the breakdown of answers was: Governors, one; Presidents of Senates, four; Speakers of Houses, four; legislative fiscal review officials, four; chairmen of appropriations committees, six; planning officials, six; administration/finance officials, one; budget officers, six; legislative research directors, three. For purposes of narrating the reported opinions the sole responding administration/finance official was included among the budget officers, and the responses of the Presidents of the Senate and the Speakers of the House were combined and treated as the opinions of legislative leaders.

The questionnaire was also sent to the identical officials in Georgia and Iowa, which changed to annual legislative sessions while retaining biennial budget approaches. These officials were requested to provide their opinions on advantages and disadvantages of not switching to an annual budget cycle.

Finally, the questionnaire was also sent to the same officials in Hawaii, which switched from annual to biennial budgeting. These officials were requested to provide their comments and opinions on the effects of the reverse change from an annual to a biennial cycle. Limiting the usefulness of the original Hawaii responses, according to several officials of the State, was the fact that a full biennium had not yet passed under the new procedure. A followup request to the Hawaiian respondents was sent in June, 1972 to seek further reactions after experience with the new approach during the 1972 session.

In view of the delay in analyzing the responses, the questionnaire was also sent to Wisconsin officials in June, 1972 to ascertain reactions to the budget review process first used in the 1972 session.

Opinions in States Recently Switching to Annual Budgets

The responses of officials in the States which have recently changed from biennial to annual budgets are analyzed in this section. The responses are organized in accordance with the questions asked.

Effect on Workload and Size of the Budget Staff

Budget officers should be in the best position to know whether there has been a change in staff size. According to the seven budget officials who responded, the budget staff was increased in size in three States and remained the same in four. The perception of other officials did not always fit these facts, for in four of the seven States one or more other officials thought the staff had increased when the budget official said it had not (two States) or thought it has not increased when the budget

chief said it had (two States). (See table 1 for summary tabulation).

1. Effect on the size of the Budget Agency:

	Increase	Decrease	No Change	No Opinion	No Answer	Total
Governor			1			1
President Senate/Speaker House	1		6		1	8
Legislative Fiscal Review	1		3			4
Chairmen Appropriations Committees	3		2		1	6
Planners	1		1	4		6
Budget Department	3		4			7
Legislative Research	2			1		3
	11		17	5	2	35

In at least one State reporting an increase in staff size, this change was due only in part to annual sessions. Annual sessions were begun at the same time that a major change in budget procedures occurred, including establishment of an analytical staff in the Governor's office and development of program analysis procedures.

With the above indications of a different opinion concerning a factual situation, a difference of opinion is to be expected on the less factual questions which follow.

Legislative leaders expressed doubt whether the workload of the budget agency had increased significantly and whether additional staff was necessary. However, chairmen of the various appropriations committees believed that there was a significant increase in the duties of the budget agency, but not to the point that staff members need be added. One suggestion was that the "off-year" was often not very productive and that the solution to the increased workload was a more concentrated effort each

year. In addition to the above positions, several legislative officials contended that there were insufficient funds to employ additional budget staff members.

Although several executive officials expressed the opinion that there was no change in the duties of the budget agencies, a few budget administrators expounded the adverse effects of the change. Their primary contention was that the switch to an annual budget had left little time to perform various studies for the improvement of organization and operations. For example, one budget director remarked, "the increased workload in terms of budget preparation has left less time to explore substantive issues, and has necessitated restrictions on all other activities." When commenting upon the increased workload of his agency and the inability to add new staff members, another budget official remarked, "instead of additions to staff, such activities as analysis, studies, management services, etc., have been drastically reduced if not altogether eliminated."

2. Effect on the workload of the Budget Agency:

	Increase	Decrease	No Change	No Opinion	No Answer	Total
Governor			1			1
President Senate/Speaker House	3		4		1	8
Legislative Fiscal Review	1		2	1		4
Chairmen Appropriations Committees	4		1		1	6
Planners	1		1	4		6
Budget Department	4		3			7
Legislative Research	3					3
	16		12	5	2	35

Effect on the Workload of other Executive Agencies

An overwhelming majority of officials responding were of the opinion that the change to an annual budget significantly increased the workload of other executive agencies. In a few instances it was noted that budget operations in all the executive agencies were operating throughout most of the year. One budget official reported that with demands on the individual agencies for program information that was not previously requested, "budgeting has become a full time activity and the days when part time budgeting was possible are gone."

Recognition of this increased workload was not limited to executive officials. Three out of every four legislative officials reported an increased burden on the executive agencies in submitting a budget for their programs annually. One legislative council director remarked that, "probably the most significant aspect of the change (to an annual budget) is an awareness that budgeting is a continuous process the year round, and not just something that takes place at session time."

3. Effect on the workload of other Executive Agencies:

	Increase	Decrease	No Change	No Opinion	No Answer	Total
Governor			1			1
President Senate/Speaker House	5		2		1	8
Legislative Fiscal Review	2		1	1		4
Chairmen Appropriations Committees	5		1			6
Planners	1		2	3		6
Budget Department	6		1			7
Legislative Research	3					3
	22		8	4	1	35

Effect on the Workload and Size of the Legislative Staff

The majority of legislative officials felt that the change to an annual budget had no significant effect upon the size or workload of legislative budget staffs already in operation. In two States the statement of the legislative fiscal staff director, who should know, concerning increase in staff was not unanimously supported in the opinions of others. In some States the legislative budget staffs were virtually non-existent under a biennial budget. For example, Vermont had no legislative budget staff until 1970, when an analyst was hired to serve the appropriations committees. Other States in which legislative budget analysis agencies were created at the time of the change to an annual budget cycle attributed those creations directly to other sources, naming the budget change as only an indirect cause.

Most executive officials asserted that they were in no position to express an opinion on the effect of the change to an annual budget upon legislative staffs. Among those who did express an opinion, two out of every three felt that the change had no significant effect upon the size or workload of the staffs.

4. Effect on the Size of the Legislative Staff:

	Increase	Decrease	No Change	No Opinion	No Answer	Total
Governor			1			1
President Senate/Speaker House	3		4		1	8
Legislative Fiscal Review	1		3			4
Chairmen Appropriations Committees	2		3	1		6
Planners			6			6
Budget Department	2		3	2		7
Legislative Research	2		1			3
	10		21	3	1	35

Effect on Ability or Willingness to Undertake Planning beyond the Budget Period

The opinions expressed on this issue were widely varied among both legislative and executive officials. Two out of every three budget officials took the position that an annual budget cycle had an adverse effect upon the willingness to undertake planning beyond the budget period. Other respondents noted that agencies and departments were reluctant to engage in advance planning to begin with, but that the switch to an annual budget left less incentive to plan beyond the budget period. Some legislative leaders said that legislative desire for long range planning was not shared by executive agencies. One executive official, explaining the slowness of agencies to plan ahead, noted that program planning is an activity "which must be fostered by the Chief Executive as a basic management tool for a reasonable length of time before agencies are even interested in performing the activity."

5. Effect on the workload of the Legislative Staff:

	Increase	Decrease	No Change	No Opinion	No Answer	Total
Governor			1			1
President Senate/Speaker House	3		4		1	8
Legislative Fiscal Review	1		3			4
Chairman Appropriations Committees	3		2	1		6
Planners				6		6
Budget Department	2		3	2		7
Legislative Research	1		2			3
	10		15	9	1	35

A few officials expressed the opinion that longer range planning was one advantage of annual budgeting, but failed to explain the reasoning behind this statement. Some other officials noted that longer range planning was being instituted under planning programming budgeting systems (PPBS) independently of the effect of annual versus biennial cycles.

Also, in two States the answers revealed differences of opinion among officials. For instance, in one State the Speaker, the legislative fiscal officer and the planning official felt that there was an increase in willingness to undertake planning beyond the budget period, while the budget officer thought there was a decrease in that willingness and both the President of the Senate and a committee chairman reported no change, attributing any difference to a recent emphasis on program planning.

6. Effect on the ability or willingness to undertake planning beyond the budget period:

	Increase	Decrease	No Change	No Opinion	No Answer	Total
Governor		1				1
President Senate/Speaker House	2	1	3	1	1	8
Legislative Fiscal Review	2		2			4
Chairmen Appropriations Committees	2	1	3			6
Planners	2		1	3		6
Budget Department	3	4				7
Legislative Research	1		1	1		3
	12	7	10	5	1	35

Effect on Accuracy of Revenue Estimates

A majority of the officials felt that a change to an annual budget cycle should, or did, increase the accuracy of revenue estimates. This opinion was held by 16 reporting officials, compared to 4 who thought that accuracy decreased and 10 who felt that there was no change.

accuracy was presumed to increase because of increased frequency of compiling estimates, and the shorter time interval between making the estimate and realizing the revenue.

7. Effect on the accuracy of Revenue Estimates:

	Increase	Decrease	No Change	No Opinion	No Answer	Total
Governor		1				1
President Senate/Speaker House	5	1	1		1	8
Legislative Fiscal Review	1	1	2			4
Chairmen Appropriations Committees	6					6
Planners			3	3		6
Budget Department	3	1	2	1		7
Legislative Research	1		2			3
	16	4	10	4	1	35

Effect on Ability to meet Matching Requirements for Federal Grants in Aid

A majority of the state officials took the position that the change to an annual budget increased the ability to meet matching requirements for federal grants in aid. The chief reason for this opinion was the time factor, especially when the federal government is often tardy in appropriating and allocating grants. An annual budget is thought to allow considerably more flexibility if the federal government should significantly alter the amount of money available. One budget director noted that the construction of an annual budget helps avoid the possibility of a special session of the legislature which, when called for fiscal matters, often generates "political stress."

8. Effect on the ability to meet matching requirements for federal grants in aid:

	Increase	Decrease	No Change	No Opinion	No Answer	Total
Governor		1				1
President Senate/Speaker House	5	1	1		1	8
Legislative Fiscal Review	4					4
Chairmen Appropriations Committees	3		3			6
Planners			3	3		6
Budget Department	5	1	1			7
Legislative Research	1				2	3
	18	3	8	3	3	35

Effect on Ability to Fully Finance Programs to Carry Out the Program Level the Appropriation was Designed to Meet

The majority opinion was that the ability to fully finance programs had been increased by the change to an annual budget. An annual budget, as stated before, appears to be more accurate in predicting revenues. The increased accuracy of estimates increased the ability to fully finance programs, thereby carrying out the program level the appropriations were designed to meet.

Some officials felt that the ability to fully finance programs was not necessarily related to annual or biennial budgets. Their position, as one budget director noted, was that the ability to fully finance programs "speaks to the quality of program projection and revenue estimating and not necessarily for the period during which these events occur."

Some officials recognized the disadvantage of predicting program finance and revenue two years in advance, as opposed to one, but felt that biennial budgeting had other overriding advantages. They suggested

that any problems encountered in fully financing programs during the second year of the biennium could be mitigated by annual sessions where emergency appropriations, transfers, etc., could be enacted.

9. Effect on the ability to fully finance programs to carry out the program level the appropriation was designed to meet:

	Increase	Decrease	No Change	No Opinion	No Answer	Total
Governor	1					1
President Senate/Speaker House	5	1	1		1	8
Legislative Fiscal Review	3		1			4
Chairmen Appropriations Committees	3		2	1		6
Planners	2		1	3		6
Budget Department	4		2	1		7
Legislative Research	1		1	1		3
	19	1	8	6	1	35

Effect on the Rate of Annual Increase in State Expenditures

There is no evident consensus on what effect, if any, the change to an annual budget might have had on the rate of annual increase in expenditures: 16 thought it would result in greater increases than biennial budgets while 12 indicated there would be no change.

One budget director who believed increases would result observed, "biennial budgeting tends to lock the second year in close proximity to the level of the first fiscal year. Annual budgeting permits the entire lobby and pressure effort of the various special interests to come into play." Some indicated that as inflation, program alterations, salary adjustments, etc., are considered annually, the rate of increase must necessarily be greater. One budget director introduced a formula: "the rate of annual increase in state expenditures is inversely proportional to the length of the budgetary period."

Those officials who took the position that the change to an annual budget had no effect on the rate of annual increase in expenditures felt that the rate of increase is dependent upon revenue. They noted that if revenue should increase beyond expectations in the second year of the biennium, alterations in appropriations could be made at that session of the legislature. These increases in appropriations would essentially be equal with any changes that might have been made if there were a new budget in the process of formulation under an annual cycle.

10. Effect on the rate of annual increase in state expenditures:

	Increase	Decrease	No Change	No Opinion	No Answer	Total
Governor	1					1
President Senate/Speaker House	4		3		1	8
Legislative Fiscal Review	3		1			4
Chairmen Appropriations Committees	2		3	1		6
Planners			3	3		6
Budget Department	4		2	1		7
Legislative Research	1			2		3
	15		12	7	1	35

Procedures under Biennial Budgets for Fiscal Adjustments

Operations under biennial budgets had not prevented most States from changing their fiscal plans where necessary. In some cases this was done through legislative action in special session or otherwise, such as emergency, deficiency or supplemental appropriations.

An additional method which was often mentioned as a means of combatting unforeseen conditions was the transfer of appropriations from one agency, unit or program to another. Five States reported the utilization

of intra-agency transfer, with three of them additionally inter-agency transfers.

Finally, three States noted the existence of an emergency board which had the power to appropriate from a special account in cases when the legislature was not accessible.

A Switch back from Annual to Biennial Budgets?

Among those States which changed to an annual budget, 75 percent of the legislative officials and 70 percent of the executive officials, (but only 50 percent of the budget officers are included in this majority) were satisfied with the new system, while the remainder in each group favored a return to the biennial budget.

Some of the following reasons were cited by legislative officers for remaining with the new system:

(1) fewer emergency appropriations;

(2) "annual budgets tend to strengthen the legislator's role in setting the policy of the state."

Two other reasons, cited by some executive officials, are:

(1) annual budgeting permits the Governor a more frequent review of agency programs and requires state agencies to develop tighter administrative controls over the spending of public funds,

(2) "in biennial budgeting immediate correction of the State's budget is not possible, and waiting until the legislature meets 'next time' is the only alternative. When corrections are eventually made the legislature in its alarm may accuse the Governor of mismanagement and the Governor in turn accuse the legislature of irresponsibility."

One legislative official who favored returning to a biennial budget system noted that with annual budgeting there was a tendency to focus legislative attention on the details, which should be the concern of the executive.

Among the executive officials who were dissatisfied with the annual budget cycle some of the reasons cited were the following:

(1) an annual budget system results in a narrow viewpoint, short time spans for accomplishment, and a vast increase in staff work;

(2) a biennial budget provides more time for program planning activities;

(3) "with annual budgets, the top talent of the executive branch is tied up preparing, defending and implementing budgets. This creates a continuous and overlapping cycle which requires preparations for next year's budget to start before information on the operation of the current year's budget can be collected and evaluated."

Expenditure Controls under Biennial Budgets

Since a switch to biennial budgeting would allow the various state agencies to operate for two years without their programs being subjected to fiscal change, respondents were asked what measures should be introduced to assure that legislative and executive controls were not weakened. Among those suggested by legislative officials were these:

(1) a strong post-audit division for the evaluation of programs,

(2) the existence of an interim committee or emergency board to act upon requests to cover deficiencies or emergencies.

Executive officials, especially budget officials, made other suggestions for assuring control, including the following:

(1) legislative willingness to attend special sessions if a significant imbalance in the budget should arise,

(2) a requirement that each fiscal year in the biennium should stand alone, and no appropriations be carried forward from one year to the next,

(3) "greater emphasis be placed upon program evaluation and review in terms of definition or objectives, method of operation and intended results,"

(4) rather than becoming concerned with details, the legislative fiscal staff "should develop information for policy decisions and directions so that the legislators can decide what services the State should render and determine whether the service is worth the dollars that are required....the legislative branch should give the necessary attention to establishing the goals and policies that will set the directions and shape the future of the government."

Annual Session States with Biennial Budgets

Officials from both Iowa and Georgia pointed out that neither State operates on a strict biennial budget. Rather, the systems in those States might be described as 'modified annual' or 'modified biennial' budgets.

The Georgia constitution provides that a General Appropriations Act shall be passed the first year of the legislative term to cover the next two fiscal years. Any excess funds not expended during the first fiscal year shall lapse and revert to the fund from which they were appropriated. In practice, however, the money provided for the second year of the biennium by the appropriations act is merely a 'dummy appropriation' since it duplicates the first year. At the legislative session in the second year of the term amendments are made to the General Appropriations Act to authorize realistic appropriations for the second fiscal year. Since the executive departments are nevertheless required to present their requests on a two-year basis and the Governor must make his recommendations on a two-year basis, the General Assembly has access to the information to make a reasonable prediction of what funds will be necessary in the second fiscal year.

Prior to 1971, Iowa operated on almost a strictly biennial budget. During those years appropriation bills were drawn which authorized an

identical amount for each year of the biennium. Any departmental appropriations which were not expended during the first fiscal year of the biennium could be carried over and expended during the second fiscal year.

In 1971 a new procedure was put into effect through adoption of a law providing that if the appropriated funds of an agency were not expended during the first fiscal year, the balance would 'revert to the state treasury and to the credit of the fund from which appropriated.' If an agency felt that the funds which would normally have reverted to the state treasury were essential to that agency, an application could be made to the appropriations committees for a hearing.

One legislative official expressed the opinion that the most significant factor in preventing Iowa from changing to an annual budget was the added burden of repeating the entire budget process each year. Although several bills had been introduced in the State which would provide for an annual budget, this time factor seems to have been the foremost cause of defeat.

Questionnaire responses from the two States totalled six, but only three were susceptible to tabulation for any one question. Thus, the following discussion is based on limited responses.

Among both Georgia and Iowa officials there were differing opinions whether a change to an annual budget cycle would have any effect on the workload or size of executive budget agencies. One budget officer noted that the only alteration might be less emphasis on analysis work and more on projection. It was suggested that the workload of other executive agencies would increase as budget preparation became a 'full-time' project.

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Additionally, officials from both these States expressed the opinion that the workload of legislative fiscal staffs would be affected by a change to an annual budget. They felt that such a change would require greater detail, greater analysis of budget requests, and overall greater control being exercised by the general assembly. There was a difference of opinion, however, concerning whether the altered workload would necessitate a larger staff.

Regarding the State's willingness to undertake planning beyond the budget period when operating on an annual cycle, Georgia and Iowa respondents indicated that the proclivity to look beyond one year would either be reduced or unaffected. While they felt that annual budgets would lead to more accuracy of revenue estimates, they indicated that inaccuracies resulting from biennial budgets could be remedied in the annual legislative sessions. Georgia and Iowa officials contended that the rate of increase in budgets is more controllable in a biennial cycle. The primary argument in Iowa was that the pressure for increase is reduced during the second session when additional appropriations will be made only in the case of emergencies or unforeseeable changes. One Iowa official summarized as follows: "It seems to us that really we have the 'best of both worlds' 1) less time consumed in preparation/hearings, yet 2) the ability to review and make changes in the second session."

The Switch from Annual to Biennial Budgets – Hawaii

Hawaii abandoned an annual system in favor of a biennial one, effective July 1, 1971. Since this change was so recent, few definite results or effects were available for analysis at the time the questionnaires were sent out. In addition to the change to biennial budgeting, the

was in the process of implementing a planning-programming-budget system. The combination of these changes resulted in a change of focus from more detailed management control to an emphasis on planning and analysis. This new approach was intended to allow the state legislature to devote more attention during the second year of the biennium to an examination of the progress and effectiveness of various programs. In fact, under the new budget act annual reports to the legislature are required "reflecting the deviations of actual from planned levels of program effectiveness, program size, and program expenditures."

As far as could be determined, the change to a biennial budget had alleviated the burden of the executive budget staff and freed the staff members for more analytical assignment on the PPBS implementation project. In addition, it was predicted that the budget workload of other executive agencies and the legislative fiscal staff would be reduced substantially.

Although Hawaiian officials admitted that revenue estimates for the biennium period would probably be less accurate than on an annual cycle, they apparently felt that the difference would not cause significant problems. The officials also recognized that additional problems could arise in projecting matching requirements for federal grants and aid, but were hopeful that the legislature would be amenable to supplemental budget requests for this purpose during the second year of the biennium. Some hoped also that the rate of annual increase in state expenditures would be less under the biennial system.

Responses to the followup request reiterated the difficulty involved in determining the effect of the switch to biennial budgeting, because that switch was made coincidentally with a change to a planning-programming

budget. One official, commenting on the budget agency workload, pointed out that a change to a biennial budget might have substantially decreased the time spent in budget preparation, yet the amount of time allotted to this function actually increased due to the demands of the planning-programming budget.

One legislator noted that the change afforded committees the opportunity to scrutinize more closely various program accomplishments and problems, "the point being that there was 'extra' time to review programmatic matters and accomplishments because the committee was not straddled with the urgency or necessity of passing an annual budget."

A legislator also noted that the 1971-73 budget could have been legislatively reduced to realign expenditures with anticipated revenues. However, he added that such action deserves careful scrutiny when the effect would impose a restrictive ceiling for expenditures while the possibility of an upturn in revenues remains.

Despite the fact that the second legislative session under Hawaii's biennial budget is now history, the general feeling is that the State has not as yet experienced the full impact of the switch from an annual to a biennial budget.

Annual Budget Review – Wisconsin

Responses concerning the Wisconsin annual review process for the second year of the biennium were received from six officials — two executive, three legislators and one legislative staff. According to a 1971 joint resolution the Governor was to submit to the Legislature by January 18, 1972 any budget changes he deemed desirable for the second year of the biennium. An executive respondent estimated that the amount of work this

entailed for the central budget office was approximately one-third of that associated with full budget preparation. This additional work was absorbed by existing staff, at the expense of fewer daily agency contacts and policy development and management improvement work. On the legislative side, one respondent hailed the process as allowing legislative review of selected programs without waiting for a full budget cycle to elapse. The budget change also altered the duties of administrative agencies which respond only to specific questions raised by the budget staff rather than being required to submit new budgets.

In discussing any change in ability to meet matching requirements for federal grants in aid, one respondent noted that most agencies more than adequately budgeted to cover any such requirements. However, he cited one instance where the annual review remedied a situation of under-estimation and was subsequently the cause of critical comment from some legislators because the review allowed agencies to be "bailed out" of their errors. The respondent also predicted that the annual review process would accelerate the rate of increase in state expenditures. This position was contradicted, however, by another respondent, who reported that the rate of increase was substantially lower in 1971-73 than in the previous three biennia.

Five of the six responding Wisconsin officials expressed satisfaction with the annual review process, because it possessed the advantages of both the annual and biennial budget. The only dissatisfied official expressed the fear that the second year budget bill would consistently become "a grab-bag for everyone's pet project with considerable logrolling."

One factor preventing a full trial of the annual review process was that the 1972 budget was not adopted until November 1971, over [illegible] the

after the beginning of the fiscal year. Thus there was little time under the first year's budget before recommendations had to be made on the second. Partly for this reason most respondents felt that it is too soon for a full evaluation of the annual review process.

Conclusion: Which way to go?

It is not surprising that most respondents from States which have shifted from biennial to annual budgets support the change. This support among most categories of officials is strong, ranging from 75 percent for legislators to 100 percent for executive officials outside of the budget office. Only budget officers made a contest of the issue - three favored retention of annual budgets and three favored returning to biennial budgets. In no case were all respondents from a State unanimous in favoring a return to biennial budgeting.

The difference in point of view can occur because of differences in conception of the budget process and differences in experience undergone by each participant in the budget process in each State. In reality, a State can develop a good system of executive and legislative fiscal and program planning and controls under either an annual or biennial budget. The system would work differently with the alternate time-spans, but could be effective under either approach.

To illustrate the contention just stated, let us examine the major selling points of both annual and biennial budgets.

Annual budgets permit more frequent and probably more accurate estimating of revenues and financial requirements of state programs. Corrections on both the expenditure and revenue sides of the balance sheet can more readily be made. Adjustments because of sudden availability or loss of [illegible] funds can be made sooner.

Annual budgeting assures that action will be taken which reflects the above occurrences. Yet action can be taken under biennial budgeting too, if the Legislature meets annually. The Wisconsin budget review process was established for this purpose, and there appears to be nothing in the Wisconsin procedure that could not be adapted to the needs of any other State.

A fundamental reason why most responding legislators favor annual budgeting is that legislative control over spending is more easily attained; the Legislature can more frequently review the spending programs it previously authorized and ascertain whether legislative intent is being carried out.

This review is a basic function of the legislature, and any system should contain built-in procedures to accomplish it. It can be done with biennial budgets as well as annual. Of course, certain conditions must be met. If the legislature meets annually, if the legislature and its committees are continuing bodies throughout the biennium, if legislators are adequately paid and staffed so that they can devote time to the task and make productive use of their time, then the task of review can be carried out effectively, and corrective actions can be taken.

Now let us look at reasons in support of biennial budgeting. Biennial budgets force a longer range planning than annual budgets simply because appropriations must be made for a longer time span; they provide more time for long range planning; and they save the time of agencies, Governor, budget staff, legislature and legislative staff in compiling, presenting, explaining and defending the myriad details that go into the making of a budget. This would allow more time for program review and evaluation.

But these activities are not excluded under annual budgeting. Most budget procedures as established by budget offices require submission and analysis of much detail, but a number of States have been struggling with ways to reduce this burden. Many details, such as replacement of equipment, are better handled through concentration on good management as part of budget execution rather than as items to be spelled out in budgets. Detailed budget items imply a specific knowledge of needs that cannot be that accurately estimated months in advance of expenditure. Concentration on management analysis and program evaluation would be more productive in the long run, and can be fitted in with annual budgets as well as biennial.

Now, simply because appropriations must be made annually, must legislatures necessarily examine the fine print in every budget every year. Legislatures can find time for program evaluation if they adjust their procedures accordingly, such as concentrating on major issues and unusual changes along with a periodic careful review of all other programs. This is a variation of a suggestion made by one respondent that major programs such as education and welfare be budgeted annually, while lesser and more routine ones such as civil defense and licensing boards be budgeted biennially.

Good decision-making encompasses, among other things, defining state program needs, determining the most effective method of accomplishing the program, providing the resources to get the job done, and evaluating the operation of the program to see whether its aims were accomplished. The budget process is but one aspect, although a most crucial one, of this larger process.

Both executive and legislative officials in many States are seeking ways to accomplish this decision-making task more effectively. The job can be done with either an annual or biennial budget. Which way a State goes depends on its existing system of budget decision-making and a realistic assessment of what can be done soon to fashion the budget process to better serve its purpose. If institutions such as the budget cycle get in the way, then a decision must be made on whether to change the institution, find a way around it, or adjust it to better accomplish the job to be done.

ATTACHMENT D

Table 1
STATE BUDGETARY PRACTICES

State or other jurisdiction	Budget-making authority	Official or agency preparing budget	Date estimates must be submitted by dept. or agencies	Date submitted to legislature	Power of legislature to change budget*	Power of item veto by governor	Fiscal year begins	Frequency of budget
Alabama	Governor	Div. of the Budget, Dept. of Finance	Oct. 15 for Jan. session; Nov. 15 for Feb. session	By the 5th day regular business session	Unlimited	Yes	Oct. 1	Annual
Alaska	Governor	Div. of Budget & Management, Office of the Governor	Oct. 1	3rd legislative day of session	Unlimited	Yes	July 1	Annual
Arizona	Governor	Finance Div., Dept. of Administration	Sept. 1 each year	By the 5th day of regular session	Unlimited	Yes	July 1	Annual
Arkansas	Governor	Office of Budget, Dept. of Finance & Administration	Sept. 1 in even years	Date of convening session	Unlimited	Yes	July 1	Biennial, odd yr.(a)
California	Governor	Dept. of Finance	Specific date for each agency set by Dept. of Finance	Jan 10	Unlimited	Yes	July 1	Annual
Colorado	Governor	Executive Director, Office of State Planning & Budgeting	Aug. 1-15	Dept. budgets submitted Nov. 1; governor's full recommendation submitted within first 10 days of legislative session	Unlimited	Yes	July 1	Annual
Connecticut	Governor	Div. of Budget & Financial Management, Office of Policy & Management	Sept. 1	1st session day after third of Feb. in odd years, except if change in governor, then 1st session day after Feb. 14. In even years, on the Wed. following the 1st Mon. in Feb.	Unlimited	Yes	July 1	Annual
Delaware	Governor	Office of Budget Director, Office of the Governor	Sept. 15; schools, Oct. 15	By Feb. 1	Unlimited	Yes	July 1	Annual
Florida	Governor	Office of Planning & Budget, Office of the Governor	Nov. 1 each year	45 days prior to regular	Unlimited	Yes	July1	Biennial
Georgia	Governor	Office of Planning & Budget	Sept. 1	By 5th day of session or sooner	Unlimited	Yes	July 1	Annual
Hawaii	Governor(b)	Budget, Planning & Management Div., Dept. of Budget & Finance	Aug. 31	20 days prior to convening of session on 3rd Wed. in Jan.	Unlimited	Yes	July 1	Biennial, odd yr.(a,c)
Idaho	Governor	Office of the Governor	Sept. 1 before Jan. session	Not later than 5th day of session	Unlimited	Yes	July 1	Annual
Illinois	Governor	Bureau of the Budget, Office of the Governor	Specific date for each agency set by Bureau of the Budget	First Wed. in March	Unlimited	Yes	July 1	Annual
Indiana	Governor	Budget Agency(d)	Sept. 1 in even years, flexible policy	Within the 1st two weeks after the session convenes(e)	Unlimited	No	July 1	Biennial, odd yr.(a)
Iowa	Governor	Comptroller	Sept. 1	Feb. 1 or before	Unlimited	Yes	July 1	Biennial, odd yr.(a)
Kansas	Governor	Div. of the Budget, Dept of Administration	Not later than Oct. 1	Within 3 weeks after convening of session in odd years and within 2 days after convening of session in even years	Unlimited	Yes	July 1	Annual
Kentucky	Governor	Office for Policy & Management, Dept. of Finance	Specific date set by administrative action but may not be	As governor desires	Unlimited	Yes	July 1	Biennial, even yr.(a)

Louisiana	Governor	State Executive Budget Director, Div. of Administration	Dec. 15	Not later than 1st day of each regular session	Unlimited	Yes	July 1	Annual
Maine	Governor	Bureau of the Budget, Dept. of Finance & Administration	Sept. 1 in even years	Not later than the Fri. following the first Mon. in Jan. of the 1st regular legislative session. Governor-elect to 1st term, not later than Fri. following 1st Mon. in Feb. of 1st regular legislative session	Unlimited	No	July 1	Biennial, odd yr.(a)
Maryland	Governor	Secretary, Dept. of Budget & Fiscal Planning	Sept. 1	3rd Wed. of Jan. annually	Limited: legislature may decrease but not increase, except appropriations for legislature and judiciary	No	July 1	Annual
Massachusetts	Governor	Budget Director, Div. of Fiscal Affairs, Executive Office for Administration & Finance	Set by administrative action	Within 3 weeks after convening of the legislature	Unlimited	Yes	July 1	Annual
Michigan	Governor	Office of the Budget, Dept. of Management & Budget	Set by administrative action	10th day of session	Unlimited	Yes	Oct. 1	Annual
Minnesota	Governor	Budget Div., Dept. of Finance	Oct. 1 preceding convening of legislature	Within 3 weeks after the 1st Mon. in Jan. in each odd year	Unlimited	Yes	July 1	Biennial, odd yr.(a)
Mississippi	Commission of Budget & Accounting(f)	Commission of Budget & Accounting	Aug. 1 preceding convening of legislature	Dec. 15	Unlimited	Yes	July 1	Annual
Missouri	Governor	Div. of Budget & Planning, Office of Administration	Oct. 1	By the 30th day	Unlimited	Yes	July 1	Annual
Montana	Governor	Director, Office of Budget & Program Planning, Governor's Office	Sept. 1 of year before each session	1st day of session	Unlimited	Yes	July 1	Biennial, odd yr.
Nebraska	Governor	Budget Div., Dept. of Administrative Services	Not later than Sept. 15	Jan. 15	Limited: three-fifths vote required to increase governor's recommendations; majority vote required to reject or decrease such items	Yes	July 1	Annual
Nevada	Governor	Budget Director, Budget Div., Dept. of Administration	Sept. 1	10th day of session or before	Unlimited	No	July 1	Biennial, odd yr.(a)
New Hampshire	Governor	Comptroller, Dept. of Administration & Control	Oct. 1 in even years	Feb. 15 in odd years	Unlimited	No	July 1	Biennial, odd yr.(a)
New Jersey	Governor	Director, Div. of Budget & Accounting, Dept. of the Treasury	Oct. 1	Third Tues. after opening of session	Unlimited	Yes	July 1	Annual
New Mexico	Governor	Budget Div. Dept. of Finance & Administration	Sept. 1	On or before 25th day of regular session	Unlimited	Yes	July 1	Annual
New York	Governor	Div. of Budget, Executive Dept.	Early in Sept.	Second Tuesday following the first day of the annual session, except on or before Feb. 1 in years following gubernatorial election	Limited: may strike out items, reduce items, or add separate items of expenditure	Yes	April 1	Annual

State or other jurisdiction	Budget-making authority	Official or agency preparing budget	Date estimates must be submitted by dept. or agencies	Date submitted to legislature	Power of legislature to change budget*	Power of item veto by governor	Fiscal year begins	Frequency of budget
North Carolina	Governor	Office of State Budget	Sept. 1 preceding session	1st week of session	Unlimited	No	July 1	Biennial, odd yr.(a)
North Dakota	Governor	Office of Management & Budget	July 15 in even years; may extend 45 days	Dec. 1, prior to biennial session	Unlimited	Yes	July 1	Biennial, odd yr.
Ohio	Governor	Office of Budget & Management	Nov. 1; Dec. 1 when new governor is elected	Within four weeks of convening in odd years unless change in governor; then March 15	Unlimited	Yes	July 1	Biennial, odd yr.(a)
Oklahoma	Governor	Director of State Finance, Div. of Budget	Sept. 1	Immediately after convening of regular legislative session; an incoming governor, following inaugural	Unlimited	Yes	July 1	Annual
Oregon	Governor	Budget & Management Div., Executive Dept.	Sept. 1 in even year preceding legislative year	Dec. 1 in even year preceding legislative year	Unlimited	Yes	July 1	Biennial, odd yr.
Pennsylvania	Governor	Secretary of Budget & Administration, Governor's Office of Budget & Administration	Nov. 1 each year	As soon as possible after organization of legislature, but no later than 1st full week in Feb. Governor-elect to 1st term, no later than 1st week in March	Unlimited	Yes	July 1	Annual
Rhode Island	Governor	Div. of Budget, Dept. of Administration	Oct. 1	24th day of session	Unlimited	No	July 1	Annual
South Carolina	State Budget & Control Board(g)	Finance Div., State Budget & Control Board	Sept. 15 or discretion of board	2nd Tues. in Jan.	Unlimited	Yes	July 1	Annual
South Dakota	Governor	Commissioner, Bureau of Finance & Management, Dept. of Executive Management	Sept. 1	1st Tues. after 1st Mon. in Dec.	Unlimited	Yes	July 1	Annual
Tennessee	Governor	Budget Div., Dept. of Finance & Administration	Oct. 1	Prior to Feb. 1, except prior to March 1 in first year of governor's term	Unlimited	Yes	July 1	Annual
Texas	Governor, Legislative Budget Board	Budget & Planning Office, Office of Governor; Legislative Budget Board	Date set by budget director and legislative board	7th day of sesion or before	Unlimited	Yes	Sept. 1	Biennial, odd yr.(a)
Utah	Governor	State Budget Office	Sept. 1-30(h)	After convening of legislature, 3 days regular session; 1 day budget session	Unlimited	Yes	July 1	Annual
Vermont	Governor	Commissioner, Dept. of Budget & Management; Agency for Administration	Sept. 1	3rd Tues. in Jan.	Unlimited	No	July 1	(i)
Virginia	Governor	Director, Dept. of Planning & Budget, Office of Administration & Finance	Feb.-Sept. in odd years	Within 5 days after convening of regular session on 2nd Wed. in Jan. in even years	Unlimited	Yes	July 1	Biennial, even yr.(a)
Washington	Governor	Director, Office of Financial Management	Date set by governor	20th day of Dec. prior to session	Unlimited	Yes	July 1	Biennial, odd yr.(a)

West Virginia	Governor	Planning Div. & Div. of Budget, Dept. of Finance & Administration	Aug. 15	1st day of session except for 1st year of new gov. when it may be submitted 1 month after convening of session	Limited: may not increase items of budget bill except appropriations for legislature and judiciary	Yes	July 1	Annual
Wisconsin	Governor	Div. of State Executive Budget & Planning, Dept. of Administration	Dates as set by secretary, Department of Administration	On or before the last Tues. in Jan. in odd-numbered years	Unlimited	Yes	July 1	Biennial, odd yr.(a)
Wyoming	Governor	Budget Div., Dept. of Administration & Fiscal Control	Sept. 15 preceding session in Feb.	Jan. 1	Unlimited	Yes	July 1	Biennial, even yr.(a)
Dist. of Col.	Mayor	Office of Budget & Management Systems	Date set by mayor	(j)	Unlimited	Yes	Oct. 1	Annual
American Samoa(k)	Governor	Planning & Budget Office	July 1	August	Unlimited (local funds)	Yes	Oct. 1	Annual
Guam	Governor	Bureau of Budget & Management Research	Date set by director, Bureau of Budget & Management Research. Usually not later than Feb. 15	By April 30	Unlimited	Yes	Oct. 1	Annual
Puerto Rico	Governor	Bureau of the Budget, Office of the Governor	Oct. 15	2nd Mon. in Jan.; opening day of regular session	Unlimited	Yes	July 1	Annual
Virgin Islands	Governor	Director of the Budget, Office of the Governor	Dec. 30	Upon convening	Unlimited	Yes	Oct. 1	Annual

*Limitations listed in this column relate to legislative power to increase or decrease budget items generally. Specific limitations, such as constitutionally earmarked funds or requirement to enact revenue measures to cover new expenditure items, are not included.

(a) Budget is adopted biennially, but appropriations are made for each year of the biennium separately. Maine – budget is reviewed annually. Minnesota and Wisconsin – a few appropriations are made for the biennium. Virginia – amendments to current budget can be made in any year, but there is no formal provision for annual review of the entire biennial appropriation. North Carolina, Washington and Wyoming – biennial appropriations with annual review. Wisconsin – statutes authorize an annual budget review, and the governor may in even years recommend changes.

(b) Governor has budget-making authority for executive branch only. Judiciary and legislative branch budgets are the responsibility of the respective branches, and the governor may only veto the budget bills as a whole, not by item.

(c) Increases or decreases may be made in even-year sessions.

(d) Budget Committee serves in advisory capacity.

(e) Convenes on first Thursday after first Monday in January in odd years.

(f) Composition of commission: governor as ex officio chairman, lieutenant governor, chairman House Ways and Means Committee, chairman House Appropriations Committee, chairman Senate Finance Committee, president pro tem of senate, chairman Senate Appropriations Committee, one member of senate appointed by lieutenant governor, speaker of house, two house members appointed by the speaker.

(g) Composition of board: governor as chairman, treasurer, comptroller general, chairman Senate Finance committee, chairman House Ways and Means Committee.

(h) Thirty days prior to each department or agency hearing before the governor.

(i) 1981 legislature authorized annual or biennial budget at governor's discretion. Submission of annual budget began with fiscal 1982.

(j) Budget submitted to both council and Congress. Council sets date of submission for its review; the Office of Management and Budget, Executive Office of the President, sets the date for submission to Congress.

(k) Information from 1980-81 *Book of the States*.



electronic or other medium approved for such purpose by the governing board or officer having jurisdiction or control of such public funds.

(5) PROCEDURES FOR WIRE TRANSFER OF FUNDS.—Notwithstanding any other provision of law, the governing board or officer of any local government who has the authority to deposit or withdraw funds is authorized to transfer funds from one depository to another or within a depository or to another institution, and may transfer funds wherein the transfer does not represent an expenditure, advance, or reduction of cash assets. Such transfer may be made by electronic, telephonic, or other medium; and each transfer shall be confirmed in writing and signed by the designee of the governing board or officer of the local government.

(6) INVESTMENT OF PUBLIC FUNDS.—Notwithstanding any other provision of law, the governing board or officer of any local government who has the authority to invest funds is authorized to transfer funds by electronic or other medium for purposes of investment to any depository authorized by law to receive funds or in the Local Government Surplus Funds Trust Fund. A written record shall be kept of all transfers made pursuant to this section.

History.—ss. 1, 2, 3, 4, 5, ch. 78-406; s. 3, ch. 82-104.

215.96 Coordinating council.—[Repealed effective October 1, 1989, by s. 1, ch. 82-46, and scheduled for review pursuant to s. 11.611 in advance of that date.]

CHAPTER 216

PLANNING AND BUDGETING

216.031 Budgets for operational expenditures.

216.031 Budgets for operational expenditures.—The legislative budget requests submitted by the head of each state agency, showing the amounts requested for operational expenditures during the next biennium, shall contain the following:

(1) For each budget entity, a summary exhibit showing, for each appropriation category, for each fund, 2 prior years' appropriations for general revenue, 1 prior year's actual and 1 current year's estimated expenditures, and the requested expenditures for each year of the next biennium. The total number of positions for the budget entity shall be shown for each fiscal year of data for which positions are authorized, fixed, or requested. However, the agency budget request for the State University System shall be expressed in terms of the amounts for the various programs as prescribed in s. 240.271 and in terms of the specified appropriation categories, including the special units' budgets, prescribed in the prior appropriations act.

(2) For each program component within the budget entity, an exhibit showing, for each appropriation category, the summary explanation of expenditures for each detail issue describing the amounts and positions for each year of the next biennium to continue current programs, for improved programs, and for new programs, with a summary showing totals by fund for each year of the biennium.

(3) For each trust fund within the budget entity, a schedule showing the trust funds available, providing the source of receipts, detail of nonoperating disbursements, operating disbursements, fixed capital outlay, and unencumbered cash balances, for 2 prior years' actual, the current year's estimated, and the request for each year of the biennium.

(4) For each budget entity, a schedule showing detail of positions, providing for each class of positions within discrete organizational activities, by the collective bargaining unit and program component for each year of the next biennium, the number of full-time equivalent positions, the estimated rate of salary, the number of months to be employed, the amounts requested for new positions, and the number of new positions requested.

(5) Detailed information for each year of the biennium necessary for the Legislature and the Governor to evaluate:

(a) The effectiveness of current programs, including justification for those programs.

(b) The justification for increasing costs to continue the operations of current programs.

(c) The justification for proposed improvements in existing programs.

(d) The justification for proposed new programs.

(6) Additional information providing a detailed description of the agency's request and the corresponding calculations needed to support the request.

(7) A schedule and other such detailed information as may be necessary to identify the federal grants-in-aid portion of the agency's legislative budget request, as may be prescribed by the Executive Office of the Governor, in consultation with the appropriations committees of the Legislature.

(8) Workload and other performance indicators as prescribed by the Executive Office of the Governor pursuant to s. 216.023.

(9) The sum of money actually expended for contractual services, as defined in s. 287.012, by the agency for the previous year.

(10) A schedule listing each committee, however created; council; coordinating council; commission; and board of trustees that is adjunct to the executive agency. The schedule shall show the name, number of meetings held in the past fiscal year, number of members, and expenses of each committee, council, coordinating council, commission, or board of trustees. The schedule shall further state the purpose of each committee, council, coordinating council, commission, or board of trustees and the statutory basis for each one's creation.

The legislative appropriations committees and the Executive Office of the Governor may require the agency to address major issues for inclusion in the agency's requests. The issues shall be submitted to the agency no later than August 30 of each even-numbered year and shall be displayed in the agency's requests as provided in the budget instructions.

History.—s. 41, ch. 69-106; s. 7, ch. 71-354; s. 1, ch. 77-452; s. 40, ch. [illegible]; s. 1, ch. 80-45; s. 3, ch. 82-10; s. 11, ch. 82-196.

*Note.—As amended by s. 1, ch. 80-45, paragraph (e) is added to subsection (5) effective July 1, 1981, to read:

(e) The projected cost of the requested [illegible] budget cycle.

CHAPTER

FINANCIAL MATTERS F
POLITICAL SUBD

PART II REVENUE SI
OF 1972

PART III LOCAL F
MANAGEMENT AND

PART IV INVESTMEN
GOVERNMENT SURF

PART VI PARTICIPATIO
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PART II

REVENUE SHARING

218.23 Revenue sharing with
ment.

218.23 Revenue sharing
government.—

(1) To be eligible to particip
ing beyond the minimum entit
year, a unit of local government

(a) Reported its finances f
completed fiscal year to the De
and Finance, pursuant to s. 218

(b) Made provisions for anr
financial accounts in accordanc
law.

(c) Levied, as shown on its
report pursuant to s. 218.32, ad
sive of taxes levied for debt ser
millages authorized by the voter
enue equivalent to a millage ra
dollar based on the 1973 taxab
by the property appraiser purs
or, in order to produce revenu
which would otherwise be produ
valorem tax, to have received a
county pursuant to s. 125.01(6)(
pational license tax or a utility
lorem tax, or received revenue fr
of these four sources. If a new r
porated, the provisions of this p
to the taxable values for the yea
certified by the property appra
requires only a minimum amou
raised from the ad valorem tax,
cense tax, and the utility tax. I
minimum millage rate.

(d) Certified that persons in
forcement officers, as defined i
the qualifications for employme
the Police Standards and Train
its salary structure and salary p

CHAPTER NO. 666

AN ACT TO CLARIFY THE INFORMATION REQUIRED TO BE SUBMITTED TO THE BUDGET DIRECTOR AND THE LEGISLATIVE FISCAL ANALYST FOR THE PREPARATION OF AGENCY BUDGET ESTIMATES; PROVIDING A DATE BY WHICH THE BUDGET OFFICE WILL PREPARE AN AGENCY REQUEST; AND SPECIFICALLY INCLUDING THE UNIVERSITY SYSTEM UNDER THE BUDGET REQUIREMENTS; AMENDING SECTIONS 17-7-111 AND 17-7-112, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 17-7-111, MCA, is amended to read:

"**17-7-111. Agency program budgets — form distribution and contents.** *(1)* In the preparation of a state budget, the budget director shall, not later than July 1 in the year preceding the convening of the legislature, distribute to all state offices and departments, including the judicial branch and the legislative branch, the proper *forms* necessary for the preparation of budget estimates. These *forms* shall be prescribed by the budget director to procure *the* information *required by subsection (2).*

(2) The agency budget requests, when completed by the budget office, must set forth a balanced financial plan for the agency completing the forms for each fiscal year of the ensuing biennium. The plan must consist of:

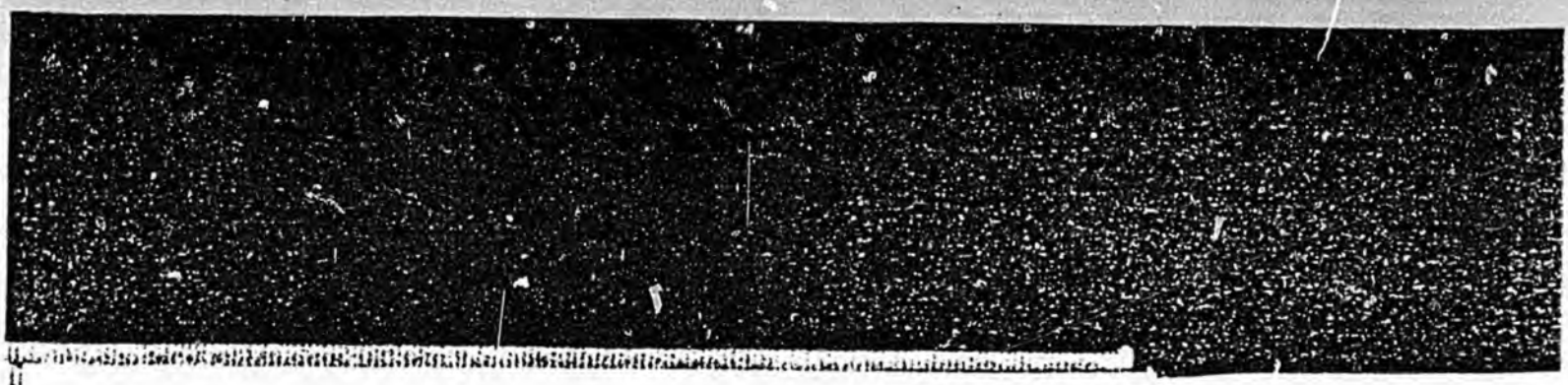
(a) a consolidated agency budget summary for current level expenditures and for each modification request setting forth the aggregate figures of the full-time equivalent personnel positions (FTE) and the budget in such manner as to show a balance between the total proposed disbursements and the total anticipated receipts, together with the other means of financing the budget for each fiscal year of the ensuing biennium, contrasted with the corresponding figures for the last completed fiscal year and the fiscal year in progress. The consolidated budget summary must be supported by schedules classifying receipts and disbursements contained therein by fund and, where applicable, organizational unit.

(b) a schedule of the actual and projected receipts, disbursements, and solvency of each accounting entity within each fund for the current and subsequent biennium;

(c) a detailed schedule of receipts, by accounting entity within each fund, indicating classification and source of funds;

(d) an agency schedule summarizing past and proposed spending plans and the means of financing the proposed plan. Information presented shall include the following:

(i) a statement of agency goals and objectives and a statement of goals and objectives for each program of the agency;



(ii) actual FTE and disbursements for the completed fiscal year of the current biennium, estimated FTE and disbursements for the current fiscal year, and the agency's request for the ensuing biennium, by program; and

(iii) actual disbursements for the completed fiscal year of the current biennium, estimated disbursements for the current fiscal year, and agency's recommendations for the ensuing biennium, by disbursement category;

(e) any other information the budget director feels is necessary for the preparation of a budget.

(3) The budget director must also prepare and submit to the legislative fiscal analyst in accordance with 17-7-112:

(a) detailed recommendations for the state long-range building program. Each recommendation shall be presented by department, institution, agency, or branch by funding source, with a description of each proposed project; and

(b) the proposed pay plan schedule for all executive branch employees with the specific cost and funding recommendations for each agency. Submission of a pay plan schedule under this subsection is not an unfair labor practice under 39-31-401."

Section 2. Section 17-7-112, MCA, is amended to read:

"17-7-112. Submission deadline. (1) It shall be the duty of each department, agency, and office, *including the Montana university system,* to submit *the* information *required under 17-7-111 to* the budget director on or before September 1 in the even year preceding the convening of the legislature.

(2) Between August 15 and September 30 in the year preceding the convening of the legislature, the director must submit each state agency's budget request required under 17-7-111(2) to the legislative fiscal analyst. The transfer of budget information shall be done on a schedule mutually agreed to by the budget director and the legislative fiscal analyst in a manner that facilitates an even transfer of budget information during the month of September and which allows each office to maintain a reasonable staff workflow.

(3) If any department, institution, *university unit,* or agency shall fail to present such information within the time herein specified, the budget director shall note that fact in the budget submitted to the governor and the budget director shall prepare *and submit to the legislative fiscal analyst and the governor by October 30* a budget request on behalf of such department, institution, *university unit,* or agency, based upon his studies of the operations, plans, and needs thereof.

(4) The proposed pay plan schedule required by 17-7-111(3) must be submitted to the legislative fiscal analyst no later than November 15 in the year preceding the convening of the legislature."

Approved April 28, 1983.

AN ACT TO COUPLE
NESS CORPORAT
PURPOSES OF TI
SECTIONS 15-31-20
15-31-205 THROUG
DIATE EFFECTIVE

Be it enacted by the L

Section 1. Section 1

"15-31-201. Defi
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(2) For purposes of
ration" means, with re
tion which has made
taxable year *and has*
on or before the 15th
which the election is to

Section 2. Section 1

"15-31-202. Elec
small business corpor
imposed by this chapte

(2) If a small busin
(1), then:

(a) with respect to
election is in effect, su
by this chapter and, w
taxable years, the provi

(b) with respect to
tion in which or with v
such election is in eff
shareholder, and with r
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(3) An election und
rules prescribed by the

(4) This election is
of such electing corpor
income as defined in 15

(5) Every electing
$10 required by 15-31-2

54-42-07. Transfer of records and other materials. The North Dakota merit system council as created by agreement of the social service board of North Dakota, the North Dakota unemployment compensation division, the North Dakota state employment service, and North Dakota state department of health shall transfer all records and other material to the possession of the North Dakota merit system council as created by this chapter.

Source: S.L. 1957, ch. 332, § 7; R.C. 1943, 1957 Supp., § 54-4207.

Cross-References.

Records of council transferred to central personnel division, see § 54-44.3-27.

54-42-08. Transfer of employees under merit system. All employed personnel having status under the merit system as created by agreement of the social service board of North Dakota, the North Dakota unemployment compensation division, the North Dakota state employment service, the North Dakota merit system council, and the North Dakota state department of health, shall have like status and pay under the North Dakota merit system council as created by this chapter.

Source: S.L. 1957, ch. 332, § 8; R.C. 1943, 1957 Supp., § 54-4208.

CHAPTER 54-43

THEODORE ROOSEVELT CENTENNIAL COMMISSION

[Omitted as a statute not of a general and permanent nature]

Note.

Not repealed but omitted as a chapter not of a general and permanent nature. For the provisions of this chapter, see S.L. 1957, ch. 333, §§ 1, 2.

CHAPTER 54-44

OFFICE OF MANAGEMENT AND BUDGET

Section

54-44-01. Responsibility of the office of management and budget.
54-44-02. State office of management and budget.
54-44-03. Director of the office of management and budget.
54-44-04. Powers and duties of the director of the office of management and budget.
54-44-04.1. The director of the office of management and budget shall have authority to withhold or deduct certain amounts from employees' compensation.
54-44-04.2. Unemployment compensation assessments to departments and institutions.
54-44-04.3. Appropriation of unemployment compensation assessments.
54-44-04.4. Payment of unemployment compensation claims.
54-44-04.5. Federal surplus property — Office of management and budget responsible for distribution — Powers and duties of director.
54-44-04.6. State surplus property — Department heads to inform director — Disposition of property — Proceeds — Exchange of property.
54-44-04.7. Responsibility to administer unassigned statutory functions of state government.
54-44-05. Warrants — Numbered — Show funds on which drawn — Not drawn unless authorized.
54-44-06. Duties as to school fund.
54-44-07. Office to set up account against person who fails to render account.
54-44-08. Director to institute suits in name of state.

54-44-09. Supplies for institutions under c
54-44-10. Legislative inspection of books o
54-44-11. Office's operating funds creation
54-44-12. Deposit and disbursement of f
Appropriation.
54-44-13. Failure of political subdivisions
of management and budget a

54-44-01. Responsibility of the office of management and budget i the control and supervision of the branch of the government, and is c office of the state auditor has the true independent post audit of all The responsibility of collecting adc in the office of the state tax commis

This chapter shall be liberally c ment this section.

Source: S.L. 1959, ch. 372, § 1; 1981, c 534, § 5.

Note.

Section 1, chapter 534, S.L. 1981, provide "Wherever the terms department of accoun and purchases, director of the department accounts and purchases, director of the sta department of accounts and purchases, dire tor of accounts and purchases, and depar ment when referring to the department accounts and purchases, appear in this cod the term office of management and budge director of the office of management and bu get, director of the state office of manageme and budget, or office, as the case may be, sha be substituted therefor. The director of t

54-44-02. State office of mana office of management and budget ve sibilities necessary to supervise a the various state departments, ager

Source: S.L. 1959, ch. 372, § 1.

54-44-03. Director of the offi shall be a director of the office o appointed by and serve at the will c shall be set by the governor withi for salaries by the legislative asser ees of the office shall be reimburs the duties of their office at the san state officials. The director shall be ent with law or rules established of the office of management and b

54-44-09. Supplies for institutions under control of the office of management and budget.
54-44-10. Legislative inspection of books of office of management and budget.
54-44-11. Office's operating funds creation.
54-44-12. Deposit and disbursement of funds of occupational and professional boards — Appropriation.
54-44-13. Failure of political subdivisions to repay natural disaster overpayments — Office of management and budget authorized to withhold funds.

54-44-01. Responsibility of the office of management and budget. The office of management and budget is to be a central authority, vested with the control and supervision of the fiscal administration of the executive branch of the government, and is directly responsible to the governor. The office of the state auditor has the primary responsibility of conducting a true independent post audit of all the executive departments and agencies. The responsibility of collecting additional taxes is consolidated and vested in the office of the state tax commissioner.

This chapter shall be liberally construed in a manner which will implement this section.

Source: S.L. 1959, ch. 372, § 1; 1981, ch. 534, § 5.

Note.

Section 1, chapter 534, S.L. 1981, provides: "Wherever the terms department of accounts and purchases, director of the department of accounts and purchases, director of the state department of accounts and purchases, director of accounts and purchases, and department when referring to the department of accounts and purchases, appear in this code, the term office of management and budget, director of the office of management and budget, director of the state office of management and budget, or office, as the case may be, shall be substituted therefor. The director of the office of management and budget is to be substituted for, and take any action previously to be taken by, and shall perform any duties previously to be performed by the director of the department of accounts and purchases".

Cross-References.

Federal aid coordinator office created in office of management and budget, see § 54-27.1-01.

Collateral References.

States ⇐ 85, 121, 122, 136.

72 Am. Jur. 2d, States, Territories, and Dependencies, §§ 75-77.

81A C. J. S. States, §§ 145, 146, 223 to 229, 242.

54-44-02. State office of management and budget. There shall be an office of management and budget vested with the duties, powers, and responsibilities necessary to supervise and administer the fiscal transactions of the various state departments, agencies, boards, and commissions.

Source: S.L. 1959, ch. 372, § 1.

54-44-03. Director of the office of management and budget. There shall be a director of the office of management and budget who shall be appointed by and serve at the will of the governor. The salary of the director shall be set by the governor within the limits of the amount appropriated for salaries by the legislative assembly, and the director and other employees of the office shall be reimbursed for expenses incurred in carrying out the duties of their office at the same rate and in the same manner as other state officials. The director shall be empowered to adopt rules, not inconsistent with law or rules established by the governor, for the administration of the office of management and budget, the conduct of its employees, the

distribution and performance of its business, and the custody, use, and preservation of the records, documents, and property pertaining thereto. He shall be empowered to set up such divisions or other internal organization within the office that he shall deem necessary in order to efficiently carry out the duties, powers, and responsibilities of the office.

The director of the office of management and budget shall execute an official bond in the sum of one hundred thousand dollars.

Source: S.L. 1959, ch. 372, § 1; 1981, ch. 535, § 16.

54-44-04. Powers and duties of the director of the office of management and budget. The director of the office of management and budget, or such subordinate officer as he shall designate:

1 to 4. Repealed by S.L. 1965, ch. 358, § 20.

5. Shall examine the budget affecting the legislative and judicial branches of the state government, but only for the purpose of determining the sufficiency of funds to meet the contemplated expenditures of these branches of state government or their officers or agencies.

6 and 7. Repealed by S.L. 1965, ch. 358, § 20.

8. Shall keep the general accounts, reflecting for each fund the resources and balance, together with current revenues and expenditures, and shall provide for an accrual accounting system.

9. Shall, acting as director of the office of the budget, process all claims for submittal to the office of management and budget, which may conduct the preaudit of all claims from the executive branch of the government before payment and the director shall conduct the current audit of all revenues, which shall include the supervision of the collection of all moneys due the state.

10. Repealed by S.L. 1979, ch. 541, § 2.

11. Except as otherwise provided by law, shall prepare warrants for payment of all claims from the executive branch of government, when approved by the office of the budget, and for payment of all claims from the judicial and legislative branches.

12. Shall be vested with the duties, powers, and responsibilities involved in the development and installation of financial records and procedures for all state departments and agencies.

12.1. Shall coordinate the development of accounting and financial related systems.

12.2. Shall create an accounting manual and provide sufficient training of current and potential users concerning the functions and use of a statewide accounting and reporting system.

13. Shall conduct such interval audits of accounts in the several departments of the state as he shall deem necessary.

14. Shall issue current reports to administrative officials concerning the status of revenue, expenditures, and appropriation accounts, and shall make periodic financial reports to the governor, administrative officials, the legislative assembly, and the public.

14.1. Shall prepare on an annual basis comprehensive financial statements of the state of North Dakota.

15. Shall submit a bi
the governor and
activities of all the
ments established
include a statemen
and public expendit

16. Shall accompany h
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17. Shall, when reques
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21. Shall be vested wit
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22. Shall maintain and
able to supply the
commonly used com
strued as authorizin

22.1. Shall distribute f
tions 54-44-04.5 and

23. Shall establish and
mechanical or electr

24. Shall perform such

Source: S.L. 1959, ch. 372, 346, § 67; 1965, ch. 358, § 20; 196 1973, ch. 403, § 51; 1975, ch. 466, 541, §§ 1, 2; 1979, ch. 560, § 1; § 10; 1981, ch. 1, §§ 9, 10; 1981, ch

Cross-References.

Communications advisory cor bership of director, see § 54-23.1

Departmental payrolls requirements of subdivisi § 54-14-04.2.

Director of office of manage get ex officio director of the § 54-44.1-02.

15. Shall submit a biennial report as prescribed by section 54-06-04 to the governor and the office of management and budget covering the activities of all the divisions of the office. In addition to any requirements established pursuant to section 54-06-04, the report shall include a statement of the funds of the state, the revenues of the state, and public expenditures during the two preceding fiscal years.
16. Shall accompany his biennial report with tabular statements showing the amount of each appropriation for the two preceding fiscal years, the amount expended, and the balance, if any, and also the amount of revenue chargeable to each county for such years, the amount paid, and the amount unpaid or due therefrom.
17. Shall, when requested, give information in writing to either house of the legislative assembly relating to the fiscal affairs of the state or to the administration of his office.
18. Shall submit to the governor at the close of each business day, or at such times as the governor may request, a report showing the current condition of each fund and appropriation.
19. Shall keep an account with each organized county of the state in which each county shall be charged with the amount of delinquent taxes due to the state, and with all sums levied in such county for state purposes, and shall be credited with all sums paid into the state treasury on account of such taxes.
20. Shall keep an account between the state and state treasurer, and charge the state treasurer therein with the balance in the treasury when he came into office, and with all moneys received by the state treasurer, and credit him with all warrants drawn on and paid by him.
21. Shall be vested with the duties, powers, and responsibilities involved in the operation of a centralized purchasing service.
22. Shall maintain and operate such supply rooms as may be found desirable to supply the several departments with office supplies and other commonly used commodities; however, this subsection shall not be construed as authorizing the establishment of a warehousing system.
22.1. Shall distribute federal and state surplus property pursuant to sections 54-44-04.5 and 54-44-04.6.
23. Shall establish and operate a central duplicating service and central mechanical or electronic data processing facilities.
24. Shall perform such other duties as are or may be prescribed by law.

Source: S.L. 1959, ch. 372, § 1; 1963, ch. 346, § 67; 1965, ch. 358, § 20; 1969, ch. 452, § 1; 1973, ch. 403, § 51; 1975, ch. 466, § 54; 1979, ch. 541, §§ 1, 2; 1979, ch. 560, § 1; 1979, ch. 568, § 10; 1981, ch. 1, §§ 9, 10; 1981, ch. 537, § 1.

Cross-References.

Communications advisory committee membership of director, see § 54-23.1-03.

Departmental payrolls exempt from requirements of subdivision 11, see § 54-14-04.2.

Director of office of management and budget ex officio director of the budget, see § 54-44.1-02.

State purchasing practices, see ch. 54-44.4.

Institutions under Board of Administration.

This chapter did not relieve the board of administration (predecessor to director of institutions) of all responsibility for overseeing accounts and purchases of institutions under its control; rather, the department of accounts and purchases (predecessor to office of management and budget) is to work through the board of administration with respect to such institutions. State ex rel. Joos v. Guy (1963) 125 NW 2d 468.

54-44-04.1. The director of the office of management and budget shall have authority to withhold or deduct certain amounts from employees' compensation. The director of the office of management and budget, in addition to other deductions or withholdings authorized or permitted by law, shall be authorized to withhold or deduct from the employees' monetary compensation such amounts as may be determined by the employer and employees to participate in tax-favored or tax-sheltered annuity programs which are authorized by the federal Internal Revenue Code

Source: S.L. 1969, ch. 453, § 1.

54-44-04.2. Unemployment compensation assessments to departments and institutions. Beginning July 1, 1979, all departments and institutions of the state of North Dakota shall pay to the office of management and budget one percent of the first six thousand dollars of each employee's earnings. Such assessments shall be paid to the office of management and budget in accordance with guidelines established by the office of the budget, from the general fund and special funds appropriated for salaries and wages to the individual departments and institutions. The moneys received from such assessments shall be deposited by the office of management and budget into a fund for the purpose of paying unemployment compensation claims. The director of the office of management and budget may decrease or suspend the assessments provided for in this section upon determination that the funds deposited pursuant to this section are sufficient to offset anticipated obligations.

Source: S.L. 1979, ch. 582, § 2; N.D.C.C., § 54-44-04.3.

54-44-04.3. Appropriation of unemployment compensation assessments. All assessments received by the office of management and budget and deposited into the fund for unemployment compensation claims are hereby appropriated.

Source: S.L. 1979, ch. 58, § 3; N.D.C.C., § 54-44-04.4; S.L. 1981, ch. 536, § 1.

54-44-04.4. Payment of unemployment compensation claims. The office of management and budget from the appropriations made in section 54-44-04.3 shall quarterly reimburse the job service North Dakota for the amount of actual claims paid by the job service North Dakota to eligible recipients previously employed by state departments and institutions. It shall be the responsibility of each department and institution to verify and certify the validity of each unemployment claim prior to the reimbursement of funds to the job service North Dakota.

Source: S.L. 1979, ch. 58, § 4; N.D.C.C., § 54-44-04.5.

54-44-04.5. Federal surplus property — Office of management and budget responsible for distribution — Powers and duties of director.

1. The office of managem
equitable distribution,
erty transferred to the
and Administrative Se
40 U.S.C. 484 (j)], hereir
2. The director of the offic
nate officer as the direc
a. May receive, invest
tions for federal sur
b. May acquire any fe
under the federal Ac
c. May distribute any
Act to:
(1) Any public age
the residents of
purposes; or
(2) Nonprofit educ
or organizations
501 of the feder
cation or public
d. May store the federa
e. Shall develop, subm
distribution of feder
eral Act and rules
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by the department o
f. May cooperate and
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g. May provide inform
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h. May assess and coll
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tion. The service cha
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Act. The state treas
if the director requ
the fund.
i. Adopt rules and tak
surplus property pur

Source: S.L. 1981, ch. 537, § 2.

54-44-04.6. State surplus
director — Disposition of p
erty.
1. The person in charge of
state shall inform the d
whenever that departm
property, whether origi

1. The office of management and budget is responsible for the fair and equitable distribution, through donation, of all federal surplus property transferred to the state in accordance with the Federal Property and Administrative Services Act of 1949, as amended [63 Stat. 378; 40 U.S.C. 484 (j)], hereinafter referred to as the federal Act.
2. The director of the office of management and budget, or such subordinate officer as the director shall designate:
   a. May receive, investigate, and make recommendations on applications for federal surplus property available under the federal Act.
   b. May acquire any federal surplus property transferred to the state under the federal Act.
   c. May distribute any federal surplus property pursuant to the federal Act to:
      (1) Any public agency for use in carrying out or promoting for the residents of a given political subdivision one or more public purposes; or
      (2) Nonprofit educational institutions, public health institutions, or organizations which are exempt from taxation under section 501 of the federal Internal Revenue Code, for purposes of education or public health or research for those purposes.
   d. May store the federal surplus property.
   e. Shall develop, submit, and implement a state plan of operation for distribution of federal surplus property and comply with the federal Act and rules and regulations adopted thereunder Provided, the director may continue the state plan of operation developed by the department of public instruction.
   f. May cooperate and enter into agreements with other surplus property agencies and federal agencies to screen and acquire surplus property and exchange property, facilities, personnel, and services.
   g. May provide information and assistance for acquiring federal surplus property to entities listed in subdivision c.
   h. May assess and collect service charges from participating recipients to cover direct and reasonable cost of services under this section. The service charges shall be deposited with the state treasurer in a surplus property special fund and used pursuant to the federal Act. The state treasurer shall credit all interest earned to the fund if the director requests the state treasurer to invest portions of the fund.
   i. Adopt rules and take other action necessary to distribute federal surplus property pursuant to the federal Act.

Source: S.L. 1981, ch. 537, § 2.

54-44-04.6. State surplus property — Department heads to inform director — Disposition of property — Proceeds — Exchange of property.

1. The person in charge of any department, agency, or institution of the state shall inform the director of the office of management and budget whenever that department, agency, or institution possesses surplus property, whether originally obtained with state or federal funds, and

the person in charge believes that the state surplus property may be used by any other department, agency, institution, or political subdivision of the state.

2. The director of the office of management and budget shall dispose of the state surplus property in the following manner:
   a. By transferring it to other state departments, institutions, or agencies without cost other than transportation expenses which shall be paid by the receiving agency. Provided, when the state surplus property was originally purchased pursuant to an appropriation other than from the general fund of the state, the agency receiving that state surplus property shall pay an amount equal to the fair market value of the property. Moneys received pursuant to this subdivision shall be deposited in the fund from which the original purchases were made.
   b. If not disposed of under subdivision a, then by sale on sealed bids or at public auction to the highest and best bid for property valued at more than three thousand dollars, with no money deposit required prior to sale, or by sealed bids, public auction, or negotiation at fair value for property valued at less than three thousand dollars.
   c. If not disposed of under subdivision a or b, title to the property shall be transferred to political subdivisions without cost, except transportation expenses.
3. All proceeds of property sold under this section, less sales costs, shall be deposited in the general fund except as provided in subdivision a of subsection 2.
4. No department, agency, or institution may exchange items as part of a purchase price of new items until a detailed statement of the value of the items to be exchanged and request for approval have been submitted to the director of the office of management and budget. The director shall approve the exchange only if the director has determined that the item has been valued at fair value.

Source: S.L. 1981, ch. 537, § 3.

54-44-04.7. Responsibility to administer unassigned statutory functions of state government. The office of management and budget shall administer all statutory functions assigned to the executive branch of state government but not statutorily placed with any specific state entity.

Source: S.L. 1981, ch. 534, § 6.

54-44-05. Warrants — Numbered — Show funds on which drawn — Not drawn unless authorized. Warrants drawn by the office of management and budget and signed by the state auditor on the state treasurer shall be numbered consecutively in the order in which they are drawn. Every warrant shall be drawn upon the fund out of which it is payable. A warrant shall not be drawn by the office of management and budget and signed by the state auditor unless authorized by law, and unless there are funds in the treasury applicable to the payment thereof to meet the same. In case of an emergency, and in anticipation of taxes already levied and

in the process of collection, the office of management and budget may prepare warrants to be signed by the state auditor in payment of duly authorized vouchers even though funds at such time do not exist to honor the warrants. Warrants so issued shall be payable by the state treasurer out of any funds in his hands other than sinking funds, or funds dedicated by the Constitution of North Dakota for other purposes.

Source: S.L. 1959, ch. 372, § 1; 1965, ch. 345, § 2.

54-44-06. Duties as to school fund. The office of management and budget shall keep a separate account of the school fund and of the interest and income thereof, together with such moneys as may be raised by special tax or otherwise for school purposes. The office shall perform such duties with reference to the apportionment of such fund as are described in title 15.

Source: S.L. 1959, ch. 372, § 1.

54-44-07. Office to set up account against person who fails to render account. Whenever any person has received moneys or has moneys or other personal property which belongs to the state by escheat or otherwise, or has been entrusted with the collection, management, or disbursement of any moneys, bonds, or interest accruing therefrom, belonging to or held in trust by the state, and fails to render an account thereof to and make settlement with the office of management and budget within the time prescribed by law, or when no particular time is specified, fails to render such account and make such settlement, or fails, within twenty days after request by the office of management and budget to pay into the state treasury any money belonging to the state, the office of management and budget must state an account with such person, charging interest at the rate of twelve percent per annum from the time of the failure. A copy of such account shall be prima facie evidence in any suit of the things therein stated. If the office of management and budget, for want of information, cannot state an account, that fact may be alleged and the amount of money or other property which is due or which belongs to the state may be stated generally.

Source: S.L. 1959, ch. 372, § 1.

54-44-08. Director to institute suits in name of state. The director of the office of management and budget shall institute suit in the name of the state against:

1. Officials for all official delinquencies in relation to the assessment, collection, and payment of the revenue.
2. Persons who by any means have become possessed of public moneys or property and who fail or neglect to pay for or deliver the same.
3. All persons indebted to the state.

Source: S.L. 1959, ch. 372, § 1.

54-44-09. Supplies for institutions under control of the office of management and budget. The office of management and budget shall make

all purchases of goods and materials on behalf of the various state institutions, departments, and agencies in accordance with the standards and specifications of the United States bureau of standards.

Source: S.L. 1959, ch. 372, § 1.

54-44-10. Legislative inspection of books of office of management and budget. Whenever required the office of management and budget shall submit its books, accounts, and vouchers to the inspection of the legislative assembly, or any committee thereof authorized to request such documents.

Source: S.L. 1959, ch. 372, § 1.

54-44-11. Office's operating funds creation.

1. The office of management and budget shall establish a state purchasing operating fund to be used for the procurement and maintenance of an inventory of equipment and supplies for the state departments and agencies. Any surplus in this fund in excess of one hundred thousand dollars on June thirtieth of each year shall be transferred to the state general fund.
2. The office of management and budget shall establish a state printing operating fund to be used for the procurement and maintenance of an inventory of printing equipment and supplies for the state departments and agencies.
3. The office of management and budget shall establish a state central data processing operating fund to be used for the procurement and maintenance of data processing equipment and supplies and for providing data processing services to state departments and agencies.
4. Each office, agency, or institution provided with purchasing, printing, or data processing services, unless exempted by law, shall pay to the office of management and budget a proportionate share of the cost of such service as determined by the director of the office of management and budget, based on actual costs and actual usage. The amounts paid to the office of management and budget by the various offices, agencies, and institutions shall be deposited in the appropriate operating fund and shall be expended in accordance with legislative appropriations.

Sources: S.L. 1959, ch. 214, § 2; 1967, ch. 392, § 1; 1969, ch. 454, § 7; 1975, ch. 486, § 1; 1979, ch. 561, § 1; 1981, ch. 534, § 7; 1981, ch. 538, § 1.

Note.

Section 54-44-11 was amended twice by the 1981 Legislative Assembly. Section 7 of chapter 534, S.L. 1981, changed the name of the department of accounts and purchases to the office of management and budget in subsection 1. Section 1 of chapter 538, S.L. 1981, deleted language concerning transfer of surplus funds in subsections 2 and 3. Pursuant to section 1-02-09.1, the section is printed above to harmonize and give effect to the changes made by both acts.

54-44-12. Deposit and disbursement of funds of occupational and professional boards — Appropriation. All occupational and professional boards, associations, and commissions created by law shall deposit all fees and other moneys received in any bank selected by the majority vote of the governing body of the board, association, or commission. Checks may

be drawn against the
the authorized expendit
signature or signatures
the governing body. All
are hereby appropriate
board, association, or co

Source: S.L. 1971, ch. 510.

**54-44-13. Failure o
overpayments — Offic
hold funds.** Whenever
sion under the Disaster
and all acts amendator
following July first, the

1. Upon certification
that a political su
ment, withhold all
moneys due the su
either the federal c
2. Cease to withhold
sentative certifies t

Source: S.L. 1971, ch. 511.

Note.

The Disaster Relief Act of 1

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54-44.1-01. Definition.
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wise requires, the term
board, commission, agen
or distinct appropriation

Source: S.L. 1965, ch. 356, §

Collateral References.

States ⇨ 121.

be drawn against the bank account, opened pursuant to this section, for the authorized expenditures of the board, association, or commission on the signature or signatures of the person or persons authorized to so act by the governing body. All moneys in accounts opened pursuant to this section are hereby appropriated for the use of the occupational or professional board, association, or commission opening the account.

Source: S.L. 1971, ch. 510, § 14.

54-44-13. Failure of political subdivisions to repay natural disaster overpayments — Office of management and budget authorized to withhold funds. Whenever an overpayment made to any state political subdivision under the Disaster Relief Act of 1970 [Pub. L. 91-606; 84 Stat. 1744], and all acts amendatory and supplemental thereto, is not repaid by the following July first, the state office of management and budget shall:

1. Upon certification from the governor's natural disaster representative that a political subdivision is delinquent in repaying such overpayment, withhold all funds, grants-in-aid, tax shares, and other similar moneys due the subdivision from the state until the subdivision repays either the federal or state government.
2. Cease to withhold funds when the governor's natural disaster representative certifies that the subdivision has repaid the overpayment.

Source: S.L. 1971, ch. 511, § 1.

Note.

The Disaster Relief Act of 1974 (P.L. 93-288, 88 Stat. 143, 42 U.S.C. § 5121 et seq.) substantially repealed the Disaster Relief Act of 1970 referred to in this section.

CHAPTER 54-44.1

OFFICE OF THE BUDGET

Section

54-44.1-01. Definition.
54-44.1-02. Office of the budget — Director — Employees — Powers.
54-44.1-03. Powers and duties of the director of the budget.
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54-44.1-06. Preparation of the budget data — Contents.
54-44.1-07. Presentation of budget data — How presented to the legislative assembly.
54-44.1-08. Budget report — Contents — When submitted to legislative assembly.
54-44.1-09. All expenditures must be appropriated.
54-44.1-10. Payments made pursuant to law only.
54-44.1-11. Office of management and budget to cancel unexpended appropriations — When they may continue.
54-44.1-12. Control over rate of expenditures.
54-44.1-13. Budget requests for legislative and judicial branches.
54-44.1-14. Biennial report to legislative assembly.

54-44.1-01. Definition. As used in this chapter, unless the context otherwise requires, the term "budget unit" means a department, institution, board, commission, agency, or other unit of government for which separate or distinct appropriations are made.

Source: S.L. 1965, ch. 358, § 1.

Collateral References.

States ⇨ 121.

72 Am. Jur. 2d, States, Territories, and Dependencies, § 75.

81A C. J. S. States, § 203.

54-44.1-02. Office of the budget — Director — Employees — Powers. The office of the budget is hereby established in the office of management and budget, for the purpose of promoting economy and efficiency in the fiscal management of the state government. The director of the office of management and budget shall be ex officio director of the budget.

The director of the budget shall appoint a budget analyst who shall hold a baccalaureate degree from a recognized institution of higher learning and such appointment shall be based upon the qualifications of eligible persons, without reference to partisan politics. Special consideration shall be given to persons who hold a degree in law, political science, business administration, or a combination thereof and who are experienced in governmental processes. The budget analyst shall serve at the pleasure of the director of the budget. The budget director shall employ such other professional, technical, and clerical personnel as he may deem necessary to carry out the duties prescribed in this chapter and shall fix the salary of all employees within the office of the budget and within the limits of the legislative appropriations. All personnel within the office of the budget shall be allowed their actual and necessary travel expenses at the same rate as for other employees of the state.

Source: S.L. 1965, ch. 358, § 2.

Cross-References.

Claims against state, budget office to assume functions of auditing board, see § 54-14-01.1.

54-44.1-03. Powers and duties of the director of the budget. The director of the budget, or such subordinate officer as he shall designate shall:

1. Be vested with the duties, powers, and responsibilities involved in securing budget estimates and work programs from the several departments and agencies of the state government.
2. Be vested with the duties, powers, and responsibilities involved in the preparation of revenue and fixed expense estimates.
3. Develop financial policies and plans as the basis for budget recommendations to the legislative assembly, and prepare detailed documents in accordance with such financial policies and plans for presentation to the legislative assembly.
4. Coordinate the fiscal affairs and procedures of the state to assure the carrying out of the financial plans and policies approved by the legislative assembly.
5. Exercise continual control over the execution of the budget affecting the departments, institutions, and agencies of the executive branch of the state government involving approval of all commitments for conformity with the program provided in the budget, frequent comparison of actual revenues and budget estimates, and control of the rate of expenditures through a system of semiannual, quarterly, or monthly allotments.
6. Investigate, examine, and make exhaustive studies:
   a. Of the structure and operation of the entire executive branch of government and of every office, institution, and agency thereof.
   b. Of all the functions, duties, and services of all executive branch offices, departments, institutions, industries, boards, bureaus, and commissions.
   c. Of all the books or agency of t whether their sound, necessar
7. Develop a long-ter by the legislative as
8. Have the authority agencies, and empl the preparation and
9. Provide such assist be available to assi information or mat ble at all times to designees.
10. Perform all other n chapter and of chap

Source: S.L. 1965, ch. 358. 110, § 10.

54-44.1-04. Budget e the budget — Deadline. fifteenth of each year nex shall submit to the office of his budget unit for th manner prescribed by th as is required by the offi head of the budget unit w bear the approval of the b a board or commission is cretion may extend the is some circumstance whi sion. If a budget unit has ments by the required d director of the budget, the unit's estimate of financ exceed ninety percent of s The director of the budge shall examine the estima reasonable opportunity requested, shall grant to t shall be open to the public.

Source: S.L. 1965, ch. 358, 539, § 1.

Cross-References.

Budget of North Dakota firem tion, see § 18-03-05.

Budget of state highway dep § 24-02-09.

54-44.1-05. Federal ai the budget. Every agency

c. Of all the books, records, and methods of accounting of each office or agency of the executive branch to ascertain and determine whether their policies, practices, and systems of accounting are sound, necessary, practical, and efficient.

7. Develop a long-term capital improvements budget for consideration by the legislative assembly.
8. Have the authority to procure from the various officers, departments, agencies, and employees such information as may be necessary for the preparation and execution of the budget.
9. Provide such assistance as the legislative assembly may request and be available to assist its appropriations committees with any needed information or material and make its records and information available at all times to the legislative assembly and its committees and designees.
10. Perform all other necessary duties to carry out the provisions of this chapter and of chapter 54-14.

Source: S.L. 1965, ch. 358, § 3; 1973, ch. 110, § 10.

54-44.1-04. Budget estimates of budget units filed with the office of the budget — Deadline. The head of each budget unit, not later than July fifteenth of each year next preceding the session of the legislative assembly, shall submit to the office of the budget, estimates of financial requirements of his budget unit for the next two fiscal years, on the forms and in the manner prescribed by the office of the budget, with such explanatory data as is required by the office of the budget and such additional data as the head of the budget unit wishes to submit. The estimates so submitted shall bear the approval of the board or commission of each budget unit for which a board or commission is constituted. The director of the budget in his discretion may extend the filing date for any budget unit if he finds there is some circumstance which makes it advantageous to authorize the extension. If a budget unit has not submitted its estimate of financial requirements by the required date or within a period of extension set by the director of the budget, the director of the budget shall prepare such budget unit's estimate of financial requirements except such estimate shall not exceed ninety percent of such budget unit's previous biennial appropriation. The director of the budget or such subordinate officer as he shall designate shall examine the estimates and shall afford to the heads of budget units reasonable opportunity for explanation in regard thereto and, when requested, shall grant to the heads of budget units a hearing thereon which shall be open to the public.

Source: S.L. 1965, ch. 358, § 4; 1981, ch. 539, § 1.

Cross-References.

Budget of North Dakota firemen's association, see § 18-03-05.

Budget of state highway department, see § 24-02-09.

Decisions under Prior Law.

Heads of state hail insurance fund, state bonding fund, state fire and tornado fund, and workmen's compensation fund had duty of filing statements of funds needed as prescribed by former section 54-15-05. Langer v. State (1939) 69 ND 129, 284 NW 238.

54-44.1-05. Federal aid budget requests — Filed with the office of the budget. Every agency of the state government when making requests

for budgets to be submitted to the federal government for funds, equipment, material, or services shall have such request or budget filed in the office of the budget before submitting it to the proper federal authority. When such federal authority has approved the request or budget, in whole or in part, the agency of the state government shall resubmit it to the office of the budget for recording before any allotment or encumbrance of the federal funds can be made.

Source: S.L. 1965, ch. 358, § 5. from treasurer of agricultural college, see § 15-12-06.1.

Cross-References.

Budget director to receive quarterly reports

54-44.1-06. **Preparation of the budget data — Contents.** The director of the budget, through the office of the budget, shall prepare budget data which shall contain and include the following:

1. Summary statements of the financial condition of the state, accompanied by such detailed schedules of assets and liabilities as the director of the budget deems desirable, which shall include, but not be limited to, the following:
   a. Summary statements of fund balances and assets showing in detail for each fund the surplus or deficit at the beginning of each of the two fiscal years of the previous biennium and the first fiscal year of the present biennium, the actual revenue for those years, the total appropriations for the previous and present biennium, and the total expenditures for those fiscal years; and
   b. Similar summary statements of the estimated fund balances and assets for the current fiscal year and each of the fiscal years of the next biennium.

   Summary statements may include, but not be limited to, a comparative consolidated balance sheet showing all the assets and liabilities of the state and the surplus or deficit, as the case may be, at the close of the first fiscal year of the current biennium.
2. Statements of actual revenue for the previous biennium, the first year of the present biennium, and the estimated revenue of the current fiscal year and of the next biennium, and a statement of unappropriated surplus expected to have accrued in the state treasury at the beginning of the next fiscal year. The statements of revenue and estimated revenue shall be classified by sources and by budget unit collecting them. Existing sources of revenue shall be analyzed as to their equity, productivity, and need for revision, and any proposed new sources of revenue shall be explained.
3. Summary statements of expenditures of the previous biennium and first year of the present biennium, itemized by budget units and classified as prescribed by the director of the budget.
4. Detailed comparative statements of expenditures and requests for appropriations by funds, budget units and classification of expenditures, showing the expenditures for the previous biennium, the first fiscal year of the present biennium, the budget of the current biennium, and the governor's recommendation for appropriations for each budget unit for the next biennium, all distributed according to the

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5. A detailed statement
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6. A summary statemen
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additional revenue.
7. Drafts of a proposed g
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the general appropriat
8. Such other informatio
or as is required by lav

Source: S.L. 1965, ch. 358, § 6
562, § 1.

54-44.1-07. **Presentatio**
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prescribed classification of expenditures. Following the lists of actual and proposed expenditures of each budget unit there shall be a brief explanation of the functions of the unit and comments on its policies and plans and on any considerable differences among the amounts recommended, with such descriptive, quantitative, comparative, and other data as to work done, unit costs, and like information as may be considered necessary or desirable. For capital outlay expenditures involving construction projects to be completed in two or more fiscal years, there shall be shown the total estimated cost of each such project and the amount thereof recommended to be appropriated and expended in each ensuing fiscal year until completion of the project. Capital outlay needs may be projected for at least two years beyond the period covered by the budget.

5. A detailed statement showing the estimate of all moneys required to be raised or appropriated for the payment of interest upon the funded debt of the state and its other obligations bearing interest, and the amount of money required to be contributed in the two next ensuing fiscal years to the general sinking funds maintained for the redemption and payment of the debts of the state.
6. A summary statement of the unappropriated fund balance estimated to be available at the beginning of the next biennium, and the estimated revenue of the next biennium, as compared with the total recommended amounts of appropriation for all classes of expenditures for the next biennium, and if the total of the recommended expenditures exceeds the total of the estimated resources, recommendations as to how the deficiency is to be met and estimates of any proposed additional revenue.
7. Drafts of a proposed general appropriations act and special appropriations acts embodying the budget data and recommendations of the governor for appropriations for the next biennium, and drafts of such revenues and other acts recommended by the governor for putting into effect the proposed financial plan. The recommended general appropriation for each budget unit shall be specified in a separate section of the general appropriations act.
8. Such other information as the director of the budget deems desirable or as is required by law.

Source: S.L. 1965, ch. 358, § 6; 1979, ch. 562, § 1.

54-44.1-07. Presentation of budget data — How presented to the legislative assembly. The director of the budget or his designated subordinate shall present the budget data information in section 54-44.1-06, including the budget and revenue proposals recommended by the governor, and make available sufficient copies thereof to the budget section of the legislative council. The budget data shall be completed and made available to the budget section of the legislative council, or its designee, in such form as may be acceptable to it by December first of each year next preceding the session of the legislative assembly, or at such later date as may be set by the budget

section chairman. The chairman of the budget section shall set the time and place at which such budget data is to be presented.

Source: S.L. 1965, ch. 358, § 7; 1969, ch. 448, § 25; 1981, ch. 540, § 1.

Decisions under Prior Law.

The budget of appropriations prepared by the auditor was an official record, of which the courts would take judicial notice. State ex rel. Wallace v. Jorgenson (1916) 34 ND 527, 159 NW 35.

54-44.1-08. Budget report — Contents — When submitted to legislative assembly. The official budget report shall be transmitted by the governor to all holdover legislators and legislators-elect not later than three days after the commencement of the session of the legislative assembly. Such report is not a third-class item under section 46-02-05. The budget director shall provide for the duplication or other satisfactory reproduction or printing of the official budget report, so as to ensure delivery of same as provided in this section. Such reports shall contain the budget and revenue proposals recommended by the governor and the information required in subsections 1, 2, 3, 5, and 6 of section 54-44.1-06 and all other data and information as the governor shall decide. The budget director shall make available any and all information regarding budget data to the governor, the legislative assembly and its designees, legislators, and to the governor-elect as may be requested. The governor may present any additional budget information in any manner to the legislative assembly as he may desire.

Source: S.L. 1965, ch. 358, § 8; 1967, ch. 393, § 1; 1973, ch. 430, § 1.

54-44.1-09. All expenditures must be appropriated. All expenditures of the state and of its budget units of moneys drawn from the state treasury shall be made under authority of biennial appropriations acts, which shall be based upon a budget as provided by law, and no money shall be drawn from the treasury, except by appropriation made by law as required by section 12 of article X of the Constitution of North Dakota.

Source: S.L. 1965, ch. 358, § 9.

54-44.1-10. Payments made pursuant to law only. No payment shall be made and no obligation shall be incurred against any appropriation unless such payment or obligation has been authorized as provided by law Every official authorizing payments in violation of this chapter shall be subject to the penalties and provisions of chapter 12.1-23.

Source: S.L. 1965, ch. 358, § 10; 1977, ch. 496, § 1.

54-44.1-11. Office of management and budget to cancel unexpended appropriations — When they may continue. The office of management and budget, thirty days after the close of each biennial period, shall cancel all unexpended appropriations or balances of appropriations, which shall have remained undrawn after the expiration of the biennial period during which they became available under the law. The chairman of the appropriations committees of the senate and house of representatives of the legislative assembly with the office of the budget may continue appropriations

or balances in force for not the biennial period during w tion of the director of the bu

1. New construction proje
2. Major repair or improv
3. Purchases of new equi per unit if it was orde nium in which the fund
4. The purchase of land where the total purcha

Source: S.L. 1965, ch. 358, § 11 563, § 1.

54-44.1-12. Control over get shall exercise continual ing the departments and a government. Execution shall ments for conformity with comparison of actual reven these analyses and compari a system of semiannual, qua ment is made which will red pursuant to an appropriatio expenditure is made, the di circumstances to exist:

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3. The expenditure or recorded in any reliabi able evidence available.
4. Circumstances or avai seen by the legislative ment of the purpose of appropriated.

Source: S.L. 1965, ch. 358, § 12 394, § 1.

54-44.1-13. Budget req The budget requests and branches of this state shall and such budget requests assembly with informationa of the budget not later tha a session of the legislative as

Source: S.L. 1965, ch. 358, § 13.

54-44.1-14. Biennial rep budget or such member of

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Jorgenson (1916) 34 ND 527, 159

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6-02-05. The budget director
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or balances in force for not more than two years after the expiration of the biennial period during which they became available upon recommendation of the director of the budget for:

1. New construction projects.
2. Major repair or improvement projects.
3. Purchases of new equipment costing more than ten thousand dollars per unit if it was ordered during the first twelve months of the biennium in which the funds were appropriated.
4. The purchase of land by the state on a "contract for deed" purchase where the total purchase price is within the authorized appropriation.

Source: S.L. 1965, ch. 358, § 11; 1979, ch. 563, § 1.

54-44.1-12. Control over rate of expenditures. The director of the budget shall exercise continual control over the execution of the budget affecting the departments and agencies of the executive branch of the state government. Execution shall mean the analysis and approval of all commitments for conformity with the program provided in the budget, frequent comparison of actual revenues and budget estimates, and on the basis of these analyses and comparisons control the rate of expenditures through a system of semiannual, quarterly, or monthly allotments. Before an allotment is made which will reduce the amount of funds which can be disbursed pursuant to an appropriation or before an allotment disallowing a specific expenditure is made, the director must find one or more of the following circumstances to exist:

1. The moneys and estimated revenues in a specific fund from which the appropriation is made are insufficient to meet all legislative appropriations from the fund.
2. The payment or the obligation incurred is not authorized by law.
3. The expenditure or obligation is contrary to legislative intent as recorded in any reliable legislative records, documents, or other reliable evidence available.
4. Circumstances or availability of facts not previously known or foreseen by the legislative assembly which make possible the accomplishment of the purpose of the appropriation at a lesser amount than that appropriated.

Source: S.L. 1965, ch. 358, § 12; 1967, ch. 394, § 1.

54-44.1-13. Budget requests for legislative and judicial branches. The budget requests and expenditures for the legislative and judicial branches of this state shall not be subject to the provisions of this chapter and such budget requests shall be submitted directly to the legislative assembly with informational copies of such budgets provided to the director of the budget not later than November fifteenth in each year preceding a session of the legislative assembly.

Source: S.L. 1965, ch. 358, § 13.

54-44.1-14. Biennial report to legislative assembly. The director of the budget or such member of that office as he shall designate may prepare

and transmit to the governor and upon approval by him may transmit to the members of the legislative assembly at least sixty days prior to the commencement of an ensuing legislative session a report which shall contain definite and specific proposals and recommendations to accomplish the following purposes:

1. To simplify the governmental structure of the state so as to render it more economical and efficient.
2. To eliminate all obsolete and unnecessary offices, departments, institutions, boards, bureaus, and commissions of the state.
3. To consolidate the functions, services, and activities of state offices and agencies thereof so as to eliminate duplication of service and expense wherever it exists.
4. To correlate the functions and services of the several offices and agencies of the state government.
5. To eliminate obsolete methods, unnecessary functions and services carried on by the state government and to render those functions and services which are determined to be absolutely essential and more economical and efficient.

Source: S.L. 1965, ch. 358, § 14.

CHAPTER 54-44.2

OFFICE OF CENTRAL DATA PROCESSING

Section

54-44.2-00.1. Definitions.
54-44.2-01. Office of central data processing — Creation.
54-44.2-02. Office of central data processing — Powers and duties.
54-44.2-03. Acquisition of data processing equipment.
54-44.2-04. Appointment of data processing coordinators.
54-44.2-05. Repealed by S.L. 1979, ch. 565, § 1.
54-44.2-06. Secrecy provision.

54-44.2-00.1. Definitions. As used in this chapter:

1. "Data processing" or "electronic data processing" means the systematic sequencing of operations performed by data processing equipment or programs, or both, upon data stored or entered in alphabetic, numeric, or alphanumeric format.
2. "Data processing equipment" means an electronic device or associated devices, except calculators and stand-alone noncommunicating word processors, which perform logical, arithmetic, and memory functions by the manipulation of electronic or magnetic impulses and includes all compiling and related input, output, and storage, equipment, programs and procedures, and data processing communication facilities.
3. "Word processing" means the textual formatting, correcting, editing, and rearranging of language elements, designed to convey full messages in English syntax, through manipulation of electronic or magnetic impulses. "Word processors" are devices on which word processing can be carried out.

Source: S.L. 1981, ch. 539, § 2.

54-44.2-01. Office of
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Source: S.L. 1969, ch. 454
539, § 3.

54-44.2-02. Office of
The office of central data
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cations to existing
to increase the cost

condition and results of operation of the State of Oregon in accordance with current, generally accepted accounting principles and such other financial and statistical information as may be necessary to completely and accurately disclose the financial condition and financial operations of the state and its various agencies. The financial statements shall include, but not be limited to, such information as may be found in a balance sheet, a statement of changes in fund balances, statement comparing budgeted and actual revenues and expenditures, statement of changes in financial position and a statement of operations. The financial statements shall compare the current fiscal year and, if it is the second year of the biennium, the first year thereof, and each fiscal year of the preceding biennium.

(2) As used in subsection (1) of this section, generally accepted accounting principles shall mean those accounting principles sanctioned by recognized authoritative bodies such as the National Council on Governmental Accounting, the American Institute of Certified Public Accountants, the Financial Accounting Standards Board or their successors.

(3) The first financial report required by subsection (1) of this section shall be prepared for the biennium ending June 30, 1979. [1977 c.897 §1]

Note: 291.040 and 291.042 were enacted into law by the Legislative Assembly but were not added to or made a part of ORS chapter 291 or any series therein by legislative action. See the Preface to Oregon Revised Statutes for further explanation.

291.042 Use of data processing programs, information and materials; approval by legislature. (1) Subject to the approval of the Joint Legislative Committee on Data Processing, the Data Systems Division of the Executive Department:

(a) May obtain copyrights and patents on copyrightable or patentable data processing programs, information or materials developed, published or produced by state agency staff.

(b) May cause to have sold, leased, or otherwise made available such data processing programs, information or materials to any agency or legislative body of any state or the Federal Government under such terms and conditions as may be agreed to by the committee and the agencies.

(2) Moneys collected under this section shall be credited to the General Fund and are available for general governmental purposes. [1979 c.740 §3]

Note: See note under 291.040.

STATE BUDGET; BUDGET REPORT

291.202 Budget report of Governor; department to assist Governor in preparation. Except as otherwise provided in ORS 291.222, the Governor shall prepare in each even-numbered year a budget report for the biennium beginning July 1 of the following year. The Executive Department shall advise and assist the Governor in the preparation of his budget report and shall perform such duties in connection therewith as the Governor requires. [Amended by 1969 c.464 §2]

291.204 Prescribing forms for submitting budget estimates and requests for appropriations; furnishing budget forms to agencies. The department, by July 1 of each even-numbered year, shall furnish every state agency with a sufficient number of forms for its use in preparing for submission to the Governor the information required by the Governor in the preparation of his budget report. The Governor shall prescribe the forms to be used by the agencies in submitting their budget estimates and requests for appropriations as required by ORS 291.208.

291.206 Guidance of agencies in completing budget forms. (1) The Governor shall prescribe such rules and regulations as he deems necessary for the guidance of agencies in the preparation of the budget estimates and requests. The Governor, with the approval of the Secretary of State, shall prepare and prescribe classifications of expenditures and revenue for the purpose of budget-making and accounting.

(2) In so far as practicable, agency budget estimates and requests and appropriation measures shall be prepared in a manner that reflects state governmental organization and state agency duties, functions and powers under the law in effect on January 1 of the following year. The Executive Department shall maintain agency budget estimates and requests in the form in which they are submitted. [Amended by 1969 c.173 §1]

291.208 Filing budget forms with department; preparing requests for agencies failing to file. Each state agency shall file with the department, before September 1 in each even-numbered year, on the form and in the manner required, its budget forms

containing the information required. The department shall prepare budget estimates and requests for appropriations for all agencies that fail to file requests.

291.210 Preparing tentative budget plan. The department, in connection with its direct studies of the operations, plans and needs of state agencies and of the existing and prospective sources of income, shall prepare a tentative budget plan for the two fiscal years for which a budget report is required to be prepared.

291.212 Revising budget plan; transmitting budget forms and tentative budget report to Governor. Upon receipt of the budget forms, the department shall check the agencies' estimates in the light of the tentative budget plan and shall make such further inquiries and investigations as the Governor requires and revise its tentative budget plan accordingly. The department then shall transmit to the Governor the budget forms filed with it by the state agencies and the revised tentative budget report.

291.214 Governor to examine budget forms and revise tentative budget report. The Governor, during the preparation of the budget report and before its submission to the Legislative Assembly, shall examine the budget forms filed by the various agencies. He may make or cause to be made such further investigations by the department, with such hearings before him or any state agency, as he deems advisable, and may make such changes or revisions in policy and program and in specific details of the tentative budget report as he finds warranted.

291.216 Governor's budget report. (1) Not later than November 10 of each even-numbered year the Governor shall cause the budget report to be compiled and prepared for printing.

(2) The budget report shall include a budget message prepared by the Governor, including his recommendations with reference to the fiscal policy of the state government for the coming biennium, describing the important features of the budget plan, embracing a general budget summary setting forth the aggregate figures of the budget report so as to show a balanced relation between the total proposed expenditures and the total anticipated income, with the basis and factors on which the estimates are made, the amount to be borrowed, and other means of financing the estimated expenditures for the ensuing biennium, compared with the corresponding figures for at least the last completed biennium and the current biennium.

(3) The budget plan shall be supported by explanatory schedules or statements, classifying the expenditures reported therein, both past and proposed, by organization units, objects and funds, and the income by organization units, sources and funds, and the proposed amount of new borrowing as well as proposed new tax or revenue sources.

(4) The budget plan shall be submitted for all dedicated funds, as well as the state General Fund, and shall include the estimated amounts of federal and other aids or grants to state agencies or activities provided for any purpose whatever, together with estimated expenditures therefrom.

(5) The budget report shall embrace the detailed estimates of expenditures and revenues. It shall include statements of the bonded indebtedness of the state government, showing the actual amount of the debt service for at least the past biennium, and the estimated amount for the current biennium and the ensuing biennium, the debt authorized and unissued, the condition of the sinking funds and the borrowing capacity. It shall also contain any statements relative to the financial plan which the Governor may deem desirable or which may be required by the legislature.

291.218 Printing budget report; transmitting to members of legislature; distribution. Except when the Governor under whose supervision the budget report has been prepared will be succeeded in office in January next following:

(1) The department shall have as many copies of the approved budget report printed as the Governor directs.

(2) Not later than December 1 of each even-numbered year, the Governor shall transmit a copy thereof to each member of the legislature who is to serve during the next session.

(3) Upon request, the Governor shall distribute copies free of charge, under such regulations as he may establish, to public libraries, schools and state officials. He shall make copies available to the general public at a reasonable charge for each copy. [Amended by 1959 c.140 §1; 1967 c.302 §1]

291.220 Furnishing information and assistance to legislature. The Governor, upon request, shall furnish the Legislative Assembly any further information required concerning the budget report. The department, upon request, shall furnish a representative to assist the Legislative Assembly, its Joint Committee on Ways and Means, appointed under ORS 171.555, and the Legislative Revenue Officer in the consideration of the budget report and any accompanying measures. [Amended by 1969 c.173 §2; 1975 c.789 §8]

291.222 Furnishing information and assistance to Governor-elect; revision of budget report. If the Governor under whose supervision the budget report has been prepared will be succeeded in office in January next following:

(1) The department shall make available to the Governor-elect so much as he requests of the information upon which the tentative budget report is based, and upon completion of the tentative budget report shall supply him with a copy thereof but shall not cause the tentative budget report to be printed and distributed. The department shall also make available to him all facilities of the department reasonably necessary to permit him to review and familiarize himself with the tentative budget report.

(2) After a review of the tentative budget the Governor-elect may prepare revisions and additions thereto. The department shall assist, upon request, in the preparation of such revisions or additions.

(3) The department shall have as many copies of the revised budget report printed as the Governor-elect requests.

(4) Not later than the convening of the next Legislative Assembly the department shall transmit a copy of a summary of the revised budget report containing the revenue and expenditure recommendations of the Governor-elect and not later than February 1 shall transmit a copy of the revised budget report to each member of the Legislative Assembly.

(5) Upon request, the department shall distribute copies of the revised budget report free of charge, under such regulations as it may establish, to public libraries, schools and state officials. It shall make copies of the revised budget report available to the general public at a reasonable charge for each copy. [Amended by 1967 c.302 §2; 1969 c.464 §3]

291.223 Furnishing agency budget estimates to Legislative Fiscal Officer and Legislative Revenue Officer; confidentiality of estimates. (1) Not later than November 10 of each even-numbered year the Governor shall cause the agency budget estimates and requests as described in ORS 291.206 to be made available to the Legislative Fiscal Officer and to the Legislative Revenue Officer.

(2) Before December 1 of the year in which they were made available under subsection (1) of this section, the Legislative Fiscal Officer or his staff and the Legislative Revenue Officer or his staff shall not reveal to any other person the contents or nature of the budget reports and other materials, except with the written consent of the Governor. [1969 c.173 §4; 1975 c.789 §9]

291.224 Capital construction program to be included in budget report; recommendation of Capitol Planning Commission. (1) A capital construction program containing estimated capital construction needs, irrespective of how financed, shall be included with the budget report required by ORS 291.216. The capital construction program shall contain the estimated physical construction requirements for each biennium of a period to be determined by the Governor, which period shall not be less than six years. The department shall assist the Governor in the preparation of the capital construction program.

(2) Except as otherwise provided in subsection (3) of this section and in accordance with regulations prescribed by the department, state agencies shall submit to the department their anticipated capital construction requirements for the period specified by the Governor. The department shall prescribe the basic assumptions relating to population changes, economic trends and other factors which might generally affect capital construction requirements and these basic assumptions shall be used by the state agencies in preparing their anticipated capital construction requirements. Each state agency is responsible for the basic assumptions which affect only its own program. The department shall prepare estimated capital construction requirements for any necessary capital construction not covered by the capital construction requirements submitted by the state agencies under this section.

(3) Each state agency, including the department, required under subsection (2) of

this section to submit or prepare anticipated or estimated capital construction requirements, shall submit a copy of such requirements that relate to construction or improvements within the areas described in ORS 276.028 to the Capitol Planning Commission at a time specified by the Capitol Planning Commission, but not later than August 1 of each even-numbered year. The Capitol Planning Commission shall review capital construction requirements submitted as required by this subsection and, not later than November 1 of each even-numbered year, make recommendations to the department with respect to such capital construction proposals.

(4) In accordance with regulations prescribed by the department, each state agency shall separately submit its estimated office space requirements for the period specified by the Governor; and the department shall consolidate those needs and make an estimate for all state office buildings to be included in the capital construction program.

(5) The Governor shall consolidate the estimates, review all of them and make such revisions as he finds warranted.

(6) The budget report shall include the proposed expenditures for the capital construction program for the ensuing biennium and the proposed expenditures for preliminary planning of the construction projects included in the capital construction program for the biennium following the ensuing biennium. The budget report shall also include dollar estimates of the cost of the capital construction projects included in the capital construction program for the succeeding years of the period determined by the Governor under subsection (1) of this section and the recommendations submitted to the department pursuant to subsection (3) of this section.

(7) As used in this section, "capital construction program" does not include the acquisition, repair, improvement, enlargement, construction or maintenance of highways and highway bridges, or park improvements, by the Department of Transportation. [1959 c.500 §1; 1973 c.129 §6]

291.226 Budget item to replace lost and unrecovered public funds or property. When there has been a failure to recover a loss of public funds or property pursuant to ORS 297.120, the state agency sustaining the loss shall include the amount of the loss in its budget estimate and request for the following biennium clearly marked as to purpose, and the Governor shall include such item in his budget report for the consideration of the Legislative Assembly. [1963 c.617 §3]

ALLOTMENTS

291.232 Declaration of policy. It is declared to be the policy and intent of the Legislative Assembly that the total appropriations made by it, or the total of any budget approved by it, for any state agency, shall be deemed to be the maximum amount necessary to meet the requirements of such agency for the biennium, excepting as may otherwise be provided by law, and that the Governor and the Executive Department are given the powers granted by ORS 291.202 to 291.222 and 291.232 to 291.260 in order that savings may be effected by careful supervision throughout each biennium, with due regard to changing conditions, and by promoting more economic and efficient management of state agencies.

291.234 Department to make allotments to state officers and agencies of appropriations and funds; allotment period. (1) The department shall make allotments to state officers and agencies of appropriations and funds pursuant to the allotment system provided for in ORS 291.234 to 291.260.

(2) For the purposes of the allotment system, each fiscal year shall be divided into four quarterly allotment periods, beginning, respectively, on the first days of July, October, January and April. However, in any case where the quarterly allotment period is impracticable, the department may prescribe a different period suited to the circumstances, not exceeding six months nor extending beyond the end of the biennium.

291.236 Allotment system applicable to all appropriations; controlling expenditures and encumbering of emergency, contingent, revolving and trust funds. (1) The provisions of ORS 291.234 to 291.260 relating to the allotment system shall apply to all appropriations for state officers and agencies. For this purpose "appropriation" includes standing, continuing and annual appropriations, and dedicated funds. In those cases where periodical allotments are impracticable, the department may dispense therewith and prescribe such regulations as will insure proper application and encumbering of funds.

(2) Subject to ORS 291.238, emergency or contingent funds, revolving funds and trust funds shall be subject to such regulations as

the department may prescribe for controlling the expenditures and encumbering of such funds.

291.238 Expenditures without allotment prohibited; expenditures from dedicated, revolving and trust funds. (1) Except as expressly authorized in this section or ORS 291.236, no person shall incur, or order or vote to incur, any obligation against the state in excess of, or make or order or vote to make any expenditure not authorized by, an allotment. Any such obligation so incurred shall not be binding against the state, but where the obligation violates this section only for having been made in excess of an allotment, the department may authorize payment thereof from unallotted funds.

(2) Excepting as to administrative expenditures from dedicated, revolving and trust funds and to revolving funds established to provide services rendered by any state agency to other state agencies or to any body politic of the State of Oregon, expenditures from dedicated funds, revolving funds and trust funds may be made by any state agency without appropriation or allotment.

(3) No person shall make or order or vote to make any expenditure from or chargeable to a revolving fund or trust fund in excess of the amount standing to the credit of such fund or for any purpose for which such fund may not lawfully be expended.

291.240 [Repealed by 1953 c.168 §4]

291.242 Allotment required before expenditure of appropriation; submitting estimates. No appropriation to which the allotment system is applicable shall become available to any state agency for expenditure thereby during any allotment period until:

(1) The agency submits to the department an estimate, in such form as the department prescribes, for such allotment period, of the amount required for each activity to be carried on during that period; and

(2) The estimate is approved, increased or decreased by the department and funds allotted therefor.

291.244 Department action on estimates. The department shall act promptly upon all estimates required by ORS 291.242. If the estimate is within the terms of the appropriation as to amount and purposes, having due regard for the probable further needs of the agency for the remainder of the term for which the appropriation was made, and if the department determines that there is a need for the estimated amount for the allotment period, the department shall approve the estimate and allot the estimated amount for expenditures. Otherwise the department shall modify the estimate so as to conform with the terms of the appropriation and the prospective needs of the agency, and shall reduce the amount allotted accordingly.

291.246 Allotments to be made for purpose or classification of expenditure prescribed in appropriation measure. Allotments shall be made according to purpose and classification of expenditures prescribed in the appropriation measure as enacted by the Legislative Assembly; provided, however, that the department may make allotments for agencies by purposes or by other classification of expenditures of amounts appropriated or authorized to be expended in appropriation measures enacted by the Legislative Assembly, whether or not such measures establish classification of expenditures. In making allotments, the department shall not authorize the expenditure of moneys for any purpose not authorized by the Act appropriating the money or authorizing it to be expended, and the funds allotted for each purpose or classification of expenditure shall be used for no other purpose or classification of expenditure. [Amended by 1963 c.182 §7]

291.248 Notice of allotment. Upon the granting of any allotment, the department shall transmit a notice of the allotment to the agency concerned.

291.250 Claims and encumbrances limited by amount and purpose of allotment. The agency shall not create any claim or encumbrance for the future disbursement of appropriated moneys unless the proposed expenditure as estimated, together with expenses theretofore paid from or encumbered against such allotment, is within the total amount and for the purposes specified in the notice of allotment transmitted to such agency.

291.252 Modifying allotment previously made. The department may at any time modify or amend any allotment previously made by it, upon application of, or upon notice to, the agency concerned, but no such modification or amendment shall reduce an allotment below the amount required to meet

valid obligations or commitments previously incurred against the allotted funds.

291.254 Reducing allotment to prevent deficit. If the department determines at any time that the probable receipts from taxes or any other sources for any appropriation will be less than was anticipated, and that consequently the amount available for the remainder of the term of the appropriation or for any allotment period will be less than the amount estimated or allotted therefor, the department shall, with the approval of the Governor, and after notice to the agency or agencies concerned, reduce the amount allotted or to be allotted so as to prevent a deficit.

291.256 [Repealed by 1959 c.608 §1]

291.258 Approval of department required for establishment of new personnel position or classification. A new personnel position or classification, not provided in the budget of an agency upon which appropriations have been based, shall not be established without prior approval of the department.

291.260 Approving, modifying or disapproving requests and budgets to be submitted to the Federal Government. Every state agency, when making requests or preparing budgets to be submitted to the Federal Government for funds, equipment, materials or services, other than for highway purposes, and purposes for which the state was legally committed on August 2, 1951, shall, upon completion of such request or budget, first submit it to the department. The department shall have authority to approve, disapprove, modify or amend any such request or budget before it is submitted to the proper federal authority.

291.262 [1963 c.182 §6; 1965 c.111 §1; repealed by 1969 c.488 §3]

ALLOCATION OF GOVERNMENTAL SERVICE EXPENSES

291.272 Definitions for ORS 291.272 to 291.280. As used in ORS 291.272 to 291.280, unless the context requires otherwise:

(1) "Administrative expenses" has the meaning defined by ORS 291.305.

(2) "Department" means the Executive Department.

(3) "Governmental service expenses" means the expenses of state government that are attributable to the operation, maintenance, administration and support of state government generally, and includes the following:

(a) Expenditures of the State Treasurer supported out of the General Fund incurred in the administration of the duties of his office, but not including the Inheritance and Gift Tax Divisions.

(b) Expenditures of the Department of Justice incurred in the administration of its duties, other than those of the Support Enforcement Division.

(c) Administrative expenses of the Executive Department supported out of the General Fund.

(d) One-half of the expenditures of the Legislative Assembly out of moneys appropriated from the General Fund, and all of the expenditures incurred in the administration of the duties of the Emergency Board.

(e) One-half of the expenditures incurred in the administration of the duties of the Joint Committee on Ways and Means and the Emergency Board.

(f) One-half of the expenditures incurred out of moneys appropriated from the General Fund in the administration of the duties of the Legislative Counsel Committee.

(g) Expenditures of the Secretary of State in the administration of the office of the State Archivist.

(4) "State agency" means every state officer, board, commission, department, institution, branch or agency of the state government, whose costs are paid wholly or in part from funds held in the State Treasury, and includes the Legislative Assembly, the courts and their officers and committees. [1967 c.637 §2; 1973 c.439 §9]

291.274 Determination of funds and appropriations to be assessed. The department shall determine and may at any time redetermine which state funds or appropriations shall be assessed a reasonable share of governmental service expenses. In determining or redetermining the funds that shall be so assessed:

(1) A fund consisting of moneys the use of which is restricted by the Oregon Constitution shall be assessed only those governmental service expenses ascertained as being necessarily incurred in connection with the purposes set forth in the Oregon Constitution.

(2) Trust funds shall be assessed only those governmental service expenses ascertained as being necessarily incurred in connection with the purposes for which the trust fund was established. [1967 c.637 §3]

291.276 Department to allocate governmental service expenses among state agencies. (1) With respect to each biennium beginning on July 1 of an odd-numbered year, commencing July 1, 1971, the department shall allocate among all state agencies the governmental service expenses, as determined by the department in accordance with ORS 291.272, for the biennium ending two years prior to the beginning of the biennium for which the allocation is made.

(2) The department, in accordance with the procedures and methods prescribed under subsection (3) of this section, shall determine and may at any time redetermine the reasonable share of governmental service expenses to be assessed against any fund or appropriation. Such expenses shall be a charge against any fund so designated and be considered an administrative expense of the agency administering the fund or appropriation.

(3) The department, with the approval of the Governor, shall prepare and prescribe the procedures and methods used in determining and redetermining the reasonable share of governmental service expenses assessed against any fund or appropriation.

(4) The department, with the approval of the Governor, may make rules necessary or proper to carry out the duties imposed upon it by ORS 291.272 to 291.280.

(5) The computation required by subsection (1) of this section shall be made by the department in advance of the biennium with respect to which the allocation is to be made. [1967 c.637 §4; 1969 c.105 §1]

291.278 Transfer of allocated amounts to General Fund. (1) Upon completion of the determination by the department under ORS 291.274 and 291.276, the department shall transfer to the General Fund, with appropriate notice to the State Treasurer, out of moneys appropriated to each state agency, the amount of governmental service expenses so certified for the agency.

(2) In the case of a state agency that collects or receives moneys for fees, fines, licenses or taxes not by law made a part of the General Fund available for general governmental purposes, if moneys available to such state agency are not sufficient to permit the transfer under subsection (1) of this section, the department shall notify the state agency of the amount certified with respect to the state agency under ORS 291.274 and 291.276, less any amount transferred out of moneys appropriated to such state agency under subsection (1) of this section. Thereafter, until such balance has been paid into the General Fund, 10 percent of all moneys collected or received by the state agency for fees, fines, licenses or taxes not by law made a part of the General Fund available for general governmental purposes shall be:

(a) Transferred by the department to and made a part of the General Fund available for general governmental purposes if such moneys are paid to the State Treasurer by the state agency; or

(b) Paid to the State Treasurer by the state agency receiving such moneys at the time when they are received by the state agency if such moneys are authorized by law to be kept and disbursed other than by and through the State Treasurer, and be credited by the State Treasurer to and made a part of the General Fund available for general governmental purposes.

(3) The transfer and payment to the General Fund required by this section shall be made notwithstanding any law that appropriates such moneys or any of them to any other purposes, and such portion so paid and transferred is not subject to any special uses thereby provided. [1967 c.637 §5]

291.280 Receipts by State Treasurer for transferred moneys. In receipting for moneys paid and transferred under ORS 291.278 (2), the State Treasurer shall make his receipt in duplicate, showing the amount credited to the General Fund available for general governmental purposes as well as the amount credited to any special fund or account. He shall file one of the duplicate receipts with the department. [1967 c.637 §6]

291.302 [Repealed by 1953 c.386 §9]

291.304 [Repealed by 1953 c.386 §9]

ACTS APPROPRIATING MONEY OR LIMITING EXPENDITURES

291.305 Meaning of "administrative expenses" in law appropriating money or limiting expenditures; limitation not ap-

propriation of money otherwise unavailable to agency. (1) As used in the laws enacted by the Legislative Assembly appropriating money or limiting expenditures, the term "administrative expenses" means, unless the context requires otherwise, those expenditures that are included under the classifications of expenditures, except debt service and special payments expenditure categories, which are prepared and prescribed, pursuant to ORS 291.206, for the purpose of budget-making and accounting during the biennium for which such laws appropriating money or limiting expenditures are enacted.

(2) In the laws enacted by the Legislative Assembly, the establishment of maximum limits for expenditures from, or for the payment of administrative expenses from, fees, moneys or other revenues collected or received by any agency is not intended as an appropriation of moneys not otherwise available to such agency. [1963 c.182 §§1, 3]

291.306 [Repealed by 1963 c.386 §9]

291.307 Appropriation from General Fund to constitute a credit only. An appropriation of any sum of money from the General Fund by any law shall not be considered as segregating or setting aside the amount of such appropriation from the moneys constituting the General Fund, but shall be considered and construed as constituting a credit in favor of the appropriation for the amount stated in the law making the appropriation, subject to allotment as provided in ORS 291.232 to 291.260. [Formerly 291.376]

291.308 [Repealed by 1963 c.386 §9]

291.310 [Repealed by 1963 c.386 §9]

EMERGENCY EXPENDITURES; EMERGENCY BOARD

291.322 Definitions for ORS 291.322 to 291.334. As used in ORS 291.322 to 291.334:

(1) "Emergency" means any catastrophe, disaster or unforeseen or unanticipated condition or circumstance, or abnormal change of conditions or circumstances, affecting the functions of a state agency and the expenditure requirements for the performance of these functions.

(2) "State agency" means any elected or appointed officer, board, commission, department, institution, branch or other agency of the state government. [1963 c.386 §1]

291.324 Emergency Board created. There hereby is created a joint committee composed of members of both houses of the Legislative Assembly, to be known as the Emergency Board. [1963 c.386 §2]

291.326 Powers of board concerning expenditures by state agencies. (1) The Emergency Board, during the interim between sessions of the Legislative Assembly, may exercise the following powers:

(a) Where an emergency exists, to allocate to any state agency, out of any emergency fund that may be appropriated to the Emergency Board for that purpose, additional funds beyond the amount appropriated to the agency by the Legislative Assembly, or funds to carry on an activity required by law for which an appropriation was not made.

(b) Where an emergency exists, to authorize any state agency to expend, from funds dedicated or continuously appropriated for the uses and purposes of the agency, sums in excess of the amount of the budget of the agency as approved in accordance with law.

(c) In the case of a new activity coming into existence at such a time as to preclude the possibility of submitting a budget to the Legislative Assembly for approval, to approve, or revise and approve, a budget of the money appropriated for such new activity.

(d) Where an emergency exists, to revise or amend the budgets of state agencies to the extent of authorizing transfers between expenditure classifications within the budget of an agency.

(2) No allocation, authorization or approval under paragraph (a), (b) or (c) of subsection (1) of this section shall be effective unless made at a meeting at which 10 members of the board were present.

(3) The laws enacted by the Legislative Assembly making appropriations and limiting expenditures, or either, are not intended to limit the powers of the Emergency Board. [1963 c.386 §3; subsection (3) enacted as 1963 c.182 §2; 1973 c.201 §2]

291.328 Board may require presentation of evidence to support requests for action; board to report its action to agencies concerned. Before the Emergency Board makes any allocation, grants any authorization or approves any budget under ORS 291.326, it may require the state agency in question to submit written evidence to justify the allocation, authorization or approval and

may require the head of the agency to appear before it in support thereof. The Emergency Board may also require the Director of the Executive Department to submit a written report as to the need and justification for the allocation, authorization or approval. Upon making an allocation, granting an authorization or approving a budget, the Emergency Board shall file with the department, the Secretary of State and the state agency in question a copy of the order of allocation, grant of authorization or approved budget. [1953 c.386 §4]

291.330 Members of board; confirmation. The Emergency Board shall be composed of the President of the Senate, the Speaker of the House of Representatives, the chairmen of the Senate and House Ways and Means Committees, six members of the Senate, at least three of whom shall have had some previous experience on the Ways and Means Committee, to be appointed by the President of the Senate and confirmed by a majority of all the members elected to the Senate, and seven members of the House, at least four of whom shall have had some previous experience on the Ways and Means Committee, to be appointed by the Speaker and confirmed by a majority of all the members elected to the House. [1953 c.386 §5; 1973 c.201 §1; 1979 c.324 §1]

291.332 Meetings of board; terms of members; filling vacancies on board. (1) The Emergency Board shall meet immediately upon adjournment of each Legislative Assembly and elect a chairman from their number. The board shall meet thereafter at such times as it may determine.

(2) The term of members of the board shall run from the adjournment of one regular session to the organization of the next regular session.

(3) If a vacancy occurs in the board, either the Speaker, if the legislator previously filling the position was a member of the House, or the President, if the legislator previously filling the position was a member of the Senate, shall fill such vacancy by an appointment for the unexpired term. However, such appointment, before becoming effective, shall be confirmed by the remaining members of the board, sitting as such board. [1953 c.386 §6]

291.334 Board authorized to secure assistance; payment of board expenses. (1) The Director of the Executive Department, upon request of the board, shall furnish necessary assistance to the board, or the board may employ such assistance as they may deem necessary.

(2) The expenses of the board, the cost of employed assistance, and other necessary expenses of the board shall be paid out of funds appropriated to the board specially for such purpose or, if no such appropriation is made, out of any emergency fund that may be appropriated to the board. All claims for those expenses and cost shall be approved by the chairman or other person authorized to approve claims, and warrants shall be drawn on the State Treasurer for the payment thereof in the same manner as other expenses are paid. [1953 c.386 §7; 1967 c.454 §96; 1975 c.530 §7]

291.336 Appropriation bills requiring approval of board before project commenced or contract let; how requirement met. (1) As used in this section, "appropriation bill" means a legislative Act which appropriates money or authorizes the expenditure of dedicated or continuously appropriated moneys or otherwise makes moneys available for expenditure.

(2) In all cases where an appropriation bill heretofore or hereafter passed provides that a state agency shall not commence any project or allow any contract to be let for any project without having the approval of the Emergency Board, such requirement may be met:

(a) During any period when the Legislative Assembly is in session, by the adoption of a resolution by each house approving the proposed action; or

(b) During any period when the Legislative Assembly is not in session, either by approval of the Emergency Board as provided in the appropriation bill, or by the elapse of 45 days without adverse action of the Emergency Board after notice of the proposed action has been given to each member of the Emergency Board at his last-known address. [1957 c.382 §1]

ESTIMATES OF STATE REVENUES

291.342 Annual estimation of state revenues; apportionment among counties of any state property tax levy necessary to make up deficiency; quarterly estimates. (1) By August 15 of each year, but not earlier than 90 days from the end of the regular session, if any, of the Legislative Assembly held in that calendar year, the Executive

Department, with the assistance of the Department of Revenue, shall:

(a) Ascertain by computation and estimate the total amount of revenue available for state purposes for the current fiscal year; and

(b) Apportion the state tax levy on property, if any, among the several counties in the manner provided in ORS 291.344.

(2) In addition to the requirement in subsection (1) of this section, the Executive Department with the assistance of the Department of Revenue shall for each calendar quarter of the year ascertain by computation and estimate the total amount of revenue available for state purposes for the current fiscal year, as well as the amount of revenue received quarterly, cumulated throughout the biennium, and report its estimate to the Legislative Revenue Officer and to the Emergency Board, or if the Legislative Assembly is in session, to the Joint Committee on Ways and Means.

(3) In carrying out its duties under subsection (2) of this section, the Executive Department shall issue quarterly a statement setting forth the methodology and assumptions used in making the revenue estimate. Nothing in this subsection requires the statement to set forth procedures used or methods used to determine either the methodology or the assumptions. [Formerly 309.510; 1971 s.s. c.5 §3; 1975 c.789 §10; 1989 c.11 §1]

291.344 Procedure for computation, levy, offset and apportionment of state property tax levy. (1) The department shall proceed as prescribed in this section.

(2) The department shall prepare a statement, summarizing:

(a) All the items of expense or deficiency, including interest on unpaid warrants left over from the previous year, to which the state will be subject under existing laws for the fiscal year next after that year or period for which the last preceding levy of state revenues was computed and declared; and

(b) When the levy is made on the assessment of an even year, the estimated expense of one biennial session of the Legislative Assembly.

(3) There shall be segregated from the total of the items tabulated in accordance with subsection (2) of this section the amount necessary for the payment of bonded indebtedness and interest thereon, and this amount shall constitute the state tax levy on property.

(4) From the total of the items summarized in accordance with subsection (2) of this section, after the amounts segregated pursuant to subsection (3) of this section have been deducted, there shall be deducted, in the order listed in subsection (5) of this section, all miscellaneous receipts including any surplus remaining in the State Treasury from all funds, however derived, excepting only the following:

(a) Funds whose use is restricted to particular purposes by the Constitution of Oregon.

(b) Funds whose use is restricted to particular purposes by federal law.

(c) All trust funds, as defined in ORS 291.002.

(5) (a) The department shall deduct first those miscellaneous receipts not excluded by paragraphs (a), (b) and (c) of subsection (4) of this section and not includable in the definitions of dedicated or revolving funds in ORS 291.002.

(b) If necessary, in order to provide revenue for all of the items summarized in subsection (2) of this section, the department shall then deduct as much as is necessary or available from any fund remaining in the State Treasury and not excluded by subsection (4) of this section. The department shall list these deductions in its records.

(6) The state tax levy on property segregated and levied pursuant to subsection (3) of this section shall be offset first by the application of miscellaneous receipts to the extent that they are not applied in accordance with subsection (4) of this section. Subject to the limitations of ORS 311.660, the amount of the state tax levy on property not offset by the foregoing application shall be apportioned among and charged to the several counties in that proportion which the total assessed value of all the taxable property in each county bears to the total assessed value of all the taxable property of the state as equalized.

(7) Immediately after the department has completed the computation, levy, offset and apportionment of the state tax levy on property in accordance with this section, a certificate thereof, signed by the director of the department, shall be filed in the office of the department. [Formerly 309.520; 1967 c.454 §97; 1981 c.804 §831]

291.348 Biennial estimate of General Fund revenues; certification to Secretary of State. (1) The department, with the assis-

tance of the Secretary of State, as soon as possible after June 30, 1966, and each even-numbered year thereafter, shall ascertain the total of General Fund revenues obtained from all sources during the preceding fiscal year, so far as is practicable.

(2) The Director of the Executive Department shall certify to the total of General Fund revenues during the preceding fiscal year as determined under subsection (1) of this section.

(3) As used in this section, "General Fund revenues" means all payments of money credited to the State Treasury that are placed or to be placed by the State Treasurer to the credit of the General Fund of the State of Oregon for general governmental purposes. [1965 c.615 §12; 1967 c.454 §98]

291.349 Revenue estimate; effect of revenue in excess of estimate. (1) As soon as practicable after adjournment sine die of the regular session of the Legislative Assembly, the Executive Department shall report to the Emergency Board the estimate as of July 1 of the first year of the biennium of General Fund revenues that will be received by the state during that biennium. The Executive Department shall base its estimate on the last forecast given to the Legislative Assembly before adjournment sine die of the regular session on which the printed, adopted budget prepared in the Executive Department is based, adjusted only in so far as necessary to reflect changes in laws adopted at that session. The report shall contain the estimated revenues from corporate income and excise taxes separately from the estimated revenues from other General Fund sources. The Executive Department may revise the estimate if necessary following adjournment sine die of any special or emergency session of the Legislative Assembly but any revision does not affect the basis of the computation described in subsection (3) or (4) of this section.

(2) As soon as practicable after the end of the biennium, the Executive Department shall report to the Emergency Board, or the Legislative Assembly if it is in session, the amount of General Fund revenues collected as of the last June 30 of the preceding biennium. The report shall contain the collections from corporate income and excise taxes separately from collections from other sources.

(3) If the revenues received from the corporate income and excise taxes during the biennium exceed the amounts estimated to be received from such taxes for the biennium, as estimated after adjournment sine die of the regular session, by two percent or more, the total amount of that excess shall be credited to corporate income and excise taxpayers in a percentage amount of corporate excise and income tax liability as determined under subsection (5) of this section. However, no credit shall be allowed against tax liability imposed by ORS 317.090.

(4) If the revenues received from General Fund revenue sources, exclusive of those described in subsection (3) of this section, during the biennium exceed the amounts estimated to be received from such sources for the biennium, as estimated after adjournment sine die of the regular session, by two percent or more, the total amount of that excess shall be credited in a percentage amount of income tax liability as determined under subsection (5) of this section.

(5) If there is an excess to be credited under either subsection (3) or (4) of this section, or both, on or before October 1, following the end of each biennium, the Executive Department shall determine and certify to the Department of Revenue the percentage amount of credit for purposes of subsection (3) or (4) of this section. The percentage amount determined shall be a percentage amount to the nearest one-tenth of a percent that will distribute the excess to be credited to either the corporate excise and income taxpayers or personal income taxpayers for taxable years beginning in the calendar year during which such excess is determined. The credit shall be computed after the allowance of any credit allowed or allowable under ORS chapter 316, 317 or 318, whichever may be applicable, and before the application of estimated tax payments, withholding or other advance tax payments. [1979 c.241 §30; 1981 c.885 §1]

Note: 291.349 and 291.355 were enacted into law by the Legislative Assembly but were not added to or made a part of ORS chapter 291 or any series therein by legislative action. See the preface to Oregon Revised Statutes for further explanation.

291.350 [1965 c.615 §13; repealed by 1971 c.544 §7]

291.352 [Renumbered 293.105]

291.354 [Amended by 1959 c.273 §7; 1961 c.280 §3; 1961 c.308 §2; renumbered 293.110]

RATE OF GROWTH OF APPROPRIATIONS

291.355 Rate of growth of appropriations for general governmental purposes. (1) Each biennium, growth of state governmental appropriations for general governmental purposes shall be no greater than the rate of growth of personal income in Oregon in the two preceding calendar years. The rate of growth shall be computed based on the U.S. Department of Commerce reports for the two preceding calendar years.

(2) For the 1979-1981 biennium, the base to which the rate of growth applies shall equal state governmental appropriations for general governmental purposes in the 1977-1979 biennium plus expenditures from non-General Fund sources that are to be funded in 1979-1981 out of the General Fund and less any General Fund expenditures in 1977-1979 that are to be funded in 1979-1981 from non-General Fund sources.

(3) In bienniums subsequent to the 1979-1981 biennium, the base shall be adjusted as necessary to reflect transfer of funding sources between General Fund sources and non-General Fund sources in order to maintain a base used for general governmental purposes.

(4) Debt service and tax relief other than that provided under ORS 310.630 to 310.690 shall not be considered appropriations for general governmental purposes. [1979 c.241 §29]

Note: See note under 291.349.

291.356 [Amended by 1963 c.333 §2; renumbered 293.115]

291.358 [Renumbered 293.120]

291.360 [Renumbered 293.125]

291.362 [Renumbered 293.130]

291.364 [Renumbered 293.135]

291.366 [Renumbered 293.140]

291.368 [Renumbered 293.145]

291.370 [Renumbered 293.150]

FISCAL MATTERS; LEGISLATIVE REVIEW

291.371 Approval of salary plan changes and unbudgeted new positions by legislative review agency required. (1) As used in this section, "legislative review agency" means the Joint Committee on Ways and Means during the period when the Legislative Assembly is in session and the Emergency Board during the interim period between sessions.

(2) Prior to making any changes in a salary plan, establishing any new positions specifically not provided for in the budget of the affected agency or reclassifying any positions specifically provided for in the budget of the affected agency, the Executive Department shall submit the proposed changes to the legislative review agency. The proposed change shall only be approved and take effect if the legislative review agency finds that the affected agency can finance the proposed change within the limits of its biennial budget and that the proposed change conforms to legislatively approved salary policies. The effective date of the change shall be the date prescribed by the Personnel Division. [1973 c.49 §1]

291.372 [Renumbered 293.155]

291.374 [Amended by 1955 c.133 §1; 1955 c.672 §1; 1957 c.460 §1; 1959 c.686 §39; 1961 c.268 §13; 1961 c.486 §27; renumbered 293.160]

291.375 Legislative review of applications for federal financial assistance; submission, approval required; exemptions. (1) Prior to the submission of any application for financial assistance or grants from the United States or any agency thereof by or on behalf of any agency of this state, the application must be submitted for legislative review in the following manner:

(a) If the application is to be submitted to the Federal Government when the Legislative Assembly is in session, the application shall be submitted to the Joint Committee on Ways and Means for review.

(b) If the application is to be submitted to the Federal Government when the Legislative Assembly is not in session, the application shall be submitted to the Emergency Board for review.

(2) If the legislative agency authorized under subsection (1) of this section to review applications described therein approves the application, it may be submitted to the appropriate federal agency. If the legislative agency disapproves of the application, it shall not be submitted to any federal agency unless it is or can be modified to meet the objections of the legislative agency.

(3) Notwithstanding subsection (1) of this section, the Joint Committee on Ways and

Means and the Emergency Board may exempt any state agency from the requirements of this section. Project grants for departmental research, organized activities related to instruction, sponsored research or other sponsored programs carried on within the Department of Higher Education, for which no biennial expenditure limitations have been established, are exempt from the requirements of this section.

(4) The review required by this section is in addition to and not in lieu of the requirements of ORS 293.550. [1973 c.44 §1]

291.378 [Renumbered 291.307]

291.378 [Amended by 1961 c.590 §1; renumbered 293.165]

291.380 [Amended by 1961 c.590 §2; renumbered 293.170]

291.385 Use of certain federal moneys for employment; legislative approval. Expenditures of moneys available to this state or any agency thereof under the Comprehensive Employment and Training Act (Public Law 93-203, 87 Stat. 839) and (Public Law 95-524, 92 Stat. 1909), the Emergency Job and Unemployment Assistance Act of 1974 (Public Law 93-567), and the Emergency Jobs Program Extension Act of 1976 (Public Law 94-444), as amended, are not limited by fixed sum appropriations or expenditure limitations imposed for the biennium beginning July 1, 1977, if authorized by the Joint Committee on Ways and Means after March 1, 1979. However, positions added under the provisions of the federal enabling legislation are subject to approval of the Emergency Board during the interim between sessions of the Legislative Assembly and by the Joint Committee on Ways and Means during a session of the Legislative Assembly. [1977 c.85 §1; 1979 c.93 §1]

Note: 291.385 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 291 or any series therein by legislative action. See the Preface to Oregon Revised Statutes for further explanation.

COMMISSION ON OREGON STATE MANAGEMENT AND ORGANIZATION

Note: Sections 1 to 8, 10 and 12 of chapter 795, Oregon Laws 1979, provide:

Sec. 1. It is the purpose of this Act to improve the responsiveness and manage the growth of Oregon state government.

Sec. 2. (1) There is created a Commission on Oregon State Management and Organization consisting of nine members and four ex officio members.

(2) The Governor shall appoint four members of the commission; the President of the Senate and the Speaker of the House of Representatives shall each appoint two members of the commission; the Chief Justice of the Supreme Court shall appoint one member of the commission.

(3) The Governor, President of the Senate, Speaker of the House and Chief Justice of the Supreme Court shall serve as ex officio, nonvoting members of the commission.

(4) No person shall be eligible for appointment to the commission who is an elected or appointed official, or who has not been seven years a resident of the State of Oregon, nor shall any person be eligible for appointment to the commission who has not demonstrated excellent leadership or managerial ability prior to the person's appointment.

(5) Each member shall be appointed to serve for a term of two years and may be reappointed for one additional term.

(6) In case of a vacancy for any cause, the Governor, President of the Senate, Speaker of the House or Chief Justice of the Supreme Court, according to the position vacated, shall make an appointment to become effective immediately for the unexpired term.

Sec. 3. (1) The purpose of the Commission on Oregon State Management and Organization shall be to provide the greatest effectiveness of state government at the lowest possible cost.

(2) The commission shall advise and assist within the limits of its resources the legislative and executive branches of state government, including state agencies, to improve the responsiveness and manage the growth of Oregon state government through proposals for legislation or changes in administrative rules or policy.

(3) The commission shall select one or more comprehensive tasks to undertake each year from priority lists submitted to the commission by the Governor, President of the Senate, Speaker of the House and Chief Justice of the Supreme Court on or before July 1 of each year.

(4) In performing its duties, the commission within the limits of available funds may:

(a) Conduct hearings and conferences to ascertain facts, to comprehend state programs and activities and to obtain qualified opinions;

(b) Appoint subcommittees consisting of members of the commission and public members, if desired, and pay the reasonable and actual expenses thereof as provided in section 4 of this Act;

(c) Obtain from any state agency necessary assistance and data; and

(d) Perform all other necessary functions to carry out the purposes of the commission and this Act.

Sec. 4. A member of the Commission on Oregon State Management and Organization shall receive no

House Research Agency
Pouch Y
Juneau, Alaska 99811
465-3991

KEY WORD: _____

Research Request Number: _____

RESEARCH EVALUATION

TO:

FROM: Susan Brody, Director

RE: Evaluation of Research Products

To assist us in improving the quality of our research services, we would appreciate your response to the following questions.

- Was the information unbiased?

- Did it provide answers to (or, at least, useful information on) all the questions you posed?

- Was the research completed and delivered to you in a timely manner?

- Was it clearly written?

- May we release this information to the public?

  |___| I approve the release of this information.

  |___| I approve the release of this information, but please remove my name.

  |___| I do not approve the release of this information; maintain confidentiality.

_____ _____

Date Signature

Please be assured that we will take your comments seriously in performing future research for you.

Please return to House Research Agency, Mail Stop 3100.

Thank you.

State of Alaska

211 Cushman Street
Fairbanks, Alaska 99701
907-452-3421
907-452-3471

Room 500, Capitol Building
Pouch V
Juneau, Alaska 99811
907-465-4984

Legislative Budget & Audit Committee
Rep. Robert Bettisworth, Chairman

April 23, 1984

M E M O R A N D U M

To: Representative Charlie Bussell, Chairman, House Judiciary Committee

From: Representative Bob Bettisworth RHB

Subject: HJR52, Proposing an amendment to the Constitution of the State of Alaska to provide for a biennial state budget.

I have previously asked that HJR52 be scheduled for hearing in House Judiciary so that it can be considered in tandem with companion legislation (HB485) which has already reached House Finance. I would appreciate any help you can give me with respect to moving the resolution so we can deal with the biennial budget question in the most expeditious manner possible. The issue here has received positive reaction from the administration and could lead to improved budgetary planning and fiscal savings should a biennial budget cycle be adopted.

Please let me know if you have any questions. This is a very straightforward piece of legislation.

RHB/rob

HJR

53

COMMITTEE REPORT

HOUSE

(7) FURTHER: FINANCE

2/8/84 Date: 2-21-84

The Committee on JUDICIARY has had HJR 53

"Relating to the reapportionment of the legislature.

under consideration and recommends:

[ ] do pass [ ] do not pass

[ ] do pass with attached amendments(s)

[ ] replace with CS for _____ [ ] same title [ ] new title

and recommends _____

[ ] AND attaches a "Letter of Intent" [ ] New Fiscal Note [ ] Zero Fiscal Note Attached

[ ] reports it back without recommendation

[ ] referred to the _____ Committee

MEMBERS SIGNING
DO PASS

MEMBERS HAVING
OTHER RECOMMENDATIONS:

CHAIRMAN

STATE OF ALASKA 1984 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date:

REQUEST
Bill/Resolution No.: HJR 53
Title: re to reapportionment of the legislature
Sponsor: Martin
Requestor: (H) State Affairs
Date of Request: 2/2/84

FISCAL DETAIL
Agency Affected: Elections
Program Categor Affected:
BRU, Program or Subprogram(s) Affected:

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 84	FY 85	FY 86	FY 87	FY 88	FY 89
OPERATING						
100 PERSONAL SERVICES		-0-				
200 TRAVEL		-0-				
300 CONTRACTUAL		6.0				
400 SUPPLIES		-0-				
500 EQUIPMENT		-0-				
600 LAND & STRUCTURES		-0-				
700 GRANTS, CLAIMS		-0-				
800 MISCELLANEOUS		-0-				
TOTAL OPERATING		6.0				
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL: The six proposed amendments to the Constitution would each receive a page in the Official Election Pamphlet, @ 1.0 per page.

ANALYSIS: Attach a separate page for analysis

Prepared By: T.P. Thoma, Information Off cer Phone: 4611
Division: Elections Date: 2/2/84

Approved by Commissioner: Date: 2/2/84
Agency: Lieutenant Governor

Distribution (by Agency preparing fiscal note):
Legislative Finance
Legislative Sponsor
Requestor
Office of Management and Budget
Impacted Agency(ies)

12/1/83

UNITED STATES DEPARTMENT OF COMMERCE
Bureau of the Census
Washington, D.C. 20233

OFFICE OF THE DIRECTOR

DEC - 4

Honorable Terry Martin
Alaska House of Representatives
Anchorage, Alaska 99501

Dear Mr. Martin:

This is in response to your telephone request concerning corrections to the April 1, 1980 census population counts for Anchorage, Alaska made subsequent to the release of the Public Law 94-171 data. These corrections, which changed the 1980 population count of Census Tract 0002 from 6,114 to 7,528 and the count for the city and borough of Anchorage from 173,017 to 174,431, are reflected in final 1980 census tabulations and publications.

We are enclosing excerpts from the Block Statistics report (Census Tract 0002) for the Anchorage Standard Metropolitan Statistical Area, as well as a listing of the individual blocks affected by the changes. Map sheets containing Census Tract 0002 also are enclosed.

If you need additional information, please contact Mr. Joel Miller, Population Division, Bureau of the Census, Washington, D.C. 20233, (301) 763-7955.

Sincerely,

C. L. KINCANNON
Deputy Director
Bureau of the Census

Enclosures

* Letter was sent to Lt. Gov. Miller + Karen Ward (Rehfeld) on Sept 15, 1981 Advising them of the Eagle River Census Correction. The Nov. 1981 Publication also has the Updated Figures.

Copies of Block Maps were included (on shelf)

Blocks with April 1, 1980 census population counts
changed after issuance of Public Law 94-171 data

	April 1, 1980 census population count	
	As shown in PL 94-171	Corrected
Census Tract 0002	6,114	7,528
Affected blocks		
101	860	1,700
104	9	46
105	0	10
116	4	16
157	0	29
163	5	24
164	9	46
190	4	16
191	9	67
192	21	85
194	3	48
195	4	29
196	6	22
197	0	12
198	70	268

1980 Census of Population and Housing

Block Statistics

ANCHORAGE, ALASKA
STANDARD METROPOLITAN STATISTICAL AREA

PHC80-1-68

CONTENTS

		Page	Fiche/ Frame
List of PHC80-1 Block Statistics Reports		IV	1/A4
TEXT			
Introduction		VII	1/A7
Appendix A	Area Classifications	A-1	1/A10
Appendix B	Definitions and Explanations of Subject Characteristics	B-1	1/A13
Appendix C	General Enumeration and Processing Procedures	C-1	1/B2
Appendix D	Accuracy of the Data	D-1	1/B3
Appendix E	Facsimiles of Respondent Instructions and Questionnaire Pages	E-1	1/B5
MAPS			

Printed maps identifying the geographic areas covered herein are provided in a separate package which can be ordered from the Superintendent of Documents.

An index to 1980 census maps, which includes an SMSA map index to block numbered areas and an index listing identifying each blocked geographic area and its map sheet number(s), accompanies the maps.

	Page	Fiche/ Frame
TABLES		
1. Characteristics of Population and Housing Units, for the Blocked Portion of the SMSA: 1980	1	1/B10
The SMSA		
Boroughs		
Places		
2. Characteristics of Population and Housing Units, by Blocks: 1980	2	1/B11
Blocks Within Census Tracts or Block Numbering Areas (BNA's)		
3. Blocks With Zero Population and Zero Total Housing Units: 1980	24	1/D5
INDEX		

An index to the location of data by geographic area on each fiche appears in frame G14.

U.S. Department of Commerce
Malcolm Baldrige, Secretary
Joseph R. Wright, Jr., Deputy Secretary
Robert G. Dederick, Assistant Secretary
for Economic Affairs

BUREAU OF THE CENSUS
Bruce Chapman, Director
Daniel B. Levine, Deputy Director

POPULATION DIVISION
Roger A. Harriet, [illegible]

HOUSING DIVISION
Arthur F. Young, Chief

Acknowledgments

Many persons participated in the diverse activities of the 1980 census. These acknowledgments generally reflect staff during the census-taking process. The Bureau was guided by then Director, Vincent P. Barabba, and Deputy Director Daniel B. Levine. Primary direction of the census program was performed by George E. Hall, then Associate Director for Demographic Fields, assisted by Earle J. Garson, then Assistant Director for Demographic Censuses, in conjunction with Barbara A. Bailar, Associate Director for Statistical Standards and Methodology, Howard N. Hamilton, Assistant Director for Computer Services, Shirley Kallek, Associate Director for Economic Fields, James D. Lincoln, Associate Director for Administration, Ron L. Pollin, Associate Director for Field Operations, and W. Bruce Ramsey, Associate Director for Information Technology. The director's staff was assisted by Peter A. Bounpane and Sherry L. Courtland.

Responsibility for developing the population portion of the 1980 census questionnaire content and designing the tabulations was in the Population Division, under the supervision of Meyer Zitter, then Chief, Paula J. Schneider, Staff Assistant for Census Programs, Roger A. Harriet, Rampon D. McKenney, and Arthur J. Norton, Assistant Chiefs.

Responsibility for developing the housing portion of the 1980 census questionnaire content, designing the tabulations, and preparing this report was in the Housing Division, under the supervision of Arthur F. Young, Chief. This report was planned and written by William A. Downs, Chief, Decennial Planning and Data Services Branch, assisted by Carol A. Demiszow and Richard G. Knapp.

Responsibility for the overall planning, coordinating, and processing of the 1980 census was in the Decennial Census Division under the direction of Gerald J. Post, then Acting Chief, assisted by Marie G. Argana, Rachel F. Brown, Donald R. Dalzell, Leonard Goldberg, Earle G. Knapp, Jr., and Roger D. Lopega.

Data base and generalized system support was developed and provided by Systems Development Division, Judy M. Bedell, Chief, under the direction of John Jerry Ball, Assistant Chief.

Computer processing was performed in the Computer Operations Division, C. Thomas DiNenna, then Chief, and John E. Halterman, Assistant Chief.

The Statistical Methods Division was largely responsible for developing new procedures to obtain a more accurate count of the population. This work was supervised by Charles D. Jones, Chief, David V. Bateman, Susan M. Mishura, and Robert T. O'Reagan, Assistant Chiefs.

Geographic programs and plans were developed in the Geography Division under the direction of Gerald F. Cranford, then Assistant Chief, Robert W. Marx and Sills G. Tomasi, Assistant Chiefs, and Donald L. Hinchfield, Special Assistant. Joseph J. Knott coordinated geographic operational phases.

Data collection activities were supervised in the Field Division by Richard C. Best, then Chief, under the direction of Lawrence T. Love and Stanley D. Matchett, then Assistant Chiefs, with the assistance of the directors and assistant directors of the Bureau's regional offices.

The coordination and acquisition of automatic data processing equipment were the responsibility of the Automatic Data Processing Planning Staff, James R. Papal, Chief, under the direction of Richard L. Pauly, Deputy Chief.

The system design, technical specifications, construction, and installation of the FOSDIC and Automated Camera Technology System were the responsibility of Technical Services Division, Mafias Anderson, Chief, assisted by Robert Z. Joseph, Assistant Chief.

Questionnaire processing procedures were developed in the Decennial Processing Staff, James B. Werking, then Chief, under the direction of Harry C. O'Hover, Assistant Chief. The manual processing and microfilming of the questionnaires were performed at three decennial processing locations as follows: Data Preparation Division, Don L. Adams, Chief; Jeffersonville Processing Office, Robert L. Kirkland, then Processing Manager; New Orleans Processing Office, Robert L. Allen, Chief; and Laguna Niguel Processing Office, Robert N. Schaller, Chief.

Administrative support was provided by the Administrative Services Division, G. Bryant Benton, then Acting Chief.

Publications editing, printing, and composition were performed in the Publications Services Division, Raymond J. Keski, Chief, under the direction of Milton S. Anderson, Arlene C. Duchest, and Gerald A. Mann.

User services were provided by the Data User Services Division under the supervision of Michael G. Garland, Chief, and Marshall L. Turner, Assistant Chief.

Many other persons participated in the various activities of the 1980 census. For a list of key personnel, refer to the *History of the 1980 Census of Population and Housing*, (PHC80-R2).

Library of Congress Cataloging in Publication Data

1980 census of population and housing. Block statistics.

PHC80-1-
Issued November 1981—
1. United States—Census, 20th, 1980.
2. United States—Population—Statistics.
3. United States—Housing—Statistics.
I. United States. Bureau of the Census.
HA219.A142 312'.0873 81-607980
AACR2

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Table 2. Characteristics of Population and Housing Units, by Blocks: 1980—Con. Anchorage Borough, Alaska

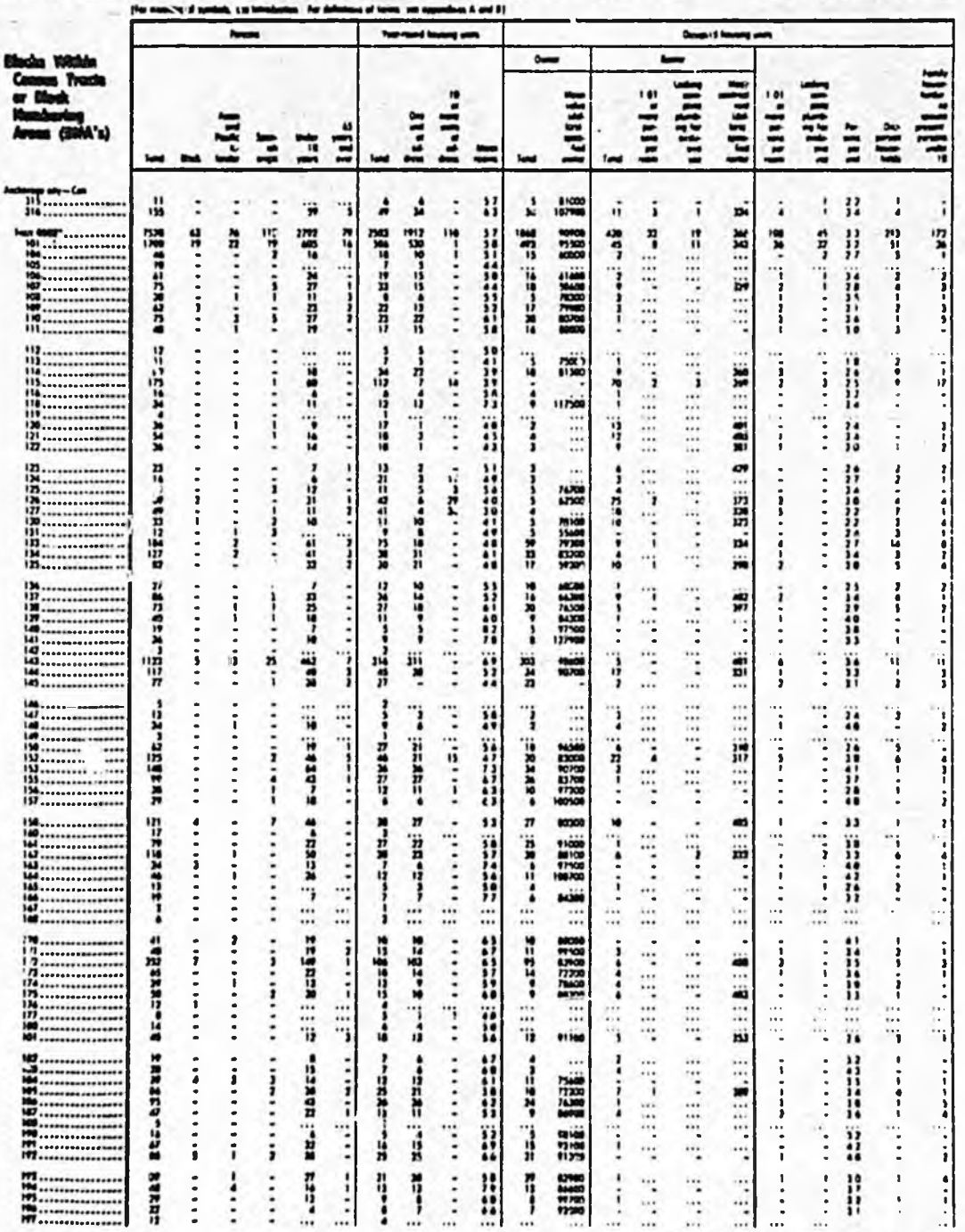


Table 2. **Characteristics of Population and Housing Units, by Blocks: 1980**—Con. **Anchorage Borough, Alaska**

(For meaning of symbols, see introduction. For definitions of terms, see appendixes A and B)

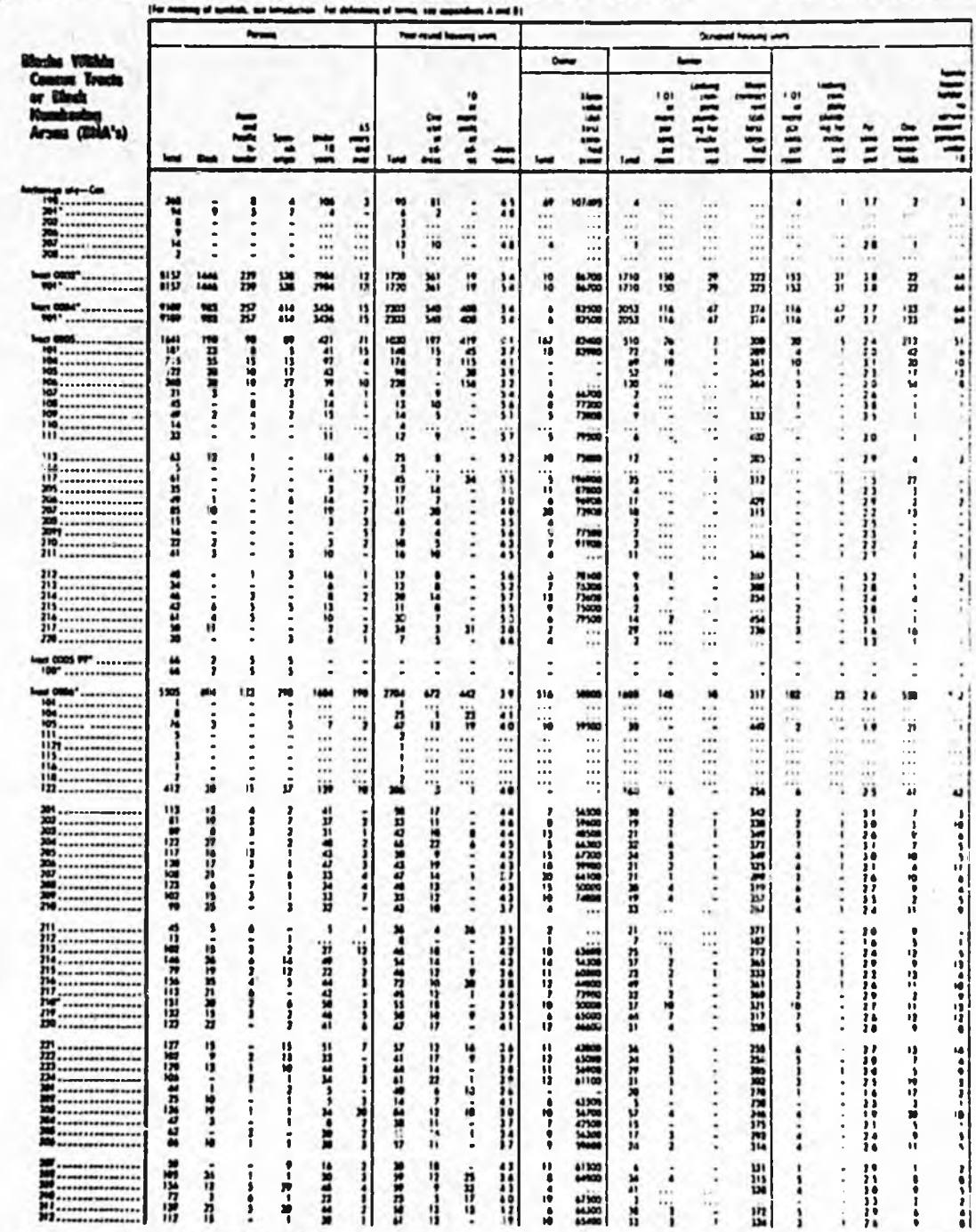
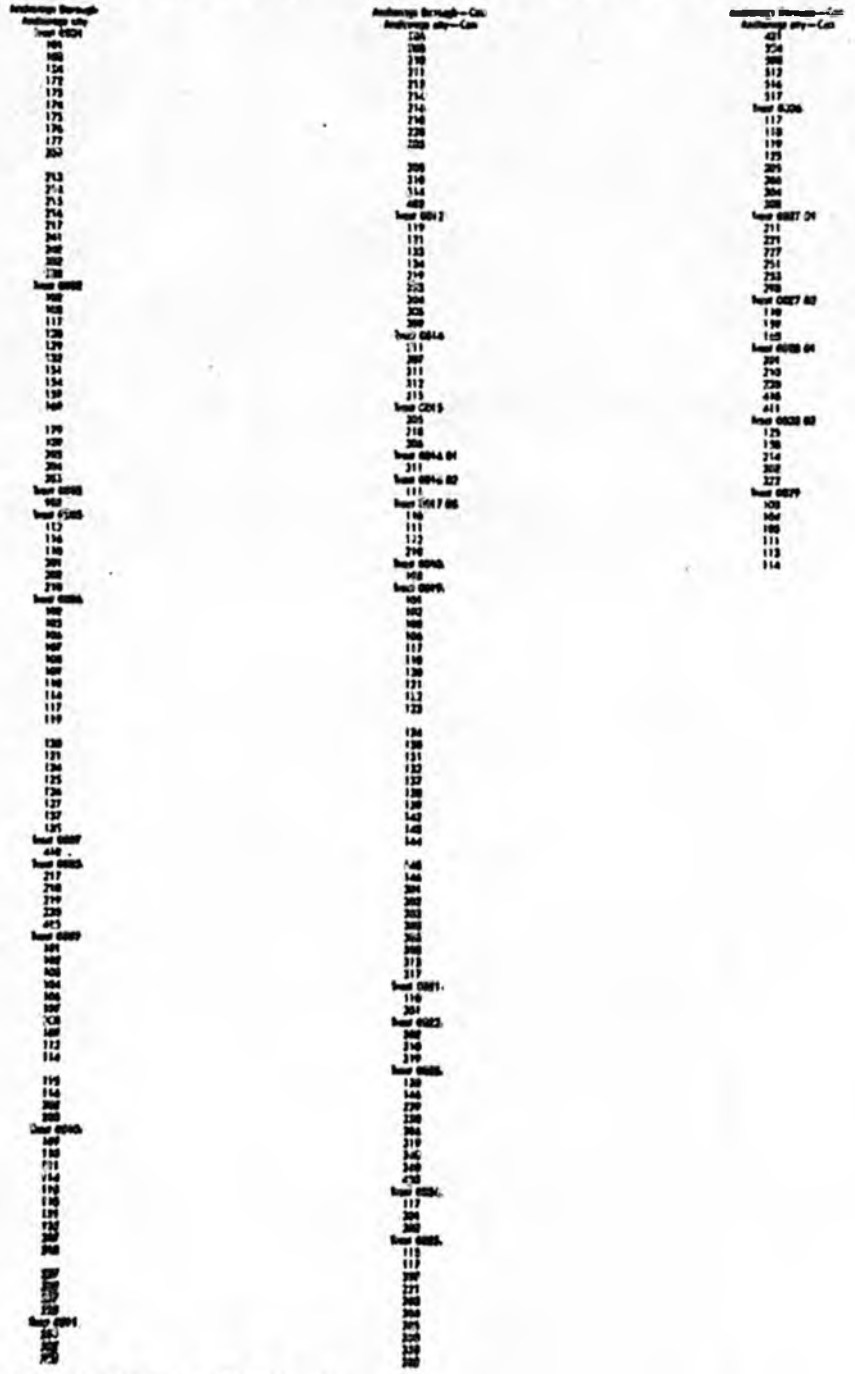


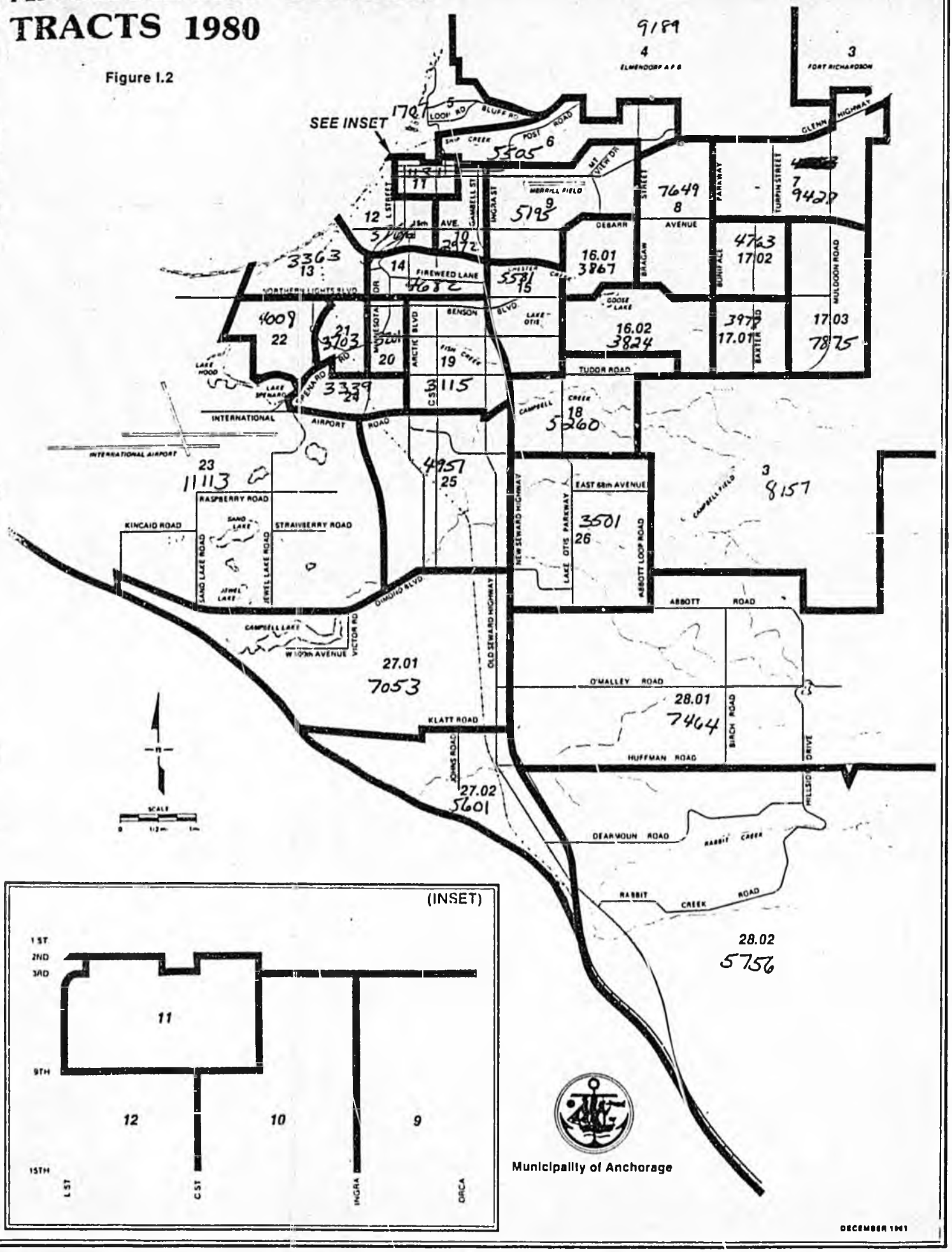
Table 1. Blocks With Zero Population and Zero Total Housing Units: 1980

Alaska



ANCHORAGE CENSUS TRACTS 1980

Figure I.2

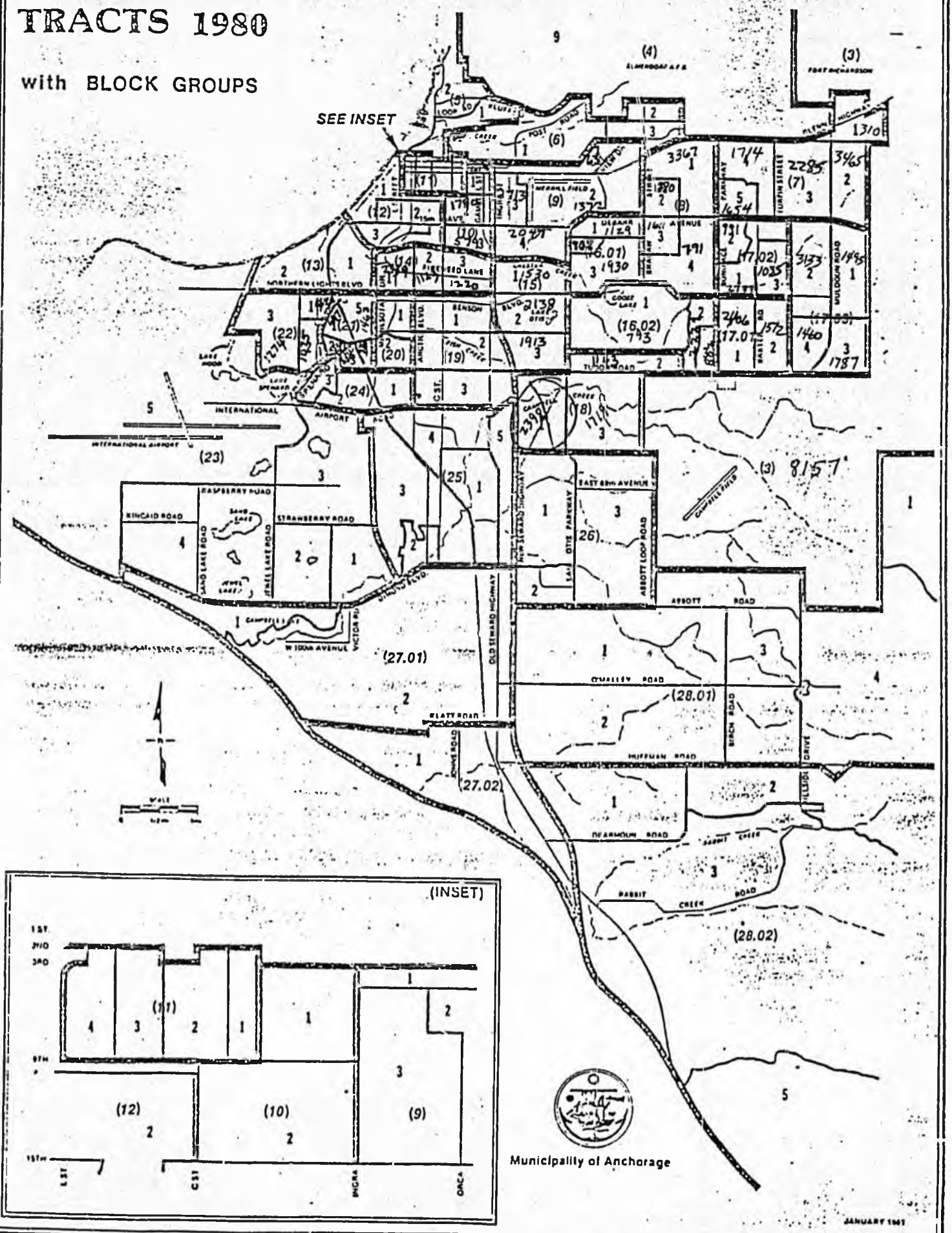


Municipality of Anchorage

DECEMBER 1981

ANCHORAGE CENSUS TRACTS 1980

with BLOCK GROUPS



4/21/81

POPULATION BY 1980 CENSUS TRACTS
1970, 1980, 1981, 1982, 1983

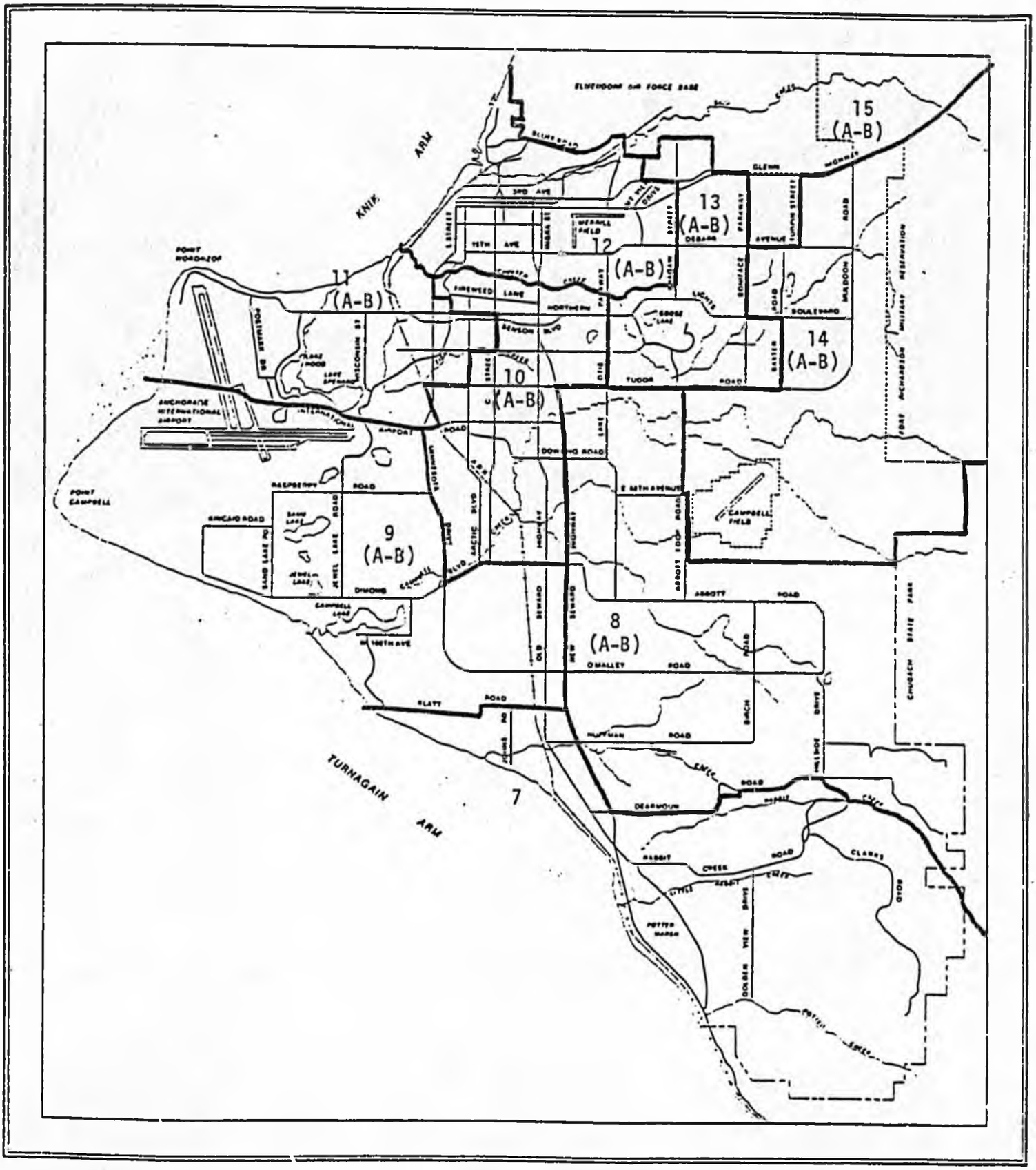
Tract		Population[1] 1970	Population[1] 1980	Population[2] 1981	Population[2] 1982	Population[2] 1983
1.00	Chugiak	2,851	5,330	5,538	5,871	8,208
2.00	Eagle River	2,981	7,528	8,787	9,106	13,741
3.00	Fort Richardson	10,751	8,157	8,821	8,672	7,855
4.00	Elmendorf AFB	13,280	9,189	9,080	8,956	9,451
5.00		3,378	1,707	2,071	2,371	2,085
6.00		5,522	5,505	6,178	6,108	7,125
7.00		7,060	9,428	10,172	11,331	11,664
8.00		5,153	7,649	8,950	10,335	9,946
9.00		3,845	5,195	5,613	5,759	6,859
10.00		3,369	2,972	3,272	3,825	4,315
11.00		2,118	1,131	1,202	1,275	1,595
12.00		4,248	3,766	3,968	4,594	4,958
13.00		3,183	3,363	3,555	3,927	3,585
14.00		5,021	4,682	5,400	5,773	5,880
15.00		4,696	5,581	5,473	5,945	5,824
16.01		3,559	3,867	3,943	4,045	4,247
16.02		1,482	3,824	4,189	4,438	4,164
17.01		975	3,978	4,055	4,981	4,858
17.02		3,864	4,763	5,104	5,281	5,716
17.03		3,123	7,875	8,576	9,107	10,162
18.00		3,054	5,260	6,067	5,174	7,093
19.00		1,776	3,115	3,725	4,010	4,150
20.00		4,322	3,201	3,592	3,904	3,981
21.00		4,481	3,703	3,796	3,729	4,586
22.00		2,741	4,008	4,309	5,810	6,407
23.00		4,199	11,113	11,705	13,014	14,865
24.00		3,366	3,339	3,747	3,398	3,562
25.00		3,079	4,951	5,394	7,618	8,258
26.00		1,876	3,501	3,717	4,325	7,200
27.01		1,044	7,053	7,527	7,198	8,823
27.02		1,461	5,601	5,085	6,777	8,027
28.01		2,321	7,464	7,245	9,339	10,832
28.02		1,889	5,756	6,968	7,241	9,379
29.00	Turnagain Arm	310	876	937	979	1,445
			156,209			
Anchorage Bowl		96,212	143,351	172,499	188,260	207,452
Military		24,031	17,346	17,901	17,628	16,574
Eagle River/Chugiak		5,832	12,858	14,325	14,977	21,949
Municipality of Anchorage		126,385	174,431	187,761	204,216	230,846

[1] Source: U.S. Bureau of the Census
[2] Source: Municipality of Anchorage, Community Planning Department

Municipality of Anchorage
Department of Community Planning
Research Section
4/27/83

avd4/mpctl

1981 ANCHORAGE ELECTION DISTRICTS



These boundaries are approximate.

1705 Blue Book

Sitka	281	304	336	352	350	379	375	367
Wrangell-Petersburg	169	269	293	277	345	476	420	414*
Other Areas	800	1,027	2,605	3,343	3,608	4,088	5,387	5,655*
TOTAL	8,076	11,594	14,176	15,825	17,203	19,776	21,640	21,074

R = Revised * Excludes Active Duty Military Personnel

* 1980 figures are the average of January to June. 1980 is latest data available at Blue Book deadline.
Source: Alaska Department of Labor.

POPULATION

Alaska's Population by Region

Year	Total Alaska	Southeast	Southcentral	Southwest	Interior	Northwest
1880	33,426	7,748	4,352	13,914	2,568	4,844
1890	32,052	8,038	6,112	12,071	2,333	3,498
1900	63,592	14,350	10,000	13,000	5,600	20,642
1910	64,356	15,216	12,900	12,049	13,064	11,127
1920	55,036	17,402	11,173	11,541	7,964	6,956
1930	59,278	19,304	11,880	12,118	8,246	7,730
1940	72,524	25,241	14,881	12,846	10,345	9,211
1950	128,643	20,203	50,093	17,715	23,008	9,624
1960	226,167	35,403	108,851	21,001	49,128	11,784
1970	300,382	42,565	162,001	26,491	56,479	12,846
1974	351,159	50,232	194,569	28,165	63,151	15,042
1975	404,634	50,438	229,492	28,428	78,614	17,662
1976	413,289	51,172	244,056	28,488	68,572	21,041
1977	411,211	53,162	252,836	26,512	58,208	20,493
1980	400,331	53,613	235,465	28,659	67,154	15,440
1981	435,300	NA	NA	NA	NA	NA
1982	460,837	NA	NA	NA	NA	NA

Note: Revised totals and estimates have been made for 1970 forward but are not available by region. They include: 1970 (302,580); 1971 (311,200); 1972 (320,000); 1973 (330,000); 1974 (344,000); 1975 (383,100); 1976 (410,700); 1977 (413,100); 1978 (403,100); 1979 (400,600); 1980 (401,850). These figures and the 1981 and 1982 totals were taken from "Preliminary State Intercensal Estimates," released 24 June 1981 by the Chief, Local Area Population Estimates, U.S. Bureau of the Census. Note that the date of estimation for each year 1971-1979 and 1981, 1982 is July 1st; for 1970 and 1980, the final census figures (rounded to the nearest 1,000) are as of April 1st.

(Source: Alaska Department of Labor)

Distribution of Total Population by Size of Place

	1980			1970			1982	
Size of Place	Number of Places	Population	Percent of Total Population	Number of Places	Population	Percent of Total Population	Number of Places	Population	Percent of Total Population
Places of less than 1,000	—	116,448	31.5	—	117,017	39.0	—	139,700	30.3
1,000-1,500	10	12,444	5.5	13	15,170	5.1	3	3,337	.7
1,500-2,000	4	7,032	3.1	4	6,918	2.3	4	7,406	1.6
2,000-2,500	2	4,478	2.0	7	15,705	5.2	4	9,493	2.1
2,500-5,000	2	5,885	2.6	6	21,355	7.1	8	25,200	5.5
5,000-10,000	3	22,354	9.9	6	43,208	14.4	4	27,135	5.9
10,000-25,000	1	13,311	5.9	2	32,000	10.6	1	22,030	4.8
25,000 or more	1	44,237	19.6	1	40,029	13.0	2	220,470	49.1

Note: The population listed for "places of less than 1,000" includes people living near to but not within the boundaries of larger communities as well as those living in small towns or small gatherings. (Source: Department of Labor)

Dept. Labor
3301 Eagle
Room 309

Off Benson
Rt on Denali
left on 33rd

Estimated components of Net Change in Alaska's Population

Year	Total Population	Net Change	Net Civilian Migration	Natural Increase	Net Military Migration
1950	138,000	—	—	—	—
1955	221,000	83,000	34,900	24,100	24,000
1960	226,000	5,000	11,100	31,900	(15,800)
1965	265,000	39,000	4,000	34,500	500
1970	300,382	37,382	14,972	25,410	(3,000)
1975*	383,100	80,520	57,830	28,190	(5,500)
1980*	401,850	18,750	(13,380)	33,640	(1,510)

Source: Estimate from Alaska Regional Population and Employment, G.W. Rogers.
Source Note: Unless otherwise noted, all population statistics for 1980 and prior years are from G.W. Rogers and R.A. Cooley, Alaska's Population and Economy and Alaska Department of Labor.

*Revised by Alaska Department of Labor

Major Components of Alaska's Population Growth

Year	Alaska	Native	Non-Native	Military
1880	33,426	32,996	430	—
1890	32,052	25,354	4,298	—
1900	63,592	29,542	30,450	—
1910	64,356	25,331	38,400	—
1920	55,036	26,558	28,228	250
1930	59,278	29,983	29,045	250
1940	72,524	32,456	39,568	500
1950	128,643	33,863	74,373	20,407
1960	226,167	43,081	150,394	32,692
1970	300,382	50,554	219,828	30,000
1980	401,851	63,867	315,981	22,003

(Source 1980 population figures: Alaska Department of Labor)

Persons by Sex, Race, and Age

	ALL RACES			WHITE			BLACK			OTHER RACES		
	BOTH SEXES	MALE	FEMALE	BOTH SEXES	MALE	FEMALE	BOTH SEXES	MALE	FEMALE	BOTH SEXES	MALE	FEMALE
TOTAL	400481	217321	183160	308455	164916	143539	13819	7643	5956	78407	39762	38645
Under 5 Years Old	38777	19944	18833	29043	14941	13602	1587	801	786	8147	4202	4445
5 to 9 Years Old	34917	17897	17020	25266	13010	12256	1327	676	651	8324	4211	4113
10 to 14 Years Old	34166	17624	16542	24558	12781	11857	1003	499	504	8605	4424	4181
15 to 19 Years Old	36980	19743	17237	26321	14716	12107	1190	656	534	9469	4873	4596
20 to 24 Years Old	45058	24153	20905	34130	18283	15847	2403	1505	898	8525	4365	4160
25 to 29 Years Old	48542	25529	23013	38899	20504	18395	2149	1268	878	7497	3757	3740
30 to 34 Years Old	41916	22561	19355	34444	18854	15590	1179	739	440	6093	2978	3115
35 to 39 Years Old	31182	17001	14181	25864	14279	11585	742	423	319	4576	2299	2277
40 to 44 Years Old	22570	12410	10160	18319	10237	8112	593	335	258	3658	1838	1820
45 to 49 Years Old	18355	9956	8399	14740	8129	6611	457	252	205	3158	1575	1583
50 to 54 Years Old	15401	8484	7117	12867	7218	5649	347	187	160	2187	1079	1108
55 to 59 Years Old	12592	6763	5829	10215	5527	4688	264	137	129	2111	1099	1012
60 to 64 Years Old	8095	4297	3798	6436	3504	2932	166	86	80	1493	707	786
65 to 69 Years Old	5191	2731	2460	3762	2000	1762	100	56	44	1329	675	654
70 to 74 Years Old	3189	1541	1648	2188	1060	1128	65	32	33	936	449	487
75 to 79 Years Old	1843	884	959	1239	575	664	33	18	15	571	291	280
80 to 84 Years Old	769	350	419	525	235	290	7	1	6	237	114	123
85 to 89 Years Old	418	247	171	309	145	164	8	2	6	101	100	101
Under 15 Years Old	107860	55465	52395	77667	40152	37715	3917	1978	1941	26276	13337	12939
15 to 64 Years Old	281051	151103	129948	222465	120749	101716	9489	5578	3911	49137	24776	24361
65 Years or Older	11530	5753	5777	8123	4015	4108	213	109	104	3194	1629	1565

* Figures are based upon preliminary totals. The revised total population for Alaska is 401,851.

REDISTRICTING AND FINAL TAB DIFFERENCE OF 1370 FOR STATE 02 - ALASKA DATE 111781 PAGE 1

COUNTY NAME ANCHORAGE			REDISTRICTING FILE --->				<---------- FINAL TAB FILE ---------->							
R	EEEES CTY	MCD	PLACE	TRACT	BLK	POP	BLK	POP	EEEES CTY	MCD	PLACE	TRACT	PARENT ED
	3008B 020	025	0140	0002	TOT	1248	TOT	2662	3008B 020	025	0140	0002	3008B
					101	485	101	1325	3008B 020				
					102	0	102	0	3008B 020				
					103	0	103	0	3008B 020				
					104	9	104	46	3008B 020				
					105	0	105	10	3008B 020				
					116	4	116	16	3008B 020				
					117	0	117	0	3008B 020				
					118	34	118	34	3008B 020				
					141	26	141	26	3008B 020				
					142	3	142	3	3008B 020				
					154	0	154	0	3008B 020				
					155	99	155	99	3008B 020				
					156	28	156	28	3008B 020				
					157	0	157	29	3008B 020				
					158	121	158	121	3008B 020				
					159	0	159	0	3008B 020				
					160	17	160	17	3008B 020				
					161	79	161	79	3008B 020				
					162	118	162	118	3008B 020				
					163	5	163	24	3008B 020				
					164	9	164	46	3008B 020				
					188	5	188	5	3008B 020				
					189	0	189	0	3008B 020				
					190	4	190	16	3008B 020				
					191	9	191	67	3008B 020				
					192	21	192	85	3008B 020				
					193	89	193	89	3008B 020				
					194	3	194	48	3008B 020				
					195	4	195	29	3008B 020				
					196	6	196	22	3008B 020				
					197	0	197	12	3008B 020				
					198	70	198	268	3008B 020				

Eagle Rich
add 1,414

A letter w/ this information was sent to Lt. Gov. Terry Miller + Karen Ward (Rehfeld) on Sept. 15, 1981

REDISTRICTING AND FINAL TAB DIFFERENCE OF 1370 FOR STATE 02 - ALASKA DATE 111781 PAGE 2

COUNTY NAME MATANUSKA-SU REDISTRICTING FILE ---><---------- FINAL TAB FILE ---------->																
R	EEEES	CTY	MCD	PLACE	TRACT	BLK	POP	BLK	POP	EEEES	CTY	MCD	PLACE	TRACT	PARENT	ED
	1168	170	025	9999	999999	TOT	4134	TOT	4184	1168	170	025	9999	999999		

Mat-Su

add 50

COUNTY NAME PRINCE OF WA REDISTRICTING FILE --->								<---------- FINAL TAB FILE ---------->						
R	EEEES	CTY	MCD	PLACE	TRACT	BLK	POP	BLK	POP	EEEES	CTY	MCD	PLACE	TRACT	PARENT ED
	1015	201	050	9999	999999	TOT	0	TOT	320	1015	201	050	9999	999999	1025
	1025	201	050	9999	999999	TOT	403	TOT	83	1025	201	050	9999	999999	1025

reallocation of population for Thorne Bay

REDISTRICTING AND FINAL TAB DIFFERENCE OF 1370 FOR STATE 02 - ALASKA DATE 111781 PAGE 4

COUNTY NAME SOUTHEAST FA REDISTRICTING FILE ---><---------- FINAL TAB FILE ---------->															
R	EEEES	CTY	MCD	PLACE	TRACT	BLK	POP	BLK	POP	EEEES	CTY	MCD	PLACE	TRACT	PARENT ED
	0833	240	025	9999	999999	TOT	94	TOT	0	0833	240	025	9999	999999	

END OF LISTING

DIST 17

subtract 94

REAPPORTIONMENT: A BETTER WAY

a common cause proposal

> "I don't think they play at all fairly, and they all quarrel so dreadfully one can't hear one self speak—and they don't seem to have any rules in particular: at least, if there are, nobody attends to them—and you've no idea how confusing it is . . ."
>
> —Alice
>
> *Alice's Adventures in Wonderland*

Alice would have felt quite at home watching a typical state legislature attempt to reapportion itself during the 1960's and early 1970's. In many states, reapportionment*—the decennial division of states into legislative districts for voting purposes—has been a series of secret deals based largely on personal and partisan motivations. Few rules have existed to safeguard the public's interest in an open and competitive political system. The guiding principle for most incumbent legislators has been self-protection.

The method by which state legislative and congressional district lines are drawn is fundamental to our system of representative democracy. The Supreme Court decisions of the mid-1960's requiring periodic reapportionment on the basis of "one person, one vote" eliminated the gross population inequalities among legislative districts that existed in the 1950's and 1960's. These decisions took us a large step toward the goal of achieving "fair and effective representation for all citizens" articulated by the Court in the 1964 *Reynolds* case. Unfortunately, we have not com-

*As a technical matter, "reapportionment" is "a distribution of legislative seats" to already established units of government (for example, states, counties). "Redistricting" is "the drawing of lines" to establish legislative districts within already established units of government. Thus, congressional seats are apportioned to the states and then districts drawn within each state. As a matter of practice, however, the terms "reapportionment" and "redistricting" have been used interchangeably. In this report, "reapportionment" is used to refer to the act of drawing legislative district lines as well as apportioning legislative seats among units of government.

pleted the journey toward that worthy goal because the Court has not dealt with the equally debilitating problems of racial and political gerrymandering. The reapportionment revolution remains unfinished.

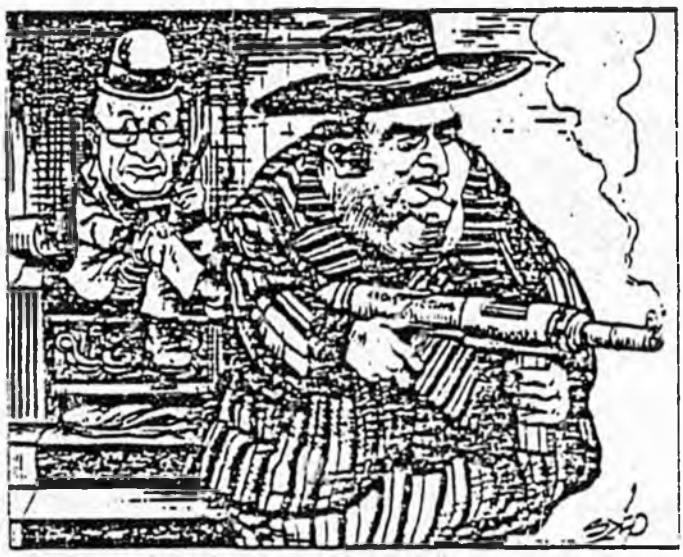
The Court's decisions leave reapportionment in the hands of the state legislatures, presenting an inherent conflict of interest. With few standards other than substantial population equality to guide them, the state legislatures have been free to draw districts of bizarre configurations designed to serve personal and partisan ends. Professors Keefe and Ogul, authors of *The American Legislative Process*, have examined our nation's experience with reapportionment and concluded that "everything about reapportionment, whether legislative or congressional, suggests the triumph of self-interest."

Political and racial gerrymandering have resulted. They have reduced electoral competition and undermined our system of representative democracy in significant ways. Political gerrymandering dilutes the value of political participation, undermines legislative responsiveness to constituent views, and weakens political parties. Gerrymandering has been used to deny representation to minority groups.

The present process works extremely well for incumbent legislators and other political insiders. It does not serve the public well. An Illinois legislator once explained this insider's game in blunt terms:

> Outsiders shouldn't stick their noses in and tell this committee how to reapportion the state . . . . Any man in this legislature who doesn't fight for his own district is a particular damn fool. I'm not for too many sitting members running against each other if we can work it out.

In the early 1980's virtually all state legislative and congressional district lines will be redrawn based on the 1980 federal census. Common Cause believes that it is well past time for citizens to "stick their noses" in this important political process and insist that it be cleaned up and opened to public participation before the reapportionment of the early 1980's takes place. Common Cause has proposed a model reapportionment process designed to establish the legal framework necessary to achieve the Supreme Court's goal of "fair and effective representation." The Common Cause model is summarized on pages 24-25. It proposes the establishment of rigorous anti-gerrymandering reapportionment standards and the creation of an independent, nonpartisan commission to draw the state legislative and congressional district lines. Unless citizens demand a better way than what we have had, the unseemly spectacles of the 1960's and 1970's will be repeated in state after state.



"If no one else has a question, we'll proceed with the democratic process."

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Background

The quest for fair and effective representation runs deep in Anglo-American political thought. In 1690, John Locke despaired of England's rotten boroughs and argued that it was in the interest of the public "to have a fair and equal representative." Apportionment was a fundamental issue for the Constitutional Convention meeting in Philadelphia in 1787. The Connecticut compromise provided for equal representation of the states in the U.S. Senate and for representation based on population in the House. Article I, Section 2 of the Constitution specifically provides that Representatives be apportioned among the states according to population every ten years.

Despite federal and state constitutional requirements to reapportion periodically, many states failed to do so. As the nation's population shifted from rural areas to the cities and suburbs, the population inequality among state legislative districts as well as congressional districts increased substantially. In 1946, the U.S. Supreme Court failed to halt this trend when it denied relief in the *Colegrove* case challenging an Illinois congressional district plan that had one district with nine times as many people as another. Justice Frankfurter argued: "Courts ought not to enter this political thicket." State courts also declined to become involved. Rural dominance was maintained in some states by simply doing nothing.

Absent a court mandate, nearly one-half of the states did not reapportion their legislatures after the 1950 census according to Professors Keefe and Ogul. By 1962, ten states had at least one house which had not been reapportioned since 1930. Vermont had not reapportioned since 1793; nor had Delaware since 1897. The resulting malapportionment was extraordinary. The Brookings Institution has pointed out that twenty-one of the forty-two states with more than one congressional district in 1962 had constituencies in which the smallest district had less than one-half of the population of the largest district. In 1961, according to Professors Jewell and Patterson, authors of *The Legislative Process in the U.S.*, there were fourteen states in which a majority of members of at least one house could be elected by as few as twenty percent of the electorate from rural areas. In the Vermont House, the 38 citizens of Stratton had the same representation as the 35,531 citizens of Burlington. The five largest cities in Connecticut had one-fourth of the state's population but elected only ten of the 294 house members. The six million citizens of Los Angeles County comprised forty percent of the population of California but had only one of the forty seats in the state Senate.

> But things not always changing equally, and private interest often keeping up customs and privileges when the reasons of them are ceased, it often comes to pass that in governments where part of the legislative consists of representatives chosen by the people, that in tract of time this representation becomes very unequal and disproportionate to the reasons it was first established upon . . . . This strangers stand amazed at, and every one must confess needs a remedy; . . . . And therefore the people, when the legislative is once constituted, having in such a government as we have been speaking of no power to act as long as the government stands, this inconvenience is thought incapable of a remedy . . . . For it being the interest as well as intention of the people, to have a *fair and equal representative*, whoever brings it nearest to that is an undoubted friend to and establisher of the government, and cannot miss the consent and approbation of the community. [emphasis added]
>
> —John Locke
> *Second Treatise of Civil Government* (1690)

The Supreme Court in the "Political Thicket"

In 1962, in the famous *Baker v. Carr* case, the U.S. Supreme Court decided to enter the "political thicket" of reapportionment. The Court held that federal courts have jurisdiction over complaints against malapportioned legislatures. The *Baker* case involved the Tennessee General Assembly which had not reapportioned itself since 1901 despite a state constitutional mandate to do so every ten years and a dramatic growth and shift of population. The Court declined to specify a remedy in Baker but did establish guidelines in a series of decisions over the next several years.

Early in 1964, in *Wesberry v. Sanders*, the Court voided Georgia's congressional district plan and held that:

> . . . the command of Art. I, Sec. 2, that Representatives be chosen "by the People of the several States" means that as nearly as is practicable one man's vote in a congressional election is to be worth as much as another's.

Perhaps the most important decision came in *Reynolds v. Sims* in June of 1964. In *Reynolds*, the Court voided Alabama's state legislative district plan and held that:

> The Equal Protection Clause requires that a State make an honest and good faith effort to construct districts, in both houses of its legislature, *as nearly of equal population as is practicable.* [emphasis added]

The response to *Baker*, *Wesberry*, and *Reynolds* was predictable. Suits were filed in federal or state courts of 48 of the fifty states between 1962 and 1972 alleging violations of the equal protection clause with respect to the apportionment of one or both legislative houses.

Over the years, the Court has refined the "one person, one vote" standard. The Court has made a distinction between state legislative and congressional districts, allowing larger population deviations among districts in state legislative plans. The Court has defined the "as nearly of equal population as is practicable" standard of *Reynolds* under the equal protection clause to allow maximum population deviations among state legislative districts of up to ten percent. The Court has allowed somewhat greater deviations if justified by rational state policy, such as the desire to respect the boundaries of political subdivisions. The Court has defined the "as nearly as is practicable" standard of *Wesberry* under Article I, Section 2 of the Constitution to require as close to mathematical equality as is reasonably possible for congressional districts.

While the Supreme Court has secured substantial population equality among legislative districts, it has been unreceptive to reapportionment challenges based on charges of political or racial gerrymandering. Districts of bizarre configurations admittedly designed to serve personal or partisan ends have been upheld if they meet the population test. The Court has indicated that it will scrutinize carefully charges of racial gerrymandering. But in *Whitcomb v. Chavis* in 1971, the most important racial gerrymandering case to date, the Court held that the use of multi-member rather than single-member state legislative districts in Indiana did not result in invidious discrimination against the black voters of Indianapolis.

SUMMARY OF MAJOR U.S. SUPREME COURT DECISIONS

Colegrove v. Green, 328 U.S. 549 (1946): The Court, by a four to three vote, denied relief in a case challenging an Illinois congressional district plan that had one district with nine times as many people as another. Justice Frankfurter argued that: "Courts ought not to enter this political thicket. The remedy for unfairness in districting is to secure state legislatures that will apportion properly, or to invoke the ample powers of Congress."

Baker v. Carr, 369 U.S. 186 (1962): In a case involving the Tennessee General Assembly, the Court held that federal courts have jurisdiction over complaints against malapportioned legislatures. The legislature had not reapportioned since 1901 despite a state constitutional mandate to do so every ten years and a dramatic growth and shift of population. The Court declined to consider what remedy would be appropriate and remanded the case to the lower court.

Wesberry v. Sanders, 376 U.S. 1 (1964): The Court voided Georgia's congressional district plan. The Court held that Article I, Section 2 of the Constitution required that "as nearly as is practicable one man's vote in a congressional election is to be worth as much as another's."

Reynolds v. Sims, 377 U.S. 533 (1964): In a case involving the Alabama Legislature, the Court rejected the analogy to the U.S. Congress and held that both houses of a state legislature must be apportioned on a population basis. The Court held that: "The Equal Protection Clause requires that a State make an honest and good faith effort to construct districts, in both houses of its legislature, as nearly of equal population as is practicable." The Court said that some deviations from the equal population principle are constitutionally permissible if "based on legitimate considerations incident to the effectuation of a rational state policy," such as a desire to respect the boundaries of political subdivisions.

Swann v. Adams, 385 U.S. 440 (1967): The Court rejected Florida's 1966 state legislative reapportionment plan because it contained senate districts ranging from 15.09 percent above the average district and 10.56 percent below and house districts ranging from 18.28 percent above to 15.27 percent below.

Kirkpatrick v. Preisler, 394 U.S. 526 (1969): The Court rejected Missouri's 1967 congressional Redistricting Act because the most populous district was 3.13 percent greater than the average district and the least populous was 2.84 percent below and the state failed to satisfactorily justify the deviations. The Court held that "the 'as nearly equal as practicable' standard requires that the State make a good-faith effort to achieve precise mathematical equality. Unless population variances among congressional districts are shown to have resulted despite such effort, the State must justify each variance, no matter how small."

Continued on page 6

U.S. SUPREME COURT DECISIONS continued from page 5

Whitcomb v. Chavis, 403 U.S. 124 (1971): The Court held that the use of multi-member districts in state legislative reapportionment in Indiana did not result in invidious discrimination against the black voters of Indianapolis. The Court "insisted that the challengers carry the burden of proving that multi-member districts unconstitutionally operate to dilute or cancel the voting strength of racial or political elements." The Court found that the challengers had not demonstrated discrimination.

Mahan v. Howell, 410 U.S. 315 (1973): The Court upheld a 1971 Virginia state legislative reapportionment plan despite the fact that it had a maximum population deviation from the largest to the smallest district of 16.4 percent. The Court held that the legislative plan "may reasonably be said to advance the rational state policy of respecting the boundaries of political subdivisions," but noted that "this percentage may well approach tolerable limits."

Gaffney v. Cummings, 412 U.S. 735 (1973): The Court upheld a 1971 state legislative reapportionment plan for Connecticut with maximum population deviations between house districts of 7.83 percent. The Court held that "minor deviations from mathematical equality among state legislative districts are insufficient to make out a prima facie case of invidious discrimination under the Fourteenth Amendment so as to require justification by the State." In addition, the Court held that the plan was not constitutionally vulnerable just because it attempted to reflect the relative strength of the major political parties.

White v. Weiser, 412 U.S. 783 (1973): The Court rejected a congressional district plan for Texas because its maximum deviations of 2.43 percent above and 1.7 percent below the average "were not 'unavoidable', and the districts were not as mathematically equal as reasonably possible."

Chapman v. Meier, 420 U.S. 1 (1975): The Court overturned a federal court ordered reapportionment of the North Dakota Legislative Assembly. The Court held that "unless there are persuasive justifications, a court-ordered reapportionment plan of a state legislature must avoid use of multi-member districts." The Court noted that it was exercising its supervisory powers with regard to federal courts; it was not holding that multi-member districts are unconstitutional *per se*.

United Jewish Organizations v. Carey, 97 Sup. Ct. 996 (1977): The Court upheld a legislative modification of New York's state legislative reapportionment plan that was designed to bring the plan into compliance with the Voting Rights Act. In order to establish several substantially non-white districts in Kings County, the legislature divided a community of Hasidic Jews. The Court held that the use of racial criteria in an attempt to comply with the Voting Rights Act did not violate either the Fourteenth or Fifteenth amendments.

Existing State Policies

Virtually all substantive law regarding apportionment procedure is found in the constitutions of the states. With the exception of some of the newest provisions, few describe in much detail either the procedure for preparation of reapportionment plans or the standards to be used. Only the constitutional provisions in Colorado, Hawaii, and Montana meet the anti-gerrymandering test advocated by Common Cause. Table I below provides an overview of existing state provisions for state legislative apportionment. A typical state constitutional provision requires the legislature to reapportion on the basis of population after each federal decennial census. One state statute and twenty-one state constitutions explicitly require that districts be compact; two state statutes and twenty-seven constitutions explicitly provide that districts be formed of contiguous territory. Many state constitutions require the apportioning authority to respect political subdivision boundaries. But even where standards exist, they are generally stated in terms too vague to be enforced in court.

In thirty-seven states, the legislature is given the initial responsibility for preparing the apportionment plan. Nine of these states provide for an apportionment authority to prepare a plan if the legislature does not do so—in five states a board is established as the backup, in three the supreme court is responsible, and in Oregon the secretary of state prepares a plan. Nine other states give responsibility to a board or commission; in two of these states the supreme court is to prepare a plan if the

TABLE I:

EXISTING STATE PROVISIONS FOR
STATE LEGISLATIVE APPORTIONMENT

State	Apportioning Authority	Compactness	Contiguity	St. Sup. Court Original Jur.	State	Apportioning Authority	Compactness	Contiguity	St. Sup. Court Original Jur
Alabama	L		X		Montana	B	X	X	
Alaska	B/G	X	X		Nebraska	L	X	X	
Arizona	L				Nevada	L			
Arkansas	B			X	New Hampshire	L			
California	L		X		New Jersey	B	X	X	
Colorado	B	X	X	X	New Mexico	L	X	X	
Connecticut	L(B)		X	X	New York	L	X	X	
Delaware	L		X		North Carolina	L		X	
Florida	L(C)			X	North Dakota	L			
Georgia	L				Ohio	B	X	X	X
Hawaii	B	X	X	X	Oklahoma	L(B)	X	X	X
Idaho	L				Oregon	L(St.)			X
Illinois	L(B)	X	X	X	Pennsylvania	B	X	X	X
Indiana	L				Rhode Island	L	X		
Iowa	L(C)	X	X	X	South Carolina	L			
Kansas	L			X	South Dakota	L(B)			
Kentucky	L				Tennessee	L			
Louisiana	L(C)				Texas	L(B)		X	
Maine	B/L(C)	X	X	X	Utah	L			
Maryland	G/L	X	X	X	Vermont	B/L(C)	X	X	X
Massachusetts	L		X	X	Virginia	L	X	X	
Michigan	B(C)	X	X	X	Washington	L			
Minnesota	L		X		West Virginia	L	X	X	
Mississippi	L				Wisconsin	L	X	X	
Missouri	Bds.(C)	X	X		Wyoming	L			

KEY: B—Board or Commission, C—Court, G—Governor, L—Legislature, St.—Secretary of State, B/G—Board is advisory to Governor, L(C)—if Legislature fails to act, the Court is the backup authority.

board does not. In two additional states—Maine and Vermont—boards are established to advise the legislature; the supreme courts backup the legislature. In Alaska, the governor is responsible for preparing a plan with the assistance of an advisory board. In Maryland, the governor presents a plan to the legislature; if the legislature does not enact a substitute, the governor's plan goes into effect. Table II on page 9 provides an overview of the makeup and responsibilities of the eighteen boards and commissions that are assigned state legislative apportionment responsibilities. Many are dominated by legislators or other public officials and lack the necessary independence. Seventeen state constitutions establish prompt court review by providing for original jurisdiction in the state's highest court.

The apportionment authorities designated by the state constitutions—especially the state legislatures—have often failed to produce acceptable plans. According to a 1973 survey by the Massachusetts Legislative Research Council, courts promulgated districts for one or both houses in at least twenty-one states between 1962 and 1972. In other states, the courts rejected reapportionment plans and ordered reapportionment authorities to prepare acceptable plans. According to Tables III and IV on pages 10-11, prepared by the Council of State Governments, sixteen existing state house apportionment plans and seventeen senate plans were court ordered.

STATE CONSTITUTIONAL AND STATUTORY REAPPORTIONMENT PROVISIONS

Alabama: Const. art. 9, secs. 197-201.
Alaska: Const. art. VI, secs. 1-11.
Arizona: Const. art. 4, pt. 2, sec. 1; and Ariz. Rev. Stat. secs. 16-1401 to 16-1403.
Arkansas: Const. amendment no. 45.
California: Const. art. 4, secs. 6 and 27.
Colorado: Const. art. V, secs. 46-48.
Connecticut: Const. art. 3, secs. 3-6.
Delaware: Code tit. 29, secs. 801-808.
Florida: Const. art. III, sec. 16.
Georgia: Const. art. 3, secs. 2-3.
Hawaii: Const. art. III, sec. 4; and Haw. Rev. Stat. secs. 25-1 to 25-8.
Idaho: Const. art. 3, secs. 4-5.
Illinois: Const. art. 4, sec. 3.
Indiana: Const. art. 4, secs. 5-6.
Iowa: Const. art. 3, secs. 34-39.
Kansas: Const. art. 10, sec. 1.
Kentucky: Const. sec. 33.
Louisiana: Const. art. III, sec. 6.
Maine: Const. art. IV, pt. 1, secs. 2-3; pt. 2, sec. 2; and pt. 3, sec. 1-A.
Maryland: Const. art. III, secs. 2-5.
Massachusetts: Const. art. CI, secs. 1-3.
Michigan: Const. art. IV, secs. 2-6; and Mich. Stat. Ann. secs. 2-28 (1)-(9).
Minnesota: Const. art. 4, secs. 2-3.
Mississippi: Const. art. 13, secs. 254-255.
Missouri: Const. art. III, secs. 2, 7, 10, and 45.
Montana: Const. art. V, sec. 14; and Mont. Rev. Codes Ann. secs. 43-108 to 43-118.
Nebraska: Const. art. III, sec. 5.
Nevada: Const. art. 4, sec. 5.
New Hampshire: Const. pt. 2, arts. 9, 9a, and 26.
New Jersey: Const. art. IV, secs. II-III.
New Mexico: Const. art. IV, sec. 3; and N.M. Stat. Ann. secs. 2-7-122, 2-9-124.
New York: Const. art. 3, secs. 4-5.
North Carolina: Const. art. II, secs. 3 and 5.
North Dakota: Const. art. II, sec. 35.
Ohio: Const. art. XI, secs. 1-15.
Oklahoma: Const. art. 5, secs. 9A, 10A, and 11A-E.
Oregon: Const. art. IV, sec. 6.
Pennsylvania: Const. art. 2, secs. 16-17.
Rhode Island: Const. amendments XIII and XIX.
South Carolina: Const. art. 3, secs. 3-6.
South Dakota: Const. art. III, sec. 5.
Tennessee: Const. art. II, secs. 4-6.
Texas: Const. art. III, secs. 25-28.
Utah: Const. art. IX, secs. 1-4.
Vermont: Const. ch. II, secs. 13, 18, and 74; and Vt. Stat. Ann. tit. 17, secs. 1901-1911.
Virginia: Const. art. II, sec. 6.
Washington: Const. art. 2, sec. 3.
West Virginia: Const. art. VI, secs. 4-10.
Wisconsin: Const. art. IV, secs. 3-5.
Wyoming: Const. art. 3, sec. 3.

TABLE II:

STATE REAPPORTIONMENT COMMISSIONS

State	No. Comm.	How Commissioners Chosen	Authority
Alaska	5	by the Governor	advisory to the Governor
Arkansas	3	board is composed of the Governor, Secretary of State, and Attorney General.	promulgate a plan
Colorado	11	four by the legislative department, three by executive, and four by judicial (no more than four may be legislators)	promulgate a plan
Connecticut	9	by the Governor from names designated by legislative leaders; the eight select a ninth	backup if legislature fails to adopt plan
Hawaii	9	legislative leaders select eight who select a ninth	promulgate a plan
Illinois	8	four legislative leaders each select one legislator and one non-legislator	backup if legislature fails to adopt a plan
Maine	13	ten legislators are chosen by legislative leaders and the legislators select three members of the public	advisory to the legislature
Michigan	8	two major political parties each select four	promulgate a plan
Missouri House	20	by Governor, one from each list of two submitted by congressional district committees of two major parties	promulgate a plan
Missouri Senate	10	by Governor, five from each list of ten submitted by two major political parties	promulgate a plan
Montana	5	four legislative leaders each select one and four commissioners select fifth	promulgate a plan
New Jersey	10 (11)	five from each of two major parties; Chief Justice appoints eleventh if deadlock	promulgate a plan
Ohio	5	board is composed of Governor, Auditor, Secretary of State, and two selected by legislative leaders	promulgate a plan
Oklahoma	3	board is composed of Attorney General, Superintendent of Public Instruction, and Treasurer	backup if legislature fails to adopt a plan
Pennsylvania	5	board composed of four legislative leaders or deputies and fifth selected by the four	promulgate a plan
South Dakota	5	board composed of Governor, Superintendent of Public Instruction, presiding judge of Supreme Court, Attorney General, and Secretary of State	backup if legislature fails to adopt a plan
Texas	5	board composed of Lt. Governor, House Speaker, Attorney General, Comptroller, and Commissioner of General Land Office	backup if legislature fails to adopt a plan
Vermont	5	Governor appoints one from each major party; each major party appoints one; Chief Justice of Supreme Court appoints one	advisory to legislature

TABLE III:

APPORTIONMENT OF LEGISLATURES: SENATE

State or other jurisdiction	Initial reapportioning agency	Present apportionment by	Year of most recent apportionment	Number of seats	Number of districts	Number of multi-member districts	Largest number of seats in district	Present deviation in actual v. average population per seat: Greatest +	Present deviation in actual v. average population per seat: Greatest −	Average population each seat (a)
Alabama	L	FC	1972	35	35	0	1	0.67	0.72	98,436
Alaska	G,B	SC	1974	20	16	3	3	14.0	8.4	15,118
Arizona	L	L	1972(b)	30	30	0	1	0.4	0.4	59,083
Arkansas	B	B	1971	35	35	0	1	2.0	1.49	54,913
California	L	SC	1973	40	40	0	1	1.92	1.02	499,321
Colorado	L	L	1972	35	35	0	1	2.48	0.67	63,121
Connecticut	L(c)	B	1971	36	36	0	1	1.9	1.9	84,233
Delaware	L	L	1971	21	21	0	1	1.4	0.9	26,100
Florida	L(c)	L	1972	40	19	14	3	0.62	0.33	169,773
Georgia	L	L	1972	56	56	0	1	2.3	2.0	81,955
Hawaii	B	B	1973	25	8	7	4	16.2	13.8	13,513(d)
Idaho	L	L	1974	35	35	0	1	5.15	5.03	20,171
Illinois	L(c)	L	1973	59	59	0	1	0.8	0.6	188,172
Indiana	L	L	1972	50	50	0	1	1.7	1.6	109,822
Iowa	L(c)	SC	1972	50	50	0	1	0.0	0.0	56,507
Kansas	L	FC	1972	40	40	0	1	3.58	3.02	56,231
Kentucky	L	L	1972	38	38	0	1	3.07	3.02	91,791
Louisiana	L	FC, L	1972	39	39	0	1	5.6	5.8	91,615
Maine	L(c)	SC	1972	33	33	0	1	1.52	1.54	40,111
Maryland	G	SC	1974	47	47	0	1	5.3	4.7	85,455
Massachusetts	L	L	1973	40	40	0	1	3.53	3.67	138,493(e)
Michigan	B	B	1972	38	38	0	1	0.0	0.0	231,253
Minnesota	L	FC	1972	67	67	0	1	1.58	1.83	56,870
Mississippi	L	FC	1975	52	39	12	3	1.12	0.92	42,000
Missouri	B	B	1971	34	34	0	1	4.9	4.9	137,371
Montana	B	B	1974	50	50	0	1	6.33	6.73	13,999
Nebraska	L	L	1971	49	49	0	1	1.4	1.1	30,280
Nevada	L	L	1973	20	10	3	7	7.7	9.6	21,110
New Hampshire	L	L	1972	24	24	0	1	3.25	4.0	30,131(f)
New Jersey	B	B, SC	1973	40	40	0	1	2.35	1.99	179,278
New Mexico	L	L, SC	1972	42	42	0	1	4.35	4.48	24,190
New York	L	L	1971	65	60	0	1	0.0	0.0	304,021
North Carolina	L	L	1971	50	27	18	4	6.40	6.89	101,041
North Dakota	L	SC	1975	50	49	1	2	3.16	3.1	12,199
Ohio	B	B	1971	33	33	0	1	1.05	0.95	322,788
Oklahoma	L(c)	L	1971	48	48	0	1	0.5	0.5	53,117
Oregon	L(c)	S, SC	1971	30	30	0	1	1.2	0.7	60,713
Pennsylvania	B	B	1971	50	50	0	1	2.29	0.03	233,949
Rhode Island	L	L	1974	50	50	0	1	17.0	0.0	17,800
South Carolina	L	L	1972	46	16	13	5	3.18	6.75	56,316
South Dakota	L(c)	L	1971	35	28	3	3	2.6	3.3	19,035
Tennessee	L	L	1971	33	33	0	1	7.1	7.4	118,914
Texas	L(c)	B	1971	31	31	0	1	2.3	2.2	361,185
Utah	L	L	1972	29	29	0	1	4.66	6.18	36,527
Vermont	L(c)	L	1973	30	13	11	6	8.17	8.48	14,824
Virginia	L	FC	1971	40	38	1	3	3.2	4.3	116,212
Washington	L	FC	1972	49	49	0	1	0.91	0.7	68,423(f)
West Virginia	L	L	1974	34	17	17	2	11.4	11.1	47,902
Wisconsin	L	L	1972	33	33	0	1	0.71	0.55	133,877
Wyoming	L	L	1971	30	16	9	5	27.9	21.6	11,080
Virgin Islands	L	L	1972	15	3	2	7	N.A.	N.A.	4,461

Source: The Book of the States, 1976–77, p. 43, with updated information.

Abbreviations: B—Board or Commission; FC—Federal Court; SC—State Court; G—Governor; L—Legislature; S—Secretary of State; N.A.—Not available.

(a) Population figures in most instances are based on the 1970 federal census. West Virginia: population figures valid at time of last legislative apportionment.

(b) Effective 1976 election.

(c) Constitution of statutes provide for another agent or agency in reapportion if the Legislature is unable to do so.

(d) Average number of registered voters per seat.

(e) Based on 1971 special State Decennial Census of state citizens.

(f) Based on civilian or nonresident population.

This table is reprinted from page 4 of *American State Legislatures: Their Structures and Procedures* (Revised 1977) with the permission of the Council of State Governments.

Note: As a result of a law enacted since this Table was prepared, the Massachusetts Senate has percentage population deviations of +2.86% and -3.35%. The average population for each seat is 144,737.

TABLE IV:

APPORTIONMENT OF LEGISLATURES: HOUSE

State or other jurisdiction	Initial reapportioning agency	Present apportionment by	Year of most recent apportionment	Number of seats	Number of districts	Number of multi-member districts	Largest number of seats in district	Percent deviation in actual v. average population per seat — Greatest +	Greatest −	Average population each seat (a)
Alabama	L	FC	1972	105	105	0	1	1.08	1.15	32,802
Alaska	G, B	SC	1974	40	22	10	6	14.0	15.0	7,359
Arizona	L	L	1972(b)	60	30	30	2	0.4	0.4	29,541
Arkansas	B	B	1971	100	84	10	3	6.3	3.1	19,233
California	L	SC	1973	80	80	0	1	1.94	1.90	249,661
Colorado	L	L	1972	65	65	0	1	0.97	1.09	33,993
Connecticut	L(c)	B	1971	151	151	0	1	1.0	1.0	20,081
Delaware	L	L	1971	41	41	0	1	2.6	2.3	13,368
Florida	L(c)	L	1972	120	45	24	6	0.2	0.1	56,391
Georgia	L	L	1974	180	154	17	4	4.87	4.79	25,502
Hawaii	B	B	1973	51	27	22	3	8.2	21.0	6,624(d)
Idaho	L	L	1971	70	35	35	2	5.45	3.03	10,186
Illinois	L(c)	L	1973	177	59	59	3	0.8	0.6	62,791
Indiana	L	L	1972	100	73	20	3	1.0	1.0	51,916
Iowa	L(c)	SC	1972	100	100	0	1	0.0	0.0	28,253
Kansas	L	L	1973	125	125	0	1	6.5	4.8	18,223
Kentucky	L	L	1972	100	100	0	1	3.1	3.9	32,193
Louisiana	L	FC, L	1972	105	105	0	1	4.6	4.6	34,697
Maine	L(c)	SC	1974	151	119	11	10	5.0(e)	5.0(e)	6,581
Maryland	G	SC	1974	141	47	47	3	5.3	4.7	27,818
Massachusetts	L	L	1973	240	240	0	1	9.94	9.06(f)	23,212(g)
Michigan	B	SC	1972	110	110	0	1	0.0	0.0	80,751
Minnesota	L	FC	1972	134	134	0	1	1.99	1.97	28,404
Mississippi	L	FC	1975	122	84	27	4	1.06	0.93	18,171
Missouri	B	SC	1971	163	163	0	1	1.2	1.3	28,696
Montana	B	B	1974	100	100	0	1	7.83	7.65	6,944
Nebraska	Unicameral Legislature			...	...	...	...			
Nevada	L	L	1973	40	40	0	1	10.9	12.1	12,218
New Hampshire	L	L	1971	400	159	109	11	25.3	19.3	1,813(h)
New Jersey	B	B, SC	1973	80	40	40	2	2.85	1.39	89,639
New Mexico	L	L, SC	1972	70	70	0	1	4.92	4.95	14,514
New York	L	L	1972	150	150	0	1	1.8	1.6	121,608
North Carolina	L	L	1973	120	45	35	8	8.2	10.2	42,330
North Dakota	L	FC	1975	100	49	49	4	3.16	3.1	6,178
Ohio	B	B	1971	99	99	0	1	1.05	0.95	107,596
Oklahoma	L(c)	L	1971	101	101	0	1	1.0	1.2	24,338
Oregon	L(c)	S, SC	1971	60	60	0	1	1.33	0.88	34,356
Pennsylvania	B	B	1971	203	203	0	1	2.98	0.04	58,115
Rhode Island	L	L	1974	100	100	0	1	17.0	0.0	8,900
South Carolina	L	L	1974	124	124	0	1	4.98	4.97	20,819
South Dakota	L(c)	L	1971	70	28	28	10	7.4	3.3	9,518
Tennessee	L	L	1973	99	99	0	1	2.0	1.6	39,618
Texas	L,c)	L	1975	150	150	0	1	3.8	4.7	74,645
Utah	L	L	1972	75	75	0	1	6.72	5.95	14,124
Vermont	L(c)	L	1974	150	72	39	15	10.58	9.36	1,820(d)
Virginia	L	L	1972	100	52	28	7	9.6	6.8	56,485
Washington	L	FC	1972	98	49	49	2	0.91	0.7	34,214(h)
West Virginia	L	L	1973	100	36	25	13	11.17	8.01	17,442
Wisconsin	L	L	1972	99	99	0	1	0.96	0.93	44,626
Wyoming	L	L	1971	62	23	12	11	41.16	45.47	5,362
Virgin Islands	Unicameral Legislature			...	...	...	...	...	...	...

Source: The Book of the States, 1976-77, p. 43, with updated information.

Abbreviations: B—Board or Commission; FC—Federal Court; SC—State Court; G—Governor; L—Legislature; S—Secretary of State.

(a) Population figures in most instances are based on the 1970 federal census.

(b) Effective 1970 election.

(c) Constitution or statutes provide for another agent or agency to reapportion if the Legislature is unable to do so.

(d) Average number of registered voters per seat.

(e) Approximate. No exact figures were available.

(f) This figure excludes two zero-graphical island districts whose deviations are −71.5 and −81.2%.

(g) Based on 1971 special State Decennial Census of state citizens.

(h) Based on civilian or nonstudent population.

This table is reprinted from page 5 of *American State Legislatures: Their Structures and Procedures* (Revised 1977) with the permission of the Council of State Governments.

Note: As a result of a recent constitutional amendment and a reapportionment law enacted since this Table was prepared, the Massachusetts House has 160 single-member districts with an average population for each seat of 36,184. The percentage population deviations range from +9.5% to -10.24%.

TABLE V:

CONGRESSIONAL DISTRICTS

State	Initial Redistricting by	Present Redistricting by	Year of Most Recent Districting	Number of Districts	Maximum Percent Deviations from Average Population	Average Population Per District
Alabama	L	L	1972	7	+.22% -.46%	492,024
Alaska	(One Member elected at-large)					
Arizona	L	L	1971	4	+.1% -.12%	443,121
Arkansas	L	L	1971	4	+.07% -.39%	480,824
California	L	SC	1973	43	+.55% -.39%	464,442
Colorado	L	L	1972	5	+.17% -.42%	441,452
Connecticut	L	FC	1972	6	+.02% -.02%	505,370
Delaware	(One Member elected at-large)					
Florida	L	L	1972	15	+.08% -.19%	452,630
Georgia	L	L	1972	10	+.41% -.69%	458,968
Hawaii	L	L	1969	2	+6.9% -5.9%	384,967
Idaho	L	L	1971	2	+.10% -.10%	356,504
Illinois	L	FC	1971	24	+.63% -.69%	463,082
Indiana	L	L	1971	11	+.11% -.12%	472,152
Iowa	L	L	1971	6	+.23% -.42%	470,840
Kansas	L	L	1971	5	+.94% -.62%	1,8,814
Kentucky*	L	L	1972	7	+.11% -.09%	460,102
Louisiana**	L	L	1972	8	+.39% -.14%	455,396
Maine	L	L	1961	2	+.23% -.23%	496,832
Maryland	L	L	1971	8	+1.01% -1.55%	490,200
Massachusetts	L	L	1971	12	+.62% -.98%	474,098
Michigan	L	FC	1972	19	+.11% -.44%	467,110
Minnesota***	L	L	1971	8	+.77% -.63%	475,634
Mississippi	L	L	1972	5	+1.94% -2.16%	443,282
Missouri	L	FC	1972	10	+.41% -.22%	467,740
Montana	L	L	1971	2	+.07% -.07%	347,206
Nebraska	L	L	1971	3	+.10% -.06%	494,597
Nevada	(One Member elected at-large)					
New Hampshire	L	L	1972	2	+.48% -.48%	368,841
New Jersey	L	FC	1972	15	+.44% -.54%	477,878
New Mexico	L	L	1968	2	+.62% -.62%	508,000
New York	L	L	1974	39	+1.53% -1.22%	467,725
North Carolina	L	L	1971	11	+2.12% -1.67%	462,006
North Dakota	(One Member elected at-large)					
Ohio	L	L	1972	23	+.31% -.19%	483,131
Oklahoma	L	L	1972	6	+.21% -.22%	426,542
Oregon	L	L	1971	4	+.11% -.11%	522,848
Pennsylvania	L	L	1972	25	+1.39% -.84%	471,756
Rhode Island	L	L	1972	2	+.12% -.12%	474,862
South Carolina	L	L	1971	6	+3.34% -4.81%	431,753
South Dakota	L	L	1971	2	+.01% -.01%	333,128
Tennessee	L	L	1972	8	+4.58% -3.71%	490,521
Texas	L	L	1975	24	+.08% -.08%	466,520
Utah	L	L	1971	2	+.01% -.01%	529,637
Vermont	(One Member elected at-large)					
Virginia	L	L	1972	10	+.24% -.44%	464,849
Washington	L	FC	1972	7	+6.77 -1.78%	487,024
West Virginia	L	L	1971	4	+.35% -.43%	436,059
Wisconsin	L	L	1971	9	+.03% -.04%	490,881
Wyoming	(One Member elected at-large)					

KEY: L—Legislature, FC—Federal Court, SC—State Court.

*Information provided by the Kentucky Legislative Research Commission.

**The Louisiana Department of Justice reports maximum deviations different from those reported by CQ (+.19% and -.13%).

***The Minnesota Secretary of State reports maximum deviations different from those reported by CQ (+.90% and -.97%).

This table was prepared by Common Cause from information in *Congressional Districts in the 1970's* (2nd Ed., 1974) (published by *Congressional Quarterly*).

Political Gerrymandering

The U.S. Supreme Court has taken us a substantial way toward its aim of "fair and effective representation for all citizens." The Court's "one person, one vote" standard has done away with the gross malapportionment of the pre-*Baker* years. But the substantial population equality required by the Court is not a total answer to the representation question. The Court has not guaranteed fair district lines. According to William J.D. Boyd of the National Municipal League:

> The reapportionment revolution has certainly come a long way, and very effectively eliminated the evil of malapportionment. As with most revolutions, it remains incomplete so long as the political gerrymander remains to effectively dilute the basic principles of a representative democracy.

The problem of political gerrymandering has replaced population inequality as the major obstacle to "fair and effective representation." Gerrymandering has been defined by Professor Robert Dixon, one of the nation's foremost experts on reapportionment, as "discriminatory districting which operates to inflate unduly the political strength of one group and deflate that of another." It is usually, but not exclusively, manifested in the manipulation of the shape of legislative districts. Political gerrymandering is a political tool that has a long history in American politics. The gerrymander was named after Elbridge Gerry, Governor of Massachusetts in 1812 when the legislature created a peculiar salamander-shaped district to benefit Gerry's Democratic Party (see "The Original Gerrymander" on page 16). It lives on today. In 1971, University of California Professor Gordon E. Baker surveyed the reapportionment plans drawn for California and concluded:

> While population variances among districts were negligible, several resulting configurations appear to be prime candidates for the Elbridge Gerry Memorial Award for Creative Cartography. Indeed, comparatively speaking, the early Massachusetts governor was a rank amateur and his famed salamander-like district a model of compactness.

Political gerrymandering is generally an attempt by incumbent legislators and majority parties in legislatures to draw district lines that perpetuate their positions of power within the status quo. It often results from the conflict of interest of having district lines drawn by state legislators. Few issues are of as intense interest to legislators as reapportionment. The drawing of district lines can make or break the political careers of the incumbent legislators who are charged with drawing the lines in most states. All too often, incumbents give in to the pressure to manipulate district lines for personal or partisan benefit. As the Majority Leader of the Maryland Senate has quipped: "There are two things that excite the Senate, reapportionment and horse racing."

Political gerrymandering is usually done by the majority party in the legislature working with statistics of past voting behavior, party registration, and demographic information. The intent is to create districts designed to produce the greatest number of legislative victories for the majority party by wasting minority party votes. As a New York politico discussing an upcoming reapportionment once said: "Now it's just a question of slicing the salami, and the salami happens to be in our hands."

One gerrymandering technique is to concentrate minority party strength in as few districts as possible, conceding these districts to the minority by wide margins in order to prevent the minority party from competing in other districts. For example, the majority party would concede one district to the minority in order to win three others. Another technique is to diffuse minority party strength in order to make it difficult for the minority party to win the number of seats representative of its popular support. In Illinois in 1973, for example, the General Assembly crossed the city line of Chicago nine times in drawing state legislative lines. The purpose and effect of this gerrymandering were to waste suburban Republican votes and to increase the number of city Democrats in the state legislature. In a 1972 study published by the American Enterprise Institute, Terry B. O'Rourke compared the ratio of votes won to seats won in the 1966-70 Congressional elections by parties with and

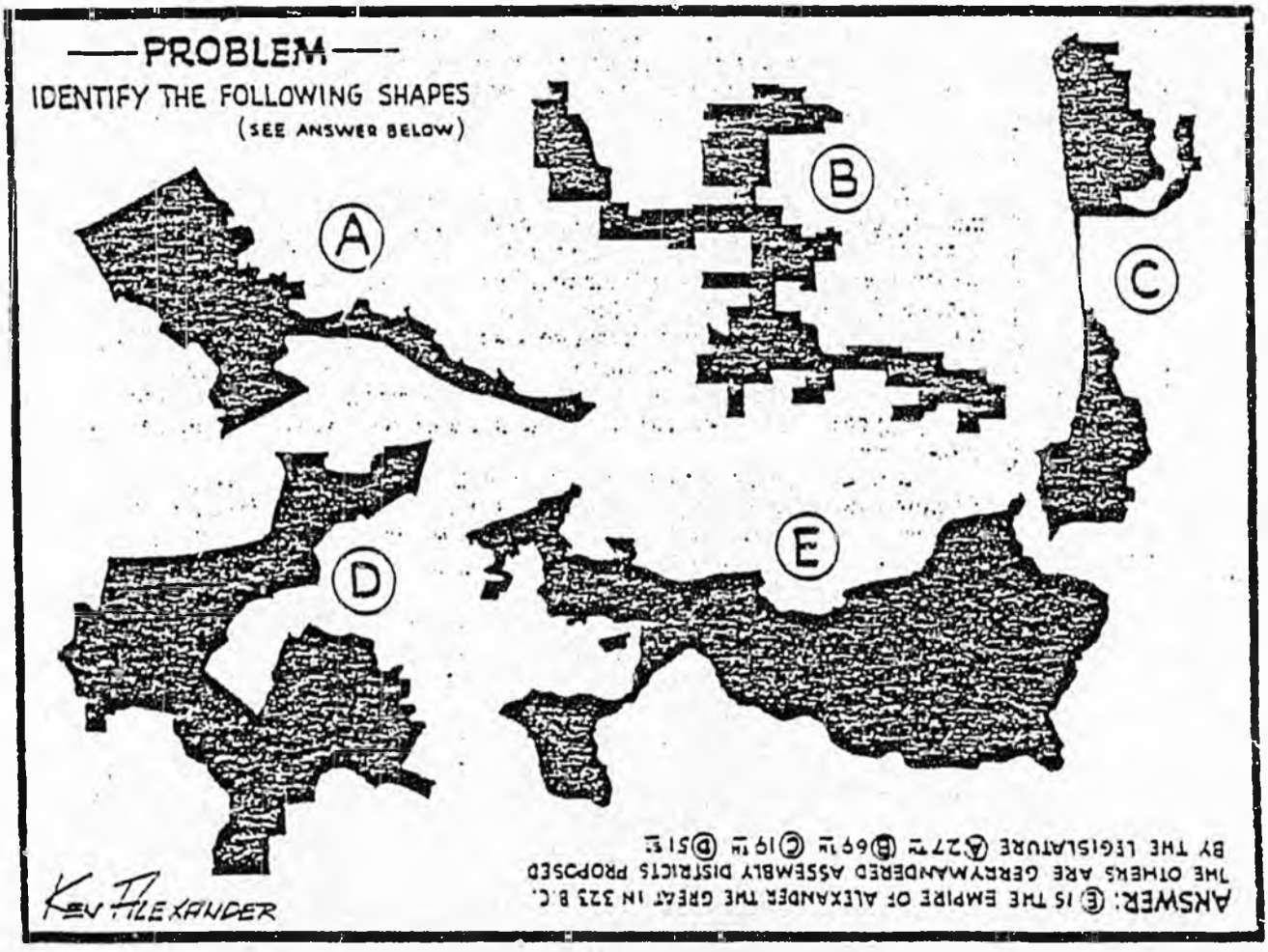
without the power to draw district lines. O'Rourke found that "parties with reapportionment power used it to enormous advantage."

The majority party in the legislature does not always undertake affirmative action to undermine the representation of the minority party. Sometimes the majority party will cut a deal with the minority to protect incumbents of both parties. Bipartisan gerrymandering seeks to increase the strength of the incumbent or the majority party in each district. Yale Professor Edward R. Tufte has found that:

> . . . a major element in the job security of incumbents is their ability to exert significant control over the drawing of district boundaries; indeed, some recent redistricting laws have been described as the Incumbent Survival Acts of 1972. It is hardly surprising that legislators, like businessmen, collaborate with their nominal adversaries to eliminate dangerous competition.

Thus, even where apportionment plans are drawn by bipartisan legislatures, gerrymandering can be used to preserve the domination of incumbents and undermine competition.

Political gerrymandering is often a weapon in intra-party disputes. Legislative leaders have used their authority over reapportionment to win support for their legislative proposals and to punish their political opponents. In the 1971 session of the Texas legislature, Texas House Speaker Gus Mutscher's absolute control of the House was threatened by a group of maverick representatives who came to be known as the Dirty Thirty. Mutscher used the redistricting plan as his vehicle for revenge. According to one observer:



Reprinted from the June 17, 1973 *San Francisco Chronicle & Examiner* with the permission of Ken Alexander.

> On May 28, 1971, three days before the end of the sixty-second session, Mutscher and his henchman Delwin Jones of Lubbock unveiled their House redistricting plan and placed it on a little easel near the front of the House chamber. One by one, the members gathered round. First came the gasps of horror, then the laughter, and finally the shaking of heads and little smiles. More than half of the Dirty Thirty had been placed in districts with each other and most of the others wound up in districts composed of voters clearly antagonistic to their political philosophies . . . [Mutscher went to great pains to put two young liberals in the same district.] The result resembles a fat chicken with Denton's house at the end of the beak and Moore's at the tip of the tail.
>
> (from Katz, *Shadow on the Alamo*)

When Chicago Mayor Richard Daley proposed a congressional districting plan designed to increase his already firm control over the Illinois delegation and remove a maverick Democrat from Congress, the *Chicago Daily News* saw the proposal as an assertion that "raw power can roll over the public interest by buying off the necessary votes in the Legislature with cynical political trades."

On the state level, political gerrymandering is often achieved by the establishment of multi-member rather than single-member legislative districts. The inevitable result of establishing multi-member districts—from which more than one legislator is elected—is to submerge the voting strength of ethnic or political party minorities. The U.S. Supreme Court has criticized multi-member districts but has not found them to be unconstitutional. In 1971, the Court rejected an argument that the use of multi-member districts in Indianapolis to limit black representation was unconstitutional.

The Effects of Political Gerrymandering

Political gerrymandering—whether by the majority party or by both parties, whether the result of intra- or inter-party disputes—attempts to pre-determine electoral results. Competition is minimized. This undermines the system of competitive elections on which our representative democracy is based.

A Common Cause survey of state and congressional election results shows a shocking lack of competition in American electoral politics. We examined the proportion of incumbents in Congress and fourteen state legislatures who ran for renomination or re-election from 1968-1976 and won. The figures in Tables VI and VII on pages 17 and 18 show that incumbents who ran for re-election were re-elected at rates frequently in excess of ninety percent. Of the 69 state legislative elections reported in Table VII, the incumbent re-election rate dropped below eighty percent in only six. Four of these six came in the four elections held in Hawaii and Montana since the adoption of reapportionment plans through processes that meet the anti-gerrymandering test advocated by Common Cause.

As public opinion polls have demonstrated, this high rate of incumbent re-election can hardly be traced to public satisfaction with the performance of government. Rather, a lack of meaningful competition is the major factor. Clearly, the existing system of reapportionment—where incumbent legislators establish the electoral ground rules and stack them in their favor—is one of the reasons for this lack of competition. The present system of financing elections and the many perquisites of public office are others.

The lack of electoral competition that results from political gerrymandering undermines our system of representative democracy in several significant ways.

First, political gerrymandering dilutes the value of political participation. Where election results are largely pre-determined through political gerrymandering, the chance that a voter can influence an election through volunteer campaign activity or voting is diminished. Without competition, political issues need not be debated. Voters receive little meaningful information and have few real choices regarding candidates' positions on major issues.

Second, political gerrymandering makes legislators less responsive to the political interests of their entire constituency. Safe districts remove the incentive to grant political concessions to constituent interests within the district or to create electoral coalitions and ensure representation of diverse points of view.

Third, political gerrymandering weakens political parties by allowing them to field weak candidates. With safe districts, political parties have little incentive to find strong candidates. Their talents are not essential to victory. Instead, the majority party in each district may use the safe seat as a political reward for a party loyalist.

Racial minority groups have been special victims of gerrymandering. An eighteen month study of the operation of the Voting Rights Act by the United States Civil Rights Commission in 1969 concluded that gerrymandering was a prime weapon for discriminating against black voters. There is no doubt that political gerrymandering in general and the use of multi-member rather than single-member districts in particular has had and can continue to have the effect of denying representation to

The Original Gerrymander . . .

The practice of "gerrymandering"—the excessive manipulation of the shape of a legislative district to benefit a certain incumbent or party—is probably as old as the Republic, but the name originated in 1812.

In that year, the Massachusetts Legislature carved out of Essex County a district which historian John Fiske said had a "dragonlike contour." When the painter Gilbert Stuart saw the misshapen district, he pencilled in a head, wings and claws and exclaimed: "That will do for a salamander!"—to which editor Benjamin Russell replied: "Better say a Gerrymander"—after Elbridge Gerry, then Governor of Massachusetts.



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. . . and the Daley Plan

The white portion of the map below was the 10th congressional district proposed by Chicago Mayor Richard J. Daley in 1975 in order to unseat the district's maverick incumbent, U.S. Representative Abner Mikva. Mikva commented: "That's not a map, that's a spaghetti." Notice that the Daley plan is quite similar to the original Gerrymander (at left).

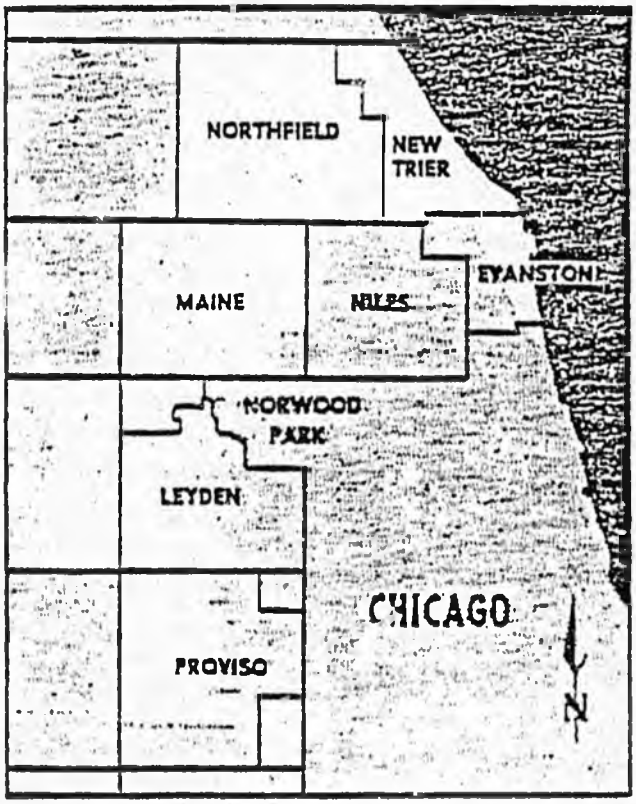


TABLE VI:

RATE OF INCUMBENTS WHO RAN FOR RE-ELECTION AND WON IN 1968-76 FOR U.S. HOUSE OF REPRESENTATIVES

State	1968	1970	1972	1974	1976
Alabama	100%	100%	100%	100%	100%
Alaska	100	—	100	100	100
Arizona	100	100	100	100	100
Arkansas	100	100	100	100	100
California	100	97	95	92	98
Colorado	100	75	50	80	100
Connecticut	82	100	83	100	100
Delaware	100	—	100	100	—
Florida	100	100	100	100	100
Georgia	100	100	89	80	100
Hawaii	100	100	100	100	—
Idaho	100	100	100	50	100
Illinois	100	100	95	90	96
Indiana	90	90	91	65	80
Iowa	100	100	71	50	83
Kansas	100	80	100	100	80
Kentucky	100	86	100	100	100
Louisiana	88	100	100	100	86
Maine	100	100	100	50	100
Maryland	85	66	100	100	100
Massachusetts	100	90	90	90	100
Michigan	100	100	95	94	93
Minnesota	100	86	100	100	100
Mississippi	100	100	100	100	100
Missouri	100	100	100	100	100
Montana	100	50	100	50	100
Nebraska	100	50	100	100	100
Nevada	100	100	0	0	100
New Hampshire	100	100	100	100	100
New Jersey	100	100	100	71	93
New Mexico	0	50	100	100	100
New York	94	87	94	88	100
North Carolina	100	100	100	82	100
North Dakota	100	100	100	100	100
Ohio	100	90	100	95	95
Oklahoma	100	100	100	80	100
Oregon	100	100	100	100	100
Pennsylvania	100	100	100	91	89
Rhode Island	100	100	100	100	100
South Carolina	100	83	83	75	100
South Dakota	100	—	100	50	100
Tennessee	100	100	88	75	100
Texas	100	100	86	97	96
Utah	100	100	50	100	50
Vermont	100	100	100	—	100
Virginia	100	100	100	80	100
Washington	100	86	100	100	100
West Virginia	100	100	100	100	75
Wisconsin	100	90	89	67	100
Wyoming	0	—	100	100	100
TOTALS	97%	95%	95%	99%	96%

The information in this table represents the percentage of incumbent Members of the U.S. House of Representatives who ran for renomination or re-election and who won re-election. The table was prepared by Common Cause from information in *Congressional Quarterly*.

TABLE VII:

RATE OF INCUMBENTS WHO RAN FOR RE-ELECTION AND WON IN LEGISLATIVE ELECTIONS IN FOURTEEN STATES FOR 1968-76

State	1968	1970	1972	1974	1976
Arizona	90%	83%	92%	86%	84%
California	96	94	95	90	94
Delaware	94	93	95	94	100
Florida	92	82	85	87	93
Hawaii*	94	91	91	77	78
Idaho	89	92	86	93	93
Illinois	—	97	93	89	94
Michigan	93	94	83	88	94
Missouri	89	88	77	86	89
Montana**	85	96	85	79	78
Pennsylvania	92	93	93	88	91
South Dakota	85	81	84	93	79
Wisconsin	92	92	93	89	95
Wyoming	83	91	83	92	88

*In 1973, Hawaii was reapportioned by a Legislative Reapportionment Commission pursuant to a new constitutional provision that established strict reapportionment standards.

**In 1974, Montana was reapportioned by a commission established pursuant to the 1972 Constitution.

The information in this table represents the percentage of incumbent legislators (House and Senate) who ran for renomination or re-election and who won re-election in fourteen states where election information and volunteer researchers were available. Assistant Professor Jerry W. Calvert of Montana State University provided the data for Idaho, Montana, South Dakota, and Wyoming. The Wisconsin Legislative Reference Bureau supplied the information for that state. The data for the other states were compiled by Common Cause volunteers from state election records.

minority groups. While blacks comprised 11.2 percent of the population in the 1970 census, only 287 of the approximately 7,500 state legislators—less than four percent—are black (see Table VIII). Only seventeen of 535 Members of Congress—just over three percent—are black.

The Goals of Reapportionment Reform

In the 1960's, the goal of reapportionment reform was to establish legislative districts of substantially equal population. The goal now is to finish the reapportionment revolution by ridding the system of political gerrymandering in order to establish electoral fairness and increase electoral competition.

By minimizing electoral competition, unfair districting undermines the political process and weakens the political parties. Our political process needs competition in order to function as envisioned. Competition forces the political process to be responsive to new ideas and new people. Without competition, the parties lack the incentive to recruit or put forward their best candidates. Electoral competition is an essential factor in giving citizens a chance to have their ideas given serious consideration in legislative forums.

The purpose of political gerrymandering is to shut people out of the political process. Reapportionment reform is designed to benefit the public by broadening political participation and increasing electoral competition. Reapportionment reform is designed to strengthen the political process by providing an incentive for political parties to bring new ideas and new people into the process. By reforming the reapportionment process and improving state legislatures, states may increase public respect for state government and strengthen the role of state government in our federal system.

The Common Cause Model Proposal

The Common Cause model proposes a reapportionment process designed to produce districts that are fairly drawn as well as districts of substantial population equality. Unlike district lines produced by political gerrymandering, fair district lines are not drawn to pre-determine election results. The model proposes a system of reapportionment that is equitable in its treatment of incumbent legislators, political parties, and others. This replaces the present system where people with political power are able to manipulate district lines for personal and partisan advantage.

The Common Cause model has three main elements—strict anti-gerrymandering standards; an independent, nonpartisan reapportionment commission; and prompt judicial review. All three elements of the model are crucial. They are designed to reinforce each other and to produce fairly drawn district lines. The reapportionment standards are designed to produce fair district lines by limiting the discretion of the commission to gerrymander for political or partisan purposes. The nonpartisan reapportionment commission replaces the legislature, providing much needed inde-

TABLE VIII:

BLACK STATE LEGISLATORS (1977)

State	Number of Black Legislators	Percent of Total Legislators	Blacks as percent of State Population	State	Number of Black Legislators	Percent of Total Legislators	Blacks as percent of State Population
Alabama	15	10.7	26.4	Montana	1	0.7	0.3
Alaska	0	0	3.0	Nebraska	1	2.0	2.7
Arizona	2	2	3.0	Nevada	3	5	5.7
Arkansas	4	2.9	18.6	New Hampshire	1	0.2	0.3
California	8	6.6	7.0	New Jersey	6	5	10.7
Colorado	3	3	3.9	New Mexico	1	0.9	1.9
Connecticut	5	2.6	6.6	New York	14	6.7	11.9
Delaware	3	4.8	14.3	North Carolina	6	3.5	22.4
Florida	3	1.9	15.5	North Dakota	0	0	0.4
Georgia	23	9.7	25.9	Ohio	11	8.3	9.1
Hawaii	0	0	1.0	Oklahoma	4	2.7	7.0
Idaho	0	0	0.3	Oregon	1	1.1	1.3
Illinois	20	8.4	12.8	Pennsylvania	13	5.1	8.6
Indiana	6	4	6.9	Rhode Island	2	1.3	2.7
Iowa	2	1.3	1.2	South Carolina	13	7.6	30.5
Kansas	6	3.6	4.8	South Dakota	0	0	0.2
Kentucky	3	2.1	7.1	Tennessee	11	8.3	16.1
Louisiana	10	6.9	29.9	Texas	13	7.2	12.7
Maine	1	0.5	0.3	Utah	0	0	0.6
Maryland	19	10.1	17.9	Vermont	0	0	0.2
Massachusetts	8	2.8	3.1	Virginia	2	1.4	18.6
Michigan	17	11.5	11.2	Washington	2	1.4	2.1
Minnesota	2	1.0	0.9	West Virginia	1	0.7	4.2
Mississippi	4	2.3	36.8	Wisconsin	3	2.3	2.9
Missouri	14	7.1	10.3	Wyoming	0	0	0.8
				TOTALS	287	3.8	11.2

The number of black state legislators is from statistics compiled by the Joint Center for Political Studies in Washington, D.C. The percentage of blacks in each state population is taken from the 1970 federal census.

pendence. Fair district lines are more likely if district lines are drawn by persons not directly affected by them. Judicial review provides finality and acts as the final safeguard of the public's interest in fair and effective representation. A discussion of the three major elements of the model follows.

I. REAPPORTIONMENT STANDARDS

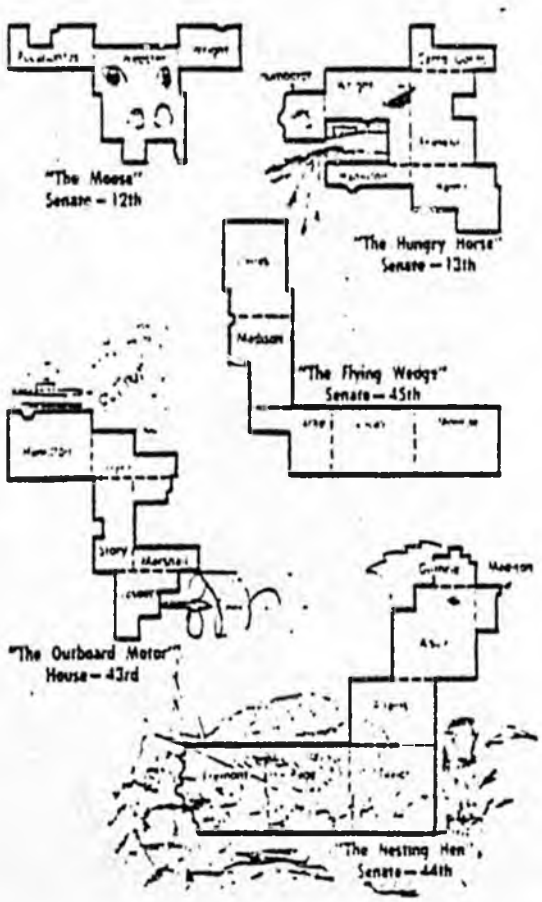
The most important element of reapportionment reform is the establishment of strict anti-gerrymandering standards. While an independent commission is more likely to produce fair district lines than a state legislature, strict reapportionment standards can virtually eliminate the potential to manipulate district lines for political or partisan advantage.

It is the absence of objective, judicially enforceable standards that has allowed the political gerrymandering that undermines our system of representative government. According to University of California reapportionment scholar Gordon E. Baker:

> If more specific guidelines to minimize gerrymandering are not forthcoming, then a great democratic principle—one man, one vote—will have degenerated into a simplistic arithmetical facade for discriminatory cartography on an extensive scale.

The model seeks to provide more specific definitions of reapportionment standards than are found in most state constitutions. This is done by providing population and compactness standards against which to judge reapportionment plans. A strong anti-gerrymandering provision is the centerpiece of the model proposal.

In *Reynolds*, the Supreme Court established the general rule that districts in each house have population "as nearly equal as is practicable." While the Court has discussed this requirement on numerous occasions, no precise definition has evolved. The model proposal attempts to establish specific population parameters



Wild and Wonderful Iowa Gerrymanders

DRAWING BY REGISTERED STAFF ARTIST DAVID SILK

Reprinted from the January 25, 1972 *Des Moines Register and Tribune* with the permission of David Silk.

more rigorous than those allowed by the Court in some cases, while maintaining flexibility necessary to allow the commission to apply other reapportionment standards as well.

In addition to establishing specific population standards, the Common Cause model's reapportionment standards are designed to produce fair districts by minimizing the opportunity for political gerrymandering. Single-member districts—favored by the National Municipal League, Legis 50, and other reform minded organizations—are required. The model requires the commission to respect local political subdivision boundaries (for example, towns and counties) where consistent with the population standards. By respecting these boundaries, the model minimizes voter confusion, enables constituencies to organize for political action in an effective manner, and limits the ability to gerrymander. Compactness and contiguity are required and are defined in order to establish a basis for enforcement. A strong anti-gerrymandering provision adapted from the Hawaii Constitution is included. It provides that: "No district shall be drawn for the purpose of favoring any political party, incumbent legislator, or other person or group." To help enforce this provision, the commission is not allowed to take into account the addresses of incumbent legislators. The commission may not use the political affiliations of registered voters, previous election results, or demographic information other than population headcounts for the purpose of favoring any political party, incumbent legislator, or other person or group. This is precisely the information that has been used by partisans in the past to gerrymander. The model provides that no district may be drawn for the purpose of diluting the voting strength of any language or racial minority group.

II. REAPPORTIONMENT COMMISSION

The National Municipal League has described the reapportionment process in most states as an "illogical system in which legislators are the judges and juries in a matter of highest importance to themselves." The conflict of interest of having state legislators draw state legislative district lines is obvious. As the Illinois legislator quoted above pointed out: "Any man who doesn't fight for his own district is a particular damn fool." A state legislator can also have a conflict of interest in preparing a congressional district plan. In addition to the fact that some legislators might want to run for Congress, a candidate for re-election to the state legislature can benefit from an unbeatable congressional candidate at the top of the party ticket.

Independence and accountability are key aspects of reform. It is essential that the responsibility for drawing legislative districts be taken from those most directly affected. The model proposes establishment of an independent, nonpartisan commission to prepare reapportionment plans. The model is drawn largely from the successful commission established in the Montana Constitution of 1972. As in the Montana Constitution, the model is not designed to deny the legislature any interest in reapportionment but rather to buffer the process from the most direct and personal conflicts of interest. Four of the five members of the commission are appointed by the legislative leaders of the major parties. The fifth is chosen by the other four. Reapportionment scholars Gordon E. Baker and Robert G. Dixon recommend similar bipartisan commissions with tie breakers. As in the Michigan, Montana, and Vermont Constitutions, the model prohibits public officials from serving on the commission. State commissions made up entirely of public officials as in Arkansas or dominated by legislative leaders or their deputies as in Pennsylvania do not meet the standard of independence sought by advocates of reapportionment reform. As in Hawaii, Michigan, and Missouri, the model prohibits commissioners from running for legislative office for a period after service on the commission in order to avoid self-dealing. The model contains numerous accountability provisions designed to ensure that the apportionment process is done by the commission in the open with a full public record and opportunity for public participation.

Few states used commissions before the reapportionment revolution of the 1960's, but they have become increasingly popular in recent years. As noted above, seventeen states now provide for boards or commissions to play a role in the reapportionment process—either as the apportioning authority, as a backup to the legislature, or in an advisory role. There is no federal obstacle to shifting the function of drawing congressional districts from the legislature to a reapportionment commission.

Establishment of a reapportionment commission is designed primarily to remove the conflict of interest inherent in having legislators draw their own districts and to

eliminate the abuses that have resulted from this system. It also should save valuable legislative time and reduce reliance on the courts. The California Legislature, for example, dealt with apportionment in 1971, 1972, and again in 1973 at an estimated cost of over $1 million. In 1971, the Legislature had 26 full-time staff members working on apportionment. Ultimately, court-appointed special masters prepared the plan. In Montana in 1974, a commission prepared a plan at a cost of only $20,000. Extended and special sessions are frequently required when state legislatures try to reapportion. With most state legislatures still understaffed and restricted by state constitutional limitations on session time, the task of legislative reapportionment takes away from time that could be spent more profitably on substantive legislative matters.

The present method of reapportionment also ties up considerable court time. As noted above, sixteen existing state house apportionment plans and seventeen senate plans were court ordered. In virtually every state, apportionment plans have been challenged in court. Under the model, litigation should be less frequent because of the strong presumption of fairness that a plan developed by a nonpartisan commission would have. After evaluating the reapportionment experience of the 1970's, the Council of State Governments concluded that commissions "appear to have a better track record than Legislatures."

MONTANA'S REAPPORTIONMENT COMMISSION

Our bipartisan reapportionment commission has become something of a model for other states. It did its work promptly and efficiently, for a total cost of less than $20,000. That is less than what it costs us to run this place for one day. And we have heard few voices raised to say the commission's districts were poorly drawn or unfair.

The real world alternative to our commission is not one of legislators surrendering the interests of their constituents to those with greater claim, every ten years.

The alternative to our commission is return either to judge-made reapportionment, or to the 1971 pattern of costly special sessions to handle this awkward problem.

To take this task back upon ourselves would not only be costly in time and money. It probably just wouldn't work. It would fail for the same reason it has failed elsewhere. Each of us considers himself elected to press the advantage of our own constituents, whatever that may mean for someone else's constituents. Why, in the crunch, should we as individual legislators be expected to do anything else? This is why legislative reapportionment of legislatures breaks down into push-and-shove and seldom manages the job to constitutional standards of fair representation.

Let's keep our reapportionment commission to do this awkward task promptly and inexpensively; let's save our costly and numbered days here for the kinds of things we manage to do passably well.

—Montana House Majority Leader
Peter M. Meloy, successfully arguing against
a proposal to repeal Montana's excellent
reapportionment commission, March of 1977

III. JUDICIAL REVIEW

No matter how well the reapportionment process works, legal challenges are inevitable in a matter as politically significant as reapportionment. Prompt judicial review is an essential element of a reformed reapportionment process. It is extremely important that all challenges to reapportionment plans be resolved and plans finalized well in advance of state legislative and congressional elections.

Finality in reapportionment is a matter of such importance and sensitivity that it warrants the prompt attention of the highest court in each state. The model grants these courts original jurisdiction over reapportionment matters. Challenges must be filed soon after a plan is prepared and the courts are required to issue decisions within a time certain.

Time To Act

While reapportionment will not take place until 1981, it is now time for the states to reform their reapportionment procedures so that the legal framework for the development of fair reapportionment plans is in place by 1981. In virtually every state, this will require voter approval of the model constitutional amendment—either proposed by the legislature or petitioned to the ballot by citizen initiative—by 1980.

Legislative resistance to the Common Cause model will be strong because it strikes at the heart of the incumbency protection system. But public support can be expected. Proponents of reform should have little trouble convincing the public of the merit of a proposal designed to strip the legislature of its ability to gerrymander for self-serving purposes. The Special Masters appointed by the California Supreme Court in 1973 to prepare a reapportionment plan found "widespread public cynicism" about the traditional method of having the state legislature redistrict itself.

The model proposal relies heavily on the Colorado, Hawaii, and Montana reapportionment procedures. The Hawaii and Montana processes were recommendations of constitutional conventions that received voter approval in 1968 and 1972, respectively. The Colorado process was the result of a citizen initiative approved by the voters in November of 1974 by a vote ratio of three to two.

By working with problem solving legislators or using the citizen initiative process where necessary and available, citizens can establish reapportionment procedures designed to ensure fair and effective representation for all citizens in the 1980's. This can complete the reapportionment revolution of the 1960's. No longer will incumbent legislators and majority parties be able to perpetuate their power by pre-determining election results through reapportionment. Establishment of fair district lines through an equitable reapportionment process will help to restore competition—the lifeblood of a democratic society—to our electoral process.

SUMMARY OF COMMON CAUSE MODEL STATE REAPPORTIONMENT PROPOSAL

The Common Cause model state reapportionment proposal is in two parts—a model constitutional amendment and model act. Virtually all substantive law regarding state apportionment procedure is found in the constitutions of the states. In almost every state, a significant change in reapportionment procedures will require a constitutional amendment. The Common Cause model state constitutional amendment establishes the essential elements of reapportionment reform—strict anti-gerrymandering reapportionment standards, an independent commission to draw the lines, and prompt judicial review. The amendment is as brief as possible in keeping with the belief that a constitution should be flexible and should not be unduly burdened with detail. The model act implements the constitutional amendment, giving definition to some of the reapportionment standards and establishing the duties, powers, and method of appointment of the commission. The model act should be adopted contemporaneously with the constitutional amendment and made contingent upon voter approval of the amendment. Obviously, each state will need to adapt the model to take into account the particular circumstances of the state.

CONSTITUTIONAL AMENDMENT

The model constitutional amendment provides for reapportionment of state legislative and congressional districts in 1981 and every tenth year after. Single-member districts are required.

The model constitutional amendment provides for the establishment of a five member reapportionment commission in 1980 and every tenth year after and at any other time of court ordered reapportionment. Four members of the commission are appointed by the legislative leaders—one each by the President of the Senate, the Speaker of the House, the Minority Leader of the Senate, and the Minority Leader of the House. The four members select a fifth member who serves as chair. None of the five members may be a public official. The model requires the legislature to provide by law for the qualifications, duties, and powers of commissioners, procedures for the selection of commissioners and filling of vacancies, and adequate funding for the commission.

The model provides that districts in each house shall have "population as nearly equal as is practicable" based on the federal census. Specific population parameters are established to give definition to the requirement of substantial population equality. For state legislative districts, the model provides that the average percentage deviation of all the districts of a house from the average population of all districts in that house shall not exceed one percent. No district shall have a population which varies from the average population of all districts unless necessary to comply with one of the other reapportionment standards. In no case shall a district have a deviation from the average of more than five percent. Thus, the maximum allowable deviation from the highest to the lowest populated district is ten percent. In the event of a court challenge, the commission has the burden of justifying any deviation.

For congressional districts, the model provides that the same standards shall be used as for state legislative districts except that no district shall have a population deviation of more than one percent from the average population of all districts.

The model constitutional amendment provides that district lines be drawn to coincide with the boundaries of political subdivisions (for example, towns and counties) to the extent consistent with the requirement of substantial population equality.

The model constitutional amendment requires districts to be "compact in form and composed of convenient contiguous territory." The amendment provides that the aggregate length of all district boundaries shall be as short as practicable consistent with the constitutional requirements of substantial population equality and maintenance of political subdivision boundaries. The model establishes a judicially enforceable compactness requirement by providing that in no case shall the aggregate length of the boundaries of all districts exceed by more than five percent the shortest possible aggregate length of all the districts under any other plan consistent with the population and political subdivision standards. The same compactness standard applies to district lines within local political subdivisions that have two or more complete districts.

The proposed amendment provides that: "No district shall be drawn for the purpose of favoring any political party, incumbent legislator, or other person or group." The model prohibits the commission from taking into account the addresses of incumbent legislators. The commission may not use the political affiliations of registered voters, previous election results, or demographic information other than

population headcounts for the purpose of favoring any political party, incumbent legislator, or other person or group. The model further provides that no district shall be drawn for the purpose of diluting the voting strength of any racial or language minority group.

In addition, the model authorizes the legislature to define by law these standards and to establish other standards not in conflict with the Constitution of the United States or of the state and designed to guarantee "fair and effective representation for all citizens."

The constitutional amendment provides that the state supreme court has original jurisdiction over apportionment matters. The model authorizes any registered voter to file a petition to challenge a reapportionment plan or to compel the commission or any person to perform duties required by the model. Challenges to an apportionment plan must be filed within forty-five days of adoption of a plan. The court must give apportionment matters precedence over all other matters and must render a decision within sixty days after a petition is filed. The court may declare a plan invalid in whole or in part and must order the commission to prepare a new plan.

The model constitutional amendment provides that reapportionment plans remain in effect for ten years unless invalidated or modified pursuant to court order. A plan shall not be subject to amendment, approval, or repeal by initiative, referendum, or act of the legislature.

MODEL ACT

The model act provides for the timing of the selection of commissioners. By May 1, 1980 (and every tenth year after), notice must be given of the establishment of the commission. Not earlier than June 1 but not later than July 1, the four legislative leaders must select four commissioners. By August 1, the four commissioners must select a fifth commissioner to serve as chair. Vacancies are filled by the initial selecting authority.

The model act provides that commissioners must be registered voters of the state who may not: hold or have held public office within two years prior to selection; be a relative or an employee of a state legislator or U.S. Representative; or be or have been a registered lobbyist within two years prior to selection. Members and employees of the commission may not: hold or campaign for public or political party office; participate in or contribute to a state or federal campaign; hold a seat in the state legislature or U.S. House of Representatives for four years after the effective date of the plan; or lobby the state legislature or U.S. Congress for compensation for one year after the effective date of the plan.

The model act provides for a staff and budget for the commission and authorizes the commission to hire consultants, reimburse witnesses for their expenses, and borrow staff and other resources from other state agencies. The act prescribes the duties of the commission: promulgate rules and regulations; preserve information and make it available to the public; give notice of meetings; open meetings of three or more commissioners to the public; log contacts with persons outside the commission; and prepare a detailed report explaining each preliminary and final reapportionment plan. The act authorizes the commission to subpoena persons and materials and to administer oaths.

The model act provides for the timing of the development of the reapportionment plan. By May 1, 1981 (and every tenth year after), the commission must propose one or two preliminary plans for public comment. The chair may also propose a plan. By July 1, the commission must complete public hearings around the state on the preliminary plans. By August 1, the commission must adopt a final plan by vote of at least three members. The act provides for an extension of these time deadlines if the necessary census tabulations are not available by February 1. The commission is required to prepare a financial statement and compile and preserve an official record of its activities. The commission expires as soon as all legal challenges to its plan have been resolved, but the supreme court may reconstitute it to comply with a court order.

The model act repeats the standards established in the model constitutional amendment. The act defines the constitutional requirement that districts be of contiguous territory. It also establishes procedures for dividing political subdivisions where required. The model act provides for alignment of state legislative and congressional district boundaries where practicable.

The model act repeats the model constitutional amendment's provision for judicial review and authorizes the state supreme court to order the state to pay petitioners reasonable attorney fees and court costs where the court finds that a petition was filed with reasonable cause.

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Common Cause has prepared a report on state and congressional reapportionment that includes an annotated version of the model proposal and a detailed state-by-state survey of apportionment practices and recent activities. A copy of the full report—*Toward a System of 'Fair and Effective Representation': A Common Cause Report on State and Congressional Reapportionment*—is available at cost ($2) by writing:

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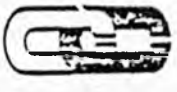

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Revised September 1980

Model Reapportionment Amendment to State Constitution

Section ___. Legislative and Congressional Reapportionment.

(a) Reapportionment Mandate. In each year ending in one, the state shall be divided into as many congressional districts as there are United States Representatives apportioned to the state, as many representative districts as the number of members of the state house of representatives as provided by law, and as many senate districts as the number of members of the state senate as provided by law. [All legislative districts shall be single-member districts.]

(b) Reapportionment Commission. In each year ending in zero and at any other time of court ordered reapportionment, a commission shall be established to prepare a reapportionment plan for state legislative and congressional districts. The commission shall consist of five members, none of whom may be public officials. The president of the senate, the speaker of the house, the minority leader of the senate, and the minority leader of the house shall each select one member. The four members so selected shall select, by a vote of at least three members, a fifth member who shall serve as chair. Failure to select the

fifth member within the time prescribed by law shall constitute an impasse which shall automatically discharge the commission, and a new commission shall be appointed in the same manner as the original commission. The legislature shall establish by law qualifications of commissioners and procedures for their selection and filling of vacancies. The legislature shall establish by law the duties and powers of the commission and shall appropriate funds to enable the commission to carry out its duties.

[ALTERNATIVE SECTION/(b) Reapportionment Commission. In each year year ending in zero and at any other time of court ordered reapportionment, a commission shall be established to prepare a reapportionment plan for state legislative and congressional districts. The commission shall consist of seven members, none of whom may be public officials. The president of the senate, the speaker of the house, the minority leader of the senate, the minority leader of the house, and the chair of the political party that received the second highest vote in the previous gubernatorial election shall each submit to the governor and make public a list of not less than three persons. The governor shall appoint six members of the commission who are broadly representative of the people of the state, including one person from each list and one additional person. The six members shall select, by a vote of at least four members, a seventh member who shall serve as the chair. Failure to select the seventh member within the time prescribed by law shall constitute an impasse which shall automatically discharge the commission, and a new commission shall be appointed in the same manner as the original commission. The legislature shall establish by law qualifications of commissioners and procedures for their selection

and the filling of vacancies. The legislature shall establish by law the duties and powers of the commission and shall appropriate funds to enable the commission to carry out its duties.]

(c) Reapportionment Standards.

(1) State legislative districts in each house shall have population as nearly equal as is practicable based on the population reported in the federal census taken in each year ending in zero. In no case shall the absolute value of the total percentage deviations of all districts of a house divided by the number of districts exceed two percent. In no case shall a district have a population which varies from the average population of all districts, unless a population variance is necessary to comply with one of the other standards set forth in this section. In no case shall a single district have a population which varies by more than five percent from the average population of all districts. When a petition challenging a plan adopted by the commission is filed with the supreme court, the commission shall have the burden of justifying any variance between the population of a district and the average population of all districts.

(2) Congressional districts shall have population as nearly equal as is practicable based on the population reported in the federal census taken in each year ending in zero. No district for election of members to the United States House of Representatives shall have a population which varies by more than one percent from the average population of all congressional districts in the state. When a petition challenging a plan adopted by the commission is filed with the supreme court, the commission shall have the burden of justifying any variance between the population of a district and the average population of all districts.

(3) To the extent consistent with subsections (1) and (2), district lines shall be drawn to coincide with the boundaries of local political subdivisions.

(4) Districts shall be composed of convenient contiguous territory.

(5) Districts shall be compact in form. The aggregate length of all district boundaries shall be as short as practicable consistent with the standards contained in subsections (1), (2), (3), and (4).

(6) The commission shall exercise its powers to provide fair and effective representation for all citizens, and, consistent with the criteria contained in subsections (1), (2), (3), (4), and (5), shall encourage electoral competition. No plan shall be drawn for the purpose of favoring any political party, incumbent legislator, or other person or group. In preparing a plan, the commission shall not take into account the addresses of incumbent legislators. The commission shall not use the political affiliations of registered voters, previous election results, or demographic information other than population head counts for the purpose of designing a plan that favors any political party, incumbent legislator, or other person or group.

(7) No district shall be drawn for the purpose of diluting the voting strength of any language or racial minority group.

(8) The legislature may define by law any of the standards enumerated in this subsection and may establish by law additional standards, not in conflict with the Constitution of the United States or this constitution, designed to guarantee fair and

Enclosure #3

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Archibald Cox
Chairman

David Cohen
President

John W. Gardner
Founding Chairman

September 1980

MEMORANDUM

To: State Chairs, State Offices

From: Bruce Adams, Director, Issue Development
Ted Stein, Research Associate

Re: Revisions to the Common Cause Reapportionment Model

Since its publication in 1977, the Common Cause reapportionment model has helped focus the debate over reapportionment reform in the states, and on the federal level. Some version of our model proposal has been introduced in more than twenty states. Reapportionment reform measures have been enacted or await voter approval in five states--Arkansas, California, Iowa, Minnesota, and Oregon. The Common Cause model has held up well under the intense spotlight of legislative debate. We have always recognized that our model offers a basic framework for reapportionment reform--not the final word. Based on discussions over the past three years with legislators, legislative staff, political scientists, and others, we believe that certain improvements can and should be made.

We have indicated the revisions on the attached copy of the Common Cause model constitutional amendment. A clean copy of the revised model amendment also in enclosed. Additional copies are available from Field Central. Keep in mind that if you decide to use the CC model statute, it will have to be modified to be

consistent with the revised amendment. A revised CC model statute is being prepared.

The revisions are as follows:

(1) Commission structure: The model should offer as an alternative the commission structure proposed in 1978 by the Florida Constitution Revision Commission (see page 2 of attachment, "Revisions to Reapportionment Model Constitutional Amendment"). This plan called for a seven-member commission. Six members would be appointed by the governor. The governor would select one and one each from lists supplied by the four legislative leaders and the chair of the opposite political party. The six members then would have selected a seventh member or tiebreaker. The potential advantage of this proposal over the original model is twofold. First, it allows the governor to provide for racial, ethnic, and geographic balance and diverse expertise in making appointments. This is aided by the size of the commission, which is larger than the five-member panel proposed by the CC model, and the fact that a single person makes the final choices. Second, the alternative places some distance between the legislature and commission appointments.

In addition, either commission structure (i.e., the CC model or the Florida alternative) should require that the commission be discharged if a deadlock develops over selection of the tiebreaker. (pages 1 and 2). Such a deadlock is a real possibility. In Montana, one of the three states with a commission system that meets our test, commissions have deadlocked twice over the selection of a tiebreaker--in 1973 and again in 1979. This same situation

occurred in Pennsylvania in 1971. In each case, the state'e supreme court selected the tiebreaker. A discharge mechanism would provide a powerful incentive to select the tiebreaker. It also would avoid the possibility--raised by court participation--of a partisan tiebreaker in states where supreme courts are dominated by one party.

(2) Compactness: According to computer experts, our original compactness definition, which requires a plan's aggregate boundary length to be within five percent of the shortest possible aggregate length, raises serious practical problems. Finding the shortest possible aggregate length, these experts say, would greatly increase the necessary data base with a commensurate cost increase. We have deleted the five percent requirement (page 4). The revised standard still requires that the aggregate length of all district boundaries be as short as practicable. This establishes a standard beyond the mere requirement of compactness while avoiding the political and technical problems inherent in a complex mathematical formula.

(3) Fair representation: A reapportionment commission has an affirmative obligation to provide fair and effective representation for all citizens of the state. The need for "fair and effective representation" was eloquently stated in the Supreme Court's famous "one person, one vote" rulings of the mid-1960s. Within the constraints of the Common Cause standards, there are various ways that lines can be drawn to ensure or to undermine fair representation in the state legislature and in Congress. While the goal of fair and effective representation has always been Common Cause's guiding principle, the original model did

not directly state it. The revised CC model clearly states the objective as part of the sixth standard (page 4).

(4) Competition: In the past, reapportionment has been used to undermine electoral competition. Attempts to produce a bias in favor of incumbents or majority parties robs our political system of its vitality. Legislators who never face close re-election races are less responsive to their constituents. Reapportionment reform is designed to encourage competition, not discourage it. To guard against a bipartisan gerrymander by the bipartisan commission, we have added competition as a standard (page 4). It is important to note that the competition standard is to be used only after application of the more fundamental standards of population equality, respect for political subdivision, and compactness. Otherwise, the standard could lead to bizarre-shaped districts that did not respect city and county lines.

(5) Population deviation: To prevent line-drawers from using population deviations to gerrymander, the model requires all population deviations to average one percent or less. This denies the majority party, for example, the opportunity to gain an advantage by making majority party districts underpopulated and minority party districts overpopulated. The revised model changes this standard in two ways (see page 3). First, the standard has been increased from one to two percent to insure that this t t is not overly rigid. Second, it adds the word "percentage" tc clarify that the average of all percentage deviations must be one percent or less.

(6) Anti-gerrymandering provisions: In the revised model, no reapportionment plan shall be drawn for the purpose of favoring any political party, incumbent legislator, or other person or group. The change in this standard involves the substitution of "plan" for "district" (page 4). This revision recognizes that to achieve fairness it may be necessary to benefit a certain political or ethnic group in one district and a second group in another. The key is that the overall plan does not purposefully favor or disadvantage any person or group. To be consistent, the use of political or demographic data to design a plan that favors any person or group is prohibited (page 5).

One additional point, not addressed in the attached revised model, involves the relationship of our proposal to the federal Voting Rights Act. Some legislators have incorrectly charged that the Common Cause model violates the Voting Rights Act. Among its provisions, the federal Act requires the Justice Department to invalidate any reapportionment plan or voting change that has a racially discriminatory effect--in certain states. Obviously, the federal Voting Rights Act would prevail over any state provision in the event that a conflict should arise between our model and the Act. This establishes a two-track system. First, states covered by the Voting Rights Act*--states with histories of discrimination

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*The Voting Rights Act of 1965, as amended in 1970 and 1975, requires Justice Department review of voting changes in nine states: Alabama, Alaska, Arizona, Georgia, Louisiana, Mississippi, South Carolina, Texas, and Virginia. Some jurisdictions in another thirteen states are also covered: California, Colorado, Connecticut, Florida, Hawaii, Idaho, Massachusetts, Michigan, New Hampshire, New York, North Carolina, South Dakota, and Wyoming. In some of these thirteen states coverage is quite limited (e.g., four counties in California, five counties in Florida, two townships in Michigan). The Act will be in effect through most of the reapportionment of the 1980s--until August 1982 when it will be up for review by Congress.

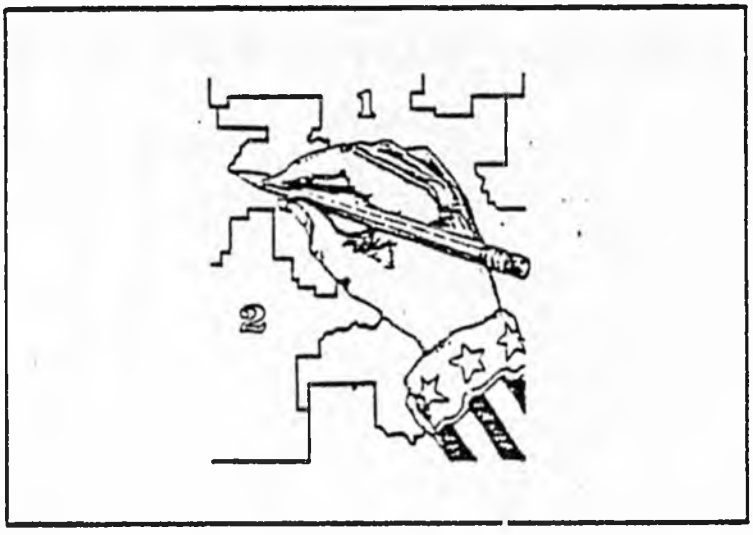
against minority voters--would be subject to an effect test. Second, states not covered by the Act would be subject to the model's purpose test.

Attachment: Revisions to Reapportionment Model Constitutional Amendment

Enclosure: Model Reapportionment Amendment to State Constitution (Revised September 1980)

Common Cause Report on Congressional and State Redistricting

June 1982 — Number Two



This is the second report
prepared by the Common Cause
Redistricting Clearinghouse

common cause

COMMON CAUSE REPORT ON CONGRESSIONAL AND STATE REDISTRICTING

This is the second report to be prepared by the Common Cause Redistricting Clearinghouse. This report focuses on state efforts to establish new congressional and legislative districts based on the 1980 census.

This study was researched and written by Marty Stephens of the Issue Development Staff with the assistance of Joseph Zwerdling. Staff members Janet Kaufmann, Vicky Kim, and Phyllis Sickels also provided assistance.

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INTRODUCTION

Every ten years citizens in many states observe their elected officials fighting to draw new election districts to accommodate population changes reflected in the latest U.S. census. Redistricting as a result of the 1980 census changes has been characterized by heavy litigation activity and skyrocketing costs. Once again, in this highly partisan process, Democrats and Republicans alike have proven that they can manipulate and "gerrymander" district lines with great skill and verve.*

A number of states are taking action to counter gerrymandering practices. Voters in California and Missouri, for example, will have a chance to vote on reapportionment reform measures on the November 1982 ballot. In both states the move to change the present system of redistricting -- requiring legislators to design their own districts -- was triggered by a sense of frustration over the 1980 redistricting events. In California, new congressional districts were likened to jigsaw puzzle pieces, while in Missouri the House and Senate deadlocked over redistricting congressional seats. A three-judge federal district panel ultimately drew up the final plan.

Except for Kansas and two states -- Maine and Montana -- that will act in 1983, congressional redistricting plans

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* The term "gerrymandering" is not new; it was inspired by the efforts of Governor Elbridge Gerry of Massachusetts in 1812. An attempt to gerrymander generally means an attempt at one of four things: (1) to protect an incumbent; (2) to gain partisan advantage; (3) to eliminate a political maverick; or (4) to exclude a racial minority.

based on the 1980 census are now drawn. Seven states must still complete redistricting for their own legislatures. However, court challenges or Justice Department rejection of plans under Section 5 of the Voting Rights Act has prolonged the process in many states. In some cases, primary election dates have been postponed until litigation has been resolved.

The purpose of this report is to examine the redistricting process, court activity, and the outcome of redistricting itself. A state-by-state status report for congressional redistricting is provided and a survey of interesting state legislative redistricting activity in 20 states follows.

Redistricting and the Courts

Article 1, Section 2 of the Constitution specifically provides that representatives be apportioned among the states according to population every ten years.* Despite this mandate, up until the 1960's many states failed to redistrict to adjust for population changes and the courts declined to get involved. The U.S. Supreme Court decisions of the mid-1960's established certain one-person, one-vote standards, requiring states to eliminate gross population inequalities in redistricting. Beyond that, however, the Supreme Court did not spell out specific substantive standards for redistricting. Few state constitutions describe in much detail either the procedure for preparation of reapportionment

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* Technically, reapportionment is the distribution of seats among units of government and redistricting is the drawing of lines.

plans or the standards to be used in drawing congressional and legislative districts.

The absence of clear criteria for redistricting leaves map makers with wide discretion in drawing up plans. The results are often controversial. Consequently, lawsuits challenging redistricting plans have been brought by aggrieved political parties, citizens' groups, and individual citizens on a variety of issues. In this round of redistricting, most of the action has been at the federal district court level, although the Supreme Court has been involved in a number of actions concerning congressional plans as follows:

- On March 22, 1982 the U.S. Supreme Court rejected an appeal by California's Republican Party to overturn the State Supreme Court's decision to allow 1982 elections to be held in districts drawn by the Democratic legislature in September 1981.

- In Illinois, a Democratically-oriented map adopted November 23, 1981 in a ruling by a federal panel in Chicago was upheld by the U.S. Supreme Court.

- Republicans in Missouri and Minnesota appealed District Court decisions on redistricting to the U.S. Supreme Court. In both cases motions to expedite were denied. However, in summary dispositions on May 17, 1982 the high court affirmed plans for both states.

- On March 29, 1982, the U.S. Supreme Court refused to overturn a stay of a decision on New Jersey's congressional map granted by Associate Justice William Brennan. A federal panel had earlier declared the Democratic-styled plan unconstitutional.

- In April 1982, a number of New Mexico candidates asked the U.S. Supreme Court to stay a decision by a federal panel to delay the primary, because it found the plan for the state legislature to be unconstitutional. The U.S. Supreme Court approved the scheduled primary for all but legislative races.

- On May 3, 1982 the U.S. Supreme Court rejected an appeal to defer reapportionment of New York's state legislature until 1983. The appeal was made by state Senate Republicans.

- A Texas congressional map was drawn by the legislature in August 1981. A three judge federal panel, in February 1982, ordered changes in six districts. The U.S. Supreme Court subsequently ruled that the federal panel acted improperly in readjusting boundaries. However, the high court left it up to the federal panel to decide what plan will go into effect for the May 1 primary. The District Court opted to have its own version in place for the election.

In states where the legislature has responsibility for drawing redistricting maps and legislators have failed to produce a plan because the House and Senate could not agree or where the legislature passed a plan which was then vetoed by the governor, the federal courts have stepped in with maps of their own:

- In Arkansas, a three-judge panel overturned a commission drawn plan and absent any corrective action by the legislature, adopted its own map on February 25, 1982.

- In Colorado, the Governor vetoed three successive plans passed by the legislature. A federal panel in Denver finally approved its own plan on January 28, 1982.

- On May 24, 1982 a federal panel issued a decision adopting a congressional plan for Michigan. An appeal has been filed with the U.S. Supreme Court.

- A U.S. District Court in Minnesota adopted a congressional plan after the legislature failed to come up with a redistricting bill.

- In Missouri, on January 7, 1982, a federal court issued a map. The state Senate had adjourned without approving redistricting legislation.

- A three-judge federal panel in Columbia, South Carolina adopted its own congressional plan on March 8, 1982, when the legislature failed to adopt a plan by the court-imposed deadline.

Federal courts have found the respective congressional redistricting maps in Arkansas, Hawaii and New Jersey to be unconstitutional. (Details of congressional redistricting are provided in the state-by-state survey beginning on page 9.)

A number of state legislative maps have met with a similar fate. State legislative plans in Hawaii, Michigan, New Mexico, Oregon, Tennessee, Texas, and Virginia have been overturned in the courts. In Michigan, the court overturned the process by which state legislative redistricting is accomplished.

Court involvement in reapportionment is not a new phenomenon. According to a 1973 survey by the Massachusetts Legislative Research Council, courts determined districts for one or both houses in at least twenty-one states between 1962 and 1972 because the state reapportionment procedure failed to produce acceptable results.

Justice Department Approval of Redistricting Plans

States that are subject to the preclearance provisions of Section 5 of the Voting Rights Act because of evidence of past voting discrimination must submit their redistricting plans to either the Justice Department or the U.S. District Court in the District of Columbia for approval within 60 days (see Appendix II for a listing of states covered by the Voting Rights Act and the status of plans submitted to the Justice Department).

The Justice Department has issued objections to a number of plans where statewide preclearance is required. For example, congressional plans for Georgia, Mississippi and Texas were rejected by the Justice Department and must be resubmitted. Action on a number of other plans is still pending.

The Time and Money Factor

Apart from inciting cynicism by voters and legislators themselves over this highly partisan process, there are other visible drawbacks to the way this round of reapportionment has been conducted -- the time and the cost. This aspect of reapportionment is especially striking at a time when state governments -- which often meet in only two or three month sessions -- are facing grave financial difficulties.

The Los Angeles Times (March 13, 1982) reported that the "Democratic-controlled legislature ... has spent $2.7 million in public funds drawing new political districts." The L.A. Times compared California's expenses with the amount spent by the New York Legislature so far, cited as "about $2.5 million."

In Virginia in early April 1981, legislators made an inauspicious start at redistricting when they came up with a House of Delegates plan that created 101 districts; that is one more than is mandated in the Constitution. Since then two House plans were vetoed by former Governor John Dalton (R), one was declared unconstitutional in federal court, and

two plans were rejected by the Justice Department under Section 5 of the Voting Rights Act. The Washington Post (April 15, 1982) reported that "[t]he entire process, including 14 special sessions and bills paid to a Richmond law firm to defend the state in court, have been estimated to cost taxpayers $1 million."

Opting for Reform

Despite the inherent conflict of interest in having legislators design their own districts, efforts at reapportionment reform have not come easily. Legislators resist giving up the responsibility and generally turn a deaf ear to groups or individuals who are seeking a more equitable process.

This could, however, change in the 1980's. Large-scale reform efforts have been launched in a number of states:

° California - San Francisco's Field Institute published the results of a February poll that found greater than 4 to 1 disapproval among both Democrats and Republicans for the present system of redistricting. Citing redistricting abuses following the 1980 census and before, Republicans and Common Cause members teamed up to conduct a petition drive for a state constitutional amendment initiative to establish a nonpartisan commission. The proposed 10-member commission would be required to draw lines according to standards designed to promote fair and effective representation for all citizens of the state. If the amendment is approved by the voters in November, the commission will draw new lines for state Senate, House, and congressional districts in 1984.

° Missouri and Washington State, after struggling with reapportionment following the 1980 census, opted to establish commissions to remove direct control for drawing lines from the legislature. Missouri already has a commission structure for state legislative redistricting; the new commission, if approved by voters on the November ballot, will be responsible for drawing congressional lines. Washington legislators, after great pressure from Common Cause and other public interest groups, established a commission to conduct state legislative and congressional redistricting, following certain apportionment standards.

° Florida, Virginia, and South Dakota - Other reform efforts have been specifically focused on standards for redistricting. Common Cause/Florida lobbied successfully for state legislative plans that included single member rather than multi-member election districts and a congressional plan that creates compact districts of convenient contiguous territory. Virginia adopted a House of Delegates plan (approved by the U.S. Justice Department) that is comprised of only single member districts. In the past Virginia had traditionally elected delegates from citywide, at-large districts. Both states hope to see improved minority access under their new single member plans. In South Dakota, the Farmers Union, AFL-CIO, League of Women Voters, We the People, ACORN, and Common Cause are conducting a petition drive to initiate a constitutional amendment to create certain single-member Senate districts to replace current multi-member districts in three urban areas.

Overview of Congressional Redistricting

The political parties have proven that they will gerrymander if they have the opportunity to do so. For example, an initial victory by Republicans in Indiana -- where the GOP turned a 6-5 Democratic edge to a projected 7-3 Republican majority of congressional seats -- was revenged by Democratic map makers in California, where the Republicans could lose five seats.

1980 census changes resulted in a 17-seat shift of congressional seats, mainly frostbelt to sunbelt. Republicans, who launched an expensive and sophisticated congressional reapportionment campaign, anticipated a gain of 10 to 12 congressional seats. But Democrats hold both houses of state legislatures in 28 states, and they proved to be tough opponents. The Baron Report (March 1, 1982) summed up the action this way: "The result, with some plans in major states still uncertain, is that reapportionment, per se, will be a 'wash' for the two parties."

Maine and Montana will not redistrict until 1983; otherwise, only Kansas must finish drawing up a congressional district plan. The Kansas legislature adopted two plans -- each subsequently vetoed by the Governor.

Georgia, Mississippi, and Texas are struggling to win Justice Department approval of their congressional redistricting plans. In other states, litigation surrounding new maps threatens to prolong reapportionment action to the end of 1982, or beyond.

The following is a summary of the action on congressional redistricting:

ALABAMA - The Democratic legislature passed a redistricting plan which was signed into law by Governor Forrest James (D) on August 18, 1981. The current congressional makeup -- four Democrats and three Republicans -- is not likely to change. The American Political Report (August 28, 1981) notes that the plan by the state legislature "makes only minor adverse changes in GOP'er Albert Lee Smith's sixth district." The state's other six districts are essentially unchanged. The Justice Department precleared the legislature's plan on February 26, 1982.

ACTION: Complete

ALASKA - One congressional district

ARIZONA - On December 7, 1981 Arizona legislators voted to override Democratic Governor Bruce Babbitt's veto of a congressional plan. Within minutes of the override, the Democratic party filed a suit in federal district court, attacking the constitutionality of both the congressional and state legislative plans and charging Voting Rights violations (Art Hamilton v. Babbitt). There is also a petition drive to put the map on the referendum ballot on November 2, 1982. Congressional Quarterly (January 30, 1982) terms the new Arizona districts "a quandary for Udall." Democratic Rep. Morris K. Udall's Tuscon base was split in the creation of a fifth congressional seat.

On April 2, 1982 a Phoenix Federal District Court issued a settlement plan redrawing both the state legislative and congressional plans to eliminate the splitting of San Carlos Apache Reservation. The settlement plan requires Justice Department approval. Justice had previously rejected the plan because of dilution on the San Carlos Apache Reservation.

ACTION: Complete

ARKANSAS - In March 1981 Arkansas became the first state to draw new congressional district lines based on the 1980 census. Residents and state representatives of Garland County (Hot Springs) filed a lawsuit in district court (Doulin v. White) charging that the legislature could have adopted a plan that has a lower population deviation and more compact districts.

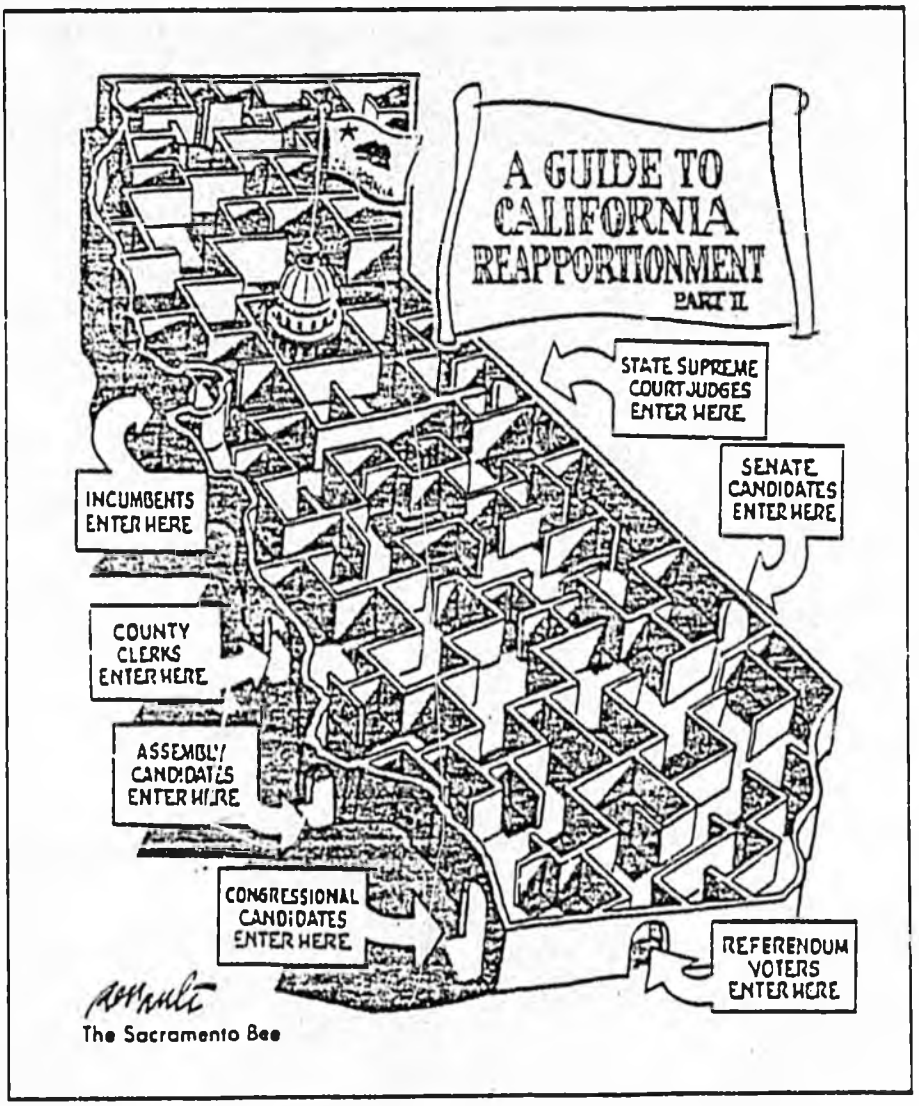
On January 6, 1982 a three-judge federal panel held that the plan was unconstitutional. On February 25 the Court, in the absence of any corrective action by the legislature, issued an opinion adopting its own redistricting plan for the 1982 elections, reflecting a .78% population deviation. On March 8 the Court denied the plaintiffs' motion to reconsider. The deadline for filing an appeal to

the Supreme Court is 60 days from that date, and it is not expected that an appeal will be filed.

According to Congressional Quarterly (March 6, 1982), the Court's plan "will have little effect on the re-election efforts of the state's incumbent House members." (Two Republicans and two Democrats.)

ACTION: Complete

CALIFORNIA - The Los Angeles Times (September 18, 1982) reported that on September 16, 1981 Democratic Governor Edmund Brown, Jr. signed a redistricting package: "All three Democratic-oriented bills were designed to perpetuate the political party now in power ..." Observers say that under the new plan -- drafted by Representative Phillip Burton (D) -- the Republicans could lose at least five congressional seats.



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On November 18, 1981 the California Republican Party submitted enough petition signatures to election officials to require a referendum on the June 1982 primary ballot regarding the three redistricting bills. The State Supreme Court was forced to come to a decision about which districts the candidates will run in this year. The Court decided to allow the Democratic plan to go into effect for one year only, allowing the referendum to take place. If the bills are rejected in June, the legislature will be required to redistrict again next year. In March 1982, the U.S. Supreme Court rejected an appeal by the California Republican Party to overturn the State Supreme Court's decision.

Meanwhile, the State Republican Committee and Common Cause launched an initiative to establish a ten-member independent redistricting commission. The initiative drive, begun in January 1982, is targeting the November election.

ACTION: Complete -- referendum and initiative pending

COLORADO - Colorado gains a sixth congressional seat (there are now three Democrats and two Republicans). In December 1981, "[t]hree federal judges began trying to do what the Colorado Legislature and governor couldn't -- redraw congressional district boundaries" (Denver Post, December 4, 1981). This action followed a series of three vetoes by Republican Governor Richard Lamm of three redistricting bills.

On January 28, 1982, a three judge panel in Denver issued a court drawn plan which protects the current officeholders and puts the new sixth district in Republican Denver suburbs.

ACTION: Complete

CONNECTICUT - A General Assembly Committee failed to draw congressional districts so a nine-member commission took over the task. The commission, on October 28, 1981, adopted a "Democratic plan that made minimal changes in the 6th District ... less Republican in makeup than it would have been under the GOP plan. Other incumbents appear strengthened" (Washington Post, February 14, 1982). Connecticut retains six congressional seats.

ACTION: Complete

DELAWARE - One congressional district

FLORIDA - Florida picked up four congressional seats, the largest increase of any state. The House and Senate resisted compromise over a new map, prompting two lawsuits (Kiser v. Firestone and Buoniconti v. Firestone). The suits were consolidated in U.S. District Court in Tallahassee. However, the legislature arrived at a plan on May 21, 1982. Governor D. Robert Graham signed the plan two days later; however, Rep. Curtis Kiser (R), whose lawsuit asks the federal court

to draw a plan, "declined to withdraw a lawsuit on the matter until his lawyer returns next week," according to the Washington Post (May 25, 1982).

ACTION: Complete -- litigation pending

GEORGIA - Georgia's congressional map was signed by Governor George Busbee on September 22, 1981 and submitted to the Justice Department for Voting Rights clearance on October 1. In February 1982 the Justice Department objected to the congressional (and state House and Senate) plans. The Washington Post reported (February 12, 1982) that Justice objected to the "division between two congressional districts of a 'cohesive black community' in Fulton and Dekalb counties in the Atlanta metropolitan area."

The U.S. District Court in the District of Columbia will hear a suit by the state of Georgia, appealing the Justice Department decision (Busbee v. Smith, et al.)

ACTION: Justice Department rejected plan -- litigation pending

HAWAII - A nine-member reapportionment commission that is responsible for conducting redistricting approved new congressional districts on September 28, 1981.

On March 23, 1982 a three-judge federal panel heard two redistricting challenges; however, only one of these suits (Craig Travis, et al. v. Jean King, et al.) concerns congressional redistricting. Plaintiffs challenged the use of voter registration, instead of census data, as a reapportionment base and charged malapportionment and gerrymandering in the congressional and legislative plans.

On March 25, the federal panel determined that the State legislative and congressional maps were unconstitutional based on the voter base issue and unacceptable population deviations. The federal court appointed special masters to supervise redrawing of the three maps. New maps were submitted to the Court on April 28, and approved in early May.

ACTION: Complete

IDAHO - Idaho keeps the same number of congressional seats (it has two, both Republican). Democratic Governor John Evans signed the congressional redistricting plan on July 29. The major action in the July special session concerned a shift of voters from the first to the second congressional district. Steve Ahrens of the Idaho Statesman (August 17, 1981) commented: "Not since 1964 have the Democrats elected a Congressman in the first district. The loss of 21,000 votes doesn't help their chances in 1982.

ACTION: Complete

ILLINOIS - Legislators -- who had the task of remapping a drop from 24 to 22 representatives -- could not come up with a plan. A three-judge federal panel charged with the responsibility subsequently considered Democratic, Republican, and bipartisan plans respectively, and "approved a Democratic-sponsored congressional redistricting proposal that would eliminate the seats of two Republicans and preserve the seats of two Democrats," according to the New York Times (November 24, 1981).

Republican legislators, including state House Speaker George H. Ryan, appealed the decision of the federal panel. In the first reapportionment case based on the 1980 census to reach the Supreme Court, the high court issued a one-line order upholding the congressional map. The Chicago Sun Times (November 24, 1981) reported that House Democratic Leader Michael J. Madigan, of Chicago, said the map "gives Democrats a strong edge in 10 districts, gives Republicans an edge in 11 districts and produces one swing district in central Illinois now represented by Republican Representative Paul Findley."

ACTION: Complete

INDIANA - The Indiana congressional plan was signed by Republican Governor Robert Orr on May 5, 1981. Indiana Republicans, who have sizable majorities in both legislative houses, used the most sophisticated computer technology available to draw up their plans. Pollster Robert Teeter's Market Opinion Research provided mapmakers with 92 separate items of information on the state's subdivisions according to The Washington Post (May 11, 1981). The Indiana Republican leadership has been candid about its reapportionment effort. Bruce Melchert, Indiana Republican chairman, told ABC news on July 22 that "there are three or four incumbent Democrats that we would like to see defeated." That would mean a transformation of the present 6-5 Democratic edge to a Republican 7-3 majority (Indiana lost one seat).

As Congressional Quarterly (May 2, 1981) describes the plan: "Its lines weave in and out of counties, concentrating Democratic voting strength into three districts and creating seven others in which the GOP believes it can win." The major victims of this design were Watergate Democrats Philip Sharp, David Evans and Floyd Fithian, whose districts were balkanized. Fithian's and Evans' districts were dispersed into four new congressional districts. Evans, Sharp, and Democratic Representative Lee Hamilton now live in the same district. The Republicans, in an attempt to try the case before a friendly judge, quickly requested a ruling on the constitutionality of their plan from the Marion Circuit Court. In an attempt to move the case to a more friendly court, the Democrats removed to federal court and filed a motion to dismiss, arguing that there was no case or controversy. The federal district court agreed and dismissed the

suit, because, at the time, no defendants said they were prepared to argue that the plan was unconstitutional.

ACTION: Complete

IOWA - Legislators rejected an initial plan that the legislature's nonpartisan research bureau produced, putting GOP Representatives Tom Tauke and Jim Leach in the same district. (Iowa's six-man delegation is currently split, three Republicans and three Democrats, and the Governor and the Legislature are Republican). American Political Report on July 3, 1981 reported that the Legislature rejected the second plan because "incumbent GOP Representative Tom Tauke got a shaky district." A third plan was finally passed on August 14. It puts Democratic Representatives Neal Smith and Tom Harkin in the same district, but Harkin is apparently expected to move elsewhere in his state to seek re-election. The Des Moines Register (August 14, 1981) stated that the approved redistricting plan will end up "preserving the balance between parties."

ACTION: Complete

KANSAS - Governor John Carlin (D) vetoed a congressional plan (SB 664) on February 18, 1982. The Kansas City Times (February 19, 1982) stated that Governor Carlin accused Republican lawmakers of "drawing a map without hearing from Democrats," and of splitting "the state's two metropolitan areas, Kansas City and Wichita, among congressional districts." Governor Carlin vetoed a second version as well. This action prompted two court challenges, which have been consolidated by a federal district court. Democrats are asking the court to take over responsibility for redistricting (O'Sullivan v. Brier). Republicans are seeking court approval of the plan passed by the legislature (Carson v. Carlin).

ACTION: Congressional plan vetoed

KENTUCKY - A congressional map was signed by Governor John Y. Brown, Jr. (D) on March 10, 1982 (HB 235). Kentucky has seven congressional seats (no losses or gains). American Political Report (February 26, 1982) noted that "Democrats think that redistricting gives them a better shot at defeating GOP Rep. Gene Snyder."

ACTION: Complete

LOUISIANA - Louisiana Governor David Treen (R) signed the state's congressional plan on November 19, 1981. The Morning Advocate observed that the "new congressional districts will look much like the present ones -- to the benefit of Louisiana's eight present members of Congress."

A lawsuit asking the Court to allow candidates to run in the old congressional districts was filed in district court (Robert E. Couhic v. James L. Brown). A second lawsuit -- charging one person, one vote violations and minority voting dilution in congressional and state house redistricting -- was also filed in district court (Barbara Major v. David Tree and James Brown).

ACTION: Complete - litigation pending

MARYLAND - The General Assembly needed to approve eight congressional districts (no change in the number of districts). Legislators completed their task on April 9, 1982.

ACTION: Complete

MASSACHUSETTS - The Boston Globe (December 10, 1981) reported that, "[the] Special Commission on Redistricting adopted a plan ... which carves 11 new districts out of the present 12 and merges the districts of Frank and Heckler." The plan was approved by Governor Edward J. King (D) on December 16, 1981.

ACTION: Complete

MICHIGAN - also loses one congressional seat, leaving the state with 18 districts. On April 8, 1982 the House adopted a plan, giving it immediate effect. On April 8, the Senate adopted a bill, but did not give it immediate effect. Governor William G. Milliken (R) vetoed the plan on April 27. A three-judge federal panel held hearings on May 7 on proposed plans submitted by the parties (Agerstrand v. Austin), and on May 24 the court issued a decision adopting a plan. The Republican party filed an appeal with the U.S. Supreme Court.

ACTION: Plan vetoed -- litigation pending

MINNESOTA - On March 11, 1982 a three-judge panel issued a plan for Minnesota's eight congressional districts. The Court took over responsibility for adopting a plan following its ruling of September 30, 1981, in which it required the state's legislature to submit both congressional and legislative maps to the court by January 29 (Lacomb v. Joan Growel). The court acted when the legislature failed to meet the deadline. American Political Report (March 12, 1982) stated that the new court-drawn map "essentially mirrors the Democratic plan. GOP Rep. Tom Hagedorn's seat was wiped out, throwing him in a new district with freshman GOPer Vin Weber ..."

The Republican congressional delegation appealed the decision to the U.S. Supreme Court. The St. Paul Pioneer Press (March 25, 1982) reported that Independent-Republican

party attorneys "argued that the panel exceeded its constitutional authority by departing dramatically from existing congressional district lines and carving out a new district within the Twin Cities metropolitan area." The U.S. Supreme Court denied a motion to expedite on April 5, 1982. On May 17, 1982 the U.S. Supreme Court upheld the plan.

ACTION: Complete

MISSISSIPPI - Governor William Winter (D) signed the congressional redistricting plan on August 28 -- the conclusion of a special summer session. The Jackson Clarion-Ledger (August 28, 1981) reported that the plan shifted six counties and parts of four other counties between districts and has been termed the "least change plan." The plan maintains five white majority districts. The overall population variance was low (.0338 percent) but the state split county lines for the first time.

Justice Department approval is required. On January 11, 1982 Justice requested additional information on the redistricting plans. On March 30, Justice rejected the congressional remap because of the minority makeup of the Delta area. The state of Mississippi is appealing the Justice Department rejection in U.S. District Court in the District of Columbia.

Two lawsuits have been filed challenging the new congressional remap for one person, one vote and Voting Rights Act violations. The suits (David Jordon v. William Winters & Owen H. Brooks v. William Winters) have been consolidated in U.S. District Court.

ACTION: Justice Department rejected plan

MISSOURI - The Missouri state House approved a congressional map, but the state Senate could not come to an agreement on nine new congressional seats (Missouri lost one district). A U.S. District Court three-judge panel filed its own plan on January 7, 1982, making it "the second time in the last two decades a federal panel has had to come up with a congressional map because of lawmakers' inability to reach agreement." Kansas City Times (Dec. 29, 1981). The court drew up its new map by essentially eliminating the rural central Missouri district of Republican representative Wendell Bailey. The three Democratic congressional seats in St. Louis, however, appear to be safe.

An appeal of the District Court decision was filed with the U.S. Supreme Court by officials of the local Farm Bureau and others (Schatzle, et al. v. Kirkpatrick). On March 29, 1982, a motion to expedite was denied by the Supreme Court. On May 17, the U.S. Supreme Court affirmed the lower court's plan.

ACTION: Complete

NEBRASKA - enacted a plan which was signed by Governor Charles Thone (R) on May 29, 1981. As the Baron Report (June 22, 1981) puts it, "GOP governor ... Nonpartisan GOP legislature ... Three GOP districts ... Little population shifts ... Add up to no change."

ACTION: Complete

NEVADA - now has two congressional seats instead of one. Questions about where to put the second congressional district culminated in a plan which creates one Las Vegas district and one district spreading across the rest of the state. (There had been talk of an east-west split.) The American Political Report (June 19, 1981) figures that the southern seat (Las Vegas) is sure to be Democratic (as it is now) and that the northern district "could go either way but probably leans to the GOP."

ACTION: Complete

NEW HAMPSHIRE - maintains its two congressional seats (one Democrat, one Republican). Democratic Governor Hugh Gallen signed the new congressional remap on March 4, 1982.

ACTION: Complete

NEW JERSEY - In a final action before leaving office, Democratic Governor Brendan Byrne signed a congressional remap developed by the Democratic legislature. New Jersey had the task of cutting back from 15 to 14 districts. Congressional Quarterly (March 6, 1982) noted that "The map had joined the districts of two Republican incumbents, created a new Democratic-leaning constituency and presented several Democratic incumbents with safe seats."

New Jersey Republicans challenged the plan based on its population deviation (0.69 percent), and on March 3, 1982 a three-judge federal panel, in a 2-to-1 vote, declared the plan unconstitutional because it violated the one person, one vote requirement.

On March 11, 1982, Democrats filed a request for a stay with Supreme Court Justice William J. Brennan, Jr., which was granted pending an appeal to the Supreme Court. New Jersey Republicans requested an expedited hearing; however, on March 29 the court rejected a request by New Jersey Republicans to vacate the stay. Subsequently, Republicans filed another lawsuit in an attempt to have the plan voided on the grounds that the redistricting process was not done in accordance with the state constitution.

ACTION: Litigation pending

NEW MEXICO - added one seat to give it three congressional districts. A new map was signed by Governor Bruce King (D) on January 19, 1982. Congressional Quarterly (January 23, 1982) noted that the plan "places New Mexico's new congressional district in the Albuquerque area and divides the rest of the state roughly between a district in the north and one in the south."

In April 1982, a federal court held that the plan was constitutionally impermissible based on the use of a votes-cast formula to estimate precinct populations and sent the plan back to the legislature. However, the U.S. Supreme Court allowed a June 1 primary for all but state legislative races, staying the federal court order that could have delayed the election.

ACTION: Complete

NEW YORK - New York's congressional delegation had to be reduced from 39 to 34 seats. As expected, the Senate and Assembly deadlocked over a plan. Senate Republicans appealed to the U.S. Supreme Court to stay a lower court order to complete a plan by May 10 (Flateau, et al. v. Anderson, et al.). The U.S. Supreme Court rejected the appeal.

The legislature enacted a congressional redistricting bill on May 11, amended May 17, and signed by the Governor on May 20. In spite of this, the court-appointed master in the pending U.S. District Court suit is reported to be proceeding to draw up his own proposed map. It is not clear what course this court proceeding will take.

American Political Report (May 21, 1982) stated: "If the congressional remap put through by the legislature holds up, the major face-offs necessitated in the new districts -- New York lost 5 seats -- will be Rep. Ben Gilman (R) vs. Rep. Peter Peyser (D), Rep. Guy Molinari (R) vs. Rep. Leo Zeferetti (D), Rep. Ted Weiss (D) vs. Rep. Jonathan Bingham (D), Rep. John Le Boutillier (R) vs. Rep. Greg Garman (R), unless Garman decides not to seek re-election. If the remap is accepted by the governor, courts and the Justice Department, Democrats would wind up bearing most of the burden..."

ACTION: Complete -- litigation pending

NORTH CAROLINA - On August 4, 1981, The Southern Political Report stated that, "the North Carolina legislature completed action on a redistricting plan that helps incumbent Congressmen and encourages a continuation of the 7 Democrats - 4 Republicans ratio in the Tarheel delegation." Under the plan, Representative L... Fountain's new district was nicknamed "Fountain's Fishhook" because of the way it wound around Durham county, a black-dominated area that had been proposed for inclusion in the conservative Fountain's district.

As required by the Voting Rights Act, the Justice Department reviewed the plan and failed to preclear the congressional map. The congressional map was rejected on the grounds that it diluted black voting strength.

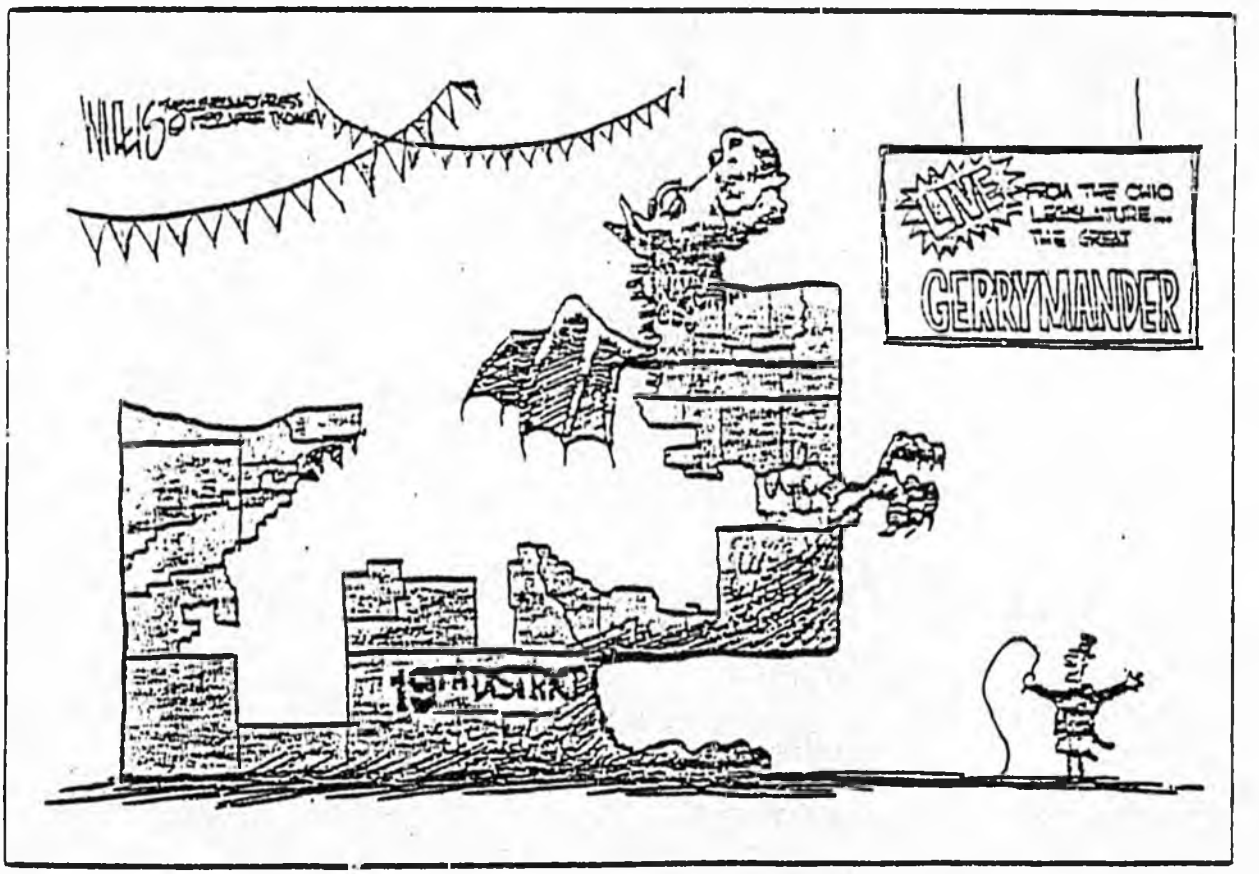
In February 1982 the North Carolina General Assembly passed a new plan that includes Durham County in Representative Fou ·in's 2nd district. In March the Justice Department p.ecleared the plan.

Meanwhile, the NAACP Legal Defense and Education Fund had challenged the congressional base based on the racial dilution issue (Gingles v. Edmisten).

ACTION: Complete -- pending litigation

NORTH DAKOTA - One congressional district

OHIO - Redistricting means a loss from 23 to 21 seats (the current delegation is now 10-D, 13-R). A bill was finally signed by Governor James Rhodes (R) on March 25, 1982. According to the Columbus Citizen-Journal (March 25, 1982): "The final version basically protects most incumbent congressmen but knocks out the 17th District now held by Republican Rep. John M. Ashbrook of Johnstown, a candidate for the U.S. Senate. It also consolidates the districts of Democratic Reps. Eckart and Ronald M. Mottle of Parma, forcing them to run against each other this year." The



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district in which they have been placed (District 19) has been called the Pac-Man district because its shape is similar to a route in the electronic game (see cartoon on page 20).

Ohio Democrats have intervened in a pending U.S. District Court suit (Patrick Flanagan v. Gillmor) to challenge the constitutionality of the plan.

ACTION: Complete -- litigation pending

OKLAHOMA's congressional district plan was signed by Democratic Governor George Nigh on July 22, 1981. The state has six seats (currently five Democrats and one Republican) and American Political Report (July 31, 1981) has noted that the new lines "solidify most of the state's Congressmen."

The Oklahoma Republican Party obtained the 92,000 signatures needed to validate an initiative petition asking voters to repeal the redistricting plan and enact a substitute plan. Initiative News Report (March 22, 1982) noted that "the State Supreme Court ruled in late February hearing to allow initiative opponents to re-check petition signatures ... until the end of April. Then, the Court must rule on 5/26/82 on ballot placement." Regardless of the pending initiative, however, congressional candidates in the November, 1982 election will run on the basis of the redistricting plan already enacted.

ACTION: Complete -- pending litigation and initiative

OREGON - The Democrats control the legislature and have a 3-1 edge in Congress. The state picks up a new district. According to Congressional Quarterly (August 8, 1981), "the redistricting bill gives Republicans a good chance to win the state's new 5th district and assures GOP control in the 2nd district." Democrats should retain control of their three congressional seats under the new plan. Governor Victor Atiyeh (R), voicing objections to diluted GOP voting strength in a Portland suburb, allowed the bill to become law without his signature.

ACTION: Complete

PENNSYLVANIA - must drop two of its 25 seats. The current delegation is 13 Republicans and 12 Democrats, following Representative Eugene V. Atkinson's switch from the Democratic to the Republican party in October 1981. On March 2, 1982 -- after many months' effort and in the face of potential federal court action and a March 9 primary filing date -- the Legislature approved a plan. Republican Governor Richard Thornburgh signed the plan on March 3.

Congressional Quarterly (March 6, 1982) noted that under the new plan, "[t]wo pairs of incumbent Democrats -- John P. Murtha and Don Bailey in the western part of the state, and Thomas M. Foglietta and Joseph F. Smith of

Philadelphia -- will have to run against each other for renomination. Democrat Doug Walgren's Pittsburgh-area district becomes more difficult for him to win, and Republican convert Eugene V. Atkinson is given territory in which he has a good chance to hold on." Lawsuits challenging the plan were filed by Democratic officials and a number of other groups. The consolidated suits were the subject of a hearing before a three-judge federal panel in March 1982. (In Re: Pennsylvania Congressional Districts Reapportionment Cases.)

ACTION: Complete -- litigation pending

RHODE ISLAND - has two congressional seats (no gains or losses). On April 2, 1982 the legislature completed action on a Congressional plan. The plan became law without the governor's signature.

ACTION: Complete

SOUTH CAROLINA - A legislative conference committee was unable to reach a compromise on South Carolina's six seats (2 Democratic, 4 Republican), so a three-judge panel U.S. District Court took over the task and adopted its own congressional redistricting plan on March 8, 1982. There is discussion of an appeal by the NAACP.

ACTION: Complete -- litigation possible

SOUTH DAKOTA - One congressional district

TENNESSEE - The legislature enacted a congressional redistricting plan in 1981. Currently Democrats have a 5-3 edge and control the legislature. Reportedly they were shooting for a 7-2 margin in Congress (the state picks up a seat). Observers say the newly-created 4th district, which has no incumbent, looks like a salamander because of the way it winds halfway across the state -- apparently made up of leftover counties from other districts. On August 25, 1981 the Tennessee Journal commented that "the makeup of the district leans slightly Democratic but a strong Republican candidate could have a good chance of winning." Democrats also targeted the new 7th district, but in the end the shift of precincts won't affect the number of Democrats and Republicans voting in the district. Republican Governor Lamar Alexander allowed the plan to become law without his signature.

ACTION: Complete

TEXAS - picks up three new seats (the current delegation is 19 to 5 Democratic). Last summer Republicans and conservative Democrats joined forces to give Republican Governor William Clements "precisely what he demanded -- a

Dallas -- Fort Worth minority district and improved Republican prospects statewide," according to the Dallas Morning News (August 11, 1981).

A lawsuit, charging racial discrimination (Seamon v. Clements) was filed in U.S. District Court. On January 29, the Justice Department filed objections concerning two southern districts, noting dilution of Hispanic voting strength.

On February 27, a three-judge federal panel ordered a redrawing of six congressional districts. According to the New York Times (February 29, 1982), "The plan adopted by the Federal judges would eliminate any distinctly black district for Dallas County. The court plan would also create a new district that appears likely to be won by a Republican."

Republicans appealed to the U.S. Supreme Court, which indicated that the lower court drew a congressional plan when the legislature's plan was not found to be unconstitutional or to violate the Voting Rights Act. The Supreme Court noted that the three-judge panel could make the redistricting change before or after the May 1 primary, as long as the legislature's map is in place for the next election. The federal court, on April 5, ordered the May 1 primary to be held under the federal court's plan.

ACTION: Plan must be redrawn by court order

UTAH - has two Republican seats and picked up a seat. The legislature adopted a congressional redistricting plan on October 30, 1981. As Congressional Quarterly (January 2, 1982) puts it: "the GOP dominated Legislature saw to it that Republicans have a strong chance of winning all three districts in 1982."

ACTION: Complete

VERMONT - One congressional district

VIRGINIA - The Democratic Virginia General Assembly adopted a redistricting plan on May 1 that "fails to loosen the Republican party's stranglehold on the state's 10-member U.S. House delegation," according to The Washington Post (May 2, 1981). Republican Prince William County was moved out of Representative Stanford Parris' (R) 8th district; observers feel that it may make him more vulnerable to a challenge. The plan was approved in a special session and precleared by the Justice Department as required by the Voting Rights Act.

ACTION: Complete

WASHINGTON - In the 1981 legislative session Republican Governor John Spellman vetoed the legislature's congressional plan, which must reflect an increase from seven to eight seats. This year the Republican legislature had better

luck; Governor Spellman signed the congressional remap on February 17. (Legislators also approved a redistricting commission to take over reapportionment after 1990.)

ACTION: Complete

WEST VIRGINIA - has four congressional districts (two Republican and two Democratic). A congressional map was signed by Democratic Governor John D. Rockefeller IV on February 11, 1982. The Washington Post (February 14, 1982) noted that "after considering more drastic changes, the Democratic legislature passed a plan making only minor adjustments in four districts, now equally divided between the parties." The legislature was pressured to act because of a lawsuit (Brookover v. Manchin). A U.S. District Court issued an order on February 23, 1982 affirming the validity of the enacted plan.

ACTION: Complete

WISCONSIN - retains nine congressional seats. A new map was enacted on March 24, 1982. Legislators were pressured by a lawsuit asking a federal court to takeover redrawing both congressional and state legislative plans (AFL-CIO v. State Elections Board). Enactment of a congressional plan effectively excluded congressional redistricting from the court challenge.

ACTION: Complete

WYOMING - One congressional district

Overview of State Legislative Redistricting

With the exception of just seven states (Maine, Massachusetts, Montana, New Hampshire, New Mexico, South Carolina and Wisconsin), legislative redistricting based on the 1980 census is completed.

Litigation brought by groups or individual citizens concerning legislative plans has been resolved in at least a dozen states, but court challenges continue to protract the process in other states. Moreover, the Justice Department, under Section 5 of the Voting Rights Act, has current objections to Alabama's state Senate plan and Texas' state Senate and House plans.

Democrats have control of state legislatures in 28 states and have total control -- the legislature and the governorship -- in 17 states. Despite this advantage, political forecasters pointed to potential Republican gains in Illinois, Pennsylvania and other states that were subject to population movement from major urban and industrial areas to outlying suburban regions.

This theory, for example, held true in Pennsylvania, where Republicans have majorities in both houses. However, in Illinois, Democrats were able to control the process and ensure enactment of a Democratic-leaning plan. The following survey looks at 20 states in which the redistricting process has been particularly noteworthy.

Highlights of Legislative Redistricting

ALABAMA - On May 6, 1982 the state House and Senate plans were rejected by the Justice Department under Section 5 of the Voting Rights Act. The Justice Department objected to a number of districts where black voting strength was decreased through redistricting decisions.

ARKANSAS - A commission composed of the Governor, a Republican, and the Attorney General and Secretary of State, both Democrats, adopted a plan for both legislative houses in June, 1981. Two lawsuits were subsequently filed. Siloam Springs residents charged that the Senate plan discriminated against voters in their area. The Senate plan was upheld by the Arkansas Supreme Court. A second challenge to the plan was dismissed.

COLORADO - A 1974 constitutional amendment proposed by the League of Women Voters established a reapportionment commission to conduct state legislative redistricting. The 11-member commission included four members appointed by House and Senate party leaders, three appointed by the Governor, and four appointed by the Chief Justice of the Colorado Supreme Court.

A plan was unanimously approved by the Commission in December 1981 and submitted to the state Supreme court for review. The court approved the commission-drawn plan but ordered revision of the sequencing of two Senate districts so that no district would be without representation from 1982 to 1984. The commission filed an amended plan that completely redrew the two Senate districts. The court rejected the changes and ordered the Commission to simply make the election date adjustments. The final plan was complete by the March 15 deadline.

FLORIDA - On April 7, 1982 the Florida legislature adopted a legislative plan, which was sent to the state Supreme Court for review. The Justice Department must also approve the plan under provisions of the Voting Rights Act. The new plan creates only single-member legislative districts.

HAWAII - The League of Women Voters, Republicans, and Democrats challenged the legislative plan prepared by Hawaii's nine-member bipartisan reapportionment commission on an issue that is unique to Hawaii -- the reapportionment base. The commission based its 1981 map on the number of registered voters rather than on census data. A U.S. District Court panel invalidated the state Senate and House plans and ordered the appointment of a special master to make a comparison of voter registration and census figures to determine if the deviation is great enough to violate the one person, one vote doctrine. The new plan created the first multicounty, single-member districts in Hawaii's history.

IDAHO - Governor John Evans (D) vetoed the Republican legislature's first and second attempts at redrawing state legislative districts, prompting Republican legislators to file a suit in district court (Budge v. Cenarrusa). By March 24, however, the legislature and the Governor approved a plan so the case -- along with a second suit charging improper splitting of political subdivisions -- was dismissed. A separate state District Court suit challenging the splitting of Sandpoint (Bonner County) Indian Reservation is pending.

ILLINOIS - The Legislative Redistricting Commission on Oct. 2, 1981 adopted a final legislative reapportionment plan that is expected to give "Democrats control of both houses of the legislature, and greatly enhance Chicago's ebbing influence there ... the new map was drawn in such a way as to carve up Republican districts ... to leave some Republican incumbents outside their districts, or to put them in districts where they would face strong challenges by other incumbents." (New York Times, October 8, 1981)

The validity of the plan was challenged in U.S. District Court (Rybicki v. State Board of Elections). In a decision issued January 12, 1982 the Court generally upheld the plan, with the exception of modifications to a few Chicago districts, to eliminate the concentration of minority voters into an unreasonably small number of districts.

INDIANA - Court action is pending concerning legislative plans which were signed by Governor Orr on February 25. Two lawsuits (Bandemer v. Davis and NAACP State Conference v. Orr) are in the U.S. District Court in Indianapolis. The Court rejected a motion to dismiss the cases, which charge minority dilution and other issues.

LOUISIANA - faces a lawsuit challenging the State House and congressional plan (Barbara Major v. David Treen and James Brown). Plaintiffs contend that the plan violates one person, one vote principles and dilutes the minority vote.

MICHIGAN'S Supreme Court issued a decision on redistricting on March 26, 1982, after reviewing a plan adopted and submitted by the Legislative Reapportionment Commission. The court held the plan unconstitutional, determining that it is unconstitutional for redistricting responsibility to be vested in the Legislative Reapportionment Commission instead of the legislature. Subsequently, in the absence of legislative action by the Court's May 4 deadline the Court appointed a special master to draw a plan in compliance with its guidelines. The master filed a revised plan on May 13, and the Court on May 21 adopted that plan with some revisions. The Democrats are appealing to the U.S. Supreme Court, and in the meantime have asked the Supreme Court to stay the effective date of the plan.

MINNESOTA - The St. Paul Pioneer Press noted that "the suburbs are the big winners and central cities the losers in a new federal court-drawn legislative redistricting plan ..." The court took responsibility for adopting a plan after the legislature failed to meet its March 12 deadline (LaComb, et al. v. Growel, et al.). The U.S. District Court's March 11 decision was appealed to the Supreme Court, which turned down the appeal.

NEW HAMPSHIRE - Governor Hugh Gallen (D) vetoed a Senate reapportionment plan passed by a Republican legislature. The Hartford Valley News (May 15, 1982) reported that Senate President Robert Monier (R) filed a suit in state Supreme Court on May 14, 1982 asking "the justices to take jurisdiction over reapportionment, declare the present district boundaries unconstitutional and accept and adopt a vetoed Senate redistricting plan."

NEW MEXICO - New Mexico has a Democratic legislature and a Democratic governor. A state legislative plan was adopted but was subsequently determined to be unconstitutional by a federal district court. The court objected to the votes-cast formula that was used to estimate precinct populations, and thereby upheld the claims of a number of plaintiffs who charged that the use of the formula resulted in minority underrepresentation.

The legislature is considering preparation of a new plan. In the meantime the June 1 primary date for members of the legislature has been delayed by court action.

NEW YORK - The state legislature, pressed by a federal court threat to appoint a special master, approved state legislative maps on May 11, 1982, with amendments May 17. Assembly Democrats who have a majority decided on the Assembly map. In the Senate, Republicans who are in control drew up the Senate map. The New York Times (May 9, 1982) commented: "Not surprisingly, the plan strengthens each party's hand in its own house." The bills were signed by Governor Hugh Carey (D) on May 20.

NORTH CAROLINA - Legislators struggled to win Justice Department approval for their state legislative districts, adopted in bills enacted in February 1982. The Raleigh News and Observer (April 28, 1982) noted that when legislators met to approve a plan, "the special session was the third to deal solely with the prickly redistricting issue since October."

Meanwhile two lawsuits were consolidated and will be taken up by a federal District Court (Gingles v. Edminsten and Fuch v. Hunt). Plaintiffs are charging Voting Rights Act violations, racial dilution, and other issues.

PENNSYLVANIA - The Reapportionment Commission adopted its final General Assembly reapportionment plan on October 13, 1981. It is expected that the plan will accelerate the shift of power in the legislature from Democratic urban areas to usually Republican suburban and rural area.

Common Cause filed suit in the Pennsylvania Supreme Court challenging the constitutionality of the plan, on the ground that it unnecessarily divided a very large number of counties, municipalities and wards into more than one district and created districts which were not compact, diluting the voting strength of racial and ethnic minorities. The Court on December 29, 1981 upheld the constitutionality of the plan, characterizing equality of population as the overriding constitutional goal.

A second challenge to the validity of the plan was raised in a suit filed in the U.S. District Court -- Hispanic Coalition on Reapportionment v. Legislative Reapportionment Commission. This suit focused on one district in Philadelphia and attacked validity of the plan on grounds it diluted Hispanic minority voting strength. In a decision issued April 6, 1982 the court rejected the challenge and dismissed the case, on the ground that the final plan increased the concentration of Hispanic votes over what it had been prior to reapportionment.

SOUTH DAKOTA - The state legislative reapportionment plan, adopted March 13, 1981 was challenged in U.S. District Court (Sioux Falls) in O'Connor v. Kundert. It was argued that the use of multi-member districts was unconstitutional. On February 12, 1982 the Court issued a decision rejecting these arguments and holding that the plan was constitutional. The case was dismissed.

However, the petition drive by Common Cause, League of Women Voters and certain other groups for an initiative constitutional amendment that would abolish multi-member state Senate districts in three urban areas was successful, and as a result the proposed constitutional amendment will be on the November, 1982 ballot.

TENNESSEE - A Nashville Chancery Court on February 18, 1982 issued a summary judgment holding the state Senate plan invalid because it divided counties in forming districts. On March 31, the state Supreme Court issued a decision holding the summary judgment improper. The legislature subsequently adopted a modified Senate plan. However, a court date was set for September 13 (the primary is scheduled for August 5) to determine the validity of both the House and Senate plans for future elections (Lockert v. Crowell).

TEXAS - Ignoring Justice Department objections to certain districts, a three-judge federal panel adopted the Legislative Redistricting Board's plans with only a few modifications, in order to hold the May 4 primary on

schedule. The court made its ruling in a lawsuit brought principally by Republicans (Terrazas v. Clements). The legislative districts were adopted only for the 1982 election. The legislature will have to redraw the districts in 1983.

VIRGINIA - After 14 special sessions, the General Assembly was finally successful in completing a House of Delegates plan and a Senate plan. An earlier plan approved by the legislature was overturned in federal court on the basis of excessively high population variance (Cosner, et al. v. Dalton, et al.). Earlier plans were also objected to by the Justice Department, but their validity is subject to review in Cosner v. Dalton. The Washington Post (April 2, 1982) stated: "The central issue throughout the debate was the demand ... for the abolition of citywide at-large districts that have protected senior white Democratic incumbents and, according to the critics, diluted black voting strength." Civil rights groups and Republicans have praised the new maps. However a number of localities have intervened in the litigation, with complaints on the issues of compactness plus the manner in which counties have been split up. Hearings are scheduled for mid-June.

APPENDIX I. CONGRESSIONAL REDISTRICTING FACTS

May 1982

	Current House Seats	1982 House Seats	1980 Seat Changes	Redistricting done by:	Completed:	Action
Alabama	7 (4D, 3R)	7	0	Leg.	Yes	completed †
Alaska	1 (1R)	1	0	•••	•••	—
Arizona	4 (2D, 2R)	5	+1	Leg.	Yes	completed †
Arkansas	4 (2D, 2R)	4	0	Leg.	Yes	completed
California	43 (22D,21R)	45	+2	Leg.	Yes	repeal referendum †
Colorado	5 (3D, 2R)	6	+1	Leg.	Yes	completed
Connecticut	6 (4D, 2R)	6	0	Leg.	Yes	completed †
Delaware	1 (1R)	1	0	•••	•••	—
Florida	15 (11D, 4R)	19	+4	Leg.	Yes	litigation pending
Georgia	10 (9D, 1R)	10	0	Leg.	Yes	litigation pending
Hawaii	2 (2D)	2	0	Comm.	Yes	completed
Idaho	2 (2R)	2	0	Leg.	Yes	completed
Illinois	24 (10D,14R)	22	-2	Leg.	Yes	completed
Indiana	11 (6D, 5R)	10	-1	Leg.	Yes	completed
Iowa	6 (3D, 3R)	6	0	Leg.Serv.Bur./Leg.	Yes	completed
Kansas	5 (1D, 4R)	5	0	Leg.	No	Gov. vetoed plan
Kentucky	7 (4D, 3R)	7	0	Leg.	Yes	completed
Louisiana	8 (6D, 2R)	8	0	Leg.	Yes	litigation pending
Maine	2 (2R)	2	0	Leg.	No	1983
Maryland	8 (7D, 1R)	8	0	Gov/Leg.	Yes	completed
Massachusetts	12 (10D, 2R)	11	-1	Leg.	Yes	completed
Michigan	19 (12D, 7R)	18	-1	Leg.	Yes	litigation pending
Minnesota	8 (3D, 5R)	8	0	Leg.	Yes	completed
Mississippi	5 (4D, 1R)	5	0	Leg.	Yes	litigation pending
Missouri	10 (6D, 4R)	9	-1	Leg.	Yes	completed
Montana	2 (1D, 1R)	2	0	Comm.	No	1983
Nebraska	3 (3R)	3	0	Leg.	Yes	completed
Nevada	1 (1D,)	2	+1	Leg.	Yes	completed
New Hampshire	2 (1D, 1R)	2	0	Leg.	Yes	completed
New Jersey	15 (8D, 7R)	14	-1	Leg.	Yes	litigation pending
New Mexico	2 (2R)	3	+1	Leg.	Yes	completed
New York	39 (22D,17R)	34	-5	Leg.	Yes	litigation pending
North Carolina	11 (7D, 4R)	11	0	Leg.	Yes	litigation pending
North Dakota	1 (1D)	1	0	•••	•••	—
Ohio	23 (10D,13R)	21	-2	Leg.	Yes	litigation pending
Oklahoma	6 (5D, 1R)	6	0	Leg.	Yes	repeal referendum
Oregon	4 (3D, 1R)	5	+1	Leg.	Yes	completed
Pennsylvania	25 (13D,12R)	23	-2	Leg.	Yes	litigation pending
Rhode Island	2 (1D, 1R)	2	0	Leg.	Yes	completed
South Carolina	6 (2D, 4R)	6	0	Leg.	Yes	completed
South Dakota	2 (1D, 1R)	1	-1	•••	•••	—
Tennessee	8 (5D, 3R)	9	+1	Leg.	Yes	completed
Texas	24 (19D, 5R)	27	+3	Leg.	Yes	completed for May primary
Utah	2 (2R)	3	+1	Leg.	Yes	completed
Vermont	1 (1R)	1	0	•••	•••	—
Virginia	10 (1D, 9R)	10	0	Leg.	Yes	completed †
Washington	7 (5D, 2R)	8	+1	Leg.	Yes	completed
West Virginia	4 (2D, 2R)	4	0	Leg.	Yes	completed
Wisconsin	9 (5D, 4R)	9	0	Leg.	Yes	completed
Wyoming	1 (1R)	1	0	•••	•••	—

••• Indicates a single Congressional district

† Plan precleared by Justice Dept. under Voting Rights Act

APPENDIX II. STATE LEGISLATIVE REDISTRICTING FACTS

May 1982

State	Political party in control Gov.	Leg.	Redistricting done by	Covered by Voting Rights Act	Redistricting completed	Action
Alabama	D	D	Leg.	statewide	Yes	rejected by Justice Dept.
Alaska	R	Sen. 10 D, 10 R; House 22 D, 16 R; 2 L	Board is advisory to governor	statewide	Yes	completed
Arizona	D	R	Leg.	statewide	Yes	completed
Arkansas	R	D	Board	no	Yes	completed
California	D	D	Leg.	4 counties	Yes	repeal referendum
Colorado	D	R	Board	1 county	Yes	completed
Connecticut	D	D	Leg.-(Board if Leg. fails to act)	3 towns	Yes	litigation pending
Delaware	R	Sen. 12 D, 9 R; House 25 R, 16 D	Leg.	no	Yes	completed
Florida	D	D	Leg.—(Court if Leg. fails to act)	5 counties	Yes	Justice Dept. approval pending
Georgia	D	D	Leg.	statewide	Yes	Justice Dept. approval pending
Hawaii	D	D	Board	1 county	Yes	Justice Dept. approval pending
Idaho	D	R	Leg.	1 county	Yes	litigation pending
Illinois	R	Sen. 29 R, 30 D; House 91 R, 86 D	Leg.—(Board if Leg. fails to act)	no	Yes	completed
Indiana	R	R	Leg.	no	Yes	litigation pending
Iowa	R	R	Leg. Serv. Bureau is advisory to Leg.	no	Yes	completed
Kansas	D	R	Leg.	no	Yes	completed
Kentucky	D	D	Leg.	no	Yes	completed
Louisiana	R	D	Leg.—(Court if Leg. fails to act)	statewide	Yes	litigation pending
Maine	D	Sen. 17 R, 16 D; House 83 D, 68 R	(Board is advisory to Leg. If Board fails to act, Court takes over)	no	No	1983
Maryland	D	D	Governor submits plan to Leg.	no	Yes	litigation pending
Massachusetts	D	D	Leg.	9 towns	No	1985
Michigan	R	D	Boards (Court if Board fails to act)	2 townships	Yes	litigation pending
Minnesota	R	D	Leg.	no	Yes	completed
Mississippi	D	D	Leg.	statewide	Yes	completed
Missouri	R	D	Board—(Court if Board fails to act)	no	Yes	completed

State	Political party in control Gov.	Leg.	Redistricting done by	Covered by Voting Rights Act	Redistricting completed	Action
Montana	D	R	Board	no	No	1983
Nebraska	R	unicameral	Leg.	no	Yes	completed
Nevada	R	D	Leg.	no	Yes	completed
New Hampshire	D	R	Leg.	9 political subdivisions	No	plan vetoed by Gov.
New Jersey	D	D	Board	no	Yes	completed
New Mexico	D	D	Leg.	no	No	special session in June or July 1982
New York	D	Sen. 35 R 25 D House 86 D 64 R	Leg.	3 New York City boroughs	Yes	litigation pending
North Carolina	D	D	Leg.	40 counties	Yes	litigation pending
North Dakota	R	R	Leg.	no	Yes	completed
Ohio	R	Sen. 18 R 15 D House 56 D 43 R	Board	no	Yes	completed
Oklahoma	D	D	Leg.—(Board if Leg. fails to act)	no	Yes	completed
Oregon	R	D	Leg.—(Sec. of State if Leg. fails to act)	no	Yes	completed
Pennsylvania	R	R	Board	no	Yes	completed
Rhode Island	D	D	Leg.	no	Yes	litigation pending
South Carolina	D	D	Leg.	statewide	House-Yes Senate-No	completed
South Dakota	R	R	Leg.—(Board if Leg. fails to act)	2 counties	Yes	const. amendment on 11/82 ballot
Tennessee	R	D	Leg.	no	Yes (for 8/5 primary)	litigation pending
Texas	R	D	Leg.—(Board if Leg. fails to act)	statewide	Yes (for May 1 primary)	Districts must be redrawn
Utah	D	R	Leg.	no	Yes	completed
Vermont	R	R	Board is advisory to Leg.—(Court if Leg. fails to act)	no	Yes	completed
Virginia	R	D	Leg.	statewide	Yes	completed
Washington	R	R	Leg.	no	Yes	completed
West Virginia	D	D	Leg.	no	Yes	completed
Wisconsin	R	D	Leg.	no	No	Gov. vetoed bill on 5/23/82
Wyoming	D	R	Leg.	1 county	Yes	completed

APPENDIX III: REAPPORTIONMENT: A BETTER WAY

Common Cause first proposed a model reapportionment process in 1977 for adoption at the state level. The model proposal relies heavily on the Colorado, Hawaii, and Montana reapportionment procedures.* The Hawaii and Montana processes were recommendations of constitutional conventions that received voter approval in 1968 and 1972, respectively, (Hawaii and Montana commissions draw congressional as well as state legislative boundaries.) The Colorado process was the result of a citizen initiative approved by the voters in November of 1974 by a vote ratio of three to two.

The Common Cause model proposes a reapportionment process designed to produce districts that are fairly drawn as well as districts of substantial population equality. Unlike district lines produced by political gerrymandering, fair district lines are not drawn to pre-determine election results. The model proposes a system of reapportionment that is equitable in its treatment of incumbent legislators, political parties, and others. This replaces the present system where people with political power are able to manipulate district lines for personal and partisan advantage.

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* A description of reapportionment commission activities in Colorado and Hawaii is found on page 26. Montana will not complete redistricting until 1983.

The Common Cause model has three main elements -- strict anti-gerrymandering standards; an independent, nonpartisan reapportionment commission; and prompt judicial review. All three elements of the model are crucial. They are designed to reinforce each other and to produce fairly drawn district lines. The reapportionment standards are designed to produce fair district lines by limiting the discretion of the commission to gerrymander for political or partisan purposes. The nonpartisan reapportionment commission replaces the legislature, providing much needed independence. Fair district lines are more likely if district lines are drawn by persons not directly affected by them. Judicial review provides finality and acts as the final safeguard of the public's interest in fair and effective representation.

Four states have enacted legislation in the last three years that strengthens the standards that legislators must use in drawing congressional and state legislative districts -- California (1980), Iowa (1980), Oregon (1979), and Washington (1982). In addition, proposals to establish a redistricting commission will appear on November 1982 ballots in California and Missouri.

Common Cause will continue to lobby for reapportionment reform in the states. To obtain a copy of Common Cause's report on state and congressional reapportionment, Toward a System of Fair and Effective Representation, and the Common

Cause model reapportionment amendment to a state constitution, please call or write to the Common Cause Redistricting Clearinghouse, 2030 M Street, N.W. Washington, D.C. 20036 (202) 833-1200.

Other Investigative Studies From Common Cause

WHO'S MINDING THE STORE? A Common Cause Guide to Top Officials at the Department of the Interior (December 1981) ($4.00)

THE UNTOUCHABLES: A Common Cause Study of the Federal Tax Expenditure Budget (September 1981) ($3.00)

COMMON CAUSE REPORT ON CONGRESSIONAL AND STATE REDISTRICTING - Number One (September 1981) (free)

MONEY, POWER AND POLITICS IN THE 97th CONGRESS: A Common Cause Guide to Political Action Committee Contributions to Party Leaders and Committee Chairmen (April 1981) ($10.00)

DIRTY MONEY...DIRTY AIR? A Common Cause Study of PAC Contributions to House and Senate Committees Reviewing the Clean Air Act (May 1981) ($2.00)

STALLED FROM THE START: A Common Cause Study of the Federal Election Commission (March 1981) ($3.00)

ADDING BITE TO THE BARK : A Common Cause Study of the GAO, the Government's Watchdog (December 1980) ($3.00)

THE PATH NOT TAKEN: A Common Cause Study of State Energy Conservation Programs (March 1980) ($3.00)

THE GOVERNMENT SUBSIDY SQUEEZE: A Common Cause Report on How The Special Interest State Fuels Inflation (January 1980) (free)

PROMISE AND PERFORMANCE: CARTER BUILDS A NEW ADMINISTRATION (November 1979) (Free summary)

OPEN FOR BUSINESS ONLY? A Common Cause Study of the Department of Energy (February 1979) ($3.00)

MAKING GOVERNMENT WORK: A Common Cause Report on State Sunset Activity (December 1978) ($3.00)

HOW MONEY TALKS IN CONGRESS: A Common Cause Study of the Impact of Money on Congressional Decision-Making (October 1978) (free)

GIMME SHELTERS: A Common Cause Study of the Review of Tax Expenditures by the Congressional Tax Committees (May 1978) ($2.00)

THE POWER PERSUADERS: A Common Cause Study of What the Federal Lobby Law Does Not Reveal About Special Interest Lobbying on the Carter Energy Package (February 1978) ($2.00)

TOWARD A SYSTEM OF 'FAIR AND EFFECTIVE REPRESENTATION': A Common Cause Report on State and Congressional Reapportionment (November 1977) ($2.00)

THE SENATE RUBBERSTAMP MACHINE: A Common Cause Study of the U.S. Senate's Confirmation Process (November 1977) ($2.00)

SHADOWS OVER THE SUNSHINE ACT: A Common Cause Study of Federal Agency Compliance with the Government in the Sunshine Act of 1976 (September 1977) ($2.00)

WITH ONLY ONE EAR: A Common Cause Study of Industry and Consumer Representation Before Federal Regulatory Commissions (August 1977) ($2.00)

STACKING THE DECK: A Case Study of Procedural Abuses by the Joint Committee on Atomic Energy (December 1976) ($2.00)

SERVING TWO MASTERS: A Common Cause Study of Conflicts of Interest in the Executive Branch (October 1976) ($2.00)

MONEY, SECRECY, AND STATE UTILITY REGULATION: A Common Cause Report on the Accountability (or lack thereof) of State Public Utility Commissions (August 1976) ($2.00)

These investigative studies are available by writing: Issue Mail, Common Cause, 2030 M Street, N.W., Washington, D.C. 20036.

State Profiles



The Council of State Governments

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ALASKA

REAPPORTIONMENT PROFILE

CONSTITUTIONAL PROVISIONS

Article VI, Sections 1-11

REAPPORTIONMENT MECHANISM

STATE LEGISLATIVE DISTRICTS: Reapportionment Board

Chairman
John Schaeffer

Established in 1959
5 members appointed by the Governor without regard to political affiliation. Members cannot be public officials or employees.

CONGRESSIONAL DISTRICTS: One Congressman

STAFF CONTACT

Karen J. Ward
Executive Director
Reapportionment Board
Pouch A
Juneau, AK 99811
(907) 465-3520

CRITERIA FOR STATE LEGISLATIVE APPORTIONMENT

DATE: 1981 - Within 90 days following release of census count the Reapportionment Board must submit its plan to the Governor who then has 90 days to issue a proclamation about the plan. (Preliminary plan was released on May 5, 1981. Final plan to be released June 10, 1981).

POPULATION: Federal census

POPULATION GROUPS EXCLUDED: Non-resident military personnel and dependents

SMALLEST UNIT OF POPULATION: Enumeration districts

CENSUS AND PRECINCT BOUNDARIES COTERMINOUS: No

OTHER CRITERIA FOR DRAWING DISTRICTS: Socio-economic areas, local government boundaries, contiguity, compactness

DEVIATION: Maximum combined deviation - 10 %

TYPE OF DISTRICT: Single member and multimember; candidates in two-member districts should run in designated seats

HOUSE AND SENATE DISTRICT WITH COTERMINOUS BOUNDARIES: Yes

ALASKA

SENATORS ELECTED IN STAGGERED TERMS: Yes - Senators may be required to run for reelection if the new district boundaries substantially change the constituency in the district

VOTING RIGHTS STATE: Yes

NEW OR REVISED DISTRICTS BEFORE 1990: No

COMPUTER ASSISTANCE FOR APPORTIONMENT

None used in 1981

COURT WITH ORIGINAL JURISDICTION

State Superior Court

STATUTORY CITATION OF MOST RECENT REAPPORTIONMENT

CURRENT LITIGATION

CASE NAME	CASE NUMBER
None	

DISTRICT MAPS

ARIZONA

REAPPORTIONMENT PROFILE

CONSTITUTIONAL PROVISIONS

No constitutional provision

STATUTORY PROVISIONS

Arizona Revised Statutes (ARS) Sections 16-1101 through 16-1103

REAPPORTIONMENT MECHANISM

STATE LEGISLATIVE DISTRICTS: Legislature

Joint Select Committee on Reapportionment and Redistricting

Chairman
Sen. John C. Pritzlaff, Jr. (R)

CONGRESSIONAL DISTRICTS: Same

STAFF CONTACT

Richard R. Greenfield
Deputy Director
Arizona Legislative Council
Capitol
Legislative Services Wing
Suite 100
Phoenix, AZ 85007
(602) 255-4236

Richard Collins
Research Director
House of Representatives
State Capitol
Phoenix, AZ 85007
(602) 255-5544

Greg Fahey
Staff Director
Senate
State Capitol
Phoenix, AZ 85007
(602) 255-4471

CRITERIA FOR STATE LEGISLATIVE APPORTIONMENT

DATE: In advance of the 1982 general election. Special legislative session on reapportionment anticipated in fall 1981.

POPULATION: Federal census

POPULATION GROUPS EXCLUDED: None

SMALLEST UNIT OF POPULATION: Blocks

CENSUS AND PRECINCT BOUNDARIES COTERMINOUS: Not required under current state law

OTHER CRITERIA FOR DRAWING DISTRICTS: Race or ethnic characteristics; geographic factors; other factors yet to be determined by the joint committee

DEVIATION: General consensus: less than 2.0% if possible

TYPE OF DISTRICT: 30 legislative districts, one senator and two house members from each district

ARIZONA

HOUSE AND SENATE DISTRICT WITH COTERMINOUS BOUNDARIES: Yes

SENATORS ELECTED IN STAGGERED TERMS: No

VOTING RIGHTS STATE: Yes

NEW OR REVISED DISTRICTS BEFORE 1990: Yes

COMPUTER ASSISTANCE FOR APPORTIONMENT

Datapol
3118 West Thomas Road
Phoenix, AZ 85017

COMPUTER CONSULTANT

Mr. C. Howard Wilson
Room 443, Legislative
Services Wing
State Capitol
Phoenix, AZ 85007

COURT WITH ORIGINAL JURISDICTION

Federal District Court

STATUTORY CITATION OF MOST RECENT REAPPORTIONMENT

Klahr v. Williams, 386 F. Supp. 1007 (1974)

CURRENT LITIGATION

CASE NAME	CASE NUMBER
None	

DISTRICT MAPS

Currently in preparation

ARKANSAS

REAPPORTIONMENT PROFILE

CONSTITUTIONAL PROVISIONS

Amendment 23, Amendment 45

REAPPORTIONMENT MECHANISM

STATE LEGISLATIVE DISTRICTS: Board of Apportionment

Governor | Secretary of State | Attorney General

CONGRESSIONAL DISTRICTS: Legislature

Senate State Agencies and Governmental Affairs Committee

Senate Chairman
Sen. Morrell Gathright (D)

House State Agencies and Governmental Affairs Committee

House Chairman
Rep. Charles W. Stewart (D)

STAFF CONTACT

Janet Reddin
Office of the Secretary of State
256 State Capitol
Little Rock, AR 72201
(501) 370-5070

William Beathea
Legislative Aide
Office of the Governor
State Capitol
Little Rock, AR 72201
(501) 371-2345

Ms. Donna Davis
Arkansas Legislative Council
315 State Capitol Building
Little Rock, AR 72201
(501) 371-1937

CRITERIA FOR STATE LEGISLATIVE APPORTIONMENT

DATE: On or before February 1, immediately following each Federal census

POPULATION: Federal census

POPULATION GROUPS EXCLUDED: No

SMALLEST UNIT OF POPULATION: Unknown

CENSUS AND PRECINCT BOUNDARIES COTERMINOUS: Yes

OTHER CRITERIA FOR DRAWING DISTRICTS: Unknown

DEVIATION: Unknown

TYPE OF DISTRICT: Senate - single member; House - single member, multimember

HOUSE AND SENATE DISTRICT WITH COTERMINOUS BOUNDARIES: No

SENATORS ELECTED IN STAGGERED TERMS: Yes - Senators will be required to run for reelection

ARKANSAS

VOTING RIGHTS STATE: No

NEW OR REVISED DISTRICTS BEFORE 1990: No

COMPUTER ASSISTANCE FOR APPORTIONMENT

University of Arkansas -- Industrial Research and Extension Center

COURT WITH ORIGINAL JURISDICTION

No one court

STATUTORY CITATION OF MOST RECENT REAPPORTIONMENT

CURRENT LITIGATION

CASE NAME	CASE NUMBER
None	

DISTRICT MAPS

CONGRESSIONAL REDISTRICTING

Act 965 (1981)
Creates 4 congressional districts -
Ideal district: 571,378
Largest district: 575,485 or +.72%
Smallest district: 564-818 or -.01%

CALIFORNIA

REAPPORTIONMENT PROFILE

CONSTITUTIONAL PROVISIONS

Article IV, Section 6

REAPPORTIONMENT MECHANISM

STATE LEGISLATIVE DISTRICTS: Legislature

Senate Elections and Reapportionment Committee

Senate Chairman
Sen. Daniel E. Boatwright (D)

Assembly Elections and Reapportionment Committee

Assembly Chairman
Asmb. Richard Alatorre (D)

CONGRESSIONAL DISTRICTS: Same

STAFF CONTACT

Alan Rosin
Staff Director
Senate Elections and Reapportionment Committee
State Capitol
Sacramento, CA 95814
(916) 445-9018
445-3375

Stephen March
Senior Consultant
Senate Elections and Reapportionment Committee
State Capitol
Sacramento, CA 95814

Dr. Bruce Cain
Consultant
Assembly Elections and Reapportionment Committee
Room 4001, State Capitol
Sacramento, CA 95814
(916) 445-7644

CRITERIA FOR STATE LEGISLATIVE APPORTIONMENT

DATE: 1981-82. The first session following each decennial Federal census

POPULATION: Federal census

POPULATION GROUPS EXCLUDED: No

SMALLEST UNIT OF POPULATION: Census tracts and block groups

CENSUS AND PRECINCT BOUNDARIES COTERMINOUS: Not generally

OTHER CRITERIA FOR DRAWING DISTRICTS: Party registration; compactness, race and ethnic characteristics, geographical factors; election information

DEVIATION: Less than 1.0%

TYPE OF DISTRICTS: Single member

HOUSE AND SENATE DISTRICT WITH COTERMINOUS BOUNDARIES: No

CALIFORNIA

SENATORS ELECTED IN STAGGERED TERMS: Yes - Senators will be allowed to serve out their term

VOTING RIGHTS STATE: Yes - Kings; Merced; Monterey, Yule counties

NEW OR REVISED DISTRICTS BEFORE 1990: Can be done but will probably not be done

COMPUTER ASSISTANCE FOR APPORTIONMENT

Yes

COURT WITH ORIGINAL JURISDICTION

State Supreme Court

STATUTORY CITATION OF MOST RECENT REAPPORTIONMENT

CURRENT LITIGATION

CASE NAME CASE NUMBER

DISTRICT MAPS

COLORADO

REAPPORTIONMENT PROFILE

CONSTITUTIONAL PROVISIONS

Article V, Sections 44-48

REAPPORTIONMENT MECHANISM

STATE LEGISLATIVE DISTRICTS: Colorado Reapportionment Commission

Established in 1974
11 members: 1 each by speaker, majority leader in Senate, minority leader in each House; 3 by governor, 4 by chief justice of Supreme Court; limit 4 legislators; limit 6 same political party; limit 4 same congressional district; 1 must reside West of Continental Divide

CONGRESSIONAL DISTRICTS: Legislature

Senate State Affairs Committee	House State Affairs Committee
Senate Chairman	House Chairman
Sen. Ted L. Strickland (R)	Rep. Frank De Filippo (R)

STAFF CONTACT

Lyle C. Kyle
Director
Colorado Legislative Council
Room 46, State Capitol Building
Denver CO 80203
(303) 839-3521

CRITERIA FOR STATE LEGISLATIVE APPORTIONMENT

DATE: About January 30, 1982 or 180 days after the convening of the Reapportionment Commission. Final plan must be approved by the State Supreme Court by March 15, 1982

POPULATION: Federal census

POPULATION GROUPS EXCLUDED: None

SMALLEST UNIT OF POPULATION: Blocks

CENSUS AND PRECINCT BOUNDARIES COTERMINOUS: No

OTHER CRITERIA FOR DRAWING DISTRICTS: Compactness, race and ethnic characteristics, geography, "community of interest"

DEVIATION: 5% from most populous to least populous

TYPE OF DISTRICT: Single member

COLORADO

HOUSE AND SENATE DISTRICT WITH COTERMINOUS BOUNDARIES: No

SENATORS ELECTED IN STAGGERED TERMS: Yes - Senators will be allowed to serve out term

VOTING RIGHTS STATE: Yes - El Paso County only

NEW OR REVISED DISTRICTS BEFORE 1990: No

COMPUTER ASSISTANCE FOR APPORTIONMENT

State Computer System

COURT WITH ORIGINAL JURISDICTION

Colorado Supreme Court must automatically review plan

STATUTORY CITATION OF MOST RECENT REAPPORTIONMENT

Title 2, Article 2, Part 1 and 2 Colorado Revised Statutes 1973 parts 1 and 2

CURRENT LITIGATION

CASE NAME	CASE NUMBER
None	

DISTRICT MAPS

CONNECTICUT

REAPPORTIONMENT PROFILE

CONSTITUTIONAL PROVISIONS

Article XII of the Amendments to the Constitution

REAPPORTIONMENT MECHANISM

STATE LEGISLATIVE DISTRICTS: Legislature

Committee on Reapportionment

Chairman:
Not yet selected

By August 1, 1981, a 2/3 vote in each chamber is required to approve a redistricting plan. If the legislature cannot complete the plan by the deadline, a Commission of 9 members is appointed: 2 each by the Senate President Pro Tem, House Speaker and the Minority Leaders of each party, all from the two major political parties and a 9th member selected by the eight within 30 days. The Commission by at least a 5 to 6 vote must submit its plan by October 30, 1981. If no plan is submitted, by petition of a registered voter, the state Supreme Court must file a plan by January 15, 1982 or rule on the petition submitted to it.

CONGRESSIONAL DISTRICTS: Same

STAFF CONTACT

Mr. Jan Majewski
Coordinator
Special Joint Committee
on Reapportionment
Vault 4, State Capitol
Hartford, CT 06115
(203) 566-8308

Mr. Harry Hutton
Coordinator
Special Joint Committee
on Reapportionment
Vault 6, State Capitol
Hartford, CT 06115
(203) 566-7429

CRITERIA FOR STATE LEGISLATIVE APPORTIONMENT

DATE: 1981 - 1982

POPULATION: Federal census

POPULATION GROUPS EXCLUDED: None

SMALLEST UNIT OF POPULATION: Census blocks and Ed's

CENSUS AND PRECINCT BOUNDARIES COTERMINOUS: Yes

OTHER CRITERIA FOR DRAWING DISTRICTS: Contiguous and single member districts

DEVIATION: Unknown

TYPE OF DISTRICT: Single member

CONNECTICUT

HOUSE AND SENATE DISTRICT WITH COTERMINOUS BOUNDARIES: Some

SENATORS ELECTED IN STAGGERED TERMS: No

VOTING RIGHTS STATE: Yes - Groton, Mansfield, Southbury Towns

NEW OR REVISED DISTRICTS BEFORE 1990: Yes

COMPUTER ASSISTANCE FOR APPORTIONMENT

Market Opinion Research
Detroit, Michigan

COURT WITH ORIGINAL JURISDICTION

State Supreme Court

STATUTORY CITATION OF MOST RECENT REAPPORTIONMENT

CURRENT LITIGATION

CASE NAME	CASE NUMBER
None	

DISTRICT MAPS

FLORIDA

REAPPORTIONMENT PROFILE

CONSTITUTIONAL PROVISIONS

Article III, Sections 1, 15, 16

REAPPORTIONMENT MECHANISM

STATE LEGISLATIVE DISTRICTS: Legislature/State Supreme Court

Senate Rules and Calendar Committee

Senate Chairman
Sen. Dempsey J. Barron (D)

House Select Committee on Reapportionment

House Chairman
Rep. Lee Moffitt (D)

CONGRESSIONAL DISTRICTS: Same

STAFF CONTACT

Terri Jo Kennedy
Staff Director
Senate Rules and Calendar Committee
Suite 409, State Capitol
Tallahassee, FL 32304
(904) 488-5810

Mark Herron
Staff Director
House Select Committee on Reapportionment
Room 223, State Capitol
Tallahassee, FL 32304
(904) 488-9622

PROPOSED CRITERIA FOR LEGISLATIVE APPORTIONMENT

DATE: End of 1982 Legislative session; no plan, Governor must convene a special session; no plan, state Supreme Court has 60 days to formulate a plan

POPULATION: Federal census

POPULATION GROUPS EXCLUDED: None

SMALLEST UNIT OF POPULATION: Voting precincts

CENSUS AND PRECINCT BOUNDARIES COTERMINOUS: No

OTHER CRITERIA FOR DRAWING DISTRICTS: State geographical factors, political boundaries

DEVIATION: No decision

TYPE OF DISTRICT: Single member and multimember districts

HOUSE AND SENATE DISTRICT WITH COTERMINOUS BOUNDARIES: No

SENATORS ELECTED IN STAGGERED TERMS: Yes - Senators will be required to run for reelection

FLORIDA

VOTING RIGHTS STATE: Yes - Collier, Hardee, Hendry, Hillsborough Monroe Counties

NEW OR REVISED DISTRICTS BEFORE 1990: No

COMPUTER ASSISTANCE FOR APPORTIONMENT

Yes - Legislative Data Processing Center

COURT WITH ORIGINAL JURISDICTION

State Supreme Court

STATUTORY CITATION OF MOST RECENT REAPPORTIONMENT

CURRENT LITIGATION

CASE NAME	CASE NUMBER
None	

DISTRICT MAPS

GEORGIA

REAPPORTIONMENT PROFILE

CONSTITUTIONAL PROVISIONS

Article III, Section II, paragraph 1, Section II, paragraph 1

REAPPORTIONMENT MECHANISM

STATE LEGISLATIVE DISTRICTS: Legislature

Senate Reapportionment Committee	House Legislative and Congressional Reapportionment Committee
Senate Chairman Sen. Perry J. Hudson (D)	House Chairman Rep. Joe Jack Wilson (D)

STAFF CONTACT

Linda Meggers
Legislative Reapportionment Associate
Institute of Government
State Capitol
Atlanta, GA 30334
(404) 656-5063

CRITERIA FOR STATE LEGISLATIVE APPORTIONMENT

DATE: No specific date - 1981

POPULATION: Federal census

POPULATION GROUPS EXCLUDED: None

SMALLEST UNIT OF POPULATION: Blocks

CENSUS AND PRECINCT BOUNDARIES COTERMINOUS: No

OTHER CRITERIA FOR DRAWING DISTRICTS: Compactness, race or ethnic characteristics, geographic factors, political boundaries

DEVIATION: 5.0% to 9.9%

TYPE OF DISTRICT: Senate - single member; House - single member, multimember

HOUSE AND SENATE DISTRICT WITH COTERMINOUS BOUNDARIES: No

SENATORS ELECTED IN STAGGERED TERMS: No

VOTING RIGHT STATE: Yes

NEW OR REVISED DISTRICTS BEFORE 1990: Yes

GEORGIA

COMPUTER ASSISTANCE FOR APPORTIONMENT

Institute of Government - University of Georgia

COURT WITH ORIGINAL JURISDICTION

Superior Court of each county

STATUTORY CITATION OF MOST RECENT REAPPORTIONMENT

CURRENT LITIGATION

CASE NAME	CASE NUMBER
None	

DISTRICT MAPS

IDAHO

REAPPORTIONMENT PROFILE

CONSTITUTIONAL PROVISIONS

Article 3, Sections 2, 4

REAPPORTIONMENT MECHANISM

STATE LEGISLATIVE DISTRICTS: Legislative

Senate State Affairs Committee	House State Affairs Committee
Senate Chairman	House Chairman
Sen. Leon M. Swenson (R)	Rep. George G. Danielson (R)

CONGRESSIONAL DISTRICTS: Same

STAFF CONTACT

Susan Bennion
Legislative Council
Room 334
State Capitol Building
Boise, ID 83720
(208) 334-2475

CRITERIA FOR STATE LEGISLATIVE APPORTIONMENT

DATE: No specific date - 1981 or 1982; Governor will call special legislative session on reapportionment to convene July 7

POPULATION: Federal census

POPULATION GROUPS EXCLUDED: Unknown

SMALLEST UNIT OF POPULATION: Voting precincts

CENSUS AND PRECINCT BOUNDARIES COTERMINOUS: Yes for some counties

OTHER CRITERIA FOR DRAWING DISTRICTS: Compactness, geography

DEVIATION: 10.0% to 14.9%

TYPE OF DISTRICT: Senate - single member; House - multimember

HOUSE AND SENATE DISTRICT WITH COTERMINOUS BOUNDARIES: Yes - Legislative districts elect one senator and two representatives

SENATORS ELECTED IN STAGGERED TERMS: No

VOTING RIGHTS STATE: Yes - Elmore County only

IDAHO

NEW OR REVISED DISTRICTS BEFORE 1990: Yes

COMPUTER ASSISTANCE FOR APPORTIONMENT

No

COURT WITH ORIGINAL JURISDICTION

State District Court

STATUTORY CITATION OF MOST RECENT REAPPORTIONMENT

CURRENT LITIGATION

CASE NAME	CASE NUMBER
None	

DISTRICT MAPS

ILLINOIS

REAPPORTIONMENT PROFILE

CONSTITUTIONAL PROVISIONS

Article IV, Section 2, 3

REAPPORTIONMENT MECHANISM

STATE LEGISLATIVE DISTRICTS: Legislature/Legislative Redistricting Commission

Legislature must redistrict by June 30, 1981. If they do not, an 8 member Legislative Redistricting Commission is appointed by July 10, 1981: 2 each by the Senate President and Minority Leader, the House Speaker and Minority Leader. The members are to include 2 Senators, 2 Representatives and 4 citizens. The Commission must file a report with the Secretary of State by August 10, 1981. If the Commission does not adopt a plan by that date, the State Supreme Court selects 2 people by September 1, 1981, one of whom is chosen at random to be the commission tie-breaker. The 9 member commission must file its report by October 5, 1981.

CONGRESSIONAL DISTRICTS: Legislature

STAFF CONTACT

Ms. Karen A. Fahrion
Research Associate
Legislative Council
Room 107, Stratton Building
Springfield, IL 62706
(217) 782-6851

CRITERIA FOR STATE LEGISLATIVE APPORTIONMENT

DATE: June 30, 1981; October 5, 1981

POPULATION: Federal census

POPULATION GROUPS EXCLUDED: None

SMALLEST UNIT OF POPULATION: Blocks

CENSUS AND PRECINCT BOUNDARIES COTERMINOUS: No

OTHER CRITERIA FOR DRAWING DISTRICTS: Party registration, compactness, geographical factors

DEVIATION: 1.0% to 4.9%

TYPE OF DISTRICT: Single member

ILLINOIS

HOUSE AND SENATE DISTRICT WITH COTERMINOUS BOUNDARIES: Yes - Senate districts

SENATORS ELECTED IN STAGGERED TERMS: Yes - all terms end in 1983; all Senators elected in 1982

VOTING RIGHTS STATE: No

NEW OR REVISED DISTRICTS BEFORE 1990: No

COMPUTER ASSISTANCE FOR APPORTIONMENT

Yes - House Republicans - Rose Institute
Claremont, California

COURT WITH ORIGINAL JURISDICTION

State Supreme Court

STATUTORY CITATION OF MOST RECENT REAPPORTIONMENT

CURRENT LITIGATION

CASE NAME	CASE NUMBER
None	

DISTRICT MAPS

INDIANA

REAPPORTIONMENT PROFILE

CONSTITUTIONAL PROVISIONS

Article 4, Section 4
Article 4, Section 5 (ruled invalid by court)

REAPPORTIONMENT MECHANISM

STATE LEGISLATIVE DISTRICTS: Legislature

Senate Legislative Apportionment and Elections Committee

Senate Chairman
Sen. Charles Bosma (R)

House Elections and Apportionment Committee

House Chairman
Rep. Dick Mangus (R)

CONGRESSIONAL DISTRICTS: Same

STAFF CONTACT

Robert Schembs; Beth Wood
Staff Attorney
Legislative Services
Room 302, State House
Indianapolis, IN 46204
(317) 269-3731

CRITERIA FOR STATE LEGISLATIVE APPORTIONMENT

DATE: State Legislative plan adopted April 1981

POPULATION: Federal census

POPULATION GROUPS EXCLUDED: None

SMALLEST UNIT OF POPULATION: Census areas and election precincts

CENSUS AND PRECINCT BOUNDARIES COTERMINOUS: Some - All precinct boundaries are now required to be drawn along discernable geographic lines

OTHER CRITERIA FOR DRAWING DISTRICTS: Party registration, compactness, geographic factors

DEVIATION: 1.0% to 4.9%

TYPE OF DISTRICT: Senate - single member; House - single member, multimember

HOUSE AND SENATE DISTRICT WITH COTERMINOUS BOUNDARIES: No

SENATORS ELECTED IN STAGGERED TERMS: Yes - Senators will be allowed to serve out their term

INDIANA

VOTING RIGHTS STATE: No

NEW OR REVISED DISTRICTS BEFORE 1990: Not prohibited, but unlikely

COMPUTER ASSISTANCE FOR APPORTIONMENT

Yes - open

COURT WITH ORIGINAL JURISDICTION

No one court

STATUTORY CITATION OF MOST RECENT REAPPORTIONMENT

Senate enrolled act 80 (Senate districts)
Senate enrolled act 85 (U.S. Congressional districts; some modification of Senate districts)
House enrolled act 1475 (House districts)

CURRENT LITIGATION

CASE NAME	CASE NUMBER
None	

DISTRICT MAPS

Available from State Election Board, 100A State Office Building, Indianapolis, IN 46204 (317) 232-3939

KANSAS

REAPPORTIONMENT PROFILE

CONSTITUTIONAL PROVISIONS

Article 10

REAPPORTIONMENT MECHANISM

STATE LEGISLATIVE DISTRICTS: Legislature

Senate Legislative, and Congressional Apportionment Committee

Senate Chairman
Sen. Dan Thiessen (R)

House Legislative, Judicial and Congressional Apportionment Committee

House Chairman
Rep. Robert G. Frey (R)

CONGRESSIONAL DISTRICTS: Same

Congressional districts will be drawn from federal census figures.

STAFF CONTACT

Russell Mills
Principal Analyst
Legislative Research Department
Room 545-N, State House
Topeka, KS 66612
(913) 296-3181

M. Torrence
Revisor of Statutes
State House
Topeka, KS 66612
(913) 296-2321

CRITERIA USED FOR STATE LEGISLATIVE APPORTIONMENT

DATE: At regular session in 1979 and every ten years thereafter

POPULATION: 1978 annual state census; used for 1979 reapportionment, in future, federal census will be used

POPULATION GROUPS EXCLUDED: Military and students

SMALLEST UNIT OF POPULATION: Voting precincts

CENSUS AND PRECINCT BOUNDARIES COTERMINOUS: No

OTHER CRITERIA FOR DRAWING DISTRICTS: Compactness, geography, county boundaries and projected population growth

DEVIATION: 5.0% to 9.9%

TYPE OF DISTRICT: Single member

HOUSE AND SENATE DISTRICT WITH COTERMINOUS BOUNDARIES: No

SENATORS ELECTED IN STAGGERED TERMS: No

KANSAS

VOTING RIGHTS STATE: No

NEW OR REVISED DISTRICTS BEFORE 1989: Yes

COMPUTER ASSISTANCE FOR APPORTIONMENT

No

COURT WITH ORIGINAL JURISDICTION

Kansas Supreme Court

STATUTORY CITATION OF MOST RECENT REAPPORTIONMENT

Senate - K.S.A. 1980 Supp. 4-4, 101 through 4-4, 142
House - K.S.A. 1980 Supp. 4-3, 201 through 4-3, 327

CURRENT LITIGATION

CASE NAME	CASE NUMBER
In re Senate Bill No. 220	Senate 225 Kan 628, 593 P2d 1 (1979)
In re House Bill No. 2620	House 225 Kan 327, 595 P2d 334 (1979)

DISTRICT MAPS

Available - The Council of State Governments

KENTUCKY

REAPPORTIONMENT PROFILE

CONSTITUTIONAL PROVISIONS

Section 33

REAPPORTIONMENT MECHANISM

STATE LEGISLATIVE DISTRICTS: Legislature

Interim Joint Committee on State Government

Senate Co-Chairman	House Co-Chairman
Sen. Pat M. McCuiston (D)	Rep. Mark O'Brien (D)

Subcommittee on Redistricting

Senate Co-Chairman	House Co-Chairman
Sen. Helen Garrett (D)	Rep. Lloyd E. Clapp (D)

CONGRESSIONAL DISTRICTS: Same

STAFF CONTACT

Joyce Honaker
Committee Staff Administrator
Legislative Research Commission
State Capitol
Frankfort, KY 40601
(502) 564-8100

CRITERIA FOR STATE LEGISLATIVE APPORTIONMENT

DATE: No specific date - redistricting anticipated in 1982 regular session

POPULATION: Federal census

POPULATION GROUPS EXCLUDED: No

SMALLEST UNIT OF POPULATION: Voting precincts and smallest census units

CENSUS AND PRECINCT BOUNDARIES COTERMINOUS: No

OTHER CRITERIA FOR DRAWING DISTRICTS: Contiguity

DEVIATION: No decision

TYPE OF DISTRICT: Single member

HOUSE AND SENATE DISTRICT WITH COTERMINOUS BOUNDARIES: No

SENATORS ELECTED IN STAGGERED TERMS: Yes - Senators will be allowed to serve out their term

KENTUCKY

VOTING RIGHTS STATE: No

NEW OR REVISED DISTRICTS BEFORE 1990: Yes

COMPUTER ASSISTANCE FOR APPORTIONMENT

State Data Processing

COURT WITH ORIGINAL JURISDICTION

State Circuit Court

STATUTORY CITATION OF MOST RECENT REAPPORTIONMENT

K.R.S. 6.011 to 6.041

CURRENT LITIGATION

CASE NAME	CASE NUMBER
None	

DISTRICT MAPS

MAINE

REAPPORTIONMENT PROFILE

CONSTITUTIONAL PROVISIONS

Article 4, Part 3, Section 1-A

REAPPORTIONMENT MECHANISM

STATE LEGISLATIVE DISTRICTS: Advisory Commission/Legislature

Advisory Commission established in 1975 by Constitutional amendment. Members will be appointed in 1983 and every 10 years after that. 15 members: 3 by House Speaker, 2 by Senate President, 5 by Floor leaders, 5 by others. 6 majority and minority party members. 3 public members. The commission prepares a plan and submits it to the legislature which may adopt the commission's plan or one of its own. If the legislature cannot agree on a plan, the Supreme Judicial Court must redistrict.

CONGRESSIONAL DISTRICTS: Legislature

STAFF CONTACT

Erland B. Hardy
Legislative Attorney
Legislative Research Office
State House
Augusta, ME 04333
(207) 289-2101

CRITERIA FOR STATE LEGISLATIVE APPORTIONMENT

DATE: 1983 - Submission of plan within 90 days after convening of Legislature

POPULATION: Federal census

POPULATION GROUPS EXCLUDED: Non-U.S. Citizens

SMALLEST UNIT OF POPULATION: Unknown

CENSUS AND PRECINCT BOUNDARIES COTERMINOUS: Unknown

OTHER CRITERIA FOR DRAWING DISTRICTS: Contiguous, compactness

DEVIATION: Unknown

TYPE OF DISTRICT: Senate - single member; House - single member multimember. Expect all House districts to be single after 1980

HOUSE AND SENATE DISTRICT WITH COTERMINOUS BOUNDARIES: No

MAINE

SENATORS ELECTED IN STAGGERED TERMS: No

VOTING RIGHTS STATE: No

NEW OR REVISED DISTRICTS BEFORE 1990: Unknown

COMPUTER ASSISTANCE FOR APPORTIONMENT

Unknown

COURT WITH ORIGINAL JURISDICTION

State Supreme Judicial Court

STATUTORY CITATION OF MOST RECENT REAPPORTIONMENT

CURRENT LITIGATION

CASE NAME	CASE NUMBER
None	

DISTRICT MAPS

MARYLAND

REAPPORTIONMENT PROFILE

CONSTITUTIONAL PROVISIONS

Article III, Sections 4, 5

REAPPORTIONMENT MECHANISM

STATE LEGISLATIVE DISTRICTS: Governor/Legislature

Senate Constitutional and Public Law Committee	House Constitutional and Administrative Law Committee
Senate Chairman Sen. Edward T. Conroy (D)	House Chairman Del. Helen L. Koss (D)

The Governor drafts a plan which he submits to the Legislature. It has 45 days to amend that plan or adopt one of its own. If it cannot act, the Governor's plan automatically becomes law.

CONGRESSIONAL DISTRICTS: Same

STAFF CONTACT

John O'Brien Executive Assistant Governor's Office State House Annapolis, MD 21401 (301) 269-2606	Donovan Peeters Legislative Analyst Senate Constitutional and Public Law Committee Room 400, James Office Building Annapolis, MD 21401 (301) 841-3582	William G. Somerville Legislative Analyst House Constitutional and Administrative Law Committee Room 141, House Office Building Annapolis, MD 21401 (301) 841-3502

CRITERIA FOR STATE LEGISLATIVE APPORTIONMENT

DATE: 1982; 45th day of the Legislative session in the second year following the census

POPULATION: Federal census

POPULATION GROUPS EXCLUDED: No

SMALLEST UNIT OF POPULATION: Unknown

CENSUS AND PRECINCT BOUNDARIES COTERMINOUS: No

OTHER CRITERIA FOR DRAWING DISTRICTS: Compactness, natural and political boundaries

Maryland

DEVIATION: Unknown

TYPE OF DISTRICT: Senate - single member; House - single member, multimember

HOUSE AND SENATE DISTRICT WITH COTERMINOUS BOUNDARIES: Yes

SENATORS ELECTED IN STAGGERED TERMS: No

VOTING RIGHTS STATE: No

NEW OR REVISED DISTRICTS BEFORE 1990: No

COMPUTER ASSISTANCE FOR APPORTIONMENT

Yes - State General Assembly Data Processing; Department of State Planning; University of Maryland

COURT WITH ORIGINAL JURISDICTION

State Court of Appeals

STATUTORY CITATION OF MOST RECENT REAPPORTIONMENT

CURRENT LITIGATION

CASE NAME	CASE NUMBER
None	

DISTRICT MAPS

MISSISSIPPI

REAPPORTIONMENT PROFILE

CONSTITUTIONAL PROVISIONS

Article 13, Section 254

REAPPORTIONMENT MECHANISM

STATE LEGISLATIVE DISTRICTS: Legislature/Reapportionment Commission

Standing Joint Legislative Committee on Reapportionment

Vice-Chairman	Chairman
Sen. William Thomas Harpole (D)	Rep. Thomas H. Campbell, III (D)

Reapportionment Commission

5 member commission consisting of the Chief Justice of the Supreme Court, Chairman; Attorney General; Secretary of State; Speaker of House of Representatives; President Pro Tempore of the Senate.

CONGRESSIONAL DISTRICTS: Legislature

STAFF CONTACT

Larry Richardson
Director
Legislative Reference Bureau
P. O. Box 1040
Jackson, MS 39205
(601) 354-6165

CRITERIA FOR STATE LEGISLATIVE APPORTIONMENT

DATE: 1982 - Adjournment date of the regular session of the Legislature in the second year following the 1980 census.

POPULATION: Federal census

POPULATION GROUPS EXCLUDED: None

SMALLEST UNIT OF POPULATION: Blocks

CENSUS AND PRECINCT BOUNDARIES COTERMINOUS: No

OTHER CRITERIA FOR DRAWING DISTRICTS: Compactness, race, county boundaries

DATE TO BE USED: Demographic, cartographic data

DEVIATION: 1.0% to 4.9%

TYPE OF DISTRICT: Single member

HOUSE AND SENATE DISTRICT WITH COTERMINOUS BOUNDARIES: No

MISSISSIPPI

SENATORS ELECTED IN STAGGERED TERMS: No

VOTING RIGHTS STATE: Yes

NEW OR REVISED DISTRICTS BEFORE 1990: Yes

COMPUTER ASSISTANCE FOR APPORTIONMENT

Unknown

CONSULTANT

Jerris Leonard and Associates
1700 Pennsylvania Avenue
Suite 550
Washington, D.C. 20006
(202) 872-1095

COURT WITH ORIGINAL JURISDICTION

No one court

STATUTORY CITATION OF MOST RECENT REAPPORTIONMENT

CURRENT LITIGATION

CASE NAME	CASE NUMBER
None	

DISTRICT MAPS

MISSOURI

REAPPORTIONMENT PROFILE

CONSTITUTIONAL PROVISIONS

Article III, Sections 2, 7, 45

REAPPORTIONMENT MECHANISM

STATE LEGISLATIVE DISTRICTS: Senate Reapportionment Commission; House Reapportionment Commission

Established in 1966
House Commission: 20 members, Senate Commission 10 members. All appointed by Governor. House members must be a resident of the Congressional district from which nominated. No more than one shall come from a single legislative district. Should the members of the commission not agree, a panel of 6 judges drawn from the Court of Appeals shall be selected to draw reapportionment plans.

CONGRESSIONAL DISTRICTS: Legislative

Senate Committee on Apportionment

Senate Chairman
Sen. Clarence H. Heflin (D)

Committee on Congressional Reapportionment

House Chairman
Rep. Anthony D. Ribaudo (D)

STAFF CONTACT

Frank Masters
Director
Committee on Legislative Research
Room 117A, State Capitol Building
Jefferson City, MO 65101
(314) 751-4223

Mark Reading
Project Director, Reapportionment
Office of Administration
Division of Budget and Planning
Room 129, Capitol Building
Jefferson City, MO 65101
(314) 751-2073

CRITERIA FOR STATE LEGISLATIVE APPORTIONMENT

DATE: 1981 - Commission names submitted within 60 days after certification of census. Governor must appoint within 30 days after submission of names. Report 6 months after appointment of commission.

POPULATION: Federal census

POPULATION GROUPS EXCLUDED: No

SMALLEST UNIT OF POPULATION: Commission may use any information available

CENSUS AND PRECINCT BOUNDARIES COTERMINOUS: Yes

OTHER CRITERIA FOR DRAWING DISTRICTS: Compactness, geography

DEVIATION: Unknown

MISSOURI

TYPE OF DISTRICT: Single member

HOUSE AND SENATE DISTRICT WITH COTERMINOUS BOUNDARIES: No

SENATORS ELECTED IN STAGGERED TERMS: Yes - Senators will be allowed to serve out their term

VOTING RIGHTS STATE: No

NEW OR REVISED DISTRICTS BEFORE 1990: Only if invalidated by a court

COMPUTER ASSISTANCE FOR APPORTIONMENT

Yes - open

COURT WITH ORIGINAL JURISDICTION

State Chancery Court

STATUTORY CITATION OF MOST RECENT REAPPORTIONMENT

CURRENT LITIGATION

CASE NAME	CASE NUMBER
None	

DISTRICT MAPS

NEBRASKA

REAPPORTIONMENT PROFILE

CONSTITUTIONAL PROVISIONS

Article III, Sections 5, 7

REAPPORTIONMENT MECHANISM

STATE LEGISLATIVE DISTRICTS: Legislature

Miscellaneous Subjects Committee
Chairman
Sen. Elroy Hefner
Room 2021
State Capitol
Lincoln, NE 68509

CONGRESSIONAL DISTRICTS: Same

STAFF CONTACT

Ron Bowmaster
Deputy Director of Research
Legislative Council
7th Floor, State Capitol
Lincoln, NE 68509
(402) 471-2440

CRITERIA FOR STATE LEGISLATIVE APPORTIONMENT

DATE: No specific date

POPULATION: Federal census

POPULATION GROUPS EXCLUDED: Aliens

SMALLEST UNIT OF POPULATION: Blocks; ED's

CENSUS AND PRECINCT BOUNDARIES COTERMINOUS: Yes

OTHER CRITERIA FOR DRAWING DISTRICTS: Compactness - will attempt to follow political boundaries. Separate and distinct districts, compact and contiguous, nearly as equal as may be, county lines are to be followed wherever practicable

DEVIATION: 1.0% to 4.9%

TYPE OF DISTRICT: Single member

HOUSE AND SENATE DISTRICT WITH COTERMINOUS BOUNDARIES: Unicameral legislature

SENATORS ELECTED IN STAGGERED TERMS: Yes - Senators will be allowed to serve out their term

NEBRASKA

VOTING RIGHTS STATE: No

NEW OR REVISED DISTRICTS BEFORE 1990: No

COMPUTER ASSISTANCE FOR APPORTIONMENT

Yes - State Central Data Processing

COURT WITH ORIGINAL JURISDICTION

Supreme Court

STATUTORY CITATION OF MOST RECENT REAPPORTIONMENT

Legislative: §5 - 104.07
Congressional: §5 - 101.01

CURRENT LITIGATION

CASE NAME	CASE NUMBER
None	

DISTRICT MAPS

NEVADA

REAPPORTIONMENT PROFILE

CONSTITUTIONAL PROVISIONS

Article 15, Section 13; Article 4, Section 5

REAPPORTIONMENT MECHANISM

STATE LEGISLATIVE DISTRICTS: Legislature

Senate Government Affairs Committee

Senate Chairman
Sen. James I. Gibson (D)

Assembly Elections Committee

House Chairman
Rep. Alan Glover (D)

CONGRESSIONAL DISTRICTS: One Congressman

STAFF CONTACT

Andrew P. Grose
Research Director
Legislative Counsel Bureau
Legislative Building
Carson City, NV 89710
(702) 885-5637

CRITERIA FOR EXISTING STATE LEGISLATIVE APPORTIONMENT

DATE: 1981

POPULATION: Federal census

POPULATION GROUPS EXCLUDED: None

SMALLEST UNIT OF POPULATION: Blocks; ED's

CENSUS AND PRECINCT BOUNDARIES COTERMINOUS: No

OTHER CRITERIA FOR DRAWING DISTRICTS: Compactness; geographic, county boundaries

DEVIATION: -5% to +5%. Maximum deviation spread 10%

TYPE OF DISTRICT: Senate - single member or two member; House - single member

HOUSE AND SENATE DISTRICT WITH COTERMINOUS BOUNDARIES: Yes

SENATORS ELECTED IN STAGGERED TERMS: Yes - Senators will be allowed to serve out their term

VOTING RIGHTS STATE: No

NEVADA

NEW OR REVISED DISTRICTS BEFORE 1990: Yes

COMPUTER ASSISTANCE FOR APPORTIONMENT

Yes - State Central Data Processing

COURT WITH ORIGINAL JURISDICTION

No one court

STATUTORY CITATION OF MOST RECENT REAPPORTIONMENT

N.R.S. 218.010 to 218.084 (1971, amended in 1973)

CURRENT LITIGATION

CASE NAME	CASE NUMBER
None	

DISTRICT MAPS

NEW HAMPSHIRE

REAPPORTIONMENT PROFILE

CONSTITUTIONAL PROVISIONS

Part 2, Articles 9, 9A, 11, 11A, 26, 26A

REAPPORTIONMENT MECHANISM

STATE LEGISLATIVE DISTRICTS: Legislature

House Reapportionment Committee

Chairman
Rep. Russell C. Chase (R)

CONGRESSIONAL DISTRICTS: Same

STAFF CONTACT

Donald S. Jennings
Legislative Services
Room 110, State House
Concord, NH 03301
(603) 271-3435

CRITERIA FOR STATE LEGISLATIVE APPORTIONMENT

DATE: 1981 - First legislative session following the decennial census

POPULATION: Federal census

POPULATION GROUPS EXCLUDED: Students, military personnel

SMALLEST UNIT OF POPULATION: Blocks

CENSUS AND PRECINCT BOUNDARIES COTERMINOUS: No

OTHER CRITERIA FOR DRAWING DISTRICTS: Town and city ward boundaries

DEVIATION: 1.0% to 4.9%

TYPE OF DISTRICT: Senate - single member; House - single member, multimember

HOUSE AND SENATE DISTRICT WITH COTERMINOUS BOUNDARIES: No

SENATORS ELECTED IN STAGGERED TERMS: No

VOTING RIGHTS STATE: Yes - Antrim Town; Benton Town; Millfield Township; Newington Town; Pinkhams Grant; Rindge Town; Stewartstown; Stratford Town; Unity Town

NEW OR REVISED DISTRICTS BEFORE 1990: Yes

NEW HAMPSHIRE

COMPUTER ASSISTANCE FOR APPORTIONMENT

No

COURT WITH ORIGINAL JURISDICTION

State Superior Court

STATUTORY CITATION OF MOST RECENT REAPPORTIONMENT

CURRENT LITIGATION

CASE NAME	CASE NUMBER
None	

DISTRICT MAPS

NEW JERSEY

REAPPORTIONMENT PROFILE

CONSTITUTIONAL PROVISIONS

Article IV, Sections II, III

REAPPORTIONMENT MECHANISM

STATE LEGISLATIVE DISTRICTS: Apportionment Commission

Established in 1966
10 members: 5 by Chairman, Democrat State Committee; 5 by Chairman, Republican State Committee
1 tie breaker if deadlock: Chief Justice, State Supreme Court

CONGRESSIONAL DISTRICTS: Legislature

STAFF CONTACT

Samuel A. Alito
Executive Director
Office of Legislative Services
Suite 232, State House
Trenton, NJ 08625
(609) 292-4661
292-8014

CRITERIA FOR STATE LEGISLATIVE APPORTIONMENT

DATE: Within one month of the receipt by the Governor of the census, or on or before February 1, 1981, whichever date is later (new state legislative plan certified April 13, 1981)

POPULATION: Federal census

POPULATION GROUPS EXCLUDED: None

SMALLEST UNIT OF POPULATION: Election districts (voting precincts)

CENSUS AND PRECINCT BOUNDARIES COTERMINOUS: No

OTHER CRITERIA FOR DRAWING DISTRICTS: Compactness, contiguity, political subdivisions (municipalities but not counties)

DEVIATION: 1981 - 7.7% overall range (+5.13% and -2.57%)

TYPE OF DISTRICT: Senate - single member; House - multimember (2 per Senate district)

HOUSE AND SENATE DISTRICT WITH COTERMINOUS BOUNDARIES: Yes - Senate is basis of district

NEW JERSEY

SENATORS ELECTED IN STAGGERED TERMS: No

VOTING RIGHTS STATE. No

NEW OR REVISED DISTRICTS BEFORE 1990: No

COMPUTER ASSISTANCE FOR APPORTIONMENT

None used

COURT WITH ORIGINAL JURISDICTION

State Superior Court

STATUTORY CITATION OF MOST RECENT REAPPORTIONMENT

CURRENT LITIGATION

CASE NAME	CASE NUMBER
Apportionment Commission v. U.S. Department of Commerce	Civil Action No. 81-309

The suit was filed in Federal District Court to force the Census Bureau to deliver population data to the state in order to do state legislative districting.

Apportionment Commission v. Degnan	Docket No. L2S848-80

The suit was filed in State Superior Court to allow certification of a state legislative plan that did not use final census figures for Essex County and did not comply with state constitutional language about the preservation of counties.

Welch v. Apportionment Commission	Docket No. C2911-80

The suit was filed in State Superior Court to overturn the 1981 state legislative districting plan because of excessive population deviations, political unfairness, and undue constitution of the Apportionment Commission. The plan was upheld.

DISTRICT MAPS

Available from The Council of State Governments or the Office of Legislative Services, Division of Legislative Information and Research.

NEW MEXICO

REAPPORTIONMENT PROFILE

CONSTITUTIONAL PROVISIONS

Article 4, Section 3

REAPPORTIONMENT MECHANISM

STATE LEGISLATIVE DISTRICTS: Legislature

CONGRESSIONAL DISTRICTS: Same

STAFF CONTACT

Mercedes G. Romero
Senior Research Assistant
New Mexico Legislative Council Service
334 State Capitol
Santa Fe, NM 87503
(505) 827-3141

CRITERIA FOR STATE LEGISLATIVE APPORTIONMENT

DATE: 1981 - Once every 10 years following the availability of census counts

POPULATION: Federal census

POPULATION GROUPS EXCLUDED: None

SMALLEST UNIT OF POPULATION: Voting precincts

CENSUS AND PRECINCT BOUNDARIES COTERMINOUS: No

OTHER CRITERIA FOR DRAWING DISTRICTS: Compactness

DEVIATION: 1.0% to 4.9%

TYPE OF DISTRICT: Single member

HOUSE AND SENATE DISTRICT WITH COTERMINOUS BOUNDARIES: No

SENATORS ELECTED IN STAGGERED TERMS: Yes - may change with reapportionment

VOTING RIGHTS STATE: No

NEW OR REVISED DISTRICT LINES BEFORE 1990: Unknown

NEW MEXICO

COMPUTER ASSISTANCE FOR APPORTIONMENT

New Mexico Republican Party - Rose Institute
Claremont, California

COURT WITH ORIGINAL JURISDICTION

No one court

STATUTORY CITATION OF MOST RECENT REAPPORTIONMENT

CURRENT LITIGATION

CASE NAME	CASE NUMBER
None	

DISTRICT MAPS

NORTH CAROLINA

REAPPORTIONMENT PROFILE

CONSTITUTIONAL PROVISIONS

Article II, Sections 3, 5

REAPPORTIONMENT MECHANISM

STATE LEGISLATIVE DISTRICTS: Legislature

Senate Redistricting Committee	House Legislative Redistricting Committee
Senate Chairman Sen. Marshall A. Rauch (D)	House Co-Chairman Rep. Robert A. Jones (D) Rep. Daniel T. Lilley (D)

CONGRESSIONAL DISTRICTS: Legislature

Senate Congressional Redistricting Committee	House Congressional Redistricting Committee
Senate Chairman Sen. Helen R. Marvin (D)	House Chairman Rep. J. P. Huskins (D)

STAFF CONTACT

John L. Allen, Jr.
Legislative Services Officer
Legislative Services Office
2129 State Legislative Building
Raleigh, NC 27611
(919) 733-7044

CRITERIA FOR STATE LEGISLATIVE APPORTIONMENT

DATE: 1981 - First regular session following release of census counts

POPULATION: Federal census

POPULATION GROUPS EXCLUDED: No

SMALLEST UNIT OF POPULATION: Counties

CENSUS AND PRECINCT BOUNDARIES COTERMINOUS: No

OTHER CRITERIA FOR DRAWING DISTRICTS: Compactness; contiguity of counties

DEVIATION: Unknown

TYPE OF DISTRICT: Single member/multimember

HOUSE AND SENATE DISTRICT WITH COTERMINOUS BOUNDARIES: No

NORTH CAROLINA

SENATORS ELECTED IN STAGGERED TERMS: No

VOTING RIGHTS STATE: Yes: Anson, Beaufort, Bertie, Bladen, Camden Caswell, Chowan, Cleveland, Craven, Cumberland, Edgecombe, Franklin, Gaston, Gates, Granville, Greene, Guilford, Halifax, Harnett, Hertford, Hoke, Jackson, Lee, Lenoir, Martin, Nash, Northampton, Onslow, Pasquotank, Perquimans, Person, Pitts, Robeson, Rockingham, Scotland, Union, Vance, Washington, Wayne, Wilson Counties

NEW OR REVISED REDISTRICTING BEFORE 1990: No

COMPUTER ASSISTANCE FOR APPORTIONMENT

Yes - Open

COURT WITH ORIGINAL JURISDICTION

Superior Court Division of the General Court of Justice

STATUTORY CITATION OF MOST RECENT REAPPORTIONMENT

CURRENT LITIGATION

CASE NAME	CASE NUMBER
None	

DISTRICT MAPS

NORTH DAKOTA

REAPPORTIONMENT PROFILE

CONSTITUTIONAL PROVISIONS

Article II, Section 29, 35
(Section 29, 35 ruled invalid in Paulson v. Meier, 232 F. Supp 183)

REAPPORTIONMENT MECHANISM

STATE LEGISLATIVE DISTRICTS: Legislature

Joint Legislative Rule 305 - creates a joint standing committee on reapportionment. Membership of the committee has not yet been established.

CONGRESSIONAL DISTRICTS: One Congressman

STAFF CONTACT

John A. Graham
Director
Legislative Council
State Capitol
Bismarck, ND 58505
(701) 224-2916

CRITERIA FOR STATE LEGISLATIVE APPORTIONMENT

DATE: 1981 - no specific deadline

POPULATION: Federal census

POPULATION GROUPS EXCLUDED: No

SMALLEST UNIT OF POPULATION: Blocks

CENSUS AND PRECINCT BOUNDARIES COTERMINOUS: No

OTHER CRITERIA FOR DRAWING DISTRICTS: Compactness, geography

DEVIATION: North Dakota CC § 54-03-01.5: "The total population variance of all districts and subdistricts if created from the average district population may not exceed recognized constitutional limitations."

TYPE OF DISTRICT: Senate - single member, multimember
House - multimember

HOUSE AND SENATE DISTRICT WITH COTERMINOUS BOUNDARIES: Yes - Senate

SENATORS ELECTED IN STAGGERED TERMS: Yes - Senators will be required to run for reelection if district boundaries change

NORTH DAKOTA

VOTING RIGHTS STATE: No

NEW OR REVISED DISTRICTS BEOFRE 1990: No

COMPUTER ASSISTANCE FOR APPORTIONMENT

Yes - Bureau of Governmental Affairs, University of North Dakota
Lloyd B. Omdahl, Director

COURT WITH ORIGINAL JURISDICTION

North Dakota Supreme Court

STATUTORY CITATION OF MOST RECENT REAPPORTIONMENT

CURRENT LITIGATION

CASE NAME	CASE NUMBER
None	

DISTRICT MAPS

OHIO

REAPPORTIONMENT PROFILE

CONSTITUTIONAL PROVISIONS

Article XI, Sections 1-15

REAPPORTIONMENT MECHANISM

STATE LEGISLATIVE DISTRICTS: Ohio Apportionment Board

Established in 1967
5 members; Governor, Secretary of State, Auditor of State, one person chosen jointly by the Speaker of the House and the head of his political party in the Senate, and one person chosen jointly by the leader of the other major political party in the House and Senate.

CONGRESSIONAL DISTRICTS: Legislature

Senate Elections, Financial Institutions and Insurance Committee

Senate Chairman
Sen. Paul R. Matia (R)

House Elections Committee

House Chairman
Rep. Terry M. Tranter (D)

STAFF CONTACT

Edith S. Woodward
Library Administrator
Ohio Legislative Service Commission
State House
Columbus, OH 43215
(614) 466-5312

Jack L. Noragon
Senior Research Associate
Ohio Legislative Service Commission
State House
Columbus, OH 43215
(614) 466-4389

CRITERIA FOR STATE LEGISLATIVE APPORTIONMENT

DATE: October 5, 1981

POPULATION: Federal census

POPULATION GROUPS EXCLUDED: None

SMALLEST UNIT OF POPULATION: Census blocks

CENSUS AND PRECINCT BOUNDARIES COTERMINOUS: No

OTHER CRITERIA FOR DRAWING DISTRICTS: Equal population, compactness, contiguity of political subdivisions, boundaries

DEVIATION: 10%

TYPE OF DISTRICT: Single member

HOUSE AND SENATE DISTRICT WITH COTERMINOUS BOUNDARIES: Yes - 3 house districts per senate district

OHIO

SENATORS ELECTED IN STAGGERED TERMS: Yes - Senators will be allowed to serve out their term

VOTING RIGHTS STATE: No

NEW OR REVISED DISTRICTS BEFORE 1990: No

COMPUTER ASSISTANCE FOR APPORTIONMENT

Yes - State Computer available; Republicans have employed Market Opinion Research, Inc., Detroit, Michigan. Democrats have employed Decision Research Corp., Cleveland, Ohio.

COURT WITH ORIGINAL JURISDICTION

Ohio Supreme Court

STATUTORY CITATION OF MOST RECENT REAPPORTIONMENT

None: law merely requires that the plan of the Apportionment Board be published.

CURRENT LITIGATION

CASE NAME	CASE NUMBER
None	

DISTRICT MAPS

PENNSYLVANIA

REAPPORTIONMENT PROFILE

CONSTITUTIONAL PROVISIONS

Article 2, Section 17

REAPPORTIONMENT MECHANISM

STATE LEGISLATIVE DISTRICTS: Legislative Reapportionment Commission

Established in 1968
5 members: House majority and minority leaders or appointed deputies; Senate majority or minority leaders or appointed deputies. The four members select the fifth member, a citizen of the commonwealth other than a local, state or federal official holding an office to which compensation is attached.

CONGRESSIONAL DISTRICTS: Legislature

STAFF CONTACT

Vincent W. Raba
Assistant Director
Joint State Government Commission
Room 108, Finance Building
Harrisburg, PA 17120
(717) 787-6617

Dr. James O. Freedman
Chairman
Legislative Reapportionment Commission
Room 217, Finance Building
Harrisburg, PA 17120
(717) 783-1222

CRITERIA FOR STATE LEGISLATIVE APPORTIONMENT

DATE: 1981 - 90 days after the commission is certified or census population is available

POPULATION: Federal census

POPULATION GROUPS EXCLUDED: None

SMALLEST UNIT OF POPULATION: Blocks

CENSUS AND PRECINCT BOUNDARIES COTERMINOUS: No

OTHER CRITERIA FOR DRAWING DISTRICTS: Compactness, geography, political boundaries, voter registration

DEVIATION: 1.0% to 4.9%; Senate - 5.0% to 9.9%

TYPE OF DISTRICT: Single member

HOUSE AND SENATE DISTRICT WITH COTERMINOUS BOUNDARIES: No

SENATORS ELECTED IN STAGGERED TERMS: Yes - Senators will be allowed to serve out their term

VOTING RIGHTS STATE: No

PENNSYLVANIA

NEW OR REVISED DISTRICTS BEFORE 1990: No

COMPUTER ASSISTANCE FOR APPORTIONMENT

State Legislative Data Processing Center/Richard E. Campbell, Director

State Legislative Data Processing Center
Main Capitol, Room 47C
Harrisburg, PA 17120
(717) 787-7358

COURT WITH ORIGINAL JURISDICTION

Pennsylvania Supreme Court

STATUTORY CITATION OF MOST RECENT REAPPORTIONMENT

CURRENT LITIGATION

CASE NAME CASE NUMBER

The Commission asked the State Supreme Court to determine when the 90 day deadline began. The Court held "... from the date the Commission receives the population data of the Commonwealth as determined by the Federal decennial census, in usuable form, (breakdown of data by precinct and ward) for the Commissions performance of its constitutional duties."

DISTRICT MAPS

SOUTH DAKOTA

REAPPORTIONMENT PROFILE

CONSTITUTIONAL PROVISIONS

Article III, Section 5

REAPPORTIONMENT MECHANISM

STATE LEGISLATIVE DISTRICTS: Legislature/Reapportionment Group

Senate State Affairs Committee	House State Affairs Committee
Senate Chairman	House Chairman
Sen. G. Homer Harding (R)	Rep. JOseph H. Barnett (R)

If the legislature is unable to redistrict, before adjourning the task falls to the Governor, Superintendent of Public Instruction, Presiding Judge of the Supreme Court, Attorney General and the Secretary of State who have 30 days to promulgate a plan.

CONGRESSIONAL DISTRICTS: One Congressman

STAFF CONTACT

Wes Tschetter
Director
Legislative Research Council
Pierre, SD 57501
(605) 773-3251

CRITERIA FOR STATE LEGISLATIVE APPORTIONMENT

DATE: April 1981 - Regular legislative session of year ending in "1". (State legislative districting plan adopted April 13, 1981).

POPULATION: Federal census

POPULATION GROUPS EXCLUDED: No

SMALLEST UNIT OF POPULATION: Townships and cities

CENSUS AND PRECINCT BOUNDARIES COTERMINOUS: No

OTHER CRITERIA FOR DRAWING DISTRICTS: Population equality, county boundaries, protection of minority voting rights, compactness, preservation of historical districting patterns, equalization as geographical size, socioeconomic considerations

DEVIATION: Unknown

TYPE OF DISTRICT: Single member, multimember

SOUTH DAKOTA

HOUSE AND SENATE DISTRICT WITH COTERMINOUS BOUNDARIES: Yes - Senate is primary district

SENATORS ELECTED IN STAGGERED TERMS: No

VOTING RIGHTS STATE: Yes - Shannon and Todd counties only

NEW OR REVISED DISTRICTS BEFORE 1990: No

COMPUTER ASSISTANCE FOR APPORTIONMENT

No

COURT WITH ORIGINAL JURISDICTION

State Supreme Court

STATUTORY CITATION OF MOST RECENT REAPPORTIONMENT

CURRENT LITIGATION

CASE NAME	CASE NUMBER
None	

DISTRICT MAPS

TEXAS

REAPPORTIONMENT PROFILE

CONSTITUTIONAL PROVISIONS

Article 3, Sections 25, 26, 26A, 28

REAPPORTIONMENT MECHANISM

STATE LEGISLATIVE DISTRICTS: Legislature/Legislative Redistricting Board of Texas

Committee of the Whole Senate
Redistricting Subcommittee

Senate Chairman
Sen. H. Tati Santiesteban (D)

House Regions, Compacts, and
Districts Committee

House Chairman
Rep. Tim Von Dohlen (D)

Established in 1948
5 members: Lt. Governor, House Speaker, Attorney General, Comptroller and the Commissioner of the General Land Office. The Board is to assemble 90 days after legislative adjournment and must promulgate a plan within 60 days.

CONGRESSIONAL DISTRICTS: Legislature

STAFF CONTACT

Robert I. Kelly
Director
Texas Legislative Council
Box 12128
Capitol
Austin, TX 78711
(512) 475-2736

Mr. Lynn Moak
Staff Director
Committee of the Whole Senate
Redistricting
Office of the Lieutenant Governor
P. O. Box 12068
Austin, TX 78711
(512) 475-3106

CRITERIA FOR STATE LEGISLATIVE APPORTIONMENT

DATE: 1981 - The first regular session after publication of the U.S. Decennial census

POPULATION: Federal census

POPULATION GROUPS EXCLUDED: No

SMALLEST UNIT OF POPULATION: Blocks

CENSUS AND PRECINCT BOUNDARIES COTERMINOUS: No

OTHER CRITERIA FOR DRAWING DISTRICTS: Compactness, race, geography

DEVIATION: Senate: 1.0% to 4.9%
House: 5.0% to 9.9%

TEXAS

TYPE OF DISTRICT: Single member

HOUSE AND SENATE DISTRICT WITH COTERMINOUS BOUNDARIES: No

SENATORS ELECTED IN STAGGERED TERMS: Yes - Senators will be required to run for reelection

VOTING RIGHTS STATE: Yes

NEW OR REVISED DISTRICTS BEFORE 1990: Yes

COMPUTER ASSISTANCE FOR APPORTIONMENT

Yes - Synercom Technology, Inc.

COURT WITH ORIGINAL JURISDICTION

No one court

STATUTORY CITATION OF MOST RECENT REAPPORTIONMENT

CURRENT LITIGATION

CASE NAME	CASE NUMBER
None	

DISTRICT MAPS

UTAH

REAPPORTIONMENT PROFILE

CONSTITUTIONAL PROVISIONS

Article IX

REAPPORTIONMENT MECHANISM

STATE LEGISLATIVE DISTRICTS: Legislature

Joint Legislative Reapportionment Committee

Senate Chairman	House Chairman
Sen. Fred W. Finlinson (R)	Rep. Merrill W. Harward (R)

CONGRESSIONAL DISTRICTS: Same

STAFF CONTACT

Richard Strong
Research Analyst
Office of Legislative Research
Room 436, State Capitol
Salt Lake City, UT 84114
(801) 533-5481

CRITERIA FOR STATE LEGISLATIVE APPORTIONMENT

DATE: 1981 - First Legislative session following the decennial census

POPULATION: Federal census

POPULATION GROUPS EXCLUDED: No

SMALLEST UNIT OF POPULATION: Block

CENSUS AND PRECINCT BOUNDARIES COTERMINOUS: No

OTHER CRITERIA FOR DRAWING DISTRICTS: Party registration, compactness, race, geography, registered voters, number of legislative districts

DEVIATION: 5.0% to 9.9%

TYPE OF DISTRICT: Single member

HOUSE AND SENATE DISTRICT WITH COTERMINOUS BOUNDARIES: No

SENATORS ELECTED IN STAGGERED TERMS: Yes - Senators will be required to run for reelection

VOTING RIGHTS STATE: No

NEW OR REVISED DISTRICTS BEFORE 1990: Yes

UTAH

COMPUTER ASSISTANCE FOR APPORTIONMENT

State Systems Planning; Wang Laboratories, Inc.

COURT WITH ORIGINAL JURISDICTION

No one court

STATUTORY CITATION OF MOST RECENT REAPPORTIONMENT

CURRENT LITIGATION

CASE NAME	CASE NUMBER
None	

DISTRICT MAPS

VERMONT

REAPPORTIONMENT PROFILE

CONSTITUTIONAL PROVISIONS

Statutory Provisions: 17 V.S.A. Chapters 33, 34, 34A; Vermont Constitution Chapter 2, Section 13, 18, 73

REAPPORTIONMENT MECHANISM

STATE LEGISLATIVE DISTRICTS: Legislative Apportionment Board/Legislature

Senate Government Operations Committee	House Government Operations Committee
Senate Chairman Sen. William T. Doyle (R)	House Chairman Rep. Cola H. Hudson (R)

CONGRESSIONAL DISTRICTS: One Congressman

STAFF CONTACT

Janet Ancel
Draftsman
Legislative Council
State House
Montpelier, VT 05602
(802) 828-2231

CRITERIA FOR STATE LEGISLATIVE APPORTIONMENT

DATE: 1981 - Advisory Board must report to Legislature by 2/1/81. House and Senate plans reported by Board to Legislature in February. Final legislative action due in 1982.

POPULATION: Federal census

POPULATION GROUPS EXCLUDED: None

SMALLEST UNIT OF POPULATION: Townships

CENSUS AND PRECINCT BOUNDARIES COTERMINOUS: No

OTHER CRITERIA FOR DRAWING DISTRICTS: Compactness, contiguity, geography, town and county lines, patterns of social interaction and trade, common interests

DEVIATION: Undetermined

TYPE OF DISTRICT: Single member; multimember

HOUSE AND SENATE DISTRICT WITH COTERMINOUS BOUNDARIES: No

SENATORS ELECTED IN STAGGERED TERMS: No

VERMONT

VOTING RIGHTS STATE: No

NEW OR REVISED DISTRICTS BEFORE 1990: Yes

COMPUTER ASSISTANCE FOR APPORTIONMENT

Yes - open

COURT WITH ORIGINAL JURISDICTION

No one court

STATUTORY CITATION OF MOST RECENT REAPPORTIONMENT

CURRENT LITIGATION

CASE NAME	CASE NUMBER
None	

DISTRICT MAPS

VIRGINIA

REAPPORTIONMENT PROFILE

CONSTITUTIONAL PROVISIONS

Article II, Section 6

REAPPORTIONMENT MECHANISM

STATE LEGISLATIVE DISTRICTS: Legislature

Senate Privileges and Elections Committee

Senate Chairman
Sen. Hunter B. Andrews (D)

House Privileges and Elections Committee

House Chairman
Del. John D. Gray (D)

CONGRESSIONAL DISTRICTS: Same

STAFF CONTACT

Jack Austin
Legislative Research Associate
Division of Legislative Services
P. O. Box 3-AG
Richmond, VA 23208
(804) 786-3591

CRITERIA FOR STATE LEGISLATIVE APPORTIONMENT

DATE: 1981 - First Legislative session following the decennial census (State legislative plan adopted April, 1981).

POPULATION: Federal census

POPULATION GROUPS EXCLUDED: None

SMALLEST UNIT OF POPULATION: Cities and parts of counties

CENSUS AND PRECINCT BOUNDARIES COTERMINOUS: Yes with a few exceptions

OTHER CRITERIA FOR DRAWING DISTRICTS: Compactness, political boundaries

DEVIATION: Senate: +4.35% and -6.3%; House: +14.67% and -14.16%

TYPE OF DISTRICT: Senate: Single member; House: Single member, multimember, flotorial

HOUSE AND SENATE DISTRICT WITH COTERMINOUS BOUNDARIES: No

SENATORS ELECTED IN STAGGERED TERMS: No

VIRGINIA

VOTING RIGHTS STATE: Yes

NEW OR REVISED DISTRICTS BEFORE 1990: No

COMPUTER ASSISTANCE FOR APPORTIONMENT

No

COURT WITH ORIGINAL JURISDICTION

No one court

STATUTORY CITATION OF MOST RECENT REAPPORTIONMENT

Code of Virginia §24.1-12.2 - House of Delagates
Code of Virginia §24.1-14.2 - Senate

CURRENT LITIGATION

CASE NAME	CASE NUMBER
None	

DISTRICT MAPS

WASHINGTON

REAPPORTIONMENT PROFILE

CONSTITUTIONAL PROVISIONS

Article 2, Section 3, 6

REAPPORTIONMENT MECHANISM

STATE LEGISLATIVE DISTRICTS: Legislature

Senate State Government Committee

Senate Chairman
Sen. Jack Metcalf (R)

House Select Committee on Redistricting

House Chairman
Rep. Bob Eberle (R)

CONGRESSIONAL DISTRICTS: Same

STAFF CONTACT

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Office of the Code Revisor
Legislative Building
Olympia, WA 98504
(206) 753-6804

Jerry Shaw
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(206) 753-1826

Loren Busch
Leslie McAllister
Research Analyst
House Select Committee on Reapportionment
House Office Building
Olympia, WA 98504
(206) 753-3158

CRITERIA FOR STATE LEGISLATIVE APPORTIONMENT

DATE: 1981 session - no specific date
(State legislative plan adopted April, 1981).

POPULATION: Federal census

POPULATION GROUPS EXCLUDED: Transient military personnel

SMALLEST UNIT OF POPULATION: Census tract

CENSUS AND PRECINCT BOUNDARIES COTERMINOUS: No

OTHER CRITERIA FOR DRAWING DISTRICTS: Party registration, compactness race, geography, voting

DEVIATION: 10.0% to 14.9%

TYPE OF DISTRICT: Senate - single member; House - single member, multimember

HOUSE AND SENATE DISTRICT WITH COTERMINOUS BOUNDARIES: Yes - Senate

SENATORS ELECTED IN STAGGERED TERMS: Yes - Senators will be allowed to serve out their terms

WASHINGTON

VOTING RIGHST STATE: No

NEW OR REVISED DISTRICTS BEFORE 1990: Yes

COMPUTER ASSISTANCE FOR APPORTIONMENT

Yes - Rose Institute software - University of Washington for hardware

COURT WITH ORIGINAL JURISDICTION

State Superior Court

STATUTORY CITATION OF MOST RECENT REAPPORTIONMENT

CURRENT LITIGATION

CASE NAME	CASE NUMBER
None	

DISTRICT MAPS

WEST VIRGINIA

REAPPORTIONMENT PROFILE

CONSTITUTIONAL PROVISIONS

Article 6, Sections 6, 7, 10

REAPPORTIONMENT MECHANISM

STATE LEGISLATIVE DISTRICTS: Legislature

Senate Select Committee on Redistricting

Senate Chairman
Sen. Ralph D. Williams (D)

House Select Committee on Redistricting

House Chairman
Del. Charles H. Damron (D)

CONGRESSIONAL DISTRICTS: Same

STAFF CONTACT

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Charleston, WV 25305
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CRITERIA FOR STATE LEGISLATIVE APPORTIONMENT

DATE: 1982 - no specific date

POPULATION: Federal census

POPULATION GROUPS EXCLUDED: None

SMALLEST UNIT OF POPULATION: Census tract

CENSUS AND PRECINCT BOUNDARIES COTERMINOUS: No

OTHER CRITERIA FOR DRAWING DISTRICTS: Compactness, geography

DEVIATION: Unknown

TYPE OF DISTRICT: Senate - multimember; House - single member, multimember

HOUSE AND SENATE DISTRICT WITH COTERMINOUS BOUNDARIES: No

SENATORS ELECTED IN STAGGERED TERMS: Yes - Senators will be allowed to serve out their terms

VOTING RIGHTS STATE: No

NEW OR REVISED DISTRICTS BEFORE 1990: No

WEST VIRGINIA

COMPUTER ASSISTANCE FOR APPORTIONMENT

No

COURT WITH ORIGINAL JURISDICTION

State Supreme Court of Appeals

STATUTORY CITATION OF MOST RECENT REAPPORTIONMENT

West Virginia Code § 1-2-2 (Senate)
§ 1-2-2 (House)
§ 1-2-3 (Congress)

CURRENT LITIGATION

CASE NAME	CASE NUMBER
None	

DISTRICT MAPS

WISCONSIN

REAPPORTIONMENT PROFILE

CONSTITUTIONAL PROVISIONS

Article IV, Sections 3-5

REAPPORTIONMENT MECHANISM

STATE LEGISLATIVE DISTRICTS: Legislature

Assembly Elections Committee

Chairperson
Rep. William B. Broydrick

Senate Special Reapportionment Committee

Chairperson
Sen. William A. Bablitch (D)

Assembly Reapportionment Committee

Co-Chairperson
Rep. William B. Broydrick (D)

Co-Chairperson
Rep. Thomas A. Hauke (D)

CONGRESSIONAL DISTRICTS: Same

STAFF CONTACT

Dr. H. Rupert Theobald
Chief
Legislative Reference Bureau
201 North, State Capitol
Madison, WI 53702
(608) 266-3561/0344

CRITERIA FOR STATE LEGISLATIVE APPORTIONMENT

DATE: 1982 - The first session after each federal enumeration (The session extends into 1982)

POPULATION: Federal census

POPULATION GROUPS EXCLUDED: None

SMALLEST UNIT OF POPULATION: Wards (precincts), blocks

CENSUS AND PRECINCT BOUNDARIES COTERMINOUS: Yes in urban areas

OTHER CRITERIA FOR DRAWING DISTRICTS: Compactness, geography, political boundaries

DEVIATION: Less than 1%

TYPE OF DISTRICT: Single member

WISCONSIN

HOUSE AND SENATE DISTRICT WITH COTERMINOUS BOUNDARIES: Yes - House

SENATORS ELECTED IN STAGGERED TERMS: Yes - Senators will be allowed to serve out their term

VOTING RIGHTS STATE: No

NEW OR REVISED DISTRICTS BEFORE 1990: No

COMPUTER ASSISTANCE FOR APPORTIONMENT

Yes - Interstate Cooperation Commission Staff

COURT WITH ORIGINAL JURISDICTION

Wisconsin Supreme Court

STATUTORY CITATION OF MOST RECENT REAPPORTIONMENT

Ch. 3, statutes - Congressional districts
Ch. 4, statutes - Assembly and Senate districts

CURRENT LITIGATION

CASE NAME	CASE NUMBER
None	

DISTRICT MAPS

WYOMING

REAPPORTIONMENT PROFILE

CONSTITUTIONAL PROVISIONS

Article 3, Sections 3, 47, 48, 49; Section 3 (part) ruled invalid

REAPPORTIONMENT MECHANISM

STATE LEGISLATIVE DISTRICTS: Legislature

Senate Corporations, Elections and Political Subdivisions Committee

Senate Chairman
Sen. Neal Stafford

House Corporations, Elections and Political Subdivisions Committee

House Chairman
Rep. Alan Stauffer

CONGRESSIONAL DISTRICTS: One Congressman

STAFF CONTACT

Gerald W. Fox
Senior Research Associate
Legislative Service Office
213 Capitol Building
Cheyenne, WY 82002
(307) 777-7881

CRITERIA FOR STATE LEGISLATIVE APPORTIONMENT

DATE: At the Legislative session next following the Federal census. (State Legislative plan adopted February, 1981).

POPULATION: Federal census

POPULATION GROUPS EXCLUDED: None

SMALLEST UNIT OF POPULATION: Counties

CENSUS AND PRECINCT BOUNDARIES COTERMINOUS: No

OTHER CRITERIA FOR DRAWING DISTRICTS: Compactness, geography, county boundaries

DEVIATION: Senate: +39.5% and -24.4%
House: +29% and -60.3%

TYPE OF DISTRICT: Single member, multimember

HOUSE AND SENATE DISTRICT WITH COTERMINOUS BOUNDARIES: Some - House

WYOMING

SENATORS ELECTED IN STAGGERED TERMS: Yes - Senators will be required to run for reelection

VOTING RIGHTS STATE: Yes - Campbell County (only)

NEW OR REVISED DISTRICTS BEFORE 1990: No

COMPUTER ASSISTANCE FOR APPORTIONMENT

No

COURT WITH ORIGINAL JURISDICTION

No one court

STATUTORY CITATION OF MOST RECENT REAPPORTIONMENT

Chapter 76 Session Laws of 1981

CURRENT LITIGATION

CASE NAME	CASE NUMBER
None	

DISTRICT MAPS

TABLE 1

CONSTITUTIONAL PROVISIONS ON LEGISLATIVE AND CONGRESSIONAL REAPPORTIONMENT

State	Constitutional Provision
Alabama	Section 197-203, Constitution of 1901
Alaska	Article VI, Sections 1-11
Arizona	No constitutional provision
Arkansas	Amendment 23, Amendment 45
California	Article IV, Section 6
Colorado	Article V, Sections 44-48
Connecticut	Article III, Section 6
Delaware	No constitutional provision
Florida	Article III, Sections 1, 15, 16
Georgia	Article III, Section II, Paragraph 1, Section II, Paragraph 1
Hawaii	Article IV
Idaho	Article 3, Sections 2, 4
Illinois	Article IV, Sections 2, 3
Indiana	Article 4, Sections 4, 5
Iowa	Article III, Section 6, 34-37, 39
Kansas	Article 10
Kentucky	Section 33
Louisiana	Article III, Section 6
Maine	Article 4, Part 3, Section 1-A
Maryland	Article III, Sections 4, 5
Massachusetts	Amendment XCII
Michigan	Article 4, Sections 2-6
Minnesota	Article IV, Section 2-3
Mississippi	Article 13, Section 254
Missouri	Article III, Sections 2, 7, 45
Montana	Article 5, Section 14
Nebraska	Article III, Sections 5, 7
Nevada	Article 15, Section 13; Article 4, Section 5 (ruled invalid)
New Hamoshire	Part 2, Articles 9, 9A, 11, 11-A, 26, 26-A
New Jersey	Article IV, Sections II, III
New Mexico	Article 4, Section 3
New York	Article III, Sections 2-5
North Carolina	Article II, Sections 3, 5
North Dakota	Article II, Section 29, 35 (ruled invalid by Paulson V. Meier)
Ohio	Article XI, Sections 1-15
Oklahoma	Article V, Section 11A-11E
Oregon	Article IV, Sections 6-7, Article 18, Section 5
Pennsylvania	Article 2, Section 17
Rhode Island	Article V, Section 1, Amendment Article XIII, XIX
South Carolina	Article III, Sections 3-6
South Dakota	Article III, Section 5
Tennessee	Article 2, Sections 4-6
Texas	Article 3, Sections 25, 26, 26A, 28
Utah	Article IX
Vermont	Chapter 2, Section 13, Section 18
Virginia	A ticle II, Section 6
Washington	Article 2, Sections 3, 6
West Virginia	Article 6, Sections 6, 7, 10
Wisconsin	Article IV, Sections 3-5
Wyoming	Article 3, Sections 3, 47, 48, 49, Section 3 (part and section 48 ruled invalid

TABLE 2a

AGENCY RESPONSIBLE FOR STATE LEGISLATIVE REAPPORTIONMENT

State	Initial Reapportionment Agency	Secondary Reapportionment Agency
Alabama	Legislature	...
Alaska	Reapportionment Board	...
Arizona	Legislature	...
Arkansas	Board of Apportionment	...
California	Legislature	...
Colorado	Colorado Reapportionment Commission	...
Connecticut	Legislature	Reapportionment Commission
Delaware	Legislature	...
Florida	Legislature	State Supreme Court
Georgia	Legislature	...
Hawaii	Reapportionment Commission	...
Idaho	Legislature	...
Illinois	Legislature	Legislative Redistricting Commission
Indiana	Legislature	...
Iowa	Legislature	Iowa Supreme Court
Kansas	Legislature	...
Kentucky	Legislature	...
Louisiana	Legislature	Louisiana Supreme Court
Maine	Advisory Commission/Legislature	Supreme Judicial Court
Maryland	Governor/Legislature	...
Massachusetts	Joint Special Committee Established to Study New Division	...
Michigan	Commission on Legislative Apportionment	...
Minnesota	Legislature	...
Mississippi	Legislature	Reapportionment Commission
Missouri	House and Senate Reapportionment Commissions	...
Montana	Montana Districting and Apportionment Commission	...
Nebraska	Legislature	...
Nevada	Legislature	...
New Hampshire	Legislature	...
New Jersey	Apportionment Commission	...
New Mexico	Legislature	...
New York	Legislature	...
North Carolina	Legislature	...
North Dakota	Legislature	...
Ohio	Ohio Apportionment Board	...
Oklahoma	Legislature	Apportionment Commission
Oregon	Legislature	Secretary of State
Pennsylvania	Legislative Reapportionment Commission	...
Rhode Island	Commission to Reapportion the General Assembly/ Legislature	...
South Carolina	Legislature	...
South Dakota	Legislature	Apportionment Group
Tennessee	Legislature	...
Texas	Legislature	Legislative Redistricting Board
Utah	Legislature	...
Vermont	Legislative Apportionment Board (Advisory)/Legislature	...
Virginia	Legislature	...
Washington	Legislature	...
West Virginia	Legislature	...
Wisconsin	Legislature	...
Wyoming	Legislature	...

TABLE 2b

AGENCY RESPONSIBLE FOR CONGRESSIONAL REAPPORTIONMENT

State	One Congressman	Legislature	Special Board
Alabama	...	*	...
Alaska	*	...	...
Arizona	...	*	...
Arkansas	...	*	...
California	...	*	...
Colorado	...	*	...
Connecticut	...	*	...
Delaware	*	...	...
Florida	...	*	...
Georgia	...	*	...
Hawaii	...	...	*
Idaho	...	*	...
Illinois	...	*	...
Indiana	...	*	...
Iowa	...	*	...
Kansas	...	*	...
Kentucky	...	*	...
Louisiana	...	*	...
Maine	...	*	...
Maryland	...	*	...
Massachusetts	...	*	...
Michigan	...	*	...
Minnesota	...	*	...
Mississippi	...	*	...
Missouri	...	*	...
Montana	...	...	*
Nebraska	...	*	...
Nevada	*	...	...
New Hampshire	...	*	...
New Jersey	...	*	...
New Mexico	...	*	...
New York	...	*	...
North Carolina	...	*	...
North Dakota	*	...	...
Ohio	...	*	...
Oklahoma	...	*	...
Oregon	...	*	...
Pennsylvania	...	*	...
Rhode Island	...	*	...
South Carolina	...	*	...
South Dakota	*	...	...
Tennessee	...	*	...
Texas	...	*	...
Utah	...	*	...
Vermont	*	...	...
Virginia	...	*	...
Washington	...	*	...
West Virginia	...	*	...
Wisconsin	...	*	...
Wyoming	*	...	...

TABLE 3a

DEADLINE DATES FOR REAPPORTIONMENT BY INITIAL APPORTIONMENT AGENCY

Date	State	Initial Reapportionment Agency	Date is Permissive	Date is Mandatory
1981				
February 1	Arkansas	B/C	...	*
	New Jersey	B/C	...	*
	Vermont-Senate	B/L	...	*
Late February/Early March	Hawaii	B/C	...	*(a)
	Utah	L	...	*(b)
	Virginia	L	...	*(b)
April 1	Alaska	B/C	...	*(c)
	Pennsylvania	B/C	...	*(c)
April 6	Oklahoma	L	...	*(b)
	Washington	L	*(b)	...
End of April	Alabama	L	...	*(b)
	Indiana	L	...	*(b)
	Nevada	L	...	*(b)
	North Dakota	L	*(b)	...
	South Dakota	L	*(b)	...
	Vermont-House	B/L	*(b)	*
End of May	Texas	L	...	*(b)
June 30	Delaware	L	...	*(b)
	Illinois	L	...	*
July 1	Oregon	L	...	*
	New Hampshire	L	...	*(b)
	North Carolina	L	...	*(b)
	South Carolina	L	*(b)	...
August 1	Connecticut	L	...	*
September 1	Iowa	L	...	*
	Michigan	B/C	...	*
September 15	California	L	*(b)	...
October 1	Missouri	B/C	...	*(a)
October 5	Ohio	B/C	...	*
December 31	Louisiana	L	...	*

TABLE 3a

(Continued)

Date	State	Initial Reapportionment Agency	Date is Permissive	Date is Mandatory
1982				
January 30	Colorado	B/C	...	*(a,c)
February	New Mexico	L	*(b)	...
	Wyoming	L	...	*(b)
March	Georgia	L	*(b)	...
	Idaho	L	*(b)	...
	Maryland	G/L	...	*(a)
	Minnesota	L	*(b)	...
	West Virginia	L	*(b)	...
	Mississippi	L	...	*(b)
April	Nebraska	L	*(b)	...
	Tennessee	L	*(b)	...
May	Rhode Island	L	...	*(b)
June	Arizona	L	*(b)	...
	Florida	L	*(b)	...
	Wisconsin	L	*(b)	...
1983				
January	Montana	B/C	...	*
April	Kentucky	L	*(b)	...
	Maine	B/L	...	*
1986				
	Massachusetts	B/C	*	...
	New York	L	*	...
1989				
	Kansas	L	...	*

Key

L	Legislature
B/C	Board or Commission
G/L	Governor and Legislature
B/L	Board and Legislature
(a)	Estimated date of mandatory deadline
(b)	Estimated or actual date of legislative adjournment
(c)	Date is contigent on receipt of census data

TABLE 3b

ANTICIPATED CRITERIA USED FOR STATE LEGISLATIVE REAPPORTIONMENT

State	Census: Federal	Census: Other	Populations Excluded: None	Populations Excluded: Student	Populations Excluded: Military	Populations Excluded: Other	Smallest Unit of Population	Census and Precinct Boundaries Coterminous
Alabama	*	...	*	...	...	...	N.A.	No
Alaska	*	...	...	...	*	...	ED's	No
Arizona	*	...	*	...	...	...	Blocks	No
Arkansas	*	...	*	...	...	...	N.A.	Yes
California	*	...	*	...	...	...	CCD's & BG	No
Colorado	*	...	*	...	...	...	N.A.	Yes
Connecticut	*	...	*	...	...	...	N.A.	Yes
Delaware	*	...	N.A.	N.A.	N.A.	N.A.	Blocks, ED's	Mostly
Florida	*	...	*	...	...	...	Voting Precinct	No
Georgia	*	...	*	...	...	...	Blocks	No
Hawaii	...	(a)	...	...	...	(b,c)	Voting Precinct	No
Idaho	*	...	N.A.	N.A.	N.A.	N.A.	Voting Precinct	Yes
Illinois	*	...	*	...	...	...	Blocks	No
Indiana	*	...	*	...	...	...	Blocks	Some
Iowa	*	...	*	...	...	...	Voting Precinct	Mostly
Kansas	...	(c)	*	...	...	...	Voting Precinct	No
Kentucky	*	...	No	...	...	...	Voting Precinct	No
Louisiana	*	...	*	...	...	...	Voting Precinct	No
Maine	*	...	...	...	...	(b)	N.A.	N.A.
Maryland	*	...	*	...	...	...	N.A.	No
Massachusetts	...	(d)	...	*	*	...	Voting Precinct	No
Michigan	*	...	*	...	...	...	Political Boundary	Yes
Minnesota	*	...	*	...	...	...	Blocks, ED's, Prec.	Yes
Mississippi	*	...	*	...	...	...	Blocks	No
Missouri	*	...	*	...	...	...	N.A.	Yes
Montana	*	...	*	...	...	...	Blocks	Yes
Nebraska	*	...	*	...	...	...	Blocks, ED's	Yes
Nevada	*	...	*	...	...	...	Block , ED's	No
New Hampshire	*	...	...	*	*	...	Blocks	No
New Jersey	*	...	*	...	...	...	Precincts	No
New Mexico	*	...	*	...	...	...	Precincts	No
New York	*	...	*	...	...	...	Blocks	No
North Carolina	*	...	*	...	...	...	Counties	No
North Dakota	*	...	*	...	...	...	Blocks	No
Ohio	*	...	*	...	...	...	Blocks	No
Oklahoma	*	...	*	...	...	...	Blocks	No
Oregon	*	...	*	...	...	...	Blocks	Unknown
Pennsylvania	*	...	*	...	...	...	Blocks	No
Rhode Island	*	...	*	...	...	...	Blocks	Mostly
South Carolina	*	...	*	...	...	...	Blocks	Mostly
South Dakota	*	...	*	...	...	...	ED's	No
Tennessee	*	...	*	...	...	...	Voting Precinct	No
Texas	*	...	*	...	...	...	Blocks	No
Utah	*	...	*	...	...	...	Blocks	No
Vermont	*	(e)	N.A.	N.A.	N.A.	N.A.	Townships	No
Virginia	*	...	*	...	...	...	Blocks	Mostly
Washington	*	...	...	...	*	...	Census Tracts	No
West Virginia	*	...	*	...	...	...	Census Tracts	No
Wisconsin	*	...	*	...	...	...	Precincts (Wards)	Yes
Wyoming	*	...	*	...	...	...	ED's	No

Key: N.A. = Not available or not yet determined

(a) Number of voters registered in the last preceding general election

(b) Non-U.S. citizen

(c) Non-registered voters

(d) State census

(e) The House of Representatives is apportioned on number "legal voters"

TABLE 3c

ANTICIPATED CRITERIA USED FOR STATE LEGISLATIVE REAPPORTIONMENT

State	Party Registration	Compact & Contiguous Districts	Race or Ethnic Characteristics	Geography	Voting Age	Other
Alabama	N.A.	N.A.	N.A.	N.A.	N.A.	N.A.
Alaska	N.A.	N.A.	N.A.	N.A.	N.A.	N.A.
Arizona	...	*	*	*	...	...
Arkansas	N.A.	N.A.	N.A.	N.A.	N.A.	N.A.
California	*	*	*	*	...	...
Colorado	...	*	*	*	...	Political Boundaries Community of Interest
Connecticut	N.A.	N.A.	N.A.	N.A.	N.A.	N.A.
Delaware	...	*	...	*	...	...
Florida	...	...	...	*	...	Political Boundaries
Georgia	...	*	*	*	...	Political Boundaries
Hawaii	...	*	...	*	...	Socio Economic Factors
Idaho	...	*	...	*	...	...
Illinois	*	*	...	*	...	...
Indiana	*	*	...	*	...	...
Iowa	...	*	...	...	...	Political Boundaries
Kansas	...	*	...	*	...	...
Kentucky	...	*	...	...	...	...
Louisiana	...	*	*	*	...	...
Maine	N.A.	N.A.	N.A.	N.A.	N.A.	N.A.
Maryland	...	*	...	*	...	Political & Natural Boundaries
Massachusetts	...	*	*	*	...	...
Michigan	...	*	...	*	...	Political Boundaries
Minnesota	...	*	...	...	...	...
Mississippi	...	*	*	...	...	County Boundaries
Missouri	...	*	...	*	...	...
Montana	...	*	*	*	...	Political Boundaries
Nebraska	...	*	...	...	...	Political Boundaries
Nevada	...	*	...	*	...	County Boundaries
New Hampshire	...	....	...	...	...	Town & City Ward Boundaries
New Jersey	...	*	...	...	...	Political Subdivisions
New Mexico	...	*	...	...	...	...
New York	N.A.	N.A.	N.A.	N.A.	N.A.	N.A.
North Carolina	...	*	...	...	...	County Boundaries
North Dakota	...	*	...	*	...	...
Ohio	...	*	...	*	...	Political Boundaries
Oklahoma	N.A.	N.A.	N.A.	N.A.	N.A.	N.A.
Oregon	...	*	*	*	...	Community of Interest
Pennsylvania	*	*	...	*	...	Political Boundaries
Rhode Island	N.A.	N.A.	N.A.	N.A.	N.A.	N.A.
South Carolina	...	*	*	*	*	...
South Dakota	...	*	...	...	...	County Boundaries
Tennessee	...	...	...	*	...	Political Boundaries
Texas	...	*	*	*	...	...
Utah	*	*	*	*	*	...
Vermont	...	*	...	*	*	County Lines
Virginia	...	*	...	...	...	...
Washington	*	*	*	*	*	...
West Virginia	...	*	...	*	...	...
Wisconsin	...	*	...	*	...	Political Boundaries
Wyoming	...	*	...	*	...	County Boundaries

Key:

N.A. - not available or not yet determined

CSG Reapportionment Information Service

March, 1981

TABLE 3d

PERCENT OF ANTICIPATED DEVIATION TO BE USED FOR DISTRICTS

Less than 1.0%	1.0% to 4.9%	5.0% to 9.9%	10.0% to 14.9%	15.0% or more	Undetermined
Arizona	Colorado	Georgia	Idaho	Wyoming	Alabama
California	Illinois	Kansas*	Massachusetts - House		Alaska
Florida	Indiana	Kentucky	Washington		Arkansas
Michigan	Iowa	Louisiana	West Virginia		Connecticut
Oklahoma	Massachusetts - Senate	Nevada			Delaware
	Mississippi	North Carolina			Hawaii
	Nebraska	North Dakota			Maine
	New Hampshire	Pennsylvania - Senate			Maryland
	New Mexico	South Carolina			Minnesota
	Ohio	Texas - House			Missouri
	Pennsylvania	Utah			Montana
	South Dakota	Wisconsin			New Jersey
	Tennessee				New York
	Texas - Senate				Oregon
					Rhode Island
					Vermont
					Virginia

* Next reapportionment to be held in 1989

TABLE 3e

TYPES OF DISTRICTS

State	SENATE Number of Seats	SENATE Number of Districts	SENATE Number of Multi-Member Districts	SENATE Largest Number of Seats in District	HOUSE Number of Seats	HOUSE Number of Districts	HOUSE Number of Multi-Member Districts	HOUSE Largest Number of Seats in District	House and Senate District Boundaries Coterminous
Alabama	35	35	0	1	105	105	0	1	Yes
Alaska	20	16	3	3	40	22	10	6	N.A.
Arizona	30	30	0	1	60	30	30	2	Yes
Arkansas	35	35	0	1	100	84	10	3	No
California	40	40	0	1	80	80	0	1	No
Colorado	35	35	0	1	65	65	0	1	No
Connecticut ...	36	36	0	1	151	151	0	1	N.A.
Delaware	21	21	0	1	41	41	0	1	No
Florida	40	19	14	3	120	45	21	6	No
Georgia	56	56	0	1	180	154	17	4	No
Hawaii.....	25	9	7	4	51	27	22	3	No
Idaho	35	35	0	1	70	35	35	2	Yes
Illinois	59	59	0	1	118	59	59	2	Yes
Indiana	50	50	0	1	100	73	20	3	No
Iowa	50	50	0	1	100	100	0	1	Yes
Kansas	40	40	0	1	125	125	0	1	No
Kentucky	38	38	0	1	100	100	0	1	No
Louisiana	39	39	0	1	105	105	0	1	No
Maine	33	33	0	1	151	119	11	10	No
Maryland	47	47	0	1	141	47	47	3	Yes
Massachusetts .	40	40	0	1	160	160	0	1	No
Michigan	38	38	0	1	110	110	0	1	Yes
Minnesota	67	67	0		134	134	0	1	Yes
Mississippi....	52	52	0		122	122	0	1	No
Missouri	34	34	0	1	163	163	0	1	No
Montana	50	50	0	1	100	100	0	1	Yes
Nebraska	49	49	0	1	Unicameral				
Nevada	20	10	3	7	40	40	0	1	No
New Hampshire .	24	24	0	1	400	161	127	11	No
New Jersey	40	40	0	1	80	40	40	2	Yes
New Mexico	42	42	0	1	70	70	0	1	No
New York	60	60	0	1	150	150	0	1	No
North Carolina.	50	27	18	4	120	45	35	8	No
North Dakota ..	50	49	1	2	100	49	49	4	Yes
Ohio	33	33	0	1	99	99	0	1	Yes
Oklahoma	48	48	0	1	101	101	0	1	No
Oregon	30	30	0	1	60	60	0	1	Yes
Pennsylvania ..	50	50	0	1	203	203	0	1	No
Rhode Island ..	50	50	0	1	100	100	0	1	No
South Carolina.	46	16	13	5	124	124	0	1	No
South Dakota ..	35	28	3	5	70	28	28	10	Yes
Tennessee	33	33	0	1	99	99	0	1	No
Texas	31	31	0	1	150	150	0	1	No
Utah	29	29	0	1	75	75	0	1	No
Vermont	30	13	11	6	150	72	39	15	No
Virginia	40	38	1	3	100	52	28	7	No
Washington	49	49	0	1	98	49	49	2	Yes
West Virginia..	34	17	17	2	100	36	25	13	No
Wisconsin	33	33	0	1	99	99	0	1	Yes
Wyoming	30	16	9	5	62	23	12	11	No

TABLE 3f

STATES WITH MULTIMEMBER DISTRICTS

Senate	Legislators Must Run From Enumerated Seats	House	Legislators Must Run From Enumerated Seats
Alaska	No	Alaska	No
...		Arizona (x2)	No
...		Arkansas	Yes
Florica	Yes	Florida	Yes
...		Georgia	Yes
Hawaii	No	Hawaii	No
...		Idano (x2)	Yes
...		Indiana	No
...		Maine	Yes
...		Maryland	No
Nevaca	No	...	
...		New Hampshire	No
...		New Jersey (x2)	No
North Carolina	No	North Carolina	No
South Carolina	Yes	...	
South Dakota	No	South Dakota	No
Vermont	No	Vermont	No
Virginia	No	Virginia	No
...		Washington (x2)	Yes
West Virginia	No	West Virginia	No
Wyoming	No	Wyoming	No

TABLE 3g

EFFECT OF REAPPORTIONMENT ON TERMS OF SENATORS

State	All Senators Elected at Same Time	Senators Elected in Staggered Terms	Senators Will be Required to Run for Reelection	Senators Will be Allowed to Serve Out Term
Alabama.....	*	...	...	...
Alaska	...	*	*	...
Arizona	*	...	...	...
Arkansas	...	*	*	...
California	...	*	...	*
Colorado.....	...	*	...	*
Connecticut....	*	...	...	...
Delaware.....	...	*	*	...
Florida	...	*	*	...
Georgia	*	...	...	...
Hawaii.....	...	*	...	*
Idaho .....[1]	*	...	...	...
Illinois	...	*(a)	...	...
Indiana	...	*	...	N.A.
Iowa	...	*	...	*(b)
Kansas	*	...	...	...
Kentucky	...	*	...	*
Louisiana	*	...	...	...
Maine	*	...	...	...
Maryland	*	...	...	...
Massachusetts..	*	...	...	...
Michigan	*	...	...	...
Minnesota.....	*	...	...	...
Mississippi....	*	...	...	...
Missouri	...	*	...	*
Montana	...	*(c)	*	...
Nebraska	...	*	...	*
Nevada	...	*	*	...
New Hampshire..	*	...	...	...
New Jersey	*	...	...	...
New Mexico ...,	...	*	*	...
New York .....,	*	...	...	...
North Carolina.	*	...	...	...
North Dakota ..	...	*	*	...
Ohio .....,	...	*	...	*
Oklahoma	...	*	...	*
Oregon	...	*	...	*
Pennsylvania ..	...	*	...	*
Rhode Island ..	*	...	...	...
South Carolina.	*	...	...	...
South Dakota ..	*	...	...	...
Tennessee	...	*	...	*
Texas .....,	...	*	*	...
Utah	...	*	*	...
Vermont	*	...	...	...
Virginia	*	...	...	...
Washington	...	*	...	*
West Virginia ,	...	*	...	*
Wisconsin .....,	...	*	...	*
Wyoming	...	*	*	...

Key: N.A. - not available or not yet determined
(a) - all terms end in 1983
(b) - unless 2 or more incumbents are placed in same district
(c) - after each reapportionment, lots will be drawn for 1 the senators to serve an initial 2-year term. Subsequent elections will be for 4-year terms.

TABLE 3h

JURISDICTIONS COVERED UNDER SECTION 5 OF THE VOTING RIGHTS ACT

State	Coverage	Date Covered
Alabama.....	Statewide	November 1, 1964
Alaska.....	Statewide	November 1, 1972
Arizona.....	Statewide	November 1, 1972
California.....	Kings County	November 1, 1972
	Merced County	November 1, 1972
	Monterey County	November 1, 1968
	Yuba County	November 1, 1968
Colorado.....	El Paso County	November 1, 1972
Connecticut ...	Groton Town	November 1, 1968
	Mansfield Town	November 1, 1968
	Southbury Town	November 1, 1968
Florida.....	Collier County	November 1, 1972
	Hardee County	November 1, 1972
	Hendry County	November 1, 1972
	Hillsborough County	November 1, 1972
	Monroe County	November 1, 1972
Georgia.....	Statewide	November 1, 1964
Hawaii.....	Honolulu County	November 1, 1964
Idaho.....	Elmore County	November 1, 1968
Louisiana.....	Statewide	November 1, 1964
Massachusetts..	Amherst Town	November 1, 1968
	Ayer Town	November 1, 1968
	Belchertown	November 1, 1968
	Bourne Town	November 1, 1968
	Harvard Town	November 1, 1968
	Sandwich Town	November 1, 1968
	Shirley Town	November 1, 1968
	Sunderland Town	November 1, 1968
	Wrentham Town	November 1, 1968
Michigan.....	Buena Vista Township	November 1, 1972
	Clyde Township	November 1, 1972
Mississippi....	Statewide	November 1, 1964
New Hampshire..	Antrim Town	November 1, 1968
	Benton Town	November 1, 1968
	Millsfield Township	November 1, 1968
	Newington Town	November 1, 1968
	Pinkhams Grant	November 1, 1968
	Ridge Town	November 1, 1968
	Stewartstown	November 1, 1968
	Stratford Town	November 1, 1968
	Unity Town	November 1, 1968
New York.....	Bronx County	November 1, 1968
	Kings County	November 1, 1968
	New York County	November 1, 1968
North Carolina..	Anson County	November 1, 1964
	Beaufort County	November 1, 1964
	Bertie County	November 1, 1964
	Bladen County	November 1, 1964
	Camden County	November 1, 1964
	Caswell County	November 1, 1964
	Chowan County	November 1, 1964
	Cleveland County	November 1, 1964
	Craven County	November 1, 1964
	Cumberland County	November 1, 1964
	Edgecombe County	November 1, 1964
	Franklin County	November 1, 1964
	Gaston County	November 1, 1964
	Gates County	November 1, 1964
	Granville County	November 1, 1964
	Greene County	November 1, 1964
	Guilford County	November 1, 1964
	Halifax County	November 1, 1964
	Harnett County	November 1, 1964
	Hertford County	November 1, 1964
	Hoke County	November 1, 1964
	Jackson County	November 1, 1964
	Lee County	November 1, 1964
	Lenoir County	November 1, 1964
	Martin County	November 1, 1964
	Nash County	November 1, 1964
	Northampton County	November 1, 1964
	Onslow County	November 1, 1964
	Pasquotank County	November 1, 1964
	Perquimans County	November 1, 1964
	Person County	November 1, 1964
	Pitt County	November 1, 1964
	Robeson County	November 1, 1964
	Rockingham County	November 1, 1964
	Scotland County	November 1, 1964
	Union County	November 1, 1964
	Vance County	November 1, 1964
	Washington County	November 1, 1964
	Wayne County	November 1, 1964
	Wilson County	November 1, 1964
South Carolina..	Statewide	November 1, 1964
South Dakota....	Shannon County	November 1, 1972
	Todd County	November 1, 1972
Texas.....	Statewide	November 1, 1964
Virginia.....	Statewide	November 1, 1964
Wyoming	Campbell County	November 1, 1968

TABLE 4

LEGISLATIVE REAPPORTIONMENT DATA PROCESSING ASSISTANCE

State	Data Processing Assistance	Computer Graphics
Alabama	Yes - University of Alabama	...
Alaska	Yes - Open	...
Arizona	Yes - Datapol, Phoenix, Arizona	...
Arkansas	Yes - University of Arkansas, Industrial Research & Extension Center	*
California	Yes - Open	...
Colorado	Yes - State Computer System	...
Connecticut	Yes - Market Opinion Research	...
Delaware	Yes - Unknown	...
Florida	Yes - Legislative Data Processing Center	*
Georgia	Yes - Institute of Government, University of Georgia	...
Hawaii	Unknown	...
Idaho	No	...
Illinois	Yes - Open	...
Indiana	Yes - Open	*
Iowa	Yes - Prof. John Lilttschwager, University of Iowa	...
Kansas	No	...
Kentucky	Yes - State Data Processing	...
Louisiana	Yes - State Planning Office	...
Maine	Unknown	...
Maryland	Yes - Open	...
Massachusetts	No	...
Michigan	Yes - Open	...
Minnesota	Yes - APT	...
Mississippi	Unknown	...
Missouri	Yes - Open	...
Montana	Unknown	*
Nebraska	Yes - State Central Data Processing	...
Nevada	Yes - State Central Data Processing	*
New Hampshire	No	...
New Jersey	Yes - Open	...
New Mexico	No	...
New York	Yes - Legislative Advisory Task Force on Reapportionment	*
North Carolina	Yes - Open	...
North Dakota	Yes - Open	...
Ohio	Yes - Open	...
Oklahoma	Yes - State Data Processing	...
Oregon	Yes - State Data Processing	*
Pennsylvania	Yes - State Legislative Data Processing Center	...
Rhode Island	Unknown	...
South Carolina	Yes - State Data Processing	...
South Dakota	No	...
Tennessee	No	...
Texas	Yes - Synercom Technology, Inc.	...
Utah	Yes - State Systems Planning; Wang Laboratories, Inc.	*
Vermont	Yes - Open	...
Virginia	No	...
Washington	Yes - Open	...
West Virginia	No	...
Wisconsin	No	...
Wyoming	No	...

A LEGAL VIEW OF REAPPORTIONMENT
A Cronology of Supreme Court Reapportionment and Voting Rights Decisions

CITY OF ROME vs. UNITED STATES, 64 L Ed 2nd 119, 100 S Ct. 1548 (1980) (GA - Local)

Voting Rights Act

Sec. 5 of the Voting Rights Act was not unconstitutional as exceeding Congress' power under the Fifteenth Amendment by prohibiting voting changes that have only a discriminatory effect; the Act, instead, being an appropriate means for carrying out Congress' power, under Sec. 2 of the Fifteenth Amendment to enforce the Amendment's Command that the right of United States citizens to vote shall not be denied or abridged on account of race, and the Act being consonant with all provisions of the Constitution.

CITY OF MOBILE vs. BOLDEN, 64 L Ed 2nd 47, 100 S. Ct. 1491 (1980) (AL - Local).

The city's at-large electoral system for city commissioners did not violate 14th and 15th Amendments and did not warrant replacing with a mayor council government.

Voting Rights Act

1. Since Negroes in the city registered and voted without hinderance, the court erred in holding that the 15th Amendment was violated by the at-large voting practice, since the 15th Amendment does not entail the right to have Negro candidates elected, but prohibits only purposefully discriminatory denial or abridgement by the government of the freedom to vote on account of race, color, or previous condition of servitude.

2. The courts below had erred in ruling that the 14th Amendment was violated by the at-large voting practice, since there can be no violation of the 14th Amendment's equal protection clause in regard to racial discrimination in voting if there is no purposeful discrimination in voting, and the evidence in the case at bar fell short of showing that the at-large voting practice was a purposeful device to further racial discrimination.

MISSISSIPPI vs. UNITED STATES, 444 U.S. 1050 62 L Ed 2nd 739 (1980) (MS - Leg)

Voting Rights Act

The statutory plan enacted in 1978 had the impermissible effect of diluting black voting strength.

NEVETT vs. SIDES, 571 F 2nd 209 (1979) (5th Cir. 1979) (AL - Local)

U.S. Court of Appeals At-Large Elections.

CLARK vs. MARENGO COUNTY, 469 F Supp. 1150 (1979) (AL - Local)

At-Large Districts

At-large scheme for elections of members of County Commission and County Board of Education cannot be held to be per se unconstitutional.

CONNOR vs. FINCH, 469 F Supp. 693 (1979) (MS - Leg)

Legislative reapportionment promulgated. Districts were drawn using federal census population, percent variance, percent black population, percent black voting age population.

DOUGHERTY COUNTY BOARD OF EDUCATION vs. WHITE, 439 U.S. 32 (1978) (GA - Leg)

Employee required to take a leave of absence to run for state Legislature.

Voting Rights Act

Sec. 5 of the Voting Rights Act must be given the broadest possible scope, encompassing the subtle as well as the obvious forms of discrimination.

WISE vs. LIPSCOMB, 437 U.S. 535 (1978) (TX - Local).

1. When the District Court invalidated the provisions of the Dallas city charter mandating Council elections, the city had the duty to devise a substitute plan rather than to leave the matter to the District Court.

2. No reason existed why the District Court was not entitled to consider the City Council's substitute plan under the principles applicable to legislatively adopted reapportionment plans.

3. The Council's ordinance should not be regarded as a court-ordered plan subject to a level of scrutiny more stringent than required by the Constitution.

Additional Opinion - Renquist, Burger, Stewart, Powell

The case at bar did not present, and the court did not decide, the question whether the use of multimember districts for city governments was unconstitutional as diluting the voting strength of racial groups.

UNITED STATES vs. BOARD OF COMMISSIONERS OF SHEFFIELD, 435 U.S. 110 (1978) (AL - Vote)

Voting Rights Act

Sec. 5 applied to all entities having power over any aspect of the electoral process within covered jurisdictions, not only to counties or to whatever units of state government performed the function as registering voters and, therefore, Sec. 5 required the city to obtain preclearance of a voting change even though it had never conducted voter registration.

UNITED JEWISH ORGANIZATIONS OF WILLIAMSBURG, INC. vs. CAREY, 430 U.S. 144 (1977) (NY - Leg)

Voting Rights Act

The Hasidic Jewish community sued, alleging that the state's use of racial criteria and quotas in developing a redistricting plan acceptable to the U.S. Justice Department, (65% non-white population majority) violated their rights. The U.S. Supreme court upheld a dismissal of their suit.

MORRIS vs. GRESSETTE, 432 U.S. 491 (1977) (SC - Leg - Senate)

Voting Rights Act

Is the USAG's decision not to object to a covered state's proposed change in its laws, submitted for his consideration under Sec. 5, subject to judicial review?

1. When the Attorney General failed to interpose a timely objection, a federal District Court did not have jurisdiction to review the Attorney Generals' action under Sec. 5.

2. Compliance with Sec. 5 is measured solely by the absence of a timely objection by the Attorney General.

BRISCOE vs. BELL (1977), 432 US 404 (TX - Vote)

Voting Rights Act

1. Under Sec. 4(b) of the Act, judicial review of coverage determinations by the Attorney General and the director of the census was absolutely barred, the only procedure available to Texas being a "bailout" suit under Sec. 4(a) to seek termination coverage.

2. In enacting Sec. 4(b), Congress acted within its "power to enforce the fourteenth and fifteenth amendments by appropriate legislation."

CONNOR vs. FINCH (1977), 431 US 407 (MS - Leg).

Population Variance

1. The District Court's reapportionment plan under which there were maximum population deviations of 16.5% in the Senate districts and 19.3% in the House districts were unconstitutional, and such a departure from constitutional requirements was not justified as reflecting deference to the state's historic respect for the integrity of county boundaries especially where

(a) the court had failed to identify any unique features of the state political structure to support the plan's more than de minimus variations,

(b) the court had been presented with a more statistically acceptable plan which fragmented fewer county boundaries.

Voting Dilution

2. With respect to challenges of the plan impermissibly diluting Negro voting strength, the court should either draw legislative districts that would be reasonably contiguous and compact, so as to eliminate suspicions that Negro voting strength was being impermissibly diluted or explain precisely why in a particular instance such a goal could not be accomplished.

KIRKSEY vs. BOARD OF SUPERVISORS OF HINDS COUNTY, MS (1977), 54 F 2nd 139 (Court of Appeals) (MS - Local).

Redistricting plan is constitutionally impermissible as racially discriminatory if it is racially motivated gerrymander or if it perpetuates existant denial of access by racial minority to political process. The court ordered a plan of voting districts for election of county officials by single member districts.

BEER vs. UNITED STATES, 425 U.S. 130 (1976) (LA - Local)

Multimember districts

Since the two at-large city councilmanic seats, having existed since 1954, could not be reviewed in a proceeding to obtain approval for the reapportionment plan under Sec. 5 of the Voting Rights Act, the plan could not be rejected solely because it did not eliminate the two at-large seats.

Voting Rights Act

The plan did not have the effect of denying or abridging the right to vote on account of race or color under Sec. 5 since under a prior plan, none of the five councilmanic districts had a clear Negro majority of registered voters and no Negro had been elected to the City Council but, under the plan for which approval had been sought, Negroes would constitute a majority of the

CONNOR vs. WALLER, 421 U.S. 656 (1975) (MS - Leg)

Voting Rights Act

Three judge panel, sitting for the U.S. District Court for the Southern District of Mississippi, erred in ruling the Mississippi statutes reapportioning the state legislature were not legislative enactments subject to federal approval pursuant to Sec. 5 of the Voting Rights Act.

CHAPMAN vs. MEIER, 420 U.S. 1 (1975) (ND - Leg - Sen)

Population Variance

A population variance of 20.14% between the largest and smallest Senate district could not be justified on the grounds of absence of electorally victimized minorities, the state's sparse population, the division of the state by a river or the goal of observing geographical and political boundaries, since none of such factors had been explicitly shown to necessitate the substantial population deviation ...

Multimember Districts

Absent persuasive justification, a federal court's reapportionment plan for a state legislature should avoid use of multimember districts, and should ordinarily achieve the goal of population equality with little more than de minimis variation.

TAYLOR vs. MCKEITHEN, 499 F 2nd 893 (1974) (LA - Leg)

Long history and continuing vitality of wards in voting districts in New Orleans entitled ward boundaries to respect in drawing district lines.

Constitution extends equal protection of the laws to people, not to interests.

WHITE vs. REGISTER, 412 U.S. 755 (1973) (TX - Leg - House)

Population Variance

House districts of 71,597 to 78,943 or 9.9% overall deviation plan upheld.

Multimember Districts

The court invalidated the use of two large multimember districts in two metropolitan counties because the Black and Chicano communities had been "effectively excluded from participation in the Democratic primary selection process".

population in two of the five districts and a clear majority of the registered voters in one of them, making it predictable that at least one and perhaps two Negroes could be elected to City Council. An impermissible effect is created whenever a reapportionment plan has the effect of diluting existing black voting strength.

EAST CARROLL PARISH SCHOOL BOARD vs. MARSHALL, 424 U.S. 636 (1976) (LA - Local)

Multimember districts

The Supreme Court's preference for single-member districts in court ordered apportionment plans is extended to districts in a local jurisdiction. The preclearance procedures of Sec. 5 of the Voting Rights Act were not applicable when a District Court adopted a reapportionment plan submitted to it by a local legislative body that was covered by the Act.

McGILL vs. GADSDEN COUNTY COMMISSION, 535 F 2nd 277 (1976) (FL - Local) (Court of Appeals)

At Large Districts

Plaintiff failed to establish that at-large voting scheme used to elect members of County Commission diluted black voting strength.

WHITE vs. REGISTER, 422 U.S. 935 (1975) (TX - Leg). (Follow-on case to White v. Weiser.)

The Texas Legislature adopted a single member redistricting plan for the multimember districts at question subsequent to WHITE vs. REGISTER. On direct appeal, the U.S. Supreme Court vacated the District Court judgment and remanded the case for further consideration.

CITY OF RICHMOND, VIRGINIA vs. UNITED STATES, 422 U.S. 358 (1975) (VA - Local)

Voting Rights Act

The effect of annexation did not deny or abridge the Negroes' right to vote in the postannexation community, since the fairly designed ward plan afforded them representation reasonably equivalent to their political strength in the enlarged community.

Multimember Districts, Racial Discrimination

In order to sustain a claim that multimember legislative districts are being used individiously to cancel out or minimize the voting strength of racial groups, it is not enough to show that the racial group allegedly discriminated against has not had legislative seats in proportion to its voting potential. Evidence must be produced to support findings that the political processes leading to nomination and election were not equally open to participation by the group in question - that its members had less opportunity than did other residents in the district to participate in the political processes and to elect legislators of their choice.

GAFFNEY vs. CUMMINGS, 412 U.S. 735 (1973) (CT - Leg)

Population Variance

Senate 83,441 to 84,973; total 1.81%

House 19,297 to 20,870; or 7.83%.

Plan upheld.

Partisan Gerrymandering

The plan was based on a "political fairness" principle, which was designed to reflect the relative strength of the major political parties, by creating a certain number "safe" of "safe" districts for each party and a certain number of "swing" districts.

Court Holdings

Minor deviations from mathematical equality among state legislative districts are insufficient to make out a prima facie case of invidious discrimination under the Equal Protection Clause.

The population variations in this case are so minor the state need not justify them.

The principle of "political fairness" is not invidiously discriminatory.

Congressional districts are to be judged by stricter deminimus standards than are state legislative districts.

GEORGIA vs. UNITED STATES, 411 U.S. 526 (1973) (GA - Leg)

Voting Rights Act

State reapportionment plans are specifically included in Sec. 5 preclearance requirements. Despite the lack of any affirmative finding by the Attorney

General to the effect that the reapportionment plan had a racially discriminatory purpose or effect, the Attorney General had properly promulgated and applied a regulation stating that the burden of proof was on the submitting party, and that the Attorney General would refrain from objecting only if his review of the material submitted satisfied him that the proposal change did not have a racially discriminatory purpose or effect.

MAHAN vs. HOWELL, 410 U.S. 315 (1973) (VA - Leg)

Population Variance

Legislative redistricting plans are not to be judged by the more stringent standards applicable to Congressional reapportionment, but judged against Equal Protection Clause.

Some divergences from a strict population standard are constitutionally permissible with respect to the apportionment of seats in either or both houses of a bicameral state legislature, where such divergences are based on legitimate considerations incident to the effectuation of a rational state policy.

Maintenance of political subdivision lines in the apportionment of legislative seats is not an irrational state policy; though such a policy, however rational, cannot be permitted to emasculate the goal of substantial equality of representation.

Tested by such standards, the population disparities among the House districts created by the Virginia General Assembly (+6.8% to -9.6% or 16.4% overall), though approaching tolerable constitutional limits, do not exceed them.

WHITE vs. WEISER, 412 U.S. 783 (1973) (TX - Cong)

Population Variance

458,581 to 477,856 for a spread of 4.1% is unconstitutional (2.43% & 1.70% average deviation among districts; .745% or 3,421 persons).

Although the percentage deviation in the legislative plan are smaller than those in Kirkpatrick & Wells, they were not "unavoidable" and the districts were not as mathematically equal as reasonably possible.

Avoidable variations must, if possible, be avoided.

Partisan Gerrymandering

The drawing of district boundaries, in a way that minimizes the number of contests between present incumbents, does not of itself establish invidiousness.

GOINES vs. HEISKELL, 362 F Supp. 313 (1973) (WV Leg - House) (U.S. District Court)

Population Deviation

16.179 maximum percentage population variance among the delegate districts was tolerable and acceptable, and did not violate "one man - one vote".

Multimember Districts

Statut apportioning membership in House of Delegates of the West Virginia Legislature did not arbitrarily discriminate against some voters and favor others in creating multimember districts.

67TH MINNESOTA STATE SENATE vs. BEENS, 406 U.S. 187 (1972) (MN - Leg)

Federal Court Intervention:

Insofar as possible, a federal court in reapportioning a state legislature should accommodate the relief ordered to the appropriate provisions of state constitutions and state statutes relating to the legislature's size.

In a federal district court action for reapportionment of a state's legislature, a court-imposed minor variation from the state's prescribed figures as to the proper size of the legislature, is permissible when the change is shown to be necessary to meet constitutional requirements; but cutting a state Senate's size almost in half and the House size by nearly 1/4 is more than a mere minor variation.

CONNOR vs. WILLIAMS, 404 U.S. 449 (1972) (MS - Leg)

Multimember Districts

The Supreme Court affirmed its preference for an emphasis upon single-member districts in court-ordered reapportionment plans.

ABATE vs. MUNDT, 403 U.S. 182 (1971) (NY - Local)

Population Variance

Population variances of 11,577 to 13,020 or +4.8% to -7.1%, or total of 11.9%, are constitutionally permissible in light of the absence of a built-in bias tending to favor any particular area or interest and the longstanding local governmental structures in which the towns and the county worked in close cooperation to provide overlapping public services.

WHITCOMB vs. CHAVIS, 403 U.S. 124 (1971) (IN - Leg)

Population Variance

Multimember districts

The use of multimember state legislative districts is not per se unconstitutional under the Equal Protection Clause, but is subject to challenge where circumstances of a particular case may operate to minimize or cancel out the voting strength of racial or political elements of the voting population.

Racial Discrimination

Minorities are not ipso facto and per se, entitled to representation in proportion to number or to relief even in multimember districts, based only on the fact of their racial or political minority.

ELY vs. KLAHR, 403 U.S. 108 (1971) (AZ - Leg)

Population Base

The use of voter registration as a basis is allowable only if it produces a "distribution of legislators not substantially different from that which would have resulted from the use of a permissible population basis".

Partisan Gerrymandering

Plan tried to insure inter alia, that no incumbent would run for re-election against another incumbent. Court held that "the incumbency factor has no place in any reapportionment or redistricting", and found "inapposite" the consideration of party strengths as a factor.

CONNOR vs. JOHNSON, 402 U.S. 690 (1971) (MS - Leg)

Multimember Districts

When U.S. District Courts are forced to fashion state legislative apportionment plans, "single-member districts are, as a general matter, preferable to large multimember districts".

PERKINS vs. MATTHEWS, 400 U.S. 379 (1971) (MS - Local)

Voting Rights Act

Definitional refinement of Sec. 5.

Any change in election procedure, no matter how small, is subject to Sec. 5 scrutiny.

The local district courts do not have jurisdiction to review Sec. 5 cases; only the U.S. Attorney General and the U.S. District Court for the District of Columbia may review these cases.

OREGON vs. MITCHELL, 400 U.S. 112 (1970) (OR - Elections)

Federally imposed voting eligibility requirements:

Congress has the right to establish national standards for voting eligibility in federal elections.

The provision lowering the minimum voting age from 21 to 18 was valid as applied to federal elections.

Congress could not lower the voting age from 21 to 18 in state and local elections.

The provision suspending the use of literacy tests for both federal elections and state and local elections is valid.

Provisions pertaining to residency requirements and absentee registration and voting in a presidential and vice presidential election are valid.

HADLEY vs. JUNIOR COLLEGE DISTRICT, 397 U.S. 50 (1970) (MO - Local)

Population Variance

Population equality is necessary in a consolidated junior college district from which trustees are elected.

GASTON COUNTY vs. UNITED STATES, 395 U.S. 285 (1969) (NC - Local)

Voting Rights Act

The District Court could properly consider the county's practice of educational discrimination in determining whether its literacy test had the effect of discriminatorily denying the franchise.

It was not clearly erroneous for the District Court to conclude that the county had not met the burden of proving that the education it provided had no such discriminatory effect.

Adult Negroes who had received inferior education were discriminatorily affected by the use of this literacy test, despite impartial administration of

the voting registration law and recent progress toward equalizing and integrating the county's school system. Educational levels can have some effect on the voting regulations under Sec. 5.

MOORE vs. OGILVIE, 394 U.S. 814 (1969) (IL - Elections)

Election Nomination Procedures

A state statute providing that the 25,000 or more signatures of qualified voters prescribed for nominating petitions of independent candidates for offices to be filled by voters at large must include the signatures of 200 qualified voters from each of at least 50 of the 102 counties in the state; notwithstanding that it was designed to require a statewide support for launching a new political party rather than support from a few localities, violates the equal protection clause of the 14th Amendment in that it applies a rigid, arbitrary formula to sparsely settled counties and populous counties alike, contrary to the constitutional theme of equality among citizens in the exercise of their political rights, discriminates against the residents of the populous counties in favor of rural sections ...

WELLS vs. ROCKEFELLER, 394 U.S. 542 (1969) (NY - Cong)

Population Variance

A difference of +435,000 to -390,000 is unconstitutional.

Community of Interest

To accept population variances, large or small, in order to create Congressional election district with specific interest orientations, is antithetical to the basic premise of the constitutional command to provide equal representation for equal numbers of people.

KIRKPATRICK vs. PREISLER, 394 U.S. 526 (1969) (MO - Cong)

Population Variance

Districts varying in population from 420,000 to 445,000 were unconstitutional. "Limited population variances among Congressional districts are constitutionally permissable only if they are unavoidable despite a good-faith effort to achieve absolute equality or if justification for them is shown".

There is no de minimus standard for congressional districting.

Acceptable reasons must justify each variance, no matter how small.

Unacceptable justifications include:

- o avoided fragmenting areas with distinct economic and social interests;
- o a reasonable legislative compromise resolving practical political problems;
- o adjustments made on eligible voter population done on a haphazard basis;
- o projected population shifts not applied systematically geographic compactness.

ALLEN vs. STATE BOARD OF ELECTIONS, 393 U.S. 544 (1969)
(MS,VA - Local)

Voting Rights Act

Approval requirements of Sec. 5 were applicable to:

- o changes from district voting to at-large voting for county supervisors;
- o changes making the office of county superintendent of education from an elective to an appointive one in certain counties;
- o increasing the requirements for an independent candidate to gain position on a general election ballot; and
- o a bulletin issued by the State Board of Elections outlining new procedures for casting write-in votes.

AVERY vs. MIDLAND COUNTY TEXAS, 390 U.S. 474 (1968) (TX - Local)

County Precincts, Population Variance

One-man, one-vote appliesd to local units of government.

LUCAS vs. RHODES, 389 U.S. 212 (1967) (OH - Cong)

Population Variance

Unofficial population population statistics are insufficient to justify the disparity among districts because they are too unreliable and not available for all areas. However, seven years after the initial census count such figures may be used.

KILGARLIN vs. HILL, 386 U.S. 120 (1967) (TX - Leg - House)

Population Variance

54,384 to 71,301, or +14.84% to -11.64%.

The Supreme Court accepted the ruling of the District Court sustaining the allocation of a representative to a smaller but more rapidly growing district.

Multimember Districts

The use of multimember and/or flaterial districts in state legislative reapportionment plans is not unconstitutional per se.

DUDDLESTON vs. GRILLS, 385 U.S. 455 (1967) (IN - Leg)

Case remanded to District Court in light of: SWANN vs. ADAMS, WESTBERRY vs. SANDERS, and REYNOLDS vs. SIMS

SWANN vs. ADAMS, 385 U.S. 440 (1967) (FL - Leg)

Population Variance Senate: +13.09; -10.56; House: +18.28; -15.27. Deviations are unconstitutional.

KATZENBACH vs. MORGAN, 384 U.S. 641 (1966) (NY - Elections)

Voting Rights Act

Sec. 4 (e) - barring English language proficiency and literacy tests as a condition of voting is constitutional.

BURNS vs. RICHARDSON, 384 U.S. 73 (1966) (HI - Leg)

Population Base

Hawaii's use of a registered voter base is upheld only because on this record it produced a distribution of legislators not substantially different from that which would have resulted from the use of a state citizen population base or another permissible population base.

Multimember Districts

The equal protection clause does not require that at least one house of a bicameral state legislature consist of single-member legislative districts.

Partisan Gerrymandering

Drawing district boundaries "in such way that minimizes the number of election contests between present incumbents does not in and of itself establish invidious discrimination".

of the state's population would elect a majority.

House: 21,825 to 95,064 + 40.5% of the state's population would elect a majority.

MARYLAND COMMITTEE FOR FAIR REPRESENTATION vs. TAWES, 377 U.S. 656 (1964) (MD - Leg)

Population Variance

Neither house, even after the reapportionment, was apportioned sufficiently on a population basis to be constitutionally sustainable. House: 6,541 to 37,879 and 35.6% of the state's population would elect a majority. Senate: 15,481 to 492,428 and 14.1% of the state's population would elect a majority.

WMCA, INC. vs. LOMENZO, 377 U.S. 633 (1964) (NY - Leg)

Population base

Case upheld New York's use of a citizen population base which excluded resident aliens.

Population Variance

Apportionment based on 1960 figures. State Assemblymen representing 37.5% of the state's citizens, and Senators representing 38.1% of the state's citizens, would constitute a majority in each chamber. Population in Assembly districts would vary from 14,974 to 190,343. Population in Senate districts would vary from 162,840 to 425,000. Population variance unconstitutional.

REYNOLDS vs. SIMS, 377 U.S. 533 (1964) (AL - Leg)

The equal protection clause requires that the seats in both houses of a bicameral state legislature be apportioned on a population basis.

Some deviations from the equal-population principle are constitutionally permissible, with respect to either or both houses of a state legislature, so long as such deviations are based on legitimate considerations incident to the effectuation of a rational state policy.

WESBURY vs. SANDERS, 376 U.S. 1 (1964) (GA - Cong)

Population Variance

The federal Constitution requires that Congressmen be chosen by "the people of

GERMANO vs. KERNER, 378 U.S. 560 (1964) (IL - Leg)

Population variance unconstitutional.

NOLAN vs. RHODES, 378 U.S. 556 (1964) (OH - Leg)

Population variance unconstitutional.

WILLIAMS vs. MOSS, 378 U.S. 558 (1964) (OK - Leg)

Population variance unconstitutional.

MEYERS vs. THIGPEN, 378 U.S. 554 (1964) (WA - Leg)

Population variance unconstitutional.

LUCAS vs. FORTY-FOURTH GENERAL ASSEMBLY OF THE STATE OF COLORADO, 377 U.S. 713 (1964) (CO - Leg)

Population Variance

Population variance in the state Senate was unconstitutional. 19,983 to 71,871 +33.2% with the maximum population.

Variance ratio in House 1.7:1 & 45.1% to elect a majority.

ROMAN vs. SINCOCK, 377 U.S. 695 (1964) (DE - Leg)

Population Variance

Population variance in both reapportionments were unconstitutional.

Senate: 4,177 to 64,820 + 22%; 4,177 to 64,820 + 21%

House: 1,643 to 58,228 + 18.5%; 1,643 to 20,040 + 28.0%

DAVIS vs. MANN, 377 U.S. 678 (1964) (VA - Leg)

Population Variance

Population variance was unconstitutional. Senate: 61,730 to 163,401 + 41.1%

SOUTH CAROLINA vs. KATZENBACH, 383 U.S. 301 (1966) (SC - Elections)

Voting Rights Act

The Voting Rights Act is upheld as constitutional.

WMCA INC. vs. LOMENZO, 382 U.S. 4 (1965), 238 F. Supp. 916 (NY - Leg)

Population Base

Apportionment on citizen population does not violate the federal Constitution. Partisan "g rrymandering" may (not) be subject to federal constitutional attack under the Fourteenth Amendment.

FORTSON vs. DORSEY, 379 U.S. 433 (1965) (GA - Leg)

Multimember Districts

Absent any contention that there was not substantial equality of population among the districts, or evidence to support the assertion that the scheme was intended to minimize or cancel out the voting strength of racial or political elements of the voting population, a statute creating multimember districts is constitutional.

HILL vs. DAVIS, 378 U.S. 565 (1964) (IA - Leg)

Population variance unconstitutional.

PINNEY vs. BATTERWORTH, 378 U.S. 564 (1964) (CT - Leg)

Population variance unconstitutional.

HEARN vs. SMYLIE, 378 U.S. 563 (1964) (ID - Leg)

Population variance unconstitutional.

MARSHALL vs. HARE, 378 U.S. 561 (1964) (MI - Leg)

Population variance unconstitutional.

the several states" which requires that, as nearly as practicable, one man's vote in a Congressional election must be worth as much as another's. Near mathematical precision in Congressional redistricting is necessary under the Equal Protection Clause of the Fourteenth Amendment.

GRAY vs. SANDERS, 372 U.S. 368 (1963) (GA - Elections)

County unit system in counting votes in Democratic primary for nomination of U.S. Senator violated the Equal Protection Clause of the Fourteenth Amendment.

County unit system cannot be equated to states in conducting elections and, therefore, the Equal Protection Clause requires that every voter is equal to every other voter in the state when he casts his ballot in a statewide election.

BAKER vs. CARR, 369 U.S. 186 (1962) (TN - Leg)

Federal Courts have jurisdiction in such political questions as legislative malapportionment, which violates the Equal Protection Clause of the Fourteenth Amendment.

GOMILLION vs. LIGHTFOOT, 364 U.S. 399 (1960) (AL - Local)

Prescribed racial gerrymandering under the Fifteenth Amendment; held Fourteenth Amendment to be inapplicable.

COLGROVE vs. GREEN, 328 U.S. 549 (1946)

Congressional districting held to be a non-justiciable political issue

BIBLIOGRAPHY



The Council of State Governments

FOREWORD

This Bibliography is the second in a series of resource materials to be released by the Reapportionment Information Service of The Council of State Governments. The first document released in December 1980, was a Directory of people and organizations actively involved in reapportionment.

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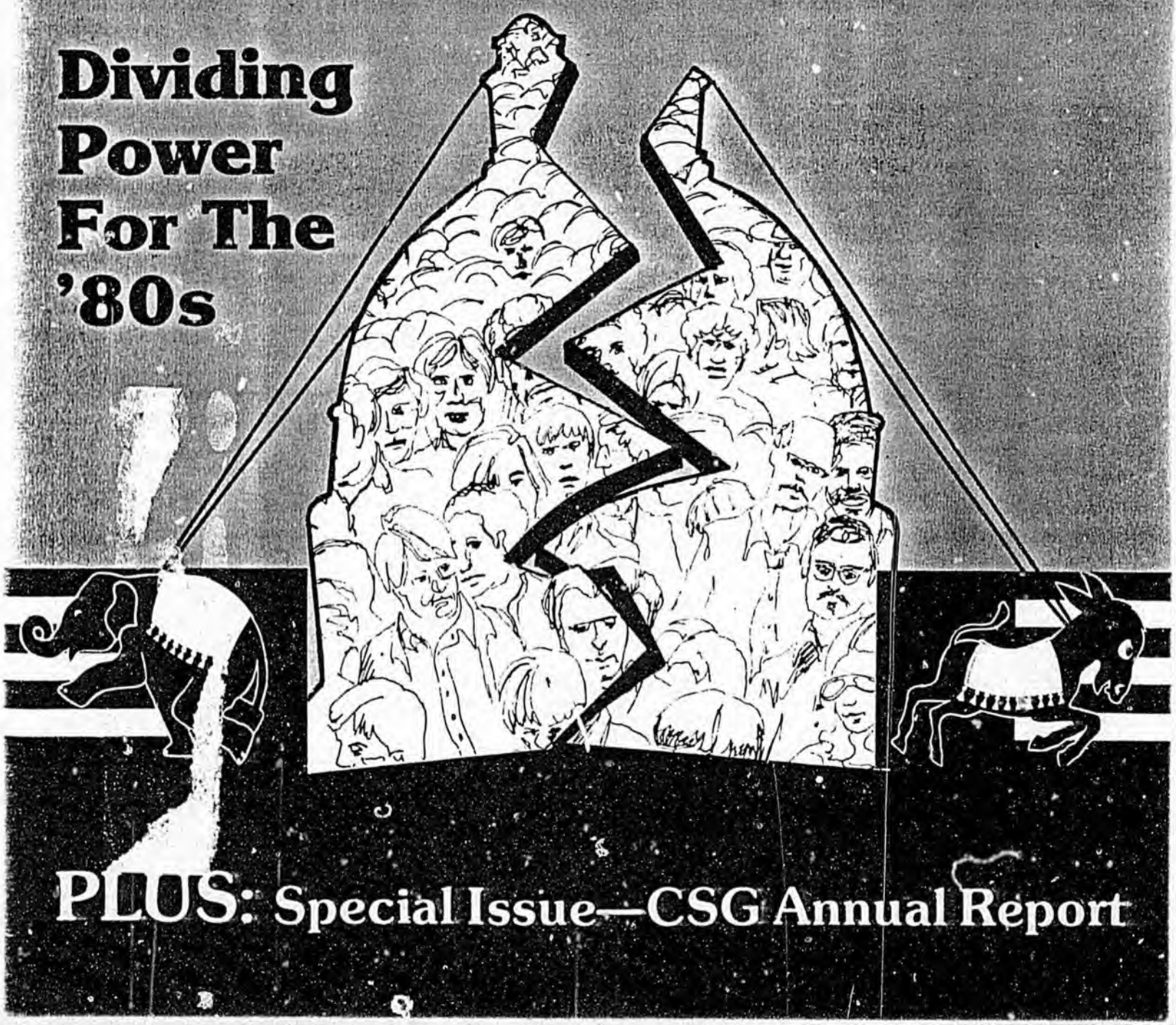
State Government News

The Council of State Governments

October 1981

REAPPORTIONMENT:

Dividing Power For The '80s



PLUS: Special Issue—CSG Annual Report

State Government News

Vol. 24 No. 10

October 1981

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STATE GOVERNMENT NEWS—Published monthly by The Council of State Governments, P.O. Box 11910, Lexington, Kentucky 40578. Considered the prime source of information on current activities by all branches of state government. Articles cover new state laws, federal-state relations, and state legislative trends, as well as court decisions and administrative actions. Writers include headquarters and regional staff professionals. Opinions expressed in this magazine do not necessarily reflect the policy of the editorial staff or the Council of State Governments. Readers' comments welcome.

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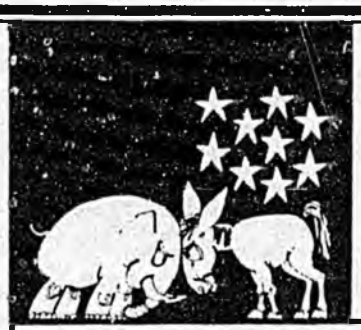

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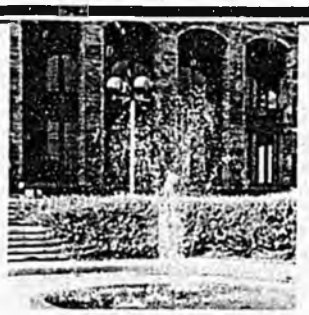

FEATURE

Reapportionment—Dividing the Power **3**
Congressional district lines have been redrawn by 14 states so far, with another eight expected to act this year, while legislative redistricting plans have been adopted by 22 states. The politics and problems of the decennial process are explored by a CSG staff expert.

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State participation in CSG activities and services CSG provides states through its headquarters, regional and Washington offices are reviewed for the past year.

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Reapportionment—Dividing the Power

BY CAROLYN KENTON, CSG, Lexington

The decennial struggle for controlling political power and influence is in full swing. The process of recarving the political pie, which is called redistricting, was triggered by the 1980 census on the congressional and the state legislative levels.

Congressional Redistricting

The political composition of Congress will be altered by the redistribution of seats among the states due to population shifts. In addition, it appears as though most states will have redrawn congressional district lines prior to the 1982 elections. Six states will have only one congressman and require no districting —Alaska, Delaware, North Dakota, South Dakota, Vermont and Wyoming. Another 14 states—Alabama, Arkansas, Idaho, Indiana, Iowa, Mississippi, Nebraska, Nevada, North Carolina, Oklahoma, Oregon, Tennessee, Texas and Virginia—have redrawn congressional district lines to conform to the 1980 census figures. Of the remaining 30 states, eight are expected to address the issue before the first of the year.

The standard for drawing congressional districts is simple and straightforward. The districts must be as nearly equal in population as possible. So far, the U.S. Supreme Court has not been willing to interject any other criterion except that imposed by the Voting Rights Act and the equal protection provisions of the 14th and 15th Amendments to the U.S. Constitution.

The new congressional districts appear to be satisfying the court's requirements for "one man, one vote." Eight of the 14 new congressional plans have an overall population difference between the largest and smallest district of less than 1 percent. The remaining six have a population difference of 2-3 percent or less.

Gerrymandering Charged

The reliance on population equality gives redistricting cartographers leeway in drawing lines and leaves the door open to gerrymandering.

Partisan battles in the states have been intense. In states controlled by a single party—governor and legislature—the party out of power and some political observers have accused the controlling party of gerrymandering. Republican Gov. John Spellman of Washington considered the Republican-drawn plan so badly gerrymandered that he vetoed it. In Indiana, the legislature and governor apparently tried to change the congressional delegation from the present 6-5 Democratic edge to a 7-3 Republican edge (Indiana lost one congressman). To accomplish this, two existing Democratic districts were divided into four new ones and three Democratic congressmen were placed into one district.

States with divided political control—one or more houses of the legislature controlled by the opposition party—have also suffered problems. Democratic Gov. Richard Lamm of Colorado has vetoed two congressional plans drawn by the Republican legislature although the largest and smallest districts had a population difference of only 41 people in one plan.

The governors of Idaho, Oregon and Tennessee allowed the opposing legislative party's congressional plans to become law without their signatures.

Three states—Illinois, Minnesota and Missouri—have suits pending which would declare the existing congressional districts invalid, therefore requiring that they be redrawn before new elections could be held. These suits were filed after an apparent political impasse on the enactment of a plan developed by the parties in the legislature and/or the governor.

The majority of congressional districts will be redrawn through the normal legislative process. The exceptions are Hawaii and Montana, where commissions are responsible, and Connecticut, where a commission will be appointed to draw them because the legislature was unable to meet an Aug. 1 deadline. Plans will be prepared in Iowa by the Legislative Service Bureau and in Maryland by the governor, but the legislatures must still act on them. Generally speaking, however, congressional districts are much easier for state legislators to redraw than are legislative districts.

Legislative Redistricting

State legislatures have doggedly plunged ahead with their own redistricting. Redistricting is expected to be completed before the next legislative election in all states except Kansas, Kentucky, Maine, Massachusetts, Montana and New York. To date, 22 states have adopted a plan for one or both legislative houses.

The Texas and Virginia house plans have been ruled unconstitutional. The Texas Supreme Court ruled the house plan split counties unnecessarily in violation of the state constitution. The Texas plan will now be drawn by the Legislative Redistricting Board which will also draw the senate districts. In Virginia, a three-judge federal district court ruled the house plan invalid because of the large disparity—over 26 percent—between the largest and smallest districts. The court allowed the election for delegates to the house to proceed on schedule this fall, but shortened their terms to one year and required the legislature to redraw the house plan before Feb. 1982.

State Legislative Criteria Differs

The rules governing legislative redistricting as set out by the U.S. Su-

(continued)



preme Court are more complex than those for congressional redistricting, and so are the redistricting mechanisms used by the states. Population equality, although important, is not the only consideration the states can use in drawing districts, and single-member districts are not required.

In addition, the states may choose to use less than the total U.S. census figures or not use the federal census figures at all. Kansas and Massachusetts use a state census as the basis for their redistricting, although Kansas plans to switch to the federal census in 1990. Hawaii uses registered voters, and Alaska has exempted transient military personnel from its population base.

States may choose other criteria such as maintaining political jurisdictional lines if they apply the policy uniformly and have a rational and justifiable reason, and if it does not violate the provisions of the Voting Rights Act.

Of the 39 new chamber redistricting plans—including Kansas and excluding the voided Texas and Virginia house plans—the overall population range between the largest and smallest district in 12 chambers is less than 5 percent. In another 19, the overall range is between 5 and 10 percent. One chamber has a range of 10 to 15 percent, and seven chamber plans have an overall range of over 15 percent between the largest and smallest district. The plans were drawn by the legislature in 17 states and by boards in the remaining four states.

The use of a board or commission to redistrict state legislatures has grown. Spurred by the efforts of such organizations as Common Cause, 15 states have a formal agency or advisory mechanism for redistricting. Another 11 states designate an agency to redistrict if the legislature fails to perform in a specified period of time. So far, this backup mechanism has been used by Connecticut for congressional districting and Illinois and Texas for legislative districting. In addition, petitions are circulating in South Dakota and Ohio for this fall's ballot to alter the apportionment process. The proposed constitutional

1981 REAPPORTIONMENT PLANS, MAXIMUM POPULATION DEVIATIONS

(CSG Reapportionment Service, September 1981)

State or other jurisdiction	Senate: Percent deviation in actual vs. average population per seat — Greatest +	Senate: Percent deviation in actual vs. average population per seat — Greatest -	Senate: Average population each seat(a)	House: Percent deviation in actual vs. average population per seat — Greatest +	House: Percent deviation in actual vs. average population per seat — Greatest -	House: Average population each seat(a)	Congress: Percent deviation in actual vs. average population per seat — Greatest +	Congress: Percent deviation in actual vs. average population per seat — Greatest -	Congress: Average population each seat(a)
Alabama	...	...	...	...	...	...	1.33	1.12	555,723
Alaska	5.80	3.97	18,456(b)	5.81	4.18	9,228(b)	One Congressman		400,481
Arkansas	4.78	4.37	65,300	4.98	4.17	22,855	0.72	0.01	571,378
Connecticut	2.40	1.52	86,322	4.42	3.92	20,580	...	...	...
Delaware	+/- 9.80		28,544	+/- 3.80		14,518	One Congressman		595,225
Georgia	4.99	5.00	97,576	4.95	4.97	30,357	...	...	...
Idaho	...	...	...	...	...	...	0.02	0.02	471,968
Indiana	2.07	1.97	109,803	5.30	14.63	54,901	0.99	0.91	549,010
Iowa	0.32	0.39	58,268	0.99	0.79	29,134	0.03	0.02	485,564
Kansas	3.10	3.40	58,982(c)	5.00	4.90	18,874(c)	...	...	...
Mississippi	...	...	...	...	...	...	0.02	0.02	509,128
Nebraska	4.76	4.67	32,041	----------	Unicameral	----------	0.08	0.15	523,335
Nevada	4.16	4.02	38,056	4.73	4.97	19,028	> +/- 1.0		399,592
New Jersey	5.13	2.57	184,104	5.13	2.57	184,104(d)	...	...	...
North Carolina	12.67	10.02	117,489	12.94	10.68	48,954	1.31	1.40	534,039
North Dakota	...	...	...	...	...	...	One Congressman		652,695
Oklahoma	2.94	2.66	63,026	5.07	5.91	29,953	0.33	0.25	504,211(a)
Oregon	2.62	1.11	87,700(f)	2.75	2.59	43,600	0.08	0.03	526,533
Pennsylvania	1.04	0.95	237,334(g)	1.27	1.13	58,456(g)	...	...	...
South Carolina	...	...	...	4.95	4.88	25,155	...	...	...
South Dakota	5.99	6.50	19,663(e)	5.90	6.50	9,832(d,e,f)	One Congressman		690,178
Tennessee	0.73	0.93	139,114	1.42	1.72	46,371	1.29	1.14	510,083
Texas	...	...	458,908	4.82	4.60	94,856(h)	0.16	0.12	526,977
Vermont	...	...	...	...	...	...	One Congressman		511,456
Virginia	4.35	6.30	133,657	12.47	14.16	56,763(h)	0.79	1.02	534,628
Washington	2.40	2.10	84,289(f)	2.40	2.10	84,289(f)	...	...	(f)
Wyoming	39.50	24.20	15,694	29.10	60.30	7,357	One Congressman		470,816

(a) Population figures in most instances are based on the 1980 federal census.

(b) Excludes transient military population.

(c) Legislative redistricting was based on state conducted census.

(d) More than one legislator runs for office from a senate district.

(e) A constitutional referendum petition is being circulated to invalidate the current plan. South Dakota: The referendum would create single-member senate districts with one senator and two house members elected from each district.

(f) Court suit filed challenging validity of existing or new plan.

(g) Preliminary plan. Pennsylvania: Challenges to the plan have been filed. Hearings were scheduled for September 24-25.

(h) This plan was declared unconstitutional.

Reapportionment
(continued)

amendment in South Dakota would establish single-member senate districts and other criteria for redistricting.

Republicans are threatening to circulate legislative referendum petitions to repeal redistricting laws which they believe are unfair in Oklahoma (congressional) and California (legislative and congressional).

The state political stories of legislative and congressional redistricting will continue to unfold for at least the coming year. So far the courts have barely been involved, but they will undoubtedly make a contribution before the process is over.

CSG will continue to follow and report on state activities. More detailed information on individual plans or current activities can be obtained by contacting the Council's Reapportionment Information Service.

Redistricting Snag Delays New York City Primary Election

The New York City primary was delayed in September when a federal court ruled the city had failed to comply with the federal Voting Rights Act in redrawing council district lines.

The court's action, which was upheld by the U.S. Supreme Court, held that the city had failed to obtain the necessary pre-clearance from the U.S. Justice Department for any changes in voting procedure. It did not go so far as to uphold the plaintiff's contention that the new district lines discriminated against minorities.

The city reached an agreement with the Justice Department to allow all but city council elections to be held Sept. 22.

Suit Filed over Kentucky Education Budget Cuts

The Kentucky Education Association has filed suit asking that education spending cuts ordered by Gov. John Y. Brown Jr. be declared unconstitutional. The suit in circuit court charges that the legislature should decide on cuts and that the reductions are "inequitable, discriminatory, and arbitrary."

Gov. Brown ordered the cuts, rather than calling the legislature into special session. Recent reductions affecting education amount to more than $70 million.

Stated Briefly

Louisiana Transfers Local Prisoners

Louisiana Gov. David C. Treen has announced that eligible prisoners have been transferred from parish jails to the Department of Corrections as of Sept. 1. Reassessment of the state prisons resulted in room to house 1,348 more prisoners, an 18 percent increase, in fiscal 1981-82.

Accounting Manual Offered by Iowa

The Iowa Department of Substance Abuse (IDSA) has developed a Project Level Accounting Manual which tells how to establish and maintain a basic bookkeeping system that meets audit requirements and how to provide separate accounting for various funding sources. It also provides management information. The manual is used by substance abuse programs within and outside of Iowa. Copies can be obtained for $12 from the IDSA, Suite 202, 505 Fifth Ave., Des Moines, Iowa 50319, or call Allen Vander Linden, (515) 281-3641.

College Tuition Rates Rise

Average tuition rates at public four-year colleges and universities shot up 16 percent the past year, according to a survey by the College Board. The rise is the largest in a decade and does not reflect increases announced since May. Many schools have raised rates since then due to lower than anticipated appropriations from state legislatures. Average tuition rates are up 13 percent at private colleges.

Costs to Be Shared in Three Mile Island Cleanup

Pennsylvania Gov. Dick Thornburgh's cost-sharing proposal for cleanup of the disabled Three Mile Island nuclear power plant won support recently. The Edison Electric Institute, an electric utilities' trade association, pledged its members to paying $192 million over six years.

The owners of the plant, General Public Utilities, have agreed to pay $335 million. The U.S. General Accounting Office in August recommended a national cost-sharing approach to Congress, but no federal action has been taken.

Wisconsin Budget Increases Transit Aid

Wisconsin's 1981-83 budget, signed by Gov. Lee S. Dreyfus July 29, includes $58.6 million for urban mass transportation programs and ridesharing (S. 85-24). Beginning in 1982, state aid will be available to cover up to 30 percent of the total operating costs of the state's urban transit systems.

Two States and U.S. Reach Desegregation Agreement for Colleges

Missouri and Louisiana have reached agreement with the U.S. Justice Department on plans to desegregate public colleges. A consent decree filed in federal court in New Orleans, if approved by the court, would end a lawsuit filed by the department in 1974.

Legislators Hold Off on Funding Decision for Higher Education

A special session of the Texas Legislature has adjourned without resolving the controversy over the future of state construction funds for public higher education.

The lawmakers will watch for the results of a pending lawsuit to restore a state property tax of 10 cents per $100 valuation. The tax had provided funds for 17 colleges and universities. The House did pass a proposal to repeal the tax; the Senate voted for a new rate of 3 cents per $100.

States' Tax Base Reflects Shifting Wealth

Alaska has the largest tax base per capita of the states—more than twice (213 percent) the nation's average.

The top five states in per capita tax wealth are Alaska, Wyoming (190 percent), Nevada (164 percent), Texas (121 percent) and California (116 percent), according to the Advisory Commission on Intergovernmental Relations' (ACIR) preliminary estimates of 1979 tax capacity. The estimates account for tax bases available to states including property, income, sales, motor fuels and the value of extracted natural resources.

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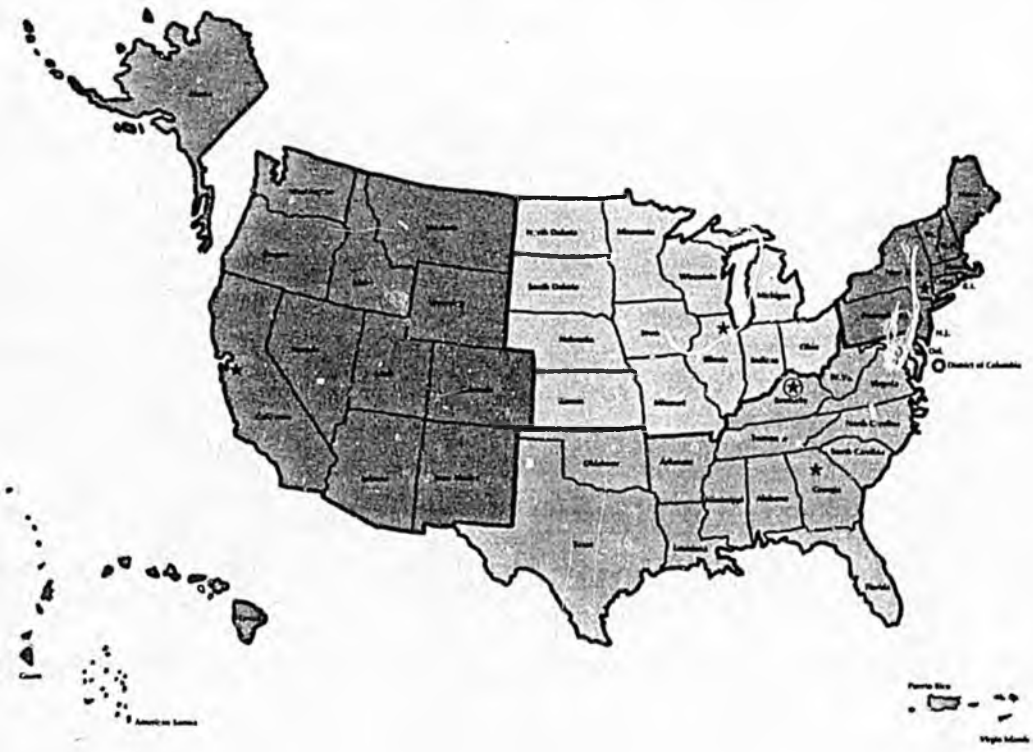

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Affiliated and Cooperating Organizations

The Articles of Organization of the Council of State Governments recognize two forms of association with the Council by groups of state officials—affiliated and cooperating. The Council presently recognizes 33 such groups—seven affiliated and 26 cooperating.

For organizations affiliated with the Council, the state services agency is authorized to provide financial assistance and secretariat and other staff services.

The seven affiliated organizations of the Council are the:

- National Conference of State Legislatures,
- Conference of Chief Justices,
- National Association of Attorneys General,
- National Conference of Lieutenant Governors,
- National Association of State Purchasing Officials,
- Conference of State Court Administrators, and
- National Association of State Auditors, Comptrollers and Treasurers.

The Council's Articles of Organization also permit its executive committee to recognize other groups and associations of state officials as cooperating organizations and maintain continuing cooperative arrangements with such organizations.

The cooperating organizations include the:

- National Conference of Commissioners on Uniform State Laws,
- Parole and Probation Compact Administrators' Association,
- Association of Juvenile Compact Administrators,
- Interstate Conference on Water Problems,
- National Association of State Mental Health Program Directors,
- Adjutants General Association of the United States,
- National Conference on Uniform Reciprocal Enforcement of Support,
- Association of State and Interstate Water Pollution Control Administrators,
- National Association of State Boating Law Administrators,
- National Association of State Civil Defense Directors,
- Association of State Correctional Administrators,
- National Association of State Units on Aging,
- National Association of Extradition Officials,
- National Association of State Juvenile Delinquency Program Administrators,
- State Personnel Administrators Association,
- Council of State Administrators of Vocational Rehabilitation,
- National Association for State Information Systems,
- National Association of Regulatory Utility Commissioners,
- Coastal States Organization,
- Federation of Tax Administrators,
- National Association of Tax Administrators,
- Conference of State Sanitary Engineers,
- National Conference of States on Building Codes and Standards,
- National Association of State Departments of Agriculture,
- National Conference of State Criminal Justice Planning Administrators, and
- National Conference of State General Services Officers.

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LEGISLATURES
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STATES INFORMATION CENTER

U.S. SUPREME COURT DECIDES NEW JERSEY AND PENNSYLVANIA REDISTRICTING CASES

In a landmark decision, the U.S. Supreme Court has tightened the "one-person, one-vote" criterion for assessing congressional redistricting being challenged in the courts. While the High Court found the New Jersey congressional redistricting plan unconstitutional on the issue of population deviation, it upheld the Pennsylvania congressional districts without comment.

On June 22, the U.S. Supreme Court struck down the New Jersey congressional redistricting plan finding that an overall population range just under .70 percent does not conform to the constitutional requirement for equal representation. In a five-to-four vote, the court ruled in Karcher, et al. v. Daggett, et al. (No. 81-2057 and formerly Forsythe, et al. v. Kean, et al.) that there are no de minimis population variations that can stand constitutional muster, and the states must adhere as closely as possible to the "one-person, one-vote" standard of reapportionment. In challenging congressional redistricting plans, the plaintiffs must prove that population differences among districts can be reduced or eliminated in a conscientious effort to design districts of equal population. If the plaintiff's arguments are satisfactory to the court, the states have the burden of proving that deviations from equality are necessary to achieve a legitimate state goal.

In defense of the New Jersey redistricting plan, the legislature argued that the deviation of the plan was justified to protect black urban neighborhoods from being divided into different districts. In addition, the legislature contended that the deviation was less than the predictable undercount in the census figures. In answer to the first assertion, the plaintiffs failed to convince the Court that the population differences were essential to preserve minority voting strength in the congressional plan. The Court further identified legislative policies which, when applied in a nondiscriminatory manner, might have been successfully used in defense of the New Jersey congressional plan, including: compactness, respect for municipal boundaries, preserving the core of prior districts, and avoiding contests between incumbents.

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With regard to the margin of error in the census data, the Court held that the census count "provides the only reliable--albeit less than perfect--indication of the districts' 'real' relative population levels, and furnishes the only basis for good faith attempts to achieve population equality." In the Court's opinion, Justice Brennan wrote: "Adopting any standard other than population equality, using the best census data available would subtly erode the Constitution's ideal of equal representation."

In a dissenting opinion, Justice White objected to the Court's rule of absolute equality on the basis that such a strict standard may be used to justify gerrymandered congressional districts. In addition, Justice White argued that the lack of a de minimis rule encourages the intrusion of federal courts into state legislative affairs. Other dissenters argued that even a miniscule population deviation is now vulnerable to constitutional attack.

Eleven states currently have congressional district maps with an overall population range greater than that of New Jersey: Alabama (2.45%), Arkansas (0.78%), Georgia (2.00%), Indiana (2.96%), Kentucky (1.39%), Massachusetts (1.09%), New Mexico (0.87%), New York (1.64%), North Carolina (1.76%), Tennessee (2.40%),and Virginia (1.81%). Although the Court's decision has no effect on the validity of these 11 plans, one state is currently involved in litigation to resolve the constitutionality of population deviation. In Ohio, a three-judge federal panel has been awaiting a decision on the New Jersey case before making a final decision in Flanagan, et al. v. Gillmor, et al..

On July 6, just two weeks after the New Jersey decision, the Pennsylvania congressional redistricting case, In Re: Pennsylvania Congressional Districts Reapportionment Cases, was decided by the U.S. Supreme Court. In a six-to-three vote, the Supreme Court affirmed the three-judge federal panel which had upheld the congressional plan drawn by the Pennsylvania legislature last year. The plaintiffs challenged the plan's overall population range of .24 percent.

WYOMING LEGISLATIVE REAPPORTIONMENT PLAN UPHELD BY U.S. SUPREME COURT

The U.S. Supreme Court has always held the states to less stringent standards of population equality in legislative reapportionment than congressional redistricting. The decisions made by the U.S. Supreme Court on June 22 prove to be no exception. On the same day the New Jersey congressional case was decided, the High Court ruled in Brown v. Thomson that the Wyoming legislative reapportionment plan, with an overall population range of 89 percent, was constitutional in light of the state's policy of allowing every county its own representation. Under the state constitution, Wyoming's 23 counties are required to have a senator and a representative in each district "apportioned among the counties as nearly as may be according to the number of their inhabitants." The plan included one small county with a population less than one-half the state's ideal district size.

The ultimate question before the Court was the state policy of granting a representative to each county. The Court held that the policy was rational and even "well-suited to the special needs" of the sparsely populated state. Justice O'Connor, in a concurring opinion, emphasized that ensuring equal representation is not simply a mathematical problem. The Court's decision rested on the narrow appeal which was brought before it. If the entire legislative plan had been challenged, rather than the representation of one county, the Court's decision might have been very different.

STATE NOTES

In ALABAMA, new state legislative elections will be held this fall as a result of the April 11th federal court decision in Burton, et al. v. Hobbie, et al. On June 21, a suit was filed petitioning the federal court for an order to require the governor to call the primary election. The Alabama Democratic Party Executive Committee will nominate all 140 state legislative candidates if the governor does not call for a primary. The plaintiffs in the suit, Boggard, et al. v. Hobbie, et al. (C.A. 83-I-604-N), claim that the executive committee is malapportioned by population and by race. They also question whether Section 5 preclearance provisions under the Voting Rights Act apply to the special elections as mandated by the Burton decision.

CALIFORNIA Governor Deukmejian has called a special election for December 13 on an initiative which recently qualified for the ballot and which would repeal the existing reapportionment and redistricting plans in favor of one drawn by an independent contractor for Assemblyman Sebastiani. Controversy over this proposal reportedly crosses party lines. However, if adopted, the Sebastiani plans could change dramatically the political makeup of both the congressional delegation and the California legislature.

In addition, the California legislature has intervened in the Wadham v. Eu case which was filed in federal court this spring. The suit contests the congressional plan signed into law on January 2, by Governor Jerry Brown, on the basis that it violates constitutional requirements of one-person, one-vote. A dispute has arisen over the authority of the secretary of state to make technical adjustments to the plan to compensate for an 8,000-person census correction. California and several states have reapportionment statutes which allow the secretary of state to make necessary corrections as a result of final population figures provided by the U.S. Bureau of the Census or as a result of minor local election district problems. The plaintiffs contend that the secretary of state does not have the constitutional authority to make these corrections and that the congressional plan must be judged as originally drawn by the legislature. The legislature argues that under state law the plan must be judged as corrected. The Ninth Circuit Court of Appeals has remanded the case back to district court for a trial on its merits. The legislature has been asked to respond.

The HAWAII congressional redistricting and legislative reapportionment plans were reviewed by the federal court on June 17. At the request of the League of Women Voters, the court, which maintained jurisdiction over the plans under the case Travis, et al. v. King, et al., reviewed the master plan and

decided that the districting plans were merely interim. Consequently, the state now has the responsibility to devise a new plan. The same commission has been reformulated with many of the same staff people available to assist. New plans should be complete by December of this year.

On June 7, the IDAHO State Supreme Court remanded Hellar, et al. v. Cenarrusa, et al. back to state district court for trial on the issue of county boundary splits. Last year the case was appealed to the state supreme court after the district court upheld the legislature's reapportionment plan as an interim plan for the 1982 elections. The plaintiffs filed the case based on the fact that the state constitution forbids county boundary lines from being split in reapportionment. Defendants argue that the splits were necessary to comply with federal constitutional requirements. The trial is scheduled to begin July 26, but a delay in the proceedings is expected. An election this year under a new legislative reapportionment plan is highly unlikely.

The LOUISIANA case of Major v. Treen is still undecided. On March 7, the three-judge federal panel heard the case which challenges the plan on the issue of minority representation.

In MONTANA, a hearing is scheduled for August 10 and 11 in the case of McBride, et al. v. Waltermire (Docket No. CZ-83-25-BU) filed in the U.S. District Court of Montana, Butte Division. The case challenges the state's legislative reapportionment plan on the issues of population equality and violation by the reapportionment commission of its own criteria including: communities of interest, county boundary splits, compactness, and contiguity. The Manning v. Montana Districting and Apportionment Commission has been dismissed. The suit was originally brought to prevent filing of the redistricting and reapportionment plans with the secretary of state. Since the plans have been filed, the federal court dismissed the case as moot.

In SOUTH CAROLINA, the new Senate redistricting plan has been in conference committee for the last several weeks. The legislature is expected to end its session sine die on July 27 and a resolution will be required for a special session to continue work on the Senate plan. The overall population range of the plan is 9.8 percent.

The TEXAS legislature has redrawn the congressional and legislative reapportionment plans. The overall population range for the congressional plan is .28 percent. The population deviation in the House plan is 9.95 percent and in the Senate is 1.81 percent. All three plans are pending approval from the Department of Justice and from the federal court under the case of Terrazas v. Clements. During this session, the Senate passed a resolution authorizing the attorney general to make changes in the Senate plan if the Department of Justice does not drop its objections. The Senate basically accepted the interim Senate plan ordered by the federal court after initial department objections coincided with court action.

WISCONSIN Governor Anthony Earl signed the new legislative redistricting plan into law on July 15, after having vetoed a similar plan passed with the Wisconsin budget bill just two weeks earlier. The overall population range of the Assembly is 1.73 percent, and the population deviation for the Senate

is 1.05 percent. There are rumors of possible court challenges to this latest reapportionment plan, but nothing has been filed to date.

Material for this edition prepared by Candace L. Romig, NCSL

SUMMARY OF STATE LITIGATION ON
CONGRESSIONAL REDISTRICTING AND LEGISLATIVE REAPPORTIONMENT

State	Court Case	Issues	Status
Alabama	Burton v. Hobbie Federal Court (L - 11/5/81)	• Malapportionment • Population equality • Dilution of minority voting strength	U.S. Supreme Court affirmed plan drawn by legislature. (4/11/83)
	Boozard v. Hobbie Federal Court (L - 6/21/83)	• Petition to require governor to call primary • Determine if election subject to Sec. 5 preclearance of Voting Rights Act	Pending trial
Alaska	None		
Arizona	Hamilton v. Babbitt Federal Court (C, L - 12/13/81)	• Gerrymandering • Violation of due process • Dilution of minority voting strength	Federal court approved corrected legislative plan per settlement agreement. (4/12/82)
Arkansas	Doulin v. White Federal Court (C)	• Population equality and deviation	Federal court ordered court plan. (2/25/82)
	Bizzell v. White Wells v. White State Supreme Court (L - 10/5/81)	• Gerrymandering	State Supreme Court dismissed. (11/2/81)
California	Brown v. Deukmejian State Supreme Court (C, L - 10/26/81)	• Challenges 3 initiatives to prevent plans from going into effect	State Supreme Court upholds all 3 initiatives. (1/28/82)
	Vadham v. Eu Federal Court (C - 2/83)	• Population deviation • Authority of Secretary of State to make technical corrections to plan	Court of Appeals orders federal court to proceed on the merits of the case. (7/11/83)
	Richardson v. Eu Federal Court (L - 2/82)	• Numbering of Senate districts with regard to staggered terms	Federal Court dismissed case (10/15/82)
	Chavez v. Eu Federal Court (L)	• Numbering of Senate districts with regard to staggered terms	Federal Court dismissed case. (5/82)
	Mallowell v. Eu Federal Court (L - 2/82)	• Malapportionment	Pending trial
Colorado	Carstens v. Lamm Federal Court (C - 10/8/81)	• Proposed to break stalemate through judicial intervention	Federal court ordered court plan. (1/25/82)
	Kallenburger v. Buchanan State District Court (L - 6/82)	• Vacancy election • Deferred vote of electorate	State Supreme Court orders election to be held using 1981 senatorial boundary. (9/82)

State	Court Case	Issues	Status
Connecticut	Logan v. O'Neill State Superior Court (C, L - 10/81)	• Municipal boundary splits • Constitutionality of backup commission • Method of devising districts	State Supreme Court upheld plans. (8/3/82)
Delaware	None		
Florida	Buoniconti v. Firestone Federal Court (C)	• To stop Secretary of State from conducting elections • Sought redistricting deadline of 3/29, after which court to enact plan	Federal Court dismissed case. (6/28/82)
	Clem v. Haben Federal Court (C - 6/23/82)	• County and municipal boundary splits	Federal Court upheld plan. (9/3/82)
	In re Apportionment Law (SJR 1E) 414 So. 2d 1040 (1982) (L)		State Supreme Court reviewed plan as provided by law.
Georgia	Busbee v. Smith Federal Court (C)	• Contested objection by Department of Justice	Federal Court upheld Justice objection (7/22/82); approves plan (8/24/82).
Hawaii	Travis v. King Federal Court (C, L)	• Malapportionment • Gerrymandering • Registered voter population base used as formula	Federal Court approves masters' plan (6/4/82); state directed to draw new plan (6/17/82).
Idaho	Evans v. Cenarrusa Federal Court (L - 3/82)	• Proposed to break stalemate through judicial intervention	Federal Court dismisses after legislature and governor agree on plan.
	Miller v. Cenarrusa State District Court (L - 5/82)	• County boundary splits • Request to enjoin general election	Supreme Court remands case to district court to try case on merits. (6/7/83)
Illinois	In Re Illinois Congressional Districts Reapportionment Cases Federal Court (C - 7/1/81)	• Congressional redistricting not complete	U.S. Supreme Court affirmed court plan (1/11/82)
	Schrage and Wolf v. State Board of Elections State Supreme Court (L - 10/19/81)	• Violation of compactness criteria of state constitution • Petition court to approve plan	State Supreme Court upheld map with changes to conform to compactness criteria
	Rybicki v. State Board of Elections State Supreme Court (L - 10/27/81)	• Dilution of minority voting strength • Municipal and county boundary splits	State Supreme Court approves commission plan as amended with regard to population variance (1/12/82); amended to conform to 1982 amendments to Voting Rights Act (1/21/83).
Indiana	Orr v. Baldridge Federal Court (C - 5/6/81)	• Challenges census procedures resulting in the loss of one congressional seat	Pending decision

State	Court Case	Issues	Status
Indiana	Sandemer v. Davis Federal Court (L - 1/12/82)	• Political gerrymandering • Request injunction to prevent plan from going into effect • Dilution of minority voting strength in multimember districts • Incongruent legislative and congressional districts • Districts inconsistent with communities of interest	Pending trial
	Garton v. O'Bannon Federal Court (L)		Federal Court dismissed case. (8/24/81)
Iowa	None		
Kansas	O'Sullivan v. Brier Federal Court (C - 4/23/82)	• Requests court to draw plan	Federal Court ordered court plan.
Kentucky	None		
Louisiana	Major v. Treen Federal Court (C, L - 3/25/82)	• Dilution of minority voting strength	Pending decision
Maine	None		
Maryland	Wiser v. Hughes State Court of Appeals (L - 3/3/82)	• Communities of interest • Natural boundaries • Political boundaries • Compactness • Dilution of minority voting strength • Partisan gerrymandering	State Court of Appeals upheld enacted plan (6/4/82) U.S. Supreme Court refused to hear case for want of substantial federal question.
Massachusetts	None		
Michigan	Koerstrand v. Austin Federal Court (C)	• Violation of one-person, one-vote because new districts not drawn	Federal Court ordered court plan. (5/24/82)
	In Re Apportionment of State Legislatures State Supreme Court (L - 1/82)	• Requests court to assume jurisdiction for reapportionment	State Supreme Court declared reapportionment statutes unconstitutional (3/25/82); interim plan approved as drawn by special master (5/21/82); U.S. Supreme Court refuses to hear case (10/12/82).
Minnesota	Orwoll v. Lacomb and Growe U.S. Supreme Court (C)	• Challenge to court plan on basis lower court exceeded its authority in drawing plans ignoring overriding state policy	U.S. Supreme Court affirms court plan (5/13/82)
	Lacomb v. Growe Federal Court (C, L - 3/25/81)	• Requests deadlines for redistricting and reapportionment	Federal Court ordered court plans. (3/11/82)
Mississippi	Mississippi v. Smith Federal Court (C - 4/7/82)	• Contested objection by Department of Justice	Federal Court upheld department's objection. (5/28/82)

State	Court Case	Issues	Status
Mississippi	Brooks v. Winter Federal Court (C)	• Requests judicial intervention in redistricting • Delay of primary election • Dilution of minority voting strength	Federal Court ordered court plan (6/9/82); U.S. Supreme Court remanded case to federal court for reconsideration under Sec. 2 of the Voting Rights Act (5/16/83).
Missouri	Schatzle v. Kirkpatrick Federal Court (C)	• Requests court to assume jurisdiction over redistricting process	U.S. Supreme Court affirmed court plan (5/17/82)
Montana	Manning v. Montana Districting and Apportionment Commission State Supreme Court (C, L - 12/22/82)	• Requests injunction on commission plan • Challenges the constitutionality of the commission: reapportionment should be done by legislators	State Supreme Court dismissed case as moot. (4/7/83)
	McBride v. Waltermire Federal Court (L - 3/11/83)	• Population deviation • Violation by commission of its own criteria, i.e. maintenance of communities of interest, county boundaries, compactness, contiguity	Pending trial August 10, 1983
Nebraska	None		
Nevada	None		
New Hampshire	Gover v. Gardner Federal Court (L - 5/17/82)	• Challenge to House plan	Federal Court upheld enacted House plan and appeal dismissed. (5/27/82)
New Jersey	Kircher v. Tarlett Federal Court (C)	• Population deviation • Legislative procedure	U.S. Supreme Court declares plan unconstitutional. (6/22/83)
New Mexico	Sanchez v. King Federal Court (L - 1/82)	• Dilution of minority voting strength • Compactness • Contiguity • Court to assume jurisdiction	Federal panel declares eligible voter population base unconstitutional and postpones primary (4/8/82); U.S. Supreme Court reinstates primary for nonlegislative candidates (4/23/82 Pending hearing by federal panel on unresolved issues.
	Apodaca v. King State Supreme Court (L - 7/6/82)	• One senator's term regarding 1982 elections	State Supreme Court ruled senator didn't have to run. (8/82)
New York	Flateau v. Anderson Federal Court (C, L - 2/82)	• Population deviation • Dilution of minority voting strength • Violation of the Voting Rights Act	Federal Court approves plans adopted by the legislature. (7/5/82)
	Bay Ridge Community Council v. Carey State Supreme Court (L - 5/25/82)	• Violation of state constitution on basis of compactness, contiguity, and convenience. • Request to enjoin state from holding elections	State Supreme Court declares plan unconstitutional (6/21/83); case appealed to the Court of Appeals

State	Court Case	Issues	Status
New York	Bay Ridge (cont.)	• County boundary splits • Dilution of minority voting strength • Violation of communities of interest • Political gerrymandering	case transferred to the Appellate Division (1/13/83).
	Montano v. Carey Federal Court (L - 6/17/82)	• Incorporated allegations set out in Plateau • Improper interference with election schedule • Violation of the Voting Rights Act	Federal Court upheld plan (7/7/82); U.S. Supreme Court denied stay of order (7/23/82); Federal Court ordered action discontinued because moot (1/13/83).
	Mirrione v. Anderson Federal Court (L - 11/12/82)	• Dilution of minority voting strength • Violation of Voting Rights Act • Alleged that legislators acted contrary to their responsibility to constituents costing taxpayers under expense • Protection of communities of interest	Federal Court dismissed case (12/3/82); pending decision of U.S. Court of Appeals (4/27/83).
North Carolina	Gingles v. Edmisten Federal Court (C, L)	• Population deviation • Dilution of minority voting strength • County boundary splits • Single-member districts	Federal Court cross congressional charges (5/82); pending trial in summer of 1983.
North Dakota	None		
Ohio	Flanagan v. Gillmor Federal Court (C)	• Requests court to assume jurisdiction for redistricting • Population deviation • Dilution of minority voting strength • Political gerrymandering	Federal panel: all charges dismissed except population deviation pending decision in New Jersey case (8/25/82); case still pending.
	Laurence v. Rhodes Federal Court (L - 9/10/81)	• Requests injunction for plan because it gerrymandered against Republicans	Federal Court: suit dropped.
Oklahoma	None		
Oregon	Cargo v. Paulus State Supreme Court (L - 10/80)	• All senators to be elected in 1982 • Municipal boundary splits • Authority of Secretary of State to assign senators to specific districts challenged	State Supreme Court declares plan unconstitutional (9/23/81); court upholds Secretary of State's plan (10/27/81).
Pennsylvania	In Re: Pennsylvania Congressional Districts Reapportionment Cases Federal Court (C - 2/15/82)	• Alleges congressional plan is unconstitutional • Requests court to delay primary • Population deviation • Requests court to assume jurisdiction	U.S. Supreme Court affirms 3-judge federal panel which affirmed plan drawn by legislature. (1 6/83)
	Hispanic Coalition on Reapportionment v. Legislative Reapportionment Commission Federal Court (L - 1/28/82)	• Dilution of minority voting strength	U.S. Supreme Court upheld commission plan. (3/1/83)

State	Court Case	Issues	Status
Rhode Island	Licht v. State of Rhode Island and Providence Plantations State Superior Court (L - 4/82)	• Challenges validity of Senate plan	State Superior Court ordered legislature to redraw plan. (6/3/82)
	Holmes v. State of Rhode Island State Superior Court (L - 4/82)	• Challenges validity of House plan	State Superior Court upheld House plan. (10/29/82)
	Farnum v. State of Rhode Island Federal Court (L - 8/7/82)	• Challenges 1974 Senate District lines imposed for 1982 elections by legislature	Federal Court declares 1974 Senate districts invalid. (1/10/83)
South Carolina	NAACP v. Riley Federal Court (C - 10/14/81)	• Denial of equal protection under the law • Dilution of minority voting strength • Violation of Voting Rights Act • Population deviation • Failure of legislature to complete redistricting	Federal court ordered plan proposed by the House implemented with minor change (3/8/82); U.S. Supreme Court upheld the court plan (11/23/82).
South Dakota	O'Connor v. Kundert Federal Court (L - 7/2/81)	• Multi-member districts	Federal Court dismissed case as moot due to adoption of single-member district plan. (11/82)
	Twinnereim v. Kundert State Supreme Court (L - 7/29/81)	• County boundary splits	State Supreme Court refused to hear the case. (8/12/81)
Tennessee	Lockert v. Crowell State District Court (L)	• County boundary splits in Senate plan	State Supreme Court overturned lower court decision and upheld Senate plan. (3/30/82)
Texas	Seamon v. Clements Federal Court (C)	• Dilution of minority voting strength	Federal Court ordered an interim plan for 1982 elections. (2/27/82)
	Terrazas v. Clements Federal Court (L)	• Dilution of minority voting strength • Population deviation • Disruption of the election process • Violation of Voting Rights Act	Federal Court redrew legislative plan for 1982 elections. (3/5/82)
Utah	Dmitrich v. Monson State Supreme Court (L - 1/29/82)	• Representation in districts with holdover senators	State Supreme Court rejected motion.
	Rawson and Wiese v. State of Utah State District Court (L)	• Provisions regarding holdover senators	District court granted summary judgment and dismissed case. (4/82)
Vermont	Petition for Review of Apportionment Bill State Supreme Court (L)	• County and municipal boundary splits	State Supreme Court dismissed cases. (6/17/82)

State	Court Case	Issues	Status
Virginia	Cosner v. Dalton Federal Court (L)	• Contest House plan in nine cases • Dilution of minority voting strength • County boundary splits • Population deviation	Federal Court declared House plan unconstitutional, orders elections to be held 1981, 1982, 1983 (8/28/81); court upheld House plan as redrawn (6/21/82).
	Cline v. Robb Federal Court (L)	• Suit brought on behalf of counties who objected to being split into single-member districts in the House	Federal Court upheld House plan. (9/10/82)
Washington	Doth v. Munro Federal Court (C)	• Population deviation • Violation of criterion of communities of interest	Federal Court declared plan unconstitutional because of population deviation. (11/82)
	Republican State Committee and Dunn v. Munro Federal Court (C, L - 5/13/81)	• Plaintiffs asked for advisory opinion issuing a declaratory judgment upholding the constitutionality of the legislative plan	Case settled out of court. (1/82)
West Virginia	Brookover v. Mancnin Federal Court (C)	• Requests court to compel legislature to complete redistricting	Federal Court approved plan drawn by legislature. (2/22/82)
	Moses v. Rockefeller Federal Court (L - 2/4/82)	• Requested court to require legislature to draw plan • Violation of population equality requirements	Federal Court accepted enacted plan. (3/25/82)
Wisconsin	AFL-CIO v. State Elections Board Federal Court (C, L)	• Present apportionment is unconstitutional • Request that court enjoin elections until valid plans are in effect	Federal Court ordered a court plan with minor corrections until valid constitutional plan enacted by law. (6/17/82) Congressional plan challenge dismissed April 2, 1982.
Wyoming	Brown v. Thomson Federal Court (L - 10/2/81)	• Dilution of voter strength • Population deviation	U.S. Supreme Court upheld legislative plan. (6/22/83)

C - Challenge to congressional plan.
L - Challenge to legislative plan.

Dates in parentheses with challenge designation signifies when case was initially filed.

Prepared by the National Conference of State Legislatures, July 22, 1983.

CONGRESSIONAL REDISTRICTING

A Public Information Monograph

AMERICAN BAR ASSOCIATION
Special Committee on Election Law and Voter Participation

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CONGRESSIONAL REDISTRICTING

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DIVISION OF PUBLIC SERVICE ACTIVITIES
AMERICAN BAR ASSOCIATION
WASHINGTON, D.C. JUNE 1981

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PREFACE

The American Bar Association Special Committee on Election Law and Voter Participation is now entering its second decade of service as one of the Association's major public service undertakings. Its work has been marked by a dual tradition of policy leadership and guidance to the ABA and of education for the bar and public on contemporary issues in election system improvement. The former is reflected in a number of formal ABA policy positions (popular election of the president, vice-presidential selection, voter registration by mail, amendment of the Federal Communications Act's "equal time" provisions, campaign financing reform, an independent federal election commission, and a presidential study commission on declining voter participation) by which the bar has contributed to the national dialogue and endorsed specific proposals for election law reform. The latter has borne fruit in a variety of conferences, symposia, and publications on current electoral system problems.

This monograph is a new addition to our public education tradition. It explores the important issues of congressional reapportionment theory and practice which still face the nation notwithstanding the "one person, one vote" giant step of the early 1960s. The message is particularly timely with our federal system on the brink of the major redistricting initiative that comes with each decennial census, and will be an important determinant of the fairness and equity accorded in the decade ahead of all citizens and all segments of society in their representation within the Congress of the United States.

The monograph was designed with a non-technical approach in mind. Despite its character as a "primer," informational appendices and literature references will be found to direct readers to relevant case and statutory law, analytical studies, and historic evolution and thereby permit more intensive study of the problem.

Fair redistricting is not just a priority of our Special Committee. It is a commitment of the entire American Bar Association. In 1979, the Association's governing body, its House of Delegates, in considering a variety of voter participation initiatives, formally supported the enactment of legislation that "provides for fair redistricting pursuant to the 1980 census without regard to partisan advantage." While no specific method of reapportionment was endorsed at the time, the concept itself was engraved in formal Association policy. Specific measures were weighed and explored at a conference cosponsored by the Committee in June 1980 with the National Science Foundation and a distinguished group of academics and practitioners at San Diego, California.*

*See conference volume, *Representation and Redistricting in the 1980s*, Grofman, Lijphart, McKay, Scarrow, eds. (1981, forthcoming)

The Committee would, therefore, welcome views, reactions, and suggestions from all readers of this handbook, whether or not Association members, on how best to ensure implementation of the "fair redistricting" concept. If the pamphlet stimulates and informs this kind of dialogue—in bar, civic, and other forums of concerned citizen activity—it will have well served its purpose and the cause of good government.

Washington, D.C.
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I. Introduction

Fair and equal representation, a cornerstone of the American political system, depends largely on the fairness of the process for selecting representatives. One of the most important factors in this process is the drawing of congressional districts from which members of the United States House of Representatives are chosen.* State legislatures traditionally have been responsible for establishing district lines.

Alterations in congressional district lines after the 1980 census promise to be extensive. According to its 1980 figures, the Census Bureau estimates that population movement among states will cause about 14 states to gain or lose seats in the House of Representatives. This shift, combined with population movement within states, may force virtually all of the 435 existing district lines to be redrawn. Even though redistricting inequities have been reduced in the past two decades, under the 'one person, one vote' mandate, many citizens are dissatisfied with current methods of reapportionment.

How Congressional Seats are Now Allocated

No matter how small its population, each state must have at least one representative in the House of Representatives. The remaining 385 seats are to be allotted so that each representative speaks for approximately the same number of people, thus attempting to provide each person with an equal share of representation in the nation's lawmaking processes.**

The population figures used are those provided by the decennial U.S. census. The President transmits these figures to Congress during the first week of the first regular congressional session after the census. Within fifteen days after receiving these figures, the Clerk of the House sends the chief executive of each state a certification of the number of representatives to which the state is entitled. Each state, according to rules in its state constitution or statutes, then creates the same number of districts as the number or representatives to which it is entitled. While states are required to redistrict every ten years, no formal time limit exists for the completion of the redistricting plan.

A Brief History of Redistricting***

While state legislatures traditionally have been the main bodies responsible for redistricting, the Congress and the courts have played varying roles in the line-

*The drawing of *legislative* districts (those from which representatives to a State House or Senate are chosen) is also central to fair representation, yet entails certain issues separate from those involved in congressional redistricting. For a more detailed discussion of legislative redistricting, see *Toward a System of Fair and Effective Representation*, Common Cause (Washington, D.C., 1977). Unless otherwise indicated, "redistricting" will refer only to congressional linedrawing.

**U.S. Constitution, Article I, Section 2, clause 3; 2 U.S.C. § 2a.

***"Reapportionment" refers specifically to distributing seats to established units of government, while "redistricting" signifies line drawing to establish districts within these units. States receive an apportionment of congressional seats, after which districts are drawn. Both terms will be used interchangeably throughout this monograph to discuss how congressional seats are distributed within each state.

drawing process. Congress was silent on the issue before 1841. However, since that time, it has enacted several pieces of legislation to alter the congressional reapportionment system, with congressional involvement peaking in the early twentieth century. The current congressional redistricting law was passed in 1929. It contains very few directives but does mandate that representatives be apportioned every ten years according to the then most recent U.S. decennial census, based on the principle of equal representation (see Appendix A). Except for an act passed in 1976 which banned at-large elections *(i.e.,* those where the entire state votes for all seats to which the state is entitled), Congress has not recently imposed any redistricting rules on the state legislatures.*

Until 1962, in the landmark case of *Baker v. Carr,* 369 U.S. 186, the courts trailed far behind state legislatures and Congress in their involvement with reapportionment.** Indeed, in the 1946 case, *Colegrove v. Green,* 328 U.S. 549, the Supreme Court asserted that it had neither a judicial responsibility nor a right to address the redistricting question, on the grounds that it was a political issue. *Baker v. Carr,* however, offered a dramatic departure from the previous stance of judicial "laissez-faire," in ruling that federal courts do have authority to judge whether districts are apportioned fairly. Some controversy, however, still exists concerning the appropriate roles of Congress and the courts in this area.

*2 U.S.C. § 2c.

**See Appendix A for summaries of major cases affecting redistricting.

II. The Current Redistricting System

Gross Population Inequality: Past Injuries Healed

Despite the requirement that congressional districts be redrawn every ten years so that each district has approximately the same population size, many states have had congressional districts whose populations varied dramatically. A study by the Brookings Institution revealed that in 1962 half of the states with more than one congressional district (21 states out of 42) had constituencies in which the smallest district contained less than fifty per cent of the population of the largest district.*

In the 1964 case of *Wesberry v. Sanders,* 376 U.S. 1, the Supreme Court condemned this gross inequity. It voided Georgia's redistricting plan, deciding that the population disparities among congressional districts violated the spirit of Article I, Section 2 of the Constitution. Articulating what is frequently referred to as the "one person, one vote" or "as nearly as practicable" standard, the Court wrote that "as nearly as practicable, one [person's] vote in a congressional election is to be worth as much as another's." Following the 1970 redistricting, most districts adjusted to this mandate: 402 of the 435 congressional districts were within 1 per cent of the district population average for their state.

Current Redistricting Problems: The Gerrymander

Even though major inequities in the area of population disparity have been greatly reduced, redistricting reformers contend that substantial and avoidable injustices remain. These defects result largely from the practice of "gerrymandering."

What is "Gerrymandering?" In 1812, the Massachusetts state legislature created a dragonlike district to benefit the Democratic party over which then Governor Elbridge Gerry had tremendous influence (see *Figure 1*). Drawing a head, claws and wings on a picture of the district, painter Gilbert Stuart exclaimed that it looked like a salamander. Editor Benjamin Russell, however, noted that "gerrymander" would be a more appropriate name, in "honor" of the governor. Since then, the term has generally referred to the drawing of district boundary lines for the purpose of giving some individual or group a political advantage. It is important to note that gerrymandering is detectable in terms of its *impact,* not necessarily by the *shape* of the district.**

Gerrymandering typically involves the use of one of two techniques to dilute the influence of "minorities" in the electoral process.*** It may concentrate minority

*A. Hacker, *Congressional Districting: The Issue of Equal Representation,* (Brookings Institution: Washington, D.C. 1961).

**A strangely shaped district may, for example, merely be following natural topographical features. *See* B. Grofman and H. Scarrow, "Representation and Redistricting in the 1980s", *Policy Studies Journal* (1981, forthcoming).

***In this discussion, "minority" refers generally to any group whose influence the line-drawers are attempting to reduce. Thus, it can include racial and ethnic minorities, challengers, members of minority factions within the party that is in control of the state legislature, and minority parties.

Figure 1
The Original Gerrymander



Reprinted from *Congressional Districts in the 1970s* (2nd Ed.) with permission of *Congressional Quarterly*.

strength in a few districts, thus wasting minority votes. To illustrate, a state with ten districts and a minority comprising 30 per cent of the state's population distributed as shown in *Figure 2* could draw district lines in at least two ways. One of these would be less beneficial for minorities. For example, instead of the minority comprising 75 per cent of the constituency in four districts (as in *Figure 3*), gerrymandered districts might be drawn so that minorities would constitute 100 per cent of the population in three districts (as in *Figure 4*), thus reducing the changes of a minority candidate being elected in other districts. It should be noted, however, that the courts have rarely concluded that this minority-concentrating technique violates minorities' constitutional rights.

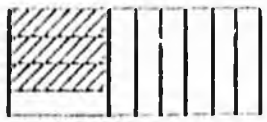
Figure 2



Figure 3



Figure 4



Note: ▨ denotes minority

A second technique is the conscious dilution of minority strength. By this strategy, a minority group that is concentrated in one geographic area (and which thus would comprise a majority if that area were a congressional district) would be split among many districts, losing a majority voice in any.

Why Gerrymandering Harms. Many individuals denounce any type of gerrymandering. Indeed, a former director of the National Municipal League's legislative redistricting information service contends that the evils which are meant to be alleviated by requiring population equality are simply accomplished through gerrymandering:

> It was inevitable that this gerrymandering problem would become worse, not better, as a direct result of the Supreme Court's rulings regarding population equity during the '60s and '70s. The incentive for resort to the gerrymander was much less when the legislature could easily accomplish the same thing by simply making districts of wildly different populations.*

In addition to general condemnation, however, the following specific charges have been leveled at gerrymandering practices:

It reduces the opportunity for ethnic minorities to be elected: the previously described techniques have often contributed to minority underrepresentation in Congress. While blacks comprise approximately 13 per cent of the nation's population, less than 3 per cent of congressional representatives were black at the beginning of the 1980s. Hispanics constitute approximately 9 per cent of the population, but make up only 1 per cent of the House of Representatives.

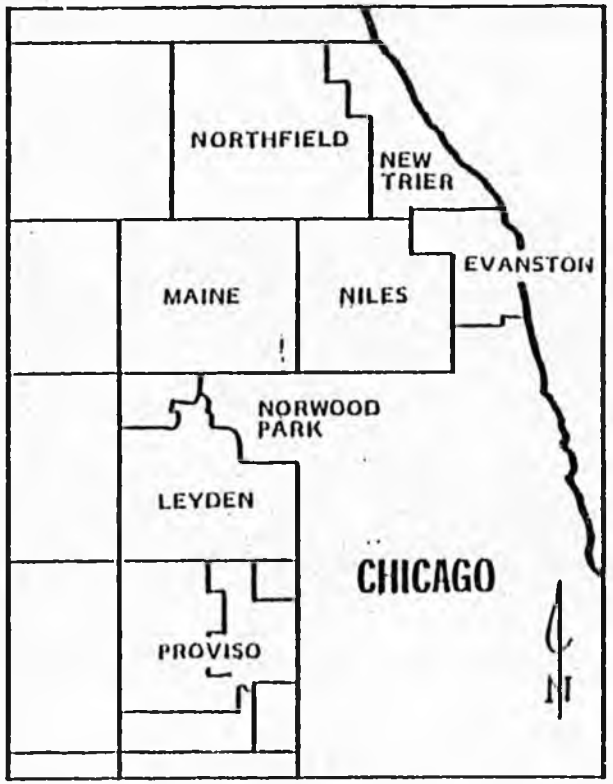
It reduces the opportunity for political minorities to be elected: members of parties not controlling the state legislatures, or members of the majority party who break with prevailing party views, also have fallen victim to the gerrymandering sword. Florida's 1972 reapportionment plan, for example, resulted in Democrats winning 75 per cent of the 15 congressional seats, while receiving only 53 per cent of the statewide vote.** And at least two recent political mavericks have been the target of their own party's gerrymandering initiatives. In 1975, Chicago's Democratic boss, the late Mayor Richard Daley, proposed an odd-shaped district plan, remarkably similar to the original Massachusetts gerrymander, which was narrowly rejected by the Democratic-controlled state legislature, and which many observers felt was designed to weaken an outspoken Daley opponent (Democrat Abner Mikva) who went on to win the contested congressional seat (see *Figure 5*). The 1972 California reapportionment apparently was designed, among other reasons, to protect incumbents of both parties. Yet, it was not designed to benefit a minority among incumbents, a liberal, anti-war Republican (Paul McCloskey) who nevertheless was reelected.

It unduly protects incumbent seats: this reduces competition and enables parties to field weak candidates. If potential candidates perceive that incumbents are drawing district lines to ensure their own reelection, challengers may be less likely to enter the race. In 1978, 11 per cent of the winners in congressional races ran unopposed. Moreover, even new-

*Congressional Anti Gerrymandering Act of 1979: Hearings on S.596 Before the Senate Committee on Governmental Affairs, 96th Congress, 1st Sess. 286 (1979) (statement of William Boyd (hereinafter cited as 1979 Hearings).

**1979 Hearings at 50 (statement of David Cohen, President, Common Cause).

Figure 5
Reapportionment Plan
(Illinois Tenth Congressional District)



comers who enter may confront additional barriers where lines have been consciously rearranged in an incumbent-protecting fashion. Plans designed to protect incumbent seats usually achieve their goals. In 1978, over 95 per cent of congressional incumbents seeking reelection were reelected.*

3. discourages voter participation: redistricting reformers argue that gerrymandering disenfranchises voters not only directly, by discouraging challengers from entering congressional races, but also indirectly, by discouraging other campaign involvement. For example, odd-shaped districts covering broad geographical areas increase the difficulty for both candidates and canvassers of undertaking neighborhood and door-to-door campaigning. Perhaps more importantly, gerrymandering may be contributing to the unfortunate decline in voter participation.* While voter turnout in House of Representatives races was about 44% in 1970, it fell to approximately 35% in 1978. Voters may reason that since gerrymandering has predetermined election results, their individual ballots hardly count. Furthermore, voters may become confused when they reside in a "strategic location" which is relocated for each major election, depending on the line-drawer's goals. A former Congressman from New York complained:

> I was redistricted in the sort of ongoing flow that occurred sufficiently often that I found that I ran for Congress three times from the same house but each time I was in a different congressional district. And the third time it was impossible for me to get from my house to the rest of my district without paying a toll.**

In addition, once candidates are elected, they might show more responsiveness to the needs of the line-drawers who created districts favoring their candidacies than to those of the citizens who elected them.

An Overview of Reform Proposals

While there exist defenders of the current system,*** advocates for improving reapportionment see the significant injustices just discussed and demand a more equitable system. The call for reform is bipartisan and nationwide.

Various groups and opinion-leaders in the nation are demanding that the redistricting system be improved. The *Washington Post*, the *Wall Street Journal*, and the *Boston Globe* all have run strong editorial messages stressing the need for change in reapportionment procedures. Some states have adopted modifications on their own in recent years. California, Colorado, Hawaii, Iowa, and Oregon have adopted strict redistricting standards, and Colorado, Hawaii and Montana have established redistricting commissions. Organizations expressing support for redistricting reform include the American Bar Association, the National Association for the Advancement of Colored People (NAACP), the Mexican American Legal Defense and Educational Fund (MALDEF), and the National Municipal League. The League of Women Voters has mounted a public education campaign on reapportionment issues and options and has left its individual state leagues free to consider and support corrective options that best meet local needs. An estimated ten to fifteen state leagues have endorsed reapportionment commissions. A Common Cause questionnaire sent to congressional candidates in the 1978 elections showed that 271 representatives favored federal redistricting standards, with only 41 opposed.

*This is not to imply that preservation of existing district lines is necessarily undesirable or harmful. From the *incumbent* legislator's perspective, a familiar constituency may be valuable if he or she is to represent constituents' views accurately.

*See ABA Special Committee on Election Reform, *The Disappearance of the American Voter* (Washington, D.C., 1979).

**1979 Hearings at 312 (statement of the late Allard Lowenstein, Representative from New York's 5th Congressional District, 1968-70).

***E.g., the National Conference of State Legislatures, (NCSL) a national organization of approximately 7000 state legislators and their staffs.

Examples of the major national initiatives are:

The Common Cause Proposal—A Model for State Self-Improvement. This public interest group, a grass-roots "good government" organization with more than 225,000 individual members and offices in over 45 states, has developed a model amendment to state constitutions with an accompanying act which states can choose to adopt. The two enactments (constitutional amendment and statute) apply to both legislative and congressional districts and are designed to balance stability with flexibility. The Common Cause plan proposes among other things:

- a commission to draw district lines. Commissioners (five in number) must meet certain qualifications for "impartiality;" Four are appointed by specific members of the state legislature, and the four select a fifth to serve as Chair;
- redistricting standards. These are rules which the initial apportioning authority must follow in its plans. It is suggested that districts embrace approximately the same size population, respect political subdivisions, be composed of contiguous territory, be compact, be drawn so as to avoid giving any group or individual political advantage, and be drawn so as to avoid diluting minority voting strength;*
- accountability provisions. In addition to requiring public hearings on redistricting proposals, the plan provides the opportunity for qualified voters to challenge the plans, and for federal courts to adjudicate these claims.

Federal Guidelines with Redistricting Commission Requirement. Senate Bill 596 and its House companion H.R. 2653 (96th Congress, 1st Session) embody this approach. Although the bills differ slightly from each other, both support the tripartite Common Cause approach: commission-standards-accountability. The primary difference lies in the Common Cause models' presumption of state action which gives the individual states a choice on implementation, unlike the congressional bills, which, once enacted, require states to adhere to their provisions. On the other hand, because the Common Cause Act is meant to be a state statute, it contains many specific provisions which the congressional options omit. The congressional bills afford states the opportunity to decide individually on a number of "specifics" in the way in which they will adhere to the more general federal mandates.

Federal Guidelines without Commission Requirement. H.R. 1516 and its companion in the Senate, Amendment 237 (96th Congress, 1st Session) offer another reform approach. Although the two bills vary slightly, both are based on suggestions from the House Wednesday Group.** The major differences between these bills and the previously mentioned congressional proposals is that H.R. 1516 and S. Amendment 237 do not recommend the establishment of commissions, as the sponsors feel that the choice of approach in ensuring equitable application of federal standards should be left to the states.

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Rather than address the totality of strengths and weaknesses of each major proposal, it may be more valuable to review individually major components or concepts. As might be expected, many proposals share some provisions and differ on others. The following discussion, therefore, takes up the key remedial options and touches on the significant arguments from various perspectives in an attempt both to foster a better understanding of the issues and to facilitate informed decisionmaking. The discussion treats two major issues: who should make the decisions, and what role might standards play in this process. Our intent is to illuminate rather than to advocate particular stances on specific provisions.

*For further discussion of standards, see Part III.

**Comprised of thirty-two moderate to liberal Republican members of the U.S. House of Representatives.

III. The Issues: Are Standards Needed?

In examining the redistricting process, several basic issues must be addressed. One fundamental set of questions revolves around the need for and character of standards to guide and order the development of reapportionment plans.

To What Extent Should Standards be Articulated?

Some groups claim that the most important aspect of redistricting reform is the establishment of specific rules which must be followed when drawing congressional district boundaries. Indeed, if fair redistricting standards are made so explicit that line-drawers cannot abuse their discretion in interpreting them, the matter of who has the responsibility for applying the standards may well become less important. Yet, even those endorsing clear standards may disagree about the extent to which certain standards should be defined by the law. The narrower the definition, the less flexibility is available to accommodate factors affecting the fairness and soundness of plans which are not yet in existence when the definition is formulated. Moreover, as might be expected, some electoral experts are opposed to explicit standards, particularly federal ones.

In Defense of Standards. A 1979 editorial in the *Washington Post* stressing the need for standards (particularly to provide courts with reviewing guidelines) emphasized one of the common rationales for this approach: "Since the federal courts are already deeply into this 'political thicket,' [of judging the fairness of redistricting plans] it might be useful to them—as well as to the cause of ending the more indefensible forms of the gerrymander—for Congress to spell out how it believes congressional district lines should be drawn."* Indeed, many have viewed standards as perhaps the most important agenda items in the fair redistricting "portfolio." As a former AFL-CIO advisor on reapportionment matters and the plaintiff in *Wells v. Rockefeller* has stated:

> The most effective way to prevent gerrymandering is not to . . . vest special power in some judicial umpire or even in a nonpartisan authority. Rather it is to make sure that whoever draws the district lines cannot do so in a manner calculated to bestow special advantages on any . . . group . . . And the best way to do this is to establish firm, explicit . . . ground rules.**

*Washington Post, June 21, 1979.

**Wells, *'Affirmative Gerrymandering' Compounds Districting Problems,* National Civic Review (January 1978) at 17.

Equity, uniformity, visibility and accountability—at first blush, all appear to make the case for articulate standards. Few seem to quarrel with the idea, at least in principle. Yet, there is a significant measure of opposition.

In Opposition to Standards—Encroachment on States' Rights. The National Conference of State Legislatures has expressed concern that if Congress mandates that commissions draw plans according to specific federal standards, the state legislatures will be accorded little voice in the redistricting process. The standard response to this objection is that state legislatures would retain a significant influence in appointing commission members. Of course, this influence would be limited by reform proposal restrictions on who could be appointed.

Absence of Standards throughout the Nation's History. It is true that federal redistricting standards have not been employed throughout most of U.S. history and that many states have set no standards for either legislative or congressional redistricting. Standards supporters, however, assert that (i) perhaps the federal standards which were renewed and embellished from 1842 to 1911 ultimately expired simply because they were not judicially enforced, and not because they were unnecessary or because Congress did not have the authority to impose them, and (ii) states are now increasingly adopting standards. These observations cast doubt on the argument that the relative absence of standards in the past implies that they are unnecessary to fair and effective operation of our redistricting apparatus.

Effect on Volume of Litigation. Some have expressed wariness of standards without commissions, suggesting that such a combination may "open the floodgates to litigation" and entail lengthy bureaucratic red tape. An underlying premise is that many plans will be unable to satisfy fully the variety of standards being proposed, and dissatisfied parties may be encouraged to find some inconsistency worthy of court contest. Yet others have speculated that the articulation of standards could reduce frivolous litigation, since challengers would use standards as guidelines to determine the types of deficiencies the courts will recognize and would assess their prospects with greater care.

Standards: Conflicts or Priorities. Focusing on the dilemmas of definition and differing social and political values that underlie many of the standards proposals, some authorities suggest that the task of reconciling and ordering meaningful standards may be unmanageable. For example, drawing districts with the same size population in order to fulfill the "population equality" standard may require odd-shaped districts which fail to meet the frequently asserted "compactness" requirement. NCSL has complained, in this vein, that many congressional bills "impose a litany of substantive and inconsistent standards to govern redistricting plans."*

Proponents of standards generally respond to such assertions not by disagreeing that standards may conflict, but by arranging them according to priorities which can operate to mitigate the problem: the less important standards need only be met to the extent that the plan they affect is also faithful to the more important standards. Indeed, several experts suggest that priorities should be

*1979 Hearings at 400 (statement on behalf of NCSL of State Senators S.H. Runyan, Arizona, Ross Doyen, Kansas, and Charles Vickery, North Carolina).

made explicit in any reform proposals which espouse redistricting standards. The Supreme Court seemed to advocate this priority approach at least with respect to legislative districts, in *Reynolds v. Sims*, 377 U.S. 533 (1964) where the Court wrote that although the state must attempt to construct districts in both houses of its state legislature as nearly equal in population as practicable, some population deviations were permissible if "based on legitimate considerations incident to the effectuation of rational state policy" such as a desire to respect political boundaries. It should be noted that placing standards in order of importance does not eliminate all difficulties. Additional questions which need to be answered include what the precise order should be among any given set of standards, whether there should be a range within which some standards can be modified to accommodate others and, if so, what these ranges might be.

Examination of Specific Standards

Against this backdrop, it is appropriate now to examine individual standards which have been proposed, where on the priority scale each might be placed, how clearly these can and should be defined in law, and how much a given standard should be modified to accommodate other standards.

Population Equality. Past congressional statutes, Supreme Court decisions, and virtually all major reform proposals agree that congressional districts should strive for equal population size. According to the Congressional Quarterly, 385 of the existing 435 congressional districts are within 1 per cent of the average district population within their states, thus confirming the efforts of states to adhere to this requirement.* Nevertheless, many issues with regard to this standard remain unresolved and a good number turn on definitions of "population equality." Most definitions set forth a percentage of population deviation allowable from a state's average population in a congressional district. Various advantages and disadvantages are claimed for this approach. The "deviation range" concept is meant to eradicate gross population since any deviation outside the stipulated range would be impermissible. This approach seems to offer a better solution than precise mathematical equality since it allows other relevant considerations to be taken into account in a way that mathematical equality may not. Thus, districts would be presumed to be within constitutional tolerances if the maximum deviation were within the permitted range. Yet this presumption might be overcome by showing that a given plan, nevertheless, "operated unreasonably to minimize the voting population," see *Kirkpatrick v. Preisler*, 394 U.S. 526, at 531 (1969).

Among those standards defining "population equality" according to range, there exist alternatives concerning the amount of deviation allowed. One 1979 Senate proposal, for example, (S. 596**) allows the largest district to be 4 per cent greater than the smaller district (*i.e.* permits deviations from the average district of up to 2 per cent). Advocates defending the broader ranges assert that they provide a greater opportunity to accommodate other relevant standards and, that in any event, small ranges may require census figures to be more accurate than is now the case. Indeed, the Census Bureau admits to a margin of error of

*Congressional Quarterly, "Congressional Districts in the 1970s" (2d ed. 1974) at 1.
**96th Congress, 1st Session.

approximately 2 per cent in its estimates, and a census authority testified in mid-1979 before a House subcommittee that many state representatives had encountered problems using census figures to draw redistricting lines.*

Thus, although debate continues concerning the precise definition of "population equality," there seems to be a consensus that some standard of this kind is a necessary (albeit not alone sufficient) requirement for fair redistricting. It appears that a range of standards would pass constitutional muster although Supreme Court decisions are not fully clear on the extent to which states must at least strive for strict mathematical equality.

Political Subdivisions. Over 200 counties are split up among congressional districts more than is required by their state's population average. Many of those concerned with improving the redistricting process feel that the boundaries of political subdivisions (counties, municipalities, and other units of local government) should be respected in the line-drawing processes, although not all of them agree on whether the term "political subdivision" should be defined in the federal law or left up to the states to define. They propose that political subdivisions remain undivided whenever possible not only because unnecessary fragmentation undermines the ability of constituencies to organize effectively, but also because it increases the likelihood of voter confusion regarding other elections based on political subdivision geographies. Furthermore, preserving political subdivisions tends to foster a sense of community.

Still not settled, however, is the priority this standard should be assigned. While it is generally agreed that boundaries should only be respected to the extent that they are consistent with the "equal population" standard, the issue becomes more controversial when this standard conflicts with the "compactness" standard which discourages odd-shaped districts. Many political subdivisions are odd-shaped; if the compactness standard is given a high priority, the political subdivisions should only be respected when both "population equality" and the "compactness" requirement are fulfilled. Most groups place preservation of political subdivisions second only in importance to "population equality."

Other criticisms of the high priority accorded preservation of political subdivisions boundaries cut more deeply than those just mentioned. It is charged that honoring subdivisions preserves the "status quo," a change in which may sometimes be needed in order to eliminate undue incumbent power in fair districting situations. Representatives from MALDEF, for example, have expressed concern that this standard may jeopardize minority voters: "[T]he standard which requires maintaining the boundaries of political subdivisions is unwarranted. In order to maximize the voting strength and enhance the opportunity for minorities to be elected, it is often necessary to split cities or counties which have large concentrations of minority citizens."**

Contiguous Territory. Rarely has it been suggested that congressional districts not be composed of contiguous territory. Generally, a district is considered contiguous if none of the territory included within it is entirely separated from the remainder of the district by intervening territory assigned to another district. Indeed, even though not required by the Constitution or by federal law, contiguity is almost always observed in congressional districts.* Perhaps this practice is common because, like compactness, it seems inherent to the system of representation upon which the U.S. House of Representatives system is based. Although there has been questioning of the incorporation of contiguity into federal legislative standards because of difficulty of definition, the almost self-evident character of the concept suggests that detailed definition may not be needed.

There are, nevertheless, problematic situations for assessing contiguity. For example, the question might be raised whether districts are necessarily contiguous if they are comprised of territories joining only at one point or connected only by bridges or tunnels, or separated by unconnected waterways. Some plans, therefore, propose "convenient contiguous" territory, a concept that is designed to permit searching scrutiny of these marginal situations and to afford some recognition to travel and communication barriers.

Compactness. The "compactness" requirement is designed to prevent gerrymandering districts into odd shapes. One measure of compactness is to determine the smallest circle in which the district can be circumscribed and to compare the ratio of the area of the district inside the circle to the area of the circle itself, with the closer to 1-1 the better. Like contiguity, compactness is required neither by the Constitution nor by federal law, but scholars and politicians alike have acknowledged its value and many states have established compactness provisions.

Defenders of the compactness requirement maintain that it is central to the theory of geographical representation upon which U.S. House of Representatives selection is based. Geographically compact districts also tend to reduce electoral costs in time and money, since candidates and campaign workers can more readily cover smaller districts. Nevertheless, a compactness standard which would be logical for one district might be quite inapplicable to another. Thus, general language requiring the aggregate lengths of district boundaries in the state to be as short as possible might be more appropriate in federal standards than more detailed or narrow definitions. States, however, could choose to define the term more narrowly in their own constitutions or codes. This level of generality is seen as preventing the arbitrary shifting of lines for political advantage while permitting minor departures from compactness to accommodate important companion standards. Virtually all proposals suggesting this standard place it below the three previously mentioned in terms of priority.

"Antigerrymandering" Standards. Some endorsers of standards believe that even if the previously mentioned requirements are carefully articulated and enforced, there should also be explicit "antigerrymandering" standards. These generally prohibit the drawing of lines for the purpose of gaining political advantage, and currently exist under the laws of Colorado, Delaware, Hawaii, and Oregon. Such requirements serve as an added safeguard against line-drawers who, while devising a means of fulfilling the previous requirements, still intentionally manage to structure district lines which establish an undue political advantage.**

*Remarks by Marshall L. Turner, Jr., U.S. Bureau of the Census, testifying before the House Subcommittee on Census and Population, May 4, 1979.

**Letter dated September 27, 1972, Abelardo Perez, then Associate Counsel for MALDEF, to Senator Danforth (R-Illinois) sponsor of S. 596.

*In fact, a federal court, in *Kopald v. Carr*, 343 F. Supp. 51 (M.D. Tenn. 1972) imposed a requirement of contiguity where that requirement was not mandated by state statutes. In addition, redistricting expert Bruce Adams has noted that, ". . . two state statutes and twenty seven constitutions require contiguity." ("A Model Reapportionment Process: The Continuing Quest for 'Fair and Effective Representation'," 14 *Harvard J. on Legislation*, June 1977 at 874).

**See Backstrom, Robins and Eller, "Issues in Gerrymandering: An Exploratory Measure of Partisan Gerrymandering Applied to Minnesota," 62 *Minn. L. Rev.* No. 6, July 1978, which points out that

The "political advantage" type of standard has encountered some opposition. It is seen by some as an attempt to make the line-drawing process politically neutral, an impossibility since every district line favors some political party, person or group. Proponents respond, however, that the standard is not meant to void a plan merely because it favors some group or individual. The Common Cause model, for example, does not void a plan merely because it *results* in favoritism. Rather, it requires that challengers demonstrate that districts were drawn for the *purpose* of favoring some person or group.*

In addition, problems may arise under an antigerrymandering standard with regard to determining which entities should explicitly be prohibited from gaining political advantage. Among those suggested by various proposals are: political parties, incumbents, economic groups, certain racial minorities, certain language groups, and specific individuals. While it seems laudable to attempt to eliminate the possibility of any entity gaining political advantage, an effective standard may be so difficult to articulate that the resulting attempt could create more problems than it would solve. Indeed, Common Cause redistricting expert Bruce Adams has advanced this criticism with respect to the protection of certain socio-economic communities (as has been attempted in Alaska, Colorado, Hawaii, and Oklahoma). In a 1977 article, he wrote:

> The notion of "socio-economic communities of interest" is so broad that a reapportionment authority could knowingly demark geographically overlapping communities. As a result, the reapportionment authority would have to favor some communities of interest over others. It is possible, therefore, that under the broad provisions those communities of interest that have been the traditional victims of discrimination will gain no additional protection.**

Another frequent criticism of the antigerrymandering standard is that it weakens the theory of geographical representation. If a "fair system" is defined as one which guarantees that groups receiving a certain percentage of the total vote are awarded a similar percentage of seats in Congress, the United States would have to adopt a mechanism for proportional rather than geographical representation.*** Many political scientists assert that the U.S. electoral system could not readily make this change because it would entail political conditions (*e.g.*, the growth of a multi-party system) which are foreign to the nation's political system and traditions. Yet, it is possible to focus only on geographic information in the *initial* formulation of redistricting plans and then to apply a "political influence" concept in checking a plan to ensure that it does not unduly benefit some specific group or individual. An antigerrymandering standard might decree that such a check is desirable although the type of data to be used in making this test and its manner of application would have to be carefully worked out.

one can measure the extent of gerrymandering by looking at any proposed districting in terms of statistical calculations on how likely the expected seats votes relationship it would give rise to could have occurred by chance.

*Common Cause, "Toward a System of 'Fair and Effective Representation'," (Washington, D.C., 1977) at 55.

**Adams, "A Model Reapportionment Process" *supra*, at 879.

***See* Backstrom, "Issues in Gerrymandering," *supra*. As measured in Backstrom's terms, fair representation is *not* proportional representation.

Some groups oppose any express prohibition of political gerrymandering, arguing that the Supreme Court has never found it unconstitutional to take certain considerations into account when drawing initial redistricting plans.* However, advocates of this standard, in addition to questioning the validity of case precedent here, suggest that it is precisely for the reason that constitutional strictures may permit some accommodation of political considerations that federal standards must be articulated in this area in order to prevent abuse.

Other Considerations: "Affirmative Gerrymandering" Practices

Most authorities and organizations advocating antigerrymandering standards disapprove of the use of statistics about a district's racial or linguistic composition to dilute the voting strength of certain racial or language minorities. Indeed, both Supreme Court decisions (*e.g. Gomillion v. Lightfoot*) and federal legislation (the Voting Rights Act of 1965) prohibit such practices.**

A more controversial question, however, is whether such information should be taken into account to afford minorities an advantage so as to compensate for past redistricting injustices (hence the name "affirmative gerrymandering"). In this vein, an expert on the effect of redistricting on black voters has suggested the following language for inclusion in redistricting proposals:

> There shall be an affirmative duty on the part of the [initial reapportionment authority] to insure that there is no discrimination on the basis of race or color in the drawing of congressional district lines.***

This approach seems to be supported by Supreme Court pronouncements [*United Jewish Organizations v. Carey*, 430 U.S. 144, (1977)]; the NAACP has also gone on record in support of "affirmative gerrymandering":

> Whereas, courts, including the Supreme Court, have recognized that it is sometimes necessary to take race into consideration in the shaping of voting districts to correct violations of the Constitution and of the Voting Rights Act; . . .[T]he NAACP opposes any law that would restrict legislatures or other entities in their efforts to correct the underrepresentation of blacks in Congress.****

Some minority interests (*e.g.* MALDEF) suggest that a diluting effect in a redistricting proposal (with or without proven intent) should be sufficient proof of discrimination to invalidate it or, at least, to create a presumption of defectiveness in any state and not merely in those jurisdictions with a history of discrimination. The rationale, drawing on experience with respect to efforts to establish discriminatory intent in matters of minority employment and education, is that proving such intent is difficult if not impossible.

In *City of Mobile v. Bolden* the U.S. Supreme Court dealt with the intent issue in the context of a redistricting challenge based on Section 2 of the Voting Rights

*NCSL; *See Gaffney v. Cummings*, 412 U.S. 735 (1973) and *White v. Regester*, 412 U.S. 755 (1973) in support of Supreme Court neutrality in this area.

**42 U.S.C. §§ 1971, 1973 *et seq.*

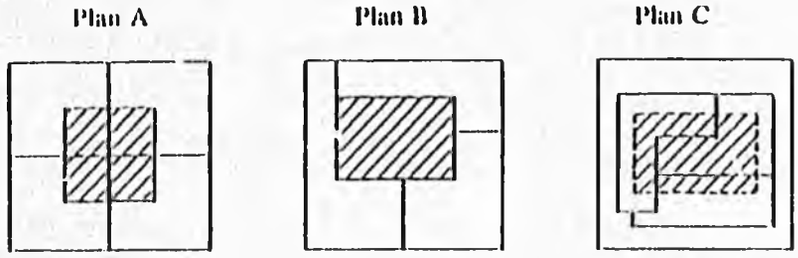
***1979 Hearings at 342 (statement of George Brandy Smith).

****Althea Simmons, Director, Washington bureau, NAACP, quoting statement of the Association enunciated during NAACP's 70th annual convention.

Act.* Mobile's at-large system of elections was alleged to cause discrimination against minority groups. The Supreme Court ruled against plaintiffs, finding that the intent to discriminate had not been proved as required in a Section 2 challenge.** This particular election system had been established in 1911, before the date of applicability of Section 5 of the Voting Rights Act. Had Section 5 applied, the system when proposed might not have passed muster during the statutorily mandated preclearance procedure which requires that a covered jurisdiction must prove that a proposed change has neither the intent *nor* the effect of discriminating against minority groups. Thus, a paradox exists with respect to the relationship between the Voting Rights Act and electoral systems. While Section 5 jurisdictions generally may not establish at-large systems, such existing systems and systems adopted by non-Section 5 jurisdictions may be imposed and perpetuated regardless of their effect on voting strength.

While a requirement which prohibits dilution of minority voting strength would lean toward Plan B instead of Plan A in an illustrative four-district urban area such as graphically portrayed in *Figure 6*, the "affirmative gerrymandering" approach might favor Plan C (at the cost, it is noted, of some geographic gerrymandering).

*Figure 6****



Note: ▨ denotes minority

These points of view have been criticized on several grounds. First, there has been questioning of one assumption upon which affirmative gerrymandering rests, namely, that minorities make up an essentially unified voting block that will rally behind a minority candidate. It can be argued, of course, that even though minority constituencies will not necessarily elect minority representatives, the larger the percentage of a minority population in a district, the more likely it is that the district will elect a minority candidate. More intensive studies of minority voting behavior may shed light on this issue. However, regardless of

*42 U.S.C. 1973, Section 2: "No voting qualifications or prerequisite to voting, or standard or procedure shall be imposed or applied by any State or political subdivision to deny or abridge the right of any citizen of the United States to vote on account of race or color, or in the contravention of the guarantees set forth in Section 1973b(f)2 of this title." Section 2 is interpreted as a restatement of the Fifteenth Amendment which requires a showing of purposeful discrimination.

**64 L. Ed. 2d 119 (1980).

***Each box represents a state; divisions denote districts. Equal population distribution is assumed.

the practical impact of such "affirmative gerrymandering," some political analysts seriously question its theoretical foundation, maintaining that while redistricting should not contribute to discrimination, neither should it carry the burden of compensating for past discriminatory practices. In the words of one expert:

> [A] racial quota [affirmative gerrymandering] could easily be superimposed on a legislative body which is elected by a system of proportional representation. It could simply be required that a particular group's proportion of the total population be reflected in the membership of the legislative body. But to attempt to apply a quota to a legislative body which is geographically based (as are the U.S. Congress and every one of the state legislatures) is to mix two fundamentally incompatible concepts.*

Time Provisions. Throughout the redistricting process, there exist steps which may become obstacles to timely action if time limits are not imposed. These include:

- completion of a proposed redistricting plan;
- voter challenge;
- initial court review;
- formulation of an acceptable plan if the initial plan is rejected;
- final judicial decision on acceptance of the plan.

Some improvement advocates believe that there should be few, if any, specifications of time limits since they may be unenforceable if emergencies arise which preclude attention to redistricting matters. These individuals endorse the "as soon as practicable" approach. Others believe that a maximum time limit should be set for some, if not all, major steps. This would help avoid the problem of ultimate plan acceptance after census figures have become outdated or after crucial elections have passed.

Perhaps the most crucial time problems arise in connection with drafting of initial and final plans. Some experts suggest that a time limit be set only for the final product. Interim time limits are unnecessary, they assert, if the final plan is accepted before political interests can predominate. The voter challenge time period is also a subject of controversy. Some proposals allow voters to challenge plans up to 60 days after they have been made public, while others allow up to nine months after establishment of the last district after a decennial census (*e.g.*, S. 596 and Amendment 237 plans, respectively). The shorter period attempts to ensure that litigation will conclude before the next major congressional election takes place. The longer time provision, on the other hand, offers citizens a greater opportunity to participate in the apportionment process and to hold line-drawers accountable. Generally speaking, some articulated time limits, perhaps more as a target than as a rigid goal, would seem desirable in reapportionment standard-setting.

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*Wells, "'Affirmative Gerrymandering' Compounds District Problems," *National Civic Review* (Jan. 1978) at 16.

This discussion has explored the major options under consideration with respect to standards for congressional redistricting. While the options remain open to debate, it appears that virtually all reform interests view mandated redistricting standards as an important element for improving the electoral process.

IV. The Issues: Who Should Make the Redistricting Decisions?

In addition to a determination of the need for and character of standards, the reapportionment "rulemakers" must be identified, *i.e.*, the body or governmental entity which determines where responsibilities lie for making subsequent decisions. This body possesses the authority to determine whether commissions, state legislatures, or other governmental officials draw district boundaries. If the rulemakers decide that specific processes and specific protections should be included in initial plans, such reviewing responsibility must be allocated. The main candidates for these key duties in the reapportionment process will be discussed separately.

Who Should be the Redistricting Rulemakers?

The ultimate authority to decide how subsequent redistricting decisions should be made lies with either Congress or the state legislatures.

Contentions as to Congressional Authority. It can be readily argued that the Constitution grants Congress this ultimate authority. Article I, Sections 4 and 8 are cited in support of this view. Article I, Section 4 declares that Congress "may at any time by law make or alter" [regulations about the] "times, places and manner of holding . . . [congressional] elections" and Section 8 grants Congress the power "To make all laws which shall be necessary and proper . . ." for carrying out its constitutional powers. This basic authority as well as subsequent judicial interpretations suggest that regulation of redistricting is within Congress' constitutional prerogatives. Indeed, the Supreme Court, on several occasions, has interpreted the Constitution as giving Congress authority over rules affecting congressional elections.* Another argument supporting this view is the pragmatic contention that Congress has exercised such authority in the past on several occasions without encountering serious objections.

Contentions as to State Legislative Authority. The National Conference of State Legislatures (NCSL) is perhaps the leading advocate of preeminent authority in state legislatures over reapportionment, and has officially opposed any federally mandated procedures, structures, or substantive standards on redistricting. Those, like NCSL, who favor the current system (which accords state legislatures an essentially free hand, subject, of course, to Supreme Court constitutional interpretations) advance several arguments. First, they maintain that the framers of the Constitution intended that state legislatures have ultimate control, noting that Article I, Section 4, provides that "the times, places and manner of holding Congressional elections shall be prescribed in each State by the Legislature thereof." Testifying before the Senate in 1979, NCSL spokespersons contended that congressional power in Article I, Section 4 to "make or alter" such rules is misinterpreted when applied beyond the most compelling emergency situations:

> Congressional authority to oversee national elections was controversial and was accepted only as an extraordinary device to be used in extraordinary circumstances. It was not intended to grant the national legislature plenary power over elections or to permit that body to interpose its notion of political fairness.*

Although Congress has legislated some standards, state legislatures historically have been responsible for making redistricting decisions. This relative congressional inactivity on redistricting stems largely from a history of lack of enforcement of congressional mandates rather than from any irrelevancy of the rules to improving the process or from an absence of congressional authority to make the rules in the first place.**

The debate about "ultimate rulemaking" authority is of greatest moment where the U.S. Congress and state legislatures would assign subsequent responsibilities in a different manner. Perhaps, then, the most crucial question to be answered is who should have responsibility for drawing district boundaries.

Who Should be the Initial Apportioning Authority?

This is perhaps the most controversial issue in the reapportionment debate, for it affects a power exercised by state legislatures since the inception of our republic. The two major candidates for the responsibility are commissions and state legislatures. The "commission" concept has generally attracted the "reform" label, yet even some "reformers" hesitate to support it.

Advocates of the "commission" approach feel it has appeal because the "legislated" system allows a great degree of self-interest to operate in the redistricting process. A former Illinois Congressman testified in 1979 that taking redistricting out of legislative hands "greatly reduces the inherent conflict of interest which now exists when the same people who draw a new map and vote on it also have a personal stake in its outcome."*** State politicians have occasionally admitted to this self-interested motivation; many legislators dislike the redistricting responsibility, but use it in "self-defense," with knowledge that if they do not succumb to the temptation of drawing lines favorable to their political interests, their opponents will certainly seek to do so.

Those groups skeptical about commissions suggest that commissioners might be just as subject to political pressures from congresspersons as are state legislators. If the commissioners are political appointees, they may even be more vul-

*See Appendix A, *Baker v. Carr, Ex Parte Siebold, Oregon v. Mitchell.*

*1979 Hearings at 401 (statement on behalf of NSCL of State Senators S. H. Rayan, Arizona, Ross Doyen, Kansas, and Charles Vickery, North Carolina).

**E.g., see discussion of Standards, at page 10.

***1979 Hearings at 302 (statement of Abner Mikva, formerly 10th Congressional District, Illinois, presently a member of the Circuit Court of Appeals for the District of Columbia).

nerable to political pressures than a legislature elected by the public. Commission supporters respond by endorsing the introduction of safeguards into the appointment process to eliminate "special interest" commission members. In a 1977 article, one redistricting expert pointed to the Arkansas legislative commission (composed mostly of legislative leaders) as a biased body that could not "exercise the independence sought by the advocates of reapportionment reform." He strongly commended, therefore, the "impartiality" restrictions incorporated in the Common Cause proposal.*

Critics of the commission approach also assert that creating commissions unrealistically attempts to remove politics from an inherently political process. It is impossible, the argument holds, to apportion political power by a non-political process. Further, the fact that citizens can vote directly for legislators but not for commissioners may cause voters to feel disenfranchised and removed from the electoral process. Pro-commission authorities concede the importance of a sensitivity to the danger of removing the redistricting process too far from the legislature. They typically stress, however, that the reform is designed not to deny the legislature its interest in reapportionment, but rather to buffer the process from conflict of interest.**

Some experts contend that entrusting redistricting to a commission may bring the process closer to the voter, as many plans implemented in the recent past were drawn by the courts, a body over which voters have even less control than over commissioners. However, proponents of the current system assert that commissions boast no better "track record" than do legislatures in terms of producing plans acceptable to the courts. While there exist few statistics relating to commissions drawing congressional lines, the information about state legislative commissions and reapportionment commissions in other countries may shed light on the issue. According to NCSL, only a "handful" of states have seen their congressional plans redrawn by the courts, and one recent study of redistricting practices suggests that the overall record of some bipartisan commissions has thus far been shown to benefit the party controlling the state legislature more than have the other methods.*** Furthermore, according to 1974 data, about a third of the plans initially proposed by both state legislatures and the courts were rejected initially by appellate courts.

While these statistics offer meager support, if any, for the commission concept, commission proponents point to other data that tend to corroborate the improved commission track record. First, many reformers take issue with the "handful of states" estimate. In fact, most estimates are that between 25 percent and 35 percent of current house district lines were drawn by the courts. A 1973 study by the Council of State Governments concluded, moreover, that commissions seemed to establish better track records than state legislatures.**** Other analysts point to commissions in other countries (*e.g.*, Australia, Canada, and

*Adams, "A Model Reapportionment Process: The Continuing Quest for 'Fair and Effective Representation,'" *supra* at 868. Adams is a principal architect of the Common Cause models.

**It is worth noting that the most direct conflict of interest concerns legislative districts. While state representatives may run for congressional seats (and thus benefit directly from congressional lines), they more often run for reelection in their state house and senate.

***1979 Hearings at 424 (statement of Eric Uslaner).

****Council of State Governments, *Reapportionment in the Seventies* 11 (1974).

Great Britain), suggesting that their record of electoral equity is better than that of those in the United States. Although the controversy about actual performance may be resolvable only with further study, it does seem clear that more than a "handful" of congressional redistricting plans initially drawn by state legislatures have been found unacceptable in the courts.

A collateral consideration in assessing performances is economy, *i.e.*, whether commissions can save time and money. Because commissions would be created for the specific purpose of efficiently and equitably preparing redistricting plans, their entire organization could be shaped toward that end. Such specialization is, of course, extremely difficult in a state legislature with numerous and diverse responsibilities. Unfortunately, reliable estimates of the comparative costs of commission versus state legislature formulation of plans are not readily available. Yet, there are some figures which provide an initial framework. From 1971 to 1973, the California legislature invested approximately $1 million developing a redistricting plan (which was ultimately replaced by a court-appointed Special Masters' Committee plan) and in 1971 there were over 26 full-time legislative staff members working on the California redistricting. Hawaii's reapportionment commission spent about $200,000; Montana's spent approximately $20,000.* These figures suggest that the dollar dimension of the debate, even if not an overriding consideration, merits some study.

In addition to criticism of the "commission" approach, advocates of state legislature line-drawing advance several positive claims. It is commonly asserted that state legislatures have not abused their discretionary powers. It is argued that since forty-two states have a population deviation of less than 1 per cent (*i.e.*, in these states, the population of the greatest district does not exceed by more than 1 per cent that of the smallest district),** this demonstrates that legislatures have made a concerted effort to draw fair districts. Thus, since the only constitutional requirement of fairness articulated by the Supreme Court is population equality, and since the legislatures are adhering to that rule, they have made a "good faith" (and largely successful) effort to establish fair district lines. As noted earlier, reformers caution that although population equality is necessary for fair redistricting, it is not alone sufficient.

Even if the commission concept is accepted, controversies can arise concerning both the method of selecting commission members and their number. The greater the number, the more likely it is that the commission will take into account minority views. However, a large membership may increase financial costs while reducing the likelihood of a consensus. An equally troublesome question is, who should mandate the commissions—Congress or the states? Those supporting the congressional approach maintain that it will ensure that all states establish commissions whose members are selected in the most impartial and uniform way possible. Critics, however, question both the political and constitutional advisability of federally mandated commissions. They voice the view that the redistricting mechanism should be left in state hands, where it can be held accountable to the citizens. They also express concern that members of a federally mandated com-

*Adams, "A Model Reapportionment Process: The Continuing Quest for 'Fair and Effective Representation'," *supra* at 856, n. 115.

**1979 Hearings at 101 (statement of North Carolina State Senator Charles Vickery, citing *Congressional Quarterly*).

mission may view themselves as ultimately accountable to the federal government, to the detriment of viable state government.

Constitutional questions also have been raised in this area, especially with respect to congressional authority to specify the method of commissioner selection. Plans requiring certain state legislators to appoint commission members, for example, might violate the "appointments clause" of the Constitution which requires that certain "Officers of the United States" be nominated by the President and confirmed by the Senate.*

Three congressmen advanced this argument in 1979 before a House Subcommittee, pointing out that it was their understanding that (i) commission proposals do not specifically define whether a commission would be a state or federal agency, (ii) if a federal agency has more than investigatory and informatory powers, its members must be selected in conformity with the "appointments clause," and (iii) since the commissions would be responsible for making reapportionment decisions (clearly more than investigatory and informatory powers), the constitutionality of their selection by party members in the state legislatures would clearly be put into question.** They also suggested that congressional specifications as to commission selection and membership might violate states' rights under the Tenth Amendment, by requiring rather than authorizing state officials to perform federal duties. These views are questioned by legal experts for groups espousing redistricting commissions who see no "appointments clause" issue where purely legislative functions are involved (as in preparing district plans) and discern in the broad federal authority recognized by the courts over congressional elections the legitimate power to specify redistricting procedures such as commission mechanisms.*** Thus, it appears that the issue of congressionally mandated reapportionment commissions must await judicial interpretation for final constitutional validation (although little constitutional question exists that the states may proceed with this technique on their own initiative).

A further line of thinking in this vein merely dismisses commissions as lacking relevancy and meaning with respect to the problems of fair apportionment. On the one hand, it is claimed that if there are fair and clearly defined redistricting standards and if there are "accountability" provisions serving as a check on the redistricting authority, it makes little difference what body holds the redistricting responsibility. Thus, each individual state should choose whatever method of

*Article II, Section 2, cl. 2: "He shall have power, by and with the advice and consent of the senate, to make treaties, provided two-thirds of the senators present concur; and he shall nominate, and by and with the advice and consent of the senate, shall appoint ambassadors, other public ministers and consuls, judges of the supreme court, and all other officers of the United States, whose appointments are not herein otherwise provided for, and which shall be established by law. But the Congress may by law vest the appointment of such inferior officers, as they think proper, in the president alone, in the courts of the law, or in the heads of departments."

**1979 Hearings at 35-36 (statements of Representatives James Leach, Robert Kastenmeier, and William Frenzel relying on *Buckley v. Valeo*, 424 U.S. 1 (1976), interpreting the case as holding in part that if a federal agency has more than investigatory and informatory powers, member selection must conform to the "appointments clause.").

***See, e.g., 1979 Hearings at 67-75 (statement of Common Cause General Counsel K. Gindo, *The Constitutionality of the Antigerrymandering Act of 1979*, relying on *Ex Parte Seibold* (1880), *Smiley v. Holm* (1932), and *Oregon v. Mitchell* (1970), as establishing Congress's clear power to divest states of all control over redistricting and, therefore, also to exercise more limited prerogatives of specifying procedural rules and methods for that function.).

reapportionment would, in its political context, be consistent with fulfilling these other major requirements. On the other hand, there are those who remain skeptical about articulating any reform measures, feeling that those who wish to exploit the redistricting process for reasons of political self-interest will find a way to circumvent even the most clearly defined rules.

Accountability Provisions: Who Should Judge the Plan?

Even if the initial reapportioning authority has built-in fairness safeguards in terms of character, independence, representativeness, and procedural standards, it must be recognized that unforeseen injustices may still result. Thus, the major reform proposals all incorporate some accountability provisions. These include:

- providing for open hearings when the line-drawers are considering redistricting options;
- requiring public notice of redistricting hearings;
- making the record of any hearings publicly available (perhaps by publication in legislative journals);
- affording the opportunity to qualified voters to challenge a proposed plan within a reasonable period (affording sufficient time to become acquainted with the line-drawing proposals and to prepare necessary information for the challenge, but not so long as to delay unduly final determinations) and, possibly, with waiver or reimbursement of attorney's fees for successful challenges;
- placing authority in federal courts for expeditious review of plans, either through challenge initiatives or automatically; and
- allocating responsibility for replacing inadequate or objectionable plans—the redrawing to be accomplished by initial redistricting body, new group, or the courts.

With respect to judicial review measures, questions arise concerning what specific time provisions should be included in the authorizing bills, and whether there should be automatic judicial review as opposed to review only of those cases which are challenged. Automatic review now occurs for legislative reapportionment plans in Colorado, Florida and Kansas. It offers the advantage of a routine and more thorough check on initial plans, as courts may catch improprieties which public scrutiny misses. However, automatic review also raises questions. In particular, it is interpreted as permitting the courts too great a role in the redistricting process.* The underlying argument stresses that the legislative and not the judicial branch of government should possess the primary authority over redistricting; the courts should not operate as the ultimate arbiter and approver of electoral system arrangements of this kind. An additional problem identified with respect to automatic judicial review is that the courts must make a judgment without the benefit of the adversarial process, a role for which they are not optimally suited.

*See, e.g., *White v. Weiser*, 412 U.S. 783 (1973) where the Court rejected a Texas redistricting plan on the basis of "avoidable" deviations. Four justices dissented, asserting that the ruling in effect established a *de minimus* rule for state legislatures where the state was not even required to justify population variances.

The problem of revision or redrafting where initial plans are rejected has also generated some differences of approach. One option dictates that courts redraw plans themselves or appoint other apportioning authorities if they reject the first plan proposed. Others follow this course only when the initial apportioning authority fails twice; such a "second-try" approach is usually defended for plans which call for redistricting commissions. An underlying rationale reflects the concern that members of a nonpartisan commission, knowing that a court of their political persuasion will take over the reapportionment process should the commission fail to act, might be inclined to force a deadlock. Moreover, the commission would likely have at its disposal staff, resources, and experience not readily available to the court, which it could employ in formulating a new plan.

Although many of the accountability provisions remain subject to debate, particularly in their detailed content, most redistricting reformers agree that this is a crucial component for improvement. Similarly, while influential groups may differ as to who should make redistricting decisions and how critical these decisional bodies are, most seem to join forces in recognizing the importance of accountability factors to an equitable reapportionment process.

V. Concluding Observations

This monograph has attempted to identify problems associated with the current congressional redistricting system and to review the various proposals for improvement along with major arguments which have been advanced in favor of and against them. It is hoped that this analysis will enhance understanding of the important issues involved, and that it will motivate groups and individuals both within and outside the legal profession to formulate their own views, consider remedial action and resist deterrence to change by traditional obstacles in this field.

The improvement proposals under consideration and debate fall into two broad categories—structural change (largely focused on the use of special commissions for developing reapportionment plans) and promulgation of standards to help ensure fairness and equity in line-drawing (based on a handful of principles running from population equality through encouragement of minority influence). Concurrently, two levels of legislative initiative for such reforms are under consideration and debate—federal and state.

It is not the intent or function of this pamphlet to advocate specific reform positions. However, redistricting equity remains a problem for the nation and optimal solutions and conditions do not yet appear to have been devised, no less incorporated in existing processes. Thus, a measure of experimentation with the new reform concepts seems desirable; the American Bar Association has formally endorsed such a posture in relation to the 1980 census redistricting process.*

The nation's experience with redistricting commissions has not been sufficiently widespread or intensively evaluated to draw final conclusions as to universal value or the most desirable subfeatures and characteristics. Thus, it would seem that those who call for state initiatives in jurisdictions so inclined, rather than for a mandate that all states establish commissions, would offer the most promise and the best opportunity to evolve optimal structures for reapportionment.

*See Appendix B.

Federal rules governing redistricting standards, rather than governing methods to apply these standards, however, may be beneficial, although existing uncertainties as to the best "mix" and order of priority among the most commonly cited standards (e.g., population equality, compactness, contiguity, avoidance of intentional political preference) suggest that such formulations might do well to leave some room for state flexibility and experimentation in detailed definition and ordering of any standards articulated.

Whatever the case, carefully studied and soundly conceived redistricting reform promises to aid many sectors of society:

- voters in general whose voice will be heard more clearly when election results are not predetermined by gerrymandering, when competition for congressional seats is maximized, and when representatives must focus their responsiveness on voters rather than on line-drawers;
- racial and ethnic minorities whose interests have often been subordinated in past redistricting practices;
- congressional candidates from minority parties and challenger groups who no longer need hurdle undue barriers of self-protection constructed by incumbent politicians;
- state legislators who will be liberated from political pressures which may influence them to manipulate the line-drawing process;
- courts which will have clearer guidelines concerning the acceptability of redistricting plans; and
- rural and suburban communities (when gerrymandering has been used to strengthen unduly the urban voice) and urban residents (when line-drawers have attempted to increase unduly rural representation).

Indeed, virtually all sectors of society can benefit from congressional redistricting improvement which aids the American electoral machinery in functioning according to our highest ideals of representative government. The time is right—for thought, for decision, and for new levels of achievement.

APPENDIX A

IMPORTANT DATES IN REDISTRICTING HISTORY

DATE	ACTOR	EVENT	DESCRIPTION	STATE LEGISLATIVE/ CONGRESSIONAL
1842	U.S. Congress	5 Stat. 491	First federal statute requiring states to establish congressional districts. First congressional attempt to impose standards in congressional redistricting: compactness, contiguity, single-member districts.	C
1872	U.S. Congress	17 Stat. 28	Reiterated 1842 standards; set forth population equality standard. Reiterated in 1882, 1891, 1901.	C
1880	U.S. Supreme Court	*Ex Parte Siebold*	Congress has supreme authority over congressional election rules.	C
1911	U.S. Congress	1,2,37 Stat. 13,14	Reiterated 1872 requirements. Fixed number of U.S. House members at 435.	C
1929	U.S. Congress	46 Stat. 21	Required automatic reapportionment on basis of population after each decennial census.	C
1932	U.S. Supreme Court	*Ex. Rel. Smiley v. Holm* (Minnesota)	Congress has "authority to provide a complete code for congressional elections."	C
1946	U.S. Supreme Court	*Colegrove v. Green* (Illinois)	Courts lack authority, to judge fairness of a political matter such as redistricting plans.	C
1960	U.S. Supreme Court	*Gomillion v. Lightfoot* (Alabama)	Gerrymandering of city boundaries with a clearly defined racial motive is unconstitutional.	L
1962	U.S. Supreme Court	*Baker v. Carr* (Tennessee)	Federal courts have authority to judge fairness of legislative redistricting plans.	L
1964	U.S. Supreme Court	*Wesberry v. Sanders* (Georgia)	"One man, one vote" ("as nearly as practicable") standard: strict numerical equality among populations in congressional districts.	C

DATE	ACTOR	EVENT	DESCRIPTION	LEGISLATIVE/ CONGRESSIONAL
1964	U.S. Supreme Court	*Reynolds v. Sims* (Alabama)	Both houses in state legislature must meet the "as nearly as practicable" standard; some deviation is allowed to accommodate other relevant considerations. (e.g., preserving political subdivisions).	L
1964	U.S. Supreme Court	*Wright v. Rockefeller* (New York)	To prove gerrymandering unconstitutional on grounds of discrimination, challenger must show evidence of discriminatory effect and purpose.	C
1965	U.S. Congress	Voting Rights Act, 42 U.S.C., 1971, 1973 et seq.	States with past history of discrimination must submit electoral changes to Department of Justice for preclearance. State plan may be rejected if either intent or effect is to dilute minority power. Protected language minorities include Alaskan natives, American Indians, Asian Americans, persons of Spanish heritage.	C,L
1966	U.S. Supreme Court	*Burns v. Richardson* (Hawaii)	Redistricting plans are not necessarily unconstitutional if merely designed to reduce competition among incumbent legislators.	L
1967	U.S. Congress	2 U.S.C. § 2c	Banned at-large congressional elections.	C
1967	U.S. Supreme Court	*Swann v. Adams* (Florida)	Although rejecting legislative apportionment plan, the court recognized that *de minimus* numerical deviations are unavoidable in state legislative apportionment.	L
1969	U.S. Supreme Court	*Kirkpatrick v. Preisler* (Missouri)	States must make "good faith effort" to achieve "precise mathematical equality" and must justify all population deviations.	C
1969	U.S. Supreme Court	*Wells v. Rockefeller* (New York)	Strict mathematical equality is required. Invalidated plan which set up a New York congressional district with maximum deviation of 6.6%.	C
1970	U.S. Supreme Court	*Oregon v. Mitchell* (Oregon)	Reiterated Congress's ultimate authority over congressional elections.	C

DATE	ACTOR	EVENT	DESCRIPTION	LEGISLATIVE/ CONGRESSIONAL
1971	U.S. Supreme Court	*Whitcomb v. Chavis* (Indiana)	Multimember state legislative districts are not unconstitutional *per se*; challengers must prove unconstitutional dilution of voting strength.	L
1971	U.S. Supreme Court	*Connor v. Johnson* (Mississippi)	Where a federal court fashions a redistricting plan, single-member districts are preferable to multi-member districts.	L
1973	U.S. Supreme Court	*White v. Regester* (Texas)	Certain population deviations are permissible in legislative redistricting plans if effected to accommodate rational state policies (e.g., preserving political subdivisions). Multi-member districting is unconstitutional if it dilutes the votes of a racial minority.	L
1973	U.S. Supreme Court	*White v. Weiser* (Texas)	Deviations of 2.43% above average and 1.7% below average in Texas congressional districting plan deemed unacceptable, since districts were not as mathematically equal as practicable.	C
1973	U.S. Supreme Court	*Gaffney v. Cummings* (Connecticut)	States not required to justify minor population deviation in legislative districts; a legislative district plan may constitutionally be drawn with intent to reflect political make-up of state.	L
1973	U.S. Supreme Court	*Mahan v. Powell* (Virginia)	Upheld a Virginia legislative plan which produced a maximum population deviation of 16.4%, deeming the plan a rational means to preserve political subdivisions.	L
1977	U.S. Supreme Court	*United Jewish Organizations v. Carey* New York	Racial criteria may be used in drawing legislative district lines if designed to comply with Voting Rights Act.	L
1980	U.S. Supreme Court	*City of Mobile v. Bolden* (Alabama)	Public officials may be elected at-large even though preclusion of election of minorities may thereby result, where plaintiffs in non-Voting Rights Act jurisdiction fail to show intent to discriminate in the election mechanism or procedure.	L

APPENDIX B

AMERICAN BAR ASSOCIATION RESOLUTION ON FAIR REDISTRICTING

(House of Delegates: February 1979)

Note: The following resolution relates to voter participation initiatives extending well beyond legislative reapportionment. While the complete resolution is set forth, only that commentary from the underlying report which relates to redistricting has been excerpted.

RECOMMENDATIONS

BE IT RESOLVED, that the American Bar Association urges the President of the United States to appoint a commission of distinguished persons from various walks of life to study the decline in voter participation in the electoral process and to make appropriate recommendations, such study to culminate in a White House conference on the subject of declining voter participation; and

BE IT FURTHER RESOLVED, that the American Bar Association supports the enactment of legislation that encourages voter participation, eliminates mechanical barriers to voting and provides for fair redistricting pursuant to the 1980 census without regard to partisan advantage; and

BE IT FURTHER RESOLVED, that the state and local bar associations be urged to support and join with the American Bar Association in this program to improve and enhance voter participation.

REPORT (Excerpts)

3. *Redistricting Pursuant to the 1980 Census*

Many of the participants in the Palo Alto conference* stated that persons frequently do not vote because politically motivated manipulation of the borders of legislative districts has prevented citizens from developing a sense of community identity with the area in which they vote. Also, such districting practices actively skew the voting power that does exist, such as when cohesive communities are broken into several legislative districts. Such gerrymandering was said to have resulted to a large extent from the judicial prescription of "one man, one vote." The sense of the conferees was that legislative districts can comply with that principle and still represent cohesive communities. Accordingly, they suggested that, at the next chance for redistricting, the ABA take an active role in supporting fair and representative legislative districts, drawn without regard to partisan advantage.

Among our recommendations for action is that the Association support the concept of fair redistricting pursuant to the 1980 census. We believe that there should be a statement of principle at this time because of the proximity of the census, following which virtually every state will be required to redraw the boundaries of congressional and state legislative districts. We believe that well in advance of the required redistricting the Association should be on record in support of the goal of fair representation for all citizens without regard to partisan advantage. In this regard, we should note that one of the recurrent themes at the Palo Alto conference was that one of the side effects of gerrymandering was a lack of competition in electoral politics, thereby decreasing the level of participation. Our redistricting recommendation does not endorse any specific method of reapportionment. Toward that end we plan to sponsor a future conference on the subject of redistricting.*

*Symposium on Citizen Participation in Government, sponsored by the Special Committee on Election Law and Voter Participation, June 1978. See proceedings published in *The Disappearance of the American Voter* (1979).

*Held in San Diego, California, June 1980. Attended by approximately forty election law experts, state legislators, attorneys, citizen groups and mathematicians, the three day session has been transcribed for publication. See *Representation and Redistricting in the 1980s*, ed. by Grofman, Lijphart, McKay, and Scarrow (Lexington Books, 1981, forthcoming).

APPENDIX C

ABA SPECIAL COMMITTEE REPORT ON REDISTRICTING

(Excerpts, August 1980)

Since its last report to the House of Delegates in February 1980, the Special ommittee has focused its attention on three major areas of election law: edistricting, absentee voting, and campaign finance.

REDISTRICTING: Introduction

In February 1979 the House of Delegates of the American Bar Association dopted, on the recommendation of our Committee, a series of resolutions on ie subject of voter participation, among which was a resolution calling for "fair edistricting pursuant to the 1980 census without regard to partisan advantage." n launching a program to encourage voter participation, the Association uthorized our Committee to co-sponsor, with the National Science Foundation, conference on representation and apportionment issues in the 1980s.

This conference was held in San Diego, California, June 11-15, 1980. It was at-ended by distinguished political scientists, mathematicians, reapportionment nd election law experts, representatives of congressional and state legislative ommittee staffs, lawyers, and representatives of various public interest groups ncluding the League of Women Voters, Common Cause and the Mexican merican Legal Defense and Educational Fund. The conference discussions ocused on such districting subjects as the use of single-member districts, the gal criteria for determining the fairness of single-member districts, electoral echanisms other than single-member districts, the policy consequences of reap-ortionment, representation within the political party system, and theories of epresentation. A number of scholarly papers were prepared for the conference, hich, along with commentaries on the proceedings, will be published in a eparate volume.* We believe this volume will be an invaluable aid to members f legislative bodies, lawyers and judges, as they grapple with the important epresentation and apportionment issues of the 1980s. How these issues are andled will be of critical importance to our nation and to the integrity, vitality nd effectiveness of our electoral system and government for the next ten years.

For that reason, we believe it of great importance that a national dialogue be pened at this time on the mixed legal and political issues of redistricting and apportionment. Although our examination of these issues will continue into 981, we felt it valuable to set forth in this informational report some of the reliminary conclusions we have reached as a result of our study of this area.

General Observations

We feel that the entire problem of reapportionment and redistricting is exceedingly complex, and quite possibly does not permit a national solution that

*One paper presented at the conference, by Professor Michel Balinski, raised questions about the formula that should apply in allocating congressional seats among the states. Another paper, by Professor Steven Brams, suggested the introduction of a new voting system called "approval voting."

is either appropriate or realistic in all fifty states. Of fundamental concern is the fact that reapportionment and redistricting are important aspects of deciding the allocation of political power within an electorate.

Because the districting process amounts to an allocation of political power and because of the obvious conflicts in having the legislatures control the process, various proposals have been submitted, some of which would create independent commissions to do the actual job of redrawing district lines. While these commission proposals may have merit (a proposition on which we now express no opinion, pro or con), it is probably utopian to expect that many legislatures are now prepared to adopt such proposals.

We do feel, however, that the time is ripe for each state to consider the standards it will apply in its actual redistricting process. Adopting standards before beginning the actual districting process has at least three advantages. First, it would make more open and public the bases upon which political power would be reallocated. Second, it would establish a framework for accomplishing the redistricting itself. And third, it would establish the benchmark against which the eventual districting plan could be evaluated by the public, the press, and (in the event of judicial appeal) the courts.

An underlying assumption is that the redistricting process—both the adoption of standards and the drawing of district lines—should be open and public. It is certainly apparent that the conflicts of interest inherent in the process are reduced by public and media scrutiny.

The Districting Standards

The next, and most fundamental, question is, specifically, what should these standards be? While one scholar has identified at least sixteen standards, not all possible standards will be relevant or appropriate in each state.* Nonetheless, there are certain basic standards which deserve consideration in every state.

The most obvious standard is population equality. Ever since the "apportionment" decisions of the U.S. Supreme Court, very close population equality has been constitutionally required. Many states have set their own standards in this regard, and it is worth noting that some states allow even less population variance from district to district than do the federal court decisions.

Other standards include the extent to which electoral districts should be compact and/or contiguous; follow local political boundaries; and be drawn to concentrate identifiable groups (whether political, ethnic, or economic) in the district.

Two other standards, which have not received the in-depth judicial scrutiny that population equality has, pertain to the functioning of a democratic form of government. The first of these is the principle that the party or faction receiving a state-wide majority of votes should also receive a majority of the seats in the legislature, so that it is able to carry out its mandate to govern. Another standard involves an application of the principle of competitiveness so as to ensure voter interest in district elections.

*The San Diego conference volume will contain an extremely useful section on the criteria for redistricting and reapportionment.

Standards: Conclusions

In considering the adoption of standards, each state will be faced with some very hard choices. This is because, by adopting and following one standard, a state may in certain cases make it impossible to follow another. Therefore, the adoption of standards likely will require their prioritization. The critical point is that because the process is a difficult one, now is the time for the states to begin dealing with the complexities of redistricting before the process is upon us.

Single-Member Districts as a Norm

As a result of its consideration of the consequences of using different types of districting, our Committee believes that a single-member districting system generally is the best and most effective form of district representation.

Single-member districts allow voters in a district to choose one representative, *i.e.*, one legislator or one county commissioner. Multi-member districting permits a citizen to select more than one representative. The geographical area and population of multi-member districts are usually much larger than those of a single-member district. Some states and localities use a combination of single and multi-member districts, including at-large elections, where all voters in a political subdivision vote for several representatives. The impact of districting is fundamentally the same no matter what type of governmental entity (city, county, state) is involved.

In favoring the use of single-member districts, we note that such a districting system has worked well for congressional elections. Authorities who have studied the subject point to a number of advantages to the single-member districting system:* a single-member district is smaller than an at-large or multi-member district, which permits closer contact between the single representative and his or her constituency. The smaller district also provides greater accountability to the electorate, who will be better informed of the activities and voting record of the sole representative. In addition, political and racial minority groups who at times have had their voting power and strength diluted by larger multi-member districts will have greater impact on the elections and a better opportunity for election to office from within the district. Finally, election campaigns would also be affected by the choice of single-member districting. It is likely that campaign costs would be decreased as a result of reducing the size of the area and population of a district and limiting the election to one representative. The nature of campaigning might also change, by reducing the impact and necessity of extensive media advertising. More effort could then be expended on neighborhood and local campaigning, which should allow the electorate to become better acquainted with the candidates. Significantly, by reducing the cost of campaigns, it is likely that more individuals would be able to run for office, thereby making the process more competitive.

While single-member districting is by no means the panacea to representation problems, we believe it would go a long way toward ensuring more effective representation and a greater opportunity to participate in government and the electoral process

The foregoing discussion outlines the intricate nature of the redistricting question. In view of the complex issues which require resolution before "fair districting without regard to partisan advantage" can take place, our Committee urges that legislators, lawyers and all reapportionment experts take up the question at this time.

*The San Diego conference volume will contain an extensive section on this subject.

Respectfully submitted,

John D. Feerick, Chairman

August 1980

APPENDIX D

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ALASKA LEGISLATIVE COUNCIL

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LEGISLATIVE APPORTIONMENT

IN ALASKA

Historical and Future Considerations

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NOVEMBER 1966

LEGISLATIVE APPORTIONMENT

IN ALASKA

Historical and Future Considerations

Prepared by the

LEGISLATIVE AFFAIRS AGENCY

Fifth State Legislature

November 1966

Alaska Legislative Council
Legislative Affairs Agency

Pouch Y, State Capitol
Juneau, Alaska

FOREWORD

Senate Concurrent Resolution No. 39 was passed by the last legislature because the Superior Court, on April 11, 1966, in Nolan et al v. Wade,/1 directed that a constitutional convention be held or constitutional amendments be proposed by the legislature and ratified by the people before December 1, 1967, the amendment to provide for a valid reapportionment of the state Senate in conformity with the rulings of the U.S. Supreme Court. The resolution directed the Legislative Council to gather "information on all facets of the matter of legislative reapportionment to the end that the 1967 session of the legislature may have all the necessary data and alternatives on hand for consideration when preparing amendments to the state constitution regarding legislative apportionment" in conformity with the opinion in Nolan et al v. Wade.

Nolan et al v. Wade was appealed to the state Supreme Court and, as will be discussed in detail in this study, the Supreme Court almost entirely overturned the decision of the Superior Court. The Supreme Court declared the Governor's Proclamation of Reapportionment and Redistricting valid and the 1966 elections have been held under that proclamation. Therefore, the stated purpose for SCR 39 no longer exists since there is no need for a constitutional amendment by December 1, 1967. As a consequence, it was questionable whether the staff should proceed with this study. It was concluded that reapportionment will continue to be of interest to the legislature since the constitution will eventually have to be amended to conform to the federal and state decisions even though it need not be done in 1967.

This study will cover the history of legislative apportionment in Alaska from the Organic Act of 1912 through the November 1966 elections, the federal and state cases on reapportionment, and possibilities for future action on this subject.

John C. Doyle
Executive Director

Juneau, Alaska
November 1967

/1 Memorandum Opinion, Civil Action No. 66-30 Superior Court for the State of Alaska, First Judicial District

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I. HISTORY OF LEGISLATIVE APPORTIONMENT IN ALASKA/1

The Territory of Alaska was first given legislative authority of its own in 1912 in the Organic Act of 1912 (37 Stat. 513). This Act provided for a bicameral legislature consisting of a House of Representatives of sixteen members and a Senate of eight members. For thirty-two years two senators and four representatives were elected at-large from the four judicial divisions into which the territory was divided, and the remaining seats were divided equally among the four divisions. By a 1942 amendment to the Organic Act (56 Stat. 1016), effective for the election of 1944, the Senate was increased to a membership of sixteen and the house to a membership of 24, the latter apportioned on the basis of estimated civilian population. The 1942 Act also provided for reapportionment of seats by the United States Director of the Census after the 1950 decennial census, and the territorial legislature was authorized to provide for legislative districting within the judicial divisions.

In 1951 the director of the census reapportioned the House seats on the basis of the civilian population reported in the 1950 census, with the following results:

Judicial Division	Apportionment 1944 - 1951	Apportionment 1952 - 1958
First	8	6
Second	4	3
Third	7	10
Fourth	5	5
	24	24

The apportionment and districting for the election of fifty-five delegates to the constitutional convention of 1955-1956 anticipated the provisions of the Alaska constitution on that point. The twenty-two election districts were of three types:

(1) The seventeen one-member districts were based on existing districts or combinations of those districts.

(2) Each of the four judicial divisions constituted a multimember district, as follows: First Division 7; Second Division 4; Third Division 12; and Fourth Division 8.

/1 "Reapportionment" by Robert B. McKay, 1965

(3) The territory as a whole constituted one district from which seven delegates-at-large were elected.

Alaska was admitted to statehood by proclamation dated January 3, 1959, on the basis of the constitution drafted in the 1955 constitutional convention. Under the constitution the Alaska legislature was divided into a House of Representatives of forty members and a senate of twenty. /2 Reapportionment is an executive function to be performed by the governor immediately following each United States decennial census. /3 The governor can appoint a reapportionment board of five members to act in an advisory capacity, which must include one member from each of the four senate districts. /4 The board must submit a report to the governor within ninety days following the official reporting of each census, and the governor must, by proclamation, reapportion or redistrict within ninety days thereafter. /5 Any qualified voter may apply to the Superior Court to compel the governor "by mandamus or otherwise" to perform his reapportionment duties. /6

Under the constitution, apportionment of the House is primarily by population. "Reapportionment shall be by the method of equal proportions." /7 Originally the state was divided into twenty-four election districts. /8 Then the total civilian population was divided by forty and "each election district having the major fraction of the quotient obtained" was allotted one representative. /9 If "the total civilian population of any election district falls below one-half of the quotient," provision is made for attaching the district to another election district "within its senate district, and the reapportionment for the new district shall be determined as provided in Section 4 of this article." /10 After publication of the 1960 census results, the governor accepted the recommendations of his advisory board on apportionment and reduced the number of districts to nineteen, thereby meeting more nearly the population standard fixed in Article VI, Section 4.

Apportionment of the Senate is a combination of area and population, with the emphasis on area. The state was

---

/2 Alaska Constitution, Art. II, Sec. 1
/3 Ibid., Art. VI, Sec. 3
/4 Ibid., Art. VI, Sec. 8
/5 Ibid., Art. VI, Sec. 10
/6 Ibid., Art. VI, Sec. 11
/7 Ibid., Art. VI, Sec. 4
/8 Ibid., Art. XIV, Sec. 1
/9 Ibid., Art. VI, Sec. 4
/10 Ibid., Art. VI, Sec. 5

originally divided into sixteen senate districts, /11 which were continued in the 1961 reapportionment.

The governor is allowed to change the size and area of election districts, but each district must "be formed of contiguous and compact territory containing as nearly as practical a relatively integrated socio-economic area. Each shall contain a population at least equal to the quotient obtained by dividing the total civilian population by forty. Consideration may be given to local government boundaries. Drainage and other geographic features shall be used in describing boundaries wherever possible." /12 Senate districts may be modified to reflect changes in election districts. /13

The report of the commitee on suffrage, elections, and apportionment to the Alaska Constitutional Convention stated in a letter of December 17, 1955, to the president of the convention that "These (election) districts are economic units of the Territory and may be compared in a sense to Swiss cantons. Their boundaries are watersheds wherever possible; waterways and steamship routes are not used as boundaries, but are considered as highways piercing valleys."

In view of the 1964 U.S. Supreme Court decisions discussed later in this study, it was obvious that Alaska must reapportion its state Senate. There was a population disparity of nineteen to one in the Senate and 2.5 to one in the House. In August 1964 the state attorney general advised the governor that he had authority to reapportion the state Senate. The governor then called the Advisory Reapportionment Board into session. That board submitted its report to the governor in September 1964. In March 1965 the governor reconvened the board for additional study and it submitted its second report to the governor on June 4, 1965. /14 On September 3, 1965, the governor issued a "Proclamation of Reapportionment and Redistricting" /15 which reapportioned the state Senate, to be effective for the 1966 election. The new reapportionment plan was designed to satisfy the equal-population principle. Each of the eleven senate districts (composed of one to two election districts) was given one senator except Anchorage (seven)and Fairbanks (four). No change was made in the house districts as promulgated in 1961. On February 21, 1966, fifteen state senators applied to the

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/11 Ibid., Art. XIV, Sec. 2
/12 Ibid., Art. VI, Sec. 6
/13 Ibid., Art. VI, Sec. 7
/14 Appendix "A"
/15 Appendix "B"

Superior Court for the First Judicial District in Juneau for a permanent injunction to prohibit the secretary of state from conducting an election under the governor's proclamation. Both sides eventually moved for a summary judgment and they agreed that Section 2, Article XIV of the Alaska Constitution was invalid under the equal protection clause of the Fourteenth Amendment of the Constitution of the United States. The basic issue was the validity of the governor's Proclamation of Reapportionment and Redistricting.

On April 18, 1966, the Superior Court declared the governor's proclamation null and void. The court retained jurisdiction, providing that if a valid constitutional amendment modifying the state Senate apportionment was not adopted by December 1, 1967, the court would issue the necessary orders to insure that the 1968 election would be held under an apportionment plan consistent with the decisions of the U.S. Supreme Court.

The case was appealed to the Alaska Supreme Court which held that the governor and the reapportionment board had implied power under the constitution to reapportion the Senate on an interim basis. The validity of the reapportionment plan set out in the proclamation was not questioned with respect to the requirements of the equal protection clause of the Fourteenth Amendment so the court did not discuss that matter. The court delcared the governor's reapportionment plan effective for the 1966 elections and "thereafter until the Alaska Constitution has been amended to provide a valid, permanent reapportionment plan for the Senate."

The 1966 elections have been held under the governor's proclamation as decreed by the state Supreme Court. The legislature may now wish to prepare consitutional amendments relating to reapportionment of the legislature or have a constitutional convention consider this problem. Scheduling factors in proposing and adopting constitutional changes are discussed in part VI of this study.

II. IMPORTANT APPORTIONMENT CASES IN THE U. S. SUPREME COURT

BAKER v. CARR, 369 U.S. 186 (1962)

> "This civil action was brought under 42 U.S.C. secs. 1983 and 1988 to redress the alleged deprivation of federal constitutional rights. The complaint, alleging that by means of a 1901 statute of Tennessee apportioning the members of the General Assembly among the State's 95 counties, 'these plaintiffs and others similarly situated, are denied the equal protection of the laws accorded them by the Fourteenth Amendment to the Constitution of the United States by virtue of the debasement of their votes' was dismissed by a three-judge court convened under 28 U.S.C. sec. 2281 in the Middle District of Tennessee. The court held it lacked jurisdiction of the subject matter and also that no claim was stated upon which relief could be granted. 179 F.Supp. 824. We noted probable jurisdiction of the appeal. 364 U.S. 898. We hold that the dismissal was error, and remand the cause to the District Court for trial and further proceedings consistent with this opinion." 369 U.S. at 187.

The court held only "(a) that the court possessed jurisdiction of the subject matter; (b) that a justiciable cause of action is stated upon which appellants would be entitled to appropriate relief; and (c) because appellees raise the issue before this court, that the appellants have standing to challenge the Tennessee apportionment statutes."

The court goes on to discuss at considerable length the factors which went into the determination of these three matters. In discussing the "justiciability" of the question presented, the court said:

> "We understand the District Court to have read the cited cases as compelling the conclusion that since the appellants sought to have a legislative apportionment held unconstitutional, their suit presented a 'political question' and was therefore nonjusticiable. We hold that this challenge to an apportionment presents no nonjusticiable 'political question.' The cited cases do not hold the contrary."

WESBERRY v. SANDERS, 376 U.S. 1 (1964)

This case, while dealing with state establishment of districts for the election of representatives to the federal Congress, contains a worthwhile discussion of the history of the Great Compromise, by which agreement was reached on having the population represented in one house and the states represented in the other. This matter is important because of the argument which the Supreme Court subsequently makes that the "Federal analogy" is false as applied to state legislatures.

REYNOLDS v. SIMS, 377 U.S. 533 (1964)

> "On August 26, 1961, the original plaintiffs...filed a complaint in their own behalf and on behalf of all similarly situated Alabama voters, challenging the apportionment of the Alabama legislature.... The complaint alleged a deprivation of rights under the Alabama Constitution and under the Equal Protection Clause of the Fourteenth Amendment, and asserted that the District Court had jurisdiction under provisions of the Civil Rights Act, 42 U.S.C. secs. 1983, 1988, as well as under 28 U.S.C. sec. 1343(3)." 32 LW at 4535.
>
> "Plaintiffs below alleged that the last apportionment of the Alabama Legislature was based on the 1900 federal census, despite the requirement of the State Constitution that the legislature be reapportioned decennially. They asserted that, since the population growth in the State from 1900 to 1960 had been uneven, Jefferson and other counties were now victims of serious discrimination with respect to the allocation of legislative representation. As a result of the failure of the legislature to reapportion itself, plaintiffs asserted, they were denied 'equal suffrage in free and equal elections...and the equal protection of the laws' in violation of the Alabama Constitution and the Fourteenth Amendment to the Federal Constitution." 32 LW at 4536.

They showed that the history of the situation clearly demonstrated that there was no relief available to them except through the District Court. Plaintiffs sought a declaration of the unconstitutionality of the existing apportionment, an injunction against the holding of further elections without reapportionment, and a mandatory injunction requiring that the 1962 elections be held at large.

The District Court initially declined to stay the impending primary election in Alabama, and refrained from acting until the Alabama legislature has been given an opportunity to remedy the admitted discrepancies in the state's legislative apportionment scheme. After the Alabama legislature had failed to act effectively, the court ordered into effect a reapportionment using the best parts of two proposed plans. The District Court recognized that its own plan was only provisional, and would not be acceptable as a permanent apportionment. The District Court then retained jurisdiction while deferring a hearing in the issuance of a final injunction in order to give the provisionally reapportioned legislature an opportunity to act effectively.

Upon review, the Supreme Court approved the actions of the District Court, holding that:

> "...as a basic constitutional standard, the Equal Protection Clause requires that the seats in both houses of a bicameral state legislature must be apportioned on a population basis. Simply stated, an individual's right to vote for state legislators is unconstitutionally impaired when its weight is in a substantial fashion diluted when compared with votes of citizens living in other parts of the State."

It also found that the "federal analogy" [see Wesberry v. Sanders, supra] was inapplicable, since there has never been a question of subordinate units of state government surrendering, as did the original 13 States, a portion of their sovereignty in order "to form a more perfect Union."

The court qualified its remarks by stating that "mathematical exactness" was not required, but that a state would have to make "an honest and good faith effort to construct districts, in both houses of its legislature, as nearly of equal population as is practicable." The court also felt that a reasonable plan for periodic reapportionment is acceptable, and specifically approved the decennial reapportionment prescribed in forty-one states.

Finally, the court remarked:

> "...legislative reapportionment is primarily a matter for legislative consideration and determination, and that judicial relief becomes appropriate only when a legislature fails to reapportion according to federal constitutional requisites in a timely fashion after having had an adequate opportunity to do so."

WMCA, INC. v. LOMENZO, 377 U.S. 633 (1964)

This action was similar in nature to that in Reynolds v. Sims, supra, and challenged the constitutional validity under the Fourteenth Amendment to the federal constitution of the apportionment of seats in the New York legislature. The District Court had initially found "want of justiciability," and dismissed the complaint. Baker v. Carr, supra, having been decided during the pendency of appeal from dismissal, the Supreme Court remanded the case for reconsideration by the District Court in the light of that opinion. The District Court subsequently dismissed the complaint on the merits, finding that the plaintiffs had not shown any invidious discrimination, that the New York Constitution's apportionment provisions were rational, that they were of historical origin and contained no improper geographical discrimination, and that the provisions could be amended by an electoral majority of the citizens of New York.

The Supreme Court, after a detailed examination of the New York scheme of apportionment, found that there was in fact an invidious discrimination against the voters in the more populous districts, as to both houses, and that there was no political remedy and remanded the case to the District Court to determine what relief was available, and when it should be made available to the plaintiffs. /16

LUCAS v. FORTY-FOURTH GENERAL ASSEMBLY OF COLORADO, 377 U.S. 713 (1964)

This case arose on appeal from a District Court decision upholding the validity of the apportionment of seats in the Colorado legislature pursuant to a constitutional amendment approved by the Colorado electorate in 1962.

The Supreme Court noted several features which rendered this case different from the other cases decided on the same date. First, at least one house of the Colorado legislature is at least arguably apportioned according to a population basis. Second, the scheme of apportionment question in the case is one which was adopted by a majority vote of the Colorado electorate at a recent date. Third, in Colorado there is an initiative to propose a constitutional amendment, which requires a percentage of the electorate to sign a petition without regard for the geographical distribution of the petitioners.

/16 For current status of legislative reapportionment in any state, see Appendix "C".

The court found the second and third features unpersuasive as arguments for the constitutionality of the scheme. It said:

> "Except as an interim remedial procedure justifying a court in staying its hand temporarily, we find no significance in the fact that a nonjudicial, political remedy may be available for the effectuation of asserted rights to equal representation in a state legislature. Courts sit to adjudicate controversies involving alleged denials of constitutional rights. While a court sitting as a court of equity might be justified in temporarily refraining from the issuance of injunctive relief in an apportionment case in order to allow for resort to an available political remedy, such as initiative and referendum, individual constitutional rights cannot be deprived, or denied judicial effectuation, because of the existence of a nonjudicial remedy through which relief against the alleged malapportionment, which the individual voters seek, might be achieved. An individual's constitutionally protected right to cast an equally weighted vote cannot be denied even by a vote of a majority of State's electorate, if the apportionment scheme adopted by the voters fails to measure up to the requirements of the Equal Protection Clause."

The case was remanded to the District Court to determine whether the imminence of the 1964 primary and general elections required the use of one of the schemes attacked, or whether appellants' rights to cast adequately weighted votes could be effectuated in 1964. /17

MARYLAND COMMITTEE FOR FAIR REPRESENTATION v. TAWES, 377 U.S. 656 (1964)

This case arose under circumstances similar to Reynolds, supra. It adds to case law insofar as it describes the principle that the Supreme Court must of necessity consider the entire apportionment scheme of a legislature, and cannot be restricted, regardless of s ope of consideration in inferior courts, to examining the apportionment in one house only. The Supreme Court further makes it clear that while it highly approves of state court attempts to deal with apportionment problems, these courts must apply federal constitutional standards.

/17 For current status of legislative reapportionment in any state, see Appendix "C".

The court remanded the case to the Maryland Court of Appeals with instructions to ensure that election of members to the Maryland legislature in 1966 was conducted in accordance with a constitutional apportionment scheme, noting that there appeared to be adequate time for the legislature to reapportion itself. /18

DAVIS v. MANN, 377 U.S. 678 (1964)

This case arose in much the same way as Reynolds, supra. The District Court found for the plaintiffs, and declared that the challenged 1962 apportionment scheme violated the Equal Protection Clause and accordingly was void and of no effect. Defendants were enjoined from proceeding under the 1962 plan, but operation of the injunction was stayed until the general assembly could act or appeal could be taken to the Supreme Court. After a characteristic examination of the facts surrounding the particular plan of apportionment, the court found that it was violative of the federal constitution and that no adequate political remedy for the malapportionment existed. While noting that the situation in Virginia is different from that in Alabama, since the Virginia legislature has consistently reapportioned itself every ten years as required by the Virginia constitution, the court found that significant uncorrected malapportionment existed, and affirmed the decision of the District Court with the understanding that the District Court would provide plaintiffs with suitable equitable relief should the Virginia legislature itself fail to act to correct the constitutional defects before the 1965 elections. /18

ROMAN v. SINCOCK, 377 U.S. 695 (1964)

Again similar in nature to the suit in Reynolds, supra. Plaintiffs here asked the District Court for relief from malapportionment in the Delaware legislature. Relief sought included a declaration that the apportionment section of the Delaware constitution was unconstitutional, an injunction to prevent further elections from being held under it, and, alternatively, a reapportionment by the court or a direction that the November 1962 elections be held on an at-large basis.

The District Court refused to interfere with the November 1962 elections, and the legislature elected approved, in January 1963, a constitutional amendment to the legislative

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/18 For current status of legislative reapportionment in any state, see Appendix "C".

apportionment provisions of the constitution. After trial of the suit, the District Court found that the apportionment both before and after the 1963 amendment resulted in the debasement of certain votes, and gave the general assembly until October 1, 1963, to reapportion itself in accordance with the Fourteenth Amendment. The District Court, having evidence of an apparent intention on the part of state officials not to comply with its instructions, enjoined the holding of any elections under the existing plans. This injunction was stayed by a Supreme Court justice pending outcome of the appeal.

The Supreme Court reviewed the facts of the Delaware situation and found the plan in force in Delaware to be unconstitutional. It affirmed the District Court's decision, and left it up to the District Court to determine.

> "...whether it would be advisable, so as to avoid a possible disruption of state election processes and permit additional time for the Delaware Legislature to adopt a constitutionally valid apportionment scheme, to allow the 1964 election of Delaware legislators to be conducted pursuant to the provisions of the 1963 constitutional amendments, or whether those factors are insufficient to justify any further delay in the effectuation of appellants' constitutional rights." 32 LW 4588. [N.B. It appears that "appellants" in the preceding quote should read "appellees."]

The court approved the manner in which the District Court gave the Delaware legislature an opportunity to act, and its deferral of decision until after the November 1962 elections "because of the imminence of that election and the disruptive effect which its decision might have had." Taking exception to the attempt of the District Court to establish a mathematical figure by which constitutionality could be judged, the court said:

> "Rather, the proper judicial approach is to ascertain whether, under the particular circumstances existing in the individual State whose legislative apportionment is at issue, there has been a faithful adherence to a plan of population-based representation, with such minor deviations only as may occur in recognizing certain factors that are free from any taint of arbitrariness or discrimination." /19

/19 For current status of legislative reapportionment in any state, see Appendix "C".

BURNS v. RICHARDSON, __ U.S. __, 16 L ed 2d 376 (1966)

In proceedings challenging the constitutionality of Hawaii's legislative apportionment, the District Court for the District of Hawaii held that provisions of the Hawaii Constitution apportioning the state senate were unconstitutional under the Fourteenth Amendment to the federal constitution, and ordered the legislature to give the electorate an immediate opportunity, in a special election, to authorize a convention for the purpose of amending the state constitution, the court retaining jurisdiction so that it could reapportion the senate if the electorate failed to authorize the convention or if a suitable reapportionment amendment was not adopted by the convention and approved by the electorate. (238 F Supp 468) The court subsequently suspended its order that a special election be held, and ordered the legislature to enact a statute providing, on the basis of the number of registered voters, an interim plan of apportionment of the senate until the next general election. After the legislature enacted an interim senate reapportionment plan, the court disapproved it and ordered immediate resort to a convention, its disapproval of the plan being based upon the failure of the legislature to create single-member senatorial districts instead of using multimember districts. (240 F Supp 724)

On appeal, the U. S. Supreme Court vacated the District Court's orders and remanded the case for further proceedings. In an opinion by Justice Brennan, expressing the view of six members of the court, it was held that the legislature's freedom of choice to devise a reapportionment plan should not have been restricted by the District Court beyond the clear commands of the equal protection clause of the Fourteenth Amendment; that the legislature's use of multimember districts in its interim reapportionment plan was not shown to have constituted invidious discrimination in violation of the constitution; that the use of the number of registered voters as a basis for the interim plan was not shown to have produced a distribution of legislators substantially different from that which would have resulted from the use of a permissible population basis and was not unconstitutional; and that the District Court should adopt the legislature's interim plan, but should retain jurisdiction pending the effectuation of a permanent plan of legislative reapportionment.

Justice Harlan concurred in the result but expressed the view that an earlier Supreme Court decision involving legislative apportionment was constitutionally wrong, and that even under that decision an apportionment plan based on the number of registered voters should be considered permissible regardless of whether it approximates some other kind of a population apportionment.

III. APPORTIONMENT CASES IN ALASKA

NOLAN ET AL v. WADE, Civil Action No. 66-30, Superior Court, First Judicial District, Juneau. Memorandum opinion filed April 11, 1966.

For the first time, in either state or federal courts, the question of whether or not the Alaska State Senate was validly apportioned was raised in the above case. In addition, there was also raised the question of whether or not the governor's Proclamation of Reapportionment and Redistricting issued on September 3, 1965, was a valid exercise of executive authority and if not whether the 1966 elections could be held under the existing constitutional apportionment.

The parties conceded and the court found that the state Senate was invalidly apportioned under the equal protection clause of the Fourteenth Amendment of the U. S. Constitution.

The court held that the governor's proclamation was issued solely under the authority vested in him by Art. VI of the State Constitution, "Legislative Apportionment", and that the State Constitution gives no power to the governor to apportion the Senate. The court then directed that the 1966 elections be held under the existing provisions of the constitution and fixed December 1, 1967, as a reasonable date for enactment and adoption of a valid apportionment of the state Senate by constitutional amendment. The court retained jurisdiction of the case so that if a valid apportionment plan for the state Senate was not timely adopted, it could enter whatever order it considered necessary to permit a valid plan of apportionment to be used in the 1968 elections.

WADE v. NOLAN ET AL, 414 P2d 689 (1966)

The decision of the Superior Court was appealed to the Alaska Supreme Court. The Supreme Court agreed with the Superior Court that the state Senate was unconstitutionally apportioned because under the constitutional apportionment 30.7 per cent of the voters resided in districts which could elect a majority in the Senate.

However, the Supreme Court disagreed with the Superior Court which had held that the governor's reapportionment was invalid. The Supreme Court looked at Article VI of the constitution in detail. The court found that under Article VI reapportionment is an executive function in Alaska. The court looked at decisions from other states in which the question was where the authority lay to reapportion a frozen legislative body

on an interim basis. /20 It concluded that in such cases the courts recognized that the agency having the power of reapportionment could reapportion a "frozen" legislative body on an interim basis although not specifically granted that power by the constitution.

The court said that Article VI of the constitution as a whole and the appropriate convention minutes indicate the pervading purpose and intent of the convention was that reapportionment authority and responsibility be in the governor and the reapportionment board; "it is only reasonable to imply that it would have required the governor to periodically reapportion the Senate had it known that its frozen formula would be declared invalid." The court then held that the governor and the board had the implied power to reapportion the Senate on an interim basis.

/20 Buckley v. Hoff, 243 F Supp 191(D. Vt. 1964); Faubus v. Kinney, 369 S.W.2d 887 (1965); In re Apportionment of Michigan Legislature, 137 N.W.2d 495 (1965)

IV. POSSIBLE DEVIATIONS FROM SUPREME COURT RULE "ONE MAN, ONE VOTE"

It is clear that the principle which must underlie apportionment is "one-man, one-vote" in both houses. It presently appears that the only factor which a state may consider, apart from numbers, is political subdivisions./21 The Supreme Court does not feel that there can be a mathematical standard for testing the constitutionality of apportionment with respect to the permissable variation from the one-man, one-vote standard, but that the state must "make an honest and good faith effort to construct districts, in both houses of its legislature, as nearly of equal population as is practicable." /22 The deviation may be "such minor deviations only as may occur in recognizing certain factors that are free from any taint of arbitrariness or discrimination." /23 It is clear that a state cannot give consideration to geographical considerations or have a variation to insure effective representation for sparsely settled areas as was done in the Alaska Constitution.

One probably minor aspect of determination of equality presented by the language of the Alaska Constitution is the provision of Article VI, Section 3, which provideds that the governor's decennial reapportionment shall be based upon the civilian population. This provision is not without precedent, as approximately the same limitation occurs in Washington. A number of other states have various limitations on the portions of the electorate to be used in apportioning legislative seats. The civilian limitation presents problems in that (1) there are military personnel who are residents of the state and entitled to vote in the state; (2) there is a great disparity in the distribution of military personnel throughout the state; and (3) the ratio of military to civilian personnel in the state is extremely high. In view of the fact that most military personnel stationed in Alaska do not vote here, it is probable that a deletion of the provision would give rise to much greater inequality, but it might be necessary to modify the provision somewhat to include resident military personnel in the apportionment figure. The Supreme Court has said in connection with military personnel, that "discrimination

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/21 Dissent to Reynolds v. Sims by Justice Harlan
/22 Reynolds v. Sims, 377 U.S. 533 (1964)
/23 Roman v. Sincock, 377 U.S. 695 (1964)

against a class of individuals, merely because of the nature of their employment, without more being shown, is constitutionally impermissible." /24

In order to convey some idea of how the Supreme Court in Reynolds v. Sims, supra, and companion cases, and in the cases summarily decided on June 22, 1964, and the U.S. District Courts in cases decided after June 15, 1964, have been handling the situation, the following is a list of the pertinent cases together with the numerical figures describing the disparities alleged to result in invidious discrimination, and the action on the case:

Reynolds v. Sims, Alabama

Constitutional plan in effect since 1901: population-variance ratios of up to 41 - 1 in the Senate, 16 - 1 in the House.

Proposed constitutional amendment: population-variance ratios of up to 59 - 1 in the Senate and 4.7 - 1 in the House.

Crawford-Webb Act (standby legislation to take effect in 1966 if constitutional amendment should fail) population-variance ratios of up to 20 - 1 in the Senate and 5 - 1 in the House.

All rejected: A provisional plan put into effect using parts of the proposed constitutional amendment and part of the Crawford-Webb Act, with an opportunity given to the provisionally reapportioned legislature to adopt a valid permanent scheme.

WMCA v. Lomenzo, New York

1894 Constitution, 1960 census apportionment: maximum population-variance ratio in Senate 3.9 - 1 and in the House 21 - 1.

Case remanded to District Court to determine whether to conduct the election under the old provisions or whether conditions permit redress of the constitutional inequities before the 1964 elections. The state Court of Appeals appointed a five-man bipartisan commission to draw up a valid reapportionment plan by March 14, 1966, after the legislature failed to agree on a plan.

/24 Davis v. Mann, 377 U.S. 678 (1964)

Lucas v. Forty-fourth General Assembly of Colorado

Colorado Constitution as amended in 1962: maximum population-variance ratio is 3.9 - 1 in the Senate and 1.7 - 1 in the House.

Apportionment of the legislature as a whole was rejected, with the court specifically declining to comment upon the population-variance ratio in the House alone. Case remanded to the District Court to determine whether the 1964 elections would have to be conducted under the old scheme or whether appellants' right to cast adequately weighted votes could be effectuated in 1964.

Maryland Committee for Fair Representation v. Tawes

Maryland Constitution: maximum population-variance ratio is 32 - 1 in the Senate and 12 - 1 in the House.

Stopgap legislation in 1962 reapportioned the House so that a maximum population-variance ratio of 6 - 1 continued to exist.

Case remanded to Maryland court with instructions to act only if the legislature should fail to reapportion itself constitutionally.

Davis v. Mann, Virginia

Virginia Code: maximum population-variance ratio is 2.65 - 1 in the Senate and 4.36 - 1 in the House.

Case remanded to the District Court with instructions to exercise its equitable powers only should the Virginia legislature not act to create a constitutionally acceptable plan of apportionment before 1965, the next date of election of Virginia legislators.

Roman v. Sincock, Delaware

Delaware Constitution prior to 1963 constitutional amendment: maximum population-variance ratio of 15 - 1 in the Senate, and 35 - 1 in the House.

After 1963 amendment if effectuated: maximum population-variance ratio in Senate remains the same, reduced in House to 12 - 1.

Case remanded to District Court to determine whether 1964 elections should be held under the terms of the 1963 amendment or whether relief should be granted earlier.

In those cases summarily decided on June 22, 1964, the Supreme Court:

Affirmed Meyers v. Thigpen, 211 F. Supp. 826 (1963) in which it was held that equal protection was not denied by Washington's congressional districting in which the maximum population-variance ratio was 1.5 - 1 and that the District Court has jurisdiction of a legislative apportionment case in which invidious discrimination is alleged, even though Washington voters in 1962 rejected an initiative proposal to reapportion on the basis of population.

Reversed Nolan v. Rhodes, 31 LW 2641 (1963) in which it was held that the provisions of the Ohio Constitution which guarantees each county at least one representative in the lower house does not invidiously discriminate against urban voters proportionally represented in the upper house. (Ohio's maximum population-variance ratio in the lower house is approximately 14 - 1.)

Affirmed Williams v. Moss, 32 LW 2077 (1963) and Oklahoma Farm Bureau v. Moss (same citation) in which judicial reapportionment was held to be available where 1963 legislature had failed to correct malapportionment declared unconstitutional in 1962, even though a constitutional amendment had been proposed which would be placed before the voters in 1964 and would, if approved by the voters, become effective in 1965.

Affirmed Lucas v. Adams (USDC MFla May 22, 1963) in which it was held that no claim was stated on which relief could be granted by a complaint seeking to enjoin enforcement of the 1963 apportionment act on the grounds that the Act invidiously discriminates against residents of more populous counties by giving residents of smaller counties, regardless of population, the right to elect at least one lower house member, while failing to secure to somewhat similar numbers of citizens living in more populous counties the right to elect at least one house member.

Reversed Germano v. Kerner, 220 F. Supp. 230 (1963) which held that Illinois' apportionment of the upper house on a geographical basis did not violate the Fourteenth Amendment so long as the lower house was

apportioned on a population basis. (The maximum population-variance ratio in the Illinois Senate is 10 - 1.)

Reversed Marshall v. Hare (USDC EMich, March 16, 1964) which held that the Fourteenth Amendment was not violated by a provision of the Michigan Constitution which permitted a maximum population-variance of 4 - 1 in the upper house, even though this representation was said to be necessary to assure representation to certain counties.

Reversed Hearne v. Smylie, 225 F. Supp. 355 (1963) which held that (a) the District Court was obliged to dismiss as beyond its capabilities a declaratory judgment suit alleging Idaho's legislative apportionment to be irrational and unconstitutional and (b) owing to its inability to devise an effective remedy for injustices claimed by voters to result from malapportionment of the legislature, the District Court was required to dismiss, for want of equity, a voters' suit to enjoin further elections under Idaho's apportionment statute.

Affirmed Pinney v. Butterworth (USDC Conn. March 26, 1964) in which it was held that voters in larger towns were discriminated against by a limitation in the Connecticut Constitution that every town should have at least one and not more than two representatives in the lower house. (The maximum population-variance ratio in the lower house is 425 - 1.)

Affirmed Hill v. Davis (USDC SIowa, January 14, 1964) in which it was held that Iowa's constitutional provision that each county should have one representative in the upper house and at least one in the lower house was unconstitutional.

William B. Saxbe in "Criteria Established by Court Decisions" /25 concludes:

(1) Each legislator must represent approximately the same number of people. As a rule of thumb, a plan under which districts deviate from the population of the perfect district by no more than fifteen per cent will be

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/25 Reapportioning Legislatures, Chapter 4, Howard D. Hamilton, Editor, 1966.

constitutional, and a plan having districts that exceed this fifteen per cent limit will probably be unconstitutional. /26

(2) An apportionment plan cannot be used for purposes of racial discrimination. Any plan which results in the power of minority groups being split between several districts, or overwhelmed in a multiple member district by a monolithic majority, is likely to be held invalid.

(3) As a strictly legal proposition, it is unclear whether political gerrymandering raises a judicial question, but the interests of good government obviously make gerrymandering an unacceptable practice.

(4) Multiple-member districts are not unconstitutional per se. However, if used for purposes of racial discrimination, they will be unconstitutional. Additionally, if huge blocks of votes are seen in one district it is not likely to meet court approval.

(5) Sitting legislators have no constitutional right to their office. If an attempt to protect such legislators results in an apportionment plan that violates the other guidelines or which would continue in office legislators who were elected under an invalid system, then that plan is unconstitutional.

/26 See chart on the following pages. And see Appendix "E" for 1966 electoral percentages in all states.

CHARTS

SHOWING POPULATION FIGURES

PER HOUSE AND SENATE DISTRICT

and

APPORTIONMENT FORMULA

House District Number	House District Name	1980 Civilian Population	Number of Rep's	Population / Rep's	Senate District	Number of Senators	Population / Senators
1	Ketchikan	11,537	2	5,768	A	1	11,537
2	Wrangell-Petersburg	4,181	1	4,181	B	1	10,786
3	Sitka	6,605	1	6,605			
4	Juneau	9,545	2	4,773	C	1	12,471
5	Lynn Canal	2,926	1	2,926			
6	Cordova-Valdez	3,936	1	3,936	D	1	9,197
7	Palmer-Wasilla	5,261	1	5,261			
8	Anchorage	68,456	14	4,890	E	7	9,780
9	Seward	2,956	1	2,956	F	1	8,646
10	Kenai	5,690	1	5,690			
11	Kodiak	5,367	1	5,367	G	1	8,961
12	Aleutian Islands	3,594	1	3,594			
13	Bristol Bay	3,485	1	3,485	H	1	8,958
15	Yukon-Kuskokwim	5,473	1	5,473			
16	Fairbanks	34,958	7	4,994	I	4	8,740
17	Barrow-Kobuk	5,449	1	5,449	J	1	11,036
18	Nome	5,587	1	5,587			
14 /29	Bethel	5,412	1	5,412	K	1	8,469
19	Wade-Hampton	3,057	1	3,057			
		193,475	40			20	

/29 Bethel is out of numerical order since it is part of Senate District K

FORMULA FOR OBTAINING POPULATION FIGURE REPRESENTED BY EACH LEGISLATIVE SEAT /27

House	Senate
4,837 people should be represented by one legislator (40/ 193,475)	9,674 people should be represented by one legislator (20/ 193,475)
15% variance over 4,837 - 5,563	15% variance over 9,674 - 11,125
15% variance under 4,837 - 4,111	15% variance under 9,674 - 8,223
4,719 (41/ 193,475)	9,213 (21/ 193,475)
15% variance over 4,719 - 5,427	15% variance over 9,213 - 10,595
15% variance under 4,719 - 4,011	15% variance under 9,213 - 7,831

The above figures indicate that although each member of the House should represent 4,837 people, that in fact the representative from House District No. 5 represents only 2,926, while the representative from House District No. 3 represents 6,605.

/27 1960 civilian population of Alaska (193,475) divided by membership of the house.

V. CONSIDERATIONS FOR CONSTITUTIONAL CHANGES

A. Alaska Constitution

Article II

Section 3. An election has been held under the new apportionment scheme, and with the new plan in effect, this section is again appropriate. It is questionable whether any change should be made.

Article VI

Section 3. The Senate as well as the House should be covered by this section. A change may be indicated here in connection with basing the apportionment upon the civilian population. A possible change to bring the section in line with the Supreme Court's expressed view in Davis v. Mann, supra, would be to insert after "civilian" the words "and resident military". This change, if adopted, must also be made in other sections of this article where the phrase appears.

Sections 4 - 7. These sections embody provisions which now will permit the governor to redistrict the House within the requirements of the equal protection clause. It appears, however, that the limitation of section 7 would prohibit him from doing the same for the Senate within the present framework. A number of possible alterations are therefore possible in these sections. Such provisions as prevent the governor from complying with the mandate of the United States Constitution could merely be removed, or alternatively, a section or sections could be substituted for the present sections 4 - 7 which would specifically enunciate the principle of equal representation as a basis for the apportionment of both houses of the legislature.

Section 10. This section provides only for a decennial reapportionment, not for a reapportionment of the kind which has taken place in the 1966 election. Therefore, while the section is sound as a permanent part of the article, it was ignored in order to carry out the present reapportionment. The legislature may want to consider whether any change in the wording is indicated to take care of a similar situation in the future.

Article XIV

Sections 1 and 3. These sections set up the original apportionment schedule for the House and were in effect superseded by the action of the Reapportionment Board and the governor culminating in the reapportionment proclamation of September 3, 1965.

Section 2 is the description of the senatorial districts which will disappear with Senate reapportionment and redistricting.

It appears that Article XIV should be deleted in its entirety since it has served its purpose for the initial apportionment of seats in the first state legislature and no longer rules.

It should be mentioned that there seems to be a procedural question in preparing and voting on this series of amendments. The changes necessary to bring the constitution into conformity with the federal constitution may be several in number, affecting different sections and even articles of the constitution, yet closely related to one another. It would be problematical to regard each change in wording as an independent "amendment" since the integrated plan could be rendered meaningless if one part failed. It is suggested, therefore, that the situation might be simplified by the use of a kind of "one-subject" rule, by which changes proposed would be separated to the extent possible, but changes in different sections which formed part of a plan and would be meaningless independently would be considered a single "amendment" for purposes of proposal and placement on the ballot, and would stand or fall together upon referral to the people.

B. Other Considerations

(1) The number of members in each house. When considering constitutional amendments, it might be well to change the present constitutional provisions for even-numbered membership in each house to an odd number, e.g., a Senate of 19 or 21 members and a House of 39 or 41 members to avoid tied votes.

(2) Use of civilian population as an apportionment basis. Thus far there has been no judicial determination of record as to the constitutionality of using strictly civilian population as a basis for determining apportionment of legislative seats. Most states use total population but variations include using the total population excluding aliens, regular military, and non-tax paying Indians, the number of registered voters,

the number of persons voting in the preceding general election for a certain office (e.g., the governor), and, in Indiana, the male population over 21 years of age. See the discussion in the June 1, 1965, opinion of the state attorney general. /28

(3) Multi-member districts. The Advisory Reapportionment Board recommended that District 8 (Anchorage) be divided into four House Districts and four Senate Districts. The governor, in his proclamation, did not make any changes in the House Districts, and House District 8 remained a multi-member district. The governor designated House District 8 as Senate District E, with the seven senators running at large. The governor gave two reasons for his decision that House District 8 and Senate District E would be multi-member districts. First, Anchorage has traditionally been a multi-member district and secondly, it would be unfair to divide Anchorage into more than one legislative district on the basis of the 1960 census figures because they became obsolete after the 1964 earthquake which resulted in a radical population dislocation. See the discussion in the June 1, 1965, opinion of the state attorney general. /29

(4) Unicameral Legislature. There is evidence of increasing interest in the unicameral legislature idea (Nebraska) since the new requirement for apportionment of both houses on a strict apportionment basis removes the original purpose of a bicameral -- a balance of having one house based mainly on population and the other emphasizing area representation. However, there are many factors to be considered in discussing the relative merits of a bicameral versus a unicameral legislature that go beyond the differences in the basis of apportionment for a bicameral legislature.

/28 Appendix "D"
/29 Idem.

VI. SCHEDULE FACTORS IN PROPOSING AND ADOPTING CONSTITUTIONAL CHANGES IN LEGISLATIVE APPORTIONMENT

1967 — If the 1967 legislature proposed amendments, the proposition would not go on the ballot until August 1968 unless a special election is called for and financed for late 1967 or very early 1968.

1968 — If a regular election schedule is followed, amendments approved by the voters in 1968 would be effective for the 1970 filings and elections.

1970 — Elections could be held under a new apportionment-districting plan. The federal decennial census is reported late in the year. If the census is still the basis, the advisory board or other authority would undoubtedly take into 1971 to come up with a new plan effective for 1972. If no constitutional convention is held in the meantime, the proposition asking for voter opinion on a constitutional convention would go on the November general election ballot. A constitutional convention would devise a plan, subject to ratification, which would become effective for the election year 1972.

Without any legislative action in 1967 - 1968, the normal course of events would bring about decennial reapportionment/redistricting effective for the 1972 filings and election. If the decennial census basis is kept and the legislature proposes a constitutional amendment during 1967 - 1968 and the amendment is approved in 1967 - 1968 by the people, it would be operative for only two years. A convention held during the same period would have the same two-year effect.

A P P E N D I C E S

APPENDIX A

REAPPORTIONMENT ADVISORY BOARD

STATE OF ALASKA

June 4, 1965

The Honorable William A. Egan
Governor of Alaska
Juneau, Alaska

Dear Sir:

The Reapportionment Advisory Board reconvened as a result of your official Proclamation, dated March 6, 1965. The Board has held public hearings on the matter of reapportionment in all of the major regions of the State of Alaska. The schedule of those public hearings was as follows:

Fairbanks	May 10th
Nome	May 11th
Anchorage	May 12th
Juneau	May 13th

In addition the following meetings were held by the Board as part of its program for developing a plan of Reapportionment for submittal to you:

Anchorage	March 22nd and 23rd
Fairbanks	April 9th and 10th
Juneau	May 13th and 14th
Anchorage	June 4th

In developing its program for reapportioning the State Legislature the Board has given due consideration to all the data presently available to it. This consists of the report submitted by the Board on December 10, 1964; the more recent opinions of the Attorney General and their relation to the decisions of the Federal Supreme Court which have become available subsequent to the December report; the hearings held; the personal contacts and observations of the Board Members; and all other relevant matter which has been presented in person, by letter, or other form to the Board for its consideration. On the basis of full and complete discussion of the relevant data and material, the Board unanimously recommends the following plan for Reapportionment and Redistricting of the Alaska State Legislature:

a. All existing House Districts except District No. 8 shall remain as presently constituted and retain their present number of House seats.

b. District No. 8 shall be subdivided into four districts. They shall be titled: Anchorage City, Anchorage North, Anchorage Southeast and Anchorage Southwest. The subdivision shall be in accord with the attached descriptions of the four new districts.

c. Anchorage City District shall have eight House seats and four Senate seats assigned to it with the candidates for these seats running at-large for the Anchorage City District.

Anchorage North District shall have two House seats and one Senate seat with the candidates for these seats running at-large from the Anchorage North District.

Anchorage Southeast District shall have two House seats and one Senate seat assigned to it with the candidates for these seats running at-large from the Anchorage Southeast District.

Anchorage Southwest District shall have two House seats and one Senate seat assigned to it with the candidates for these seats running at-large from the Anchorage Southwest District.

d. The House election Districts shall be renumbered from 1 to 22 and named in accord with the attached Schedule of House Apportionment.

e. The Senate Districts shall be fourteen in number and shall be designated by the letters "A" thru "N" and formed of the House Districts listed on the attached schedule of Senate Apportionment.

f. The terms of office for the Senators from the various Senate Districts shall be as set forth in the attached schedule of Senate Apportionment. In Senate Districts "E" and "L", one half of the Senate seats shall be designated as position "A" and one half designated as position "B" for the purpose of the initial election under this schedule of apportionment to insure that one half of the Senate is elected in each biennial election following the initial election.

The Board again wishes to repeat its recommendation that any future Federal Census be taken with more regard to the requirements of the Alaska State Constitution in the matter of redistricting and reapportioning the State Legislature. The use of enumeration districts encompassing more than 1/40th of the population of the State as well as enumeration districts totally surrounding other enumeration districts creates situations which make redistricting and reapportioning the State extremely difficult.

For your information and review the Board is attaching to this report minutes of the Board Meetings and Public Hearings, copies of correspondence received and marked up maps of the Anchorage area indicating the recommended redistricting of existing Election District No. 8.

Respectfully submitted,

Victor D. Fischer, Chairman

Irene Ryan

Edward M. Cox

Florence Lancashire

Doris Wilke

ANCHORAGE - CITY AREA

Being that area used in the 1960 Census as the Anchorage City Area and more particularly described as follows:

Beginning at a point on the southerly boundary line of Section 22, T13NR4W, S.M., approximately 1800' west of the easterly boundary line of Section 22; thence east along the southerly boundary line of Section 22 and the centerline of Northern Lights Boulevard to the centerline of Minnesota Drive; thence south along the centerline of Minnesota Drive to the southerly boundary of the Martin Manor Subdivision; thence east along the southerly boundary of the Martin Manor Subdivision to the centerline of Spenard Road; thence north along the centerline of Spenard Road to the centerline of Northern Lights Boulevard; thence east along the centerline of Northern Lights Boulevard to the centerline of Arctic Boulevard; thence north along the centerline of Arctic Boulevard to the centerline of Fireweed Lane; thence east along the centerline of Fireweed Lane to the centerline of the Seward Highway; thence south along the centerline of Seward Highway to the east-west centerline of Section 29, T13NR3W, S.M.; thence east along the east-west centerline of Section 29 to the centerline of Lake Otis Parkway; thence south along the centerline of Lake Otis Parkway to the southerly east-west sixteenth line of Section 28, T13NR3W, S.M.; thence east along the southerly sixteenth line of Section 28 and 27, T13NR3W, S.M., to the north-south centerline of Section 27; thence north along the north-south centerline of Section 27 and Section 22 to the east-west centerline of Section 22, T13NR3W, S.M.; thence east along the east-west centerline of Section 22 to the centerline of Boniface Parkway; thence north along the centerline of Boniface Parkway to the east-west centerline of Section 15, T13NR3W, S.M.; thence west along the east-west centerline of Section 15 to the north-south centerline of Section 15; thence north along the north-south centerline of Section 15 and the centerline of Pine Street to the east-west centerline of Section 10, T13NR3W, S.M., identical with the centerline

of McPhee Avenue; thence west along the centerline of McPhee Avenue to the centerline of Taylor Street, projected; thence south along the centerline of Taylor Street to the centerline of Thompson Avenue; thence west along the centerline of Thompson Avenue, projected, to the intersection with the westerly sixteenth line of Section 9, T13NR3W, S.M.; thence north along the westerly sixteenth line of Section 9 to the centerline of Bluff Road; thence southwesterly along the centerline of Bluff Road to the centerline of Plum Street; thence north along the centerline of Plum Street and its projection to the east-west centerline of Section 5, T13NR3W, S.M.; thence west to the centerline of Knik Arm; thence southwesterly along the centerline of Knik Arm to a point due north of the point of beginning; thence due south to the place of beginning.

ANCHORAGE NORTH

All of that area drained by streams flowing into the Knik Arm from the east from and including the Old Knik River Bridge on the north to a southerly boundary line more particularly described as follows:

Beginning at a point on the centerline of Knik Arm where it intersects the westerly projection of the east-west centerline of Section 6, T13NR3W, S.M.; thence east along the projected east-west centerline of Section 6 & 5, T13NR3W, S.M. to the north-south centerline of Section 5, T13NR3W, S.M.; thence south along the north-south centerline of Section 5 and the centerline of Plum Street to the centerline of Bluff Road; thence northeasterly along the centerline of Bluff Road to its intersection with the westerly sixteenth line of Section 9, T13NR3W, S.M.; thence south along the westerly sixteenth line of Section 9 to the westerly projection of the centerline of Thompson Ave.; thence east along the westerly projection of the centerline of Thompson Ave. and the centerline of Thompson Ave. to the centerline of Pine Street; thence south along the centerline of Pine Street to the south boundary of Section 10, T13NR3W, S.M.; thence east to the intersection with the Knik Arm Drainage Divide.

ANCHORAGE SOUTHEAST

All of that area drained by streams flowing into Turnagain Arm from and including Placer River on the south; and bounded on the west by a line more particularly described as follows:

Beginning at the intersection of the centerline of Seward Highway with the east-west centerline of Section 29, T13NR3W, S.M.; thence south along the centerline of the Seward Highway and the easterly boundary of Section 30, T12NR3Wm S.M. to the centerline of Turnagain Arm.;

and bounded on the north by a line more particularly described as follows:

Beginning at the intersection of the centerline of the Seward Highway with the east-west centerline of Section 29, T13NR3W, S.M.; thence east along the east-west centerline of Section 29 to the centerline of the Lake Otis Parkway; thence south along the centerline of Lake Otis Parkway to the southerly east-west sixteenth line of Section 28, T13NR3W, S.M.; thence east along the southerly east-west sixteenth line of Sections 28 and 27m T13NR3W, S.M. to the north-south centerline of Section 27, thence North along the north-south centerline of Sections 27 and 22, T13NR3W, S.M. to the east-west centerline of Section 22; thence east along the east-west centerline of Section 22, T13NR3W, S.M. to the centerline of Boniface Parkway; thence north along the centerline of Boniface Parkway tothe east-west centerline of Section 15, T13NR3W, S.M.; thence West along the east-west centerline of Section 15 to the north-south centerline of Section 15, T13NR3W, S.M.; thence north along the north-south centerline of Section 15 to the north boundary of Section 15, T13NR3W, S.M.; thence east to the Knik River Drainage Divide,

ANCHORAGE SOUTHWEST

Beginning at a point on the southerly boundary line of Section 22, T13NR4W, S.M. approximately 1,800' west of the easterly boundary line of Section 22; thence east along the southerly boundary line of Section 22 and the centerline of Northern Lights Boulevard to the centerline of Minnesota Drive; thence south along the centerline of Minnesota Drive to the southerly boundary line of the Martin Manor Subdivision; thence east along the southerly boundary of the Martin Manor Subdivision to the centerline of the Spenard Road; thence north along the centerline of Spenard Road to the centerline of Northern Lights Boulevard; thence east along the centerline of Northern Lights Boulevard to the centerline of the Seward Highway; thence south along the centerline of the Seward Highway and the easterly boundary of Section 30, T12NR3W, S.M., to the centerline of Turnagain Arm; thence northwesterly following the centerline of Turnagain Arm and northeasterly following the centerline of Knik Arm to a point due north of the point of beginning; thence due south to the place of beginning; and also including all of Fire Island within its limits.

SCHEDULE OF HOUSE APPORTIONMENT

House District No.	Name of District	No. of Representatives
1	Ketchikan	2
2	Wrangell-Petersburg	1
3	Sitka	1
4	Juneau	2
5	Lynn Canal	1
6	Cordova-Valdez	1
7	Palmer-Wasilla	1
8	Anchorage City	8
9	Anchorage North	2
10	Anchorage Southeast	2
11	Anchorage Southwest	2
12	Seward	1
13	Kenai	1
14	Kodiak	1
15	Aleutian Islands	1
16	Bristol Bay	1
17	Yukon-Kuskokwim	1
18	Fairbanks	7
19	Barrow-Kobuk	1
20	Nome	1
21	Wade-Hampton	1
22	Bethel	1
		40

Ratio Calculations:

Lowest District — Population 2,925 (Lynn Canal)

Highest District — Population 6,505 (Sitka)

Ratio - - - - - - 2.25 to 1

Percentage of Population required to elect majority of House 47.1%

SCHEDULE OF SENATE APPORTIONMENT

Senate District	Name of District	No. of Senators	Initial Term of Senator
A.	Ketchikan	1	4 years
B.	Wrangell-Petersburg & Sitka	1	2 years
C.	Juneau & Lynn Canal	1	4 years
D.	Cordova-Valdez & Palmer-Wasilla	1	2 years
E.	Anchorage City	4	(see note)
F.	Anchorage North	1	4 years
G.	Anchorage Southeast	1	2 years
H.	Anchorage Southwest	1	4 years
I.	Seward & Kenai	1	2 years
J.	Kodiak & Aleutian Islands	1	4 years
K.	Bristol Bay & Yukon-Kuskokwim	1	2 years
L.	Fairbanks	4	(see note)
M.	Barrow-Kobuk & Nome	1	4 years
N.	Bethel & Wade-Hampton	1	2 years
		20	

Note: In both Senate District E and Senate District L, it will be necessary to designate half the Senate seats as position "A" and half the seats as position "B" for the purpose of the initial election under this schedule of apportionment to insure that one half of the Senate is elected in each biennial election following the initial election.

Ratio Calculations:

Lowest District Population 8,159 (Anchorage Southeast)

Highest District Population 12,471 (Juneau-Lynn Canal)

Ratio - - - - - - 1,526 to 1

Percentage of Populations required to elect majority of Senate 53.1%

POPULATION TABULATION TO ACCOMPANY HOUSE and SENATE APPORTIONMENT SCHEDULES

House District No.	House Dist. Name	1960 Civilian Pop.	No. of Repr.	Pop/Repr.	Senate District	No. of Senators	Pop/Senator
1	Ketchikan	11,537	2	5,768	A	1	11,537
2	Wrangell-Petersburg	4,101	1	4,101)			
3	Sitka	6,605	1	6,605)	B	1	10,706
4	Juneau	9,545	2	4,773)			
5	Lynn Canal	2,926	1	2,926)	C	1	12,471
6	Cordova-Valdez	3,936	1	3,936)			
7	Palmer-Wasilla	5,261	1	5,261)	D	1	9,197
8	Anchorage City	39,010	8	4,970	E	4	9,959
9	Anchorage North	9,546	2	4,773	F	1	9,546
10	Anchorage Southeast	8,158	2	4,079	G	1	8,158
11	Anchorage Southwest	10,934	2	5,467	H	1	10,934
12	Seward	2,956	1	2,956)			
13	Kenai	5,690	1	5,690)	I	1	8,646
14	Kodiak	5,367	1	5,367)			
15	Aleutian Islands	3,594	1	3,594)	J	1	8,961
16	Bristol Bay	3,405	1	3,405)			
17	Yukon-Kuskokwim	5,473	1	5,473)	K	1	8,958
18	Fairbanks	34,958	7	4,994	L	4	8,740
19	Barrow-Kobuk	5,909	1	5,909)			
20	Nome	5,587	1	5,587)	M	1	11,036
21	Bethel	5,412	1	5,412)			
22	Wade-Hampton	3,057	1	3,057)	N	1	8,469
		193,479	40			20	

PROCLAMATION OF REAPPORTIONMENT AND REDISTRICTING

WHEREAS, the United States Supreme Court in the case of Reynolds v. Sims, and in other companion cases decided in June of 1964, held that under the Equal Protection Clause of the United States Constitution both houses of a state legislature must be apportioned on a population basis and that a state is required to make an honest and good faith effort to construct districts, in both houses of its legislature, as nearly of equal population as is practicable;

WHEREAS, it does not appear that the Alaska State Senate is apportioned on a population basis within the meaning of the Supreme Court decisions;

WHEREAS, the Constitution of the State of Alaska (Article VI) and the minutes of the Alaska Constitutional Convention clearly contemplate that the Governor shall have the sole responsibility for legislative reapportionment;

WHEREAS, the mandate of the United States Supreme Court can be carried out in a manner consistent with the manifest intent of the Constitution of the State of Alaska only by reapportionment by the Governor with the advice of the Advisory Reapportionment Board;

WHEREAS, I, William A. Egan, Governor of the State of Alaska, pursuant to Article VI of the Constitution of the State of Alaska, issued a Proclamation on March 6, 1965, directing the Advisory Reapportionment Board to submit a plan that would meet the requirements of the Supreme Court decisions and those provisions of the Constitution of the State of Alaska that are not in conflict with those decisions;

WHEREAS, the Advisory Reapportionment Board convened pursuant to my order and on June 8, 1965, submitted to me a plan for reapportionment and redistricting;

WHEREAS, the Governor is required by law to issue a proclamation of reapportionment and redistricting within 90 days after receipt of the recommendations of the Advisory Reapportionment Board;

NOW, THEREFORE, I, WILLIAM A. EGAN, Governor of the State of Alaska, do proclaim the following plan of reapportionment and redistricting:

First: The election districts for the House of Representatives shall remain as designated by the Proclamation of Reapportionment and Redistricting of December 7, 1961.

Second: Members of the Senate shall be elected from the Senate Districts and in the number shown below:

Senate District	Name of District	Composed of Election Districts	Number of Senators
A.	Ketchikan	1	1
B.	Wrangell-Petersburg & Sitka	2 & 5	1
C.	Juneau & Lynn Canal	4 & 5	1
D.	Cordova-Valdez & Palmer-Wasilla	6 & 7	1
E.	Anchorage	8	7
F.	Seward & Kenai	9 & 10	1
G.	Kodiak & Aleutian Islands	11 & 12	1
H.	Bristol Bay & Yukon-Kuskokwim	13 & 15	1
I.	Fairbanks	16	4
J.	Barrow-Kobuk & Nome	17 & 18	1
K.	Bethel & Wade-Hampton	14 & 19	1
			20

Third: This reapportionment and redistricting shall be effective for elections of members of the Legislature until the next decennial census.

Fourth: This reapportionment and redistricting shall be implemented for the 1966 primary and general elections. The terms of all members of the Fourth State Legislature shall terminate on the fourth Monday in January, 1967. In the 1966 general election 40 members shall be elected to the House of Representatives and 20 members to the Senate.

Fifth: Members of the State Senate elected at the 1966 general election shall serve the term indicated as follows:

Senate District	Name of District	Initial Term of Senator
A.	Ketchikan	4 years
B.	Wrangell-Petersburg and Sitka	2 years
C.	Juneau-Lynn Canal	4 years
D.	Cordova-Valdez and Palmer-Wasilla	2 years
E.	Anchorage A	4 years
	Anchorage B	2 years

Senate District	Name of District	Initial Term of Senator
	Anchorage A	4 years
	Anchorage B	2 years
	Anchorage A	4 years
	Anchorage B	2 years
	Anchorage A	4 years
F.	Seward & Kenai	2 years
G.	Kodiak & Aleutian Islands	4 years
H.	Bristol Bay & Yukon-Kuskokwim	2 years
I.	Fairbanks A	4 years
	Fairbanks B	2 years
	Fairbanks A	4 years
	Fairbanks B	2 years
J.	Barrow-Kobuk & Nome	4 years
K.	Bethel & Wade-Hampton	2 years

Sixth: State legislators elected at the 1966 general election shall hold office for a term beginning with the fourth Monday of the January following election. Their term shall be two years, except that senators elected for four-year terms shall serve an additional two years thereafter.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the Seal of the State to be affixed, this third day of September in the year of our Lord nineteen hundred and sixty five.



William R. Egan
Governor

ATTEST:

Secretary of State

STATEMENT ACCOMPANYING PROCLAMATION
OF
REAPPORTIONMENT AND REDISTRICTING

I have adopted the excellent and well-considered recommendations of the Advisory Reapportionment Board with two exceptions, neither of which increases or decreases the numerical representation allotted by the Board to any area.

Under the Board's recommendation District 8 would be divided into four House Districts. Under my Proclamation all House Districts, including District 8, remain exactly as they were designated in the Proclamation and Redistricting of December 7, 1961.

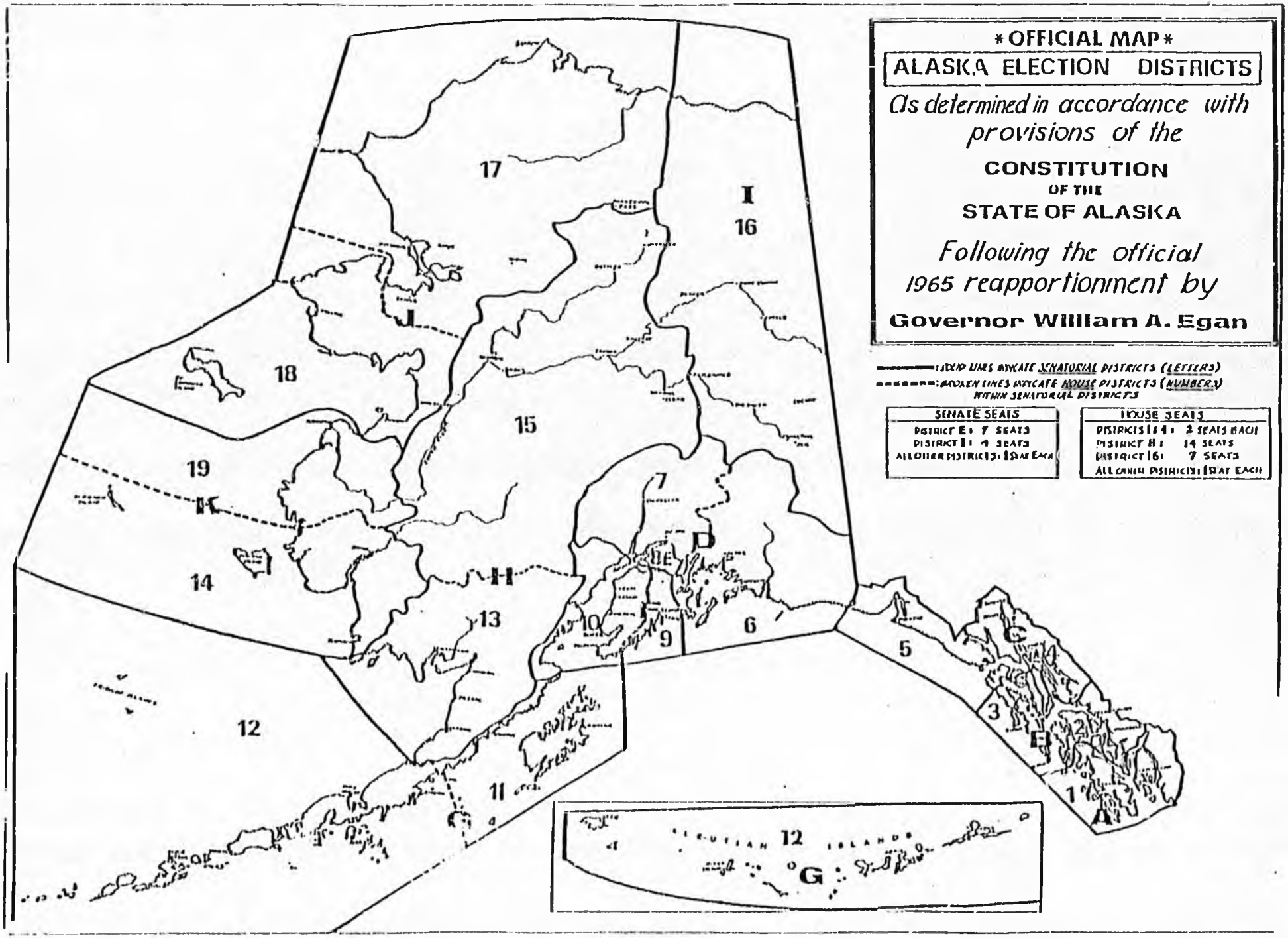
Under the Board's recommendation District 8 would also be divided into four Senate Districts (E, F, G and H), with a total of 7 senators assigned to the four districts. I have changed the Board's recommendation so that the 7 senators assigned to District 8 will all run at large in that district which will be designated Senate District E. This will eliminate Senate Districts F, G and H from the Board's proposal, and all other Senate Districts have been re-lettered accordingly in the Proclamation.

It would be unwise and unfair to attempt to divide District 8 into more than one legislative district on the basis of the 1960 census figures. These figures became obsolete with the March 27, 1964, earthquake which devastated large, heavily populated areas in and around Anchorage and resulted in radical population dislocation and movement of unknown proportions. Therefore, any reapportionment plan based on the 1960 census which would split District 8 into several legislative districts could result in over-representation of districts which have lost a considerable part of their population and under-representation of districts which gained substantially in population as a result of the earthquake and subsequent dislocation.

Furthermore, Anchorage has traditionally been a multi-member district with all of its candidates for the Legislature running at large. This system has proved workable and fair in the past, and is the most equitable one which can be devised under existing circumstances.

Dated: September 3, 1965.

William A. Egan
Governor


* OFFICIAL MAP *
ALASKA ELECTION DISTRICTS
As determined in accordance with provisions of the
CONSTITUTION
OF THE
STATE OF ALASKA
Following the official 1965 reapportionment by
Governor William A. Egan
SOLID LINES INDICATE SENATORIAL DISTRICTS (LETTERS)
BROKEN LINES INDICATE HOUSE DISTRICTS (NUMBERS) WITHIN SENATORIAL DISTRICTS
SENATE SEATS
DISTRICT E: 7 SEATS
DISTRICT I: 4 SEATS
ALL OTHER DISTRICTS: 1 SEAT EACH
HOUSE SEATS
DISTRICTS 16 & 1: 2 SEATS EACH
DISTRICT 8: 14 SEATS
DISTRICT 16: 7 SEATS
ALL OTHER DISTRICTS: 1 SEAT EACH
ALEUTIAN 12 ISLANDS
17
16
18
15
19
14
13
12
11
10
9
7
6
5
3
2
1
A
B
C
D
E
F
G
H
I
J

LEGISLATIVE REAPPORTIONMENT IN THE STATES /1

(November, 1965 - May, 1966)

The following checklist shows that 33 states have now been reapportioned. In four additional states one house has been so apportioned: in one of these a plan for the other house is being challenged in the courts; and in three more, a temporary plan has been implemented. In five states reapportionment schemes for both houses await court approval, while eight states are operating with temporary plans.

PLAN ADOPTED AND NO CURRENT LITIGATION

Alabama
Alaska (house only)
Arizona
Arkansas
California
Colorado
Connecticut
Idaho
Illinois
Indiana
Kansas (house only)
Kentucky
Louisiana (house only)
Maine
Maryland
Massachusetts
Missouri
Nebraska
Nevada
New Hampshire
New Mexico
New York
North Carolina
North Dakota
Oklahoma
Oregon /2
Rhode Island
South Carolina (house only)
South Dakota
Tennessee[1]
Utah
Vermont
Virginia
Washington
West Virginia
Wisconsin
Wyoming

PLAN ADOPTED BUT LITIGATION OR COURT APPROVAL PENDING

Delaware
Florida
Louisiana (senate only)
Minnesota
Mississippi
Pennsylvania

TEMPORARY LEGISLATIVE OR COURT PLAN

Alaska (senate only)
Georgia
Hawaii
Iowa
Kansas (senate only)
Michigan
Montana
New Jersey
Ohio
South Carolina (senate only)
Texas

/1 Published by the Council of State Governments.
/2 Some litigation is yet pending; nevertheless, the basic plans have received court approval.

STATES IN WHICH THERE HAS BEEN NO CHANGE IN LEGISLATIVE REAPPORTIONMENT SINCE NOVEMBER 1965 ARE FOUND IN THE BACK OF THIS APPENDIX.

ALASKA

On April 11 the Alaska superior court issued a memorandum opinion that (1) the governor had exceeded his constitutional authority in reapportioning the senate (2) the 1966 elections be held under the existing plan, and (3) a constitutional amendment for a valid reapportionment of the senate be adopted no later than December 1, 1967. The state supreme court reversed, in part, the superior court ruling and adopted the governor's plan of September 3, 1965, declaring it effective for the 1966 elections and thereafter until the constitution is amended to provide a permanent reapportionment plan for the senate (Wade v. Nolan, et al, decided May 20). A separate appeal from the April 11 ruling is pending with the federal court.

ARIZONA

The federal court on February 2 reapportioned both houses of the Arizona legislature, reducing the house from 80 to 60 members, increasing the senate from 28 to 30 members, and providing for at-large elections except in Maricopa and Pima counties (Klahr v. Goddard). On March 14 the court issued a supplemental decree approving subdistricting plans for the two counties.

ARKANSAS

On November 4 the federal court issued a memorandum opinion approving a reapportionment scheme for the general assembly, as submitted by the state board of apportionment (Yancey v. Faubus). The plan calls for 44 districts for the house and 25 for the senate. Intervenors' appeal to the U. S. supreme court that the 1965 plan failed to meet the "one-man, one-vote" requirements was denied February 28 (Crawford County Bar Association v. Faubus; Alexander v. Faubus).

CALIFORNIA

The state supreme court on January 11 upheld the reapportionment of the California legislature, as adopted October 21 during the second 1965 special session. In doing so, the court overruled objections that the senate plan included two multi-member districts for San Francisco and the populous part of Alameda county and did not have such multi-member districts for other sections of the state (Silver v. Brown; Adams v. Brown).

CONNECTICUT

On December 14 voters approved a new state constitution with provisions conforming with the 1965 reapportionment act. The senate consists of 30 to 50 members, the house from 125 to 225 members. Responsibility for future reapportionment, following each decennial federal census, is placed with the legislature or, should it fail, an eight-member legislative commission or, should it fail, a board comprised of two judges from the state superior court and one elector.

DELAWARE

Sincock v. Gately is still pending in the federal court. The contested reapportionment plan, enacted by the Delaware legislature in 1964, is based wholly on straight population and provides single-member districts for both houses.

FLORIDA

The federal court on December 23 declared the 1965 legislative reapportionment act (HB 19-XX) unconstitutional but allowed it to stand as an interim plan until 60 days following adjournment of the 1967 regular session (Sobel v. Adams; Swann v. Adams). On February 25 the U. S. supreme court ruled that the district court erred in approving the plan on an interim basis (Swann v. Adams). The legislature subsequently adopted another reapportionment scheme, HB 17-X (66), which was then approved by the federal court on March 19 (Swann v. Adams). Appeal has been lodged with the U. S. supreme court.

GEORGIA

On March 25 the federal court rejected arguments that the Florida case Swann v. Adams required an immediate reapportionment of the Georgia legislature. (NOTE The court had previously accepted the 1965 house reapportionment plan as an interim measure but had ordered both houses reapportioned no later than the end of the 1968 regular session or May 1, 1968, whichever arrived first.) But the court did advance to May 1, 1967, the date by which further reapportionment must be accomplished (Toombs v. Fortson).

HAWAII

On April 25 the U. S. supreme court reversed its lower court and accepted the interim scheme (HB 987) passed during the 1965 regular session to reapportion the senate and the existing house apportionment as temporary plans for use in the 1966 general elections and to continue until such time as a permanent plan is adopted (Burns v. Richardson, et al; Cravalho, et al v. Richardson, et al; Abe, et al v. Richardson, et al).

IDAHO

The federal court on December 20 declared the Idaho reapportionment plan, enacted during a March, 1965 special session, unconstitutional and ordered at-large elections for both houses until constitutionally apportioned (Hearne v. Smylie). The legislature then enacted a new reapportionment plan during the third 1966 extraordinary session. The defendants from Hearne petitioned the federal court to dissolve the December 20 injunction which required at-large elections. When plaintiffs failed to respond to the petition, the court on April 1 granted the petition which, in effect, approved the new reapportionment plan.

ILLINOIS

On December 8 a special bipartisan commission appointed by the governor filed its plan for new house districts with the office of the secretary of state. It became immediately effective for the 1966 elections, providing for three representatives elected at-large from each of 59 multi-member districts. There is no court action pending.

INDIANA

On November 18 the federal court approved one of four alternate plans for the house and one of four alternates for the senate as adopted by the legislature in 1965 (Stout v. Bottorff; Grills v. Branigin).

IOWA

In Davis v. Cameron the federal court deferred to the state district court which, in turn, on November 5 gave temporary approval to the interim apportionment scheme for both houses, enacted during the Iowa 1965 regular session. On April 15 the state supreme court declared the 1965 temporary plan sufficient to serve as an interim plan of apportionment until 1968. But the court also ruled that a combination of multi- and single-member districts could not be used for the same chamber (Kruidenier v. McCulloch). Defendants are expected to file a writ of certiorari with the federal court.

KANSAS

On December 28 the senate apportionment was declared unconstitutional, although the federal court delayed the effective date of its ruling until April 1 (Long v. Avery). The court followed on February 24 with a decree that the legislature adopt a new senate plan no later than April 1, 1968 or, failing to do so, the court would order into effect its own plan or at-large elections. The state supreme court on March 23 approved the reapportionment plan (HB 504) for the lower house, adopted during a 1966 special session (Harris v. Anderson).

MAINE

During the 1966 special session the legislature approved a proposed constitutional amendment providing for not less than 30 nor more than 40 senators. In the event the legislature failed to reapportion, the state supreme court would be entrusted with the duty. If the amendment is approved by the voters in November, the legislature in its 1967 session will have to establish lines for the districts which would take effect in the 1968 elections.

MARYLAND

The lower state court on December 22 accepted a 1965 special session act (SB 5) to reapportion both houses of the Maryland legislature (Maryland Committee for Fair Representation, et al v. Tawes). The court also found another act of the 1965 special session (SB 8) violative of the equal protection clause of the 14th Amendment. The ruling was reaffirmed by the state court of appeals on January 11.

MICHIGAN

The plan presented by the commission in 1964 was never explicitly ruled unconstitutional. But the state supreme court indicated its shortcomings insofar as compliance with the state constitution was concerned by instructing the commission on November 2 to prepare new plans within 60 days. However, the commission deadlocked. The court itself stalemated regarding the validity of the 1964 plan and, thus, issued seven separate opinions on March 9 (In Re Apportionment).

MINNESOTA

On November 26 the state supreme court reversed its lower court and declared that the veto power existed with respect to apportionment legislation. Thus the governor's veto of the 1965 reapportionment act was upheld. But the court also noted that its decision was not intended to be an evaluation of the act (Duxberry, et al v. Donovan). On January 14, plaintiffs from Honsey v. Donovan petitioned the federal court to go ahead with preliminary plans for establishing new legislative districts for the 1966 elections. The judges denied the petition, noting that sufficient time existed for the legislature to reapportion.

The Minnesota legislature on May 9 enacted a reapportionment bill (SF 2) in special session providing 67 and 135 members, respectively, for the senate and house. On May 11 the governor vetoed the bill, charging population inequities and gerrymandering. But the legislature followed one week later with a new plan which was signed by the governor on May 20.

MISSISSIPPI

On January 21 the federal court received briefs in Conner, et al v. Johnson. (This suit was filed October 19, 1965 challenging the 1963 reapportionment.)

MISSOURI

During a special session in the fall of 1965, the legislature approved a proposed constitutional amendment to create a commission for reapportioning the house periodically. The amendment was approved by referendum January 14. New house districts were announced by the commission in March. (The senate had been reapportioned by a commission in the fall of 1965.)

NEBRASKA

On January 25 the Nebraska supreme court upheld a 1965 reapportionment act (LB 925) which provided for crossing of county lines in forming districts (Carpenter v. State). Consequently the state withdrew its appeal to the U. S. supreme court on LB 628, a previously invalidated reapportionment act. The federal court followed on February 10 by dismissing litigation regarding the constitutionality of LB 925 in League of Nebraska Municipalities v. Marsh.

NEVADA

On November 13 the legislature in special session passed a reapportionment bill which provided for a 20-member senate and 40-member house. The federal court approved the plan on March 21 (Dungan v. Sawyer).

NEW HAMPSHIRE

Since the legislature had reapportioned both houses during its 1965 regular session, the federal court on December 2 dismissed Levitt v. Stark, et al, which had attacked the 1961 apportionment.

NEW JERSEY

A constitutional convention began work on March 21 to draft new constitutional provisions for apportioning the legislature. It is to report in June, 1966.

NEW MEXICO

The federal court on March 17 ruled that the senate reapportionment act, adopted in a 1966 special session, fell short of the "one-man, one-vote" requirements and issued its own plan establishing 39 senatorial districts (Beauchamp v. Campbell). The court increased the number of districts to 42 in an amended order dated March 31.

NEW YORK

A commission appointed by the legislature reported a reapportionment plan in December, but the legislature failed to act on the issue by the court deadline. On February 23 the New York court of appeals assumed jurisdiction and appointed a five-member commission to prepare apportionment plans for both houses. One month later the court adopted the commission's report providing for a 57-member and 150-member senate and house, respectively.

NORTH CAROLINA

The North Carolina legislature was ordered by the federal court to reapportion no later than January 31, 1966. The court warned that if the legislature failed the court would hand down its own plan in time for the 1966 primaries and elections (Drum, et al v. Seawell, et al, November 30). On January 14 the legislature adjourned a five-day special session after enacting bills to reapportion both houses. The federal district court accepted the plan on February 18 (Drum, et al v. Seawell, et al). And the U. S. supreme court on April 4 reaffirmed the decision.

OHIO

On December 20 arguments were heard before the state court of appeals (10th district) re: King v. Rhodes. Plaintiffs contended that the members of the state apportionment board exceeded their power in reapportioning the Ohio legislature. The U. S. supreme court issued a per curiam opinion February 21 reaffirming its lower court ruling which had adopted the board's reapportionment plan and ordered it into effect on a temporary basis for the 1966 general elections (Nolan v. Rhodes, October, 1965).

OREGON

An original mandamus proceeding commenced in the state supreme court December 9 as plaintiffs petitioned for a redistribution of the representatives from the subdistricts of Multnomah county (Portland). However the court refused granting relief until the legislature had had an opportunity to act (Cook, et al v. McCall, January 26).

PENNSYLVANIA

On February 4 the Pennsylvania state court reapportioned the legislature, reducing the house from 209 to 203 members and leaving the senate at 50 members (Butcher v. Bloom). The federal court has subsequently been asked to review the state supreme court decision. Briefs were filed during April.

RHODE ISLAND

After receiving two extensions to the original January 15 deadline, the 15-member legislative commission on March 28 filed its report. The legislature subsequently enacted separate bills providing for the reapportionment of each chamber. Both bills were vetoed by the governor. However, in each instance, the legislature overruled the vetoes. A general constitutional convention is now at work that will consider a permanent apportionment plan.

SOUTH CAROLINA

The federal court on February 18 upheld the 1961 apportionment of the house, and approved the 1966 reapportionment plan for the senate as an interim measure for purposes of the next election only, and for a limited term of two years (O'Shields v. McNair, et al; Munro v. McNair).

TENNESSEE

On November 15 a three-judge federal court upheld the 1965 Tennessee legislative reapportionment act (Baker v. Carr). However, the chancery court at Nashville held unconstitutional that portion of the 1965 act which divided four urban counties into senatorial subdistricts (Williams v. Carr, March 7). An appeal is now pending with the state supreme court.

TEXAS

Hainsworth v. Martin was vacated as moot by the court of civil appeals on November 15 in view of the enactment of the 1965 Texas apportionment act. On February 2 the federal court upheld the 1965 act (HB 195) as a valid interim plan of apportionment for the 1966 elections, but ordered the eleven flotorial districts revised no later than August 1, 1967 (Kilgarlin v. Martin).

VERMONT

On November 18 the Vermont supreme court denied appeals aimed at blocking the November 23, 1965, special legislative election and at having the 1965 reapportionment acts declared null and void.

WYOMING

On February 28 the U. S. Supreme court reaffirmed a federal court ruling that subdistricting of multi-member districts was not required (Harrison v. Schaefer).

LEGISLATIVE REAPPORTIONMENT

IN THE STATES /1

(November 1965) /2

ALABAMA

In summer, 1962, the federal court, after declaring the existing Alabama legislative apportionment unconstitutional, issued its own temporary plan (Sims v. Frink). On appeal the lower court was sustained by the supreme court in the now famous Reynolds v. Sims.

During 1965 regular session, the house approved a proposal which would have reapportioned the senate. This bill died on the senate calendar. The federal court later made it clear that the bill would have been insufficient inasmuch as it applied only to the upper chamber.

On September 23, the legislature reapportioned both houses during special session. The court on October 2 held the reapportionment of the senate constitutional but substituted its own scheme for the lower house to correct certain population discrepancies of the legislative version.

COLORADO

Lucas v. Forty-Fourth General Assembly (1964) struck down a "little federal" plan that had been approved by the voters in preference to a straight population proposal. Meeting in 1964 special session, the legislature then enacted a plan using a population basis. This statute was challenged because of its provision for subdistricts in multi-member counties. After the state supreme court found for the plaintiffs, the 1965 general assembly passed a new apportionment act eliminating subdistricts and, shortly thereafter, the state supreme court dismissed all litigation.

KENTUCKY

The Kentucky legislature successfully reapportioned itself in 1963 special session. No litigation is pending.

/1 Published by the Council of State Governments.

/2 There has been no change in legislative reapportionment since November 1965 in the states in this listing.

LOUISIANA

Meeting in special session, the legislature reapportioned the house in 1963 after the federal court declared that the existing apportionment violated the 14th Amendment (Daniel v. Davis).

Litigation has been pending since 1963 (Bannister v. Davis) to reapportion the senate; however, plaintiffs have not yet moved to bring the matter to a hearing on merits.

MASSACHUSETTS

After the state supreme court declared existing house apportionment unconstitutional (Fishman v. White), the legislature realigned house districts in October, 1963. But reapportionment will be required again in 1966 following the new state census.

MONTANA

Suit challenging apportionment of the Montana legislature was decided January, 1965 (Herwez v. Thirty-Nineth Legislative Assembly) when the federal court held both houses malapportioned.

However, the court stayed remedial action pending outcome of the 1965 regular session. When the legislature failed to report a new apportionment scheme, the court on August 6 announced its own plan for use in the 1966 elections and declared that its plan would remain in force until the legislature was properly apportioned.

NORTH DAKOTA

As a result of longstanding litigation (Lien v. Sathre and Paulson v. Meier), the legislature reapportioned itself in the 1965 regular session. The act was declared unconstitutional by the federal court which on August 13 ordered into effect its own plan, to become effective with the 1966 elections (Paulson v. Meier).

The court plan is a slight modification of a proposal to the legislature by the Legislative Research Committee.

OKLAHOMA

In Moss v. Burkhart, the federal court ruled the state legislature malapportioned and warned that if a new plan was not devised by March, 1963, the court would implement its own scheme. New measures were adopted by the legislature in 1963, but these also were invalidated by both the federal and state supreme courts. Extensive litigation finally was climaxed July 31, 1964, when the federal court reapportioned both houses on a population basis.

SOUTH DAKOTA

Both houses of the legislature were reapportioned on a population basis in 1961.

UTAH

A federal court ordered the reapportionment of the state legislature in Petuskey v. Clyde. After the legislature enacted new plans during its 1965 regular session, the attorney general filed motion to dismiss all suits pending.

The plan, providing for 23 senators and 69 representatives, was approved by the federal court, excepting one section designed to allow senators elected in 1964 to complete their full terms.

VIRGINIA

The reapportionment undertaken by the 1962 state legislature was declared unconstitutional by a federal court in Mann v. Davis. During a March, 1964 special session, the legislature enacted a new plan which a federal special three-judge court found acceptable, except that two of the house districts, each having one delegate, were ordered combined into a single district with two delegates.

Henrico County appealed to the U.S. supreme court asserting that the effect of being placed in a single district with the City of Richmond, rather than being made an independent district, was to give Richmond a voting power greater than Henrico and deprived the county of representation by its own citizens. On October 26, the High Court upheld the ruling of the special court.

WASHINGTON

In Meyers v. Thigpen the U. S. supreme court affirmed a federal court decision that declared existing apportionment unconstitutional and enjoined further elections thereunder. On February 26, 1965, the legislature reapportioned itself and the federal court dismissed pending litigation.

WEST VIRGINIA

After Robertson v. Hatcher declared existing apportionment unconstitutional, the legislature successfully reapportioned itself during 1964 extraordinary session.

WISCONSIN

Following gubernatorial veto of three separate legislative apportionment acts and legislative failure to conform with an order to reapportion, the state supreme court issued its own scheme on May 14, 1964.

Upon resuming the 1965 regular session on October 4, the legislature considered several bills that would give statutory standing to the court plan. However, none of the proposals advanced to final passage and after one month the legislature adjourned until May 2, 1966.

STATE OF ALASKA

WILLIAM A. EGAN, GOVERNOR

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL / BOX 2178 — JUNEAU 99801

June 1, 1965

Mr. Felix Toner, Chairman
Advisory Reapportionment Board
Juneau, Alaska

Dear Mr. Toner:

You have asked the following questions:

1. May the Board create a multi-member legislative district in the Northwest?

2. May the Board include military personnel in population for apportionment purposes?

I will answer these questions in order.

1. Some residents of the Northwest have proposed that the Board establish a single legislative district in the Northwest, stretching from the Kuskokwim River in the south to Point Barrow in the north. Under the proposed plan a huge multi-member district would replace the single-member districts now used in the Northwest. All candidates for both the House and Senate would be required to run at large.

You have indicated that the Board is considering retaining multi-member districts in Anchorage and Fairbanks. The Board has decided that it would be practically impossible to divide these urban areas into single-member districts. The 1960 census gives population figures for enumeration districts which have no relationship in size or shape to apportionment of the area into single-member districts of approximately equal population. Also, it is obvious that last year's earthquake displaced large numbers of people from the major population centers of Anchorage. Since the Board must use 1960 census figures, it would only compound the inequities resulting from use of census figures rendered obsolete by the earthquake to attempt to establish single-member districts in Anchorage. We understand that for these reasons, the Board intends to retain multi-member districts in Anchorage and Fairbanks.

With the census data available it is possible, however, for the Board to establish single-member districts elsewhere in the State. Although the United States Supreme Court, in Forston v. Dorsey, 379 U.S. 433 (1965), upheld use of some multi-member districts in Georgia, the Court warned:

> "It might well be that, designedly or otherwise, a multi-member constituency apportionment scheme, under the circumstances of a particular case, would operate to minimize or cancel out the voting strength of racial or political elements of the voting population. When this is demonstrated, it will be time enough to consider whether the system still passes constitutional muster."

If the Board determines that a vast multi-member district in the Northwest would "minimize or cancel out the voting strength of racial or political elements of the voting population," it would be unconstitutional for the Board to create such a district.

A multi-member district in the Northwest might minimize or cancel out voting strength in several ways. For example, in a vast, sparsely-settled Northwest legislative district voters in several population centers might be able to elect most, if not all, of the entire Northwest's legislators. These voters would minimize or cancel out the voting strength of entire areas containing small, widely-scattered villages which could elect their own representatives if the Northwest were divided into single-member districts. In addition, voters in population centers located in one part of the district, which would stretch almost 800 air miles from the Kuskokwim to Point Barrow, might combine to prevent voters in other parts of the district from electing their unanimous choice. If voting strength of a minority of voters were minimized or cancelled out, vast areas of the Northwest would be without any effective representation in the legislature. It would be unconstitutional for the Board to create a multi-member district in the Northwest which would give rise to this type of discrimination.

In retaining multi-member districts in Anchorage and Fairbanks, the Board runs a risk that political or racial minorities in these areas will argue that use of multi-member districts minimizes or cancels out their voting strength. It is clear, however, that the Board plans to retain multi-member

districts in these urban areas only because of the practical impossibility of dividing the cities into single-member districts and, in the case of Anchorage, because of the inequities that would result from following pre-earthquake census figures. Since the Board has no reason to believe that use of multi-member districts in these two relatively compact urban areas would submerge political or racial minorities, it is improbable that use of these multi-member districts would be held unconstitutional.

2. Your second question is whether the Board may include military personnel in population for apportionment purposes. The Alaska Constitution, in Article VI, Section 3, states:

> "Reapportionment shall be based upon civilian population within each election district as reported by the census."

This clearly provides that military personnel are not to be included in population for apportionment purposes. Unless the United States Supreme Court declares this provision unconstitutional, it must be followed by the Board.

The United States Supreme Court has not held that military personnel must be included as part of the population base for apportionment purposes. It has not yet been asked to settle this specific issue. In Davis v. Mann, 377 U.S. 678 (1964), the Court discounted Virginia's argument that certain areas were not in fact under-represented because these areas contained large numbers of military personnel who were not domiciled in Virginia and did not vote there. The Court purported to answer this argument by stating that "discrimination against a class of individuals, merely because of the nature of their employment, without more being shown, is constitutionally impermissible." Whatever this statement means, it does not invalidate Alaska's constitutional provision excluding military personnel from the population base for apportionment purposes. Until the Supreme Court decides in explicit terms that such a provision is unconstitutional, the Board must follow Alaska's Constitution.

This was the approach taken by a federal district court in Holt v. Richardson, 33 U.S. Law Week 2443 (Feb. 17, 1965). Under Hawaii's Constitution, apportionment is based on the number of registered voters in the last general election. Since many military personnel are not Hawaii residents and do not vote there,

they are not counted for apportionment purposes. Plaintiffs argued that apportionment must be based on total population, including military personnel. The federal district court refused to invalidate the apportionment of Hawaii's House of Representatives because registered voters, and not total population, were used as a basis for apportionment. The Court stated its reason for holding that registered voters were a valid basis for representation:

> "Hawaii has become the United States' military bastion for the entire Pacific and military population in the State fluctuates violently as the Asiatic spots of trouble arise and disappear. If total population were to be the only acceptable criteria upon which legislative representation could be based, in Hawaii, grossly absurd and disastrous results would flow from a blind adherence to the 'elusive "one-person-one-vote"aphorism.' (Mr. Justice Harlan in Forston v. Tombs, 33 U.S. Law Week 4172)"

Military personnel accounted for about 10 percent of Hawaii's total population in 1960. Military personnel account for about 15 percent of Alaska's population. Alaska can point to the same inequities as does Hawaii if military personnel are included in population for apportionment purposes.

Even if the Board were to include military personnel who are Alaska residents in the population base, this would not affect representation under any possible apportionment plan. The military has informed us that just over 100 military personnel stationed in Alaska consider themselves Alaska residents. There is no method of determining how many military personnel vote in Alaska. However, since voting is one factor in determining residence, it is likely that military personnel who claim residence in states other than Alaska do not vote in Alaska. Most vote by absentee ballot in the state where they claim residence and for that reason, in many cases, they will be counted for apportionment purposes.

Until the United States Supreme Court holds that a constitutional provision excluding military personnel from

population for apportionment purposes is invalid, the Board must follow Alaska's provision and reapportion on the basis of civilian population only.

Very truly yours,

WARREN C. COLVER
ATTORNEY GENERAL

WCC/sr6

HEADQUARTERS, ALASKAN COMMAND
APO SEATTLE 98742

% PA

16 April 1965

Mr. Felix J. Toner, Chairman
Reapportionment Advisory Board
P.O. Box 2534
Juneau, Alaska

Dear Mr. Toner:

Reference is made to my letter of April 1st and your letter of March 29th concerning the matter of military residents in Alaska.

A survey of military personnel records indicates that there are 111 Alaskan residents in the military forces stationed in Alaska. I must point out, however, that this cannot be considered an absolutely accurate figure, as military personnel records do not contain an entry showing what can be called a "legal residence" for voting purposes. The record shows only the place the person prefers to consider as his permanent home.

The Alaska resident personnel are scattered in several places with the greater number in the Anchorage area. It appears, however, the total is so small that it would have no effect on reapportionment action.

Sincerely,

HARRY A. WAKEFIELD
Lt Col, USAF
Chief, Public Affairs

STATE REAPPORTIONMENT, ELECTORAL PERCENTAGES, 1966 ELECTIONS

STATE	DATE LATEST REAPPORTIONMENT		ELECTORAL PERCENTAGE*				REAPPORTIONING BODY**	PARTY STRENGTHS				1966 ELECTION
			HOUSE		SENATE			UPPER HOUSE		LOWER HOUSE		
	HOUSE	SENATE	Old	New	Old	New		Dem.	Rep.	Dem.	Rep.	
Alabama	1965	1965	43.0	47.7	27.6	47.8	Court, Legislature	35	0	103	3	Entire Legislature
Alaska	1961	1965	n.a.	47.8	33.4	51.0	Commission	17	3	30	10	One-half Upper House Entire Lower House
Arizona	1966	1966	45.8	49.1	12.8	49.1	Court	26	2	43	35	Entire Legislature
Arkansas	1965	1965	33.3	49.4	43.8	49.2	Commission	35 1 Vacancy	0	100 3 Vacancies	1	Entire Legislature
California	1965	1965	44.7	48.3	10.7	48.9	Legislature	25 2 Vacancies	13	49	31	Entire Legislature
Colorado	1965	1965	45.3	46.8	46.9	47.5	Legislature	15	20	42	23	One-half Upper House Entire Lower House
Connecticut	1965	1965	11.9	43.8	31.9	47.9	Legislature	23	13	111	189	Entire Legislature
Delaware	1961	1961	18.3	n.a.	22.0	n.a.	Legislature	13	3	30	5	One-half Upper House Entire Lower House
Florida	1966	1966	26.9	47.8	15.2	48.4	Legislature	41	2	105	7	Entire State Legislature
Georgia	1965	1962	22.5	42.3	21.4	48.2	Legislature	41	9	198	7	Entire Legislature
Hawaii	1959	1965	n.a.	38.4	18.1	n.a.	Legislature	16	9	40	11	Entire Legislature
Idaho	1966	1966	32.7	n.a.	16.6	n.a.	Legislature	19	25	37	41	Entire Legislature
Illinois	1965	1965	28.7	49.1	30.9	50.4	Commission, court	25 2 Vacancies	33	118 3 Vacancies	59	Entire Legislature
Indiana	1965	1965	34.8	48.7	40.4	49.5	Legislature	35	15	75 3 Vacancies	22	Entire Legislature
Iowa	1965	1965	26.9	41.8	35.2	45.1	Legislature					
Kansas	1966	1964	19.4	48.7	26.8	50.1	Legislature	38	23	101	23	One-half Upper House Entire Lower House
Kentucky	1963	1963	34.1	41.8	42.0	46.6	Legislature	13	27	41	81	Entire Lower House
Louisiana	1963	1021	n.a.	33.1	n.a.	33.0	Legislature	25	13	61	36	None
Maine	1961	1961	39.7	40.0	n.a.	40.8	Legislature	39	0	103	2	None
Maryland	1965	1965	35.6	50.5	14.1	47.8	Legislature	29	5	81	70	Entire Legislature
Massachusetts	1961	1961	n.a.	45.5	n.a.	50.1	Legislature	22	7	117	25	Entire State Legislature
								27	13	167 1 Ind. 3 Vacancies	69	Entire Legislature
Michigan	1964	1964	44.0	52.0	29.0	52.0	Court	23	15	73	37	Entire Legislature
Minnesota	1966	1966	34.5	47.2	40.1	48.1	Legislature	24	43	53	79	Entire Legislature
								Technically a non-partisan Legislature				
Mississippi	1963	1963	29.1	41.2	34.6	37.4	Legislature	51	1	120	2	None
Missouri	1966	1965	20.3	49.8	47.7	52.0	Commission	22	12	123	40	One-half Upper House Entire Lower House
Montana	1965	1965	36.6	49.0	16.1	46.9	Court	32	24	56	38	Entire Legislature
Nebraska†	1965		44.0	49.3			Legislature	Unicameral Legislature 49 Non-Partisan Seats				Entire Legislature
Nevada	1965	1965	29.1	46.8	8.0	49.7	Legislature	8 1 Other	8	25	12	Entire Legislature
New Hampshire	1965	1965	44.0	45.2	43.8	52.3	Legislature	10	14	176	224	Entire Legislature

APPENDIX E

STATE	DATE LATEST REAPPORTIONMENT		ELECTORAL PERCENTAGE*				REAPPORTIONING BODY**	PARTY STRENGTHS				1966 ELECTION
			HOUSE		SENATE			UPPER HOUSE		LOWER HOUSE		
	HOUSE	SENATE	Old	New	Old	New		Dem.	Rep.	Dem.	Rep.	
New Jersey	1964	1965	n.a.	46.5	19.0	47.0	Legislature	10	10	41	19	None
New Mexico	1965	1966	27.0	47.1	11.0	45.8	Legislature, court	28	1	59	18	15 Seats Upper House Entire Lower House
New York	1966	1966	49.3	49.2	49.4	49.1	Commission (court)	28	36 1 Vacancy	90	75	Entire Legislature
North Carolina	1966	1966	27.1	47.3	47.1	48.8	Legislature	49	1	106	11	Entire Legislature
North Dakota	1965	1965	40.9	48.7	31.9	48.7	Court	20	29	65	41	Entire Legislature
Ohio	1965	1965	30.3	47.3	41.7	49.6	Commission	16	16	62	75	Entire Legislature
Oklahoma	1965	1965	29.4	48.7	24.5	49.2	Legislature (court)	41	7	78	21	One-half Upper House Entire Lower House
Oregon	1964	1964	n.a.	48.1	n.a.	47.5	Secretary of State	19	11	28	32	One-half Upper House Entire Lower House
Pennsylvania	1966	1966	42.7	47.0	43.4	50.1	Court	21	27 1 Vacancy	116	93	One-half of Senate Entire Lower House
Rhode Island	1966	1966	46.3	n.a.	18.1	n.a.	Legislature	30	15 1 Rep.-Ind.	76	24	Entire Legislature
South Carolina	1964	1966	n.a.	46.2	23.3	48.0	Legislature	46	0	124	1	One-half Upper House Entire Lower House
South Dakota	1965	1965	38.5	46.7	30.3	47.1	Legislature	16	18	30	45	Entire Legislature
Tennessee	1965	1965	41.5	48.1	39.7	49.1	Legislature	24	9 2 Vacancies	71	24 1 Ind.	Entire Legislature
Texas	1965	1965	38.7	47.0	30.3	49.4	Legislature	31	0	149	1	Entire Legislature
Utah	1965	1965	37.7	47.6	25.3	41.3	Legislature	15	12	39	30	One-half Upper House Entire Lower House
Vermont	1965	1965	11.6	48.7	47.0	48.3	Legislature	6	24	33	113	Entire Legislature
Virginia	1964	1964	40.5	47.7	41.1	49.0	Legislature	37	3	89	11	None
Washington	1965	1965	28.0	46.7	35.6	47.6	Legislature	32	17	60	39	One-half Upper House Entire Lower House
West Virginia	1964	1964	40.0	46.2	46.7	46.7	Legislature	27	7	91	9	One-half Upper House Entire Lower House
Wisconsin	1964	1964	40.0	43.4	12.5	48.1	Court	13	20	52	48	One-half Upper House Entire Lower House
Wyoming	1967	1965	35.8	46.5	24.1	47.4	Legislature, court	12	13	34	27	Entire Legislature

The electoral percentage is the percentage of each state's population which is theoretically able to elect a majority of each chamber of the state legislature.

**Where two bodies are listed, the first reapportioned the House and the second reapportioned the Senate.

†Unicameral legislature.

n.a. Not available.

SOURCES: National Municipal League, Legislature Reference Service, Chamber of Commerce of the U.S., Congressional Quarterly.

REAPPORTIONMENT AND REDISTRICTING PLAN FOR THE ALASKA STATE LEGISLATURE



Prepared by: The Reapportionment Board
June 10, 1981

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I. INTRODUCTION

Article VI of the Alaska Constitution requires that reapportionment of election districts take place following each decennial census. The Governor is responsible for reapportionment with the assistance of a five-member advisory board.

The board must submit a plan for reapportionment and redistricting to the Governor within 90 days following receipt of official census data. The Governor has an additional 90 days to approve or modify the plan and issue a proclamation of reapportionment and redistricting.

A. COMPOSITION OF THE BOARD

Article VI, Section 8 of the Alaska Constitution provides for appointment of a five-member reapportionment board to act in an advisory capacity to the Governor. None of the members is to be a public employee or official. Appointments are to be made without regard to political affiliation. One member each is to be appointed from the Southeastern, Southcentral, Central and Northwestern Senate Districts, the original geographic senate districts at the time of statehood. In September of 1979 Governor Hammond appointed the following individuals to serve on the Reapportionment Board: Kent Dawson, Juneau; Cliff Groh, Anchorage; John Holm, Fairbanks; Byron Mallott, Yakutat; and John Schaeffer, Kotzebue. During their organizational meeting in December 1979, Byron Mallott was selected as Board chairman and served until his resignation in August of 1980. In

September 1980, Governor Hammond appointed Avrum Gross of Juneau to the Board to replace Mallot. John Schaeffer was elected chairman during the Board meeting on October 15, 1981 and Kent Dawson was elected vice chairman.

B. STAFF AND TECHNICAL REQUIREMENTS

The Board secured the services of Karen Ward as full-time Executive Director to be responsible for all administrative and fiscal details for the Board. The Executive Director arranged meetings and prepared and maintained records for all meetings, hearings, and other business conducted by the Board. Additionally, the Executive Director developed proposals and monitored the work of consultants and other personnel retained by the Board. Suzanne Lowell was retained to provide clerical and administrative support on a part-time basis over the course of the project. The Board also entered into a Reimbursable Services Agreement (RSA) with the Department of Law to provide legal counsel on a full-time basis. Assistant Attorney General Thomas M. Jahnke served as legal counsel to the Board throughout its existence.

The University of Alaska, Institute of Social and Economic Research (ISER) was retained to assist the Board in its use of census data and to supplement that data with additional information on non-residents. The Institute presented a report prepared by Dr. John A. Kruse. Dr. Kruse's findings are discussed in detail in Section III of this report.

R & M Consultants, Inc., was selected to prepare the election district maps and corresponding legal boundary descriptions for the Board.

Additionally, demographic and statistical assistance was provided by the Department of Labor, Research and Analysis Section. Stephen Harrison assisted in developing pre-census population estimates by election district. State Demographer Dave Swanson assisted in organizing the census data for use by the Board. The Research and Analysis Section also handled all requests for population data regarding the 1980 census.

John Gliva of the Department of Community and Regional Affairs, Division of Community Planning, provided preliminary cartographic services. A complete set of Community and Regional Affairs mylars with incorporated city, regional corporation, Regional Education Attendance Area, and borough boundaries was made available to the Board and provided considerable assistance in developing preliminary proposals.

C. BUDGET

The Governor's Contingency Fund was the source of $50,000 for the immediate activities of the Board in January of 1980. The Legislature approved a special appropriation of $204,800 for Fiscal Year 1980. $50,000 was returned to the Governor's Contingency Fund. $47,025.90 lapsed at the end of FY 80. The Reapportionment Board was funded $314,200 for FY 81.

II. PUBLIC PARTICIPATION

The Reapportionment Board conducted 20 public hearings across the state beginning in October of 1980 and ending in February, 1981. A schedule of the dates and locations of the hearings is included in Table I.

The Board scheduled a week out of each month, over a period of four months, for public hearings. In almost every case, at least two board members were present to conduct the hearing. Weather conditions during the December hearing schedule grounded several of the board members in different locations. John Holm conducted the Ketchikan and Wrangell hearings, and Avrum Gross conducted the Sitka hearing. The Petersburg hearing for December was cancelled due to weather and rescheduled in February.

Advertising for the hearings included newspaper display ads that were typeset and camera-ready, and sent to the newspapers in the specific areas for each hearing. Thirty second public service announcements were recorded with the assistance of the Broadcast Information Office in the Office of the Governor, Division of Communications, and sent via telephone to the local radio stations. Formal press releases were issued prior to each set of hearings with the dates and locations of the hearings. Additionally, a televised interview with Board Executive Director Karen [illegible] was conducted prior to each round of hearings and sent via satellite to television stations across the state. Individual television and radio stations and newspapers

conducted interviews which resulted in increased advertising for the hearings.

Attendance at the hearings varied in each location. The time of day during which the hearing was held and conflicts with other activities may have contributed to a lower turnout at some of the meetings.

Many people expressed the sentiment that, prior to receipt of census data and absent any formal action by the Board, there was little to contribute regarding reapportionment during the public hearings. However, the Board had several major policy decisions to make concerning reapportionment and how they would proceed in developing their recommendations upon receiving census data. The Board sought public comment on a proposal to create 40 single-member house districts as well as arguments supporting multi-member districts. Various alternatives for apportioning the state senate were discussed during the hearings, including single-member districts and electing senators statewide. Local input and suggestions for either expanding current election district boundaries, if need be, or carving out portions of election districts to join with adjacent underpopulated districts were also sought during the meetings.

The Alaska Constitution allows 90 days from receipt of census data to prepare the reapportionment plan and submit it to the Governor. That period did not allow adequate time for the Board to conduct a second set of public hearings. The Board received official census data on

March 12, 1981. Organizing the census data, applying the results of the data obtained by ISER and preparing the maps for the Board to utilize in developing the plan took approximately 30 of the allotted 90 days.

The Board released a draft plan for house districts on May 5. Copies of the draft plan were supplied to each legislative information office, regional governor's and election offices, and mailed to each of the several hundred people who attended the public hearings. A statewide teleconference was scheduled for May 12, 1981 for public comment and testimony. The teleconference tied in 23 communities and approximately 60 people testified during the three-hour conference. Additionally, the Board received numerous telephone calls, telegrams and letters.

As a result of testimony received regarding the first proposal, the Board made several revisions and called for written public comment. The Board met on May 22, 1981 to finalize their recommendations and instructed the staff to prepare the text and corresponding maps to submit to the Governor.

III. POPULATION BASE AND IDEAL DISTRICT SIZE

A. THE CENSUS POPULATION

The United States Census of 1980 reported a state population of 400,481. That total may include a significant number of persons who do not consider themselves to be residents or domiciliaries of Alaska, including aliens, oil

production base camp workers, lumber camp workers, workers at fish processing facilities, college students and military personnel and their dependents.1/

B. ADJUSTMENT OF CENSUS FIGURES

The United States Supreme Court has held that

> [T]he Equal Protection Clause does not require the states to use total population figures derived from the federal census as the standard by which this substantial population equivalency is to be measured ... Neither in Reynolds v. Sims nor in any other decision has this Court suggested that the states are required to include aliens, transients, short-term or temporary residents, or persons denied the vote for conviction of a crime, in the apportionment base by which their legislators are distributed and against which compliance with the Equal Protection Clause is to be measured.

Burns v. Richardson, 384 U.S. 73, 16 L. Ed 2d 376, 390-391 (1966). With this principle in mind, Dr. John A. Kruse of the Institute of Social and Economic Research (ISER) of the University of Alaska inquired into the census treatment of the groups enumerated in III-A above.2/

In communication with the Bureau of the Census prior to the census date, Dr. Kruse learned that the census bureau had developed a special procedure for enumerating oil production base camps which allowed the census bureau to allocate the workers back to their true residence in Alaska or elsewhere.3/

There was extensive consideration by Dr. Kruse of floating and on-shore fish processing facilities.4/ Floating processors were enumerated by the census bureau in January through March 1980, at which time the non-resident population would have been at its lowest. On-shore processors were

enumerated ahead of the peak employment period, but there was a chance that some non-residents were included. Dr. Kruse noted the very short time-frame in which ISER would have to work, the variations in residency patterns from company to company, uncertainty as to how the residency of persons would be recorded in the census, and the likely resistance of workers to the efforts of ISER. Based on these factors, the Board decided to forego further inquiry into the residency of workers at fish processing facilities.5/

All but one of 88 companies active in the timber industry responded to ISER inquiries. Their responses indicated 630 non-resident lumber camp employees or dependents out of a total of 1,442. The Board decided not to undertake a further inquiry given the large number of camp locations and the relatively small number of people in each affected region.6/

Dr. Kruse recommended that there be no special study of college students to determine their residency characteristics. His reasons included the extremely low proportion of students (10%) paying non-resident tuition rates, indicating a relatively low non-residency factor, and their small number compared to the population of the surrounding communities.7/ The Board concurred.

The alien population in Alaska, based upon figures provided by the Immigration and Naturalization Service, is extremely small. Though relatively concentrated in a dozen election districts, their proportion does not exceed 2.9% in

any one area of concentration. The decision was made not to undertake a special study.8/

Felons and persons who are mentally incompetent were also considered. Their numbers were so small that no effort was made to eliminate any portion from the population base for reapportionment.

The only segment of the population thought to contain large and readily identifiable concentrations of non-residents is military personnel and their dependents. Historically, this group has been concentrated in great numbers in a handful of communities. Their residency factor has been thought to be very low.9/

The Alaska Supreme Court has approved the principle that non-resident military personnel may constitutionally be excluded from the reapportionment population base:

> [W]hile the clause of the Alaska Constitution seeking to exclude military as a class is unconstitutional, that is not to say that some military cannot be excluded as a permissible device for limiting the impact of transients and non-residents on legislative districting.

Egan v. Hammond, 502 P. 2d 586, 869 (Ak. 1972). More to the point, the court observed:

> We hold that it was reasonable for the Board to exclude some proportion of military personnel not merely because of their transience, but because a significant number of Alaska-based military personnel exercise an option to be non-Alaskans, despite their physical presence here. This phenomenon is well demonstrated by the minuscule voter registration on military enclaves. It is thus not offensive to notions of equal protections to exclude from the population base even military personnel who have lived in Alaska for substantial

> periods of time, so long as those people have exercised their option to remain residents and domiciliaries of other states.

Id. at 872-873. 10/

Dr. Kruse determined that there are seven military installations with populations large enough to affect the reapportionment process.11/ These installations are Elmendorf Air Force Base, Eielson Air Force Base, Fort Wainwright, Fort Richardson, Fort Greely, Adak Naval Base, and the Kodiak Coast Guard Station.

Because military records are not updated consistently, they were deemed unreliable. A full census of military personnel and their dependents was rejected both because of cost and because more reliable results can actually be obtained from a survey of a scientific sample. Thus, it was decided to proceed with a survey of military personnel and dependents, both on- and off-base.

The survey sought to answer two questions: First, did the respondent consider Alaska to be his or her nome; second, was the respondent registered to vote in Alaska. If the answer to either of these inquiries was "yes", the respondent was deemed to be a resident; put another way, a person was not deemed to be a non-resident unless he or she neither voted nor considered Alaska home.12/

Separate non-residency factors were obtained for on-base servicemembers, on-base dependents, off-base servicemembers and off-base dependents. The off-base results were achieved by use of address lists provided by the military

branches which allowed Dr. Kruse to determine, with precision, how many servicemembers and dependents live in each off-base enumeration district near a given installation.

Table II shows the numbers of non-resident servicemembers and dependents deducted from the population of each base and the total number of non-resident servicemembers and dependents deducted from the off-base areas adjoining the installations.

C. IDEAL DISTRICT POPULATIONS

The total non-resident servicemember and dependent count is 31,363.8. When that number is subtracted from the census population of 400,481, an adjusted state population of 369,117.2 results.

The ideal house district population is the quotient of the adjusted population divided by the number of house seats to be apportioned, i.e. 40. 13/ That quotient is 9,228.

The ideal senate district population is the quotient of the adjusted population divided by the number of senate seats to be apportioned, i.e. 20. 14/ That quotient is 18,456.

IV. THE ELECTION DISTRICTS

A. GUIDELINES

Federal and state constitutional provisions prescribe two basic rules to be followed by the Board in designing new election districts. First,

> The Equal Protection Clause requires that a state make an honest and good faith effort to construct districts, in both houses of its legislature, as nearly of equal population as is practicable.

Reynolds v. Sims, 377 U.S. 533, 12 L. Ed 2d 506, 536 (1964) (emphasis added).

Second,

> Each new district so created shall be formed of contiguous and compact territory containing as nearly as practicable a relatively integrated socio-economic area.

Alaska Constitution, Article VI, § 6.

The population parameter first mentioned is elucidated in Groh v. Egan:

> We conclude that in the absence of a showing that the manner of reapportioning the state was improperly motivated or had an impermissible effect, [combined] deviations of up to ten percent require no showing of justification. The state, however, has the burden of showing that [combined] deviations in excess of ten percent are "based on legitimate considerations incident to the effectuation of a rational state policy."

526 P.2d at 877. Thus, it was the Board's goal to fashion districts with combined deviations or variances from the population ideal of not more than ten percent. This was accomplished: the most overrepresented and underpopulated house district is Mid-Town Anchorage at 4.1737 percent; the most underrepresented and overpopulated house district is Juneau at 5.8084 percent; their combined variance is 9.9821 percent. Table III contains a statistical summary of the proposed house districts.

Notwithstanding the Board's success on the paramount population front, the district configurations also represent

contiguous, compact, relatively integrated socio-economic areas. The Board's conception of these terms follows.

1. Compactness and Contiguity

"Compact" and "contiguous" are relative terms embodying imprecise concepts. In the Board's view, the requirements aim to serve at least two goals. First, they are intended to foster the inclusion in a single district of people with substantially like backgrounds and concerns. Such people are typically found in a single region or area. Second, the standards introduce an efficiency into representative government by requiring a closer grouping of people to form a constituency. Such a grouping facilitates communication among constituents and between constituents and legislators.

To implement these concepts, the Board decided to fashion single-member house and senate districts throughout the state except in five relatively populous and socio-economically homogeneous areas.

Still, there is, in some features of the plan, an undeniable tension between the geographical aspect of the compactness requirement and its socio-economic aspect. Nowhere is this more apparent than in the Cordova-Inside Passage District. It is indisputable that Cordova is physically closer to Valdez and Seward than it is to the balance of House District 2. However, it is also indisputable that, from a socio-economic standpoint, Cordova has less in common with the predominantly commercialized and industrialized

economies of Seward and Valdez than with the fishing communities of the Inside Passage. Thus, to honor the form of the compactness command would debase its substance by combining socio-economically less compatible communities.

2. Socio-Economic Homogeneity

The concept of socio-economic homogeniety has a number of interrelated components, including ethnic composition, economic base, governmental and neighborhood boundaries, community size, transportation and communication links, and other miscellaneous considerations. In the task of district composition, a balance often had to be struck between competing socio-economic factors. In a given case one factor, e.g. economic base, might indicate the inclusion of a population group in district X. However, its ethnic composition might indicate inclusion in district Y. This balancing process was the most difficult part of the Board's task.

A primary concern of the Board, especially in northern and western Alaska was the ethnic composition of the districts. Divisions between the Athabascan and Eskimo peoples go back centuries and profoundly influence voting patterns today. Eskimos note bright-line distinctions between Inupiat Eskimos in the north and Yupik Eskimos in the south. Unfortunately, unbending observance of these divisions would have produced enormous population variances and severed other current and substantial cross-cultural socio-economic ties. It was therefore impossible to conform

district lines to the distribution of each of those cultural and social groups. Still, substantial respect for such divisions is apparent in the district boundaries between the North Slope-Kotzebue and Norton Sound districts on the one hand, and the Interior Rivers District on the other. Ethnic composition was a tertiary consideration in the design of the Inside Passage-Cordova District, after economic base and community size.

Economic base was a major factor in the composition of many districts. A shared economic base was a primary or secondary consideration in House Districts 1, 2 and 3 (fishing, timber), 4 (government), 5 (energy, fishing), 6 (shipping, recreation), 16 (agriculture), 17 (transportation, subsistence), 24 (subsistence), 26 and 27 (fishing).

A distinct effort was made to observe the Alaska Native Regional Corporation boundaries and the socio-economic divisions they embody, but there are a number of significant deviations therefrom, especially in the relatively populous Lower Yukon and Lower Kuskokwim areas. Respect for political subdivision boundaries is also apparent throughout the state. A deliberate and largely successful effort was made to respect the boundaries of the following political subdivisions: the Ketchikan Gateway Borough, the City and Borough of Juneau, the Haines Borough, the City and Borough of Sitka, the Kenai Peninsula Borough, the Municipality of Anchorage, the Matanuska-Susitna Borough, the Fairbanks North Star Borough, the North Slope Borough, the Bristol Bay

Borough and the Kodiak Island Borough. In Anchorage, the Board endeavored to follow the formal neighborhood council boundaries, with considerable success. Substantial strides were made toward the goal of eliminating large, multi-member districts in Anchorage and Fairbanks while preserving the integrity of the cities' neighborhoods. In Anchorage, none of the long-established neighborhoods has seen any substantial portion of its citizenry placed in a different district. It is the Board's hope that, in future decades, as the newer areas coalesce into readily identifiable neighborhoods, their geographic and social integrity will be respected in the reapportionment process.

Transportation and communication links explain many of the decisions made at the edges of districts. For example, these were important considerations in placing Platinum and Goodnews Bay in the Lower Kuskokwim district while Twin Hills and Togiak went with the Bristol Bay district. With the exception of the southern reaches of the Interior Rivers District and the southern third of the Norton Sound District, the villages on the edges of each bush district are oriented toward a transportation and communication center <u>within</u> the district.

There are a number of other miscellaneous considerations which influenced the Board, some of which are merely shorthand expressions for a combination of the socio-economic factors already discussed. One such expression is "lifestyle". It is illustrated more or less clearly in virtually every

district, with some districts reflecting an urban lifestyle, other districts representing a suburban lifestyle and still others representing rural and/or subsistence lifestyles. The senate district including South Anchorage, the Kenai Peninsula and the south coast constitutes a balance of rural and suburban interests in a region that is experiencing increasing commercialization and industrialization.

The Ketchikan-Wrangell-Petersburg district depicts the resolution of two legitimate but conflicting considerations: the logic of keeping all of the Ketchikan Gateway Borough together in one district; and the logic of not submerging the interests of Wrangell and Petersburg by including them in a "metropolitan" district with the much larger Ketchikan. In the case of House District 1, inclusion of Wrangell and Petersburg with Ketchikan is justified by the considerable identity and interdependence of their economies and the substantial ties between their citizens. Were districts drawn separating Ketchikan from Wrangell and Petersburg, it would also be necessary to submerge scores of small Indian villages in two districts dominated by the three larger white communities. This would do substantially more violence to the social interests of the Indian communities than District 1 does to the interests of Wrangell and Petersburg.

3. Single Member vs. Multi-member Districts

The Board decided at an early date to endeavor to fashion forty single-member house districts. Testimony in all communities save Fairbanks clearly favored the con-

Single Member District

cept.15/ The case is especially compelling in the bush areas where even single-member house districts are larger than most of our sister states. Thus, the Board adhered steadfastly to the single-member concept in bush Alaska.16/

In six areas of the state, however, two-member districts were fashioned. In Ketchikan, a two-member district was designed because of the overpopulation of the Ketchikan Gateway Borough. In order to create single-member districts, a portion of urban Ketchikan would have had to be carved out and joined with either Wrangell and Petersburg or a collection of smaller communities to the west and north of Ketchikan.

In Juneau a two-member district was utilized for two reasons: First, a two-member district would allow the preservation of the entire City and Borough of Juneau in a single district. Second, the population of Juneau constitutes a virtually indivisible unit that, with a government service economy, is unique in a region otherwise dominated by fishing and timber interests.

The Kenai Peninsula Borough is populous enough for two and three-quarters seats. If single-member seats were utilized, as in the Board staff's first proposal, the borough would be divided in three.17/ By use of a two-member house district, the borough is divided only in two. Even that split is ameliorated by the combination of the Kenai Peninsula, South Coast and South Anchorage districts in a two-member senate district. With the exception of the

Kachemak Bay communities, the senate district encompasses an area of growing urbanization, commercialization and industrialization.

A two-member district was utilized in the Matanuska-Susitna Borough area to keep the borough intact. The population approximates the ideal for a two-member house district.

The Fairbanks North Star Borough includes one two-member house district in downtown Fairbanks and three single-member house districts covering the outlying areas.

In Anchorage there are eight two-member house districts. These configurations accomplish two things: First, they allow the inclusion in a single district of entire neighborhoods which would have to be split if single-member house districts were the rule. Second, they work less hardship on incumbents and constituents who have, since the 1974 reapportionment, been joined in districts with broader interests in Anchorage. This plan is, in effect, a step toward single-member districts, which goal may be reached in the 1991 reapportionment plan if the intervening decade of experience recommends the concept.

Single Member Districts

In the rural areas of Alaska the Board combined two house districts to make one single-member senate district. In three areas, Fairbanks, Anchorage, and the Kenai Peninsula, the Board combined four house districts to make two-member senate districts with designated seats. Table IV contains a statistical summary of the proposed senate districts.

4. Length of Senate Terms

Realignment of senate districts in this plan creates some districts with two or more incumbents and some districts with no incumbents. The Board believes that that situation must be corrected at the next election in 1982. In order to accomplish this, candidates must run to represent the vacant districts. However, because the constitution limits the size of the senate to 20, for every vacant district that elects a senator, another district with two or more incumbents must give up a senator. Some of those senators are serving terms that will not expire until January 1985.

Another problem is the need to preserve the staggering of senate seats whereby only half of the seats are filled at each election.18/ Thus, for the 1982 elections in which more than ten senate seats may be filled, the Board must decide which seats will have two-year terms and which will have four-year terms.

Truncation of some senators' terms is unavoidable. The Board recommends that truncation occur only in two situations: First, where approximately one-third or more of an incumbent senator's constituency has changed, tuncation may occur. That is, if approximately one-third of the population of an incumbent's new district did not have an opportunity to vote on the incumbent in 1980, that incumbent's term may be truncated in 1982. Additionally, if approximately one-third of the population which had the

opportunity to vote on the incumbent in 1980 is now in a different district, that incumbent's term may be truncated. Second, if it is the case that, notwithstanding the numerical standard just articulated, an incumbent now represents a district in which the method of selecting senators has changed, that incumbent's term may be truncated. For example, if an incumbent had been elected in an at-large, multi-member district in 1980, and were now in a two-member district with designated seats, his or her term could be truncated.

In each of the six two-member senate districts, the seat designated "A" will be a two-year seat for the 1982 elections; the seat designated "B" will be a four-year seat. For the remaining eight single-member senate districts, length of terms commencing in 1982 was decided by drawing lots:

Senate District	Term
A	four-year
B	two-year
C	four-year
I	two-year
J	four-year
L	four-year
M	two-year
N	two-year

Beginning in 1984, senate elections should follow the constitutionally prescribed scheme wherein ten seats are filled at each election for four-year terms.

B. DISTRICT CONFIGURATIONS AND POPULATIONS

1. Ketchikan-Wrangell-Petersburg

District 1 is an area within a line proceeding from Dixon Entrance in a northerly direction up Clarence Strait, passing west of Zarembo Island, northerly up Duncan Canal, across Frederick Sound to a point just north and west of Cape Fanshaw, then northeasterly to the Canadian border and southerly along the Canadian border to the point of beginning at Dixon Entrance. The district includes the Ketchikan Gateway Borough, Wrangell, Petersburg, Metlakata, Hyder, Saxman, Meyers Chuck and Kupreanof. It has a population of 17,940 and a variance of -2.8 percent. Candidates will run for either of two designated seats in the house and one senate seat.

2. Inside Passage-Cordova

District 2 is composed of that portion of Southeast Alaska between Dixon Entrance and Port Gravina on Prince William Sound that is not contained in Districts 1, 3 and 4. Included within its boundaries are the communities of Cordova, Yakutat, Haines, Skagway, Klukwan, Gustavus, Angoon, Kake, Thorne Bay, Klawock, Craig and Hydaburg. The district has a population of 9,301 and a variance of +.8 percent. One house member will be elected from the district. With District 3, it will elect one senator.

3. Baranof-Chichagof

District 3 consists of Baranof Island and Chichagof Island. The communities on the islands include Sitka,

Pelican, Hoonah, Tenakee Springs and Port Alexander. The district has a population of 9,266 and variance of +.4 percent. It will elect one house member and, with District 2, one senator.

4. Juneau

District 4 boundaries coincide with those of the City and Borough of Juneau. The district has a population of 19,528 and a variance of +5.8084 percent. It will elect two house members to designated seats and one senator.

5. Kenai-Cook Inlet

District 5 includes all of the coastal areas on the east and west sides of Cook Inlet that lie south and west of Nikishka. Sterling is also within the district. The district has a population of 19,068 and a variance of +3.3 percent. Candidates will run for either of two designated seats in the house. Districts 5, 6 and 7 will elect two senators to designated seats.

6. North Kenai-South Coast

District 6 includes the northern quarter of the Kenai Peninsula, Nikishka, Hope, Cooper Landing, Moose Pass, Seward, Whittier and Valdez. It has a population of 9,267 and a variance of +.4 percent. It will elect one house member and, with Districts 5 and 7, two senators to designated seats.

7. South Anchorage

District 7 contains the suburban southern and southeastern reaches of the Municipality of Anchorage,

including the community council areas of Eldon, Old Seward/ Oceanview, Rabbit Creek, Turnagain Arm and Girdwood Valley. Its northern boundary proceeds east from the inlet on Klatt Road to the New Seward Highway, southerly on the New Seward Highway to DeArmoun Road, east on DeArmoun Road to Morgaard Road, easterly on Morgarrd Road to DeArmoun Road, easterly and southerly on Rabbit Creek. The district has a population of 8,853.2 and a variance of -4.1 percent. It will elect one house member and, with Districts 5 and 6, two senators to designated seats.

8. Hillside

District 8 is bounded on the south by Rabbit Creek, Morgaard Road and DeArmoun Road and on the west by the Seward Highway. At Tudor Road the boundary proceeds east to Bragaw Road where it turns south. This district includes the neighborhood council areas of Campbell Park, Abbott Loop, Huffman-O'Malley, Mid-Hillside, Hillside East and Glen Alps. The district population is 18,202.1 and its variance is -1.4 percent. It will elect two house members to designated seats and, with District 9, two senators to designated seats.

9. Sand Lake

District 9 is bounded by a line beginning at the inlet and proceeding east on Klatt Road. The line proceeds north on the New Seward Highway to Dimond Boulevard where it turns west. At Minnesota Drive the line turns north and proceeds to International Airport Road where it turns west

and extends to the inlet. The district includes the community council areas of Sand Lake and Klatt Road. Its population is 18,004.7 and its variance is -2.4 percent. It will elect two house members to designated seats and, with District 8, two senators to designated seats.

10. Mid-Town

District 10 is bounded by a line beginning at the intersection of the Seward Highway and Dimond Boulevard. The line proceeds west to Minnesota Drive, north to International Airport Road, east to the Alaska Railroad, north by northwest along the railroad right of way to Tudor Road, east to Arctic Boulevard, north to 36th Avenue, east on 36th Avenue to C Street, north to Northern Lights Boulevard, west to Spenard Road, north to W. 25th Street, west to Minnesota Drive, north to Chester Creek, easterly to Lake Otis Road, south to Tudor Road, west to the New Seward Highway and south to the point of beginning. The district includes the community council areas of North Star, Rogers Park, Tudor, and parts of Spenard and Taku-Campbell. It has a population of 17,685.7 and a variance of -4.1737 percent. It will elect two house members to designated seats and, with District 11, two senators to designated seats.

11. West Side

District 11 is bounded by the boundary of District 10 on the east, International Airport Road on the south, and the inlet and Chester Creek on the north. It includes the community council area of Turnagain and the major part of

the Spenard area. It has a population of 17,957.8 and a variance of -2.7 percent. It will elect two house members to designated seats and, with District 10, two senators to designated seats.

12. Downtown

District 12 is bounded by Chester Creek on the south, Bragaw Road on the east, Commercial Drive and the Elmendorf reservation boundary on the north and the inlet on the west. Included are the community council areas of Government Hill, Downtown, Penland Park and South Addition, and parts of the areas of Fairview, North Mountain View and Airport Heights. The district has a population of 18,170 and a variance of -1.5%. It will elect two house members to designated seats and, with District 13, two senators to designated seats.

13. Mountain View-University

District 13 is bounded by a line beginning at the intersection of Tudor Road and Lake Otis Road proceeding east to Baxter Road, north to Northern Lights Boulevard, west to Boniface Road, north to the Glenn Highway, west on the Glenn Highway, northerly and westerly around North Mountain View along the Elmendorf military reservation boundary, south to the Glenn Highway, east to Bragaw Road, south to Chester Creek, westerly to Lake Otis Road and south to the point of beginning. The district includes the community council areas of Russian Jack Park and University, and parts of the North Mountain View and Airport Heights

areas. It has a population of 18,907.5 and a variance of +2.4 percent. It will elect two house members to designated seats and, with District 12, two senators to designated seats.

14. Muldoon

District 14 includes Stuckagain Heights and the community council areas of Northeast and Scenic Park. That part of the Northeast area bounded by Boniface Road, DeBarr Road, Turpin Street and the Glenn Highway is included in District 15. District 14 has a population of 19,031.5 and a variance of +3.1 percent. It will elect two house members to designated seats and, with District 15, two senators to designated seats.

15. Chugiak-Eagle River-Bases

District 15 includes the community council areas of Eklutna Valley, Chugiak, Birchwood and Eagle River Valley. Also included are Fort Richardson, Elmendorf Air Force Base and that area of the Northeast community council area bounded by Boniface Road, DeBarr Road, Turpin Street and the Glenn Highway. The district has a population of 18,560.7 and a variance of +.56 percent. It will elect two house members to designated seats and, with District 14, two senators to designated seats.

16. Matanuska-Susitna

District 16 is comprised of the Matanuska-Susitna Borough, including the communities of Talkeetna, Willow, Houston, Big Lake, Wasilla, Bodenburg Butte, Palmer, Sutton,

Peter's Creek, Montana and Chickaloon. It has a population of 17,724.6 and a variance of -4.0 percent. It will elect two house members to designated seats and one senator.

17. Interior Highways

District 17 is made up of those areas outside of the Matanuska-Susitna Borough and the Fairbanks North Star Borough which are along the Glenn, Parks, Richardson and Alaska Highways. Included are Paxson, Gulkana, Glennallen, Copper Center, Tonsina, Tazlina, McCarthy, Eagle, Delta, Fort Greely, Tanacross, Tok, Tetlin, Northway, Nenana, Anderson, Healy and Cantwell. The district has a population of 9,111.9 and a variance of -1.2 percent. It will elect one house member and, with District 18, one senator.

18. Southeast North Star Borough

District 18 encompasses the southeast section of the Fairbanks North Star Borough. It includes North Pole, Eielson Air Force Base, Salcha and Harding Lake. Its population is 9,300, with a variance of +.7 percent. It will elect one house member and, with District 17, one senator.

19. Fort Wainwright-Outer Fairbanks

District 19 includes Livengood, Ester, Goldstream Road, the Steese Highway, the eastern half of Farmers Loop Road, Fort Wainwright, Chena Hot Springs Road, Circle, Central and Circle Hot Springs. It has a population of 8,934.3 and a variance of -3.2 percent. It will elect one house member and, with Districts 20 and 21, two senators to designated seats.

20. Fairbanks City

District 20 is bounded by the Noyes Slough and University Avenue on the west, the Fairbanks International Airport on the southwest, the Tanana River on the south and Fort Wainwright on the east. The Creamers Field area is included as the northern edge of the district. The district has a population of 18,319.7 and a variance of -.7 percent. It will elect two house members to designated seats and, with Districts 19 and 21, two senators to designated seats.

21. West Fairbanks

District 21 includes the western half of Farmers Loop Road and the area west of Noyes Slough and University Avenue to, but not including, the Ester area. It has a population of 9,247.1 and a variance of +.2 percent. It will elect one house member and, with Districts 19 and 20, two senators to designated seats.

22. North Slope-Kotzebue

District 22 includes the areas of the North Slope Borough/Arctic Slope Regional Corporation and the Northwest Alaska Native Association. It has a population of 9,030 and a variance of -2.1 percent. The district will elect one house member and, with District 23, one senator.

23. Norton Sound

District 23 includes the area of the Bering Straits Regional Corporation; Shishmaref, Diomede, Teller, Nome, Koyuk and Saint Michael, and the coastal communities

as far south as Hooper Bay and Paimiut. Chevak is also included along with Yukon River villages down river from Mountain Village. The district has a population of 9,388 and a variance of +1.7 percent. It will elect one house member and, with District 22, one senator.

24. Interior Rivers

District 24 includes the communities on or near the great interior rivers, the Yukon, the Koyukuk and the Kuskokwim, as far down river as Mountain Village on the Yukon and Lower Kalskag on the Kuskokwim. The Lake Clark and Lake Iliamna communities, Minto and Manley Hot Springs are included; Eagle and Circle are not included. The district has a population of 9,549 and a variance of +3.5 percent. It will elect one house member and, with District 25, one senator.

25. Lower Kuskokwim

District 25 includes the Kuskokwim River communities down river from Tuluksak and the coastal communities from Newtok to Platinum. It has a population of 9,698 and a variance of +5.1 percent. It will elect one representative and, with District 24, one senator.

26. Bristol Bay-Aleutian Islands

District 26 includes all of the Bristol Bay Native Corporation area except Ivanof Bay, Perryville, Chignik Lake, Chignik Lagoon and the Lake Clark-Lake Iliamna communities. Included are the remainder of the Alaska Peninsula communities, the Aleut n communities, the Bristol Bay

communities as far west as Twin Hills, and communities as far up river as Aleknagik and Koliganek. The Bristol Bay Borough is also included. The district has a population of 9,479 and a variance of +2.7 percent. It will elect one house member and, with District 27, one senator.

27. Kodiak-East Alaska Peninsula

District 27 covers the Kodiak Island Borough and the Alaska Peninsula communities of Ivanof Bay, Perryville, Chignik Lake, Chignik and Chignik Lagoon. It has a population of 9,592.4 and a variance of +3.9 percent. It will elect one house member and, with District 26, one senator.

TABLE I

REAPPORTIONMENT BOARD
PUBLIC HEARING SCHEDULE

Community	Date and Time	Location
Anchorage	January 8, 1981 1:30 p.m. 7:30 p.m.	Grand Jury Room #402 Alaska Court Building 303 K Street
Barrow	October 20, 1980 1:30 p.m.	Borough Assembly Chambers
Bethel	October 17, 1980 7:30 p.m.	City Council Chambers
Cordova	November 20, 1980 7:30 p.m.	Public Library Meeting Room
Delta Junction	January 6, 1981 7:00 p.m.	Delta School Gymnasium
Dillingham	October 17, 1980 1:30 p.m.	City Council Chambers
Fairbanks	January 7, 1981 1:30 p.m. 7:30 p.m.	Borough Assembly Chambers
Glennallen	November 18, 1980 7:30 p.m.	School District Office
Juneau	December 11, 1980 7:30 p.m.	Alaska Court Building
Kenai	November 17, 1980 7:30 p.m.	Fire Hall
Ketchikan	December 8, 1980 7:30 p.m.	Borough Assembly Chambers
Kodiak	October 16, 1980 7:30 p.m.	Borough Assembly Chambers
Kotzebue	October 19, 1980 7:30 p.m.	City Council Chambers
Nome	October 18, 1980 1:30 p.m.	City Hall, Council Chambers
Palmer	November 18, 1980 1:30 p.m.	Borough Assembly Chambers
Petersburg	February 5, 1981* 7:30 p.m.	City Council Chambers

Seward	November 17, 1980 1:30 p.m.	City Council Chambers
Sitka**	December 10, 1980 7:30 p.m.	Centennial Building
Valdez	November 19, 1980 7:30 p.m.	City Council Chambers
Wrangell	December 9, 1980 12:00 p.m.	City Council Chambers

*Originally scheduled December 9, 1980, but due to weather the hearing had to be cancelled.

**Due to weather conditions, Av Gross was the only board member in attendance. Participants did not wish their remarks to be taped. Therefore, there is no transcript of the Sitka hearing.

TABLE II

CALCULATION OF NON-RESIDENT MILITARY POPULATION

On-Base

Installation	Census Count	Ratio of Dependents to Servicemembers	Proportion of Non-Resident Dependents	Proportion of Non-Resident Servicemembers	Non-Resident Population Coefficients	Non-Resident Population	Resident Population
Elmendorf AFB	9,189	1.71	.69	.78	.723	6,643.6	2,545.4
Eielson AFB	~~5,232~~ ~~84,421~~	1.39	.70	.79	.738	3,861.2	1,370.8
Ft. Wainwright	5,812	1.49	.66	.77	.704	4,091.6	1,720.4
Ft. Richardson	8,157	1.14	.77	.78	.775	6,321.7	1,835.3
Ft. Greely	1,635	1.08	.78	.81	.794	1,298.2	336.8
Adak Naval Stn	3,315	1.14	.87	.91	.889	2,947	368
Kodiak CG Stn	1,370	1.71	.59	.71	.634	868.6	501.4
Subtotals	(34,710)					(26,031.9)	(8,678.1)

Off-Base

	4480
Anchorage - (Elmendorf AFB/Ft Richardson)	4,678.5
Fairbanks - (Eielson AFB/Ft Wainwright)	382.1
Matanuska-Susitna - (Elmendorf AFB/Ft Richardson)	41.4
Delta Junction - (Ft Greely)	229.9
Subtotal	(5,331.9)

TOTAL NON-RESIDENT MILITARY AND DEPENDENTS 31,363.8

Total 1980 Statewide Population 400,481 - 31,363.8 = 369,117.2

Total 1980 Statewide Population less Non-resident Military and Dependents:
369,117.2 ÷ 40 = 9,227.9

Ideal House District Population 9,227.9
Senate District Population 18,455.8

Cenotaxy Pop. was

_____

now _____

_____

S.E pop was _____

including Cordova

now _____ less Cordova

Cordova Pop. 1950 1,9 —

Letter for Willie Hensley

In Plan I Committee

1) Why is ~~the~~ basefiguer changed from

was 369.117.2 now —

2) House Rep. question

was 9,227.9 now —

3) Juneau pop. was

19,528 now -

Write different scenarios for Plan 2 - which should have - 50 figures + —

TABLE III

STATISTICAL SUMMARY
HOUSE DISTRICTS
June 10, 1981

House District	Name	Population	Population Variance
1. Seat A (2) Seat B	Ketchikan-Wrangell-Petersburg	17,940 (8,970/seat)	-2.8%
2. (1)	Inside Passage-Cordova	9,301	+ .8%
3. (1)	Baranof-Chichagof	9,266	+ .4%
4. Seat A (2) Seat B	Juneau	19,528 (9,764/seat)	+5.8084%
5. Seat A (2) Seat B	Kenai-Cook Inlet	19,068 (9,534/seat)	+3.3%
6. (1)	North Kenai-South Coast	9,267	+ .4%
7. (1)	South Anchorage	8,853.2	-4.1%
8. Seat A (2) Seat B	Hillside	18,202.1 (9,101.05/seat)	-1.4%
9. Seat A (2) Seat B	Sand Lake	18,004.7 (9,002.35/seat)	-2.4%
10. Seat A (2) Seat B	Mid-Town	17,685.7 (8,842.85/seat)	-4.17371%
11. Seat A (2) Seat B	West Side	17,957.8 (8,978.9/seat)	-2.7%
12. Seat A (2) Seat B	Downtown	18,170 (9,085/seat)	-1.5%
13. Seat A (2) Seat B	Mountain View-University	18,907.5 (9,453.75/seat)	+2.4%
14. Seat A (2) Seat B	Muldoon	19,031.5 (9,515.75/seat)	+3.1%
15. Seat A (2) Seat B	Chugiak-Eagle River-Bases	18,560.7 (9,280.35/seat)	+ .56% 155,373
16. Seat A (2) Seat B	Matanuska-Susitna	17,724.6 (8,862.3/seat)	-4.0%
17. (1)	Interior Highways	9,111.9	-1.2%
18. (1)	Southeast North Star Borough	9,300	+ .7%

19.	(1)	Outer Fairbanks	8,934.3	-3.2%
20.	Seat A (2) Seat B	Fairbanks City	18,319.7 (9,159.8/seat)	- .7%
21.	(1)	West Fairbanks	9,247.1	+ .2%
22.	(1)	North Slope-Kotzebue	9,030	-2.1%
23.	(1)	Norton Sound	9,388	+1.7%
24.	(1)	Interior Rivers	9,549	+3.5%
25.	(1)	Lower Kuskokwim	9,698	+5.1%
26.	(1)	Bristol Bay-Aleutian Islands	9,479	+2.7%
27.	(1)	Kodiak-East Alaska Peninsula	9,592.4	+3.9%
		TOTAL POPULATION (Less Non-Resident Military and Dependents)	369,117.2	
		Maximum Overpopulation	5.8084% (Juneau)	
		Maximum Underpopulation	4.17371% (South Anchorage)	
		Total Combined Variation	9.98211%	

TABLE IV

STATISTICAL SUMMARY
SENATE DISTRICTS
June 10, 1981

Senate District	Name	Population	Population Variance
A. (1)	Ketchikan-Wrangell-Petersburg	17,940	-2.8%
B. (1)	Inside Passage-Cordova-Baranof-Chichagof	18,567	+ .6%
C. (1)	Juneau	19,528	+5.8%
D. Seat A (2) Seat B	Kenai-Cook Inlet-North Kenai-South Coast-South Anchorage	37,188.2	+ .7%
E. Seat A (2) Seat B	Hillside-Sand Lake	36,206.8	-1.9%
F. Seat A (2) Seat B	Mid-Town-West Side	35,643.5	-3.4%
G. Seat A (2) Seat B	Downtown-Mountain View-University	37,077.5	+ .4%
H. Seat A (2)	Muldoon-Chugiak-Eagle River-Bases	37,592.2	+1.8%
I. (1)	Matanuska-Susitna	17,724.6	-4.0%
J. (1)	Interior Highways-Southeast North Star Borough	18,411.9	- .2%
K. Seat A (2) Seat B	Outer Fairbanks-Fairbanks City-West Fairbanks	36,501.1	-1.1%
L. (1)	North Slope-Kotzebue Norton Sound	18,418	- .2%
M. (1)	Interior Rivers-Lower Kuskokwim	19,247	+4.3%
N. (1)	Bristol Bay-Aleutian Islands-Kodiak-East Alaska Peninsula	19,071.4	+3.3%
	TOTAL POPULATION (Less Non-resident military and dependents)	369,117.2	
	Maximum Overpopulation	+5.3% (Juneau)	
	Maximum Underpopulation	-4.0% (Mat-Su)	
	Combined Variation	9.8%	

NOTES

1/ See "Final Report, Design and Implementation of Alaska 1980 Reapportionment Data Collection Effort," August 29, 1980 by Dr. John A. Kruse of the Institute of Social and Economic Research (ISER) of the University of Alaska (hereinafter "Kruse") p. 9.

2/ See, generally, Kruse at 9-35.

3/ Id. at 9-11 and 23-26.

4/ Id. at 11-12 and 26-28.

5/ Id. at 26-28.

6/ Id. at 28 and 30.

7/ Id. at 30-33.

8/ Id. at 33.

9/ In 1972, the Board found only 11% of the active duty military personnel to be residents. Groh v. Egan, 526 P. 2d 863, 874 (Alaska 1973).

10/ Alaska's election code prescribes the following rules for determining residency for voting purposes:

> (1) No person may be considered to have gained a residence solely by reason of his presence nor may he lose it solely by reason of his absence while in the civil or military service of this state or of the United States....
>
> (2) The residence of a person is that place in which his habitation is fixed, and to which, whenever he is absent, he has the intention to return....

AS 15.05.020

11/ See, generally, Kruse at 35-48.

12/ Id. at 42

13/ Alaska Constitution, Article II, § 1

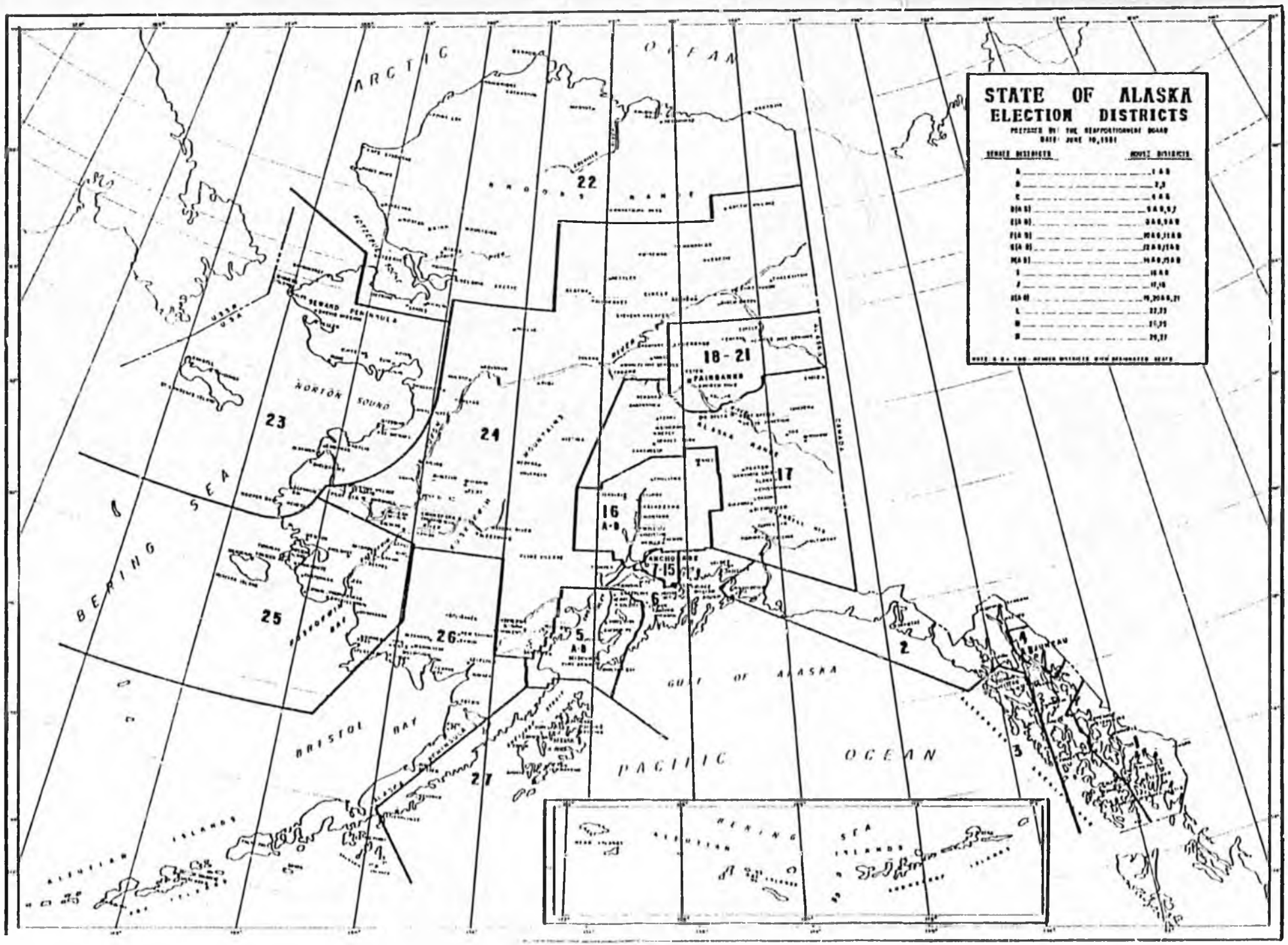
14/ Id.

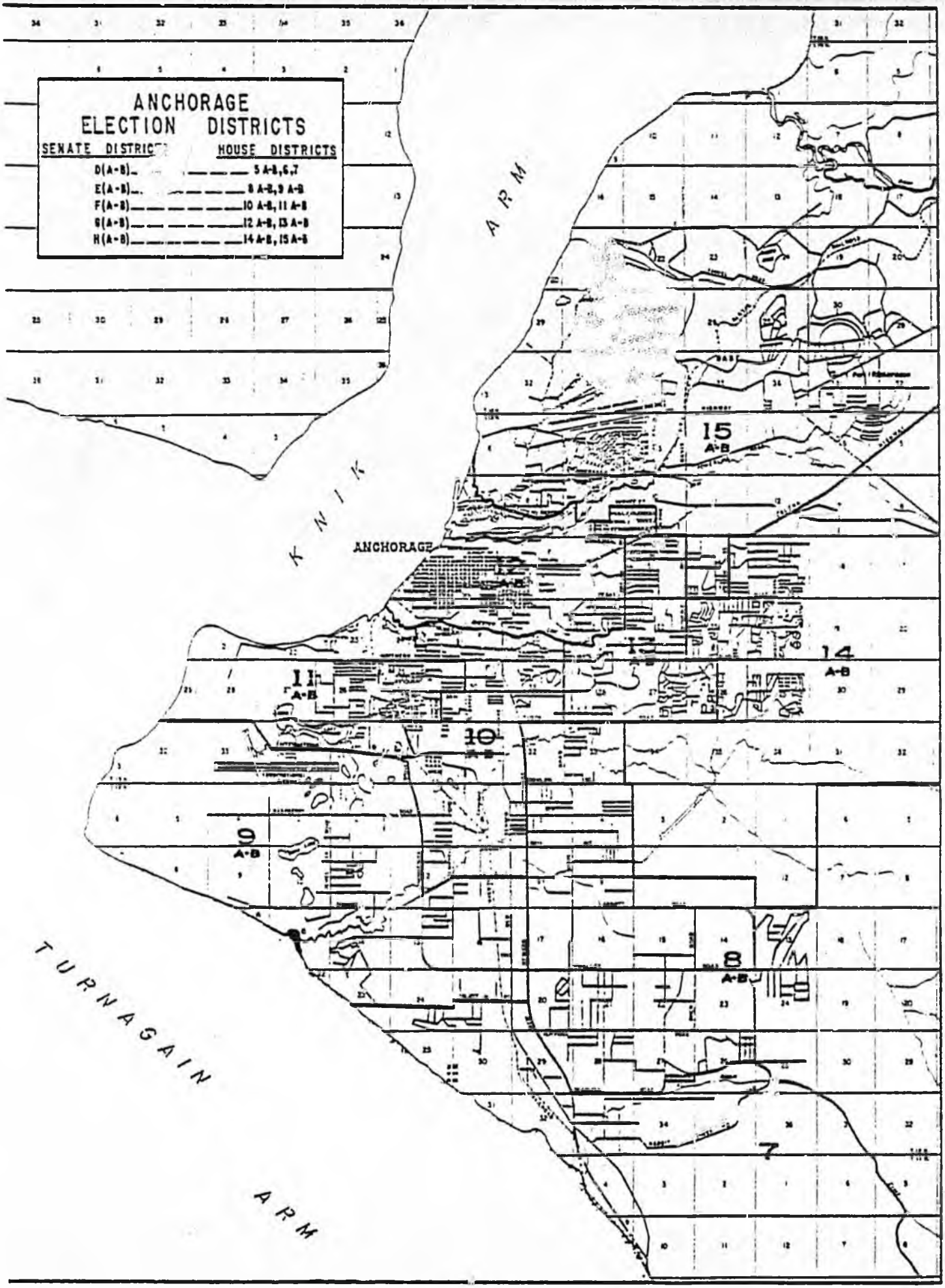
15/ In Fairbanks, the sentiment was fairly evenly split.

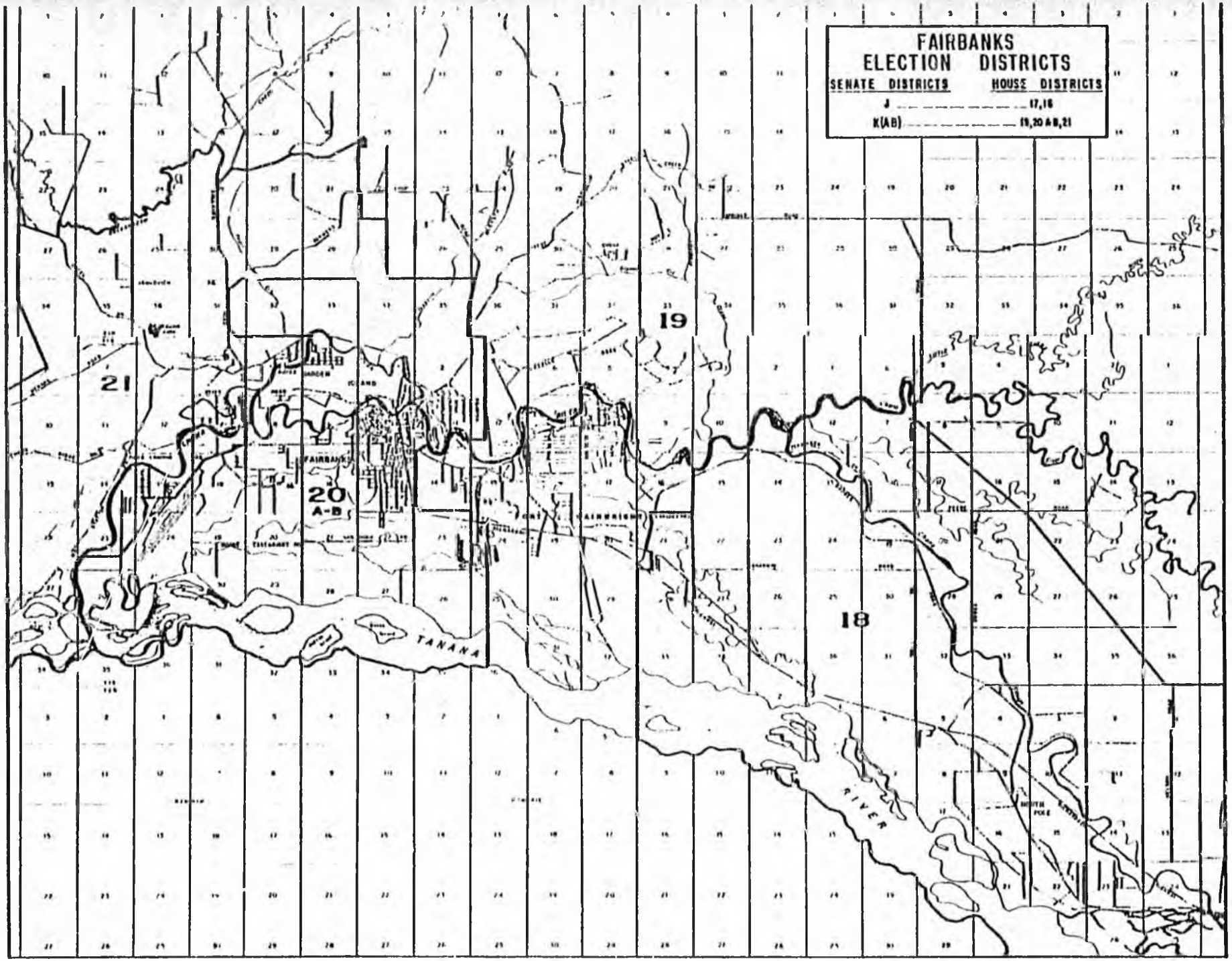
16/ As a consequence, the relatively populous Calista Native Regional Corporation area cannot be contained within a single district.

17/ A variation on the staff proposal, dividing the Kenai Peninsula Borough in three and placing Kenai and Soldotna in separate districts, was favored by Kenai Peninsula Borough Mayor Stan Thompson in a letter to the Board dated May 21, 1981.

18/ Alaska Constitution, Article II, § 3.


STATE OF ALASKA
ELECTION DISTRICTS
PREPARED BY THE REAPPORTIONMENT BOARD
DATE: JUNE 10, 1981
SENATE DISTRICTS
HOUSE DISTRICTS
ARCTIC OCEAN
BERING SEA
NORTON SOUND
BRISTOL BAY
GULF OF ALASKA
PACIFIC OCEAN
SEWARD PENINSULA
FAIRBANKS
ANCHORAGE
22
18 - 21
23
24
17
16
A-B
7-15
25
26
6
5
A-B
2
4
3
27


ANCHORAGE
ELECTION DISTRICTS
SENATE DISTRICTS
HOUSE DISTRICTS
D(A-B) 5 A-B, 6, 7
E(A-B) 8 A-B, 9 A-B
F(A-B) 10 A-B, 11 A-B
G(A-B) 12 A-B, 13 A-B
H(A-B) 14 A-B, 15 A-B
ANCHORAGE
KNIK ARM
TURNAGAIN ARM
15 A-B
14 A-B
11 A-B
10 A-B
9 A-B
8 A-B
7


FAIRBANKS
ELECTION DISTRICTS
SENATE DISTRICTS
HOUSE DISTRICTS
J ---------- 17,18
K(AB) ---------- 19,20 A-B,21
19
21
20
A-B
18
TANANA
RIVER

STATE OF ALASKA

OFFICE OF THE GOVERNOR
JUNEAU

BILL SHEFFIELD
GOVERNOR

NEWS RELEASE

FOR INFORMATION CONTACT:
Pete Spivey
Press Secretary

John Greely
Deputy Press Secretary
Office of the Governor
Pouch A, Juneau, AK 99811

Bus. Phone: (907) 465-3500

SHEFFIELD APPOINTS FIVE MEMBER STATE REAPPORTIONMENT BOARD
OCTOBER 20, 1983
NO. 83-172

FOR IMMEDIATE RELEASE

ANCHORAGE -- Governor Bill Sheffield today announced the appointment of a five-member State Reapportionment Board, in compliance with an order issued by Superior Court Judge Milton Souter on October 12.

Appointed were: Joseph H. McKinnon, an Anchorage lawyer and former member of the Legislature; Felix Toner, a Juneau engineer with previous Reapportionment Board experience who also served on the Juneau Assembly; Mary Nordale, a Fairbanks lawyer; Richard Borer, a Cordova hotel owner and former member of the Legislature; and Willie Hensley of Anchorage, a former Legislator who now is President of NANA Development Corporation and Chairman of United Bank Alaska.

Toner, McKinnon, Nordale and Hensley are Democrats. Borer is a Republican.

The board is charged with presenting the Governor with a proposal to amend a final Proclamation of Reapportionment approved by former Governor Hammond. The Alaska Supreme Court ordered the plan revised last July 23 and returned the case to the Superior Court. In his order last week, Judge Souter ordered the reapportionment plan amended so that the city of Cordova is "placed in a contiguous, compact and relatively integrated socio-economic election district...."

-MORE-

Cordova lies in House District 2, the so-called "Iceworm District." The district currently stretches from Prince William Sound to the state's southernmost border, excluding the largest towns and cities of Southeast Alaska.

The board members will convene in Juneau October 26, and will meet with Department of Law representatives to review their authority and discuss administrative matters before beginning their deliberations.

The proposed amended plan is to be delivered to Sheffield by January 3. The Governor is to then issue the revised final plan by February 3.

-30-

Alaska State Legislature

REPRESENTATIVE
TERRY MARTIN
DISTRICT 8
CHAIRMAN—LABOR AND COMMERCE COMMITTEE
PHONE 465-3873

3960 REKA DRIVE—86
ANCHORAGE, AK 99504
PHONE 333-6990

DURING LEGISLATURE
POUCH V
STATE CAPITOL
JUNEAU, AK 99811
PHONE 465-3784

November 11, 1983

Judge Milton Souter
Superior Court, Third District
303 "K" Street
Anchorage, Alaska 99501

Dear Judge Souter:

Alaska's history of apportionment and reapportionment has been one of much concern by all citizens, for this state of just twenty-five years belonging as an equal partner in the United States. Our youth as a state has its benefits, in that we have learned by the mistakes of other states and took advantage of major U.S. Supreme Courts decisions pertaining to the equality of each citizen in equal representation. This is verified in Article IV Sections 4 and 6. Both of these sections are based on the decennial census of the United States [Art. IV, Sec. 3]

Sec.4. Reapportionment shall be by the methods of equal proportion, except that each election district having major fraction of the quotient obtained by dividing total civilian population by forty shall have one representative.

Sec. 6. The governor may further redistrict by changing the size and area of election districts, subject to the limitations of this article. Each new district so created shall be formed of contiguous and compact territory containing as nearly as practicable a relatively integrated socio-economic area. Each shall contain a population at least equal to the quotient obtained by dividing the total civilian population by forty. Consideration may be given to local government boundaries. Drainage and other features shall be used in describing boundaries whenever possible.

As you are aware the "forty" formula was most distorted in the 1972 and 1974 reapportionments. In the 1980 reapportionment, the committee achieved a much more desirable equal apportionment, but even this missed the mark with some representative districts being as much as 5.8% above the quotient or 4.18% below the quotient, thus a difference of almost 10% inequality of representation, from an average population of 9,228 per house member of the 1980 census of 400,481 people. This excludes transient military population. [See attached "State Government News" - Oct. 1981]

Since the Federal Census of 1980, every state has gone through the traumatic reapportionment mandated. It can be concluded that most states tried to adhere to the U.S. Supreme Court's requirements for "one person, one vote." Many have less than 1% difference. In some states the governors took this criterion so serious that they vetoed badly drawn plans of their legislature - even against their own party. In one case, Colorado, the governor vetoed the new reapportionment plan although the largest and smallest districts had a population difference of only 41 people. In Texas, Supreme Court ruled the House plan split counties unnecessarily in violation of the state constitution. Some states use the Federal Census as their base, some use less of that figure and others do not use the decennial census at all.

In Alaska, it is clearly the intent of the Constitution [Art. VI. Sec. 3] to use the decennial census of the United States. While the intent of this was good - since in the territory era we had no better way of counting people nor the ability to pay for such an undertaking - this method is extremely limiting today. The Constitution, as I interpret it, does not limit the state to outdated statistics when reapportioning between decennial periods. If this is not true, then we are severly limited in complying to the "one person, one vote" equality concept and the current exercise of the Reapportionment Board is diminished in value. Another approach should be considered that is much more reliable and annually takes into consideration the annual fluctuation of population, also. The true military resident count should be added to the Constitution.

I would like to bring to your attention the potential use of statistics completed by the Department of Revenues for recipients of the Permanent Fund dividends. If we are going to reapportion it seems only logical and certainly within the constitution concept of "one person, one vote" equality to use the best census available. While the Federal census of 1980 shows 400,000 plus residents, the Permanent Fund dividends of 1982 has verified 474,000 plus residents. Thus, in the current scheme of reapportionment, almost twenty percent of the population will not be considered for the quotient obtained divided by forty. Alaska can be quite unique in its abilities of combining this new program and using its statistic to allow other departments, commissions, and legislature to share the information of exactly where the people are.

Combining the total recipients of 1982 Permanent Fund checks with the U.S. Post Office zip code numbers makes it easy for any reapportionment committee to combine an equal number for each political districts. [See attached letter and stats - Nov 3, 1983] This obviously is a far superior method of census counting than any yet devised. We know these citizens have been checked for residency and volunteer the information of each household with no additional cost to the state. A most unique aspect in this program is the pre-counting of persons. It allows a pregnant woman of six month pre-birth to count the child to be and receive a dividend check.

The 1983 P.F. statistics can be readily obtained if you approve of the concept for Governor Sheffield's Reapportionment Board. This applied to the latest zip codes of each city, municipality and village will help decrease conflicting reports from various state agencies and local governments as to how many people live where.

Judge Souter, I appeal to you to ask the present Board appointed by Governor Sheffield to reapportion the whole State of Alaska and to use the very latest and factual statistics available - namely the 1983 Permanent Fund Dividend recipients.

If you would like to explore this concept with me personally or need additional information, I will make myself available at your convenience.

Thank you very much for your consideration of my request. I look forward to hearing from you soon.

Most sincerely,

Terry Martin

Representative Terry Martin

TM:jl

Enclosures:

P.S. Currently I am having the Legislative legal service research for legislation to be introduced in January 1984 to allow for the above to be voted on in the 1984 November election and to include a clause to specifically count military residents for purposes of political reapportionment.

cc: Governor William Sheffield
Attorney General's Office
Senate President Jay Kerttula
Speaker Joe Hayes
Supreme Court Chief Justice Edward Burke



Superior Court
State of Alaska

THIRD JUDICIAL DISTRICT
303 K STREET
ANCHORAGE, ALASKA
99501

CHAMBERS OF
MILTON M. SOUTER, JUDGE

November 14, 1983

Honorable Terry Martin
Chairman, Labor and Commerce Committee
3960 Reka Drive-B6
Anchorage, Alaska 99504

Dear Representative Martin:

This morning you delivered to my office a three page letter together with enclosures, pertaining to the on-going reapportionment proceedings. It appears to me that you are perhaps laboring under a misconception of those proceedings at present, so I feel it appropriate to take this opportunity to present a brief explanation.

A newly constituted reapportionment board is presently handling the reapportionment proceedings. Accordingly, nothing is occurring in court with respect to those proceedings at this time. Further, it is unlikely that anything further will occur in court until the reapportionment board has made its recommendations to Governor Sheffield and he has issued an amended reapportionment order. Therefore, it would have been better for your purposes if you had delivered your letter and enclosures to the reapportionment board, rather than to me.

Because you are not a party to the reapportionment court case, you do not have the right to file with the court any written arguments, suggestions or comments regarding the

case. This is the rule pertaining to non-parties in all court cases. Accordingly, I am returning to you the letter and enclosures which you delivered to me, since it is not proper for me to consider items from a non-party. It might be possible for you to become a party to the case or to submit argument, etc., as an "amicus curiae", but you should consult with a lawyer to determine whether and how to do this.

Despite the formal tone of this letter, I wish to assure you that I appreciate the interest which you have shown in this matter, and I am sure that the active participants in the reapportionment proceedings will wish to consider your views. I have therefore instructed my secretary to send a xerox copy of your letter and enclosures to the formal parties in the reapportionment court case.

Sincerely yours,

Milton M. Souter

MMS/pb

cc: Holli Ploog w/enclosures
701 West 58th Ave., Suite F
Anchorage, AK 99503

Timothy A. McKeever w/enclosures
2550 Denali Street, Suite 700
Anchorage, AK 99503

Jonathan B. Rubini
Assistant Attorney General
Pouch K
Juneau, AK 99811

Court file

Alaska State Legislature

House of Representatives

Official Business

Pouch V
State Capitol
Juneau, Alaska 99811

November 14, 1983

FOR IMMEDIATE RELEASE
CONTACT: Rep. Terry Martin
333-6990

REP. TERRY MARTIN SAYS PERMANENT FUND STATISTICS SHOULD BE USED FOR REAPPORTIONMENT

ANCHORAGE - Rep. Terry Martin is asking the Superior Court to have the Sheffield administration use population statistics compiled from the Permanent Fund Dividend program as a basis for reapportioning the state's election districts.

In a letter sent to Superior Court Judge Milton Souter on Monday, Martin said the Permanent Fund Dividend program's statistics were the most current and accurate population figures available for reapportionment. Martin also asked that the entire state be reapportioned using these statistics.

"While the federal census of 1980 shows 400,000 plus residents, the Permanent Fund dividends of 1982 has verified 474,000 plus residents," Martin said. "Thus, in the current scheme of reapportionment, almost 20 percent of the population will not be considered" in the pending reapportionment process.

Martin, R-Anchorage, said because the Permanent Fund Dividend applications have already been thoroughly checked for accuracy, the program offers a unique and inexpensive means of determining a current population count.

"This obviously is a far superior method of census counting than any yet devised," Martin said. "We know these citizens have been checked for residency and volunteer the information of each household with no additional cost to the state."

Martin added, "A most unique aspect in this program is the pre-counting of persons. It allows a pregnant woman of six month pre-birth to count the child to be and receive a dividend check."

Martin said equitable election districts could be designed by using the program statistics and postal zip codes.

"Judge Souter, I appeal to you to ask the present (reapportionment) board appointed by Gov. Sheffield to reapportion the whole State of Alaska and to use the very latest and factual statistics available - namely the 1983 Permanent Fund Dividend recipients," Martin concluded in the letter.

Martin said he is also having the Legislative legal service conduct research on his behalf for legislation which would allow Martin's recommendation to be voted on in the 1984 general election, and also include a clause which would specifically count military residents for political reapportionment. Martin intends to introduce the legislation at the beginning of the upcoming session in January 1984.

# # # # # #

Note Copy

NEWS RELEASE

REAPPORTIONMENT BOARD PROPOSES REVISIONS TO 1981 PLAN
November 18, 1983

FOR IMMEDIATE RELEASE

JUNEAU--Following extensive meetings in Juneau during the last several weeks, the newly-appointed Reapportionment Board has proposed two plans for the court-mandated revisions to the 1981 Reapportionment Plan. Chairman Willie Hensley says the Board is moving as quickly as possible in order to have their recommendations to Governor Sheffield by January 3. "We would like to have the public review these proposals and provide us with their comments. The Board will be holding several public hearings in the next two weeks and we invite anyone concerned with this process to participate in the hearings," said Hensley. The Public Hearing Schedule is as follows:

Mon., Nov. 21 - Ketchikan	7:30 p.m. School District Board Room Masonic Temple Building Grant Street
Tues., Nov. 22 - Juneau	7:30 p.m. Court Room A Alaska Court Building
Tues., Nov. 29 - Fairbanks	7:30 p.m. Borough Assembly Chambers 520 Fifth Avenue
Wed., Nov. 30 - Anchorage	Two Sessions: 1:30 - 5:00 p.m. 7:30 - 10:00 p.m. Court Room G, Room 401 Alaska Court Building 303 K Street
Thurs., Dec. 1 - Kenai	1:30 - 4:00 p.m. City Council Chambers 210 Fidalgo

The 5-member panel, including Hensley of Kotzebue, Mary Nordale of Fairbanks, Joe McKinnon of Anchorage, Richard Borer of Cordova and Felix Toner of Juneau, is charged with presenting recommendations to Governor Sheffield which revise the 1981 Reapportionment Plan by shifting the Cordova area from House District 2 in Southeast to a Southcentral district.

PLAN 1

Plan 1 utilizes the same data used by the 1981 Reapportionment Board in formulating their recommendations to former Governor Hammond. The Southeast revisions include separating Metlakatla and Annette Island from District 1 and Hoonah from District 3, to replace the Cordova area in District 2. Although Southeast Alaska as a region is only slightly underpopulated, -3.2 percent for six house seats, the allocation of the population is difficult because of the overpopulation in the Juneau area. After considerable thought, the Board concluded that it would be ill-advised to sever a portion of the Juneau area. Their proposal for Southeast, which is the same in Plans 1 and 2, has a total combined variance between the most overpopulated and the most underpopulated district of 14.84 percent.

The Cordova area in Plan 1 is placed in a Prince William Sound district, District 6, which includes the communities of Tatitlek, Valdez, Seward, Hope, Cooper Landing, Moose Pass, Port Graham, and English Bay. House District 5, a two-member district, remains virtually the same with the exception of Port Graham and English Bay.

The Nikishka area and North Kenai Peninsula that was formerly in House District 6 has been moved into South Anchorage in both Plans 1 and 2. The revised District 7 includes the area from Klatt Road south along the New Seward Highway to Potter Creek, all remaining area south of Potter Creek in the Municipality of Anchorage, and the Nikishka area.

Modifications to District 8 in Plan 1 include extension of the southern boundary from DeArmoun Road to Potter Creek and rather than following the New Seward Highway to Tudor Road, the boundary turns east at Dowling Road to Lake Otis Parkway and then north to Tudor Road. Why no mention of pop. decrease in S.W.AK. - military -

District 9's boundaries remain unchanged. District 10's western boundary is revised to follow Arctic Boulevard from International Airport Road to Fireweed Lane, then west to Spenard Road and north to Chester Creek. This also becomes the new eastern boundary of District 11.

PLAN 2

During the course of the Board's deliberation, the Board identified several instances where the data used for the 1981 Plan contained a reporting error. The principal error occurred in the reporting of the census data for the Eagle River area, where 1,414 persons were inadvertantly excluded. In order to address the problem with the initial census data, Governor Sheffield asked that asked the Board provide him with a plan which uses the most accurate census data available. Under Plan 2, which utilizes the adjusted census data, the ideal population per house seat is increased from 9,176.2 in Plan 1 to 9,210.5 in Plan 2.

The proposal for revisions to districts in Southeast Alaska and on the Kenai Peninsula are the same in both Plans 1 and 2. The population variances change slightly because of the increase in the ideal population per seat.

In Anchorage, Plan 2 offers three proposals for redistricting. Because of a major correction in 1980 census data in the Eagle River area of an additional 1,414 persons, shifts in the boundaries are necessary to correct the excessive population variance.

Plan 2-A utilizes the same redistricting plan for House Districts 7 through 11 as in Plan 1. District 12 includes the Downtown area and North Mountain View. Elmendorf Air Force Base and the North Muldoon area are in District 13, South Muldoon and University in District 14, and part of Muldoon, east of Muldoon Road is included with Fort Richardson, Chugiak, and Eagle River in District 15.

Plan 2-B includes the same revision for District 7 and makes major revisions to District 8 which includes part of the Hillside area and Campbell Lake. Abbott Loop, Rogers Park, Tudor, and part of the Spenard and Taku-Campbell areas are in District 9. District 10 includes Sand Lake and Turnagain and District 11 encompasses most of the Spenard area. District 12 is the Downtown area and District 13 includes Elmendorf AFB, Mountain View and North Muldoon area. The University and South Muldoon areas are in District 14 and residents east of Muldoon Road are in District 15 with Fort Richardson, Chugiak and Eagle River.

Plan 2-C changes the other proposals for District 7 from the Klatt Road area to include the Upper Hillside. District 8 becomes a single-member district in the Lower Hillside area and District 9 is also a single-member district including the Campbell Lake and Klatt Road area. The University, Rogers Park and Tudor areas are combined with Abbott Loop and Taku-Campbell in District 10. District 11 includes most of Sand Lake and Turnagain and District 12 encompasses the Spenard area. The Downtown area becomes District 13, with Elmendorf AFB, Mountain View, and North Muldoon in District 14. South Muldoon becomes District 15 and Fort Richardson, Chugiak, Eagle River, and part of Muldoon become District 16. Because of the creation of two additional single-member districts in South Anchorage in Plan 2-C, it is necessary to renumber District 16, the Matanuska-Susitna Borough, to District 17, and all remaining districts through District 28. Only the numbers change. There have been no changes in election district boundaries beyond Anchorage.

Attached to the press release is a detailed discussion of adjustments to the 1980 census data, a statistical summary for house districts in Plan 1 and Plan 2-A, 2-B, and 2-C. Maps of the revised districts are also included as well as a map of the 1981 election districts in Anchorage.

Copies of this material may be obtained by contacting the Reapportionment Office in Juneau at 465-3538, the Regional Governor's Offices, and Legislative Information Offices.

attn: Karen Perfield
Pouch A

REAPPORTIONMENT OF ELECTION DISTRICTS
ADJUSTMENTS TO 1980 CENSUS DATA
November 18, 1983

In September of 1981, the U.S. Bureau of the Census issued revised 1980 census counts for three census areas in the State of Alaska; Anchorage, Matanuska-Susitna, and Southeast Fairbanks. A detailed listing of these revised counts by census tract, blocks, and enumeration districts was compiled in November, 1981. The November listing also included a correction in the Prince of Wales census sub-area that did not change the population for the sub-area, but reallocated the population previously reported to the correct enumeration district.

Three additional corrections to the 1980 census data for Alaska were issued in June of 1982; in Saxman, Selawik, and Barrow. These corrections represented a reallocation of population within the specific census area and did not change the population in those census areas.

The 1981 corrections to the 1980 census counts for Alaska are as follows:

Anchorage Census Area	
Tract 0002 - Eagle River	+1,414
Matanuska-Susitna Census Area	
ED 1168 Wasilla Area	+50
Southeast Fairbanks Census Area	
ED 0833	-94

The 1980 population for the State of Alaska utilized by the 1981 Reapportionment Board was 367,050.29 (that number excluded 33,430.7 non-resident military and dependents from the original statewide total of 400,481).

The adjusted 1980 population for the State of Alaska, incorporating the 1981 revisions, is 368,420.29.

	367,050.29	- 1980 population
	+ 1,414	- Eagle River
	+ 50	- Matanuska-Susitna
	- 94	- Southeast Fairbanks
TOTAL	368,420.29	- Adjusted 1981 population

The ideal house district population is also adjusted from 9,176.2 to 9,210.5; the quotient of dividing the adjusted population by the 40 house seats to be apportioned.

PLAN 1

REAPPORTIONMENT OF ELECTION DISTRICTS
STATISTICAL SUMMARY
HOUSE DISTRICTS
November 18, 1983

	House District	Name	Population	Population Variance
* 1.	Seat A (2) Seat B	Ketchikan-Wrangell-Petersburg	16,601.58 (8,300.79/seat)	-9.5%
* 2.	(1)	Inside Passage	8,924.35	-2.7%
* 3.	(1)	Baranof-Chichagof	8,448.97	-7.9%
4.	Seat A (2) Seat B	Juneau	19,332.75 (9,666.375/seat)	+5.34%
* 5.	Seat A (2) Seat B	Kenai-Cook Inlet	18,711.95 (9,355.975/seat)	+1.9%
* 6.	(1)	Prince William Sound	8,906.19	-2.9%
* 7.	(1)	North Kenai-South Anchorage	9,270.9	+1.03%
* 8.	Seat A (2) Seat B	Hillside	18,269.4 (9,134.7/seat)	- .4%
9.	Seat A (2) Seat B	Sand Lake	18,004.7 (9,002.35/seat)	-1.9%
*10.	Seat A (2) Seat B	Mid-town	19,038.1 (9,519.05/seat)	+3.7%
*11.	Seat A (2) Seat B	Westside	18,960.4 (9,480.2/seat)	+3.3%
12.	Seat A (2) Seat B	Downtown	18,170.0 (9,085/seat)	-1.0%
13.	Seat A (2) Seat B	Mountain View-University	18,907.5 (9,453.75/seat)	+3.02%
14.	Seat A (2) Seat B	Muldoon	19,031.5 (9,515.75/seat)	+3.7%
15.	Seat A (2) Seat B	Chugiak-Eagle River-Bases (5330 + 1528 + ??)	18,560.7 (9,280.35/seat)	+1.13%
16.	Seat A (2) Seat B	Matanuska-Susitna	17,642.23 (8,821.115/seat)	-3.87%

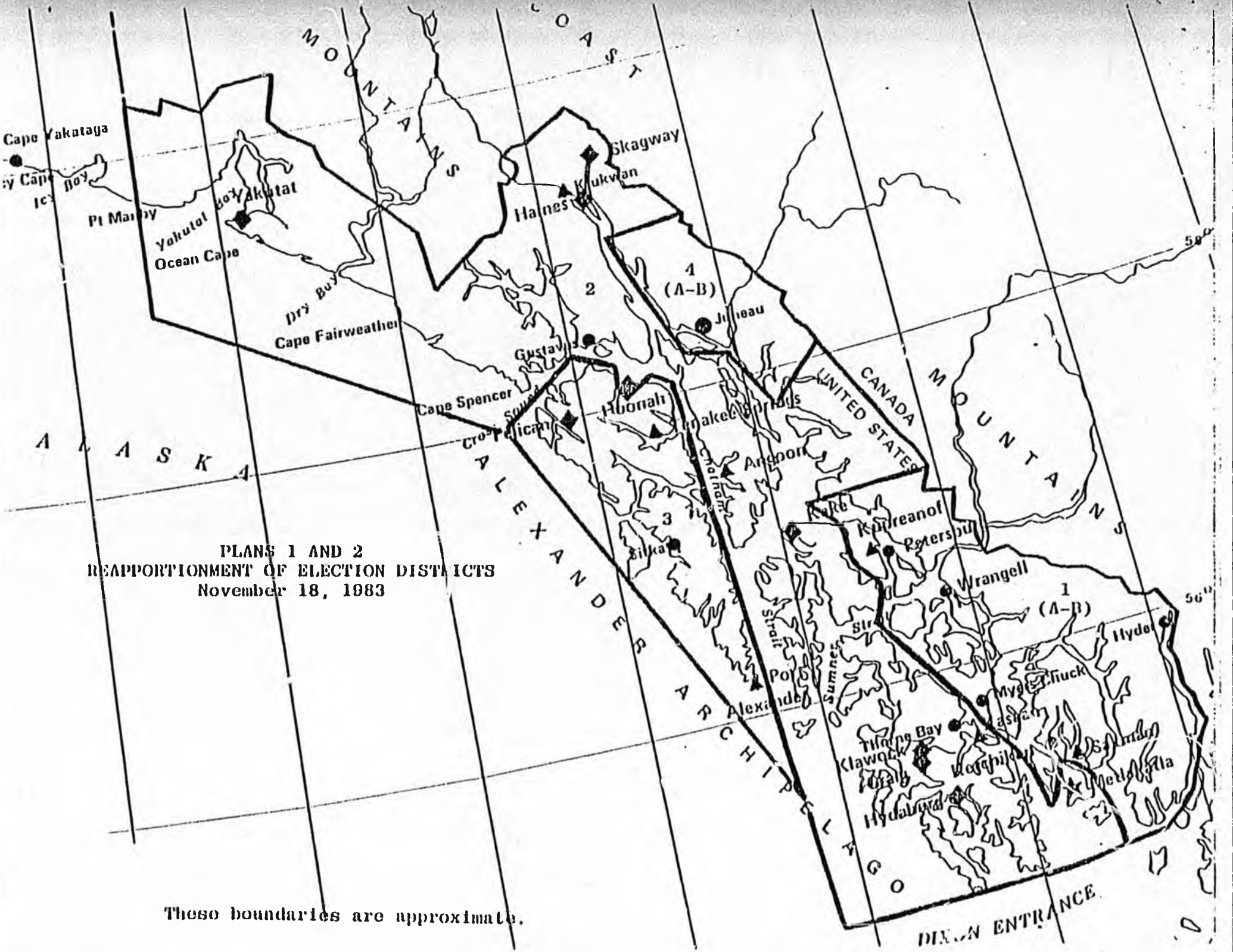
Up to 29% allowed Military as Civilian

Total Population Anchorage US 1980 Census Population
How many Military Figured in if at all
How Are Military Counted? Doubt counted if live off base?

	House District	Name	Population	Population Variance
17.	(1)	Interior Highways	9,011.57	-1.8%
18.	(1)	Southeast North Star Borough	9,300.0	+1.3%
19.	(1)	Outer Fairbanks	8,934.3	-2.6%
20.	Seat A (2) Seat B	Fairbanks City	18,319.7 (9,159.8/seat)	- .2%
21.	(1)	West Fairbanks	9,247.1	+ .8%
22.	(1)	North Slope-Kotzebue	8,999.06	-1.9%
23.	(1)	Norton Sound	9,338.86	+1.8%
24.	(1)	Interior Rivers	8,936.12	-2.6%
25.	(1)	Lower Kuskokwim	9,432.35	+2.8%
26.	(1)	Bristol Bay-Aleutian Islands	9,157.61	- .2%
27.	(1)	Kodiak-East Alaska Peninsula	9,592.40	+4.53%
		TOTAL POPULATION	367,050.29	
		(Less Non-Resident Military and Dependents)		

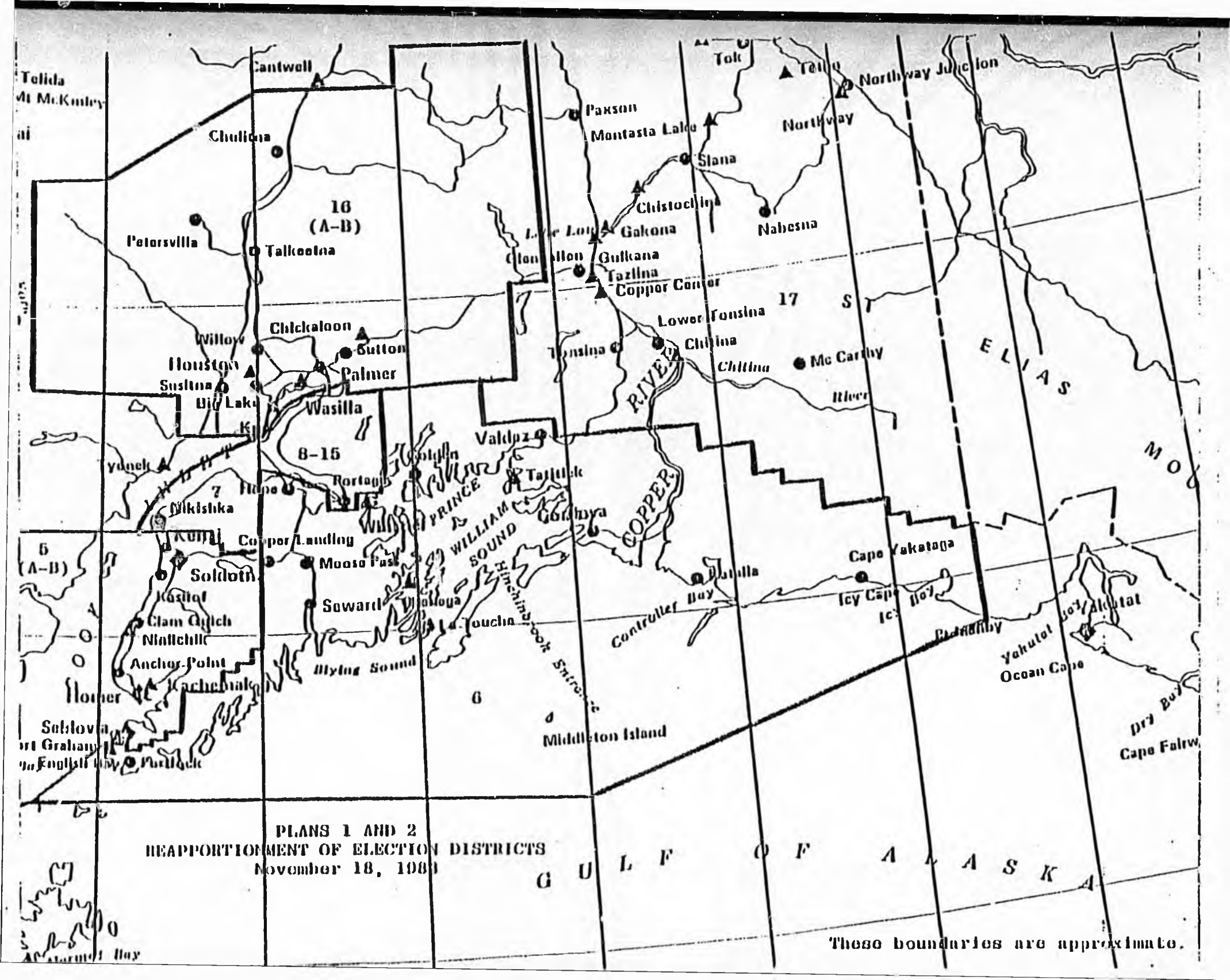
Southeast Alaska	Maximum Overpopulation	+5.34%	District 4
	Maximum Underpopulation	-9.5 %	District 1
	Total Combined Variance	14.84%	
Other Districts	Maximum Overpopulation	+4.53%	District 27
	Maximum Underpopulation	-3.87%	District 16
	Total Combined Variance	3.4 %	

*These districts were revised in order to make corrections to the 1981 Reapportionment Plan in accordance with Superior Court Judge Milton Souter's order dated October 12, 1983.



PLANS 1 AND 2
REAPPORTIONMENT OF ELECTION DISTRICTS
November 18, 1983

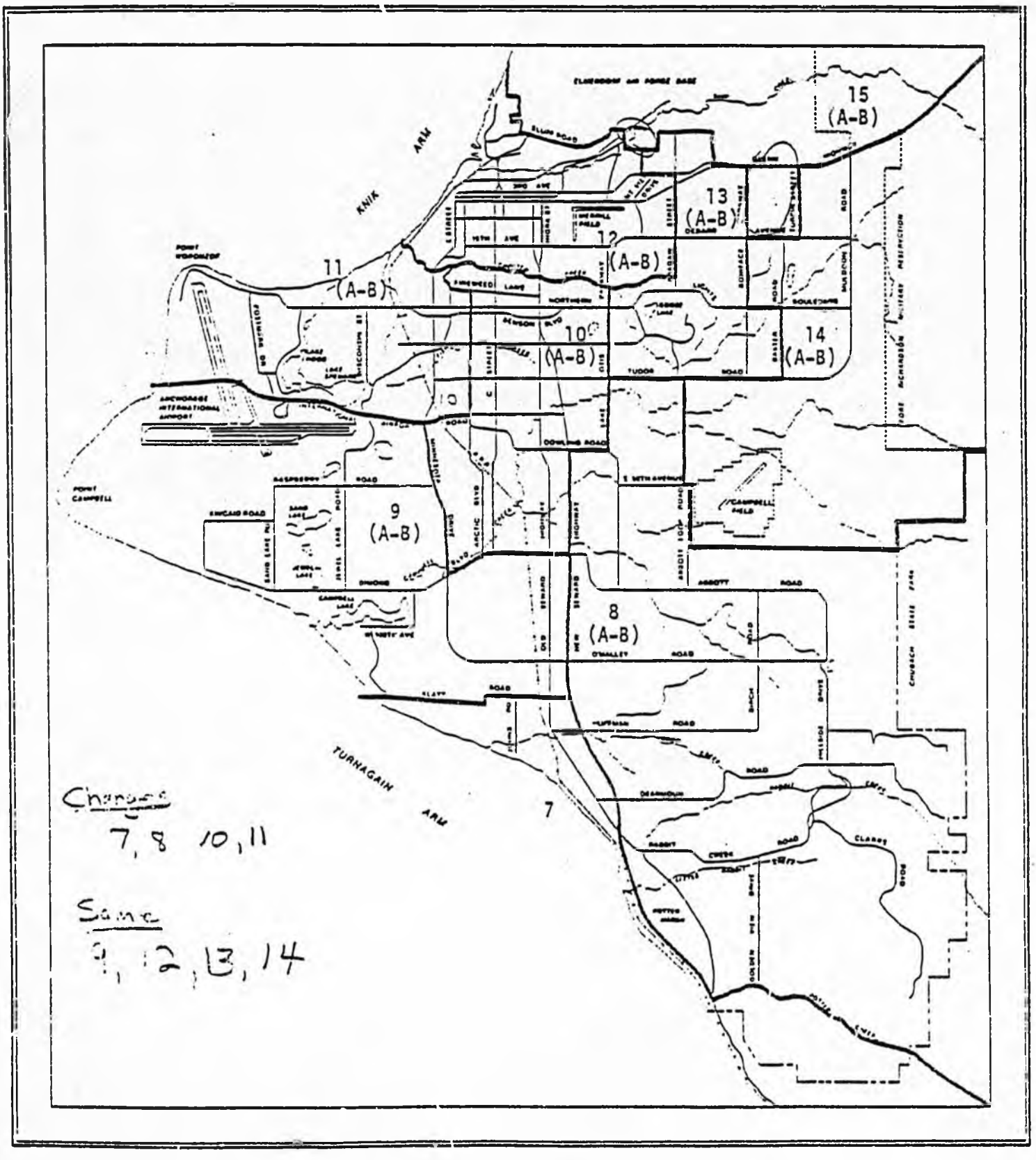
These boundaries are approximate.



PLANS 1 AND 2
REAPPORTIONMENT OF ELECTION DISTRICTS
November 18, 1983

These boundaries are approximate.

PLAN 1
ANCHORAGE ELECTION DISTRICTS
November 18, 1983



These boundaries are approximate.

PLAN 2 - A
REAPPORTIONMENT OF ELECTION DISTRICTS
STATISTICAL SUMMARY
HOUSE DISTRICTS
November 18, 1983

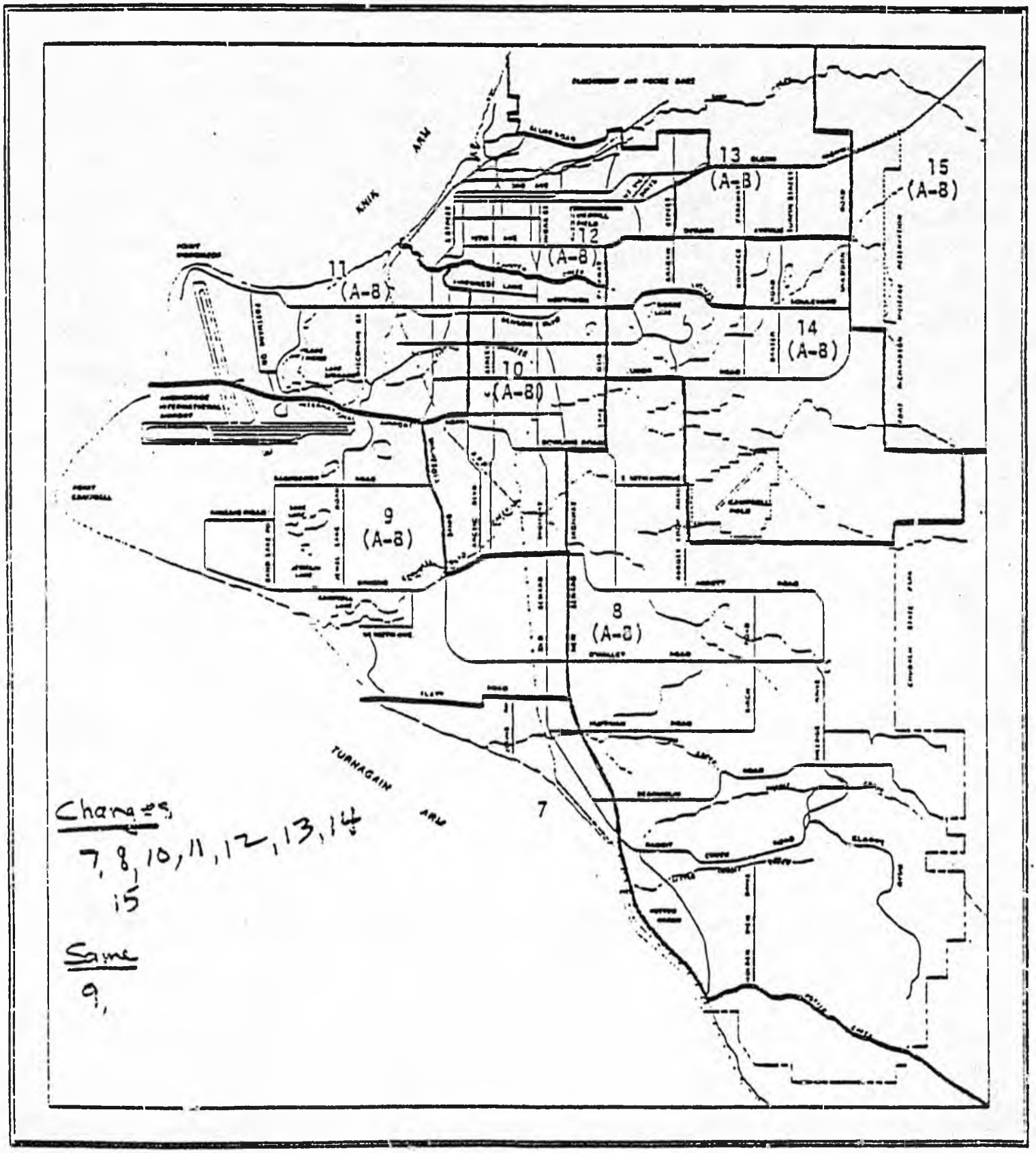
House District		Name	Population	Population Variance
* 1.	Seat A (2) Seat B	Ketchikan-Wrangell-Petersburg	16,601.58 (8,300.79/seat)	-9.9%
* 2.	(1)	Inside Passage	8,924.35	-3.1%
* 3.	(1)	Baranof-Chichagof	8,448.97	-8.3%
4.	Seat A (2) Seat B	Juneau	19,332.75 (9,666.375/seat)	+4.9%
* 5.	Seat A (2) Seat B	Kenai-Cook Inlet	18,711.95 (9,355.975/seat)	+1.6%
* 6.	(1)	Prince William Sound	8,906.19	-3.3%
* 7.	(1)	North Kenai-South Anchorage	9,270.9	+ .6%
* 8.	Seat A (2) Seat B	Hillside	18,269.4 (9,134.7/seat)	- .8%
9.	Seat A (2) Seat B	Sand Lake	18,004.7 (9,002.35/seat)	-2.2%
*10.	Seat A (2) Seat B	Mid-town	19,038.1 (9,519.05/seat)	+3.3%
*11.	Seat A (2) Seat B	Westside	18,960.4 (9,480.2/seat)	+2.9%
*12.	Seat A (2) Seat B	Downtown-North Mountain View	19,268.4 (9,634.2/seat)	+4.6%
*13.	Seat A (2) Seat B	Elmendorf AFB-Mountain View	18,891 (9,445.5/seat)	+2.5%
*14.	Seat A (2) Seat B	University-Muldoon	19,023.1 (9,511.55/seat)	+3.3%
*15.	Seat A (2) Seat B	Chugiak-Eagle River-Ft. Richardson	18,901.2 (9,450.6/seat)	+2.6%
*16.	Seat A (2) Seat B	Matanuska-Susitna	17,692.23 (8,846.115/seat)	-3.9%

	House District	Name	Population	Population Variance
*17.	(1)	Interior Highways	8,917.57	-3.2%
18.	(1)	Southeast North Star Borough	9,300.0	+ .9%
19.	(1)	Outer Fairbanks	8,934.3	-3.0%
20.	Seat A (2) Seat B	Fairbanks City	18,319.7 (9,159.8/seat)	- .5%
21.	(1)	West Fairbanks	9,247.1	+ .4%
22.	(1)	North Slope-Kotzebue	8,999.06	-2.3%
23.	(1)	Norton Sound	9,338.86	+1.4%
24.	(1)	Interior Rivers	8,936.12	-3.0%
25.	(1)	Lower Kuskokwim	9,432.35	+2.4%
26.	(1)	Bristol Bay-Aleutian Islands	9,157.61	- .6%
27.	(1)	Kodiak-East Alaska Peninsula	9,592.40	+4.1%
		TOTAL ADJUSTED POPULATION	368,420.29	
		(Less Non-Resident Military and Dependents)		

Southeast Alaska	Maximum Overpopulation	+4.9%	District 4
	Maximum Underpopulation	-9.9%	District 1
	Total Combined Variance	14.8%	
Other Districts	Maximum Overpopulation	+4.6%	District 12
	Maximum Underpopulation	-3.9%	District 16
	Total Combined Variance	8.5%	

*Revisions were made in these districts in order to make corrections to the 1981 Reapportionment Plan in accordance with Superior Court Judge Milton Souter's order dated October 12, 1983, and includes technical corrections made to the 1980 census data.

PLAN 2 - A
ANCHORAGE ELECTION DISTRICTS
November 18, 1983



These boundaries are approximate.

PLAN 2 - B
REAPPORTIONMENT OF ELECTION DISTRICTS
STATISTICAL SUMMARY
HOUSE DISTRICTS
November 18, 1983

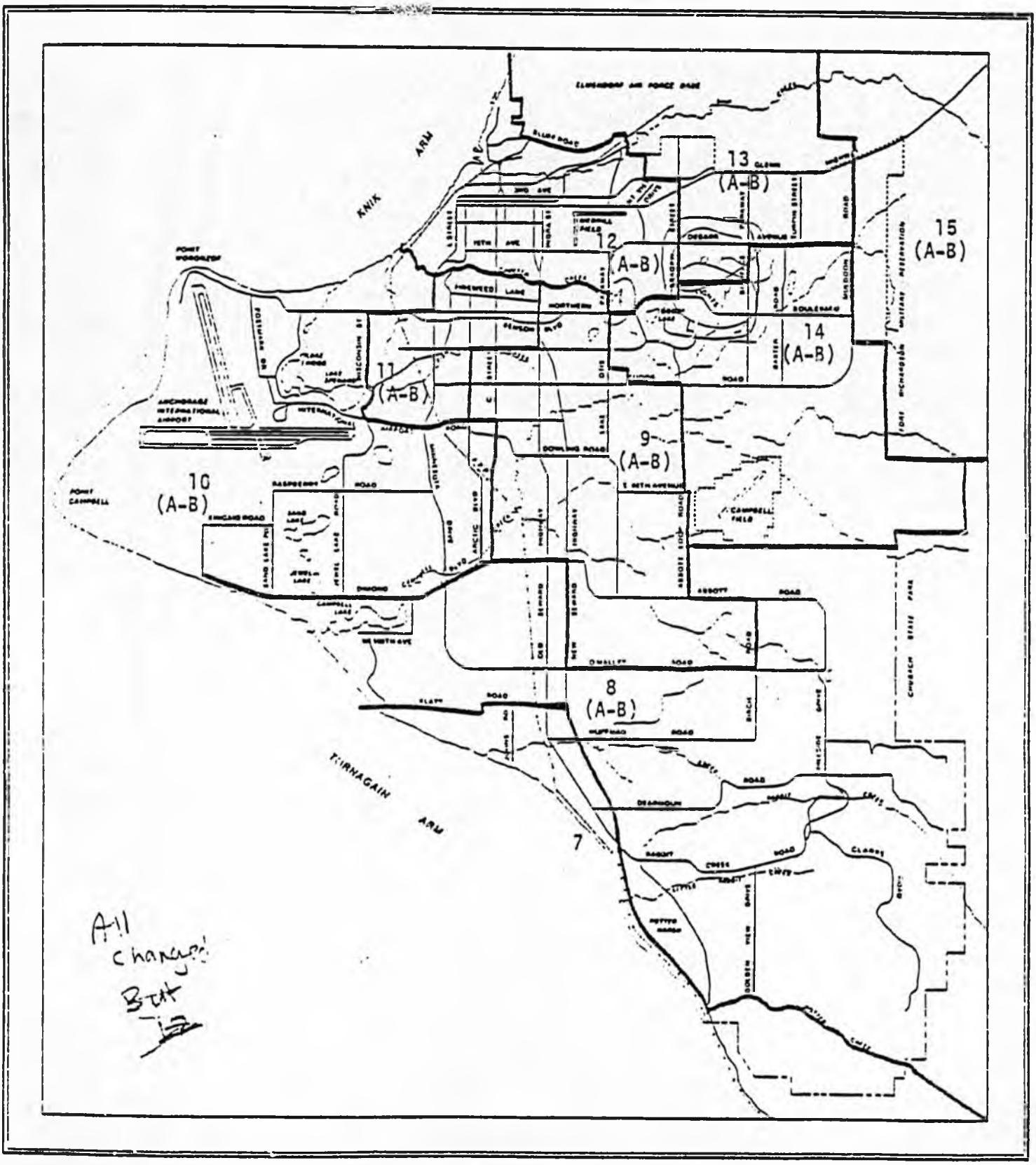
	House District	Name	Population	Population Variance
* 1.	Seat A (2) Seat B	Ketchikan-Wrangell-Petersburg	16,601.58 (8,300.79/seat)	-9.9%
* 2.	(1)	Inside Passage	8,924.35	-3.1%
* 3.	(1)	Baranof-Chichagof	8,448.97	-8.3%
4.	Seat A (2) Seat B	Juneau	19,332.75 (9,666.375/seat)	+4.9%
* 5.	Seat A (2) Seat B	Kenai-Cook Inlet	18,711.95 (9,355.975/seat)	+1.6%
* 6.	(1)	Prince William Sound	8,906.19	-3.3%
* 7.	(1)	North Kenai-South Anchorage	9,270.9	+ .6%
* 8.	Seat A (2) Seat B	Hillside-Campbell Lake	18,351.2 (9,175.6/seat)	- .4%
* 9.	Seat A (2) Seat B	Mid-town	18,983.8 (9,491.9/seat)	+3.05%
*10.	Seat A (2) Seat B	Sand Lake-Turnagain	18,551.7 (9,275.85/seat)	+ .7%
*11.	Seat A (2) Seat B	Spenard	18,846.5 (9,423.25/seat)	+2.3%
*12.	Seat A (2) Seat B	Downtown	18,540.6 (9,270.15/seat)	+ .6%
*13.	Seat A (2) Seat B	Mountain View-Elmendorf AFB	18,879.4 (9,439.7/seat)	+2.5%
*14.	Seat A (2) Seat B	Muldoon-University	19,301.9 (9,650.95/seat)	+4.8%
*15.	Seat A (2) Seat B	Chugiak-Eagle River-Ft. Richardson	18,901.2 (9,450.6/seat)	+2.6%
*16.	Seat A (2) Seat B	Matanuska-Susitna	17,692.23 (8,846.115/seat)	-3.9%

	House District	Name	Population	Population Variance
*17.	(1)	Interior Highways	8,917.57	-3.2%
18.	(1)	Southeast North Star Borough	9,300.0	+ .9%
19.	(1)	Outer Fairbanks	8,934.3	-3.0%
20.	Seat A (2) Seat B	Fairbanks City	18,319.7 (9,159.8/seat)	- .5%
21.	(1)	West Fairbanks	9,247.1	+ .4%
22.	(1)	North Slope-Kotzebue	8,999.06	-2.3%
23.	(1)	Norton Sound	9,338.86	+1.4%
24.	(1)	Interior Rivers	8,936.12	-3.0%
25.	(1)	Lower Kuskokwim	9,432.35	+2.4%
26.	(1)	Bristol Bay-Aleutian Islands	9,157.61	- .6%
27.	(1)	Kodiak-East Alaska Peninsula	9,592.40	+4.1%
		TOTAL ADJUSTED POPULATION	368,420.29	
		(Less Non-Resident Military and Dependents)		

Southeast Alaska	Maximum Overpopulation	+4.9%	District 4
	Maximum Underpopulation	-9.9%	District 1
	Total Combined Variance	14.8%	
Other Districts	Maximum Overpopulation	+4.8%	District 14
	Maximum Underpopulation	-3.9%	District 16
	Total Combined Variance	8.7%	

*Revisions were made in these districts in order to make corrections to the 1981 Reapportionment Plan in accordance with Superior Court Judge Milton Souter's order dated October 12, 1983, and includes technical corrections made to the 1980 census data.

PLAN 2 - B
ANCHORAGE ELECTION DISTRICTS
November 18, 1983

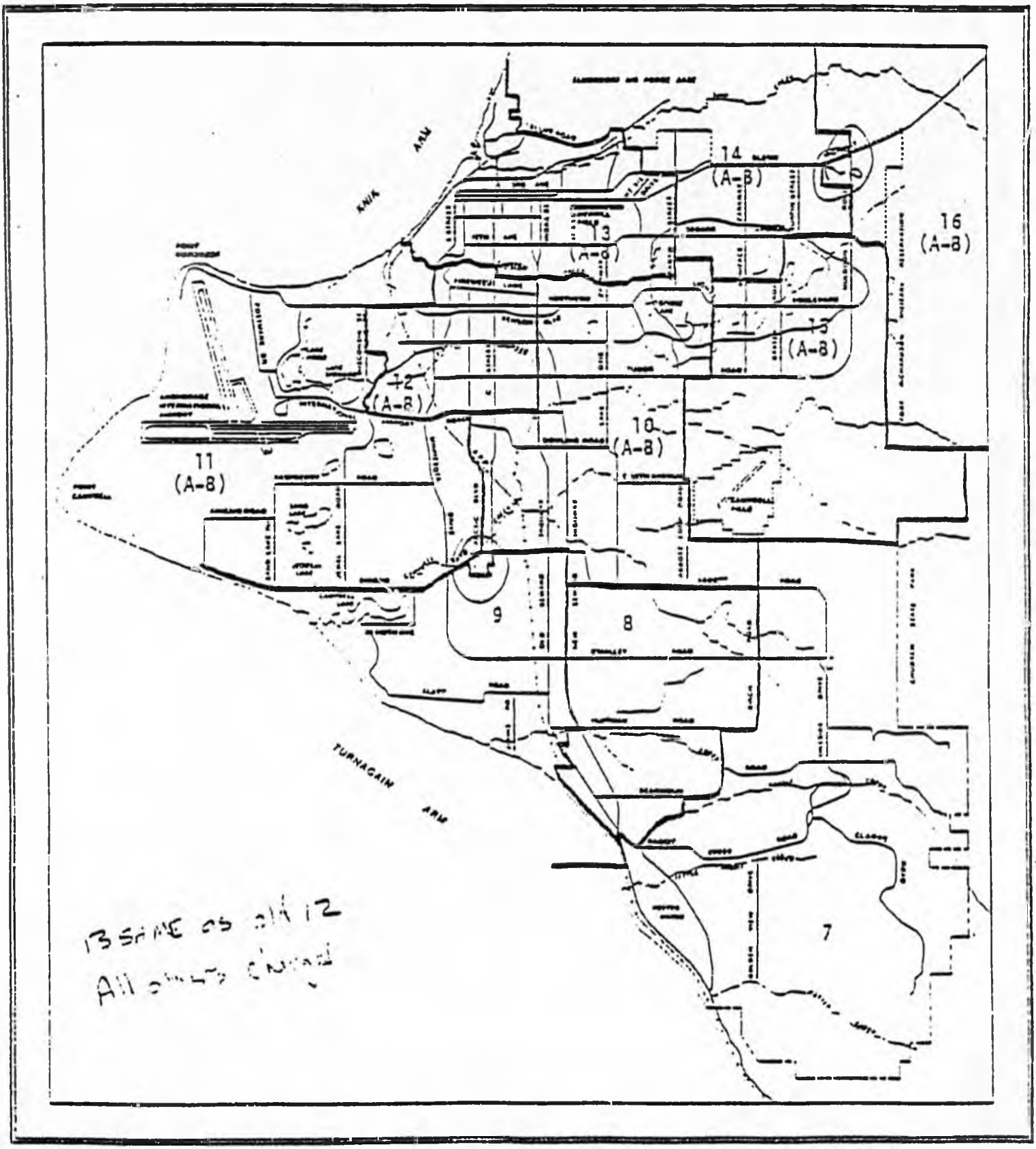


These boundaries are approximate.

PLAN 2 - C
REAPPORTIONMENT OF ELECTION DISTRICTS
STATISTICAL SUMMARY
HOUSE DISTRICTS
November 18, 1983

	House District	Name	Population	Population Variance
* 1.	Seat A (2) Seat B	Ketchikan-Wrangell-Petersburg	16,601.58 (8,300.79/seat)	-9.9%
* 2.	(1)	Inside Passage	8,924.35	-3.1%
* 3.	(1)	Baranof-Chichagof	8,448.97	-8.3%
4.	Seat A (2) Seat B	Juneau	19,332.75 (9,666.375/seat)	+4.9%
* 5.	Seat A (2) Seat B	Kenai-Cook Inlet	18,711.95 (9,355.975/seat)	+1.6%
* 6.	(1)	Prince William Sound	8,906.19	-3.3%
* 7.	(1)	North Kenai-South Anchorage-Upper Hillside	9,639.9	+4.6%
* 8.	(1)	Lower Hillside	9,560	+3.8%
* 9.	(1)	Campbell Lake-Oceanview	9,576.6	+3.9%
*10.	Seat A (2) Seat B	Mid-town	19,087.2 (9,543.6/seat)	+3.6%
*11.	Seat A (2) Seat B	Turnagain-Sand Lake	19,155.9 (9,577.95/seat)	+4.0%
*12.	Seat A (2) Seat B	Spenard	18,804.1 (9,402.05/seat)	+2.1%
*13.	Seat A (2) Seat B	Downtown	18,678.4 (9,339.2/seat)	+1.4%
*14.	Seat A (2) Seat B	Elmendorf AFB-Mountain View	18,464.7 (9,232.35/seat)	+ .2%
*15.	Seat A (2) Seat B	South Muldoon	18,265.4 (9,132.7/seat)	- .8%
*16.	Seat A (2) Seat B	Chugiak-Eagle River-Ft. Richardson	18,395 (9,197.5/seat)	- .1%

PLAN 2 - C
ANCHORAGE ELECTION DISTRICTS
November 18, 1983



These boundaries are approximate.

House District		Name	Population	Population Variance
*17.	Seat A (2) Seat B	Matanuska-Susitna	17,692.23 (8,846.115/seat)	-3.9%
18.	(1)	Interior Highways	8,917.57	-3.2%
19.	(1)	Southeast North Star Borough	9,300.0	+ .9%
20.	(1)	Outer Fairbanks	8,934.3	-3.0%
21.	Seat A (2) Seat B	Fairbanks City	18,319.7 (9,159.8/seat)	- .5%
22.	(1)	West Fairbanks	9,247.1	+ .4%
23.	(1)	North Slope-Kotzebue	8,999.06	-2.3%
24.	(1)	Norton Sound	9,338.86	+1.4%
25.	(1)	Interior Rivers	8,936.12	-3.0%
26.	(1)	Lower Kuskokwim	9,432.35	+2.4%
27.	(1)	Bristol Bay-Aleutian Islands	9,157.61	- .6%
28.	(1)	Kodiak-East Alaska Peninsula	9,592.40	+4.1%
		TOTAL ADJUSTED POPULATION	368.420.29	
		(Less Non-Resident Military and Dependents)		

Southeast Alaska	Maximum Overpopulation	+4.9%	District 4
	Maximum Underpopulation	-9.9%	District 1
	Total Combined Variance	14.8%	
Other Districts	Maximum Overpopulation	+4.6%	District 7
	Maximum Underpopulation	-3.9%	District 17
	Total Combined Variance	8.5%	

*Revisions were made in these districts in order to make corrections to the 1981 Reapportionment Plan in accordance with Superior Court Judge Milton Souter's order dated October 12, 1983, and includes technical corrections made to the 1980 census data. House Districts 16 through 27 have been renumbered as Districts 17 through 28.

BILL SHEFFIELD
GOVERNOR

for 1:30 meeting:
get there early &
let Willie Hensley
know you're there —
he'll get you on early.

STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

~~Hensley will be back~~ Shill try to get back to me today or first thing tomorrow

Terry - afternoon ~~[illegible]~~
~~or evening meetings~~
Class at 3:00, so before that.

November 18, 1983

Dear Legislator:

William Hensley, Chairman of the Reapportionment Board, requested that I provide all incumbent legislators with the various proposed plans adopted by the 1983 Reapportionment Board. As you know, the Alaska Supreme Court ruled that the 1981 Plan improperly included the Cordova area within House District 2. With the advise of the Reapportionment Board, Governor Sheffield must therefore formulate amendments to the 1981 Plan which relocates the Cordova area and which satisfies the constitutional guarantee of equal representation.

The Reapportionment Board recently concluded a series of meetings in Juneau, during which the Board drafted two proposed plans for amending the 1981 Plan. Included in the packet is a news release which fully explains the proposed changes. The Board has not as yet had an opportunity to address whether changes in either Senate districts or Senate terms is advisable.

The news release also describes the public hearings scheduled by the Board. You are, of course, invited to attend any of the scheduled public hearings. If you would like to offer comments to the Board, but are unable to attend a scheduled public hearing, you may submit written testimony. All written testimony should be mailed by December 5, 1983, to:

Reapportionment Board
Pouch A
Juneau, AK 99811

If you need any additional information please feel free to contact the Reapportionment staff at 465-3538.

Sincerely,

Dana LaTour

Dana LaTour
Staff Assistant

Enclosures

NEWS RELEASE

REAPPORTIONMENT BOARD PROPOSES HOUSE AND SENATE PLANS
December 9, 1983

FOR IMMEDIATE RELEASE

JUNEAU -- The Reapportionment Board will be holding a series of teleconferences and hearings concerning two proposals they have adopted for house and senate districts. The five-member Board, including Willie Hensley of Kotzebue, Mary Nordale of Fairbanks, Joe McKinnon of Anchorage, Richard Borer of Cordova, and Felix Toner of Juneau, scheduled the hearings and teleconferences to gain public comment on the proposals. Board Chairman Willie Hensley said, "We are operating under severe time constraints and realize that it would be desirable to give everyone more time. However, we are trying to meet a January 3 deadline for submission of our recommendations to Governor Sheffield." The Governor is required to issue a reapportionment proclamation by February 4.

The meeting and public hearing/teleconference schedule for the Reapportionment Board is as follows:

Wed., Dec. 14 - Anchorage	9:00 AM - 4:00 PM Board Meeting 1024 W. 6th Legislative Information Office
	6:00 PM - 9:00 PM Teleconference with the Kenai Matanuska-Susitna Borough, and Prince William Sound areas
Thurs., Dec. 15 - Anchorage	9:00 AM - 3:00 PM Board Meeting 1024 W. 6th Legislative Information Office

Thurs., Dec. 15 - Anchorage

4:00 PM - 6:00 PM
Teleconference with Hoonah and Metlakatla
1024 W. 6th
Legislative Information Office

7:30 PM - 10:00 PM
Public Hearing
1049 W. 5th
APUC Hearing Room, 1st Floor
Mutual of New York Bldg.

Fri., Dec. 16 - Anchorage

~~10:00~~ - ~~12:00~~ Noon
Board Meeting
1024 W. 6th
Legislative Information Office

The Reapportionment Board was appointed in October to make revisions to the 1981 Reapportionment Plan as ordered by Superior Court Judge Milton Souter. In mid-November the Board released several redistricting options, Plan 1, and Plan 2a, 2b, and 2c for public comment. After extensive meetings and hearings during the last few weeks, the Board adopted Plan 1 and Plan 2c with some revisions.

Plan 1 - House Districts

Plan 1 utilized the same data used by the 1981 Reapportionment Board in formulating their recommendations to former Governor Hammond. The Southeast revisions include separating Metlakatla and Annette Island from District 1 and Hoonah from District 3, to replace the Cordova area in District 2. This proposal for Southeast has a total combined variance between the most over-populated and the most underpopulated district of 14.84 percent.

The Cordova area in Plan 1 is placed in a Prince William Sound district, District 6, which includes the communities of Tatitlek, Valdez, Seward, Hope, Cooper Landing, Moose Pass, Port Graham, and English Bay. House District 5, a two-member

district, remains virtually the same with the exception of Port Graham and English Bay, and with the inclusion of the Sterling area from proposed District 7.

The Nikishka area and North Kenai Peninsula that was formerly in House District 6 has been placed with South Anchorage into House District 7. This district includes the area from Klatt Road south along the New Seward Highway to Potter Creek, all remaining area south of Potter Creek in the Municipality of Anchorage, and the Nikishka area.

Modifications to District 8 in Plan 1 include extension of the southern boundary from DeArmoun Road to Potter Creek and rather than following the New Seward Highway to Tudor Road, the boundary turns east at Dowling Road to Lake Otis Parkway and then north to Tudor Road.

District 9's boundaries remain unchanged. District 10's western boundary is revised to follow Arctic Boulevard from International Airport Road to Fireweed Lane, then west to Spenard Road and north to Chester Creek. This also becomes the new eastern boundary of District 11.

Plan 1 - Senate Districts

In keeping with the Superior Court order to make as few changes as possible, the Board determined that the senate districts would remain unchanged in Plan 1.

Plan 2c - House Districts

During the course of their deliberations, the Board identified several instances where the data used for the 1981 Plan contained a reporting error. The principal error occurred in the reporting

of the census data for the Eagle River area, where 1,414 persons were inadvertantly excluded. In order to address the problem with the initial census data, Governor Sheffield asked that the Board provide him with a plan which uses the most accurate census data available. Under Plan 2c, which utilizes the adjusted census data, the ideal population per house seat is increased from 9,176.2 in Plan 1 to 9,210.5 in Plan 2c.

The proposal for revisions to House Districts 1, 2, 3, and 4 in Southeast Alaska, and House Districts 5 and 6 for the Prince William Sound and the Kenai Peninsula are the same in Plan 1 and 2c. The population variances change slightly because of the increase in the ideal population per seat.

Plan 2c has been revised from the original version released in mid-November to address some concerns expressed to the Board during the last several weeks. District 7 previously placed the Upper Hillside area with Nikishka in a single-member district. The revised Plan 2c for District 7 places the area from Furrow Creek, south along the old Seward Highway to DeArmoun Road, then south of DeArmoun Road and Huffman Road from Bainbridge Road east to Glen Alps, with Nikishka. House Districts 8 and 9 are combined into a two-member district including the Campbell Lake, Klatt Road, and the Hillside areas. With only minor modifications the remainder of 2c is the same as orginally proposed. Because of the combination of the two single-member districts in South Anchorage in the revised Plan 2c, it is necessary to renumber all the Anchorage house districts. Please refer to the map included in this release for district numbering.

Plan 2c - Senate Districts

The Board has proposed three options for senate districts under Plan 2c for the Prince William Sound and Kenai Peninsula area.

1. One proposal would be to combine House District 5, a two-member house district, with single-member House Districts 6 and 7 into a two-member senate district.
2. The second proposal would have House District 5 become a single-member senate district, and combine House Districts 6 and 7 into a single-member senate district.
3. Because of testimony received by the Board concerning composition of a senate district that would include the Matanuska-Susitna Borough, the Prince William Sound, and part of the Kenai Peninsula, the third proposal would combine House Districts 6 and 7 with House District 16, a two-member house district for the Matanuska-Susitna area, into a two-member senate district. House District 5 would be a single-member district.

Three proposals were also developed for senate district combinations in the Anchorage area under Plan 2c.

1. The first proposal would be to create single-member senate districts in House Districts 8 - 15, which are all two-member house districts.
2. The second proposal would combine House Districts 8 and 10, House Districts 9 and 11, House Districts 12

Used 33 1/3% changes in 1981 - Board

To change as few old people as district

All are w/in 20% of same people in old Senate District

and 13, and House Districts 14 and 15, into two-member senate districts.

3. Finally, the third proposal would combine House Districts 8 and 9, House Districts 10 and 11, House Districts 12 and 13, and House Districts 14 and 15 into two-member senate districts.

The Reapportionment Board is very interested in receiving public comment on these proposals and would like to encourage anyone concerned with this process to participate in the teleconferences and meetings scheduled for December 14 through 16.

Attached to the press release is a statistical summary for house districts in Plan 1 and Plan 2c. Maps of the revised districts are also included as well as a map of the 1981 election districts in Anchorage.

Copies of this material may be obtained by contacting the Reapportionment Office in Juneau at 465-3538, the Regional Governor's Offices, and Legislative Information Offices.

PLAN 1
REAPPORTIONMENT OF ELECTION DISTRICTS
STATISTICAL SUMMARY
HOUSE DISTRICTS
December 9, 1983

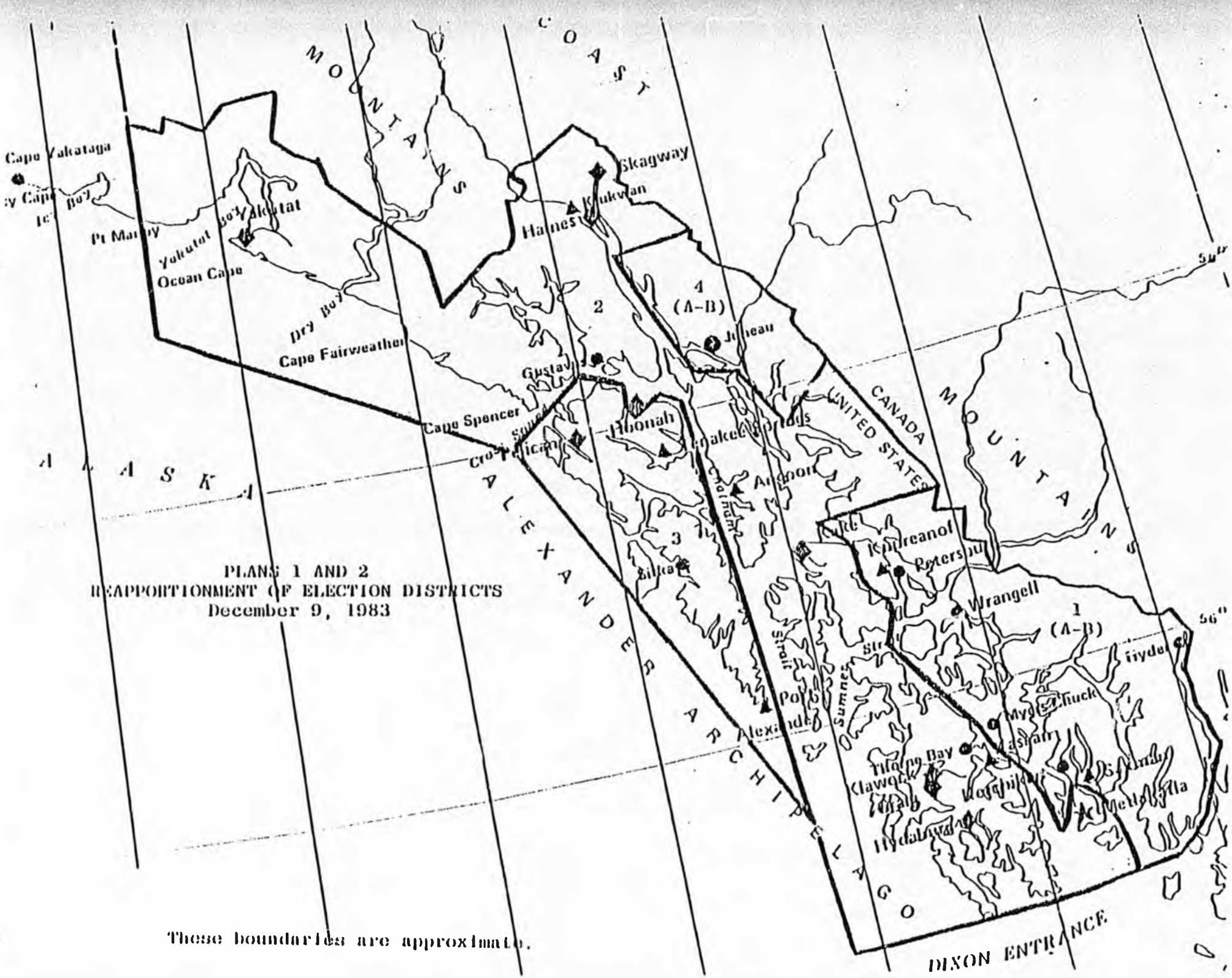
	House District	Name	Population	Population Variance
* 1.	Seat A (2) Seat B	Ketchikan-Wrangell-Petersburg	16,601.58 (8,300.79/seat)	-9.5% N
* 2.	(1)	Inside Passage	8,924.35	-2.7%
* 3.	(1)	Baranof-Chichagof	8,448.97	-7.9%
4.	Seat A (2) Seat B	Juneau	19,332.75 (9,666.375/seat)	+5.34%
* 5.	Seat A (2) Seat B	Kenai-Cook Inlet	18,872.95 (9,436.475/seat)	+2.8% change +161
* 6.	(1)	Prince William Sound	8,906.19	~~-2.9%~~
* 7.	(1)	North Kenai-South Anchorage	9,109.9	- .7% change -161
* 8.	Seat A (2) Seat B	Hillside	18,269.4 (9,134.7/seat)	- .4%
9.	Seat A (2) Seat B	Sand Lake	18,004.7 (9,002.35/seat)	-1.9%
*10.	Seat A (2) Seat B	Mid-town	19,038.1 (9,519.05/seat)	+3.7%
*11.	Seat A (2) Seat B	Westside	18,960.4 (9,480.2/seat)	+3.3%
12.	Seat A (2) Seat B	Downtown	18,170.0 (9,085/seat)	-1.0%
13.	Seat A (2) Seat B	Mountain View-University	18,907.5 (9,453.75/seat)	+3.02%
14.	Seat A (2) Seat B	Muldoon	19,031.5 (9,515.75/seat)	+3.7%
15.	Seat A (2) Seat B	Chugiak-Eagle River-Bases	18,560.7 (9,280.35/seat)	+1.13%
16.	Seat A (2) Seat B	Matanuska-Susitna	17,642.23 (8,821.115/seat)	-3.87%

House District		Name	Population	Population Variance
17.	(1)	Interior Highways	9,011.57	-1.8%
18.	(1)	Southeast North Star Borough	9,300.0	+1.3%
19.	(1)	Outer Fairbanks	8,934.3	-2.6%
20.	Seat A (2) Seat B	Fairbanks City	18,319.7 (9,159.8/seat)	- .2%
21.	(1)	West Fairbanks	9,247.1	+ .8%
22.	(1)	North Slope-Kotzebue	8,999.06	-1.9%
23.	(1)	Norton Sound	9,338.86	-1.8%
24.	(1)	Interior Rivers	8,936.12	-2.6%
25.	(1)	Lower Kuskokwim	9,432.35	+2.9%
26.	(1)	Bristol Bay-Aleutian Islands	9,157.61	- .2%
27.	(1)	Kodiak-East Alaska Peninsula	9,592.40	-4.53%
		TOTAL POPULATION	367,010.29	
		(Less Non-Resident Military and Dependents)		

Southeast Alaska	Maximum Overpopulation	+5.34%	District 4
	Maximum Underpopulation	-9.5 %	District 1
	Total Combined Variance	14.84%	
Other Districts	Maximum Overpopulation	+4.53%	District 27
	Maximum Underpopulation	-3.87%	District 16
	Total Combined Variance	8.4 %	

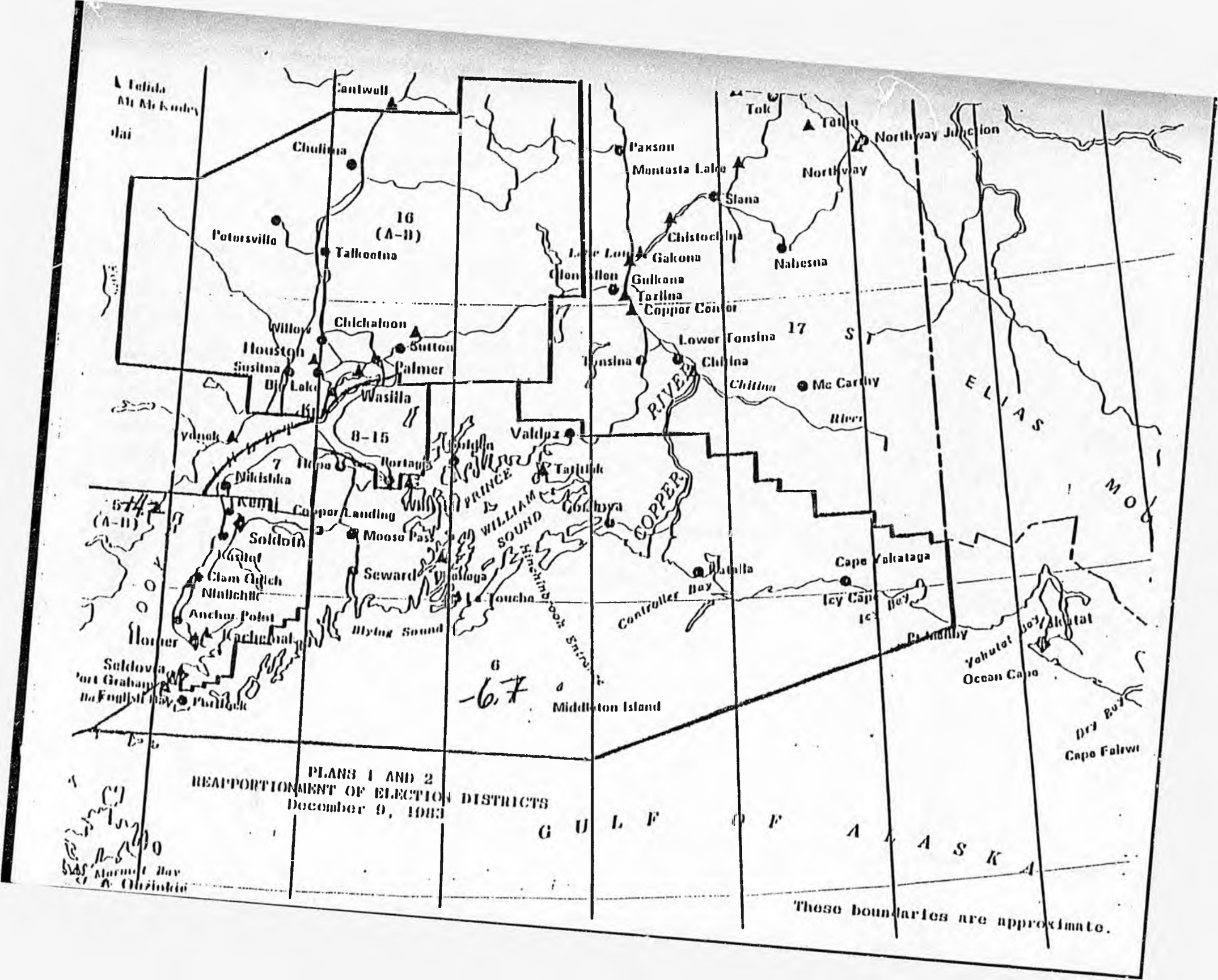
*These districts were revised in order to make corrections to the 1981 Reapportionment Plan in accordance with Superior Court Judge Milton Souter's order dated October 12, 1983.

No mention of changes between



PLANS 1 AND 2
REAPPORTIONMENT OF ELECTION DISTRICTS
December 9, 1983

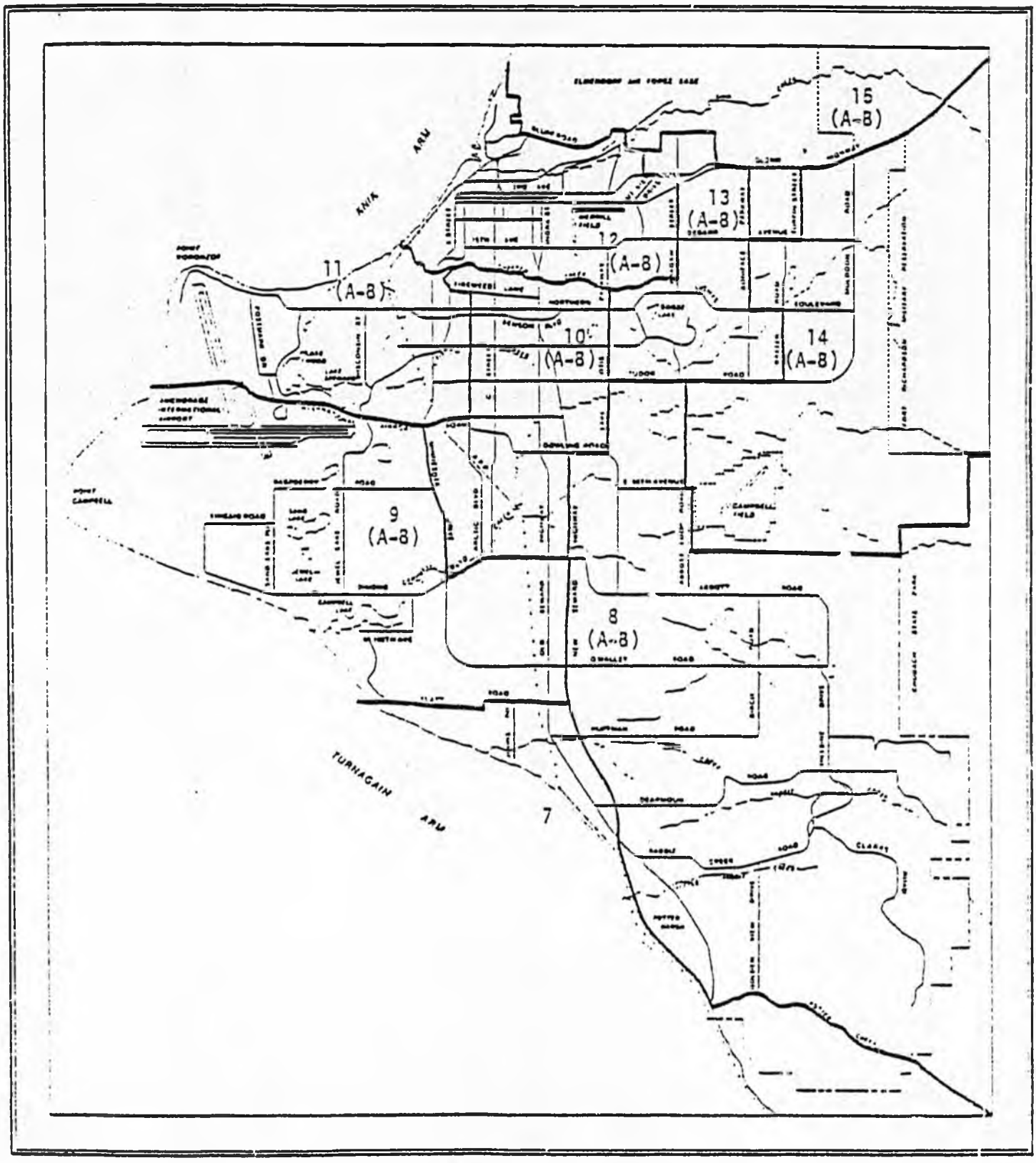
These boundaries are approximate.



PLANS 1 AND 2
REAPPORTIONMENT OF ELECTION DISTRICTS
December 9, 1983

These boundaries are approximate.

PLAN 1
ANCHORAGE ELECTION DISTRICTS
December 9, 1983



These boundaries are approximate.

PLAN 2c
REAPPORTIONMENT OF ELECTION DISTRICTS
STATISTICAL SUMMARY
HOUSE DISTRICTS
December 9, 1983

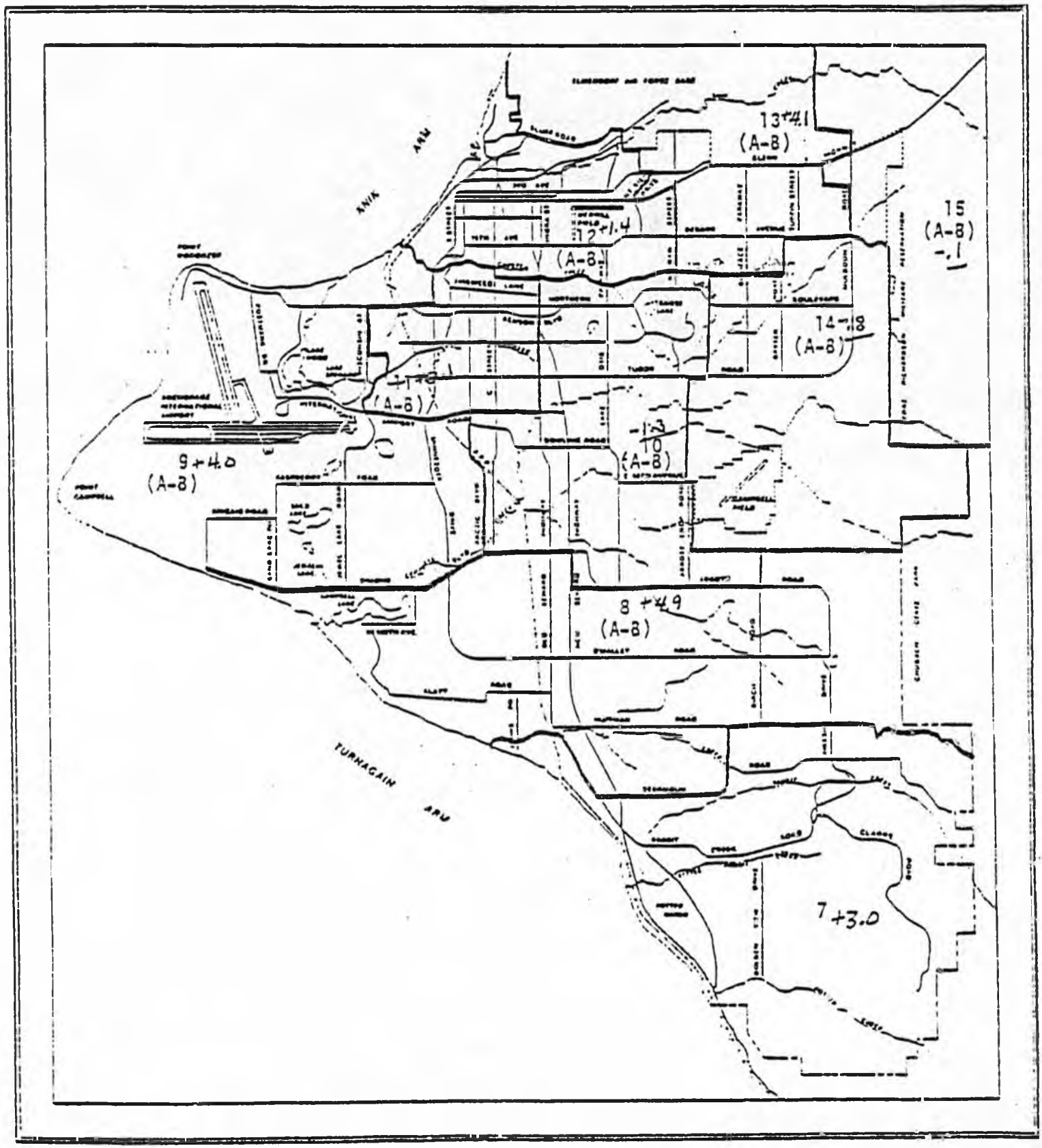
	House District	Name	Population	Population Variance
* 1.	Seat A (2) Seat B	Ketchikan-Wrangell-Petersburg	16,601.58 (8,300.79/seat)	-9.9%
* 2.	(1)	Inside Passage	8,924.35	-3.1%
* 3.	(1)	Baranof-Chichagof	8,448.97	-8.3%
4.	Seat A (2) Seat B	Juneau	19,332.75 (9,666.375/seat)	+4.9%
* 5.	Seat A (2) Seat B	Kenai-Cook Inlet	18,872.95 (9,436.475/seat)	~~-3.5%~~ -4.2
* 6.	(1)	Prince William Sound	8,906.19	~~-3.6%~~ -6.7%
* 7.	(1)	North Kenai-South Anchorage	9,485	+3.0%
* 8.	Seat A (2) Seat B	Campbell-Hillside	19,325.8 (9,662.9/seat)	+4.9%
* 9.	Seat A (2) Seat B	Turnagain-Sand Lake	19,155.9 (9,577.95/seat)	+4.0%
*10.	Seat A (2) Seat B	Mid-town	18,183.5 (9,091.75/seat)	-1.3%
*11.	Seat A (2) Seat B	Spenard	18,804.1 (9,402.05/seat)	-2.1%
*12.	Seat A (2) Seat B	Downtown	18,678.4 (9,339.2/seat)	+1.4%
*13.	Seat A (2) Seat B	Elmendorf AFB-Mountain View	19,173.1 (9,586.55/seat)	+4.1%
*14.	Seat A (2) Seat B	South Muldoon	18,265.4 (9,132.7/seat)	- .8%
*15.	Seat A (2) Seat B	Chugiak-Eagle River-Ft. Richardson	18,395 (9,197.5/seat)	- .1%

House District		Name	Population	Population Variance
16.	Seat A (2) Seat B	Matanuska-Susitna	17,692.23 (8,846.115/seat)	-3.9%
17.	(1)	Interior Highways	8,917.57	-3.2%
18.	(1)	Southeast North Star Borough	9,300.0	+ .9%
19.	(1)	Outer Fairbanks	8,934.3	-3.0%
20.	Seat A (2) Seat B	Fairbanks City	18,319.7 (9,159.8/seat)	- .5%
21.	(1)	West Fairbanks	9,247.1	+ .4%
22.	(1)	North Slope-Kotzebue	8,999.06	-2.3%
23.	(1)	Norton Sound	9,338.86	+1.4%
24.	(1)	Interior Rivers	8,936.12	-3.0%
25.	(1)	Lower Kuskokwim	9,432.35	+2.4%
26.	(1)	Bristol Bay-Aleutian Islands	9,157.61	- .6%
27.	(1)	Kodiak-East Alaska Peninsula	9,592.40	+4.1%
		TOTAL ADJUSTED POPULATION	368,420.29	
		(Less Non-Resident Military and Dependents)		

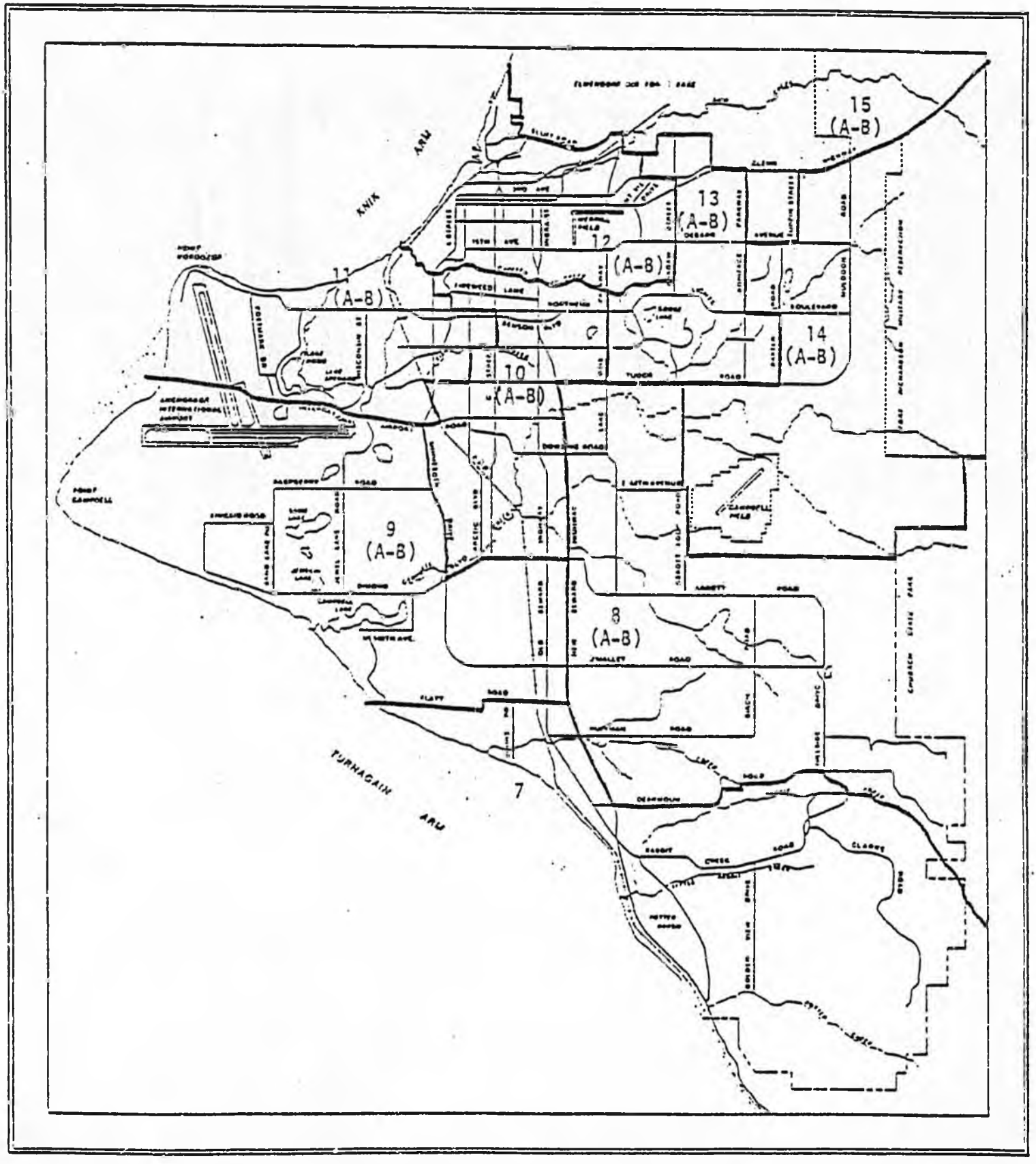
Southeast Alaska	Maximum Overpopulation	+4.9%	District 4
	Maximum Underpopulation	-9.9%	District 1
	Total Combined Variance	14.8%	
Other Districts	Maximum Overpopulation	+4.9%	District 8
	Maximum Underpopulation	-3.9%	District 17
	Total Combined Variance	8.8%	

*Revisions were made in these districts in order to make corrections to the 1981 Reapportionment Plan in accordance with Superior Court Judge Milton Souter's order dated October 12, 1983, and includes technical corrections made to the 1980 census data.

PLAN 2c - REVISED
ANCHORAGE ELECTION DISTRICTS
December 9, 1983



1981 ANCHORAGE ELECTION DISTRICTS



These boundaries are approximate.

AGENDA

REAPPORTIONMENT ADVISORY BOARD

December 14 - 15, 1983 Meeting
1024 W. 6th
Legislative Information Office
Anchorage, Alaska

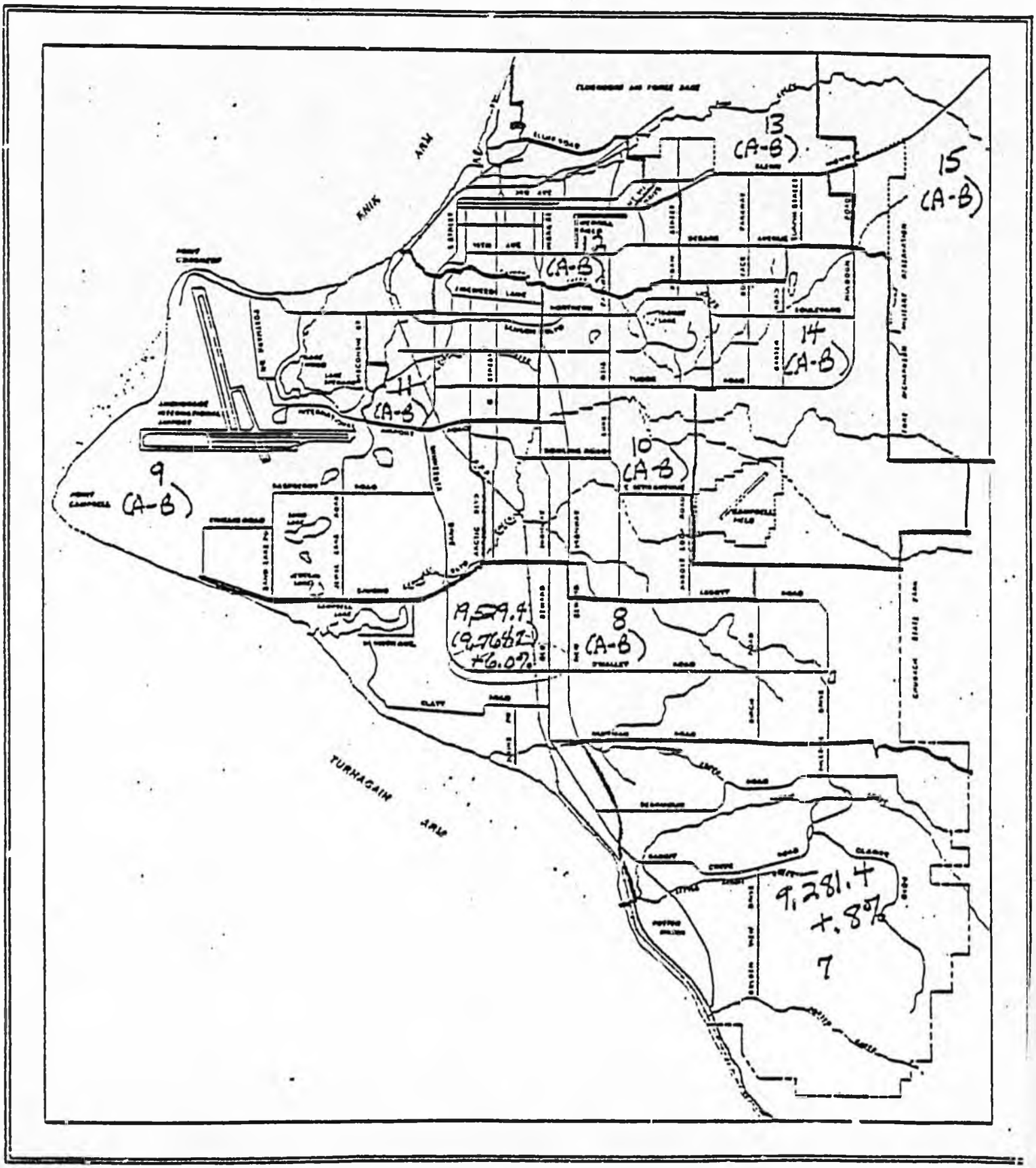
1. Call to Order
2. Discussion of Plan 2c
3. Discussion of Guidelines for Senate Terms
4. Other Business
5. Adjournment

Revised Plan 2C-1

ANCHORAGE ELECTION DISTRICTS

December 12, 1983

Numbers, & Don't Work

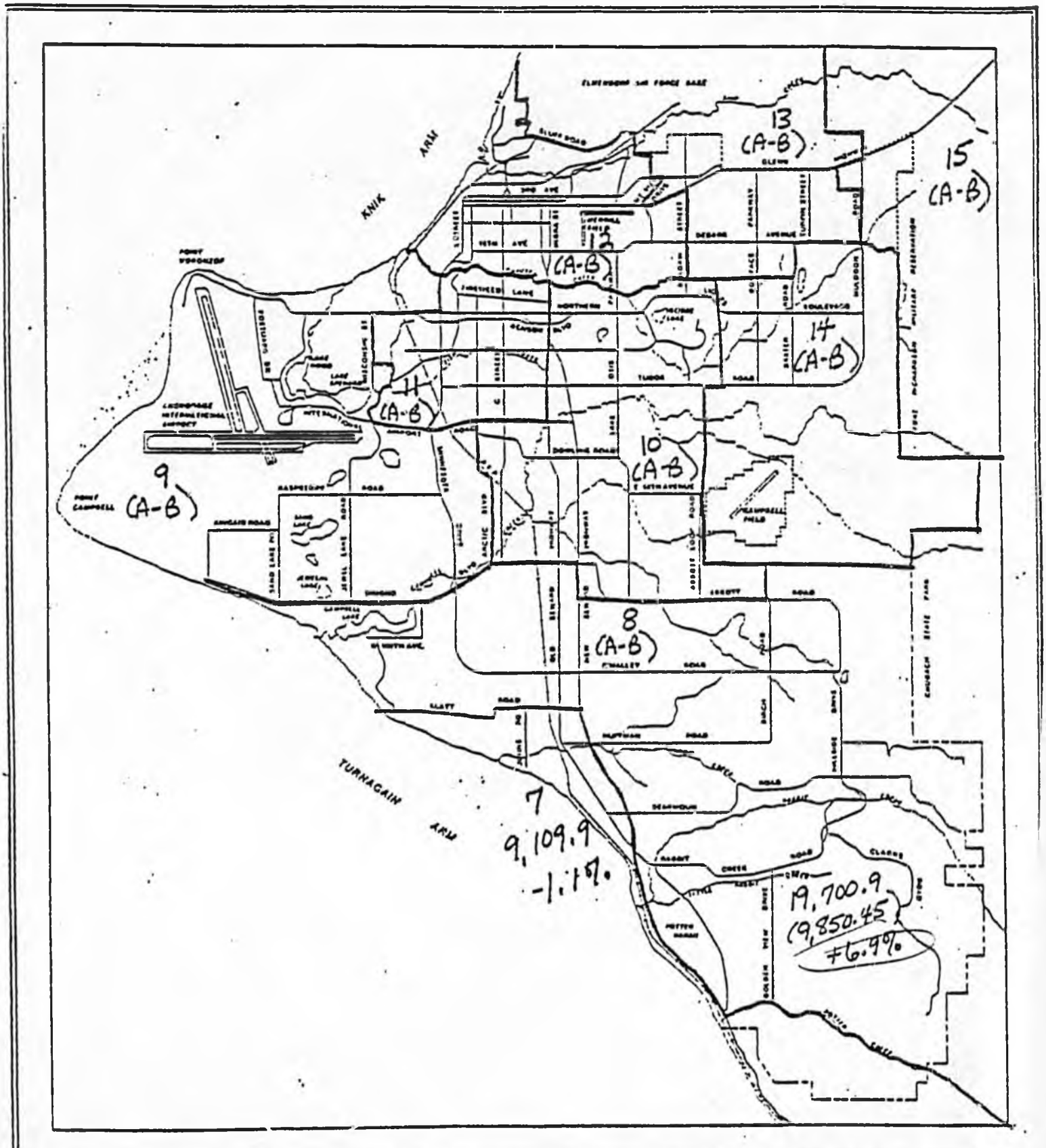


Revised Plan 2C-2

ANCHORAGE ELECTION DISTRICTS

December 12, 1983

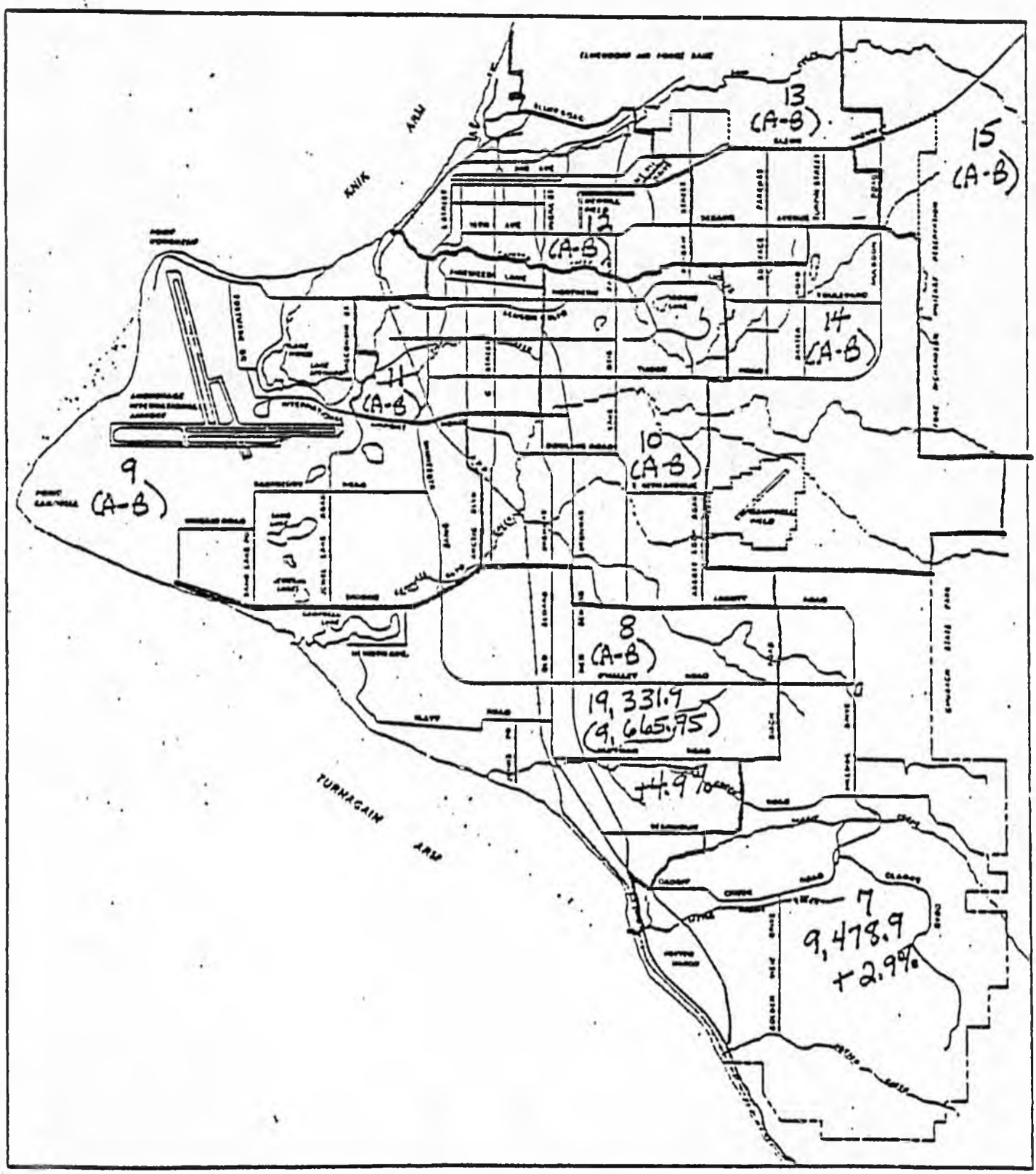
Numbers Don't Work



Revised Plan 2C-3

ANCHORAGE ELECTION DISTRICTS

December 12, 1983

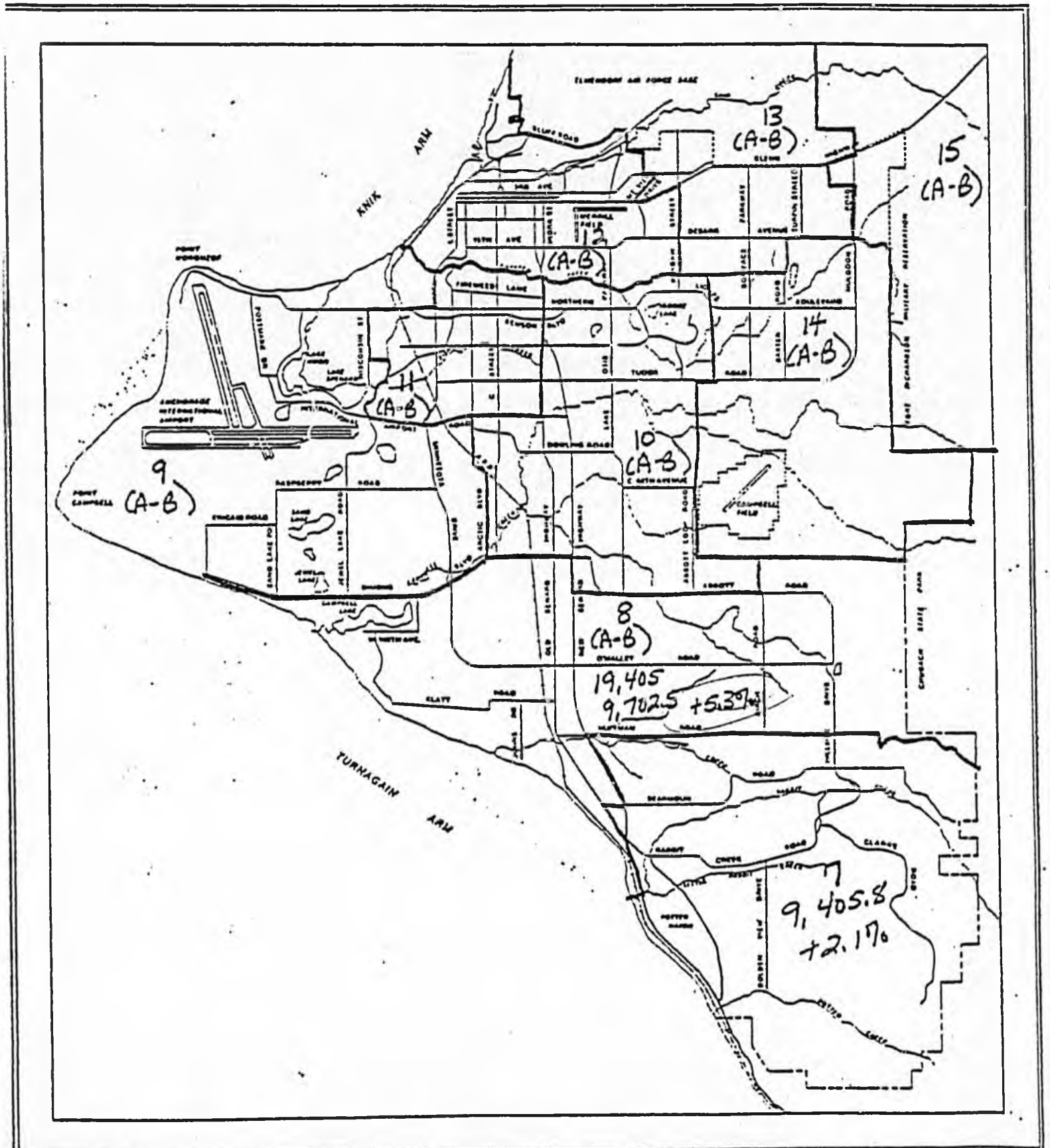


Revised Plan 2C-4

ANCHORAGE ELECTION DISTRICTS

December 12, 1983

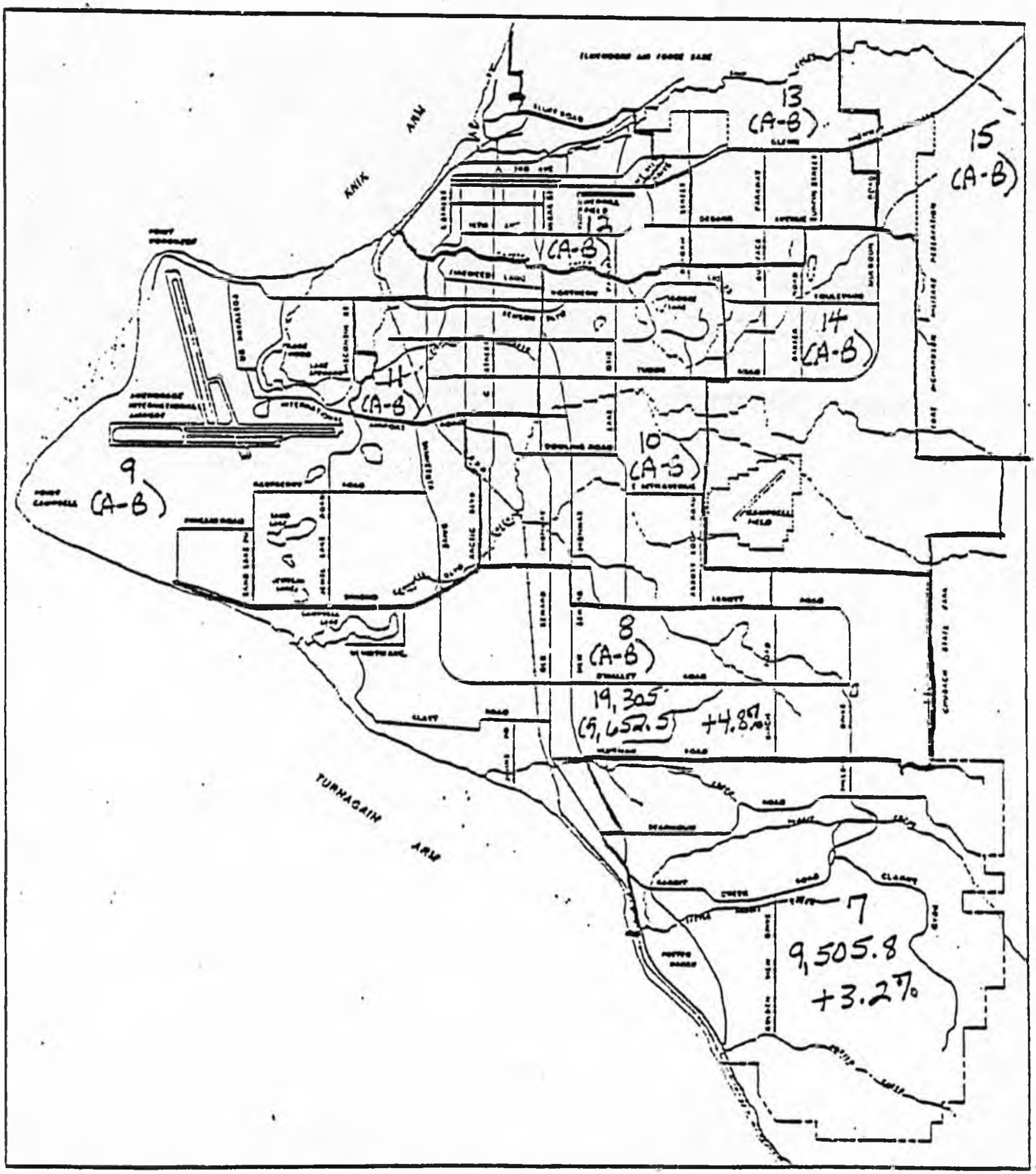
Numbers Don't Work



Revised Plan 2C-5

ANCHORAGE ELECTION DISTRICTS

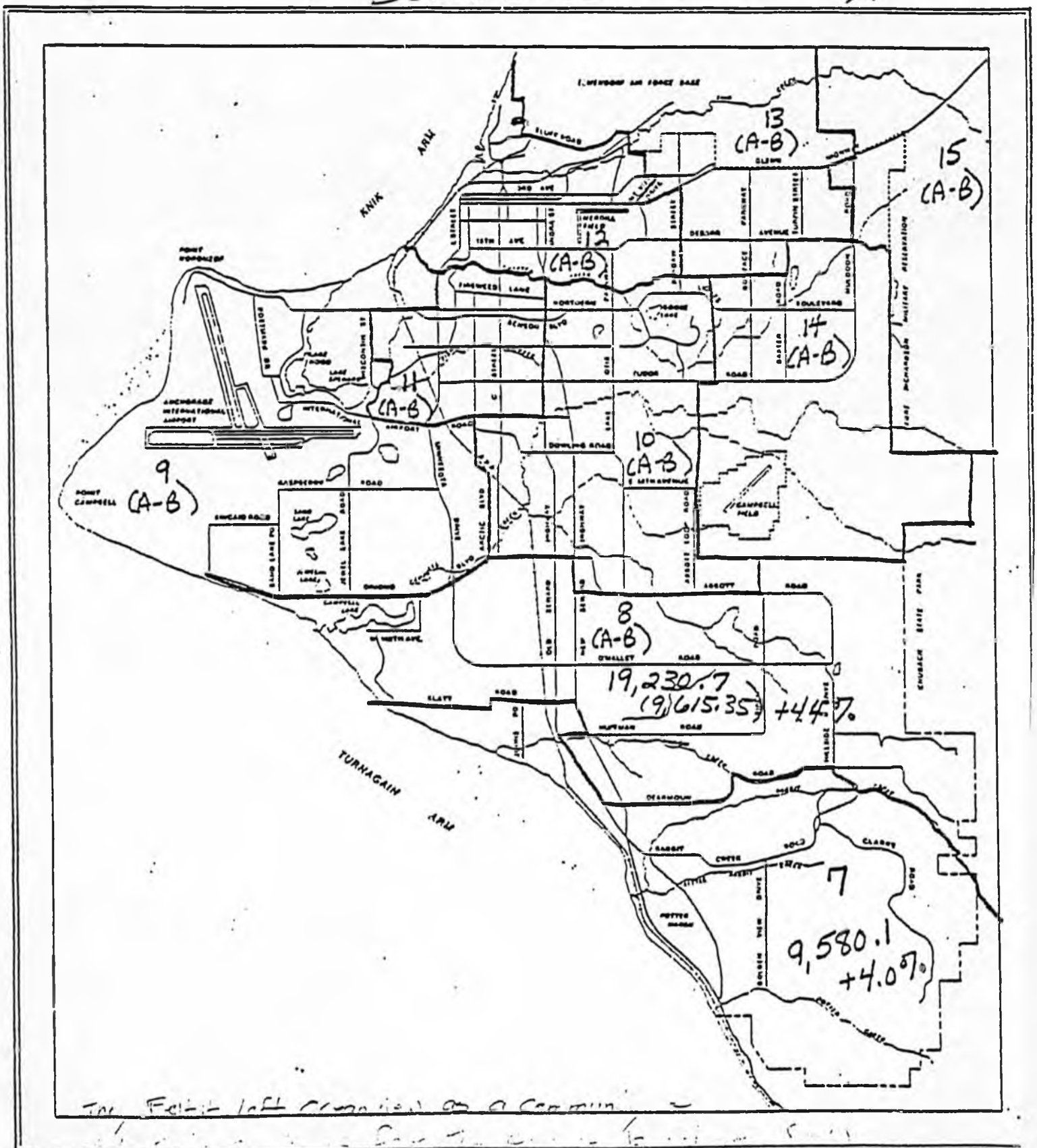
December 12, 1983



Revised Plan 2C-6

ANCHORAGE ELECTION DISTRICTS

December 12, 1983
Board Chose This Plan



Reapportionment Board Meets
Jan. 10th & 11th. 9 A.M. Rm 123 Ak. office Bldg.

Teleconference
Jan 10th. 4:30-6:30 p.m.
Southcentral & S.E.

NEWS RELEASE

REAPPORTIONMENT BOARD ADOPTS HOUSE AND SENATE PLANS
December 19, 1983

FOR IMMEDIATE RELEASE

JUNEAU -- In order to make court-mandated revisions to the 1981 Reapportionment Plan, the newly appointed Reapportionment Board has tentatively adopted two redistricting plans for submission to the Governor. The Board, appointed by Governor Sheffield in October, is charged with presenting recommendations to him which shift the Cordova area from House District 2 in Southeast Alaska to a Southcentral district.

PLAN 1 - House Districts

Plan 1 utilizes the same data used by the 1981 Reapportionment Board in formulating their recommendations to former Governor Hammond. The Southeast revisions include separating Metlakatla and Annette Island from District 1 and Hoonah from District 3, to replace the Cordova area in District 2.

The Cordova area in Plan 1 is placed in a Prince William Sound district, District 6, which includes the communities of Tatitlek, Valdez, Seward, Hope, Cooper Landing and Moose Pass; Port Graham and English Bay are shifted back into House District 5, a two-member district that remains virtually the same with the exception of the inclusion of the Sterling area from proposed District 7.

The Nikishka area, formerly in House District 6, has been placed with South Anchorage into House District 7. This district includes the area from Klatt Road south along the New Seward Highway to Potter Creek, and all remaining area south of Potter Creek in the Municipality of Anchorage with the Nikishka area.

Modifications to District 8 in Plan 1 include extension of the southern boundary from DeArmoun Road to Potter Creek, and rather than following the New Seward Highway to Tudor Road, the boundary turns east at Dowling Road to Lake Otis Parkway and then north to Tudor Road.

District 9's boundaries remain unchanged. District 10's western boundary is revised to follow Arctic Boulevard from International Airport Road to Fireweed Lane, then west to Spenard Road and north to Chester Creek. This also becomes the new eastern boundary of District 11.

The remaining districts in Plan 1 are the same with the exception of a minor boundary change between House Districts 12 and 13 to shift a small trailer court into District 13. This change was made as a result of testimony received by the Board.

PLAN 1 - Senate Districts

In keeping with the Superior Court order to make as few changes as possible, the Board determined that the senate districts would remain unchanged in Plan 1.

PLAN 2 - House Districts

During the course of their deliberations, the Board identified several instances where the data used for the 1981 Plan contained

a reporting error. The principal error occurred in the reporting of the census data for the Eagle River area, where 1,414 persons were indavertantly excluded. In order to address the problem with the initial census data, Governor Sheffield asked that the Board provide him with a plan which uses the most accurate census data available. Under Plan 2, which utilizes the adjusted census data, the ideal population per house seat is increased from 9,176.2 in Plan 1 to 9,210.5 in Plan 2.

The proposal for revisions to House Districts 1, 2, 3, and 4 in Southeast Alaska, and House Districts 5 and 6 for the Prince William Sound and the Kenai Peninsula are the same in Plan 1 and Plan 2. The population variances change slightly because of the increase in the ideal population per seat.

Anchorage House District 7 in Plan 2 has been revised to address some concerns expressed to the Board during the past week. District 7 previously placed the Upper Hillside area with Nikishka in a single-member district. The revised District 7 places the area south of Klatt Road to the New Seward Highway, south along the New Seward Highway to Huffman Road, west along Huffman Road to the Old Seward Highway then south along the Old Seward Highway to DeArmound Road and east along DeArmoun Road to Rabbit Creek, with Nikishka. House District 8 is a two-member district including the Campbell Lake and Hillside areas. With only minor modifications the remainder of Plan 2 is the same as originally proposed.

PLAN 2 - Senate Districts

The Board has recommended that House District 5, a two-member district on the Kenai Peninsula, become a single-member

senate district. House Districts 6 and 7 will also become a single-member senate district. In an effort to make as few changes as possible the Board decided to retain the two-member senate districts in Anchorage as utilized in the 1981 Plan. House Districts 8 and 10 will be combined into a two-member senate district as will House Districts 9 and 11, House Districts 12 and 13, and House Districts 14 and 15.

The Board's staff will be completing a legal analysis of these proposals and other alternatives in preparation of submitting their recommendations to Governor Sheffield by mid-January. The Governor has given the Board an extension from January 3 to January 16 to present their recommendations to him.

Attached to this release is a statistical summary for House Districts in Plan 1 and Plan 2. Maps of the revised districts are also included as well as a map of the 1981 election districts in Anchorage.

Copies of this material may be obtained by contacting the Reapportionment Office in Juneau at 465-3538, the Regional Governor's Offices, and Legislative Information Offices.

PLAN 1
REAPPORTIONMENT OF ELECTION DISTRICTS
STATISTICAL SUMMARY
HOUSE DISTRICTS
December 19, 1983

	House District	Name	Population	Population Variance
* 1.	Seat A (2) Seat B	Ketchikan-Wrangell-Petersburg	16,601.58 (8,300.79/seat)	-9.5%
* 2.	(1)	Inside Passage	8,924.35	-2.7%
* 3.	(1)	Baranof-Chichagof	8,448.97	-7.9%
4.	Seat A (2) Seat B	Juneau	19,332.75 (9,666.375/seat)	+5.34%
* 5.	Seat A (2) Seat B	Kenai-Cook Inlet	19,189.95 (9,594.975/seat)	+4.5%
* 6.	(1)	Prince William Sound	8,589.19	-6.4%
* 7.	(1)	North Kenai-South Anchorage	9,109.9	- .7%
* 8.	Seat A (2) Seat B	Hillside	18,269.4 (9,134.7/seat)	- .4%
9.	Seat A (2) Seat B	Sand Lake	18,004.7 (9,002.35/seat)	-1.9%
*10.	Seat A (2) Seat B	Mid-town	19,038.1 (9,519.05/seat)	+3.7%
*11.	Seat A (2) Seat B	Westside	18,960.4 (9,480.2/seat)	+3.3%
12.	Seat A (2) Seat B	Downtown	18,170.0 (9,085/seat)	-1.0%
13.	Seat A (2) Seat B	Mountain View-University	18,907.5 (9,453.75/seat)	+3.02%
14.	Seat A (2) Seat B	Muldoon	19,031.5 (9,515.75/seat)	+3.7%
15.	Seat A (2) Seat B	Chugiak-Eagle River-Eagles	18,560.7 (9,280.35/seat)	+1.13%
16.	Seat A (2) Seat B	Matanuska-Susitna	17,642.23 (8,821.115/seat)	-3.87%

House District		Name	Population	Population Variance
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20.	Seat A (2) Seat B	Fairbanks City	18,319.7 (9,159.8/seat)	- .2%
21.	(1)	West Fairbanks	9,247.1	+ .8%
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23.	(1)	Norton Sound	9,338.86	+1.8%
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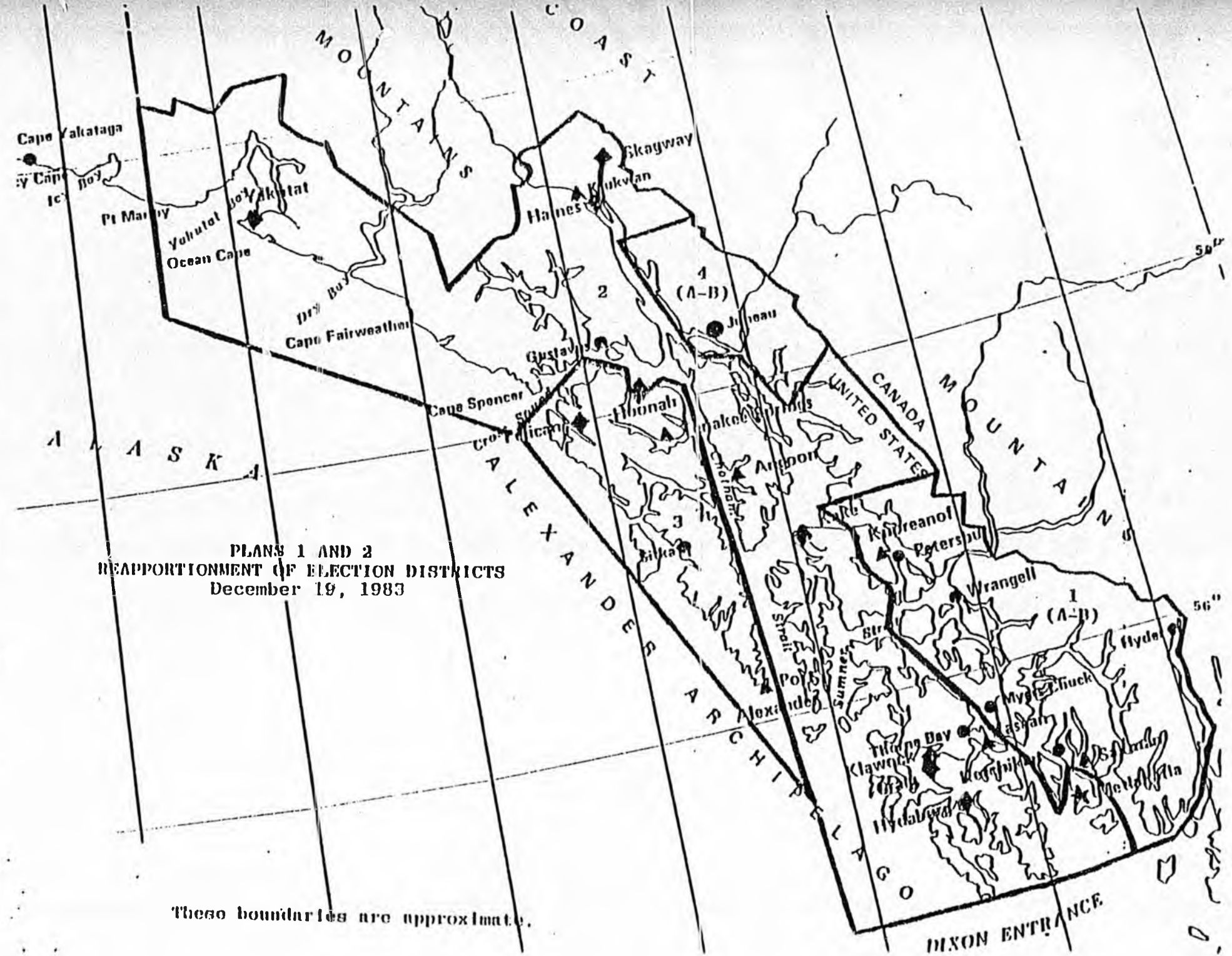
25.	(1)	Lower Kuskokwim	9,432.35	+2.8%
26.	(1)	Bristol Bay-Aleutian Islands	9,157.61	- .2%
27.	(1)	Kodiak-East Alaska Peninsula	9,592.40	+4.53%
		TOTAL POPULATION	367,050.29	
		(Less Non-Resident Military and Dependents)		

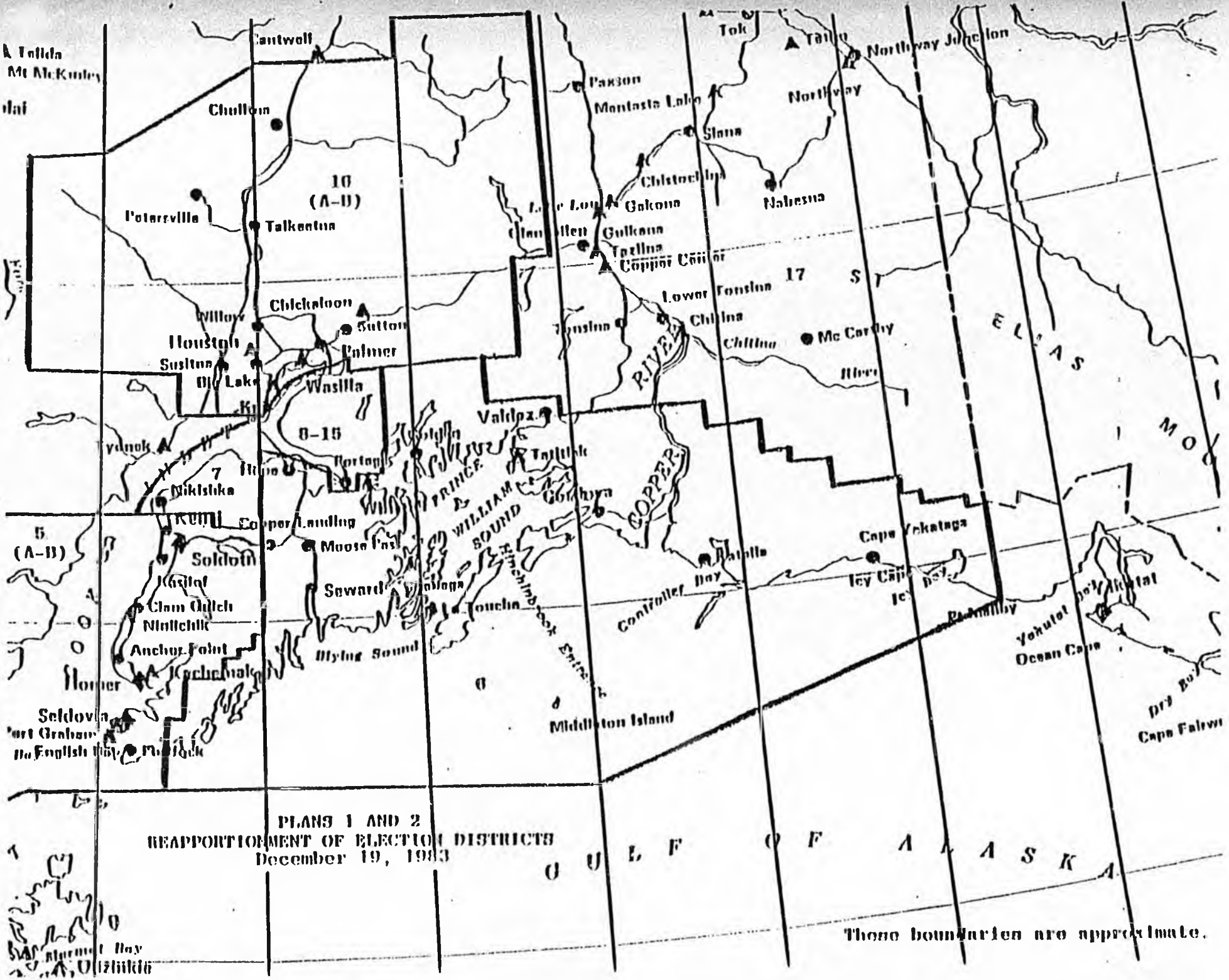
Southeast Alaska	Maximum Overpopulation	+5.34%	District 4
	Maximum Underpopulation	-9.5 %	District 1
	Total Combined Variance	14.84%	
Other Districts	Maximum Overpopulation	+4.53%	District 27
	Maximum Underpopulation	-6.4 %	District 6
	Total Combined Variance	10.93%	

*These districts were revised in order to make corrections to the 1981 Reapportionment Plan in accordance with Superior Court Judge Milton Souter's order dated October 12, 1983.



PLANS 1 AND 2
REAPPORTIONMENT OF ELECTION DISTRICTS
December 19, 1983

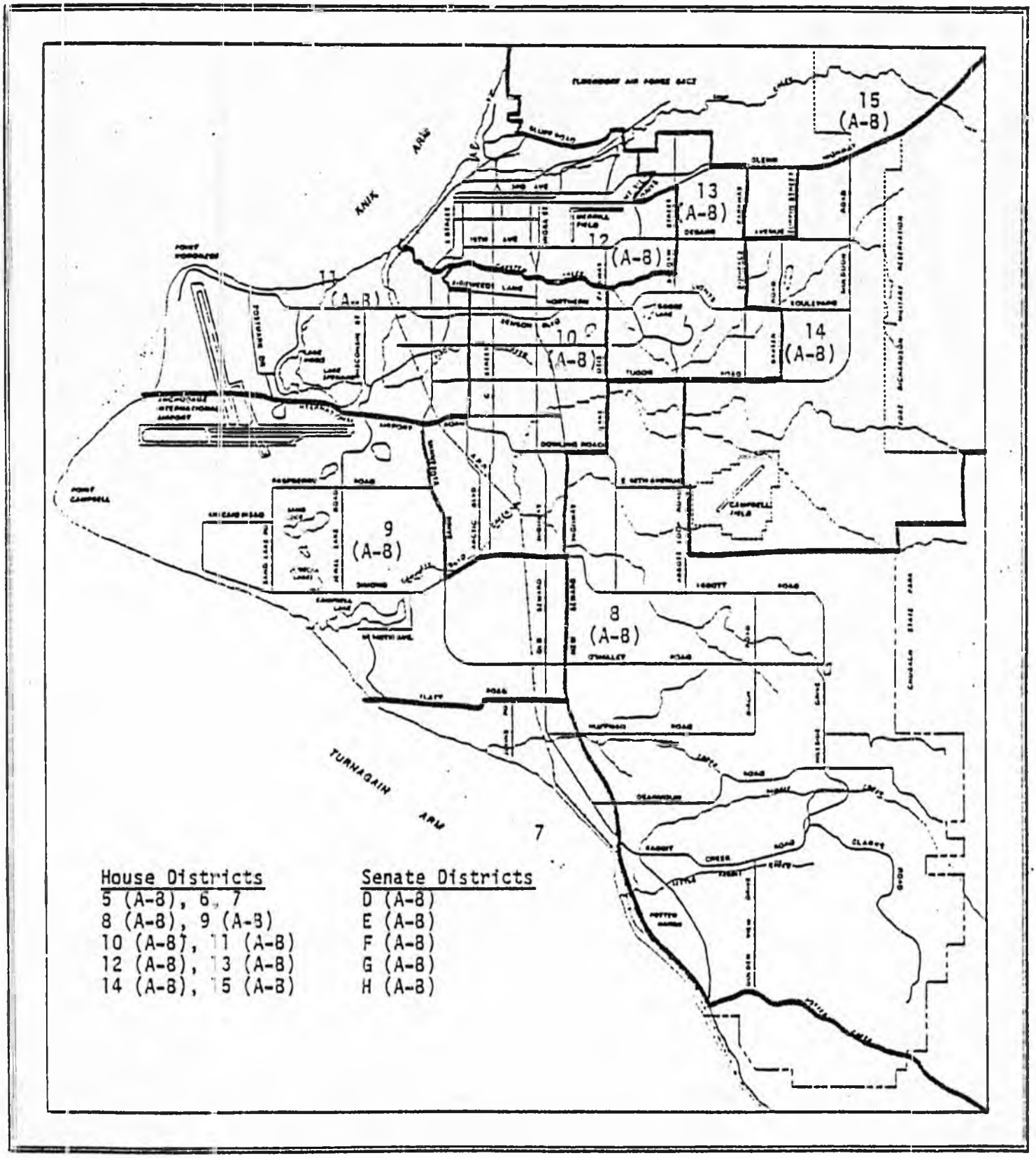
These boundaries are approximate.



PLANS 1 AND 2
REAPPORTIONMENT OF ELECTION DISTRICTS
December 19, 1963

These boundaries are approximate.

PLAN 1
ANCHORAGE ELECTION DISTRICTS
December 19, 1983



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PLAN 2
REAPPORTIONMENT OF ELECTION DISTRICTS
STATISTICAL SUMMARY
HOUSE DISTRICTS
December 19, 1983

House District		Name	Population	Population Variance
* 1.	Seat A (2) Seat B	Ketchikan-Wrangell-Petersburg	16,601.58 (3,300.79/seat)	-9.9%
* 2.	(1)	Inside Passage	8,924.35	-3.1%
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*15.	Seat A (2) Seat B	Chugiak-Eagle River-Ft. Richardson	18,395 (9,197.5/seat)	- .1%

Rest of Alaska 153,446 Ave = -0.6

House District		Name	Population	Population Variance
16.	Seat A (2) Seat B	Matanuska-Susitna	17,692.23 (8,846.115/seat)	-3.9%
17.	(1)	Interior Highways	8,917.57	-3.2% (-4.9)
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19.	(1)	Outer Fairbanks	8,934.3	-3.0%
20.	Seat A (2) Seat B	Fairbanks City	18,319.7 (9,159.8/seat)	- .5%
21.	(1)	West Fairbanks	9,247.1	+ .4%
22.	(1)	North Slope-Kotzebue	8,999.06	-2.3%
23.	(1)	Norton Sound	9,338.86	+1.4%
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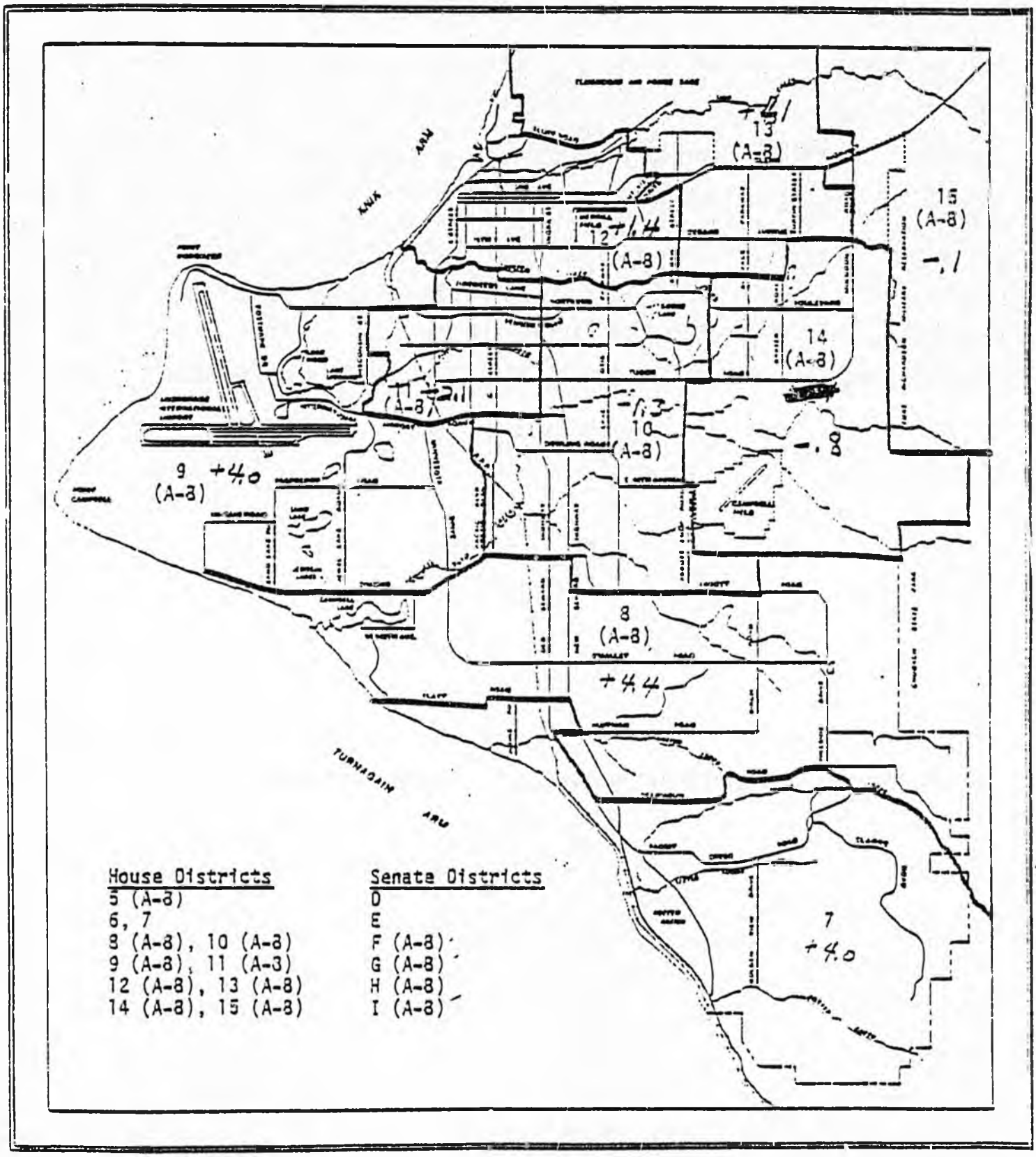
27.	(1)	Kodiak-East Alaska Peninsula	9,592.40	+4.1%
		TOTAL ADJUSTED POPULATION	368,420.29	
		(Less Non-Resident Military and Dependents)		

Southeast Alaska	Maximum Overpopulation	+4.9%	District 4
	Maximum Underpopulation	-9.9%	District 1
	Total Combined Variance	14.8%	
Other Districts	Maximum Overpopulation	+4.4%	District 8
	Maximum Underpopulation	-6.7%	District 6
	Total Combined Variance	11.1%	

*Revisions were made in these districts in order to make corrections to the 1981 Reapportionment Plan in accordance with Superior Court Judge Milton Souter's order dated October 12, 1983, and includes technical corrections made to the 1980 census data.

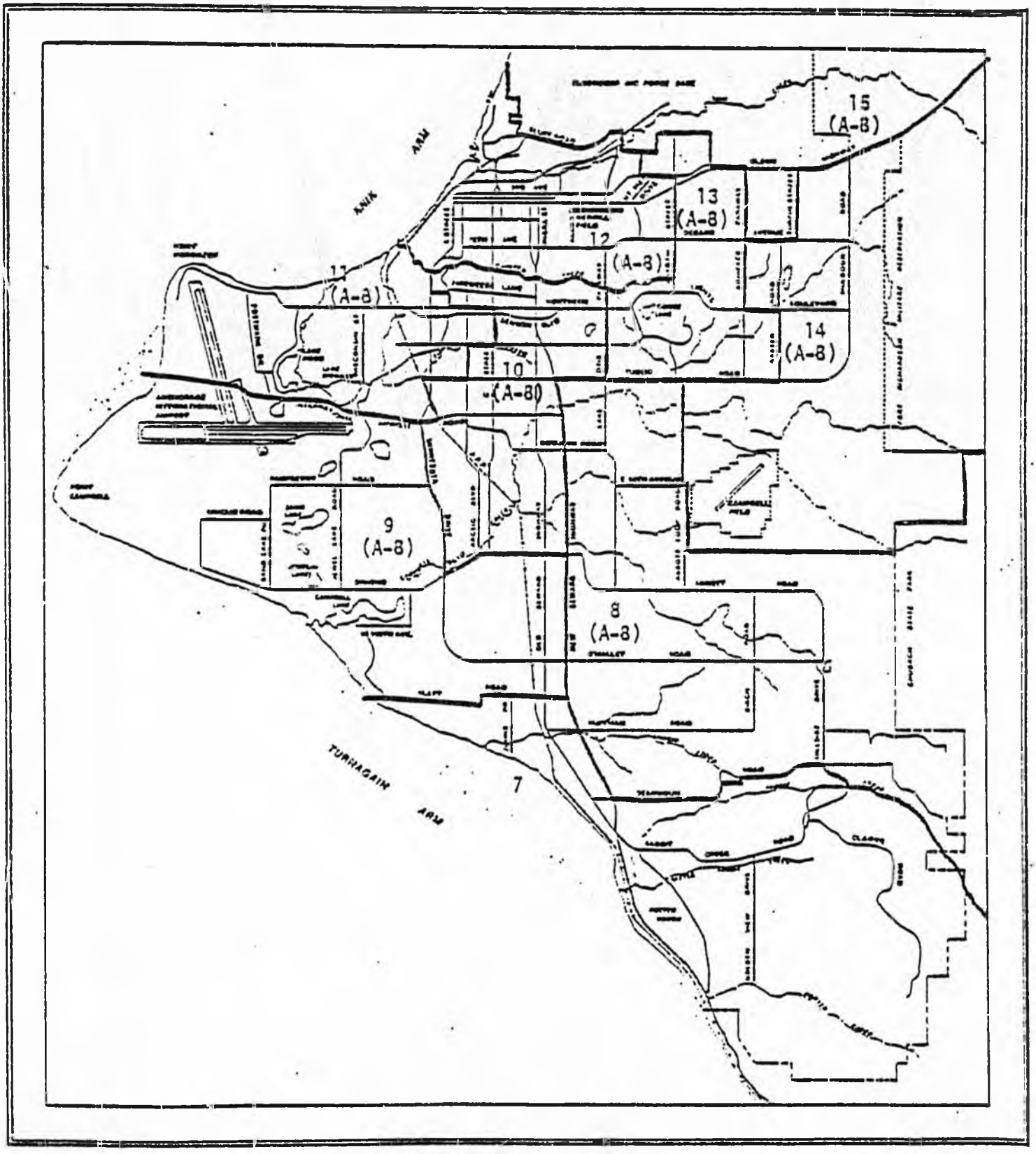
PLAN 2
ANCHORAGE ELECTION DISTRICTS
December 19, 1983



House Districts	Senate Districts
5 (A-8)	D
6, 7	E
8 (A-8), 10 (A-8)	F (A-8)
9 (A-8), 11 (A-3)	G (A-8)
12 (A-8), 13 (A-8)	H (A-8)
14 (A-8), 15 (A-8)	I (A-8)

These boundaries are approximate.

1981 ANCHORAGE ELECTION DISTRICTS



These boundaries are approximate.

Alaska State Legislature

REPRESENTATIVE
TERRY MARTIN
DISTRICT 8
CHAIRMAN—LABOR AND COMMERCE COMMITTEE
PHONE 465-3473

3960 REKA DRIVE—86
ANCHORAGE, AK 99504
PHONE 333-6990

DURING LEGISLATURE
POUCH V
STATE CAPITOL
JUNEAU, AK 99811
PHONE 465-3784

December 29, 1983

Mr. Willie Hensley
c/o Reapportionment Board
Pouch A
Juneau, AK 99811

Attention: Karen Rehfeld

Dear Mr. Hensley:

A copy of the Board's most recent reapportionment plan (Dec.19) was most appreciated and I take this opportunity to express my concerns.

Because of past actions of the 1981 Reapportionment Board, Judge Souter's very restrictive directions, Governor Sheffield's concerns that all persons be counted, outdated constitution wording and fast growing, population, your Board faces an impossible task and is severely hampered in doing a responsible and constitutionally sound job of reapportionment. The previous Board's action seriously discriminated against the majority of Alaska's true population. All plans thus far proposed by your Board only exasperate the problem of meeting the superior requirement of one person equals one vote.

In order to save excessive court costs in the immediate future, I believe it imperative that the Board request Gov. Sheffield to ask Judge Souter and/or the Alaska Supreme Court to lift the current restrictions imposed and allow a statewide reapportionment that will properly use Federal census figures of 1980 (if we must be limited to this) and insure equal and fair representation for all Alaskans.

Admittedly this may delay reapportionment taking place until after the 1984 election but in the long run, without broader direction for the Board and considering the court's previous recommended changes in Alaska's constitution, all your current efforts seem futile.

Please also consider the following points of views on the past and present reapportionment plans.

Yours very truly,

Terry Martin

Rep. Terry Martin

cc: Board Members
Executive Director
Gov. Wm. Sheffield
Speaker of House
Senate President
Media
Attorney General's Office

In the wake of the Carpenter v. Hammond decision it seems that the current Board has strayed from the controlling consideration in reapportionment - one man, one vote. The 1980 Board strove to keep combined variances between any two districts below ten per cent. This ten per cent total population variance (from highest to lowest) seems to be the rule of thumb. In Carpenter v. Hammond, Judge Moore required the adjustment of district boundaries in Southwest Alaska to reduce the combined population variance between Districts 25 and 26 (11.5%).

The current Board appointed by Governor Sheffield, seems to weigh the socio-economic guideline (brought out in the Carpenter Case) equal to if not more important than equally populated districts. In the original reapportionment plan (June 10, 1981) there was only one variance between districts greater than ten per cent and Judge Moore required adjustment of those districts. In the plan adopted by the current Board on Dec. 19, 1983 (Plan 2) there are 28 cases where combined variances between districts exceed ten per cent. (TABLE X) Granted, there may be uncontrollable factors involved, but to leap from 1 to 28 seems excessive.

In examining past Supreme Court decisions the basis for apportionment is clearly stated. The opinion of the U.S. Supreme Court in Wesberry v. Sanders 376 U.S. 1 at 180 was: "While it may not be possible to draw congressional districts with mathematical precision, that is no excuse for ignoring our Constitution's plain objective of making equal representation for equal numbers of people the fundamental goal for the House of Representatives." And although the previous quote refers specifically to Federal Representatives, the same applies to state legislatures as noted in the opinion of the Alaska Supreme Court in Egan v. Hammond, Alaska 502P2d 856 at 875: "Under the Equal Protection & Supremacy Clause of the Constitution of the United States of America, the constitutional right to vote of every citizen of Alaska is protected against impermissible dilutions and impairments flowring from malapportionment of either the House of Representatives or the Senate."

Some would argue that the Alaska State Constitution provides guidelines other than population alone to be used for reapportionment. While contiguity, compactness, and socio-economic integration can be considered, they are not to be the controlling factors. This point is in the U.S. Supreme Courts opinion in Reynolds v. Sims 377 U.S. 533 at 579-580: "But neither history alone, nor economic or other sorts of group interests, are permissible factors in attempting to justify disparities from population - based representation." In the same opinion on page 581 the Justices noted, "But if, even as a result of a clearly rational state policy of according some legislative representation to political subdivisions, population is submerged as the controlling consideration in the apportionment of seats in the particular legislative body, then the right of all the State's citizens to cast an effective and adequately weighted vote would be unconstitutionally impaired."

In utilizing the variance concept to achieve equitable representation, there must be an underlying assumption of randomness in those variances. If one region is biased with non-random variations then the cumulative effect of those variations can be substantial. Southeast Alaska is a good example of these non-random variances and their effect. With 5 of 6 S.E. districts having significant negative variations, the average negative variation for all 6 seats is 5.5%.

While statistics are useful aids for comparison, they can also be quite misleading. In Reapportionment Plan 2 (Dec 19,1983) the average population variance in Southeast from the ideal House seat size is -3.5%. The variance for the 17 Anchorage seats from the ideal is +1.8%. (TABLE I)

Neither variance sounds excessive, but when actual numbers from Southeast and Anchorage are compared, the problem becomes apparent. The total population for six Southeast House seats is 53308 or 8885 per seat. Likewise, Anchorage's population is 159,466 for 17 seats or 9380 per seat. Direct comparison shows a difference of 495 people per average seat size. (TABLE I)

While individual variances may seem reasonable, the cumulative effect is not. Essentially, Anchorage is under represented by 495 people per seat. For 17 Anchorage seats that works out to 8415 people, which is a significant number when compared with the Southeast seat size of 8885 and the ideal seat size of 9211. Anchorage is under represented by one seat. (TABLE II)

When comparing the rest of Alaska (excluding Anchorage) with Southeast similar problems occur. There is a 271 person per seat difference between Southeast and the rest of Alaska. This works out to a cumulative inequity of 4607 people between the two regions. The total overpopulation for the whole state vs. Southeast is 8415 (Anchorage) + 4607 (Remaining Alaska) or 13022. This emphasizes that not only is most of Alaska under represented, but that Southeast Alaska is over represented when compared with the rest of the state. (TABLE III)

As noted in the order of the Alaska Supreme Court in Egan vs. Hammond, Alaska, 502P2d 856 at 875: "Under the Equal Protection and Supremacy Clause of the Constitution of the United States of America, the constitutional right to vote of every citizen of Alaska is protected against impermissible dilutions and impairments flowing from malapportionment of either the House of Representatives or the Senate."

While there have been instances where Courts have upheld reapportionment plans with variances greater than ten per cent, there are usually specific reasons for this. In Abate v. Mundt, 403 U.S. 182, the U.S. Supreme Court upheld an 11.9% total variance due to historical considerations and the fact that there were no built in bases which favored a certain area or interest. Just the opposite is true in Alaska. The variances in the reapportionment plan are strongly biased in favor of Southeast Alaska and against the Anchorage area.

In Kilgarlin v. Hill, 386 U.S. 120, the U.S. Supreme Court set a precedent in allowing a combined variance of 20.48%. They reasoned that the under populated area had a high growth rate and would soon have the population to eliminate the variance. In examining Alaska's reapportionment under this growth principle, inequities surface once again. Those areas growing fastest, which would soon justify more representation are the regions with the highest variances above the average. North Kenai - South Anchorage (+4.0%), Campbell-Hillside (+4.4%), Turnagain-Sandlake (+4.0%), Kenai-Cook Inlet (+4.2%) are all rapidly expanding, yet they all have large positive variances. It seems the Board could at least consider growth areas and rather than becoming more under represented, a region could grow into fair representation.

The major problem with all the reapportionment plans is the unequal representation afforded certain regions of the state. The 1981 Board made some mistakes which when coupled with mandates from the Carpenter v Hammond case further exacerbate the problem.

Throughout the reapportionment process the Anchorage area has been allocated more people and the Southeast region has been allocated less. This is specifically due to three things; the movement of Cordova out of Southeast, the alternative treatment of the military, and the 1980 census revisions. All of these further the inequity of representation between the two regions.

The 1981 Board received its official census data on March 12, 1981. The first Draft of the reapportionment plan, issued May 5, 1981, did not include an April Census revision which added 1414 people to Eagle River, 50 to the Mat Su Borough and subtracted 94 from the S.E. Fairbanks area. The Board still did not consider the corrections when it made revisions and issued its final plan on May 22, 1981.

Reasons for not using the updated census data are unknown. Fortunately, the current board appointed by Gov. Sheffield has utilized these corrections in at least one of its reapportionment plans (2). The reasons for still considering Plan I, which doesn't use corrected data, are unclear. The 1414 people in Eagle River need to be represented. They can't be just overlooked.

The 1981 Board utilized a plan to consider a certain proportion of military personnel as residents for reapportionment purposes. In the original reapportionment plan (June 10,1981, resident military personnel were determined at only 7 major military installations (Elmendorf, Eilson, Ft. Wainwright, Ft. Richardson, Ft. Greeley, Adak Naval Base, and the Kodiak Coast Guard Station). This resulted in 31,363.8 non-resident military personnel. Since all military were included in Alaska's population during the 1980 Federal census, these 31,363.8 were subtracted from the census figures to arrive at Alaska's resident population for reapportionment (400,481-31,353,7 = 369.117.2).

Problems arise in the application of the plan. Why did the 1981 Board only consider the seven major military installations? They didn't include approximately 2491 other military personnel throughout the state. Of the 2491 only 424 were considered residents. Therefore 2067 more people should be subtracted from the total state population to arrive at the base figure for reapportionment.

Fortunately, the current Board has considered these additional personnel in formulating both of their reapportionment plans (Plan 1 and Plan 2). The only criticism to be levied upon the current Board is their lack of public disclosure. No where do they explain this exclusion of the additional 2067 non-resident military personnel in the current plans (Plan 1 & 2). The population figures change in many districts without any explanations or indications of change.

In the Carpenter v Hammond case the Alaska Supreme Court decided that Cordova was not similar enough in socio-economic terms to be included in the Iceworm District. Their mandate was to take Cordova out of the Southeast district and move it elsewhere. This shift reduced Southeast's population base by 2241.

Also, in Carpenter v Hammond, Judge Souter,, who has jurisdiction in the case, ordered that the reapportionment be done consistent with federal and state constitutional requirements of equal representation, but with the fewest possible changes to the original plan (June 10,1981). All of these guidelines make the current Boards reapportionment job extremely difficult.

To tie in all three problem areas it must be noted again that throughout the reapportionment process, Anchorage has been gaining people and S.E. has been losing them, resulting in an unacceptable imbalance of representation.Due to the census correction, Anchorage area gained 1414 people. As a result of considering additional non-resident military, rural Alaska lost 2067 people, and specifically Southeast lost 484. Most significant of all is moving Cordova, thus reducing Southeast's population by another 2241 people. So, as a result of the reapportionment the disparity between Anchorage and Southeast has grown by 4139 people (1414 + 2241 + 484).

Since the Carpenter v. Hammond case which required removal of Cordova from the Iceworm District, the current Board seems to be picking and choosing when to apply the socio-economic test and when not to. In Plan 2 (Dec. 19,1983) Port Graham and English Bay were reincluded in District 5 because of the feeling from public testimony that their ties were with Seldovia and Homer. This move increased the variances of both Districts 5 and 6, but the Board made the move because of the economic ties and they felt it was reaching a long way from Prince William Sound just to include these two communities.

The same socio-economic and distance arguments can be made for Metlakatla in Southeast, yet no changes were made. The people of Metlakatla have strongly voiced their desire to be politically attached to Ketchikan only a few miles away and not be forced to vote for a representative that lives four or five hundred miles away. All of their ties are with Ketchikan - social, economic, transportation, communication, yet Metlakatla is included with Yakutat, Haines and Skagway who are far away and have few if any direct ties. It seems the Board is reaching as far in this Southeast District as it did with Port Graham and English Bay, yet no changes have been made.

Including Nikishki (North Kenai) in one district with South Anchorage seems as bad as the above cases. People from North Keani and South Anchorage have expressed their displeasure at being combined into one district. All of Nikishki's ties are with Kenai. Travel must be through Kenai to get to Anchorage. Nikishki belongs to the Kenai school district not Anchorage. Again, despite few ties between two areas and public opposition the Board has placed them in the same district.

Why are a few blocks from Muldoon plased in District 15 which is primarily Eagle River-Chugiak? Why is Tyonek, an area in the Kenai School District and with all its ties to Anchorage or Kenai, the only coastal village in a huge district stretching far into the Interior? It seems that the current Board lacks a consistent set of guidelines to apply during the reapportionment process.

One guideline which would improve representation would be to fashion all single member House and Senate seats. The history of Alaska since the Statehood convention of 1955-56 has shown a continuous effort to move toward single member elected House and Senate seats. Catering to this principle that insures and enhances one person one vote will readily decrease the problems of equal representation and drawing of election boundary lines.

Single member seats would guarantee that your representative would live in your District. One strong block of voters, such as Eagle River or downtown wouldn't be able to elect both representatives for the whole election area.

Single seat districts further guarantee representation for neighborhoods in large urban areas. In the future Fairview and Mountain View will always be sure of a Representative that truly lives in their area. Chugiak-Eagle River can easily support its own single Senate seat and two House seats. Under the current districts (1981) there are no Senators living in District 13. If Plan 2 (Dec. 19,1983) were adopted and the current Senators were re-elected, Districts 13 and 14 (all of east Anchorage) would lack senators living in their district.

Multi-member districts also discriminate against the political candidates in them. It costs a lot more to run a campaign focused at 18,500 people (multi-member district size) than one for 9250 people. Single member districts make it more feasible (less money) for the average person to run for office. And once in office it costs less for mailouts to smaller districts. Fewer people to represent would hopefully result in better representation. In large districts (area wise) single seats cut down the distance a representative must travel to physically meet constituents.

It must be noted again that many of the problems mentioned in this report are unsurmountable when working within the constraints given the current Board. The Boards current plans (1 and 2) which discriminate against a large number of people and many regions of the state, will no doubt face expensive and time consuming litigation. Rather than end up with a patch-work reapportionment that must be lived with until 1990, why not take the necessary time and use specific guidelines to fashion a fair and equitable state reapportionment plan.

TABLE I

Anchorage vs Southeast

Plan 2
Dec. 19, 1983

Southeast 6 House Seats

District	Population	Variance
D1	16602	-9.9
D2	8924	-3.1
D3	8449	-8.3
D4	19333	+4.9
	6/ 53308 =	8885/seat

Ave. S.E. variance) 3.5%

Ave. Anchorage Variance +1.8%

State Total 368,420 ÷ 40 = 9210.5

Anchorage

District	Population	Variance
D7	9580	+4.0
D8	19231	+4.4
D9	19156	+4.0
D10	18184	-1.3
D11	18804	+2.1
D12	18678	+1.4
D13	19173	+4.1
D14	18265	- .1
	17/159466 =	9380/seat

Difference per average seat Anchorage vs S.E. 9380 - 8885 = 495

Total people not represented in Anchorage 495 x 17 = 8415

TABLE II

Southeast vs Anchorage

Plan 2
Dec 19, 1983

Total Population 53308 + 159466 = 212774
Southeast Anchorage

Ave Juneau Seat Size 8885 212774 ÷ 8885 = 23.95

23.95 - 6 = 17.95

Should be 6 seats in Juneau and 18 in Anchorage

S.E.

6/ 53308 = 8885/seat

Ave S.E. variance - 3.5%

Anchorage

17/ 159466 = 9380/seat

Ave Anch variance + 1.8%

9380 - 8885 = 495/seat

495 x 6 = 2970

495 x 17 = 8415

TABLE III

Remaining AK (excluding Anch) vs Southeast

Plan 2
Dec. 19, 1983

Remaining Alaska (excluding Anch)

District	Population	Variance		
D5	19190	+4.2		
D6	8598	-6.7		
D16	17692	-3.9		
D17	8918	-3.2		
D18	9300	+ .9		
D19	8934	-3.0		
D20	18320	- .5		
D21	9247	+ .4		
D22	8999	-2.3		
D23	9339	+1.4		
D24	8936	-3.0	9210	
D25	9432	+2.4	-9156	
D26	9158	- .6	54	
D27	9592	+4..	54	
	17/ 155655 = 9156/seat		9210 = -0.6%	

Southeast 6 seats

District	Population	
D1	16602	
D2	8924	
D3	8449	
D4	19333	
	6/ 53308 = 8885/seat	
	9210	
	-8885	
	325	
	325	
	9210 = 3.5%	

9156 - 8885 = 271/seat

271 x 17 = 4607

Anchorage vs Remain Alaska (excluding S.E.)

Plan 2
Dec. 19, 1983

Anch	17 seats	159466	9380	+1.8%
Alaska	17 seats	-155656	9156	-0.6%
		3820	224/seat	

Anchorage vs Rest of Alaska (including S.E.)

Anch	17 seats	159466	9380/seat	+1.8%
Alaska	23 seats	208954	9085/seat	-1.4%
			295/seat	

295
x17
5015

Plan 1

S.E. 6 seats

District	Population
D1	16602
D2	8924
D3	8449
D4	19333
6/	53308 = 8885/seat

Ave S.E. Variance = -3.2%
Ave S.E. Seat size - 8885

Anchorage 17 seats

District	Population
D7	9110
D8	18269
D9	18005
D10	19083
D11	18960
D12	18170
D13	18908
D14	19032
D15	18561
17/	158053 = 9297/seat

Ave Anch Variance = +1.3%
Ave Anch Seat size = 9297

9297 - 8885 = 412/seat

6 S.E. seats vs 6 Ave Anch seats 53308 - 55782 = 2474

6 S.E. seats vs 6 most populated Anch seats 57030 - 53308 = 3722

Total Anch under represented vs. S.E. = 17 x 412 - 7004

Total Alaska under represented vs. S.E. = 7004 + 4641 = 11645

TABLE X

Districts With Combined Variances
Greater Than Ten Percent

Districts	Variances
1 v. 4	9.9 + 4.9 = 14.8
1 v. 5	9.9 + 4.2 = 14.1
1 v. 7	9.9 + 4.0 = 13.9
1 v. 8	9.9 + 4.4 = 14.3
1 v. 9	9.9 + 4.0 = 13.9
1 v. 11	9.9 + 2.1 = 12.0
1 v. 12	9.9 + 1.4 = 11.3
1 v. 13	9.9 + 4.1 = 14.0
1 v. 18	9.9 + 0.9 = 10.8
1 v. 21	9.9 + 0.4 = 10.3
1 v. 23	9.9 + 1.4 = 11.3
1 v. 25	9.9 + 2.4 = 12.3
1 v. 27	9.9 + 4.1 = 14.0

Districts	Variances
3 v. 4	8.3 + 4.9 = 13.2
3 v. 5	8.3 + 4.2 = 12.5
3 v. 7	8.3 + 4.0 = 12.3
3 v. 8	8.3 + 4.4 = 12.7
3 v. 9	8.3 + 4.0 = 12.3
3 v. 11	8.3 + 2.1 = 10.4
3 v. 13	8.3 + 4.1 = 12.4
3 v. 25	8.3 + 2.4 = 10.7
3 v. 27	8.3 + 4.1 = 12.4
6 v. 4	6.7 + 4.9 = 11.6
6 v. 5	6.7 + 4.2 = 10.9
6 v. 8	6.7 + 4.4 = 11.1
6 v. 9	6.7 + 4.0 = 10.7
6 v. 13	6.7 + 4.1 = 10.8
6 v. 27	6.7 + 4.1 = 10.8

BILL SHEFFIELD
GOVERNOR

STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

January 6, 1984

The Honorable Terry Martin
State Representative
Pouch V
Juneau, AK 99811

Dear Mr. Martin:

Thank you for your recent letter expressing your concerns with the 1981 Reapportionment Plan, the restrictions placed on this Board by the Court, and our current proposals to amend the plan. We appreciate your time in preparing the extensive background information that accompanied your letter.

First, let me say that it is unlikely that this Board would encourage Governor Sheffield to seek authority from the Court to undertake a comprehensive redistricting of the state. Although we understand and appreciate your contention that there may have been serious problems with the work of the previous board, it appears the courts have already made their decision on the validity of that plan.

Secondly, we have been subjected to criticism from those who believe we have already gone too far in making our revisions. Those criticisms center around the use by this Board of official corrections made by the U.S. Bureau of the Census to the 1980 census counts for Alaska. These corrections were not available to the 1981 Board. As you know, our state constitution requires that reapportionment utilizes federal census data. We feel that this implies use of the most accurate census data available.

Finally, we realize that some people will be unhappy with our recommendations. Reapportionment is a very difficult task and one that is surrounded by controversy. Given the history of reapportionment litigation in our state, it is

likely that this plan will face legal challenge. Please be assured that this Board has made every effort to follow the constitutional and court-mandated guidelines in developing our proposal.

Thank you again for your letter.

Sincerely,

William Hensley/ggr

William Hensley
Chairman
Reapportionment Board

cc: Governor Sheffield
Senator Jalmar Kerttula
Representative Joe Hayes
Attorney General Gorsuch
Press

Alaska State Legislature

Official Business

Pouch V
State Capitol
Juneau, Alaska 99811

January 9, 1984

FOR IMMEDIATE RELEASE
CONTACT: REP. TERRY MARTIN
465-3783 or 465-3784

REP. MARTIN SEEKS CONSTITUTIONAL AMENDMENT ON REAPPORTIONMENT PROCESS

JUNEAU - Rep. Terry Martin today introduced a House Joint Resolution which would place a constitutional amendment to alter the state's reapportionment process on the 1984 general election ballot.

Martin said the constitutional amendment is needed to "correct the potential for party politics of being the major consideration for reapportionment."

As proposed in HJR 53:

- The entire state would be reapportioned into single-member House and Senate election districts;

- Only a two percent disparity in population will be allowed statewide and no more than five percent disparity per district;

- All military personnel and their families must be counted equally throughout the state.

"This resolution calls for the necessary changes in the state constitution pertaining to equality of representation for all Alaskans," said Martin, R-Anchorage.

"A major feature of this is to correct a problem that discriminates against military residents," Martin said. "As it is now, most military residents are treated like second-class citizens."

Currently, most military residents living in the southeast and southwest portions of the state are counted as "100 percent" residents. But in Anchorage and Fairbanks, Martin said, the military residents count as only "15 percent" residents. This inequitable formula, Martin said, inflates the population statistics for the southern parts of the state while "robbing Anchorage and Fairbanks of equal representation."

"The disparity from district to district is appalling," Martin said. "Some areas, primarily Anchorage, are under represented."

Martin said his resolution would allow only a five percent disparity in population in each district "with some justification for socio-economic factors."

"But in the last reapportionment (1980) and the current reapportionment negotiations, the boards have put socio-economic factors ahead of equal representation."

Martin said he is confident the resolution would be approved by the voters, "If this does pass both houses I'll be surprised," Martin said. "It won't allow them to play as many games."

But Martin said he felt the public, if given the opportunity, would support his measure.

"It's fair, it's equal and I just hope the other members of the legislature put aside party politics and vote for something that allows the state equal representation for all residents.

"This is really getting down to the fundamentals of pure democracy," Martin concluded. "The goal is to get this on the ballot and let the people see the value of it and vote accordingly."

# # # # # #

Not Copy

MEMORANDUM State of Alaska

TO: William Hensley, Chairman
Reapportionment Board

DATE: January 10, 1984

FILE NO:

TELEPHONE NO: 465-3600

FROM: Norman C. Gorsuch
Attorney General

SUBJECT: Legal review of proposed reapportionment plan

By: Jonathan B. [illegible]
Assistant Attorney General

Following the Reapportionment Board's (Board) tentative adoption on December 16, 1983 of proposed amendments to the 1981 Reapportionment Plan (Plan), the Department of Law requested an opportunity to review certain legal concerns which had been raised during the course of the Board's deliberations. Our legal review of several probable areas of concern are set forth in this memorandum. We caution, however, that the law relating to reapportionment is, in many respects, quite unsettled and that, as a consequence, our legal analysis is intended more as an indication of probable judicial analysis than as a statement of legal validity. 1/

I. Southeast Alaska

The proposed configuration of districts in Southeast Alaska retains the conceptual approach embodied in the 1981 Plan. Cordova, of course, has been removed from District 2. To retain the concept of a predominantly rural, "island chain" district, the communities of Metlakatla and Hoonah were removed from Districts 1 and 3 respectively, and relocated into District 2. In other respects, the 1981 Plan is unchanged. The comparative variation of this proposed plan is 14.8 percent, with District 4 (Juneau) the most overpopulated district, and District 1 (Ketchikan) the most underpopulated.

1/ To assist in this review, the Department of Law engaged the law firm of Sanosky, Chambers, Sachse & Guido, a firm located in Washington, D.C. with substantial expertise in the areas of reapportionment law. The views of the Sanosky firm are included within this memorandum.

To evaluate the proposed configuration, we assess the proposed Plan as opposed to Southeast Option No. 5, an alternative option considered by the Board which rejects the concept of District 2, and instead divides the region in a more horizontal fashion. Under this plan, District 1 would be a two-member district which includes Ketchikan, Metlakatla, Wrangell, and Prince of Wales. District 2 would include Petersburg, Hoonah, Gustavus, Haines, Skagway, and Yakutat. The comparative variation in this plan is 15.5 percent.

A. Population Variances

We first address whether the proposed comparative variance of 14.8 percent raises a substantial legal problem under the Equal Protection Clause of the United States and Alaska Constitutions.

In Reynolds v. Sims, 377 U.S. 533 (1964), the Supreme Court enunciated the basic test for judging the population distribution in a state legislative redistricting plan, with the Equal Protection Clause:

> [T]he Equal Protection Clause requires that a State make an honest and good faith effort to construct districts, in both houses of its legislature, as nearly of equal population as is practicable.

377 U.S. at 577. The Court recognized that "legitimate considerations incident to the effectuation of a rational state policy," 377 U.S. at 579, such as a desire to respect subdivision lines or to provide for compact districts of contiguous territory, justify some deviations from the principle of equal population. But it cautioned that the "overriding objective" of state redistricting plans "must be substantial equality of population among the districts, so that the vote of any citizen is approximately equal in weight to that of any other citizen." Id. 2/

2/ In Reynolds, the Court struck down population variance ratios of 41 to 1 in the Alabama Senate and 16 to 1 in the Alabama House. 377 U.S. at 546. On the same day Reynolds was decided, continued

In the cases subsequent to Reynolds and its companion cases, the Court refined its analysis of permissible population variances in state legislative redistricting plans. Although the Court has acknowledged that such districts are to be judged by more flexible standards than congressional districts, see e.g., Wesberry v. Sanders, 376 U.S. 1 (1964); Kirkpatrick v. Roeisler, 394 U.S. 526 (1969); Gaffney v. Cummings, 412 U.S. 735, 742 (1973), the apparent "rule" is that state legislative districts should not exceed a maximum deviation of 10 percent, and may not exceed a maximum deviation of 16.5 percent. This rule has been applied -- virtually without exception -- since the early 1970's by both the Supreme Court and the lower federal courts.

In Swann v. Adams, 385 U.S. 440 (1967), for instance, the Supreme Court disapproved of maximum variance of 25.65 percent in the Florida legislature. Similarly, it disapproved a maximum deviation of 26.48 percent in Kilgarin v. Hill, 386 U.S. 120 (1967), and deviations of 24.78 percent and 28.20 percent in Whitcomb v. Chairs, 403 U.S. 124 (1971). On the other hand, the Court permitted a maximum deviation of 7.83 percent in Gaffney v. Cummings, 412 U.S. 735 (1973), and, with justification by the state, a deviation of 11.9 percent in Abate v. Mundt, 403 U.S. 182 (1971).

In White v. Regester, 412 U.S. 755 (1973), the Court held that a maximum deviation of 9.9 percent in a state redistricting plan did not, in itself, establish a prima facie case of invidious discrimination under the Equal Protection Clause. 412 U.S. at 764. Thus, the state bore no burden to justify any deviation up to that degree. Id. The Court did recognize, however, that "larger differences between districts would not be tolerable without justification" based on the effectuation of a rational state policy. Id.

2/ continued
the Court also struck down redistricting plans with a variance ratio of 1.7 to 1 in the House and 3.6 to 1 in the Senate in Colorado, Lucas v. Colorado General Assembly, 377 U.S. 713 (1964); a variance of 32 to 1 in the Senate and 6 to 1 in the House in Maryland, Maryland Committee v. Tawes, 377 U.S. 656 (1964), a variance of 2.65 to 1 in the Senate and 4.36 to 1 in the House in Virginia, Davis v. Mann, 377 U.S. 678 (1964), and a variance of 15 to 1 in the Senate and 35 to 1 in the House in Delaware, Roman v. Sincock, 377 U.S. 695 (1964). In each instance, the Court found that such wide population disparities among legislative districts violated the Equal Protection Clause.

In a prior case, Mahan v. Howell, 410 U.S. 315 (1973), the Court permitted Virginia to accept a plan with a maximum deviation of 16.4 percent -- but only after making a strong demonstration that the deviation was justified by the state policy of respecting subdivision boundaries. 410 U.S. at 328. The Court expressly noted that the 16.4 percent deviation approved in Mahan "may well approach tolerable limits ..." 410 U.S. at 329.

The Court has adopted a three part test. Maximum deviations below 10 percent are treated by the Court as "minor deviations from mathematical equality" which are "insufficient to make out a prima facie case of invidious discrimination ... so as to require justification by the State." Gaffney v. Cummings, 412 U.S. at 745. Deviation greater than 10 percent but less than the 16.5 percent in Mahan "may be sufficiently large to require justification but nonetheless justifiable and legally sustainable." Id. Finally, deviations larger than the 16.4 percent approved in Mahan would likely exceed the tolerable limits in state redistricting plans. 3/

Virtually all court rulings from the early 1970's to the present support these distinctions. Maximum deviations below 10 percent are approved with little or no further scrutiny, and those below 16.5 percent approved if justified by a rational state policy. See, e.g., Farnum v. Burns, 561 F. Supp. 83 (D. R.I. 1983) (deviation of 2.5 percent); Bover v. Gardner, 540 F. Supp. 624 (D. N.H. 1982) (deviation of 13.74 percent); Winter v. Dockering, 373 F. Supp. 308 (D. Kansas 1974) (deviation of 11.6

3/ A 1983 case, Brown v. Thomson, _____ U.S. _____, 77 L.Ed.2d 214 (1983) appears as an exception to this rule but is, we believe, of virtually no precedential value. There, the Court approved an extraordinary maximum deviation of 89 percent in the Wyoming House of Representatives on the grounds that the state redistricting plan furthered the state policy of preserving county boundaries. 77 L.Ed.2d at 272. The Court found the population variances to be "entirely the result of the consistent and nondiscriminatory application of a legitimate state policy." Id. at 223. However, the Court explicitly addressed only the marginal deviation that resulted from the overrepresentation of a particular county. Indeed, six members of the Court, including two justices from the majority, noted the limited question at issue, and as a consequence, Brown will likely have little, if any, precedential effect.

percent); Gaines v. Herskell, 362 F. Supp. 313 (S.D. W Va. 1973) (deviation of 16.1 percent); Kelly v. Bumpers, 340 F. Supp. 468 (B.D. Ark. 1972) (deviations of 3.5 percent and 9.5 percent); Dunn v. State of Oklahoma, 343 F. Supp. 320 (W.D. Okla. 1972) (deviation of 2.2 percent); In re Senate Bill No. 220, 225 Kan. 628, 593 P.2d 1 (Kansas 1979) (deviation of 6.5 percent); In re Senate Bill 177, 318 A.2d 157 (Vt. 1974) (deviation of 16.6 percent); Franklin v. Krause, 367 N.Y.S.2d 998 (N.Y. 1975) (deviation of 8.6 percent) (county commissioners); Schneider v. Rockefeller, 31 N.Y.2d 420, 293 N.E.2d 67 (N.Y. 1972) (deviations of 1.82 percent and 3.38 percent); Davenport v. Apportionment Commission, 65 J.J. 125, 319 A.2d 718 (N.J. 1974) (deviation of 4.2 percent); In re Apportionment Law, 263 So.2d 797 (Fla. 1972) (deviations of .3 percent and 1.15 percent).

On the other hand, maximum deviations exceeding 16.5 percent are, virtually without exception, struck down as a violation of equal protection. As one federal court noted in a recent decision:

> In fact, as far as we can ascertain from independent research, it appears that no court since Mahan has upheld a legislative reapportionment scheme which includes a maximum deviation of 16.5% or more. Apparently most courts have read the Supreme Court's caveat in Mahan as implicitly setting this figure as the outermost limit allowed by the Constitution.

Travis v. King, 552 F. Supp. 554, 562 (D. Hawaii 1982). A review of the court decisions confirms the view that a 16.5 percent maximum deviation is the limit permissible, and that deviations between 10 percent and 16.5 percent will be approved only if justified by the state. See, e.g., Fanium v. Burns, 548 F. Supp. 769 (D. R.I. 1982) (disapproved deviation of 88 percent); Travis v. King, 552 F. Supp. 554 (D. Hawaii 1982) (disapproved deviations of 15.02 percent and 43.2 percent); Sanchez v. King, 550 F. Supp. 13 (D. N.M. 1982) (disapproved deviations of 94 percent and 83 percent); Cosner v. Dalton, 572 F. Supp. 350 (E.D. Va. 1981) (disapproved deviations of 26.63 percent and 72.12 percent); Mader v. Crowell, 498 F. Supp. 726 (M.D. Tenn. 1980) (disapproved deviation of 18.03 percent); Sullivan v. Crowell, 444 F. Supp. 606 (W.D. Tenn. 1978) (disapproved deviations of 21.8 percent and 35.6 percent); Chapman v. Meier, 407 F. Supp. 649 (D. N.D. 1975) (disapproved deviation of 20.17 percent); Cohen v. Maloney, 410 F. Supp. 1147 (D. Del. 1976) (disapproved deviation of 18.3 percent) (city council); Winter v. Docking, 356 F. Supp. 88 (D. Kansas 1973) (disapproved deviation of 19.41

percent); Sims v. Amos, 336 F. Supp. 924 (M.D. Ala.) aff'd 409 U.S. 942 (1972) (disapproved deviations of 28.65 percent and 24.28 percent); Stufy v. Anderson, 93 Wash.2d 546, 611 P.2d 764 (Wash. 1980) (disapproved deviation of 168.6 percent) (county commissioner); In re Senate Bill 177, 294 A.2d 657 (Ver. 1972) (deviation of 25.33 percent disapproved); Franklin v. Krause, 367 N.Y.S. 998 (N.Y. 1975) (deviation of 22 percent disapproved) (county commissioner); Scrimminger v. Sherwin, 60 N.J. 483, 291 A.2d 134 (N.J. 1972) (deviations of 28.83 percent and 26.20 percent disapproved); Opinion of the Justices, 307 A.2d 198 (Me. 1973) (deviation of 94.02 percent disapproved).

Thus, any state redistricting plan with a maximum deviation less than 10 percent will likely be found per se not to violate the Equal Protection Clause. A plan with a deviation between 10 percent and 16.5 percent may be upheld if the state meets its burden of rebutting a prima facie violation of equal protection by demonstrating both that the state made a good faith effort to minimize the population deviation and that the deviation is necessary to effectuate a legitimate state policy, such as compact, contiguous districts that preserve subdivision lines. Finally, the case law indicates that maximum deviations in excess of 16.5 percent will likely be held to violate the equal protection clause, no matter what justification is offered by the state. Accordingly, deviations in excess of 16.5 percent would raise substantial legal uncertainty and should thus be avoided.

It is our view that the projected deviation in Southeast Alaska does not violate the Equal Protection Clause. The projected variance directly results from the Board's decision to retain a two-member district within the boundaries of the City and Borough of Juneau, a district which is 4.8 percent overpopulated. Simply put, a population deviation of less than 10 percent could not be obtained unless a segment of the Juneau population was included within another southeast district. Importantly, the projected deviations under the proposed plan are less than 16.5 percent, threshhold recognized as the tolerable limit to permissible population deviations. Historically, of course, the boundaries of the Juneau area have been preserved in the redistricting process. Preservation of political subdivision boundaries has been repeatedly recognized as a legitimate state objective. E.g. Mahan v. Howell, 410 U.S. at 328. More importantly, the long-standing state policy to establish districts which are socio-economically integrated, as required under article 6, section 6 of the Alaska Constitution, may well preclude the promulgation of a reapportionment plan which severs the Juneau community. See Groh v. Egan, 526 P.2d at 879, n.65.

why split up Anchorage w/ Nikolski?

B. Voting Rights Act Considerations

Any consideration of the two identified alternative districting options in Southeast Alaska must revolve around a comparative assessment under the Voting Rights Act of 1965 (Act), as amended, 42 U.S.C. § 1973C. The inquiry as to compliance with the Act focuses on the impact on minority voting prerogatives. House District 2, as established in the 1981 Plan, contained a 27.5 percent Native population. The proposed District 2 would contain a 41.9 percent Native population, while under the alternative approach, 28.9 percent of the district would be Native.

Analysis

The Act was adopted to insure the protection of rights guaranteed by the Fifteenth Amendment and "to rid the country of racial discrimination in voting." South Carolina v. Katzenbach, 383 U.S. 301 (1966). Section 5 requires that no jurisdiction subject to "preclearance" procedures, such as Alaska, may implement any change in "any voting qualification or prerequisite to voting, or standard, practice, or procedure with respect to voting" unless such change has been approved by the United States Attorney General or the District Court for the District of Columbia. 42 U.S.C. § 1973C. The standard on review is to ensure that such change "does not have the purpose and will not have the effect of denying or abridging the right to vote on account of race or color." Id. This standard was intended to guarantee that gains in minority political participation "would not be emasculated or destroyed through new discriminatory procedures and techniques." Mississippi v. United States, 490 F. Supp. 569, 581 (D.D.C. 1979) (three-judge court).

The Supreme Court has held that section 5 applies to state legislative redistricting plans. See Georgia v. United States, 511 U.S. 526 (1973); Beer v. United States, 425 U.S. 130 (1976); Allen v. State Board of Elections, 393 U.S. 544 (1969). The burden of proof lies with the state in demonstrating the legality of its plan under section 5. Georgia v. United States, supra; South Carolina v. Katzenbach, supra.

In Beer, supra, the Supreme Court stated the test for a section 5 analysis in terms of "retrogression":

> [T]he purpose of § 5 has always been to insure that no voting-procedure changes would be made that would lead to a retrogression in the position of racial minorities with respect to their effective exercise of the electoral franchise.

425 U.S. at 141. The central issue is whether a proposed change would "dilute the effectiveness" of the vote of a racial minority as compared to the situation prior to change. City of Rome v. United States, 446 U.S. 156, 183 (1980). Minority voting strength is impermissibly diluted when a redistricting scheme would operate "to minimize or cancel out the voting strength of racial elements of the voting population." Fortsen v. Dorsey, 379 U.S. 433, 439 (1965); Burns v. Richardson, 384 U.S. 73, 88 (1965).

In applying this test, lower federal courts have held that a redistricting plan dilutes minority votes when minority population concentrations are "unnecessarily fragmented and dispensed." Mississippi v. United States, 490 F. Supp at 582. In Kirksey v. Board of Supervisors, 554 F.2d 139 (5th Cir. 1977), for instance, the Fifth Circuit held that a reapportionment plan for a unit of local government would "tend to dilute the voting strength of the minority" because it fragmented members of the minority bloc between two districts. 554 F.2d at 144. See also Robinson v. Commissioners Court, 505 F.2d 674, 679 (5th Cir. 1974).

If viewed solely as a question of the percentage of Native voters in District 2, it would appear that neither of the two alternatives reflect a dimunition in minority voting strength. While the proposed District 2 would substantially enlarge the percentage of Native residents in District 2, the state is under no affirmative obligation to maximize the percentage of Native residents in the district.

We caution, though, that the probative consideration is whether a proposed redistricting would "delete the effectiveness" of the minority vote. Were the concept of a chain of rural, island communities rejected, it is arguable that the inclusion of rural Native communities with more urbanized population centers in Southeast may, as a practical matter, dilute the effectiveness of the minority vote. 4/ And, if the alternative districting

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4/ In preliminary research, we have not discovered any authority which directly addresses this matter.

proposal in southeast is viewed as a retrogressive plan, the fact that the alternative plan would extend, not reduce, the comparative population deviation in southeast would be material.

In sum, while we believe that either alternative would ultimately obtain Justice Department approval, we cannot unequivocally advise that the alternative approach to House District 2 would not prove violative of the Voting Rights Act. Our review of the available case law suggests that absent compelling facts to establish a dimunition in the effectiveness of minority voting prerogatives, a numerical inquiry is the traditional mode of analysis. Yet, it bears noting that while either version may well be acceptable under the Voting Rights Act, the likelihood of expeditious review and approval is undoubtedly furthered under the proposed District 2, a proposal which substantially increases the percentage of Native residents in the district.

C. Article VI, Section 6 Considerations

Article VI, section 6 provides that all districts "shall be formed of contiguous and compact territory containing as nearly as practicable a relatively integrated socio-economic areas." As initially adopted at the constitutional convention, the substantive restrictions set forth in section 6 were principally intended to inhibit, if not prevent, the instances of impermissible political gerrymandering. 3 Alaska Legislative Council, Alaska Constitutional Convention 1846 (1965); see Carpenter v. Hammond, 667 P.2d 1204, ____ (Alaska 1983). The Carpenter decision illustrates, though, that the section 6 standard operates independent of any evidence of gerrymandering. Importantly, though, while the recent Carpenter ruling has spawned a broader public sensitivity to section 6 considerations, the substantive restrictions established in section 6 are subsidiary to the concern for equal population distribution, the "overriding objective" under a federal constitutional inquiry.

1. Compactness

Section 6 mandates that districts shall be compact. The compactness requirement, however, is clearly not an absolute standard which demands that any configuration less than the most compact is impermissible. The Alaska Supreme Court has unambiguously recognized the governor's authority under article

VI to select between single-member or multi-member districts. Cf. Groh v. Egan, 526 P.2d at 880; Egan v. Hammond, 501 P.2d at 873. Since a multi-member district is necessarily less compact than a single-member district, it is apparent that compactness is a relative concept.

While the alternative southeast configuration may well be more compact than the proposed configuration of District 2, I believe that either alternative satisfies the constitutional mandate. Importantly, the proposed configuration of District 2 is more compact than the district at issue in Carpenter, a district which a majority of the court did not find impermissibly noncompact. 5/

2. Socio-Economic Integration

The more difficult inquiry concerns the mandate to establish districts which "contain as nearly as practicable a relatively integrated socio-economic area." The most extensive discussion of the constitutional provision is included in Carpenter v. Hammond, 667 P.2d 1204. In Carpenter, the Alaska Supreme Court concluded that the record presented to the court did not establish the requisite degree of social and economic interaction between Cordova and the communities in District 2 to support the inclusion of Cordova within the district.

The Carpenter decision, however, raises far more questions with respect to the parameters of the relative socio-economic intergration standard than it provides answers. Several general comments are warranted. First, Carpenter clearly rejects the assertion that socio-economic homogeneity is itself sufficient to satisfy the constitutional prerequisite. 667 P.2d at _____. Second, the preferred interpretation of Carpenter is that at least a majority of the court apparently rejects the interpretation that section 6 demands that proposed districts are permissible only if socio-economic integration is maximized. The court noted that the state conceded that Cordova was more integrated with other Prince William Sound communities than with the communities in District 2. Notwithstanding the concession, the court recognized that the question was "extremely close," and concluded that "the record is simply devoid of evidence of

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5/ Justice Mathews concluded otherwise in a concurring opinion.

significant social and economic integration...." Id. at _____. Implicitly, then, evidence of "significant" socio-economic integration would be sufficient to meet the requirements of section 6. Unfortunately, the court did not articulate what quantum of social and economic integration is sufficient, nor did the court address the relationship between the socio-economic integration standard and other applicable constitutional standards.

Under the proposed configuration of District 2, the inclusion of Metlakatla within the district poses the most substantial integration question. Historically, Metlakatla has been united with Ketchikan for purposes of legislative apportionment, an area with which they share an obvious economic and social linkage. Again, though, we do not believe that the appropriate inquiry is whether Metlakatla is more integrated with the communities in District 1 than with the communities in District 2. Indeed, the inquiry is whether a significant degree of social and economic integration exists between Metlakatla and the other communities in the proposed district. While the question is quite close and depends to a large extent on the court's ultimate explication of the rule enunciated in Carpenter, we think it certainly arguable that the inclusion of Metlakatla in District 2 is consistent with the section 6 standard. Clearly, the degree of homogeneity is stronger in this instance than in the Cordova context. And, intervisitation between the rural communities in southeast is demonstrably more extensive than was the case between Cordova and the other communities within District 2.

We note, though, that the alternative southeast districting proposal does not, in our preliminary assessment, appear to pose as close a question under section 6. The significant aspect of the alternative configuration is the communities of Wrangell and Petersburg would not be included within the same district. That the two communities share an obvious and historic linkage does not necessarily preclude the existence of sufficient ties to communities in Districts 1 and 2 respectively to support a districting proposal which places the communities in different legislative districts.

JBR:cyb

State of Alaska because of its differing climates, topography, ethnic composition, socio-economic interests and distribution of its relatively sparce population. However, under the mandate of various decisions of the United States Supreme Court, we make the following determinations and order:

1. The reapportionment plan proposed by the Governor of Alaska in his Proclamation of Reapportionment and Redistricting of December 30, 1971, is unconstitutional in that its overall reapportionment of the Senate and House of Representatives results in proposed election districts that do not contain as nearly equal population proportions as is practicable. Reynolds v. Sims, 377 U.S. 533, 84 S.Ct. 1362, 12 L.Ed.2d 506 (1964); Wade v. Nolan, 414 P.2d 689 (Alaska 1966). Under the Equal Protection and Supremacy Clause of the Constitution of the United States of America, the constitutional right to vote of every citizen of Alaska is protected against impermissible dilutions and impairments flowing from malapportionment of either the House of Representatives or the Senate. In order to effectuate this constitutionally protected right to vote, we are obliged to declare the reapportionment plan of December 30, 1971, invalid under the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution.

2. To insure compliance with the Equal Protection Clause in regard to the forthcoming 1972 primary and general elections for the State Legislature this court must formulate an interim reapportionment and redistricting plan. Scott v. Germano, 381 U.S. 407, 85 S.Ct. 1525, 14 L.Ed.2d 477 (1965); Maryland Comm. for Fair Representation v. Tawes, 377 U.S. 656, 673–676, 84 S.Ct. 1429, 12 L.Ed.2d 595, 607 (1964). The Lieutenant Governor is to conduct the 1972 primary and general elections for the State Legislature pursuant to the interim reapportionment and redistricting plan which this court will adopt.

3. In order to fashion an interim plan this court will appoint one or more masters to assist it.

4. Upon receipt of the report of the master or masters, this court will consider the manner in which the House and Senate districts shall be reapportioned. This court will then proceed to adopt an interim plan of reapportionment which, as nearly as practicable, considering the allotted time, reflects the standards which have been made binding upon the states by the United States Supreme Court. Ely v. Klahr, 403 U.S. 108, 91 S.Ct. 1803, 29 L.Ed.2d 352 (1971); Reynolds v. Sims, 377 U.S. 533, 586, 84 S.Ct. 1362, 12 L.Ed.2d 506, 541 (1964).

5. In the event this court determines that the exigencies of the situation preclude the fashioning of an interim constitutional reapportionment plan by June 15, 1972, this court will enter a further order specifying the plan under which the Lieutenant Governor shall conduct the 1972 primary and general elections for the State Legislature, together with the dates that such elections will be held. Connor v. Johnson, 402 U.S. 690, 91 S.Ct. 1760, 29 L.Ed.2d 268 (1971).

6. A full opinion discussing and determining the issues which were raised in the petition and cross-petition will be filed in due course.

Dated at Juneau, Alaska, this 26th day of May, 1972.

George F. Boney

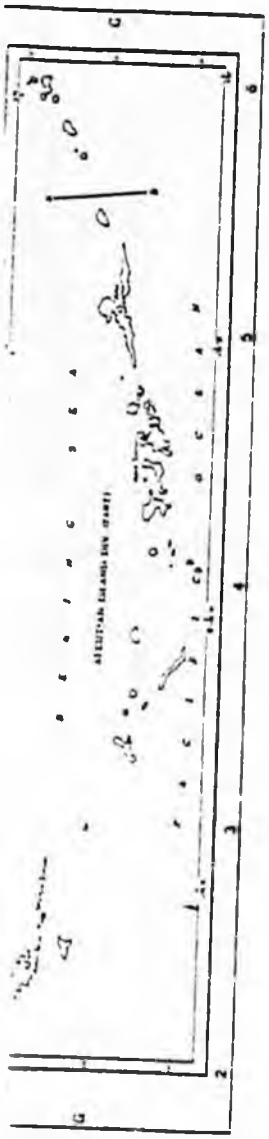
Chief Justice
Jay A. Rabinowitz

Associate Justice
Roger G. Connor

Associate Justice
Robert C. Erwin

Associate Justice
Robert Boochever

Associate Justice



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ORDER ESTABLISHING AN INTERIM REAPPORTIONMENT PLAN FOR 1972 LEGISLATIVE ELECTIONS

This Court declared the Reapportionment and Redistricting Proclamation dated December 30, 1971, unconstitutional by its Decision and Order entered May 26, 1972. Pursuant to that Decision and Order, the Court appointed Dr. George W Rogers and William H. Scott Masters to assist it in fashioning an interim reapportionment plan for the 1972 Alaska Legislative Elections.[1]

The Court, on May 26, 1972 gave the Masters the following written instructions:

1. By use of the official census of 1970, you should establish a population base for the State of Alaska. This population base should include military personnel who were enumerated in the 1970 Census.

2. You should make an inquiry to determine whether or not the number of nonresident military personnel included in the 1970 Census can be determined. If a determination can be made, then you should subtract the number from the total which you have arrived at in paragraph 1 above. You should also state the methods in detail by which you arrived at this determination.

3. Once you have determined the population base, you should divide the same by 40. This will give you the ideal number of persons to be included in a single member House district. You should then divide the population base by 20 which will represent the ideal population for a single member Senate district.

4. You should then establish House and Senate election districts containing a number of persons as close to the formula as feasible.

5. In establishing House and Senate districts, an effort should be made to make the districts correspond, where feasible, with the approximate boundaries set out in the 1971 reapportionment plan. No designated seats will be established within a multi-member district if multi-member districts are established. In establishing House and Senate districts you should, wherever feasible, create a district of contiguous and compact territory containing as nearly as practicable a relatively integrated socio-economic area.

6. If there are any substantial deviations from the population norms, express, specific reasons should be set forth.

The Masters submitted a report on June 12, 1972. Thereafter, the Masters met with the Court on June 13, 1972, at which time the report was amended to reflect determinations made by the Court concerning the reapportionment plan.

The Court, now being fully advised in the premises, hereby makes and orders the following interim reapportionment plan for the 1972 legislative elections:

(1) By use of the Official Census of 1970, the Court determines that the total population base for the State of Alaska shall be 302,361. This figure includes the military population residing in the State of Alaska at the time of the Official Census of April, 1970. In the time available to the Court for the preparation of the interim plan, the Court could find no feasible method of excluding some or all of the military personnel from the total population base. Moreover, computations revealed that changes in representation under the interim plan due to the inclusion of military personnel were minimal.

1. We commend George W. Rogers, Professor of Economics at the University of Alaska, and Mr. William H. Scott, C.P.A., their legal assistant R. E. Hicks, and Mr. Richard Listowski, cartographic and statistical assistant, for the excellence of their performance in executing the Court's instructions.

litigation of reapportionment plans in Alaska, would be an issue in the inevitable legal challenge to the amended Plan.

With the foregoing considerations in mind, the Proposed Order articulates three broad areas which may necessitate amendment to the Reapportionment Plan. First, the Carpenter decision specifically explicated the constitutional mandate that each district contain "as nearly as practicable a relatively integrated socio-economic area." Alaska Constitution, article VI, section 6. To implement the Carpenter decision, it is at least necessary to remove the Cordova area from District No. 2 and to include the area within another appropriate district. And, if the configurations of other districts must be modified to implement the Carpenter decision, all "new" districts must also conform to the recently articulated standards for social and economic integration. 3/

Second, relocation of the Cordova area will, in turn, harbor substantial implications with respect to the constitutional mandate to assure relatively equal population distribution among districts. See Groh v. Egan, 526 P.2d 863 (1974); White v. Regester, 412 U.S 758 (1973); cf. Kentopp v. Municipality of Anchorage, 652 P.2d 453 (Alaska 1982). The Cordova area contains approximately 2,250 residents, a number which constitutes more than 20% of the average district population. Removal of the Cordova area from District No. 2 will thus result in a substantial relative underpopulation (overrepresentation) for House District No. 2. Conversely, relocation of the Cordova area into House District No. 6 will result in the substantial underrepresentation of that district. See Affidavit of Rehfeld. To place Cordova within a

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3/ Indeed, if the socpe of the necessary amendment to the Reapportionment Plan is substantial, it is arguable that any qualified voter would have standing under article VI, section 11 to challenge the relative degree of social and economic integration of any district.

this right. In urging the people to adopt the Constitution, Madison said in No. 57 of *The Federalist:*

> "Who are to be the electors of the Federal Representatives? Not the rich more than the poor; not the learned more than the ignorant; not the haughty heirs of distinguished names, more than the humble sons of obscure and unpropitious fortune. The electors are to be the great body of the people of the United States. . . ." [47]

Readers surely could have fairly taken this to mean, "one person, one vote." Cf. *Gray* v. *Sanders*, 372 U. S. 368, 381. While it may not be possible to draw congressional districts with mathematical precision, that is no excuse for ignoring our Constitution's plain objective of making equal representation for equal numbers of people the fundamental goal for the House of Representatives. That is the high standard of justice and common sense which the Founders set for us.

Reversed and remanded.

MR. JUSTICE CLARK, concurring in part and dissenting in part.

Unfortunately I can join neither the opinion of the Court nor the dissent of my Brother HARLAN. It is true that the opening sentence of Art. I, § 2, of the Constitution provides that Representatives are to be chosen "by the People of the several States . . . ." However, in my view, Brother HARLAN has clearly demonstrated that both the historical background and language preclude a finding that Art. I, § 2, lays down the *ipse dixit* "one person, one vote" in congressional elections.

On the other hand, I agree with the majority that congressional districting is subject to judicial scrutiny. This

[47] The Federalist, No. 57 (Cooke ed. 1961), at 385.

376 U.S. v (1)

Court has so held ever since *Smiley* v. *Holm*, 285 U. S. 355 (1932), which is buttressed by two companion cases, *Koenig* v. *Flynn*, 285 U. S. 375 (1932), and *Carroll* v. *Becker*, 285 U. S. 380 (1932). A majority of the Court in *Colegrove* v. *Green* felt, upon the authority of *Smiley*, that the complaint presented a justiciable controversy not reserved exclusively to Congress. *Colegrove* v. *Green*, 328 U. S. 549, 564, and 568, n. 3 (1946). Again, in *Baker* v. *Carr*, 369 U. S. 186, 232 (1962), the opinion of the Court recognized that *Smiley* "settled the issue in favor of justiciability of questions of congressional redistricting." I therefore cannot agree with Brother HARLAN that the supervisory power granted to Congress under Art. I, § 4, is the exclusive remedy.

I would examine the Georgia congressional districts against the requirements of the Equal Protection Clause of the Fourteenth Amendment. As my Brother BLACK said in his dissent in *Colegrove* v. *Green*, *supra*, the "equal protection clause of the Fourteenth Amendment forbids . . . discrimination. It does not permit the States to pick out certain qualified citizens or groups of citizens and deny them the right to vote at all. . . . No one would deny that the equal protection clause would also prohibit a law that would expressly give certain citizens a half-vote and others a full vote. . . . Such discriminatory legislation seems to me exactly the kind that the equal protection clause was intended to prohibit." At 569.

The trial court, however, did not pass upon the merits of the case, although it does appear that it did make a finding that the Fifth District of Georgia was "grossly out of balance" with other congressional districts of the State. Instead of proceeding on the merits, the court dismissed the case for lack of equity. I believe that the court erred in so doing. In my view we should therefore vacate this judgment and remand the case for a hearing

But neither history alone, nor economic or other sorts of group interests, are permissible factors in attempting to justify disparities from population-based representation. Citizens, not history or economic interests, cast votes. Considerations of area alone provide an insufficient justification for deviations from the equal-population principle. Again, people, not land or trees or pastures, vote. Modern developments and improvements in transportation and communications make rather hollow, in the mid-1960's, most claims that deviations from population-based representation can validly be based solely on geographical considerations. Arguments for allowing such deviations in order to insure effective representation for sparsely settled areas and to prevent legislative districts from becoming so large that the availability of access of citizens to their representatives is impaired are today, for the most part, unconvincing.

A consideration that appears to be of more substance in justifying some deviations from population-based representation in state legislatures is that of insuring some voice to political subdivisions, as political subdivisions. Several factors make more than insubstantial claims that a State can rationally consider according political subdivisions some independent representation in at least one body of the state legislature, as long as the basic standard of equality of population among districts is maintained. Local governmental entities are frequently charged with various responsibilities incident to the operation of state government. In many States much of the legislature's activity involves the enactment of so-called local

Ordinance of 1787, in explicitly providing for population-based representation of those living in the Northwest Territory in their territorial legislatures, clearly implied that, as early as the year of the birth of our federal system, the proper basis of legislative representation was regarded as being population.

377 U.S. 533 (1964)

legislation, directed only to the concerns of particular political subdivisions. And a State may legitimately desire to construct districts along political subdivision lines to deter the possibilities of gerrymandering. However, permitting deviations from population-based representation does not mean that each local governmental unit or political subdivision can be given separate representation, regardless of population. Carried too far, a scheme of giving at least one seat in one house to each political subdivision (for example, to each county) could easily result, in many States, in a total subversion of the equal-population principle in that legislative body.[62] This would be especially true in a State where the number of counties is large and many of them are sparsely populated, and the number of seats in the legislative body being apportioned does not significantly exceed the number of counties.[63] Such a result, we conclude, would be constitutionally impermissible. And careful judicial scrutiny must of course be given, in evaluating state apportionment schemes, to the character as well as the degree of deviations from a strict population basis. But if, even as a result of a clearly rational state policy of according some legislative representation to political subdivisions, population is submerged as the controlling consideration in the apportionment of seats in the particular legislative body, then the right of all of the State's citizens to cast an effective and adequately weighted vote would be unconstitutionally impaired.

[62] See McKay, Political Thickets and Crazy Quilts: Reapportionment and Equal Protection, 61 Mich. L. Rev. 645, 698–699 (1963).

[63] Determining the size of its legislative bodies is of course a matter within the discretion of each individual State. Nothing in this opinion should be read as indicating that there are any federal constitutional maximums or minimums on the size of state legislative bodies.

ter in a free and democratic society. Especially since the right to exercise the franchise in a free and unimpaired manner is preservative of other basic civil and political rights, any alleged infringement of the right of citizens to vote must be carefully and meticulously scrutinized. Almost a century ago, in *Yick Wo* v. *Hopkins*, 118 U. S. 356, the Court referred to "the political franchise of voting" as "a fundamental political right, because preservative of all rights." 118 U. S., at 370.

Legislators represent people, not trees or acres. Legislators are elected by voters, not farms or cities or economic interests. As long as ours is a representative form of government, and our legislatures are those instruments of government elected directly by and directly representative of the people, the right to elect legislators in a free and unimpaired fashion is a bedrock of our political system. It could hardly be gainsaid that a constitutional claim had been asserted by an allegation that certain otherwise qualified voters had been entirely prohibited from voting for members of their state legislature. And, if a State should provide that the votes of citizens in one part of the State should be given two times, or five times, or 10 times the weight of votes of citizens in another part of the State, it could hardly be contended that the right to vote of those residing in the disfavored areas had not been effectively diluted. It would appear extraordinary to suggest that a State could be constitutionally permitted to enact a law providing that certain of the State's voters could vote two, five, or 10 times for their legislative representatives, while voters living elsewhere could vote only once. And it is inconceivable that a state law to the effect that, in counting votes for legislators, the votes of citizens in one part of the State would be multiplied by two, five, or 10, while the votes of persons in another area would be counted only at face value, could be constitutionally sustainable. Of course, the effect of

state legislative districting schemes which give the same number of representatives to unequal numbers of constituents is identical.[40] Overweighting and overvaluation of the votes of those living here has the certain effect of dilution and undervaluation of the votes of those living there. The resulting discrimination against those individual voters living in disfavored areas is easily demonstrable mathematically. Their right to vote is simply not the same right to vote as that of those living in a favored part of the State. Two, five, or 10 of them must vote before the effect of their voting is equivalent to that of their favored neighbor. Weighting the votes of citizens differently, by any method or means, merely because of where they happen to reside, hardly seems justifiable. One must be ever aware that the Constitution forbids "sophisticated as well as simple-minded modes of discrimination." *Lane* v. *Wilson*, 307 U. S. 268, 275; *Gomillion* v. *Lightfoot*, 364 U. S. 339, 342. As we stated in *Wesberry* v. *Sanders*, *supra*:

> "We do not believe that the Framers of the Constitution intended to permit the same vote-diluting discrimination to be accomplished through the device of districts containing widely varied numbers of inhabitants. To say that a vote is worth

[40] As stated by Mr. Justice Black, dissenting, in *Colegrove* v. *Green*, 328 U. S. 549, 569–571:

"No one would deny that the equal protection clause would . . . prohibit a law that would expressly give certain citizens a half-vote and others a full vote. . . . [T]he constitutionally guaranteed right to vote and the right to have one's vote counted clearly imply the policy that state election systems, no matter what their form, should be designed to give approximately equal weight to each vote cast. . . . [A] state legislature cannot deny eligible voters the right to vote for Congressmen and the right to have their vote counted. It can no more destroy the effectiveness of their vote in part and no more accomplish this in the name of 'apportionment' than under any other name."

more in one district than in another would . . . run counter to our fundamental ideas of democratic government . . . ." [41]

State legislatures are, historically, the fountainhead of representative government in this country. A number of them have their roots in colonial times, and substantially antedate the creation of our Nation and our Federal Government. In fact, the first formal stirrings of American political independence are to be found, in large part, in the views and actions of several of the colonial legislative bodies. With the birth of our National Government, and the adoption and ratification of the Federal

[41] 376 U. S., at 8. See also *id.*, at 17, quoting from James Wilson, a delegate to the Constitutional Convention and later an Associate Justice of this Court, who stated:

"[A]ll elections ought to be equal. Elections are equal, when a given number of citizens, in one part of the state, choose as many representatives, as are chosen by the same number of citizens, in any other part of the state. In this manner, the proportion of the representatives and of the constituents will remain invariably the same." 2 The Works of James Wilson (Andrews ed. 1896) 15.

And, as stated by MR. JUSTICE DOUGLAS, dissenting, in *MacDougall v. Green*, 335 U. S., at 288, 290:

"[A] regulation . . . [which] discriminates against the residents of the populous counties of the state in favor of rural sections . . . lacks the equality to which the exercise of political rights is entitled under the Fourteenth Amendment.

"Free and honest elections are the very foundation of our republican form of government. . . . Discrimination against any group or class of citizens in the exercise of these constitutionally protected rights of citizenship deprives the electoral process of integrity. . . .

"None would deny that a state law giving some citizens twice the vote of other citizens in either the primary or general election would lack that equality which the Fourteenth Amendment guarantees. . . . The theme of the Constitution is equality among citizens in the exercise of their political rights. The notion that one group can be granted greater voting strength than another is hostile to our standards for popular representative government."

Constitution, state legislatures retained a most important place in our Nation's governmental structure. But representative government is in essence self-government through the medium of elected representatives of the people, and each and every citizen has an inalienable right to full and effective participation in the political processes of his State's legislative bodies. Most citizens can achieve this participation only as qualified voters through the election of legislators to represent them. Full and effective participation by all citizens in state government requires, therefore, that each citizen have an equally effective voice in the election of members of his state legislature. Modern and viable state government needs, and the Constitution demands, no less.

Logically, in a society ostensibly grounded on representative government, it would seem reasonable that a majority of the people of a State could elect a majority of that State's legislators. To conclude differently, and to sanction minority control of state legislative bodies, would appear to deny majority rights in a way that far surpasses any possible denial of minority rights that might otherwise be thought to result. Since legislatures are responsible for enacting laws by which all citizens are to be governed, they should be bodies which are collectively responsive to the popular will. And the concept of equal protection has been traditionally viewed as requiring the uniform treatment of persons standing in the same relation to the governmental action questioned or challenged. With respect to the allocation of legislative representation, all voters, as citizens of a State, stand in the same relation regardless of where they live. Any suggested criteria for the differentiation of citizens are insufficient to justify any discrimination, as to the weight of their votes, unless relevant to the permissible purposes of legislative apportionment. Since the achieving of fair and effective representation for all citi-

Judge Moore

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

THIRD JUDICIAL DISTRICT AT ANCHORAGE

MARILYN CARPENTER, Plaintiff, vs. JAY S. HAMMOND, Governor of Alaska, Defendant.	No. 3AN-81-5839 Civ.

NOTICE OF COMPLIANCE WITH FINAL JUDGMENT

The Governor of the State of Alaska, Jay S. Hammond, by and through his attorney, hereby gives notice of his compliance with the court's directions in its final judgment in this action dated March 26, 1982. [The court required adjustment of district boundaries in Southwest Alaska to reduce the combined population variation between Districts 25 and 26 (11.5%)]

The court suggested but did not require the transfer of Platinum and Goodnews Bay from District 25 to District 26. Such a transfer would be inadvisable since those two communities are socially and economically tied to the Bethel region and are geographically isolated from the District 26 communities by coastal mountains; the only transportation ties with Platinum and Goodnews Bay are via Bethel. These problems were expressly addressed by the Reapportionment Board. See Plaintiff's Exhibit 2, p. 16. In addition, the two communities are in the Calista Corporation region whereas their placement in District 26 would situate them in a district comprised of the Bristol Bay Native Corporation and Aleut Corporation regions. See Plaintiff's Exhibit 13.

Instead, the Governor will accomplish the required adjustment by means of the [movement of Tuluksak from District 25 to District 24 and the movement of the Lake Iliamna/Lake Clark region (Igiugig, Iliamna, Kokhanok, Newhalen, Nondalton, Pedro Bay) from District 24 into District 26.] The Lake Iliamna/Lake Clark region was originally included in District 24 to avoid the excessive overpopulation that would be caused in District 26.

ATTORNEY GENERAL, STATE OF ALASKA
STATE CAPITOL
PORCH N. JUNEAU, ALASKA 99811
PHONE 465-3600

Socially and economically, however, the communities are tied to Bristol Bay, sharing the same fish stocks, communication links and transportation networks. The residents of the region were the most vociferous of all in their objection to their placement in District 24; there were numerous phone calls, letters, telegrams and petitions demanding their inclusion in District 26 rather than District 24.

The adjustment will be accomplished as follows:

A. The population of District 25 will be reduced by placing Tuluksak in District 24. The relevant enumeration districts (ED) and populations are ED 0292 (Tuluksak, pop. 236) and ED 0344 (Tuluksak area, pop. 0). The population of District 25 will become 9,448 with a variance of +2.96%.

B. The population of District 24 will be changed by the inclusion of Tuluksak (236) and the movement of the Lake Iliamna/Lake Clark region into District 26. The relevant enumeration districts in the Lake Iliamna/Lake Clark region are EDs 0475, 0476, 0478, 0479, 0480, 0481, 0482, 0515, 0516B, 0522A, 0522B, 0522C and 0523; they have a total population of 530. The population of District 24 will become 8,920 with a variance of -2.79%.

C. The population of District 26 will be increased, by the inclusion of the Lake Iliamna/Lake Clark region, by 530. The population will become 9,157.61 with a variance of -.2%.

With this adjustment, the maximum combined variance for the state will be as follows:

District 4 (Juneau)	+ 5.34%
District 16 (Matanuska-Susitna)	- 3.87%
	9.21%

This notice has been reviewed by all the members of the Reapportionment Board. The board members expressed their unani-

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ATTORNEY GENERAL, STATE OF ALASKA
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POUCH K, JUNEAU, ALASKA 99811
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3. In addition, by use of address lists provided by the military branches, Dr. Kruse was able to determine, with precision, how many non-resident servicemembers and dependents live in each off-base enumeration district. The following numbers of non-resident servicemembers and dependents were deducted from off-base enumeration district populations in the listed areas:

Anchorage	4,678.5
Fairbanks	382.1
Matanuska-Susitna	41.4
Delta Junction	229.9

See Exhibit 2, Table II.

E. Military Bases Treated by the Governor

1. The Governor deducted from the reapportionment population base those numbers of non-resident military personnel and dependents who resided at or near the seven largest military installations in Alaska: Elmendorf Air Force Base, Ft. Richardson, Eielson Air Force Base, Ft. Wainwright, Ft. Greeley, Kodiak Coast Guard Station and Adak Naval Station.

2. There were approximately 2,067 non-resident military personnel at smaller installations on the Aleutians, in Bristol Bay, in interior Alaska and in Southeast Alaska. The largest numbers of non-residents were at Shemya and King Salmon in District 26 (851), Galena in District 24 (259), Juneau (195), Sitka (137), Ketchikan (133) and Clear in District 17 (100).

3. Had all these numbers of non-resident military, and those at other locations not listed in the preceeding paragraph, been deducted from the population base, that population base would have become 367,050 and the ideal district size would have become 9,176. See Appendix I, attached hereto.

4. Under this scheme, the most overpopulated district would be district 25 with 9,684 persons (+5.53%); the most underpopulated district would be district 26 with 8,628 persons

discretion cannot be disturbed unless it lacks any rational basis.

2. It was reasonable and not arbitrary to exclude identifiable non-resident military personnel and dependents from the reapportionment population base while including non-identifiable members of other groups. The rights of military personnel and dependents to due process and equal protection were not violated. Groh v. Egan at 870-871.

3. It was reasonable and not arbitrary for the Governor to forego study of military at smaller, remote installations in view of the demonstrably small impact their potential non-residency would have on the reapportionment populations of the individual districts.

4. It was reasonable and not arbitrary to exclude non-resident military dependents based upon answers to survey questions put to their parents or spouses. Such a procedure did not violate the dependents' rights to due process and equal protection.

5. The survey utilized by the Governor to determine the proportion of non-residents among military personnel and dependents was a reasonable and constitutional device which accurately identified that proportion of military personnel and dependents who neither intend to make Alaska their domicil nor register to vote in Alaska, the two key criteria identified by the Alaska Supreme Court. Groh v. Egan at 873, text and n. 36.

6. Since military personnel and dependents are in Alaska under legal compulsion, it was reasonable and consitutional to inquire in the survey about their intent to make a home in Alaska at a time when they had the freedom to choose where they would live, i.e. at the time of retirement or discharge. See RESTATEMENT (SECOND) OF CONFLICT OF LAWS, Section 12, Illustration 3 and Comment i; Section 17, Comment d and Illustrations 1, 2, 7 and 8; Section 18, Comment b (cont.); Section 19, Illustrations 1 and 2. See also Groh v. Egan at 871-872, n. 34.

7. Alaska Constitution article VI, section 6 requires that election districts be "compact". It does not require that the districts be the most compact that could possibly be devised; considerations of population equality, socio-economic integration, geographic barriers and municipal boundaries may militate against the most compact configuration. The goal to be achieved by the compactness requirement is effective legislative representation, which occurs when persons and communities with substantially like backgrounds and interests, usually but not always in a single region, are joined in a political unit to elect the person of their choice. Effective transportation and communication systems may make a far-flung district functionally compact, especially when the residents of the district have common interests and take advantage of the transportation and communications systems to develop their policy positions and make their views known to their legislator.

8. District 2 does not violate the requirement of compactness.

9. Alaska Constitution article VI, section 6 requires that a district "contain as nearly as practicable a relatively integrated socio-economic area." The concept embodies a number of interrelated components, including economic base, ethnic composition, governmental boundaries, community size, transportation and communication links, and lifestyle. The reapportionment process requires a balancing of these components; one may be deemed predominant while another may be subordinated. As well, the socio-economic factors may be subordinated to the consideration of population equality with another district. The balance is to be struck by the Governor and will be sustained unless it lacks any rational basis. Groh v. Egan at 866.

10. Socio-economic integration does not require that regular social and economic interactions or transactions occur between the communities of a district, although such occurrences

are indicia of socio-economic integration. Integration of social or economic interests, as distinguished from integration of social or economic systems, is all that is required. Integration of interests alone has been the basis of many districts formed at and since the Alaska Constitutional Convention. See e.g., the discussion of the placement of the community of Livengood in Minutes, Alaska Constitutional Convention at 1933-1939, 1941. See, also, the comments of Delegate Hellenthal in Minutes, Alaska Constitutional Convention at 1872. Integration of interests was the basis of the North Slope - Kotzebue and Yukon River districts drawn by the Alaska Supreme Court in Egan v. Hammond, 502 P.2d 58[illegible] (Alaska 1972); there was, in those districts, no integration of social or economic systems across those vast areas.

11. The inclusion of Cordova in a district with small Inside Passage communities with identity or similarity of interests in fishing, forest management, ferry service, air service and other issues does not violate the constitutional requirement of socio-economic integration.

The Governor shall submit a form of judgment in conformity with these findings and conclusions.

DATED at Anchorage, Alaska this _____ day of March, 1982.

Daniel A. Moore, Jr.
Superior Court Judge

APPENDIX I

ADDITIONAL EXCLUSIONS ASSUMING PLAINTIFF'S FIGURES FROM EXHIBIT 4

CENSUS DIVISION	DISTRICT	MILITARY POPULATION	NON-RESIDENT FACTOR	ADDITIONAL NUMBER TO EXCLUDE
Aleutians & Bristol Bay	26	See attached sheet*	.91	851.39
Angoon	2	3 (CG)	.71	2.13
Barrow	22	17 (NV)	.91	15.47
Bethel	25	15 (U.S.A.F.)	.91	13.65
Cordova	2	54 (CG)	.71	38.34
Juneau	4	275 (CG)	.71	195.25
Kenai-Cook Inlet	5	55 (CG)	.71	39.05
Ketchikan	1	188 (CG)	.71	133.48
Kobuk	22	17 (U.S.A.F.)	.91	15.47
Kuskokwim	24	55 (U.S.A.F.)	.91	50.05
Mat-Su	16	105.6 (Army) (See attached sheet**)	.78	82.37
Nome	23	41 (U.S.A.F.)	.91	37.31
Seward	6	15 (CG)	.71	10.65
Sitka	3	193 (CG)	.71	137.03
Skagway-Yakutat	2	12 (CG)	.71	8.52
Upper Yukon	24	28 (U.S.A.F.)	.91	25.48
Valdez-Chitina Whittier	6	42 (CG)	.71	29.82
Wade Hampton	23	13 (U.S.A.F.)	.91	11.83
Wrangell-Petersburg	1	14 (CG)	.71	9.94
Yukon-Koyukuk (Part)	17	127 (Clear-U.S.A.F.)	.79	100.33
Yukon-Koyakuk (Part)	24	285 (U.S.A.F.)	.91	259.35
		Total Additional Exclusion		2,066.91

31,363.8 - military already excluded
\+ 2,066.91 - additional exclusion
33,430.71

400,481 - 1980 statewide population
\- 33,430.71 - non-resident military and dependents
367,050.29 ÷ 40 = 9,176.2 Ideal district size.

ATTACHMENT TO APPENDIX I

* ADDITIONAL EXCLUSION FOR ALEUTIAN ISLANDS-
BRISTOL BAY CENSUS DIVISIONS
Assuming Plaintiff's Figures (Exhibit 4)

2175	Aleutian Islands Census Division - Exhibit 4
x.91	non-resident factor - Exhibit 1, Table 9
1979.25	non-resident active duty
3315	total military & dependents at Adak - 1980 Census
-1610	military at Adak - Exhibit 1, Table 9
1705	dependents at Adak
1705	dependents at Adak
x.87	non-resident factor, dependents at Adak-Exhibit 1, Table 9
1483.35	non-resident dependents at Adak
1483.35	non-resident dependents on Aleutians & Bristol Bay
+1979.25	non-resident military on Aleutians
3462.6	
369	military - Bristol Bay Census Division - Exhibit 4
x.91	non-resident factor - Exhibit 1, Table 9
335.79	non-resident military Bristol Bay
3798.39	total non-resident military & dependents on Aleutians & Bristol Bay
3798.39	number that shou d have been excluded
-2947.00	number actually excluded - Exhibit 2, Table II
851.39	additional number required to be excluded

** Of the 147 persons reported in Alaska Population Overview (Exhibit 4) to reside in the Matanuska-Susitna Census Division, 41.4 were previously deducted by the Governor. See Exhibit 2, Table II.

APPENDIX II

HOUSE DISTRICT VARIANCE
Assuming Plaintiff's Figures (Exhibit 4)

(Ideal District Size 9,176.2)

District	Population	Additional Exclusion	New Population	Variance
1.	17,940	143.42	17,796.58 (8,898.29)	-3.03%
2.	9,301	48.99	9,252.01	+ .8%
3.	9,266	137.03	9,128.97	- .5%
4.	19,528	195.25	19,332.75 (9,666.375)	+5.34%
5.	19,068	39.05	19,028.95 (9,514.475)	+3.66%
6.	9,267	40.47	9,226.53	+ .5%
7.	8,853.2			-3.51%
8.	18,202.1 (9,101.05)			- .8%
9.	18,004.7 (9,002.35)			-1.9%
10.	17,685.7 (8,842.85)			-3.63%
11.	17,957.8 (8,978.9)			-2.15%
12.	18,170 (9,085)			-1.0%
13.	18.907.5 (9,453.75)			+3.02%
14.	19,031.5 (9,515.75)			+3.7%
15.	18,560.7 (9,280.35)			+1.13%
16.	17,724.6	82.37	17,642.23 (8,821.115)	-3.87%
17.	9,111.9	100.33	9,011.57	-1.79%
18.	9,300			+1.35%
19.	8,934.3			-2.63%
20.	18,319.7 (9,159.85)			- .18%
21.	9,247.1			+ .77%
22.	9,030	30.94	8,999.06	-1.93%
23.	9,388	49.14	9,338.86	+1.77%
24.	9,549	334.88	9,214.12	+ .4%
25.	9,698	13.65	9,684.35	+5.53%
26.	9,479	851.39	8,627.61	-5.97%
27.	9,592.4			+4.53%

Most overpopulated - Dist. 25 - Bethel	9,684.35	+5.53%
Most underpopulated - Dist 26 - Bristol Bay Aleutians	8,627.61	-5.97%
Total Combined Variance		11.50%

Judge Souter

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

THIRD JUDICIAL DISTRICT

FILED in the Trial Courts
State of Alaska, Third District
OCT 12 1983
CLERK OF TRIAL COURTS
By: Deputy Clerk

MARILYN CARPENTER,

Plaintiff,

vs.

JAY S. HAMMOND,

Defendant.

Case No. 3AN-81-5839 CI

ORDER

Having reviewed the opinion of the Alaska Supreme Court in this case, together with the applicable constitutional provisions and the arguments presented by the parties:

IT IS HEREBY ORDERED that:

1. This case is remanded to the Governor of the State of Alaska, who, after being advised by the Reapportionment Board, shall issue, no later than February 3, 1984, a revised final Proclamation of Reapportionment in conformity with the opinion of the Alaska Supreme Court which was issued in this case on July 22, 1983.

2. The revised final Proclamation of Reapportionment shall, in a manner consistent with the federal and state constitutional requirements of equal representation, but with the fewest possible changes in the final Reapportionment Plan as approved by the Alaska Supreme Court in this case, cause Cordova to be placed in a contiguous, compact and relatively integrated socio-economic election district and cause House District 2 to be transformed into such an election district.

3. The revised final Proclamation of Reapportionment shall utilize the "indefinite intention" test in determining the residency of military members in any election

districts whose boundaries must be changed in order to accomplish the necessary changes regarding Cordova and District 2, and it shall not utilize any amendments to the most recent federal decennial census which were issued after the initial final decision which was entered by the Superior Court in this case on March 16, 198[illegible]

4. The Reapportionment Board shall meet as soon as practicable, hold such public hearings as it deems appropriate and present the Governor with a proposed amended final Proclamation of Reapportionment no later than January 3, 1984, unless otherwise ordered by the Governor. The Reapportionment Board which provided the recommendations which formed the basis for Governor Hammond's Proclamation of Reapportionment on July 24, 1981 remains in existence and may be used by Governor Sheffield. However, Governor Sheffield may, in his discretion, appoint a new Reapportionment Board to serve in the place and stead of the existing one.

5. This court shall retain continuing jurisdiction in this case for the purpose of resolving such disputes as might hereafter be properly submitted to it regarding the reapportionment proceedings at issue, it being this court's intention not to entertain any but the most extraordinary of motions in this case until the revised final Proclamation of Reapportionment has been issued.

ENTERED this 12th day of October, 1983.

Milton A. Souter

MILTON A. SOUTER
SUPERIOR COURT JUDGE

I certify that on 10/12/83 at 4:00 p.m., I personally delivered a copy of said Order to the following:

Holli Ploog
Jonathan B. Rubini

Pamela Brown
Secretary to Judge Souter

I Certify that on 10-13-83
[illegible] Timothy A. McKeever
Pamela Brown

Anchorage Daily News

359, 252 PAGES — ANCHORAGE, ALASKA, SUNDAY, DECEMBER 25, 1983 — PRI(

Booming economy makes Alaska the fastest-growing state

By RONNIE CHAPPELL
Daily News correspondent

The largest influx of people in Alaska history pushed the state's population past 500,000 in 1983 and confirmed Alaska as the fastest growing state in the nation.

The Alaska Department of Labor, last year estimated the state's population at 460,037. This year, the five largest cities and boroughs in the state have reported combined population increases of 49,799 — which alone would push Alaska over the 500,000 mark. The state will not release an official estimate until February.

"If growth continues at the same rate (as in 1982) we're going to be over 500,000 in 1983," said Jo Van Patten, an economist in the state Department of Labor.

The population boom between the 1980-to-1983 period exceeds the leaps of the Gold Rush, World War II and the pipeline era.

"In sheer numbers this would be the greatest influx," said John Whitehead, associate professor of history at the University of Alaska, Fairbanks. "In the past it has taken at least a decade to add 100,000 people to the state's population.

Based on figures provided by the Alaska Department of Labor and local governments throughout the state, The Daily News estimates the state's population at 505,000, an increase of more than 100,000 since the 1980 U.S. Census.

The Department of Labor does not base its population estimates solely on figures supplied by Alaska communities. The figures are suspect because communities receive state revenue-sharing money on the basis of population. They have an incentive to report the highest possible populations, Van Patten said.

For that reason, Van Patten checks the figures against a formula based on elementary school enrollments, housing starts, births and deaths.

In addition to its burgeoning population, the Alaska economy has expanded by more than 40,000 jobs since 1980.

Those new jobs are the byproduct of subsidized home loans, permanent fund dividends, an increasing state payroll and massive government con-

See Page A-8, GROWTH

Growth

Continued from Page A-1

struction budgets, according to a new report by the labor department.

Experts agree that $14 billion in state spending — about 1½ times the amount spent on the trans-Alaska pipeline — is the underlying cause of the boom.

Despite recent population gains, Alaska remains the smallest state, trailing Vermont, which had 518,000 people in July 1982.

But Alaska, with a population increase of more than 10 percent between 1980 and 1982, is the fastest growing. In the same period, Vermont's population grew 1.3 percent.

If the Alaska economy continues its present pace for one more year, Vermont could be the smallest state in the nation by the end of 1984.

In Alaska, the Matanuska-Susitna Borough is the fastest growing area in the nation's fastest-growing state. Its population is up 71 percent since 1980, from 17,816 to 30,568.

During the same period, Anchorage added 56,415 people, an increase of 32 percent, for a total of 230,846.

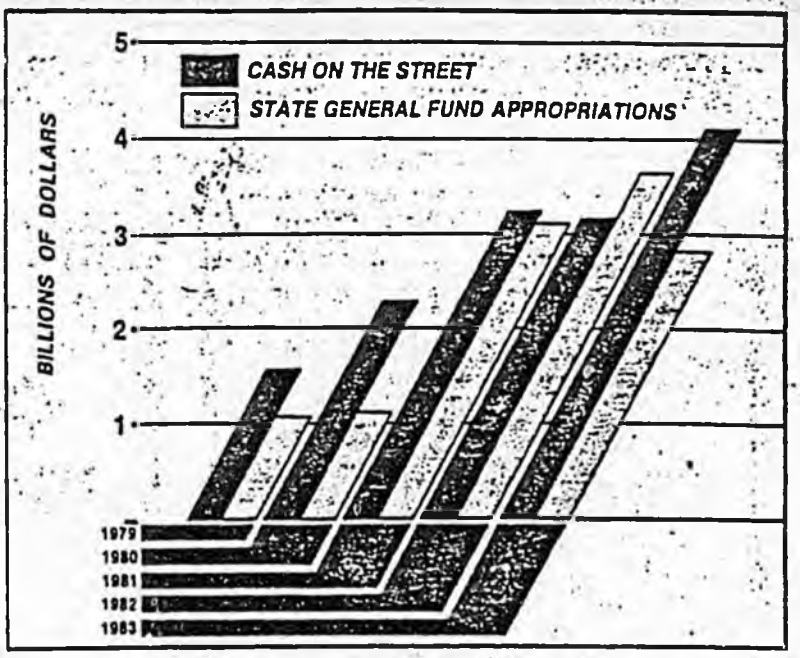
The population of the Kenai Peninsula is up 38 percent, Fairbanks is up 20 percent and Juneau is up 40 percent.

Rural Alaska is growing too, but at more moderate rates.

Rapid growth in the 1980s has not hit Alaska with the sudden, sledgehammer force of the pipeline years. Because it has come independent of a single mammoth project that focuses public attention, the growth has been felt area by area without being noted as a major statewide phenomenon.

In Anchorage, commuters are spending more time driving to and from work. School enrollment in Palmer is growing so fast that after the holidays some children will return to classes in a National Guard Armory. Vacancy signs are disappearing in Fairbanks and developers are building apartments again.

In Soldotna, the spruce trees behind Ellington's Hardware have been replaced by a McDonald's, a pizza restaurant, a Safeway and a 21-store mall.



"It was kind of scary at first," said store owner Joan Ellington. But "after doing some reading about other places this has happened, we realized it could double our business."

Still, the changes amaze Ellington.

"It makes you wonder what's down here to bring all these people," she said.

The answer to her question is simple.

Work.

One clerk at Ellington's Hardware has been in the state 16 months. She came with her husband and four children. The other clerk arrived four years ago with five other family members.

Thousands of people are coming to Alaska to escape a bitter recession that has produced bread lines and soup kitchens in other parts of the country. They are leaving old jobs to find better ones.

"Economic opportunity is the No. 1 reason they're coming," said Neal Fried, an economist for the Alaska Department of Labor. "People have heard about wages. They've heard about the pipeline. Many have relatives here who tell them to come."

For many, the move has been a good one.

"There is a lot of opportunity for people here," Fried said. "But it is not a job market with a shortage of people. Unemployment hasn't come down."

In fact, despite the addition of 40,000 jobs to the economy, the unemployment rate actually increased from 9.3 percent to 10.1 percent during the last two years. Nearly 4,000 more people are looking for work in Alaska today than in 1981.

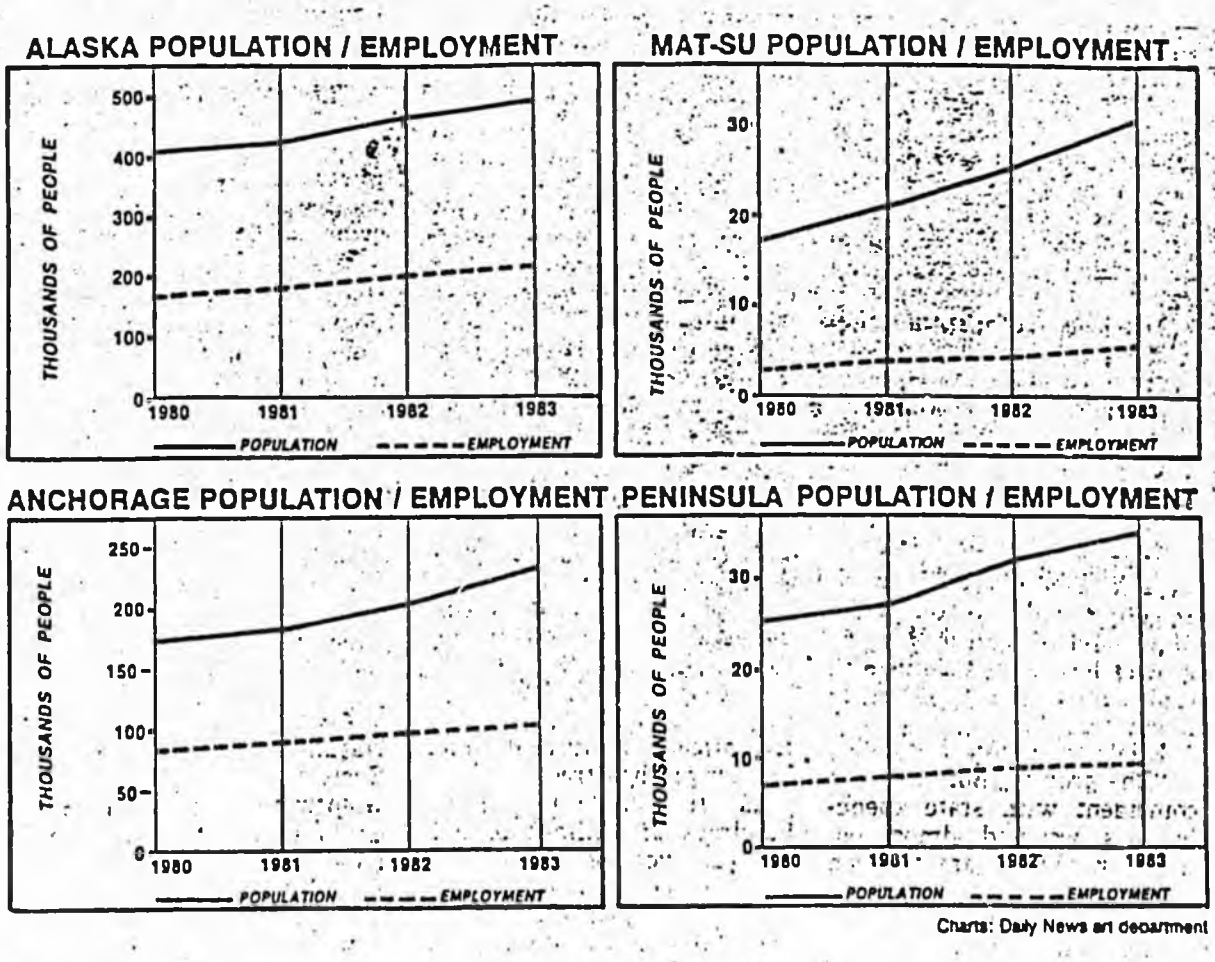
Still, it is better to be unemployed in Alaska than in the idle factory towns of Michigan or logging communities of northern Idaho. The chances of finding work in an expanding economy are better than in a stagnant one, Fried said.

Huge numbers of new Alaskans are not finding jobs in the oil, fishing and timber industries. Instead, they are working as carpenters, roofers, electricians, store managers, clerks, waitresses, cooks, gas station attendants, lawyers, engineers, surveyors, real estate agents, reporters, teachers. Some have started new businesses.

Two thousand jobs have been created on the Kenai Peninsula despite the lack of significant growth in the oil and fishing industries.

People are working in new shopping centers, in new restaurants, gift shops, nurseries, computer stores and sporting goods outlets. Oldtimers are starting to complain that downtown Soldotna looks like Northern Lights Boulevard in Anchorage.

Residential and commercial construction reached all-time highs in 1983. Homer Electric Association added 1,500 new



Charts: Daily News art department

customers.

Sales tax revenues generated on retail sales in Kenai and Soldotna are up 40 percent over 1982.

"What's happening here is being evidenced everywhere else in Alaska," said Frank McIlhargey of the borough resource development office. "We're in the midst of a government-dollar-generated boom."

Assessing the effect of massive government spending on the economy is difficult. It was made easier in 1982 when economists Gregg Erickson and Tom Singer developed a way to track the money pumped into the economy by state government.

The result is a series of multi-billion dollar totals — based on checks actually issued by the treasury — that Erickson and Singer call Cash-on-the-Street.

Cash-on-the-Street includes loans by the Alaska Housing Finance Corp. and other state agencies, permanent fund dividends, the salaries paid state employees, operation and maintenance costs, general fund and bond financed capital projects.

the permanent fund.

In four of the last five years, Cash-on-the-Street exceeded state general fund appropriations — the figure most often referred to as a measure of state spending.

In a September 1983 report, the state Department of Labor observed that "Alaska employment is closely correlated with Cash-on-the-Street. In a statistical sense, 95 percent of the growth in employment from 1978 through the first half of 1983 is explained by growth in Cash-on-the-Street."

According to Erickson and Singer, "statistical evidence suggests that state spending now accounts for 44 percent of Alaska personal income."

Cash-on-the-Street has increased steadily from $1.5 billion in fiscal year 1979 to $4 billion in 1983. It peaked during a three-month period in the summer of 1982 when the state paid $1.3 billion to people and businesses in Alaska.

Cash-on-the-Street does not affect employment and population immediately, the economists said. There is a six-month to one-year lag, which means this year's boom is the

It is unlikely that Cash-on-the-Street will again reach the record levels of 1982, according to the Labor department report. Oil revenues have declined since 1980 and state spending is down. North Slope production will fall off sharply after 1990. One-third of the known reserves in Prudhoe Bay have already been pumped through the pipeline.

The looming question now is what happens to the state's economy when the state can no longer afford subsidized loans, permanent fund dividends and huge expenditures on capital projects.

"Nobody really knows what's going to happen," said Scott Goldsmith, an enonomist with the Institute of Economic and Social Research at the University of Alaska.

"I've got to believe some of the small new businesses are operating right at the margin now. When Cash-on-the-Street tails off, those marginal businesses are going to start hurting and go under."

But Goldsmith says he doesn't see a bust in the future.

The economic contraction

Alaska becomes nation's fastest-growing state

Continued from Page A-8

spending won't be "as immediate and dramatic as the growth has been," Goldsmith said. "Businesses will try to tough it out."

Erickson agrees.

"The growth that has been coincident with state spending has occurred almost entirely in service areas" such as retail trade, communications and transportation, Erickson said.

"There is some reason to think that won't be lost. It depends on where and how fast declines in state spending occur and it depends on how much faith people have in Alaska."

The service sector of the economy is population sensitive. If people remain in Alaska despite a decrease in their standard of living, if they are willing to make do with less disposable income, then chances are good the economy can be weaned from state spending without too much social dislocation, Erickson said.

He also pointed out that:

• Much of the recent growth was needed. Compared to similar markets in other parts of the nation, the service economy in Alaska was underdeveloped.

• Alaska's basic industrial base will not be affected by contraction of state spending. Oil field employment may actually increase as production declines.

• Even today, construction is not a big part of the state economy. Construction employment is the same today — in terms of percentage of total labor force — as it was in 1963.

• There has been no five-year period since 1950 in which the service sector didn't add more jobs to the state economy than the industrial sector.

If policy makers better understood the relationship between state spending and the economy, Erickson believes, they could mitigate the negative effects of future declines in Cash-on-the-Street.

Is it wise to spend hundreds of millions of dollars each year on new capital projects? On permanent fund dividends? On subsidized loans? Should the state spend money to keep down local property taxes? What is best for the economy? Which appropriations have the biggest effect, per dollar expended, on employment?

Without answers to questions like these, Erickson said, state leaders can't hope to soften the effects of future state spending cuts on the economy.

Right now, no one is serious trying to find the answers. "There's been no institutional support for this kind of research," Erickson said.

Big spending cuts are inevitable because oil income is rapidly declining. That fact becomes apparent when state revenue projections are adjusted for inflation.

According to Matt Berman of the Institute for Social and Economic Research, oil revenues will decline 50 percent — in terms of 1982 dollars — by the early 1990s.

Nothing on the horizon is capable of replacing the revenue now provided by oil. Even royalty income generated by the proposed Alaska Natural Gas Transportation System will not be sufficient, Goldsmith said. Offshore oil exploration is taking place on federal leases.

By the mid-1990s, interest income generated by the permanent fund will be the state's second largest revenue source. How big a revenue source it becomes depends on how much money is set aside today.

Alaska has already enjoyed five years of Prudhoe Bay production. In six to eight years, production will decline significantly.

The choices facing lawmakers now are difficult. Should they maintain the state's thriving economy over the next few years by continuing to pump huge amounts of money into the marketplace? Or should they cut state spending today to keep the cost of basic government services affordable after 1990? Is there any way to accomodate these seemingly incompatible goals?

"There are no easy answers," Goldsmith said.

Kenai Clarion
Jan 11, 1984

Districting options unpopular

Governor's board hears views on reapportionment

By JOHN MARRS
Editor

If the rest of Southcentral and Southeastern Alaska were as easy to please as English Bay and Port Graham, the governor's special reapportionment board would have few problems.

Testimony during a teleconference conducted over the state's conference network Wednesday evening indicated no consensus in English Bay or Port Graham for or against whether the two southern peninsula villages were put in one voting district or another.

The rest of the 30 people who spoke told

See BOARD, Page 14

...Board hearing

Continued from Page 1

the board they didn't like the pending reapportionment plans.

Half of those who spoke urged the board to revive a once-proposed but abandoned plan to create one large Senate district encircling Anchorage with Nikiski, Seward, Valdez, Cordova, Whittier and the Matanuska Valley. The area — not counting Nikiski — is roughly the same as the pre-1981 Senate district represented by Sen. Jay Kerttula, D-Palmer.

The possibility of switching English Bay and Port Graham from a House District for Prince William Sound to one for the Kenai Peninsula was the only change actually mentioned as a possibility by the board.

The change is contemplated in the board's last public report, and Chairman Willie Hensley and board member Mary Nordale mentioned it Tuesday in discussions with citizens who were testifying. The change, if made when the board meets today, would move the Chitna and McCarthy areas into House District 6 (Valdez-Seward-Cordova) and put English Bay and Port Graham back in House District 5, the peninsula's main voting district.

Walter Maganik Sr., president of the Port Graham Village Council, urged the board to "leave us alone," but he also said a village vote came out 21 in favor of moving to the new Prince William Sound District to 29 in favor of staying put.

Rep. Milo Fritz, R-Anchor Point, speaking from Juneau, said he spoke earlier Tuesday with Vince Kvasnikoff, an English Bay village leader, and was told that the people there couldn't make up their minds whether they would be better off one way than the other. He also asked that a board representative visit the village to talk about it.

Assemblywoman Karen McGahan of Nikiski, Dorothy Westphal of Sterling and Lois Irvin of Homer all protested the board's plan to put Nikiski with South Anchorage in a new House District 7.

Westphal also read a letter by Sharon Overman of Soldotna, president of the Central Peninsula Republican Women's Club, objecting to a plan that would cut the peninsula's representation in the Senate.

Two peninsula residents, Jack Warner and Louis Bernacardino of Seward, joined people from Whittier, Valdez, Cordova and the Mat-Su Borough in recommending that proposed House Districts 6, 7 and 16 be combined to form a Senate district with two seats. Similar to Kerttula's former district, the plan has been called the "Doughnut District" because of its shape.

The reapportionment board dropped the plan, originally raised by Kerttula, without comment at its last meetings in December. Tuesday night, Hensley said the idea had not found any support on the board.

The board has until Feb. 3 to report to the governor, who this week got a court extension to Feb. 17 for his report to Superior Court Judge Milton Souter.

Mark Jacobs, Jr.
P.O.Box 625
Sitka, Alaska 99835

February 4, 1984

Honorable Ben Grussendorf
Alaska State Legislature
Pouch V (MS 3100)
Juneau, Alaska 99811

Dear Mr. Grussendorf:

My testimony on the statewide teleconference yesterday on HJR# 53 is that I am very concerned about the future trends in reapportionment of the State of Alaska's legislature. Although the United States Constitution is designed for providing for one man, one vote philosophy in order to have a fair representation, I don't believe it is fair as it affects Alaska and it's vast areas of small populations.

The main problem as I see it, is the increasing population in the Anchorage area. Right now their voting strength in the legislature is nearly fifty per cent, this means that they are almost to the point of running the entire State of Alaska as they please and can get practically any population increasing facilities or programs.

What chance do we have as citizens of Alaska if all the voting power is concentrated in one small area of Alaska? If the present trend continues we will have only a limited voice in determining the future of our Alaskan life style, our cultures,resources and political participation. The Capital move proponents I am sure will again become active.

I would rather see a rigid constitutional provision to allow for geographical representation rather than by population. This would provide us with an adequate political voice in determining the future of our Alaskan way of life.

Candidates for the State Legislature from the out lying areas of Alaska must travel great distances at great expenses to campaign for the office while those in the population centers can do their campaigning in a few city blocks of their district.

If they should eventually succeed in getting all the government of the State of Alaska, then I think the only way to preserve our political life is to create an area to be known as the "District of the State of Alaska" very similiar to what Washington D.C. is at the present time.

I know that the creation of a "District of the State of Alaska" is a wild idea not legally possible, it is simply a heart cry of what might be the answer to preserving our political life as Alaskan cultures.

I often wish the United States Supreme court would take into consideration the vastness and the diversity of Alaska in it's decisions.

Sincerely,

Mark Jacobs, Jr.

cc: U.S. Congressmen
any newspaper publication
Tlinget & Haida Central Council

LEGISLATIVE INFORMATION OFFICE

Dec 14th Reapportionment Teleconference

Participant list from the Dec. 14 T/C.

We are pleased to send the enclosed material in response to your recent request.

Barbara.....

MSG 83-00022850 PRTY 1 12/16/83 07:59:56 ORIG: LH01 IN= 0001 OUT= 0003
FROM: MARTIE/MATSU TO: JUNEAU T/C
TARGET: LAH2 SUBJ: REAPPORTIONMENT T/C

****
LEGISLATIVE TELECONFERENCE NETWORK SIGN-IN SHEET
****

-DEC. 14, 1983_____:DATE
-MATSU LIO-_____:SITE/LOCATION
-SEN. STURGULEWSKI/REAPPORTIONMENT BOARD:SPONSOR/SUBJECT
-8-_____TESTIFY/ED ********T/C STARTED_6:00 PM_____ADT
-4-_____OBSERVE/ED ********T/C ENDED___7:15 PM_____ADT
12-_____TOTAL

NAME/REPRESENTING	ADDRESS/PHONE		TESTIFY	OBSERVE
1. CHUCK SMITH, SELF	BOX 871385, WASILLA 99687	376 2941	TEST.	
2. CAROLYN COVINGTON, SELF SR D BOX 9340, PALMER 99645 VALLEY WOMEN'S RESOURCE CENTER		745 3365	TEST.	
3. DOROTHY A. JONES, SELF	BOX 109, TALKEETNA 99676	733 2395	TEST.	
4. ELSIE M. O'BRYAN, SELF	PO BOX 24, HOUSTON 99694	892 6638	TEST.	
5. JOYCE KERTTULA, SELF	BOX Z, PALMER 99645	745 5247	TEST.	
6. JUDITH ANDEREGG,	BOX Z, PALMER		TEST.	
7. NOEL WOODS,	PO BOX 827, PALMER 99645	745 3027	TEST.	
8. JOHN MUSGROVE,	PO BOX 1284, PALMER 99645	745 2191	TEST.	
9. KAY BILLS,	BOX 342, SUTTON, 99674	745 5125		OBS.
10. JEAN WOODS,	PO BOX 827, PALMER 99645	745 3627		OBS.
11. RON LARSON,	PO BOX 53, PALMER 99645	745 3826		OBS.
12. ED GRASSER,	PO BOX 53, PALMER 99645	376 8628		OBS.
13. MARSHA MELTON,	PO BOX 891, PALMER		SUBMITTED WRITTEN TESTIMONY	
14. LEN MELTON,	PO BOX 891, PALMER 99645			OBS.

I DON'T KNOW IF YOU EVER GOT THE FINAL LIST IN ANCHORAGE OR IF YOU STILL NEED ALL OF THIS. I THINK YOU COULD THROW IT AWAY IF YOU DON'T NEED IT. HAVE A GREAT FRIDAY!

JESDAY, 1/10/84 :DATE
DOTNA :SITE/LOCATION
M.M.MILLER (JNU), :SPONSOR/SUBJECT
OV.'S REAPPORTIONMENT BD. FINAL PLAN'

JAN. 10th
Reapportionment
Teleconference

ME/REPRESENTING	ADDRESS/PHONE	TESTIFY	OBSERVE
JOHN MARRS PEN. CLARION	BOX 43330, KENAI, AK. 99611		X
DOROTHY WESTPHAL	RT.2 BX 295 STERLING, AK. 262-6061	X	
KAREN MCHAN	RT.1 BOX 767 KENAI, AK. 99611	X	
RICHARD MCHAN	" " " "		X

_____STATS_____
____TESTIFY/ED
____OBSERVE/ED
____TOTAL
4:30 PM T/C STARTED
6:35 PM T/C ENDED

REGIONAL STATS **

MER LTC SITE
____TESTIFIED
____OBSERVED
____TOTAL

LOIS IRVIN 167 WEST BAY VIEW HOMER AK. 235-7172 TESTIFIED
99603

WARD LTC SITE
___ TESTIFIED
___ OBSERVED
___ TOTAL

LOUIS BENCARDINO 519 5TH. SEWARD TESTIFIED
JACK WERNER 423RD. SEWARD TESTIFIED
ALICE PICKETT LOWELL CANYON OBSERVED
EDGAR BLATCHFORD BOX 1344 SEWARD OBSERVED

TE: 1/10/84
TE: ANCHORAGE/ MICKI
ONSOR/SUBJECT: REPRESENTATIVE MILLER/GOVERNOR'S REAPPORTIONMENT BOARD
PUBLIC HERAING
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MARK RIEHLE, KENI RADIO
BONNIE STEWARD, ARCO

JAN 10th

. WILLIE HENSLEY	REAPPORTIONMENT BRD		T
. MARY NOBDALE	"		T
. DICK BORER	"		T
. JOE MCKINNON	"		T
. FELIX TONER	"		T
. JOHN RUBINI	REAPP. BRD. STAFF		O
. KAREN REHFELD	"		O
. DANA LATOUR	"		O
. PERRY LOVETT	N/A		O
0.BILL HALL	N/A		O
1.REP MILO FRITZ	465-4833		T
2.DAVID SCHACH	"		O
3.WALLY KUDLEY	MENDENHALL APTS #709		O
4.REP RON WENDTE	465-4944		T
5.PAUL ARMOND	HOUSE DEMOC.	465-4843	O
6.DENISE ZACHARY	HOUSE DEMOC.	465-4843	O
7.ALAIRE STANTON		465-4821	O
8.MAFOUSE	POUCH V	465-3818	O
9.MARK HANLEY/MARTIN		465-3783	O

------STATS------

7 TESTIFY/ED
12 OBSERVE/ED
19 TOTAL

T/C STARTED 4:30 AST
T/C ENDED 6:30 AST

TE: JANUARY 10, 1984
TE: SITKA ✓
ONSOR/SUBJECT: REP. M.M. MILLER/REAPPORTIONMENT PLAN

.....TESTIFIED
.....OBSERVED
.....TOTAL

*****T/C STARTED: 4:40
*****T/C ENDED: 6:25

ERVED
******

SUSAN FROETCHEL, SITKA SENTINEL, BOX 799, SITKA, AK 99835
WOLFRAM KUONI, BOX 155, SITKA, AK 99835

HAINES	HOONAH	YAKUTAT	CORDOVA
...TESTIFIED	2..TESTIFIED	1..TESTIFIED	7..TESTIFIED
...OBSERVED	4..OBSERVED	0..OBSERVED	3..OBSERVED
...TOTAL	6..TOTAL	1..TOTAL	10.TOTAL

NES/TESTIFIED

DAVE OLERUD, HAINES CHAMBER OF COMMERCE, BOX 527, HAINES, AK 99827
DARRELL MAPLE, HAINES CITY ADMINISTRATOR, BOX 576, HAINES, AK 99827

ERVED

LEO LAND, BOX 122, HAINES, AK 99827

LDEZ STATS:

STIFY:___4___
SERVE:___0___
TAL: ___4___

*****T/C STARTED: 4:35 PM
*****T/C ENDED: 6:25 PM

ME/REPRESENTING	ADDRESS/PHONE	TESTIFY	OBSERVE
JOHN DEVENS	BOX 307, VALDEZ 99686	X	
CITY OF VALDEZ	835-2421		
JIM WATSON	BOX 307, VALDEZ 99686	X	
CITY OF VALDEZ	835-4313		
SUSY COLLINS	BOX 307, VALDEZ 99686	X	Cordova Valdez Mat-Su
MAYOR OF VALDEZ	835-4913 (EXT. 5241)		
BARNEY M. MEYRING	BOX 512, VALDEZ 99686	X	
CHAMBER OF COMMERCE	835-2330		

FEB 10 1984

FEB 10 1984

FINAL REPORT

REAPPORTIONMENT AND REDISTRICTING PLAN

FOR THE

ALASKA STATE LEGISLATURE

Prepared by: The Reapportionment Board

February 8, '1984

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I. THE REAPPORTIONMENT BOARD

A. Introduction

This Report presents the recommendations of the 1983 Reapportionment Board of the State of Alaska.

The 1983 Reapportionment Board was convened to propose amendments to the 1981 State Reapportionment Plan following the Alaska Supreme Court's determination that the 1981 State Reapportionment Plan improperly included Cordova in House District 2. Carpenter v. Hammond, 667 P.2d 1204 (Alaska 1983). The constitutional problem identified by the court was that the inclusion of Cordova in a district with communities in Southeast Alaska violated the mandate of article 6, section 6 of the Alaska Constitution which requires that legislative districts contain "as nearly as practicable a relatively integrated socio-economic area."

In an order entered on October 12, 1983, the Honorable Milton M. Souter of the Alaska Superior Court, Third Judicial District, directed the Governor, with the advice of the Reapportionment Board, to issue a Proclamation of Reapportionment on or before February 3, 1984 1/ which causes Cordova to be placed in a contiguous, compact and relatively integrated

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1/ By subsequent order of the court, the deadline for the issuance of a Proclamation of Reapportionment was extended to February 17, 1984.

socio-economic election district. The court further directed the Governor to amend the 1981 Plan as is necessary to satisfy federal and state constitutional requirements, but to make only the fewest possible changes.

In accordance with the superior court order, the 1983 Reapportionment Board was appointed by Governor Bill Sheffield on October 20, 1983. The Reapportionment Plan recommended in this Report sets forth the Board's solution to the problems identified in the Carpenter decision. In formulating this Plan, the Board has sought to make the fewest possible changes to the 198' Plan while giving primary importance to the principle of equal representation.

1. Composition of the Board

In the superior court's October 12 order, the Governor was instructed to issue a revised Proclamation of Reapportionment with the assistance of an advisory board. The following individuals were appointed by Governor Sheffield in October of 1983 to serve on the Reapportionment Board: William L. Hensley, Kotzebue; Mary A. Nordale, Fairbanks; Joseph H. McKinnon, Anchorage; Richard R. Borer, Cordova; and Felix J. Toner, Juneau. William Hensley was elected chairman during an organizational meeting in Juneau on October 26, and Mary Nordale was selected to serve as vice-chairman.

2. Staff and Technical Requirements

Dana LaTour served as staff assistant to the Board. Her responsibilities included all administrative and fiscal details such as arranging meetings and hearings and maintaining accurate records of all Board activities. Cheryl Barsness and Cheryl Beaty provided clerical and administrative support to the Board for the duration of the project. Assistant Attorney General Jonathan Rubini served as the Board's legal counsel.

The Board retained the services of Karen Rehfeld to provide technical assistance on a contractual basis. Rehfeld served as Executive Director for the 1981 Reapportionment Board.

B. Public Participation

The Board provided as much opportunity for public participation as was possible within the limited time available. All meetings of the Board were open to the public. In addition, the Board conducted six public hearings, most of which took place in communities directly affected by the proposals described in this report. And, through use of the Legislative Teleconference Network on three occasions, all citizens were accorded an opportunity to present their views to the Board. A schedule of the dates and locations of the meetings and hearings is included.

In almost every case, all Board members were present for the public hearings. Weather conditions prohibited Dick Borer and the reapportionment staff from attending the Fairbanks hearing. Chairman William Hensley was unable to attend the

teleconference with the communities in the Prince William Sound area, the Kenai Peninsula, and Matanuska-Susitna Borough.

Advertising for the hearings included newspaper display ads that were sent to the newspapers in the specific areas for each hearing. In most cases, public service announcements were prepared and read via telephone to the local radio stations prior to the public hearings. Additionally, the Legislative Teleconference Network in the Legislative Affairs Agency, Division of Public Services, provided assistance by advertising the teleconferences in each site location involved. Newspapers and radio stations conducted interviews which resulted in increased attention to the hearings.

Following each board meeting, the Board prepared a news release which explained the proposed plans for reapportionment. Copies were supplied to each Legislative Information Office, Regional Governor's Office, all 60 legislators, members of the press and interested persons. These news releases served as the basis for public comment and testimony.

Attendance at the public hearings varied in each location. In many locations the public comment received was in response to the plans already proposed by the Board. The Board also sought public comment on three proposals for redistricting Anchorage. Various options for apportioning the senate in Anchorage and Southcentral were discussed during the hearings. Additionally, the Board received numerous letters and telegrams.

As a result of testimony received, the Board made two revisions to their proposed plans. During a meeting on January 11, 1984, the Board formulated their recommendations and directed staff to prepare the text of this report and corresponding maps to submit to the Governor.

1983 REAPPORTIONMENT BOARD
MEETING/PUBLIC HEARING SCHEDULE

Community	Date and Time	Location
Juneau	Meeting October 26-27, 1983	5th Floor Court Building
Juneau	Meeting November 7-8, 1983	7th Floor State Office Bldg.
Ketchikan	Hearing November 21, 1983 7:30 p.m.	School District Meeting Room
Juneau*	Hearing November 22, 1983 7:30 p.m.	Court Room A Alaska Court Bldg.
Fairbanks**	Hearing November 29, 1983 7:30 p.m.	Borough Assembly Chambers
Anchorage	Hearing November 30, 1983 1:30 - 5:00 p.m. 7:30 - 10:00 p.m.	Court Room G Room 401 Alaska Court Bldg. 303 K Street
Kenai***	Hearing December 1, 1983 7:30 p.m.	Borough Assembly Chambers, Soldotna
Anchorage	Meeting December 8, 1983	Suite 758 Frontier Bldg.
Anchorage	Meeting December 14-16, 1983	Leg. Information Office

Community	Date and Time	Location
Cordova, Valdez, Whittier, Seward, Homer, Soldotna, Wasilla	Teleconference December 14, 1983 6:00 p.m.	Leg. Teleconference Office - Anchorage
Metlakatla, Hoonah	Teleconference December 15, 1983 4:00 - 6:00 p.m.	Leg. Teleconference Office - Anchorage
Anchorage	Hearing December 15, 1983 7:30 p.m.	APUC Hearing Room Mutual of New York Building
Juneau	Meeting January 10-11, 1984	Room 123 Alaska Office Bldg.
Metlakatla, Ketchikan, Wrangell, Petersburg, Sitka, Hoonah, Juneau, Haines, Yakutat, Cordova, Valdez, Whittier, Seward, Homer, Soldotna, Wasilla, Anchorage	Teleconference January 10, 1984 4:30 - 6:30 p.m.	Leg. Teleconference Office - Juneau
Juneau	Meeting February 3, 1984	Room 711 State Office Bldg.

* Due to a delay in the arrival of the plane from Ketchikan, the Board and staff did not arrive at the hearing until 8:15 p.m.

** There was no public participation at the Fairbanks hearing. Therefore, there is no transcript of the hearing.

*** The Kenai hearing was originally advertised to be held in the City Council Chambers in Kenai from 1:30 - 4:00 p.m. The hearing was changed at the request of the community.

C. Population Base and Ideal District Size

At the outset the Board considered which census data it should use in preparing its plan. The 1981 Reapportionment Board utilized census figures prepared by the U.S. Bureau of Census in 1980. However, as discussed in more detail below, substantial corrections were made by the Bureau of Census in 1981.

1. The Original 1980 Census Population

The original 1980 Census population reported by the Bureau of Census showed a statewide total population of 400,481. Drawing upon this figure, the 1981 Reapportionment Board excluded 31,363.8 as estimated nonresident military personnel and dependents, leaving a statewide total for reapportionment purposes of 369,117.2. The ideal district size under the census data utilized by the 1981 Board was 9227.9.

Following issuance of the 1981 Proclamation of Reapportionment, the nonresident military exclusion was further adjusted by order of the superior court in March 1982. The superior court concluded that the original military exclusion should have been applied consistently across the state. This required the exclusion of an additional 2,066.91 nonresident military personnel and dependents. The total military population of 33,430.71 excluded from the 1980 Census statewide population of 400,481, left a reapportionment population base of 367,050.29. The ideal house district size was then 9,176.2. The court ordered adjustments were made prior to the 1982 elections.

2. The 1981 Census Data Corrections

In September 1981, the United States Bureau of the Census issued corrected 1980 census counts for three census areas in Alaska -- Anchorage, Matanuska-Susitna, and Southeast Fairbanks. A detailed listing of these revised counts by census tract, blocks, and enumeration districts was compiled in November, 1981. 2/ The 1981 corrections to the 1980 census counts for Alaska are as follows:

Anchorage Census Area Tract 0002 - Eagle River	+1,414
Matanuska-Susitna Census Area ED 1168 Wasilla Area	+50
Southeast Fairbanks Census Area ED 0833	-94

The adjusted 1980 population for the State of Alaska, incorporating the 1981 revisions, is 368,420.29.

	367,050.29	-	1980 Adjusted Census Figure
	+ 1,414	-	Eagle River
	+ 50	-	Matanuska-Susitna
	- 94	-	Southeast Fairbanks
TOTAL	368,420.29	-	Adjusted 1981 Population

2/ The November listing also included a correction in the Prince of Wales census sub-area that did not change the population for the sub-area, but reallocated the population previously reported to the correct enumeration district.

Additional corrections to the 1980 census data for Alaska were issued in June 1982 for Saxman, Selawik, and Barrow. These corrections also represented a reallocation of population within the specific census area and did not change the population in those census areas. None of the reallocation corrections affect the Reapportionment Plan, and none are therefore considered in this report.

In order to confirm the validity of these corrections and to ensure that these corrections included all official Census Bureau adjustments, the Board consulted with the State Department of Labor, Research and Analysis Section. The Research and Analysis Section is the contact for the Federal/State Cooperative Programs for population estimates and projections, and is the contact agency for the Alaska Census Data Network. In these capacities, it receives all publications and data generated by the Bureau of Census pertaining to Alaska. In its response to the Board's inquiry, dated November 17, 1983, the Research and Analysis Section confirmed that no additional corrections have been issued.

In addition, the Board requested that the Institute of Social and Economic Research, University of Alaska, review the matter to assure that use of corrected data would not interject a new statistical bias. The Institute of Social and Economic Research reviewed the corrected data, and concluded that the use of corrected data yielded the best possible data base for the present reapportionment. 3/

3. The Board's Decision to Use Corrected Census Data

The October 12, 1983 order directed the Governor to:

> [N]ot utilize any amendments to the most recent federal decennial census which were issued after

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3/ The Institute's conclusions are set forth in a letter to the Board dated November 21, 1983.

> the initial final decision which was entered by the Superior Court in this case on March 26, 1982.

The controlling date in the order is March 26, 1982. The official corrections to the original 1980 census data were made in September 1981, well in advance of this date. Thus, use of this data by the Board complies with the superior court's order.

Despite the literal language of the superior court's order, the Governor and the Board recognized that the correct intent of the court's order may actually have been to require that any new plan utilize the same figures as employed by the 1981 Reapportionment Board, that is, the uncorrected 1980 census data. Pending resolution of how to proceed, Governor Sheffield sent a letter to the members of the Reapportionment Board, requesting that the Board prepare alternative plans amending the 1981 Plan, one utilizing corrected census data and the other using the uncorrected original data. At the same time, the Governor requested that the Department of Law review the issue.

In a Memorandum of Advice to the Governor dated February 1, 1984, the Department of Law concluded that the Board should utilize the 1981 corrections to the 1980 census in the preparation of its amended Reapportionment Plan. By letter dated February 2, 1984, Governor Sheffield expressed his recommendation that the Board submit its Plan utilizing only the corrected data. After consideration of the conclusions reached by the Department

of Law, the Board has decided to submit a single Plan utilizing only the corrected census data. 4/

The Department of Law concluded in its February 1, 1984, memorandum that utilization of the uncorrected data would expose the plan to legal challenge. The Equal Protection Clause of the United States Constitution requires a state to construct its districts with as nearly equal population as is practicable, a goal intended to ensure the ideal of one-man, one-vote. Reynolds v. Sims, 377 U.S. 533, 577 (1964). Adoption of a plan using data which is admittedly erroneous serves only to distort the fundamental tenet of equal representation. As the Alaska Supreme Court stated in Groh v. Egan, "There can be little question but that the general principle of equalizing votes per person can best be achieved by use of the most current accurate data reasonably available." 526 P.2d at 868. (Emphasis added.) To ignore the 1981 corrections would be tantamount to ignoring -- and thereby disenfranchising -- 1,414 voters in Eagle River, a solution the Board considers to be absolutely unacceptable.

In order to comply with the U.S. and Alaska constitutional mandates and the directions of the Alaska Supreme Court, the Board has concluded that it is mandatory that this Report and the Board's Plan utilize only the most accurate data

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4/ Prior to this decision, the Board had prepared a Plan using the erroneous uncorrected data (pursuant to Governor Sheffield's request of November 8, 1983). This alternative Plan remains a part of the record of the Board's proceedings.

presently available. The 1980 census data, as corrected in 1981, is the most accurate census data available to the Board.

4. Ideal District Populations

The adjusted statewide population utilized in this plan, incorporating corrections made to 1980 census data, is 368,420.29. The ideal house district population is determined by dividing the total population by the 40 house seats to be apportioned. The ideal house district population is 9,210.5.

The ideal senate district population is determined by dividing the total population by the 20 senate seats to be apportioned. The ideal senate district population is 18,421.

II. REVISED ELECTION DISTRICTS

A. House Districts

The revisions made in the Board's proposal affect the Southeast and Southcentral areas of the state.

In Southeast, the Board shifted the community of Metlakatla and vicinity, previously in House District 1, and the community of Hoonan, previously in House District 3, into House District 2 to replace the Cordova population which was moved into House District 6. As a result, Districts 1, 2, and 3 are slightly affected under this proposal. House District 4 remains unchanged.

The Southcentral districts are affected two ways: first by the inclusion of the Cordova area (approximately 2,200 persons) with the Prince William Sound area; and second, by the technical correction made by the U.S. Census Bureau which added an additional 1,414 persons to the Eagle River area.

House District 6 has been revised to include the Cordova, Chitina, and McCarthy areas. Because of the need to distribute the excess population in Southcentral over a larger area, the Nikiski area of the North Kenai is combined with South Anchorage in House District 7. With the exception of the inclusion of a small enumeration district along the Sterling Highway, House District 5 in unchanged. The Anchorage house districts were revised to reflect the adjusted population in the southern and northern areas of the municipality. In making these

changes, particular attention was given to following community council boundaries and neighborhoods in drawing the district lines.

Following is a brief outline of the area within each election district, the major communities in the district, the population of the district, and the population variance. The complete technical boundary description for each district is included as an appendix to this report.

1. Ketchikan-Wrangell-Petersburg

District 1 is an area within a line proceeding from Dixon Entrance in a northerly direction up Clarence Strait, passing west of Zarembo Island, northerly up Duncan Canal, across Frederick Sound to a point west of Cape Fanshaw, then northeasterly to the Canadian border and southerly along the Canadian border to the point of beginning at Dixon Entrance, excluding the area on Annette Island. The district includes the Ketchikan Gateway Borough, Wrangell, Petersburg, Hyder, Saxman, Meyers Chuck, and Kupreanof. It has a population of 16,601.58 and a variance of -9.9 percent. It will elect two house members to designated seats and one senator.

2. Inside Passage

District 2 is composed of that portion of Southeast Alaska between Dixon Entrance and Boundary Point 187 on the U.S./Canadian International Boundary that is not contained in

Districts 1, 3, and 4. Included within its boundaries are the communities of Yakutat, Haines, Skagway, Klukwan, Gustavus, Hoonah, Angoon, Kake, Metlakatla, Thorne Bay, Klawock, Craig, and Hydaburg. The district has a population of 8,924.35 and a variance of -3.1 percent. It will elect one house member and, with District 3, one senator.

3. Baranof-Chichagof

District 3 consists of Baranof Island, Yakobi Island, Chichagof Island, and all of the smaller adjacent islands offshore, excluding the area within the City of Hoonah. The communities on the islands include Sitka, Pelican, Elfin Cove, Tenakee Springs, and Port Alexander. The district has a population of 8,448.97 and a variance of -8.3 percent. It will elect one house member and, with District 2, one senator.

4. Juneau

District 4 boundaries coincide with those of the City and Borough of Juneau. The district has a population of 19,332.75 and a variance of +4.9 percent. It will elect two house members to designated seats and one senator.

5. Kenai-Cook Inlet

District 5 includes all of the coastal areas on the east and west sides of Cook Inlet inside the Kenai Peninsula Borough, that lie south and west of Nikiski. Communities within

the district include Kenai, Soldotna, Sterling, Ninilchik, Anchor Point, Homer, Seldovia, Port Graham, and English Bay. The district has a population of 19,189.95 and a variance of +4.2 percent. It will elect two house members to designated seats and one senator.

6. Prince William Sound

District 6 includes the area along Prince William Sound from Boundary Point 187 on the U.S./Canadian International boundary on the east to the Kenai National Moose Range boundary on the west. Included in the district are the communities of Hope, Cooper Landing, Moose Pass, Seward, Whittier, Valdez, Chitina, McCarthy, Tatitlek, and Cordova. It has a population of 8,753.19 and a variance of -4.9 percent. It will elect one house member and, with Districts 7 and 16, two senators to designated seats.

7. North Kenai-South Anchorage

District 7 contains the Nikiski area on the northern Kenai Peninsula, and the southeastern reaches of the Municipality of Anchorage, including the community council areas of Old Seward/Oceanview, Rabbit Creek, Turnagain Arm, and Girdwood Valley. Its northern boundary proceeds east from Turnagain Arm along Klatt Road to the New Seward Highway, southerly on the New Seward Highway to Huffman Road, westerly along Huffman Road to the Old Seward Highway, southerly on the Old Seward Highway to DeArmoun Road, east on DeArmoun Road to Rabbit Creek, and

easterly and southerly along Rabbit Creek. The district has a population of 9,580.1 and a variance of +4.0 percent. It will elect one house member and, with Districts 6 and 16, two senators to designated seats.

8. Campbell-Hillside

District 8 is bounded on the south by Rabbit Creek, DeArmoun Road, the Seward Highway, and Klatt Road, and on the west by Turnagain Arm. Dimond Boulevard and Abbott Road form the northern boundary, and the Chugach Mountains are the eastern boundary. This district includes the neighborhood council areas of Bayshore/Klatt, Huffman/O'Malley, Mid-Hillside, Hillside East and Glen Alps. The district has a population of 19,230.7 and a variance of +4.4 percent. It will elect two house members to designated seats and, with District 10, two senators to designated seats.

9. Turnagain-Sand Lake

District 9 is bounded by a line beginning at Turnagain Arm and proceeding east on Dimond Boulevard to Arctic Boulevard, then north to International Airport Road, then west to Spenard Road, then northerly to Fish Creek and continuing north to W. 36th Avenue, then west to Wisconsin Street and north on Wisconsin to Northern Lights Boulevard, then east on Northern Lights to Minnesota Drive and north on Minnesota Drive to Chester Creek, then west on Chester Creek to Knik Arm. The district includes the community council areas of Turnagain and Sand Lake. It has a

population of 19,155.9 and a variance of +4.0 percent. It will elect two house members to designated seats and, with District 11, two senators to designated seats.

10. Mid-Town

District 10 is bounded by a line beginning at the intersection of Arctic Boulevard and Dimond Boulevard, then north to International Airport Road, east to the Old Seward Highway, north to Chester Creek, easterly to Bragaw Street and E. 20th Avenue, east to Pine Street, south to Tudor Road, then westerly and southerly along the Bureau of Land Management boundary to Birch Road, south to Abbott Road, and west along Abbott Road to the New Seward Highway, north to Dimond Boulevard, and west to the point of beginning. The district includes the community council areas of Rogers Park, Tudor, Taku-Campbell, Lake Otis, and University. It has a population of 18,183.5 and a variance of -1.3 percent. It will elect two house members to designated seats and, with District 8, two senators to designated seats.

11. Spenard

District 11 is bounded by District 10 on the east, International Airport Road on the south, Wisconsin Street, Fish Creek, and Spenard Road on the west, and Chester Creek and W. 23rd Avenue on the north. It includes the community council areas of Spenard and North Star. It has a population of 18,804.1 and a variance of +2.1 percent. It will elect two house members

to designated seats and, with District 9, two senators to designated seats.

12. Downtown

District 12 is bounded by Chester Creek on the south, Bragaw Road on the east, Commercial Drive and the Elmendorf reservation boundary on the north and the inlet on the west. Included are the community council areas of Government Hill, Downtown, Penland Park, South Addition, Fairview, and parts of the areas of North Mountain View and Airport Heights. The district has a population of 18,678.4 and a variance of +1.4 percent. It will elect two house members to designated seats and, with District 13, two senators to designated seats.

13. Elmendorf Air Force Base-Mountain View

District 13 is bounded by a line beginning at the intersection of Bragaw Street and E. 20th Avenue proceeding east to Baxter Road, north to DeBarr Avenue, east to Muldoon Road, north to E. 4th Avenue, west to Patterson Street, north to the Glenn Highway, east on the Glenn Highway to the common boundary between Elmendorf Air Force Base and Fort Richardson, then following the Elmendorf military reservation boundary to Commercial Drive, then east to Mountain View Drive, then southwesterly to the Glenn Highway, then east to Bragaw Road and south to the point of beginning. The district includes the community council areas of Russian Jack Park, North and South Mountain View, Airport Heights, and North Muldoon. It has a

population of 19,173.1 and a variance of +4.1 percent. It will elect two house members to designated seats and, with District 12, two senators to designated seats.

14. South Muldoon

District 14 includes Stuckagain Heights and the community council areas of Northeast, South Muldoon, and Scenic Park. The District is bounded by District 13 on the north, District 15 on the north and east, District 8 on the east and south, and District 10 on the south and west. District 14 has a population of 18,265.4 and a variance of -.8 percent. It will elect two house members to designated seats and, with District 15, two senators to designated seats.

15. Chugiak-Eagle River-Fort Richardson

District 15 includes the northern portion of the Municipality of Anchorage from Fort Richardson on the west to the municipality's border on the north and east, and by District 14 on the south. It includes the community council areas of Eklutna Valley, Chugiak, Birchwood, and Eagle River Valley. Also included are Fort Richardson, and the area of the North Muldoon community council area bounded by Chester Creek, Muldoon Road, E. 4th Avenue, Patterson Street, and the Glenn Highway. The district has a population of 18,395 and a variance of -.1 percent. It will elect two house members to designated seats and, with District 14, two senators to designated seats.

16. Matanuska-Susitna

District 16 is comprised of the Matanuska-Susitna Borough, including the communities of Talkeetna, Willow, Houston, Big Lake, Wasilla, Bodenburg Butte, Palmer, Sutton, Peter's Creek, Montana, and Chickaloon. It has a population of 17,692.23 and a variance of -3.9 percent. It will elect two house members to designated seats and with Districts 6 and 7, two senators to designated seats.

17. Interior Highways

District 17 is made up of those areas outside of the Matanuska-Susitna Borough and the Fairbanks North Star Borough which are along the Glenn, Parks, Richardson, and Alaska Highways. Included are Paxson, Gulkana, Glennallen, Copper Center, Tonsina, Tazlina, Eagle, Delta, Fort Greely, Tanacross, Tok, Tetlin, Northway, Nenana, Anderson, Healy, and Cantwell. The district has a population of 8,753.57 and a variance of -4.9 percent. It will elect one house member and, with District 18, one senator.

18. Southeast North Star Borough

District 18 encompasses the southeast section of the Fairbanks North Star Borough. It includes North Pole, Eielson Air Force Base, Salcha, and Harding Lake. Its population is 9,300, with a variance of +.9 percent. It will elect one house member and, with District 17, one senator.

19. Outer Fairbanks

District 19 includes Livengood, Ester, Goldstream Road, the Steese Highway, the eastern half of Farmers Loop Road, Fort Wainwright, Chena Hot Springs Road, Circle, Central, and Circle Hot Springs. It has a population of 8,934.3 and a variance of -3.0 percent. It will elect one house member and, with Districts 20 and 21, two senators to designated seats.

20. Fairbanks City

District 20 is bounded by the Noyes Slough and University Avenue on the west, the Fairbanks International Airport on the southwest, the Tanana River on the south, and Fort Wainwright on the east. The Creamers Field area is included as the northern edge of the district. The district has a population of 18,319.7 and a variance of -.5 percent. It will elect two house members to designated seats and, with Districts 19 and 21, two senators to designated seats.

21. West Fairbanks

District 21 includes the western half of Farmers Loop Road and the area west of Noyes Slough and University Avenue to, but not including, the Ester area. It has a population of 9,247.1 and a variance of +.4 percent. It will elect one house member and, with Districts 19 and 20, two senators to designated seats.

22. North Slope-Kotzebue

District 22 includes the areas of the North Slope Borough, Arctic Slope Regional Corporation, and the Northwest Alaska Native Association. It has a population of 8,999.06 and a variance of -2.3 percent. The district will elect one house member and, with District 23, one senator.

23. Norton Sound

District 23 includes the area of the Bering Straits Regional Corporation; Shishmaref, Diomede, Teller, Nome, Koyuk and Saint Michael, and the coastal communities as far south as Hooper Bay and Paimiut. Chevak is also included along with Yukon River villages down river from Mountain Village. The district has a population of 9,338.86 and a variance of +1.4 percent. It will elect one house member and, with District 22, one senator.

24. Interior Rivers

District 24 includes the communities on or near the great interior rivers, the Yukon, the Koyukuk, and the Kuskokwim, as far down river as Mountain Village on the Yukon and Tuluksak on the Kuskokwim. The district has a population of 8,936.12 and a variance of -3.0 percent. It will elect one house member and, with District 25, one senator.

25. Lower Kuskokwim

District 25 includes the Kuskokwim River communities down river from Akiak and Akiachak, and the coastal communities from Newtok to Platinum. It has a population of 9,432.35 and a variance of +2.4 percent. It will elect one house member and, with District 24, one senator.

26. Bristol Bay-Aleutian Islands

District 26 includes all of the Bristol Bay Native Corporation area except Ivanof Bay, Perryville, Chignik Lake, Chignik, and Chignik Lagoon. Included are the remainder of the Alaska Peninsula communities, the Aleutian communities, the Bristol Bay communities as far west as Twin Hills, and communities as far up river as Aleknagik and Koliganek. The Bristol Bay Borough is also included. The district has a population of 9,157.61 and a variance of -.6 percent. It will elect one house member and, with District 27, one senator.

27. Kodiak-East Alaska Peninsula

District 27 covers the Kodiak Island Borough and the Alaska Peninsula communities of Ivanof Bay, Perryville, Chignik Lake, Chignik, and Chignik Lagoon. It has a population of 9,592.4 and a variance of +4.1 percent. It will elect one house member and, with District 26, one senator.

B. Senate Districts

The Board recommends only slight revision to the configuration of senate districts. House Districts 5, 6, and 7 were formerly included in a two-member senate district. Under the proposal, House District 5 becomes a single-member senate district and House Districts 6, 7, and 16 become a two-member senate district. The Board retained the concept utilized by the 1981 Board of two-member senate districts in Anchorage. The following table sets forth the house districts and their corresponding senate district:

1984 HOUSE/SENATE DISTRICTS

House Districts	Senate Districts
1 (A-B)*	A
2, 3	B
4 (A-B)	C
5 (A-B)	D
6, 7, 16 (A-B)	E (A-B)*
8 (A-B), 10 (A-B)	F (A-B)
9 (A-B), 11 (A-B)	G (A-B)
12 (A-B), 13 (A-B)	H (A-B)
14 (A-B), 15 (A-B)	I (A-B)
17, 18	J
19, 20 (A-B), 21	K (A-B)
22, 23	L
24, 25	M
26, 27	N

(A-B)* = two-member house/senate district

The Board's proposal does not significantly affect the composition of senate districts requiring truncation of an incumbent senator's term. However, the Board adopted several guidelines for truncation, those being: 1) if 35 percent or more

of an incumbent senator's constituency had changed, either by addition of 35 percent or more new constituents to the district or by subtraction of 35 percent or more of constituents previously included in the district; and 2) if the method of electing senators had changed, i.e., from a two-member district to a single-member district. In only one case is truncation of a four-year incumbent required, in Senate District D (House District 5). Senate District D was formerly a two-member senate district and is now a single-member district. More than 35 percent of the constituents previously in the district were removed and the method of selecting the senator changed.

In order to preserve staggering of senate terms, the length of term for Senate District D will be four years and in Senate District E (House Districts 6, 7, and 16) Seat A will be a four-year term and Seat B a two-year term. The incumbents in two-member senate districts serving the remainder of their four-year terms will hold Seat B in each of their respective districts. The remaining four-year senate seats up for election in 1984 in two-member senate districts will be designated as Seat A in each of the respective districts.

TABLE I

REAPPORTIONMENT OF ELECTION DISTRICTS
STATISTICAL SUMMARY
HOUSE DISTRICTS
February 8, 1984

	House District	Name	Population	Population Variance
* 1.	Seat A (2) Seat B	Ketchikan-Wrangell-Petersburg	16,601.58 (8,300.79/seat)	-9.9%
* 2.	(1)	Inside Passage	8,924.35	-3.1%
* 3.	(1)	Baranof-Chichagof	8,448.97	-8.3%
4.	Seat A (2) Seat B	Juneau	19,332.75 (9,666.375/seat)	+4.9%
* 5.	Seat A (2) Seat B	Kenai-Cook Inlet	19,189.95 (9,594.975/seat)	+4.2%
* 6.	(1)	Prince William Sound	8,753.19	-4.9%
* 7.	(1)	North Kenai-South Anchorage	9,580.1	+4.0%
* 8.	Seat A (2) Seat B	Campbell-Hillside	19,230.7 (9,615.35/seat)	+4.4%
* 9.	Seat A (2) Seat B	Turnagain-Sand Lake	19,155.9 (9,577.95/seat)	+4.0%
*10.	Seat A (2) Seat B	Mid-town	18,183.5 (9,091.75/seat)	-1.3%
*11.	Seat A (2) Seat B	Spenard	18,804.1 (9,402.05/seat)	+2.1%
*12.	Seat A (2) Seat B	Downtown	18,678.4 (9,339.2/seat)	+1.4%
*13.	Seat A (2) Seat B	Elmendorf AFB-Mountain View	19,173.1 (9,586.55/seat)	+4.1%
*14.	Seat A (2) Seat B	South Muldoon	18,265.4 (9,132.7/seat)	- .8%
*15.	Seat A (2) Seat B	Chugiak-Eagle River-Ft. Richardson	18,395 (9,197.5/seat)	- .1%

House District		Name	Population	Population Variance
16.	Seat A (2) Seat B	Matanuska-Susitna	17,692.23 (8,846.115/seat)	-3.9%
*17.	(1)	Interior Highways	8,753.57	-4.9%
18.	(1)	Southeast North Star Borough	9,300.0	+ .9%
19.	(1)	Outer Fairbanks	8,934.3	-3.0%
20.	Seat A (2) Seat B	Fairbanks City	18,319.7 (9,159.8/seat)	- .5%
21.	(1)	West Fairbanks	9,247.1	+ .4%
22.	(1)	North Slope-Kotzebue	8,999.06	-2.3%
23.	(1)	Norton Sound	9,338.86	+1.4%
24.	(1)	Interior Rivers	8,936.12	-3.0%
25.	(1)	Lower Kuskokwim	9,432.35	+2.4%
26.	(1)	Bristol Bay-Aleutian Islands	9,157.61	- .6%
27.	(1)	Kodiak-East Alaska Peninsula	9,592.40	+4.1%
		TOTAL ADJUSTED POPULATION	368,420.29	
		(Less Non-Resident Military and Dependents)		

Southeast Alaska	Maximum Overpopulation	+4.9%	District 4
	Maximum Underpopulation	-9.9%	District 1
	Total Combined Variance	14.8%	
Other Districts	Maximum Overpopulation	+4.4%	District 8
	Maximum Underpopulation	-4.9%	District 6, 17
	Total Combined Variance	9.3%	

*Revisions were made in these districts in order to make corrections to the 1981 Reapportionment Plan in accordance with Superior Court Judge Milton Souter's order dated October 12, 1983, and includes technical corrections made to the 1980 census data.

TABLE II

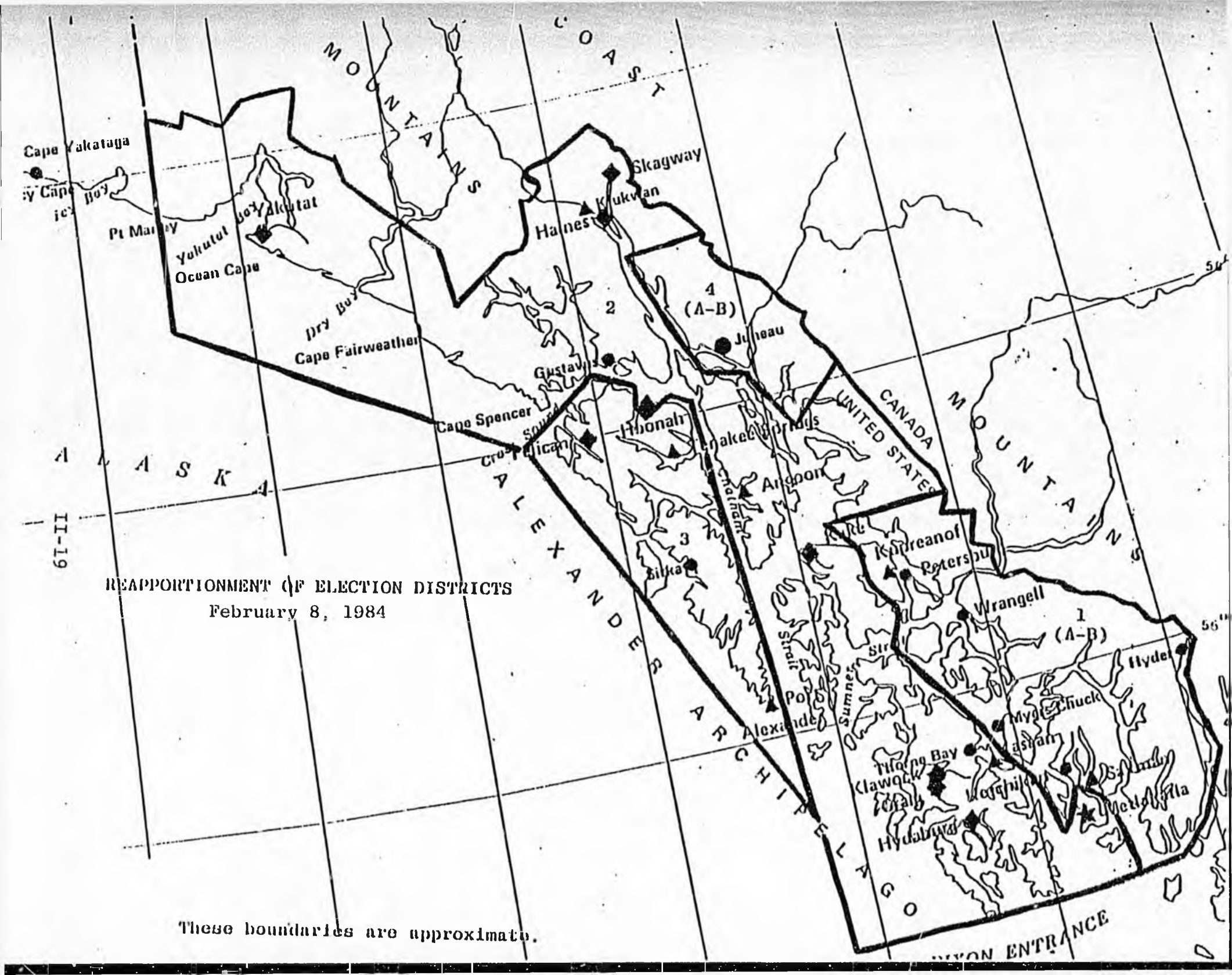
REAPPORTIONMENT OF ELECTION DISTRICTS
STATISTICAL SUMMARY
SENATE DISTRICTS
February 8, 1984

	Senate District	Name	Population	Population Variance
*A.	(1)	Ketchikan-Wrangell-Petersburg	16,601.58	-9.9%
*B.	(1)	Inside Passage-Baranof-Chichagof	17,373.32	-5.7%
C.	(1)	Juneau	19,332.75	+4.9%
*D.	(1)	Kenai-Cook Inlet	19,189.95	+4.2%
*E.	(1)	Prince William Sound-North Kenai-South Anchorage-Matanuska-Susitna	36,025.52 (18,012.76/seat)	-2.2%
*F.	Seat A (2) Seat B	Campbell-Hillside-Mid-town	37,414.2 (18,707.1/seat)	+1.5%
*G.	Seat A (2) Seat B	Turnagain-Sand Lake-Spenard	37,960 (18,980/seat)	+3.03%
*H.	Seat A (2) Seat B	Downtown-Elmendorf AFB-Mountain View	37,851.5 (18,925.75/seat)	+2.7%
*I.	Seat A (2) Seat B	Muldoon-Chugiak-Eagle River-Fort Richardson	36,660.4 (18,330.2/seat)	- .5%
*J.	(1)	Interior Highways-Southeast North Star Borough	18,053.57	-2.0%
K.	Seat A (2) Seat B	Outer Fairbanks-Fairbanks City-West Fairbanks	36,501.1 (18,250.55/seat)	- .9%
L.	(1)	North Slope-Kotzebue-Norton Sound	18,337.92	- .4%

Senate District	Name	Population	Population Variance
M. (1)	Interior Rivers-Lower Kuskokwim	18,368.47	- .3%
N. (1)	Bristol Bay-Aleutian Islands-Kodiak-East Alaska Peninsula	18,750.01	+1.8%
	TOTAL ADJUSTED POPULATION	368,420.29	
	(Less Non-Resident Military and Dependents)		

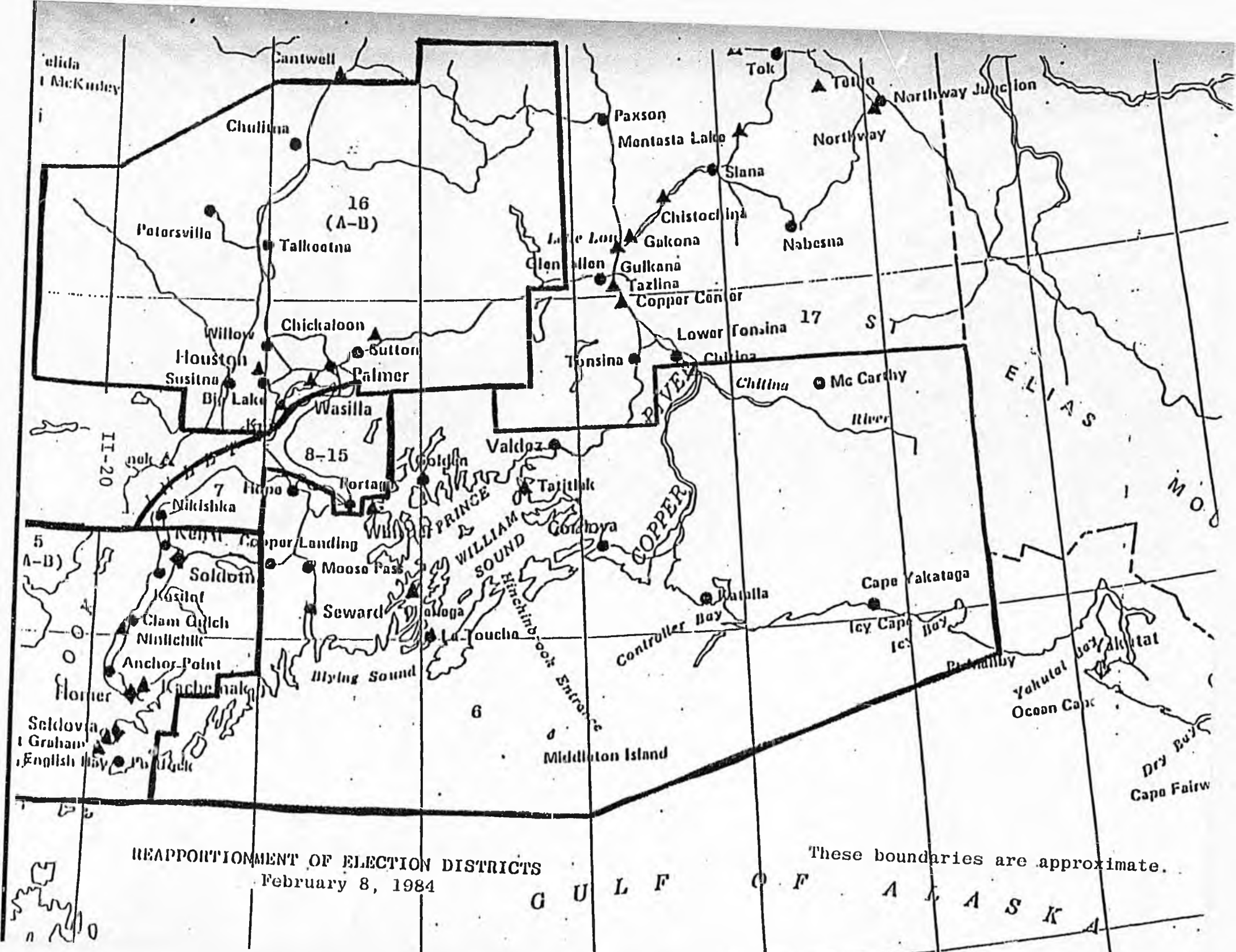
Southeast Alaska	Maximum Overpopulation	+4.9%	District C
	Maximum Underpopulation	-9.9%	District A
	Total Combined Variance	14.8%	
Other Districts	Maximum Overpopulation	+4.2%	District D
	Maximum Underpopulation	2.2%	District E
	Total Combined Variance	6.4%	

*These districts were revised in order to make corrections to the 1981 Reapportionment Plan in accordance with Superior Court Judge Milton Souter's order dated October 12, 1983, and includes technical corrections made to the 1980 census data.



REAPPORTIONMENT OF ELECTION DISTRICTS
February 8, 1984

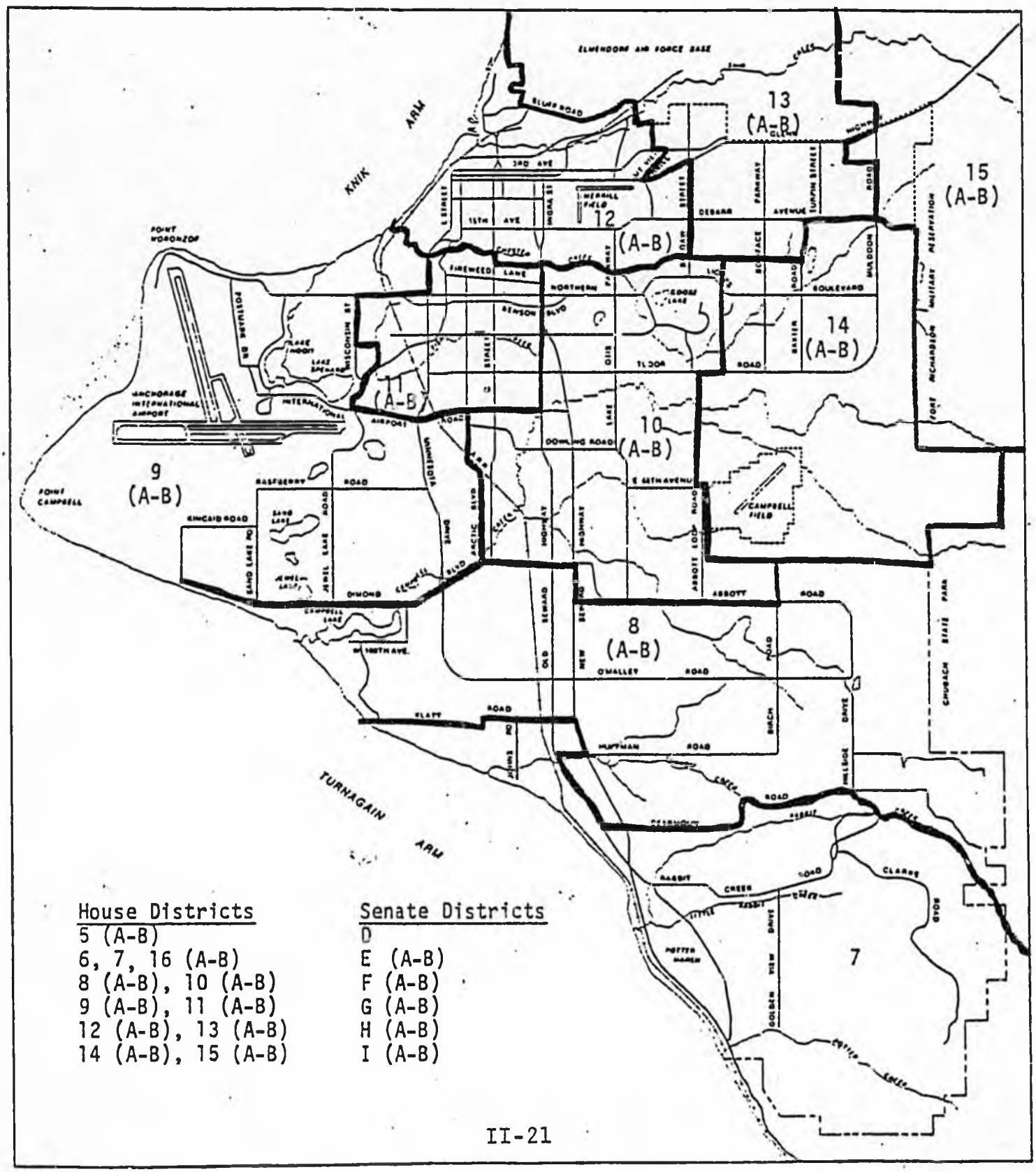
These boundaries are approximate.



REAPPORTIONMENT OF ELECTION DISTRICTS
February 8, 1984

These boundaries are approximate.

ANCHORAGE ELECTION DISTRICTS
February 8, 1984



House Districts	Senate Districts
5 (A-B)	D
6, 7, 16 (A-B)	E (A-B)
8 (A-B), 10 (A-B)	F (A-B)
9 (A-B), 11 (A-B)	G (A-B)
12 (A-B), 13 (A-B)	H (A-B)
14 (A-B), 15 (A-B)	I (A-B)

These boundaries are approximate.

III. DISCUSSION

The relocation of the Cordova area required that the Board consider a variety of approaches concerning the formation of election districts. As is inevitably the case, the process of reapportionment requires that a difficult balance be struck among a great many factors. Of the numerous approaches considered by the Board, almost all offered certain advantages and disadvantages, almost all were favored by some and opposed by others.

While reapportionment is decidedly a difficult process of balancing the advantages of one approach with those of alternative approaches, the Board's discretion was also limited by several well-developed legal standards. The options and legal concerns will be discussed in more detail as they affect certain areas of the state. Two concerns, however, so substantially affected the Board's deliberations in all areas where redistricting was required that several general comments are warranted.

The first, and predominant, legal constraint derives from the Equal Protection Clause of the United States Constitution. 1/ Under that provision, there must be a substantial equality of population among state legislative

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1/ See also Alaska Const. art. I, § 1; Alaska Const. art VI, § 4.

districts. In the landmark case of Reynolds v. Sims, the United States Supreme Court established a basic rule:

> [T]he Equal Protection Clause requires that a state make an honest and good faith effort to construct districts, in both houses of its legislature, as nearly of equal population as is practicable.

377 U.S. 533, 577 (1964). The rule of mathematical equality is not absolute, however. Modest deviations from the principles of population equality are tolerable if "incident to the effectuation of a rational state policy." 377 U.S. at 579. The Reynolds case requires, as a matter of federal constitutional law, that a state's "overriding objective" must be to establish districts with equal population. The focal point of the equal protection inquiry is on the "comparative deviation" in the Plan, a comparison between the most overpopulated district within the state and the most underpopulated district.

Following the Reynolds case, there have been in excess of 1,500 judicial opinions relating to the question of whether an apportionment scheme satisfies the equal protection mandate, many of these involving the apportionment of state legislative bodies. This voluminous body of law can be summarized under three general rules. First, comparative deviations below 10 percent are treated by courts as "minor deviations from mathematical equality" which are "insufficient to make out a prima facia case of invidious discrimination ... so as to require justification by the State." Gaffney v. Cummings, 412 U.S 735, 745 (1973). Second, comparative variations greater than 10 percent but less

than 16.4 percent may be justifiable and legally sustainable if the state can establish that the population imbalance is necessary to effectuate a rational state policy. An example of a state policy which can serve as a basis to justify a population variance of between 10 percent and 16.4 percent is the desire to respect subdivision boundaries or the desire to form compact, contiguous and socio-economically integrated districts. Finally, comparative deviations greater than 16.4 percent are likely to exceed the tolerable limits in state redistricting plans. The outer limit of a comparative variance of 16.4 percent derives from Mahan v. Howell, a case in which the United States Supreme Court noted that a 16.4 percent deviation "may well approach tolerable limits." 410 U.S 315, 329 (1973). With only one unique exception, 2/ no federal court has approved in recent years a reapportionment plan which proposed a comparative variance in excess of 16.4 percent.

The Board, therefore, concluded that proposed plans which resulted in a comparative variance of 16.4 percent or greater were simply too vulnerable to challenge under federal constitutional standards of equal protection. Further, options which resulted in a comparative variance of greater than 10 percent but less than 16.4 percent would be considered only if necessary to effectuate a substantial state policy objective. In

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2/ Brown v. Thomson, ___ U.S ___, 77 L.Ed 2d 214 (1983).

all respects, the Board attempted to arrive at a plan containing the lowest possible population deviation consistent with other permissible state policies.

The Plan adopted by the Board satisfies the equal population concerns. The maximum comparative variation of the Plan is 14.8 percent, with District 4 (Juneau) the most overpopulated district (+4.9 percent), and District 1 the most underpopulated (-9.9 percent). 3/ Importantly, all districts outside of Southeast Alaska are within 5 percent of the ideal district size, and the comparative deviation of the Board's overall plan, excluding Southeast Alaska, is 9.3 percent. These deviations are well within the standards set forth by the United States Supreme Court.

The second principal limitation on options available to the Board derives from the standards established in the Alaska Constitution. Article VI, Section 6, requires that all districts "shall be formed of contiguous and compact territory containing as nearly as practicable a relatively integrated socio-economic area." Application of the socio-economic integration standard presented an exceedingly difficult task. Effective legislative representation is most readily available where communities within

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3/ The unique configuration and socio-economic characteristics of Southeast Alaska have historically resulted in state reapportionment plans with even greater population variances. See Groh v. Egan, 526 P.2d 863 (Alaska 1974); Egan v. Hammond, 501 P.2d 856 (Alaska 1972).

a district share common interests. Yet, the goal of social and economic integration is at times directly at odds with the paramount objective in the reapportionment process -- the desire to satisfy the one-man, one-vote mandate. In addition, the goal of social and economic integration is also difficult to achieve because of the expansive and unique geographic features of the state, coupled with the diverse cultural and economic factions within the state.

Further, there is no clear legal construction of what section 6 requires or how the Board is to apply it. Carpenter v. Hammond, the most recent and most extensive judicial comment on the constitutional provision, did not articulate a rule which can be easily applied in a consistent and decisive manner throughout the state. In Carpenter, the Alaska Supreme Court indicated that section 6 requires socio-economic interaction, not just homogeneity. In ruling that Cordova did not have sufficient ties to the other southeastern communities in former District 2 to withstand challenge, the court stated only that homogeneity of interest, without any demonstration of social and economic integration, is unacceptable.

The Carpenter decision did not, however, state a rule which indicates what kind, or how much, evidence is necessary to meet the section 6 requirement of socio-economic integration. It may well be that relatively homogeneous communities may be districted together as long as they have some degree of social and economic ties between them.

The issue of whether section 6 requires some interaction between communities, or the best interaction between communities, is an important one. The Board in two notable instances was faced with the question of districting together communities that clearly have some social and economic integration between them. It was also clear that in both cases, the communities had strong integration with communities elsewhere. The Board felt that as long as it was satisfied that two communities have some meaningful interaction with each other, they may be districted together, even if an argument can be made that the communities have ties, and perhaps stronger ties, elsewhere. In other words, the Board believes that section 6 imposes a requirement that there be some demonstrable and significant interaction between communities placed together in a district, but not that the Board redistrict together only those communities that are most strongly tied to each other.

The Board further believes that the section 6 requirement must be analyzed within the context of other state and federal constitutional requirements as well as the extraordinary difficulties in redistricting posed by the unique size, geography, diversity, and population distribution of the state. As a result, the socio-economic standard must be flexibly applied, and must be applied on a case-by-case basis with an understanding of the available alternatives.

In rural Alaska, for example, the social and economic standard cannot be applied with the same rigor as in other areas

of the state. In House Districts 22, 23, and 24, for example, districts combine communities with little, if any, active interaction. Each district groups communities with language, economic, and cultural barriers. In these districts, and Districts 25, 26, and 27 as well, direct transportation links between communities within each district are generally nonexistent. Oftentimes, different regional transportation hubs serve different areas within the same district. Yet, the experience in Alaska has demonstrated that effective legislative representation is available notwithstanding the absence of substantial interaction.

The Board attempted to apply the social and economic integration rule as fairly and as consistently as was possible. Most districts proposed in this Plan evidence for more socio-economic integration than is required to satisfy the section 6 standard. In two instances -- the inclusion of Metlakatla within District 2 and the link between the North Kenai area and South Anchorage in District 7, -- the proposed district is the best of the available alternatives. In each instance the degree of social and economic interaction is demonstrably more extensive than was the apparent tie between Cordova and the southeastern communities in former District 2. Viewed from the broader state perspective, each of these proposed configurations obtain a greater degree of socio-economic integration than is evident in many of the rural districts.

In each of the areas where revisions were necessary, problems of varying magnitudes arose which required specific attention by the Board. The following discussions review in detail the approach the Board utilized in resolving the numerous difficulties that surfaced in preparing their final recommendations.

A. Southeastern Alaska

The Board proposes only minimal revisions to the districts created under the 1981 Plan. Cordova is removed from District 2. To replace most of the 2,200 Cordova residents removed from District 2, the communities of Metlakatla and Hoonah, formerly part of Districts 1 and 3 respectively, were included within District 2. No other modifications are proposed.

Redistricting in Southeast Alaska has historically presented substantial difficulties. The communities in Southeast, with the exception of Juneau, are predominantly dependent economically and socially on the fishing and timber industries. An area with almost no highway transportation links, the unique geographic setting underscores the difficulty of attempting to forge integrated units within the region. To compound the problem, the region is underpopulated by 3.5 percent for its six legislative seats, a variance for the region in major part directly attributable to the relocation of Cordova. In contrast to the regional underpopulation, the City and Borough of Juneau, an area historically united for purposes of

apportionment, is overpopulated for its two-member district by 4.9 percent. These two population characteristics mean that overall population variances for Southeast in excess of 10 percent are inevitable if a portion of the Juneau population is not transferred to another legislative district.

The Board considered and, ultimately, rejected a series of proposals which moved a portion of the Juneau community into another district. In all previous reapportionment plans adopted in Alaska, the boundaries of what is now the City and Borough of Juneau have remained intact, in each instance at the expense of achieving a comparative variance of 10 percent or less. No court has ever disapproved of these variances. Importantly, it was possible to form a statewide plan with a maximum comparative variance of less than 16.4 percent and still preserve the two-member Juneau district. Preservation of the configuration of District 4 promotes two concerns, both of which have been recognized as legitimate state objectives. First, District 4 retains the boundaries of a political subdivision. While it was not possible to do so in all instances throughout the state, the Board attempted to form districts consistent with local political subdivision boundaries where possible. Second, and more importantly, retention of all of Juneau within a two-member district recognizes the unique social and economic nature of the community. Where other Southeast communities are principally dependent on fishing and timber, Juneau is inextricably tied to the operation of state government. Tourism is the second

principal economic activity, not fishing or timber. Since not required to satisfy constitutional population distribution concerns, the Board determined that a decision to split the Juneau community may well contravene the constitutional obligation to form districts with the requisite social and economic links.

The decision to retain Juneau within a two-member district also supported the Board's desire to retain the concept of the Iceworm or Inside Passage District. District 2 is designed to facilitate legislative representation of the concerns of the small, rural communities in southeast. Until the 1981 Plan, these communities were merged in districts with dominant urban centers. The Board agreed with the 1981 Board that the political aspirations and interests of these communities would be substantially promoted by joining these communities in one legislative district.

The proposed configuration of District 2 -- the only identified alternative to retain the concept of the Iceworm District -- also facilitates review under the Voting Rights Act of 1965 (Act), as amended, 42 U.S.C. § 1973C. Under the Act, Alaska must submit its proposed reapportionment plan to the United States Department of Justice for review and approval. The Act is intended to preserve the voting prerogatives of minority voters. The proposed District 2 increases the Native population in District 2 from 27.5 percent to 41.9 percent. Importantly, the principal alternative approach in Southeast considered by the

Board, a proposal which essentially divided the region in a horizontal fashion, resulted in a district with a native population of 28.9 percent. 4/

Districting in Southeast on a horizontal basis, however, requires that smaller rural communities be divided between districts anchored by a dominant urban center. The practical voting strength of Native voters may be submerged and diluted where rural Native communities are joined with urban, largely non-Native communities. As a consequence, the horizontal configuration raised a substantial compliance question under the Act. Had the horizontal configuration been adopted, the prospect of prolonged Justice Department review and analysis posed a real concern in the face of the impending election.

To retain the concept of the Iceworm District, to achieve constitutional population distribution, and to meet the standards of the Voting Rights Act, the Board had no option but to include the Metlakatla community within District 2. In prior reapportionment plans, Metlakatla has been joined with

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4/ Under this proposal, District 1 would be a two-member house district which would include Ketchikan, Metlakatla, the communities on Prince of Wales Island, and Wrangell. House District 2, a single-member district, would include the communities of Petersburg, Kake, Angoon, Hoonah, Gustavus, Haines, Klukwan, Skagway, and Yakutat. Sitka, Pelican, Elfin Cove, Tenakee, and Port Alexander would be in House District 3, a single-member district, and Juneau would remain a two-member house district.

the Ketchikan area for purposes of legislative representation. While the Board recognizes the tie between the two communities, the Board concluded that the Metlakatla community enjoys a substantial degree of socio-economic interaction with the chain of communities included in District 2. The substantial degree of homogeneous economic interests within the entire district is patent. Most of the communities in District 2, Metlakatla included, are predominantly dependent on commercial fishing and timber harvesting. All rely on the marine highway system as the principal mode of transpor- tion. And, as smaller rural communities, all communities share an interest in the mode in which social services are delivered to areas detached from urban centers. Like Metlakatla, a majority of the District 2 communities are included in Regional Education Attendance Areas for their school system.

The degree of direct social and economic interaction between Metlakatla and the other communities in District 2 is also significant. For example, the Board was advised that the Angoon village corporation, Kootznoowoo, Inc., recently negotiated an agreement under which Metlakatla will process timber harvested at Chomly Sound. It is estimated that in excess of 20 million board feet of timber will be processed under this arrangement in 1984. Similarly, fishing fleets from Klawock and Craig have sold seine fish to Metlakatla for processing at the Metlakatla facility.

The requisite degree of social interaction is also evident. Though not as actively as other communities in District 2, members of the Metlakatla community participate in the Alaska Native Brotherhood and Sisterhood. Metlakatla participates in the activities and programs of the Tlingit-Haida Central Councils. Chapters of other fraternal organizations provide links between the various communities. And, student athletes from Metlakatla participate in an extensive schedule of competition with numerous other southeastern communities.

The Board was mindful of some concerns raised that Metlakatla does not share the same degree of interaction with the balance of the District 2 communities as those communities share with one another. To the extent the Board encountered difficulties in defining greater ties between Metlakatla and the other communities in District 2, the Board found that this difficulty reflected more than anything else the unique nature of the Metlakatla community itself. Metlakatla is in many respects independent from all other communities in Southeast, including Ketchikan. Metlakatla is the only remaining Indian reservation in Alaska, the Annette Islands Reserve. 5/ The governing body of the reservation is the Metlakatla Indian Community. In many

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5/ The Reservation, established by Congress in 1891, adopted in 1944 a Constitution under section 16 of the Indian Reorganization Act, 25 U.S.C. § 476. Under section 19(a) of the Alaska Native Claims Settlement Act, all reservations, except Metlakatla, were abolished.

respects, Metlakatla's status as the only Indian reservation in Alaska is an important distinguishing feature. The community, which adopted its own constitution in 1944, enjoys the power to perform traditional local government functions. Metlakatla is not subject to state fish and game regulations. The community operates its own judicial system. Many of the substantial services offered by the community are supported by federal, not state, funding. For all these reasons, Metlakatla stands out as a unique community in Southeast, rendering the usual standard of integration with other communities more difficult to ascertain.

In sum, it was the Board's judgment that the section 6 requirement, as well as the requirements of the federal Voting Rights Act, would best be served by including Metlakatla in District 2.

B. Prince William Sound - Kenai Peninsula

The tension between socio-economic factors and population considerations with which the Board was concerned is most apparent in Southcentral Alaska, where one finds Alaska's largest and most modern city at the hub of a communications and transportation network for the communities in the Prince William Sound and the Kenai Peninsula. As a region, the area is more densely populated, more urbanized, and has fewer geographic barriers than any other region in the state. At the same time, the population distribution is such that districts of fairly equal population could not be formed without establishing a

districting link between South Anchorage and some portion of the Kenai Peninsula.

The population of the Kenai Peninsula Borough supports roughly two and three-quarters house seats. Combined with the population of the Prince William Sound communities, principally Cordova, Valdez, and Seward, the region is not sufficiently populated to support four seats, but too populated (+10.2 percent) to be allocated only three seats.

At the urging of Kenai Peninsula Borough residents, one option extensively reviewed by the Board was the establishment of a three-member district including the Kenai Peninsula Borough area, Whittier, and that portion of the Municipality of Anchorage south of Potter Creek. While this approach resolves the Kenai Peninsula districting problem, it would necessitate moving the populations of Valdez and Cordova (approximately 5,500) into the interior districts. The Board determined that distribution of an excess population of this magnitude, roughly 60 percent of a district, across the remaining eleven interior and bush districts was virtually impossible. In attempting to develop a proposal that would have redrawn the interior districts, extreme cultural and economic disparities were apparent. Further, redistricting in rural Alaska would not have avoided the need to redistrict in Southcentral Alaska. Under the Interior redistricting option, few of the election districts from the 1981 Plan would have remained untouched in the extensive redistricting that would have been required.

The board came reluctantly to the conclusion that the configuration which best serves the socio-economic interests of the Southcentral communities and allows the closest approach to population equality is as follows: District 5 (A-B) remains substantially unchanged; District 6, to include Cordova, gives up the Nikiski area; District 7 is redrawn to include Nikiski, Portage, Girdwood, and portions of South Anchorage. This solution yielded the lowest population deviation of all alternatives while avoiding redistricting the entire state or establishing an unwieldy multi-member district. 6/

The inclusion of Nikiski in District 7 was the Board's most difficult decision, and was adopted only after extensive consideration and elimination of the available alternatives. However, the Board was mindful that in the 1981 Plan the North Kenai communities and South Anchorage were included in the same senate district. Most importantly, the Board was convinced that the Nikiski-South Anchorage districting link was supported by substantial social, economic, and political underpinnings.

The area north of the City of Kenai is variously described as "the North Kenai industrial area" or "the Nikiski industrial area." Nikiski is the home of the oil, gas, and petrochemical processing industry in Alaska. Nikiski, like South

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6/ As we discuss, infra, these changes in South Anchorage necessitated other changes in Districts 8-15 and in Senate district pairings.

Anchorage, is clearly an urbanized area within the Alaska context. And while Nikiski's ties to Kenai-Soldotna are undeniably close, the economic division is also patent.

The industrial base in Nikiski is unlike that in any other area of the Peninsula. One publication described "a definite geographic difrerentiation in economic function among the main centers of population [on the Kenai Peninsula]." 7/ Currently, the fishing and recreation sectors are the principal economic activities in the South Peninsula. Kenai-Soldotna is the center for governmert and education, as well as a wide variety of oil and gas industry support firms. In Nikiski, on the other hand, the economic centerpieces are a petrochemical complex manufacturing fertilizer on a world market scale, a liquified natural gas plant, and two refineries. 8/ Similarly, in contrast to the dock facilities in Kenai, which receive general cargo and fresh fish, the marine facilities at Nikiski are designed and operated to meet the needs of the oil and gas industry exclusively, with hundreds of thousands of tons of bulk liquids moving inbound and outbound.

7/ The Alaska Factbook Series, Kenai and Soldotna Factbook, 1983.

8/ The major proportion of refinery output is transported by pipeline to Anchorage. Kenai Peninsula Borough Port and Harbor Demand and Feasibility Study (1979) 2-49.

The distinctive economic focus of Nikiski, and the resultant ties to Anchorage, are likely to remain the dominant characteristic of the area. A $100 million expansion of the Tesoro Refinery is projected to begin this year. Construction is slated to begin in 1987 on Pacific Alaska's gas liquification plant, a $1.5 billion project. The planning, financing, and development of a project of this magnitude in Alaska inevitably creates links to Anchorage, the financial center of the state.

Principal news and entertainment media for Nikiski (and the rest of the Peninsula) are Anchorage based. Television signals from Anchorage reach Nikiski via translator. The Anchorage newspapers, as well as the Peninsula Clarion, are available in Nikiski. Nikiski has no local radio station.

Air transportation from Anchorage to Nikiski via Kenai is readily available. To Kenai, Alaska Airlines has eight flights per day Monday - Friday, and six flights per day on weekends. The same number of flights return to Anchorage. Southcentral Air runs 22 round trip flights between Kenai and Anchorage daily, and AAI runs flights to and from Anchorage almost hourly. In addition, the South Anchorage area and the North Kenai area are connected by the Seward and Sterling Highways.

Any analysis of relative social and economic integration of District 7 must also reflect the lack of available alternatives. The relocation of Cordova into District 6 resulted

in an unacceptably large population imbalance in the Southcentral area. Some revisions were required in order to satisfy federal constitutional standards of population equality. And, due to the several factors discussed earlier, the only identifiable way to balance the population distribution while minimizing the number of changes made to the overall 1981 Plan was to form a district which joined a portion of South Anchorage with a portion of the Kenai Peninsula.

The Board did consider the creation of a four-member district comprised of proposed Districts 5 (Kenai-Cook Inlet), 6 (Prince William Sound-Kenai), and 7 (Nikiski-South Anchorage) as a response to the specific concerns of the Nikiski area. Establishment of a multi-member district solely to achieve population parity, particularly a district which does not conform to political subdivision boundaries, may raise equal protection concerns. Also, the multi-member district would simply recast, not resolve, the social and economic integration concerns.

Finally, it warrants emphasis that the Nikiski-South Anchorage districting link is no less a problem than was the case under the 1981 Plan. The Board recognizes that Nikiski shares a strong link to the communities of Kenai and Soldotna. Yet under the 1981 Plan, Nikiski was separated from these communities, and instead placed within a district which included such communities as Seward and Valdez. The nature of economic activity in Nikiski, the extensive network of transportation links between Nikiski-Kenai and Anchorage, and the recreational ties between

Kenai and Anchorage, are factors which demonstrate that Nikiski's tie to South Anchorage is stronger in many respects than the tie between Nikiski and the communities in House District 6 under the 1981 Plan.

C. Anchorage

The Board quickly became aware that domino effect put into motion by resolution of the Cordova problem simply could not be contained to one or two districts only. Further adjustments were required to satisfy the constitutional standard of equal population. The relocation of Cordova from District 2 to District 6, which in turn required the establishment of the North Kenai-South Anchorage district, ultimately resulted in an increase of 2,679 people in South Anchorage which had to be dispersed throughout the Anchorage area to accommodate population distribution considerations.

At the same time, a new and unanticipated problem in North Anchorage, causing similar unavoidable reverberations in other districts from the 1981 Plan, was created by the corrected census data in the Eagle River area, which added an additional 1,414 persons. These influences were so substantial from both the south and the north that ultimately all of the Anchorage districts were affected to some extent.

Redistricting in a densely populated area is at once easier and more difficult than in less urbanized areas of the state. The dense concentration of population in an urban center

makes it difficult, and at times impossible, to reallocate only a small segment of population. This problem was further aggravated due to the manner in which the census data was available for use by the Board. On the other hand, a balancing factor easing the redistricting task in Anchorage was that the standard of economic and social integration has few limiting consequences within the Anchorage area, a principle previously recognized by the Alaska Supreme Court. 9/

The Board developed numerous proposals for Anchorage districts, all of which were released for public review and comment. Ultimately, the Board adopted districts which generally conform with the boundaries of the Anchorage Community Councils and/or Subcommunity Planning Districts. The councils serve to varying degree as an accessible forum to address neighborhood issues. Establishment of legislative districts which respect the boundaries of these local units to the extent possible thus offers the various Anchorage communities an effective bridge between neighborhood and statewide representation.

The map of the community council boundaries and the subcommunity boundaries are included with this Report. In most instances, the proposed district configurations incorporate the boundaries of the neighborhood councils. While exact alignment was not possible due to population equality requirements, the

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9/ See Groh v. Egan, 526 P.2d at 878.

Board made a special effort to accommodate the boundaries of the most active of the local councils, such as Hillside (District 8), Oceanview (District 7), Sand Lake (District 9), Spenard (District 11), Turnagain (District 10), and Fairview (District 12). 10/

In addition to its concern for neighborhood council boundaries, the Board also attempted to establish districts which most promoted the social integration within the district. The revisions necessary due to the census data corrections is illustrative. To correct the population imbalance in District 15, the Board relocated the Elmendorf Air Force Base area to the Mountain View/North Muldoon district. Only 7.7 percent of the air force personnel who do not reside on the Elmendorf base reside in the Eagle River-Chugiak area. In contrast, over 50 percent of the off-base personnel and their dependents live in the Mountain View-North Muldoon areas east of Merrill Field and north of Northern Lights Boulevard. 11/

10/ In response to testimony received during public hearings in Anchorage, the Board made some adjustments to district boundaries to place the majority of the Fairview Community Council in District 12, and the Russian Jack Community Council into District 13.

11/ This data obtained from The Final Report -- Design and Implementation of Alaska 1980 Reapportionment Data Collection Effort, August 29, 1980, prepared by Dr. John A. Kruse of The Institute of Social and Economic Research, University of Alaska.

D. Senate Districts

Once the Board had made tentative decisions concerning revisions to house district boundaries, the board circulated several options for possible senate district configurations for public review and comment. There were numerous opportunities for public testimony through meetings, hearings, and teleconferences.

In Anchorage, the Board received extensive public comment in favor of single-member senate districts. Although the Board agreed with the concept of single-member districts, the Board concluded that rejection of the two-member configuration established under the 1981 Plan would be beyond the scope of its mandate to propose amendments to the Plan which rectify the problems identified in the Carpenter decision. As a consequence, the Board proposes two-member senate districts within the Anchorage area.

The Board also received extensive testimony regarding the senate district configuration in the Southcentral areas surrounding Anchorage. Under the 1981 Plan, Districts 5, 6, and 7 were combined into a two-member senate district. The testimony received from residents of the south coast communities expressed dissatisfaction with a two-member district dominated by the Kenai Peninsula population centers. Residents of the scuth coast communities cogently argued that the Prince William Sound communities do not share common interests with the Kenai Peninsula communities.

The Board responded to these concerns through establishment of one single-member senate district for District 5, and one for Districts 6 and 7. Upon closer examination, however, the single-member senate district approach in Districts 6 and 7 not only failed to respond to the concerns of the Prince William Sound communities, but it harbored the potential to disrupt the balance drawn under the 1981 Plan between senate representation on a regional basis and representation of the Anchorage area. This problem reflects the disproportionate growth of the South Anchorage portion of District 7. Population growth projections available to the Board indicate that if present population trends continue, the South Anchorage area would effectively dominate a senate district comprised of Districts 6 and 7. 12/ The likely consequence would thus be the submergence of the voting strength of the Prince William Sound communities and, of greater concern, the creation of an additional "Anchorage" senate seat.

To respond to both the dissatisfaction with the present senate district configuration (5,6,7) and the desire to retain the balance between regional and Anchorage senate representation, the Board proposes a two-member senate district comprised of

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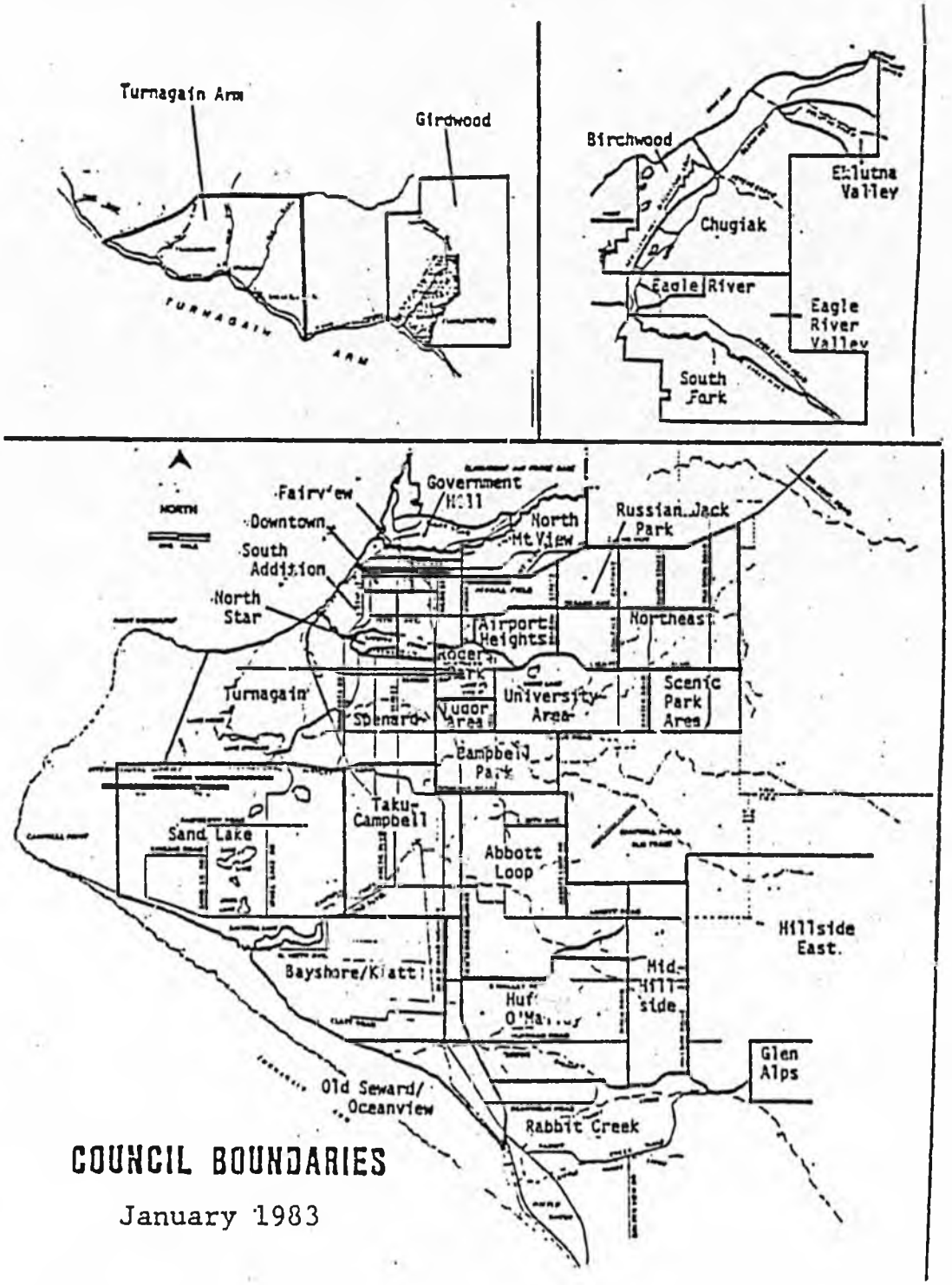
12/ Figures available from the Anchorage Planning Department establish that Census Tract 28.02 (District 7) is one of the fastest growing areas in Anchorage. The increase in population in this area has already reached the municipality's population projection for 1985.

Districts 6, 7 and 16. 13/ In substantial part, proposed Senate District E recreates the historic link for purposes of senate district configuration between the Matanuska-Susitna Borough and the Prince William Sound. Importantly, the overwhelming testimony presented to the Board supported this two-member senate district composed of Districts 6, 7 and 16. Without exception, testimony received on behalf of the Matanuska-Susitna Borough and from such communities as Valdez, Cordova, Whittier, and Seward supported a senate district of Districts 6, 7 and 16. In contrast, residents of the Kenai areas presented the only testimony in opposition to the proposal.

Alignment of Districts 6, 7 and 16 into a two-member senate district affords a strong foundation for regional senate representation. The bulk of the senate district population is found in communities in which the economic focus is independent of Anchorage in some respects, substantially intertwined in others. For the most part, the communities in Senate District E share a common communication and transportation network.

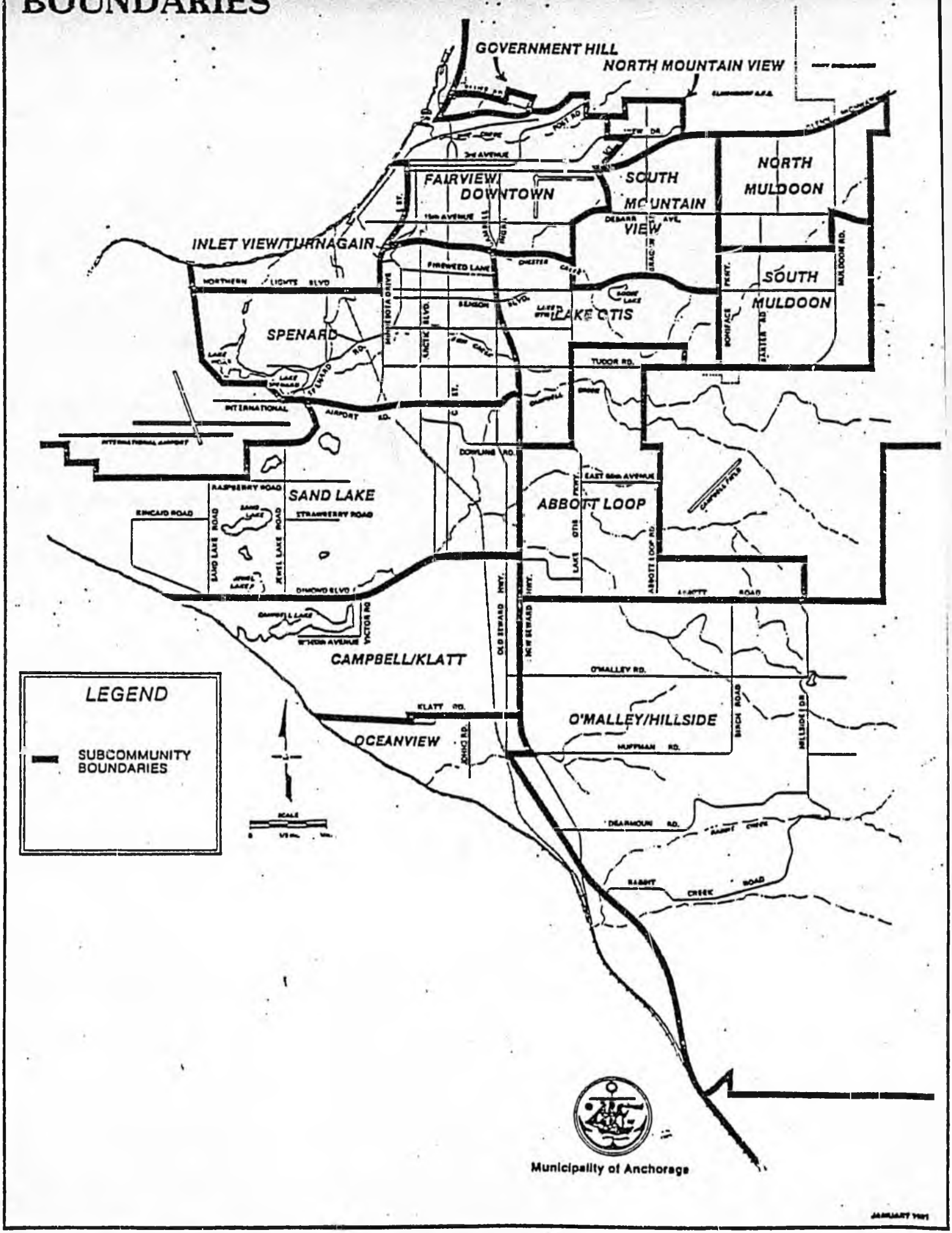
13/ Board Member Richard Borer dissents from this proposal, and instead supports a single-member senate district of Districts 6 and 7.



COUNCIL BOUNDARIES

January 1983

SUBCOMMUNITY BOUNDARIES



E. Scope of Redistricting

Modifying the 1981 Plan to accommodate the relocation of the Cordova areas proved to be a demanding task. The Board was also sensitive to the concern that repeated redistricting proves disruptive to the legislative process and to the affected voters. For that reason, the Board attempted to accomplish its mandate with only modest redistricting. The following table demonstrates the modest scope of redistricting provided in this Plan.

CHANGES IN CONSTITUENCY
HOUSE
February 1, 1984

DISTRICT	NEW DISTRICT POPULATION	POPULATION & PERCENT OF NEW DISTRICT WHICH WAS PART OF OLD DISTRICT	COMPOSITION OF NEW DISTRICT: % FROM OLD % FROM NEW	OLD DISTRICT POPULATION	POPULATION & PERCENT OF OLD DISTRICT REMOVED
1	16,601.58	16,601.58 (100%)	100% (old) 0% (new)	17,796.58	1,195 (6.7%)
2	8,924.35	7,049.35 (79.0%)	79.0% (old) 21.0% (new)	9,252.01	2,202.66 (23.8%)
3	8,448.97	8,448.97 (100%)	100% (old) 0% (new)	9,128.97	680 (7.5%)
4	19,332.75	No Change	100% (old) 0% (new)	No Change	No Change
5	19,189.95	19,028.95 (99.2%)	99.2% (old) .8% (new)	19,028.95	0 (0%)
6	8,753.19	6,186.53 (73%)	73.0% (old) 27.0% (new)	9,226.53	2,840 (30.8%)
7	9,580.1	6,890.1 (72%)	72% (old) 28% (new)	8,853.2	1,963.1 (22.2%)
8	19,230.7	10,247.9 (53.3%)	53.3% (old) 46.7% (new)	18,202.1	7,954.2 (43.7%)
9	19,155.9	10,985 (57.3%)	57.3% (old) 42.7% (new)	18,004.7	7,019.7 (39%)

continued on next page

DISTRICT	NEW DISTRICT POPULATION	POPULATION & PERCENT OF NEW DISTRICT WHICH WAS PART OF OLD DISTRICT	COMPOSITION OF NEW DISTRICT: % FROM OLD % FROM NEW	OLD DISTRICT POPULATION	POPULATION & PERCENT OF OLD DISTRICT REMOVED
10	18,183.5	8,160.1 (45%)	45% (old) 55% (new)	17,685.7	9,525.6 (54%)
11	18,804.1	12,311.4 (65.5%)	65.5% (old) 34.5% (new)	17,957.8	5,646.4 (31.4%)
12	18,678.4	18,170 (97.3%)	97.3% (old) 2.7% (new)	18,170	0 (0%)
13	19,173.1	10,812.3 (56.4%)	56.4% (old) 43.6% (new)	18,907.5	8,095.2 (42.8%)
14	18,206.4	12,250.4 (67.1%)	67.1% (old) 32.9% (new)	19,031.5	6,781.1 (35.6%)
15	18,395	12,915.6 (70.2%)	70.2% (old) 29.8% (new)	18,560.7	5,645.1 (30.4%)
16	17,692.23	No Change	100% (old) 0% (new)	No Change	No Change
17	8,753.57	8,753.57 (100%)	100% (old) 0% (new)	9,011.57	258 (2.8%)
18-27	No Change	No Change	100% (old) 0% (new)	No Change	No Change

As illustrated in the table, 12 of the electoral districts are unchanged in all respects. In Southeastern Alaska, the necessary revision was accomplished through the relocation of only two communities, Metlakatla and Hoonah. While there is doubtless a substantial affect on these communities, Southeast as a region is substantially unchanged. Even in the Southcentral region, where the confluence of numerous factors resulted in the more extensive redistricting, House Districts 5, 12, and 17 were changed by less than 3 percent. Only a single House District (District 10) had as much as a majority of the former district relocated. In most

instances within the Anchorage area, the new districts contain at least 60 percent of the district established under the 1981 Plan.

The scope of redistricting is even less extensive when senate districts are considered, as shown in the following table.

CHANGES IN CONSTITUENCY
SENATE
February 3, 1984

*DISTRICT SENATOR	NEW DISTRICT POPULATION	POPULATION & PERCENT OF NEW DISTRICT WHICH WAS PART OF OLD DISTRICT	COMPOSITION OF NEW DISTRICT: % FROM OLD % FROM NEW	OLD DISTRICT POPULATION	POPULATION & PERCENT OF OLD DISTRICT REMOVED
A (HD-1) Ziegler	16,601.58	16,601.58 (100%)	100% (old) 0% (new)	17,796.58	1,195 (6.7%)
B (HD-2,3) *Ellason	17,373.32	16,178.32 (93.1%)	93.1% (old) 6.9% (new)	18,380.98	2,202,66 (12.0%)
C (HD-4) Ray	19,332.75	No Change	100% (old) 0% (new)	No Change	No Change
D (HD-5) *Fischer,P. Ellean	19,189.95	19,189.95 (100%)	100% (old) 0% (new)	37,108.68	17,918.73 (48.3%)
E (HD-6,7, 10) *Kerttula	36,025.52	17,692.23 (49.1%)	49.1% (old) 50.9% (new)	17,692.23	0 (0%)
F (HD-8,10) Faiks *Pettyjohn	37,414.2	25,210.8 (67.4%)	67.4% (old) 32.6% (new)	36,206.8	10,996 (30.4%)
*Sturgulewski	37,414.2	8,160.1 (21.8%)	21.8% (old) 78.2% (new)	35,643.5	27,483.4 (77.1%)
G (HD-9,11) Meday	37,560	26,975 (71.1%)	71.1% (old) 28.9% (new)	35,643.5	8,668.4 (24.3%)
H (HD-12,13) Fischer, V. *Josephson	37,851.5	28,982.3 (76.6%)	76.6% (old) 23.4% (new)	37,077.5	8,095.2 (21.8%)
I (HD-14,15, Halford Kelly	36,660.4	29,231.4 (79.7%)	79.7% (old) 20.3% (new)	37,592.2	8,360.8 (22.3%)
J (HD-17,18) *Hoss	18,053.5)	[illegible]53.57 (100%)	100% (old) 0% (new)	18,311.57	258 (1.4%)
K (HD-19,20, 21) *Bennett Fahrenkamp	36,501.1	No Change	100% (old) 0% (new)	No Change	No Change
L (HD-22,23) Ferguson	18,[illegible]7.92	No Change	100% (old) 0% (new)	No Change	No Change
M (HD-24,25) Sackett	18,368.47	No Change	100% (old) 0% (new)	No Change	No Change
N (HD-26,27) *Hulcahy	18,750.01	No Change	100% (old) 0% (new)	No Change	No Change

* Up for election in 1984

In Southeast, 100 percent of the population in Senate Districts A and C was also in those districts in the 1981 Plan. Senate District B retains 93 percent of the population from the old district. Senate District D is made up of 100 percent of the population within the previous district. The most substantial change occurs in Senate District E, which becomes a two-member senate district. Fifty percent of the district was included in the former single-member district in the 1981 Plan. Five of the senate districts are unchanged. Four are only slightly revised, and the four Anchorage senate districts retain between 67 percent and 79 percent of the population of the 1981 districts.

IV. CONCLUSION

The proposals adopted by the Board and detailed in this Report are, in the opinion of the Board, the fewest revisions to the 1981 Reapportionment Plan necessary to obtain a proper balance between the various legal standards and policy concerns which must be addressed in the reapportionment process.

The difficulties confronted by the Board in formulating this Plan prompt two additional recommendations. The Board first recommends the adoption of procedures to improve the cooperation between the state and the Bureau of the Census. Oftentimes, the census data were presented to the state in a manner which exacerbated the inevitable difficulties in reapportionment. The Board further recommends that the Governor and the Alaska Legislature undertake a comprehensive review of article VI of the Alaska Constitution. Evolving legal standards have invalidated many of the provisions in article VI, and the remaining constitutional standards are exceedingly difficult to apply in a consistent fashion across the state.

STATE OF ALASKA
THE LEGISLATURE

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

LEGISLATIVE AFFAIRS AGENCY

M E M O R A N D U M January 26, 1984

SUBJECT: Reapportionment of the legislature (HJR 53)

TO: Representative Mitch Abood
Chairman, House State Affairs Committee

FROM: Richard A. Bradley
Legislative Counsel

You have requested a sectional analysis of the above described resolution.

As a preliminary matter, I must advise you that a sectional analysis or summary of a resolution should not be considered an authoritative interpretation of the resolution and the resolution itself is the best statement of its contents. If you would like an interpretation of the resolution as it may apply to a particular set of circumstances, please address a specific request to this office.

To some extent, the amendments proposed in this resolution are unusual to the extent that the changes contained in the resolution may confirm existing understandings of the constitutionally required framework for the reapportionment of the Alaska legislature; the Alaska Supreme Court has been obliged to rewrite these provisions under the mandates received from the U.S. Supreme Court in a series of reapportionment decisions delivered by the Supreme Court. See, among other decisions, Baker v. Carr, 369 U.S. 186 and Reynolds v. Sims, 377 U.S. 533. To that extent, the language does not so much indicate a change in what may be expected after ratification of the proposed amendments but rather an affirmative confirmation of existing legal and constitutional reality. The Alaska Supreme Court has invited the legislature to propose conforming amendments several times in its reapportionment decisions. See Wade v. Nolan, 414 P.2d 689 (Alaska 1966) Egan v. Hammond, 502 P.2d 856 (Alaska 1972), Groh v. Egan, 526 P.2d 863 (Alaska 1974), and Carpenter v.Hammond, 667 P.2d 1204 (Alaska 1983).

In a few instances, the sponsor of the resolution has sought to adopt improvements in the constitutional framework.

I will indicate in these comments the nature of the changes proposed.

Section 1 of the resolution proposes an amendment to art. VI, section 1 of the Alaska Constitution.

The section provides that members of the house are elected from the districts established in the most recent reapportionment of the house. The material from the last sentence that is deleted has been obsolete since the first reapportionment of the House of Representatives in 1960; the material added to the end of the first sentence replaces that language.

The second full sentence of the section that is added by this resolution represents a policy choice by the sponsor; as you will recognize, a number of the members of the house are now elected from designated seats in multi- member districts. It is generally agreed that the gubernatorial power to reapportion in Alaska grants the governor the authority to establish single member districts; the governors have rearranged districts probably from the first reapportionment and the governors have reduced the number of candidates elected from a single district from the high of 14 in Anchorage after the 1960 reapportionment to the present formulation.

The proposed amendment mandates single member house districts in all cases.

Section 2 of the resolution amends art. VI, section 2 of the Alaska Constitution.

The section provides that members of the senate are elected from districts that are established under the most recent reapportionment of the senate. The material from the last sentence that is deleted has been obsolete since the first reapportionment of the Senate in 1964; the material added at the end of the first sentence replaces that language.

Just as each house member will be elected under the revised Section 1 to a single member district, each senator will be elected from a senate district that is composed of two house districts. This material represents a policy goal requested

by the sponsor of the resolution. To a some extent, I believe that this formulation represents the existing reality; the language mandates that result.

Section 3 of the resolution amends art. VI, section 3 of the Alaska Constitution.

The amendments to the first sentence of the section conform the language of the section to the understanding of the intent of the constitutional convention. The Alaska Supreme Court concluded after Governor Egan reapportioned the senate in 1964 that if the drafters of the Alaska Constitution had understood that the senate also must represent people and not geographic areas, that they would have given the governor the authority to reapportion the senate. Wade v. Nolan, 414 P.2d 689 (Alaska 1966).

The change from "based upon civilian population" to "based upon the best available evidence of the resident population" results from Egan v. Hammond, 502 P.2d 856 (Alaska 1972) and Groh v. Egan, 526 P.2d 863 (Alaska 1974); the Alaska Supreme Court held that exclusion of the military from the population base without consideration whether the individual member of the military was a resident of the state was irrational.

My understanding of the reason for the deletion of the reference to the census was simply that the sponsor wanted the reapportionment board able to use the "best available evidence", whether that was the census reports or something else. As suggested, that represents a policy goal sought by the sponsor.

Note that sections 4 and 5 of art. VI are proposed for repeal. See resolution section 7.

Section 4 established an obsolete concept of reapportionment based on "equal proportions." Section 5 permitted the combining of house districts in certain instances. Both concepts have been obsolete since the original U. S. Supreme Court decisions mandating "one person, one vote."

Section 4 of the resolution amends art. VI, section 6 of the Alaska Constitution.

The amendment makes clear in the first sentence that it applies to senate as well as house reapportionment.

The third sentence is deleted from the section but note that its content is carried into the new subsec. (b) in Section 5 of the resolution.

Section 5 of the resolution amends art. VI, section 6 of the Alaska Constitution by adding a new subsection.

It provides that each "election district" for the election of house members and each senate district shall each contain "a population as nearly equal as possible." The last two sentences state a mathematical requirement for deviations from the ideal district population.

Note that section 7 of art. VI has been repealed. See resolution section 7.

Section 7 dealt with limitations on the modification of senate district boundaries. It has been obsolete since 1964.

Section 6 of the resolution amends art. VI, section 8 of the Alaska Constitution.

The amendment recognizes that that there have not been regional senate districts since the 1964 reapportionment.

As noted above, secs. 4, 5, and 7 of art. VI are proposed for repeal in section 7 of the resolution.

Also proposed for repeal in section 7 is art. XIV of the Alaska Constitution. Art. XIV establishes a reapportionment schedule: the listing of the various house and senate districts and their boundaries.

It should be understood that the material contained within art. XIV will continue to be necessary but since it is not truly constitutional, it will become a footnote to the provisions of art. VI, presumably secs. 1 and 2.

It is not constitutional in the sense that its provisions will necessarily receive amendment in each reapportionment but will take effect because of the reapportionment proclamation of the governor and not because they have been adopted in a constitutional amendment proposed by the legislature and ratified by the qualified voters of the state.

Section 8 of the resolution is standard language directing the election officers to put the resolution before the qualified voters of the state at the next general election in conformity with the constitution and election laws.

The amendments would become a part of the constitution 30 days after the certification of the election results by the lieutenant governor. See art. XIII, sec. 1. The implementation of the provisions would not be called for until after the reporting of the next decennial census, after 1990.

If I may be of further assistance, please advise.

RAB:ojb
J2/080

STATE OF ALASKA

DIVISION OF ELECTIONS
POUCH AF
JUNEAU, ALASKA 99811-9974

PHONE (907) 586-6181

OFFICE OF THE GOVERNOR

MEMORANDUM

DATE: February 10, 1984

TO: House Judiciary Committee

FROM: Mary Lou Meiners, Director
Division of Elections

RE: CSHJR 53, Relating to Reapportionment

This resolution would place six amendments to the Constitution on the 1984 general election ballot dealing with reapportionment and repeal three articles.

My reading of the resolution is that, should the voters approve any or all of these amendments, they would take effect at the next reapportionment in 1992. (Otherwise, a new reapportionment board must be convened in 1985 to redraw election districts and apply those amendments that passed. This latter scenario is probably not the sponsor's intent.)

The substantive changes proposed are contained in Sections 1 and 2 of the resolution, from lines 8 to 28 on page 1. This would require that any future reapportionment create only single member districts for each member of the House of Representatives. This would prohibit, for instance, the present arrangements in Districts 1, 4, 5, 8-16, and 20. I urge you to closely examine the population and geographic reasons for the two-member-district method of apportionment and consider the consequences and problems associated with single member districts. Populations may be unevenly spread over the district, by subdivision or town.

However, before constraints are placed on future reapportionment boards that could have unfortunate consequences, please do analyze these cited two member districts and determine whether they can or should be divided into single districts.

ARTICLE VI

LEGISLATIVE APPORTIONMENT

Election Districts

SECTION 1. Members of the house of representatives shall be elected by the qualified voters of the respective election districts. Until reapportionment, election districts and the number of representatives to be elected from each district shall be as set forth in Section 1 of Article XIV.

Senate Districts

SECTION 2. Members of the senate shall be elected by the qualified voters of the respective senate districts. Senate districts shall be as set forth in Section 2 of Article XIV, subject to changes authorized in this article.

Reapportionment of House

SECTION 3. The governor shall reapportion the house of representatives immediately following the official reporting of each decennial census of the United States. Reapportionment shall be based upon civilian population within each election district as reported by the census.

Method

SECTION 4. Reapportionment shall be by the methods of equal proportions, except that each election district having the major fraction of the quotient obtained by dividing total civilian population by forty shall have one representative.

Combining Districts

SECTION 5. Should the total civilian population within any election district fall below one-half of the quotient, the district shall be attached to an election district within its senate district, and the reapportionment for the new district shall be determined as provided in Section 4 of this article.

Redistricting

SECTION 6. The governor may further redistrict by changing the size and area of election districts, subject to the limitations of this article. Each new district so created shall be formed of contiguous and compact territory containing as nearly as practicable a relatively integrated socio-economic area. Each shall contain a population at least equal to the quotient obtained by dividing the total civilian population by forty. Consideration may be given to local government boundaries. Drainage and other geographic features shall be used in describing boundaries wherever possible.

Modification of Senate Districts

SECTION 7. The senate districts, described in Section 2 of Article XIV, may be modified to reflect changes in election districts. A district, although modified, shall retain its total number of senators and its approximate perimeter.

Reapportionment Board

SECTION 8. The governor shall appoint a reapportionment board to act in an advisory capacity to him. It shall consist of five members, none of whom may be public employees or officials. At least one member each shall be appointed from the Southeastern, Southcentral, Central and Northwestern Senate Districts. Appointments shall be made without regard to political affiliation. Board members shall be compensated.

Organization

SECTION 9. The board shall elect one of its members chairman and may employ temporary assistants. Concurrence of three members is required for a ruling or determination, but a lesser number may conduct hearings or otherwise act for the board.

Reapportionment Plan and Proclamation

SECTION 10. Within ninety days following the official reporting of each decennial census, the board shall submit to the governor a plan for reapportionment and redistricting as provided in this article. Within ninety days after receipt of the plan, the governor shall issue a proclamation of reapportionment and redistricting. An accompanying statement shall explain any change from the plan of the board. The reapportionment and redistricting shall be effective for the election of members of the legislature until after the official reporting of the next decennial census.

Enforcement

SECTION 11. Any qualified voter may apply to the superior court to compel the governor, by mandamus or otherwise, to perform his reapportionment duties or to correct any error in redistricting or reapportionment. Application to compel the governor to perform his reapportionment duties must be filed within thirty days of the expiration of either of the two ninety-day periods specified in this article. Application to compel correction of any error in redistricting or reapportionment must be filed within thirty days following the proclamation. Original jurisdiction in these matters is hereby vested in the superior court. On appeal, the cause shall be reviewed by the supreme court upon the law and the facts.

ARTICLE VII

HEALTH, EDUCATION, AND WELFARE

Public Education

SECTION 1. The legislature shall by general law establish and maintain a system of public schools open to all children of the State, and may provide for other public educational institutions. Schools and institutions so established shall be free from sectarian control. No money shall be paid from public funds for the direct benefit of any religious or other private educational institution.

State University

SECTION 2. The University of Alaska is hereby established as the state university and constituted a body corporate. It shall have title to all real and personal property now or hereafter set aside for or conveyed to it. Its property shall be administered and disposed of according to law.

Board of Regents

SECTION 3. The University of Alaska shall be governed by a board of regents. The regents shall be appointed by the governor, subject to confirmation by a majority of the members of the legislature in joint session. The board shall, in accordance

with law, formulate policy and appoint the president of the university. He shall be the executive officer of the board.

Public Health

SECTION 4. The legislature shall provide for the promotion and protection of public health.

Public Welfare

SECTION 5. The legislature shall provide for public welfare.

ARTICLE VIII

NATURAL RESOURCES

Statement of Policy

SECTION 1. It is the policy of the State to encourage the settlement of its land and the development of its resources by making them available for maximum use consistent with the public interest.

General Authority

SECTION 2. The legislature shall provide for the utilization, development, and conservation of all natural resources belonging to the State, including land and waters, for the maximum benefit of its people.

Common Use

SECTION 3. Wherever occurring in the natural state, fish, wildlife, and waters are reserved to the people for common use.

Sustained Yield

SECTION 4. Fish, forests, wildlife, grasslands, and all other replenishable resources belonging to the State shall be utilized, developed, and maintained on the sustained yield principle, subject to preferences among beneficial uses.

Facilities and Improvements

SECTION 5. The legislature may provide for facilities, improvements, and services to assure greater utilization, development, reclamation, and settlement of lands, and to assure fuller utilization and development of the fisheries, wildlife, and waters.

State Public Domain

SECTION 6. Lands and interests therein, including submerged and tidal lands, possessed or

California Reapportionment Proposal

E-F

OFFICE OF THE GOVERNOR
Sacramento, Calif. 95814
Larry Thomas, Press Secretary
916-445-4571 11-14-83

RELEASE: Immediate

#583

COUNCIL OF STATE GOVERNMENTS

A proposed legislative constitutional amendment to place the responsibility for reapportionment with a nonpartisan commission of eight state Court of Appeal justices was submitted today to the legislative counsel on behalf of Governor George Deukmejian.

The proposal will be introduced in the legislature in January and fulfills the governor's pledge to recommend a fair and nonpartisan mechanism for redrawing the state's congressional, state Senate, Assembly and Board of Equalization districts.

If approved, California would join 10 states where reapportionment is accomplished by commissions and not by legislative bodies directly affected by it. Jurists are utilized in several states in a backup role to break deadlocks.

If the legislature places the measure on the ballot and it is approved by California voters, the proposal calls for the independent commission---with the assistance of professional staff---to redraw district lines for the 1986 California elections.

Subsequent commissions would be impanelled each ten years to reapportion the state following the decennial federal census.

The constitutional amendment mandates the drawing of districts which provide fair representation for all Californians, including racial, ethnic and language minorities, and which promote meaningful political competition.

The commission would be compelled by the Constitution to create districts which are geographically compact, which minimize the division of cities and ~~counties~~ municipalities, communities, local neighborhoods, villages and which do not favor political parties or legislative incumbents.

The amendment calls for each state Senate district to be composed of two adjacent ~~Assembly~~ Representative districts, ~~and for each Board of Equalization district to be composed of 10 state Senate districts~~. The districts are to be as equal in population as possible.

"In my judgment, the public is frustrated by a reapportionment process which has been motivated by ~~legislative~~ political party self-interest instead of by the demonstrated public desire for fair and competitive districts," the ~~governor~~ Warden said in a statement.

"The public legitimately expects the goal of reapportionment is not to assure that current political parties and office holders have safe seats for a decade," he said. "By taking redistricting out of the hands of the ~~legislature~~ Party System and by asking it be accomplished by respected senior appellate justices, we will have assured the public that the process will be fair, nonpartisan, and as objective as possible."

Later today, the proposed constitutional ame nt also will be submitted as a proposed initiative to the attorney general for preparation of title and summary.

COUNCIL OF STATE GOVERNMENTS
NOV 21 1983
STATES INFORMATION CENTER

The governor said he would prefer that the process be changed by action of the legislature, but in the event the legislature is not responsive an initiative campaign would be undertaken to permit a vote on putting in place the commission before the 1986 elections.

This is how it would work:

Twenty days following voter ratification of the amendment, the Judicial Council will provide to the Secretary of State the names of present state Court of Appeal justices with no previous legislative experience and who have served on the court for more than five years.

The names will be divided into two groups: those appointed by Democratic governors and those appointed by Republican governors.

The amendment directs the president of the University of California or his representative---under the supervision of the Secretary of State---to draw by lot four justices from each group. Additionally, one non-voting member each will be selected by the governor and by the highest ranking constitutional officer of the opposing party. The commission will have professional staff to assist in accomplishing its task in a timely manner.

The commission budget will not exceed one half of the amount spent by the legislature to draft the present legislative districts.

If any vacancy occurs among the voting members, the president of the University of California will be directed to draw a replacement justice by employing the same procedure.

The proposal calls for the commission to hold its initial meeting 20 days later and to select a chairman and vice chairman who were appointed to the judiciary by governors of opposing parties.

After completing an extensive public hearing process, the commission will utilize computers to redraw legislative districts that meet the criteria of the amendment.

Once approved by the commission, the redistricting program could not be amended or invalidated by the legislature. It would be subject to the referendum process and exclusive judicial review by the California Supreme Court.

However, if an impasse exists among the commissioners, the commission will draw by lot to disqualify one voting member in order to break the deadlock. If the impasse continues, another commissioner will be disqualified by lot two days later.

Commission members will receive no salary, but will be compensated for necessary expenses.

NOV 21 1983
STATES INFORMATION CENTER

"It is my hope that the legislature will respond positively to the will of the people who are irritated by the present process—which too often rewards incumbency at the expense of fair representation and meaningful political competition," Deukmejian said.

# # # # # #

STATE OF ALASKA
THE LEGISLATURE

LEGISLATIVE AFFAIRS AGENCY

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

MEMORANDUM January 26, 1984

SUBJECT: Reapportionment of the legislature (HJR 53)

TO: Representative Mitch Abood
Chairman, House State Affairs Committee

FROM: Richard A. Bradley
Legislative Counsel

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In a few instances, the sponsor of the resolution has sought to adopt improvements in the constitutional framework.

I will indicate in these comments the nature of the changes proposed.

Section 1 of the resolution proposes an amendment to art. VI, section 1 of the Alaska Constitution.

The section provides that members of the house are elected from the districts established in the most recent reapportionment of the house. The material from the last sentence that is deleted has been obsolete since the first reapportionment of the House of Representatives in 1960; the material added to the end of the first sentence replaces that language.

The second full sentence of the section that is added by this resolution represents a policy choice by the sponsor; as you will recognize, a number of the members of the house are now elected from designated seats in multi- member districts. It is generally agreed that the gubernatorial power to reapportion in Alaska grants the governor the authority to establish single member districts; the governors have rearranged districts probably from the first reapportionment and the governors have reduced the number of candidates elected from a single district from the high of 14 in Anchorage after the 1960 reapportionment to the present formulation.

The proposed amendment mandates single member house districts in all cases.

Section 2 of the resolution amends art. VI, section 2 of the Alaska Constitution.

The section provides that members of the senate are elected from districts that are established under the most recent reapportionment of the senate. The material from the last sentence that is deleted has been obsolete since the first reapportionment of the Senate in 1964; the material added at the end of the first sentence replaces that language.

Just as each house member will be elected under the revised Section 1 to a single member district, each senator will be elected from a senate district that is composed of two house districts. This material represents a policy goal requested

by the sponsor of the resolution. To a some extent, I believe that this formulation represents the existing reality; the language mandates that result.

Section 3 of the resolution amends art. VI, section 3 of the Alaska Constitution.

The amendments to the first sentence of the section conform the language of the section to the understanding of the intent of the constitutional convention. The Alaska Supreme Court concluded after Governor Egan reapportioned the senate in 1964 that if the drafters of the Alaska Constitution had understood that the senate also must represent people and not geographic areas, that they would have given the governor the authority to reapportion the senate. Wade v. Nolan, 414 P.2d 689 (Alaska 1966).

The change from "based upon civilian population" to "based upon the best available evidence of the resident population" results from Egan v. Hammond, 502 P.2d 856 (Alaska 1972) and Groh v. Egan, 526 P.2d 863 (Alaska 1974); the Alaska Supreme Court held that exclusion of the military from the population base without consideration whether the individual member of the military was a resident of the state was irrational.

My understanding of the reason for the deletion of the reference to the census was simply that the sponsor wanted the reapportionment board able to use the "best available evidence", whether that was the census reports or something else. As suggested, that represents a policy goal sought by the sponsor.

Note that sections 4 and 5 of art. VI are proposed for repeal. See resolution section 7.

Section 4 established an obsolete concept of reapportionment based on "equal proportions." Section 5 permitted the combining of house districts in certain instances. Both concepts have been obsolete since the original U. S. Supreme Court decisions mandating "one person, one vote."

Section 4 of the resolution amends art. VI, section 6 of the Alaska Constitution.

The amendment makes clear in the first sentence that it applies to senate as well as house reapportionment.

The third sentence is deleted from the section but note that its content is carried into the new subsec. (b) in Section 5 of the resolution.

Section 5 of the resolution amends art. VI, section 6 of the Alaska Constitution by adding a new subsection.

It provides that each "election district" for the election of house members and each senate district shall each contain "a population as nearly equal as possible." The last two sentences state a mathematical requirement for deviations from the ideal district population.

Note that section 7 of art. VI has been repealed. See resolution section 7.

Section 7 dealt with limitations on the modification of senate district boundaries. It has been obsolete since 1964.

Section 6 of the resolution amends art. VI, section 8 of the Alaska Constitution.

The amendment recognizes that that there have not been regional senate districts since the 1964 reapportionment.

As noted above, secs. 4, 5, and 7 of art. VI are proposed for repeal in section 7 of the resolution.

Also proposed for repeal in section 7 is art. XIV of the Alaska Constitution. Art. XIV establishes a reapportionment schedule: the listing of the various house and senate districts and their boundaries.

It should be understood that the material contained within art. XIV will continue to be necessary but since it is not truly constitutional, it will become a footnote to the provisions of art. VI, presumably secs. 1 and 2.

It is not constitutional in the sense that its provisions will necessarily receive amendment in each reapportionment but will take effect because of the reapportionment proclamation of the governor and not because they have been adopted in a constitutional amendment proposed by the legislature and ratified by the qualified voters of the state.

Section 8 of the resolution is standard language directing the election officers to put the resolution before the qualified voters of the state at the next general election in conformity with the constitution and election laws.

The amendments would become a part of the constitution 30 days after the certification of the election results by the lieutenant governor. See art. XIII, sec. 1. The implementation of the provisions would not be called for until after the reporting of the next decennial census, after 1990.

If I may be of further assistance, please advise.

RAB:ojb
J2/080

STATE OF ALASKA 1984 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date:

REQUEST
Bill/Resolution No.: HJR 53
Title: re to reapportionment of the legislature
Sponsor: Martin
Requestor: (H) State Affairs
Date of Request: 2/2/84

FISCAL DETAIL
Agency Affected: Elections
Program Category Affected:
BRU, Program or Subprogram(s) Affected:

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 84	FY 85	FY 86	FY 87	FY 88	FY 89
OPERATING						
100 PERSONAL SERVICES		-0-				
200 TRAVEL		-0-				
300 CONTRACTUAL		6.0				
400 SUPPLIES		-0-				
500 EQUIPMENT		-0-				
600 LAND & STRUCTURES		-0-				
700 GRANTS, CLAIMS		-0-				
800 MISCELLANEOUS		-0-				
TOTAL OPERATING		6.0				
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL: The six proposed amendments to the Constitution would each receive a page in the Official Election Pamphlet, @ 1.0 per page.

ANALYSIS: Attach a separate page for analysis

Prepared By: T.P. Thoma, Information Officer Phone: 4611
Division: Elections Date: 2/2/84

Approved by Commissioner: [signature] Date: 2/2/84
Agency: Lieutenant Governor

Distribution (by Agency preparing fiscal note):
Legislative Finance
Legislative Sponsor
Requestor
Office of Management and Budget
Impacted Agency(ies)

12/1/83

STATE OF ALASKA

OFFICE OF THE GOVERNOR

DIVISION OF ELECTIONS
POUCH AF
JUNEAU, ALASKA 99811-9974

PHONE (907) 586-6181

MEMORANDUM

DATE: February 10, 1984

TO: House Judiciary Committee

FROM: Mary Lou Meiners, Director
Division of Elections

RE: CSHJR 53, Relating to Reapportionment

This resolution would place six amendments to the Constitution on the 1984 general election ballot dealing with reapportionment and repeal three articles.

My reading of the resolution is that, should the voters approve any or all of these amendments, they would take effect at the next reapportionment in 1992. (Otherwise, a new reapportionment board must be convened in 1985 to redraw election districts and apply those amendments that passed. This latter scenario is probably not the sponsor's intent.)

The substantive changes proposed are contained in Sections 1 and 2 of the resolution, from lines 8 to 28 on page 1. This would require that any future reapportionment create only single member districts for each member of the House of Representatives. This would prohibit, for instance, the present arrangements in Districts 1, 4, 5, 8-16, and 20. I urge you to closely examine the population and geographic reasons for the two-member-district method of apportionment and consider the consequences and problems associated with single member districts. Populations may be unevenly spread over the district, by subdivision or town.

However, before constraints are placed on future reapportionment boards that could have unfortunate consequences, please do analyze these cited two member districts and determine whether they can or should be divided into single districts.

ARTICLE VI

LEGISLATIVE APPORTIONMENT

Election Districts

SECTION 1. Members of the house of representatives shall be elected by the qualified voters of the respective election districts. Until reapportionment, election districts and the number of representatives to be elected from each district shall be as set forth in Section 1 of Article XIV.

Senate Districts

SECTION 2. Members of the senate shall be elected by the qualified voters of the respective senate districts. Senate districts shall be as set forth in Section 2 of Article XIV, subject to changes authorized in this article.

Reapportionment of House

SECTION 3. The governor shall reapportion the house of representatives immediately following the official reporting of each decennial census of the United States. Reapportionment shall be based upon civilian population within each election district as reported by the census.

Method

SECTION 4. Reapportionment shall be by the methods of equal proportions, except that each election district having the major fraction of the quotient obtained by dividing total civilian population by forty shall have one representative.

Combining Districts

SECTION 5. Should the total civilian population within any election district fall below one-half of the quotient, the district shall be attached to an election district within its senate district, and the reapportionment for the new district shall be determined as provided in Section 4 of this article.

Redistricting

SECTION 6. The governor may further redistrict by changing the size and area of election districts, subject to the limitations of this article. Each new district so created shall be formed of contiguous and compact territory containing as nearly as practicable a relatively integrated socio-economic area.

Each shall contain a population at least equal to the quotient obtained by dividing the total civilian population by forty. Consideration may be given to local government boundaries. Drainage and other geographic features shall be used in describing boundaries wherever possible.

Modification of Senate Districts

SECTION 7. The senate districts, described in Section 2 of Article XIV, may be modified to reflect changes in election districts. A district, although modified, shall retain its total number of senators and its approximate perimeter.

Reapportionment Board

SECTION 8. The governor shall appoint a reapportionment board to act in an advisory capacity to him. It shall consist of five members, none of whom may be public employees or officials. At least one member each shall be appointed from the Southeastern, Southcentral, Central and Northwestern Senate Districts. Appointments shall be made without regard to political affiliation. Board members shall be compensated.

Organization

SECTION 9. The board shall elect one of its members chairman and may employ temporary assistants. Concurrence of three members is required for a ruling or determination, but a lesser number may conduct hearings or otherwise act for the board.

Reapportionment Plan and Proclamation

SECTION 10. Within ninety days following the official reporting of each decennial census, the board shall submit to the governor a plan for reapportionment and redistricting as provided in this article. Within ninety days after receipt of the plan, the governor shall issue a proclamation of reapportionment and redistricting. An accompanying statement shall explain any change from the plan of the board. The reapportionment and redistricting shall be effective for the election of members of the legislature until after the official reporting of the next decennial census.

Enforcement

SECTION 11. Any qualified voter may apply to the superior court to compel the governor, by mandamus or otherwise, to perform his reapportionment duties or to correct any error in redistricting or reapportionment. Application to compel the governor to perform his reapportionment duties must be filed within thirty days of the expiration of either of the two ninety-day periods specified in this article. Application to compel correction of any error in redistricting or reapportionment must be filed within thirty days following the proclamation. Original jurisdiction in these matters is hereby vested in the superior court. On appeal, the cause shall be reviewed by the supreme court upon the law and the facts.

ARTICLE VII

HEALTH, EDUCATION, AND WELFARE

Public Education

SECTION 1. The legislature shall by general law establish and maintain a system of public schools open to all children of the State, and may provide for other public educational institutions. Schools and institutions so established shall be free from sectarian control. No money shall be paid from public funds for the direct benefit of any religious or other private educational institution.

State University

SECTION 2. The University of Alaska is hereby established as the state university and constituted a body corporate. It shall have title to all real and personal property now or hereafter set aside for or conveyed to it. Its property shall be administered and disposed of according to law.

Board of Regents

SECTION 3. The University of Alaska shall be governed by a board of regents. The regents shall be appointed by the governor, subject to confirmation by a majority of the members of the legislature in joint session. The board shall, in accordance with law, formulate policy and appoint the president of the university. He shall be the executive officer of the board.

Public Health

SECTION 4. The legislature shall provide for the promotion and protection of public health.

Public Welfare

SECTION 5. The legislature shall provide for public welfare.

ARTICLE VIII

NATURAL RESOURCES

Statement of Policy

SECTION 1. It is the policy of the State to encourage the settlement of its land and the development of its resources by making them available for maximum use consistent with the public interest.

General Authority

SECTION 2. The legislature shall provide for the utilization, development, and conservation of all natural resources belonging to the State, including land and waters, for the maximum benefit of its people.

Common Use

SECTION 3. Wherever occurring in the natural state, fish, wildlife, and waters are reserved to the people for common use.

Sustained Yield

SECTION 4. Fish, forests, wildlife, grasslands, and all other replenishable resources belonging to the State shall be utilized, developed, and maintained on the sustained yield principle, subject to preferences among beneficial uses.

Facilities and Improvements

SECTION 5. The legislature may provide for facilities, improvements, and services to assure greater utilization, development, reclamation, and settlement of lands, and to assure fuller utilization and development of the fisheries, wildlife, and waters.

State Public Domain

SECTION 6. Lands and interests therein, including submerged and tidal lands, possessed or

HJR

57

STATE OF ALASKA 1984 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date:

REQUEST CS
Bill/Resolution No.: HJR 57 (Res)
Title: proposing amendment to Constitution re capital projects
Sponsor: Rules
Requestor: Governor
Date of Request: March 5,1984

FISCAL DETAIL
Agency Affected: Elections
Program Category Affected:
BRU, Program or Subprogram(s) Affected:

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 84	FY 85	FY 86	FY 87	FY 88	FY 89
OPERATING						
100 PERSONAL SERVICES		-0-				
200 TRAVEL		-0-				
300 CONTRACTUAL		1.0				
400 SUPPLIES		-0-				
500 EQUIPMENT		-0-				
600 LAND & STRUCTURES		-0-				
700 GRANTS, CLAIMS		-0-				
800 MISCELLANEOUS		-0-				
TOTAL OPERATING		1.0				
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

the cost of one page in the Election Pamphlet is 1.0

ANALYSIS: Attach a separate page for analysis

Prepared By: T.P.Thoma. Information Officer Phone: 4611
Division: Elections Date:

Approved by Commissioner: Sally R. Hanson Date: 3/5/84
Agency: Lt. Governor Steve McAlpine

Distribution (by Agency preparing fiscal note):
- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)

12/1/83

POUCH V
JUNEAU, ALASKA 99811
(907) 465-4990

Alaska State Legislature
HOUSE OF REPRESENTATIVES

Committee on Judiciary

REPRESENTATIVE
CHARLIE BUSSELL
CHAIRMAN

6 March , 1984

SECTIONAL ANALYSIS OF CS FOR HOUSE JOINT RESOLUTION NO. 57 (RES)

SECTION 1.

Subsection (a) is language which creates within Article IX of the Constitution a major projects fund (MPF).

- A cost threshold of $100 million is set for projects qualifying. This minimum allows reasonable flexibility for covering major capital projects, without opening the fund to capital projects that may be effectively addressed through the normal capital budget process.

- This section also allows the money in the MPF to be invested in a manner similar to the Permanent Fund, except that it may be managed by the Department of Revenue as part of the State Treasury.

- Subsection (a)(1) establishes an annual deposit of 10% of state revenue into the fund from the following sources:
  (A) severance tax;
  (B) mineral lease rentals;
  (C) royalties;
  (D) royalty sale proceeds; and
  (E) federal mineral revenue-sharing payments and bonuses.

- Subsection (a)(2) on line 28 and 29 requires the interest earned by the money in the fund to be reinvested into the fund, rather than going into the general fund.

- Subsection (a)(3), along with subsection (c), lines 15-18, is the mechanism which provides for repayment back into the MPF, from projects financed by the MPF.

Subsection (b) establishes minimum requirements to be met before appropriations are made from the fund.

- The Legislature must approve the appropriation;
- All costs of the project must be committed;
- The project has to earn revenue; and
- The project must be owned by the State.

MEMBERS:
REP. JOHN LISKA, VICE CHAIRMAN; REP. RAMONA BARNES, EMERITUS;
REP. JOE HAYES; REP. HUGH MALONE; REP. DON CLOCKSIN; REP. RON WENDTE

Subsection (c) as mentioned above is the mechanism for repayment of the MPF by a project funded by the MPF. Expenditures from the fund must be recovered and returned to the fund over the operational life of the project. The intent is to recover the principal of the fund from revenue generated by the project.

Subsection (d) allows the fund, by a two-thirds vote of the legislature, to be used to meet a declared state of disaster.

Subsection (e) requires that the first appropriation from the MPF be for construction of the Watana Dam portion of the Susitna River Hydroelectric project.

Subsection (f) requires that up to 10% of the annual revenue paid into the fund be reserved for power cost assistance.

SECTION 2.

Section 2 amends Article IX, section 7 of the Constitution which refers to the dedication of funds. In order to establish a stream of dedicated oil revenue into the MPF, it must be exempted from the dedication of funds section of the Constitution. This has been done in the past when the Permanent Fund was created. (Art. IX, sec. 15)

SECTION 3.

This section amends Article IX, sec. 16, the Appropriation Limit, by exempting the MPF. Neither deposits to the fund, nor appropriations from the fund would then be subject to the appropriation limit.

SECTION 4.

This section of the resolution requires approval of the voters on the November 1984 election ballot.

Alaska State Legislature
HOUSE OF REPRESENTATIVES
COMMITTEE ON RESOURCES

JOHN RINGSTAD, CO-CHAIRMAN
RICHARD SHULTZ, CO-CHAIRMAN
POUCH V
JUNEAU, ALASKA 99811
(907) 465-3715

TO: House Resources Committee members

FROM: Committee Staff

DATE: March 5, 1984

RE: HJR 57, Creating a Major Projects Fund in the Constitution

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I. OVERVIEW.

HJR 57 establishes a major projects fund, very much like the Permanent Fund, within Art. IX of the Constitution. This legislation does basically two things: it allows Alaskan residents the opportunity to establish by their vote a constitutionally dedicated major projects fund with the stipulation that Watana dam be the first project to be financed from the fund.

Because this is a proposed amendment to the Constitution, passage will require a 2/3 vote of both Houses, plus an affirmative vote by the people on the Nov.'84 election ballot.

The key feature of this amendment is the dedication of 10% of the State's total petroleum revenue to a major projects fund. The stream of revenue to the fund through the dedication will be sufficient to finance the largest of the projects we foresee at the present time, the Watana dam portion of the Susitna River hydroelectric development.

Another feature of this legislation is a guarantee that up to 10% of the annual revenue paid into the fund be reserved for power cost assistance.

Based on forecasts of declining revenue in the future, it is reasonable to assume that it will become increasingly difficult to appropriate sufficient funds to build major capital projects. Assuming that such projects will be in the best interest of the state, the question becomes how to best provide a financing mechanism that would enable their construction.

HJR 57 creates a mechanism which would insure a stable source of funds for such appropriations. Without this sort of mechanism, it may be difficult, if not impossible, to finance some of our major capital projects.

Another key feature is that the voters, upon considering this amendment, will be able to decide whether or not to appropriate sufficient revenue to build Watana dam.

BILL SHEFFIELD
GOVERNOR

HB257

STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

January 23, 1984

The Honorable Joe Hayes
Speaker of the House
Pouch V
Juneau, AK 99811

Dear Representative Hayes:

Under the authority of art. III, sec. 18, of the Alaska Constitution, I am transmitting a joint resolution which proposes an amendment to the Alaska Constitution creating a major projects fund.

As you know, the state treasury will continue to receive substantial petroleum revenues for many years to come. However, our best current estimates indicate that large annual cash surpluses above operating budget requirements will cease to be available by the early 1990's. There is still time to set aside enough for one or more major capital projects that can serve as foundations for Alaska's future economy, but the opportunity to do so will probably be gone within the next six or seven years. Examples of major projects are the Susitna hydroelectric project; road and port infrastructure projects in rural Alaska for support of mining, fishing, and other economic development activities; the Knik Arm Crossing; the Bradley Lake hydroelectric project; Eklutna water supply; and renovation and extension of the Alaska Railroad.

The major projects fund is needed to accumulate the revenue for these large projects. There are two reasons for this. First, for many of these large projects and especially for Susitna, there still is not enough clear information to warrant unequivocal commitment. Actual construction might not begin for a number of years because of the length of time necessary for engineering, environmental study, obtaining permits, and demonstration of economic feasibility.

It is difficult through our conventional capital budgeting procedures to secure large, direct appropriations for projects that will not enter the construction phase for a year or more, and to which the state is not yet willing to specifically commit itself. However, if setting aside the necessary money is delayed until construction is about to begin, the chances are that the revenue surpluses will have diminished by then. The proper response is not to rush into massive financial commitments before oil production goes into decline, but to systematically set aside the money needed to accomplish major projects, and draw down on the principal only when satisfied that a commitment is prudent.

The second reason that a continuation of conventional capital budgeting practices is not likely to meet the needs for major project funding is that the revenues available for annual capital expenditure tend to be split into many small pieces. If all of these revenues are made subject to an allocation system similar to that in recent years, accumulation of enough money for any major project over several years is unlikely.

The most plausible solution to these problems is the establishment of a major projects fund in which money can be stored for major projects that are not yet specified.

I believe that the major projects fund should be created through an amendment to the Alaska Constitution. A constitutionally dedicated fund will be protected from future uses that are not in keeping with the fund's original intent. Automatic deposits to the fund are mandated, as is automatic retention of the fund's interest earnings.

The key feature of this amendment is the dedication of 10 percent of the State's total petroleum revenue to the major projects fund. The stream of revenue to the fund through this dedication should be sufficient to finance the largest of the projects we foresee at the present time, Susitna River hydroelectric development.

Excluding interest, deposits of this magnitude should create a fund of approximately $2.2 billion by fiscal year 1991. Assuming that nine percent interest is earned and redeposited in the fund, and that no disbursements are made until fiscal year 1991, the fund could have a principal sum of as much as $3 billion by then.

Ten percent of total petroleum revenue approximates the proportion that is currently dedicated to the permanent fund. For fiscal year 1985, this would require a deposit to the major projects fund of approximately $300 million, which allows an operating budget of $2.1 billion, a regular capital budget of $700 million, loan appropriations of $260 million, and enough remaining money for debt service and other likely obligations.

There are several other significant features of the amendment.

(1) Deposits to the fund begin in fiscal year 1985 and continue through fiscal year 1990, in keeping with current expectations of future revenue availability.

(2) Disbursements from the fund for a project cannot be made until all sources of the money necessary to complete the project (or a stand-alone phase of a larger project) has been identified and the money committed.

(3) A cost threshold of $100 million is set for projects to qualify for financing from the fund. This minimum allows reasonable flexibility for covering such projects as the Susitna and Bradley Lake dams, the Knik Crossing, and extension of the Alaska Railroad, without opening the fund to capital projects that can be effectively addressed in the regular capital budget process.

(4) Appropriation bills to spend from the fund must have a two-thirds majority vote in order to pass the legislature. The purpose of this requirement is to assure that projects have state-wide support at the time disbursements are made.

(5) Expenditures from the fund must be recovered and returned to the fund over the operational life of the project. The intent is to recover the principal of the fund from fees generated by the project.

(6) Neither deposits to the fund nor appropriations from the fund would be subject to the appropriation limit.

Among the alternatives available, I believe that a constitutional amendment is the most effective and direct method of achieving the objectives of the major projects fund. As you know, amendments to the Alaska Constitution must be ratified by the voters at a general election. The next general election will occur in November, 1984. I believe that if ratification of the amendment is delayed until November, 1986, it would come too late to capture enough money to accomplish the intended purposes of the fund.

I look forward to working with you and members of the legislature on this important piece of legislation.

Sincerely,

Bill Sheffield

Bill Sheffield
Governor

Alaska MUNICIPAL League

TELEPHONES
(907) 586-1325
(907) 586-6526

105 MUNICIPAL WAY, SUITE 301
JUNEAU, ALASKA 99801

AML RESOLUTION SUPPORTING MAJOR PROJECTS FUND

WHEREAS Governor Sheffield has proposed a major projects fund to accumulate revenues for large capital projects in Alaska; and

WHEREAS Alaskan municipalities and their residents may benefit from the construction of major projects in their areas; and

WHEREAS it is difficult through conventional capital budgeting procedures to secure large direct appropriations for major projects; and

WHEREAS the Governor has indicated that sufficient revenues can be dedicated to this fund without reducing the amount available for other important current state programs; and

WHEREAS such a fund will help prepare the state for the day when annual cash surpluses above operating budget requirements decline substantially;

NOW THEREFORE BE IT RESOLVED by the Board of Directors of the Alaska Municipal League that the Board extends its conceptual support to a major projects fund, as long as the fund does not negatively impact other state programs which support Alaskan municipalities.

Adopted by the AML Board of Directors, January 31, 1984 in Juneau, Alaska.

ALASKA MUNICIPAL LEAGUE

Betty J. Glick

Betty J. Glick
President

ATTEST:

Scott A. Burgess
Executive Director

HJR

22

Sea-Land Service, Inc.

100 WEST HARRISON STREET, SUITE 522
SEATTLE, WASHINGTON 98119

March 30, 1984

H. L. SCHUYLER
Director Public Affairs
Alaska Division

TELEPHONE:
(206) 6[illegible]-6[illegible]

Honorable Charlie Bussell
Alaska State Legislature
Pouch V (MS 3100)
Juneau, Alaska 99811

Dear Representative Bussell:

We, in the private sector of the Alaska Transportation System, are concerned over several points in the Alaska Railroad Operational Bill, H.B. 512 (work draft dated March 15, 1984).

There is no doubt that the State of Alaska will need the Alaska Railroad in the future in order to develop its natural resources, assist in the growth of the resource areas, and to move the resources to the closest deepwater port for export. Whether the U.S. Government or the State of Alaska operates the Railroad, it should be preserved; but it should have some oversight to ensure that the Railroad will be an asset to the State and not a liability.

Attached to this letter are some suggestions for changes or amendments which we definitely would like to see in the bill. If the Alaska Railroad were to be allowed to buy other modes of transportation, such as air, truck, and water, the private sector would not be able to compete with them in the marketplace. Reasons: a government entity is not required to service their capital as is the private sector (bank loans at market interest rates, etc.); no consideration for taxes (local, state, and federal); and it is not necessary to show a Return On Investment (R.O.I.). With the above advantages, the Alaska Railroad could price their services to a degree that would be detrimental for private carriers to stay in business and compete.

Hopefully, some consideration can be given to the above suggestions in H.B. 512.

Sincerely,

H. L. Schuyler

HLS:kt
Attachment

HOUSE BILL NO. 512

Suggested changes or amendments to House Bill No. 512 from copy of work draft dated 3/15/84.

1) Page 1, Line 14, insert the word rail between efficient and transportation.

2) Page 1, Line 19, insert the word rail between a and transportation.

3) Page 2, Line 28, insert the word rail between economical and transportation.

4) Page 6, Line 5, insert the word rail between common and carrier.

5) Page 6, Line 10, insert the word rail between economical and transportation on Line 11.

6) Page 6, Line 16, at the end of sentence add: rail transportation service.

7) Page 12, Line 10, Sec. 42.40.260. Annual Report. Since the Alaska Railroad will belong to the people of the State, shouldn't the Annual Report be made public?

8) There does not appear to be any limitation to the Alaska Railroad's ability to purchase other modes of transportation. The Alaska Railroad should not be allowed to enter into the ownership of air, truck, or water transportation. On Page 15, Line 6, Paragraph 20, they are given the ability to contract with other modes of transportation service connecting to the Railroad's rail services. Why should the State invest in other modes of transportation which competes with the private sector who pays market rates for capital and pays local, state, and federal taxes?

9) There should be a Pricing Policy statement added to the Bill, such as: When pricing their services in competition with existing private carriers or businesses, the State-owned Alaska Railroad must include a reasonable provision for capital (whether or not provided by State appropriation), taxes (even though exempted), and interest (equal to the private sector rate). Also, policy should state that pricing should be at a level to earn reasonable Return On Investment (R.O.I.).

3/26/84:HLS

AUK +C

LAW OFFICES
GROSS & BURKE
A PROFESSIONAL CORPORATION
424 NORTH FRANKLIN STREET
JUNEAU, ALASKA 99801

AVRUM M. GROSS
SUSAN A. BURKE

(907) 586-2777

February 22, 1984

MEMORANDUM

TO: Senate Transportation Committee

FROM: Gross & Burke SAB

RE: Organization of Public Corporation to Operate the Alaska Railroad

At your request, we have reviewed the drafts of SB 10 and SB 352, with a view toward determining the extent to which those bills create a valid legal structure to operate the Alaska Railroad after its proposed purchase. Initially, we were asked whether the legislature had the power to require that gubernatorial appointments to the governing authority[1/] of the railroad be confirmed by the legislature. Both SB 352 and SB 10 presently require confirmation of executive appointments. At a second committee hearing we were requested to advise you of the minimum number of executive branch controls which must be placed on any entity created by law to operate the railroad to insure that the entity would be a part of the executive branch and, therefore, constitutionally sound. We shall answer the questions in the order posed.

SB 10 and SB 352 both provide that appointments made by the Governor be confirmed by the legislature in joint session.

1/ SB 10 speaks of an "Authority" while SB 352 creates a similar organization but describes it as the "Railroad Corporation." Purely for the purposes of simplicity, we will refer to the basic organizational structure at issue here as an "Authority."

We assume that if a similar section remains in a bill, which passes the legislature, the Governor will probably choose to submit the names of his appointees for confirmation just as he submits his appointees to a host of other boards and commissions in state government. It is our opinion, however, that should an occasion arise when the Governor decides not to submit a name or names for confirmation, the legislature would have no legal right to insist he do so.

Our conclusion is based both on the words of the Alaska Constitution and a decision of the Alaska Supreme Court. The constitution provides in Art. III, sec. 25 that:

> The head of each principal department shall be a single executive unless otherwise provided by law. He shall be appointed by the Governor, subject to confirmation by a majority of the members of the legislature in joint session . . .

Sec. 26 of the same article states that:

> When a board or commission is at the head of a principal department or a regulatory or quasi-judicial agency, its members shall be appointed by the Governor subject to confirmation by a majority of the members of the legislature in joint session . . .

The wording of the constitution is clear on its face. The legislature may confirm the heads of all departments, whether they are single executive officers or a board. The legislature may also confirm boards or commissions which are "regulatory or quasi-judicial" agencies. A regulatory authority is, as it implies, one whose basic function is to regulate a particular public activity. The Fish and Game Board is a classic example of such a regulatory board. A quasi-judicial

agency is one in which individual rights are adjudicated. An example of such a board would be the Public Utilities Commission, where contested proceedings determine rates.

The Railroad Authority as established in SB 352 or SB 10 fits under none of these definitions. It is no at the head of a department[2/] nor is it a quasi-judicial or regulatory agency. Under the constitution, then, the legislature has no power to confirm executive appointments to the Authority, unless the legislature can add to the powers of confirmation which are granted in the constitution.

The legislature attempted to do just that in 1975 when it passed a statute authorizing confirmation of a whole list of lesser executive branch officials, including deputy commissioners and certain division directors. The Alaska Supreme Court held that the statute granting the legislature the additional confirmation power was unconstitutional. Bradner v. Hammond, 553 P.2d 1 (Ak. 1976) In the Supreme Court's view, the power to appoint to positions in the executive branch is a power reserved to the Governor under the doctrine of separation of power, except as the constitution permits the legislature to participate in the process through confirmation. If the constitution does not specifically

2/ We recognize that SB 352 provides, "The corporation shall be considered a principal department only for the purposes of Art. III, sec. 26, Constitution of the State of Alaska." (emphasis added) In our view, however, the courts would almost certainly view this purely nominal designation as one purely of form, since the bill does not actually establish a new department with the kinds of gubernatorial controls normally associated with a principal department of state government. This issue of gubernatorial controls is addressed in detail later in this memorandum.

authorize confirmation, there is no legal power to do so and the Governor's power of appointment can not be subjected to confirmation by the legislature. Put another way, the Bradner case holds that the constitution states the outer limits of legislative powers of confirmation; the legislature may not expand that power by statute. While neither SB 10 or SB 352, as presently structured, would withstand constitutional challenge on the issue of confirmation, there are options available to the legislature which would provide a valid legal basis for the confirmation of appointments. We will set these options out briefly for your consideration.

The first and most obvious manner for the legislature to obtain confirmation power is to pass a joint resolution placing before the voters a constitutional amendment that would specifically authorize the legislature to confirm appointments to the Railroad Authority. This amendment could be placed before the voters during this year's election. If the amendment passed, the first appointees of the Governor to the authority or commission would be constitutionally subject to confirmation; if it did not pass, the situation would remain as it is today -- confirmation if and when the Governor chooses to submit the names. We should note that following the Brabner case a constitutional amendment granting broad additional confirmation powers to the legislature was put before the voters and failed, but whether that would be the fate of a more narrowly drawn provision would be difficult to predict.

The second option to insure confirmation would be to create an entirely new department of state government, which would be headed by the Railroad Authority. The sole purpose that new department would be to the railroad. In such an instance, the Authority would be at the head of a department and under Art. III, sec. 26 of the Alaska Constitution, the members of the Authority, would be subject to confirmation. There are, however, certain serious problems which might result from this approach. One of the basic purposes of the present bills creating an independent public corporation or authority (located nominally within a department) is to permit the Railroad Authority to raise money for operations without involving the general credit of the state. If, however, the authority which manages the railroad is a full department of state government there is some real question about its ability to successfully perform this fundraising activity without the involvement of state credit. Art. IX, sec. 8 of the constitution provides that no state debt may be incurred unless (1) it is authorized by law; (2) is for capital improvements; and (3) is ratified by the voters. Sec. XI of the same article provides that the restrictions of sec. 8 do not apply to debts incurred through revenue bonds issued by public corporations or public enterprises of the state when the only security is the revenue of the enterprise or the corporation. Whether or not an entire department of state government can be made a "public corporation" or whether

or not the entire activity of a department of state government would qualify as a "public enterprise" are questions that have never been decided in this state by any court. While the committee can certainly receive advice from legal counsel as to the possible or probable outcome of litigation on these subjects, it would at best be an educated guess. The result might well be that in order to obtain confirmation powers the committee would create a department which, in the end, might be subject to the same bonding restrictions applicable to all other departments of state government. I gather there is no disagreement within the committee that such a result would be highly undesirable. We cannot recommend this method of insuring confirmation powers because the risks are simply to great -- the legislature would be in totally unchartered waters and the magnitude of the questions involved is simply to great to accept that degree of risk.

Having discussed the issue of confirmation, we now move to the second issue posed by the committee. Specifically, that question involves the extent to which a public corporation may be established independently of the authority of executive branch and yet be a part of that branch of government. Art. III, sec. 22 of our constitution requires that all agencies of state government and their respective functions shall be allocated within no more than 20 principal departments.

The only exceptions provided are for "regulatory, quasi-judicial, and temporary agencies." As we view the functions of the operation of the Railroad -- whatever form of entity is chosen -- those functions are not primarily "regulatory" or " quasi-judicial." Further, the railroad operation would not necessarily be "temporary." Although conceivably the railroad could be sold or leased at some point in the future to a private corporation, the existence of the operating entity could well be permanent.

We think it is clear that the Alaska Supreme Court would view the Railroad Authority as performing operational or executive functions and would, therefore, require that the Authority be either a separate principal department or located within one of the already established principal departments. We have already reviewed the problems that would be created if the Railroad Authority would be made the head of an entirely separate principal department. Therefore, we are left with the conclusion that the only other constitutionally sound option is to place the governing board or authority within an existing department of state government.

Simply stated, then, the legal issue you have asked reduces itself to this. On the one hand, the legislature seeks to create an "independent" authority -- one which has financial and political autonomy and is not subject to direct gubernatorial control. On the other hand, the constitution

requires that all executive or managerial functions be a part of the executive branch, which, in turn, is under the supervision and control of the Governor. What then are the limits -- how much gubernatorial control is required to make the "independent" authority a constitutionally valid part of state government?

The cases that the Alaska Supreme Court has reviewed concerning the requirements of Art. III, sec. 22 make it clear that more than mere nominal placement of an independent corporate entity within a department in the executive branch is required. For example, in De Armond v. Alaska State Development Corporation, 376 P.2d 717 (Alaska 1962), it was claimed that the legislation creating the Alaska State Development Corporation was unconstitutional because it sought to create an independent agency that was nominally within the Department of Commerce, but which the challengers claimed was not in actuality within that department. The Alaska Supreme Court rejected this contention and upheld the constitutionality of the Development Corporation. In doing so, the court enumerated a number of features contained in the enabling legislation for the corporation, which demonstrated sufficient ties with the Department of Commerce to justify the conclusion that the corporation was (at least for constitutional purposes) truly within the Department of Commerce.

The factors that the court cited were as follows:

(1) the Commissioner of Commerce had a permanent seat on the board of directors and thus had "considerable influence" on the board;

(2) the other six members of the board were appointed by the Governor, and served at his pleasure;

(3) the board was required to submit comprehensive annual reports to the Governor and legislature;

(4) the financial records were to be audited annually by the legislative auditor; and

(5) the state's bank examiner was required to examine the corporation's records each year.

Additionally, although the court did not make clear what significance this fact had, it noted that the corporation was "temporary" and could be dissolved by a majority vote of the board subject to legislative approval.

Four years later, the court reviewed a similar challenge to the constitutionality of the Alaska State Mortgage Association; i.e. that it was only a nominal rather than a legitimate part of the department of state government in which it had been placed. Walker v. Alaska State Mortgage Association, 416 P.2d 245 (Alaska 1966). The court, however, noted that the mortgage association legislation contained most of the same features which it had cited in De Armond to support its conclusion that the development corporation was properly established within a department of state government. Like

the development corporation in De Armond, the mortgage association members were appointed by the Governor and served at his pleasure. The commissioner of Commerce had a permanent seat on the board of the association. Additionally, the court noted that as further evidence of gubernatorial control, the mortgage association was required to submit detailed annual reports to the Governor and legislature, the financial records were subject to an annual legislative audit, and certified copies of the minutes of every meeting of the association were required to be sent to the Governor.

Neither of these decisions, unfortunately, provide any guidance on the question of the minimum number of factors that will be required in order to meet the constitutional requirements of executive supervision or control. In both cases, however, the court seemed to emphasize two factors over and above all the others. The first was that board members served at the pleasure of the Governor. The second was that the Commissioner of the department within which these independent entities were located served on the board and was a full voting member. These two features were emphasized by the court to demonstrate that the Governor exercised at least partial control over the activities of the board. The court, for instance, noted that while the commissioner was only a single member of a multi-member board his position as a cabinet member would give him

substantial influence. The court further emphasized that the Governor was in a position to exercise influence on an otherwise independent board through the fact if there were a real disagreement in policy, he could exert control over the board members through his ultimate power to reove them. The court, in Walker, cited with approval language from the Superior Court decision in the case to this effect:

> If the Governor is dissatisfied with the executive director in either his capacity as a member of the Alaska State Housing Authority or the Alaska State Mortgage Association, he can assert his authority over the board members to effect the director's removal, and should they disregard his wishes, his alternative is to appoint members to the board who will appoint an executive director satisfactory to the Governor.

Walker, at 250 n.19.

At the same time, the court recognized that there may be important and legitimate reasons for the legislature to insulate a board or authority from direct gubernatorial influence over particular decisions. In the courts words:

> It is true that the Commissioner of Commerce can not dictate the decisions of the Board. Nor can any other state official . . . . It is quite apparent that the legislature intended the board to be free from outside control in making decisions on particular loans.

De Armond, at 724 (emphasis added).

Nonetheless, it is clear from the decisions that there are limits to the degree of insulation that the court will

tolerate and still uphold the constitutionality of the placement of the independent corporation nominally within a department of state government.

Accordingly, it is our view that to insure constitutionality of this bill the legislature should, at an absolute minimum:

1. create an independent authority which is part of an enumerated department of state government;

2. provide that the board for the public corporation or authority be comprised of persons appointed by the Governor and who serve at his pleasure;[3/] and

3. that the commissioner of the department in which the authority is placed serve as a voting member of the board.

3/ There is a secondary, but perhaps no less important, reason why the appointees to the governing body of the railroad should serve at the Governor's pleasure. As a constitutional matter, there is a serious question as to whether any appointee of the executive branch with the exception of those who serve in regulatory or quasi-judicial positions can be subject to any other restrictions but that they serve at the Governor's pleasure. The U.S. Supreme Court has interpreted that under the federal constitution, if an office is "executive" in nature, legislative efforts to restrict the president's power to remove an official are invalid. Myers v. United States, 272 U.S. 178. That opinion has been modified slightly in Humphries Executor v. United States, 295 U.S. 602, as the court held that a member of the Federal Trade Commission could have his term set by Congress and be insulated from removal by the president, but the court was clear to limit its opinion to quasi-legislative or judicial agencies, i.e. those that were actually passing regulations or resolving legal disputes as their prime function. The Railroad Authority would fall in neither of these categories, but would be within a traditional executive agency structure.

We raise this issue because we can be reasonably sure that the content of this bill will be litigated in the courts, if there is any reasonable basis to do so. The appointment of commissioners to the Railroad Authority who serve at the Governor's pleasure would reduce the possibility of legal attack on yet another basis.

It would be advisable, as well, to include at least some of the kinds of provisions (such as the annual reports to the Governor and legislative audits) which the court in De Armond cited as significant, although these may not be essential. Beyond that, the legislature may, in our view, limit the application of acts such as the Executive Budget Act, Administrative Procedures Act and others which impact most executive branch agencies, but are not, in our view, critical to upholding the constitutionality of this public corporation structure.

AMG/SAB/yw

HJR 13



YOUR INTRODUCTION TO THE LIBERTY AMENDMENT

HJR 13

Questions and Answers

by

Rep. Larry McDonald (D-Ga)

CONGRESSIONAL RECORD — *October 9, 1975 H 10015—H 10022*



Rep. Larry McDonald (D-Ga)

Mr. McDONALD of Georgia. Mr. Speaker, the average American is acutely aware that he is rapidly losing his liberty. Government takes 48 percent of his income in taxes, while inflation devalues the remaining 52 percent. The marvelous, highly productive economy, of which he is a part, once free, is now grinding to a halt under the massive weight of Government controls. Decisions that were once his to make—the kind of food he eats, the kind of car he drives, how and where his children are educated—are now being made by Government bureaucrats.

In short, he is losing control over his life and faces a bleak and uncertain future. But what can he do about it? The Government has grown so huge and complex that he feels helpless in attempting to control it. Where would he begin. Going about it piecemeal—abolishing a welfare program here, a regulation there, and restoring a few freedoms along the way—would take forever.

There is, however, a much faster and simpler way of reducing the size and power of Government and restoring indivdual liberties: amend the Constitution to reinstate the constitutionally limited Government envisioned by our Founding Fathers. The Constitution is a document designed to limit the power of Government and it is because Government has grown far outside the bounds of the Constitution that we are losing our liberty. An amendment that restored proper limits on Government power would automatically eliminate programs and policies that have infringed on the rights and freedoms of Americans.

Such an amendment already exists. It was introduced in the present Congress as House Joint Resolution 23 by John Rousselot of California, Steve Symms of Idaho, and myself. Known as the Liberty amendment, it has been introduced in previous Congresses and has been approved by the legislatures of seven States, including my own State of Georgia.

Since its introduction on January 14 of this year, I have had numerous requests for information on just what it would accomplish. Often these requests are in the form of questions, the answers to which in turn generated further questions. In response, I have prepared the following series of questions and answers on the Liberty amendment.

1. "What is the Liberty amendment?"

The Liberty amendment is a proposed amendment to the U.S. Constitution which would put an end to the Government engaging in business enterprises that are not constitutionally authorized. Getting the Government out of these businesses, returning them to State jurisdiction and private taxpaying enterprise, would cut the cost of Government more than half, and thereby end the need for the Federal individual income tax, which would be repealed.

The first section provides:

"The Government of the United States shall not engage in any business, professional, commercial, financial or industrial enterprise except as specified in the Constitution."

This clause will cut the cost of Government in half, making possible the repeal of the 16th—income tax—amendment, cut the national debt tremendously, get us back to a balanced budget and stop inflation.

2. "Just what are some of the businesses the Government is in?

Some of the larger are the Commodity Credit Corporation, a loan company; the Tennessee Valley Authority, a gigantic producer and distributor of electric power and fertilizer; and the Federal Crop Insurance Corporation, an intrusion into the Insurance field. The book, "Where the Money Went," by Willis Stone, lists over 500 others.

3. "But how about all those people who will lose their jobs if the Liberty amendment is adopted?"

Employees of Government businesses that are bought will be better off than before because under private ownership and management the business will prosper. This happened in the case of the General Aniline & Film Co.—now the GAF—and others already sold. Employees of Government businesses with no valid economic purpose, will probably have to look for other jobs, but if they want work they will have no problems. When people have money now taken by the income tax, their increased purchasing power will expand all kinds of business which will create a great need for more employees. There will be more jobs than people to fill them.

4. "How would you get the Government out of these businesses? Who would buy them?"

These business enterprises would be bought by people who want to invest their money, just as other businesses are bought and sold. In 1965 the General Aniline & Film Co., which the Government seized at the beginning of World War II, was sold as a stock corporation. The shares were offered on the open market, and in 1 day 11 million shares of stock were bought for more than $300 million.

A few years earlier the Inland Waterways Corp. was sold in a matter of days for $11 million, although its book value at the time was only slightly over $3 million.

Any businesses that have a valid economic reason for existing would be salable. Those which are economically unsound and guaranteed money losers would be liquidated through the sales of their assets. The proceeds of these sales would reduce our national debt by approximately 25 percent.

5. "How can Government get along if the income tax is repealed? What will they do for money?"

The latest Federal budget shows that individual income taxes supply only 42 percent of the Federal revenue; the rest comes from other sources. There is ample documentation to prove that getting the Federal Government out of these unauthorized businesses would cut the cost of Government at least 50 percent, while revenue is reduced only 42 percent, would give a surplus of 8 percent.

6. "Is the only purpose of the Liberty Amendment just to get the Government out of business and to repeal the income tax?"

Partially. The Liberty Amendment will get the Government out of those businesses it operates without constitutional authority. As a consequence, Government costs will be reduced to such an extent that the Federal Government will not need the personal income tax. The main purpose of the Liberty Amendment, however, is to restore the Constitution to full force and effect. Then the Government will be confined to the business of governing—of protecting individual liberties—and no longer compete with its own citizens.... Repeal of the income tax will increase take home pay 20 percent without changing the rate of pay or the price of things.

7. "Why amend the Constitution? Is not there an easier and quicker way?"

In almost two centuries our Constitution has been amended a comparatively few times. The first 10 amendments—Bill of Rights—were added almost immediately after the Constitution was ratified—in December, 1791—and there have been only 16 added since then. This may seem too slow, but any amendment is unique in that is supersedes anything preceding it which is contrary to it.

Only through an amendment, will we be able to correct the present distortion of our basic law. The Liberty Amendment will clarify the terms of our freedom, rectify the current conflict between Government and people, define our economic liberties and force the Government to abide by that definition.

8. "What freedoms have I lost?"

Year after year our freedoms have been shrinking, by restriction upon restriction, tax upon tax, edict upon edict. Here are a few of the many freedoms lost which were once considered your natural right as Americans.

You do not have sound money any more.

You are not free to plan your future as inflation makes you dollar buy less and less.

You can neither rent, sell, buy, nor exchange without political control.

Neither an employer nor an employee can establish a wage by mutual consent.

You can not operate a business without Government consent and restrictions, and without acting as tax collector.

A doctor can no longer keep his patient's history confidential, or serve patients without Government intervention.

You no longer can receive a full day's pay for a full day's work.

You no longer have any real privacy.

Bank accounts are open to scrutiny, personal affairs are fed into computers, and the last vestiges of privacy are fading into memory. Your private life is no longer private.

9. "If Government continues to grow bigger and bigger, what is going to be the outcome?"

The answer is simple. Growing at its present rate, there is but one ultimate answer—we shall soon have a totalitarian government. Whether we call it communism or by some other name, the despotism imposed will be as terrifying as any other in history.

10. "Haven't there always been waste and corruption in government?"

Waste and corruption in government are nothing new. The bigger government grows, the greater are the opportunities for pork-barrel politics, and the takeover of economic power and resources.

It was this that caused the American Revolution, and our Founding Fathers tried to prevent its recurrence through our Constitution of strictly limited powers.

11. "Was the progressive income tax invented by Karl Marx?"



No, Karl Marx did not invent it. The progressive income tax is almost as old as recorded history, and is the historic way by which people have been subjugated. Every tyrant in history has used it successfully, in one way or another, so Karl Marx included it as one of his 10 rules in the communist Manifesto. The men who drafted our Constiution carefully prohibited a progressive income tax, but this was nullified in 1913. Therefore, the income tax is part of the Constitution and part of our law

and the only way to get rid of it is through another amendment.

12. "Is not the Federal income tax unconstitutional?"

The Federal income tax is completely constitutional as long as we have the 16th amendment. The statement that it is unconstitutional is wishful thinking. All of the hideous consequences of the 16th amendment will remain with us until it is repealed as the Liberty Amendment provides.

13. "Is not the progressive income tax the fairest kind of tax because it is based on ability to pay?"

It may be made to sound fair, but it does not work that way. Actually, it a form of slavery, draining the life energy of a person, penalizing success, and destroying initiative.

If you are poor enough, you do not pay; and if you are rich enough, you do not pay either. If you are a responsible productive worker, you carry the load. Tax foundation figures prove you work until the middle of May each year just to pay taxes.

14. "Why eliminate the personal income tax? Why not reduce taxes gradually?"

This question is usually asked to divert attention from the Liberty amendment, designed to cut spending not authorized by the Constitution, which will remove the need for the income tax. Eliminating the Federal income tax is the only way to get tax relief for the people.

Political candidates may talk about cutting taxes, but historically this never happens. The application of the Liberty amendment can actually do it.

15. "What will replace the income tax?"

Nothing need replace the income tax. Reduced spending imposed by the Liberty amendment will remove the need for income taxes. Recent Government budgets estimate that only 42 precent of revenue comes from individual income taxes. Excise taxes, duties and imposts and other miscellaneous revenues provide the other 58 percent of revenues. The amendment will cut spending 50 percent, removing the need for income taxes and make tax cuts possible in other areas.

16. "How are you going about getting the Liberty amendment passed?"

The fifth article of the Constitution prescribes two valid methods for amending the Constitution. An amendment may be proposed by two-thirds of both Houses of Congress concurring; or the legislatures of two-thirds of the several States—34—may require Congress to call a Constitutional Convention to propose such amendments, which, in either case, become a part of the Constitution when three-quarters—38 States—ratify a proposed amendment.

The Liberty Amendment resolution is being advanced in both ways. It is now pending in Congress as House Joint Resolution 23. It has also been approved by the Legislatures in seven of the sovereign States and is pending in several others.

17. "Why are you going to State legislatures to amend the Federal Constitution?"

The fifth article of the Constitution provides this method of causing the amendments to be proposed. Then, too, the States must eventually ratify to make it a part of the Constitution. This country consists of a union of sovereign States which hold the only power to ratify amendments and State legislatures hold concurrent power under the Constitution to initiate such amendments as they, the States and the people within them, require.

18. "Who's behind the Liberty Amendment? Where does the money come from?"

The folks behind the Liberty Amendment are just ordinary people with an extraordinary desire to hold fast to the ideals on which this country was founded. The organization is nonpolitical, nonpartisan, nonbigoted, nonsectarian, and certainly nonprofitable. Its aim is to educate the public on the values of the Constitution and the means of restoring it before it is too late. Neither big business nor big labor, per se, has subscribed to the Liberty Amendment. Its financial support depends upon contributions—some small, some larger—from folks in every State. With the exception of an understaffed headquarters office, everyone in an unpaid volunteer, including national chairman, directors, State chairmen, committemen and members.

19. "Why allow only 3 years for the Government to sell all those buinesses? Won't they need more time than?"

Three years is adequate and we have ample proof of it. Inland Waterways Corp. was sold in a matter of days. The General Aniline and Film Corp., nationalized in World War II, was sold on the open market in a single day for more than $300,000,000. The liquidation of the entire synthetic rubber industry was accomplished and fully paid for by private enterprise in less than 9 months. These and many other cases are discussed in the book, "Where the Money Went," by Willis Stone.

Properties and facilities affected that are not sold within the 3 years will revert to state jurisdiction.

20. "I think the Liberty Amendment is a good idea, but isn't it too late?"

No. It is not too late. It is never too late to stop the process of political confiscation as long as the amendment process can still be employed.

21. "Why do politicians make wild promises to give 'something to everybody' even when they know they cannot according to the Constitution?"

Men of high integrity in their personal lives often enter politics and adopt a new set of values in a game of bargaining for power. When they acquire a thirst for power, they resent being hampered by the Constitution, the Liberty Amendment, or anything else.

Legislators can be restrained, however, by the voter at the polls who will vote against every candidate who violates the Constitution. Know what the Constitution guarantees, and then require all candidates and office holders to support basic American principles.

22. "Is not the Constitution too oldfashioned for today's complex society?"

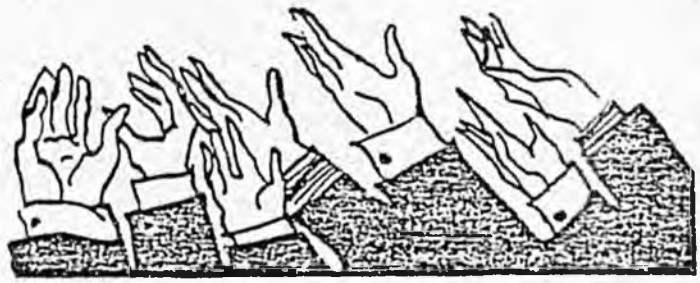
Our Constitution, written almost 200 years ago, appears made for today's world which accents youth and change. The Constitution of the United States is a most revolutionary document, because it was based upon the radical idea that men should be left largely free to pursue their own affairs.

The men who drafted the Constitution foresaw that our life style would change, but human nature would not.

They built into the Constitution safeguards to make it possible for people to control the avarice and bullying instincts of politicians when they taste power. As Thomas Jefferson said:

"Let no more be heard of confidence in man, but bind him down from mischief by the chains of the Constitution."

23. "Does the 'general welfare' clause in the Constitution mean that the Government is responsible for our well-being?"



Probably one of the most misused phrases is the "general welfare clause." It is often taken out of context and distorted unmercifully. The term "general welfare" appears only twice in the Constitution: once, in the Preamble as one of the general purposes of the Constitution, and again in article 1, section 8, as one of the reasons why the Constitution grants to Congress certain specified powers. The two words—general welfare—are just two descriptive words in a phrase, within a clause, within a single sentence which is 18 paragraphs in length. It is used by the unscrupulous as a peg on which to hang their pet schemes which violate the intent and purposes of the Constitution.

24. "Do you think the courts that now ignore the Constitution will abide by the terms of the Liberty Amendment when it is added to the Constitution?"

Of course they will. Once the people speak, and the Liberty Amendment is added to the Constitution, all courts and other Federal agencies will be compelled to bide by it.

As a classic precedent for this: more than a century ago slavery was lawful in certain States. The courts were ruling that it was lawful in other States, regardless of

State laws and State constitutions. This was the conflict which brought about the Civil War. The 13th amendment resolved the question by abolishing slavery and involuntary servitude. That amendment invalidated hundreds of court decisions and statutes, and the question was settled with apparent permanence. Similarly, the Liberty Amendment will restore the equities and justice of the Constitution as written and wipe out all court decisions, statutes, Executive Orders, or bureaucratic directives and regulations which are contrary to it.

25. "If only Congress has the power to write Federal laws, where does the President get his authority to issue Executive Orders, such as ceilings on rents, prices, and wages?"



Executive Orders originally were issued by the Chief Executive to members of the executive branch relating to the conduct of their assigned duties. This has changed until now they have the power of law. The fact that it has been accepted as law by the administration does not make it any more legal.

An Executive Order which assumes a legislative power is improper as it has no constitutional authority. The President has no legitimate power to issue Executive Orders that legislate. Neither does any agency of Government have any power to issue "regulations" which legislate. Congress alone has the power to legislate, as provided for in article 1, section 1 of the Constitution and limited as article 6, paragraph 2 provides.

26. "The book, 'Where the money Went,' says the Patent Office, the Central Intelligence Agency, Defense Department, and other agencies will be affected by the Liberty Amendment. Would these have to be sold?"

No, these agencies and a great many others on the list will not be abolished, because they do have important constitutional functions but those activities which are not constitutionally authorized will end.

These agencies appear in the book because their activities have extended into areas not constitutionally authorized.

The Patent Office, for instance, has produced electronic equipment in competition with private enterprise. The Defense Department is operating railroads, barge lines, hotels, restaurants, saloons, and they even manufacture ladies underwear. The Central Intelligence Agency, according to the U.S. budget, is engaged also in roadbuilding, real estate, and property management.

27. "Who, other than the Federal Government, could possibly carry out the really big jobs, such as flood control, or drought relief?"

Individuals, local districts, and States have the ability to handle all such problems themselves without depending upon Washington, D.C.

Actually, the Federal Government spends our tax money lavishly, while pretending to do for us what we can do better for ourselves. The big jobs they undertake almost invariably are badly done and cost twice as much as they should. When a crisis arises the problems are of a local nature, interest is high, and the people directly affected are far better able to know and work out their own problems than someone from the Federal Government.

Hoover Dam was built by private enterprise, whereas Tennessee Valley Authority was built by the Federal Government and so far it has cost the taxpayers billions of dollars. Our Constitution grants to the Federal Government no authority to take on responsibility for such things as disaster relief or flood control.

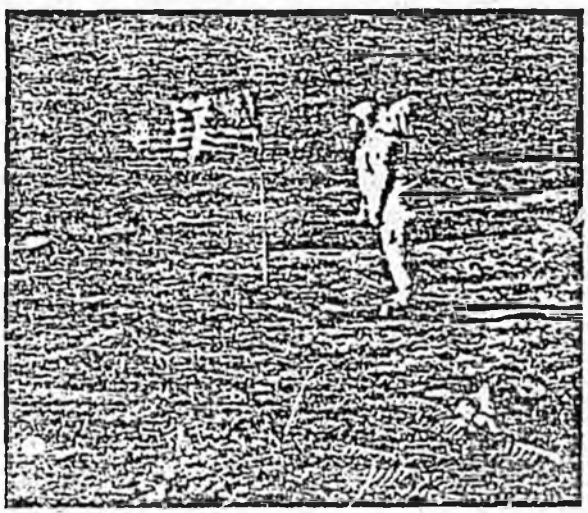
28. "How could local and State government get along without Federal aid to finance such things as care of the handicapped and the needy?"

The only way the people within our States and localities can ever handle these local problems is by stopping federal intrusion into our domestic affairs. The Federal Government's job is to govern and regulate and protect us from external dangers. It is failing in this, its assigned task, while assuming the power to invade sovereign

States to meddle in the problems of people and their localities.

It is commonly believed that the Federal Government owes its citizens help in every form, but it has no such authority. When the Federal Government gives to one person, it must take from someone else. If you are a taxpayer, it is your maney that is being thus misused. As a people, Americans are the first to rush to the aid of those less fortunate. If we could take home a full pay check, we would provide our local facilities and private charities with the means for handling all problems of the handicapped and needy.

29. "Will the Liberty Amendment force us to abandon such projects as space exploration and super-highways?"



Not necessarily. It will return to the people only those activities which the Federal Government has taken over without constitutional authority. A great highway system was built under local jurisdiction and paid for by local taxes or gasoline taxes at the pump. These expanded from country lanes to superhighways, and only recently has the Federal Government invaded this field, expanding the costs and producing not a single mile of road that could not have been done better within the local jurisdiction at far less cost.

The Federal Government has a valid interest in space from a military standpoint, but the assumption that only Government can carry through large projects is not correct. For example, Telstar was designed, built, and launched by American Telephone & Telegraph Co.

30. "Do you not believe that Federal aid to education is essential if every child is to have an equal opportunity?"

No one will dispute that every child should have a good education. The question is, whose responsibility is it?

"Education" *per se* is not mentioned in the Constitution, and consequently, under the 10th amendment, this activity is reserved to the States. Federal aid to education produces Federal control of education, and this has proved most detrimental.

31. "How will the Liberty Amendment affect civil rights for minority groups?"

When the Constitution is restored, everyone, regardless of race, will enjoy equity and equality before the law. The Liberty Amendment is a friend to all minority groups, for its purpose is to preserve and guarantee true civil rights to all people—equally. Some people have been encouraged by certain politicians to expect very unequal "civil rights," through the enactment of special interest laws and special subsidies.

32. "What effect will the Liberty Amendment have on veterans' benefits?"

Almost every family numbers a veteran among its members. Adding the Liberty Amendment to the Constitution would in no way nullify the obligation of Congress to recruit and provide for an armed force and to care for that force and everyone in it. Service-connected disabilities would be an obligation, as always, and the powers and obligations to care for the Armed Forces would be in no way affected. The abuses developed in this field will, of course, stop.

33. "How will the Liberty Amendment affect the Indians and their reservations?"

The Liberty Amendment will emancipate Indians, as the 13th amendment emancipated the slaves in 1863.

The Bureau of Indian Affairs controls those lands, and the Indians cannot improve their environment or themselves.

Indians must be elevated to the status of first-class citizens, rather than wards of the Government. Because the Liberty Amendment deals specifically with economic freedom for all people, the Indians will be set free—free to administer their own lands, to improve, develop, buy and sell—just the same as every other person in this country.

34. "If the Federal urban renewal program should end, how could we possibly modernize our cities?"

The modernization of cities must rest with the people, at the local level of government, for that responsibility is not given to the Federal Government under the Constitution.

The Federal urban renewal program has used our tax dollars to drive out property owners, often in the lower income group, and then turn them over to affluent and generally politically powerful persons for renewal devised by the bureaucrats.

Private citizens, unhampered by the horrendous burden of taxes, Government restrictions and regulations, would pridefully invest their money and effort to keep their cities up to date.

35. "What will happen to farm subsidies? Can the American farmer survive without help from the Federal Government?"

The farm subsidy program is probably the most tragic example of what happens when government disregards the Constitution and intervenes in free enterprise.

Farm subsidies have raised the price of farm products and consequently increased the consumer's food bill. The bulk of the billions in subsidies go to the factory-type operations which have driven out the real farmers. And every farmer—big and small—has lost the freedom to plant the crops of his choice and sell the product of his toil at the best possible price in the free market.

John Scott of Gilby, N.C., states the case:

"We who remain on the farms and ranches of this nation are fighting for survival. We simply cannot endure a continuation of the restrictions, regulations, and meddling that beset us these forty years . . . We need an end to federal farm programs . . . We ask for a free market of supply and demand."

And we who pay the food bill, ask for the same.

36. "What about the social security system?"

Until recently there were few dissenting voices on the subject of social security but it is now being given much scrutiny. The facts now being revealed show social security is: First, not insurance because the so-called premiums we are forced to pay are really a tax on wages, paid into a general fund. The Congress appropriates those funds to many Government agencies. The tax on wages and funds appropriated to Social Security are not necessarily similar. Second, the operation is not social, because it is compulsory. Third, it is not secure, as it is subject to any alteration at any time, and there is no contract. Neither is funding as required of insurance companies, and is therefore, hopelessly in debt with contingent liabilities of almost half a trillion dollars.

Unfortunately, Social Security is so many different things that its ultimate fate must be left to the Supreme Court for decision. If the Supreme Court decides it is not constitutional, benefits will stop instantly, which would be a tragic situation for many elder citizens.

The Liberty Amendment, on the other hand, provides 3 years in which to transfer the operation from unfunded political mismanagement to funded, ecomonically sound, private management, controlled by law so that present and future beneficiaries will go right on receiving their checks.

37. "What about medicare? Will this be eliminated?"

The "medicare" program is similar to that of the Social Security system as a whole. With or without the Liberty Amendment the Supreme Court will some day have to settle the question. With the Liberty Amendment in force, the basic structure can be returned to private enterprise which has adequate medical and hospital plans working advantageously. The present system is unfunded and deeply in debt because of its contingent liabilities.

Actually, all our people will be in much better position with private insurers under a firm contract supervised by law.

38. "Is not the Federal Government responsibile for seeing our air and water is not polluted?"

Polluted water and smog-filled air is of deepest concern to the people of the community. Only they can solve the problem. Absentee bureaucrats in Washington, D.C. can not. As an example, Pittsburgh was once our dirtiest city and politicians kept it that way. A Smoke

Committee was organized by private manufacturers and industrialists and whipped the problem, with the result that today it is a clean city. The same can be done elsewhere.

39. "Our entire transportation system is in terrible shape, particularly railroads and local rapid transit. If the Federal Government does not take over, who will?"

Once upon a time we had the most efficient transportation system the world ever knew, all built and operated by private enterprise. Over an interval of a great many years, our local and national systems have been destroyed by the strategy of freezing revenue while increasing costs and taxes to the point of bankruptcy.

The only solution is to confine the Government to constitutional limits and permit the people themselves to build the network of transportation needed by today's mobile millions.

40. "If the Liberty Amendment gets the Government out of business, what will prevent large companies and wealthy individuals from creating monopolies?"

Competition in a free market prevents monopolies, because the rewards for production, invention, development, and service are profits. Profits are dependent upon giving the customer what he needs or wants to survive. If one fails to serve the customer, he is out of business and his competion takes over.

The exception to this is when political pressure is applied, and politicians take over....The Liberty Amendment would tend to eliminate monopoly and open up a truly free market.

41. "How did the Federal Government get so much land? What will happen to all the 'public lands?"

The Federal Government had no authority to hold back any public lands from the States as they were created, or to "take" any land in any State except as the Constitution provides.

The Constitution confirmed the terms of the Northwest Ordinance. All States were to come into the Union with rights and powers equal to the original States—in which the Federal Government had no property rights whatsoever—except first, as land might be purchased, second, with the consent of the legislature of the State in which the same shall be, and third, for agreed upon and needful purposes, such as arsenals, magazines, forts dockyards, et cetera.

Now we find that only two—tenths of 1 percent of Alaska was originally subject to the jurisdiction of the State. In Nevada the Federal Government holds 87 percent of the land area, in Utah 66 percent, and in Oregon 52 percent, in Idaho 64 percent, and in California 45 percent of the land area. Under the Liberty Amendment the 40 percent of the land area now under Federal control will be restored to State jurisdiction.

42. "Much of the land under Federal control seems to be worthless desert or rugged mountains. Who would buy land like that?"

Land that appears worthless to one may be highly regarded by another. An example is the land just north of California-Mexico border which was the most barren area imaginable, but men of vision saw possibilities in the arid desert land well below sea level, and now the Imperial Valley is a garden without compare. There is no worthless land.

43. "If private land developers get control of this land, would not they destroy the natural beauties and add to the problem of ecology?"

Federally controlled lands, turned back to State jurisdiction, will be under the watchful eye of the people most concerned with preserving their beauty and usefulness. State and local authorities will make the laws regarding them. An absentee landlord in Washington is not as concerned with the future of the land as are the people of the community involved.

44. "What will happen to our national parks and forests?"

There is no reason to fear that parks and forests will be destroyed because they will be in State jurisdiction. There is nothing to indicate that Federal control has any merit. State, city, and county parks are generally better maintained than national parks, because the local interest is higher.

The same may be said of forests. Records show that the ravages of fire and disease in a national forest are far greater than in State forests, and greater in States forests than in private forests. The obvious reason is that trees in a private forest represent a salable crop, while in public hands they are an avenue to political power.

45. "Can the States be trusted to maintain their parks and monuments and preserve these for posterity?"

Under the Constitution each State was sovereign and held complete jurisdiction over the land and activities within its boundares. As the Parks and Monuments are located within States, the States are naturally better stewards of their own property than any Federal agency could be.

The Constitution intended the state would hold exclusive jurisdiction over all land and activities within its own boundaries. The Liberty Amendment will restore that concept.

46. "What will be the effect on the Federal Trade Commission?"

According to the U.S. Government Organization Manual of 1971-72 (page 439), the Federal Trade Commission was established to "promote free and fair competition in interstate commerce through prevention of price-fixing agreements, boycotts, combinations in restraint of trade, and other unfair methods of competition." Nice words but this agency has become along with others, the proponent of price fixing, boycotts, and various restraints of trade that hamper private enterprise. This may well be an attempt to cripple private enterprise and clamp a tighter political grip on private affairs. Under the Liberty Amendment the Federal Trade Commission will hold limited regulatory powers.

47. "How will the application of the Liberty Amendment affect the Federal Communications Commission?"

The Federal Communication Commission holds some valid regulatory powers, but they have no constitutional authority to control, punish, or dismember any channels of communication. Like so many Government agencies, the Federal Communications Commission has assumed powers that it simply does not have. Media slanting is one of these. The Liberty Amendment will stop the despotic control of broadcasting privileges of stations at odds with FCC bias.



48. "What about the effect of the Liberty Amendment on the Labor Relations Board?"

The National Labor Relations Act of 1935 authorized a National Labor Relations Board to investigate and settle labor disputes. It has no constitutional authority for existence, but it has wielded enormous power. We can assume the Liberty Amendment will stop the arbitrary control of labor, management, and industry by edicts that have no constitutional authority. Realistically, the only legitimate jurisdiction the Federal Government has over labor and management is within the ranks of Federal employees.

With the National Labor Relations confined to its proper sphere, the terrifying power of labor unions over workers will be drastically reduced. . . .

50. "How will Government be able to control labor and business monopolies if the Liberty Amendment removes or limits the regulatory powers of the Federal Government?"

It is ironic that so many people are worried about labor and business monopolies, and yet it apparently never occurs to them that the monopolist to fear most is Government itself. In Communist countries government has a monopoly on all activities, and the people have no

economic freedom. With our Federal Government controlling 40 percent of the land area and 20 percent of the industrial capacity of this Nation, we are facing the same disaster.

Free enterprise destroys monopolies faster than can government control.

51. "What is the value of the land and personal property held by the Federal bureaus?"

The Committee on Government Operations of the House of Representatives maintains a continuing inventory of the real and personal property held by the Government. Their June 30, 1970, report gives a figure of $435 billion for the world wide holdings as of that date. The estimate is extremely low and some properties—such as the famous Presidio in San Francisco inventoried at $1—are under valued in their appraisal. One thing is certain, if even half of these properties—the ones held without constitutional authorization—are sold at half of book value, the recovered amount will be well over $100 billion.

52. "Supposing all these properties and facilities are not sold off as expected, or do not sell for the prices expected, then that happens?"

If the properties are not sold within 3 years, the Federal Government must relinquish them anyway, and anything left unsold will revert to State jurisdiction for disposal or retention, as the case may be. Prices may vary in the liquidation process, but the main point is that these properties will be removed from Federal hands and restored to State jurisdiction and private taxpaying ownership. The consequent saving from not maintaining these bureaucratic empires will exceed what we now pay in income taxes.

53. "Now that you have the activities of these agencies that are not authorized and listed, why not get Congress to eliminate them?"

Theoretically this sounds like a good idea, but do you know of anyone who has enough power in Congress to override the pressure of the Federal bureaucracy? The bureaucracy has billions of our tax dollars at their disposal every year, and their lobby keeps the pressure on Congress for more power and more appropriations, endlessly. The only way to remove their power is to dry up the tax fountain with the Liberty Amendment.

54. "What effect would the Liberty Amendment have on the plan for regional government, which would concentrate all power in Washington?"

A concerted effort is being made to brainwash the American people into accepting not only regional government, but a new Constitution. Books advance the idea, articles in prominent magazines, TV programs and speeches by people who must be misinformed are outright enemies.

The Liberty Amendment will stop these attacks and restore the sovereignty of States. It will automatically outlaw all such designs for the concentration of power from either regional government or a Constitution other than the one we now have, which provides for individual freedom.

55. "Will the Liberty Amendment have any effect on unemployment?"

Unemployment is a tragic fact of life to many people. Surprisingly, the Liberty Amendment will solve much of the unemployment problem. Getting the Government out of business enterprises it operates without constitutional authority would eliminate the staggering losses. This would make possible the elimination of income tax. Workers would then receive about 20 percent more take home pay without any change in their rate of pay. This increased purchasing power would stimulate production and make the economy boom.

56. "Isn't the Liberty Amendment just a scheme to shift the load of responsibility from the Federal Government onto the back of the State government"

Not at all. The idea is to get the responsibility back into the hands of each individual. When Government deprives the individual of self determination and individual responsibility, it tends toward a nation of slaves or robots. In a free society, a free man must be self-reliant and help maintain the society of which he is a part. Our Government was limited in power by the Constitution. The purpose of the Liberty Amendment is to stop the concentration of despotic power an redistribute it to the people.

57. "Does not Congress already have the power to sell such properties and repeal or reduce taxes?"

Yes, Congress has such power and used it on various occasions, sometimes very strangely. For example, Congress did abolish the Reconstruction Finance Corporation, after it had dissipated an estimated $50 billions in tax dollars. While title I of the act abolished the Reconstruction Finance Corporation, title II of the same act created the Small Business Administration, enlarged the General Services Administraction, and divided all the residuary powers of RFC between them. The name on the door changed, but now there were two doors instead of one.

The sale of the Synthetic Rubber Industry and General Analine and Film Corp. was accomplished, but while these were being sold, other businesses were issuing from the prolific bureaucracy. Reinforcing the Constitution will stop this sleight-of-hand process.

58. "If Federal agencies are operating businesses without constitutional authority, why do not you take them to court?"

A good idea, and many persons have tried it; but there is a catch—there is no way to sue Government without the Governments's permission, and this is rarely given. The Constitution provides that we, the people, shall be able to "petition the Government for redress of grievances," but the courts have repeatedly shut their eyes to the flagrant assaults against the constitutional rights and powers of the people, and have contended that they have no "jurisdiction" when a bureaucratic "regulation" is involved. The only real court available that can change this situation is the court of public opinion which can restore the Constitution by applying the Liberty Amendment.

59. "Do not you think it is necessary for our Government to keep ahead of Russia in the space race, or the arms race, or the merchant marine?"

The United States for a long time has been the first place in most fields. We should continue in that position. The question is, why are we lagging behind now? Is it possible our Government has been so busy playing the dangerous game of world power politics and trying to run everyone else's affairs that they have neglected our safety and liberty? Now we are warned that we need to hurry to keep up, but we are increasingly being hampered in our efforts by regulations and directives and competition from tax-free governmental agencies that prevent it. The Liberty Amendment will release the vast resources of American inventive genius and production know-how and again give workers the incentive of a full paycheck.

So far as the space race is concerned, the Space Act strangled private incentive by declaring that all inventions dealing with space belong to the Government, instead of to the inventors, as the Constitution provides.

60. "Exactly what is the Federal Reserve System an what will the Liberty amendment do about it?"



There is probably more misinformation about the Federal Reserve System than about any other one thing. Some say it is a Federal agency; others say that it is privately owned. In 1913 an act of Congress created the FRS to provide us with what was defined as "an elastic currency." This has been done, and in the process our stable currency, based on silver and gold standards, has been replaced by printing press money. The Hoover report of 1955 declared the Federal Reserve to be the first of the 104 banking and lending organizations then being operated by Government. A recent U.S. Government organization Manual confirms this. The article "Who Gets The Plunder?" in Freedom magazine reproduced a page from the 57th Federal Reserve report to Congress, showing that in 1970 the U.S. Treasury received 98.9 percent of the earnings, while only 1.2 percent went to the banks compelled to own FRS bank stock. The Liberty Amendment will remove the Government from the banking business.

61. "Can the inflation we have experiencing for years be stopped by the Liberty Amendment?"

The sprial of inflation will be stopped when the Federal Reserve System's endless stream of printing press money is stopped. Webster's International Dictionary defines

"Inflation" as "an increase in the volume of money and credit relative to available goods resulting in a substantial and continuing rise in the general price level." In other words, when money is printed faster than actual production of goods and services, we have inflation.

Our president and Congress constantly spend more money than all the American people combined can funnel into Washington through taxes. Then they translate these deficits into unredeemable printing press money and we have inflation. In 1971, $40 billion of new paper money was printed for the FRS to cover the Government's deficit—thus was created that much inflation.

Yes, the Liberty Amendment can stop inflation.

62. "Does the Government have anything to do with setting interest rates, and what will the Liberty Amendment do about it?"

Economists and the news media have a great deal to say about interest rates, although it is baffling to most ordinary individuals. These days our credit is at the mercy of the bureaucracy that controls money. Interest rates are manipulated by the politically appointed directors of the Federal Reserve System. This manipulation will stop when the Liberty Amendment is in operation. When the happy day comes, credit arrangements will be strictly between the borrower and the lender, based upon the borrower's integrity and ability to repay. Interests rates will become realistic, also, when they are no longer manipulated through political control. after all, it is on this basis America was built.

63. "How about all the tax money that is spent on wars. Will the Liberty Amendment change this?"

The sole function of the Defense Department is to defend this country from foreign aggression. The Liberty Amendment will not cut the obligations of Defense Department to carry out its specified duties, to defend this Nation on the ground, in the air, at sea, and even in space. The Constitution enforced by the Liberty Amendment, will not permit undeclared "no win" wars, and our defense posture will be improved enormously by getting our defense establishment back into the business of defending, rather than competing with us, as they do now, through thousands of business, industrial and commercial establishments.

64. "Will the Liberty Amendment have any effect on the present law regarding the draft?"

While there is no longer a draft in this country, every eligible male who attains the age of 18 years must register and carry a draft card, presumably to keep a record of eligible strength in case of emergency.

The 13th amendment very distinctly provides that:

"Neither slavery nor involuntary servitude, except as punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction."

If we have learned anything from history it is that no conscripted army has ever proved the equal of a free people defending themselves. Returning to the Constitution will prevent the draft, and increase our defense posture because we will be free to defend the most priceless possession of all—Liberty.

65. "Exactly what effect will the Liberty Amendment have on our membership in the United Nations?"

The United Nations building is located in New York City. This country contributes by far the largest amount of money in support to this organization. Some people believe that the United Nations Charter supersedes our Constitution, but this is not true. Nothing supersedes our Constitution as the supreme law, and certainly not the United Nations Charter. The Liberty Amendment will end the pretense that treaty law, the Genocide Treaty, or any other such device can have an valid impact on our domestic affairs, our industries, our domestic affairs, our industries, our lands, or our activities. It will reduce the United Nations Organization to a forum for the discussion of international affairs and international relations.

66. "Will the Liberty Amendment have any effect upon Communist countries?"

Time and again the wealth and resources of the United States have been diverted to the aid of Communist controlled countries. Apparently the Communist system is incapable of sustaining its own existence. When our Government is confined again to the terms of the Constitution, it can no longer bail out Communist countries

when their economy falters, and the enslaved people may be able to establish forms of government of their own free choice.

67. "Unless we have a hand in managing the affairs of some small nations, is there not danger that they will fall under Communist control?"

When the torch of freedom burns brighter in this country through the re-establishment of our Constitution, we will be in a better position to set an example for other nations. The Constitution does not permit this country to maintain the economy of other nations or control their political lives, yet that is what we have been doing. Foreign aid around the world cost the United States people, from 1946 through 1971, a total of $212,880,797,000. The rulers of 3½ billion inhabitants of this world, have received aid from the United States. The Liberty Amendment will stop with this madness which is destroying us.

68. "Would it not be a good idea to continue foreign aid to help the more friendly countries?"

Foreign aid does not reach the people of any country, friendly or otherwise. It is a gift from the Chief of State elsewhere. It only enriches the tyrant. Our constitution protects us from this device for plunder. Our Government was empowered to gather taxes to protect this Nation from the avarice and cupidity of all the other nations of the Earth. It did not grant any administration the power to hand our tax dollars, or the production of our people, to any foreign power. The Liberty Amendment will stop this dissipation of our substance by Government, and will restore the right of people to assist whom ever they willaround the world, as they once did.

69. "How will the Liberty Amendment affect such treaties and alliances as NATO, SEATO, and others like them?"



The Liberty Amendment will not alter the right and power of the President, with the advice and consent of the Senate, to enter into any treaty that may be within the authority of the Constitution. A review of the Constitution shows that no treaty can be valid which in any way jeopardized the independence of the United States or any of the separate States or permits any foreign power or combination of foreign powers to exercise jurisdiction or control over the internal affairs of the United States or any of the individual States, whether it be with the U.N., NATO, SEATO, or any other.

70. "Will we be able to defend our country properly under the Liberty Amendment?"

We have already touched on this subject of defense, and should be reassured that the Liberty Amendment will accomplish miracles in this area. At the present time the Defense Department is involved in thousands of businesses without constitutional authority. Divorced from these activities, their total attention will be given to the defense of this Nation, and with the Constitution back in force and effect we will not be involved in undeclared wars. The Constitution wisely separated the power of declaring war from the power of waging war, to prevent its being declared for the sake of waging it.

71. "Will we still be able to have a strong economy in the fields of mining, agriculture, manufacturing and transporation with the Liberty Amendment?"

All of these activities will flourish incredibly well. Gold and silver production has been stifled, agriculture has been hampered; manufacturers have been in bureaucratic straightjackets; transportation has been strangled. There is no open market. We can expect spectacular new developments in all these fields and every other area of production when the Liberty Amendment is in force.

72. "If the Government does not finance or underwrite research and development, who will?"

The only research and development of Government has any right to be involved in is in the defense of this Nation. Even here, it has been individuals and companies that have researched and devised all methods of production. A man named Colt invented the revolver, and the Army was reluctant to adopt it. An American

invented the submarine, and our Navy would not even look at it. The airplane was invented here, and the U.S. was one of the last to adopt it to our defense. Gen. Billy Mitchell was discharged from the Armed Forces because he advocated air power. Government has curtailed real research and development, and our weaponry has suffered.

73. "Exactly what effect will the Liberty Amendment have on our local State and city governments?"

Federal aid to state and city governments sounds good, but the Federal government has manipulated the States into very dangerous financial situations through "sharing," "matching funds" and managed inflations.

Cities have been drained of vitality by the Federal individual income tax, which syphons away their potential resources, and federal agencies which inject themselves into essential municpal services and make them more costly. Both States and cities will be better off under the Liberty Amendment.

74. "What will happen to the Government's revenue sharing plan?"

At first glance revenue sharing looks like a splended idea. The Federal Government gathers a wealth of taxes from the people and then dribbles a little money back to the States and local governments for their own use. Upon further examination, this new device proves to be a take-over of the states, for it is only a small subsidy, and when government subsidizes anything it exerts control.

There are already too many subsidies in existence that undermine our states' prerogatives. Now even their boundaries are being threatened by "regional government" which would replace the individual states with 10 regions.

Restoring the Constitution, as the Liberty Amendment is capable of doing, would take care of all of these questions—regional government included.

THE ALAN STANG REPORT

Tape 561, Week of February 14, 1983

Liberty Amendment
Is Income Tax Legal?
[illegible]in Schiff's Offer
Corporate Tax
Watt Baiting

TAPE 561, No. 1

Liberty Amendment

This is Alan Stang. Congressman Ron Paul wants the federal income tax abolished. Details in a minute. Please stick around.

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A few weeks ago, Congressman Ron Paul, of Texas, who is a member of the House Banking Committee, reintroduced the Liberty Amendment. This historic legislation would eliminate the need for the personal income tax, by abolishing agencies of the federal government that are doing business in direct competition with private enterprise. Congressman Paul points to such examples as the Commodity Credit Corporation, the Tennessee Valley Authority, the Synthetic Fuels Corporation, and various lending institutions.

The Commodity Credit Corporation is of course the bank of the Department of Agriculture. Regular listeners will remember that it is paying your tax money to the monster multinational banks, because Poland is broke. Those payments began last year, with the blessing of the Reagan Administration. Dr. Paul says that the Commodity Credit Corporation and other businesses "are not constitutionally authorized and should be eliminated. This would so radically reduce federal expenditures that the personal income tax — the 16th Amendment to the U.S. Constitution — could itself be repealed, which the Liberty Amendment would accomplish." Of course the Internal Revenue Service would be abolished too. That's right, friends, no more 1040s, no more withholding!

Dr. Paul explains that since income taxes do not supply the bulk of the federal government's revenues, the losses in revenues would be more than made up by the sale of government corporate operations — and the profits could then be used to balance the federal budget.

Congressman Paul says this: "This amendment would go far toward restoring constitutional government in America, addressing our economic problems at their cause — excessive government spending — and by so doing eliminating the need for the personal income tax. The Liberty Amendment would leave the government with all revenue sources it ever had from the beginning until 1913 — corporate taxes, excises, imposts, duties and a host of miscellaneous taxes which have always been within the power of the federal government."

Nineteen thirteen is of course the year we got the income tax. Except for the Civil War years, we got along without one from the very beginning of our nation until well into the present century. Our government never collapsed, not once. It didn't need an income tax because it wasn't spending us into bankruptcy. Now, it is, and even with a tax approaching confiscation, the government says it needs still more of your money. I'll be back in a minute.

***

The Liberty Amendment has been endorsed by state legislatures around the country; most recently by Indiana and Arizona. It certainly has to be considered news, but your reporter can't remember ever hearing it mentioned by his colleagues in the national press. Be with me tomorrow when we'll see whether the income tax is legal.

This is Alan Stang. Think about it.

Tape 561, No. 2

Is Income Tax Legal?

This is Alan Stang. Is the income tax legal? A new discovery. Details in a minute. Please stick around.

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Yesterday, as you will recall, we mentioned the proposed Liberty Amendment to the U.S. Constitution, which Texas Congressman Ron Paul recently reintroduced in the House. The Liberty Amendment would repeal the Sixteenth Amend-

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ment, which gives Congress the power to impose an income tax. If the income tax is legal, it applies only to a strictly limited, very small group of people and activities, such as corporations. If you are a regular listener to these broadcasts, you know that the paycheck you get for your work is not what the law means by income. It is not subject to the tax.

Is the income tax legal? A fascinating article on the subject appeared in the January issue of *The Justice Times*, which says that "the 16th Amendment cannot be valid law due to the fact that it was not signed by the President of the United States." The Sixteenth Amendment started out as a Joint Resolution of Congress. According to *Black's Law Dictionary*, a Joint Resolution must be approved by the President. But the Joint Resolution that gave us the income tax was signed by Vice President James Sherman, not President William Howard Taft. Does this mean that the law is defective?

There is also the interesting fact that the Sixteenth Amendment is listed in U.S. statutes as a private law, as opposed to public law. Private law governs relations between individuals, and applies only to particular groups. Public law brings the government into it, and applies to everyone, without exception. So, why would the income tax amendment turn out to be a private law, rather than a public one?

The Justice Times says, as follows: "The intent of the framers of the 16th Amendment, which is supported by any number of Supreme Court decisions, was that the income tax was an excise tax and must be limited to an indirect tax which was assessed on corporations in return for the privilege of doing business in a corporate capacity. Is this the reason the 16th Amendment was designated as a Private Law rather than a Public Law? Let the reader be the judge."

This fascinating question certainly deserves further investigation. It is one of the many mysteries of the income tax that research is bringing to the surface. It is important to note that Congress could get rid of the income tax any day of the week. The Sixteenth Amendment doesn't say there has to be an income tax. It just gives Congress the power to impose one, if it wants to. Congress could abolish the I.R.S. tomorrow. I'll be back in a minute.

***

Why not read the article for yourself. *The Justice Times* is published monthly in Clinton, Arkansas. A yearly subscription is twenty dollars. The address is Post Office Box 562, Clinton, Arkansas, 72031. Be with me tomorrow, when we'll take a look at a remarkable offer by author Irwin Schiff.

This is Alan Stang. Think about it.

Tape 561, No. 3

Irwin Schiff's Offer

This is Alan Stang. Author Irwin Schiff makes a remarkable offer. Details in a minute. Please stick around.

***

Regular listeners to these broadcasts are familiar with Irwin Schiff. Mr. Schiff is the author of the book entitled, *How Anyone Can Stop Paying Income Taxes*, the national best seller distributed by Simon & Schuster. In it, Schiff shows that the payment of income tax is voluntary, a fact repeated by one Commissioner of Internal Revenue after another. Now, to use a cliche that fits perfectly, Irwin Schiff puts his money where his mouth is.

Irwin Schiff's Freedom League has launched the $100,000 I.R.S. Treasure Hunt. Here's what the Treasure Hunt is all about, from the Freedom League's advertising copy: "One hundred thousand dollars will be awarded to anyone who can show any section of the Internal Revenue Code that 'requires' we the people, as individual citizens, to file a personal income tax return (popularly known as the 1040 form). The contest is open to all, including I.R.S. personnel! Let the I.R.S. help you win! If there is any section of the code which 'requires' one to file, then the I.R.S. should know. So call the I.R.S. Ask them if American citizens are 'required' to file income tax returns or if it is 'voluntary.' If the I.R.S. says you are 'required,' then ask them to send you the section of the Internal Revenue Code which states that you are 'required.'"

The ad says you should send the information you get from I.R.S. to Irwin Schiff. The earliest postmark wins. Everyone is eligible. In the event of a tie, the $100,000 will be divided equally, and it is tax-free. Needless to say, the winner will be paid in Federal Reserve Notes, not in money, because the government has made money unavailable. Still, the Schiff offer sounds like an excellent deal. This is the Internal Revenue Service's chance to prove its case, and make Irwin Schiff look like a fool.

We suspect that I.R.S. is going to have trouble. There is a good reason that various Commissioners of Internal Revenue have said repeatedly that the income tax is voluntary. It *has* to be voluntary, because when you sign the return —under penalty of perjury — you are testifying against yourself just as certainly as if you were sitting on the witness chair in court. This is a well-settled fact in our system of law. The Fifth Amendment forbids the government to require an American to testify against himself. If the income tax required that, it would be illegal. That's why the Commissioners keep saying it is voluntary. I'll be back in a minute.

***

To win your $100,000, send the pertinent section from the Internal Revenue Code to Irwin Schiff, Freedom Books, Post Office Box 5303, Hamden, Connecticut, 06518. For more information, call Irwin Schiff's Freedom League, at (714) 771-6520.

This is Alan Stang. Think about it.

Tape 561, No. 4

Corporate Tax

This is Alan Stang. Some thoughts on the President's remark about the corporate income tax. Details in a minute. Please stick around.

***

Three weeks ago, President Reagan said in Boston: "I realize that there'll be a great stirring and I'll probably kick myself for having said this but when are we all going to have the courage to point out that in our tax structure the corporate tax is very hard to justify?" The President said we ought to consider abolishing that tax. The theory behind abolition is that corporate profits are taxed twice: once when the corporation earns them; again when they are paid to the stockholders as dividends. Abolition would stop this double taxation.

Let's say a word in defense of the corporate income tax. A corporation is of course a creature of government. It is created by government and could not exist without it. Its existence is a favor granted by the government. Just as the God of most individual Americans is the Lord; the god of the corporation is government. If an income tax should be levied properly anywhere, it should hit the corporation, as a tribute paid to government in return for the favor of the corporation's existence.

The President got into substantial political trouble for suggesting the abolition of the corporate income tax. He would win the gratitude of tens of millions — and stand on much firmer constitutional ground — by calling for the abolition of the *personal* income tax. Indeed, the President could end one of the biggest hoaxes of all time — maybe the biggest — by stating that the personal income tax on individuals has been illegal all along.

We mentioned that the President drew political flak for his suggestion. The next day, he backed away from it quickly. The *Los Angeles Times* reports that his advisers told him he had said "the wrong thing at the wrong time." One White House official said that the President had been "fighting to stay awake" just before he made the suggestion, and just forgot that about three hundred reporters were there. The next day, White House spokesman Larry Speakes was reminded that the President of the United States had said the idea should be looked at. Speakes replied, "Well, it ain't gonna be looked at."

Remember, all these examples come from within the Administration, not from Tip O'Neill, and they certainly lend fuel to the accusations by the President's enemies that he lacks the political courage he talks about, and that he is someone else's tool. We don't pretend to know what is happening in the White House, but this latest fiasco proves something is wrong. I'll be back in a minute.

***

The monster multinational corporations are happy to pay the corporate income tax. One of its effects has been to stifle competition, by making it difficult for new companies to challenge the biggies. To do that, the challenger must accumulate capital; but the corporate income tax takes that money away.

This is Alan Stang. Think about it.

Tape 561, No. 5

Watt Baiting

This is Alan Stang. A remarkable editorial about Socialism and James Watt. Details in a minute. Please stick around.

***

By now you know that a few weeks ago, Secretary of the Interior James Watt made a speech about the shocking problems of many American Indians. Watt said this: "Every social problem is exaggerated because of socialistic government policies on the Indian reservation. If you want an example of the failure of socialism don't go to Russia — come to America and go to the Indian reservations."

Our friends the liberals didn't like this. They don't like much of anything Secretary Watt has to say, but his statement about the reservations seems to have struck the proverbial sensitive nerve. *The Miami Herald*, one of the nation's major daily newspapers, put the following headline on its denunciation: "Red Baiting." We are certainly grateful to the *Herald* for acknowledging that Socialism is Red. Socialism is obviously the *Herald's* hot button. In its remarkable editorial, the Miami newspaper worries more than anything else about defending Socialism from Secretary Watt.

The *Herald* says this: "Socialism is that system of political economy that best describes the societies of most nations in Western Europe. Socialism is the Tennessee Valley Authority and Social Security and Medicare and Government subsidies for Lockheed and Chrysler." That's right, that's what the *Miami Herald* says, and, again, it has our gratitude. Social Security and those other things *are* Socialism, are Red, as the *Herald* says; but until now a man could be labelled an extremist for saying so. Now that the *Miami Herald* says so, presumably it's okay. It has always been okay to call government subsidies to Lockheed and Chrysler "Socialism for the rich." That what it is.

But, if the disaster on the Indian reservations *isn't* Socialism, what it is? *The Miami Herald* has the answer: "America's Indian reservations are not socialism. They are failures of something more properly understood as paternalism, and a cruel, uncaring paternalism indeed. The Government maintains them, but the Government does precious little for them."

In short, the *Herald* is angry because the government hasn't given as much to the reservations as it has to the corporations. Our friends the liberals don't want to change the reservation system; they made it. Their complaint is the fact that "Socialism for the poor" isn't luxurious enough. Would the *Miami Herald* please comment. The more that newspaper editorializes, the better we like it, and the more grateful we are. I'll be back in a minute.

The Miami Herald's problem is that paternalism and Socialism go together like two legs on the same bug. Indeed, paternalism is the *essence* of Socialism, which is impossible without it. British Socialist George Bernard Shaw once explained that you would live fairly well under Socialism if you did as you were told. If you didn't you would be shot.

This is Alan Stang. Think about it.

SB

13

LETTER OF INTENT

CSSB 13

HOUSE JUDICIARY COMMITTEE
May 9, 1983

The Committee does not intend that the mere presence at the scene of a fire of a firefighter or other emergency responder would be sufficient in all cases to constitute danger of serious physical injury necessary to establish the crime of arson in the first degree. The existence of the necessary danger will be an issue of fact which must be determined by the trier of fact in each individual case.

SENATE LETTER OF INTENT

(SENATE BILL 13)

The Judiciary Committee has had under consideration SB 13, relating to the crime of arson. The Committee recommends that SB 13 be replaced with Committee Substitute for SB 13 (CSSB 13), and that CSSB 13 do pass.

Under Alaska Statute 11.46.400, a person, under certain circumstances set forth in the section, is guilty of the crime of arson in the first degree if by starting a fire or explosion, such person recklessly places another "person" in danger of physical injury.

However, in the Superior Court at Fairbanks, a trial judge instructed a jury, in an arson prosecution under AS 11.46.400, that "a fireman is not a 'person' within the crime of first degree arson", i.e., that one who starts a fire or explosion, thereby placing a fireman in danger of physical injury, has not thereby put a "person" in danger of physical injury within the meaning of the section cited. (State v. Markland, case no. 4FA S82-100 Criminal).

The Alaska State Firefighters Association has sought an amendment to prevent such an instruction from being given again. The Committee Substitute for SB 13 would make clear that for purposes of AS 11.46.400, public safety personnel and public employees responding to emergencies are "person[s]" whose reckless endangerment by another who intentionally causes a fire or explosion could be the basis of a prosecution under the statute.

During the Judiciary Committee's consideration of SB 13, a representative of the Alaska Department of Law expressed concern lest the Legislature, by changing AS 11.46.400 only, could be viewed by a Court as having intended to exclude public safety personnel and/or public employees responding to emergencies from the meaning of the word "person" or "persons" where those words appear elsewhere in Title 11.

There is no such intention. Rather, the Committee wishes to cure a specific problem which arose in a specific setting under one section of Title 11. It is the view of the Committee, respectfully, and as part of the traditional legislative oversight of judicial interpretations of statutory law, that the exclusion of fire fighters from the purview of the term "person", in AS 11.46.400, in the instruction of the trial judge, was a misapprehension of legislative intent and was unsupportable as public policy. The Committee wishes to avoid any similar misapprehensions of the meaning of AS 11.46.400 in future. The report of the Committee and the enactment of CSSB 13 should not be construed to reflect any legislative intent to exclude fire fighters, police officers, or other public safety personnel or public employees from the purview of the term "person" in other sections of Title 11. On the

contrary, it is rather the view of the Committee that no such exclusion can be reasonably found or implied, and thus, no other statutory changes are required.

THE LEGISLATURE OF THE STATE OF ALASKA
THIRTEENTH LEGISLATURE

FISCAL NOTE

☐ Expenditure Type
☐ Revenue Type

I. REQUEST
Bill/Resolution No. SB 13
Title Arson/First Degree
Requested by Senate Rules Date

II. FISCAL DETAIL
Agency Affected Department of Public Safety
Program Category Affected Administration of Justice
BRU, Program, Or Subprogram(s) Affected Alaska State Troopers
(Note: If more than one budget component is affected, separate line-item amounts and funding for each component in the analysis section.)

EXPENDITURES (Thousands of Dollars)

	FY 83	FY 84	FY 85	FY 86	FY 87	FY 88
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 COMMODITIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS,CLAIMS,ETC.						
TOTAL						

FUNDING (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER (Specify Source)						

POSITIONS

FULL TIME						
PART TIME						
TEMPORARY						

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

No fiscal impact is anticipated

Office of Management and Budget
Reviewed by: Mike Mayer, Program Budget Analyst
Division of Budget Review

IV. DATE January 19, 1983 PREPARED BY Francis C. Allan Phone 269-5691
DIVISION State Troopers Initials mcl
DEPARTMENT OF PUBLIC SAFETY Initials

Original: Legislative Finance
cc: Budget and Management



ALASKA STATE FIREFIGHTERS ASSOCIATION

HOUSE JUDICIARY COMMITTFE

Hearing on Committee Substitute for Senate Bill No. 13, relating to Crime

March 18, 1983

Mr. Chairman:

My name if E. Robert Haag and I represent the Alaska State Firefighters Association and the Alaska Fire Chief Association.

We wish to speak in favor of CSSB-13 now before your Committee.

We appreared before the Senate Judiciary Committee in January and February in support of SB-13. We did suggest a minor wordage change to the defination of "another person" in the Bill. This was considered by the Senate Judiciary Committee. A Committee Substitue was drafted, discussed and subsequently passed by the Committee. The full Senate passed the Bill without objections.

Mr. Chairman, we know that you have all the information concerning this Bill. Also you have a very busy schedule. Therefore, our hope is that your Committee will give serious consideration to the passage of this Bill so that it may become law at the earlist date.

THE LEGISLATURE OF THE STATE OF ALASKA
THIRTEENTH LEGISLATURE

FISCAL NOTE

☐ Expenditure Type
☐ Revenue Type

I. REQUEST
Bill/Resolution No. SB 13
Title Arson/First Degree
Requested by Senate Rules Date

II. FISCAL DETAIL
Agency Affected Department of Public Safety
Program Category Affected Administration of Justice
BRU, Program, Or Subprogram(s) Affected Alaska State Troopers
(Note: If more than one budget component is affected, separate line-item amounts and funding for each component in the analysis section.)

EXPENDITURES (Thousands of Dollars)

	FY 83	FY 84	FY 85	FY 86	FY 87	FY 88
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 COMMODITIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC.						
TOTAL						

FUNDING (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER (Specify Source)						

POSITIONS

FULL TIME						
PART TIME						
TEMPORARY						

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

No fiscal impact is anticipated

Office of Management and Budget
Reviewed by: Mike Mayer, Program Budget Analyst
Division of Budget Review

IV. DATE January 19, 1983 PREPARED BY Francis C. Allan Phone 269-5691
DIVISION State Troopers Initials mck
DEPARTMENT OF PUBLIC SAFETY Initials

Original: Legislative Finance
cc: Budget and Management

AMENDED TITLE: CSSB 13

AN ACT RELATING TO THE CRIME OF ARSON IN THE FIRST DEGREE

PRIME SPONSOR: ZIEGLER.

CO-SPONSORS:

CURRENT STATUS: 2/14/83 IN (H) JUDICIARY

DATE	SEQ	PAGE	LEGISLATIVE ACTION
01/18/83	01	0022	FIRST READING -- COMMITTEE REPORTS
02/01/83	02	0106	JUD -- CS04
02/01/83	03	0106	JUD CMTE LETTER OF INTENT
02/11/83	04	0169	RLS -- OTHER04
			TAKEN UP IMMEDIATELY
02/11/83	05	0169	RLS CMTE ZERO F/NOTE
02/11/83	06	0171	SECOND READING
02/11/83	07	0171	JUD CS ADOPTED BY UNAN CONSENT
02/11/83	03	0171	SEN LETTER OF INTENT
02/11/83	09	0171	ADVANCED TO 3RD READING BY UNAN CONSENT
02/11/83	10	0171	THIRD READING
02/11/83	11	0171	PASSED BY DIV 19-00-01
****	**	**	*** *** ***

DATE	SEQ	PAGE	LEGISLATIVE ACTION
02/14/83	12	0241	FIRST READING -- COMMITTEE REPORTS
02/14/83	13	0241	SEN LETTER OF INTENT
			JUDICIARY
			RULES
****	**	**	*** *** ***

SB

86

FROM SENATOR KERTTULA

SB 86: BACKGROUND

State compensation for victims of violent crimes was a response to the growing concern that while an offender's rights were protected the rights of the victim were often overlooked. California was the first state to address this issue and in 1965 enacted a Victim Compensation Program. As of January 1, 1983, thirty-four states plus the District of Columbia had established similar programs.

AS 18.67, establishing a Violent Crimes Compensation Board, was adopted by the state legislature in 1972. The purpose of this legislation is:

> to facilitate and permit the payment of compensation to innocent persons injured, to dependents of persons killed, and to certain other persons who by virtue of their relationship to the vicitm of a crime incur actual and reasonable expense as a result of certain serious crimes or in attempts to prevent the commission of crime or to apprehend suspected criminals. AS 18.67.010.

The Violent Crimes Compensation Board is in the Department of Public Safety. The Board is composed of three members appointed by the governor. It is the duty of the board to review and rule on all applications received. Payment of compensation can be ordered if personal injury or death resulted from:

> (1) an attempt on the part of the applicant to prevent the commission of crime, or to apprehend a suspected criminal, or aiding or attempting to aid a police officer to do so, or aiding a victim of a crime; or
>
> (2) the commission or attempt on the part of one other than the applicant to commite any of the following offenses: murder in any degree, manslaughter, criminally negligent homicide, assault in the first or second degree, kidnapping, sexual assault in any degree, sexual abuse of a minor, robbery in any degree, contributing to the delinquency of a minor under AS 11.15.130(a)(4), or threats to do bodily harm. AS 18.67.101.

Victim compensation covers reasonable expenses incurred; loss of earnings power due to incapacibility; job retraining or employment - oriented rehabilitive services; pecuniary loss to the dependents of the deceased victim; and other reasonable loss determined by the board. AS 18.67.110.

Presently compensation is made payable to or for the benefit of the injured person; to a person responsible for the maintenance of the victim; or to the dependent of a deceased victim. AS 18.67.080. The total amount of compensation is limited to $25,000 per victim per incident for losses and expenses not covered by collateral sources. Life insurance proceeds are not treated as a collateral source AS 18.67.090. However, in the case of the death of a vicitm who has more than one eligible dependent compensation may not exceed $40,000. AS 18.67.130.

Additional limitiations exist under the current state statute. No compensation may be awarded unless an application to the board for compensation was made within two years after the date of the incident and the incident was reported to the police within five days of its occurrance or within five days of the time when a report could reasonably have been made. AS 18.67.130.

Presently no compensation may be awarded if the victim:

(1) is a relative of the offender;
(2) is, at the time of the personal injury or at the time of the injury wihcih results in the death of the victim living with the offender as a member of the same family or household, or maintaining a sexual relationship, whether illicit or not, with the offender or with a member of the offender's family;
(3) violated a penal law of the state, hsich violation caused or contributed to his injuries or death; or
(4) is injured as a resurlt of the operation of a motor vehicle, boat or airplane unless the vehicle was used a s a weapon in a deliberate attempt to injure or kill the victim.

The bill as introduced would revise the statutes affecting the Violent Crimes Compensation Board as follows:

(1) AS 18.67.080 would be amended by adding a new paragraph, which would allow compensation to be paid directly to the provider of the service.

Result: The victim receives necessary services and the provider is ensured of payment with a minimal amount of red tape.

Argument for: In situations where the provider has given services to the victim without charge the board must make joint payment to the victim or his representative and the provider. Nola Capp, administration to the board, has encountered numerous cases where payment never reached the provider. With the addition of this new paragraph the administrative procedures will be reduced.

Argument against: The only possible argument against this addition might be the concern that victims who paid for the service would not be reimbursed. This can be countered with the administrative safeguard already in existence. The Board requires receipts of all expenses paid by the victim and also notifies the provider that if payment has already been made then the award of compensation is to be passed on to the victim

(2) The bill repeals AS 18.67.130(b) (1) and (2), which deny compensation to the victim if he or she is a relative of the offender, member of the offender's household, maintaining a sexual relationship with the offender or with a member of the offender's family.

Result: The purpose of AS 18.67.10 - AS 18.67.130, "to facilitate and permit the payment of compensation to innocent persons injured" will only be achieved if all "innocent victims" are treated equally.

Arguments for: The relation between the victim and the offender should not work as a financial disadvantage if the victim is innocent, reports the crime and cooperates with the local law enforcement officials. Each case that comes to the board is investigated completely and a determination is made as to whether or not compensation should be awarded. Thus we already have sufficient safeguards in existence to weed out any fabricated stories. Also, since compensation only covers those reasonable expenses incurred as a result of the personal injury nothing is to be gained. The present restriction primarily denies compensation for victims of domestic violence and incest. Rural Alaska presents another problem due to the fact that the population is sparse, housing is often limited and many people are distantly related.

Arguments against: If relatives are allowed to be

compensated for injuries sustained as a result of criminal activity the offender is benefiting from his/her misconduct. Counter: Only reasonable expenses incurred are compensated, thus no financial gain.

Victims of domestic violence will get compensated but might not file charges. Counter: the crime must now be reported under AS 18.67.130, and if this bill passes in its entirety, the victim would be required to aid in the apprehension and conviction of the offender. Once again, the board carefully scrutinizes each case.

Relatives or members of same household are more likely to conspire for financial gain. Counter: where is the gain if only expenses incurred are compensated?

(3) AS 18.67.130(b) would be amended by adding a new paragraph. No compensation may be awarded if the victim:

> refuses to give reasonable cooperation to state or local law-enforcement agencies in their efforts to apprehend and convict the offender for the crime resulting in the personal injury, unless good cause for the refusal is shown the board.

Result: Although the victim must presently report the incident within five days of its occurrence, this would strengthen the amount of assistance imposed on the recipient of compensation.

Arguments for: This provides the local law enforcement agency with additional support in the apprehension and conviction of offenders. In many ways this is already required because of the reporting requirement. Even a hostile victim/witness can be subpoenaed by the prosecution. More importantly this additional requirement would counter the argument that relatives or members of a household, if eligible for compensation, would conspire to defraud the state through collusion.

Arguments against: Certain victims might argue that this is an unreasonable requirement, particularly if further mental anxiety would occur. However, each case is reviewed individually and the amendment gives the board the discretion to determine whether "good cause" is shown for noncompliance.

Defense attorneys might use this compensation/cooperation requirement to impeach the credibility of a victim/witness with a "bought" testimony argument. The counter argument is that the victim/witness only is reimbursed for reasonable expenses incurred as a result of the perpetrator's criminal conduct. No real financial gain.

Final Note

A victim is a victim and if innocent should be treated as such.

In 1982 the basic provisions of this bill were introduced in the House by Halford and Clocksin (HB 869) and in the Senate, by Bradley (SB 620).

SB 620 restricted compensation if at the time of application for compensation (the victim) was living with the offender as a member of the same family or household, or maintaining a sexual relationship, whether illicit or not, with the offender."

This provision only speaks to the time of making application and nothing prevents reconciliation, if that was the point to be made. Because of this I find this provision to be without real merit.

Supporters of the Bill
*Council on Domestic Violence and Sexual Assault
*Caren Robinson, speaking for the Network on Domestic Violence and Sexual Assault
*Nola Capp, administrator of the Violent Crimes Compensation Board
*Katie Hurley, speaking for the Commission on the Status of Women

NATIONAL CONFERENCE OF STATE LEGISLATURES

STATE PROFILES

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STATE VICTIM COMPENSATION PROGRAMS

ALASKA.....Year Effective: 1972
Source of Revenue: General Tax
Maximum Award: $25,000* Minimum Award: --
Financial Needs Test: No Police Rept. Req.: 5 days
File with Commission: 2 years Son of Sam Provision: Yes
Out of State Residents Covered: Yes

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CALIFORNIA...Year Effective: 1965
Source of Revenue: Penalty Assessments
Maximum Award: $23,000 Minimum Award $100
Financial Needs Test: Yes Police Rept. Req.: Yes
File with Commission: 1 year Son of Sam Provision: No
Out of State Residents Covered: No

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COLORADO.....Year Effective: 1982
Source of Revenue: Penalty Assessments
Maximum Award: $1,500 Minimum Award: $25
Financial Needs Test: No Police Rept. Req.: 72 hrs
File with Commission: 6 mos Son of Sam Provision: No
Out of State Residents Covered: No

.....

CONNECTICUT..Year Effective: 1979
Source of Revenue: Penalty Assessments
Maximum Award: $10,000 Minimum Award: $100
Financial Needs Test: No Police Rept. Req.: 5 days
File with Commission: 2 yrs Son of Sam Provision: No
Out of State Residents Covered: Yes**

.....

DELAWARE.....Year Effective: 1975
Source of Revenue: Penalty Assessments
Maximum Award: $10,000 Minimum Award: $25
Financial Needs Test: No Police Rept. Req.: Yes
File with Commission: 1 yr Son of Sam Provision: No
Out of State Residents Covered: Yes

.....

FLORIDA.....Year Effective: 1978
Source of Revenue: General Tax OR Penalty Assessments
Maximum Award: $10,000 Minimum Award: --
Financial Needs Test: Yes Police Rept. Req.: 72 hrs
File with Commission: 1 yr Son of Sam Provision: No
Out of State Residents Covered: No

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HAWAII.....Year Effective: 1967
Source of Revenue: General Tax
Maximum Award: $10,000 Minimum Award: --
Financial Needs Test: No Police Rept. Req.: Yes
File with Commission: 18 mos Son of Sam Provision: No

Maximum Award: $25,000 Minimum Award: $100
Financial Needs Test: No Police Rept. Req.: 5 days
File with Commission: 1 yr Son of Sam Provision: Yes

MISSOURI.....Year Effective: 1982
Source of Revenue: Penalty Assessments
Maximum Award: $10,000 Minimum Award: $200
Financial Needs Test: No Police Rept. req.: 48 hrs
File with Commission: 1 yr Son of Sam Provision: No
Out of State Residents Covered: Law is silent

MONTANA.....Year Effective: 1978
Source of Revenue: Penalty Assessments
Maximum Award: $25,000 Minimum Award: --
Financial Needs Test: No Police Rept. Req.: 72 hrs
File with Commission: 1 yr Son of Sam Provision: Yes
Out of State Residents Covered: YES

NEBRASKA.....Year Effective: 1979
Source of Revenue: General Tax
Maximum Award: $10,000 Minimum Award: --
Financial Needs Test: No Police Rept. Req.: 3 days
File with Commission: 2 yrs Son of Sam Provision: Yes
Out of State Residents Covered: Yes

NEVADA.....Year Effective: 1981
Source of Revenue: Penalty Assessments
Maximum Award: $5,0000 Minimum Award: $100
Financial Needs Test: Yes Police Rept. Req.: 5 days
File with Commission: 1 yr Son of Sam Provision: Yes
Out of State Residents Covered: No

NEW JERSEY...Year Effective: 1971
Source of Revenue: General Tax OR Penalty Assessments
Maximum Award: $10,000 Minimum Award: $100
Financial Needs Test: No Police Rept. Req.: 3 mos
File with Commission: 1 yr Son of Sam Provision: No
Out of State Residents Covered: Yes

NEW MEXICO...Year Effective: 1981
Source of Revenue: General Tax
Maximum Award: $12,500 Minimum Award: --
Financial Needs Test: No Police Rept. Req.: 30 days
File with Commission: 1 yr Son of Sam Provision: No
Out of State Residents Covered: No

NEW YORK.....Year Effective: 1966
Source of Revenue: General Tax
Maximum Award: $20,000 plus unltd. Medical Expenses--
Minimum Award: --
Financial Needs Test: Yes Police Rept. Req.: 1 wk
File with Commission: 1 yr Son of Sam Provision: Yes

Out of State Residents Covered: Yes

N DAKOTA.....Year Effective: 1975
Source of Revenue: General Tax
Maximum Award: $25,000 Minimum Award: $100
Financial Needs Test: No Police Rept. Req: 72 hrs
File with Commission: 1 yr Son of Sam Provision: --
Out of State Residents Covered: Yes

OHIO.....Year Effective: 1976
Source of Revenue: Penalty Assessments
Maximum Award: $50,000 Minimum Award: --
Financial Needs Test: No Police Rept. Req.: 72 hrs
File with Commission: 1 yr Son of Sam Provision: No
Out of State Residents Covered: Yes

OKLAHOMA.....Year Effective: 1981
Source of Revenue: Penalty Assessments
Maximum Award: $10,000 Minimum Award: --
Financial Needs Test: No Police Rept. Req.: 72 hrs
File with Commission: 1 yr Son of Sam Provision: Yes
Out of State Residents Covered: Yes

OREGON.....Year Effective: 1978
Source of Revenue: General Tax
Maximum Award: $23,000 Minimum Award: $250
Financial Needs Test: No Police Rept. Req.: 72 hrs
File with Commission: 6 mos Son of Sam Provision: No
Out of State Residents Covered: Yes

PENNSYLVANIA...
Year Effective: 1977
Source of Revenue: Penalty Assessments
Maximum Award: $25,000 Minimum Award: $100
Financial Needs Test: No Police Rept. Req.: 72 hrs
File with Commission: 1 yr Son of Sam Provision: No
Out of State Residents Covered: Yes**

TENNESSEE....Year Effective: 1976
Source of Revenue: Penalty Assessments
Maximum Award: $10,000 Minimum Award: $100
Financial Needs Test: No Police Rept. Req.: 48 hrs
File with Commission: 1 yr Son of Sam Provision: No
Out of State Residents Covered: Yes

TEXAS.....Year Effective: 1980
Source of Revenue: Penalty Assessments
Maximum Award: $50,000 Minimum Award: --
Financial Needs Test: Yes Police Rept. Req.: 72 hrs
File with Commission: 180 days Son of Sam Provision: Yes
Out of State Residents Covered: No

VIRGINIA.....Year Effective: 1976
Source of Revenue: Penalty Assessments

Maximum Award: $10,000 Minimum Award: $100
Financial Needs Test: Yes Police Rept. Req.: 48 hrs
File with Commission: 6 mos Son of Sam Provision: No
Out of State Residents Covered: Yes**

.....

W VIRGINIA...Year Effective: 1981
Source of Revenue: Penalty assessments
Maximum Award: $20,000 Minimum Award: --
Financial Needs Test: No Police Rept. Req.: 72 hrs
File with Commission: 2 yrs Son of Sam Provision: No
Out of State Residents Covered: Yes

.....

WISCONSIN....Year Effective: 1977
Source of Revenue: General Tax
Maximum Award: $12,000 Minimum Award: --
Financial Needs Test: No Police Rept. Req.: 5 days
File with Commission: 2 yrs Son of Sam Provision: No
Out of State Residents Covered: Yes

.....

Maximum Award includes medical expenses, lost earnings, and funeral expenses.

** $25,000 per victim; $40,000 if there are 2 or more surviving dependents.
* If victim is a resident of a state that compensates out-of-state resident.

****
* NCSL STAFF CONTACT: Mindy GAYNES *
* 303/~~623~~-6600 *
* REV. DATE: 01/15/82 292- *
****

******* ARTICLES *******

TITLE: ALTERNATIVE SENTENCING: A WAY OUT?
AUTHOR: GREENHOUSE, L.
PERIODICAL: STATE LEGISLATURES.
VOLUME INFORMATION: VOL. 5, NO. 2
DATE 02/01/79
SCOPE
CA DC FE GE IL MA MD TN VA
ABSTRACT

THIS ARTICLE PRESENTS THE NOTION THAT BOTH ECONOMY AND JUSTICE ARE WELL SERVED BY FORMS OF PUNISHMENT OTHER THAN PRISON. IT CONTENDS THAT POLICIES THAT INCREASE THE DURATION AND FREQUENCY OF PRISON SENTENCES ARE BY FAR THE MOST EXPENSIVE WAYS TO DEAL WITH THE CRIME PROBLEM, SO IT IS SURPRISING THAT NEW SENTENCING LAWS AND THE PRISON BUILDING BOOM HAVE SO FAR ESCAPED PROPOSITION 13 FEVER. THEIR IMMUNITY FROM THE FISCAL SCYTHE IS NOT DUE TO ANY GREAT PUBLIC OR LEGISLATIVE SATISFACTION WITH THE PRISON SYSTEM, WHICH MANY BELIEVE HAS FAILED MISERABLY TO REHABILITATE PRISONERS OR DETER CRIMES. ILL. INCLUDED.
NCSL IDENTIFICATION NUMBER: ART7900041

STATE OF ALASKA
PRELIMINARY STATEMENT OF FISCAL IMPACT

Bill No: SB 86 Date on Bill: 1-27-83
Title: An Act Relating To Compensation for Victims of Violent Crimes
Sponsor: Senators Kertulla and Fischer
Requestor: Senate Judiciary

1. Estimated fiscal impacts on:

a. Expenditures:

(Thousands of Dollars)

	FY 83	FY 84	FY 85	FY 86
Capital				
Operating		341.1	349.9	371.0
Total		341.1	349.9	371.0

b. Revenues:

Revenue				

2. Source of funds to offset fiscal impact of bill:

Not Identified by Sponsors of Bill.

3. Assumptions:
If the proposed legislation is enacted it is anticipated there would be an increase of approximately 50 claims. It is estimated we would receive 40 assault claims (the statute covers only Assault I and II) of which we estimate 26 claims would receive compensation, and we would receive 10 death claims and 5 would be awarded, including 2 claims with one dependent per incident and 3 claims with multiple dependents. There will be additional hearings as with the change in statute, the Board will want to be certain the offender will not receive any of the compensation.

4. Disclaimer:
This statement has not been reviewed by the OMB in the Office of the Governor. It therefore does not represent the final estimate of fiscal impact.

Prepared By: Nola K. Capp Phone: 465-3040
Division: Violent Crime Compensation Board Date:

Approved by Commissioner: Robert J. Sundberg RJS by TPH Date: 2/18/83
Department: Public Safety

5. Distribution:
Original to Legislative Finance
Copy to OMB
Copy to Sponsor
Copy to Requestor

2/15/83

FISCAL NOTE DETAIL
BILL NO. SB 86

EXPENDITURES		FY 83	FY 84	FY 85	FY 86
100	Personal Services		26.6	28.2	29.9
200	Travel		7.9	8.4	8.9
300	Contractual		17.1	9.1	9.7
400	Commodities				
500	Equipment		2.5		
600	Land & Structures				
700	Grants, Claims, etc.		287.0	304.2	322.5
800	Miscellaneous				
	TOTAL		341.1	349.9	371.0
FUNDING					
	General Fund		341.1	349.9	371.0
	Federal Funds				
	Program Receipts				
	Inter-Agency Receipts				
	Other				
POSITIONS					
	Full Time		1	1	1
	Part Time/Seasonal				
	Non-Perm				
	Months				

ANALYSIS:

If the proposed legislation is enacted, it is anticipated there would be an increase of approximately 50 claims. It is estimated we would receive 40 assault claims (the statute covers only Assault I and II) of which we estimate 26 claims would receive compensation. The average award is $4500.00 per claim so 26 claims would total $117,000. It is estimated the program would receive 10 death claims and 5 would be awarded: 2 claims at one dependent per incident would be $50,000 and 3 claims for multiple dependents would be $120,000 for a total estimated grant money of $287,000.

Because there will be an increase of claims, it is determined it will be necessary to have one more board meeting at a cost of $1500.00. Because of the repeal of the statute it is anticpated there would be 8 hearings at $800 for travel per hearing. The reason for more hearings is because of the change in the statute, the Board will want to be certain the offencer will not receive any of the compensation and because of circumstances in some cases, they may order a hearing prior to a final determination by the Board.

The current staff for the Violent Crimes Compensation Board consists of two persons. This change in the statute would necessitate the addition of a clerk typist (range 8) and associated costs, including equipment.

(continued)

Under contractual services, there would be a need for a terminal only for the IBM displaywriter at $3000.00 per year. There would be the cost of hearing officers' fees for 8 hearings at $700 per hearing and a total cost of $5600. Since this will be a major change in the statute, the public must be made aware through TV spots, radio and newspapers. Production of the TV spots will be a one time expense as will the radio spots. These spots should cost around $6500 plus another $1000 for public notices in newspapers around the state.

The costs are assumed to begin 7/1/83.

	POSITION TITLE				RANGE/STEP	BARG. UNIT	FORM 12 PAGE/LINE	GOV.	APPROV.	DISAPP.
1.	Clerk-Typist III				8B	G				
2.	TYPE OF POSITION: PFT	STAFF MONTHS: 12	RP NUMBER	PCN NUMBER	BRU PRIORITY	LOCATION: Juneau	ELECTION DISTRICT: 4	LEG.		
3.	CONTINUATION LEVEL		ADDITION							

4.	TYPE OF EXPENDITURE		AMOUNT
	1	2	3
	PERSONAL SERVICES		
5.	Salary	19,176	
6.	Benefits	3,367	
7.	Supplemental Benefits	1,175	
8.	Fixed Benefits	2,880	
9.	TOTAL PERSONAL SERVICES	01	26,598
10.	Travel	02	
11.	Contractual	03	
12.	Commodities	04	
13.	Equipment	05	2,484
14.	Other		
15.	TOTAL COST		29,082

	RECEIPT CODE	FUNDING SOURCE		
16.		Federal Receipts	1002	
17.		G.F. Match	1003	
18.		General Funds	1004	29,082
19.		I-A Receipts	1005	
20.		Program Receipts	1028	
21.		Other		

FOR O&M USE ONLY
4A KEY NUMBER __ __ - __ __ - __ __ - __ __ - __ __

JUSTIFICATION

The number of claims received annually by the Violent Crimes Compensation Board has doubled since 1976 and is projected to double again during the two-year period ending 6/30/84. Yet the program has only the same two-person staff it had in 1973.

It is anticipated the change in the statute will increase the number of claims by 50. This increase, on top of the existing understaffing, will necessitate the addition of a clerk-typist and associated costs, including equipment.

Since this is a major change in the statute, all the applications, brochures and posters will have to be redone. The public must be made aware of the changes through TV, radio and newspapers, again much clerical work. There will be an increase in hearings, which must be transcribed verbatim.

The equipment costs include a desk, chair, file cabinet, table, calculator and transcriber.

13 REQUEST FOR NEW POSITION

AGENCY: Department of Public Safety

PROGRAM: Crime Identification & Apprehension

BRU: Violent Crimes Compensation Board

COMPONENT:

Page 1 of 1

Revised Date 2/2/83

FY 84

01-1136(7/82)-13

STATE OF ALASKA
FISCAL NOTE

Revision Date , 1983

I. REQUEST

Bill/Resolution No.: CSSB 86(FIN)
Title: "Act Relating to Compensation for Victims"
Sponsor: Sen. Kertulla
Requestor House Judiciary

II. FISCAL DETAIL

Agency Affected: Public Safety
Program Category Affected: Crime ID
BRU, Program of Subprogram(s) Affected: Violent Crimes Compensation Board

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 83	FY 84	FY 85	FY 86	FY 87	FY 88
OPERATING						
100 PERSONAL SERVICES		26.6	28.2	29.9	31.7	33.6
200 TRAVEL		7.9	8.4	8.9	9.4	10.0
300 CONTRACTUAL		17.1	9.1	9.7	10.3	10.9
400 COMMODITIES						
500 EQUIPMENT		2.5				
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC		287.0	304.2	322.5	341.9	362.4
TOTAL OPERATING		341.1	349.9	371.0	393.3	416.9
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND		341.1	349.9	371.0	393.3	416.9
FEDERAL FUNDS						
OTHER (Specify Source)						

POSITIONS:

FULL-TIME		1	1	1	1	1
PART-TIME						
TEMPORARY						

III. SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

Source of funds not identified by sponsor.

IV. ANALYSIS: Attach a separate page for any Analysis See Attached

Prepared By: Nola K. Capp Phone: 465-3040
Division: Violent Crimes Compensation Board Date: 5-6-83

Approved by Commissioner: Date: 5/9/83
Department: Public Safety

Distribution:
Original to Legislative Finance
Copy to Office of Management and Budget (for Legislature introduced bills)
Copy to Department (for Governor introduced bills)
Copy to Sponsor
Copy to Requestor (if different from Sponsor)

3/2/3

ANALYSIS

If the proposed legislation is enacted, it is anticipated there would be an increase of approximately 50 claims. It is estimated we would receive 40 assault claims (the statute covers only Assault I and II) of which we estimate 26 claims would receive compensation. The average award is $4500.00 per claim so 26 claims would total $117,000. It is estimated the program would receive 10 death claims and 5 would be awarded; 2 claims at one dependent per incident would be $50,000 and 3 claims for multiple dependents would be $120,000 for a total estimated grant money of $287,000.

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The current staff for the Violent Crimes Compensation Board consists of two persons. This change in the statute would necessitate the addition of a clerk typist (range 8) and associated costs, including equipment.

Under contractual services, there would be a need for a terminal only for the IBM displaywriter at $3000.00 per year. There would be the cost of hearing officers' fees for 8 hearings at $700 per hearing and a total cost of $5600. Since this will be a major change is the statute, the public must be made aware through TV spots, radio and newspapers. Production of the TV spots will be a one time expense as will the radio spots. These spots should cost around $6500 plus another $1000 for public notices in newspapers around the State.

SB

95

FISCAL NOTE

I. REQUEST

Bill/Resolution No. SENATE BILL NO. 95

Title An Act requiring that certain legislative officers file statements of financial interests; e.d. Date 2-8-83

Requested by: Senate Judiciary Committee

II. FISCAL DETAIL

Agency Affected Legislature - Executive Branch - Municipalities

Program Category Affected General Government

BRU, Program, Or Subprogram(s) Affected Legislature - Executive Branch

(Note: If more than one budget component is affected, separate line-item amounts and funding for each component in the analysis section.)

EXPENDITURES (Thousands of Dollars)

	FY 83	FY 84	FY 85	FY 86	FY 87	FY 88
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 COMMODITIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS,CLAIMS,ETC.						
TOTAL		-0-				

FUNDING (Thousands of Dollars)

GENERAL FUND		-0-				
FEDERAL FUNDS		-0-				
OTHER (Specify Source)		-0-				

POSITIONS None

FULL TIME						
PART TIME						
TEMPORARY						

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

It is estimated that no additional fiscal impact will result from this bill.

IV. DATE 2-8-83

PREPARED BY [illegible], Director, Admin. Svcs.

AGENCY Legislative Affairs Agency

PHONE 465-3640

Original: Legislative Finance

cc: Budget and Management

Prime Sponsor (First Legislator Named)

33-001 (Rev. 12/82)

SB 95 TITLE & SPONSOR SUMMARY 10:40 2/26/83 PAGE 1 OF 3

AMENDED TITLE:
AN ACT REQUIRING THAT CERTAIN LEGISLATIVE OFFICERS FILE STATEMENTS OF FINANCIAL INTERESTS; AND PROVIDING FOR AN EFFECTIVE DATE

PRIME SPONSOR: BENNETT.
CO-SPONSORS:
CURRENT STATUS: 2/25/83 IN (H) JUDICIARY

SB 95 SENATE ACTION 10:40 2/26/83 PAGE 2 OF 3

DATE	SEQ	PAGE	LEGISLATIVE ACTION
01/31/83	01	0101	FIRST READING -- COMMITTEE REPORTS
02/15/83	02	0190	JUD -- DP05
02/15/83	03	0190	JUD CMTE ZERO F/NOTE
02/24/83	04	0251	RLS -- OTHER05
			TAKEN UP IMMEDIATELY
02/24/83	05	0253	SECOND READING
02/24/83	06	0254	ADVANCED TO 3RD READING BY UNAN CONSENT
02/24/83	07	0254	THIRD READING
02/24/83	08	0254	PASSED BY DIV 20-00-00
02/24/83	09	0254	EFFECTIVE DATE VOTE SAME AS PASSAGE
****	**	**	*** *** ***

SB 95 HOUSE ACTION 10:40 2/26/83 PAGE 3 OF 3

DATE	SEQ	PAGE	LEGISLATIVE ACTION
02/25/83	10	0342	FIRST READING -- COMMITTEE REPORTS
			JUDICIARY
			RULES
****	**	**	*** *** ***

SB

101

STATE OF ALASKA
THE LEGISLATURE

LEGISLATIVE AFFAIRS AGENCY

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

MEMORANDUM February 1, 1984

SUBJECT: Sectional analysis of CSSB 101 (Resources)

TO: Representative Charlie Bussell
Chairman House Judiciary Committee

FROM: Edward H. Hein EHA
Legislative Counsel

Section 1 adds a new section, AS 16.05.165, to the fish and game code that provides that a peace officer investigating a misdemeanor violation of the code or a regulation adopted under it may issue a citation as provided in AS 12.25.180, notwithstanding the provisions of AS 16.05.160, which requires a peace officer to arrest any person committing a code violation in the officer's presence. Note that SSHB 404 would amend AS 16.05.160 to make such arrests discretionary, but would expand the arrest authority to include violations of all of AS 16 except AS 16.51 and 16.52. Section 1 also directs the supreme court to establish a bail schedule for fish and game misdemeanor violations and provides for paying fines by mail, similar to what is done with traffic tickets.

Section 2 amends AS 16.05.410, which provides for revocation of licenses for conviction of sport fishing and hunting license violations. The amendment provides that the existing revocation provisions do not apply to violations for which a forfeitable bail amount is established under AS 16.05.165. Two convictions of such an offense, however, could result in a peace officer filing a civil action to have the person's license revoked. A non-jury court hearing is required. If the court finds that the person's actions demonstrate a disregard for the preservation of the state's fish or wildlife resources, the license may be revoked for a mandatory one-to-three year period.

Section 3 amends AS 12.25.190(c) to provide that a person receiving a citation under AS 16.05.165 is not required to

give a written promise that he or she will appear in court in response to the citation.

EHH:ojb
J3/037

POUCH V
JUNEAU, ALASKA 99811
(907) 465-4990

Alaska State Legislature
HOUSE OF REPRESENTATIVES

REPRESENTATIVE
CHARLIE BUSSELL
CHAIRMAN

Committee on Judiciary

CSSB 101 (RES)
TABLE OF CONTENTS

A. Committee Substitute for Senate Bill 101 (Resources)
"An act relating to the issuance of citations for fish and game violations."

B. Sectional Analysis
Ed Hein, Legislative Counsel.

C. Fiscal Note
Col. Robert J. Stickles, Director, Fish and Wildlife Protection,
Department of Public Safety.

D. Letter of Intent
Senate Resources Committee

E. Title and Sponsor Summary/Legislative Action.

F. Letter of Support
Bill Sheffield, Governor.

G. Letter of Support
Col. Robert J. Stickles, Director, Fish and Wildlife Protection,
Department of Public Safety.

H. Letter of Support and Suggested Amendments
Stephanie J. Cole, Deputy Director for Services, Alaska Court System.

MEMBERS:
REP. JOHN LISKA, VICE CHAIRMAN; REP. RAMONA BARNES, EMERITUS;
REP. JOE HAYES; REP. HUGH MALONE; REP. DON CLOCKSIN; REP. RON WENDTE

STATE OF ALASKA
FISCAL NOTE

Revision Date , 1983

I. REQUEST

Bill/Resolution No.: CSSB 101 (Res)
Title: "Act relating to issuance of ..."
Sponsor: Senate Resource Committee
Requestor: Senate Judiciary

II. FISCAL DETAIL

Agency Affected: Public Safety
Program Category Affected: F&WP
BRU, Program of Subprogram(s) Affected: Fish & Wildlife Protection

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 83	FY 84	FY 85	FY 86	FY 87	FY 88
OPERATING						
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 COMMODITIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC						
TOTAL OPERATING		-0-	-0-	-0-	-0-	-0-
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER (Specify Source)						

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

III. SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

IV. ANALYSIS: Attach a separate page for any Analysis No fiscal impact anticipated

Prepared By: Col. Robert J. Stickles, Director Phone: 269-5532
Division: Fish & Wildlife Protection Date: 3-22-83

Approved by Commissioner: [signature] Date: 3/25/83
Department: Public Safety

Distribution:
Original to Legislative Finance
Copy to Office of Management and Budget (for Legislature introduced bills)
Copy to Department (for Governor introduced bills)
Copy to Sponsor
Copy to Requestor (if different from Sponsor)

3/2/3

SENATE RESOURCES COMMITTEE

LETTER OF INTENT

CSSB 101

It is the intent of the Resources Committee in passing out this bill that the Supreme Court shall specify certain fish and game violations for which bail amounts can be set and for which citations could be issued which would not require court appearances. It is intended that this procedure be similar to that currently employed under the motor vehicle code for traffic citations. Through implementation of this procedure it is intended that savings to the court system, enforcement agencies and violators in time would be realized.

However, the Committee recognizes that only some fish and game misdemeanors would be identified under this new statute because of their "minor" nature. Other misdemeanors would continue to require court appearances by the cited violators. In testimony before the Committee and in statements to the Committee the following misdemeanors were mentioned as examples of those violations for which the provisions of this bill might in all likelihood apply:

1) snagging or attempting to snag fish
2) failure to punch harvest tickets
3) failure to submit hunting permit reports
4) license not in possession

The following misdemeanors were mentioned as examples of those violations for which the provisions of this bill should probably not apply:

1) commercial fish
2) limited entry
3) guide-related
4) closed season
5) same-day airborne
6) waste

It is the intention of the Committee that the Supreme Court, in consultation with the Department of Public Safety, would identify misdemeanors under this bill consistent with the above lists.

CSSB 101 (Res) RELATING TO THE ISSUANCE OF CITATIONS FOR FISH AND GAME VIOLATIONS.

ASK FOR UNANIMOUS CONSENT FOR ADOPTION OF THE RESCURCES COMMITTEE SUBSTITUTE.

(SMALL CHANGES WERE MADE IN THE C.S : (ALL RECOMMENDED BY THE COURT SYSTEM)

.. REMOVED REFERENCES TO "MINOR MISDEMEANOR" AS IT HAS NO LEGAL DEFINITION

.. ALLOWS THE DEFENDANT TO PAY BAIL IN THE COURT WHERE THE OFFICER FILES THE CITATION RATHER THAN IN THE COURT OF JURISDICTION

... MAKES AN ALLOWANCE FOR A PERSON WHO FORGETS TO SIGN HIS/HER CITATION

.. AND SOME TECHNICAL CHANGES IN LINE WITH RECOMMENDATIONS FROM THE ATTORNEY GENERAL'S OFFICE

LETTER OF INTENT
IN THIRD READING, PRIOR TO PASSAGE, ASK FOR UNANIMOUS CONSENT FOR ADOPTION OF THE LETTER OF INTENT.

.. ASSURES THAT ONLY MINOR OFFENSES WOULD BE COVERED BY THIS BILL

IN GENERAL
THIS BILL WOULD GIVE PEACE OFFICERS THE AUTHORITY TO ISSUE CITATIONS FOR FISH AND GAME MISDEMEANORS UNDER A PROCEDURE SIMILAR TO THE ISSUANCE OF TRAFFIC CITATIONS. THE INTENT IS TO EXPEDITE THE ENFORCEMENT PROCEDURE BY REDUCING COURT LOADS. THE SUPREME COURT IS TO IDENTIFY THE MISDEMENAORS APPROPRIATE FOR DISPOSITION WITHOUT COURT APPEARANCE - CONSIDERABLE WORK WAS DONE IN COMMITTEE TO ASSURE THAT ONLY MINOR OFFENSES WOULD BE COVERED BY THE TRAFFIC TICKETING SYSTEM. WE ANTICIPATE A REDUCTION OF ABOUT 1,000 CASES A YEAR THAT WOULD NORMALLY GO BEFORE THE COURTS.

FISCAL NOTE IS ZERO.

MENDED TITLE: CSSB 101(RES)

N ACT RELATING TO THE ISSUANCE OF CITATIONS FOR FISH AND
AME VIOLATIONS

RIME SPONSOR: SENATE RULES COMMITTEE.

O-SPONSORS.

URRENT STATUS: 5/19/83 IN (H) JUDICIARY

DATE	SEQ	PAGE	LEGISLATIVE ACTION
2/01/83	01	0109	FIRST READING -- COMMITTEE REPORTS
2/01/83	02	0109	F/NOTE EQUALS ZERO
2/01/83	03	0109	GOV TRANSMITTAL LETTER
3/18/83	04	0430	RES -- CS05, NR01
3/18/83	05	0430	RES LETTER OF INTENT
4/14/83	06	0693	JUD -- RES CS05
4/14/83	07	0693	JUD F/NOTE EQUALS ZERO
4/22/83	08	0783	RLS -- RES CS04, OTHER04
			TAKEN UP IMMEDIATELY
4/22/83	09	0787	SECOND READING
4/22/83	10	0787	RES CS ADOPTED BY UNAN CONSENT
4/22/83	11	0787	SENATE LETTER OF INTENT ADOPTED
4/22/83	12	0787	ADVANCED TO 3RD READING BY UNAN CONSENT
4/22/83	13	0787	THIRD READING
4/22/83	14	0787	PASSED BY DIV 20-00-00
****	**	**	*** *** ***

DATE	SEQ	PAGE	LEGISLATIVE ACTION
4/25/83	15	1015	FIRST READING -- COMMITTEE REPORTS
5/19/83	16	1425	RES -- DP06
			JUDICIARY
			RULES
****	**	**	*** *** ***

BILL SHEFFIELD
GOVERNOR

STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

February 1, 1983

The Honorable Jalmar Kerttula
President of the Senate
Alaska State Legislature
Pouch V
Juneau, Alaska 99811

Dear Mr. President:

Under authority of art. III, sec. 18, of the Alaska Constitution, I am transmitting a bill that will establish an expeditious procedure to dispose of minor uncontested misdemeanor fish and game violations.

Under existing law (AS 12.25.180), peace officers have the authority to issue citations for misdemeanors instead of arresting the offender. Once a citation is issued, however, the offender must ordinarily appear in court, even if he does not wish to contest the charge. Section 1 of the attached bill adopts a procedure similar to that found in the motor vehicle code (AS 28.05.151) which allows the offender to post and forfeit bail if he does not wish to contest the charge. The bill also authorizes the supreme court to establish a bail schedule for those minor misdemeanor offenses which are appropriate for disposition without court appearance.

As in the comparable motor vehicle code provision, this bill provides that when a person is convicted of a minor misdemeanor which is included in the bail schedule, the fine imposed may not exceed the bail amount, even though statutes or regulations may allow a higher maximum penalty level. This bail amount "ceiling" on fines is necessary to ensure that a person who contests a citation and goes to trial will not receive a more severe penalty upon conviction than the person who enters a no contest plea and forfeits the bail amount without appearance. To expose the person who contests a citation to a higher maximum possible sentence would penalize the exercise of the right to a trial, constituting a denial of equal protection of the law.

Section 2 of this bill generally exempts persons who have been convicted of two or more minor fish and game violations from the mandatory license forfeiture required by AS

16.05.410(a) -- (c). However, the bill also provides that, in specific appropriate situations the hunting or fishing licenses of frequent repeat minor offenders may be revoked following a district court hearing.

Passage of this bill will benefit law enforcement, the person cited for a relatively minor offense, and the judicial system. The person will avoid the time and expense associated with a court appearance, while law enforcement will be able to concentrate its resources on more serious offenses. We anticipate a reduction of approximately 1,000 cases per year that would normally go before the courts.

Sincerely,

Bill Sheffield
Governor

STATE OF ALASKA

BILL SHEFFIELD, GOVERNOR

ROBERT J. SUNDBERG
COMMISSIONER

DEPARTMENT OF PUBLIC SAFETY

DIVISION OF FISH & WILDLIFE PROTECTION

P. O. BOX 6188, ANNEX
ANCHORAGE, ALASKA 99502

March 9, 1983

Representative Mitch Abood
Pouch V
Juneau, Alaska 99801

Dear Representative Abood:

During the budget hearings on March 7th involving the Division of Fish and Wildlife Protection we discussed Senate Bill 101 and it's potential impact on the Division. Senate Bill 101 was introduced on February 1st, 1983 and is a bill entitled "An Act relating to the Issuance of Citations for Fish and Game Violations."

Should this Bill pass it will allow the Alaska Supreme Court to establish a bail system for minor fish and wildlife offenses. If that occurs we anticipate approximately twenty (20) of the most common and minor violations being placed on this bail system. A fine will be established by the Court System for the offenses and if an individual is caught in a violation he will have the option of mailing in a fine or appearing in court. We anticipate that this will have a significant impact on the Court System, the Division of Fish and Wildlife Protection and the District Attorneys Office and it will be a positive impact because we feel an overwhelming majority of people will elect to use the bail system.

In an era when the State's treasury is going down and operating funds for the Division are not going to be as great as they have been in the past this type of legislation will assist the Division in maintaining it's current posture while decreasing expenditures at the same time. Last year the Division spent nearly 6,000 hours in court in the prosecution of the violations that we apprehended in the field. We believe that at a minimum, one half of this time can be eliminated if this particular piece of legislation passes. I would like to note also that we believe this will be of tremendous benefit to the sportsmen of the State of Alaska. I say sportsmen because right now we do not envision commercial type violations being placed on the bail system. In many cases persons are traveling, for example from Anchorage to Kenai to participate in the sport fishery and are cited for a violation. In order to go to court the individual has to take at least one day off from work, go to court, plead guilty or innocent, pay his fine, and it's an inconvenience to the general public as well as a burden on the court system, my officer's time, and the District Attorney's time. We feel the passage of this Bill will help not only us, but also the citizen.

·L12LH

Should this Bill come before the House State Affairs Committee of which you are the Chairman, I urge your support for this piece of legislation. If we can be of further assistance in explaining the benefits of this legislation or in answering any questions, please feel free to contact us.

Sincerely,

Colonel Robert J. Stickles
Director

RJS/rt

cc: Commissioner Robert J. Sundberg, Department of Public Safety

M E M O R A N D U M

TO: Senator Bettye Fahrenkamp, Chair, Senate Resources Committee

INFORMATION: Senator Robert H. Zielger, Sr., Vice-Chair
Senator Bob Mulcahy
Senator Richard I. Eliason
Senator Paul Fischer
Senator Arliss Sturgulewski
Senator Vic Fischer

FROM: Stephanie J. Cole
Deputy Director for Services
Alaska Court System

SUBJECT: SB 101

DATE: March 16, 1983

The Alaska Court System supports the passage of legislation enabling the development and adoption of a bail forfeiture schedule for minor fish and game offenses. Such a bail schedule could both reduce the court's workload and promote public convenience.

The following comments are offered about SB 101:

1. Section I, AS 16.05.165(a): We would suggest the addition of the phrase "as provided in AS 12.25.180" at the end of the sentence.

   AS 12.25.180 (When peace officer has option to take person before judge or magistrate) sets forth the parameters of a peace officer's discretionary power to issue a citation to a defendant. It should be as applicable to fish and game misdemeanors as to other types of misdemeanors. The reference to AS 12.25.180 will make the incorporation clear.

2. Section I, AS 16.05.165(b): We would suggest the deletion of the word "minor" in the first sentence.

   This first sentence refers to "minor misdemeanors." This term does not have any legal definition. The legislative intent that only minor types of cases be included in the bail schedule is already addressed by the language in this same sentence, "...misdemeanors that are appropriate for disposition without court appearance." More serious misdemeanors would not be appropriate for inclusion in the bail schedule. The inclusion of the term "minor misdemeanors" could be unnecessarily confusing.

3. Section I, AS 16.05.165(c): In the first sentence, we would delete "...having jurisdiction over the place where the violation occurred," and would substitute "...in which the citation is filed by the peace officer."

   The defendant may have no knowledge about which court has jurisdiction over the place where the violation occurred. He must deal with the court where the peace officer files the citation. This court address would be indicated on the citation.

4. Section I, AS 16.05.165(c)(2): We would suggest that a final sentence be added to this subsection: "Bail shall be forfeited if the person cited returns the bail amount but fails to sign the citation."

   Clerical problems will develop if (as frequently occurs with the traffic bail schedule receipts) persons mail in their bail money and omit, inadvertently or otherwise, to sign their citations. This provision would allow the court to treat the matter as if the person had signed the citation, thus expediting case processing.

5. Section I, AS 16.05.165(f): We would change the provision in the first sentence of "after trial" to "after plea or trial."

   It sometimes happens that a person wants to plead guilty to this sort of offense while still wanting to go to court to tell the judge about the particular circumstances of his case. This minor addition will insure that he or she would not be penalized for doing so.

6. Section I, AS 16.05.410(g): This subsection raises the possibility of a number of problems and leaves a number of questions unanswered.

   Among the issues raised are the following. Is this a criminal or civil proceeding? What standard of proof does the court use? If the license to be revoked is considered to be a "valuable license" by the court, the defendant has the right to a trial by jury. [See Baker v. City of Fairbanks, 471 P.2d 386 (Alaska 1970).] Then, how does the court treat the underlying prior misdemeanor offenses which support the case before the court, for which the defendant did not have the right to trial by jury? Is the defendant allowed to raise issues relating to his or her guilt in these closed cases before the jury? Different courts will probably decide these and other questions in varying ways.

As an alternative method, the legislature may want to consider the implementation of an administrative point system as is presently in use in traffic matters. See AS 28.15.221 et. seq. Such a point system would avoid many of the procedural pitfalls created by the present subsection.

Thank you for the opportunity to comment on this proposed legislation.

Stephanie J. Cole

SJC:jm

SB

111

Alaska State Legislature

POUCH V
JUNEAU, ALASKA 99811

P. O. BOX 9
KENAI, ALASKA 99611

REPRESENTATIVE HUGH MALONE

5/15/84
TO: CHARLIE BUSSELL

FROM: HUGH MALONE

Appreciate your scheduling SB 111 - relating to teleconferenced meetings under the administrative procedures act (by Gov.)

This bill codifies what is a reasonable approach to the use of teleconferencing for public meetings. I am not sure it is really necessary, but it would avoid arguments over what the rules are.

Thanks for your consideration.

Hugh L

SB

116

Tops Form No. 4002

WHILE YOU WERE AWAY

FOR Cyndy DATE 3/24 TIME 9:10 A.M. P.M.

M TERRY KRAMER

OF

PHONE 4442
AREA CODE NUMBER EXTENSION

MESSAGE Blue Ribbon
Commission
Noting w/ SB 116
is scheduled (yl)

	TELEPHONED
	RETURNED YOUR CALL
✓	PLEASE CALL
	WILL CALL AGAIN
	CAME TO SEE YOU
	WANTS TO SEE YOU

SIGNED

TOPS FORM 4002

Alaska State Legislature

JUNEAU, ALASKA

BLUE RIBBON COMMISSION ON THE
STATE PERSONNEL ACT

Senator Bill Ray, Chairman

Pouch YG
Mail Stop 3123
Juneau, Alaska 99811
(907) 465-4442

MEMORANDUM

March 25, 1983

TO: Members of the House Judiciary Committee

FROM: Teresa B. Cramer Teresa B Cramer
Administrative Assistant

SUBJECT: CSSB 116(SA) - Placing Emergency Guards Employed by the Department of Public Safety in the Partially Exempt Service

In 1979, the Blue Ribbon Commission sponsored legislation to place greater restraints on the employment of both nonpermanent and emergency classified state workers. These restrictions have created some difficulties for the Department of Public Safety because of the large number of emergency guards they hire. In 1982 the department hired 495 emergency guards. There were only 112 other emergency appointments in the state.

An emergency employee is defined as "an employee appointed for a period not to exceed 30 calendar days, whose appointment was made under conditions requiring immediate action to carry on work that is required in the public interest". AS 39.25.200(3). Departments are required to report the reason for hiring an emergency employee within 15 working days of the appointment. Personnel practices require that departments prepare Personnel Action forms at the beginning and end[illegible] of an emergency appointment. In addition, employment forms from the Division of Payroll and the Division of Retirement and Benefits must be prepared for each appointment.

For some communities with frequent need for emergency guards, the department employs the same individuals each time the need arises. There were 136 individuals who filled the 495 emergency guard appointments during 1982. These employees guard prisoners or seized property in rural areas where a one- or two-person post prevents a trooper from maintaining 24-hour per day watch. The period required for the emergency service is between arrest and either arraignment or transportation to a correctional facility or until other arrangements are made to maintain custody of the seized property. According to the Department of Public Safety, typical appointments last from two to four days.

Placing emergency guards in the partially exempt service will substantially reduce the paperwork burden placed on the Departments of Public Safety and Administration. Those employees who are repeatedly hired when an emergency occurs can remain on the payroll indefinitely, preparing time sheets for each period they actually work. Making the positions part of the partially exempt service means that the positions remain part of the state's classification plan and are paid according to the state's pay plan. This will insure pay equity for those employees.

The Blue Ribbon Commission recommends placing these positions in the partially exempt service. It will reduce the paperwork burden on the department with little effect on the employee. (The protections for emergency appointments in the classified service are not much greater, if at all, than for partially exempt employees.) The continuing need for these appointments has been adequately documented.

Bill Analysis

Line 10 Section 1 amends the section of the State Personnel Act which lists positions placed in the partially exempt service to include emergency guards.

Line 14 Section 2 amends the chapter which creates the Department of Public Safety by requiring the department to report to the Director of Personnel on the number and description of appointments of emergency guards. Departments are currently required to report the number of classified service emergency appointments they make. This will retain that requirement for emergency guards after they are moved to the partially exempt service.

TBC:lmk

SB 116 TITLE & SPONSOR SUMMARY 08:26 3/24/83 PAGE 1 OF 3

AMENDED TITLE: CSSB 116(S.A.)

AN ACT PLACING EMERGENCY GUARDS EMPLOYED BY THE DEPARTMENT OF PUBLIC SAFETY IN THE EXEMPT SERVICE

PRIME SPONSOR: SENATE RULES COMMITTEE.

CO-SPONSORS:

CURRENT STATUS: 3/23/83 IN (H) JUDICIARY

SB 116 SENATE ACTION 08:26 3/24/83 PAGE 2 OF 3

DATE	SEQ	PAGE	LEGISLATIVE ACTION
02/09/83	01	0155	FIRST READING -- COMMITTEE REPORTS
03/11/83	02	0371	S.A. -- CS04
03/11/83	03	0371	MOVED FROM JUD TO RLS BY UNAN CONSENT
03/21/83	04	0447	RLS -- NR01, OTHER03
			TAKEN UP IMMEDIATELY
03/21/83	05	0449	SECOND READING
03/21/83	06	0449	S.A. CS ADOPTED BY UNAN CONSENT
03/21/83	07	0450	ADVANCED TO 3RD READING BY UNAN CONSENT
03/21/83	08	0450	THIRD READING
03/21/83	09	0450	PASSED BY DIV 18-00-02
****	**	**	*** *** ***

SB 116 HOUSE ACTION 08:26 3/24/83 PAGE 3 OF 3

DATE	SEQ	PAGE	LEGISLATIVE ACTION
03/23/83	10	0590	FIRST READING -- COMMITTEE REPORTS
			JUDICIARY
			RULES
****	**	**	*** *** ***

SB 24 TITLE & SPONSOR SUMMARY 08:23 3/24/83 PAGE 1 OF 3

AMENDED TITLE: CSSB 24(JUD)AM

AN ACT RELATING TO PENALTIES FOR ASSAULTING A PEACE OFFICER, FIRE FIGHTER, OR OTHER EMERGENCY RESPONDER

PRIME SPONSOR: RODEY.

CO-SPONSORS: RAY, MOSS, PETTYJOHN, FERGUSON, JOSEPHSON, FISCHER,V. , FISCHER,P. , STURGULEWSKI.

CURRENT STATUS: 3/21/83 IN (H) JUDICIARY

SB 24 SENATE ACTION 08:24 3/24/83 PAGE 2 OF 3

DATE	SEQ	PAGE	LEGISLATIVE ACTION
01/18/83	01	0324	FIRST READING -- COMMITTEE REPORTS
03/02/83	02	0295	JUD -- CS04, NR01
03/18/83	03	0432	RLS -- JUD CS(AM)04, OTHER04
			TAKEN UP IMMEDIATELY
03/18/83	04	0435	SECOND READING
03/18/83	05	0435	JUD CS ADOPTED BY UNAN CONSENT
03/18/83	06	0436	AM01 ADOPTED BY UNAN CONSENT
03/18/83	07	0436	AM02 NOT ADOPTED BY VOICE VOTE
03/18/83	08	0436	ADVANCED TO 3RD READING BY UNAN CONSENT
03/18/83	09	0436	THIRD READING
03/18/83	10	0437	PASSED BY DIV 16-00-04
****	**	**	*** *** ***

SB 24 HOUSE ACTION 08:24 3/24/83 PAGE 3 OF 3

DATE	SEQ	PAGE	LEGISLATIVE ACTION
03/21/83	11	0570	FIRST READING -- COMMITTEE REPORTS
			JUDICIARY
			RULES
****	**	**	*** *** ***

SB

131

THE ALASKA CHAPTER
ASSOCIATED GENERAL CONTRACTORS
OF AMERICA, INC.

SKILL
RESPONSIBILITY
INTEGRITY

BOX 4-2500 • ANCHORAGE, ALASKA 99509
TELEPHONE (907) 276-5354
TELEX 25-394

3201 SPENARD ROAD
ANCHORAGE
RICHARD M. PITTENGER
MANAGER

February 24, 1983

The Honorable Bill Ray
Senate Judiciary Committee
Alaska Senate
Pouch V
M.S. 3100
Juneau, Alaska 99811

RE: Senate Bill 131

Dear Senator Ray:

On behalf of the Alaska Chapter of Associated General Contractors of America, I offer support to the passage of SB 131. Similar statutes have been enacted by Michigan, Kansas, Oregon, Texas, Wisconsin, Hawaii, Idaho, Ohio, New Hampshire and Pennsylvania.

Obviously, Alaska has had its share of disasters -- from the 1964 earthquake to the 1967 flood in Fairbanks. As you are undoubtedly aware, most disaster assistance operations depend upon quick and effective mobilization of the communities' resources. Increasing litigation and the potential liability resulting therefrom, makes it extremely important to minimize the impact of any lawsuits arising out of any disaster assistance operation. Persons providing disaster assistance should not be held to the same standard of care as persons performing the same operations under normal circumstances. It would be a sorry state of affairs if a person failed to render disaster assistance when needed solely because of fear of legal liability.

We believe enactment of SB 131 will help preserve the natural tendency of persons to render assistance when necessary. I urge you and your fellow Sentors to expeditiously move this bill through the Senate.

Sincerely,

ALASKA CHAPTER
ASSOCIATED GENERAL CONTRACTORS

Derald Schoon
President

cc: Senator Bettye Fahrenkamp
Senator Pappy Moss
Senator Robert H. Ziegler, Sr.

/bj

SB 831 - Mass

THE ASSOCIATED GENERAL CONTRACTORS OF AMERICA

1957 E Street, N.W. • Washington, D.C. 20006 • (202) 393-2040 • TWX: 710-822-9406 AGC WSH

H. C. HELDENFELS, *President* RICHARD S. PEPPER, *Senior Vice President* JAMES D. PITCOCK, JR., *Vice President*
A. A. BENINTEND, *Treasurer* HUBERT BEATTY, *Executive Vice President*

Disaster Assistance Bulletin #82-2
June 18, 1982

TO: Chapter Managers
Disaster Assistance Committee

SUBJECT: HOLD HARMLESS STATUTES

The following states have been identified as having existing statutes which protect a contractor from liability for his actions during a disaster relief operation which are ordered by a government official or agent of the government:

Michigan	Hawaii
Kansas	Idaho
Oregon	Ohio
Texas	New Hampshire
Wisconsin	Pennsylvania

Although the language varies in each statute, an example of typical and effective language appears in the Wisconsin statute as follows:

> Exemption from Liability - No person who provides equipment or services under the direction of the governor, the secretary or the head of emergency government services in any county, town or municipality during a state of emergency declared by the governor is liable for the death of or injury to any person or damage to any property caused by his or her actions, except where the trier of fact finds that the person acted intentionally or with gross negligence. This subsection does not affect the right of any person to receive benefits to which he or she would otherwise be entitled under the worker's compensation law or under any pension law, nor does it affect entitlement to any other benefits or compensation authorized by state or federal law.

The Disaster Assistance Committee has encouraged chapters to attempt to have hold-harmless, good samaritan or other similar legislation passed on the state level to protect contractors working in disaster relief operations. If you would like copies of the statutes from any of the above listed states, please let me know.

Sincerely,

Brian Deery

BRIAN DEERY
Secretary
Disaster Assistance Committee

BD:chh

STATE OF ALASKA
PRELIMINARY STATEMENT OF FISCAL IMPACT

Bill No: Senate Bill No. 131 Date on Bill: 2/17/83
Title: "An Act providing for immunity...(for) persons...(rendering)...disaster relief."
Sponsor: Moss
Requestor:

1. Estimated fiscal impacts on:

a. Expenditures:

(Thousands of Dollars)

			FY 83	FY 84	FY 85	FY 86		
Capital								
Operating								
Total			-0-	-0-	-0-	-0-		

b. Revenues:

Revenue								

2. Source of funds to offset fiscal impact of bill:

Source of funds not identified by sponsor.

3. Assumptions:

No fiscal impact.

4. Disclaimer:
This statement has not been reviewed by the OMB in the Office of the Governor. It therefore does not represent the final estimate of fiscal impact.

Prepared by: Francis C. Allan F.C.A. Phone: 269-5691
Division: Alaska State Troopers Date: 3-9-83

Approved by Commissioner: Date: 3/10/83
Department: Public Safety

5. Distribution:
Original to Legislative Finance
Copy to OMB
Copy to Sponsor
Copy to Requestor

2/15/83

SB

133

STATE OF ALASKA
THE LEGISLATURE

FINAL

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

LEGISLATIVE AFFAIRS AGENCY

M E M O R A N D U M January 17, 1984

SUBJECT: House CS for CSSB 133 (Judiciary)

TO: Representative Charlie Bussell
Chairman, House Judiciary Committee

FROM: David R. Dierdorff
Revisor of Statutes

This bill was prepared by the revisor of statutes under AS 01.05.036 which provides, in part, that the revisor of statutes shall

> ". . . prepare for submission to the legislature legislation for the correction or removal of . . . deficiencies, conflicts, or obsolete provisions, or to otherwise improve the form or substance of . . . the statute law of this state."

This memorandum discusses the House Committee Substitute for the bill.

SECTIONAL ANALYSIS

Sections 1-3, 80 and 127 amend statutory references to the Pacific time zone to reflect the change to Alaska time.

Section 4 improves the definition of "municipality" that was first enacted as a part of the Alaska Aeronautics Act of 1949, subsequently rewritten during the bulk formal revision of the Alaska Statutes and amended by the 1974 revisor's bill. The present definition excludes unified municipalities, which we do not believe was intended, and, if interpreted strictly, also excludes home rule cities or boroughs, as there are no classifications of home rule municipalities. The latter problem was the inadvertent result of an amendment made to the revisor's bill as it

progressed through the legislature in 1974. The proposed new definition is identical to that which is contained in the revised municipal code (SB 1 and HB 272) and will be valid whether or not SB 1 or HB 272 are enacted.

Section 5 clarifies the term "director" in AS 03.10.-030(e). The term is not defined in AS 03.10 and appears only in this section.

Section 6 repeals all of AS 03.19. This chapter deals exclusively with the small grain incentive program, a program which ended with the crop year 1975. The division of agriculture has confirmed that this material is obsolete and that it is quite unlikely that a program of this type would ever be used in the future.

Sections 7 and 8 clarify responsibilities in the programs related to diseased livestock. When responsibilities in Title 3 were divided between the Departments of Natural Resources and Environmental Conservation by Executive Order in 1981, the sections immediately preceding and following the sections amended by secs. 7 and 8 of the revisor's bill were changed to place responsibility in the Department of Environmental Conservation. However, by virtue of the definitions applying to Title 3, the word "commissioner" in AS 03.45.060 and AS 03.45.070 must be read as "commissioner of natural resources". Since all sections in AS 03.45 are part of an integrated scheme, it is our opinion that the failure to change the references to commissioner in these two sections was an oversight.

Section 9 repeals references to the Board of Barbers, Board of Hairdressers, Board of Welding Examiners, and Collection Agency Board. The latter two boards were "sunsetted" and the first two were repealed by Chapter 159, SLA 1980.

Section 10 corrects an apparent oversight. When the Board of Hairdressers and Board of Barbers were repealed they were combined into the Board of Barbers and Hairdressers. However, the name of that board was not added to the list in AS 08.01.010, which sets forth the boards subject to AS 08.01.

Section 11 amends AS 08.02.010(a) to correct a reference to nurses and to make consistent the reference to other professions. The term "professional nurse" is no longer defined in AS 08.68.410 as a result of 1982 amendments. The

section also contains two changes to remove gender indicating pronouns.

Sections 12 and 13 repeal obsolete references to the Collection Agency Board and the Board of Welding Examiners which are found in the section setting forth the schedules for the sunset of regulatory boards.

Section 14 repeals an obsolete requirement in the chapter on the licensing of public accountants. The paragraph repealed had application only for a period in the 1960's.

Section 15 corrects an error in tense which appears in AS 08.20.140.

Section 16 repeals those sections in AS 08.24 which established the Collections Agency Board and a paragraph which defined "board" for the chapter. The board was terminated by operation of the sunset statutes. The termination date was June 30, 1980.

Sections 17 - 23 amend provisions in the law licensing and regulating collection agents to delete references to the terminated Collection Agency Board.

Sections 24 and 25 correct internal references in AS 08.36. AS 08.36.310 was repealed and replaced by AS 08.36.315 in 1980.

Section 26 repeals an obsolete definition. The word defined ("resident")is not used in the chapter and has not been used since prior to the original bulk formal revision of the Alaska Statutes.

Sections 27 and 28 repeal and remove material which has become obsolete through the passage of time and is no longer necessary.

Section 29 amends AS 08.68.270(4) to reflect the changes in the drug laws which went into effect on January 1, 1983. The deleted sections of the Alaska Statutes which were referenced in this paragraph were repealed in the drug legislation passed last session.

Section 30 repeals AS 08.71.220 which is an obsolete portion of the chapter regulating dispensing opticians. The

provisions of this section were in the nature of temporary transition provisions for licensing.

Section 31 repeals a subsection of AS 08.80.295 which is obsolete. The mandate of subsection (e) was to extend for a "period of two years following September 16, 1976".

Section 32 amends AS 08.88.201 by deleting the second sentence, which is now obsolete. AS 08.88.191(a) no longer provides for petitions for an additional examination.

Sections 33 and 34 amend provisions in AS 08.88 to reflect the 1980 repeal of AS 08.88.211 and substitute the current references.

Section 35 repeals all but one section of the chapter on the Board of Welding Examiners which was terminated under the sunset law. The retained section establishes the piping code of the state.

Section 36 corrects a reference to the federal bankruptcy act in the exemptions act passed by the last session of the legislature. Chapter "XIII" refers to the Wage Earner Plan of the old bankruptcy act of 1898. The amendment conforms the reference to the current bankruptcy law. We have also changed the citation to federal law to conform to our present style.

Section 37 makes another correction in the exemptions act. There is no consumer price index for the month of December. The Anchorage index is issued every other month. The index which would be used to establish December price relationships would, in fact, be the November consumer price index.

Section 38 corrects an internal reference by deleting a reference to statutes repealed in 1972 and inserting the proper current references.

Section 39 corrects internal references to reflect the 1982 legislative action repealing the referenced section in AS 09.35 and establishing AS 09.38, the Alaska Exemptions Act.

Section 40 repeals AS 11.71.120(d). That subsection should have been deleted from the 1982 bill when the legislature decided to make the Controlled Substances Advisory Committee a purely advisory committee and amended out of the bill its power to designate substances as controlled substances.

Section 41 also deletes language to reflect the final form of the controlled substances legislation. In the version enacted, AS 11.71.120 does not provide for the designation of a substance as controlled.

Section 42 corrects an incorrect reference to the court rules. Rule 2(c) of the District Court Rules of Criminal Procedure has been repealed and replaced by Rule 603(b) of the Rules of Appellate Procedure.

Section 43 makes a change in AS 12.47.030(b) to reflect the fact that the assertion by a criminal defendant of evidence to establish that the defendant was guilty but mentally ill is not a defense to a criminal prosecution.

Section 44 amends AS 12.62.035(e) to more clearly reflect legislative intent. This is required by an attorney general's opinion of November 1, 1983, that stated that convictions of certain crimes under statutes repealed in 1980 were not within the definition of "sex crime." The amendment makes other minor form and style changes.

Section 45 amends AS 14.07.058(e) to clarify the meaning of the word "board". In AS 14.60, the word "board" is defined for AS 14 to mean the State Board of Education. Consequently, the use of the word with no further identification could be confusing.

Section 46 deletes a reference to a statute repealed in 1982.

Sections 47 and 48 consolidate definitions for AS 14.11.100 - 14.11.135 by repealing a subsection that contained a redundant definition and amending into the definition section the remaining definition that was in ther repealed subsection.

Section 49 amends AS 14.17.080 to remove obsolete references. "Basic need" is no longer defined in AS 14.17.021 and there is no longer any matching under AS 14.17.071. As a matter of fact, AS 14.17.071 has been repealed.

Section 50 also deletes obsolete references that result from the changes in policy in the school foundation program. The second sentence of the amended section is also changed to conform the internal reference to our present style.

Section 51 repeals AS 14.17.225(d) because the underlying statute, AS 14.17.215, was repealed in 1980 by sec. 20, Chapter 26, SLA 1980.

Section 52 repeals provisions which set forth the minimum teachers' and administrators' salary scales and definitions. The salary scales are obsolete since salaries are set by negotiation. The definitions section is also obsolete by reason of successive reapportionments. The section which contains minimum salaries for teachers (AS 14.20.220) also contains some material still useful to the Department of Education and school districts and that portion of the section is not repealed.

Sections 53, 54 and 55 delete obsolete references to the old state-operated school system and substitute the regional educational attendance area. In sec. 54, the phrase "school board" is substituted for "district" because "district" is not defined in AS 14. "School board" is.

Section 56 deletes a reference in AS 14.42.015(a)(2) to the Alaska Methodist University and substitutes the successor school, Alaska Pacific University.

Sections 57 and 58 delete references to the old tuition grant program that was declared unconstitutional by the Alaska Supreme Court some time ago and repealed by Chapter 94, SLA 1980 and Chapter 59, SLA 1982.

Section 59 repeals the definition of a phrase that is not used in the scholarship loan program. The term "part-time student" is not used in the Alaska Statutes.

Section 60 repeals a chapter that is obsolete and inoperative. When the chapter was enacted in 1972 it was based on participation in "the federal child nutrition act of 1971". However, that federal legislation was never enacted. No programs have been implemented or regulations adopted under this chapter.

Section 61 deletes from AS 14.57.020(b), relating to the state museum collections advisory committee, a sentence which was necessary only during the initial year of operation of the committee.

Sections 62 and 63 correct references to the acknowledgement statute. AS 09.65.012 has been replaced by AS 09.63.020.

Section 64 conforms the language used AS 15.60.101(30) to that found in the rest of the election laws.

Section 65 deletes material from the law on registration tags for shellfish pots or buoys to reflect the 1977 repeal of AS 16.05.630 and 16.05.670.

Section 66 amends AS 16.05.660 to make more specific the reference to 25 cent licenses. At the time this section was enacted, there was only one type of 25 cent license available (for certain heads of households or their dependents). Subsequent legislation has provided a 25 cent sport fishing license for blind residents, leading to the need to clarify the reference in this section.

Section 67 repeals AS 16.10.530 on the basis of the decision of the Supreme Court in State v. Alex, 646 P.2d 203 (1982) The case only invalidated AS 16.10.530.

Section 68 repeals the residency requirement on certain bounties. An identical change was made in AS 16.35.130 by chapter 67, SLA 1983 (the residency bill) and it appears that this section was inadvertently overlooked when the residency bill was put together.

Section 69 repeals a provision that applied only to permits issued for 1974.

Section 70 makes changes to reflect the 1977 repeal of the underlying statutes.

Sections 71 and 72 delete references to the adoption of regulations under AS 11.71.120(a). This conforms the language of the two amended sections to the enacted version of the controlled substances bill. See also sections 40 and 41 of the proposed committee substitute.

Section 73 substitutes the substantive provisions of repealed AS 11.05.010 for the obsolete reference to the repealed provision.

Section 74 repeals a reference made obsolete by changes in the school foundation program. "Local effort" is no longer a required part of the public school foundation law.

Section 75 substitutes a date certain for language referring to the end of the United States' involvement in Vietnam.

Similar changes have been made previously in other provisions of the statutes.

Section 76 corrects an incorrect internal reference in AS 21.60.010(d). The section currently referenced contains a definition of "insurance" rather than a penalty.

Section 77 repeals and reenacts AS 22.05.020 which establishes the composition and general powers of the Supreme Court. The repeal and reenactment deletes obsolete material relating to the number of justices and organizes the section into three subsections for clarity.

Section 78 is a repeal and reenactment of AS 22.10.020, which sets forth the jurisdiction of the superior courts. The sole purpose of the rewriting is to make the section more readable. There have been no substantive changes and it is not the purpose of this section to override differences, if any, between jurisdiction of the superior court set forth by statute and that set forth by court rule.

There are three minor changes which should be noted. In new subsection (a), the words "but not limited to" have been deleted following the word "including". Since the words "include" or "including" are not exclusive words, it is unnecessary to use the term "but not limited to" following such words in the Alaska Statutes. In new (h), the internal reference to the Alaska Native Claims Settlement Act has been changed to conform to present style. The other change is the deletion of a reference to AS 23.10.192 in new subsection (i). That section was repealed in 1980 and the provisions of AS 18.80, which are still referenced, have picked up the provisions of the repealed section.

Section 79 corrects a problem of tense in AS 22.10.040(4).

Section 81 deletes a reference to the legislative board of retirement benefits. That board was repealed in 1980.

Section 82 repeals a provision in the Surface Coal Mining Control and Reclamation Act that was intended to provide regulation in the event the Alaska program was disapproved by the Secretary of Interior. The program was approved on May 2, 1983, so the repealed provision is not required.

Section 83 repeals an obsolete provision in the motor vehicle code. AS 28.10.105(c) was applicable only during 1979.

Section 84 corrects a drafting error made during the first session by restoring to AS 28.10.201(b) certain internal references that were mistakenly deleted when the final version of SCS CSHB 184 (Rules) (chapter 99, SLA 1983) was prepared.

Section 85 amends AS 28.10.411(b) by deleting a reference to repealed AS 42.15.

Section 86 clarifies a reference to the commissioner of natural resources.

Sections 87, 88, and 89 delete references to a statute which was repealed when the new criminal code was enacted in 1978. The proper references to the provisions on unlawful evasion have been substituted.

Section 90 revises a definition in the Agreement on Detainers. The term defined, "state" was changed to "party state" through amendments to the original bill. However, the definition was not changed. "State" needs to be defined in this law, as the term is used to include the jurisdictions of the United States which are not states, e.g., Puerto Rico and the District of Columbia. "Party state" does not need to be defined, as it is clear from a reading of the Agreement on Detainers that a party state is a state (as defined) which is a party to the agreement. Without some change, some confusing results occur in reading the law to which the definitions apply.

Section 91 repeals a subsection that is redundant to the provisions of AS 09.38 referenced in the subsection. The rights and liabilities purportedly established by this subsection are more clearly established in AS 09.38. If this subsection is repealed, a cross reference note to the appropriate provisions in AS 09.38 will be added to the annotations for AS 34.15.140.

Section 92 deletes references to AS 14.08.161 which has been repealed.

Section 93 deletes a reference in AS 38.04.065(a) to a statute repealed in 1981 and substitutes a reference to the present notice provisions.

Section 94 deletes from AS 38.04.900(a) provisions which were of a temporary nature and are now obsolete.

Section 95 rewrites the paragraph in AS 38.04.910 which defines "state park" for AS 38.04. The old definition contained specific references to some of the laws designating areas which fall within the definition of state parks, but has not been kept up to date as new areas have been designated. It is our opinion that it would be better to enact a definition such as that proposed in this section and maintain a current list of laws designating the various areas in a note to the section.

Section 96 amends a reference in AS 38.05.057 to the notice provisions of AS 38.05.345. Note that there is still an AS 38.05.345(e), but that the section was substantially rewritten after AS 38.05.057(e)(3) was enacted, resulting in the repeal of the notice provisions of former AS 38.05.-345(e). The present provisions are irrelevant in the context of the reference found in AS 38.05.057(e)(3).

Section 97 deletes the last sentence of AS 38.05.057(g), as the sentence is no longer necessary. AS 38.05.055, referenced in the sentence, has been rewritten and no longer contains any requirements for contracts. AS 38.05.065 now establishes certain terms required for contracts under this section. The deletion of "or his representative" is consistent with the law requiring the deletion of gender indicating pronouns, and is not required in this provision, since other provisions authorize the director to act through designated representatives. See AS 38.05.035.

Section 98 amends AS 38.05.079(a) to reflect the repeal of two sections referenced in the subsection. In the case of AS 38.05.047, the reference is retained, but the reader will know that the section is no longer operative. In the case of AS 38.05.305, a reference to AS 38.05.345 was substituted. That section now contains all of the notice procedures.

Section 99 updates an obsolete internal reference.

Section 100 also updates an obsolete internal reference. A review of the legislative history of AS 38.05.102 (amended by this section) indicates that the spanned reference should be to the entire article on leasing. In any event, AS 38.-05.100 has been repealed.

Section 101 substitutes a reference to AS 38.05.345 for the obsolete reference to repealed AS 38.05.305.

Section 102 makes a number of minor style changes and substitutes a reference to AS 46.15 for an obsolete reference to repealed law.

Section 103 clarifies an internal reference to reflect 1980 amendments to the referenced section.

Section 104 makes the same change to AS 38.08.020 that was made to AS 38.05.057(e)(3) by section 96 of the bill.

Section 105 deletes obsolete language relating to initial (1960) appointments to the personnel board.

Section 106 corrects an error in the internal references in AS 39.25.120(b) which were created by the repeal and re-enactment, with some renumbering, of AS 39.25.150.

Section 107 adds the Alaska Power Authority and the Alaska Resources Corporation to the list of agencies included in the definition of "state commission or board" for purposes of the conflict of interest laws. These boards are subject to AS 39.50 by the terms of the laws establishing them, but they were not added to the list in AS 39.50.200. This over-sight was brought to our attention by the staff of the Alaska Public Offices Commission.

Section 108 repeals two subsections that set out duties to be performed on December 31, 1980. They are now obsolete.

Section 109 repeals obsolete material that applied only during 1980.

Section 110 harmonizes the language used in AS 42.06.280 by substituting commission for commissioner in two places.

Section 111 corrects an internal reference to reflect other legislative action and makes a minor word change to conform to proper statutory drafting.

Section 112 repeals a provision made obsolete by the enactment of the criminal code. The material repealed is now covered by AS 11.46.210.

Section 113 makes a minor technical change to clarify the language of the statute.

Section 114 repeals a provision made partially obsolete by the repeal of AS 43.20.170 in 1980 and adequately dealt with elsewhere in AS 43.05.290.

Section 115 deletes a reference to AS 43.21, which was repealed in 1981.

Section 116 makes changes in internal references required by the enactment of the Alaska Exemptions Act in 1982.

Section 117 corrects an internal reference.

Section 118 changes a three year residency requirement that was overlooked last session to a one year requirement. The one year provision was suggested by the Department of Law.

Section 119 corrects an internal reference.

Section 120 repeals AS 43.58. The tax established by this chapter terminated in 1977 under the provisions of AS 43.58.170 and the chapter is now obsolete.

Section 121 corrects the reference to the head of the Department of Community and Regional Affairs by substituting "commissioner" for "director".

Section 122 corrects the reference in the Alaska Statutes to the United States Board on Geographic Names.

Section 123 corrects an internal reference to reflect 1982 legislation affecting the referenced section.

Section 124 changes a reference to the licensing of embalmers to reflect other legislative changes.

Section 125 supplies the words necessary to make a complete sentence out of the last sentence in AS 44.83.398(f).

Section 126 repeals a reference made obsolete by changes in the school foundation program. See secs. 50 and 74 of this memo.

Section 128 amends the Alaska Securities Act to clarify the time that is available to take an appeal from an administrative order. The Alaska Court Rules of Appellate Procedure allow only 30 days for an appeal from an administrative decision. However, this section of the securities act currently allows 60 days. This is a direct conflict and should be resolved. The applicable appellate rule is Rule 602(a)(2). Other minor word changes are made in the subsection.

Sections 129, 130, and 131 delete obsolete material from three sections of AS 46.30. All of the deleted material is dated and no longer necessary.

Section 132 corrects an internal reference in AS 47.10.-230(f).

Section 133 repeals a definition in the child support enforcement chapter that is not used in the chapter. The term defined is "disposable earnings".

Section 134 makes changes in internal references required by the new exemptions statute.

Section 135 corrects an internal reference.

Section 136 provides for an immediate effective date.

DRD:ojb
SB133/010

Alaska State Legislature

SENATOR
ROBERT H. ZIEGLER, SR.
307 BAWDEN STREET
KETCHIKAN, ALASKA 99901

While in Juneau
POUCH V
JUNEAU, ALASKA 99811

Senate

VICE CHAIRMAN
SENATE RESOURCES COMMITTEE

MEMBER
SENATE JUDICIARY COMMITTEE

WESTERN STATES LEGISLATIVE
FORESTRY TASK FORCE

WESTERN CONFERENCE COUNCIL
OF STATE GOVERNMENTS

May 16, 1983

All Members of the
Alaska State Senate
Juneau, Alaska

Dear Senators:

At Senator Ray's request, I have attached the following hereto: (1) the most recent proposed CSSB 133; (2) the Revisor's letters of February 15, 1983, March 23, 1983 and May 4, 1983; and (3) my subcommittee letter of April 14, 1983.

Senator Faiks has indicated the bill will probably be calendared in the near future.

It is the hope of the Judiciary Committee Chairman that you will review this material prior to the date it is calendared in order that if you have any questions concerning the legislation you can contact me, my A.A. Guy Van Doren, Counsel for the Judiciary Committee, John Gabrielli, and David Dierdorff, Revisor of Statutes.

Once you start to pick a bill of this nature apart on the floor, you will encounter complex problems.

If any Senator has amendments to propose, we would appreciate your submitting them to Mr. Gabrielli.

Very truly yours,

Robert H. Ziegler, Sr.

RHZ:lk

Enclosures

Alaska State Legislature

SENATOR
ROBERT H. ZIEGLER, SR.
307 BAWDEN STREET
KETCHIKAN, ALASKA 99901

While in Juneau
POUCH V
JUNEAU, ALASKA 99811

Senate

VICE CHAIRMAN
SENATE RESOURCES COMMITTEE

MEMBER
SENATE JUDICIARY COMMITTEE

WESTERN STATES LEGISLATIVE
FORESTRY TASK FORCE

WESTERN CONFERENCE COUNCIL
OF STATE GOVERNMENTS

April 14, 1983

Senator Bill Ray,
Chairman - Senate Judiciary Committee
Alaska State Legislature
Juneau, Alaska 99811

RE: CSSB 133

Dear Senator Ray:

Your man John, my guy Guy and Revisor of Statutes Dave Dierdorff have labored mightily on the captioned bill.

It would be my suggestion that you distribute copies of the committee substitute and the Revisor's letter of March 23rd to all members of the Senate at least one week before the Rules Committee Chairperson intends to calendar it.

In the committee letter of transmittal to the Senate membership, if I may offer another suggestion, you could say that if anyone has any questions about the bill to get in touch with you, me or our staff people prior to the day it is calendared.

It is obviously my intent to get the mother through the Senate without getting bogged down in floor fights or amendments.

Regards,

3 —

Robert H. Ziegler, Sr.

RHZ:lk

Enclosure

STATE OF ALASKA
THE LEGISLATURE

LEGISLATIVE AFFAIRS AGENCY

M E M O R A N D U M February 15, 1983

SUBJECT: "An Act making corrective amendments in the Alaska Statutes as recommended by the revisor of statutes" (Work Order No. 13-0470)

TO: Senator Bill Ray
Chairman, Legislative Council

FROM: David R. Dierdorff
Revisor of Statutes

This bill was prepared by the revisor of statutes under AS 01.05.036 which provides, in part, that the revisor of statutes shall

> ". . . prepare for submission to the legislature legislation for the correction or removal of . . . deficiencies, conflicts, or obsolete provisions, or to otherwise improve the form or substance of . . . the statute law of this state."

It is suggested that this memorandum accompany the bill through its legislative course.

SECTIONAL ANALYSIS

Section 1 improves the definition of "municipality" that was first enacted as a part of the Alaska Aeronautics Act of 1949, subsequently rewritten during the bulk formal revision of the Alaska Statutes and amended by the 1974 revisor's bill. The present definition excludes unified municipalities, which we do not believe was intended, and, if interpreted strictly, also excludes home rule cities or boroughs, as there are no classifications of home rule municipalities. The latter problem was the inadvertent result of an amendment made to the revisor's bill as it progressed through the legislature in 1974. The proposed new definition is identical to that which is contained in

the revised municipal code (SB 1) and will be valid whether or not SB 1 passes.

It should be mentioned that this section is but one of 24 sections of the Alaska Statutes which define municipality. Those 24 sections contain ten different definitions. Only eight of the 24 sections contain definitions which are essentially identical; however, all but two or three of the definitions are fairly similar in most respects. Ten of the 24 sections would be repealed by SB 1. It is the revisor's opinion that it would be wise to consider placing a general definition of "municipality" in AS 01.10.060. That would eliminate the need for a definition of "municipality" in other parts of the Alaska Statutes except where the use of the term required some variation from the standard definition.

Section 2 deletes the definition of "domestic fur farm animal" from AS 03.05.010(c)(6). The definition is preceded by a definition of "fur farming" and is limited to the purposes of the paragraph in which it is contained. The term "domestic fur farm animal" does not occur in the paragraph nor does it occur at any other place in the Alaska Statutes.

Section 3 clarifies the term "director" in AS 03.10.-030(e). The term is not defined in AS 03.10 and appears only in this section.

Section 4 repeals all of AS 03.19. This chapter deals exclusively with the small grain incentive program, a program which ended with the crop year 1975. The division of agriculture has confirmed that this material is obsolete and that it is quite unlikely that a program of this type would ever be used in the future.

Sections 5 and 6 clarify responsibilities in the programs related to diseased livestock. When responsibilities in Title 3 were divided between the Departments of Natural Resources and Environmental Conservation by Executive Order in 1981, the sections immediately preceding and following the sections amended by Secs. 5 and 6 of the revisor's bill were changed to place responsibility in the Department of Environmental Conservation. However, by virtue of the definitions applying to Title 3, the word "commissioner" in AS 03.45.060 and AS 03.45.070 must be read as "commissioner of natural resources". Since all sections in AS 03.45 are

part of an integrated scheme, it is our opinion that the failure to change the references to commissioner in these two sections was an oversight. Both sections also make changes in the use of pronouns in accordance with Chapter 58, SLA 1982.

Section 7 repeals references to the Board of Barbers, Board of Hairdressers, Board of Welding Examiners, and Collection Agency Board. The latter two boards were "sunsetted" and the first two were repealed by Chapter 159, SLA 1980.

Section 8 corrects an apparent oversight. When the Board of Hairdressers and Board of Barbers were repealed they were combined into the Board of Barbers and Hairdressers. However, the name of that board was not added to the list in AS 08.01.010, which sets forth the boards subject to AS 08.01.

Section 9 amends AS 08.02.010(a) to correct a reference to nurses and to make consistent the reference to other professions. The term "professional nurse" is no longer defined in AS 08.68.410 as a result of 1982 amendments. The section also contains two changes to remove gender indicating pronouns.

Sections 10 and 11 repeal obsolete references to the Collection Agency Board and the Board of Welding Examiners which are found in the section setting forth the schedules for the sunset of regulatory boards.

Section 12 repeals an obsolete requirement in the chapter on the licensing of public accountants. The paragraph repealed had application only for a period in the 1960's.

Section 13 corrects an error in tense which appears in AS 08.20.140.

Section 14 repeals the chapter on the Collection Agency Board which has been rendered obsolete by operation of the sunset statute. The termination date was June 30, 1980.

Sections 15 and 16 correct internal references in AS 08.36. AS 08.36.310 was repealed and replaced by AS 08.36.315 in 1980.

Section 17 repeals an obsolete definition. The word defined is not used in the chapter and has not been used since prior to the original bulk formal revision of the Alaska Statutes.

Sections 18 and 19 repeal and remove material which has become obsolete through the passage of time and is no longer necessary.

Section 20 amends AS 08.68.270(4) to reflect the changes in the drug laws which went into effect on January 1, 1983. The deleted sections of the Alaska Statutes which were referenced in this paragraph were repealed in the drug legislation passed last session.

Section 21 repeals AS 08.71.220 which is an obsolete portion of the chapter regulating dispensing opticians. The provisions of this section were in the nature of temporary transition provisions for licensing.

Section 22 repeals a subsection of AS 08.80.295 which is obsolete. The mandate of subsection (e) was to extend for a "period of two years following September 16, 1976".

Section 23 amends AS 08.88.201 by deleting the second sentence, which is now obsolete. AS 08.88.191(a) no longer provides for petitions for an additional examination.

Sections 24 and 25 amend provisions in AS 08.88 to reflect the 1980 repeal of AS 08.88.211 and substitute the current references.

Section 26 repeals the chapter on the Board of Welding Examiners which was terminated under the sunset law.

Section 27 corrects a reference to the federal bankruptcy act in the exemptions act passed by the last session of the legislature. Chapter "XIII" refers to the Wage Earner Plan of the old bankruptcy act of 1898. The amendment conforms the reference to the current bankruptcy law. We have also changed the citation to federal law to conform to our present style.

Section 28 makes another correction in the exemptions act. There is no consumer price index for the month of December. The Anchorage index is issued every other month. The index which would be used to establish December price

relationships would, in fact, be the November consumer price index.

Section 29 corrects internal references to reflect the 1982 legislative action repealing the referenced section in AS 09.35 and establishing AS 09.38, the Alaska Exemptions Act.

Section 30 corrects an incorrect reference to the court rules. Rule 2(c) of the District Court Rules of Criminal Procedure has been repealed and replaced by Rule 603(b) of the Rules of Appellate Procedure.

Section 31 makes a change in AS 12.47.030(b) to reflect the fact that the assertion by a criminal defendant of evidence to establish that the defendant was guilty but mentally ill is not a defense to a criminal prosecution. It is, rather, a strategy which involves the presentation of mitigating factors in order to affect the disposition of the matter following a conviction.

Section 32 amends AS 14.07.058(e) t clarify the meaning of the word "board". In AS 14.60, the word "board" is defined for AS 14 to mean the State Board of Education. Consequently, the use of the word with no further identification could be confusing.

Section 33 amends AS 14.17.080 to remove obsolete references. Basic need is no longer defined in AS 14.17.021 and there is no longer any matching under AS 14.17.071. As a matter of fact, AS 14.17.071 has been repealed.

Section 34 also deletes obsolete references that result from the changes in policy in the school foundation program. The second sentence of the amended section is also changed to conform the internal reference to our present style. If appropriate changes were made in AS 29.88.020, this section could be repealed.

Section 35 amends AS 14.17.190(b) to delete a reference to money acquired from school district "local effort". "Local effort" is no longer a required part of the public school foundation act.

Section 36 repeals AS 14.17.225(d) because the underlying statute, AS 14.17.215 was repealed in 1980 by sec. 20, Chapter 26, SLA 1980.

Section 37 repeals the three sections which set forth the minimum teachers' and administrators' salary scales and definitions for the sections. The salary scales are obsolete since salaries are set by negotiation.

Sections 38, 39 and 40 delete obsolete references to the old state-operated-school system and substitute the regional educational attendance area. In Sec. 39, the phrase "school board" is substituted for "district" because "district" is not defined in AS 14. "School board" is.

Section 41 deletes a reference in AS 14.42.015(a)(2) to the Alaska Methodist University and substitutes the successor school, Alaska Pacific University.

Sections 42 and 43 delete references to the old tuition grant program that was declared unconstitutional by the Alaska Supreme Court some time ago and repealed by Chapter 94, SLA 1980 and Chapter 59, SLA 1982.

Section 44 repeals the definition of a phrase that is not used in the scholarship loan program. The term "part-time student" is not used in the Alaska Statutes. HB 174 would introduce the term to AS 14, but a definition is not necessary in the context it appears in HB 174.

Section 45 repeals a chapter that is obsolete and inoperative. When the chapter was enacted in 1972 it was based on participation in "the federal child nutrition act of 1971". However, that federal legislation was never enacted. No programs have been implemented or regulations adopted under this chapter.

Section 46 deletes from AS 14.57.020(b), relating to the state museum collections advisory committee, a sentence which was necessary only during the initial year of operation of the committee.

Sections 47 and 48 correct references to the acknowledgement statute. AS 09.65.012 has been replaced by AS 09.63.020.

Sections 49 and 50 correct an apparent oversight in AS 16.10. The sections presently read as if any fisherman who sells fish without an entry permit or interim use permit is in violation of the sections. However, certain fishermen are not required to have entry permits or interim use

permits, so certain types of fish could legally be sold. The suggested amendments make it clear that fishermen who are not required to hold a permit under AS 16.43 can sell fish without violating these sections.

Section 51 repeals AS 16.10.500 - 16.10.620 on the basis of the decision of the Supreme Court in State v. Alex. Technically, the case only invalidated AS 16.10.530 but the effect was to wipe out the entire program set forth in these sections. The present program is operated under AS 43.76.

Section 52 deletes an obsolete provision in AS 18.23.040 relating to punishment for misdemeanors. The effect of this amendment is to make a violation under this section a class A misdemeanor, through operation of the section relating to unclassified misdemeanors, AS 11.81.250(c). Since the penalty for a class A misdemeanor under is up to one year in jail and a fine of up to $5,000, the penalty would be more severe than under the repealed section referred to presently in AS 18.23.040. Under the repealed section the jail sentence would be the same but the maximum fine would have been only $500. The legislature may wish to amend this section of the bill to retain the old penalty, or consider establishing this as class B misdemeanor, with a maximum fine of $1,000 and a term of imprisonment of not more than 90 days.

Section 53 repeals a reference made obsolete by changes in the school foundation program. See sec. 35 of this memo.

Section 54 corrects an incorrect internal reference in AS 21.60.010(d). The section currently referenced contains a definition of "insurance" rather than a penalty.

Section 55 repeals and reenacts AS 22.05.020 which establishes the composition and general powers of the Supreme Court. The repeal and reenactment deletes obsolete material relating to the number of justices and organizes the section into three subsections for clarity.

Section 56 is a repeal and reenactment of AS 22.10.020, which sets forth the jurisdiction of the superior courts. The sole purpose of the rewriting is to make the section more readable. There have been no substantive changes and it is not the purpose of this section to override any differences between jurisdiction of the superior court set forth by statute and that set forth by court rule. In other

words, in those ways that this material may differ from the rules, the repealed and reenacted statute does not necessarily override should it pass by more than a two-thirds vote.

There are three minor changes which should be noted. In new subsection (a), the words "but not limited to" have been deleted following the word "including". Since the words "include" or "including" are not exclusive words, it is unnecessary to use the term "but not limited to" following such words in the Alaska Statutes. In new (h), the internal reference to the Alaska Native Claims Settlement Act has been changed to conform to present style. The other change is the deletion of a reference to AS 23.10.192 in new subsection (i). That section was repealed in 1980 and the provisions of AS 18.80, which are still referenced, have picked up the provisions of the repealed section.

Section 57 corrects a problem of tense in AS 22.10.040(4).

Section 58 deletes a reference to the legislative board of retirement benefits. That board was repealed in 1980.

Section 59 repeals an obsolete provision in the motor vehicle code. AS 28.10.105(c) was applicable only during 1979.

Sections 60, 61, and 62 delete references to a statute which was repealed when the new criminal code was enacted in 1978. The proper references to the provisions on unlawful evasion have been substituted.

Section 63 revises a definition in the Agreement on Detainers. The term defined, "state" was changed to "party state" through amendments to the original bill. However, the definition was not changed. "State" needs to be defined in this law, as the term is used to include the jurisdictions of the United States which are not states, e.g., Puerto Rico and the District of Columbia. "Party state" does not need to be defined, as it is clear from a reading of the Agreement on Detainers that a party state is a state (as defined) which is a party to the agreement. Without some change, some confusing results occur in reading the law to which the definitions apply. Consequently, the legislature should either adopt the amendment proposed in this section, or adopt the amendment and an additional amendment as follows:

(4) "party state" means a state which is party to this agreement.

Sections 64 and 65 delete references to AS 14.08.161 which has been repealed.

Section 66 repeals AS 37.14.060 - 37.14.100, which comprised Article 2 of AS 37.14. This article was not to be effective until the Board of Regents of the University of Alaska approved certain matters. In fact, the Board of Regents disapproved all matters on August 17, 1978. Consequently, the repealed sections never took effect.

Section 67 corrects an error in the internal references in AS 39.25.120(b) which were created by the repeal and reenactment, with some renumbering, of AS 39.25.150.

Section 68 makes changes in internal references required by the enactment of the Alaska Exemptions Act in 1982.

Section 69 corrects the reference to the head of the Department of Community and Regional Affairs by substituting "commissioner" for "director".

Section 70 corrects the reference in the Alaska Statutes to the United States Board on Geographic Names.

Section 71 deletes a reference to the licensing of embalmers. The referenced provisions were repealed in 1976.

Section 72 supplies the words necessary to make a complete sentence out of the last sentence in AS 44.83.398(f).

Section 73 repeals a reference made obsolete by changes in the school foundation program. See secs. 35 and 53 of this memo.

Section 74 amends the Alaska Securities Act to clarify the time that is available to take an appeal from an administrative order. The Alaska Court Rules of Appellate Procedure allow only 30 days for an appeal from an administrative decision. However, this section of the securities act currently allows 60 days. This is a direct conflict and should be resolved. The applicable appellate rule is Rule 602(a)(2).

Sections 75, 76, and 77 delete obsolete material from three sections of AS 46.30. All of the deleted material is dated and no longer necessary.

Section 78 corrects an internal reference in AS 47.-10.230(f).

Section 79 re[illegible] definition in the child support enforcement ch[illegible]hat is not used in the chapter. The term defined [illegible]sable earnings".

Section 80 mak[illegible]nges in internal references required by the new exemption statute.

DRD:ljb

Enclosure

STATE OF ALASKA
THE LEGISLATURE

POUCH Y STATE CAPITOL
JUNEAU, ALASKA 99811
907 465 3800

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM May 4, 1983

SUBJECT: Changes in CSSB 133 (Judiciary)

TO: Senator Bill Ray
Chairman, Senate Judiciary Committee

FROM: David R. Dierdorff
Revisor of Statutes

Enclosed with this memo are the revised revisor's memo, which you may wish to use as a committee report, and CSSB 133 (Judiciary) in final form. The changes made since the March 23rd draft are:

1. In Sec. 9 (page 3, line 8), "registered" was substituted for "licensed" to more accurately reflect previous legislative intent.

2. In Sec. 20 (page 5, line 10), "an" was deleted for clarity.

3. Sec. 33 (page 7, line 12), now repeals all of AS 08.99 except AS 08.99.110. That section establishes the piping code for the state and, although we are unable to determine any relationship with other laws, it was the revisor's opinion, shared by the Departments of Law and Labor, that we ought to retain the section until we were certain that it was unnecessary or obsolete. We will editorially transfer it to Title 18 later this year.

4. Sec. 42 (page 10, lines 16 - 21 of the March 23rd draft), was deleted at the request of the Department of Law, as the Department of Education desires that local districts continue the practice of making records of local effort available to the commissioner for audit.

5. In Sec. 43 (page 10, line 17), we have deleted AS 14.20.220 from the list of sections repealed, at the request of the Department of Law. The Department of Education is preparing a major revision of this and other

sections which will retain the provisions of (e) and (g) of the section. Those two subsections are still used by the department and districts for certain purposes.

6. Sec. 57 (page 14, line 12), now proposes the repeal of only AS 16.10.530 rather than all of the sections from AS 16.10.500 to 16.10.620. The section to be repealed is the one held unconstitutional in State v. Alex. The other sections are still valid and being used regularly in a variety of programs.

7. On page 15, line 25 of the draft, a form and style change was made for clarity.

If you have any questions, please feel free to call. Thank you for your assistance in expediting Senate consideration of the bill this session.

DRD:ljb

Enclosures
17/024

STATE OF ALASKA
THE LEGISLATURE

POUCH V STATE CAPITOL
JUNEAU ALASKA 99811
907 465 3800

LEGISLATIVE AFFAIRS AGENCY

M E M O R A N D U M May 4, 1983

SUBJECT: "An Act making corrective amendments in the Alaska Statutes as recommended by the revisor of statutes" (CSSB 133 (Judiciary))

TO: Senator Bill Ray
Chairman, Senate Judiciary Committee

FROM: David R. Dierdorff
Revisor of Statutes

This bill was prepared by the revisor of statutes under AS 01.05.036 which provides, in part, that the revisor of statutes shall

> ". . . prepare for submission to the legislature legislation for the correction or removal of . . . deficiencies, conflicts, or obsolete provisions, or to otherwise improve the form or substance of . . . the statute law of this state."

It is suggested that this memorandum accompany the bill through its legislative course.

SECTIONAL ANALYSIS

Section 1 improves the definition of "municipality" that was first enacted as a part of the Alaska Aeronautics Act of 1949, subsequently rewritten during the bulk formal revision of the Alaska Statutes and amended by the 1974 revisor's bill. The present definition excludes unified municipalities, which we do not believe was intended, and, if interpreted strictly, also excludes home rule cities or boroughs, as there are no classifications of home rule municipalities. The latter problem was the inadvertent result of an amendment made to the revisor's bill as it progressed through the legislature in 1974. The proposed new definition is identical to that which is contained in the revised municipal code (SB 1) and will be valid whether or not SB 1 passes.

It should be mentioned that this section is but one of 24 sections of the Alaska Statutes which define municipality. Those 24 sections contain ten different definitions. Only eight of the 24 sections contain definitions which are essentially identical; however, all but two or three of the definitions are fairly similar in most respects. Ten of the 24 sections would be repealed by SB 1. It is the revisor's opinion that it would be wise to consider placing a general definition of "municipality" in AS 01.10.060. That would eliminate the need for a definition of "municipality" in other parts of the Alaska Statutes except where the use of the term required some variation from the standard definition.

The Senate deleted this section because of the probable passage of SB 189

Section 2 deletes the definition of "domestic fur farm animal" from AS 03.05.010(c)(6). The definition is preceded by a definition of "fur farming" and is limited to the purposes of the paragraph in which it is contained. The term "domestic fur farm animal" does not occur in the paragraph nor does it occur at any other place in the Alaska Statutes.

Section 3 clarifies the term "director" in AS 03.10.-030(e). The term is not defined in AS 03.10 and appears only in this section.

Section 4 repeals all of AS 03.19. This chapter deals exclusively with the small grain incentive program, a program which ended with the crop year 1975. The division of agriculture has confirmed that this material is obsolete and that it is quite unlikely that a program of this type would ever be used in the future.

Sections 5 and 6 clarify responsibilities in the programs related to diseased livestock. When responsibilities in Title 3 were divided between the Departments of Natural Resources and Environmental Conservation by Executive Order in 1981, the sections immediately preceding and following the sections amended by Secs. 5 and 6 of the revisor's bill were changed to place responsibility in the Department of Environmental Conservation. However, by virtue of the definitions applying to Title 3, the word "commissioner" in AS 03.45.060 and AS 03.45.070 must be read as "commissioner of natural resources". Since all sections in AS 03.45 are part of an integrated scheme, it is our opinion that the failure to change the references to commissioner in these two sections was an oversight. Both sections also make

changes in the use of pronouns in accordance with Chapter 58, SLA 1982.

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Section 9 amends AS 08.02.010(a) to correct a reference to nurses and to make consistent the reference to other professions. The term "professional nurse" is no longer defined in AS 08.68.410 as a result of 1982 amendments. The section also contains two changes to remove gender indicating pronouns.

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Section 13 corrects an error in tense which appears in AS 08.20.140.

Section 14 repeals those sections in AS 08.24 which established the Collections Agency Board and a paragraph which defined "board" for the chapter. The board was terminated by operation of the sunset statutes. The termination date was June 30, 1980.

Sections 15 - 21 amend provisions in the law licensing and regulating collection agents to delete references to the terminated Collection Agency Board.

Sections 22 and 23 correct internal references in AS 08.36. AS 08.36.310 was repealed and replaced by AS 08.36.315 in 1980.

Section 24 repeals an obsolete definition. The word defined is not used in the chapter and has not been used since prior to the original bulk formal revision of the Alaska Statutes.

Sections 25 and 26 repeal and remove material which has become obsolete through the passage of time and is no longer necessary.

Section 27 amends AS 08.68.270(4) to reflect the changes in the drug laws which went into effect on January 1, 1983. The deleted sections of the Alaska Statutes which were referenced in this paragraph were repealed in the drug legislation passed last session.

Section 28 repeals AS 08.71.220 which is an obsolete portion of the chapter regulating dispensing opticians. The provisions of this section were in the nature of temporary transition provisions for licensing.

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Section 30 amends AS 08.88.201 by deleting the second sentence, which is now obsolete. AS 08.88.191(a) no longer provides for petitions for an additional examination.

Sections 31 and 32 amend provisions in AS 08.88 to reflect the 1980 repeal of AS 08.88.211 and substitute the current references.

Section 33 repeals all but one section of the chapter on the Board of Welding Examiners which was terminated under the sunset law. The retained section establishes the piping code of the state.

Section 34 corrects a reference to the federal bankruptcy act in the exemptions act passed by the last session of the legislature. Chapter "XIII" refers to the Wage Earner Plan of the old bankruptcy act of 1898. The amendment conforms the reference to the current bankruptcy law. We have also changed the citation to federal law to conform to our present style.

Section 35 makes another correction in the exemptions act. There is no consumer price index for the month of December. The Anchorage index is issued every other month. The index

which would be used to establish December price relationships would, in fact, be the November consumer price index.

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Section 37 corrects an incorrect reference to the court rules. Rule 2(c) of the District Court Rules of Criminal Procedure has been repealed and replaced by Rule 603(b) of the Rules of Appellate Procedure.

Section 38 makes a change in AS 12.47.030(b) to reflect the fact that the assertion by a criminal defendant of evidence to establish that the defendant was guilty but mentally ill is not a defense to a criminal prosecution.

Section 39 amends AS 14.07.058(e) to clarify the meaning of the word "board". In AS 14.60, the word "board" is defined for AS 14 to mean the State Board of Education. Consequently, the use of the word with no further identification could be confusing.

Section 40 amends AS 14.17.080 to remove obsolete references. Basic need is no longer defined in AS 14.17.021 and there is no longer any matching under AS 14.17.071. As a matter of fact, AS 14.17.071 has been repealed.

Section 41 also deletes obsolete references that result from the changes in policy in the school foundation program. The second sentence of the amended section is also changed to conform the internal reference to our present style. If appropriate changes were made in AS 29.88.020, this section could be repealed.

Section 42 repeals AS 14.17.225(d) because the underlying statute, AS 14.17.215 was repealed in 1980 by sec. 20, Chapter 26, SLA 1980.

Section 43 repeals two sections which set forth the minimum teachers' and administrators' salary scales and definitions. The salary scales are obsolete since salaries are set by negotiation. The definitions section is also obsolete by reason of successive reapportionments. The section which contains minimum salaries for teacher's (AS 14.20.020) is also obsolete, but contains some material still useful to

the Department of Education and school districts. It will be the subject of a bill being prepared by the department proposing substantial revision in that and other sections.

Sections 44, 45 and 46 delete obsolete references to the old state-operated-school system and substitute the regional educational attendance area. In sec. 46, the phrase "school board" is substituted for "district" because "district" is not defined in AS 14. "School board" is.

Section 47 deletes a reference in AS 14.42.015(a)(2) to the Alaska Methodist University and substitutes the successor school, Alaska Pacific University.

Sections 48 and 49 delete references to the old tuition grant program that was declared unconstitutional by the Alaska Supreme Court some time ago and repealed by Chapter 94, SLA 1980 and Chapter 59, SLA 1982.

Section 50 repeals the definition of a phrase that is not used in the scholarship loan program. The term "part-time student" is not used in the Alaska Statutes. HB 174 would introduce the term to AS 14, but a definition is not necessary in the context it appears in HB 174.

Section 51 repeals a chapter that is obsolete and inoperative. When the chapter was enacted in 1972 it was based on participation in "the federal child nutrition act of 1971". However, that federal legislation was never enacted. No programs have been implemented or regulations adopted under this chapter.

Section 52 deletes from AS 14.57.020(b), relating to the state museum collections advisory committee, a sentence which was necessary only during the initial year of operation of the committee.

Sections 53 and 54 correct references to the acknowledgement statute. AS 09.65.012 has been replaced by AS 09.63.020.

Sections 55 and 56 correct an apparent oversight in AS 16.10. The sections presently read as if any fisherman who sells fish without an entry permit or interim use permit is in violation of the sections. However, certain fishermen are not required to have entry permits or interim use permits, so certain types of fish could legally be sold. The suggested amendments make it clear that fishermen who are

not required to hold a permit under AS 16.43 can sell fish without violating these sections.

Section 57 repeals AS 16.10.530 on the basis of the decision of the Supreme Court in State v. Alex. The case only invalidated AS 16.10.530.

Section 58 substitutes the substantive provisions of repealed AS 11.05.010 for the obsolete reference to the repealed provision.

Section 59 repeals a reference made obsolete by changes in the school foundation program. "Local effort" is no longer a required part of the public school foundation law.

Section 60 corrects an incorrect internal reference in AS 21.60.010(d). The section currently referenced contains a definition of "insurance" rather than a penalty.

Section 61 repeals and reenacts AS 22.05.020 which establishes the composition and general powers of the Supreme Court. The repeal and reenactment deletes obsolete material relating to the number of justices and organizes the section into three subsections for clarity.

Section 62 is a repeal and reenactment of AS 22.10.020, which sets forth the jurisdiction of the superior courts. The sole purpose of the rewriting is to make the section more readable. There have been no substantive changes and it is not the purpose of this section to override differences, if any, between jurisdiction of the superior court set forth by statute and that set forth by court rule.

There are three minor changes which should be noted. In new subsection (a), the words "but not limited to" have been deleted following the word "including". Since the words "include" or "including" are not exclusive words, it is unnecessary to use the term "but not limited to" following such words in the Alaska Statutes. In new (h), the internal reference to the Alaska Native Claims Settlement Act has been changed to conform to present style. The other change is the deletion of a reference to AS 23.10.192 in new subsection (i). That section was repealed in 1980 and the provisions of AS 18.80, which are still referenced, have picked up the provisions of the repealed section.

Section 63 corrects a problem of tense in AS 22.10.040(4).

Section 64 deletes a reference to the legislative board of retirement benefits. That board was repealed in 1980.

Section 65 repeals an obsolete provision in the motor vehicle code. AS 28.10.105(c) was applicable only during 1979.

Section 66 amends AS 28.10.411(b) by deleting a reference to repealed AS 42.15.

Sections 67, 68, and 69 delete references to a statute which was repealed when the new criminal code was enacted in 1978. The proper references to the provisions on unlawful evasion have been substituted.

Section 70 revises a definition in the Agreement on Detainers. The term defined, "state" was changed to "party state" through amendments to the original bill. However, the definition was not changed. "State" needs to be defined in this law, as the term is used to include the jurisdictions of the United States which are not states, e.g., Puerto Rico and the District of Columbia. "Party state" does not need to be defined, as it is clear from a reading of the Agreement on Detainers that a party state is a state (as defined) which is a party to the agreement. Without some change, some confusing results occur in reading the law to which the definitions apply. Consequently, the legislature should either adopt the amendment proposed in this section, or adopt the amendment and an additional amendment as follows:

> (4) "party state" means a state which is party to this agreement.

Sections 71 and 72 delete references to AS 14.08.161 which has been repealed.

Section 73 repeals AS 37.14.060 - 37.14.100, which comprised Article 2 of AS 37.14. This article was not to be effective until the Board of Regents of the University of Alaska approved certain matters. In fact, the Board of Regents disapproved all matters on August 17, 1978. Consequently, the repealed sections never took effect.

Section 74 deletes a reference in AS 28.04.065(a) to a statute repealed in 1981 and substitutes a reference to the present notice provisions.

Section 75 deletes from AS 38.04.900(a) provisions which were of a temporary nature and are now obsolete.

Section 76 rewrites the paragraph in AS 38.04.910 which defines "state park" for AS 38.04. The old definition contained specific references to some of the laws designating areas which fall within the definition of state parks, but has not been kept up to date as new areas have been designated. It is our opinion that it would be better to enact a definition such as that proposed in this section and maintain a current list of laws designating the various areas in a note to the section.

Section 77 amends a reference in AS 38.05.057 to the notice provisions of AS 38.05.345. Note that there is still an AS 38.05.345(e), but that the section was substantially rewritten after AS 38.05.057(e)(3) was enacted, resulting in the repeal of the notice provisions of former AS 38.05.-345(e). The present provisions are irrelevant in the context of the reference found in AS 38.05.057(e)(3).

Section 78 deletes the last sentence of AS 38.05.057(g), as the sentence is no longer necessary. AS 38.05.055, referenced in the sentence, has been rewritten and no longer contains any requirements for contracts. AS 38.05.065 now establishes certain terms required for contracts under this section. The deletion of "or his representative" is consistent with the law requiring the deletion of gender indicating pronouns, and is not required in this provision, since other provisions authorize the director to act through designated representatives. See AS 38.05.035.

Section 79 amends AS 38.05.078(e) to reflect the fact that (b) of the section has been repealed. The reference is retained as "former (b)" to insure that the remedies contained in (e) will be available to the state in the event of an action involving a contract for the purchase of land authorized by the repealed subsection.

Section 80 repeals the definition of a term no longer used in the section.

Section 81 amends AS 38.05.079(a) to reflect the repeal of two sections referenced in the subsection. In the case of AS 38.05.047, the reference is retained, but the reader will know that the section is no longer operative. In the case of AS 38.05.305, a reference to AS 38.05.345 was

substituted. That section now contains all of the notice procedures.

Section 82 updates an obsolete internal reference.

Section 83 also updates an obsolete internal reference. A review of the legislative history of AS 38.05.102 (amended by this section) indicates that the spanned reference should be to the entire article on leasing. In any event, AS 38.-05.100 has been repealed.

Section 84 substitutes a reference to AS 38.05.345 for the obsolete reference to repealed AS 38.05.305.

Section 85 makes a number of minor style changes and substitutes a reference to AS 46.15 for an obsolete reference to repealed law.

Section 86 makes the same change to AS 38.08.020 that was made to AS 38.05.057(e)(3) by section 77 of the bill.

Section 87 corrects an error in the internal references in AS 39.25.120(b) which were created by the repeal and reenactment, with some renumbering, of AS 39.25.150.

Section 88 adds the Alaska Power Authority and the Alaska Resources Corporation to the list of agencies included in the definition of "state commission or board" for purposes of the conflict of interest laws. These boards are subject to AS 39.50 by the terms of the laws establishing them, but they were not added to the list in AS 39.50.200. This oversight was brought to our attention by the staff of the Alaska Public Offices Commission. Other matters brought to our attention will be handled through notes to this section in the 1983 supplement or editorial corrections.

Section 89 makes changes in internal references required by the enactment of the Alaska Exemptions Act in 1982.

Section 90 corrects the reference to the head of the Department of Community and Regional Affairs by substituting "commissioner" for "director".

Section 91 corrects the reference in the Alaska Statutes to the United States Board on Geographic Names.

Section 92 deletes a reference to the licensing of embalmers. The referenced provisions were repealed in 1976.

Section 93 supplies the words necessary to make a complete sentence out of the last sentence in AS 44.83.398(f).

Section 94 repeals a reference made obsolete by changes in the school foundation program. See secs. 42 and 60 of this memo.

Section 95 amends the Alaska Securities Act to clarify the time that is available to take an appeal from an administrative order. The Alaska Court Rules of Appellate Procedure allow only 30 days for an appeal from an administrative decision. However, this section of the securities act currently allows 60 days. This is a direct conflict and should be resolved. The applicable appellate rule is Rule 602(a)(2).

Sections 96, 97, and 98 delete obsolete material from three sections of AS 46.30. All of the deleted material is dated and no longer necessary.

Section 99 corrects an internal reference in AS 47.-10.230(f).

Section 100 repeals a definition in the child support enforcement chapter that is not used in the chapter. The term defined is "disposable earnings".

Section 101 makes changes in internal references required by the new exemptions statute.

DRD:ljb

STATE OF ALASKA
THE LEGISLATURE

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM March 23, 1983

SUBJECT: "An Act making corrective amendments in the Alaska Statutes as recommended by the revisor of statutes" (CSSB 133 (Judiciary))

TO: Senator Bill Ray
Chairman, Senate Judiciary Committee

FROM: David R. Dierdorff
Revisor of Statutes

This bill was prepared by the revisor of statutes under AS 01.05.036 which provides, in part, that the revisor of statutes shall

> ". . . prepare for submission to the legislature legislation for the correction or removal of . . . deficiencies, conflicts, or obsolete provisions, or to otherwise improve the form or substance of . . . the statute law of this state."

It is suggested that this memorandum accompany the bill through its legislative course.

SECTIONAL ANALYSIS

Section 1 improves the definition of "municipality" that was first enacted as a part of the Alaska Aeronautics Act of 1949, subsequently rewritten during the bulk formal revision of the Alaska Statutes and amended by the 1974 revisor's bill. The present definition excludes unified municipalities, which we do not believe was intended, and, if interpreted strictly, also excludes home rule cities or boroughs, as there are no classifications of home rule municipalities. The latter problem was the inadvertent result of an amendment made to the revisor's bill as it progressed through the legislature in 1974. The proposed new definition is identical to that which is contained in the revised municipal code (SB 1) and will be valid whether or not SB 1 passes.

It should be mentioned that this section is but one of 24 sections of the Alaska Statutes which define municipality. Those 24 sections contain ten different definitions. Only eight of the 24 sections contain definitions which are essentially identical; however, all but two or three of the definitions are fairly similar in most respects. Ten of the 24 sections would be repealed by SB 1. It is the revisor's opinion that it would be wise to consider placing a general definition of "municipality" in AS 01.10.060. That would eliminate the need for a definition of "municipality" in other parts of the Alaska Statutes except where the use of the term required some variation from the standard definition.

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Section 41 also deletes obsolete references that result from the changes in policy in the school foundation program. The second sentence of the amended section is also changed to conform the internal reference to our present style. If appropriate changes were made in AS 29.88.020, this section could be repealed.

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Section 43 repeals AS 14.17.225(d) because the underlying statute, AS 14.17.215 was repealed in 1980 by sec. 20, Chapter 26, SLA 1980.

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required to hold a permit under AS 16.43 can sell fish without violating these sections.

Section 58 repeals AS 16.10.500 - 16.10.620 on the basis of the decision of the Supreme Court in State v. Alex. Technically, the case only invalidated AS 16.10.530 but the effect was to wipe out the entire program set forth in these sections. The present program is operated under AS 43.76.

Section 59 substitutes the substantive provisions of repealed AS 11.05.010 for the obsolete reference to the repealed provision.

Section 60 repeals a reference made obsolete by changes in the school foundation program. See sec. 42 of this memo.

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There are three minor changes which should be noted. In new subsection (a), the words "but not limited to" have been deleted following the word "including". Since the words "include" or "including" are not exclusive words, it is unnecessary to use the term "but not limited to" following such words in the Alaska Statutes. In new (h), the internal reference to the Alaska Native Claims Settlement Act has been changed to conform to present style. The other change is the deletion of a reference to AS 23.10.192 in new sub-

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Section 74 repeals AS 37.14.060 - 37.14.100, which comprised Article 2 of AS 37.14. This article was not to be effective until the Board of Regents of the University of Alaska approved certain matters. In fact, the Board of Regents

disapproved all matters on August 17, 1978. Consequently, the repealed sections never took effect.

Section 75 deletes a reference in AS 38.04.065(a) to a statute repealed in 1981 and substitutes a reference to the present notice provisions.

Section 76 deletes from AS 38.04.900(a) provisions which were of a temporary nature and are now obsolete.

Section 77 rewrites the paragraph in AS 38.04.910 which defines "state park" for AS 38.04. The old definition contained specific references to some of the laws designating areas which fall within the definition of state parks, but has not been kept up to date as new areas have been designated. It is our opinion that it would be better to enact a definition such as that proposed in this section and maintain a current list of laws designating the various areas in a note to the section.

Section 78 deletes a reference to a repealed section and substitutes the substantive provisions of that repealed section. After consultation with the Departments of Law and Natural Resources, we felt that this substitution would more accurately reflect legislative intent and present administrative practices. Note that there is still an AS 38.05.345(e), but that the section was substantially rewritten after AS 38.05.057(e)(3) was enacted, resulting in the repeal of the provisions of former AS 38.05.345(e). The present provisions are irrelevant in the context of the reference found in AS 38.05.057(e)(3).

Section 79 deletes the last sentence of AS 38.05.057(g), as the sentence is no longer necessary. AS 38.05.055, referenced in the sentence, has been rewritten and no longer contains any requirements for contracts. AS 38.05.065 now establishes certain terms required for contracts under this section. The deletion of "or his representative" is consistent with the law requiring the deletion of gender indicating pronouns, and is not required in this provision, since other provisions authorize the director to act through designated representatives. See AS 38.05.035.

Section 80 amends AS 38.05.073(e) to reflect the fact that (b) of the section has been repealed. The reference is retained as "former (b)" to insure that the remedies contained in (e) will be available to the state in the event

of an action involving a contract for the purchase of land authorized by the repealed subsection.

Section 81 repeals the definition of a term no longer used in the section.

Section 82 amends AS 38.05.079(a) to reflect the repeal of two sections referenced in the subsection. In the case of AS 38.05.047, the reference is retained, but the reader will know that the section is no longer operative. In the case of AS 38.05.305, a reference to AS 38.05.345 was substituted. That section now contains all of the notice procedures.

Section 83 updates an obsolete internal reference.

Section 84 also updates an obsolete internal reference. A review of the legislative history of AS 38.05.102 (amended by this section) indicates that the spanned reference should be to the entire article on leasing. In any event, AS 38.05.100 has been repealed.

Section 85 substitutes a reference to AS 38.05.345 for the obsolete reference to repealed AS 38.05.305.

Section 86 makes a number of minor style changes and substitutes a reference to AS 46.15 for an obsolete reference to repealed law.

Section 87 makes the same change to AS 38.08.020 that was made to AS 38.05.057(e)(3) by section 78 of the bill.

Section 88 corrects an error in the internal references in AS 39.25.120(b) which were created by the repeal and reenactment, with some renumbering, of AS 39.25.150.

Section 89 adds the Alaska Power Authority and the Alaska Resources Corporation to the list of agencies included in the definition of "state commission or board" for purposes of the conflict of interest laws. These boards are subject to AS 39.50 by the terms of the laws establishing them, but they were not added to the list in AS 39.50.200. This oversight was brought to our attention by the staff of the Alaska Public Offices Commission. Other matters brought to our attention will be handled through notes to this section in the 1983 supplement or editorial corrections.

Section 90 makes changes in internal references required by the enactment of the Alaska Exemptions Act in 1982.

Section 91 corrects the reference to the head of the Department of Community and Regional Affairs by substituting "commissioner" for "director".

Section 92 corrects the reference in the Alaska Statutes to the United States Board on Geographic Names.

Section 93 deletes a reference to the licensing of embalmers. The referenced provisions were repealed in 1976.

Section 94 supplies the words necessary to make a complete sentence out of the last sentence in AS 44.83.398(f).

Section 95 repeals a reference made obsolete by changes in the school foundation program. See secs. 42 and 60 of this memo.

Section 96 amends the Alaska Securities Act to clarify the time that is available to take an appeal from an administrative order. The Alaska Court Rules of Appellate Procedure allow only 30 days for an appeal from an administrative decision. However, this section of the securities act currently allows 60 days. This is a direct conflict and should be resolved. The applicable appellate rule is Rule 602(a)(2).

Sections 97, 98, and 99 delete obsolete material from three sections of AS 46.30. All of the deleted material is dated and no longer necessary.

Section 100 corrects an internal reference in AS 47.-10.230(f).

Section 101 repeals a definition in the child support enforcement chapter that is not used in the chapter. The term defined is "disposable earnings".

Section 102 makes changes in internal references required by the new exemptions statute.

DRD:ljb

Enclosure

SB 133 and CSSB 133(Jud)

REVISORS BILL

TO: SENATOR ROBERT H. ZIEGLER SR.

FROM: GUY A. VAN DOREN ADMIN. ASST.

SUBJECT: REVISORS BILL

I have reviewed the origional SB 133 and CSSB 133 (Jud) and submit the following report.

With the exception of the sections listed below, all sections are satisfactory and within the jurisdiction of the revisor's duties.

The only reason specific sections are listed below is if they have been changed from the origional bill or are additions to the origional bill. There are several section upon which I have made comments or observations.

Section 3. I still question, as I did in SB133, whether the words "of the department" on lone 26, pg. 1, are necessary. Since the entire section deals with the Department of Natural Resources, I feel the words are redundant.

Section 14 In the origional bill, the entire AS 08.24 was repealed. In checking with the Department of Commerce, it was found that though the Board of Collection Agencies was terminated, the statutes governing collection agency activities are still in effect.

Section 15-21: These sections all amend provisions in the statutes licensing and regulating collection agencies to delete references to the Board which was terminated. They did not appear in the origional bill because the entire 08.24 was deleted in error.

Section 41. NOTE!!! Notes exemptions under 43.25 which must be honored. The more exemptions,,the less taxable real and personal taxes 29.88.020.

Section 59. This section has changed a little from the origional. The revisor spelled out the punishment in this CS, rather than just providing that violations are misdemeanors.

Section.67. This section did not appear in the origional bill, but O.K.

Section.75. This section was not in the origional bill. The revisor indicated that a new book for Title 38 will be issued next year. The revisor is trying to eliminate as many obsolete sections in Title 38 as possible begfore the new book is printed.

Section.. 76 New section in CS..See Section 75 explanation
In this section, the revisor deleted the obsolete material. He also deleted the pronoun to eliminate the masculine gender by substituting "believed" for "he believes". Since no other sub-section or section in the chapter authorizes the Commissioner to adopt regulations, I suggest that "believed" be deleted. The section would then read: "The Commissioner shall adopt under the Administrative Procedure Act (AS 44.62) regulations necessary to carry out the purposes of this chapter"

Sections 77-87 All new sections added to the origional bill. See Sec.75 For explanation.

Section. 90. O.K. Although, the exemptions listed for livestock, food, fuel, household goods, tools, etc., etc. were enacted in 1949 and the amounts are unrealistically low; therefore, in my opinion, obsolete. The committee may want to look into this for another bill.

REMAINDER OF THE BILL, FINE.....

STATE OF ALASKA
THE LEGISLATURE

LEGISLATIVE AFFAIRS AGENCY

POUCH V STATE CAPITOL
JUNEAU ALASKA 99811
907 465 3800

M E M O R A N D U M May 2, 1983

SUBJECT: Revisor's bill
(CSSB 133 (Judiciary))

TO: Senator Bill Ray
Chairman, Senate Judiciary Committee

FROM: David R. Dierdorff
Revisor of Statutes

In light of the changed position of the Department of Natural Resources and the language of CSSB 222 (Resources), the following language should be substituted for Secs. 78 and 87 of CSSB 133 (Judiciary):

* Sec. 78. AS 38.05.057(e)(3) is amended to read:

(3) notice of the application period and the date of the lottery shall be given in accordance with AS 38.05.345 [AS 38.05.345(e)]; and

* Sec. 87. AS 38.08.020 is amended to read:

Sec. 38.08.020. PUBLIC NOTICE. The director shall publish notice of the availability of the land in the same manner as provided in AS 38.05.345 [AS 38.05.345(e)].

The revisor's memo dated March 23, 1983, would need to be modified by substituting the following text for the discussion of Sec. 78:

Section 78 amends a reference in AS 38.05.057 to the notice provisions of AS 38.05.345. Note that there is still an AS 38.05.345(e), but that the section was substantially rewritten after AS 38.05.057(e)(3) was enacted, resulting in the repeal of the notice provisions of former AS 38.05.345(e). The present provisions are irrelevant in the context of the reference found in AS 38.05.057(e)(3).

The discussion of Sec. 87 in the revisor's memo does not require a change, as it merely refers back to the above text accompanying Sec. 78.

DRD:ljb
17/015

FILE WITH SB133

BILL SHEFFIELD, GOVERNOR

DEPARTMENT OF NATURAL RESOURCES

OFFICE OF THE COMMISSIONER

POUCH M
JUNEAU, ALASKA 99811
PHONE: 465-2400

April 27, 1983

The Honorable Bill Ray
Chairman
Senate Judiciary Committee
Pouch V
Juneau, AK 99811

Dear Senator Ray:

My staff has reviewed CSSB 133 (Jud) which will be heard in the Judiciary Committee on Monday, May 2. I submit two amendments to that proposed legislation for your consideration. In both cases we have discussed these amendments with Mr. Deardorf, the revisor, and with Tom Koester of the Attorney General's Office. They both agree that the change we are requesting is a matter of policy.

Page 21, Lines 14-20 should read:

*Sec. 78. AS 38.05.057(e)(3) is amended to read:

(3) notice of the application period and the date of the lottery shall be given in accordance with AS 38.05.345[(e)]; and

Page 23, Lines 20-27 should read:

* Sec. 87. AS 38.08.020 is amended to read:

Sec. 38.08.020. PUBLIC NOTICE. The director shall publish notice of the availability of the land in the same manner as provided in AS 38.05.345[(e)].

We are requesting this change rather than the change recommended by the revisor in order to make all public notice requirements consistent as provided in AS 38.05.345. In some cases this may require the department to do somewhat more rigorous public notice than previously required. However, we feel that the result will be less confusion for the public and for department officials implementing these programs.

10-J9LH

If you have any questions about these recommendations, please call my office. We will be available to testify on this bill as requested.

Sincerely,

Esther C. Wunnicke

Esther C. Wunnicke
Commissioner

Alaska State Legislature

BETTYE FAHRENKAMP, Chairman
ROBERT H. ZIEGLER, SR., Vice Chairman
DICK ELIASON
PAUL FISCHER
VIC FISCHER
BOB MULCAHY
ARLISS STURGULEWSKI

POUCH V
STATE CAPITAL
JUNEAU, ALASKA 99811
(907) 465-3834
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Senate

Committee on Resources

April 28, 1983

Memo

To: Senator Bill Ray, Chairman Senate Judiciary Committee

From: Senator Bettye Fahrenkamp

Subject: Comments on CSSB 133, Statute Revisions

The following are in response to your request for comments on the above bill scheduled for hearing on May 2, 1983:

1) Section 2 amends the definition of fur farming contained in AS 03.05.010(c)(6). The Resources Committee recently heard and reported out CSHB 187 which also amends this section. This bill includes the same changes but also includes additional clarifying amendments. As this bill appears to have an excellent chance of enactment, I would recommend that prior to any final action on CSSB 133 conforming changes to CSHB 187 be made. Attached is a copy of the relevant section from CSHB 187.

2) Section 77 of CSSB 133 amends the state park definition in AS 38.04.910. The Senate has passed and sent to the House SB 128 which establishes a marine park system within the state park system. I would recommend that the definition of state park in CSSB 133 be amended to include marine park units should SB 128 pass in advance of CSSB 133.

3) Section 78 of CSSB 133 amends 38.05.057(e). The Resources Committee has recently reported SB 222 making changes in Title 38 including this section. The changes in 38.05.057(e) are different than those proposed in CSSB 133 and have been agreed to be DNR and the Statute Revisor. Again, I would recommend that CSSB 133 be changed to conform with SB 222 if that legislation should be enacted prior to CSSB 133.

4) Section 79 of CSSB 133 amends 38.05.057(g). SB 222 makes an additional change in this section. ("director" changed to "commissioner")

5) Section 84 of CSSB 133 amends 38.05.102. SB 222 makes an additional change in this section.

6) Section 86 of CSSB 133 amends 38.05.255. SB 222 makes an additional change in this section.

7) Section 87 of CSSB 133 amends 38.08.020. SB 222 contains an amendment to this same section but in a different, more comprehensive manner. This amendment has been agreed to by the DNR and the Statute Revisor.

Attached are copies of the relevant sections of SB 222 indicating these changes.

Thank you for the opportunity to comment on this bill. I hope that between your committee, the Statute Revisor, and others we can watch the timing of all this legislation and ensure conformity.

STATE OF ALASKA
PRELIMINARY STATEMENT OF FISCAL IMPACT

Bill No: Senate Bill No. 133 Date on Bill: February 21, 1983
Title: "AN Act making corrective amendments to the Alaska Statutes."
Sponsor: Rules Committee
Requestor: Legislative Council

1. Estimated fiscal impacts on:

a. Expenditures:

(Thousands of Dollars)

	FY 83	FY 84	FY 85	FY 86
Capital				
Operating				
Total				

b. Revenues:

Revenue	(4.1)	(2.7)	(12.9)	

2. Source of funds to offset fiscal impact of bill:

3. Assumptions: See attached sheet.

4. Disclaimer:
This statement has not been reviewed by the OMB in the Office of the Governor. It therefore does not represent the final estimate of fiscal impact.

Prepared By: Darrell Miller Phone: 465-2535
Division: Occupational Licensing Date: March 2, 1983

Approved by Commissioner: Richard A. Lyon Date:
Department: Commerce & Economic Development

5. Distribution:
Original to Legislative Finance
Copy to OMB
Copy to Sponsor
Copy to Requestor

2/15/83

Assumptions: Senate Bill No. 133, as relates to the repeal of AS 08.24, Collection Agencies.

Section 14, AS 08.24, of this bill repeals the licensing function for Collection Agencies and Collection Agency Operators. Current licensure fees for biennial licensure of Collection Agencies is $200.00, and $100.00 for Collection Agency Operators.

Initial application fees are $100.00 for Collection Agencies and $40.00 for Collection Agency Operators.

Past history reveals a 50 to 60% turnover of licensed operators during any given calendar-year. Collection Agency licensure has remained at a fairly constant level with infrequent turnover.

For the remainder of FY '83, April-June, there are currently 8 Agency and 12 Operator applications on file. The loss of revenue for the remainder of FY '83 is projected to be $4,080.00.

The next biennial license period is June 30, 1984, for FY '85/'86. The projected loss of revenue for FY '84 would be from the anticipated turnover of Collection Agency Operators. Including the application fee of $40.00 and the license fee of $100.00, the loss of revenue is projected to be $2,660.00.

The projected loss of revenue for FY '85 would be $12,860.00 and would cover Collection Agency renewals, Collection Agency Operator renewals, as well as the anticipated turnover of operators.

MEMORANDUM State of Alaska

TO: Harry Treager, Director
Division of Occupational Licensing
Department of Commerce and Economic Development

DATE: October 14, 1981

FILE NO: J-66-111-82

TELEPHONE NO: 465-3600 ex 56

FROM: WILSON L. CONDON
ATTORNEY GENERAL

By: Diane T. Colvin
Legal Assistant

SUBJECT: Agency responsibility following termination of an occupational licensing board pursuant to AS 08.

You asked for our opinion on the division's responsibilities when a board is terminated pursuant to AS 08.03.010, the sunset law. Your question pertains specifically to the Collection Agency Board, the only board allowed to expire to date under sunset. We believe that basically your duties and responsibilities are not affected by termination of the board, for the reasons given below.

AS 08.03.010 provides a termination date of June 30, 1980 for the Collection Agency Board. Because the Legislature did not affirmatively act to reestablish the board, it automatically expired on the date indicated. Pursuant to AS 08.03.020 it continued in existence until June 30, 1981 for the purpose of "concluding its affairs." AS 08.03.020 further provides that:

> One year after the date of termination, a board not continued shall cease all activities.

No other "guidance" is given by the statutes except by way of reference to AS 44.66.050, concerning legislative oversight. This statute deals generally with review procedures for boards and commissions subject to scrutiny under AS 08.03 and AS 44.66. In regard to boards terminated, AS 44.66.060 provides:

> This chapter shall not cause the termination or dismissal of a claim or right of a citizen against a board, commission or program of an agency terminated under this chapter which is subject to litigation. Claims and rights shall be assumed by the department to which the board or commission terminated under this chapter was attached for administrative purposes.

It should be noted that the Collection Agency Board is somewhat unique in that it had effectively ceased to function before its sunset termination date. According to the performance review of the Collection Agency Board prepared by Legislative Audit

in March 1979, no meetings were held by the board between October 13, 1971 and March 14, 1977. 1/ During this time, the Department of Commerce and Economic Development conducted all licensing functions and handled all administrative matters relating to collection agencies and operators.

There is also a unique feature to Alaska's sunset law in that the automatic termination date under sunset applies to the respective boards or commissions only, not to the accompanying licensing laws. Most of the states that have enacted sunset laws have applied the principle of automatic expiration to all the statutes relating to a particular occupation or profession, thus terminating licensing as well as the boards if the legislature takes no action.

Because AS 08.03.010 applies only to AS 08.24.011, the statute creating the Collection Agency Board and designating board membership, the functions of the Division of Occupational Licensing are essentially unchanged with termination of the Board. This is particularly true in the case of the Collection Agency Board, since it had only minimal authority under the law when it was in existence. Under AS 08.24, the board was specifically empowered to 1) adopt rules and regulations (AS 08.24.031); 2) waive certain license requirements (AS 08.24.100), and 3) investigate applicants (AS 08.24.120). (The latter two powers were shared with the Department, and the first is an implied power of the Department.)

All of the other powers relating to regulation of collection agencies are granted to the Department of Commerce and Economic Development. This differs from most licensing laws, where the board or the commission, not the department, is granted certain powers and required to carry out certain duties.

1/ According to the report, six meetings were held between August 1977 and February 1979. There appears to be a correlation here with the passage of sunset legislation (Chapter 194, SLA 1977 was approved by the Governor on June 18, 1977 and went in effect on September 16, 1977).

Consequently, your division's responsibilities regarding licensing of collection agencies and enforcement of the licensing law have essentially not been affected by the termination of the board. 2/ You should continue all administrative, investigative, licensing and enforcement functions you have conducted in the past. The division was charged with administration and enforcement of the law prior to termination of the board; this has not been changed by expiration of the board.

We would recommend that the Department adopt regulations to carry out its duties under the law. No regulations were ever adopted by the Board, although some were drafted and proposed. We would be happy to work with you on development of any regulations you deem necessary.

It should be noted that the advice given here applies only to a board such as the Collection Agency Board which is limited to an advisory role. Should the Legislature allow one of the boards to terminate that is vested with specific powers and duties, the question of the Division's continuing responsibilities would be a more complicated one. We shall deal with that question when and if the issue arises.

Please contact us if you have further questions on this matter.

DTC/jb

2/ Other than to ensure that no claims or rights against the Board are affected by its termination. (See AS 44.66.060.)

SB
139

Introduced: 2/23/83
Referred: Resources and Judiciary

IN THE SENATE BY THE RESOURCES COMMITTEE

SENATE BILL NO. 139

IN THE LEGISLATURE OF THE STATE OF ALASKA

THIRTEENTH LEGISLATURE - FIRST SESSION

A BILL

For an Act entitled: "An Act repealing the licensing of big game transporters."

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

* Section 1. AS 08.54.190(a) is amended to read:

(a) A master guide, registered guide, class-A assistant guide, or assistant guide [OR TRANSPORTER] license expires on December 31, following issuance.

* Sec. 2. AS 08.54.200(d) is amended to read:

(d) No person who is disciplined under this section may engage in any guiding [OR TRANSPORTING] activity during the period of license revocation or disciplinary action. No person licensed under this chapter may hire or work for a guide whose license is suspended or revoked under this section.

* Sec. 3. AS 08.54.210 is amended to read:

Sec. 08.54.210. UNLAWFUL ACTS. (a) It is unlawful for

(1) a master guide, registered guide, class-A assistant guide, or assistant guide [OR TRANSPORTER] to fail to timely report to the Department of Public Safety, division of fish and wildlife protection, and in no event later than 30 days, violations by a client of a state fish, game or guiding statute or regulation;

(2) a master guide, registered guide, class-A assistant guide, or assistant guide [OR TRANSPORTER] to aid the commission of a violation of this chapter or of AS 16.05 or a regulation promulgated under either chapter, or permit the commission of a violation in the

guide's [OR TRANSPORTER'S] sight without attempting to prevent it, short of using force, and without reporting it;

(3) a person to guide [OR TRANSPORT] as defined in this chapter without being licensed under this chapter and without having the license in actual possession; [HOWEVER, FOR PURPOSES OF TRANSPORTING BY AIR, IN THE CASE OF A CORPORATION, COMPANY, PARTNERSHIP OR OTHER BUSINESS ENTITY, THE LICENSE MAY REMAIN AT THE PRINCIPAL PLACE OF BUSINESS OF THE BUSINESS ENTITY;]

(4) a person to advertise as or represent to be a licensed master guide, registered guide, class-A assistant guide, or assistant guide [OR TRANSPORTER] without being currently licensed, or to falsely advertise services;

(5) a person to guide as defined in this chapter without having a current valid hunting and fishing license in the person's possession; [.]

(6) a master or registered guide to employ or supervise more than three assistant guides at the same time; [.]

(7) a person to guide as defined in this chapter without paying a fee as prescribed in AS 16.05.340(e).

(b) A person who violates (a)(1) - (6) of this section is guilty of a misdemeanor and upon conviction is punishable by a fine of not more than $1,000 or by imprisonment for not more than one year, or by both, and the person's license may be revoked for a period up to five years. However, a person who engages in guiding [OR TRANSPORTING] activity during the period the person's license is suspended or revoked under this chapter is guilty of a felony punishable, upon conviction, by a fine of not more than $5,000 and by imprisonment for not less than one year nor more than three years. In addition to punishment for a felony, all guns, fishing tackle, boats, aircraft,

automobiles or other vehicles, camping gear and other equipment and paraphernalia used in, or in aid of, guiding [OR TRANSPORTING] activity engaged in during the period of suspension or revocation shall be confiscated by persons authorized to enforce this chapter. A person who violates (a)(7) of this section, upon conviction, is subject to the same license revocation provision as for a violation of (a)(1) - (6) of this section and, in addition, is punishable by a fine of not more than $5,000, or by imprisonment for not more than one year, or by both.

* Sec. 4. AS 08.54.142, 08.54.144, 08.54.146, 08.54.170(c), and 08.54.-240(5) are repealed.

SB
163

STATE OF ALASKA
FISCAL NOTE

Revision Date , 1983

I. REQUEST

Bill/Resolution No.: SB 163
Title: Use of Child Restraints
Sponsor: Sen. V. Fischer
Requestor: Sen. Transportation

II. FISCAL DETAIL

Agency Affected: Public Safety
Program Category Affected: Life & Prop Pro
BRU, Program of Subprogram(s) Affected:
Highway Safety Planning Agency

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 83	FY 84	FY 85	FY 86	FY 87	FY 88
OPERATING						
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 COMMODITIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC						
TOTAL OPERATING		-0-	-0-	-0-	-0-	-0-
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER (Specify Source)						

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

III. SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

IV. ANALYSIS: Attach a separate page for any Analysis No Fiscal Impact Anticipated

Prepared By: Paul Conger
Phone: 465-4338
Division: Administrative Services
Date: 3/16/83

Approved by Commissioner:
Date: 3/23/83
Department: Public Safety

Distribution:
Original to Legislative Finance
Copy to Office of Management and Budget (for Legislature introduced bills)
Copy to Department (for Governor introduced bills)
Copy to Sponsor
Copy to Requestor (if different from Sponsor)

3/8/83

Alaska State Legislature
HOUSE OF REPRESENTATIVES

POUCH V
JUNEAU, ALASKA 99811
(907) 465-4990

Committee on Judiciary

Dave Sumpling, Physician Coord.
for EMS. + Indian Health Service
Anch. 265-9263.

Dr. George Longenbaugh.
Sitka 747-3446 St Director
of Trauma Prog of Surg.

Committee on Judiciary

Child Restr

SB 163

Barkal

EMS.

Carlis Saylor

543-3321

Dr. John Hall, St. Med.
Direct for EMS. Rep. AK Chap
of Emerg. Phy. Supp in
Amer.

333-4171

Kodiak EMS

Joan Minks

486-5725

Senator Vic Fischer

Alaska State Legislature
1024 W. 6th Avenue, Suite 204C
Anchorage, Alaska 99501 (907) 278-3654
During Session • Pouch V • Juneau, Alaska 99811 (907) 465-4954

MEMORANDUM

TO: Members, House Judiciary Committee

FROM: Senator Vic Fischer

DATE: March 26, 1984

RE: SB 163, HB 262, HB 464 (Child Safety Devices)

Dr. Clinton Lillibridge, of the American Academy of Pediatricians, asked that I send you a copy of the attached article on child safety device law.

UNIVERSITY OF
COLORADO
LAW REVIEW

CHILD SAFETY IN AUTOMOBILES: MANDATORY RESTRAINT-USE LAWS

Automobile safety is an issue of long-standing concern, but only recently has special attention been focused on the safety needs of young children, to whom cars pose one of the largest public health threats in the country.[1] This threat would be greatly diminished if each pre-school aged child were properly secured in a child restraint device (CRD) each time he or she traveled in a motor vehicle.

A CRD is a car seat, padded shell, or harness which is designed to protect infants and young children in the event of an accident, and which is usually secured in place by a vehicle's existing lap belts.[2] These devices are fairly inexpensive and readily available, yet they are rarely used. In fact, a leading study found that less than ten percent of children transported in motor vehicles were adequately protected against the possibility of injury.[3]

A growing awareness of this public health problem has resulted in passage of legislation mandating the use of CRDs in two states[4] and proposed legislation in twenty-eight others.[5] This Comment will examine the laws mandating the use of CRDs and the legal issues which may arise from them. The efficacy of the various statutes will be analyzed as well as their constitutional validity under state police powers. An evaluation of the potential impact of CRD laws on auto-

---

1. See text accompanying notes 6-8 *infra*.

2. Some CRDs are designed solely for use by infants while others protect only toddlers capable of sitting alone. Many restraint devices are convertible and can be used from birth until the child weighs more than forty to fifty pounds, at four or five years of age. For a complete description and evaluation of many of the CRDs marketed today, *see* MICHIGAN'S MOTOR VEHICLE OCCUPANT PROTECTION PROGRAM, MICHIGAN TRAFFIC SAFETY INFORMATION COUNCIL, A DETAILED REVIEW OF CURRENTLY MARKETED INFANT AND CHILD RESTRAINTS (1979); *Child Restraint Systems*, 42 CONSUMER REPORTS 314 (1977).

3. *See* Williams, *Observed Child Restraint Use in Automobiles*, 130 AM. J. DISEASES OF CHILDREN 1311 (1976).

4. CRD-use laws are in effect in Tennessee and Rhode Island. See notes 33 and 41 *infra*.

5. Child restraint bills have been proposed in the following states: Alabama, Arizona, California, Colorado, Connecticut, Delaware, Hawaii, Illinois, Louisiana, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Nebraska, New Hampshire, New Jersey, New York, North Carolina, North Dakota, Ohio, Oregon, South Dakota, Virginia, Washington, West Virginia, and Wisconsin. *See* ACTION FOR CHILD TRANSPORTATION SAFETY, SUMMARY OF PROPOSED CHILD RESTRAINT LEGISLATION AND ALTERNATIVE MODEL LAWS (1979, updated May, 1980) [hereinafter cited as ACTS].

mobile accident litigation will follow. Before turning to those issues, however, the problem to which CRD laws are addressed will be more fully described.

THE PROBLEM

Motor vehicle accidents cause death and injury to more children than any other single cause, including childhood diseases.[6] In 1979 alone, 1159 children under the age of five died, and at least fifty times that number were injured, in such accidents in the United States.[7] Colorado contributed fourteen fatalities and 835 recorded injuries to that toll.[8] These high numbers are due primarily to two factors: the physical characteristics of young children and the positions they usually occupy as unrestrained passengers in motor vehicles.

The unique center of gravity and small size of young children make them particularly vulnerable to serious injuries in automobile crashes.[9] A child's head makes up a great proportion of his overall body weight, and this, coupled with an inability to brace himself with his short arms and legs, greatly increases the likelihood that he will be propelled head-first in the direction of any impact point. The result is a high incidence of head injuries and related deaths among accident victims in this age group.[10] In fact, such injuries can occur even in the absence of an actual accident when an unsecured child is thrown against the automobile's interior by a sudden swerve or application of the brakes.[11] Larger and heavier passengers, on the other hand, are less likely to be shifted by abrupt driving maneuvers.

The physical characteristics of very young children also tend to

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6. Automobile accidents are the leading cause of death and serious injury for all children beyond one month of age. *See* Sheiness & Charles, *Children as Passengers in Automobiles. The Neglected Minority on the Nation's Highways*, 56 PEDIATRICS 271 (1975).

7. DEPARTMENT OF TRANSPORTATION, NATIONAL HIGHWAY TRAFFIC SAFETY ADMINISTRATION (NHTSA), HIGHWAY SAFETY 1979. REPORT ON ACTIVITIES UNDER THE HIGHWAY SAFETY ACT OF 1966 (1980). This report contains only death statistics. Injury statistics are not published but are kept on file by NHTSA. The National Electronic Injury Surveillance System file kept at NHTSA shows that 60,408 pre-schoolers injured by motor vehicles were transported to emergency rooms in 1979. Telephone interview with Grace Hazzard, data retrieval specialist, National Center for Statistics and Analysis, NHTSA, Sept. 16, 1980.

8. MOTOR VEHICLE DIV., COLO. DEP'T OF REV., STANDARD SUMMARY OF MOTOR VEHICLE TRAFFIC ACCIDENTS (1979).

9. *See* Karwacki & Baker, *Children in Motor Vehicles Never Too Young to Die*, 242 J. A[illegible] MED. ASSOC. 2838 (1979); Alter, *Unsafe at Any Age? Children and Car Safety*, PARENTS MAGAZINE Feb. 1979, *reprinted in* INSURANCE INSTITUTE FOR HIGHWAY SAFETY (IIHS) STATUS REPORT 8 (Mar. 19, 1979).

10. Karwacki & Baker, *supra* note 9.

11. Alter, *supra* note 9, at 9.

and the forward-moving weight of the person holding him.[18] This same crushing action can occur when a seatbelt is fastened around both the adult and the child on his lap. In a collision, the weight of the adult is forced against the child penned in the seatbelt with him, and the probability of serious abdominal injury to the child is greatly increased.[19]

The final variation of on-lap travel is a seatbelted adult holding an unrestrained child on his lap. In this position, the adult does not crush the child in an accident, but is powerless in most cases to prevent other harm to the child, for even the smallest infant weighs the equivalent of several hundred pounds at the instant of impact, and is likely to be torn from even the strongest of human arms.[20] In short, holding a child can never be an adequate safety alternative to the use of an appropriate restraint device.

The need for CRDs will not be obviated by the automatic restraint systems which federal legislation will require on all new cars by 1984.[21] While manufacturers will be able to satisfy the requirements by providing either automatic seatbelts or airbags in their vehicles, neither option is fully adequate for child safety needs. Automatic seatbelts designed for average sized adults will not offer even minimal protection to infants. Airbags, on the other hand, will diminish the threat to children riding in the front seat, but present legislation does not require airbag installation for the protection of rear seat passengers, a class composed largely of children.[22] Furthermore, airbags will provide little protection in side- and rear-impact collisions and rollovers.[23]

Finally, unlike a CRD, an airbag would not play a role in preventing the occurrence of an accident. A study conducted at the University of North Carolina concluded that more than two hundred

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18. *Id.* at 3.

19. *Id.* at 4.

20. The force that a child will exert upon impact can be roughly calculated by multiplying the child's weight and the vehicle's speed together. For instance, a fifteen pound infant will exert a force of three hundred pounds in a twenty mile per hour collision. *See* IIHS, *An Evaluation of Adult Clasping Strength for Restraining Lap-Held Infants*, discussed in IIHS STATUS REPORT 6 (Mar. 19, 1979).

21. Automatic restraint systems are being phased in over several years with large cars being targeted first. All new cars will have to meet the requirement by the 1984 model year. 49 C.F.R. § 571.208 (1979).

22. One survey found that about seventy percent of the nearly 9000 children observed in motor vehicles were riding in the back seat. Riesinger & Williams, *Evaluation of Programs Designed to Increase the Protection of Children in Cars*, 62 PEDIATRICS 280, 286 (1978).

23. *See* Comment, *Occupant Protection in Automobiles*, 27 AM. U. L. REV. 635 (1978) for a thorough discussion of automatic restraint systems.

of that state's traffic accidents in 1977 were caused by unrestrained children who had distracted the driver of the vehicle in which they were riding. Children who fell off the seat or interfered with the operation of the motor vehicle were, in many instances, found to have been the direct cause of a crash.[24]

All of the problems discussed above would be greatly alleviated by the use of CRDs. Experts in the field generally agree that the number of children killed and injured in automobile accidents would be minimized—some claim by as much as ninety percent—if CRDs were consistently and properly used.[25] Yet recent data shows that only seven percent of the children riding on the nation's roads are adequately secured for protection against possible harm.[26] Parents who wear their own seatbelts while transporting their children have been found to use child restraints more than any other group. Yet even in that situation, only twenty-two percent of the passenger children were secured by a CRD or seatbelt.[27] The great number of children harmed, coupled with the low voluntary usage rate of adequate restraints, has led to a growing interest in a statutory solution to this public health problem.

THE STATUTES

The field of automobile safety is one which legislators enter with trepidation. Traditional public hostility toward regulation of individual driving habits has led to a reluctance to impose safety requirements on individual drivers. Public sentiment was so strong against the federally mandated seatbelt-ignition interlock system,[28] for example, that Congress was forced to repeal the measure less than a

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24. This study was summarized in MICHIGAN ASSOCIATION FOR TRAFFIC SAFETY, FORMATS, *Child Passenger Safety News* (Feb. 1980)

25. A study of crashes done in Washington state by Dr. Robert G. Scherz, for example, concludes that "[t]he difference between deaths and disabling injuries between the restrained and unrestrained pre-school children was highly significant. If all of the children in the 0-5 age group had been restrained at the time of the accident, then the . . . deaths may have been reduced from 124 to 13 (down 90%) and disabling injuries reduced from 716 to 238."

Alter, *supra* note 9, at 10.

The reduction in injuries in the Washington study is about 33%, a rate very similar to that obtained by analyzing accidents involving children under fifteen years of age in North Carolina. The North Carolina study found that "[u]se of restraints reduced the injury rate by 39% in the front seat and by 31% in back." Williams & Zador, *supra* note 16, at 10.

26. Williams, *supra* note 3.

27. *Id.* at 1314.

28. The seatbelt-ignition interlock system prevented a vehicle's engine from being started until seatbelts were buckled. An annoying buzzer sounded if seatbelts were unfastened while the seat was occupied.

year after it went into effect.[29] This public hostility explains the absence of mandatory seatbelt-use laws in any of the states.

The somewhat warmer reception given to CRD-use laws in state legislatures is undoubtedly due to the age of those who would benefit from such legislation. Because infants and young children are completely dependent on others for their well-being, state law has historically provided for their health and safety when those charged with their care fail adequately to do so.[30] The effectiveness and practicality of extending state protection to children as automobile passengers will be evaluated by examining the various CRD statutes which have been proposed.

The Existing Laws

Two states have succeeded in passing CRD legislation: Tennessee[31] and Rhode Island.[32] The pioneering Tennessee statute, which went into effect at the beginning of 1978, requires that all children under the age of four be secured in a CRD when riding in a vehicle owned and operated by their parents.[33] Exemptions are allowed for children riding on other passengers' laps, and for children riding in recreational vans and certain trucks.[34] The penalty for breaking this law is a moderate fine; and proof of the violation cannot be raised in civil suits for negligence.[35]

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29. 15 U.S.C. § 1410b(b)(1)(B) (1976).
30. See text accompanying notes 83-92 *infra*.
31. TENN. CODE ANN. § 55-9-214(b) (1980).
32. R. I. GEN. LAWS § 31-22-22 (1980).
33. TENN. CODE ANN. § 55-9-214 (1980):
(b) Effective January 1, 1978, every parent or legal guardian of a child under the age of four (4) years residing in this state shall be responsible, when transporting his child in a motor vehicle owned by that parent or guardian operated on the roadways, streets or highways of this state, for providing for the protection of his child and properly using a child passenger restraint system meeting federal motor vehicle safety standards, or assuring that such child is held in the arms of an older person riding as a passenger in the motor vehicle. Provided that the term "motor vehicle" as used in this paragraph shall not apply to recreational vehicles of the truck or van type. Provided further that the term "motor vehicle" as used in this paragraph shall not apply to trucks having a tonnage rating of one (1) ton or more. Provided that in no event shall failure to wear a child passenger restraint system be considered as contributory negligence, nor shall such failure to wear said child passenger restraint system be admissible as evidence in the trial of any civil action.
(c) Violation of any provision of this section is hereby declared a misdemeanor and anyone convicted of any such violation shall be fined . . . not less than two dollars ($2.00) nor more than ten dollars ($10.00) for each violation of subsection (b) of this section.
34. *Id.*
35. *Id.*

From a safety standpoint, the most controversial provision of this law is the so-called "babes-in-arms" exemption.[36] Holding a child in a passenger's arms has been shown to be an entirely inadequate substitute for the use of a restraint,[37] and there is hope among the original sponsors of the Tennessee law that this exemption will be repealed at some future date.[38] Unfortunately, similar provisions were included in bills introduced in four other states.[39]

A second aspect of the Tennessee law which may lessen its effectiveness is that it applies only to parents who are transporting their own children. Although the majority of children less than four years old are likely to be driven by a parent whenever they ride in a vehicle, this provision may nevertheless lead to enforcement problems. Since most children carry no identification, the temptation for any parent or guardian to simply assert that he is, for example, the child's uncle or babysitter when stopped for a possible violation is evident. A police officer faced with such a statement would in many cases lack probable cause to go forward and issue a citation.[40]

Tennessee's final exempting provision, which excludes trucks and vans from the law's application, was probably viewed as a practical necessity because of the limited seating which is available in those vehicles. The addition of a further provision requiring that restraints be used if seating were available would strengthen the protective purpose of the law while still acknowledging these practical concerns.

A CRD-use law with quite different provisions went into effect in Rhode Island in July of 1980.[41] Unlike the Tennessee statute, this

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36. The exemption allowed for children who ride on another passenger's lap was added as an amendment by one of the bill's opponents. He argued that the happiest day of his daughter's life was when she brought her new baby home from the hospital in her arms and that the law would deny this pleasure to other new mothers. It was feared that the law would not be passed if the exemption were removed. R. Sanders, *Effective Interaction With State Legislatures* (paper presented at the Child Passenger Safety Conference, U. of Tenn. Transp. Center, May 10, 1978, available from Action for Child Transportation Safety).

37. See text accompanying notes 17-20 *supra*

38. Sanders, *supra* note 36.

39. This language was included in bills introduced in Illinois, Louisiana, New Hampshire, and New Jersey, none of which passed. ACTS, *supra* note 5.

40. Probable cause exists when the facts and circumstances within the officer's knowledge are sufficient in themselves to warrant a belief by a man of reasonable caution that an offense has been committed. Brinegar v. United States, 338 U.S. 160, 175-76 (1949). More than mere suspicion is required. Henry v. United States, 361 U.S. 98, 101 (1959).

41. R. I. GEN. LAWS § 31-22-22 (1980):

> Child Passenger Restraint Systems. Any person transporting a child three (3) years of age or under in the front seat of a motor vehicle operated on the roadways, streets or highways of this state, will provide for the protection of the child and

law applies to all persons driving in Rhode Island and therefore avoids the potential enforcement problems posed by a "parents-only" provision. The unique feature of Rhode Island's law is that it requires CRD use by children under the age of four only while they are riding in the front seat of a vehicle.[42] The law thus addresses the most hazardous practices of unrestrained, or on-lap, front seat travel, but fails to provide protection for the majority of child passengers: those who ride in the back seat.[43] A more stringent bill, to be introduced in the South Dakota legislature,[44] would provide the added protection. That bill would require that children ride in the back seat *and* be secured in the vehicle's available seatbelts whenever possible. Should it be necessary for a child to be transported in the front seat, a restraint device appropriate for the child's age and size, such as is required in Rhode Island, would have to be used.

Pending Legislation: Some Further Options

The majority of CRD legislation introduced in other states is similar to the Tennessee law, but without the "babes-in-arms" exemption.[45] These statutes typically would require that a parent who is driving his own vehicle must have his young children secured in CRDs. The protected class of children is most often limited to those younger than four years, or alternatively, to those who weigh less than forty pounds.[46] These age and weight limitations provide convenient lines for the legislators to draw, since they encompass the class

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properly use a child passenger restraint system approved by the United States Department of Transportation under Federal Standard 213, provided that in no event [shall] failure to wear a child passenger restraint system be considered as contributory negligence, nor [shall] such failure to wear said child passenger restraint system be admissible as evidence in the trial of any civil action.

Any person deemed to be in violation of this section shall be issued a citation with a fine of fifteen ($15.00) dollars and it will be recorded on said person's driving record within the rules and regulations governing Section 31-43.

42. *Id.*

43. While one study found that a "back seat location reduced the injury rate by 28% among unrestrained child passengers and by 18% among restrained children," it further concluded that restrained children are safer than those who are unrestrained, regardless of their position in a vehicle. Williams & Zador, *supra* note 16, at 71.

44. The South Dakota proposal is described in ACTS, *supra* note 5.

45. Arizona H.B. 2418 (defeated in committee), Colorado H.B. 1440 (defeated in the House); Michigan substitute for H.B. 5327, Minnesota H.B. 156 and S.B. 274, Nebraska Leg. B. 79; North Carolina H.B. 1018 (defeated); North Dakota H.B. 1490 (defeated); Oregon H.B. 2667 (defeated in the House); Washington H.B. 199 and S.B. 2895 (withdrawn by sponsors); Wisconsin Asmb. B. 747. The sponsors of many of the defeated bills plan to reintroduce their respective proposals. ACTS, *supra* note 5.

46. *Id.*

of passengers for whom CRDs are typically designed.[47] Also, by drafting legislation concerned with CRD use only, legislators can minimize the political and public opposition which would accompany a more far-reaching restraint-use law.

The four year age limit is not universal, however. California has a bill pending which would encourage the use of appropriate restraint systems for all children under the age of sixteen.[48] This bill is designed primarily to educate the public and would allow law enforcement officers to issue verbal hazard warnings, but not citations, to non-complying motorists. Other age variations are found in the South Dakota legislation mentioned above,[49] which would apply to children up to thirteen years of age, and in a Maryland bill which would require restraint use for the protection of children who are less than eight.[50]

Proposed CRD laws also vary in their determination of who will be responsible for complying with their respective terms. As noted, the majority would hold only parents or legal guardians liable for the failure to use restraint devices. Statutes with broader coverage usually are written to apply to all resident drivers,[51] or to the drivers of all vehicles which are registered in the enacting state.[52] One novel variation is the New York proposal,[53] which would impose a penalty on both the driver of a vehicle in which an unrestrained child was riding, and the vehicle owner who knowingly permitted a child to be transported in that manner.

Other provisions which may be incorporated into some proposed statutes include a ban on carrying passengers in the cargo areas of hatchbacks, station wagons, and pickup trucks,[54] and on the practice of buckling one seatbelt around two people.[55] One exemption under consideration in some states allows children with medical problems

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47. See note 2 *supra*.
48. California Asmb. B. 1198, ACTS, *supra* note 5.
49. See note 44 and accompanying text *supra*.
50. Maryland H.B. 33, ACTS, *supra* note 5.
51. *See, e.g.*, Maryland H.B. 33, ACTS, *supra* note 5.
52. *See, e.g.*, Colorado H.B. 1440, ACTS, *supra* note 5.
53. New York S.B. 2623, ACTS, *supra* note 5.
54. *See, e.g.*, Massachusetts S.B. 1269 which would prohibit the carrying of passengers in open trucks. ACTS, *supra* note 5. This particular provision has been enacted by city ordinance in Ogden, Utah. This five year old law forbids persons from riding in any portion of a motor vehicle not designed or intended for use by passengers. It further makes it illegal to operate a motor vehicle while any person is standing on the vehicle's seats. MICHIGAN ASSOCIATION FOR TRAFFIC SAFETY, FORMATS, *Child Passenger Safety News* 4 (Apr. 1980).
55. *See, e.g.*, Maryland H.B. 33; Washington H.B. 199 and S.B. 2895, ACTS, *supra* note 5.

which may make the use of a CRD impossible, to travel without being secured in such a device.[56] To avoid possible abuse of this provision, a doctor's certificate of exemption would be required by some statutes.[57]

In combining any of these provisions into a workable child restraint law, the interest in maximizing safety should be balanced against considerations of fairness and practicality. The statutes must be flexible. For example, a large family that can afford only a small car with inadequate seating for all family members should not be subject to a penalty each time they venture onto the public roads. A law which requires the use of CRDs for available seating and which further requires all unrestrained children to ride in the back seat might best accomodate both safety concerns and tight family budgets.

Flexibility and compromise is also necessary in striking a reasonable balance between the strictness of a restraint law's provisions and the determination of who will be subject to the law's terms. For example, a requirement that CRDs be obtained and used would be less controversial under a law that applies only to parents and legal guardians, rather than to all in-state drivers. Conversely, statutes which apply to all drivers might require only that the vehicle's available seatbelts be used for the protection of children. Under a law of the latter type, parents could still be encouraged to obtain CRDs by other means, such as by allowing a tax credit as an incentive for their purchase. The tax credit incentive is presently under consideration in some states.[58]

Costs and Enforcement

The burden which would be imposed on members of the public by requiring them to obtain CRDs should not be viewed as an insurmountable problem. The cost of these devices, generally between twenty and forty-five dollars,[59] is not unreasonable when it is consid-

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56. Members of Action for Child Transportation Safety find exemptions for "physical or medical" reasons unacceptable and argue that children unable to sit in the typical car seat style CRD — because of a bulky cast or perhaps some birth defect — are nevertheless entitled to protection. They suggest larger shield or harness type restraints as alternatives. ACTS, *supra* note 5. *See also* L. Schneider, J. Melvin, C. E. Cooney, *Impact Sled Test Evaluation of Restraint Systems Used in Transportation of Handicapped Children* (paper presented to the Society of Automotive Engineers, Detroit 1979) discussed in HHS STATUS REPORT 5 (Mar. 19, 1979).

57. *See, e.g.*, Colorado H.B. 1440; Massachusetts S.B. 1097, ACTS, *supra* note 5.

58. *See, e.g.*, Michigan S.B. 394, ACTS, *supra* note 5.

59. See note 2 *supra*.

ered that a CRD provides up to four years of protection and that each CRD can be re-used by several children. The price of the device could simply be considered, along with license plates, safety inspections, and insurance, as one of the costs of owning and operating a motor vehicle.

On the other hand, CRD legislation would probably receive greater public acceptance if it were accompanied by programs designed to minimize the cost of compliance. Legislative efforts toward this end could include the tax credit mentioned above and, possibly, Medicaid coverage of CRD purchases for the poor. It has been suggested that Medicaid payments for CRDs could be justified under the same theory that applies to childhood vaccinations—that such devices constitute effective preventive medicine.[60]

As an alternative to government help, many innovative private programs offer means of keeping compliance costs down. Examples include CRD rental programs which have been successfully established in several parts of the country, as well as programs which offer used restraint devices for sale at minimal cost.[61] A different approach has been implemented by one insurance company, which provides CRDs to its insured families without charge, thereby spreading the cost of the devices among all of its policy holders.[62] Thus, several possibilities exist in both the government and private sectors which could minimize the financial burden imposed by CRD-use laws.

A final concern about the practicality of these statutes centers on the enforcement problems that they may present, although these problems appear to be no greater than those which accompany many other traffic regulations. As in the case of driving without a valid license, which is against the law[63] but usually goes undetected, CRD violations might often be found only after the driver of the car is stopped for another infraction. More likely, an officer would simply

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60. Action for Child Transportation Safety is among those groups exploring the possibility of Medicaid payments for CRD purchases. Allowing such payments was urged by the safety coordinator of a pediatric preventive medicine program in testimony before the House Commerce Subcommittee on Oversight and Investigation. HHS STATUS REPORT 7 (May 17, 1979).

61. Several such programs are described in *Child Passenger Safety News*, *supra* note 24.

62. Robert E. Vanderbeck, president of the League General Insurance Companies of Southfield, Michigan told the House Commerce Subcommittee on Oversight and Investigation that "[t]he program . . . makes economic sense and we believe will be cost effective — it will pay for itself through reduced claims." HHS STATUS REPORT 6 (May 17, 1979).

63. *See, e.g.*, COLO. REV. STAT. § 42-2-101 (1973).

notice a child standing on the seat of a vehicle or riding on another person's lap and then pull that vehicle over in order to issue a ticket to the driver. Children traveling in dangerous positions are often visible to other motorists on the road and no extraordinary surveillance techniques would be needed by police charged with halting that practice.

THE POLICE POWER

Each state possesses authority to pass laws which protect the health, safety, or welfare of the public.[64] This authority is an inherent aspect of the state's sovereignty and is known as its police power.[65] In determining the validity of any legislation passed pursuant to this power, courts typically employ a two-step analysis. Such a law will be upheld if it furthers a legitimate state objective and if the means employed to attain it are reasonably related to that end.[66]

A Legitimate Objective

An appropriate state objective has been held to be any one which promotes or protects the public welfare.[67] This definition is elastic enough to encompass the wide variety of laws which are enacted in response to changing public needs. The shift from an agrarian to an industrial society, for example, created the need for regulations such as workmen's safety, pure food, and urban housing and sanitation laws.[68] More recently, the public welfare concept has been expanded to include rent control laws,[69] anti-deceptive credit practice laws,[70] and anti-billboard and landmark preservation statutes

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64. *See* Berman v. Parker, 348 U.S. 26, 32 (1954); East New York Bank v. Hahn, 326 U.S. 230, 232 (1945); Nebbia v. New York, 291 U.S. 502, 523 (1934); License Cases, 46 U.S. (5 How.) 504, 583 (1847).

65. The term "police power" appears to have been first used by Justice Marshall in Brown v. Maryland, 25 U.S. (12 Wh.) 419, 433 (1827). It is a residuary power, one which was retained by the states after certain enumerated powers had been transferred to the new federal government.

66. "To justify the state in . . . interposing its authority in behalf of the public, it must appear, first, that the interests of the public . . . require such interference; and, second, that the means are reasonably necessary for the accomplishment of the purpose, and not unduly oppressive upon individuals." Goldblatt v. Hempstead, 369 U.S. 590, 594-95 (1962) *quoting* Lawton v. Steele, 152 U.S. 133, 137 (1894).

67. *See, e.g.*, In re Interrogatories of the Governor, 97 Colo. 587, 595, 52 P.2d 663, 667 (1935) which notes that this power is as "broad as the public welfare."

68. *See* Morissette v. United States, 342 U.S. 246, 253-54 (1952).

69. Hutton Park Gardens v. West Orange Town Council, 68 N.J. 543, 350 A.2d 1 (1975).

70. Birkenfield v. City of Berkeley, 17 Cal.3d 129, 550 P.2d 1001, 130 Cal. Rptr. 465 (1976)

designed to protect the aesthetic features of an area.[71]

Regulations such as these can be viewed as an attempt to redress an unequal balance of power. When members of the public are faced with some threat with which they cannot deal on an individual level, the constitutional niche known as the police power has enabled the state to attempt to protect their well-being by regulating the conduct of those who do have the power and ability to mitigate the potential harm. Thus, the acts of the employer, the manufacturer, and the polluter may be regulated for the benefit of the worker, the consumer, and the public at large.

The CRD statutes fit easily into this pattern. In passing these laws, states are seeking to protect a particularly powerless class of people by regulating the behavior of those in the best position to minimize the risk to that class. Insofar as they seek to promote safety, these statutes are at the core of the police power doctrine.[72]

Highway Regulations. Specifically, CRD legislation is addressed to the problem of highway safety, an area in which the states have extensively exercised their rule-making powers.[73] Since the arrival of the automobile, both drivers and vehicles have been subjected to a variety of statutory requirements designed to protect the driving and riding public. In evaluating the validity of CRD laws as highway safety regulations, a useful analogy can be drawn from the motorcycle helmet laws which, like CRD laws, mandated the use of specialized equipment.

The controversial helmet laws, which swept the country approximately a decade ago, were sustained as valid police power legislation by the overwhelming majority of courts which faced the issue.[74] The Colorado Supreme Court's discussion in the case of *Love v. Bell*[75] is typical of many of these opinions. As with most of the courts across the country which addressed the problem, the Colorado

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71. Penn Central Transp. Co. v. New York, 438 U.S. 104, 129 (1978); John Donnelly & Sons v. Mallar, 453 F. Supp. 1272 (S.D. Me. 1978).

72. Kelley v. Johnson, 425 U.S. 238, 247 (1976).

73. South Carolina Highway Dep't v. Barnwell Bros., 303 U.S. 177 (1938); Bibb v. Navajo Freight Lines, 359 U.S. 520 (1959); People v. Brown, 174 Colo. 513, 485 P.2d 500 (1971); Zaba v. Motor Vehicle Div., 183 Colo. 335, 516 P.2d 634 (1973).

74. Helmet statutes were struck down in only two of the thirty-three states in which they were challenged. Illinois, People v. Fries, 42 Ill.2d 446, 250 N.E.2d 149 (1969) and Michigan, American Motorcycle Association v. Davids, 11 Mich. App. 351, 158 N.W.2d 72 (1968). The Michigan Supreme Court upheld a very similar municipal law several years later in City of Adrian v. Poucher, 398 Mich. 316, 247 N.W.2d 798 (1976). The helmet cases are collected in 32 A.L.R.3d 1270.

75. 171 Colo. 27, 465 P.2d 118 (1970).

court studiously avoided the most salient issue which grew out of the helmet legislation, the issue of whether mandatory self-protection and of regulating a person for his own good was a valid state objective.[76] Instead, the court sought to find some benefit which the helmet statutes provided to other highway users in order to sustain the law. It found one such benefit in the economic area, noting the "laws may be passed within the police power to protect the public from financial loss."[77] In drawing upon a record which showed a higher frequency of serious head injuries and deaths among bare-headed riders than among those who wore helmets, the court ruled that the law protected the public's financial health since it prevented motorists involved in accidents with motorcycles "from being required to respond in damages more heavily than might be the case if the motorcycle driver and passenger were wearing helmets."[78] Other courts also employed the "financial health" argument and cited increased public medical and welfare costs which would have to be paid to disabled cyclists, as well as higher insurance rates.[79]

Most of the helmet law opinions did not rest solely on this economic protection analysis, but also sought some connection between helmets and the public's physical well-being. Many courts found such a connection in the "flying debris" theory, which is based upon the hypothesis that an unprotected cyclist might be struck in the head by loose gravel or other objects thrown up by passing vehicles, thereby causing the cyclist to lose control and possibly cause an accident.[80] The courts were unswayed by the argument that such a chain of events had never been known to have occurred.

If CRDs are substituted for helmets in the analysis above, the reasoning employed in the typical helmet case not only remains valid but is, in fact, strengthened. As with helmets, CRDs offer the potential for mitigating physical, and therefore, financial damages resulting from highway accidents. More importantly, a CRD law would not leave a court having to strain for a "loose gravel" rationale in

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76. Few courts were willing to ground their opinions on the self-protecting aspect of helmet legislation. Two cases which did discuss this issue were People v. Carmichael, 56 Misc. 2d 388, 288 N.Y.S.2d 931 (1968) (state has an interest in preserving strong, healthy citizens) and State v. Mele, 103 N.J. Super. 353, 247 A.2d 176 (1968) (state has an interest in protecting people from their own carelessness).

77. 171 Colo. at 33, 465 P.2d at 121.

78. 171 Colo. at 33, 465 P.2d at 121-22.

79. *See, e.g.*, State v. Anderson, 3 N.C. App. 124, 164 S.E.2d 48 (1968), *aff'd*, 275 N.C. 168, 166 S.E.2d 49 (1969).

80. *See* 171 Colo. at 33-34, 465 P.2d at 122 and the cases cited therein.

searching for a connection between the regulation and the physical safety of non-regulated members of the public. In contrast to the helmet law discussions on this point, the potential beneficiaries of CRD legislation are not hypothetical, their existence is clearly documented in the "0-4 years" column of each state's accident reports.

The mandatory helmet statutes are perhaps on the periphery of valid police legislation. They raise the difficult problem of the extent to which an individual can be regulated for his own good. Shifting political attitudes on just this point have resulted in the repeal of helmet laws in twenty-eight of the forty-nine states which originally enacted them.[81] The notion of protecting a person against himself is not a factor in CRD legislation, however, for in requiring the use of child restraints the state is attempting to protect those too young to make rational choices in their own best interest. In this vein, it is interesting to note that of those states which repealed helmet laws, nearly two-thirds reenacted such legislation applicable only to minors.[82]

Parens Patriae. The state's interest in the well-being of its youth is of ancient origin. Plato believed that the good of the state as a whole justified the regulation of child-rearing practices.[83] His pupil, Aristotle, differed on this point, suggesting that regulations were necessary only to protect the interests of the individual child.[84] These two theories have survived to the present and are often meshed with a third concern, an interest in preserving the family structure as the basic unit in society.[85]

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81. California is the only state never to have enacted helmet legislation. A summary of the recent status of helmet laws in this country, including dates of enactment, repeal and pending legislation is compiled in HHS STATUS REPORT 5-8 (Apr. 30, 1979).

82. *Id.*

83. PLATO, REPUBLIC Bk. V (E. Hamilton & H. Cairns, eds., THE COLLECTED DIALOGUES OF PLATO 1961, at 698-702), *mentioned in* Meyer v. Nebraska, 262 U.S. 390, 401-2 (1923).

84. ARISTOTLE, POLITICS 32-33 discussed in Kleinfeld, *The Balance of Power Among Infants, Their Parents and the State*, 4 FAM. L. Q. 410 411-12 (1970).

85. See text accompanying notes 105-08, *infra* An example of the interweaving of these ideals is the preamble to the Colorado Children's Code. COLO. REV. STAT. § 19-1-102 (1973): The general assembly declares that the purposes of this title are:

> (a) To secure for each child subject to these provisions such care and guidance, preferably in his own home, as will best serve his welfare and the interests of society;
>
> (b) To preserve and strengthen family ties whenever possible, including improvement of home environment;
>
> (c) To remove a child from the custody of his parents only when his welfare and safety or the protection of the public would otherwise be endangered; and
>
> (d) To secure for any child removed from the custody of his parents the necessary

The Platonic theory was mentioned more often in early cases dealing with child-related legislation than it is today. For instance, in sustaining the state's compulsory schooling law, the Colorado Supreme Court in 1927 stated flatly that "[t]he state, for its own protection, may require children to be educated. This needs no citation."[86] This "good-of-the-state" approach is also reflected in statutory provisions, such as those which override parental objections to immunization whenever a community is threatened with an epidemic.[87]

Statutes usually demonstrate a more Aristotelian concern for the welfare of individual children, rather than for the state as a whole. Examples are child abuse laws,[88] child labor laws,[89] and those mandating specific medical procedures to prevent blindness[90] and mental retardation[91] in newborns. The "child protection" rationale is also cited frequently by state courts since the United States Supreme Court has stated that "[t]he well-being of its children is of course a subject within the State's constitutional power to regulate. . . ."[92]

Although CRD legislation arguably benefits the state as a whole by preserving the health of future productive citizens and by reducing the number of those who might require long-term public aid because of automobile injuries, its primary purpose is to prevent needless harm from being inflicted upon young children. This latter goal is an entirely appropriate one, as has previously been shown. The question that remains is whether requiring individual drivers to obtain and use child restraints is a reasonable method of attaining that objective.

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care, guidance, and discipline to assist him in becoming a responsible and productive member of society.

86. Vollmar v. Stanley, 81 Colo. 276, 280, 255 P. 610, 613 (1927).

87. *See, e.g.*, COLO. REV. STAT. §§ 25-4-303 to -305 (1973 & Supp. 1978).

88. *See, e.g.*, COLO. REV. STAT. §§ 19-10-101 to -115 (1973) which deal with reporting abuse, and COLO. REV. STAT. § 18-6-401 (1973 & Supp. 1979) describing the crime of child abuse.

89. *See, e.g.*, COLO. REV. STAT. §§ 8-12-101 to -117 (1973 & Supp. 1979), the Colorado Youth Employment Opportunity Act of 1971, which details the types of employment that youths of various ages may engage in.

90. *See, e.g.*, COLO. REV. STAT. §§ 25-4-303 to -305 (1973), requiring that the eyes of all newborns be treated with a prophylaxis within one hour of birth.

91. *See, e.g.*, COLO. REV. STAT. § 25-4-801 (1973): "The general assembly declares that, as a matter of public policy of this state and in the interest of public health, every newborn infant should be tested for phenylketonuria and other metabolic defects in order to prevent mental retardation resulting therefrom. . . ."

92. Ginsberg v. New York, 390 U.S. 629, 639 (1968).

Reasonable Means

The legislature is given wide discretion in implementing its goals, and a presumption of validity attaches to each statute it enacts.[93] In order to rebut this presumption, an opponent must prove that a law, when applied, violates some provision of the state or federal constitution,[94] or that the law does not reasonably relate to the state's objective in passing it.[95] The question of its "reasonableness" is, in fact, the central issue in any challenge to a police power regulation.[96]

Most statutes promulgated under the police power seek to protect public welfare by regulating conduct in the manufacturing and professional sectors. Individual behavior may also legitimately be regulated so long as the burden imposed does not infringe on a fundamental right.[97] A mere showing "that in its operation a police measure may increase their labor, decrease the value of their property or otherwise inconvenience individuals" will not suffice to render a law void.[98] Securing a child in a CRD before each automobile trip may at times be inconvenient, but the question of concern to a reviewing court would be whether a law mandating that action infringes upon a fundamental right.

An opponent of CRD legislation could claim that any one of several rights are infringed upon by such a law: the right to parental autonomy[99] and privacy;[100] the right to equal protection under the

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93. Kelly v. Johnson, 425 U.S. 238 (1976); Day-Brite Lighting, Inc. v. Missouri, 342 U.S. 421, 423 (1952); Prince v. Massachusetts, 321 U.S. 158, 168-70 (1944).

94. Day-Brite Lighting, Inc. v. Missouri, 342 U.S. 421 (1952); Jackson v. Massachusetts, 197 U.S. 11, 25 (1905); City of El Paso v. Simmons, 379 U.S. 497, 508-09, *rehearing denied*, 380 U.S. 926 (1964).

95. *See* Paris Adult Theatre I v. Slayton, 413 U.S. 49 (1973); NAACP v. Alabama, 377 U.S. 288 (1964); Goldblatt v. Town of Hempstead, 369 U.S. 590 (1962).

96. "The legislature may devise *reasonable* schemes for regulations of activities which affect the health and safety of the public." People ex rel. Dunbar v. Kogul, 179 Colo. 394, 399, 501 P.2d 738, 740 (1972) (emphasis in original).

97. Fundamental rights are those rights "implicit in the concept of ordered liberty." Palko v. Connecticut, 302 U.S. 319, 325 (1937).

98. In re Interrogatories of the Governor, 97 Colo. 587, 596, 52 P.2d 663, 667 (1935). One example of a law which puts the burden of compliance on individuals is COLO. REV. STAT. § 33-31-105 (1973 & Supp. 1979). This law makes it the duty of a boat owner or operator — not of the boat manufacturer — to provide an adequate life preserver for each person on board.

99. Parental rights are afforded constitutional protection against unwarranted or unreasonable interference by the state. Planned Parenthood v. Danforth, 428 U.S. 52, 73 (1976); Wisconsin v. Yoder, 406 U.S. 205 (1972); Meyer v. Nebraska, 262 U.S. 390 (1923). *See also* Smith v. Organization of Foster Families, 431 U.S. 816, 842-44 (1977); Ginsberg v. New York, 390 U.S. 629, 639 (1968).

law;[101] and the right to free and unrestricted travel between the states.[102] The last claim can be quickly dispensed with by once again analogizing to the helmet cases, which consistently held that the right to travel was not unreasonably restricted by requiring motorcyclists to obtain and use a relatively inexpensive piece of safety equipment.[103] This right was not infringed even though the helmet statutes were written to apply to all, and not just resident, motorcyclists travelling on the enacting state's roads.[104] The CRD laws are not as broad as the helmet statutes since they typically apply only to resident parents or to those driving vehicles registered in the enacting state. Non-resident tourists therefore would not be subject to the law's provisions.

Parental Autonomy and Privacy. The allocation of power between parent and state in making decisions concerning the best interests of the child is always a sensitive issue. Supreme Court cases have "consistently recognized that the parents' claim to authority in their own household to direct the rearing of their children is basic in the structure of our society."[105] Indeed, the integrity of the family unit has found protection in the Due Process[106] and Equal Protection[107] Clauses of the fourteenth amendment and in the ninth amendment.[108]

Despite this high regard for the family unit, laws which restrict parental autonomy in order to further the welfare of children are usually sustained. Such laws are struck down only if they are arbitrary and capricious. For example, a law attempting to promote good citizenship by banning the teaching of foreign languages in elementary schools was struck down in *Meyer v. Nebraska* on these grounds.[109] Similarly, if the state's objective in passing the law is not sufficiently compelling to overcome a parental objection based on a

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100. Fundamental rights include the "right of personal privacy, or a guarantee of certain areas or zones of privacy." Roe v. Wade, 410 U.S. 113, 152 (1973). The source of this right is not specifically defined, but is derived from the first, third, fourth, fifth, and ninth amendments, the penumbra of the Bill of Rights, and the guarantee of liberty in the fourteenth amendment. Griswold v. Connecticut, 381 U.S. 479, 481-85 (1965).

101. U.S. CONST. amend. XIV.

102. The states may not enact rules and regulations which unreasonably burden the right to travel freely between the states. Shapiro v. Thompson, 394 U.S. 618 (1969).

103. *See, e.g.*, Love v. Bell, 171 Colo. 27, 36, 465 P.2d 118, 123 (1970).

104. *See, e.g.*, COLO. REV. STAT. § 42-4-231 (1973) (repealed 1977).

105. Ginsberg v. New York, 390 U.S. 629, 639 (1968).

106. Meyer v. Nebraska, 262 U.S. 390, 399 (1923).

107. Skinner v. Oklahoma, 316 U.S. 535, 541 (1942).

108. Griswold v. Connecticut, 381 U.S. 479, 496 (1965) (Goldberg, J., concurring).

109. 262 U.S. 390 (1923).

freedom of religion claim it will be held void.[110]

CRD statutes could not be invalidated under either theory. These laws are narrowly drawn, requiring the use of an effective, readily available device designed specifically for the purpose of protecting children in motor vehicles, and are therefore not vulnerable to charges of arbitrariness or caprice. Nor could these laws, which are essentially traffic safety regulations, conceivably be subject to any objections based on religious grounds. In short, the statement that it is "fundamental . . . that parental rights must yield to the interest and welfare of the child"[111] would appear to be particularly uncontroversial when applied to the issue of highway safety.

Parental rights are based to a large extent on the broader claim of a right to privacy—the "right to be let alone."[112] This broader right itself is not unreasonably infringed upon by traffic regulations, as aptly pointed out by the Wisconsin Supreme Court:

> There is no place where any such right to be let alone would be less assertible than on a modern highway. . . . When one ventures onto such a highway, he must be expected and required to conform to public safety regulations and controls, including some that would neither have been necessary nor reasonable in the era of horse-drawn vehicles.[113]

Equal Protection. CRD statutes distinguish between children less than four years old and all other highway users. If a court were convinced that no rational basis existed for this distinction, it could void such legislation on the ground that it denies the public equal protection under the law. A statutory discrimination will not be invalidated, however, if any state of facts reasonably can be conceived to justify it.[114]

When reviewing CRD legislation, a court could rely on several supporting factors to sustain the legislature's classification. A court could find that members of the statutorily created class of children four years of age or younger face a greater risk of injury or death than do others in accident situations, are incapable of making ra-

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110. Wisconsin v. Yoder, 406 U.S. 205 (1972).

111. Stjernholm v. Mazaheri, 180 Colo. 352, 356, 506 P.2d 155, 157 (1973). *See also* Fulton v. Martensen, 129 Colo. 125, 267 P.2d 658 (1954); Graham v. Francis, 83 Colo. 346, 265 P. 690 (1928).

112. Olmstead v. United States, 277 U.S. 438, 478 (1928) (Brandeis, J., dissenting).

113. Bisenius v. Karns, 42 Wis. 2d 42, 55, 165 N.W.2d 377, 384 (1969), *appeal dismissed*, 395 U.S. 709 (1969).

114. Dandridge v. Williams, 397 U.S. 471, 485 (1970), *rehearing denied*, 398 U.S. 914 (1970).

tional choices to further their self-preservation, and are not afforded the same degree of protection by existing safety belts as are older passengers for whom such belts are designed.[116] Furthermore, although all legislatively imposed age restrictions are arbitrary to some extent, the class delineated by CRD legislation is not unreasonable since it corresponds to that class for which CRDs are designed and manufactured.[116] These factors could support a finding that a state of facts sufficient to justify the statutory distinction exists.

Finally, it should be noted that although all automobile passengers could benefit by mandatory seatbelt laws, the fact that such laws have not been enacted is insufficient to void CRD laws under the Equal Protection Clause. A law will not be invalidated for violating that Clause merely because the legislature has not "comprehensively remedied all problems at once—it is entitled to proceed one step at a time."[117]

In sum, CRD legislation is valid under both the "ends" and the "means" prongs of the police powers analysis. The state is operating in traditional areas when it seeks further highway and child safety, and no fundamental rights are threatened when the state mandates the use of appropriate equipment in attempting to attain that safety objective.

Civil Proceedings

Aside from the constitutional issues, the legal ramifications which could attend CRD legislation in certain civil cases remain to be examined.[118] Although the only two CRD laws currently in force expressly provide that a breach of their respective terms may not be

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115. See text accompanying notes 9-25 *supra*.

116. See note 2 *supra*.

117. Bushnell v. Sapp, 194 Colo. 273, 280, 571 P.2d 1100, 1104 (1977).

118. CRD statutes could also have an impact on certain criminal proceedings, particularly vehicular homicide and vehicular assault cases. Drunk driving typically is a misdemeanor, but if death to another results, it may be filed as vehicular homicide, a felony. If a drunk driver collides with a vehicle in which an unsecured child is riding and the collision results in the death of that child, a decision to file a felony charge against the drunk driver may pose problems. In Colorado, for example, such a charge can be brought only against a person whose wrongful acts were the "sole proximate cause" of a highway death. Goodell v. People, 137 Colo. 507, 509, 327 P.2d 279, 280 (1958). If the child would not have died had he been properly secured in a CRD, then the failure to use that device would be another proximate cause of his death. Hence, felony charges could not be lodged against the drunk motorist.

The problem is not merely a speculative one, for prosecutors in Michigan have contacted state highway officials to seek advice on this particular issue. Telephone interview with David Shinn, Driver and Vehicle Admin., Mich. Dep't of State, July 1980.

raised in any civil action,[119] future enacting states may pass such laws without this limitation. The discussion below evaluates the impact which a CRD statute without a "no liability" clause could have in negligence lawsuits.

Civil Liability

Negligence per se. In the absence of CRD legislation, a suit for negligence brought on behalf of a child injured in an automobile accident against the child's driver would face serious obstacles. Typically, in order to support a negligence claim, the burden is on the plaintiff to establish by a preponderance of the evidence that the defendant owed him a certain standard of care, that the standard was breached, and that the breach was a cause of the harm suffered.[120] Without a CRD law in force the plaintiff's burden on the question of "standard of care" would be substantial. He would have to assume the burden of educating and persuading six or twelve peers from the community on the practicality and wisdom of CRDs. The fact that the community as a whole has shown little inclination to use child restraints indicates the size of the plaintiff's task in proving this element of the case.

Were a CRD-use law in existence, however, the mere fact of its enactment would greatly lessen the plaintiff's burden. In passing that law, the legislature would have established in specific language the appropriate standard of care which was owed by the defendant, and that question would be removed from the jury's consideration.[121] In other words, the plaintiff could show that the defendant acted negligently simply by showing that the defendant breached the statute. The only further burden the plaintiff would have in this negligence per se claim would be to show a causal link between the harm suffered and the negligent act or omission.[122]

As previously shown,[123] proof of causation should not be difficult, particularly if the child's injuries resulted from his ejection from the vehicle, or from his collision with some portion of its inte-

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119. See notes 33 and 41 *supra*.

120. *See* cases cited in W. PROSSER, HANDBOOK OF THE LAW OF TORTS 143 (4th ed. 1971).

121. *See, e.g.*, Martin v. Herzog, 228 N.Y. 164, 126 N.E. 814 (1920); Konow v. Southern Pacific, 105 Ariz. 386, 465 P.2d 366 (1970); Zerby v. Warren, 297 Minn. 134, 210 N.W.2d 58 (1973); Stahl v. Cooper, 117 Colo. 468, 190 P.2d 891 (1948).

122. *See, e.g.*, Plains Transport of Kansas v. Baldwin, 217 Kan. 2, 535 P.2d 865 (1975); Pratt v. Thomas, 80 Wash. 2d 117, 491 P.2d 1285 (1971); Hamilton v. Gravinsky, 28 Colo. App. 408, 474 P.2d 185 (1970), *modified*, 174 Colo. 206, 483 P.2d 385 (1971).

123. See text accompanying notes 10-25 *supra*.

tempts to shift some of the responsibility for the harm done to the injured child to that third party, but no doctrine would provide this original defendant with complete immunity from liability. Contributory or comparative negligence statutes which limit or totally bar the payment of compensation to a plaintiff would be inapplicable to CRD related lawsuits. Those statutes apply only when the plaintiff has been shown to have contributed to his injuries by his own careless actions.[130] A pre-school aged child is, in many states, legally incapable of negligence,[131] and his failure to look out for his own safety cannot be raised as a defense in any suit in which that child is a plaintiff.[132]

Nor can the defendant obtain complete immunity from liability by claiming contributory negligence due to the carelessness of a plaintiff child's parents. The "doctrine that the negligence of the parents of a child of tender years shall be imputed to the child" was dismissed in one early case as "not only unsound, but absurd and inhuman,"[133] and that doctrine is universally rejected today.

The child's driver, on the other hand, stands a better chance of claiming immunity if he is brought into the negligence case as a third party defendant. If he is unrelated to the plaintiff he can seek to avoid liability under any guest statutes which exist in that state. These laws, which are no longer as prevalent as they once were, prevent a person from suing his "host" driver for any injuries sustained while riding as a non-paying passenger in that driver's vehicle.[134] The laws have been justified in part by an "assumption of the risk" type of theory and for that reason have often been held inapplicable to young children.[135] The child's driver has a much better chance of claiming immunity, and therefore of imposing the full cost of compensating the child on any other defendants, if he is the plaintiff

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130. *See, e.g.*, COLO. REV. STAT. § 13-21-111 (1973 & Supp. 1979). The Colorado court has made it clear that "[t]he comparative negligence statute is inapplicable where no negligence on the part of the plaintiff can be proven." Denham v. Kampman, 37 Colo. App. 233, 236, 547 P.2d 263, 266 (1975), *aff'd*, 192 Colo. 448, 560 P.2d 91 (1977).

131. *See, e.g.*, Lewis v. Buckskin Joes, 156 Colo. 46, 396 P.2d 933 (1964) (children of "very tender years" are incapable of negligence and assume no risks).

132. *See, e.g.*, Majors v. J.C. Penney Co., 31 Colo. App. 568, 506 P.2d 399 (1972) (six year old child incapable of contributory negligence)

133. Denver City Tramway Co. v. Brown, 57 Colo. 484, 491, 143 P. 364, 368 (1914). *See also* W. PROSSER, HANDBOOK OF THE LAW OF TORTS 490 (4th ed. 1971).

134. *See* Brown v. Merlo, 8 Cal. 3d 855, 506 P.2d 212, 106 Cal. Rptr. 388 (1973).

135. *See, e.g.*, Burhans v. Witbeck, 375 Mich. 253, 134 N.W.2d 225 (1965); Wood v. Morris, 109 Ga. App. 148, 135 S.E.2d 484 (1964); Green v. Jones, 136 Colo. 512, 319 P.2d 1083 (1957)

such lawsuits will tend to preserve family harmony.[142] In any CRD related action, the plaintiff would necessarily be a very young child, incapable of maliciously plaguing his parents with lawsuits. The decision to bring a suit on his behalf will most likely be made by the child's parents, with an awareness that their liability insurer will be the true defendant. Under those circumstances, commencing an action is not evidence of a family's internal strife, but rather of the "provident management of its affairs."[143]

The invalidity of the first two arguments, which ignore the existence of liability insurance, must be conceded before credence can be given to the third argument: allowing children to sue their parents will lead to widespread collusion and fraud against insurance companies.[144] A trust in the jury system and its ability to distinguish between valid and fraudulent claims is the first step which must be taken to reject the argument. The courts have consistently reaffirmed that trust and have relied on juries to prevent injustice to insurance companies in automobile cases between husbands and wives[145] and between close friends.[146] No readily apparent reason exists for refusing to extend that trust to cases involving a parent and child.[147] Indeed, an attempt by a parent to defraud an insurance company in a case which centered on the lack of CRD use would be quite difficult. Because of his age, the plaintiff could not be an active participant in the scheme and could not be counted on to convincingly fake a nonexistent harm.

The strongest reason for abrogating parental immunity, at least under the limited circumstances of a CRD law, is largely unrelated

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142. The family harmony argument originated in Roller v. Roller, 37 Wash. 242, 79 P. 788 (1905), a much maligned case in which a daughter was prevented from bringing a civil action for rape against her father based on the family harmony theory.

143. Badigan v. Badigan, 9 N.Y.2d 472, 479, 174 N.E.2d 718, 723, 215 N.Y.S.2d 35, 41 (1961) (Fuld, J., dissenting).

144. *See* Windauer v. O'Connor, 13 Ariz. App. 442, 477 P.2d 1157 (1971), *modified*, 107 Ariz. 267, 485 P.2d 561 (1971); Breinmeeke v. Kilpatrick, 336 S.W.2d 68 (Mo. 1960); Small v. Rockfield, 66 N.J. 231, 330 A.2d 335 (1974).

145. *See, e.g.*, Rains v. Rains, 97 Colo. 19, 46 P.2d 740 (1935) (abolished interspousal immunity in the context of an automobile negligence case).

146. *See, e.g.*, Johnson v. Hassett, 217 N.W.2d 771 (N.D. 1974) in which the court noted the "good sense of the juries" as a protection against fraud in the absense of a guest statute

147. In abrogating parental immunity, one court stated: "Even assuming that a few fraudulent and collusive claims will slip through judges and juries (and there is no impirical [*sic*] evidence that the assumption is valid) we believe that this price would not be too great since the alternative is to continue a prophylactic rule which indiscriminately bars all claims." France v. A.P.A. Transp. Corp., 56 N.J. 500, 505, 267 A.2d 490, 493 (1970).

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563-1946

March 16, 1984

Representative Charlie Bussell
House Judiciary Committee
Pouch V
Juneau, AK 99811

Re: House Bill 464 regarding child passenger restraints (Cato's bill)

Dear Representative Bussell:

In our telephone conversation on Friday, March 9th, you indicated you were philosophically opposed to such legislation as it interfered with the family's responsibility to care for their own children.

I disagree with this opinion for the following reasons:

Twenty percent of accidents in which unrestrained children are involved are actually caused by the child. Alaska Department of Highway Safety statistics show that 253 serious injuries and 9 deaths occur to children each year (1979 - 1981 data). This translates into approximately 50 serious injuries and 2 deaths caused because people are not acting responsibly by buckling in their children. Philosophically, I can permit you to swing your fist all you want as long as you don't hit anyone innocent. When your fist contacts my nose, that's no longer a matter of your relationship with your fist. That action then becomes a matter of public concern.

This is not a matter of inconvenience to the parents. This is smashed heads, crushed babies, bleeding, dying, agony! Education programs and seat loaner programs achieve only 15-19% compliance in many states that have tried this approach over many years.

Many children are killed and more children are maimed from riding in automobiles than any other risk. In fact, the second and third causes of death (congenital malformations, prematurity and sudden infant death syndrome) combined do not add up to the carnage produced by the automobile.

You, as a legislator, can do more to save lives than the combination of all the pediatricians in Alaska.

Your refusal to support this issue strongly is parallel to being passive regarding the murder of unborn children by the abortionists.

The pediatricians of Alaska, in their quarterly meeting March 8th, unanimously supported passage of House Bill 464. I look forward to hearing that you also support it.

Sincerely yours,

Clint Lillibridge

Clinton B. Lillibridge, M.D.
State Chairman

CBL:ken

BRIEFING PAPER CS SB 163 (Rules)

The Department of Health and Social Services has two vested interests in seeing this bill enacted this session:

1) it will improve the health status of our children and
2) it will probably save the Department money.

Point No. 1. Regarding health status: Accidents kill and injure more Alaskan children than any other disease, infection, or condition. When we examine the specifics of these accidents using the tools of epidemiology and common sense it is clear that ~~the greatest~~ major reductions can be derived from occupant protection on our streets and highways. Child safety devices (car seats) have been available for 10-15 years. When properly used we know they save infants and children from death and injury in event of a crash or sudden stop.

Experience has shown that utilization of car seats improves somewhat with just education and loaner programs. But, the biggest improvements have been experienced only after enactment of mandatory child safety device legislation. Tennessee has led the nation in this mandatory approach. Their experience over a seven year period has demonstrated a 55% reduction of highway fatalities of children under 4 years of age, from an average of 15-20 deaths per year before mandatory usage to 6-10 deaths per year after enforcement. This enforcement has leveled off at approximately 4,000 citations per year in Tennessee. That is an average of one child's life saved for every 500 citations. Would your child's life be worth that investment?

According to the Michigan EMS Office, one year after a child passenger safety law went into effect in April, 1982, which required children under 4 years old to be restrained in approved passenger safety devices while travelling in automobiles, the death rate for children under 4 dropped 35 percent. A survey during this same period showed that use of child restraints rose from 6% to 82%.

An article in Pediatrics in 1981 reported a study by R.G. Schurtz in Washington State that showed when children under 4 are properly restrained in automobiles, deaths in crashes can be reduced by up to 90% and injuries can be reduced up to 63%.

The issue of protection of civil rights has been raised as an argument against passage of this bill. We submit the same argument, protection of an individual's rights, can be made for passage if you consider the child's rights, a child who cannot exercise his/her own right to health and growing up to be a productive citizen. If parents fail to protect the child's interests, then the state has an obligation to do so - particularly in an instance of this nature where the protection is cheap, not intrusive, and actually contributes to improved behavior of children.

At the recent meeting of the Regional EMS Coordinators and State Advisory Council on EMS in Juneau a couple of weeks ago, they unanimously endorsed legislation to require child restraints in automobiles. Emergency medical responders report that they have seen too many accidents in which small children were seriously injured or killed because they were not properly restrained in child passenger safety devices. One member reported a case in Fairbanks a couple of years ago where an infant was crushed in his mother's arms when she hit the dashboard in an auto crash. Any preventable death or serious injury is tragic, but it is even more tragic when this happens to an infant or small child, especially when it often can be so easily prevented.

According to the Insurance Institute for Highway Safety, 42 states have passed some type of child restraint legislation. Most states provide for citations if parents are transporting an unrestrained child in an automobile, but there usually is no fine if they prove they have obtained a child restraint device within a certain period of time. These laws are not meant to be punitive, rather, they are designed to protect the lives of small children who cannot look out for their own well-being. Furthermore, many parents still may not be aware of the hazards of transporting unrestrained children in cars. No doubt the mother in Fairbanks, whose infant died in her arms, would rather have had a citation, than a dead child. She probably didn't realize that carrying the infant in her arms was potentially lethal.

Point No. 2. Saving money: Please consider the out-of-pocket costs of passing this legislation versus the costs of your letting the bill die in this committee. ~~My~~ The Division of Public Health has the Handicapped Children's Program that covers medical expenses of chronic, handicapping conditions of children. For every death on the highway there are 10 serious injuries, some of which result in lifelong handicaps like cerebral palsy, mental retardation, seizures, and paralysis. ~~Our~~ The Handicapped Children's program and other third party payors (Medicaid, Insurance, Catastrophic Illness - all programs that are familiar to this body's finance committees) will likely have reduced expenditures if you pass this legislation.

A couple of the EMS Coordinators said they would rather see passage of this legislation than an increase in their budget this year. They felt that actions to prevent deaths and injuries are more important than spending more money on treatment, even though improved emergency medical treatment is extremely important.

We know of ~~no~~ few other public health programs which can have as great an impact immediately on saving lives or reducing disabilities in small children, and saving the state money at the same time, as legislation requiring child passenger safety devices.

SECTIONAL ANALYSIS: CS SB 163 (Rules)
An act relating to the use of child safety devices in motor vehicles

*Sec. 1 AS 28.05.095 is amended by adding new sections to read:

Sec. 28.05.095 CHILD SAFETY DEVICES.

(a) requires chilren under the age of seven to be properly secured while being transported in a motor vehicle in Alaska if

(1) in a front seat and under the age of four, in an approved child safety device (CSD)

(2) in a back seat and under the age of four, in an approved CSD or in a seatbelt

(3) between the age of four and six in an approved CSD or a seatbelt

(b) exempts the following vehicles and passengers

(1) mass transit vehicles (school bus,taxi, emergency vehicles etc.)

(2) off road vehicles (ATV's, snow mobiles, motorcycles etc.)

(3) children exempted by regulations under AS 28.05.096 (handicapped, disabled, or children with physical or medical conditions that preclude the use of standard restraining devices).

(4) when all seats equipped with seatbelts are occupied by passengers using the seatbelts

(5) when the motor vehicle is not equipped with seatbelts

(6) moter vehicles exempt under AS 28.10.011(11) - (areas in Alaska not connected to the state marine or road highway system, specifically northern and western Alaska).

(c) prohibits a person removing seatbelts from passenger vehicles in order to be exempted under (b) (4) or (5)

Sec. 28.05.096 EXEMPTIONS; ALTERNATIVE SAFETY DEVICES.

(a) permits the Commissioner of public safety to adopt regulations to exempt a child or class of children from the requirements of this bill if it's determined a CSD is impractical because of physical or medical conditions.

(b) permits the Commissioner to desginate alternative means of protection for children exempted under this section

Sec. 28.05.097 PENALTY.

(a) Any person convicted of violating AS 28.05.095 (a) or (c) is guilty of an infraction and eligible for a fine and demerit points against their driver's license unless

(b) they provide a peace officer, within 30 days of issuance of the citation, proof of purchase or acquisition and installation of an approved CSD. If the proof is provided within 30 days the citation is dismissed and no points are assessed under (a) of this section unless

(1) they have been convicted previously for violating that section by failing to provide a CSD or seatbelt

(2) they have been cited for failure to provide a CSD or seatbelt and forfeited the bail required by the citation; or

(3) provided the proof required by this subsection on a prior occasion

* Sec. 2. Effective date is one year after enactment.

STATE OF ALASKA 1984 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date:

REQUEST
Bill/Resolution No.: HCS CSSB163(JUD)
Title: "An Act relating to the use of child safety devices..."
Sponsor: Sen. V. Fischer
Requestor: House Judiciary
Date of Request:

FISCAL DETAIL
Agency Affected: Public Safety
Program Category Affected: Life & Property Protection
BRU, Program or Subprogram(s) Affected: Highway Safety Planning Agency

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 84	FY 85	FY 86	FY 87	FY 88	FY 89
OPERATING						
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 SUPPLIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS						
800 MISCELLANEOUS						
TOTAL OPERATING						
CAPITAL	100					
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND	100					
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

ANALYSIS: Attach a separate page for analysis

Prepared By: House Judiciary Committee Phone: 465-4990
Division: Date: 16 May, 1984

Approved by Commissioner: Rep. Charlie Bussell Date: 16 May, 1984
Agency: Chairman

Distribution (by Agency preparing fiscal note):
Legislative Finance
Legislative Sponsor
Requestor
Office of Management and Budget
Impacted Agency(ies)

12/1/83

Alaska State Legislature

Senate Committee on State Affairs

Vic Fischer, Chair • Pouch V
Juneau, Alaska 99811
(907) 465-4954

Official Business

MEMORANDUM

TO: Rep. Charlie Bussell
Chair, House Judiciary Committee

FROM: Sen. Vic Fischer

DATE: February 22, 1984

SB 163, a bill relating to the use of child safety devices (car seats), is currently before the House Judiciary Committee.

This bill is an important one for the children of Alaska and their parents. I believe it is the single most effective thing this legislature can do to address the greatest cause of death and serious injury to Alaska's children - automobile accidents.

In addition, it is a strong personal priority of mine. I would appreciate it greatly if you could schedule this bill for hearing before the committee at your earliest convenience.

Attached is back-up material for the committee. Please let me know if additional material is necessary.

Thanks.

Alaska State Legislature

Senate Committee on State Affairs

Vic Fischer, Chair • Pouch V
Juneau, Alaska 99811
(907) 465-4954

Official Business

To: Members, Alaska State Senate

From: Senator Vic Fischer

Date: February 7, 1984

Re: SB 163 - an act relating to the use of child safety devices in motor vehicles in Alaska

Senate Bill 163 is before the Senate today and I ask for your support. I believe this bill is the single most effective thing we will do this session to protect the life, health and safety of our children.

As of 1984, Alaska remains one of the few states in the Union that has no laws pertaining to the use of child restraints in automobiles. A massive education and advocacy program has gone on nationwide over the last decade, spearheaded by physicians, pediatricians, and public safety officials. There are compelling reasons for this. Among them are:

* Automobile accidents kill more children under the age of five in the United States than are killed by the total of all major childhood diseases.

* Because children's bodies have a higher center of gravity (an infants head comprises over 20% of body weight as opposed to 10% in adults) an infant becomes a high speed projectile, head first, in any accident, even those at relatively low speeds (20 mph).

* Each year 4,300+ children under the age of five are killed in auto accidents and another 100,000 are injured.

* Infants, particularly young infants, are at greater risk of death in automobile accidents than any other passenger.

Statistics on motor vehicle accidents in Alaska are equally compelling.

* The number 1 cause of death in Alaska for ages 1-4 is accidents. The mortality rate for accidents in Alaska is 105% higher than the U.S.

* 40% of all accidental deaths in Alaska for ages 1-4 are due to motor vehicle accidents.

* In 1978 there were 137 fatalities in Alaska from motor vehicle accidents and 4,962 injuries. In all there were 15,030 motor vehicle accidents resulting in an economic loss of $20,136,864.00.

* The average lifetime medical costs for a head-injured child are a staggering $1,192,000! Virtually none of Alaska's citizens can afford that level of care, even with medical insurance. Subsequently, the state can expect to pick up the tab for medical costs for children needlessly injured in automobile accidents.

You may ask what can prevent such tragedy? The answer is specially constructed car seats. When used properly and consistently, these restraints can save 91% of the lives and prevent 78% of the injuries attributable to car accidents involving preschoolers. In spite of this, car seats or restraints are used for less than 7% of children under 4.

In response to this national tragedy, over 40 states have instituted child restraint laws in the last decade. These laws range from a polite request to criminal charges for failure to restrain children. In Alaska, we've chosen to take the "middle ground" in the form of SB 163.

WHAT SB 163 DOES

* Requires children age 1-4 to be restrained in an approved car seat (or in lieu of a car seat, restrained in a seat belt in a rear seat).

* Requires children age 4-6 to be restrained in an approved car seat or a seat belt.

* Violation of this act is treated as an equipment violation with points assessed against your drivers license. If a person cited for failure to comply with this act shows a peace officer (including village safety officers) proof of having purchased or installed an approved CSD within 30 days of the infraction, the citation is dismissed.

WHAT SB 163 DOES NOT DO

SB 163 does not apply to:

* A mass transit vehicle, a school bus, an emergency vehicle, a taxicab or other commercial vehicle.

* A motor vehicle designed for and used primarily off the highway (RV's).

* Vehicles that are not required to be equipped with seatbelts as original equipment.

* Children riding as passengers in a motor vehicle in which all seating positions equipped with seatbelts or child safety devices are occupied by other passengers using the seatbelts or devices. (in other words, SB163 does not require anyone to install additional seatbelts above and beyond what the vehicle is normally equipped with).

* Areas in Alaska not connected to the state road or marine

highway system, specifically Northern and Western Alaska.

WHY SB163 DESERVES YOUR SUPPORT

The leading cause of death to children age 1-4 in Alaska is automobile accidents. Seat belts and approved CSD's can be expected to reduce those deaths by 90% and to reduce injuries to preschoolers by 70%. The single most effective thing you can do to save the lives of children under age four is to see that every driver in Alaska uses child safety devices!

What those numbers mean in "real" terms is that there will be seven more children alive in Alaska the year SB 163 becomes effective than there will be without it. That's a pretty convincing argument to me.

Some more food for thought:

* In many states, extensive educational programs have been tried, with very little increase in usage. Education programs alone do not work.

* Use of a CSD will be more likely to save your child's life that all the immunizations, vitamin pills and preventative health care available to you.

* 20% of all motor vehicle accidents where children are passengers were caused by the children not being adequately and safely restrained while the vehicle was in motion.

* Your chances of being in a major vehicle accident is greatly increased by other drivers not adequately restraining their passengers.

* Most vehicle accidents in Alaska that result in serious injury or death occur in daylight, with dry roads and excellent driving conditions, within 25 miles of your home.

The legislature constantly deals with serious issues adversely affecting children in this state. Child abuse, assault, abandonment, disease, delinquency. All these issues literally keep us awake at night trying to find the best programs, adequate funding and trained staff to turn the tide of destruction and despair for Alaska's children. Funding for the above programs is considerable; funding for SB163 is nil.

Yet, as a legislator, the single most effective thing you can do to save Alaska's children from serious injury, dismemberment, and death is to vote for SB 163.

FROM: SEN. ADD. Cear.
2/21/84

EFFECTIVENESS OF CHILD SAFETY DEVICES (CAR SEATS)
IN PREVENTING DEATH AND SERIOUS INJURY TO CHILDREN UNDER SEVEN YEARS OLD

ILLINOIS

Law went into effect July 1, 1983. In 1982 3,485 children were injured in automobile accidents, 27 killed. For nine months of 1983 there were 2,471 injured and 6 killed.

TENNESSEE

Before Tennessee passed their child restraint law between 20-25 children died each year in automobile accitends. The law was enacted in 1978. In 1980 there were 14 deaths (none of the children were restrained) and in 1981 10 deaths (in which one of the children was in an approved child restraint device).

MASSACHUSETTS

Massachusetts instituted an education program for the use of car seats in 1979. In 1980 they instituted mandatory car seat laws.

Usage of seat restraints	Education Program	Mandatory
Age 1 year	41%	70%
2 years	22%	49%
3 years	12%	40%

WASHINGTON STATE

In Washington state from 1970-79 39,500 accidents in which children were passengers claimed 148 children's lives. For 6,300 of those accidents where children were restrained, 2 died. Of the remaining 33,200 where children were not restrained 146 died.

The death rate for unrestrained children was 13 times as great than for restrained children. Twenty percent of the unrestrained children were being held on an adult's lap but were killed. Nine out of every ten adults holding the child were not killed.

WISCONSIN

Legislation was passed in 1982 with penalties enacted in 1983. From January to July of 1983 head injuries to children under 4 in automobile accidents was down 19%. Wisconsin is currently in theprocess of applying the law to all persons transporting children from the present requirement for guardians and parents only.

*This survey was done using a child passenger protection laws summary prepared by the State Relations Department of the Motor Vehicle Manufactures Association and updated by the National Transportation Safety Board.

(over)

NATIONAL TRANSPORTATION SAFETY BOARD
WASHINGTON, D.C. 20594

SAFETY STUDY

Adopted: September 7, 1983

CHILD PASSENGER PROTECTION AGAINST DEATH, DISABILITY, AND DISFIGUREMENT IN MOTOR VEHICLE ACCIDENTS

INTRODUCTION

Motor vehicle accidents are the number one killer and crippler of children in the United States. Infants and small children riding as passengers in motor vehicles are especially vulnerable to death, disability, and disfigurement, even in minor accidents and noncrash incidents, such as sudden stops. Although it is estimated that most fatalities and injuries to infants and small children in motor vehicles could be prevented by the proper use of child safety seats, 1/ safety seat use remains low, and most children continue to be transported in motor vehicles without proper protection.

In 1982, because of its increasing concern about the continuing high levels of highway fatalities and injuries, the National Transportation Safety Board began a study of child passenger protection as part of an expanded effort to concentrate its highway accident investigations and its other activities on safety problems having high potential for success in reducing fatalities and injuries.

In mid-1982, the Safety Board launched a series of detailed investigations of accidents involving infants and small children. Fifty-three investigations were conducted in 19 States by highway accident investigators in four field offices located in Los Angeles, New York, Kansas City, and Atlanta, and in the Safety Board's Washington, D.C., headquarters. The investigations examined the use and crash performance of child safety seats as well as accident consequences to infants and small children who were not traveling in child safety seats. The accident investigations were not intended to produce statistically representative accident data. The Safety Board selected each accident individually to obtain cases which would permit investigation of potentially significant safety issues in motor vehicle transportation of infants and small children. 2/

The 53 accidents were identified with the assistance of State and local law enforcement agencies, State highway safety agencies, and other organizations, including Physicians for Automotive Safety, the American Academy of Pediatrics, the American Association for Automotive Medicine, the National Child Passenger Safety Association and some of its State and local chapters, the Highway Safety Research Center of the University of North Carolina, the University of Michigan Transportation Research Institute, the Rehabilitation Institute of Chicago, the National Safety Council and some State and local safety councils, and some of the National Accident Sampling System teams of the National Center for Statistics and Analysis of the National Highway Traffic Safety Administration, U.S. Department of Transportation.

1/ In this report, "child safety seat" is used generally to refer to any of a number of types of child restraint systems, which include infant safety seats, toddler safety seats, convertible child safety seats, booster seats, safety harnesses, and handicapped child safety seats. For a complete description of each of these types, see appendix D.

2/ Case summaries of the 53 accidents investigated for the study appear at appendix E. For ease of reference, the case summaries are organized by topic and are numbered 1 through 53.

On December 7, 1982, based on the preliminary results of its initial investigations, the Safety Board issued Safety Recommendations H-82-59 and -60 to the Governors or Governors-elect of 31 States and the Mayor of the District of Columbia. (See appendix A.) Safety Recommendation H-82-59 urged the adoption of child passenger protection laws requiring the proper use of child safety seats, and Safety Recommendation H-82-60 urged the adoption of comprehensive, statewide child passenger safety programs. When the recommendations were issued, 19 States had passed child passenger protection laws requiring safety seat use. In the next 7 months, 22 more laws were enacted, bringing the nationwide total to 41 child passenger protection laws in 40 States and the District of Columbia. (Additionally, Pennsylvania enacted a law on November 1, 1983. Data hereinafter do not reflect this additional law.)

In early 1983, the Safety Board held regional public hearings in Dallas (January 13, 1983), Philadelphia (February 4, 1983), and St. Louis (March 24, 1983), on the problem of child passenger safety. The hearings were held to gather information for the public record and to increase public awareness of the problem of child motor vehicle deaths and injuries and the importance of proper child passenger protection. Testimony was received from 54 witnesses, including families of children involved in crashes, accident investigators and law enforcement officials, pediatricians and other medical personnel, highway safety and accident prevention specialists, and State legislators. (See appendix B.)

This report presents the findings and recommendations of the Safety Board's child passenger protection study. The report presents investigative results; illustrates the problem of deaths and injuries of infants and small children in motor vehicle accidents and the benefits of proper use of child safety seats; identifies misuse of child safety seats as a significant problem in accidents; identifies other problems and issues developed in the accident investigations; identifies a need for improvements in child passenger safety laws and programs; identifies elements for inclusion in an effective child passenger protection law; and includes further recommendations to reduce child passenger fatalities and injuries.

BACKGROUND

In the United States, more infants and small children under 5 years old are killed or crippled while riding as passengers in motor vehicles than the total killed or crippled by the seven common childhood diseases that children are immunized against. Motor vehicle accidents are the number one traumatic cause of epilepsy, and are a major traumatic cause of mental retardation and spinal cord injury in children. In the last 5 years (1978 through 1982), nearly 3,400 child passengers under 5 years old were killed in traffic accidents, 3/ and more than 250,000 more were injured. Most of these deaths and injuries are preventable; up to 90 percent of the fatalities and 67 percent of the disabling injuries could have been prevented by the proper use of child safety seats. 4/

3/ Fatal Accident Reporting System data base, National Center for Statistics and Analysis, National Highway Traffic Safety Administration, U.S. Department of Transportation (See appendix C, "Child Passenger Fatalities by State, Age 0 through 4, 1978-1982").

4/ Robert G. Scherz, M.D., "Summary of Statistics on the Children Age 0-15 Years Who Were Passengers in Motor Vehicles Involved in Accidents," Washington State Seat Belt Study 1970-77, Mary Bridge Children's Health Center, Tacoma, Washington, 1978; and Robert G. Scherz, M.D., "Restraint Systems for the Prevention of Injury to Children in Automobile Accidents," American Journal of Public Health, Vol. 66, No. 5, May, 1976.

Child car seats have been available for some 50 years as a means of keeping children confined, supported, and elevated for better behavior and a better view from windows in motor vehicles. However, it has only been in the last 10 to 15 years that the injury prevention potential of child safety seats has been recognized and more fully developed as a result of the efforts of concerned physicians and engineers, initiatives by individual manufacturers, and the adoption of a Federal safety regulation.

Child safety seats are specially designed to prevent the infants or small children riding in them from striking the vehicle interior during a collision or sudden stop. In a head-on collision into a brick wall or a tree at 30 mph, the car stops almost instantly, but the occupants inside continue traveling forward at 30 mph, or 44 feet per second. Unless restrained by some means, the car's occupants will collide with brutal force into whatever object is in front of them — the instrument panel, windshield, steering wheel, or seatback. Previous accident investigations by the Safety Board have shown that a frontal collision into a tree can be fatal to an unrestrained adult at speeds as low as 19 mph. 5/

Modern child safety seats are designed to provide more protection for infants and small children than a standard vehicle safety belt. They work by using a safety harness or protective shield, or both, to distribute the crash forces over a larger area of the child's fragile body than a safety belt, and to cushion the body to a stop before the child can strike the vehicle interior.

Federal Safety Standard

All child safety seats marketed in this country must meet the requirements established by the National Highway Traffic Safety Administration (NHTSA) in Federal Motor Vehicle Safety Standard (FMVSS) 213, 6/ Child Restraint Systems, which became effective April 1, 1971. Through the efforts of Consumer's Union and concerned health and safety professionals, FMVSS 213 was later upgraded to include stricter requirements for safety seats manufactured on or after January 1, 1981. Currently FMVSS 213 requires that safety seats be dynamically tested in a simulated 30-mph frontal crash using a test dummy representative of a 6-month-old infant or a 3-year-old toddler (convertible safety seats must be tested with both dummies). During the tests, the forward movement of the dummy's head and knees and the amount of force exerted on the head and chest are measured. To pass the test, the seats must not allow such forces to exceed certain limits. Safety seats and booster seats which require use of a tether strap must pass both a 30-mph crash test with the tether strap used and a 20-mph "misuse" test without use of the tether strap. Safety seats designed with a nonprotective front armrest also must pass a misuse test at 20 mph with the harness unfastened and only the armrest in front of the dummy.

FMVSS 213 also requires that safety seat manufacturers label their products with certain basic instructions for use and that they provide a place on the safety seat where the complete, detailed usage instructions may be stored. The label must identify the manufacturer and must contain a statement warning the user that failure to follow the instructions exactly "can result in your child's striking the vehicle interior during a sudden stop or crash."

5/ Special Study of Motor Vehicle Collisions with Trees Along Highways, Roads and Streets: An Assessment, Report No. NTSB-HSS-81-1, May 13, 1981.

6/ Code of Federal Regulations, Title 49, Part 571, Section 571.213, U.S. Government Printing Office, Washington, D.C., 1982.

Although many child restraint systems have been certified under FMVSS 213 for motor vehicle use, few have received the approval of the Federal Aviation Administration (FAA), which specified additional testing requirements for child restraint systems for use in aircraft. 7/ In a February 24, 1983, recommendation letter (Safety Recommendation A-83-1) to the FAA, the Safety Board expressed its concern that the extremely limited availability of FAA-approved child safety seats not only limits the opportunity for children to be protected adequately during air travel, but also discourages families traveling by air from taking their child safety seats with them for motor vehicle use before and after the air travel portion of their trips.

To increase the availability of child safety seats for use before, during, and after air travel, in August 1983 the NHTSA began rulemaking action to combine the existing FMVSS 213 requirements and the separate FAA requirements into a single standard administered by a single agency. 8/ To speed certification of child restraint systems for use in both motor vehicles and aircraft, the NHTSA also began a program to test the ability of current child restraint systems to meet the FAA requirements for aircraft use.

Public Education and Safety Seat Loan Programs

Between the mid-1960's and the late 1970's, efforts to increase public awareness of the problem of child passenger safety spread from individual pediatricians and other concerned physicians to a wide variety of organizations. As early as 1963, two out of five pediatricians were counseling parents on the need to protect their children in motor vehicles; 9/ by 1978, the American Academy of Pediatrics began to expand its ongoing support for these efforts by developing a national "First Ride, A Safe Ride" program. The program, which was developed to encourage child safety seat protection for small children beginning with the newborn's first motor vehicle trip (usually the trip home from the hospital), was officially launched in 1980.

Some of the earliest organized efforts to educate the public about child passenger protection were undertaken by Physicians for Automotive Safety, a national organization now based in Armonk, New York. Through its efforts, child passenger safety education programs for new parents had been established in a number of hospitals throughout the country by the early 1970's, and with its help, concerned parents in Seattle, Washington, founded a national organization, Action for Child Transportation Safety (ACTS), in 1972. ACTS developed educational brochures, pamphlets, films, slides, posters, and bumper stickers; encouraged the development of public education programs in many communities throughout the country; and with funding from the NHTSA, ACTS developed an "Early Rider" educational curriculum for health professionals. After 10 years of active public service, ACTS was dissolved as a national organization due to financial and other reasons.

By the mid-1970's public education programs were being conducted by many hospitals, community volunteer and civic organizations, and State public health and highway safety agencies. Safety seat loan programs also were established by hospitals,

7/ On May 28, 1982, the FAA issued Technical Standard Order (TSO) C-100, Child Restraint Systems. The intent of this TSO is to describe the minimum performance requirements for infant and child restraint devices permissible for use on aircraft as "approved" seats.

8/ NHTSA Notice of Proposed Rulemaking, "Child Restraint Systems for Use in Motor Vehicles and Aircraft," Docket No. 74-09, Notice 13, Federal Register, Vol. 48, No. 158, August 15, 1983, pp. 36849-53.

9/ I.B. Pless, K. Roghmann, and P. Algranati, "The Prevention of Injuries to Children in Automobiles," Pediatrics, Vol. 49, No. 3, March 1972.

community groups, and public agencies to encourage safety seat use by making them widely available at nominal cost. The NHTSA sponsored two series of regional workshops during the 1970's to improve coordination and communication among the various groups involved and to foster the sharing of information about effective approaches to child passenger safety. Public education efforts also were supported at the Federal level by the U.S. Department of Health, Education and Welfare, which had developed printed materials to guide parents in selecting child safety seats as early as 1967. 10/

In 1981, the National Child Passenger Safety Association (NCPSA) was formed as a national non-profit organization dedicated to working with individuals, organizations, and government agencies to ensure the right of every child to protection against death or injury while being transported as a passenger in a motor vehicle. Its national headquarters is located in Ardmore, Pennsylvania, and it is affiliated with State and local child passenger safety associations throughout the country. NCPSA also serves as a central national clearinghouse to assure the uniformity and accuracy of child passenger safety information disseminated to safety and health professionals, legislators, and the public.

Public education and safety seat loan programs were effective in increasing safety seat use, especially when both programs were conducted together, 11/ but these programs alone were unable to bring about usage increases of the magnitude necessary to achieve proper protection for the majority of infants and small children nationally. While programs in some communities achieved significant increases in safety seat use, most children under 5 years old continued to be transported unrestrained even by safety belts, which are found almost universally in automobiles. 12/

Child Passenger Protection Laws

To increase the use of child safety seats and safety belts by infants and small children and reduce child passenger fatalities and injuries more effectively, most States have adopted a legislative approach. As of July 1, 1983, 40 States and the District of Columbia had enacted child passenger protection laws to "immunize" infants and small children against death, disability, and disfigurement in traffic accidents (see figure 1). Twenty-seven were already in effect on that date, and the remainder were scheduled to go into effect on various dates between then and July 1, 1984.

10/ Randy L. Perry, K.W. Heathington, John W. Philpot, C.A. Penty, and Mark Lo, Transportation Center, University of Tennessee, The Impact of A Child Restraint Law and a Public Information and Education Program on Child Passenger Safety In Tennessee, prepared for the National Highway Traffic Safety Administration, U.S. Department of Tranportation, October 1980 (Report No. DOT HS-805 640).

11/ K.S. Reisinger and A.F. Williams, Evaluation of Programs Designed to Increase the Protection of Infants in Cars, Insurance Institute for Highway Safety, Washington, D.C., 1977.

12/ James L. Nichols, Ph.D., Effectiveness and Efficiency of Safety Belt and Child Restraint Usage Programs; The Safety Potential of Safety Belts, Child Restraint and Programs to Promote Their Use, National Highway Traffic Safety Administration, U.S. Department of Transportation, January 1982.

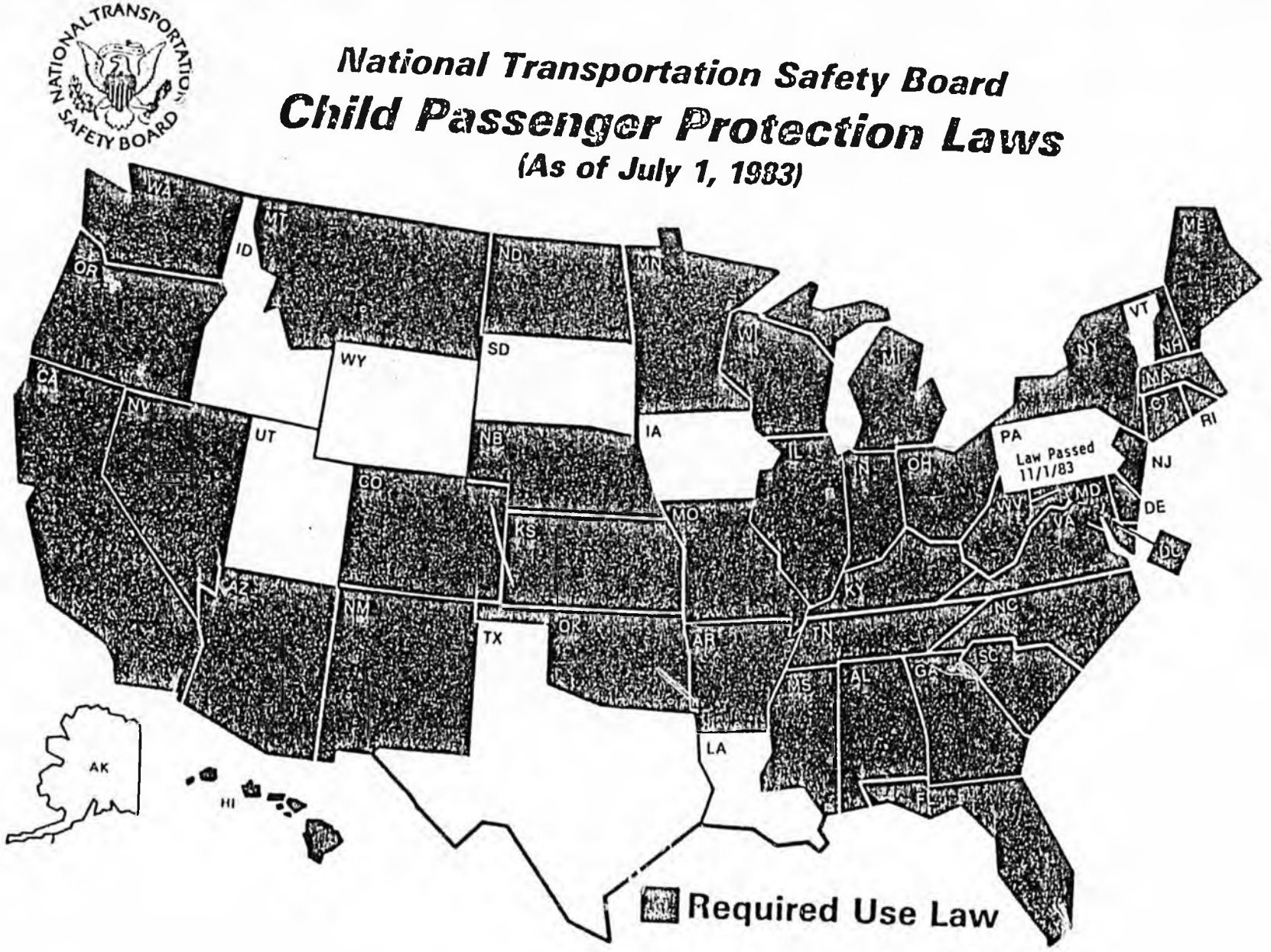

Figure 1.—Child Passenger Protection Laws.

UNRESTRAINED INFANTS AND SMALL CHILDREN—UNSAFE AT ANY SPEED

Case 15: About 6:55 a.m. on April 16, 1983, a 1974 Chevrolet Chevelle sedan was traveling about 25 mph on a four-lane boulevard in Paramount, California, when the driver of a pickup truck approaching from the opposite direction attempted to make a left turn across the path of the Chevelle. The driver of the Chevelle braked sharply but was unable to avoid colliding into the right front of the pickup truck. The Chevelle was occupied by an 18-month-old girl seated on a fold-down center front armrest, her mother, who was driving, and her grandmother, who was seated in the right front. All three occupants were unrestrained and were thrown forward and to the left on impact. The mother and grandmother in the Chevelle and the driver of the pickup truck received minor injuries. The 18-month-old girl struck the windshield with her head, the instrument panel with her chest, and the gear selector lever with her neck. She died of multiple injuries within 10 hours after the accident. (NTSB Investigation No. LAX83HCR13)

Accident investigations conducted by the Safety Board show that it is extremely dangerous for an infant or small child to ride without proper protection in a motor vehicle at any time, under any circumstances. In the 23 accidents investigated involving unrestrained infants and small children, 18 children were killed and 9 were injured, including infants as young as 8 days, 5 weeks, and 7 weeks old. 13/ Most of the accidents were not severe, and other (older) occupants of the same vehicle, while injured, survived.

The accidents which killed or injured unrestrained infants and small children included minor accidents and cases of severe braking without a collision on city business or residential streets, as well as more serious crashes on highways. Some of the children were killed or seriously injured on routine trips as little as 50 yards from the family's home while going to or returning from shopping, taking a child to a babysitter's, traveling to a local restaurant, going to visit grandparents or other relatives, driving a friend or relative to work, or taking the children out for ice cream.

The investigations illustrate that, far from being less subject to the risk of death or injury, unrestrained infants and children are more likely to be killed or to suffer severe injuries if they are being held in the arms of an adult or if they are ejected from the vehicle. Virtually all fatal and serious injuries to unrestrained children in the accidents investigated were head or spinal injuries resulting from being propelled into the instrument panel, windshield, or other interior surfaces, and from contacts with other unrestrained occupants. These injuries are common to all unrestrained infants and children. In addition, unrestrained children being held in the arms of an adult are often crushed into the instrument panel or other interior surfaces by the weight and acceleration of the adult holding them. Further, unrestrained infants and children who are ejected from the vehicle suffer collisions with exterior surfaces, such as another vehicle or the pavement, or are crushed by the vehicle's overturning on top of the child (in addition to injuries sustained from contact with the vehicle interior before or during ejection).

13/ The accidents involving unrestrained infants and small children were Cases 1-18, 25, 27, 29, 30, and 38.

The investigations show also that an unrestrained infant or small child is in danger of being killed or injured in certain common, everyday driving incidents even if the vehicle is not involved in a crash. Such noncrash incidents include sudden stops, swerves, turns, and children falling from moving vehicles.

In addition, unrestrained children can cause accidents which endanger not only the children involved and other occupants of the vehicles in which the children are riding, but other motorists, their passengers, pedestrians, and bicyclists.

The Vulnerability of Infants and Small Children to Fatal or Serious Injury

Medical witnesses heard by the Safety Board in the regional public hearings on child passenger safety identified several reasons why infants and small children are more likely to be killed or injured even in minor accidents or noncrash incidents. According to pediatricians and specialists in pediatric surgery and pediatric emergency medicine, infants and small children have less built-in anatomical protection against injury. Muscle mass, which provides some protection in adults, is less well-developed. The skull of an infant or small child is thin and soft, and an infant has an open fontanelle, or boneless area, which does not close until late in the first year of life. The ribcage of an infant or small child is flexible and offers less protection for the chest and upper abdominal organs. The spine also is less protected and susceptible to injury. Consequently, infants and small children are subject to a significantly higher risk of serious head, spine, chest, and abdominal injury in accidents than are older passengers. In infants and small children, the head is also large and heavy in relation to the body, resulting in a higher center of gravity. In an accident, the infant or small child is likely to be catapulted through the air toward the vehicle's point of impact head-first as a helpless "unguided missile" or human torpedo, into a violent collision with the vehicle interior.

When infants and small children are propelled against the vehicle interior, they do not benefit as much as adults from padding and energy-absorbing materials which, if they are provided, are placed in areas more likely to be contacted by adults. Infants and small children also are more likely to contact the protruding controls, knobs, door handles, window cranks, and ashtrays usually found on the instrument panel, doors, and seatbacks. Finally, injured children do not show symptoms of injuries in the way that adults do, and their injuries are more difficult to diagnose and treat effectively.

According to testimony given in Philadelphia by the President of Physicians for Automotive Safety:

> In a crash, children are projected so frequently head-first, helpless missiles striking unyielding interior surfaces, or worse, are ejected from the car, sustaining so frequently irreversible brain damage. More American children have been rendered paralyzed, epileptic, or mentally retarded by car accidents than by any other trauma or crippling disease. Considering the rather delicate aspects of infant and child anatomy -- skin, torso, skeletal weaknesses — the devastating injuries to [unrestrained] children in traffic accidents should be no surprise.

Children Riding in the Arms of Adults—The Most Dangerous Way to Travel

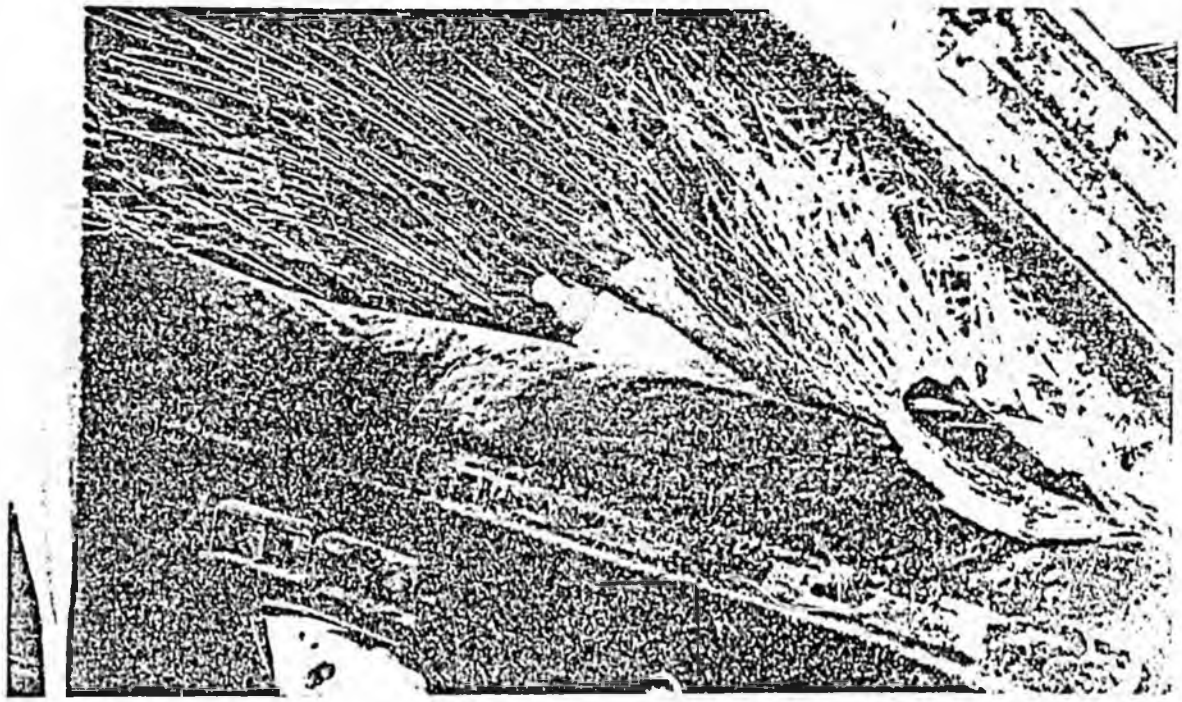

Figure 2.—Head-on Collision on July 27, 1982, near Addison, New York.

Case 1: About 5:15 p.m. on July 27, 1982, a Dodge sedan traveling on a two-lane State Route near Addison, New York, crossed the yellow centerline and collided head-on with a Ford sedan. The Dodge was occupied by three adults and two infants, all of whom were in the front seat unprotected by safety belts or child safety seats. The infants, ages 5 months and 15 months, were riding in the laps of their parents. The two infants were crushed into the dashboard by the weight and acceleration of their parents' bodies and died of massive head injuries. (See figure 2.) The parents and the driver survived with moderate injuries. (NTSB Investigation No. NYC82HCR05)

Case 2: About 5:28 p.m. on November 2, 1982, a Subaru station wagon occupied by a man, his wife, and their 5-week-old baby was traveling about 32 mph on East Riverside Drive in Austin, Texas, when it was struck head-on by a Ford sedan that crossed the centerline traveling about 57 mph. At the time of impact, the infant was being held in the arms of his mother while her husband drove. The mother and father, who were not using safety belts, received minor-to-moderate injuries. The 20-year-old driver of the Ford, who was charged with driving while intoxicated, received bruises on both legs. The baby was crushed into the dashboard by the weight and acceleration of his mother's body and died at the hospital from massive head injuries. (NTSB Investigation No. MKC83HCR02)

Eight of the accidents investigated involving 10 infants held in the arms of adults or of another child passenger illustrate why this is one of the most dangerous ways for infants or small children to travel in a motor vehicle. In these four frontal collisons and four side impact accidents, the 10 adults who were holding infants in their arms were unable to protect them from harm. Nine lap-held infants ranging in age from 5 weeks to 15 months were killed, and one infant survived with head and facial injuries.

The investigations show clearly that a mother's arms (or the arms of any person) are not a safe place for an infant in a motor vehicle. In a 30-mph collision, a 20-pound infant who is unrestrained can generate a propelling force of 300 to 600 pounds. Experiments have shown that even a restrained adult cannot hold onto and protect a lap-held infant in a moderate collision, and that many adults may not be able to protect a lap-held infant even in a minor collision. 14/ If the adult is unrestrained, the lap-held infant is subject to being crushed against the vehicle interior by the adult's body, which, being heavier, can generate a propelling force of several thousand pounds in a moderate accident.

In the frontal collisions, the six adults who were holding infants in their arms not only were unable to protect them, the adults also increased the severity of the injury to the infants. At least four of the infants were crushed into the dashboard or windshield by the bodies of the adults who were holding them, causing massive, fatal head injuries to the infants. In one accident, a lap-held infant was killed, although another infant who was lap-held in the rear seat received relatively minor head and facial injuries from being thrown into the rear of the front seatback. In all four frontal collisions, the lap-held infants who were killed were the only fatalities in the vehicle. None of the adults holding infants who were killed in frontal collisions received more than minor or moderate injuries because the infants cushioned the impact of the adult with the vehicle interior. In two cases, the infant's mother or grandmother reported that the baby was "still in my lap" or they were "still holding" the baby after the crash. Both infants were fatally injured by being crushed into the instrument panel.

In the side impact collisions, infants were propelled from the arms of the persons holding them and received fatal injuries from contact with the vehicle interior (or in one case, from being crushed by the vehicle after ejection).

The accidents investigated did not include any cases of a safety belt being fastened around both the adult and the infant in the adult's lap, although the Safety Board would expect this also to produce very severe crushing forces on the infant in a crash.

Increased Risk of Death for An Unrestrained Child Ejected from the Vehicle

Case 7: About 12:30 a.m. on July 26, 1982, a 1976 Chevrolet sedan occupied by a young couple and their two-year-old daughter who were returning home after a weekend visit to the child's grandmother was traveling on a two-lane State Route in Maddox, Maryland, when the driver failed to negotiate a curve and the vehicle ran off the road. The Chevrolet sideswiped a utility pole, severed a wooden signpost, and descended a 4-foot embankment, sliding on its side until it rolled over completely and came to rest on its wheels in a soybean field. The two unrestrained adults received minor injuries. The 2-year-old girl, who was sleeping unrestrained on the rear seat, was ejected from the vehicle and died of massive head injuries. (NTSB Investigation No. NYC 2HCR03)

14/ D. Mohan and L. Schneider, "An Evaluation of Adult Clasping Strength for Restraining Lap-Held Infants," Human Factors, Vol. 21, No. 6, The Human Factors Society, Inc., 1979.

Case 8: About 6:25 p.m. on November 28, 1982, the driver of a 1982 Oldsmobile Custom Cruiser station wagon was cresting a hill on the New York Thruway when he saw the brake lights of vehicles stopping and colliding on icy pavement ahead and attempted to stop. The station wagon skidded first to the left, then to the right on the slight downgrade and struck the rear of a vehicle with its left side, shattering the left rear side window. The Oldsmobile was traveling about 27 mph when the impact occurred, and the vehicle it struck was traveling about 10 mph. The Oldsmobile was occupied by two adults in the front seat and their two children, who were sleeping on top of the folded down rear seatback which formed part of the station wagon's rear cargo area. The two restrained adults received minor injuries. The father, who was wearing a lap/shoulder safety belt in the driver's seat, sustained a strained shoulder and the mother, who was wearing a lap/shoulder safety belt in the right front, sustained a strain of the lower right leg. The two unrestrained children, ages 3 and 5 years old, were ejected from the cargo area through the shattered left rear window of the station wagon, struck the roof and hood of the other vehicle, and collided with the pavement. They slid on the ice and came to rest on the roadway and shoulder about 50 feet ahead of the vehicles' point of rest. Both children sustained multiple injuries, including fatal head injuries probably received when they struck the pavement. (NTSB Investigation No. DCA83HCR03)

A particularly serious hazard to unrestrained infants and small children in accidents, in addition to their being propelled into violent collisions with the vehicle interior and other occupants, is ejection from the vehicle. Ejection increases the potential for additional injury from windshield and window glass and collisions with the pavement, other vehicles, and other exterior objects, thereby compounding injury severity and further reducing the chances of survival. In five accidents investigated by the Safety Board, six unrestrained children under 5 years old and one 5-year-old were ejected from the vehicle during collision impacts or overturn (Cases 7-11). All but one of the children ejected were fatally injured. An additional accident involving a child seated on a safety seat in which he was not restrained by a safety harness or shield resulted in ejection with fatal injury (Case 42).

The only child ejected who was not fatally injured suffered serious injury in a minor accident (Case 9) in which the only other occupant of the vehicle, an adult who also was unrestrained, remained in the vehicle and escaped without injury. The 3-year-old boy who was ejected sustained a concussion and facial and knee abrasions from contact with the vehicle interior, and a fractured elbow. The boy's collision with the pavement probably contributed to the severity of his head injury.

One of the accidents involving ejection (Case 11) was an extremely severe head-on collision with a tractor-semitrailer. Two children who were unrestrained in the rear seat of the case vehicle and one unrestrained adult in the front seat were ejected and fatally injured. The unrestrained driver was thrown into the rear seat and remained in the vehicle, but was fatally injured. While the proper use of child safety seats probably would have prevented ejection and might have enabled the two children to survive, data on the performance of child safety seats under such extremely severe impact forces are insufficient to support a finding as to the probability of the children's survival in this accident had they been properly restrained. In this case, the possibility of the children's survival, even with proper use of child safety seats, was compromised by the unrestrained driver being thrown into the rear seat.

In their testimony in the regional public hearings, doctors and law enforcement officers cited other accidents involving ejection of children with fatal or severe consequences. One mother's testimony described an accident in which her unrestrained 3-year-old son was ejected and killed, while her unrestrained 22-month-old daughter remained in the car and survived, although she was severely injured. (See appendix F.)

Noncrash Incidents — Unrestrained Children Killed or Injured During Swerves, Turns, and Sudden Stops

Case 12: About 2:30 p.m. on October 28, 1982, a mother, her two children, and their grandmother were departing a local convenience grocery store in Mt. Vernon, Kentucky, to return home. The grandmother was driving her 1973 Chevrolet station wagon, and the children's mother was seated in the right front. Her 4-month-old daughter was properly harnessed in a child safety seat in the center front, and her 4-year-old son was in the rear seat. As they drove away from the store, the boy was standing up, leaning over the front seatback and playing with his sister. Suddenly, as the station wagon was negotiating a slight left curve, the 4-year-old boy fell to the pavement through the right rear door when it opened for undetermined reasons. Before his grandmother could stop the station wagon, the boy had been run over and fatally injured by the right rear wheel. (NTSB Investigation No. MKC83HCR01)

Three investigations of noncrash incidents highlight one of the most tragic and least recognized kinds of accidents that can occur to unrestrained child passengers -- the kind that involves no crash or external impact but results in death or injury to an unrestrained child. Each noncrash incident investigated involved a child either falling from a moving vehicle or being propelled into the windshield in a sudden stop.

In Case 43, a 2-month-old infant fell to the roadway when the partially open right front door swung wide as his mother backed the car into the road in back of their house. The infant was run over by the right front wheel of the car and fatally injured. Because the infant had been seated in a child safety seat with the harness not fastened and the safety seat not secured to the vehicle, the infant was considered unrestrained.

Case 13 involved a driver who made a sudden stop to avoid collision with another vehicle that made an unexpected maneuver. Although he was traveling only 25 to 30 mph, the driver was powerless to protect his unrestrained 4-year-old son. The boy was thrown head-first into the windshield and sustained moderate head and facial injuries, although the vehicle was not involved in a collision and no other person was harmed. In each noncrash incident investigated, the proper use of either a child safety seat or a safety belt would have prevented the child's death or injury.

Pediatricians and surgeons testified in the public hearings that in their professional experiences, cases of unrestrained children injured in noncrash incidents are common. One doctor described the case of a 6-month-old infant riding in his mother's lap, who was fatally injured in a sudden stop when his head was crushed against the instrument panel by his mother's body. No one else was injured in the incident. Evidence suggests that at least one out of every four or five children injured while riding as passengers in motor vehicles is injured in a noncrash incident. Moreover, because nonfatal, noncrash incidents typically are not reported to or investigated by police, more than 20 percent of all injuries to child passengers may not be included in motor vehicle injury statistics. 15/

15/ Phyllis F. Agran, M.D., M.P.H., "Motor Vehicle Occupant Injuries in Noncrash Events," Pediatrics, Vol. 67, No. 6, American Academy of Pediatrics, June 1981.

In the course of normal law enforcement activities, law enforcement officers have significant opportunities to identify usage errors, to provide the user information as to how misuse errors can degrade safety seat performance, and to encourage corrective action. Data on safety seat use and misuse in actual crashes, which could be collected in police traffic accident reports and could be included in a State's traffic accident data system, are needed to identify the kinds of problems that are occurring, as a basis for adjusting child passenger safety programs to combat those problems more effectively. Some jurisdictions have conducted training for police on safety seat use, and an increasing number of jurisdictions have tried to improve the occupant restraint data collected in accident investigations and to ensure that limited child safety seat data are collected and reported to the traffic accident data system. Generally, however, these kinds of activities have been limited. In virtually all Safety Board-investigated accidents which involved safety seat misuse, the misuse was not identified in the police report of the accident.

Another reason for police training to identify safety seat misuse is that, in some cases, news reports relying on police-reported information will report that a child was killed in a safety seat in an accident, without reporting, for example, that the safety harness was not fastened around the child and that the child was, in effect, unrestrained. One accident investigated by the Safety Board in North Carolina (Case 3) was originally reported as involving an infant killed in a safety seat. The investigation established that the safety seat was being carried loose and unused in the rear of the car when the accident occurred. The prompt identification of safety seat misuse (or nonuse) in accidents can help to avoid unintentionally misleading media reporting, which may undermine the public education efforts undertaken by State and local jurisdictions.

Improving Safety Seat Design, Instructions, and Labeling.—The misuse problems identified in the accidents investigated by the Safety Board indicate that it is absolutely essential that safety seat design and instructions for use of safety seats be as simple, clear, and precise as possible. However, trained professional highway accident investigators familiar with child safety seats and their use found that instructions accompanying many safety seats involved in the accidents were complex, imprecise, confusing, and not clearly illustrated. This was especially true for convertible models where the thresholds specified for conversion from forward-facing to rear-facing orientation and for changes between infant and toddler harness routing were variously specified in terms of when a child can sit upright by himself, a height or height range, a weight or weight range, or a sitting height (which requires a special measurement exclusively for this purpose). In some cases, two different standards were used, and, in one case, the instructions specified the use of a cushion under the child "if the child sits too low in relation to the shield" without any guidance for determining how low is "too low."

In one study 23/ of factors affecting the acceptance and use of child safety seats, "observations made during the study concerned the role of the marketplace and Federal regulation in adversely affecting the design of child restraints. Marketing reactions to the preferences of ill-informed consumers have sometimes encouraged cumbersome and uncomfortable systems with "something in front," to the exclusion of innovations in the form of harness-only and other systems." The study concluded that child safety seat designers "need to concentrate on obvious, simple systems that accommodate real children."

23/ Kathleen Weber and Nancy Polchik Allen, "Child Restraint Systems: Factors Affecting Their Acceptance and Use," The HSRI Research Review, University of Michigan Highway Safety Research Institute, Ann Arbor, May-June 1982, Vol. 12, No. 6.

Some recent revisions of instructions have resulted in improvements. For example, Questor Juvenile Furniture Company made significant improvements in instructions issued with one of its safety seats, including improvements which were suggested by the findings of one of the Safety Board's first accident investigations for the child passenger protection study (Case 43). The instructions were revised with the assistance of a child passenger safety consultant engaged for that purpose. Some manufacturers also have begun to use labels on the safety seat to identify correct safety belt routing locations. These kinds of initiatives can help to make the correct locations readily identifiable, even when the detailed usage instructions are not available or are not used.

FMVSS 213 requires that child safety seats have an instruction label attached to the safety seat itself, and that a more detailed instruction booklet be furnished with the safety seat. However, in the accidents investigated, labels of some of the safety seats had been torn off or were missing, wrinkled and difficult to read, or abraded. In some cases involving misuse, including cases involving children who were killed or injured, the family did not have any instructions because they were not included with the seat when it was purchased second-hand at a yard or garage sale or when it was handed down by a friend or relative. Misuse appeared to be a prevalent problem in these cases, and some of the seats were incomplete, with part of the harness missing, when they were acquired. The family did not have the detailed usage instructions and did not realize that the safety seat was not complete.

SAFETY BELT USE BY SMALL CHILDREN

Case 52: About 11:45 a.m. on November 25, 1982, a 1979 Ford sedan occupied by a 17-year-old driver and his 18-month-old niece was traveling on a 2-lane U.S. highway near Cynthiana, Kentucky, when the Ford crossed the centerline in a curve and collided head-on with a 1981 Oldsmobile sedan. The unrestrained 17-year-old driver of the Ford sustained fatal head, neck, and chest injuries. The 18-month-old girl, secured by an adult lap safety belt in the center front seating position, sustained minor injuries which included facial abrasions and a laceration of the upper lip. (NTSB Investigation No. ATL83HCR01)

Emphasis on the need for special protection for infants and small children may have led to an incorrect perception that safety belts do more harm than good to children in crashes. 24/ At a time when more children are riding in safety seats than ever before, nearly all infants and small children who are not riding in safety seats are being transported completely unrestrained — without even the use of available safety belts -- and the use of safety belts by older children is rare. 25/ There appears to be a need to develop a better public understanding of the benefits and limitations of safety belt use by children both to encourage greater use of child safety seats and other child restraint systems for superior protection, and to reduce the incidence of children being transported unrestrained when safety belts are available.

24/ Physicians for Automotive Safety, "Safety Belts OK for Small Children," PAS News, Rye, New York, Fall 1982 - Winter 1982-83.

25/ James L. Nichols, Ph.D., Effectiveness and Efficiency of Safety Belt Usage Programs: the Safety Potential of Safety Belts, Child Restraints, and Programs to Promote Their Use, National Highway Traffic Safety Administration, U.S. Department of Transportation, January 1982.

Testimony at the public hearings and other research and accident data from several countries 26/ indicate that children of all ages (including infants) generally are safer in crashes if they are wearing safety belts, especially in the rear seat, than if they are unrestrained. Pediatricians and surgeons testified that adult safety belts can prevent the ejection of children, which would be likely to result in fatal or severe injury, and can prevent or reduce the occurrence of fatal and serious head injuries, irreparable brain damage, and other serious injuries which may be suffered by unrestrained children who are thrown against the vehicle interior or other passengers in a crash. Safety belt use also can be expected to be virtually 100 percent effective in preventing child fatalities and injuries in noncrash incidents. 27/

The limitations of safety belt use by children are known in a general sense, but have not been fully crash tested in the laboratory, or fully documented in actual crashes (largely because safety belt use by children is rare). Several decades of medical research beginning in the 1920's identified unique anatomical characteristics of infants and small children. In the 1950's and 1960's researchers examining the question of effective crash protection for children emphasized that infant and child anatomy differs from that of adults in a number of ways which make the use of adult safety belts less effective in protecting infants and children than adults. 28/ The increasing recognition of the need for more effective protection designed specifically for children led to the development of child safety seats and other child restraint systems. The medical evidence that is available and limited data on crash injuries to safety-belted children indicate that while safety belts prevent ejection and prevent or reduce impact injuries to children from contact with interior vehicle structures, safety belt-induced injuries can occur. The risk of these kinds of injuries to children appears to be significantly greater for infants, and generally appears to decrease with age. 29/ However, it is important to stress that this risk is less than the risk of transporting children unrestrained.

Parents and others transporting infants and small children need to be encouraged to at least use safety belts to protect child passengers who otherwise would be transported unrestrained. At the same time, crash test studies and further accident research are needed to provide the public, legislators, and others with better information about the benefits and limitations of safety belt use by children at various ages so that informed choices can be made about child passenger protection. Data currently available are inadequate to answer questions about the relative degree of safety provided by a safety belt to a child at various ages, what the limitations are, and the kinds of results that can be expected in crashes. There is a need especially for a greater understanding of the interaction of safety belts with the body regions where they can be expected to localize

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26/ Allan F. Williams, Insurance Institute for Highway Safety, "Restraint Use Legislation: Its Prospects for Increasing the Protection of Children in Cars," Accident Analysis and Prevention, Vol. II, Pergammon Press. Ltd., 1979; Allan F. Williams and P. Zador, "Injuries to Children in Automobiles in Relation to Seating Location and Restraint Use," Accident Analysis and Prevention, Vol. 9, 1977; and John W. Melvin, Richard L. Stalnaker and Dinesh Mohan, "Protection of Child Occupants in Automobile Crashes," Proceedings of the 22nd Stapp Car Crash Conference, Society of Automotive Engineers, Warrendale, Pennsylvania, 1978.

27/ Phyllis Agran, M.D., M.P.H., Op. Cit.

28/ A.R. Burdi, D.F. Huelke, R. G. Synder, and G.H. Lowrey, "Infants and Children in the Adult World of Automotive Safety Design: Pediatric and Anatomical Considerations For Design of Child Restraints," Journal of Biomechanics, Vol. 2, Pergammon Press, 1969. (Presented at the American Society of Mechanical Engineers Third Biomechanical and Human Factors Division Conference at the University of Michigan, Ann Arbor, June 12-13, 1969.)

29/ Ibid.

crash forces — the pelvis, abdomen, spine, chest, and neck — at different stages of child anatomical development.

Proper child passenger protection for older children also remains a problem. Motor vehicle accidents are the leading cause of death for children at all ages after the early weeks of life. In 1982, nearly 3,500 children ranging from age 5 to age 17 were killed in traffic accidents in the United States. In passenger cars and trucks only, during the last 5 years nearly 18,500 child passengers from age 5 through age 17 were killed in traffic accidents. (See appendix H.) Although substantial progress is being made in improving the safety of child passengers under age 5, little or no progress has been made in the protection of children age 5 and older. Currently, virtually none of the 41 child passenger protection laws are designed to foster the transition of children from safety seat use to safety belt use. A notable exception is the State of New York, which in 1983 enacted legislation which, in each of the next 4 years, gradually will extend the age requirements for mandatory safety seat or safety belt use until children through the age of 9 years will be covered effective April 1, 1987.

Moreover, there is no evidence that use of child safety seats leads to safety belt use later, after a child outgrows conventional safety seats. In the accidents investigated by the Safety Board, 14 child passengers ranging from age 5 to age 17 were unrestrained, including at least two who had traveled in child safety seats until they had outgrown them. Ten of the older children were injured, two fatally. In two other accidents, two children who outgrew their safety seats at age 3 or 4 also were unrestrained when the accident occurred, and both children were killed. Children, beginning when they are too large to use conventional safety seats, need to be protected by either safety belts or booster seats designed for motor vehicle crash protection.

There is a potential for misuse of both booster seats and safety belts. Virtually all booster seats require the use of a tether strap and safety harness unless the seat is used in conjunction with a lap/shoulder safety belt. Considering the results of surveys indicating that failure to install and use a tether strap with conventional safety seats which require them is a common problem, similar problems may be encountered with the use of booster seats. Crash test results for a booster seat used with a lap belt only, without the required shoulder harness or tether strap, suggest that greater injury can occur in a crash than would occur to a child using a lap belt only, and there may be a greater potential for head injury. 30/

While concern about potential neck injuries to small children using an adult shoulder belt passing across the neck are considered by some researchers to be generally unfounded, 31/ one study of children in crashes found that adult safety belts did not provide adequate protection to children when the safety belt was fastened loosely. 32/ Crash tests have identified significant potential for serious injury when a single lap safety belt is fastened around two children. In the tests, the bodies of the dummies collided with each other. 33/

30/ Kathleen Weber and John Melvin, University of Michigan Transportation Research Institute, "Dynamic Testing of Innovative Solutions to Child Protection Problems," presentation at the National Highway Traffic Safety Administration, Washington, D.C., August 16, 1983.

31/ A. F. Williams and P. Zador, Op. Cit.

32/ B. A. Vazey, Child Restraint Field Study, Traffic Accident Research Unit, Department of Motor Transport, New South Wales, Australia, November 1977.

33/ Kathleen Weber, University of Michigan Transportation Research Institute, presentation at Lifesavers Conference sponsored by the National Safety Council and the National Highway Traffic Safety Administration, U.S. Department of Transportation, Denver, Colorado, April 6, 1983.

In one accident investigated by the Safety Board (Case 53), a 3-year-old girl was sharing a single lap/shoulder safety belt with an adult in the right front seat. The child also was out of position on impact, with her head and shoulders lying across the adult's lap. The child sustained moderate head and facial injuries, including a concussion, contusions and abrasions, from striking the unpadded area of the lower right instrument panel. The adult passenger also received moderate injuries.

Another accident investigated by the Safety Board (Case 41) involved a lateral right side impact to the vehicle with secondary impact in the right front. A 4-year-old girl was restrained by a lap-type safety belt in the left rear, next to a 2-year-old boy seated in a forward-facing convertible child safety seat in the right rear. The 4-year-old girl weighed 32 pounds and was 38 inches tall. On impact, her upper body was propelled toward the right, and her head contacted the tubular steel frame of the safety seat, causing fatal injury. The 2-year-old boy in the safety seat sustained minor facial abrasions from contact with the side of the safety seat. The unrestrained driver sustained severe injuries. In this accident, the 4-year-old girl probably would have survived if she had been properly protected by a child safety seat, which would have restrained the movement of her upper torso and head and probably would have prevented any contact with the safety seat in the right rear. However, the accident indicated that further improvements may be needed in child safety seats through additional padding or other means to minimize the injury potential from an unrestrained or lap-restrained occupant contacting a safety seat installed in the vehicle.

THE ECONOMIC COSTS OF CHILD PASSENGER DEATHS AND INJURIES

In addition to the tragic human costs of crash consequences to unrestrained children and their families in terms of fatalities, pain and suffering, physical and mental disabilities, psychological trauma, and the loss of human potential, significant economic costs are paid not just by the families involved, but by virtually all Americans. The total bill for these costs (and the share paid by each citizen) is not well documented because there is no system for collecting these cost data on any broad scale. However, there are indications that the costs are considerable. Moreover, the expenses are paid, directly or indirectly, by every State and Federal taxpayer; everyone who pays premiums for automobile, health, or life insurance; and everyone who pays a hospital bill.

Testimony presented at the Safety Board's public hearings included some indications of the kinds of costs that can be involved when a child is killed or injured in a motor vehicle accident. Doctors and other health profes ·als from several parts of the country testified that the cost of a single emergency room visit for a child with very minor injuries who is treated and released immediately typically would be about $50 (less than the cost of most safety seats), or up to about $200 if a few x-rays or routine tests are necessary. For minor injuries requiring hospitalization, the cost would run several hundred dollars for each day in the hospital, with additional costs for tests x-rays, medications, and followup examinations after discharge.

One review 34/ examined the cases of 12 children between 12 months old and 4 years old who were injured in motor vehicle accidents and treated at St. Louis Children's Hospital in Missouri during one 6-month period. The average hospital stay was 2 weeks, and the costs incurred during their hospitalization alone ranged from $936 to $26,839,

34/ Greg Echele, Director of Community Services Development, St. Louis Children's Hospital, "Case Examples: Cases Treated at St. Louis Children's Hospital Who Were Involved in Automobile Accidents and Survived," unpublished summary.

with an average cost of $6,226. It was estimated that the medical costs for 20 percent of the children were paid by Medicaid funds from Missouri and Federal tax dollars.

In a typical example of a seriously injured child with a broken neck, witnesses testified that the injury would require approximately 21 days in an acute care hospital at a cost of about $600 per day, and an additional 4 months care in a rehabilitation hospital at a cost of approximately $78,000, for a total cost of more than $90,000 (not counting any additional costs which might be expected following hospitalization).

As an indication of the kinds of costs that can be incurred for treatment of children severely injured and disabled in auto accidents, one witness cited an actual case of a patient treated at the Rehabilitation Institute of Chicago and Northwestern Children's Memorial Hospital, which together constitute the largest of the 17 spinal cord injury treatment centers in the United States. 35/ The patient, an 18-day-old girl, was injured in a low-speed collision while taking her second car ride with her grandparents. She was cradled in the arms of her grandmother and on impact was crushed by her grandmother's body, resulting in a brain stem contusion. Three years after the accident, the child was still believed to be cortically blind, and she had not been able to ingest food or breathe for herself.

From the time of her injury to her first birthday, the baby was kept alive by life support systems in the intensive care unit of Children's Memorial Hospital. When she was discharged, the hospital costs were $450,000. At that time she was brought home, where she receives continuous nursing care and must be on a ventilator most of the day.

Before she was 3 years old, the child's care had cost $700,000. Her parents raised more than $15,000 of that amount and their insurance company paid the rest. At an annual cost of more than $100,000 for the child's continuing medical care and rehabilitation, the $1 million limit on the insurance policy was expected to be reached before the child's sixth birthday.

Although this is an extreme example, it is not an isolated case. Another medical witness cited the case of a child who has now been hospitalized for nearly 10 years as a result of a spinal cord injury suffered in a motor vehicle accident, and whose care has cost more than $1 million. 36/ These kinds of cases, and many others involving medical costs of hundreds of thousands of dollars, occur annually.

Besides the economic costs of injuries to children in crashes and noncrash incidents, other evidence suggests that substantial additional costs result from accidents caused by unrestrained children. One study of a majority of the reported accidents which occurred

35/ Testimony of Ms. Mary Beth Berkoff, Director of Accident Prevention, Rehabilitation Institute of Chicago, before the National Transportation Safety Board, Public Hearing on Child Motor Vehicle Passenger Safety, St. Louis, Missouri, March 24, 1983.
36/ Testimony of William A. Anderson, M.D., Director of Emergency Services, The Children's Mercy Hospital, Kansas City, Missouri, before the National Transportation Safety Board, Public Hearing on Child Motor Vehicle Passenger Safety, St. Louis, Missouri, March 24, 1983.

in North Carolina during a 5-year period identified 748 accidents caused by unrestrained children. 37/ The accidents occurred when the children either interfered physically with the driver or the vehicle controls, or distracted the driver by falling onto the floor or by moving around the car, etc. Besides the occupants of the vehicles in which the unrestrained children were riding, the accidents involved 562 other persons (other motorists, their passengers, bicyclists, or pedestrians) and resulted in 1 fatality, 572 injuries, and costs of at least $4.1 million. The study found that all the accidents could have been prevented if the children had been properly restrained. In 309 other accidents which resulted in costs of $1.5 million, the information about the accidents was insufficient to determine whether or not the accidents were preventable.

CHILD PASSENGER PROTECTION LAWS—BENEFITS, LIMITATIONS, AND LOOPHOLES

The first child passenger protection law in the United States was enacted in Tennessee in 1977 as the result of a campaign led by pediatricians. Effective January 1, 1978, the law required that children through age 3 be properly protected by a child safety seat when transported by the child's resident parent or legal guardian in a vehicle owned by the parent or legal guardian. The law established a fine of $2 to $10 for violation. The Tennessee law also included an amendment which permitted a child to be held in the arms of an older passenger in lieu of being protected by a child safety seat. The amendment was known as the "Babes in Arms Amendment," but later became known as the "Child Crusher Amendment" after some 13 infants and small children were killed in accidents in Tennessee while riding in the arms of other passengers. The amendment was repealed in 1981. 38/

After enactment of the law, a 3-year public information and education program was begun with funding from the Governor's Office of Highway Safety and the NHTSA. The purpose of the program was to inform the public about the requirements of the law and to provide public education through a campaign which included brochures, billboards, posters, public service announcements, and news media reporting. A child safety program was conducted by the Tennessee Department of Public Health with the goal of establishing safety seat loan programs throughout the State in all 95 county health departments.

Initially, oral warnings were given to violators, then law enforcement officers began to issue citations; aggressive enforcement did not actually begin until September 1979. The Tennessee Highway Patrol in the Department of Safety also developed a positive enforcement policy under which all 800 Highway Patrol cruisers were equipped with child safety seats for troopers to loan to violators on-the-spot. The seats were to be returned at the time of the court appearance, and if the violator could show at that time that a safety seat had been acquired, the law enforcement agency would ask the court to waive the fine and court costs. Although thousands of citations were issued, virtually all

37/ William L. Hall and Forrest M. Council, Highway Safety Research Center, University of North Carolina, "Warning: In Cars, Children May Be Hazardous to Their Parents' Health: The Role of Restraints in Preventing Collisions," Proceedings of the Twenty-Fourth Conference of the American Association for Automotive Medicine, AAAM, Morton Grove, Illinois, 1980.

38/ Testimony of Robert S. Sanders, M.D., before the National Transportation Safety Board, Public Hearing on Child Motor Vehicle Passenger Safety, Dallas, Texas, January 13, 1983; and Robert S. Sanders, M.D., "Legislative Approach to Auto Safety: The Tennessee Experience," in A.B. Bergman, ed., Preventing Childhood Injuries, Report of the Twelfth Ross Roundtable on Critical Approaches to Common Pediatric Problems, Ross Laboratories, Columbus, Ohio, 1982.

violators appeared in court with the required proof, and the assessment of a fine was extremely rare. When given a citation, violators frequently thanked Highway Patrol Troopers for their concern and assistance. In terms of fostering good law enforcement-community relations, the enforcement policy was considered the most effective public relations activity in the history of the Tennessee Highway Patrol. 39/

Child safety seat usage rates in Tennessee began to increase after enactment of the child passenger protection law. After the public information and education and safety seat loan programs were established to support the law, usage rates reached 29 percent, or more than triple the prelaw average of 9 percent. However, the impact of the law and the support programs on usage was considered to have been weakened to some extent because for the first 3 years citizens could also comply with the law without safety seat use by having children ride in the laps of their parents or other passengers. 40/

Before the Tennessee law was enacted, 20 to 25 child passenger fatalities occurred yearly in the State in the 3-and-under age group covered by the law. After the law's enactment and the supporting enforcement, public information and education, and safety seat loan programs were put in place, child passenger fatalities in that age group dropped to 15 in 1980, 10 in 1981, and 6 in 1982. While the reductions may have been affected somewhat by other factors (such as changes in the accident exposure of this age group), the reductions are considered to be attributable primarily to the child passenger protection law and support programs.

In the 5 years following enactment of the Tennessee law, other States gradually began to enact similar legislation, and those States are beginning to report similar results. For example, during the first 10 months after the North Carolina law went into effect child safety seat use by children under age 2 increased from 30 percent to 46 percent and an estimated 8 deaths and 23 serious injuries were prevented. 41/ Since the Rhode Island law became effective on April 1, 1981, Rhode Island has not reported a single child passenger death in the 3-and-under age group covered by the law. During the first 9 months the Michigan law was in effect, total child passenger casualties (fatalities and injuries combined) in the 3-and-under age group covered dropped by 31 percent compared to the same period the previous year, while adult motor vehicle occupant fatalities dropped only 10 percent.

All 41 child passenger protection laws which had been enacted in the United States by mid-1983 contain provisions which define and limit their applicability. While some limitations are necessary, others have the effect of excluding children from the

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39/ Testimony of Sgt. Marion Ramsey, Tennessee Highway Patrol, before the National Transportation Safety Board, Public Hearing on Child Motor Vehicle Passenger Safety, Dallas, Texas, January 13, 1983; and Gene Roberts, Commissioner, Tennessee Department of Safety, "Child Passenger Safety: The Tennessee Enforcement Strategy," paper presented at the International Forum on Occupant Restraint, Toronto, Ontario, Canada, June 1-3, 1981.

40/ Randy L. Perry, et al., op. cit., and Allan F. Williams, "Evaluation of the Tennessee Child Restraint Law," American Journal of Public Health, Vol. 69, American Public Health Association, 1979.

41/ University of North Carolina Highway Safety Research Center, The North Carolina Child Passenger Protection Law: Summary of First Year Experience, Interim Report to the General Assembly, June, 1983.

protection of the law unnecessarily. Consequently, the laws fail to place a clear prohibition on transportation of children unrestrained. Accident investigations illustrate the gaps created by four kinds of limitations: those on the adults responsible for complying with the law; those on the children who must be protected; those based on "personal needs" exemptions; and those which restrict the enforcement of the law. (See Summary of Child Passenger Protection Laws at appendix G.)

Adults Responsible for Compliance

On September 4, 1982, in an accident near Winston-Salem, North Carolina, a 9-month-old girl riding in her grandmother's lap was killed, along with her grandparents (Case 3). A child safety seat that was being carried loose and unused in the rear of the car was ejected during impact and was found lying next to the car after the accident. If the baby had been riding properly secured in that safety seat, rather than riding in her grandmother's lap, she probably would have survived the accident. North Carolina's child passenger protection law had been in effect for 2 months when this accident occurred. The law applies to every driver required to have a North Carolina driver's license when transporting his or her own child under age 2 in his or her own motor vehicle; it does not apply to transportation of children by any other person, including grandparents, other relatives, or friends.

Laws in 33 States, expressly or indirectly, restrict the applicability of the law to residents of the State, or to drivers of vehicles registered in the State, or both. In 16 jurisdictions, the law applies to the child's parent or legal guardian only, and 11 of those laws are further limited to motor vehicles owned by the parent or legal guardian. Three laws are limited to drivers who regularly and customarily transport a small child, and two provide exceptions for use of a temporary or a substitute vehicle.

The effect of these limitations in many cases is to exclude infants and small children from the protection of the law because the person transporting them is not subject to the law. The limitations may have been made for reasons that seemed valid at the time of enactment -- for example, out of concern that having to purchase a child safety seat would be an unreasonable financial burden for persons other than a child's parent or guardian, or for nonresidents who were not subject to similar requirements in their own State. Now, however, four out of five States either already have a child passenger protection law in effect or will have one in effect by mid-1984, and more laws are expected to be enacted by the remaining States. Rather than excluding from the coverage of the law children in nonparental driving situations and allowing them to be transported with no protective restraint, some States, such as California, provide a safety belt option. Under the California law, the child passenger protection requirement may be met by use of either a safety seat or a safety belt in a nonparental driving situation or when a parent is driving someone else's vehicle.

Children Not Required to be Protected

Many children also are excluded from the protection of the law by provisions which limit applicability only to certain children based on age, weight, height, or some combination thereof. The laws vary considerably, with 3 covering children through 1 year old only, 2 extending through age 2, 20 through age 3, 10 through age 4, 4 through age 5, 1 through age 9, and 1 which applies to children 40 inches or less in height. Some laws provide exemptions for children whose weight meets or exceeds 40 pounds or who obtain a physician's certificate indicating that safety seat use is impracticable due to the child's size or weight, or medical reasons. Others provide a safety belt option, rather than an outright exemption, based on age, size, or weight.

In some of the accidents investigated, children who were not covered by an existing child passenger protection law were not using any protective restraint and were killed or injured. For example, in Mt. Vernon, Kentucky (Case 11), an unrestrained 4-year-old boy who was fatally injured in a nonerash incident when he fell from a moving vehicle was 42 inches tall — 2 inches taller than the maximum height specified by the Kentucky law for mandatory safety seat use. This law requires the superior protection provided by a safety seat until a child outgrows it, and then does not require any protection at all.

In an accident in Herkimer, New York (Case 8), a 3-year-old girl and her 5-year-old brother, both unrestrained, were ejected from the family station wagon, collided with another vehicle and the pavement, and were fatally injured. Both children almost certainly would have survived, probably with little or no injury, if they had been wearing safety belts. However, the New York child passenger protection law in effect at that time covered children only through age 4, and, thus, did not apply to the 5-year-old boy. The law did apply to his 3-year-old sister; however, she was 42 inches tall and had outgrown her safety seat. The New York law was amended in 1982 to include a safety belt option for 4-year-old children, but the option was not extended to 3-year-olds too large to use conventional safety seats. In other accidents investigated by the Safety Board involving infants and small children, 10 other unrestrained children over 4 years old were killed or injured. Safety belt options provide a means of extending child passenger protection requirements to older children who are not covered by existing laws as well as to children who cannot use conventional safety seats because of their size or weight.

Exemptions for Nursing, Diapering, or Other "Personal Needs"

An accident which occurred November 2, 1982, in Austin, Texas, involved a young mother who was nursing her 5-week-old son in the front seat of their 1974 Subaru while her husband was driving. All three occupants were unrestrained. A drunk driver traveling in the opposite direction in a 1968 Ford sedan suddenly veered across the centerline and collided head-on with the Subaru. The baby's father was seriously injured and the mother sustained moderate injuries. The 5-week-old baby was crushed into the instrument panel by the weight and acceleration of his mother's body and died of massive head injuries.

Since Texas had not enacted a child passenger protection law, it was not unlawful for the baby not to be properly protected by a child safety seat while he was being nursed by his mother. This practice also would not have been unlawful in five of the States that do have child passenger protection laws. In the five States —Georgia, Michigan, North Carolina, Tennessee, and South Carolina — a child does not have to be properly protected when the child is being nursed, and some of the exemptions extend to situations when an adult is attending to a child's "personal needs" or when a child "has any distress which makes it impractical to use a child restraint system."

"Personal needs" exemptions are based largely on convenience and do not adequately protect the child's health and safety. The exemptions may encourage or perpetuate a false notion that it is somehow "safe" to transport a child without proper protection if the child is being nursed or diapered. However, the Austin, Texas, accident shows that it is dangerous for a child to travel without proper protection while personal needs are being accommodated, even for a brief period. If a child has a personal need which cannot be attended to while the child is properly restrained, it should not be attended to while traveling in a moving vehicle.

Enforcement Limitations

The intent of child passenger protection laws is positive, rather than punitive. As one witness testified in the public hearings, child passenger protection laws are "education with teeth." 42/ Their purpose is to encourage the safe transportation of children and, especially, to encourage families to obtain and use child safety seats to protect infants and small children properly. Consequently, most laws provide that the fine specified for violations either must or may be waived upon showing proof that a child safety seat has been obtained. While the existence of a child passenger protection law in itself serves an educational function, the law must be enforced to be fully effective.

The child passenger protection laws of two States — Arizona and New Mexico -- do not permit law enforcement officers to stop a vehicle solely for the purpose of enforcing child passenger protection requirements. In effect, law enforcement officers in those States are prevented from enforcing the child passenger protection law even when a particularly hazardous situation, such as a child riding in the lap of a driver or passenger or standing in a moving vehicle, is observed, unless the officer has another reason for making a stop (such as a violation of another law). The child passenger protection laws of three other States — Kansas, Kentucky, and Oklahoma — do not provide any penalty for violations, and instead restrict enforcement action to the issuance of an oral or written warning which may be accompanied by printed educational materials provided to violators.

Even in States which do not have such restrictions, law enforcement agencies in many cases may not be conducting an active enforcement campaign. While much of the focus of child passenger safety efforts has been concentrated on the passage of legislation and the development of public information and education programs, there is a growing recognition that the implementation of the laws, and especially their enforcement, has not received sufficient attention. An increasing number of jurisdictions are finding that the passage of a child passenger protection law is just the beginning, and that a considerable amount of effort is required for effective planning and coordination of its implementation.

In addition to the law enforcement training discussed previously, a critical element of implementation is the training and education of law enforcement officers in the positive role that they have in enforcing a child passenger protection law. It cannot be assumed that individual officers and their superiors will automatically be supportive and committed to enforcing a child passenger protection law in the absence of such training and of a written enforcement plan.

The National Child Passenger Safety Association is concerned about the implementation of child passenger protection laws and is in an excellent position to assist the States in identifying implementation problems and developing effective implementation programs which would address the need for effective law enforcement plans and training, public information, education and safety seat loan programs, the evaluation of the effectiveness of such laws and programs, and efforts to combat safety seat misuse.

42/ Testimony of Robert S. Sanders, M.D., before the National Transportation Safety Board, Public Hearing on Child Motor Vehicle Passenger Safety, Dallas, Texas, January 13, 1983.

TOWARD FURTHER ADVANCES IN CHILD PASSENGER SAFETY: ELEMENTS OF AN EFFECTIVE CHILD PASSENGER PROTECTION LAW

Based on the foregoing analysis, the Safety Board believes that to prevent or reduce more effectively the needless death, disability, and disfigurement of children in motor vehicle accidents and nonerash incidents, child passenger protection laws should incorporate the following major elements.

A. Age and Type of Protection

1) For infants and children through 4 years old whose height does not exceed 40 inches and whose weight does not exceed 40 pounds, require use of a child safety seat or other child restraint system; for a child 1 year old or older transported by a person other than his or her parent or legal guardian, or in a vehicle which is not owned by the parent or legal guardian, permit use of a safety belt, preferably in the rear seat, in lieu of a child safety seat.

2) For infants and children through 4 years old whose height exceeds 40 inches or whose weight exceeds 40 pounds, require use of a safety belt, preferably in the rear seat, or a child restraint system, such as booster seat, which is appropriate for the child's height and weight.

3) For all children age 5 and older, require use of a vehicle safety belt or a child restraint system, such as a booster seat.

4) Exceptions: a) when restraint use would be inappropriate for medical reasons or during an emergency; or b) when the number of passengers exceeds the number of seating positions equipped with safety belts, if all safety belts are in use and if preference in use of restraints is given to children.

B. Person Responsible for Child's Protection

The driver is responsible, except when the child's parent or legal guardian is present in the vehicle.

C. Vehicles Subject to Child Passenger Protection Requirements

All vehicles equipped with safety belts at the time of manufacture or currently equipped with safety belts.

D. Specific Prohibitions

1) Temporarily unrestraining a child for nursing, feeding, or diapering.

2) Using household infant carriers or home booster chairs not designed for motor vehicle crash protection.

3) Leaving a child under age 5 secured in a child safety seat or child restraint device in a vehicle that is unattended by an adult.

E. Acceptable Child Safety Seats and Child Restraint Systems

Those which meet applicable Federal Motor Vehicle Safety Standards in effect at the time of manufacture.

F. Proper Use Required

1) A child safety seat or other child restraint system must be used exactly in accordance with the manufacturer's instructions.

2) A safety belt must be used properly, according to the instructions of the vehicle manufacturer.

G. Penalty for Noncompliance

1) An appropriate fine, which may be waived for the first violation upon provision of proof that a child safety seat or other appropriate child restraint system has been acquired within a period of time established by the law.

H. Enforcement

Evidence of violation is sufficient cause for enforcement without the occurrence of a separate violation of law or other prerequisite.

I. Evaluation

Ongoing or periodic evaluations of effectiveness of State law, including measurements of the degree of compliance, the degree of misuse of child safety seats, the degree of enforcement, and accident consequences to restrained and unrestrained child passengers.

CONCLUSIONS

1. It is extremely dangerous for an infant or child to be transported in a motor vehicle without proper protection at any time, under any circumstances.

2. An infant or child in a moving vehicle cannot be restrained and protected properly by being held in the arms of another passenger, which adds the danger of the child being crushed against the vehicle interior by the weight and acceleration of the body of the holder in an accident, and increases the risk of fatal or serious injuries to the child.

3. Ejection of an unrestrained child from a vehicle increases the danger of fatal or serious injury from striking the pavement, other vehicles, or other exterior objects, in addition to the danger of injuries resulting from contact with the vehicle interior before and during ejection.

4. Children riding unrestrained in a motor vehicle are in danger of being killed or injured even if the vehicle is not involved in a crash; death or injury can result from common driving maneuvers, such as sudden stops, turns, swerves, or from the unrestrained child falling from a moving vehicle.

5. Household infant carriers and home booster chairs are not designed to provide any protection for children in motor vehicle accidents and cannot be relied upon to do so.

6. Child safety seats, when used properly according to the manufacturer's instructions, can provide excellent protection against the death or serious injury of children in motor vehicle accidents.

7. A second essential element of child passenger protection is that all other vehicle occupants be properly restrained to prevent fatal or serious injury to a child from violent contact with unrestrained occupants propelled by crash impact forces.

8. Misuse of child safety seats appears to be a significant and widespread problem. While in some kinds of accidents, a misused safety seat may still provide some protection, misuse can reduce or totally negate the protection provided by a safety seat.

9. The most prevalent misuse problem encountered in the Safety Board investigated accidents was the failure to use or to correctly anchor the tether on safety seats which require a tether and which rely on its use for effective crash performance. In almost every case where a tether was required, it was not used, and when it was used, it was sometimes tied to some part of the vehicle, rather than being properly secured to an anchor installed for that purpose.

10. Two of the most safety-critical misuses uncovered in the accidents investigated were the failure to fasten the safety seat harness around the child (or not securing it snugly) and the failure to use the vehicle safety belt (or failure to fasten it in the correct place on the safety seat) to secure the safety seat tightly to the vehicle. In the accidents investigated, these errors allowed infants and small children to be propelled from the safety seat, or both the safety seat and the child to be propelled together, against the vehicle interior.

11. Additional safety seat design improvements may be needed to prevent injury to a restrained or unrestrained vehicle occupant resulting from contact with a safety seat installed in the vehicle.

12. The possibility of developing abdominal load and neck load criteria, anthropomorphic dummies, and dynamic test procedures for certification of child safety seats should be explored by the National Highway Traffic Safety Administration through further research and developmental crash testing.

13. To combat the problem of misuse of child safety seats, additional action is needed to place special emphasis on the misuse problem in child passenger safety public education programs and in safety seat loan programs, to train law enforcement officers to identify misuse in their enforcement and accident investigation activities, to identify through accident data the kinds of misuse problems that are occurring in accidents, to determine their magnitude, and to simplify safety seat design and improve manufacturers' usage instructions and labels.

14. Many children are cut off from the benefits of child passenger protection laws by statutory provisions which unnecessarily limit the scope of the law in terms of the adults responsible for compliance, the children covered by the law, and the circumstances in which the law applies.

15. Virtually none of the child passenger protection laws enacted as of mid-1983 are designed to foster the transition of children from safety seat use to safety belt use; the vast majority of the laws require that a child be provided the superior protection of a safety seat until age 1, 2, 3, 4, or 5 (often with a safety belt option at the upper end of that age range), but permit a child to be transported without any protection whatsoever after the maximum age specified.

16. The proper use of safety belts by infants and small children, although not as effective as the proper use of safety seats in preventing death or injury, should be encouraged for those driving situations in which a child at any age would otherwise be transported unrestrained.

17. Crash test studies and accident data are needed to evaluate the use and crash performance of safety belts by small children, to better identify injury prevention benefits and limitations, and to provide guidance to legislators and the public.

18. The economic costs of motor vehicle deaths and injuries to unrestrained children (and adults) in the United States are paid by all American citizens through higher taxes for police services, emergency medical services, medical care and rehabilitation, public health and highway safety programs to reduce child fatalities and injuries, and special education for the handicapped; through higher hospital costs; and through higher insurance premiums.

19. Accidents caused by unrestrained children endanger the health and safety of other motorists and their passengers, pedestrians, bicyclists, and others, and result in substantial additional costs to taxpayers and consumers.

RECOMMENDATIONS

As a result of its Safety Study of Child Passenger Protection Against Death, Disability, and Disfigurement in Motor Vehicle Accidents, the National Transportation Safety Board made the following recommendations:

--to the Governors and legislative leaders of Alaska, Idaho, Iowa, Louisiana, South Dakota, Texas, Utah, Vermont, Wyoming, American Samoa, Guam, Puerto Rico, and the Virgin Islands:

> Enact legislation requiring the proper protection of children traveling in motor vehicles, following as closely as possible the elements set forth by the National Transportation Safety Board in its Safety Study, "Child Passenger Protection Against Death, Disability, and Disfigurement in Motor Vehicle Accidents." (Class II, Priority Action) (H-83-49)
>
> Include, as part of a statewide child passenger safety program, public information and education activities specifically aimed at combating misuse of child safety seats. (Class II, Priority Action) (H-83-50)

--to the Governors and legislative leaders of Alabama, California, Connecticut, Delaware, Florida, Illinois, Kansas, Kentucky, Massachusetts, Michigan, Minnesota, New York, North Carolina, Ohio, Rhode Island, Tennessee, Virginia, West Virginia, and Wisconsin:

> Include, as part of a statewide child passenger safety program, public information and education activities specifically aimed at combating misuse of child safety seats. (Class II, Priority Action) (H-83-51)

--to the Governors and legislative leaders of Arizona, Arkansas, Colorado, Georgia, Hawaii, Indiana, Maine, Maryland, Mississippi, Missouri, Montana, Nebraska, Nevada, New Hampshire, New Jersey, New Mexico, North Dakota, Oklahoma, Oregon, South Carolina, Washington, and the Mayor and Chairman of the Council of the District of Columbia:

Include, as part of a statewide child passenger safety program, public information and education activities specifically aimed at combating misuse of child safety seats. (Class II, Priority Action) (H-83-52)

--to the National Highway Traffic Safety Administration:

Expedite the issuance of a final rule requiring that newly-manufactured vehicles under 10,000 pounds gross vehicle weight be equipped with tether anchorages or predrilled holes for the installation of such anchorages at all rearmost seating locations. (Class II, Priority Action) (H-83-53)

Examine the consequences in accidents of nonuse and misuse of tether straps with safety seats requiring use of tether straps to determine whether such safety seats should be required to meet all the requirements of Federal Motor Vehicle Safety Standard 213, Child Restraint Systems, without the tether strap attached. (Class II, Priority Action) (H-83-54)

Examine the incidence of nonuse and misuse of a tether strap with child safety booster seats when used in a rear vehicle seat and the consequences in accidents of such nonuse or misuse to determine whether the advantages offered by such booster seats outweigh the disadvantages. (Class II, Priority Action) (H-83-55)

Amend Federal Motor Vehicle Safety Standard 213, Child Restraint Systems, to require that child safety seats and other child restraint systems include on their certification labels, information for obtaining a replacement copy of the manufacturer's detailed instructions for use. (Class II, Priority Action) (H-83-56)

Conduct research and developmental crash testing to explore the feasibility and desirability of developing abdominal and neck load criteria, anthropomorphic dummies, and test procedures for child safety seats and other child restraint systems. (Class II, Priority Action) (H-83-57)

Conduct research to examine the potential for other restrained or unrestrained vehicle occupants to sustain injuries in accidents from contact with a child safety seat when used in a motor vehicle and to determine whether additional safety requirements may be necessary and practicable to prevent or minimize potential injuries. (Class II, Priority Action) (H-83-58)

Conduct crash tests and accident research to examine the use and accident performance of safety belts with children at various ages to better identify the benefits and limitations of such use. (Class II, Priority Action) (H-83-59)

--to Child Safety Seat Manufacturer:

Review and revise instructions for use of child safety seats and other child restraint devices as needed to improve the clarity of the instructions and to establish specific height, weight, or other thresholds for required actions which depend on a child's physical characteristics (such as conversion between forward and rear-facing modes and harness rerouting on convertible child safety seats). (Class II, Priority Action) (H-83-60)

Attach permanent labels to safety seats to identify correct safety belt routing points, harness routing points, and correct recline positions for use in motor vehicles. (Class II, Priority Action) (H-83-61)

--the International Association of Chiefs of Police:

Coordinate and promote the development of training programs for State and local law enforcement officers on the use and misuse of child safety seats and safety belts for law enforcement and accident investigation purposes. (Class II, Priority Action) (H-83-62)

Promote the use of statewide traffic accident data systems to collect and analyze specific data identifying the use and misuse of child safety seats and safety belts in motor vehicles involved in accidents and the consequences of such use and misuse. (Class II, Priority Actior) (H-83-63)

—to the National Child Passenger Safety Association:

Assist the States in developing effective programs to implement child passenger protection laws. (Class II, Priority Action) (H-83-64)

BY THE NATIONAL TRANSPORTATION SAFETY BOARD

/s/ JIM BURNETT
Chairman

/s/ PATRICIA A. GOLDMAN
Vice Chairman

/s/ FRANCIS H. McADAMS
Member

/s/ G. H. PATRICK BURSLEY
Member

/s/ DONALD D. ENGEN
Member

September 7, 1983

CHILD PASSENGER PROTECTION LAWS
SUMMARY OF KEY PROVISIONS
(40 STATES AND DISTRICT OF COLUMBIA)

STATE CHILD PASSENGER SAFETY LAWS

State Effective Date	Requires	Children	Where[1] Seated	To Use[2]	Vehicle	Exceptions	Penalties	Public Education Campaign	Other Provisions
Arizona 1/1/87	Resident Driver	Under Age 3	Not Specified	Approved Child Passenger Restraint System	Motor Vehicle	Non-resident drivers Active Duties under question	Maximum fine $100.00	No	Failure to use child restraint system shall not be considered contributory negligence. Violation of law does not nullify or change provisions of insurance contract
Arizona 7/1/83	Resident Parent or Guardian	Under Age 4 or Under 40 lbs	Not Specified	Approved Child Passenger Restraint System	Non-commercial Motor Vehicle	Non-resident drivers, vehicles originally manufactured without factory-installed passenger restraint devices, more than one child in back seat of vehicle and vehicle for which not provided suitable anchorage devices	7/1/83 to 12/31/84 warning ticket; after 7/1/84 maximum fine $50.00; fine will be waived if proof of acquisition of system is shown	Yes. Requires hospitals to provide parents of newborn with information regarding child restraint programs prior to leaving baby from hospital. Fines will be placed in fund for rental program	Prohibits police officer from stopping vehicle solely for enforcing the law; exempts persons with physical disabilities from child restraint use or non-use of system is inadmissible evidence in court
Arkansas 6/1/83	Resident Driver	Under Age 3	Not Specified	Approved Child Passenger Safety Seat System	Passenger Automobile Van or Pick Up Truck	Drivers of for hire vehicles; children who can't use system due to medical condition verified by physician; during emergency situations; all other seats filled with seat belts used or occupied by non-resident drivers	6/1/83 to 6/30/84 warning ticket; after 7/1/84 $10.00 - 25% of fine or proof of acquisition of system	Yes. Law encourages law enforcement agencies and hospitals to conduct public information campaign. Fines will be placed in fund for rental program	Failure to use child restraint system does not constitute comparative or contributory negligence. Use or non-use of system is inadmissible evidence in court
		Ages 3-5	Not Specified	Approved Child Passenger Safety Seat System or Seat Belt					
California 1/1/83	Resident Parent or Legal Guardian	Own Child Under Age 4 or Under 40 lbs	Not Specified	Approved Child Passenger Seat Restraint System	Passenger Vehicle or Motor Truck Under 6,001 lbs Owned by Parent or Guardian and Registered in State	Non-resident drivers; children who can't use system due to medical condition or body size	Child warning system to be developed prior to first year of campaign; charges dropped if proof of acquisition of system shown in court. Fine $50.00 - $100	Yes. Law includes public information and education campaign on value of seat restraints for infants & children up to age 10. Campaign expires 1/1/84	None
	Resident Parent or Legal Guardian	Own Child Under Age 4 or Under 40 lbs	Not Specified	Approved Child Passenger Seat Restraint System or Seat Belt	Passenger Vehicle or Motor Truck Under 6,001 lbs Not Owned by Parent or Guardian but Registered in State				
	Resident Driver	Any Child Under Age 4 or Under 40 lbs	Not Specified	Passenger Seat Restraint or Seat Belt	Passenger Vehicle or Motor Truck Under 6,001 lbs Registered in State		Charge against resident drivers will be dropped if child, parents or legal guardians are present in vehicle at time of violation		
Colorado 1/1/84	Resident Driver	Under Age 4 and Under 40 lbs	Not Specified	Approved Child Restraint System	Non-commercial Passenger Vehicle	Non-resident drivers	$25.00 fine will be waived if proof of acquisition is shown	Yes. Law includes public information and education campaign to be implemented 7/1/84	Failure to use child restraint device shall not constitute negligence or contributory negligence per se
Connecticut 10/1/82	Driver	Under Age 4	Front Seat	Approved Child Restraint System	Motor Vehicle	Non-resident vehicles; children in certain buses; buses for hire; medical reasons	Violation is deemed an infraction; fine will be waived if proof of acquisition of system is shown	No	Failure to use child restraint system shall not be considered contributory negligence; use or non-use is inadmissible evidence in court
		Under Age 4	Rear Seat	Approved Child Restraint System or Seat Belt					
Delaware 6/2/82	Resident Parent or Legal Guardian	Under Age 4	Not Specified	Approved Child Passenger Restraint System	Motor Vehicle	Non-resident drivers	Maximum fine of $25.00; fine will be waived if proof of acquisition of system is shown	No	Failure to use child restraint system shall not be considered contributory negligence; use or non-use is inadmissible evidence in court
Florida 7/1/83	Resident Parent or Legal Guardian	Under Age 4	Not Specified	Approved Child Restraint System	Passenger Car Van or Pick Up Truck	Non-resident drivers	$15.00 fine; proof of acquisition of system	Yes. Law specifies that law enforcement agencies should conduct a public education campaign. Agencies are urged to send notice to all registered drivers with delivery of license plates	Failure to use child restraint system does not constitute negligence per se; use or non-use of system is inadmissible evidence in court
		Ages 4 & 5	Not Specified	Approved Child Restraint System or Seat Belt					

N.A. - Not applicable

[1] Where not specified, we are assuming use is required in both front and rear seats

[2] Approved system = a system which meets Federal motor vehicle safety standards

STATE CHILD PASSENGER SAFETY LAWS (continued)

State Effective Date	Requires	Children	Where[1] Seated	To Use[2]	Vehicle	Exceptions	Penalties	Public Education Campaign	Other Provisions
Georgia 7 1 84	Resident Driver	Under Age 3	Not Specified	Approved Child Passenger Restraint System	Passenger Automobile Van or Pick Up Truck	For those vehicles not equipped with seat belts, children whose physical characteristics are beyond limits established by manufacturers	Maximum fine $25 00 for second and subsequent violations in court	Yes Law includes public information program Campaign expires 1 1 84	Failure to use child restraint system does not constitute negligence or contributory negligence per se
		Ages 3 4	Not Specified	Approved Child Passenger Restraint System or Seat Belt					
Hawaii 7 1 83	Driver	Under Age 3	Not Specified	Approved Child Passenger Restraint System	Motor Vehicle	For those vehicles common to all vehicles all other seats in which children are occupied	Maximum fine $100 00 for first conviction maximum fine $200 00 for second conviction within one year maximum fine $500 00 for subsequent conviction	No	Failure to use child restraint system shall not be considered contributory negligence or comparative negligence or negligence per se
		Ages 3 4	Not Specified	Approved Child Passenger Restraint System or Seat Belt					
Illinois 7 1 81 As Amended 6 27 83	Resident Parent or Legal Guardian	Under Age 4	Not Specified	Approved Child Restraint System	Motor Vehicle or Recreational Vehicle	Non resident drivers	First offense maximum fine $25 00 subsequent offense maximum fine $50 00 Fee will be waived upon proof of acquisition of systems shown Attorney General's office to initiate actions for violations	No	Failure to use child restraint device shall not constitute negligence use or non use may be admissible evidence in court
	Resident Parent or Legal Guardian	Ages 4 6	Not Specified	Approved Child Restraint System or Seat Belt					
Indiana 1 1 84	Resident Driver	Under Age 3	Not Specified	Approved Child Passenger Restraint System	Motor Vehicle	Taxicabs school buses rental vehicles leased for less than 90 days non resident drivers motorbus	$25 00 $500 00 court costs Fee will be waived upon proof of acquisition of systems shown	Previous public education campaign expires on 9 1 84	Failure to use child restraint system shall not constitute contributory negligence
		Ages 3 5	Not Specified	Approved Child Passenger Restraint System or Seat Belt					
Kansas 1 1 82	Resident Parent or Legal Guardian	Under Age 2	Front Seat	Approved Child Passenger Restraint System	Passenger Vehicle	Non resident drivers drivers of temporary substitute vehicles	Oral warnings	Yes	Failure to use child restraint system shall not constitute negligence per se
Kentucky 7 14 82	Resident Parent or Legal Guardian	Under 40 Inches in Height	Not Specified	Approved Child Restraint System	Motor Vehicle	Non resident drivers rental rental vehicles trucks over one ton vehicles not owned by parents or guardians	Oral warnings	No	Failure to use child restraint system does not constitute negligence per se use or non use of systems inadmissible evidence in court
Maine 9 23 83	Resident Parent or Legal Guardian	Less Than 4 Years	Not Specified	Approved Child Safety Seat	Motor Vehicle Owned and Operated by Parent or Legal Guardian	Vehicle not equipped with seat belts not required number of passengers and has no seats with seat belts only non resident drivers	9 23 83 3 23 84 oral warning After 3 23 84 $25 00 for initial violation $50 00 subsequent violations Fee will be waived upon proof of acquisition of systems shown	Yes State had public education campaign that ended 3 1 83	Failure to use child safety seat does not constitute negligence per se use or non use of systems inadmissible evidence in court
	Resident Driver	Ages 1 4	Not Specified	Approved Child Safety Seat or Seat Belt	Motor Vehicle Neither Owned nor Operated by Parent or Legal Guardian				
	Resident Driver	Less Than 1 Year	Not Specified	Approved Child Safety Seat	Motor Vehicle Neither Owned nor Operated by Parent or Legal Guardian				
Maryland 1 1 84	Resident Driver	Under Age 3	Not Specified	Child Safety Seat	Passenger Motor Vehicle or Multi purpose Motor Vehicle	Children who can use system Use by medical conference Use at other seats with seat belts are occupied	$25 00 fee will be waived Proof of acquisition of systems shown Points will not be assessed	Yes Law specifies that DOT and Department of Motor Vehicles shall implement an educational program	Prohibits use of safety seat or seat belt by more than one person per seat at one time Failure to use Child safety seat does not constitute contributory negligence Use or non use of systems inadmissible in court
		Ages 3 5	Not Specified	Child Safety Seat or Seat Belt					
Massachusetts 1 1 82	Driver	Under Age 5	Not Specified	Approved Child Passenger Restraint System or Seat Belt	Motor Vehicle	Vehicle used to transport passengers for hire vehicle not required with seat belts all other seats with seat belts are occupied	Maximum fine $25 00 or probation or loss of license	No	Failure to use child restraint system does not constitute negligence per se
Michigan 4 1 82	Resident Driver	Ages 1 4	Front Seat	Approved Child Restraint System	Motor Vehicle	Non resident drivers child care centers registered taxi & school bus taxi after other vehicle not required to be equipped with seat belts	Maximum fine $10 Objections courts or local police department system points will not be assessed	No	None
		Ages 1 4	Back Seat	Approved Child Restraint System or Seat Belt					
		Under Age 1	Not Specified	Approved Child Restraint System					

(1) Where not specified we are assuming users required to be in front or rear seats

(2) Approved systems are systems which meet Federal motor vehicle safety standards

STATE CHILD PASSENGER SAFETY LAWS (continued)

State Effective Date	Requires	Children	Where[1] Seated	To Use[2]	Vehicle	Exceptions	Penalties	Public Education Campaign	Other Provisions
Minnesota 1 1 82 As Amended 8 1 83	Resident Parent or Legal Guardian	Under Age 4	Not Specified	Approved Child Passenger Restraint System	Motor Vehicle	Non resident drivers, vehicles not owned by parent or guardian, vehicles not equipped with seat belts	Maximum fine $25.00, fine will be waived if proof of acquisition of system is shown. Points will not be assessed	No	None
Mississippi 7 1 81	Resident Parent or Legal Guardian	Under Age 2	Not Specified	Approved Child Passenger Restraint System	Motor Vehicle	Non resident drivers	Maximum fine $10.00, fine will be waived if proof of acquisition of system is shown	Notice of new law will be sent to registered drivers with delivery of motor vehicle license plates	Failure to use child restraint system does not constitute contributory or comparative negligence, law does not create any new standard of duty on part of parent to child
Missouri 1 1 84	Resident Driver	Under Age 4	Front Seat	Child Passenger Restraint System Approved by Department of Public Safety	Motor Vehicle	Temporary substitute vehicles for hire vehicles, non resident drivers	Maximum fine $25.00	Yes. Law provides for public information program	Failure to use child restraint system does not constitute negligence or contributory negligence, use or non use of system is in admissible evidence in court, if all other seats with seat belts are not occupied child shall be transported in rear seat
			Rear Seat	Child Passenger Restraint System or Seat Belt Approved by Department of Public Safety					
Montana 1 1 84	Resident Parent or Legal Guardian	Under Age 2	Not Specified	Approved Child Restraint Device	Motor Vehicle	Drivers not required to equip vehicle with more than three child restraint systems, children who can use system due to medical condition or body size, taxi cab, motor bus or school bus, vehicles which only seat two persons and which are transporting over 2 persons over age 4 in vehicle, vehicles not required to be equipped with seat belts, non resident drivers	First violation $10.00, $25.00, fine will be waived if proof of acquisition of system is shown. Subsequent violation within three years $25.00, $100.00 fine	No	Failure to use child restraint system shall not constitute negligence, use or non use is inadmissible evidence in court
		Ages 2-4 or Under 40 Lbs	Not Specified	Approved Child Restraint Device or Seat Belt					
Nebraska 8 26 83	Resident Driver	Under Age 1	Not Specified	Approved Child Passenger Restraint System	Motor Vehicle	1963 or earlier motor vehicle not equipped with seat belts, taxicabs, children who can use system due to medical condition or body size, non resident drivers	$25.00 if proof of acquisition of system		Failure to use system shall not constitute negligence, use or non use of system shall not constitute a defense for recovery of medical expenses
		Ages 1-4	Not Specified	Approved Child Passenger Restraint System or Seat Belts					
Nevada 7 1 83	Resident Driver	Under Age 5	Front Seat	Approved Child Restraint Device	Motor Vehicle	Non resident drivers, taxi cab, school bus, rented vehicle, children who can use system because of medical condition or body size, all other seats with seat belts are occupied	$35.00, $100.00 fine, fine will be waived if proof of acquisition of system is shown, points will not be assessed	No	Failure to use child restraint system will not constitute negligence, preference for use of safety belts should be given to children under age three and all unrestrained children under age five should be seated in rear seat
		Under Age 3	Rear Seat	Approved Child Restraint Device					
		Ages 3-5	Rear Seat	Approved Child Restraint Device or Seat Belts					
New Hampshire 6 27 83	Driver	Under Age 5	Not Specified	Child Passenger Seat or Seat Belt	Motor Vehicle	For hire vehicles, vehicles not equipped with seat belt, children who can use system because of medical condition	Maximum fine $10.00, fine will be waived if proof of acquisition of system is shown	No	Failure to use child restraint system shall not constitute contributory negligence

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STATE CHILD PASSENGER SAFETY LAWS (continued)

State Effective Date	Requires	Children	Where[1] Seated	To Use[2]	Vehicle	Exceptions	Penalties	Public Education Campaign	Other Provisions
New Jersey 4 7 83	Driver	Under Age 5	Front Seat	Approved Child Passenger Restraint System	Motor Vehicle	None	$10 00 $25 00 fine will be waived if proof of acquisition of system is shown	Yes Law calls for public information program	Failure to use child restraint system shall not constitute contributory negligence use or non use of system is in admissible evidence in court Where number of children in one family under age 5 in motor vehicle exceeds number of available seat belts children must be seated in [illegible] seat
		Ages 18 Mos 5 Yrs	Rear Seat	Approved Child Passenger Restraint System or Seat Belt					
New Mexico 6 17 83	Resident Driver	Under Age 5	Front Seat	Approved Child Passenger Restraint Device	Passenger Car Van or Pick Up Truck	Non resident drivers school bus all seating positions and seat belts are occupied	$50 00 fine fine will be waived if proof of acquisition of system is shown	No	Failure to use child restraint system shall not constitute negligence
		Ages 1 5	Rear Seat	Approved Child Passenger Restraint Device or Seat Belt					
New York 4 1 82	Resident Driver	Under Age 4	Not Specified	Approved Child Restraint Seat	Passenger Motor Vehicle	School buses, non resident drivers	Maximum fine $25 00 or proof of acquisition of system	No	Vehicle owner shall not permit use of vehicle unless child passengers are restrained
		Ages 4&5 (as amended 4 2 82)	Not Specified	Approved Child Restraint Seat or Safety Belt Approved by Commissioner of Motor Vehicles					
As Amended 6 28 83									Law has been expanded to require use of seat belts by children as follows After 4 1 84 Under Age 7 After 4 1 85 Under Age 8 After 4 1 86 Under Age 9 After 4 1 87 Under Age 10
North Carolina 7 1 82 -7/1/85	Resident Parent	Under Age 1	Not Specified	Child Restraint System Approved by Commissioner of Motor Vehicles	Motor Vehicles or a Family Purpose Vehicle	Non resident drivers children whose personal needs are being attended to all other seats with seat belts are occupied not required if seated in seat not requiring safety belt	7 1 82 6 30 84 warning ticket 7 1 84 6 30 85 $10 00 fine points will not be assessed	No Study is mandated from 7 1 82 6 30 85	Legislature not obligated to appropriate funds to implement law failure to use child restraint system does not constitute negligence per se
		Ages 1 2	Not Specified	Child Restraint System Approved by Commissioner of Motor Vehicles or Seat Belt					
North Dakota 1 1 84	Parent or Legal Guardian	Under Age 2	Not Specified	Approved Child Restraint System	Passenger Car	Vehicles manufactured prior to 1966 not equipped with seat belts	Maximum $20 00 fine fine will be waived if proof of acquisition of system is shown	No	Failure to use child restraint system does not constitute negligence use or non use is in admissible in court
		Ages 2 4	Not Specified	Approved Child Restraint System or Seat Belt					
Ohio 3 7 83	Resident Driver	Under Age 4 or Under 40 lbs	Not Specified	Approved Child Restraint System	Motor Vehicle Owned by Parent or Guardian and Registered in State	Taxi cabs vehicles not required to be equipped with seat belts life threatening emergencies non resident drivers Director of Highway Safety to develop other rules on subject	$10 00 fine fine waived if proof of acquisition of system is shown	No	Failure to use child restraint device does not constitute negligence use or non use is inadmissible in court
	Resident Driver	Under Age 1	Not Specified	Approved Child Restraint System	Motor Vehicle Not Owned by Parent or Guardian and Registered in State				
	Resident Driver	Ages 1 4 or Under 40 lbs	Not Specified	Approved Child Restraint System or Lap Belt or Seat Belt	Motor Vehicle Not Owned by Parent or Guardian and Registered in State				
	Resident Driver	Under Age 4 or Under 40 lbs	Not Specified	Approved Child Restraint System	Motor Vehicle Owned by Nursery School Day Care Center or Kindergarten and Registered in State				

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STATE CHILD PASSENGER SAFETY LAWS (continued)

State Effective Date	Requires	Children	Where[1] Seated	To Use[2]	Vehicle	Exceptions	Penalties	Public Education Campaign	Other Provisions
Oklahoma 11 1 83	Resident Driver	Under Age 4	Rear Seat	Approved Child Passenger Restraint System or Seat Belt	Motor Vehicle	Non-resident driver school bus farm truck vehicle not required to be equipped with seat belts all other seats with seat belts are occupied child can refuse to use system because of medical conditions	Oral warning	Yes Law provides for public education campaign	Use or non use of system is inadmissible evidence in court failure to use system shall not be used in mitigation of damages
		Under Age 4	Front Seat	Approved Child Passenger Restraint System					
		Ages 4&5	Not Specified	Approved Child Restraint System or Seat Belt					
Oregon 1 1 84	Resident Driver	Under Age 5	Not Specified	Child Safety System Approved by Division of Motor Vehicles or Seat Belt	Motor Vehicle or Pick Up Truck Under 8 000 lbs	Privately owned common carrier vehicle vehicle manufactured prior to 1968 and not equipped with seat belts child who can use system because of medical condition body size all other seats with seat belts are occupied residents of other states that don't have similar laws	1 1 84 & 30 84 warning after 7 1 84 maximum $20 00 fine fine will be waived if proof of acquisition of system is shown	No	Failure to use system does not constitute negligence use or non use of system is not admissible evidence in court
Rhode Island 7 1 81	Driver	Under Age 3	Front & Rear Seat (as amended 1 4 84)	Approved Child Passenger Restraint System	Motor Vehicle	None	Maximum fine of $15 00 or proof of purchase of system recorded on driver's record	No	Use or non use of system is inadmissible evidence in court failure to use child restraint system does not constitute negligence per se
South Carolina 7 1 83	Resident Driver	Under Age 1	Front or Rear Seat	Approved Child Passenger Restraint System	Passenger Car Pick Up Truck Van Recreational Vehicle	(a) church day care and school bus drivers commercial motor vehicle child being fed child who can use system due to medical conditions	7 1 83 & 30 83 warning to bail After 7 1 84 maximum fine $25 00 fine will be waived if proof of acquisition of child restraint system is shown	No	Failure to use system does not constitute negligence per se or constitute any negligence use or non use of system is inadmissible evidence in court costs of certain proceedings failure to use system may be introduced in mitigation of damages proof of financial responsibility may be given to child on under age three
		Under Age 4	Front Seat	Approved Child Passenger Restraint System					
		Ages 1 3	Rear Seat	Approved Child Passenger Restraint System or Seat Belt					
Tennessee 1 1 78 As Amended 1 1 81	Resident Parent or Legal Guardian	Under Age 4	Not Specified	Approved Child Passenger Restrained System	Motor Vehicle	Children being rushed to attended to by mother who cannot normally be present or guardians non resident drivers	$10 00 $10 00 fine no court costs	No	Use or non use of system is inadmissible evidence in court failure to use child restraint system does not constitute negligence per se
Virginia 1 1 81	Resident Parent or Legal Guardian	Under Age 1 & Under 40 lbs	Not Specified	Child Restraint System Approved by State Police	Motor Vehicle Manufactured After 1 1 68	Public taxi or school bus vehicle which has exemption designation on registration certificate use system if child is examined by a doctor and doctor states that use system is not advisable non resident drivers driving of vehicle manufactured prior to 1 1 68	$25 00 fine ($10 to locality retain system if driver) fine may be waived if non use is due to financial reasons	No However law provides for development of a program to provide child restraint systems to persons who are financially unable to purchase system	Failure to use child restraint system does not constitute negligence per se failure to use system will not constitute contributory negligence or payment of medical claims
		Ages 1 4 & Over 40 lbs	Not Specified	Child Restraint System Approved by State Police or Seat Belt					
Washington 12 31 81	Resident Parent or Legal Guardian	Under Age 1	Not Specified	Child Passenger Restraint Device Approved by State Commission Equipment or Seat Belt	Motor Vehicle Owned by Parent Guardian and Registered in State	Non residents	1 1 84 & 31 84 written warning after 1 1 84 maximum fine $ 101 fine will be waived if proof of acquisition of system is shown	No	Failure to use child restraint device does not constitute negligence per se use or non use of system not admissible in court
		Ages 1 4	Not Specified	Child Passenger Restraint Device Approved by State Commission Equipment or Seat Belt					

(1) Where not specified most laws assume children are required to ride in front and rear seats

(2) Approved system is a system which meets Federal motor vehicle safety standards

STATE CHILD PASSENGER SAFETY LAWS (continued)

State Effective Date	Requires	Children	Where[1] Seated	To Use[2]	Vehicle	Exceptions	Penalties	Public Education Campaign	Other Provisions
Washington D.C. 7/1/83	Resident Driver	Under Age 3	Not Specified	Approved Child Restraint Seat	Motor Vehicle	Taxicabs, farm purpose vehicle, non resident drivers, all other seats with seat belts are occupied	$25 fine, fine will be waived if proof of acquisition of system is proved; points will not be assessed	Yes. Law specifies that public information programs will be undertaken	Failure to use child restraint system shall not constitute negligence or contributory negligence violation or compliance will not provide basis for civil action for damages
		Ages 3-6	Not Specified	Approved Child Restraint Seat or Seat Belt					
West Virginia 7/9/81	Resident Driver	Under Age 3	Not Specified	Approved Child Passenger Restraint System, Car Bed or Car Seat	Passenger Automobile Van or Pick Up Truck	For hire vehicles, non resident drivers	Misdemeanor $10.00-$20.00 fine or proof of purchase of system	No	Failure to use system does not constitute negligence per se
		Ages 3-5	Not Specified	Approved Child Passenger Restraint System, Car Bed, Car Seat or Seat Belt					
Wisconsin 11/1/82	Resident Parent or Legal Guardian	Under Age 2	Not Specified	Child Safety Restraint System Approved by State Department of Transportation	Motor Vehicle	Children who can't use system because of medical condition or body size, motor bus, school bus, taxicab vehicles which only seat 2 persons and which are transporting over 2 persons over age 4 in vehicle, non resident drivers	$30-$75 fine for children under age 2, $10-$25 for first offense and $25-$200 for second offense for children aged 2-4, fines waived if proof of acquisition of system is shown	No. However, fines will not be assessed until 5/1/83	Failure to use system does not constitute negligence per se, use or non use of system is inadmissible evidence in court
		Ages 2-4	Not Specified	Child Safety Restraint System Approved by State DOT or Seat Belt					
Pennsylvania 11/1/83	Resident Parent or Legal Guardian	Under Age 1	Not Specified	Approved Child Passenger Restraint System	Passenger Car, Class 1 & 2 Trucks, Classic & Antique Motor Vehicle, Motorhome	Non residents, Medical conditions or size of child	Oral warning thru 1/85, after $25 fine; waived if proof of acquisition is shown	Yes. Hospital information on loan or rental of Child Seats	Fines will be used to support loan a seat program Must use Child Restraint if transporting child in vehicle cargo area Failure to use system does not constitute negligence; not admissable in court.
		Ages 1-4	Rear Seat	Approved Child Restraint System or Seat Belt					

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(2) Approved system is a system which meets Federal motor vehicle safety standards

mvma
Prepared by Mary Jones
State Relations Department
Motor Vehicle Manufacturers Association
8-15-83

Updated by the National Transportation Safety Board
November 14, 1983

SB

129

Alaska State Legislature

Senate

Official Business

Pouch V
State Capitol
Juneau, Alaska 99811

Summary of CS SB 179 (Jud)

This bill will allow the commissioners of the principal departments of the state to delegate their membership on boards and commissions to high level subordinate employees. Delegation shall be to an equivalent of a division director, subject to approval by the Governor, and must be in writing. Delegation remains in effect until principal executive officer revokes it, resigns, or otherwise forfeits office.

The Judiciary CS adds a provision which allows the legislature to nullify a delegation by adopting a concurrent resolution within 30 days after the legislature is notified of the delegation.

Current Commissioners Responsibilities:

Commissioner Casey (5)

Commissioner Collinsworth (5)

Commissioner Heath (6)

Commissioner Lewis (7)

Commissioner Lind (3)

Commissioner Lyon (11)

Commissioner Neve (4)

Commissioner Robison (2)

Commissioner Rudd (3)

Commissioner Smith (7)

Commissioner Sundberg (5)

Commissioner Wunnicke (7)

9-313

Summary of Judiciary Committee Sub.

I. REQUEST

Bill/Resolution No.: SB 179

Title: "An act relating to the delegation of department head membership on boards.."

Sponsor: Governor

Requestor: Governor

II. FISCAL DETAIL

Agency Affected: All

Program Category Affected: All

BRU, Program of Subprogram(s) Affected:

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 83	FY 84	FY 85	FY 86	FY 87	FY 88
OPERATING						
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 COMMODITIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC						
TOTAL OPERATING		0	0	0	0	0
CAPITAL		0	0	0	0	0
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER (Specify Source)						

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

III. SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

IV. ANALYSIS: Attach a separate page for any Analysis

Prepared By: Jeff Morrison, Program Budget Analyst Phone: 465-3568

Division: OMB - Division of Budget Review Date: March 8, 1983

Approved by Commissioner: Date: 3/9/83

Department:

Distribution:

Original to Legislative Finance

Copy to Office of Management and Budget (for Legislature introduced bills)

Copy to Department (for

Copy to Sponsor

Copy to Requestor (if

Fiscal Note

3/

STATE OF ALASKA

BILL SHEFFIELD, GOVERNOR

OFFICE OF THE GOVERNOR

POUCH AM
JUNEAU, ALASKA 99811
PHONE: (907) 465-3568

OFFICE OF MANAGEMENT AND BUDGET

POSITION PAPER

SB 179

A Bill Relating to the Delegation of Department Head Membership on Boards, Commissions, and Other Units of State Government

The Sheffield Administration supports this bill -- a bill which allows Commissioners to delegate their membership on boards and commissions to high-level subordinate employees.

This bill would serve to clarify the management responsibilities of the heads of principal departments of the State. Present statutes provide that the heads of several principal departments must sit on many boards of the plethora of public agencies throughout the executive branch of government, in addition to serving as the chief executive officers (CEOs) of their respective agencies.

These provisions have created an anomalous situation that inhibits the ability of these key members of government to exercise either their duties as commissioners or board members. The statutes in question leave little room to allocate top management resources to these important functions. In fact, most of the public agency statutes require that important board memberships can only be filled from a group of fifteen (15) people.

Another effect of this severe limitation on the pool of talent available for boards has been the creation of single-deputy positions to assume CEO duties for principal departments. This creates an otherwise unnecessary layer of management that insulates the operational management of each agency from the line of accountability of top management. This insulation is not in the public interest.

Position Papers

It is in the public interest to ensure that government makes the best use of the abilities of the people who are appointed to manage the principal agencies.

Our laws must provide that the uppermost duty of the head of each department is to manage the affairs of that department. The laws should also provide that the many important public agencies directed by boards should benefit from access to the larger pool of top management talent presently available within the Alaska government.

Peter B. McDowell, Director
Office of Management and Budget

March 30, 1983

Date

MEMORANDUM

State of Alaska

TO: Peter B. McDowell, Director
Office of Management and Budget
Office of the Governor

DATE: March 18, 1983

FILE NO: 020.1

TELEPHONE NO: 465-2800

SUBJECT: Position Paper, SB 179

FROM: Marshall L. Lind
Commissioner
Department of Education

We concur with your position regarding Senate Bill 179, as expressed in the draft position paper.

MEMORANDUM State of Alaska

TO: Peter McDowell, Director
Office of Management and Budget
Office of the Governor

DATE: March 25, 1983

FILE NO:

TELEPHONE NO:

FROM: Richard A. Lyon, Commissioner
Department of Commerce and
Economic Development

SUBJECT: SB 179 Delegation of membership on boards and commissions

SB 179 allows a commissioner, subject to the Governor's approval, to delegate his membership on a board, commission, public authority or other unit of State Government to a subordinate employee (director status or above). I agree with this proposal and request the Administration to support its passage.

RAL/mc5/12

MEMORANDUM State of Alaska

TO: Peter B. McDowell
Director
Office of Management & Budget

DATE: March 25, 1983

FILE NO:

TELEPHONE NO:

FROM: Esther C. Wunnicke
Commissioner
Department of Natural Resources

SUBJECT: SB 179

Thank you for inviting my comments on SB 179 and the draft position paper which you drafted.

I agree that SB 179 should be enacted into law, and, with one exception, I agree with the case you have so well presented for its enactment.

That part of the agreement with which I disagree is the assertion that it is the membership of Commissioners on boards which has led to the establishment of single-deputy positions. Given the range of Commissioner responsibilities to the Governor, to departmental employees, to legislators, and to the public, I think there are a multiplicity of reasons for the appointment of single deputy commissioners.

MEMORANDUM

State of Alaska

OFFICE OF MANAGEMENT & BUDGET

TO: Peter B. McDowell
Director
Office of Management & Budget

DATE: March 23, 1983

MAR 25 1983

FILE NO:

DIRECTOR

TELEPHONE NO: 465-3376

FROM: Roger V. Endell
Director
Division of Adult Corrections

SUBJECT: Senate Bill No. 179 and Draft Position Paper

Senate Bill No. 179 "An Act relating to the delegation of department head membership on boards, commissions, and other units of the state government," and the draft Position Paper has been reviewed. Adult Corrections is in agreement with the position that public agencies directed by boards would benefit from access to a larger pool of top management personnel.

RVE/AW/mjr

OFFICE OF
MANAGEMENT & BUDGET

MAR 29 1983

STRATEGIC PLANNING

MEMORANDUM

State of Alaska

TO: The Cabinet

DATE: March 17, 1983

FILE NO:

TELEPHONE NO: 465-3568

FROM: Peter B. McDowell
Director
Office of Management
and Budget

SUBJECT: Draft SB 179 and Position Paper

Attached for your review is a copy of SB 179 and a draft Position Paper on the bill. We request your comments and suggestions on the Position Paper.

Thank you.

PETER,
I STRONGLY CONCUR: WE'VE GOT TO MUCH ELEVATION IN STATE GOV & NOT ENOUGH DELEGATION!!
DAL

RECEIVED

MAR 18 1983

DOT/PF
COMMISSIONER'S OFFICE

MEMORANDUM State of Alaska

DEPARTMENT OF ENVIRONMENTAL CONSERVATION

TO: Peter B. McDowell
Director
Office of Management and Budget

DATE: March 23, 1983

FILE NO:

TELEPHONE NO: 465-2600

FROM: Richard A. Neve'
Commissioner
Environmental Conservation

SUBJECT: SB 179
Position Paper

This department fully supports the draft position paper on SB 179 which you sent for comment on March 17.

MEMORANDUM State of Alaska

TO: Peter D. McDowell
Director
Office of Management
and Budget

DATE: March 23, 1983

FILE NO:

TELEPHONE NO: 465-4322

FROM: Robert J. Sundberg
Commissioner
Department of Public Safety

SUBJECT: Draft SB 179 and related position paper

The draft legislation and accompanying position paper were reviewed and I am in complete agreement. Passage of the legislation will be a godsend in allowing more time to manage the department.

OFFICE OF
MANAGEMENT & BUDGET

MAR 29 1983

STRATEGIC PLANNING

MEMORANDUM State of Alaska

TO: Peter B. McDowell, Director
Office of Management and Budget
Office of the Governor

DATE: March 18, 1983

FILE NO: 020.1

TELEPHONE NO: 465-2800

SUBJECT: Position Paper, SB 179

FROM: Marshall L. Lind
Commissioner
Department of Education

We concur with your position regarding Senate Bill 179, as expressed in the draft position paper.

MEMORANDUM State of Alaska

TO: Peter B. McDowell
Director
Office of Management
and Budget

DATE: March 30, 1983

FILE NO:

TELEPHONE NO: 465-3030

FROM: Robert London Smith, Ph.D.
Commissioner
Department of Health and
Social Services

SUBJECT: Draft SB 179 and
Position Paper

This is in reply to your memorandum of March 17, 1983 on the above subject. I fully concur with SB 179 and the draft position paper setting forth support for the Administration of that bill.

Alaska State Legislature

Senate

Official Busin ss

Pouch V
State Capitol
Juneau, Alaska 99811

Summary of CS SB 179 (Jud)

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Commissioner Robison (2)

Commissioner Rudd (3)

Commissioner Smith (7)

Commissioner Sundberg (5)

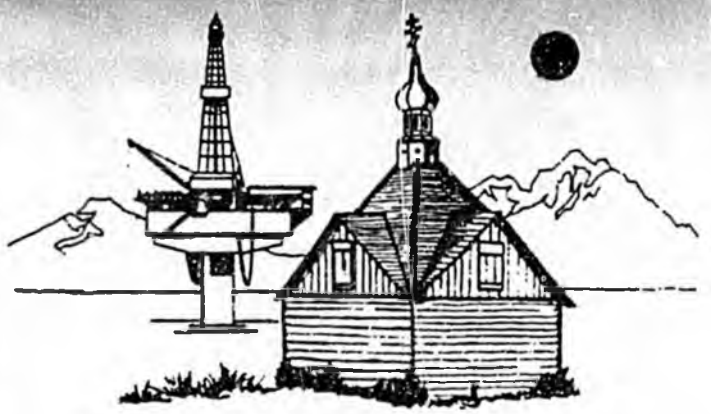
Commissioner Wunnicke (7)

a 313

Summary of Judiciary Committee Sub.

SB

187



CITY OF KENAI

"Oil Capital of Alaska"

P. O. BOX 580 KENAI, ALASKA 99611
TELEPHONE 283 - 7535

P.O. Box 3173
Kenai, Alaska 99611

February 16, 1983

James F. Mayer
Executive Director
Alaska Police Standards Council
Pouch N
Juneau, Alaska 99811

Dear Mr. Mayer,

On February 14, 1983 a meeting of the Alaska Association of Chiefs of Police was held in Anchorage. An item of specific interest at that meeting was the issue of subpoena powers for the APSC. This was discussed at some length with several presentations on this issue.

It was resolved by the Alaska Association of Chiefs of Police, that it is absolutely essential for the APSC to have subpoena powers in order to make informed decisions in carrying out their regulatory functions. You, or your staff, when testifying on this matter may represent this position on our behalf.

Please keep me informed as to the status of this proposed statutory change.

Sincerely,

Chief Richard Ross
Kenai Police Department
Secretary - Treasurer
AACOP

RAR/nc

RECEIVED
FEB 22 1983
Police Standards Council

MEMORANDUM State of Alaska

TO: Robert J. Sundberg
Commissioner
Department of Public Safety

DATE: January 7, 1983

FILE NO:

TELEPHONE NO: 465-4378

FROM: James F. Mayer
Executive Director
Alaska Police Standards Council

SUBJECT: 1983 Legislation

To amplify on my memo of August 4, 1982 to former Commissioner Nix, most internal investigations and disciplinary actions against police officers by state and municipal police departments are considered confindential by those departments and not available for review by the Council. Yet those reports are necessary to form a basis for decisions by the Council on revocation of a police officer's certificate.

If the Council had the authority to subpeona these records it could avoid erroneous and premature decisions in denials and revocations and legally relieve the department of liability under the various privacy acts in addition to assisting the Attorney General's office in determining whether the Police Standards Act has been violated.

JFM:vm

RECEIVED
DEPARTMENT OF PUBLIC SAFETY
COMMISSIONER'S OFFICE
Juneau, Alaska
JAN 11 1983 JAN 07 1983

Police Standards
Council

02-001A(Rev.10/79)

MEMORANDUM

TO: William R. Nix
Commissioner
Department of Public Safety

DATE: August 4, 1982

FILE NO:

TELEPHONE NO: 465-4378

SUBJECT: 1983 Legislation

FROM: James F. Mayer
Executive Director
Alaska Police Standards Council

I've attached a copy of a bill drafted by the Department of Law at the Council's request for introduction in the Twelfth Legislature - Second Session. The bill was not introduced at that Session.

The Council requests that it be introduced in the Thirteenth Legislature - First Session.

The Council has experienced considerable difficulty in obtaining sufficient information from various police departments upon which to base decisions concerning denial or revokation of police officer certificates. In order to avoid erroneous decisions without sufficient information or based on inaccurate or incomplete information, the Council requests this legislation. It would also largely relieve the police departments of potential liability under the various privacy acts.

It would have no fiscal impact on the Councils activities.

JFM:vm
Attachments

12/31/82

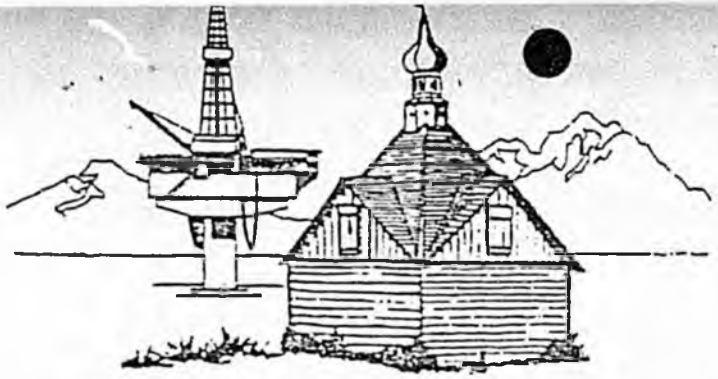
[illegible]

Not on List from Matt.

RECEIVED
DEPARTMENT OF PUBLIC SAFETY
COMMISSIONER'S OFFICE
Juneau, Alaska
JAN 11 1983
DEC 30 1982

Police Standards Council

02-001A(Rev.10/79)



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February 16, 1983

James F. Mayer
Executive Director
Alaska Police Standards Council
Pouch N
Juneau, Alaska 99811

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It was resolved by the Alaska Association of Chiefs of Police, that it is absolutely essential for the APSC to have subpoena powers in order to make informed decisions in carrying out their regulatory functions. You, or your staff, when testifying on this matter may represent this position on our behalf.

Please keep me informed as to the status of this proposed statutory change.

Sincerely,

Chief Richard Ross
Kenai Police Department
Secretary - Treasurer
AACOP

RAR/nc

RECEIVED
FEB 22 1983
Police Standards Council

SB 187

BILL SHEFFIELD
GOVERNOR

STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

March 18, 1983

The Honorable Jalmar Kerttula
President of the Senate
Alaska State Legislature
Pouch V
Juneau, Alaska 99811

Dear Mr. President:

Under the authority of art. III, sec. 18, of the Alaska Constitution, I am transmitting a bill that will grant investigative subpoena power to the Alaska Police Standards Council.

The Alaska Police Standards Council is empowered to establish and enforce minimum standards for the employment of police officers within the state. Under existing law, the council has the authority to investigate the background and qualifications of individual police officers, and may deny or revoke certification of those officers who do not meet the minimum standards. In the past, the council has experienced some difficulty in obtaining records from some police departments, as the departments regard information such as personnel files or the results of internal investigations as confidential and accessible only through a court order.

This bill adds a new paragraph to the statute which enumerates the powers granted to the council. It explicitly confers investigatory authority and authorizes the issuance of subpoenas for persons, books, records, or other documents related to an investigation. Passage of the bill will enable the council to investigate more efficiently when it appears that a police officer does not meet the educational, training, or moral character standards established by the council. It will enable the council to swiftly terminate, without the necessity of a formal hearing, those investigations which find that concern regarding an officer's qualifications is unfounded.

Sincerely,

Bill Sheffield
Governor

STATE OF ALASKA
FINAL STATEMENT OF FISCAL IMPACT

Bill No: SB187 Date on Bill: 3/18/83
Title: An Act relating to investigations by, and granting subpoena power to the APSC
Sponsor: Rules Committee - Governor's Request
Requestor:

1. Estimated fiscal impacts on:

a. Expenditures:

(Thousands of Dollars)

			FY 83	FY 84	FY 85	FY 86		
Capital								
Operating								
Total			-0-	-0-	-0-			

b. Revenues:

Revenue								

2. Source of funds to offset fiscal impact of bill:

3. Assumptions:

No Fiscal Impact

4. This statement has been reviewed by the OMB in the Office of the Governor. It may be considered to represent the policy of the Sheffield Administration and the final estimate of fiscal impact.

Prepared By: Paul Conger Phone: 465-4338
Division: Administrative Services Date: 2-17-83

Approved by Commissioner: Robert J. Sundberg RSS by TPH Date: 2/18/83
Department: Public Safety

Reviewed by OMB: Mike Meyer Date: 2/18/83
Phone: 465-3213

5. Distribution:
Original to Legislative Finance
Copy to Department
Copy to Sponsor
Copy to Requestor

2/8/83

SB

194

Arthur Peterson, Department of Law, testified that the CS takes care of many of the problems he had identified in the original bill. He stated that he had some concern that the project may be taking on too much. He went through the list of things to be included in the journal and commented on each one. He discussed the benefits of the provision which disclaims liability for the contents of the journal.

Senator Rodey moved and asked for unanimous consent to pass the bill from committee with individual recommendations. There were no objections.

SB 194--Relating to "ice classics"

Senator Sackett (prime sponsor) testified that he had been asked to help create a "Kuskokwim Ice Classic" by Bethel Social Services. This group wants to reduce their dependence on state money.

Senator Ray suggested that the title of the bill be changed to " An Act relating to Establishment of the Kuskokwim Ice Classic".

Senator Fischer suggested a minor change on line 13 of the bill.

Senator Ray moved and asked unanimous consent that these changes be incorporated in a committee substitute, that the committee substitute be adopted and passed out of committee with individual recommendations. There was no objection.

SB 137--Requiring public employees to comply with the Regulation of Lobbying Act.

Senator Faiks (prime sponsor) testified that she had contemplated a sponsor substitute but decided against it. She reviewed the substance of the bill and described the current situation where municipal and university lobbyists do not have to register and disclose while private sector lobbyists do. She described lobbying laws in other states. She stated that it was very difficult to get information on lobbying expenditures from the Municipality of Anchorage.

Senator Ray asked if, for example, a municipal attorney who answered questions for a legislator or legislative staff person would have to register. Senator Faiks responded that that would be true it the public employee was lobbying for money. She pointed out that "substantial and regular" portions of this person's salary must come from lobbying.

I. REQUEST

Bill/Resolution No: SB 194
Title: An Act Relating to Ice Classics
Sponsor: Senator Sackett
Requestor: State Affairs

II. FISCAL DETAIL

Agency Affected: Revenue
Program Category Affected: Coll. & Mgmnt.
BRU, Program of Subprogram(s) Affected: Public Services Division

EXPENDITURES/REVENUES: (Thousands of Dollars)

		FY 83	FY 84	FY 85	FY 86	FY 87	FY 88
	OPERATING						
100	PERSONAL SERVICES	-	-	-	-	-	-
200	TRAVEL	-	-	-	-	-	-
300	CONTRACTUAL	-	-	-	-	-	-
400	COMMODITIES	-	-	-	-	-	-
500	EQUIPMENT	-	-	-	-	-	-
600	LANDS & STRUCTURES	-	-	-	-	-	-
700	GRANTS, CLAIMS, ETC.	-	-	-	-	-	-
	TOTAL OPERATING	Ø	Ø	-	-	-	-
	CAPITAL	-	-	-	-	-	-
	REVENUE	-	-	-	-	-	-

FUNDING: (Thousands of Dollars)

	GENERAL FUND	Ø	Ø	-	-	-	-
	FEDERAL FUNDS	-	-	-	-	-	-
	OTHER (Specify Source)	-	-	-	-	-	-
		-	-	-	-	-	-

POSITIONS:

	FULL-TIME	-	-	-	-	-	-
	PART-TIME	-	-	-	-	-	-
	TEMPORARY	-	-	-	-	-	-
		-	-	-	-	-	-

III. SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

IV. ANALYSIS: Attach a separate page for any Analysis. No administrative cost. No effect on Revenue.

Prepared By: Philip A. Wall, Director
Phone: 465-2392
Division: Public Services Division
Date: 3-29-83

Approved by Commissioner:
Date:
Department:

Distribution:
Original to Legislative Finance
Copy to Office of Management and Budget (for Legislature introduced bills)
Copy to Department (for Governor introduced bills)
Copy to Sponsor

SB
208

AMENDMENT

OFFERED IN THE HOUSE: BY: Judiciary Committee

TO: _____ HOUSE BILL No. 208

SENATE BILL No. _____

PAGE: 1 LINE: 12

Delet 1987

insert 1984

Alaska State Legislature
Senate

JUNEAU, ALASKA

March 17, 1983

MEMORANDUM: Senator Ray, Chairman Judiciary

President Kerttula referred A Report on the Department of Revenue, Alcoholic Beverage Control Board, dated December 15, 1982 to the Judiciary Committee on March 8.

This report was not received in this office until this date. Please return A Special Performance Report on the Department of Health and Social Services, State Office of Alcoholism and Drug Abuse unless the Judiciary Committee is interested in retaining this report.

Peggy Mulligan
Secretary of the Senate

Encl: 1

SENATE JUDICIARY COMMITTEE MEETING

Meeting Minutes

4/4/83

The meeting was called to order at 1:10 p.m. by Senator Ray, Chairman.

All members were present except Senator Eliason, who was excused.

The first order of business was Senate Bill 208--Extending the termination date of the Alcoholic Beverage Control Board--and the Sunset review and report regarding the ABC Board, as to which Patrick L. Sharrock, the Director of the ABC Board, and Robert Sundberg, Commissioner of Public Safety, were present and participated in the ensuing discussion and deliberation

Senator Ray asked Director Sharrock a question about the auditor's conclusion, on page 5 of the 12/15/82 Sunset report, that "the ABC Board has not met its mandated enforcement responsibilities of Title 4 of the Alaska Statutes." Director Sharrock adamantly refuted this conclusion and concurred with Senator Ray's statement regarding the fact that agents of the Board are not empowered to routinely carry guns and make arrests and stated that this is pursuant to the entire scheme of applicable law requiring local participation whereby municipalities are allowed to retain licensing fees to cover the cost of enforcement. In other words, Director Sharrock stated that the auditor's conclusion was merely a statement of existing legislative intent and enforcement policy, rather than a valid finding that the Board has failed to carry out its mandated duties.

Senator Ray stated that the author of the Sunset review and report of 12/15/82 doesn't seem to have grasped the basic concept previously mentioned, and Director Sharrock fully concurred.

Commissioner Sundberg stated that he strongly recommends that the Board's tenure be extended and that no changes be made in its operation and procedures.

Senator Ray stated that the Board appears to be operating properly and the Sunset report appears to be wrong about the Board not meeting its statutory enforcement obligations.

Senator Josephson stated that, in regard to the Sunset report's comments about the Board's enforcement power, existing law already provides for agents of the Board to have police enforcement powers, such as the power to carry firearms and make arrests, subject to certain conditions, such as a prior finding by the Board and approval by the Commissioner of Public Safety, and Commissioner Sundberg fully concurred.

Senator Ray stated that it has been an established policy of past Commissioners of Public Safety not to allow ABC Board agents to carry firearms or make arrests, and Commissioner Sundberg concurred, stating that he doesn't recommend any changes in that policy.

Senator Ray again stated that the licensing fee has been used as payment to municipalities for their enforcement functions and Director Sharrock concurred, stating that this has worked out very well and there are no problems in that regard. Senator Ray then further pointed out that this is precisely where the author of the Sunset report went wrong by failing to realize that there are no problems with the existing enforcement functions and policy of the ABC Board.

Senator Pettyjohn pointed out that recommendation number 1 on page 7 of the Sunset report seems to state that criminal sanctions and prosecutions are necessary to adequately enforce existing law. Senator Pettyjohn then posed a question to Director Sharrock as to the sufficiency of existing notice of violation and administrative proceedings. Director Sharrock replied that pursuant to existing procedures, notices of violation are issued based on reported incidents and the Board prefers this approach to the filing of criminal complaints because the latter wouldn't be appropriate in the vast majority of cases. Discussion was had on this point, with Senator Josephson participating therein and pointing out that the author of the Sunset report apparently failed to understand two key practical factors in making his previously mentioned finding and recommendation:

1. The economics of a situation where a notice of violation is served on a licensee who may have a substantial economic interest at stake (for example, Director Sharrock pointed out that the fair market value of a license can be as high as $200,000.00 to $400,000.00); and

2. The heavy burden of proof in a criminal case which makes it very difficult and expensive to obtain a conviction after a criminal complaint is filed.

Senator Pettyjohn then concurred with the previous speakers' opinions that existing notice of violation procedures are more effective than the recommended filing of criminal complaints.

Senator Ray pointed out that, based on his extensive experience in this area, approximately 95% of licensees are honest, law-abiding and hard working whereas 5% are always in trouble.

Furthermore, Senator Ray pointed out that he is very disappointed with the Sunset report which seems to be inacurrate and raises more questions than it answers.

Director Sharrock and Commissioner Sundberg, as well as Senators Ziegler, Josephson and Pettyjohn, concurred in Senator Ray's last observation, and Senator Pettyjohn further pointed out that, at best, the Sunset report is very superficial. Commissioner Sundberg then again

stated that he strongly recommends no changes whatsoever in existing ABC Board functions and procedures.

Don Kubley of the Alaska Cabaret and Hotel Restaurant Association testified in support of Senate Bill 208 and stated that, on behalf of his organization, he recommends the rejection of the Sunset report's recommendations and he believes that the ABC Board policies and procedures are essentially firm but fair.

Senator Josephson then moved for a Do Pass with individual recommendations on Senate Bill 208. After a vote was taken, the motion passed unanimously.

The second order of business was Senate Bill 111--Relating to the use of teleconferencing under the Administrative Procedure Act--as to which Sue Plumber, Director of Teleconference Services testified in favor of the bill, stating that it clears up existing legal questions and has a potential for decreasing travel and related costs.

Extensive discussion was then had on the bill and it was unanimously agreed that a committee substitute would be drafted by Senator Pettyjohn along with Committee counsel and Billy Berrier's office, to be presented at the committee hearing on Friday, April 8, 1983.

The third order of business was a brief discussion of matters to be considered at future Committee meetings.

The fourth order of business was a new subcommittee assignment:

SB 4	Repealing the requirement that an applicant for a beverage dispensary license file a bond	Ray

There being no further business the meeting adjourned at 1:48 p.m.

A REPORT ON THE DEPARTMENT OF REVENUE ALCOHOLIC BEVERAGE CONTROL BOARD

December 15, 1982

Audit Control Number

04-1071-83-R

Commissioner, Department of Revenue	Robert D. Heath
Deputy Commissioners, Department of Revenue:	
Taxation	Joseph K. Donohue
Treasury	Vacant

Members of the
Alcoholic Beverage Control Board

Chairman	William Gordon
Member	Donald J. House
Member	William K. Smith
Member	Joseph W. Berberich
Member	Chuck J. Green

STATE OF ALASKA

AUDIT DIVISION
POUCH W—ALASKA OFFICE BUILDING

THE LEGISLATURE

BUDGET AND AUDIT COMMITTEE

JUNEAU, ALASKA 99811

December 15, 1982

Members of the
Legislative Budget and Audit Committee:

In accordance with the provisions of Title 24 of the Alaska Statutes, the attached report is submitted for your review.

A REPORT ON THE
DEPARTMENT OF REVENUE
ALCOHOLIC BEVERAGE CONTROL BOARD

December 15, 1982

Gerald L. Wilkerson, CPA
Legislative Auditor
Division of Legislative Audit

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PURPOSE OF THE REPORT

In accordance with the provisions of Alaska Statutes 24.20.271(1) and 44.60.050 (Sunset Legislation) an examination of the Alcoholic Beverage Control Board was conducted to determine whether there is a demonstrated need to continue liquor regulation in its present form. To determine that need we reviewed Board activities for Fiscal Year 1982 to see if the Board has been operating in an efficient and effective manner.

AS 44.66.010 specifies that the Alcoholic Beverage Control Board will terminate on June 30, 1983, but will continue until June 30 of the following year for the purpose of concluding its affairs. This report should be considered during the legislative oversight function in determining whether the Board should be allowed to terminate, be reestablished in its present form or be reestablished in a modified form.

(Intentionally left blank)

ORGANIZATION AND FUNCTION

In 1933 the Territorial Legislature created the Board of Liquor Control with full power, authority, and control to prescribe (1) rules and regulations to govern the manufacture, barter, sale and possession of intoxicating liquors, (2) qualifications of those engaged in that business, and (3) license fees and excise taxes. The present Alcoholic Beverage Control Board (hereinafter referred to as the ABC Board or the Board) was established in 1959, and the same broad powers and duties conferred on the Board of Liquor Control were transferred to the new ABC Board at that time.

Members are appointed for three-year terms by the Governor and serve at his pleasure subject to confirmation by the Legislature. Membership is limited by statute to five persons (two liquor industry representatives, three non-industry representatives). A director, also appointed by the Governor, serves as executive officer and is responsible for enforcement of Title 4 liquor laws and regulations developed by the Board.. Although he is not a member of the Board, the director may cast a tie-breaking vote.

The ABC Board is a regulatory, quasi-judicial agency, vested with the powers, duties, and responsibilities for the control of alcoholic beverages, including the power to propose and adopt regulations, and to hear appeals. The Board may order the director to issue, renew, revoke, transfer, or suspend licenses and permits.

Title 4 prescribes the type of licenses, fees, and specific activities allowed under each license classification (see schedule of license types and fees in Appendix C). Fees are payable at the time of application and are not reduced or prorated in any way for periods less than the statutory calendar year. To renew an already existing liquor license, the application must be filed (and the corresponding fees paid) on or before February 28.

The staff of the ABC Board is divided into three major functions: administration, licensing, and enforcement. A brief description of the services provided by those functions follows:

Administration. The director of the ABC Board provides all administrative support needed by the Board including overseeing all staff functions, preparing budget documents, and directing the preparation and implementation of administrative and public hearings, and directing special enforcement investigations.

Licensing. The licensing staff currently consists of three full-time employees responsible for issuing and receiving application forms, maintaining records and files for all licenses, collecting fees, issuing all licenses and permits authorized by the Board, and answering inquiries from the general public on routine licensing matters.

Enforcement. The ABC Board currently employs five investigators - three operating from the Anchorage central office, one operating from the Fairbanks field office, and one operating from the Juneau field office. One Anchorage Investigator position is vacant. Services provided include (1) surveillance and inspections of licensed premises, (2) investigations to obtain information to be used in criminal and civil proceedings and investigations into suspected licensing violations, (3) public appearances relating to ABC laws and regulations, and (4) assisting the licensing staff in handling inquiries from the general public.

REPORT CONCLUSION

Policy Issues

This review contains policy issues raised as a result of our evaluation of various Board practices. The final policy decisions affecting those practices are not within the scope of this review but require legislative consideration. In debating these decisions the legislative oversight committees should take into consideration the findings and alternatives presented in this report, so that the potential impact of the policy changes can be evaluated.

Report Conclusions

Title 4 of the Alaska Statutes established the ABC Board to control the manufacture, barter, possession and sale of alcoholic beverages in the State in order to protect the public's health, safety and welfare. We believe this control should continue to exist, however, it is our opinion the ABC Board has not met its mandated enforcement responsibilities of Title 4 of the Alaska Statutes. We recommend the ABC Board reevaluate its interpretation and application of the enforcement requirements of Title 4.

(Intentionally left blank)

FINDINGS AND RECOMMENDATIONS

Recommendation No. 1

The Alcoholic Beverage Control Board should reevaluate its interpretation and application of the enforcement requirements of Title 4.

Alaska Statute 04.06.075 states that the director of the ABC Board shall enforce Title 4 and regulations adopted by the Board. Title 4 also provides that a person who violates a provision of the Title or adopted regulations is guilty, upon conviction, of a class A misdemeanor. To enable the Director and enforcement personnel to accomplish this task, Title 4 also provides for the exercise of peace officer powers, upon concurrence of the Commissioner of Public Safety.

Although these statutes clearly show that the ABC Board is mandated to enforce Title 4, it is ABC's opinion the primary responsibility for enforcement rests with State and local law enforcement agencies. As a result, few criminal complaints have resulted from ABC enforcement activities. During Fiscal Year 1982, only eight criminal complaints were filed, five of which were originated by ABC personnel.

The ABC Board utilizes a Notice of Violation to communicate to licensees that a violation allegedly occurred. However, Notices of Violation of and by themselves carry no penalty. Again, the ABC Board relies primarily on State and local law enforcement agencies to provide information to generate a Notice. Over 60 percent of the Notices issued during Fiscal Year 1982 were the result of work performed by local law enforcement agencies.

State and local law enforcement agencies are required to investigate and report violations of Title 4 to the ABC Board. However, this responsibility is only a small part of their total criminal enforcement responsibilities in the State of Alaska. As a matter of priority, these agencies cannot devote sufficient time to the enforcement of Title 4. Therefore, this responsibility must and does rest with the ABC Board.

It is our opinion that the ABC Board should reevaluate its interpretation of the enforcement responsibilities of Title 4 and, within staffing limitations, reconsider the direction of current ABC enforcement efforts.

Recommendation No. 2

The Office of the Governor should keep appointments to the Alcoholic Beverage Control Board current and staggered as required by AS 04.06.030.

During our review of appointments to the ABC Board we noted the following exceptions:

1. Past appointments to the Board have not been made in accordance with the provisions of AS 04.06.030(b) which requires the Governor to fill vacancies to unexpired terms within 30 days of the vacancies. Our review of appointments showed one position remained vacant for 92 days and another position was vacant for 152 days.

2. AS 04.06.030(a) requires appointments to be overlapping terms of 3 years. We found that the terms of two members will expire on January 31, 1984, and the terms of two other members will expire January 31, 1985.

We recommend the Office of the Governor appoint new members or reappoint current members to vacant ABC Board seats in a timely manner and in compliance with AS 04.06.030. We also recommend that the appointment terms be staggered as required by law.

We further recommend the Office of the Governor establish a talent pool for Board appointments. The concept of a talent pool is to have a list of persons available and desiring to serve as a Board member. Many sources exist in the State to establish such a pool. Liquor industry associations could be requested to provide a list of members who would like to serve as an industry representative on the Board.

ANALYSIS OF PUBLIC NEED

Limited Analysis

The following analysis indicates both positive and negative attainments of the ABC Board and how its activities relate to the public need factors defined by AS 44.66.050. This analysis is not intended to be comprehensive in nature.

I. The extent to which the board, commission or program has operated in the public interest.

Public protection gained through licensing to control liquor manufacture and traffic has been adequately provided by the ABC Board. However, the Board is also charged with enforcement of the alcoholic beverage control laws, rules, and regulations. As previously documented in this report, it is our opinion the ABC Board has not met its statutory responsibilities in protecting public health, safety, and welfare (see Recommendation No. 1).

II. The extent to which the operation of the board, commission, or agency program has been impeded or enhanced by existing statutes, procedures, and practices which it has adopted, and any other matter, including budgetary, resource, and personal matter.

The 1980 revisions to Title 4 have, for the most part, been beneficial to the operation of the ABC Board. However, those sections which deal with suspension and revocation of licenses and permits place severe restrictions upon the ability of ABC to suspend and revoke licenses for the illegal act of licensee employees.

The Board is also restricted in meeting its statutory responsibilities in protecting the public health, safety and welfare by the size of the enforcement staff which consists of one agent in Juneau, one in Fairbanks and three, including a supervisory agent in Anchorage. Including the supervisory agent, there are only five agents with inspection and enforcement responsibilities for 1,483 licensed premises. However, one other Anchorage Investigator position is vacant.

VII. The extent to which a board or commission which regulates entry into an occupation or profession has presented qualified applicants to serve the public.

Our review of licensing activity of the ABC Board to determine whether all statutory qualifications of licensees were being met revealed no exceptions. The Board has therefore, presented qualified applicants to serve the public.

VIII. The extent to which state personnel practices, including affirmative action requirements, have been complied with by the board, commission, or agency to its own activities and the area of activity or interest.

No discrepancies were noted during our review of the ABC Board affirmative action program.

IX. The extent to which statutory, regulatory, budgeting, or other changes are necessary to enable the agency, board or commission to better serve the interests of the public and to comply with the factors enumerated in this subsection.

Please refer to I and II above and to the previous section, Findings and Recommendations.

(Intentionally left blank)

APPENDIXES

APPENDIX A

STATE OF ALASKA
DEPARTMENT OF REVENUE
ALCOHOLIC BEVERAGE CONTROL BOARD
REVENUE COMPARED WITH EXPENDITURES
Fiscal Years 1980, 1981 and 1982
(UNAUDITED)
(Note 1)

	1980	1981	1982
Revenue (See Schedule 1)	$1,028,982	$1,494,489	$1,548,393
Expenditures	(483,121)	(556,589)	(562,178)
Excess of Revenue Over Expenditures	$ 545,861	$ 937,900	$ 986,215

Schedule 1
Revenue Collected

Types of License	1980	1981	1982
Liquor License Application	$ 76,050	$ 83,250	$ 86,350
Pub	494	100	400
Beverage Dispensary	501,850	771,050	773,200
Club	24,650	39,500	39,300
Common Carrier	14,150	25,800	29,050
Restaurant	44,250	60,750	69,600
Roadhouse	3,250	-0-	-0-
Retail Store	248,350	330,700	335,400
Wholesale General	79,500	138,500	156,000
Wholesale Malt Beverage	15,300	13,200	21,600
Miscellaneous (Note 2)	21,138	31,639	37,493
Total	$1,028,982	$1,494,489	$1,548,393

Note 1

This revenue/expenditure comparison was prepared from available records and discussions with ABC Board personnel. The records were not audited by us and accordingly we do not express an opinion on the ABC Board Revenue Compared with Expenditures, nor the Schedule of Revenue Collected.

Note 2

Includes recreational-site licenses, caterer's, special events and conditional contractor's permits.

APPENDIX B

STATE OF ALASKA
DEPARTMENT OF REVENUE
ALCOHOLIC BEVERAGE CONTROL BOARD
NUMBER OF LICENSES BY TYPE
Fiscal Years 1980, 1981 and 1982

Types of License	1980	1981	1982
Pub	1	1	1
Beverage Dispensary	607	620	634
Club	61	63	65
Common Carrier	64	72	88
Restaurant	146	182	215
Roadhouse	20	-0-	-0-
Retail Store	431	438	445
Wholesale General	16	15	16
Wholesale Malt Beverage	6	7	7
Miscellaneous (Note 1)	10	9	12
Total	1362	1407	1483

Note 1

Includes recreational-site licenses, caterer's, special events and conditional contractor's permits.

APPENDIX C

STATE OF ALASKA
DEPARTMENT OF REVENUE
ALCOHOLIC BEVERAGE CONTROL BOARD
DESCRIPTION OF LICENSE TYPES AND FEES

Source	Description	Annual Fee
Application Fee	For each license application.	$ 50
Beverage Dispensary	To sell or serve on the licensed premises alcoholic beverages for consumption on the licensed premises only.	1,250
Restaurant or Eating Place	To sell beer and wine for consumption only on the licensed premises.	300
Club	To sell alcoholic beverages for consumption only on the licensed premises.	600
Bottling Works	To operate a bottling works where beer and wine may be bottled and sold.	250
Brewery	To operate a brewery where beer is manufactured and bottled or barreled for sale.	500
Winery	To operate a winery where wine is manufactured and bottled or barreled for sale.	250
Package Store	To sell alcoholic beverages to a person in response to a verbal solicitation for purchase received from the person present on the licensed premises or in response to a written solicitation made by a person known to the licensee for a purchase to be received by the person making the solicitation.	750

Source	Description	Annual Fee
Retail Stock	To sell the remaining stock of a package liquor store when the owner wishes to close or terminate business. Sale may only be to licensed persons.	$ 100
General Wholesale	To sell alcoholic beverages in the original package, and wine in bulk, in quantities of not less than five gallons to holders of licenses.	1,000 First $100,00 of sales plus $500 - 10,000 on additional sales
Wolesale Malt Beverage and Wine	To sell malt beverages and wine in the original packages in quantities of not less than five wine gallons to holders of licenses.	200 First $20,000 of sales plus $300 - 10,000 based on additional sales
Distillery	To operate a distillery where alcoholic beverages are distilled and bottled or barreled for sale.	500
Community Liquor	Authorizes a municipality to operate a beverage dispensary or a package store or both subject to the same conditions and fees applicable to beverage dispensary or package liquor store licenses.	1,250 Beverage Dispensary 750 Package Store
Common Carrier Dispensary	To sell alcoholic beverages for consumption aboard a vehicle, boat, aircraft, or railroad buffet car licensed by the State or federal agency for passenger travel.	350 Per vehicle, boat, aircraf or railroad car
Recreational Site	To sell beer and wine at a recreational site during and one hour before and after a recreational event which is not a school event, for co sumption on designated areas at the site.	400

Source	Description	Annual Fee
Pub	To sell beer and wine for consumption only at designated premises located on the campus of an accredited college or university.	$ 400
Caterer	Authorizes the holder of a [illegible]rage dispensary license [illegible]l or dispense alcoholic [illegible]ges at conventions, [illegible]s, social gatherings, [illegible].ng events or similar [illegible]rs held off the holder's licensed premises.	50
Special Events	To sell or dispense beer or wine for consumption at designated premises for a specific occasion and limited period of time. Only a nonprofit organization may acquire the permit.	50 Per day
Conditional Contractor	To sell beer or wine for consumption only on designated premises for one year from the date of issuance of the permit at construction sites which are located outside a city and inside the boundaries of a military or naval reservation.	600

BILL SHEFFIELD, GOVERNOR

STATE OF ALASKA

DEPARTMENT OF REVENUE

OFFICE OF THE COMMISSIONER

POUCH S
JUNEAU, ALASKA 99811
PHONE: (907) 465-2300

March 2, 1983

RECEIVED
MAR 03 1983
LEGISLATIVE AUDIT

Mr. Gerald L. Wilkerson, CPA
Legislative Auditor
Division of Legislative Audit
Pouch W
Juneau, AK 99811

Dear Mr. Wilkerson:

This letter is in response to your Recommendation No. 1 contained in your preliminary audit report of the Alcoholic Beverage Control Board dated December 15, 1982.

Without generating a lengthy dissertation about staff and budgetary limitations, utilization of present staff, and administrative/judicial due process, we generally believe your recommendation has merit. However, if we understand your perception of enforcement by the board to be criminally oriented, under present law heavy reliance on other state and local-law authority is required, and no single agency could fill a void which the report implies exists.

The board at each and every monthly meeting evaluates its enforcement function through granting or denying license applications, sitting in informal conference, and reviewing hearing officer decisions. The board has scheduled "workshop" sessions during its two-day April meeting in Juneau and will review law and regulations in light of your opinion.

Thank you for the opportunity to respond.

Sincerely,

Robert D. Heath
Commissioner of Revenue

cc: Patrick L. Sharrock, Director
ABC Board

ABC Board Members

2LH

SB

231

POSITION PAPER/Department of Health & Social Services

POSITION PAPER
SENATE BILL NO. 231

Atricle III, Section 18, of the Alaska Constitution requires the State establish a parole system. This administration supports the Parole Board as the least costly constitutional method of carrying out the parole process. Numerous legislative hearings held around the State over the last four years in conjuction with the sunset review of the Parole Board support this position.

Although the administration expects to submit a comprehensive bill next session to revise the outdated statutes, this bill will extend the life of the Board until the new bill is submitted next session.

The Parole Board is currently in its one year "wind down" now and is due to go out of existence on July 1, 1983. Legislation must be passed by then to comply with the constitutional mandate for a parole system. Expeditious passage of this legislation is strongly supported.

Recommend by: Samuel H. Trivette Date April 13, 1983
Samuel H. Trivette
Executive Director
Parole Board

Approved by: Robert London Smith Date 4/14/83
Robert London Smith, Ph.D.
Commissioner
Department of Health and
Social Services

I. REQUEST

Bill/Resolution No.: SB 231
Title: Extend life of Parole Board
Sponsor: Rules Committee
Requestor: Governor

II. FISCAL DETAIL

Agency Affected: Health & Social Services
Program Category Affected:
BRU, Program of Subprogram(s) Affected:

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 83	FY 84	FY 85	FY 86	FY 87	FY 88
OPERATING						
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 COMMODITIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-
CAPITAL	-0-	-0-	-0-	-0-	-0-	-0-
REVENUE	-0-	-0-	-0-	-0-	-0-	-0-

FUNDING: (Thousands of Dollars)

GENERAL FUND	-0-	-0-	-0-	-0-	-0-	-0-
FEDERAL FUNDS	-0-	-0-	-0-	-0-	-0-	-0-
OTHER (Specify Source)	-0-	-0-	-0-	-0-	-0-	-0-

POSITIONS:

FULL-TIME	-0-	-0-	-0-	-0-	-0-	-0-
PART-TIME	-0-	-0-	-0-	-0-	-0-	-0-
TEMPORARY	-0-	-0-	-0-	-0-	-0-	-0-

III. SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

IV. ANALYSIS: Attach a separate page for any Analysis

Prepared By: Parole Board
Phone: 465-3384
Division: Parole Board
Date: April 5, 1983

Approved by Commissioner:
Date: 4/5/83
Department: Health and Social Services

Distribution:
Original to Legislative Finance
Copy to Office of Management and Budget (for Legislature introduced bills)
Copy to Department (for Governor introduced bills)
Copy to Sponsor
Copy to Requestor (if different from Sponsor)

3/8/83

GOVERNOR

STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

April 6, 1983

The Honorable Jalmar Kerttula
President of the Senate
Alaska State Legislature
Pouch V
Juneau, Alaska 99811

Dear Mr. President:

Under the authority of art. III, sec. 18, of the Alaska Constitution, I am transmitting a bill extending the life of the State Board of Parole to June 30, 1985. Under the current law, that board "sunsetted" June 30, 1982 and is now in its one-year wrap-up period. Unless it is extended, it will go out of existence on June 30, 1983. However, art. III, sec. 21, of the Alaska Constitution says that "A parole system shall be provided by law." Therefore, it is necessary either to extend the life of the present board or establish a new parole system before the present board goes out of existence. It is my intent that members of my administration work with the legislature in dealing with additional issues confronting the parole system.

Sincerely,

Bill Sheffield
Governor

SENATE JUDICIARY COMMITTEE

Meeting Minutes
4/22/83

The meeting was called to order at 1:37 p.m. by Chairman Ray. All members were present.

The first order of business was SENATE BILL 231--Extending the life of the parole board, as to which Senator Ray briefly explained the purpose of the legislation and a discussion was had wherein Senator Pettyjohn stated that he was on the parole board for about two years and thus has some familiarity with the subject matter of the bill and he fully supports it. Senator Ziegler then moved to pass the bill out with individual recommendations. All members voted Do Pass.

The second order of business was SENATE BILL 232--Relating to state liability under AS 03.05, as to which Mark Hutton, who works for the Commissioner of the DEC, testified, concluding that his department opposes the present version of the bill and recommends that action on it be held in abeyance pending the drafting of a better version. After a discussion in which Senators Ray, Eliason and Ziegler participated, it was agreed that the Committee would follow Mr. Hutton's recommendation.

The third order of business was SENATE BILL 243--Modifying or abolishing some common law real property rules, as to which Dick Regan, Research Director for the Alaska Code Revision Committee, testified in favor of the bill and answered various questions posed by each member of the Committee, all of whom participated in a discussion, whereupon Senator Ziegler moved that the bill be passed out with individual recommendations. Senators Josephson, Ziegler and Pettyjohn voted Do Pass. Senators Ray and Eliason voted No Recommendation.

The fourth order of business was the unanimous confirmation of the following new ABC Board appointees:

John Walters from Nome; and

Wesley "Wally" Wallace from Fairbanks

The fifth and final order of business was the following new subcommittee appointments:

SB 163--Use of seat belts in cars.

Senator Pettyjohn

COMMITTEE REPORT

SENATE

FURTHER:

Date: _____

Mr. President:

The Committee on _____ has had _____

Extending the life of the Parole Board; and [illegible]

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

[ ] do pass [ ] do not pass

[ ] do pass with attached amendments(s)

[ ] replace with CS for _____ [ ] same title [ ] new title

and recommends _____

[ ] AND attaches a "Letter of Intent" [ ] New Fiscal Note

[ ] reports it back without recommendation

[ ] referred to the _____ Committee

MEMBERS SIGNING
DO PASS

_____

_____

_____

_____

_____

_____

_____

_____

_____

MEMBERS HAVING
OTHER RECOMMENDATIONS:

_____

_____

_____

_____

_____

_____

_____

CHAIRMAN

Alaska State Legislature

SENATOR
ROBERT H. ZIEGLER, SR.
307 BAWDEN STREET
KETCHIKAN, ALASKA 99901

While in Juneau
POUCH V
JUNEAU, ALASKA 99811

Senate

VICE CHAIRMAN
SENATE RESOURCES COMMITTEE

MEMBER
SENATE JUDICIARY COMMITTEE

WESTERN STATES LEGISLATIVE
FORESTRY TASK FORCE

WESTERN CONFERENCE COUNCIL
OF STATE GOVERNMENTS

April 14, 1983

Senator Bill Ray,
Chairman - Senate Judiciary Committee
Alaska State Legislature
Juneau, Alaska

RE: SB 231

Dear Senator Ray:

The captioned bill extends the life of the Parole Board until June 30, 198[illegible]. It it doesn't pass, the Board goes kaput as of June 30 of this yea[illegible].

It should pass.

Very truly yours,

Robert H. Ziegler, Sr.

RHZ:lk

SB

243

ALASKA CODE REVISION COMMISSION

MAY 18 1983

COMMISSIONERS
JOHN W. ABBOTT - CHAIRMAN
JAMES L. BALDWIN - VICE CHAIRMAN
PATRICK M. RODEY
CHARLIE BUSSELL
L. S. KURTZ, JR.
JUDGE (RET.) THOMAS B. STEWART
FREDERIC E. BROWN

ALASKA STATE LEGISLATURE
POUCH Y - STATE CAPITOL
JUNEAU, ALASKA 99811
(907) 465-4878

EXECUTIVE SECRETARY
BILLY G. BERRIER

MEMORANDUM

TO: Representative John J. Liska
Vice Chairman (Acting Chairman)
House Judiciary Committee

FROM: Dick Regan, Research Director
Alaska Code Revision Commission

DATE: May 18, 1983

RE: SB 243 on common law property rules

When Professor Jesse Dukeminier was here to testify but had to return to Los Angeles, you suggested we might submit written testimony on SB 243.

For an analysis of the bill we cannot provide a more accurate written statement than the commentary in Joint House and Senate Journal Supplement No. 8.

However, in an effort to express the reasons for the bill non-technically, I recently provided the attached statement to Chairman Bussell. It could serve as written testimony, and I'll be glad to answer questions about the bill at the hearing today.

DR:chw

Enclosure

FURTHER EXPLANATION OF THE REASONS FOR SB 243 ON COMMON LAW PROPERTY RULES

SB 243 deals with common law rules with roots that go back to feudal land holdings.

The main purpose of the bill is to remove possible hidden traps in order to make it more sure that the terms of a person's will will be carried out.

The bill benefits the person who drafts his or her own will. It benefits lawyers, too, in the same sense that accident prevention benefits insurance companies. But everybody who may leave property by a will benefits by reducing the risk of accidents in will drafting so the person's true intentions can be carried out. Nothing is much sadder than the bitterness engendered among family members by a disputed will. These ancient common law rules can be a cause of that bitterness.

The bill is to clarify and simplify the law by abolishing two old rules and changing a third.

Section 1 is a statement of intent that would become a revisor's note with the sections when they are published in Alaska Statutes. It is a broad brush explanation using the common names for the rules.

Section 2 changes the rule against perpetuities. That rule is well entrenched and it is needed. It sets a limit on how long a person can control who will own the property the person deeds, gives, or includes in the person's will.

But the rule works injustices by invalidating from the start many transfers that would be completed well within the time limit. The old rule determines validity or invalidity of a transfer based on possibilities, no matter how outlandishly unlikely the possibilities may be. This bill would carefully change the rule by statute so actual events, not unlikely possibilities, determine validity of a transfer. And any transfer that still is not completed within the time limit is to be carried out as nearly as possible within the limits of the rule as changed.

More than half of the states, England, and several Commonwealth jurisdictions have changed the rule, and the form we are proposing has proven to be suitable in other jurisdictions.

Sections 3 and 4 of the bill would abolish the other two old rules--the "Rule in Shelley's Case" and the "doctrine of destructibility of contingent remainders." The reasons for the two rules no longer exist in modern land holding. But common law rules aren't statutes that can just be repealed by a repealer section. Abolishing or changing a common law rule requires careful use of language. Unfortunately, as the rules are old, some old-sounding terms are needed in a bill that abolishes or changes them.

As is pointed out in joint journal supplement number 8, whether the Rule in Shelley's Case presently applies in Alaska is unclear. It is easy to make it clear that the rule does not apply by enacting section 3 of SB 243, the kind of course that has been taken in the vast majority of states.

Similarly, about three-fourths of the states have managed in one way or another to get rid of the long outdated doctrine of destructibility of contingent remainders, as the bill does in section 4.

Enactment of the bill would include Alaska among the enlightened jurisdictions that have enacted statutes to assure that the old rules from the feudal system will no longer interfere with reasonable property dispositions.

ALASKA CODE REVISION COMMISSION

MAY 18 1983

COMMISSIONERS
JOHN W. ABBOTT - CHAIRMAN
JAMES L. BALDWIN - VICE CHAIRMAN
PATRICK M. ROONEY
CHARLIE BUSSELL
L. S. KURTZ, JR.
JUDGE (RET.) THOMAS B. STEWART
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ALASKA STATE LEGISLATURE
POUCH Y - STATE CAPITOL
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EXECUTIVE SECRETARY
BILLY G. BERRIER

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Enactment of the bill would include Alaska among the enlightened jurisdictions that have enacted statutes to assure that the old rules from the feudal system will no longer interfere with reasonable property dispositions.

SB 243

FILE WITH SB

#

028018 ANCHORAGE AK 35 04-22 0915 AST

PMS SEN BILL RAY 1305

JUNEAU

THE PROBATE LAW SECTION OF THE ALASKA BAR ASSOCIATION CONSIDERED THE DRAFT OF SB243 RELATING TO THE ABOLISHMENT OF THREE COMMON LAW PROPERTY RULES AT ITS REGULAR MEETING ON JANUARY 20 1983. THE SECTION FAVORS THE PASSAGE OF THE BILL. THE SECTION FEELS THAT THE THREE COMMON LAW RULES IN QUESTION ARE ANTIQUATED AND WERE DESIGNED TO DEAL WITH SOCIAL PROBLEMS THAT NO LONGER EXIST. THE SECTIONS AGREE THAT PROPOSED LEGISLATION IS SUFFICIENTLY SIMPLE AND DIRECT TO ACCOMPLISH THE DESIRED RESULTS. WE URGE YOUR FAVORABLE CONSIDERATION OF THE BILL.

KATHRYN A BLACK CHAIRPERSON

HB 340
SB 243

COMMISSIONERS
JOHN W. ABBOTT - CHAIRMAN
JAMES L. BALDWIN - VICE CHAIRMAN
PATRICK M. RODEY
CHARLES G. ANDERSON
L. S. KURTZ, JR.
JUDGE (RET.) THOMAS B. STEWART

ALASKA STATE LEGISLATURE
POUCH Y - STATE CAPITOL
JUNEAU, ALASKA 99811
(907) 465-4878

EXECUTIVE SECRETARY
BILLY G. BERRIER

MEMORANDUM

TO: Chairman, Alaska Legislative Council

FROM: John W. Abbott, Chairman
Alaska Code Revision Commission

DATE: February 22, 1983

RE: Bill on common law property rules

Pursuant to authority granted in AS 24.20.075(c), the Alaska Code Revision Commission has prepared the attached bill on common law property rules and asks that it be introduced in the legislature.

The bill deals with three old common law property rules. If enacted it will modify the rule against perpetuities, and will abolish the rule on destructability of contingent remainders and a rule known to lawyers as "the rule in Shelley's case."

The reasons for treating these rules by statute and the debt the commission owes to Professor Jesse Dukeminier in its preparation are matters covered in the attached commentary on the bill.

JWA:chw

Attachment

cc: Hon. Bill Sheffield
Hon. Edmond W. Burke, Chief Justice
Myrton R. Charney, Executive Director
Legislative Affairs Agency

FEBRUARY 1983

COMMENTARY TO ACCOMPANY DRAFT BILL

ON COMMON LAW PROPERTY RULES

BILL NO.

GENERAL BACKGROUND

The rules dealt with in the attached bill reach so far back that few remember they exist. That is one of the main reasons for the bill. The rules, when not recognized and dealt with by statute, can defeat the intention of a person who makes a will or otherwise transfers real property. Many Alaskans draft their own wills, and many Alaska attorneys are general practitioners who may not be aware that these archaic rules still may be in effect in Alaska.

The common law that has developed through custom and precedent is the basic law of Alaska, subject to AS 01.10.010. That section provides:

> SEC. 01.10.010. APPLICABILITY OF COMMON LAW. So much of the common law not inconsistent with the Constitution of the State of Alaska or the Constitution of the United States or with any law passed by the legislature of the State of Alaska is the rule of decision in this state.

Statutes are needed to make clear whether certain of the old common law rules regarding land transfers continue to apply and to assure that the rules that apply are modified if no longer consistent with current conditions. A distinguished professor of real property law, Jesse Dukeminier of the UCLA Law School, has focused on the problem caused by these common law property rules and the need for legislation to abolish or modify them. His pointing out the need for legislation in Alaska caused the Alaska Code Revision Commission to consider the subject and to propose the attached bill on three rules--the rule against perpetuities, the rule in Shelley's Case, and the doctrine of

destructibility of contingent remainders. With minor exceptions, the following explanations of the rules and the need for legislation is Professor Dukeminier's, and is adopted by the commission.

Section 1

The Statement of Purpose is self-explanatory.

Section 2

Three common law property rules are dealt with here:

I. AS 34.27.010. MODIFICATION OF THE COMMON LAW RULE AGAINST PERPETUITIES.

Purpose of Proposed AS 34.27.010. Proposed AS 34.27.-010 is to provide the State of Alaska with a Rule against perpetuities that preserves (a) the essential purpose of the Rule, and (b) the intentions of testators, grantors, and settlors of trusts to the maximum extent possible.

What is the Rule Against Perpetuities?

Expressed in the technical language of the law, the rule is as follows:

> No interest is good unless it must vest, if at all, not later than 21 years after some life in being at the creation of the interest.

The purpose of the rule is to prevent property from being tied up for too long a period. It was developed by the English courts to curb the efforts of land owners who wanted to establish family dynasties. These problems are almost nonexistent today.

Why Does the Rule Need Modification?

Many unsound incrustations upon a basically sound rule have accumulated over the many years of the rule's existence. The rule is ridden with superfluous technicalities and decisions that destroy careful and reasonable estate plans offering no threat to the public interest. The following examples illustrate

these technicalities, which are traps for people who write their own wills and for lawyers and their clients:

> The fertile octogenarian. Testator devises property in trust to pay the income 'to my sister A for life, then to A's children for their lives, and then to distribute the principal to A's grandchildren.' A is eighty years old at testator's death. Because the law conclusively presumes A to be capable of bearing children, for purposes of the rule against perpetuities, the remainder to A's grandchildren might not vest until the death of A's children conceived after testator's death, which is too remote. The remainder to A's grandchildren is void.
>
> The unborn widow. Testator devises property 'to my son A for life, then to A's widow for life, then to A's issue per stirpes.' The remainder to A's issue may not vest until the death of A's widow, who might be a woman not yet born at testator's death. Hence the remainder to A's issue is void
>
> The slothful executor. Testator devises property 'to my issue living upon distribution of my estate.' Because the law assumes the distribution of testator's estate may occur more than twenty-one years after lives in being at testator's death, the gift to testator's issue is void.

The two basic difficulties with standard perpetuities doctrine, which result in defeating reasonable dispositions by reasonable property owners, are these:

> 1. In determining whether an interest violates the rule the courts close their eyes to events which actually happen and decide the case upon events which might happen after testator's death. For example, the courts assume that a man or woman of any age--even eighty or beyond--can have a child. See the fertile octogenarian case above. It will be observed that the first sentence of proposed AS 34.27.-010 corrects this by declaring that 'the period of perpetuities shall be measured by actual rather than possible events.' If in fact A does not have a child born after testator's death the gift is good. This sentence enacts the wait-and-see doctrine.
>
> 2. If it is found that an interest violates the rule, the entire interest is struck down instead of cutting it down to permissible size. It will be observed that the second sentence of proposed AS 34.17.010, corrects this

> by declaring that the interest 'shall be reformed, within the limits of that rule, to approximate most closely the intention of the creator of the interest.' (It should be noted that this provision of proposed AS 34.17.010 applies to private dispositions the cy pres doctrine, with which all lawyers are familiar, whereby when the purpose of a charitable trust fails the money is applied, under the supervision of the Attorney General, to such other charity as most closely approximates the general charitable intent of the settlor of the trust.)

All the known anomalies in the decisions on the rule will be automatically corrected by these two simple provisions. Modification of the rule by these provisions will avoid a trap for people who draft their own wills, and will also practically eliminate any potential liability of lawyers for falling into what John Chipman Gray (the great authority on the rule) called "the net which the rule spreads for the unwary."

Is There General Recognition that the Rule is Defective?

Yes. The wait-and-see doctrine determines validity by what actually happens, not by what might happen. The wait-and-see doctrine has been adopted in one form or another by fourteen states, England, and several Commonwealth jurisdictions. Fla. Stat. § 689.22(2) (1977); Ky. Rev. Stat. § 381.216 (1972); Ohio Rev. Code Ann. § 2131.08 (Page 1978); 20 Pa. Cons. Stat. Ann. § 6104(b) (Purdon 1975); Va. Code § 55-13.3 (approved April 7, 1982); Vt. Stat. Ann. tit. 27, § 501 (1975); Ill. Ann. Stat. ch. 30, § 195 (Smith-Hurd 1969 & Supp. 1979); Wash. Rev. Code §§ 11.98.010-.050 (1976); Conn. Gen. Stat § 45-95 (1979); Me. Rev. Stat. tit. 33, § 101 (1978); Md. Est. & Trusts Code Ann. § 11-103(a) (1978); Mass. Gen. Laws Ann. ch. 184A, § 1 (West 1977); Phelps v. Shropshire, 254 Miss. 277, 785, 183 So. 2d 148, 161-62 (1966); Merchants Nat'l Bank v. Curtis, 90 N.H. 225, 230-31, 97 A.2d 207, 211 (1953); English Perpetuities

and Accumulations Act, 1964, c. 55, § 3. In May 1979, the American Law Institute approved the wait-and-see approach to be incorporated into the Restatement (Second) of Property. Restatement (Second) of Property, Donative Transfers §§ 1.3-.4 (Tent. Draft No. 2, 1979).

Under the cy pres doctrine the invalid interest is reformed to give effect as nearly as possible to the general intent of the creator of the interest. The cy pres doctrine has been adopted in fifteen states and by the Restatement (Second) of Property. Cal. Civ. Code § 715.5 (West 1970); Mo. Ann. Stat. § 442.555 (Vernon Supp. 1979); Okla. Stat. tit. 60, § 75 (1971 & Supp. 1978); Tex. Rev. Civ. Stat. Ann. art. 1291b (Vernon Supp. 1978); Ky. Rev. Stat. § 381.216 (1972); Ohio Rev. Code Ann. § 2131.08(c) (Page 1976); Vt. Stat. Ann. tit. 27, § 501 (1975); Va. Code § 55-13.3 (approved April 7, 1982); Wash. Rev. Code § 11.98.030 (1976); In re Estate of Chun Quan Yee Hop, 52 Haw. 40, 46, 469 P.2d 183, 197 (1970); In re Foster's Estate, 190 Kan. 498, 503, 376 P.2d 784, 788 (1962) (semble); Carter v. Berry, 243 Miss. 321, 376, 140 So. 2d 843, 855 (1962); Edgerly v. Barker, 66 N.H. 434, 31A. 900 (1891); Berry v. Union Nat'l Bank, 262 S.E.2d 766 (W. Va. 1980) (a particularly persuasive opinion analyzing cy pres and citing most of the relevant literature); See also Atchison v. City of Englewood, 568 P.2d 13, 17-18 (Colo. 1977) (reforming commercial agreement so as to avoid violation of the Rule). Restatement (Second) of Property, Donative Transfers § 1.5 (Tent. Draft No. 2, 1979), applies the cy pres doctrine if the interest actually vests beyond the perpetuities period. Thus, the Restatement has adopted the modifications adopted in Kentucky, Mississippi, New Hampshire, Ohio, Vermont, and Virginia. These modifications are provided in proposed AS 34.27.010 of the statute proposed for Alaska.

To summarize, proposed AS 34.27.010 draws upon and combines the best features of existing legislation in other American states, and does so in simple form.

Who Will Benefit from This Bill?

This bill will cause innocent and reasonable family dispositions, which standard perpetuities doctrine now invalidates, to be upheld within the limits of the rule. Instead of determining validity of interests by what might happen, often unforeseen by competent lawyers, it will determine the validity of interests by what actually occurs. It will benefit the general practicing lawyer who has difficulty keeping abreast of the intricacies and technicalities of the rule. It will also benefit the property owner who consults the lawyer or who drafts his own will.

It should be noted that the statute does not affect or modify any disposition that would have been valid prior to enactment of the statute. It only affects dispositions that heretofore would be void.

How Will the Statute Apply?

The discussion that follows is somewhat more technical.

In the first place, it would seem desirable for a court to decline to pass on the validity of a future interest which may or may not vest within the rule until previous interests have expired; in the case of land no issue of possession can arise until this time comes, and in the case of a trust the trustee is not in a position where he or she has to distribute. It is standard practice in many jurisdictions to decline to pass on a perpetuities issue until previous interests expire. The proviso in the first sentence of proposed AS 34.27.010

("However, the period of perpetuities may not be measured by a life whose continuance does not have a causal relationship to vesting or failure of the interest") prevents waiting out lives which have no relationship to the gift.

If decision is postponed until previous interests expire, it will usually be found that "actual rather than possible events" have eliminated any hypothetical violation of the rule. If, however, actual events still produce a violation of the rule, then the court under the second sentence of proposed AS 34.27.010 will enter a decree reforming the will, deed, or trust in such a way as to carry out most closely the intent while still staying within the limits of the Rule.

Two common examples:

(1) A childless farmer has several brothers. His youngest brother, John, works the place with him. John has several children. The farmer's will leaves the place to John for life, and then to John's children who reach the age of 25. Under standard perpetuities doctrine, the gift to the children is void; and on John's death the property will pass to the farmer's heirs (who would include the other brothers). Under the proposed Act the validity of the remainder would not be determined until John's death; then, if all John's children were born in the testator's lifetime or if all were over 4 years old at John's death, no reformation of the interest would be required. The remainder would actually vest within the period. If there were at John's death a child under 4 who was born after the testator's death, the will would be reformed to give the farm to such of John's children as should reach 21. The justification is that the testator obviously would have preferred earlier vesting to total invalidity if the point were put to him.

(2) A father has a son, aged 45, who is married and has three children. He leaves his property in trust to pay the income to the son for life, then to pay the income to the son's widow for life, and then to pay the principal to the son's children who should be living at the death of the survivor of the son and his widow. Under standard perpetuities doctrine the gift to the children is void, because of the possibility that the son's present marriage might end by death or divorce, the son might marry a woman who was unborn at the testator's death, there might be children of this second marriage, and the second wife might survive her husband. Of course, the chance that these events would occur is absurdly slight; but the existence of the chance causes the standard rule to be violated. Under the proposed Act it would not be determined whether the gift to children is valid or void until the son's death, when it would doubtless appear that the "actual events" did not violate the rule. However, on the long chance that this extraordinary series of events actually did take place, the court would reform the gift to the children so that it would read: ". . . to such children of my son as shall be living at the death of the survivor of my son and any widow of his, provided that, if my son leaves a widow who was unborn at my death, the interest to my son's children shall vest not later than 21 years after my son's death." As thus reformed, the gift is valid, no matter what happens.

Conclusion

Proposed AS 34.27.010, if enacted, will provide Alaska with a law of perpetuities which at once safeguards the public interest against overlong dispositions, carries out to the greatest feasible extent the intentions of testators,

grantors, and settlors of trusts, and removes potential traps for the lay will drafter and the general practicing attorney.

II. AS 34.27.020. ABOLITION OF THE COMMON LAW RULE IN SHELLEY'S CASE.

What is the Rule in Shelley's Case?

Many lawyers know the rule in Shelley's Case only as a quaint rule learned in law school and immediately forgotten after the real property law exam. Under the rule if one instrument creates a life estate in land in a person and purports to create a remainder in the person's heirs, the remainder becomes a remainder in fee simple in the grantee, not in the grantee's heirs. Thus:

> Testator devises land to A for life, remainder to A's heirs. The remainder to A's heirs is void. A takes the remainder in fee simple, which merges with A's life estate, giving A a fee simple in possession. See 1 American Law of Property §§ 4.40-4.52.

The rule in Shelley's Case is a rule of law defeating the testator's intent to give A only a life estate. It serves no good purpose. It is a feudal anachronism which has been abolished in thirty-nine states and the District of Columbia.

Does the Rule Exist in Alaska?

It is not clear whether the rule exists in Alaska, and the question should be answered by legislation. Deferring to the courts would only cause someone to incur major litigation expenses and would perpetuate the period of uncertainty until someone is willing to incur the expense in time and money to resolve the question.

The rule in Shelley's Case was abolished by statutes in Alaska that were part of the original code adopted from Oregon, Compiled Laws of Alaska 1913, Sections 586 and 587. These sections were carried over into Alaska Statutes in 1962 as AS 13.05.210 and AS 13.05.220. They were:

> Sec. 13.05.210. DEVISE OF ESTATE FOR LIFE WITH REMAINDER TO HEIRS. If any person by last will devise any real estate to any person for the term of such person's life, and after his death, to his or her children or heirs, or right heirs in fee, such devise shall vest an estate for life only in such devisee, and remainder in fee simple in such children.
>
> Sec. 13.05.220. ESTATE BY DEED OR WILL. Where any estate, real, or personal is given by deed or will to any person for his life, and after his death to his heirs, or to the heirs of his body, the conveyance shall be construed to vest an estate for his life only in such person, and a remainder in fee simple in his heirs or the heirs of his body.

These sections were repealed by the blanket repeal of AS 13 when the Uniform Probate Code was adopted in Alaska by ch. 78, SLA 1972.

The rule of statutory construction involved is AS 01.-10.100(c):

> (c) When any act repealing a former act, section, or provision is itself repealed, such repeal does not revive the former act, section, or provision, unless it is expressly so provided.

AS 13.05.210--13.05.220, now repealed, simply declared a rule of law that negated a common law rule. Whether the common law rule in Shelley's Case was revived by the 1972 repeal of AS 13.-05.210--13.05.220 is an open question. Proposed AS 34.27.020 in the bill would include Alaska clearly with the 39 states in which the rule is specifically abolished by statute.

Why Should the Rule be Abolished?

The rule developed out of feudal land holdings where feudal incidents (equivalent to death taxes) came due if land descended to the heir, not if the heir took by way of remainder. To prevent tax avoidance by giving A a life estate only, with remainder to A's heirs, the rule was invented. No reason for the rule exists in the present system of land holding, but it

is ingrained in the common law and crops up occasionally to defeat testamentary intent in the few states where the rule is not abolished by statute.

III. AS 34.27.030. ABOLITION OF THE COMMON LAW DESTRUCTIBILITY OF CONTINGENT REMAINDERS.

What is the Rule on Destructibility of Contingent Remainders?

At English common law a legal contingent remainder in land was destroyed if it did not vest at or before the termination of the preceding freehold estate. Thus:

> Testator devises land to A for life, then to A's children who reach 21. Thereafter A dies, leaving two children aged 15 and 12. Because the children are under 21, the remainder is destroyed and A's children never take. Testator's heirs take a fee simple absolute at A's death. See 1 American Law of Property §§ 4.60-4.63.

Using the same example and assuming proposed AS 34.27.030 has been enacted, the state of the title is:

> A has a life estate, A's children have a contingent remainder, and the testator's heirs have a reversion. If A dies leaving children under 21, possession of the land will go to the testator's heirs until a child reaches 21. The testator's heirs will have to surrender possession to A's first child to reach 21, who in turn will have to share possession with his siblings who reach 21. This is what is meant by the final sentence of AS 34.27.030: "the remainder [in A's children] takes effect [after the termination of the life estate] in the same way as a springing or shifting executory interest." The remainder is not destroyed at A's death, but takes effect [springs up] later if the condition is met.

There are two types of future interests in transferees: remainders and executory interests. A remainder follows a life estate in possession. An executory interest is an interest which springs up in the future at some time other than at the death of a life tenant; it does not follow a life estate. Remainders were recognized in early feudal days; executory

interests were made permissible by the Statute of Uses (1536). The main difference between remainders and executory interests was that remainders were destroyed if they did not vest upon termination of the life estate, whereas executory interests--which did not follow life estates--were indestructible. It is this difference that AS 34.27.030 wipes out.

Why Should the Doctrine be Abolished by Statute?

This doctrine ought to be abolished because it defeats the testator's intent. In the above example there is no reason why A's children should not take when they reach 21. This doctrine has been abolished in about three-fourths of the states, but not expressly abolished in Alaska. There appears to be no Alaska case accepting or rejecting it.

There are ways an astute lawyer can draft a will to avoid the consequences of this doctrine, but not all lawyers and very few non-lawyers are aware of the potential problem. Until the doctrine is abolished by statute the potential exists for malpractice by attorneys drafting wills and for frustration of the testamentary intent of persons who carefully plan for the disposition of their property after death.

STATE OF ALASKA
FISCAL NOTE

Revision Date , 1983

I. REQUEST

Bill/Resolution No.: SB 243
Title: "...modifying...property rules."
Sponsor: Senate Rules
Requestor: House Judiciary

II. FISCAL DETAIL

Agency Affected: Department of Law
Program Category Affected: General Govt.
BRU, Program of Subprogram(s) Affected: Legal Services

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 83	FY 84	FY 85	FY 86	FY 87	FY 88
OPERATING						
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 COMMODITIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND	-0-	-0-	-0-	-0-	-0-	-0-
FEDERAL FUNDS						
OTHER (Specify Source)						

POSITIONS:

FULL-TIME	-0-	-0-	-0-	-0-	-0-	-0-
PART-TIME						
TEMPORARY						

III. SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

N/A

IV. ANALYSIS: Attach a separate page for any Analysis

Prepared By: Richard I. Pegues, Director (Richard I. Pegues) Phone: 465-3672
Division: Administrative Services Division Date: May 18, 1983

Approved by Commissioner: Norman C. Gorsuch, Attorney General (Richard I. Pegues/for/) Date: May 18, 1983
Department: Department of Law

Distribution:
Original to Legislative Finance
Copy to Office of Management and Budget (for Legislature introduced bills)
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Copy to Sponsor
Copy to Requestor (if different from Sponsor)

SB 243
Fiscal Note
Analysis

This bill modifies and abolishes some common law property rules. It is part of an ongoing effort of the Code Revision Commission to clarify and update the state's property statutes in a model form. Because this action enhances the legal process there will be no fiscal impact on the Department of Law's operations.

SB

257

FREE

Federation's Role in our Enterprise Economy

25 May 1983



Representative Charlie Bussell
Chairman of the Judiciary Committee
Alaska House of Representatives
Pouch V
Juneau, Alaska 99811

Re: Legislative Ethics -- SB 257

Dear Representative Bussell:

On May 23, 1983, the FREE Committee wrote to you concerning SB 257 and HB 362. Since that letter was posted, the final version of SB 257 as it was passed by the Senate on friday, May 20, became available in Anchorage. It is our understanding that SB 257 will be considered by your committee on monday, May 30, at 1:30 p.m. and, therefore, a representative of the FREE Committee will be attending that meeting.

There were 14 significant amendments made on the floor to the Senate Judiciary Committee version of the bill before it was passed by the Senate. The FREE Committee has reviewed those amendments and submits the following comments and suggested amendments for your consideration. (Deletions are in brackets and additions are underlined.)

1. To avoid confusion and to ensure that the state can continue to contract non-competitively with sole sources, for fair traded items, for air taxi services, or for other services or goods enumerated in AS 37.05.230, page 3, line 29 and page 4, lines 1 through 7 should be amended to read as follows:

> contract or lease unless the contract or lease is let [by competitive bidding under] pursuant to AS 37.05.230 or the total amount of the state contract or lease is $1000 or less, [or is a standardized contract or lease generally available to the public at large, members of a profession, occupation or group which was developed under publicly established guidelines]. A person has an interest in a state contract or lease under this section if the person receives direct or indirect financial benefits.

There are many occasions when the state has a legitimate reason to contract non-competitively and the FREE Committee believes that it is important to protect that right even where one possible beneficiary is a legislator or employee of the legislature. The second deletion is suggested, because it is not

clear why the deleted language was included and is, therefore, unnecessary.

2. FREE Committee believes that public officials have the right to expect that ethical standards be clearly defined so that they can avoid ethical problems and, therefore, suggests that the following sentence be added to Sec. 24.60.050 (a) at page 4, line 18:

> determining qualification. Within 30 days, the committee shall issue a list of loans that are not considered to create a conflict of interest. Such list shall be reviewed annually.

3. While the public's right to know is important, FREE believes that legislators and legislative employees have a right to privacy. Loan applications and the supporting documents often contain information that should be kept confidential and, therefore, FREE recommends that only notice of a loan application be sent to the APOC. It is simply not the function of the Ethics Committee to second guess the decision of the lending agency to lend money. Where an agency exercises its authority to lend money, even courts are reluctant to impose a contrary determination. More importantly, since the Ethics Committee has subpeona powers and the power to require the production of evidence when it is investigating a complaint, it is unnecessary to require routine production of such confidential information where no complaint has been filed.

In addition, FREE believes that it should be incumbent upon the legislator seeking the loan to notify the APOC, rather than upon the lending agency. Finally, FREE believes that to be consistent, the bill needs to specify where loan applications of legislative employees should be filed. To minimize expense, FREE suggests that APOC could be designated, so long as AS 15.13.030 was amended to permit APOC to receive the information. Based on these reasons, the following changes to page 4, lines 27-29 and to page 5, lines 1-3 are suggested:

> the [lending agency] legislator shall send a [copy] notice of the application to the Alaska Public Offices Commission, which will incorporate the [material] notice into the applicant's financial disclosure statement, if the applicant is required to file a disclosure statement or which will place the information in a legislative employee loan file which is open to the public, if the applicant is not required to file a disclosure statement. [All records relating to a state loan to a person to whom this chapter applies may be disclosed to the committee.]

4. FREE is also concerned that Sec. 24.60.050 (d) (page 5, lines 4-9) only requires state loan agencies to list outstanding loans. It does not clearly require quasi-state loan agencies

(such as the Alaska Commercial and Fishing and Agriculture Bank) to provide the same information. Since a large number of loans are processed through such agencies, this language should be re-written to address them. With that in mind, the following language is suggested for page 5, line 4:

> (d) Each February 1, each [state loan agency] lending agency that receives more than 50% of its funding from state funds must deliver a . . .

5. Since reasonable regulations should apply to everybody, FREE believes that Sec. 24.60.050 (e) (page 5, lines 10-14) should be deleted entirely. In addition, if separate well written regulations setting up procedures for granting loans are enacted, it makes an Ethics Committee unnecessary, because there would be no reason to review an agency's decision to grant a loan.

6. For reasons discussed above in paragraph 3, subsection (f), page 5, lines 17-18 should be re-written as follows:

> to determine whether [appropriate procedures were observed in granting or reviewing the loans] loan conditions imposed by the lending agency are being enforced. The division shall report its findings to the committee by April 1.

7. The FREE Committee believes that the entire Sec. 24.60.070, beginning page 5, line 29 and ending page 6, line 16, should be deleted. This section duplicates information already provided to the APOC by legislators and where it would affect legislative employees, that information would already have been filed with the APOC by the other business partner (legislator, public official required to file a financial disclosure, or registered lobbyist). The only economic association that would not already have been disclosed would be an association between supervisor and employee. It is difficult to understand why this is relevant to the purpose of this bill, legislative ethics. Therefore, FREE suggests that this section be deleted.

8. The original language found in SB 257 for Sec. 24.60.080 should be used rather than the new language, page 6, lines 17-25. The original language was clearer and carefully identified gifts which would not create conflicts of interests. The present version creates a legal problem by requiring intent to be established.

9. To be consistent with the rest of Sec. 24.60.090, line 26, page 6, should be changed to read as follows:

> Sec. 24.60.090. NEPOTISM. (a) [A relative of] An individual who is related to a member of the . . . .

10. Sec. 24.60.100 allows legislators and legislative

employees to represent clients before state agencies, boards and commissions for compensation. FREE believes that this is improper and recommends that the present section be deleted and re-written as follows (page 7, lines 9-17):

> Sec. 24.60.100. REPRESENTATION. (a) Except as provided in this section, a member of the legislature or a person employed by an agency of the legislature established under AS 24.20 may not represent another person for compensation before an agency, board, or commission of the state.
>
> (b) A member of the legislature may represent a client in
>
> (1) an action before a court of the state; or
>
> (2) a matter which was pending at the time a person to whom this chapter applies assumes office or is employed.

The FREE Committee believes that if a person receives no compensation, representation does not create a conflict of interest. Legislators should be allowed to represent constituents without fear that they will be subject to censure.

11. To avoid creating unnecessary, expensive permanent interim committees, the FREE Committee suggests that page 7, line 26, be amended to read as follows:

> the Rules committee shall maintain a [public] record open to the public of the disclosure . . . .

12. In a time of declining revenues, FREE Committee believes that every effort must be made to reduce government and its costs. Therefore, FREE suggests that any committee created to address violations of the ethical code be limited to employing staff only when there is in fact a complaint to investigate. The following addition to page 8, lines 21 and 22, is therefore suggested:

> (f) The committee or a subcommittee may contract for professional services and may employ staff as it considers necessary to investigate a complaint and to recommend action by the legislature. The authority of the committee or subcommittee to contract for professional services or to employ staff is expressly limited to those times that it is actively addressing a complaint.

13. The FREE Committee does not believe that any Ethics Committee created by this legislation should be bound by its inaction on a request for an advisory opinion and, therefore, recommends that the sentence binding the committee be eliminated. The section would then read as follows (page 9, lines 8-15):

Sec. 24.60.150. ADVISORY OPINIONS. The committee shall issue an advisory opinion within 30 days on the request of a person to whom the chapter applies as to whether the facts and circumstances of a particular case constitute a violation of ethical standards. [If an advisory opinion is not issued within 30 days after the request is filed with the committee, the facts and circumstances of the particular case do not constitute a violation of the ethical standards.] The opinion issued [or considered issued] is binding on the committee in any subsequent . . . .

14. FREE Committee does not believe that it is appropriate to leave a legislator or legislative employee open to investigation for a violation of this chapter for 4 years. This is unreasonable. Since a person who intentionally hides his or her unethical behavior is not subject to any time limit and since criminal prosecution is not affected by this section, the FREE Committee recommends that any complaint must be brought within one year of the alleged violation. It is too difficult to reconstruct the circumstances surrounding a complaint 4 years later. The amended language would read on page 9, line 26, as follows:

a proceeding begun within [four] one year[s] after the alleged violation . . . .

15. Subsection (d) should also be re-written. Since a complaint can be initiated by one private person, it only makes sense that a complaint should be allowed to be initiated by one sub-committee member where the complaint is against a legislator. (It should be remembered that each sub-committee only has three members and this bill would require all three to initiate the complaint.) In addition, the FREE Committee sees no reason to stay all pending actions before a committee within 60 days preceding a state primary or general election. There is some merit to not allowing complaints to be filed within the 60 day period, however. The following language is, therefore, recommended (page 10, lines 7-17):

the committee. A complaint may be initiated by any [private] person [or by three or more members of the committee). A complaint shall be in writing and signed under oath by the person making the complaint. No complaint, other than a complaint initiated by [five or more members] the majority of the members of the committee, may be received within a period fo 60 days preceding a state primary or general election. [All proceedings pending before the commission on the 60th day preceding a state primary or general election are stayed unless the proceedings are based on a complaint initiated by five or more members of the committee. No further action may be taken in the stayed proceeding

until the legislature next convenes in regular session.]

16. Line 15, page 11 should be amended to set a specific minimum notice period for setting a hearing. This is only fair. The time itself should only be a minimum and is somewhat arbitrary. The language could read as follows:

> the committee with a minimum of 10 days notice to the complainant, if any, and to the . . . .

17. The Committee believes that subsections (j) and (k) found on page 12, lines 3-19, appear to conflict and are somewhat difficult to understand. It is suggested that they be carefully considered. In particular, the phrase, "The order is confined to this determination." needs to be clarified. While subsection (j) seems to make this order public immediately, subsection (k) appears to require a 30 day waiting period (lines 16-18). The Committee also suggests that the 30 day period should run whether the legislature is in session or not. To do otherwise allows the committees to engage in political manipulation. Therefore, the Committee recommends that the following deletion be made (page 12, lines 17-18):

> the referral. [Days during which the legislature is not in session may not be counted in determining the 30 day period.] The legislature . . . .

18. Finally, the FREE Committee is concerned about frivolous accusations and complaints. Therefore, the Committee has enclosed a copy of a statute found in the Louisiana ethics legislation which provides a penalty for false accusations. While the penalty provisions might be harsh, it is suggested that this is one approach that the legislature might consider.

Ethics legislation is important to Alaska, its citizens and the persons directly affected by this legislation. The FREE Committee urges you to carefully consider its recommendations.

Sincerely,

Cheri C. Jacobus

Cheri C. Jacobus
Chairman, Legislative Study

cc: all legislators
Governor Bill Sheffield

D. Prescription.—No action to enforce any provisions of this Part shall be commenced after the expiration of two years following the discovery of the occurrence of the alleged violation or four years after the alleged violation, whichever period is shorter. No action may be taken against a violator who committed the violation prior to the effective date of this Chapter. Added Acts 1964, No. 110, § 1.

Library references: States ⇨81; C.J.S. States § 85.

§ 1146. Criminal laws not affected

Nothing in this Part is intended to nor is to be construed as repealing, amending or modifying in any way the provisions of ar of the criminal or penal laws of this state. Added Acts 1964, No. 110, § 1.

Library references: Criminal Law ⇨15; C.J.S. Criminal Law § 27.

§ 1147. Penalty for false accusations

Any person who shall knowingly and intentionally file a false complaint with either the Louisiana Commission on Governmental Ethics or the Louisiana Board of Ethics for State Elected Officials or any member of either said board or commission who shall knowingly and intentionally initiate action against any state employee, board or commission member or elected official knowing such action to be false shall, upon conviction in a court of competent jurisdiction, be guilty of the crime of making false accusations.

Whoever commits the crime of making false accusations shall be fined not more than five thousand dollars or imprisoned, with or without hard labor for not more than five years, or both. Added Acts 1964, No. 110, § 1.

Library references: Malicious Prosecution ⇨78; C.J.S. Malicious Prosecution § 116.

§ 1148. Procedure and rules of evidence for hearings

Notwithstanding any other provisions of this Chapter, all hearings conducted by the Louisiana Commission on Governmental Ethics and by the Louisiana Board of Ethics for State Elected Officials shall be held in accordance with the rules of procedure set forth in Title 15 of the Louisiana Revised Statutes of 1950, including but not restricted to those rules governing the admissability of evidence and all other rules pertaining to the introduction of and the weight to be given to any evidence. Added Acts 1964, No. 110, § 1.

Library references: Administrative Law and Procedure ⇨111 et seq.; C.J.S. Public Administrative Bodies and Procedure § 111 et seq.

Alaska State Legislature

IN SESSION:
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JUNEAU, ALASKA 99811
(907) 465-4949

BOX 142
EAGLE RIVER, ALASKA
99577

Representative Randy Phillips

HOUSE DISTRICT 15

MEMORANDUM

TO: Representative Charlie Bussell
Chairman, House Judiciary Committee

FROM: Representative Randy Phillips R.P.

DATE: May 25, 1983

RE: Conflict of Interest Legislation
(House Bill 362, CSSB 257 (Jud) am)

Attached are the following items for your committee's review:

1. Memorandum dated May 24, 1983, entitled "Comparison of CSSB 257 (Jud) am and SB 257. As you know, SB 257 is the same as House Bill 362.

Attached to this memorandum is a copy of CSSB 257 (Jud) am in which the changes from SB 257 to the Senate-passed version have been highlighted.

2. Memorandum dated May 25, 1983, comparing the Legislative Ethics Commission as proposed in HB 362/SB 257 and the Select Committee on Legislative Ethics as proposed in CSSB 257 (Jud) am.

If you have any questions, please do not hesitate to contact me. I plan on being in attendance at this Friday's meeting when I understand this subject matter will be before your committee.

MEMORANDUM

TO: Representative Randy Phillips

FROM: Janet Seitz J. Seitz

DATE: May 25, 1983

RE: Conflict of interest legislation

Attached is a seven-page comparison of the Legislative Ethics Commission, as contained in House Bill 362/Senate Bill 257, and the Select Committee on Legislative Ethics, as contained in CSSB 257 (Jud) am.

The provisions for the Legislative Ethics Committee start in Sec. 24.60.130, starting on page 8 of SB 257. The provisions for the Select Committee on Legislative Ethics start in Sec. 24.60.130, starting on page 8 of CSSB 257 (Jud) am.

The page and line number references are included for each category.

LEGISLATIVE ETHICS COMMISSION (SB 257/HB 362)	SELECT COMMITTEE ON LEGISLATIVE ETHICS (CSSB 257 (Jud) am)
In legislative branch (p.8, l. 3-5)	In legislative branch (p. 8, l. 3-5)
Seven Members (p. 8, ls. 6-25) One Senator appointed by President with concurrence of 3/4 roll call vote of full membership One Representative appointed by Speaker with concurrence of 3/4 roll call vote of full membership Two persons appointed by Senate President with concurrence of 2/3 roll call vote of full membership Two persons appointed by Speaker with concurrence of 2/3 roll call vote of full membership One former legislator appointed by other commission members	Six Members - two subcommittees (p. 8, ls. 6-14) Senate subcommittee 3 Senators appointed by President with concurrence of 3/4 roll call vote of full membership House subcommittee 3 Representatives appointed by Speaker with concurrence of 3/4 roll call vote of full membership
No more than 4 members of same party or residents of same organized or unorganized borough (p. 8, ls. 26-28)	No more than two members of each subcommittee may be of same party (p. 8, ls. 15-16)
Commission members shall elect chair and vice-chair and other offices. Legislators may not serve as chair or vice-chair (p. 8, l. 29 to p. 9, l. 3)	Members of each subcommittee shall elect chairs, who shall co-chair meetings (p. 8, ls. 17-18)
Term of office (p. 9, ls. 4-8) Public member - 4 years from Feb. 1 of year of appointment and until successor is appointed and qualifies Legislator may not serve beyond expiration of legislative term Members may not serve more than one full term.	
Members MAY NOT (p. 9, ls. 9-16) Hold or seek elective office (except for legislators who are members)	

LEGISLATIVE ETHICS COMMISSION
(SB 257/HB 362)

Be officer of political party, political committee, or group

Lobby

Vacancy (p. 9, ls. 17-18)
Filled under appointment provisions for balance of term

Services and Staff (p. 9, ls. 19-21)-
Commission may contract for professional services and staff

Compensation (p. 9, ls. 22-28)
No compensation received except for travel and per diem. Legislators who are members of the committee are not entitled to travel or per diem if receiving from legislative duties.

DUTIES OF COMMISSION (p. 9, l. 29 to p. 10, l. 13)

Adopt regulations.

Recommend legislation.

SELECT COMMITTEE ON LEGISLATIVE ETHICS
(CSSB 257 (Jud) am)

Vacancy (p. 8, ls. 19-20)
Filled in same manner as original appointments

Services and Staff (p. 8, ls. 21-22)
Committee may contract for professional services and staff

COMMITTEE AUTHORITY (p. 8, l. 23 to p. 9, l. 7)

Senate subcommittee has authority over proceedings concerning Senate member or former member or employee of Senator or Senate committee.

House subcommittee has authority over proceedings concerning House member or former member or employee of House or House committee.

Full committee:
1. has authority over employee of legislative agency
2. may review matter arising under this chapter that would result in action being required by both houses
3. may issue advisory opinions

LEGISLATIVE ETHICS COMMISSION (SB 257/HB 362)	SELECT COMMITTEE ON LEGISLATIVE ETHICS (CSSB 257 (Jud) am)
Subpoena witnesses, administer oaths, take testimony, require production for examination.	
Publish semi-annual summaries of decisions, advisory opinions, and informal advisory opinions, with sufficient deletions to prevent disclosure	
ADVISORY OPINIONS (p. 10, ls. 13-27)	ADVISORY OPINIONS (p. 9, ls. 8-21)
Issued on request of person to whom chapter applies.	May issue on request of person to whom chapter applies as to whether facts and circumstances of particular case constitute violation.
States whether facts and circumstances of a particular case constitute violation.	
If not issued within 30 days of request, no violation.	If not issued within 30 days after request is filed, no violation.
Opinion issued is binding on commission unless material facts were omitted or misstated in request.	Opinion issued is binding on committee on subsequent proceedings concerning facts and circumstances unless facts or circumstances were misrepresented or omitted.
Opinion is confidential but may be made public upon written request of person who requested opinion.	Opinion is confidential unless written request from person involved is received.
PROCEEDINGS BEFORE COMMISSION (p. 10, l. 28, to p. 11, l. 9)	PROCEEDINGS BEFORE COMMITTEE (p. 9, l. 22, to p. 10, l. 6)
Commission may initiate, receive, and consider complaints.	Committee may initiate, receive, and consider complaints.
Commission may investigate violation in proceeding begun within 4 years after alleged violation and 1 year after termination of service.	May investigate a violation of this chapter in a proceeding begun within 4 years after alleged violation occurs and within one year after termination of state service.
Nothing bars proceedings against person who by fraud prevents discovery of violation.	Nothing bars proceedings against person who intentionally prevents discovery of violation.
Before the commission may investigate resolution supported by three	Before exercising powers authorized, committee must have resolution

LEGISLATIVE ETHICS COMMISSION (SB 257/HB 362)	SELECT COMMITTEE ON LEGISLATIVE ETHICS (CSSB 257 (Jud) am)
commission members must be passed defining nature and scope	supported by majority vote of full membership of the committee to define scope and nature.
Investigations are confidential	Investigations are confidential.
COMPLAINTS (p. 11, l. 9, to p. 12, l. 7) Proceedings commenced by filing complaint.	COMPLAINTS (p. 10, l. 5, to p. 11, l. 13) Proceeding initiated by filing of complaint either by private person or three or more members of the committee.
Complaint must be in writing and signed under oath. Three or more commission members may initiate.	Complaint must be signed under oath and in writing.
No complaint, other than one initiated by five or more commission members, may be received within 60 days preceding state primary or general election.	No complaint, other than one initiated by five or more committee members, may be received within a period of 60 days preceding a state primary or general election. All proceedings pending before the committee on the 60th day preceding election are stayed unless proceedings are based on a complaint initiated by five or more members of the committee. No further action may be taken in stayed proceedings until the legislature next convenes in regular session.
Commission must notify in writing each person against whom complaint is received. Person accused must be given opportunity to explain conduct.	Committee shall notify each person against whom complaint alleged, in writing, and afford person opportunity to explain conduct.
If commission determines that complaint is insufficient, may dismiss	If committee determines complaint does not contain sufficient allegations for violation, may dismiss
Commission shall investigate charges filed and issue advisory opinion to person alleged to have violated provisions of chapter.	Committee shall investigate charges filed and issue advisory opinion to person alleged to have violated provisions of chapter. If committee determines that a probable violation exists that may be corrected by action of the person, and does not warrant other sanctions, the advisory opinion shall recommend such action.

LEGISLATIVE ETHICS COMMISSION (SB 257/HB 352)	SELECT COMMITTEE ON LEGISLATIVE ETHICS (CSSB 257 (Jud) am)
If advisory opinion indicates probable violation, person against whom complaint was made may request formal opinion or comply with advisory opinion.	
	Person against whom complaint is filed may comply with advisory opinion or request hearing.
	After hearing, committee may amend or affirm opinion.
Upon failure to comply or belief by majority of commission that probable cause exists regarding violation, commission will file complaint.	If person fails to comply with opinion or if majority of committee determines probable cause for belief violation may not be corrected, committee shall formally charge person.
Complaint shall be personally served on person charged, who has 20 days after service of the complaint to respond in writing to commission.	Charge and statement of alleged violation shall be personally served on person charged and that person has 20 days to respond in writing to the committee.
HEARING (p. 12, ls. 8-25)	HEARING (p. 11. l. 14 to. p. 12, l. 2)
Commission may set time and place for hearing. Notice shall be given to complainant and person charged.	Committee may set time and place for hearing with notice to complainant and person charged.
Representative of commission and the charged with violation shall have opportunity to be heard, subpoena witnesses, require production of items, to be represented by counsel and to have right of cross-examination.	Representative of committee and person charged with violation shall have opportunity to be heard, subpoena witnesses, and require production of items, to be represented by counsel and to have right of cross-examination.
Witnesses shall testify under oath.	Witnesses shall testify under oath.
Hearings are closed to public unless person charged requests open hearing.	Hearings are closed unless person charged otherwise requests.
Commission not bound by rules of evidence but findings must be based upon evidence.	Committee not bound by rules of evidence but findings must be based upon evidence.
Testimony taken shall be recorded and evidence maintained	Testimony recorded and record maintained.
Testimony and evidence available only to commission staff and to person	Testimony and evidence available to committee and staff and person charged

LEGISLATIVE ETHICS COMMISSION (SB 257/HB 362)	SELECT COMMITTEE ON LEGISLATIVE ETHICS (CSSB 257 (Jud) am)
charged with violation.	with violation.
Copy of transcript may be furnished to person charged with violation upon that person's request and at no charge to that person.	Copy of transcript may be furnished to person charged with violation upon that person's request and at no charge to that person.
DECISION (p. 12, l. 26 to p. 13, l. 24)	DECISION (p. 12, ls. 3-29)
In writing and signed by four or more commission members	In writing and signed by majority of committee
Accompanied by written order determining if violation did or did not exist.	Accompanied by written order determining if violation did or did not exist.
Order is confined to determination.	Order is confined to determination.
Order is public record.	Order is public record.
If decision is that violation has occurred or legislator has not cooperated with commission, decision is to be referred to presiding officers of legislature.	If committee decides violation has occurred, shall refer decision to presiding officers of legislature.
Decision shall contain statement of facts determined to constitute violation or failure to cooperate.	Decision shall contain statement of facts determined to constitute violation or failure to cooperate
May contain recommendations for civil penalties (up to $25,000), divestment of interest, termination of legislative privileges, or expulsion.	May contain recommendations for penalties.
Decision shall be made public 30 days referral. Days during which legislature is not in session are not counted.	Decision is public 30 days after referral. Days legislature is not in session are not counted.
Legislature shall act as appropriate.	Legislature shall act as appropriate.
If four commission members agree to decision that a former member of legislature or employee or former employee of legislative agency has violated this chapter, commission shall issue a public statement of its decision 30 days after date of decision.	If majority of committee agree to decision that former member or an employee or former employee has violated this chapter, the committee shall issue public statement of decision 30 days after date of decision.
Legislature shall act as appropriate.	Legislature shall act as appropriate.

LEGISLATIVE ETHICS COMMISSION (SB 257/HB 362)	SELECT COMMITTEE ON LEGISLATIVE ETHICS (CSSB 257 (Jud) am)
In case of an employee, action may include suspension, demotion, or dismissal.	In case of employee, action may include suspension, demotion, or dismissal. Employee is entitled to hearing before action taken.
CONFIDENTALITY (p. 13, ls. 25-28)	CONFIDENTALITY (p. 12, l. 29, to p. 13, l. 2)
Commission member or individual who divulges information regarding a charge before the filing of a complaint by the commission is guilty of misuse of confidential information under AS 11.56.860 (Berrier says this is a Class A misdemeanor.)	A committee member or staff member divulges information concerning proceedings is guilty of a Class A misdemeanor.

MEMORANDUM

TO: REP. RANDY PHILLIPS

FROM: JANET SEITZ

DATE: MAY 24, 1983

RE: COMPARISON OF CSSB 257 (JUD) AM and SB 257

On the attached bill, changes are highlighted in yellow.

Changes are also as listed below:

1. Page 1, Line 8, title change -- from "Legislative Ethics Commission" to "Select Committee on Legislative Ethics".

2. Page 1, Line 23 - same as title change. Reference is to the committee's name.

3. Page 1, line 27, deletes "to a person employed by a member of the legislature." This was done by Senator Kelly on the Senate floor. Senator Moss had pointed out that this language would mean that a person employed outside of a member's legislative duties would also be effected by this legislation (Sen. Moss cited the person plowing his field as an example). Remaining language now reads: "This chapter applies to a member of the legislature and to a permanent or temporary employee of an agency of the legislature."

4. Page 2, line 6, deletes "a member of". This is, I think, part of Kelly's amendment, referenced above.

5. Page 2, Line 19, deletes "has discretion to" and then the verbs are changed in the rest of this subsection.

6. Page 2, line 20, changes "which" to "that"

7. Page 3, lines 2-5. Changes the wording to read positively. Rather than a conflict does not exist, this new language states: "A conflict exists . . ."

8. Page 3, Lines 6 to 26. Includes (g) concerning fund raising during legislative session.

9. Page 3, Lines 27-29. Adds "or lease" to this provision.

10. Page 4, Lines 2-7. Adds "or lease" as appropriate. Also ADDS "or is a standardized contract or lease generally available to the public at large, members of a profession, occupation or group which was developed under publicly established guidelines" after "less," on line 3. DELETES "A person has an interest in a state contract under this section if the contract is awarded to (1) a firm, corporation, or association that has assets in excess of $5,000,000 and in which the person has an ownership

interest greater than 10 percent or that has assets of $5,000,000 or less and in which the person has an ownership interest greater than 25 percent; or (2) a partnership in which the person is a partner."

11. Page 4, Line 10, deletes "the person is a party to the contract, and without regard to whether"

12. Page 4, Line 11. Changes "inure" to "ensue"

QUERY: No mention is made of "leases" in (b). Oversight?

13. Page 4, Line 22, changes references to "commission" to "committee"

14. Page 5, line 4. Changes "1st" to "1" when referring to date. Adds "state" before "loan agency". Somewhere along the line, I remember some reference to the fact that the language in the original bill would mean all loan agencies, be they state or private, would have to report if the original language was retained. Changes "publish" to "deliver" when referring to the list of loans.

15. Page 5, lines 6-7, adds "to the presiding officer of each house." That's who the list of loans is to be delivered to by the state agencies.

16. Page 5, Lines 8-9. Adds: "The list shall be published in the supplemental journal."

17. Page 5, Line 19. Changes reference from "commission" to "committee".

18. Page 5, Lines 25 and 26. Adds "wilfully" before "discloses" and "knowingly" before "uses".

19. Page 6, Lines 1-5. Drops reference to commission. Adds, after "shall disclose", the following: "in the journal of the appropriate body or if the legislature is not in session to the committee, which shall maintain a public record of the disclosure and forward the disclosure to the respective house for inclusion in the journal for the first day of the session,"

20. Page 6, lines 15-16. Adds "(4) a registered lobbyist who is not a member of the immediate family of the person." as another class of persons that close economic association with (formation or maintenance of) must be disclosed under this section.

21. DROPPED from this section was section (b) of the original bill: "(b) It is a prohibited conflict of interest for a person to whom this chapter applies to form or maintain a close economic association involving a substantial financial matter with a lobbyist who is not a member of the immediate family of the person."

22. Page 6, Line 18, drops reference to the $100 figure.

23. Page 6, line 19. Same as 22 above.

24. Page 6, lines 20-25, DELETES: "under circumstances in which it may reasonably be inferred that the gift is intended to influence the person in the performance of the duties of the person or is intended as a reward for an official action by the person. (b) It is not a conflict of interest under this section if a person to whom this chapter applies accepts (1) hospitality at another person's residence, including meals, lodging or ground or water transportation; (2) discounts that are generally available to the public or a large class of persons to which the person belongs; (3) an invitation to attend a meal or social event that does not exceed $100 in value received by the person for each meal or event and that does not in the aggregate exceed $250 in value during the calendar year from one person; or (4) gifts from the person's immediate family. (c) The commission may establish policies that limit the extent to which persons to whom this chapter applies may accept the benefits set out in (b)(2) of this section, or that require public officials to turn over the benefits to the agency."

PLACED IN THE NEW VERSION IS: "if the gift was intended as a reward for an official action by the person. A gift of travel and hospitality received by a member of the legislature in obtaining information on matters of legislative concern is not prohibited by this section, nor are political contributions received and reported under AS 15.13.040.

25. Page 6, lines 26-29 REPLACES "(a) An individual who is related to a member of the legislature may not be employed in the house in which the legislator is a member, by an agency of the legislature established under AS 24.20, or in the other house during the interim between sessions." WITH "(a) A relative of a member of the legislature may not be employed in the house in which the legislator is a member, by an agency of the legislature established under AS 24.20, or in the other house during the interim between sessions."

26. Page 7, Line 4, adds "stepchild".

27. Page 7, Line 5, REPLACES "a permanent member of the legislators' household" WITH "a member of the same household."

28. Page 7, Lines 6-8, REPLACES "(b) An individual is not employed if no compensation is received from the state for the services provided" WITH "(b) For purposes of this section an individual is not employed if no compensation is received from the state for the services provided."

29. Page 7, Line 9, DROPS "BY LEGISLATORS" and REPLACES "(a) Except as provided in this section, a member of the legislature or a person employed by an agency of the legislature established under AS 24.20 may not represent another person for compensation before an agency, board, or commission of the state. (b) A member of the legislature may represent a client in (1) an action before a course of the state; or (2) a matter which was pending at the time a person to whom this chapter applies assumes office or is employed. (c) A legislator cannot avoid a conflict of interest under this section by waiving compensation for representing another person under circumstances where compensation would

ordinary be expected." WITH "A person to whom this chapter applies who represents another person for compensation before an agency, board, or commission of the state shall disclose the name of the person represented, the subject matter of the representation, and the body before which the representation is to take place in the journal of the appropriate body or if the legislature is not in session to the committee. The committee shall maintain a public record of the disclosure and forward the disclosure to the respective house for inclusion in the journal for the first day of the session."

30. Page 7, lines 18-20. Adds "knowingly" before "has a conflict of interest" and adds "or has been notified of a conflict of interest" before "shall immediately".

31. Page 7, line 21. Adds "conflicting" before "position".

32. Page 7, lines 25-6. Changes reference from "commission" to the committee.

33. Page 8, lines 1-2. REPLACES "for private gain or campaign purposes" WITH "except property under lease from the state or funds for private gain."

34. Page 8, lines 3, through Page 9, line 8. This is where the Commission is dropped and the Committee is inserted.

35. Page 9, lines 8-21. Changes reference from commission to committee.

36. Page 9, line 22, through Page 13, lines 3. Sets out the proceedings before the committee. While some of the procedures are similar, they are not the same.

37. Page 13, lines 3-8, ADDS new section "Cooperation by State Agencies."

38. Page 13, Lines 9, Definitions - defines "committee".

39. Page 13, lines 12-15. Adds Section 2 "Nothing in this Act applies to conduct which occurred before the effective date of the Act and the committee established by this Act has no jurisdiction over any alleged violation which occurred before the effective date of this Act."

Lawmakers judge selves under ethics bill

JUNEAU (AP) — A measure to establish standards of conduct among Alaska legislators and their employees and to create a joint-legislative committee to ensure the standards were followed cleared the Senate Thursday.

The bill, held for a reconsideration vote, was approved 13-6 following the defeat of several amendments including one that to give the public four seats on the panel that would sit in judgment of lawmakers.

As the bill stands now, lawmakers would act as their own judges, a provision that one legislator said injures the measure's main aim -- to instill public confidence in the Legislature.

Chopped from the final version was a provision that would have banned lawmakers from holding campaign fundraisers in the capital during the session unless they lived here. The vote on the deletion, proposed by Sen. Bettye Fahrenkamp, DFairbanks, came despite arguments that it was a conflict of interest for lawmakers to solicit donations from lobbyists while considering legislation being sought by lobbyists.

The bill (CSSB257), forged by a special joint-committee on legislative reform and two Senate panels, follows a warning from Attorney General Norman Gorsuch that his office would begin enforcing common law controlling conflicts of interest and related concerns if the Legislature failed to pass its own standards of conduct.

Common law is defined as law based not on statute but on a body of legal opinion derived from court cases involving conduct of public officials both within and outside Alaska.

Approval came after one opponent called the measure an "abomination" and backers said it represented the Senate's best effort to grapple with the murky area of "ethics."

The bill sets guidelines controlling conflicts of interest, business contracts with the state, applying for some state loans, hiring relatives, accepting gifts and raising campaign funds during the legislative session, among other things..

The measure would not supplant a state statute banning conflicts of interest, which are defined in the law as use of public office for personal gain.

Sen. Fritz Pettyjohn, R-Anchorage, and others, however, said common law was "judges law" and not the proper way to control legislative behavior. "Personally, I want a statute that tells me what I can and cannot do."

Sen. Joe Josephson, D-Anchorage, who played a major role in hammering out the legislation, said "This is not a perfect bill by any means. And if our constituents feel it needs strengthening, they can tell us so and we can take action."

Josephson said he was disappointed in his failed effort to amend the measure to permit public representation on the panel that would judge those who violated the standards of conduct. He said the failure could weaken public confidence in the law.

Sen. Bob Ziegler, D-Ketchikan, submitted an amendment, partly in jest, that would have replaced the measure with the following:

"To be an ethical and moral legislator you must (1) turn aside without ostentation to aid the weak; (2) treasure ideals more than raw ambition; (3) hold honesty of conscience above honesty of purse; (4) track no man to his undeserved hurt; and (5) pursue no woman to her tears."

Ziegler withdrew the amendment but said he viewed the measure with trepidation because "You've got problems when you endeavor to legislate ethics and morality.'"

Among other things, the bill would:

—Ban conflicts of interest, defined as taking or withholding official action that "could substantially benefit or harm a financial matter in which a person has a direct or indirect private interest.

—Ban virtually any interest in a state contract unless it was for $1,000 or less or complied with statutory competitive bidding regulations.

—Permit legislators to receive state loans, such as for home mortgages, that are generally available to the public. However, a legislator or employee who applied for a state loan not generally available to the public, such as a fishing or business business loan, must send a copy of the application to the Alaska Public Offices Commission to be incorporated in the legislator's financial disclosure statement.

—Ban solicitation or acceptance of gifts in any form or amount that is intended as a reward for official action. "However, gifts of travel and hospitality received by a legislator to obtain information about matters of legislative concern" would be expressly exempted.

—Ban relatives of lawmakers from employment in the house of which a legislator is a member or in a legislative agency. Relatives could be employed by the other house during the session, however.

Voting for the measure were: Sens. Dick Eliason, R-Sitka; Fahrenkamp; Jan Faiks, R-Anchorage; Paul Fischer, R-Soldotna; Vic Fischer, D-Anchorage; Josephson; Tim Kelly, RAnchorage; Jay Kerttula, D-Palmer; Bob Mulcahy, R-Kodiak; Pettyjohn; Bill Ray, DJuneau; Pat Rodey, D-Anchorage; and Arliss Sturgulewski, R-Anchorage.

Voting against were Sens. Don Bennett, R-Fairbanks; Don Gilman, R-Kenai; Halford; Moss; John Sackett, R-Ruby, and Ziegler.

Senate OKs ethics bill to let lawmakers judge themselves

NEWS 5-20-83
B1

By HAL SPENCER
The Associated Press

JUNEAU — A measure to establish standards of conduct for Alaska legislators and their employees and to create a joint legislative committee to ensure the standards are followed cleared the Senate on Thursday.

The bill, held for a reconsideration vote, was approved 13-6 following the defeat of several amendments, including one to give the public four seats on the panel that would sit in judgment of lawmakers.

As the bill stands now, lawmakers would act as their own judges, a provision that one legislator said works against the main aim of the measure — to instill public confidence in the legislature.

Chopped from the final version was a provision that would have banned lawmakers from holding campaign fund-raisers in the capital during the session unless they lived here. The vote on the deletion, proposed by Sen. Bettye Fahrenkamp, D-Fairbanks, came despite arguments that it was a conflict of interest for lawmakers to solicit donations from lobbyists while considering legislation being sought by lobbyists.



Sen. Bob Ziegler

The bill, forged by a special joint committee on legislative reform and two Senate panels, follows a warning from Attorney General Norman Gorsuch that his office would begin enforcing common law controlling conflicts of interest and related concerns if the legislature failed to pass its own standards of conduct.

Common law is defined as law based not on statute but on a body of legal opinion derived from court cases involving conduct of public officials both within and outside Alaska.

Approval came after one opponent called the measure an "abomination" and backers said it represented the best effort of the Senate in the murky area of ethics.

The bill sets guidelines controlling conflicts of interest, business contracts with the state, applying for some state loans, hiring relatives, accepting gifts and raising campaign funds during the legislative session, among other things.

The measure would not supplant a state statute banning conflicts of interest, which are defined in the law as use of public office for personal gain.

The key distinction between the proposal and the criminal statute is that the proposal deals with appearances of misconduct while the law, which carries a maximum misdemeanor penalty of a year in jail and a $5,000 fine, deals with actual misconduct.

The measure would provide a committee composed of legislators the power to advise their colleagues they were violating the standards of conduct. If the advice were ignored, the House or Senate could take action against the member in question.

Both bodies could use their existing powers to punish the member by stripping the member of committee assignments, withdrawing privileges, or even expulsion.

"I oppose this bill for the simple reason that it does nothing in and of itself, but does repeal common law," which does maintain legislative standards of conduct, said Sen. Rick Halford, R-Chugiak.

Sen. Joe Josephson, D-Anchorage, who played a major role in drafting the legislation, said, "This is not a perfect bill by any means. And if our constituents feel it needs strengthening, they can tell us so and we can take action."

Josephson said he was disappointed in his failed effort to amend the measure to permit public representation on the panel that would judge those who violated the standards of conduct. He said the failure could weaken public confidence in the law.

Sen. Bob Ziegler, D-Ketchikan, submitted an amendment, partly in jest, that



Sen. Joe Josephson

would have replaced the measure with the following:

"To be an ethical and moral legislator you must (1) turn aside without ostentation to aid the weak; (2) treasure ideals more than raw ambition; (3) hold honesty of conscience above honesty of purse; (4) track no man to his undeserved hurt; and (5) pursue no woman to her tears."

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Among other things, the bill would:

- Ban conflicts of interest, defined as taking or withholding official action that "could substantially benefit or harm a financial matter in which a person has a direct or indirect private interest."
- Ban virtually any interest in a state contract unless it was for $1,000 or less or complied with statutory competitive bidding regulations.
- Permit legislators to receive state loans, such as for home mortgages, that are generally available to the public. However, a legislator or employee who applied for a state loan not generally available to the public, such as a fishing or business loan, must send a copy of the application to the Alaska Public Offices Commission.
- Ban solicitation or acceptance of gifts in any form or amount that is intended as a reward for official action.
- Ban relatives of lawmakers from employment in the house of which a legislator is a member or in a legislative agency.

Standards-of-conduct bill clears Senate

by Hal Spencer
Associated Press

Juneau — A measure to establish standards of conduct among Alaska legislators and their employees and to create a joint-legislative committee to ensure the standards were followed cleared the Senate Thursday.

The bill, held for a reconsideration vote, was approved 13-6 following the defeat of several amendments including one that would have given the public four seats on the panel that would sit in judgment of lawmakers. If the bill passes the reconsideration vote, it will go to the House.

As the bill stands now, lawmakers would act as their own judges, a provision that one legislator said injures the measure's main aim — to instill public confidence in the legislature.

Chopped from the final version was a provision that would have banned lawmakers from holding campaign fund-raisers in the capital during the session unless they lived her. The vote on the deletion, proposed by Sen. Bettye Fahrenkamp, D-Fairbanks, came despite arguments that it was a conflict of interest for lawmakers to solicit donations from lobbyists while considering legislation being sought by lobbyists.

The bill, forged by a special joint-committee on legislative reform and two Senate panels, follows a warning from Attorney General Norman Gorsuch that his office would begin enforcing common law controlling conflicts of interest and related concerns if the legislature failed to pass its own standards of conduct.

Common law is defined as law based not on statute but on a body of legal opinion derived from court cases involving conduct of public officials both within and outside Alaska.

Approval came after one opponent called the measure an "abomination" and backers said it represented the Senate's best effort to grapple with the murky area of "ethics."

The bill sets guidelines controlling conflicts of interest, business contracts with the state, applying for some state loans, hiring relatives, accepting gifts and raising campaign funds during the legislative session, among other things.

The measure would not supplant a state statute banning conflicts of interest, which are defined in the law as use of public office for personal gain.

The key distinction between the proposal and the criminal statute is the proposal deals with appearances of misconduct while the law, which carries a maximum misdemeanor penalty of a year in jail and a $5,000 fine, deals with actual misconduct.

The measure would provide a committee composed of legislators the power to advise their colleagues they were violating the standards of conduct. If the advice were ignored, the House or Senate could take action against the member in question.

Both bodies could use their existing powers to punish the member by stripping the member of committee assignments, withdrawing privileges, or even expulsion.

"I oppose this bill for the simple reason that it does nothing in and of itself, but does repeal common law," which does maintain legislative standards of conduct, said Sen. Rick Halford, R-Chugiak.

"This bill is an abomination," said Sen. Pappy Moss, D-Delta Junction. He favored relying on common law to keep lawmakers honest.

Sen. Fritz Pettyjohn and others, however, said common law was "judges law" and not the proper way to control legislative behavior. "Personally, I want a statute that tells me what I can and cannot do."

Sen. Joe Josephson, D-Anchorage, who played a major role in hammering out the legislation, said "This is not a perfect bill by any means. And if our constituents feel it needs strengthening, they can tell us so and we can take action."

Josephson said he was disappointed in his failed effort to amend the measure to permit public representation on the panel that would judge those who violated the standards of conduct. He said the failure could weaken public confidence in the law.

Sen. Bob Ziegler, D-Ketchikan, submitted an amendment, partly in jest, that would have replaced the measure with the following:

"To be an ethical and moral legislator you must (1) turn aside without ostentation to aid the weak; (2) treasure ideals more than raw ambitions; (3) hold[illegible]

regulations.

- Permit legislators to receive state loans, such as for home mortgages, that are generally available to the public. However, a legislator or employee who applied for a state loan not generally available to the public, such as a fishing or business business loan, must send a copy of the application to the Alaska Public Offices Commission to be incorporated in the legislator's financial disclosure statement.
- Ban solicitation or acceptance of gifts in any form or amount that is intended as a reward for official action. "However, gifts of travel and hospitality received by a legislator to obtain information about matters of legislative concern" would be expressly exempted.
- Ban relatives of lawmakers from employment in the house of which a legislator is a member or in a legislative agency. Relatives could be employed by the other house during the session, however.

Voting for the measure were: Sens. Dick Eliason, R-Sitka; Fahrenkamp; Jan Faiks, R-Anchorage; Paul Fischer, R-Soldotna; Vic Fischer, D-Anchorage; Josephson; Tim Kelly, R-Anchorage; Jay Kerttula, D-Palmer; Bob Mulcahy, R-Kodiak; Pettyjohn; Bill Ray, D-Juneau; Pat Rodey, D-Anchorage; and Arliss Sturgulewski, R-Anchorage.

Voting against were Sens. Don Bennett, R-Fairbanks; Don Gilman, R-Kenai; Halford; Moss; John Sackett, R-Ruby, and Ziegler. Sen. Frank Ferguson, D-Kotzebue, was absent.



SENATE JUDICIARY COMMITTEE

SECTIONAL ANALYSIS

OF

CS SB 257 (JUD)

LEGISLATIVE ETHICS ACT

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Sec. 24.60.010 LEGISLATIVE FINDINGS AND PURPOSE

This section states, in essence, that the basic purpose of this Act is to give legislators and staff the benefit of specific standards to guide their conduct while, at the same time, recognizing that under the Alaska Constitution each house of the legislature has primary responsibility for judging the qualifications of--and by implication judging the conduct of--its own members.

Another key purpose of the Act is to establish a Select Committee on Legislative Ethics (hereinafter the "Ethics Committee") which can initiate, accept, investigate and act upon complaints and render advisory opinions.

Sec. 24.60.020 APPLICABILITY

Pursuant to this section, the Act applies to the following persons:

All legislators once they have been sworn in;

Former legislators, but only in the limited circumstances set forth in the Act;

Legislative employees at or above Step 2, Range 12 (i.e., administrative assistants are covered, but not professional secretaries);

Former legislative employees, but only in the limited circumstances set forth in the Act.

The Act also expressly repeals--or supersedes--common law rules regarding legislative conflicts of interest, but it does not supersede applicable criminal laws.

Sec. 24.60.030 CONFLICTS OF INTEREST

Under this section two things are generally prohibited:

The use of public office for private advancement or gain; and

Conflicts of interest.

A conflict of interest is deemed to exist under the following two broad situations:

When a person takes or withholds official action or exerts influence that could substantially benefit or harm a financial matter in which the person has a direct or indirect private interest; and

If benefits accrue to a person beyond that which may accrue uniformly to members of the profession, occupation

or group to which the person belongs, or to the public at large.

In addition, a conflict of interest is deemed to exist if a legislator who does not represent the City and Borough of Juneau accepts money from a fundraiser held therein during session. However, this does not apply if the legislator is running for anything other than a state legislative office. Thus, for example, a legislator running for statewide or congressional office can hold a fundraiser in Juneau during session without violating the Act.

Furthermore, the Act also provides that it is a conflict of interest to knowingly disclose, or willfully use for personal gain or the gain of another, confidential information acquired in the course of official duties (see Sec. 24.60.060, below).

Conflicts of interest are expressly deemed not to exist under the following specific circumstances:

If there is no substantial impropriety or appearance of impropriety because the person's interest in a matter is relatively insignificant or the person's authority in regard to the matter is relatively remote; or

If a person merely accepts:

Hospitality at another's residence within the state, including meals, lodging or transportation;

Public discounts;

Meals or social events worth $100 or less each;

Cultural food and foodstuffs;

Gifts from the person's own family.

It is also provided that the Ethics Committee, or a subcommittee thereof, can establish policies limiting the extent to which persons can accept the benefits previously listed. However, legislative approval is necessary to establish these additional limitations.

Sec. 24.60.040 CONTRACTS

This section prohibits virtually any interest in a state contract unless:

The contract is for $1000 or less; or

It complies with statutory competitive bidding criteria.

The basic philosophy and intent of this section is that a person to whom the Act applies should have the same right as anyone else to enter into

a state contract, as long as the contract complies with statutory competitive bidding criteria. State leases were intentionally omitted because the Judiciary Committee believes that they are inherently different from state contracts and, also, that they are already subject to statutory competitive bidding criteria.

Sec. 24.60.050 STATE LOANS

The basic philosophy, intent and provisions of this section provide that, as to state loans generally available to the public, persons covered by the Act will be treated exactly the same as anyone else.

However, when a person covered by the Act applies for a state loan that is not generally available to the public, full disclosure is required in that the loaning agency must send a copy of the application to APOC, where it will be kept, and where it will be incorporated into the financial disclosure statement of an applicant who is otherwise required to file one with APOC.

State loan agencies must publish annual lists of all outstanding loans that are not generally available to the public and are made to persons covered by the Act. The agencies must also adopt separate procedures for granting and reviewing such state loans, and annual reviews by the division of legislative audit are required, as well as annual reports to the Ethics Committee.

Sec. 24.60.060 CONFIDENTIAL INFORMATION

This section prohibits, by deeming it a conflict of interest, persons covered by the Act from knowingly disclosing or wilfully using, for personal gain or the gain of another, confidential information acquired in the course of official duties.

Sec. 24.60.070 INTERESTS BETWEEN PUBLIC OFFICIALS

Under this section, a person covered by the Act must disclose a close economic association involving a substantial financial matter with:

The person's own supervisor;

A legislator;

A public official in another branch who is required to file an APOC statement; or

A registered lobbyist not a member of the person's immediate family.

Disclosure is to be made as follows:

When the legislature is in session, in the journal of

the appropriate house;

When the legislature is not in session, to the Ethics Committee, which, in addition to maintaining a public record thereof, must forward the disclosure to the appropriate house for inclusion in its journal for the first day of session.

Sec. 24.60.080 GIFTS

This section generally prohibits a person covered by the Act from soliciting, accepting or receiving a gift in any form or amount which is intended as a reward for an official action.

However, gifts of travel and hospitality received by a legislator to obtain information about matters of legislative concern are expressly exempted. Also, under Sec. 24.60.030 (see above), certain other "gifts" --such as hospitality at another's residence within the state--are exempted.

Sec. 24.60.090 NEPOTISM

This section sets forth the following limitations:

Relatives of a legislator may not be employed in the house of which the legislator is a member or be a legislative agency;

Relatives of a legislator may be employed in the house of which the legislator is not a member, but only during session; and

Relatives of an employee of the legislature may not be employed in a position over which the employee has supervisory authority.

However, individuals who are not on the state payroll are exempt from these limitations.

Furthermore, the definition of a relative includes close family members --such as spouses, children, parents and siblings--as well as "a member of the same household".

Sec. 25.60.100 REPRESENTATION

This section provides that a person covered by the Act is not prohibited from paid representation of another before a state agency, board or commission. However, disclosure of such representation must be made in essentially the same manner as disclosure of interests between or with public officials (see Sec. 24.60.070, above).

Sec. 24.60.110 ACTION ON A CONFLICT OF INTEREST

Under this section if a legislator knows or has been notified that he or she has a conflict of interest, the legislator must immediately resign the conflicting position; or get rid of the interest that caused the conflict; or disclose the conflict. Disclosure is to be made in essentially the same manner as disclosure of interests between or with public officials (see Sec. 24.60.070, above).

Sec. 24.60.120 STATE PROPERTY AND FUNDS

Pursuant to this section. the use of state property or funds for private gain is prohibited. However, there is an exception for state leases.

Sec. 24.60.130 SELECT COMMITTEE ON LEGISLATIVE ETHICS

In essence, this section establishes the Ethics Committee, consisting of a three-member subcommittee from each house. Members are to be appointed by the presiding officer with the concurrence of three-fourths of the full membership of each house, and no more that two members of each subcommittee can belong to the same political party.

Sec. 24.60.140 AUTHORITY OF THE COMMITTEE

This section provides that the Ethics Committee as a whole has authority over:

> Proceedings involving the conduct of employees of legislative agencies;
>
> Matters requiring action by both houses of the legislature; and
>
> The issuance of advisory opinions.

Each subcommittee has authority over proceedings involving the conduct of members or employees of its respective house.

Sec. 24.60.150 ADVISORY OPINIONS

Pursuant to this section, a person covered by the Act can request an advisory opinion from the Ethics Committee as to whether or not the facts and circumstances of a particular case constitute a violation of ethical standards.

The Ethics Committee has thirty days to issue the advisory opinion. If it fails to do so within that period, the facts and circumstances of that particular case are automatically deemed not to constitute an ethical violation, unless there were material omissions or misstatements in the request for the advisory opinion.

When the Ethics Committee does issue and advisory opinion, that opinion is binding in any subsequent proceeding involving the same facts and circumstances, unless there were material omissions or misstatements in the request for the advisory opinion.

Advisory opinions are confidential unless the persons requesting them ask, in writing, that they be made public.

Sec. 24.60.160 PROCEEDINGS BEFORE THE COMMITTEE

This section generally empowers the Ethics Committee to initiate, receive, investigate and consider complaints against persons covered by the Act, but a complaint must be filed within four years of an alleged violation, unless the accused person has intentionally prevented the discovery of the violation.

A complaint must be filed in writing and under oath, and this can be done by a private person or by three or more members of the Ethics Committee.

No complaint can be filed or acted on in any way within sixty days prior to a state primary or general election, unless the complaint has been initiated by five or more members of the Ethics Committee.

Before acting on a complaint, a majority of the members of the Ethics Committee must pass a resolution defining the nature and scope of the inquiry, and all investigations must be conducted on a confidential basis.

Once the Ethics Committee proceeds to act on a complaint, written notice must be served on the accused person, who must be given an opportunity to explain the alleged misconduct, whereupon the Ethics Committee can summarily dismiss the complaint if it determines that even if the alleged facts and circumstances are true, they are not sufficient to constitute a violation of the Act.

After investigating the charges alleged in a complaint, the Ethics Committee must issue an advisory opinion which can merely recommend that a probable violation of the Act be corrected. The accused person can then simply comply with the recommendation and thus end the matter. However, the accused person can also request a hearing before the Ethics Committee, following which the advisory opinion can either be affirmed or amended.

If an accused person does not comply with an advisory opinion, or if the Ethics Committee determines that a violation has occurred that cannot be corrected as previously described, formal written charges must be personally served on the accused person, who then has twenty days to submit a written response, whereupon a time and place must be set for a formal hearing before the Ethics Committee, with notice thereof to the accused person as well as to the complainant, if any.

Unless the accused person otherwise requests, hearings before the Ethics Committee are closed to the public and are to be conducted pursuant to the following procedural and substantive rights to:

Be represented by counsel;

Be heard (i.e., to testify and present evidence and witnesses);

Subpeona witnesses;

Require the production of books and papers;

Have witnesses testify under oath;

Cross-examine witnesses;

Have the Ethics Committee base its findings on competent and substantial evidence, even though it is not bound by formal rules of evidence;

Have testimony recorded and evidence preserved and not be released to anyone else; and

Receive a free transcript of the testimony.

After a formal hearing, the Ethics Committee must submit a written decision signed by a majority of its members, along with a written order, which becomes a public record, determining only whether or not there was a violation of the Act. If the decision establishes that a legislator has violated the Act or has failed to cooperate with the Ethics Committee, specific details as to what constitutes the violation or failure to cooperate must be provided, and the decision can also contain recommendations as to appropriate penalties to be imposed. The decision will then be referred to the presiding officers of the legislature--and thirty days later the decision is to be made public--for disposition as the legislature deems appropriate.

If the proceedings involved a former legislator or a past or present legislative employee, and if the decision contains a determination that a violation of the Act occurred, the Ethics Committee must issue a public statement of its decision thirty days after it is made, whereupon the legislature must act on it as it deems appropriate.

Furthermore, this section provides that if a member or employee of the Ethics Committee divulges unauthorized information about a proceeding, that person is guilty of a class A misdemeanor.

Sec. 24.60.170 COOPERATION BY STATE AGENCIES

This section provides that state executive agencies must fully cooperate with the Ethics Committee or a subcommittee thereof, including the disclosure of financial and other records, to the extent allowed by state and federal law.

Sec. 24.60.180 DEFINITIONS

This section defines the terms "committee" and "person employed by a member of the legislature."

ATTACHMENT

Fiscal Note for Senate Bill No. 257:

III ANALYSIS:

There are no guidelines in the bill for amount or level of staff or for amounts of travel and per diem. It is necessary, therefore, to establish a set of assumptions on which to build a fiscal note.
Using input from various legislators who worked on the bill, I have made the following assumptions:

Assumption 1: There will be no permanent staff at this time. Personal services and professional services will be contracted as needed; therefore, no office space or equipment will be needed. The commission will determine how the central files are to be kept.

Personal Services Contracts	20.0
Professional Services Contracts	20.0
Other Contractual Services	10.0
	50.0

Assumption 2: To establish a good average for travel costs, I have hypothetically assumed that the Commission is to be made up of members living in Nome, Bethel, Fairbanks, Anchorage, Kodiak, Juneau, Ketchikan, and will travel coach fare: 3 roundtrips to Juneau; 4 roundtrips to Anchorage; and 5 roundtrips to Fairbanks for meetings. There will be no more than an average of three days per month of travel and per diem for meetings. There be no more than an average of one meeting per month.

Per Diem ----------	$18,720
Travel ----------	$25,385
TOTAL Trvl/PD	$44,105

Assumption 3: Additional costs, if any, for reports or copies made by other agencies for the Commission will be absorbed in that agency's operation budget.

Assumption 4: The Legislative Affairs Agency print shop can print the semi-annual summaries of decisions and advisory opinions.

THE LEGISLATURE OF THE STATE OF ALASKA
THIRTEENTH LEGISLATURE

FISCAL NOTE

I. REQUEST
Bill/Resolution No. SB No. 257
Title An act relating to standards of conduct of legislators and legislative employees and establishing a Legislative Ethics Commission
Requested by: Senate State Affairs Date: April 19, 1983

II. FISCAL DETAIL
Agency Affected Legislative Affairs Agency
Program Category Affected General Government
BRU, Program, Or Subprogram(s) Affected Legislative Affairs Agency
(Note: If more than one budget component is affected, separate line-item amounts and funding for each component in the analysis section.)

EXPENDITURES (Thousands of Dollars)

	FY 83	FY 84	FY 85	FY 86	FY 87	FY 88
100 PERSONAL SERVICES		-0-				
200 TRAVEL		44.1				
300 CONTRACTUAL		50.0				
400 COMMODITIES		-0-				
500 EQUIPMENT		-0-				
600 LAND & STRUCTURES		-0-				
700 GRANTS,CLAIMS,ETC.		-0-				
TOTAL		94.1				

FUNDING (Thousands of Dollars)

GENERAL FUND		94.1				
FEDERAL FUNDS		-0-				
OTHER (Specify Source)		-0-				

POSITIONS None

FULL TIME						
PART TIME						
TEMPORARY						

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

SEE ATTACHMENT

IV. DATE April 20, 1983 PREPARED BY Wally Harrison, Director, Admin. Svcs.
AGENCY Legislative Affairs Agency
PHONE 465-3850

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

33-001 (Rev. 12/82)

STATE OF ALASKA

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

Bill Sheffield, Governor

POUCH K – STATE CAPITOL
JUNEAU, ALASKA 99811
PHONE: (907) 465-3600

RECEIVED JUL 19 1983

July 13, 1983

Honorable Charlie Bussell
Representative
Alaska State Legislature
P. O. Box 4-1325
Anchorage, AK 99509

Re: Common Law Conflicts of Interest

Dear Representative Bussell:

As you know, none of the legislative ethics bills considered this session was passed. It was my hope that bills dealing with conflicts of interest for both legislators and public employees would be enacted so that definite and certain statutory standards would supersede the common law standards that now apply. As I pointed out in my letter of June 16, 1983 to Senator Vic Fischer, the imposition of common law conflicts of interest standards on citizen legislators in the state of Alaska is less than desirable. First, the common law standards are not well defined, producing uncertainty in determining what conduct is acceptable. In addition, the common law standards are strict, prohibiting not only actual conflicts of interest but also requiring avoidance of even the appearance of impropriety.

The common law conflicts of interest standards that are now in effect will be enforced by this office prospectively only; i.e., from the close of the legislative session. This is in accordance with my memorandum of December 28, 1982, in which I stated that enforcement action of the common law rules relating to conflicts of interest would be deferred until the end of the session, in order to give the legislature the opportunity to modify those rules. Since no action was taken, my decision to defer enforcement must be retracted. I recognize that some of you may have explored or entered into investment or business opportunities during the session in reliance on my decision to defer enforcement and on the presumption that a legislative ethics bill superseding the common law would be enacted. In those instances, even if the final arrangements were made after the end of the session, I will not take enforcement action based on the common law rules, unless, of course, the conduct is egregious (e.g., where the conflict also violates express civil or criminal statutes).

The purpose of this letter is not only to remind you that the common law standards are in effect and will be enforced during the interim, but also to provide you with some basic guidelines regarding conflicts of interest until statutory standards can be established, preferably during the next legislative session. In regard to state contracts and loans, the key to avoiding a conflict is the amount of discretion involved in administration of the loan or contract. As indicated in the December 3, 1982 opinion of this office, home loans and education loans are subject to fixed eligibility standards and little discretion is involved in their administration. Commercial loans, in contrast, involve a much higher degree of discretion, giving rise to a greater potential for influence or abuse. Thus, before entering into a state loan or contract, a legislator should examine carefully the amount of discretion involved, and avoid any situation in which there is potential for influence because of the degree of discretion. If the administrative procedures for granting a loan or contract are well-defined and minimal discretion is exercised in awarding the loan or contract under these procedures, the potential for undue influence should likewise be minimal, and the loan or contract can be accepted without fear of creating a conflict.

In regard to financial interests other than state loans and contracts, certain additional factors should be considered in attempting to avoid potential conflicts. These include:

1. whether your interest is of a type possessed generally by the public or by a large class of persons to which you belong;

2. whether your authority as a legislator is relatively far removed from any official action that could affect a matter in which you have a financial interest;

3. whether the effect that your action or influence could have on a matter in which you have a financial interest is insignificant or speculative; and

4. whether your financial interest is relatively insignificant.

These factors, taken together, should help you to judge whether there is potential for influence or abuse. If that potential exists, a financial interest should be avoided.

I hope this reminder will be of assistance to you in dealing with potential conflicts situations during the interim.

I trust that in the next legislative session the uncertainty of dealing with the common law standards will be cured with adoption of an ethics bill covering both legislators and public employees.

If you have any questions, please do not hesitate to contact this office. Assistant Attorney General Thomas M. Jahnke can assist you with conflicts problems. If he is unavailable, please contact Assistant Attorney General Diane T. Colvin.

Sincerely,

Norman C. Gorsuch
Attorney General

NCG:DTC:eja

Draft Amendments to CSHB 362(St. Affs.)

by Rep. M.M. Miller

1. Pg. 1 - L. 16 - Delete "must" and insert "should".

2. - L. 18 - After "legislators" add "and legislative employees".

3. - L. 25 - After "chapter." add "This chapter shall be liberally construed to promote high standards of ethical conduct in the legislature."

4. - L. 29 - After "legislature." insert "Except for AS 24.60.090,".

5. Pg. 2 - L. 11 - Delete "specifically repeal" and insert "supercede".

6. Pg. 3 - L. 4 - After "less" insert "except as set forth in subsection (c)."

7. - L. 11 - Insert the following subsections:

(c) A state agency may enter into a contract without resort to the competitive bidding process under AS 37.05.230 when, in the judgment of the agency the property or services should not in the public interest, be acquired through competitive bidding. Written justification for the noncompetitive award of such contract shall be made a matter of public record and shall be filed with the ethics commission at least ten days before such contract is entered into.

(d) In addition to any other penalty provided by law, any contract entered into by the state in violation of this chapter is voidable on behalf of the state; provided that in any action to avoid a contract pursuant to this section, the interests of third parties who may be damaged thereby shall be taken into account, and the action to void the transaction is initiated within sixty days after the determination of a violation under this chapter. The Attorney General shall have the authority to enforce this provision.

8. Pg. 6 - L. 13 - After "lobbyist" insert "as defined by AS 24.45.171,".

9. - L. 19 - Delete "A gift of travel and hospitality received by a member of the legislature in obtaining information on matters of legislative concern is not prohibited by this section."

10. Pg. 7 - L. 15 - Delete the entire section and insert the following:

A person to whom this chapter applies who knowingly has a conflict of interest or has been notified of a conflict of interest shall

(1) Immediately divest the interest that has resulted in the conflict; or

(2) Prepare a written statement describing such matter and the nature of the conflict, and

(A) in the case of a legislator, deliver within 48 hours, copies of the statement to the commission and the presiding officer of respective body of the legislator, who shall cause such statement to be printed in the journal or if the legislature is not in session such statement shall be printed in the first journal of the following legislative session; or

(B) in the case of an employee of the legislature covered by this chapter, deliver within 48 hours, a copy of the statement to the commission and to their immediate superior, if any, who shall assign the matter to another employee, or if the employee has no immediate superior, the employee shall take such steps as the commission shall prescribe or advise to remove the employee from influence over action or decision on the matter.

11. Pg. 10, L. 21 - After "opinion" insert ", or until the opinion is amended or revoked by the commission."

23 May 1983

Representative Charlie Bussell
Pouch V
Juneau, Alaska 99811

Re: Legislative Ethics -- SB 257 and HB 362

Dear Representative Bussell:

For the past two years, the FREE Committee has been concentrating on legislative ethics reform and is on record as recommending that a code of ethics be added to the Uniform Rules. Enclosure 1 is a copy of that recommendation.

The Committee recently completed a careful review of the ethics and conflict of interest laws in all 50 states and based upon that review identified several areas that should be addressed in any ethics legislation considered by the Legislature. Enclosure 2 is a copy of suggested changes to the existing Alaska law that was forwarded to the Joint Legislative Reform Committee in January

In developing its recommendations, the FREE Committee was also concerned that amendments to the present law not become so restrictive that good legislators with other sources of income be prohibited from serving the public. Therefore, unlike the provisions in SB 257 and HB 363, the FREE Committee proposal would not prohibit public officials from obtaining loans or contracts from the state, so long as the suggested safeguards were incorporated.

We believe that public officials have the right to expect that ethical standards be clearly defined so that ethical problems can be avoided. With these things in mind, the Committee drafted language which if adopted would more clearly identify problem areas and which would provide for binding Attorney General opinions where the law is not clear.

The main difference between the FREE Committee proposal and the versions being considered by the legislature is that the FREE proposal addresses illegal activity and the legislative versions address improper but not necessarily illegal behavior. This distinction is significant, because the state constitution requires the legislature to be the sole judge of the improper behavior of legislators. By adding a code of ethics to the Uniform Rules, similar to that proposed in HCR 33 and SCR 21

(copies enclosed), the legislature could address infractions as a whole body, assigning various members the task of investigating complaints.

After careful consideration, the Committee rejected the approach taken in all versions of SB 257 and HB 362. This legislation would create a new commission whose main purpose is to evaluate and investigate legislator and legislative employee activities for conflicts and to recommend what action should be taken by Legislature. While this is a popular method chosen by other states and is superficially attractive, the Committee rejected this idea for four reasons.

First, this would unduly lengthen the process by creating another layer of government and since nearly every potential conflict would have to be run through the commission to determine whether there is in fact a conflict, the expense could be quite high. In fact, these bills should contain a fiscal note. Even after the process is completed, only the Legislature can finally decide whether disciplinary action should be taken.

Second, we are opposed to creating new governmental bodies if other less expensive and complicated approaches would provide the same or better results.

Third, this could result in politically motivated investigations and less than even handed treatment of persons who are investigated. While some of the versions envision a commission composed of a mix of legislators and citizens, the risk of politically motivated investigations is still real. Unless the citizen members were chosen from the population as a whole by lottery, they would be political creatures and not immune from political motivations.

Fourth, we believe strongly that a public official is a citizen who is serving the public and, therefore, deserves to know what activities are prohibited before being investigated. The present bills do not clearly identify improper behavior.

In summary, the FREE Committee believes that it is important to ensure that our legislators and their employees behave properly and avoid acting solely to enrich themselves. However, we believe that this goal can be accomplished with minimal rules and without creating a new and expensive body. The FREE Committee wants good legislators and, therefore, urges you to vote no on SB 257 and HB 362. We strongly believe no bill is better than a poor bill.

Sincerely,

Cheri C. Jacobus

Cheri C. Jacobus
Chairman, Legislative Study

General Federation of Women's Clubs

Anchorage FREE Committee

LEGISLATIVE STUDY COMMITTEE REPORT

Part I

Second Printing...January 1981

P.O. Box 4-2955
Anchorage, Alaska 99509

FREE Legislative Study Committee Members

Jan Faiks, Chairman

Jan Bomhoff, Vice-Chairman

Darlene Holt, Project Coordinator

Esther Brautigan

Teddy Cartwright

Connie Chambers

Betty Cuddy

Beth Henderson

Annie Laurie Howard

Pauline Martens

Priscilla Thorsness

Bobbye Young

Invited Participants

Bob Fleming - Resource Development Council

Cliff Groh - Former Legislator

Dave Harbour - Registered Lobbyist

Jean Peterson - Common Sense for Alaska

Contributing Legislators

Senator W. E. "Brad" Bradley

Senator Mike Colletta

Senator M. E. Dankworth

Senator Bettye Fahrenkamp

Senator Frank Ferguson

Senator Tim Kelly

Senator Patrick Rodey

Senator Terry Stimson

Senator Arliss Sturgulewski

Representative C. V. "Chat" Chatterton

Representative Samuel Cotten

Representative Richard Halford

Representative Joe L. Hayes

Representative Terry Martin

Representative Russ Meekins, Jr.

Representative Joe D. Montgomery

Representative Joyce Munson

Representative Randy Phillips

Representative Richard L. Randolph

Senator-elect Vic Fischer

Senator-elect Don Gilman

Representative-elect Mitch Abood

Representative-elect Charles Anderson

Representative-elect David Cuddy

INTRODUCTION

The Anchorage FREE Committee is the product of a nation-wide program designated by the General Federation of Women's Clubs. FREE is an acronym for "Federation's Role in our Enterprise Economy", and is dedicated to the preservation of America's enterprise economy. Through active participation in the GFWC FREE Enterprise Program, we can:

- make our nation's lawmakers aware of the impact which 600,000 Clubwomen can have by promoting the American Free Enterprise system.
- broaden public understanding of the American economic system.
- provide a mechanism by which GFWC members can become actively involved in the legislative process at federal, state and local levels.

The free enterprise system is the economic counterpart of a politically free society. It provides economic liberty, which means that the tools of production are privately owned; producers are free to produce and offer in a competitive market what they believe consumers want; comsumers are free to buy what they choose.

While monitoring the activities of the Alaska State Legislature, it has become apparent to the members of the Anchorage FREE Committee that legislative rules (or lack of)

and procedures could be used to circumvent the wishes of the majority. Often, it seemed, important decisions and appropriations were made by a very few legislators. A dozen legislators in key positions distributed more than $1½ million worth of non-competitive contracts and 20 lawmakers split $3.2 million in interim committee funds, (ref. ALL ALASKA WEEKLY, 6/27/80, 7/4/80; THE ANCHORAGE TIMES, 10/7/80). Since the political and economic structures of our American society are closely interrelated, each system must be preserved in order that the other might survive.

In an effort to educate ourselves as well as the citizens of Alaska, FREE formed a Legislative Study Committee in September of 1980. The purpose of the committee was to try to discover how policies and procedures of our state legislature might be modified or changed in order to make the legislative process run smoother, allow for additional public input, and make it less vulnerable to abuse.

We have interviewed or received written comments and suggestions from twenty-four legislators regarding our topics. Our sessions with the legislators, involving over 100 hours of discussion, were extremely productive and we are grateful for their willingness to meet with us and share their time and ideas.

At the request of several lawmakers during our discussions, FREE and Common Sense for Alaska have written all states requesting their uniform rules. We are currently

analyzing and comparing the other states' uniform rules to determine how they have avoided, through rules and procedures, problem areas which have surfaced in the Alaska Legislature. A complete report comparing these uniform rules will be made available at a later date.

On the basis of our research and discussions to date, however, FREE feels that there are some legislative rules that warrant immediate attention and change. We have included as much data from the rules of other states as is currently available. The following report deals with these recommendations.

SUMMARY OF RECOMMENDATIONS

The following points summarize the conclusions of this study:

I. Two consecutive conference committees should be appointed, deliberate in good faith, and be unable to reach a compromise before granting powers of free conference to a third committee. Free conference powers would be granted for those specific areas of disagreement only. Non-germane amendments and sections would be prohibited. All conference or free conference bills should be printed and placed on legislators desks twenty-four hours prior to voting. All budget related conference committee meetings should be open to the public. (pp. 6-9)

II. A simple "bill content" rule is needed to define "germane" and prevent bill "piggybacking" from occuring. The rule should read, "No bill shall be passed by either house containing more than one subject, which should be clearly expressed in the title." (pp. 10, 11)

III. The public should be informed of the standing committee meetings and their agendas at least five days prior to the meeting. (pp. 12, 13)

IV. The House and Senate Finance Committees should meet jointly for the purpose of holding public hearings or considering any proposed or pending legislation. (pp. 14, 15)

V. The procedures of the standing committees are vital to the quality of legislation. Precise procedures involving a majority of the committee working in the open would serve to maintain and improve the integrity of the committee system. Fiscal impact statements and legislative intent should be included with all bills. The committee report should include one of three recommendations from each member - "do pass", "do pass as amended", or "do not pass". (pp. 16-18)

VI. No interim committees should be provided except those authorized by the state constitution, or either or both houses jointly may by resolution or statute, provide for the appointment of interim committees. (pp. 19, 20)

VII. The legislative session should be limited to 120 days. Any extension beyond 120 days should require a 2/3 vote of both houses and include a "limited call" provision. The extension itself should be for a specific number of days. (pp. 21, 22)

VIII. In order to encourage the concept of a citizen legislature, there should be a limitation on the number of consecutive terms a Representative and Senator may serve. The recommendations are two 4-year terms for a Senator and four 2-year terms for a Representative. An individual could prolong his years of service by alternating legislative houses every eight years. (pp. 23, 24)

IX. A Code of Ethics should be added to the uniform rules. General aspects should include a definition of ethical conduct, conflict of interest provisions, responsibilities of legislative staff in relation to campaigning and privileged information, and a section dealing with compensation for services rendered. A disciplinary mechanism should be established to deal with alleged violations. (pp. 25-27)

X. A simple, precise procedure is needed in the awarding of legislative professional service contracts. Requesting committees and legislators should follow specific procedures in requesting professional services. The Legislative Affairs Agency or other existing agency should have the authority to advertise, select and monitor all contracts. (pp. 28-30)

I.

FREE CONFERENCE COMMITTEE

According to the majority of the responding legislators, the use of the FREE Conference Committee is the most abused and dangerous [illegible] our Alaska legislative procedures.

In the normal course of events, when a bill is passed by both the House and the Senate, but with differences, a conference committee is appointed. Members of both houses sit on this committee, and their responsibility is to reach a compromise based solely on the material appearing before them in the two bills. The conference committee must choose between two existing concepts, and cannot add new ideas or phraseology, (ref. New Hampshire Joint Rule 20(h), California Joint Rule 29.56).

If the members of the conference committee cannot agree on amendments, or one or both houses refuses to adopt its report, then a Free Conference Committee is appointed. Historically and traditionally, the granting of the powers of free conference is the absolute final step in resolving a deadlock. New language and information germane to the issue can be introduced in an attempt to reach a compromise. The granting of the powers of free conference appears to be a perfectly logical outgrowth of a conference committee which is unable to reach a compromise, (ref. Alaska Uniform Rule 41).

Unfortunately, the free conference committee has been widely abused in the Alaska legislature. Legislators are currently, even before the start of the new session, campaigning for spots on various free conference committees. The legislators are assuming that, first, the House and Senate will surely disagree on a bill, and secondly, that a conference committee will not be able to choose between the bills to arrive at a compromise. In Louisiana, specific guidelines set forth the selection of conference committee members, (ref. Louisiana House Rule 6.15). California prohibits powers of free conference on the budget bill, (ref. California Joint Rule 29.5(c)).

As a practical matter in Alaska, conference committees are "granted the powers of free conference" without going through the conference committee process. Therefore, a non-restricted free conference committee has enormous power to create, add, delete and alter bills without benefit of standing committee approval or public hearings.

Part of the problem with free conference committees is their lack of adherance to the word "germane". Webster defines germane as "closely related, appropriate, pertinent, to the point". At the present time, laws are passed that have no relation to the intent of the original bill, or amendments are added that are totally unrelated in context and intent to the rest of the bill.

Due to the problems encountered with the free conference committee and the lack of a clear, specific germaneness

rule which is adhered to by our legislators, it is tempting to recommend the total elimination of the free conference committee. In many of our sister legislatures in the Lower 48 (10 out of 15 studied), the powers of free conference are not allowed; if the conference committee cannot compromise, the bills are dead.

However, the FREE Committee feels it is not the powers of free conference that are the problem, but rather the guidelines for its use and strict adherance to "germaneness" which is badly needed in Alaska.

FREE recommends the following rule changes in the use of the conference and free conference committees:

1. Two consecutive conference committees should be appointed, deliberate in good faith, and be unable to reach a compromise before granting powers of free conference to a third committee. The specific areas of non-agreement would be clearly documented and signed by all conference committee members. Free conference powers would be granted for those specific areas of disagreement only. (Ref. North Carolina Assembly Rule 44(a-c), California Joint Rule 29, North Dakota Joint Rule 6(e), New Jersey Joint Rule 1-6, Pennsylvania Senate Rule 21(1-3).

2. Non-germane amendments and sections should be prohibited and not allowed under any circumstances. (Ref. New Hampshire Joint Rule 11 and 20(d)(e)(h), West Virginia Joint Rule 3).

3. All conference or free conference bills should be printed and placed on lawmakers desks twenty-four hours prior to voting. (Ref. New Hampshire Joint Rule 20(d)(e)(h), North Dakota Senate Rule 54, Pennsylvania Senate Rule 21.1-3).

4. All budget related conference or free conference committee meetings should be open and readily accessible to the public. (Ref. California Joint Rule 29.5(a)).

California has a very specific rule relating to appropriation bills which bears further investigation. Number 29 of the Joint Rules states,

> "It shall require an affirmative recorded vote of 2/3 of the entire elected membership of each house to adopt any conference report affecting any bill which contains an item or items of appropriation which are subject to subdivision".

Actually, there are several states that have other than majority vote requirements for appropriation bills. We feel this is an area that needs further investigation, and FREE will recommend rule changes on this topic in our next report.

II.

"BILL CONTENT" RULE

Currently, bill "piggybacking" is practiced in the Alaska Legislature, even though Alaska Uniform Rule 34 prohibits such action. This process adds non-germane amendments to existing bills in order to facilitate the passage of weak or controversial bills.

The potential for abuse is obvious in that a particular bill favored by a few can be piggybacked onto another popular bill favored by the public, and therefore be sure to pass. Or, non-germane amendments dealing with other topics can be piggybacked to not only facilitate their passage, but to prevent adequate public hearing on the topic to be added.

Many states have solved this problem by adopting in their joint rules a very simple, but certainly far reaching "bill content" rule. The FREE Committee highly recommends this or a similar rule to stop the piggybacking process.

Simply stated, and quoting from the Arkansas Joint Rules Sec. 4, "No bill shall be passed by either house containing more than one subject, which should be clearly expressed in the title". (Also ref. North Dakota Senate Rule 31d, West Virginia House Rule 97, Pennsylvania Senate Rule 14.3). All amendments must remain within the scope of the bill being considered, or all amendments must be "germane".

(Ref. North Dakota Senate Rule 49, Pennsylvania Senate Rule 15, California Joint Rule 9, North Carolina Assembly Rule 43, Washington House Rule 31, West Virginia House Rule 113, Main Senate Rule 11).

Legislators could then vote on the merit of a bill without having to consider the political consequences of a piggyback, and the rights of the majority would be protected. Each piece of legislation should be considered on the basis of its own merit. (Ref. West Virginia House Rule 62, New Hampshire Joint Rule 11, Florida House Rule 11.8, Washington House Rule 31).

III.

PRIOR NOTICE OF COMMITTEE MEETINGS AND AGENDA

At the present time, there is not adequate prior notice of committee meetings and their agendas. Citizens with interest in a particular bill are often unable to adequately respond in writing or in person unless advance notice is given.

There, FREE recommends the public be informed of the standing committee meetings and their agendas at least five days prior to the meeting. (Ref. North Dakota Senate Rule 43, Arkansas Senate Rule 33, New Jersey Rules of Assembly 10.6, California Joint Rule 36(2), Pennsylvania Senate Rule 16.8, Florida House Rule 6.18, Washington House Rule 78). In an emergency, 2/3 majority of the committee can vote to suspend the public notice rule. (Ref. Arkansas Senate Rule Sec. 33). Public notice and agendas could be placed in the press room and throughout the network of legislative information offices. (Ref. North Carolina Assembly Rule 143-318:12).

FREE feels that there are a great many advantages that would occur as a result of this prior notice. Legislation would have the benefit of additional public scrutiny by allowing for more public input. Legislators would be forced to pre-plan their schedules, which would in turn result in a more organized committee system, and help to alleviate some of the "end of the session crunch".

FREE is aware that there will be protests that one cannot give advance public notice of committee meetings and still expect the legislature to complete its work in 120 days as recommended elsewhere in this report. Certainly it may not be easy at first, but the need for the public to be better informed must take precedence over legislative convenience.

Note: The State of Pennsylvania requires 30 days published notice in the locality affected by a bill prior to its introduction, (ref. Pennsylvania Senate Rule 5, and also Florida House Rule 7.4).

IV.

FINANCE COMMITTEE REFORM

FREE recommends that the House and Senate Finance Committees meet jointly for the purpose of holding public hearings or considering any proposed or pending legislation. (Ref. Calfironia Joint Rule 37).

A joint hearing would eliminate the need for state agencies, municipalities, school districts and other entities requesting funds to travel and testify, twice. The financial savings would be significant to the agencies and both houses would receive the same budgetary information. This is a worthwhile consideration for other committees as well. (Ref. Arkansas Joint Rules Sec. 25, New Hampshire Joint Rule 14, California Joint Rule 3, Louisiana Senate Rule 66 and House Rule 6.27, Maine Joint Rule 13, West Virginia Joint Rule 11, 19).

By meeting jointly, coordination of action by the two houses should become automatic and efficiency in pursuing budget matters should be enchanced. A time table should be set early in the session by the Joint Finance Committee for the finalization of the budget. (Ref. Arkansas Senate Rule 93(J)). Every new item added to the budget should list program implications, back-up material, criteria and fiscal impact.

Historically, the budget derives from the governor's initial budget proposal submitted to each new session of

the legislature. Literally thousands of hours have gone into the preparation and justification of this budget by administrators and their staffs throughout the state. After in-depth review by the separate House and Senate Finance Committees, different versions of the budget are passed in each house, and thus the budget ends up in a free conference committee.

It is in the free conference committee that budgetary abuses occur. New items are added based on political motives and "a slice of the pie" theory. There seems to be little or no research done on these new items, and some justification of the new items is not made apparent. Some states have a constitutional limit on such appropriations. (Ref. Arkansas Senate Rule 93(L)). Hopefully, a Joint Finance Committee can work to decrease these abuses and eliminate the need for the budget free conference committees.

V.

STANDING COMMITTEES

The procedures of the standing committees are vital to the quality of legislation, as well as the efficiency and organization of the entire legislature. Legislators should strive to maintain and improve the integrity of the committee system.

FREE feels the following recommendations would enhance standing committee operations:

1. All bills introduced in the name of the committee should have the prior approval (of introduction) by a majority of the committee members. (Ref. Louisiana House Rule 8.14, California Joint Rule 10.7, Florida House Rule 7.1-, Washington House Rule 79).
2. At least a majority of all members constituting a standing committee should be required to report a bill out of committee. (Ref. Pennsylvania Senate Rule 16.16, Arkansas Senate Rule 34(d) and 36, New Jersey Rules of Assembly 10.6, California Joint Rule 62.(c), Florida House Rule 6.32).
3. No action should be taken on any measure outside of a duly constituted committee meeting in which a quorum is present, and such meeting should be open to the general public. (Ref. Washington House Rule 79, Florida House Rule 6.25, New Jersey Rules

of Assembly 10.5, West Virginia House Rule 83, Nevada Senate Rule 13 and 53).

4. Elimination of public hearings or similar measures which detour or abbreviate the bill process should be avoided. (Ref. Louisiana House Rule 6.11, New Jersey Rules of Assembly 10.5, Washington House Rule 79).

5. Any bill or resolution which would have fiscal impact on the state should have a note stating a reliable estimate of the fiscal effect of such a bill. This information could be prepared by the Legislative Finance Division. (Ref. Louisiana Joint Rule 44, New Hampshire Joint Rules 5-a, New Jersey Rules of Assembly 10:11, 15:2(a)-15:2(g), California Joint Rule 37.1, Maine Joint Rule 20, West Virginia House Rule 95a, Florida House Rule 7.16, North Carolina Assembly Rule 38, Delaware House Rule 23).

6. Each committee report should include one of three recommendations from each member - "do pass", "do pass as amended", "do not pass". We feel "no recommendation" should not be allowed, since a committee member who has participated in the public hearings and committee deliberations should be able to make a specific recommendation in the committee report. (Ref. Arkansas Senate Rule 34(a), New Jersey Rules of Assembly 10.6, West Virginia House

Rule 98, Delaware House Rule 17(d), North Carolina Assembly Rule 36, Florida House Rule 6.34, Pennsylvania Senate Rule 16.12).

7. Each committee report should include a statement of the legislative intent of all bills that address themselves to major innovation or change in public policy. (Ref. Florida House Rule 6.33, Arkansas Senate Rule 34(c), New Jersey Rules of the Assembly 15:4, Maine Joint Rule 31, Delaware Senate Rule 8).

Many states have deadlines for reporting bills out of the standing committee to which they have been assigned. (Ref. New Hampshire Joint Rules 10(a-c), North Dakota Senate Rule 38 and 44, Florida House Rule 6.29, Maine Joint Rule 13). In addition, there are early deadlines for the introduction of bills. (Ref. Louisiana Joint Rule 5, New Hampshire Joint Rule 12, Arkansas Joint Rule Sec. 19 and 24, West Virginia Senate Rule 14, Washington House Rule 19). If the standing committees in the Alaska Legislature are having problems organizing and accomplishing their work loads, further consideration should be given to these concepts.

VI.

INTERIM COMMITTEES

According to the majority of legislators interviewed, interim committees are primarily needed and used by legislators to keep good staff year-round, to reward political supporters and to meet the demands of their constituents during the interim. FREE feels that interim committees are not being used in ways that benefit the citizens of Alaska.

Used wisely and with restraint, interim committees could be a legitimate tool of the legislature, but recent legislatures have used them with neither wisdom nor self-restraint. Dissatisfied voters have rejected propositions in 1978 and in 1980 to expand and legitimize interim committees.

FREE recommends that no interim committees be provided except those authorized by the state constitution.

In those cases where there is a need to study or promote a topic, the task can simply be assigned to the appropriate standing committee which has a professional staff, or the legislators can authorize an interim committee by statute. (Ref. California Joint Rule 36, Statutes of Nevada 1968, 1973). This insures that a majority of legislators must agree to the necessity of an interim committee prior to its creation.

In both cases the assumption is made that the request be substantiated by a clear purpose and objective, statement of who will do the work, budget limitations, and reporting procedures. The committee ceases to exist upon completion of its task.

During the discussion on interim committes, there was a great deal of time spent evaluating the demands made on legislators by their constituents between sessions - phone calls, answering mail, attending meetings and generally being responsive to the public. The suggestion was made that secretarial help or legislative aides be provided. FREE does not recommend such staff at this time. The feeling is that meeting these needs is part of the job of being an elected citizen legislator, and that those for whom this is a burden should perhaps reconsider their availability to serve.

VII.

LIMIT ON LEGISLATIVE SESSION

There seems to be growing support throughout the state for imposing a limit on the number of days allowed for each legislative session. FREE concurs with this sentiment, and proposes a limit of 120 days. (Ref. Wyoming State Constitution, Florida State Constitution, Nevada State Constitution). Any extension beyond 120 days should require a 2/3 vote of both houses, and should include a "limited call" provision, whereby the topics to be addressed must be limited and pre-stated, and the extension itself should be for a specific number of days. (Ref. New Hampshire Joint Rule 24).

FREE feels that a session limit would enhance the concept of a citizen legislature, in that a shorter (the tendency has been for longer and longer sessions) and specific time frame would facilitate participation as lawmakers by a greater number of citizens.

The Alaskan legislature has the distinction of being the most costly (per capita) of any state in the union. A limited session would be cost efficient in that salaries, per diem, rents and other costs related to time would be decreased.

A limited session would encourage legislators to work together as a matter of expediency. A deadline

necessitates working and accomplishing goals in the most efficient and organized manner.

Perhaps the quality of legislation would be enhanced. Only those issues which have broad support and concern would be brought before the legislature. There would be less time to create problems where none exist.

Finally, a limited session would help to stop the growing talk from legislators of the need for a full time staff and legislature. The staff, in turn, would be better able to plan for additional employment after the session.

VIII.

LIMIT TERMS OF OFFICE

The FREE Committee strongly believes in the concept of a citizen legislature versus professional lawmakers. For this reason, and others, FREE feels that there should be a limitation on the number of terms a Representative and Senator may serve. Surprisingly, a good portion of the responding legislators favored this concept.

FREE feels that a limitation would serve as an incentive for more citizens to seek elective office - the perception being that incumbents are generally pretty difficult to unseat. New faces bring fresh approaches to programs and issues, needed at all times, but especially now in Alaska with its vast natural resource wealth.

When legislators remain in one house for a long period of time, excessive power over colleagues and staff seems to develop, as do legislative cliches. By dispersing the concentration of power, it will be more difficult for a handful of "long time" legislators to control legislation contrary to the wishes of the majority.

One legislator commented during the discussions that it was difficult for even the "good guy' legislators to remain free of obligations to their colleagues. In the lawmaking process there is always give and take, and legislators who have been on the job for a long time will inevitably build up a certain amount of "favors due" and

"favors owed", so that it becomes increasingly difficult to judge matters under consideration solely on their merit.

FREE recommends the following limitations on the terms of office:

1. Senate - two 4-year consecutive terms.
2. House - four 2-year consecutive terms.
3. Present incumbents would begin counting their terms with the effective date of the law.

Using FREE's formula, legislators popular with their constituents could remain in the legislature, but would have to change Houses every eight years. Thereby, the right of the citizen to choose his lawmakers remains intact.

CODE OF ETHICS

Any public office holder in a free government is entrusted with the security, safety, health, prosperity and general well-being of those whom he serves. With such a trust, high moral and ethical standards which produce the public's confidence should be the goal of every legislator.

FREE recommends that a code of ethics or standards of conduct be added to the uniform rules. Parameters for acceptable and unacceptable behavior must be drawn so that legislators know what kind of behavior to expect from one another. It is difficult to confront and correct unethical activities until the guidelines are drawn and understood by all.

General aspects of the Code of Ethics should include, but not be limited to, the following:

1. Any conflict between private interests and official duties must be avoided. No state legislator should accept any employment which could impair his independence and integrity of judgment nor should he exercise his position of trust to secure unwarranted privileges for himself or others. (Ref. Maine Legislative Code of Ethics, New Jersey Legislative Code of Ethics 2:1.a, California Joint Rules 44.(a)).

2. Members of the legislature should not directly or indirectly receive or agree to receive any compensation for any services which one knows or has reason to believe is given with the intent of influencing him in the performance of his duties as a legislator. (Ref. New Jersey Legislative Code of Ethics 2:1.6, California Joint Rules 44.(3)).

3. Legislators should be directly responsible for the ethical conduct of their staff. (Ref. California Joint Rule 44(f), Florida House Rule 5.11).

4. Legislators should notify the leadership prior to taking any action or voting upon any bill in which he or any member of his immediate family has a personal or professional interest which ensures his private gain or the gain of any principal by whom he is retained or employed. The legislator should disqualify himself from the vote in which he has a conflict of interest. (Ref. Florida House Rule 5.10, California Joint Rules 44.(s), Pennsylvania Senate Rule 22.2, Washington State Constitution Article 2, Sec. 30).

5. Legislative staffs should not be assigned to campaign or fund raising duties; legislative staff should not be considered to be political organizations.

6. Legislators should be prohibited from raising campaign funds during the legislative session. (Ref. New Jersey Legislative Code of Ethics 2:10.)

New Jersey has developed a comprehensive manual entitled "Legislative Code of Ethics" which would serve as an excellent resource instrument. In addition, North Carolina includes with their General Statutes a thorough "Code of Legislative Ethics".

It follows that once a Code of Ethics is established, some sort of mechanism needs to be implemented to deal with alleged violations. Many states have detailed disciplinary procedures which would make excellent guidelines. (Ref. Pennsylvania Senate Rule 37, 38, Illinois House Rule 12, New Jersey Joint Rule 19(a,b), California Joint Rule 45(a-p), North Carolina General Statutes Article 14, Part 3).

X.

PROFESSIONAL SERVICE CONTRACTS

FREE feels it is extremely important that the new legislature adopt very specific professional service contracting procedures. We are gratified by the concern expressed by many legislators in relation to this subject, but the voiced concern must be developed into a solid, practical set of rules.

FREE recommends the following guidelines:

1. The Legislative Affairs Agency or another existing agency should be in control of all professional service contracts. (Ref. New Jersey Rules of Assembly 10:12).
2. The purposes and objectives of the professional service desired should be clearly defined in written form by the committee or legislator requesting the service, along with a statement of reasons why the admisistration or legislative staff could not meet the need.
3. The parameters and scope of the service required should be pre-determined and included in the written request.
4. A time frame for commencement and completion should be indicated.
5. The request, including items 2-4, should be forwarded to the controlling agency.

6. The agency should advertise throughout the state.
7. The agency should analyze the bid proposals, ranking the proposals in 1, 2, 3, . . . order.
8. A contract would be negotiated by the legislative agency with the #1 responder, moving on to #2 or #3 until a satisfactory contract is negotiated.
9. The agency should monitor the project and determine if the finished product meets the desired and stated criteria prior to any disbursement of funds.
10. A report should be made available to the public no later than 10 days after it is due to the committee.
11. The final report should include on the title page the name of the requesting committee, the name of the firm providing the service, and the total cost of the report or project.
12. Some provision must be made for needed emergency information when the above procedures cannot, for reasons of time, be followed. FREE suggests any professional service contract needed which cannot follow the prescribed procedures must be approved by 2/3 vote of the house requesting the service.
13. Contracts may be entered into without going through steps 6 and 7 provided the amount of the contract does not exceed $2,500, and no one

entity receives contracts in excess of $10,000 in each calendar year.

CONCLUSION

Throughout history, frustration and apprehension have been felt by citizens of their states regarding the actions taken by their state legislatures. Numerous examples of misdeeds have aroused public outcry, which in turn has resulted in changes in procedures.

In comparison to its sister legislatures in the Lower 48, the Alaska State Legislature is a young entity. Currently, the Alaska legislature is undergoing "growing pains", but under a different, and more difficult, set of circumstances that those of other states.

In the Lower 48, legislative activity was, and still is, watched by dozens of news reporters representing numerous small towns and counties, as well as the larger metropolitan areas. This results in close scrutiny of legislative activity, and a better informed public.

Closely tied in with media coverage is the accessibility of the legislative halls to the general population, which also leads to closer scrutiny of legislative activities and greater awareness by the general public of their elected representative's activities.

Finally, when comparing Alaska's legislature with that of other states, one very significant factor is without precedent - no other state has ever had such a huge budget surplus, per capita.

A blessing, yes, and yet a potentially destructive force demanding extreme caution in its management.

Because of these differences, it is incumbent upon our elected officials to follow sound, accountable legislative procedures. While other states have undergone a gradual maturation process over the years, we do not have that luxury. Alaska's state government must do in a couple of years what other states have done in at least sixty years or more (excluding Hawaii).

This, then, is a major challenge facing our Alaska State Legislature. It will require changes in thinking and in ways of conducting legislative business. But the people of Alaska, and our elected officials in particular, are not unfamiliar with challenges. Citizens and legislators, working together, have an opportunity to create a noble and splendid existence.

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DELETIONS ARE BRACKETED AND ADDITIONS ARE UNDERLINED

(The following section changes filing requirements for the Alaska Public Offices Commission to be consistent with the other changes. Primarily these changes address inequities created by the law's requirement that nondependent children's income and spousal income be reported but not that income of persons living together. The changes are less wordy and the dollar amounts are more realistic.)

* Section 1. AS 39.50.030 is amended to read:

Sec. 39.50.030. Contents of Statements. (a) Each statement shall be an accurate representation of the financial affairs of the public official or candidate and shall contain the same information for each member of his family or household as [specified in (b) of this section] defined in AS 39.50.200, to the extent that it is ascertainable by the public official or candidate. [An asset or liability under $500, household goods, and personal effects need not be identified.]

(b) Each statement filed by a public official or candidate under this chapter shall include:

(1) the source of all income over [$100] $500, including capital gains, whether or not taxable, received by him [or his spouse or dependent child of his or nondependent child of his who is living with him during the preceding calendar year] , his family or member of his household;

(2) the identity, by name and address, of each business in which he or [his spouse or dependent child of his or nondependent child of his who is living with him] his family or a member of his household was a stockholder, owner, officer, director, partner, proprietor, or employee during the preceding calendar year;

(3) the identity and nature of each interest owned by him or [his spouse or dependent child of his or nondependent child of his who is living with him,] by his family or by a member of his household, in any business during the preceding calendar year;

(4) the identity and nature of each interest in real property, including an option to buy, owned by him or [his spouse or dependent child of his or nondependent child of his who living with him,] by his family or by a member of his household during the preceding calendar year;

(5) the identity of each trust or other fiduciary relation in which he [or his spouse or dependent child of his or nondependent child of his living with him,] his family or member of his household, held a beneficial interest during the preceding calendar year, a description and identification of the property contained in each trust or relation and the nature and extent of the beneficial interest in it;

(6) any loan or loan guarantee made to him or [his spouse or dependent child of his or nondependent child of his who is living with him,] to a member of his family or household and the identity of the maker of the loan or loan guarantor and the identity of each creditor to whom he or [his

spouse or dependent child of his or nondependent child of his who is living with him] a member of his family or household owed $500 or more;

(7) a list of all contracts and offers to contract with the state, or an instrumentality of the state, during the preceding year, held, bid or offered by him, [his spouse, dependent child of his or nondependent child of his who is living with him, his mother or father] a member of his family or his household or a partnership or professional corporation of which he is a member, or a corporation in which he or [his spouse or his children] a member of his family or household, or a combination of them, hold a controlling interest; and

(8) a list of all mineral, timber, oil, or any other natural resource lease held, or lease offer made, during the preceding calendar year by him, [a dependent child of his or nondependent child of his who is living with him, his mother or father] a member of his family or his household or a partnership or professional corporation of which he is a member, or a corporation of which he or [his spouse or his children,] a member of his family or his household, or a combination of them, hold a controlling interest.

(The following section is rearranged, sections are added to make the law clearer, and certain activities would be punished as felonies. It should be noted that the present versions of SB 257 and HB 362 allow the legislature to impose a fine of up to $50,000.)

* Section 2. AS 39.50.090 is repealed and reenacted to read:

AS 39.50.090. Prohibited Acts. (a) Violation of this sub-section is a class C felony, punishable by a fine of not less than $5,000, nor more than $50,000, by imprisonment of up to 5 years, or by both.

(1) No public official may use his official position or office for the primary purpose of obtaining any financial or other type of benefit for himself, a member of his family or his household or business with which he or his family or household is associated or owns stock.

(2) No public official or former public official shall disclose any information which by law or practice is not available to the public and which he acquired in the course of his official duties or use of the information for his personal gain or the benefit of anyone.

(b) Violation of this sub-section is a misdemeanor, punishable by a fine of not less than $500, nor more than $2,000, by imprisonment up to one year, or by both.

(1) No person may offer or pay to a public official and no public official may solicit or receive money for legislative advice or assistance, or for advice or assistance given in the course of the official's public employment or relating to his public employment. However, this prohibition does not apply to a chairman or member of a state commission or board or municipal officer of the subject matter of the

legislative advice or assistance is not related directly to the function of the commission, board, or municipal body served by the municipal officer; this exception from the general prohibition does not apply to one whose service on a state commission or board constitutes him a full-time state employee under AS 39.

(2) No public official may represent a client before a state agency for a fee. However, this prohibition does not apply to a municipal officer, or chairman or member of a state commission or board except with regard to representation before his own commission or board; this exception from the general prohibition does not apply to one whose service on the commission or board constitutes him a full-time state employee under AS 39.

(3) A former public official may not assist any person, business, instrumentality of the state or act in a representative capacity for a fee or other consideration, on matters in which he personally participated as a public official, nor may the former public official within twelve months after termination of office or employment act in a representative capacity for a fee or other consideration before any state agency. This subsection does not prohibit any agency from contracting with a former public official on a matter on behalf of the state and does not prevent the former public official from appearing before any agency with relation to such employment.

(4) A public official may not apply for a loan from a state agency unless the application is simultaneously filed with the commission. A state agency may not approve a loan to a public official who fails to file the application with the commission and a state agency may not grant special consideration to the application of a public official.

(5) No public official, member of his family or household, or business with which he, his family or household, is associated may enter into any contract with the state, valued at $100 or more, other than a contract of employment as a state employee or pursuant to a court appointment, unless the contract has been awarded in compliance with existing state law in an open and public process, including prior public offer and subsequent public disclosure of all proposals considered and the contract awarded. A member of the legislature shall simultaneously file the offer to contract with the commission; if the offer to contract is a sealed bid, the commission may not open the offer to contract until after the offer to contract has been opened by the agency receiving the offer to contract. A state agency may not award a contract to a public official or to a person known to be a member of the family or of the household of a public official or to a business that is associated with the public official or with a member of the family or of the household of a public official unless the offer to contract is filed with the commission.

(6) No member of the legislature, person acting on behalf of a member of the legislature, member of the legislator's family or household may solicit funds for political contributions to the campaign treasury of the member of the

legislature during a legislative session. Both the legislator and the person soliciting the contribution are liable and subject to penalty for any violation of this subsection.

(c) In this section, "public official" includes, in addition to the persons specified in AS 39.50.200(a)(1), chairmen and members of all commissions and boards created by statute or administrative action as agencies of the state.

(d) No municipal officer may represent a client for a fee before the municipal body which he serves.

(The following section provides for advisory opinions from the Attorney General to help public officials from inadvertently violating the conflict of interest law. This approach is followed in a number of different jurisdictions.)

* Section 3. AS 39.50.095 is added to read:

Sec. 39.50.095. Attorney General Opinion. If any public official or member of his family or household or business with which he is associated is in doubt whether a proposed transaction or action constitutes a violation of this chapter, the public official or business may request in writing a written determination from the Attorney General's office. Within thirty days of such request, the Attorney General's office shall issue a written opinion based on the facts recited by the requester. If a legislator is involved, this advisory opinion shall be published in the daily legislative journal. A public official or business with which he is associated shall not be liable under this chapter, for any action or transaction carried out in accordance with such an advisory interpretation, provided he disclosed all the known facts to the Attorney General at the time of the request.

* Section 4. AS 39.50.200 (a)(8) is amended to read:

(8) "source of income" means the entity for which service is performed or which is otherwise the origin of payment; if the person whose income is being reported is employed by another, his employer is the source of his income; but if he is self employed by means of a sole proprietorship, partnership, professional corporation, or a corporation in which he [or his spouse or his children,] , his family or a member of his household, or a combination of them, hold a controlling interest, the "source" is the client or customer of the proprietorship, partnership or corporation, but if the entity which is the origin of payment is not the same as the client or customer for whom the service is performed, both are considered the source;

* Section 5. AS 39.50.200 (a) is amended by adding new paragraphs to read:

(10) "member of his household" means any person whose permanent address is the same as the public official's permanent address or anyone who actually resides in the same household;

(11) "family" includes mother, father, spouse, children, parents in law;

(12) "financial gain" means economic benefit resulting from salary, gratuity, gift, or other compensation or remuneration from any individual, partnership, organization or association, or resulting from ownership or interest in a business entity.

Alaska State Legislature

IN SESSION:
POUCH V
JUNEAU, ALASKA 99811
(907) 465-4949

BOX 142
EAGLE RIVER, ALASKA
99577

Representative Randy Phillips

HOUSE DISTRICT 15

MEMORANDUM

TO: Representative Charlie Bussell
Chairman, House Judiciary Committee

FROM: Representative Randy Phillips R.P.

DATE: May 25, 1983

RE: Conflict of Interest Legislation
(House Bill 362, CSSB 257 (Jud) am)

Attached are the following items for your committee's review:

1. Memorandum dated May 24, 1983, entitled "Comparison of CSSB 257 (Jud) am and SB 257. As you know, SB 257 is the same as House Bill 362.

Attached to this memorandum is a copy of CSSB 257 (Jud) am in which the changes from SB 257 to the Senate-passed version have been highlighted.

2. Memorandum dated May 25, 1983, comparing the Legislative Ethics Commission as proposed in HB 362/SB 257 and the Select Committee on Legislative Ethics as proposed in CSSB 257 (Jud) am.

If you have any questions, please do not hesitate to contact me. I plan on being in attendance at this Friday's meeting when I understand this subject matter will be before your committee.

POUCH V
JUNEAU, ALASKA 99811
465-4990

P.O. BOX 4-1325
ANCHORAGE, ALASKA 99509
248-1515

CHAIRMAN
HOUSE JUDICIARY COMMITTEE
MEMBER
HOUSE RESOURCES COMMITTEE

Representative Charlie Bussell

ALASKA STATE LEGISLATURE
HOUSE OF REPRESENTATIVES

TO: All Legislators

FROM: Representative Charlie Bussell

RE: Conference Committee on SB 257 - Ethics

DATE: March 22, 1984

I would like to inform you that today at 3:00 p.m. there will be a meeting of the Conference Committee on SB 257, ethics. The meeting will be held in Judiciary Committee Room, Room 124 of the Capitol. The committee consists of myself, Rep. Bussell, Rep. Martin, Rep. Flood, Senator Ray, Senator Mulchay, and Senator Gilman.

Previously Senator Ray has distributed amendments for consideration.

Attached you will find a CS that I am proposing.

I am sure the committee will appreciate your attendence and comments on this legislation.

Berrier /

A M E N D M E N T

Offered in the SENATE By Ray

TO: CCSSB 257

Page 3, line 16, following "norm;" delete "or"

Page 3, line 17, delete "." and insert "; or"

Page 3, following line 17, insert:

"(6) gifts of nominal value given by a nonprofit organization in recognition of public service by the recipient."

Page 3, lines 19 and 20 following the word "event", delete:

"held within the City and Borough of Juneau"

Page 6, lines 18-20, following the word "form", delete:

", in excess of $100 and which does not in the aggregate exceed $250 in value during the calendar year"

Page 7, line 8, following the word "sister", delete the word "or" and following the word "brother" insert "or spouse-equivalent"

Page 8, line 12, following "six", insert "legislative"

Page 8, line 12, following the word "members", insert:

"and the executive director of the Alaska Public Offices Commission who serves as a member of the full committee and of each subcommittee with all of the rights of a member except the executive director does not have the right to vote"

Page 8, line 21, following "two", insert "legislative"

Page 9, line 2, following "A", insert "legislative"

Page 9, line 8, following "When a", insert "legislative"

STATE OF ALASKA
THE LEGISLATURE

LEGISLATIVE AFFAIRS AGENCY

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

M E M O R A N D U M

February 24, 1984

SUBJECT: Sectional Analysis

TO: Conference Committee on SB 257

FROM: Billy G. Berrier
Director
Division of Legal Services

You have requested that I prepare a sectional analysis on CCS SB 257 and note changes from the Senate version, CSSB 257 (Jud) am and the House version, HCS CSSB257 (Jud) am H.

Sec. 24.60.010 set out the legislative findings and purpose. It states that it is essential that legislators have the respect and confidence of the people, must avoid conduct that appears to violate the trust of the people and should have specific standards to guide them. The purpose is stated to be to establish standards of conduct for legislators and legislative employees and to establish the Select Committee on Legislative Ethics to consider violations and to render advisory opinions.

* Except for the committee name all three versions are essentially identical.

Sec. 24.60.020 provides the chapter applies to legislators and permanent or temporary employees of an agency of the legislature, excludes former members and former employees except to the extent they are specifically included in a provision, excludes members elect and excludes employees whose pay is below the pay established for Step A, Range 18 of the state salary schedule. It provides this section supersedes common law but does not supersede criminal law.

* The House version excludes employees from the nepotism provision, the Senate bill includes them and the Conference Committee bill also does. Otherwise the three are essentially identical.

Sec. 24.60.030 relates to conflict of interest

(a) Provides that a person may not use public office for private advancement or gain.

* This is identical in all three bills.

(b) Provides that a conflict of interest exists when a person takes official interest or exerts influence that could benefit or harm a private financial matter of the person.

* This is identical in all three bills.

(c) Prohibits conflict of interest but sets out two exceptions where there is no substantial impropriety or appearance of impropriety.

* This is identical in all three bills.

(d) provides that a conflict of interest exists if benefits accrue to a person other than those which accrue uniformly to a group to which the person belongs.

* This is identical in all three bills.

(e) provides that a conflict of interest does not exist if a person accepts hospitality at another persons residence within the state, generally available discounts, meals or social events which do not exceed $100.00, indigenous food or gifts from a person's family.

* This is identical in all three bills.

(f) provides it is a conflict of interest for a legislator to accept money raised at a fund raiser in Juneau during the session.

* This is identical in all three bills.

* The Senate version allows the committee to establish, with approval of the legislature, additional policies that limit the extent by which a person may accept benefits under (e). The House bill and the Conference Committee bill do not contain this.

Sec. 24.60.040 relates to contracts and leases.

(a) Provides that a person may not be a party to or have an interest in a state contract or lease unless

(1) The contract or lease is let by competitive bidding.

(2) The amount is $1,000,00 or less.

(3) The contract or lease is standardized and available to the public or to a group generally.

This applies when the person receives a direct or indirect financial benefit under the contract or lease. (b) defines direct or indirect financial benefits.

* The exception for a standardized contract or lease is not contained in the House bill. Otherwise the three bills are essentially identical.

Sec. 24.60.050 relates to state loans.

(a) Provides that it is not a conflict of interest to receive a state loan if the loan is generally available, has fixed eligibility standards and minimal discretion is excercised in determining qualifications. It also requires the Committee to issue a list of programs and loans it considers to meet the standards of this paragraph and revise the list annually.

* The Senate bill does not contain the list requirement which is in the House bill and the Conference Committee bill.

(b) In determining whether a conflict of interest exists the committee must consider the adequacy of administrative procedure for granting and reviewing loans to legislators but is not limited to considering only that.

* In the Senate version this paragraph applies only to legislators. In the House version and the Conference Committee version it applies to all persons covered by the bill.

(e) requires that upon application for a loan, other than a loan described in (a) the person shall send a notice of the application to Alaska Public Offices Commission which will incorporate that in the financial disclosure statement. If the person is not required to file a disclosure statement the notice must be placed in an employee loan file open to the public. All records relating to a loan may be disclosed to the committee.

* The House bill does not contain the provision that all records relating to the loan may be disclosed to the committee which is in the Senate bill and the Conference Committee bill. The Senate bill requires the copy of the application be sent by the lending agency and the House and Conference Committee bill requires it be sent by the person involved. Otherwise this paragraph is identical in each of the bills.

(d) requires that on each February 1, each loan agency must deliver a list of loans to the presiding officer of each house, set out what must be included in the list and provides the list must be published in the supplemental journal.

* This paragraph is identical in each of the bills.

(e) requires the Division of Legislative Audit to annually review state loans to persons to whom this chapter applies to determine whether appropriate procedures were observed in granting the loan and whether loan conditions are being enforced. The division must report its findings to the committee by April 1, of each year.

* The Senate bill requires the auditor to determine whether appropriate procedures were observed in granting the loan. The House bill requires the auditor to determine whether loan conditions are being enforced. The Conference Committee bill requires both.

(f) Defines state program.

* This paragraph is identical in each bill.

* The Senate version requires the lending agencies to adopt regulations that establish separate procedures for granting and reviewing loan to persons to whom this chapter applies.

This requirement is not in the House or Conference Committee bill.

Sec. 24.60.060 provides it is a conflict of interest if a person uses for personal gain of the person or another confidential information the person acquired in the course of official duties.

* This section is identical in each bill.

Sec. 24.60.070 requires disclosure of a close economic association with an employee, and a supervisor if the supervisor is not a member of the legislature, a legislator, a public official in another branch if the public official is required to file a disclosure statement or a lobbyist.

* The House version does not contain this requirement. The Senate version does not explicitly exclude legislators from the supervisor-employee provision.

Sec. 24.60.080 provides that a person may not solicit a gift in any amount or accept a gift in excess of $100.00 or in the aggregate in excess of $250.00 during a calendar year if the gift was intended as a reward or inducement for official action. A gift of travel and hospitality within Alaska received by a member of the legislature in obtaining information of legislative concerns and political contribution reported under AS 15.13.040 are not prohibited.

* The Senate bill has no dollar limitation and does not have the term "inducement". The House bill prohibits gifts under circumstance in which it may reasonably be inferred that the gift was intended to influence a person in the performance of official duties and specifically sets out exceptions.

Sec. 24.60.090 prohibits employment of relatives in specified circumstances. A spouse of a legislator may not be employed by either house during the interim or by an agency of the legislature. Other relatives may not be employed in the house in which the related legislator is a member, by an agency of the legislature or by the other house during the interim. An individual who is related to an employee of the legislature may not be employed in a position over which the employee has supervisory authority. The section defines relative. It provides that for this section a person is not employed if the person does not receive compensation and

that a member of the legislature is, for purposes of this section, not an employee of the legislature.

* The provision relating to employment of a spouse during the session is not in the Senate bill or the House bill. Both the House bill and Senate bill include "a member of the same household" in the definition of relative which is not included in the Conference Committee bill. The term "adopted child" is specifically included in both the House and Senate bill but in the Conference Committee bill this term is subsumed under the word "child".

Sec. 24.60.100 requires that a person who represents another person before an agency of the state for compensation shall disclose the representation in the journal if the legislature is in session and, if not, to the committee. The committee must maintain a record of the disclosures and send them to the house involved for inclusion in the journal for the first day of the session.

* The Senate version is identical. The House version prohibits representation before an agency of the state for compensation except in court actions and actions which were pending at the time the person was elected or employed.

Sec. 24.60.110 provides that a legislator who has a conflict of interest shall resign the conflict of interest, divest the interest or disclose the interest in the journal or, if the legislature is not in session to the committee. Disclosure does not remove the conflict.

* Neither the House or Senate bill contains the provision that disclosure does not remove the conflict. Otherwise the three versions are identical.

Sec. 24.60.120 provides a person may not use state funds or state property, except under lease, for private gain.

* This section is identical in all three versions.

Sec. 24.60.130 establishes a Select Committee on Legislative Ethics consisting of three members from each house with a Senate and House subcommittee. The members are appointed by the presiding officer with concurrence of three fourths of the full membership of the house. Vacancies are filled in the same manner. No more than two members may be of the same party or organizational caucus. The chair is elected

by each subcommittee. The chair of the Senate subcommittee chairs the full committee in odd numbered year and the house chair in even numbered years. Members serve for the duration of the legislature. A member of a committee is disqualified from serving if the member is a party and provision is made for appointment of a replacement for the matter involved. The committee or a subcommittee may employ staff and contract for services.

* The Senate version does not contain the prohibition of more than two members and the disqualification provision. Otherwise it is essentially identical. The House version is substantially different. It has a single committee with seven members. A legislator and two other persons are appointed by each presiding office with concurrence of two thirds of the membership of the house. These members appoint the remaining member who must be a former legislator. The public members have four year terms. The legislative members may not serve beyond the expiration of the legislative term of office. A committee member may not serve more than one term. A legislator member may not hold or seek elective office, be an officer of a political party or group or lobby. The chair and vice chair are elected by the committee and may not be legislators. Vacancies are filled in the same manner as the original appointment. Members receive no compensation but may receive travel expenses and per diem. The committee may employ staff and contract for services.

Sec. 24.60.140 provides a subcommittee shall have authority over proceedings involving a member or employee of its house. The full committee has authority over agency employees, a matter that would require action by both houses and issuance of advisory opinions.

Sec. 24.60.150 prescribes duties for the committee requiring the committee to adopt procedures for receipt of inquiries and prompt rendition of opinion. It may recommend legislation and use compulsory process.

* This is identical to the version in the Senate bill. The House version does not include this.

* This is identical with the House version except for the division into mandatory and permissive which is not in the House version. The Senate version does not include this.

Sec. 24.60.160 provides for advisory opinions by the committee on request of a person to whom this chapter applies. The opinion must be issued within 30 days but that period may be extended 10 days with consent of the person requesting the opinion. The opinion is binding on the committee unless material facts were omitted or misstated in the request. The opinion is confidential unless the person who requested the opinion requests in writing that it be made public.

* This provision is substantially identical to the House version except for the 10 day extension of time. In the Senate version if the advisory opinion is not issued within the 30 day period the facts in the particular case for which the opinion is requested do not constitute a violation of ethical standards.

Sec. 24.60.170 establishes the procedure before the committee.

(a) The committee may initiate, receive and consider complaints alleging a violation of the chapter.

* All three versions are identical.

(b) The committee may investigate a violation within four years after the violation and within one year after termination of service. The limitations do not apply if there is intentional prevention of discovery of the violation.

* All three versions are identical.

(c) The committee must by resolution define the nature and the slope of an inquiry before exercising any power under this section. It must investigate all complaints on a confidential basis.

* All three versions are identical.

(d) Proceedings are commenced by filing which is in writing and under oath and may be initiated by any person. Within 60 days of a general election no complaint other than a complaint initiated by two thirds of the members of a committee may be received and, except for such complaints all proceedings are stayed until the election is certified. If the proceedings are stayed

the committee shall notify the person against whom the complaint was filed. If the person objects in writing to the stay the proceedings shall continue.

* In the House version a complaint in the 60 days preceeding election needs a majority of the committee. There is no provision for a stay.

* In the Senate version that complaint requires 5 members of the committee and the stay is until the legislature next convenes in regular session.

(e) The committee must notify the person against whom a complaint is filed and afford the person an opportunity to explain the conduct. The committee may summarily dismiss the complaint if the alleged facts, if true would not constitute a violation.

* All three versions are identical.

(f) The committee must investigate charges filed and issue an opinion to the person charged.

* All three version are identical.

(g) If the committee finds a probable violation exists that may be corrected and does not warrant sanction other than correction it shall recommend corrective action. The person may comply or request a hearing. The committee may affirm the opinion or amend it after the hearing.

* All three versions are identical except that both the House and Senate used the term "advisory opinion" while the Conference Committee deleted "advisory" in this paragraph and in paragraph (h), to avoid confusion with Sec. 24.60.160.

(h) If the person fails to take the corrective action recommended under (g) or corrective action is not sufficient the committee shall charge the person and serve the person with the charge and statement of the violation. The person has 20 days to respond in writing.

* All three versions are identical except for the change noted in (h).

(i) establishes procedure of a hearing and provides the hearing is closed to the public unless the person charged requests an open hearing.

* The Conference Committee version requires a minimum of 10 days notice to the person charged. The House and Senate versions have no explicit notice period. Otherwise all three versions are identical.

(j) A decision must be in writing and signed by a majority of the committee. An order limited to a determination that a violation does not exist must accompany the decision. The order is public.

* All three versions are identical.

(k) If the committee finds a violation or a failure to cooperate by a legislator it must refer the matter to the presiding officer. The decision must contain a statement of facts and may recommend sanctions. The committee shall make the decision public 30 days after transmittal. The house involved shall act on the decision as it considers appropriate.

* The Senate version provides that days when the legislature is not in session may not be counted as part of the 30 day period before the decision is made public. The House and Conference Committee versions do not contain this. Otherwise all three versions are identical.

(l) If the committee finds a violation by an employee it shall make a public statement of the decision 30 days after the date of the decision. The legislature shall act as it considers appropriate. Sanctions may include suspension, demotion or dismissal. The employee is entitled to a hearing before final action is taken.

* All three versions are identical.

(m) Disclosure of information by a committee member or staff concerning a proceeding except as permitted by this chapter is a class A misdemeanor.

* All three versions are identical.

Sec. 24.60.180 requires executive branch agencies to the extent permitted by law to cooperate fully with the committee.

* All three versions are identical.

Sec. 24.60.190 defines committee to mean the Select Committee on Legislative Ethics or where appropriate the applicable subcommittee.

* The House version, which has a single committee, does not refer to the subcommittees.

Sec. 11.56.805 establishes the crime of false accusation if a person knowingly or intentionally initiates a false complaint with the committee as a Class C felony.

* This is not in the Senate version.

Sec. 39.50.025 requires APOC to mail a copy of the standards of conduct establishes in * Sec. 1 of this bill to each legislative candidate.

* This is not in the House or Senate version.

Section 4 provides the Act does not apply to conduct which occurred before the effective date of this act.

* All three versions are identical.

Section 5 Provides an immediate effective date for the sections establishing the committee and providing for its authority.

* All three versions are identical.

BGB:ojb
J3/122

Alaska State Legislature
State Senate

Committee on Judiciary

Senator Bill Ray
Chairman
Senate Floor Leader

Pouch V
State Capitol
Juneau, Alaska 99811

M E M O R A N D U M March 22, 1984

TO: Conference Committee Members on SB 257

FROM: Senator Bill Ray

The attached are the replys received in response to my memo of March 8 to all legislators asking for their comments on my proposed amendment to CCSSB 257.

Attachments

FILE WITH 257

Alaska State Legislature

IN SESSION:
POUCH V
JUNEAU, ALASKA 99811
(907) 465-4949

BOX 142
EAGLE RIVER, ALASKA
99577

Representative Randy Phillips

HOUSE DISTRICT 15

MEMORANDUM

TO: Senator Bill Ray, Chairman
Senate Judiciary Committee

FROM: Representative Randy Phillips R.P.

RE: CCSSB 257 (Legislative Ethics)

DATE: March 8, 1984

I have looked over the compromise language that is proposed to be included in CCSSB 257 and have the following comments and questions:

1. Page 3, following line 17, insert:
"(6) gifts of nominal value given by a nonprofit organization in recognition of public service by the recipient."

QUESTION: What is the definition of "nominal value"?

2. Page 3, lines 19 and 20 following the word "event", delete:
"held within the City and Borough of Juneau"

COMMENT: I would prefer to see such language left in the legislation.

3. Page 8, line 12, following the word "members", insert:
"and the executive director of the Alaska Public Offices Commission who serves as a member of the full committee and of each subcommittee with all of the rights of a member except the executive director does not have the right to vote"

COMMENT: It is my feeling that the ideal composition of the Ethics Committee would be as set out in HCS CSSB 257 (Jud) am H -- one senate member, one house member, two public members appointed by senate, two public members appointed by house, and one past legislator appointed by the other members of the committee.

Or, it would be even more acceptable if a committee composed of three senate members, three house members and one public member who is a member of the Alaska Public Offices Commission.

I appreciate being given the opportunity to comment on the proposed changes in this legislation. Please do not hesitate to contact me should you have any questions regarding my comments on the proposed changes.

REPRESENTATIVE
JOE FLOOD
3423 WEST 79TH
ANCHORAGE, ALASKA 99502
(907) 243-7511

DISTRICT 9
SOUTHWEST ANCHORAGE

Alaska State Legislature

WHILE IN JUNEAU
POUCH V
JUNEAU, ALASKA
99811
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MEMBER
TRANSPORTATION COMMITTEE
MEMBER
REGULATION REVIEW COMMITTEE

House of Representatives

M E M O R A N D U M

March 14, 1984

TO: Senator Bill Ray

FROM: Representative Joe Flood

SUBJECT: CSSB 257

I have a few questions in regards to CSSB 257. I would appreciate it if you or a member of your staff would take a few minutes and clarify the following points for me.

1. Page 3, line 19 and 20. Does the elimination of "held within the City and Borough of Juneau" mean that no events anywhere in the state can be held during the session?

2. Page 6, line 18 through 20. Does the elimination of "in excess of $100 and which does not in the aggregate exceed $250 in value during the calendar year" mean that no gift whatsoever, irregardless of cost or utility can be accepted by a member, i.e., the calanders we receive, the note pads, the pens, pencils, these sort of innocuous things. If we take out the dollar amounts are we therefore excluding everything.

3. Page 7, lines 1 and 2. This section makes reference to a legislator's family working during the interim. It does not specifially state that a legislator's family could work during the session. Under this clause, it appears to me that I could put my entire family on staff during session. Therefore, it would be extremely helpful to me if you or a member of your staff could read and interpret that clause in regards to this question.

4. Page 8, lines 12 through 17. This clause is referring to having the Executive Director for the Alaska Public Office Commission sitting on the committee. Considering that APOC has to come to the legislature for their budget needs, I believe we would be putting the Executive Director for APOC in an untenable position with respect to issues that come before the Ethics Committee insofar as the Director would be agreeing and in many cases disagreeing with individual legislators who have authority over the Director's department's budget. This appears to

me to present quite a problem for both the legislators and that Executive Director. Perhaps it would be better to simply have someone from the private sector be appointed to that committee. Perhaps a retired judge, retired commissioner, or respected but completely retired public official.

These were some of the points that came to mind as I worked through the legislation and I am confident that working together we'll be able to answer these questions and if necessary come up with solutions that are fair and equitable for all parties concerned.

FILE WITH 257

Alaska State Legislature

Representative Milo Fritz
District 5
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Anchor Point, Alaska 99556
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While in Juneau
Pouch V
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House of Representatives

MILO FRITZ

MEMORANDUM

TO: Senator Bill Ray

FROM: Representative Milo Fritz

DATE: March 8, 1984

SUBJ: CCSSB 257 (Legislative Ethics)

In regards to your memo of March 8 the only change I would like to suggest is on page 1, in reference to page 7, line 8 the change being "or spouse equivalent" to "or consort".

FILE WITH 257

Alaska State Legislature
State Senate

Committee on Judiciary

Senator Bill Ray
Chairman
Senate Floor Leader

Pouch V
State Capitol
Juneau, Alaska 99811

MEMORANDUM March 8, 1984

TO: All Legislators

FROM: Senator Bill Ray BR

RE: CCSSB 257 (Legislative Ethics)

Attached you will find suggested compromise language that I will propose be added to CCSSB 257 (standards of conduct of legislators and legislative employees and establishing a Select Committee on Legislative Ethics) when the new conference committee meets to consider the above bill.

I would appreciate it if you would carefully look over the amendment and within the next two or three days submit a written response to me indicating whether or not you approve or disapprove the changes, plus any suggested changes you may have.

Your prompt response will be appreciated as I plan to schedule a meeting between the Senate and House conferees sometime next week.

Thank you for your cooperation in this matter.

Attachment

3/9/83

Senator Ray:

1. No changes contemplated
2. No objection to amendment
3. No bill would be a better bill
4. Do your thing

Rep Abood

RESPONSE FROM Rep. ABOOD

Berrier /

Jon Faiks

AMENDMENT

Offered in the SENATE

By Ray

TO: CCSSB 257

Page 3, line 16, following "norm;" delete "or"

Page 3, line 17, delete "." and insert "; or"

Page 3, following line 17, insert: OK no problem

"(6) gifts of nominal value given by a nonprofit organization in recognition of public service by the recipient."

Page 3, lines 19 and 20 following the word "event", delete: Great for everyone

"held within the City and Borough of Juneau"

Page 6, lines 18-20, following the word "form", delete:

", in excess of $100 and which does not in the aggregate exceed $250 in value during the calendar year" no problem.

Page 7, line 8, following the word "sister", delete the word "or" and following the word "brother" insert "or spouse-equivalent" no problem

Page 8, line 12, following "six", insert "legislative"

Page 8, line 12, following the word "members", insert:

3/7/84

Response from Senator Faiks

great - good compromise - I hope it works.

"and the executive director of the Alaska Public Offices Commission who serves as a member of the full committee and of each subcommittee with all of the rights of a member except the executive directo does not have the right to vote"

Page 8, line 21, following "two", insert "legislative"

Page 9, line 2, following "A", insert "legislative"

Page 9, line 8, following "When a", insert "legislative"

excellent changes - I wish you luck and fortitude
You are our hope for an Ethics bill this year.

3/7/84

FILE WITH 257

M E M O R A N D U M

To: Senator Bill Ray, Chairman
Conference Committee on SB 257

From: Senator Frank R. Ferguson FRF

Subj: Ethics Legislation Amendments

Date: March 12, 1984

In response to your memorandum of March 8, 1984 concerning the Ethics legislation, I will first of all give you comments on your recommendations and then comment on the overall bill.

Page 3, lines 16 and 17 I agree with these technical and substantive changes;

Page 3, lines 19-20 Although I agree with deleting the City and Borough of Juneau, I believe that the following should be inserted: the Capital City.

Page 6, lines 18-20 I agree with this substantive change.

Page 7, line 8 Although I agree with your change but it should be noted that it will be very difficult to determine whether or not a relationship was platonic or not if two individuals are living together.

Page 8, line 12 I prefer the language in SB 518 but in the spirit of compromise I could go along with the APOC Executive Director to serve as a member of the full committee and that the director or her designee shall sit on each subcommittee. I don't believe that the first Conference Committee reached an acceptable compromise and, therefore, I voted against the first Conference Committee Report.

Page 8, line 21 I agree with the technical change.

Page 9, line 2 I agree with the technical change.

Page 9, line 8 I agree with the technical change.

Additional Comments

Page 1 of 2 1. I believe all reference to legislative employees should be deleted from the bill because

legislators hire and fire. Legislators are elected but employees are appointed. Should a criminal infraction take place involving an employee, the courts can deal with the individual immediately.

2. I believe spouses should be prohibited from employment during both the session and the interim.

3. I believe it should specify the types of disciplinary action the committee can recommend including but not limited to censorship, loss of pay, fines or other penalties.

4. I believe the hearings on complaints should be open to the public unless the person in the complaint desires a closed proceeding.

5. I believe the penalty for divulging of information under this chapter should be changed from a class A misdemeanor to a class C felony.

FILE WITH SB257

SENATOR
ARLISS STURGULEWSKI

2957 SHELDON JACKSON
ANCHORAGE, ALASKA 99508
SENATE DISTRICT F, SEAT A

Alaska State Legislature

While in Juneau
POUCH V
JUNEAU, ALASKA 99811
(907) 465-3818

Senate

M E M O R A N D U M

March 21, 1984

TO: Senator Bill Ray

FROM: Senator Arliss Sturgulewski

RE: CCSSB 257 Legislative Ethics

Thank you for an opportunity to comment on proposed changes to the above bill. Following are my comments.

1. You suggested an amendment on page 3, lines 19 and 20, following the word "event" delete "held within the City and Borough of Juneau." I do not support this deletion and prefer the language as currently stated in the bill. However, there does need to be language which provides an exemption for legislators who live within the City and Borough of Juneau.

2. Although you have taken a step in the right direction by adding the executive director of the Alaska Public Offices Commission to the Select Committee on Legislative Ethics, I have and continue to support public members on this committee with all rights of a legislative member. Support has been strong from my constituency for public members on the oversight committee. There is a strong feeling that political considerations will keep the legislature from adequately policing its own actions. I certainly hope you will reconsider the membership of the committee.

The other amendments appear to clarify the legislation. Again, thank you for an opportunity to comment.

FILE WITH 257

ALASKA STATE LEGISLATURE - SENATE

SENATOR RICHARD I. ELIASON

LABOR AND COMMERCE COMMITTEE, CHAIRMAN
RESOURCES COMMITTEE
JUDICIARY COMMITTEE
FISHERIES SUB-COMMITTEE

P.O. BOX 143
SITKA, ALASKA 99835

POUCH V
JUNEAU, ALASKA 99811
(907) 465-4916

MEMORANDUM

TO: Conferees, CCSSB 257 - Legislative Ethics

FROM: Senator Dick Eliason

DATE: March 10, 1984

RE: Proposed Amendment

Page 3, lines 19 and 20, following the word "event", delete: "held within the City and Borough of Juneau".

In my opinion, this amendment is proposed for one purpose only, that being to restore the questionable practice of fund raisers held in Juneau when the Legislature is in session. An attempt, but not a very clever attempt.

This specific prohibition was discussed on two occasions on the Senate Floor, when the Senate version passed. It was an amendment to the Ethics Bill, made on the Floor of the Senate and adopted by a majority of the Senate membership.

If it is not a conflict of interest to invite the lobbyists to a fundraiser for a legislator, the perception certainly is. There is no question in my mind that if a committee chairperson held a fundraiser in Juneau during session, any lobbyist who had anything of interest in that committee would feel obligated to either go or contribute. It seems to me to be the prudent thing to do, no matter what the "cover charge" might be.

If we truly want to bring credibility to our presence here in Juneau, such fundraisers must be prohibited.

I would certainly urge you to oppose this proposed amendment.

FILE WITH 257

From the desk of:
Fritz Pettyjohn
Alaska State Senator

Re: CCSSB 257

Bill,

I believe 2 public, voting members should be appointed by the presiding officer of each body, subject to 1 3/4 confirmation vote.

I believe some former legislators (Butrovich?) would have the confidence of enough legislators to make it work.

I can think of possible public members who would probably be more trusted than some incumbent legislators.

Fritz

FILE WITH 257

Alaska State Legislature
State Senate

Committee on Judiciary

Senator Bill Ray
Chairman
Senate Floor Leader

Pouch V
State Capitol
Juneau, Alaska 99811

MEMORANDUM March 8, 1984

TO: All Legislators

FROM: Senator Bill Ray BR

RE: CCSSB 257 (Legislative Ethics)

Attached you will find suggested compromise language that I will propose be added to CCSSB 257 (standards of conduct of legislators and legislative employees and establishing a Select Committee on Legislative Ethics) when the new conference committee meets to consider the above bill.

I would appreciate it if you would carefully look over the amendment and within the next two or three days submit a written response to me indicating whether or not you approve or disapprove the changes, plus any suggested changes you may have.

Your prompt response will be appreciated as I plan to schedule a meeting between the Senate and House conferees sometime next week.

Thank you for your cooperation in this matter.

Attachment

Bill - this looks good! Vic F. 3-9-84

RESPONSE from SENATOR FISCHER

SB

312

SB 317

BILL SHEFFIELD
GOVERNOR

STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

June 8, 1983

The Honorable Jalmar Kerttula
President of the Senate
Alaska State Legislature
Pouch V
Juneau, Alaska 99811

Dear Mr. President:

Under the authority of art. III, sec. 18, of the Alaska Constitution, I am transmitting a bill to create an office of public advocacy within the Department of Administration. The bill transfers responsibility for the public guardian program (AS 13.26.360 -- 13.26.410) and for administration of statutorily required advocacy services from the court system to the executive branch.

PUBLIC GUARDIANSHIP

The public guardian office, established by the legislature in 1981 (AS 13.26.370), provides guardianship and conservatorship services to incapacitated persons and minors when no one else is willing or qualified to perform in this capacity. Many of the wards are severely handicapped due to mental retardation, developmental disabilities, or mental illness. The public guardian's responsibilities for individual wards include placement; securing medical, dental, vocational, or rehabilitation services; financial management; benefits application; and personal visits.

The public guardian is also required to assist private guardians throughout the state to ensure that guardians and conservators secure the necessary services for the persons they protect. This task involves maintaining contact with community resource programs and government agencies, and producing informational and educational aids.

The court system is not qualified or equipped to handle such a social services program. By law, coroners/public administrators must serve as the public guardians, yet none of the coroner/public administrators is a social worker.

PUBLIC REPRESENTATION

The court system, by statute (AS 18.85.130(a)), appoints and compensates attorneys who represent indigent persons when the public defender agency cannot provide an attorney because of a conflict of interests. The court is also authorized by current law to appoint and pay for guardians ad litem to represent the best interests of a minor in proceedings which affect the minor's welfare (AS 09.65.130). Representation and guardian ad litem services presently are provided by contract with private law firms and by direct court appointment at hourly rates that are below customary rates charged by attorneys.

OFFICE OF PUBLIC ADVOCACY

The bill creates an office of public advocacy under the commissioner of administration, who also oversees the public defender agency. The office will be empowered to provide public guardian and guardian ad litem services as well as legal representation to indigent persons, when authorized by existing statutes. Services will be provided both by staff employed by the office and by independent contractors, subject to centralized management under the commissioner of administration.

In creating such an office, it is anticipated that it will have locations in major population areas around the state. This will permit efficient sharing of resources, including space, personnel, clerical support, and other administrative costs, with other state offices. In developing the staffing requirements and other costs, it has been determined that in many instances it will be less costly for the state to establish full-time offices with full-time employees rather than contract for these services.

The judicial branch supports transfer of the public guardian program and the management of advocacy services to the office of public advocacy. Principles of sound management and fiscal responsibility point to the desirability of this approach, and I urge passage of the bill.

Sincerely,

Bill Sheffield
Governor

STATE OF ALASKA 1984 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date:

REQUEST
Bill/Resolution No.: SB 312
Title: Creating Office of Public Advocacy
Sponsor:
Requestor:
Date of Request:

FISCAL DETAIL
Agency Affected: Alaska Court System
Program Category Affected: Justice
BRU, Program or Subprogram(s) Affected: Alaska Court System

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 84	FY 85	FY 86	FY 87	FY 88	FY 89
OPERATING		(328.9)				
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL		(2,066.6)				
400 SUPPLIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS						
800 MISCELLANEOUS						
TOTAL OPERATING		(2,395.5)				
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND		(2,395.5)				
FEDERAL FUNDS						
OTHER						
TOTAL		(2,395.5)				

POSITIONS:

FULL-TIME		(8)				
PART-TIME						
TEMPORARY						

SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

ANALYSIS: Attach a separate page for analysis

Prepared By: Robert G. Fisher Phone: 264-0561
Division: Alaska Court System Date: 1/17/84

Approved by Commissioner: Date: 1/17/84
Agency: Alaska Court System

Distribution (by Agency preparing fiscal note):
Legislative Finance
Legislative Sponsor
Requestor
Office of Management and Budget
Impacted Agency(ies)

12/1/83

ANALYSIS OF SB 312

The FY 85 budget for the Court System contains $2,395.500 of funds for the functions being transferred to the Department of Administration by this bill. In the transfer of the guardian function, the Court System will maintain the existing eight (8) positions until the Department of Administration has established its organization and offices around the state. At that time the positions will be transferred to the Department of Administration.

STATE OF ALASKA 1984 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date: February 14, 1984

REQUEST
Bill/Resolution No.: CSSB 312 (Jud)
Title: "Creation of the office of Public Advocacy"
Sponsor: Senate Rules
Requestor: Governor
Date of Request:

FISCAL DETAIL
Agency Affected: Department of Administration
Program Category Affected:
BRU, Program or Subprogram(s) Affected:

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 84	FY 85	FY 86	FY 87	FY 88	FY 89
OPERATING		726.6	1309.9	1375.4	1444.2	1516.4
100 PERSONAL SERVICES		88.0	136.5	143.3	150.5	158.0
200 TRAVEL		1308.0	808.3	848.7	891.1	935.7
300 CONTRACTUAL		22.8	35.2	36.9	38.7	40.6
400 SUPPLIES		30.9	13.7	-	-	-
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS						
800 MISCELLANEOUS						
TOTAL OPERATING		2176.3	2303.6	2404.3	2524.5	2650.6
CAPITAL		-	-	-	-	-
REVENUE		-	-	-	-	-

FUNDING: (Thousands of Dollars)

GENERAL FUND		2176.3	2303.6	2404.3	2524.5	2650.6
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS:

FULL-TIME		18.0	26.0	26.0	26.0	26.0
PART-TIME						
TEMPORARY						

SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

ANALYSIS: Attach a separate page for analysis

Prepared By: [signature] Phone: 465-3753
Division: Senate Finance Committee Date: 2/14/84

Approved by Commissioner: Date:
Agency:

Distribution (by Agency preparing fiscal note):
Legislative Finance
Legislative Sponsor
Requestor
Office of Management and Budget
Impacted Agency(ies)

12/1/83

STATE OF ALASKA 1984 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date: February 7, 1984

REQUEST
Bill/Resolution No.: CSSB 312 (Jud)
Title: "Creation of the office of Public Advocacy"
Sponsor: Senate Rules
Requestor: Governor
Date of Request:

FISCAL DETAIL
Agency Affected: Administration
Program Category Affected:
BRU, Program of Subprogram(s) Affected:

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 84	FY 85	FY 86	FY 87	FY 88	FY 89
OPERATING						
100 PERSONAL SERVICES		726.6	1309.9	1375.4	1444.2	1516.4
200 TRAVEL		88.0	136.5	143.3	150.5	158.0
300 CONTRACTUAL		1458.0	808.3	848.7	891.1	935.6
400 SUPPLIES		22.8	35.2	36.9	38.7	40.6
500 EQUIPMENT		30.9	13.7	-		
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC						
800 MISCELLANEOUS		69.2				
TOTAL OPERATING		2395.5	2303.6	2404.3	2524.5	2650.6
CAPITAL		-	-	-	-	-
REVENUE		-	-	-	-	-

FUNDING: (Thousands of Dollars)

GENERAL FUND		2395.5	2303.6	2404.3	2524.5	2650.6
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS:

FULL-TIME		18.0	26.0	26.0	26.0	26.0
PART-TIME						
TEMPORARY						

SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

ANALYSIS: Attach a separate page for any Analysis.

Prepared By: Christine L. Dooley
Division: Administrative Services
Phone: 465-4418
Date: February 7, 1984

Approved by Commissioner: Lisa Rudd
Agency: DEPARTMENT OF ADMINISTRATION
Date: 2/13/84

Distribution (by Agency preparing fiscal note):
Legislative Finance
Legislative Sponsor
Requestor
Office of Management and Budget
Impacted Agency(ies)

CSSB 312 (Jud)
Fiscal Note Analysis
Prepared by Administrative Services
Department of Administration

Date: February 7, 1984

Establishment of the Office of Public Advocacy will transfer numerous attorney functions, now being handled by the court system through contracts with attorneys in private practice, to a new office with staff attorneys and guardians. The attached breakdown of budget figures is based on suggested staffing for this office provided to the Department of Administration by the Alaska Court System.

Due to the fact that the Office of Public Advocacy, like the Public Defender Agency, will be unable to control which cases are assigned it by the court system, flexibility must be allowed the department. This was the reason for the original lump sum fiscal note presented to this committee.

A number of variables associated with transforming these attorney functions in to a new State agency still exist. These variables necessitate giving the Department of Administration maximum flexibility in allocation of funds between personal services and contractual and or transfer of positions from one geographic area to another to accomplish the following:

1. Provision of quality services to indigent clients in remote bush areas by contracting with local attorneys on a case-by-case basis;

2. Handling multiple-defendant conflict cases by contract where the Public Defender Agency and the Office of Public Advocacy are each already handling one defendant and have a conflict in representing additional defendants associated with the case; and

3. Transfer of attorneys, guardians, and clerical positions from one Office of Public Advocacy branch office to another as the caseloads warrant.

These projected costs are predicated upon utilization of attorneys as State employees rather than engagement of private attorneys contracted on an as-needed basis. However, some private attorney contracts will continue to be necessary in cases of multiple party conflict and to assist the Office of Public Advocacy in remote locations.

It is intended that the court system will continue to handle the responsibilities of the guardianship cases in FY 85 and the completion of any open contracts until the cases are resolved. The court system will retain the seven guardian PCN's and one accounting clerk, and the Department of Administration will allocate Reimbursable Services Agreement funds to the court for these costs. In FY 86 these 8 positions will transfer to the Department of Administration.

The Department of Administration will manage the Public Advocacy FY 85 Budget Appropriation during the transition period and RSA funds to the Court System to pay the continued contract costs during this period.

CSSB 312 (Jud)
Fiscal Note Analysis
Prepared by Administrative Services
Department of Administration

Date: February 7, 1984

The Department of Administration, Division of Administrative Services, has projected the need for two additional accounting technicians to handle the increased responsibilities of another division within the department. These positions are for additional workload in professional contracts, vendor payment and payroll functions for these three new offices.

This Fiscal Note is based on information from the court system on caseloads, location of cases, hours per case and costs of guardianship.

Because the Public Advocacy Office will be administered differently than in the court system, we can not guarantee that moving the function will be a cost saving matter. Neither can we guarantee the actual costs since we have used court system projections without having performed this function ourselves.

Office of Public Advocacy

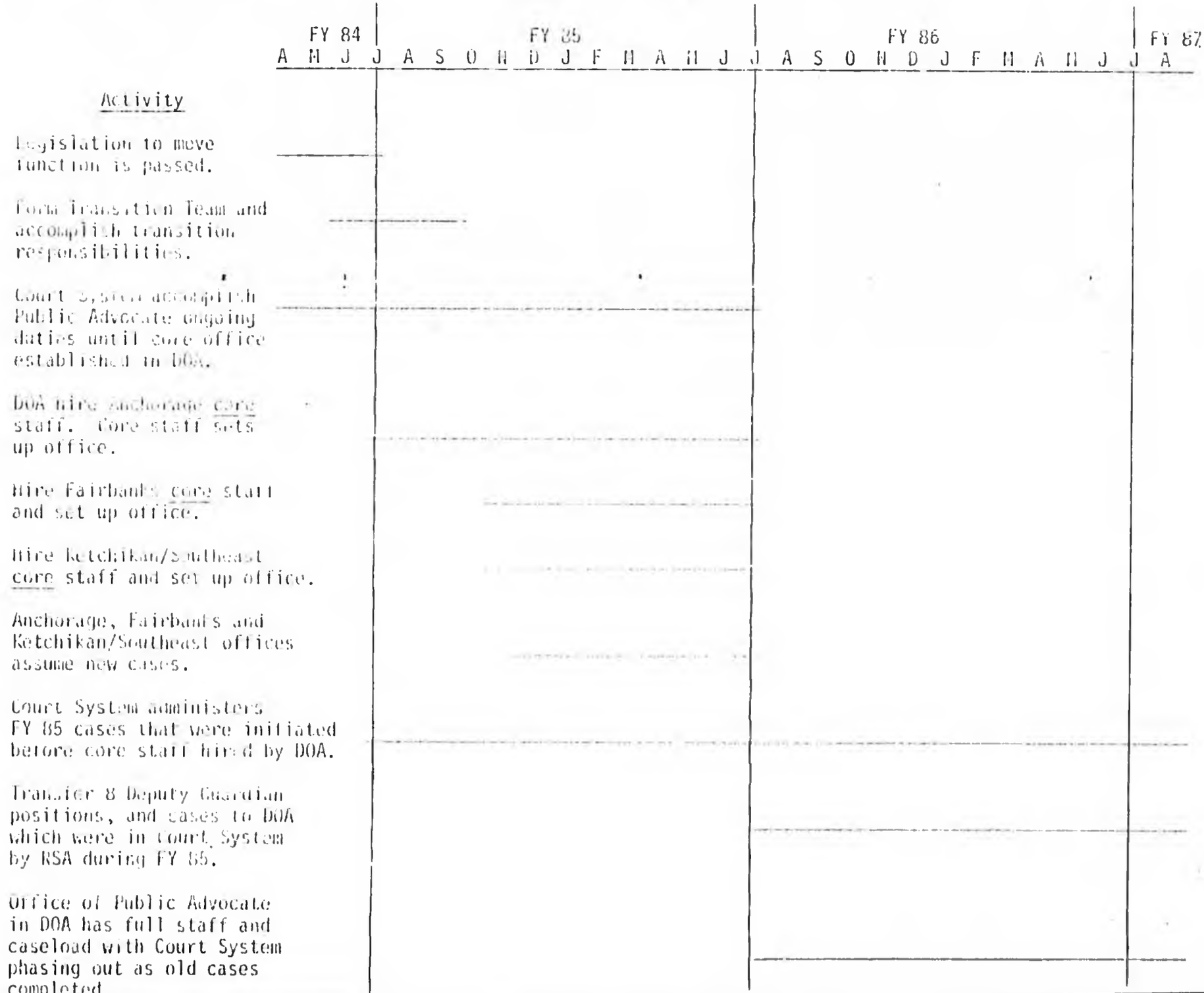
FY 85 Staff Projection

Hire Date	Staff	Position	Location	Full 12 Month P.S. Cost	Months Vacant	FY 85 Partial Cost
07-01-84		Attorney VI	Anchorage (1)	$ 74,900	0	$ 74,900
07-01-84		Legal Secretary I	Anchorage (1)	28,482	0	28,482
09-01-84		Attorney IV	Anchorage (3)	203,748	2 mos.	169,790
		Attorney III	Anchorage (2)	119,978	2 mos.	99,982
		Legal Secretary I	Anchorage (1)	28,482	2 mos.	23,735
		Administrative Officer	Anchorage (1)	44,395	2 mos.	36,996
		Investigator	Anchorage (2)	81,750	2 mos.	68,125
11-01-84		Attorney IV	Fairbanks (1)	77,261	4 mos.	51,507
		Attorney III	Fairbanks (1)	67,916	4 mos.	45,277
		Legal Secretary I	Fairbanks (1)	31,809	4 mos.	21,206
11-01-84		Attorney IV	Ketchikan/ Southeast (1)	67,916	4 mos.	45,277
		Legal Secretary I	Ketchikan/ Southeast (1)	28,482	4 mos.	18,988
		Accounting Technician I	Ketchikan/ Southeast (2)	63,618	4 mos.	42,412
			(18)	918,737		726,677
				(726,677)		
			**	$ 192,060		

** In FY 85 This personal services differential is a result of the (Phase-In) vacancies. In FY 86 these dollars are necessary for full twelve (12) month funding of these position.

NOTE: This vacancy factor of approximately 20% has been used to reduce the other line items associated with this proposed budget.

OFFICE OF PUBLIC ADVOCATE
TRANSFER TIMING CHART



Office of Public Advocacy
Analysis of
Proposed FY 85 Budget

		FULL YEAR COSTS	ADJUSTMENTS FOR PARTIAL YEAR FY 85		FY 85 PROPOSED BUDGET
100	PERSONNEL	1,247.6	Guardians (remain on Court System payroll for FY 85)	(328.9)	
			20% Vacancy due to phase-in process	(192.1)	726.6
200	TRAVEL	110.0	20% Reduction due to phase-in process	(22.0)	88.0
300	CONTRACTUAL				
	Space leases for 26 employees @ 200 sq. ft. @ $2.40/sq. ft.	124.8	20% Reduction due to phase-in process	(25.0)	99.8
	Equipment rental, phones, postage, etc.	45.0	20% Reduction due to phase-in process	(9.0)	36.0
	Visitors, experts, contracted attorneys in remote locations, third-party conflict attorneys (based on information from ACS)	600.0	20% Reduction due to phase-in process	(120.0)	480.0
			RSA to AK Court System for Guardians and overhead	429.0 (100%)	429.0
			RSA to AK Court System for payments to attorneys during start up	413.2 (50%)	413.2
400	COMMODITIES	28.5	20% Reduction due to phase-in process	(5.7)	22.8
500	EQUIPMENT		New equipment and new office furniture	30.9	30.9
600	MISCELLANEOUS		Extraordinary travel, moving costs and other costs of setting up new agency	~~69.2~~ -0-	69.2
		2,155.9			~~2,395.5~~

	POSITION TITLE				RANGE/STEP	BARG. UNIT	FORM 12 PAGE/LINE	GOV.	APPROV.	DISAPP.
1.	Accounting Technician I				12A	GGU				
2.	TYPE OF POSITION: PFT	STAFF MONTHS: 12	RP NUMBER:	PCN NUMBER: New	BRU PRIORITY	LOCATION: ANA	ELECTION DISTRICT	LEG.		
3.	CONTINUATION LEVEL:	ADDITION:								

4.	TYPE OF EXPENDITURE		AMOUNT
	1	2	3
	PERSONAL SERVICES		
5.	Salary	23,676	
6.	Benefits	4,052	
7.	Supplemental Benefits	1,451	
8.	Fixed Benefits	2,630	
9.	TOTAL PERSONAL SERVICES	01	31,809
10.	Travel	02	
11.	Contractual	03	
12.	Commodities	04	
13.	Equipment	05	
14.	Other		
15.	TOTAL COST		31,809

	RECEIPT CODE	FUNDING SOURCE		
16.		Federal Receipts	1002	
17.		G.F. Match	1003	
18.		General Funds	1004	31,809
19.		I-A Receipts	1005	
20.		Program Receipts	1028	
21.		Other		

FOR B&M USE ONLY
4A KEY NUMBER __ __ - __ __ - __ __ - __ __ - __ __

JUSTIFICATION

This position will provide Administrative Support in Accounting, Payroll and Professional Contract Services for the Statewide Public Advocate Offices.

8/1B1/0204-01/1

13 REQUEST FOR NEW POSITION

AGENCY Department of Administration

PROGRAM Centralized Administrative Svs.

BRU Centralized Administrative Svs.

COMPONENT Administrative Services

Page of

Revised Date

FY 85

01 1136.02 821 13

1.	POSITION TITLE Accounting Technician I			RANGE/STEP 12A	BARG. UNIT GGU	FORM 12 PAGE/LINE	COV.	APPROV.	DISAPP.
2.	TYPE OF POSITION PFT	STAFF MONTHS 12	RP NUMBER	PCN NUMBER New	BRU PRIORITY	LOCATION ANA	ELECTION DISTRICT	LEG.		
3.	CONTINUATION LEVEL		ADDITION						

4.	TYPE OF EXPENDITURE		AMOUNT
	1	2	3
	PERSONAL SERVICES		
5.	Salary	23,676	
6.	Benefits	4,052	
7.	Supplemental Benefits	1,451	
8.	Fixed Benefits	2,630	
9.	TOTAL PERSONAL SERVICES	01	31,809
10.	Travel	02	
11.	Contractual	03	
12.	Commodities	04	
13.	Equipment	05	
14.	Other		
15.	TOTAL COST		31,809

	RECEIPT CODE	FUNDING SOURCE		
16.		Federal Receipts	1002	
17.		G.F. Match	1003	
18.		General Funds	1004	31,809
19.		I-A Receipts	1005	
20.		Program Receipts	1028	
21.		Other		

FOR B&M USE ONLY
4A KEY NUMBER __ __ - __ __ - __ __ - __ __ - __ __

JUSTIFICATION

This position will provide Administrative Support in Accounting, Payroll and Professional Contract Services for the Statewide Public Advocate Offices.

8/1B1/0204-01 2

13 REQUEST FOR NEW POSITION

AGENCY Department of Administration

PROGRAM Centralized Administrative Svs.

BRU Centralized Administrative Svs.

COMPONENT Administrative Services

Page of

Revised Date

FY 85

1.	POSITION TITLE: Legal Secretary I			RANGE/STEP: 10A	BARG. UNIT: GGU	FORM 12 PAGE/LINE	GOV.	APPROV. / DISAPP.
2.	TYPE OF POSITION: PFT	STAFF MONTHS: 12	RP NUMBER:	PCN NUMBER: New	BRU PRIORITY:	LOCATION: ANA	ELECTION DISTRICT	LEG.
3.	CONTINUATION LEVEL:		ADDITION:					

4. TYPE OF EXPENDITURE	1	2	AMOUNT 3
	PERSONAL SERVICES		
5.	Salary	20,976	
6.	Benefits	3,590	
7.	Supplemental Benefits	1,286	
8.	Fixed Benefits	2,630	
9.	TOTAL PERSONAL SERVICES	01	28,482
10.	Travel	02	
11.	Contractual	03	
12.	Commodities	04	
13.	Equipment	05	
14.	Other		
15.	TOTAL COST		28,482

	RECEIPT CODE	FUNDING SOURCE		
16.		Federal Receipts	1002	
17.		G.F. Match	1003	
18.		General Funds	1004	28,482
19.		I-A Receipts	1005	
20.		Program Receipts	1028	
21.		Other		

FOR BSM USE ONLY
4A KEY NUMBER __ __ - __ __ - __ __ - __ __ - __ __

JUSTIFICATION

This position will provide the Legal Secretary Services in the new Juneau-Ketchikan office which will replace the present private attorney contracts.

8/1B1/0204-01/2

13 REQUEST FOR NEW POSITION

AGENCY: Department of Administration
PROGRAM: Due Process
BRU: Public Advocate
COMPONENT: Public Advocate

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FY 85

1. POSITION TITLE				RANGE/STEP	BARG. UNIT	FORM 12 PAGE/LINE	GOV.	APPROV.	DISAPP.
Attorney IV				24A	PX				
2. TYPE OF POSITION	STAFF MONTHS	RP NUMBER	PCN NUMBER	BRU PRIORITY	LOCATION	ELECTION DISTRICT	LEG.		
PFT	12		New		AWA				
3. CONTINUATION LEVEL		ADDITION							

4. LINE OF EXPLANATION	1	2	AMOUNT 3
	PERSONAL SERVICES		
5.	Salary	53,568	
6.	Benefits	9,168	
7.	Supplemental Benefits	2,550	
8.	Fixed Benefits	2,630	
9.	TOTAL PERSONAL SERVICES	01	67,916
10.	Travel	02	
11.	Contractual	03	
12.	Commodities	04	
13.	Equipment	05	
14.	Other		
15.	TOTAL COST		67,916

	RECEIPT CODE	FUNDING SOURCE		
16.		Federal Receipts	1002	
17.		C.F. Match	1003	
18.		General Funds	1004	67,916
19.		I-A Receipts	1005	
20.		Program Receipts	1028	
21.		Other		

FOR B&M USE ONLY
4A KEY NUMBER __ __ - __ __ - __ __ - __ __ - __ __

JUSTIFICATION

This position represents indigent defendants in felonies, appeals and misdemeanors; serves as guardian ad litum and provides representation in civil matters.

This position serves as senior attorney in this location with some travel necessary to other locations in this judicial district.

8/1B1/0204-01/4

13 REQUEST FOR NEW POSITION

AGENCY Department of Administration

PROGRAM Due Process

BRU Public Advocate

COMPONENT Public Advocate

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FY 85

	POSITION TITLE				RANGE/STEP	BARG. UNIT	FORM 12 PAGE/LINE	GOV.	APPROV.	DISAPP.
1.	Legal Secretary I				10A	GGU				
2.	TYPE OF POSITION	STAFF MONTHS	RP NUMBER	PCN NUMBER	BRU PRIORITY	LOCATION	ELECTION DISTRICT	LEG.		
	PFT	12		New		FBA				
3.	CONTINUATION LEVEL		ADDITION							

JUSTIFICATION

This position will provide the Legal Secretary Services in the new Anchorage office which will replace the present private attorney contracts.

	1 TYPE OF EXPENDITURE	2	3 AMOUNT
	PERSONAL SERVICES		
5.	Salary	20,976	
6.	Benefits	3,590	
7.	Supplemental Benefits	1,286	
8.	Fixed Benefits	2,630	
9.	TOTAL PERSONAL SERVICES	01	28,482
10.	Travel	02	
11.	Contractual	03	
12.	Commodities	04	
13.	Equipment	05	
14.	Other		
15.	TOTAL COST		28,482

	RECEIPT CODE	FUNDING SOURCE		
16.		Federal Receipts	1002	
17.		G.F. Match	1003	
18.		General Funds	1004	28,482
19.		I-A Receipts	1005	
20.		Program Receipts	1028	
21.		Other		

FOR BSM USE ONLY
4A KEY NUMBER __ __ - __ __ - __ __ - __ __ - __ __

8/1B1/0204-01/5

13 REQUEST FOR NEW POSITION

AGENCY Department of Administration

PROGRAM Due Process

BRU Public Advocate

COMPONENT Public Advocate

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FY 85

	POSITION TITLE			RANGE/STEP	BARG. UNIT	FORM 12 PAGE/LINE	GOV.	APPROV.	DISAPP.
1.	Attorney IV			24A	PX				
2.	TYPE OF POSITION: PFT	STAFF MONTHS: 12	RP NUMBER:	PCN NUMBER: New	BRU PRIORITY:	LOCATION: EBA	ELECTION DISTRICT:	LEG.		
3.	CONFIRMATION LEVEL:	ADDITION:							

	TYPE OF EXPENDITURE		AMOUNT
	1	2	3
	PERSONAL SERVICES		
5.	Salary	53,568	
6.	Benefits	9,168	
7.	Supplemental Benefits	2,550	
8.	Fixed Benefits	2,630	
9.	TOTAL PERSONAL SERVICES	01	67,916
10.	Travel	02	
11.	Contractual	03	
12.	Commodities	04	
13.	Equipment	05	
14.	Other		
15.	TOTAL COST		67,916

	RECEIPT CODE	FUNDING SOURCE		
16.		Federal Receipts	1002	
17.		G.F. Match	1003	
18.		General Funds	1004	67,916
19.		I-A Receipts	1005	
20.		Program Receipts	1028	
21.		Other		

FOR OMB USE ONLY
4A KEY NUMBER ___ ___ - ___ ___ - ___ ___ - ___ ___ - ___ ___

JUSTIFICATION

This position represents indigent defendants in felonies, appeals and misdemeanors; serves as guardian ad litum and provides representation in civil matters.

This position serves as senior attorney in this location with some travel necessary to other locations in this judicial district.

8/1B1/0204-01/6

13 REQUEST FOR NEW POSITION

AGENCY: Department of Administration

PROGRAM: Due Process

BRU: Public Advocate

COMPONENT: Public Advocate

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1.	POSITION TITLE Attorney IV				RANGE/STEP 24A	BARG. UNIT PX	FORM 12 PAGE/LINE	GOV.	APPROV.	DISAPP.
2.	TYPE OF POSITION PFT	STAFF MONTHS 12	RP NUMBER	PCN NUMBER New	BRU PRIORITY	LOCATION FBA	ELECTION DISTRICT	LEG.		
3.	CONTINUATION LEVEL		ADDITION							

4.	TYPE OF EXPENDITURE		AMOUNT
	1	2	3
	PERSONAL SERVICES		
5.	Salary	53,568	
6.	Benefits	9,168	
7.	Supplemental Benefits	2,550	
8.	Fixed Benefits	2,630	
9.	TOTAL PERSONAL SERVICES	01	67,916
10.	Travel	02	
11.	Contractual	03	
12.	Commodities	04	
13.	Equipment	05	
14.	Other		
15.	TOTAL COST		67,916

	RECEIPT CODE	FUNDING SOURCE		
16.		Federal Receipts	1002	
17.		G.F. Match	1003	
18.		General Funds	1004	67,916
19.		I-A Receipts	1005	
20.		Program Receipts	1028	
21.		Other		

FOR B&M USE ONLY
4A KEY NUMBER — — - — — - — — - — — - — —

JUSTIFICATION

This position represents indigent defendants in felonies, appeals and misdemeanors; serves as guardian ad litum and provides representation in civil matters.

This position serves as senior attorney in this location with some travel necessary to other locations in this judicial district.

8/1B1/0204-01/7

13 REQUEST FOR NEW POSITION

AGENCY Department of Administration

PROGRAM Due Process

BRU Public Advocate

COMPONENT Public Advocate

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Revised Date

FY 85

01 1116 17 82 13

1.	POSITION TITLE: Attorney IV			RANGE/STEP: 24A	BARG. UNIT: PX	FORM 12 PAGE/LINE	COV.	APPROV.	DISAPP.
2.	TYPE OF POSITION: PFT	STAFF MONTHS: 12	RP NUMBER	PCN NUMBER: New	BRU PRIORITY	LOCATION: FBA	ELECTION DISTRICT	LEG.		
3.	CONTINUATION LEVEL		ADDITION							

4.	TYPE OF EXPENDITURE	2	AMOUNT 3
	PERSONAL SERVICES		
5.	Salary	53,568	
6.	Benefits	9,168	
7.	Supplemental	2,550	
8.	Fixed Benefits	2,630	
9.	TOTAL PERSONAL SERVICES	01	67,916
10.	Travel	02	
11.	Contractual	03	
12.	Commodities	04	
13.	Equipment	05	
14.	Other		
15.	TOTAL COST		67,916

	RECEIPT CODE	FUNDING SOURCE		
16.		Federal Receipts	1002	
17.		G.F. Match	1003	
18.		General Funds	1004	67,916
19.		I-A Receipts	1005	
20.		Program Receipts	1028	
21.		Other		

FOR B&M USE ONLY
4A KEY NUMBER __ __ - __ __ - __ __ - __ __ - __ __

JUSTIFICATION

This position represents indigent defendants in felonies, appeals and misdemeanors; serves as guardian ad litum and provides representation in civil matters.

This position serves as senior attorney in this location with some travel necessary to other locations in this judicial district.

8/1B1/0204-01/8

13 REQUEST FOR NEW POSITION

AGENCY: Department of Administration

PROGRAM: Due Process

BRU: Public Advocate

COMPONENT: Public Advocate

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FY 85

	POSITION TITLE				RANGE/STEP	BARG. UNIT	FORM 12 PAGE/LINE	COV.	APPROV.	DISAPP.
1.	Attorney III				22A	PX				
2.	TYPE OF POSITION	STAFF MONTHS	RP NUMBER	PCN NUMBER	BRU PRIORITY	LOCATION	ELECTION DISTRICT	LEG.		
	PFT	12		New		EBA				
3.	CONTINUATION LEVEL		ADDITION							

4.	TYPE OF EXPENDITURE		AMOUNT
	1	2	3
	PERSONAL SERVICES		
5.	Salary	46,800	
6.	Benefits	8,009	
7.	Supplemental Benefits	2,550	
8.	Fixed Benefits	2,630	
9.	Total PERSONAL SERVICES	01	59,989
10.	Travel	02	
11.	Contractual	03	
12.	Commodities	04	
13.	Equipment	05	
14.	Other		
15.	TOTAL COST		59,989

	RECEIPT CODE	FUNDING SOURCE		
16.		Federal Receipts	1002	
17.		G.F. Match	1003	
18.		General Funds	1004	59,989
19.		I-A Receipts	1005	
20.		Program Receipts	1028	
21.		Other		

FOR BSM USE ONLY
4A KEY NUMBER ___ ___ - ___ ___ - ___ ___ - ___ ___ - ___ ___

JUSTIFICATION

This position represents indigent defendants in misdemeanors when the Public Defender Agency cannot represent the defendant because of conflict; serves as guardian ad litum in cases identified by office as containing routine factual and legal issues; represents parties in civil matters.

Requires travel to other locations in this judicial district.

8/1B1/0204-01/9

13 REQUEST FOR NEW POSITION

AGENCY Department of Administration

PROGRAM Due Process

BRU Public Advocate

COMPONENT Public Advocate

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FY 85

1. POSITION TITLE				RANGE/STEP	BARG. UNIT	FORM 12 PAGE/LINE	COV.	APPROV.	DISAPP.
Attorney III				22A	PX				
2. TYPE OF POSITION	STAFF MONTHS	RP NUMBER	PCN NUMBER	BRU PRIORITY	LOCATION	ELECTION DISTRICT	LEG.		
PFT	12		New		EBA				

3. CONTINUATION LEVEL | ADDITION

4. TYPE OF EXPENDITURE	2	AMOUNT 3
PERSONAL SERVICES		
5. Salary	46,800	
6. Benefits	8,009	
7. Supplemental Benefits	2,550	
8. Fixed Benefits	2,630	
9. Total PERSONAL SERVICES	01	59,989
10. Travel	02	
11. Contractual	03	
12. Commodities	04	
13. Equipment	05	
14. Other		
15. TOTAL COST		59,989

	RECEIPT CODE	FUNDING SOURCE		
16.		Federal Receipts	1002	
17.		G.F. Match	1003	
18.		General Funds	1004	59,989
19.		I-A Receipts	1005	
20.		Program Receipts	1028	
21.		Other		

FOR B&M USE ONLY
4A KEY NUMBER __ __ - __ __ - __ __ - __ __ - __ __

JUSTIFICATION

This position represents indigent defendants in misdemeanors when the Public Defender Agency cannot represent the defendant because of conflict; serves as guardian ad litum in cases identified by office as containing routine factual and legal issues; represents parties in civil matters.

Requires travel to other locations in this judicial district.

8/1B1/0204-01/10

13 REQUEST FOR NEW POSITION

AGENCY Department of Administration

PROGRAM Due Process

BRU Public Advocate

COMPONENT Public Advocate

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FY 85

	POSITION TITLE				RANGE/STEP	BARG. UNIT	FORM 12 PAGE/LINE	GOV.	APPROV.	DISAPP.
1.	Legal Secretary I				10A	GGU				
2.	TYPE OF POSITION	STAFF MONTHS	RP NUMBER	PCN NUMBER	BRU PRIORITY	LOCATION	ELECTION DISTRICT	LEG.		
	PFT	12		New		EBA				
3.	CONTINUATION LEVEL		ADDITION							

4.	TYPE OF EXPENDITURE	2	AMOUNT 3
	PERSONAL SERVICES		
5.	Salary	20,976	
6.	Benefits	3,590	
7.	Supplemental Benefits	1,286	
8.	Fixed Benefits	2,630	
9.	TOTAL PERSONAL SERVICES	01	28,482
10.	Travel	02	
11.	Contractual	03	
12.	Commodities	04	
13.	Equipment	05	
14.	Other		
15.	TOTAL COST		28,482

	RECEIPT CODE	FUNDING SOURCE		
16.		Federal Receipts	1002	
17.		G.F. Match	1003	
18.		General Funds	1004	28,482
19.		I-A Receipts	1005	
20.		Program Receipts	1028	
21.		Other		

FOR OMB USE ONLY
4A KEY NUMBER - - - - -

JUSTIFICATION

This position will provide the Legal Secretary Services in the new Juneau-Ketchikan office which will replace the present private attorney contracts.

8/1B1/0204-01/11

13 REQUEST FOR NEW POSITION

AGENCY Department of Administration

PROGRAM Due Process

BRU Public Advocate

COMPONENT Public Advocate

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Revised Date

FY 85

1. POSITION TITLE				RANGE/STEP	BARG. UNIT	FORM 12 PAGE/LINE	GOV.	APPROV.	DISAPP.
Administrative Officer				17A	Supervisory				
2. TYPE OF POSITION	STAFF MONTHS	RP NUMBER	PCN NUMBER	BRU PRIORITY	LOCATION	ELECTION DISTRICT	LEG.		
PFT	12		New		FBA				

3. CLASSIFICATION LEVEL | ADDITION

4. TYPE OF EXPENDITURE		AMOUNT
1	2	3
PERSONAL SERVICES		
5. Salary	33,888	
6. Benefits	5,800	
7. Supplemental Benefits	2,077	
8. Fixed Benefits	2,630	
9. TOTAL PERSONAL SERVICES	01	44,395
10. Travel	02	
11. Contractual	03	
12. Commodities	04	
13. Equipment	05	
14. Other		
15. TOTAL COST		44,395

	RECEIPT CODE	FUNDING SOURCE	
16.		Federal Receipts 1002	
17.		G.F. Match 1003	
18.		General Funds 1004	44,395
19.		I-A Receipts 1005	
20.		Program Receipts 1028	
21.		Other	

FOR B&M USE ONLY
4A KEY NUMBER __ __ - __ __ - __ __ - __ __ - __ __

JUSTIFICATION

The position will serve as the Statewide Administrative Supervisor for the Public Advocacy Agency. Duties to include budget preparation, Office Managment and other Administrative Duties.

8/1B1/0204-01/12

13 REQUEST FOR NEW POSITION

AGENCY Department of Administration

PROGRAM Due Process

BRU Public Advocate

COMPONENT Public Advocate

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FY 85

1.	POSITION TITLE: Attorney VI			RANGE/STEP: 26A	BARG. UNIT: PX	FORM 12 PAGE/LINE	GOV.	APPROV.	DISAPP.
2.	TYPE OF POSITION: PFT	STAFF MONTHS: 12	RP NUMBER	PCN NUMBER: New	BRU PRIORITY	LOCATION: EBA	ELECTION DISTRICT	LEG.		
3.	CONTINUATION LEVEL	ADDITION							

4.	TYPE OF EXPENDITURE	2	AMOUNT 3
	PERSONAL SERVICES		
5.	Salary	59,532	
6.	Benefits	10,188	
7.	Supplemental Benefits	2,550	
8.	Fixed Benefits	2,630	
9.	TOTAL PERSONAL SERVICES	01	74,900
10.	Travel	02	
11.	Contractual	03	
12.	Commodities	04	
13.	Equipment	05	
14.	Other		
15.	TOTAL COST		74,900

	RECEIPT CODE	FUNDING SOURCE		
16.		Federal Receipts	1002	
17.		G.F. Match	1003	
18.		General Funds	1004	74,900
19.		I-A Receipts	1005	
20.		Program Receipts	1028	
21.		Other		

FOR BSM USE ONLY
4A KEY NUMBER __ __ - __ __ - __ __ - __ __ - __ __

JUSTIFICATION

Directs the Office of Public Advocacy Agency, hires employees, sets up the organization and manages the Agency.

Handles similar types of cases as the Attorney IV position but in smaller volume due to administrative responsibilities.

8/1B1/0204-01/13

13 REQUEST FOR NEW POSITION

AGENCY: Department of Administration

PROGRAM: Due Process

BRU: Public Advocate

COMPONENT: Public Advocate

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FY 85

1.	POSITION TITLE Investigator				RANGE/STEP 16A	BARG. UNIT PX	FORM 12 PAGE/LINE	GOV.	APPROV.	DISAPP.
2.	TYPE OF POSITION PFT	STAFF MONTHS 12	RP NUMBER	PCN NUMBER New	BRU PRIORITY	LOCATION FBA	ELECTION DISTRICT	LEG.		
3.	CONTINUATION LEVEL		ADDITION							

	TYPE OF EXPENDITURE		AMOUNT
	1	2	3
	PERSONAL SERVICES		
5.	Salary	31,032	
6.	Benefits	5,311	
7.	Supplemental Benefits	1,902	
8.	Fixed Benefits	2,630	
9.	TOTAL PERSONAL SERVICES	01	40,875
10.	Travel	02	
11.	Contractual	03	
12.	Commodities	04	
13.	Equipment	05	
14.	Other		
15.	TOTAL COST		40,875

	RECEIPT CODE	FUNDING SOURCE		
16.		Federal Receipts	1002	
17.		G.F. Match	1003	
18.		General Funds	1004	40,875
19.		I-A Receipts	1005	
20.		Program Receipts	1028	
21.		Other		

FOR B&M USE ONLY
4A KEY NUMBER

JUSTIFICATION

Develops facts and interviews witnesses in criminal and civil cases. Assists Attorneys appointed as guardian ad litum in home studies. Requires travel as assigned in this judicial district.

8/1B1/0204-01/14

13 REQUEST FOR NEW POSITION

AGENCY Department of Administration

PROGRAM Due Process

BRU Public Advocate

COMPONENT Public Advocate

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Revised Date

FY 85

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	POSITION TITLE			RANGE/STEP	UNIT	FORM 12 PAGE/LINE	GOV.	APPROV.	DISAPP.
1.	Investigator			16A	EA				
2.	TYPE OF POSITION	STAFF MONTHS	RP NUMBER	PCN NUMBER	BRU PRIORITY	LOCATION	ELECTION DISTRICT	LEG.		
	PFT	12		New		EBA				
3.	CONTINUATION LEVEL		ADDITION							

4.	TYPE OF EXPENDITURE		AMOUNT
	1	2	3
	PERSONAL SERVICES		
5.	Salary	31,032	
6.	Benefits	5,311	
7.	Supplemental Benefits	1,902	
8.	Fixed Benefits	2,630	
9.	TOTAL PERSONAL SERVICES	01	40,875
10.	Travel	02	
11.	Contractual	03	
12.	Commodities	04	
13.	Equipment	05	
14.	Other		
15.	TOTAL COST		40,875

	RECEIPT CODE	FUNDING SOURCE		
16.		Federal Receipts	1002	
17.		G.F. Match	1003	
18.		General Funds	1004	40,875
19.		I-A Receipts	1005	
20.		Program Receipts	1028	
21.		Other		

FOR BSM USE ONLY
4A KEY NUMBER ___ ___ - ___ ___ - ___ ___ - ___ ___ - ___ ___

JUSTIFICATION

Develops facts and interviews witnesses in criminal and civil cases. Assists Attorneys appointed as guardian ad litum in home studies. Requires travel as assigned in this judicial district.

8/181/0204-01/15

13 REQUEST FOR NEW POSITION

AGENCY Department of Administration

PROGRAM Due Process

BRU Public Advocate

COMPONENT Public Advocate

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Revised Date

FY 85

1.	POSITION TITLE: Attorney IV			RANGE/STEP: 24A	BARG. UNIT: PX	FORM 12 PAGE/LINE	GOV.	APPROV.	DISAPP.
2.	TYPE OF POSITION: PFT	STAFF MONTHS: 12	RP NUMBER	PCN NUMBER: New	BRU PRIORITY	LOCATION: JPA	ELECTION DISTRICT	LEG.		
3.	CONTINUATION LEVEL		ADDITION						

4.	TYPE OF EXPENDITURE		AMOUNT
	1	2	3
	PERSONAL SERVICES		
5.	Salary	61,548	
6.	Benefits	10,533	
7.	Supplemental Benefits	2,550	
8.	Fixed Benefits	2,630	
9.	TOTAL PERSONAL SERVICES	01	77,261
10.	Travel	02	
11.	Contractual	03	
12.	Commodities	04	
13.	Equipment	05	
14.	Other		
15.	TOTAL COST		77,261

	RECEIPT CODE	FUNDING SOURCE		
16.		Federal Receipts	1002	
17.		G.F. Match	1003	
18.		General Funds	1004	77,261
19.		I-A Receipts	1005	
20.		Program Receipts	1028	
21.		Other		

FOR BSM USE ONLY
4A KEY NUMBER: ___ ___ - ___ ___ - ___ ___ - ___ ___ - ___ ___

JUSTIFICATION

This position represents indigent defendants in felonies, appeals and misdemeanors; serves as guardian ad litum and provides representation in civil matters.

This position serves as senior attorney in this location with some travel necessary to other locations in this judicial district.

8/1B1/0204-01/17

13 REQUEST FOR NEW POSITION

AGENCY: Department of Administration

PROGRAM: Due Process

BRU: Public Advocate

COMPONENT: Public Advocate

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FY 85

1.	POSITION TITLE: Attorney III			RANGE/STEP: 22A	BARG. UNIT: PX	FORM 12 PAGE/LINE	COV.	APPROV.	DISAPP.
2.	TYPE OF POSITION: PFT	STAFF MONTHS: 12	RP NUMBER	PCN NUMBER: New	BRU PRIORITY	LOCATION: JBA	ELECTION DISTRICT	LEG.		
3.	CONTINUATION LEVEL		ADDITION						

4.	TYPE OF EXPENDITURE		AMOUNT
	1	2	3
	PERSONAL SERVICES		
5.	Salary	53,568	
6.	Benefits	9,168	
7.	Supplemental Benefits	2,550	
8.	Fixed Benefits	2,630	
9.	TOTAL PERSONAL SERVICES	01	67,916
10.	Travel	02	
11.	Contractual	03	
12.	Commodities	04	
13.	Equipment	05	
14.	Other		
15.	TOTAL COST		67,916

	RECEIPT CODE	FUNDING SOURCE	
16.		Federal Receipts 1002	
17.		G.F. Match 1003	
18.		General Funds 1004	67,916
19.		I-A Receipts 1005	
20.		Program Receipts 1028	
21.		Other	

FOR BSM USE ONLY
4A KEY NUMBER ___ ___ - ___ ___ - ___ ___ - ___ ___ - ___ ___

JUSTIFICATION

This position represents indigent defendants in misdemeanors when the Public Defender Agency cannot represent the defendant because of conflict; serves as guardian ad litum in cases identified by office as containing routine factual and legal issues; represents parties in civil matters.

Requires travel to other locations in this judicial district.

8/1B1/0204-01-18

13 REQUEST FOR NEW POSITION

AGENCY: Department of Administration
PROGRAM: Due Process
BRU: Public Advocate
COMPONENT: Public Advocate

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1.	POSITION TITLE Legal Secretary I				RANGE/STEP 10A	BARG. UNIT GGU	FORM 12 PAGE/LINE	GOV.	APPROV.	DISAPP.
2.	TYPE OF POSITION PFT	STAFF MONTHS 12	RP NUMBER	PCN NUMBER New	BRU PRIORITY	LOCATION JBA	ELECTION DISTRICT	LEG.		
3.	CONTINUATION LEVEL		ADDITION		JUSTIFICATION					

	TYPE OF EXPENDITURE		AMOUNT
	1	2	3
	PERSONAL SERVICES		
5.	Salary	23,676	
6.	Benefits	4,052	
7.	Supplemental Benefits	1,451	
8.	Fixed Benefits	2,630	
9.	TOTAL PERSONAL SERVICES	01	31,809
10.	Travel	02	
11.	Contractual	03	
12.	Commodities	04	
13.	Equipment	05	
14.	Other		
15.	TOTAL COST		31,809

	RECEIPT CODE	FUNDING SOURCE		
16.		Federal Receipts	1002	
17.		G.F. Match	1003	
18.		General Funds	1004	31,809
19.		I-A Receipts	1005	
20.		Program Receipts	1028	
21.		Other		

FOR B&M USE ONLY
4A KEY NUMBER __ __ - __ __ - __ __ - __ __ - __ __

8/1B1/0204-01/19

13 REQUEST FOR NEW POSITION

AGENCY Department of Administration

PROGRAM Due Process

BRU Public Advccate

COMPONENT Public Advocate

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SB

346

STATE OF ALASKA 1984 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date:

REQUEST
Bill/Resolution No.: SB 346
Title: "An act relating to the treatment of mentally ill persons."
Sponsor: Sen. Josephson & Halford
Requestor: Senate HESS
Date of Request: 1-20-84

FISCAL DETAIL
Agency Affected: Public Safety
Program Category Affected: Administration of Justice
BRU, Program or Subprogram(s) Affected: Alaska State Troopers

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 84	FY 85	FY 86	FY 87	FY 88	FY 89
OPERATING						
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 SUPPLIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS						
800 MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0
CAPITAL	0.0	0.0	0.0	0.0	0.0	0.0
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND	0.0	0.0	0.0	0.0	0.0	0.0
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

This Bill provides law enforcement officers with the latitude to protect both the mentally ill person and the public from the actions of the mentally ill.

ANALYSIS: Attach a separate page for analysis

Prepared By: Francis C. Allan G.C.A. mCK Phone: 269-5601
Division: Alaska State Troopers Date: 01/19/84

Approved by Commissioner: Robert D. Sundberg Date: 1-26-84
Agency: Public Safety

Distribution (by Agency preparing fiscal note):
Legislative Finance
Legislative Sponsor
Requestor
Office of Management and Budget
Impacted Agency(ies)

JUSTICE - Andy/SJS

12/1/83

FISCAL NOTE

Revision Date:

REQUEST
Bill/Resolution No.: SB 346
Title: "An Act relating to the treatment of mentally ill persons."
Sponsor: Sen. Josephsen
Requestor: Senate HESS
Date of Request: 1/17/84

FISCAL DETAIL
Agency Affected: Department of Law
Program Category Affected: General Government
BRU, Program or Subprogram(s) Affected: Legal Services Operations

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 84	FY 85	FY 86	FY 87	FY 88	FY 89
OPERATING						
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 SUPPLIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS						
900 MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND	-0-	-0-	-0-	-0-	-0-	-0-
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS:

FULL-TIME	-0-	-0-	-0-	-0-	-0-	-0-
PART-TIME						
TEMPORARY						

SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

ANALYSIS:

This act amends the state's statutes covering the treatment of mentally ill persons. The amendment clarify existing law and provide additional safeguards for the general public and the relatives of mentally ill persons, while seeking to protect the legal rights of persons suffering from mental illness. The amendments will not require any additional legal services, over those currently being provided, and their enactment will not have a fiscal impact on the department's operations.

Prepared By: Richard I. Pegues / Director — Phone: 465-3672
Division: Administrative Services — Date: 1-18-84

Approved by Commissioner: Norman C. Gorsuch — Date: 1-18-84
Agency: Department of Law

LAW-Analysis

STATE OF ALASKA 1984 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date:

REQUEST
Bill/Resolution No.: SB 346
Title: An Act relating to the treatment of mentally ill persons
Sponsor: Josephson and Halford
Requestor:
Date of Request: 1-11-84

FISCAL DETAIL
Agency Affected: Division of Mental Health and Developmental Disabilities
Program Category Affected: API
BRU, Program or Subprogram(s) Affected:

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 84	FY 85	FY 86	FY 87	FY 88	FY 89
OPERATING						
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 SUPPLIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS						
800 MISCELLANEOUS						
TOTAL OPERATING		0	0	0	0	0
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

ANALYSIS: Attach a separate page for analysis * See Attached

Prepared By: James L. Scoles (PS) (RR) Phone: 465-3370 /cc
Division: Mental Health & Developmental Disabilities Date: 1-20-84

Approved by Commissioner: Robert London Smith Date: 1/30/84
Agency: Dept. of Health & Social Services

Distribution (by Agency preparing fiscal note):
Legislative Finance
Legislative Sponsor
Requestor
Office of Management and Budget
Impacted Agency(ies)

HEALTH-ANALYSIS
12/1/83

The Division of Mental Health and Developmental Disabilities does not foresee any increase or decrease in expenditures as a result of the passage of SB 346 at this time. The primary purpose of this bill is mainly directed at reducing the procedural requirements of A.S. 47.30.655 - 47.30.915, changing the age of majority from 14 to 18 years of age, changing the period of time for the initial commitment from 21 to 30 days and the third period of commitment from 120 to 180 days, expanding the definition of peace officers to include mental health professionals, and slightly relaxing the standards for commitment.

We do not believe that any of these proposed amendments will increase or decrease the number of mentally ill persons that will require hospitalization. The amendments should, however, make it easier to commit the mentally ill which should result in more professional staff time available to provide direct patient care and treatment rather than excessive time being expended in the commitment process.

ALASKA MENTAL HEALTH ASSOCIATION

2611 Fairbanks Street, Suite A Anchorage, Alaska 99503
Telephone 276-1705

A Division of the National Mental Health Association

February 29, 1984

Senator Joe Josephson
Pouch V
State Capitol
Juneau, Alaska 99811

Dear Senator Josephson:

On February 15, 1984, I was involved in an emergency commitment situation which occurred at approximately 4:30 p.m., and which I think exemplifies one of the basic problems with the current commitment law. A patient came to the Fairbanks Community Mental Health Center for treatment and expressed an intent to kill herself. After evaluating her, the mental health professional called Carol Davis, the Probate Clerk who ordinarily handles these cases for the Magistrate. Ms. Davis stated she could not order an involunatry emergency commitment after hours because she could not do the paperwork. She would give the order if a physician at the hospital requested it. She advised the Center to call the police and have them exercise their authority to Emergency Commit the patient.

When the municipal police arrived, they said they knew they could commit, but refused to exercise their power because it is their agency's policy to avoid this responsibility except when they "encounter" a person in the usual course of their duties. They appeared to feel that the court system was "dumping" the responsibility on their shoulders after hours.

As you know, under current law, neither the mental health professional or a physician can act in this type of situation alone. In fact, the policemen involved were aware of this and also aware that they were the only ones empowered to act alone. Needless to say, this stalemate tied up the mental health professional - who was forced to cancel other patients - the court representative, and the police. It was finally resolved by an extra-legal (in my opinion) act. The police officer said that he would transport the patient to the Fairbanks hospital emergency room if the emergency room doctor would agree to see her and, in effect, authorize the involuntary transport. This freed the Center to resume its activities and seemed to shift the responsibility to the hospital.

I think you can see that the Mental Health Center and the patients are caught in a kind of territorial dispute between the municipal police and the court

system. Since both of these systems feel free to operate independently, the "system" of care breaks down. It results in one emergency commitment system for 9:00 a.m. to 5:00 p.m., and another for 5:01 p.m. to 8:59 a.m. A similar stand-off has occurred in Anchorage, although the situation in Fairbanks is more complicated because the system must depend upon a private hospital.

The provision in the revised commitment bill which reinstates the physician certificate (or mental health professional certificate) would alleviate this this problem.

It would also be alleviated if the courts and the police would work cooperatively.

Sincerely,

Jerry L. Schrader, M.D.
President, Alaska Mental Health Association

cc: Chief Mathew Kiernan
Charles M. Mac Gibson
Phyllis Vanairsdale

STATE OF ALASKA

BILL SHEFFIELD, GOVERNOR

DEPT. OF HEALTH AND SOCIAL SERVICES

OFFICE OF THE COMMISSIONER

POUCH H 01
JUNEAU, ALASKA 99811
PHONE: 465-3030

April 14, 1983

Document No. 83-152

The Honorable Joe Josephson
Senator
Alaska State Legislature
Pouch V
Juneau, AK 99811

Dear Senator Josephson:

RE: AS 47.30.655 - 47.30.915
(Involuntary Commitment Act for
Mentally Ill Persons)

We appreciate the work you are undertaking and would like to add our comments to those you have already received regarding possible amendments to Alaska's recently enacted civil commitment statutes for mentally ill persons. As you know, the Division of Mental Health and Developmental Disabilities supports the general intent of the Act but feels it is procedurally too cumbersome. This seems to have resulted in treatment staff wasting their time in complying with procedures and filling out numerous forms rather than providing treatment for mentally ill persons.

I have enclosed a copy of our earlier suggested amendments that were prepared during the previous administration. The status of these suggested amendments is unknown to us. Upon review, however, I believe that you will agree that they are primarily designed to facilitate treatment. In addition, I am confident that the Attorney General's Office will be able to assist your staff in determining which forms, notices and procedures that are presently required can be deleted while still protecting the rights of the mentally ill.

Another area of extreme importance in the successful implementation of this Act has been the availability, or lack thereof, of detoxification facilities and other alcohol and substance abuse programs and services. Experience has shown that the emergency involuntary hospitalization at API of persons with a primary diagnosis of alcoholism has increased dramatically since the new Act became effective. This is cause for considerable concern to us as our bed space for legitimate psychiatric emergency cases is in extremely short supply. We believe that if additional alcoholism and substance abuse programs offering emergency

inpatient care were available, especially in Anchorage, that the number of referrals of intoxicated persons to API would be substantially reduced. You may be interested to know that the provisions of the Uniform Alcoholism and Intoxification Treatment Act (AS 47.37.010 - 47.37.270) have never been fully implemented, partially as a result of a lack of inpatient facilities that offer various types of alcoholism services and treatment.

The most utilized provision of the Uniform Alcoholism and Intoxification Treatment Act seems to have been what is called the "12-hour drunk law." This provision allows persons that are seriously incapacitated as a result of alcohol to be placed in a local jail or state correctional center for up to 12 hours with no criminal charges being filed. In the past, this has permitted law enforcement agencies the opportunity to take intoxicated persons into custody and house them in a jail or correctional center until the person has regained sobriety and is no longer in danger of harm as a result of his inebriated condition.

Unfortunately, as a consequence of the extreme shortage of bed space in all of Alaska's correctional centers, law enforcement agencies are no longer able to deliver these incapacitated persons to correctional facilities and have them held in custody until they are no longer incapacitated by alcohol. More simply put, as a result of serious overcrowding in our correctional systems, drunks are being taken to API and kept there until they sober up sufficiently to make a diagnosis. More often than not, the diagnosis reveals that they are suffering primarily from alcoholism and not a major mental illness. At that point they are discharged and referred elsewhere. This results in a serious misuse of the few psychiatric resources we have. It is our position that these limited resources should be exclusively available to the seriously mentally ill person that presents himself, or is presented, to Alaska's only designated psychiatric hospital.

In addition to the recommended amendments contained in the enclosure, as well as the previously mentioned concerns, we have listed below a number of other changes to the Act that we would like to support:

1) We recommend that the period of commitment be changed from 21 days, 90 days, and 120 days to 30 days, 90 days, and 180 days. It is our opinion that this would reduce the administrative workload of our treatment staff while having little or no effect on the period of time patient's are actually involuntarily committed.

   Rather than interrupt treatment after 21 days in order to undergo the 90-day commitment process, treatment could continue for an additional 9 days if necessary. This would allow medications and other forms of therapy some additional time to stabilize the patient, possibly resulting in a discharge between the 21st and 30th day. The change from 120

days to 180 days is simply to reduce the administrative and procedural requirements necessary for the long-term, chronic metally ill patients that require extended periods of hospitalization.

2) We propose that all references to a minor child be changed from age 14 to age 18 throughout the Act. Numerous situations have arisen as a consequence of this provision that indicate it has fostered confusion as well as placing young people and API in an awkward position with regard to their status. It is also not in concert with other provisions of Title 47 that address the care and treatment of minors in Alaska.

3) Under AS 47.30.730(a)(3), we recommend that the following language be added with regards to gravely disabled: "... or that painful or dangerous regression could be prevented and the respondent could maintain the capacity for self-reliance;...". It has been our experience that some gravely disabled individuals may not be expected to actually improve during hospitalization, but if left untreated can be expected to suffer substantially, even to the point of requiring permanent institutionalization as a result.

4) Under AS 47.30.840(4), (5), (6), and (7), we suggest that provision be made to restrict these rights in unusual circumstances in which harm to the patient or others may result if these rights are exercised. We propose adding "... unless the professional person in charge determines it is not in the best interests of the patient and will pose a threat to the safety or well being of the patient or others;..." to these sections.

5) We recommend that AS 47.30.845 be amended to add a provision that would allow confidential information or records to be disclosed to law enforcement agencies in emergency situations involving a current or former patient. In order to restrict this disclosure we suggest the following section be added: "(7) a law enforcement agency when there is substantiated concern over imminent danger to the community by a presumed mentally ill person."

This would allow the disclosure of information to law enforcement agencies that may be helpful in preventing needless injury or death occurring as a result of the actions of a mentally ill persons during an emergency situation.

6) An additional area that, in our opinion, should be revised is the area of involuntary outpatient commitment. Thusfar, there have only been a limited number of these types of commitments. It seems, however, that none have proven successful for various reasons. While the idea of involuntary outpatient

commitment appears sound, the provisions of the Act appear to militate against the successful utilization of this less restrictive alternative. Perhaps your proposed revision to the definition of "likely to cause serious harm" will have a positive influence on the successful use of outpatient commitment.

It should be noted, with regards to outpatient treatment, that AS 47.30.800(a) requires persons seeking conversion from involuntary outpatient commitment to inpatient commitment must have direct knowledge that the respondent is mentally ill or gravely disabled. If the respondent fails to report to the provider of service, than the provider will be unable to substantiate the allegations necessary to convert the commitment to inpatient treatment.

7) In AS 47.30.745(b), the last sentence should read "... not later than 90 days..." rather than "... not earlier ...." as it currently reads.

8) The final area in which we would recommend revision is the requirement that all patients be given the opportunity to be voluntarily admitted. We do not dispute the value of this option in the vast majority of cases that require psychiatric hospitalization; there are, however, instances in which it may not be wise or prudent to be required to offer or allow the voluntary admission of some patients to the hospital. Certainly, the substitution of "reasonable" for "every" in Section 1 of your draft is a step in the right direction. We would hope that it would be interpreted to mean in cases in which it was deemed unreasonable, that involuntary commitment proceedings would commence.

While I am confident that these recommendations for amendments do not represent a panacea for all that is wrong with such a complicated set of laws, I am certain that these, along with many other suggestions that you have received, represent a substantial improvement in providing for the care and treatment of Alaska's mentally ill. Again, I would like to thank you and your staff for giving this information your review and consideration. My staff and I look forward to working with you and other members of the Legislature in revising our civil commitment laws.

Sincerely,

Robert London Smith

Robert London Smith, Ph.D.
Commissioner

Enclosure

POSITION PAPER/Department of Health & Social Services

RECEIVED

POSITION PAPER

Senate Bill No. 346

"An Act relating to the treatment of mentally ill persons."

In October, 1981, Chapter 84, SLA 1981 became effective. This act completely revised Alaska's involuntary commitment laws for mentally ill persons that required involuntary hospitalization or treatment. Upon its effective date, there was considerable concern that the Act was procedurally cumbersome which would require that an excessive amount of professional treatment staff time be consumed in filling out forms, testifying in court, and other non-treatment related activities. While the Act has proven workable and involuntary commitment of the mentally ill have continued to occur, there are a number of areas in the Act that have proven repeatedly troublesome since its effective date. Senate Bill 346 is an attempt to amend some of those troublesome provisions that have tended to inhibit or hamper the treatment of the involuntarily committed mentally ill patient.

The majority of the amendments that are proposed in Senate Bill 346 are technical rather than substantive in nature, a number of the amendments are intended to change the Act in a way that is seen by many as improving its effectiveness. Those amendments that are considered to require clarification are discussed below:

Page 1, Section 1, Line 20:

During the period of time the Act has been in effect, many areas have applied literal interpretation to the requirement that "every" opportunity be afforded to respondents to accept voluntary treatment. The result has been instances in which a prospective involuntary patient has repeatedly refused to accept voluntary treatment until the court hearing is actually in progress or about to begin and then suddenly decides he will accept voluntary treatment. The court proceedings cease and the petition for commitment is dismissed. If, prior to arrival to API for involuntary admission, the patient changes his mind and again refuses voluntary treatment (as has been the case), the entire involuntary commitment process must be started anew.

This has been cause for considerable concern and confusion. The amendment offered would change "every" opportunity to "reasonable" opportunity to accept voluntary treatment. This would allow for some discretion in its interpretation. Thus, if a patient repeatedly refused voluntary treatment, the commitment process would proceed even if the patient requested voluntary treatment at a later time. This would insure that treatment would be possible and the expensive commitment process would not have to be repeated unnecessarily.

Page 2, Section 2, Line 7:

Under the Act, the age of majority, for purposes of accepting or rejecting voluntary treatment without the consent of a parent or guardian was set at 14 years old. This has created a number of difficulties especially for those children between the ages of 14 and 18 years of age.

For example, a 14 year old child could present himself at API and request admission without the knowledge or approval of the parent or guardian. As A.S. 47.30.845 (Confidential Records) does not give the hospital the authority to release any information to the parents or guardians of a person 14 years of age or older without the permission of the patient, it may not be legal for us to tell parents or guardians the whereabouts or condition of their child.

Also, a 14 year old child that would benefit from evaluation or treatment at API but does not meet involuntary civil commitment standards may not be admitted at the request of the parents or guardian unless the child voluntarily agrees to accept treatment. Thus, some mentally ill children may not receive necessary mental health care and treatment even though their parents or guardian attempt to provide these services for them. In cases such as this, it becomes even more ludicrous if the Division of Family and Youth Services attempts to file a petition to have the court find the youth as a child in need of aid by alleging that the child's medical needs are being neglected. If the parents or guardian sought voluntary hospitalization of the child that is 14 years old but the child refused treatment, then parental neglect, which would support a finding of a child in need of aid status, is not possible.

The amendment proposed would change the age of majority under this section from 14 to 18 years of age. This would be consistent with other statutes that govern the care of treatment of these children and adolescents as well as correct these legal anomalies.

Page 3, Section 5, Line 12

This would increase the period of time for voluntary hospitalization of a minor by 9 days (from 21 to 30 days). This additional time will increase the ability of the hospital to provide a more thorough and comprehensive evaluation and treatment program for mentally ill children.

Page 3, Section 5, Line 22-23,

This language would broaden the circumstances under which a minor may be accepted for admission at the hospital if the professional person in charge believes that hospitalization is necessary on a voluntary basis. This added provision could prove very helpful in addressing the treatment needs of mentally ill children and adolescents who are at risk of further deterioration and need hospitalization. Under the existing statutes, unless improvement in their condition can be reasonably expected, admission may not be possible. We believe this added provision will prove helpful in providing necessary care and treatment for this group of patients.

Page 4, Section 6, Lines 6-26

The addition of this language provides needed clarification regarding the circumstances and procedures for releasing or retaining mentally ill minors with or without the consent of the parent or guardian. It is especially pertinent as there have been occasions when the safety of the child or others was questionable and the child was not committable but the parents or guardian have demanded immediate release of the child. This amendment will make it possible to insure the safety of all concerned prior to release of the minor.

Page 5, Section 7, Line 3

By granting mental health professionals the authority to take mentally ill persons into custody under an emergency situation and deliver them to an evaluation facility, a number of problems will be alleviated. Under the existing statutes, if a physician in an emergency room examines an individual that is brought to the hospital by relatives or friends, and the patient is clearly mentally ill and is in need of immediate hospitalization, the physician may have to call the police in order to have a peace officer take the patient into custody and sign an application for the patient's examination. This situation may occur in any hospital in Alaska including API.

Under the proposed amendment, the physician or any other health care professional that is included in the definition of a mental health professional under A.S. 47.30.915(11), can sign the application for examination under A.S. 47.30.705 and have the patient held in custody pending completion of the exam and receipt of an ex part order.

Page 5, Section 7, Lines 9-12

As written, this proposed amendment, if strictly interpreted, could tend to prohibit the completion of examination or evaluations of patients that were detained in jails or correctional centers even if qualified evaluation personal were available. We certainly agree in principle that jails and correctional centers should not be used to hold the non-criminal, mentally ill; however, in practice, we have found that under certain exceptional circumstances, a jail or correctional center may be the only facility available to detain the patient at the local level for purposes of evaluation and insure the safety of the patient and the community.

It has been our experience that the utilization of there types of facilities is neither widespread nor indiscriminate and is used only on a very short-term basis. Nevertheless, when it is necessary to house patients in jails or correctional centers, we proceed with the examination, evaluation, and involuntary commitment process when the necessary resources are locally available. The time spent by these

patients under these circumstances is then counted for purposes of the 24 hour and 72 hour time limit that is required for examinations and evaluations to occur by mental health professionals. This tends to insure that patients are not detained longer than necessary and treatment, if indicated, can commence immediately.

Consequently, we recommend that this amendment be deleted and that the existing language in A.S. 47.30.705 on lines 12-15 (in brackets) should be retained.

Page 5, Section 7, Line 24

This amendment would change the period of time for the first involuntary commitment from 21 to 30 days and is repeated throughout Senate Bill 346. The additional 9 days would tend to reduce the administrative workload of our treatment staff while having little or no effect on the period of time patients are actually involuntarily hospitalized.

Rather than interrupt treatment on the 21st day in order to undergo the 90-day commitment process, treatment could continue for an additional 9 days if necessary. This would allow medications and other forms of therapy an additional period of time to stabilize the patient, possibly resulting in a discharge of the patient between the 21st and 30th day.

Page 9, Section 10, Lines 17-19

This amendment is designed to insure that a less formal courtroom atmosphere is possible during the involuntary civil commitment process. This should make the commitment proceedings less painful and frightening to the mentally ill respondent.

Page 9, Section 10, Lines 27-28

The addition of this provision to allow a respondent to call his own experts or other witnesses to testify on his behalf is not seen as necessarily having an impact on the Division of Mental Health and Developmental Disabilities unless the respondent decides to call experts from API to testify on his behalf. It may, however, have a financial impact on the Alaska Court System if the respondent is indigent and the court has to pay the expenses of the experts and other witnesses called by the respondent on his behalf.

Page 12, Section 13, Line 7

This amendment would change the 120-day commitment to 180 days and is repeated throughout the bill. This change will reduce the administrative and procedural requirements necessary for the long-term, chronic mentally ill patients that require extended periods of involuntary hospitalization.

Page 13, Section 16, Lines 23-26

This additional requirement for notification of a patients family or guardian as well as any person known to been threatened by the patient of his unauthorized absence from the treatment facility is supported by the Division of Mental Health and Developmental Disabilities. We feel that this is an appropriate and necessary measure in cases such as this.

Page 14, Section 18, Lines 8-9

The addition of this language is seen as necessary and will correct what appears to have been an oversight when the he Act was drafted. It simply makes specific that computations of time for a patient being evaluated or a patient being detained for evaluation do not include Saturdays, Sundays, legal holidays, or transportation time and are not to be included in the 72 or 48 hour time limitation prescribed by the Act.

Page 15, Section 19, Lines 6-7

This adds mental health professionals among those that may not be held civilly or criminally liable for detaining and transporting a person, under the Act. This amendment is consistent with this section of the Act.

Page 15, Section 20, Lines 15-17

This amendment will require that an adult designated by the respondent must give informed consent in cases in which the patient is unable to give informed consent prior to certain treatments being authorized. We feel this is an appropriate addition to the Act.

Page 15, Section 21, Lines 28-29

This simply requires that an adult designated by the patient must be provided a copy of the patient's discharge plan. This is consistent with A.S. 47.30.845 under the existing statutes regarding confidential information.

Page 17, Section 24, Lines 6-8

This proposed amendment would clarify the circumstances under which the hospital may release confidential information and records to law enforcement agencies when they are concerned that a patient or ex-patient may present as an imminent danger to the community. Under certain circumstances, we feel it is in the best interests of the community and the patient to take such action.

Page 17, Section 24, Line 13

The addition of this language will include hospitals operated by the federal government, such as the PHS facilities, for use as evaluation facilities for purposes of the Act. Under the existing statutes, these facilities are not included in the definition of an evaluation facility and some of these federal facilities have not been able or willing to be utilized in this capacity.

Page 17, Section 24, Lines 21-26

This addition to the definition of a gravely disabled person will significantly clarify and improve our position with respect to the involuntary care and treatment of these patients. An additional period of hospitalization may help prevent further deterioration of gravely disabled persons in order to avoid or reduce the risk of further tragedy and/or agony.

Page 18, Section 27, Line 1

This amendment offered in the bill will reduce the standard upon which a potentially suicidal person may be taken into custody and involuntarily committed. It is our belief that this is both necessary and appropriate given our current rate of death by suicide in Alaska.

Page 18, Section 27, Lines 5-8

As in the previous section, this language will alter the standard for involuntary hospitalization of a person that may present as a danger to others or to the property of others. This may allow some seriously mentally ill persons to be involuntarily committed before they actually harm another person or another person's property.

Page 18, Section 28, Lines 17-20

This simply requires that a psychologist or a psychological associate must be trained specifically in clinical psychology in order to be considered a mental health professional for purposes of screening, examination, and evaluation under the Act.

Page 18, Section 28, Lines 22-24

This amendment is intended to include in the definition of mental health professionals those registered nurses that have experience in psychiatric nursing in a JCAH accredited psychiatric hospital for purposes of screening, examination, and evaluation under the Act. This is considered an appropriate addition to this definition.

POSITION PAPER/Department of Health & Social Services

The Department of Health and Social Services generally supports the amendments contained in Senate Bill 346 and endorses its passage with the exceptions noted above.

Recommended by: Philip Shapiro

Philip Shapiro, M.D.,
Director, Division of Mental Health and Developmental Disabilities

Date: 11/30/84

Approved by: Robert London Smith

Robert London Smith, Ph.D.
Commissioner

Date: 11/30/84

SECTIONAL ANALYSIS OF CSSB 346 (JUD)am - AN ACT RELATING TO THE TREATMENT OF MENTALLY ILL PERSONS BY Josephson and Faiks.

NOTE: Throughout the bill, the age of majority has been changed from 14 to 18, commitment time periods have been from 21, 90 and 120 days to 30, 90, and 180 days, and neutral words have been substituted for gender pronouns.

Section 1 — Provides a word change ("every" to "reasonable") to limit the endless paperwork from patients transferring in and out of voluntary status.

Section 2-5 — Changes the age of majority under the title from 14 to 18 to make this statute consistent with others dealing with juveniles. Section 4 also changes the term "immediate" to "timely" in order to avoid the inoperable situations caused by literal interpretation of the language.
Section 5(b) provides for the appointment of a guardian ad litem for each minor to monitor appropriateness of placement. Subsection (3) adds language to admission procedures to allow treatment of those minors whose condition could worsen if untreated.

Section 6 — Provides options for the release of a minor, and options to keep a minor in danger of harming self or others. (Statutory basis for procedure currently used at A.P.I.)

Section 7 — Adds "mental health professional" to current law allowing peace officers to take someone into custody for emergency evaluation. It also limits the use of a correctional facility for the mentally ill, providing only emergency protective custody while awaiting transportation to an evaluation facility.

Section 8-9 and 10 — Technical amendments concerning time computations and neutral language to comply with other sections of this bill.

Section 11 — Adds to respondents rights in a 30 day commitment hearing; that the rules of evidence and civil procedure be applied in an informal way;
that experts and other witnesses may testify on the respondent's behalf.

Section 12, 13 and 14 — Time computation changes.

Section 15 — Adds a new section providing that medication and treatment may be administered to an involuntarily committed patient in compliance with patient's rights.

Section 16 — Provides new language to the statute dealing with unauthorized absences providing that a parent, guardian or a person known to have been threatened by the patient will be immediately notified.

Section 17 — Adds a new section to the statute relating to the change of status from involuntary to voluntary, providing that the physician must agree that the transfer is appropriate and must be made in good faith.

Section 18 — Provides that acceptance of order, and 48 hour detention period time computations will not include weekends and holidays.

Section 19 — Amends liability section to include a mental health professional who detains and transports a patient.

Section 20 — Provides that an adult designated as a guardian shall be provided with a copy of a patient's discharge plan.

Section 21 — Adds a new section to the law providing that a patient has the right to a nutritionally sound and medically appropriate diet.

Section 22 — Adds to the patient's rights section of law, additional rights to:
be free of corporal punishment;
exercise and recreation;
at any time have a visit or phone conversation with an attorney;
not be retaliated against for assertion of rights.

Section 23 — Allows for temporary suspension of certain patient rights (wearing personal clothing, phone calls, visitors and recreation) only after the initial evaluation period, if there is a threat to the patient or others.

Section 24 — Allows access to confidential records by a law enforcement agency if there is substantial concern over imminent danger from a presumed mentally ill person.

Section 25 — Includes federal facilities in the definition of "evaluation facility".

Section 26 — Expands the definition of "gravely disabled" to include persons who are not in imminent danger, but whose lack of treatment would cause deterioration of their condition.

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Section 29 — Definition of mental illness.

ALASKA STATE SENATE

JOE P. JOSEPHSON
DISTRICT G - ANCHORAGE
1526 F STREET
ANCHORAGE, ALASKA 99501
(907) 277-4419

COMMITTEES
HEALTH, EDUCATION & SOCIAL SERVICES (CHAIR)
JUDICIARY (VICE CHAIR)
FINANCE
MAJORITY CAUCUS (CHAIR)

WHILE IN JUNEAU
POUCH V
JUNEAU, ALASKA 99811
(907) 465-4907
(907) 465-4525

April 12, 1984

The Honorable Mae Tischer
Alaska State House of Representatives
Pouch V
Juneau, Alaska 99811

Dear Representative Tischer:

SB 346, relating to the treatment of mentally ill persons has passed the Senate and has been referred to your committee.

This bill is the result of a year and a half of work by the Senate, and addresses the concerns of all who testified in the many hearings conducted around the state.

I was pleased to incorporate your amendment for the right to a nutritionally sound and medically appropriate diet (Section 21). A significant amount of new patients' rights will be added to the mental health commitment law with the passage of this bill.

My interest in this legislation was sparked by input from family grounds of the chronically mentally ill, the Alaska Mental Health Association and the Alaska Psychiatric Association. The major revision in the law of 1981 brought about dramatic changes in the treatment of the mentally ill, and I see SB 346 as a refinement of those provisions.

I am enclosing some backup material on this legislation for your perusal. I know this is a difficult and emotional issue, but I find that this bill has a broad base of support.

I will be happy to meet with you at any time to discuss this issue.

With best wishes, I am

Sincerely,

Joe P. Josephson

JPJ/ndc

Enclosure

Alaska State Legislature

REP. MAE TISCHER
CHAIRMAN

POUCH V
STATE CAPITAL
JUNEAU, ALASKA 99811
(907) 465-3777

House of Representatives
HEALTH, EDUCATION AND SOCIAL SERVICES COMMITTEE

M E M O R A N D U M May 16, 1984

TO: All Members of the House HESS Committee
Senator Joe Josephson, Sponsor, SB 346
Senator Jan Faiks, Sponsor, SB 346
Dr. Phil Shapiro, Director, Division of Mental Health and Developmental Disabilities
All Interested Persons

FROM: Representative Mae Tischer, Chairman, House HESS MT

RE: Version 3, Proposed House CS for CS for Senate Bill 346 (HESS)

Attached please find a copy of Version 3 of a proposed House HESS CS for CS for Senate Bill 346, "An Act relating to the treatment of mentally ill persons."

The amendments to the bill, indicated with blue highlighting on the attached draft, are found on the pages and lines indicated below. A brief explanation of the effect of each amendment is provided. Please note that page and line references are to Version 3, House CS for CS for Senate Bill 346 (HESS), dated May 15, 1984.

1. Page 1, line 20: This phrase was slightly reworded so as to give added emphasis to the requirement that persons be given ample opportunity to accept voluntary treatment.

2. Page 3, lines 24 - 26: This sentence was rewritten so as to accommodate a couple of substantive and technical amendments: (a) at the request of the Court System, the words "under AS 25.24.310" (circled on line 25 of the draft) were inserted in order to clarify the legal mechanics for the appointment of guardians ad litem as described in this section; (b) the words "as soon as possible" (circled on line 26 of the draft) were inserted so as to require the prompt appointment of a guardian ad litem for each minor.

3. Page 3, lines 28 and 29: As in amendment 2(a) above, the words "under AS 25.24.310" were inserted at the request of the Court System in order to clarify the legal mechanics for the appointment of guardians ad litem under this section.

4. Page 4, lines 11 - 15: This amendment would require a treatment facility to inform as soon as possible the parent or guardian of a minor under 18 years of age if the minor is detained at or admitted or committed to the treatment facility.

5. Page 13, lines 27 and 28: The catch line for AS 47.30.790 was changed so as to more accurately reflect the contents of the section.

6. Page 16, lines 4 - 16: This set of amendments would require a treatment facility to evaluate all patients present in the facility for more than 72 hours to determine if any individual patients have nutritional deficiencies. In conjunction with the original requirement that the treatment facility provide a nutritionally sound diet, this amendment further requires the facility to take appropriate steps to correct any identified deficiencies.

7. Page 20, line 11: This amendment merely returns the language in the bill to the way it appears in present law, deleting the reference to "a psychologist trained in clinical psychology."

8. Page 20, lines 17 - 18: This amendment inserts the word "substantial" before the word "experience," the effect of which would be the application of a higher standard (requiring substantial experience, instead of some possibly lesser degree of experience) when determining the kind of social worker who would be qualified to act as a "mental health professional."

9. Page 20, line 18: This amendment, meant as a purely technical amendment, changes the phrase "experience in the field of mental illness" to "experience in the field of mental health."

10. Page 20, lines 27 - 29; Page 21, lines 1 - 3: This amendment inserts temporary law requiring the division of mental health and developmental disabil-

ities to review the literature concerning orthomolecular psychiatric methods (nutritional therapy) in order to determine their potential uses in the treatment and diagnosis of mentally ill persons in the state; and to submit the report to the legislature by February 1, 1985.

Amendments 1, 2(b), 5, 7, 8 and 9 are found in Version 3 of the proposed House HESS Committee Substitute only. Amendments 2(a), 3, 4, 6 and 10 (in substance) have appeared in one or more of the earlier versions of the proposed House HESS Committee Substitute.

Please review this proposed CS and share your suggestions or comments with me as soon as possible. If there are no additional suggestions or comments, this will be the Version of the bill which we will discuss and hopefully move out during our next HESS meeting. I would appreciate receiving your response as soon as possible.

Attachment

Alaska State Legislature

REP. MAE TISCHER
CHAIRMAN

POUCH V
STATE CAPITAL
JUNEAU, ALASKA 99811
(907) 465-3777

House of Representatives
HEALTH, EDUCATION AND SOCIAL SERVICES COMMITTEE

M E M O R A N D U M May 16, 1984

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Sincerely,

Joe P. Josephson

JPJ/ndc

Enclosure

SECTIONAL ANALYSIS OF CSSB 346 (JUD)am - AN ACT RELATING TO THE TREATMENT OF MENTALLY ILL PERSONS BY Josephson and Faiks.

NOTE: Throughout the bill, the age of majority has been changed from 14 to 18, commitment time periods have been from 21, 90 and 120 days to 30, 90, and 180 days, and neutral words have been substituted for gender pronouns.

Section 1 — Provides a word change ("every" to "reasonable") to limit the endless paperwork from patients transferring in and out of voluntary status.

Section 2-5 — Changes the age of majority under the title from 14 to 18 to make this statute consistent with others dealing with juveniles. Section 4 also changes the term "immediate" to "timely" in order to avoid the inoperable situations caused by literal interpretation of the language.
Section 5(b) provides for the appointment of a guardian ad litem for each minor to monitor appropriateness of placement. Subsection (3) adds language to admission procedures to allow treatment of those minors whose condition could worsen if untreated.

Section 6 — Provides options for the release of a minor, and options to keep a minor in danger of harming self or others. (Statutory basis for procedure currently used at A.P.I.)

Section 7 — Adds "mental health professional" to current law allowing peace officers to take someone into custody for emergency evaluation. It also limits the use of a correctional facility for the mentally ill, providing only emergency protective custody while awaiting transportation to an evaluation facility.

Section 8-9 and 10 — Technical amendments concerning time computations and neutral language to comply with other sections of this bill.

Section 11 — Adds to respondents rights in a 30 day commitment hearing; that the rules of evidence and civil procedure be applied in an informal way;
that experts and other witnesses may testify on the respondent's behalf.

Section 12, 13 and 14 — Time computation changes.

Section 15 — Adds a new section providing that medication and treatment may be administered to an involuntarily committed patient in compliance with patient's rights.

Section 16 — Provides new language to the statute dealing with unauthorized absences providing that a parent, guardian or a person known to have been threatened by the patient will be immediately notified.

Section 17 — Adds a new section to the statute relating to the change of status from involuntary to voluntary, providing that the physician must agree that the transfer is appropriate and must be made in good faith.

Section 18 — Provides that acceptance of order, and 48 hour detention period time computations will not include weekends and holidays.

Section 19 — Amends liability section to include a mental health professional who detains and transports a patient.

Section 20 — Provides that an adult designated as a guardian shall be provided with a copy of a patient's discharge plan.

Section 21 — Adds a new section to the law providing that a patient has the right to a nutritionally sound and medically appropriate diet.

Section 22 — Adds to the patient's rights section of law, additional rights to:
be free of corporal punishment;
exercise and recreation;
at any time have a visit or phone conversation with an attorney;
not be retaliated against for assertion of rights.

Section 23 — Allows for temporary suspension of certain patient rights (wearing personal clothing, phone calls, visitors and recreation) only after the initial evaluation period, if there is a threat to the patient or others.

Section 24 — Allows access to confidential records by a law enforcement agency if there is substantial concern over imminent danger from a presumed mentally ill person.

Section 25 — Includes federal facilities in the definition of "evaluation facility".

Section 26 — Expands the definition of "gravely disabled" to include persons who are not in imminent danger, but whose lack of treatment would cause deterioration of their condition.

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Section 28 — Changes language relating to psychologists and psychological associates, to be consistent with their licensing statute, which indicates that they do not have a "specialty designation" but have training in clinical psychology.

Section 29 — Definition of mental illness.

STATE OF ALASKA

BILL SHEFFIELD, GOVERNOR

DEPT. OF HEALTH AND SOCIAL SERVICES

OFFICE OF THE COMMISSIONER

POUCH H 01
JUNEAU, ALASKA 99811
PHONE: 465-3030

April 14, 1983

Document No. 83-152

The Honorable Joe Josephson
Senator
Alaska State Legislature
Pouch V
Juneau, AK 99811

Dear Senator Josephson:

RE: AS 47.30.655 - 47.30.915
(Involuntary Commitment Act for
Mentally Ill Persons)

We appreciate the work you are undertaking and would like to add our comments to those you have already received regarding possible amendments to Alaska's recently enacted civil commitment statutes for mentally ill persons. As you know, the Division of Mental Health and Developmental Disabilities supports the general intent of the Act but feels it is procedurally too cumbersome. This seems to have resulted in treatment staff wasting their time in complying with procedures and filling out numerous forms rather than providing treatment for mentally ill persons.

I have enclosed a copy of our earlier suggested amendments that were prepared during the previous administration. The status of these suggested amendments is unknown to us. Upon review, however, I believe that you will agree that they are primarily designed to facilitate treatment. In addition, I am confident that the Attorney General's Office will be able to assist your staff in determining which forms, notices and procedures that are presently required can be deleted while still protecting the rights of the mentally ill.

Another area of extreme importance in the successful implementation of this Act has been the availability, or lack thereof, of detoxification facilities and other alcohol and substance abuse programs and services. Experience has shown that the emergency involuntary hospitalization at API of persons with a primary diagnosis of alcoholism has increased dramatically since the new Act became effective. This is cause for considerable concern to us as our bed space for legitimate psychiatric emergency cases is in extremely short supply. We believe that if additional alcoholism and substance abuse programs offering emergency

inpatient care were available, especially in Anchorage, that the number of referrals of intoxicated persons to API would be substantially reduced. You may be interested to know that the provisions of the Uniform Alcoholism and Intoxification Treatment Act (AS 47.37.010 - 47.37.270) have never been fully implemented, partially as a result of a lack of inpatient facilities that offer various types of alcoholism services and treatment.

The most utilized provision of the Uniform Alcoholism and Intoxification Treatment Act seems to have been what is called the "12-hour drunk law.' This provision allows persons that are seriously incapacitated as a result of alcohol to be placed in a local jail or state correctional center for up to 12 hours with no criminal charges being filed. In the past, this has permitted law enforcement agencies the opportunity to take intoxicated persons into custody and house them in a jail or correctional center until the person has regained sobriety and is no longer in danger of harm as a result of his inebriated condition.

Unfortunately, as a consequence of the extreme shortage of bed space in all of Alaska's correctional centers, law enforcement agencies are no longer able to deliver these incapacitated persons to correctional facilities and have them held in custody until they are no longer incapacitated by alcohol. More simply put, as a result of serious overcrowding in our correctional systems, drunks are being taken to API and kept there until they sober up sufficiently to make a diagnosis. More often than not, the diagnosis reveals that they are suffering primarily from alcoholism and not a major mental illness. At that point they are discharged and referred elsewhere. This results in a serious misuse of the few psychiatric resources we have. It is our position that these limited resources should be exclusively available to the seriously mentally ill person that presents himself, or is presented, to Alaska's only designated psychiatric hospital.

In addition to the recommended amendments contained in the enclosure, as well as the previously mentioned concerns, we have listed below a number of other changes to the Act that we would like to support:

1) We recommend that the period of commitment be changed from 21 days, 90 days, and 120 days to 30 days, 90 days, and 180 days. It is our opinion that this would reduce the administrative workload of our treatment staff while having little or no effect on the period of time patient's are actually involuntarily committed.

   Rather than interrupt treatment after 21 days in order to undergo the 90-day commitment process, treatment could continue for an additional 9 days if necessary. This would allow medications and other forms of therapy some additional time to stabilize the patient, possibly resulting in a discharge between the 21st and 30th day. The change from 120

days to 180 days is simply to reduce the administrative and procedural requirements necessary for the long-term, chronic metally ill patients that require extended periods of hospitalization.

2) We propose that all references to a minor child be changed from age 14 to age 18 throughout the Act. Numerous situations have arisen as a consequence of this provision that indicate it has fostered confusion as well as placing young people and API in an awkward position with regard to their status. It is also not in concert with other provisions of Title 47 that address the care and treatment of minors in Alaska.

3) Under AS 47.30.730(a)(3), we recommend that the following language be added with regards to gravely disabled: "... or that painful or dangerous regression could be prevented and the respondent could maintain the capacity for self-reliance;...". It has been our experience that some gravely disabled individuals may not be expected to actually improve during hospitalization, but if left untreated can be expected to suffer substantially, even to the point of requiring permanent institutionalization as a result.

4) Under AS 47.30.840(4), (5), (6), and (7), we suggest that provision be made to restrict these rights in unusual circumstances in which harm to the patient or others may result if these rights are exercised. We propose adding "... unless the professional person in charge determines it is not in the best interests of the patient and will pose a threat to the safety or well being of the patient or others;..." to these sections.

5) We recommend that AS 47.30.845 be amended to add a provision that would allow confidential information or records to be disclosed to law enforcement agencies in emergency situations involving a current or former patient. In order to restrict this disclosure we suggest the following section be added: "(7) a law enforcement agency when there is substantiated concern over imminent danger to the community by a presumed mentally ill person."

This would allow the disclosure of information to law enforcement agencies that may be helpful in preventing needless injury or death occurring as a result of the actions of a mentally ill persons during an emergency situation.

6) An additional area that, in our opinion, should be revised is the area of involuntary outpatient commitment. Thusfar, there have only been a limited number of these types of commitments. It seems, however, that none have proven successful for various reasons. While the idea of involuntary outpatient

commitment appears sound, the provisions of the Act appear to militate against the successful utilization of this less restrictive alternative. Perhaps your proposed revision to the definition of "likely to cause serious harm" will have a positive influence on the successful use of outpatient commitment.

It should be noted, with regards to outpatient treatment, that AS 47.30.800(a) requires persons seeking conversion from involuntary outpatient commitment to inpatient commitment must have direct knowledge that the respondent is mentally ill or gravely disabled. If the respondent fails to report to the provider of service, than the provider will be unable to substantiate the allegations necessary to convert the commitment to inpatient treatment.

7) In AS 47.30.745(b), the last sentence should read "... not later than 90 days..." rather than "... not earlier ...." as it currently reads.

8) The final area in which we would recommend revision is the requirement that all patients be given the opportunity to be voluntarily admitted. We do not dispute the value of this option in the vast majority of cases that require psychiatric hospitalization; there are, however, instances in which it may not be wise or prudent to be required to offer or allow the voluntary admission of some patients to the hospital. Certainly, the substitution of "reasonable" for "every" in Section 1 of your draft is a step in the right direction. We would hope that it would be interpreted to mean in cases in which it was deemed unreasonable, that involuntary commitment proceedings would commence.

While I am confident that these recommendations for amendments do not represent a panacea for all that is wrong with such a complicated set of laws, I am certain that these, along with many other suggestions that you have received, represent a substantial improvement in providing for the care and treatment of Alaska's mentally ill. Again, I would like to thank you and your staff for giving this information your review and consideration. My staff and I look forward to working with you and other members of the Legislature in revising our civil commitment laws.

Sincerely,

Robert London Smith

Robert London Smith, Ph.D.
Commissioner

Enclosure

POSITION PAPER/Department of Health & Social Services

POSITION PAPER

Senate Bill No. 346

"An Act relating to the treatment of mentally ill persons."

In October, 1981, Chapter 84, SLA 1981 became effective. This act completely revised Alaska's involuntary commitment laws for mentally ill persons that required involuntary hospitalization or treatment. Upon its effective date, there was considerable concern that the Act was procedurally cumbersome which would require that an excessive amount of professional treatment staff time be consumed in filling out forms, testifying in court, and other non-treatment related activities. While the Act has proven workable and involuntary commitment of the mentally ill have continued to occur, there are a number of areas in the Act that have proven repeatedly troublesome since its effective date. Senate Bill 346 is an attempt to amend some of those troublesome provisions that have tended to inhibit or hamper the treatment of the involuntarily committed mentally ill patient.

The majority of the amendments that are proposed in Senate Bill 346 are technical rather than substantive in nature, a number of the amendments are intended to change the Act in a way that is seen by many as improving its effectiveness. Those amendments that are considered to require clarification are discussed below:

Page 1, Section 1, Line 20:

During the period of time the Act has been in effect, many areas have applied literal interpretation to the requirement that "every" opportunity be afforded to respondents to accept voluntary treatment. The result has been instances in which a prospective involuntary patient has repeatedly refused to accept voluntary treatment until the court hearing is actually in progress or about to begin and then suddenly decides he will accept voluntary treatment. The court proceedings cease and the petition for commitment is dismissed. If, prior to arrival to API for involuntary admission, the patient changes his mind and again refuses voluntary treatment (as has been the case), the entire involuntary commitment process must be started anew.

This has been cause for considerable concern and confusion. The amendment offered would change "every" opportunity to "reasonable" opportunity to accept voluntary treatment. This would allow for some discretion in its interpretation. Thus, if a patient repeatedly refused voluntary treatment, the commitment process would proceed even if the patient requested voluntary treatment at a later time. This would insure that treatment would be possible and the expensive commitment process would not have to be repeated unnecessarily.

Page 2, Section 2, Line 7:

Under the Act, the age of majority, for purposes of accepting or rejecting voluntary treatment without the consent of a parent or guardian was set at 14 years old. This has created a number of difficulties especially for those children between the ages of 14 and 18 years of age.

For example, a 14 year old child could present himself at API and request admission without the knowledge or approval of the parent or guardian. As A.S. 47.30.845 (Confidential Records) does not give the hospital the authority to release any information to the parents or guardians of a person 14 years of age or older without the permission of the patient, it may not be legal for us to tell parents or guardians the whereabouts or condition of their child.

Also, a 14 year old child that would benefit from evaluation or treatment at API but does not meet involuntary civil commitment standards may not be admitted at the request of the parents or guardian unless the child voluntarily agrees to accept treatment. Thus, some mentally ill children may not receive necessary mental health care and treatment even though their parents or guardian attempt to provide these services for them. In cases such as this, it becomes even more ludicrous if the Division of Family and Youth Services attempts to file a petition to have the court find the youth as a child in need of aid by alleging that the child's medical needs are being neglected. If the parents or guardian sought voluntary hospitalization of the child that is 14 years old but the child refused treatment, then parental neglect, which would support a finding of a child in need of aid status, is not possible.

The amendment proposed would change the age of majority under this section from 14 to 18 years of age. This would be consistent with other statutes that govern the care of treatment of these children and adolescents as well as correct these legal anomalies.

Page 3, Section 5, Line 12

This would increase the period of time for voluntary hospitalization of a minor by 9 days (from 21 to 30 days). This additional time will increase the ability of the hospital to provide a more thorough and comprehensive evaluation and treatment program for mentally ill children.

Page 3, Section 5, Line 22-23.

This language would broaden the circumstances under which a minor may be accepted for admission at the hospital if the professional person in charge believes that hospitalization is necessary on a voluntary basis. This added provision could prove very helpful in addressing the treatment needs of mentally ill children and adolescents who are at risk of further deterioration and need hospitalization. Under the existing statutes, unless improvement in their condition can be reasonably expected, admission may not be possible. We believe this added provision will prove helpful in providing necessary care and treatment for this group of patients.

Page 4, Section 6, Lines 6-26

The addition of this language provides needed clarification regarding the circumstances and procedures for releasing or retaining mentally ill minors with or without the consent of the parent or guardian. It is especially pertinent as there have been occasions when the safety of the child or others was questionable and the child was not committable but the parents or guardian have demanded immediate release of the child. This amendment will make it possible to insure the safety of all concerned prior to release of the minor.

Page 5, Section 7, Line 3

By granting mental health professionals the authority to take mentally ill persons into custody under an emergency situation and deliver them to an evaluation facility, a number of problems will be alleviated. Under the existing statutes, if a physician in an emergency room examines an individual that is brought to the hospital by relatives or friends, and the patient is clearly mentally ill and is in need of immediate hospitalization, the physician may have to call the police in order to have a peace officer take the patient into custody and sign an application for the patient's examination. This situation may occur in any hospital in Alaska including API.

Under the proposed amendment, the physician or any other health care professional that is included in the definition of a mental health professional under A.S. 47.30.915(11), can sign the application for examination under A.S. 47.30.705 and have the patient held in custody pending completion of the exam and receipt of an ex part order.

Page 5, Section 7, Lines 9-12

As written, this proposed amendment, if strictly interpreted, could tend to prohibit the completion of examination or evaluations of patients that were detained in jails or correctional centers even if qualified evaluation personal were available. We certainly agree in principle that jails and correctional centers should not be used to hold the non-criminal, mentally ill; however, in practice, we have found that under certain exceptional circumstances, a jail or correctional center may be the only facility available to detain the patient at the local level for purposes of evaluation and insure the safety of the patient and the community.

It has been our experience that the utilization of there types of facilities is neither widespread nor indiscriminate and is used only on a very short-term basis. Nevertheless, when it is necessary to house patients in jails or correctional centers, we proceed with the examination, evaluation, and involuntary commitment process when the necessary resources are locally available. The time spent by these

patients under these circumstances is then counted for purposes of the 24 hour and 72 hour time limit that is required for examinations and evaluations to occur by mental health professionals. This tends to insure that patients are not detained longer than necessary and treatment, if indicated, can commence immediately.

Consequently, we recommend that this amendment be deleted and that the existing language in A.S. 47.30.705 on lines 12-15 (in brackets) should be retained.

Page 5, Section 7, Line 24

This amendment would change the period of time for the first involuntary commitment from 21 to 30 days and is repeated throughout Senate Bill 346. The additional 9 days would tend to reduce the administrative workload of our treatment staff while having little or no effect on the period of time patients are actually involuntarily hospitalized.

Rather than interrupt treatment on the 21st day in order to undergo the 90-day commitment process, treatment could continue for an additional 9 days if necessary. This would allow medications and other forms of therapy an additional period of time to stabilize the patient, possibly resulting in a discharge of the patient between the 21st and 30th day.

Page 9, Section 10, Lines 17-19

This amendment is designed to insure that a less formal courtroom atmosphere is possible during the involuntary civil commitment process. This should make the commitment proceedings less painful and frightening to the mentally ill respondent.

Page 9, Section 10, Lines 27-28

The addition of this provision to allow a respondent to call his own experts or other witnesses to testify on his behalf is not seen as necessarily having an impact on the Division of Mental Health and Developmental Disabilities unless the respondent decides to call experts from API to testify on his behalf. It may, however, have a financial impact on the Alaska Court System if the respondent is indigent and the court has to pay the expenses of the experts and other witnesses called by the respondent on his behalf.

Page 12, Section 13, Line 7

This amendment would change the 120-day commitment to 180 days and is repeated throughout the bill. This change will reduce the administrative and procedural requirements necessary for the long-term, chronic mentally ill patients that require extended periods of involuntary hospitalization.

Page 13, Section 16, Lines 23-26

This additional requirement for notification of a patients family or guardian as well as any person known to been threatened by the patient of his unauthorized absence from the treatment facility is supported by the Division of Mental Health and Developmental Disabilities. We feel that this is an appropriate and necessary measure in cases such as this.

Page 14, Section 18, Lines 8-9

The addition of this language is seen as necessary and will correct what appears to have been an oversight when the he Act was drafted. It simply makes specific that computations of time for a patient being evaluated or a patient being detained for evaluation do not include Saturdays, Sundays, legal holidays, or transportation time and are not to be included in the 72 or 48 hour time limitation prescribed by the Act.

Page 15, Section 19, Lines 6-7

This adds mental health professionals among those that may not be held civilly or criminally liable for detaining and transporting a person, under the Act. This amendment is consistent with this section of the Act.

Page 15, Section 20, Lines 15-17

This amendment will require that an adult designated by the respondent must give informed consent in cases in which the patient is unable to give informed consent prior to certain treatments being authorized. We feel this is an appropriate addition to the Act.

Page 15, Section 21, Lines 28-29

This simply requires that an adult designated by the patient must be provided a copy of the patient's discharge plan. This is consistent with A.S. 47.30.845 under the existing statutes regarding confidential information.

Page 17, Section 24, Lines 6-8

This proposed amendment would clarify the circumstances under which the hospital may release confidential information and records to law enforcement agencies when they are concerned that a patient or ex-patient may present as an imminent danger to the community. Under certain circumstances, we feel it is in the best interests of the community and the patient to take such action.

Page 17, Section 24, Line 13

The addition of this language will include hospitals operated by the federal government, such as the PHS facilities, for use as evaluation facilities for purposes of the Act. Under the existing statutes, these facilities are not included in the definition of an evaluation facility and some of these federal facilities have not been able or willing to be utilized in this capacity.

Page 17, Section 24, Lines 21-25

This addition to the definition of a gravely disabled person will significantly clarify and improve our position with respect to the involuntary care and treatment of these patients. An additional period of hospitalization may help prevent further deterioration of gravely disabled persons in order to avoid or reduce the risk of further tragedy and/or agony.

Page 18, Section 27, Line 1

This amendment offered in the bill will reduce the standard upon which a potentially suicidal person may be taken into custody and involuntarily committed. It is our belief that this is both necessary and appropriate given our current rate of death by suicide in Alaska.

Page 18, Section 27, Lines 5-8

As in the previous section, this language will alter the standard for involuntary hospitalization of a person that may present as a danger to others or to the property of others. This may allow some seriously mentally ill persons to be involuntarily committed before they actually harm another person or another person's property.

Page 18, Section 28, Lines 17-20

This simply requires that a psychologist or a psychological associate must be trained specifically in clinical psychology in order to be considered a mental health professional for purposes of screening, examination, and evaluation under the Act.

Page 18, Section 28, Lines 22-24

This amendment is intended to include in the definition of mental health professionals those registered nurses that have experience in psychiatric nursing in a JCAH accredited psychiatric hospital for purposes of screening, examination, and evaluation under the Act. This is considered an appropriate addition to this definition.

POSITION PAPER/Department of Health & Social Services

The Department of Health and Social Services generally supports the amendments contained in Senate Bill 346 and endorses its passage with the exceptions noted above.

Recommended by: Philip Shapiro

Philip Shapiro, M.D.,
Director, Division of Mental Health and Developmental Disabilities

Date: 11/30/84

Approved by: Robert London Smith

Robert London Smith, Ph.D.
Commissioner

Date: 11/30/84

ALASKA MENTAL HEALTH ASSOCIATION

2611 Fairbanks Street, Suite A Anchorage, Alaska 99503
Telephone 276-1705

A Division of the National Mental Health Association

February 29, 1984

Senator Joe Josephson
Pouch V
State Capitol
Juneau, Alaska 99811

Dear Senator Josephson:

On February 15, 1984, I was involved in an emergency commitment situation which occurred at approximately 4:30 p.m., and which I think exemplifies one of the basic problems with the current commitment law. A patient came to the Fairbanks Community Mental Health Center for treatment and expressed an intent to kill herself. After evaluating her, the mental health professional called Carol Davis, the Probate Clerk who ordinarily handles these cases for the Magistrate. Ms. Davis stated she could not order an involunatry emergency commitment after hours because she could not do the paperwork. She would give the order if a physician at the hospital requested it. She advised the Center to call the police and have them exercise their authority to Emergency Commit the patient.

When the municipal police arrived, they said they knew they could commit, but refused to exercise their power because it is their agency's policy to avoid this responsibility except when they "encounter" a person in the usual course of their duties. They appeared to feel that the court system was "dumping" the responsibility on their shoulders after hours.

As you know, under current law, neither the mental health professional or a physician can act in this type of situation alone. In fact, the policemen involved were aware of this and also aware that they were the only ones empowered to act alone. Needless to say, this stalemate tied up the mental health professional - who was forced to cancel other patients - the court representative, and the police. It was finally resolved by an extra-legal (in my opinion) act. The police officer said that he would transport the patient to the Fairbanks hospital emergency room if the emergency room doctor would agree to see her and, in effect, authorize the involuntary transport. This freed the Center to resume its activities and seemed to shift the responsibility to the hospital.

I think you can see that the Mental Health Center and the patients are caught in a kind of territorial dispute between the municipal police and the court

system. Since both of these systems feel free to operate independently, the "system" of care breaks down. It results in one emergency commitment system for 9:00 a.m. to 5:00 p.m., and another for 5:01 p.m. to 8:59 a.m. A similar stand-off has occurred in Anchorage, although the situation in Fairbanks is more complicated because the system must depend upon a private hospital.

The provision in the revised commitment bill which reinstates the physician certificate (or mental health professional certificate) would alleviate this this problem.

It would also be alleviated if the courts and the police would work cooperatively.

Sincerely,

Jerry L. Schrader, M.D.
President, Alaska Mental Health Association

cc: Chief Mathew Kiernan
Charles M. Mac Gibson
Phyllis Vanairsdale

STATE OF ALASKA 1984 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date:

REQUEST
Bill/Resolution No.: SB 346
Title: "An act relating to the treatment of mentally ill persons."
Sponsor: Sen. Josephson & Halford
Requestor: Senate HESS
Date of Request: 1-20-84

FISCAL DETAIL
Agency Affected: Public Safety
Program Category Affected: Administration of Justice
BRU, Program or Subprogram(s) Affected: Alaska State Troopers

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 84	FY 85	FY 86	FY 87	FY 88	FY 89
OPERATING						
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 SUPPLIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS						
800 MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0
CAPITAL	0.0	0.0	0.0	0.0	0.0	0.0
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND	0.0	0.0	0.0	0.0	0.0	0.0
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

This Bill provides law enforcement officers with the latitude to protect both the mentally ill person and the public from the actions of the mentally ill.

ANALYSIS: Attach a separate page for analysis

Prepared By: Francis C. Allan G.C.A. mcK Phone: 269-5691
Division: Alaska State Troopers Date: 01/19/84

Approved by Commissioner: Robert A. Sundberg Date: 1-20-84
Agency: Public Safety

Distribution (by Agency preparing fiscal note):
Legislative Finance
Legislative Sponsor
Requestor
Office of Management and Budget
Impacted Agency(ies)

JUSTICE - Andy/SS

12/1/83

FISCAL NOTE

Revision Date:

REQUEST
Bill/Resolution No.: SB 346
Title: "An Act relating to the treatment of mentally ill persons."
Sponsor: Sen. Josephsen
Requestor: Senate HESS
Date of Request: 1/17/84

FISCAL DETAIL
Agency Affected: Department of Law
Program Category Affected: General Government
BRU, Program or Subprogram(s) Affected: Legal Services Operations

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 84	FY 85	FY 86	FY 87	FY 88	FY 89
OPERATING						
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 SUPPLIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS						
800 MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND	-0-	-0-	-0-	-0-	-0-	-0-
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS:

FULL-TIME	-0-	-0-	-0-	-0-	-0-	-0-
PART-TIME						
TEMPORARY						

SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

ANALYSIS:

This act amends the state's statutes covering the treatment of mentally ill persons. The amendment clarify existing law and provide additional safeguards for the general public and the relatives of mentally ill persons, while seeking to protect the legal rights of persons suffering from mental illness. The amendments will not require any additional legal services, over those currently being provided, and their enactment will not have a fiscal impact on the department's operations.

Prepared By: Richard I. Pegues / Director
Phone: 465-3672
Division: Administrative Services
Date: 1-18-84

Approved by Commissioner: Norman C. Gorsuch / Richard I. Pegues for NCG
Date: 1-18-84
Agency: Department of Law

Zero LAW-Analysis

STATE OF ALASKA 1984 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date:

REQUEST
Bill/Resolution No.: SB 346
Title: An Act relating to the treatment of mentally ill persons
Sponsor: Josephson and Halford
Requestor:
Date of Request: 1-11-84

FISCAL DETAIL
Agency Affected: Division of Mental Health and Developmental Disabilities
Program Category Affected: API

BRU, Program or Subprogram(s) Affected:

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 84	FY 85	FY 86	FY 87	FY 88	FY 89
OPERATING						
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 SUPPLIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS						
800 MISCELLANEOUS						
TOTAL OPERATING		0	0	0	0	0
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

ANALYSIS: Attach a separate page for analysis * See Attached

Prepared By: James L. Scoles (PS) (PR) Phone: 465-3370 cc-
Division: Mental Health & Developmental Disabilities Date: 1-20-84

Approved by Commissioner: Robert London Smith Date: 1/30/84
Agency: Dept of Health & Social Services

Distribution (by Agency preparing fiscal note):
Legislative Finance
Legislative Sponsor
Requestor
Office of Management and Budget
Impacted Agency(ies)

HEALTH-ANALYSIS
12/1/83

The Division of Mental Health and Developmental Disabilities does not foresee any increase or decrease in expenditures as a result of the passage of SB 346 at this time. The primary purpose of this bill is mainly directed at reducing the procedural requirements of A.S. 47.30.655 - 47.30.915, changing the age of majority from 14 to 18 years of age, changing the period of time for the initial commitment from 21 to 30 days and the third period of commitment from 120 to 180 days, expanding the definition of peace officers to include mental health professionals, and slightly relaxing the standards for commitment.

We do not believe that any of these proposed amendments will increase or decrease the number of mentally ill persons that will require hospitalization. The amendments should, however, make it easier to commit the mentally ill which should result in more professional staff time available to provide direct patient care and treatment rather than excessive time being expended in the commitment process.

Alaska State Legislature

REP. MAE TISCHER
CHAIRMAN

POUCH V
STATE CAPITAL
JUNEAU, ALASKA 99811
(907) 465-3777

House of Representatives
HEALTH, EDUCATION AND SOCIAL SERVICES COMMITTEE

M E M O R A N D U M 5-25-, 1984

TO: Chairman, House Judiciary Committee
FROM: Representative Mae Tischer, Chairman, House HESS MT
RE: Back-up materials for SB 346 by Lowe

Attached please find back-up material obtained by the House HESS Committee staff on the bill described above.

I hope this material is valuable to your committee as you consider this legislation. If my staff or I may be of additional assistance, please feel free to contact my office at x 3777.

Attachment

COMMITTEE REPORT

HOUSE

(7) FURTHER: JUDICIARY

4/11/84 Date: May 24, 1984

The Committee on HEALTH, EDUCATION AND SOCIAL SERVICES has had CSSB 346(Jud)am

"An Act relating to the treatment of mentally ill persons."

under consideration and recommends:

[ ] do pass [ ] do not pass

[ ] do pass with attached amendments(s)

[X] replace with HCS for CSSB 346 (HESS) [X] same title [ ] new title

and recommends _____

[ ] AND attaches a "Letter of Intent" [ ] New Fiscal Note [ ] Zero Fiscal Note Attached

[ ] reports it back without recommendation

[ ] referred to the _____ Committee

MEMBERS SIGNING DO PASS

Mae Fischer

MEMBERS HAVING OTHER RECOMMENDATIONS:

Rick Kelly (NO REC.)

T.H. Martin (No Rec)

Mike Davis NO REC

Nick Kopman no rec.

Peter Doe needs amendment

Sam Pestinger no rec.

Mae Fischer
CHAIRMAN

NUTRITION AND ORTHOMOLECULAR THERAPY

Nov. 1983

Prepared for the

APA Commission on Psychiatric Therapies

NUTRITION AND ORTHOMOLECULAR THERAPY

Nutrition is a branch of biology which studies the requirements for foods, their composition, and the processes by which they are converted into energy and the tissue growth and repair required for health and life. Prior to about 1750, nutrition was naturalistic and ethno-pharmacological. Plant and animal foods of unknown chemical composition were eaten in diets which varied greatly from culture to culture. Centuries of trial and error had demonstrated their value or danger. Certain foods were designated by Hippocrates to have special curative properties which were useful in the treatment of many of man's illnesses. Others were poisonous or tabooed for unknown reasons. In the period from 1750 to 1900, as chemistry developed, foods were simply classified chemically as carbohydrates, proteins, fats and the non-combustible ash. Attempts to raise animals on diets containing only these quickly showed the inadequacy of this simple classification. The golden age of nutrition occurred between 1900 and 1950. When the need for micronutrients was discovered, a conceptual revolution occurred with the insight that much of man's illness resulted from the absence of significant dietary constituents. To the established infectious and toxic theories of illness were added the deficiency diseases. With the discovery of vitamins, essential amino acids and trace elements, the nature of common diseases like pellagra, beri beri, scurvy, nutritional anemia and protein malnutrition were quickly understood. The development of quantitative standards for daily requirements of these nutrients for man, animals, and plants stimulated revolutionary changes in food production and several major public health triumphs. It is difficult to recognize that less than 50 years ago there were more than 200,000 cases of pellagra annually in this country. Mortality from this illness averaged 33% and about 10% of the beds in insane asylums

the country were occupied by demented patients with this illness. In the South, where pellagra was endemic because of the staple diet of corn, fatback and molasses, from 1/3 to 1/2 of the state mental hospital population had physical symptoms of pellagra and dementia (1). Pellagra was also very common among sharecroppers and in prisons, orphanages, and other state institutions. The discovery in 1937 that vitamin B_3 (niacin) was the antipellagra vitamin and the subsequent fortification of most cereal products with this vitamin made pellagra virtually absent in this country. Clinical nutritional research was greatly accelerated in World War II because of the need to develop adequate military rations. It led to the semi-quantitative determination of human needs for most nutrients. It was so successful that World War II was the first war in which more combat troops died from war injuries than from malnutrition and infection (2). The spin-offs to civilian nutrition were large. Today, nutritional science is sufficiently advanced so that, in this country, malnutrition is uncommon and when it does occur, it is likely a function of poverty, alcoholism, or self-selected inadequate diets. This is not true in the Third World where millions of children are stillborn, retarded, or die within the first few years of life because of the unavailability of adequate calories, protein, or micronutrients (3). In the world as a whole, malnutrition today remains as large a public health problem as infectious disease with which it constantly interacts.

In the richer, industrialized world, research in nutrition has moved into more specialized areas. In medicine, there have been significant advances in the study of the nutritional needs of special populations like pregnant women, premature infants, and the elderly. Vitamin requirements have been shown to increase when some drugs are administered for treatment of tumors, convulsions,

or even contraceptive purposes (4). Great advances have been made in furnishing the nutritional requirements of postsurgical patients or those with severe burns by total parenteral feeding. Specialized nutritional needs have been found for some patients with ophthalmological or dermatological disease. Genetic illnesses, like phenylketonuria, have been found to be clinically responsive to minimizing the intake of the amino acid phenylalanine. Rare genetic autosomal recessive illnesses characterized by mental retardation and multiple somatic defects have been found. These can be prevented or cured by the daily administration of very large quantities of particular vitamins (3,5,6).

Nutritional theories of the etiology of common mental illness and behavior disorders and treatments based on these theories are very controversial. Nevertheless, new diagnostic methods have shown that several psychiatric illnesses may be complicated by nutritional deficiency and may respond to nutritional supplementation. We shall discuss these below. These are all reviewed in an excellent text, Nutritional Support of Medical Practice (7). A comprehensive review is offered in the five volumes entitled Nutrition and the Brain (8).

Many natural foods, especially those from plants, contain chemicals which are biologically active and may be either toxic or therapeutically useful. Many of these substances have been identified and isolated in pure form and now are useful products in our pharmacological armamentarium. In the industrialized world, food chemists supplement natural foods with nutrients and also with natural and synthetic additives which enhance the taste and appearance of foods and diminish spoilage, thus enhancing their useful distribution. Residues from synthetic herbicides and insecticides used to increase crop production and steroids and

antibiotics used to increase animal food production may appear in our food. Because of this, there has arisen the quasi-nutritional subspecialty of nutritional toxicology designed to protect the public from foods which might contain dangerous chemicals like mercury in fish or selenium in wheat or foods to which chemicals are purposely added during processing. There has also been increasing interest in what might be called nutritional pharmacology. Selected, specific nutrients like the amino acids tyrosine and tryptophan or the quaternery ammonium compound choline can be fed in doses greatly above their usual intake levels in order to elevate neurotransmitters in the brain. Such precursor therapy is actively under investigation and its interest to psychiatry will be discussed below. Although the substances used are natural and even essential in our daily diet in small quantities, quantities employed in precursor therapy are so much greater than are ordinarily required that we choose to call the use of the substances in these quantities "pharmacological." Moreover, their biological effects at high concentrations may be different from and unrelated to their primary action. For example, nicotinic acid and nicotinamide have identical nutritional value as vitamin B_3. In very high doses, nicotinic acid causes vasodilation and lowers blood cholesterol; nicotinamide does not. These actions of nicotinic acid at high doses are considered pharmacological (9).

There is also included under the rubric of nutrition, the study of food allergy and hypersensitivity to either specific foods or to commercial additives. Reactive hypoglycemia, generally attributed to the use of high carbohydrate diets which result in the over-production of insulin which, in turn, leads to hypoglycemia has also been studied in relation to clinical states as diverse as panic disorders, depression, and aggression leading to crime and delinquency (10,11).

Along with the slow, cautious, and steady advances in nutrition, there continues to be what we call "pseudonutrition". Nutritional fads have been promulgated in the lay press, in books, and in a few journals. These attribute many common somatic and psychiatric complaints to inadequate or toxic diets. They promise much: enhancing longevity, diminishing the risk of, or improving the treatment of cancer, heart disease, and the major mental illnesses with appropriate dietary therapies. These generally unproven treatments are especially popular among those with illnesses which are chronic and for which conventional medical or psychiatric treatment is slow, not yet fully adequate, and often, expensive. Patients with cancer and mental illness seem to be extraordinarily susceptible to seduction by these claims. Substantial efforts and quantities of time and money have been spent in scientific trials to test the claims of nutritional faddists. Despite many negative results, the claims persist. We shall, therefore, devote some time and space to a discussion of the theory which underlies the claims of the therapeutic value of orthomolecular psychiatry, additive free diets, hypoglycemic diets, and diets designed to eliminate substances to which patients claim to be hypersensitive and which they feel may cause the major mental illnesses.

Nutritional Principles

Man, as an evolutionary product of the animal kingdom, has nutritional needs similar to those of other mammals. The complex foods he eats are digested to simpler molecules which are then absorbed and resynthesized under genetic interactions to the multitude of compounds of which he is made. Maintenance of body temperature, movement, growth, repair and reproduction require energy supplied mainly by the oxidation and carbohydrate and fat. Metabolic end products like exhaled carbon dioxide or urinary nitrogen metabolites need constant replacement from dietary intake. Even the body minerals are constantly turning over metabolically and must be replaced by ingested food. For growth and development, a positive balance of calories and essential nutrients must be supplied. For adult maintenance the balance should be zero. Control of appetite and food intake involves a complex set of sensors and feedback systems in the brain and endocrine organs which are beyond the scope of this chapter.

Despite the capacity of each species to synthesize the myriad of compounds unique to it, some things must be supplied in the diet. These include water, the major anions and cations of the cellular fluids and skeleton, and trace elements like copper, manganese, cobalt, fluorine, vanadium, selenium, and zinc. Ten amino acids cannot be synthesized and must be furnished. They are needed for the synthesis of proteins and other nitrogenous compounds. Thirteen vitamins are required, four of these are fat soluble, eight are members of the vitamin B complex and vitamin C is uniquely required by man, primates, the guinea pig, an East Indian bat, and a bird. It is a remarkable testimony to the synthetic capacities of the body that the thousands of compounds of which we are made can all be synthesized from approximately two dozen organic compounds furnished in the diet.

Several features of man's nutrition deserve comment. First, as mentioned previously, he is quite rare in requiring vitamin C. The evolutionary purpose of this is not known. Second, he is an omnivore who eats a greater variety of foods than any other known species except perhaps the rat. Undoubtedly, this offers a great evolutionary advantage since it permits man to survive on the indigenous food of any region on earth. Third, he is apparently the only species whose choice of diets is determined by taste, smell, color, appearance, and even texture. He is the only animal for whom eating is both a necessity and an aesthetic experience. In contrast to most animals who eat the same food every day of their lives, man constantly seeks variety and, whenever possible, gets it. The aesthetic qualities of food have had inte esting social consequences. For example, it may be argued that Columbus discovered America while looking for food additives; that is, the spices that help to preserve food and enhance its taste and color. In the industrialized United States, food companies compete vigorously to produce products which are more attractive than their competitors even though they are nutritionally equivalent. This is done with food additives. Many of the food fads are based upon presumed, but unproven, hazards created by commercial food processing. Man still attributes to foods magical properties which can hurt or help him.

Fourth, the precise nutritional requirements for man are less well known than they are for the domesticated animals which supply his food. There are several reasons for this. Experiments can be done on food animals which cannot be done safely with man. Animals are bred to be genetically homogeneous and efficient in their conversion of food to milk, eggs, or edible animal protein. Their daily activities and energy output are much more closely regulated than are those

of man. Finally, the economics of the food industry make it essential to know the minimum food requirements of animals for maximum growth and marketability. Despite the difficulties in precisely determining the nutritional requirements of man, reasonable estimate have been made since 1941, by the Food and Nutrition Board, National Research Council of the National Academy of Sciences. These are revised every five years; the 9th edition (121) was published in 1980. It offers recommended daily allowances (RDA) for calories, protein, minerals, and vitamins for men, women, and children. The RDA are not minimal requirements. Recognizing substantial variance in man's nutritional needs because of genetic heterogeneity and living habits, they are calculated by the Board to exceed average nutritional needs by a "safe margin" allowing for individual differences in a basically healthy population. The magnitude of the safety factor is substantial. For example, the minimal requirement for folic acid is estimated to be about 50micrograms per day; the RDA is 400micrograms. The RDA has been accepted by the American Medical Association (122) and is used by the Food and Drug Administration for food labelling. It is also the basis on which the Department of Agriculture and the United States Public Health Service established national food programs and nutritional educational programs. The RDA can be found in most standard texts of medicine, pharmacology, and biochemistry (3,4,7).

In an affluent society, man's omnivorous appetite and his wish for variety makes it easy to obtain a nutritionally sound, balanced diet. RDA requirements are generally met by diets which offer a mixture of four food groups in adequate proportions. These groups are (1) Fruits, vegetables, and fruit juices; (2) Grains and grain products; (3) Meats and meat products; (4) Milk and milk products.

Such diets offer adequate nutrients as well as taste and variety. When they are consumed, vitamin or mineral supplementation is not required. Impoverished populations here or abroad who subsist largely on grain and who have no variety in their diets generally need supplementation with vitamins, minerals, and other proteins.

Under special conditions of illness, severe dieting, heavy alcohol consumption, stress, pregnancy or lactation, supplementation may be desirable with modest quantities of vitamins. Massive supplementation with megadoses of vitamins is required only in three conditions. (1) In the genetic vitamin dependency or insufficiency illnesses, (2) When there are transport difficulties for nutrients in the gut or across other cell membranes, and (3) When antivitamin antimetabolites are used as in the treatment of cancer.

Some orthomolecular psychiatrists believe that the brain may have nutritional requirements so much larger than the other body tissues that cerebral avitaminosis may exist and may account for much major mental illness.

But, malnutrition generally produces mental changes along with somatic changes like weight loss or anemia. In early or minimal nutritional deficiences mental changes may occasionally appear before readily observable physical changes ensue. But, careful examination will reveal lowered blood or tissue levels of vitamins or minerals. The mental changes associated with vitamin deficiency are nonspecific. Perusal of the literature shows that weakness, irritability, anxiety, anorexia, lassitude, depression, apathy, anergia, headache, dizziness and inability to concentrate have been reported in subjects or patients with mild deficiency of any of the water soluble

vitamins. When the deficiency is severe, memory loss, disorientation, delusions, hallucinations, and other signs of dementia may appear.

Clinical ecologists, advocates of the Feingold diet, and some orthomolecular psychiatrists believe that in some individuals, the brain may be uniquely allergic or hypersensitive to certain foods, food additives, or other environmental chemicals. Such hypersensitivity is considered by them to be related to hyperkinesis in children and a variety of illnesses including schizophrenia, depression, anxiety, drug addiction and antisocial behavior.

But, allergy or hypersensitivity when it exists involves the whole body and is manifested by physical symptoms like asthma and urticaria as well as by nonspecific mental complaints.

In the following sections we shall discuss: Consequences of protein calorie malnutrition, psychiatric manifestations of deficiencies of some of the B complex vitamins and the use of amino acids in pharmacological doses as precursors of neurotransmitters. Finally, we shall devote the remainder of the chapter to an examination of what we call "pseudonutrition" in relation to psychiatric practice.

Protein Calorie Malnutrition

Many studies conducted in impoverished socities have shown that severe, prolonged protein calorie malnutrition is especially devastating to infants and children and that the consequences are prolonged and likely irreversible. The results of such studies have been summarized in several excellent monographs derived from international conferences on this subject (12,13). The reasons for this high vulnerability is the rapid growth of the human brain in infancy and the effects of malnutrition on its growth and development. Winnick (14) has shown that, in the human, the number of brain cells increases linearly from gestation until birth and then more slowly until about 10 months of age, at which time it virtually stops. Cell size, in contrast to cell number, continues to increase for several years. Myelination occurs rapidly at birth and is still occurring at two years. The weight of the brain increases rapidly through gestation and the first two years of life, its rate of growth diminishes thereafter, but adult weight is not reached until adolescence. Studies on the brains of children who have died from malnutrition show that children dying from marasmus in the first two years of life have from 15 to 50% fewer brain cells than normal children of comparable age. Children with kwashiorkor who become malnourished after being taken off the breast in the second or third year of life have a normal number of brain cells, but the size of the cells is diminished (15). Studies of the behavior of children who survive early malnutrition show that such children have profound disturbances in the acquisition of language, motor skills, interpersonal relationships, and adaptive and motivational behavior. Memory defects have also been found (12,14). Most of these studies have been limited to children studied only a few years after recovery from malnutrition. However,

an ongoing longitudinal study by Cravioto and DeLicardi (16) should ultimately give an answer to the question of whether or not the damaging consequences of early malnutrition are truly irreversible. If they are, it would lead to a vicious cycle in which malnutrition during infancy results in a large pool of poorly functioning people who, because of their poor level of functioning, rear their children under conditions destined to produce a new generation of malnourished people (14,16). Children born in the poverty that leads to malnutrition also live in social and family environments which are themselves capable of retarding mental and behavioral development. Some ingenious experiments on rats, conducted by Francova (13) have shown that protein deficient rats, raised with their mothers and litter mates show about 20% decrement in exploratory activity. Rats on normal diets that have restricted optical and acoustical stimuli show about a 30% decrement in exploratory activity. Rats deprived of both protein and environmental stimuli show a 90% decrement. The effects of both types of deprivation simultaneously are thus more than additive; they are synergistic. The introduction of an "aunt," a nonpregnant virgin female, into the cages of protein deprived infant rats elevated their performance to that of normal rats, even though such a "mother's helper" did not lactate and was unable to offer food. She did, however, stimulate them by grooming and retrieving them. DeLicardi and Cravioto have conducted experiments which led to similar conclusions in impoverished children from an agricultural community in Central America. In this population, 83% of the children showed no clinical signs of malnutrition, 11% showed mild and moderate malnutrition, and 5% showed severe malnutrition. Yet, the families of all of the children had approximately equal incomes, land, and food. Therefore, no correlation could be established between the amount of food available to the

families of these children and the level of malnutrition. However, a significant correlation was found by psychologists who studied this cohort of children while unaware of their nutritional antecedents. They found that the degree of psychological stimulation offered at age six months to those children who later developed severe malnutrition was significantly lower than that of controls from the same population matched by age and birth weight. In children whose diets are marginal nutritionally, psychosocial deprivation predisposes them to severe malnutrition. Malnutrition, in turn, diminished activity, motivation, exploratory behavior, and those complex signals that ordinarily elicit a stimulating and gratifying response from adult parents. A vicious cycle is thus set up in which the effects of malnutrition synergize with those of environmental deprivation. The consequences may lead to irreversible emotional and mental disorders of development. The interaction between nutrition and psychosocial stimulation is not unique to rats or man. All species that have been studied show the same interaction (13).

Vitamin Deficiency States

Vitamin Requirements

Several methods have traditionally been used to determine the vitamin requirements of human subjects. One, employed commonly with conscientious objectors during World War II was the deliberate production of nutritional deficiency followed by the measurement of the quantity of nutrient required to eliminate the signs and symptoms of the deficiency and to maintain health. This quantity was then considered the recommended dietary allowance, and was added to the K rations of our troops. Variations on this strategy use populations in which nutritional deficiency is endemic. Another approach is to measure abnormal metabolites of carbohydrate and protein known to exist in specific deficiencies in the blood and urine. For example, elevated blood lactate and pyruvate occurs in thiamine deficiency. The dose of a specific vitamin required to correct this biochemical abnormality is considered to be the daily requirement. The third approach is the direct measurement of the vitamin in the blood and urine by chemical or microbiologic means. "Normal" levels have been established. This strategy involves the use of large populations of healthy subjects of different age, sex, and race in order to obtain normative data. Recently a new approach to the measurement of vitamin requirements has been proposed. This is based on the assumption that the enzymes requiring cofactors should be fully saturated with cofactor at all times and that a vitamin deficiency exists if they are unsaturated. For example, serum or erythrocyte glutamic-oxalacetic transaminase activity is measured with and without added pyridoxalphosphate, the cofactor. If activity is greater with added cofactor, the enzyme is unsaturated and a

deficiency is said to exist. This method is somewhat controversial but it may be useful in detecting cases of vitamin deficiency and vitamin insufficiency illnesses (17).

Using such methods, a number of vitamin deficiency states relevant to psychiatry have been found; usually they are secondary to the use of pharmacological agents. They most commonly follow the long term use of antituberculosis drugs, anticonvulsants, oral contraceptives, and anti-tumor drugs (18).

The functions of the water soluble vitamins in the nervous system, the manifestations of deficiency and their therapeutic utility has recently been reviewed in great detail (8.19). The following emphasizes features unique to psychiatry:

Vitamin B_6

Vitamin B_6 has many neurobiological functions. It is the precursor of a coenzyme required for more than 50 enzymes in the body. It is so widely distributed in our food supply that it has not been found to occur in populations throughout the world. It has been produced experimentally. Mental symptoms associated with deficiency include lassitude, weakness, depression, anorexia, and confusion. Somatic symptoms include a microcytic anemia which fails to respond to iron but improves dramatically following treatment with small doses of the vitamin. Isoniazide and cycloserine form carboxyl addition compounds with pyridoxal or pyridoxal phosphate that make it unable to function as a cofactor in the approximately 50 enzymes with which it is associated. The administration of vitamin B_6 supplement along with antituberculosis medication reveals that both neurologic and psychiatric symptoms disappear when supplementary vitamin is given in appropriate quantities (20). Estrogens have been shown to compete with pyridoxal phosphate for binding sites among its numerous apoenzymes. High estrogen levels which

occur during pregnancy or the use of oral contraceptives seem to increase the requirements for vitamin B_6. In therapeutic trials on women who developed depression during pregnancy or while taking oral contraceptives, vitamin B_6 supplementation has been reported to improve mood and to correct the abnormal urinary excretion of tryptophan metabolites (21,22,23). Based on such findings some investigators recommend the inclusion of supplemental B_6 into oral contraceptive preparations (22). In Spain, manufactured oral contraceptives contain 25mg of pyridoxine and the combination is reported to produce fewer side effects (24). The RDA for vitamin B_6 for adults is 2.0mg/day. Doses 10 times this are safe and can prevent deficiencies due to drugs administered for other purposes. Although vitamin B_6 is not very toxic, doses several hundred or thousand times of the estimated daily requirement have been reported to cause convulsions and liver hypertrophy (25).

Vitamin B_3

Vitamin B_3 (niacin, niacinamide, nicotinic acid, nicotinamide) is combined with adenine, ribose and phosphoric acid in the body cells to form nicotinamide adenine dinucleotide (NAD). This is a cofactor for many enzymes which catalyze oxidation reduction reactions which are involved in energy release from carbohydrate, the synthesis of fatty acids, steroid metabolism, etc. Niacin in the judgment of some is not truly a vitamin because limited quantities can be synthesized from the metabolism of the essential amino acid tryptophan (26). While this is correct, historical usage, plus the fact that niacin deficiency can be produced on diets ordinarily adequate in tryptophan seem to us to warrant continued classification as a vitamin. Corn, which is deficient in both tryptophan and niacin, is the common food staple in countries where pellagra was common and where it continues to exist. Hartnup's disease is an autosomal recessive disease characterized by diminished absorption of neutral amino acids including tryptophan. Some of its

symptoms resemble pellagra and these respond to niacin (27). The recommended daily allowance of niacin is 6.6mg/1000 calories of food or about 10-20mg/day. The requirement increases during pregnancy and lactation (27).

Pellagra is characterized by a triad of symptoms - dermatitis, diarrhea, and dementia. In early deficiency, psychiatric symptoms are diffuse and include apathy, depression, anxiety and memory deficits. In severe pellagra, mania, delirium, organic dementia, bulbar palsy, and visual field deficits may be present. The EEG has excessive theta and delta activity. This returns to normal after niacin treatment. Routine manufacture of wheat flour and all cereal products supplemented with niacin has caused pellagra to virtually disappear in the U.S. Niacin deficiency in the brain, without deficiency in other tissues, has been claimed by orthomolecular psychiatrists to account for schizophrenia and other mental disturbances. This will be discussed later.

In pharmacological doses of 10-30grams/day, nicotinic acid, but not nicotinamide, lowers blood cholesterol and causes transient cutaneous vasodilation manifested by a flush (19). Nicotinamide, but not nicotinic acid, at doses of 250mg/day tranquilizes rodents and diminishes locomotor activity in gerbils (28). At similar doses, it increases REM sleep and it has been reported to be of benefit to some insomniacs (29). Nicotinamide also binds weakly to the benzodiazepine receptor (30). At ordinary dietary doses, the brain concentrations of nicotinamide are likely to be too low for biologically significant binding to this receptor, but at megadoses, this might occur. At such doses, niacinamide might have anxiolytic properties like the benzodiazepines. This has not been tested. Nicotinic acid and nicotinamide are identical as vitamins; the different properties of the two compounds occur only at pharmacological doses. Thus,

there is no evidence to relate their pharmacological properties shown at high doses to their classical vitamin action as precursors of NAD. Niacin and niacinamide are not very toxic even in megadoses, but in view of their use in orthomolecular psychiatry at doses 100-500 times higher than the average nutritional requirement, it is worth noting that reported side effects include hepatoxicity (31), hypotension, tachycardia, and hyperglycemia (32). There is a very recent report of severe sensory neuropathy from pyridoxine abuse at doses of 2-6mg/day for several months (158,159). These toxic must be balanced against any presumed therapeutic utility.

Vitamin B_{12}

Vitamin B_{12} (cyanocobalamin) is unique in three regards. It is the only vitamin containing a mineral (cobalt) as part of its chemical structure; it is not found in plants and its absorption from the gut requires a highly specialized mechanism the failure of which results in pernicious anemia. The RDA is about 3.0mg/day. 1micro daily causes remission of pernicious anemia. The vitamin is involved in transmethylation reactions, the synthesis of amino acids, purines and pyrimidines. It is vital for blood formation and the maintenance of neuronal integrity.

A number of studies have shown that 25-30% of patients with untreated pernicious anemia have either major or minor psychiatric problems (33). These include depression and apathy, irritability, confusion, and paranoid states. Neurological symptoms results from demyelination of the dorsal columns of the pyramidal tracts and result in the syndrome known as combined system disease. As many as 60% of untreated pernicious anemia patients have been found to have an abnormal EEG (33,34). Deficiencies of vitamin B_{12} may arise from strict vegetarian diets, but more often follow failure to absorb the vitamin as when there is lack of the gastric intrinsic factor or in ileitis and following bowel surgery. It may also follow chronic ingestion of alcohol or after the administration of neomycin, para-amino salicyclic acid or colchicine. There is an increased requirement for vitamin B_{12}

during pregnancy. Since folic acid is required for the absorption of B_{12}, folate deficiency may be accompanied by B_{12} deficiency (35,36).

Although a large percentage of patients with hematologic and neurologic findings of vitamin B_{12} deficiency also have psychiatric symptoms,

> . . . in a significant number of patients the psychiatric manifestations may be the first symptoms and can antedate anemia or spinal cord disease. A recent report (37) presents two cases of organic psychosis without anemia or spinal cord symptoms that responded dramatically to the appropriate administration of intramuscular B_{12}. It is noteworthy that both patients had normal hematologic profiles. Diagnosis was made by finding low serum levels of B_{12}. With restoration of appropriate B_{12} levels, the presenting symptoms disappeared. Evans et al. (37) recommends consideration of B_{12} deficiency and serum B_{12} determination of all patients with organic psychiatric symptoms whose cause is not clearly known. Even more recently, Van Tiggelem et al. (38) have suggested that blood levels of B_{12} may not always correlate with cerebrospinal fluid levels and that the latter may be much lower.

Folic Acid

Folic acid (pteroyl glutamic acid) is involved in: hydroxylation reactions required for norepinephrine and serotonin synthesis, transmethylation reactions, the synthesis of the purine bases, adenine and guanine, and the pyrimidine base thymine. Folic acid is, therefore, indispensible for the production of DNA and RNA. Transmethylation reactions are involved in myelin synthesis and in the inactivation of the neurotransmitters norepinephrine and serotonin. The RDA is less than 0.5mg/day. It doubles during pregnancy. Serum concentrations in man range from 5-30ng/ml. Folate deficiency has been produced in experimental animals. Diminished learning capacity and EEG changes have been reported in rat pups born of mothers with folate deficiency.

Folic acid, as the name implies, is present in leafy green vegetables and in meats. In man, folate deficiency occurs endemically in severely malnourished populations. It can be produced experimentally in volunteers on folate deficient diets and iatrogenically in marginally nourished people by the administration of anticonvulsants like diphenylhidantoin, oral contraceptives, or the antifolates used in the treatment of malignancy. In experimental folate deficiency, forgetfulness and insomnia appear at the same time as megaloblastic anemia and can be quickly reversed by the vitamin. In less pure deficiency states, occurring among the aged or chronically institutionalized patients, the spectrum of mental disorders includes apathy, irritability, depression, psychosis, delirium and dementia (39).

Folate deficiency can readily be determined by measurement of blood levels. When this is done, as many as 30% of psychiatric admissions have been reported to be deficient (39). Of a sample of admissions to a psychogeriatric ward, 67% have been reported to be folate deficient (40). Carney and Sheffield found that

about 25% of 432 psychiatric admissions have low blood folate levels. Folate treated patients with organic psychoses, endogenous depression and schizophrenia had shorter hospital stays and left in better clinical state than untreated patients (36).

An association between folate deficiency and gestational difficulties has been recognized for many years. Population surveys have shown that about 15% of women, especially among the poor, have marginal or deficient blood levels. Deficiency during pregnancy is associated with an increase in prematurity and teratogenicity.

In the last few years, evidence has accumulated which tends to relate folic acid deficiency during early gestation to neural tube defects and to the Fragile X syndrome of mental retardation. Both of these are polygenic illnesses in which the phenotypic expression of the genotypic defect is apparently determined by the nutritional state of the uterine environment. Smythells (42) has found that when 493 women who had already given birth to a child with neural tube defect gave birth to a second child, 23 of these had children with such a defect. In 397 similar women who were given a vitamin supplement containing folic acid prior to conception and through the first menstrual period, only 3 had such recurrences. This strikingly significant difference cannot be readily explained except by a direct prophylactic effect of vitamin supplementation very early after conception.

The Fragile X chromosome is a relatively newly discovered cause of mental retardation. The fragility of the X chromosome can be rectified <u>in vitro</u> by folic acid (43). Lejeune (44) has reported that the administration of folic acid greatly reduced symptoms of autism and psychotic complications of mental retardation in 7 out of 8 such patients.

Both of these interesting findings clearly require confirmation. If confirmed, they will represent a major advance in the understanding and treatment of two devastating illnesses of concern to neurologists, psychiatrists, and pediatricians through appropriate nutritional supplementation early in conception. A series of studies have shown that folic acid can be added to staple foods, as nicotinic acid commonly is, and that such fortification is feasible, safe, and effective (155). Until this is done, oral administration of folic acid tablets at a level of 0.5mg/day to pregnant women, especially those living in poverty, appears to be prudent (155).

A genetic vitamin dependency illness which required about 20mg of folic acid daily has been reported. These rare cases presented with homocystinuria. One such patient showed mild mental retardation with symptoms of schizophrenia which improved after folate administration and recurred 6 months after the supplementary vitamin was dicontinued (41).

Quasi-Nutrition

Precursor Therapy

Communication between neurons in the central nervous system, it is generally accepted, is overwhelmingly chemical. Neurotransmitters synthesized in presynaptic neurons are extruded into the synaptic cleft when the neuron fires. They then engage specific receptors on post synaptic neurons and initiate a series of metabolic steps which may excite, inhibit, or modulate their activity. More than 20 neurotransmitters are thought to exist; they range in composition from simple amino acids to complex polypeptides. The classical neurotransmitters, dopamine, norepinephrine, serotonin, and acetylcholine have been the most studied. The paradigm for precursor therapy is the use of L-DOPA in Parkinson's disease. The enzyme for the conversion of tyrosine to L-DOPA is lacking in the striatal neurons of the brain from patients with this disease. But, the decarboxylation of L-DOPA to dopamine can still take place. Hence, L-DOPA in pharmacological doses permits the synthesis of sufficient dopamine to be therapeutically effective for several years.

More than a decade ago, it was discovered by Wurtman and his coworkers (45) that the synthesis and release of several neurotransmitters in presynaptic neurons can be influenced by the concentration of precursors offered to them. The amino acids tryptophan and tyrosine are the precursors of serotonin and norepinephrine respectively. Choline is the precursor for the synthesis of acetylcholine. The conversion of precursors to active neurotransmitters is enzymatic. When saturating concentrations of the precursors are available, the rate at which transmitters can be synthesized is limited by the enzymatic capacity. But, concentrations of the dietary precursors in the blood is not constant and under some conditions the rate limiting enzymes may not be saturated, but can become so if

large doses of precursors are administered. Precursor therapy is relatively safe, because feedback inhibition and other neuronal control mechanisms prevent the synthesis of more transmitter than is needed by the neuron at any particular time. Consequently, few side effects are noted when subjects are given pharmacological doses of tyrosine, tryptophan (46), or choline (47,48) that is, amounts much greater the quantities usually ingested in the diet.

The finding that levels of neurotransmitters in the brain can be altered by experimentally manipulating the quantity of ingested precursor had led to considerable basic research as well as clinical research on both normal volunteers and patients in whom there is reason to believe that there may be a neurotransmitter deficiency.

Dietary precursors must be absorbed from the gut, transported in the blood, penetrate the blood brain barrier, and finally enter into appropriate neurons. These are complex processes which depend initially on the quantity of the precursor in the diet, the effectiveness of the gut in absorbing them, and the transport mechanisms within the blood. Circulating amino acids then compete with each other for active transport through the blood brain barrier into the brain (45,49). The ratio of plasma tryptophan, for example, to the sum of the concentration of other neutral amino acids like tyrosine, phenylalanine, leucine, isoleucine, and valine determines the penetrability of tryptophan into the brain, and, hence, the brain serotonin concentration. Thus, a high protein meal in which many amino acids compete for transport into the brain depresses serotonin synthesis in the rat brain (45,50). A high carbohydrate, low protein meal raises brain serotonin because it elicits the secretion of insulin which lowers the blood levels of other neutral amino acids without affecting tryptophan. Doses of tryptophan as large as 10-15grams would be

more likely to diminish transport of other amino acids into the brain than doses of 1-3grams.

Tryptophan and Tyrosine

Tryptophan, administered at a dose of 50mg/kg to healthy young men in the morning, significantly increased self reports of fatigue and inertia and reduced vigor and activity (46). It is interesting to note that in this same experiment, tyrosine at 100mg/kg had undetectable effects. It is also worth noting that tryptophan did not cause depression, anxiety, confusion, nor anger in this experiment.

Tryptophan has also been used in the treatment of insomnia with apparent favorable effects. Doses of 1 to 5 grams before bedtime have been reported to reduce sleep latency without producing distortions of physiological sleep as measured by EEG recordings (51). Doses of 10-15 grams cause EEG changes but these are less pronounced than those resulting from the use of hypnotics. The mechanism for the effectiveness of tryptophan in insomnia is presumed to be due to its effects on serotonin levels in the brain stem (52). The use of L-tryptophan for the treatment of insomnia is still experimental even though the amino acid is available for sale in health food stores. The current literature suggests that it would have substantial advantages over conventional hypnotics, but it appears not to be uniformly effective for insomniacs. Furthermore, the long term effects of doses of 5-15grams per day require further investigation.

Serotonin deficits have been implicated in some depressions and mania and clinical trials with tryptophan were conducted with mixed results (53,54). Since tryptophan is rapidly catabolized enzymatically by liver pyrollase, the idea occurred that the concomitant administration of an inhibitor could more effectively

raise brain serotonin. Nicotinic acid and nicotinamide are both pyrollase inhibitors and in a preliminary report, encouraging results were obtained with the combination of tryptophan and nicotinamide in the treatment of depression (55). These results have not been confirmed. In very recent work, it has been reported that tryptohan diminishes sensitivity to mild pain and in people over forty increases the likelihood of errors in performance tasks (56).

The administration of tyrosine can, under certain circumstances, elevate levels of brain catecholamines (45,57). It has been reported to help some patients with depression (58) and mild Parkinson's disease (57). Continued clinical research in which tyrosine or tryptophan is used with depressed patients might help to distinguish depressions in which norepinephrine is involved from those in which the defect may be in serotonin metabolism.

Choline and Lecithin

Several studies have shown that the administration of choline or lecithin, the precursors of acetylcholine, increased cholinergic function in the brain (59). On the basis of this finding, clinical research has been conducted in which there is a possible disorder in acetylcholine metabolism. Tardive dyskinesia is one such disorder. Presumably the disorder arises because of prolonged administration of neuroleptics, which chronically block striatal dopamine receptors, cause these receptors to become supersensitive to dopamine (60). Some dopamine receptors are present on cholinergic neurons and their supersensitivity probably causes a chronic decrease in the release of acetylcholine by decreasing the firing rates of the cholinergic neurons. Davis et al. (61) reported marked clinical improvement after giving oral choline to a patient with tardive dyskinesia. Several additional studies have confirmed this (62,63). Unfortunately, large doses of choline have undesirable side effects.

including a socially unacceptable odor which results from the degradation of ingested choline to trimethylamine by intestinal bacteria. Lecithin, a phosphatidyl choline, is the most common source of our dietary choline. Lecithin is more effective than choline in raising plasma choline levels (64). Several reports suggest that it, too, is effective in diminishing symptoms of tardive dyskinesia (65,66). A review of the literature suggests that there is modest improvement in the motor function of about 1/2 of the patients who receive lecithin. Interestingly, the antipsychotic action of neuroleptics has not been reported to be diminished by the administration of either choline or lecithin.

Choline has been administered to schizophrenic subjects and failed to modify their clinical symptoms (67). Lecithin has been administered to manic patients with encouraging results (68). Disorders in acetylcholine function have been suggested in Huntington's Disease, Friedrich's Ataxia, and Tourette Syndrome. The results of therapeutic trials with choline or lecithin in those illnesses are equivocal. They have been reviewed by Growden et al. (69).

Alzheimer's disease, the most common cause of dementia among the elderly, is characterized by impaired functioning of cholinergic neurons. On autopsy, the brains of such patients show a dramatic loss of brain choline acetyltransferase (71,70,45). Memory deficits are characteristic of Alzheimer's disease and many studies have been conducted to measure the effects of acethylcholine precursors in normal people and in patients with Alzheimer's disease (48,72). These studies have not convincingly demonstrated any enhancement of memory after treatment with acetylcholine precursor.

Alternative methods for enhancing cholinergic activity include the use of choline esterase inhibitors and cholinergic agonists. Physostigmine, a reversible

short acting choline esterase inhibitor and arecoline, a short acting cholinergic agonist, improve memory when given in low doses to healthy young adults (73,74). Physostigmine, in a double blind experiment, enhanced the memory processes of patients with Alzheimer's disease for brief periods (75).

It is curious that physostigmine, which enhances cholinergic function by inhibiting the enzyme which destroys acetylcholine, should be more effective than precursors which increase the concentration of this neurotransmitter. The reason is not known, but it immediately raises the question of whether a combination of a precursor and a choline agonist or choline esterase inhibitor might be additive or synergistic. To the best of our knowledge, this has not yet been tested.

The precursor strategy with tryptophan, tyrosine, and choline has thus far yielded results which are of great research interest but have only preliminary and uncertain clinical utility. This type of research is young, and vigorous. We may hazard a guess that greater clinical effects from precursors may be achieved when they are combined with other types of psychotropic drugs. Tryptophan or tyrosine combined with tricyclics might accelerate the therapeutic process or decrease the required dose in depression. Stern and Mendels have reviewed the literature on the use of such combinations in the treatment of refractory depression (76). A recent report suggests that the combination of physostigmine and lecithin improves memory in Alzheimer's disease (75).

Pseudo-Nutrition

Food Additives and Hyperkinesis

In 1975, the late Dr. Ben F. Feingold, a pediatrician and allergist, proposed that some children have a central nervous system variant that predisposes them to sensitivity to synthetic food additives, particularly to food colors and the antioxidants butylated hydroxyanisole (BHA) and butylated hydroxytoluene (BHT). He claimed that in such children hyperkinetic behavior results from the ingestion of these additives. The use of an additive free diet which he developed led to dramatic improvement or even cure in from 50-70% of hyperkinetic/learning disabled children. He stated that 75% of children who had been treated with stimulant medication could discontinue the treatment (77). The diet, he claimed, became effective in several days to several weeks and the younger the patient, the more rapid and complete his response. Total and permanent adherence to the diet is mandatory, Feingold insisted, because even a minor infringement produces a return of symptoms within about 3 hours, which may persist as long as 72 hours. Feingold based his findings on extensive clinical experience in open studies. He did not conduct controlled, double blind trials to test his hypothesis. The Feingold dietary treatment gained considerable popularity among the lay public and more than 20,000 families of hyperkinetic children were reported to adhere to the diet and to advocate its use (78). Feingold urged that labelling of additives be mandatory and the immediate clinical application of an additive free diet in school food programs to a congressional committee by stating: "it is not necessary to await the availability of basic data, it has been demonstrated that these children respond to dietary intervention" (79). Several uncontrolled clinical studies supported Feingold. Rigorous double blind studies, conducted in 7 centers and involving about 200 children have benerally failed to replicate his findings (84).

Two types of controlled studies have been conducted. Harley et al. (80) offered families with hyperactive children two different diets blindly at weekly intervals. One was a conventional diet; the other was prepared solely from foods recommended by Feingold. In 36 school age boys, based on teacher and objective ratings, no significant differences in behavior occurred with the diet. With these school age children, a few parents reported a significant improvement when the additive free diet followed the controlled diet, but they were unable to detect differences when the order was reversed. In preschool age children, where only parental ratings were available, a few parents were able to consistently detect differences with the additive free diet compared to the usual diet.

Most of the double blind studies have been challenge trials; that is, children, who ate additive free diets because their parents believed that they improved on them, were blindly "challenged" by the addition of cookies or drinks which contained food color additives. About 200 children have been tested in several studies conducted throughout the U.S. (81,82,83). A summary of these experiments and the results and conclusions has been reported (84). The National Institutes of Health (88) and the American Council on Science and Health (85) have concurred. The data from these studies have recently been examined statistically by an independent group who have come to the same conclusions (86). The conclusions from these many studies are that Feingold's claims that 50-70% of children improve dramatically on an additive free diet and deteriorate rapidly after minor infractions from the diet cannot be supported in careful double blind trials. At most, 3 of the 200 children were reported by their mothers to deteriorate significantly when challenged with food colors. In these 3 children, objective tests and/or outside observers were not used. The Nutrition Foundation Report (84) concluded that there was

insufficient evidence to require a special symbol on food labels indicating the presence or absence of these food additives for the purpose of treating these behavioral disorders. There is also insufficient evidence to suggest a ban on food containing artificial food colorings in federally supported school programs.

Rimland, Vice President of the Academy of Orthomolecular Psychiatry, has challenged the methods, results, and conclusions of those who failed to confirm Feingold's results (87).

Food and Environmental Allergy and Hypersensitivity

The notion that hypersensitivity or allergy to foods or other environmental agents like gasoline fumes, soaps, or hydrocarbons results in medical or psychiatric illness is subscribed to by what Brodsky calls a "medical subculture" (89). Clinical ecologists and some orthomolecular physicians are among those who support this view. It has been popularized extensively by books and in the media (90,91,92,93). Symptoms which have been related to such sensitivity or allergy include lethargy, depression, palpitations, sleep disturbance, mood swings, poor concentration, anxiety attacks, aggressiveness, and delinquent behavior. The Feingold hypothesis (77) that hyperactivity and learning disability in children is related to the ingestion of common synthetic food additives seems to be a specific variant of the food hypersensitivity thesis which focuses on synthetic food additives and natural salicylates. Hoffer (94) has claimed that many of his schizophrenic patients who failed to respond favorably to megavitamins do respond to five days of starvation followed by diets in which single items of food to which the patients are not sensitive are carefully introduced.

Pierson et al. recently sought objective evidence for the role of food hypersensitivity in 23 patients who attributed a wide variety of their physical and psychological symptoms to food allergies (95). These patients were seen independently for initial diagnosis by a psychiatrist who withheld his findings from the other investigating physicians. The allergists assessed the patients by medical and dietary history, a physical examination, and skin tests for common inhalant and food antigens. The patients were then put on exclusion diets consisting of uncommon foods to which they had no alleged hypersensitivity. All the patients improved. Single foods which the patients had themselves incriminated were then

added openly. Many patients became ill with their initial complaints. Blind tests were then performed using the same foods, freeze dried, and in opaque capsules. The investigators found that only four of the 23 patients had true food hypersensitivity. None of these four had significant psychiatric symptoms and all of them had physical symptoms characteristic of atopy, i.e., allergic rhinitis, urticaria, asthma o. atopic eczema which appeared even when the offending foods were given blindly. The 19 in whom food hypersensitivity could not be confirmed in the blind trials had physical and psychological symptoms not characteristic of the atopic syndrome; 18 of these 19 patients had been diagnosed by the intake psychiatrist as having significant psychiatric illness; 10 of these were considered neurotically depressed, the remainder had other neuroses and personality disorders but none were psychotic. The authors conclude that psychogenic reactions to food are very common and that some form of double blind testing is the only certain means by which the diagnosis of food hypersensitivity can be established. They note that "since the dangers of unwise dietary restriction are real, patients should not be encouraged to restrict their diet without specialist, dietetic advice and without objective confirmation of food hypersensitivity."

There have been claims that food allergies are responsible for delinquency and criminal behavior (96,97,98). Statements are made that food allergies are common in delinquents but prevalance rates are not given. The only reported double blind studies of behavioral change in relation to food allergy have used sublingual testing, a method whose validity is considered doubtful (99).

Clinical ecologists go farther. Patients are initially tested for dietary sensitivity and are placed on elimination diets. If these are not helpful, they are placed in a "chemical free" environment in a hospital. If they improve in

that environment, they are then treated by prescribed avoidance of environments which include the common substances like perfume, smoke, etc. to which they claimed sensitive. Such avoidance inevitably leads to major changes in their lives including a move to a "clean climate". Patients may also receive injections of the indicted substances in order to desensitize themselves. According to Brodsky (89) they spend much of their time on diets, tests for sensitivity, reading about allergies, participating in a support group of similar patients, and tending to worker's compensation claims.

Schizophrenia and Gluten

In 1966, Dohan suggested that peptides derived from cereal grain glutens may play an important role in the pathogenesis of schizophrenia in genetically predisposed people. This proposal was based on the observations of considerably higher than chance occurance of celiac disease in schizophrenics as well as schizophrenia among adults with celiac disease. In addition, both schizophrenia and celiac disease have been reported to be three times more prevalent in Ireland than in England and Wales. Dohan also found a strong correlation between a change in rates of admission of female patients with schizophrenia to psychiatric institutions and a change in wheat consumption during World War II among five

countries (USA, Canada, Finland, Sweden, and Norway) variously affected by the war. Following these observations, he and his colleagues studied the effects of milk free and cereal free diet on schizophrenic patients. 47 schizophrenic patients randomly assigned to a cereal free diet showed a significant increase in rate of release from hospitals compared to 55 patients on a high cereal diet. No difference was found when wheat gluten was added to the cereal free diet in a subsequent double blind study (100).

Singh and Kay (101) found that schizophrenic patients who received neuroleptics and a cereal free, milk free diet showed a significant decline when challenged with wheat gluten in a double blind manner. They suggested that clinical improvement on a gluten free diet and subsequent deterioration on gluten challenge may be related to a gluten mediated decrease in neuroleptic absorption. In support of this, Fried et al. (102) found that wheat gluten given to mice 20 minutes before a 1mg/kg dose of haloperidol reduced the amount of neuroleptic absorbed into the blood stream. Recently, however, Osborne et al. (103) found that 5 chronic schizophrenic patients did not improve on a gluten free diet; furthermore, the gluten free diet had no effect on blood levels of butaperazine, which had been administered in constant doses throughout the study. The study, however, selected patients who had failed to respond to traditional neuroleptic therapy and who thus might represent an atypical subpopulation. Also, as the authors note, their patients were on the special diet for 36 weeks. Dohan and Grassberger (104) stressed that chronic patients may require months or years of gluten free diets before significant results are achieved.

Potkin et al. (105) studied 8 chronic schizophrenic patients who were maintained on a diet free of gluten, cereal grains and milk and who were challenged

in a double blind manner with dietary wheat gluten and placebo. They found no deterioration in clinical status (as measured by the BPRS) on gluten challenge; however, Singh and Kay (106) have pointed out that with an N of 8, the authors' chances of detecting a true small or medium effect of gluten would be only 7% and 15%, respectively.

Hallert (107) who has studied many celiacs in Sweden where it has a relatively high prevalence rate found no schizophrenia in adult celiacs, but did find significant depression. He suggests that celiac disease is not an appropriate model. Dohan recently (108) reviewed the evidence supporting the model and suggests approaches for further study.

Recently, Zioudrous et al. (109) reported that gluten peptides have naloxone-reversible endorphin activity at brain opiate receptor sites. This finding might explain a link between gluten free diets and clinical response in a subpopulation of schizophrenics. However, such a relationship has yet to be consistently demonstrated and the important observations of Dohan's group and Singh and Kay merit further exploration.

"Reactive, Relative, or Postprandial Hypoglycemia"

In animals and man, food intake is intermittent and yet the blood sugar levels, except for transient rises after eating, remains relatively constant. Such homeostasis requires the synchronized participation of the liver, muscles, pancreas, other endocrine organs and the central nervous system. Most body tissues can tolerate fluctuations in blood sugar but the brain, which is unable to store glucose or glycogen in significant quantities and which uses glucose as its primary fuel, requires a constant supply. In the resting state, the brain accounts for 80% of the glucose consumed by the body.

Glucose homeostasis is remarkably effective. In a normal population, fasting levels of plasma glucose range from 50-115mg/dc. Such levels occur 5-6 hours after feeding and do not change significantly overnight. In well nourished individuals, blood glucose levels change very little after several days of fasting. Many physical illnesses like diabetes or islet cell tumors of the pancreas can either elevate or lower the fasting blood sugar (110,111).

Reactive, relative, or postprandial hypoglycemia is an abnormal degree of depression of the extracellular glucose concentration reflected in the plasma, without a well defined cause. When plasma levels fall below 50mg/dc or blood levels below 40mg/dc, symptoms and signs of adrenergic hyperactivity or nervous system depression or a combination of the two usually appear. Hypoglycemic activation of the adrenergic system causes tremulousness, anxiety, hunger, sweating, palpitations, and tachycardia. Central nervous system hypoglycemia causes perturbations of cortical and subcortical functions with symptoms of fatigue, headache, weakness, diplopia, confusion, amnesia, incoordination, seizures and coma. There is substantial variation in the cluster of symptoms of hypoglycemia from patient to patient.

Several of the symptoms of hypoglycemia resemble those with which anxious, depressed, and hypochrondiacal patients present. Consequently, some patients may diagnose themselves as having hypoglycemia. The tendency to do this is augmented by popular books in the lay press which have featured hypoglycemia as a global cause for a welter of illnesses and antisocial behavior like "nervous breakdown", alcoholism, juvenile delinquency, drug dependence, inadequate sexual performance, and overt aggression in prisoners (112,113,114).

Some orthomolecular physicians and clinical ecologists are among the physician groups who attribute much mental illness and antisocial behavior to hypoglycemia and who treat this condition with low carbohydrate, high protein diets. Psychotropic drugs are frequently added but this is not usually acknowledged. While the majority of endocrinologists, psychiatrists, and criminologists have not accepted nutritional theories and dietary treatments of neurotic and antisocial behavior, these theories have, nonetheless, had an impact on prisons, probation departments, and school systems. The Los Angeles County Probation Department, for example, banned the consumption of chocolates, other sweets, and refined sugar products from juvenile facilities and is attempting to reduce consumption of processed and additive-containing foods in prisons (115). There have also been malpractice suits in which patients have claimed that their physicians missed the diagnosis of reactive hypoglycemia and, therefore, mistreated them.

The concept that postprandial or reactive hypoglycemia is common in the population has not been generally accepted by the medical profession. The American Diabetes Association (116), in collaboration with other societies, has published statements to downplay the prominence of the misattribution of hypoglycemia as a cause of multiple illness. Yager and Young (117) have referred to the epidemic

proportions of the incorrect diagnosis of hypoglycemia as a cause for multiple psychiatric and somatic complaints. Too often the diagnosis is made without a glucose tolerance curve at all. Diagnosis by questionnaires which attempt to relate symptoms to eating habits is inadequate. Many patients who have affective, somatization or anxiety disorders report a relationship of symptoms to food intake which is not borne out in a glucose tolerance test (110,118,119).

The reasons for the conflict between those who emphasize hypoglycemia as a major contributor to multiple psychiatric illnesses and those who discount it lie largely in the rigor with which a 5 hour glucose tolerance test is conducted and in how it is interpreted. In this test, the patient should be prepared by eating a diet containing about 250gm of carbohydrate daily for three days. He is then fasted overnight, and is given 50-100gms of sugar orally in solution. Alterations in plasma or blood glucose are monitored at half hour intervals for the ensuing five hours, while subjective symptoms are recorded. The typical normal glucose tolerance curve shows a rise of 60-70mg/dc in the first 30-60 minutes; this is the period when glucose enters the circulation from the gastrointestinal tract. In normal persons, increasing glucose concentration, abetted by cholinergic signals, stimulate insulin secretion. The increased circulating insulin in conjunction with declining glucagon production results in decreasing hepatic glucose output and a fall of blood glucose to levels approximating or slightly lower than the fasting state over the next four hours. By the fifth hour, there is usually recovery to base levels. At its peak, blood glucose levels in normal subjects seldom exceeds 160mg/dc. Higher levels suggest diabetes. At the nadir, glucose levels below 50mg/dc should raise the suspicion of reactive hypoglycemia. For a definitive diagnosis to be made, the low blood sugar values should coincide in time with the symptoms of adrenergic activation and central nervous system hypoglycemia referred to above. The diagnosis

should not be made on the basis of a low blood sugar without clinical symptoms or on symptoms alone without a low blood sugar. Many patients report symptoms and signs of anxiety with blood sugar levels above 70; others may have the blood sugar fall to levels of below 40 without manifest symptoms or signs of hypoglycemia (118). Sinc the glucose tolerance test may vary from day to day in any patient, borderline tests should be repeated. Orthomolecular psychiatrists interpret the results of glucose tolerance tests differently from endocrinologists. An example of orthomolecular interpretation is shown in the work of Meiers who claims that 70% of schizophrenics have relative hypoglycemia (123).

The notion that hypoglycemia is related to panic attacks, reported by patients, has recently been tested by Gorman et al. (11). These investigators measured the blood sugar in ten patients who met DSM III criteria for panic disorder or agoraphobia at the moment when panic was experienced by the patient during an infusion of 0.5molar sodium lactate under single blind conditions. They found that, on the average, such patients had a fasting blood sugar of 98mg/dc and at the moment of panic it was 94mg/dc. None of these patients had serum glucose levels even close to hypoglycemic levels. These findings demonstrate that hypoglycemia is not a necessary condition for panic attacks, but do not, of course, prove that hypoglycemia may not cause panic attacks. To determine the latter, it may be necessary to experimentally lower blood sugar in such patients by an insulin tolerance test and then determine whether it triggers panic and whether the blood sugar levels correlate well with the onset of panic. It is also now possible for patients who suspect that they have hypoglycemia related to panic, or to any other clinical symptoms to screen themselves at home by collecting capillary blood on impregnated filter paper. They can measure the blood sugar levels themselves or send it to a laboratory for analysis (120). In either type of experiment, a close correlation between clinical symptoms and blood sugar

values must be found in order to designate hypoglycemia as a proximate cause of the symptoms. It seems likely that such research will be conducted in the near future.

In summary, there is little evidence from carefully conducted research to support the concept that reactive hypoglycemia is a common condition and that it is causally related to psychiatric or behavioral disorders. Nonetheless, some professionals and patients are convinced a priori that emotional illness and inappropriate behavior is caused by postprandial or relative hypoglycemia which follows a high dietary intake of carbohydrates. Individuals who choose to believe this may alter their diets to diminish intake of simple sugars and to increase protein and complex carbohydrates with little danger or expense. But, the translation of hypoglycemic mythology into dietary regulation on a mass scale in schools or prisons is not justified.

Orthomolecular Psychiatry

"Psychiatry seems unusually vulnerable to almost any fad which happens to drift into its amoeboid maw."
(Osmond, 1982)

The theory, practice, and clinical value of megavitamin therapy and orthomolecular psychiatry has been the subject of debate for almost twenty years. An American Psychiatric Association Task Force reviewed the evidence thoroughly in 1973 and was very critical (124). Orthomolecular psychiatrists responded (125), calling the Task Force Report biased, unfair, and full of errors. Pauling (126) was also critical. His criticisms were answered by Klein (127) and Wyatt (128). A book Orthomolecular Psychiatry: Treatment of Schizophrenia which details their theory and practice was published in 1973 (129). A detailed update of the APA Task Force critique which included a review of the role of the water soluble vitamins in the nervous system was published in 1979 (130). The present chapter summarizes some older reviews of this subject and adds material published since that time.

Orthomolecular Theory

The term "megavitamin therapy" was coined in the early 1950s to describe a treatment for acute schizophrenia that employed doses of vitamin B_3 (nicotinic acid or nicotinamide) in the dose range of 3-30 grams daily. The theoretical basis for this treatment was initially pharmacological, not nutritional. The originators of megavitamin therapy attributed the pathogenesis of schizophrenia to the endogenous formation of adrenochrome and adrenolutein which are hallucinogenic condensation products of oxidized adrenaline. Adrenaline is formed by methylation of noradrenaline and in schizophrenia the formation was thought to be excessive. These products caused perceptual distortions which were the primary causes of schizophrenia. The perceptual defects could be detected and quantified by a psychological card sorting test called Hoffer-Osmond Diagnostic Test (HOD).

They see schizophrenia as primarily a perceptual disorder. For example, Hawkins, co-editor of the book Orthomolecular Psychiatry (129,p627) says, "Clinically, the illness begins as altered subjective experiences associated with changes in perception and these may or may not in time result in the observable changes upon which a diagnosis or schizophrenia has hitherto been based .... At this stage of the illness, the diagnosis may be made by interviewing techniques focused on detection of these subjective changes. The perceptual changes may also be detected by objective measures such as the HOD and EWI tests which parallel changes in the severity of the illness. The stage of the illness may be called metabolic disperception. It precedes the appearance of overt clinical schizophrenia -- the signs and symptoms of schizophrenia are secondary to the perceptual disorders and these in turn precede the tertiary impairments in social functioning." Hawkins then presents evidence to support the proposition that all of the manifestations of schizophrenia can be produced by perceptual changes alone. The HOD score is described by him as being more accurate than the usual clinical criteria in evaluating the degree of the patient's illness and response to treatment. He say (129,p617), "The majority of patients that we see with schizophrenia are not overtly psychotic. Although schizophrenia is technically classified as a psychosis, the development of irrationality indicates an advanced degree of the state of the illness. We, therefore, view schizophrenia as a disease process which is capable of producing psychosis." He continues (129,p602 "The HOD test consists of 145 true-false questions, read and answered by the patient which are designed to measure visual, auditory, olfactory, touch, taste, and time perception as well as thought and mood disturbances. Underlying this work is the assumption now supported by substantial experimental evidence that there is a genetic predisposition in schizophrenics which under certain conditions leads to errors in metabolism resulting in the formation of chemicals that may interfere with the function of the central nervous system which is responsible for maintaining perceptual abilities."

Kelm (129,p327-342) defines metabolic disperception as "people who suffer from varying degrees of abnormal perception, with corresponding changes in thought, mood

and behavior who respond favorably to megavitamin B_3 and allied therapy if treated before irreversible damage has developed." Subclinical pellagra is defined as "a deficiency syndrome characterized by the presence of perceptual changes affecting any or all of the five senses associated with neurasthenia. The HOD and related tests can measure the degree of perceptual abnormality and changes in thought and mood."

Hawkins (129,p620) continues, "For routine use, the HOD test. . . .is the most useful test, not only to confirm the diagnosis, but also to determine the degree of illness and to monitor the response to treatment. Beneficial measures are followed by a reduction of the HOD score and deleterious measures or an increase in the illness are followed by an increase. It can be administered and scored by anyone in the office. Shock treatment brings the most rapid reduction in the HOD score, the phenothiazines will also lower the score considerably, but usually not to within normal range. The patient can take the test retroactively; that is, he can answer the question according to how he felt when most ill or at any specified time in the past."

Hoffer remains committed to nicotinic acid deficiency as the primary cause of of schizophrenia, which he sees as cerebral pellagra. He says (129,p250), "If all the vitamin B_3 were removed from our food, everyone would become psychotic within 1 year. This pandemic psychosis would resemble pellagra and it would resemble schizophrenia. It could not be called pellagra, because none of the antecedents of that disease would exist."

"Schizophrenia and pellagra are not identical since they require different quanitities of vitamin B_3. Most symptoms of pellagra are alleviated by doses of vitamin B_3 below 1 gram/day, but a small proportion may need many times as much. Most schizophrenia respond to 3 to 6 grams, but a small proportion may require more than 20 grams per day" (129,p251).

But, Hoffer also believes in the use of ECT in the treatment of schizophrenics who do not respond to megavitamins. Commenting on the failure of others to confirm megavitamin therapy, he says (129,p206), "Several experiments are underway, but they are testing only 1 part of the program. For example, they do not use ECT. It is, therefore, necessary to reiterate that the megavitamin program is not one which can be completed in a single month or six months or a year. Time alone is no criterion. One starts with the simplest therapy that is chemotherapy alone using megavitamin doses plus all the other chemotherapies available to psychiatry as indicated in each case. The patients who recover are maintained on the program in order to keep them well. Patients who do not recover within 3 months are then given a series of ECT in addition to the chemotherapy. They may require a second or even a third series. With any acute series, using ECT if there is insufficient improvement within three months of beginning chemotherapy, one can expect a recovery rate of over 90% within one year and improvement in the other 10%."

He also says (129,p659), "All patients were treated with phenothiazines, megavitamins, accessory symptomatic medication, group therapy and all the other usual adjunctive measures. The exception was that 85 patients received ECT and 55 served as controls. When the results were tabulated and graphed, the very significant effect of ECT was observable. This was most marked in the younger age groups."

To prevent or treat schizophrenia, it was thou necessary to reduce adrenaline formation. Since adrenaline was formed by methylation of noradrenaline, a means to diminish methylation was sought.

When nicotinic acid or nicotinamide are administered in large doses n-methyl-nicotinamide is formed and is rapidly excreted; hence, both compounds are methyl acceptors. Since they are relatively non-toxic in large doses, they were chosen as competitive inhibitors of the methylation of noradrenaline. It is worth emphasizing that they were not chosen as nutrients; indeed, in a 1957 publication advocating the use nicotinic acid in the treatment of schizophrenia, Hoffer et al. (131) speculated about the mechanism of therapeutic action of nicotinic acid. They chose as the most likely mechanism the ability of nicotinic acid to be a methyl acceptor which would reduce the formation of the endogenous hallucinogen adrenochrome. They rejected its role as a vitamin, saying, "psychosis (sic) association with pellagra does in many ways resemble the schizophrenic psychosis except that it contains qualities of toxic confusion. However, the incidence of avitaminosis among schizophrenic persons is no greater than among the general population. Doses adequate to treat any unknown deficiency are without affect on schizophrenia; it may, therefore, be concluded that this factor is unimportant." (131)

In 1968, Pauling (132) published a theoretical paper in which he suggested that some forms of mental illness might be due to deficiencies in essential nutrients occurring in susceptible irdividuals eating an ordinarily adequate diet. Man's genetic heterogeneity leads to biochemical individuality with large variations in the need for essential nutrients, especially vitamins (132). The brain might differ from other organs in its nutritional requirements so that localized cerebral deficiency could occur. Pauling named his concept "orthomolecular psychiatry" and he defined it as "the treatment of mental disease by the

provision of the optimum molecular environment for the mind, especially the optimum concentration of substances normally present in the human body." With the publication of this interesting theoretical paper, clinicians who had been practicing megavitamin therapy quickly adopted Pauling's concept and claimed that what they had been practicing from 1952 to 1968 was, indeed, orthomolecular psychiatry. This conceptual shift from the transmethylation hypothesis in which nicotinic acid was a pharmacological methyl acceptor to a nutritional hypothesis in which schizophrenia was cerebral pellagra treatable by nicotinic acid functioning as a true vitamin was accompanied by the formation of an Academy of Orthomolecular Psychiatry and a name change of their journal from the Journal of Schizophrenia to the Journal of Orthomolecular Psychiatry. With this shift in theory, many other vitamins and hormones were added to their therapeutic armamentarium. The scope of the conditions which orthomolecular psychiatrists treat has also been expanded to include autism, hyperkinesis, depression, anxiety, alcoholism, drug addiction, delinquency, etc. Their current practice is perhaps best described by Hawkins. "Clinicians practicing orthomolecular psychiatry are using a combination approach which varies from patient to patient depending upon the biochemical peculiarities of a given case and which often includes high doses of niacin or niacinamide, ascorbic acid, pyridoxine, vitamin E, thyroid, vitamin B_{12}, hypoglycemic diets, cereal free diets, daily physical exercise, lithium, the phenothiazines, and also the commonly used tranquilizers and antidepressants."(133). Electroconvulsive shock therapy is still frequently used (125). The current theory is expressed by Hoffer (134), "There is a simple message: The most important treatment for psychosis is nutritional. Other treatments which are considered THE treatment by the American Psychiatric Association are merely palliative."

The change in the theory of schizophrenic pathogenesis from excessive transmethylation to nutritional deficiency broadened the therapeutic ingredients of orthomolecular practice greatly. With the first theory, there was a pharmacological need for nicotinic acid as a methyl acceptor and no special needs for other vitamins and nutrients. With the nutritional theory there is room for the addition of many other micronutrients to the therapeutic program. In current practice, many nutrients are added in megadoses simultaneously. Nonetheless, nicotinic acid seems to be always included in the therapeutic cocktail for schizophrenia and this is because that illness continues to be looked at as cerebral pellagra. Hoffer says, "It is clear that there are no clinical grounds for separating the two diseases. A distinction is artificial". He also says, "schizophrenia is a vitamin B_3 dependent condition or an NAD deficiency disease" (135). Nonetheless, other water soluble vitamins and minerals are also used in megaquantities.

The concept of reactive hypoglycemia and of food or environmental allergy as causative agents in many types of mental illness and behavioral disorders has also been adopted (136). Orthomolecular psychiatrists who originally rejected psychotropic drugs as unnecessary poisons imposed on the medical profession and patients by heavy industrial advertising is now accepted as sometimes useful adjunctive therapy. Characteristic of orthomolecular psychiatry is the absence of psychological or social causes for mental illness or aberrent behavior. Nor is there any admission of a useful role for psychological treatment, although halfway houses and self help groups are used.

The transmethylation hypothesis is testable and has been tested by many investigators over the past 20 years. No evidence of any excess transmethylation

has been found. If anything, there may be diminished transmethylation (137,143). There is also neither clinical nor laboratory evidence for a metabolic defect similar to that found in pellagra in any of the schizophrenias. This subject was thoroughly reviewed a decade ago in the APA Task Force Report (124) and no evidence to the contrary has appeared since that time.

The Pauling statement that there is an optimum molecular environment for the neurons in the brain is probably true, but it is not testable, because optimum, especially for any single individual, cannot be defined nor determined. It is like saying that there should be an optimum income, education, and degree of health and freedom for every citizen. There would be enormous arguments by people of different political persuasions about the meaning of the term. Pauling noted that optimum intake of phenylalanine should be very low for the patient with phenylketonuria. But, in general he tended to view optimum as very much larger than the RDA. He suggested that genetic variance in the transport of vitamins across the blood brain barrier might, in selected individuals, result in a cerebral avitaminosis despite normal blood and other tissue levels of these nutrients. He also felt that the protein apoenzymes for which vitamins or their derivatives function as coenzymes might be genetically defective so that much higher concentrations of coenzymes were necessary in order for the enzymes to function. He stated that "the so-called gene for schizophrenia may itself be a gene that leads to a localized cerebral deficiency . . one or more vital substances" (126,132).

Roger Williams (138), more than 30 years ago, had presented evidence for a degree of variability within a species which he called biochemical individuality that might account for differences in nutritional requirements. Pauling's hypothesis was an elaboration of Williams' thesis. Williams' thesis is also not arguable in principle, but the quantitative aspects

need empirical testing. We all readily accept biochemical individuality for things like height, weight, hemoglobin, intelligence, caloric needs, metabolic rate, etc., but generally speaking, such variability is seldom more than 15%. Orthomolecular theory suggests that differences in vitamin requirements might be as great as several thousand percent. Some evidence has been found in rare genetic diseases to support this. There are about 25 known genetic "vitamin-responsive in-born errors of metabolism"(139). These disorders are genetic autosomal recessives and are so rare that a total of less than 1,000 cases have been described in the world literature. All of the water soluble B vitamins except niacin and riboflavin have been implicated. Vitamin dependency illnesses are characterized by an increase in the requirement for a specific vitamin that ranges from 10 to several hundred times the RDA. This is because they have mutant apoenzymes which require high concentrations of cofactor to function. Vitamin dependency illnesses are manifest at birth or in early childhood and they are generally associated with mental retardation as well as with multiple somatic disorders ranging from convulsions to severe anemias. Patients with these illnesses show demonstrable abnormalities in circulating amino acids or other metabolites. Unless they are treated with megadoses of the appropriate vitamin early in life such patients show retardation in growth and development and usually die in childhood. Orthomolecular psychiatrists apparently believe that the large differences in nutritional needs which occur in the rare genetic vitamin dependency illnesses are common in psychiatric patients of all types. Hoffer, for example, believes that schizophrenia is a vitamin B_3 dependent condition or an NAD deficiency disease (135). Since schizophrenia fails to meet the many other criteria established for the definition of autosomal recessive genetic diseases, it becomes necessary for him to postulate that the vitamin dependency characteristic is localized to the brain.

There is another genetic variant less severe than the vitamin dependency illnesses which Blass calls "vitamin insufficiency illness" (140). This occurs in that small fraction of alcoholics who develop Wernicke-Korsakoff syndrome. Such patients are apparently able to grow normally to adulthood on ordinary daily requirements of thiamine and an average diet, but under the unusual circumstances of heavy alcohol consumption when the vitamin intake diminishes and the vitamin requirement may increase, the syndrome develops. This condition can be detected by measurement of a thiamine dependent protein apoenzyme called transketolase which in Wernicke patients requires a much higher concentration of thiamine pyrophosphate in order to function adequately. Folkers et al. (141) have reported that patients with carpal tunnel syndrome may also have a vitamin insufficiency syndrome because their erythrocyte glutamate oxaloacetate transaminase (EGOT) is unsaturated at normal dietary levels of pyridoxine. At megadoses the enzyme becomes saturated and new enzyme synthesis is induced. Of interest to psychiatry has been the report of Rimland et al. (142) who recently found that massive doses of pyridoxine could improve the symptoms of about 30% of autistic children and that in such children pyridoxine causes a drop in the urinary excretion of homovanillic acid, a major metabolite of dopamine. It is, therefore, possible that a subgroup of autistic children may have a vitamin B_6 insufficiency illness. Detection of this particular subgroup can thus far not be made clinically or biochemically. Moreover, even though some improvement occurs when these children are given pyridoxine, they are still very far from being psychologically well.

The possibility that schizophrenia or even a significant subgroup of the schizophrenias is a vitamin dependency illness must be considered very remote. They have multiple somatic abnormalities which have not been found in schizophrenics.

They are generally mentally retarded and they have distinct biochemical abnormalities in the blood or urine which are detectable at birth or in early infancy. They respond quickly and dramatically to large doses of the single vitamin required to remedy their genetic metabolic abnormality. Schizophrenia fails to meet any of these criteria.

Is schizophrenia a vitamin insufficiency illness which resembles the Wernicke-Korsakoff syndrome? Again, it is very unlikely. A vitamin dependent specific enzyme defect has not been found, nor is there any evidence of a metabolic abnormality.

Recent Studies:

Some literature has appeared in the last several years dealing with megavitamin therapy and orthomolecular principles in autism, learning disability and mental retardation. Rimland et al. conducted a double blind crossover study of the effects of high doses of vitamin B_6 on autistic children (142). LeLord has studied the effects of high doses of vitamin B_6 and magnesium on autistic children (145) Both groups have reported positive findings. The results suggest that in a heterogeneous illness like autism there may be a subgroup that responds to this treatment. The degree of response is modest but statistically significant.

Kershner and Hawke (146) studied the efficacy of adding megavitamins to a diet low in carbohydrates high in protein with 20 learning disabled children who carried diagnoses of hyperactivity, minimal brain dysfunctions, or both. After a double blind six month period of treatment, the addition of megavitamins failed to produce any significant improvement when compared to the diet alone on a variety of intellectual, school achievement, perceptual, and behavioral measures. The efficacy of the diet alone could not be assessed because no dietary control group was employed. The parents of 18 of these children reported improvement in their children on this diet regardless of whether megavitamins or placebo were added. As the authors cautiously point out, this may reflect parent enthusiasm and/or the child's maturation rather than dietary effects.

In 1981, Harrell et al. (147) reported the results of a study in which 16 children (age range 5-15) with either Down's syndrome or unclassified mental retardation (IQ 17-70) received either placebo or a supplement containing 11 vitamins and 8 minerals for a four month period. All subjects were also placed on diets which restricted the intake of "sugary foods and soft drinks" and encouraged consumption of fruits and milk. All but one of the subjects were also given thyroid hormone because of low morning axial temperatures. At the end of four months,

the children were evaluated by 2 of 7 psychologists who did not all use the same IQ testing instruments. One of the psychologists, the principle investigator, was not blind to the conditions of the experiment. During the first four months of treatment, the five children who received supplemental vitamins increased their average IQ by 5-9.6 points and the 11 subjects on placebo showed negligible change. In a second phase of the experiment, all 16 of the subjects received vitamin supplements and the 11 subjects who had been on placebo in the first phase showed an average IQ increase of 10 points. The Harrell study has received considerable attention because of the implications of its conclusions. However, it has also received much criticism because of the weakness of its design and methodology.

Coburn et al. (157) carried out a replication study using mentally retarded young adults. This experiment was conducted entirely on a double blind basis with a uniform IQ testing procedure. None of the subjects, including those on the Harrell supplementation, showed any improvement in performance on the Stanford Binet test at 10 and 20 weeks. Admittedly, the Coburn study examined mentally retarded patients who were older than those studied by Harrell et al. Possibly, improvement in IQ may be limited to very young subjects. However, given the methodological weaknesses in the Harrell study and the absence of confirma · replication studies at this point, there is reason to skeptical. Replication studies are required for both professional responsbility and in the public interest.

Conclusion:

The history of medicine clearly shows that theory and practice are often dissociated. Regardless of the weaknesses of orthomolecular theory, the question may be asked, Does it work? The APA Task Force addressed this question by translating the hypotheses into testable questions. In doing so, they foccused only on the testing of the value of nicotinic acid in the treatment of schizophrenia. It was felt that this was justified because nicotinic acid was the cornerstone of megavitamin and, later on, orthomolecular theory and because the original publications for therapeutic efficacy used only this vitamin. The results of studies by many investigators who did double blind controlled studies are given in detail by the Task Force Report (124). The results were negative. Nicotinic acid as the sole medication for newly admitted schizophrenics was no better than an inactive placebo. As an adjuvant medication to phenothiazines it was worse and increased the duration of hospital stay and the amount of neuroleptic required. For chronic patients receiving neuroleptics, it was also worse than placebo. The Task Force was critical of the use of the Hoffer-Osmond card sorting test for perceptual difficulties which was the primary instrument for diagnosing schizophrenia and for measuring change with megavitamin therapy.

Since the publication of the APA Task Force Report in 1973, many other professional, academic organizations have reviewed the field of orthomolecular psychiatry and have arrived at similar conclusions. The Royal Australian and New Zealand College of Psychiatrists concluded that orthomolecular medicine has "no status in the practice of medicine or psychiatry. Its clinical role is unproven and the pathology tests cannot be justified for the rational practice of internal medicine or psychiatry". The Canadian Mental Health Association collaborative study indepndently investigated some of the underlying

hypotheses supporting orthomolecular psychiatry and obtained negative results. The American Academy of Pediatrics' Committee on Nutrition, looking specifically at the published evidence on megavitamn therapy for childhood psychoses and learning disabilities, concluded that "megavitamin therapy as a treatment for learning disabilities psychoses in children including autism is not justified on the basis of documented clinical results" (144).

The reply of Hoffer and Osmond to the APA Task Force Report was published in 1976 by the Canadian Schizphrenia Foundation of which Hoffer is President (125). The authors are careful to say that it does not necessarily represent the opinion of the Directors nor all of the members of the Foundation. It is 121 pages long; more than twice as long as the Task Force Report. The interested reader should examine it carefully.

Hoffer and Osmond (125) state that the Task Force Report and the data upon which it was based were grossly unfair and biased. They have many objections: (1) Fixed doses of nicotinic acid at 3 grams/day were used; some patients require 20 to 30 grams; (2) Orthomolecular claims were for acute schizophrenics; the so-called attempts at replication employed chronic schizophrenics; (3) Megavitamin practitioners use ECT as an adjuvant when necessary; it was not used in the replication experiments, which they feel should not be called "replication"; (4) The double blind trials which counted heavily in the Task Force judgment were unnecessary and restrictive. Criticism of megavitamin therapy research which failed to do control studies is unfair becuase it is unethical for practitioners to withhold treatment which they know is effective;(5) The Task Force Report based its judgment solely on research on vitamin B_3; megavitamin therapy has evolved to a much more complex therapeutic program which now uses other vitamins, minerals, psychotropic drugs, hormones, and other procedures; (6) The NAD experiments were

were done with a preparation which was not enterically coated. Hoffer had the megavi used with specially coated tablets which resisted digestive enzymes; (7) The Task Force selected from the literature all negative reports and did not adequately weigh the confirmatory reports.

At a more political level, Hoffer and Osmond feel the report is biased because (1) Dr. Lipton, the Chairman, was an avowed opponent, (2) at least two of the other members were opponents for different reasons, (3) no orthomolecular practitioners were on the Task Force, (4) The Task Force used pejorative adjectives in describing the work of the megavitamin therapists.

Most of the work of the orthomolecular psychiatrists is printed in their Journal of Orthomolecular Psychiatry, which is published quarterly by the Academy of Orthomolecular Psychiatry and the Canadian Schizophrenia Foundation. The Journal averages about 75 pages in each issue. It is not indexed in many major citation services, such as Index Medicus, and few medical school or university libraries in this country subscribe to it.

In a one year period (4th quarter 1981 to 4th quarter 1982), half of the full length articles were essays or reviews (15) with an additional 3 editorials, 5 case reports, 14 pages of Letters to the Editor, and 8 pages of book reviews. Only 10 articles presented data, and the vast majority of these were so flawed in methodology and so confused and confusing in purpose so as to prohibit labeling them as scientific reports.

The essays and reviews cover such topics as "Principles of Bio-Ecologic Medicine", "Towards the Orthomolecular Environment" ["We have seen how the migration of our species into space may bring us into the environment that most closely approximates the optimum for human beings, the ortho-environment. . ." (156)], "Allergies and Schizophrenia", and "Stigma and Mental Illness: Theory versus Reality."

Several of the papers and Letters to the Editor make imaginative and, perhaps, correct statements. For example, we are told that Lactobacillus Casei in the

human gut serves as an antidepressant and mild euphoriant since their cell walls contain phenylethylamine" (150). The use of mercury amalgams for filling teeth may result in chronic mercury poisoning (151). Manganese and nicotinic acid supplementation prevents tardive dyskinesia in patients receiving neuroleptics (152). Nearly 100,000 schizophrenic patients have been treated in the past 20 years. There is no doubt in the mind of every physician who has used these vitamins as part of a sophisticated treatment approach that it is remarkably beneficial (153). But data are seldom given, at most there will be an anecdotal case report.

The orthomolecular psychiatry may be called a belief system or subculture. It is not cautious and self correcting as a science should be.

It should be apparent that few, if any. research psychiatrists would agree with the orthomolecular definition of psychiatric disorders., their conc its pathogenesis, and the psychological instruments they use to measure its severity or its change with treatment. Given these vast differences, it is easy to understan why systematic attempts using research criteria to replicate their work invariably fail.

Orthomolecular psychiatrists say that clinical experience is enough to validate their procedures and that controlled blind studies are unethical. There may be other reasons, such as orthomolecular psychiatrists who are mainly in pr practice. Only a few hold academic or research positions.

Few psychiatric patients have unique nutritional requirements. Nutritional research in relation to psychiatry continues at a steady, if not spectacular pace. The pharmacological use of nutrients as in precursor therapy shows considerable promise. The special nutritional requirements of the early fetus and of geriatric patients are receiving constant attention and it seems very likely that these will be better understood and treated.

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ORTHOMOLECULAR PSYCHIATRY

TREATMENT OF SCHIZOPHRENIA

EDITED BY

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Preface

In the article *Insanity* in the ninth edition of the Encyclopaedia Britannica (1881) insanity is defined as a chronic disease of the brain inducing chronic disordered mental symptoms. The author of the article (J. Batty Tuke, M.D., Lecturer on Insanity, School of Medicine, Edinburgh) then stated that this definition

> possesses the great practical advantage of keeping before the student the primary fact that insanity is the result of disease of the brain, that it is not a mere immaterial disorder of the intellect. In the earliest epochs of medicine the corporeal character of insanity was generally admitted, and it was not until the superstitious ignorance of the Middle Ages had obliterated the scientific, though by no means always accurate, deductions of the early writers that any theory of its purely psychical character arose. At the present day it is unnecessary to combat such a theory, as it is universally accepted that the brain is the organ through which mental phenomena are manifested, and therefore that it is impossible to conceive of the existence of an insane mind in a healthy brain.

By 1929, when the fourteenth edition of the Encyclopaedia Britannica was published, the situation had changed, largely because of the development of psychoanalysis by Sigmund Freud. The earlier definition of insanity was deleted, and replaced by discussions from two points of view: the point of view of the materialistic school

> that though in many states of insanity no observable structural changes are found, they exist all the same, only they are such that our imperfect methods cannot detect them, and in time they will be discovered . . .

and the point of view of the psychogenic school,

> that though mental disease may arise secondarily to physical disorder, the symptoms are psychological reverberations of that disorder and the body of an individual must be regarded as environmental to the ego. . . . The many structural changes which are found in certain forms of insanity should be reviewed as probably secondary to a perverted mentality.

Psychoanalysis has failed, and psychiatry is now rapidly returning to the scientific approach, the recognition of the corporeal character of mental disease, with manifestations determined to some extent by environmental stress and past experience. Supportive psychotherapy has great value—an example is the explanation to the schizophrenic patient and his family that his disturbed behavior and thinking are the result of an imbalance in the molecular composition of his body, and that this imbalance can be corrected (Hawkins, Chapter 29 of this volume). The recognition of the effectiveness of phenothiazines and other drugs (and the ineffectiveness of psychoanalysis) has accelerated the reacceptance of the concept that mental disease is disease of the brain, and that the brain itself needs to be treated, by changing its molecular composition.

The relation of vitamins to mental disease became evident as soon as vitamins were discovered. One manifestation of pellagra is psychosis. Pellagra is a vitamin-deficiency disease, and the psychosis is cured (averted) by the provision of an adequate intake of the vitamin (niacin). It is estimated that in the first decades of this century 10 percent of the persons in psychiatric hospitals were pellagrins (Kety, 1970). The discovery in 1937 that niacin is the pellagra-preventing vitamin soon led to its trial in controlling mental disease in patients not suffering from pellagra. Cleckley et al. (1939) and Sydenstricker and Cleckley (1941) reported some success in treating 48 subjects with acute mental illness of one sort or another by use of moderately large doses of niacin (300 to 1,500 mg per day, as compared with the pellagra-preventing intake of about 12 mg per day).

In 1943 Kaufman described the deterioration in mental and physical health of 150 patients with a disease to which he gave the name aniacinamidosis, and in 1949 he published a larger book on this subject, with discussion of 455 patients. Measurements of impairment of joint mobility and increase in blood sedimentation rate gave objective information about the progress of the disease. He found that most of the patients improved greatly on a regime of 1 to 5 g of niacinamide per day, in divided doses (6 to 16 per day), continuing for as long as nine years (Kaufman, 1955). He observed no untoward reactions from niacinamide in several thousand patient-years of continuous use. His recommended intake of niacinamide for treatment of restricted mobility of joints and other manifestations of aniacinamidosis is 4 or 5 g per day. Many of his patients showed striking improvement in mental health as well as physical health on this regime.

The effective introduction of megavitamin therapy for schizophrenia came in the period from 1952 on through the work of Hoffer and Osmond, as described in several chapters of this book. After making some studies on a few patients with encouraging results, they carried out several double-blind and blind comparisons of niacin, niacinamide, and a placebo. A study with 171 subjects (73 receiving 3 g of niacin per day for all or part of the period of study, 98 receiving a placebo) gave a statistically significant difference in the number transferred to the mental hospital and a difference in the number of suicides (0 and 4, respectively) with borderline statistical significance (Hoffer et al., 1957). Another study with 82 subjects (43 receiving 3 g of niacin per day and 39 receiving a placebo) gave a difference with high statistical significance in the number classified as improved or unimproved (Hoffer, 1962).

It is evident from the published accounts of these studies that amounts larger than 3 g per day of niacin or niacinamide are needed for a pronounced therapeutic effect for many schizophrenic patients. Hoffer and Osmond had in fact observed that daily amounts of niacin or niacinamide larger than 6 g seemed to be required by some patients, and also that many patients benefited from receiving 3 to 6 g per day of ascorbic acid. Other vitamins, especially pyridoxine in amounts 600 mg to 1,500 mg per day, have been found to be beneficial. In addition, many schizophrenics, probably more than 80 percent, suffer from hypoglycemia, which needs to be corrected, as described in some chapters in this book. The orthomolecular treatment of schizophrenia includes more than the routine administration of 3 g of niacin or niacinamide per day.

The importance of good nutrition to good health cannot be denied. There is much evidence to support the thesis that for most people the optimum daily intake of ascorbic acid is far larger than the usually recommended daily allowance (Pauling, 1970); 3 to 6 g per day, the amount customary in megavitamin treatment of schizophrenia, may well be only the average optimum for most human beings. Little effort has been expended in the study of the amounts of vitamins required for optimum health. The decision by most psychiatrists who do not accept the principles of orthomolecular psychiatry to restrict the intake of vitamins by their patients to certain arbitrary levels, without checking the possible benefit for the patient of an increased intake, cannot be justified.

Part of the resistance to megavitamin therapy is based on the idea that an increased intake of a vitamin should be subjected to as thorough testing as a new synthetic drug. This is nonsense; the vitamins are substances to which the human body has long been accustomed, and the toxicities of the water-soluble vitamins are known to be low and the side effects few. Another part of the resistance is the result of a misunderstanding of the meaning of statistical significance. Investigations described as attempts to replicate Hoffer and Osmond's results are reported to have failed to show a statistically significant difference between the subjects receiving niacin or niacinamide and those receiving a placebo. This conclusion is then incorrectly interpreted as meaning

that the investigations have shown niacin or niacinamide to have no greater value than a placebo.

For example, Hoffer had reported that mentally ill children receiving niacinamide and ascorbic acid benefited more than those receiving a placebo. Greenbaum (1970) then reported that he was unable to confirm the claimed value of niacinamide in his double-blind study of 17 children receiving niacinamide (1000 mg per day per 50 lb. body weight) and 24 children receiving a placebo (also 16 receiving niacinamide and a tranquilizer). The principal criterion was the increase during the six months of the study in the score on a clinical scale of observable behavior categories. Greenbaum reported that "there was no significant difference attributable to niacinamide." This statement is seriously misleading. The average improvement in the score was in fact 4.0 units for the niacinamide group and 2.6 units for the placebo group. The difference between 4.0 and 2.6 is reported as not statistically significant. But we see that Greenbaum found 54 percent greater improvement in the niacinamide group than in the placebo group. From Greenbaum's result we can say that it is more likely that niacinamide has an effect (54 percent greater than the placebo) than that it has no effect, but it is not 20 times more likely ($P < 0.05$, accepted as statistically significant).

The statistical significance is determined by the design of the investigation. If Greenbaum had got the same result (54 percent more improvement for the niacinamide group than for the placebo group) with a larger number of subjects the null hypothesis of equal effect of niacinamide (in the dosage used) and placebo could have been rejected with statistical significance ($P < 0.05$).

Ban (1971) states that "The hypothesis, based on these findings [by Hoffer], that nicotinamide therapy is useful in childhood schizophrenia was not verified by Greenbaum in a carefully designed—placebo controlled—study." I consider this statement to be wrong. Greenbaum found 54 percent more improvement in the niacinamide group than the placebo group. Surely 54 percent more improvement is useful. The amount of improvement, 54 percent, is unreliable, but that is what he found.

I have discussed this matter in some detail because much of the objection to the use of orthomolecular methods in psychiatry is based upon similar misrepresentations of the reported studies.

Another investigation that is quoted as having provided evidence against the hypothesis that niacin or niacinamide has value in the treatment of schizophrenia was published by Ananth et al. in 1970, with the title "Nicotinic acid in the prevention and treatment of artificially induced exacerbation of psychopathology in schizophrenics." It is known that a substance, such as the amino acid methionine, whose molecules can donate methyl groups to other molecules has the property of exacerbating the mental illness of schizophrenics when it is ingested, and it has been suggested that the effectiveness of niacin and niacinamide in controlling schizophrenia results from the action of their molecules as methyl acceptors—that is, they remove methyl groups

om some methylated compounds in the body that may be causing the mental illness. n the investigation by Ananth et al. schizophrenia patients were given daily doses of ethionine. Some of the patients also were given niacinamide. All of the patients owed a pronounced exacerbation of their mental illness. The result has been terpreted as showing that niacinamide does not neutralize the methyl-donating fect of methionine in exacerbating schizophrenia by virtue of its function as a methyl ceptor. This conclusion is, however, not justified, because there was a serious flaw the design of the experiment. The patients were given 20 g of methionine per day. er 16 g of niacinamide per day would be required to accept the methyl groups nated by 20 g of methionine, but the patients were given only 3 g. It could have en predicted that the experiment would fail.

There is thoroughly convincing evidence that the methods of orthomolecular sychiatry discussed in this book have great value. Some aspects of the scientific asis of these methods are presented in the earlier chapters. Some of the chapters are most interest to biochemists. Most of the chapters can, I believe, be read with nderstanding and profit by physicians and by laymen who have some acquaintance ith the terminology of chemistry and other sciences. Despite the progress that has en made in controlling it, mental illness is still the cause of a tremendous amount of uffering. The work of Hoffer, Osmond, Hawkins, and others has shown that the ethods of orthomolecular psychiatry can be used to decrease the amount of this uffering. I join my co-editor, Dr. David Hawkins, and the other contributors to this ook in expressing the hope that it will be found useful not only by scientists and hysicians but also by those who suffer from schizophrenia and by their families.

I thank Dr. Gustav Albrecht for his help.

August 1972 *Linus Pauling*

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Orthomolecular Psychiatry

LINUS PAULING

INTRODUCTION

The methods principally used now for treating patients with mental disease are psychotherapy (psychoanalysis and related efforts to provide insight and to decrease environmental stress), chemotherapy (mainly with the use of powerful synthetic drugs, such as chlorpromazine, or powerful natural products from plants, such as reserpine), and convulsive or shock therapy (electroconvulsive therapy, insulin coma therapy, pentylenetetrazol shock therapy). I have reached the conclusion, through arguments summarized in the following paragraphs, that another general method of treatment, which may be called orthomolecular therapy, may be found to be of great value, and may turn out to be the best method of treatment for many patients.

Orthomolecular psychiatric therapy is the treatment of mental disease by the provision of the optimum molecular environment for the mind, especially the optimum

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concentrations of substances normally present in the human body.[1] An exam the treatment of phenylketonuric children by use of a diet containing a smaller normal amount of the amino acid phenylalanine. Phenylketonuria (Følling, 1 results from a genetic defect that leads to a decreased amount or effectiveness o enzyme catalyzing the oxidation of phenylalanine to tyrosine. The patients on a mal diet have in their tissues abnormally high concentrations of phenylalanine some of its reaction products, which, possibly in conjunction with the decreased centration of tyrosine, cause the mental and physical manifestations of the dis (mental deficiency, severe eczema, and others). A decrease in the amount of phe alanine ingested results in an approximation to the normal or optimum concer tions and to the alleviation of the manifestations of the disease, both mental physical.

The functioning of the brain is d pendent on its composition and structure; tha on the molecular environment of the mind. The presence in the brain of molecule N,N-diethyl-D-lysergamide, mescaline, or some other schizophrenogenic substa is associated with profound psychic effects (see, for example, Woolley, 1962). Cl kin has recently pointed out (1967) that in 1799 Humphry Davy described sim subjective reactions to the inhalation of nitrous oxide. The phenomenon of gene anesthesia also illustrates the dependence of the mind (consciousness, epheme memory) on its molecular environment (Pauling, 1961; Miller, 1961).

The proper functioning of the mind is known to require the presence in the brai molecules of many different substances. For example, mental disease, usu associated with physical disease, results from a low concentration in the brain of a one of the following vitamins: thiamine (B_1), nicotinic acid or nicotinamide (E pyridoxine (B_6), cyanocobalamin (B_{12}), biotin (H), ascorbic acid (C), and folic ac There is evidence that mental function and behavior are also affected by changes the concentration in the brain of any of a number of other substances that are nor ally present, such as L(+)-glutamic acid, uric acid, and γ-aminobutyric acid.[2]

OPTIMUM MOLECULAR CONCENTRATIONS

Several arguments may be advanced in support of the thesis that the optimum mol cular concentrations of substances normally present in the body may be differe from the concentrations provided by the diet and the gene-controlled synthe

[1] I might have described this therapy as the provision of the optimum molecular composit of the brain. The brain provides the molecular environment of the mind. I use the word mind a convenient synonym for the functioning of the brain. The word orthomolecular may be criticiz as a Greek-Latin hybrid. I have not, however, found any other word that expresses as well t idea of the right molecules in the right amounts.

[2] The literature is so extensive that I refrain from giving references here.

chanisms, and, for essential nutrilites (vitamins, essential amino acids, essential ty acids) different from the minimum daily amounts required for life or the "recommended" (average) daily amounts suggested for good health. Some of these arguments are presented in the following paragraphs.

VOLUTION AND NATURAL SELECTION

e process of evolution does not necessarily result in the normal provision of timum molecular concentrations. Let us use ascorbic acid as an example. Of the ammals that have been studied in this respect, the only species that have lost the wer to synthesize ascorbic acid and that accordingly require it in the diet are man, her Primates (rhesus monkey, Formosan long-tail monkey, and ring-tail or brown puchin monkey), the guinea pig, and an Indian fruit-eating bat (*Pteropus medius*).[3] resumably the loss of the gene or genes controlling the synthesis of the enzyme or nzymes involved in the conversion of glucose to ascorbic acid occurred some 20 illion years ago in the common ancestor of man and other Primates, and occurred dependently for the guinea pig and for one species of bat and one bird, in each case an environment such that ascorbic acid was provided by the food. For a mutation te of 1/20,000 per gene generation and for even a very small advantage for the mutnt (0.01 percent more progeny) the mutant would replace the earlier genotype within bout 1 million years. The advantage to the mutant of being rid of the ascorbic-acid-ynthesis machinery (decrease in cell size and energy requirement, liberation of machinery for other purposes) might well be large, perhaps as much as 1 percent; a disadvantage nearly as large (less by 0.01 percent) resulting from a less than optimum supply of dietary ascorbic acid would not prevent the replacement of the earlier species by the mutant. Hence, even if the amount of the vitamin provided by the diet available at the time of the mutation were less than the optimum amount, the mutant might still be able to replace its predecessor. Moreover, it is possible that the environment has changed during the last 20 million years in such a way as to provide a decreased amount of the vitamin. Even a serious disadvantage of the changed environment would not lead to a mutation restoring the synthetic mechanism within a period of a few million years, because of the small probability of such mutations, far smaller than of those resulting in loss of function.

Moreover, the process of natural selection may be expected later on to lead to the survival of a species or strain that synthesizes somewhat less than the optimum amount of an autotrophic vital substance rather than of the species or strain that synthesizes the optimum amount. To synthesize the optimum amount requires

[3] For references, see Stone (1965). The only other vertebrates known to require exogenous ascorbic acid are the red-vented bulbul, *Pycnonotus cafer*, and related passeriform birds.

about twice as much biological machinery as to synthesize half the optimum amou
As suggested in Figure 1-1, the evolutionary disadvantage of synthesizing a less th

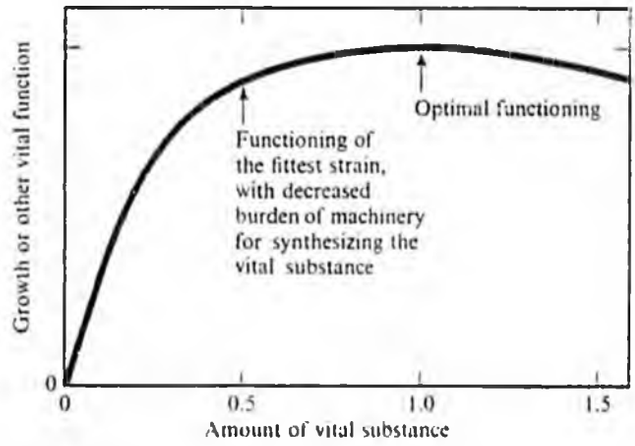

FIGURE 1-1.
Diagrammatic representation of growth rate or other vital property of an organism as function of the concentration of vital substance in the organism, showing the concentration at which the differential advantage of an increased amount of vital substance is just balanced by the differential disadvantage resulting from an increased amount of machinery for synthesis, and the concentration that gives optimum functioning without consideration of the burden of the machinery for synthesis.

optimum amount of the vital substance may be small, and may be outweighed by th
advantage of requiring a smaller amount of biological machinery. Evidence from th
study of microorganisms is discussed in the following paragraphs.

EVIDENCE FROM MICROBIOLOGICAL GENETICS

Many mutant microorganisms are known to require, as a supplement to the mediu
in which they are grown, a substance that is synthesized by the corresponding wil
type organism (the normal strain). An example is the pyridoxine-requiring mutant
Neurospora sitophila reported by G. W. Beadle and E. L. Tatum in their first *Neur*
spora paper, published in 1941.

Several species of *Neurospora* that have been extensively studied are known to b
able to grow satisfactorily on synthetic media containing inorganic salts, an in
organic source of nitrogen, such as ammonium nitrate, a suitable source of carbon
such as sucrose, and the vitamin biotin. All other substances required by the organis

e synthesized by it. Beadle and Tatum found that exposure to x-radiation produces utant strains such that one substance must be added to the minimum medium in der to permit the growth at a rate approximating that of the normal strain. Their yridoxine-requiring mutant was found to grow on the standard medium at a rate nly 9 percent of that of the normal strain. When pyridoxine (vitamin B_6) is added to e medium, the rate of growth of this strain at first increases nearly linearly with the oncentration of the added pyridoxine and then increases less rapidly, as shown in igure 1-2.[4] The growth rate of the normal strain without added pyridoxine is equal o that of the mutant with about 10 micrograms of the growth substance per liter in he medium. At a concentration about four times this value (40 micrograms per liter) he growth rate of the mutant strain reaches a value 7 percent greater than that of the ormal strain without added pyridoxine.

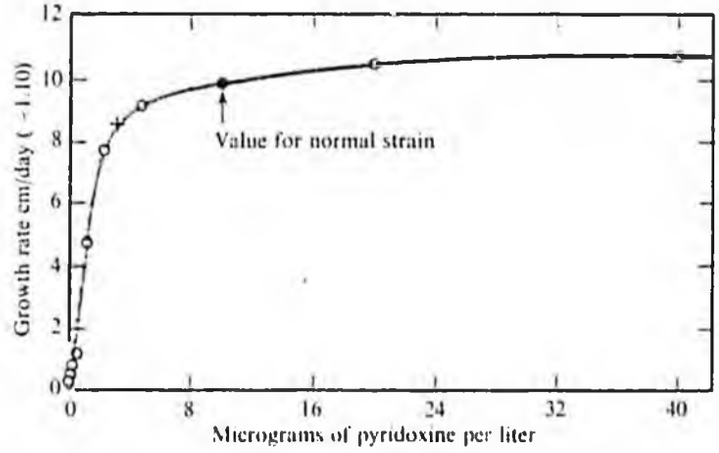

FIGURE 1-2.
The observed rate of growth of a pyridoxine-requiring *Neurospora* mutant (Beadle and Tatum, 1941), as function of the concentration of pyridoxine in the medium.

The point of maximum curvature of the curve in Figure 1-2, at about 3.2 micrograms of pyridoxine per liter (indicated by a cross), may be reasonably considered to mark the division between the region of vitamin deficiency (to the left) and the region of normal vitamin supply (to the right), such as might permit the mutant to compete with the wild type, which has the growth rate represented by the filled circle in Figure 1-2. The point marked by the cross might well correspond to an "adequate" or "recommended" amount of the vitamin, in that the growth rate of the mutant is only

[4] The points in Figure 1-2 represent my measurement of the slopes of the growth curves shown in Figure 1 of Beadle and Tatum (1941). They agree closely with the points of their Figure 2, except for one point, that for 1.2 μg/liter, which may have been misplotted.

12 percent less than that of the wild strain, and that the amount of the vitamin would have to be increased threefold to make up this 12 percent.[5]

As shown in Figure 1-2, quadrupling the concentration of pyridoxine that gives the mutant a growth rate equal to that of the wild type causes a further increase in growth rate by nearly 10 percent. The growth rates of the mutant and the wild type at very large concentrations of the vitamin have not been measured, so far as I know, and the optimum concentration is not known. From the work of Beadle and Tatum (1941) the optimum concentration may be taken to be greater than 40 micrograms per liter; that is, more than ten times the "adequate" concentration for the mutant and more than four times the concentration equivalent to the synthesizing capability of the wild type. The growth rate of the mutant at the optimum concentration is more than 22 percent greater than that at the "adequate" concentration and more than 9 percent greater than that of the normal strain.

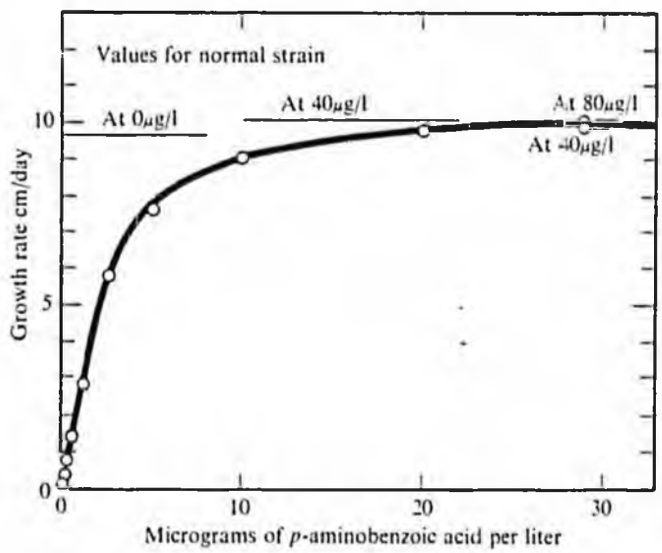

FIGURE 1-3.
The observed rate of growth of a *p*-aminobenzoic-acid-requiring *Neurospora* mutant (Tatum and Beadle, 1942), as function of concentration of the growth substance in the medium.

Similar results have been reported for other mutants of *Neurospora*. The values found by Tatum and Beadle (1942) for a *p*-aminobenzoic-acid-requiring mutant of *Neurospora crassa* as a function of the concentration of *p*-aminobenzoic acid added to the standard medium are shown in Figure 1-3. The growth-rate curve is similar in

[5] The reported growth rate for the normal strain in a medium with 40 μg of added pyridoxine per liter is 3 percent greater than that for the basic medium, as shown by the slopes of the lines in Figure 1 of Beadle and Tatum (1941).

shape to that for the pyridoxine-requiring mutant. The value of the growth rate for the normal strain of *Neurospora crassa* with no added *p*-aminobenzoic acid is equal to that for the mutant at a concentration of added *p*-aminobenzoic acid of about 15 micrograms per liter. A value about 4 percent greater is found for the normal strain at 40 micrograms per liter and for the mutant strain at 80 micrograms per liter, as indicated in Figure 1-3.

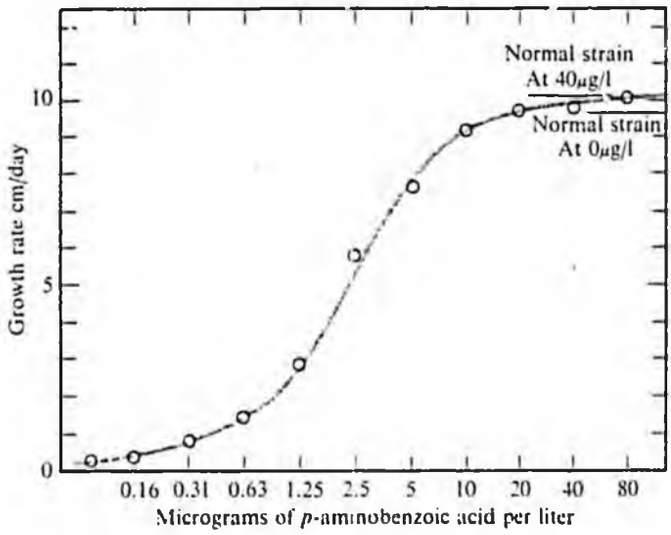

FIGURE 1-4.
Observed rate of growth of a *p*-aminobenzoic-acid-requiring *Neurospora* mutant as function of the logarithm of the concentration of *p*-aminobenzoic acid.

It is customary to plot values of the growth rate against the logarithm of the concentration of the growth substance, as shown in Figure 1-4. The amount of increase accompanying a doubling in the concentration of the growth substance is a maximum at 1.25 to 2.5 micrograms per liter, and decreases thereafter to about half the value for each successive doubling.

From these two examples we see that there may be a significant increase in rate of growth of the normal strain through addition of some of the growth substance that it synthesizes to the medium in which it is grown; that is, that the amount of the growth substance that is synthesized by the normal strain is not the optimum amount, but is somewhat less, leading to a rate of growth approximately 7 percent less than the maximum in the case of pyridoxine (with the normal strain of *Neurospora sitophila*) and 4 percent less for *p*-aminobenzoic acid (with the normal strain of *Neurospora crassa*). Many other examples are known of microorganisms that grow more

abundantly in a medium containing vitamins, amino acids, or other substances th they are able to synthesize than on a minimum medium.

Evidence supporting the above arguments has been presented recently by Zame hof and Eichhorn (1967) in a paper entitled "Study of microbial evolution throu loss of biosynthetic functions: Establishment of 'defective' mutants." These authc carried out experiments involving competitive growth in a chemostat of an aux trophic mutant (a mutant requiring a nutrilite) and a prototrophic parent in a mediu of constant composition containing the nutrilite. They found that the "defectiv mutant has a selective advantage over the prototrophic parental strain under the conditions. For example, an indole-requiring mutant of *Bacillus subtilis* was found t show a strong selective advantage over the prototrophic back-mutant when the tw were grown together in a medium containing tryptophan: the relative number of cel of the latter decreased 10^6-fold in 54 generations. They also found that greater ac vantage to the auxotroph accompanies a greater number of biosynthetic steps tha have been dispensed with (earlier block in a series of reactions), with the final meta bolite available. They point out that a mutant with a gene deletion would be at distinct selective advantage over a point mutant, in that not only the synthesis of th metabolite, but also that of the structural gene, the messenger RNA, and perhaps th inactive enzyme itself would be dispensed with, and that accordingly the mutant witl a deletion would replace the point mutant in competition. They mention evidence that some of the "defective" strains occurring in nature have lost one or more of thei structural genes by deletions, rather than by point mutations.

MOLECULAR CONCENTRATIONS AND RATE OF REACTION

Most of the chemical reactions that take place in living organisms are catalyzed by enzymes. The mechanisms of enzyme-catalyzed reactions in general involve (1) the formation of a complex between the enzyme and a substrate molecule, and (2) the decomposition of this complex to form the enzyme and the products of the reaction. The rate-determining step is usually the decomposition of the complex to form the products or, more precisely, the transition through an intermediate state of the complex, characterized by activation energy less than for the uncatalyzed reaction, to a complex of the enzyme and the products of reaction, with a rapid dissociation. Under conditions such that the concentration of the complex corresponds to equilibrium with the enzyme and the substrate, the rate of the reaction is given by the following equation (the Michaelis–Menten equation; Michaelis and Menten, 1913):

$$R = \frac{d[S]}{dt} = \frac{kE[S]}{[S] + (1/K)}, \tag{1}$$

In this equation $[S]$ is the concentration of the substrate, E is the total concentration of enzyme (present both as free enzyme and enzyme complex), K is the equilibrium constant for formation of the enzyme complex ES, and k is the reaction-rate constant for decomposition of the complex to form the enzyme and reaction products. This equation corresponds to the case in which there are no enzyme inhibitors present.

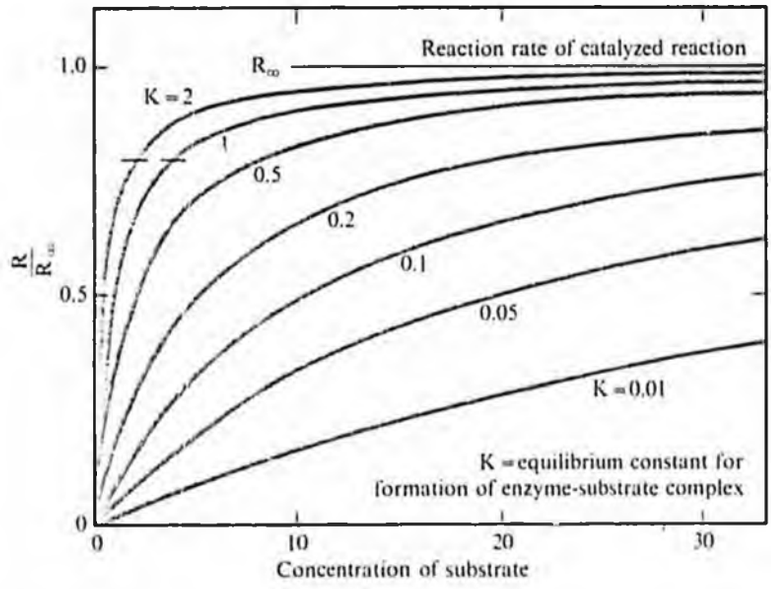

FIGURE 1-5.
Curves showing calculated reaction rate R/R_∞ of catalyzed reaction as function of the concentration of the substrate, for different values of the equilibrium constant K for formation of the enzyme-substrate complex.

Values of the reaction rate calculated from this equation for different values of K are shown in Figure 1-5. The curves are similar in shape to those of Figures 1-2 and 1-3. At concentrations much smaller than K^{-1} the reaction rate is proportional to the concentration of substrate. At larger concentrations, as the amount of enzyme complex becomes comparable to the amount of free enzyme, the reaction rate changes from the linear dependence. At substrate concentration equal to K^{-1} the slope of the curve is one-quarter of the initial slope, and the value is one-half of the value corresponding to saturation of the enzyme by the substrate.

The similarity of the curves of Figures 1-2 and 1-3 to appropriate curves in Figure 1-5 suggests that the growth substance may be involved in an enzyme-catalyzed reaction in which it serves as the substrate. The normal strain of the organism manufactures an amount of the substrate such as to permit the reaction to take place at what

may be considered a normal rate, 90 or 95 percent of the maximum ra
sponds to saturation of the enzyme. As described above, the gain
associated with the manufacture of a larger amount of the substrat
sponding advantage to the organism, might be balanced by the disa
organism associated with the upkeep of the larger amount of machin
manufacture the increased amount of substrate. An increase in rate
could also be achieved by an increase in the amount of the enzyme syn
organism. Here, again, the advantage to the organism resulting fro
may be overcome by the disadvantage associated with the increase in
machinery required for the increased synthesis. During the process of
has presumably been selection of genes determining the concentrati
zymes catalyzing successive reactions such as to achieve an approx
optimum reaction rate with the smallest amount of disadvantage to t

The rate of an enzyme-catalyzed reaction is approximately propo
concentration of the reactant, until concentrations that largely satura
are reached. The saturating concentration is larger for a defective en
creased combining power for the substrate than for the normal enzyn
defective enzyme the catalyzed reaction could be made to take place
normal rate by an increase in the substrate concentration, as indicated
The short horizontal lines intersecting the curves indicate what may
"normal" reaction rate, 80 percent of the maximum. For $K = 2$ the "n
achieved at substrate concentration $[S] = 2$. At this substrate conc
reaction rate is only 29 percent of the maximum and 35 percent of "r
mutated enzyme with $K = 0.2$; it could be raised to the "normal" valu
increase in the substrate concentration, to $[S] = 20$. Similarly, the sti
advantage of low reaction rate for a mutated enzyme with K only 0.01 c
come by a 200-fold increase in substrate concentration, to $[S] = 400$.
ism of action of gene mutation is only one of several that lead to disa
manifestations that could be overcome by an increase, perhaps a great in
concentration of a vital substance in the body. These considerations ol
gest a rationale for megavitamin therapy.

MOLECULAR CONCENTRATIONS AND MENTAL DISEASE

The functioning of the brain and nervous tissue is more sensitively depe
rate of chemical reactions than the functioning of other organs and tiss
that mental disease is for the most part caused by abnormal reaction rat
mined by genetic constitution and diet, and by abnormal molecular conce
essential substances. The operation of chance in the selection for the chi

The complement of genes of the father and mother leads to bad as well as to good genotypes, and the selection of foods (and drugs) in a world that is undergoing rapid scientific and technological change may often be far from the best. Significant improvement in the mental health of many persons might be achieved by the provision of the optimum molecular concentrations of substances normally present in the human body. Among these substances, the essential nutrilites may be the most worthy of extensive research and more thorough clinical trial than they have yet received. One important example of an essential nutrilite that is required for mental health is vitamin B_{12}, cyanocobalamin. A deficiency of this vitamin, whatever its cause (pernicious anemia; infestation with the fish tapeworm *Diphyllobothrium*, whose high requirement for the vitamin results in deprivation for the host; excessive bacterial flora, also with a high vitamin requirement, as may develop in intestinal blind loops), leads to mental illness, often even more pronounced than the physical consequences. The mental illness associated with pernicious anemia (a genetic defect leading to deficiency of the intrinsic factor [a mucoprotein] in the gastric juice and the consequent decreased transport of cyanocobalamin into the blood) often is observed for several years in patients with this disease before any of the physical manifestations of the disease appear (Smith, 1950). A pathologically low concentration of cyanocobalamin in the serum of the blood has been reported to occur for a much larger fraction of patients with mental illness than for the general population. Edwin et al. (1965) determined the amount of B_{12} in the serum of every patient over 30 years old admitted to a mental hospital in Norway during a period of 1 year. Of the 396 patients, 5.8 percent (23) had a pathologically low concentration, less than 101 picograms per milliliter, and the concentration in 9.6 percent (38) was subnormal (101 to 150 picograms per milliliter). The normal concentration is 150 to 1300 picograms per milliliter. The incidence of pathologically low and subnormal levels of B_{12} in the serums of these patients, 15.4 percent, is far greater than that in the general population, about 0.5 percent (estimated from the reported frequency of pernicious anemia in the area, 9.3 per 100,000 persons per year). Other investigators[6] have also reported a higher incidence of low B_{12} concentrations in the serums of mental patients than in the population as a whole, and have suggested that B_{12} deficiency, whatever its origin, may lead to mental illness.

Nicotinic acid (niacin), when its use was introduced, cured hundreds of thousands of pellagra patients of their psychoses, as well as of the physical manifestations of their disease. For this purpose only small doses are required; the recommended daily allowance (National Research Council) is 12 milligrams per day (for a 70-kilogram male). In 1939 Cleckley et al. reported the successful treatment of 19 patients, and

[6] Hansen et al. (1966) report serum B_{12} concentration below 150 pg/ml in 13 of 1,000 consecutive patients admitted to a Copenhagen psychiatric clinic. Henderson et al. (1966) report that 9 of 1,012 unselected psychiatric patients in a region in Scotland were found to have B_{12} deficiency, in addition to 5 pernicious anemia patients in the group.

in 1941 Sydenstricker and Cleckley[7] reported similarly successful treatment of 29 patients with severe psychiatric symptoms by use of moderately large doses of nicotinic acid (0.3 to 1.5 grams per day). None of these patients had physical symptoms of pellagra or any other avitaminosis. More recently many other investigators have reported on the use of nicotinic acid and nicotinamide for the treatment of mental disease. Outstanding among them are Hoffer and Osmond, who since 1952 have advocated and used nicotinic acid in large doses, in addition to the conventional therapy, for the treatment of schizophrenia (Hoffer et al., 1957; Hoffer, 1962, 1966; Osmond and Hoffer, 1962; Hoffer and Osmond, 1964). The dosage recommended by Hoffer is 3 to 18 grams per day, as determined by the response of the patient, of either nicotinic acid or nicotinamide, together with 3 grams per day of ascorbic acid. Nicotinic acid and nicotinamide are nontoxic (the lethal dose, 50 percent effective [LD_{50}], is not known for humans, but probably it is over 200 grams; the LD_{50} for rats is 7.0 grams per kilogram for nicotinic acid and 1.7 grams per kilogram for nicotinamide), and their side effects, even in continued massive doses, seem not to be commonly serious. Among the advantages of nicotinic acid, summarized by Osmond and Hoffer (1962), are the following: it is safe, cheap, and easy to administer, and it is a well-known substance that can be taken for years on end, if necessary, with only small probability of incidence of unfavorable side effects.

Another vitamin that has been used to some extent in the treatment of mental disease is ascorbic acid, vitamin C. A sometimes-recommended daily intake of ascorbic acid is 75 milligrams for healthy adults. Some investigators have estimated that the optimum intake is much larger (Kyhos et al., 1945), perhaps 3 to 15 grams per day, according to Stone (1966, 1967). Williams and Deason (1967) have emphasized the variability of individual members of a species of animals; they have reported their observation of a 20-fold range of required intake of ascorbic acid by guinea pigs, and have suggested that human beings, who are less homogeneous, have a larger range.

Mental symptoms (depression) accompany the physical symptoms of vitamin-C deficiency disease (scurvy). In 1957, Akerfeldt reported that the serum of schizophrenics had been found to have greater power of oxidizing N,N-dimethyl-*p*-phenylenediamine than that of other persons. Several investigators then reported that this difference is due to a smaller concentration of ascorbic acid in the serum of schizophrenics than of other persons. This difference has been attributed to the poor diet and increased tendency to chronic infectious disease of the patients (Benjamin, 1958; Kety, 1959), and has also been interpreted as showing an increased rate of metabolism of ascorbic acid by the patients (Hoffer and Osmond, 1960; Briggs, 1962). It is my opinion, from the study of the literature, that many schizophrenics have an increased metabolism of ascorbic acid, presumably genetic in origin, and that the

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[7] References are given in this paper to some earlier work on nicotinic acid therapy.

gestion of massive amounts of ascorbic acid has some value in treating mental disease.

Other vitamins (thiamine, pyridoxine, folic acid) and other substances (zinc ion, magnesium ion, uric acid, tryptophan, L(+)-glutamic acid, and others) influence the functioning of the brain. I shall review work on L(+)-glutamic acid as a further example. L(+)-Glutamic acid is an amino acid that is present at rather high concentration in brain and nerve tissue and plays an essential role in the functioning of these tissues (Weil-Malherbe, 1936). It is normally ingested (in protein) in amounts of 5 to 10 grams per day. It is not toxic; large doses may cause increased motor activity and nausea. In 1943 Price et al. reported favorable results for glutamic acid therapy of convulsive disorders (benefit to one out of three or four patients with petit mal epilepsy: Waelsch, 1948). Zimmerman and Ross (1944) then reported an increase in maze-running learning ability of white rats given extra amounts of glutamic acid. Zimmerman and many other investigators then studied the effects of glutamic acid on the intelligence and behavior of persons with different degrees and kinds of mental retardation. L(+)-Glutamic acid is apparently more effective than its sodium or potassium salts. The effective dosage is usually between 10 and 20 grams per day (given in three doses with meals), and is adjusted to the patient as the amount somewhat less than that required to cause hyperactivity. Several investigators[8] have reported an improvement in personality and increase in intelligence (by 5 to 20 I.Q. points) for many patients with mild or moderate mental deficiency.

LOCALIZED CEREBRAL DEFICIENCY DISEASES

The observation that the psychosis associated with pernicious anemia may manifest itself in a patient for several years before the other manifestations of this disease become noticeable has a reasonable explanation: the functioning of the brain and nervous tissue is probably more sensitively dependent on molecular composition than is that of other organs and tissues. The observed high incidence of cyanocobalamin deficiency in patients admitted to a mental hospital, mentioned above, suggests that mental disease may rather often be the result of this deficiency, and further suggests that other deficiencies in vital substances may be wholly or partly responsible for many cases of mental illness.

The foregoing arguments suggest the possibility that under certain circumstances a deficiency disease may be localized in the human body in such a way that only some of the manifestations usually associated with the disease are present. Let us consider, for example, a vitamin or other vital substance that is normally metabolized by the

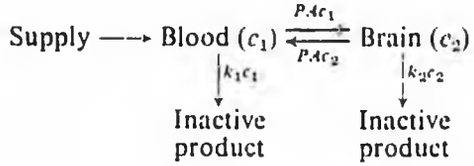
[8] A recent survey of the role of glutamic acid in cognitive behaviors has been published by Vogel et al. (1966). Many references to earlier work are given in this paper.

catalytic action of an enzyme normally present in the tissues and organs of the bod
In a person of unusual genotype there might be an especially great concentration
this enzyme in one body organ, with essentially the normal amount in other organ
Through the action of this enzyme in especially great concentration the steady-sta
concentration of the vital substance in that organ might be decreased to a level muc
lower than that required for normal function. Under these circumstances there woul
be present a deficiency disease restricted to that organ.

An especially important case is that of the brain. We may, as a rough model of th
human body, consider two reservoirs of fluid, the blood and lymph, with volume V
and cerebrospinal fluid, the extracellular fluid of the brain and spinal column, wit
volume V_2. We assume that a vital substance is destroyed in each of these reservoirs a
a characteristic rate, corresponding to the rate constants k_1 and k_2, that it diffuse
across the blood-brain barrier at a rate determined by the product of the permeabilit
and area of the barrier and the difference $c_2 - c_1$ of the concentrations in the tw
reservoirs, and that it is introduced from the gastrointestinal tract into the firs
reservoir at a constant rate. The steady-state con rations are then in the ratio

$$c_1/c_2 = 1 + (k_2V_2/PA)$$

where PA is the product of permeability and the area of the blood-brain barrier. Th
steady state corresponds to the following system:



From this equation it is seen, as shown also in Figure 1-6, that for small values o
k_2V_2/PA the difference in steady-state concentrations in the cerebrospinal fluid and
the blood is small, but that through either decrease in permeability of the barrier o
increase in the metabolic rate constant k_2 the dy-state concentration in the brai
becomes much less than that in the blood.

This simple argument leads us to the possibility of a localized cerebral avitaminosi
or other localized cerebral deficiency disease. There is the possibility that some huma
beings have a sort of cerebral scurvy, without any of the other manifestations, or a
sort of cerebral pellagra, or cerebral pernicious anemia. It was pointed out by
Zuckerkandl and Pauling (1962) that every vitamin, every essential amino acid, every
other essential nutrilite represents a molecular disease (Pauling et al., 1949) which our
distant ancestors learned to control, when it began to afflict them, by selecting a thera-
peutic diet, and which has continued to be kept under control in this way. The local-
ized deficiency diseases described above are also molecular diseases, compound
molecular diseases, involving not only the original lesion, the loss of the ability to

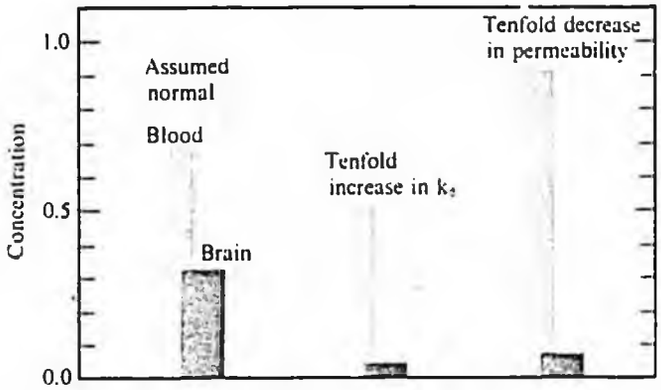


FIGURE 1-6.
Values of the concentration of a vital substance in the blood and in the cerebrospinal fluid for three different assumed sets of values of blood-brain barrier permeability and rate of destruction in the cerebrospinal fluid.

nthesize the vital substance, but also another lesion, one that causes a decreased te of transfer across a membrane, such as the blood-brain barrier,[9] to the affected gan, or an increased rate of destruction of the vital substance in the organ, or some ther perturbing reaction.

It has been suggested by Huxley et al. (1964), partially on the basis of the observations of Böök (1953, 1958) and Slater (1958) on the incidence of schizophrenia in relatives of schizophrenics, that schizophrenia is caused by a dominant gene with incomplete penetrance. They suggested that the penetrance, about 25 percent, may in some cases be determined by other genes and in some cases by the environment. I suggest that the other genes may, in most cases, be those that regulate the metabolism of vital substances, such as ascorbic acid, nicotinic acid or nicotinamide, pyridoxine, cyanocobalamin, and other substances mentioned above. The reported success in treating schizophrenia and other mental illnesses by use of massive doses of some of these vitamins may be the result of successful treatment of a localized cerebral deficiency disease involving the vital substances, leading to a decreased penetrance of the gene for schizophrenia. There is a possibility that the so-called gene for schizophrenia is itself a gene affecting the metabolism of one or another of these vital substances, or even of several vital substances, causing a multiple cerebral deficiency.

I suggest that the orthomolecular treatment of mental disease, to be successful, should involve the thorough study of and attention to the individual, such as is

[9] It has been suggested by Melander and Martens (1958, 1959) and by Hoffer and Osmond (1966) that the effects of taraxein (Heath et al., 1958) may result from changing the permeability of the blood-brain barrier.

customary in psychotherapy but less customary in conventional chemotherapy. the course of time it should be possible to develop a method of diagnosis (measu ment of concentrations of vital substances) that could be used as the basis for det mining the optimum molecular concentrations of vital substances for the individu patient and for indicating the appropriate therapeutic measures to be taken. My c workers and I are carrying on some experimental studies suggested by the foregoi considerations, and hope to be able before long to communicate some of our resul

SUMMARY

The functioning of the brain is affected by the molecular concentrations of many su stances that are normally present in the brain. The optimum concentrations of the substances for a person may differ greatly from the concentrations provided by h normal diet and genetic machinery. Biochemical and genetic arguments support th idea that orthomolecular therapy, the provision for the individual person of th optimum concentrations of important normal constituents of the brain, may be th preferred treatment for many mentally ill patients. Mental symptoms of avitaminos sometimes are observed long before any physical symptoms appear. It is likely tha the brain is more sensitive to changes in concentration of vital substances than ar other organs and tissues. Moreover, there is the possibility that for some persons th cerebrospinal concentration of a vital substance may be grossly low at the same tim that the concentration in the blood and lymph is essentially normal. A physiologica abnormality such as decreased permeability of the blood-brain barrier for the vita substance, or increased rate of metabolism of the substance in the brain, may lead to a cerebral deficiency and to a mental disease. Diseases of this sort may be called local ized cerebral deficiency diseases. It is suggested that the genes responsible for abnor malities (deficiencies) in the concentration of vital substances in the brain may be responsible for increased penetrance of the postulated gene for schizophrenia, and that the so-called gene for schizophrenia may itself be a gene that leads to a localized cerebral deficiency in one or more vital substances.

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Orthomolecular Psychiatry: Treatment of Schizophrenia

DAVID HAWKINS

INSTRUCTIONS TO THE PATIENT

Education of the Patient: Explanation of the Illness and Test Results

Subsequent to the completion of tests and the diagnostic interview, the patient is given an interpretation of all the test findings and the diagnosis, including a biochemical explanation of his illness. It is explained to him how the HOD test reveals faulty perception, and he is told his exact HOD score and its correlation with his symptoms. It is then explained that a medical regimen will be prescribed that is designed to correct the brain's faulty perceptual functioning. An adequate understanding of the illness frequently relieves irrationality rapidly.

Similarly, when it is explained to the patient that paranoia is a result of faulty brain chemistry and it is labeled "paranoia" he becomes less paranoid and more rational. Unless the condition is of considerable duration, so that it has become

systematized with many attendant secondary gains, paranoid symptoms usually diminish rapidly. An adequate explanation to the patient of his illness is an extremely important therapeutic procedure and sets the stage for all the treatment procedures that follow.

We use the term "metabolic dysperception" (see Chapter 19 by Kowalson and Chapter 26 by Robie) to most accurately describe the patient's condition, and we explain that metabolic dysperception, if it gets bad enough, can produce overt clinical schizophrenia. We have yet to see a patient who has rejected this explanation, if expressed correctly. Many of the patients respond very positively and will state that this is the first time a psychiatrist has ever been honest with them.

Telling the patient that he has a specific illness allows him to assume the sick role with all the attendant benefits that accrue in our society, as have been well described by Siegler and Osmond (1969). Once the patient and family understand the nature of the illness they are usually willing to accept it and do something about it. The family no longer has to utilize denial or reaction formation to handle their guilt, anger, and other emotional reactions which automatically stem from psychological formulations of the illness. Under these conditions, families readily assent to counselling in those instances where disturbed family interaction is apparently impeding the patient's progress.

General Medical Regimen

The patient is told that he will be placed on a regimen consisting of diet, megavitamins, medications, and prescribed periods of exercise, rest, and sleep. No more than 8 hours of sleep is advised as more has been shown to increase fatigue and disability (Globus, 1969). Daily physical exercise is prescribed for its physiological benefit. Anxiety in mental patients has been demonstrated to be accompanied by elevated lactate levels as a result of altered energy systems (Pitts and McClure, 1967; Beebe and Wendell, 1968; also see Chapter 21 by Beebe and Wendell). The beneficial effect of exercise has also been reported by members of Schizophrenics Anonymous; they claim that of all the forms of exercise, swimming is the most subjectively beneficial.

Patients are advised to avoid excessive fatigue and stress and they are placed on a hypoglycemic diet which consists primarily of the avoidance of sugar and sweets, reduction of starch, and elimination of caffeine. Because there is an increasing interest in functional hypoglycemia there are a number of recent books available to the patient (see Chapter 22 by Meiers). A booklet "Hypoglycemia and Me" by the Hypoglycemic Foundation[1] is excellent and provides all the information needed.

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[1] Available from Adrenal Metabolic Research Society of the Hypoglycemia Foundation, P.O. Box 48, Fleetwood, Mount Vernon, New York, N.Y. 10552.

Patient self-help groups such as Health Frontiers[2] hold regular meetings, distribute educational literature, and sponsor informative lectures by endocrinologists.

The use of adrenal cortical extract (ACE) in the alleviation of hypoglycemic episodes is occasionally necessary. Our experiences have indicated that in certain patients it can be demonstrated to have a marked benefit and in several instances, the use of the ACE injections has made it unnecessary to hospitalize patients who had precipitated relapses by going off their diets. "Physicians Guidelines to Diagnosis and Treatment of Hypoglycemia or the Hypoadrenocortical State" and "Hypoadrenocorticism" are available from the Hypoglycemia Foundation to physicians only.[3]

We also advise patients that strong aged cheeses such as Roquefort and Camembert should be avoided as these have been reported by the members of SA to aggravate their symptoms.

Patients appreciate the reasons for all of these instructions and are far more cooperative when the rationale is given. It is useful to clarify the difference between a vitamin *deficiency* disease and a vitamin *dependency* disease (Rosenberg, 1970) in which vitamins are being used in pharmacologic rather than replacement doses. To aid in their understanding of the illness, educational literature is made available and most patients and families find helpful the educational package which is available from the Schizophrenia Association of Long Island.[4] In our experience, the more the patient and family know about the illness, the better the result.

Joining Schizophrenics Anonymous is recommended when it appears the patient would benefit, and we suggest to family members that they join one of the schizophrenia associations, become acquainted with the other families, and attend the educational lectures. Many patients become interested in the hypoglycemic aspect of the illness and appreciate being referred to patient self-help groups concerned with this illness.

With the alcoholic-schizophrenic patients, treatment is first concentrated on the schizophrenia and they are referred to SA. In each of the SA groups, there are also members of Alcoholics Anonymous and, as the patient improves, these recovered alcoholics introduce the patient to AA. If the patient is not going to SA then he is referred directly to AA after his HOD score has gone down and the schizophrenic process has abated. Surprisingly, at that point the schizophrenic-alcoholic usually abruptly stops drinking without the prolonged struggle and battle typical of the nonschizophrenic alcoholic. The patient frequently attends both SA and AA groups and as the schizophrenic process dissolves, he usually drifts away from SA and continues in just AA.

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[2] Available from Health Frontiers Foundation, 149 Spindle Road, Hicksville, New York 11801.

[3] Adrenal Metabolic Research Society of the Hypoglycemia Foundation, P.O. Box 98, Fleetwood, Mt. Vernon, New York.

[4] Long Island Schizophrenia Association, 1691 Northern Blvd., Suite No. 203, Manhasset, New York 11030.

MEDICATION

Psychotropic Drugs

The academic drug researcher operates at a distinct disadvantage—he cannot employ the great variety of techniques which the clinician utilizes almost automatically in his daily practice. Also, the researcher can only handle very limited data and the number of controlled variables must of necessity include only those that are most obvious and that lend themselves to data collection and processing. The parameters of research designs are, therefore, arbitrarily quite limited, as are the results. Unfortunately, the results of such studies are often extrapolated beyond the confines of the data and the results are stated in terms which do not limit the results to the conditions of the study. Because he is unencumbered by such limitations, it is usually possible for the clinician to accomplish more with any given drug than the literature infers. The more complex the illness being treated, the more this general principle holds true, and it is especially so in schizophrenia.

Correct sequencing of medications is important in the psychopharmacology of schizophrenia. By changing the sequence it is often possible to obtain results with the same drug to which the patient was previously unresponsive. A similar observation has also been made by Kline (1969), who noted, in doing cross-over studies, that patients may react differently to the same dose of the same drug when it is later re-introduced and that this phenomenon creates a previously unrecognized problem for drug research. We have learned that this can be done deliberately—a patient can be "set up" to respond to a drug that we intend to administer at a later date. In doing this, advantage can be taken of certain readily observable principles of central nervous system activity such as the rebound phenomenon. For instance, a patient will often readily respond to an "up" drug if it is rapidly introduced during the immediate period following cessation of a "down" drug and vice-versa. Brain function, as a general rule, tends to be compensatory, and this natural tendency can be used to purposely "sensitize" a patient to the effect of the same or another drug. In attempting to induce this reaction, the action of the "sensitizing" drug should be in the opposite direction from the drug whose response we later need to effect a recovery.

Researchers who are not clinically experienced are often puzzled by the "polypharmacy" that they come across, because, from the limitations of a theoretical viewpoint, it "doesn't make sense." The clinician, however, often follows by "intuition" certain principles in drug usage which have been learned by experience. Besides sequencing, these include: utilization of mutual synergisms and antagonisms, balancing off of side effects, purposely utilizing desired side effects, extending dosage ranges by concurrent use of antagonists, calculating onsets and durations of action, predicting progressive loss of response, predicting development of tolerance or loss

of tolerance, estimating effective dosage ranges at different stages of the illness, and predicting phases of drug responses. Because of all these clinically important factors, which are not included in research designs, it is common for clinicians to obtain quite different results from those that are received from academic studies. In daily practice the clinician automatically compensates for biological individuality (Williams, 1971) and the difference between patients, which in psychiatric conditions are more marked than in other kinds of illness. In psychiatry it is common for patients to require 10 to 100 times the "average dose" of a given substance before they respond favorably.

Additional reasons for the traditional "town versus gown" difference in the results of treatment between clinicians and academic researchers are provided by understanding Joseph Wilder's "Law of Initial Value," which states that the pre-stimulus state of the organism determines the response as much as does the nature of the stimulus itself. The chemical importance of this concept has been reviewed by Lesse (1971). Because of the antipsychotic effect of the phenothiazines, all patients are placed on either a suitable phenothiazine or other antipsychotic medication if this has not been done previously. According to Hollister (1971), antipsychotic drugs "contribute the most therapeutic benefits in schizophrenia—there is little direct evidence that traditional therapies add more," and all antipsychotics produce a postsynaptic dopamine receptor blockade leading to stabilization of the membrane at the receptor site.

The site of action may also be an enzymatic protein in the presynaptic membrane adjacent to the intersynaptic cleft (Teller and Denber, 1968). They point out that the defective protein at the synaptic site is probably quite small and that the antipsychotic drugs are capable of changing protein structure even in minute doses. The change in structure then causes change in functioning of the enzymatic activity. Utilizing a "framework molecular model" (available from Prentice-Hall, Inc., Englewood Cliffs, N. J.) they demonstrated, for instance, that the "architectural" characteristic of chlorpromazine and mescaline allowed for a demonstration of their mutually antagonistic action by action at the cell's protein membrane discs.

Spontaneous disinhibition of neuronal circuits, because they are connected in series rather than parallel, can result in clinically significant symptoms even though only a few sites are involved. This may lead to production of reverberative circuits in which apparent perceptions may occur, for instance, without external stimulation. Also, in chronic schizophrenia there is a disturbance of internal inhibitory activity (Saarma, 1968), and Saarma and Vasar (1970) have demonstrated that this disturbance is positively influenced by nicotinic acid. Teller and Denber conclude that the symptoms resulting from the endogenous genetic defect in schizophrenics are similar, from the viewpoint of molecular biology, to those that are exogenously caused by the psychotomimetic drugs. Bradley and Johnston made a valuable contribution to future research in this area in their work on "The Molecular

Pharmacology of Hallucinogens" (1968). Animal research until this time had been based only on gross behavioral changes in response to the drugs being investigated. Bradley and Johnston introduced the use of operant conditioning techniques to determine more subtle behavioral changes in response to a series of possible psychotogens. By correlating these more subtle responses to a series of structural changes in the molecules being studied, they have come closer to approximating the human condition in drug research with experimental animals.

It is explained to the patient that the phenothiazines are being prescribed, not as tranquilizers, but for their effect in reducing the HOD score and for their antischizophrenic action. Intelligent patients appreciate a brief explanation of the action of the phenothiazines so that they get to know that chlorpromazine has a "down" action and is, therefore, useful when they are agitated, or upset, or have insomnia, whereas fluphenazine, especially in lower doses, has an "up" action. An explanation is given of extra-pyramidal side effects and the reason for prescribing anti-Parkinsonian medication.

Patients are told that if they get blurred vision, the anti-Parkinsonian drug dose is too high, and that if they get restless legs or cannot sit still, it is too low. An explanation is given that the phenothiazines are not properly called tranquilizers and that that term should be reserved for drugs of the meprobamate type. This removes the common prejudice against taking tranquilizers. Many patients are either fearful of tranquilizers or they have reaction formations against them and do not want to become dependent on them. Clarification of this issue is often of considerable importance because some patients will discontinue antipsychotic drugs, with dire results, for these reasons.

The dose of phenothiazines is reduced as the patient improves and his medication is shifted from one end of the phenothiazine spectrum to the other, depending on what phase of illness or recovery he is in currently. We have seen many patients whose impairment was impeded by their being kept on the wrong phenothiazine due to the mistaken notion that all phenothiazines are interchangeable. As an example:

> A 28-year-old schizophrenic man was admitted to a hospital with paranoid symptoms. He was placed on 600 mg of chlorpromazine, following which the paranoid symptoms disappeared. He then became depressed and apathetic. During the next year-and-a-half he had psychotherapy three times a week, but did not improve and so was discharged at the end of that time as having achieved maximum hospital benefit. Medication remained the same throughout the entire hospital stay and he was discharged on the same dosage.
>
> When seen at the clinic, he was still "down," apathetic, listless, and indifferent. The notes in the patient's hospital record indicated that this was thought to be due to the schizophrenic process. At the first visit, his medication was changed from 600 mg chlorpromazine to 5 mg fluphenazine three times daily. Within 24 hours the entire symptom constellation disappeared. He became alert, responsive, and energetic, and eventually recovered.

The best clinical principle is that the patient should be on the right dosage of the right phenothiazine at the right time. We tell the patient that as he recovers the dosage will be reduced, but that he will be kept on a small, perhaps "bed-time only" maintenance dose for its beneficial chemical effect even though he has long since not needed a tranquilizer. This again demonstrates to the patient that the phenothiazine is not being used as a tranquilizer, but for its biochemical effect. This explanation results in increased patient cooperativeness.

Antidepressants may be necessary in this connection. We have found that activation of the tricyclic antidepressants by thyroid medication may bring about a prompt response. This has been recently reported by Prange et al. (1969) and Earle (1970). It is important, as mentioned before, that the patient's euthyroid status be ascertained prior to placing him on this combination of medications. The patient's active symptoms should always be first brought under control with a phenothiazine before the antidepressant is introduced.

Another medication which is useful in the treatment of schizophrenia is methylphenidate hydrochloride (Ritalin®). If the depression is not too severe, 10 to 20 mg three times per day before meals will alleviate fatigue and depression, as well as any sedation effects from the phenothiazines. This medication at times has relieved depressions of suicidal degree in less than an hour and helps to tide the patient over until his basic condition improves sufficiently that the depression passes. Overreliance on this medication can lead to a diminution of effect. It can be used to potentiate the effects of the tricyclic antidepressants. This synergistic effect results in an increase of blood levels of the antidepressants through enzyme inhibition (Wharton et al., 1971). Overusage by schizophrenic patients is rare, and in our experience has occurred only in those who have a problem with multiple drug abuse.

An additional use for thyroid medication in the euthyroid schizophrenia patient is in the treatment of periodic catatonia. In this condition, between upsets, the patient's HOD score may be within the normal range, and when an attack occurs the score rises precipitously. The typical response to 3 or 4 grains of thyroid daily is exemplified by the following case:

> A 41-year-old housewife had been hospitalized *15 times* in the last seven years for recurrent acute schizophrenic episodes uncontrolled by massive doses of chlorpromazine. When seen in the office between attacks, her HOD score was only 10. The attacks were always preceded by a period of insomnia and often occurred during the pre-menstrual period. In addition to megavitamins and a hypoglycemic diet, she was placed on 4 grains of Proloid® daily at the first visit. Since then she has not had a single recurrence—she feels and functions as though she had never been ill. She returns to the clinic for follow-up visits every three months.

Although the successful use of thyroid in treating schizophrenia has been the subject of many papers in psychiatry for more than 40 years, apparently many

clinicians do not think of using it because schizophrenics are usually euthyroid. The periodic catatonic is a readily recognizable subgroup of the schizophrenias and the value of using thyroid in this condition has been reported by many researchers including Gjessing (from 1932 on, but recently see 1964, 1967, 1969). Danziger (1958) Danziger and Kindwall (1953, 1954), Gunne and Gemzell (1956), Sourkes (1962 1970), Lochner et al. (1963), Minde (1966), Cookson et al. (1967), Jenner (1967) Vestergaard (1969), and Hoffer (1967). Thyroid can be used in treatment of the recurrently ill schizophrenic as well as for other types of schizophrenia.

Hoffer and Osmond (1967) reviewed the literature and noted that the average dose of thyroid used was 5 grains daily. Danziger and Kindwall (1953, 1954) gave doses of 2 to 20 grains but found that few patients required more than 10 grains. All researchers have commented on the considerable resistance of the schizophrenic to thyroid hormone and in our own work we have observed the same phenomenon. Our most common dose is 3 to 5 grains daily, and many patients who were previously unresponsive to treatment will recover when this amount of thyroid is added. Many of these are patients who do not present the classic periodic pattern; one will be described later.

Megavitamins

We routinely use mega doses of four vitamins for a variety of reasons in treating schizophrenic patients, and this has resulted in increased rates of recovery. It is still not possible to predict exactly which patients will benefit by megavitamins and it remains for future researchers to give us the useful clinical indicators to identify these patients in advance. Work supported by the Canadian Mental Health Association (Ban, 1969; Ananth et al., 1969; Ban and Lehmann, 1970) is proceeding in that direction and preliminary results indicate that there is a segment of the schizophrenic population that responds to either nicotinic acid and pyridoxine or pyridoxine alone and may eventually be identifiable.

Ananth, Ban, and Lehmann report (1972) that the therapeutic effect of nicotinic acid in chronic schizophrenics is potentiated by pyridoxine. This was demonstrated in a 48-week double blind control study in which pyridoxine alone, nicotinic acid alone, or the two together were demonstrated to have a statistically significant therapeutic effect. The therapeutic effect was demonstrable even though the patients had been hospitalized for an average of 10.9 years, were not on hypoglycemic diets, and the doses of both pyridoxine (75 mg daily) and vitamin B3 (3 g a day) were considerably below the dosages we routinely prescribe.

In general, it can be said from our own experience that the higher the patient's HOD score, the greater the likelihood of response to an overall megavitamin treatment regimen. The schizophrenic patient whose illness could be called "metabolic

rception" responds the best. The grown-up childhood schizophrenic with the OD score, postural stigmata of propioceptive deficit, and primarily visual per-al distortions is the least likely to benefit. The most significant visual perceptual tion in this group of patients is loss of depth. This particular distortion, even it is induced hypnotically in normal subjects, produces a schizophreniform nse with primitivization and regression, as has been shown by Aaronson in al studies (1967a, b, 1968). This type of patient appears to belong to a different iemical subcategory of the subtypes of the schizophrenias.

e megavitamins and the phenothiazines act clinically as though they had a gistic action, and for that reason patients are kept on a low daily dose of a othiazine prophylactically even after they have recovered. Sainz (1964) has onstrated that the phenothiazines elevate blood ascorbic acid levels, and there be a variety of synergistic effects such that the antipsychotic action of the phenothiazines may be augmented by the megavitamins. Demonstration of the effectiveness of the combination requires correction of co-existing functional hypoglycemia. any patients, in our experience, recovery was prevented by lack of adherence to ypoglycemic diet. As an example:

> A 26-year-old unemployed schizophrenic man had been ill for several years and had been hospitalized several times, during which he had had shock treatment and all other available forms of therapy. By the time he came to the clinic, he was surly, uncooperative, paranoid, and obese. The Glucose Tolerance Test revealed definite functional hypoglycemia and he was placed on the usual regimen of megavitamins, phenothiazines, and a hypoglycemic caffeine-free diet.
>
> For the next one-and-a-half years no progress was achieved and during visits he was highly uncommunicative, despite high doses of vitamins and phenothiazines. It was then discovered from his family that he was drinking at least half a case of a cola beverage per day and on week-ends he usually drank a whole case daily. Cessation of the cola ingestion resulted in rapid, progressive improvement with noticeable changes in behavior, communicability, and relationship with the family. His inappropriateness and surly, gauche manner disappeared and he is continuing to improve.

When we first began using megavitamins in treating childhood schizophrenics we re unaware of the importance of ameliorating the hypoglycemia and, therefore, r first reports on the use of nicotinamide in schizophrenic children stated that . . niacin and niacinamide were found to be relatively ineffective in childhood izophrenics and less effective in adult schizophrenics with childhood onset" awkins, 1967, 19. 8b). Similar negative experiences have been reported by Roukema d Emory (1970) and Greenbaum (1970b), who also demonstrated that nicotinamide alone in the treatment of childhood schizophrenia, except for improvement in me individual cases, did not produce statistically significant results. It was Cott 969) who pointed out that recovery of childhood schizophrenics on megavitamins as not possible until the hypoglycemia was corrected, and that unless this was

done it was useless to proceed. The importance of this concept cannot be overemphasized, as in this group as well as certain other patient groups no recovery at all is possible unless the hypoglycemia is corrected.[5] In this connection it might be well to emphasize again that recovery after the acute phase is over can be delayed for long periods of time if the patient is allowed to sleep beyond 8 hours a day. The apathy and lassitude which ensue from prolonged oversleep can negate attempts at rehabilitation.

Our initial combination of megavitamins usually consists of 1 gram niacinamide, 1 gram ascorbic acid, 50 mg pyridoxine, and 400 I.U. of natural vitamin E, repeated four times daily. Although occasionally an adolescent girl will develop nausea as a result of this dose of niacinamide and require a reduction of dosage, this combination is tolerated by the majority of patients without any side effects. The most frequent complaints are about the nuisance of taking the pills and, occasionally, difficulty in swallowing them.

For a time, we hypothesized that the difficulty in swallowing, especially in adolescent girls, was hysterical in origin, but we discovered this was often due to esophageal dysfunction associated with schizophrenia as reported by Hussar and Bragg (1969, 1970). Their study on the swallowing functioning in schizophrenics using cineradiographic techniques demonstrated that almost half of the schizophrenic patients showed various degrees of swallowing abnormalities and that chlorpromazine medication had no effect on the swallowing mechanism. The conclusion of their study was that "these results contribute to an understanding of the not infrequent tragic episodes of asphyxiation on food among chronic schizophrenic patients often incorrectly ascribed to tranquilizer medication."

Both niacinamide and ascorbic acid are available in capsules, which are more easily swallowed than pills. The ascorbic acid available in crystalline form can be mixed easily with orange juice.

The maximum therapeutic dose of niacin or niacinamide is about 1 gram per day below the nausea-inducing dose. We routinely begin by using niacinamide and later switch the patient to niacin if there are specific indications to do so, such as the existence of concomitant alcoholism, elevated cholesterol, or hypoglycemia, or if the schizophrenia has been precipitated by LSD. Although the flushing side-effect of niacin can be controlled by cyproheptidine (Periactin®) 4 mg four times daily (Robie, 1967), the flush unnecessarily alarms patients even when it has been previously explained to them. Niacin also appears to be more beneficial than niacinamide in treating the alcoholic-schizophrenic, although we do not have statistical studies to prove that this is so.

Recent studies (Davis and Walsh, 1970; Lieber and DeCarli, 1970) have demonstrated metabolic pathways in alcoholics which may account for nicotinic acid's

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[5] Hypoglycemic episodes, for instance, will trigger post-LSD "flashbacks."

action in this disorder. Thus, alcohol, by way of its primary metabolite, acetaldehyde, competitively inhibits nicotinamide-adenosine-dinucleotide-linked aldehyde dehydrogenase, which interferes with the metabolic disposition of the biogenic amine dopamine, producing aberrant metabolites. Prolonged consumption of alcohol enhances the activities of the enzyme-reduced nicotinamide-adenosine-dinucleotide phosphate oxidase. In this connection, alcoholics have also been demonstrated to have a deficiency of vitamin C as exemplified by a lower level leukocyte ascorbic acid in control groups (Goldberg, 1970).

Althougn Saarma and Vasar (1970) report that with nicotinic acid there is an appearance of clinical improvement between the fourth and sixth week of treatment, in our experience the response to the megavitamins is generally more delayed and not discernible until the third to sixth month. A very noticeable or marked degree of improvement as compared to patients who are treated with just phenothiazines is most obvious by the end of the first year.

Improvement can be speeded up by the use of parenteral injections of the megavitamins, in which case a noticeable improvement begins within a few weeks (see Chapter 25 by Cott). Patients who have been on adequate oral doses for a considerable length of time without improvement will often suddenly respond when switched to parenteral administration. The ability of the intestinal tract to handle a given compound is not the same in all persons (Kaloon, 1970). Some patients may have a defect in transport enzyme systems so that a patient may have been on a high dosage of ascorbic acid for some time and yet still show a subnormal blood ascorbic acid level. This level then suddenly increases to normal when much smaller doses of ascorbic acid (500 mg) are given by injection.

Multiple modes of action of nicotinic acid in schizophrenia have been described (see Chapter 11 by Hoffer), including the recent work of Galzigna (1969, 1970) and Galzigna and Rizzoli (1970) showing that nicotinamide reacts rapidly with the aminochromes, reducing them. In the absence of nicotinamide in the brain tissue, the aminochromes react with acetylcholine to form a stable complex which acts as an endogenous hallucinogen. They conclude that "if we consider adrenochrome reduction derivatives as non-toxic excretion products of the psychotogen aminochromes, a rationale for the clinical use of nicotinamide in mega doses as a therapy for mental illness is provided." Further work is in progress to demonstrate the nature of this interaction with ascorbic acid which is central to the authors' "short circuit" theory of the onset of mental illness.

Nicotinic acid has nonspecific properties of blocking the production of stress-induced gastric ulcers in laboratory animals and it also blocks the L-dopa-induced exacerbation of symptoms in schizophrenic Parkinsonian patients (Yaryura-Tobias, 1971). Research is currently being done to determine the effect of nicotinamide in reducing the stress responses (cold pressor test) of normal students to final examinations (Bovard, 1971, personal commun.). The contraindications for using nicotinic

acid have been described by Hoffer and Callbeck (1959), Hoffer (1962, 1969), Hoffer and Osmond (1966), Mosher (1970), and Newbold (1970), and have been reviewed in other chapters. The four main contraindications to niacin are those of peptic ulcer, hypertension, diabetes, and gout. The niacin-induced hyperglycemia may alter insulin requirements in diabetics. The histamine-release, which produces the flush, results in hyperchlorhydria in ulcer patients. The elevation of uric acid may precipitate gout attacks, and if the hypertensive patient is on a reserpine-type anti-hypertensive agent, the patient may possibly go into shock. The cholesterol-lowering effect has been demonstrated in long-term heart studies and the heart studies have discovered the same contraindications (Boyle, 1968). Here, obviously, the lowering of blood cholesterol is sought, and it is a side benefit when niacin is taken by schizophrenics.

In the review articles mentioned earlier concerning the possible side effects of nicotinic acid, several cases of possible hepatic toxicity were reported. When the effect of nicotinic acid in producing false positive liver enzyme tests is discounted, these appear to be questionable. We have not seen any cases of noninfectious jaundice which did not clear up when the phenothiazine was discontinued. In addition, we have seen several cases of intercurrent infectious hepatitis as demonstrated by liver function tests and liver biopsy. The majority of patients who develop phenothiazine jaundice were continued on the megavitamins and the jaundice cleared up with no difficulty. In a few cases, because of the isolated reports in the literature, megavitamins were discontinued along with all other medications, and the patients were subsequently replaced on nicotinamide with no recurrence of jaundice. At this time, we consider that jaundice due to nicotinic acid, although unlikely, may be a remote possibility and treatment will depend upon the judgment of the attending internist.

We explain to patients that both vitamin E and ascorbic acid are prescribed for their antioxidant effects. Ascorbic acid alone has been shown in controlled studies to benefit psychiatric patients as evidenced by improvements in their Wittenborn and MMPI scores (Milner, 1963). The effect of vitamin C in preventing the common cold has been reviewed by Pauling (1970), and this is of benefit to schizophrenic patients, who characteristically show a clinical worsening and an increase of perceptual difficulties as a response to viral infections. For those patients in whom this has been a problem, we recommend the sustained-action form of ascorbic acid in capsule granulated form, which sustains ascorbic acid blood levels during sleep (Ricciталli, 1972) and thereby eliminates recurrent colds in the majority of patients. We frequently have observed minor relapses and setbacks in recovered patients in response to upper respiratory virus infections and a possible mechanism for this observation has been described by Teller and Denber (1968) related to abnormal protein structure (such defects can occur genetically, or be caused by malnutrition, avitaminosis, infection, toxins, or immunologic reactions). The greater retention of

rbic acid in schizophrenic patients has been shown by Cowan et al. (1970) and iously by Herjanic and Herjanic (1969) and VanderKamp (1966). Current ies by Pauling and Robinson and by Herjanic are reported in Chapters 2 and 14 his volume.

igh doses of ascorbic acid may occasionally cause mild diarrhea in some viduals and it may cause false positive urine tests in diabetics who use commercial e test kits. A case is also reported in which ascorbic acid shortened the pro-mbia time in a patient who was receiving a Warfarin (Coumadin®) anticoagulant senthal, 1971). In treating over 5,000 patients with 4 grams or more of ascorbic per day, however, we have not had a single instance of any serious side effects.

/e explain to patients that vitamin B6, pyridoxine, is necessary as a precursor of tinic acid. It is an intermediary step in the biotransformation of tryptophan to tinic acid where it is required for the hydroxylation of kynurenine (derived from tophan) to 3-OH-kynurenine and for the further metabolism of 3-hydroxyky-nine to 3-hydroxyanthranilic acid (immediate precursor to nicotinic acid; Gibbs Walshe, 1969). Vitamin B6 deficiency interferes with the metabolism of amino s, proteins, and biogenic amines, and causes abnormalities of nervous system vity in man, where the pathological effects of deficiency are most marked on the loping brain. Abnormalities of vitamin B6 metabolism have been associated not with schizophrenia but also with a variety of other abnormalities of the central ous system, and B6 deficiency at the subcellular level may be produced by a ber of antimetabolites (Knapp, 1966; Coursin, 1969). The antagonism between min B6 and L-dopa is a recent illustration (Duvoisin et al., 1969; Cotzias and avasilion, 1971). Pyridoxine in high doses has been used by Cott (1969) in the tment of childhood schizophrenia. The role of pyridoxine in psychiatric disorders recently been summarized by Ananth, Ban, and Lehmann (1972) in their paper tled "Potentiation of Therapeutic Effects of Nicotinic Acid by Pyridoxine in onic Schizophrenics" presented at the Canadian Psychiatric Convention in ntreal, June 8, 1972. This paper states that pyridoxine potentiates the action of tinic acid, possibly by opening up the kynurenine cycle of tryptophan metabolism thereby decreasing the formation of indoles. In their study, already referred to, doxine alone had a therapeutic effect in schizophrenics as well. In more than 0 patients we have not observed a single side effect from pyridoxine administra-of 200 mg daily.

is best to write down the medication schedule and the recommendations for p and diet on a card and give it to the patient at the initial visit. It is also advisable dicate to the pharmacist that all medications be labelled to show the name and age size. Unless this is done, there will be mistakes and many call-backs as most ents are perceptually disordered and unable to remember verbal instructions.

summary, the addition of megavitamins is inexpensive and safe, and very itively influences the long-term outcome. Side effects of a serious nature are quite

rare and easily avoided. The occurrence of even the most mild side effects is avoided by giving niacinamide instead of niacin. Precise identification of those patients most likely to respond is not yet possible but, in general, the more elevated the HOD, the more likely the response, provided however, that concomitant hypoglycemia is also corrected.

INVOLVEMENT OF THE PATIENT IN AN INTEGRATED COMMUNITY TREATMENT SYSTEM

Because of the severity of a patient's condition or situation, hospitalization may either be required or elective. The average length of hospitalization for intensive hospital treatment (which may or may not include a course of ECT) in our series of patients over the last five years is eight weeks. Ten to twelve weeks may be necessary, however, if the patient has been taking large doses of methedrine (speed). ECT rapidly reduces the HOD score, and this effect is most marked in the younger age groups, as will be discussed later.

If the schizophrenia has been exacerbated by LSD or methedrine to the degree that the patient is psychotic, then ECT, in our experience, is often necessary, as the psychosis otherwise tends to persist. It is also very effective with the depressive aspect of the patient's illness, which may be creating a suicidal risk. The response to ECT is different if the patient has been preparatorily pretreated. If, while in the hospital, the patient receives high-dosage megavitamins both orally and parenterally and is on phenothiazines and a hypoglycemic diet, the relapses following cessation of ECT formerly seen in schizophrenics seldom occur and the improvement is maintained following discharge.

Curiously, annoying side effects from medication seldom occur in a hospital setting. The patient who had side effects from practically every medication tried as an outpatient will probably have none from much higher doses of the same medication if he is hospitalized. In the hospital, patients are given 500 mg of ascorbic acid and 200 mg of niacinamide intramuscularly three times weekly in addition to the usual oral doses. Few patients fail to improve from intensive hospital treatment and even many of the severe chronic patients improve sufficiently so that they can be discharged and treated as outpatients.

Patients who appear shaky at the time of discharge or have difficult home situations or who have become disabled by the long duration of their illness benefit considerably from a convalescent period in a halfway house where they can be maintained on the same therapeutic regimen with monthly visits for changes of medication and evaluative follow-up. The use of SA, family groups, day activities programs, and

involvement with other supportive units of a treatment complex are described in Chapters 28 and 29.

Patients' self-help groups, such as Recovery, can also be of benefit to certain patients who have residual symptoms, so that, no matter what the family's financial limitations are, a great deal of supportive help and definitive group psychotherapy is available to both patient and family at no cost.

Pathological family interaction in which abnormal pressures are exerted on the patient by his family, or where there is a disturbed family situation that can impede his recovery, may require either family group therapy or parent counselling to facilitate the patient's recovery. This can be suspected as an operative factor when the patient's HOD score decreases progressively but is not accompanied by a return to normal function. The disability may then be stemming from an overprotective parent who infantilizes the patient rather than from the previously active schizophrenic process, and this pattern may require therapeutic intervention. At times this may be actively resisted by the dominant parent, who has unwittingly utilized the patient's illness for secondary gain or for other pathologic reasons.

Highly specialized group therapy may be necessary for the patient who has become heavily involved with the drug culture because unless this is done he tends to fall back into the same drug usage which precipitated his schizophrenia. In this type of group therapy, we have found that a straight chemical approach brings the best response. In this group setting, which differs markedly from the traditional analytically oriented group therapy, there is considerable discussion of drugs and their biochemical effects and especially the effects of drugs on the HOD score. The therapist needs to have knowledge of the current drug scene and the whole psychedelic subculture, especially language, life styles, and an awareness of what has recently been termed Consciousness III (Reich, 1970).

Once the patients learn that mescaline, psylocybin, LSD, STP and methedrine elevate the HOD score—with the risk of "freaking out"—they begin leaving these dangerous drugs alone. They learn that these drugs are truly psychotogens for them and that many of them have had to be hospitalized for LSD- or speed-precipitated schizophrenia psychoses. Patients inevitably discover that neither marijuana nor hashish has a residual effect on their HOD score and, therefore, for a period of time, excessive use of these two drugs may replace their former involvement with the more dangerous drugs that are likely to precipitate hospitalization and psychosis. As their HOD scores come down, the use of marijuana diminishes and they begin to function again and return to school or to work.

Prolongation of the excessive marijuana smoking may be associated with altered time perception, which should then be tested for with a timing device such as an electronic metronome (see Chapter 18 on dyschronia). Until this specific schizophrenic syndrome is alleviated, attempts to dissuade the patient from excessive pot smoking are almost always unsuccessful.

PSYCHOTHERAPY

From the model of schizophrenia which we have described, and the description of the diagnostic process, it is apparent that the patient has already been oriented to his illness and that this has been augmented by explanations of the meaning of the laboratory and perceptual test results. In addition to an explanation of the biochemical and perceptual aspects of the illness an explanation is given of how these interfere with functioning, feeling, and relating to others.

Although the illness intensifies pre-existent psychological conflicts and personality problems, it is explained to the patient that the initial phase of therapy will be devoted to medical recovery from the illness and that coexistent psychological problems will not be dealt with primarily until the HOD score is within the normal range. The explanation given for this is that impaired brain function causes so many different kinds of symptoms and effects on the personality that there would be no way of knowing, until the patient gets better, which of them are results of the patient's own personal problems and which are manifestations of an active disease process. The analogy given here is similar to a toxic brain syndrome. A more common example is that of the alcoholic who when actively drinking may develop an enormous range of pathologic symptoms and behavior and when sober may have only mild or no indications for psychotherapy.

Most patients readily concur with this treatment plan. The majority of patients will have already undergone previous psychotherapy, often of a prolonged and intensive nature with a number of therapists, so that they are seldom motivated to take part in any kind of formal psychotherapy. Many patients are actively opposed to psychotherapy as well as being bitter about such previous experiences.

The resentment of patients and families and the turmoil ensuing from previous experience with psychotherapy were responsible for much of the bitter comment about traditional methods of psychiatric treatment for schizophrenia which appeared in the early issues of the *Newsletter* of the American Schizophrenia Association. This same conflict and disillusionment has been reported by professionals themselves when a member of their family has become ill. For example, a Professor of Psychiatry reported his own disheartening experience with this dilemma (Kysar, 1968).

At the North Nassau Mental Health Center, five years of experience using the orthomolecular approach were compared with the previous five years when traditional psychiatry approaches were used. This comparison showed that dynamically based psychotherapy was of very limited benefit in schizophrenia. Although parent counselling and educational and supportive therapy were demonstratively beneficial, and often critically so, therapies based on theories of a psychodynamic etiology of the patient's schizophrenia brought questionable benefit (Hawkins, 1969). Whether psychotherapy or pharmacotherapy was more important was glaringly demonstrated

by the disastrous consequences which occurred when patients discontinued medication. Most patients relapsed upon termination of medication, but showed little response to termination of psychotherapy. One of the most common reasons for hospitalization was discontinuance of medication, yet hospitalization was never required because of a therapist's absence or termination of psychotherapy. Hospitalization was in fact more often preceded and precipitated by the patient's decision to "go for analysis." Those patients placed on the orthomolecular program who continued in psychotherapy with their previous analyst did considerably less well than those patients in whom psychotherapeutic intervention was kept to an absolute minimum.

The clinic's conclusions have been corroborated by similar findings from large-scale research studies done elsewhere as well as by the collective experience of patients and their families.

Information about the value of psychotherapy in schizophrenia can be obtained from three additional decisive areas: (1) controlled studies in the scientific literature; (2) reports from therapists in institutions who have had extensive, long-term experience with the use of psychoanalytic psychotherapy in the treatment of schizophrenia; and (3) the experiences of large numbers of patients and their families.

During recent years, there have been several large-scale authoritative studies on the value of psychotherapy in schizophrenia, the most extensive being that of May (1968, 1969), in which a comparison was made of five different treatment methods in schizophrenia. This study was so extensive and included so many collaborators that a research project of its magnitude on the value of psychotherapy will probably never be duplicated. The study was supported by the State of California Department of Mental Hygiene, U.S. Department of Health, Education and Welfare, U.S. Public Health Service, the National Institute of Mental Health, the University of California Health Services, and the research committee of the Los Angeles Psychoanalytic Society, and there was collaboration with many other authorities too numerous to mention.

In review of this work, Barnes (1971) considers the study to be the most meticulous, intensive, complex, and comprehensive research design in the field of psychiatric therapy. He notes that many will disbelieve the results but

> more for emotional reasons than on the basis of any critical analysis of the work . . . these findings are of the greatest importance both to clinical psychiatry and to mental health program administration . . . it also leads us to wonder about the efficacy of the various therapies used in out-patient work with ambulatory patients, both schizophrenics and others.

The conclusions of this immense study were that medication alone, whether combined with psychotherapy or not, was the most effective and efficient treatment for most patients. Electroconvulsive therapy was the second most effective treatment.

Individual psychotherapy and milieu therapy were found to be the least effective, most expensive, and most time consuming.

Another series of important studies on the value of psychotherapy in the treatment of schizophrenia was reported from the Department of Psychiatry, Harvard Medical School, at the Massachusetts Mental Health Center. The conclusion from these computerized studies was that psychotherapy alone, even with experienced psychotherapists, did little or nothing for chronic schizophrenic patients, even over two years time (Grinspoon et al., 1967, 1968). In another study by the same researchers (Grinspoon et al., 1969) the same conclusions were reached: medication with or without psychotherapy had the most marked benefits. These studies confirm the earlier findings of May and Tuma (1965) that psychotherapy alone does not improve the schizophrenic patient's chances for improvement. In a further study by Shader et al. (1971) the authors conclude that there was no demonstrable difference in the results whether a patient received psychotherapy by either a "Type A" or a "Type B" therapist.

The findings of these extensive studies are supplemented by the 10-year study done by the American Psychoanalytic Association, in which data supplied by 386 analysts on over 3,000 patients reported an overall rate of symptom cure for schizophrenia of 9 percent (1968).

The second area of informative data is supplied by those institutions with long-term intensive experience in the use of psychoanalytic therapy with schizophrenia. Of these, Chestnut Lodge in Rockville, Maryland, is probably the best known. Two recent books from that institution indicate the failure of this method of treatment. In *Schizophrenia and the Need-Fear Dilemma* (Burnham et al., 1969) the psychoanalytic theory of schizophrenia is deftly presented together with an explanation of the lack of positive clinical results obtained. As a matter of fact, all of their case histories end with the patient either dead or still sick with schizophrenia. In the second book, *Conflicts and Reconciliation: A Study on Human Relations in Schizophrenia* (Stierlan, 1969), a similar lack of clinical results is reported.

Gray (1970) points out in a review article that "Sigmund Freud always held that schizophrenia was not amenable to psychoanalytic cure" and that "the challengers of this statement have failed to disprove the truth of it."

The clinic has had the opportunity to provide treatment for a number of patients who had prior long-term in-patient psychoanalytic treatment. In almost every case these patients who had been unresponsive to intensive, long-term psychoanalytic therapy promptly responded to a medical regimen. After 8 weeks of medication and/or ECT in a hospital, the majority had recovered. They are now employed, or back in college, able to socialize and some married. The following case is illustrative:

> This 24-year-old man had been ill with schizophrenia for six years and for the last two years had been in the hospital for psychoanalysis during which time he received no drugs of any kind. The family was alarmed at his deteriorating condition as he had

decided to commit suicide by not eating and the institution refused to use any medications. The family experienced great difficulty in getting the patient transferred to a medically oriented hospital and finally had to threaten legal action to obtain his release. The patient was so disturbed that the hospital had to wrap him in wet sheets mummy fashion and move him by ambulance because of their refusal to use tranquilizer medication.

On admission to the Brunswick Hospital, the patient was mute, withdrawn, severely depressed, negativistic, and uncooperative. After 8 weeks of intensive hospital treatment he recovered sufficiently to be discharged. Within a few months, he was gainfully employed, and was taking college courses in the evening. He then moved away from his family, became independent, and subsequently married.

The foregoing would tend to augment the findings of Will (1970), who concludes an article on psychotherapy in schizophrenia with the statement "*few schizophrenic patients will be helped in this prolonged, expensive and largely unattainable treatment.*"

The general consensus of many schizophrenic patients also has been that the results of psychotherapy were disappointing. Not only are their experiences discussed at meetings of Schizophrenics Anonymous and the various schizophrenia associations throughout the United States, but their collective experience also was expressed resentfully in the first few volumes of the *Newsletter* of the American Schizophrenia Association, as was previously mentioned. Autobiographies by former patients or their families reflect the same attitudes. *In Search of Sanity* by Gregory Stefan (1966) and *Gone is Shadow's Child* (Foy, 1970) are typical examples.

From the foregoing survey of important sources of information, the evidence is that psychotherapy based on psychoanalytic formulations of schizophrenia is of no statistically demonstrable benefit to patients. When done by therapists who are less than expert, psychotherapy may well be deleterious. Therefore, the requests of patients and their families for the inclusion of medication in the patient's treatment is hardly irrational, nor does it constitute "uninformed lay opinion." Many families, especially those who belong to a schizophrenia association, are very well informed and have read extensively. Dr. May's book, for instance, among many others, is for sale at association meetings. (One of the families of the Long Island Schizophrenia Association recently co-sponsored a major professional symposium on Gilles de la Tourette's Syndrome—which indicates a rather high degree of sophistication.)

In the clinic's experience, most patients do not desire or require formal psychotherapy once their HOD scores have returned to normal. During the initial period of the illness, while the patient's HOD score is still elevated, the less interference the patient experiences from the psychiatrist, the better will be the result. Patients who continue in dynamically oriented psychotherapy during this phase recover much slower and to a lesser degree. This conclusion became apparent after several years of experience with patients who were in therapy elsewhere and who were allowed to continue in therapy while the clinic handled their medications. As a group, these patients recovered to such a noticeably lesser degree that the clinic finally had to

recommend that patients discontinue that type of psychotherapy until they had medically recovered from the worst of their illness. When this practice was followed, results were much better—when patients did resume therapy, it was usually for far different reasons than the ones for which they had originally sought it.

After the initial diagnostic visit, patients are usually seen weekly to adjust medications until an effective regimen has been established. This usually occurs by the end of the first month and visits during the second and third months are usually bi-weekly. The average patient is then seen monthly for the remainder of the first year. During the second year patients are usually seen every two or three months, and during the third year they are seen every three or four months.

Inasmuch as the patients go through various stages of recovery, the problems that they present during these periods of time will vary. Initially, the patient needs an explanation and interpretation of the illness followed by support and encouragement. During the first year, the main concerns are associated with symptoms, but these progressively diminish, so that by the end of the first year problems relating to returning to functioning in the various areas of life will be presented. The second year is devoted primarily to the problems of re-entry into a social life, returning to work, or returning to school, and there is a desire to become independent of the family who has supported the patient during the illness. Dependency conflicts become almost routinely manifest and at times family therapy or parental counselling may be required to handle the family's matching anxieties regarding resolution of this conflict. Adolescent-type problems then typify the second stage of recovery, which constitutes the "re-entry" phase.

During the third year, many patients will have grown and progressed beyond the level of functioning which preceded their illness. Many will state that they are "weller" than they were before they became ill, and at this time the actual onset of the illness will be dated retrospectively. This will almost always precede the previously accepted date of onset. This occurs because the patients never knew what it was to feel and function well, and now that they experience this, they will frequently give the exact time in their lives when the internal change had occurred which signalled the real beginning of the illness. Many function with perceptual impairment for years; one characteristic of this state is the subjective certainty that one has "always been this way." Patients may need practical advice as they enter areas of life in which they have never before ventured.

During the second and third years of treatment, when some patients marry and begin having children, their questions concern genetic predisposition and pertain to what percentage of their children may be expected to develop the same illness. Almost routinely, newly married recovered schizophrenics want to know if there are any ways in which they can prevent the occurrence of schizophrenia in their children or detect it early. It is important to advise the women to stay on the medical regimen during pregnancy to prevent post-partum relapses.

nts, especially if they became ill during early adolescence, will have
able, secondary neurotic gains—especially the fulfillment of depend-
and will continue to display immature child-like behavior even though
ores have returned to normal. Some will tenaciously cling to the sick
ro. ough it is no longer appropriate and they may require both explanation of what they are now doing as well as firm encouragement in a more mature direction. Often, these problems become disguised by the patient's adoption of self-serving interpretations of the youth culture "drop-out" pattern. Group therapy techniques are often useful to overcome these delayed maturational problems.

The adolescent rebellion pattern may coexist or predominate, instead of the passive dependent style. As is well known, this may also be a reaction formation. These conflicts associated with the dependence-independence growth phase may require adroit handling, as well as considerable forbearance. Families forget that schizophrenics can demonstrate the same problems that other young people do in our culture and that the problems that they are having with the patients are not all due to schizophrenia. It is frequently necessary to reorient families to this fact, as they lose their perspective from living so intimately with the illness.

In summary, during the acute phase of the illness, when the patient's HOD score is elevated, the most effective psychotherapy is an educational approach, which is of considerable benefit to both patient and family. This is followed by supportive practical advice as the patient recovers and goes through the successive stages of recovery, during which time he may have changing symptoms, which merely indicate that he is passing through a different phase, rather than getting worse, as he may erroneously conclude. The well-known appearance of depression following disappearance of the paranoid and hallucinatory symptoms is an example, and the patient needs to be reassured that the depression symptom will also pass and respond to treatment as did the previous phase.

After the patient's HOD score has returned to normal, specific conflicts may be handled either by supportive, individual therapy or group therapies. At this stage, recurrence of symptoms accompanied by elevation in HOD score indicates that the cause is biochemical and should be treated by a change in the medical regimen. Symptoms unaccompanied by a rise in the HOD score, on the other hand, are probably stemming from interpersonal or psychological conflicts and are, therefore, treated psychotherapeutically.

The approach to the patient during the initial phase of the illness has certain parallels with handling the psychedelic experience, in that every effort is made to influence favorably the patient's set and setting (which includes the therapeutic setting) so that the patient will be subject to benign experiences as much as possible. Following this principle will greatly increase the likelihood of recovery and the prevention of unfortunate sequellae. The importance of respecting the patient's extreme vulnerability when his defenses are inoperative is paramount. Analogies

between the schizophrenic and psychedelic experiences have been made by many authors, including Silverman (1968), Hoffer and Osmond (1967), and Laing (1967).

If the altered biochemistry of some people spontaneously sends them on a "voyage of discovery into inner space" then their experiences should be made as positive as is possible. This is also emphasized by Dabrowski (1964) in his book, *Positive Disintegration*, which demonstrates the possibility of reintegration at a higher level of functioning, as so many of our patients actually do.

In our view it is a serious misunderstanding to consider, as Laing has done, that if some people are defined as having schizophrenia the word itself is an epithet or a damaging "label." A vase can be used to hit someone over the head, but that does not mean that vases are inherently damaging or evil. *All* labels are potentially damaging—the fact that a person is labelled as American, Catholic or Protestant, black or white, rich or poor, educated or whatever, will put that person in very serious trouble in certain social circumstances. Some groups in society will negatively use any label that can be thought of. We should see to it the word schizophrenia is not used in that way against our patients, but the dilemma is not solved by pretending that the condition does not exist.

Although from a theoretical viewpoint the schizophrenic experience can be made a positive one, it should not be allowed to last indefinitely. Even a voluntary psychedelic experience is emotionally exhausting and the subject is relieved when it is over. Because the situation in which the schizophrenic experience occurs is seldom favorable for any length of time, the "voyage" of the schizophrenic illness is endlessly painful. We have never known a patient to have regrets that the experience was finally over—the plunge into another experiential world was involuntary. Even those patients who became schizophrenic following the intentional use of psychedelics did not intend to go that far—they meant to only spend a day that way—not years or maybe forever.

RESULTS AND RESPONSE TO TREATMENT

General Problems in Evaluating Treatment Results in Schizophrenia

Once it becomes known that a particular institution is using a new or helpful approach to an illness, it tends to attract a distorted sample of patients. A progressively increasing percentage is made up of difficult and intractable cases. Determining the results of treatment then becomes more difficult and interpretation of statistics is less and less meaningful. Reporting of results in schizophrenia is notoriously fraught with

almost impossible obstacles, so that no matter how carefully research designs have been devised they are still subject to criticism in some area. Each professional discipline has its own criteria of what is meaningful. Control groups can also be grossly misleading, as the variables which one researcher considers essential to control are ignored by another. As Williams (1971) has shown, even identical twins are not biochemically nor even anatomically equal. Matching groups of patients with schizophrenia as to age, classical diagnosis, sex, or occupational group may actually be of minimal importance.

Of considerably more clinical significance would be the matching of groups of patients who are identical with respect to HOD score, incidence and severity of hypoglycemia, type of previous treatment, and favorability of life circumstances. Of importance also are the patient's degree of knowledge of his illness and the manner in which it has been presented to him. The use of the medical model itself, for instance, has an effect in that the patient is allowed to be ill when he is ill. The nonspecific effects of Selye's general adaptation syndrome also have to be taken into account, as the response of the patient during the alarm reaction can be quite different from the response of a patient when he is in the stage of chronic resistance or exhaustion.

We would also have to know whether the average HOD scores in the contrasting groups, even though numerically equal, were on the rise, indicating a worsening of the condition, or were falling, indicating a process of remission. We could not, for example, compare pneumonia patients based just on their temperature. A temperature of 102° might occur because the patient is in the process of going into a fulminating crisis where the temperature might eventually reach 107°, or because his temperature has been previously higher, which would indicate that he is in the process of getting well.

Evaluations of drug responses are difficult to assess, as many such studies utilize fixed dosages instead of the *optimal* dosages which take into account individual variation. Fixed-dosage-schedule studies, therefore, give only mathematical probability figures and fail to indicate the real clinical usefulness of a given medication when used in the proper dosage and in the proper sequence.

Because of the impossibility of meeting all these crucial requirements, results of any treatment method in schizophrenia are probably most usefully conveyed to clinicians by giving as detailed and accurate a description of the clinical response as is possible, so that the results could be duplicated. The average busy clinician is interested in treatment methods that are practical and produce observable results. In daily practice, he tends to be pragmatic and unimpressed by the polemics of theoreticians. Most physicians are aware that the ultimate scientific explanation of most of the treatments they use in daily practice will not be forthcoming in the near future. Practical considerations prevail when the physician is confronted by the sick patient.

Practical Factors: Acceptability, Applicability, Cost, and Safety

The orthomolecular approach circumvents most of the public's objections to psychiatric treatment. Psychiatry has generally been accused of developing treatments which are totally impractical in that they are either extremely time consuming, expensive, and drastic, they produce serious side effects, they fail to produce results, or they are so objectionably named as to cause them to be rejected and resisted. In addition, many of the treatment modalities require a high degree of motivation, sophistication, verbal ability, and insight, and the absence of factors which would result in their not being accepted for a particular treatment. Intensive psychotherapy, for instance, exemplifies many of these objections, and in addition often results in alienation of the patient from the family, which in itself is an extremely serious side effect.

"Shock" treatment, by its very name, has such dread connotations that its applicability and acceptability have been seriously curtailed. Long-term hospitalizations for psychodynamic therapies are extraordinary in cost and disappointing in results. Imprudent publicity and actions by some agencies have caused many patients to be more concerned with side effects than they are with getting well. This has reached such a degree that recently a depressed patient who wanted to commit suicide was reluctant to take antidepressants because they might cause side effects! She was not even aware of the absurdity of her position, so deeply had this fear been embedded in her mind. Another block in reaching large numbers of patients is the idea that all psychotherapy is "Freudian." Schizophrenic patients especially are not enthusiastic about the prospect of having their personal privacy invaded by interrogation, especially when it does not pertinently relate to what they are experiencing.

In our experience with the orthomolecular-medical model-approach to a wide variety of patients representing the whole socio-economic scale, this treatment method has been extremely well accepted. The involvement of patients and their families in an integrated community system allows them to compare notes, observe results, and compare experiences of different treatment methods. This has had a remarkable effect on morale and cooperation and it results in a beneficial increase in education of both patients and their families.

Because return visits are widely spaced and diminish in frequency with time, this treatment method is economically feasible and compares favorably with more traditional ones. Patients feel that their illness is being monitored by some objective means rather than by just the subjective opinion of the psychiatrist or family.

The treating psychiatrist has objective data upon which to base treatment and verify results so that this treatment method is also well accepted by the professional. In addition, the treatment method can be used in private, hospital, and clinic practice

and is suitable for treating large numbers of patients at significant savings in cost and manpower.

The safety factor is considerable, and this is important in our present society. Because psychotherapy with this treatment system is aimed primarily at educating and increasing the understanding of patient and family, disruption of the family is not a side effect of treatment. Patients are not advised to leave the family unit, because the family is not viewed as pathogenic. A recovered patient may decide to leave a family unit because he feels that the particular family structure is deleterious to his recovery, but that is an individual matter which may be handled by family therapy. In our experience with this method, in the majority of instances when the patient leaves the family unit it is because he is well enough to make it on his own. As patients recover, they develop insight into the fact that the illness caused perceptual distortions, and that many of their perceptions of family interaction were distorted and subsequently remained in that form in their memories. Recognition of this results in reconciliation with the family more frequently than disruption. The storing up of distorted memories of a family interaction has been described by others, including Rubinfine (1971), who stated that

> schizophrenics suffer impairment of consciousness from infancy onward so that percepts are registered in this altered state and memories from this state of infancy onward are impaired. These distorted perceptions become openly evident in the decompensated state and treatment requires correcting these altered percepts.

The side effects that we have observed in treating over 5,000 patients with megavitamins have been minimal and minor. We have seen no side effects from vitamin E except for loose stools in one patient. Pyridoxine has not produced side effects in any case. Vitamin C in in the routine dosage of 4 grams a day has not resulted in discernible side effects. Although loose stools are supposedly a possibility, we have not observed this. We have three patients with a history of gout on 4 grams per day and there has been no increase in uric acid level, nor attacks of gouty arthritis. There is serious doubt as to whether ascorbic acid produces any significant incidence of side effects. This was reviewed in an article on the subject in World Medical News, Vol. 12, Issue No. 8, February 26, 1971. Patients who were pregnant were continued on megavitamins with no untoward effects on either the mother or the baby.

Niacinamide in a dosage of 4 grams a day can produce nausea in a few patients, usually adolescent girls. This can be circumvented by the use of buffered niacinamide in capsule form, the addition of one tablet per day of meclazine (Bonine®), or by lowering the dosage.

The side effects of niacin have been extensively reviewed in articles by Hoffer (1969), Mosher (1970), and Boyle (1968); the contraindications remain those of duodenal ulcer, hypertension, gout, and diabetes. If niacin is not used in these conditions (although it can be with adequate medical controls) the only side effects seen are those

of the initial flush and occasional nausea. The flush can be diminished by taking the full starting dosage of 1 gram four times a day with meals and a glass of cold milk in the evening, or by premedicating the patient with cyproheptadine (Periactin®). The flush disappears in 24 to 36 hours and is hastened by raising the dosage rather than by lowering it (on a low dosage, patients will continue to flush indefinitely). Inasmuch as the flush is due to a release of histamine from the mast cells, the histamine is sufficiently "washed out" after a day so that insufficient histamine is released by subsequent doses to cause further flushing. Nausea can be controlled by the same measure as with niacinamide. An inositol salt of nicotinic acid, available in Canada as Linodil®, also effectively circumvents nausea. Young patients, especially those with red hair and fair complexions are least tolerant of niacin and may develop a recurrent itchy rash requiring its discontinuance. The niacin flush may also produce heartburn or other gastrointestinal symptoms in a minority of cases, also requiring its discontinuance. Niacin may also give false positive liver enzyme tests and should be discontinued two days prior to the testing procedure. It will also cause hyperglycemic changes in the glucose tolerance curve, and accordingly should not be given for 48 hours before that test.

We have seen patients who have taken 20 to 40 grams of niacin daily for prolonged periods with no adverse effect. In general, as both Hoffer and Mosher conclude, and our experience corroborates, niacin appears to be relatively harmless as long as due caution is taken in avoiding its use in the presence of the aforementioned contraindications.

Administratively, the orthomolecular approach provides several sizable advantages. The cost, waiting time, and professional manpower for psychodiagnostic testing are greatly reduced. Psychiatrists can handle large numbers of patients without any special equipment, although having one's own biochemical laboratory is a distinct advantage. Continuity of treatment is not interrupted when there is a change of doctors, which is a frequent circumstance in clinics and hospitals and one that poses difficulties if the therapy is based primarily on psychotherapy. The treatment method results in enormous economic advantages in that seeing a patient once a month costs about one-twelfth as much as seeing patients three times weekly for long-term therapy.

Joining Schizophrenics Anonymous and taking part in the activities of the schizophrenia associations further reduces costs in that they supply specific group therapy at no cost to the patient. When the cost of treatment in the average case is prorated over a three-year period the annual cost of treatment itself will amount to only a few hundred dollars, which compares very favorably with any other available treatment system. Even in those cases where hospitalization is necessary the comparative cost is still relatively low because the average duration of hospitalization with this treatment method is only 5 weeks, and rehospitalization is seldom necessary except in a very chronic and severe case where the patient has been ill since childhood.

Because this treatment method utilizes objective monitoring of the patient's response, it facilitates reporting of improvement by treatment agencies, and this may become of progressive importance. In New York City, for instance, all mental health agencies contracting with the City's Funding Agency must now demonstrate tangible outcome of treatment to justify funding. With this treatment system, response to treatment in individuals or groups can be demonstrated even before the patient's behavior begins to reflect that improvement. The following case is an illustrative example:

> A 34-year-old housewife developed schizophrenia postpartum. She had been hospitalized and then treated unsuccessfully for two years. When the patient applied for treatment at the clinic she was depressed and relatively immobilized, with a HOD score of 110. On a treatment regimen of megavitamins, hypoglycemic diet, phenothiazines, antidepressants, and supportive therapy, she clinically remained essentially the same, with neither symptomatic nor behavioral improvement.
>
> Serial HOD testing showed, however, that the score was coming down progressively. It was not until the fourteenth month of treatment, when the HOD score got down to 30, that her symptoms finally disappeared and she resumed total functioning. Two months prior to her behavioral recovery the question of hospitalization had arisen. Because of the trend of the HOD scores, however, hospitalization was not advised, as it appeared to be only a matter of time before the HOD score would finally reach the level where recovery would occur.

In this case, several important things were demonstrated. First, an unnecessary hospitalization was avoided, but had it occurred her recovery two months later would have been falsely attributed to it. Second, a behavior rating scale or multiple interviewing techniques would have erroneously concluded at the end of the first year of treatment that she was no better, when in fact the basic disease process was considerably improved. The obverse is also true, in that, for instance, many patients have worked the very day they committed suicide, and the HOD score could have picked up the increasing severity of their illness despite behavioral status quo. The pressures in our society toward normal behavior are so enormous that relatively normal behavior may still occur in the face of *serious* degrees of illness.

Evaluation of Effectiveness

In view of the previously described difficulties in evaluating treatment results in schizophrenia, a variety of ways of demonstrating the effectiveness of this treatment approach can be described in terms that are appropriate for different settings.

OFFICE PRACTICE

The only absolute control which meets all of the essential criteria is the utilization of the patient as his own control. This also eliminates the problem of placebo or transference responses. In this regard, it is useful for the physician to select from his own practice patients with whom he has become familiar, whose failure to recover despite all previous treatments had been personally observed, and about whom he has collected a great deal of subtle and usually unreported data. A change in the patient's response then becomes readily apparent even though transmission of this observation to others may only sound anecdotal and be difficult to demonstrate convincingly. The following two cases are illustrative:

Case No. 1: This 33-year-old housewife and mother of three young children had been overtly and severely psychotic with schizophrenia for five years. The family had unlimited means and provided her with the best of professional help. She had been in a number of hospitals and was treated by many highly qualified psychiatrists. She had had all the psychotropic drugs in massive doses and in multiple combinations, as well as several courses of electroshock therapy. Despite all this, her condition became progressively worse. She was openly delusional, suicidal, out of contact, and irrational.

Because of the hopelessness and severity of her condition, a prefrontal lobotomy was finally advised and it was scheduled to be performed. At this point, the family asked if she could be given a trial of megavitamin therapy before resorting to the drastic surgical procedure. The reply was "Lobotomy, yes—niacin, no!" The family then had the patient transferred, against medical advice, out of the hospital and had her admitted to the Brunswick Hospital. The patient was not at all happy about the transfer; she did not like the new hospital, did not believe any treatment would help, and did not like the new doctor—she did, however, agree to take the prescribed medications.

On a combination of megavitamins, thyroid, hypoglycemic diet, and a small dose of tranquilizers, she recovered in 10 weeks. She was discharged from the hospital 4 years ago and during the intervening time has returned to full normalcy, including taking care of her children, running her household, and becoming active in the PTA and other social activities. In addition, she is working at a part-time job. She is seen for after-care visits at the clinic every four months. She looks well, feels well, and has no symptoms. During February 1971, she was interviewed by a correspondent on CBS News on nationwide television and she gave no sign of ever having been ill.

Case No. 2: A 24-year-old unmarried, unemployed young woman with a diagnosis of borderline paranoid schizophrenia had spent 10 years in weekly psychotherapy during which time she had three different therapists. Despite everything, she remained "half well" in that her borderline paranoia prevented her from holding a job, keeping a boyfriend, or making close friends. She stayed home and bemoaned her fate that she would always be disabled and would never be able to get married. She felt herself to be a social fifth wheel and an embarrassment to her family, who belonged to a subculture in which for a young woman of her age to be unmarried was a social disgrace. All of the psychodynamic possibilities had been repeatedly explored, but her condition remained static. In addition to different phenothiazines, a variety of medications had

been tried. She usually had unpleasant side effects and her attitude toward medications was suspicious.

At this point, the therapist put her on a sugar-free diet with no explanation, except that it might help her to take off weight. She was also placed on the megavitamin regimen with the explanation that vitamins might give her more energy. Because she suffered from apathy, listlessness, and hypochondriasis, she agreed. Within a few months she began to demonstrate a different emotional tone and lost the hostile, paranoid edge in her interactions with others, so that for the first time in her life she made a friend. Soon after, also for the first time, she was able to keep a boyfriend (prior to this time she had gone out with many young men but she was so hypercritical that seldom did they call her for a second date).

She now was able for the first time to hold a job and get along with her superiors. In the past she had always become paranoid and had either been fired or quit in a huff. She subsequently married, now has two children, and functions normally as a housewife. All medications were prophylactically temporarily increased after the birth of each child to prevent a postpartum episode.

To the clinician then, the efficacy of a new treatment method is most convincingly evidenced by a clinical response in patients who have failed to recover by all previously tried methods.

HOSPITAL PRACTICE

Changes in the collective HOD scores of groups of patients demonstrate the effectiveness of a given procedure. A research project done at the Brunswick Hospital demonstrated the usefulness of this method in determining the effect of ECT in the treatment of schizophrenia (Chiossone et al., 1969). In this study, all patients were given both the HOD and OIT tests on admission and again on discharge. The same patients were also evaluated on a clinical rating scale and although there was no statistically significant difference between the two groups at the time of their discharge as far as their degree of recovery, suitability for discharge, and scores on the rating scale, the HOD scores demonstrated that there had been a marked difference in response to treatment.

All patients were treated with phenothiazines, megavitamins, accessory symptomatic medications, group therapy, and all the other usual adjunctive measures, with the exception that 85 patients received ECT and 55 served as controls. When the results were tabulated and graphed, the very significant effect of ECT was observable. This was most marked in the younger age groups (Fig. 30-1).

Figure 30-2 shows the effect of ECT as compared to the control group by graphing only improvement in the percentage of scores above the median on the perceptual subscale of the HOD test.

Figure 30-3 graphs the same results, except that the improved scores have been obtained by totalling the paranoid and perceptual subscales. The purpose of comparing these subscales with the total scores is to eliminate the effect of improvement

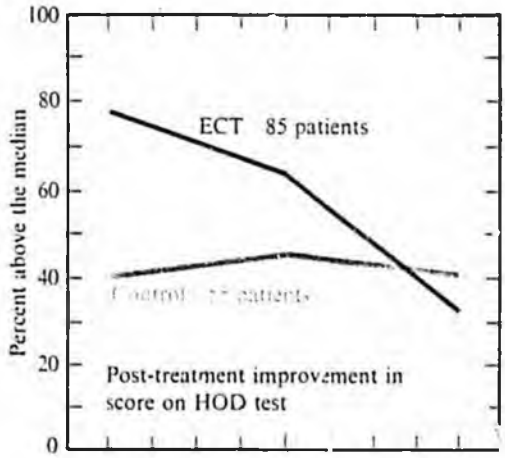

FIGURE 30-1.

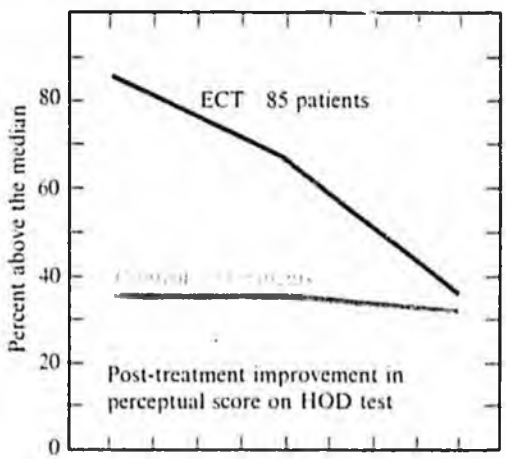

FIGURE 30-2.

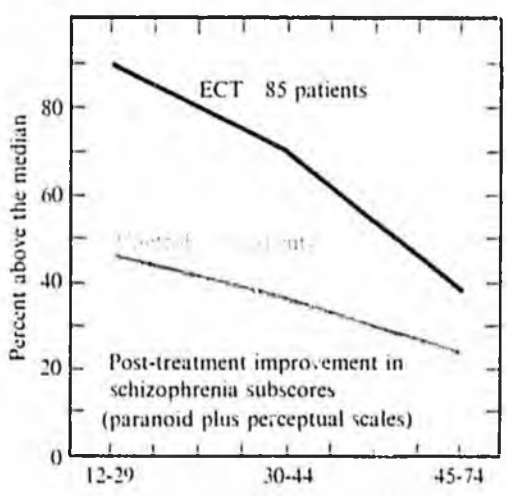

FIGURE 30-3.

in the patient's depressive subscales, as depression in and of itself is not intrinsic to the schizophrenic process and is often only reactive. By eliminating the depressive subscale, comparison of the two groups demonstrates the substantial benefit of ECT in the young schizophrenic and it demonstrates that this is not due to the alleviation of any accompanying depression, but rather to an alleviation of the schizophrenic process itself.

Without the use of the HOD test, this marked difference could not have been demonstrated as rating scales based on behavior showed no difference between the two groups. This study again supports the view that schizophrenia is both an inner experience and a perceptual disorder and not just abnormal behavior, arbitrarily labeled as schizophrenia.

In reporting the above data, a method was selected to by-pass rater bias and to demonstrate that behavioral rating scales would have been grossly misleading. Also, it was assumed for purposes of this study that the patients were in a worsening condition with a rising HOD score at the time of their admission to the hospital. In addition, all patients were on the same diet and all patients were seriously ill. This type of reporting of data is suitable for evaluation of the effectiveness of a treatment which has a rapid response. During a short-term hospital stay it would be impossible to evaluate the effects of other treatment measures such as the use of thyroid or megavitamins, which usually take a few months or even six months to a year to demonstrate results.

A follow-up study was conducted at the Brunswick Hospital during a two-year period to determine the effects of the continuance of megavitamins on the recovery rate (Hawkins et al., 1970). So that results of the study would be comparable to other follow-up studies reported in the literature, it was arbitrarily decided to use the rehospitalization rate as evidence of response, as that is the most frequently cited criterion. The pros and cons of utilization of rehospitalization rates have been well discussed over the years and will not be cited here except to say that in a practical way it represents the resultant of many factors, including social survival. The study included 140 patients who had been hospitalized because of severe schizophrenia, during which time the patients were hospitalized for an average length of 8 weeks. While in the hospital, all patients received phenothiazines, megavitamins, and adjunctive therapy. The diagnoses were confirmed by HOD testing and no cases were included in which there was doubt about the diagnosis. At the time of discharge from the hospital, megavitamins were discontinued in 85 patients. The remaining patients were subdivided into subgroups taking the megavitamins for periods of three months or for one year. Tabulation of the rates of rehospitalization (to any hospital) over the two-year period of study revealed that among the control group, in whom megavitamins were discontinued, 35 percent were rehospitalized. Of patients who continued on the megavitamins for three to six months, 25 percent were rehospitalized. The rehospitalization rate for the patients who stayed on megavitamins for one year

or more was 16 percent (9 of 57 patients). The χ^2 score value for this comparison is in excess of the 5.99 required for a significance at the 0.05 level, indicating a definite correlation between the continuation of the megavitamin therapy and a 50 percent lower readmission rate than for the patients in the control group.

CLINIC PRACTICE

In a clinic setting it is possible to follow large numbers of patients for a considerable length of time and also to observe subgroups in which schizophrenia is associated (for example, with alcoholism, drug abuse or homosexuality). In evaluating a new treatment method, several of the most common sources of evaluative error need to be eliminated—rater bias, placebo reaction, and positive transference "cures."

Placebo effect can be eliminated by studying patients who have had many trials over the years on multiple drugs without success and also by waiting for a year to pass before evaluating results. Rater bias can be bypassed by objective testing, such as the HOD test. Other objective data can also be used, such as achievement of sobriety by the alcoholic, discontinuance of drug abuse, cessation of homosexual activity, return to college, or whatever criteria are appropriate to the sample being studied.

Positive transference reactions can be eliminated by a variety of techniques which are also applicable to private practice. Using patients as their own controls is obviously the best. Looking for a difference in recovery rates between patients who have a positive transference and those who have a negative transference is another commonsense approach. In actual practice, treating large numbers of patients who are chronically ill and who have had a number of therapists and many different drugs eliminates most doubts, as it is obvious that if they were prone to placebo or transference cures they would not still be ill. There is really no answer to the question of spontaneous remissions except that in the comparison of large groups of patients over many years it can be assumed that the spontaneous remission rates in both groups will have equalized.

One criterion for the effectiveness of a medical regimen is the response of the patient when it is discontinued. Another way of ascertaining the specificity of a treatment modality is to determine the type of case or disease entity where it does not work. In schizophrenia, which is most likely a group of different biochemical illnesses, evaluation of drug studies requires clinical interpretation. As an example, if the effectiveness of a given antibiotic in treating pneumonia is reported in percentages, it can well be that of all pneumonias treated by a given drug, only 10 percent might respond. This might be taken to mean that the antibiotic is only 10 percent effective, and therefore hardly warrants marketing. The clinical fact may be, however, that the 10 percent represents a particular type of pneumonia for which the particular antibiotic is close to 100 percent effective and is in fact specific for that type of pneumonia but not for others. It would appear that in the psychiatric

literature similar conditions prevail. The importance of some of these factors was pointed out by Fritz Freyhan in his presidential address to the American Psychopathological Association. The influence of the double-blind study on the actual practice of clinical psychiatry has been curiously nil. Not a single treatment used in psychiatry was discovered by the use of the double-blind method, with one single exception—the first double-blind study done in psychiatry (actually it was a triple-blind study), devised by Hoffer and Osmond to study the effect of niacin in schizophrenia, and the results of this meticulous, long-term study were generally ignored for some years (see Chapter 10 by Osmond on the history of the niacin treatment).

In reporting data, then, the clinical researcher is confronted by a communications problem (Heston, 1970). We have found that the most useful style of reporting results to other clinicians is in terms of definite observations that include enough data about the circumstances to allow the results to be duplicated. To report the total clinical experience of treating 5,000 schizophrenic patients with a new treatment method involving a new conceptual framework over a five-year period presents sizeable difficulties. Because the setting itself influences treatment results, some general description of the situation in which a clinical experience takes place will be described.

The clinic itself is situated in a very informal setting, above a set of stores, and is innocuous and unforbidding in appearance. Each office is decorated differently so that a schizophrenic patient is unlikely to feel depersonalized or lost. The informality extends to the waiting room which lends itself to conversation and is friendly rather than institutional in style and atmosphere. It is not the kind of place where a patient is likely to feel like a number. Each patient and family becomes aware that specific arrangements are being made for them individually. Over the years, many of the families and clinic staff have had meetings under a variety of circumstances and have developed a certain community feeling and mutual concern. To some degree, the well-being of each patient then subsequently becomes part of the total community concern, so that if a given patient is not doing well there is an immediate feedback. This is a unique situation and although it exerts considerable pressure on the staff, it also results in a certain enthusiasm and a heightened therapeutic intention. There is an expectation that every patient is going to improve sooner or later, therefore any self-fulfilling prophecies that occur are likely to do so to the patient's benefit.

The patient most likely to respond to this overall treatment regimen has an elevated HOD score and a discernible perceptual dysfunction. These represent the majority of patients and most of these patients will have improved or recovered by the end of a year. The patients who fail to improve are, as stated previously, usually those in whom the onset was in early childhood, and they are further characterized by low HOD scores, primarily visual distortions, and the stilted postural attitudes indicative of an underlying proprioceptive disorder of long duration. This latter group constitutes the

minority of patients, and of them only about half will improve.[5] Also, they do not show the complete recovery which frequently occurs in the more favorable group. Even so, the improvement may be in areas which are extremely important to patient and family, so that limited improvement may still be of considerable importance. The following case is an example:

> A 30-year-old chronic schizophrenic patient was brought to the clinic after having had 15 years of continuous prior treatment, including six hospitalizations where she had a full course of insulin shock treatment plus a total of 125 electroshock treatments. The family indicated that this was to be the last trial of treatment before they would reluctantly have to accept permanent state hospital placement for the patient. The family reported that she was incontinent, refused to wear her false teeth, constantly rocked, and was uncommunicative. She therefore presented a considerable nursing problem for her parents.
>
> The patient was placed on an overall treatment regimen of hypoglycemic diet, megavitamins, phenothiazines, and thyroid. She responded very slowly, but by the end of two years her appearance was markedly improved, she used make-up, wore her teeth, spoke politely, had stopped rocking, and had long since been continent. The family was able to take her on social family visits, and could travel in public with her.
>
> This patient was far from recovered, however, in that her affect was flat, her behavior was still moderately inappropriate, and her overall style was awkward and somewhat stilted, but her family was extremely pleased. The treatment also had been based on bi-monthly and then tri-monthly visits, which were within the family's financial capacity.

The megavitamin approach is effective in other conditions associated with an elevated HOD score, such as alcoholism or post-psychedelic drug reactions. It is the most effective treatment for post-LSD "flashbacks" of the type reported by Horowitz (1969) and far more efficient than psychotherapy (Hoffer, 1972). It also is of benefit to some hyperkinetic children and also to some with learning disorders (Rossi, 1967; Green, 1970, 1971). There are many adolescent patients who present a clinical picture of pseudo-psychopathic behavior due to an underlying, unrecognized schizophrenia disorder, and in these patients the behavior improves on the overall megavitamin regimen.

We have not observed any benefit from megavitamins on convulsive disorders but the hypoglycemic diet has helped several. Megavitamins are also ineffective in manic-depressive or other psychoses. They are also ineffective in the psychoneuroses. (Many "neurotic" patients, however, are greatly helped by the hypoglycemic diet—especially depressed, anxious, phobic, fatigued, irritable, or hypochondriacal patients. In many of these, the diet eliminated the need for psychotherapy.) We have

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[5] These results were confirmed by a research study conducted by the Institute for Child Behavior Research in which it was reported that 50 percent of the children responded to megavitamins (Rimland, 1970, 1972, and Chapter 24 of this book).

treated six patients with prior lobotomies and none of them responded to the treatment although their diagnosis was definitely that of schizophrenia.

The homosexual schizophrenic patient responds quite favorably, and by the end of the first year of treatment the majority report the disappearance of the supposed homosexuality. In these cases, no discussion of the homosexual pattern was entered into during the entire year and the recoveries from these patterns were reported spontaneously. It would seem that the perceptual disorganization impairs the self-image, including sexual identity. This was accompanied in these patients by regression and the development of pseudo-homosexuality, as has been described by Ovesey (1954, 1955a, 1955b). This was most likely to occur with male schizophrenics. Several female schizophrenic patients who were also alcoholic continued a homosexual life style despite abatement of the schizophrenic process.

Postpartum psychotic episodes were completely eliminated in our schizophrenic patients with this treatment method. By prophylactically increasing doses of medications immediately following delivery, this complication was prevented, which was in marked contrast to clinical experience of years past. On the other hand, several patients who had previously recovered and then stopped all medication became pregnant and did have postpartum relapses.

Therapeutic results do not depend on a positive transference. Its presence, however, is helpful, not so much to the eventual outcome as to the ease of clinical management of the case. We have treated a number of patients via family members and also by mail with results equal to those for patients seen in the clinic. The following case is an example:

> A 44-year-old man with chronic paranoid schizophrenia of 10-years duration had been given up as hopeless after many years of treatment. The family kept him home in an upstairs room where his condition was disturbed and dishevelled. He screamed obscenities at his hallucinatory enemies, refused to change clothes, refused to take any medication, and exhibited no interest in external events. The family came to the clinic, learned of the megavitamin treatment and worked out a combination of vitamins titrated with bicarbonate of soda and flavored with chicory, which was then placed surreptitiously in all of his beverages.
>
> After a few months he began to respond and improve, and at that point a small dose of thioridazine in liquid form was added to his formula. By the end of the year he had become a clothes dandy, carried on a normal conversation, was no longer hallucinating, was calm, read a daily paper, watched television, and answered the telephone. Two years later he continues to do well and is planning to live on his own, which has created apprehension with the family, as they are still reluctant to inform him of their secret treatment. When they finally tried to persuade him to take megavitamins he said he didn't think he needed them as he had been doing pretty well on his own for the last few years!

Getting patients to take the medication and stay on it is seldom a problem, especially after they have had an opportunity to experience subjective improvement.

A few patients who have recovered will feel so well that they will experiment with discontinuance of the therapeutic regimen and promptly relapse. One reason this occurs is that in altered states of consciousness there is difficulty in remembering what one has learned in another state of consciousness. This has also been demonstrated experimentally in animals and is a common clinical observation. This phenomenon does not appear to be attributable to the mechanism of denial, although that, too, may at times play a role. Recovery from relapses unfortunately is usually slower and more difficult than was the original recovery. This is more true in children than adults, however, and has been reported also by Cott (1969).

As patients recover, certain questions tend to recur. Many of these relate to the ability to concentrate and the question of when to return to college or work. Initially, when the patient's HOD score is high, his ability to concentrate is markedly impaired, and we usually ask patients if they are able to follow a story on television. When the HOD score is close to 100 this is usually not possible, but as the patients recover they will report that they are now able to follow the story, so this is a favorable indicator. It is usually some months and, in many cases, close to the end of the first year of treatment, before concentration returns to the point that the patient is able to remember what he has read, and we advise him not to return to college until this capacity has returned. We recommend that the patient take 6 credits the first semester and if that goes well, that he take 12 credits the following semester and then 15 credits thereafter. Allowing patients to return to school prematurely invites failure and discouragement.

Return to work, on the other hand, is quite different and this may occur almost immediately or as soon as the patient feels "up to it." It is a common observation then that the patient is capable of returning to work sometimes the very day following discharge from the hospital and yet he is unable to take evening college courses for a [illegible] year.

As has been pointed out previously, we avoid i[illegible]ing the patient's personal privacy when his HOD score is elevated and interpersonal contact is painful. This saves a great deal of reparative work later which would otherwise become necessary to undo the deleterious effects of such intrusions. Where the patient has already had this unfortunate prior experience, some reparative therapy to the patient's damaged self-esteem may become necessary as he recovers. A patient's resentment over having had this experience forced upon him in the past can be amazingly severe.

Lastly, it is on the administrative level that the effect of the orthomolecular treatment approach first becomes most strikingly apparent. There is an almost immediate disappearance of waiting lists. There is a marked reduction of diagnostic testing costs and time. There is a progressive increase in the case load within the same budget and manpower limitations, and there is an overall improvement in treatment results which is expressed in a very positive feedback. The level of functioning in group therapy with schizophrenic patients increases noticeably to a higher level and the

percentage of patients who are capable of such interaction also increases greatly. The preoccupation is no longer with "keeping the patient out of the hospital" but rises to the level of counselling him about the advisability of seeking a better job at this time, or on the timing of an impending marriage.

Another response noticeable to administration is that sizeable numbers of patients who were on welfare at the time they began treatment will be off welfare by the end of a year, since their social disablement stemmed from a previously undiagnosed perceptual disorder.

GROUP AND HALFWAY HOUSE EXPERIENCE

All of the Schizophrenics Anonymous groups that did not use the orthomolecular-megavitamin approach soon failed and all the groups that were successful had taken the orthomolecular approach. In Alcoholics Anonymous, many members were unable to stay sober until they were placed on a sugar-free diet with megavitamins. In 1972, an estimated 20,000 to 25,000 alcoholics were taking megavitamins.

This approach is an integral part of the therapeutic regimen in many alcoholic rest homes. Of these, the most comprehensive and intensive therapeutic regimen is the one in use at Guest House, Lake Orion, Michigan, for alcoholic priests. In their experience, high-dosage megavitamins and hypoglycemic diets are critically essential in the recovery of a sizeable percentage of their alcoholics. It is notable that they achieve an overall recovery rate of 80 percent (Ripley, 1969, personal commun.).

A more elaborate study by Smith (1971) included 4,243 alcoholics. Of these, a group of 507 patients had been carefully followed for five years. All were long-time-treatment failures, and 400 of the 507 cases had been sober for two years and more, which is quite remarkable considering the severity of their condition. A formal cross-over double-blind study of two sanitarium groups will be completed in 1972. A full report of 3,673 patients will also be forthcoming. In this study, it can already be reported that niacin was superior in effectiveness to niacinamide.

Similar positive results were reported by Hawkins (1967) in the first group of clinic patients treated with this method. In that group there were 53 alcoholic-schizophrenic patients. By the end of a year, 41 patients were active in AA and 36 had achieved sobriety.

When the HOD test was given to residents at a halfway house for soft drug users (Kinsman Hall, New York), almost two-thirds were found to have abnormally elevated scores and they were unresponsive to the intensive therapy until placed on megavitamins (Palmer, 1970; Hepper, 1970, personal commun.). The experience of this halfway house could be expected from the work already done on the use of the HOD test with psychedelic-drug users by the LSD Rescue Service which is in operation in major cities throughout the United States (Peters, 1971, personal commun.).

The LSD Rescue Service has for years relied primarily on giving megavitamin doses and on attempting to raise blood sugar level to counteract adverse psychedelic drug reactions. It is notable that they have discovered that high doses of thiamine hydrochloride have been found to be beneficial in reducing the craving and return to the use of methedrine (speed).

The use of niacin and niacinamide in ameliorating LSD reactions is well known among the more knowledgeable members of the drug subculture and has been reported widely in the underground newspapers. *The Hippy's Handbook* (Bronsteen, 1967) details this use under "Rx for a Bad Trip" and also has this to say about psychiatry, "Without one single exception, every hippy interviewed had, at one point, gone to a therapist—in every single case the experience was negative . . . modern psychiatry is out of touch with young people. . . ." The "Practical Advice" section of Abbie Hoffman's *Revolution for the Hell of It* (1968) includes similar advice to avoid the psychiatric establishment and to use niacin or niacinamide for "freak-outs." The use of megavitamins for the "drug wipeout" is described in the Do It Now Foundation's *Conscientious Guide to Drug Abuse* (Pawlick, 1971).

The evidence then for the effectiveness of the combination of megavitamins and hypoglycemic diets in correcting perceptual disorders, whether they are associated with outright schizophrenia, alcoholism, or drug use, is derived from widespread experience in a variety of patient population groups and settings.

We can compare the results of this treatment with statistics as given by authorities in the field of schizophrenia. For instance, the Chief of the Center for Studies of Schizophrenia for the National Institute of Mental Health, Dr. Lorin Mosher, indicates that only 30 percent of the patients who develop schizophrenia are able to return to work, and according to Caffey et al. (1970) only 15 percent of patients who had been hospitalized for any appreciable length of time ever function in a completely normal way thereafter. Statistics from the New York State Department of Mental Hygiene indicate that 55 percent of patients hospitalized for schizophrenia are readmissions and in this percentage are many patients with multiple rehospitalizations. As compared to these overall large-scale statistical guidelines, it would appear beyond any doubt that the orthomolecular psychiatric approach offers substantial and valid hope to patients and family. As the number of patients increases, the development of an integrated community system for the treatment of schizophrenia evolves to meet the growing needs of the patient population. The strength of the system, however, relies entirely on demonstrable results.

SUMMARY

Following the diagnostic process, the patient is given the results of the tests and the diagnosis, along with an explanation of his illness based on the orthomolecular

medical model and the significance of his perceptual disorder. The patient is then placed on a medical regimen consisting of a hypoglycemic diet, prescribed rest and exercise, phenothiazines, and other ancillary medications and megavitamins. The importance of detecting and treating functional, relative, or absolute hypoglycemia is stressed.

While the HOD score is elevated, psychotherapeutic intervention is kept to an absolute minimum. Those problems that still remain after the HOD score has returned to normal may be dealt with by psychotherapy if the patient is so motivated. Recovery is facilitated by the use of ancillary measures such as SA, group therapy, family therapy, AA, halfway houses, or specialized drug groups. Case histories and vignettes are used to explain and illustrate many of these principles. Evidence is reviewed to corroborate the experience that psychodynamically oriented psychotherapy does not influence the basic disease process itself to any statistically demonstrable degree.

The patient group most responsive to the orthomolecular approach is identified by an elevated HOD score, which demonstrates perceptual dysfunction. The majority of these patients recover by the end of the first year, re-enter life's activities during the second year, and in the third year are able to function on a higher level than they were before they became ill. We have not seen this response with any other treatment method.

The general problems inherent in evaluating the results of treatment in schizophrenia have been briefly surveyed and an attempt made to report a huge mass of data in terms which are useful to the clinician.

The orthomolecular approach is very practical. There is a high degree of acceptability and it is suitable for a wide range of applications in a variety of settings such as private practice, hospital, clinic, halfway house, and a diversity of groups. Because patient visits are widely spaced, there is a great saving in cost, not only to the patient, but also to the institution. With proper safeguards, there is an ample safety factor. Medical contraindications to the use of certain vitamins in high dosage are enumerated and toxicity is reviewed. The positive safety and cost factors are augmented by the establishment of a specialized laboratory.

We have described the effectiveness of this overall treatment approach with several thousand patients over a five-year period. Its evaluation in private practice has been with an emphasis upon using the patient himself as the ideal control, and we have also discussed how this overall system is used in hospital practice. We included the results of a study utilizing group improvements in HOD scores to demonstrate the effectiveness of ECT. This study demonstrated the defect of behavioral rating scales and the marked effectiveness of ECT in amelioration of the schizophrenic process especially in the younger patient. The results of a two-year follow-up study to evaluate the effect of continuance of megavitamins on the relapse rate have been reported. Using the rehospitalization rate as the criteria of effectiveness, the control group had twice the relapse rate of the megavitamin group.

The patients most likely to respond to this treatment have elevated HOD scores associated with schizophrenia, or schizophrenia plus homosexuality, psychedelic drug abuse, or alchoholism. Although each requires different handling, the overall results are promising and the degree of positive response in the majority of cases was responsible for the development of an integrated community system for the treatment of schizophrenia. The system is related to a variety of other treatment settings where a large body of positive results with this approach have been reported over the years.

The overall results from such a wide range of clinical experience correlates with both theoretical formulations and laboratory research to establish a broad foundation for the concept of orthomolecular psychiatry.

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Liability of hospital for negligence of nurse assisting operating surgeon. 29 ALR3d 1065.

Hospital's liability for injury or death to patient resulting from or connected with administration of anesthetic. 31 ALR3d 1114.

Liability of hospital for refusal to admit or treat patient. 35 ALR3d 841.

Attending physician's liability for injury caused by equipment furnished by hospital. 35 ALR3d 1068.

Hospital's liability to patient injured going to or using bathroom or toilet facilities. 36 ALR3d 1235.

Liability for negligence in diagnosing or treating aspirin poisoning. 36 ALR3d 1358.

Liability of one releasing institutionalized mental patient for harm he causes. 38 ALR3d 699.

Medical malpractice in connection with diagnosis, care, or treatment of diabetes. 42 ALR3d 482.

Hospital's liability for injury allegedly caused by improper diet or feeding of patient. 42 ALR3d 736.

Liability for injury allegedly resulting from negligence in making hypodermic injection. 45 ALR3d 731.

Liability for injury or death from blood transfusion. 45 ALR3d 1364.

Liability of hospital for injury caused through assault by a patient. 48 ALR3d 1288.

Hospital's liability to patient for injury allegedly sustained from absence of particular equipment used in diagnosis or treatment of patient. 50 ALR3d 1141.

Hospital's liability for negligence in selection or appointment of staff physician or surgeon. 51 ALR3d 981.

Liability for injuries or death resulting from physical therapy. 53 ALR3d 1250.

Liability of hospital, or medical practitioner, under doctrine of strict liability in tort, or breach of warranty, for harm caused by drug, medical instrument, or similar device used in treating patients. 54 ALR3d 258.

Liability of physician or hospital in the performance of cosmetic surgery upon the face. 54 ALR3d 1255.

Liability of hospital, other than mental institution, for suicide of patient. 60 ALR3d 880.

Validity and construction of contract between hospital and physician providing for exclusive medical services. 74 ALR3d 1268.

Tort liability of physician or hospital in connection with organ or tissue transplant procedures. 76 ALR3d 890.

Recovery for mental or emotional distress resulting from injury to, or death of, member of plaintiff's family arising from physician's or hospital's wrongful conduct. 77 ALR3d 447.

Malpractice in connection with diagnosis of cancer. 79 ALR3d 915.

Patient tort liability of rest, convalescent, or nursing homes. 83 ALR3d 871.

Arbitration of medical malpractice claim. 84 ALR3d 375.

Malpractice in connection with electroshock treatment. 94 ALR3d 317.

Application of rule of strict liability in tort to person or entity rendering medical services. 100 ALR3d 1205.

Sec. 18.20.020. License required. No person or government unit, except the federal government, acting severally or jointly with another person or governmental unit may establish, conduct or maintain a hospital in the state without a license. (§ 40-6-3 ACLA 1949; am § 3 ch 112 SLA 1957)

Cross references. — As to requirement for certificate of need to construct or alter a health care facility, see AS 18.07.011 — 18.07.111.

Opinions of attorney general. — A nursing home is considered a hospital for the purpose of the licensing provisions. 1963 Op. Att'y Gen., No. 7.

If a person establishes a hospital which gives general and medical treatment and in addition provides nursing service, both aspects of hospital operation are nonetheless within the same hospital, and there is no justification for breaking up the operations of one hospital into separable units for licensing purposes; therefore, one license should be required for the entire hospital operation. 1963 Op. Att'y Gen., No. 7.

Collateral references. — Licensing and regulation of nursing or rest homes. 97 ALR2d 1187.

Sec. 18.20.030. Application and fees. Application for a license shall be made to the department upon a form provided by it, and shall contain the information the department requires, which may include affirmative evidence of ability to comply with the reasonable standards, rules and regulations prescribed under AS 18.20.060 — 18.20.080. Each application for a license shall be accompanied by a license fee of $10. The department shall deposit all fees received in the state treasury. (§ 40-6-4 ACLA 1949)

Sec. 18.20.040. Issuance and renewal of license and posting. Upon receipt of an application for license and the license fee, the department shall issue a license if the applicant meets the requirements established under AS 18.20.060 — 18.20.080. If the applicant does not meet the requirements established under AS 18.20.060 — 18.20.080 but makes continued efforts to comply with them, the department may grant him a temporary or provisional license for a reasonable period of time. A license, unless suspended or revoked, is renewable annually without charge upon filing by the licensee, and approval by the department of an annual report on the uniform date and containing the information in the form the department prescribes by regulation. Each license issued is for the premises and person or governmental unit named in the application and is not transferable or assignable except with the written approval of the department. Licenses shall be posted in a conspicuous place on the licensed premises. (§ 40-6-5 ACLA 1949; am § 4 ch 112 SLA 1957)

Sec. 18.20.045. Insurance required.

Repealed by § 40 ch 177 SLA 1978.

Editor's notes. — The repealed section derived from § 39, ch. 102, SLA 1976.

As to purpose of repealing act, see § 1, ch. 177, SLA 1978 in the 1978 Temporary and Special Acts and Resolves.

Sec. 18.20.050. Denial, suspension or revocation of license. The department may deny, suspend or revoke a license in a case in which it finds that there has been a substantial failure to comply with the requirements established under AS 18.20.060 — 18.20.080. (§ 40-6-6 ACLA 1949)

Sec. 18.20.060. Regulations and standards. The department shall adopt, amend, and enforce rules, regulations and standards for all hospitals designed to further the accomplishment of the purposes of AS 18.20.010 — 18.20.130 in promoting safe and adequate treatment of individuals in hospitals in the interest of public health, safety and welfare. (§ 40-6-7 ACLA 1949)

Sec. 18.20.070. Compliance with regulations. Each hospital in operation at the time the department adopts rules and regulations or

Council under § 1524(c)(2)(A) of P.L. 93-641 and only after consideration of comment and advice of the Advisory Board on Alcoholism. In awarding grants, the department shall further consider the amount of money that is available for all applications and whether an application would contribute to the wise development of a comprehensive program of alcoholic rehabilitation and prevention.

(c) Grants shall be awarded in a ratio of 90 percent state money to 10 percent community money for the costs of providing staff and limited improvement, renovation or new construction of facilities for alcoholic detoxification, rehabilitation or "half-way house" care. The department may waive all or part of the requirement that state money be matched by community money if the department finds that community money is unavailable and waiver of the requirement is in the best interests of the state. No grant for improving, renovating or constructing may exceed $50,000 except when there is a lack of applicants for available money and then only with the approval of the Review Board on Alcoholism. The department is not required to award all money available under this program, or the full percentages specified in this subsection, when another source of money is available or could reasonably be made available to the applicant.

(d) Money used by the applicant to qualify for state money may be from any source other than the state. The cost of developing an application is not reimbursable from the grant. The value of real property to be used directly in conjunction with the grant may be used in calculating the required amount of community money, as allowed by regulations of the department.

(e) No grant may be awarded under this section unless the application includes a plan which provides for

(1) the expenditure of grant money for education and other preventative measures, or the treatment of alcoholics;

(2) the reception of advice and comment from a local advisory board, or, if a local advisory board cannot be formed because the area is sparsely populated, from the governing bodies of private nonprofit health organizations, regarding the design, implementation, and evaluation of the plan and action to be taken;

(3) goals, expressed in quantifiable terms that express the intended impact of the assistance provided under the plan upon the number of individuals needing or utilizing such assistance;

(4) coordination with the goals and objectives of the health systems plan developed by the health systems agencies under § 1513(b)(2) of P.L. 93-641.

(f) The department shall monitor the implementation of the plan required under (e) of this section, and shall terminate payment of grant money if the plan is not implemented or approval of the program as a public or private treatment program under AS 47.37.110 is not granted within one year of the award of the grant, or is suspended, revoked,

limited or restricted. Modification of the plan required by (e) of this section must be approved by the department before implementation of the modification.

(g) The department shall provide management training for persons administering a program receiving grant money under this section.

(h) If the department determines, after the award of a grant under (c) of this section, that the community is capable of bearing a greater portion of the cost of a program than originally determined, the department may

(1) reduce the award by that portion of the cost of a program which the department subsequently determined the community could bear; or

(2) terminate payment of the grant entirely. (§ 2 ch 101 SLA 1970; am § 1 ch 126 SLA 1975; am §§ 1, 2 ch 116 SLA 1978; am § 33 ch 168 SLA 1978; am § 1 ch 150 SLA 1980)

Effect of amendments. — The 1980 amendment substituted "90" for "75", and "10" for "25", deleted "except that in communities designated as poverty areas the ratio shall be 80 percent state money to 10 percent community money" following "community money" near the beginning of subsection (c), inserted the second sentence of subsection (e), and substituted "Review" for "Advisory" near the end of the third sentence of subsection (c).

Article 6. Mental Health Program.

Section
655. Purpose
660. Powers and duties of department

Sec. 47.30.655. Purpose. The purpose of this major revision of Alaska civil commitment statutes (AS 47.30.660 — 47.30.915) is to more adequately protect the legal rights of persons suffering from mental illness. The legislature has attempted to balance the individual's constitutional right to physical liberty and the state's interest in (1) protecting society from persons who are dangerous to others; and (2) protecting persons who are dangerous to themselves, by providing due process safeguards at all stages of commitment proceedings. In addition, the following principles of modern mental health care have guided this revision:

(1) that persons be given every opportunity to accept voluntary treatment before involvement with the judicial system;

(2) that persons be treated in the least restrictive alternative environment consistent with their treatment needs;

(3) that treatment occur as promptly as possible and as close to the individual's home as possible;

(4) that a system of mental health community facilities and supports be available;

(5) that patients be informed of their legal rights and be informed of and allowed to participate in their treatment program as much as possible;

(6) that persons who are mentally ill but not dangerous to others be committed only if there is a reasonable expectation of improving their mental condition. (§ 1 ch 84 SLA 1981)

Editor's notes. — The parenthetical expression in the first sentence was added by the revisor of statutes pursuant to AS 01.05.031.

Sec. 47.30.660. Powers and duties of department. The department is the mental health authority of the state and shall

(1) administer a comprehensive program for the prevention of mental illness and the care and treatment of the mentally ill, including inpatient and outpatient care and treatment and the procurement of services of specialists or other persons on a contractual or other basis;

(2) take the actions and undertake the obligations which are necessary to participate in federal grants-in-aid programs and accept federal or other financial aid from whatever sources for the study, examination, care, and treatment of the mentally ill;

(3) administer AS 47.30.660 — 47.30.915;

(4) designate, operate, and maintain treatment facilities equipped and qualified to provide inpatient and outpatient care and treatment for the mentally ill;

(5) provide for the placement of mentally ill patients in designated treatment facilities;

(6) enter into arrangements with governmental agencies for the care or treatment of the mentally ill in facilities of the governmental agencies in the state or in another state;

(7) enter into contracts with treatment facilities for the custody and care or treatment of the mentally ill;

(8) enter into contracts which incorporate safeguards consistent with AS 47.30.660 — 47.30.915 and the preservation of the civil rights of the patients with another state for the custody and care or treatment of patients previously committed from this state under 48 U.S.C., sec. 46 et seq., and P.L. 830, 84th Congress, 2nd Session, 70 Stat. 709;

(9) prescribe the form of applications, records, reports, requests for release, and consents to medical or psychological treatment required by AS 47.30.660 — 47.30.915;

(10) require reports from the head of a treatment facility concerning the care of patients;

(11) visit each treatment facility at least annually to review methods of care or treatment for patients;

(12) investigate complaints made by a patient or an interested party on behalf of a patient,

(13) delegate upon mutual agreement to another officer or agency of it, or a political subdivision of the state, or a treatment facility designated, any of the duties and powers imposed upon it by AS 47.30.660 — 47.30.915; and

(14) adopt regulations to implement the provisions of AS 47.30.660 — 47.30.915. (§ 1 ch 84 SLA 1981)

Editor's notes. — Section 6, ch 84, SLA 1981, provided: "Except as provided in this Act, the provisions of AS 47.30.660 — 47.30.915 enacted by sec. 1 of this Act do not in themselves impair any action taken in a proceeding pending under statutes in effect before October 1, 1981, nor do they apply retroactively to terminate the detention of a person previously committed under statutes in effect before October 1, 1981. However, 90 days after October 1, 1981, the provisions of this Act apply to all persons committed under statutes in effect before October 1, 1981."

Article 7. Voluntary Admission for Treatment.

Section		Section	
670	Standards for voluntary admission	690	Admission of minors under 14 years of age
675	Notice of rights	695	Notice of request for release of minors under 14 years of age from detention and commitment
680	Discharge of voluntary patients		
685	Notice of intent to leave facility; commitment		

Editor's notes. — Section 6, ch 84, SLA 1981, provided: "Except as provided in this Act, the provisions of AS 47.30.660 — 47.30.915 enacted by sec. 1 of this Act do not in themselves impair any action taken in a proceeding pending under statutes in effect before October 1, 1981, nor do they apply retroactively to terminate the detention of a person previously committed under statutes in effect before October 1, 1981. However, 90 days after October 1, 1981, the provisions of this Act apply to all persons committed under statutes in effect before October 1, 1981."

Sec. 47.30.670. Standards for voluntary admission. A person 14 years of age or older may be voluntarily admitted to a treatment facility if he is suffering from mental illness and he voluntarily signs the admission papers. (§ 1 ch 84 SLA 1981)

Sec. 47.30.675. Notice of rights. (a) Upon the application of a person for voluntary admission, or at the time a person admitted under AS 47.30.690 reaches the age of 14, he shall be given a copy of the following documents which shall be explained to him as necessary:

(1) notice of rights as set out in AS 47.30.825 — 47.30.895 and an explanation of any document served upon him; and

(2) notice that should he desire to leave at a time when the treatment facility determines that he is mentally ill and as a result is likely to cause serious harm to himself or others or is gravely disabled the facility would initiate commitment proceedings against him.

(b) If an applicant for voluntary admission does not understand English, the explanation shall be given in a language he understands. (§ 1 ch 84 SLA 1981)

Sec. 47.30.680. Discharge of voluntary patients. A patient who no longer meets the standards established in AS 47.30.670 shall be discharged from the treatment facility. (§ 1 ch 84 SLA 1981)

Sec. 47.30.685. Notice of intent to leave facility; commitment. A voluntary patient who is 14 years of age or older and who desires to leave a treatment facility must submit to the facility a written notice of intent to leave on a form provided to him by the facility. Upon immediate investigation, the patient shall be evaluated in writing and discharged immediately or given written notice that involuntary commitment proceedings will be initiated against him. The treatment facility may detain the patient for no more than 48 hours after receipt of the patient's notice of intent to leave in order to initiate involuntary commitment proceedings. (§ 1 ch 84 SLA 1981)

Sec. 47.30.690. Admission of minors under 14 years of age. (a) A minor under the age of 14 may be admitted for 21 days evaluation, diagnosis, and treatment at a designated treatment facility if his parent or guardian signs the admission papers and if, in the opinion of the professional person in charge,

(1) he is gravely disabled or is suffering from mental illness and as a result he is likely to cause serious harm to himself or others;

(2) there is no less restrictive alternative available for his treatment; and

(3) there is reason to believe that the patient's mental condition could be improved by the course of treatment.

(b) The minor may be released by the treatment facility at any time during the 21 day period if the professional person in charge or his designated mental health professional determines the minor would no longer benefit from continued hospitalization and the minor is not dangerous. The minor's parents or his guardian must be notified by the facility of the contemplated release and that, unless they initiate involuntary commitment proceedings, the minor will be released. (§ 1 ch 84 SLA 1981)

Sec. 47.30.695. Notice of request for release of minors under 14 years of age from detention and commitment. The parent or guardian of a minor who is less than 14 years of age may request and obtain immediate release of the minor at any time, unless as the result of mental illness, the minor is likely to cause serious harm to himself or others. (§ 1 ch 84 SLA 1981)

Article 8. Involuntary Admission for Treatment.

Section		Section	
700.	Initiation of involuntary commitment procedures	760.	Placement at closest facility
705.	Emergency detention for evaluation	765.	Appeal
710.	Examination	770.	Additional 120 day commitment
715.	Acceptance of order	775.	Commitment of minors
720.	Release before expiration of 72 hour period	780.	Early discharge
725.	Commitment proceeding rights; notification	785.	Authorized absences
730.	Procedure for 21-day commitment; petition for commitment	790.	Return from unauthorized absence
735.	21 day commitment	795.	Involuntary outpatient care for committed persons
740.	Procedure for 90 day commitment following 21 day commitment	800.	Conversion of involuntary outpatient treatment to inpatient commitment
745.	90 day commitment hearing rights	805.	Computing periods of time
750.	Conduct of hearing	810.	Habeas corpus
755.	Court order	815.	Limitation of liability; penalty for false application

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Editor's notes. Section 6, ch 84, SLA 1981, provided "Except as provided in this Act, the provisions of AS 47.30.660 — 47.30.815 enacted by sec. 1 of this Act do not in themselves impair any action taken in a proceeding pending under statutes in effect before October 1, 1981, nor do they apply retroactively to terminate the detention of a person previously committed under statutes in effect before October 1, 1981. However, 90 days after October 1, 1981, the provisions of this Act apply to all persons committed under statutes in effect before October 1, 1981."

Sec. 47.30.700. Initiation of involuntary commitment procedures. (a) Upon petition of any adult, a judge shall immediately conduct a screening investigation or direct a local mental health professional employed by the department or by a local mental health program that receives money from the department under AS 47.30.520 — 47.30.620 or another mental health professional designated by the judge, to conduct a screening investigation of the person alleged to be mentally ill and, as a result of that condition, alleged to be gravely disabled or to present a likelihood of serious harm to himself or others. Within 48 hours after the completion of the screening investigation, a judge may issue an ex parte order orally or in writing, stating that there is probable cause to believe the respondent is mentally ill and that condition causes the respondent to be gravely disabled or to present a likelihood of serious harm to himself or others. The court shall provide findings on which the conclusion is based, appoint an attorney to represent the respondent, and may direct that a peace officer take the respondent into custody and deliver him to the nearest appropriate facility for emergency examination or treatment. The ex parte order shall be provided to the respondent and made a part of the respondent's clinical record. The court shall confirm an oral order in writing within 24 hours after it is issued.

(b) The petition required in (a) of this section shall allege that the respondent is reasonably believed to present a likelihood of serious harm to himself or others or is gravely disabled as a result of mental illness and shall specify the factual information on which that belief is based including the names and addresses of all persons known to the petitioner who have knowledge of those facts through personal observation. (§ 1 ch 84 SLA 1981)

Sec. 47.30.705. Emergency detention for evaluation. A peace officer who has probable cause to believe that a person is gravely disabled or is suffering from mental illness and is likely to cause serious harm to himself or others of such immediate nature that considerations of safety do not allow initiation of involuntary commitment procedures set out in AS 47.30.700, may cause the person to be taken into custody and delivered to the nearest evaluation facility. A correctional facility may be used as an emergency evaluation facility if an evaluation facility is not available. Upon arrival at the evaluation facility, the peace officer shall complete an application for examination of the person in custody and be interviewed by a mental health professional at the facility. (§ 1 ch 84 SLA 1981)

Sec. 47.30.710. Examination. (a) A respondent who is delivered under AS 47.30.700 to 47.30.705 for emergency examination and treatment to an evaluation facility shall be examined and evaluated as to his mental and physical condition by a mental health professional and by a physician within 24 hours after arrival at the facility.

(b) If the mental health professional who performs the emergency examination has reason to believe that the respondent is (1) mentally ill and that condition causes the respondent to be gravely disabled or to present a likelihood of serious harm to himself or others, and (2) is in need of care or treatment, the mental health professional may hospitalize him, or arrange for hospitalization, on an emergency basis. If a judicial order has not been obtained under AS 47.30.700, the mental health professional shall apply for an ex parte order authorizing hospitalization for evaluation. (§ 1 ch 84 SLA 1981)

Editor's notes. — The word "respondent" was substituted for the word "person" in the first sentence of subsection (b) by the revisor of statutes pursuant to AS 01.05.031.

Sec. 47.30.715. Acceptance of order. When a facility receives a proper order for evaluation, it must accept the order and the respondent for an evaluation period not to exceed 72 hours. The facility shall promptly notify the court of the date and time of the respondent's arrival. The court shall set a date, time and place for a 21-day commitment hearing, to be held if needed within 72 hours after the respondent's arrival, and the court shall notify the facility, the respondent, his attorney, and the prosecuting attorney of the hearing;

arrangements. Evaluation personnel, when used, shall similarly notify the court of the date and time when they first met with the respondent. (§ 1 ch 84 SLA 1981)

Sec. 47.30.720. Release before expiration of 72-hour period. If at any time in the course of the 72-hour period the mental health professionals conducting the evaluation determine that the respondent does not meet the standards for commitment specified in AS 47.30.700, the respondent shall be discharged from the facility or the place of evaluation by evaluation personnel and the petitioner and the court so notified. (§ 1 ch 84 SLA 1981)

Sec. 47.30.725. Commitment proceeding rights; notification. (a) When a respondent is detained for evaluation under AS 47.30.660 — 47.30.915, he shall be immediately notified orally and in writing of his rights under this section. Notification shall be in a language understood by the respondent. His guardian, if any, and if the respondent requests, an adult designated by the respondent, shall also be notified of the respondent's rights under this section.

(b) Unless a respondent is released or voluntarily admits himself for treatment within 72 hours of his arrival at the facility or, if he is evaluated by evaluation personnel, within 72 hours from the beginning of his meeting with evaluation personnel, he is entitled to a court hearing to be set for not later than the end of that 72-hour period to determine whether there is cause to detain him after the 72 hours have expired for up to an additional 21 days on the grounds that he is gravely disabled or mentally ill and as a result presents a likelihood of serious harm to himself or others. The facility or evaluation personnel shall give notice to the court of the releases and voluntary admissions under AS 47.30.700 — 47.30.820.

(c) The respondent has a right to communicate immediately, at the department's expense, with his guardian, if any, or an adult designated by the respondent and the attorney designated in the ex parte order, or an attorney of the respondent's choice.

(d) The respondent has the right to be represented by an attorney, to present evidence, and to cross-examine witnesses who testify against him at the hearing.

(e) The respondent has the right to be free of the effects of medication and other forms of treatment to the maximum extent possible before the 21-day commitment hearing; however, the facility or evaluation personnel may treat him with medication under prescription by a licensed physician or by a less restrictive alternative of his preference if, in the opinion of a licensed physician in the case of medication, or of a mental health professional in the case of alternative treatment, the treatment is necessary to

(1) prevent bodily harm to the respondent or others;

(2) prevent such deterioration of the respondent's mental condition that subsequent treatment might not enable him to recover; or

(3) allow the respondent to prepare for and participate in the proceedings.

(f) A respondent, if he is represented by counsel, may waive, orally or in writing, the 72-hour time limit on the 21-day commitment hearing and have the hearing set for a date no more than seven calendar days after his arrival at the facility. The respondent's counsel shall immediately notify the court of the waiver. (§ 1 ch 84 SLA 1981)

Sec. 47.30.730. Procedure for 21-day commitment; petition for commitment. (a) In the course of the 72-hour evaluation period, a petition for commitment to a treatment facility may be filed in court. The petition must be signed by two mental health professionals who have examined the respondent, one of whom is a physician. The petition must

(1) allege that the respondent is mentally ill and as a result is likely to cause harm to himself or others or is gravely disabled;

(2) allege that the evaluation staff has considered but has not found that there are any less restrictive alternatives available that would adequately protect the respondent or others; or, if a less restrictive involuntary form of treatment is sought, specify the treatment and the basis for supporting it;

(3) allege with respect to a gravely disabled respondent that there is reason to believe that the respondent's mental condition could be improved by the course of treatment sought;

(4) allege that a specified treatment facility or less restrictive alternative that is appropriate to the respondent's condition has agreed to accept the respondent;

(5) allege that the respondent has been advised of the need for, but has not accepted, voluntary treatment, and request that the court commit the respondent to the specified treatment facility or less restrictive alternative for a period not to exceed 21 days;

(6) list the prospective witnesses who will testify in support of commitment or involuntary treatment;

(7) list the facts and specific behavior of the respondent supporting the allegation in (1) of this subsection.

(b) A copy of the petition shall be served on the respondent, his attorney, and his guardian, if any, before the 21-day commitment hearing. (§ 1 ch 84 SLA 1981)

Sec. 47.30.735. 21-day commitment. (a) Upon receipt of a proper petition for commitment, the court shall hold a hearing at the date and time previously specified according to procedures set out in AS 47.30.715.

(b) The hearing shall be conducted in a physical setting least likely to have a harmful effect on the mental or physical health of the

respondent, within practical limits. At the hearing, in addition to other rights specified in AS 47.30.660 — 47.30.915, the respondent has the right

(1) to be present at the hearing; this right may be waived only with the respondent's informed consent; if the respondent is incapable of giving informed consent, the respondent may be excluded from the hearing only if the court, after hearing, finds that the incapacity exists and that there is a substantial likelihood that the respondent's presence at the hearing would be severely injurious to his mental or physical health;

(2) to view and copy all petitions and reports in the court file of his case;

(3) to have the hearing open or closed to the public as he elects;

(4) to be proceeded against according to the rules of evidence applicable to civil proceedings;

(5) to have an interpreter if he does not understand English;

(6) to present evidence on his behalf;

(7) to cross-examine witnesses who testify against him;

(8) to remain silent.

(c) At the conclusion of the hearing the court may commit the respondent to a treatment facility for not more than 21 days if it finds, by clear and convincing evidence, that the respondent is mentally ill and as a result is likely to cause harm to himself or others or is gravely disabled.

(d) If the court finds that there is a viable less restrictive alternative available and that the respondent has been advised of and refused voluntary treatment through the alternative, the court may order the less restrictive alternative treatment for not more than 21 days if the program accepts the respondent.

(e) The court shall specifically state to the respondent, and give him written notice, that if commitment or other involuntary treatment beyond the 21 days is to be sought, the respondent shall have the right to a full hearing or jury trial. (§ 1 ch 84 SLA 1981)

Sec. 47.30.740. Procedure for 90-day commitment following 21-day commitment. (a) At any time during the respondent's 21-day commitment, the professional person in charge, or his professional designee, may file with the court a petition for a 90-day commitment of that respondent. The petition must include all material required under AS 47.30.730(a) except that references to "21 days" shall be read as "90 days"; and

(1) allege that the respondent has attempted to inflict or has inflicted serious bodily harm upon himself or another since his acceptance for evaluation, or that he was committed initially as a result of conduct in which he attempted or inflicted serious bodily harm upon himself or another, or that he continues to be gravely disabled, or that he demonstrates a current intent to carry out plans of serious harm to himself or another.

(2) allege that the respondent has received appropriate and adequate care and treatment during his 21-day commitment;

(3) be verified by the professional person in charge, or his professional designee, during the 21-day commitment.

(b) The court shall have copies of the petition for 90 day commitment served upon the respondent, his attorney, and his guardian, if any. The petition for 90-day commitment and proofs of service shall be filed with the clerk of the court, and a date for hearing shall be set, by the end of the next judicial day, for not later than five judicial days from the date of filing of the petition. The clerk shall notify the respondent, his attorney, and the petitioner of the hearing date at least three judicial days in advance of the hearing.

(c) Findings of fact relating to the respondent's behavior made at a 21-day commitment hearing under AS 47.30.735 shall be admitted as evidence and may not be rebutted except that newly discovered evidence may be used for the purpose of rebutting the findings. (§ 1 ch 84 SLA 1981)

Sec. 47.30.745. 90-day commitment hearing rights. (a) A respondent subject to a petition for 90-day commitment has, in addition to the rights specified elsewhere in AS 47.30.350 — 47.30.915, or otherwise applicable, the rights enumerated in this section. Written notice of these rights shall be served on the respondent, his attorney, his guardian, if any, and may be served on an adult designated by the respondent at the time the petition for 90-day commitment is served. An attempt shall be made by oral explanation to insure that the respondent understands the rights enumerated in the notice. If the respondent does not understand English, the explanation shall be given in a language he understands.

(b) Unless the respondent is released or voluntarily admits himself following the filing of a petition and before the hearing, he is entitled to a judicial hearing within five judicial days of the filing of the petition as set out in AS 47.30.740(b) to determine if he is mentally ill and as a result is likely to cause harm to himself or others, or if he is gravely disabled. If the respondent voluntarily admits himself following the filing of the petition, the voluntary admission constitutes a waiver of any hearing rights under AS 47.30.740 or under AS 47.30.685. If at any time during the respondent's voluntary admission under this subsection, the respondent submits to the facility a written notice of intent to leave, the professional person in charge may file with the court a petition for 120-day commitment of the respondent under AS 47.30.770. The 120-day commitment hearing shall be scheduled for a date not earlier than 90 days after the respondent's voluntary admission.

(c) The respondent is entitled to a jury trial upon request filed with the court if the request is made at least two judicial days before the hearing. If the respondent requests a jury trial, the hearing may be

continued for no more than 10 calendar days. The jury shall consist of six persons.

(d) If a jury trial is not requested, the court may still continue the hearing at the respondent's request for no more than 10 calendar days.

(e) The respondent has a right to retain an independent licensed physician or other mental health professional to examine him and to testify on his behalf. Upon request by an indigent respondent, the court shall appoint an independent licensed physician or other mental health professional to examine him and testify on his behalf. The court shall consider an indigent respondent's request for a specific physician or mental health professional. A motion for the appointment may be filed in court at any reasonable time before the hearing and shall be acted upon promptly. Reasonable fees and expenses for expert examiners shall be determined by the rules of court.

(f) The proceeding shall in all respects be in accord with constitutional guarantees of due process and, except as otherwise specifically provided in AS 47.30.700 — 47.30.915, the rules of evidence and procedure in civil proceedings.

(g) Until the court issues a final decision, the respondent shall continue to be treated at the treatment facility unless the petition for 90-day commitment is withdrawn. If no decision has been made within 20 days of filing of the petition, not including extensions of time due to jury trial or other requests by the respondent, he shall be released. (§ 1 ch 84 SLA 1981)

Sec. 47.30.750. Conduct of hearing. The hearing under AS 47.30.745 shall be conducted in the same manner, and with the same rights for the respondent, as set out in AS 47.30.735(b). (§ 1 ch 84 SLA 1981)

Editor's notes. — The words "under AS 47.30.745" was added following "hearing" by the revisor of statutes pursuant to AS 01.05.031.

Sec. 47.30.755. Court order. (a) After the hearing and within the time limit specified in AS 47.30.745, the court may commit the respondent to a treatment facility for no more than 90 days if the court or jury finds by clear and convincing evidence that the respondent is mentally ill and as a result is likely to cause harm to himself or others, or is gravely disabled.

(b) If the court finds that there is a less restrictive alternative available and that the respondent has been advised of and refused voluntary treatment through the alternative, the court may order the less restrictive alternative treatment after acceptance by the program of the respondent for a period not to exceed 90 days. (§ 1 ch 84 SLA 1981)

Sec. 47.30.760. Placement at closest facility. Treatment shall always be available at a state operated hospital, however, if space is

available and upon acceptance by another treatment facility, a respondent who is committed by the court shall be placed by the department at the designated treatment facility closest to his home unless the court finds that

(1) another treatment facility in the state has a program more suited to the respondent's condition, and this interest outweighs the desirability of the respondent being closer to home;

(2) another treatment facility in the state is closer to the respondent's friends or relatives who could benefit him through their visits and communications; or

(3) the respondent wants to be further removed from his home, and the mental health professionals who sought his commitment concur in the desirability of removed placement. (§ 1 ch 84 SLA 1981)

Sec. 47.30.765. Appeal. The respondent has the right to an appeal from any order of involuntary commitment. The court shall inform the respondent of this right. (§ 1 ch 84 SLA 1981)

Sec. 47.30.770. Additional 120-day commitment. (a) The respondent shall be released from involuntary treatment at the expiration of 90 days unless the professional person in charge files a petition for a 120-day commitment conforming to the requirements of AS 47.30.740(a) except that all references to "24-day commitment" shall be read as "the previous 90-day commitment" and all references to "90-day commitment" shall be read as "120-day commitment".

(b) The procedures for service of the petition, notification of rights, and judicial hearing shall be as set out in AS 47.30.740 — 47.30.760. If the court or jury finds by clear and convincing evidence that the grounds for 90-day commitment as set out in AS 47.30.755 are present, the court may order the respondent committed for an additional treatment period not to exceed 120 days from the date on which the first 90-day treatment period would have expired.

(c) Successive 120-day commitments are permissible on the same ground and under the same procedures as the original 120-day commitment. An order of commitment may not exceed 120 days.

(d) Findings of fact relating to the respondent's behavior made at a 24-day commitment hearing under AS 47.30.735, a 90-day commitment hearing under AS 47.30.755, or a previous 120-day commitment hearing under this section shall be admitted as evidence and may not be rebutted except that newly discovered evidence may be used for the purpose of rebutting the findings. (§ 1 ch 84 SLA 1981)

Sec. 47.30.775. Commitment of minors. The provisions of AS 47.30.700 — 47.30.815 apply to minors. However, all notices required to be served on the respondent by AS 47.30.700 — 47.30.815 shall also be served on the parent or guardian of a respondent who is a minor, and parents or guardians of a minor respondent shall be notified that they may appear as parties in any commitment proceeding concerning the

minor and that as parties they are entitled to retain their own attorney or have one appointed for them by the court. A minor respondent has the same rights to waiver and informed consent as an adult respondent under AS 47.30.660 — 47.30.915; however, he shall be represented by counsel in waiver and consent proceedings. (§ 1 ch 84 SLA 1981)

Sec. 47.30.780. Early discharge. The professional person in charge shall at any time discharge a respondent on the ground that the respondent is no longer gravely disabled or likely to cause serious harm as a result of mental illness. A certificate to this effect shall be sent to the court which shall enter an order officially terminating the involuntary commitment. (§ 1 ch 84 SLA 1981)

Sec. 47.30.785. Authorized absences. A respondent undergoing involuntary treatment on an inpatient basis under AS 47.30.700 — 47.30.815 may be authorized to be absent from the treatment facility during times specified by the professional person in charge, or his professional designee, when an authorization to be absent is in the best interests of the respondent and he is not likely to cause harm to himself or others. (§ 1 ch 84 SLA 1981)

Sec. 47.30.790. Return from unauthorized absence. When a respondent undergoing involuntary treatment on an inpatient basis is absent from the treatment facility without, or in excess of, authorization under AS 47.30.785, the professional person in charge, or his professional designee, may contact the appropriate peace officers who shall take the respondent into custody and return him to the treatment facility. If it is determined by the professional person in charge to be necessary, a member of the treatment facility staff shall accompany the peace officers when they take the respondent into custody. (§ 1 ch 84 SLA 1981)

Sec. 47.30.795. Involuntary outpatient care for committed persons. (a) A respondent who was originally committed to involuntary inpatient care under AS 47.30.700 — 47.30.915 may be released before the expiration of his commitment period if a provider of outpatient care accepts him for specified outpatient treatment for a period of time not to exceed the duration of his commitment, and if the professional person in charge, or his professional designee, finds that

(1) it is not necessary to treat the respondent as an inpatient to prevent him from harming himself or others; and

(2) there is reason to believe that the respondent's mental condition would improve as a result of the outpatient treatment.

(b) A copy of the conditions for early release shall be given to the respondent, his attorney, his guardian, if any, the provider of outpatient care, and the court.

(c) If during the commitment period the provider of outpatient care determines that the respondent can no longer be treated on an

outpatient basis because he is likely to cause harm to himself or others or is gravely disabled, the provider shall give the respondent oral and written notice that he must return to the treatment facility within 24 hours, with copies to the respondent's attorney, his guardian, if any, the court, and the inpatient treatment facility. If the respondent fails to arrive at the treatment facility within 24 hours after receiving the notice, the professional person in charge may contact the appropriate peace officers who shall take the respondent into custody and transport him to the facility. If it is determined by the professional person in charge to be necessary, a member of the treatment facility staff shall accompany the peace officers when they take the respondent into custody.

(d) If the provider of outpatient care determines that the respondent will require continued outpatient care after the expiration of his commitment period, the provider may initiate further commitment proceedings as if he were the professional person in charge, and the provisions of AS 47.30.660 — 47.30.915 apply, except that provisions relating to inpatient treatment shall be read as applicable to outpatient treatment. (§ 1 ch 84 SLA 1981)

Sec. 47.30.800. Conversion of involuntary outpatient treatment to inpatient commitment. (a) A respondent ordered by the court under the provisions of AS 47.30.700 — 47.30.915 to receive involuntary outpatient treatment may be required to undergo inpatient treatment when the provider of outpatient care finds that (1) the respondent is mentally ill and is likely to cause serious harm to himself or others or is still gravely disabled; (2) the respondent's behavior since the hearing resulting in court-ordered treatment indicates that he now needs inpatient treatment to protect himself or others; (3) there is reason to believe that the respondent's mental condition will improve as a result of inpatient treatment; and (4) there is an inpatient facility appropriate to the respondent's need which will accept him as a patient. Treatment for these respondents shall be available at state-operated hospitals at all times.

(b) Upon making the findings specified in (a) of this section, the provisions of AS 47.30.795(b) relating to notice and AS 47.30.745 relating to hearing apply. (§ 1 ch 84 SLA 1981)

Sec. 47.30.805. Computing periods of time. (a) Except as provided in (b) of this section,

(1) computations of a 72-hour evaluation period do not include Saturdays, Sundays, legal holidays, or any period of time necessary to transport the respondent to the treatment facility;

(2) a 21-day commitment period expires at the end of the 21st day after the 72 hours following initial acceptance;

(3) a 90-day commitment period expires at the end of the 90th day after the expiration of a 21-day period of treatment;

(4) a 120-day commitment period expires at the end of the 120th day, after the expiration of a 90-day period of treatment or previous 120-day period, whichever is applicable.

(b) When a respondent has failed to appear or absented himself contrary to any order properly made or entered under AS 47.30.660 — 47.30.915, the relevant commitment period shall be extended for a period of time equal to the respondent's absence if written notice of absence is promptly provided to the respondent's attorney and his guardian, if there is one, and if, within 24 hours after the respondent has returned to the evaluation or treatment facility, written notice of the corresponding extension and the reason for it is given to the respondent, his attorney, his guardian, if any, and to the court. (§ 1 ch 84 SLA 1981)

Sec. 47.30.810. Habeas corpus. Nothing in AS 47.30.660 — 47.30.915 may be construed as limiting a person's right to a writ of habeas corpus. (§ 1 ch 84 SLA 1981)

Sec. 47.30.815. Limitation of liability; penalty for false application. (a) A person acting in good faith upon either actual knowledge or reliable information who makes application for evaluation or treatment of another person under AS 47.30.700 — 47.30.915 is not subject to civil or criminal liability.

(b) The following persons may not be held civilly or criminally liable for detaining a person under AS 47.30.700 — 47.30.915 or for releasing a person under AS 47.30.700 — 47.30.915 at or before the end of the period for which the person was admitted or committed for evaluation or treatment if the persons have performed their duties in good faith and without gross negligence:

(1) an officer of a public or private agency;

(2) the superintendent, the professional person in charge, the professional designee of the professional person in charge, and the attending staff of a public or private agency;

(3) a public official performing functions necessary to the administration of AS 47.30.700 — 47.30.915;

(4) a peace officer responsible for detaining a person under AS 47.30.700 — 47.30.915.

(c) A person who wilfully initiates an involuntary commitment procedure under AS 47.30.700 without having good cause to believe that the other person is suffering from a mental illness and as a result is gravely disabled or likely to cause serious harm to himself or others, is guilty of a felony. (§ 1 ch 84 SLA 1981)

Article 9. Patient Rights.

Section	Section
825. Patient rights: Medical	845. Confidential records
830. Prohibition of experimental treatments	850. Expungement of records
835. Civil rights not impaired	855. Posting of rights
840. Right to privacy and personal possessions	860. Notices in languages other than English
	865. Discrimination prohibited

Sec. 47.30.825. Patient rights: Medical. Each patient who is receiving services under AS 47.30.660 — 47.30.915 has the following rights:

(1) A patient, or his counsel, guardian, or the adult designated in accordance with AS 47.30.725 if the patient is mentally incapable of participation, is entitled to participate in formulating his individualized treatment plan and to participate in the evaluation process as much as possible, at minimum to the extent of requesting specific forms of therapy, inquiring why specific therapies are or are not included in his treatment program, and being informed as to his present medical and psychological condition and prognosis. The treating physician may not withhold any of this information from the patient.

(2) A patient has the right to know the name of medication that he is asked to take, what its purpose is, and what side effects may occur with this medication. If the patient is incapable of understanding the purpose and side effects of the medication, the treating physician or mental health professional shall explain it to the patient's counsel or guardian or, if there is no guardian, the adult designated in accordance with AS 47.30.725.

(3) A locked quiet room, or other form of physical restraint, may not be used, except as provided in this paragraph, unless a patient is likely to physically harm himself or others unless restrained. The form of restraint used shall be that which is in the patient's best interest and which constitutes the least restrictive alternative available. When practicable, the patient shall be consulted as to his preference among forms of adequate, medically advisable restraints including medication, and his preference shall be considered. Nothing in this section is intended to limit the right of staff to use a quiet room at the patient's request or with his knowing concurrence when considered in the best interests of the patient. Patients placed in a quiet room or other physical restraint shall be checked at least every 15 minutes or more often if good medical practice so indicates. Patients in a quiet room must be visited by a staff member at least once every hour and must be given adequate food and drink and access to bathroom facilities. At no time may a patient be kept in a quiet room or other form of physical restraint against his will longer than necessary to accomplish the purposes set out in this paragraph. All uses of a quiet room or other restraint shall be recorded in the patient's medical record, the information including but not limited to the reasons for the use, the duration of use, and the name of the authorizing staff member.

(4) A patient has the right to be free from unnecessary or excessive medication. Psychotropic medication shall be administered only on the order of a licensed physician when the physician determines that such medication is in the best interest of the patient or will prevent serious harm to others.

(5) A patient capable of giving informed consent has the absolute right to accept or refuse electro-convulsive therapy or aversive conditioning. A patient who lacks substantial capacity to make this decision may not be given such therapy or conditioning without a court order.

(6) In no event may treatment include psychosurgery, lobotomy, or other comparable form of treatment without specific informed consent of the patient, including a minor unless he is clearly too young or disabled to give an informed consent in which case the consent of his legal guardian is required. In addition, such treatment may not be given without a court order after hearing compatible with full due process.

(7) When, in the written opinion of a patient's attending physician, a true medical emergency exists and a surgical operation is necessary to save the life, physical health, eyesight, hearing or member of the patient, the professional person in charge, or his professional designee, may give consent to the surgical operation if time will not permit obtaining the consent of the proper relatives or guardian or appropriate judicial authority. However, an operation may not be authorized if the patient is not a minor and knowingly withholds consent on religious grounds.

(8) A patient upon discharge shall be given a discharge plan specifying the kinds and amount of care and treatment he should have after discharge and such other steps as he might take to benefit his mental health after leaving the facility. The patient shall have the right to participate, as far as practicable, in formulating his discharge plan. A copy of the plan shall be given to the patient, his guardian, the court if appropriate, and any follow-up agencies. (§ 1 ch 94 SLA 1981)

Sec. 47.30.830. Prohibition of experimental treatments. (a) Experimental treatments involving any significant risk of physical or psychological harm may not be administered to a patient.

(b) If the personnel of an evaluation or treatment facility are uncertain as to whether a proposed treatment is experimental or is experimental as applied to a particular patient or would involve a significant risk of mental or physical harm to the patient, the matter may be referred to the commissioner for a determination. The patient, his attorney, his guardian, if any, and an adult designated by the patient, shall, simultaneously with the referral to the commissioner, be provided with copies of all the documents by which the referral is made and shall have the opportunity to provide evidence to the commissioner on the question.

(c) A determination by the commissioner that a treatment is experimental and entails significant risks of mental or physical harm is binding upon all persons involved in the administration of treatment to a patient. (§ 1 ch 84 SLA 1981)

Sec. 47.30.835. Civil rights not impaired. (a) A person may not deny to a person who is undergoing evaluation or treatment under AS 47.30.660 — 47.30.915 a civil right, including but not limited to, the right to free exercise of religion and the right to dispose of property, sue and be sued, enter into contractual relationships, and vote. A person who violates this subsection commits the crime of interference with constitutional rights under AS 11.76.110.

(b) Court-ordered evaluation or treatment under AS 47.30.660 — 47.30.915 is not a determination of legal incapacity under AS 13.26.005 — 13.26.330. (§ 1 ch 84 SLA 1981)

Sec. 47.30.840. Right to privacy and personal possessions. A person undergoing evaluation or treatment under AS 47.30.660 — 47.30.915 shall

(1) not be photographed without his consent and that of his guardian if a minor, except that he may be photographed upon admission to a facility for identification and for administrative purposes of the facility; all photographs shall be confidential and may only be released by the facility to the patient or his designee unless a court orders otherwise;

(2) at the time of admission to an evaluation or treatment facility, have reasonable precautions taken by the staff to inventory and safeguard his personal property; a copy of the inventory signed by the staff member making it shall be given to the patient and made available to his attorney and any other person authorized by the patient to inspect the document;

(3) have access to an individual storage space for his private use while undergoing evaluation or treatment;

(4) be permitted to wear his own clothing, to keep and use his own personal possessions including his toilet articles if they are not considered unsafe for him or other patients who might have access to them, and to keep and be allowed to spend a reasonable sum of his own money for his own needs and comfort;

(5) be allowed to have visitors at reasonable times;

(6) have ready access to letter writing materials, including stamps, and have the right to send and receive unopened mail;

(7) have reasonable access to a telephone, both to make and receive confidential calls. (§ 1 ch 84 SLA 1981)

Sec. 47.30.845. Confidential records. Information and records obtained in the course of a screening investigation, evaluation, examination, or treatment are confidential and are not public records, except as the requirements of a hearing under AS 47.30.660 — 47.30.915 may

necessitate a different procedure. Information and records may be copied and disclosed under regulations established by the department only to

(1) a physician or a provider of health, mental health, or social and welfare services involved in caring for, treating, or rehabilitating the patient;

(2) the patient or an individual to whom the patient has given written consent to have information disclosed;

(3) a person authorized by a court order;

(4) a person doing research or maintaining health statistics, if the anonymity of the patient is assured, and the facility recognizes the project as a bona fide research or statistical undertaking;

(5) the division of corrections in a case in which a prisoner confined to the state prison is a patient in the state hospital on authorized transfer either by voluntary admission or by court order;

(6) a governmental or law enforcement agency when necessary to secure the return of a patient who is on unauthorized absence from a facility where the patient was undergoing evaluation or treatment. (§ 1 ch 84 SLA 1981)

Sec. 47.30.850. Expungement of records. Following the discharge of a respondent from a treatment facility or the issuance of a court order denying a petition for commitment, the respondent may at any time move to have all court records pertaining to the proceedings expunged on condition that he file a full release of all claims of whatever nature arising out of the proceedings and the statements and actions of persons and facilities in connection with the proceedings. (§ 1 ch 84 SLA 1981)

Sec. 47.30.855. Posting of rights. The rights set out in AS 47.30.825 — 47.30.855 shall be prominently posted in all treatment facilities in places accessible to all patients. A patient who does not understand English shall have his rights explained to him in a language he understands. (§ 1 ch 84 SLA 1981)

Sec. 47.30.860. Notices in languages other than English. When practicable all documents and notices required by AS 47.30.660 — 47.30.915 to be served on a respondent, or on his parents, guardian or adult designee, shall be explained in a language the person understands if he is not competent in English. (§ 1 ch 84 SLA 1981)

Sec. 47.30.865. Discrimination prohibited. (a) The fact that a person is or has been evaluated or treated for mental illness may not be a basis for discrimination in

(1) seeking employment;

(2) resuming or continuing professional practice or previous occupation,

(3) obtaining or retaining housing;

(4) obtaining or retaining licenses or permits, including but not limited to a motor vehicle license, motor vehicle operator's and chauffeur's license, and a professional or occupational license.

(b) Applications for positions, licenses, and housing may not contain requests for information concerning evaluation or treatment experiences.

(c) It is unlawful for a person to aid, abet, incite, compel, or coerce the doing of an act forbidden under this section or to attempt to do so. (§ 1 ch 84 SLA 1981)

Article 10. Miscellaneous Provisions.

Section	
870	Transportation
875	Nonresident patients
880	Interstate compact
885	Rights outside state
890	Provision for personal needs upon discharge
895	Disposition of personal property and unclaimed money
900	Disposition of money and personal property subject to claim
905	Fees and expenses for judicial proceedings
910	Liability for expense of placement in a treatment facility
915	Definitions

Sec. 47.30.870. Transportation. When a person is to be involuntarily committed to a facility, the department shall arrange, and is authorized to pay for, the person's necessary transportation to the designated facility accompanied by appropriate persons and if necessary by a peace officer. The department shall pay return transportation of a person, his escorts, and if necessary a peace officer, after a determination that the person is not committable, at the end of a commitment period, or at the end of a voluntary stay at a treatment facility following an evaluation conducted in accordance with AS 47.30.715. When advisable, one or more relatives or friends shall be permitted to accompany the person. The department may pay necessary travel, housing, and meal expenses incurred by one relative or friend in accompanying the person if the department determines that the person's best interests require that he be accompanied by the relative or friend and the relative or friend is indigent. (§ 1 ch 84 SLA 1981)

Sec. 47.30.875. Nonresident patients. (a) The admission papers of a person who is admitted to a treatment facility under AS 47.30.660 — 47.30.915 shall include a statement as to his residence. The department may return a patient who is not a resident of the state to the state of his residence with court approval if the person has been committed. If the state in which he has residence does not accept him as a patient, the person shall be treated as a resident of this state under the provisions of AS 47.30.660 — 47.30.915.

(b) To facilitate the return of nonresident patients the department may enter into a reciprocal agreement or compact with another state providing for the prompt return under appropriate supervision of residents of that state who are mentally ill. A mentally ill resident of this state who has been placed in a facility outside this state may be admitted with the approval of the department to a treatment facility in the state designated by the department. The department may enter into reciprocal agreements or contracts with another state providing for custody, care or treatment, or return of mentally ill residents of this state by the other state and for the custody and care or treatment of mentally ill residents of that state by this state on a reimbursable basis. A resident of this state who has been committed in another state and is returned in accordance with this section shall, within 72 hours of his admission to the designated facility, be examined. After examination the mental health professional in charge shall release him or shall petition for involuntary commitment as prescribed in AS 47.30.740.

(c) In taking action under (a) and (b) of this section, consideration shall be given to the best interests of the patient, particularly to the relationship of the patient to his family, legal guardian, or friends to maintain relationships and encourage visits beneficial to the patient. (§ 1 ch 84 SLA 1981)

Sec. 47.30.880. Interstate compact. This state ratifies and adopts by reference "The Interstate Compact on Mental Health" consisting of 14 articles approved on September 30, 1955, by the Northeast State Governments Conference on Mental Health. The department is designated as compact administrator with full power to carry out the purpose of the compact and to make all necessary regulations to implement the compact. (§ 119(e) ch 87 SLA 1957; added by § 11 ch 127 SLA 1959; AS 47.30.180)

Editor's notes. — This section derives from former AS 47.30.180 and was renumbered by the revisor of statutes under AS 01.05.031 to accord with the revision of the mental health statutes in Chapter 84 SLA 1981.

Sec. 47.30.885. Rights outside state. Nothing in AS 47.30.660 — 47.30.915 alters or impairs the application or availability to a patient, while hospitalized in another state under contractual arrangements entered in accordance with AS 47.30.660 — 47.30.915, of the rights, remedies or safeguards provided by the laws of this state. (§ 1 ch 84 SLA 1981)

Sec. 47.30.890. Provision for personal needs upon discharge. The department shall insure that

(1) a patient is not discharged from a treatment facility without suitable clothing; and

(2) a discharged indigent patient is furnished

(A) suitable transportation to his permanent residence in this state or to another suitable place at the discretion of the department; and

(B) a reasonable amount of money to meet his immediate needs. (§ 1 ch 84 SLA 1981)

Sec. 47.30.895. Disposition of personal property and unclaimed money. (a) Articles of personal property and unclaimed money in the custody of a treatment facility that belong to a patient who dies before discharge, or to a patient who leaves the hospital without authority, if unclaimed by the patient or his legal heirs or representatives within one year after the death or departure of the patient, shall be disposed of in the manner prescribed by the department and the proceeds shall be deposited in the state treasury.

(b) If a mentally ill individual has died in a foreign facility and the department desires to recover the patient's personal property under this section, the commissioner or his designated representative may secure the property and for that purpose only is designated the decedent's administrator. Property so recovered shall be disposed of as provided by law. (§ 1 ch 84 SLA 1981)

Sec. 47.30.900. Disposition of money and personal property subject to claim. The department shall make diligent inquiry in every instance after departure without authority or death of a patient, to ascertain the whereabouts of the patient or that of his legal heirs or representatives, and shall turn over to the proper person the money or articles of personal property in the custody of the facility to the credit of the patient. Claims to the money or articles of personal property, including claims by the state, may be presented to the department at any time. If a claim other than by the state is established by clear and convincing evidence more than one year after the death or departure without authority of a patient, it shall be certified to the legislature for consideration and the legislature may pay the claim. (§ 1 ch 84 SLA 1981)

Sec. 47.30.905. Fees and expenses for judicial proceedings. (a) The witnesses, expert witnesses, and the jury in commitment proceedings under AS 47.30.660 — 47.30.915 are entitled to the fees, compensation, and mileage established by the administrative rules of court for other jurors and witnesses. Compensation, mileage, fees, transportation expenses for a respondent, and other expenses arising from evaluation and commitment proceedings shall be audited and allowed by the superior court of the judicial district in which the proceedings are held. To the extent that services of a peace officer are used to carry out the provisions of AS 47.30.660 — 47.30.915, he is entitled to fees and actual expenses from the same source and in the same manner as for his other official duties.

(b) An attorney appointed for a person under AS 47.30.660 — 47.30.915 shall be compensated for his services as follows:

(1) the person for whom an attorney is appointed shall, if he is financially able under standards as to financial capability and indigency set by the court, pay the costs of the legal services;

(2) if the person is indigent under those standards, the costs of the services shall be paid by the state. (§ 1 ch 84 SLA 1981)

Sec. 47.30.910. Liability for expense of placement in a treatment facility. (a) A patient, or his legal representative acting in a representative capacity, or his spouse, or his parents if the patient is under the age of 18, shall pay or contribute to the payment of the charges for the care, transportation, and treatment of the patient when hospitalized under AS 47.30.660 — 47.30.915. Charges assessed after an order for commitment for treatment is issued and charges assessed when a patient is hospitalized at a facility operated by the department, or under a contract for services with the department, may not exceed the actual cost of the care and treatment. The department may order payment by the patient or by the person responsible for payment for the patient's care and treatment under this subsection, according to ability to provide for payment. The department may make necessary investigations to determine the ability to pay and may require sworn statements of income by the patient, or his legal representative acting in a representative capacity, or his spouse or parent. In the exercise of his discretion, the commissioner may impose full liability for the patient's actual cost of care and treatment on the patient, his legal representative, his spouse, or parent for refusal to supply a sworn statement of income. An order for payment shall be issued by the department within six months after the date on which the charge was incurred. The order shall remain in full force and effect unless modified by subsequent court or department order. Liability under this subsection shall be determined as follows: A patient hospitalized under AS 47.30.660 — 47.30.915, or the person responsible for payment of charges for the patient, may be required to pay according to his ability to provide for payment, and in the manner and proportion which the department finds is not detrimental to the patient's rehabilitation. The department shall, at any time that it determines the action will serve the best interests of the state and the patient or the person responsible for payment, relieve the patient or the person responsible for payment from liability for charges for the care, transportation, and treatment of the patient.

(b) As used in (a) of this section, the term "actual cost of the care and treatment" means either the rate provided for by a contract entered into under AS 47.30.660 — 47.30.915, or, in the absence of a contract, a daily rate approved by the department.

(c) The department may charge, or accept from a person money or property, for the care or treatment of an inpatient or outpatient or for

other purposes, even if the payment is not required by an order of the department, so long as the total payments received do not exceed the actual cost of care or treatment.

(d) All money paid by the patient or on his behalf to the department under this section shall be deposited in the state treasury.

(e) If an order for payment is entered by the department under this section, and delinquency in the payment of any amount due the state under the order continues for a period of more than 30 days after the notification to the patient or the legal representative, spouse, or parent of the patient by the department, the state may proceed to collect the amounts due by appropriate proceedings. An action to enforce the collection of payments may only be brought within three years after the date of notification of a delinquent payment.

(f) The orders of the department issued under this section may relate only to charges incurred after October 1, 1981. (§ 1 ch 84 SLA 1981)

Sec. 47.30.915. Definitions. In AS 47.30.660 — 47.30.915

(1) "commissioner" means the commissioner of health and social services;

(2) "court" means a superior court of the state;

(3) "department" means the Department of Health and Social Services;

(4) "designated treatment facility" means a hospital, clinic, institution, center, or other health care facility that has been designated by the department for the treatment or rehabilitation of mentally ill persons and for the receipt of these persons by court-ordered commitment, but does not include correctional institutions;

(5) "evaluation facility" means a health care facility that has been designated or is operated by the department to perform the evaluations described in AS 47.30.660 — 47.30.915; or a medical facility licensed under AS 18.20.020;

(6) "evaluation personnel" means mental health professionals designated by the department to conduct evaluations as prescribed in AS 47.30.660 — 47.30.915 who conduct evaluations in places in which no staffed evaluation facility exists;

(7) "gravely disabled" means a condition in which a person as a result of mental illness, is in danger of physical harm arising from such complete neglect of basic needs for food, clothing, shelter, or personal safety as to render serious near term illness or death highly probable if care by another is not taken;

(8) "inpatient treatment" means care and treatment rendered inside or on the premises of a treatment facility, or a part or unit of a treatment facility, for a continual period of 24 hours or longer;

(9) "least restrictive alternative" means mental health treatment facilities and conditions of treatment which are

(A) no more harsh, hazardous, or intrusive than necessary to achieve the treatment objectives of the patient, and

(B) involve no restrictions on physical movement nor supervised residence or inpatient care except as reasonably necessary for the administration of treatment or the protection of the patient or others from physical injury;

(10) "likely to cause serious harm" means a person who

(A) poses a substantial risk of imminent and substantial bodily harm to himself, as manifested by recent attempts at suicide or bodily harm;

(B) poses a substantial risk of imminent and substantial bodily harm to one or more other persons as manifested by behavior causing or attempting harm, including, in regard to evaluations, at least one incident within 30 days before the filing of a petition for emergency hospitalization; or

(C) demonstrates a current intent to carry out plans of serious harm to himself or another;

(11) "mental health professional" means a psychiatrist or physician who is licensed to practice in this state or employed by the federal government; a clinical psychologist licensed by the state Board of Psychologists and Psychological Associate Examiners; a psychological associate with a clinical psychology or counseling specialty licensed by the Board of Psychologists and Psychological Associate Examiners; a registered nurse with a master's degree in psychiatric nursing, licensed by the State Board of Nursing, and a social worker with a master's degree in social work and experience in the field of mental illness;

(12) "mental illness" means an organic, mental, or emotional impairment that has substantial adverse effects on an individual's ability to exercise conscious control of his actions or ability to perceive reality or to reason or understand; mental retardation, epilepsy, drug addiction, and alcoholism do not per se constitute mental illness, although persons suffering from these conditions may also be suffering from mental illness;

(13) "peace officer" includes a state police officer, municipal or other local police officer, state, municipal, or other local health officer, public health nurse, United States marshal or deputy United States marshal, or a person authorized by the court;

(14) "provider of outpatient care" means a mental health professional or hospital, clinic, institution, center, or other health care facility designated by the department to accept for treatment patients who are ordered to undergo involuntary outpatient treatment by the court or who are released early from inpatient commitments on condition that they undergo outpatient treatment;

(15) "screening investigation" means the investigation and review of facts which have been alleged to warrant emergency examination or treatment, including interviews with the persons making the allegations, any other significant witnesses who can readily be contacted for interviews, and if possible, the respondent, and an investigation and evaluation of the reliability and credibility of persons

providing information or making allegations;

(16) "state" means a state of the United States, the District of Columbia, the territories and possessions of the United States, and the Commonwealth of Puerto Rico, and, with the approval of the United States Congress, Canada;

(17) "professional person in charge" means the senior mental health professional at a facility or his designee; in the absence of a mental health professional it means the chief of staff or a physician designated by the chief of staff. (§ 1 ch 84 SLA 1981)

Chapter 35. Private Institutions.

Article 1. Foster Homes, Boarding Homes and Institutions.

Section
20 License or permit required
40 Licensing
50 [Repealed]
55 Provisional license
80 Definitions

Sec. 47.35.020. License or permit required. No person may, without a license or permit to do so,

(1) maintain or conduct, for more than 90 days, a boarding home, foster home, group home, institution, or other place for the regular reception or care of children under 16 years of age, or a foster home, group home, or institution for the care of dependent adults; or

(2) engage in the business of receiving or caring for children under 14 years of age, with or without compensation, in a nursery in which five or more children not related by blood or marriage, or legal adoption, to the owner, operator or manager of the business are lodged. (§ 3 ch 17 SLA 1951; am § 3 ch 42 SLA 1973; am § 3 ch 253 SLA 1976; am § 2 ch 45 SLA 1977; am § 1 ch 97 SLA 1982)

Effect of amendments. — The 1982 amendment inserted "for more than 90 days" near the beginning of paragraph (1) and made minor changes in style.

Sec. 47.35.040. Licensing. (a) The department shall issue a license to a facility if it determines that the facility has met the standards for operation set out in AS 47.35.010 — 47.35.080 and the regulations adopted under AS 47.35.010 — 47.35.080.

(b) A license is valid for two years after the date of issuance unless it is revoked or modified. The department may revoke a license or modify a license to provisional status if it determines that a facility is not in compliance with AS 47.35.010 — 47.35.080 or the regulations adopted under AS 47.35.010 — 47.35.080.

(c) The department may waive compliance with a standard set out in regulations adopted under AS 47.35.010 — 47.35.080 if an acceptable alternative is established that meets the purpose of the provision and reasonably assures the well-being of persons in care.

(d) A license may not be transferred to a different facility or owner.

(e) The department shall give written notice of revocation or modification under (b) of this section 5 days before the effective date of the action. However, if the health or well-being of children or dependent adults is in jeopardy, the revocation or modification action is effective immediately upon the issuance of written notice by the department. (§§ 5, 8 ch 17 SLA 1951; am § 4 ch 42 SLA 1973; am § 2 ch 97 SLA 1982)

Effect of amendments. — The 1982 amendment substituted the present provisions of the section for the provisions set out in the main pamphlet.

Sec. 47.35.050. Duration of license or permit.

Repealed by § 5 ch 97 SLA 1982.

Cross references. — For present provisions covering the subject matter of the repealed section, see AS 47.35.040(b) and (c).

Editor's notes. — The repealed section derived from § 6, ch. 17, SLA 1951; § 5, ch. 42, SLA 1973; § 3, ch. 45, SLA 1977.

Sec. 47.35.055. Provisional license. (a) The department shall issue a provisional license to a new facility if the facility submits to the department an acceptable plan for operation that is in conformity with the provisions of AS 47.35.010 — 47.35.080 and the regulations adopted under AS 47.35.010 — 47.35.080. After the department determines that the new facility is operating in conformity with the provisions of AS 47.35.010 — 47.35.080 and the regulations adopted under AS 47.35.010 — 47.35.080, the department shall issue a license under AS 47.35.040 to the facility.

(b) The department may issue a provisional license to a facility that is licensed under AS 47.35.040 but is temporarily unable to conform to the provisions of AS 47.35.010 — 47.35.080 or the regulations adopted under AS 47.35.010 — 47.35.080.

(c) The department may issue a provisional license under (b) of this section only if the facility submits to the department an acceptable plan to bring the facility into conformity with the provisions of AS 47.35.010 — 47.35.080 and the regulations adopted under AS 47.35.010 — 47.35.080 within the time specified in the provisional license.

(d) A provisional license is valid for a period not exceeding one year from the date of issuance. The department may renew a provisional license for an additional period not to exceed one year. (§ 3 ch 97 SLA 1982)

Sec. 47.35.080. Definitions. In AS 47.35.010 — 47.35.100

(1) "boarding home or foster home" means an establishment providing regular care for less than six children not related by blood or marriage to the foster parents;

SENATE HEALTH, EDUCATION AND SOCIAL SERVICES COMMITTEE

WITNESS REGISTER

BILL NUMBER Mental Health Commitment Law DATE Oct. 14, 1983 (Anchorage)

NAME	REPRESENTING	ADDRESS	PHONE NUMBER
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Natalie Gottstein	AMHA	2611 Fairbanks St	276-1705
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Gladys Birsh	Anch. Com. Mental Health Chief	1577 C St Anch	278-4558
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Rudy Klemkauf	Alaska Ch, Natl Ass. Social Workers		

MENTAL HEALTH COMMITMENT LAW

Senate HESS 9/23/83

Attendance: Josephson, P. Moss. Sens. V. Fischer, P. Fischer, and Halford excused.

018 Josephson convened meeting regarding mental health commitment law testimony.

093 Josephson: Our purpose today is to receive testimony on the question of mental health commitment. I think our purpose would be better served if those wishing to testify could talk to how you evaluate the existing law, what changes you would like to see, rather than to address any specific work draft as a mark-up vehicle.

120 Sonya Benson, representing Representative Niilo Koponen: I don't have any specific testimony at this time.

129 Mrs. Ann Denardo, Family of Chronically Ill Victims, Fairbanks: Our son is schizophrenic and housed at A.P.I. We've had a lot of experience of with this commitment act and we find it to be burdensome, vague, and emotional. We feel families should have a great role in commitment procedures. A broader criteria for commitment should be studied based on ability to function with thought processes.

198 Denardo: Under paragraph 7, 'gravely disabled' means a condition in which a person is a result of mental illness. We would like to add 'or is not receiving such care in mental medical treatment as is necessary for health and safety' or 'a person who thought processes, perception of reality or judgment is substantially impaired'.

230 Josephson: Has this language been used anywhere else?

273 Denardo: I've studied other acts from other states, and this language comes from a combination of law in two or three other states. We also suggest that a study be done of other commitment acts.

299 Denardo: Commitment procedures should be redefined, with a view to creating a less adversarial situation and family. Court procedures are either civil or criminal. Commitment comes under civil procedure. In civil procedure, there has to be cross-examination and rules of evidence presented. This puts family members in the position of testifying against their child. I would like to suggest that the legislature study the possibility of another procedure, not civil and not criminal, but a procedure just for mental commitments.

335 Denardo: Mentally ill patients should receive better continuity of care as they move from hospital to community. Commitment procedures should reflect this need. We feel that the courts should be better apprised to the mental health system and the whole problem of severe mental illness.

374 Josephson: What do families experience in Fairbanks, being far from API? What happens as the family member enters the system?

389 Denardo: First of all, there aren't very many involuntary commitments from Fairbanks because we do all we can to convince the patient that they should go in on a voluntary admission. It's emotionally easier because the court procedures are skipped. We then have to pay for transportation to A.P.I. I think this is a legislative oversight. When there is an involuntary commitment, the patients airfare is paid to Anchorage. We have asked for designated beds. We desperately need a psychiatric unit here in Fairbanks. There are approximately 200 chronically mental ill people in this area. We have no half-way houses or programs. The Community Mental Health Center struggles along on a few dollars. They have a small day treatment program, but it's insufficient for the needs of the community.

421 Denardo: Because of the high cost of travel, meals, hotel accommodations, rent-a-cars, etc., I am only able to visit my son once a month. We feel that the most important part of treatment for the patient is proximity to family and friends.

477 Denardo: Twenty years down the line, we will look at the neuroleptic medications as pharmaceutical labotomies. With this medication, the patients are not cured. They are put into a medicated miasthma. They can't move. Patients say that the medication makes them feel unpleasant, sick, and tired. My own son was taken off the medication because he couldn't get out of bed. This is the condition in which he returns home.

510 Josephson: For the schizophrenic, is it the only thing we have?

559 Denardo: There are no other therapies that professionals are using at this point. At this time, more than 20% of the patients don't respond to this medication. Some patients do come out of their psychotic state, but many others fall into the pharmaceutical labotomies. Eventually, all patients develop a nervous disorder, which is totally irreversable. In many cases, the liver of the patient is ruined.

601 Josephson: Do you have any anxiety that the language, 'a person whose thought processes, perception of reality or judgment is substantially impaired', could be abused by commiting people who are eccentric, etc.?

610 Denardo: No. The screening process is cumbersome and is so comprehensive that I can't see an eccentric person being committed.

621 Josephson: Is your organization part of a national group?

629 Denardo: We are part of The National Alliance for the Mentally Ill.

683 Denardo: There is inappropriate jailing of mental ill patients. People having psychotic crisis are treated as criminals. Once they get into the criminal system, it is quite hard for them to get out of it. They get on probation, they get put into A.P.I. and know that when they are released, they have to return to jail for breaking probation. They, in turn, have no incentive to be released for A.P.I.

740 End of Side A. Turned to Side B

001 Cathleen Nixer, Nurse Manager, Psychiatric Inpatient Unit, Fairbanks Memorial Hospital: Many of the problems we face with the mental health system, is based on a premise that the mental health service delivery system in Alaska is decentralized, when in fact, it is not. When the Mental Health Law was passed in 1981, there was only one in-patient treatment facility in the state, A.P.I. Today, there still remains only one designated in-patient treatment facility in the state.

103 Nixer: The easiest way for a mentally ill person to receive treatment would be through the commitment process. They at least receive care why the legal process is taking place. It's sort of a Catch-22 situation, since we encourage people to accept voluntary treatment, yet we provide no funding for this treatment.

210 Moss: What is the average number of patients in the Fairbanks facility?

216 Nixer: Our average daily count runs around 7 to 8 patients. We have an 11 bed in-patient unit, with a proposal for 1985 for 17 beds.

270 Josephson: What is the longest patient stay you've experienced?

274 Nixer: Approximately 30 days.

305 Moss: Will the 17 beds be additional beds?

308 Nixer: Yes.

318 Moss: Are you receiving any federal funding?

326 Nixer: Sometimes patients are eligible for the standard medicaid programs. We would like to see patients who may voluntarily elect to seek their treatment after a commitment process in Fairbanks, which is close to their home.

458 Maureen Phillips, Board of NARA: The designated bed problem has come up in a recent meeting with the NARA Board. The University of Alaska health coverage for mental illness does not allow for patients to be admitted to anything other than a "designated mental facility", not designated medical floor a hospital. I feel it is important that something be done about the designated bed situation here in Fairbanks.

491 Josephson: That appears to conclude the testimony this afternoon. We will make minutes of this meeting available to our colleagues who are absent today. Thank you very much for coming.

538 Meeting adjourned.

Senate Health, Education & Social Services Committee
October 14, 1983
Anchorage

TOPIC: Mental Health Commitment Bill (Work draft of "An Act relating to the treatment of mentally ill persons.")

ATTENDANCE: Senators J. Josephson (Chairman), R. Halford
Excused - P. Fischer; Absent - V. Fischer, H. Moss

The hearing was commenced at 9:15 by Chairman Josephson.

Introductory remarks by Chairman Josephson:

Previously we've heard testimony in Anchorage and recently in Fairbanks on this issue.

This new draft incorporates ideas from Department of Health and Social Services, family groups and others, particularly those who work with troubled children.

New draft incorporates these changes: involvement of correction system is reduced in terms of dealing with the mentally ill; age change from 14 to 18; time computations changed from 21-90-120 days to 30-90-180 days for commitment periods; commitment period for minors changed from 21 to 30 days; records can be made available to law enforcement agency if substantial concern over any danger to community; qualifier added to right to privacy and personal possessions - if professional in charge determines not in the best interest of patient or will pose a threat to safety, visitors and telephone calls can be denied; approval of psychologist would be added requirement for patient wanting to change from involuntary to voluntary; court proceeding would be as informal as possible; family and guardians would be notified if patient is absent without leave; form consent required of parent or guardian of patient's right relating to alternative treatments; and notification of parent or guardian of discharge plan.

Other areas you may wish to consider today; hearings for minors; equal protection of the law relating to minors; time period commitment for minors; designated facilities; involuntary outpatient commitment; use of correctional system for mentally ill; and transportation costs for voluntary committed people where costs are paid for as required by statutes.

40 Jerry L. Schraider, M.D., Alaska Psychiatric Association

Appreciate the hearing being held, general reaction to working draft is supportive.

Have often been frustrated and confused over commitment law, mental health professionals are not all legalistically minded, don't have available legal counsel when working in these situations (often crisis situation) and must proceed best we can in interest of patient. Because of confusion, believes there's been some people that should've been committed who were not.

Will study draft further and hopes it will be submitted as legislation.

170 Ed Essa, Staff, Rep. Mae Tischer

Submitted letter addressed to Senator Josephson by Rep. Tischer stating that extensive research has suggested that nutritional deficiencies have a correlation with mental illness and that when deficiencies are identified and treated, improvements in the mental health of clients are made. Propose that the draft bill require extensive and mandatory nutritional analysis of each client be made upon admittance. This way the client is treated both mentally and physically.

190 Deborah B. Geeseman, M.D., private psychiatrist (formerly did work with children at API)

Supports most of what's in the bill. Suggested minor changes - 1) Pg 5, ln 19; instead of "21 days" should be 30 days. 2) Pg 4, ln 7; "the person" should be self.

Need a better working relationship with police force and understanding of what goes on with commitment laws.

Admission of minors - child under 14 cannot remain in hospital for evualation or treatment for no more than 21 days (under current law) without having a commitment hearing. An adult who wants to be voluntary committed may stay in hospital as long as they want or treatment facility deems necessary. Then if they want to leave hospital, it becomes a legal issue.

For children, often a good evualation cannot be made until after 3-4 weeks. Limited resources are available for treatment of children in Alaska. Only have one facility for extensive psychiatric treatment. Have some facilities for conduct and behavorial management of children (but full and have a waiting list).

260 Supports change in age from 14-18.

Pg 2, lns 23-29; not sure you need any of these three criteria, one just needs to make sure the person is mentally ill or gravely disabled. Or if it remains in #3 (pg 3, ln 1) should be "deteriorate further if" not "treated" (add not to sentance).

290 Sen. Josephson - While at API you noted that severe psychosis does not appear that often below the age of 14, correct?

Yes.

Sen. Josephson - What additional facilities do you feel Alaska needs for young children?

Difficult in state with our small population and distance from other states (where we could jointly share use of facilities). Presently we don't have a sizeable population of psychiatric young children. When we do, they will need a place, the only facility we have now is API. Would like to see other facilities that would address more extensively psychiatric needs of children.

PART II

As draft now stands, court has to get involved in 30 days, recommends 30 days be taken out, child could be a voluntary patient.

Many times children need evualation when they encounter some trauma (ex: divorce of parents). If that evualation goes beyond the time limit set, they could end up with commitment as legal statement on their record. If it remains on their record, can hamper their future.

Pg 3, Section 47.30.695; support it but has trouble with the wording. #2, lns 18-21, part (a)(b) (lns 22-29) - believes it to imply if child is dangerous, can still discharge them against medical advice. Dosen't feel its consistant. #2, ln 18; should read "treating physician," release of (should be added) "the minor" would be seriously detrimental to child's health that (should be added) "the treating physician may". (b) lns 26-29 the minor is likely to cause serious harm to self or others, or there's reason to believe the release could place the minor in immediate danger (should be added) "refuse to discharge".

60 Joseph Reum, Handicapped Services Coordinator, Municipality of Anchorage

Pg 4, ln 26 - "commitment hearing, to be held if needed", Who determines need?

Sen. Josephson - Depends whether patient is voluntary or involuntary.

80 Dr. Conrad, Superintendent, API

Submitted memorandum on admission statistics for FY'83.

Out of 1013 admissions, 500 were voluntary, 36% came involuntary under Title 47. Out of 100 involuntary patients, 73% have dropped out of involuntary channel before 72 hour limit.

Agree with Dr. Geeseman's comment on page 3 that paragraph 2a is inappropriate, not allowed that option with an adult.

Under present statute, cannot release information on history of violence to law enforcement agencies. In our judgement, release of this information (when there's concern about safety) might be helpful.

140 Patient would be better served by expeditious entry into treatment using physician's certificate. Most times used is after a suicide attempt.

150 Sen. Halford - In analysis of American Psychiatric Association guidelines, we don't allow certain types of evidence, we protect communication between patient and doctor. What kind of a problem does this bring up in involuntary commitment?

Has caused a problem by not allowing hearsay evidence at commitment hearing. Often it's highly relevant and meaningful evidence but due to rules of evidence not allowed because it's hearsay.

180 Often relatives and other people are frightened to testify for fear the person being committed will hold a grudge or seek revenge later. Also consider some people (to testify) live far away (would be expensive for transportation cost).

200 Sen. Josephson - What happens during, example a domestic conflict and people exaggerate testimony or state it falsely?

When it does occur, then don't rely on element of danger but fall back on object of evidence of mental illness. Do not proceed to commitment hearing if lacking evidence of mental illness.

210 In vast majority of cases, most do not go forward to hearing, and where there is mental illness, majority of patients accepts need for treatment. When cases do go to court, public defenders and probate masters become very involved.

240 Sen. Josephson - What is treated as confidential?

Commitment hearing itself is confidential.

260 David D. Samson, M.D., Psychiatric Supervisor, Anchorage Community Mental Health Center.

Mentally ill are more prone to be brought in for disturbing peace, public nuisance kinds of things, where their liberties are not essentially protected.

Concept of outpatient commitment should be addressed. What do you do when outpatients don't show up for their scheduled appointments?

Generally supportive of draft and comments that have also been made.

PART III

Voluntary medication on outpatient is a problem. Sometimes people are crafty enough to manipulate the system and be released (these are the dangerous ones).

30 Natelie Gottstein, Executive Director, Alaska Mental Health Association

Commends Committee for making changes, particularly inclusion of physician to be able to institute commitment procedures and redifinition of gravely disabled.

Pg 2, ln 10; concerned about definition of "timely", what's considered timely?

Dr. Conrad - Would interpret to be 8-12 hours.

70 N. Gottstein - Pg 16, ln 5; definition of mental health professional - important people working in the bush (social workers, etc) be included in this definition. A further clarification of social worker might be in order due to so many areas of social work.

90 Sen. Josephson - There's another bill on licensing of social worker and we may run into some difficulty with that.

100 Sen. Josephson - Is there an official position by Mental Health Association on this?

Not on this, but we will make recommendations before January.

Sen. Halford - What does Association think in terms of communication between doctor and patient, should be available in commitment hearings or not?

Don't have an official position. My opinion - if hearings are closed, then in very specific and well defined instances, that privilege should be opened. In individuals right to receive treatment, the doctor's opinion certainly is an important matter.

Sen. Josephson - Question of changing or relaxing rule of confidentiality, would it have the effect of causing people not to tell doctors what they would otherwise say? Or would it have a useful affect in bringing these matters out into the commitment hearing? The real danger would be if patients refused to give information to their doctors for fear it would be used against them (in court). That people shouldn't be afraid to see a psychiatrist when they have problems.

These relaxations in confidentiality need to be carefully worded, possibly be limited to psychiatric people for involuntary commitment.

Dr. Jay Verkozen, clinical psychologist (private practice)

Pg 13, lns 27-28; issue of psychosurgery, lobotomy, or other comparable forms of treatment. Not specific with other comparable forms. Consider these types of barbarisms and should be done away with. Psychosurgery has been abused.

PART IV

Sen. Josephson - (to Dr. Conrad) Has there been any record keeping in Alaska of psychosurgery or lobotomy given?

Dr. Conrad - No, the only way would be to ask all the neurosurgeons. Electroshock - no one to my knowldege at API has been administered with it.

J. Verkozen - But it does go on regularly at Providence.

Pg 14, lns 19-23; suspension of people's rights; if you're going to do something to someone, need to be clear about it with the person and if it's not in their interest to know about it, then it shouldn't be done.

You can't treat people psychologically unless you get them involved in it. If somebody might be better off with something, it dosen't mean you can force it on them.

Pg 8, ln 20 (#4) "efficient" - efficient for what? For commitment? For civil liberty?

Pg 8, ln 15 (#2); Right to view and copy all petitions - they should be given copies and helped to understand it.

Pg 12, lns 25-27; good point that family or guardian be notified on patient's absence.

Pg 11, ln 14; Disagree with 180 days for commitment, more advantageous for longer length of time.

Pg 5, ln 22; "gravely disabled" - too broad.

Pg 6, lns 4-5; replace "maximum extent possible" with absent of violence.

PART V

Dr. Conrad - Two cases of patients at API treated involuntary: 1. if violent to themself or to others; 2. severly catonic people (who don't eat or drink)

J. Verkozen - Pg 6; objects to (e)(2) and (3), lns 14-18; aren't necessary.

Pg 13, ln 9; objects to 72 hours, procedure should be speeded up rather than be long.

Pg 4; notion of deputizing all physicians in state so they can commit someone. This authority should stay with the police. All physicians shouldn't have this type of power. You're just making a cosmetic change, you're still locking someone up.

Dr. Glade Birch, Acting Director, Anchorage Community Mental Health Center

It's a good document.

Balance of right of people to receive treatment and their civil liberties. That's the balance we're maintaining.

Regarding who has the authority to commit someone, remember we're talking about all Alaska (including the bush). Physician does have degree of training in recognizing mental illness, where police officer dosen't. To protect civil liberties of people, it's better for at least someone qualified in mental health to make determination of commitment.

As a neuropsychologist, be very careful before you write into statute prohibitation against treatments.

Individuals released as outpatients from API, isn't a comfortable solution to it. You may consider transitional living (intermediate type of commitment). (A transitional facility where they could receive supervision.)

Has reservations about having licensed social workers being able to commit someone (pg 4). You may get a social worker who has no actural diagnostic abilities.

Topic of confidentiality. Two solutions: 1) treatment (must maintain confidentiality in this); 2) examination with notice for commitment (person knows it is commitment, does not have to disclose information, takes away effectiveness of examination).

Sen. Josephson - What a person discloses when he wants treatment is going to be in stream of what is revealed in commitment process, no way to unlearn that material.

That's why I tried to make the distinction. The disclosure of patient's statement when presenting himself for treatment needs to be protected. If someone is going to testify at commitment proceeding, may have to be a separate examination by another person.

200 Steve Harrison, Regional Administrator for South Central Region, Division of Mental Health

Agrees with Dr. Birch in including mental health professional in emergency detention. If we use a mental health professional, we should use those with national accreditation for social workers.

Law is workable, changes are good.

240 Frances Purdy, Mental Health Program Coordinator, Behavorial Health Division, Municipality of Anchorage

Thanks for nonsexist law.

Pg 3, Part a; lns 22-25 should be deleted, they should not be able to release someone who is dangerous.

Pg 12, lns 25-27; good idea to notify parents or guardians of patient's absence. May also want to add anyone that has been threatened by patient, also may add immediate notification instead of 3 hours.

Pg 14, lns 24-27; good idea.

Consider what other states have done with mental health professional being the office of involuntary commitment. Probably more important for Anchorage than for the bush. Impractical to have officer in bush for involuntary commitment. In Anchorage, specifically we're beginning to need an area of expertise in just emergency cases. Check into Washington state statutes. They have designated person who is trained to do reading of rights, is impartial, not hired by institution or other agency.

PART VI

Jim Parsons, Manager, Behavorial Health Division, Municipality of Anchorage (former member of licensing board of psychologists)

Concurs with Purdy's opinion of release of minors when we don't do that with adults.

Most of my concerns have been covered.

Pg 16; licensing law for psychiatrist is generic rather than speciality. There are some psychologist trained in areas other than clinical who may not have expertise in mental illness at all. May be a good idea to say licensed by state with adequate clinical training or something similar rather than clinical psychologist since we don't license in that sense.

Mention of social workers appears to be too broad. Perhaps should use national accreditation with it. Too broad to say experienced in field of mental illness rather than having some type of specific training in that area.

30 Cecilia Kleinkauf, Alaska Chapter, National Association of Social Workers

Pg 16; issue of professional social work, as included in definition of "mental health professional" - just received the draft copy and will have to be reviewed by board before Assoc. takes a position on it and makes recommendations.

Admission of minors at API - the bill, as it is, would constitute age discrimination on state in regards to minors. Minor has a constitutional right to liberty equal to adults. Unconstitutional to deprive minor of right to liberty for a greater amount of time than an adult (in institutionalizing). We have repeated this point at every hearing.

One item not covered in bill is protection of court for child's right regardless of his/her parent's right. Does not provide the child the right to a court hearing which court then hears evidence as to institutionalize the child. The bill leaves the right to child's parents and to mental health professional. Sometimes parents don't act in best interest of their children.

There are a number of children institutionalized at API whom mental health professionals say these children are not probably mentally ill but "there's no place else to put them".

The previous director of State Division of Mental Health testified at Senator Parr's Committee stating it is frequently difficult, if not impossible, to make definitive diagnosis with respect to mental illness in children.

Sen. Josephson - Which is an explanation as to why we have a longer period to evualate. I don't think the Constitution requires that you cannot make classification if there is a rational basis for it.

Why is it ok to institutionalize a child without court's protection in mental illness, and in statutes of state, it's not ok to institutionalize without court's protection when it comes to delinquincy?

PART VII

Grandfathering clause on social worker - the language and amendments proposed by National Association Social Work Chapter. Only spoke to baccalaureate level of social work. Individuals will not be grandfathered at master's level of social work with training in any other field. Anyone who is grandfathered, who wishes to be called a social worker and be licensed under social work law, could at maximum, only be licenses as a baccalaureate level. Only level grandfather amendments refer to.

Meeting was adjourned by Chairman Josephson at 12:50 pm.

BARANOF MENTAL HEALTH CLINIC

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STANLEY T. LAUGHRIDGE, PH.D.
CLINICAL PSYCHOLOGIST

12-16-83

Honorable Joe Josephson
Alaska State Legislature
Pouch V
Juneau, AK 99811

Dear Senator Josephson:

I have read the proposed draft bill that you are submitting to the legislature in the forth coming session. It contains precisely those very important amendments and stipulations that I have been trying to encourage for a number of years regarding mental health commitments.

If you will check the admission record of Sitka over the past six and a half years, that our clinic has been here; you will see that we have an extremely low admission rate. This is because we have treated people in our local hospitals rather than sending them to API. Often in doing so we have had great difficulty getting under the 72 hour limit before having to go into the court room. Usually within 72 hours, I am able to obtain the person's voluntary commitment but on those few cases where I am not able to do so we end up sending some to API that we could very easily have treated in our local hopitals.

Your bill will very nicely resolve that problem and should, if we in the mental health field do our part, reduce the admission rate to API dramatically.

Congratulations on your good work.

Cordial regards,

S. T. Laughridge

Stanley T. Laughridge, Ph. D.
Clinical Psychologist

cc: Joe Adelmeyer, ACSW Supervisor
Susan Will, R.N., M.S.

Give to Nancy

CORDOVA COMMUNITY HOSPITAL
MENTAL HEALTH AND ALCOHOL CLINIC

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Senator Joe Josephson
Alaska State Legislature
Senate
Pouch V.
State Capitol
Juneau, AK 99811

Oct. 27, 1983

RE: THE MENTAL HEALTH COMMITMENT LAW

Dear Senator Josephson:

We urge you to incorporate the changes proposed by the Department of Health and Social Services and the Alaska Psychiatric Association and in particular the amendment to add licensed psychologists in changing procedures for emergency detention for evaluation in Sec.47.30.705.

In our experience the present state of things in which a peace officer must be convinced that there is probable cause to believe that a person is gravely disabled or is suffering from mental illness and is likely to cause serious harm to himself or others and should be taken into custody for evaluation is highly precarious. Just recently we had a case of a possible suicide and homocide situation in which help was delayed past a critical point because the peace officier did not believe the physician and licensed psychologist who were urging intervention. When it's a matter of arranging a flight before dark every minute is crucial. It is perhaps unfair to expect a peace officer to understand the dynamics of depression or paranoia without any particular training when years of post-graduate training and supervised experience are needed for a psychologist to do so. It is time Alaska made better use of the unique qualifications that psycholcgists do provide for intervention in and prevention of tricky situations.

Sincerely,

Judy Ringenson-Knutsson.

Judy Ringenson-Knutsson, Ph.D.
Clinical Psychologist



The Cordova Community Hospital

Central Peninsula Mental Health Center
P.O. Box 4683 • Kenai, Alaska 99611 • (907) 282-7501

February 1, 1984

Senator Joe Josephson
Alaska Senate
Pouch V (MS 3100)
Juneau, Alaska 99811

Dear Senator Josephson,

I am writing relative to Senate Bill No.346 related to certain revisions of Title 47 of the Civil Commitment Statutes.

I am strongly in favor of the revisions relative to admission of minors, changing the age from 14 to 18 years of age.

The procedure for emergency detention for evaluation is improved by allowing the mental health professional in addition to a police office to have an individual taken into custody. The procedure relative to placement or utilization of the jail for protective custody and holding prior to transportation is appropriate and is an accurate description of the need for rural areas such as Kenai.

I am also in favor of the use of a 30 day as opposed to a 21 day commitment procedure.

I sincerely appreciate the opportunity to comment on the revisions in this Statute.

Respectfully Submitted,

Paul E. Turner, Ph.D.
Clinical Psychologist
Program Lirector

PET/jvh

Ann DeNardo
Families of Chronically Mentally Ill
Victims
SR Box 30754
Fairbanks, Alaska 99701

Senator Joe Josephson, Chariman
Health, Education and Social Services Committee
Pouch V
Juneau, Alaska 99811

RE: Chronic Mental Ilness

Dear Senator Josephoson:

The enclosed article tells you who I am and what I am about.

During last week's teleconference with our Fairbanks legislators, I addressed short comings in Chapter 84, Laws of Alaska, relating to mentally ill persons.

1. Families should have a greater role in and be consulted with regard to commitment procedures.

2. A broader criteria for commitment should be studied, based on ability to function rather than just being a danger to self or others.

3. Commitment and guardianship procedures should be redefined with a view to creating a less adversarial situation between patient and family.

4. Mentally ill patients should receive better continuity of care as they move from hospital to community and commitment procedures should reflect this need.

In this week's teleconference we will address the glaring lack of hospital space for our chronically mentally ill relatives. While other states are grappling with problems of closed wards and community acceptance, Alaska struggles to get patients out of the corridors and into the wards! The only State facility, Alaska Psychiatric Institute, is perpetually overcrowded.

The Fairbanks Memorial Hospital is willing and able to become a designated treatment facility for psychiatric patients. I don't understand the mechanisms involved in such a designation and would appreciate your telling me. I do understand the urgent need for such a facility in the Interior.

I urge you to work toward this goal as a positive step toward a better mental health delivery system for the entire State of Alaska.

Sincerely,

Ann F. DeNardo
Families of Chronically Mentally Ill Victims

Enclosure

AD:aw

Families of CMI Victims
SR Box 30737
Fairbanks, Alaska 99701

RECOMMENDATIONS FOR AMENDMENTS TO ALASKA'S COMMITMENT ACT

The Commitment Act, Chapter No. 84, Laws of Alaska, has caused a great deal of pain to families already engulfed in an ultimate tragedy--the loss of a loved-one; loss through the ravages of a disease as old as mankind, and for which we know no cause or cure.

We are familiar with the Commitment Act on a experiential level and on paper and make the following recommendations for amendments:

1. Families should have a greater role in and be consulted with regard to commitment procedures.

2. A broader criteria for commitment should be studied, based ability to function when thought processes, perception of reality or judgement is substantially impaired.

3. Commitment procedures should be redefined with a view to creating a less adversarial situation between patient and family.

4. Mentally ill patients should receive better continuity of care as they move from hospital to community and commitment procedures should reflect this need.

5. The courts, the judiciary, should be better apprised of the mental health system.

The above five points are overall conclusions. Some specific changes by page, section, and line were given in testimony before Senators Josephson and Fisher of the Hess Committee in Anchorage on March 19, 1983.

The above five points are still pertinent and present a good summary of the attached material presented in testimony before the HESS committee on September 23, 1983, in Fairbanks, Alaska.

TESTIMONY BEFORE THE SENATE HESS COMMITTEE
Re: Mental Health Commitment Law
September 23, 1983 - Fairbanks, Alaska

The families of severely mentally ill victims have worked with the Mental Health Commitment Law for two years. We wish to convey our position regarding the bill.

Section 47.30.660. This section sets out the powers and duties of the Department of Health and Social Services. Paragraph (4) of this section calls for the Department to designate, operate and maintain treatment facilities...to provide...care and treatment for the mentally ill. A treatment facility is defined in 47.30.915(15). In spite of the directive to designate treatment facilities, the API remains Alaska's only such facility.

Section 47.30.670. This section sets out standards for voluntary admission. A patient who accepts voluntary admission can leave the hospital anytime "against medical advice," or AMA. This is why there are so many voluntary admissions as opposed to involuntary. A psychiatrist might do a screening at this point to determine a patient's ability to function and make these decisions.

Section 47.30.705. This section addresses emergency detention for evaluation. It states that a police officer"...may cause the person to be taken into custody and delivered to the nearest evaluation facility. A correctional facility may be used as an emergency evaluation facility if an evaluation facility is not available... (and) the peace officer shall...be interviewed by a mental health professional at the facility." There are no mental health professionals at the correctional facilities.

Section 47.30.710. Examination. This section states that a person so placed in a correctional facility shall be examined and evaluated within 24 hours. This puts a person in jail for 24 hours because of an illness he cannot control. There is no other illness where, due to the illness itself, a person is incarcerated!

Section 47.30.715. Acceptance of Order. In this section the court is ordered to set a date for hearing and notify the respondent's attorney. There is no directive for the attorney to make an effort to see the respondent. Often the first contact the respondent has with his attorney is in the courtroom itself, immediately preceeding the hearing.

Section 47.30.735. This section sets out the civil procedure for a 21 day commitment. These procedures should be redefined in order to create a less adversarial situation between patient and family. Families become the caretakers following hospitalization in 50-55% of the cases. It is important to understand that hospitals do not cure patients. They are only stabilized with neuroleptic medications and returned to the family with their illness in tact, and the added belief that the family has turned against them.

Judicial procedures are either civil or criminal. Commitment procedures are civil. Families feel it might be possible to create a new area within which commitments could be handled. We request the Judiciary Committee to study this concept with a view toward lessening the adversarial approach.

Section 47.30.790. This section deals with absence without leave. If a patient is absent from a treatment facility without authorization a peace officer is instructed to take the patient into custody and return him to the treatment facility. This section should include a provision that the family or guardian be notified of such absence with a specified time, say 3 hours.

Section 47.30.795. This section addresses involuntary outpatient care. Paragraph (c). It states that if it is determined that respondent needs inpatient care due to a critical condition, oral and written notice that he must return to a treatment facility within 24 hours must be given him. If the patient is experiencing thought disorder this gives him 24 hours to get out of town. This section further states a police officer shall pick up the patient if he has not complied with the notice. The respondent is not a criminal, to be served and treated as a criminal. We object to the constant posture of addressing mental disease as criminal.

Section 47.30.825. This section deals with patient rights. Paragraph (6) of this section prevents psychosurgery, lobotomy, or other form of treatment without specific, informed consent of the patient and a court order. We would like to see a provision included that would also require specific informed consent given by "an adult designated in accordance with 47.30.725". (This is an adult designated by the respondent.)

Again, paragraph (8) of this section should insure a copy of the discharge plan is given to "an adult designated in accordance with 47.30.725". Families rarely know of any discharge plan and it is the nature of the disease that patients will not follow through without help.

Section 47.30.845. This section deals with confidential records. Paragraph (2) of this section makes it possible for an individual to whom the patient has given written consent to receive records and information on the patient. This release of records should be dated within a specified time period,-say-one year. This release of records to a designated individual should not be open-ended, but lapse within a restricted time frame.

Section 47.30.870. This section deals with transportation of patient and escort to the designated facility following involuntary commitment. (In this State, of course, this means a trip to Anchorage.) There is provision authorizing the Department to pay for transportation of patient and escort the API for INVOLUNTARY commitments only. Provision should be made to authorize payment of transportation costs for VOLUNTARY commitments as well. At present the family, or the patient, must bear this cost. This creates a continuing financial burden for families trying to remain "case manager" over the years. The continuing financial burdens encourage families to give up attempts to maintain relationships beneficial to the patient.

Section 47.30.875. This section addresses nonresident patients and the return of a mentally ill resident of this state who has been placed in a facility outside of this state. Paragraph (c) of this section is the only section of this Act which mentions the importance of maintaining family relationships and encouraging visits beneficial to the patient. It is ironic that this important approach to treatment is mentioned only under such subtitle as "nonresident patients". We would like to see the encouragement of more family involvement.

Section 47.30.915. Definitions. Paragraph (7) defines "gravely disabled" and paragraph (10) defines "likely to cause serious harm". It is the contention of everyone involved with this Act that these definitions must be broadened. This is such a complicated and emotional issue that agreement is difficult. As a consequence many people who need mental health treatment desparately are not being served. Instead of waiting for a person to commit a crime, or attempt to commit a crime, we recommend the following criteria to enlarge the definition of a mentally ill person for purposes of providing treatment:

(7) "gravely disabled" means a condition in which a person, as a result of mental illness,...
(B) or is not receiving such care and mental medical treatment as is necessary for health and safety, of a person whose thought processes, perception of reality or judgement is substantially impaired.

2 or 3 other States

We would like to see a study of other states' commitment laws in reference to their criteria for commitment.

ALASKA PSYCHIATRIC ASSOCIATION

ALASKA DISTRICT BRANCH
of
AMERICAN PSYCHIATRIC ASSOCIATION

February 4, 1983

Senator Joseph Josephson
Alaska State Legislature
Pouch V
Juneau, Alaska 99811

Dear Senator Josephson:

The Alaska District Branch of the American Psychiatric Association is a professional organization which represents the majority of the physicians in Alaska who are specialist in the field of psychiatry. The membership is composed of psychiatrists who work in both the private and public sector. The members of our organization have an ongoing interest in any subject which affects the treatment of mentally ill individuals. As a result of this interest we were actively involved in the development and passage of the Alaska Statute for the Civil Commitment of the Mentally Ill (AS 47.30). Our national organization has also been very active in monitoring the subject of civil commitment and has recently developed guidelines on this subject which we recently provided you.

The Alaska District Branch supports fully the objectives of the current Alaska Statute on Civil Commitment of the Mentally Ill which became law in October of 1981. After the first year of experience with this new law and after discussion with judicial and civic leaders, we wish to recommend certain amendments to the law which we believe will assure that its worthwhile goals are more effectively achieved. These amendments are provided in the enclosed material.

The experience during the past year has indicated to us that the following refinements are needed:

1. The Definition of "Gravely Disabled" needs to be expanded to recognize that some patients, if left untreated, will needlessly lose their capacity to be self-reliant.

2. There are many instances when physicians have clearly psychotic or suicidal persons under care in an emergency setting, and need to arrange for their hospitalization at the Alaska Psychiatric Institute. The current requirement that a peace officer be called to form an independent judgement and duplicate work already accomplished is unnecessarily cumbersome. Allowing the physician the authority to arrange for emergency detention would simplify this procedure. When family and friends are willing and able to transport the patient, the peace officer would be free for more serious business.

3. The patient and society could be better served if the rules governing evidentiary and procedural matters at commitment hearings under this law were promulgated so as to facilitate a more informal and efficient presentation of all the relevant facts.

4. The definition of "likely to cause harm to self and others" has set such a rigid standard that some of the most dangerous clients have not been committed. The issue of dangerousness is a complex one and the judge must be given the opportunity to weigh both the magnitude of the risk and the magnitude of the harm. Also, the law needs to recognize that harm to others may include property.

5. An unanticipated consequence of the current law, has created an undue hardship in the care and treatment of children under the age of 14. The right to be voluntarily hospitalized and treated, which is available to everyone over the age of 14, is curtailed for children and limited to 21 days. After 21 days, even if the parents, the child, and the treating physician agree that continued treatment is needed, the law forces them to obtain an involuntary commitment.

6. Since very few persons actually require involuntary commitment, it would facilitate their care and treatment if the law recognized that patients in this group lack the necessary understanding to accept treatment voluntarily, and authorize the use of medications and other treatments under the direction of a licensed physician subject to the medical rights already guaranteed the patients in Article 9 of Section 47.30.

7. In some instances the law requires the staff of the hospital to respond "immediately" when, in practice, a "timely" response is all that is practical or needed.

As we gain experience with the new commitment statute, I am sure we will have other suggested changes. However, for the present time, we feel these changes are urgently needed to iron out some of the procedural problems and to improve the care and treatment of the mentally ill. We would be happy to provide any additional documentation you may need. We hope you will consider putting the attached amendments in bill form and submitting them to the Legislature.

Sincerely,

Carla Hellekson, M.D.
President
Alaska Psychiatric Association

CH:mm

Alaska State Legislature

REP. MAE TISCHER
CO-CHAIRMAN

REP. MILO FRITZ
CO-CHAIRMAN

POUCH V
STATE CAPITAL
JUNEAU, ALASKA 99811
(907) 465-3777

MEMBERS
REP. MIKE MILLER
VICE CHAIRMAN
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REP. MIKE DAVIS
REP. PETER GOLL
REP. NIILO KOPONEN

House of Representatives
HEALTH, EDUCATION AND SOCIAL SERVICES COMMITTEE

October 12, 1983

The Honorable Joe Josephson
Member of the Alaska State Senate
Anchorage, Alaska 99501

Dear Senator Josephson:

Thank you for your kind offer to submit a suggestion to your committee during deliberations on the "Mental Health Commitment Law," scheduled for Thursday, October 13.

I am sorry that House HESS hearings in Fairbanks prevent my discussing this matter with your committee personally; however, I have asked Ed Essa to present this letter to you for your consideration.

In recent years, medical science has come a long way in better understanding mental illness. Research has uncovered some very interesting facts. Perhaps the most intriguing discoveries relate to the effects vitamin and other nutritional deficiencies have on our mental well-being. Extensive research has suggested that nutritional deficiencies have a correlation with mental illness, and that when deficiencies are identified and treated with vitamin therapy, some startling improvements in the mental health of clients are made.

Given this information and with the knowledge that our mental health is tied intricately to our physical health, I am proposing that the draft bill you are considering be adapted to require an extensive and mandatory nutritional analysis of each client upon admittance; and that these findings be used as the basis for appropriate intensive theraputic treatment, along with other applied therapy. In this way, the <u>whole</u> client is treated -- both mentally and physically.

Your favorable consideration of this suggestion may well serve to improve the methods of treating many Alaskans who want to be healthy, while helping to induce a marked decrease in the recurrence of mental illness.

Senator Josephson, thank you for extending me the courtesy to be heard today. I join with many others in seeking a continued dialogue on this encouraging new approach to a long-standing and seemingly worsening

problem that faces our state and our nation.

Respectfully,

Mae

Mae Tischer
State Representative

MMT:wtl

End to Nancy ✓

Central Peninsula Mental Health Center

P.O. Box 4683 • Kenai, Alaska 99611 • (907) 282-7501

October 25, 1983

Senator Joe P. Josephson
1526 "F" Street
Anchorage, Alaska 99501

Dear Senator Josephson,

I am writing to you relative to recent Senate HESS Committee Hearings on the Title 47 Commitment Statute.

I am writing to request that licensed psychologists be given the same prerogatives as physicians within the Statute. For example in 47.30.705, the recommended change is that emergency detention for evaluation can be made by a police office or a physician. Generally, however, licensed psychologists are much more able in terms of training, expertise, education and practice to be able to make determinations of need for emergency detention. It would seem wise to include this independent profession in this activity. There are also other sections that are being amended in Title 47 adding the medical profession as the identified entity, for example 47.30.815(b)(4). In those instances I think that clinical psychologists should also be included.

Thank you very much for this opportunity to correspond with you relative to this issue.

Respectfully,

Paul E. Turner, Ph.D.

Paul E. Turner, Ph.D.
Clinical Psychologist
Program Director

PET/jvh

Send to Nancy

Oliver Osborn, M.D.
Cordova Medical Clinic
Box 310
Cordova, Alaska 99574

Nov. 5, 1983

Senator Joe Josephson
Pouch V
Juneau, Alaska 99811

Dear Senator Josephson,

I am writing in regard to the proposed changes to the Mental Health Commitment Law. My concern is that the proposed law will not allow a licensed psychologist in Alaska to initiate emergency detention for evaluation (under sec. 47.30.705).

Here in Cordova, our health team includes a licensed psychologist working in a mental health clinic which is a department of the hospital. The psychologist is often the person most immediately involved with patients who might be a danger to themselves or to others. It is imperative that this professional be allowed to initiate emergency detention for evaluation in cases with serious potential. It has been our experience that the psychologist often works closely with the local police department to defuse crisis situations in Cordova.

Thank you for your attention.

Sincerely,

Oliver S. Osborn MD

Oliver s. Osborn, M.D.
Member, Cordova City Council

COMMUNITY MENTAL HEALTH CENTER

Box 2274
Homer, Alaska 99603-2274
(907) 235- 7701



October 25, 1983

Senator Joe Josephson
1526 "F" Street
Anchorage AK 99501

Dear Senator Josephson:

It has come to my attention that the Senate Health Education and Social Services Committee is reviewing Alaska's Mental Health Commitment Law of 1981 (SP100). I am essentially in support of the changes which have been proposed.

Under Section 47.30.705 regarding emergency detention for evaluation, I would recommend the following addition to the revised statute:

> "A peace officer or a physician licensed in this state or a psychologist licensed in this state who has probable cause to believe that a person is suffering from a mental illness and is likely to cause serious harm to the person or others of such immediate nature that considerations of safety do not allow initiation of involuntary commitment procedures set out in AS 47.30.700, may cause the person to be taken into custody and delivered to the nearest evaluation facility. A person taken in to custody for emergency evaluation may not be placed in a jail or other correctional facility except for protective custody purposes and only while needing transportation to a treament facility. The peace officer or physician or psychologist shall complete an application for examination of the person in custody and be interviewed by a mental health professional at the facility."

In addition, I would recommend that AS 47.30.815(b) (4) be further ammended to read:

> "A peace officer or physician or psychologist responsible for detaining or transporting a person under AS 47.30.700-47.30.915."

Alaska has a pool of well qualified psychologists whose competency and training have been carefully scrutinized by the Board of Psychologists and Psychological Associate Examiners as well as the Division of Occupational Licensing. Insofar as many rural mental health practitioners in the state are licensed psychologists, it would seem appropriate and expedient to include this professional group in the emergency detention clause. With regard to

familiarity with psychiatric disorders, conducting mental status evaluations, and determining the appropriateness of civil commitment, licensed psychologists are well prepared to handle the responsibilities involved in civil commitment in a professional manner.

Thank you for considering this input to the legislative process. I appreciate your consideration.

Paul L. Craig, Ph.D.
Psychologist, Director

PLC: cjs

ALASKA PSYCHIATRIC ASSOCIATION

ALASKA DISTRICT BRANCH
of
AMERICAN PSYCHIATRIC ASSOCIATION

February 15, 1984

The Honorable Joseph Josephson
Alaska State Senator
Pouch V
Juneau, Alaska 99811

Dear Senator Josephson:

At a recent meeting of the Executive Committee of the Alaska District Branch of the American Psychiatric Association this group voted to support your bills regarding changes in the involuntary hospitalization statutes and also the bill which you have submitted requiring parity coverage for psychiatric services by insurance companies doing business in the State of Alaska. It was the wish of the Executive Committee that I write you and notify you that we strongly support you on both these issues.

Thank you very much for introducing this much needed legislation.

Sincerely yours,

Irvin A. Rothrock, M.D.
President, Alaska District Branch
American Psychiatric Association

IAR:bw

ALASKA MENTAL HEALTH ASSOCIATION

2611 Fairbanks Street. Suite A Anchorage. Alaska 99503
Telephone 276-1705
A Division of the National Mental Health Association

March 6, 1984

RECEIVED

MAR 19 1984

Josephson,

Senator Joe Josephson
Pouch "V"
Juneau, Alaska 99811

Dear Senator Josephson:

The Alaska Mental Health Association commends the Senate HESS committee for undertaking the review of the Mental Health Commitment Statute. As you know, implementation of the current Statute which was enacted in 1981 has revealed some major problems which the current bill addresses. We wholeheartedly support this effort.

Our concern is that the mentally ill of Alaska receive the best available treatment in a timely manner, in their home community or as close as possible. We believe the procedures established by this Statute must protect individual civil/human rights AND provide for the protection of society. These goals must be accomplished in a manner that recognizes that the primary purpose of this statute is to enable individuals who are mentally ill to receive appropriate treatment. On the whole we believe the Bill does this quite well.

When we consider that mental disease is today's most common disabling condition, one of its least understood, one of its most difficult to treat and yet, the major disease group we spend the least amount of research dollars to study, we can see why the central purpose of the Statute must be to provide care and treatment.

We believe that the current Statute needed to be reviewed and improved. Before commenting specifically on the proposed changes in the Statute, we would offer the following proposal:

> Since one of the original purposes of the Statute was to provide for evaluation and treatment as close to the individual's home as possible, we suggest the Legislature conduct a study of the commitments during the past year to determine whether or not this purpose is being met. Another important purpose the Statute attempted to include was to provide for a timely judicial review and supervision of the commitment process. The study should also focus on the actual length of time required for judicial involvement.

With respect to some of the specific proposed changes, in AS 47.30.655-915 we have the following comments and suggestions:

#1 AS 47.30.690 Admissions of minors, line 12:

The limitation on the involuntary admission of a minor should be increased to 60 days. It is generally recognized that therapy with minors, when hospitalization is necessary, requires a longer average length of stay than do adults. Even this requirement will place a needless burden on the facility and the parents if they live in remote portions of Alaska.

#2 Sec. 47.30.705 Emergency detention for evaluations - Line 3:

The extension of the emergency detention's powers to all "mental health professionals" has both advantages and disadvantages. It greatly expands the numbers of people who will have the power in the bush areas. This will create the kind of flexibility that is needed to provide timely and local action. The disadvantage is that many, if not most, non-medical mental health professionals have not received training or experience in the legal and clinical issues involved in the commitment process. As a consequence, we recommend that these powers be somewhat more limited. The law should limit this power to (i) peace officers and (ii) physicians and mental health professionals who have had sufficient training to properly perform this function. In conjunction with this, we would like to see the establishment of a system to train and designate "mental health professionals" who will have the expertise to exercise this function. Although this will require an additional state expenditure, it should not be prohibitive.

#3 AS 47.30.730(b) - 30 day commitment, line 26:

The extension of the commitment to provide 30 days of treatment is recommended because it is a reasonable length of time considering the seriousness of these disorders.

#4 AS 47.30.735(b)(4):

The attorney member of our Board of Directors informs us this section does not make sense because the rules of civil procedure and evidence would not be "informal but efficient presentation of evidence" in that they are formal rules. It appears the intent is for the respondent to be given a choice between (i) the formal rules of evidence and the rules of Civil Procedure and (ii) an informal set of rules. The draft we have reviewed does not make this at all clear.

#5 AS 47.30.845(7) - Confidential Records, Line 7:

We feel that the "presumed mentally ill person" standard is (i) not defined and (ii) too broad. "Presumed" by whom? What does "presumed mentally ill" mean anyway? If the intent is to release records of former mental patients, that is what should be stated. If the intent is something else, that should be stated. In any event, the standard should be in language that is susceptible to clear interpretation and implementation.

#6 AS 47.30915 (7) - Definition of "gravely disabled":

We strongly support the passage of this amended language as many psychotic patients' symptoms prevent them from seeking the treatment which may restore them to a nearly normal state of mind.

#7 AS.47.30.915 (10) - Definition of likely to cause serious harm:

We strongly recommend the amendments to this section since, in our opinion, the former language created a "standard" which was too restrictive and led to persons being released who were actually dangerous.

Sincerely

Dr. Jerry Schrader
President

BILL SHEFFIELD, GOVERNOR

DEPT. OF HEALTH AND SOCIAL SERVICES

POUCH H 04
JUNEAU, ALASKA 99811
PHONE:

DIVISION OF MENTAL HEALTH AND DEVELOPMENTAL DISABILITIES

March 6, 1984

The Honorable Bill Sheffield
Governor
State of Alaska
Pouch A
Juneau, AK 99811

Dear Governor Sheffield:

Your Mental Health Advisory Council has been following the developments of Senate Bill Number 346 amending an Act entitled: "An act relating to the treatment of mentally ill persons." We are aware that many public hearings have occurred prior to its introduction January 11, 1984 by Senators Josephson and Halford. Additionally, individual professionals, the Alaska Psychiatric Association and the Alaska Psychological Association have had consultation and input into these revisions with strong support for these amendments. These amendments are thought to represent improvements in the treatment of adolescents and adults from the standpoint of both providers and consumers.

Your advisory Council heard today that this bill is being held "hostage" pending untold bargaining possibilities. Since these amendments would improve the quality of care and likely result in more efficiently and less cost for both the Mental Health and Judicial Divisions, it seems unfortunate to delay its enactment.

Your Mental Health Advisory Council recommends your support for the quick passage of this act. On behalf of all Council Members thank you for your consideration.

Sincerely,

Herbert G.W. Bischoff, Ph.D.
Chairperson

Council Members
David R. Samson, M.D.
Anchorage, Vice Chairperson
Ann Egrass, McGrath
Mabel Rosvold, Petersburg
Alice Wardlow, Bethel
Barbara T. Wihloborg, Fairbanks
Robert Hunter, M.D., Mt. Edgecumbe
Kevin C. Ritchie, Juneau

cc: Bill Ray, Chairman, Judiciary Committee
All Judiciary Committee Members
HGWB/dmb

06-F100LH

American Psychiatric Association

1700 Eighteenth Street, N.W., Washington, D.C. 20009 • Telephone: (202) 797-4900
Melvin Sabshin, M.D., Medical Director

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Parliamentarian
Henry H. Work, M.D.
Deputy Medical Director

Alaska Psychiatric Association
4001 Dale Street, Suite 101
Anchorage, Alaska 99508

February 28, 1984

Senator Josephson
Pouch V
Juneau, Alaska 99801

Dear Senator Josephson:

The Legislative Committee of the Alaska Psychiatric Association has reviewed Senate Bill 346 -"An Act relating to the treatment of the mentally ill." We support the proposed amendments. We have one additional suggestion pertaining to page 18, line 24. We believe the inclusion of a period of experience for psychiatric nurses is a good idea, but we do not believe this should serve to eliminate a Masters Degree in Psychiatric Nursing from the list of mental health professionals. A simple "or" in line 24, page 18 would suffice to change this.

Thank you once again for your efforts on the behalf of the mentally ill.

Sincerely,

Jerry L. Schrader, M.D.
Legislative Representative
Alaska Psychiatric Association

JLS/saw
Enc.

MEMORANDUM State of Alaska

TO: Nancy Deitrick
Aide to Senator Josephson
Alaska State Senate

DATE: April 4, 1984

FILE NO:

TELEPHONE NO:

FROM: Jennifer Strickler
Management Analyst
Division of Occupational Licensing
Department of Commerce and Economic Development

SUBJECT: SB 303 and SB 346

This is to inform you that at a meeting held on March 13, 1984, the Board of Psychologist and Psychological Associates reviewed SB 303, "An Act relating to the practices of social work and establishing the Board of Social Worker Examiners; and providing for an effective date"; and, also, SB 346, "An Act relating to the treatment of mentally ill persons."

Determinations were made by the Board to support both SB 303 and SB 346.

JS/shA/20-3
4484a

Fairbanks Memorial Hospital
1650 Cowles Street, Fairbanks, Alaska 99701

April 6, 1983

Dennis DeWitt
Alaska Hospital Association
319 Seward Street
Juneau, Alaska 99801

Dear Dennis,

I have reviewed the work draft that would amend the current act relating to the treatment of the mentally ill persons and have the following comments.

Much of this work draft simply cleans up the language of the current legislation. (Apparently the law is going to allow for those rare instances when a female is mentally ill!)

Several areas in the work draft propose significant content changes. In all cases these content changes would significantly improve the current legislation.

1. AS 47.30.915 (7) and AS 47.30.915 (10) change the definition of 'gravely disabled' and 'likely to cause serious harm.' The proposed changes in these definitions, if enacted, would greatly improve the ability of the legal system and providers of mental health care to intervene appropriately in situations where emergency detention is in the best interest of the patient.

2. Section 47.30.705 This proposed change allows a physician to initiate the involuntary commitment procedures. This is an essential addition to the current legislation and entirely appropriate.

3. The other content changes (dealing with the detention and commitment of minors, etc.) also upgrade the current legislation and make it more workable.

Overall there are no objections in the changes proposed by this work draft. The content changes deserve support and would markedly improve the current legislation governing the treatment of the mentally ill.

I would recommend that the Alaska Hospital Association support a bill that reflects the content and intent of the work draft.

Sincerely,

M. J. Emmert, R.N.
Director of Nursing Service

MJE:mc

STATE OF ALASKA

DEPT. OF HEALTH AND SOCIAL SERVICES

OFFICE OF THE COMMISSIONER

BILL SHEFFIELD, GOVERNOR

POUCH H 01
JUNEAU, ALASKA 99811
PHONE: 465-3030

February 3, 1984

DOCUMENT #84-32

The Honorable Joe Josephson
Alaska State Senator
Alaska State Legislature
Pouch V
Juneau, AK 99811

Dear Senator Josephson:

RE: Senate Bill 346
(Suggested Amendment)

The language listed below is suggested as an amendment to Senate Bill 346 to allow persons under the age of 18 to be voluntarily hospitalized by their parents or guardians for additional 30 day periods. Under the existing statute, children and adolescents may not be voluntarily hospitalized by their parents or guardians for a period longer than 21 days even if they meet the criteria for hospitalization under A.S. 47.30.690. The amendment would rectify this oversight.

On page 4, line 3, Section 5 of Senate Bill 346, we recommend that the following subsection be included:

> "(c) Additional 30-day voluntary admissions of a minor under the age of 18 may be sought by parents or guardians if, in the opinion of the professional person in charge, the conditions under subsections (1), (2), and (3) continue to exist."

This amendment is considered especially important, even critical, in providing the necessary and appropriate level of care for this oftentimes fragile group of patients.

We will be happy to provide you or other members of the Senate Health, Education, and Social Services Committee with any additional information you may require concerning this proposed amendment as well as any questions you may have regarding our Position Paper which was submitted earlier.

Sincerely,

Robert London Smith

Robert London Smith, Ph.D.
Commissioner

06-F38LH

MSG 84-00028880 PRTY 1 03/27/84 16:24:35 ORIG: LA01 IN= 0007 OUT= 0115
FROM: KAREN, ANC LIO TO: POM - JUNEAU INFO
TARGET: LJHK SUBJ: POM

TO: ALL SENATORS

FROM: G. KENT EDWARDS
2113 DUKE DRIVE
ANCHORAGE, AK. 99508
H. 276-2664; W. 274-3576

MARGARET BROWN, 2957 EMORY, ANCHORAGE, AK. 99508
H. 272-6039 W. 272-3454

RECEIVED
MAR 23 1984
Josephson

I URGE YOUR SUPPORT OF SB 346,, THE MENTAL HEALTH BILL.
SECTIONS 26 AND 27 ARE ESPECIALLY IMPORTANT SINCE CURRENT
DEFINITIONS ARE INADEQUATETO DEAL WITH MANY
MENTALLY ILL PATIENTS WHO MAY CAUSE BODILY HARM.

3/28/84, SHIRLEE ANC LIO, 29182

TO: ALL MEMBERS
ALASKA SENATE

[RECEIVED]

MAR 28 1984

Josephson.

FROM: PAT EDWARDS
2113 DUKE DRIVE
ANCHORAGE, AK 99508
(H) 276-2264 (W) 271-3735

SUBJ: SENATE BILL 346 (TREATMENT OF MENTALLY ILL PERSONS)

I URGE YOUR SUPPORT OF SENATE BILL 346, ESPECIALLY SECTION 27. PSYCHOTIC HISTORIES AND ACTS OF VIOLENCE TOWARDS PROPERTY MUST BE CONSIDERED WHEN EVALUATING MENTAL PATIENTS.

****

RECEIVED
MAR 30 1984
Joseplison.

MSG 84-00029328 PRTY 1 03/28/84 14:47:49 ORIG: LA09 IN= 0005 OUT= 0105
FROM: KIM / ANCH LIO TO: POM / JNU INFO
TARGET: LJHK SUBJ: P O M

TO: ALL SENATORS

FROM: JOHN BROWN, 1936 BEAVER PLACE, ANCHORAGE 99504
H 337-2755 W 272-3454

SB 346, TREATMENT OF MENTALLY ILL PERSONS

URGING YOUR SUPPORT, SPECIFICALLY SECTIONS 26 AND 27. MY FAMILY HAS BEEN PLAGUED BY A PARANOID SCHIZOPHRENIC. HE'S BEEN IN AND OUT OF API FOR THE PAST 8-10 YEARS. HE'S 6'4, 300 POUNDS PLUS AND I AM AN EX-STATE HEAVYWEIGHT WRESTLING CHAMP WHOM HE TOSSED AROUND LIKE A RAGDOLL LAST CHRISTMAS EVE.

FROM: LINDA THAGGARD
4701 CANTERBURY WAY
ANCHORAGE, AK. 99503Q
561-8085

I URGE YOU TO SUPPORT SB 443 BRINGING POWER LINES TO THE CASWELL LAKE AREA.

MSG 84-00030841 PRTY 1 04/03/84 09:14:09 ORIG: LF01 IN= 0003 OUT= 0027
FROM: PAULA/FKS TO: JNU INFO
TARGET: LJHK SUBJ: POM

TO: ALL MEMBERS OF THE SENATE

FROM: JEANETTE GRAFTO
SR 20683
FAIRBANKS, AK, 99701
455-6212-H

RE: SB 346, MENTALLY ILL

MSG: I SUPPORT SB 346. I HAVE A MENTALLY ILL BROTHER AND I BELIEVE HIS RIGHT TO TREATMENT IS VERY IMPORTANT. CIVIL RIGHTS ARE NOT EVEN RELATIVE WHEN YOU CANNOT TAKE CARE OF YOURSELF AND PEOPLE IN THE STREET ARE TAKING ADVANTAGE OF YOU.

----------EOM

TO: ALL MEMBERS OF THE SENATE

FROM: DOROTHY STELLA
235 IDITAROD
FAIRBANKS, AK, 99701
456-1454-H 372-4265-W

RE: SB 346, TREATMENT OF MENTALLY ILL

MSG: TO CONTINUE TO DENY TREATMENT OF THE CHRONICALLY MENTALLY ILL MIGHT HAVE SERIOUS LEGAL RAMIFICATIONS. SUPPORTING BILL 346 AS PROPOSED WOULD ELIMINATE DEPRIVATION OF MEDICAL CARE TO THESE INDIVIDUALS.

----------EOM

MSG 84-00030806 PRTY 1 04/03/84 08:45:52 ORIG: LF01 IN= 0002 OUT= 0019
FROM: PAULA/FKS TO: JNU INFO
TARGET: LJHK SUBJ: POM

TO: ALL MEMBERS OF THE SENATE

FROM: MR. & MRS. AARON, MEMBERS OF FKS ALLIANCE FOR THE MENTALLY ILL
P.O. BOX 74132
FAIRBANKS, AK, 99707-4132
456-4407-H

RE: JB 346

MSG: FOR THOSE HELPLESSLY SUFFERING THE UNCONTROLLED DEPRIVATIONS OF SEVERE PSYCHOTIC DELUSIONS AND DEPRESSIONS, THE MOST URGENT CIVIL RIGHT IS THE RIGHT TO HAVE PROPER CARE AND TREATMENT, ESPECIALLY WHEN THE VICTIM IS TOO DISTURBED TO REALIZE THE NEED FOR HELP AND MAY BE STARVING FOR EXAMPLE. YES TO JB 346.

----------EOM

MSG 84-00030851 PRTY 1 04/03/84 09:32:01 ORIG: LF01 IN= 0004 OUT= 0031
FROM: ANNIE IN FAIRBANKS TO: JUNEAU INFO.
TARGET: LJHK SUBJ: POM

TO: ALL SENATORS

FROM: PHYLLIS VAN ARISDALE
141 STEEL HEAD ROAD
FAIRBANKS 99701
HOME 479-3071

RE SB346, MENTAL ILLNESS

IT IS VITAL THAT YOU DO PASS SB346. THE MOST DIFFICULT PROBLEM IN THE MENTAL ILLNESS PROCESS IS GETTING TREATMENT WHEN A PSYCHOTIC BREAK OCCURS. THE MOST IMPORTANT CIVIL RIGHT OF MENTALLY ILL PEOPLE TODAY IS THE RIGHT TO TREATMENT. DENIAL OF TREATMENT WAS A CAUSE OF OUR SON'S DEATH.

6

----------EOM

TO: SENS RAY, ELIASON, PETTYJOHN, ZEIGLER, JOSEPHSON

FR: RICHARD H. RUSSELL
MEMBER OF FBX ALLIANCE FOR THE MENTALLY ILL
304 12TH AVE. #3
FBX, 99701
452-5661

RE: [redacted] TREATMENT OF THE MENTALLY ILL

MSG: THIS IS NECESSARY AND LONG OVERDUE LEGISLATION. WHILE OUR SON WAS AT API, I BECAME QUITE FAMILIAR WITH ALASKA'S COMMITMENT ACT. IT IS UNNECESSARILY VAGUE AND OFTEN MISLEADING. SB346 IS AN IMPORTANT ADJUSTMENT.

----------EOM

TO: TOM MINGEN
FBX MEMORIAL HOSPITAL
1650 COWLES
FBX, 99701
452-8181 EXT 305

RE: [redacted] TREATMENT OF MENTALLY ILL

MSG: URGE YOUR SUPPORT OF SB 346.

----------EOM

FROM: GERALDINE HARRINGTON
1820 CHEROKEE WAY
ANCHORAGE, AK. 99504
333-9252

SUPPORT [redacted] THE MENTAL HEALTH BILL. I'M A DIAGNOSED MANIC DEPRESSIVE, HOSPITALIZED SEVERAL TIMES DURING THE PAST 15 YEARS.

FROM A PATIENT'S VIEWPOINT, IT IS CRUCIAL THAT A TRAINED PROFESSIONAL BE IN THE POSITION TO TREAT THE INDIVIDUAL WHOSE JUDGEMENT CANNOT BE RELIED UPON AT THE MOMENT TREATMENT IS NEEDED MOST.

MSG 84-00023748 PRTY 1 03/13/04 12:28:17 ORIG: LJ01 IN= 0004 OUT= 0019
FROM: SITKA TO: JUNEAU
TARGET: LJHK SUBJ: POM

TO: SENATORS JOSEPHSON, RAY, ELIASON, PETTYJOHN AND ZIEGLER

FROM: STAN LAUGHRIDGE, BARANOF MENTAL HEALTH CLINIC
BOX 1130
SITKA, AK 99835

RE: [redacted] TREATMENT OF MENTALLY ILL PERSONS

I AM A PROFESSIONAL MENTAL HEALTH WORKER AND I STRONGLY SUPPORT THE PROVISIONS OF SB 346.

##SITKA LIO, 3/13, 23748##

MSG 84-00023914 PRTY 1 03/13/84 15:05:07 ORIG: LF00 IN= 0009 OUT= 0070
FROM: TRACIE/FBX TO: JUN INFO
TARGET: LJHK SUBJ: POM

15

TO: SENS RAY, JOSEPHSON, ELIASON, ZIEGLER, PETTYJOHN, RAY, BENNETT, FAHRENKAMP, MOSS
REPS DAVIS, BETTISWORTH, KOPONEN, RINGSTAD, M.W. MILLER

FR: JANET WHITE, IMMACULATE CONCEPTION COMMUNITY SERVICES DIRECTOR
PO BOX 81632
FOX, 99708
488-0646-H
456-4918-W

RE: [redacted]EATMENT OF THE MENTALLY ILL

MSG: FAMILIES OF THE MENTALLY ILL SUPPORT SB346. THIS BILL IS A TESTIMONY FOR THE IMPROVEMENT OF THE CONDITIONS FOR SUFFERING FAMILIES AND THEIR LOVED ONES, IE THE PATIENT.

----------EOM

TO: SENATORS JOSEPHSON, RAY, ELIASON, PETTYJOHN, AND ZEIGLER

FROM: RANDY HURST
BOX 4310
MT. EDGECUMBE, AK. 99835 966-2438 (W)

RE: [redacted]

I'M WRITING IN SUPPORT OF SB 346. THE LONGER TIME FRAMES, THE FOCUS ON LEAST RESTRICTIVE ENVIRONMENTS, AND ABILITY TO INITIATE PETITIONS BY MENTAL HEALTH PROFESSIONALS ARE VERY IMPORTAN INCLUSIONS. I WISH THE INITIAL TIME FRAME OF 30 DAYS COULD BE MADE LONGER, ESPECIALLY SINCE MEDICATION STABILIZATION TAKES AT LEAST THAT LONG IN MANY CASES.

----------SITKA LIO, 3-12-84----------

MSG 84-00023818 PRTY 1 03/13/84 13:39:52 ORIG: LJ01 IN= 0006 OUT= 0041
FROM: ELAINE, SITKA TO: JUNEAU
TARGET: LJHK SUBJ: POMS

TO: SENATORS JOSEPHSON, RAY, ELIASON, PETTYJOHN, AND ZIEGLER

FROM: DR. SUSAN CARLSEN
BOX 4575
MT. EDGECUMBE, AK. 99835 747-6474

RE: [redacted] MENTAL HEALTH ILLNESS

I URGE SUPPORT OF THE MENTAL HEALTH BILL, SB 346, WHICH WOULD FACILITATE MENTAL HEALTH TREATMENT LOCALLY AND ALLOW MENTAL HEALTH WORKERS IN SITKA TO WORK WITH THOSE WHO ARE IN INVOLUNTARY COMMITMENT.

----------SITKA LIO, 3-13-84 23818----------

file SB 354 - Mental Health

ATTACHMENT 1
Speaker/Speaker-Elect
Report to Reference Commi
and Board

American Psychiatric Association

GUIDELINES FOR LEGISLATION ON THE PSYCHIATRIC HOSPITALIZATION OF ADULTS[1]

These Guidelines Deal With:

Emergency Psychiatric Evaluation
Voluntary Admission
Involuntary Hospitalization
Right to Treatment
Right to Refuse Treatment
Patients' Rights
Legal Immunity for Mental Health Personnel

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[1] These Guidelines for Legislation on the Psychiatric Hospitalization of Adults have been prepared and approved by the American Psychiatric Association in order to assist psychiatrists, legislators and the public in considering possible revisions of civil commitment laws. The American Psychiatric Association believes that these Guidelines constitute a responsible set of proposals which would improve the process of psychiatric hospitalization in many states. However, because local laws, community conditions, and medical practices vary, state and local psychiatric associations and individual psychiatrists may properly support provisions which differ in many respects from these general Guidelines.

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ADDENDUM A-1

Section 1. SHORT TITLE

These provisions governing the psychiatric hospitalization of adults may be cited as Title I of the Mental Health Code.[1]

Section 2. LEGISLATIVE PURPOSES

This Act is intended to achieve and shall be construed so as to promote these legislative purposes:

-- To make available psychiatric evaluation, care and treatment to all persons who suffer from severe mental disorders and can benefit from treatment, and to encourage voluntary rather than involuntary admission whenever hospitalization is necessary;

-- To safeguard the legal rights of patients in a manner which will advance and not impede the therapeutic and protective purposes of psychiatric hospitalization;

-- To provide workable procedures for obtaining consent to and administering medications and other treatments;

-- To provide legal immunity for reasonable, good-faith efforts to implement this Act, and legal penalties for knowing, willful efforts to subvert the processes in this Act; and

-- To provide a statutory framework for the promulgation of regulations by the Department of Mental Health.

Section 3. DEFINITIONS

As used in this Act, the terms below shall have the meanings indicated:

"aversive therapy" means any treatment or procedure which, because it is believed to be painful or physically uncomfortable to the patient, is administered in order

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[1] These Guidelines deal only with persons who may be hospitalized for psychiatric care and treatment under the civil commitment process; they do not deal with persons who may be confined for forensic evaluation or other purposes under the criminal justice process.

to reduce the frequency or intensity of a behavior; except that aversive therapy does not refer to verbal therapies, seclusion or physical restraints used in conformity with Section 10.F., or psychotropic medications which are not used for purposes of aversive conditioning.

"consistent with the least restrictive alternative principle" means that (1) each patient committed solely on the ground that he is likely to cause harm to himself or to suffer substantial mental or physical deterioration shall be placed in the most appropriate and therapeutic available setting, that is, where treatment provides the patient with a realistic opportunity to improve, and which is no more restrictive of his physical or social liberties than is believed conducive to the most effective treatment for the patient; and (2) each patient committed solely or in part on the ground that he is likely to cause harm to others shall be placed in a setting in which treatment is available and the risks of physical injury or property damage posed by such placement are warranted by the proposed plan of treatment.

"court" means the court or judicial officer designated under the laws of this State for the discharge of the functions described in this Act.

"emergency situation" means a situation in which the patient exhibits substantial behavior which is self-destructive, assaultive, or threatens significant damage to the property of others, or which indicates that the patient is suffering extreme anxiety amounting to panic, or sudden exacerbation of his severe mental disorder.

"experimental treatment" means any treatment other than one which is commonly accepted for treatment of the mental disorder involved or is supported by widely accepted scientific studies, and is provided by a qualified health professional; if such treatment poses a significant risk of harm to the patient.

"informed consent to treatment" means a knowing and voluntary decision to undergo treatment, evidenced in writing, and made by a person who has the capacity to make an informed decision, after the treatment facility has explained to the person the nature and effects of the proposed treatment.

"lacks capacity to make an informed decision concerning treatment" means that the person, by reason of his mental disorder or condition, is unable despite

conscientious efforts at explanation, to understand basically the nature and effects of hospitalization or treatment, or is unable to engage in a rational decisionmaking process regarding such hospitalization or treatment as evidenced by inability to weigh the possible risks and benefits.

"likely to cause harm to himself or to suffer substantial mental or physical deterioration" means that as evidenced by recent behavior, the person (1) is likely in the near future to inflict substantial physical injury upon himself, or (2) is substantially unable to provide for some of his basic needs such as food, clothing, shelter, health or safety, or (3) will if not treated suffer or continue to suffer severe and abnormal mental, emotional or physical distress, and this distress is associated with significant impairment of judgment, reason or behavior causing a substantial deterioration of his previous ability to function on his own.

"likely to cause harm to others" means that as evidenced by recent behavior causing, attempting or threatening such harm, a person is likely in the near future to cause physical injury, physical abuse, or substantial property damage to another person.

"patient" means any person receiving evaluation, care or treatment under this Act, except that "patient" for purposes of the rights provided in Section 10 shall refer only to persons in residential treatment programs.

"person" means for purposes of any provision of this Act authorizing the commitment or treatment of a "person," an individual aged eighteen years or more.[2]

"psychosurgery" means any procedure which by direct access to the brain, removes, destroys, or interrupts the continuity of brain tissue which is histologically normal (as distinguished from normal in its physiological or psychological functioning) for the primary purpose of altering behavior or treating a mental disease or disorder. Psychosurgery includes the implantation of electrodes with such an effect and

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[2] For provisions concerning persons under the age of eighteen, refer to the American Psychiatric Association's "Guidelines for Psychiatric Hospitalization of Minors" (1981).

for such a purpose, with or without subsequent electrocoagulation. Psychosurgery does not include neurosurgical procedures designed to treat reliably diagnosed intractable physical pain or epilepsy.

"severe mental disorder" means an illness, disease, organic brain disorder, or other condition which (1) substantially impairs the person's thought, perception of reality, emotional process, or judgment, or (2) substantially impairs behavior as manifested by recent disturbed behavior.[3]

"treatment facility" means a community mental health facility, a general medical facility providing psychiatric services, or other psychiatric facility or program meeting applicable licensing standards, which has been approved for the provision of services under this Act by the Department of Mental Health; provided that no jail or other correctional facility shall be approved as a treatment facility for any persons other than those who could otherwise lawfully be detained there.

Section 4. EMERGENCY PSYCHIATRIC EVALUATION

4.A. Detention by a Police Officer

1. A police officer may take a person into custody, and transport the person to a treatment facility for emergency psychiatric evaluation if and only if:

a. the person would otherwise be subject to lawful arrest and the police officer believes that the person is in need of emergency psychiatric treatment; or

b. the police officer has probable cause to believe that the person has attempted suicide within the last 48 hours; or

c. the police officer has probable cause to believe, based on his personal observation and investigation, or based on the petition of any interested adult under subsection

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[3] Mental retardation, epilepsy, or other developmental disabilities do not, in themselves, constitute a severe mental disorder. States may wish to provide by other provisions of law for persons whose use of or addiction to intoxicating substances warrants hospitalization.

4.C. and such corroboration as the police officer deems necessary in the circumstances, that the person is suffering from a severe mental disorder as a result of which he is likely to cause harm to himself or to others or is manifestly unable to care for some of his basic needs, and that immediate hospitalization is necessary to prevent harm to the person or to others; or

d. he is acting upon the certification of a licensed physician under subsection 4.B.

2. Any person taken into custody pursuant to this subsection shall be presented promptly to a treatment facility. Correctional facilities shall not be used as temporary shelter for such persons except for the protective custody of the person pending transportation to a treatment facility.

3. Upon or shortly after taking a person into custody, the police officer shall take reasonable precautions to safeguard and preserve the personal property of the person unless a guardian or responsible relative is able to do so. Upon presenting a person to a treatment facility the police officer shall inform the staff in writing of the facts which caused him to take the person into custody, and specifically state whether the person is otherwise subject to arrest.

4.B. Certification by a Licensed Physician

A person may be taken into custody by a police officer, or accepted by an ambulance service, and transported and presented to a treatment facility for emergency psychiatric evaluation, when a licensed physician certifies in writing that he has examined the patient in the last 72 hours, or that he has ongoing medical responsibility for the person and has knowledge of his current condition, and on such basis he has probable cause to believe that such person is suffering from a severe mental disorder as a result of which: he lacks capacity to make an informed decision concerning treatment; and he is (1) likely to cause harm to himself or to suffer substantial mental or physical deterioration, or (2) likely to cause harm to others; and immediate hospitalization is necessary to prevent such harm.

4.C. Petition by Any Interested Adult

Any interested adult may petition for, or present a person for, emergency psychiatric evaluation by alleging based on personal observation that he has probable cause to believe that such person is suffering from a severe mental disorder as the result of which: he is likely to cause harm to himself or to others or is manifestly unable to care for some of his basic needs; and immediate hospitalization is necessary to prevent harm to the person or to others.

4.D. Treatment Facility Determination

1. Upon the presentation of a person to a treatment facility pursuant to this Section 4, the facility shall accept the person and shall promptly examine him to determine whether he meets the criteria for emergency evaluation and treatment set forth in subparagraph 2.

2. The person shall be admitted for emergency evaluation and treatment only if the examining psychiatrist determines that there is probable cause to believe that the person suffers from a severe mental disorder as the result of which: he lacks capacity to make an informed decision concerning treatment; and he is (1) likely to cause harm to himself or to suffer substantial mental or physical deterioration, or (2) likely to cause harm to others; and immediate hospitalization is necessary to prevent such harm.

3. If the examining psychiatrist determines that there is not probable cause to believe that the person meets the criteria for emergency evaluation and treatment, the person shall be released. If a person was presented to the treatment facility by a police officer and was otherwise subject to lawful arrest, he shall continue under the custody of police officers.

4.E. Advice of Rights

The treatment facility shall advise any person admitted for emergency evaluation and treatment of the purposes and possible duration of emergency evaluation, and of his rights under this Act, as soon after admission as his medical condition permits.

4.F. Hearing on Emergency Evaluation

1. Each person who is admitted to a treatment facility shall receive a preliminary hearing before the court within five business days of admission or be discharged, unless he has, after consultation with counsel, executed a written waiver of such hearing. The hearing shall be informal and subject to such rules as the court sets consistent with fundamental fairness.

2. The court shall determine at the close of the hearing, or within five business days of the patient's admission, whether he should be discharged. A patient shall then be discharged, unless the court determines that there is probable cause to believe that he satisfies the criteria for thirty-day commitment provided in Section 6, and unless within two business days of the court's decision a petition for such commitment is filed with the court.

4.G. Duration of Emergency Evaluation and Treatment

The period of emergency evaluation and treatment shall in no case exceed fourteen days.

Section 5. VOLUNTARY ADMISSION

5.A. Admission

1. A treatment facility may admit a person if after examining the patient a psychiatrist [or: "a physician"]* on the staff or with privileges at the treatment facility believes the person is mentally ill and in need of hospitalization, and if the person gives written consent to admission. Prior to such admission, the person shall be advised orally and given a written statement of his rights under this Act; provided that if his condition upon admission makes such advice infeasible and the medical reasons are entered in the record, such advice may be deferred until the patient's medical condition permits, for not more than 48 hours. Each patient shall be asked to sign an acknowledgement that he has been so advised and has consented to voluntary admission for treatment.

2. Initial consent to voluntary admission for treatment shall be valid for sixty days. Thereafter,

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* Optional provision.

a patient may remain at the treatment facility for periods of up to one hundred eighty days each upon a signed consent executed after the patient has had an opportunity to consider with such persons as he wishes his need for continued hospitalization and treatment.

3. If the responsible psychiatrist [or: "the responsible physician"][5] has substantial reason to believe that a person seeking to admit himself or to consent to further hospitalization lacks capacity to make an informed decision concerning treatment, he shall obtain in addition to the consent of the patient, the informed consent of the patient's next of kin or guardian. The responsible psychiatrist [or: "the responsible physician"][6] shall renew his effort to obtain the informed consent of the patient if the patient regains the capacity to make an informed decision concerning treatment.

5.B. Discharge or Petition for Thirty-Day Commitment

Any patient who is voluntarily admitted to a treatment facility shall be discharged within five business days of his written request for discharge (and any patient who indicates his desire to be discharged but is unable to write shall be assisted to put his request in writing), unless a petition for thirty-day commitment is filed within that period by the treatment facility or the patient's next of kin or guardian.

5.C. Conversion from Involuntary to Voluntary Status

A patient who is subject to involuntary hospitalization pursuant to Sections 4, 6, or 11 of this Act may at any time convert to voluntary status if the responsible psychiatrist [or: "the responsible physician"][7] agrees that such conversion is made in good faith and that the patient is an appropriate patient for voluntary hospitalization.

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[5] Optional provision.

[6] Optional provision.

[7] Optional provision.

Section 6. THIRTY-DAY COMMITMENT

6.A. Petition

1. Persons who are present at a treatment facility under voluntary admission but have requested discharge, and persons present at a treatment facility for emergency psychiatric evaluation, may be committed involuntarily for a period of up to thirty days upon a petition filed by the treatment facility or by the next of kin or guardian; and other persons may be so committed upon a petition filed by any interested adult. The petition shall allege that such person meets the criteria set forth in subsection 6.C. The petition shall set forth the facts supporting the allegations, and, in the case of petitions filed by a treatment facility, describe why the patient requires treatment. The petition shall be filed with the court, which shall have copies promptly served upon the patient, the next of kin or guardian, and the patient's attorney if known.

2. The copies of the petition served by the court shall be accompanied by a notice advising of the person's rights concerning the proceeding.

6.B. Summons for Evaluation; Psychiatric Report

1. Upon the filing of a petition for thirty-day commitment of a person who is not currently under emergency evaluation or voluntary admission, the court shall issue a summons to the person to submit to an examination (on an outpatient basis) conducted by a psychiatrist at a treatment facility or a private psychiatrist. The examining psychiatrist shall promptly prepare a report on his examination and file it with the court. The court shall have copies promptly served upon the patient, the next of kin or guardian, and the patient's attorney if known.

2. A person served with a summons to submit to a psychiatric examination may in lieu of such examination submit a report of a psychiatrist stating that he has recently examined the person, or has ongoing medical responsibility for the person and knowledge of his current condition, and that in his opinion the person does not meet the criteria for involuntary commitment. The petition for commitment may then be dismissed by the court, or continued.

6.C. Criteria for Thirty-Day Commitment[1]

A person may be involuntarily committed for a period of up to thirty days if, after the hearing provided in Section 6.D., the court determines, based upon clear and convincing evidence, that:

1. the person is suffering from a severe mental disorder; and

2. there is a reasonable prospect that his disorder is treatable at or through the facility to which he is to be committed, and such commitment would be consistent with the least restrictive alternative principle; and

3. the person either refuses or is unable to consent to voluntary admission for treatment; and

4. the person lacks capacity to make an informed decision concerning treatment; and

5. as the result of the severe mental disorder, the person is (1) likely to cause harm to himself or to suffer substantial mental or physical deterioration, or (2) likely to cause harm to others.

6.D. Hearing on Thirty-Day Commitment

1. Every person as to whom a petition for thirty-day commitment has been filed shall be notified by the court sufficiently in advance to be able to prepare for the hearing, and shall receive a prompt hearing. For persons confined for emergency psychiatric evaluation, or currently under voluntary admission, this hearing shall take place within three business days of the filing of the petition.

2. The respondent shall be present at the hearing unless the court finds (1) that he has knowingly and voluntarily waived such right after consulting with counsel, or (2) that because his behavior at the hearing

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[1] Refer to the Commentary for a discussion of the disposition of various types of persons who do not meet the criteria in Section 6.C.

is so disruptive, it cannot reasonably continue in his presence. Hearings shall be held in the treatment facility wherever feasible given the other functions of the court.

3. Any respondent who is unable to pay for counsel shall have the right to be provided with counsel to prepare for and represent him at the hearing. [Any respondent who is unable to pay for an examination for purposes of the hearing shall have the right to be provided with one examination by a licensed psychiatrist, at the expense of the (state or local government).][9]

4. The District Attorney or County Counsel shall represent the interests of the State at the hearing. [If the District Attorney or County Counsel fails to proceed with the commitment, the next of kin or a petitioning party may retain counsel to do so in his stead, and the reasonable costs of such counsel shall be paid by the (state or local government).][10]

5. The rules governing evidentiary and procedural matters at hearings under this Act shall be promulgated so as to facilitate informal, efficient presentation of all relevant, probative evidence and resolution of issues with due regard to the interests of all parties. Hearsay evidence may be received, and experts and other witnesses may, consistent with law, testify to any relevant and probative facts at the discretion of the court.

6. Patients shall not have a "right to remain silent" at a psychiatric examination or hearing conducted pursuant to this Act; provided that no patient shall be held civilly or criminally liable for not speaking or testifying. Any information obtained from or disclosed by the patient during the course of evaluation or treatment is admissible in any hearing provided in this Act without regard to whether it would otherwise be privileged; provided that no disclosure made by the patient during the course of evaluation or treatment or in any proceeding conducted under this Act, and no opinion testimony based on such disclosures, may be admitted against the patient on the issue of guilt in a criminal proceeding unless he places his mental condition in issue in such proceeding, and the disclosure or opinion is relevant to such an issue raised by him.

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[9] Optional provision.

[10] Optional provision.

7. The hearing shall be closed to the public, unless the respondent requests that it be open, or the court determines for other good cause that the hearing should be open. The court shall keep a complete record, written or recorded, of every hearing.

8. At the conclusion of the hearing, or within one business day thereafter, the court shall make its findings, including specific findings as to whether the commitment is warranted because the person is (a) likely to cause harm to others, or (b) likely to cause harm to himself or to suffer substantial mental or physical deterioration, or (c) both (a) and (b). As to any person found likely to cause harm to himself or to suffer substantial mental or physical deterioration, the court shall further make findings as to whether commitment is warranted because the person (1) is likely in the near future to inflict substantial physical injury upon himself, or (2) is substantially unable to provide for some of his basic needs such as food, clothing, shelter, health or safety, or (3) will, if not treated, suffer severe and abnormal mental, emotional or physical distress, and this distress is associated with significant impairment of judgment, reason, or behavior causing a substantial deterioration of his previous ability to function on his own.

9. The court shall enter an order discharging the person unless it finds by clear and convincing evidence that the person satisfies all of the criteria for commitment in Section 6.C., in which event it shall enter an order committing the person for evaluation and treatment for a period of "up to thirty days." If at any time during thirty-day (or any subsequent) commitment a patient is absent without permission, the order of commitment constitutes a continuing authorization to the treatment facility and to any police officer to procure his return.

Section 7. INFORMED CONSENT TO MEDICATION OR OTHER TREATMENT -- VOLUNTARY PATIENTS

7.A. Informed Consent

Except in an emergency situation, a treatment facility shall, prior to beginning any course of medication or other treatment for a patient who is subject to voluntary admission under Section 5, obtain informed consent to treatment. If the patient does not lack

capacity to make an informed decision concerning treatment, the consent shall be his own. If he does lack such capacity, the consent shall be that of his next of kin or guardian, provided that such a patient may receive appropriate medications or other treatments, except as limited by Section 8.C., until such time as the consent or refusal to consent of such next of kin or guardian can be obtained.

7.B. Revocation of Consent

A voluntary patient (or the next of kin or guardian who consented to treatment on his behalf) may revoke consent to treatment at any time by a reasonably clear statement in writing (and patients who indicate a desire to revoke consent but are unable to write shall be assisted to put their statement in writing). If such consent is revoked, the treatment shall be promptly discontinued, provided that a course of treatment may be concluded or phased out where necessary to avoid the harmful effects of abrupt withdrawal.

7.C. Refusal to Consent

Except in an emergency situation, any voluntary patient (himself or through his next of kin or guardian) shall have the right to refuse any and all medications or other treatments. If appropriate medications or treatments are refused, the facility may then discharge the patient, and shall not be liable in any respect for such action.

Section 8. INFORMED CONSENT TO MEDICATION OR OTHER TREATMENT -- INVOLUNTARY PATIENTS

8.A. Consent During Emergency Evaluation

Following admission and during the period of emergency evaluation provided in Section 4, the treatment facility may administer medications or other treatments, except as limited by Section 8.C., to a patient consistent with good medical practice and without the informed consent of the patient or his next of kin or guardian. However, prior to administering any such medication or other treatment, the staff shall explain the purposes, nature, and effects of the treatment and shall request the patient's consent to it, unless the responsible

psychiatrist [or: "the responsible physician"][11] determines that the patient's condition makes doing so infeasible or harmful to him, and enters the reasons for not doing so in the record.

8.B. Consent During Thirty-Day or Subsequent Commitments

It being a prerequisite to involuntary commitment that the person lacks capacity to make an informed decision concerning treatment, the treatment facility shall be authorized to administer medications or other treatments, except as limited by Section 8.C., to such persons consistent with good medical practice without their consent. Although consent to treatment is not required, during the course of treatment the responsible psychiatrist [or: "the responsible physician"][12] shall consult with the patient and his next of kin or guardian, and give consideration to the views they express concerning treatment and any alternatives.

8.C. Special Therapies

Notwithstanding subsections A. and B. above, a treatment facility shall not administer aversive therapy, experimental treatment, psychosurgery, or any other special therapy designated by the Department of Mental Health except as provided by law or in regulations promulgated by the Department of Mental Health.

8.D. Other Medical/Surgical Treatments

Consent for other medical/surgical treatments not intended primarily to treat a patient's mental disorder shall be obtained in accordance with applicable law.

Section 9. PROVISION OF TREATMENT

9.A. General Duty To Provide Treatment

Every patient shall be provided with prompt, competent and appropriate treatment, which offers him a realistic prospect of improvement. Patients shall be afforded treatment by sufficient numbers of duly qualified personnel, in facilities which meet applicable

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[11] Optional provision.

[12] Optional provision.

licensing and accreditation standards, which conform to applicable regulations of the Department of Mental Health, and which are able adequately to care for and treat the patients they serve.

9.B. Individual Treatment Plan

1. A written individual treatment plan shall be prepared, with the participation of the patient to the extent he is able, during voluntary admission or emergency psychiatric evaluation, or if a person has been subject to neither, then within seven days of a patient's thirty-day commitment. The individual treatment plan shall be approved by the responsible psychiatrist [or: "the responsible physician"],[13] and the course of treatment actually administered shall conform to the plan.

2. The patient's progress in attaining the objectives in the treatment plan shall be noted in his records and revisions in the plan shall be made as appropriate. The patient, and if the patient desires, the next of kin or guardian, shall be afforded an opportunity to participate in considering any substantial change in the treatment plan.

3. The individual treatment plan shall be available upon request to the patient, and to any other person designated by him, provided that the responsible psychiatrist [or: "the responsible physician"][14] may preclude disclosure of the individual treatment plan to the patient or others for a period not to exceed seven days from the request, if he states in writing why disclosure would be harmful to the patient.

9.C. Administration of Medications and Other Treatments

1. Medications and other treatments shall only be prescribed, ordered and administered in conformity with accepted clinical practice. Medication shall be administered only in accordance with the written order of a physician or upon a verbal order, noted in the patient's medical record and subsequently signed by the physician. Medication shall be administered only by a qualified physician, or qualified nurse, or by

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[13] Optional provision.

[14] Optional provision.

qualified other persons pursuant to procedures approved by the Department of Mental Health. The attending physician shall review regularly the drug regimen of each resident patient under his care and shall monitor any symptoms of harmful side effects. Prescriptions for psychotropic medications shall be written with a termination date not exceeding thirty days thereafter, but may be renewed.

2. Medications and other treatments shall be administered in accordance with all applicable law.

3. If a patient is given any psychotropic or other medication which has an effective duration of action including the day of a court hearing, the facts concerning its administration and effects, and the patient's mental status and behavior in the absence of medication, shall be brought to the attention of the court.

9.D. Other Medical/Surgical Care

All patients shall be provided with prompt, regular and competent medical care for physical ailments under the supervision of a licensed physician. Every patient shall have a reasonably complete physical examination at appropriate intervals.

Section 10. RIGHTS OF PATIENTS

10.A. Preservation of Rights

No right of any person (including but not limited to the right to register and vote at elections; rights to acquire, use and dispose of property including contractual rights; rights to sue and be sued; rights relating to licenses, permits, privileges and benefits under law; and rights concerning domestic relations) shall be denied or reduced solely by reason of his having been evaluated, committed or treated under this Act, except as otherwise specifically provided herein or in other applicable law. A finding of lack of capacity to make an informed decision concerning treatment under Section 6 shall not alone establish lack of competence for any other purpose. A treatment facility may for clinical reasons preclude a patient who is believed to lack competence from making substantial dispositions of his property until his competence can be decided by a court.

10.B. Right to Treatment

Patients shall have a right to treatment to the extent provided in Sections 9, 10.C., and 10.D.

10.C. Healthful and Humane Environment

Every patient shall have the right to a healthful and humane environment. Every treatment facility shall provide a clean, sanitary, safe and comfortable environment in a structure which complies with applicable licensing requirements governing physical facilities, nutrition, health and safety, and medical services, and for aspects of care for which there are not mandatory requirements, with generally accepted professional standards. In addition, every patient shall have a right to a humane psychological environment which protects him from harm or abuse, provides reasonable privacy, promotes personal dignity and provides opportunity for improved functioning.

10.D. Least Restrictive Alternative and Leaves of Absence

1. Every patient shall have the right to treatment consistent with the least restrictive alternative principle.

2. Leaves of absence may be granted in appropriate cases at the discretion of the treating facility. Police officers shall be authorized to and shall, at the request of a treatment facility, take into custody and return to the treatment facility any person who has been committed there and leaves without proper authorization or does not return at the end of an authorized leave of absence.

10.E. Institutional Labor

1. Patients have a right to perform labor as part of a therapeutic program.

2. Patients may not be required to perform labor, except that to the extent they are able, they may be required to perform (1) tasks necessary to care for their personal possessions, (2) routine, nondegrading housekeeping tasks necessary to maintain their living quarters, or (3) other tasks which the responsible

psychiatrist [or: "the responsible physician"][15] approves and which are monitored as part of a therapeutic program for the patient. No patient shall be subjected to any loss of any right under this Act (as distinguished from a privilege which is conferred as part of a therapeutic program) because of his refusal to perform such tasks.

3. Any patient labor which confers an economic benefit upon the institution beyond merely supplementing employee performance of housekeeping tasks shall be compensated on a reasonable basis in accordance with applicable law, and the proceeds of such labor shall be paid to the patient or his designee.

10.F. Restraints and Seclusion[16]

1. Restraints and seclusion may be of therapeutic benefit to some patients and therefore may be administered in conformity with good medical practice.

2. Every patient shall have the right to be free from unwarranted or inappropriate restraints or seclusion.

3. A patient shall be physically restrained or placed in seclusion only at the written order of a physician or upon a verbal order noted in the patient's record and subsequently signed by the physician.

4. During any period in which a patient is restrained or secluded, he shall be periodically checked and cared for properly to assure his well-being.

10.G. Corporal Punishment

Every patient shall have the right to be free from corporal punishment.

10.H. Nutrition

Every patient shall have the right to a nutritionally sound and medically appropriate diet.

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[15] Optional provision.

[16] These provisions establish only a basic framework for the use of restraints and seclusion. More detailed guidelines are being prepared by the American Psychiatric Association to deal with the many subtle problems which arise.

10.I. Exercise and Recreation

Every patient shall have reasonable opportunities for physical and outdoor exercise and access to recreational areas and equipment. Reasonable limitations may be set by general rules or, for clinical reasons, in particular cases.

10.J. Visitors

Every patient has the right to receive visitors of his choosing with reasonable privacy. Reasonable limitations on access of visitors may be set by general rules or, for clinical reasons, in particular cases.

10.K. Communications

1. Every patient shall have the right to send and receive mail. Reasonable rules governing inspection (but not reading) of incoming mail may be enforced, provided that they are necessary to substantial health care purposes and that they preserve the patient's privacy rights to the extent compatible with his clinical status.

2. Every patient shall have the right to reasonably private access to telephones, including the right to make long-distance calls to the extent he can arrange for payment for such calls.

3. A treatment facility shall provide reasonable assistance to patients in exercising their communication rights. Reasonable limitations on use of the mails and telephones may be set by general rules or, for clinical reasons, in particular cases.

10.L. Practice of Religion

Every patient shall have the right to practice or refrain from practicing religion, and pressure shall in no event be placed on those who do not wish to practice religion. The treatment facility shall provide appropriate assistance so that patients wishing to practice a religion have a reasonable opportunity to do so.

10.M. Personal Possessions

Every patient shall have the right to keep, use and store personal possessions and to maintain and use

bank accounts or other sources of personal funds, unless precluded from doing so by order of a court. Reasonable limitations may be set by general rules or, for clinical reasons, in particular cases.

10.N. Notice of Rights

As soon after admission as his medical condition permits, a patient shall be advised orally and given a written statement of his rights under this Act, and such a statement of rights shall be posted so that it is available to patients.

10.O. Non-Retaliation

No patient shall be retaliated against or subjected to any adverse change of conditions or treatment solely because of his having asserted his rights.

10.P. Access to Counsel

A patient may at any time have a telephone conversation with or be visited by his lawyer.

Section 11. SUCCESSIVE PERIODS OF COMMITMENT

11.A. Sixty-Day Re-Commitment

1. Any person who has been subject to a thirty-day commitment pursuant to Section 6, may be re-committed for up to sixty days upon a petition by the treatment facility or by the next of kin or guardian. The petition may be filed with the court at any time prior to the expiration of the thirty-day commitment. The petition shall include a statement of the treatment facility as to why the person still meets the criteria for involuntary commitment; what treatment has been provided and what progress has been made; why a further period of commitment is warranted; and the identity of the person who has knowledge concerning the case. The petition shall be promptly served by the court on the patient, the next of kin or guardian, and the patient's attorney.

2. The patient shall be entitled to a hearing before the court on the petition on or before the first business day following the expiration of the thirty-day commitment, and shall have all other rights to which he was entitled at the hearing on thirty-day commitment.

3. The court shall order that the person be discharged unless it determines (a) by clear and convincing evidence that the person still satisfies the criteria for involuntary commitment, and (b) that there is a reasonable prospect that a substantial therapeutic purpose would be served by a further period of commitment.

11.B. One Hundred Eighty-Day Re-Commitments

1. Any person who has been subject to sixty-day re-commitment pursuant to Section 11.A. may be re-committed for up to one hundred eighty days upon a petition filed with the court by the treatment facility or by the next of kin or guardian. The petition shall include a statement of the treatment facility as to why the person still meets the criteria for involuntary commitment; what treatment has been provided and what progress has been made; why a further period of commitment is warranted; and the identity of the person who has knowledge concerning the case. The petition shall be promptly served by the court on the patient, the next of kin or guardian, and the patient's attorney.

2. The patient shall be entitled to a hearing before the court on the petition on or before the first business day following expiration of the operative period of commitment and shall have all other rights to which he was entitled at the hearing on thirty-day commitment.

3. The court shall order that the person be discharged unless it determines (a) by clear and convincing evidence that the person still satisfies the criteria for involuntary commitment, and (b) that there is a reasonable prospect that a substantial therapeutic purpose would be served by a further period of commitment.

4. Additional re-commitments for periods of up to one hundred eighty days each may be ordered in accordance with Section 11.B.1-3 when warranted.

11.C. Waiver of Hearings

A patient may waive any hearing to which he is entitled under this Section 11 upon a written waiver which the court finds is knowingly and voluntarily executed by the patient.

Section 12. DISCHARGE

12.A. The responsible psychiatrist [or: "the responsible physician"][17] shall review periodically whether a patient still meets the criteria for lawful commitment, and if he concludes that the patient does not, he shall undertake discharge procedures as provided herein.

12.B. As to a patient committed because he was likely to cause harm to himself or to suffer substantial mental or physical deterioration, if the responsible psychiatrist [or: "the responsible physician"][18] concludes that the patient no longer meets the criteria for lawful commitment, he may discharge the patient directly.

12.C. As to a patient committed solely because, or partly because, he was likely to cause harm to others, if the responsible psychiatrist [or: "the responsible physician"][19] concludes that the patient no longer meets the criteria for lawful commitment, or that the patient's treatment program has been completed or is unlikely to provide further benefits, he shall apply to the court for an order discharging or transferring the patient, as may be appropriate. The application shall set forth the relevant facts. The court may conduct an informal hearing, subject to such procedures as the court sets. Nothing in this subsection shall reduce any rights to hearings which patients have pursuant to other provisions of this Act.

12.D. Discharge of any patient may be delayed for a reasonable period of time in order to arrange transportation or lodging for the patient, or for other good cause.

12.E. A person who has been discharged from emergency evaluation, thirty-day commitment or a subsequent period of commitment may be re-committed only pursuant to the same procedures provided in this Act and upon a showing of some new circumstances warranting such commitment which were not known at the time of discharge.

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[17] Optional provision.

[18] Optional provision.

[19] Optional provision.

12.F. The responsible psychiatrist [or: "the responsible physician"][28] may, as part of an individual treatment plan for a patient who is involuntarily committed, release such patient to outpatient treatment upon the condition that if the patient fails to follow through with or respond acceptably to such outpatient treatment, he may be returned to inpatient treatment for the remainder of the operative period of commitment.

12.G. Nothing in this Act shall limit any other legal rights or remedies concerning discharge which a patient may have or acquire pursuant to law, regulation or policy, including the right to petition for a writ of habeas corpus.

Section 13. CONFIDENTIALITY AND DISCLOSURE OF INFORMATION

[This Section adopts the American Psychiatric Association's "Model Law on Confidentiality of Health and Social Service Records."]

Section 14. REPRESENTATION OF PATIENTS

14.A. Right to Counsel at Hearings

Every patient shall have a right to counsel to represent him at court hearings under this Act, except that a patient need not be provided with counsel for the preliminary hearing on emergency evaluation provided in Section 4.F.

14.B. Resolution of Grievances in Treatment Facilities

Every treatment facility shall establish a fundamentally fair procedure for the assertion, resolution, and redress of patients' grievances, and shall have a patients' representative or similar person who shall hear patients' grievances, attempt to resolve problems, and protect patients' interests.

14.C. Representation by Next of Kin or Guardian

Any right of patients provided in this Act may be exercised on behalf of a patient who is unable to exercise such right by a next of kin or guardian, in accordance with State law.

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[28] Optional provision.

Section 15. TRANSPORTATION

Whenever a patient is to be brought to or from a treatment facility, or is to be transferred to another facility or to a home, the court may direct the sheriff, state police or other appropriate authorities to furnish suitable transportation.

Section 16. NON-DEROGATION OF PATIENTS' RIGHTS

Rights conferred upon patients by this Act shall be in addition to, and nothing in this Act shall revoke or reduce, any rights, privileges or immunities which a patient may have or acquire by law, regulation or policy.

Section 17. COSTS OF CARE

In accordance with law, indigent public patients shall receive care and treatment under this Act without charge to them. Patients committed under this Act who are able to pay may be required to pay some reasonable costs of care and treatment, and to that end treatment facilities and the State shall be authorized to recover such costs from them or their estate, their family, custodians of their property, or third parties liable for the costs of their care or treatment, in conformity with law. The liability of patients, their families, and others for the long term care of patients committed as likely to cause harm to others shall be specially limited by regulations of the Department of Mental Health.

Section 18. IMMUNITIES AND PENALTIES

18.A. Immunities

1. In the absence of willful misconduct or gross negligence, no officer, director, staff member or employee of a treatment facility shall be liable for acts or omissions within the scope of his employment related to admission, evaluation, care, treatment, nonadmission, transfer, removal of restrictions upon, or discharge of a person, pursuant to this Act.

2. No other person who, acting in good faith and with a reasonable basis, participates in any of the processes provided in this Act shall be liable for such actions.

3. Notwithstanding any other provision of this Act, no police officer, no officer, director, staff member or employee of a treatment facility, and no other person or entity performing actions pursuant to this Act, shall be liable for any action of a patient who is discharged from or is absent from a treatment facility pursuant to this Act.

4. Under no circumstances shall any person performing actions pursuant to this Act have a duty to, or be liable for failing to, notify, advise or warn anyone concerning the non-admission, transfer, removal of restrictions on, or discharge of any person.

18.B. Penalties

1. Any person who knowingly and willfully gives substantial, false information or takes other wrongful action for the purpose of distorting, corrupting or interfering with the processes provided in this Act shall be subject to a civil fine, and shall be liable for injunctive relief and money damages, in addition to any other liability under law.

2. Any person who takes into custody, admits for evaluation or commitment, detains for a further period of time, discharges, or administers medication or treatment to a patient, or takes other action affecting the substantial rights of a patient, doing so knowingly and willfully in substantial violation of this Act, shall be subject to a civil fine, and shall be liable for injunctive relief and money damages, in addition to any other liability under law. This subsection shall not be invoked in cases of minor, merely technical, or otherwise justifiable breaches of the provisions of this Act.

Section 19. REGULATIONS

The Commissioner of Mental Health is empowered to promulgate regulations to implement this Act which are consistent with its provisions.

Section 20. CONSTRUCTION

20.A. Gender and Number

As used in this Act, pronouns shall refer to both male and female persons equally, and articles shall refer to singular and plural references equally.

20.B. Severability

If any provision of this Act or its application to any person or circumstance is held invalid, it is the legislative intent that such invalidity not affect other provisions or applications which can be given effect apart from that which is invalidated, and to this end the provisions of this Act shall be deemed severable.

20.C. Construction Against Implied Repeal

This Act is intended as a unified, general Act covering its subject matter, and accordingly none of its provisions shall be deemed impliedly repealed by subsequent legislation if such a construction reasonably can be avoided.

ADDENDUM

This addendum contains Guidelines for states which do not wish to undertake a comprehensive revision of their civil commitment laws, but do wish to add provisions for the commitment of persons who are likely to "suffer substantial mental or physical deterioration."

* * *

DEFINITIONS

As used in this Act, the terms below shall have the meanings indicated:

* * *

"consistent with the least restrictive alternative principle" means that (1) each patient committed solely on the ground that he is likely to cause harm to himself or to suffer substantial mental or physical deterioration shall be placed in the most appropriate and therapeutic available setting, that is, where treatment provides the patient with a realistic opportunity to improve, and which is no more restrictive of his physical or social liberties than is believed conducive to the most effective treatment for the patient; and (2) each patient committed solely or in part on the ground that he is likely to cause harm to others shall be placed in a setting in which treatment is available and the risks of physical injury or property damage posed by such placement are warranted by the proposed plan of treatment.

* * *

"lacks capacity to make an informed decision concerning treatment" means that the person, by reason of his mental disorder or condition, is unable despite conscientious efforts at explanation, to understand basically the nature and effects of hospitalization or treatment, or is unable to engage in a rational decisionmaking process regarding such hospitalization or treatment as evidenced by inability to weigh the possible risks and benefits.

"likely to cause harm to himself or to suffer substantial mental or physical deterioration" means that as evidenced by recent behavior, the person (1) is likely in the near future to inflict substantial physical injury upon himself, or (2) is substantially unable to provide for some of his basic needs such as food, clothing, shelter, health or safety, or (3) will if not treated suffer or continue to suffer severe and abnormal mental, emotional or physical distress, and this distress is associated with significant impairment of judgment, reason or behavior causing a substantial deterioration of his previous ability to function on his own.

* * *

"severe mental disorder" means an illness, disease, organic brain disorder, or other condition which (1) substantially impairs the person's thought, perception of reality, emotional process, or judgment or (2) substantially impairs behavior as manifested by recent disturbed behavior.[1]

* * *

EMERGENCY PSYCHIATRIC EVALUATION

Detention by a Police Officer

A police officer may take a person into custody, and transport the person to a treatment facility for emergency psychiatric evaluation if:

* * *

-- the police officer has probable cause to believe, based on his personal observation and investigation, or based on the petition of any interested adult and such corroboration as the police officer deems necessary in the circumstances, that the person is suffering from a severe mental disorder as a result of which he is likely to cause harm to himself or others or is manifestly unable to care for some of his basic needs, and that immediate hospitalization is necessary to prevent harm to the person or to others;

* * *

Certification by a Licensed Physician

A person may be taken into custody by a police officer, or accepted by an ambulance service, and transported and presented to a treatment facility for emergency psychiatric evaluation when a licensed physician certifies in writing that he has examined the patient

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[1] Mental retardation, epilepsy, or other developmental disabilities do not, in themselves, constitute a severe mental disorder. States may wish to provide by other provisions of law for persons whose use of or addiction to intoxicating substances warrants hospitalization.

in the last 72 hours or that he has ongoing medical responsibility for the person and has knowledge of his current condition, and on such basis he has probable cause to believe that such person is suffering from a severe mental disorder as the result of which: he lacks capacity to make an informed decision concerning treatment; and he is (1) likely to cause harm to himself or to suffer substantial mental or physical deterioriation, or (2) likely to cause harm to others; and immediate hospitalization is necessary to prevent such harm.

* * *

Treatment Facility Determination

Upon the presentation of a person to a treatment facility, the facility shall accept the person and shall promptly examine him to determine whether he meets the criteria for emergency evaluation and treatment set forth below.

The person shall be admitted for emergency evaluation and treatment only if the examining psychiatrist determines that there is probable cause to believe that the person suffers from a severe mental disorder as the result of which: he lacks capacity to make an informed decision concerning treatment; and he is (1) likely to cause harm to himself or to suffer substantial mental or physical deterioration, or (2) likely to cause harm to others; and immediate hospitalization is necessary to prevent such harm.

* * *

CRITERIA FOR COMMITMENT

A person may be involuntarily committed for a period of up to ( )[2] days if after the hearing the court determines, based upon clear and convincing evidence, that:

1. the person is suffering from a severe mental disorder; and

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[2] Insert the time period under existing law.

2. there is a reasonable prospect that his disorder is treatable at or through the facility to which he is to be committed, and such commitment would be consistent with the least restrictive alternative principle; and

3. the person either refuses or is unable to consent to voluntary admission for treatment; and

4. the person lacks capacity to make an informed decision concerning treatment; and

5. as the result of the severe disorder, the person is (1) likely to cause harm to himself or to suffer substantial mental or physical deterioration, or (2) likely to cause harm to others.

* * *

INFORMED CONSENT TO MEDICATION OR OTHER TREATMENT -- INVOLUNTARY PATIENTS

* * *

It being a prerequisite to involuntary commitment that the person lacks capacity to make an informed decision concerning treatment, the treatment facility shall be authorized to administer medications or other treatments, except special therapies which are subject to particular laws or regulations, to such persons consistent with good medical practice without their consent. Although consent to treatment is not required, during the course of treatment the responsible psychiatrist shall consult with the patient and his next of kin or guardian, and give consideration to the views they express concerning treatment and any alternatives.

STATE OF ALASKA
THE LEGISLATURE

LEGISLATIVE AFFAIRS AGENCY

POUCH Y STATE CAPITOL
JUNEAU, ALASKA 99811
907 465 3800

MEMORANDUM September 9, 1983

SUBJECT: Mental health commitment laws
(Work Order No. 13-1516)

TO: Senator Joe Josephson
Chairman, Senate Health, Education and
Social Services Committee

FROM: Edward H. Hein EHA
Legislative Counsel

You have asked for a comparison of the American Psychiatric Association's draft guidelines for psychiatric hospitalization of adults with Alaska's mental health commitment laws (AS 47.30.655 - 47.30.915). I have enclosed a section-by-section comparison, with the APA guidelines on the left-hand pages and the corresponding Alaska statutes on the right-hand pages. My comments follow.

In general, there are many similarities between the APA guidelines and Alaska law. Both provide for emergency or involuntary commitments, voluntary commitments, initial periods of detention followed by longer periods of extension, standards, hearings, patient rights, immunities for mental health professionals, and penalties for bad faith commitments. In most cases Alaska law appears to provide equal or better patient protections than those recommended by the APA.

The major specific differences between the guidelines and the statutes are as follows:

1. Emergency detention. Under APA section 4.A.2. a person taken into custody for emergency evaluation may not be placed in a jail or other correctional facility, except for protective custody purposes and only while awaiting transportation to a treatment facility. Under AS 47.30.705. a correctional facility may be used as an emergency evaluation facility if a regular evaluation facility is unavailable.

2. Petition for involuntary commitment. Under APA section 4.C. any "interested adult" may petition for an emergency psychiatric evaluation of another person. The APA does not define what "interested" means. Under AS 47.30.700 "any adult" may petition for involuntary commitment of another person.

3. Deadline for emergency examination. Under APA section 4.D.1. a treatment facility must examine a person under emergency detention "promptly" after arrival at the facility. Under AS 47.30.710 the examination and evaluation must be completed within 24 hours of arrival.

4. Advisement of rights. Under APA section 4.E. a treatment facility must notify a person admitted for emergency evaluation of the purposes and possible duration of the evaluation, as well as the person's legal rights relating to commitment. Under AS 47.30.725 there is no specific requirement of notice relating to the purposes and duration of evaluation. But the Alaska statute requires that notice be both oral and written and in a language the person understands.

5. Hearing after emergency detention. Under APA section 4.F. a person under emergency detention must receive a hearing before a court within five business days after being admitted to a facility. This right to a hearing may be waived in writing upon advice of counsel. The hearing is informal and is conducted under rules set by the court consistent with "fundamental fairness". After the hearing a person may be discharged by the court or committed for 30 days. Under AS 47.30.725 a person under emergency or involuntary detention has a right to a hearing within 72 hours of arrival at the facility. The person may not waive the right to a hearing, but may waive the 72-hour limit if the person is represented by counsel. However, the hearing must be held within seven calendar days of the person's arrival at the facility. The person has a right to communicate, immediately after arrival at the facility, with a guardian or other adult and with an attorney. At the hearing the person has a right to be represented by an attorney, to present evidence and to cross-examine witnesses. Subject to specified exceptions, the person has a right to be free of the effects of medicine or treatment before the hearing. After the hearing the person may be discharged or committed for a period of 21 days. Additional hearing rights are

specified elsewhere in the APA guidelines and the Alaska statutes.

6. Voluntary admission. Under APA section 5.A. a person believed to be mentally ill and in need of hospitalization may be admitted voluntarily if the person consents in writing after being advised of rights. The consent is effective for 60 days, but may be renewed for an unlimited number of periods of up to 180 days each. Under AS 47.30.670 the only requirements are that the person (1) in fact be suffering from mental illness, (2) be 14 years old or older, and (3) "voluntarily" signs the admission papers. A person under 14 years of age may be "voluntarily" admitted for a period of 21 days if (1) the minor's guardian or parent signs the admission papers and (2) the senior mental health professional at the facility concludes that specified criteria are met. Presumably the minor is automatically released after 21 days unless the minor is admitted again under the same requirements as for initial admittance.

7. Discharge from voluntary admission. Under APA section 5.B. any person voluntarily admitted must be discharged within five business days after submitting a written request for discharge, unless the treatment facility or the person's guardian files a petition for 30-day commitment. Under AS 47.30.685 - 47.30.695 a person who was voluntarily admitted to a treatment facility shall be discharged immediately upon submitting a written notice of intent to leave the facility. However, the treatment facility may hold the person for 48 hours after receiving an intent to leave notice in order to initiate involuntary commitment proceedings. In that case, the facility must give the person written notice of its intent to initiate the proceedings by the time the person would otherwise be released. A person who is under 14 years of age must be discharged immediately upon the request of the parent or guardian, unless the minor, if released, is likely to cause serious harm to himself or another as a result of a mental illness.

8. Conversion of status. Under APA section 5.C. a person who was committed involuntarily may change to a voluntary admitee with a psychiatrist's approval. No comparable provision exists in Alaska law.

9. Further periods of commitment. The APA guidelines provide for 30-day, 60-day, 90-day, and 180-day commitments. Alaska law provides for 21-day, 90-day, and 120-day

commitments. Each period of commitment is to be preceded by a hearing under both the APA guidelines and the Alaska statutes. The patient's rights at the hearing vary considerably, however, under the two different schemes. The most noticeable differences are that (1) the APA guidelines allows the use of hearsay evidence so long as it is relevant, while Alaska requires the use of civil rules of evidence; (2) the APA denies a patient's Fifth Amendment right to remain silent, while Alaska law specifically recognizes it; and (3) the APA does not allow the exclusion from evidence of privileged communications between the patient and psychiatrist or physician made during the course of evaluation or treatment, whereas Alaska law recognizes such an evidentiary privilege.

10. Petitions for further periods of commitment. Under both the APA guidelines and Alaska law, all commitments are initiated by the filing of a petition. Under APA section 6.A. a petition for a 30-day commitment of a person already at a treatment facility may be filed by the facility or by the person's "next of kin" or guardian. If the person is not currently committed, any "interested adult" may file a petition for a 30-day commitment of the person. The language of the guidelines does not make clear whether additional petitions may be filed for successive commitments of 30-days each. Under APA section 11.A. a person who "has been subject to" a 30-day commitment may be recommitted for an additional 60-day period upon a petition filed by the treatment facility or the person's "next of kin" or guardian. (The drafting here is imprecise and ambiguous. The phrase "has been subject to" could mean "has ever been subject to" or it could mean "is currently under" or it could mean "has met the criteria for".) Under APA section 11.B., a person committed for any period of time and who is dangerous to himself or herself may be committed for one additional period of "up to 90 days" upon a petition filed by the treatment facility or by the person's next of kin or guardian at any time before the current period of commitment expires. Under APA section 11.C., a person who "was committed for up to 30 days and is subject to 60-day recommitment" and who is likely to harm others may be committed for successive additional periods of 180 days each upon a petition filed by the person's next of kin or guardian, or by the state "upon advice of the treatment facility". Under AS 47.30.730, a petition for a 21-day commitment must be signed by two mental health professionals who have examined the person. It is not clear who may file

the petition. Under AS 47.30.740, a petition for a 90-day commitment may be filed by "the professional person in charge" while the person is under a 21-day commitment. Under AS 47.30.770 the "professional person in charge" may file a petition for a 120-day commitment of a person who is under a 90-day commitment. Successive commitments of 120 days each are authorized.

11. Informed consent. Under APA section 7, a treatment facility must obtain a patient's informed consent before administering medicine or treatment to a voluntary admitee in a non-emergency situation, unless the person lacks capacity to consent. A voluntary admitee may revoke consent in writing at any time except in an emergency. Under APA section 8, an involuntary admitee, or a voluntary admitee in an emergency, may be treated or given medicine without informed consent. Under AS 47.30.825, every mental patient has the right to know the name, purpose and side effects of medicine to be administered. In a "true medical emergency", surgery to save the "life, physical health, eyesight, hearing or member of the patient" may be performed without the consent of the patient, guardian or court. The law specifically recognizes an adult patient's right to not be operated on if the patient knowingly withholds consent on religious grounds.

12. Special therapies. Under APA section 8.C. experimental treatments, psychosurgery, aversive therapy or other special therapy designated by the appropriate state department may not be administered, except as provided by law or regulation. AS 47.30.825 provides that a lobotomy or psychosurgery may not be performed without specific informed consent, a full due process hearing, and a court order. Electro-convulsive therapy or aversive conditioning requires informed consent or, if the patient lacks substantial capacity to give informed consent, a court order. Under AS 47.30.830 experimental treatments involving any significant risk of physical or psychological harm are prohibited.

13. Patient rights. This is one area where the APA guidelines are more thorough than Alaska law. Under both schemes patients have rights to privacy, property, civil rights such as voting, mail, access to attorneys and visitors, and treatment consistent with the "least restrictive alternative" principle. APA section 10, however, also provides a right to "nutritionally sound and medically appropriate diet", a right to exercise and recreation, a

right to perform labor, and a right to be free from corporal punishment.

14. Discharge. Under APA section 12.F. a person may, as part of an individual treatment plan, be released from commitment at a facility to outpatient treatment. The person may, however, be returned to inpatient treatment for failure to comply with the outpatient treatment program requirements. APA section 15 provides that law enforcement or other appropriate authorities shall provide transportation of patients to and from a treatment facility. Under AS 47.30.825, a person upon discharge from a facility must be given a discharge plan suggesting, but not requiring, the kinds and amounts of treatment the person should have to maintain mental health. The person has a right to participate in formulating the discharge plan. Also, under AS 47.30.890 a person is entitled to "suitable clothing" upon discharge, and if indigent, to transportation to the person's permanent residence in the state and "a reasonable amount of money to meet immediate needs". See also AS 47.30.795.

15. Confidentiality. The APA guidelines adopt by reference the "Model Law on Confidentiality of Health and Social Service Records". AS 47.30.845 provides that patient records are confidential and not public records, and specifies the persons or agencies to whom records and information may be disclosed.

16. Grievance procedures. APA section 14.B. requires that treatment facilities establish "fundamentally fair" procedures for patients' grievances. Alaska statutes have no similar provision.

17. Immunities. Under APA section 18.A. employees of a treatment facility are not liable for acts or omissions within the scope of employment, absent willful misconduct or gross negligence. Other persons who act in good faith and with a reasonable basis are not liable for actions provided for under the guidelines. The guidelines disclaim any liability for actions by a patient who is absent from a treatment facility or who has been discharged. Finally, the guidelines disclaim any liability for failure to warn or notify anyone of a patient's discharge. Immunity under Alaska law is much more limited. Under AS 47.30.815 a person is not subject to criminal or civil liability for petitioning for evaluation or treatment of another person in

good faith and upon actual knowledge or reliable information. Also, four classes of officials may not be held civilly or criminally liable for detaining or releasing a person "at or before the end of" the period for which the person was committed, so long as the official acted in good faith and without gross negligence.

18. Penalties. APA section 18.B. provides that a civil fine, injunctive relief and money damages may be imposed or granted if a person (1) "knowingly and willfully gives substantial, false information or takes other wrongful action for the purpose of distorting, corrupting or interfering with the processes provided in this Act" or (2) commits, detains, discharges, or treats a patient, or otherwise affects a patient's "substantial rights" knowingly and willfully in substantial violation of the guidelines. AS 47.30.815 makes it a class C felony to willfully initiate an involuntary commitment procedure without good cause.

19. Miscellaneous provisions. The last four pages of the comparison booklet (enclosed) consist of provisions of Alaska law for which there are no corresponding provisions in the APA guidelines. Note especially AS 47.30.760, providing for placement at the closest facility; AS 47.30.765, providing for appeal of involuntary commitment orders; AS 47.30.875, providing for handling of nonresident patients; AS 47.30.880, adopting the Interstate Compact on Mental Health; and AS 47.30.895 - 47.30.900, disposition of personal property and money of patients who die while in custody or who leave a facility without authority. Note one error: AS 47.30.795, relating to outpatient care and appearing among the miscellaneous provisions, actually corresponds with APA section 12.F. and should have appeared opposite that section.

If you have any questions or comments, feel free to contact me at your convenience.

EHH:ljb

Enclosure
29/002

GIVEN TO PATIENTS AT API
(ALSO IN A LANGUAGE UNDERSTOOD BY PATIENT)

PATIENTS' RIGHTS

Your legislators have tried to protect your rights to freedom and at the same time protect everyone from dangerous people and protect people who are harmful to themselves because of mental illness.

The following are your rights according to law:

1. You may join in developing your treatment plan, and you are entitled to be informed of your medical and psychological condition and prognosis.

2. You will be told the name, purpose, and side effects of any medication you are asked to take.

3. No unnecessary or excessive medication will be given to you. All medication will be given only on the order of a licensed physician.

4. Physical restraint will not be used on you unless you behave in a manner harmful to yourself or others.

5. You will not receive electroconvulsive therapy, aversive conditioning, experimental treatment or psychosurgery.

6. You will be given a discharge plan outlining the kind and amount of care and treatment you should have after discharge.

7. Your civil rights will not be impaired.

8. Your hospital record and I.D. photograph will be confidential.

9. Unless you sign a release of responsibility, your personal property will be inventoried and safe-guarded and returned to you at discharge.

10. You will have private storage space, and will be allowed to wear your own clothing, and keep certain personal possessions and a reasonable amount of your own spending money.

11. You may have visitors during visiting hours.

12. You will have access to letter writing materials and stamps, and may send and receive unopened mail.

13. You will have reasonable access to a phone and may make and receive confidential calls.

14. After discharge you may move to have all court records pertaining to your care expunged.

Under the law certain rights may be restricted by your doctor when it is necessary for the protection of yourself or others.

The following additional information will help you better understand your care here. If you still have questions, ask your nurse or social worker:

1. No matter what your legal status is, the more you want to help yourself and work with the staff in an honest, open manner, the quicker and more effective will be your recovery.

2. You do not have the right to do the following:

   - Injure or threaten others.

   - Damage property

   - Intrude on the rights of others, such as rudeness, shouting, or excessive noise that you can control.

   - Make messes for others to clean up.

   - Bring or use drugs, alcohol or weapons.

   - Do illegal acts (break the law). This includes writing threatening letters or making threatening or obscene phone calls.

If you feel you are being treated unfairly or improperly, please follow these steps:

1) Bring it up in the community meeting.

2) If you are not satisifed with the results of that action, bring it up with your nursing advisor, doctor, or any member of the treatment team.

3) If not satisfied, write down your problem and complaint and forward it to the Superintendent.

4) You always have the right to write to your attorney, the State Ombudsman, the Commissioner of the Department of Health and Social Services, or the Superior Court which may have been involved in your hospitalization.

If you feel you've been discriminated against in any way because of race, color, sex, religion, age, or national origin, you may file a complaint with the Civil Rights Commission. You can get the forms from the Administrator's Office. If you need help in filling them out, see your nurse advisor or the Hospital Administrator's Office.

/ojb/vnc

HALOPERIDOL (Systemic)

Haloperidol (ha-loe-PER-i-dole) is used to treat nervous, mental, and emotional conditions. It is used also to control nausea and vomiting and the effects of Gilles de la Tourette's disease. Haloperidol is available only with your doctor's prescription.

Before Using This Medicine

In order to decide on the best treatment for your medical problem, your doctor should be told:

—if you have any of the following medical problems:

- Alcoholism
- Blood disease
- Epilepsy
- Glaucoma
- Heart or circulation disease
- Kidney disease
- Liver disease
- Lung disease
- Overactive thyroid
- Parkinson's disease
- Prostate enlargement
- Severe mental depression
- Stomach ulcers
- Urination problems

—if you are now taking any of the following medicines or types of medicine:

- Amphetamines
- Anticonvulsants (seizure medicine)
- Antihypertensives (high blood pressure medicine)
- Asthma medicine
- Epinephrine
- Ulcer medicine

—if you are now taking central nervous system (CNS) depressants such as:

- Antihistamines or medicine for hay fever, other allergies, or colds
- Barbiturates
- Narcotics
- Prescription pain medicine
- Sedatives, tranquilizers, or sleeping medicine
- Tricyclic antidepressants (medicine for depression)

Proper Use of This Medicine

Use this medicine only as directed by your doctor. Do not use more of it, do not use it more often, and do not use it for a longer period of time than your doctor ordered.

If this medicine upsets your stomach, it may be taken with food or milk to lessen stomach irritation.

If you miss a dose of this medicine, take it as soon as possible unless it is within 6 hours of your next scheduled dose. Do not double doses. Instead, go back to your regular dosing schedule. If you have any questions about this, check with your doctor.

Precautions While Using This Medicine

Your doctor should check your progress at regular visits, especially for the first few months you take this medicine.

Sometimes haloperidol must be taken for several days to several weeks before its full effect is reached in the treatment of certain mental and emotional conditions.

Do not suddenly stop taking this medicine without first checking with your doctor. Your doctor may want you to reduce gradually the amount you are taking before stopping completely.

This medicine will add to the effects of alcohol and other medicines that slow down the nervous system such as: antihistamines or medicine for hay fever, other allergies, or colds; barbiturates; medicine for seizures; narcotics; prescription pain medicine; sedatives, tranquilizers, or sleeping medicine; or tricyclic antidepressants (medicine for depression). ***Check with your doctor before taking any of the above while you are taking this medicine.***

This medicine may cause some people to become drowsy or less alert than they are normally, especially as the amount of medicine is increased. Even if you take this medicine at bedtime, you may feel drowsy or less alert on arising. ***Make sure you know how you react to this medicine before you drive, use machines, or do other jobs that require you to be alert.***

Although not a problem for many patients, dizziness, light-headedness, or fainting may occur, especially when getting up from a lying or sitting position. Getting up slowly may help. However, if the problem continues or gets worse, check with your doctor.

Side Effects of This Medicine

Along with its needed effects, a medicine may cause some unwanted effects. Although not all of these side effects appear very often, when they do occur they may require medical attention. Check with your doctor if any of the following side effects occur:

More common

- Shuffling walk
- Stiffness of arms and legs
- Tic-like, jerky movements of head, face, mouth, and neck
- Trembling and shaking of hands and fingers

Less common

- Difficulty in urination
- Dizziness, lightheadedness, or fainting
- Fine, worm-like movements of tongue
- Skin rash

Rare

- Sore throat and fever
- Yellowing of eyes and skin

Other side effects may occur which usually do not require medical attention. These side effects may go away during treatment as your body adjusts to the medicine. However, check with your doctor if any of the following side effects continue or are bothersome:

More common

- Blurred vision
- Constipation
- Dry mouth

TRICYCLIC ANTIDEPRESSANTS (Systemic)

Applies to:
Amitriptyline (a-mee-TRIP-ti-leen)
Desipramine (dess-IP-ra-meen)
Doxepin (DOX-e-pin)
Nortriptyline (nor-TRIP-ti-leen)
Imipramine (im-IP-ra-meen)

Does *not* apply to:
Protriptyline

This medicine belongs to the group of medicines known as tricyclic antidepressants or "mood elevators." It is used to relieve mental depression and depression that sometimes occurs with anxiety. One form of this medicine (imipramine) may be used to treat enuresis (bedwetting). Tricyclic antidepressants are available only with your doctor's prescription.

Before Using This Medicine

In order to decide on the best treatment for your medical problem, your doctor should be told:

—if you have experienced an allergic reaction to other tricyclic antidepressants.

—if you have any of the following medical problems:

Alcoholism	Heart disease
Asthma (history of)	High blood pressure
Difficult urination	Liver disease
Enlarged prostate	Overactive thyroid
Glaucoma	Stomach or intestinal problems

—if you are now taking any other medicines, including over-the-counter (OTC) or nonprescription medicine, especially the following:

Allergy medicine	Other medicine for depression
Antihistamines	Pain medicine
Barbiturates	Sedatives
Blood pressure medicine	Seizure medicine
Cold remedies	Sleeping medicine
Hay fever medicine	Tranquilizers
Narcotics	

—if you are now taking or have taken within the past 2 weeks monoamine oxidase (MAO) inhibitors such as:

Isocarboxazid	Phenelzine
Pargyline	Tranylcypromine

Proper Use of This Medicine

Take this medicine only as directed by your doctor.

To lessen stomach upset, take this medicine with food, unless your doctor has told you to take it on an empty stomach.

Sometimes this medicine must be taken for several weeks before you begin to feel better.

Keep this medicine out of the reach of children since overdose is especially dangerous in young children.

If you miss a dose of this medicine, take it as soon as possible and then go back to your regular dosing schedule. However, if a once-a-day bedtime dose is missed, do not take that dose in the morning. Instead, check with your doctor.

Precautions While Using This Medicine

It is very important that your doctor check your progress at regular visits.

Do not stop taking this medicine without first checking with your doctor. Your doctor may want you to reduce gradually the amount you are using before stopping completely.

Before having any kind of surgery (including dental surgery) or emergency treatment, tell the doctor or dentist in charge that you are using this medicine.

This medicine will add to the sedative effects of alcohol and other medicines that slow down the nervous system such as antihistamines or medicines for hay fever, other allergies, or colds; barbiturates; medicine for seizures; narcotics; other medicine for depression; prescription pain medicine; sedatives, tranquilizers, or sleeping medicine. *Check with your doctor before taking any of the above while you are taking this medicine and also for several days after you stop taking it.*

This medicine may cause some people to become drowsy or less alert than they are normally. *Make sure you know how you react to this medicine before you drive, use machines, or do other jobs that require you to be alert.*

Dizziness, lightheadedness, or fainting may occur, especially when getting up from a lying or sitting position. Getting up slowly may help. If this problem continues or gets worse, check with your doctor.

Side effects of this Medicine

Along with its needed effects, a medicine may cause some unwanted effects. Although not all of these side effects appear very often, when they do occur they may require medical attention. Check with your doctor if any of the following side effects occur:

More common

Blurred vision	Irregular heartbeat (pounding, racing, skipping)
Constipation	Problems in urinating

Less common

Eye pain	Hallucinations (seeing, hearing, or feeling things that are not there)
Fainting	Shakiness
	Unusually slow pulse

Rare

Seizures	Sore throat and fever
Skin rash and itching	Yellowing of eyes and skin

LITHIUM (Systemic)

Lithium (LI-thee-um) is a medicine used in the treatment of certain mental and emotional conditions. Lithium is available only with your doctor's prescription.

Before Using This Medicine

In order to decide on the best treatment for your medical problem, your doctor should be told:

—if you are pregnant or if you intend to become pregnant while using this medicine.

—if you are breast-feeding an infant.

—if you have any of the following medical problems:

Heart disease	Severe infection
Kidney disease	Thyroid disease
Parkinson's disease	

—if you drink large amounts of coffee or tea.

—if you are on a low-salt diet.

—if you are now taking any of the following medicines or types of medicine:

Asthma medicine	Haloperidol
Caffeine	Potassium iodide
Chlorpromazine	Sodium bicarbonate (baking soda)
Diuretics (water pills, especially thiazide-type)	

Proper Use of This Medicine

Take this medicine exactly as directed. Do not take more of it, do not take it more often, and do not take it for a longer period of time than your doctor ordered.

Sometimes this medicine must be taken for 1 to several weeks before you begin to feel better.

While taking this medicine, *drink 2 or 3 quarts of water or other fluids each day*, and use a normal amount of table salt in your food, unless otherwise directed by your doctor.

Take this medicine immediately after meals or with food or milk to lessen stomach upset, unless otherwise directed by your doctor.

If you miss a dose of this medicine, take it as soon as possible unless it is 2 hours or less until your next scheduled dose. Do not double doses. Instead, go back to your regular dosing schedule. If you have any questions about this, check with your doctor.

Precautions While Using This Medicine

Your doctor should check your progress at regular visits to make sure that the medicine is working properly and that possible side effects are avoided.

This medicine may cause some people to become drowsy or less alert than they are normally. *Make sure you know how you react to this medicine before you drive, use machines, or do other jobs that require you to be alert.*

Use extra care in hot weather and during activities that cause you to sweat heavily, such as hot baths, saunas, or exercising. The loss of too much water and salt from your body may lead to serious side effects from this medicine.

Do not drink large amounts of caffeine-containing beverages, such as coffee, tea, or colas, while taking this medicine. Since lithium is lost from the body through the urine, the increased urine flow caused by caffeine may lessen the medicine's effect.

Side Effects of This Medicine

Along with its needed effects, a medicine may cause some unwanted effects. Although not all of these side effects appear very often, when they do occur they may require medical attention. Check with your doctor if any of the following side effects occur:

More common

Nausea and vomiting
Shakiness and tremor

Less common

Drowsiness	Swelling of feet and lower legs
Mental confusion	Weakness
Pains in lower Stomach	Slurred speech

Rare

Blurred vision	Jerking of arms and legs

Other side effects may occur which usually do not require medical attention. These side effects may go away during treatment as your body adjusts to the medicine. However, check with your doctor if any of the following side effects continue or are bothersome:

More common

Decreased sexual ability	Dry mouth
Diarrhea	Increased thirst
Dizziness	Increased urination

Less common

Skin eruption or rash

Signs of low thyroid function

Coldness of fingers and toes	Menstrual changes
Constipation	Muscle aches
Dry, puffy skin	Sleepiness
Headache	Tiredness
	Unusual weight gain

BENZTROPINE (Systemic)

Benztropine (BENZ-troe-peen) is a medicine used to treat Parkinson's disease, sometimes referred to as "shaking palsy." By improving muscle control, benztropine allows more normal movements of the body as the disease symptoms are reduced. Benztropine is available only with your doctor's prescription.

Before Using This Medicine

In order to decide on the best treatment for your medical problem, your doctor should be told:

—if you have any of the following medical problems:

Asthma	High blood pressure
Bronchitis	Intestinal blockage
Difficult urination	Kidney disease
Emphysema	Liver disease
Enlarged prostate	Myasthenia gravis
Glaucoma	Overactive thyroid
Hiatal hernia	Severe ulcerative colitis

—if you are taking any of the following medicines or types of medicine:

Amantadine	Medicine for diarrhea
Antacids	Medicine for Parkinson's disease
Antihistamines or medicine for hay fever, other allergies, or colds	Medicine for sleep
Haloperidol	Nerve medicine
Heart medicine	Sedatives or tranquilizers
	Ulcer medicine

—if you are now taking or have taken within the past 2 weeks monoamine oxidase (MAO) inhibitors such as:

Isocarboxazid	Phenelzine
Pargyline	Tranylcypromine

Proper Use of This Medicine

Take this medicine only as directed by your doctor To lessen stomach upset, take this medicine immediately after meals or with food, unless your doctor has told you to take it on an empty stomach.

If you miss a dose of this medicine, take it as soon as possible. If it is within 8 hours of your next dose, do not take the missed dose at all and do not double the next one. Instead, go back to your regular dosing schedule. If you have any questions about this, check with your doctor.

Precautions While Using This Medicine

This medicine will add to the effects of alcohol and other medicines that slow down the nervous system such as antihistamines or medicine for hay fever, other allergies, or colds; barbiturates; medicine for depression; medicine for seizures; narcotics; prescription pain medicine; sedatives, tranquilizers, or sleeping medicine. *Check with your doctor before taking any of the above while you are taking this medicine.*

Do not take this medicine within 1 hour of taking antacids or medicine for diarrhea. Taking them too close together will make benztropine less effective.

This medicine may cause your eyes to become more sensitive to light than they are normally. Wearing sunglasses may help lessen the discomfort from bright light.

This medicine may cause some people to become drowsy, dizzy, or less alert than they are normally. *Make sure you know how you react to this medicine before you drive, use machines, or do other jobs that require you to be alert.*

Benztropine will often reduce your tolerance of heat, since it makes you sweat less, causing your body temperature to increase. *Use extra care not to become overheated during exercise or hot weather while you are taking this medicine, as this could possibly result in heat stroke.*

Your mouth, nose, and throat may feel very dry while you are taking this medicine. *To help relieve mouth dryness, chew sugarless gum or dissolve bits of ice in your mouth.*

Check with your doctor if you develop intestinal problems such as constipation. This is especially important if you are taking other medicine while taking benztropine, because if the problems are not corrected serious complications may result.

Side Effects of This Medicine

Along with its needed effects, a medicine may cause some unwanted effects. Although not all of these side effects appear very often, when they do occur they may require medical attention. Check with your doctor if any of the following side effects occur:

More common

Constipation

Less common

Difficult urination

Rare

Eye pain
Skin rash

THIOXANTHENES *(Systemic)*

Applies to:
Chlorprothixene (klor-proe-THIX-een)
Thiothixene (thye-oh-THIX-een)

This medicine belongs to the general family of medicines known as thioxanthenes. It is used in the treatment of nervous, mental, and emotional conditions. This medicine is available only with your doctor's prescription.

Before Using This Medicine

In order to decide on the best treatment for your medical problem, your doctor should be told:

—if you have ever had any unusual reaction to other thioxanthene or phenothiazine medicines.

—if you have any of the following medical problems:

Alcoholism	Lung disease
Blood disease	Parkinson's disease
Glaucoma	Stomach ulcers
Heart or circulation disease	Prostate enlargement
Liver disease	Urination problems

—if you are now taking any of the following medicines or types of medicine:

Amphetamines	Guanethidine (high blood pressure medicine)
Anticonvulsants (seizure medicine)	Levodopa
Epinephrine	Ulcer medicine

—if you are now taking central nervous system (CNS) depressants such as:

Antihistamines or medicine for hay fever, other allergies, or colds	Sedatives, tranquilizers, or sleeping medicine
Barbiturates	Tricyclic antidepressants (medicine for depression)
Narcotics	
Prescription pain medicine	

—if you are now taking or have taken within the past 2 weeks monoamine oxidase (MAO) inhibitors such as:

Isocarboxazid	Phenelzine
Pargyline	Tranylcypromine

Proper Use of this Medicine

Do not take more of this medicine or take it more often than your doctor ordered. This is particularly important when it is given to children, since they may react very strongly to the effects of the medicine.

This medicine may be taken with food or a full glass (8 ounces) of water or milk to reduce stomach irritation.

Sometimes this medicine must be taken for several weeks before its full effect is reached in the treatment certain mental and emotional conditions.

If you miss a dose of this medicine, take it as soon as possible. If it is two hours or less until your next dose, do not take the missed dose at all and do not double the next one. Instead, go back to your regular dosing schedule. If you have any questions about this, check with your doctor.

Precautions While Using This Medicine

Your doctor should check your progress at regular visits, especially for the first few months you take this medicine.

Do not stop taking this medicine without first checking with your doctor. Your doctor may want you to reduce gradually the amount you are taking before stopping completely.

This medicine will add to the effects of alcohol and other medicines that slow down the nervous system such as: antihistamines or medicine for hay fever, other allergies, or colds; barbiturates; medicine for seizures; narcotics; prescription pain medicine; sedatives, tranquilizers, or sleeping medicine; or tricyclic antidepressants (medicine for depression). *Check with your doctor before taking any of the above while you are taking this medicine.*

This medicine may cause some people to become drowsy or less alert than they are normally, especially during the first few weeks the medicine is being taken. Even if you take this medicine only at bedtime, you may feel drowsy or less alert on arising. *Make sure you know how you react to this medicine before you drive, use machines, or do other jobs that require you to be alert.*

Dizziness, lightheadedness, or fainting may occur, especially when getting up from a lying or sitting position. Getting up slowly may help. If the problem continues or gets worse, check with your doctor.

Sometimes, patients may show signs of restlessness and excitement after taking this medicine. If this occurs, stop taking the medicine and check with your doctor.

This medicine will often make you sweat less, causing your body temperature to increase. Use extra care not to become overheated during exercise or hot weather while you are taking this medicine, since overheating could possibly result in heat stroke. Also, hot baths or saunas may make you feel dizzy or faint while you are taking this medicine.

A few people who take this medicine may become more sensitive to sunlight than they are normally. When you first begin taking this medicine, avoid too much sun or too much use of a sunlamp until you see how you react. If you have a severe reaction, check with your doctor.

Do not take this medicine within an hour of taking antacids or medicine for diarrhea. Taking them too close together may make this medicine less effective.

Side Effects of This Medicine

Along with its needed effects, a medicine may cause some unwanted effects. Although not all of these side effects appear very often, when they do occur

ANTIHISTAMINES (Systemic)

Applies to:
Azatadine (a-ZA-ta-deen)
Bromodiphenhydramine (broe-moe-dye-fen-HYE-dra-meen)
Brompheniramine (brome-fen-EER-a-meen)
Carbinoxamine (kar-bi-NOX-a-ameen)
Chlorpheniramine (klor-fen-EER-a-meen)
Dexchlorpheniramine (dex-klor-fen-EER-a-meen)
Dimethindene (dye-meth-IN-deen)
Diphenylpyraline (dye-fen-il-PEER-a-leen)
Doxylamine (doxe-ILL-a-meen)
Pyrilamine (peer-ILL-a-meen)
Tripelennamine (tri-pel-ENN-a-meen)
Triprolidine (trye-PROE-li-deen)

Does not apply to:
Cyproheptadine
Dimenhydrinate
Diphenhydramine
Hydroxyzine
Promethazine
Trimeprazine

Antihistamines are used to relieve or prevent the symptoms of hay fever and other types of allergy. Certain antihistamine preparations are available only with your doctor's prescription. Others are available without a prescription; however, your doctor may have special instructions on the proper dose of the medicine for your medical condition.

Before Using This Medicine

In order to decide on the best treatment for your medical problem, your doctor should be told:

—if you are breast-feeding an infant.

—if you have any of the following medical problems:

- Enlarged prostate
- Heart disease
- High blood pressure
- Increased eye pressure
- Overactive thyroid
- Stomach ulcer
- Urinary tract blockage

—if you are now taking any central nervous system (CNS) depressants such as:

- Barbiturates
- Medicine for seizures
- Narcotics
- Other antihistamines or medicine for hay or colds
- Prescription pain medicine
- Sedatives, tranquilizers, or sleeping medicine
- Tricyclic antidepressants (medicine for depression)

—if you are now taking or have taken within the past two weeks monoamine oxidase (MAO) inhibitors such as:

- Isocarboxazid
- Pargyline
- Phenelzine
- Tranylcypromine

Proper Use of This Medicine

Antihistamines are used to relieve or prevent the symptoms of your medical problem. Take them only as directed. Do not take more of them or take them more often than your doctor ordered.

Take this medicine with food or a glass of water or milk to lessen stomach irritation.

If you are taking the long-acting tablet form of this medicine, the tablets are to be swallowed whole. Do not break, crush, or chew before swallowing.

Do not give this medicine to premature or newborn infants, unless otherwise directed by your doctor.

Precautions While Using This Medicine

Antihistamines will add to the effects of alcohol and other medicines that slow down the nervous system, such as anesthetics, including dental anesthetics; tranquilizers; medicine for depression; narcotics; prescription pain medicine; medicine for seizures; sleeping medicine; sedatives; or medicine for hay fever, other allergies, or colds. *Check with your doctor before taking any of the above while you are taking this medicine.*

This medicine may cause some people to become drowsy or less alert than they are normally. Even if taken at bedtime, it may cause some people to feel drowsy or less alert on arising. *Make sure you know how you react to this medicine before you drive or do other jobs that require you to be alert.*

Side Effects of This Medicine

Along with its needed effects, a medicine may cause some unwanted effects. The following side effects may go away during treatment as your body adjusts to the medicine; however, check with your doctor if they continue or are bothersome:

More common

- Dizziness
- Drowsiness
- Thickening of the bronchial secretions
- Upset stomach or stomach pain

Less common or rare

- Blurred vision
- Difficult or painful urination
- Dryness of mouth, nose, and throat
- Headache
- Loss of appetite
- Nervousness, restlessness, or trouble in sleeping(especially in children)
- Skin rash
- Unusual increase in sweating
- Unusually fast heartbeat

Other side effects not listed above may also occur in some patients. If you notice any other effects, check with your doctor.

PHENOTHIAZINES (Systemic)

Applies to:
Acetophenazine (a-set-oh-FEN-a-zeen)
Butaperazine (byoo-ta-PAIR-a-zeen)
Carphenazine (kar-FEN-a-zeen)
Chlorpromazine (klor-PROE-ma-zeen)
Fluphenazine (floo-FEN-a-zeen)
Perphenazine (per-FEN-a-zeen)
Piperacetazine (pi-per-a-SET-a-zeen)
Prochlorperazine (proe-klor-PAIR-a-zeen)
Promazine (PROE-ma-zeen)
Thioridazine (thye-oh-RID-a-zeen)
Trifluoperazine (trye-floo-oh-PAIR-a-zeen)
Triflupromazine (trye-floo-PROE-ma-zeen)

Does *not* apply to:
Ethopropazine
Methdilazine
Methotrimeprazine
Promethazine
Propiomazine
Thiethylperazine
Thiopropazate
Trimeprazine

Phenothiazines (fee-noe-THYE-a-zeens) are a family of medicines used to treat nervous, mental, and emotional conditions; some are used also to control anxiety, nausea and vomiting, and severe hiccups. Phenothiazines are available only with your doctor's prescription.

Before Using this Medicine

In order to decide on the best treatment for your medical problem, your doctor should be told:

—if you have ever had any unusual reaction to any of the phenothiazine medicines.

—if you are pregnant or if you intend to become pregnant while using this medicine.

—if you are breast-feeding an infant.

—if you have any of the following medical problems:

Alcoholism	Lung Disease
Blood disease	Parkinson's disease
Glaucoma	Prostate enlargement
Heart or circulation disease	Stomach ulcers
Liver disease	Urination problems

—if you are now taking any of the following medicines or types of medicine:

Amphetamines	Guanethidine (high blood pressure medicine)
Anticonvulsants (seizure medicine)	Levodopa
Asthma medicine	Ulcer medicine
Epinephrine	

—if you are now taking central nervous system (CNS) depressants such as:

Antihistamines or medicine for hay fever, other allergies, or colds	Prescription pain medicine
Barbiturates	Sedatives, tranquilizers, or sleeping medicine
Narcotics	Tricyclic antidepressants (medicine for depression)

—if you are now taking or have taken within the past two weeks monoamine oxidase (MAO) inhibitors such as:

Isocarboxazid	Phenelzine
Pargyline	Tranylcypromine

Proper Use of This Medicine

Do not take more of this medicine or take it more often than your doctor ordered. This is particularly important when it is given to children, since they may react very strongly to the effects of the medicine.

Sometimes this medicine must be taken for several weeks before its full effect is reached in the treatment of certain mental and emotional conditions.

Do not stop taking this medicine without first checking with your doctor. Your doctor may want you to reduce gradually the amount you are taking before stopping completely.

If you miss a dose of this medicine and your dosing schedule is one dose to be taken:

Once a day— Take the missed dose as soon as possible. Then go back to your regular dosing schedule. But if you do not remember the missed dose until the next day, do not take it at all and do not double the next one. Instead, go back to your regular dosing schedule.

Two times a day— Take the missed dose as soon as possible. Then go back to your regular dosing schedule. However, if it is almost time for your next dose, do not take the missed dose at all and do not double the next one. Instead, go back to your regular dosing schedule.

More than two times a day— If you remember within an hour or so of the missed dose, take it right away. Then go back to your regular dosing schedule. But if you do not remember until later, do not take the missed dose at all and do not double the next one. Instead, go back to your regular dosing schedule.

If you have any questions about this, check with your doctor.

Precautions While Using This Medicine

Your doctor should check your progress at regular visits, especially for the first few months you take this medicine.

This medicine will add to the effects of alcohol and other medicines that slow down the nervous system

such as: antihistamines or medicine for hay fever, other allergies, or colds; barbiturates; medicine for seizures; narcotics; prescription pain medicine; sedatives, tranquilizers, or sleeping medicine; or tricyclic antidepressants (medicine for depression). *Check with your doctor before taking any of the above while you are taking this medicine.*

This medicine may cause some people to become drowsy or less alert than they are normally, especially during the first few weeks the medicine is being taken. Even if you take this medicine only at bedtime, you may feel drowsy or less alert on arising. *Make sure you know how you react to this medicine before you drive, use machines, or do other jobs that require you to be alert.*

Dizziness, lightheadedness, or fainting may occur, especially when getting up from a lying or sitting position. Getting up slowly may help. If the problem continues or gets worse, check with your doctor.

Sometimes, patients may show signs of restlessness and excitement after taking this medicine. If this occurs, stop taking the medicine and check with your doctor.

This medicine will often make you sweat less, causing your body temperature to increase. *Use extra care not to become overheated during exercise or hot weather while you are taking this medicine,* since overheating could possibly result in heat stroke. Also, hot baths or saunas may make you feel dizzy or faint while you are taking this medicine.

A few people who take this medicine may become more sensitive to sunlight than they are normally. When you first begin taking this medicine, avoid too much sun or too much use of a sunlamp until you see how you react. If you have a severe reaction, check with your doctor.

Side Effects of This Medicine

Along with its needed effects, a medicine may cause some unwanted effects. Although not all of these side effects appear very often, when they do occur they may require medical attention. Check with your doctor if any of the following side effects occur:

More common (occurring with increase of dosage)

Muscle spasms, especially of neck and back	Tic-like (jerky) movements of head, face, mouth, and neck
Restlessness	Trembling and shaking of hands and fingers
Shuffling walk	

Less common

Fainting	Skin rashes
Fine, worm-like movements of tongue	

Rare

Eye problems	Yellowing of eyes and skin
Sore throat and fever	

Other side effects may occur which usually do not require medical attention. These side effects may go away during treatment as your body adjusts to the medicine. However, check with your doctor if any of the following side effects continue or are bothersome:

More common

Blurred vision	Dry mouth
Constipation	Increased sensitivity of skin to sun
Decreased sweating	Nasal congestion
Dizziness	Unusually fast heartbeat
Drowsiness	

Less common

Changes in menstrual period	Difficult urination
Decreased sexual ability	Swelling of breasts

This medicine may cause the urine to turn pinkish red to red or reddish brown; this is harmless and may be expected. If you have questions about this, ask your doctor or pharmacist.

Other side effects not listed above may also occur in some patients. If you notice any other effects, check with your doctor.

ADDITIONAL INFORMATION

For patients taking this medicine by mouth

This medicine may be taken with food or a full glass (8 ounces) of water or milk to reduce stomach irritation.

Do not take this medicine within an hour of taking antacids or medicine for diarrhea. Taking them too close together may make this medicine less effective.

If you are taking a liquid form of this medicine, try to avoid getting it on your skin or clothing because it may cause a skin rash or other irritation.

If your medicine comes in a dropper bottle, it must be diluted before you take it. Just before taking, measure each dose with the specially marked dropper and dilute it in ½ glass (4 ounces) of tomato or fruit juice, water, soup, coffee, tea, milk, or carbonated beverage.

For patients taking the extended-release tablet form of this medicine

The extended-release tablets or capsules are to be swallowed whole. Do not break, crush, or chew before swallowing.

For patients using the suppository form of this medicine

How to insert suppository: First remove the foil wrapper and moisten the suppository with water. Lie down on side and push the suppository well up into the rectum with finger.

If the suppository is too soft to insert because of storage in a warm place, before removing the foil wrapper chill the suppository in the refrigerator for 30 minutes or run cold water over it.

For patients receiving this medicine by injection

The effects of the long-acting injection form of this medicine may last for up to 6 weeks. The precautions and side effects information for this medicine applies during this period of time.

Article 9. Patient Rights.

Section	Section
825 Patient rights: Medical	845 Confidential records
830 Prohibition of experimental treatments	850 Expungement of records
835 Civil rights not impaired	855 Posting of rights
840 Right to privacy and personal possessions	860 Notices in languages other than English
	865 Discrimination prohibited

Sec. 47.30.825. Patient rights: Medical. Each patient who is receiving services under AS 47.30.660 — 47.30.915 has the following rights:

(1) A patient, or his counsel, guardian, or the adult designated in accordance with AS 47.30.725 if the patient is mentally incapable of participation, is entitled to participate in formulating his individualized treatment plan and to participate in the evaluation process as much as possible, at minimum to the extent of requesting specific forms of therapy, inquiring why specific therapies are or are not included in his treatment program, and being informed as to his present medical and psychological condition and prognosis. The treating physician may not withhold any of this information from the patient.

(2) A patient has the right to know the name of medication that he is asked to take, what its purpose is, and what side effects may occur with this medication. If the patient is incapable of understanding the purpose and side effects of the medication, the treating physician or mental health professional shall explain it to the patient's counsel or guardian or, if there is no guardian, the adult designated in accordance with AS 47.30.725.

(c) A locked quiet room, or other form of physical restraint, may not be used, except as provided in this paragraph, unless a patient is likely to physically harm himself or others unless restrained. The form of restraint used shall be that which is in the patient's best interest and which constitutes the least restrictive alternative available. When practicable, the patient shall be consulted as to his preference among forms of adequate, medically advisable restraints including medication, and his preference shall be considered. Nothing in this section is intended to limit the right of staff to use a quiet room at the patient's request or with his knowing concurrence when considered in the best interests of the patient. Patients placed in a quiet room or other physical restraint shall be checked at least every 15 minutes or more often if good medical practice so indicates. Patients in a quiet room must be visited by a staff member at least once every hour and must be given adequate food and drink and access to bathroom facilities. At no time may a patient be kept in a quiet room or other form of physical restraint against his will longer than necessary to accomplish the purposes set out in this paragraph. All uses of a quiet room or other restraint shall be recorded in the patient's medical record, the information including but not limited to the reasons for its use, the duration [illegible]

(4) A patient has the right to be free from unnecessary or excessive medication. Psychotropic medication shall be administered only on the order of a licensed physician when the physician determines that such medication is in the best interest of the patient or will prevent serious harm to others.

(5) A patient capable of giving informed consent has the absolute right to accept or refuse electro-convulsive therapy or aversive conditioning. A patient who lacks substantial capacity to make this decision may not be given such therapy or conditioning without a court order.

(6) In no event may treatment include psychosurgery, lobotomy, or other comparable form of treatment without specific informed consent of the patient, including a minor unless he is clearly too young or disabled to give an informed consent in which case the consent of his legal guardian is required. In addition, such treatment may not be given without a court order after hearing compatible with full due process.

(7) When, in the written opinion of a patient's attending physician, a true medical emergency exists and a surgical operation is necessary to save the life, physical health, eyesight, hearing or member of the patient, the professional person in charge, or his professional designee, may give consent to the surgical operation if time will not permit obtaining the consent of the proper relatives or guardian or appropriate judicial authority. However, an operation may not be authorized if the patient is not a minor and knowingly withholds consent on religious grounds.

(8) A patient upon discharge shall be given a discharge plan specifying the kinds and amount of care and treatment he should have after discharge and such other steps as he might take to benefit his mental health after leaving the facility. The patient shall have the right to participate, as far as practicable, in formulating his discharge plan. A copy of the plan shall be given to the patient, his guardian, the court if appropriate, and any follow-up agencies. (§ 1 ch 84 SLA 1981)

Sec. 47.30.830. Prohibition of experimental treatments. (a) Experimental treatments involving any significant risk of physical or psychological harm may not be administered to a patient.

(b) If the personnel of an evaluation or treatment facility are uncertain as to whether a proposed treatment is experimental or is experimental as applied to a particular patient or would involve a significant risk of mental or physical harm to the patient, the matter may be referred to the commissioner for a determination. The patient, his attorney, his guardian, if any, and an adult designated by the patient, shall, simultaneously with the referral to the commissioner, be provided with copies of all the documents by which the referral is made and shall have the opportunity to provide evidence to the commissioner on the question.

(c) A determination by the commissioner that a treatment is experimental and entails significant risks of mental or physical harm is binding upon all persons involved in the administration of treatment to a patient. (§ 1 ch 84 SLA 1981)

Sec. 47.30.835. Civil rights not impaired. (a) A person may not deny to a person who is undergoing evaluation or treatment under AS 47.30.660 — 47.30.915 a civil right, including but not limited to, the right to free exercise of religion and the right to dispose of property, sue and be sued, enter into contractual relationships, and vote. A person who violates this subsection commits the crime of interference with constitutional rights under AS 11.76.110.

(b) Court-ordered evaluation or treatment under AS 47.30.660 — 47.30.915 is not a determination of legal incapacity under AS 13.26.005 — 13.26.330. (§ 1 ch 84 SLA 1981)

Sec. 47.30.840. Right to privacy and personal possessions. A person undergoing evaluation or treatment under AS 47.30.660 — 47.30.915 shall

(1) not be photographed without his consent and that of his guardian if a minor, except that he may be photographed upon admission to a facility for identification and for administrative purposes of the facility; all photographs shall be confidential and may only be released by the facility to the patient or his designee unless a court orders otherwise;

(2) at the time of admission to an evaluation or treatment facility, have reasonable precautions taken by the staff to inventory and safeguard his personal property; a copy of the inventory signed by the staff member making it shall be given to the patient and made available to his attorney and any other person authorized by the patient to inspect the document;

(3) have access to an individual storage space for his private use while undergoing evaluation or treatment;

(4) be permitted to wear his own clothing, to keep and use his own personal possessions including his toilet articles if they are not considered unsafe for him or other patients who might have access to them, and to keep and be allowed to spend a reasonable sum of his own money for his own needs and comfort;

(5) be allowed to have visitors at reasonable times;

(6) have ready access to letter writing materials, including stamps, and have the right to send and receive unopened mail;

(7) have reasonable access to a telephone, both to make and receive confidential calls. (§ 1 ch 84 SLA 1981)

Sec. 47.30.845. Confidential records. Information and records obtained in the course of a screening investigation, evaluation, examination, or treatment are confidential and are not public records, except as the requirements of a hearing under AS 47.30.660 — 47.30.915 may necessitate a different procedure. Information and records may be copied and disclosed under regulations established by the department only to

(1) a physician or a provider of health, mental health, or social and welfare services involved in caring for, treating, or rehabilitating the patient;

(2) the patient or an individual to whom the patient has given written consent to have information disclosed;

(3) a person authorized by a court order;

(4) a person doing research or maintaining health statistics, if the anonymity of the patient is assured, and the facility recognizes the project as a bona fide research or statistical undertaking;

(5) the division of corrections in a case in which a prisoner confined to the state prison is a patient in the state hospital on authorized transfer either by voluntary admission or by court order;

(6) a governmental or law enforcement agency when necessary to secure the return of a patient who is on unauthorized absence from a facility where the patient was undergoing evaluation or treatment. (§ 1 ch 84 SLA 1981)

Sec. 47.30.850. Expungement of records. Following the discharge of a respondent from a treatment facility or the issuance of a court order denying a petition for commitment, the respondent may at any time move to have all court records pertaining to the proceedings expunged on condition that he file a full release of all claims of whatever nature arising out of the proceedings and the statements and actions of persons and facilities in connection with the proceedings. (§ 1 ch 84 SLA 1981)

Sec. 47.30.855. Posting of rights. The rights set out in AS 47.30.825 — 47.30.855 shall be prominently posted in all treatment facilities in places accessible to all patients. A patient who does not understand English shall have his rights explained to him in a language he understands. (§ 1 ch 84 SLA 1981)

Sec. 47.30.860. Notices in languages other than English. When practicable all documents and notices required by AS 47.30.660 — 47.30.915 to be served on a respondent, or on his parents, guardian or adult designee, shall be explained in a language the person understands if he is not competent in English. (§ 1 ch 84 SLA 1981)

Sec. 47.30.865. Discrimination prohibited. (a) The fact that a person is or has been evaluated or treated for mental illness may not be a basis for discrimination in

(1) seeking employment;

(2) resuming or continuing professional practice or previous occupation;

(3) obtaining or retaining housing;

(4) obtaining or retaining licenses or permits, including but not limited to a motor vehicle license, motor vehicle operator's and chauffeur's license, and a professional or occupational license.

(b) Applications for positions, licenses, and housing may not contain requests for information concerning evaluation or treatment experiences.

(c) It is unlawful for a person to aid, abet, incite, compel, or coerce the doing of an act forbidden under this section or to attempt to do so. (§ 1 ch 84 SLA 1981)

Article 10. Miscellaneous Provisions.

Section	
870	Transportation
875	Nonresident patients
880	Interstate compact
885	Rights outside state
890	Provision for personal needs upon discharge
895	Disposition of personal property and unclaimed money
900	Disposition of money and personal property subject to claim
905	Fees and expenses for judicial proceedings
910	Liability for expense of placement in a treatment facility
915	Definitions

Sec. 47.30.870. Transportation. When a person is to be involuntarily committed to a facility, the department shall arrange, and is authorized to pay for, the person's necessary transportation to the designated facility accompanied by appropriate persons and if necessary by a peace officer. The department shall pay return transportation of a person, his escorts, and if necessary a peace officer, after a determination that the person is not committable, at the end of a commitment period, or at the end of a voluntary stay at a treatment facility following an evaluation conducted in accordance with AS 47.30.715. When advisable, one or more relatives or friends shall be permitted to accompany the person. The department may pay necessary travel, housing, and meal expenses incurred by one relative or friend in accompanying the person if the department determines that the person's best interests require that he be accompanied by the relative or friend and the relative or friend is indigent. (§ 1 ch 84 SLA 1981)

Sec. 47.30.875. Nonresident patients. (a) The admission papers of a person who is admitted to a treatment facility under AS 47.30.660 — 47.30.915 shall include a statement as to his residence. The department may return a patient who is not a resident of the state to the state of his residence with court approval if the person has been committed. If the state in which he has residence does not accept him as a patient, the person shall be treated as a resident of this state under the provisions of AS 47.30.660 — 47.30.915.

(b) To facilitate the return of nonresident patients the department may enter into a reciprocal agreement or compact with another state providing for the prompt return under appropriate supervision of residents of that state who are mentally ill. A mentally ill resident of this state who has been placed in a facility outside this state may be admitted with the approval of the department to a treatment facility in the state designated by the department. The department may enter into reciprocal agreements or contracts with another state providing for custody, care or treatment, or return of mentally ill residents of this state by the other state and for the custody and care or treatment of mentally ill residents of that state by this state on a reimbursable basis. A resident of this state who has been committed in another state and is returned in accordance with this section shall, within 72 hours of his admission to the designated facility, be examined. After examination the mental health professional in charge shall release him or shall petition for involuntary commitment as prescribed in AS 47.30.740.

(c) In taking action under (a) and (b) of this section, consideration shall be given to the best interests of the patient, particularly to the relationship of the patient to his family, legal guardian, or friends to maintain relationships and encourage visits beneficial to the patient. (§ 1 ch 84 SLA 1981)

Sec. 47.30.880. Interstate compact. This state ratifies and adopts by reference "The Interstate Compact on Mental Health" consisting of 11 articles approved on September 30, 1955, by the Northeast State Governments Conference on Mental Health. The department is designated as compact administrator with full power to carry out the purpose of the compact and to make all necessary regulations to implement the compact. (§ 119(e) ch 87 SLA 1957; added by § 11 ch 127 SLA 1959; AS 47.30.180)

Editor's notes. — This section derives from former AS 47.30.180 and was renumbered by the revisor of statutes under AS 01.05.031 to accord with the revision of the mental health statutes in Chapter 84, SLA 1981.

Sec. 47.30.885. Rights outside state. Nothing in AS 47.30.660 — 47.30.915 alters or impairs the application or availability to a patient, while hospitalized in another state under contractual arrangements entered in accordance with AS 47.30.660 — 47.30.915, of the rights, remedies or safeguards provided by the laws of this state. (§ 1 ch 84 SLA 1981)

Sec. 47.30.890. Provision for personal needs upon discharge. The department shall insure that

(1) a patient is not discharged from a treatment facility without suitable clothing; and

(b) The petition required in (a) of this section shall allege that the respondent is reasonably believed to present a likelihood of serious harm to himself or others or is gravely disabled as a result of mental illness and shall specify the factual information on which that belief is based including the names and addresses of all persons known to the petitioner who have knowledge of those facts through personal observation. (§ 1 ch 84 SLA 1981)

Sec. 47.30.705. Emergency detention for evaluation. A peace officer who has probable cause to believe that a person is gravely disabled or is suffering from mental illness and is likely to cause serious harm to himself or others of such immediate nature that considerations of safety do not allow initiation of involuntary commitment procedures set out in AS 47.30.700, may cause the person to be taken into custody and delivered to the nearest evaluation facility. A correctional facility may be used as an emergency evaluation facility if an evaluation facility is not available. Upon arrival at the evaluation facility, the peace officer shall complete an application for examination of the person in custody and he interviewed by a mental health professional at the facility. (§ 1 ch 84 SLA 1981)

Sec. 47.30.710. Examination. (a) A respondent who is delivered under AS 47.30.700 to 47.30.705 for emergency examination and treatment to an evaluation facility shall be examined and evaluated as to his mental and physical condition by a mental health professional and by a physician within 24 hours after arrival at the facility.

(b) If the mental health professional who performs the emergency examination has reason to believe that the respondent is (1) mentally ill and that condition causes the respondent to be gravely disabled or to present a likelihood of serious harm to himself or others, and (2) is in need of care or treatment, the mental health professional may hospitalize him, or arrange for hospitalization, on an emergency basis. If a judicial order has not been obtained under AS 47.30.700, the mental health professional shall apply for an ex parte order authorizing hospitalization for evaluation. (§ 1 ch 84 SLA 1981)

Editor's notes. — The word "respondent" was substituted for the word "person" in the first sentence of subsection (a) by the revisor of statutes pursuant to AS 01.05.031.

Sec. 47.30.715. Acceptance of order. When a facility receives a proper order for evaluation, it must accept the order and the respondent for an evaluation period not to exceed 72 hours. The facility shall promptly notify the court of the date and time of the respondent's arrival. The court shall set a date, time and place for a 21 day commitment hearing, to be held if needed within 72 hours after the respondent's arrival, and the court shall notify the facility, the respondent, his attorney, and the prosecuting attorney of the hearing arrangements. Evaluation personnel, when used, shall similarly notify the court of the date and time when they first met with the respondent. (§ 1 ch 84 SLA 1981)

Sec. 47.30.720. Release before expiration of 72-hour period. If at any time in the course of the 72-hour period the mental health professionals conducting the evaluation determine that the respondent does not meet the standards for commitment specified in AS 47.30.700, the respondent shall be discharged from the facility or the place of evaluation by evaluation personnel and the petitioner and the court so notified. (§ 1 ch 84 SLA 1981)

Sec. 47.30.725. Commitment proceeding rights; notification. (a) When a respondent is detained for evaluation under AS 47.30.660 – 47.30.915, he shall be immediately notified orally and in writing of his rights under this section. Notification shall be in a language understood by the respondent. His guardian, if any, and if the respondent requests, an adult designated by the respondent, shall also be notified of the respondent's rights under this section.

(b) Unless a respondent is released or voluntarily admits himself for treatment within 72 hours of his arrival at the facility or, if he is evaluated by evaluation personnel, within 72 hours from the beginning of his meeting with evaluation personnel, he is entitled to a court hearing to be set for not later than the end of that 72-hour period to determine whether there is cause to detain him after the 72 hours have expired for up to an additional 21 days on the grounds that he is gravely disabled or mentally ill and as a result presents a likelihood of serious harm to himself or others. The facility or evaluation personnel shall give notice to the court of the releases and voluntary admissions under AS 47.30.700 – 47.30.820.

(c) The respondent has a right to communicate immediately, at the department's expense, with his guardian, if any, or an adult designated by the respondent and the attorney designated in the ex parte order, or an attorney of the respondent's choice.

(d) The respondent has the right to be represented by an attorney, to present evidence, and to cross-examine witnesses who testify against him at the hearing.

(e) The respondent has the right to be free of the effects of medication and other forms of treatment to the maximum extent possible before the 21 day commitment hearing; however, the facility or evaluation personnel may treat him with medication under prescription by a licensed physician or by a less restrictive alternative of his preference if, in the opinion of a licensed physician in the case of medication, or of a mental health professional in the case of alternative treatment, the treatment is necessary to

(1) prevent bodily harm to the respondent or others;

(2) prevent such deterioration of the respondent's mental condition that subsequent treatment might not enable him to recover; or

(3) allow the respondent to prepare for and participate in the proceedings.

(f) A respondent, if he is represented by counsel, may waive, orally or in writing, the 72-hour time limit on the 21-day commitment hearing and have the hearing set for a date no more than seven calendar days after his arrival at the facility. The respondent's counsel shall immediately notify the court of the waiver. (§ 1 ch 84 SLA 1981)

Sec. 47.30.730. Procedure for 21-day commitment; petition for commitment. (a) In the course of the 72-hour evaluation period, a petition for commitment to a treatment facility may be filed in court. The petition must be signed by two mental health professionals who have examined the respondent, one of whom is a physician. The petition must

(1) allege that the respondent is mentally ill and as a result is likely to cause harm to himself or others or is gravely disabled;

(2) allege that the evaluation staff has considered but has not found that there are any less restrictive alternatives available that would adequately protect the respondent or others; or, if a less restrictive involuntary form of treatment is sought, specify the treatment and the basis for supporting it;

(3) allege with respect to a gravely disabled respondent that there is reason to believe that the respondent's mental condition could be improved by the course of treatment sought;

(4) allege that a specified treatment facility or less restrictive alternative that is appropriate to the respondent's condition has agreed to accept the respondent;

(5) allege that the respondent has been advised of the need for, but has not accepted, voluntary treatment, and request that the court commit the respondent to the specified treatment facility or less restrictive alternative for a period not to exceed 21 days;

(6) list the prospective witnesses who will testify in support of commitment or involuntary treatment;

(7) list the facts and specific behavior of the respondent supporting the allegation in (1) of this subsection.

(b) A copy of the petition shall be served on the respondent, his attorney, and his guardian, if any, before the 21-day commitment hearing. (§ 1 ch 84 SLA 1981)

Sec. 47.30.735. 21-day commitment. (a) Upon receipt of a proper petition for commitment, the court shall hold a hearing at the date and time previously specified according to procedures set out in AS 47.30.715.

(b) The hearing shall be conducted in a physical setting least likely to have a harmful effect on the mental or physical health of the respondent, within practical limits. At the hearing, in addition to other rights specified in AS 47.30.660 — 47.30.915, the respondent has the right

(1) to be present at the hearing; this right may be waived only with the respondent's informed consent; if the respondent is incapable of giving informed consent, the respondent may be excluded from the hearing only if the court, after hearing, finds that the incapacity exists and that there is a substantial likelihood that the respondent's presence at the hearing would be severely injurious to his mental or physical health;

(2) to view and copy all petitions and reports in the court file of his case;

(3) to have the hearing open or closed to the public as he elects;

(4) to be proceeded against according to the rules of evidence applicable to civil proceedings;

(5) to have an interpreter if he does not understand English;

(6) to present evidence on his behalf;

(7) to cross-examine witnesses who testify against him;

(8) to remain silent.

(c) At the conclusion of the hearing the court may commit the respondent to a treatment facility for not more than 21 days if it finds, by clear and convincing evidence, that the respondent is mentally ill and as a result is likely to cause harm to himself or others or is gravely disabled.

(d) If the court finds that there is a viable less restrictive alternative available and that the respondent has been advised of and refused voluntary treatment through the alternative, the court may order the less restrictive alternative treatment for not more than 21 days if the program accepts the respondent.

(e) The court shall specifically state to the respondent, and give him written notice, that if commitment or other involuntary treatment beyond the 21 days is to be sought, the respondent shall have the right to a full hearing or jury trial. (§ 1 ch 84 SLA 1981)

Sec. 47.30.740. Procedure for 90-day commitment following 21-day commitment. (a) At any time during the respondent's 21-day commitment, the professional person in charge, or his professional designee, may file with the court a petition for a 90-day commitment of that respondent. The petition must include all material required under AS 47.30.730(a) except that references to "21 days" shall be read as "90 days"; and

(1) allege that the respondent has attempted to inflict or has inflicted serious bodily harm upon himself or another since his acceptance for evaluation, or that he was committed initially as a result of conduct in which he attempted or inflicted serious bodily harm upon himself or another, or that he continues to be gravely disabled, or that he demonstrates a current intent to carry out plans of serious harm to himself or another;

(2) allege that the respondent has received appropriate and adequate care and treatment during his 21-day commitment;

(3) be verified by the professional person in charge, or his professional designee, during the 21-day commitment.

(b) The court shall have copies of the petition for 90-day commitment served upon the respondent, his attorney, and his guardian, if any. The petition for 90-day commitment and proofs of service shall be filed with the clerk of the court, and a date for hearing shall be set, by the end of the next judicial day, for not later than five judicial days from the date of filing of the petition. The clerk shall notify the respondent, his attorney, and the petitioner of the hearing date at least three judicial days in advance of the hearing.

(c) Findings of fact relating to the respondent's behavior made at a 21-day commitment hearing under AS 47.30.735 shall be admitted as evidence and may not be rebutted except that newly discovered evidence may be used for the purpose of rebutting the findings. (§ 1 ch 84 SLA 1981)

Sec. 47.30.745. 90-day commitment hearing rights. (a) A respondent subject to a petition for 90-day commitment has, in addition to the rights specified elsewhere in AS 47.30.350 — 47.30.915, or otherwise applicable, the rights enumerated in this section. Written notice of these rights shall be served on the respondent, his attorney, his guardian, if any, and may be served on an adult designated by the respondent at the time the petition for 90-day commitment is served. An attempt shall be made by oral explanation to insure that the respondent understands the rights enumerated in the notice. If the respondent does not understand English, the explanation shall be given in a language he understands.

(b) Unless the respondent is released or voluntarily admits himself following the filing of a petition and before the hearing, he is entitled to a judicial hearing within five judicial days of the filing of the petition as set out in AS 47.30.740(b) to determine if he is mentally ill and as a result is likely to cause harm to himself or others, or if he is gravely disabled. If the respondent voluntarily admits himself following the filing of the petition, the voluntary admission constitutes a waiver of any hearing rights under AS 47.30.740 or under AS 47.30.685. If at any time during the respondent's voluntary admission under this subsection, the respondent submits to the facility a written notice of intent to leave, the professional person in charge may file with the court a petition for 120-day commitment of the respondent under AS 47.30.770. The 120-day commitment hearing shall be scheduled for a date not earlier than 90 days after the respondent's voluntary admission.

(c) The respondent is entitled to a jury trial upon request filed with the court if the request is made at least two judicial days before the hearing. If the respondent requests a jury trial, the hearing may be continued for no more than 10 calendar days. The jury shall consist of six persons.

(d) If a jury trial is not requested, the court may still continue the hearing at the respondent's request for no more than 10 calendar days.

(e) The respondent has a right to retain an independent licensed physician or other mental health professional to examine him and to testify on his behalf. Upon request by an indigent respondent, the court shall appoint an independent licensed physician or other mental health professional to examine him and testify on his behalf. The court shall consider an indigent respondent's request for a specific physician or mental health professional. A motion for the appointment may be filed in court at any reasonable time before the hearing and shall be acted upon promptly. Reasonable fees and expenses for expert examiners shall be determined by the rules of court.

(f) The proceeding shall in all respects be in accord with constitutional guarantees of due process and, except as otherwise specifically provided in AS 47.30.700 — 47.30.915, the rules of evidence and procedure in civil proceedings.

(g) Until the court issues a final decision, the respondent shall continue to be treated at the treatment facility unless the petition for 90-day commitment is withdrawn. If no decision has been made within 20 days of filing of the petition, not including extensions of time due to jury trial or other requests by the respondent, he shall be released. (§ 1 ch 84 SLA 1981)

Sec. 47.30.750. Conduct of hearing. The hearing under AS 47.30.745 shall be conducted in the same manner, and with the same rights for the respondent, as set out in AS 47.30.735(b). (§ 1 ch 84 SLA 1981)

Editor's notes. — The word "under AS 47.30.745" was added following "hearing" by the revisor of statutes pursuant to AS 01.05.031.

Sec. 47.30.755. Court order. (a) After the hearing and within the time limit specified in AS 47.30.745, the court may commit the respondent to a treatment facility for no more than 90 days if the court or jury finds by clear and convincing evidence that the respondent is mentally ill and as a result is likely to cause harm to himself or others, or is gravely disabled.

(b) If the court finds that there is a less restrictive alternative available and that the respondent has been advised of and refused voluntary treatment through the alternative, the court may order the less restrictive alternative treatment after acceptance by the program of the respondent for a period not to exceed 90 days. (§ 1 ch 84 SLA 1981)

Sec. 47.30.760. Placement at closest facility. Treatment shall always be available at a state-operated hospital; however, if space is

(5) that patients be informed of their legal rights and be informed of and allowed to participate in their treatment program as much as possible;

(6) that persons who are mentally ill but not dangerous to others be committed only if there is a reasonable expectation of improving their mental condition. (§ 1 ch 84 SLA 1981)

Editor's notes. — The parenthetical expression in the first sentence was added by the revisor of statutes pursuant to AS 01.05.031

Sec. 47.30.660. Powers and duties of department. The department is the mental health authority of the state and shall

(1) administer a comprehensive program for the prevention of mental illness and the care and treatment of the mentally ill, including inpatient and outpatient care and treatment and the procurement of services of specialists or other persons on a contractual or other basis;

(2) take the actions and undertake the obligations which are necessary to participate in federal grants-in-aid programs and accept federal or other financial aid from whatever sources for the study, examination, care, and treatment of the mentally ill;

(3) administer AS 47.30.660 — 47.30.915;

(4) designate, operate, and maintain treatment facilities equipped and qualified to provide inpatient and outpatient care and treatment for the mentally ill;

(5) provide for the placement of mentally ill patients in designated treatment facilities;

(6) enter into arrangements with governmental agencies for the care or treatment of the mentally ill in facilities of the governmental agencies in the state or in another state;

(7) enter into contracts with treatment facilities for the custody and care or treatment of the mentally ill;

(8) enter into contracts which incorporate safeguards consistent with AS 47.30.660 — 47.30.915 and the preservation of the civil rights of the patients with another state for the custody and care or treatment of patients previously committed from this state under 48 U.S.C., sec. 46 et seq., and P.L. 830, 84th Congress, 2nd Session, 70 Stat. 709;

(9) prescribe the form of applications, records, reports, requests for release, and consents to medical or psychological treatment required by AS 47.30.660 — 47.30.915;

(10) require reports from the head of a treatment facility concerning the care of patients;

(11) visit each treatment facility at least annually to review methods of care or treatment for patients;

(12) investigate complaints made by a patient or an interested party on behalf of a patient;

(13) delegate upon mutual agreement to another officer or agency of it, or a political subdivision of the state, or a treatment facility designated, any of the duties and powers imposed upon it by AS 47.30.660 — 47.30.915; and

(14) adopt regulations to implement the provisions of AS 47.30.660 — 47.30.915. (§ 1 ch 84 SLA 1981)

Editor's notes. — Section 6, ch 84, SLA 1981, provided "Except as provided in this Act, the provisions of AS 47.30.660 — 47.30.915 enacted by sec. 1 of this Act do not in themselves impair any action taken in a proceeding pending under statutes in effect before October 1, 1981, nor do they apply retroactively to terminate the detention of a person previously committed under statutes in effect before October 1, 1981. However, 90 days after October 1, 1981, the provisions of this Act apply to all persons committed under statutes in effect before October 1, 1981."

Article 7. Voluntary Admission for Treatment.

Section

670 Standards for voluntary admission
675 Notice of rights
680 Discharge of voluntary patients
685 Notice of intent to leave facility; commitment
690 Admission of minors under 14 years of age
695 Notice of request for release of minors under 14 years of age from detention and commitment

Editor's notes. — Section 6, ch 84, SLA 1981, provided "Except as provided in this Act, the provisions of AS 47.30.660 — 47.30.915 enacted by sec. 1 of this Act do not in themselves impair any action taken in a proceeding pending under statutes in effect before October 1, 1981, nor do they apply retroactively to terminate the detention of a person previously committed under statutes in effect before October 1, 1981. However, 90 days after October 1, 1981, the provisions of this Act apply to all persons committed under statutes in effect before October 1, 1981."

Sec. 47.30.670. Standards for voluntary admission. A person 14 years of age or older may be voluntarily admitted to a treatment facility if he is suffering from mental illness and he voluntarily signs the admission papers. (§ 1 ch 84 SLA 1981)

Sec. 47.30.675. Notice of rights. (a) Upon the application of a person for voluntary admission, or at the time a person admitted under AS 47.30.690 reaches the age of 14, he shall be given a copy of the following documents which shall be explained to him as necessary:

(1) notice of rights as set out in AS 47.30.825 — 47.30.865 and an explanation of any document served upon him; and

(2) notice that should he desire to leave at a time when the treatment facility determines that he is mentally ill and as a result is likely to cause serious harm to himself or others or is gravely disabled, the facility could initiate commitment proceedings against him.

(b) If an applicant for voluntary admission does not understand English, the explanation shall be given in a language he understands. (§ 1 ch 84 SLA 1981)

Sec. 47.30.680. Discharge of voluntary patients. A patient who no longer meets the standards established in AS 47.30.670 shall be discharged from the treatment facility. (§ 1 ch 84 SLA 1981)

Sec. 47.30.685. Notice of intent to leave facility; commitment. A voluntary patient who is 14 years of age or older and who desires to leave a treatment facility must submit to the facility a written notice of intent to leave on a form provided to him by the facility. Upon immediate investigation, the patient shall be evaluated in writing and discharged immediately or given written notice that involuntary commitment proceedings will be initiated against him. The treatment facility may detain the patient for no more than 48 hours after receipt of the patient's notice of intent to leave in order to initiate involuntary commitment proceedings. (§ 1 ch 84 SLA 1981)

Sec. 47.30.690. Admission of minors under 14 years of age. (a) A minor under the age of 14 may be admitted for 21 days evaluation, diagnosis, and treatment at a designated treatment facility if his parent or guardian signs the admission papers and if, in the opinion of the professional person in charge,

(1) he is gravely disabled or is suffering from mental illness and as a result he is likely to cause serious harm to himself or others;

(2) there is no less restrictive alternative available for his treatment; and

(3) there is reason to believe that the patient's mental condition could be improved by the course of treatment.

(b) The minor may be released by the treatment facility at any time during the 21 day period if the professional person in charge or his designated mental health professional determines the minor would no longer benefit from continued hospitalization and the minor is not dangerous. The minor's parents or his guardian must be notified by the facility of the contemplated release and that, unless they initiate involuntary commitment proceedings, the minor will be released. (§ 1 ch 84 SLA 1981)

Sec. 47.30.695. Notice of request for release of minors under 14 years of age from detention and commitment. The parent or guardian of a minor who is less than 14 years of age may request and obtain immediate release of the minor at any time, unless as the result of mental illness, the minor is likely to cause serious harm to himself or others. (§ 1 ch 84 SLA 1981)

Article 8. Involuntary Admission for Treatment.

Section		Section	
700	Initiation of involuntary commitment procedures	760	Placement at closest facility
705	Emergency detention for evaluation	765	Appeal
710	Examination	770	Additional 120 day commitment
715	Acceptance of order	775	Commitment of minors
720	Release before expiration of 72 hour period	780	Early discharge
725	Commitment proceeding rights; notification	785	Authorized absences
730	Procedure for 21 day commitment; petition for commitment	790	Return from unauthorized absence
735	21 day commitment	795	Involuntary outpatient care for committed persons
740	Procedure for 180 day commitment following 21 day commitment	800	Conversion of involuntary outpatient treatment to inpatient commitment
745	90 day commitment hearing rights	805	Computing periods of time
750	Conduct of hearing	810	Habeas corpus
755	Court order	815	Limitation of liability, penalty for false application

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Editor's notes. Section 1 ch 84 SLA 1981, provided: "Except as provided in this Act, the provisions of AS 47.30.660 — 47.30.815 enacted by sec. 1 of this Act do not in themselves impair any action taken in a proceeding pending under statutes in effect before October 1, 1981, nor do they apply retroactively to terminate the detention of a person previously committed under statutes in effect before October 1, 1981. However, 90 days after October 1, 1981, the provisions of this Act apply to all persons committed under statutes in effect before October 1, 1981."

Sec. 47.30.700. Initiation of involuntary commitment procedures. (a) Upon petition of any adult, a judge shall immediately conduct a screening investigation or direct a local mental health professional employed by the department or by a local mental health program that receives money from the department under AS 47.30.520 — 47.30.670 or another mental health professional designated by the judge, to conduct a screening investigation of the person alleged to be mentally ill and, as a result of that condition, alleged to be gravely disabled or to present a likelihood of serious harm to himself or others. Within 48 hours after the completion of the screening investigation, a judge may issue an ex parte order orally or in writing, stating that there is probable cause to believe the respondent is mentally ill and that condition causes the respondent to be gravely disabled or to present a likelihood of serious harm to himself or others. The court shall provide findings on which the conclusion is based, appoint an attorney to represent the respondent, and may direct that a peace officer take the respondent into custody and deliver him to the nearest appropriate facility for emergency examination or treatment. The ex parte order shall be provided to the respondent and made a part of the respondent's clinical record. The court shall confirm an oral order in writing within 24 hours after it is issued.

outpatient basis because he is likely to cause harm to himself or others or is gravely disabled, the provider shall give the respondent oral and written notice that he must return to the treatment facility within 24 hours, with copies to the respondent's attorney, his guardian, if any, the court, and the inpatient treatment facility. If the respondent fails to arrive at the treatment facility within 24 hours after receiving the notice, the professional person in charge may contact the appropriate peace officers who shall take the respondent into custody and transport him to the facility. If it is determined by the professional person in charge to be necessary, a member of the treatment facility staff shall accompany the peace officers when they take the respondent into custody.

(d) If the provider of outpatient care determines that the respondent will require continued outpatient care after the expiration of his commitment period, the provider may initiate further commitment proceedings as if he were the professional person in charge, and the provisions of AS 47.30.660 — 47.30.915 apply, except that provisions relating to inpatient treatment shall be read as applicable to outpatient treatment. (§ 1 ch 84 SLA 1981)

Sec. 47.30.800. Conversion of involuntary outpatient treatment to inpatient commitment. (a) A respondent ordered by the court under the provisions of AS 47.30.700 — 47.30.915 to receive involuntary outpatient treatment may be required to undergo inpatient treatment when the provider of outpatient care finds that (1) the respondent is mentally ill and is likely to cause serious harm to himself or others or is still gravely disabled; (2) the respondent's behavior since the hearing resulting in court-ordered treatment indicates that he now needs inpatient treatment to protect himself or others; (3) there is reason to believe that the respondent's mental condition will improve as a result of inpatient treatment; and (4) there is an inpatient facility appropriate to the respondent's need which will accept him as a patient. Treatment for these respondents shall be available at state operated hospitals at all times.

(b) Upon making the findings specified in (a) of this section, the provisions of AS 47.30.795(b) relating to notice and AS 47.30.745 relating to hearing apply. (§ 1 ch 84 SLA 1981)

Sec. 47.30.805. Computing periods of time. (a) Except as provided in (b) of this section,

(1) computations of a 72-hour evaluation period do not include Saturdays, Sundays, legal holidays, or any period of time necessary to transport the respondent to the treatment facility;

(2) a 21-day commitment period expires at the end of the 21st day after the 72 hours following initial acceptance;

(3) a 90-day commitment period expires at the end of the 90th day after the expiration of a 21-day period of treatment;

(4) a 120-day commitment period expires at the end of the 120th day, after the expiration of a 90-day period of treatment or previous 120-day period, whichever is applicable.

(b) When a respondent has failed to appear or absented himself contrary to any order properly made or entered under AS 47.30.660 — 47.30.915, the relevant commitment period shall be extended for a period of time equal to the respondent's absence if written notice of absence is promptly provided to the respondent's attorney and his guardian, if there is one, and if, within 24 hours after the respondent has returned to the evaluation or treatment facility, written notice of the corresponding extension and the reason for it is given to the respondent, his attorney, his guardian, if any, and to the court. (§ 1 ch 84 SLA 1981)

Sec. 47.30.810. Habeas corpus. Nothing in AS 47.30.660 — 47.30.915 may be construed as limiting a person's right to a writ of habeas corpus. (§ 1 ch 84 SLA 1981)

Sec. 47.30.815. Limitation of liability; penalty for false application. (a) A person acting in good faith upon either actual knowledge or reliable information who makes application for evaluation or treatment of another person under AS 47.30.700 — 47.30.915 is not subject to civil or criminal liability.

(b) The following persons may not be held civilly or criminally liable for detaining a person under AS 47.30.700 — 47.30.915 or for releasing a person under AS 47.30.700 — 47.30.915 at or before the end of the period for which the person was admitted or committed for evaluation or treatment if the persons have performed their duties in good faith and without gross negligence:

(1) an officer of a public or private agency;

(2) the superintendent, the professional person in charge, the professional designee of the professional person in charge, and the attending staff of a public or private agency;

(3) a public official performing functions necessary to the administration of AS 47.30.700 — 47.30.915;

(4) a peace officer responsible for detaining a person under AS 47.30.700 — 47.30.915.

(c) A person who wilfully initiates an involuntary commitment procedure under AS 47.30.700 without having good cause to believe that the other person is suffering from a mental illness and as a result is gravely disabled or likely to cause serious harm to himself or others, is guilty of a felony. (§ 1 ch 84 SLA 1981)

Detaining the Insane

Detention Hospitals, Mental Health, and Frontier Politics in Alaska, 1910-1915

Thomas G. Smith

The strong interest in social history during the last decade has produced several studies on the care and treatment of disadvantaged, dependent, and deviant persons. Significant general works have been undertaken, but local, state, and institutional studies, especially ones set in the 20th century, are lacking. This essay explores the efforts of Alaskans to establish detention hospitals for the mentally ill between 1910 and 1915. Although students of Alaskan history point to poor treatment of the insane as evidence of the federal government's neglect of and indifference toward Alaska, the study reveals that Alaskans themselves must share the blame. In addition, the essay provides insights into mental health policy, Alaskan politics, and federal-territorial relations during the period.[1]

By the turn of the century, the prevalence of mental illness was a growing concern among many Alaskans. As the population surged due to the gold rushes of the 1890s, so did the number of insane. The arduous journey, excruciating work, harsh climate, loneliness, and dashed hopes sometimes proved more than pioneers could endure. In 1900 nine Alaskans were adjudged insane. By 1910 the number had climbed to 130, and a decade later the figure reached 217. Responding to pleas for assistance from Alaskans, the federal government provided for the care of the mentally ill in the civil government bill of 1900. That measure made insanity a criminal offense. The person accused in a written complaint was arrested by the marshal, brought before a district commissioner, and tried by a six-man jury. If found guilty, he was committed to an asylum. Since Alaska had no mental hospital, the governor was empowered to contract with the lowest-bidding institution west of the Rocky Mountains for the care of the insane. From 1904 to 1956 the Morningside Sanitarium (formerly Mount Tabor), near Portland, Oregon, held the contract.[2]

The contract system came under severe attack by residents of Alaska. They complained that it was an archaic and inhumane practice not followed by any other American state or territory. Noncontiguous dependencies such as Hawaii, Puerto Rico, and the Philippines all had asylums that were built and maintained at local or territorial expense. Not until 1912, however, did Alaska win territorial status and its own government; in the meantime, it had to rely on the federal government to care for the insane.[3]

Alaskans also decried the practice of incarcerating the afflicted in jails until they could be transported to Oregon. In interior Alaska the mentally ill often had to spend as long as six months in jail until weather conditions permitted transportation to the "outside." An Alaska asylum was the solution, but Congress rejected the proposal for such an institution because of cost ($75,000 for the building alone). Alaskans next implored the government to establish small hospitals in which the mentally afflicted could be temporarily detained pending removal to Morningside.[4]

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1. See, for example, Gerald Grob, *Mental Institutions in America* (New York, 1973); Blake McKelvey, *American Prisons* (Montclair, N.J., 1977); David Rothman, *The Discovery of the Asylum* (Boston, 1971), and *Conscience and Convenience: The Asylum and Its Alternatives in Progressive America* (Boston, 1980). For criticisms of the way the federal government dealt with Alaska's insane, see *Alaska Daily Empire* (Juneau), Nov. 6, Dec. 6, 30, 1912; Ernest Gruening, *The State of Alaska* (New York, 1968), 280.

2. For the early treatment of Alaska's insane, see Thomas G. Smith, "The Treatment of the Mentally Ill in Alaska, 1884-1912: A Territorial Study," *PNQ*, Vol. 65 (1974), 17-20. Also see Claus-M. Naske, "Bob Bartlett and the Alaska Mental Health Act," *ibid.*, Vol 71 (1980), 31-39.

3. Apparently Alaskans were not troubled by assigning criminal status to the insane, indigent sick, elderly, etc.; lacking asylums, almshouses, old folks homes, and local charities, they classified social dependents as criminals in order to assure them of government care. The federal government also maintained Indians who were mentally ill (a government asylum was established in 1898 at Canton, S.D.). Canada, like Alaska, transported its insane from remote and sparsely populated areas to provincial hospitals rather than build mental institutions in the Yukon and Northwest Territories. See Henry Hurd, ed., *The Institutional Care of the Insane in the United States and Canada*, 4 vols. (Baltimore, 1916-17), III, 630-32, 871-90; IV, 2-25, 228-36.

4. For introduction of these two measures, see *Congressional Record*, 61st Cong., 2d Sess., 1910, pp. 1498 (H.R. 20111), 5243 (H.R. 24833); for the texts of these bills, *ibid.*, 6853, and 61st Cong., 2d Sess., House Document 637, p. 2 (Serial 5836).

The need for some type of "holding tank" or detention center seemed obvious to the residents of interior Alaska. Detailed descriptions of mental breakdowns appeared frequently in the press. "DANGEROUS LUNATIC NOW AT LARGE" ran a Nome *Nugget* headline in October 1908. The escaped "lunatic" threatened to kill the district judge, marshal, and commissioner. In Fairbanks, a "crazed" woman shot to death the police chief in 1908. A year later in the same city a "madman" tried to kill the proprietor of the Pioneer Hotel by hurling a boulder through the window, and a knife-wielding, "blood-seeking headhunter" went berserk in Dempsey Lewis's saloon before being felled by a pool cue. In Fairbanks, the roster of persons taken into custody included the president of the Washington-Alaska Bank, an Indian woman, a prospector who repeatedly tried to commit suicide, a sourdough who imagined he was being run over by automobiles, and a woodchopper from Fox City who broke down when fire destroyed 12 cords of firewood. The Fairbanks *Daily News-Miner* pointed out that the number of insane in that community in 1909 had doubled over the previous year.[5]

Alarmed by the increasing frequency of insanity, Fairbanksans called for proper detention facilities for the afflicted. The federal jail lacked sufficient space to accommodate both prisoners and mental patients. Attempts to integrate criminals and the insane resulted in "pandemonium." On one occasion an insane man "kept everyone awake . . . by praying loudly and the noise was well calculated to make the rest of the prisoners nervous." The *News-Miner* noted that the number of insane was increasing at such a rapid rate that "separate quarters must necessarily be provided for them." The grand jury of the fourth judicial division at Fairbanks concurred.[6]

James Wickersham, Alaska's delegate to Congress, also advocated proper facilities for the care of the insane. Wickersham was a fiery progressive from Fairbanks who had served as a federal district judge at Eagle, Nome, and Fairbanks before being elected delegate in 1908. In February 1910, he tried to convince Congress to appropriate money for a permanent insane asylum in southeastern Alaska (HR 20111). When that effort failed, he introduced new legislation in April calling for an appropriation of $50,000 to build detention hospitals at Fairbanks and Nome for the temporary care of the insane (HR 24833). The House Committee on Territories recommended passage of the measure, declaring that the mentally afflicted "are entitled to the most scrupulous care, and should not be subjected to commitment in an ordinary jail." With an eye for economy, however, the committee recommended $25,000 instead of $50,000 for the project. The Senate Committee on Territories also approved the measure. Despite stiff opposition from some economy-minded congressmen, the bill was passed into law "In the interest of humanity."[7]



James Wickersham, who wrote the defective hospitals bill, blamed others for the delay in construction. (Whalen Collection, University of Alaska Archives, Fairbanks)

Specifically, the measure called for the establishment of a detention hospital in the second judicial division at Nome and in the fourth judicial division at Fairbanks. Insane persons would receive temporary care in a detention center until trails and waterways thawed sufficiently to permit the U.S. marshal to transport them to the Morningside Sanitarium in Oregon. Each hospital was to cost no more than $12,500. The marshal, the governor of Alaska, and the U.S. district judge, acting as a board of governors, would call for bids and award a contract for construction. Once completed, the detention houses would be administered and maintained by the Department of Justice.[8]

From the beginning, the detention hospitals project encountered difficulties. Although the bill became law on June 25, 1910, the summer expired without any attempt to implement it. Pressed for an explanation by the *Alaska Citizen*, Governor Walter E. Clark stated that, after reading the measure carefully, he had discovered a shortcoming which made it "practically inoperative." According to the governor, the law was defective because it failed to provide for the acquisition of sites on which to build the hospitals. John Rustgard, U.S. district attorney at Juneau, supported the governor's interpretation of the bill and advised him not to proceed without instructions from the Justice Department. Judicial officers from Nome expressed similar views.[9]

But U.S. District Judge Peter D. Overfield of Fairbanks voiced a different opinion. He favored prompt implementation of

5. Nome *Nugget*, July 17, Oct. 21, Nov. 2, 1908, Fairbanks *Daily News-Miner*, April 12 (headhunter), 14, May 4, Oct. 29, 1909 (hereafter cited as *News-Miner* with appropriate date).

6. *News-Miner*, Aug. 6, 1909.

7. 61st Cong., 2d Sess., 1910, House Report 1238, p. 2 (first quotation) (Serial 5593); *Congressional Record*, 61st Cong., 2d Sess., 1910, pp. 6853-58 (6856, last quotation); *Care of the Insane in Alaska: Statements of Hon. James Wickersham, Delegate from Alaska, Hon. W. R. Ellis, M.C., Mr. George Coe, Stanfield, Oregon, March 4 and April *, 6, and 20, 1910*. House Committee on the Territories (Washington, D.C., 1910), 19, 26-28, 31-32.

8. 36 Stat. 852 (1910). In 1910 Alaska was divided into four judicial divisions. In the second and fourth, waterways froze and land routes were virtually impassable for seven or eight months of the year.

9. *Alaska Citizen* (Fairbanks), July 10, 1910; John Rustgard to Walter E. Clark, Oct. 3, 1910, Clark to Peter D. Overfield, Oct. 8, 1910, Overfield to Clark, Oct. 8, 1910, Box 564, File 4-7-2-1, Record Group 129, Department of Justice (DJ), National Archives.

the law and accused Clark and Rustgard of pettiness and needless delay. Although Wickersham had failed to provide for hospital sites when he drafted the bill, the oversight could be remedied. Overfield held, by securing donated land. Residents of Fairbanks were eager to have a detention hospital and would furnish land to the government free of charge. Nome residents would probably follow suit. Clark rejected Overfield's suggestion because he doubted the legality of accepting land as a gift on behalf of the federal government.[10]

Pointing out that on several occasions in the past the federal government had accepted "gratuitous deeds of lands for public purposes," Overfield urged the governor to seek the advice of the U.S. attorney general; if land donation proved unacceptable, Congress might be asked to remedy the problem by authorizing the acquisition of land or by permitting the hospitals to be built as additions to the Fairbanks and Nome jails.[11]

Although the governor agreed to consult the attorney general, he did not agree to present the case objectively. Indeed, besides underscoring the law's legal defects, Clark assured the attorney general that the detention hospitals were "entirely unnecessary" because adequate provisions had been made "for the temporary care of the insane in the modern jails erected at Nome and Fairbanks two years ago." He denounced Overfield's dogged support for the detention houses as political loyalty to Wickersham, who was responsible for the judge's appointment, and he also censured Overfield for showing disrespect for the governor's office by "his conspicuous absence without excuse from a public dinner in my honor at Fairbanks."[12]

In October 1910 the Justice Department declared the hospitals act defective because it lacked provision for the acquisition of land; hence, it found that Governor Clark had properly delayed construction of the hospitals. Since the federal government did not own land in Fairbanks and Nome appropriate for hospital sites, the attorney general recommended referring "the matter back to Congress for a further expression of its wishes." Inexplicably, he failed to rule on whether the federal government could accept hospital sites as a gift from the residents of Fairbanks and Nome.[13]

Governor Clark's objections to the detention hospital law were guided by political as well as legal considerations. Clark and Wickersham were bitter political enemies despite being members of the Republican party. Republicans in Alaska and around the nation were divided into regular and progressive factions. Clark and Lewis W. Shackleford, Alaska's Republican national committeeman, headed the regulars; Wickersham, the progressives.

Disturbed by his independence, GOP regulars referred to Wickersham as a "political harlot" and in the delegate race of 1910 nominated Edward S. Orr, a businessman from Fairbanks, to oppose him. The Socialists also entered a candidate, William O'Connor, a newspaper editor from Tanana. The Democrats, a minority party in Alaska, refused to run a candidate. When the votes were counted, the incumbent, Wickersham, easily retained his seat.[14]

Although the detention hospitals were not an issue in that election, residents of interior Alaska were growing increasingly irritated by the lack of action on the project. In March 1911 the grand jury of the fourth judicial division reported that the federal jail at Fairbanks was "inadequate for the proper care and detention of insane persons, of whom there are several now in custody." Due to overcrowding, it was necessary to confine the sane and insane in the same room. The grand jury found that practice unacceptable from a humanitarian standpoint and urged immediate construction of a detention center.[15]

In May the town council of Fairbanks passed a resolution offering the federal government free of charge a parcel of land on which to erect a detention hospital. Noting that the residents of Fairbanks "are pressing me pretty hard," Governor Clark forwarded the resolution to Attorney General George Wickersham (no relation to the delegate) for an opinion. At the same time, Clark recommended that the detention center be erected as an addition to the Fairbanks jail instead of as a separate facility.[16]



Even as he obstructed implementation of the hospitals act, Governor Walter Clark blamed Wickersham for the delay. (Bunnell Coll., University of Alaska Archives)

10. Overfield to Clark, Oct. 14, 15, 1910, Clark to Overfield, Oct. 17, 1910, Box 564, File 4-7-2-1, RG 129, DJ; Rustgard to Clark, Oct. 17, 1910, Box 768, Alaska Governors Papers (AGP), Alaska State Archives, Juneau.

11. Overfield to Clark, Oct. 18, 1910, Box 564, File 4-7-2-1, RG 129, DJ; Overfield and Henry K. Love to Clark, Oct. 19, 1910, Box 244, File 9-1-10, Office of the Territories (OT), National Archives; Overfield to Clark, Oct. 20 (quotation), Nov. 14, 1910, Box 768, AGP.

12. Clark to George Wickersham, Oct. 4, 19 (quotations), 1910, Box 564, File 4-7-2-1, RG 129, DJ.

13. Acting attorney general to Clark, Oct. 18, 1910 (quotation), Box 768, AGP; attorney in charge of titles to attorney general, Nov. 1, 1910, Box 564, File 4-7-2-1, RG 129, DJ.

14. *Nome Nugget*, June 17 (harlot), July 13, Aug. 4, 1910; Fairbanks *Sunday Times*, Oct. 22, 1911; Evangeline Atwood, *Frontier Politics: Alaska's James Wickersham* (Portland, 1979), 225-34, 300.

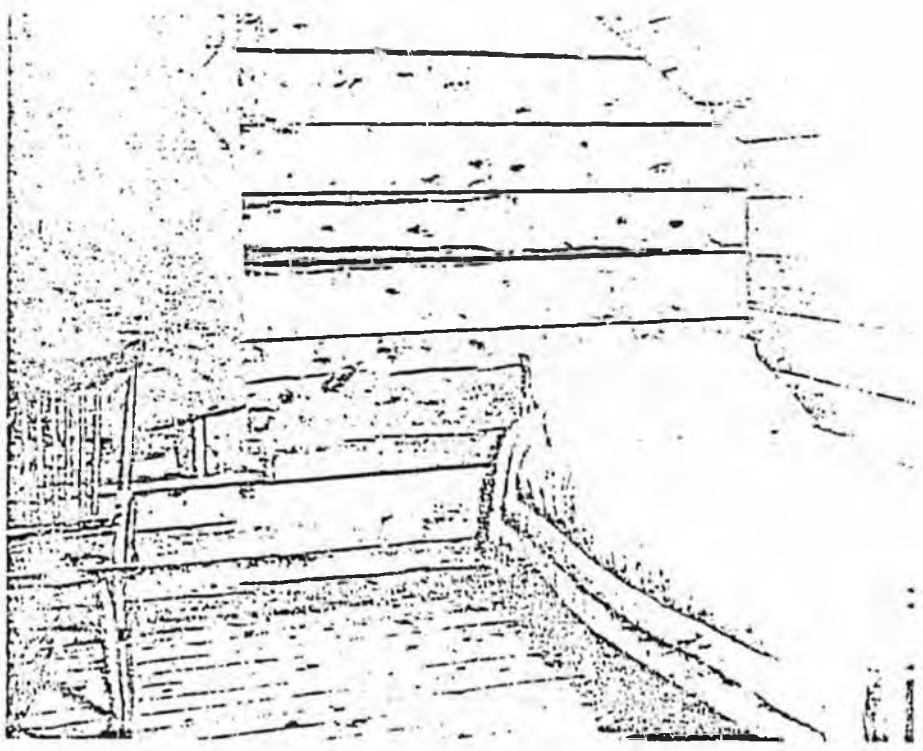
15. Overfield to Clark, Jan. 7, 1911, Box 768, AGP; grand jury of the fourth division to Overfield, March 23, 1911, Box 244, File 9-1-10, OT; *News-Miner*, Jan. 6, 1911.

16. Fairbanks town council to Clark, May 5, 1911, F. S. Gordon to Clark, June 3, 1911, Clark to attorney general, June 21, 1911, Box 768, AGP.

Nearly two months elapsed without a decision. Numerous Fairbanksans seethed over the delay and sought scapegoats. Some considered the lack of progress another example of federal indifference toward Alaska. Others, particularly the Republican press in Fairbanks, faulted Wickersham for having drafted a defective bill. In an editorial entitled "Our Detained Hospital," the Fairbanks *Daily Times* criticized the delegate for failing to follow the "businesslike course" of admitting his mistake and introducing legislation to rectify it. Had he introduced corrective legislation, the community "would have a detention hospital built and running today." Wickersham had rejected that course of action, the editor opined, because as a politician he was concerned mainly with retaining office. "He is making political capital out of the fact that the hospital is not built," the newspaper charged. "Such political capital is worth more to him than the hospital would be, so he has deliberately failed to remedy the matter."[17]

Wickersham himself blamed the delay on Governor Clark and District Attorney Rustgard. The delegate claimed that he had purposely omitted provision for the purchase of land sites in the bill because he planned to build the centers on public land. The public domain, he stated, had been utilized in the past for jails, courthouses, and telegraph offices. It could also be used for detention centers. "It would have been considered silly," he explained to the Fairbanks Commercial Club, "for the United States to appropriate money out of its own treasury to buy its own land in Alaska for a United States hospital. Nobody but Governor Clark and Mr. John Rustgard would have ever thought of such a foolish proposition, and they would not have thought of it except for the fact that they wished to make the law a failure."[18]

Pro-Wickersham newspapers such as the *Alaska Citizen* echoed the delegate's charges. The *Citizen* held that there was "no one to blame for the delay" but Clark, who had advanced "the ridiculous proposition that the government could not accept a donated site." That view, the paper continued, was based on Clark's "bitter opposition to the delegate, and his determination that Wickersham shall get nothing for the territory that could in any way enhance his prestige."[19]



The federal jail at Fairbanks housed both prisoners and the insane; the women slept in this 12-by-14-foot room with a sloping ceiling and one window. (National Archives)

Nonetheless, the argument in defense of the law was weak. If the hospitals were to be erected on public land, the act should have so specified. Moreover, its author should have realized that public land was unavailable in Fairbanks and Nome: once a patent is granted for a townsite, the land is no longer public. Instead of introducing corrective legislation, Wickersham stubbornly defended a defective law and blamed his political enemies for sabotaging the hospitals. As the Fairbanks *Daily Times* remarked, "the delegate overlooked an important detail in his bill, and in trying to cover it up is attempting to unload upon the governor whatever blame exists."[20]

In August 1911 the attorney general instructed Governor Clark to proceed with the construction of the Fairbanks hospital. Instead of being constructed on a donated site, the facility would be erected on top of the federal jail. Such a plan would minimize delay and save expense by using the same personnel to operate both institutions.[21]

But the instructions sparked a heated protest from Wickersham. Addressing the Fairbanks Commercial Club on September 28, he ridiculed the idea of housing "poor crazy people" above the "dirty old rotten jail." His plan, he reminded the town's businessmen, was to build the hospitals on public land. Appealing to their booster spirit, he informed his listeners that the Fairbanks detention facility was part of a larger plan to secure a permanent insane asylum in the town. That larger effort would be stymied, he warned, unless Alaskans insisted upon

17. Fairbanks *Daily Times*, Oct. 28, 1911 (hereafter cited as *Times* with appropriate date).

18. *Ibid.*, July 15, 1911.

19. *Alaska Citizen*, July 10 (quotations), 17, 1911.

20. *Times*, July 15, 1911.

21. C. H. McGlasson to attorney general, June 28, Aug. 7, 1911, Box 564, File 4-7-2-1, RG 129, DJ; attorney general to Clark, Aug. 8, 1911, Box 768, AGP.

construction of detention centers separate from the jails at Fairbanks and Nome.[22]

Urged on by Wickersham, the commercial club branded the Justice Department's plan to build the hospital as an addition to the jail "unsafe, unsanitary, and undesirable generally." It forwarded to Washington a petition signed by more than 900 residents protesting the proposal as "an act of injustice." The petitioners demanded a separate facility for the temporary care of the mentally ill.[23]

Other Fairbanks civic groups joined the protest. The Tanana Valley Democratic Club unanimously adopted a resolution condemning the governor for concocting a scheme whereby the "prisoners will be a nuisance to the sick, and the insane a nuisance to the prisoners." Moreover, the town council of Fairbanks announced its displeasure with the proposal by passing an ordinance forbidding the detention of the insane "upon the upper, second or higher story" of any wooden building. The Fairbanks press also lambasted the plan, calling it a "sorry makeshift." To accept a portion of the appropriation and build the hospital above the jail, said the *Daily Times*, would qualify Fairbanksans "to become the first inmates of such a hospital." The editor of the *Daily Times* urged the governor to build a hospital on a donated site and worry later about the legal consequences. Such a move, he declared, "would be worthy [of] the red blood of the pioneer."[24]

The strong protest from Fairbanks brought results. In October 1911, the Justice Department decided to "suspend action" on the construction of the hospital as an upper story to the jail. More than a year passed without further developments.[25]

Meanwhile, the issue continued to provoke controversy between Clark and Wickersham. The delegate repeatedly blamed the absence of a detention center on "one petty man, with a wooden nutmeg heart." Appealing to the emotions of a Fairbanks audience, Wickersham pointed out that if one's mother or wife were arrested because she was mentally ill, she would be confined in a "dirty jail" because the governor was so "spiteful" he refused to spend the money Congress had appropriated for a modern detention facility.[26]

Predictably, Clark denied Wickersham's charges. He reiterated the fact that his position was based not on politics but on his interpretation of the law, an interpretation supported by the Justice Department. It would be foolish, he stated, to proceed with the construction of the hospital on a donated site without prior approval from the federal government. What contractor, he asked, would build a hospital without official authorization? Neither Clark nor Wickersham explained why he did not push for an official decision on the legality of building on a donated site.[27]

Wickersham's opponents used the defective hospitals act against him in the delegate election of 1912 but without effect. Indeed, his successful efforts to obtain for Alaska an elective territorial government more than offset any loss of votes caused by his mishandling of the detention hospitals affair. Running as an independent "Bull Mooser," he was reelected, defeating a regular Republican, a Socialist, and two Democrats.[28]

On the national level, the Republican party, split between regulars and progressives, lost the White House to Woodrow Wilson. Although he was disappointed that Theodore Roosevelt, his idol, had lost, Wickersham was confident that he would be able to cooperate with the new president. And he was encouraged when Wilson's secretary of the interior, Franklin K. Lane, invited his opinions on Alaskan issues, including the appointment of a new governor.[29]

Created in August 1912, Alaska's first territorial legislature took the lead in securing construction of the detention centers, though prohibited by law from dealing with the insane. The territorial government act had left to the federal government responsibility for the care of the mentally ill, which meant that vic-



This cartoon depicts the Fairbanks view of Governor Strong's arrival in Alaska—a long-awaited hospital under each arm. (Alaska Citizen, Aug. 4, 1913)

22. *Alaska Citizen*, Oct. 2, 1911.

23. Fairbanks Commercial Club to attorney general, Oct. 4, 1911 (injustice), Box 564, File 4-7-2-1, RG 129, DJ; *Times*, Sept. 29 (first quotation), Oct. 5, 1911.

24. *Times*, Sept. 30 (last three quotations), Oct. 1 (nuisance), 8 (second quotation), 1911.

25. *News-Miner*, Oct. 5, 1911.

26. Fairbanks *Sunday Times*, Oct. 22, 1911.

27. *Times*, Jan. 24, 1912; *Alaska Citizen*, Feb. 5, 1912; Clark to secretary of the interior, Dec. 22, 1911, Box 564, File 4-7-2-1, RG 129, DJ.

28. *News-Miner*, Oct. 8, 1912; *Alaska Citizen*, Aug. 12, 1912.

29. Atwood, 247-65, 271.

tims would continue to be farmed out to Morningside Sanitarium and that patients in interior Alaska would be held in jails until detention facilities were constructed. But in April 1913, Alaskan legislators forwarded to Congress a joint memorial protesting the practice of detaining the insane in jails and requesting an appropriation of $4,000 to buy land on which to build two detention houses. The memorial went unheeded.[30]

Despite the lack of congressional action, supporters of the detention hospitals were encouraged when President Wilson named John F. A. Strong to succeed Walter Clark as governor of Alaska. Born in New Brunswick in 1859, Strong had been in Alaska since 1897. He had engaged briefly in mining, then entered the newspaper business, and was editor of the Democratic Juneau *Daily Empire* at the time of his appointment.[31]

In June 1913, the new governor and Wickersham met with Secretary of the Interior Lane to discuss the detention hospitals. Sympathetic, Lane agreed to build the hospitals promptly if Strong could secure donated land. Within three months, the governor had obtained the sites, and Lane had authorized him to advertise for construction bids. Strong's success convinced some Alaskans that the previous delay had been "for political and personal reasons only." It also showed that Washington could be moved to action when Alaskans put aside politics and united behind a project.[32]

Construction of both hospitals began in September and concluded in December 1913. After a delay of more than three years, then, the communities of Fairbanks and Nome possessed detention hospitals. The Fairbanks facility was a 2-story wood[illegible] building, 42 feet square, located on 1.25 acres of land at the corner of Turner Street and Tenth Avenue. It had a porch that ran along the full front of the first floor and a large second-story balcony. The first story contained a kitchen, oak-paneled dining room, seven rooms, a bath, and a padded cell. On the second floor were four rooms, one ward, a shower-bath, and two padded cells. The facility had electric lights and steam heat and could accommodate 15 male and 5 female patients. Local residents described the building as "a thing of



Within six months of assuming office, J. F. A. Strong had delivered the Nome and Fairbanks hospitals; opening them was the next step. (Bunnell Coll., Univ. of Alaska Archives)

beauty" that was "equipped with all modern conveniences." The Nome hospital was similarly appointed, though lacking the large front porch and balcony. The Nome *Nugget* described it as a "monument" to the builder. In Juneau, the *Alaska Daily Empire* editorialized that the "construction of these institutions marks a step forward in caring for unfortunate men and women of the Territory."[33]

Financial considerations, however, prompted Washington to reevaluate its decision to open the hospitals. The money to maintain the centers was to come from an appropriation of $500,000 for support of prisoners in all the states and territories. Marshal Emmet R. Jordan of Nome informed the Justice Department in early 1914 that it would cost $17,500 a year to maintain each of the detention hospitals. The attorney general balked at spending $35,000 yearly to provide temporary care for a handful of patients. It cost only twice that amount, including transportation, to maintain 150 Alaska patients at the Morningside Sanitarium in Oregon.[34]

Marshal Lewis T. Erwin of Fairbanks, who had replaced Henry Love in 1913, took issue with Jordan's figures. Erwin estimated that operation of the Fairbanks hospital would cost only $7,500 per year. Because the two estimates differed so significantly, the Justice Department refused to open the facilities until accurate figures had been secured. On the recommendation of the U.S. superintendent of prisons, the attorney general sent an inspector to Alaska to determine the cost of running the hospitals and the necessity of opening them.[35]

Proud of their new facilities, residents of Fairbanks and Nome were distressed to learn that neither structure might be utilized. "Loss of the detention hospital" would "be a serious blow" to the community, declared the Fairbanks *Daily Times*; "It means that we will be right back where we were before the building of the hospital was authorized, except that we have the structure to remind us of the long fight made to secure the hospital." There was a pressing need for the centers, according to that paper, and townspeople "have every reason to expect the terms of the bill to be carried out, for, after all, the cost of maintenance is a question which should have been investigated before the money for the building was appropriated."[36]

30. (Alaska) Senate Joint Memorial Number 17 to Congress, April 11, 1913, Box 244, File 9-1-10, CT; *Times*, May 2, 1913.

31. Juneau *Daily Empire*, July 29, 1929 (obituary); Gruening, 166.

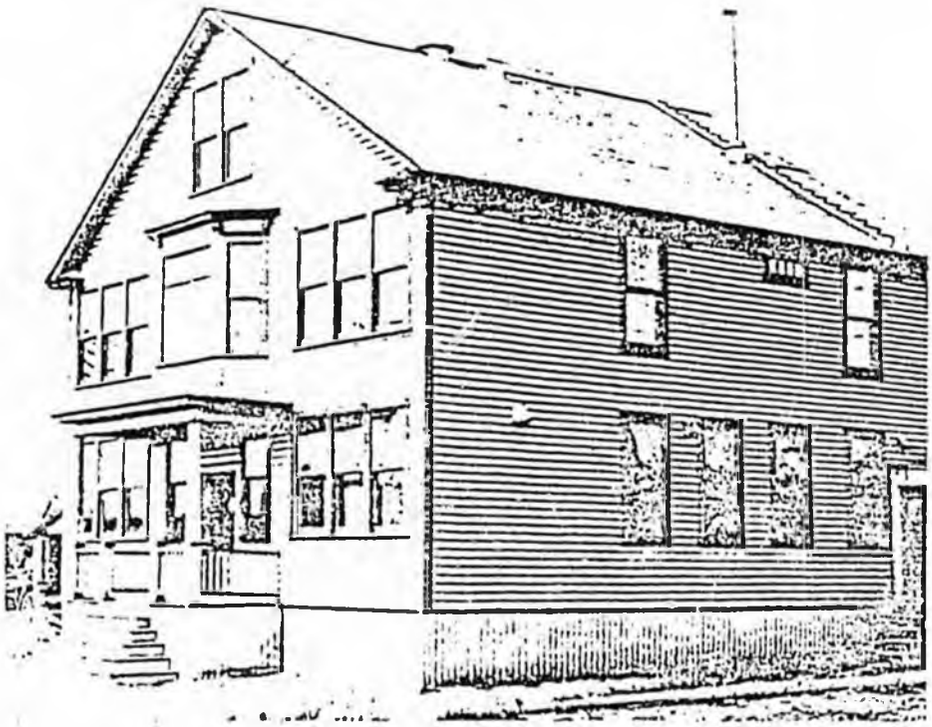
32. J. F. A. Strong to secretary of the interior, June 11, 12, 16, Aug. 5, 1913, secretary of the interior to Strong, June 12, 1913, Box 244, File 9-1-10, CT; *Alaska Citizen*, July 28, 1913 (quotation).

33. *News-Miner*, June 17, Sept. 3, Nov. 17, 1913; *Times*, Aug. 7, Sept. 3, Dec. 27 (quotations), 1913; *Alaska Daily Empire*, Nov. 21, 1913; Nome *Nugget*, Sept. 12, 15, Nov. 5 (quotation), 25, 26, 1913.

34. Superintendent of prisons to attorney general, April 1, 1914, Box 565, File 4-7-2-1, RG 129, DJ.

35. *Ibid.*; L. T. Erwin to assistant attorney general, Feb. 20, 1914, Box 564, File 4-7-2-1, RG 129, DJ.

36. *Times*, Dec. 13, 1913; *Alaska Citizen*, Dec. 15, 1913.



Equipped with electric lights, steam heat, and other conveniences, the Nome facility was hailed as a step forward in the care of the insane. (National Archives)

Meanwhile, Governor Strong, Delegate Wickersham, and Marshal Erwin of Fairbanks pushed Attorney General T. W. Gregory to open the detention hospitals. Erwin was especially insistent. On March 5, he had wired the Justice Department: "Have now three insane, jail not proper place." Four days later he had telegraphed: "Have just taken into custody insane woman in addition to three insane men reported. Hospital much needed." On June 2 he sent yet another message informing the attorney general that he had 14 prisoners in the jail, including two women. One of the women was insane. "No place to keep women except jail attic. Roof covered with tin. Fear women cannot live in such quarters during warmest summer weather. No toilet except men's department. Women taken ladies toilet courthouse. Makes it bad handling raving maniac. Condition insane woman requires three matrons eight-hour shifts." The marshal asked permission to transfer both women to the detention hospital where they could receive proper care. The attorney general refused the request and advised the marshal to install toilet facilities in the jail, fix the roof, and transport the insane woman to Morningside.[37]

That same month, R. J. W. Brewster, the Justice Department's investigator, arrived to inspect the hospitals. After examining the facilities, he recommended against opening them. His reason: expense. He estimated that the yearly operating costs of each institution, including heat, light, food, guards, a cook, repairs, and sundry expenses, would exceed $7,000.

The number of insane in interior Alaska was not large enough to justify the expense of operating two detention centers, Brewster advised. At Nome only three people were adjudged insane during fiscal year 1913-14, and these victims were housed in the jail for a total of 45 days; since the hospital would stand empty most of each year, Brewster recommended that the building be transferred to another government department and put to better use. At Fairbanks he found that 21 individuals had been adjudged insane in fiscal year 1913. "This hospital," he declared, "should never have been built, and although there is more reason for its opening than there is for the opening of the Nome institution, I do not see the *real* necessity which would warrant the expense of operation." To those who argued that modern mental health care practice called for separate facilities for the sane and insane, he replied that the "theory may be beautiful but would be expensive to carry out."[38]

The delay over opening the detention hospitals became a campaign issue in the delegate election of 1914. Running as a "Woodrow Wilson Progressive," Wickersham sought his fourth term as delegate. He was opposed by John M. Brooks, a Socialist from Jack Wade Creek, and Charles E. Bunnell, a Democrat from Valdez who had the support of the Wilson administration. Alaska Republicans did not nominate a candidate.[39]

Throughout the campaign Wickersham reminded his constituents of his past accomplishments, including passage of the territorial government act, the Alaska railway bill, and the detention hospitals measure. That the hospitals remained closed, he asserted, was the fault of Marshal Erwin, a Democrat and political enemy. Wickersham accused Erwin of obstructing efforts to open the hospitals, and he asked Alaskans to consider the "inhumanity of an officer who keeps a sick prisoner in the attic of that dirty, filthy jail when you have a fine detention hospital where she should be kept."[40]

Wickersham's charges against Erwin were unwarranted. The Justice Department advised the marshal to issue a statement "disclaiming all responsibility for the failure to open and occupy the de-

37. Quoted in *Times*, Feb. 11, 1915.

38. Superintendent of prisons to attorney general, July 11, 31, Oct. 14, 1914, and R. J. W. Brewster to attorney general, Sept. 19, 1914 (quotations), Boxes 564, 565, File 4-7-2-1, RG 129, DJ; *News-Miner*, July 27, Aug. 1, 1914. The Justice Department was also reluctant to go to the expense of opening the Nome hospital because the population of that town had declined steadily since the boom days of the early 1900s.

39. Atwood, 277-87.

40. Quoted in Erwin to attorney general, Nov. 14, 1914, Box 564, File 4-7-2-1, RG 129, DJ.

tention hospital." Opponents of Wickersham were probably correct when they declared that his attack on the marshal was a smokescreen to cover up his own ineptness. The Democratic Fairbanks *Daily Times* reminded readers that the law "was so clumsily drawn that the hospital never would have been built but for the efforts of Governor Strong and the Democrats of Fairbanks." Despite Wickersham's irresponsible charges, he was reelected with votes to spare.[41]

After his reelection, Wickersham continued to lash out against Erwin for failing to utilize the hospitals. In mid-November 1914, he informed the press that the marshal permitted the caretaker to use the Fairbanks institution as a "chicken coop." Producing a photograph that showed chickens hanging lifeless by their feet from a rope stretched across the hospital's balcony, Wickersham urged Fairbanksans to petition the Justice Department to use the hospital for needy mental patients not dead chickens.[42]

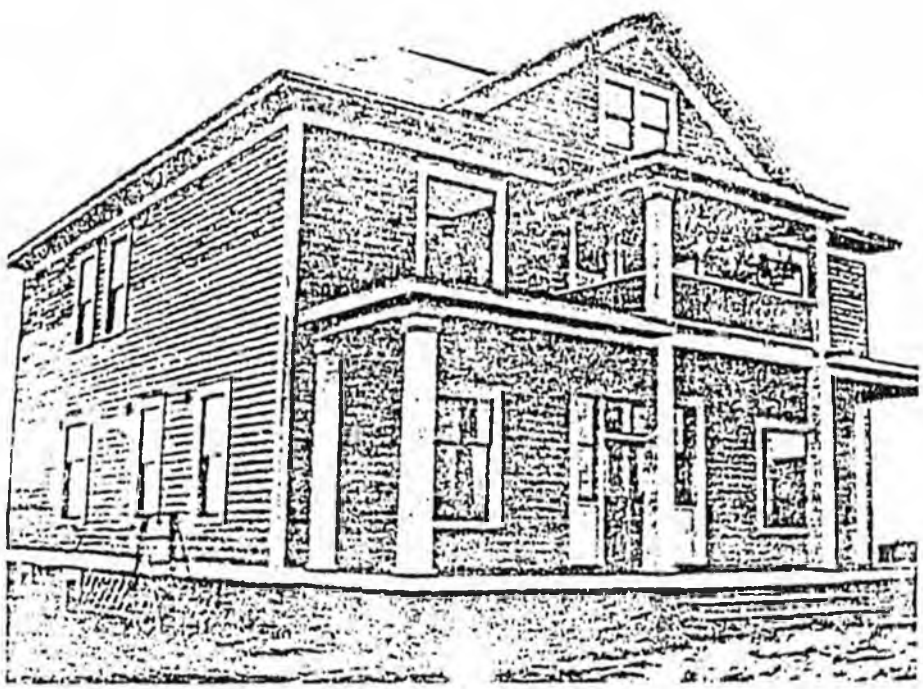
The delegate also censured the Justice Department for its indifference. He informed the Fairbanks Commercial Club on November 9 that "there is no reason in the world why the Department of Justice should not make the necessary appropriation to maintain the institution." Instead of utilizing a modern facility, he noted, the federal government is confining the insane in a "hellhole." He implored club members "to get busy, to do something to force the proper parties to open the hospital and I pledge myself to do all I can to help."[43]

Wickersham made good his promise. On January 6, 1915, he sent a long letter to the attorney general lamenting the policy of holding Alaska's insane in "dirty foul-smelling old jails." He enclosed three photographs taken by the Fairbanks health officer, Dr. J. A. Sutherland, showing the "exact condition of the room in the attic" of the Fairbanks jail where insane women were housed. "In this stinking hole the United States of America keeps the insane women who fall into their clutches," the delegate wrote. "It is a disgrace to the Department of Justice that such a condition may continue to exist." He reminded the attorney general that the detention hospitals act was intended to prevent the "vile arrangement" of housing the mentally ill in jails. Failure to open the institutions for financial reasons, he believed, was unjustified. According to section 2 of the act, the hospital expenses were to be paid "from the same fund as the expenses of the United States jails under the same marshal." Enclosing the "chicken coop" photograph, Wickersham informed the attorney general that the hospital at Fairbanks was being used to accommodate slaughtered chickens instead of mentally afflicted human beings. He exhorted the Justice Department to make proper use of the Nome and Fairbanks structures at once.[44]

Wickersham's hard-hitting letter to Washington was not entirely accurate. He had written on the photograph that the jail was a "dirty-hole," a description that was exaggerated as Erwin, Dr. Sutherland, and several newspapers pointed out. Yet the delegate's main point was on the mark—namely, that the detention hospitals and not jails should be used for the temporary confinement of the mentally afflicted and that the government, in delaying the opening of the facilities, had failed to execute the law. Responding to Wickersham's letter, the attorney general stated that the issue was "under consideration" and would be resolved soon.[45]

Actually, the Justice Department was working diligently to rid itself of both buildings, to "turn them loose" on other government departments. The Bureau of Education in the Interior Department wanted the Nome building as a medical facility for Indians. The deal fell through though when the Justice Department insisted that the Interior Department take

This photograph of the Fairbanks hospital, its balcony festooned with dead chickens, no doubt furthered the campaign to open the facility. (National Archives)



41. Assistant attorney general J. Erwin, Dec. 14, 1914, Box 565, File 4-7-2-1, RG 129, DJ; *Times*, Nov. 1, 1914.

42. *Times*, Nov. 10, 1914.

43. *Ibid.*; George C. Bruce to Wickersham, Nov. 16, 1914, Box 565, File 4-7-2-1, RG 129, DJ.

44. Wickersham to attorney general, Jan. 6, 1915, Box 564, File 4-7-2-1, RG 129, DJ.

45. *Times*, Feb. 10, 11, 12, 1915; Fairbanks *Weekly Times*, Feb. 15, 1915; assistant attorney general to Wickersham, Jan. 12, 1915, Box 565, File 4-7-2-1, RG 129, DJ.

both "white elephants"; having no use for the Fairbanks facility, the secretary of the interior refused the offer.[46]

Residents of Fairbanks were enraged when they learned of the Justice Department's attempts to unload their hospital. The mayor, marshal, district judge, and district attorney sent wires to the attorney general reminding him that the Fairbanks City Council had donated land for a "detention hospital only" and would oppose using the building and grounds for any other purpose. One Fairbanks citizen scored the federal government for being parsimonious toward a land "which has returned so much more than it cost to the government which owns it." The three local newspapers pushed hard for the cause by running editorials that supported the opening of the detention hospital.[47]

The strong protest brought results. In March 1915, nearly five years after Congress passed Wickersham's bill, the attorney general instructed Erwin to open the Fairbanks hospital immediately. That message elicited "great joy" among Alaska's territorial officials. Nomites, on the other hand, had little to cheer about: their facility remained closed. Inspired by the Fairbanks success, however, Nome residents, including the mayor, city council, Western Federation of Miners, and several fraternal organizations, petitioned Washington in June and repeatedly during the next year, but without results. In 1921 the Justice Department transferred the building to the Bureau of Education for use as a residence for teachers.[48]

In Fairbanks the triumph was short lived. Within five months of the hospital's opening, high operating costs caused the Justice Department to contemplate closing it again. Governor Strong admitted that the building required around-the-clock caretakers and that it would "always be a source of continued expense to the Government, whether occupied or not." Yet he advised against shutting down the institution because a "considerable percentage of the patients would recover, and the expense of their transportation to Morningside Sanitarium and their maintenance there would be avoided." Wickersham sided with Strong and blamed the high maintenance costs on the extravagance of Erwin, whom he accused of using the hospital as a place of residence.[49]

Wickersham's charges prompted an investigation by the Department of Justice. Asked for a response, Erwin maintained that he was making every effort to keep expenses at a minimum. He reported that from the opening of the hospital in March 1915 through August, a total of seven patients had been detained for 114 days at a cost of $2,000. Admitting that he lived at the hospital, he claimed that his presence saved the government money by obviating the need for a guard and custodian to watch the patients. He paid his own board and maintained a garden on the grounds that brought the government $625 worth of produce. He also economized by feeding the inmates fish, moose, and mountain sheep, which he provided free of charge. "I have attempted to economize and save the Government all I could at the same time rendering a good service but not a wasteful one," Erwin declared.[50]

Erwin's report convinced the Justice Department that the operation of the facility "has been economical and careful under the circumstances." Yet the paucity of inmates and high cost of their care (approximately $15 per day for each) did not seem to warrant keeping the hospital open on a permanent basis. Nonetheless, the attorney general decided to "continue its operation during the closed period of this winter in order to get a complete list of the cost of its maintenance."[51]

The Justice Department's position proved "disquieting" to Wickersham. Moreover, he continued to attack the marshal for extravagance. In December 1915, he wrote a scathing letter to the attorney general accusing Erwin of reckless spending and graft. He pointed out that for much of the year the hospital contained no patients, yet the cost of a building caretaker and electricity totaled $1,260. This money could have been saved, the delegate contended, had the facility been closed when it was unoccupied. The only reason for a caretaker, he declared, was that the marshal "wants the use of this nice, warm, new, handsome, well lighted building as a private residence: he needs the caretaker and his wife as servants, and he is annoyed that insane persons are intruded upon his privacy."[52]

Once again Wickersham's charges were groundless and probably sparked by political animosity. As most federal officials in Fairbanks realized, the hospital required the services of a permanent caretaker to protect the building and grounds from vandalism. It was necessary to heat the structure to prevent burst pipes and frost damage. Moreover, the institution might be needed at any time to detain an individual who suddenly became insane. To shut down the facility when it was unoccupied seemed senseless. Judge Charles Bunnell and District Attorney R. J. Roth both believed that the marshal's residence in the hospital re-

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46. Memorandum (from "W.C.E.") to attorney general, Nov. 12, 1914, attorney general to secretary of the interior, Nov. 12, 1914, and assistant secretary of the interior to attorney general, Dec. 9, 1914, Box 565, File 4-7-2-1, RG 129, DJ; assistant secretary of the interior to attorney general, Sept. 17, 1914, File 6—51, Bureau of Education, Hospital Service, Nome, Alaska, part 1, RG 48, National Archives (hereafter cited BE-Nome, RG 48).

47. Charles Bunnell et al to attorney general, March 10, 12, 1915, Box 565, File 4-7-2-1, RG 129, DJ; *News-Miner*, March 11 (first quotation), 12, 13 (last quotation), 1915; *Times*, March 13, 1915; *Alaska Citizen*, March 15, 1915.

48. Attorney general to Erwin, March 12, 1915, and to Wickersham, March 16, 1915, Box 565, File 4-7-2-1, RG 129, DJ; *Times*, March 16, 1915 (great joy); Nome Residents Petition for Attorney General, June 8, 1915, Box 769, AGP; *Nome Nugget*, Aug. 20, 1915, April 10, Sept. 19, 1916; assistant secretary of the interior to attorney general, Oct. 11, 1922, attorney general to secretary of the interior, Oct. 16, 1922, File 6—51, BE-Nome, RG 48.

49. Wickersham to attorney general, July 9, 1915, and Strong to attorney general, Aug. 27, 1915, Box 564, File 4-7-2-1, RG 129, DJ.

50. Attorney general to Erwin, Aug. 14, 1915, Erwin to attorney general, Sept. 22, 1915, *ibid.*

51. Assistant attorney general to attorney general (memorandum), Oct. 30, 1915 (first quotation), attorney general to Erwin, Nov. 1, 1915, and to Wickersham, Nov. 1 (last quotation), Dec. 11, 1915, *ibid.*

52. Wickersham to attorney general, Dec. 27, 1915, *ibid.*

sulted in an efficient and economical operation. To avoid the appearance of impropriety and to silence Wickersham, however, they recommended that the marshal cease living there. The attorney general agreed.[53]

To secure the permanent operation of the detention hospital, Wickersham stressed the need for humane care of the mentally ill and for following the dictates of Congress. He emphasized that in 1910 Congress passed legislation establishing detention hospitals for patients in interior Alaska who could not be promptly shipped stateside. "Now what authority has an Attorney General, the Marshal, or any one else," he asked, "to disregard and violate that law?" Will the Justice Department return to the archaic practice of keeping the mentally ill in jails? he queried. He advised the attorney general to continue the operation of the institution and to adhere to "humane methods for the care and protection of the insane sick entrusted to your care, as you are instructed to do by Congress."[54]

Wickersham's appeal proved persuasive. The detention hospital was not shut down, and it remained in operation for two decades. In the 1930s the facility served as both a detention hospital and jail until a new federal building was erected in 1933.

Although Alaskans in 1910 sought to provide humane care for the insane by maintaining them in detention centers rather than jails, they achieved modest success only after five years of delay caused by indifference and parsimony at the federal level and political factionalism within Alaska itself. When territorial officials at last united behind Governor Strong in 1913 and 1915, they got two hospitals built and one operating; the second—for lack of patients and excessive maintenance costs—never opened. The detention center episode was one of the early fights in the long crusade for mental health care in Alaska: it would take another 40 years for Alaskans to obtain a permanent asylum. □

Thomas G. Smith is associate professor of history at Nichols College, Dudley, Massachusetts. His research interests include 20th-century America, Alaska, and U.S. foreign policy. He is currently at work on a biography of the New Deal budget director and cold war ambassador Lewis W. Douglas.

53. R. J. Roth to attorney general, Jan. 7, 1916, Bunnell to attorney general, Feb. 18, 1916, and attorney general to Erwin, March 17, 1916. Box 565, File 1-7-2-1, RG 129, DJ.

54. Wickersham to attorney general, Dec. 27, 1915, *ibid.*

E. T. Barnette

E. T. Barnette: The Strange Story of the Man Who Founded Fairbanks. By TERRENCE COLE. (Anchorage: Alaska Northwest, 1981. ix, 163 pp. Illustrations, notes, selected bibliography, index. $7.95)

Terrence Cole has put flesh on a phantom. The year of Barnette's birth is uncertain. When, or where, or from what cause he died is unknown. There are, apparently, only two probable Barnette photographs. In one his face is obscured, and in the other a fur hat and a bushy moustache hide his hairline and mouth. Paradoxically, Barnette was as substantial as he was phantasmal.

Cole's study of the real Barnette is a fine historical narrative and investigation. Barnette established a trading post on the Chena River in 1901. The trading post became Fairbanks, while Barnette became a prosperous merchant, miner, and banker. He was a large man, ambitious, gregarious, and plausible. He invested much of his money in a Kentucky farm and a Mexican plantation. Affable though he was, court suits and controversy swirled around him. He throve until his bank collapsed in 1911, a few months after he had resigned its presidency and left town. The bank failure was the beginning of the end of Barnette's fortune. His Mexican property suffered from the turmoil of revolution, his wife divorced him and won a large property settlement, and his comeback attempts were ineffectual.

Such schemes and adventures call for placement in the context of western and Alaska history, yet Cole's interpretations rarely venture beyond the judgments of contemporaries. Those judgments were possibly too particularistic and severe, delivered as they were from a provincial "sourdough" perspective. For instance, Barnette's manufactured rush to Fairbanks certainly duped some gullible miners. Nevertheless, it was in the tradition of western boom-town promotionalism. Interpretive lacunae aside, Cole writes with verve. He skillfully relates Barnette to the development of Fairbanks and the Alaska-Yukon interior. His book is nicely composed, with many pertinent maps and photographs. Best of all, Cole, a widely published Alaska historian, is not yet out of his twenties. Therefore we may look forward to many more worthwhile studies from the author of *E. T. Barnette*. □

WILLIAM H. WILSON
North Texas State University

STATE OF ALASKA 1984 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date:

REQUEST
Bill/Resolution No.: SB 346
Title: An Act relating to the treatment of mentally ill persons
Sponsor: Josephson and Halford
Requestor:
Date of Request: 1-11-84

FISCAL DETAIL
Agency Affected: Division of Mental Health and Developmental Disabilities
Program Category Affected: API

BRU, Program or Subprogram(s) Affected:

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 84	FY 85	FY 86	FY 87	FY 88	FY 89
OPERATING						
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 SUPPLIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS						
800 MISCELLANEOUS						
TOTAL OPERATING		0	0	0	0	0
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

ANALYSIS: Attach a separate page for analysis * See Attached

Prepared By: James L. Scoles (PS) (PR) Phone: 465-3370
Division: Mental Health & Developmental Disabilities Date: 1-20-84

Approved by Commissioner: Robert London Smith Date: 1/30/84
Agency: Dept of Health & Social Services

Distribution (by Agency preparing fiscal note):
Legislative Finance
Legislative Sponsor
Requestor
Office of Management and Budget
Impacted Agency(ies)

12/1/83

The Division of Mental Health and Developmental Disabilities does not foresee any increase or decrease in expenditures as a result of the passage of SB 346 at this time. The primary purpose of this bill is mainly directed at reducing the procedural requirements of A.S. 47.30.655 - 47.30.915, changing the age of majority from 14 to 18 years of age, changing the period of time for the initial commitment from 21 to 30 days and the third period of commitment from 120 to 180 days, expanding the definition of peace officers to include mental health professionals, and slightly relaxing the standards for commitment.

We do not believe that any of these proposed amendments will increase or decrease the number of mentally ill persons that will require hospitalization. The amendments should, however, make it easier to commit the mentally ill which should result in more professional staff time available to provide direct patient care and treatment rather than excessive time being expended in the commitment process.

Alaska State Legislature

REP. MAE TISCHER
CHAIRMAN

POUCH V
STATE CAPITAL
JUNEAU, ALASKA 99811
(907) 465-3777

HAND DELIVERED

House of Representatives
HEALTH, EDUCATION AND SOCIAL SERVICES COMMITTEE

MEMORANDUM April 19, 1984

TO: All Members of the House HESS Committee
FROM: Representative Mae Tischer, Chairman, House HESS MT

RE: CSSB 346 (Judiciary), Amended

The House HESS Committee will hear the Senate Judiciary Committee Substitute for Senate Bill 346, Amended, "An Act relating to the treatment of mentally ill persons," on Monday, April 23, at 5:00 p.m. in Capitol Room 112.

I ask that you review the attached background materials in preparation for this hearing. Your cooperation will enable the HESS Committee to act expeditiously on this important legislation.

To save on duplicating costs, please be responsible for bringing these materials to the meeting on Monday.

Attachments

ALASKA STATE LEGISLATURE

INTERIM OFFICE:
P.O. BOX 81435
FAIRBANKS, ALASKA 99708

IN SESSION:
POUCH V
JUNEAU, ALASKA 99811
(907) 465-4930/4941

CHAIRMAN
1983 INTERIOR DELEGATION

MEMBER
TRANSPORTATION
HEALTH, EDUCATION AND SOCIAL SERVICES
LABOR SUBCOMMITTEE
JOINT OIL AND GAS
RURAL EDUCATION ATTENDANCE AREAS

Representative Mike Davis
House District 19



April 18, 1984

To: Rep. Tischer

From: Rep. Davis

Re: SB 346

I thought you might be interested in this letter I received from one of my constituents concerning their experience with care of the mentally ill and their support for this bill.

April 6, 1984

Dear Rep. Davis.

I wish to write and voice my support for CSSB 346 which I understand the senate has sent to the House this week.

My first husband suffers from chronic manic depressive illness. His initial break down was a nightmare for myself and his family - and I believe for him. Although he was obviously seriously disoriented we were not able to get help for him against his will. He had to do serious bodily harm to someone else before he could be treated involuntarily. As a result, I had to spend time hiding from him until he finally injured someone. As I was pregnant at the time and caring for our older small child, I could not risk being the person he would injure.

A few years later, he returned to Fairbanks when our oldest child was critically ill in the hospital - and chose that time to experiment with his mental stability by not taking his medication. Knowing he was at risk for another breakdown, I refused to let him visit his son unsupervised. He became angry and later did indeed have another breakdown in the course of which he was jailed twice and finally sent to API.

When he was released from API,

they notified me that he was being released and that he intended to leave for Seattle BUT they made it clear that they had only notified me because he had given his permission as IN THEIR OPINION he was no threat to any of his family members. I thanked them for notifying me, but told them that in light of the then recent Charles Meach murders their opinion of who was and was not dangerous did not have much credibility.

Although our situation resolved itself without anyone being injured, our family experienced a very tense summer with one child in the hospital and the other not allowed to play outside without constant direct adult supervision. I believe that patients do have rights, but I also believe that their family members have rights as well. Living with a mentally ill family member can be exhausting, frustrating, frightening and dangerous, especially when the law offers no protection from the patient.

Thank you for your time,

James Carson-Sellin
455-6099
P.O. Box 1699
Fairbanks Alaska 9970

Alaska State Legislature

REP. MAE TISCHER
CHAIRMAN

POUCH V
STATE CAPITAL
JUNEAU, ALASKA 99811
(907) 465-3777

House of Representatives
HEALTH, EDUCATION AND SOCIAL SERVICES COMMITTEE

M E M O R A N D U M May 16, 1984

TO: All Members of the House HESS Committee
Senator Joe Josephson, Sponsor, SB 346
Senator Jan Faiks, Sponsor, SB 346
Dr. Phil Shapiro, Director, Division of Mental Health and Developmental Disabilities
All Interested Persons

FROM: Representative Mae Tischer, Chairman, House HESS MT

RE: Version 3, Proposed House CS for CS for Senate Bill 346 (HESS)

Attached please find a copy of Version 3 of a proposed House HESS CS for CS for Senate Bill 346, "An Act relating to the treatment of mentally ill persons."

The amendments to the bill, indicated with blue highlighting on the attached draft, are found on the pages and lines indicated below. A brief explanation of the effect of each amendment is provided. Please note that page and line references are to Version 3, House CS for CS for Senate Bill 346 (HESS), dated May 15, 1984.

1. Page 1, line 20: This phrase was slightly reworded so as to give added emphasis to the requirement that persons be given ample opportunity to accept voluntary treatment.

2. Page 3, lines 24 - 26: This sentence was rewritten so as to accommodate a couple of substantive and technical amendments: (a) at the request of the Court System, the words "under AS 25.24.310" (circled on line 25 of the draft) were inserted in order to clarify the legal mechanics for the appointment of guardians ad litem as described in this section; (b) the words "as soon as possible" (circled on line 26 of the draft) were inserted so as to require the prompt appointment of a guardian ad litem for each minor.

3. Page 3, lines 28 and 29: As in amendment 2(a) above, the words "under AS 25.24.310" were inserted at the request of the Court System in order to clarify the legal mechanics for the appointment of guardians ad litem under this section.

4. Page 4, lines 11 - 15: This amendment would require a treatment facility to inform as soon as possible the parent or guardian of a minor under 18 years of age if the minor is detained at or admitted or committed to the treatment facility.

5. Page 13, lines 27 and 28: The catch line for AS 47.30.790 was changed so as to more accurately reflect the contents of the section.

6. Page 16, lines 4 - 16: This set of amendments would require a treatment facility to evaluate all patients present in the facility for more than 72 hours to determine if any individual patients have nutritional deficiencies. In conjunction with the original requirement that the treatment facility provide a nutritionally sound diet, this amendment further requires the facility to take appropriate steps to correct any identified deficiencies.

7. Page 20, line 11: This amendment merely returns the language in the bill to the way it appears in present law, deleting the reference to "a psychologist trained in clinical psychology."

8. Page 20, lines 17 - 18: This amendment inserts the word "substantial" before the word "experience," the effect of which would be the application of a higher standard (requiring substantial experience, instead of some possibly lesser degree of experience) when determining the kind of social worker who would be qualified to act as a "mental health professional."

9. Page 20, line 18: This amendment, meant as a purely technical amendment, changes the phrase "experience in the field of mental illness" to "experience in the field of mental health."

10. Page 20, lines 27 - 29; Page 21, lines 1 - 3: This amendment inserts temporary law requiring the division of mental health and developmental disabil-

ities to review the literature concerning orthomolecular psychiatric methods (nutritional therapy) in order to determine their potential uses in the treatment and diagnosis of mentally ill persons in the state; and to submit the report to the legislature by February 1, 1985.

Amendments 1, 2(b), 5, 7, 8 and 9 are found in Version 3 of the proposed House HESS Committee Substitute only. Amendments 2(a), 3, 4, 6 and 10 (in substance) have appeared in one or more of the earlier versions of the proposed House HESS Committee Substitute.

Please review this proposed CS and share your suggestions or comments with me as soon as possible. If there are no additional suggestions or comments, this will be the Version of the bill which we will discuss and hopefully move out during our next HESS meeting. I would appreciate receiving your response as soon as possible.

Attachment

SB

360

STATE OF ALASKA 1984 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date: February 6, 1984

REQUEST
Bill/Resolution No.: SB 360
Title: An act relating to Checking Accounts
Sponsor: Ray and Kertula
Requestor:
Date of Request: 1/19/84

FISCAL DETAIL
Agency Affected: Commerce and Economic Dev.
Program Category Affected: Consumer Protection
BRU, Program or Subprogram(s) Affected: Banking, Securities and Corporations

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 84	FY 85	FY 86	FY 87	FY 88	FY 89
OPERATING						
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	- 0 -	- 0 -	- 0 -	- 0 -	0 -	- 0 -
CAPITAL	- 0 -	- 0 -	- 0 -	- 0 -	- 0 -	- 0 -
REVENUE	- 0 -	- 0 -	- 0 -	- 0 -	- 0 -	- 0 -

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

ANALYSIS: Attach a separate page for analysis

Prepared By: Willis F. Kirkpatrick, Director Phone: 465-2521
Division: Banking, Securities and Corporations Date: 2/6/84

Approved by Commissioner: Richard A. Lyon Date: 2/7/84
Agency: Commerce and Economic Development

Distribution (by Agency preparing fiscal note):
Legislative Finance
Legislative Sponsor
Requestor
Office of Management and Budget
Impacted Agency(ies)

12/1/83

Fiscal Note

– PAWLA –

PROPOSED BAD CHECK CIVIL PENALTIES

PREPARED BY GARY L. JENKINS

NATIONAL FEDERATION OF INDEPENDENT BUSINESS

*Section _. AS 11.46. is amended by adding a new section to read:

Sec. 11.46.290. BAD CHECK CIVIL PENALTIES. (a) In any action against a person who makes any check for the payment of money which has been dishonored, the plaintiff may recover from the defendent damages in an amount equal to $100.00 or triple the amount for which the check is drawn, whichever is greater. However, damages recovered under this section shall not exceed by more than $1,000.00 the amount of the check and may be awarded only if the plaintiff made written demand of the defendant for payment of the amount of the check not less than 15 days before commencing the action and if the defendent failed to tender to the plaintiff, prior to commencement of the action, an amount of money not less than the original amount of the check plus costs incurred by the plaintiff not to exceed $25.00.

(b) A cause of action under this section may be brought in small claims court, if it does not exceed the jurisdiction of that court, or in any other appropriate court.

(c) Subsequent to the commencement of the action but prior to the hearing, the defendent may tender to the plaintiff as satisfaction of the claim, an amount of money equal to the sum of the amount of the check plus the plaintiff's incurred court, legal and service costs, not to exceed $150.00.

(d) In this section

(1) "check" means the same as defined in AS 11.46.280(c)(2);

(2) "dishonored", in addition to meaning the same as defined in AS 11.46.280(b), means a check which is not paid due to a stop payment being issued without cause;

(3) "written demand" means providing a notice in writing to the maker at the address shown on the dishonored check by first class mail or hand delivery advising the drawer that the check has been dishonored and explaining the civil penalties stipulated by this section.

CSSB 360 (L&C)

SECTIONAL ANALYSIS

Section 1

a) Before opening a checking account, the applicant must provide identifiable information, including a driver's license or another identifying document which includes the applicant's photograph.

b) The applicant who falsifies the information is guilty of a class B misdemeanor.

c) A bank may not authorize the checking account if the applicant cannot provide "photo ID". If the applicant is a minor, the parent/ guardian can provide identification.

The bank can waive this requirement if the applicant has had another type of account with the bank for at least a year.

d) The bank shall print checks indicating the month and year the account was opened. If the applicant had a checking account for 2 years or more within 5 years of the date of the new request, the bank can print the month and year of the earlier account.

e) These requirements, except as provided in (c) of this section, do not limit the bank's discretion whether to grant or deny the application.

Section 06.55.020

a) A person who issues a bad check and who fails to pay the amount of the check within 30 days after receiving a written demand for payment is liable for the amount of the check plus 3 times the check value. The damages, exclusive of the amount of the check, may not be less than $100 or more than $500.

b) The check is prima facie evidence if the payee records identifying information on the check and verifies the information against a photo ID.

Section 06.55.500

This section lists a variety of definitions. "Financial institution" is defined as a "bank, savings and loan association, credit union, or other business association authorized to offer transaction accounts in the state.

OFFICIAL BUSINESS

ALASKA STATE LEGISLATURE - SENATE

COMMITTEE ON LABOR AND COMMERCE

SENATOR RICHARD I. ELIASON
CHAIRMAN

POUCH V • JUNEAU, ALASKA 99811
(907) 465-3844

M E M O R A N D U M

TO: Senator Bill Ray, Chair
Senate Judiciary Committee

FROM: Senator Dick Eliason

RE: SB 360 - "An Act relating to checking accounts"

DATE: April 18, 1984

The Senate Labor and Commerce Committee recently held two hearings on SB 360 - "An Act relating to checking accounts". Two distinct versions of this legislation were considered by the Committee. In both instances the banking community opposed sections of SB 360. However, this does not mean the bankers are against legislation which addresses the problem of "bad check" writers. On the contrary, the Alaska Bankers Association supports the intent and objectives of this legislation.

The original version of SB 360 was based on legislation enacted by the State of Minnesota. This version required the banks to verify an applicant's financial stability before a checking account could be opened. As there is no central data base where an applicant's financial history is recorded, representatives from the banks testified that it would be virtually impossible to accurately and efficiently verify the applicant's information before opening a checking account.

The main objections to a committee substitute drafted by the Senate Labor and Commerce Committee centered on the requirement that a photo ID be a requirement for opening a checking account and the stipulation that each check indicate when the account was opened. Testimony indicated that the absolute requirement for a photo ID may be a potential hardship for bush area customers where some people do not have drivers' licenses.

The stipulation that banks print checks indicating the date in which the account was established would prove unenforceable according to a bank representative. If a customer objects strongly to this requirement, the checks could be printed by any publishing house.

In summary, in recognition of the problem stemming from "bad check" writers, I offer a committee substitute based on legislation recently enacted by California. The major thrust of this version is to increase the civil penalties for writing a NSF check.

The various versions of SB 360 are attached for your consideration.

Proposed bill might put a stop to bad check writing

By DEBBIE REINWAND ROSE
The Juneau Empire

A bill which would require banks to compile information on a potential customer's financial history before issuing that customer a checking account faces re-working by the Senate Labor and Commerce Committee.

Empire 2/9/84

Newspaper

The measure, which was heard by the committee Tuesday, is targeted at decreasing the number of bad checks written in Alaska, said sponsor Sen. Bill Ray, D-Juneau.

"We've been trying for the last five or six years to find a way to combat the NSF (non-sufficient funds) check problem so we can get a handle on it," said Ray. "Minnesota passed a similar law last year and it has cut down their bad check rate by 25 percent."

Under the bill's provisions, in addition to asking for basic vital statistics, banks would have to ask customers for information about their past checking accounts, whether any accounts were closed due to applicants' writing bad checks, and whether applicants had been convicted of writing bad checks in the past two years.

Banks would also be required to issue picture identification cards.

Testimony from local bank officials was primarily against the legislation, although suggestions for changes to the bill were offered.

"We are neither in favor or against the bill, but want to point out the problems with it as written," said B.M. Behrends Bank Executive Vice President Craig Dahl.

"There's nothing wrong with the bill, but the mechanisms don't exist at this time to make this come about. In Minnesota they have check systems set up which means everytime they close a customer's account for an overdraw situation, it is reported," said Dahl. "We have no central system to turn to get this kind of information. Someone could tell us they had never had bad check problems, but we still have to try to confirm their history."

In addition, the delay to "99 percent of the customers who are honest" would be unnecessary, said Dahl.

However, Labor and Commerce Chairman Sen. Dick Eliason, R-Sitka, said banks "are very careful about a person's financial history when it comes to loaning money because they then have something at risk."

During committee work on the measure, which is co-sponsored by Senate President Jay Kerttula, D-Palmer, Eliason hopes to "find some kind of balance we can agree on."

CALIFORNIA CREDIT UNION LEAGUE
TOPS/MANDATORY
TECHNICAL OPERATION PROCEDURES
- A D V A N C E -

T.B. 83-66

August 30, 1983

TO: All Credit Unions

SUBJECT: BAD CHECKS OR DRAFTS (A.B. 1226)

Effective January 1, 1984, if a member writes a bad check or draft made payable to the credit union, you may make a claim for the face amount, plus triple the amount owing. Checks or drafts written prior to January, that are dishonored after the effective date, are subject to the new law.

Regardless of the check or draft amount, you may make a claim for at least $100. You may not, however, make a claim exceeding $500.

Example 1: A member writes a $15 bad check. You may make a claim for $100.

Example 2: A member writes a $100 bad check. You may make a claim for $400 - [$100 + (3 x $100)].

Example 3: A member writes a $300 bad check. You may make a claim for $500.

Claims may be filed in small claims court, or any other appropriate court. Before filing a claim, your credit union must deliver, by certified mail, a written demand for payment in cash. After the demand is delivered, the member has 30 days to pay. If the member doesn't pay, you may then make your claim.

This new law applies not only to members that write bad checks or drafts; it also applies to all other persons or organizations. This law does not allow the credit union to file a claim when a share draft, made payable to a third party and drawn on the credit union, is dishonored.

R&I
RESEARCH & INFORMATION
2322 South Garey Ave, Pomona, CA 91766
800/472-1702 or 714/628-6044

Assembly Bill No. 1226

CHAPTER 522

An act to add Section 1719 to the Civil Code, relating to commercial paper.

[Approved by Governor July 28, 1983. Filed with Secretary of State July 28, 1983.]

LEGISLATIVE COUNSEL'S DIGEST

AB 1226, Katz. Bad checks: punitive damages.

Existing law makes it a crime to fraudulently write a bad check, knowing that it is made upon insufficient funds.

This bill would create a cause of action for treble the amount owing but in no case less than $100 or more than $500 for failure to pay upon a dishonored check, in cash, within 30 days of demand for payment, as specified.

The people of the State of California do enact as follows:

SECTION 1. Section 1719 is added to the Civil Code, to read:

1719. Notwithstanding any penal sanctions which may apply, any person who makes, utters, draws, or delivers any check, or draft, or order upon any bank or depository, or person, or firm, or corporation, for the payment of money, which refuses to honor the same for lack of funds or credit to pay, or because the maker has no account with the drawee, and who fails to pay the same amount in cash to the payee within 30 days following a written demand therefor delivered to the maker by certified mail, shall be liable to the payee, in addition to the amount owing upon such check or draft or order damages of treble the amount so owing, but in no case less than one hundred dollars ($100), and in no case more than five hundred dollars ($500).

A cause of action under this section may be brought in small claims court, if it does not exceed the jurisdiction of that court, or in any other appropriate court.

o

011—100 Reprinted 1-20-84 2M 95 50

California Law

Opponents argue that the federal discount rate does not necessarily indicate the cost of funds to financial institutions or businesses. A variety of other factors affect the cost of funds to a particular entity. They argue, therefore, that it is more appropriate to remove all limitations and let market conditions establish the rates.

Bad Check Penalties

3. Do you favor or oppose increased civil and/or criminal penalties as an effective deterrent to the writing of bad checks?

95% Favor (1) 4% Oppose (2) 1% Undecided (3) 19

BACKGROUND: It is well established that bad checks are a problem that every business must deal with to some degree. However, the question has been raised whether the laws of Alaska are presently adequate to deal with the problem. It has been suggested that either or both the civil or criminal penalties should be made stronger to attempt to reduce the impact of this problem.

Bad Check Civil Penalties

4. Should legislation be adopted to require that bad-check writers repay not only the face value of the check and any court costs incurred by the receiver but also civil damages of $100 (minimum) or triple the amount of the check?

86% Favor (1) 10% Oppose (2) 4% Undecided (3) 20

BACKGROUND: Law enforcement officials frequently do not pursue those who write bad checks for small amounts. Thus, the only deterrent to writing a bad check is the receiver's (merchant) collection efforts. Checks written for small amounts, which together may represent a deep cut in a business's profit, frequently cost more to collect than they are worth.

If the merchant was allowed to collect from the bad-check writer a minimum of $100 or triple the amount of the check as damages, in addition to the base value of the check and any court costs incurred, there would be a real incentive for the merchant to collect and a deterrent to bad-check writing.

Check Information

5. Should financial institutions be required to number checks on new accounts beginning at #101 and display on the face of the check the month and year the account was opened?

41% Favor (1) 49% Oppose (2) 10% Undecided (3) 21

5A. Should banks be allowed to disclose to merchants the bank account information of those who issue checks which are returned because of insufficient funds? Such information might include account status, current address, phone number, and history of returned checks.

66% Favor (1) 33% Oppose (2) 1% Undecided (3) 22

BACKGROUND: In the United States, approximately 400,000 worthless checks are written every day. Eighty percent of those checking accounts are six months old or less. Numerical listing and date of account opening would alert merchants to new accounts and to take care in deciding whether to accept those checks. Additionally, several states have given financial institutions permission to disclose account information to either law enforcement officials or merchants who receive a worthless check.

Opponents of the numbering system believe it would create problems for individuals and businesses who for continuity purposes want to continue to number checks from where the old account left off.

LABOR

Mandatory Overtime Wages

6. Should existing law be repealed which requires a business with four or more employees to pay overtime to an employee who works more than 8 hours in one day, but does not work over 40 hours per week?

73% Favor (1) 24% Oppose (2) 3% Undecided (3) 23

BACKGROUND: Most small businesses require that a particular job be accomplished within a certain period. This may require an employee to work more than 8 hours on a particular day. However, the employee is given time off on other days of the week so as not to work more than 40 hours that particular week. Proponents of a change say that law is particularly unfair smaller businesses whose workload heavy at certain times and slack other days of the week. This flexibil of worker time should not impose additional financial burden on smal businesses.

Opponents to changing the law arg that employees working more than hours in any one day should be giv extra compensation in the form overtime pay, whether they work voluntarily or were required to do by their employer. They feel daily ove time pay should be independent of t requirement to pay overtime to an er ployee who works more than 40 hou a week.

GOVERNMENT

Permanent Fund Income

7. Should the unused portion of th income from the Permanen Fund not allocated to the Div dend Program be authorized fo the following?

a. The Longevity Bonus Progran for the elderly

41% Favor (1) 51% Oppose (2) 8% Undecided (3)

Municipal Assistance Program

24% Favor (1) 66% Oppose (2) 10% Undecided (3)

BACKGROUND: During the 198 Legislative Session bills were intro duced which would require that part o the income of the Permanent Fund be held to finance the Longevity Bonus program and/or finance the municipa revenue sharing program. In the past, funding for such programs has been from the state's General Fund.

Proponents of using the income from the Permanent Fund to provide funds for these programs contend that this would not violate the intent of the Permanent Fund financing activities to benefit the maximum number of residents of the state. They argue that programs like the municipal assistance program are helping all communities of the state directly and thus benefit the residents of the various communities indirectly by reducing local taxation and providing needed services.

Opponents argue that the Legislature is merely looking for new sources to fund the expensive programs they have created the past few years which they do

SB

384

Revision Date: February 15, 1984

REQUEST
Bill/Resolution No.: CSSB 384(HESS)
Title: An Act relating to food banks

Sponsor: FERGUSON
Requestor:
Date of Request: 2/10/84

FISCAL DETAIL
Agency Affected: Environmental Conservation
Program Category Affected: NRMEC

BRU, Program or Subprogram(s) Affected:
Environmental Quality Mgmt.

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 84	FY 85	FY 86	FY 87	FY 88	FY 89
OPERATING						
100 PERSONAL SERVICES		0	0	0		
200 TRAVEL		0	0	0		
300 CONTRACTUAL		0	0	0		
400 SUPPLIES		0	0	0		
500 EQUIPMENT		0	0	0		
600 LAND & STRUCTURES		0	0	0		
700 GRANTS, CLAIMS		0	0	0		
800 MISCELLANEOUS		0	0	0		
TOTAL OPERATING		0	0	0		
CAPITAL		0	0	0		
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND		0	0	0		
FEDERAL FUNDS		0	0	0		
OTHER		0	0	0		
TOTAL		0	0	0		

POSITIONS:

FULL-TIME		0	0	0		
PART-TIME		0	0	0		
TEMPORARY		0	0	0		

SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

ANALYSIS: Attach a separate page for analysis

Prepared By: Joe Cladouhos, Director — Phone: 465-2640
Division: Environmental Quality Management — Date: 2/15/84

Approved by Commissioner: Richard A. Neve' — Date: 2/15/84
Agency: Environmental Conservation

Distribution (by Agency preparing fiscal note):
- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)

12/1/83

Alaska State Legislature

REP. MAE TISCHER
CHAIRMAN

POUCH V
STATE CAPITAL
JUNEAU, ALASKA 99811
(907) 465-3777

4/23/84

House of Representatives
HEALTH, EDUCATION AND SOCIAL SERVICES COMMITTEE

STAFF REVIEW

CS FOR SB 384 (HESS), "An Act relating to food banks," by Senators Ferguson, Kelly, Rodey, et al, amends the Alaska Food, Drug and Cosmetic Act (AS 17.20) by adding language relating to the liability of food banks and individual donors. CSSB 384 (HESS) is identical to CSHB 496 (HESS) by Representatives Koponen and Miller. The Department of Environmental Conservation, Division of Environmental Quality Management, estimates the fiscal impact of CSSB 384 (HESS) to be Zero for FY 85, FY 86, and FY 87 (Please see fiscal note for greater detail).

The bill provides that a donor to a food bank is not subject to civil or criminal liability arising from an injury or death attributable to the condition of donated food if the injury or death is not a result of the gross negligence, recklessness, or intentional misconduct of the donor. The bill specifically states that nothing in the bill prohibits the donation of canned goods with misbrands or missing labels, and food that would not be readily marketable because of appearance or grade, or because it is surplus.

The bill provides that a food bank is not liable for injury or death attributable to the condition of donated food if the food bank inspects the food received in a reasonable manner and if the injury or death is not the direct result of the negligence, recklessness, or intentional misconduct of the food bank. Food banks may accept misbranded food or food with missing labels, or food that would not be readily marketable because of appearance or grade, or because it is surplus.

"Donor" is defined in such a way as to exclude a person who acts in a commercial capacity as a manufacturer, packer, processor, bottler, or similar entity, if that activity is the person's primary activity.

The bill does not provide for an effective date and would therefore become law 90 days after the Governor signs the bill.

(Legislative Reporting Service, 1/30/84, p. 122, and 1/16/84, pp. 44 - 45)

Alaska State Legislature

REP. MAE TISCHER
CHAIRMAN

POUCH V
STATE CAPITAL
JUNEAU, ALASKA 99811
(907) 465-3777

House of Representatives
HEALTH, EDUCATION AND SOCIAL SERVICES COMMITTEE

MEMORANDUM April 23, 1984

TO: Representative Mae Tischer
FROM: Bill Lovell, Professional Assistant, HESS Committee

RE: Analysis of CSSB 384 (HESS)

I have prepared the following analysis of the Senate HESS Committee Substitute for Senate Bill 384, "[a]n Act relating to food banks."

CSSB 384 (HESS) amends AS 17.20 (Alaska Food, Drug and Cosmetic Act) by adding new sections, the effects of which are described below.

Sec. 17.20.345 provides that a donor to a food bank is not subject to civil or criminal liability for damages resulting from the consumption of donated food, unless such damages are the result of extreme negligence, recklessness, or misconduct by the donor. In other words, gross negligence, recklessness, or misconduct must be proven before a food bank donor is held civilly or criminally liable for damages attributable to the consumption of donated food. This provision subjects food bank donors to a more stringent test than food bank operators when determining negligence, recklessness, or misconduct.

The bill specifically states that nothing in this section prohibits the donation of apparently suitable goods solely because of missing labels, appearance, or lower grade or marketability.

Sec. 17.20.346 provides that a food bank is not subject to civil or criminal liability for damages resulting from the consumption of goods received and distributed by the food bank if, prior to distribution, the food bank had inspected the food in a reasonable manner; if the food bank had had no actual or constructive knowledge that the food was adulterated, tainted, or contaminated; and if the aforementioned damages were not the result of negligence, recklessness, or misconduct by the operators of the food bank. In other words, simple negligence, which is more easily proven than

gross negligence, must be proven before a food bank operator can be held civilly or criminally liable for damages attributed to the consumption of food distributed by the food bank. This provision of the bill subjects food bank operators to a less stringent test than donors when determining negligence, recklessness, or misconduct.

The bill specifically states that nothing in this section prohibits a food bank from distributing apparently suitable food solely because of missing labels, appearance, or lower grade or marketability.

Sec. 17.20.347 defines "donor," as used in AS 17.20.345 and 17.20.346, as including a person, farmer, retailer, slaughter-house under state supervision, freight company, distributor, wholesaler, or similar entity. This provision specifically permits operators of state supervised slaughter-houses to donate suitable meats to food banks.

The section specifically excludes from the definition of "donor," any person who acts in a commercial capacity as a manufacturer, packer, processor, bottler, or similar entity, if that activity is the person's primary activity.

This section further provides that "food bank" means an organization recognized by the state or federal government as a nonprofit organization and that operates principally to collect, inspect, and salvage donated food for free distribution to needy persons.

/wtl

Alaska State Legislature

Senate

Official Business

Pouch V
State Capitol
Juneau, Alaska 99811

M E M O R A N D U M

TO: Representative Mae Tischer, Chair
House Health, Education, and Social
Services Committee

FROM: Senator Frank Ferguson

DATE: April 23, 1984

SUBJ: Senate Bill 384

In Nome, Barrow and Kotzebue we have food donors and banks at many of our churches who, under current law, run the risk of civil and criminal liability for any injury or death arising out of the use of any donated food.

This bill provides protection for honest, civic-minded individuals and businesses who wish to donate edible foodstuffs for those less fortunate. However, should the donor provide food knowing that it could cause injury or death, they would face both criminal and civil liability.

HOUSE HESS - HB 496/SB 384

Chapter 10. Uniform Narcotic Drug Act.

[Repealed, § 26 ch 45 SLA 1982. For current law, see AS 11.71 and 17.30.]

Cross references. — For transition provisions, see secs. 23 and 24, ch. 45, SLA 1982 in the Temporary and Special Acts.

Chapter 12. Depressant, Hallucinogenic and Stimulant Drugs.

[Repealed, § 26 ch 45 SLA 1982. For current law, see AS 11.71 and 17.30.]

Cross references. — For transition provisions, see secs. 23 and 24, ch. 45, SLA 1982 in the Temporary and Special Acts.

Chapter 15. Drugs.

[Repealed, § 26 ch 45 SLA 1982. For current law, see AS 11.71 and 17.30.]

Cross references. — For transition provisions, see secs. 23 and 24, ch. 45, SLA 1982 in the Temporary and Special Acts.

Chapter 20. Alaska Food, Drug and Cosmetic Act.

Article
1. Food (§§ 17.20.010—17.20.076)
2. Drugs and Devices (§§ 17.20.080—17.20.135)
3. Cosmetics (§§ 17.20.140—17.20.165)
4. False Advertising (§§ 17.20.160—17.20.178)
5. Enforcement (§§ 17.20.180—17.20.280)
6. Prohibited Acts and Penalties (§§ 17.20.290—17.20.330)
7. General Provisions (§§ 17.20.340—17.20.380)

Opinions of attorney general. — The Department of Health and Social Services has the authority to regulate the sanitary practices of canneries even though the products manufactured in the canneries are solely for export to a foreign country. 1974 Op. Att'y Gen. No. 3, withdrawing its opinion of June 21, 1971.

Collateral references. — What is a "drug," "device," and "new drug" within the definitions of these terms in § 201(g)(1), (h), and (p) of the Federal Food, Drug, and Cosmetic Act as amended (21 USC § 321(g)(1), (h), and (p)), 3 ALR Fed. 813.

Article 1. Food.

Section
10. Definitions and standards for food
20. Adulterated food
30. Tolerances for added poisonous ingredients
40. Misbranded foods
45. Misbranding halibut
50. Emergency permit control
60. Suspension and reinstatement of emergency permit
70. Inspection by department
72. Enforcement authority
75. Definitions

Collateral references. — 35 Am. Jur. 2d, Food, § 2 et seq.
36A C.J.S., Food, § 9(2).

Sec. 17.20.010. Definitions and standards for food. When, in the judgment of the commissioner, honest and fair dealing in the interest of consumers will be promoted, the department shall adopt regulations fixing and establishing for food or class of food a reasonable definition and standard of identity, a reasonable standard of quality, and reasonable standards of fill of container. In prescribing a definition and standard of identity for food or class of food in which optional ingredients are permitted, the department shall, for the purpose of promoting honesty and fair dealing in the interest of consumers, designate the optional ingredients which shall be named on the label. The definitions and standards adopted shall conform as far as practicable to the definitions and standards adopted under authority of the federal act. The department shall establish a mobile canned food inspection service available upon request to food packers or processors inside the state. (§ 9 ch 120 SLA 1949; am § 1 ch 125 SLA 1955)

Sec. 17.20.020. Adulterated food. (a) Food is adulterated if

(1) it bears or contains a poisonous or deleterious substance which may render it injurious to health; but in case the substance is not an added substance the food is not considered adulterated under this paragraph if the quantity of the substance does not ordinarily render it injurious to health;

(2) it bears or contains added poisonous or added deleterious substance which is unsafe within the meaning of AS 17.20.030;

(3) it consists in whole or in part of a diseased, contaminated, filthy, putrid, or decomposed substance, or if it is otherwise unfit for food;

(4) it has been produced, prepared, packed, or held under insanitary conditions in which it may have become contaminated with filth, or in which it may have been rendered diseased, unwholesome, or injurious to health;

(5) it is, in whole or in part, the product of a diseased animal or an animal which has died otherwise than by slaughter, or that has been fed upon the uncooked offal from a slaughterhouse;

(6) its container is composed, in whole or in part, of a poisonous or deleterious substance which may render the contents injurious to health.

(b) Food is adulterated if

(1) a valuable constituent has been omitted or abstracted in whole or part;

(2) a substance has been substituted in whole or part for a valuable constituent;

(3) damage or inferiority has been concealed;

(4) a substance has been added or mixed or packed with it to increase its bulk or weight, or reduce its quality or strength, or make it appear better or of greater value than it is.

(c) Confectionery is adulterated if it bears or contains an alcohol or nonnutritive article or substance except harmless coloring, harmless flavoring, harmless resinous glaze not in excess of four-tenths of one per cent, harmless natural wax not in excess of four-tenths of one per cent, harmless natural gum, and pectin. This subsection does not apply to confectionery containing less than one-half of one per cent by volume of alcohol derived solely from the use of flavoring extracts, or to chewing gum containing harmless nonnutritive masticatory substances.

(d) Food is adulterated if it bears or contains a coal tar color other than one from a batch which has been certified under authority of the federal act. (§ 10 ch 129 SLA 1949)

Collateral references. — Trichinosis, proof, 11 Am. Jur. POF, pp. 373-417; botulism poisoning, 16 Am. Jur. POF, pp. 213-271.

Liability of packer, foodstore, or restaurant for causing trichinosis, 90 ALR3d 451.

Sec. 17.20.030. Tolerances for added poisonous ingredients. A poisonous or deleterious substance added to food, except where the substance is required in the production of food or cannot be avoided by good manufacturing practice, is unsafe for purposes of the application of AS 17.20.020(a)(2). When the substance is required or cannot be avoided, the department shall adopt regulations limiting the quantity of it to the extent necessary for the protection of public health. A quantity exceeding the limits fixed is unsafe for purposes of the application of AS 17.20.020(a)(2). While a regulation limiting the quantity of a substance in the case of any food is in effect, the food is not, by reason of bearing or containing an added amount of the substance, adulterated within the meaning of AS 17.20.020(a)(1). In determining the quantity of the added substance to be tolerated in or on food, the department shall consider the extent to which the use of the substance is required or cannot be avoided in the production of each article and the other ways in which the consumer may be affected by that or other poisonous or deleterious substances. (§ 11 ch 129 SLA 1949)

Sec. 17.20.040. Misbranded foods. Food is misbranded if

(1) its labeling is false or misleading in any particular;

(2) it is offered for sale under the name of another food;

(3) it is an imitation of another food, unless its label bears, in type of uniform size and prominence, the word "imitation" and, immediately thereafter, the name of the food imitated;

(4) its container is made, formed, or filled so as to be misleading;

(5) it is in package form unless it bears a label containing (A) the name and place of business of the manufacturer, packer, or distributor; and (B) an accurate statement of the quantity of the contents in terms of weight, measure, or numerical count; however, under (B) of this paragraph reasonable variations are permitted, and exemptions for small packages shall be established by regulations prescribed by the department;

(6) a word, statement, or other information required by or under authority of this chapter to appear on the label or labeling is not prominently placed with the conspicuousness (as compared with other words, statements, designs or devices, in the labeling) and in terms which make it likely to be read and understood by the ordinary individual under customary conditions of purchase and use;

(7) it purports to be or is represented as a food for which a definition and standard of identity has been prescribed by regulations as provided by AS 17.20.010, unless (A) it conforms to the definition and standard, and (B) its label bears the name of the food specified in the definition and standard and the common names of optional ingredients other than spices, flavoring, and coloring present in the food as required by regulation;

(8) it purports to be or is represented as (A) a food for which a standard of quality has been prescribed by regulations, and its quality falls below that standard, unless its label bears, in the manner and form the regulations specify, a statement that it falls below that standard; or (B) a food for which a standard of fill of container has been prescribed by regulation as provided by AS 17.20.010 and it falls below the applicable standard of fill of container, unless its label bears, in the manner and form as the regulations specify, a statement that it falls below that standard;

(9) it is not subject to the provisions of (7) of this section, unless it bears labeling clearly giving (A) the common or usual name of the food, if any, and (B) in case it is fabricated from two or more ingredients, the common or usual name of each ingredient; except that however spices, flavorings, and colorings, other than those sold as such, may be designated as spices, flavorings, and colorings, without naming each; however, to the extent that compliance with the requirements of (B) of this paragraph is impracticable, or results in deception or unfair competition, exemptions shall be established by regulations promulgated by the department, but the requirements of (B) of this paragraph do not

apply to food products which are packaged at the direction of purchasers at retail at the time of sale, the ingredients of which are disclosed to the purchasers by other means in accordance with regulations adopted by the department;

(10) it purports to be or is represented for special dietary uses, unless its label bears information concerning its vitamin, mineral, and other dietary properties the commissioner determines to be, and by regulations prescribes as, necessary in order fully to inform purchasers as to its value for those uses;

(11) it bears or contains artificial flavoring, artificial coloring, or chemical preservative, unless it bears labeling stating that fact; however, to the extent that compliance with the requirements of this paragraph is impracticable, exemption shall be established by regulations adopted by the department. (§ 11 ch 129 SLA 1949)

Collateral references. — Validity and construction of regulations dealing with misrepresentation in the sale of Kosher food, 52 ALR3d 959.

Sec. 17.20.045. Misbranding halibut. No person may label or offer for sale any food fish product designated as halibut, with or without additional descriptive words, unless the food fish product is Hippoglossus or Hippoglossus Stenolepsis. A person who violates this section is guilty of misbranding food under provisions of this chapter. (§ 1 ch 59 SLA 1968)

Sec. 17.20.050. Emergency permit control. When the department finds after investigation that the distribution in the state of a class of food may, by reason of contamination with microorganisms during the manufacture, processing, or packing, be injurious to health, and that the injurious nature cannot be adequately determined after the articles have entered commerce, it, in that case only, shall adopt regulations providing for the issuance of permits to manufacturers, processors, or packers of that class of food, to which shall be attached the conditions governing the manufacture, processing, or packing of that class of food, for a temporary period of time as may be necessary to protect the public health. After the effective date of the regulations, and during the temporary period, no person may introduce or deliver for introduction into commerce the food so manufactured, processed or packed by any manufacturer, processor, or packer unless the manufacturer, processor, or packer of it holds a permit issued by the commissioner. (§ 12(a) ch 129 SLA 1949)

Sec. 17.20.060. Suspension and reinstatement of emergency permit. The commissioner may suspend immediately upon notice a permit issued under AS 17.20.050 if it is found that the conditions of the permit have been violated. The holder of a suspended permit may apply for the reinstatement of the permit, and the commissioner, immediately after prompt hearing and an inspection of the establishment, shall reinstate the permit if it is found that adequate measures have been taken to comply with and maintain the conditions of the permit as originally issued or as amended. (§ 12(b) ch 129 SLA 1949)

Sec. 17.20.070. Inspection by department. An officer or employee designated by the commissioner shall have access to a factory or establishment, the operator of which holds a permit from the commissioner, for the purpose of ascertaining whether or not the conditions of the permit are being complied with. Denial of access for inspection is ground for suspension of the permit until access is freely given. (§ 12(c) ch 129 SLA 1949)

Sec. 17.20.072. Enforcement authority. The commissioner is responsible for enforcing AS 17.20.010 — 17.20.075, and may delegate that authority as appropriate. This section does not limit the authority of peace officers. (Executive Order No. 51, § 19 (1981))

Sec. 17.20.075. Definitions. In AS 17.20.010 — 17.20.075,

(1) "commissioner" means the commissioner of environmental conservation;

(2) "department" means the Department of Environmental Conservation. (Executive Order No. 51, § 19 (1981))

Article 2. Drugs and Devices.

Section
80. Adulterated drugs and devices
90. Misbranded drugs and devices
100. Exemptions in case of drugs and devices
105. Preparation of drug prescription by pharmacist
110. Sale of new drugs
120. Application for sale of new drugs
130. Exemptions
132. Enforcement authority
135. Definitions

Collateral references. — 25 Am. Jur. 2d, Drugs, Narcotics, and Poisons, §§ 18 et seq., 28 et seq., 69.

Aspirin poisoning, 25 Am. Jur. POF, pp. 725-764.

Negligence in use of diet and weight control drugs in treatment of obesity, 24 Am. Jur. POF2d, pp. 203-344; barbiturate poisoning, 29 Am. Jur. POF2d, pp. 199-222.

28 C.J.S., Drugs and Narcotics Supplement, § 100 et seq.

Hospital's liability for negligence in connection with preparation, storage, or dispensation of drug or medicine, 9 ALR3d 870.

Liability of manufacturer or seller for injury or death allegedly caused by use of contraceptive, 70 ALR3d 315.

Administering or prescribing drugs for weight control, 1 ALR4th 236.

Administering or prescribing birth control pills or devices, 9 ALR4th 372.

Validity of inspection conducted under pre-announced Federal Food, Drug, and Cosmetic Act (21 USCS § 374(a)) authorizing FDA inspectors to enter and inspect food, drug or cosmetic factory, warehouse, or other establishment, 18 ALR Fed. 734.

Validity, construction, and application of provision of § 502(f) of Federal Food, Drug, and Cosmetic Act (21 USCS § 352(f)) requiring [illegible] adjusting to

proposed repeal or amendment of regulation providing for certification of antibiotic drugs, to state "reasonable grounds" therefor, 22 ALR Fed. 885.

Sec. 17.20.080. Adulterated drugs and devices. (a) A drug or device is adulterated if

(1) it consists in whole or in part of a filthy, putrid, or decomposed substance;

(2) it has been produced, prepared, packed, or held under insanitary conditions in which it may have been contaminated with filth, or in which it may have been rendered injurious to health;

(3) it is a drug and its container is composed, in whole or in part, of poisonous or deleterious substance which may render the contents injurious to health; or

(4) it is a drug and it bears or contains, for purposes of coloring only, a coal tar other than one from a batch certified under the authority of the federal act.

(b) A drug is adulterated if it purports to be or is represented as a drug the name of which is recognized in an official compendium, and its strength differs from, or its quality or purity falls below the standard set forth in the compendium. The determination as to strength, quality, or purity shall be made in accordance with the tests or methods of assay set forth in the compendium, or in the absence or inadequacy of tests or methods of assay, those prescribed under authority of the federal act. A drug defined in an official compendium is not adulterated under this subsection because it differs from the standard of strength, quality, or purity set forth in the compendium, if its difference in strength, quality, or purity is plainly stated on its label. When a drug is recognized in both the United States Pharmacopoeia and the Homeopathic Pharmacopoeia of the United States it is subject to the requirements of the United States Pharmacopoeia unless it is labeled and offered for sale as a homeopathic drug, in which case it is subject to the provisions of the Homeopathic Pharmacopoeia of the United States and not to those of the United States Pharmacopoeia.

(c) A drug is adulterated if it is not subject to the provisions of (b) of this section and its strength differs from, or its purity or quality falls below, that which it purports or is represented to possess.

(d) A drug is adulterated if a substance has been

(1) mixed or packed with it to reduce its quality or strength; or

(2) substituted wholly or in part for it. (§ 14 ch 129 SLA 1949)

Sec. 17.20.090. Misbranded drugs and devices. A drug or device is misbranded

(1) if its labeling is false or misleading in any particular;

(2) if it is in package form unless it bears a label containing (A) the name and place of business of the manufacturer, packer, or distributor; and (B) an accurate statement of the quantity of the contents in terms

of weight, measure, or numerical count; however, under (B) of this paragraph reasonable variations shall be permitted and exemptions for small packages shall be established by regulations adopted by the department;

(3) if a word, statement, or other information required by or under authority of this chapter to appear on the label or labeling is not prominently placed with conspicuousness as compared with other words, statements, designs, or devices, in the labeling and in terms which render it likely to be read and understood by the ordinary individual under customary conditions of the purchase and use;

(4) if it is for use by man and contains a quantity of the narcotic or hypnotic substance alpha-eucaine, barbituric acid, beta-eucaine, bromal, cannabis, carbromal, chloral, coca, cocaine, codeine, heroin, marijuana, morphine, opium, paraldehyde, peyote, or sulphonmethane, or a chemical derivative of any of them, which has been by the commissioner after investigation found to be and by regulations under this chapter designated as habit forming; unless its label bears the name, and quantity or proportion of the substance or derivative and in juxtaposition with it the statement "Warning – May be habit forming";

(5) if it is a drug and is not designated solely by a name recognized in an official compendium unless its label bears (A) the common or usual name of the drug; and (B) in case it is fabricated from two or more ingredients, the common or usual name of each active ingredient, including the kind and quantity or proportion of alcohol, and including, whether active or not, the name and quantity or proportion of bromides, ether, chloroform, acetanilid, acetphenetidin, amidopyrine, antipyrine, atropine, hyoscine, hyoscyamine, arsenic, digitalis glucosides, mercury, quabain, strophanthin, strychnine, thyroid, or derivative or preparation of any of these substances contained in them; however, to the extent that compliance with the requirements of (B) of this paragraph is impracticable, exemptions shall be established by regulations adopted by the department;

(6) unless its labeling bears (A) adequate directions for use; and (B) adequate warnings against use in those pathological conditions or by children where its use may be dangerous to health, or against unsafe dosage or methods or duration of administration or application, in the manner and form necessary for the protection of users; however, where a requirement of (A) of this paragraph as applied to a drug or device is not necessary for the protection of the public health, the department shall adopt regulations exempting the drug or device from these requirements;

(7) if it purports to be a drug the name of which is recognized in an official compendium, unless it is packaged and labeled as prescribed in the compendium; however, the method of packing may be modified with the consent of the commissioner, and when a drug is recognized

in both the United States Pharmacopoeia and the Homeopathic Pharmacopoeia of the United States, it is subject to the requirements of the United States Pharmacopoeia with respect to packaging and labeling unless it is labeled and offered for sale as a homeopathic drug, in which case it shall be subject to the provisions of the Homeopathic Pharmacopoeia of the United States; and not to those of the United States Pharmacopoeia;

(8) if it has been found by the commissioner to be a drug liable to deterioration, unless it is packaged in the form and manner and its label bears a statement of the precautions the department by regulation requires as necessary for the protection of public health; and no regulation shall be established for a drug recognized in an official compendium until the commissioner has informed the appropriate body charged with the revision of the compendium of the need for packaging or labeling requirements and that body has failed within a reasonable time to prescribe the requirements;

(9) if it is a drug and its container is made, formed, or filled so as to be misleading or if it is an imitation of another drug; or if it is offered for sale under the name of another drug;

(10) if it is dangerous to health when used in the dosage, or with the frequency or duration prescribed, recommended, or suggested in its labeling;

(11) if (A) it is a drug sold at retail and contains any quantity of aminopyrine, barbituric acid, cinchophen, pituitary, thyroid, or their derivatives, or (B) it is a drug or device sold at retail and its label as originally packed bears a statement that it is to be dispensed or sold only by or on the prescription of a physician, dentist or veterinarian, unless it is sold on a written prescription signed by a member of the medical, dental, or veterinary profession licensed by law to administer the drug or device, and its label as dispensed bears the name and place of business of the seller, the serial number and date of the prescription, and the name of the member of the medical, dental or veterinary profession, and the prescription shall not be refilled except on the written authorization of the prescribing physician, dentist or veterinarian. (§ 16 ch 129 SLA 1949)

Collateral references. — Failure to warn as basis of liability under doctrine of strict liability in tort. 61 ALR3d 230.

Liability of manufacturer or seller for injury or death allegedly caused by failure to warn regarding danger in use of vaccine or prescription drug. 91 ALR3d 709.

Sec. 17.20.100. Exemptions in case of drugs and devices. A drug sold on a written prescription signed by a member of the medical, dental, or veterinary profession, except a drug sold in the course of the conduct of a business of selling drugs pursuant to diagnosis by mail, is exempt from the requirements of AS 17.20.090(2) and (6) if (1) the member of the medical, dental, or veterinary profession is licensed by

law to administer the drug, and (2) the drug bears a label containing the name and place of business of the seller, the serial number and date of the prescription, and the name of the member of the medical, dental, or veterinary profession. (§ 16 ch 129 SLA 1949)

Sec. 17.20.105. Preparation of drug prescription by pharmacist. (a) In preparing a drug prescription a pharmacist shall indicate on the drug container the name and strength of the drug contained in it, unless specifically directed otherwise by the prescribing physician, osteopathic physician, dentist or veterinarian. If a drug is a mixture of pharmacologically active substances, only the name of the mixture need be indicated on the container, or in the absence of a name, the term "physician's mixture" may be used.

(b) In preparing a prescription, a pharmacist may not substitute a drug for a registered brand or trade name product specified unless the pharmacist obtains permission from the author of the prescription; but if the prescribing physician, osteopathic physician, dentist or veterinarian is temporarily unavailable, the pharmacist may, if unable to supply the drug requested, substitute a drug or preparation of approximately equal therapeutic value so long as the pharmacist notifies the author of the prescription at an early opportunity. (§ 1 ch 17 SLA 1971)

Sec. 17.20.110. Sale of new drugs. A person may not sell, deliver, offer for sale, hold for sale or give away a new drug unless

(1) an application for it has become effective under the federal act, or

(2) when not subject to the federal act unless the drug has been tested and has not been found to be unsafe for use under the conditions prescribed, recommended, or suggested in the labeling of it, and before selling or offering it for sale there has been filed with the commissioner an application setting out

(A) full reports of investigations which have been made to show whether or not the drug is safe for use;

(B) a full list of the articles used as components of the drug;

(C) a full statement of the composition of the drug;

(D) a full description of the methods used in, and the facilities and controls used for, the manufacture, processing, and packing of the drug;

(E) samples of the drug and articles used as components of it which the commissioner requires; and

(F) specimens of the labeling proposed to be used for the drug. (§ 17(a) ch 129 SLA 1949)

Collateral references. — Right of medical patient to obtain, or physician to prescribe, Laetrile for treatment of illness — state cases. 6 ALR4th 219.

Sec. 17.20.120. Application for sale of new drugs. The application provided for in AS 17.20.110 is effective on the 60th day after the filing of it. If the commissioner finds, after notice to the applicant and providing an opportunity for a hearing, that the drug is not safe for use under the conditions prescribed, recommended, or suggested in the proposed labeling, the commissioner shall, before the effective date of the application, issue an order refusing to permit the application to become effective. An order refusing an application to become effective may be revoked by the commissioner. (§ 17(b) (d) ch 129 SLA 1949)

Sec. 17.20.130. Exemptions. AS 17.20.110 does not apply to a drug (1) intended solely for investigational use by experts qualified by scientific training and experience to investigate the safety in drugs provided the drug is plainly labeled "for investigational use only"; or (2) licensed under the Virus, Serum, and Toxin Act of July 1, 1902 (U.S.C. 1934 ed. title 42, chap. 4). (§ 17(c) ch 129 SLA 1949)

Editor's notes. — The Virus, Serum, and Toxin Act has been superseded by 42 U.S.C. 262

Sec. 17.20.132. Enforcement authority. The commissioner is responsible for enforcing AS 17.20.080 — 17.20.135, and may delegate that authority as appropriate. This section does not limit the authority of peace officers. (Executive Order No. 51, § 19 (1981))

Sec. 17.20.135. Definitions. In AS 17.20.080 — 17.20.135,

(1) "commissioner" means the commissioner of health and social services;

(2) "department" means the Department of Health and Social Services. (Executive Order No. 51, § 19 (1981))

Article 3. Cosmetics.

Section	Section
140. Adulterated cosmetics	152. Enforcement authority
150. Misbranded cosmetics	155. Definition

Sec. 17.20.140. Adulterated cosmetics. A cosmetic is adulterated if

(1) it bears or contains a poisonous or deleterious substance which may render it injurious to a user under the conditions of use prescribed in the labeling or advertisement of it, or under conditions of use which are customary or usual; however, this provision does not apply to coal tar hair dye, the label of which bears the following legend conspicuously displayed: "Caution — this product contains ingredients which may cause skin irritation on certain individuals and a preliminary test according to accompanying directions should first be made. This product must not be used for dyeing the eyelashes or eyebrows; to do so may cause blindness." and the labeling of which bears adequate directions for preliminary testing, and for the purposes of this paragraph and (5) of this section the term "hair dye" does not include eyelash dyes or eyebrow dyes;

(2) it consists in whole or in part of a filthy, putrid, or decomposed substance;

(3) it has been produced, prepared, packed, or held under insanitary conditions by which it may have become contaminated with filth or made injurious to health;

(4) its container is composed, in whole or in part, of a poisonous or deleterious substance which may make the contents injurious to health;

(5) it is not a hair dye and it bears or contains a coal tar color other than one from a batch which has been certified under authority of the federal act. (§ 18 ch 129 SLA 1949)

Collateral references. — Liability of seller of cosmetics for injuries on theory of breach of warranty as affected by buyer's or user's allergy or unusual susceptibility to injury from article. 26 ALR3d 968.

Sec. 17.20.150. Misbranded cosmetics. A cosmetic is misbranded if

(1) its labeling is false or misleading in any particular;

(2) it is in package form unless it bears a label containing (A) the name and place of business of the manufacturer, packer, or distributor; and (B) an accurate statement of the quantity of the contents in terms of weight, measure, or numerical count; however, under (B) of this paragraph reasonable variations shall be permitted, and exemptions as to small packages shall be established by regulations adopted by the department;

(3) a word, statement, or other information required by or under authority of this chapter to appear on the label or labeling is not prominently placed on it with conspicuousness as compared with other words, statements, designs, or devices, in the labeling, and in terms which make it likely to be read and understood by the ordinary individual under customary conditions of purchase and use;

(4) its container is made, formed, or filled so as to be misleading. (§ 19 ch 129 SLA 1949)

Sec. 17.20.152. Enforcement authority. The commissioner of environmental conservation is responsible for enforcing AS 17.20.140 — 17.20.155, and may delegate that authority as appropriate. This section does not limit the authority of peace officers. (Executive Order No. 51, § 19 (1981))

Sec. 17.20.155. Definition. In AS 17.20.140 — 17.20.155, "department" means the Department of Environmental Conservation. (Executive Order No. 51, § 19 (1981))

Article 4. False Advertising.

Section
160. False advertising generally
170. Specified false advertising
172. Enforcement authority
175. Definitions

Collateral references. — 3 Am. Jur. 2d, Advertising, §§ 2, 4 et seq.; 37 Am. Jur. 2d, Food and Drugs, § 56.

What constitutes "false advertising" of food products or cosmetics within §§ 5 and 12 of the Federal Trade Commission Act (15 USCS §§ 45, 52), 50 ALR Fed. 16.

Sec. 17.20.160. False advertising generally. An advertisement of a food, drug, device, or cosmetic is false if it is false or misleading in any particular. (§ 20(a) ch 129 SLA 1949)

Sec. 17.20.170. Specified false advertising. The advertisement of a drug or device representing that it has an effect on albuminuria, appendicitis, arteriosclerosis, blood poison, bone disease, Bright's disease, cancer, carbuncles, cholecystitis, diabetes, diphtheria, dropsy, erysipelas, gallstones, heart and vascular diseases, high blood pressure, mastoiditis, measles, meningitis, mumps, nephritis, otitis media, paralysis, pneumonia, poliomyelitis (infantile paralysis), prostate gland disorders, pyelitis, scarlet fever, sexual impotence, sinus infection, smallpox, tuberculosis, tumors, typhoid, uremia, or venereal disease is false advertising. An advertisement not in violation of AS 17.20.160 is not false under this section if it is disseminated only to members of the medical, dental, or veterinary profession, or appears only in the scientific periodicals of these professions, or is disseminated only for the purpose of public health education by persons not commercially interested, directly or indirectly, in the sale of the drug or device. However, when the commissioner determines that an advance in medical science has made a self-medication safe as to any of the diseases named in this section, the department shall by regulation authorize the advertisement of drugs having curative or therapeutic effect for the disease, subject to the conditions and restrictions the commissioner considers necessary in the interests of public health. This section shall not be construed as indicating that self-medication for diseases other than those named in this section is safe or efficacious. (§ 20(b) ch 129 SLA 1949)

Sec. 17.20.172. Enforcement authority. The commissioner is responsible for enforcing AS 17.20.160 — 17.20.175, and may delegate that authority as appropriate. This section does not limit the authority of peace officers. (Executive Order No. 51, § 19 (1981))

Sec. 17.20.175. Definitions. In AS 17.20.160 — 17.20.175,

(1) "commissioner" means the commissioner of health and social services;

(2) "department" means the Department of Health and Social Services. (Executive Order No. 51, § 19 (1981))

Article 5. Enforcement.

Section
180. Regulations
190. Hearings
200. Inspections and examinations
210. Reimbursement for expenses
220. Publication of reports and information
230. Detention or embargo of goods
240. Petition for libel for condemnation
250. Destruction of adulterated or misbranded goods
260. Exemption from destruction
270. Immediate destruction of contaminated food
280. Injunction proceedings

Collateral references. — 25 Am. Jur. 2d, Drugs, Narcotics, and Poisons, §§ 7 et seq., 28 et seq.; 35 Am. Jur. 2d, Food, § 63 et seq.

Seizure of food, 9 Am. Jur. Trials, pp. 59-136.

Sec. 17.20.180. Regulations. The Department of Environmental Conservation and the Department of Health and Social Services may adopt regulations for the efficient enforcement of their respective portions of this chapter. Each department may make the regulations conform, in so far as practicable, with those adopted under the federal act. (§ 21(a) ch 129 SLA 1949; am Executive Order No. 51, § 20 (1981))

Effect of amendments. — The 1981 amendment substituted "Department of Environmental Conservation and the Department of Health and Social Services" for "department," substituted "adopt" for "promulgate" preceding "regulations" and added "of their respective portions" following "efficient enforcement" in the first sentence. In the second sentence, the amendment substituted "each" for "the" preceding "department" and substituted "adopted" for "promulgated" following "with those."

Sec. 17.20.190. Hearings. Hearings authorized or required by this chapter shall be conducted under the provisions of the Administrative Procedure Act (AS 44.62). (§ 21(b) ch 129 SLA 1949)

Sec. 17.20.200. Inspections and examinations. (a) The commissioner of environmental conservation or an agent shall have free access at reasonable hours to a factory, warehouse, or establishment in which foods or cosmetics are manufactured, processed, packed, or held for introduction into commerce, or to enter a vehicle being used to transport or hold these foods or cosmetics in commerce, in order to

(1) inspect a factory, warehouse, establishment, or vehicle to determine if the provisions of the commissioner's respective portions of this chapter are being violated, and

(2) secure samples or specimens of a food or cosmetic after paying or offering to pay for the sample.

(b) The commissioner of environmental conservation shall make or have made examinations of samples secured under this section to determine whether or not a provision of the commissioner's respective portions of this chapter is being violated.

(c) The commissioner of health and social services has the same powers and duties with respect to drugs and devices as the commissioner of environmental conservation has with respect to food and cosmetics under (a) and (b) of this section. (§ 22 ch 129 SLA 1949; am § 1 ch 80 SLA 1957; am Executive Order No. 51, § 21 (1981))

Effect of amendments. — The 1981 amendment added "of environmental conservation" following "the commissioner" and deleted "drugs, devices" following "food" twice in the introductory language of subsection (a). Also in subsection (a), the amendment added "of his respective portions" following "if the provisions" in paragraph (1) and deleted "drug, device" following "food" in paragraph (2). In subsection (b), the amendment added "of environmental conservation" following "commissioner" and added "of his respective portions" following "not a provision." The amendment also added subsection (c).

Collateral references. — Validity of inspection conducted under provisions of Federal Food, Drug, and Cosmetic Act (21 USCS § 374(a)) authorizing FDA inspectors to enter and inspect food, drug or cosmetic factory, warehouse, or other establishment, 18 ALR Fed. 734.

Sec. 17.20.210. Reimbursement for expenses. The Department of Environmental Conservation and the Department of Health and Social Services may make expenditures from money appropriated for the administration of their respective portions of this chapter to reimburse authorized employees or agents for amounts expended without receipt, covering purchases or services obtained in securing evidence of a violation of their respective portions of this chapter, upon vouchers certified by the disbursing and certifying officers of the appropriate department. Disbursement shall not exceed $800 in any biennium. (§ 22 ch 129 SLA 1949; am § 1 ch 80 SLA 1957; am Executive Order No. 51, § 22 (1981))

Effect of amendments. — The 1981 amendment substituted "Department of Environmental Conservation and the Department of Health and Social Services" for "department" near the beginning of the first sentence, added "their respective portions of" preceding "this chapter" twice in the first sentence and added "appropriate" preceding "department" near the end of the first sentence.

Sec. 17.20.220. Publication of reports and information. (a) The commissioner of environmental conservation and the commissioner of health and social services may have published from time to time reports summarizing judgments, decrees, and court orders which have been rendered under their respective portions of this chapter, including the nature of the charge and the disposition of it.

(b) The commissioner of environmental conservation may have disseminated information regarding food and cosmetics which the commissioner considers necessary in the interest of public health and the protection of the consumer against fraud. This section does not prohibit the commissioner from collecting, reporting, and illustrating the results of the commissioner's investigations.

(c) The commissioner of health and social services has the same power with respect to drugs and devices as the commissioner of environmental conservation has with respect to food and cosmetics under (b) of this section. (§ 23 ch 129 SLA 1949; am Executive Order No. 51, § 23 (1981))

Effect of amendments. — The 1981 amendment added "of environmental conservation and the commissioner of health and social services" following "the commissioner" and added "their respective portions" following "rendered under" in subsection (a). The amendment also added "of environmental conservation" following "commissioner" and deleted "drugs, devices" following "regarding food" in subsection (b) and added subsection (c).

Sec. 17.20.230. Detention or embargo of goods. (a) Whenever the commissioner of environmental conservation finds or has probable cause to believe that a food or cosmetic is adulterated, or so misbranded as to be dangerous or fraudulent within the meaning of this chapter, the commissioner shall affix to it a tag or other appropriate marking, giving notice that it is or is suspected of being adulterated or misbranded and has been detained or embargoed, and warning all persons not to remove or dispose of it by sale or otherwise until permission for removal or disposal is given by the commissioner or the court. A person may not remove or dispose of a detained or embargoed article by sale or otherwise without this permission.

(b) The commissioner of health and social services has the same duty with respect to drugs and devices as the commissioner of environmental conservation has with respect to food and cosmetics under (a) of this section. (§ 6(a) ch 129 SLA 1949; am Executive Order No. 51, § 24 (1981))

Effect of amendments. — The 1981 amendment designated the existing section as subsection (a) and added subsection (b). In subsection (a), the amendment added "of environmental conservation" following "the commissioner" and deleted "drug, device" following "food" in the first sentence.

NOTES TO DECISIONS

Cited in State, Comm'r of Dep't of Health & Social Servs. v. Seward Marine Serv., Inc., Sup. Ct. Op. No. 2113 (File No. 2113), 612 P.2d 1010 (1980).

Sec. 17.20.240. Petition for libel for condemnation. When an article detained or embargoed under AS 17.20.230 has been found by the commissioner of environmental conservation or the commissioner

of health and social services, as the case may be, to be adulterated or misbranded, the appropriate commissioner shall petition the superior court for a libel for condemnation of the article. When that commissioner finds that a detained or embargoed article is not adulterated or misbranded, the commissioner shall remove the tag or other marking. (§ 6(b) ch 129 SLA 1949; am Executive Order No. 51, § 25 (1981))

Effect of amendments. — The 1981 amendment added "of environmental conservation or the commissioner of health and social services, as the case may be" preceding "to be adulterated" in the first sentence and substituted "that" for "the" preceding "commissioner" in the second sentence.

Sec. 17.20.250. Destruction of adulterated or misbranded goods. If the superior court finds that a detained or embargoed article is adulterated or misbranded, it shall, after entry of the decree, be destroyed at the expense of the claimant, under the supervision of the commissioner of environmental conservation or the commissioner of health and social services, as the case may be. Court costs and fees and storage and other proper expenses shall be taxed against the claimant of the article. (§ 6(c) ch 129 SLA 1949; am Executive Order No. 51, § 26 (1981))

Effect of amendments. — The 1981 amendment added "of environmental conservation or the commissioner of health and social services, as the case may be" at the end of the first sentence.

Sec. 17.20.260. Exemption from destruction. When the adulteration or misbranding can be corrected by proper labeling or processing of the article, and after entry of the decree and after costs, fees, and expenses have been paid and a good and sufficient bond, conditioned that the article will be properly labeled or processed has been executed, the court may order that the article be delivered to the claimant for labeling or processing under the supervision of the commissioner of environmental conservation or the commissioner of health and social services, as the case may be. The claimant shall pay the expense of supervision. The bond shall be returned to the claimant of the article on representation to the court by the appropriate commissioner that the article is no longer in violation of this chapter, and that the expenses of supervision have been paid. (§ 6(c) ch 129 SLA 1949; am Executive Order No. 51, § 27 (1981))

Effect of amendments. — The 1981 amendment added "of environmental conservation or the commissioner of health and social services, as the case may be" following "the commissioner" near the end of the first sentence and added "appropriate" preceding "commissioner" in the third sentence.

Sec. 17.20.270. Immediate destruction of contaminated food. Meat, seafood, poultry, vegetable, fruit, or other perishable article in

any room, building, vehicle of transportation or other structure which is unsound, or contains filthy, decomposed, or putrid substance, or a substance that may be poisonous or deleterious to health or otherwise unsafe, is a nuisance. Whenever the commissioner of environmental conservation finds such an article, the commissioner shall immediately condemn or destroy it or in any other manner render it unsalable as human food. (§ 6(d) ch 129 SLA 1949; am Executive Order No. 51, § 28 (1981))

Effect of amendments. — The 1981 amendment added "of environmental conservation" following "the commissioner" in the second sentence.

Sec. 17.20.280. Injunction proceedings. The commissioner of environmental conservation and the commissioner of health and social services may apply to the superior court for, and the court has jurisdiction to grant, a temporary or permanent injunction restraining a person from violating their respective portions of AS 17.20.290. (§ 4 ch 129 SLA 1949; am Executive Order No. 51, § 29 (1981))

Effect of amendments. — The 1981 amendment added "of environmental conservation and the commissioner of health and social services" following "commissioner" and added "their respective portions of" following "person from violating."

Article 6. Prohibited Acts and Penalties.

Section
290. Prohibited acts
300. Determination of misleading labeling or advertisement
310. Penalties
320. Effect of written guaranty
330. Liability for dissemination of false advertising

Collateral references. — 25 Am. Jur. 2d, Drugs, Narcotics, and Poisons, § 40 et seq, 35 Am. Jur. 2d, Food, §§ 63 et seq., 74 et seq.

Sec. 17.20.290. Prohibited acts. (a) The following acts and the causing thereof are prohibited:

(1) the manufacture, or sale, or delivery, holding, or offering of sale of food, drug, device, or cosmetic that is adulterated or misbranded;

(2) the adulteration or misbranding of food, drug, device or cosmetic;

(3) the receipt in commerce of food, drug, device, or cosmetic that is adulterated or misbranded, and the delivery or proffered delivery of them for pay or otherwise;

(4) the sale, delivery for sale, holding for sale, or offering for sale of an article in violation of AS 17.20.050 — 17.20.070 and 17.20.100,

(5) the dissemination of a false advertisement;

(6) the refusal to permit entry or inspection, or to permit the taking of a sample, as authorized by AS 17.20.200;

(7) the giving of a guaranty or undertaking which is false, except by a person who relied on a guaranty or undertaking to the same effect signed by and containing the name and address of the person residing in the state from whom the person who relied on the guarantee or undertaking received the food, drug, device, or cosmetic in good faith;

(8) the removal or disposal of a detained or embargoed article in violation of AS 17.20.230 — 17.20.270;

(9) the alteration, mutilation, destruction, obliteration, or removal of the whole or part of the labeling of, or the doing of any other act with respect to, a food, drug, device, or cosmetic, if the act is done while the article is held for sale and results in the article being misbranded;

(10) forging, counterfeiting, simulating, or falsely representing, or without proper authority using a mark, stamp, tag, label or other identification device authorized or required by regulations adopted under AS 17.20.230 — 17.20.270;

(11) the using, on the labeling of a drug or in an advertisement relating to a drug, of a representation or suggestion that an application with respect to the drug is effective under AS 17.20.110 or that the drug complies with the provisions of that section;

(12) the sale or offering for sale of frozen fish as fresh fish;

(13) the improper labeling and drug substitution by pharmacists under AS 17.20.405.

(b) The commissioner of environmental conservation or a designee of the commissioner is responsible for enforcing the provisions of paragraphs (a)(1), (2), (3), (4), (6), (7), (8), (9), and (10) of this section, if the subject of the prohibited act involves food or cosmetics, and the provisions of paragraph (a)(12) of this section. This subsection does not limit the authority of peace officers.

(c) The commissioner of health and social services or a designee of the commissioner is responsible for enforcing the provisions of paragraphs (a)(1), (2), (3), (4), (6), (7), (8), (9), and (10) of this section, if the subject of the prohibited act involves drugs or devices, and the provisions of paragraphs (a)(5), (11), and (13) of this section. This subsection does not limit the authority of peace officers. (§ 3 ch 129 SLA 1949; am § 1 ch 119 SLA 1967; am § 2 ch 17 SLA 1971; am Executive Order No. 51, § 30 (1981))

Cross references. — For adulteration of food and its sale, see AS 17.05.020.

Effect of amendments. — The 1981 amendment added subsections (b) and (c).

Sec. 17.20.300. Determination of misleading labelling or advertisement. If an article is alleged to be misbranded because the labeling is misleading, or if an advertisement is alleged to be false

because it is misleading, in determining whether the labeling or advertisement is misleading, there shall be taken into account among other things representations made or suggested by statement, word, design, device, sound or combination of them, and the extent to which the labeling or advertisement fails to reveal facts material in the light of the representations or material with respect to consequences which may result from the use of the article to which the labeling or advertisement relates under the conditions of use prescribed in the labeling or advertisement or under customary or usual conditions of use. (§ 201 ch 129 SLA 1949)

Collateral references. — Products liability of manufacturer or seller for injury or death allegedly caused by failure to warn regarding danger in use of vaccine or prescription drug. 71 ALR3d 748.

Promotional efforts directed towards prescribing physician as affecting prescription drug manufacturer's liability for product-caused injury. 91 ALR3d 1080.

What constitutes "false advertising" of food products or cosmetics within §§ 5 and 12 of the Federal Trade Commission Act (15 USCS §§ 45, 52), 50 ALR Fed 16.

Sec. 17.20.310. Penalties. A person who violates the provisions of AS 17.20.290, upon conviction, is punishable by imprisonment for not more than six months, or by a fine of not more than $500, or by both. If the violation is committed after a conviction under this section has become final, the person is punishable by imprisonment for not more than one year, or by a fine of not more than $500, or by both. (§ 5(a) ch 129 SLA 1949)

Sec. 17.20.320. Effect of written guaranty. A person is not subject to the penalties of AS 17.20.310 for having violated AS 17.20.290(1) or (3) if that person establishes a guaranty or undertaking signed by and containing the name and address of the person residing in the state from whom the article was received in good faith, to the effect that it is not adulterated or misbranded within the meaning of this chapter. (§ 5(b) ch 129 SLA 1949)

Sec. 17.20.330. Liability for dissemination of false advertising. No publisher, radio broadcast licensee, or agency or medium for the dissemination of an advertisement, except the manufacturer, packer, distributor, or seller of the article to which a false advertisement relates, is liable under AS 17.20.310 for the dissemination of the false advertisement, unless the publisher, licensee, agency or medium has refused the request of the commissioner of health and social services to furnish the name and post office address of the manufacturer, packer, distributor, seller, or advertising agency, residing in the state who caused dissemination of the advertisement. (§ 5(c) ch 129 SLA 1949; am Executive Order No. 51, § 31 (1981))

Effect of amendments. — The 1981 amendment deleted "on" preceding "the request of," added "of health and social services" following "the request of the commissioner" and deleted "the commissioner" preceding "the name and post office address."

Collateral references. — What constitutes "false advertising" of food products or cosmetics within §§ 5 and 12 of the Federal Trade Commission Act 115 USCS §§ 45, 52, 53 ALR Fed 10

Article 7. General Provisions.

Section
340 Scope of provisions dealing with sale
350 Report of minor violations
360 Hearing before report of criminal violation
370 Definitions
380 Short title

Sec. 17.20.340. Scope of provisions dealing with sale. The provisions of this chapter regarding the sale of food, drugs, devices, or cosmetics include the manufacture, production, processing, packing, exposure, offer, possession, and holding of them for sale; the sale, dispensing, and giving of them, and the supplying or applying of them in the conduct of a food, drug, or cosmetic establishment. (§ 2(part) ch 129 SLA 1949)

Sec. 17.20.350. Report of minor violations. Nothing in this chapter requires either the commissioner of environmental conservation or the commissioner of health and social services, as the case may be, to report minor violations of their respective portions of this chapter for prosecution, or for the institution of libel or injunction proceedings, when that commissioner believes that the public interest will be adequately served by a suitable written notice or warning. (§ 8 ch 129 SLA 1949, am Executive Order No. 51, § 32 (1981))

Effect of amendments. — The 1981 amendment added "either" following "chapter requires," added "of environmental conservation or the commissioner of health and social services, as the case may be" following "the commissioner," added "of their respective portions" following "respective portions" and substituted "that" for "the" preceding "commissioner believes that."

Sec. 17.20.360. Hearing before report of criminal violation. The attorney general, to whom the commissioner of environmental conservation or the commissioner of health and social services, as the case may be, reports a violation of this chapter, shall institute appropriate proceedings in the superior court without delay and prosecute them in the manner required by law. Before a violation of this chapter is reported to the attorney general, the person against whom the proceeding is contemplated shall be given appropriate notice and an opportunity to respond to the appropriate commissioner, orally or in writing, in person or by attorney, with regard to the contemplated proceeding. (§ 7 ch 129 SLA 1949, am Executive Order No. 51, § 31 (1981))

Effect of amendments. — The 1981 amendment added "of environmental conservation or the commissioner of health and social services, as the case may be" following "commissioner" in the first sentence and added "appropriate" preceding "commissioner" in the second sentence.

Sec. 17.20.370. Definitions. In this chapter

(1) "advertisement" means a representation disseminated, other than by labeling, for the purpose of inducing, or which is likely to induce directly or indirectly the purchase of food, drugs, devices or cosmetics;

(2) "antiseptic", in the labeling or advertisement of a drug, is a representation that it is a germicide, except in the case of a drug purporting to be, or represented as, an antiseptic for inhibitory use as a wet dressing, ointment, dusting powder, or other use involving prolonged contact with the body;

(3) "contaminated with filth" means food, drug, device, or cosmetic not securely protected from dust, dirt, and as far as necessary by all reasonable means, from foreign or injurious contamination;

(4) "cosmetic" means an article intended to be rubbed, poured, sprinkled, or sprayed on, introduced into, or otherwise applied to the human body for cleansing, beautifying, promoting attractiveness, or altering the appearance, and an article intended for use as a component of an article enumerated in this paragraph; except that the term does not include soap intended for cleansing purposes only;

(5) "device" except when used in AS 17.20.040(6), 17.20.090(3), 17.20.150(3), 17.20.290(10) and 17.20.300 means an instrument, apparatus, and contrivance, including its components, parts, and accessories, intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in man or animal; or to affect the structure or function of the body of man or animal;

(6) "drug" means an article recognized in the official United States Pharmacopoeia, official Homeopathic Pharmacopoeia of the United States, or official National Formulary; an article intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in man or animal; an article other than food, intended to affect the structure or function of the body of man or animal; and an article intended for use as component of an article specified in this paragraph but does not include devices or their components, parts, or accessories;

(7) "federal act" means the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. 301 — 392; 52 Stat. 1040 — 1959;

(8) "food" means an article used for food or drink for man or animal, chewing gum, and articles used for components of either of them;

(9) "immediate container" does not include a package liner;

(10) "label" means a display of written, printed or graphic matter upon the immediate container of an article, however, a requirement made by or under authority of this chapter that a word, statement, or other information appear on the label is not complied with unless the

word, statement, or other information also appears on the outside container or wrapper of the retail package, if there is one, or is easily legible through the outside container or wrapper;

(11) "labeling" means the label and other written, printed or graphic matter upon an article or its container or wrapper accompanying the article;

(12) "new drug" means a drug the composition of which is such that it is not generally recognized among experts qualified by scientific training and experience to evaluate the safety of drugs as safe for use under the conditions prescribed, recommended, or suggested in the labeling of it; or a drug the composition of which is such that the drug, as a result of investigations to determine its safety for use under such conditions, has become so recognized, but which has not, otherwise than in these investigations, been used to a material extent or for a material time under those conditions;

(13) "official compendium" means the official United States Pharmacopoeia, official Homeopathic Pharmacopoeia of the United States, official National Formulary, or supplements to them. (§ 2(a) — (k) (m) — (p) ch 129 SLA 1949; am § 6 ch 101 SLA 1971; am § 14 ch 208 SLA 1975; am Executive Order No. 51, § 41 (1981))

Revisor's notes. — This section was reorganized in 1983 to alphabetize the words defined.

Effect of amendments. — The 1981 amendment repealed former definitions of "commissioner" and "department."

Collateral references. — Marijuana, psilocybin, peyote or similar drugs of vegetable origin as narcotics for purposes of drug prosecution, 50 ALR3d 1164.

Sec. 17.20.380. Short title. This chapter may be cited as the Alaska Food, Drug and Cosmetic Act. (§ 1 ch 129 SLA 1949)

Chapter 30. Controlled Substances.

Article
1. Regulation of Manufacture, Distribution, Prescription, and Dispensing of Controlled Substances (§§ 17.30.010 — 17.30.080)
2. Enforcement, Forfeiture and Review Provisions (§§ 17.30.100 — 17.30.130)
3. Education and Research (§ 17.30.140)
4. General Provisions (§§ 17.30.150 — 17.30.900)

Cross references. — For transitional provisions, see sec. 2, ch. 45, SLA 1982 in the Temporary and Special Acts; for declaration of legislative purpose, see sec. 1, ch. 45, SLA 1982 in the Temporary and Special Acts.

Collateral references. — 28 C.J.S., Drugs and Narcotics Supplement, § 1 et seq.

Construction or provision of Uniform Narcotic Drug Act or similar statute dealing with obtaining or procuring the administration of a narcotic drug by fraud or deceit, 25 ALR3d 1118.

Article 1. Regulation of Manufacture, Distribution, Prescription, and Dispensing of Controlled Substances.

Section
10. Regulations
20. Registration requirements
30. Registration
40. Denial, revocation, and suspension of registration
50. Order to show cause
60. Records of registrants
70. Order forms; prescriptions
80. Unlawful administration, prescription and dispensation of controlled substances

Collateral references. — 25 Am. Jur. 2d, Drugs, Narcotics, and Poisons, §§ 7 et seq., 28 et seq.

Sec. 17.30.010. Regulations. (a) The Board of Pharmacy shall adopt regulations under the Administrative Procedure Act (AS 44.62) which are necessary for the administration of this chapter, and may charge reasonable fees relating to the registration and control of the manufacture, distribution, and dispensing of controlled substances as authorized by federal law in the state.

(b) Regulations adopted under this chapter by the board shall be patterned after federal law so that the legitimate manufacture, distribution, and dispensing of controlled substances is subject to regulations regarding registration, record keeping, order forms and prescription requirements that are identical to those required by federal law or regulations. (§ 4 ch 45 SLA 1982)

Cross references. — For penalty for furnishing false or fraudulent information in or omitting material information from any application, report, record, or other document required to be kept or filed under this chapter, see AS 11.71.040(a)(8). For penalty for failure to make, keep, or furnish any record, notification, order form, statement, notice, or information required under this chapter, see AS 11.71.030(a)(9).

Editor's notes. — Section 21, ch. 45, SLA 1982 provides "Orders issued and regulations adopted under a law amended or repealed by this Act and in effect on January 1, 1983, and not in conflict with this Act continue until amended or repealed."

Sec. 17.30.020. Registration requirements. (a) A person who manufactures, distributes, dispenses, or conducts research with a controlled substance in the state or who proposes to manufacture, distribute, or dispense a controlled substance in the state, shall register annually with the board in accordance with regulations adopted under AS 17.30.010.

SB 384/HB 496

465-3600

June 30, 1980

The Honorable Jay S. Hammond
Governor
State of Alaska
Pouch A
Juneau, Alaska 99811

Re: SCS CSHB 686 am S
(limiting liability of
donors of food)
Our File: J-88-146-80

Dear Governor Hammond:

This office has reviewed SCS CSHB 686 am S, the principal thrust of which relieves a person donating food to a nonprofit organization of any civil or criminal liability flowing from any adulteration or misbranding of the food, unless the alteration is the result of intentional or grossly negligent conduct on the part of the donor.

"Grossly negligent conduct" is defined as "the intentional failure to perform a duty with reckless disregard of consequences that affect the life or property of another." (The legislature forgot the comma after "duty," thus changing the literal meaning, but we assume that we know what was intended.) A donee may ask the commissioner of health and social services to inspect the food to determine if it is adulterated or misbranded.

The commissioner may delegate this inspection duty, and a broad range of other enforcement and inspection duties, to the Department of Environmental Conservation.

This bill is apparently well intentioned; it is designed to encourage the donation of food to nonprofit

organizations for their use or distribution--presumably to needy persons. However, it exacts too great a price from prospective donees as a reward for the eleemosynary conduct.

The bill's failure to distinguish between donors who are manufacturers, packers, or bottlers and those who are not is, we think, a fatal flaw. It is a well-established principle of law that manufacturers, bottlers, and packers are liable for damages resulting from a failure to exercise that degree of care required to insure that the product is fit for use and is free from taint. See 32A C.J.S. Food, sections 59-60. This bill would relieve those manufacturers from liability for negligence for illness caused by unfit food when they give away rather than sell their products. While it is admirable to encourage the donation of food to needy causes, it is unwise to eliminate the ordinary standard of care and its attendant liability. We can, for example, imagine a manufacturer whose warehouse is laden with food of marginal fitness who would like to donate it for a tax deduction. We do not think it proper to eliminate this person's liability for negligence should one of the donees become ill from adulterated or unfit food. Poor people receiving donated food should have no less protection than people who buy food from the donor.

The class of persons who manufacture food should be held to a uniform standard of care regardless of whether the food is sold or given away. To do otherwise would be to encourage socially irresponsible conduct disguised as beneficent bounty. We would suggest that you veto this bill.

Sincerely,

Wilson L. Condon
Attorney General

WLC:ml:MRL

GARY C. NEWMAN
S.R. BOX 51233
FAIRBANKS, ALASKA 9[illegible]701

January 23, 1994

House HESS Committee

I am in support of House Bill 496, relating to food banks.

This bill would remove the impediment of liability from the donation by food vendors of surplus or waste food. By doing so, it would allow the use of tons of food for human or animal consumption that is presently being destroyed by the vendors.

For one who has had animals such as pigs, chickens and cows, this bill would allow them to have the waste that is presently thrown away by food vendors. At present, the vendors won't give away food which is waste by their standards even for animal use because there is the chance that the food would really be used for human consumption and they are concerned about the liability question, as I stated earlier.

While this issue may affect only a small proportion of our state's population, it would allow the use of tons of resources that are expensively imported into our state for use for something other than landfill.

I urge your support of this bill.

Gary C. Newman

FOOD BANK OF ALASKA

P.O. Box 3324, Anchorage, Ak 99510
1025 Orca Street, # N8, Anchorage
907-276-4776

January 5, 1984

Dear Friends :

The holidays are over and we have all of you to thank for your support during the 1983 year. It has been a very good year for the Food Bank. I can't give all the details on this short letter, but I will be glad to do so at the Annual Meeting Friday, February 3rd, 1984 at 6:30 pm. The First Christian Church at 3031 LaTouche street will host the meeting. It will begin with dinner. The public is invited to share in the report of 1983 activities. Please phone the Food Bank, 276-4776, with your reservations. Donation for the dinner will be $7.50. Ballots will be mailed to all individuals that have donated $10.00 to the Food Bank and all Agencies that have donated $25.00 during 1983.

The Bureau of Land Management recently had a canned food drive with interdepartmental competition. The total poundage donated to the Food Bank was a shade under 500 lbs. That makes it the largest single food drive in recent history! Thanks to all the employees of the BLM.

The Food Bank has finally bought a Kerosun Heater!! No more freezing in the office for the volunteers or staff. We still need a nice, well running 4X4 to pick up the overflow for the High Cube van. If any one knows of a bargain let us know. (Or if you know of someone who would be willing to donate one)

In the last newsletter I let it be known that we needed snow tires. Well the plea did not go unheard. I would like to thank the Salvation Army for donating two studded tires and the Firestone store on Post Rd for donating three tires and mounting. The Firestone donation was arranged by Allen Bentson of Alaska Sales and Service. Thank you Allen, Salvation Army and Firestone.

The Food Bank is having an activity called "Can Skate" if you can skate then come to the Anchorage Roller Rink on January 24, 1984 with two cans of food and you can skate for free! This has been arranged in cooperation with Mark Dade of the Anchorage Roller Rink. We are hoping for a very good turnout. If you can't skate you can drop off donations there on the 24th anyway.

I hope to see each of you at the annual meeting and at the skating rink. I thank each and everyone of you for your support during the 1983 year and look forward to your continued support.

Sincerely,

Carl M. Larsen
General Manager

P.S. Please RSVP by January 31 for the Annual Meeting.

"Cache and Share / Don't Waste Food"

First Reading

Gleaners fight hunger, salvage food in 11 states

In produce fields and fruit groves scattered across America, hard-pressed Americans are increasingly using a concept as old as the Bible to fight hunger. It is gleaning, the salvaging of food that otherwise would rot in the fields, whether inadvertently left behind or discarded because of blemishes, bruises, or low prices.

Gleaners are gathering some of that food through privately organized efforts in at least 11 states: Arizona, California, Colorado, Florida, Kansas, Maryland, Michigan, Missouri, Oregon, Texas, and Washington. They help fill what Congress' General Accounting Office calls "an unmet need" for food assistance among those not qualifying for government food programs, and GAO says states can help increase the amount of gleaned food.

California and Oregon, for example, give state tax deductions to farmers for the value of food gleaned from their fields. First passed in 1977, California's A.B. 120 this year was extended through 1984.

"It's an incentive for churches and other groups to go out and get the produce and say to a store or grower that he can get a tax deduction," says California Assemblyman David Kelly, who sponsored the renewal. Stores and growers can claim a charitable deduction — in addition to the business expense — for the value of gleaned or discarded food. A study is underway to determine the amount of lost taxes on such food.

In addition, the Food Marketing Institute says that 34 states have passed "Good Samaritan" laws limiting the liability of food donors. Ohio's is illustrative: "No person who in good faith donates perishable food to an agency is liable in civil damages for injury, death, or loss to persons or property that arises because that perishable food . . . is not fit for human consumption," if the food was reasonably considered safe at the time it was donated.

Tax deductions and Good Samaritan laws, the GAO said, are "positively affecting the amount of food being donated."

Gleaning takes its cue from Leviticus 19:9-10: "When you harvest the produce of your field, do not completely mow the edge of your field or gather the gleanings of your harvest . . . leave them for the poor." Today food is also gleaned from supermarket waste.

Gleaners are the needy or volunteers gathering food for others. The needy keep what they can use with the excess going to such places as food banks. "It's not a freebie program — you work for what you get," says Judi Amos, of Everett, Wash., who has labored as a gleaner among potatoes and peaches.

"The program's really helped out my budget," adds Rachel Brown, who supports three children on welfare and food stamps. After years of dependence on others, she says with pride, "I'm helping myself and helping others."

—Bill Curry



Los Angeles Times photo by Bob Gnesser

GLEANING HARVEST — Rachel Brown and her nephew, Anthony Miller, stand next to boxes of pears and vegetables that were her share for a day's work of gleaning in Washington state.

In-state preference laws enacted to govern public contract awards

One sidelight of the recent recession is that several legislatures are worried about state and local government contracts being awarded to out-of-state firms. As a consequence, at least 21 legislatures have enacted in-state preference laws.

The "Buy Minnesota" law passed last May, for example, has received nationwide publicity reflecting the generic pros and cons of implementing such protectionist legislation. (These laws differ from "Buy American" laws requiring the purchase of American-made goods and services over those from foreign countries — which don't specify whether they must come from in-state firms.)

According to the author of the Minnesota legislation, State Representative Pat Beard, the law was intended to improve in-state employment and thus increase state tax revenues.

Beard found that 13 other states exercise in-state preference laws that include a 2-15 percent break in bidding on public works jobs against out-of-state contractors. States exercising preference are Alaska, Arizona, Arkansas, Hawaii, Louisiana, Maine, Montana, New Mexico, Oklahoma, South Carolina, Washington, West Virginia, and Wyoming. Among them, the preference law may apply only to state agencies or extend also to municipalities and school districts.

The Minnesota law includes a provision that says any contract awarded by a state agency for engineering services, erection, construction, alteration or repair of any public building or structure, or for any public work improvement, when competitive bidding is not required, must be awarded to a Minnesota resident.

"If competitive bidding is required by law," the statute continues, "the contract must be

To: House H.E.S.S.

Re: H.B. 496 – Food Banks

fm. Rep. Niilo Koponen

Waste not, want not

WASHINGTON, DC

How are America's poor to eat when their unemployment pay runs out, or when they can no longer make do on food stamps and welfare? The recession has provided an answer: a jerry-built, but enviably efficient, system of emergency food centres. This network stretches across the nation, using food that would otherwise go to waste, and shunts it quickly and in large quantities from grower or manufacturer to the various centres that feed the hungry. It is a charitable operation which employs only a few hundred people and is completely decentralised. It has grown with such speed that it has already left the agriculture department's much criticised surplus commodity programme, ensnarled in red tape, far behind.

The emergency food system has its origins in the soup kitchens of the depression and before, but its growth in the past few years has been startling. Although all involved would like to consider it a temporary institution, there is a growing belief that it is here to stay and, if anything, will grow much larger.

Sixty-one regional food banks are the system's backbone. Each consists of a large warehouse equipped with freezers and usually manned by a small, paid staff supplemented by volunteers. These food banks are connected through Second Harvest, a non-profit-seeking organisation, which acts as a food broker. From its base in Phoenix, Arizona, Second Harvest approaches farmers and food manufacturers for donations and then shunts this food through three regional offices out to its members. The member food banks, either individually or through pools, pay the cost of transport, which is also sometimes donated. Once the food reaches a food bank, it is then given out to hundreds of the bank's members: churches, day centres for infants and the elderly, soup kitchens and various other organisations.

The member groups, which would previously have bought food on the open market, now support their food bank by paying a tax of between five and 12.5 cents a pound for the food they take. In this way the budget of the food bank, usually running anywhere from $100,000-250,000 a year, is covered. In some instances food banks are paid for by small donations. In Oklahoma, 600 people send in cheques of from $5 to $25 a month to keep the major local food banks going.

The entire system is private and non-profit seeking. To make sure it stays that way for tax purposes, Second Harvest certifies its member banks, inspects their operations, ensures that they charge no more than 12.5 cents a pound in taxes, and satisfies itself that the bank members in turn are charitable organisations as defined under the tax laws.



No shortage of takers

Second Harvest began as an experimental arm of the now defunct Community Services Administration in the Carter era. Last year it handled 600m lb of food. This year the volume is expected to exceed 1000m lb. Much of the food consists of products that would otherwise be thrown out by the manufacturer, not because they are bad, but because they cannot be sold for other reasons: for example, discolouration or misspelled labels. When a Middle Eastern food broker went out of business, a trailer of macaroni with Arabic labelling was given to a food bank in New Jersey. Second Harvest dispensed 32 train carloads of a cereal which its manufacturer thought too oddly-flavoured to sell. The companies can deduct cost and half the unrealised profit from their taxes when they make such donations.

Some food banks rely heavily on farm surpluses. In northern California, where there are five large food banks, the banks collaborate to find out what crops are in surplus and to carry out exchanges between different areas. The bank in Watsonville, for example, supplies tons of artichokes and lettuce and gets, in exchange, peaches from the bank in Santa Clara and tomatoes from the bank in Sacramento. Farmers give food that would otherwise go to waste. What is left in the fields after harvest is also, in many cases, gathered in by teams of volunteer gleaners who take their pickings to the banks for sorting, cleaning and packing.

A report by a research group in Washington noted a dramatic increase in people coming to programmes served by the food banks. More than half the 181 programmes surveyed said that provision of free meals or food baskets had increased by more than half between February, 1982, and February, 1983. The Community Food Bank of New Jersey in Newark provides a good indication of the trend. Last autumn the bank was handling 10,000 lb of food a month. Now it distributes 200,000 lb a month across the state to 300 different groups which provide food to 30,000 people every day.

Some food banks in the Second Harvest system also distribute federal surplus foods under the government's programme. For the most part these consist of butter, cheese and non-fat dry milk from the government's huge surplus. But some food banks refuse to handle federal foods on the ground that it involves too much paper work. In certain states food banks say they have been deliberately denied federal food shipments, which instead have been handed out through local politicians as patronage.

Salvation Army aims to replenish dwindling food bank



DAVID CLITHEROE
'We don't turn anyone away'

by Chriss Swaney
Times Writer 11/20/84

When a boxer goes down for the 10 count, he usually gets saved by the gong or the referee. That's not the case, however, for the emergency food bank at the Salvation Army's McKinnell House.

The food bank is going down for a 10 count and Salvation Army officials say they don't have the money to revive it.

"We're in bad shape. Our food supplies are so low now that we're trying to decide how long we can stretch things out," said Capt. David Clitheroe, director of social services.

Clitheroe said dwindling emergency food supplies are the result of a 51 percent increase in walk-in clients in the past three years and a 37 percent decrease in food funding.

Normally, the Salvation Army spends $80,000 on its emergency food program. But inflation and an increased number of needy families in Anchorage have whittled funds to $50,000.

Because of the decreases, the normal three-day food box which includes nine meals for a family of four has been cut back to a one-day box of food. There are also serious shortages in meat, dairy products and canned goods.

"These are things we generally try to supply needy families with," Clitheroe said. The flood of needy families has been so great that the Army's food policy of assisting families once every 90 days is frequently extended. "We don't turn anyone away," Clitheroe said. The cost of feeding people has also risen from $7.14 per person in 1982 to $10.50 per person in 1984.

McKinnell House, a short-term shelter for families and an emergency food repository located at 546 E 15th Ave., is operated by the Salvation Army Emergency Services Program. It served more than 9,000 people last year.

"We expect to see even more people this year. But I'm worried about how we can adequately help them," Clitheroe said.

He attributes the massive influx of needy families to three overriding problems: the shaky economy, tighter food stamp regulations and increased migration of younger families to Anchorage.

"Many are still coming to find the great American dream. But once they get here, they're finding the job situation is tight," Clitheroe said.

Take the Bearfield family of Juneau, for example. They came to Anchorage for a better way of life. But they ended up standing in food stamp lines and filling out yards of eligibility forms.

"We applied for food stamps Dec. 5 but didn't get any until February. If it hadn't been for the Salvation Army emergency food program my family would have starved," Bearfield said. The Bearfields have three children: Pamela, 3, Christina, 5, and Wanda, 14.

"We waited months before we got any permanent help," Bearfield said.

For some families, Clitheroe said, the food stamp vigil continues. The Meyer family, who still relies heavily on the Salvation Army emergency food program, applied for food stamps March 8. "We still haven't received any yet," said Sandy Meyer.

"We're living on navy bean soup and the generosity of the Salvation Army," she said. The Meyer family has two children: Brandi, 1, and Marie, 3.

Salvation Army officials claim current overloads are due in part to the lengthy and complex food stamp application process. Legally, the state can spend up to 30 days verifying need.

Jan Hanson, regional manager for southcentral division of public assistance, said applications for food stamps are up. "We're seeing more applications because building starts are down and the fishing industry has been unpredictable for the past two seasons," she said.

Hanson also said that there seems to be a misunderstanding about the entire food stamp program. "We're not an emergency relief service. We are committed to giving long-term assistance. That's why we send people to emergency shelters like McKinnell House," Hanson said.

The overload at McKinnell House is only the tip of the iceberg. Other emergency food providers like St. Francis House at 817 W. Sixth Ave. and Bean's Cafe at 425½ E. Fifth Ave. are seeing more needy people as a result of the already overworked Salvation Army emergency food program.

"I have drawers full of referrals. The only immediate answer is to cut back services. I hope we never get to the point where we can't help at all. Hunger and homelessness in America have reached epidemic levels," Clitheroe said.

COMMITTEE REPORT

HOUSE

(7)

FURTHER: JUDICIARY

1/9/84

Date: 2-8-84

Mr. Speaker:

The Committee on HEALTH, EDUCATION AND SOCIAL SERVICES has had HB 496

"An Act relating to food banks."

under consideration and reports it back as follows:

[ ] do pass [ ] do not pass

[ ] do pass with attached amendments(s)

[X] replace with CS for HB 496 (HESS) [X] same titl [ ] new title

and recommends

[ ] AND attaches a "Letter of Intent" [ ] New Fiscal Note

[ ] reports it back without recommendation

[ ] referred to the _____ Committee

MEMBERS SIGNING DO PASS

Mae Fischer

Terry Martin

Rich Uehly

Sam Pestinger

Otto Kopanen

Mike Davis

MEMBERS HAVING OTHER RECOMMENDATIONS:

Mae Fischer
CHAIRMAN

H 60 (Rev. 3/81)

COMMITTEE REPORT

HOUSE

(7)

FURTHER: JUDICIARY

Date: April 24, 1984

4/13/84

The Committee on HEALTH, EDUCATION AND SOCIAL SERVICES has had CSSB 384(HESS)

"An Act relating to food banks."

under consideration and recommends:

[X] do pass [ ] do not pass

[ ] do pass with attached amendments(s)

[ ] replace with CS for _____ [ ] same title [ ] new title

and recommends _____

[ ] AND attaches a "Letter of Intent" [ ] New Fiscal Note [X] Zero Fiscal Note Attached

[ ] reports it back without recommendation

[ ] referred to the _____ Committee

MEMBERS SIGNING DO PASS

MEMBERS HAVING OTHER RECOMMENDATIONS:

CHAIRMAN

HOUSE HEALTH, EDUCATION & SOCIAL SERVICES
STANDING COMMITTEE
January 28, 1984
10:15 a.m.

Members Present: Rep. Tischer, Chairman
Rep. M.W. Miller, Vice-Chair
Rep. Martin
Rep. Uehling
Rep. Goll
Rep. Koponen
Rep. Davis

Members Absent: None.

COMMITTEE CALENDAR

HB 496 "An Act relating to food banks".

HB 32 "An Act making a special appropriation to the University of Alaska for construction of dormitories at the Anchorage Campus; and providing for an effective date."

HB 514 "An Act relating to the regulation of private schools".

CSSB 354 (Jud) am "An Act relating to the regulation of private schools".

WITNESS REGISTER

Carl Larson
General Manager
Food Bank of Alaska
Juneau, Alaska 99801
Position Statement: In support of HB 496.

Gary Newman
Fairbanks, Alaska
Position Statement: Suggested changes in HB 496.

Barbara Smith
FISH Organization
Anchorage, Alaska
Position Statement: In favor of HB 496.

Connie Wallace
Executive Director
Fairbanks Food Bank
Fairbanks, Alaska
Position Statement: Noted concerns with some of the language in

Barbara Burke
Abused and Aide Shelter
Anchorage, Alaska
Position Statement: In support of HB 496.

Bill Barker
Bean's Cafe
Anchorage, Alaska
Position Statement: Didn't state position on HB 496.

Michael McQuinn
Student
University of Alaska, Anchorage
Position Statement: In favor of HB 32.

David Alcott
Chancellor
University of Alaska, Anchorage
Position Statement: In favor of HB 32.

Ed Bickerstaff
Chancellor
University of Alaska, Anchorage
Position Statement: In support of HB 32.

Roger Wordsley
Student Services
Anchorage Community College
Position Statement: In support of HB 32.

Sandy Berkie
Student
ACC/UAA
Position Statement: Urged passage of HB 32.

Bob Baldwin
Chairman
UAA Citizen's Advisory Committee
Position Statement: In support of HB 32.

Carol Lund
Director of Student Activities
Position Statement: Urged passage of HB 32.

Harry Nichols
Dean of Students
UAA
Position Statement: Supports HB 32.

Lee Pickard
Campus Affairs
UAA

Position Statement: In support of HB 32.

John Herring
Student
UAA
Position Statement: Urged passage of HB 32.

Ramona Suetopka-Duerre
President
Alaska Native Education Association
Position Statement: Strongly supports HB 32.

John O'Shea
UAA Alumni Association
Position Statement: Representing Alumni Association, he urged passage of HB 32.

Mary M. Wilson
Montessori Creative Training Center
1422 O Street
Anchorage, Alaska 99501
276-2971
Position Statement: Supports HB 514.

Fae Scott
Secretary to Ms. Green
Tom Thumb Montessori School
1831 Bunker
Anchorage, Alaska 99503
Position Statement: Supports HB 514 without amendments.

Safiyyah Shaheed
Montessori School
1224 Richardson Vista
#350
Anchorage, Alaska
279-1247
Position Statement: Supports HB 514 without amendments.

Katherine Miller
Tom Thumb Montessori
5915 Doncaster Dr.
Anchorage, Alaska
337-5006
Position Statement: In favor of HB 514.

Margaret Green
Director
Tom Thumb Montessori
1901 Spenard Drive
Anchorage, Alaska 99503
Position Statement: Supports HB 514.

Harry Bates

SR 2, Box 4110
Chugiak, Alaska
688-2242
Position Statement: In favor of CSHB 514.

Mac Culver
Hillcrest Christian School
SR 3 Box 5946
Chugiak, Alaska
688-3813
Position Statement: In favor of CSHB 514.

Burt Carney
P.O. Box 10-1779
Anchorage, Alaska
Position Statement: Supports SB 354, concerned with CS.

Daniel Glover
Church Christian Harvester
9109 Brayton Drive
344-2244
Position Statement: Supports SB 354.

Kalen Saxton
Position Statement: Supports HB 354.

Mary Beth Juday
Position Statement: In favor of CSSB 354.

Tim Ewell
Position Statement: In support of SB 352.

Joan Hurst
Position Statement: Opposed HB 354 and SB 352.

Sister Eileen Brown
Fairbanks, Alaska
Position Statement: Questioned language in HB 354.

Patty Meritt
Position Statement: Opposes both HB 354 and SB 352.

Doug Schmedlen
Position Statement: Favored HB 514.

Lloyd Bellamy
Position Statement: In support of CSSB 354.

Edwin Rinner
Position Statement: In support of CSSB 354.

Jerry Wainscott
Position Statement: Urged passage of CSSB 354.

Robert Alley
Position Statement: Supports CSSB 354.

Robert Byron
Position Statement: In support of CSSB 354.

Walt Arden
Abott Loop Christian Center
Position Statement: Supports CSSB 354.

PREVIOUS ACTION

HB 496	1/9/84 - First Reading.
	Committee Referrals - HESS, Judiciary and Rules.
	No previous action in HESS Committee.
HB 32	1/17/83 - First Reading.
	Committee Referrals - HESS, Finance and Rules.
	See HESS minutes of January 27, 1984.
HB 514	1/13/84 - First Reading.
	Committee Referrals - HESS and Rules Committees.
	See HESS minutes of January 23, 1984.
CSSB 354 (Jud) am	1/13/84 - First Reading on Senate Floor.
	Committee Referrals - HESS, Judiciary and Rules Committees.
	1/19/83 - See Senate Journal page 1798 for Judiciary Committee Report.
	1/24/83 - See Senate Journal page 1835 for HESS Committee Report.
	1/14/83 - See Senate Journal pages 1835, 1838 -1841 for Senate floor action.
	1/24/84 - First Reading on House floor.
	Committee referrals - HESS and Rules Committees.
	No previous action in HESS Committee.

ACTION NARRATIVE

TAPE#1, Side A

Recording Number 0001 — Chairman Tischer called the meeting to order at 10:15 a.m., acknowledged members present and introduced HB 496 to the committee.

Number 0017 — Rep. Koponen, sponsor of HB 496 comes to the stand to testify. He said the bill intended to exempt food banks and doners from liability. Alaska is one of three states without this legislation. Significant difference between this bill and similar legislation was vetoed by the 11th Legislature under Governor Hammond. This bill excludes commercial foods. This bill maintains standards for the food.

Number 0070 — Rep. Koponen: We will be looking at changes in this bill which will provide restrictions.

Number 0080 — Chairman Tischer: We ought to look at provisions which allow the giving away of food. Referred to example.

Number 0104 — Chairman Tischer: I've seen folks dig in garbage behind retail grocers and pull out perfectly good food. Seems more humane to let them be given food out of back of a truck.

Number 0114 — Rep. Koponen: I agree, it's a tremendous waste. We want to come up with a bill which will take care of this waste, but provide some standards for this food.

Number 0130 — Rep. Koponen: Food banks are co-op ventures of Salvation Army and other groups. We want looser language which will permit easier distribution of food.

Number 0143 — Chairman Tischer: Cited another example: Got from store food they were going to throw away. Can we provide this legality again?

Number 0166 — Rep. Koponen: Stores discourage that because of liability. Different stores have different policies.

Number 0198 — Carl Larson of Juneau, General Manager of Food Bank Alaska: Thanks for the chance to testify. Many organizations rely on food

banks and food donations for their food. This bill would help incentive to donate. People and commercial organization don't donate for fear of liability.

Number 0250 — Ward of Food Bank said he gives to organizations such as Bean's Cafe and it is tax deductible. These provisions deal with food from surplus.

Number 0273 — Rep. Larson: Trying to determine value of giving away hard to access.

Number 0284 — Rep. Ward: If I were a fisherman with extra fish; could I give them to food bank and deduct from taxes their full value?

Number 0318 — Chairman Tischer: How does your organization function? Are you paid?

Number 0327 — Carl Larson: Food bank started in 1979. We get "Request for Proposal" grants from the municipality, plus others. I get $1400 a month and our driver gets $7.50 an hour.

Number 0412 — Rep. Ward: How many people served last year?

Number 0420 — Mr. Larson: We estimated 6500.

Number 0420 — Rep. Ward: We aren't coordinating what we're trying to do.

Number 0463 — Mr. Larson: There are 10 different Salvation Army Programs, 8 different children's organization and others. We always try to recruit.

Number 0468 — Chairman Tischer: What criteria to get food from you?

Tape 1, Side B
Recording
Number 0006 — Gary Newman from Fairbanks: This bill will allow food to be given to animals too, rather than wasted. Suggested change; we need to be more specific in certain people's exclusion.

Number 0045 — Barbara Smith, Anchorage from FISH Organization: We're emergency food distribution agency staffed by volunteers. We receive food from food bank. We also distribute. We re-package some foods, so

we're concerned about our liability.

Number 0092 — Barbara Smith: We have been serving about 110 families per month. There is no means test, $6,480 of meals per month. This month we have seen a great increase in number of needy families.

Number 0124 — Rep. Ward: Do you have a problem with people getting tax credit for donating?

Number 0140 — Barbara Smith: We encourage our doners to take a tax credit. There are two types: Food of marginal quality and food simply out of date.

Number 0185 — Chairman Tischer: It's incomprehensible for hungry person who receives free food to criticize that food. Maybe we ought to void responsibility of giver. Food receivers eat at their own risk.

Number 0206 — Barbara Smith: I think this bill addresses that. The bill makes it clear that the food bank makes every effort to provide sanitation for its food.

Number 0242 — Rep. Koponen: This bill was vetoed when we had our canned fish problem in Alaska. Canned food probably should not be included in this bill.

Number 0254 — Barbara Smith: We do not accept home canned food. We cannot trust it. We are careful.

Number 0290 — Connie Wallace, Executive Director of Fairbanks Food Bank: We work with several agencies and every church in town. People who need short-term help concern me. That's why we work with pastors.

Number 0343 — 1976 Tax Reform Act addresses Rep. Ward's tax deduction question.

Number 0363 — Connie Wallace; about animal food. In Fairbanks we can use food for animals so that nothing goes to waste.

Number 0424 — Connie Wallace: botulism problem, we make use of city sanitarian. We have people who know lots about food handling. Urge change in excluding manufactures. This will need to be changed in next couple of years.

Tape 2, Side A

Recording Number 0001 — Rep. Ward: Enough salmon rot on beaches in Alaska to feed everyone in the state. Please comment.

Number 0015 — Connie Wallace: I share your concern. Nationally, 137 million tons of food are wasted yearly. There's no reason for anyone in America to be hungry.

Number 0041 — Chairman Tischer: In California, tons of oranges rot each year when there's a bumper crop to help the price up. Anything subsidized by government will do this.

Number 0055 — Beverly Burke from Anchorage: Representing the Abuse, and Aid Shelter; $1000 a month in for those people, 25% food from food bank. This bill is a good balance.

Number 0090 — Bill Barker from Anchorage for Bean's Cafe: Bean's Cafe cooks for 200 people twice daily for street people of Anchorage. The main donator is the food bank.

Number 0120 — Rep. Ward: There's no criteria for price on raw salmon. That's why so much waste. Can't get a tax deduction for giving fish away because of the lack of criteria.

Number 0141 — Bill Barker: Bean's Cafe gets salmon from sport fishermen who empty last year's catch from freezer.

Number 0154 — Rep. Davis: I'm a commercial fisherman. So much goes to waste because it rots so fast. Agree it is a waste, but how to solve is an answered question.

Number 0171 — Chairman Tischer: It seems a simple matter to save this food for hungry people and save liability suits from flying everywhere, we should pass a bill like this.

Number 0204 — Testimony on HB 496 concluded.

Number 0239 — Chairman Tischer introduces HB 32 and welcomes all sites.

Number 0261 — Rep. Furnace: We have obligation to provide student housing for Anchorage City College and University of Alaska, Anchorage. Long-standing agreement with campuses. This bill

calls for $15 million on first come first serve basis.

Number 0293 — Rep. Furnace: Let me repeat. We have an obligation and a long-standing agreement.

Number 0301 — Rep. Ward: This bill is contrary to capital request budget which provides for Juneau campus housing. The design of dorms are very large.

Number 0316 — Rep. Furnace: I hope message is clear to pass this legislation, lets not let this die because of quality of design.

Number 0348 — Rep. Martin: Juneau housing is a gimmick to attract students to that campus. The Anchorage campus needs housing, it has for 11 years. We should be flexible on design. Priority is a question. I hope students will have input about what is priority for who gets housing; rural students, etc. Maybe not first come, first serve, but these details unimportant compared to getting legislation passed.

Number 0429 — Michael McQuinn on behalf of UAA/ACC students: I work primarily with rural students as Orientation Officer at Anchorage Community College. Housing is a primary reason there's a high drop-out rate of Native students.

Tape 2, Side B
Recording
Number 0001 — Michael McQuinn: Help make cultural transition if the Natives could live on campus.

Number 0020 — Rep. Koponen: Have you decided how to split use of housing between ACC/UAA?

Number 0025 — Mr. McQuinn: Seems to be good communication between both Chancellors.

Number 0048 — Rep. Martin: Cost to students in borrowing for loan. Students with available housing to borrow for less than those without housing. We could save $6 million a year by providing housing. Within three years, savings will pay for this new housing.

Number 0078 — Rep. Ward asks Rep. Martin: What will the

on going operation cost of this be if approved?

Number 0082 — Rep. Martin: I could not answer. Addition in operation would be small.

Number 0099 — Mr. McQuinn: Concerned with equal opportunity education for handicapped, from to physically handicapped. My greatest concern.

Number 0110 — David Alcott, Chancellor at University of Alaska, Anchorage: Very pleased with testimony. Concerned with accessibility to education. The money; $15 million to provide housing for 350 students. Type of housing; concerned to provide maximum for minimum dollars. Least operating costs too.

Number 0153 — David Alcott: Hope for $250 a month for student housing.

Number 0168 — Rep. Ward: How many students would utilize dorms if available?

Number 0173 — Mr. Alcott: Housing needs will be between 900 and 1400 students. We will make these figures available. No risk that we'll build too many rooms.

Number 0194 — Ed Bickerstaff, Chancellor at Anchorage Community College; joint partnership is growing between two campuses. Same set of standards for both schools in priority who gets housing.

Number 0270 — Chairman Tischer: Legislature sees duplication of effort from architects in school design. Why not use the functional design already designed?

Number 0293 — Mr. Bickerstaff: Students requests; privacy and cheap cost. Universities are moving increasingly away from traditional housing. Operating costs will fall almost one-half if we go from traditional dorm to the apartment style housing.

Number 0349 — Chairman Tischer: Do we have to have the ancillary help? Can't the students take the place of janitors, etc? Can we take away the frills?

Number 0388 — Rep. Ward: What about the provision for 1%

cost going to art-work? Will this hinder?

Number 0400 — Mr. Bickerstaff: I think some of the art around is an asset. I'm pleased. The art is complimentary to the brick and concrete buildings. If I had choice, I'd rather put that 1% to student housing.

Number 0428 — Rep. Martin: Anchorage has stereotype of students who are older, married and have housing. More freshmen coming, but leaving because of the lack of housing. We want these freshmen.

Tape 3, Side A
Recording
Number 0001 — Chairman Tischer asks the witnesses to keep their testimony short. Offers to accept testimony in writing.

Number 0009 — Roger Wordsley, Vice-Chair of Student Services at ACC: Our housing is not designed for older married students. Rural students coming to ACC is our highest priority.

Number 0024 — Mr. Wordsley: Dorms versus apartment type, we don't plan to furnish extras. We will provide some sort of food service.

Number 0045 — Sandy Berkie, Student at ACC/UAA; urged passage of HB 32. To hold on to our students, we must build housing, education is our best natural resource.

Number 0066 — Rep. Ward: Student Loan Program; should that loan be made if those courses are offered here?

Number 0073 — Sandy Berkie; it should be restricted. Keep resources in this state.

Number 0079 — Chairman Tischer repeats Rep. Ward's question.

Number 0083 — Rep. Ward: I agree with trying to help our students here.

Number 0090 — Bob Baldwin, Chairman of UAA Citizen's Advisory Committee: The priorities are; classroom space and planning money to lay out campus.

Number 0110 — Mr. Baldwin: Student housing; a roadblock in developing the campuses. Regret the Governor's empty promise to support this in his capital budget. The designs are not extravagant, art in public places we strongly support. We have barren campuses.

Number 0161 — Rep. Ward: Public art, optional or mandatory?

Number 0183 — Mr. Baldwin: Committee has no position on that.

Number 0188 — Carol Lund, Director of Student Activities: Students and I support HB 32, cited popularity of bill from last year.

Number 0110 — Harry Nichols, Dean of Students, UAA: Count me as another member of University community who supports this legislation. If the campus will be seen as University, housing must be provided.

Number 0235 — Lee Pickard, Vice-Chairman of Campus Affairs, UAA: I support this bill, I'd like to answer any questions.

Number 0254 — Chairman Tischer: If bill goes, would you need more support staff?

Number 0269 — Lee Pickard: No extra staff required, you can't realistically expect students to do their own cleaning.

Number 0301 — John Herring, Student at UAA; strongly supports HB 32.

Number 0334 — Rep. Ward: Do you know any students who transferred out because of lack of dorms?

Number 0337 — John Herring: I almost transferred because of that.

Number 0370 — Ramona Suetopka-Duerre, President of Alaska Native Education Association: We're very concerned with the problem of the dorms. We strongly support HB 32.

Number 0400 — John O'Shea, Representing UAA Alumni Association: I affirm all prior testimony, rural students are being discriminated against because of lacking housing.

Tape 3, Side B

Recording	
Number 0001	Chairman Tischer: Introduces HB 514 and clarifies the committee is not addressing day care centers and witnesses should confine testimony to specific legislation by name.
Number 0047	Mary Wilson, Teacher, Montessori School: Limit for preschool to (4) hours (in SB 354) has our parents mad. Support HB 514.
Number 0066	Fae Scott, Secretary, Montessori School: She was against the (4) hour limitation. Our schools are very good, a good atmosphere for the citizens of tomorrow.
Number 0093	Fae Scott: We want HB 514 without amendments.
Number 0105	Safiyyah Shaheed, Teacher, Montessori: Supports HB 514 without amendments.
Number 0115	Katherine Miller: In support of HB 514 as is. The (4) hour limit not germane, it's a poor criteria. Recommended deleting amendment on Page 2, Lines 22-25.
Number 0157	Margaret Green, Director, Montessori School: Our paperwork is the same as that for the University. Very controlled. I represent parents of 650 children, the (4) hour limit is unfounded. Susan Clark's past testimony did not represent the University Women. The (4) hour limit do disservice to our school.
Number 0212	Ms. Green: We do have fire safety and other health codes. Please hurry this legislation it has taken much time already.
Number 0221	Rep. Koponen: (4) hour limitation never offered by either house.
Number 0230	Rep. Uehling: Please comment later on your feelings toward SB 354.
Number 0281	Harry Bates, Principle: In favor of CSHB 514 and am against amendments 1 and 2 of CSSB 354.
Number 0332	Mac Culver: Thanked committee for interest and agreed with Mr. Bates' testimony. Substantive changes might negate agreement with Governor and Attorney General.

Number 0378

Bart Carney, Pastor: Handed out a document which he read as testimony to the committee. He supported SB 354 and was concerned with amendment 1 of CSSB 354.

Tape 3, Side B
Recording
Number 0011

Rep. Koponen: We should discuss with the Attorney General to see what the changes will be.

Number 0017

Rep. Uehling: Last three amendments are fine with you? (Yes).

Number 0041

Daniel Glover: Agreed with Mr. Carney's testimony. Parents who go to the trouble of placing their children in these private schools do care about their children, and are capable of choosing wisely for their children.

Number 0084

Kalen Saxton: In support of SB 354 with exception of amendments.

Number 0135

Mary Beth Juday: Concerned that children in day-care facilities have their needs met. children don't belong in academic programs all day long. They won't learn to be children, such as play and socialize, when they are in school all day. In favor of CSSB 354.

Number 0159

Chairman Tischer: Do you want always to reserve the right to choose for your own children? (Yes).

Number 0187

Ms. Juday: Its the government's responsibility to ensure safety and other standards for our children.

Number 0220

Tim Ewell: Restated Mr. Carney's testimony.

Number 0260

Joan Hurst: As a private citizen; she opposed both HB 514 and SB 354. The state is obliged to watch out for school's health and safety, including child/staff ratio. She said she objects to certain school exemptions.

Number 0349

Sister Eileen Brown: Agreed with most of Ms. Juday's testimony, and asked for some clarification with the language on Page 2, Line 8.

Number 0376 — Rep. Koponen clarifies the language.

Number 0422 — Sister Eileen Brown: We are in favor of the government's health and safety requirements and thanks the committee.

Number 0453 — Patty Meritt: Both bills will increase inconsistency in regulations. She was against both bills.

Tape 4, Side A
Recording
Number 0016 — Patty Meritt: Teacher with certain training should be able to teach with bigger ratios of students.

Number 0028 — Rep. Koponen: Any suggestions for regulations?

Number 0032 — Ms. Meritt: Look at other states, many schools have bigger ratio allowances. Age makes a difference to ratio; so does teacher qualification.

Number 0052 — Doug Schmedlen: Agreed with Mr. Carney's testimony. emphasized that amendments 1 and 2 need attention, the original bill HB 514 was a good bill. Referred to concerns about subsidies.

Number 0074 — Lloyd Bellamy: Agreed with Mr. Carney's testimony.

Number 0080 — Edwin Rinner: As parent of four children, he believed this bill is appropriate. Appreciated the Governor's interest and that of the legislators, and also agreed with Mr. Carney's suggestions for changing the amendments.

Number 0100 — Jerry Wainscott: Concurred with Mr. Carney's testimony. Thanked the committee for their work and urged passage of the bills.

Number 0115 — Robert Alley: Concurred with Mr. Carney's statement and thanked the committee members.

Number 0145 — Robert Bryon, Wasilla Children's Center: He supported Mr. Carney's testimony and sending 18 students from Wasilla to Peter's Creek. Next year we hope to help them in our own school in Wasilla, there will be about 40 children.

Number 0166	Walt Arden: Endorses Mr. Carney's testimony.
Number 0183	Chairman Tischer thanked the witnesses for coming to the hearing and the committee will soon put the bill on the floor.
Number 0190	No further business to come before the committee, Chairman Tischer adjourned the meeting at 3:04 p.m.

HOUSE HEALTH, EDUCATION & SOCIAL SERVICES
STANDING COMMITTEE
February 8, 1984
1:20 p.m.

Members Present:	Rep. Tischer, Chairman MT
	Rep. Pestinger, Vice-Chair (late)
	Rep. Martin
	Rep. Davis
	Rep. Koponen
	Rep. Uehling (late)
Members Absent:	Rep. Goll

COMMITTEE CALENDAR

HB 496 "An Act relating to food banks."

WITNESS REGISTER

Joe Cladouhos
Director
Division of Environmental Quality Management
Department of Environmental Conservation
Pouch O
Juneau, Alaska 99811
465-2640
Position Statement: Department supports the bill.

Elizabeth Shaw
Assistant Attorney General
Department of Law
Pouch K
465-3603
Position Statement: Supports the HESS CS for HB 496.

PREVIOUS ACTION

HB 496 1/9/84 - First Reading.

Committee Referrals - HESS, Judiciary and Rules Committees.

See HESS minutes of January 28, 1984.

ACTION NARRATIVE

TAPE#1, Side A
Recording
Number 0001 Chairman Tischer called the meeting to order

at 1:20 p.m., and recognized the members present. She announced the committee calendar, welcomed all teleconference sites and stated her intent to move the bill out of committee.

Number 0022 — Rep. Martin moved that CSHB 496 (HES_) be brought up for consideration. No objection, so ordered.

Number 0026 — Chairman Tischer called the first witness to testify, Rep. Koponen who is the sponsor of the bill.

Number 0037 — Rep. Koponen stated that the liability is limited to constructive knowledge of any type of fraud. The committee substitute defines liability as gross negligence rather than legal negligence. The law is written in one section of the bill so people don't have to pick around. The donor section defines donor as farmer, retailer, wholesale, freight company, etc. It excludes manufactures of canned foods, said Rep. Koponen.

Number 0078 — Chairman Tischer asks if Matanuska Maid made sour cream and something happened so the package didn't look good, could they give that to a food bank?

Number 0102 — Rep. Koponen responds yes, that is better than the indigents picking through the garbage bins.

Number 0110 — Joe Cladouhos from the Department of Environmental Conservation stated that the Department supports HB 496 and they had no problems with the present language.

Number 0122 — Representatives Pestinger and Uehling are now present for the committee meeting.

Number 0129 — Elizabeth Shaw from the Department of Law is the next witness to testify. She defines liability of donors; one of the problems for the original bill was that it didn't change the standards that applied to food donors. We wanted the new bill to define standards of negligence, said Ms. Shaw.

Elizabeth Shaw said theory or negligence presupposes a standard of behavior and that's the reasonable and prudent person

standard. The juries use that standard to determine negligence, they want people to act reasonably and prudently at all times - doing what a reasonable and prudent person would do. This encourages donors to give to food banks and this donor would not be liable if he acted reasonably and prudently.

Ms. Shaw continues. This bill has two categories; one is a donor which excludes those of commercial capacities. Retailers, however, would be considered a donor.

Page 1, line 13: previous draft stated injury not be attributed to donor if not a direct result. We questioned the use of direct, said Ms. Shaw.

Page 2, line 7: The in food bank, injury or death is not a direct result. There is an intentional difference between the two standards.

Number 0230 — Chairman Tischer asks for questions.

Number 0233 — Rep. Pestinger moved that CSHB 496 (HESS) be passed out of committee with individual recommendations. No objections, so ordered. Representatives Tischer, Pestinger, Martin, Uehling, Davis and Kohonen signed a "do pass" recommendation.

Number 0254 — No further business to come before the committee, Chairman Tischer adjourned the meeting at 1:58 p.m.

SB

394

Offered: 2/16/84
Referred: Rules

Original sponsor: Judiciary Committee

IN THE SENATE BY THE JUDICIARY COMMITTEE

CS FOR SENATE BILL NO. 394 (Judiciary)

IN THE LEGISLATURE OF THE STATE OF ALASKA

THIRTEENTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act relating to the crime of terroristic threatening; and providing for an effective date."

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

* Section 1. AS 11.56.810 is amended to read:

Sec. 11.56.810. TERRORISTIC THREATENING. (a) A person commits the crime of terroristic threatening if the person

(1) knowingly makes a false report that a circumstance dangerous to human life exists or is about to exist and

(A) [(1)] places a person in fear of physical injury to any person;

(B) [(2)] causes evacuation of a building; or

(C) [(3)] causes serious {public} inconvenience; or

(2) with intent to place another person in fear of death or serious physical injury to the person or the person's immediate family, or (3) makes repeated threats to cause death or serious physical injury to another person.

(b) Terroristic threatening is a class [C felony.] A Misdemeanor

* Sec. 2. This Act takes effect immediately in accordance with AS 01.-10.070(c).

Offered: 2/16/84
Referred: Rules

Original sponsor: Judiciary Committee

IN THE SENATE BY THE JUDICIARY COMMITTEE

HOUSE CS FOR CS FOR SENATE BILL NO. 394 (Judiciary)

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(1) making a threat to cause death or physical injury to another person placing a person in fear of physical injury to any person;

(2) falsely causing evacuation of a building; or

(3) placing another person in fear of death or serious physical injury to the person or the person's immediate family.

(b) Terroristic threatening is a class A misdemeanor.

* Sec. 2. This Act takes effect immediately in accordance with AS 01.10.-070(c).

Offered: 2/16/84
Referred: Rules

Original sponsor: Judiciary Committee

IN THE SENATE BY THE JUDICIARY COMMITTEE

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Referred: Rules

Original sponsor: Judiciary Committee

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(2) falsely causing evacuation of a building; or

(3) placing another person in fear of death or serious physical injury to the person or the person's immediate family.

(b) Terroristic threatening is a class A misdemeanor.

* Sec. 2. This Act takes effect immediately in accordance with AS 01.10.-070(c).

(b) Making a false report is a class A misdemeanor. (§ 6 ch 166 SLA 1978)

NOTES TO DECISIONS

Statements prohibited. — Defendant's statements concerning his oral accusation that a police officer had taken $250 from the glove compartment of his truck, which the police officer authorized to be towed without operating lights or current registration, were prohibited by former AS 11.30.215, which made it a misdemeanor to give a false report of a crime to a peace officer. Gottschalk v. State, Sup. Ct. Op. No. 1566 (File No. 2916), 575 P.2d 289 (1978).

Sec. 11.56.810. Terroristic threatening. (a) A person commits the crime of terroristic threatening if the person knowingly makes a false report that a circumstance dangerous to human life exists or is about to exist and

(1) places a person in fear of physical injury to any person;

(2) causes evacuation of a building; or

(3) causes serious public inconvenience.

(b) Terroristic threatening is a class C felony. (§ 6 ch 166 SLA 1978)

Collateral references. — Criminal offense of bomb hoax or making false report as to planting of explosive, 93 ALR2d 304.

Possession of bomb, Molotov cocktail, or similar device as criminal offense, 42 ALR3d 1230.

Validity and construction of "terroristic threat" statutes, 58 ALR3d 533.

Sec. 11.56.820. Tampering with public records. (a) A person commits the crime of tampering with public records if the person knowingly

(1) makes a false entry in or falsely alters a public record; or

(2) destroys, mutilates, suppresses, conceals, removes, or otherwise impairs the verity, legibility, or availability of a public record, knowing that the person lacks the authority to do so.

(b) Tampering with public records is a class A misdemeanor. (§ 6 ch 166 SLA 1978)

NOTES TO DECISIONS

For case construing former AS 11.30.240 — 11.30.260, relating to mishandling of public records, see Larson v. State, Sup. Ct. Op. No. 1430 (File No. 2433), 564 P.2d 365 (1977).

Sec. 11.56.830. Impersonating a public servant. (a) A person commits the crime of impersonating a public servant if the person pretends to be a public servant and does any act in that capacity.

(b) It is not a defense to a prosecution under this section that

(1) the office the defendant pretended to hold did not in fact exist; or

ANNOTATION

VALIDITY AND CONSTRUCTION OF "TERRORISTIC THREAT" STATUTES

by

Jeffrey F. Ghent, J.D.

Section 211.3 of the American Law Institute's Model Penal Code, Proposed Official Draft (1962), makes it a felony of the third degree to threaten to commit any crime of violence with purpose to terrorize another or to cause evacuation of a building, place of assembly, or facility of public transportation, or otherwise to cause serious public inconvenience, or to make such threats in reckless disregard of the risk of causing such terror or inconvenience.[1]

This annotation collects the cases in which the courts have construed or passed upon the validity of such statutes[2] expressly making "terroristic

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1. The section entitled "Terroristic Threats" is distinguished in an official note from a related provision pertaining "Criminal Coercion" (§ 212.5), the Institute explaining that the object of § 211.3 is to prevent serious alarm for personal safety, such as may arise from letters or anonymous telephone calls threatening death, kidnapping, or bombing, and that in the case of terroristic threats, there is no occasion to exempt from criminal liability on the ground of the actor's possibly benign ultimate purpose, as is appropriate in connection with the offense of coercion.

2. Since the statutes are included only to the extent that they are reflected in the

TOTAL CLIENT-SERVICE LIBRARY® REFERENCES:

16 Am Jur 2d, Constitutional Law § 319; 31 Am Jur 2d, Extortion, Blackmail, and Threats §§ 14–17

13 Am Jur Trials 465, Defending Minor Felony Cases

ALR Digests, Constitutional Law § 792

US L Ed Digest, Constitutional Law § 935.5

ALR Quick Index, Explosions and Explosives; Freedom of Speech and Press; Threats

Federal Quick Index, Bombs; Explosions and Explosives; Freedom of Speech and Press; Threats

L Ed Index to Annos., Freedom of Speech, Press, Religion, and Assembly; Threats

Consult POCKET PART in this volume for later cases

threats" a separate and distinct criminal offense.[3] Thus, the present annotation does not include cases involving the offenses of extortion, blackmail, or threats generally.[4] Among other offenses involving, or often involving, threats but not designated in terms of "terroristic threats," and therefore beyond the scope of this annotation, are assault,[5] robbery,[5] sedition,[6] "night riding" and "whitecapping,"[7] "bomb hoax,"[8] and the specific federal offenses of racketeering,[9] extortionate credit transactions,[10] riots,[11] intimidating witnesses, jurors, or federal officers,[12] threatening the President,[13] extortion by federal officers or employees,[14] using violations of federal law to blackmail,[15] inducing kickbacks from public works employees,[16] and mailing, or transmitting in interstate commerce, threatening communications.[17]

In the following cases, the validity of "terroristic threat" statutes, as construed by the courts, was upheld.

A Georgia statute punishing terroristic threats and acts, and providing that a person commits a terroristic threat when he threatens to commit any crime of violence, or to burn or damage property, with the purpose of terrorizing another, or of causing the evacuation of a building, place of assembly, or facility of public transportation, or otherwise causing serious public inconvenience, or when he makes such threats in reckless disregard of the risk of causing such terror or inconvenience, was held neither violative of the First Amendment right to free speech nor unconstitutionally vague, at least in pertinent part, in Masson v. Slaton (1979, ND Ga) 329 F Supp 669, the court granting a defense motion for judgment on the pleadings in an action for injunctive and declaratory relief against enforcement of the statute. As to the contention that the statute proscribed constitutionally protected conduct by

reported cases within the scope of this annotation, the reader is advised to consult the latest enactments in his jurisdiction.

3. See 31 Am Jur 2d, Extortion, Blackmail, and Threats.

4. See, generally, 6 Am Jur 2d, Assault and Battery §§ 28-31. As to assault with intent to murder or kill, see 40 Am Jur 2d, Homicide §§ 568-532. As to assault with intent to rob, see 67 Am Jur 2d, Robbery §§ 79-85.

5. See 67 Am Jur 2d, Robbery §§ 22-26.

6. See, generally, 70 Am Jur 2d, Sedition, Subversive Activities, and Treason.

7. See 31 Am Jur 2d, Extortion, Blackmail, and Threats § 16.

8. See the annotation, "Criminal offense of bomb hoax or making false report as to planting of explosive," at 93 ALR2d 304.

9. See the annotations at 1 ALR Fed 838 and 4 ALR Fed 881. See also 31 Am Jur 2d, Extortion, Blackmail, and Threats §§ 18-28.

10. See the annotation, "Validity, construction, and application of Consumer Protection Act provisions (18 USC §§ 891-896) prohibiting extortionate credit transactions," at 7 ALR Fed 950.

11. See the Federal Anti-Riot Act of 1968 (18 USCS §§ 2101, 2102).

12. See 18 USCS § 1503.

13. See the annotation, "Validity and construction of federal statute (18 USC § 871) punishing threats against the President," at 22 L Ed 2d 988.

14. See 18 USCS § 872.

15. See 18 USCS § 873.

16. See 18 USCS § 874.

17. See 18 USCS §§ 875, 876.

making illegal bare statements without an overt act or attempt to carry out the threat, the court replied that statements alone can be without First Amendment protection; that although the right to free speech entitles an individual to advocate certain ideas regardless of their popularity, it does not extend to the threatening of terror, inciting of riots, or placing another's life or property in danger; and that the indictment against the plaintiff made just such an accusation—that he had threatened in the presence of a third party to burn and damage 11 automobiles owned by another for the purpose of terrorizing the owner. It was further contended that the statute was unconstitutionally vague because it required a man of ordinary intelligence to guess at its meaning, and because some portions of the statute were so ambiguous as to fail to give fair and adequate warning of the conduct proscribed. However, the court pointed out that it was only necessary to consider that portion of the statute under which the plaintiff had been indicted, namely, the provision that a person commits a terroristic threat when he threatens to burn or damage property with the purpose of terrorizing another. Concluding that there was nothing vague or indefinite in this provision, the court stated that no meaningful contention could be made that the provision failed to adequately inform the plaintiff of the conduct prohibited.

A Kansas statute making a terroristic threat a felony, and defining a terroristic threat as any threat to commit violence communicated with intent to terrorize another, or to cause the evacuation of any building, place of assembly, or facility of transportation, or impaired in wanton disregard of the risk of causing such terror or evacuation, was held valid against a contention that it was unconstitutionally vague under both the Kansas Constitution and the Fourteenth Amendment to the United States Constitution, in State v Gunzelman (1972) 210 Kan 181, 502 P2d 703, 58 A.L.R.3d 522, the court reversing on other grounds a conviction for making a terroristic threat to a highway patrol officer. The patrolman had issued a traffic ticket to one of the defendant's truckdrivers, and the alleged terroristic threat, made at the patrolman's home, was apparently intended to prevent further tickets to the drivers.[18] Observing generally that the idea for the new statute; designed to fill a gap in the law, had been drawn from the American Law Institute's Model Penal Code § 211.3, supra, the court recognized that a statute creating a new offense must be sufficiently explicit to inform those who are subject to it what conduct on their part will render them liable to its penalties. However, characterizing the "main thrust" of the defendant's constitutional argument as based upon a failure by the legislature to define the words "threat" and "terroristic," the court pointed out that a general definition section of the Kansas Criminal Code defined a threat as "a communicated intent to inflict physical or other harm on any person or on property." The court also

18. Although not ruling on the sufficiency of the evidence to support the conviction, the court did state the language of the alleged threat as follows: "I am warning you for the last time that you are not pulling my drivers over for no reason and arresting them. . . . You have a wife and family. You had better give some thought to that. You are gone a lot of nights. Where is your bedroom? I will be back."

noted that in a similar case,[19] the word "terrorize" had been defined as "to reduce to terror by violence or threats," and the word "terror" as "an extreme fear or fear that agitates body and mind." Given abiding definitions for the words "threat" and "terrorize," as those terms are understood by men of common intelligence, the court said, the statute proscribing terroristic threats survives any constitutional challenge for vagueness and uncertainty. Finally, the court observed that although the statute might have been directed at campus unrest, fire and bomb threats to public buildings, and acts of mob violence, the main elements of the offense were threats communicated with a specific intent to terrorize another, and that the wording of the statute appeared sufficient to proscribe such threats whether directed generally against one or more persons, and regardless of the purpose which the terrorist had in mind to accomplish.

•

The following annotations may be of related interest:

Peaceful picketing of private residence. 42 ALR3d 1353.

Possession of bomb, Molotov cocktail, or similar device as criminal offense. 42 ALR3d 1230.

Validity of blasphemy statutes or ordinances. 41 ALR3d 519.

Attacks on judiciary as a whole as indirect contempt. 40 ALR3d 1291.

Participation of student in demonstration on or near campus as warranting imposition of criminal liability for breach of peace, disorderly conduct, trespass, unlawful assembly, or similar offense. 32 ALR3d 551.

Criminal offense of bomb hoax or making false report as to planting of explosive. 83 ALR2d 764.

Validity, construction, or enforcement of statutes or ordinances relating to picketing of courts. 52 ALR2d 1287.

Homicide, causing one to flee in fear or fright, to house or field to prevent crime. 25 ALR2d 1158.

Civil liability for insulting or abusive language not amounting to defamation. 15 ALR2d 1078.

Validity of legislation directed against political, social, or industrial propaganda deemed to be of a subversive or dangerous tendency. 7 ALR 1494, supplementing 1 ALR 556 and 20 ALR 1553.

Opprobrious words addressed to policeman as breach of peace. 7 ALR 506.

Validity, construction, and application of Civil Obedience Act of 1968 (18 USCS §§ 231–233) punishing certain acts in connection with civil disorders. 16 ALR Fed 906.

Validity, construction, and application of Consumer Credit Protection Act provisions (18 USC §§ 891–896) prohibiting extortionate credit transactions. 7 ALR Fed 959.

Elements of offense proscribed by the Hobbs Act (18 USC § 1951) against racketeering in interstate or foreign commerce. 4 ALR Fed 881.

Validity, construction, and effect of 18 USC § 1952, making it a federal offense to use interstate or foreign travel or transportation in aid of racketeering enterprises. 1 ALR Fed 368.

Validity and construction of federal

19. Armstrong v Ellington (1970, DC Tenn) 312 F Supp 1119, involved a Tennessee statute which did not, strictly speaking, prohibit "terroristic threats," but rather criminal carnal acts when done for the purpose of terrorizing or, alternatively, for the purpose of coercing through threats, any citizen to do an unlawful thing.

statute (18 USC § 871) punishing threats against the President, 22 L Ed 2d 688.

The Supreme Court and the right of free speech and press, 21 L Ed 2d 976, supplementing 9 L Ed 1151, 2 L Ed 2d 1706, 11 L Ed 2d 1146, 16 L Ed 2d 1053.

Consult POCKET PART in this volume for later cases

SB

397

BILL SHEFFIELD
GOVERNOR

SB 397

STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

January 31, 1984

The Honorable Jalmar Kerttula
Alaska State Senate
Pouch V
Juneau, AK 99811

Dear Senator Kerttula:

Under the authority of art. III, sec. 18, of the Alaska Constitution, I am transmitting a bill to extend the life of the Alcoholic Beverage Control Board for four years. The board has gone through four "sunset" reviews in the last five years, and its sunset date was extended from June 30, 1983 to June 30, 1984 during last year's legislative session. I believe that it is time to give the board a four-year extension so that it can continue to fulfill its responsibility for administering our alcoholic beverage control laws.

Sincerely,

Bill Sheffield
Governor

STATE OF ALASKA 1984 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date:

REQUEST
Bill/Resolution No.: 357
Title: Extending termination date of ABC Board.
Sponsor: Governor
Requestor:
Date of Request:

FISCAL DETAIL
Agency Affected: Revenue
Program Category Affected: Public Protection
BRU, Program or Subprogram(s) Affected: Alcoholic Beverage Control Board

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 84	FY 85	FY 86	FY 87	FY 88	FY 89
OPERATING						
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 SUPPLIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS						
800 MISCELLANEOUS						
TOTAL OPERATING						
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

The fiscal impact of this bill is reflected in the Governor's FY 85 Executive Budget showing continued funding for the Alcoholic Beverage Control Board. Please see attached.

ANALYSIS: Attach a separate page for analysis

Prepared By: Patrick F. Kennard Phone: 277-8638
Division: Alcoholic Beverage Control Board Date: 11/20/84

Approved by Commissioner: [illegible] Date: 11/20/84
Agency: Revenue

Distribution (by Agency preparing fiscal note):
- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)

12/1/83

AGENCY: DEPARTMENT OF REVENUE
CATEGORY: GENERAL GOVERNMENT

PROGRAM: DATA AND WORD PROCESSING
SUB-PROGRAM: A.B.C. BOARD

EXPENDITURES & FUNDING	83 AUTH	83 FINAL	83 ACT	84 AUTH	ADJ BASE	85 SL 1	85 SL 2	85 SL 3	85 SL 4	GOVERNOR		
01 PERS. SERV.												
02 TRAVEL												
03 CONTRACTUAL					7.8	7.8				7.8		
04 SUPPLIES												
05 EQUIPMENT												
06 LANDS/BLDGS												
07 GRANTS, CLMS												
08 MISC.												
** TOTAL EXPEND					7.8	7.8				7.8		
09 I-A TRANSFER												
FED. RECEIPT												
**GF + MATCH					7.8	7.8				7.8		
G. F. MATCH												
GENERAL FUND					7.8	7.8				7.8		
PGM RECEIPTS												
I/A RECEIPTS												
OTHER FUNDS												
15 FULL-TIME												
16 PART-TIME												
17 TEMPORARY												

AGENCY: DEPARTMENT OF REVENUE
CATEGORY: PUBLIC PROTECTION

PROGRAM: ALCOHOL BEVERAGE CONTROL BOARD
SUB-PROGRAM: ALCOHOL BEVERAGE CONTROL BOARD

EXPENDITURES & FUNDING	83 AUTH	83 FINAL	83 ACT	84 AUTH	ADJ BASE	85 SL 1	85 SL 2	85 SL 3	85 SL 4	GOVERNOR		
1 PERS. SERV.	461.5	471.5	473.6	487.8	516.8	534.5	534.5	569.0		534.5		
2 TRAVEL	50.1	50.1	43.1	40.1	40.1	47.2	37.6	57.8		47.2		
3 CONTRACTUAL	117.7	103.4	92.1	111.2	103.4	78.2	54.4	109.3		78.2		
4 SUPPLIES	3.2	4.7	4.2	7.2	7.2	7.6	7.6	8.5		7.6		
5 EQUIPMENT		2.8	.4					1.4				
6 LANDS/BLDGS			.4									
7 GRANTS, CLMS												
8 MISC.												
* TOTAL EXPEND	632.5	632.5	613.8	646.3	667.5	667.5	634.1	746.0		667.5		
9 I-A TRANSFER	12.4											
FED. RECEIPT												
**GF + MATCH	632.5	632.5	613.8	646.3	667.5	667.5	634.1	746.0		667.5		
G. F. MATCH												
GENERAL FUND	632.5	632.5	613.8	646.3	667.5	667.5	634.1	746.0		667.5		
PGM RECEIPTS												
I/A RECEIPTS												
OTHER FUNDS												
5 FULL-TIME	12.0	12.0	12.0	12.0	12.0	12.0	12.0	13.0		12.0		
6 PART-TIME												
7 TEMPORARY												

000015

A PERFORMANCE REPORT ON THE DEPARTMENT OF REVENUE ALCOHOLIC BEVERAGE CONTROL BOARD

January 30, 1984

Audit Control Number

04-1149-84-R

Commissioner, Department of Revenue	Robert D. Heath
Deputy Commissioners, Department of Revenue:	
Taxation	Bruce M. Botelho
Treasury	Milton B. Barker

Members of the
Alcoholic Beverage Control Board

Chairman	William K. Smith
Member	Wesley D. Wallace
Member	Donald J. House
Member	E. L. Holloway
Member	Jane C. Perkins

AUDIT DIVISION
POUCH W—ALASKA OFFICE BUILDING

THE LEGISLATURE

BUDGET AND AUDIT COMMITTEE JUNEAU, ALASKA 99811

January 30, 1984

Members of the
Legislative Budget and Audit Committee.

In accordance with the provisions of Title 24 of the Alaska Statutes, the attached report is submitted for your review.

A PERFORMANCE REPORT ON THE
DEPARTMENT OF REVENUE
ALCOHOLIC BEVERAGE CONTROL BOARD

January 30, 1984

Gerald L. Wilkerson, CPA
Legislative Auditor
Division of Legislative Audit

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PURPOSE OF THE REPORT

In accordance with the provisions of Alaska Statutes 24.20.271(1) and 44.60.050 (Sunset legislation) an examination of the Alcoholic Beverage Control Board was conducted to determine if the Board has been operating in an efficient and effective manner and if the Board should be reestablished.

As required by legislative intent, this report should be considered during the legislative oversight function in determining if the Alcoholic Beverage Control Board should be reestablished. Per the 1983 amendment to AS 44.66.010(A)(1), the Board is scheduled to terminate on June 30, 1984.

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Enforcement. The ABC Board currently employs five investigators - three operating from the Anchorage central office, one operating from the Fairbanks field office, and one operating from the Juneau field office. One Anchorage Investigator position is vacant. Services provided include (1) surveillance and inspections of licensed premises, (2) investigations to obtain information to be used in criminal and civil proceedings and investigations into suspected licensing violations, (3) public appearances relating to ABC laws and regulations, and (4) assisting the licensing staff in handling inquiries from the general public.

ORGANIZATION AND FUNCTION

The Alcoholic Beverage Control Board (hereinafter referred to as the ABC Board or the Board) was established in 1959 by Title 4 of the Alaska Statutes as a regulatory, quasi-judicial agency. The Board is vested with the powers, duties, and responsibilities for the control of alcoholic beverages, including the power to propose and adopt regulations, and to hear appeals.

Members are appointed for three-year terms by the Governor and serve at his pleasure subject to confirmation by the Legislature. Membership is limited by statute to five persons (two liquor industry representatives, three non-industry representatives). A director, also appointed by the Governor, serves as executive officer and is responsible for enforcement of Title 4 liquor laws and regulations developed by the Board. Although he is not a member of the Board, the director may cast a tie-breaking vote. Under the direction of the Board, the director may issue, renew, transfer, revoke or suspend licenses or permits.

Title 4 prescribes the type of licenses, fees, and specific activities allowed under each license classification (see schedule of license types and fees in Appendix C). Fees are payable at the time of application. To renew an already existing liquor license, the application must be filed (and the corresponding fees paid) on or before February 28. On January 1, 1984 the Board adopted emergency regulations to set a moratorium on the issuance of certain new license within the State. The primary purpose of the moratorium is to avail time to the Board to reevaluate its current criteria for license application approvals. This moratorium will be in effect until April 30, 1984.

The staff of the ABC Board is divided into three major functions: administration, licensing, and enforcement. A brief description of the services provided by those functions follows.

Administration. The director of the ABC Board provides all administrative support needed by the Board including overseeing all staff functions, preparing budget documents, and directing the preparation and implementation of administrative and public hearings, and directing special enforcement investigations.

Licensing. The licensing staff currently consists of three full-time employees responsible for issuing and receiving application forms, maintaining records and files for all licenses, collecting fees, issuing all licenses and permits authorized by the Board, and answering inquiries from the general public on routine licensing matters.

REPORT CONCLUSION

Policy Issues

This review contains policy issues raised as a result of our evaluation of various Board practices. The final policy decisions affecting those practices are not within the scope of this review but require legislative consideration. In debating these decisions the legislative oversight committees should take into consideration the findings and recommendations presented in this report, so that the potential impact of the policy changes can be evaluated.

Report Conclusions

Title 4 of the Alaska Statutes established the ABC Board to control the manufacture, barter, possession and sale of alcoholic beverages in the State in order to protect the public's health, safety, and welfare. We believe that there is a demonstrated need for this control to continue to exist. In order to operate in a more efficient and effective manner the following recommendations should be implemented:

1. The ABC Board should improve documentation of its enforcement efforts.

2. The ABC Board should strengthen communications with law enforcement officers.

3. The ABC Board should establish procedures to monitor license fee refunds.

4. The ABC Board should improve its activity reporting system.

5. The Department of Revenue should review the ABC Board's transmittal of receipt procedures and establish procedures to transmit funds more efficiently.

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FINDINGS AND RECOMMENDATIONS

Recommendation No. 1

The ABC Board should improve documentation of its enforcement efforts.

The ABC Board is mandated by statute to control the manufacture, barter, possession, and sale of alcoholic beverages in the State. When a violation is observed or reported, the ABC Board staff would issue a notice of violation, initiate an investigation, or file a criminal complaint. An enforcement file is maintained by the ABC Board to document actions taken. Our review of these files disclosed weaknesses in the following areas:

Investigations

Upon completion of an investigation by the enforcement staff a written report is prepared. The report is reviewed by the enforcement supervisor and submitted to the Director and/or Board for final action. Our review disclosed that adequate documentation is not maintained on enforcement activity. For instance, 16 of 25 enforcement files reviewed did not contain documentation of final action resulting from the Director and/or Board review. In addition, a review of 25 administrative files maintained by the Director showed that 17 files did not contain documentation of the informal conference held with the licensee and final resolutions made.

In order to improve the efficiency and effectiveness of operations, the ABC Board should implement procedures to ensure files are complete. Enforcement files should contain documentation of enforcement activity from inception to final resolution.

Notice of Violation (NOV)

The ABC Board utilizes an NOV to communicate to licensees that a violation allegedly occurred. NOVs of an by themselves carry no penalty, and present regulations do not require the licensee to respond to the NOV. Our review of 25 NOVs showed only 9 responses were received from licensees.

An NOV or an accumulation of NOVs could lead to the filing of an accusation or could initiate an investigation. In addition, NOVs may be reviewed by the Board in considering whether to suspend, revoke, or renew a license.

To provide for fair and balanced consideration by the Board, Director or enforcement officers, all licensees should be required to provide a written response to an NOV. The response should become a part of the decision on whether or

not additional action is warranted. Consideration should also be given to the assessment of a penalty to the licensee when no response is received after the issuance of an NOV.

Recommendation No. 2

The ABC Board should strengthen communications with law enforcement officers.

Our review of the ABC Board's law enforcement activities showed that the staff relies primarily on the services of local law enforcement officers to aid in enforcing liquor laws. To promote local enforcement, annual license fees, excluding wholesale fees, collected from licenses issued within a municipality are refunded semi-annually to the municipality.

Total license fees refunded to 40 municipalities in Fiscal Year 1983 was $809,980. According to the ABC Board staff, they are unsure of what services are provided by several municipalities. No reports have been submitted by 20 of the 40 municipalities.

Alaska Statute 04.11.610(b) states that if the officers of a municipality fail to actively enforce local ordinances, laws of the United States and the State, and the regulations relating to the manufacture and sale of alcoholic beverages, the Commissioner of Revenue may deny the refund, until the Board finds the enforcement of the ordinances, laws and regulations is resumed. Alaska Statute 04.11.610(c) also provides for the recovery of any amount erroneously refunded.

As of January 1984, the ABC Board implemented procedures to monitor the number of reports received from law enforcement officers. We encourage the Board to continue this effort. In addition, the Board should review its enforcement requirements and inform all municipalities of the types of reports and/or services expected from each to ensure liquor law enforcement.

Recommendation No. 3

The ABC Board should establish procedures to monitor license fee refunds.

If an application for an alcoholic beverage license or permit is denied by the ABC Board, the applicant is required by Board procedures to submit a claim for a refund of the license fee paid. Upon receipt, the claim is reviewed and endorsed by the ABC Board's staff. The claim is then forwarded to the Department of Revenue for processing.

A review of the ABC Board's records showed that no reconciliation is performed between the amount requested and the amount disbursed. In addition, no accounting is maintained of the number and amount of unclaimed refunds. Discussion with the ABC Board's staff disclosed that several applicants are long overdue in submitting their claims. For example, four claims processed in Fiscal Year 1983 totalling $2,200 were for refunds resulting from denials made prior to 1979.

Unclaimed refunds are a liability to the State and should be accounted for accordingly. Therefore, we recommend that the ABC Board establish procedures to automatically refund licensee fees when the denial action taken by the Board is known to be final. Supervisory review and approval should be required on all refunds processed. Refunding procedures should also include a summary of outstanding refunds, and a reconciliation of the amount requested to the amount disbursed.

Recommendation No. 4

The ABC Board should improve its activity reporting system.

Statistical information summarizing Board actions, licensing activities and enforcement activities is compiled annually by ABC Board's staff. These statistics are utilized as performance indicators for in-house and budgetary reporting. Our review of Fiscal Year 1983 summaries disclosed the following weaknesses:

A. Enforcement activity summaries do not adequately reflect staff performance. For example, investigations are reported when completed. The man-hours required to conduct each investigation varies directly with the purpose and scope of the investigation. One investigation may take several months to complete, however no accounting is maintained on the man-hours required.

B. Activity summaries are not accurate. Two material reporting errors were found as a result of our review. Total licenses revoked by the Board were erroneously reported at thirty-seven instead of four. The reported figure included thirty-three actions which should have been classified as denials or non-renewals. In addition, total investigations were reported at seventy-four, however only fifty were recorded.

The ABC Board should develop and implement policies and procedures to adequately measure staff performance and to promote accurate reporting of its activities.

Recommendation No. 5

The Department of Revenue should review the ABC Board's transmittal of receipt procedures and establish procedures to transmit funds more efficiently.

Revenues collected by the ABC Board consisting of application and license fees are deposited approximately once a week in a non-interest bearing bank account. Due to staff limitations and time allotted for bank verification, a check for the amount deposited is not prepared until several days later and forwarded to the Division of Treasury.

A review of the ABC Board's bank statements showed that the average monthly balance for Fiscal Year 1983 was $87,828. Interest income is lost as a result of transmittal delays by the ABC Board. The Department of Revenue should establish procedures to have funds wire transferred to the Division of Treasury upon deposit or authorize the establishment of an interest bearing depository account to be maintained by the ABC Board.

ANALYSIS OF PUBLIC NEED

Limited Analysis

The following analysis indicates both positive and negative attainments of the ABC Board and how its activities relate to the public need factors defined by AS 44.66.050. This analysis is not intended to be comprehensive in nature.

I. The extent to which the board, commission or program has operated in the public interest.

Public protection gained through licensing to control the manufacture, possession and sale of alcoholic beverages has been adequately provided by the ABC Board. However, operational efficiency and effectiveness should be improved. See Recommendations 1 through 5 of this report.

II. The extent to which the operation of the board, commission, or agency program has been impeded or enhanced by existing statutes, procedures, and practices which it has adopted, and any other matter, including budgetary, resource, and personal matter.

The 1980 revisions to Title 4 have, for the most part, been beneficial to the operation of the ABC Board. However, those sections which deal with suspension and revocation of licenses and permits place severe restrictions upon the ability of ABC to suspend and revoke licenses for the illegal act of licensee employees.

The Board is also restricted in meeting its statutory responsibilities in protecting the public health, safety and welfare by the size of the enforcement staff which consists of one agent in Juneau, one in Fairbanks and three, including a supervisory agent in Anchorage. Including the supervisory agent, there are only five agents with inspection and enforcement responsibilities for 1,513 licensed premises. However, one other Anchorage Investigator position is vacant.

III. The extent to which the board, commission or agency has recommended statutory changes which are generally of benefit to the public interest.

The last major revisions to Title 4 of the Alaska Statutes were the result of action by the 1980 session of the Legislature. The ABC Board participated in the process of developing those revisions

IV. The extent to which the board, commission or agency has encouraged interested persons to report to it concerning the effect of its regulations and decisions on the effectiveness of service, economy of service, and availability of service which it has provided.

The ABC Board has met an average of ten times during 1982 and 1983. During each year they have met at least once in each of the four judicial districts. Each meeting has been adequately advertised and open to all interested persons. Staff of the ABC Board are located in Anchorage, Juneau and Fairbanks and are available to answer inquiries of the general public during all normal business hours. We believe this has provided an adequate forum for allowing public input on Board regulations and decisions.

V. The extent to which the board, commission, or agency has encouraged public participation in the making of its regulations and decisions.

As noted in IV above, the Board has provided an adequate forum for obtaining input from the public.

VI. The efficiency with which public inquiries or complaints regarding the activities of the board, commission or agency filed with it, with the department to which a board or commission is administratively assigned, or with the office of the ombudsman have been processed and resolved.

As noted in past reviews the number of formal hearings continue to be few in number. However, the ABC Board has the authority to hold its own hearings on protests which it exercises as a part of its regularly scheduled meetings. Hearings in this manner have been accomplished in a timely manner since the Board meets at least ten times each year.

VII. The extent to which a board or commission which regulates entry into an occupation or profession has presented qualified applicants to serve the public.

Our review of licensing activity of the ABC Board to determine whether all statutory qualifications of licensees were being met revealed no exceptions. The Board has therefore, presented qualified applicants to serve the public.

VIII. The extent to which state personnel practices, including affirmative action requirements, have been complied with by the board, commission, or agency to its own activities and the area of activity or interest.

No discrepancies were noted during our review of the ABC Board affirmative action program.

IV. The extent to which statutory, regulatory, budgeting, or other changes are necessary to enable the agency, board or commission to better serve the interests of the public and to comply with the factors enumerated in this subsection.

Please refer to I and II above and to the previous section, Findings and Recommendations.

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APPENDIXES

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APPENDIX A

STATE OF ALASKA
DEPARTMENT OF REVENUE
ALCOHOLIC BEVERAGE CONTROL BOARD
REVENUE COMPARED WITH EXPENDITURES
Fiscal Years 1981, 1982 and 1983
(UNAUDITED)
(Note 1)

	1981	1982	1983
Revenue (See Schedule 1)	$1,494,489	$1,548,393	$1,592,957
Expenditures	(556,589)	(562,178)	(605,131)
Excess of Revenue Over Expenditures	$ 937,900	$ 986,215	$ 987,826

Schedule 1
evenue Collected

Types of License	1981	1982	1983
Liquor License Application	$ 83,250	$ 86,350	$ 86,950
Pub	100	400	400
Beverage Dispensary	771,050	773,200	799,050
Club	39,500	39,300	41,200
Common Carrier	25,800	29,050	30,500
Restaurant	60,750	69,600	73,550
Roadhouse	-0-	-0-	-0-
Retail Store	330,700	335,400	341,500
Wholesale General	138,500	156,000	146,700
Wholesale Malt Beverage	13,200	21,600	27,900
Miscellaneous (Note 2)	31,639	37,493	45,207
Total	$1,494,489	$1,548,393	$1,592,957

Note 1

This revenue/expenditure comparison was prepared from available records and discussions with ABC Board personnel. The records were not audited by us and accordingly we do not express an opinion on the ABC Board Revenue Compared with Expenditures, nor the Schedule of Revenue Collected.

Note 2

Includes recreational-site licenses, caterer's special events and conditional contractor's permits.

(Intentionally left blank)

APPENDIX B

STATE OF ALASKA
DEPARTMENT OF REVENUE
ALCOHOLIC BEVERAGE CONTROL BOARD
NUMBER OF LICENSES BY TYPE
Fiscal Years 1981, 1982, and 1983

Types of License	1981	1982	1983
Pub	1	1	1
Beverage Dispensary	620	634	645
Club	63	65	65
Common Carrier	72	88	94
Restaurant	182	215	223
Roadhouse	-0-	-0-	-0-
Retail Store	438	445	448
Wholesale General	15	16	16
Wholesale Malt Beverage	7	7	8
Miscellaneous (Note 1)	9	12	13
Total	1407	1483	1513

Note 1

Includes recreational-site licenses, caterer's special events and conditional contractor's permits.

(Intentionally left blank)

APPENDIX C

STATE OF ALASKA
DEPARTMENT OF REVENUE
ALCOHOLIC BEVERAGE CONTROL BOARD
DESCRIPTION OF LICENSE TYPES AND FEES

Source	Description	Annual Fee
Application Fee	For each license application.	$ 50
Beverage Dispensary	To sell or serve on the licensed premises alcoholic beverages for consumption on the licensed premises only.	1,250
Restaurant or Eating Place	To sell beer and wine for consumption only on the licensed premises.	300
Club	To sell alcoholic beverages for consumption only on the licensed premises.	600
Bottling Works	To operate a bottling works where beer and wine may be bottled and sold.	250
Brewery	To operate a brewery where beer is manufactured and bottled or barreled for sale.	500
Winery	To operate a winery where wine is manufactured and bottled or barreled for sale.	250
Package Store	To sell alcoholic beverages to a person in response to a verbal solicitation for purchase received from the person present on the licensed premises or in response to a written solicitation made by a person known to the license for a purchase to be received by the person making the solicitation.	750
Retail Stock	To sell the remaining stock of a package liquor store when the owner wishes to close or terminate business. Sale may only be to licensed persons.	100

Source	Description	Annual Fee
General Wholesale	To sell alcoholic beverages in the original package, and wine in bulk, in quantities of not less than five gallons to holders of licenses.	$1,000 First $100,000 of sales plus $500 - 10,000 on additional sales
Wholesale Malt Beverage and Wine	To sell malt beverages and wine in the original packages in quantities of not less than five wine gallons to holders of licenses.	200 First $20,000 of sales plus $300 - 10,000 based on additional sales
Distillery	To operate a distillery where alcoholic beverages are distilled and bottled or barreled for sale.	500
Community Liquor	Authorizes a municipality to operate a beverage dispensary or a package store or both subject to the same conditions and fees applicable to beverage dispensary or package liquor store licenses.	1,250 Beverage Dispensary 750 Package Store
Common Carrier Dispensary	To sell alcoholic beverages for consumsption aboard a vehicle, boat, aircraft, or railroad buffet car licensed by the State or federal agency for passenger travel.	350 Per vehicle, boat, aircraft or railroad car
Recreational Site	To sell beer and wine at a recreational site during and one hour before and after a recreational event which is not a school event, for consumption on designated areas at the site.	400
Pub	To sell beer and wine for consumption only at designated premises located on the campus of an accredited college or university.	400
Caterer	Authorizes the holder of a beverage dispensary license to sell or dispense alcoholic beverages at conventions, picnics, social gatherings,	50

Source	Description	Annual Fee
	sporting events or similar affairs held off the holder's licensed premises.	
Special Events	To sell or dispense beer or wine for consumption at designated premises for a specific occasion and limited period of time. Only a nonprofit organization may acquire the permit.	$50 Per day
Conditional Contractor	To sell beer or wine for consumption only on designated premises for one year from the date of issuance of the permit at construction sites which are located outside a city and inside the boundaries of a military or naval reservation.	600

(Intentionally left blank)

BILL SHEFFIELD, GOVERNOR

DEPARTMENT OF REVENUE

OFFICE OF THE COMMISSIONER

POUCH S
JUNEAU, ALASKA 99811
PHONE: (907) 465-2300

February 24, 1984

RECEIVED
FEB 2 1984
LEGISLATIVE
AUDIT

Mr. Gerald L. Wilkerson, CPA
Legislative Auditor
Division of Legislative Audit
Pouch W
Juneau, AK 99811

Dear Mr. Wilkerson:

This letter is in response to recommendations contained in your Performance Report of the Alcoholic Beverage Control Board dated January 30, 1984.

Recommendation No. 1 - The A.B.C. Board should improve documentation of its enforcement efforts.

We agree. Conclusions for and final actions from investigations, informal conferences and administrative hearings will be more precisely documented and recorded in pertinent files.

Recommendation No. 2 - The A.B.C. Board should strengthen communications with law enforcement officers.

We agree. This is an ongoing task for the board and its staff. We hope the monitoring procedures implemented recently will produce improved communications with other agencies.

Recommendation No. 3 - The A.B.C. Board should establish procedures to monitor license fee refunds.

We agree. Procedures to process and assess disposition of denied applications and related refund of license fees will be established.

Recommendation No. 4 - The A.B.C. Board should improve its activity reporting system.

We agree.

Item A. A man-hour reporting system for investigators is in place.

Item B. The discrepancy for total investigations reported resulted from "information only" notations by investigators on their daily reports erroneously recorded by clerical staff as "completed" investigations. Improved communication and control within the enforcement staff has begun to prevent this kind of error from reoccurring.

Recommendation No. 5 - The Department of Revenue should review the A.B.C. Board's transmittal of receipt procedures and establish procedures to transmit funds more efficiently.

We agree. The department is vigorously reviewing cash receipt management in all departments at the present time.

On behalf of the A.B.C. Board and its staff we commend your staff who performed this audit for their professionalism and conduct. Thank you for your constructive and appropriate recommendations.

Sincerely,

Robert D. Heath
Commissioner of Revenue

RDH:PLS:mll

cc: Patrick L. Sharrock, Director
A.B.C Board
A.B.C Board Members

SB

408

sb 404

BILL SHEFFIELD
GOVERNOR

STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

February 6, 1984

The Honorable Jalmar Kerttula
Alaska State Senate
Pouch V
Juneau, AK 99811

Dear Senator Kerttula:

Under the authority of art. III, sec. 18, of the Alaska Constitution, I am transmitting a bill appropriating a total of $314,205 to the Alaska Court System.

The first section of the bill appropriates $285,000 from the general fund to offset the deficit created by underfunding the FY 84 cost-of-living pay increase. When funds were appropriated for that increase, the level of funding was set at approximately 75 percent of the estimated cost of the increase for existing employees. In addition, pay increase funds were not provided for the eight new positions received by the trial courts in FY 84. The court system has attempted to reduce the deficit by extending vacancies, eliminating overlaps, and reducing overtime to the extent possible. Through these efforts, the trial courts will have realized a savings of $400,000 by the end of this fiscal year.

The second section of the bill appropriates $29,205 from the general fund to pay FY 83 outstanding obligations for library materials. Inadvertently, invoices were not processed in a timely manner, and the court system has actually lapsed sufficient funds to cover these claims.

Additional backup material will be furnished to the finance committee.

Sincerely,

Bill Sheffield
Governor

Alaska Court System
State of Alaska

OFFICE OF ADMINISTRATIVE DIRECTOR

303 K Street
Anchorage, Alaska 99501

ROBERT G. FISHER
Manager of Fiscal Operations

January 23, 1984

Carolyn Martin
Senior Budget Analyst
Office of Management & Budget
Pouch AM
Juneau, AK 99811

Dear Carolyn:

Accompanying this letter is the Court System's request for a supplemental appropriation in the amount of $285,000 for the trial court budget request unit for fiscal year 1984. The additional funds are requested to offset the deficit in the current year budget, which was created by the underfunding of the FY 8384 general cost-of-living pay increase.

When funds were appropriated for the pay increase, the level of funding was set at approximately 80% of the estimate cost of the increase for existing employees. Additionally, pay increase funds were not provided for the new positions received by the trial courts in FY 84. The requested funds will cover the projected underfunding deficit in the current year. The Court System has requested funds in the FY 85 operating budget to cover the on-going cost of the pay increase in the next fiscal year.

The Court System has made every effort to reduce the deficit through other means. However, no other funds are available and full staffing is needed in the trial courts to keep pace with the high rate of growth in caseload.

Sincerely,

Robert G. Fisher
Fiscal Officer

RGF/11

enc

FY 84 SUPPLEMENTAL REQUEST ANALYSIS

	1 FY 82 ACTUAL	2 FY 83 FINAL AUTH	3 FY 83 ACTUAL	4 FY 84 GOV. AMEND. BUDGET	5 FY 84 INITIAL AUTH.	6 FY 84 CURRENT AUTH.	7 FY 84 EXPENDITURES + ENCUMBRANCES 7/1 to	8 FY 84 OTHER OBLIGATIONS 7/1/ to 12/31	9 FY 84 PROJECTED EXPENDI- TURES + 1/1 to 6/30	10 FY 84 (DEFICIT) OR EXCESS
PERSONAL SERVICES	17,213.7	19,941.3	19,940.3	20,271.3	21,635.2	21,635.2	9,633.8	128.4	12,158.0	285.0
TRAVEL										
CONTRACTUAL SERVICES										
COMMODITIES										
EQUIPMENT										
LANDS, BLDG.										
GRANTS, CLAIMS										
MISCELLANEOUS										
TOTAL										
FEDERAL RECEIPTS										
REQUIRED GF MATCHING										
OTHER GENERAL FUND										
INTER-AGENCY RECEIPTS										

AGENCY: Alaska Court System BRU: Trial Courts COMPONENT: Trial Courts Revised

MEMOS/1433

SB408

Alaska Court System

State of Alaska

OFFICE OF ADMINISTRATIVE DIRECTOR

303 K Street
Anchorage, Alaska 99501

ROBERT G. FISHER
Manager of Fiscal Operations

January 23, 1984

Carolyn Martin
Senior Budget Analyst
Office of Managment & Budget
Pouch AM
Juneau, AK 99811

Dear Carolyn:

The Court System is requesting a supplemental appropriation for $30,000 for several unpaid prior year bills for library materials from Commerce Clearing House. The bills originated in fiscal years 1982 and 1983. The unpaid amounts are $803.85 and $29,205.00, respectively. The Court System lapsed sufficient funds in each fiscal year to cover the unpaid claims.

Due to changes in personnel, I have not been able to ascertain the reason the bills were not paid in a timely manner. Nevertheless, the charges are valid and must be paid. A statement is enclosed, which provides information on the unpaid bills. The statement has been amended to reflect the correct amount due.

It is requested that these obligations be included in the FY 84 Miscellaneous Claims Supplemental Appropriation.

Sincerely,

Robert G. Fisher
Fiscal Officer

RGF/11

SB

427

REPEAL OF POOLED MUSIC COPYRIGHT LAW

AS 45.50.330-.460

It is recommended that Alaska's 1939 pooled music copyright law, AS 45.50.330-.460, be repealed. The law is archaic, obsolete, imposes massive useless paperwork burdens on State agencies, and is of doubtful validity in light of subsequent federal legislation and court decisions.

1. Obsolete. The law was adopted by the Alaska Territorial Legislature in 1939 in response to conditions and practices then existing in the licensing and use of copyrighted musical compositions. In the forty-three years since then, the industry has changed dramatically, but the Alaska law remains as an anachronism.

2. Repeals by Other States. In the late 1930's several states adopted similar statutes. These statutes have now been repealed in Washington, Florida, Montana, Nebraska, Tennessee and Wyoming.

3. Conflict with Federal Law. The validity of the Alaska law is doubtful in light of post-1939 developments in federal statutory and case law. These developments include a comprehensive revision of copyright law under the Federal Copyright Act of 1976, which pre-empted State copyright laws, and two consent decrees governing licensing of copyrighted musical works.

4. Useless Collection and Accumulation of Paperwork. The Alaska law requires that massive amounts of paperwork be filed with and retained by the Department of Administration, none of which serves any useful purpose. The filings create expensive and unnecessary administration and storage problems and have not been used by either the public or the State. Comparable information is available to the public from the Federal Copyright Office.

COPY JUDICIARY MEMBERS

W. EUGENE GUESS 1932-1975
JOSEPH RUDD 1933-1978
THEODORE E. FLEISCHER
FRANCIS E. SMITH, JR.
HERBERT BERKOWITZ
MICHAEL G. BRIGGS
DAVID H. BUNDY
HARRIS SAXON
PHILLIP J. EIDE
GARY A. ZIPKIN
JOSEPH M. WILSON
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LOUIS R VEERMAN
CLIFFORD W. HOLST
RICHARD M. ROSSTON
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JOSEPH J. PERKINS, JR.
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LYNN M. ALLINGHAM
TRICIA COLLINS
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DEBRA J. BRANDVEIN
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ROBERT A. BASSETT

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ELY GUESS & RUDD
A PROFESSIONAL CORPORATION
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SEVENTH FLOOR
ANCHORAGE, ALASKA 99501
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TELEX [090] 25-292
TELECOPIER [907] 279-8354

318 FOURTH STREET
JUNEAU, ALASKA 99801
TELEPHONE [907] 586-3210
TELECOPIER [907] 586-3762

OF COUNSEL:
ROBERT C. ELY
JOSEPH A. MCLEAN

March 29, 1984

Senator Bill Ray
Pouch V
Juneau, Alaska 99811
(Mail Stop 3100)

Re: SB 427
Repeal of
AS 45.50.330-.460
Our File 3300.16

Dear Senator Ray:

Thank you for meeting with Gordon Evans and me last Tuesday regarding SB 427.

I trust that you found our answers to your questions responsive. And I hope that the background we provided with respect to the U.S. Copyright Law and the history of our client's operations fully explained the context of ASCAP's interest in the repeal of AS 45.50.330 through .460.

I would like to emphasize once again that ASCAP has no "ulterior motives" in wishing to see SB 427 passed. Its earlier passage would not have affected in the least our client's activities in Alaska or the litigation in which its members have engaged in Alaska. Its passage hereafter will not affect in any way our pending litigation (we have only one suit unresolved at this time). In short, our interest in the passage of SB 427 is as simply explained as we said: ASCAP would like to be relieved of a filing requirement which serves no public interest of any kind. The balance of the existing statutory scheme is generally procedural or redundant with federal law, would generally be made irrelevant by the repeal of the filing requirements, and should, we believe, be repealed also.

Thank you again for meeting with us. If you have any further questions of any kind, I hope you will not hesitate to call me. And I do hope that you will agree that SB 427 should be passed.

Sincerely,

ELY, GUESS & RUDD

Francis E. Smith, Jr.

FES:gm

HELENE M. ANTEL
MICHAEL W. DUNDY
BRIAN W. DURRELL
DAVID R. MILLEN
DOUGLAS S. PARKER
JAMES N. REEVES
THOMAS K. WILLIAMS

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WASHINGTON, D. C. OFFICE
SUITE 900
ONE THOMAS CIRCLE, N. W.
WASHINGTON, D. C. 20005
(202) 293-3600 TELEX: 89-7410

February 15, 1984

The Hon. Bill Ray, Chairman
Senate Judiciary Committee
Alaska State Legislature
Pouch V
Juneau, Alaska 99811

Re: Senate Bill No. 427 (Our File No. 1221/01249)

Dear Senator Ray:

The enclosed letter explains in somewhat more detail why SB 427 (repealing Alaska's 1939-vintage law on pools for licensing the public performance of copyrighted music) should be passed.

My initial reaction if I were in your position would probably be to do nothing with this legislation unless I was sure in my own mind that there was no further need for these laws and that the interests of the Alaskan public would not be compromised by such a repeal, so I can understand it if your feelings are similar. However, there really are sound reasons for repealing these laws, and the public will not be harmed by doing so. With all respect, I urge you to schedule a hearing of the Judiciary Committee on this bill in the near future, so that you can satisfy yourself whether such is the case or not. Additional reasons for repeal, besides those in my letter, could also be presented and explained at such a hearing.

Very truly yours,

BOGLE & GATES

Thomas K. Williams

cc (w/ encl.): Senate Judiciary Committee Members

Edward W. Chapin, Broadcast Music, Inc.

STATE OF ALASKA

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

BILL SHEFFIELD, GOVERNOR

REPLY TO:

☐ *1031 W 4th AVENUE*
SUITE 200
ANCHORAGE, ALASKA 99501
PHONE: (907) 276-3550

☐ *1st NATIONAL CENTER*
100 CUSHMAN ST.
SUITE 400
FAIRBANKS, ALASKA 99701
PHONE: (907) 452-1568

☐ *POUCH K - STATE CAPITOL*
JUNEAU, ALASKA 99811
PHONE: (907) 465-3600

March 15, 1984

The Honorable Richard D. Eliason
Chairman, Senate Labor and Commerce
Committee
Alaska State Senate
Pouch V
Juneau, AK 99811

Re: SB 427

Dear Chairman Eliason:

We have received your inquiry of March 6, asking for our comments on SB 427, which would repeal AS 45.50.330 -- 460, the pooled music copyright law. In response to your request, we have reviewed the state law, federal copyright law, and applicable case law. We conclude that AS 45.50.330 -- 460 is obsolete and should be repealed.

The pooled music copyright law was enacted by the Alaska Territorial Legislature in 1939. The law was similar to legislation adopted at about that same time in several states. The purpose of these laws was to prevent certain practices that existed in the music industry at that time. Since then, because of changes in the industry itself and in federal law, each of the states that enacted a pooled music copyright law has repealed its legislation, except Alaska.

The pooled music copyright law has, for the most part, been pre-empted by federal copyright law. It offers no protection to the copyright owner or to the general public beyond that available under the federal statutes. The one purpose it might now serve is providing information to owners and the public, but even that function is covered by the federal copyright act. The information that the law requires the Departments of Revenue and Administration to file is readily available in printed form from the U.S. Copyright Office.

We find no reason to retain the pooled music copyright law. Its only remaining function appears to be to create an ad-

ministrative burden for two agencies of the state. We recommend its repeal.

Sincerely yours,

NORMAN C. GORSUCH
ATTORNEY GENERAL

By: Diane Colvin
Diane T. Colvin
Assistant Attorney General

NCG:DTC::eja

— CALENDAR —

ALASKA STATE LEGISLATURE - SENATE

COMMITTEE ON LABOR AND COMMERCE

SENATOR RICHARD I. ELIASON
CHAIRMAN

POUCH V • JUNEAU, ALASKA 99811
(907) 465-3844

OFFICIAL BUSINESS

M E M O R A N D U M

TO: Sen. Bill Ray, Chair
Senate Judiciary Committee

FROM: Sen. Dick Eliason

DATE: March 9, 1984

RE: SB 427 - "An Act repealing the pooled music copyright law"

As requested I reviewed the above-referenced legislation and I am now reporting my findings to you.

This legislation will repeal AS 45.50.330-45.50.460, which requires persons holding certain pooled copyrights on musical works to file lists of these copyrights with the State. The purpose of these filings is to allow the public to "avoid using the copyrighted compositions and to avoid conflict with them". In fact, however, no one ever examines these filings any more. In 1983 only one person examined the files in the Department of Revenue or the duplicate files at the Department of Administration.

Repeal of the state law would not make the information unavailable to the Alaskan public. Federal copyright laws require the same information to be filed with the Copyright Office, and copies of the lists of copyrighted materials may be purchased from the Federal Superintendent of Documents. A new list is published every six months.

Additional back-up information is attached.

STATE OF ALASKA 1984 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date

REQUEST
Bill/Resolution No: SB 427
Title: Act repealing the pooled music copyright law.
Sponsor: Fahrenkamp
Requestor: Senate Judiciary
Date of Request:

FISCAL DETAIL
Agency Affected: Revenue
Program Category Affected: Commissioner's Office
BRU, Program of Subprogram(s) Affected:

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 84	FY 85	FY 86	FY 87	FY 88	FY 89
OPERATING						
100 PERSONAL SERVICES	-	-0-	-	-	-	-
200 TRAVEL	-	-	-	-	-	-
300 CONTRACTUAL	-	-	-	-	-	-
400 SUPPLIES	-	-	-	-	-	-
500 EQUIPMENT	-	-	-	-	-	-
600 LANDS & STRUCTURES	-	-	-	-	-	-
700 GRANTS, CLAIMS	-	-	-	-	-	-
800 MISCELLANEOUS	-	-	-	-	-	-
TOTAL OPERATING	-	-0-	-	-	-	-
CAPITAL	-	-0-	-	-	-	-
REVENUE	-	-0-	-	-	-	-

FUNDING: (Thousands of Dollars)

GENERAL FUND	-	-	-	-	-	-
FEDERAL FUNDS	-	-	-	-	-	-
OTHER	-	-	-	-	-	-
TOTAL	-	-0-	-	-	-	-

POSITIONS:

FULL-TIME	-	-	-	-	-	-
PART-TIME	-	-	-	-	-	-
TEMPORARY	-	-	-	-	-	-

SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

ANALYSIS: Attach a separate page for analysis.

Prepared By: Bruce M. Botelho
Phone: 465-2300
Division: Revenue
Date: 03/07/84

Approved by Commissioner: [signature]
Date: 3/8/84
Agency: Revenue

Distribution (by Agency preparing fiscal note):
- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)

Analysis for SB 427

The Department of Revenue is in favor of repeal of sections AS 45.50.330-45.50.460. In the last five years the department has had only one request for information pertaining to these statutes. It is important to note that Alaska is the only state in the Union that continues to have such a law on its books.

Position Paper

SB 427

February 28, 1984

This bill will repeal AS 45.50.330-45.50.460, which requires persons holding certain pooled copyrights on musical works to file lists of these copyrights with the State.

The Department of Administration believes that AS 45.50.330-45.50.460 should be repealed and, therefore, favors passage of this legislation.

We feel that the statute is unnecessary and of no significant benefit. In the past eight months only one person has inquired about filing information. We anticipate no staff reduction due to passage since it is one of the minor miscellaneous duties of a secretary.

Frances H Rose

Frances H. Rose
Special Assistant to the Commissioner
Department of Administration

Date 2/29/84

A. [illegible] for

Commissioner Lisa Rudd
Department of Administration

Date 3-1-84

19/1D1/0229-01/2

STATE OF ALASKA 1984 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date: February 28, 198-

REQUEST
Bill/Resolution No.: SB 427
Title: An Act repealing the pooled music copyright law
Sponsor: Fahrenkamp
Requestor:
Date of Request:

FISCAL DETAIL
Agency Affected: Administration
Program Category Affected:
BRU, Program or Subprogram(s) Affected: Commissioner's Office

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 84	FY 85	FY 86	FY 87	FY 88	FY 89
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 SUPPLIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC						
800 MISCELLANEOUS						
TOTAL OPERATING	0	0	0	0	0	0
CAPITAL	0	0	0	0	0	0
REVENUE	0	0	0	0	0	0

FUNDING: (Thousands of Dollars)

GENERAL FUND	0	0	0	0	0	0
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS: None

FULL-TIME	0	0	0	0	0	0
PART-TIME	0	0	0	0	0	0
TEMPORARY	0	0	0	0	0	0

SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

ANALYSIS: Attach a separate page for any Analysis.

Prepared By: Frances H. Rose Frances H Rose
Division: Commissioner's Office
Phone: (907) 465-2200
Date: 2-29-84

Approved by Commissioner: Lisa Rudd
Agency: DEPARTMENT OF ADMINISTRATION
Date: 3-1-84

Distribution (by Agency preparing fiscal note):
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(202) 293-3600 TELEX: 89-7410

February 15, 1984

The Hon. Bill Ray, Chairman
Senate Judiciary Committee
Alaska State Legislature
Pouch V
Juneau, Alaska 99811

Re: Senate Bill No. 427
(Our File No. 1221/01249)

Dear Mr. Chairman:

I am writing for myself and on behalf of our client, Broadcast Music, Inc. ("BMI"), to advise that we support the passage of SB 427, which would repeal Alaska's pooled-music copyright law (AS 45.50.330 - 45.50.460). This law, which was passed in 1939, has become badly outdated as circumstances have changed and the federal copyright statutes have been comprehensively rewritten in the 45 years since then.

The Alaska law applies to societies or organizations like BMI and ASCAP, which are formed by owners of the copyrights to copyrighted musical works to license the public performance of those works on behalf of the copyright owners. Such organizations then collect royalties from the public performances and distribute them back to the copyright owners.

Essentially, the Alaska law requires each such organization to file each year a list of all the copyrighted musical compositions that it licenses. The purpose of these filings is to allow the public to "avoid using the copyrighted compositions, if they so desire, and [to] avoid conflict with them, and avoid committing innocent infringements of the works." AS 45.50.360. In fact, however, no one ever examines these filings any more. In 1983 not one person examined the files at

the Department of Revenue or the duplicate files at the Department of Administration.

Repeal of the state law would not make the information unavailable to the Alaskan public. Federal copyright laws require the same information to be filed with the Copyright Office, and copies of the lists of copyrighted materials may be purchased from the federal Superintendent of Documents. A new list is published every six months.

A further reason for repealing the Alaska law is the great change in conditions from those in 1939. At that time there was only one organization licensing the performance of copyrighted music, and its dominant position allowed abuses that prompted Florida, Montana, Nebraska, Tennessee, Wyoming and Washing, as well as Alaska, to enact remedial legislation in the late 1930s. Since that time other licensing organizations have been formed, so that there is more competition and less opportunity for monopolistic abuse. Moreover, the two largest organizations, ASCAP and BMI, operate under direct supervision of the federal courts, pursuant to their respective consent decrees that were entered in federal antitrust litigation against them.

In 1976 Congress passed a comprehensive revision of the federal copyright statute, effective January 1, 1978. This legislation replaced the dual system of copyright laws, one federal and the other by the states, and created a unified federal system instead. This complete federal system eliminates the need for state laws to "fill in the gaps" that had been left in prior federal copyright law. Congress not only eliminated the need for state copyright laws with the enactment of its comprehensive federal system, but it also eliminated the state laws themselves by exercising its preemption power (see. 17 U.S.C. § 301) under the Supremacy Clause of the United States Consitution.

As the result of these changes, the states that enacted legislation in the late 1930s to remedy the then-prevailing abuses with music copyrights have repealed their statutes, except for Alaska. It it time for us to recognize these changes as our sister states have done.

Finally, it is not easy or cheap to prepare these filings with the State. Each report by ASCAP, for example, takes up about half of a full-sized drawer in a filing cabinet. By the same token, it is not cheap for the State to keep these voluminous files. Yet the continued presence of these laws on the books requires both the filers and the Departments of Revenue and Administration to suffer these needless expenses.

Had I been personally aware of this situation when I was still Commissioner of Revenue, I would have advocated repealing these statutes as a prime example of wasteful, pointless paperwork imposed by state government on the public. It is our understanding from the officials in the State of Washington that they have been pleased by the repeal of that state's pooled-music law in 1982 and by being relieved from keeping the massive files required under that law. I believe the Departments of Revenue and Administration would likewise wish to be spared the time, expense and space that are needed for their files under Alaska's law.

The biggest problem with a bill like SB 427 is that there is no large constituency to support it. Clearly, the public is indifferent to whether these filings continue or not, since no one ever looks at them. There is only a small handful of organizations that are subjected to the burden of filing. Without a constituency to support such a bill, the easiest course is simply not to advance it out of committee.

I respectfully urge you not to let the bill die, but to hold a hearing on it before your committee. If possible, please schedule such a hearing in the near future so that, if you are satisfied that these statutes are no longer necessary to protect and promote the interests of the public, there will still be time for the bill to have a realistic chance of passage during this Session.

Please do not hesitate to call me at 276-4557 or to write me at the address above, if you have any questions on this subject or if you decide to hold a hearing on the bill. I can arrange for testimony before the committee on behalf of BMI if there is to be a hearing.

Very truly yours,

BOGLE & GATES

Thomas K. Williams

cc: Members of the Senate Judiciary Committee

Edward W. Chapin, Counsel
Broadcast Music, Inc

LAW OFFICES OF
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A PROFESSIONAL CORPORATION
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JUNEAU, ALASKA 99801
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GLENN E. CRAVEZ
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TRICIA COLLINS
JOHN A. MCDONAGH
PAUL S. STAHL

* ADMITTED IN D.C. AND ALASKA
OTHERS ADMITTED IN ALASKA

May 18, 1983

Ms. Gladys Williamson
Department of Administration
Pouch "C"
Juneau, Alaska 99811

Re: American Society of Composers, Authors and Publishers
Our File No. 3300.10

Dear Ms. Williamson:

This letter is written with reference to our recent telephone conversations regarding the documents and other materials filed each year on behalf of the American Society of Composers, Authors and Publishers (ASCAP). Under requirements of AS 45.50.330-.460, the original of the filing is delivered to the Department of Revenue and a duplicate copy is filed with the Commissioner of Administration for public review.

It is my understanding that apparently there has been little, if any, public review of these documents since the law was enacted. The Alaska statute had been based on the Washington state law, which was repealed this year apparently because nobody had made use of the public review provision. Accordingly, it may be appropriate to consider possibly seeking repeal of the Alaska statute for the same reason, thus cutting down on the paperwork and archival requirements of the State. Any such repeal effort, however, would not be undertaken until the 1984 legislative session.

In the meantime, and in order to help ascertain whether in fact any use is being made of the documents on file for public review, it would be appreciated if you would attach to the documents in your office a sign-up/tally sheet similar to the enclosed sample. It would merely have any person reviewing the documents note this fact and the date of his or her review so that early in 1984 a compilation of that

information could be provided to the Legislature to support the repeal effort.

Thank you in advance for your assistance in this matter. If you have any questions, please let me know.

Very truly yours,

ELY, GUESS & RUDD

Gordon E. Evans

Gordon E. Evans

Enclosure:

cc: Francis E. Smith, Jr., Esq.

GEE/pm

AMERICAN SOCIETY OF COMPOSERS, AUTHORS AND PUBLISHERS

LIST OF PERSONS REVIEWING ANNUAL FILING
OF COPYRIGHTED WORKS OF ASCAP MEMBERS

Name (Printed)	Signature	Date

SB

#453

JUNEAU BAR ASSOCIATION

February 22, 1984

Senator Bill Ray
Chairman, Senate Judiciary Committee
Alaska State Legislature
Pouch V(MS 3100)
Juneau, Alaska 99811

Re: Senate Bill No. 453, "An Act relating to the Commission on Judicial Conduct; and providing for an effective date."

Dear Senator Ray:

The Juneau Bar Association has been asked to comment upon Senate Bill 453 relating to the Commission on Judicial Conduct currently pending before your Committee. After reviewing this bill and discussing it with other members of the Juneau Bar as well as members of the Commission on Judicial Conduct, we strongly recommend the passage of this legislation. I have asked Mr. Michael M. Holmes to present this letter to your Committee as part of his testimony pertaining to the bill.

Thank you for the opportunity to comment on this legislation.

Very truly yours,

John F. Clough, III
President, Juneau Bar Association

JFC:gp

SENATE BILL 453

AN ACT RELATING TO THE COMMISSION ON JUDICIAL CONDUCT AND PROVIDING FOR AN EFFECTIVE DATE.

Section 1. Changes the name and make-up of the Commission on Judicial Qulifications
Name will be the Commission on Judicial Conduct
3 Judges or Justices
3 members who have practiced law for 10 yrs.
3 public members

Section 2. Provides that the Commission shall inquire into an allegation that a judge, within a period of not more than 6 yrs. before the start of the current term, committed an act that constituted conduct in violation of the Code of Judicial Conduct.

Section 3. Substitutes AS 44.62.310 (d), relating to Agency meetings public, for AS 44.62.310 (c) (2) ****(SEE ACCOMPANYING STATUTES)

Section 4. Provides that the commission may informally and privately admonish the judge or recommend counseling.

Section 5. Provides that acts of the commission are not valid unless concurred in by a majority of the members serving on the commission at the time the act is taken.

Section 6. New Section.....

(b) Makes all records, files and reports of the commision confidential unless:

(1) Judge, in writing, waives confidentiality;
(2) the subject matter of the hearing has become public; then provices what the commission shall do.
(3) formal charges have been filed;
(4) there is an inquiry by the Alaska Judicial Council, then provides that the Judicial Council shall maintain the confidentiality of the information it receives.

Section 7. New section which provides that the commission may request the judge to submit to a physical or mental examination. If the judge refuses, the fact that he refused may affect the decision on the hearing,adversely.

new

Section 8. Changes the name from Commission on Judicial Qualifications, to Commission on Judicial Conduct.

Section 9. July 1, 1984 effective date.

Quoted in Ketchikan Retail Liquor Dealers Ass'n v. State, ABC Bd., Sup. Ct. Op. No. 1963 (File No. 3697), 602 P.2d 434 (1979).

Stated in Kingery v. Chapple, Sup. Ct. Op. No. 858 (File No. 1554), 504 P.2d 831 (1972).

Cited in Boehl v. Sabre Jet Room, Inc., Sup. Ct. Op. No. 3 (File No. 17), 349 P.2d 585 (1960).

Am. Jur. 2d reference. — 2 Am. Jur. 2d, Public Administrative Law, §§ 553-775.

Article 6. Agency Meetings Public.

Section

310. Agency meetings public
312. State policy regarding meetings

Sec. 44.62.310. Agency meetings public. (a) All meetings of a legislative body, of a board of regents, or of an administrative body, board, commission, committee, subcommittee, authority, council, agency, or other organization, including subordinate units of the above groups, of the state or any of its political subdivisions, including but not limited to municipalities, boroughs, school boards, and all other boards, agencies, assemblies, councils, departments, divisions, bureaus, commissions or organizations, advisory or otherwise, of the state or local government supported in whole or in part by public money or authorized to spend public money, are open to the public except as otherwise provided by this section. Except when voice votes are authorized, the vote shall be conducted in such a manner that the public may know the vote of each person entitled to vote. This section does not apply to any votes required to be taken to organize the afore-mentioned bodies.

(b) If excepted subjects are to be discussed at a meeting, the meeting must first be convened as a public meeting and the question of holding an executive session to discuss matters that come within the exceptions contained in (c) of this section shall be determined by a majority vote of the body. No subjects may be considered at the executive session except those mentioned in the motion calling for the executive session unless auxiliary to the main question. No action may be taken at the executive session.

(c) The following excepted subjects may be discussed in an executive session:

(1) matters, the immediate knowledge of which would clearly have an adverse effect upon the finances of the government unit;

(2) subjects that tend to prejudice the reputation and character of any person, provided the person may request a public discussion;

(3) matters which by law, municipal charter, or ordinance are required to be confidential.

(d) This section does not apply to

(1) judicial or quasi-judicial bodies when holding a meeting solely to make a decision in an adjudicatory proceeding;

deleted in SB 453

This replaces the above

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Revisor's n based on Cal.
Cross refer 44.62.310.

Section
320. Legislati and revi

Jet Room, Inc., No. 17), 349 P.2d

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(2) juries;

(3) parole or pardon boards;

(4) meetings of a hospital medical staff; or

(5) meetings of the governing body or any committee of a hospital when holding a meeting solely to act upon matters of professional qualifications, privileges or discipline.

(e) Reasonable public notice shall be given for all meetings required to be open under this section.

(f) Action taken contrary to this section is void. (§ 1 art VI (ch 1) ch 143 SLA 1959; am § 1 ch 48 SLA 1966; am § 1 ch 78 SLA 1968; am § 1 ch 7 SLA 1969; am §§ 1, 2 ch 98 SLA 1972; am § 2 ch 100 SLA 1972; am § 1 ch 189 SLA 1976)

Effect of amendment. — The 1976 amendment added the second and third sentences of subsection (a).

A meeting of the board of governors of the Alaska Bar Association in Hawaii in 1978 was not subject to the requirements of this section. Horowitz v. Alaska Bar Ass'n, Sup. Ct. Op. No. 2059 (File Nos. 4310, 4311), P.2d (1980).

Am. Jur. 2d reference. — 2 Am. Jur. 2d, Administrative Law, §§ 281, 282.

Sec. 44.62.312. State policy regarding meetings. (a) It is the policy of the state that

(1) the governmental units mentioned in AS 44.62.310(a) exist to aid in the conduct of the people's business;

(2) it is the intent of the law that actions of those units be taken openly and that their deliberations be conducted openly;

(3) the people of this state do not yield their sovereignty to the agencies which serve them;

(4) the people, in delegating authority, do not give their public servants the right to decide what is good for the people to know and what is not good for them to know;

(5) the people's right to remain informed shall be protected so that they may retain control over the instruments they have created.

(b) AS 44.62.310(c)(1) shall be construed narrowly in order to effectuate the policy stated in (a) of this section and avoid unnecessary executive sessions. (§ 3 ch 98 SLA 1972)

Revisor's note. — AS 44.62.312(a) is based on Cal. Gov't C.A., sec. 54950.

Cross reference. See note under AS 44.62.310.

Legislative history report. — For report on ch. 98, SLA 1972 (SB 253), see 1972 House Journal, p. 158.

Article 7. Legislative Review of Rules.

Section

320. Legislative annulment of regulations and review

SENATE BILL 453

AN ACT RELATING TO THE COMMISSION ON JUDICIAL CONDUCT AND PROVIDING FOR AN EFFECTIVE DATE.

Section 1. Changes the name and make-up of the Commission on Judicial Qulifications
Name will be the Commission on Judicial Conduct
3 Judges or Justices
3 members who have practiced law for 10 yrs.
3 public members

Section 2. Provides that the Commission shall inquire into an allegation that a judge, within a period of not more than 6 yrs. before the start of the current term, committed an act that constitut-ed conduct in violation of the Code of Judicial Conduct.

Section 3. Substitutes AS 44.62.310 (d), relating to Agency meetings public, for AS 44.62.310 (c) (2) ****(SEE ACCOMPANYING STATUTES)

Section 4. Provides that the commission may informally and privately admonish the judge or recommend counseling.

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Section 8. Changes the name from Commission on Judicial Qualifications, to Commission on Judicial Conduct.

Section 9. July 1, 1984 effective date.

DRUG ABUSE POLICY OFFICE
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Dr. Mario Perez-Reys

LANGLEY PORTER PSYCHIATRIC INSTITUTE
UNIVERSITY OF CALIFORNIA - SAN FRANCISCO
✓ Dr. Reece Jones — 415/681-8080
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ALCOHOL AND DRUG ABUSE RESEARCH CENTER
HARVARD SCHOOL OF MEDICINE
MCLEAN HOSPITAL - BELMONT
Dr. Jack Mendelsen

TULANE UNIVERSITY
Dr. Richard Garey — 504/588-2290

UNIVERSITY OF CALIFORNIA
Dr. Forrest Tennant — 213/919 1879

SB

504

(DID NOT PASS WITH BILL)

D R A F T

Letter of Intent

The Judiciary Committee has considered and heard testimony regarding SB 504, an act relating to unauthorized access to or use of computer and telecommunications services. The version of the bill approved by the committee provides that a person may be prosecuted for theft of services if the person obtains cable, subscription, or pay TV services, known to be available only for compensation, by deception or other means to avoid payment for the services. AS 11.46.200(a)(1).

Section 2 of the bill, however, provides that a person may not be prosecuted for theft of cable, subscription, or pay TV services if the service was obtained through the use of a device designed to receive electromagnetic signals directly from a satellite, commonly referred to as a "home earth station". This means that, under state law, a person who owns a home earth station (now or in the future) may watch whatever signals the earth station will pick up - including signals broadcast by cable or pay TV distributors. The bill would not affect the application of any federal laws which may regulate this behavior.

With the exception of services obtained through a home earth station, the bill makes it a crime (theft) for a person to view, without payment of a fee, cable or pay TV services which are known to be available only for compensation. The bill does <u>not</u> prohibit the possession or use of any electronic device, except the use of a "descrambler", (whose only function is to descramble signals which have been scrambled to prevent unauthorized receipt or viewing). For example, a person may use an antenna in the 2 GHz range to listen to amateur radio transmissions, or to listen to broadcasts from a space shuttle. But the use of the same antenna to receive programming services broadcast by Multivisions in Anchorage <u>would</u> constitute theft of services if the person lives in an area where Multivisions service was available through the payment of a fee.

MultiVisions

November 30, 1983

Mr. Clark King
Alaska Cable Television Association
1725B Douglas Highway
Douglas, Alaska 99824

Re: Proposed Anti-Theft Legislation

Dear Clark:

Per your request, I have reviewed a proposed work draft of a bill dealing with theft of telecommunications services. My comments on this draft are as follows:

1. The proposed addition of AS 11.46.200(c) would be extremely detrimental to any theft of service program. This subsection would allow, as a defense to prosecution the fact that a telecommunications provider (for whatever lawful reason) might choose not to sell to particular groups or individuals. For example, many premium movie services such as HBO prohibit exhibition of their programming in certain areas such as public viewing areas. Companies such as MultiVisions (MVL) are therefore precluded from selling HBO in some situations. As I read the bill, a person could demand HBO service from MVL, be refused and then be insulated from prosecution if he intercepted our signal.

   Similarly, 11.46.200 c (1) (B) seems to say that any non-commercial use of intercepted programming is permissable. This is, of course, totally unacceptable. Copyright laws, our contracts with program suppliers and, in some cases, FCC requirements prohibit companies such as MVL from allowing unauthorized interception of signals for <u>any</u> purpose.

2. 11.46.200 (c) (2) would exempt from prosecution all "pirate" microwave antennas such as those used to steal Visions programming in Anchorage. Under present state law and federal law, <u>any</u> unauthorized interception of microwave or other telecommunication signals is illegal. Interception of signals that are delivered in any part by wire or cable is also in violation of federal wiretap statutes. The proposed wording of AS 11.46.200 would be contrary to all of this present legislation.

4792 Business Park Blvd.
Anchorage, Alaska 99503
907/562-2400

3. The proposed new AS 11.46.482 (a)(3) would make sale of pirate microwave antennas Class C felony. I agree with this approach and believe ACTA should support this provision.

4. Section 7 of the proposed bill would clarify the definition of "services" for purposes of theft of services statutes to specifically include CATV and microwave communications. This clarification is well drafted and should be adopted.

Apparently, the reason for the proposed language discussed in 1 and 2 above is a desire to avoid interference with "home earth station" users in rural areas who cannot otherwise access satellite programming. Two comments are in order. First, there is no doubt under present law that many satellite signals can be lawfully received by home earth stations. Second, in the case of copyrighted material such as Home Box Office (HBO), nothing in the proposed state legislation can avoid the fact that unauthorized reception of such material is unlawful under federal law. As a practical matter, no cable operator or MDS or STV system is going to harass earth station users outside of their service areas. In fact, by trying to legitimize theft of copyrighted programming, the proposed bill may encourage HBO and other suppliers to take action against such individuals.

The proposed bill as presently drafted is unacceptable and would be a setback for theft of service efforts in Alaska. ACTA should work with the Administration to obtain legislation clearly prohibiting theft of service in all forms. It should be relatively easy to protect legitimate home earth station users and I would be happy, on behalf of ACTA, to meet with the appropriate people in the Administration to discuss this matter and to assist in preparing a revised draft. Please feel free to contact my office with any questions on the above.

Sincerely,

Theodore D. Berns

TB/ak

cc: Robert J. Gould

NCTA BOARD OF DIRECTORS' MEETING

THE MADISON HOTEL
WASHINGTON, D.C.
SEPTEMBER 22-23, 1983

THEFT OF CABLE SERVICE

Theft of service has become a major problem for the cable industry. NCTA estimates that as much as $400 million in revenues were lost to cable pirates in 1982. In New York City alone, it believes that some 5,000 illegal hookups are depriving Manhattan Cable of $1 million per year.

As theft of cable service has increased, cable operators have become more aggressive in trying to root out the problem. Cox Cable has conducted a massive public relations campaign to curb cable theft in San Diego. Cox has also employed New York's theft of service statute to prosecute several individuals for unauthorized reception of Cox's service. Cablevision in New Jersey and ARTEC in Virginia have utilized their respective states' theft of service statutes to prosecute cable pirates. Storer Cable relied upon Florida's theft of service statute to gain damages and an injunction against an individual who was selling and installing equipment that was being used to receive Storer's cable service at net cost.

Finally, Manhattan Cable recently brought a federal lawsuit against 27 individuals and 3 taverns who were illegally receiving Manhattan Cable's services. In addition to relying upon New York's theft of service law, Manhattan Cable claims that the defendants violated Section 605 of the Communications Act and the federal wiretap law.

The cable industry's efforts in this area have been hampered by the fact that the law has not kept pace with the theft of service problem. This report will examine the existing federal and state theft of service laws, the weaknesses of those laws, and the steps that are being taken to correct them.

Federal Laws

There are primarily two federal laws governing unauthorized reception of communications -- Section 605 of the Communications Act and the federal wiretap statute. Section 605 outlaws unauthorized interception of radio communications which are not intended for reception by the general public. Private parties can enforce this provision by bringing a civil damage suit against the intercepter. Section 2511 of the wiretap law prohibits interception of any wire or oral communications. Moreover, Section 2512 criminalize the manufacture, possession, distribution or advertising of equipment or

devices that are primarily useful for the surreptitious interception of wire or oral communications. Finally, Section 2520 of the statute authorizes parties whose communications have been intercepted to sue for damages.

These two statutes, however, may be of limited use in combating theft of cable service. For example, although cable service is not intended for reception by the general public, it is questionable whether cable services are "radio communications" for the purpose of Section 605. Although it can be argued that cable should fall within Section 605, there is no case law on the issue.1/ The wiretap law is inadequate because it does not cover the interception of visual communications, such as video or text.2/

To correct these deficiencies in existing law, the Senate included theft of service language in S.66. Section 610(a) of that bill outlaws unauthorized reception of broadband (cable) services. A cable operator could rely on this provision in a civil damage action against a cable pirate. Additionally, Section 610(b) of the bill states that cable services are "wire communications" for the purposes of the wiretap statute. This change, of course, would subject pirates to civil and criminal liability under that law. Equally important, the Senate proposal would permit cable operators to use Section 2512 of the wiretap statute to reach those who manufacture, possess, distribute and advertise unauthorized converters, decoders and similar equipment.

S.66 having passed the Senate, the House Telecommunications Subcommittee is currently drafting cable deregulation legislation. NCTA has been assured that the draft bill will contain comprehensive language concerning theft of cable service, but the Association has not yet seen any specific proposals. Cox Cable is working on an equally comprehensive theft of service legislative proposal that could be tacked on to cable deregulation legislation or introduced as a separate bill.

1/ Courts have ruled that Section 605 applies to theft of MDS and STV signals. Those over-the-air radio offerings, however, clearly fall within the class of "radio communications" protected by Section 605.

2/ Also, although the statute refers to "wire communications," it only applies where the wire is provided by a common carrier which cable, of course, is not.

State Laws

Although all fifty states have theft of service laws, state statutes have not always been effective against cable pirates. Only 28 states, for example, have specifically outlawed theft of cable service. As a result, cable operators in other states face the troublesome task of seeking relief under statutes which outlaw theft of "telecommunications" or "public utility" services. Further, many state theft laws make intent to steal an essential element of the offense, thus encumbering the cable operator with difficult problems of proof. Many of those laws also do not reach the possession, sale or distribution of equipment that can be used to steal cable service. Finally, most state theft laws prescribe criminal penalties which can only be enforced by the state attorney general.

Fortunately, many states are moving to correct these defects in their theft of service laws. In the past two years, for example, six states have enacted specific cable theft of service laws 3/. Additionally, many states are amending the mechanics of their theft of service statutes to make it easier for a cable operator to protect his services from unauthorized reception. New York, for example, recently enacted theft of cable service legislation which (1) prohibits the manufacture, possession, or distribution of any equipment with the knowledge that it will or could be used to steal cable service; (2) states that the possession, distribution, or manufacture of equipment that can be used to steal cable service without written consent of the cable operator shall be prima facie evidence of intent to steal service; and (3) authorizes cable operators to bring civil actions to enforce the statute. Seventeen other states have recently considered bills that would provide similar protections to cable operators.

NCTA has compiled a handbook of the various state theft of service laws. The Association is also drafting a model theft of cable service law for use by state cable associations.

3/ California, Louisiana, Michigan, New Jersey, New York and Oklahoma.

THEFT OF SERVICE

"COOKBOOK"

Prepared for California Cable
Television Association

by

The CCTA Theft of Service Committee

7/83
R. McRann, Chairma
J. Haber
T. Smith

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- PLAN DEVELOPMENT
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- GAINING LAW ENFORCEMENT/COMMUNITY SUPPORT
- CAMPAIGN OBJECTIVES
- PUBLIC NOTICE
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INTRODUCTION

Theft of cable services has been an ever increasing problem to the cable industry. No cable system is without it. The more program channels the cable system adds to its service, the more desirable the product becomes. Cable TV has now become something that people understand. The public has become more sophisticated in how cable works and how to get it without paying for it. Everyone knows at least one other person who pirates cable TV signals in one form or another. From unauthorized connections to tampered or illegal converters, the problem is growing.

The NCTA has estimated that the cable industry is losing 700 million dollars annually to an estimated 6.75 million illegal users. There will always be cable theft, but there is something that can be done to reduce it. It starts with legislation, tougher cable theft laws, and a willingness on the part of cable management to use the tools at its disposal to crack down on cable piracy.

The following report outlines the steps that can be taken to reduce/eliminate theft of service, including a review of California Penal Code Section 593d and its effect on one system.

THE PROBLEM OF ONE CABLE TV SYSTEM:

- PROFILE
  - -- 370;000 Homes Passed
  - -- 225,000 Basic Subscribers
  - -- 12.3% Unauthorized Hookups = 45,000
  - -- Estimated 30,000 Tampered Decoders

- EQUIPMENT
  - -- Basic Oak T-35
  - -- Pay Oak MC-35 (HBO/Showtime/Galavision)
    Oak TC-35/56 (Playboy/Cinemax)

- SYSTEM REVENUE LOSS

-- 45,000 x $19.37 x 12	$10,460,000
-- 30,000 x $ 8.00 x 12	2,880,000
TOTAL	$13,340,000

THE PROBLEM, NATIONWIDE - 1983

- 30,000,000 Basic Subscribers
- 12.3% Unauthorized Hookups = 3,690,000
- 5% Estimated Tampered/Defeated Decoders = 1,500,000
- Nationwide Revenue Lost:

-- 3,690,000 x $17.00 x 12	$752,760,000
-- 1,500,000 x $ 8.00 x 12	144,000,000
TOTAL	$896,760,000

RECOGNITION OF THE THEFT OF SERVICE PROBLEM:

Before any cable system can begin to tackle a theft of service problem, there first must be an acceptance by management that the problem exists to an extent that something must be done about it. Generally, management has a tendency to down play the extent of service theft because of other "higher priorities." System maintenance, customer service, installation and marketing programs are part of the cable system's day to day operation. At some time in the system's growth, there comes a realization that the penetration of services is not meeting the budget objectives. When revenue is effected, it may be time to analyze the extent of cable piracy, its causes and effect on the system. The data on the preceding page shows that service theft is a monumental problem for all cable systems.

ANALYSIS OF THE PROBLEM:

In order to calculate the extent of cable piracy in the system, some measurements must be taken. Sample street or tap audits will have to be performed. Converter security should be investigated by doing random converter exchanges and inspections. The random samples should be large enough and reflect a cross section of the system's demographics. Once this data has been compiled and applied to the homes passed figures, a theft of service profile can be developed and a dollar revenue loss can be calculated.

PLAN DEVELOPMENT:

After service theft losses have been calculated, the system can assign the proper priority to a plan designed to reduce theft and recover revenue losses. In order to develop an effective plan, the system needs to identify the causes of service theft and their effect on the system. A long-range plan should be implemented that will both fix the problem internally and develop a theft of service campaign that ideally seeks voluntary compliance by the cable system's homes passed base before legal action is taken.

SYSTEM SECURITY:

Before any external theft of service campaign can be developed, a thorough internal program must be implemented to eliminate the cable system's own contribution to cable theft. This includes:

-- Investigations into employee theft, with resulting terminations, prosecution and restitution.

-- Pre-employment screenings and background checks on new employees.

-- Procedures cleaned up to close loopholes in inventory control, field control, returned boxes, etc.

-- Cable drop/tap security, particularly in multi-unit complexes and high churn areas.

-- Improve decoder/converter security thereby reducing tampering.

-- Consolidation and synchronization of converter tracking data bases.

-- Improvement of installation/disconnect control procedures.

-- Cable drop relabeling and identification procedures, particularly in multi-unit complexes.

-- Where economically feasible, change decoders or traps to addressable products.

In addition, a system security/audit program should be established to police the system and uncover theft of service situations or conditions that contribute to it. Before a cable system looks toward implementing any external theft of service campaign, it must have made major inroads toward eliminating its internal contribution to the service theft problem.

REVIEW OF THE CABLE THEFT LAW:

In 1982, the California Legislature passed an amendment to PC 593d that provides for significant criminal and civil penalties for those who manufacture, sell, distribute or use illegal cable equipment. The law became effective on January 1, 1983 and now provides every California cable system with the tools necessary to recapture lost revenue. Violators can receive jail sentences of up to one year and fines that total $25,000 for the most serious violations. (See attached copy of Amended Penal Code Section 593d.)

GAINING LAW ENFORCEMENT/COMMUNITY SUPPORT:

As a corporate citizen in the communities that we do business, cable systems have the right to seek protection under the umbrella of the law and should do so. In order to obtain real protection, the cable system will have to enlist support from the community authorities. The most effective method to gain support is to make a presentation of the system's theft of service problems to the community's highest ranking officials. Ask for their support and for protection under the law. Suggest forming a task force with high ranking law enforcement officers to develop a plan to attack the problem. Be sure to outline the steps the system has already taken to reduce service theft situations internally. Offer to assign key system employees to do much of the leg work of the task force to keep community time and costs at a minimum.

The results of the cable theft task force meetings should be the formation of the steps, procedures, stages and responsibilities that each party will perform in the plan to crack down on cable piracy. It should be determined what and how evidence of cable theft should be obtained and what form the complaint should take. Agreement on the timing of each phase of the plan should be established.

CAMPAIGN OBJECTIVES:

The primary objectives of a theft of service campaign should be to eliminate service theft through voluntary compliance and the recovery of lost revenue through the purchase of cable services from those involved in service theft.

To accomplish these objectives, the public must be made aware of the intent of the cable system to crack down on signal theft by prosecution of violators. Cable pirates must be given an opportunity to avoid prosecution and to save face. A "no questions asked" form of amnesty should be offered for violators who voluntarily comply with the cable system's offer to resolve the theft of service situations through either a converter exchange program or billing for those who do not have a service account.

The cable system's sales force should be used to man some type of converter exchange booth on the company's property. Most of the cable pirates will be receptive to subscribing to additional services at the time of voluntary compliance, providing the atmosphere is of a positive nature.

PUBLIC NOTICE:

As previously mentioned, the public must be made aware of the rules of the game and the consequences of not complying. A public awareness campaign must be launched to reach as many people as possible. The first step in this phase should be an open letter to subscribers outlining the extent of the service theft problem, the effect it is having on honest subscribers who, in effect, are subsidizing neighbors who have chosen not to pay. The letter should announce the launching of the theft of service campaign and the cable system's intentions to get tough with violators.

The campaign launch date should begin with a press conference. The local media, as well as community officials, should be invited. A prepared statement should be available that tells the extent of cable theft, both locally and nationally. It should explain the losses the cable system is experiencing, the effect on the honest subscriber and the franchise tax losses to the community. Attempt to have the District Attorney or some other top law enforcement official make a statement to the press on his or her support of the campaign and their intent to enforce the cable theft law by prosecuting violators.

A local ad campaign should immediately follow the press conference using as much newspaper print, radio and TV spots as is feasible. The more publicity from the campaign, the better the results will be.

PUBLIC IMAGE/ATTITUDE:

Plan ahead for the resulting coverage by the news media. Some inquiries will be positive, while some may be negative. Avoid having the cable system obtain the image as being the "bad guy" using scare tactics to get the "little guy."

Over the years, the public has developed the attitude that cable theft is a minor unenforceable infraction. They think of it as a challenge to beat the system; nobody wants to pay for TV. The campaign should be designed to change the public attitude. The theme should take the stand that cable signal theft is "no laughing

matter." It is theft, a crime just like shoplifting. Those who are stealing cable services are not only ripping off the cable system, but even more so--the general public. A business can absorb theft by adjusting prices, but in the end, it is the general public who ends up being the victim.

Public attitude is generally against big business, big government and public utilities. The support is not there for a cable system to make more money by making the "little guy" pay. The news media is aware of this and will seek the opportunity to do an investigative report showing the cable system to be the "bad guy." If the cable system is not careful, a negative image could develop from the campaign.

Public relations should be the guiding force in a campaign of this type. The public attitude must be changed and be developed into supporting the effort of the cable system to eliminate cable theft. Cable theft has reached the point that it no longer can be ignored. If the cable system is stunted, if it can no longer grow to its full potential, then who is the loser? Everyone is the loser.

APPENDIX - COX CABLE RESULTS

RESULTS THROUGH 7/15/83

- 9,900 DECODERS TURNED IN SINCE 2/21/83
- 3,200 ILLEGAL DECODERS DISCARDED (EST.)
- 6,100 ADDITIONAL SERVICES PURCHASED (62%)
- 1,300,000 RECOVERED TO DATE
  - -- 3,200 x $19.37 x 12 $ 743,000
  - -- 6,100 x $ 8.00 x 12 586,000

  TOTAL $1,329,000
- 45 WARRANTS SERVED ON ILLEGAL HOOK-UPS
  - -- 18 CASES IN COURT AS OF 7/15/83
  - -- 27 CASES PASSED UP
  - -- ONE CONVICTION:
    - o $300 FINE
    - o 3 YEAR PROBATION
    - o FINGERPRINTS ON FILE

Senate Bill No. 1505

CHAPTER 1342

An act to amend Section 593d of the Penal Code, relating to unauthorized cable television connections.

[Approved by Governor September 23, 1982. Filed with Secretary of State September 24, 1982.]

LEGISLATIVE COUNSEL'S DIGEST

SB 1505, Montoya. Unauthorized cable television connection.

Existing law provides that every person who knowingly and willfully makes unauthorized connections, whether physically, electrically, or inductively or attaches any unauthorized device or devices to any cable, wire or other component of a franchise cable television system or to a television set for the purpose of intercepting any program carried by a franchised cable television system is guilty of a misdemeanor punishable by a fine not exceeding $200 or imprisonment in the county jail not exceeding 30 days.

This bill would extend such prohibition to the making or maintaining of any modification or alteration to any device installed with the authorization of a franchised or otherwise duly licensed cable television system, for the purpose of intercepting or receiving any program or other service carried by the system. A violation of the provision would constitute a misdemeanor punishable by a fine not exceeding $1,000 or by imprisonment in the county jail not exceeding 90 days or both. Each connection or attachment would constitute a separate violation.

The bill would also do all of the following:

(1) Prohibit every person who, without authorization, knowingly and willfully manufactures, imports into the state, distributes, sells, offers to sell, possesses for sale, or advertises for sale any device, or plan or kit for a device, or printed circuit, designed to decode, descramble or otherwise make intelligible any encoded, scrambled or other nonstandard signal carried by that cable television system. It would make a violation a misdemeanor punishable by a fine not exceeding $10,000 or by imprisonment in the county jail, or both. A second or subsequent conviction would be punishable by a fine not exceeding $20,000 or by imprisonment in the county jail for up to one year, or both.

(2) Permit any franchise cable television system to bring an action against the person who committed the violation for specified damages.

(3) Permit a franchise or otherwise duly licensed cable television system to bring an action to enjoin and restrain specified violations.

(4) Provide that it is not a necessary prerequisite to such actions that the plaintiff suffer, or be threatened with, actual damages.

3723-100 Reprinted 10-15-82 1,600

Article XIII B of the California Constitution and Sections 2231 and 2234 of the Revenue and Taxation Code require the state to reimburse local agencies and school districts for certain costs mandated by the state. Other provisions require the Department of Finance to review statutes disclaiming these costs and provide, in certain cases, for making claims to the State Board of Control for reimbursement.

However, this bill would provide that no appropriation is made and no reimbursement is required by this act for a specified reason.

The people of the State of California do enact as follows:

SECTION 1. Section 593d of the Penal Code is amended to read:

593d. (a) Every person who knowingly and willfully makes or maintains an unauthorized connection or connections, whether physically, electrically, or inductively, or purchases, possesses, attaches or maintains the attachment of any unauthorized device or devices to any cable, wire or other component of a franchised or otherwise duly licensed cable television system or to a television cable or set, or makes or maintains any modification or alteration to any device installed with the authorization of a franchised or otherwise duly licensed cable television system, for the purpose of intercepting or receiving any program or other service carried by a franchised or otherwise duly licensed cable television system which such person is not authorized by that cable television system to receive, is guilty of a misdemeanor punishable by a fine not exceeding one thousand dollars ($1,000), or by imprisonment in the county jail not exceeding 90 days, or both. For the purposes of this section, each such purchase, possession, connection or attachment shall constitute a separate violation of this section.

(b) Every person who, without the express authorization of a franchised or other duly licensed cable television system, knowingly and willfully manufactures, imports into this state, distributes, sells, offers to sell, possesses for sale, or advertises for sale any device, or any plan or kit for a device or for a printed circuit, designed in whole or in part to decode, descramble or otherwise make intelligible any encoded, scrambled or other nonstandard signal carried by that cable television system, is guilty of a misdemeanor punishable by a fine not exceeding ten thousand dollars ($10,000) or by imprisonment in the county jail, or both. For the purpose of this subdivision, "encoded, scrambled or other nonstandard signal" shall include, without limitation, any type of signal or transmission that is not intended to produce an intelligible program or service without the aid of a decoder, descrambler, filter, trap or some similar device. A second or subsequent conviction is punishable by a fine not exceeding twenty thousand dollars ($20,000) or by imprisonment in the county jail for up to one year, or both.

(c) Any person who violates the provisions of this section shall be

liable to the franchised or otherwise duly licensed cable television system for the greater of the following amounts:

(1) Five thousand dollars ($5,000).

(2) Three times the amount of actual damages, if any, sustained by the plaintiff, plus reasonable attorney's fees.

(d) Any franchised or otherwise duly licensed cable television system may, in accordance with the provisions of Chapter 3 (commencing with Section 525) of Title 7 of Part 2 of the Code of Civil Procedure, bring an action to enjoin and restrain any violation of this section, and may in the same action seek damages as provided in subdivision (c).

(e) It is not a necessary prerequisite to an action pursuant to this section that the plaintiff has suffered, or be threatened with, actual damages.

SEC. 2. No appropriation is made and no reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution or Section 2231 or 2234 of the Revenue and Taxation Code because the only costs which may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, changes the definition of a crime or infraction, changes the penalty for a crime or infraction, or eliminates a crime or infraction.

O

SECTION 1. Section 69580 of the Government Code is amended to read:

69580. In the County of Alameda there shall be 28 judges of the superior court.

SEC. 2. The sum of one hundred eighty thousand dollars ($180,000) is hereby appropriated from the General Fund to the State Controller for allocation and disbursement to local agencies pursuant to Section 2231 of the Revenue and Taxation Code to reimburse such agencies for costs incurred by them pursuant to this act.

CHAPTER 974

An act to add Section 593d to the Penal Code, relating to cable television.

[Approved by Governor September 22, 1975. Filed with Secretary of State September 23, 1975.]

The people of the State of California do enact as follows:

SECTION 1. Section 593d is added to the Penal Code, to read:

593d. Every person who knowingly and willfully makes unauthorized connections, whether physically, electrically, or inductively, or attaches any unauthorized device or devices to any cable, wire or other component of a franchised cable television system or to a television set, for the purpose of intercepting any program carried by a franchised cable television system which such person is not authorized to receive, is guilty of a misdemeanor punishable by fine not exceeding two hundred dollars ($200) or by imprisonment in the county jail not exceeding 30 days.

SEC. 2. Notwithstanding Section 2231 of the Revenue and Taxation Code, there shall be no reimbursement pursuant to this section nor shall there be any appropriation made by this act because the Legislature recognizes that during any legislative session a variety of changes to laws relating to crimes and infractions may cause both increased and decreased costs to local government entities and school districts which, in the aggregate, do not result in significant identifiable cost changes.

CHAPTER 975

An act to amend Section 4305 of, and to repeal Chapter 4 (commencing with Section 4501) of Division 2 of, the Public Utilities Code, relating to transportation.

SB

513

COMMITTEE REPORT

HOUSE

(7) FURTHER:

Date: 4/10/84

The Committee on JUDICIARY has had SB 513

"An Act relating to renunciation of rights in decedents' estates."

under consideration and recommends:

[ ] do pass [ ] do not pass

[ ] do pass with attached amendments(s)

[ ] replace with CS for _____ [ ] same title [ ] new title

and recommends _____

[ ] AND attaches a "Letter of Intent" [ ] New Fiscal Note [ ] Zero Fiscal Note Attached

[ ] reports it back without recommendation

[ ] referred to the _____ Committee

MEMBERS SIGNING
DO PASS

MEMBERS HAVING
OTHER RECOMMENDATIONS:

CHAIRMAN

HOUSE AND SENATE JOINT
JOURNAL SUPPLEMENT

March 1, 1984 No. 21

ALASKA CODE REVISION COMMISSION

COMMISSIONERS
JOHN W. ABBOTT - CHAIRMAN
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PATRICK M. RODEY
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ALASKA STATE LEGISLATURE
POUCH Y - STATE CAPITOL
JUNEAU, ALASKA 99811
(907) 465-4878

EXECUTIVE SECRETARY
BILLY G. BERRIER

March 1, 1984

Senator Bill Ray, Chairman
Alaska Legislative Council
Pouch V, State Capitol
Juneau, Alaska 99811

RE: (1) a bill relating to principal and income of trusts; (HB 693/SB 511)
(2) a bill relating to administration of decedents' estates; (HB 694/SB 512)
(3) a bill relating to renunciation of of rights in decedents' estates; (HB 695/SB 513)
(4) a bill relating to married persons' rights in a family home; and (HB 696/SB 514)
(5) a bill relating to the uniform disposition of certain property rights at death (HB 697/SB 515)

Dear Senator Ray:

Pursuant to AS 24.20, the Alaska Code Revision Commission has prepared the enclosed bills and respectfully asks that they be introduced in the legislature.

They are technical bills the commission has been working on with the probate committee of the Alaska Bar Association. They relate generally to rights at death and to property arrangements that usually have their inception in death.

At its last meeting, the Legislative Council agreed to introduce the bills.

One of the bills, the bill on disposition of certain property rights at death, was previously in the legislature but received little notice. It is revived at the request of the probate committee of the Alaska Bar Association, and that

committee has advised the commission that it will actively support the bill.

A commentary on each bill is enclosed.

Very truly yours,

John W. Abbott

John W. Abbott, Chairman
Alaska Code Revision Commission

JWA:chw

Enclosures

cc: Hon. Bill Sheffield
Hon. Edmond W. Burke, Chief Justice
Myrton R. Charney, Executive Director
Legislative Affairs Agency

-- COVERS IDENTICAL BILLS: HB 695 & SB 513 --

ALASKA CODE REVISION COMMISSION COMMENTARY TO ACCOMPANY BILL ON RENUNCIATION OF RIGHTS IN DECEDENTS' ESTATES

This bill deals with refusal to accept property or an interest in property from a decedent's estate. Referred to as "renunciation" or "disclaimer", it is a valuable option for estate planning to avoid a taxable transfer.

The right to renounce is provided for in AS 13.11.295 (Section 2-801 of the Uniform Probate Code). This bill would make three changes to facilitate estate planning:

(1) The right to renounce would survive the death of the person having it;

(2) The permissible disclaimer period would be extended from six to nine months after a death; and

(3) Accepting one interest in property would not prevent renouncing another interest in the same property.

The concept of the changes proposed by this bill is in the Uniform Disclaimer of Transfers by Will, Intestacy or Appointment Act (1978). Because Alaska has already adopted the Uniform Probate Code contained in AS 13, minimal changes to AS 13.11.295 will give Alaska the main benefits of the uniform disclaimer statute. The bill does not extend beyond disclaimer of transfers resulting from death. Disclaimer of other kinds of transfers could be the subject of another bill.

The changes in (b) extend the time for renunciation to the nine months period in which renunciation is permitted under the Internal Revenue Code, 26 U.S.C., Sec. 2518. The current version of the Uniform Probate Code recommends that states conform their laws to the nine month period. Failure to do so may deny to Alaskans the full period the federal law permits for taking advantage of a tax planning tool.

Sometimes an heir with a right to disclaim will die within this nine month period. For example, an elderly husband and wife may not outlive each other by nine months. In that situation, a disclaimer would avoid an extra taxable transfer before property is inherited by their children. The changes in (a) would allow a personal representative (executor of the estate

of the second to die) to exercise the right of disclaimer. However, the period for disclaimer would not be extended: the personal representative of the second to die would have ot act within nine months of the first death.

The changes in (d) would permit disclaiming one interest in property without forfeiting the right to accept another interest in the same property. Under federal Internal Revenue law, it is possible for a beneficiary to refuse to accept an income interest in property while accepting transfer of the principal asset, or to refuse a transfer of a principal asset while accepting an income interest in the asset. The change in (d) would delete language that infers that the acceptance of any interest in property would totally bar a renunciation of any other interest in the same property.

AS 13.11.295(f) is deleted as obsolete law. A similar section is not needed as temporary law in this bill because the changes in AS 13.11.295 liberalize renunciation, do not restrict it.

FISCAL NOTE

Revision Date:

REQUEST
Bill/Resolution No.: SB 513
Title: "...renunciation of rights in decedents' estates."
Sponsor: House Rules/Code Rev. Comm.
Requestor: House Judiciary
Date of Request: 3/13/84

FISCAL DETAIL
Agency Affected: Department of Law
Program Category Affected: General Government
Program or Subprogram(s) Affected: Legal Services

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 84	FY 85	FY 86	FY 87	FY 88	FY 89
OPERATING						
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 SUPPLIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS						
800 MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND	-0-	-0-	-0-	-0-	-0-	-0-
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS:

FULL-TIME	-0-	-0-	-0-	-0-	-0-	-0-
PART-TIME						
TEMPORARY						

SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

ANALYSIS: Attach a separate page for analysis

Prepared By: Richard I. Pegues, Director (Richard I. Pegues) Phone: 465-3672
Division: Administrative Services Division Date: 3-13-84

Approved by Commissioner: Norman C. Gorsuch (Richard I. Pegues for) Date: 3-13-84
Agency: Department of Law

Distribution (by Agency preparing fiscal note):
- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)

12/1/83

Fiscal Note
Analysis

March 13, 1984

SB 513

This bill was requested by the Code Revision Commission to amend the Uniform Probate Code to provide that:

(1) the right to renounce would survive the death of the person having it;

(2) the permissible disclaimer period would be extended from six to nine months after a death; and

(3) accepting one interest in property would not prevent renouncing another interest in the same property.

Renunciation of rights in decedents' estates is a valuable option for estate planning to avoid the taxable transfer of estates. Because this measure deals only with an individual's right to renounce an estate interest, it will not have a fiscal impact on state government operations.

SB

514

FISCAL NOTE

Revision Date:

REQUEST

Bill/Resolution No.: HB 696
Title: "...married persons' rights in a family home."
Sponsor: House Rules/Code Rev. Comm.
Requestor: House Judiciary
Date of Request: 3/13/84

FISCAL DETAIL

Agency Affected: Department of Law
Program Category Affected: General Government
Program or Subprogram(s) Affected: Legal Services Operations

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 84	FY 85	FY 86	FY 87	FY 88	FY 89
OPERATING						
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 SUPPLIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS						
800 MISCELLANEOUS						
TOTAL OPERATING	-0-	0	0	0	0	0
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND	-0-	-0-	-0-	-0-	-0-	-0-
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS:

FULL-TIME	-0-	-0-	-0-	-0-	-0-	-0-
PART-TIME						
TEMPORARY						

SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

ANALYSIS: Attach a separate page for analysis

Prepared By: Richard T. Pegues, Director (Richard R. Pegues) Phone: 465-3672
Division: Administrative Services Division Date: 3-13-84
Approved by Commissioner: Norman C. Gorsuch (Richard R. Pegues/for) Date: 3-13-84
Agency: Department of Law

Distribution (by Agency preparing fiscal note):
- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)

12/1/83

Fiscal Note
Analysis
HB 696

March 13, 1984

This bill was requested by the Code Revision Commission to remove certain anachronisms and would repeal certain statutory provisions that cause uncertainty in titles to Alaska real property. The protections afforded a widow by the right of dower are now afforded by various options under the Uniform Probate Code, as are the protections afforded a widower under the related "curtesy" right. This bill would repeal some of the protections once afforded a married person under common law dower and curtesy. Because the bill only deals with private property rights, it will not have a fiscal impact on state government operations.

HOUSE AND SENATE JOINT
JOURNAL SUPPLEMENT

March 1, 1984 No. 21

ALASKA CODE REVISION COMMISSION

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ALASKA STATE LEGISLATURE
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EXECUTIVE SECRETARY
BILLY G. BERRIER

March 1, 1984

Senator Bill Ray, Chairman
Alaska Legislative Council
Pouch V, State Capitol
Juneau, Alaska 99811

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(3) a bill relating to renunciation of of rights in decedents' estates; (HB 695/SB 513)
(4) a bill relating to married persons' rights in a family home; and (HB 696/SB 514)
(5) a bill relating to the uniform disposition of certain property rights at death (HB 697/SB 515)

Dear Senator Ray:

Pursuant to AS 24.20, the Alaska Code Revision Commission has prepared the enclosed bills and respectfully asks that they be introduced in the legislature.

They are technical bills the commission has been working on with the probate committee of the Alaska Bar Association. They relate generally to rights at death and to property arrangements that usually have their inception in death.

At its last meeting, the Legislative Council agreed to introduce the bills.

One of the bills, the bill on disposition of certain property rights at death, was previously in the legislature but received little notice. It is revived at the request of the probate committee of the Alaska Bar Association, and that

committee has advised the commission that it will actively support the bill.

A commentary on each bill is enclosed.

Very truly yours,

John W. Abbott

John W. Abbott, Chairman
Alaska Code Revision Commission

JWA:chw

Enclosures

cc: Hon. Bill Sheffield
Hon. Edmond W. Burke, Chief Justice
Myrton R. Charney, Executive Director
Legislative Affairs Agency

-- COVERS IDENTICAL BILLS: HB 696 & SB 514 --

ALASKA CODE REVISION COMMISSION COMMENTARY TO ACCOMPANY BILL RELATING TO MARRIED PERSONS' RIGHTS IN A FAMILY HOME

This bill would remove certain anachronisms and would repeal certain statutory provisions that cause uncertainty in titles to Alaska real property. The principal provisions to be repealed are AS 34.15.010(b), (c) and (d), subsections that deal with conveyances of "the family home or homestead".

The other two sections to be repealed by the bill deal with dower, a common law concept that has not been recognized in Alaska in its pure form since 1900 (Bechtol v. Bechtol, 2 Alaska 397 (1905)). Its altered, statutory form was removed from Alaska law in 1963 (sec. 30, ch. 38, SLA 1963). The protections once afforded a widow by the right of dower are now afforded by various options under the Uniform Probate Code adopted in Alaska in 1972, as are the protections afforded a widower under the related "curtesy" right. The official comment to the Uniform Probate Code includes:

> "The provisions of this Code replace the common law concepts of dower and curtesy and their statutory counterparts."

The main subjects of this bill, AS 34.15.010(b), (c) and (d), are subsections enacted over a period of time, apparently in a patchwork effort to approach some of the protections once afforded a married person under common law dower and curtesy.

Common law dower was a life estate given a widow in one-third of the lands her husband owned at any time during the marriage. Her husband could not transfer away her right. But Alaska's statutory dower only applied to real property owned by the husband at the husband's death. Common law curtesy was similar to dower but was a right given a husband in lands of his wife. In its statutory form (sec. 482, Compiled Laws of Alaska 1913, since repealed) it applied only to lands owned by the wife at the wife's death.

To compensate for the lesser protection afforded in the statutory forms of dower and curtesy, the legislature required the signature of both spouses on every deed to "a family home or homestead" (ch. 107, SLA 1933; now AS 34.15.010(b)).

Unless both spouses' names appear on the title

documents, a purchaser down the chain of title usually will have no way of knowing whether a precedessor was married and usually will have no way of knowing whether real property was a married couple's "home or homestead". Therefore, the 1953 legislature (ch. 145, SLA 1953) engrafted further provisions on the statute in an effort to clear titles clouded by what now is AS 34.15.010(b).

The confused and contradictory state of these subsections of AS 34.15.010 can best be shown by setting them out in full:

> (b) In a deed or conveyance of the family home or homestead by a married man or a married woman, the husband and wife shall join in the deed or conveyance.
>
> (c) The requirement that a spouse of a married person join in a deed or conveyance of the family home or homestead does not create a proprietary right, title or interest in the spouse not otherwise vested in the spouse.
>
> (d) Failure of the spouse to join in the deed or conveyance does not affect the validity of the deed or conveyance, unless the spouse appears on the title. The deed or conveyance is sufficient in law to convey the legal title to the premises described in it from the grantor to the grantee when the deed or conveyance is otherwise sufficient, and (1) no suit is filed in a court of record in the judicial district in which the land is located within one year from the date of recording of the deed or conveyance by the spouse who failed to join in the deed or conveyance to have the deed or conveyance set aside, altered, changed, or reformed, or (2) the spouse whose interest in the property is affected does not file, within one year in the office of the recorder for the recording district where the property is situated, a notice of his interest in the property.

Inconsistencies in the subsections make them extremely difficult to interpret. All that is clear is that there are title problems whenever only one person is record owner of real property, and that person conveys an interest in the property by a document that does not show whether he or she is a single person. At best, the title is clouded during the year of limbo provided under AS 34.15.010(c) and (d).

By proposing this bill, the code revision commission is suggesting (1) that any worthwhile purpose there may be in retaining AS 34.15.010(b), (c) and (d) in the law is far outweighed by the uncertainty in land titles the subsections cause, and (2) that the options afforded a married person under the Uniform Probate Code provide adequate protection.

AS 09.45.480(a)(1) relates to determining value of an "estate in dower". AS 09.45.720 relates to "actions to recover possession by a tenant in dower". The sections should be repealed because the dower right no longer exists in Alaska, as noted above.

ALASKA CODE REVISION COMMISSION

COMMISSIONERS
JOHN W. ABBOT - CHAIRMAN
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ALASKA STATE LEGISLATURE
POUCH Y - STATE CAPITOL
JUNEAU, ALASKA 99811
(907) 465-4878
OFFICE LOCATION:
ROOMS 5 AND 8
110 SEWARD ST.
JUNEAU, ALASKA 99801

EXECUTIVE SECRETARY
TAMARA BRANDT COOK

MEMORANDUM

TO: Representative Charlie Bussell, Chairman
House Judiciary Committee

FROM: Dick Regan, Research Director
Alaska Code Revision Commission

DATE: April 30, 1984

RE: SB 514 on married persons' rights in a family home (identical to HB 696)

As you know SB 514 which passed the Senate and was referred to House Judiciary today is an identical bill to HB 696 which was passed out of the House Judiciary Committee on April 4, 1984. I trust it can go through House Judiciary promptly (or that the referral can be waived).

SB 514 passed the Senate with no dissenting vote. However, I thought there should be more background on the bill in the hands of Senator Fritz Pettyjohn who was scheduled to carry the bill on the floor, so I prepared a memorandum on the policy reasoning that went into the bill. It is enclosed.

Also enclosed is a miniature summary of the bill in case you would like to have it in hand when the bill comes up in the House.

DR:chw

Attachments: 1. Miniature summary
2. Memorandum to Sen. Pettyjohn dated 4/27/84

HB 514 ON

MARRIED PERSONS' RIGHTS IN A FAMILY HOME

Alaska's statutory form of dower, the right of a widow to use real property owned by her husband at the time of his death, was removed from state law in 1963. Compensating rights are in our Uniform Probate Code.

This bill repeals procedural sections that are based on the dower right that no longer exists in Alaska law.

One of the repealers concerns the names of husband and wife on conveyances. Repeal is desirable because (1) the remedy for failure to comply with the statute is based upon the dower right and therefore is obsolete and unusable; and (2) the section creates clouds on title to property that it was never intended to affect.

ALASKA CODE REVISION COMMISSION

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EXECUTIVE SECRETARY
TAMARA BRANDT COOK

MEMORANDUM

TO: Senator Fritz Pettyjohn
Alaska State Legislature

FROM: Dick Regan, Research Director
Alaska Code Revision Commission

DATE: April 27, 1984

RE: SB 514 on married persons' rights in a family home

I see SB 514 is scheduled for second reading in the Senate today.

House and Senate Joint Journal Supplement No. 21, dated March 1, 1984, explains the bill. A copy is attached.

In Senate HESS Senator Josephson raised some questions about repeal of AS 34.15.010(b), (c) and (d). I leave to your discretion whether, after reading this further discussion of the bill, you wish to pass a copy on to Senator Josephson. Perhaps it would answer his questions.

SB 514 was developed by the code revision commission with representatives of the bar's probate committee. It originated with a request from the Attorney General's representative on the commission.

The journal supplement explains the background of the bill. Here I set out more on the pro and con practical questions that come up in deciding whether AS 34.15.010(b), (c) and (d) should be repealed. In committee hearings we pointed out that repeal of AS 34.15.010(b), (c) and (d) involves a policy choice. In the Judiciary Committee the legal flaws in (b), (c) and (d) were discussed, but we did not dwell on policy. This, therefore, can supplement that discussion.

The subsections cause clouds on title to vacant land, business property and residential property that has never been the home of the owner or the owner's spouse. They cause clouds on title transferred by persons who have never been married but neglect to provide on their deeds that they are single persons.

The problem is that the documents in the recorder's office don't show much. A property description on a conveyance looks the same whether property is an ancestral home or a gas station.

Title to most family homes of married persons has been transferred to them as tenants by the entirety. Their names appear on the conveyance. AS 34.15.010(b), (c) and (d) have no meaning for tenants by the entirety. Whether or not (b), (c) and (d) are repealed, when persons are named in the conveyance by which they receive title, the same persons will have to sign any document that transfers an interest in the property (a deed, mortgage, lease, option, etc.).

AS 34.15.010(b), (c) and (d) must be read together. In spite of confusing language, it is clear that a spouse who did not join in a conveyance of the family home is given apparent remedies in (d) that must be employed within one year after the conveyance. No one the code revision commission could locate had seen anyone even try to use the remedies since dower was removed from Alaska law in 1963. The commission believes there is no longer a legal basis for either of the remedies in (d). Since dower and curtesy rights no longer exist in Alaska, we know of no clear interest that could be claimed in a suit filed under (d)(1) or that could be claimed in an affidavit under (d)(2).

Even though the remedies in (d) probably have no life as remedies, they do have a continuing effect: Title companies will not certify clear title during the year in which there is a remote possibility that a conveyance could be defeated under (d).

The result is that financing or resale of property is delayed or stopped when only one name is on a conveyance as grantor, unless the conveyance shows on its face that the grantor is a single person. (The term "grantor" is used here to include the person who is selling, mortgaging, lease, contracting to sell, or giving an option or any other interest in real property.)

Because the title company's report will list an exception to clear title, the parties involved must find the original grantor to get a corrected conveyance showing on its face that the grantor is single, or, if the grantor is married, getting the other spouse included in the conveyance.

There may be times when the statute causes second thoughts by the grantor and when it has a desirable effect of permitting each spouse to stop a transaction that affects the family home. This, even though the legal remedies in the statute are obsolete and unworkable.

Most of the time, though, when the statute comes into play it is only an impediment to legitimate transactions. It can defeat a transaction because of the delay it causes, or it can block development of land that has been purchased because the original grantor cannot be located or is reluctant to sign more papers to correct title defects. It can be used as a basis for harassment when husband and wife are feuding or separated and the property involved has never been a family home. And it can be an annoyance in the relatively common situation where one party to a marriage owns a home before the marriage, and the parties wish the marriage to have no effect on that ownership.

On balance, the code revision commission saw many reasons for repealing the subsections and few for retaining them, especially since the remedy for violation of the subsections is now no more than a fiction.

DR:chw

Attachment

SB

539

STATE OF ALASKA 1984 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date:

REQUEST:
Bill/Resolution No.: SB 539
Title: "An Act relating to community work.."

Sponsor: Judiciary Committee
Requestor: Judiciary Committee
Date of Request: April 6, 1984

FISCAL DETAIL:
Agency Affected: DEPARTMENT OF CORRECTION
Program Category Affected:
Administration of Justice
BRU, Program or Subprogram(s) Affected:
Northern, Southcentral & Southeastern
Regional Corrections

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY84	FY 85	FY 86	FY 87	FY 88	FY 89
OPERATING						
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 COMMODITIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC.						
800 MISCELLANEOUS						
TOTAL OPERATING	-0-	*	*	*	*	*
CAPITAL	-0-	-0-	-0-	-0-	-0-	-0-
REVENUE	-0-	-0-	-0-	-0-	-0-	-0-

FUNDING: (Thousands Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER (Specify Source)						
TOTAL	-0-	*	*	*	*	*

* See Analysis - Program Summary.

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						
TOTAL						

SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

The source of funds to offset the impact of this bill has not been identified by the bill sponsor.

ANALYSIS: Attach a separate page for any Analysis.

Prepared By: Roger C. Lange *Roger C. Lange* Phone: 465-3376
Division: Administrative Services Date: April 9, 1984

Approved by Commissioner: *Roger V. Endell for WL* Date: *April 9, 1984*
Department: DEPARTMENT OF CORRECTIONS

Distribution:
Legislative Finance
Legislative Sponsor
Requestor
Office of Management and Budget
Impacted Agency (ies)

12/1

ANALYSIS

I. Assumptions:

Enactment of Senate Bill No. 539 would expand authority for requiring persons guilty of crimes to perform community work, and would standardize the upper and lower limits of hours of community work to which a defendant could be sentenced according to the classification of the offense. The bill also specifies that the work be performed for and under the supervision of the State, a political subdividion of the State, or a non-profit organization.

It is assumed that enactment of this bill would:

A. Increase the number of persons required to perform community work over that which now exists;

B. Require effort by either the Department of Law or the Department of Corrections to develop/coordinate community work programs; and

C. Increase the time-accounting activities required as a result of increased number of participants.

Therefore, it is assumed that there will be incremental costs generated as a result of this legislation, if passed.

II. Program Summary:

With the information available at this time, it is not possible to predict the extent of fiscal impact on the Department of Corrections. Community Counselors may be required to work with political subdivisions or non-profit organizations to develop and/or expand meaningful work projects. Depending on the time during the sentence of an incarcerated person, additional supervision may be necessary to accomplish the community work program. An adequate record keeping system must be kept to assure that all hours required for community work are performed (recording of hours worked; running balance of hours of work remaining, etc.).

It is the considered opinion of the Department of Corrections that it will take a year of tracking to measure the fiscal impact of this bill. There will be a fiscal impact, but the magnitude cannot be estimated at this time.

III Economic Impact:

Enactment of this bill would not have any significant impact on the State's economy.

IV. Impact on Local Governments:

Enactment of this bill may have a slight impact on local governmental units supervising community work programs, but this impact should be offset by the product of the work program.

Office Location All Southeast Offices Year 1983

Felony Clients:

Referred This Year	72
Active This Year	152
Terminated Favorably This Year	24
Terminated Unfavorably This Year	12
Total # Hours Performed	7,844

Misdemeanor Clients:

Referred This Year	276
Active This Year	364
Terminated Favorably This Year	20
Terminated Unfavorably This Year	12
Total # Hours Performed	3,332

Juvenile Clients:

Referred This Year	208
Active This Year	292
Terminated Favorably This Year	76
Terminated Unfavorably This Year	16
Total # Hours Performed	2,452

Diversion Clients:

Referred This Year	
Active This Year	67
Terminated Favorably This Year	43
Terminated Unfavorably This Year	13
Total # Hours Performed	2,022

Grand Total Hours Performed This Year 15,650

-3-

5

18,250

Rev. 12/83-#0969

DEPARTMENT OF CORRECTIONS
Pouch T
Juneau, Alaska 99811

POSITION PAPER
Senate Bill No. 539

"An Act relating to community work as a part of a criminal sentence."

Senate Bill No. 539 would expand authority for the community work program for sentenced offenders and establish the minimum/maximum numbers of hours a defendant could be sentenced to community work in the various classes of criminal offenses.

The general public would benefit as a result of the performance of the community work projects at little or no cost. It could also result in a slight reduction in the number of inmate days of care when performance of community work is done in lieu of incarceration.

The Department of Corrections agrees in concept with this proposed legislation and supports its passage.

Prepared by: Roger C. Lange
Roger C. Lange
Internal Management Administrator

Date: April 5, 1984

Approved by: William W. Ladwig
William W. Ladwig
Assistant Commissioner
for Administration
Department of Corrections

Date: April 9, 1984

STATE OF ALASKA

DEPARTMENT OF LAW

CRIMINAL DIVISION
PRETRIAL DIVERSION PROGRAM

BILL SHEFFIELD, GOVERNOR

REPLY TO:

☒ *POUCH KT*
JUNEAU, ALASKA 99811
PHONE: (907) 465-3578

☐ *941 W 4th ST.*
ANCHORAGE, ALASKA 99501
PHONE: (907) 276-3505

☐ *733 7th AVE.*
FAIRBANKS, ALASKA 99701
PHONE: (907) 452-7713

March 27, 1984

The Honorable Thomas E. Schulz
Presiding Judge
First Judicial District
415 Main St.
Ketchikan, AK 99901

Re: Community Work Service Guidelines

Dear Judge Schulz:

I want to thank you for your time when I was in Ketchikan on February 16. Our discussion on the community work service program renewed my hope that some of the problems we are experiencing can be rectified and that this program will achieve its full potential as an alternative disposition for offenders. I apologize for not getting back to you earlier on this matter, however, with the Legislature in session it seems as though some of my normal responsibilities get relegated to the back burner.

As you are aware, the Pretrial Services Section of the Criminal Division, Department of Law is responsible for the placement and monitoring of offenders in community work service. As an adjunct to employment of community work service for diverted offenders, we contracted with the Adult Corrections Agency to provide a similar service for sentenced felons. At the time we entered into this agreement, we sought a consolidation of work under this program in order to promote uniformity in its application. As we undertook to perform these contracted duties, we likewise decided to offer our services to the district courts for sentenced misdemeanants. As we were under no duty to offer this service, it became our lowest priority, and we would undertake it to the extent of our available resources. We believed that this would offer a greater range of constructive alternatives to the courts at sentencing while, likewise continuing the uniform standards that are necessary to an efficient and successful program. Until recently we have been very satisfied with the cooperation between the community work service staff and the judiciary, and we feel that, at least in the First Judicial District, the program

is working well. However, as of lately, we are beginning to experience some difficulties, particularly with the service offered to District Court. I am disinclined to discontinue this service, however, unless the problems are rectified, I will find it necessary to do so. As you suggested, I have reviewed the problems we are experiencing, and offer the following standards for your consideration. I feel if these standards are utilized throughout the First Judicial District, the community work service program will continue to be an efficient and successful alternative program.

The nature of the problems we are encountering is wide. District court judges are ordering the performance of community work service in lieu of the payment of fines. While not an objectionable practice, obvious abuses are coming to light. For example, performance of a single hour of community work service in lieu of a $10 fine amounts to a significant waste of my staff's time, not to mention the difficulty I have in believing that an offender didn't have $10, and had no prospects of procuring $10 within the foreseeable future.

It is becoming evident that the inquiry and examination of offenders sentenced to pay fines under AS 12.55.035 is not being conducted. Routinely, offenders are ordered to pay fines and immediately upon denial of the ability to pay the fine, they are given community work service in lieu thereof. AS 12.55.035(d) provides a procedure whereby the court can permit an offender to pay a fine over a period of time. Awareness and employment of this provision would vest some integrity in AS 12.55.035, and foreclose obvious abuses. Additionally, I believe the court has the inherent power to bring an offender who is "unable" to pay a fine back before it and have that offender voluntarily execute an assignment of a permanent fund dividend to satisfy an outstanding fine. Finally, on this issue, I believe that it is implicit in the Court of Appeals decision in Brezenoff v. State, 658 P.2d 1359 (Alaska 1983) that the court needs to fully explore an offender's claimed inability to pay before it makes that determination.

Another problematic area is the failure of the courts to follow through on those individuals who fail to perform community work service. While it may be somewhat inconvenient for some judges to do so, the fact that an

offender has ignored the court's judgment to perform community work service should not be dismissed. Time and again, my staff has attempted to put some teeth into the court's orders by unfavorably terminating offenders who fail to perform community work service. To our knowledge, in Ketchikan, nothing ever happens to these offenders (In Sitka and Juneau, Orders to Show Cause are issued, and offenders are held to answer for failure to comply). Rather, offenders in Ketchikan are either rereferred for community work service or the court merely dismisses the judgements without satisfaction. Needless to say, in smaller communities such as Ketchikan, word of the court's disinclination to back up its judgments becomes common knowledge within the community and operates to destroy the effectiveness of programs such as community work service.

Consistent with your request, I have discussed the operation of the community work service here in Southeast with my staff. We offer for your consideration the following minimum standards which need to be met to ensure a successful program:

1. Minimum Number of Hours. Considering there is a certain amount of time which we must invest in each referral for screening, placement and monitoring functions, as well as paperwork for each referral which we require of placement agencies, it is not cost-effective to work with any offender who has less than eight hours of community work service to perform.

2. Community Work Service in Lieu of Fines. C.W.S. should not be allowed as an alternative to a fine except (a) when a thorough examination of the offender is made to ascertain the inability to pay the fine; (b) the offender is unlikely to be able to pay the fine in the future under AS 12.55.-035(d); and (c) there is a substantial reason why the offender is unable to assign his permanent fund dividend to satisfy the fine. Only if this procedure is followed will community work service in lieu of fines be a legitimate alternative. Once an offender is found to be unable to satisfy a fine and community work service is ordered, the offender should not be permitted to "buy" his way out of Community Work Service by suddenly

"finding" sufficient funds to satisfy the fine. Realistically, if a thorough examination of the offender occurs before ordering performance of community work service in lieu of a fine, then this should not be a problem. It is problematic in terms of monitoring offenders to have them change from community work service to payment of the fine, especially when my staff is rarely notified of this occurrence.

3. Time Limits. When an offender is ordered to perform community work service, a time limit in which the work must be performed should be set. This reinforces in the offender the connection between community work service and the offense. Usually for misdemeanants or violators, a time period of three months, is sufficient although an extension of that period under legitimate circumstances should be allowed. For most minor offenders who rarely receive more that fifty hours, this amounts to one day per week for no more than half the thirteen week period. It is quite inconceivable that an offender cannot schedule that type of available time. And, as I preciously stated, when the offender does have other legitimate activities which preclude performance within this period, adjustments in the time period can be arranged.

4. Unfavorable Terminations and Enforcement of the Court's Order. The major problem administering this program occurs with offenders who fail to perform. On numerous occasions, offenders ordered to perform community work service either fail to ever appear, or having appeared and been placed, fail to follow through. For example, a recent placement in Ketchikan was so unreliable and unsatisfactory in his performance that the referral agency has discontinued using Community Work Service offenders.

This type of offender is regularly terminated from the program with the cases being referred back to the court for further action. In Juneau and Sitka, these unfavorable terminations result in the offender being brought back before the court;

and additional consequences normally ensue. This is generally in the form of either jail time or additional community work service hours for contempt of court. In Ketchikan, there are generally no additional consequences, and the offender is rereferred to my staff for another chance. This type of offender is not any more responsive than previously. There has even been a case brought to my attention wherein the court just vacated its previous sentence. Needless to say, the credibility and integrity of the program are severely damaged. Absent consequences, especially in a community the size of Ketchikan, our ability to instill responsibility or otherwise motivate the more obdurate offender is strictly limited. Even a "You'll perform, or else" approach won't work when the offender knows the "or else" is meaningless. Only if the "or else" truly results in more severe consequences can this program be successfully and properly administered.

5. Referral of Municipal Cases. Although we generally do not make the distinction between the original source of a case referred for community work service, there is an exception. In that we are constantly in need of referral agencies which can absorb a large number of offenders and which will provide the greatest benefit to the largest number of people, we have utilized municipal governments for placements. However, there have been a few municipalities that have refused to accept referrals, not out of a lack of need for additional help, but only because they disagree with State policy regarding sharing any financial liability that may result from placement of these offenders. As a result of this position, we have likewise assumed the policy of not accepting cases involving municipal offenses in these communities. In the First Judicial District, only Ketchikan is affected by this policy, therefore we do not accept Ketchikan municipal cases.

6. Uniformity. In administering this program statewide, I have noted a large disparity in the ordering of community work service. In your role as head of the sentencing guidelines committee, I

know you'll understand the offensiveness of disuniformity in sentencing practices. While this issue is not a "bottom line," it is one that needs to be addressed, and I would welcome any suggestions you might offer in seeing that some consistency occurs in ordering community work service.

The first problem in this area concerns the number of hours of community work service ordered as a reflection of the severity of the offense. I am enclosing a copy of the standards we employ within the diversion program when requiring community work service, as well as a copy of legislation I worked on a number of years ago on the same subject. If these numbers are agreeable to you, perhaps their implementation here would be the first step in instituting uniform guidelines for community work service.

The second area of concern involves the rate of exchange when an offender performs community work service in lieu of a fine. In Fairbanks, Anchorage, Juneau and Sitka, conversion is at the rate of $5.00 per hour. In Ketchikan, the rate is $10.00 per hour. The biggest anomaly occurs in Saxman, where community work service is performed at a rate of $10.00 per hour, with our major referral agency being the City of Saxman. That municipality allows other residents to work off utility debts, performing the same work as the community work service referrals, but at a rate of $7.00 per hour. Needless to say, this creates some problems.

I'm not sure of the resolution to these problems, but any assistance you can offer would be appreciated.

In conclusion, I again want to thank you for your time and your efforts. Imposition of these standards throughout the First Judicial District will ensure a legitimate community work service program.

Sincerely,

NORMAN C. GORSUCH
ATTORNEY GENERAL

By: Patrick W. Conheady
Patrick W. Conheady
Assistant Attorney General

Enclosures
Copies to: Kelly Richards, Juneau
Sue White, Sitka
Kathey Saporito, Anchorage
Patty Moss, Fairbanks

SJR

/

We the undersigned would like to go on record as opposing the passage of Senate Joint Resolution #1 "Relating to the proposal by Congress of an Equal Rights Amendment." because:

1. The wording is too vague.
2. This resolution gives an inaccurate picture of support of ERA to the Federal Legislature.
3. It is unnecessary because these rights are already guaranteed in the United States Consitution.

Date	Name	Address		Telephone
3/13/83	[illegible] ANDERSON	BOX 2234	JNU 99803	789-7310
3-13-83	FORD HORST	9350 TURN	99801	789-0752
3-13-83	[illegible] Horst	9350 Turn	99801	789-0782
3-13-83	Carrie Field	P.O Box 370	Juneau 99802	
~~3/13/83~~	[illegible]			
3-13-83	Carol A. Halegen	4449 Julep St.	Juneau 99801	789-3570
3-13-83	Donald E. Halegen	4449 Julep St.	Juneau 99801	789-3570
3-13-83	[illegible]	2465 Mendenhall Loop #32	99801	789-4004
3-13-83	[illegible]	P.O. Box 2885	Juneau 99803	789-7564
3-13-83	[illegible]	9325 NORTHLAND	Juneau, 99801	789-9332
3-13-83	Debra A Cathcart	Box 2914	Juneau, Alaska	789-7611
3-13-83	HIRAM J. Cathcart II	"	"	"
3-13-83	[illegible]	Box 2882	Juneau AK 99803	789-7564

We the undersigned would like to go on record as opposing the passage of Senate Joint Resolution #1 "Relating to the proposal by Congress of an Equal Rights Amendment" because:

1. The wording is too vague.
2. This resolution gives an inaccurate picture of support of ERA to the Federal Legislature.
3. It is unnecessary because these rights are already guaranteed in the United States Consitution.

Date	Name	Address	Telephone	VOTING NUMBER
3/13/83	Timothy Evans	P.O. Box 2714	789-2520	
3/13/83	Allen Mayford	c/o Box 6 Juneau	586-6839	
3/13/83	Shirl Stevens		789-7008	
3/13/83	Wesley D. Karan		364-3427	
3/13/83	Dorothea T. Schmidt		789-2874	
3/13/83	Edith Wright		789-8477	
3/13/83	Lee R. Baran	P.O. Box 330 Juneau	789.3693	
3-13-83	Alan Backford	6590 Glacier Hwy #143	789-0566	
3/13/83	Ethel M. Dybdahl	6590 Glacier Hwy #143	789-0566	
3-13-83	Carol Stine	P.O. Box 2306 Juneau	789-3681	
3-13-83	Ann Burton	3555 Mendenhall Loop Rd #32	789-0014	
3-13-83	Mary Ellingson	Box 69 Juneau	789-2770	
3-13-83	Jeanie Anderson	593 Seattle St.	586-2182-00206342	
3-13-83	Michael R. Middleton	PO Box 294 Juneau, Ak.	789-0838	
3-13-83	Donald E. Anderson	592 Seattle St.	586-2182-00206151	
3-13-83	Victoria McAven	3663 Burgoss	789-0587	
3-13-83	Cecilia Hansen	Box 1535	364-3427	01596709

We the undersigned would like to go on record as opposing the passage of Senate Joint Resolution #1 "Relating to the proposal by Congress of an Equal Rights Amendment." because:

1. The wording is too vague.
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3. It is unnecessary because these rights are already guaranteed in the United States Consitution.

Date	Name	Address	Telephone
3/13/83	Earl W. Ford	4066 Deborah Dr.	
3-13-83	Chris Tathem	9344 Tam St	789-9382
3-13-83	Cliff Tathem		
3-13-83	Robert W. Rose	c/o Box 1017	364-3427 (H)
3-13-83	Herbert Mercer	Lemon Creek	586.1710
3/13/83	Kathy Evans	P.O. Box 2714	789-2520
3/13/83	Richard Brucker	Box 521 Douglas Ale	364-2312
3-13-83	Hazel J. Nowlin	Box 283 Juneau	6-2448
3-13-83	Darzele L. Jack	Box 478 Juneau	586-1799
3-13-83	Donna L. DeGan	8908 Gee St., Juneau	789-3702
3-13-83	[illegible]	RTA2 Box 910 Soldotna AK	789-0782
3-13-83	Joyce Sikorski		789-0782
3-13-83	Gary Ann	P.O. Box 2184	789-0589
3-13-83	Gary Rohweder	15845 Glacier Hwy Juneau, AK 99801	789-9037
3-13-83	Kathy E. Fagerstrom		586-6697
3-13-83	Terry A. Mooney	Box 171 Skagway	983-2594
3-13-83	Charles E Nowlin	Box 283 Juneau	5862448
3-13-83	Donna Fagerstrom	Box 6 Juneau 99802	586-2844
3-13-83	Darla Morford	c/o Box 6 Juneau, AK 99802	586-6839

We the undersigned would like to go on record as opposing the passage of Senate Joint Resolution #1 "Relating to the proposal by Congress of an Equal Rights Amendment." because:

1. The wording is too vague.
2. This resolution gives an inaccurate picture of support of ERA to the Federal Legislature.
3. It is unnecessary because these rights are already guaranteed in the United States Consitution.

Date	Name	Address	Telephone
3/13/83	Devita Writer	3090 Riverwood Dr. Juneau Ak.	789-3729
3/13/83	Ross A Writer	3090 Riverwood Dr., Juneau, Alaska	789-3729
3/13/83	Roger Buck	6014 Lund St. Juneau Ak	586-1721
3/13/83	Paula G. Buck	6014 Lund St. Juneau	586-1721
3/13/83	Ron J. [illegible]	9335 Stephen Richards	789-3967
3/13/83	Julie DeGan	8908 Gee St. Juneau	789-3702
3/13/83	Joy DeGan	8908 Gee St. Juneau Ak.	789-3702
3/13/83	Rhonda Williams	151 Taylor Ave. Juneau Ak.	6-1045
3/13/83	[illegible]	[illegible] Box 370 Juneau Ak. 99802	789-3651
3/13/83	Heather Hansen	PO Box 396 Juneau, AK. 99802	586-2106
~~3/13/83~~	~~Kathi Dun~~		
3/13/83	James DeGan	8908 Gee St. Juneau Ak.	789-3702
3/13/83	Matt Bowen	2416 Aurora Drive. Ak.	789-4018
3/13/83	[illegible]	10120 Dock St Duty Cove Rd AK	789-2411
3/13/83	[illegible]	Po. Box 2719 99602	789-2520
3/13/83	[illegible]	[illegible]	789-[illegible]
3/13/83	[illegible]	4412 Julep Street	789-[illegible]

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Date	Name	Address	Telephone
3/13/83	Evangeline Lech	6590 Glacier Hwy #130 Juneau AK 99801	789-0035
3/13/83	Mary Hunter	3800 Portage Blvd	789-2040
3/13/83	Doris D Ward	P.O. Box 473 Juneau AK	789-0363
3/13/83	Mari K Gray	9353 Turn St. Jun. 99801	9-0134
3/13/83	Larry O. Gray	9353 Turn St Juneau 99801	70134
3/13/83	Mary C. John	4447, Eyelet St Juneau. Ak.	99801
3/13/83	Julie A Ward	Box 473 Juneau, AK.	99802
3/13/83	Jane L. Schmidt	Box 3037 Juneau AK	99803
3/13/83	Mary O Arvola	PO 856 Juneau, AK	99802
3/13/83	Louise Johns	3800 Portage, Juneau Ak	99801
3/13/83	Dennis H. Johns	3800 Portage Blvd. Juneau, Ak.	99801
3-13-83	Wm J. John J.	4447 Eyelet st - Juneau, AK	99801
3-13-83	Beverly M. Jones	PO Box 2066 Juneau, AK	99803
3-13-83	Donald E Dawson	Box 2266 Juneau, AK	99803
3-13-83	Amanda L Hanson	Box 2266 Juneau, AK	99803
3-13-83	Wayne T Hanson	Box 396 Juneau, AK.	99802
3-13-83	Florence M Hanson	Box 396 - Juneau	99802
3-13-83	John Crawford	Box 2324 Juneau, AK.	99803- 789-0838

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Date	Name	Address	Telephone
3-13-83	Rev. Wm. Nichols	8497 Thunder Mtn. Rd.	789-3605
3-13-83	Cathy Nichols	8497 Thunder Mtn. Rd.	784-3605
3-13-83	Lorene Warren	8725 Gail Ave	789-5046
3-12-83	Frances Cropley	4104 Birch Lane	789-0838
3/12/83	Tommy Jiminez Jr	9521 Eagle St	789-2358
3-13-83	Lecia Bennett	8209 Cedar Drive	789-9618
3-13-83	Walter Bennett	8209 Cedar Drive	9-9618
3-13-82	Gerald Horning	1700 Valley Ct. #86	586-1292
3-13-82	Wilma J Baines	8497 Thunder Mtn Rd	789-4334
3-13-83	Dorothy J. Horning	1700 Valley Ct. #86	586-1292
5-15-83	Carol S. Clay	~~#32~~/3865 Mendenhall Loop Rd.	789-4004
5-15-83	Fred L Clay	32-2865 Mendenhall Loop Road	789-4004

MEMORANDUM
LEAGUE OF WOMEN VOTERS OF ALASKA

TO: House Judiciary Committee DATE: May 20, 1983

FROM: Paula Ziegler, President, League of Women Voters of Alaska

SUBJECT: SJR 1

The League of Women Voters of Alaska is appreciative of the House Judiciary committee's hearing SJR 1. The League strongly supports passage of this resolution.

The Equal Rights Amendment will provide a constitutional guarantee of equal protection under the law to women and men. This means that any protection extended to one sex under the law must be extended to both sexes. The basic principle is that gender should not be a factor in determining the legal rights and responsibilities of people.

The economic facts are indisputable:

* 43% of the American work force is comprised of women.
* Women earn only 59¢ for every $1.00 earned by men.
* Women work for the same reason as men: economic necessity.
* 66% of all women work at low-paying, traditionally "female" jobs.
* 33% of all female-headed families live in poverty.

The Equal Rights Amendment will not automatically erase the centuries of discriminatory attitudes and practices that have kept women economically dependent, nor will it automatically make jobs and opportunities available. But it will provide the constitutional foundation and public mandate necessary to the effective enforcement of laws already on the books as well as to future legislation addressing economic equity for women.

Reports from states with equal rights amendments (such as Alaska) refute the claims of opponents that dire things will come to pass with ERA. The terrible perils of coed bathrooms, rampant homosexual marriages, massive family instability and interference in the privacy of family relationships have simply not materialized.

We are all proud of the Alaskan tradition of individualism and opportunity. Remembering that "individuals" means men and women, help maintain opportunity for both by passing SJR 1.

Thank you.

Paula Ziegler

Testimony on SJR #1 and HJR #6 May 20, 1983

I urge you to oppose the passage of SJR #1 and HJR #6 relating to the proposal by Congress of an Equal Rights Amendment.

Do you know that sex discrimination is already constitutional prohibited? Discrimination is a matter of enforcement, not a lack of laws.

Do you know that negative effects have resulted from the State ERA? It has disrupted families and recently a study showed that women develop a housewife depression sydrome because feminists have told them they are deprived!

Do we want more loss of freedom for state's rights? ERA would take away the law making function of the State and give the Supreme Court the power to interpret and decide on this issue. After 100 years, the Supreme Court is still finding meanings in the 14th Amendment never imagined by its drafters.

Is this as simple as it appears?

Alice Bergdoll
1506 Lund Street
Juneau, Alaska 99801

P.O. Box 376
Douglas, Ak. 99824
Sue Miller, President
Eagle Forum
Juneau Douglas Chapter

Testimony, May 20th, House Judidiary

We are opposed to SJR#1 because it will send an inaccurate message to Congress.

You may not have received all of the messages from across the state opposing SJR 1 because many of the people thought you were considering HJR #6 today, which is the identical resolution as SJR 1 without the traditional family statement. Therefore, I ask you to consider the opposition to HJR#6 as the same as to SJR#1.

What we all object to is the wrong message you would be giving Congress. Even though lines 1 and 2 of page 2 state "Whereas adoption of this resolution does not minimize the state's support of and belief in traditional family values.", the whole resolution would negate this statement as experience has already nullified that statement.

<u>There is no way, you can have ERA without affecting the traditional family.</u>

In the Senate House Judiciary, many of us gave testimony showing negative effects from the State ERA, all of which affected the values of the traditional family, whether so=stated or not. Our testimony also made a lie out of lines 17-24, page 1 of this resolution. For example:

We gave testimony which proved that rather than enhancing the ability of all citizens to achieve their full potential, it hindered the ability of many to achieve that potential. (lines 17-19)

We gave testimony that proved negative results of the state ERA that affect us today to such an extent that there are now seven organizations in the State that we know of and many individuals fighting this resolution and the reintroduction of this subject into Congress.(lines 20-22)

We gave testimony that proved not only has the 1972 amendment created difficulties but it has also created discrimination and harassment of women by women. (lines 21-24)

On the attached page you will find a partial listing of some of the negative results we testified to in the senate.

One Senator stated that because his wife and children hadn't suffered any negative effects, therefore there were none. Naturally, if a family holds feminist views, they will not feel any negative effects. Being married, with children at home, does not automatically make your family traditional. It is your convictions and lifetstyle that count.

We also have many single, divorced, widowed and elderly people who hold our views - they are the views of our great Judeo-Christian heritage for which we are fighting.

Kindly consider all the messages you have heard against HJR#6 and SJR #1 and reject this resolution since it does not send a true picture of the feelings of the people of Alaska to Washington

Partial Listing of Negative Results

(a) Break-up of homes from counseling, by tax-payer funded counseling groups, dedicated to anti-/traditional family views.
(b) Creation of a network of tax-payer funded organizations, all dedicated to political advocacy of anti-traditional family views.
(c) Invasion of privacy and religious conviction and on-the-job harassment as in the O'Brien case.
(d) The invasion into education of committees which took out of school textbooks teachings showing traditional men-women roles, religion and patriotism, substituting or leaving in only views which reflect the BBA philosophy.
(e) The creation of the ailment, "housewife syndrone", a major mental health problem documented by Dr. Harold Voth, a prominent psychiatrist and psychoanalyst at the Menninger Foundation in Topeka, Kansas, and Dr. Herbert Freudenberger, co-author of Situational Anxiety.
(f) Taxpayer supported day-care facilities which remove parents farther from their responsibilites and creates an ever growing dependency upon govt. to resolve all needs.
(g) Taxpayer funding of abortions because of their equalization principle, a corner-stone principle of socialism.
(h) Tax-payer funding of family planning services, which interfere between parent and child relationships.
(i) Affirmative action in job-hiring practices, a form of discrimination itself.
(j) Attempts to reduce womens(preferential car insurance rates.
(k) Advocacy for homosexual/lesbian activities, trying to call these preferences rights.
(l) The insistence in use of unwieldy non-sexist terms as "chairperson", due to their inflexible attitude against terms which mean all mankind.
(m) The extreme expense the State has had to bear to promote the views of one group of women over another.
(n) The pitting of women against women and causing a major division and disruption in society.

Kindly review tertimony given before Senate House Judiciary for testimony of personal negative results.

Lee Miller

My name is Barbara Tyndall. I am a wife and the mother of five children, ges three to thirteen.

I am here today in opposition to Senate Joint Resolution #1, the Equal Rights Amendment. I see no reason for this bill. It's purpose and intent cannot be to protect women in the working world. I have before me over twenty pages of laws and listed agencies that protect women from everything from equal pay for equal work to sexual harrassment on the job. These agencies are both state and federal.

Because of the vague language of the Equal Rights Amendment, many of us fear it could be interpreted to give rights to homosexuals and lesbians, work toward creating a unisex society, and force our daughters into military service. This fear is particularly real to us since many feminist organizations, such as Now, have proclaimed these very things as their goals and desires for the future and look to the Equal Rights Amendment as a tool to acheive these goals.

I have heard many verbal promises that these things will never happen and the Equal Rights Amendment will never be interpreted in this negative way. Will these verbal agreements stand up in court? Will they protect me and my family from the negative aspects of the ERA? No, they will not. I have looked for some qualifying statements to be added to this bill to protect the traditional family from the possible harmful aspects ~~of this bill~~. Senator Bill Bay attempted to alleviate some of these fears and attach an amendment that would guarantee us protection in these areas. The fact that this amendment was all but eliminated has increased my fears even further. Is it possible that "gay" rights, a unisex society and the death of the traditional family are really the goals and purposes behind this bill? I believe they are.

I am tired of this issue. For ten years we have been squabbling as a nation over the Equal Right s Amendment. It has been defeated. Why are we resurrecting it again? It can only hurt and divide us.

Please seriously cast your vote against SJR 1 and see that this bill is defeated in the House. Thank you very much.

Barbara T. Tyndall

Barbara B. Tyndall

Good afternoon ladies and gentlemen. My name is Betty Lauritzen. I am speaking on behalf of myself and future generations

Section I of the Equal Rights Amendment states that equality of rights shall not be denied or abridged on account of sex. I believe this will be interpreted to mean that what is required of men will also be required of women and what is provided for men will likewise be provided for women. Clearly, we want equal pay for equal work. But ERA will also mean equality in the draft for women including mothers, the loss of protective laws for women such as weight ~~restrictions~~ lifting requirements on the job, rest periods, separate bath and living quarters. I believe ERA will actually rob women of protective laws + rights that we have today.

On April 15, 1975 Judge Wilkinson in Pennsylvania denied unemployment compensation to 4 women who refused to apply for a job which required lifting 40 to 150 lbs

In Colorado and Pa. wives under state ERA, whether they have children to care for or not, are legally responsible for family support.

The Dow Jack Force Report has already acknowledged the necessity for more child care centers as women are forced by ERA to work outside the home.

ERA will eliminate a wife's right to draw S.S. on her husbands earnings.

It will be illegal, under ERA, to give lower auto and life insurance rates to women simply because they are women, even tho they statistically have a lower risk factor.

~~It will be illegal to give lower auto and life~~

Sex crimes laws which protect the fabric of our society, such as seduction laws, statutory rape laws and manifest danger laws would not be permitted under ERA

The "separate but equal" doctrine would not be permissible for the male and female, married or not, under ERA. This means public bathrooms in schools for our children, universities, colleges, hospitals, all government subsidized operations. This is already evident on the Alaska Marine Fairway where employees share bathrooms and staterooms.

These are all realities admitted by both pro-ERA and anti-ERA proponents. Representative Edith Greene, the author and sponsor of Title IX even admitted that it has been used for ridiculous rulings never ~~intended~~ intended by Congress.

The Supreme Court is still finding new meanings in the 14th Amendment, ratified 100 years ago. The implications and possibilities for ERA are staggering and endless.

If you think these concerns are invalid and extreme, I would like to ask you this:

When the abortion amendment was ratified in 1973, do you think the proponents intended that babies would be aborted thru the 9th month of pregnancy; skin, breathing, and crying and left in a bucket to die? Ladies and gentlemen, this is happening today, all across America..

Thank you.

SJR

19

MSG 83-00016289 PRTY 1 05/10/83 12:11:43 ORIG: LD00 IN= 0004 OUT= 0068
FROM: LINDA/DELTA TO: JNU
TARGET: LJHL SUBJ: POM'S

TO: ALL LEGISLATORS

FROM: JACQUELINE S. REICHERT
BOX 1138
DELTA JUNCTION, ALASKA 99737

RE: SJR 19

WOULD YOU PLEASE CONSIDER SENATOR MOS. RESOLUTION SJR 19 IN SUPPORT OF DR. GOODMAN. HE HAS BEEN OUR DENTIST FOR MANY YEARS AND WE FEEL THAT IE WOULD BE A GREAT LOSS TO US AND OTHER DELTA PEOPLE. WE HOPE HE IS ALLOWED TO CONTINUE PRACTICING IN DELTA.

**** DELTA INFO OFFICE ***
TO: ALL LEGISLATORS

FROM: WANDA GERRY
BOX 1044
DELTA JUNCTION, ALASKA 99737

REL SJR 19

PLEASE ALLOW DR. GOODMAN TO CONTINUE HIS DENTAL PRACTICE IN DELTA, AS THE WHOLE COMMUNITY WOULD SUFFER FROM THE LOSS OF IT. THIS MAN HAS BEEN THOUGH ENOUGH, WHERE AND WHEN WILL IT ALL STOP.
**** DELTA INFO OFFICE ***

TO: ALL LEGISLATORS

FROM: ALLEN R. CHAFFIN
BOX 712
DELTA JUNCTION, ALASKA 99737

RE: SJR 19

I BELIEVE THAT JIM GOODMAN SHOULD BE ALLOWED TO CONTINUE HIS PRACTICE HERE IN DELTA. THE COMMUNITY NEED'S HIM VERY MUCH.

DOC 83-900020214 PRTY 4 05/24/83 15:28:25 ORIG: LD00 IN= 0005 OUT= 0163
FROM: LIZ IN DELTA TO: JUNEAU
TARGET LJNL SUBJ: POM

TO: ALL LEGISLATORS

FROM: DAVID JOHNSON, P.O. BOX 421, DELTA JCT., AK 99737

RE: SJR 19

I SUPPORT SJR 19 AS I WANT DR. GOODMAN TO CONTINUE TO PRACTICE DENTISTRY IN DELTA.

DR

DELTA POM, [illegible]

TO: ALL LEGISLATORS

FROM: ANDREW JERRY TAYLOR, P.O. BOX 37, TOK, AK 99780 883-2761

RE: SJR 19

MY FAMILY OF FIVE HAS BEEN SEEING DR. GOODMAN FOR FIVE YEARS AND HAVE ALWAYS BEEN VERY PLEASED WITH ALL TREATMENT. IN MY OPINION IT IS OBJECTIFIED AND WOULD BE GREAT HARM FOR HIM TO BE UNABLE TO PRACTICE DENTISTRY. PLEASE PASS SJR 19 FOR THE BENEFIT OF THOSE IN THE AREA.

EOM

LEWIS AND ROCA
LAWYERS
A PARTNERSHIP INCLUDING PROFESSIONAL CORPORATIONS

FIRST INTERSTATE BANK PLAZA
ONE HUNDRED WEST WASHINGTON STREET
PHOENIX, ARIZONA 85003-1899
602/262-5311
TWX 910-951-1178
TELECOPIER 602-262-5747

PAUL F. ROCA
1891-1978

WALTER LINTON
OF COUNSEL

OUR FILE NUMBER

WRITER'S DIRECT LINE
262-0873

April 12, 1983

The Honorable Fritz Pettyjohn
The Honorable Pappy Moss
Alaska State Senate
Pouch V -- State Capitol
Juneau, AK 99811

Re: James Goodman adv. United States

Gentlemen:

We are co-counsel with Kay, Christie, Fuld and Saville of Anchorage, Alaska for Dr. James Goodman. We have been asked to respond to a letter dated March 23, 1983 addressed to Senator Pettyjohn from Ms. Sue Ellen Tatter concerning Senate Resolution No. 19. Before responding to Ms. Tatter's letter, we believe it helpful to analyze the issue.

As we understand it, Senate Resolution 19 would, among other matters, commend Goodman for pardon to the President of the United States. We urge adoption of the resolution. Analysis of Ms. Tatter's letter, in light of the issue pending before you, illuminates its predominately irrelevant remarks.

There can be no question but that Goodman was indeed convicted by a jury. There would, of course, be no need for pardon in the absence of such a conviction. Therefore, it is unpersuasive on the question whether to adopt the resolution to suggest that Goodman has been convicted.

However, if the question is whether to commend Goodman for pardon because he did not receive a fair trail, then examination of some of the pretrial and trial events may be of assistance. Ms. Tatter relies heavily in her letter upon the notion that a jury rejected Goodman's defense. Of the men and women chosen for jury service, one individual was Mr. Geczy. Prior to selection as a trial juror, Geczy had been sued by Goodman's trial counsel, Mr. Kalamarides of Anchorage, Alaska. Imagine, if you will, Goodman's consternation when he learned that one of the people who determined his guilt had been a party adverse to Goodman's own lawyer, Kalamarides. How it came to pass that Geczy was permitted to remain on the jury without Goodman's knowledge is quite beside the point. If the jury verdict is advanced as a rationale for opposing Senate Resolution 19, one need only examine the membership of that jury to decide that the verdict is not all that it is made out to be.

Similarly, assuming Geczy had not been a juror, it is not likely that Goodman would have been acquitted in any event. This is so because critical evidence demonstrating billing errors in favor of the Government, as opposed to billing errors in favor of Goodman, were not presented. This failure of proof arose from two dichotomous problems. The dental work subject of dispute was predominately rendered to children. Their mouths change quickly by reason of maturation and dental care by others. Goodman received no notice that the Government intended to seek an indictment against him alleging false claims before the indictment was returned. While the Government was spending thousands and tens of thousands of dollars travelling about the State of Alaska looking for proof that Goodman filed false claims, Goodman continued to render dental care. He did not seek evidence supporting the notion that billing errors had been made in favor of the Government. By the time the indictment was returned, the Government had obtained its evidence and, by and large, it was too late for Goodman to gather his. The children's mouths had, by that time, changed and dental care had been rendered the children by other dentists.

Furthermore, in the post-indictment setting, no significant effort was made by Goodman's defense team to find billing errors in favor of the Government. In fact, it was not until after the jury verdict of guilty was returned and new counsel employed that anyone suggested to Goodman that evidence of billing errors in favor of the Government would have been relevant and material defense evidence in the trial of the case. Having been shown errors exclusively in favor of Goodman, it was doubtful that any could have acquitted Goodman of all counts. Therefore, suggesting that the Government's case was strong and the defendant's case was weak as a rationale for rejecting Senate Resolution 19 misses the mark.

It is indeed true that Goodman dismissed his appeal from the judgment and sentence of the Court. That decision was based on two facts -- economics and emotions. The trial of this case significantly drained Goodman and his family of their economic and emotional stores. The best result which could be achieved on appeal was reversal of the conviction with a remand for new trial. Goodman would then again be in a position of having to pay -- financially and emotionally -- for a second round. In light of the fact that the trial judge granted probation and recommended that his license to practice dentistry not be revoked, we pushed Goodman very hard toward abandoning an emotionally and financially expensive appellate process in favor of an end to Government litigation and a rebuilding of his emotional and financial condition. With great reluctance, he accepted our advice.

Almost immediately, the Government brought its civil action seeking $100,000, or thereabouts, from Goodman. That civil action called into question the same issues raised in the criminal proceeding. The Government had already obtained its facts and was in a position simply to move forward. Goodman would be faced with the obligation of producing the contrary evidence needed to persuade the trier of fact not to impose civil liability. Once again, out of economic and emotional necessity, Goodman accepted our advice to settle. He and his family could not and cannot afford, financially or emotionally, a further war with the Government. The Government apparently has unlimited resources and unlimited time to litigate with one of its citizens. I dare say there isn't

a member of your august body who can financially and emotionally afford a war of attrition with the United States Government. Therefore, the civil case was settled. However, to suggest that settlement of the civil case is somehow relevant to the decision that you must make with respect to Resolution 19 is simply irrelevant. The settlement documents disclose Goodman's continuing denial of wrongdoing and a payment by him to settle litigation. They show nothing else.

Ms. Tatter's letter suggests that, contrary to Goodman's position, the prosecution in this case was not instituted vindictively, in retribution for Goodman's dispute with the Public Health Service. Unfortunately, Goodman's position on this basic issue was not presented to the trial court for resolution by Goodman's defense team before trial. There is, of course, much precedent for the view that the Government may not institute a criminal prosecution out of vindictiveness or retribution. See, for example, United States v. Gallegos-Curiel, 681 F.2d 1164 (9th Cir. 1982). In fact, no significant effort was made during trial to establish the motive of the Public Health Service dentists for testifying as they did in terms of Goodman's dispute with them. We note that Ms. Tatter does not deny in her letter to you that a serious dispute occurred before the investigation began between Goodman and the Public Health Service.

Salted throughout Ms. Tatter's letter is the notion that this was a serious fraud case. The seriousness of white collar offenses is ordinarily measured by the extent of the damage incurred. The amount in controversy with respect to the counts on which Goodman was convicted totalled $1393. Ms. Tatter suggests that with respect to the claims for relief in the civil lawsuit, there was approximately $2600 of overpayments to Goodman. The Government admits to having spent, in costs alone, $28,000. In fact, the Government sought considerably more -- a sum in excess of $40,000 as costs in the criminal case. If one compares the amount in controversy with the amount spent in pursuing the criminal litigation, that is, $30-40,000 for costs, plus the salary of the Public Health Service doctors, FBI agents, and prosecutors, with the amount claimed to have been lost by the Government -- a number between $1500 and $3000, it is not hard to understand Goodman's assertion that the prosecution was undertaken vindictively. Moreover, it is truly difficult to give credence to the assertion that this was a serious fraud case in light of the dollars involved.

Apparently recognizing this problem, Ms. Tatter has suggested that native American children did not receive dental care because of Goodman's false claims. One wonders whether the lack of care arose from Goodman's false claims or from the months of time that Public Health Service dentists were out in the bush looking for another 25 or 50 dollar error in a billing statement. In any event, the children are getting free care now. Without any order of a court, but out of a sense of responsibility to see to it that his innocent errors are corrected, Goodman has, on almost every Friday since his conviction, rendered free dental care to native Americans. We again note that Ms. Tatter ignores this fact in her letter.

We perceive the Government--Goodman litigation, both criminal and civil, as wholly unnecessary. Regardless of one's view of Goodman's intent, the sums involved are literally insignificant in terms of the overall scheme of things. If the Government truly wanted justice, as opposed to Goodman's hide, this dispute would have followed an entirely different scenario. For example, when the Government's investigation showed that Goodman had over-billed the Government, demand could have been made for immediate repayment and a termination of Goodman's Public Health Service contract. In addition, other forms of relief beyond money damages could have been obtained -- the Government could easily have requested that Goodman render free care for a period of time to even the scales of justice a bit.

Instead, the Government has spent more than $250,000 prosecuting a case in which it lost a maximum of $2500. Now, to advance its cause of "justice" to its ultimate conclusion, the Government seeks to deny Goodman a pardon and threatens to seek further relief before the Dental Board in terms of a license revocation. The history of the litigation between Goodman and the Government, along with Ms. Tatter's letter on behalf of the Government,

demonstrate to the reasonable mind that the Government has had enough and more than enough from Goodman, whatever his misdeeds. We urge adoption of the resolution.

Sincerely,

JORDAN GREEN

JG/st

U.S. Department of Justice

United States Attorney
District of Alaska at Anchorage

Federal Building & United States Courthouse *907/271-5071*
Room C-252, Mail Box 9
701 'C' Street
Anchorage, Alaska 99513

March 23, 1983

The Honorable Fritz Pettyjohn
The State Senate
Pouch V - State Capitol
Juneau, Alaska 99811

Dear Sir:

In response to your letter to Michael Spaan, United States Attorney, I am outlining the position of this office with respect to proposed Senate Joint Resolution No. 19 concerning Dr. Goodman. Many of the assertions in Senate Resolution No. 19, are not factually correct; they involve assertions of Dr. Goodman which were presented to the trial jury and rejected.

1. Criminal Charges - Summary

Dr. Goodman was indicted for 33 felony counts of presenting false claims to the Public Health Service. Under this charge, the United States is required to prove deliberate fraud for each count. The judge instructed the jury that the government had to prove Goodman intended to defraud. Mistakes, bookkeeping errors or unintentional overbilling were legitimate defenses, as described to the jury by the trial judge.

At trial, Dr. Goodman presented a defense of "mistake" or unintentional error. The jury heard the evidence and convicted him of 22 felony counts. The judge refused to grant Dr. Goodman a new trial. Dr. Goodman voluntarily dismissed his appeal to the Ninth Circuit Court of Appeals prior to any briefing.

2. Evidence at Trial

a. Discovery of the Fraud

The charges for which Dr. Goodman stands convicted involve serious fraud. The Senate resolution alleges the prosecution was initiated because of a "heated discussion" between Dr. Goodman and a Public Health Service dentist. This allegation is false. The charges arose because a

private dentist, Dr. Richard Siry of Wasilla, discovered Dr. Goodman had billed for major procedures in children's mouths which had not been performed when Dr. Siry treated them. Dr. Siry checked the children's mouths against copies of Dr. Goodman's bills. Dr. Siry informed the Public Health Service dentist, Dr. H. Douglas Smole, that the Public Health Service should investigate Dr. Goodman's billing.

Dr. Siry testified at trial that Dr. Goodman's false claims were for major procedures. Dr. Goodman's false claims had a high frequency. Dr. Siry checked for mere transpositions and other clerical[1/] or minor errors. In his opinion, the absent procedures for which Dr. Goodman billed were not the result of "mistakes."

b. The Government's Evidence

Dr. Smole and Dr. Robin Lenaker, another dentist now in private practice, audited the work of Dr. Goodman and three other dentists who contracted for "bush" work. They found a high percentage of serious errors in Dr. Goodman's case and only one or two clerical-type errors per other dentist. They checked for lost fillings or lost teeth.

The government presented testimony of Public Health Service dentists, two private dentists and a government dentist who privately consults for the Dental Health Plan as an auditor. None of these persons exhibited any personal animosity toward Dr. Goodman. In fact, they had never met him. They described only professional concern that a dentist was billing for procedures clearly not performed, such as repeated billings for repeat visits for the same unperformed work, in circumstances which make unintentional mistakes unlikely. In addition, the government

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1/ "Clerical" errors would be mere transpositions of work done to another side of the mouth, or mis-numbered teeth where restorative work was done on another tooth. In contrast, Dr. Goodman's fraudulent claims included the bill for Lorita Paul, a four year old, whose mouth, including all of her baby teeth, were intact, with no dental work and no fillings, at the time of trial. Dr. Goodman billed for three baby tooth fillings for Lorita Paul. For numerous children, Dr. Goodman billed for stainless steel crowns, an elaborate procedure requiring preparation of the tooth, when the childrens' mouths contained no such crowns nor preparations. In one case, the patient testified that Dr. Goodman did the work after Goodman was indicted, and not when the bill was submitted.

presented slides and X-rays of the children's teeth, so that even a lay person could understand the nature of the false claims. Further, the government's charge of deliberate falsity were supported in some cases by Dr. Goodman's own X-rays and charts. Dr. Goodman, working in an isolated situation in the "bush," where detection was unlikely, billed for major procedures which he did not perform in the mouths of small Native children.

c. Dr. Goodman's Defense and the Government Rebuttal

Dr. Goodman did not testify at trial to any vendetta or "heated discussion" as described in the Senate resolution. He did not dispute at trial that many of his claims were false. He and his expert at trial recognized that many of these procedures were absent. Dr. Goodman and his staff alleged, in certain cases, that these procedures were performed on patients other than the ones named in the bills. In one case, the government introduced evidence to show that the "other patient" did not exist. In another case, the government showed that the "other patient" was in continual court-ordered custody in a state children's home when Dr. Goodman was supposed to have treated her and that Dr. Goodman did not treated her as claimed.

In some cases the defense alleged that the false claims occurred because of Dr. Goodman's frantic office pace or poor bookkeeping. However, as the government pointed out, Dr. Goodman saw many of these patients repeatedly and never corrected his "errors." Nor did he testify to one instance where he made an "error" against his own interest.

Some patients testified personally that they either did not receive any fillings from Dr. Goodman or that Dr. Goodman did the work he billed for after he was indicted for false billing. There was testimony that these were memorable, traumatic procedures, even from Dr. Goodman's own witnesses.

The Senate resolution indicates Dr. Goodman was convicted because of arguably corroded fillings whose age could have been disputed by experts. This is not true. Dr. Goodman presented several experts at trial. He was not convicted of the counts where his experts disputed the Public Health Service opinions. Where he disputed the interpretation of the bills, such as the corroded fillings cases, the jury gave him the benefit of the doubt and did not convict him.

The trial testimony has been described and is available if the Committee is concerned with factual accuracy. I am certain the facts described in the Senate

resolution are not accurate reflections of the testimony under oath at trial.

3. The Sentence

The United States feels that the judge gave a fair sentence. Dr. Goodman was placed on probation and received a fine in lieu of jail time. This fine was punitive. It did not serve to reimburse the government or the defrauded health program.

The children in the villages served by the Public Health Service are entitled by Act of Congress to receive health care from the United States. The Public Health Service dental program has limited funds. There are children in the village who cannot have cavities or absesses treated because the money was used up, partially to pay for Dr. Goodman's false claims.

4. Public Interest

It was important for the United States to bring this case against a public contractor, paid by the taxpayers, for deterrent purposes. The government in Alaska is forced to rely on many professionals who contract with the government. Many of these persons do work in the "bush" where false billing is difficult to detect. It is very expensive for the government to examine every single patient or every single contract performed by a government contractor. In this case, only a dentist could detect the falsities. In fact, the falsities were discovered not by Public Health Service dentists, but by a private dentist who worked on the children's teeth in the village of Mentasta. In such circumstances, the government believes it must occasionally undertake a thorough investigation to root out fraud.

We sincerely hope no legislator takes the position that the government should prosecute crimes that are easy to detect, and let clever professionals escape liability because they possess special knowledge and a special trust relationship with the patient. Violation of the special trust relationship here between patient and dentist makes the fraud especially serious.

Dr. Goodman's case was not easy to prosecute, but it certainly did not involve a disproportionate amount of government expense. It was only one of several other criminal fraud trials I handled in 1982, in addition to many civil and appellate cases. Dr. Goodman's case was one of numerous criminal cases prosecuted by this office: it was not singled out for unusual treatment by this office or the FBI.

The government did bear the cost of transporting all the patients to the trial because Dr. Goodman refused to stipulate concerning what was in the childrens' mouths. Once the children appeared at court, Dr. Goodman's attorney changed his mind in many cases and did not dispute the patient's mouth configurations. The cost of bringing the witnesses was approximately $28,000. The expense was due solely to Dr. Goodman's initial evidentiary position.

5. The Civil Fraud Suit

The federal government sued Dr. Goodman for presenting false claims to a government agency under the Civil Fraud Statute. This is a permissible method of proceeding, approved by our elected representatives in Congress. Its purpose is to make the government whole. The civil concept allows recovery for cases where the burden of proof is less strict than in a criminal case where many rights are given to the accused.

The civil fraud suit involved claims in addition to those presented to the criminal trial jury. Further, in the course of preparing for this civil lawsuit, the Public Health Service dentists are discovering even more false claims made by Dr. Goodman.

Dr. Goodman has, at present counting, submitted false claims for 26 patients totaling approximately $2600 or an average of $100/patient. He treated about 150 Public Health Service patients. Thus, it is likely there are still more false claims that are difficult and expensive to detect.

One of the purposes of the civil fraud statute is to permit recovery where there have been numerous fraudulent claims -- and the likelihood of many more -- but where the fraud is difficult or expensive to detect.

Mr. Spaan believes we would be remiss in our duties to the taxpayers and to the general treasury if we did not pursue all avenues to reimburse the government for false claims and their attendant cost, particularly, the cost of detection. If we pursue collection remedies against those who default on student loans, VA loans or SBA loans, even where the borrower is in difficult circumstances, it is unfair to exempt a wealthy dentist from his statutory duties described by Congress.

The civil suit is in the final stages of settlement negotiations. The government is considering a substantial settlement offer proposed by Dr. Goodman's attorneys. If Dr. Goodman believes the suit is unjust, his proper avenue is in the courts.

We believe it will be prejudicial to both parties to discuss the case more at this point, but the results will become a matter of public record soon.

6. Conclusion

The jury was convinced beyond a reasonable doubt that Dr. Goodman was guilty of 22 counts of intentional fraud. The jury thus did not accept his explanations of "mistake," "professional disagreement" or "bookkeeping errors." Dr. Goodman has elected not to pursue his appeal. Thus any claim of innocence is not supported by the record.

The United States has taken no position on any State Dental Board proceedings. However, if any doubt remains about the fraudulent nature of Dr. Goodman's intent, after the jury verdict, after Dr. Goodman dismissed his appeal and after compromise of the civil suit then perhaps presentation to the Dental Board will resolve any lingering doubts.

The transcript of the criminal trial, as well as all pleadings in both the civil and criminal cases, are a matter of public record and available for you or your Committee to examine. We believe that if the matter is investigated by yourselves or the Dental Board, impartial persons will see, as did the jurors, that indefensible fraud was perpetrated upon the Public Health Service, the American taxpayers and upon the children whom Dr. Goodman was paid for treating.

Thank you for your attention.

Very truly yours,

MICHAEL R. SPAAN
United States Attorney

Sue Ellen Tatter

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Dental Emphasis:
Dentures and Partial Dentures

April 4, 1983

Senator Bill Ray
Chairman Senate Judiciary Committee
C/O Alaska State Legislature
Pouch V (MS 3100)
Juneau, Alaska 99811

Dear Senator Ray:

I am appalled by Senate Joint Resolution Number 19 which represents a presidential pardon for Dr. Goodman. I am appalled not by the appeal but by what it is based on. Several very important aspects of it are absolutely incorrect! I find it difficult to believe that a legislator could print erroneous information in a document that is to be presented before the state legislature.

First of all, and least of all, the amount of falsified claims totalled $1800.00 not $900.00 as alleged in the resolution. Secondly, no prosecution of these claims was ever initiated until a thorough quality review had been performed on five contract dentists, all working in the TOK area, Dr. Goodman being one of them.

Finally, the reason that an inquiry was performed was that another private contract dentist had noted a discrepancy with work Dr. Goodman had claimed to have performed and alerted the chief of Dental Services of the USPHS, Dr. Smole of this. At that point an investigation ensued which uncovered numerous billings for work never performed that had been paid for by US. tax dollars.

The most abusive portion of this resolution is the part that states that Dr. Smole has or had a personal vendetta against Dr. Goodman. I not only assisted Dr. Smole in the five day assessment in the TOK area that uncovered the discrepencies, but worked along side him for over two years at the Alaska Native Medical Center in Anchorage. He has always dealt fairly with individuals whether they be fellow PHS officers or private contact dentists. Dr. Smole has always adhered to honorable cognitive approaches to all problems requiring reasonable judgments.

I feel, and have told him so, that court action should be pursued for the defamation of character remark made in this resolution as well as other degrading statements made in papers in the last few months.

PHIL W. WRIGHT, JR., D.D.S.
ROBIN P. LENAKER, JR., D.D.S.
502 E. Fireweed Lane, Suite B
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Dental Emphasis:
Dentures and Partial Dentures

Senator Ray, I only ask that your committee be fully aware of the court transcripts prior to acting on this resolution.

Sincerely,

Robin P. Lenaker Jr

Robin P. Lenaker; D.D.S.

RPL/jl
cc: Senator Tim Kelly
C/O Alaska State Legislature
Room 208 - B
Pouch V (MS 3100)
Juneau, Alaska 99811

Delta dentist settles suit with government

BY SHEILA TOOMEY
Daily News reporter

Delta Junction dentist James Goodman, convicted of defrauding the federal government by charging for dental work he didn't do, has settled a civil suit filed against him by the federal government with a $20,751.60 check.

The sum will partially repay the government for the cost of detecting Goodman's fraud, said Assistant U.S. Attorney Sue Ellen Tatter. Tatter originally had sought to recover $87,000 from Goodman to cover the cost of the investigation and trial that led to his arrest and conviction.

The amount of the check, received at the U.S. Attorney's office on Tuesday, was arrived at by Goodman's attorneys through a series of calculations, Tatter said. Neither Goodman nor the government admits any liability in the settlement.

Goodman was convicted by a jury on June 16 of 22 fraudulent billings to the U.S. Public Health Service. The jury acquitted him on 10 similar charges, and one charge was dismissed by the judge during the trial.

In reaching their decision, jurors rejected Goodman's defense that the fraudulent billings were inadvertent and due to sloppy bookkeeping by himself, his wife, Jane, and his staff.

Goodman was sentenced to five years probation and fined $31,500.

The state board that licenses dentists has asked for the transcript of Goodman's trial. The board is expected to discuss at its June meeting whether or not his license to practice in Alaska should be revoked, said Harry Treager, director of the Division of Occupational Licensing.

Tatter said Tuesday's settlement closes the government's case against him and will end a continuing investigation into other billing claims raised against the dentist since the filing of the original charges.

"We could keep investigating more and more of these claims," Tatter said, "but it's very expensive and it ties up the dentists from the Native Health Center."

Goodman treated about 150 Public Health Service patients between 1979 and 1981, according to Tatter. Investigators uncovered 26 patients charged for work not done totaling $2,600 in billings, she said.

The government agreed to settle with Goodman to avoid incurring any further costs and because they think the sum is a reasonable compromise, Tatter said. "We're very glad to get it," she said. "To date the civil case has cost us very little to pursue. It would cost us more to go further."

Goodman said he agreed to settle not because he felt he did anything wrong, but to save his family and friends the ordeal of another trial.

The Goodman prosecution — especially Tatter's decision to file a civil suit after the criminal trial — has angered some people in the Delta Junction area where the dentist lives and practices.

Three hundred people contributed $3,400 at a Feb. 25 pro-Goodman rally to lobby Congress and President Reagan to pardon Goodman. And a local group has written a song picturing Goodman as a victim of overzealous law enforcement.